TEAR R. CARTER : NUMBER: 559,782-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

KENNETH R. PHILLIPS, ET AL : CADDO PARISH, LOUISIANA

CONSOLIDATED WITH

HENDERSON BUTLER, JR. : NUMBER: 561,867-A

VERSUS : FIRST JUDICIAL DISTRICT COURT

KENNETH PHILLIPS AND : CADDO PARISH, LOUISIANA

STATE FARM INSURANCE

JOINTLY AND IN SOLIDO

**RULING ON LIABILITY**

**AND APPORTIONMENT OF FAULT**

A day-long trial was held in the captioned matter on August 13, 2013. As to liability issues, the Court heard testimony from Tear Carter, Henderson Butler, Jr., Kenneth Phillips and Shreveport Police Officer J. Allen[[1]](#footnote-1). The Court also received into evidence numerous exhibits, notably an image of the scene and photographs of the vehicles. Having thoroughly reviewed the evidence and inspected the general scene, the Court concludes the following:

(1) On March 2, 2012, Kenneth Phillips (“Phillips”) was driving his 1999 Ford F 350 XL Crew Cab long bed pick-up truck, exiting the parking lot of Pet Zone, and his brother Steven[[2]](#footnote-2) occupied the passenger seat;

(2) Phillips intended to turn left to proceed southbound on Jewella Avenue;

(3) Phillips looked to his left, then to his right and saw the southbound vehicle driven by Henderson Butler, Jr. (“Butler”) in the distance;

(4) Phillips eased through the two northbound lanes of Jewella, passed through the median, and into the southbound lanes;

(5) As he positioned himself in the southbound outer lane, an impact occurred between the Phillips truck and the taxi cab driven by Butler in which Tear Carter was a customer and passenger;

(6) Because of the large and extended nature of the truck driven by Phillips, the left turn maneuver necessarily had to be made in a wide radius and took more time than would be the case for an average vehicle;

(7) According to the jurisprudence of this State, a left turn maneuver is inherently dangerous and must be executed in a careful and prudent manner[[3]](#footnote-3);

(8) Phillips was negligent in the method by which he executed his left turn by failing to properly yield to oncoming traffic and by exercising a maneuver which created a hazardous condition for southbound Jewella motorists, like Butler;

(9) By colliding with the left rear side of Phillips’ truck, Butler was negligent in that he breached the standard of care for a following motorist[[4]](#footnote-4);

(10) Moreover, as a cab driver, Butler had a responsibility to exercise reasonable care in transporting his customers. He failed to do so by traveling too fast under the circumstances, failing to keep a proper lookout and failing to take defensive action by reasonably anticipating the maneuver by Phillips. Specifically, the Court is of the view that had Butler reasonably anticipated the action of Phillips and taken evasive action either by slowing his vehicle or moving to the inside southbound lane of Jewella, the accident would have been avoided.

(11) The Court assesses fault as follows: Butler, 40% at fault; and Phillips, 60% at fault. Of course, Ms. Carter is an innocent guest passenger.

Counsel shall submit briefs on quantum issues (not to exceed two pages) by August 23, 2013.

Signed this 16th day of August, 2013, in Shreveport, Caddo Parish, Louisiana.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

J. Marshall Rice, Counsel for Tear Carter

S. P. Davis, Sr., Counsel for Kenneth R. Phillips

Theodore J. Casten, Counsel for State Farm Mutual Automobile Insurance Company and Kenneth Phillips

Paul D. Oberle, Jr., Counsel for Imperial Fire and Casualty Insurance Company and Henderson Butler, Jr.

1. Written statements of the parties taken shortly after the accident were also admitted as evidence. [↑](#footnote-ref-1)
2. Steven Phillips, brother of Kenneth Phillips, and Lisa Dinkins were not called to testify notwithstanding that both were listed as eyewitnesses. [↑](#footnote-ref-2)
3. A driver attempting to make a left turn is under a duty to exercise a high degree of care. He is presumed to be liable for the accident and must prove that he is free of negligence to avoid liability. He must make sure, before turning, that the turn can be made without danger to oncoming traffic, and he must yield the right of way to such vehicle. [↑](#footnote-ref-3)
4. When a following driver rear-ends the vehicle in front of him, the following driver is presumed to be at fault and must prove a lack of fault in order to avoid liability. In order to prove that he was not at fault, the following driver must show that he kept his vehicle under control, watched the vehicle in front of him closely, keeping a safe distance, or that the lead driver created a hazard which he could not reasonably avoid. [↑](#footnote-ref-4)