



Defense Lawyers
Association

February 2012 Verdicts

Submitted By	Shannon Parden Olsen, Parden & Crow, P.C. sparden@opclawfirm.com (505) 881-2782
Court	State Court
County	Bernalillo
Judge	Hon. Ted Baca
Defense Counsel	Shannon Parden and Brian Judson, Montgomery & Andres, at trial, with Paul Houston as lead pre-trial counsel
Plaintiff Counsel	Steve Henry
Trier	Judge
Style	<i>Reetz Construction, Inc., Lewis Reetz, Ltd. dba Larry Reetz Construction, and Clarendon Insurance Co. v. Brian O'Malley, The Talbot Agency, Inc. and Builder's Trust of New Mexico.</i>
Statement of Facts	<p>From 1994 through 2004, Plaintiff Lewis Reetz Ltd. ("Reetz") was a member of Defendant Builder's Trust of New Mexico ("Builder's Trust"), which provided Workers' Compensation benefits as allowed by the Group Self-Insurance Act. Reetz's coverage through Builder's Trust was procured or facilitated by Defendants Brian O'Malley and The Talbot Agency, Inc. (collectively "Talbot").</p> <p>On June 9, 2004, an employee of one the Plaintiff Reetz entities, Jerry Hoskinson, was injured and subsequently died on June 22, 2004 from his injuries. Builder's Trust denied Workers' Compensation coverage, because Hoskinson was a resident of Arizona working in Arizona at the time of the incident. Hoskinson's wrongful death estate ("Estate") brought suit against and eventually settled with the Reetz entities and Clarendon National Insurance Company ("Clarendon"). The Reetz entities were defended pursuant to a reservation of rights in the wrongful death lawsuit pursuant to a commercial general liability policy issued by Clarendon. The wrongful death action was settled, with Clarendon paying the entire amount of the settlement.</p> <p>Plaintiffs Reetz then brought causes of action against Talbot alleging failure to procure workers' compensation coverage for non-resident workers on the Arizona project and failing to notify or advise Plaintiff Reetz of the relevant coverage limitations. Plaintiffs Reetz had requested that Talbot issue certificates of insurance coverage for the project in Arizona at which the accident occurred. Prior to the project, Reetz's work was confined to New Mexico (except for one occasion) and Reetz had only hired employees in New Mexico to work in New Mexico. The main issue at trial was whether, when Reetz requested the certificates of insurance for the Arizona project, Talbot had a duty to (re)inform Reetz that the Builder's Trust coverage did not provide coverage for workers hired in Arizona to work in Arizona.</p> <p>The Court found that Reetz knew that Builder's Trust did not provide workers compensation coverage for workers hired out of state to work out of state. The Court further held that Talbot did not breach its contract to procure appropriate workers compensation coverage for Reetz's employees on the Arizona project; that Talbot was not negligent; and that Talbot had not violated the UPA or the UIPA.</p>
Verdict	Defense
Experts	Defense expert: Jack Cleary Plaintiff's expert: Garth Allen