

**NEGLIGENT MAINTENANCE****Motor Vehicle - Passenger - Single Vehicle****Roadway was dangerously full of gravel, plaintiffs claimed****MEDIATION**      **\$1,862,500****CASE**              Rocia Maria Rojo and Maurillo Rojo, Individually and a/n/f of Roxanna Rojo v. Pate & Pate Enterprises, Inc., No. 7616**COURT**            Rains County District Court, 354th, TX  
**JUDGE**            Mark Gilbert  
**DATE**              02/02/2005**PLAINTIFF****ATTORNEY(S)**    **Robert W. Hildebrand**, Glover, Miller, Lewis & Prebeg, Houston, TX (Rocia Maria Rojo, Maurillo Rojo, Roxanna Rojo)  
**James B. Lewis**, Glover, Miller, Lewis & Prebeg, Houston, TX (Maurillo Rojo, Rocia Maria Rojo, Roxanna Rojo)  
**Michael D. Miller**, Glover, Miller, Lewis & Prebeg, Houston, TX (Rocia Maria Rojo, Maurillo Rojo, Roxanna Rojo)  
**Daniel Perkins** (local counsel), Watkins & Perkins, Greenville, TX (Rocia Maria Rojo, Maurillo Rojo, Roxanna Rojo)**DEFENSE****ATTORNEY(S)**    **Andrew D. Keetch**, Cantey & Hanger, Fort Worth, TX (Carter & Burgess)  
**Brian C. Newby**, Cantey & Hanger, Fort Worth, TX (Carter & Burgess)  
**C. Andrew Woodward**, Fee, Smith, Sharp & Vitullo, Dallas, TX (Pate & Pate Enterprises Inc.)  
**Jim D. McLeroy**, McLeroy, Litzler, Rutherford, Bauer & Friday, Sulphur Springs, TX (Bernice Rojo)  
**Lanny Perkins**, Dallas, TX (APM & Associates Inc.)  
**Robert S. Davis**, Flowers Davis, L.P., Tyler, TX (Rains County)  
**Thomas W. Fee**, Fee, Smith, Sharp & Vitullo, Dallas, TX (Pate & Pate Enterprises Inc.)  
**Tolbert L. Greenwood**, Cantney & Hanger, Fort Worth, TX (Carter & Burgess)  
**William Jones**, Flowers Davis, L.P., Tyler, TX (Rains County)**FACTS & ALLEGATIONS** Shortly after midnight on June 15, 2002, plaintiff Roxanna Rojo, 17, a high school student, was a passenger in the front seat of a car involved in a single-vehicle accident on Rains County Road 2420. Roxanna ended up in the backseat, sustaining serious injuries.

Individually and on behalf of Roxanna, her parents, Maurillo and Rocia Maria Rojo alleged that Roxanna's 18-year-old sister, Bernice, was driving and lost control as a result of loose rock and gravel which was

there because Pate &amp; Pate Enterprises Inc., an underground utility construction firm in The Woodlands, failed to properly maintain the road. Plaintiffs also brought claims against Carter &amp; Burgess and APM &amp; Associates Inc., which hired Pate &amp; Pate, alleging that they were responsible to the extent that they had any oversight responsibilities over the company.

Plaintiffs claimed that Pate &amp; Pate violated its contractual responsibility to maintain the Rains County roads "in existing or better condition" and use temporary paving while laying a 108-inch water pipeline for Dallas Water Utilities. Carter &amp; Burgess and APM were contractors who had limited responsibilities on the premises. Pate &amp; Pate brought a third-party claim against Bernice Rojo, alleging excessive speed, failure to keep a proper lookout, and negligence in operation of the vehicle, and against Rains County, alleging that the county had the responsibility, or had taken over the responsibility, for maintenance of the roadway.

It is undisputed that at the scene of the accident, which was only about one-half mile from the Rojas' home, the girls' mother, Rocia, told the investigating officer that she (Rocia) was driving the car at the time of the single-car accident and that she (Rocia) was "going too fast" and lost control when an animal ran out onto the roadway. The investigating officer was not told that Bernice was driving until near the time of his deposition in 2005.

The defendants denied the allegations of the plaintiffs, contending that they properly maintained the roadway and there was no evidence of the road's condition at the time of the accident because the investigating officer did not assess its condition due to the statements made by Rocia Rojo. Photographs of the road were not taken until one to three weeks after the accident, and there were no witnesses other than Bernice and Roxanna. The defendants contended that the accident was caused by the driver traveling at an unsafe speed down a country roadway, as determined by the investigating officer.

Bernice testified that she did not know how fast she was traveling and that she believed her car had completely flipped over.

**INJURIES/DAMAGES** Roxanna was permanently paralyzed from the chest down, with some use of her arms. The plaintiffs claimed that she will need daily care for the rest of her life, costing millions of dollars, and that her earning capacity was seriously diminished.

The defendants contended that since Roxanna finished high school and is doing well in college, that she would become gainfully employed.

**RESULT** After mediation on Jan. 12, the mediator continued working and obtained a global settlement of \$1,862,500, with an agreement on additional details in the weeks following. The sums which each individual defendant paid are confidential, and none of their insurers may be identified.