

**GEORGE A. BATISTE**

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**NO. 2000-CA-2027**

**VERSUS**

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**COURT OF APPEAL**

**GENERAL MOTORS  
CORPORATION AND  
ALLSTATE INSURANCE  
COMPANY**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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### **McKAY, J. DISSENTS WITH REASONS**

I respectfully dissent from the majority's opinion and would reverse the trial court's granting of summary judgment.

The trial court granted the summary judgment on the basis that a plaintiff must produce expert testimony in order to prevail in a product liability claim. However, the burden required for a summary judgment is "that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law." Short v. Griffin, 96-0361 (La. App. 4 Cir. 8/21/96), 682 So.2d 249. Furthermore, Mr. Batiste submits that he has alleged a head on collision with the concrete rail of I-10 and a rear end collision with the rail of I-10 at a speed of approximately 50 m.p.h. The defense experts, however, have indicated that they do not believe that this

was a front end collision or a rear end collision, and therefore the air bag functioned properly by not deploying. A genuine issue of material fact exists as to what kind of collision did happen. Accordingly, summary judgment as to whether the air bags deployed properly was improper.