



Defense Lawyers
Association

January 2014 Verdicts

Submitted By **Sid Childress**
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Court State Court

County Santa Fe County

Judge Hon. Sarah Singleton

Defense Counsel Sid Childress

Plaintiff Counsel Esteban "Steve" Aguilar, Dan Bryant and Steve Aguilar Jr.

Trier 12 Person Jury

Style Shawn Kayser, Tonia Kayser and Kohl Kayser v. Torrance County, NMDOT, Daniel Brinkley and Nancy Brinkley

Statement of Facts

Case no. CV-2010-03664 in the First Judicial District. In the dark of a morning in October 2008, Shawn Kayser came commuting on State Highway 337 through Torrance County on his way to work in Albuquerque. Some Brinkley cows had wandered out of their pasture and onto the highway. A previous motorist hit one and the animal was down in the roadway. Mr. Kayser did not avoid it. The collision caused his car to roll onto its roof and slide down the highway 171 feet. Mr. Kayser suffered severely to recover from the accident, has permanent injury and is lucky to be alive.

All Defendants were sued for personal injury, emotional distress and loss of consortium. Plaintiffs dismissed Torrance County with prejudice to maintain venue in Santa Fe. NMDOT settled with Plaintiffs before trial leaving the Brinkleys and I to fend for ourselves.

Plaintiffs' accident reconstructionist opined the cow was mostly in Mr. Kayser's lane when he hit it. I argued the cow was in the middle of the road and Mr. Kayser could easily have avoided the cow had he been driving with due care on this rural highway. Mr. animal expert Lar Thomas opined that my clients the Brinkleys were negligent ranchers who abused their animals, causing them to be more likely to leave their pasture. I could not find an expert witness qualified or willing to testify about what made cows happy or unhappy but I presented the Brinkleys as responsible, law-abiding cattle-growers. Mr. Thomas also tried to convince the jury the animals escaped through fencing adjoining Brinkley pasture and the highway. Landowner liability in these cases can quickly turn on whether the landowner kept a close eye on any nearby highway fencing, assuring its good condition, so I needed to prove the animals actually got onto the highway by another route.

No settlement offers were exchanged because Plaintiffs simply wanted everything the Brinkleys owned. Trial was the week of December 9 with closing arguments December 16 whereupon Plaintiffs asked for \$3.75 million. The jury deliberated 2 hours including their lunch before deciding the Brinkleys had not been negligent.

Verdict Defense

Comments

My impressive expert witness had never been an expert witness before but he was fantastic and critical to our good result. Sarah Singleton lived up to her reputation as an exceptional trial court judge. Steve Aguilar and Dan Bryant are outstanding injury attorneys. But I had good facts, good witnesses and good law on my side, and I always prepare thoroughly for trials. That's a formula for success that's hard to screw up.

Experts

Plaintiffs:

Dr. Foote (psychologist), Dr. McDonald (economist), David Torres (accident reconstructionist), Lar Thomas (lawyer & expert witness)

Brinkley Defendants:

Robert Alexander, 40-year range management specialist for the federal Bureau of Land Management



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February 2014 Verdicts

Submitted By Jeffrey M. Croasdell and Richard E. Hatch
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Court State Court

County Bernalillo County

Judge Hon. Carl J. Butkus

Defense Counsel Jeffrey M. Croasdell and Richard E. Hatch

Plaintiff Counsel Adam T. Funk and Louren Oliveros

Trier 12 Person Jury

Style Robert B. Alt, Individually, and as Representative of the Estate of Vicki L. Alt, Deceased, Plaintiff v. Presbyterian Healthcare Services, Andrzej C. Skarpetowski, M.D.; Laura Mardo, R.N., Defendants - No. D-202-CV-2012-07605

Statement of Facts Plaintiff claimed that PHS providers at Dan C. Trigg Memorial Hospital in Tucumcari failed to diagnose infectious endocarditis resulting in the death of Plaintiff's wife. Plaintiff and his wife were team truck drivers from Tennessee. While driving through New Mexico, the decedent became very sick. They stopped at Dan C. Trigg Hospital where the decedent complained of shortness of breath, chills, and vomiting. She did not have any cardiac chest pain, but did have muscle pain in her chest from an injury sustained while trying to drive in heavy wind. A urinalysis was positive and the doctor diagnosed a urinary tract infection. He prescribed Ciprofloxacin and ordered her to follow-up immediately with her primary care provider in Tennessee. The next day the results of a blood culture returned positive for Streptococcus agalactiae. The emergency room doctor on duty left a message with the decedent and Plaintiff that the test was positive and to call back, which never happened. The decedent followed-up with her primary care provider, but did not inform the provider of the positive blood culture. Several days later, the decedent developed severe chest pain and a transesophageal echocardiogram revealed tricuspid valve endocarditis. She was transferred to Vanderbilt University, but died en route. Plaintiff claimed that the emergency room providers at Dan C. Trigg Hospital failed to perform adequate diagnostic testing or transfer the decedent to a larger facility with more diagnostic capabilities. The defense argued that the diagnosis of urinary tract infection was consistent with her presentation and that the decedent did not have any of the specific signs or risk factors that would warrant the kind of diagnostic testing that would reveal infectious endocarditis. The jury awarded a verdict in favor of the defense.

Verdict Defense

Experts Plaintiff's expert used Tim Osbon, MD from Charleston, South Carolina to testify as to standard of care and damages. Defendants' expert was Eric Barton, MD, the chair of emergency medicine at the University of Utah.