

BAR BULLETIN

August 21, 2019 • Volume 58, No. 17



Silver Lining by Kat Livengood (see page 3)

Dark Bird Studio, Santa Fe

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CLE Planner

*Upcoming programming
from the
Center for Legal Education*

New Mexico Legal Group

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September 2019

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Amy Bailey

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on strategic planning in her cases ensures our clients always know what is
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From the New Mexico Court of Appeals

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Meetings

August

23

Immigration Law Section Board

Noon, teleconference

27

Intellectual Property Law Section Board

Noon, JAlbright Law LLC

September

6

Health Law Section Board

9 a.m., teleconference

7

Employment and Labor Law Section Board

Noon, State Bar Center

8

Business Law Section Board

4 p.m., teleconference

9

Prosecutors Section Board

Noon, teleconference

13

Appellate Practice Section Board

Noon, teleconference

13

Bankruptcy Law Section Board

Noon, U.S. Bankruptcy Court, Albuquerque

14

Children's Law Section Board

Noon, Children's Court, Albuquerque

Workshops and Legal Clinics

August

28

Consumer Debt/Bankruptcy Workshop

6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

September

4

Divorce Options Workshop

6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

17

Legal Workshop for Seniors

Presentation: 10-11:15 a.m.; POA/AHCD
Workshop: 11:30 a.m.-1 p.m., Alamo Senior
Center, Alamogordo, 505-797-6005

25

Legal Workshop for Seniors

Presentation: 10-11:15 a.m.; POA/AHCD
Workshop: 11:30 a.m.-1 p.m., Las Vegas
Senior Center, Las Vegas, 505-797-6005

25

Consumer Debt/Bankruptcy Workshop

6-8 p.m., State Bar Center, Albuquerque,
505-797-6000

26

Legal Workshop for Seniors

Presentation: 10-11:15 a.m.; POA/AHCD
Workshop: 11:30 a.m.-1 p.m., Deming
Senior Center, Deming, 505-797-6005

About Cover Image and Artist: Photographer Kat Livengood lives and works in the high desert of Santa Fe, New Mexico. When she's not at her Canyon Road studio, she's traveling all over the west with her partner, artist Kelly Moore, looking for wild horses and capturing images of wildlife and southwestern landscapes. She's known for sensitively conveying spirit and soul in her work. For more information, visit www.katlivengood.com

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov/>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources, including Westlaw, LexisNexis and HeinOnline. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building Hours: Monday-Friday 8 a.m.-5 p.m. Reference and Circulation Hours: Monday-Friday 8 a.m.-4:45 p.m. For more information, call 505-827-4850, email libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Administrative Office of the Courts Notice of Online Dispute Resolution

The New Mexico Judiciary implemented online dispute resolution in debt and money due cases in early June in district and magistrate courts in the Sixth and Ninth judicial districts. The pilot program will expand to the Second Judicial District Court and the Bernalillo County Metropolitan Court later in June. The free service allows the parties to negotiate online to quickly resolve debt and money due cases without appearing in court. If a resolution is reached, the ODR system will prepare a stipulated settlement agreement and electronically file it in court. The plaintiff's attorney or a self-represented plaintiff will receive an email notification to begin ODR after the defendant files an answer to the complaint. Once the plaintiff makes an offer for possibly settling the dispute, an email goes to the defendant with an opportunity to respond. During the first two weeks of negotiations, the parties can request the help of a trained online mediator. If no agreement is reached after 30 days, the case will move forward in court. ODR notices will be emailed to the parties from no-reply@newmexicocourtsdmd.modria.com. The parties should check their inbox, spam and junk mailboxes to ensure they receive the ODR notices.

Professionalism Tip

With respect to my clients:

I will advise my client against pursuing matters that have no merit.

Second Judicial District Court Destruction of Exhibits:

Pursuant to 1.21.2.617 FRRDS (Records Retention and Disposition Schedules-Exhibits), the Second Judicial District Court will destroy exhibits filed with the Court, the Domestic (DM/DV) for the years of 1984 to 2008 including Criminal single case(s) CR-1983-36306, CR-1986-41147, CR-1991-02346, CR-1994-00531, CR-1994-00553, CR-2000-04292, CR-2001-01101, but not limited to cases which have been consolidated. Cases on appeal are excluded. Parties are advised that exhibits may be retrieved beginning through Oct. 2. Should you have cases with exhibits, please verify exhibit information with the Special Services Division, at 841-6717, from 8 a.m. 4 p.m., Monday through Friday. Plaintiff's exhibits will be released to counsel for the plaintiff(s) or plaintiffs themselves and defendant's exhibits will be released to counsel of record for defendants(s) or defendants themselves by Order of the Court. All exhibits will be released IN THEIR ENTIRETY. Exhibits not claimed by the allotted time will be considered abandoned and will be destroyed by Order of the Court.

Eleventh Judicial District Court

Suspension of Subsection (C) of Local Rule LR11-302

LR11-302 (C) states: "As a sanction for all other technical violations, the probationer shall be incarcerated for five (5) days." The Judges of the Eleventh Judicial District Court have decided that effective immediately, subsection (C) of LR11-302 is suspended indefinitely. The remainder of LR11-302 remains in effect.

Bernalillo County Metropolitan Court Volunteers are Needed for Legal Clinics

The Legal Services and Programs Committee of the State Bar and the Bernalillo County Metropolitan Court hold a free legal clinic the second Friday of every month from 10 a.m. until 1 p.m. Attorneys

answer legal questions and provide free consultations at the Bernalillo County Metropolitan Court, 9th Floor, 401 Lomas Blvd NW, in the following areas of law: landlord/tenant, consumer rights, employee wage disputes, debts/bankruptcy, trial discovery preparation. Clients will be seen on a first come, first served basis and attendance is limited to the first 25 persons.

U.S. District Court for the District of New Mexico U.S. Magistrate Judge Vacancy

The President of the U.S. has nominated current U.S. Magistrate Judge Kevin R. Sweazea to fill a vacancy on the U.S. District Court in Las Cruces. Upon the anticipated confirmation of Judge Sweazea's nomination to be a district judge, the District of New Mexico will have a full-time magistrate judge vacancy in Las Cruces. In order to begin the process of filling the anticipated magistrate judge vacancy, the U.S. District Court for the District of New Mexico announces this notice of availability for a full-time U.S. Magistrate Judge for the District of New Mexico at Las Cruces, New Mexico. This authorization is contingent upon the appointment of incumbent U.S. Magistrate Judge Kevin Sweazea as a District Judge for the District of New Mexico and is contingent upon approval to fill this anticipated magistrate judge vacancy by the Judicial Conference of the U.S. The current annual salary for this position is \$194,028. The term of office is eight years. The U.S. Magistrate Judge Application form and the full public notice with application instructions are available from the Court's website at www.nmd.uscourts.gov/employment or by calling 575-528-1439. Applications must be submitted no later than Aug. 9.

STATE BAR NEWS New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

- Sep. 2, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (the Group meets the first Monday of the month.)

- Sep. 9, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.
- Sep. 16, 5:30 p.m.
UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets the third Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.

For more information, contact Latisha Frederick at 505-948-5023 or 505-453-9030 or Bill Stratvert at 505-242-6845.

Employee Assistance Program: Managing Stress Tool for Members

The Solutions Group, the State Bar's free Employee Assistance Program, announces a new platform for managing stress. My Stress Tools is an online suite of stress management and resilience-building resources which includes: training videos, relaxation music, meditation, stress tests, a journaling feature and much more. My Stress Tools helps you understand the root causes of your stress and gives you the help you need to dramatically reduce your stress and build your resilience. Your Employee Assistance Program is available to help you, 24/7. Call at 866-254-3555.

Prosecutors Section Annual Prosecutor Section Awards

The State Bar Prosecutors Section is seeking nominations for a rookie prosecutor of the year from each of the following jurisdiction groupings: 1) Third and Sixth; 2) Seventh and Thirteenth; 3) Eleventh and Fourth; 4) First and Eighth; 5) Second and Attorney General; 6) Tenth and Fifth; 7) Twelfth and Ninth. For the purposes of these awards, the prosecutor must have been practicing law for less than three years and exhibit the following criteria: impact of the prosecution on the community; coordination with law enforcement, including training, in the prosecution of the case(s); best litigated case(s) (refers to the quality of the presentation); new approach or legal theory used in the prosecution; case management (refers to process used to manage a large quantity of cases); or any other exhibition of excellence in that category of cases. In addition, the Prosecutors Section will recognize the 2019 Prosecutor of the Year. For this

award, we are accepting nominations from the entire state of New Mexico. Nominations should be for individuals with over three years of experience as a prosecutor and should exhibit the same criteria listed above. Send a letter with the name and contact information of the nominee, the case category and the reasons why you believe the individual should receive the award to: Devin Chapman at devin.chapman@state.nm.us. Nominations may be made by anyone and additional letters of support are welcome. The deadline for nominations is Aug. 30. The awards will be presented at the AODA Fall Conference.

UNM SCHOOL OF LAW Spanish for Lawyers I

The UNM School of Law presents "Spanish for Lawyers I" (20.0 G CLE credits) this fall. This course will teach the basic legal terminology that is used in our judicial system in a variety of practice settings, including criminal law, domestic relations, and minor civil disputes. Practical aspects of language usage will be emphasized, and active participation is required. Lawyers must be conversant in Spanish, as the course is taught entirely in Spanish. All students will be tested prior to the start of class. Classes will be 4:30-6:30 p.m. on Thursdays, from Aug. 22–Nov. 21. To register or for more information, visit <http://lawschool.unm.edu/spanishforlawyers/>.

Law Library Hours Summer 2019

Through Dec. 31

Building and Circulation

Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	Closed.

Reference

Monday–Friday	9 a.m.–6 p.m.
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Holiday Closures

Labor Day: Sept. 2
Thanksgiving: Nov. 28-29
Winter Break: Dec. 23-Jan. 1, 2020

OTHER BARS Colorado Bar Association 11th Annual Rocky Mountain Regional Elder Law Retreat

The Colorado Bar Association, Elder Law Section of the CBA and the Colorado Chapter of National Academy of Elder Law Attorneys present the 11th Annual Rocky

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Mountain Regional Elder Law Retreat (13.0 G) from Aug. 22–24 in at the Vail Marriott Resort in Vail, Colo. Visit <https://cle.cobar.org/> to register.

National Conference of Bar Examiners Nationwide Practice Analysis Survey by the Testing Task Force

Attorneys across the country have the opportunity to participate in the NCBE Testing Task Force 2019 practice analysis survey, which will gather current data on the knowledge, skills, abilities, other characteristics and technology newly licensed lawyers use to accomplish the job tasks they perform. This survey is part of the Task Force's three-year study to consider the content, format, timing and delivery methods for the bar exam to ensure it keeps pace with a changing legal profession. The results of the practice analysis, which will be published at the beginning of next year, will be used by NCBE to develop the next generation of the bar exam and will benefit the profession as a whole. To participate in the survey on behalf of

continued on page 11

Legal Education

August

- | | | |
|--|---|---|
| <p>21 IT Sourcing Agreements: Reviewing and Drafting Cloud Agreements
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>23 Alternatives to Trial: Getting Good Results for Your Client Through the Plea Negotiation Process and Pretrial Litigation
6.5 G
Live Seminar, Las Cruces
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org</p> | <p>28 Making your Case with a Better Memory (2019)
6.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>22 Spanish for Lawyers I
20.0 G
Live Seminar, Albuquerque
UNM School of Law
lawschool.unm.edu/spanishforlawyers/</p> | <p>23 Taking Effective Depositions
5.0 G
Live Seminar, Santa Fe
The Next Chapter in Bankruptcy and Insolvency
www.americancollegeofbankruptcy.com</p> | <p>28 Advanced Mediation Skills Workshop (2018)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>22-24 11th Annual Rocky Mountain Regional Elder Law Retreat
12.0 G
Live Seminar, Vail, C.O.
Colorado Bar Association
https://cle.cobar.org/Seminars/Event-Info/sessionaltcd/EL082219L</p> | <p>24 Taking Effective Depositions
7.0 G, 1.0 EP
Live Seminar, Albuquerque
James Woof Law
www.albuquerqueinjurylawfirm.com</p> | <p>28 Health Law Legislative Update (2019)
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>22-23 12th Annual Legal Service Providers Conference: Legal Service Providers in Action (Two Day Conference)
10.0 G, 2.0 EP
Live Seminar
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>27 Trust and Estate Planning for Cabins, Boats and Other Family Recreational Assets
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>28 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| | <p>28 Easements in Real Estate
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>30 Ethics of Pro-Bono
1.0 EP
Live Seminar, Hobbs
New Mexico Legal Aid
www.newmexicolegalaid.org</p> |

September

- | | | |
|--|---|--|
| <p>4 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Live Seminar, Las Cruces
Third Judicial District Court
www.nmbar.org</p> | <p>6 How to Practice Series: Parentage and Issues in Domestic Violence
5.5 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Ethics, Disqualification and Sanctions in Litigation
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org</p> |
|--|---|--|

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@nmbar.org. Include course title, credits, location/course type, course provider and registration instructions.

7	Everything Old is New Again: The Latest Issues in the World of Ethics 1.0 EP Live Seminar, Santa Fe American College Of Trial Lawyers NM Chapter	17	Trust and Estate Planning for Collectibles, Art and Other Unusual Assets 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	20	Retail Leases: Restructurings, Subleases and Insolvency 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org
7	From Glorieta to DC: A New Mexico Police Shooting Goes to the Supreme Court(White v. Pauly) 1.0 G Live Seminar, Albuquerque American College Of Trial Lawyers NM Chapter	17	Yellow Brick Road 1.0 EP Live Seminar, Albuquerque Albuquerque Community Foundation www.albuquerquefoundation.org	20	2019 Tax Symposium 6.0 G, 1.0 EP Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org
9	Your Title Tool Kit 5.0 G, 1.0 EP Live Seminar, Albuquerque NBI Inc. www.nbi-sems.com	19	Litigation and Argument Writing in the Smartphone Age (2017) 5.0 G, 1.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	24	The Ethics of Representing Two Parties in a Transaction 1.0 EP Teleseminar Center for Legal Education of NMSBF www.nmbar.org
9	The Link Between Animal Abuse and Human Violence 11.2 G Live Seminar Positive Links www.thelinknm.com	19	Pretrial Practice in Federal Court (2018) 2.5 G, 0.5 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	25	Civil Trial—Everything You Need to Know 11.0 G Live Seminar, Albuquerque NBI, Inc. www.nbi-sems.com
13	30th Annual Appellate Practice Institute 6.7 G Live Webcast/Live Seminar, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	19	What Drug Dealers and Celebrities Teach Lawyers About Professional Responsibility (2018) 3.0 EP Live Replay, Albuquerque Center for Legal Education of NMSBF www.nmbar.org	26	Volunteer Attorney Program Orientation 2.0 EP Live Seminar, Albuquerque Volunteer Attorney Program www.lawaccess.org
13	Annual Bench and Bar Conference 5.0 G, 2.0 EP Live Seminar 12Th Judicial District Bar Association	19	Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204 1.0 EP Live Webinar Center for Legal Education of NMSBF www.nmbar.org	26	Orientation and Ethics of Pro Bono 2.0 EP Live Seminar Volunteer Attorney Program 505-814-5033
				27	2019 Advanced Collaborative Law Symposium: Mapping the Road to Effective Collaboration 6.5 G Live Seminar Center for Legal Education of NMSBF www.nmbar.org

October

4	Complex, White Collar and Federal Death Penalty Cases 6.0 G Live Seminar New Mexico Criminal Defense Lawyers www.nmcdla.org	8	“Founding Documents”: Drafting Articles of Incorporation & Bylaws, Part 1 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org	9	“Founding Documents”: Drafting Articles of Incorporation & Bylaws, Part 2 1.0 G Teleseminar Center for Legal Education of NMSBF www.nmbar.org
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Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

IN MEMORIAM

As of April 8, 2019:

Barbara Albin

1221 San Marcos Drive
Bernalillo, NM 87004

As of July 3, 2019:

Charlotte Mary Toulouse

122 Girard Blvd., SE
Albuquerque, NM 87106

CLERK'S CERTIFICATE OF LIMITED ADMISSION

On July 25, 2019:

Heather Alison Burns

Office of the Eleventh Judicial
District Attorney
335 S. Miller Avenue
Farmington, NM 87401
505-599-9810
hburns@da.state.nm.us

On July 29, 2019:

Teague Gonzalez

New Mexico Center on Law
and Poverty
924 Park Avenue, SW,
Suite C
Albuquerque, NM 87102
505-255-2840
teague@nmpovertylaw.org

On August 12, 2019:

Aaron Cole Leonard

Law Offices of the Public De-
fender
419 W. Cain Street
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aaron.leonard@lopdm.us

On August 12, 2019:

Yvonne Zylan

New Mexico Court of Appeals
2211 Tucker Avenue, NE
Albuquerque, NM 87106
505-841-4618
505-841-4614 (fax)
coayxz@nmcourts.gov

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective July 12, 2019:

Nancy A. Dominski

PO Box 10007
Saipan, N. Mariana Islands,
MP 96950
670-234-6215
670-234-1009 (fax)
nancy.dominski@gmail.com

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS AND CHANGE OF ADDRESS

Effective July 18, 2019:

Ralph D. Dowden

1116 Axtell Street
Clovis, NM 88101
575-763-3632
texlawman9@gmail.com

CLERK'S CERTIFICATE OF REINSTATEMENT TO ACTIVE STATUS

Effective July 15, 2019:

Steven A. Harrell

7400 San Pedro Drive, NE,
Suite 1021
Albuquerque, NM 87109
505-363-6239
crmarler77@gmail.com

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS AND CHANGE OF ADDRESS

Effective July 25, 2019:

Gary Don Reagan

PO Box 2157
Hobbs, NM 88241

CLERK'S CERTIFICATE OF CHANGE TO INACTIVE STATUS

Effective July 15, 2019:

Walter Frank Wolf Jr.

PO Box 2830
108 1/2 E. Aztec Avenue
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505-722-3861
505-863-5996 (fax)
wfwolfjr@aol.com

CLERK'S CERTIFICATE OF INDEFINITE SUSPENSION FROM MEMBERSHIP IN THE STATE BAR OF NEW MEXICO

Effective August 8, 2019:

Rafael Padilla

Padilla Law Firm
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CLERK'S CERTIFICATE OF ADMISSION

On August 1, 2019:

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New Mexico and learn more about the study, visit <https://www.testingtaskforce.org/2019PASurvey>.

New Mexico Criminal Defense Lawyers Association Alternatives to Trial: Getting Good Results for Your Client Through the Plea Negotiation Process and Pretrial Litigation

The New Mexico Criminal Defense Lawyers Association presents "Alternatives to Trial: Getting Good Results for Your Client Through the Plea Negotiation Process and Pretrial Litigation" (6.5 G) on Aug. 23 in Las Cruces. What can you do from the very beginnings of a case to prevent it from going to trial? Come learn from the experts all their best tools for plea negotiations, obtaining hard-to-get witnesses, wearing down the prosecution, staying ahead of bias, litigating search warrants, and more. This CLE will feature two breakout sessions to give you a chance to practice these

skills so you feel confident in your grasp of the material. PLUS, join us for a special lunch discussion on how to prepare your client and yourself for the mental battles that lie ahead in trial. Members and their friends and family are invited to join us after the CLE for our annual membership party! Visit www.nmcdla.org to register today.

New Mexico Defense Lawyers Association Insurance Bad Faith Seminar

Join the New Mexico Defense Lawyers Association for "Insurance Bad Faith Seminar" on Aug. 23. This full-day seminar will cover the latest trends and developments in bad faith litigation including post-litigation continuing bad faith, defense within limits (burning limits policies), bad faith from the policyholder's perspective, responding to time-limited policy limit demands, and effective trial strategies for defending insurers. This program is designed to benefit practitioners who represent insurers in bad faith litigation

as well as insurance claims professionals, in-house counsel, and outside defense counsel who defend policyholders. A solid understanding of extra-contractual liability is essential for all who work in the insurance defense arena.

OTHER NEWS New Mexico Legal Aid Second Annual Fiesta for Justice

Each year New Mexico Legal Aid helps thousands of low-income families navigate the civil legal system. Because of NMLA's hard work, these families can access and keep safe housing, crucial food and income, and personal safety. NMLA needs your help to continue this important work. On Sept. 21, NMLA will hold its Second Annual Fiesta for Justice at Tiguex Park in Albuquerque. The Fiesta for Justice will feature music, games, food and prizes. We ask you to consider sponsoring and attending this wonderful event. For more information and to R.S.V.P., visit www.newmexicolegalaid.org or call 505-243-7871.

Save the Date!

The NEW MEXICO
STATE BAR FOUNDATION
invites you to participate in the
**Third Annual
Golf Classic Tournament**

Oct. 14, 2019

Tanoan Country Club, Albuquerque
Shotgun start at 10 a.m.

All proceeds benefit the State Bar Foundation.



Contests for men and women
Networking opportunities
Breakfast provided
Awards reception to follow tournament



NEW MEXICO
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Register today!
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Ask about sponsorship opportunities: Stephanie Wagner, swagner@nmbar.org • 505-797-6007

BRITTANY DUCHAUSSEE AWARDED

2018 JUSTICE PAMELA B. MINZER

Outstanding Advocacy for Women Award

By Sheryl L. Saavedra, Esq., Committee Member for Women in the Legal Profession



The Committee on Women in the Legal Profession proudly announces Albuquerque attorney, **Brittany Sutaya Nanjin DuChaussee** as the 2018 recipient of the Pamela B. Minzer Outstanding Advocacy for Women Award.

Each year, the Committee presents the Justice Pamela B. Minzer Outstanding Advocacy for Women Award to a New Mexico attorney, male or female, who has distinguished himself or herself by providing legal assistance to women who are underrepresented or underserved, or by advocating for causes that will ultimately benefit and/or further the rights of women.

DuChaussee graduated from Duke University in 2010 with a Bachelor of Arts degree in Political Science. She then joined the Peace Corp and left for Zambia where she coordinated and taught HIV/AIDS education and prevention classes. She graduated from the University of New Mexico School of Law in 2014, cum laude. In law school, she was a staff member for the Tribal Law Journal and the Student Representative for the Law & Indigenous Peoples Program Committee.

After serving as a judicial extern for Second Judicial District Court Chief Judge Stan Whitaker and U.S. District Court Judge James O. Browning, DuChaussee began her legal career at the Second Judicial District Attorney's Office, where she prosecuted cases in the Crimes Against Children Division, now known as the Special Victims Unit.

Her work there led her to the Special Prosecutions Division of the State of New Mexico Office of the Attorney General's Office, where she was recruited to assist in the prosecution of former New Mexico school teacher Gary Gregor, who was convicted in December 2018 of multiple sexual offenses against two of his former 4th grade students, culminating in a 108-year sentence. DuChaussee plans to prosecute three additional survivor's cases against Gregor. While, she may not be able to do much more for those victims than to add to an already insurmountable prison sentence, pursuing his conviction on the remaining cases will insure those women their equal day in court and assist them in their healing process.

DuChaussee has spent her career concentrating on violent crimes against women and children. As a member of the Cheyenne River Sioux Tribe, she is interested in combining her heritage and her professional interests by prosecuting violent crimes against women and children in Indian Country, whom she considers to be a vulnerable population. She is also expanding her prosecution into internet crimes and human trafficking.

When asked what she thought was important for the legal community to know about her and the work that she does, she responded that women and children have a right to be believed, before they are doubted. That we, as a legal community, should come from a place where we give victims as much respect and deference as we give perpetrators. It shouldn't have to take 15 to 20 women or children alleging the same offense for us, as a society, to finally believe what they say. If we start there, by treating women and girls with an equal amount of dignity and respect, we can develop a legal system that is both equitable and just.

DuChaussee enjoys spending her free time with her two dogs and on physical fitness and nutrition, together with her husband, Alfred. ■

*Join us
to celebrate
Ms. DuChaussee!*
5:30-7:30 p.m. • Thursday, Aug. 22
Albuquerque Country Club,
601 Laguna Blvd. SW,
Albuquerque, NM 87104



Stuart Butzier has been elected vice president of the Rocky Mountain Mineral Law Foundation. He is a long-time RMMLF member and former trustee and secretary. Butzier currently serves as Modrall Sperling's vice president, managing director of its Santa Fe office, head of the Natural Resources Department and chair of the Mining Practice Group. He was named Natural Resources Lawyer of the Year by the Natural Resources, Energy, and Environmental Law Section of the State Bar in 2018.



Holland & Hart announced the addition of partner **Tim Crisp** to its Commercial Finance practice. Crisp brings sophisticated commercial finance expertise to advise a broad spectrum of traditional and non-traditional lenders and borrowers. Crisp counsels banks and non-traditional lenders such as commercial finance companies, equipment factors, and accounts receivable factors to structure transactions in ways that identify and manage risk. He is admitted to practice in New Mexico, Illinois, Wisconsin, and Oregon.



Tomas Garcia, an associate with Modrall Sperling, is a recipient of the ABA On the Rise – Top 40 Young Lawyers Award, which recognizes attorneys nationwide who exhibit achievement, innovation, vision, leadership and legal and community service. He recently helped establish a charter elementary school in Albuquerque's South Valley. Tomas was named "Young Lawyer of the Year" by New Mexico Defense Lawyers' Association in 2015 and has an AV* peer-

review rating from Martindale-Hubbell. He is a graduate of Yale University, Harvard University, and Georgetown University Law Center.

Sandra Benischek Harrison has been named vice president of Legal and Regulatory Affairs of the Oklahoma Hospital Association. Since 2013 when Harrison joined the OHA staff she has served in various capacities in government relations roles and overseen litigation for the association. Sandra Benischek Harrison presented to White House Staff regarding Medicare Telemedicine Site Restrictions at the White House in Washington, D.C. on June 14 on behalf of the Center for Telehealth and Elaw, based in D.C.

Ray, McChristian & Jeans, P.C law firm congratulates **Daniel Hernandez** on his recent election as president of the El Paso Bar Association for the 2019-2020 year which serves attorneys in the general metro area including dual licensed attorneys from New Mexico with programming, education, and opportunities to assist and expand their practice including providing free legal clinics for the general public and Veteran's communities, and young lawyers with seminars and mentorship to help them grow into our profession. Hernandez is a lawyer in the firm's El Paso office and handles Texas and New Mexico cases involving personal injury litigation, and general civil and commercial litigation matters.



Michelle Hernandez, a shareholder with Modrall Sperling, serves on the host committee for the 40th annual U.S. Hispanic Chamber of Commerce National Convention, taking place in Albuquerque Sept. 29-Oct. 1. Hernandez is immediate past chair of the Albuquerque Hispano Chamber of Commerce, serving on its board of directors since 2013. She was the regional president for the Hispanic National Bar Association from 2015 through 2019, and was instru-

mental in bringing that group's Corporate Counsel Conference to Albuquerque in March.



Modrall Sperling is pleased to announce that **Bayard Roberts IV** has joined the firm's Albuquerque office as an associate in the Litigation Department. A *magna cum laude* graduate of the University of New Mexico School of Law, Bayard assists on matters involving insurance, torts, commercial liability, professional liability, and natural resource law. Bayard was nominated for appointment to the United States Naval Academy by both Senator Jeff Bingaman and

Congresswoman Heather Wilson. He graduated with a B.S. in Economics in 2010 and was commissioned as a Second Lieutenant in the United States Marines Corps. Prior to joining Modrall Sperling, Bayard served as a judicial law clerk for Justice Gary L. Clingman at the New Mexico Supreme Court.



Moses Winston, an associate with Modrall Sperling, has been named to The ALS Association New Mexico Chapter's Board of Directors. A member of the firm's litigation group, Moses practices in healthcare, tort, and employment law. Moses received his B.A. in Government from New Mexico State University and his J.D. from the University of New Mexico School of Law, where he received Clinical Honors.

Judith Ann Bova, who practiced criminal defense law in predominantly the First and Eighth Judicial Districts for more than 20 years, died suddenly on May 7. She is survived by her son, Dylan Patrick Storment of Albuquerque and her brothers Peter Bova and Stephen Bova of Massachusetts. Bova was born in Boston, Mass., on May 1, 1949. She spent her early years in Boston, Cape Cod and New Jersey with her parents, Charles Bova and Suzanne Peretti and her brothers. She left home and moved to New York City in her late teens, where she worked in various theaters both on and off Broadway. She loved the stage, a love which carried over into her adult years. Judith moved to Santa Fe in 1974, making the cross-country trek from New York in a rickety converted school bus filled with her furniture. She lived in the school bus after arriving in Santa Fe, without running water or electricity on a rural plot of land south of the city, with her two dogs Rastus and Japhet. Despite, or perhaps because of, this rebellious streak of her nature, Bova became interested in the law, and took impromptu law classes taught by several lawyers in the evening at Morton Simon's law office in downtown Santa Fe. It was during one of these classes that she met her future husband, Reginald Storment. They became a couple almost immediately and married in 1976. Bova wanted to pursue a law degree, and began completing her undergraduate work at UNM in 1976. She graduated with a bachelor's degree in political science in 1979, and began law school at UNM in the fall of that same year. She graduated from UNM in 1982 (as evidence of her penchant for always being front and center stage, look at the 1982 class photo in the law library). Upon passing the bar exam, Bova immediately began work as a criminal defense lawyer, which was the only work she ever wanted to do. She liked every aspect of criminal defense; she was a zealous representative of the rights of those accused of crimes. Bova loved doing trials, which gave her an opportunity to display her long-simmering acting skills. The long years spent

apart during her time in undergraduate and law school had taken their toll on her marriage, and Judith and Reginald divorced in 1988. She continued to live in Santa Fe, raise Dylan, and practice law for some years after the divorce. Judith later married Bill Stinebaugh, retired from practicing law and moved to Mosquero, N.M., where Bill had a ranch. There she finally had time to engage in more of her great loves, gardening and reading and camping and religiously following the Boston Red Sox. She and Bill both bought bikes, which they rode around the country, even riding to the Sturgess Rally several times. Judith and Bill split up after many years together, and divorced in 2011. After the divorce, Judith moved to Albuquerque, to be near Dylan. In her later years, she was no longer able to garden or camp or ride, but pursued her love of reading with even greater vigor. She read and reread many of the classics, and was always ready to discuss the book she was presently reading. She subscribed to *The New York Times*, and read every page each week. Just days before her sudden and unanticipated death, Bova forcefully exhorted a number of those close to her to "live every moment, of every day, to the fullest." That was her credo, that was how she lived her life, and that is how she would want to be remembered. A memorial gathering for family and close friends was held at Los Poblanos Historic Inn and Farm on June 23, 2019. The group told stories, looked at photos of Judith's life, drank good wine and ate good food, all of which would have pleased her. She will be missed.

Judge Sarah Michael Singleton, born April 2, 1949, in Ann Arbor, Mich, died of cancer at her home in Santa Fe on July 4. She had a long and illustrious career as a lawyer and a judge, and she will be greatly missed by all who knew her. In lieu of flowers, please donate to the New Mexico Bar Foundation for the Supreme Court Access to Justice Fund or to any provider of civil legal services to the poor.

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective Aug. 2, 2019

PUBLISHED OPINIONS

A-1-CA-35994	State v. T Chavez	Affirm	07/29/2019
A-1-CA-35971	J Goodman v. OS Restaurant	Affirm	07/31/2019
A-1-CA-36038	N Gaume v. NM Interstate	Reverse	07/31/2019

UNPUBLISHED OPINIONS

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A-1-CA-37757	State v. D Rodriguez	Affirm	07/29/2019
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A-1-CA-36079	D Toland v. Wells Fargo Bank	Affirm	07/30/2019
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A-1-CA-34885	State v. R Bruvold	Affirm/Reverse/Remand	07/31/2019
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PUBLISHED OPINIONS

A-1-CA-37230	State v. Quintin C	Reverse/Remand	08/08/2019
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UNPUBLISHED OPINIONS

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A-1-CA-35725	State v. M Scott	Affirm/Vacate/Remand	08/07/2019
A-1-CA-36591	In the Matter of Howard S.	Affirm	08/07/2019
A-1-CA-37789	State v. A Sanchez	Affirm	08/08/2019

Slip Opinions for Published Opinions may be read on the Court's website:

<http://coa.nmcourts.gov/documents/index.htm>

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-022

No. A-1-CA-36048 (filed November 28, 2018)

AMANDA MOTES,
Worker-Appellee,

v.

CURRY COUNTY ADULT DETENTION
CENTER and NMCIA,
Employer/Insurer-Appellants.

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION

Terry S. Kramer, Workers' Compensation Judge

Certiorari Denied, May 1, 2019, No. S-1-SC-37445.

Released for Publication July 2, 2019

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Opinion

Jennifer L. Attrep, Judge

{1} Curry County Adult Detention Center (Employer or the detention center) and New Mexico County Insurance Authority (Insurer) appeal a Workers' Compensation Judge's (the WCJ) order awarding compensation to Worker Amanda Motes for injuries she sustained while engaged in horseplay on Employer's premises. Employer and Insurer contend Worker is not entitled to compensation because, given the nature of the horseplay, she cannot establish her injuries arose out of and in the course of her employment as required for compensability by NMSA 1978, Section 52-1-28(A)(1) (1987) of the Workers' Compensation Act (the Act), NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2017). We hold that substantial evidence supports the WCJ's findings and the WCJ did not err in concluding Worker's injuries are compensable under the Act. We affirm the compensation order.

BACKGROUND

{2} Worker had been working at the detention center as a booking specialist for approximately five weeks when she sustained the injuries at issue in this ap-

peal. As a booking specialist, Worker was responsible for the "overall operation" of the booking room and file room at the detention center. Her duties generally involved classifying and booking new inmates, receiving and recording incoming paperwork, medication, and visitors, and performing related filing obligations, along with various other unspecified responsibilities. In her first week on the job, she worked the day shift and trained with direct supervisors in the booking department. After that initial training period, Worker made the switch to the night shift.

{3} None of her direct supervisors in the booking department and no senior officials in her direct chain of command worked nights. Instead, typically the most senior employees on duty at night were sergeants who worked in the detention chain of command, as opposed to the booking chain of command, and oversaw the operations of more junior detention officers at the detention center. These sergeants also served as "supervisory employee[s]" for the facility more generally and served as the first point of contact for more junior employees from all departments, including the booking department, when questions or concerns arose. The sergeants worked from different duty stations interspersed

among the departments; the specific station assignment varied night to night.

{4} Sergeant Jayson Cloud worked as a supervisory sergeant on the night shift along with other sergeants, and he worked the night Worker sustained her injuries. Cloud had worked at the detention center for approximately three years at the time of Worker's injuries. He had accrued a short history of discipline in his time there—he had been counseled twice for use of obscene or abusive language toward inmates and staff, suspended for conduct unbecoming a county employee, counseled for overriding facility doors while inmates were present, and reprimanded for failing to report for shifts.

{5} The detention center's workload at night ebbed and flowed, and the sergeants and employees in booking and in detention often had downtime. Curry County (the County) had promulgated and distributed a safety manual to all county employees, including those employed at the detention center. The manual prohibited horseplay by employees and advised that horseplay "may subject" employees to disciplinary action at the discretion of department heads. Worker and Cloud both signed forms acknowledging they had read and understood the manual's terms. County Manager Lance Pyle, who gave deposition testimony for the WCJ's consideration, could not recall whether Worker or Cloud had been given any specific safety training above and beyond the instructions provided in the County's safety manual, and he could not produce any documentation recording their attendance at any safety training sessions the County did provide from time to time.

{6} Worker and Cloud had established a history of interacting in an apparently lighthearted way when downtime arose at the detention center. Worker testified that Cloud had "made it his life goal to terrorize [her] at any given moment." She added that they had on previous occasions attempted to mark each other with markers and spray each other with bug spray and that Cloud "would do stuff like that all the time." Cloud confirmed they had in the past attempted to mark each other with markers, describing the frequency as "from time to time."

{7} Worker observed that theirs was not unique behavior at the detention center, recalling, "I [knew] a lot of people there that [did] engage in horseplay, they [did]

have that sort of camaraderie between each other . . . A lot of the officers [did], the booking officers, and the actual guards themselves.” Other sergeants, she added, engaged in similar ways during downtime and, she reported, “it was one of those things where it had become a custom . . . I didn’t think anything of it . . . because it was something that I saw often.” Worker also testified, in response to a question about whether she had raised the subject of horseplay with her direct supervisors, that she had let a supervisor know Cloud often “irritated” her. The supervisor, however, brushed her off, observing that “that was how [Cloud] was.” By contrast, Pyle testified that he was unaware the detention center had this culture of activity during periods of downtime at all, and he emphasized that if the culture existed, “it should have been reported” so that the County could take “immediate action.” But neither Pyle nor Cloud could recall any reports or complaints to supervisors regarding the activity, and Pyle reiterated that if reports had in fact been made, the County would have investigated and taken action as appropriate.

{8} On the night she sustained her injuries, Worker recalled that work was slow and she was sitting, waiting in the booking area. A few hours after her shift began, she and Cloud engaged and attempted to mark each other with markers, as they had in the past. Cloud withdrew, stepped into a nearby bathroom, and returned with a can of bug spray. He feigned spraying Worker with the bug spray, and then retreated out of the booking area. Worker gave chase, running, but she tripped on a short staircase exiting the booking area. Her fall resulted in a broken right ankle and fibula. The entire interaction from the initial engagement to the fall, Worker testified, occurred in a span of a few minutes or less, as one continuous exchange. Worker and Cloud both testified this was the first time their downtime interaction had involved running.

{9} Worker eventually sought and received medical attention for her injuries and reported the accident to Employer. After some consultation with Cloud, Worker gave a fabricated account of the events giving rise to the injuries in her initial report, fearing she might lose her job and receive no compensation for the injury were the actual story to come out. Cloud signed off on the report. The County made its standard investigation of the report and reviewed surveillance video at the

detention center from the night Worker sustained her injuries. After observing the incident on video as it actually transpired, the County realized Worker had falsified the initial report.

{10} This was not the first time surveillance video had revealed Worker committing an infraction at the detention center, as she had previously been seen on video using her phone in an area where phone use was prohibited and was counseled for that infraction. Although Worker testified that the surveillance cameras were monitored around the clock from a station near the booking area, the record does not reveal when or under what conditions any surveillance might have been reported up a chain of command. Based on her prior discipline, Cloud’s disciplinary history, the circumstances surrounding the accident observed in the surveillance video, and the falsification of the accident report, Employer eventually fired both Worker and Cloud.

{11} Worker sought workers’ compensation for her injuries, believing they constituted compensable accidental work injuries. Employer took the position that Worker’s injuries had arisen not from and in the course of her employment as required by statute, but instead from non-compensable horseplay. At trial, the WCJ heard testimony from Worker and argument from the parties regarding the dispute. The parties also submitted depositions from Cloud and Pyle, along with various other exhibits and proposed findings of fact and conclusions of law, for the WCJ’s consideration in making the compensation determination.

{12} In the compensation order, the WCJ made various findings in evaluating the coverage question. The WCJ found, among other things, that the injury took place during normal work hours and on Employer’s premises, that “Cloud had engaged in horseplay with Worker on previous occasions[,]” and that “Employer had not counseled either [Sergeant] Cloud or Worker concerning horseplay any time prior to the . . . incident.” The WCJ added that “Employer did nothing to curtail the repeated horseplay at any time prior to the . . . incident.” The WCJ further found that Cloud was the supervisor in charge at the time of Worker’s injury and that “Employer had surveillance cameras throughout the detention center.” The WCJ also declined to adopt Employer’s proposed findings that “[h]orseplay is further not tolerated at [the] County and particularly in the

secured areas such as the booking area of the . . . [d]etention [c]enter,” and that “[the] County, including the . . . [d]etention [c]enter, does not have a ‘culture’ of horseplay.” Those proposals stood in contrast to Worker’s proposed finding that “horseplay [was] commonplace at the [d]etention [c]enter”—a finding implicitly, if not explicitly, adopted by the WCJ. Based on his findings, the WCJ concluded Worker’s injury was compensable under the Act and entered a compensation order in her favor. Employer and Insurer timely filed this appeal.

DISCUSSION

{13} Employer and Insurer raise several factual and legal arguments in response to the WCJ’s compensation order. They contend the record cannot support the WCJ’s finding that Cloud was a supervisor at the detention center such that any knowledge he had, and any toleration he exhibited, regarding a custom of horseplay at the facility might be imputed to Employer. They also dispute the finding that Employer had notice of past horseplay at the detention center based on Employer’s operation of surveillance cameras. Employer and Insurer present those factual challenges in support of their main legal argument—that the Act and our prior cases examining horseplay establish a threshold requirement for compensation that an employer have notice of a history of horseplay in the employment environment. They maintain that Worker has not established the requisite notice as a matter of law, and thus contend the WCJ erred in concluding Worker’s injuries are compensable under the Act.

I. Standard of Review

{14} We review the whole record in workers’ compensation cases to determine whether substantial evidence supports the WCJ’s findings. *See Lewis v. Am. Gen. Media*, 2015-NMCA-090, ¶ 17, 355 P.3d 850. We review the evidence in the light most favorable to the decision, and we defer to the WCJ’s resolution of conflicts in the evidence. *See Rodriguez v. McAnally Enters.*, 1994-NMCA-025, ¶ 11, 117 N.M. 250, 871 P.2d 14. In cases involving “uncertain, doubtful, or ambiguous findings,” we are “bound to indulge every presumption to sustain the judgment.” *Kincaid v. WEK Drilling Co.*, 1989-NMCA-111, ¶ 28, 109 N.M. 480, 786 P.2d 1214 (operating under prior version of Rule 1-052(A) NMRA); *see also Jones v. Auge*, 2015-NMCA-016, ¶ 2, 344 P.3d 989 (explaining that “on appeal, a reviewing court liberally construes findings of fact

adopted by the fact finder in support of a judgment” and “such findings are sufficient if a fair consideration of all of them taken together supports the judgment entered below” (alteration, internal quotation marks, and citations omitted)). In reviewing the whole record, we examine the findings both expressly and implicitly made, along with any refusals to adopt proposed findings proffered by a party, in determining whether the WCJ’s final conclusions are justified. See *Molinar v. Larry Reetz Constr., Ltd.*, 2018-NMCA-011, ¶ 42, 409 P.3d 956 (examining “express” and “concomitant implied” findings); *Jones v. Beavers*, 1993-NMCA-100, ¶ 18, 116 N.M. 634, 866 P.2d 362 (explaining that “[t]he trial court’s refusal to adopt the requested findings of fact is tantamount to a finding against [the requesting party] on each of these factual issues”); see also *State ex rel. King v. UU Bar Ranch Ltd. P’ship*, 2009-NMSC-010, ¶ 44, 145 N.M. 769, 205 P.3d 816 (“When a trial court rejects proposed findings of facts or conclusions of law, we assume that said facts were not supported by sufficient evidence.”). We review de novo the WCJ’s application of law to the facts found, and we may affirm the WCJ’s order if it reaches the right result, even for reasons the order does not address. See *Maez v. Riley Indus.*, 2015-NMCA-049, ¶ 31, 347 P.3d 732. Finally, to the extent the dispute here raises questions about the appropriate interpretation of the Act, we review such questions de novo. See *Romero v. Laidlaw Transit Servs., Inc.*, 2015-NMCA-107, ¶ 8, 357 P.3d 463.

II. Compensable Injuries Under the Act

{15} The Act directs that claims for compensation are only to be allowed “when the worker has sustained an accidental injury arising out of and in the course of his employment[.]” Section 52-1-28(A) (1); see also *Rodriguez v. Permian Drilling Corp.*, 2011-NMSC-032, ¶ 9, 150 N.M. 164, 258 P.3d 443 (“The Act provides the exclusive remedy for an employee to receive compensation for an injury arising out of and in the course of his employment.” (internal quotation marks and citation omitted)). That an injury may be caused entirely by the negligence of the injured does not generally change the compensation determination. See § 52-1-8(C) (“In an action to recover damages for a personal injury sustained by an employee . . . it shall not be a defense . . . that the injury . . . was caused, in whole or in part by the want of ordinary care of the injured employee where such want of care was not willful.”). Instead, the relevant language presents two distinct conditions

for compensation: (1) the “arising out of” condition typically calls for a kind of causation analysis, while (2) the “in the course of” condition makes reference “to the time, place[,] and circumstances under which the injury occurred.” *Wilson v. Richardson Ford Sales, Inc.*, 1981-NMSC-123, ¶ 9, 97 N.M. 226, 638 P.2d 1071. Both conditions are satisfied where an injury can be characterized as “reasonably incidental to the employment” or “flowing [from the employment] as a natural consequence.” *Id.* Whether an injury can be described as reasonably incidental to the employment will depend “upon the practices permitted” in the employment and “the customs of the employment environment generally.” *Id.* (internal quotation marks and citation omitted). More recently, our Supreme Court has observed a critical inquiry in evaluating the Act’s two compensation conditions is whether “the injury was sustained during the commission of an activity that is reasonable and foreseeable both as to its nature and manner of commission.” *Rodriguez*, 2011-NMSC-032, ¶ 9 (internal quotation marks and citation omitted).

III. Injuries Resulting From Horseplay

{16} In horseplay cases, which have not often been examined in New Mexico, we have elaborated on the standard inquiry. Historically, both participants and non-participants were out of luck when it came to recovering for injuries caused by horseplay—their injuries were said not to have arisen from and in the course of employment but from some risk foreign to the employment environment. See *Woods v. Asplundh Tree Expert Co.*, 1992-NMCA-046, ¶ 7, 114 N.M. 162, 836 P.2d 81. This rule was then relaxed for non-participants, as courts observed the risks created by fellow workers might often constitute risks of the employment environment itself. *Id.* Participants, by contrast, often remained without a route to recovery. *Id.* Eventually, however, the participant/non-participant distinction fell out of favor; and in *Woods*, this Court recognized a longstanding “trend against the rule denying recovery solely on the basis of participation [in horseplay] and toward the elimination of distinctions based on fault.” *Id.* ¶ 10. We observed that two tests for evaluating compensability had gained prominence in other jurisdictions, both of which had been shaped by the trend. See *id.* ¶¶ 8, 11-12 (identifying the “New York rule” and the “course of employment test”). Both, we determined, reflected critical compensation

inquiries consistent with New Mexico law. *Id.* ¶¶ 13-14, 27. We thus concluded both tests may often be useful in determining whether horseplay injuries satisfy the Act’s “arising out of” and “course of employment” requirements. *Id.*; see also *Esckelson v. Miners’ Colfax Med. Ctr.*, 2014-NMCA-052, ¶ 8, 324 P.3d 393 (confirming, more recently, that the *Woods* analysis applies to “cases in which a worker is injured while engaging in horseplay”).

{17} The first test *Woods* identified had come to be known as the “New York rule.” *Woods*, 1992-NMCA-046, ¶ 8. The test asks simply whether the activity giving rise to the injury had “become a regular incident of the employment, rather than an isolated act.” *Id.* Our analysis in *Woods* revealed that two basic considerations should guide the application of the New York rule. See *id.* ¶ 21. First, we examined the nature and extent of prior activity similar to the activity giving rise to the injury. And second, we considered the nature of the specific employment environment more generally and whether it may be expected to include activity similar to that giving rise to the injury. *Id.*

{18} The second compensability test, which *Woods* identified as “the course of employment test,” asks a different question—evaluating whether the activity giving rise to the injury amounts “to a substantial deviation from the employment.” *Id.* ¶ 11 (internal quotation marks and citation omitted). Under this test, injuries remain compensable unless they have arisen from substantial deviations. *Id.* We highlighted in *Woods* several considerations that should guide the evaluation of whether a horseplay deviation is substantial. See *id.* ¶ 22. Those considerations include: (1) the scope and gravity of the deviation; (2) the completeness of the deviation; (3) the extent to which horseplay has become an accepted part of the employment environment; and (4) the extent to which the specific employment environment may be expected to include “such horseplay.” *Id.* Given those considerations, we observed in *Woods* that application of the course of employment test may often render more injuries compensable than application of the New York rule. *Id.* ¶ 24. This is the case because injuries arising from various isolated acts, for example, which might fail under the New York rule, might nevertheless be coverable under the course of employment test. *Id.* But whether an injury may be compensable under one test but not the other, the *Woods* court cautioned,

should not generally matter—the worker “should be able to prevail in New Mexico if he or she can factually satisfy either one.” *Id.* ¶ 13.

{19} Before examining each test in light of the facts in this case, we address Employer and Insurer’s threshold notice argument. Employer and Insurer point to language from *Woods* and ask us to impose as a threshold condition for recovery the requirement that an employer have notice of the horseplay activity giving rise to the injury. In the course of adopting both the New York rule and the course of employment test, *Woods* observed that the old participant/non-participant distinction would generally no longer be dispositive in making a compensation determination. *Id.* ¶ 15. Instead, *Woods* recognized, the nature and extent of an injured party’s participation may often illuminate whether an employer had “actual or constructive notice” of or “reason to foresee” the activity giving rise to the horseplay. *Id.* And these questions are instructive under both tests. *See id.* Employer and Insurer have seized on these observations in *Woods* regarding notice and submit that the notice question is properly treated as a threshold inquiry divorced from the two tests. But asking the notice question in isolation is inconsistent with various principles within our workers’ compensation jurisprudence. Moreover, because notice is but one consideration pertinent to the analyses required by the two tests, examining it in isolation will amount to both an incomplete and redundant exercise.

{20} For instance, a danger arises that any generalized notice inquiry may be understood in its negligence-related sense. Understood that way, notice might tell us something about an employer’s negligence in allowing certain activity or an employee’s assumption of the risk. But, as we have repeatedly explained, the “policies served” by workers’ compensation law differ from those served by tort law, and mingling their principles is often unhelpful to the task at hand. *See, e.g., Lessard v. Coronado Paint & Decorating Ctr., Inc.*, 2007-NMCA-122, ¶ 9, 142 N.M. 583, 168 P.3d 155; *see also Segura v. J.W. Drilling, Inc.*, 2015-NMCA-085, ¶ 11, 355 P.3d 845 (“Workers['] compensation law is ‘sui generis’ and New Mexico courts have repeatedly declined to mingle its principles with those in other areas of law.”). The Act, in fact, explicitly disavows many of those classic negligence-related concepts, and our Supreme Court recently has observed

our compensation system is designed to “eliminate[] employer defenses that frequently prevented injured workers from recovering for workplace injuries under the common law.” *Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶ 13, 378 P.3d 13; *see also NMSA 1978, § 52-5-1* (1990) (“The workers’ benefit system in New Mexico is based on a mutual renunciation of common law rights and defenses by employers and employees alike.”).

{21} A closely related problem occurs when an isolated notice question makes concepts like “personal knowledge, personal acquiescence, [and] personal failure to prevent recurrence” dispositive in our compensation law. 2 Arthur Larson et al., *Larson’s Workers’ Compensation Law* § 23.05[2], at 23-8 (2017) (cautioning that these concepts “have no place in compensation law”); *see also Crilly v. Ballou*, 91 N.W.2d 493, 502 (Mich. 1958) (“The employer’s knowledge, actual or constructive, [its] acquiescence, [its] condonation, are not essential to the compensability of an injury under our statute.”). As we recognized in *Woods*, a long line of authority had observed those concepts may tell us nothing at all about compensability, because “[t]he test of liability under the statute is not the master’s dereliction, whether his own or that of his representatives acting within the scope of their authority.” *Woods*, 1992-NMCA-046, ¶ 7 (quoting *Leonbruno v. Champlain Silk Mills*, 128 N.E. 711, 712 (N.Y. 1920) (Cardozo, J.)). The relevant question, instead, is “the relation of the service to the injury, of the employment to the risk.” *Id.* (quoting *Leonbruno*, 128 N.E. at 712).

{22} Moreover, proper evaluation of any foreseeability or notice question must maintain the requisite focus on the “arising out of” and “in the course of” elements under the Act—considerations the New York rule and the course of employment test are designed to explore. *See* 2 Larson, *supra*, § 23.05[2], at 23-7 (“The controlling issue is whether the custom had *in fact* become part of the employment; the employer’s knowledge of it can make it neither more nor less a part of the employment—at most it is evidence of incorporation of the practice into the employment.”); *see also Crilly*, 91 N.W.2d at 502 (“If the employer is indisposed, remote from the operation, engrossed in other affairs, even enjoying a well-earned respite in the Caribbean, will there be a suspension of compensation for operations developed in his absence, or their natural concomitants?”). Evaluation

of the nature and extent of the horseplay and the nature and history of the employment environment, in other words, will often more closely probe the notice and foreseeability questions as those concepts must be understood for purposes of the Act. *See Woods*, 1992-NMCA-046, ¶ 21 (applying New York rule and analyzing nature of the horseplay and history, custom, and nature of employment environment); *id.* ¶ 26 (applying course of employment test and analyzing nature of the horseplay and history, custom, and nature of employment environment).

{23} Application of the tests themselves, in addition, will ordinarily answer the question of whether any specific activity should have been foreseeable without the need for separate inquiry. *See* 2 Larson, *supra*, § 23.05[2], at 23-8 (“[A]lmost any practice which had continued long enough to qualify as a ‘custom’ and as ‘part and parcel’ of the employment could be found to be within the constructive knowledge of the employer.”). Any activity constituting a regular incident of employment under the New York rule should thus satisfy any foreseeability requirement for purposes of the compensation determination, as should any activity not constituting a substantial deviation under the course of employment test. *See Wilson*, 1981-NMSC-123, ¶ 9 (“An injury reasonably incidental to the employment . . . is compensable.”); *cf. Woods*, 1992-NMCA-046, ¶ 25 (summarizing application of course of employment test and highlighting critical questions of whether the activity is “a usual practice on the job,” and whether the job is “the type of employment that induce[s]” the activity); 2 Larson, *supra*, § 23.05[2], at 23-7 (stating that “[t]he controlling issue is whether the custom had . . . become part of the employment”).

{24} Given the purpose of and ground covered by the New York rule and the course of employment test, we conclude the analytically sounder approach applies the tests first and reveals and incorporates their respective answers to the notice question along the way. We decline the invitation to establish any threshold notice requirement or preliminary inquiry in this context.

IV. The WCJ Did Not Err in Determining Worker’s Injuries Are Compensable

{25} Regardless when the notice question is to be resolved, Employer and Insurer also contend that the WCJ erred in imputing notice to Employer based on a

determination that Cloud was a supervisor engaged in horseplay with Worker and Employer's use of surveillance cameras. Employer and Insurer add that the WCJ erred in concluding Worker's injuries are compensable under either the New York rule or the course of employment test. The WCJ omitted explicit application of either test from his compensation order. As noted above, however, we have often explained that any combination of a denial of requested findings and the adoption of others may establish sufficient substance for our review. *See, e.g., Jones*, 1993-NMCA-100, ¶ 18; *Woods*, 1992-NMCA-046, ¶ 26 (reviewing WCJ's "findings, as well as the effect of what he refused to find"); *see also Maez*, 2015-NMCA-049, ¶ 31 (stating that we may affirm a compensation order if it is right for a reason not addressed by the WCJ). Here, the substance of the WCJ's findings and associated denials allow for our review of the compensation award under both tests, and we conclude both tests are satisfied in this case.

A. The New York Rule

{26} The New York rule, as previously noted, asks whether activity giving rise to an injury constitutes a regular incident of employment as opposed to an isolated act. *Woods*, 1992-NMCA-046, ¶ 8. The WCJ made various findings aiding an examination of that question. The WCJ found that Worker's injury occurred during regular work hours and on Employer's premises and that Worker and Cloud had previously engaged in horseplay of the same or similar nature on multiple occasions. Worker's testimony supported both findings; she testified that she and Cloud had engaged in this kind of activity at work, as frequently as "all the time." Cloud's testimony added support, as he testified they had engaged in this kind of behavior "from time to time." The WCJ added findings that Worker had no direct supervisor on duty at the time she suffered the injury and that Cloud was serving as a supervising employee for the entire facility at the time, as he often had in the past. Worker and Cloud gave testimony in support of those findings without qualification; Pyle's testimony added only the qualification that Cloud may have served as more a point of contact for Worker than as a supervisor. The WCJ also found that Employer had counseled neither Worker nor Cloud for their horseplay at any time prior to the night Worker sustained her injuries and that Employer had in fact done nothing at all to curtail the "repeated horseplay"

occurring at the detention center prior to the night of the injury. Pyle and Cloud's testimony supported those findings as they could recall no incidents of counseling or reprimand for prior horseplay. Worker's testimony corroborated the findings, as she had observed the facility seemed to have a "custom" of similar activity but could recall no instances of counseling or reprimand for the behavior.

{27} Our whole record review reveals not only that the WCJ's findings were supported by the substantial evidence identified, but also that the evidence on these questions was largely undisputed. Beyond Worker's testimony and Cloud's deposition, there is little in the record regarding any history or absence of horseplay, its frequency, its nature or circumstances, or, more generally, the nature of the environment at the detention center at night. The limited additional evidence exploring those considerations came in the form of Pyle's deposition, which revealed only that Pyle was "unaware" of any history or reports of horseplay. Neither his deposition nor any other evidence in the record, however, provided any information regarding how often he or any other supervisory employee had occasion to observe the employment environment at night. Whether Pyle's deposition created any conflict with the rest of the evidence presented is unclear given the limited information regarding his familiarity with the work environment at night; regardless, the WCJ was free to resolve any conflict in favor of the testimony given by Worker and Cloud. *See Salazar v. City of Santa Fe*, 1983-NMCA-134, ¶ 15, 102 N.M. 172, 692 P.2d 1321 ("We will not disturb the trial court's resolution of conflicting evidence[.]").

{28} Despite the evidence demonstrating that horseplay was a regular incident of employment at the detention center, Employer and Insurer maintain the fact that Employer had policies in place prohibiting horseplay should weigh heavily in their favor. In support, they rely on *Woods* and our decision in *Cox v. Chino Mines/Phelps Dodge*, 1993-NMCA-036, 115 N.M. 335, 850 P.2d 1038, both of which affirmed non-compensability determinations where employers had probative policies in place. A closer look at each case reveals that neither gave as much weight to the policies as Employer and Insurer would have us impart here.

{29} Whether *Cox* can tell us much is questionable; it was a case featuring not horseplay but sexual harassment, and

we expressed reservations there about whether horseplay cases and sexual harassment cases were sufficiently analogous for purposes of borrowing legal principles. *See* 1993-NMCA-036, ¶ 15. We maintain those concerns today. Even were the contexts comparable, *Cox* highlighted in reaching its conclusion not only the employer's policy prohibiting harassment, but also the worker's concessions she had never previously experienced harassment in her lengthy career and she was unaware of any other history of harassment in the workplace. *See id.* Policy prohibitions aside, those concessions were integral to the imported New York rule analysis in *Cox*. *See id.* (noting, in addition to specific policy prohibitions in place, "[c]laimant's claim fails because sexual harassment was not a regular incident of the employment"). Our record, by contrast, reveals no such concessions.

{30} The *Woods* record gave rise to a similarly fact-specific analysis, featuring evidence that horseplay of the kind giving rise to the subject injury was exceptionally rare. *See* 1992-NMCA-046, ¶ 6. Because the horseplay was so uncommon, moreover, we concluded it appropriate to draw the inference that the employer's horseplay prohibitions largely controlled the employment environment, and that inference supported the conclusion the activity did not constitute a regular incident of employment. *See id.* Neither the fact of exceptional rarity nor the associated inference that a written policy has controlled the customs of the environment, however, are supported on our record here.

{31} Instead, based on our whole record review, we determine that substantial evidence supported the WCJ's findings that Worker and Cloud had previously engaged in horseplay, that Employer had not previously counseled Worker or Cloud regarding the horseplay, and that Employer had done nothing else to curtail repeated horseplay at the detention center. Those findings in turn support a determination that the activity giving rise to the injury constituted a regular incident of employment, as opposed to an isolated act, satisfying the New York rule and answering at the same time in the affirmative the question of whether the activity was reasonably foreseeable. *See id.* ¶ 19 (highlighting case where compensability was justified because "the risks incident to this employment included risks associated with the friendly jostling customary to the restaurant"). The WCJ's

findings identified here are sufficient on their own to establish the activity at issue was reasonably foreseeable for purposes of any notice requirement under our cases and the language of the Act. Having settled that question, it is not necessary to address whether the associated findings Employer and Insurer challenge—i.e., that Cloud was a supervisor and his knowledge could be imputed to Employer and that the surveillance cameras gave Employer notice of the horseplay—were supported by substantial evidence.

{32} Satisfaction of the New York rule, we note, ends our inquiry under *Woods*, as the claimant need only prevail under one of the applicable analytical frameworks to establish the injury is compensable. See *id.* ¶ 13. The parties having addressed the course of employment test in their briefing, however, we examine that test as well.

B. Course of Employment Test

{33} The course of employment test, as previously explained, asks whether activity causing an injury constitutes a substantial deviation from employment and examines: (1) the scope and gravity of any deviation; (2) the completeness of any deviation; (3) the acceptance of horseplay in the environment; and (4) the extent to which the environment may be expected to include similar horseplay. Application of these considerations reveals that Worker's injury arose out of and in the course of her employment as required by the Act.

{34} With respect to the third and fourth factors, the WCJ's findings neglected to address specifically the questions of whether horseplay had become accepted in the environment and whether the environment might be expected to include similar horseplay. The WCJ's findings, however, that Worker and Cloud had previously engaged in similar activity and that Employer failed to "curtail the repeated horseplay" at the facility address these questions implicitly, and they provide substance sufficient for purposes of our whole record review. See *Molinar*, 2018-NMCA-011, ¶ 42 (examining "express" and "concomitant implied" findings). As to the third factor—the extent that horseplay was accepted or tolerated at the detention center—Worker testified in support of various contentions, as identified in our analysis of the New York rule. In short, Worker testified that horseplay was widespread among employees and that Cloud had often engaged in similar behavior previously. She testified that her direct supervisor had brushed her off when she had confided that Cloud

was "irritating" her. She added that despite this history, she was unaware of any instances of counseling or reprimand of any employee for horseplay. Cloud added testimony that he and Worker had engaged in similar behavior previously and that he also could not recall any instances of counseling or reprimand for horseplay. Pyle was likewise unaware of any instances of counseling or reprimand. As to the fourth factor—whether the environment might generally be expected to include horseplay—Worker testified that the facility featured substantial downtime and she had been waiting during a familiar lull in work when the horseplay on the night in question began. All this evidence taken together suggests both the third and fourth course of employment considerations weigh in Worker's favor here. See *Woods*, 1992-NMCA-046, ¶ 25 (emphasizing considerations of whether "horseplay was a usual practice on the job" and whether there were "lulls in activity or shared tasks that would encourage horseplay").

{35} With respect to the first and second factors, we note again as a prefatory matter that specific findings on scope, gravity, and completeness are not contained in the WCJ's order. Nevertheless, as we have often remarked, we may draw various reasonable inferences from the facts found in determining whether a "fair construction of all of them, taken together," supports the judgment. *Robey v. Parnell*, 2017-NMCA-038, ¶ 41, 392 P.3d 642 (quoting *H.T. Coker Constr. Co. v. Whitfield Transp., Inc.*, 1974-NMCA-002, ¶ 9, 85 N.M. 802, 518 P.2d 782). The WCJ's order provides sufficient substance for our review, given the findings actually made and the ultimate conclusion of compensability, which implicitly determined that Worker's injury arose out of and in the course of her employment. See *id.* ("If, from the facts found, the other necessary facts may be reasonably inferred, the judgment will not be disturbed." (internal quotation marks and citation omitted)); *Salazar*, 1983-NMCA-134, ¶ 15 ("[T]he trial court's findings answered the factual questions . . . necessary to determine whether decedent had returned to the course and scope of his employment.").

{36} As to the first and second factors, Worker's testimony that the whole incident occurred over the course of just a few moments near the booking area supports a determination that any deviation was narrow in scope and neither grave nor complete. Cf. *Salazar*, 1983-NMCA-134, ¶¶ 14-15

(affirming conclusion that two-and-a-half hour deviation from commute home in employer vehicle constituted no abandonment of employment). Cloud's testimony regarding duration corroborated Worker's account. Worker's testimony regarding the frequent downtime and the horseplay that often arose at work during the downtime also support a determination that any deviation was narrow in scope and neither grave nor complete. See, e.g., *Whitehurst v. Rainbo Baking Co.*, 1962-NMSC-126, ¶ 24, 70 N.M. 468, 374 P.2d 849 ("That there was no temporary abandonment of the employment is evidenced by the fact that while taking the coffee break appellant was, at the same time, waiting for the delivery of a truck part in order to complete his work."); see also, e.g., *Dehart v. Betty Breaux Pers., Inc.*, 535 So. 2d 456, 458 (La. Ct. App. 1988) ("The courts have consistently recognized that, during idle periods in the course of employment, working men will engage in jocular activities with fellow employees"); 2 Larson, *supra*, 23.07[6], at 23-27 ("[I]t is suggested that the idleness factor is relevant to this extent, that the duration and seriousness of the deviation which will be called substantial should be somewhat smaller when the deviation necessitates the dropping of active duties than when it does not.").

{37} Employer and Insurer nevertheless contend that *Woods* compels a conclusion that the deviation here was substantial. *Woods*, however, featured a record supporting findings that (1) the horseplay was highly unusual given the history of the employment environment as reported by employees, and (2) the resulting deviation was substantial, in the form of rapid, violent escalation of a physical confrontation between employees of different employers. See 1992-NMCA-046, ¶¶ 4, 6. The record here, by contrast, reveals that horseplay had become an expected part of the environment, it occurred often during downtime, and any deviation was minor, brief, and incomplete. See, e.g., *Petrik v. JJ Concrete, Inc.*, 2015 SD 39, ¶ 22, 865 N.W.2d 133 (concluding injury arising from "running through job site, . . . [h]owever misguided" or rare, was "momentary and impulsive deviation during a lull in work" and therefore insubstantial). In sum, substantial evidence supports the determination that any deviation was insubstantial, satisfying the course of employment test, as well as resolving that the activity here was reasonably foreseeable for purposes of compensation under the Act.

{38} We, therefore, conclude that, regardless whether the New York rule or the course of employment test is applied, substantial evidence supports the WCJ's findings and the WCJ properly determined that Worker's injuries are compensable under the Act because the injuries arose out of and in the course of employment as required by Section 52-1-28(A)(1) of the Act.

CONCLUSION

{39} For the foregoing reasons, we affirm the WCJ's compensation order.

{40} **IT IS SO ORDERED.**

JENNIFER L. ATTREP, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

J. MILES HANISEE, Judge

Advance Opinions

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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Court of Appeals

Opinion Number: 2019-NMCA-023

No. A-1-CA-36402 (filed December 20, 2018)

MANUEL EDEL NAVARRETE
RODRIGUEZ, Individually and as
Personal Representative of the Estate
of EDGAR NAVARRETE RODRIGUEZ,
Deceased,
Plaintiff-Appellee,

v.

Ford Motor Company, Defendant-Appellant
and
Luis A. Ponce, Defendant

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

David K. Thomson, District Judge

Certiorari Granted, April 8, 2019, No. S-1-SC 37491.

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for Appellant

Opinion

Linda M. Vanzi, Chief Judge

{1} In this appeal, we consider whether Ford consented to general personal jurisdiction in New Mexico courts when it registered to do business here. To answer this question, we must determine whether the United States Supreme Court's decision in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), and this Court's decision in *Werner v. Wal-Mart Stores, Inc.*, 1993-NMCA-112, 116 N.M. 229, 861 P.2d 270, remain binding precedent in light of the evolution of general jurisdiction jurisprudence found

in *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945), and *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). We recognize the tension between the two lines of cases. Nevertheless, because we conclude that both *Pennsylvania Fire* and *Werner* are still binding, we conclude that Ford consented to general jurisdiction in New Mexico.

{2} The district court found that New Mexico could exercise specific personal jurisdiction, but not general personal jurisdiction, and therefore denied Ford's motion to dismiss for lack of personal jurisdiction. Because we conclude to the contrary—that Ford consented to general jurisdiction—we affirm the denial of Ford's motion to dismiss but for

a different reason than relied on by the district court. We do not reach the issue of specific jurisdiction.

Background

{3} “Where, as here, the district court bases its ruling on the parties’ pleadings, attachments, and non-evidentiary hearings, . . . [we] construe th[ose] pleadings and affidavits in the light most favorable to the complainant[.]” *Sproul v. Rob & Charlies, Inc.*, 2013-NMCA-072, ¶ 6, 304 P.3d 18 (internal quotation marks and citation omitted). Edgar Navarrete Rodriguez (Decedent), a New Mexico resident, purchased a 2000 Ford F-250 (the F-250) from a private seller in New Mexico. Decedent later died in a single vehicle accident when the roof structure of the F-250 collapsed after the vehicle rolled over on New Mexico State Road 206. Manuel Edel Navarrete Rodriguez, as personal representative for Decedent’s estate, (Plaintiff) filed this wrongful death action against Ford, claiming that the F-250’s roof structure was defectively designed. In the complaint, Plaintiff claimed that the district court had jurisdiction over Ford “by virtue of its manufacture, and distribution of the vehicle and by virtue of Ford’s overall conduct in conducting business within the state.” He also alleged that “Ford designed, tested, approved, manufactured, marketed, distributed, and sold the subject F-250 and its components for sale in New Mexico and elsewhere throughout the United States.” Finally, Plaintiff alleged that “Ford . . . is a foreign corporation and can be served through its registered agent . . . located . . . [in] New Mexico.”

{4} Ford filed a motion to dismiss for lack of general or specific personal jurisdiction. While Ford did not contest any of the facts asserted by Plaintiff, Ford argued that the district court did not have specific personal jurisdiction because Plaintiff’s claims did not arise out of any in-state activities, as the F-250 was not designed, manufactured, sold, or serviced by Ford in New Mexico. Although it acknowledged that it “interjected its products into the stream of commerce knowing full well its products would be sold by independent dealers in New Mexico,” Ford argued that its in-state activities did not lead to Plaintiff’s claims because the F-250 was designed in Michigan, assembled in Kentucky, and sold by Ford to an independent Ford dealership in Arizona. Ford also argued that general jurisdiction was

lacking because “Ford was not incorporated in New Mexico and does not have its principal place of business here.”

{5} Plaintiff did not contest any of Ford’s asserted facts. However, Plaintiff argued that the district court had specific personal jurisdiction due to Ford’s substantial contacts with New Mexico and Ford’s placement of the F250 “into the stream of commerce under circumstances such that Ford should reasonably anticipate being haled into court in New Mexico to answer claims about the failure of that product in New Mexico.” In support of his argument, Plaintiff provided an affidavit detailing the following connections Ford had with New Mexico: (1) Ford has at least thirteen official Ford dealerships in New Mexico; (2) Ford maintains an interactive website where New Mexico consumers can purchase Ford automotive parts, search inventory of Ford vehicles in the state, obtain coupons and discounts, find safety recall information, and apply for credit for vehicle purchases; (3) Ford targets New Mexican consumers through marketing techniques such as sponsoring local professional bull riding championships; and (4) Ford has “in-forum advertising and defense and indemnity contracts with its dealerships” and is a “frequent” litigant in New Mexico.

{6} The district court held a non-evidentiary hearing on the motion and concluded that it had specific, but not general, personal jurisdiction over Ford. Ford filed a motion for reconsideration. After another non-evidentiary hearing, the district court denied Ford’s motion for reconsideration. However, the district court certified its order for interlocutory appeal, which we granted. After initial briefing was complete, we requested simultaneous supplemental briefing on the “viability and applicability of *Werner*” and “whether, under *Werner*, [Ford] consented to general jurisdiction in New Mexico courts by registering in compliance with Article 17 of the Business Corporation Act [(the Act)], NMSA 1978, §§ 53-11-1 to 53-18-12 (1967, as amended through 2003).”

Discussion

{7} “In reviewing an appeal from an order granting or denying a motion to dismiss for lack of personal jurisdiction, the determination of whether personal jurisdiction exists is a question of law, which an appellate court reviews de novo when the relevant facts are undisputed.” *CABA Ltd. Liab. Co. v. Mustang Software, Inc.*, 1999-NMCA-089, ¶ 9, 127 N.M. 556, 984 P.2d

803. As we explain, we conclude that Ford consented to general jurisdiction in New Mexico under *Werner*. We therefore affirm the district court’s denial of Ford’s motion to dismiss, but for a different reason. See *State v. Vargas*, 2008-NMSC-019, ¶ 8, 143 N.M. 692, 181 P.3d 684 (“Under the right for any reason doctrine, we may affirm the district court’s order on grounds not relied upon by the district court if those grounds do not require us to look beyond the factual allegations that were raised and considered below.” (internal quotation marks and citation omitted)). Given our conclusion, we need not address Ford’s arguments related to specific jurisdiction.

Preliminary Matters

{8} We begin by addressing whether this Court’s review is limited by preservation principles or the scope of interlocutory appeal. First, to the extent Ford argues that this Court should not address whether Ford consented to general jurisdiction because Plaintiff failed to raise the issue of consent in the district court, we disagree that this fact precludes our review of the issue here. This Court has “broad discretion to decide jurisdictional issues on appeal.” *Capco Acquisub, Inc. v. Greka Energy Corp.*, 2008-NMCA-153, ¶ 35, 145 N.M. 328, 198 P.3d 354. Although the district court did not address specifically whether registration by Ford indicated consent to jurisdiction, it found that Ford is registered in New Mexico and made findings, which are undisputed, about Ford’s other activities in New Mexico. Thus, the factual record is adequately developed for our review of this question and remand for a hearing on the legal significance of undisputed facts would be duplicative and wasteful. See *id.* (considering personal jurisdiction issue in light of evidence produced at trial because remand for a hearing on jurisdiction “would be duplicative—and possibly futile”). Ford points to *Chaleunphonh v. Parks & Recreation Division*, in which this Court stated that reversing on a ground not raised below is “especially inappropriate when the ground requires a factual predicate and the party who prevailed below had no reason to make a record regarding the factual predicate.” 1996-NMCA-066, ¶ 14, 121 N.M. 801, 918 P.2d 717. Here, Ford prevailed in the district court on the issue of general jurisdiction based on minimum contacts, but it did not dispute the factual predicate underlying consent by registration, i.e., that it registered in New Mexico. Moreover, Ford provided a supplemental brief on consent

by registration and, therefore, was not blindsided by the issue. Consideration of this issue is therefore not unfair to Ford.

{9} Second, in an interlocutory appeal, as here, this Court’s review is “limited to the issues fairly contained in the order[.]” although “we are not confined to the particular questions the district court certified” for appeal. *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 8, 320 P.3d 482. In other words, an appellate court can decide issues other than those certified, so long as they are not “wholly unrelated to the issues identified by the district court” in its order. *Armijo v. Wal-Mart Stores, Inc.*, 2007-NMCA-120, ¶ 19, 142 N.M. 557, 168 P.3d 129. Here, the district court considered and ruled on both general and specific jurisdiction. Because the district court granted Ford’s motion to dismiss as to general jurisdiction and denied Ford’s motion as to specific jurisdiction, Ford appealed only the latter portion of the district court’s order. Nevertheless, the question of general jurisdiction based on registration is not “wholly unrelated” to personal jurisdiction generally or “to the issues identified by the district court” in its order. See *id.*

Jurisdiction

{10} “The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). The “limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014). Thus, a key aspect of all personal jurisdiction analyses is the “fairness” and “reasonableness” of subjecting the defendant to the state’s jurisdiction. *World-Wide Volkswagen*, 444 U.S. at 292. Jurisdiction is fair and reasonable when “the defendant’s conduct and connection with the forum [s]tate are such that he should reasonably anticipate being haled into court there.” *Id.* at 297. “[R]equiring that individuals have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign” provides “predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit[.]” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (alterations, internal quotation marks, and

citations omitted). Hence, “[t]he primary focus of our personal jurisdiction inquiry is the defendant’s relationship to the forum [s]tate.” *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cty.*, ___ U.S. ___, ___, 137 S. Ct. 1773, 1779 (2017); see *World-Wide Volkswagen*, 444 U.S. at 294 (“[T]he Due Process Clause ‘does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.’” (quoting *Int’l Shoe*, 326 U.S. at 319)).

{11} The exercise of general personal jurisdiction is fair when the defendant is “at home” in the state—e.g., it is incorporated or has its principal place of business in the state. *Daimler*, 571 U.S. at 137. On the other hand, “specific personal jurisdiction” is fair where (1) the defendant has purposefully availed itself of the benefits of the market in the forum state (i.e., has “minimum contacts” with the state); (2) the plaintiff’s claims arise out of or relate to the defendant’s contacts with the forum state; and (3) it is not otherwise unfair or unreasonable to exert jurisdiction over the defendant. *Burger King*, 471 U.S. at 473-76.

Consent to Jurisdiction by Registration

{12} Personal jurisdiction is also fair when the defendant consents to it. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011) (“A person may submit to a [s]tate’s authority in a number of ways. There is, of course, explicit consent.”). “A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court.” *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982); see *id.* at 704 (collecting cases and stating that “the [United States Supreme] Court has upheld state procedures which find constructive consent to the personal jurisdiction of the state court in the voluntary use of certain state procedures”). In some states, compliance with the state’s statute requiring registration to do business in the state constitutes consent to that state’s jurisdiction. Kevin D. Benish, *Pennoyer’s Ghost: Consent, Registration Statutes, and General Jurisdiction After Daimler AG v. Bauman*, 90 N.Y.U.L. Rev. 1609, 1647-61 (2015) (providing a survey of state statutes and their effect). The United States Supreme Court recognized consent by registration as a valid avenue for general jurisdiction at least as early as 1917 in *Pennsylvania Fire*, 243 U.S. at 95. In that case, the plaintiff sued the defendant, an Arizona corporation, in Missouri

for claims related to an insurance policy covering buildings in Colorado. *Id.* at 94. The defendant, “in compliance with [a Missouri statute], had filed with the superintendent of the insurance department a power of attorney consenting that service of process upon the superintendent should be deemed personal service upon the company so long as it should have any liabilities outstanding in the state.” *Id.* The defendant argued that the statute pertained only to “suits upon Missouri contracts, and that if the statute were construed to govern the present case, it encountered the [Fourteenth] Amendment by denying to the defendant due process of law.” *Id.* at 94-95. Noting that the Missouri Supreme Court had found that the statute was not limited to suits related to Missouri contracts and that it did not deny the defendant due process, the United States Supreme Court agreed that the statute’s “language . . . rationally might be held to [apply to the suit at issue],” and that such a “construction did not deprive the defendant of due process of law.” *Id.* at 95; see *Acorda Therapeutics Inc. v. Mylan Pharm. Inc.*, 817 F.3d 755, 767-68 (Fed. Cir. 2016) (O’Malley, J., concurring) (discussing *Pennsylvania Fire* and the history of consent to jurisdiction through registration), *cert. denied sub nom. Mylan Pharm. v. Acorda Therapeutics*, 137 S. Ct. 625 (2017); Jack B. Harrison, *Registration, Fairness, and General Jurisdiction*, 95 Neb. L. Rev. 477, 510 (2016) (same).

{13} Much has changed in the jurisprudence of personal jurisdiction since 1917. However, in the 100-plus years since *Pennsylvania Fire* was decided, the Supreme Court has not expressly overturned it. *Acorda Therapeutics*, 817 F.3d at 755. Instead, it was clarified in *Robert Mitchell Furniture Co. v. Selden Breck Construction Co.*, 257 U.S. 213, 215-16 (1921), and reaffirmed in *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 175 (1939). In spite of this fact, some courts have held that *Pennsylvania Fire* has been overtaken by more recent pronouncements on jurisdiction, particularly those found in *International Shoe* and *Daimler*. See, e.g., *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 145 n.119 (Del. 2016) (collecting cases holding that *Daimler* negates consent by registration); Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1361 (2015) (discussing critiques of the consent by registration approach in light of case law). However, we agree with those courts holding to the contrary that

Pennsylvania Fire and its progeny are still binding precedent. See *Brieno v. Paccar, Inc.*, No. 17-cv-867 SCY/KBM, 2018 WL 3675234, at *2 (D.N.M. Aug. 2, 2018), *motion for reconsideration denied*, 17-cv-00867-SCY/KBM (Nov. 5, 2018); *Genuine Parts*, 137 A.3d at 148-49 n.130 (Vaughn, J., dissenting) (collecting cases holding that consent by registration remains valid after *Daimler*); Harrison, *supra*, at 510-12 (discussing consent by registration generally and cases following and departing from *Pennsylvania Fire*).

{14} In *International Shoe*, the Court held that “due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” 326 U.S. at 316 (internal quotation marks and citation omitted). The Court thus departed from *Pennoyer v. Neff*, 95 U.S. 714, 714-15 (1877), under which jurisdiction of the state court rested on a defendant’s “presence” in the forum. *Int’l Shoe*, 326 U.S. at 316; Harrison, *supra*, at 485-88 (discussing the effect of *International Shoe* on *Pennoyer*). Although *International Shoe* changed the analysis for jurisdiction, it did so in the context of situations in which there had not been consent. The Court noted that the defendant there “had no agent within the state upon whom service could be made[,]” and also held that a corporation may have sufficient activities in a state to satisfy due process when those activities are “continuous and systematic” and “also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given.” *Int’l Shoe*, 326 U.S. at 312, 317 (emphasis added). By specifying that jurisdiction may be proper “even though” there was no consent, the *International Shoe* Court acknowledged that consent remains a separate and distinct avenue to jurisdiction. See *Otsuka Pharm. Co. v. Mylan Inc.*, 106 F. Supp. 3d 456, 467 (D.N.J. 2015) (stating that “*International Shoe* itself clearly reflects that the Supreme Court’s jurisdictional determinations related to cases where no consent to be sued or authorization to an agent to accept service of process has been given” and that “it cannot be genuinely disputed that consent, whether by registration or otherwise, remains a valid basis for personal jurisdiction following *International Shoe*”).

(internal quotation marks and citation omitted)). *International Shoe*, therefore, did not undermine *Pennsylvania Fire*'s holding regarding consent by registration. {15} In *Daimler*, decided in 2014, the Court addressed general jurisdiction where the plaintiffs' "claims involv[ed] only foreign plaintiffs and conduct occurring entirely abroad." 571 U.S. at 125. The Court noted that "general and specific jurisdiction have followed markedly different trajectories post-*International Shoe*. Specific jurisdiction has been cut loose from *Pennoyer*'s sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized." *Daimler*, 571 U.S. at 132. The Court held that "[w]ith respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction" because "[t]hose affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." *Id.* at 137 (omission, alteration, internal quotation marks, and citation omitted). Noting that general jurisdiction is not limited to the place of incorporation and principal place of business, the Court nevertheless held that the "exercise of general jurisdiction in every [s]tate in which a corporation engages in a substantial, continuous, and systematic course of business . . . is unacceptably grasping." *Id.* at 138 (internal quotation marks omitted). It concluded that "the inquiry . . . is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the [s]tate are so continuous and systematic' as to render [it] essentially at home in the forum [s]tate." *Id.* at 138-39 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Neither the plaintiff nor its subsidiary, were incorporated in California, nor did either have its principal place of business there. *Id.* at 139. The Court declined to hold that sales by the plaintiff's subsidiary in California were sufficient for general jurisdiction because such a holding would mean that "every other [s]tate in which [the subsidiary]'s sales are sizable" would also have general jurisdiction. *Id.* "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Id.* (quoting *Burger King*, 471 U.S. at 472). The Court

emphasized that its holding did not rest on the quantity of in-forum contacts alone, but instead was based on "an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.* at 139 n.20. It concluded, "A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, 'at home' would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States." *Id.* In sum, the *Daimler* Court "substantial[ly] curb[ed] the exercise of general jurisdiction" by limiting the types of contacts adequate to satisfy due process. *Bristol-Myers Squibb Co.*, ___ U.S. at ___, 137 S. Ct. at 1784 (Sotomayor, J., dissenting).

{16} However, *Daimler* neither cited *Pennsylvania Fire* nor addressed its holding. Harrison, *supra*, at 523 ("[T]he *Daimler* Court never stated that it was overruling *Pennsylvania Fire* or cases that came after it, like *Neirbo*"). Indeed, the *Daimler* Court implicitly acknowledged that a defendant might consent to jurisdiction. In discussing the state of the law of general jurisdiction after *International Shoe*, the Court stated that "[t]he Court's 1952 decision in *Perkins v. Benguet [Consolidated] Mining Co.*, [342 U.S. 437 (1952)] remains the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum." *Daimler*, 571 U.S. at 129 (emphasis added) (alteration, internal quotation marks, and citation omitted). By citing *Perkins* as "the textbook case" for situations not involving consent, the Court indicated that its ensuing discussion applying *Perkins* also presumed the absence of consent. "Thus, *Daimler* did not impliedly eradicate the distinction between cases involving an express consent to general jurisdiction and those analyzing general jurisdiction in the absence of consent; it actually maintains it." *Acorda Therapeutics*, 817 F.3d at 769 (O'Malley, J., concurring); accord *Perigo Co. v. Merial Ltd.*, No. 8:14-CV-403, 2015 WL 1538088, at *7 (D. Neb. Apr. 7, 2015) ("*Daimler* only speaks to whether general jurisdiction can be appropriately exercised over a foreign corporation that has not consented to suit in the forum. It does nothing to affect the long-standing principle that a defendant may consent to personal jurisdiction." (citations omitted)); *Forest Labs., Inc. v. Amneal Pharm. LLC*, No. 14-508-LPS, 2015 WL 880599, at *13 (D. Del. Feb. 26, 2015) (stating that "in the one instance in which *Daimler* mentions consent to jurisdiction—in the context of

a discussion regarding general jurisdiction—it does so to *distinguish* the concept of consent from the circumstances relevant to its decision"); *Webb-Benjamin, LLC v. Int'l Rug Grp., LLC*, 192 A.3d 1133, 1139 (Pa. Super. Ct. 2018) ("*Daimler* does not eliminate consent as a method of obtaining personal jurisdiction."). Moreover, the *Daimler* Court had no occasion to address the impact of consent by registration because the forum state (California) did not construe its registration statute as giving rise to jurisdiction. *Acorda Therapeutics*, 817 F.3d at 769 (O'Malley, J., concurring); *AM Tr. v. UBS AG*, 681 F. App'x 587, 588-89 (9th Cir. 2017) ("California does not require corporations to consent to general personal jurisdiction in that state when they designate an agent for service of process or register to do business.").

{17} In sum, both *International Shoe* and *Daimler* recognized that consent presented a distinct avenue for jurisdiction, but neither directly addressed consent by registration given that such a circumstance was not present in the facts of those cases. Hence, neither of those cases explicitly overrules the Supreme Court's earlier holdings that one way in which a corporate defendant may consent to jurisdiction is by registering in the forum state. See *Mitchell v. Eli Lilly & Co.*, 159 F. Supp. 3d 967, 977 (E.D. Mo. 2016) (stating that "the Supreme Court's recent decisions do not sub silentio reverse" cases recognizing consent by registration).

{18} Moreover, even if we viewed consent by registration as conflicting with the spirit of *Daimler*, we see no basis for departure from *Pennsylvania Fire* and its progeny. The Supreme Court has stated that a lower court should not, "on its own authority . . . take[] the step of renouncing [Supreme court precedent]." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). Instead, "[i]f a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [courts] should follow the case which directly controls, leaving to th[e] Supreme Court the prerogative of overruling its own decisions." *Id.* Similarly, in *State Oil Co. v. Khan*, the Court observed that the court of appeals was correct in applying a principle laid down in an earlier case, despite its "infirmities, and its increasingly wobbly, moth-eaten foundations," because "it is this Court's prerogative alone to overrule one of its precedents." 522 U.S. 3, 20 (1997) (alteration, internal quotation

marks, and citation omitted); *accord In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2016 WL 2866166, at *3 (D. Kan. May 17, 2016) (“[The court] is not prepared to ignore such Supreme Court precedent based on speculation about how the Court might view jurisdiction in contexts other than that discussed in *Daimler*.” (internal quotation marks omitted)); *Novartis Pharm. Corp. v. Mylan Inc.*, No. 14-777-RGA, No. 14-820 RGA, 2015 WL 1246285, at *3 (D. Del. Mar. 16, 2015) (stating that it is not “appropriate . . . to ‘overrule’ Supreme Court precedent that the Supreme Court has not overruled”); *cf. Aguilera v. Palm Harbor Homes, Inc.*, 2002-NMSC-029, ¶ 6, 132 N.M. 715, 54 P.3d 993 (stating that the New Mexico Court of Appeals “remains bound by [New Mexico] Supreme Court precedent” even if this Court harbors reservations about that precedent’s continuing validity).

{19} Having concluded that *Pennsylvania Fire* remains binding precedent, we turn to Ford’s argument that registration statutes such as the Act are unconstitutional because they violate the unconstitutional conditions doctrine or the dormant Commerce Clause. Ford first argues that consent by registration violates the unconstitutional conditions doctrine, which “vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). Ford maintains that the registration statute here “bar[s] companies, as a condition of doing business in New Mexico, from asserting their federal due process rights to resist state-court jurisdiction over matters unconnected to their activities in New Mexico.” For support, Ford relies on *Southern Pacific Co. v. Denton*, 146 U.S. 202, 203 (1892), in which the statute violated the unconstitutional conditions doctrine because it not only “regulated procedure for suit but sought to deny foreign corporations access to the federal courts.” *Neirbo*, 308 U.S. at 173 (discussing *Denton*). In *Neirbo*, the Court distinguished *Denton*, stating that the statute there presented “an entirely different situation” and went on to affirm that “[a] statute calling for . . . designation [of an agent] is constitutional, and the designation of the agent a ‘voluntary act,’” and also that such designation is “actual consent . . . to be sued in the courts” of the state. *Id.* at 175 (quoting *Pa. Fire*, 243 U.S. at 96); *see Acorda Therapeutics*, 817 F.3d at 770 n.1 (O’Malley, J., concurring) (stating

that “the Supreme Court has upheld the validity of consent-by-registration statutes numerous times since the development of the unconstitutional conditions doctrine”); *In re Syngenta*, 2016 WL 2866166, *3 (discussing *Neirbo* and rejecting the argument that consent by registration violates the unconstitutional conditions doctrine by impinging on a defendant’s “right to be free from general jurisdiction” unless certain requirements are satisfied). {20} Ford next argues that consent by registration is unconstitutional because it “unduly burdens interstate commerce” and hence violates the dormant Commerce Clause. U.S. Const. art. I, § 8, cl. 3. “The Commerce Clause not only empowers Congress to regulate [c]ommerce among the several [s]tates, but also denies the [s]tates the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce[.]” *Am. Target Advert., Inc. v. Giani*, 199 F.3d 1241, 1254 (10th Cir. 2000) (omission, internal quotation marks, and citations omitted). “This implied restraint upon the states is often referred to as the negative or ‘dormant’ aspect of the Commerce Clause.” *Id.* “Where the burden of a state regulation falls on interstate commerce, restricting its flow in a manner not applicable to local business and trade,” *Bendix Autolite Corp. v. Midwesco Enters.*, 486 U.S. 888, 891 (1988), the statute or regulation violates the dormant Commerce Clause unless “it serves a ‘legitimate public interest,’ its effects on interstate commerce are only ‘incidental,’ and the burden imposed on interstate commerce is not ‘clearly excessive in relation to the putative local benefits.’” *Am. Target Advert.*, 199 F.3d at 1254 (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

{21} Some scholars and courts have stated that the dormant Commerce Clause limits general jurisdiction derived from consent by registration to actions in which the plaintiff is a resident of the forum state or suffered injury in the forum state. For instance, in *In re Syngenta*, the court held that “the Kansas registration statute, as applied . . . to claims by the *non-resident plaintiffs*, discriminates against interstate commerce in practical effect, and thus is invalid under the [dormant] Commerce Clause.” 2016 WL 2866166, at *5 (emphasis added). This is so because “a state has no legitimate interest in hosting litigation between two out-of-state parties that does not arise from either parties’ activities in the state.” *Id.* at *6. The court

acknowledged that “it may be argued that a state has an interest in allowing a corporation to be sued locally on claims arising out of the corporation’s activities there (specific jurisdiction), or in providing a forum for claims by its residents[.]” *Id.* Because the plaintiffs there had identified no “legitimate state interest” in the nonresidents’ claims against nonresident defendants, however, jurisdiction over the nonresident defendants was an unjustified burden on interstate commerce. *Id.*; *cf. Genuine Parts*, 137 A.3d at 128, 143 (holding that a Delaware registration statute was an undue burden as to a defendant incorporated in Georgia where the plaintiffs were residents of Georgia and injured in Florida).

{22} A different result was reached in *Hegna v. Smitty’s Supply, Inc.*, No. 16-3613, 2017 WL 2563231 (E.D. Pa. June 13, 2017). There, the defendant argued that “the imposition of general personal jurisdiction over it based on its registration to do business in this Commonwealth violates the dormant Commerce Clause.” *Id.* at *4. The court rejected this argument, stating that the defendant had “not identified any authority in which a registration statute that imposes general personal jurisdiction over foreign corporations that register to do business in a state has been found to violate the dormant Commerce Clause in a lawsuit brought by a state resident.” *Id.* at *5 (emphasis added). Because the plaintiff there was a Pennsylvania resident, the court concluded that the registration statute at issue did not violate the dormant Commerce Clause as applied. *Id.*

{23} Unlike *In re Syngenta* and *Genuine Parts*, and like *Hegna*, Decedent was a New Mexico resident. Moreover, he suffered injury in this state. New Mexico has an interest in providing a forum for its residents and those injured here. *See Zavala v. El Paso Cty. Hosp. Dist.*, 2007-NMCA-149, ¶ 31, 143 N.M. 36, 172 P.3d 173 (stating that “New Mexico certainly has an interest in providing its residents with a forum to allow resolution of conflicts” and that “a forum state has a significant interest in obtaining jurisdiction over a defendant who causes tortious injury within its borders” (internal quotation marks and citation omitted)); *Int’l Milling Co. v. Columbia Transp. Co.*, 292 U.S. 511, 520 (1934) (stating that “[r]esidence [of the plaintiff] . . . is a fact of high significance” in a Commerce Clause analysis); John F. Preis, *The Dormant Commerce Clause As A Limit on Personal*

Jurisdiction, 102 Iowa L. Rev. 121, 143 (2016) (observing that “states have a legitimate interest in providing a forum for redress to residents injured in and out of state . . . and nonresidents injured in state”). Thus, assuming without deciding that the Act burdens interstate commerce, we conclude that the burden is justified by New Mexico’s interest in providing access to the courts for residents and those injured in the state. *See Preis, supra*, at 138, 143 (observing that “jurisdiction-via-registration” laws “have the ‘practical effect’ of discriminating against out-of-state companies” but that such “effects will nonetheless be tolerable when the plaintiff is a state resident (whether injured in or out of state) or a non-resident injured in state”).

Consent by Registration in New Mexico

{24} Consistent with *Pennsylvania Fire*, then, we turn to whether Ford consented to jurisdiction here by complying with the registration requirements in the Act. Whether consent to jurisdiction is inherent in corporate registration depends on language of the forum state’s registration statute itself or on how a state court has construed it. *See Robert Mitchell Furniture Co.*, 257 U.S. at 215-16 (stating that the “purpose in requiring the appointment of such an agent is primarily to secure local jurisdiction in respect of business transacted within the [s]tate” and that jurisdiction under the statute may be extended to business conducted elsewhere only if the law “expressly or by local construction gives to the appointment [of an agent] a larger scope”); *Brieno*, 2018 WL 3675234, at *2.

{25} This Court construed the Act in *Werner*. There, the plaintiff, a New Mexico resident, sued the defendant, which was incorporated in Delaware, for injuries suffered in Georgia. 1993-NMCA-112, ¶ 2. This Court held that the defendant had consented to jurisdiction in New Mexico by registering pursuant to the Act. *Id.* ¶ 11. In its analysis, the Court construed Sections 53-17-2, -11, and -15 of the Act. *Werner*, 1993-NMCA-112, ¶¶ 10-11. In relevant part, Section 53-17-2 provides that

[a] foreign corporation which has received a certificate of authority under the Business Corporation Act shall . . . enjoy the same, but no greater, rights and privileges as a domestic corporation . . . ; and, except as otherwise provided in the Business Corporation Act, is subject to the same duties, re-

strictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

(Emphases added.) Section 53-17-11 states that

[t]he registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Finally, Section 53-17-15(A)(4) provides that, to withdraw its registration,

the foreign corporation shall deliver to the commission [secretary of state] an application for withdrawal, which shall set forth . . . a statement that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in an action, suit or proceeding *based upon a cause of action arising in this state during the time the corporation was authorized to transact business in this state* may thereafter be made on the corporation by service thereof on the secretary of state[.]

(Emphasis added) (first alteration in original).

{26} The *Werner* Court first noted that Section 53-17-11, which provided for service of process on a “registered agent appointed by a foreign corporation,” could be a basis for jurisdiction over a foreign corporation if the Legislature so intended. *Werner*, 1993-NMCA-112, ¶ 8; *see id.* (“One of the most solidly established ways of giving such consent is to designate an agent for service of process within the State.” (internal quotation marks and citation omitted)). It then found that, because “[S]ection 53-17-2 defines the power of a registered foreign corporation as the same but no greater than that of a domestic corporation[.]” the Legislature intended “to equalize foreign and domestic corporations operating within New Mexico with respect to ‘rights and privileges,’ as well as ‘duties, restrictions, penalties and liabilities,’ ” including being subject to state court jurisdiction. *Werner*, 1993-NMCA-112, ¶ 10 (quoting Section 53-17-2). Finally, it found that, because Section 53-17-15(A)(4)’s limiting language did not appear in Section 53-17-11, Section 53-17-11 applied “to any claims against a foreign corporation with a registered agent in

New Mexico[.]” not just those arising from activities in the state. *Werner*, 1993-NMCA-112, ¶ 11 (emphasis added). Although the defendant had not argued before this Court that jurisdiction was barred by due process concerns, the Court stated that it “suspect[ed] that [the d]efendant recognize[d] that it has a sufficient presence in New Mexico to satisfy due process concerns.” *Id.* ¶ 14. However, this Court also cited *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196, 1200 (8th Cir. 1990), for the proposition that “when personal jurisdiction is based on consent, resort to minimum-contacts or due-process analysis is unnecessary[.]” *Werner*, 1993-NMCA-112, ¶ 14.

{27} *Werner* was decided in 1993. In the twenty-five years since, neither this Court nor the New Mexico Supreme Court has reversed or abrogated it. Hence, *Werner* “remain[s] controlling precedent upon which we rely until overruled or reversed by [our] Supreme Court.” *Gulbransen v. Progressive Halcyon Ins. Co.*, 2010-NMCA-082, ¶ 13, 148 N.M. 585, 241 P.3d 183 (stating that Court of Appeals decisions are binding even when the New Mexico Supreme Court has granted certiorari to review them). Federal district courts in this state have relied on *Werner* to find jurisdiction. *See Brieno*, 2018 WL 3675234, at *3 (discussing *Werner* and holding that a defendant had consented to general jurisdiction by registering in the state); *Fireman’s Fund Ins. Co. v. Thyssen Mining Constr. of Can., Ltd.*, No. 10cv0401 MV/LFG, 2011 WL 13085934, at *2 (D.N.M. July 29, 2011) (same), *aff’d in part, rev’d in part on other grounds*, 703 F.3d 488 (10th Cir. 2012).

{28} Importantly, the *Werner* decision gives companies notice that registration under the Act and continued compliance with its reporting requirements, indicates consent to general jurisdiction. *Cf. Burger King*, 471 U.S. at 472 (stating that the Due Process Clause “requir[es] that individuals have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign” (alteration, internal quotation marks, and citation omitted)); *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 637 (2d Cir. 2016) (discussing due process concerns when, at the time the defendant “registered to transact business in Connecticut in 1995, the statute was neither explicit about the scope of jurisdiction conferred, nor had there issued an authoritative state judicial decision construing the

statute”¹ (emphasis added)); *Forest Labs.*, 2015 WL 880599, at *12 (stating that the defendant had fair notice that registration entailed consent to jurisdiction because a state court had so construed the registration statute in 1988 and, therefore, “when [the defendant] was considering whether to comply with the Delaware registration statute in 2010, it could not have been taken by surprise”); see generally § 53-17-17 (stating that the certificate of authority may be revoked if an annual report is not timely filed).

{29} To the extent Ford asks that we overrule *Werner* because it is “out of step with other Model Business Corporation Act [s]tates,” we decline to do so. See §§ 53-17-2, -11, -17, compiler’s notes (stating that these sections were “derived from . . . the [American Bar Association] Model Business Corporation Act”). First, a careful review of the cases Ford cites in support of this proposition reveals that most of those courts construed their statutes in light of *Daimler* and held that consent by registration was inconsistent with its holding. See *Genuine Parts*, 137 A.3d at 141 (examining the Delaware registration statute in the context of *Daimler*); *Dutch Run-Mays Draft, LLC v. Wolf Block, LLP*, 164 A.3d 435, 446 (N.J. Super. Ct. App. Div. 2017) (“In light of *Daimler*, we reject [an earlier] holding as allowing general jurisdiction solely based on the fiction of implied consent by a foreign corporation’s compliance with New Jersey’s business registration statute.”); *Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 2017 WI 71, ¶ 25, 898 N.W.2d 70 (citing *Daimler* and stating that it “give[s] preference to prevailing due process standards when interpreting a contemporary statute for the first time”). Unlike these courts, we have concluded that *Daimler* did not address consent to jurisdiction or overrule *Pennsylvania Fire*. But see *Missouri ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 52 (Mo. 2017) (concluding that the plain language of the registration statute does not “provide an independent basis for . . . personal jurisdiction”).

{30} Second, while some states have construed their statutes differently, others have reached results similar to *Werner*. For instance, the Supreme Court of Minnesota, construing its statute based on the Model Business Corporation Act, held that it is “well-established . . . that a state may exact from the nonresident, as a condition of performing some activity in the state, consent to personal jurisdiction” and that “Minnesota has done so by requiring the appointment of an agent for service of process as a condition to transacting business in the state.” *Rykoff-Sexton, Inc. v. Am. Appraisal Assocs.*, 469 N.W.2d 88, 90 (Minn. 1991) (citing Minn. Stat. §§ 303.03, .06, .13 (1990)); see also *Perrigo*, 2015 WL 1538088, at *7 (“[I]t is equally clear that designating an agent upon whom process may be served operates, under Nebraska law, as a consent to jurisdiction.”); *Bohreer v. Erie Ins. Exch.*, 165 P.3d 186, 191-94 (Ariz. Ct. App. 2007) (holding that registration constitutes consent to jurisdiction); *Allstate Ins. Co. v. Klein*, 422 S.E.2d 863, 864-65 (Ga. 1992) (same); *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229, 1230-31 (Miss. 1987) (same); *Green Mountain Coll. v. Levine*, 139 A.2d 822, 824-25 (Vt. 1958) (same); cf. *Allstate Ins. Co. v. Electrolux Home Prods.*, No. 5:18-cv-00699, 2018 WL 3707377, at *5 (E.D. Pa. Aug. 3, 2018), (applying Pennsylvania’s registration statute); *Kearns v. N.Y. Cmty. Bank*, 400 P.3d 182, at *5 (Kan. Ct. App. 2017) (“When a corporation applies to do business in Kansas, it consents to personal jurisdiction. Consenting to jurisdiction in Kansas by applying to do business in the state does not violate the requirements of due process.”); *Davenport v. State Farm Mut. Auto. Ins. Co.*, 756 S.W.2d 678, 679, 684 (Tenn. 1988) (holding that “the consent theory as a basis of in personam jurisdiction over foreign corporations” was recognized in the state and not limited by an 1887 statute restricting jurisdiction over foreign corporations to transactions or activities occurring within the state). Moreover, contrary to Ford’s suggestion that *Werner* is an outlier, “[m]ost states . . . have not yet clarified the jurisdictional

consequences of their registration statutes.” Benish, *supra*, at 1647; see Model Business Corporation Act Annotated §§ 15.05, 15.10, 15.31 (Am. Bar Ass’n 2013) (listing states that have adopted relevant portions of the Model Business Corporation Act). Hence, although we agree that “[o]ur interpretation of [a model act] should effectuate the purpose of uniformity with other states that have likewise adopted the . . . [a]ct,” there appears to be little uniformity on this issue. See *Corum v. Roswell Senior Living, LLC*, 2010-NMCA-105, ¶ 5, 149 N.M. 287, 248 P.3d 329 (citing NMSA 1978, § 12-2A-18(B) (1997)). Given this context, Ford’s argument is unavailing.

Ford Consented to General Jurisdiction by Complying With the Act

{31} Here, the district court found, and Ford conceded, that Ford is registered in New Mexico as required by Section 53-17-11. Hence, Ford consented to jurisdiction in New Mexico and was on notice that it should “anticipate being haled into court” in New Mexico. See *World-Wide Volkswagen*, 444 U.S. at 297; see also *Forest Labs.*, 2015 WL 880599, at *12 (holding that the defendant had fair notice where a state court had construed the statute twenty-two years prior to the defendant’s registration); cf. *Bane v. Netlink, Inc.*, 925 F.2d 637, 641 (3d Cir. 1991) (stating that “[t]he [registration] statute . . . gave [the defendant] notice that [it] was subject to personal jurisdiction in Pennsylvania and thus it should have been reasonably able to anticipate being haled into court in Pennsylvania” (internal quotation marks and citation omitted)).

CONCLUSION

{32} We recognize that courts differ on the breadth and impact of *Daimler*. When squarely presented with the issue, the United States Supreme Court may hold that registration pursuant to a state statute, does not, by itself, indicate consent to general jurisdiction that is consistent with due process. But we will not divest New Mexico courts of jurisdiction in anticipation of a holding that may or may not manifest, especially when there

¹In *Brown*, the Second Circuit Court of Appeals concluded that “in the absence of a clear legislative statement and a definitive interpretation by the Connecticut Supreme Court and in light of constitutional concerns, we construe Connecticut’s registration statute . . . not to require registrant corporations . . . to submit to the general jurisdiction of Connecticut courts.” *Id.* at 641 (emphasis added). Although the Connecticut Appellate Court had construed the Connecticut statute and stated that compliance with it constituted consent, the *Brown* court found this statement to be “less than fully supported” dicta. *Id.* at 635 n.15. It therefore went on to construe the statute itself and found that the statute did not give notice that compliance with it would entail consent to general jurisdiction. *Id.* at 637. Hence, *Brown* is distinguishable on its facts. Moreover, the *Brown* court also stated that “a carefully drawn state statute that expressly required consent to general jurisdiction as a condition on a foreign corporation’s doing business in the state, at least in cases brought by state residents, might well be constitutional” but did not reach this question. *Id.* at 641. v

is binding precedent directly on point. Hence, we decline to depart from *Pennsylvania Fire* and *Werner*. Here, Ford had notice through *Werner* that registration and compliance with the Act would subject it to the jurisdiction of New Mexico courts. In addition, the accident giving rise to the present suit occurred in New

Mexico to a New Mexico resident. Hence, New Mexico has a substantial interest in adjudicating the suit. See *Zavala*, 2007-NMCA-149, ¶ 31. We therefore conclude that Ford consented to general jurisdiction in New Mexico courts by registering to do business here and appointing an agent for service of process under the Act. The

district court's denial of Ford's motion to dismiss for lack of jurisdiction is affirmed.

{33} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

J. MILES HANISEE, Judge

STEPHEN G. FRENCH, Judge Pro Tem



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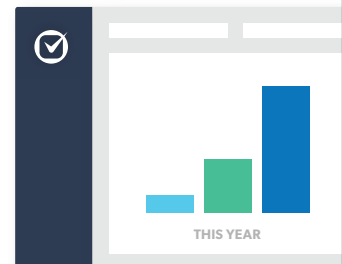
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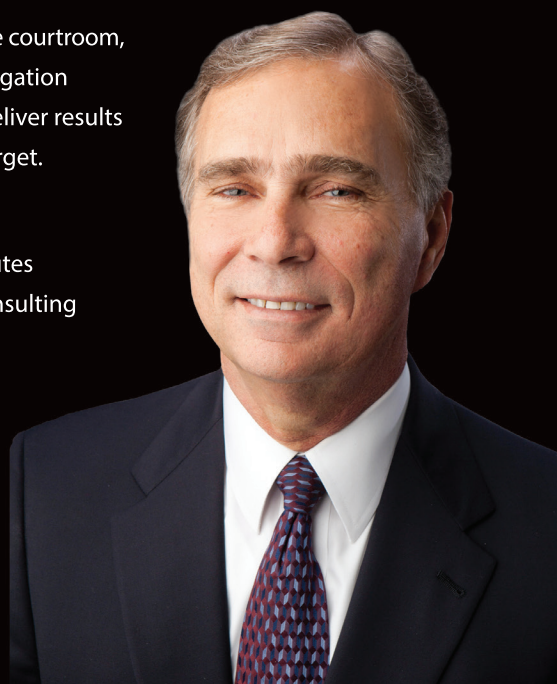
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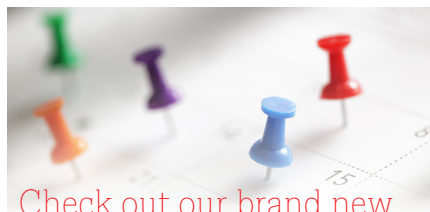
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Weed Law Firm LLC, located in The Town of Bernalillo, Sandoval County, is seeking to hire an entry level attorney to join our team. We are a high-volume, general practice firm that deals with an extensive variety of legal issues. Providing excellent customer service and resolving legal issues in the most timely and effective manner are our daily goals. This is an excellent opportunity for the individual that seeks to establish themselves with a growing firm that continually fights for justice while upholding their own personal integrity and respect for the law. Please send your resume and a cover letter to weedlawfirmllc@hotmail.com. All information provided is confidential.

Trial Attorney

Trial Attorney wanted for immediate employment with the Ninth Judicial District Attorney's Office, which includes Curry and Roosevelt counties. Employment will be based in either Curry County (Clovis) or Roosevelt County (Portales). Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Email resume, cover letter, and references to: Steve North, snorth@da.state.nm.us.

Senior Trial Attorney Eleventh Judicial District Attorney's Office, Div II

The McKinley County District Attorney's Office, Gallup, New Mexico is seeking resumes to fill current vacancies. The DUI Task Force is seeking a Senior Trial Attorney position. This position must be New Mexico and Navajo Nation Licensed. The DUI Task Force is a multi-agency taskforce established to prosecute DUI cases in courts of the State of New Mexico and on the Navajo Nation. The District Attorney is also seeking resumes for an Assistant Trial Attorney and Senior Trial Attorney. Former position is ideal for persons who recently took the NM bar exam. Senior Trial Attorney position requires substantial knowledge and experience in criminal prosecution, rules of criminal procedure and rules of evidence. Admission to the New Mexico State Bar preferred, but will consider applicants who are eligible to be admitted by reciprocity. The McKinley County District Attorney's Office provides regular courtroom practice and a supportive and collegial work environment. Enjoy the spectacular outdoors in the adventure capital of New Mexico. Salaries are negotiable based on experience. Submit letter of interest, resume and references to Paula Pakkala, District Attorney, 201 West Hill, Suite 100, Gallup, NM 87301, or e-mail letter and resume to PPakkala@da.state.nm.us by 5:00 p.m. August 30, 2019.

Associate Attorney

Boyd, Powers & Williamson's Hobbs office is seeking a full-time attorney with 5-7 years of experience. Practice areas include personal injury, family law, and criminal law. Please visit our website to learn more about bpwlaw.com and why you would want to join our team. Excellent benefits and competitive salary. Please email a letter of interest, salary requirements and resume to: hfuller@bpwlaw.com

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Liberty Mutual's Insurance Defense Attorneys represent the Company and its policyholders in civil litigation matters involving claims for money damages or compensation for personal injury or property damage of a moderate value with moderately complex legal issues. Currently seeking an attorney with experience in litigation including depositions, motion practice and arbitrations. You will handle a full case load of personal injury cases while providing guidance and counsel to your clients through effective communication. Litigate cases and gain trial experience. Please view ad on Liberty's website for full information, including how to apply. <https://jobs.libertymutualgroup.com/job/9865706/insurance-defense-attorney-new-mexico-albuquerque-nm/>

Bilingual Associate Attorney (Uptown Albuquerque)

Rebecca Kitson Law is adding a full time, bilingual associate attorney position. Candidate must have passion and commitment to advocate for immigrants in all areas of relief. We are an inclusive, supportive office culture that welcomes all to apply. Must be fluent in Spanish. Must be willing to travel for Hearings and Interviews, as needed. Law License from any state accepted but New Mexico preferred. Preference will be given to those with 1-2 years of law-related experience. Salary DOE, full benefits and fun perks offered. Please send letter of interest, resume, and writing sample to rk@rkitsonlaw.com. You will only be contacted if you are being considered for the position. Please note that incomplete applications will not be considered.

Public Education Department - Attorney Positions

The Public Education Department (PED) is seeking attorneys for its Office of General Counsel. In addition to practicing education law, attorneys may be relied on for advice on matters relating to contracts, procurement, employment, public records, federal and state government funding, and/or other governmental agency matters. Strong writing and interpersonal skills are essential. More details about positions and how to apply are provided on the State Personnel Office website at <http://www.spo.state.nm.us/>. Please check the website periodically for updates to the list of available positions.

New Mexico — Ethics Commission Executive Director

The New Mexico Ethics Commission seeks a licensed attorney to serve as Executive Director. Responsibilities will include hiring and managing Ethics Commission staff, including a General Counsel, to fulfill the powers and duties provided by the State Ethics Commission Act, Laws 2019, Ch. 86, §§ 1-16. The Executive Director will oversee the receipt of complaints alleging violations of statutes under the Commission's jurisdiction and, if appropriate, the referral of such complaints to other state agencies. The Executive Director will, in some circumstances, report to the Commission on the status of investigations and assist the Commission in compelling testimony or production of evidence. The Executive Director will also assist the Commission in both the initiation of complaints and the promulgation of regulations, including rules of procedure, forms of complaints and other filings, rules for the qualifications of hearing commissioners, and rules for the issuance of advisory opinions. Further, the Executive Director will prepare and submit the Commission's annual budget; make recommendations for changes to statutes and rules that would facilitate administration of the State Ethics Commission Act; enter into contracts on behalf of the Commission; and maintain public access to the Commission's opinions and reports through a website. The Executive Director will assist the Commission in providing for ethics guides and ethics trainings for public officials, public employees, government contractors, lobbyists, and other interested persons. Additionally, the Executive Director will assist the Commission in drafting advisory opinions, proposed codes of ethics for state agencies, and annual reports of the Commission's activities to the Legislature and the Governor. A successful applicant will have experience in litigation, management and budgeting, and drafting adjudicatory opinions, contracts, and reports. The Executive Director must reapply for the position after six years of service and may serve for no more than twelve years. The position will have an annual salary range of \$125,000.00 to \$146,150.58. Please send applications by September 1, 2019 to: Ethics.Commission@state.nm.us or, by postal mail, to Karen Armijo, Department of Finance and Administration, Bataan Memorial Building, Room 180, 407 Galisteo St., Santa Fe, NM 87501. The position will remain open until filled.

Associate Attorney

Scott & Kienzle, P.A. is hiring an Associate Attorney (0 to 10 years experience). Practice areas include insurance defense, subrogation, collections, creditor bankruptcy, and Indian law. Associate Attorney needed to undertake significant responsibility: opening a file, pre-trial, trial, and appeal. Lateral hires welcome. Please email a letter of interest, salary range, and résumé to paul@kienzlelaw.com.

Custodian of Public Records

The University of New Mexico seeks a motivated, detail-oriented person to coordinate and facilitate UNM's compliance with the New Mexico Inspection of Public Records Act (IPRA). The Custodian serves as the primary contact regarding requests to inspect public records, and oversees and coordinates UNM's response to such requests in a timely manner. The Custodian is responsible for managing UNM's online public records portal, communicating with public requesters and UNM personnel, reviewing records to determine whether they are responsive to a particular request, drafting response letters, and working closely with University Counsel when issuing final response letters. The Custodian is responsible for requests involving public records maintained by the Main Campus, the branch campuses, the UNM Health Sciences Center (including the UNM hospitals) and the Office of Medical Investigator. Applicants should be familiar with adhering to statutory deadlines and be able to work in a fast-paced environment. The Custodian operates under the direction of UNM's Chief Legal Counsel and supervises a staff of 1-2 paralegals. Minimum qualifications: Bachelor's degree and at least five years of experience directly related to the duties and responsibilities specified; skilled in interpreting, applying and explaining laws, rules and regulations; ability to use independent judgment and manage confidential information; strong interpersonal and communication skills; and the ability to work effectively with a wide range of constituencies. Preferred qualifications: Juris doctorate and at least three years of experience in evaluating and responding to requests for public records; supervisory experience; and experience working with an electronic records management system. To apply please visit our website at <http://unmjobs.unm.edu>, Req. #9760. Open until filled. UNM is an equal opportunity employer. EEO/AA/Minorities/Females/Vets/Disabled/and other protected classes.

Attorney Wanted

Small AV-rated firm seeks attorney with trial experience interested in civil litigation, primarily insurance defense. Must do high-quality work, use good judgment, possess strong work ethic, work efficiently, and take initiative. Email resume to Nathan H. Mann at nmann@gcmlegal.com.

Attorney

Butt Thornton & Baehr PC seeks an attorney with at least 5 years' legal experience. Our growing firm is in its 60th year of practice. We seek an attorney who will continue our tradition of excellence, hard work, and commitment to the enjoyment of the profession. Please send letter of interest, resume, and writing samples to Ryan T. Sanders at rtsanders@btblaw.com.

Solo/Small Firm

Are you an established solo or small firm that would like the benefit of being part of an AV-rated, small firm that concentrates in civil litigation, especially insurance defense? We seek one or more such attorneys with same or compatible practices. Contact Nathan H. Mann by email at nmann@gcmlegal.com

Assistant Trial Attorney/Deputy District Attorney

The Office of 11th Judicial District Attorney, Division I, in Farmington, NM is Equal Opportunity Employer and is accepting resumes for positions of Assistant Trial Attorney to Deputy District Attorney. Salary DOE. Please send resume to: Jodie Gabehart - jgabehart@da.state.nm.us

Attorney

The Carrillo Law Firm, P.C., located in Las Cruces, NM, is seeking an Attorney to join our firm. We handle complex litigation as well as day-to-day legal matters from governmental sector and private corporate clients. Applicant must possess strong legal research and writing skills, have a positive attitude, strong work ethic, desire to learn, and have a current license to practice law in New Mexico. We offer competitive benefits to include health insurance, a profit sharing plan, and an excellent work environment. Please send letter of interest, resume, references, and writing sample via email to deena@carrillolaw.org. All responses are kept confidential.

Senior Trial Attorney Positions Available in the Albuquerque Area

The Thirteenth Judicial District Attorney's Office is seeking Senior Trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties, where you will enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, which provides the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Fajardo kfajardo@da.state.nm.us or 505-771-7411 for an application. Apply as soon as possible. These positions will fill up fast!

Associate Attorney

Stiff, Keith & Garcia is a successful and growing law firm representing national clients, looking for a lawyer to work as an associate in the areas of insurance defense and civil litigation. Flexible work environment available. Minimum of 2 years of litigation experience. Strong academic credentials, and research and writing skills are required. We are a congenial and professional firm. Excellent benefits and salary. Great working environment with opportunity for advancement. Send resume to resume01@swcp.com

Associate of Counsel Attorney

Chapman and Priest, P.C., an AV rated defense firm, seeks an associate or of counsel attorney to assist with increasing litigation case load. Candidates should have 4 to 10 years civil defense experience, good research and writing skills, as well as excellent oral speaking ability. Candidate must be a self-starter. Trial and coverage experience a plus. Send resume, references, writing sample and salary requirements to Tonnies@cplawnm.com.

State of New Mexico – General Counsel

The State of New Mexico seeks to hire General Counsel for the General Services Department and a Legal Director for the Department of Public Safety. Minimum qualifications include a Juris Doctorate degree from an accredited school of law and three years of experience in the practice of law. Please submit a cover letter, resume and references to vanessa.kennedy@state.nm.us.

Legal Director

For nearly 20 years Enlace Comunitario has been transforming lives of Latino immigrant victims of domestic violence, their children and their communities in Central NM. We are a passionate, highly motivated group of advocates, counselors, educators, attorneys, public policy experts, and fundraisers, and we're looking for an exceptional legal director to join our team. Reporting to the Executive Director, the Legal Director will lead and expand EC's legal program, including developing and litigating family law cases related to the victimization, assisting in the development of a new immigration component and managing the legal department. The Legal Director will be responsible for handling the day-to-day management of legal staff, volunteers, and cooperating attorneys. As a critical member of the organization's senior management team, the Legal Director will provide strategic leadership on both litigation and non-litigation legal advocacy in priority areas such as women's and immigrants' rights as well as other areas identified by our team in collaboration with community partners. In addition, the Legal Director works in close coordination with our other teams, as well as our local and national partners to advance our advocacy goals. Must be bilingual (Spanish-English). For a detailed job description, visit our website enlacenm.org. If you are interested in this position, please submit a cover letter to cmolina@enlacenm.org that illustrates your commitment to victims and immigrant rights, a current resume, a legal writing sample, and contact information for three professional references. Include "Legal Director Search" in the subject line and specify how you heard about the posting. No phone calls or walk-ins, please.

Pueblo of Laguna is seeking applicants for the following positions:

Court Prosecutor will presents/files criminal complaints and prosecutes individuals accused of violating ordinances of the Pueblo. Represents the Pueblo as plaintiff in Pueblo Court to prosecute and enforce penalties. Assesses complaints to determine formal criminal proceedings. Conducts research, interviews victims and witnesses; develops strategy, arguments and testimony to present case; provide legal advice regarding search warrants, arrest warrants, and subpoenas; works with Probation, Social Services, Behavioral Health; utilizes a plea bargain process. Acts as co-counsel with Pueblo attorneys; Reviews and recommends amendments to Pueblo codes, ordinances; Manages and budget funding agencies, and reports, supervises staff. Associate Prosecutor will presents/files criminal complaints and prosecutes individuals, accused of violating criminal laws, including status offenses, Pueblo laws, codes, and/or ordinances. Assigned by Prosecutor will act as plaintiff in Pueblo Court actions to prosecute and enforce penalties for violations. Prepare pleadings, motions, legal briefs, orders and appellate documents. Works with Probation, Social Services, Behavioral Health, and Victim Witness Advocate. Assists in the development of crime prevention and intervention initiatives. Utilizes the Pueblo's customary based approach to resolve issues. Associate Judge adjudicates cases, prepares decisions, and carries out other functions of the judicial processes. Hears, tries, and determines cases to ensure the enforcement of and compliance with Pueblo codes and ordinances. Entertains pleadings from outside jurisdictions; holds hearings for bench warrants, requests for search warrants, extradition proceedings, etc. Adjudicates civil and criminal cases; imposes judgment, fines, penalties, and/or sentences. Drafts orders, opinions, or other pleadings. Refers to other courts on certain cases for disposition. Develops and maintains comprehensive case files, narrative and statistical reports. Public Defender represents indigent clients accused of violating ordinances of the Pueblo of Laguna. Performs competent defense, arrangements of bail, posting bond, pretrial conferences, representation in court appearances, and post-trial representation. Ensures civil rights are protected. Utilizes plea bargain process in the interests of the accused. Contact clients of hearings, case developments, and obligations. Interviews, gathers evidence, and analyzes to formulate legal representation. Prepares pleadings, motions, legal briefs, orders, and appellate documents. Works with relevant personnel or entities regarding appropriate recommendations for case resolution, sentences, and referrals. Reviews codes and/or ordinances; recommends amendments. For more information, contact the Pueblo of Laguna Human Resources Office at (505) 552-6654 or visit our website www.lagunapueblo-nsn.gov

Associate Attorney Las Cruces:

The law office of McGraw & Strickland, LLC, based in Las Cruces, New Mexico, is seeking an associate attorney, preferably with 2+ years of experience. We represent plaintiffs for civil rights violations and personal injury claims. Candidates should have excellent brief writing and legal research skills, and be able to work well with others and independently in a fast-paced, professional environment. Bilingual is a plus. Competitive salary and benefits, including health insurance and 401K plan. Please email resume, cover letter, writing samples and three references to: reception@lawfirmnm.com

Domestic Relations Hearing Officer Family Court

The Second Judicial District Court is accepting applications for a full-time, term At-Will Domestic Relations Hearing Officer in Family Court (position #33541). This position is under the supervision of the Presiding Family Court Judge. Applicant will be assigned a child support caseload. May also be assigned caseloads to include domestic relations and domestic violence matters consistent with Rule 1-053.2. Qualifications: J.D. from an accredited law school, New Mexico licensed attorney in good standing, minimum of (5) years of experience in the practice of law with at least 20% of practice having been in family law or domestic relations matters, ability to establish effective working relationships with judges, the legal community, and staff; and to communicate complex rules clearly and concisely, respond with tact and courtesy both orally and in writing, extensive knowledge of New Mexico and federal case law, constitution and statutes; court rules, policies and procedures; manual and computer legal research and analysis, a work record of dependability and reliability, attention to detail, accuracy, confidentiality, and effective organizational skills and the ability to pass a background check. SALARY: \$51.44 hourly, plus benefits. Send application or resume supplemental form with proof of education and writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM 87102. Applications without copies of information requested on the employment application will be rejected. Application and resume supplemental form may be obtained on the NM Judicial Branch web page at www.nmcourts.gov. CLOSES: August 28, 2019 at 5:00 p.m. EOE. Applicants selected for an interview must notify the Human Resource Division of the need for an accommodation.

Associate Attorney

Small active and productive law firm in Albuquerque is seeking an associate attorney interested in practicing consumer bankruptcy law. This position will provide someone with the opportunity to learn and/or expand his or her knowledge of bankruptcy law and eventually take over the firm. To apply for this opportunity interested candidates should mail their resume to Don Provencio at 1721 Carlisle Blvd. NE, Albuquerque, NM 87110 or email it to don.dplawfirm@comcast.net.

Assistant District Attorney

The Fifth Judicial District Attorney's office has immediate positions open for new or experienced attorneys, in our Carlsbad and Hobbs offices. Salary will be based upon the New Mexico District Attorney's Salary Schedule with starting salary range of an Assistant Trial Attorney to a Senior Trial Attorney (\$58,000 to \$79,679). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs, NM 88240-8335 or e-mail to 5thDA@da.state.nm.us.

Senior Trial Attorney/ Deputy District Attorney Taos County

The Eighth Judicial District attorney's office is accepting applications for a Senior Trial Attorney/Deputy District Attorney in the Taos office. The Senior Trial Attorney position will handle a combination of misdemeanor and felony level cases, whereas the Deputy District Attorney position will handle primarily felony level cases. Senior Trial and Deputy District Attorney positions are mid-level to advanced level positions of which is a minimum of two (2) to four (4) years of criminal law experience is preferred, respectively. Salary will be based upon experience and the District Attorney Personnel and Compensation Plan. Please submit a letter of interest and a resume to Suzanne Valerio, District Office Manager, 105 Albright St., Suite L, Taos, New Mexico 87571, or submit electronically to svalerio@da.state.nm.us. Applications will be accepted until and attorney has been hired for the position.

Legal Secretary

Well-established Albuquerque civil litigation firm seeking a full-time Legal Secretary. The ideal candidate should have a minimum of 2 years civil litigation experience, be highly motivated, detail oriented, well-organized, strong work ethic, knowledge of State and Federal court rules, and proficient in Odyssey and CM/ECF e-filing. We offer an excellent fully funded health insurance plan, 401(K) and Profit Sharing Plan, paid designated holidays and PTO, and a professional and team-oriented environment. Please submit your resume to: becky@madisonlaw.com.

Legal Assistant

Legal Assistant for litigation defense downtown law firm. Looking for someone with relevant experience, knowledge of e-filing in State and Federal courts, strong organizational skills, cooperative attitude, and attention to detail. Full time, salary DOE, great benefits incl. health, dental & life ins. and 401K match. Please e-mail resume to kayserk@civerolo.com, or mail to Civerolo, Gralow & Hill, PA, PO Box 887, Albuquerque NM 87103.

Paralegal

Solo practitioner seeking an experienced, professional, full-time paralegal for a litigation practice. Practice is limited to probate litigation, guardianships, and elder law (and some plaintiff's personal injury). Experience with probate and guardianships preferred. The ideal candidate will be professional in dress, appearance, and demeanor; will have an excellent command of the English language; will possess above-average writing skills; and will have experience with Timeslips and e-filing; and can answer discovery and draft pleadings with minimal supervision. Position offers a very pleasant working environment. Salary commensurate with experience. Please send a cover letter along with your resume to ben@benhancocklaw.com.

Front Desk/Facilities Assistant

The State Bar of New Mexico seeks a dynamic and energetic full-time Front Desk/Facilities Assistant. For full details and instruction on how to apply, visit <https://www.nmbar.org/NmbarDocs/AboutUs/Careers/FD.pdf>.

JLAP Clinician/Project Manager

The State Bar of New Mexico seeks a dynamic full-time Clinician/Project Manager for the New Mexico Judges and Lawyers Assistance Program (NM JLAP). NM JLAP offers confidential professional and peer assistance to help individuals identify and address problems with alcohol and other drugs, depression, and other mental health/emotional disorders, as well as with issues related to cognitive impairment. For full details and instruction on how to apply, visit <https://www.nmbar.org/NmbarDocs/AboutUs/Careers/JLAP.pdf>

Office Space

620 Roma N.W.

The building is located a few blocks from Federal, State and Metropolitan courts. Monthly rent of \$550.00 includes utilities (except phones), fax, copiers, internet access, front desk receptionist, and janitorial service. You'll have access to the law library, four conference rooms, a waiting area, off street parking. Several office spaces are available. Call 243-3751 for an appointment.

Downtown Office Space For Lease:

1001 Luna Circle. Charming 1500 sq. ft. home converted to office, walking distance to Courthouses and government buildings. Open reception/secretarial area, 4 offices, kitchenette, free parking street-front and in private lot. Security system. Lease entire building \$1600/mo. or individual office \$500/mo. Call Ken 238-0324

110 12th Street NW

Beautiful, 2-story office for rent in Historic Downtown Albuquerque. Formerly Kathy Townsend Court Reporters. Upstairs: four private offices; one bath; small break area with small refrigerator. Downstairs: waiting area with fireplace; large office or open work area; generous breakroom area with large refrigerator; one bath; furnished conference room with table and 8 chairs. High ceilings, large windows, modern light fixtures throughout. Functioning basement, onsite parking. \$3,000.00/month. Contact Shane Youtz, (505) 980-1590 for an appointment.

503 Slate NW

503 Slate NW, Affordable, three beautiful large offices for rent, with secretarial area, located within one block of the courthouses. Rent includes parking, utilities, fax, wireless internet, janitorial services, and part-time bilingual receptionist. All offices have large windows and natural lighting with views of the garden and access to a beautiful large conference room. Call 261-7226 for appointment.

For Sale Or Lease

Large individual office suites with support staff areas, a small kitchen/breakroom, men's and women's baths, large windows for natural lighting, and located at Louisiana & Candelaria. Will lease all or part. \$900/MO. Full service. Mike Contreras, CCIM Owner/Broker, OFFICE: 505-888-1500 mike@sentinelrealestate-inv.com

Office Space—Santa Fe

Beautiful downtown office at 200 West De Vargas Street (located next to First Judicial Court Building). The property has its own private parking lot. Unit has brick floors, a kiva fireplace, vigas and plenty of natural light. 930 square feet. Contact Ryan Romero @ (505) 660-3274.

500 Tijeras NW

Beautiful office space is available with reserved on-site tenant and client parking. Walking distance to court-houses. Two conference rooms, security, kitchen, gated patios and a receptionist to greet and take calls. Please email estefany500tijerasllc@gmail.com or call 505-842-1905.

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Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201

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Client is looking to buy judgments for cash. E-mail ops@lzamzok.com or 898-6311 X3014

Law Firm Office for Sale

The Twelfth Judicial District, and Alamogordo in particular, is experiencing a shortage of attorneys who engage in a general civil practice. This is a great opportunity for an attorney to establish a practice in an established location. The building is the location of the former Robert M. Doughty II, PC, 1207 New York Ave., Alamogordo, NM. The office is one block from the Otero County Courthouse. Furnished. OWNER WILL FINANCE. You can take a virtual tour at <https://my.matterport.com/show/?m=Ce9XzkSNbht&m=1https://my.matterport.com/show/?m=Ce9XzkSNbht&m=1> For information, please contact Molly Pattillo, Future Real Estate, at molly@futurererealestate.com.

Official Publication of the State Bar of New Mexico

BAR BULLETIN

2019 ADVERTISING SUBMISSION DEADLINES

The *Bar Bulletin* publishes every other week on Wednesdays.

Submission deadlines are also on Wednesdays, two weeks prior to publishing by 4 p.m. Advertising will be accepted for publication in the Bar Bulletin in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. Cancellations must be received by 10 a.m. on Thursday, 13 days prior to publication.

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