



Defense Lawyers
Association

July 2014 Verdict

Submitted By**Jeff Ray and Mark Mowery**

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Court

Federal District Court for the District of New Mexico (after removal from State District Court – First Judicial District)

County

Suit was originally filed in state district court in Santa Fe County and was later removed to federal court.

Judge

Honorable James O. Browning

Defense Counsel

Jeff Ray, Robert Edwards, Mark Mowery & Jose Blanton

Plaintiff Counsel

Scott Hendler & Sean Lyons (HENDLERLAW, PC, Austin, TX) and Zackaree Kelin (Kelin Law Firm, P.C., Albuquerque, NM)

Trier

12 Person Jury

Style

David Peshlakai, Darlene Thomas, Charles Reynolds as the personal Representative of the Wrongful Death Estates of Del Lynn Peshlakai (Deceased) and Deshaunna Peshlakai (Deceased), Danell Peshlakai, Darnell Peshlakai, Shawn Begay, Delacey Peshlakai and David Peshlakai, Jr., Plaintiffs, vs. AmRest, LLC DBA Applebee's Neighborhood Grill and Bar, Case 1:13-cv-00752-JB-CG

Statement of Facts

On March 5, 2010, James Ruiz, Gilbert Mendoza and Veronica Castro went to the Applebee's Neighborhood Grill and Bar in Santa Fe, operated by franchisee AmRest, LLC. The group arrived at Applebee's at approximately 4:15 p.m. and remained there until approximately 6:30 p.m. During that period of time, Ruiz and Mendoza were served 3 and possibly 4 Bud Light beers in "Brewtus" 20 oz. glasses with an approximate 17 oz. pour. There was disputed testimony as to whether they had been served additional bottles of beer which did not appear on any tabs. From Applebee's, the group went to the Blue Corn Café & Brewery located a few minutes away. The party drove to Blue Corn in Mendoza's 2005 Ford F350 pickup truck. The party opened a tab at Blue Corn at 6:54 p.m. While at Blue Corn, Ruiz and Mendoza each ordered 4 rounds of beers (16 oz. IPAs by Ruiz and 12 oz. Coors Lights by Mendoza) along with 4 shot s of Crown Royal liquor. (There was disputed evidence as to whether Ruiz and Mendoza consumed the 4th round of drinks, although the round was delivered to their table.) During this period of time, Castro became increasingly ill and the party departed Blue Corn very suddenly at approximately 8:45 p.m. without paying their bill but leaving behind Castro's purse and cellphone. When the party left Blue Corn, Ruiz was driving Mendoza's truck. At approximately 8:57 p.m., the truck being driven by Ruiz collided at a high speed with the rear end of a 2007 Chevrolet Impala being driven by David Peshlakai. At the time of the collision, the Peshlakai vehicle was stopped in a line of traffic on southbound Cerrillos Road. In the Peshlakai vehicle was David's wife Darlene Thomas and two of their daughters – 19 year old Del Lynn and 17 year old Deshaunna. The accident caused a pile up of 5 vehicles. David and Darlene sustained serious personal injuries in th e accident but survived. Deshaunna died at the scene of the accident and Del Lynn died shortly afterwards at the hospital where she was taken for emergency surgery. After the accident, a ½ full 750 ml bottle of Vodka was found in Ruiz' belongings in the Mendoza truck. It was estimated that at the time of the accident, Ruiz' BAC was between .25 and .28%. In the course of the investigation of the accident, Blue Corn and the server there who waited on the Ruiz party were both cited for over-service of alcohol. They subsequently pled guilty to the citations. Ruiz eventually pled guilty to two counts of vehicular homicide and two counts of great bodily harm by vehicle, and he was sentenced to 42 years in prison (where he remains today). Plaintiffs initially filed suit against Blue Corn, Ruiz and Mendoza in state district court. After settling with Blue Corn, Plaintiffs amended their complaint to add AmRest and Applebee's International (the franchi sor) as additional defendants. Plaintiffs later settled with Ruiz and Mendoza. AmRest and Applebee's then removed the case to federal court, where it remained by stipulation of the parties with an agreement that the jury would be drawn exclusively from residents of Santa Fe County. Prior to trial, plaintiffs settled with Applebee's International, leaving AmRest as the sole remaining defendant at trial. Trial began on April 21 and was concluded on April 30.

Verdict Defense

Comments

On a vote of 10-2, the jury returned a verdict in favor of AmRest by answering “no” to the following first question on a Special Verdict form: “Was Defendant AmRest, LLC’s sale or service of alcohol to Gilbert Mendoza and/or James Ruiz in violation of the New Mexico Liquor Liability Act?”

Experts

Plaintiffs' experts: Dr. Robert Bux (toxicology); Dr. Gill Woodall (alcohol service); Dr. Sam Roll (PTSD); Dr. Everett Dillman (economist)

Defense experts: Dr. Don Fisher (toxicology); Victoria Martinez-Sanchez (alcohol service)



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July 2014 Verdicts continued

Submitted By

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Court State Court**County** Lincoln County**Judge** Honorable Karen L. Parsons**Defense Counsel** Daniel J. O'Brien and Erica R. Neff**Plaintiff Counsel** David A. Grammer III and Tricia Monaghan**Trier** 12 Person Jury**Style** Richard A. Bergsrud, Plaintiff, v. Farmers Insurance Company of Arizona, Defendant; Case No. D-1226-CV-2011-00267**Statement of Facts**

This bad faith case arises out of a claim made for property damage on a vehicle that was acquired after the insurance policy was issued. Plaintiff purchased a 2004 Volkswagen Phaeton. The Bill Of Sale was dated March 25, 2010. Plaintiff claimed that the paperwork finalizing the purchase was completed on March 25, 2010, but the deal was not finalized until March 27, 2010, because of financing issues. He claims he took possession of the vehicle on March 27, 2010.

After purchase of the vehicle, Plaintiff was involved in a single vehicle rollover accident on April 24, 2010, in which the vehicle was completely destroyed. On April 26, 2010, Plaintiff called his agent and added the vehicle to his policy. He did not disclose at that time that the vehicle had been totaled two days before. On May 25, 2010, Plaintiff reported the April 24, 2010, accident and made a claim.

The policy at issue defined an insured vehicle as "any additional private passenger car or utility car of which you acquire ownership during the policy period provided that: 1) you notify us within 30 days of its acquisition." The Defendant insurance company investigated the claim and denied the same, contending that the purchase was not noticed until April 26, 2010, 32 days after the Bill Of Sale was executed. Plaintiff maintained that notice was given 30 days after the purchase and thus timely based on a claimed March 27, 2010, purchase date.

After Plaintiff's claim was denied he filed suit alleging 1) that his notice was within the 30 days required by the definition of insured vehicle and 2) in any event, the accident occurred within 30 days of the acquisition date and therefore was insured notwithstanding that notice may have been beyond the 30 day requirement. The plaintiff's insurance expert asserted that there was no notification requirement, despite the policy language, and that there are 30 days of free, automatic coverage for any new car. He also argued that Defendant should have taken Plaintiff at his word regarding the purchase date (i.e., should have used March 27 as the purchase date), and that Defendant acted in bad faith by relying on the date of the Buyer's Order and Plaintiff's previous, mistaken report that he had purchased the car on March 25. He opined that the Virginia Buyer's order was not a "bill of sale," that a March 27 purchase date should have been used by Defendant, and that this would have put Plaintiff's report of the new car within the 30 day notice period, providing coverage. The expert admitted that he did not examine Virginia law in coming to his opinions, including the Virginia Buyer's Order statute, which explains that the date of the Buyer's Order is the date of sale and that the Buyer's Order is a legal bill of sale. He maintained his positions and opined that Defendant acted unreasonably, unfairly, and in bad faith.

Counsel for Defendant also argued that Plaintiff acted dishonestly, in violation of the duty to promptly report claims, and in violation of the duty to cooperate when the plaintiff knowingly failed to disclose the accident for more than a month and attempted to get coverage on the vehicle despite knowing that it was already totally destroyed. The above-referenced matter was tried on July 23, 2014, for three days. After about one half hour of deliberation, the jury returned a defense verdict.

Verdict

Defense

ExpertsPlaintiff: Steven C. Henry, insurance expert
Defendant: none
