IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

CRAIG BEAUDRY,

Plaintiff-Appellee,

v.

FARMERS INSURANCE EXCHANGE, TRUCK INSURANCE EXCHANGE, FIRE INSURANCE EXCHANGE, MID-CENTURY INSURANCE COMPANY, FARMERS NEW WORLD LIFE INSURANCE COMPANY, FARMERS INSURANCE COMPANY OF ARIZONA, LANCE CARROLL, AND CRAIG ALLIN,

Defendants-Appellants.

No. 33,618
Santa Fe County
Case No. D-101-CV-2011-00646

Appeal from the First Judicial District Court
County of Santa Fe, State of New Mexico
Honorable Sarah Singleton, District Judge, Presiding

APPELLANTS' REPLY BRIEF

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STATEMENT OF COMPLIANCE

Pursuant to Rule 12-213(G) NMRA, this brief complies with the type-volume limitations set forth in Rule 12-213(F)(3) NMRA. It is prepared in 14-point Times New Roman using Microsoft Word, and the body of the brief contains 4,276 words.

I. Introduction

Upholding the verdict would make this Court the first appellate tribunal in America to hold that *prima facie* tort can be based on a contract termination expressly authorized by the contract itself. A person has no "legally protected interest" in a contract that lawfully no longer exists, a principle Beaudry concedes by silence, and that defeats the "intent to injure" and "injury" elements of *prima facie* tort. Contractually-authorized conduct also provides justification as a matter of law, thus defeating a third essential element of *prima facie* tort. Beaudry's claim also fails because it duplicates and evades the elements of other causes of action. Beaudry repeatedly ignores New Mexico law on these points, each of which warrants reversal without remand.

II. Beaudry Paints A Skewed And Irrelevant Factual Picture

Beaudry presents a skewed version of the record in an attempt to garner sympathy and divert attention from the fatal legal defects in his *prima facie* tort claim. For example, he admits his Agent Appointment Agreement ("Agreement") expressly prohibited him from submitting (or placing) an existing (or eligible) Farmers customer for coverage with another insurer (AB 10), but then makes excuses for why his agency should not have been terminated for doing precisely that. This prohibition was not, however, some obscure technicality; it was vital to the relationship. Unlike the exclusive agent agreements offered by some other

insurers, the Agreement provided Beaudry a unique benefit – the opportunity to sell insurance for (and make sales commissions from) outside companies. Beaudry took full advantage, earning nearly $700,000 in non-Farmers commissions from 2006-2010. 4/23/13 TR-194. Under the Agreement, Beaudry was only allowed to do so if the customer was ineligible for a Farmers policy. BIC 4-5. When an agent violates this provision, the Companies not only fail to receive money to which they are entitled, the money goes to a competitor and the agent receives an undeserved sales commission. 4/24/13, TR-94-100, 117-18.

Breaches of this provision are "almost impossible to catch" because "[t]here is just no way of regularly monitoring . . . to see if an eligible piece of business has been placed outside Farmers." 4/24/13, TR-96. Compliance is largely based on an honor system, so a violation breaches both the Agreement and the mutual trust on which the Agreement is based. When a breach like Beaudry's comes to light, termination is the usual result, regardless of the agent's excuses. 4/26/13, TR-84.[1] Beaudry may now claim his breach occurred at a time of personal stress in his life and to keep a difficult customer, but "the end doesn't justify the means." 4/24/13, TR-143.

[1] Other types of contract violations (*e.g.*, cash handling, underwriting) are much easier to monitor and can be corrected without termination. 4/24/13, TR-94-100.

Other examples of Beaudry's efforts to skew the record include:

- Beaudry claims Tom Gutierrez "poached" 135 policies from him. The evidence, however, demonstrated that all but one policy was properly transferred from Beaudry's agency to Gutierrez's agency at the customer's request. 4/25/13 TR-106-109; 4/29/13 TR-176-180, 188; *Compare* Pl's Ex. 16 (list of transferred policies) *with* Def's Ex. 38 (customer letters for each transfer).

- Beaudry feigns ignorance about Granger's "mistake" with the Martinez policy and insinuates CNA never issued Martinez a policy to replace Martinez's Farmers policy. But not only did CNA issue Martinez a policy, CNA e-mailed that policy directly to Beaudry. 19 RP 4586, 4590, 4619-34; 33 RP 8049.

- Beaudry accuses Carroll of ambushing him to confront him about the Martinez policy during a meeting. Beaudry ignores that Carroll was only following Christopher Kerr's instructions not to mention the Martinez policy prior to the meeting, so they could hear Beaudry's unfiltered response. 4/24/13 TR-133-34; 4/25/13 TR-57-58. The jury (correctly) declined to find Kerr liable for *prima facie* tort. 33 RP 8070.

- Beaudry complains the Companies did not terminate another agent who committed underwriting violations. Beaudry ignores that he violated the same underwriting requirements, and similarly, was not terminated. 4/23/13. TR-209-11; Def's Ex. 35.

III. Beaudry Concedes By His Silence That He Had No Legally Protected Interest In Continuation of a Lawfully Terminated Agreement, And He Therefore Fails On Two Essential Elements

Beaudry was required to prove "intent to injure" and "injury," both of which require injury to "a legally protected interest." There is, however, no such thing as a legally protected interest in a contract that has been terminated for an expressly-authorized reason. BIC at 2-3, 34-36.

Beaudry ignores this issue, choosing instead to mischaracterize the relevance of Appellants' citation to the New Mexico rule that *prima facie* tort cannot be used to thwart the employment-at-will doctrine. The Companies do not seek reversal on the grounds that the "Agreement is an at-will employment contract." AB 31-40.[2] The "at-will" cases are, however, premised on the same "legally protected interest" analysis that is dispositive here.

New Mexico law bars *prima facie* tort claims by at-will employees because they have no legally protected interest in an employment contract that can be lawfully terminated for any reason or no reason at all. Under the same rationale, Beaudry's *prima facie* tort claim is barred because he had no legally protected interest in an agency contract the Companies were authorized to lawfully terminate. BIC 2-3, 34-36; *see, e.g., Hill v. Cray Research, Inc.*, 864 F. Supp. 1070, 1079 (D.N.M. 1991), *cited with approval in Healthsource, Inc.*, 2005-NMCA-97 at ¶¶ 35–36, 138 N.M. 70, 81 ("[I]f Defendants' conduct was lawful—in the event that Plaintiff fails to establish a cause of action for either breach of an implied contract or wrongful discharge—Plaintiff's claim must also fail since he cannot show an intent to injure a legally protected interest."); *Ewing v. State Farm*

[2] As noted in Section VIII below, Appellants alternatively seek remand because the district court improperly barred the jury from deciding whether the Agreement was terminable without cause.

Mut. Auto. Ins. Co., 6 F. Supp. 2d 1281 (D.N.M. 1998) (same rule applied to independent contractors).

There is no legal principle that would justify disallowing *prima facie* tort for the termination of an at-will contract relationship but allowing it for the expressly-authorized termination of some other contract relationship. When a contract of any kind is terminated, the terminating party either breached or did not breach. BIC 34-36. If there is a breach, the "lawful conduct" element of *prima facie* tort cannot be satisfied. When there is no breach, the lawful exercise of a contractual right means there was no legally protected interest in continuing the contract, BIC 34-36, and also that conduct is justified as a matter of law. BIC 27-32, 36-37.

Without citing any authority, Beaudry urges the Court to disregard the at-will cases as involving "simple employment – the exchange of labor for wages – [that] creates no expectation of job security," whereas "[t]he interests of the plaintiff and of society in the continuation of a long-term principal-agent relationship are different, both as a matter of law and public policy, than they are in a simple exchange of labor for pay." AB 38-39. Beaudry, therefore, asks this Court to find that "society" and "public policy" have greater concern for sophisticated, well-capitalized insurance agents, whose rights are protected by a complex commercial agreement, than for an unsophisticated, single parent, who is

being paid a minimum wage under a "simple exchange of labor for pay" contract. No wonder he could find no supporting case law.

Judgment should be entered for Appellants on this basis alone.

IV. Beaudry Does Not Cite A Single Appellate Decision Affirming A *Prima Facie* Tort Judgment Based On Conduct That Was Expressly Authorized By Contract

Beaudry asserts "courts of both New Mexico and Missouri have applied the *prima facie* tort doctrine to conduct authorized by contract." AB 27. He sweepingly contends "if an otherwise lawful act is done with malicious intent to injure the plaintiff, and without sufficient justification, it follows *prima facie* that the conduct is actionable in tort." AB 25. None of the cases Beaudry cites so hold. In fact, those cases confirm that a contracting party cannot pursue *prima facie* tort unless there is (i) a breach of some non-contractual, legal duty, which (ii) causes damage separate and apart from contract damage.

Porter v. Crawford & Co., 611 S.W.2d 265 (Mo. Ct. App. 1980) (AB 27-28). In *Porter*, plaintiff was damaged in a collision with a vehicle that was insured by the defendant insurer. The insurer settled the claim, and plaintiff signed a settlement agreement and release in return for a draft. Plaintiff deposited the draft and wrote checks believing the money was in his account. Without notice to plaintiff, the insurer stopped payment on the draft, causing a number of plaintiff's checks to "bounce." 611 S.W.2d at 267.

Plaintiff's *prima facie* tort claim was not based on conduct that was expressly authorized by the insurance policy, the settlement agreement or any other contract. Rather, it was based on the insurer stopping payment without notice, conduct that was not authorized by contract and did not fall within any existing tort. *Id.* at 267-68. In addition, plaintiff did not seek to recover contract damages. He only sought to recover the damage caused by the stop payment order: the insufficient funds penalties assessed by his bank and the embarrassment he suffered from appearing to be a "dead beat." *Id.* at 267.

Schmitz v. Smentowski, 1990-NMSC-002, 109 N.M. 386 (AB 28-29). Beaudry claims that "in *Schmitz*, the conduct found to be tortious by our Supreme Court was authorized by a combination of statute and contract. *Schmitz*, ¶ 21." AB 28. Paragraph 21 of the opinion does not even contain the words "statute" or "contract." *See Schmitz*, 109 N.M. at 361. Moreover, the Bank's conduct could not have been expressly authorized by contract because there was no contractual relationship between the *prima facie* tort plaintiffs and the Bank. BIC 21-23.

Kitchell v. Pub. Serv. Co. of New Mexico, 1998-NMSC-051, 126 N.M. 525. Beaudry argues that in *Kitchell* "our Supreme Court applied the principles of *prima facie* tort to defendant PNM's conduct in terminating Kitchell's employment contract" and "although Kitchell's contract plainly authorized PNM to terminate his employment, this did not end the Court's inquiry." AB 29.

To the contrary, Kitchell's *prima facie* tort claim was "based on the alleged wrongfulness of the termination of these company health benefits," not the termination of his employment. 1998-NMSC-051, ¶ 2 (emphasis added). The Supreme Court granted summary judgment against Kitchell because there was no evidence of intent to injure. *Id.* ¶ 16. Since that element was lacking, it was unnecessary to decide whether any of the other *prima facie* tort requirements, including whether there was "justification for PNM's act" (*id.*) had been satisfied.

Portales Nat'l Bank v. Ribble, 2003-NMCA-093, 134 N.M. 238 (AB 30). In *Portales*, the Ribbles alleged the defendant Bank's president personally coveted their ranch and engaged in a pattern of misconduct "for the purposes of acquiring a default judgment." That pattern included acts not authorized by contract, such as "providing false information to thwart the Ribbles' effort to obtain financing at another bank." *Id.* ¶ 6. This Court found the Ribbles had stated a *prima facie* tort claim because they had alleged conduct that was not contractually authorized. *Id.* ¶ 9.[3]

If any of Beaudry's case citations actually held that *prima facie* tort can be based on conduct expressly authorized by contract, those decisions would have

[3] Beaudry cites *Costello v. Shelter Mutual Insurance Co.*, 697 S.W.2d 236 (Mo. Ct. App. 1985), without discussion or even a page reference. While the case involved *prima facie* tort and termination of an insurance agent, it did not involve any conduct that was claimed to be contractually authorized. And the Missouri Court of Appeals actually reversed a judgment in the agent's favor.

distinguished or disapproved the cases holding to the contrary. BIC 27-32. But none of Beaudry's citations do so, for the very good reason that none of them were expressing a contrary view that *prima facie* tort can be based on contractually-authorized conduct.

As Beaudry notes, the origins of *prima facie* tort go back to at least 1904. AB 24-25. Yet 111 years later, Beaudry cannot point to a single appellate decision allowing *prima facie* tort for a termination or other conduct expressly authorized by contract.

V. Beaudry Ignores The Cases Holding That Conduct Expressly Authorized By Contract Is Justified For The Purposes Of *Prima Facie* Tort

Beaudry asserts, once again without citing authority, that "[t]here is no doctrine which provides that just because conduct is authorized by contract (or, for that matter, by statute), a company or a person can engage in that conduct with actual intent to harm someone." AB 27.

Beaudry observes that *prima facie* tort requires a lawful act (*id.* 27 n.1), but as *Schmitz* illustrates, there is an abundance of conduct that is lawful but is not expressly authorized by contract. This is not a case about conduct that is lawful because it is not prohibited by contract; it is about conduct expressly authorized by contract. Where, as here, the parties expressly contemplate and authorize conduct in an enforceable contract, that conduct is justified as a matter of law. BIC 36-37

(citing and discussing *Carreon* and *Jackson*). Beaudry does not even acknowledge that discussion much less explain how or why this Court should distinguish or disregard those authorities.

Beaudry also ignores that the exercise of an express contractual right could not be found to be tortious, without "evading" the settled rule that a party's motives are irrelevant where the party's conduct is expressly authorized by contract. BIC 27-30. For example, Beaudry ignores *Smith v. Price's Creameries*, 1982-NMSC-102, 98 N.M. 541, where a young couple contracted to serve as a wholesale distributor. *Id.* ¶ 3. The agreement was terminable by either party "for any reason" upon 30 days' notice. *Id.* ¶ 4. According to the Smiths, they were assured the relationship would continue indefinitely as long as they performed satisfactorily. *Id.* ¶ 3. The Smiths paid the former distributor $72,000 and borrowed $26,000 for working capital. *Id.* Defendant terminated the agreement after only six months. Though not a *prima facie* tort claim, the Supreme Court affirmed summary judgment for defendant emphasizing the irrelevance of motive, or even bad faith, to the lawful exercise of a contractual right. *Id.* ¶¶ 20-24 ("The parties to a contract may agree to terminate an agreement upon any terms that are fair and just. . . . Contractual provisions relating to termination or cancellation of an agreement not arrived at by fraud, or unconscionable conduct, will be enforced by law."); *see also Mosley v. Titus*, 762 F. Supp. 2d 1298, 1334 (D.N.M. 2010) (no

prima facie tort against lawyer who had probable cause to file lawsuits, despite lawyer's allegedly bad motive).[4]

Nor can Beaudry's citation-free assertion be harmonized with the holding that *prima facie* tort was not "meant to interfere with a company's prerogative to select its employee or independent contractors." *Ewing v. State Farm Mut. Auto. Ins. Co.*, 6 F. Supp. 2d 1281, 1291 (D.N.M. 1998) (insurer refused to grant an agency to existing agent's daughter so she could succeed him). *See also Jackson v. Freightliner Corp.*, No. CIV-93-968-JB/DJS, 1996 WL 500666, at *5 (10th Cir. Sept. 5, 1996) (unpublished) (defendant "was justified in withholding consent [to plaintiff's purchase of a distributorship] . . . because it had an absolute right to choose the individuals with whom it wished to have contractual relations"); BIC 27-32.[5]

VI. Affirming The Judgment Would Be Bad Policy

Beaudry charges that Appellants misunderstand the nature of *prima facie* tort. AB 24-27. In fact, it is Beaudry who misunderstands the nature of contract. A contract is, by definition, an agreement to change some of the legal relationships or rights that would otherwise exist between the contracting parties. *See United*

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[4] Beaudry makes no claim that any of the terms of the Agreement are unenforceable as drafted. BIC 31-32.

[5] Beaudry also fails to discuss how the rationale for the retroactive application of *prima facie* tort can be reconciled with contract-based conduct. BIC 25-27.

Wholesale Liquor Co. v. Brown-Forman Distillers Corp., 1989-NMSC-030, ¶ 8, 108 N.M. 467, 471 (New Mexico's "strong public policy of freedom to contract" allowed parties to modify the law that would otherwise apply to their relationship). Absent well-established public policy considerations such as fraud or unconscionability, the contracting parties' agreement controls. BIC 31-32.

The Agreement gave Beaudry benefits he would not otherwise have possessed. In return, Beaudry voluntarily agreed to the conditions under which the Companies could terminate the Agreement if he placed eligible business with another insurer. To the extent this included the voluntary abandonment of Justice Holmes' concept of a generalized duty not to injure in the absence of such a contractual agreement (AB 24-27), New Mexico's "strong public policy of freedom to contract . . . requires enforcement of" the terms of the Agreement "unless they clearly contravene some law or rule of public morals. Great damage is done where businesses cannot count on certainty in their legal relationships and strong reasons must support a court when it interferes in a legal relationship voluntarily assumed by the parties." *Berlangieri v. Running Elk Corp.*, 2003-NMSC-024, ¶ 20 , 134 N.M. 341, 348 (citations omitted; emphasis added).

The district court interfered in the parties' legal relationship, as set forth in the Agreement, by adding a requirement that Beaudry could be terminated only if a jury found that the termination was justified. The "great damage" done by that

rewriting includes not only the judgment in this case (tort damages for a lawful contract termination, versus the Agreement's provision for only three months' commissions for termination without notice), but also the future harm that will flow from an affirmance, as summarized in the Brief in Chief (pp. 39-41) and the Association of Commerce & Industry of New Mexico's amicus brief.

VII. *Prima Facie* Tort Impermissibly Duplicated Beaudry's Other Claims Or Evaded His Failure To Prove Them

Beaudry does not dispute that his *prima facie* tort claim was based on the same facts supporting several other claims. BIC 37-39; AB 51 (admitting his complaint employed a "unified statement of facts"). Rather, he contends he has "unique facts," permitting submission of *prima facie* tort to the jury solely because "[a]ll other torts were properly ruled out" by the district court's rulings after which his case no longer "fit within the contours of other accepted torts." AB 51-52. But there is nothing "unique" about pleading numerous claims and having everything else dismissed, leaving only *prima facie* tort for resolution by the district court.

Beaudry ignores multiples cases in which this Court has affirmed dismissal of a plaintiff's other claims, and then also affirmed dismissal of a *prima facie* tort claim because it was either duplicative or evasive of the elements of those other claims:

- *Andrews v. Stallings*, 1995-NMCA-015, ¶¶ 63-67, 119 N.M. 478, *493-94 ("it would be incongruous to allow *prima facie* tort to eliminate a requirement or restrictive feature of a traditional tort, such

as defamation, which expresses an important public policy—freedom of speech").

- *Stock v. Grantham*, 1998-NMCA-081, ¶ 39, 125 N.M. 564, 576 ("[T]he claim of prima facie tort is duplicative of her other claims. But to the extent that it is not, we hold that application of that doctrine in this case would be an improper means of evading proof of essential, and appropriate, elements of those other claims.").

- *Healthsource, Inc. v. X-Ray Assocs. of New Mexico*, 2005-NMCA-097, ¶ 36, 138 N.M. 70, 81, relying on *Hill v. Cray Research*, 864 F. Supp. 1070, 1080 (D.N.M. 1991) ("[t]he only facts used to support the [*prima facie* tort] claim are those incorporated from other causes of action mentioned within the complaint").

Beaudry relies instead on *Hagebak v. Stone*, 2003-NMCA-007, 133 N.M. 75, which predated *Healthsource* by two years. *Hagebak* merely held that at the summary judgment stage, and on the facts of that case, it was premature to determine whether plaintiff's *prima facie* tort claim was or was not identical to his claim for defamation. *Id.* ¶ 29, 133 N.M. at 83. Here, Beaudry went all the way through a trial with a *prima facie* tort claim based on the same facts as his other (failed) claims. BIC 38-39. Tellingly, *Hagebak* cites, but does not overrule, *Andrews* and *Stock*. *Id.* ¶¶ 19, 27, 133 N.M. at 81-83. Nor does *Healthsource* even mention *Hagebak*.

Under this longstanding authority, Beaudry's *prima facie* tort claim runs afoul of the rules that "*prima facie* tort should not be permitted to duplicate a remedy or defect in another established cause of action," or become a "catchall alternative for every cause of action which cannot stand on its own legs," or be

used "to shadow more traditional causes of action, only to gain meaning in the event that those traditional causes of action proved defective." BIC 17-18.

But even if the facts underlying a *prima facie* tort could become "unique" when a district court dismisses all other claims based on those facts, that is not what happened here. After the summary judgment rulings, the district court allowed Beaudry to proceed with other causes of action relating to the termination review board, with the jury to determine "whether it was in the best interest of the company to terminate" the Agreement, regardless of whether Appellants could lawfully terminate it. 3/26/13 TR-14:21-16:19. Although Beaudry now devotes pages of his Brief to his grievances over the review board proceeding, he voluntarily abandoned those causes of action prior to trial – making the tactical decision to use *prima facie* tort to argue it was unfair for the Companies to terminate him. BIC 9. He perpetuates this abandoned argument on appeal. *See, e.g.,* AB 1 (arguing "termination [of the Agreement] is not in the company's interest").

In short, the district court impermissibly allowed Beaudry to use *prima facie* tort to duplicate or avoid defects in established causes of action that either could not stand on their own legs or that he voluntarily abandoned. This is another independent basis for reversal.

VIII. Alternatively, The Case Should Be Retried Because The District Court Wrongfully Barred Appellants From Proving Beaudry's Agreement Was Terminable Without Cause

New Mexico's employment at-will cases not only apply by analogy, as noted in Section III above, they apply directly because Beaudry's Agreement was also terminable without cause, an issue the district court improperly withheld from the jury. BIC 28, n. 7; 39-40, n. 10.

Beaudry claims Appellants intentionally abandoned this argument in exchange for the district court's ruling that the Agreement was lawfully terminated for cause due to Beaudry's breach. Not so. Appellants filed an early motion to limit Beaudry's contract damages because the Agreement was terminable without cause, upon three months' notice; therefore, Beaudry could only recover damages for 29 days because he was provided 51 days prior to being terminated for cause. 13 RP 3106.

Appellants subsequently asked the district court to hold the Agreement was properly terminated for cause/breach, which required only 30-days' notice.[6] Appellants acknowledged that a ruling in their favor would moot their earlier motion because there would no longer be a claim for contract damages. Appellants

[6] Beaudry has not appealed the district court's findings that (1) the Agreement was terminable for cause on 30-days' notice, and (2) he was properly terminated for cause because he was given 51-days' notice before the Agreement was terminated due to his breach.

noted, however, that "[t]he at-will nature of the Agreement . . . may still affect Plaintiff's other claims." 16 RP 3821; 19 RP 4531.

The district court later recognized "[t]he fact-finder has to decide" whether the Agreement was terminable without cause to assess whether *prima facie* tort could proceed. 3/26/13 Tr. 8:9-22. Accordingly, before trial and at the close of evidence, Appellants submitted a jury instruction on whether the Agreement was terminable without cause. 32 RP 7754; 4/30/13 Tr. 32:9-33:7. But despite its earlier ruling, the court refused to give the requested instruction or allow the jury to consider whether the Agreement was terminable without cause. *Id.*

This is reversible error because a jury determination that the Agreement was terminable without cause would have foreclosed the *prima facie* tort claim. *See, e.g., Schmitz,* 109 N.M. ¶ 63 (*prima facie* tort "cannot be used to avoid [the] employment at-will doctrine"); BIC 34-36. At a minimum, therefore, the case should be remanded so a jury can determine whether the Agreement was terminable without cause, as expressly provided therein.

IX. The Punitive Damage Award Is Unconstitutional

Beaudry concedes reprehensibility is the "most significant factor" in assessing the constitutionality of a punitive damage award. AB 54. But he devotes only two sentences to analyzing reprehensibility without even countering

Appellants' explanation of how the five *Campbell* reprehensibility factors weigh against a punitive damage award here. Compare *id.* with BIC 44-45.

X. Conclusion

Beaudry is asking this Court to do what no other appellate court has done: hold that the exercise of an express, and fully enforceable, right to terminate a contract can be a tort.

The enormity of Beaudry's request is forcefully illustrated by his serial refusal to acknowledge the opposing authority. Beaudry does not even mention 32 of the 35 cases cited in the BIC. If those decisions were really distinguishable, or should not be followed, Beaudry would have explained why in his Answer Brief. Instead, he spends large portions of his brief on an emotionally charged (and skewed) factual recitation, attempting to prevail on sympathy, while ignoring New Mexico case law on point and the practical dangers that will be created by the affirmance he seeks.

Regardless of how pejoratively Beaudry characterizes the facts, both established law and the broader underlying policy considerations require that the judgment be reversed without remand for retrial.

Respectfully submitted,

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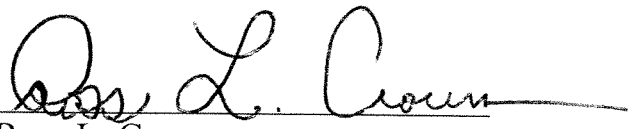
By: 

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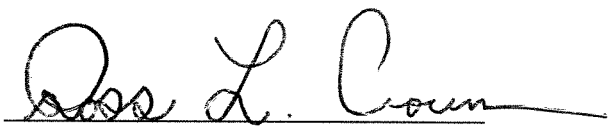

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