



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### BARBARA FOX v MEGAN PERCY

The High Court of Australia today dismissed Ms Fox's appeal against a New South Wales Court of Appeal decision that her horse was on the wrong side of the road when it collided with a Kombi van on a dirt road near Bega in south-eastern NSW. Ms Fox had sued Ms Percy for damages for negligent driving.

Ms Fox and Ms Percy, the driver of the van, each claimed they were on their correct side of the road. Ms Percy was driving downhill and Ms Fox and her partner Christopher Murdoch were riding their horses uphill when the collision occurred on April 11, 1992. Ms Fox was seriously injured and her horse was killed.

At the accident scene, Constable Peter Volf sketched a diagram of straight 10-metre-long skidmarks on the left-hand side of the road behind the van, which came to rest facing forward on the correct side of the road. However, the NSW District Court trial judge accepted the evidence of Ms Fox.

The case raised questions of principle as to the approach to be taken by an appellate court on reviewing a trial judge's holding of fact.

The High Court held that the NSW Court of Appeal was correct to set aside the District Court's verdict. The Court held that the skidmarks were an incontestable fact contradicting Ms Fox's evidence and it unanimously dismissed her appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*