

GABRIELLE HUBER

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NO. 2000-CA-0679

VERSUS

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COURT OF APPEAL

**LIBERTY MUTUAL
INSURANCE COMPANY,
AMERICAN CENTRAL
INSURANCE COMPANY,
BURNHAM SERVICE
COMPANY, INC., JOHN DOE,
AND STATE OF LOUISIANA,
THROUGH THE
DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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PLOTKIN, J., DISSENTS WITH REASONS:

The majority selectively quotes from Ms. Huber's affidavit to show Ms. Huber's inability to identify Burnham as the owner of the phantom truck, after she settled with American Central Insurance. The majority overlooks the sworn testimony of Ms. Huber's deposition, which is inconsistent with the affidavit and establishes a prima facie case for the fact finder to determine that Burnham was the owner of the truck. During her deposition, Ms. Huber described the accident, and how she pulled to the side of the road after her vehicle was struck from behind. The following dialogue took place:

A. And then I couldn't believe it, and slowly got to as far as I

could because of all the construction that was going on, got over somewhere safely because I was traveling on the interstate to pull over to get out of the lane of traffic. And when I did that, the truck had slowed down. I felt he was coming behind me to stop also, but he kept going. And at this time, I could see the name of the truck on the side of the truck.

Q. What name did you see?

A. I saw Burnham. I wrote it down very quickly, Burnham.

A genuine issue of material fact remains as to whether a Burnham delivery truck struck plaintiff's vehicle on the date of the accident. I would reverse the trial court's judgment, granting summary judgment in favor of defendants, and remand the case for further proceedings. Accordingly, I respectfully dissent.