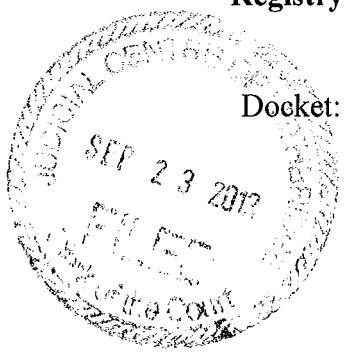
Court of Queen's Bench of Alberta

Citation: Johnston v. Day, 2013 ABQB 512

Date:
Docket: 1006 00585, 0806 00581, 0806 00560, 0806 00577, 0806 00578, 1006 00432
Registry: Lethbridge



Docket: 1006 00585

Between:

Lydia Johnston

Plaintiff

- and -

Gary Reginald Day by His Litigation Representative Gayle Hiscocks, Craig Allan Prien and James Keating carrying on business as Crowsnest Taxi and Karen Middleton and The Co-Operators General Insurance Company

Defendants

and Between

Docket: 0806 00581

Annie Romancewicz

Plaintiff

- and -

James Keating and James Keating Operating as Crowsnest Taxi and Craig Prien and Gary Day and Karen Middleton

Defendants

and Between

Docket: 0806 00560

Rose Quarin

Plaintiff

- and -

Craig Allan Prien, Craig Allan Prien carrying on business as Crowsnest Taxi and Gary Reginald Day and Karen D. Middleton and James Keating

Defendants

and Between

Docket: 0806 00577

Karen Middleton

Plaintiff

- and -

Gary Reginald Day

Defendant

and Between

Docket 0806 00578

Karen Middleton

Plaintiff

- and -

Cooperators General Insurance Company

Defendant

and Between

Docket 1006 00432

Rose Quarin

Plaintiff

- and -

Peace Hills General Insurance Company

Defendant

Reasons for Judgment
of the
Honourable Chief Justice
Neil Wittmann

Introduction

[1] On September 1st, 2006 at about 11:30 in the morning, the Defendant Gary Reginald Day ("Day") drove a taxi through a crowded fruit stand in Blairmore, Alberta, causing injuries to a number of pedestrian patrons including the plaintiffs in these actions. The taxi was owned by Craig Allan Prien ("Prien") carrying on business as Crowsnest Taxi and was at all material times

operated by Karen Middleton ("Middleton") with the express consent of Prien, except during the time when Day was operating the taxi.

[2] By a previous Order of this Court, the trial of an issue was directed as to liability, in particular, which parties were negligent or contributorily negligent for the motor vehicle accident which occurred September 1st, 2006.

Background

[3] As noted from the styles of cause in these actions, which were consolidated for the purposes of trial, Middleton appears as both a plaintiff and defendant. Middleton, Day, Prien and and Keating appear as defendants in the actions brought by Lydia Johnston, Annie Romancewicz, and Rose Quarin. Keating was the owner and operator of Crowsnest Taxi prior to the sale of the business, July 26th, 2006, when Prien acquired 3 taxis including the 1993 Oldsmobile involved in the accident on September 1st, 2006. After July 26th, 2006, Prien became the sole owner, did some driving of the taxis and continued to operate the business as Crowsnet Taxi. His other drivers included Middleton, who drove 4 or 5 days a week. Prien did not provide training to his drivers, but knew that Middleton had a minimum of 4 years experience driving taxi prior to his acquiring Crowsnest Taxi from Keating. Neither Prien, nor Keating before him, told their drivers not to leave the keys in the car if a passenger or fare was in the car, or not to leave the car running when the driver was not in the car, or not to leave a passenger in the car when the driver stepped out to run an errand for the passenger. There was no policy manual, nor were any oral instructions given to the taxi drivers, including Middleton.

[4] Both Keating and Prien knew Day. According to Prien, Day was a regular taxi customer and was drunk 75% percent of the time when being transported by Crowsnest Taxi. When Prien drove Day, he was asked on occasion to run an errand; to go into a local convenience store on behalf of Day. On those occasions, Prien always removed the keys from the taxi and took them with him when he ran the errands. There were no rules, policies or discussions held among the taxi drivers, including between Middleton and Prien, on this kind of an issue. Particularly, there was never any discussion with Middleton about any circumstance where she should not leave the keys in the vehicle or leave the vehicle running, when she was not in it. Day was a frequent passenger in Middleton's taxi.

[5] In Middleton's experience, when Day was her passenger, he was impaired or drunk about 98% percent of the time and was taking drugs, namely marijuana and cocaine, as well as alcohol.

[6] On September 1st, 2006, Middleton got a call to pick up Day a little after 11:00 a.m. at his home in Frank, Alberta. Middleton described Day as being drunk when she picked him up. Day told her he wanted to go to Blairmore, an extremely short distance. He sat in the passenger front seat next to Middleton. As the taxi approached a fruit stand across from the Extra Foods store on the north side of 20th Avenue in Blairmore, Day indicated to Middleton that he wanted some fruit, whereupon Middleton drove the taxi to the fruit stand and stopped in the parking lot area. Day asked Middleton if she would get out and get him some fruit because he was too "wobbly"

to do it himself. Shortly before 11:30 a.m., Middleton turned the taxi off, left the keys in the ignition and walked to the fruit stand.

[7] Middleton usually would take the keys with her but did not on this occasion. While she was standing in line at the fruit stand, she heard her taxi "turn on", looked and saw that Day was still in the passenger seat. She continued in the line and paid for the fruit, but, thereafter could hear her taxi "revving", heard the brake let go and spinning gravel because Day was driving the taxi, seated in the driver's seat driving north.

[8] Middleton admitted that leaving the keys in the ignition with an impaired fare alone ought to be something she should know not to do, as a matter of common sense, because of the risk that the impaired passenger might take over the vehicle. She also understood that people impaired by alcohol and drugs can act erratically and unpredictably; that she shouldn't leave an impaired fare alone in her taxi with the keys in the vehicle.

[9] A number of agreed facts and exhibits relevant to the issue of liability were tendered to the Court. The Agreed Facts include that Day was a fare paying passenger in the taxi being driven by Middleton, September 1st, 2006 and at the time was intoxicated by alcohol. At or about 11:30 a.m., the Plaintiffs Rose Quarin, Lydia Johnston, Annie Romancewicz and Karen Middleton were standing at the outdoor fruit stand located at 12306 - 20th Avenue, Blairmore, Alberta and each suffered bodily injury caused by Day driving the taxi into the fruit stand. The Administrator of the *Motor Vehicle Accident Claims Act*, RSA 2000, c. M-22, ("the Administrator") admits that Day was negligent in the operation of the taxi on September 1st, 2006.

[10] Day was convicted of operating a motor vehicle while his ability to do so was impaired by alcohol, thereby causing harm to each of Lydia Johnston and Karen Middleton contrary to s. 255(2) of the *Criminal Code of Canada*. Certificates of Conviction were entered as Exhibits. Also, a Certificate of Conviction for operating a motor vehicle while disqualified from doing so, by reason of an Order made pursuant to s.259(1) of the *Criminal Code* was entered. In addition, a Certificate of Conviction for the theft of the motor vehicle, being the property of Craig Allan Prien, contrary to s.334(A) of the *Criminal Code*, was entered in evidence.

[11] There is little, if any, dispute as to the facts of the accident pertaining to liability as related above. The issue directed to be tried is whether Day was solely negligent and the sole cause of the bodily injury to the plaintiffs or whether others, namely, Middleton, Prien, or Keating were contributorily negligent.

The Actions

[12] Three of the four actions alleged that the bodily injuries were caused by the negligence of some, one or more of Day, Middleton, Prien, Keating and Crowsnest Taxi. The action wherein Middleton is plaintiff claims against Day only. Day is now deceased and in at least one action, a litigation representative has been appointed. The action has been discontinued against Keating in each of the actions other than the Quarin action. The defendants have claimed contribution and

indemnity from each other. In the Middleton action, Day has issued a third party claim against Prien. In the Johnston action, her motor vehicle liability insurer, the Co-Operators, has been added as a party defendant. Similarly, in the Quarin action, where Peace Hills Insurance has been added as a defendant. In all of the actions, Day has been noted in default and the Administrator, pursuant to the *Motor Vehicle Accident Claims Act*, has defended on behalf of Day and claimed contribution and indemnity from the co-defendants in the Johnston, Quarin and Romancewicz actions.

[13] The insurers have been added as parties in aid of their rights pursuant to an SEF 44 endorsement. Liability for the bodily injuries is the only issue before the Court at this time.

Issues

[14] The issues to be determined by the Court are:

1) The liability of Day;
2) The liability of Keating doing business as Crowsnest Taxi;
3) The liability of Middleton; and
4) The liability of Prien doing business as Crowsnest Taxi.

[15] I will deal with each in turn.

Liability of Day

[16] It is beyond doubt that Day is liable for the bodily injuries sustained by each of the plaintiffs. In the case of Johnston, Romancewicz and Quarin, there is no issue as to contributory negligence on the part of the plaintiffs. Day owed duty of care to those whom he could reasonably foresee would suffer harm or be at risk of harm in the event he put the Middleton taxi in motion and drove it in an area where pedestrians were lawfully assembled. There is no explanation as to why he did it other than the fact that he was drunk or impaired by alcohol and drugs at the time.

Liability of Keating

[17] Keating is not liable to any of the plaintiffs. The Court notes that this was recognized by Johnston, in that a discontinuance of the action against Keating was filed January 11th, 2012, after Questioning. Keating sold the taxi business to Prien. The form of the sale does not matter. There is no question that Prien became the owner of the business and commenced operating Crowsnest Taxi in July 2006. The taxis were registered in Prien's name and he became the sole proprietor of the business. How Keating operated Crowsnest Taxi prior to that time has no direct bearing on the actions before me. Keating is not liable to any of the plaintiffs. It follows that he is not liable to contribute pursuant to s.3 of the *Tort-Feasors Act*, RSA 2000, c.T-5 at the instance of any of the defendants in the actions.

Liability of Middleton and Prien

(a) Position of the Administrator

[18] The Administrator submits that Middleton should be at least at 25% percent negligent and Day 75% percent negligent.

[19] The Administrator has admitted Day was negligent and caused bodily injury to the four plaintiffs. But on behalf of Day, he strongly disputes that Day should bear sole responsibility for the accident. In support of his position, he cites the following authorities: *Childs v. Desmoreaux* [2006] S.C.C. 18; *The Queen v. Toews* [1985] 2 S.C.C. 19; *R. v. Burbella* 2002 MBCA 105; "Entrust" and "Negligent Entrustment", Black's Law Dictionary (Ninth ed.); "Entrust" and "Entrustment", Webster's Third New International Dictionary; "Entrust", Canadian Oxford Dictionary, (2nd ed.); *Heller v. Martens*, 2002 ABCA 122.

[20] The Administrator acknowledges Middleton's evidence that she had driven Day "hundreds of times" as a passenger in the front seat and left him there and had done so without incident. But, the Administrator says that all that changed on September 1st, 2006, when she heard her taxi start, when she was 20 feet away from the taxi. He submits that Middleton could have yelled, but instead turned her back for 6 - 7 minutes, and left Day totally unsupervised. The Administrator urges that at that point, the risk had changed; that there were children with mothers at the fruit stand and that the history of Middleton and Day is a "red herring" once Middleton heard the taxi start. The Administrator puts Middleton in a position of negligent entrustment, cites a number of authorities with respect to leaving keys in a vehicle where that party is held to have been contributorily negligent by virtue of their conduct, even when a thief has taken the vehicle and caused an accident to others.

(b) Position of Quarin

[21] Quarin's counsel similarly argues that when Middleton's taxi was started by Day, Middleton should have been aware and noticed the risk. Quarin relies on the authorities provided to the Court by Johnston and in addition, Quarin has cited *Anderson v. Chasney*, [1949] 4 D.L.R. 71 (Man. C.A.); *Childs* and *R. v. Boudreault*, 2012 SCC 56. *The Traffic Safety Act*, RSA 2000 c.T-6, s. 186(1).

[22] Quarin's counsel indicates that Middleton should have been aware that Day was very drunk and presented a huge risk, if left in the taxi with the keys. He cites *Childs* at paras. 34 and 37. *Childs* dealt with the duty of a host in a private home convening a party, where a party goer left impaired and drove his vehicle into another oncoming vehicle. The Court drew a distinction between a commercial host and a private host. In the case of a commercial host or in cases where defendants offer a service to the general public, the responsibilities include a duty to act with special care to reduce risk: para. 37. The Court was careful to indicate that "special duties arise".

(c) Position of Johnston

[23] In addition to Day, Johnston asserts that Middleton and Prien, carrying on business as Crowsnest Taxi, are liable for the injuries sustained to Johnston, Quarin and Romancewicz. In support of the legal basis for liability, Johnston has cited the following authorities: *Traffic Safety Act*, ss. 1, 185, 186 and 187; *Contributory Negligence Act,* R.S.A. 2000, c. C-27, s.1; *Mugford v. Kodiak Construction Ltd.*, 2004 ABCA 145; *Mugford v. Weber*, 2005 CarswellAlta 5; *Mustapha v. Culligan of Canada Ltd.* 2008 SCC 27; *Palmquist v. Ziegler, 2010 ABQB 337; Fullowka v. Royal Oak Ventures Inc.*, 2008 NWTCA 04; *Fullowka v. Pinterton's of Canada Ltd.,* [2010] 1 SCR 132; *Campiou Estate v. Gladue*, 2002 CarswellAlta 1562; *Goldberg v. McInnis*, 1959 CarswellSask 16; *Hollett v. Coca Cola Ltd.* [1980] C.C.L.T. 281; *Kalogeropoulos v. Ottawa (City)*, [1996] CarswellOnt 3827; *Leveille v. Mel Murdock Ltd.,* [1993] CarswellOnt 697; *Leveille v. Mel Murdock Ltd.,* [1994] CarswellOnt 3169; *R. v. St. Georges*, 2010 CarswellOnt 4565; *Spagnolo v. Margesson's Sports Ltd.,* [1983] CarswellOnt 1261; *Stavast v. Ludwar*, 1974 CarswellBC 165; *Tong v. Bedwell,* 2002 ABQB 213; *Van Wynsberghe v. Knockaert*, [1954] CarswellMan 40.

[24] Johnston cites *Mustapha* as authority that the fundamentals of a successful negligence action are establishing that a defendant owes the plaintiff a duty of care and that the defendant's conduct breached the standard of care owed; that the plaintiff suffered damage which was caused, in fact and in law, by the defendant's breach: paras. 4-11.

[25] To establish these elements, Johnston has submitted that both Middleton and Prien owed a duty of care to the plaintiffs and that the articulated test is that a duty of care arises where the circumstances of time, place and person would create in the mind of a reasonable person, in those circumstances, a probability of harm resulting to other persons, requiring that person to take precautions to prevent that probable result: *Kalogeropoulos* at para. 48, quoting *Nova Mink Ltd.* v. *Trans Canada Airlines,* [1951] 2 D.L.R. 241 (N.S.C.A.) at p. 254, per McDonald J.

[26] Applying this principle to both Middleton and Prien, the submission of Johnston is that Middleton admittedly acknowledged responsibility for her taxi; that she alone had control of the vehicle and the keys to it; that she knew she was transporting a known drunk and drug abuser, who was impaired on the date and time in question; and that she brought that situation to the public fruit stand and allowed it to evolve.

[27] Similarly, Johnston submits that Prien, as the taxi owner is vicariously liable for the actions of Middleton because of the provisions of s.187(2) of the *Traffic Safety Act*. That section states as follows:

> 187(2) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who, at the time that the loss or damage occurred,
>
> (a) was driving the motor vehicle, and
>
> (b) was in possession of the motor vehicle with the consent, expressed or implied, of the owner of the motor vehicle

is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle,
(d) to be employed as the agent or employee of the owner of the motor vehicle, and
(e) to be driving the motor vehicle in the course of that person's employment.

[28] In addition, Johnston asserts a direct liability on the part of Prien failing to properly train and supervise his employee Middleton, not to leave the taxi with the keys in it when a passenger was present.

[29] With respect to the breach of the standard of care, Johnston says that Middleton's actions gave rise to a reasonable forseeability that Day in the circumstances would put the vehicle in motion with disastrous consequences. Johnson relies on *Tong* at para. 27 and *Kalogeropoulos* at para. 32 by analogy, for the proposition that it is reasonably foreseeable that if a vehicle is left unlocked with the keys inside, it will be stolen or moved by a person not authorized to do so and that that person would operate the vehicle in such a manner as to cause loss or damage to a third party. More specifically, Johnston submits that it is negligence for the driver or operator of a taxi to place Day in an unlocked and unattended car and relies on *Goldberg* for the proposition where an intoxicated fare was left in an unattended taxi with the motor running, it was negligent to do so. Similar reliance is placed on *R. v. St. Georges* at para. 11, where an intoxicated passenger was left in a truck with the engine running.

[30] With respect to the liability of Prien, Johnston submits that no training was given to Middleton, that on Prien's own evidence he knew that 75% of the time Day was drunk, that Prien never advised any of his drivers not to leave the keys in the taxi, or to leave it running if they were not in the taxi, if there was a fare in the taxi. Notwithstanding this, Prien's own practice, on his evidence, was to always take the taxi keys with him when he ran an errand in those circumstances. Johnston argues that had Prien instructed his taxi drivers not to leave keys in the taxi that was occupied by a fare or a drunk or a fare that was intoxicated, the collisions would not have occurred. The third and fourth elements of the test were dealt with by Johnston's counsel succinctly: the plaintiffs sustained damage, which is in the Agreed Statement of Facts, para. 10; that the damage was caused in fact and in law by the breach of duty owed by both Middleton and Prien. It is urged upon the Court by Johnston that the apportionment of fault between Day and Prien be equal, pursuant to s.1 of the *Contributory Negligence Act*, RSA 2000, c.C-27, s.1(1).

(d) Position of Middleton

(i) As Plaintiff

[31] On behalf of Middleton, plaintiff's counsel argues that it is plain and obvious that Day was negligent. She says that Day was "almost exclusively responsible". Further, she refers to Prien's evidence to the effect that in Blairmore "everyone knows everyone" and Keating's evidence that the clientele is "just like family"; that Day had been with Middleton "hundreds of

times in the front seat and had never before misbehaved." Therefore, Middleton asserts that she was not negligent on the basis Day's behaviour in causing the accident was not foreseeable.

(ii) As Defendant

[32] On behalf of Middleton, her defence counsel points out, relying on *Hammond v. Wabana (Town)*, [1998] N.J. No. 336 (Supreme Court of Newfoundland), Court of Appeal, para. 64 that the history between Day and Crowsnest Taxi is vital to an analysis of forseeability. In that case, reference is made to what the reasonable man would have done "under the same or similar circumstances". He reminds the Court that Day stole the vehicle and was convicted of theft. He says this cannot be a case of negligent entrustment because the keys were never given to Day. He further disputes that Middleton did not turn her back once the engine of the taxi was turned on while she was in line at the fruit stand. He says she did not turn her back; rather, she turned around. Referring to *Fullowka*, forseeability involves an analysis of something that "is likely to occur". Essentially, Middleton argues that it could not have been foreseen, in light of the past experience of Day and Crowsnest Taxi and Middleton, that Day would put the vehicle in motion.

(e) Position of Romancewicz

[33] Counsel for Romancewicz informed the Court by letter March 21st, 2013 that her client passed away in 2011 and that she would not be attending the liability trial. The letter indicated that the Romancewicz claim "is intact", by agreement of all counsel. The Court interpreted this to mean the Romancewicz Estate will be bound by this Court's decision on liability.

Analysis

(a) Liability of Middleton

[34] It is clear under from the evidence that Middleton appreciated the risk of leaving the keys in the vehicle with Day unattended and did nothing to prevent that risk from materializing. It is also clear that Middleton, who regarded herself as an employee of Crowsnest Taxi, was providing a service to the public at large. It does not matter that Middleton was following a practice of leaving Day in the vehicle unattended while she ran an errand for him. As *Chasney* points out, a practice that is fool hardy is not elevated to the normative discharge of a duty owed. It is precisely because the practice is fool hardy that when an event occurs, as the result of a fool hardy practice, a duty is breached attracting liability.

[35] I find Middleton is liable for the bodily injury to the plaintiffs, including her own bodily injury. Although history and experience is important in predicting future behaviour, dumb luck is part of the experience. The fact that Day had been a passenger, left in the taxi with the keys, when he was drunk or impaired by alcohol and drugs on previous occasions, is no answer to a fool hardy practice. This is precisely the argument that failed in *Chasney*. Middleton's admissions belie her argument on forseeability. In terms of causation, but for her leaving the keys in the taxi, the accident would not have happened. In *Ediger v. Johnston*, 2013 SCC 18, the Supreme Court of Canada again summarized the legal test for causation at para. 28: the plaintiff

must show on a balance of probabilities that 'but for' the defendant's negligence, the injury would not have occurred, that the defendant's negligence was necessary to bring about the injury, or put in another way, that the injury would not have occurred without the defendant's negligence. Further, at para. 29, the Court stated that causation is a factual inquiry.

[36] Applying the above principles to this case, Middleton was negligent, Prien was negligent and Day was negligent. But for the negligence of any one of them, the accident would not have occurred. That is clear on the facts. Were it not for Middleton leaving the keys in the vehicle and in the ignition, Day could not have set the vehicle in motion. But for Day's setting the vehicle in motion, and negligently driving it into the plaintiffs, the accident would not have occurred. And but for Prien failing to properly instruct his taxi drivers, including Middleton, never to leave the keys in the vehicle with a drunk passenger in the front seat (a practice he himself followed), the accident would not have occurred.

[37] Therefore, each of Day, Middleton and Prien are jointly and severally liable to the plaintiffs.

[38] I do not find it necessary to apply the provisions of s.186(1) of the *Traffic Safety Act* as argued by Quarin. Whether the section imports a reverse onus applicable in the circumstances of this case is unnecessary for me to decide. Nor is it necessary to decide whether s.187(2) of the *Traffic Safety Act* applies to "deem" Middleton the servant or employee of Prien. I find as a fact she was at all material times the servant or employee of Prien.

[39] With respect to the apportionment of fault, I am bound by *Heller* to apply the principles articulated in that case. The *Contributory Negligence Act*, in s.1(1) provides as follows:

> 1(1) When by fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree in which each person was at fault but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

[40] In *Heller*, a motor vehicle accident caused an injury to the plaintiff Heller, who was not wearing a seatbelt. The Court of Appeal was faced with deciding the proper approach to determine the apportionment of fault pursuant to s.1(1) of the *Contributory Negligence Act*. At the trial, Heller was held to be 25% contributorily negligent and the Martens 75% notwithstanding the trial judge's findings that Heller's injuries "resulted directly from his failure to wear a seatbelt" and that "a seatbelt would have prevented this specific type of injury": para. 6. Martens, who had failed to stop at a stop sign, admitted liability for the motor vehicle accident.

[41] The Court canvassed two approaches to apportionment, namely the causation approach and the comparative blame worthiness approach. If the Court were to apply the causation approach, it is obvious from the findings of fact of the trial judge that Heller would be assessed

the majority of the fault for his injuries. The Court of Appeal described this approach as "a poor choice": para. 22. The reasons are set forth in paras. 23-28 of *Heller*.

[42] Thus, the Court of Appeal has mandated that the comparative blame worthiness approach be adopted in Alberta. This approach requires a Court to look at all of the circumstances of the conduct of any liable party to determine the extent of their negligence or degrees of fault. The factors were to be considered or described in para. 34 of *Heller* include the nature of the duty owed, the number of acts of fault or negligence committed by each tort-feasor, the timing of the acts, the nature of the conduct and any statutory breaches.

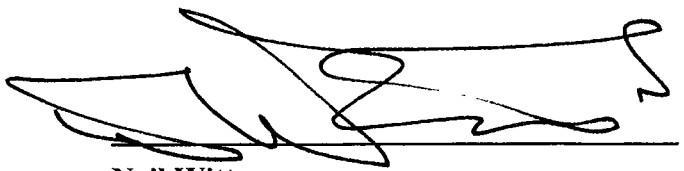
[43] Applying all of these factors as mandated by *Heller*, Day's conduct was criminal. It was egregious. He was convicted of theft and impaired driving causing bodily harm. Day is the most blameworthy.

[44] The plaintiffs, except Middleton, were entirely innocent. I am therefore apportioning the majority of the blame worthiness to Day. Applying the same factors to Middleton and Prien, their blame worthiness is less than Day's. Indeed, Middleton may have been lulled into a false sense of community and "family" in her relationship with Day as a regular fare in a small town where "everybody knows everybody." But her knowledge and acknowledgment of the folly of leaving the keys in the ignition with an impaired passenger put her in a position of being fool hardy. I find she is the second most blameworthy tort-feasor in this tragic incident. Prien on the other hand, is almost as blameworthy as Middleton applying all of the above factors. He set no policy or guidance for his taxi drivers, including Middleton, to follow his own practice of never leaving the keys in the vehicle when he ran an errand for a passenger left in the taxi. He took no steps whatsoever to guard against a reasonably foreseeable incident, notwithstanding he presumably foresaw it himself. Therefore, I apportion liability as follows: to Day - 65%; to Middleton - 20%; to Prien - 15%.

[45] The parties may speak to costs if they are unable to agree.

Heard on the 26th and 27th days of March, 2013.

Dated at the City of Calgary, Alberta this 11th day of September, 2013.



Neil Wittmann
C.J.C.Q.B.A.

Appearances:

Walter W. Kubitz, Q.C.
for the Plaintiff, Lydia Johnston

Steven Florendine
for the Plaintiff, Karen Middleton

Valerie J. Danielson
for the Plaintiff, Annie Romancewicz

Kerry Gellrich
for the Plaintiff, Rose Quarin

G.D. Keith
for the Defendants, Craig Allan Prien and James Keating carrying on business as Crowsnest Taxi and Karen Middleton

M.L. McMahon
for the Defendant, Co-Operators General Insurance Company

Gayle Hiscocks
for the Estate of Gary Reginald Day

Ray S. Wong
for the Defendant, Peace Hills General Insurance Company

Allan G.P. Shewchuk, Q.C.
for the Administrator of the Motor Vehicle Accident Claim Act, on behalf of the Defendant, Gary Reginald Day