

**KATIE DIXON MATHERNE
AND DANIEL MATHERNE**

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NO. 2000-CA-1088

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**LUHR BROS INC., AND STATE
OF LOUISIANA, THROUGH
THE DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT**

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STATE OF LOUISIANA

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Armstrong, J., dissents with reasons.

I respectfully dissent. The plaintiffs' car became airborne and flipped over because it hit a crossover, including a protruding metal pipe, in the ditch next to the highway. The DOTD is supposed to maintain a "clear area" thirty feet from the edge of the paved area of the road. This requires the DOTD to guard against obstacles or hazards in the clear area by use of barriers or other means. The duty of the DOTD extends to privately-owned obstacles and hazards such as the crossover and pipe in this case. The crossover and pipe were within thirty feet of the paved area of the road, the expert witnesses agreed that the crossover and pipe constituted hazards and obstacles, and the DOTD did not use any barriers or other means to guard against the crossover and pipe. Thus, it seems indisputable that the DOTD violated a duty to guard against the very hazards and obstacles which turned

a minor accident into a catastrophic one. While the plaintiff driver was at fault in causing the accident, it is also apparent that the DOTD's fault contributed to the injuries of the plaintiffs.

Accordingly, I would remand this case to the trial court for a determination of the comparative fault of the plaintiff driver and the DOTD.