



Defense Lawyers  
Association

## December 2010 Verdict

<b>Submitted By</b>	Gregory L Biehler Beall & Biehler <a href="mailto:greg@beall-biehler.com">greg@beall-biehler.com</a> (505) 828-3600 (505) 828-3900
<b>Court</b>	State Court
<b>County</b>	Bernalillo
<b>Judge</b>	Shannon Bacon
<b>Defense Counsel</b>	Gregory Biehler and Peter Grueninger
<b>Plaintiff Counsel</b>	Gabrielle Valdez
<b>Trier</b>	12 Person Jury
<b>Style</b>	<i>Emanuele Corso v. Paradise Village, Inc.</i> , CV 2008-05058
<b>Statement of Facts</b>	<p>Mr. Corso, a construction coordinator for a movie company, came to pick up a TV from an electronics store, Paradise, on May 25, 2005. He claimed that he was helping detach a 100 lb plasma TV when it fell onto his back. The owner of the store claimed Corso was helping to lift the TV off a shelf when he dropped the TV onto the floor. Plaintiff reported to his employer the next day that he was injured when a TV fell on him and later sought treatment for injury to his back. Although plaintiff acknowledged prior back injuries, he claimed this event was debilitating and changed the course of his life. He asserted damages complete disability and constant pain, medical bills or approximately \$12,000. His counsel asked the jury to award a minimum of \$247,000.</p>
<b>Verdict</b>	Plaintiff
<b>Comments</b>	<p>The jury returned a verdict in the amount of \$13,248. Plaintiff was assessed 40% negligence, for a net verdict of \$7,948.80. Prior to trial Paradise made an offer of settlement under Rule 68 for \$22,000. Post offer costs exceed \$12,000. Plaintiff's last offer of settlement was for \$45,000. This was Judge Bacon's first jury trial. Her rulings were generally thoughtful and even handed.</p>
<b>Experts</b>	Plaintiff used Dr. John Vigil as her IME expert. Defendant used Dr. James Buchanan.

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

## Spring 2010 Defense Verdicts

**Court:** State Court  
**County:** Otero  
**Judge:** Honorable Jerry Ritter

**Defense Counsel:** Gregory L Biehler  
**Plaintiff Counsel:** Roger Eaton and Deena Beard of Will Ferguson and Associates

**Trier:** 12-Person Jury  
**Verdict:** Defense  
**Date:** 05/21/2010

**Style:** Timothy Stygar v. One Stop Auto Parts, Inc.

**Facts:** Plaintiff, a civilian driver for the German Air Force, alleged that Defendant, an auto repair shop in Alamogordo, failed to reinstall a "bar stop" on a tow truck hood. The hood, weighing 200 lbs, over rotated and plaintiff suffered a torn bicep as a result. Plaintiff alleged negligence on the part of Defendant and presented medical bills of \$21,000 and lost wages of \$14,000. Plaintiff was off work for 4 months and alleged permanent injury and weakness to his bicep. Plaintiff requested the jury to award \$340,000 in damages. Credibility was a key issue as Defendant's employees testified the bar stop was installed and Plaintiff's witnesses testified Defendant's employees later admitted to having failed to reinstall the bar stop and returned the uninstalled part to Plaintiff.

**Verdict Comments:** The jury returned with a verdict in less than 15 minutes with a unanimous verdict of no negligence.

**Experts:** Plaintiff: Barry Maron

**Final Comments:** Plaintiff filed an offer of settlement for \$85,000 two months before trial and refused to negotiate thereafter. At a prior mediation, Plaintiff demanded no less than \$200,000. Defendant filed an offer of settlement for \$75,000 prior to trial. Judge Ritter was exceptional.

**Submitted by:**

Gregory L Biehler  
Beall & Biehler  
505.828.3600  
Fax: 505.828.3900  
[greg@beall-biehler.com](mailto:greg@beall-biehler.com)

**Court:** Federal Court  
**Judge:** The Hon. William P. Johnson

**Defense Counsel:** Mark D. Standridge & Mark D. Jarmie  
**Plaintiff Counsel:** Joseph N. Riggs & Natalie Bruce

**Trier:** Judge  
**Verdict:** Defense  
**Date:** 05/04/2010

**Style:**

SAMUEL MASCARENAS,  
Plaintiff,

v.

GEORGE TAPIA, Warden of the New Mexico Correctional Facility, JOE R. WILLIAMS,  
Secretary of the New Mexico Department of Corrections, STANLEY MOYA, STEVE LOVATO,  
RANDY RYAN, ARTHUR SANCHEZ, MICHAEL GARINGER, PETE PEREZ, JOHN DOE and  
JOHN DOE II,  
Defendants.

**Facts:** Plaintiff was a founding member of the Los Carnales prison gang. Plaintiff alleged that the individual Defendants, who were all corrections officers employed by the New Mexico Corrections Department, violated his Eighth Amendment right to be free of cruel and unusual punishment when they placed him in a prison pod with members of the Los Carnales gang, who stabbed plaintiff shortly after he entered the pod. Plaintiff alleged that the Defendants acted with deliberate indifference toward plaintiff's fate because they knew of the substantial risk to plaintiff's safety in placing him in the prison pod with other Los Carnales gang members.

**Verdict Comments:** In two separate opinions, filed on March 12, 2009 and October 29, 2009, the Court dismissed all claims made by the plaintiff. With respect to the Defendant Prison Wardens and Secretary of the Department of Corrections, the Court found that plaintiff had not alleged any actual knowledge on the part of these Defendants of the putative danger that plaintiff faced. As for the remainder of the Defendants, the evidence adduced in discovery did not establish that they were deliberately indifferent such that they could be held accountable for plaintiff's injuries under the Eighth Amendment.

**Final Comments:** The Court's opinions in this matter had previously been sealed, but were unsealed by order of the Court on April 30, 2010.

**Submitted By:**

Mark D. Standridge  
Jarmie & Associates  
575. 647.1399  
575.523.4911  
[mstandridge@jarmielaw.com](mailto:mstandridge@jarmielaw.com)

**Court:** Federal Court  
**Judge:** The Hon. William Johnson

**Defense Counsel:** Mark D. Jarmie & Mark D. Standridge, on behalf of Defendants Joe Romero, Christine Vallejos and Robert Ulibarri

**Plaintiff Counsel:** Mary Y.C. Han & Darin M. Foster

**Trier:** Judge

**Verdict:** Defense

**Date:** 4/30/2010

**Style:**

KARI T. MORRISSEY, as Personal Representative of the Estate of MICHAEL CRESPIN,  
deceased,  
Plaintiff,

v.

ROBERT ULIBARRI, HARVEY J. FEATHERSTONE, M.D., MONIQUE GIBSON, M.D., TACEY OREY, DANNA TAPIA, and ELIZABETH BURNETT, M.D., in their individual capacities, WEXFORD HEALTH SOURCES, INC., CHRISTINE VALLEJOS and JOSEPH ROMERO,  
Defendants.

**Facts:** While he was an inmate in a New Mexico state prison, plaintiff's decedent was diagnosed with colon cancer. Over the course of several months, the decedent missed numerous medical appointments at the University of New Mexico Hospital where he was being treated. Decedent sued the Defendants, prison wardens and prison medical personnel, for the violation of his Eighth Amendment right to be free from cruel and unusual punishment and for various tort claims in violation of New Mexico tort law. Subsequently, decedent passed away and plaintiff entered her appearance as the personal representative of decedent's estate.

**Verdict Comments:** Summary judgment granted in favor of the Defendant prison wardens on April 28, 2010. The Court found that plaintiff did not present sufficient evidence that the Defendant prison wardens knew of the decedent's medical condition or his missed appointments, thus plaintiff's Eighth Amendment claim failed. In addition, the Court found that Defendants were entitled to sovereign immunity under the Tort Claims Act and the Eleventh Amendment with respect to plaintiff's state law tort claims.

**Plaintiff's Expert:** Robert Greifinger, M.D.

**Submitted By:**

Mark D. Standridge  
Jarmie & Associates  
575. 647.1399  
575.523.4911  
[mstandridge@jarmielaw.com](mailto:mstandridge@jarmielaw.com)

**Court:** State Court  
**County:** Bernalillo County  
**Judge:** Nan G. Nash

**Defense Counsel:** Robert A. Corchine  
**Plaintiff Counsel:** David A. Archuleta

**Trier:** 12 Person Jury  
**Verdict:** Plaintiff  
**Date:** 03/29/2010

**Style:** Tonya Kersting v. Mariann Carson

**Facts:** Low speed rear-end collision with alleged chronic cervical strain and aggravation for pre-existing conditions in cervical spine. Plaintiff, a 47 year old female, was seen by a total of 15 medical providers and underwent numerous radiographic studies and injections. She sought to recover the cost of two level surgery to her cervical spine, past medical expenses in the amount of \$55,000, past lost earnings and for the cost of a drug detox program based on a claim that she became addicted to narcotic pain medication due to her alleged injuries. Plaintiff's counsel asked the jury to award his client \$536,000 in total damages. However, he suggested to the jury that the case is probably worth \$750,000.

**Verdict Comments:** Jury awarded Plaintiff the total sum of \$18,500. Defendant's last offer before trial was \$100,000.

**Experts:** Plaintiff called orthopedic surgeon, Thomas Grace, M.D., as her testifying medical expert. Defendant called G. Theodore Davis, M.D. as her testifying medical expert.

**Final Comments:** Defendant's theory was that Plaintiff is a somatizer based on her non-organic and non-physiologic complaints and lack of objective findings to support her subjective complaints.

**Submitted By:**

Robert A. Corchine  
Dines & Gross PC  
505.889.4050  
Fax: 505.889.4049  
Email Address: [rcorchine@dineslaw.com](mailto:rcorchine@dineslaw.com)

**Court:** First Judicial District Court  
**Judge:** Hon. Clay Campbell

**Defense Counsel:** Ada B. Priest, for Del Sol Shopping Center Associates, L.P., BGK properties, Inc., BGK Realty, Inc., and BGK Equities III, LLC; Lisa Pullen and Clea Gutterson for BGK Property Management, LLC

**Plaintiffs' Counsel:** John Escamilla, Joe Cruz Castellano, Beatrice Castellano Lockhart, and David Jaramillo

**Trier:** Judge Clay Campbell  
**Verdict:** Defense  
**Date:** March 16, 2010

**Style:**

NO. D0101-CV-2006-01855

JAMES RODRIGUEZ, Individually And As Representative Of The Estates Of JANELL L. RODRIGUEZ And DAVID RODRIGUEZ, Deceased, LEANN AGUILAR, DOMENIC A. RODRIGUEZ, JUAN M. TERRAZAS, Individually And As Representative Of The Estate Of VIVIANA E. TERRAZAS, Deceased, LUDIVINA TERRAZAS ENRIQUEZ And BILLY J. TRUJILLO, As Next Friend Of Isaiah Trujillo,  
Plaintiffs.

vs.

BEAVER MOTORS, INC. d/b/a BEAVER TOYOTA-SCION, DEL SOL SHOPPING CENTER ASSOCIATES, L.P. a/k/a DEL SOL SHOPPING CENTER, CONCENTRA HEALTH SERVICES, INC., BGK PROPERTIES, INC., BGK REALTY, Inc., BGK EQUITIES, III, LLC, BGK PROPERTY MANAGEMENT, LLC, and RACHEL RUIZ,  
Defendants.

**Facts:** This case arises from a collision that occurred on March 17, 2006 at the Del Sol Shopping Center in Santa Fe, New Mexico. Janelle Rodriguez, David Rodriguez and Viviana Terrazas were killed when a full size truck driven by Rachel Ruiz drove through the front door and windows of the Concentra Clinic located in the Del Sol Shopping Center. Plaintiffs filed a lawsuit claiming the property owner and property management company breached their duty by failing to have speed bumps, asphalt markings, adequate signage and protective barriers in front of the clinic to protect against vehicle intrusion into the building. Plaintiffs argued that generalized knowledge of vehicle building collisions provided adequate notice to the owner and management company that safety measures should be taken. Plaintiffs also argued the presence of a bar in the shopping center and the drug testing performed at Concentra created heightened risks and awareness of potentially dangerous vehicular traffic.

**Verdict Comments:** On March 16, 2010, Judge Campbell awarded summary judgment to the property owner and property management defendants and held under an analysis of duty that this accident was not reasonably foreseeable. In his Memorandum Opinion, Judge Campbell determined this incident was not one which the property owner or management company could have reasonably or objectively expected to occur. The car dealership and medical clinic defendants had previously settled with the plaintiffs.

The judge denied plaintiffs' motion for reconsideration on April 5, 2010.

**Plaintiffs' Experts:** Barrett Chambers Miller  
David J. Bizzak, Ph.D.  
Dr. Everett Dillman  
Rob Reiter  
Dr. Samuel Roll

**Defense Experts:** Charles Rick Green  
Jubal Hamernik  
Brock Carter  
John Lewinger

**Submitted by:**

Ada B. Priest  
Madison, Harbour & Mroz, P.A.  
505.242.2177  
Fax: 505.242.7184  
[ada@madisonlaw.com](mailto:ada@madisonlaw.com)

The logo for DLA (Defense Lawyers Association) features the letters 'DLA' in white on a blue square background.The logo for NEW MEXICO features the words 'NEW MEXICO' in white on a black rectangular background.

Defense Lawyers  
Association

## Summer 2010 Defense Verdicts

**Court** State Court

**County** Santa Fe

**Judge** Judge Singleton

**Defense Counsel** Nicole M. Charlebois and Aaron R. Kugler

**Plaintiff Counsel** Brian Branch and Mack Ed Swindle

**Trier** 12 Person Jury

**Style** Laretta Harris, Individually, as Personal Representative of the Estate of Roger Harris, Deceased and as the natural mother and next friend of Ethan Andrew Harris, a minor v. Rush Truck Center of New Mexico, Inc.

**Statement of Facts** On August 17, 2005 at approximately 4:20 a.m., Roger Harris was driving north on I-25 south of Santa Fe, hauling a tanker carrying approximately 9,000 gallons of gasoline and diesel fuel. At approximately mile marker 274, the vehicle drifted off the road. Harris lost control of the vehicle rolled onto its side and exploded, killing Harris.

Mrs. Harris alleged that the accident was the result of negligent repairs performed on the tractor by Defendant Rush the day before the accident. Rush maintained that the accident was the result of driver inattention and over correction.

**Verdict** Defense

**Comments** This was a retrial. The case was originally tried in September of 2009 and the jury deadlocked 9 to 3 for the defense. The verdict received yesterday was 10 to 2 for the defense with a finding of negligence but no causation.

**Experts** Defense retained a vehicle dynamics expert, materials scientist and an accident reconstructionist to provide testimony regarding the cause of the accident.

Plaintiff retained Robert Reed, a mechanic from Columbus, Ohio. Reed was not credible during the first trial but was much better prepared for the retrial. Overall, however, his testimony lacked and credible foundation with regard to causation. Plaintiff's also retained Michael Huerta from El Paso to provide mechanical metallurgy testimony. Dr. Huerta did not make a well organized presentation and appeared confused and unsure of his opinions.

**Comments** Judge Singleton did an excellent job managing the case. She was well prepared, organized and consistent in her rulings.