

1 STATE OF NEW MEXICO
COUNTY OF SANTA FE
2 FIRST JUDICIAL DISTRICT COURT

3 No. D-0101-CV-200400963

4

5 ROXANNE MARTINEZ, CHARLIE JIMENEZ, JR.,
ADAN CARRIAGA and CHRISTA OKON,

6

Plaintiffs,

7

vs.

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ALLSTATE INSURANCE COMPANY,

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Defendant.

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12 TRANSCRIPT OF PROCEEDINGS

13 On the 13th day of November 2009, at 5:00 p.m., this matter
14 came for hearing on a BENCH TRIAL, before the HONORABLE BARBARA J.
15 VIGIL, Judge of the First Judicial District, State of New Mexico,
16 Division I.

17 The Plaintiffs, ROXANNE MARTINEZ, et al., appeared by
18 Counsel of Record, DAVID J. BERARDINELLI, Berardinelli Law Firm,
19 Attorneys at Law, Post Office Box 1944, Santa Fe, New Mexico
20 87504-1944; DANIEL J. O'FRIEL, Law Offices of Daniel J. O'Friel,
21 LTD, Attorneys at Law, Post Office Box 2084, Santa Fe, New Mexico
22 87504-2084; and DAVID P. GARCIA, RAY VARGAS, II, Garcia & Vargas,
23 LLC, Attorneys at Law, 303 Paseo de Peralta, Santa Fe, New Mexico
24 87501; and D. DIEGO ZAMORA, Attorney at Law, 303 Paseo de Peralta,
25 Santa Fe, New Mexico 87501.

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I N D E X

Page

(Excerpt of Proceedings.)

Court's Observations, Directions, Ruling:

4

Court Reporter's Certificate:

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1 (In Open Court November 13, 2009; 5:00 p.m.)

2 THE COURT: Court is now in session. We are here
3 this afternoon in the matter of Roxanne Martinez vs. Allstate
4 Insurance Company; Cause No. Santa Fe 04-963 CV.

5 MR. BERARDINELLI: Your Honor, David
6 Berardinelli, Mr. O'Friel, Mr. Vargas, Mr. Garcia, Mr. Zamora, for
7 the Plaintiffs.

8 THE COURT: Okay.

9 MS. MANN: And, Your Honor, Lisa Mann, Richard
10 Fenton, Floyd Bienstock. We are here with Bruce Converse, who has
11 previously been admitted in this case, from the firm of Steptoe
12 and Johnson.

13 THE COURT: Okay.

14 MS. MANN: And, also, Jennifer Noya, in back, and
15 Terry Gonsalves and Kevin Kamraczewski, the whole crew; as well as
16 our client representatives for Allstate, Your Honor.

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18 (Excerpt of Court's Observations, Directions, Ruling:)

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20 THE COURT: Good afternoon, and thank you,
21 counsel, and both parties for your presentations over the last
22 two-and-a-half weeks and, really, since 2004. First, let me go on
23 the record in Martinez vs. Allstate; Cause No. Santa Fe 04-963.

24 I'd like to commend counsel on your presentations to the
25 Court and your hard work in representing your clients. I

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1 appreciate your diligence, your attempt to keep everything
2 somewhat under control. As you can see, I think we have a lot of
3 exhibits that the Court needs to consider.

4 Let me start by saying that I'm going to announce a
5 decision this afternoon on all the claims as to all the
6 Plaintiffs, and I'm going to ask the parties whether they want to
7 submit Findings of Fact or Conclusions of Law to the Court to
8 adopt, and I will give you a period of time in which to do that.
9 Findings and Conclusions are necessary, as you all know, for
10 purposes of appeal. And I imagine that following my decision, one
11 party or the other will likely appeal my decision. So let me know
12 whether you will be submitting Findings and Conclusions.

13 My decision this afternoon, I know, is not complete,
14 but I think goes to the ultimate issues in this case. And,
15 certainly, the parties are always encouraged to try to discuss the
16 Court's proposed decision and, perhaps, maybe to reach a
17 compromise, if you can, before a final decision is entered. So
18 let me make my decision with respect to each of the claims.

19 First of all, I find that there are three claims for
20 each Plaintiff. There is an allegation that Allstate violated
21 NMSA Section 59A-16-20E and Section 59A-16-20G of the Unfair
22 Claims Practices Act. And I believe that Mr. O'Friel referred to
23 the Hovet claim as under Section 59A-16-20E, that that was his
24 argument. I don't find that there's a separate cause of action
25 under Hovet but, rather, that Hovet supports a claim under

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1 59A-16-20E. I find the following, and I'll read my decision with
2 respect to all Plaintiffs, because it's consistent for all of
3 them.

4 I find with respect to each of the Plaintiffs, Roxanne
5 Martinez, Charlie Jimenez, Adan Carriaga, and Christa Okon, I find
6 by a preponderance of the evidence that Allstate has violated
7 Section 59A-16-20E and G. It violated Section G by compelling
8 each of the Plaintiffs to litigate their insurance claims through
9 a jury trial to obtain final judgment, and to recover amounts due
10 under a policy by offering substantially less than the amounts
11 they ultimately recovered when they went through trial.

12 I find that Allstate violated Section 59A-16E by not
13 attempting to effectuate a prompt, fair, and equitable settlement
14 of their claims in which liability had become reasonably clear.

15 I find that each of the Plaintiffs suffered actual
16 damages as a result of Allstate's willful violations of Sections
17 59A-16-20E and G, and that each of the Plaintiffs are, therefore,
18 entitled to recover their actual damages under Section 59A-16-30.

19 I find that each of the Plaintiffs' claims for damages
20 will be taken under advisement by me, and I did consider the
21 Plaintiffs' presentation this afternoon about what you claim the
22 actual damages are for those claims. I'd like to take some time
23 and think about that and determine, after considering the
24 evidence, what the actual damages are for each of the Plaintiffs
25 under their claims under the UCPA.

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1 I also find in favor of the Plaintiffs with respect to
2 malicious abuse of process. I find that Allstate has used the
3 judicial process in New Mexico and with these Plaintiffs, the jury
4 trial process and judicial proceedings, for each of the Plaintiffs
5 with the primary motive to accomplish an illegitimate purpose and
6 not intended by that process, and in a manner suggesting the
7 wrongful use of the jury trial system; an attempt to delay or
8 extort each of the Plaintiffs into accepting less than the full
9 value of their benefits under their policy, their MFRA policies,
10 providing coverage for their claims.

11 I also find that each of the Plaintiffs are entitled
12 to compensatory damages for the Court's finding of malicious abuse
13 of process, and that the Court will take under advisement the
14 request and the evidence to support their compensatory damages
15 claim for that claim.

16 And, finally, I will find Allstate Insurance Company's
17 acts in these cases as being wrongful conduct and supporting a
18 claim for punitive damages. The amount of which, again, I will
19 take under advisement. And that award of punitive damages will be
20 to deter Allstate from the commission of this practice in
21 New Mexico with others.

22 Thank you counsel; thank you Plaintiffs; thank you
23 Defendants for your patience and good, hard litigation. Thank
24 you. We'll be in recess.

25 Oh, with respect to the exhibits, I have most of the

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1 exhibits, but what I was going to ask, counsel, if you would, if
2 you intend to submit -- let me give you a deadline for that. I'd
3 like Findings and Conclusions to be submitted to the Court within
4 thirty days. I will try to enter a decision on this case before
5 the end of the calendar year.

6 If you intend to appeal my decision and submit
7 Findings and Conclusions, then I will need all of the exhibits,
8 and I believe that there are some that I'm not sure I have. So I
9 may be calling on you to supply the Court with an original of the
10 exhibit that you offered in trial. Is that clear?

11 MR. BERARDINELLI: Yes, Judge.

12 MR. FENTON: Yes, Your Honor.

13 THE COURT: I'm sure I'll get what I need. Thank
14 you. We'll be in recess.

15 (Note: Court is adjourned: 5:09 p.m.)

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17 (Excerpt of Court's Observations, Directions and Ruling
18 concludes.)

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STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, LORETTA L. BRANCH, Official Court Reporter for the First
Judicial District of New Mexico, hereby certify that I reported,
to the best of my ability, the proceedings, D-0101-CV-200400963;
that the pages numbered TR-4 through TR-8, inclusive, are a true
and correct partial transcript of my stenographic notes, and were
reduced to typewritten transcript through Computer-Aided
Transcription; that on the date I reported these proceedings, I
was a New Mexico Certified Court Reporter.

Dated at Santa Fe, New Mexico, this 16th day of November
2009.

LORETTA L. BRANCH
New Mexico CCR No. 169
Expires: December 31, 2009