

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-00048-WDM-BNB

HAL WILLIAM ROUECHE, SR.,
PAGAN ROUECHE, individually and as legal guardians and next friends of Hal William
Roueche, Jr., an incapacitated person,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

ORDER

This matter arises on **Defendant's Motion for Leave to Designate Hal William Roueche, Jr., as a Non-Party at Fault** [Doc. # 40, filed 12/30/2009] (the "Motion").

Hal Roueche, Sr., and Pagan Roueche are the parents and legal guardians of their incapacitated adult son, Hal Roueche, Jr. They bring this action under the Federal Tort Claims Act against the United States asserting a claim of medical malpractice on behalf of their son. Hal Roueche, Jr., suffered an incapacitating injury in January 2006. In February 2006, Hal Roueche, Sr., and Pagan Roueche were appointed his guardians by the District Court of Las Animas County, Colorado. The United States seeks leave to designate Hal Roueche, Jr., as a non-party at fault pursuant to section 13-21-111.5(3)(b), C.R.S., so that his pro rata liability may be assessed by the court.

The plaintiffs responded to the Motion by stating:

Under Colorado's comparative negligence statute [section 13-21-111, C.R.S.], "in any action by any person *or his legal representative* to recover damages for negligence resulting in death or in injury to person or property," the finder of fact must determine "[t]he degree of negligence of each party." Nonetheless, to the extent that Defendant would rather have Hal William Roueche, Jr., treated as a non-party whose degree of fault, if any, is governed by C.R.S. § 13-21-111.5, Plaintiffs make no objection.

Plaintiffs' Response [Doc. # 44, filed 1/6/2010](original emphasis). I deem the Motion as unopposed.

IT IS ORDERED that the Motion [Doc. # 40] is GRANTED. The Clerk of the Court is directed to accept for filing the United States' Designation of Non-Party at Fault [Doc. # 40-5].

Dated February 1, 2010.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge