



Defense Lawyers
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January 2011 Verdicts

Submitted By	W. Ann Maggiore Butt, Thornton & Baehr, PC wamaggiore@btblaw.com (505) 884-0777 (505) 889-8870
Court	Federal Court
County	Bernalillo
Judge	Hon. Judith Herrera
Defense Counsel	Robert W. Becker/Ronald Gould (French & Associates); W. Ann Maggiore (Butt, Thornton & Baehr)
Plaintiff Counsel	Ray Twohig
Trier	6 Person Jury
Style	<i>Roy Buchner and Shaun Wilkins v. Juan de Reyes, Michael Fenner and Frank Jacoby</i>
Statement of Facts	<p>This was a malicious prosecution case filed by Plaintiffs against investigating police officers after criminal juries could not reach a verdict on 4 homicide charges against them. Plaintiffs alleged that the police interrogations of two other suspects in the homicides were coercive to the point of producing false information about who committed the murders. This case was the civil aftermath of the 1995 Torreon Cabin Homicides, in which two adults, Ben Anaya, Jr. and Cassandra Sedillo were shot to death. Cassandra's two young boys were left locked in the cabin and ultimately died of dehydration and starvation. The bodies were discovered about four months after the homicides occurred. The New Mexico State Police (Michael Fenner and Frank Jacoby) led the investigation with assistance from the Albuquerque Police Department Gang Unit (Juan de Reyes). Their investigation focused on four members of the 18th Street Gang: Roy Buchner, Shaun Wilkins, La Wrence Nieto and Shawn Popeleski. Nieto and Popeleski were ultimately convicted of the homicides but the juries for Wilkins and Buchner were unable to reach a verdict and their cases were not retried.</p>
Verdict	Defense
Experts	Plaintiff: Thomas Thompson, Ph.D. Defense: Ned Siegel, Ph.D.



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Submitted By	W. Ann Maggiore Butt, Thornton & Baehr, PC wamaggiore@btblaw.com (505) 884-0777 (505) 889-8870
Court	State Court
County	Bernalillo
Judge	Hon. Nan Nash
Defense Counsel	W. Ann Maggiore, Geoffrey D. White
Plaintiff Counsel	Robert Gorence, Amanda Romero
Trier	12 Person Jury
Style	<i>Troy and Linda Ford v. Paul Johnson, MD</i>
Statement of Facts	Plaintiffs initially sued Dr. Richard Massen, a surgeon, and Holy Cross Hospital in addition to Dr. Paul Johnson, a radiologist, for medical negligence following a surgery performed by Dr. Massen. Plaintiffs alleged that Dr. Johnson "misread" an abdominal CT scan performed after surgery and that he influenced Dr. Massen to delay returning Mr. Ford to the operating room for two days, resulting in severe sepsis due to a perforated viscus. The abdominal CT had been formally read by NightHawk Radiology; Dr. Massen then claimed he did a "curbside consult" with Dr. Johnson, who had no recall of the alleged consult. Dr. Massen and Holy Cross Hospital settled the case and Dr. Johnson proceeded to trial. The jury found no negligence on the part of Dr. Johnson.
Verdict	Defense
Experts	Plaintiff: Bennett Greenspan, MD – radiology Defense: William Zimmer, MD– radiology; David Arredondo, MD – surgery



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February 2011 Verdicts

Submitted By	John K. Ziegler Conklin, Woodcock & Ziegler, P.C. jkz@conklinfirm.com (505) 224-9160
Court	State Court
County	Bernalillo
Judge	Hon. Valerie A. Huling
Defense Counsel	Robert C. Conklin and John K. Ziegler
Plaintiff Counsel	Michael Mozes
Trier	Judge
Style	<i>Robert Miller v. Presbyterian Healthcare Services</i> , No. CV 2008-8286
Statement of Facts	Plaintiff worked for PHS as an x-ray technologist for 26 years. Plaintiff alleged that he was wrongfully terminated following an interaction with a patient who was picking up her records. The Plaintiff further alleged that he should not have been previously disciplined. Plaintiff claimed that the disciplinary actions and termination breached an implied contract of employment based on PHS' policies and procedures and constituted a prima facie tort. Plaintiff sought lost wages and benefits of over \$400,000.
Verdict	Defense
Comments	Judge Huling granted summary judgment as to the prima facie tort claim, and returned a bench verdict in favor of PHS on the implied contract claim. Judge Huling found that PHS' policies and procedures did not constitute an implied contract of employment and even if an implied contract existed, PHS had complied with its policies and procedures by utilizing corrective action prior to terminating Plaintiff's employment. Judge Huling further found that PHS reasonably believed that Plaintiff had engaged in the behavior for which he was disciplined and terminated.



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Submitted By	W. Ann Maggiore Butt, Thornton & Baehr, PC wamaggiore@btblaw.com (505) 884-0777 (505) 889-8870
Court	State Court
County	Bernalillo
Judge	Hon. Nan Nash
Defense Counsel	W. Ann Maggiore, Geoffrey D. White
Plaintiff Counsel	Robert Gorence, Amanda Romero
Trier	12 Person Jury
Style	<i>Troy and Linda Ford v. Paul Johnson, MD</i>
Statement of Facts	Plaintiffs initially sued Dr. Richard Massen, a surgeon, and Holy Cross Hospital in addition to Dr. Paul Johnson, a radiologist, for medical negligence following a surgery performed by Dr. Massen. Plaintiffs alleged that Dr. Johnson "misread" an abdominal CT scan performed after surgery and that he influenced Dr. Massen to delay returning Mr. Ford to the operating room for two days, resulting in severe sepsis due to a perforated viscus. The abdominal CT had been formally read by NightHawk Radiology; Dr. Massen then claimed he did a "curbside consult" with Dr. Johnson, who had no recall of the alleged consult. Dr. Massen and Holy Cross Hospital settled the case and Dr. Johnson proceeded to trial. The jury found no negligence on the part of Dr. Johnson.
Verdict	Defense
Experts	Plaintiff: Bennett Greenspan, MD – radiology Defense: William Zimmer, MD– radiology; David Arredondo, MD – surgery



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March 2011 Verdicts

Submitted By	Michelle Lalley Blake Keleher & McLeod mlb@keleher-law.com (505) 346-4646 (505) 346-1370
Court	Federal Court
County	Santa Fe
Judge	Bruce D. Black
Defense Counsel	Michelle Lalley Blake
Plaintiff Counsel	Dennis Montoya
Trier	6 Person Jury
Style	<i>Henry Chavez v. T. McWhorter, P. Pacheco and J. Meyer</i> ; CIV-09-280 BB/RLP
Statement of Facts	Plaintiff, who was 64 years old at the time of his arrest, claimed Defendants unlawfully seized and arrested him, used excessive force and maliciously prosecuted him. Plaintiff was incarcerated for two weeks on a charge of battery on a peace officer. Plaintiff claimed Defendants tore a ligament in his shoulder resulting in surgery, caused him to suffer a recurrence of previously diagnosed PTSD, future medical expenses, pain and suffering and punitive damages. Defendants established that Plaintiff kicked an investigating officer two times, therefore his arrest was supported by probable cause, and that his alleged shoulder injury/surgery was unrelated to the altercation with Defendants.
Verdict	Defense
Comments	Plaintiff's last settlement offer before trial was in excess of \$500,000.00. The seven man and one woman jury found in favor of Defendants on all claims.
Experts	None



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March 2011 Verdicts

Submitted By	Mark D. Standridge Jarmie & Associates mstandridge@jarmielaw.com (575) 647-1399
Court	Federal Court
Judge	Judith C. Herrera
Defense Counsel	Mark D. Standridge and Mark D. Jarmie
Plaintiff Counsel	Joseph P. Kennedy
Trier	Judge
Style	<i>Maria Rios, on her behalf and on behalf of her minor son, D.R., Plaintiffs, vs. Dona Ana County, et al., Defendants</i> , No. CV-08-1213 JH/GBW
Statement of Facts	Plaintiffs sued County Sheriff's Officers and State Deputy District Attorneys under 42 U.S.C. § 1983, alleging that Prosecutors improperly advised Sheriff's Officers that they had probable cause to arrest plaintiff for a violation of New Mexico's Custodial Interference statute, N.M.S.A. 1978 § 30-4-4(B). The Deputy District Attorneys moved for summary judgment, in part on grounds of qualified immunity. The District Court granted the Deputy District Attorneys' motion with respect to qualified immunity. Assuming, without deciding, that the Deputy District Attorneys advised the Sheriff's Officers that there was probable cause to arrest plaintiff for custodial interference, based upon the facts actually communicated to them by the Officers, the Deputy District Attorneys' probable cause determination was reasonable.
Verdict	Defense



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March 2011 Verdicts

Submitted By	Richard M. Padilla O'Brien & Padilla P.C. rpadilla@obrienlawoffice.com (505) 883-8181
Court	State Court
County	Bernalillo
Judge	Hon. Beatrice Brickhouse
Defense Counsel	Daniel J. O'Brien and Richard M. Padilla
Plaintiff Counsel	Stephen F. Lawless
Trier	12-person Jury
Style	<i>Debra Brennan v. Rachel Trujillo</i> , CV 2009-09131
Statement of Facts	<p>Car accident case in which the Defendant, after stopping at a cross street, pulled out in front of Plaintiff's vehicle traveling on Paseo del Norte causing a collision. Defendant claimed that she looked both ways before pulling out but did not see any oncoming traffic. For this reason, she believed that Plaintiff must have been speeding. Defendant's accident reconstructionist testified, based on crush analysis and Plaintiff's testimony, that Plaintiff was traveling at least 15 miles over the speed limit. Plaintiff sought recovery for a severely broken wrist and other injuries to her knees and ankles. Her medical bills were over \$65,000 and she made a claim for lost earning capacity. Plaintiff's counsel's demand before trial was \$300,000.</p>
Verdict	The jury awarded a total of \$75,329.98 in damages and found the Plaintiff 40% comparatively at fault. A Judgment in the amount of \$45,197.99 will be entered.
Please note	Plaintiff's counsel had offered, pursuant to the <i>Herman v. Dairyland</i> case, to settle all claims except claims for medical bills for policy limits of \$25,000. The Defendant rejected this offer. Plaintiff's medical bills had been paid by the Department of the Navy. Its subrogation claim, after write offs, was \$20,136.21. Prior to trial, Defendant's insurer settled the Navy's subrogation claim for \$1,000.
Post trial Issue	<p>Defendant sought to reduce the verdict by the amount of the Navy's subrogation claim that had been satisfied by Defendant's insurer based on <i>Aragon v. Brown</i>, 93 N.M. 646, 603 P.3d 1103 (Ct. App. 1979), overruled on other grounds, <i>Smith v. Village of Ruidoso</i>, 128 N.M. 470, 994 P.2d 50 (1999). In <i>Aragon</i>, the Court held that "It is the well-reasoned and majority rule that where the benefits derive from the defendant himself or a source identified with him, he is entitled to credit for it, since there is no collateral source but only funds provided by the defendant." In <i>Aragon</i>, the Court of Appeals held that, if any damages were awarded to the plaintiff, those damages would be reduced by insurance payments already received from defendant's insurer.</p> <p>Defendant Trujillo argued that the Judgment should be reduced by the amount of the lien satisfied by her insurer's payment, not just the amount paid to satisfy that lien. Judge Brickhouse rejected this argument holding that the \$1,000 paid to the Navy could only be used as a partial satisfaction of the judgment. Her decision will be appealed.</p>
Experts	Plaintiff: Dr. Lujan (massage therapist) Defendant: Bill Rehm (accident reconstructionist)



Defense Lawyers
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March 2011 Verdicts

Submitted By	Mary Torres and Gianna Mendoza Beall & Biehler Law Firm mtorres@beall-biehler.com (505) 828-3600
Court	State Court
County	Bernalillo
Judge	Hon. Beatrice Brickhouse
Defense Counsel	Mary T. Torres and Gianna M. Mendoza
Plaintiff Counsel	Sam Bregman and Eric Loman
Trier	12-person Jury
Style	<i>John Wesley Paul v. Cathleen A. Catanach, Bureau Chief, NM Department of Corrections</i>
Statement of Facts	<p>On February 10, 2011, a 12-person jury found Plaintiff John Paul, who was in and out of the New Mexico State Penitentiary between 1971 and 2004 on three different sentences for armed robbery and burglary, had not been illegally incarcerated 15 years too long. Paul, who was represented by attorneys Sam Bregman and Eric Loman, filed his lawsuit in 2006 against the New Mexico Department of Corrections and Cathleen Catanach, the Department's Records Bureau Chief. He alleged that Catanach's wrongful failure to give him credit for all of the good time he earned in prison led her to miscalculate his release date from prison and, therefore, she was responsible for keeping him illegally incarcerated for 15 years.</p> <p>At trial, the jury heard evidence that Catanach did not miscalculate Paul's release date. While determining Paul's release date was a complicated process given the various changes in New Mexico law on good time during the last four decades, the fact Paul was serving multiple sentences and the fact Paul engaged in serious misconduct in prison and out of prison on parole, the jury faithfully followed their duties and followed Catanach's testimony regarding her calculations. Catanach told the jury that when configuring his release date, she did properly credit Paul all good time he earned towards his release date but that as a result of Paul's own misconduct, the time Paul was required to stay behind bars increased. While in prison, Paul committed five acts of major misconduct which added to his prison time as did the fact that Paul absconded from parole three out of the four times he was released, one time for as long as 8 years.</p> <p>The jury's deliberations began in the early afternoon on February 10, 2011, and in a matter of a couple of hours, the jury reached a verdict. The jury found that Paul was not incarcerated in prison longer than his sentences and misconduct allowed and issued a verdict in favor of Catanach.</p> <p>Prior to trial, Plaintiff demanded two million dollars to settle the case and reduced his settlement offer to \$750,000 one week before trial. At trial, Mr. Bregman suggested the jury award Paul \$15 million dollars. Catanach, a faithful public servant who has served the State of New Mexico for over thirty years, was immensely grateful for the jury's unwavering dedication to the litigation process and their duties despite the complicated nature of the subject matter it was presented. Catanach was represented by Albuquerque attorneys Mary T. Torres and Gianna M. Mendoza.</p>
Verdict	Defense