



Defense Lawyers  
Association

## July 2011 Verdicts

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**Submitted By** Daniel J. O'Brien  
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**Court** State District Court

**County** Sandoval

**Judge** Hon. George P. Eichwald

**Defense Counsel** Daniel J. O'Brien and Alicia M. Santos

**Plaintiff Counsel** Paul J. Kennedy and Darin M. Foster

**Trier** 12-Person Jury

**Style** *NAOMI GOMEZ and ANGEL GOMEZ, v. ROMERO FUNERAL HOME LLC, BROOKWOOD TRANSPORT, LLC, and DOES 1- 25*

**Statement of Facts** Plaintiffs were the daughter and son-in-law of Mr. Willie Boyar, deceased. Plaintiffs contracted with Defendant Romero Funeral Home to provide refrigeration and other funeral services for the remains of Mr. Boyar. The incident giving rise to this case occurred at the family viewing. When Mr. Boyar's remains were taken out of refrigeration for the family viewing, signs of decomposition were present. A Romero Funeral Home employee advised Plaintiffs that Mr. Boyar's remains were not in good condition and advised Plaintiffs that they should not view the body. However, Plaintiffs insisted on viewing Mr. Boyar's remains. Plaintiffs proceeded into the embalming room to view Mr. Boyar's remains. Based on the condition of Mr. Boyar's remains, Plaintiffs alleged that Romero Funeral Home failed to properly refrigerate the remains.

Plaintiffs' Complaint asserted claims for negligence, negligence *per se*, breach of contract, violation of the Unfair Practices Act, negligent infliction of emotional distress to a bystander and loss of consortium. The defense argued that the condition of Mr. Boyar's remains was the result of the natural process of decomposition, which started when Mr. Boyar's remains were left outside of refrigeration at the Office of the Medical Investigator.

Plaintiffs' last demand was \$250,000.00. Defendant filed an offer of settlement in the amount of \$20,001.00.

**Verdict** Defense

**Experts:** Plaintiffs: Claire Brice, Medical Investigator  
Defendant: Stephen Cina, Forensic Pathologist

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<b>Submitted By</b>	Don Bruckner Guebert Bruckner P.C. (505) 823-2300 (505) 823-9600 (fax) <a href="mailto:donbruckner@guebertlaw.com">donbruckner@guebertlaw.com</a>
<b>Court</b>	State Court
<b>County</b>	Bernalillo
<b>Judge</b>	Hon. Beatrice Brickhouse
<b>Defense Counsel</b>	Don Bruckner
<b>Plaintiff Counsel</b>	Jim Ellis, Whitener Law Firm, Lance Himmelberger
<b>Trier</b>	12-Person Jury
<b>Style</b>	<i>Florence Maestas v. Pro's Ranch Markets and Central Avenue Atrisco Pro's Real Estate LLC</i> , Second Judicial District Cause No.: D-202-CV-2010-06635
<b>Statement of Facts</b>	Plaintiff tripped on a speed bump or a pot hole in the parking lot at the shopping center at Central and Atrisco in September 2007. The shopping center was being renovated by defendants, and the parking lot was repaved before Defendants first received notice of Plaintiff's claim a year and a half after her fall. Plaintiff sustained facial injuries, but also alleged a knee injury that required surgery which was not reported to her physicians until 6 ½ months after her fall.
<b>Verdict</b>	Defense
<b>Experts:</b>	<u>Plaintiffs:</u> Dr. Andrew Veitch (treating orthopedic surgeon) <u>Defendant:</u> Dr. John M.H. Allen (orthopedic surgeon)

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**Submitted By** Christopher J. DeLara, Guebert Bruckner P.C.  
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**Court** Federal Court

**County** United States District Court for the District of Kansas

**Judge** Hon. Carlos Murguia

**Defense Counsel** Terry R. Guebert

**Plaintiff Counsel** Terry Revo and Steve Vogel

**Trier** 12-Person Jury

**Style** *Diane Swinney v. State Farm Fire and Casualty Company*, No. 10-2021-CM

**Statement of Facts** Plaintiff, a New Mexico resident, submitted a claim to her insurer, Defendant State Farm Fire and Casualty Company, and asserted that a 127-year-old home she owned in Columbus, Kansas sustained over \$500,000 in damage as a result of a tornado on June 30, 2005.

As part of its claims investigation, State Farm retained an engineer to evaluate the damage to Plaintiff's home. According to the engineer's report, the damage to Plaintiff's home was caused by the settling of earth around the house and not from a tornado. Consequently, State Farm denied Plaintiff's claim because the damage to Plaintiff's home was due to settling and was specifically excluded under Plaintiff's policy of insurance.

In December 2007, Plaintiff mailed a demand letter to State Farm along with a copy of an independent engineer report she obtained which indicated the damage to Plaintiff's home was consistent with damage caused by high winds. State Farm forwarded Plaintiff's report to its engineer for evaluation, and after review, State Farm's engineer affirmed his earlier findings that the damage to the home was caused by settling, not wind. Accordingly, State Farm again denied Plaintiff's claim.

Plaintiff filed suit against State Farm and a fictional State Farm adjuster on December 27, 2007 in the Second Judicial District Court for Bernalillo County, New Mexico. The complaint alleged various causes of action against the Defendants including breach of contract, insurance bad faith and breach of fiduciary duties, and violations of the New Mexico Insurance Code and Unfair Practices Act.

On March 5, 2008, State Farm removed the case to the United States District Court for the District of New Mexico. Plaintiff filed a motion to remand which was denied, and State Farm subsequently filed a Motion to Transfer to the United States District Court for the District of Kansas. That Motion was initially granted, but then denied upon Plaintiff's Motion for Reconsideration. In response to the Court's Order, State Farm submitted a Motion for Reconsideration and the Court ultimately granted that Motion and transferred the case to the United States District Court for the District of Kansas on January 14, 2010.

Trial began on June 27, 2011 in the United States District Court for the District of Kansas in Kansas City, Kansas, and the jury returned its verdict in favor of Defendant as to all of Plaintiff's claims on July 2, 2011.

**Verdict** Defense

**Comments** United States District Court Judge Murguia ruled that New Mexico statutory and bad faith law applied to Plaintiff's claims because Plaintiff is a New Mexico resident.

**Experts:** Plaintiffs: Engineer: Larry Vorba; Meteorologist: David L. Mitchell, Ph.D.; Insurance: Steven Strzelec  
Defendant: Engineer: Laurence C. Fehner; Meteorologist: Donald W. Burgess; Ins: William C. Madison