

VANA ANDREWS

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NO. 2003-CA-0736

VERSUS

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COURT OF APPEAL

**MARGARET DUFOUR, THE
GOVERNMENT EMPLOYEES
INSURANCE COMPANY AND
FORD MOTOR COMPANY**

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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TOBIAS, J., CONCURS IN THE RESULT AND ASSIGNS REASONS.

I respectfully concur in the result reached by the majority.

The majority correctly states the law respecting the standard of review of a judgment notwithstanding the verdict (“JNOV”) as set forth in *Davis v. Wal-Mart Stores, Inc.*, 2000-0445, pp. 4-5 (La. 11/28/00), 774 So.2d 84, 89, and *Anderson v. New Orleans Public Service, Inc.*, 583 So.2d 829 (La. 1991), but then errs in its attempt to give deference to both the jury’s verdict and trial court’s JNOV on the issue of fault. Where the majority and I part views is whether this court must give any validity or deference to the jury’s verdict once we determine that the trial court was correct in granting the JNOV. In the case at bar, reasonable jurors could not find (a) that Ms. Andrews was not partially at fault or (b) that Ford was at fault (as discussed below); therefore the trial court was correct in granting the JNOV. The

trial court was clearly wrong/manifestly erroneous in finding Ford at fault (as discussed below). Therefore, this court is required to recast the percentages of fault anew without giving any deference to either the jury's or trial judge's allocation of fault.

Since this case was argued and while it was under advisement, a different panel of this court decided *Seither v. Winnebago Industries, Inc.*, 2002-2091 (La. App. 4 Cir. 7/2/03), 853 So.2d 37, *writ den.* 2003-2797 (La. 2/13/04), 867 So.2d 704 and 2003-2799 (La. 2/13/04), 867 So.2d 705. *Seither* is now the rule of law in this circuit and we are required to adhere to it. *Seither* requires that we find that Ford was not responsible for the accident or injuries based upon the evidence in the record before us as explained in the majority's opinion.