# IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

## ORAL ARGUMENT CALENDAR

## TUESDAY, SEPTEMBER 20, 2011

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**2:00 P.M.**

**No. 28,508**

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| **CHERYL SCHULTZ, on behalf of KEVIN SCHULTZ, deceased,** | **George Wright Weeth** |
| **Worker-Appellant,** | |
| **vs.** | |
| **POJOAQUE TRIBAL POLICE DEPARTMENT, and NEW MEXICO MUTUAL CASUALTY COMPANY,** | **Richard J. Shane**<br>**Kristin J. Dalton** |
| **Employer/Insurer-Appellees.** | |

***PANEL: CHIEF JUDGE CASTILLO, JUDGES SUTIN AND FRY**

*Court of Appeals' panel members are listed in seniority order.

Panels may be changed without notice.

Oral Argument will be held in the Albuquerque Court of Appeals Pamela B. Minzner Law Center, 2211 Tucker NE., Albuquerque, NM 87106

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**IN THE COURT OF APPEALS**
**OF THE STATE OF NEW MEXICO**



No. 28,508



CHERYL SCHULTZ on behalf of
KEVIN SCHULTZ (deceased),

Worker-Appellant,

v.

POJOAQUE TRIBAL POLICE DEPARTMENT, and
NEW MEXICO MUTUAL CASUALTY COMPANY,

Employer/Insurer-Appellee

Appeal from New Mexico Workers' Compensation Administration
Hon. Helen L. Stirling, Workers' Compensation Judge

# APPELLANT'S REPLY BRIEF

(Oral Argument Requested)

Submitted by,

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This Reply Brief complies with Rule 12-213(F) NMRA. The brief uses Times New Roman, 14 point, which is a proportionally-spaced type style or typeface, and it is formatted with full justification margins. Although the body of the brief, as defined by the Rule, is 17 pages, it does not exceed four thousand four hundred (4,400) words. According to the word count feature of counsel's word processing software, Corel WordPerfect, it contains 4,203 words.

## TABLE OF AUTHORITIES

### NEW MEXICO STATUTES



### NEW MEXICO CASE LAW

**OTHER CASE LAW**

## OTHER AUTHORITIES

## STANDARD OF REVIEW

The Employer's Answer Brief suggests that this Court should affirm the Workers' Compensation Judge (WCJ) because there is substantial evidence to support her findings. [AB 10-11]. However, the pertinent facts are not in dispute. Therefore, both the questions of the course of employment and the statute of limitations can be decided by this Court de novo as a matter of law.

Where the facts are not in dispute, it is a question of law whether an accident arises out of and in the course of employment. *See Hernandez v. Home Educ. Livelihood Program*, 98 N.M. 125, 645 P.2d 1381 (Ct. App. 1982); *Losinski v. Drs. Corcoran, Barkoff and Stagnone, P.A.*, 97 N.M. 79, 80, 636 P.2d 898, 899 (Ct. App. 1981); *Thigpen v. Cnty. of Valencia*, 89 N.M. 299, 300, 551 P.2d 989, 990 (Ct. App.1976). Likewise, where the facts are not in dispute, the issue of timeliness is a question of law which the appellate court reviews de novo. *See Nelson v. Homier Distrib. Co.*, 2009-NMCA-125, ¶ 7, 147 N.M. 318, 222 P.3d 690.

The substantial evidence standard would apply only in the event the Court reaches the question of whether there was good cause to excuse the delay in filing. *See* [BIC 9-10, 22-25]. However, it is undisputed that the Employer's First Report of Injury form was not filed until *after* the Complaint was filed. *See* [BIC 21-22]. Employer's Answer Brief does not suggest that it filed any document with the Workers'

Compensation Administration that would satisfy the requirements of Section 52-1-58 NMSA 1978 (1991). Therefore the statute of limitations did not begin to run before the Complaint was filed. *See Herman v. Miners' Hosp.*, 111 N.M. 550, 556, 807 P.2d 734, 740 (1991); *Nelson*, 2009-NMCA-125, ¶ 15.

## ARGUMENT

### I. THE WORKER'S DEATH WAS DUE TO AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT

Employer/Insurer apparently misapprehends Appellant's argument regarding the course of employment. It suggests that Worker is seeking to rewrite the statute, [AB 9], but she has only asked that this Court interpret Section 52-1-28(A) NMSA 1978 (1987) to recognize that her husband's accidental death was in the course of his employment. Employer claims that Worker's "argument . . . are [sic] premised solely on the general standard adhered to by police officers around the country; namely to *protect* and serve." [AB 9] (emphasis in original). However, Worker's argument has two legs: not only that the profession of policing creates a "special risk" of injury as a result to the duty to respond to life-threatening emergencies, but also that the Standard Operating Procedures of this specific Employer authorized and encouraged – but did not require – Officer Schultz to act in the face of a life-threatening emergency.

*See* [BIC 15-16].

Employer's fears about uncontrolled workers' compensation costs should Worker prevail are unfounded. *See* [AB 9-10]. If a particular department wanted to limit its exposure for workers' compensation benefits to its officers, it could certainly adopt rules which prohibited them from undertaking police activity while off duty and/or outside of their jurisdictional boundaries. *See Lukesh v. Ortega*, 95 N.M. 444, 623 P.2d 564 (1980) (violation of specific instruction limiting scope of work barred receipt of workers' compensation benefits); *Walker v. Woldridge*, 58 N.M. 183, 268 P.2d 579 (1966) (same).

Worker has no quarrel with the Employer's citations to general statements of the law on the course of employment. *See* [AB 15-16]. However, Employer offers no useful analysis of what the term "course of employment" means in the circumstances of this case. Employer's reliance on a tort case to define the course of employment in this workers' compensation case is misplaced. *See* [AB 18-20, *discussing Narney v. Daniels*, 115 N.M. 41, 846 P.2d 347 (Ct. App. 1993)]. As discussed in Worker's Brief in Chief, the public policy considerations in tort law and workers' compensation law are different, so that tort cases are not persuasive authority for deciding the course of employment in a workers' compensation setting. *See* [BIC 12-13]; *see also*, *Wayman v. Accor N. Am., Inc.*, No. 103,456, 2011 WL 923530, at *8 (Kan. Ct. App. Mar. 18,

2011), Slip Op. at pp. 14-15 (available at http://www.kscourts.org/ cases-and-opinions/ opinions/CtApp/2011/20110318/103456.pdf; also available through Casemaker at www.nmbar.org) (citing *O'Shea v. Welch*, 350 F.3d 1101, 1106 (10th Cir. 2003) ("We also agree that the public policies behind worker's compensation and third party liability cases are different"); *Garcia v. Estate of Arribas*, 363 F. Supp. 2d 1309, 1318 (D. Kan. 2005) ("[W]orkers compensation laws, . . . are quite different, in many respects, from the laws pertaining to the liability of employers to third parties"); *Stokes v. Denver Newspaper Agency, LLP*, 159 P.3d 691, 693-95 (Colo. App. 2006) (discussing differences between respondeat superior and workers' compensation theories of recovery); *Salt Lake City Corp. v. Labor Comm'n*, 2007 UT 4, ¶ 18, 153 P.3d 179, 182 (Utah 2007) ("With very different presumptions governing worker's compensation and negligence cases, it would not be wise to hold that the rules governing scope of employment questions in one area are wholly applicable to the other")).

Employer correctly noted that a Maryland case mentioned by Worker had been reversed. *See Sawyer v. Humphries*, 82 Md. App. 72, 570 A.2d 341 (Md. Ct. Spec. App. 1990), *rev'd on other grounds*, 322 Md. 247, 587 A.2d 467 (1991). Worker should have noted that in her citation. The case was cited for its discussion of the profession of policing, not for its holding that the defendant off-duty officer was covered by the state tort claims act for claims arising out of his pesonal assault on the

plaintiff. *See* [BIC 16]. Even while it reversed the result, the higher court approved that portion of the opinion referenced in the Brief in Chief. "We agree with the Court of Special Appeals that a police officer may be 'on duty' 24 hours a day in the sense that he may be on call and may under certain circumstances have an obligation to act in a law enforcement capacity even when on his own time." *Sawyer v. Humphries*, 322 Md. 247, 258, 587 A.2d 467, 472 (1991). That opinion, which was cited in *Narney*, held that an off-duty officer was not in the course of employment when he assaulted a private citizen for personal reasons. 322 Md. at 260, 587 A.2d at 473. But where a police officer responds to an emergency in a manner consistent with his employer's regulations, he enters the course of his law enforcement employment, even if he was off duty at the time. *See Cooper v. City of Dayton*, 120 Ohio App. 3d 34, 44, 696 N.E.2d 640, 646-47 (1997) (police officer moonlighting as private security guard acting as city policeman when attempting to affect an arrest).

The only workers' compensation case cited by Employer, *Meeks v. Eddy Cnty. Sheriff's Dept.*, 118 N.M. 643, 884 P.2d 534 (Ct. App. 1994), is not on point. In that case, this Court held that the worker was injured while jogging in a self-directed fitness program for his own benefit, which did not further the department's interests. 118 N.M. at 645-46, 884 P.2d at 536-37; *see also*, *Woods v. Asplundh Tree Expert Co.*, 114 N.M. 162, 836 P.2d 81 (Ct. App. 1992) (horseplay not foreseeable or tolerated by

employer); *Carter v. Burn Constr. Co.*, 85 N.M. 27, 30, 508 P.2d 1324, 1327 (Ct. App. 1973) (major deviation during work-related travel was outside the course of employment while employee "pursuing his own pleasure"). Contrary to Employer's suggestion, [AB 21], *Meeks* does not hold that legislative action would be needed to reach the result sought by Worker. The court simply noted that a California case cited in the opinion had been superceded by a statutory amendment which specifically included off-duty physical training within the course of employment. *Meeks*, 118 N.M. at 646, 884 P.2d at 537.

Employer's analysis of the course of employment confuses the question of whether the Employer *requires* an activity with whether that activity *benefits* the Employer. [AB 22, 25]; *see Kloer v. Municipality of Las Vegas*, 106 N.M. 594, 596, 746 P.2d 1126, 1128 (Ct. App. 1987); *Sandmeyer v. City of Bemidji*, 161 N.W.2d 318, 320 (Minn. 1968) ("The question is not whether the activity is compelled by the contract of employment, but whether it is incidental to the employment relationship"). Appellant has never argued that any common law duty or any of Employer's policies *required* Ofc. Schultz to attempt a rescue of the drowning child. Her argument has been that the profession of policing generally, and Employer's policies specifically, authorized and encouraged him to react in a reasonable fashion to address the emergency with which he was faced. Appellant does not argue that Ofc. Schultz *would*

have been disciplined had he not rescued the child. *See* [AB 23]. Her argument is that he *could* have been disciplined. [BIC 17-18]. The jurisdiction of the New Mexico Law Enforcement Academy to discipline an officer for his off-duty actions shows the general duty to protect life inherent in the profession of policing. *See Lane v. Indus. Comm'n*, 218 Ariz. 44, 178 P.2d 516 (Ariz. Ct. App. 2008). The potential for discipline by his department for off-duty actions indicates the interest of this specific Employer in the decision Ofc. Schultz faced that day whether to attempt a rescue of the drowning child.[1]

Employer unsuccessfully attempts to distinguish the body of case law specific to off-duty policemen injured performing police functions. It states that police have a duty to respond to *crimes*, thereby implying that there is no duty to respond to life-threatening emergencies. *See* [AB 24-25] (emphasis in original). However, Employer made no effort to distinguish the police cases which did not involve criminal activity. *See, e.g., Lane*, (friend injured by random gunshot); *Krasnoff v. New Orleans Police*

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[1] Worker's expert witness, Mark Bralley testified in his deposition about the history of the profession of policing and its broad duties to mankind, as well as the specific policies of the Pojoaque Tribal Police Department. As noted in the Brief in Chief, it does not appear that the WCJ read Ofc. Bralley's deposition. [BIC 3-4]. Employer suggests that this failure was harmless because he testified at the trial. However, his trial testimony consisted solely of voir dire by Employer's counsel to question his credentials. The WCJ qualified him as an expert and admitted the deposition in lieu of his trial testimony in order to save time.

*Dept.*, 241 So. 2d 11 (La. Ct. App. 1970) (off-duty officer stopped at scene of automobile accident); *Spieler v. Village of Bel-Nor*, 62 S.W.3d 457, 459 (Mo. Ct. App. 2001) (traffic accident with injuries; court rejected Employer's argument, stating, "the interdiction of felonies does not fully define the duty of police officers in providing protection to members of the public who need assistance, wherever they may find them"); *Village of Butler v. Indus. Comm'n*, 265 Wis. 380, 61 N.W.2d 490 (1953) (traffic accident); *State ex rel. Wyo. Worker's Comp. Div. v. Van Buskirk*, 721 P.2d 570 (Wyo. 1986) (assisting at fire outside town limits). Worker asserts that police officers have a duty to respond to all types of emergencies. *See* [BIC 14] (discussion of "special risk" doctrine). The workers' compensation law should not draw technical distinctions about coverage after the fact when an officer was faced with a split-second decision to act in an emergency. *See City of Pittsburg v. Workmen's Comp. Appeals Bd.*, 108 Pa. Commw. 477, 480, 529 A.2d 1196, 1197 (1987) ("[W]e would loath to hold that claimant should sit by idly while a fellow officer must fend for himself against a crowd of ruffians because he would go uncompensated if seriously injured because of his entry into a fracas"); *cf.*, *Babington v. Yellow Taxi Corp.*, 250 N.Y. 14, 17, 164 N.E. 726 (1928) ("An officer may not pause to parley about the ownership of a vehicle in the possession of another when there is need of hot pursuit").

The Answer Brief offers no discussion of the various Pojoaque Tribal Police

Department policies that authorized Ofc. Schultz to undertake the emergency response that led to his death. It merely states that none of the regulations "*obligated or required*" him to act. [AB 25] (emphasis in original). Worker's argument is not that he was required to act, but that his action was foreseeable and authorized by the Employer, and that Employer benefitted by his action, which placed him in the course of employment. [BIC 15-17]; *See Ramirez v. Dawson Prod. Partners, Inc.*, 2000-NMCA-011, ¶17, 128 N.M. 601, 995 P.2d 1043. Several departmental policies directed Pojoaque officers to "serve and protect" the public. *See* [BIC 16-17]. The department had adopted Standard Operating Procedures which directed officers to protect life and administer aid when needed. [Ex. N, pp. 12, 14-15, 30-32, 111]. The SPOs specifically address situations which might arise outside of duty hours or outside of the Pueblo boundaries. "On or off duty Pojoaque Pueblo police officers will refrain from initiating action outside of their jurisdiction, *except in circumstances so serious that immediate action must be taken.*" SOP § 4.3(A)(4) [Ex. N, p. 51] (emphasis added); *see* [BIC 17]. Worker asserts that Ofc. Schultz was faced with just such a serious circumstance. His Employer had foreseen that such situations might arise, and it had authorized him to exercise his discretion to respond as necessary to protect life and to render aid. *See D.L. Cullifer & Son, Inc. v. Martinez*, 572 So. 2d 1360 (Fla. 1990) (humanitarian acts designed to prevent imminent harm to public incidental to

employment); *Ace Pest Control, Inc. v. Indus. Comm'n*, 32 Ill.2d 386, 389, 205 N.E.2d 453, 455 (1965) (humanitarian act foreseeable and not prohibited).

The Brief in Chief contained a specific rebuttal to the Employer's contention that Ofc. Schultz owed a duty to the drowning child in his capacity as a chaperone of his church youth group. [BIC 20-21]. There is no common law duty of rescue that would have required Kevin to respond to that emergency. Furthermore, early in the litigation, Employer had tried to show that the Sangre de Cristo Bible Church was the employer at the time of the accident. After conducting extensive discovery, Employer dismissed the church from the case. *See* [BIC 3]. However, Employer continues to suggest that Kevin's response was motivated solely by his status as a chaperone, rather than by his duty as a police officer. [AB 18, 21]. Not only does Employer cite no evidence as to Kevin's state of mind at that moment, it offers no authority establishing a legal duty for him to undertake the dangerous rescue. Even if Mr. Schultz, in his role as a chaperone, had some legal duty to save the boy, that would not extinguish his concurrent duty as a police officer to protect and serve the public. *See Lane*, 178 P.2d at 521 (personal motivation to save friend did not extinguish employment-related duty to help). The dual-purpose doctrine is well established in workers' compensation law. *See Clemmer v. Carpenter*, 98 N.M. 302, 307-08, 648 P.2d 341, 346-47 (Ct. App. 1982).

Finally, Employer's argument that the meaning of "line of duty" for purposes of

the federal death benefit for public safety officers is different than the "course of employment" for workers' compensation purposes is ludicrous. [AB 27-28]. The *Russell* case cited by Employer specifically held that "by using the 'line of duty' language Congress meant to adopt a job-relatedness test akin to that developed under workers' compensation law." *Russell v. Law Enforcement Assistance Admin.*, 637 F.2d 1255, 1265 (9th Cir. 1980).[2] Ofc. Schultz's family was awarded the federal benefit after Det. Thomas Grady of the Pojoaque Tribal Police Department prepared an application for them. [Ex. 10]. The U.S. Department of Justice approved the claim based on its finding that "PO Schultz died as a direct and proximate result of a personal injury sustained in the line of duty from drowning while attempting to rescue another person." [Ex. I-3]. While Worker has not argued that this finding is binding on the WCJ, it is persuasive evidence of how broadly other agencies in the public safety field view the course of employment for off-duty police officers. The language defining "line of duty" is very similar to that describing the "course of employment." *Compare* 28 C.F.R. 32.2(c)(1) (2002) ("[a]ny action which an officer . . . is obligated or authorized

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[2] Although Employer's citation might suggest that the pertinent holding in *Russell* has been superceded by statute, a close reading of *Davis v. U.S.*, 169 F.3d 1196, 1199 (9th Cir. 1999) indicates that it declined to follow *Russell's* holding that the Circuit Court, rather than the Court of Claims, had jurisdiction over appeals regarding benefits under the Public Safety Officers' Death Benefits Act. There is nothing in the *Davis* opinion that undermines its holding regarding the "line of duty."

by rule, regulations, condition of employment or service, or law to perform . . . .") *with Ramirez*, 2000-NMCA-011, ¶14 ("acts the employer instructed the claimant to perform, acts incidental to the claimant's assigned duties, or acts which the claimant had a common law or statutory duty to perform").

In summary, Employer has not rebutted the primary arguments on the course of employment raised by Worker's Brief In Chief. The fact that Worker was killed on his day off and while outside the boundaries of Pojoaque Pueblo is not dispositive. All that is required in workers' compensation law is that the activity be of the type normally assigned to the employee or related to the performance of such duties, not prohibited by the employer, and that it be of some benefit to the employer. *See Chavez v. ABF Freight Sys., Inc.*, 2001-NMCA-039, ¶ 10, 130 N.M. 524, 27 P.3d 1011. The profession of policing creates special risks of injury because of the general duty upon officers to respond to emergency situations. [BIC 14-15]. Department regulations often recognize this duty and authorize officers to take appropriate actions as necessary to protect life and property. [BIC 15-17]. There is no dispute that Ofc. Schultz was faced with a life-threatening emergency, that he reacted appropriately, saving the child's life, but that he was unable to save himself. Future off-duty officers faced with a snap decision to rescue a citizen or stop a crime should not hesitate to act out of fear that themselves or their families will not be compensated should they be injured while

performing a police function.

## II. THE STATUTE OF LIMITATIONS WAS TOLLED BY EMPLOYER'S FAILURE TO FILE THE ACCIDENT REPORT AND BY ITS REPRESENTATIONS TO CLAIMANT

Appellee did not respond to Appellant's argument that the statute of limitations did not bar Worker's claim due to Employer's failure to file the Employer's First Report of Injury form until after the Complaint was filed. *See* [BIC 21-22]. Where the Appellee's brief does not respond to an argument raised by the Appellant, the reviewing court will assume that the Appellant is correct. *See Gutierrez v. Intel Corp.*, 2009-NMCA-106, ¶ 23, 147 N.M. 267, 219 P.3d 524; *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076. Therefore, this Court should reverse the WCJ on the statute of limitations. *See Herman*, 111 N.M. at 556, 807 P.2d at 740; *Nelson*, 2009-NMCA-125, ¶ 15.

If the Court reaches the question of whether Worker's widow reasonably relied on the representations of Chief Garcia that he would "take care of getting the workers' compensation paperwork done," [BIC 22-23], this Court should still reverse. Employer has pointed to no evidence supporting the WCJ's conclusion that Mrs. Schultz's "failure to file timely was [not] caused in whole or in part by the conduct of Employer

. . . ." [RP 324, COL 15]. The evidence is undisputed that Chief Garcia led her to believe that he would file the claim, and that because she had received the federal benefit based solely on the Department's application, she would receive the workers' compensation benefit as well. [RP 314, FF 59, 61]. If the Employer's late filing of the E1 is not enough to toll the statute of limitations until October 1, 2003, then these undisputed facts support a tolling until then under Section 52-1-36 NMSA 1978 (1989). Employer offers no rebuttal of either basis asserted by Worker for tolling the statute of limitations.

Employer's only argument seems to be that the statue of limitations was not tolled for long enough to cover the Amended Complaint filed on June 21, 2004. [RP 28]. The Answer Brief does not respond to the case law cited in the Brief in Chief about the effect of tolling. [BIC 26-27]; *see Delta Automatic Sys., Inc. v. Bingham*, 1999-NMCA-029, ¶ 31, 126 N.M. 717, 974 P.2d 1174 (failure to respond to argument raised in opponent's brief "constitutes a concession on the matter"). New Mexico law is clear that once a time limit is suspended, the full amount of the time allowed remains after the tolling ends. *See State v. Sanchez*, 109 N.M. 313, 316, 785 P.2d 224, 227 (1989); *Elsea v. Broome Furniture Co.*, 47 N.M. 356, 369, 143 P.2d 572, 580 (1943). Thus, if the statute of limitations did not begin to run until October 1, 2003, it did not expire until a year later, well after the Amended Complaint was filed, without any

necessity for finding that it related back to the original filing date. Employer offered no authority for its position, and therefore it should not be considered. *See In re Adoption of Doe*, 100 N.M. 764, 765, 676 P.2d 1329, 1330 (1984) ("Issues raised in appellate briefs which are unsupported by cited authority will not be reviewed by us on appeal"); *Molina v. Allstate Indem. Co.*, 2011-NMCA-005, ¶ 10, 149 N.M. 180, 246 P.3d 449 (filed 2010), *cert. denied*, 2010-NMCERT-012, ___ N.M. ___, ___ P.3d ___ (No. 32,658, Dec. 2, 2010) (where party has directed court to no authority supporting its argument, court will assume that none exists).

## CONCLUSION

The WCJ's Findings and Conclusions demonstrate that she applied an incorrect legal standard to the issues presented in this case. There is no dispute as to the pertinent, material facts. This Court can decide the legal issues on the basis of the trial record as a matter of law.

The evidence demonstrates that Ofc. Schultz died while rescuing a child who had been swept up in the strong current of the Rio Grande. While he was an adult chaperone for the children's group, he was also a trained police officer, licensed by the State of New Mexico. The dangerous nature of police work creates a special risk of injury that broadens the course of employment for them. In addition, Ofc. Schultz's

Employer, the Pojoaque Tribal Police Department, had adopted Standard Operating Procedures which authorized him to protect life and to administer aid when needed. Even while off duty and outside of the Pueblo, the SOPs specifically authorized Ofc. Schultz to act when confronted with a life-threatening emergency. These policies establish the Employer's understanding of the breadth of the public duty assumed by police officers, and serve to expand the scope of employment to include Ofc. Schultz's rescue of the drowning child.

After his death, the Employer applied for benefits on behalf of his widow and son. They received a federal death benefit based upon a finding that Ofc. Schultz died "in the line of duty." Cheryl Schultz did not have to do anything to obtain that benefit, not even sign the application. The Employer took care of it for her. Following receipt of the federal benefit, she asked the Employer about workers' compensation benefits as well. Chief Garcia told her that he would take care of the paperwork. When the widow learned that nothing had been done by the Employer more than a year later, she immediately filed a Complaint.

The failure of the Employer to file the Employer's First Report of Accident tolled the limitations period until one year and thirty one days after it was filed. In addition, Worker's widow reasonably relied on the representations of the Chief of the department that he was taking care of her workers' compensation claim. The statute of

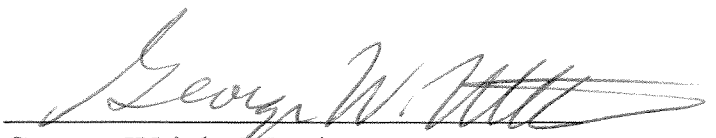
limitations was tolled until she learned the truth, and she filed her Complaint that same day. If the statute of limitations ever began to run, it did not commence until the dismissal of the original Complaint, and the Amended Complaint was filed six months later, well within the limitations period.

Worker requests that this Court first determine as a matter of law that Kevin Schultz died as the result of an accidental injury arising out of and in the course of his employment by Pojoaque Tribal Police Department. Then this Court should find that Worker's Complaint for benefits was not barred by the statute of limitations. The opinion of the Court should reverse the decision of the Workers' Compensation Judge and remand to the Workers' Compensation Administration for a determination of the amount of benefits owed and an award of attorney's fees.

## REQUEST FOR ORAL ARGUMENT

Appellant requests oral argument before the Court pursuant to Rule 2-213(C) NMRA. This case raises complicated issues of public policy underlying the New Mexico Workers' Compensation Act. Because of the unique and specialized nature of the field of workers' compensation law, Appellant believes that oral argument would be helpful to the Court and to the parties to clarify the arguments raised in the briefs. In addition, the issues presented are of significant public interest.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Reply Brief** was served on counsel of record by first class mail this 23rd day of May, 2011 at this address:

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