



Defense Lawyers Association

September 2017 Verdicts

Submitted By	Stephen M. Simone Chapman and Priest, P.C. stephensimone@cclawn.com (505) 242-6000
Court	State Court
County	Santa Fe County
Judge	Judge Francis J. Mathew
Defense Counsel	Stephen M. Simone and David Frizzell
Plaintiff Counsel	Thomas J. Mescall, II and Phillip Baca
Trier	12 Person Jury
Style	STATE OF NEW MEXICO COUNTY OF SANTA FE FIRST JUDICIAL DISTRICT ROSEANNE ARAGON, individually, ROSEANNE ARAGON as parent and next friend of JOE ANTHONY ALDERETE, a minor child, Plaintiffs, Cause No. D-101-cv-2016-01726 v. ALLSTATE INSURANCE COMPANY. Defendant.
Statement of Facts	<p>This case proceeded to trial before a 12 person jury on August 9-11, 2017. This was a bad faith case which had been bifurcated where the uninsured motorist claim was tried first in May 2017. A verdict was rendered in favor of the plaintiffs in the first trial but the verdict was less than what Allstate had offered. The bad faith case centered around plaintiff's allegations that Allstate improperly investigated the uninsured motorist claim.</p> <p>Plaintiff Rosanne Aragon was represented by Thomas Mescall and Phillip Baca. Allstate was defended by Stephen M. Simone and David Frizzell. Plaintiff's expert was Terry Guebert. Allstate's expert was Robert Collins. There were two main issues during the trial. Could post litigation conduct by Allstate, through its attorneys, be considered as evidence of bad faith? A second issue was whether inadequate investigation could stand alone as the basis for bad faith. Plaintiff's argument was that inadequate investigation resulted in a dishonest and unfair evaluation.</p> <p>Judge Mathew did allow some evidence of post-litigation conduct but did not allow other motions to be introduced as evidence of bad faith on the basis that it was advocacy on behalf of Allstate.</p> <p>The primary focus of the defense was that plaintiff was not entitled to a second bite at the apple and that the attempt at bad faith was to compensate for her dissatisfaction with the first jury verdict.</p> <p>The jury deliberated for approximately 90 minutes before returning a unanimous verdict for Allstate. The defense was only able to interview one juror. It was clear from that juror's opinion that the bad faith action was an attempt to compensate for the unfavorable first jury award. The pretrial (1st trial) offers by Allstate were good faith attempts to resolve the claims.</p>
Verdict	Defense
Experts	Plaintiff's expert was Terry Guebert. Allstate's expert was Robert Collins.



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September 2017 Verdicts Continued

Submitted By Denise S. Hall, Esq.
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(505) 710-7182

Court State Court

County Bernalillo County

Judge Judge Valerie Huling

Defense Counsel Denise S. Hall

Plaintiff Counsel Cloyd Hinkle

Trier 6 Person Jury

Style Filed in Bernalillo County District Court

Statement of Facts

A Brief Description of Factual Evidence at Trial that is part of the public record:

On January 12, 2015, the Defendant exited a Valero Gas Station to head north on Old Coors. The Defendant exited into the far right lane of Old Coors with the intent of moving into the middle lane. The left driver's side of Defendant's vehicle impacted the front end of Plaintiff's vehicle in a T-bone position. The property damage was moderate to Plaintiff's vehicle. There was heavy to Defendant's vehicle. The Plaintiff did not complain of injury at the scene of the accident. Air bags did not deploy to either vehicle. The Defendant stipulated to liability.

The Plaintiff did not complain of pain or injury at the scene of the accident. The Plaintiff started treating on January 29, 2015 with a Chiropractor JC Moore at Altura Chiropractic complaining of right arm pain and lower back pain at a level 6/10. Plaintiff treated until May 26, 2015. The Plaintiff complained of ongoing and continued lower back pain at a level 7-8/10 at least 3-4 times per week after she stopped treating with Altura Chiropractic. The Plaintiff did not seek any additional medical treatment due to lack of insurance.

Our Defense at trial was Mitigation of Damages and other potential causes of re-injury from work related duties of standing all day and cleaning at her job at an ice cream shop.

The Plaintiff's Demand at Trial: 1) \$4,400.00 in Chiropractic treatment. 2) \$10,000.00 for pain and suffering and 3) \$15,000.00 for future maintenance therapy with Altura Chiropractic and future pain and suffering or loss of enjoyment of life for a total of \$29,400.00.

The Defendant argued Mitigation of Damages and asked the Jury to award a range of \$1,000.00 to \$9,000.00 depending upon whether they believed that Plaintiff failed to mitigate her damages and only include pain and suffering in a minimal amount due to the subjective levels of pain recorded in her medical records. I argued that the Defendant was at a mild level of pain within 2 months after the accident and potentially re-injured herself on the job.

Expert testimony discussed below.

Jury verdict was \$7,400.00. Last offer of settlement by Defendant was \$9,012.90. Last Demand was \$12,999.00.

Verdict Defense

Comments

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Experts

Plaintiff's expert was Dr. JC Moore with Caremore Chiropractic. Dr. Moore testified that the Plaintiff had ongoing and continued back pain after the accident that was permanent in nature. Dr. Moore recommended maintenance therapy for the rest of her life on an as needed basis.

The Defendant's expert was Dr. Paul Legant. Dr. Legant testified that Plaintiff suffered a soft tissue injury to her back that could have healed without any treatment or in the alternative one month of chiropractic treatment or physical therapy. Dr. Legant testified that he could not criticize the standard of care of a Chiropractor. However, Dr. Legant could testify to the type of injury sustained in this accident and the types of treatment that he would recommend and whether future treatment is needed after his physical examination. Dr. Legant examined Plaintiff on 11/28/16 and opined that only a month of treatment was reasonable and necessary and her injury could have resolved without treatment. Dr. Legant's physical examination revealed no objective finding of injury except for minor pain when she leaned back, which would not require any additional treatment.



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September 2017 Verdicts Continued

Submitted By	Gregory L Biehler Lewis Brisbois greg.biehler@lewisbrisbois.com (505) 828-3600
Court	State Court
County	Santa Fe County
Judge	Judge Mathew
Defense Counsel	Gregory L Biehler and David Larson
Plaintiff Counsel	Stuart White, Rachel Higgins, Reagan Sahadi, David Jaramillo
Trier	12 Person Jury
Style	Noah Bojorquez, Individually and as Personal Representative of the Estate of Severo Bojorquez, Manual Bojorquez, Rochell Bojorquez-Proffer; Efren Rivera Aleman individually and Rachel Berenson as Personal Representative of the Estate of Augustina Bojorquez de Rivera, Veronica Rivera Bojorquez, Guadalupe Rivera, Efren Edmundo Rivera, Jamie Rivera Bojorquez v. Agfinity Inc., D-101-CV-2015-02061
Statement of Facts	Plaintiff Efren Rivera was driving a 2005 Dodge Dakota pickup southbound on I 25 south of Socorro when a right rear tire belt separated. Mr. Rivera lost control and the pick up rolled into the median, killing his wife Agustina and his brother in law Severo Bojorquez. This occurred on October 30, 2014. The rear tires of the truck were retreaded by Agfinity in 2004. Plaintiffs alleged strict liability, negligent manufacture and marketing of the tires and a failure to warn. Plaintiffs alleged the tires should never have been retread and the retreading process and materials were inappropriate for the those tires. Defendant alleged the tire belts separated because of a road hazard and the retreading process was appropriate. Damages were sought for the wrongful death of the two passengers and loss of consortium by the driver for his wife and the adult children of the two deceased passengers.
Verdict	Defense
Experts	David Southwell for Plaintiffs regarding tires; David Torres regarding accident reconstruction for Plaintiffs. Joe Grant for Defendant regarding the tires.
