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April 2011 Verdicts

Submitted By	John S. Stiff Stiff, Keith & Garcia, LLC jstiff@stiffllaw.com (505) 243-5755
Court	State Court
County	Bernalillo
Judge	Hon. Nan G. Nash
Defense Counsel	John S. Stiff
Plaintiff Counsel	Whitney Buchanan and Robert Cole
Trier	12 Person Jury
Style	<i>Senutovitch v. Sullivan and State Farm Insurance Company</i> ; Cause No. D-202 CV-200904180
Statement of Facts	The plaintiff was riding as a passenger in a vehicle which was traveling through a parking lot. The defendant was backing out of a parking space. The defendant did not see the plaintiff's vehicle coming, and backed out. The right rear of the defendant's vehicle struck the side of the plaintiff's vehicle at the passenger side door post. The plaintiff's vehicle was totaled as a result of the collision. The plaintiff had been involved in several other accidents, both before and after the accident forming the basis of the present lawsuit. The jury returned a verdict finding that the defendant's negligence was not a cause of the plaintiff's injuries and damages.
Verdict	Defense
Experts	Plaintiff's expert: Dr. Radecki Defendant's expert: Dr. Grace



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April 2011 Verdicts

Submitted By	John S. Stiff Stiff, Keith & Garcia, LLC jstiff@stiffllaw.com (505) 243-5755
Court	State Court
County	Bernalillo
Judge	Hon. Carl J. Butkus
Defense Counsel	John S. Stiff and J. Douglas Compton
Plaintiff Counsel	M.J. Keefe
Trier	12 Person Jury
Style	<i>Thomas Martinez v. Araceli Ibarra, Sergio Ibarra and Safeco Insurance</i> ; Cause No.: CV-2006-07882
Statement of Facts	<p>The plaintiff was proceeding westbound on Tower Road through the intersection of Tower and 98th Street in Albuquerque, New Mexico. She passed through the intersection. A phantom vehicle cut her off. She swerved to avoid a collision, driving on top of the raised median. The Plaintiff, driving a motor scooter, eastbound on Tower to go northbound on 98th Street, claims he was knocked off his scooter.</p> <p>The plaintiff claimed right lower extremity road rash causing right hip osteomyelitis and eventual removal of the right hip, head laceration, and road rash on the right side of the body.</p> <p>The jury found that the plaintiff was not liable for defendant's injuries.</p>
Verdict	Defense
Comments	Plaintiffs refused to accept tender of policy limits and are pursuing insureds for excess liability.



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April 2011 Verdicts

Submitted By	Gregory L. Biehler Beall & Biehler greg@beall-biehler.com (505) 828-3600 Fax (505) 828-3900
Court	State Court
County	Curry
Judge	Hon. David Reeb
Defense Counsel	Gregory L. Biehler and Randy Knudson
Plaintiff Counsel	David Domina (Nebraska), Felicia Weingartner
Trier	12-person Jury
Style	<i>DAN LOPER, d/b/a RIO LECHE DAIRY, CO. v. JMAR, a New Mexico General Partnership</i> D-905-CV-2007-00013
Statement of Facts	Plaintiff Dan Loper originally filed suit under numerous theories arising out of a lease/purchase of a dairy outside Clovis, NM. The dairy was constructed in 2001. The claim, when first filed, was primarily a "stray voltage" claim which asserted a failure to ground electrical components in the dairy, resulting in a loss of more than \$11,000,000 in milk production. The stray voltage claim was eliminated by a Daubert motion on the plaintiff's expert. The remaining claims were for breach of contract for failing to provide structures and improvements to the dairy under a written contract theory. The Court, before trial, determined the contract was ambiguous and the issue was submitted to the jury. Damages were claimed to be \$474,000. Plaintiff also claimed loss of milk production for failure to supply adequate milking equipment. After a three and one half day trial, the jury found there was no agreement between the parties for the additional improvements requested by plaintiff.
Verdict	Defense
Experts	Dr. Terry Smith for Defendant JMAR



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May 2011 Verdicts

Submitted By	Rick Beitler Rodey Law Firm rbeitler@rodey.com (505) 768-7260
Court	Bernalillo County District Court
Defense Counsel	Rodey Law Firm (Rick Beitler and Krystle Thomas)
Plaintiff Counsel	Not Given
Style	<i>Gloria Padilla v. Lovelace Healthcare System, Inc.</i> , No. CV 2008-12096
Statement of Facts	Plaintiff alleged that the sidewalk outside of the former Lovelace clinic on Carlisle was unreasonably dangerous. Plaintiff also claimed that the dangerous condition caused her fall, chronic back pain, and depression. Defendant denied liability, disputed Plaintiff's version of events, contested causation, and asserted the affirmative defense of comparative fault. Plaintiff sought approximately \$10,000 in medical bills and \$85,000 in emotional distress, pain and suffering, and other damages. After a 3 1/2 day trial and fifteen minutes of deliberation, a unanimous jury found that Lovelace was not negligent in its maintenance of the sidewalk.
Verdict	Defense



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May 2011 Verdicts

Submitted By	Michelle Lalley Blake Keleher & McLeod mlb@keleher-law.com (505) 346-4646
Court	Tenth Circuit Court of Appeals
Defense Counsel	Michelle Lalley Blake (representing Officer Townsend) and Kathy Levy (for City and Officer Moore)
Plaintiff Counsel	Not Given
Style	<i>Aragon v. City of Albuquerque, D. Moore and Lucas Townsend</i> , N. 1:07-CV-00737-LH-ACT (D.N.M)
Statement of Facts	Plaintiff argued that his arrest violated his First and Fourth Amendment rights. Judge Hansen granted summary judgment in favor of Defendants based on qualified immunity. Plaintiff appealed. The Tenth Circuit Court of Appeals affirmed the dismissal, noting that officers such as Moore and Aragon could have reasonably believed that their actions were lawful based on well established law as it existed at the time of Plaintiff's arrest. Kathy Levy, Deputy City Attorney represented the City of Albuquerque and Officer Moore. Officer Townsend was represented by Michelle Lalley Blake
Verdict	Defense



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May 2011 Verdicts

Submitted By	Don Bruckner Guebert Bruckner P.C donbruckner@guebertlaw.com (505) 823-2300	
Court	State Court	
County	Bernalillo	
Judge	Hon. Shannon C. Bacon	
Defense Counsel	Don Bruckner	
Plaintiff Counsel	Burt Parnall & Ben Davis	
Trier	12 Person Jury, May 9 - 13, 2011	
Style	<i>MacNinch v. Rodriguez & Bordertown Transportation</i> , Second Judicial District Cause No. D-202-CV-2009-04264	
Statement of Facts	Plaintiff was injured in a collision with a semi truck at the intersection of Unser and Los Volcanes in January 2009. Plaintiff alleged the defendant driver was negligent and violated the law by failing to yield the right-of-way and failing to keep a proper lookout while making a left turn. Plaintiff also alleged the defendant driver was on duty in excess of the federal limitations on hours of service. Plaintiff further alleged the defendant trucking company negligently hired, trained, supervised and retained defendant driver. Defendants denied liability and alleged Plaintiff was solely negligent for causing the accident by driving into the intersection in the path of the oncoming semi truck. The 77-year-old Plaintiff alleged medical bills of in excess of \$150,000 and sought damages for treatment in a nursing home for the rest of her life. The jury found Defendants were negligent, but found their negligence did not cause Plaintiff's injuries or damages.	
Verdict	Defense	
Experts	<u>Plaintiff's</u> Kerry Nelson (trucking, accident reconstruction) Timothy Ownbey, D.O. (neurologist) Adam Ray, M.D. (ENT) Arthur Rosenberg, M.D. (ophthalmologist)	<u>Defendant's</u> J.T. Hayes (accident reconstruction) G. Theodore Davis (medical)



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June 2011 Verdicts

Submitted By	Ada Priest and Rebecca Kenny Madison, Harbour & Mroz, P.A. abp@madisonlaw.com Phone (505) 242-2177; Fax (505) 242-7184
Court	State Court
County	Bernalillo
Judge	Hon. Nan Nash
Defense Counsel	Ada B. Priest and Rebecca S. Kenny
Plaintiff Counsel	Roger Eaton, David Houlston and Louis Marjon
Trier	12-Person Jury
Style	<i>Crystle Gallegos as personal representative of the Estate of John Joe Gallegos, et al v. Pueblo of Sandia d/b/a Sandia Casino</i>
Statement of Facts	This case involves an accident wherein John Joe Gallegos ("Mr. Gallegos") tripped and fell when exiting Sandia Casino on September 1, 2008. Mr. Gallegos was hospitalized for a spinal cord injury and ultimately passed away on February 12, 2009. Plaintiffs' Complaint asserted claims for wrongful death and bystander recovery alleging that Mr. Gallegos fell when he became entangled in the carpeted mat near the doorway that had become wrinkled and created a dangerous condition. The defense argued the video footage from the casino's security cameras clearly demonstrated the mat at issue was laying flat and being used in the manner in which it was intended. The defense further argued Mr. Gallegos fell as a result of his failure to lift his left foot over the edge of the mat, which in turn was caused by a myriad of preexisting medical conditions.
Verdict	Defense
Experts	Plaintiff: Frank Burg, Accident Prevention Expert Defense: Dr. Mark Berger, Neurologist



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June 2011 Verdicts

Submitted By	Ben M. Allen & Richard E. Hatch Allen, Shepherd, Lewis, Syra & Chapman, P.A. rhatch@allenlawnm.com Phone (505) 341-0110; Fax (505) 341-3434
Court	State Court
County	Bernalillo
Judge	Hon. Valerie A. Huling
Defense Counsel	Ben M. Allen & Richard E. Hatch
Plaintiff Counsel	Kenneth R. Wagner & Thomas J. McBride
Trier	12-Person Jury
Style	<i>April Jean Aguilar and Glynn P. Aguilar v. Jill Marjama-Lyons, M.D. and Marjama, Inc.</i>
Statement of Facts	<p>Plaintiffs claimed that Defendant physician, a movement disorder specialist, negligently diagnosed the patient with Parkinson's Disease, and, as a result, negligently referred the patient for Deep Brain Stimulation ("DBS") surgery.</p> <p>The surgery was performed on January 2, 2007 by Dr. Andrew Metzger with no complications. Plaintiffs alleged that the surgery was unsuccessful and even harmful because the patient did not actually have Parkinson's Disease, but Multiple System Atrophy, for which Deep Brain Stimulation is contraindicated. Plaintiffs further argued that because of the misdiagnosis, Plaintiffs suffered damages, including \$155,000 in medical expenses for the surgery, as well as significant pain and suffering, loss of enjoyment of life and loss of consortium.</p> <p>Defendants argued that Defendant's diagnosis was well within the standard diagnostic criteria for Parkinson's Disease and that surgery was indicated because the benefit of medication therapy had been exhausted. Defendants further argued that there is no medical evidence that Plaintiffs' current condition is anything but the natural progression of her terminal disease.</p>
Verdict	Defense
Experts	Defendants' Expert: Jeff Bronstein, M.D. (Movement Disorder Specialist) Plaintiffs' Expert: Michael J. Aminoff, M.D. (Movement Disorder Specialist)



Defense Lawyers
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June 2011 Verdicts

Submitted By	Nicole M. Charlebois Allen, Shepherd, Lewis, Syra & Chapman, P.A. ncharlebois@allenlawnm.com Phone (505) 341-0110; Fax (505) 341-3434
Court	Federal Court
Judge	Hon. Martha Vazquez
Defense Counsel	Nicole M. Charlebois and Christopher R. Reed
Plaintiff Counsel	Roger Heath and Frank Balderama
Trier	6-Person Jury
Style	<i>Sam Gordon Lusk and Billye Lusk, Plaintiffs v. Eugene Sanchez, Individually and Champion Auto Carriers, Inc., a Colorado Corporation</i>
Statement of Facts	<p>On December 29, 2004, Plaintiffs, who were from Houston, were driving their 2000 Cadillac Escalade from Taos, New Mexico, to Las Vegas, Nevada. At approximately 5:00 p.m. Plaintiffs were stopped in heavy traffic in the westbound lanes of Interstate 40 near the Rio Grande exit. Road conditions were wet.</p> <p>Gordon maintains that after stopping, he looked in his rear view mirror and saw a truck driven by Eugene Sanchez that appeared unable to stop. Sanchez' vehicle hit Plaintiffs' Escalade and pushed it forward into the vehicle in front of it.</p> <p>Billye Lusk was taken by ambulance to the hospital where she was examined and released. Neither Sam Lusk nor the other two passengers in the vehicle reported any injuries at the time of the accident nor were they treated at the hospital immediately following the accident.</p> <p>Plaintiffs' vehicle was a total loss. Sanchez drove his vehicle from the scene. No citations were issued.</p> <p>Plaintiffs claimed negligence, negligence per se, negligent hiring, supervision and retention, loss of consortium and punitive damages. Plaintiffs estimated their damages in excess of \$250,000.</p>
Verdict	Defense
Experts	Plaintiffs' experts were excluded by the Court because Plaintiffs failed to make timely disclosure of their experts. Based on the Court's exclusion of Plaintiffs' experts, Defendants did not disclose any experts on causation or damages.