

KEOKA PARQUETTE

*

NO. 2006-CA-1527

VERSUS

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COURT OF APPEAL

**CERTIFIED COATING OF
CALIFORNIA, INC. AND
MARKEL INSURANCE
COMPANY**

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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BAGNERIS, J., DISSENTS WITH REASONS

I respectfully dissent from the majority opinion, as I would find that the trial court erred when it granted plaintiff's motion for partial summary judgment, striking defendants' defense of third-party negligence. Louisiana law provides that defendants are entitled to have damages apportioned among all persons causing injury to plaintiff and thus, the trial court erred when it denied defendants the opportunity to present their evidence regarding the defective condition of the cable to the jury. See La. C.C. Art. 2323¹. Further, the Louisiana Supreme Court in *Dumas v. State ex rel. Dept. of Culture, Recreation & Tourism*, 2002-0563

¹ Louisiana Civil Code Article 2323 states in part:

- A. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.
- B. The provisions of Paragraph A shall apply to any claim for recovery of damages for injury, death, or loss asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability.

(La.10/15/02), 828 So.2d 530, held that La C.C. Art. 2323 “clearly requires that the fault of every person responsible for a plaintiff’s injuries be compared, whether or not they are parties, regardless of the legal theory of liability asserted against each person.” *Id.* at p. 11, 828 So.2d at 537. In the instant case, defendants specifically pled the fault of third parties as a cause of the plaintiff’s accident and injuries as an affirmative defense in its answer to plaintiff’s petition for damages. Pursuant to La C.C. Art. 2323, and the Louisiana Supreme Court’s holding in *Dumas*, defendants were entitled to present evidence regarding the defective condition of the cable that snapped to the jury, and the jury should have determined whether any nonparty tortfeasors should bear a portion of the fault in this case. Therefore, I would find that the trial court erred as a matter of law by granting the partial summary judgment striking defendants’ defense of third-party negligence and keeping the issue from the jury.