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TRUCKERS BEWARE THE “CITY DIFFERENT”

What in the world is going on in Santa Fe, New Mexico? This 400-year-old capital city is home to the nation’s oldest church and other architectural treasures, incredible artworks, and a rich mixture of Hispanic, Anglo, and Native American cultures. Trying a case in Santa Fe is hard because you seem to be the only one working and not having fun. Juries in Santa Fe have historically leaned to the liberal side, and there have been large verdicts in the past, but defense verdicts, even in serious personal injury cases, could still be had. However, in less than two years, the trucking industry has been rocked by two verdicts of unprecedented size -- \$58,500,000 and \$165,000,000 respectively.

Not only are these verdicts the largest in New Mexico history, they are some of the largest anywhere in the country.

Unfortunately, what we’re seeing in the Land of Enchantment may be spreading to other states, as noted in the January 29, 2015 award of \$34,555,220 against Landstar in Los Angeles, California.

The runaway trucking verdict has yet to come to Colorado, and Hall & Evans is committed to using our best efforts to try and keep it that way. Trucking companies need to be aware of the implications of what has happened in our neighboring state.

IMPORTANCE OF VENUE

Due to New Mexico’s loose venue rules, a wrongful death case can be brought in any county where a personal representative (PR) resides. The PR doesn’t have to be a family member, and plaintiffs’ attorneys often hire Santa Fe attorneys to serve as PRs in order to establish Santa Fe County as the venue. The case does not need to have any connection to Santa Fe. On March 20, 2013, a Santa

Fe jury in *Santa Fe Trust v. Standard E&S* awarded \$58,500,000 in a single death case where a tractor-trailer was crossing a four-lane highway at night near Carlsbad, NM (268 miles from Santa Fe.) The decedent collided with the semi at a high rate of speed and was killed. He was a relatively high income earner who left behind a wife and family. The physical evidence suggested that the decedent had time to avoid the collision had he been properly attentive. There was no evidence of any significant evasive maneuvering by the decedent. However, the jury placed no fault on the decedent and only 1% fault on the truck driver. The remainder was assessed against the trucking company defendants. New Mexico is a pure comparative negligence state. \$47,000,000 of the award was for punitive damages. The trucking companies failed to provide records, which had either been lost or destroyed. They also had a history of safety violations, and allegedly provided inadequate driver training. These marks against them did not sit well with the jury. All the claims against the trucking companies were contested, as was negligence for the accident itself, but it wasn’t enough. The jury went so far as to draft a letter, read by the foreman, stating they “expect a much higher standard of safety and training from the trucking industry,” and “[t]o the family, we understand that there is no way to put a monetary value on a human life. We trust that Kevin’s children will remember their father, will continue to live their lives in a manner that will honor his memory.” The spoliation, training, and safety violations evidence, plus an effective use of “Reptile” tactics, netted the enormous verdict. The jury bought the Reptilian line that they were the “guardians of community” against dangerous trucking companies. The case later settled.

On January 23, 2015, a Santa Fe jury in *Morga v. FedEx Ground Package System* returned what is, at least for now, the largest verdict in New Mexico history and one of the largest trucking verdicts in the nation's history: \$165,000,000 for the deaths of a mother and her young daughter for the derivative claims for loss of guidance, counselling for two other children, and for the husband's loss of consortium. A FedEx Ground trailer was being pulled by a tractor owned and operated by a small independent company at night on I-10 near Las Cruces, NM (285 miles from Santa Fe). Marialy Morga, the deceased mother, was driving a passenger vehicle in the same direction, was either stopped or driving very slowly, and was entirely or partially in the right travel lane. She was struck from behind, and she and her daughter were killed. Her young son survived the collision. The truck driver, Elizabeth Quintana, was also killed. She was allegedly a few hours over the hours of service limitations mandated by the FMCSA, so driver fatigue claims loomed large during the trial. Quintana's estate filed a counterclaim against Morga's estate. The plaintiffs alleged that FedEx Ground was actually the statutory employer of Quintana and, therefore, vicariously liable for her negligence and directly liable for not properly contracting the load in accordance with FMCSA regulations. The jury apportioned fault as follows: 65% to FedEx Ground, 10% each to the two small trucking companies involved, 10% to Quintana, and 5% to Morga. According to court documents, the jury could not agree upon punitive damages (10 out of 12 jurors must agree upon a verdict), so compensatory damages were enlarged to achieve essentially the same result. After the trial, the judge

NONE of the award was for punitive damages.

was excused due to potentially improper ex parte communications. The case is still in the post-trial motion phase, so the story has not come to an end.

INDIVIDUALS VS. CORPORATIONS

In both cases, the jury didn't want to blame individuals and saved nearly all of their ire for the companies on trial. The juries were very forgiving of negligence by individuals but unforgiving of any imperfection on the part of the corporate defendants. Santa Fe has long had a wide streak of anti-corporate bias, but these verdicts are completely off the charts. The fact that the defendants were found to be negligent isn't the shocking part, as evidence in both cases could have led the juries to find percentages of fault against them. The shocking part is the very small percentages of fault on the truck drivers who supposedly caused the fatal accidents, the excusal of negligence on the part of the decedents, and the gargantuan sizes of the monetary awards, which did not seem to be in proportion to actual damages. In both cases, the focus was on alleged corporate misconduct, separate from the facts of the accident itself. The companies were held to higher standards than the individual people, even though New Mexico law requires equal treatment. The New Mexico wrongful death jury instruction allows juries to adjust their awards based upon "aggravating or mitigating circumstances," which the defense bar has always viewed as getting punitive damages in through the back door without plaintiffs needing to meet the higher burden of proof. Standards of care can also be heightened for parties as the risk of harm from the particular activity increases. Again, this is viewed as a way to unlevel the playing field—an ordinary motorist's negligence supposedly doesn't increase the risk of harm, but the perceived negligence of a truck driver or trucking company, no matter how slight, is seen as more egregious because they are "the professionals" who put "80,000 lbs. of rolling death on the roadways." In 2007, the New Mexico Court of Appeals held in *Valdez v. Yates Petroleum Corp.* that operation of an 18-wheeler was not an inherently dangerous activity and that ordinary negligence standards would apply. These high value verdicts suggest that

de facto strict liability has arrived in Santa Fe for trucking companies.

REGISTERED AGENT LOCATION

What can be done? Avoid New Mexico and enjoy the beautiful Colorado scenery instead? That wouldn't be fair to all that New Mexico has to offer, nor practical. Being aware of the recent history and avoiding suits in Santa Fe County and other liberal north central New Mexico counties is a very prudent course, just as it would be with liberal venues in any state. It seems that most out-of-state companies have their registered agents in Santa Fe. The rationale is apparently rooted in the fact that it is the state capital, and companies that serve as registered agents are often based in state capitals. Finding a registered agent in a more conservative and business-friendly venue is an important consideration. Trucking companies often hire a particular company to act as registered agent in all 48 contiguous states and give little thought for the location of the registered agent in any particular state. Given New Mexico's venue rules, changing the location of the registered agent can help the out-of-state company have a better chance of keeping the case venue in a more business-friendly city in non-death cases and create a public policy argument in death cases against the forum shopping games plaintiffs' attorneys play to get their cases tried where they don't belong.

The most important considerations, however, are the ones all trucking companies should follow regardless of the state: hire and train good drivers, follow the laws and regulations, maintain your equipment, proactively investigate accidents with advice of counsel when needed, have good record keeping practices, and always keep safety as the top priority.

Hall & Evans partners with many trucking companies and their insurers to help them avoid serious accidents, proactively manage accident investigations, and provide vigorous legal representation in the event of litigation.

We welcome the continuing opportunity to serve the trucking industry.



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