

The logo for the Defense Lawyers Association (DLA) in New Mexico, featuring the letters 'DLA' in white on a blue square background.The text 'NEW MEXICO' in white on a black rectangular background, positioned below the DLA logo.

Defense Lawyers
Association

Fall 2009 Defense Verdicts

Court: State Court
County: Santa Fe
Judge: Sheri A. Raphaelson
Defense Counsel: E. W. Shepherd for Nob Hill & Paul Hultin & Bryan Cross for La Montanita
Plaintiff Counsel: Scott Voorhees
Trier: 12 Person Jury
Verdict: Defense
Date: 10/20/2009

Style:

STATE OF NEW MEXICO COUNTY OF SANTA FE FIRST JUDICIAL DISTRICT No. D-0101-CV-200801535 MICHAEL SCOTT REILLY,

Plaintiff,

v.

LA MONTANITA FOOD COOPERATIVE and NOB HILL PARTNERSHIP,
Defendants.

Facts: Personal injury action filed against La Montanita who was the tenant and Nob Hill Partnership who was the landlord for an action which occurred at the Nob Hill Center in Albuquerque. Plaintiff claimed a La Montanita employee suddenly and with great force, opened a storage room door into a public breezeway striking the Plaintiff causing an ulnar nerve compression and subsequent permanent injury.

Verdict Comments: Directed Verdict and Defense Verdict

Plaintiff's Expert: Brock Carter (the Court excluded Brock Carter from testifying on the grounds he was not qualified as a safety expert and the opinions he intended to offer were not those requiring expert testimony).

Defendant's Experts: Dr. Belyn Schwartz and Dr. Mark Berger

Submitted By:

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Court: State Court
County: San Juan
Judge: Hon. Karen Townsend

Defense Counsel: W. Ann Maggiore and Paul R. Bishop
Plaintiff Counsel: Michael Mihm and Anna Martinez

Trier: 12 Person Jury
Verdict: Defense
Date: 10/12/2009

Style: *Donna Jill Lau, as Personal Representative of the Estate of Wyndal Lau, v. John McNeill, DDS and John McNeill, DDS, PC.*

Facts:

Medical malpractice action filed against San Juan Regional Medical Center, Dr. Dale Kester (ER) and Dr. John McNeill (oral surgeon) alleging failure to diagnose and treat subdural hematoma from patient's complaint of a toothache. Hospital and Dr. Kester settled out prior to trial. Plaintiff was seen on an early Monday morning at the San Juan Regional Medical Center ER by Dr. Kester who diagnosed a toothache, since that was plaintiff's chief complaint, with a secondary complaint of headache. Dr. McNeill saw the patient later that day, diagnosed an abscessed and non-restorable tooth #12, and prescribed prophylactic antibiotics due to plaintiff's history of rheumatic fever as a child. On Tuesday he extracted an abscessed tooth #12. Less than 24 hours later plaintiff died of a subdural hematoma. No history of head trauma was reported. Plaintiff alleged that Dr. McNeill should have noted an asymptomatic bradycardia as a sign of increasing intracranial pressure.

Verdict Comments: Defense verdict.

Experts: Dr. John Mitchell (oral and maxillofacial surgeon); Dr. Howard Yonas (chief of neurosurgery at UNMH)

Submitted By:

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Court: State Court
County: Bernalillo
Judge: Judge Valerie Huling

Defense Counsel: Jeff Croasdell & Brenda Saiz , Rodey Law Firm
Plaintiff Counsel: Al Thiel & Robert Gutierrez

Trier: 12 Person Jury
Verdict: Defense
Date: 10/09/2009

Style: *Rosalie Kleinstiver v. Presbyterian Hospital*

Facts:

Plaintiff alleged that on March 15, 2005, she was brought to the PHS Kaseman Emergency Room and admitted to Presbyterian Hospital for suspected gastrointestinal bleeding. Plaintiff claimed that the untimely administration of blood products and/or insufficient amounts of blood product replacement caused a stroke and permanent damages. Plaintiff based these allegations upon a belief that the ER doctor recognized the need for a transfusion while Plaintiff was at Kaseman but the transfusion did not occur until several hours later.

Verdict Comments:

The jury deliberated for approximately three hours and on the special verdict form found that PHS was negligent, but that PHS' negligence was not the proximate cause of P's injuries.

Experts:

Dr. Ravi Tikoo/Dr. Jason D'Amore/Brian McDonald (withdrawn during trial)/Lori Postenrieder (withdrawn during trial) and for the defense Dr. Glenn Graham

Submitted By:

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Court: State Court
County: Taos
Judge: John Paternoster

Defense Counsel: Phyllis Lynn and Mike Jahner
Plaintiff Counsel: Ed Pitts

Trier: 12 Person Jury
Verdict: Defense
Date: 09/11/2009

Style: *Paul Dominguez v. Northern Mountain Constructors, Inc.*

Facts:

Plaintiff was injured while cleaning screening equipment which is part of gravel crushing equipment, when the conveyor to that equipment was accidentally turned on because the operator, Plaintiff's supervisor, misunderstood employee signals. Plaintiff sought damages for negligence, negligence per se, strict liability and punitive damages against JCI, the manufacturer of the screener; Western Wire, the lessor of the equipment; Northern Mountain Constructors, the alleged lessee/owner of the equipment; and Perovich Properties d/b/a Taos Gravel Products, his employer. Taos Gravel Products was dismissed on summary judgment under the exclusivity provisions of the Workers' Compensation Act and upheld in a published decision by the Court of Appeals. JCI and Western Wire reached a settlement agreement. Plaintiff only proceeded against Northern Mountain Constructors at trial claiming that NMC failed to provide and implement "lock-out/tag-out" devices and adequate warnings to prevent the equipment from being started while workers are on the conveyor belt; that NMC was negligent per se for violating MSHA/OSHA regulations; and that the equipment was defective for failing to have an adequate alarm/siren to alert workers that the equipment was being started. NMC argued that it was not the lessee of the equipment did not have a duty to Plaintiff because it did not have possession, custody or control over the equipment involved in the accident. NMC's name was on the lease due to sloppy paperwork but it did not make payments on the lease nor did its employees set-up or operate the equipment.

Verdict Comments:

After four days of trial, Judge Paternoster granted Defendant's Motion for Directed Verdict.

Experts:

Plaintiff: Vincent Gallagher (safety expert); David Montoya (vocational rehabilitation); Brian McDonald (economist); Michael Baten (neurologist)

Defendants: Buc Buchanan (IME physician) and James Lubowitz (treating physician) prepared to testify

Final Comments: After a Daubert hearing, Judge Paternoster allowed Brian McDonald to testify regarding hedonic damages.

Submitted by:

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Defense Lawyers
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Summer 2009 Defense Verdicts

Court: Federal Court
County: Bernalillo
Judge: Judith Herrera

Defense Counsel: Lance Richards; Kallie Kuehl
Plaintiff Counsel: Jim Ellis; Lance Himmelberger

Trier: 6 Person Jury
Verdict: Defense

Style

Keneth Myers v. Rogers Trucking and Robert Gwinn

Facts

Plaintiff claimed defendant's tractor-trailer rear ended his vehicle on I-40 westbound. Defendant alleged plaintiff suddenly and unexpectedly cut into his lane of traffic causing the accident. Investigating officer testified in favor of plaintiff, JT Hayes testified physical evidence contradicted plaintiff's claims and officer's observations. Plaintiff suffered a subdural hematoma confirmed by CT scan, alleged cognitive injuries included memory loss, dizziness, confusion, etc. Plaintiff treated approximately 8 months with Corrales Chiropractic and Caremore for alleged neck and back injuries. Dr. Seelinger testified it was possible but not probable that the subdural hematoma caused the alleged cognitive injuries, as plaintiff had pre-existing cognitive issues.

Verdict Comments: Judge Herrera did a good job under difficult circumstances.

Experts

Plaintiff: Dr. Kevin Goodluck

Defendants: Dr. Don Seelinger, neurology JT Hayes, accident reconstruction

Submitted By:

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