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## April 2013 Verdicts

**Submitted By**

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**Court**

Federal Court

**County**

Santa Fe

**Judge**

Honorable Robert Scott Hayes

**Defense Counsel**

Lance Richards, Larry Hill, JoHanna Cox

**Plaintiff Counsel**

Danny Thomas, Jonathan Soper, J'Nan Kimak, Lauren McClain

**Trier**

6 Person Jury

**Style**

BARBARA DAHLBERG, individually and as personal representative of decedent Ronald Dahlberg, Plaintiff, v. Case No. 11-CV-203 RHS/LFG MCT TRANSPORTATION, LLC, and DANIEL J. O'BRIEN, Defendants.

**Statement of Facts**

This case arises from a motor vehicle accident on February 7, 2008 on southbound I-25 near Las Vegas. Plaintiff Barbara Dahlberg claimed that Defendant O'Brien's tractor-trailer encroached into her husband's lane of travel as the Dahlberg's pickup truck passed Defendant O'Brien. This alleged encroachment forced the pickup onto the left shoulder and Mr. Dahlberg lost control. Plaintiff's pickup rolled back through the left lane and into Defendant O'Brien's lane of travel. The tractor then struck the pickup truck. Ronald Dahlberg died as a result and Barbara Dahlberg received serious injuries.

Defendants asserted that as the Dahlberg pickup passed the tractor-trailer, the Dahlberg's were shielded from high winds blowing from the west. As the Dahlberg's completed their pass, the high winds blew over a travel trailer towed by the pickup truck. This in turn caused the Dahlberg's pickup truck to roll. Defendant O'Brien braked and steered hard to the right. The impact occurred on the right shoulder. One eyewitness and accident reconstructionist JT Hayes confirmed Defendant O'Brien did not encroach into Plaintiff's lane.

**Verdict**

Defense

**Comments**

There was an 8 person jury, no alternates. Plaintiff's lowest demand for settlement was \$750,000.

**Experts**

Plaintiff:  
Kevin Johnson, accident reconstruction  
John Ward, economist  
treating doctors  
  
Defendant: JT Hayes, accident reconstruction



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## April Continued 2013 Verdicts

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**Submitted By**

**Daniel H. Hernandez, Sr.**  
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**Court**

Federal Court

**County**

Western District of Texas, El Paso Division

**Judge**

Honorable David Briones

**Defense Counsel**

Daniel H. Hernandez

**Plaintiff Counsel**

Douglas Dollinger and Corey Harbour-Valdez

**Trier**

12 Person Jury

**Style**

Gregory Martino v. Kiewit New Mexico Co. Inc. and Martin Gomez, cause number EP11CV0128DB. U.S. District Court, Western District of Texas, El Paso Division.

**Statement of Facts**

A unanimous defense jury verdict for Kiewit New Mexico Co. Inc. in a construction worksite accident in a case involving a Plaintiff whose foot and lower leg were crushed by an operator of heavy equipment. The Plaintiff, an employee of another subcontractor, had entered the construction zone area where Kiewit was operating machinery and walked behind the machinery.

**Verdict**

Defense

**Comments**

The project involved the construction by Kiewit of the U.S. International Border fence with Mexico and plaintiff was an archeologist with Zia Engineering & Environmental, a Las Cruces company hired to monitor digging and trenching operations. The jury consisted of 9 members.

**Experts**

Dr. Juan Herrera, accident reconstructionist for the defense.  
Dr. Floyd L. Pacheco, Jr., with New Mexico Orthopedics, a podiatrist, for Plaintiff.



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## May 2013 Verdicts

<b>Submitted By</b>	<b>Damian L. Martinez</b> Holt Mynatt Martinez P.C. <a href="mailto:dln@hbm-law.com">dln@hbm-law.com</a> (575) 524-8812
<b>Court</b>	Federal Court
<b>County</b>	Doña Ana
<b>Judge</b>	United States Magistrate Judge Gregory B. Wormuth
<b>Defense Counsel</b>	Damian L. Martinez
<b>Plaintiff Counsel</b>	James P. Lyle
<b>Trier</b>	Judge
<b>Style</b>	Herry Hummell as Personal Representative for the Estate of Lance Hummell v. Horacio Rivera ad City of Las Cruces Civ 11-765 GBW/WPL
<b>Statement of Facts</b>	<p>On July 13, 2010 Lance Hummell sent several text messages to his then girlfriend, whom had just broke off their relationship indicating he was going to commit "suicide by cop". Hummell then penned a suicide note and called the 911 call center stating an individual with a samurai sword was threatening people at a local apartment complex. Mr. Hummell then went to his vehicle and waited for the police to arrive.</p> <p>Two Las Cruces Police Department officers arrived on scene and approached the apartment complex. They observed an individual sitting in a vehicle and decided to ask if the individual had seen the subject they were looking for. As they approached the vehicle, Lance Hummell exited the vehicle and advanced on the officers while holding a 4 foot samurai sword. The officers shouted commands to drop the weapon. Hummell ignored the commands and continued his advance. Officer Rivera fired four rounds form his police issued AR-15, hitting Hummell with every shot.</p> <p>Hummell died on the scene.</p> <p>The estate filed a multiple count Law Suit under 42 U.S.C. § 1983 and the New Mexico Tort Claims Act alleging Decedent's Fourth Amendment rights had been violated. Plaintiff further alleged that the Officer's actions amounted to battery on Decedent, and that the Las Cruces Police Department had a policy, practice or custom that lead to Hummell's death.</p> <p>Court ruled that Officer Rivera did not violate Lance Hummell's Civil Rights. The Court further ruled Officer Rivera was not negligent nor did he commit battery on Lance Hummell. Lastly, since Hummell's Civil Rights were not violated, the Plaintiff could not establish that the City had a custom, policy or practice that lead to a deprivation of Hummell's Civil Rights.</p> <p>Counsel for the Defendants filed a motion to exclude Plaintiff's "Expert" Robert Jones a former Dona Ana County Sheriff Deputy from testifying on use of force issues. In the Court's Memorandum Decision the Court granted the motion and did not qualify Jones as an expert.</p>
<b>Verdict</b>	Defense
<b>Comments</b>	Plaintiff requested \$14,872,000.
<b>Experts</b>	Defense Expert John J. Ryan



Defense Lawyers  
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## May 2013 Verdicts

**Submitted By** **W. Mark Mowery**  
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**Court** State Court

**County** Chavez County

**Judge** Hon. Freddie Romero

**Defense Counsel** W. Mark Mowery and Richard Hatch

**Plaintiff Counsel** Barbara Patterson

**Trier** 12 Person Jury

**Style** Bob Satterfield, Plaintiff, vs. Coca-Cola Refreshments USA, Inc. and Rich Mlnarik, Defendants, Case No. CV-2012-129, Sate of New Mexico, County of Chaves, Fifth Judicial District

### Statement of Facts

Plaintiff was a 65 year old independent contractor mechanic who was requested to come to the Coca-Cola distribution facility in Roswell to unfreeze the brakes on two trailers. The brakes had become frozen due to an accumulation of ice and extreme cold. Unfreezing the brakes required the plaintiff to position himself underneath the trailers and use a blowtorch to melt the ice. This work also required the assistance of Coca-Cola employee Rich Mlnarik, who sat in the cab of an attached tractor and kept air pressure on the brakes. After the plaintiff unfroze the brakes on the first trailer, he got out from underneath the trailer and instructed defendant Mlnarik to pull the trailer forward. This work was completed without incident. The work proceeded in the same manner on the second trailer. However, plaintiff was having difficulty unfreezing the brakes on one last wheel. There was a dispute as to what specific instructions plaintiff gave to defendant Mlnarik, but it was undisputed that he did instruct him to pull the second trailer forward in an attempt to free the remaining brake. It also was undisputed that the plaintiff either then got back under or remained under the trailer after having instructed defendant Mlnarik to pull the trailer forward. The trailer was then pulled forward 50-60'. The trailer would have driven over the plaintiff but for the fact that a lift gate on the back of the trailer was partially lowered, leaving a space of approximately 12-15" from the bottom of the lift gate to the ground. Plaintiff got caught underneath the lift gate and was injured.

**Verdict** Plaintiff

**Comments** Plaintiff's primary injury was a torn rotator cuff. He incurred medical bills of approximately \$70,000. Claims for lost earnings, loss of future earning capacity, and for punitive damages were dismissed shortly before trial. The jury found that the plaintiff's total damages were \$80,000 and that he was 50% at fault for the accident, thereby reducing his damage award to \$40,000. This amount was less than the defendants' pre-trial Rule 1-068 Offer of Settlement. The case was tried over three days from April 30 thru May 2, 2013.

**Experts**

Plaintiff:  
Kerry V. Nelson of D&A Consultants in Phoenix --- truck safety expert  
Dr. Kenneth Yaw --- treating orthopedist  
Darrel Elwell --- treating physical therapist

Defendants:  
John Pinckney of National Transportation Consultants in Noblesville, IN --- truck safety expert



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## June 2013 Verdicts

<b>Submitted By</b>	<b>Paul T. Yarbrough &amp; Geoffrey D. White</b> Butt Thornton & Baehr, PC <a href="mailto:gdwhite@btblaw.com">gdwhite@btblaw.com</a> (505) 884-0777
<b>Court</b>	Federal Court
<b>County</b>	Bernalillo
<b>Judge</b>	James A. Parker
<b>Defense Counsel</b>	Paul T. Yarbrough & Geoffrey D. White of Butt Thornton & Baehr, PC
<b>Plaintiff Counsel</b>	Jesse Quackenbush & Brian T. Judson of Will Ferguson & Associates
<b>Trier</b>	12 Person Jury
<b>Style</b>	Darlene Burrell v. Harley-Davidson Motor Company, et. al.
<b>Statement of Facts</b>	<p>The 4' 11", 190 lb. plaintiff alleged she received two large third-degree burns and other injuries as a result of crashing her motorcycle during a beginner's motorcycle training course at Thunderbird Harley-Davidson in Albuquerque. She claimed the accident occurred, in essence, because she was forced into a class for which she was unfit, and that this was a nationwide practice. Plaintiff alleged she was too short for the motorcycle, she didn't know how to ride a bicycle (a class prerequisite), she was forced to buy riding boots to "enhance her height," the motorcycle was too large and powerful for use by beginners, the instructors failed to recognize she did not fit the motorcycle, she was not meeting the objectives of the exercises, and the instructors did not question whether she was physically capable of performing the tasks asked of her. Plaintiff signed releases that were not enforced by the judge to dismiss the case but were allowed into evidence to show assumed risks. The defense presented the jury candid photographs of the plaintiff taken during the training course that showed the plaintiff fit the motorcycle and operated the motorcycle successfully in spite of a minor, common "stop and drop" on the first day of training. Testimony revealed that the plaintiff's accident was due to her own negligence in over-revving the throttle, dumping the clutch, and failing to brake despite having been taught to properly use, and having successfully used, all three systems 100 or more times the day before.</p>
<b>Verdict</b>	Defense
<b>Comments</b>	<p>Plaintiff's counsel argued that the case was "about corporate greed" from the opening statement onward. Plaintiff's counsel attempted to use the "Reptile" strategy but was unable to marshal facts showing the motorcycle training course represented a danger to the community. The defense argued the chilling effect an adverse verdict would have on the availability of motorcycle safety training for the community. Plaintiff's experts were mediocre to weak, and opposing counsel's efforts to elicit violations of "safety rules" from defense witnesses did not gain traction. The jurors were conscientious and methodically went over the evidence and documents. The jury deliberated five hours after seven trial days. Judge Parker limited the Plaintiff to 18 hours in which to present evidence, and the defense to 12 hours.</p>
<b>Experts</b>	<p>Plaintiff: James R. Davis (motorcycle safety); John C. Laughlin (biomechanical engineer); Kacy L. Turner (life care planner); Brian C. Buck, M.D. (IME physician).</p> <p>Defendant: Richard Radecki, M.D. (IME physician)</p>