IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

CRAIG BEAUDRY,

Plaintiff-Respondent,

vs. **NO. S-1-SC-36181**

FARMERS INSURANCE EXCHANGE, TRUCK INSURANCE EXCHANGE, FIRE INSURANCE EXCHANGE, MID-CENTURY INSURANCE COMPANY, FARMERS NEW WORLD LIFE INSURANCE COMPANY, FARMERS INSURANCE COMPANY OF ARIZONA, LANCE CARROLL, AND CRAIG ALLIN,

Defendants-Petitioners.

BRIEF OF *AMICUS CURIAE* NEW MEXICO DEFENSE LAWYERS ASSOCIATION

On a Writ of Certiorari to the New Mexico Court of Appeals

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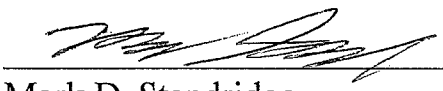
STATEMENT REGARDING SUBMISSION OF AMICUS BRIEF

Pursuant to Rule 12-215(A) NMRA, Amicus Curiae New Mexico Defense Lawyers Association ("NMDLA") hereby submits this Amicus Brief pursuant to NMDLA's contemporaneously-filed Motion for Leave to File Amicus Brief. Pursuant to Rule 12-215(F) NMRA, NMDLA states that, while counsel for the Petitioners provided comments and suggested edits to this Amicus Brief, no counsel for any party to this appeal actually authored this Brief, nor has any party's counsel or any party to the appeal made any monetary contribution intended to fund the preparation or submission of this Brief. Pursuant to Rule 12-215(B) NMRA, counsel for all parties of record received timely notice of NMDLA's intent to file this Amicus Brief.



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STATEMENT OF COMPLIANCE

Pursuant to Rules 12-213(A)(1)(c) and 12-213(G) NMRA, Amicus Curiae New Mexico Defense Lawyers Association hereby certify that their Brief complies with the limitations of Rule 12-213(F) NMRA. This Brief has been prepared using a proportionally-spaced type style or typeface (Times New Roman, 14 point font), and contains 4,358 words (inclusive of footnotes). This word count was obtained using Microsoft Word 2013.

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SUMMARY OF PROCEEDINGS

I. Nature of the Case

The present case is before this Court upon a writ of certiorari issued to the New Mexico Court of Appeals as to all questions presented in the Petition for Writ of Certiorari filed on November 14, 2016. This Court has been called upon to review the Court of Appeals' split opinion in *Beaudry v. Farmers Ins. Exchange*, 2017-NMCA-016.

II. Summary of Facts and Course of Proceedings Below

NMDLA relies upon the Statement of Facts and Procedural History set forth by Petitioners in their Brief in Chief, *see generally* **[BIC 3-13]**, and incorporates those sections by reference herein.

In brief, plaintiff-respondent Craig Beaudry filed suit over the termination of his Agent Appointment Agreement with the Defendant-Petitioners. That Agreement was terminable for breach of contract upon 30 days' notice, and was also terminable without cause (i.e. at will) on three months' notice. **[1 RP 17 ¶ C]**. Plaintiff breached the Agreement by placing a policyholder's policy with one of Petitioners' rival insurers. **[19 RP 4490-91; 28 RP 6926-30]**. Pursuant to the Agreement, Petitioners gave plaintiff 30 days' notice that they were terminating the Agreement. **[19 RP 4495]**.

In the operative version of plaintiff's Complaint (plaintiff's "Third Amended Complaint," *see generally* **[6 RP 1433-50; 7 RP 1451-56]**, plaintiff purported to bring a number of contract and tort claims against Defendants. In the facts section of his Third Amended Complaint, plaintiff generally pleaded that 1) he and Defendants had entered into the Agreement, 2) he fulfilled his obligations under the Agreement, 3) some of Defendants' agents/employees "began to draw away customers from" plaintiff, and later benefitted from the termination of the Agreement, 4) Defendants "wrongfully" terminated the Agreement, 5) plaintiff pursued a contractual right of appeal to a Termination Review Board, and 6) the Termination Review Board hearing was generally improper. *See generally* **[6 RP 1436-45 (3d Am. Complaint ¶¶ 10-44)]**.

In addition to his contract claims and contract-based tort claims, plaintiff purported to state a claim for Prima Facie Tort in Count VII of his Third Amended Complaint. *See* **[7 RP 1452-53 (3d Am. Complaint ¶¶ 79-85)]**. In support of this Count of the Complaint, plaintiff generally claimed that Defendants "acted intentionally in terminating the Agreement...or in assisting, aiding, and abetting the wrongful termination of Plaintiff...and in the wrongful denial of his contractual right to a meaningful appeal," and that in doing so, Defendants "intended to injure" him. **[7 RP 1452 (3d Am. Complaint ¶¶ 80-81)]**. Within his prima facie tort claim, plaintiff pleaded only one additional set of facts:

> Defendant Farmers further intended to injury [sic] Plaintiff, and did so injure him, by delaying issuing a U-5 securities form, by improperly filling out information on the U-5 securities form, which wrongfully prevented Plaintiff, Craig Beaudry, from exercising his profession as a securities broker and advisor, thereafter refusing to correct this misinformation on the U-5 form, and by failing to pay the proper "contract value" to Plaintiff Craig Beaudry and/or properly account for the "contract value."

[7 RP 1452 (3d Am. Complaint ¶ 82)]. Defendants filed two summary judgment motions aimed at this Count of the Compliant. *See generally* **[16 RP 3736-3808; 31 RP 7492-7527]**. The District Court denied these motions as to the termination of the Agreement—the District Court did, however, grant summary judgment as to the claims regarding conduct of the Termination Review Board and the U-5 form. **[32 RP 7898]**. The case thus proceeded to trial on, *inter alia*, plaintiff's claims against all Defendants for prima facie tort based on the allegations that Defendants lawfully terminated or lawfully took actions that resulted in the termination of the Agreement, with the intent to injure plaintiff and without justification. *See id.* The jury found against the Farmers Companies, as well as individual Defendants Lance Carroll and Craig Allin, on the prima facie tort claims. **[33 RP 8070-72]**.

On October 17, 2016, the New Mexico Court of Appeals affirmed the jury's verdict, albeit in a split opinion consisting of a "Lead" opinion (2017-NMCA-016, ¶¶ 1-65), a special "Concurrence" (2017-NMCA-016, ¶¶ 66-90), and a strong "Dissent" (2017-NMCA-016, ¶¶ 91-104). As Petitioners correctly point out, *see* **[BIC 13]**, these three one-judge opinions "present three conflicting views of the

case." The Lead opinion purported to limit this case to its facts, asserting that, "under the particular manner in which this case was tried, prima facie tort was properly sent to the jury." *Beaudry*, 2017-NMCA-016, ¶ 3; *see also id.* ¶ 24 (stating that the Lead Opinion sought "to highlight the problems, uncertainties, and ambiguities stemming from the application of prima facie tort, and prefer[red] to pointedly limit its application to the facts and circumstances of how this case was tried"). Strikingly, the Lead opinion unabashedly predicted this Court's review of this case, stating that the purpose of the Court of Appeals' Opinion was to "lay[] the groundwork for [this] Court to establish more clarity as to the appropriate application of prima facie tort." *Id.* ¶ 25.

Meanwhile, the Concurrence "s[aw] no reason to second-guess the parties' litigation strategy below" and opined that "prima facie tort was invoked and litigated in this case just as [this] Court envisioned in *Schmitz* [*v. Smentowski*, 1990-NMSC-002, 109 N.M. 386, 785 P.2d 726]." *Beaudry*, 2017-NMCA-016, ¶ 66. Indeed, the Concurrence claimed that "[t]here is nothing to be gained and much to be lost" by second guessing the manner in which the case was tried. *Id.* ¶ 81.The Concurrence reasoned that, because "all of Plaintiff's causes of action other than prima facie tort were dismissed by summary judgment...the dismissed causes were not available to Plaintiff as a matter of law" such that they were allowed to go to the jury. *Id.* ¶ 79.

The Dissent correctly holds that the majority's affirmace of the jury's verdict in this matter "injects the specter of prima facie tort liability into commercial relationships governed first by contracts and, when necessary, doctrinal contract law." *Beaudry*, 2017-NMCA-016, ¶ 91. The operative question, as identified by the Dissent, is "whether the district court erred in denying the last of an otherwise successful series of dispositive motions filed by Defendants." *Id.* ¶ 93. As discussed herein, the answer to that question is undeniably yes, as the District Court's refusal to grant summary judgment in Defendants' favor on plaintiffs' prima facie tort claim—and the Court of Appeals' fractured affirmance of the subsequent jury verdict in plaintiff's favor—conflicts with long-established New Mexico law. Allowing the split opinion below to stand would upend decades' worth of contract and tort jurisprudence on which ordinary persons rely, and threatens to burden the courts of this state with unceasing litigation by grafting a tort claim into every contract entered into in this state or by its residents. As such, NMDLA joins in Petitioners' request that the Court of Appeals' majority opinion in this matter be reversed.

ARGUMENT AND AUTHORITIES

I. The Court of Appeals' Split Opinion Upends Settled Law Regarding Both Contracts and Torts

A. Contract and Tort Law are Separate and Should Remain So

Parties to contracts make agreements "act[ing] in reliance upon the terms of th[e] contract and *settled principles of contract law*" (emphasis supplied). *Oklahoma v. New Mexico*, 501 U.S. 221, 227 (1991) (Rehnquist, C.J., concurring in part and dissenting in part). Indeed, at least one Justice of this Court has characterized contract law "as the bedrock of the legal system," requiring this Court "to give effect to valid contracts whenever possible." *CC Hous. Corp. v. Ryder Truck Rental, Inc.*, 1987-NMSC-117, ¶ 18, 106 N.M. 577, 746 P.2d 1109 (Stowers, J., dissenting). It is a "bedrock principle" of contract law "that contract damages be limited to those 'within the contemplation and control of the parties in framing their agreement.'" *Amrep Southwest, Inc. v. Shollenbarger Wood Treating, Inc. (In re Consol. Vista Hills Retaining Wall Litig.)*, 1995-NMSC-020, ¶ 28, 119 N.M. 542, 893 P.2d 438 (quoting *City of Richmond v. Madison Management Group, Inc.*, 918 F.2d 438, 446 (4th Cir.1990) (quoting in turn *Kamlar Corp. v. Haley*, 224 Va. 699, 299 S.E.2d 514, 517 (1983))).

As Petitioners have correctly noted, this Court has emphasized that "[a]s a matter of policy...parties should not be allowed to use tort law to alter or avoid the bargain struck in the contract. *The law of contract provides an adequate remedy*" (emphasis supplied). *Amrep*, *supra*, 1995-NMSC-020, ¶ 28; *see also* **[BIC 15]**. In *Amrep*, this Court sought "to preserve the line between contract law and tort law." *Amrep*, 1995-NMSC-020, ¶ 28. It is axiomatic that, where a plaintiff's claim arises solely from a breach of contract, the plaintiff generally must sue in contract, and not in tort; in order to assert a tort claim along with a contract claim, the plaintiff must generally allege that the Defendant violated an independent legal duty, apart from the duty imposed by contract. *See, e.g.*, *Kuroda v. SPJS Holdings, LLC*, 971 A.2d 872, 889 (Del.Ch. 2009) (citing *Data Mgmt. Internationale, Inc. v. Saraga*, 2007 WL 2142848, *3 (Del.Super.Ct. July 25, 2007) ("[i]n preventing gratuitous 'bootstrapping' of contract claims into tort claims, courts recognize that a breach of contract will not generally constitute a tort") (citations omitted)).

Strikingly, the Lead opinion below acknowledged this Court's opinion in *Amrep*, *see Beaudry*, *supra*, 2017-NMCA-016, ¶ 34, but made no effort to distinguish that case from this one. Indeed, the Lead conceded that "Defendants' points regarding the differences between tort and contract doctrines are solid reasons for requiring Plaintiff to have pleaded and pursued contract claims based on a theory that his termination was wrongful, pretextual, and carried out with the

malicious intent to harm and without sufficient justification." *Id.* ¶ 37. Nonetheless, the Lead surmised that "[t]he fact that the jury verdict favored Plaintiff in prima facie tort in effect shows that Defendants chose their for-cause contract clause as a cover for their true intent." *Id.* As a matter of law, however, the question never should have reached the jury—as discussed below, prima facie tort cannot be used as a substitute claim for a pleaded—but failed—breach of contract claim.

B. Prima Facie Tort Was Never Intended to Supplant Traditional Contract Remedies or Actions

As this Court is aware, the purpose of prima facie tort is "to address wrongs that otherwise 'escape[] categorization,'"—however, the tort must "'not be used to evade stringent requirements of *other established doctrines of law*'" (emphasis supplied). *Hagebak v. Stone*, 2003-NMCA-007, ¶ 24, 133 N.M. 75, 61 P.3d 201 (quoting *Schmitz, supra*, 1990-NMSC-002, ¶¶ 49, 63). This Court has "emphasized the importance of limiting the cause of action," stating that it "was not intended to provide a remedy for every intentionally caused harm." *Lexington Ins. Co. v. Rummel*, 1997-NMSC-043, ¶ 11, 123 N.M. 774, 945 P.2d 992; *see also Saylor v. Valles*, 2003-NMCA-037, ¶ 23, 133 N.M. 432, 63 P.3d 1152 (stating that prima facie tort is to be applied narrowly); *Cabanas v. Gloodt Assocs.*, 942 F.Supp. 1295, 1311 (E.D.Cal.1996) ("the prima facie tort doctrine is not intended to supplant traditional tort elements or traditional tort defenses"); *cf. Lundberg v. Prudential*

Ins. Co. of America, 661 S.W.2d 667, 671 (Mo.App. 1983) (holding that prima facie tort would not be used to convert an employment-at-will into a relationship which could be terminated only for cause); *Anselmo v. Manufacturers Life Ins. Co.*, 595 F.Supp. 541, 548-49 (W.D. Mo. 1984) (same).

As this Court has noted, prima facie tort may be pleaded in the alternative, however, it should not go to the jury if the evidence suggests that plaintiff's proof is susceptible to submission under another theory of liability. *See Schmitz*, 1990-NMSC-002, ¶ 48. A plaintiff my not proceed on a prima facie tort claim where other contractual or contract-related tort remedies are available:

> Although [the plaintiff] was unable to establish a claim under intentional interference with contract, that was the appropriate tort action in this case. *In addition, [the plaintiff] had a (successful) cause of action under breach of contract.* Thus existing causes of action provided reasonable avenues to a remedy for the asserted wrongful conduct. As such, there was simply no need to resort to prima facie tort. This is a classic case of a plaintiff trying to avoid "stringent requirements of other established doctrines of law" to impose liability in tort...Prima facie tort has no application here.

(emphasis supplied). *Bogle v. Summit Inv. Co.*, 2005-NMCA-024, ¶ 24, 137 N.M. 80, 107 P.3d 520 (citation omitted). Nothing in New Mexico law suggests that an *unsuccessful* breach of contract claim can be transformed into a triable tort claim.

Quite simply, a claim of prima facie tort that is duplicative of other claims is not permitted. *Stock v. Grantham*, 1998-NMCA-081, ¶¶ 38-39, 125 N.M. 564, 964 P.2d 125; *see also Five Star Automatic Fire Prot., LLC v. Nuclear Waste P'ship,*

LLC, No. CV-14-622 JCH/GBW, Doc. No. 97, Mem. Op. and Order, p.17 (D.N.M. May 13, 2016) (unpublished). That a plaintiff may plead "in the alternative" does not mean that a court should not dismiss a claim before trial because it is duplicative or because it does not properly plead a claim. *See Saylor*, *supra*, 2003-NMCA-037, ¶¶ 1, 23-24 (affirming district court's dismissal under Rule 1-012(B)(6) NMRA because complaint failed to plead essential elements of prima facie tort); *Five Star Automatic*, p.20.

The Concurrence stated that "[i]t is notable, though not relevant here, that no one in *Guest* [*v. Allstate Ins. Co.*] saw any difficulty in allowing the plaintiffs' contract claims and the prima facie tort claims to both go to the jury." Concurrence, ¶ 84 n.16. However, *Guest* does not stand for the proposition that, where a contract indisputably exists but is not breached, prima facie tort may go to the jury. In *Guest*, 2009-NMCA-037, 145 N.M. 797, 205 P.3d 844, *aff'd in part and rev'd in part*, 2010-NMSC-047, 149 N.M. 74, 244 P.3d 342, the New Mexico Court of Appeals determined that, unlike the present case, the factual predicates for the breach of contract and prima facie tort claims were *not* the same. Significantly, there was a fact dispute as to whether a contract existed at all in *Guest*. As such, the Court merely held that, if the jury determined there was no contract between the parties, a prima facie tort claims could exist. *See Guest*, 2009-NMCA-037, ¶ 35; *see also Saey v. Xerox Corp.*, 31 F.Supp.2d 692, 700 (E.D. Mo. 1998) ("[i]f

plaintiffs allege no action by defendant which would be an independent tort in the absence of a contract, they cannot make out a claim for prima facie tort") (citing *Rolscreen Co. v. Pella Prods. of St. Louis, Inc.*, 64 F.3d 1202, 1212 (8th Cir. 1995)). In the present case, plaintiff Beaudry's contract and prima facie tort claims were indistinct and, indeed, merely duplicative. See *Hagebak*, *supra*, 2003-NMCA-007, ¶¶ 27-29 (holding that, upon plaintiff's argument of distinct and not duplicative claims, reasonable opportunity to marshal further evidence may be warranted).

In *Guest*, this Court held on public policy grounds that a client is not liable to his lawyer for lost future earnings when the client terminates the attorney-client relationship. *Guest*, *supra*, 2010-NMSC-047, ¶¶ 47-56. The attorney-plaintiff in *Guest* contended that even if lost future earnings were not available in a breach of contract action, they were nonetheless available in an action based on prima facie tort. *Id.* ¶ 57. However, this Court disagreed, holding that "[b]ecause these claims arose out of the same circumstances as [plaintiff's] contract claim—her employment relationship with [Defendant] Allstate,—[this Court's] reasoning applies regardless of the theory of liability." *Id.* The Dissent in the instant matter appropriately looked to this Court's opinion in *Guest* as support for the assertion that "if a plaintiff cannot prevail on breach of contract or the covenant of good faith and fair dealing for a good reason, then the plaintiff should not be allowed to

prevail on a prima facie tort claim for the same reason." *Beaudry*, 2017-NMCA-016, ¶ 100. The Concurrence, on the other hand, was unduly dismissive of this binding authority. *See id.* ¶ 84.

In *Jones v. Augé*, 2015-NMCA-016, 344 P.3d 989, the District Court found that the Appellant committed a prima facie tort against the Appellees—however, on appeal, the Appellees "concede[d] that the facts on which the prima facie tort was based 'duplicate[d Appellees'] fraud and breach of fiduciary duty claims." *Jones*, 2015-NMCA-016, ¶ 46. Relying on *Guest*, the Court of Appeals agreed. *See id.* (citing *Guest v. Allstate Ins. Co.*, *supra*, 2009–NMCA–037, ¶ 33). In *Jones*, the only facts alleged in support of the prima facie tort claim were those "as set forth" in the fraud, securities fraud, breach of fiduciary duty, and breach of contract claims. *Jones*, 2015-NMCA-016, ¶ 46. Similarly, in the present case, plaintiff alleged the same facts in support of his prima facie tort claims as those he alleged for all of his other claims. The only exception to this was the set of facts regarding the U-5 forms, *see* **[7 RP 1452 (3d Am. Complaint ¶ 82)]**, however, the District Court granted Defendants summary judgment on the claims relating to those allegations, and they are not at issue in this appeal. *See Beaudry*, *supra*, 2017-NMCA-016, ¶ 37 n.9.

The Court of Appeals properly relied upon *Guest*, as well as *Bogle*, in *Jones v. Augé*, 2015-NMCA-016, ¶ 46, but paradoxically failed to follow its prior

opinion in the present case. Of course, the Court of Appeals cannot overrule its own prior precedent. *Gulbransen v. Progressive Halcyon Ins. Co.*, 2010-NMCA-082, ¶ 13, 148 N.M. 585, 241 P.3d 183 (citing *Arco Materials, Inc. v. Taxation & Revenue Dep't*, 1994-NMCA-062, ¶ 3, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds*, *Blaze Constr. Co. v. Taxation & Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803); *see also State v. Smith*, 2013-NMCA-081, ¶ 3 n.1, 308 P.3d 135 ("a formal Court of Appeals opinion has controlling authority in" subsequent cases before that Court). The Court of Appeals' failure to follow its own precedent, as well as that of this Court, is "destructive of the positive goals of stability and predictability fostered by the notion of *stare decisis*." *Cordova v. Taos Ski Valley, Inc.*, 1996-NMCA-009, ¶ 21, 121 N.M. 258, 910 P.2d 334 (citing Taylor Mattis, *Precedential Value of Decisions of the Court of Appeals of the State of New Mexico*, 22 N.M.L.Rev. 535, 537 (1992) (the Court of Appeals has not succumbed to the temptation of rejecting horizontal *stare decisis*). As such, the Court of Appeals' opinion below must be reversed.

II. Reversal is Warranted in Order to Settle and Secure Long-Established Case Law Respecting the Boundaries Between Contract and Tort Law

The provision of precedent is a matter of public interest, not just a concern of the parties to the litigation. *Abeita v. N. Rio Arriba Elec. Co-op.*, 1997-NMCA-097, ¶ 49, 124 N.M. 97, 946 P.2d 1108. Consequently, the fractured opinion below—even where it was purportedly limited to the particular facts of this case by the Lead opinion—has consequences to contracting parties and litigants beyond the parties to this case. The combination of the Lead and Concurrence opinions severely blurs the line between contract and tort law. As noted above, parties to contracts—including ordinary citizens as well as small and large businesses—enter into contracts under the agreed-upon terms of the contract itself as well as against the backdrop of clearly established principles of law. The Court of Appeals' opinion below—which is itself inconsistent with, *inter alia*, *Schmitz* and its progeny—destroys the formerly clear separation between contract- and tort-based claims, disrupting the settled expectations of contracting parties throughout this State. *Cf. Stroh Brewery Co. v. Director of N.M. Dep't of Alcoholic Beverage Control*, 1991-NMSC-072, ¶ 56, 112 N.M. 468, 816 P.2d 1090 (Montgomery, J., dissenting) (discussing the desirability of "respecting settled expectations that may have grown up around" long-standing rules of law). Now, under the Court of Appeals' opinion every party to a contract must now anticipate that he or she might

be subjected to tort liability for taking actions that are otherwise perfectly lawful and governed by the terms of the bargained-for agreement itself. This Court must reverse the judgment below to restore, and continued to preserve, the line between contract law and tort law, particularly as it is applied to ordinary people living and doing business in New Mexico.

Additionally, the Court of Appeals opinion has the strong potential to burden further an already overloaded court system. As a general matter, this Court is "reluctant to increase the burden on [New Mexico's] District Courts' dockets." *Martinez v. Reid*, 2002-NMSC-015, ¶ 25, 132 N.M. 237, 46 P.3d 1237. The already large body of claims for breach of contract/breach of the covenant of good faith and fair dealing will now also carry with them underlying tort actions in every case where a party's termination (or other action adverse to the other party) under the bargained-for terms of the contract is held to be lawful. Simply letting the jury decide (in tort) each case of an otherwise lawfully-terminated contract would strain the District Courts, in an age where the Courts are already underfunded and overworked. This Court should reverse the judgment below and again set forth the strict limitations on the use of prima facie tort in order to minimize unwarranted claims and to lessen undue burden on courts below. *Cf. Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, ¶ 48, 283 P.3d 853.

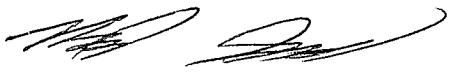
Finally, the Court of Appeals' opinion has potential ramifications for third parties who are only tangentially related to the contract or to the contracting parties. In the present case, two employees (Lance Carroll and Craig Allin) of the Defendant Companies—neither of whom was actually a named party to the Agreement underlying plaintiff's claims (a contract which, again, was lawfully terminated per the District Court)—were named as Defendants and ultimately found liable under the prima facie tort theory. These two individuals suffered the entry of a large judgment against them. Had either of these individuals induced a breach of the contract or tortuously interfered with the contract, that by itself would have been unlawful and separately actionable—however, neither individual could be sued for prima facie tort (which, of course, requires an intentional but *lawful* act by the Defendant). However, that is not the case here: the contract was lawfully terminated, but nonetheless, two individuals who were in the orbit of the contract were still subjected to liability in tort. Thus, the effects of this case extend even beyond contracting parties: they extend to any person or entity who might bear some relationship to the contracting parties. This would generate further unpredictability in both the realms of contract and tort law, and would have a chilling effect on the simple transaction of business within and by the residents of this state.

CONCLUSION

The Lead opinion itself expressly invited this Court to review this case and "establish more clarity as to the appropriate application of prima facie tort." *Beaudry*, *supra*, 2017-NMCA-016, ¶ 25; *cf. Varsity Brands, Inc. v. Star Athletica, LLC*, 799 F.3d 468, 496-97 (6th Cir. 2015) (McKeague, J., dissenting) (lamenting that copyright law with respect to garment design "is a mess" such that "either Congress or the Supreme Court (or both) must" provide the lower courts with "much-needed clarification" on the matter), *cert. granted*, *Star Athletica, LLC v. Varsity Brands, Inc.*, 136 S.Ct. 1823 (2016). Now that this Court has granted the petition for writ of certiorari, it must reverse the opinion below to give contracting parties, litigants and the lower courts "much-needed clarification" on the proper application of prima facie tort. *Cf. Pauly v. White*, 817 F.3d 715 (10th Cir. 2016) (Hartz, J., dissenting) ("[p]erhaps the Supreme Court can clarify the governing law" regarding qualified immunity), *reversed*, *White v. Pauly*, 137 S.Ct. 548 (2017). The "majority" opinion of the Court of Appeals in this case creates an unworkable and untenable precedent that, if left unchecked, will have far-reaching negative consequences.

In sum, this honorable Court should reverse the split opinion of the New Mexico Court of Appeals, and remand with instructions to enter judgment in favor of the Defendants on plaintiff's prima facie tort claims.

Respectfully submitted,



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I hereby certify that a true and correct copy of the foregoing was mailed and e-mailed on this 6th day of March, 2017 to:

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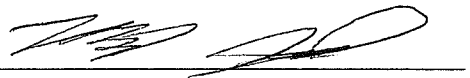

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