

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE
ON THE JUDICIARY, UNITED STATES SENATE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
James Oren Browning ("Jim")
2. Address: List current place of residence and office address(es).
 - Residence: Albuquerque, New Mexico
 - Office: Browning & Peifer, P.A.
20 First Plaza, NW, Suite 725 (Zip 87102)
Post Office Box 25245
Albuquerque, New Mexico 87125
3. Date and place of birth.
April 6, 1956 Levelland, Texas
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Mamed. Wife's name is Jan Ramey Browning. Her maiden name was Marla Jan Ramey. Jan is a teacher, but is not currently working outside of the home.
5. Education. List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
University of Virginia
Attended: 1978 to 1981
J.D. 1981

Yale University
Attended: 1974 to 1978
B.A. Political Science (Intensive Program), 1978

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Browning & Perfer, P.A.
 20 First Plaza, NW, Suite 725 (Zip 87102)
 Post Office Box 25245
 Albuquerque, New Mexico 87125
 (505) 247-4800

Shareholder: 1990 to the present
 Director: 1990 to the present
 Chairman: 1990 to the present
 Secretary: 1991 through 2000

Rodey, Dickason, Sloan, Akin & Robb, P.A.
 201 Third Street N.W., Suite 2200
 Post Office Box 1888
 Albuquerque, New Mexico 87103
 1983-1987, Associate
 February 1988 to June 1990, Shareholder and Director

Attorney General Harold (Hal) D. Stratton
 New Mexico Department of Justice
 Bataan Memorial Building, Suite 260
 Santa Fe, New Mexico 87503
 1987-1988, Deputy Attorney General

The Honorable Lewis F. Powell, Jr., Associate Justice
 The Supreme Court of the United States
 Washington, D.C. 20543
 1982-1983, Law Clerk

The Honorable Collins J. Seltz, Chief Judge
 United States Court of Appeals for the Third Circuit
 Federal Building, 844 King Street
 Wilmington, Delaware 19801
 1981-1982, Law Clerk

Covington & Burling

1024

1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Summer 1981, Summer Associate

Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Summer 1980, Summer Clerk

Hinkle, Cox, Eaton, Coffield & Hensley
400 Penn Plaza, Suite 700
Roswell, New Mexico 88201
Summer 1979, Summer Clerk

Manpower or some other temporary work service
Charlottesville, Virginia
Christmas break 1978 to 1979. I worked for a temporary job service
It assigned me to a textile mill

Texaco
Buckeye, New Mexico
Summer 1978, Roundabout

Dairy Freeze
Carlsbad Highway
Hobbs, New Mexico
Summer 1978, Cook and Order taker

Browning Investment Company
20 First Plaza, NW, Suite 725 (Zip 87102)
Post Office Box 25245
Albuquerque, New Mexico 87125
Director, 1992 to the present
Officer: President and Treasurer, 1992 to the present

Montgomery Blvd. Church of Christ
7201 Montgomery Blvd. NE
Albuquerque, New Mexico 87109
Elder and Director, 1995 to 1997

American Judicature Society
180 North Michigan Avenue, Suite 600
Chicago, Illinois 60601
Director, Member of Board of Directors (1988 to 1999)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Yale University

- Graduated magna cum laude
- Distinction in major
- Frank Muer Patterson Prize (1978) best senior essay on American political issues
- William L. Learned Scholarship (end of freshman-sophomore year: 1975)

University of Virginia

- Editor in Chief, Virginia Law Review
- Recipient, Marguerit G. Hyde Award for outstanding law student
- Order of the Coif
- Raven Society
- Colonel, Aide de Camp on the Staff of the Governor of the State of New Mexico (honor conferred on February 23, 1987 by the Honorable Jack Stahl, Lt. Governor, acting Governor of New Mexico)
- Best Lawyers in America (2003-2004)
- Chambers USA - America's Leading Lawyers (2003)
- Who's Who in the West (1990);
- Who's Who in American Law (1990, 1994);
- Nominated, Sterling Who's Who Directory (1994);
- Nominated, Who's Who Among Rising Young Americans (1990, 1994);
- Nominated, Who's Who of Emerging Leaders in America, (3rd ed. 1991, 4th ed.

1992).

- Nominated, Personalities of America (5th ed. 1990);
- Nominated, Who's Who Among Young American Professionals 1992-1994; and
- Certificate of Appreciation in recognition of noteworthy contributions to the Administration of Justice, given by the Honorable Burt Cosgrove, District Judge, Second Judicial District court, State of New Mexico (Dec. 31, 1996).

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

- Chairman, Committee on Admissions and Grievances, United States District Court for the District of New Mexico (7/31/1997 to 12/31/2000);
- Member, Committee on Admissions and Grievances, U.S. District Court, District of New Mexico (8/01/92 to 08/31/94 and 08/01/94 to 07/31/97);
- Member, New Mexico Bar Association (admitted in 1983);
- Albuquerque Bar Association (1982 to 1987; 1988 to 2000);
- The Bar Association for the United States District Court for the District of New Mexico (1996-2003);
- Member and Attendee, 1988, 1989, 1991, 1992, and 1993 Judicial Conference of the Tenth Circuit (there may have been others since 1993).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

- Lobbying: None
- Other Organizations:
 - ✓ New Mexico Christian Legal Aid, Inc.,
 - ✓ Federalist Society,
 - ✓ Madison Club (Federalist Society);
 - ✓ Member, Practice Group, Federalist Society;

- ✓ Albuquerque Bar Association,
- ✓ Republican National Lawyers Association;
- ✓ Montgomery Boulevard church of Christ;
- ✓ Christian Scholarship Foundation.
- ✓ Member, Legal Advisory Committee for Rio Grande Foundation, Inc.;
- ✓ Yale Football Y Association.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice

- New Mexico Bar Association (admitted in 1983).
- Bar for the United States District Court for the District of New Mexico (admitted in 1983);
- Bar for the United States Court of Appeals for the Tenth Circuit (admitted in 1983);
- Bar for the United States Court of Appeals for the Federal Court (admitted in 1987);
- Bar for the Supreme Court of the United States (admitted in 1987);
- Bar for the United States Court of Appeals for the Ninth Circuit (admitted March 30, 1999);
- Pro Hac Vice, United States Bankruptcy Court for the Northern District of Texas for the Lubbock Division, In re: First Federal Bank, formerly First Federal Savings Bank of New Mexico v. South Plains Car & Truck Plaza, Inc. d/b/a Red Raider County Dodge, Jim Richardson and Charlene Richardson, No. 00-50086-RLJ-11, Adversary No. 00-5032 (admitted September 17, 2001);
- Pro Hac Vice, United States District Court for the Northern District of California, Joan C. Howard v. Steven L. W. Hui, Michael C. Y. Wong, Wong's International (Holdings) Limited and Gatcombs Corp. N.V., No. C: 92-2742 CAL. (admitted June 30, 1998).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material

you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

- "Right to Bear Arms Born of Natural Law," Foundation of Our Freedom Second in Series to celebrate the 200th anniversary of the Bill of Rights, Albuquerque Journal 111th year, No. 343, December 9, 1991;
- Letter from James O. Browning to the Honorable Jack Stahl, Lt. Governor (dated March, 1990), reprinted in Vol. 1, Issue 3 of The Bernalillo County Bugle at 3, 6 (Spring 1990) (published by the Bernalillo County Republican Party).
- "Justice Powell Called Core of Supreme Court," Nov. 8, 1987, Hobbs Daily News-Sun;
- Letter to Editor on Legal Services Corporation, reprinted in State Bar Bulletin, Vol. 26, No. 42, Oct. 22, 1987;
- "AG's Office Upholds Watchdog Tradition," March 5, 1987, Albuquerque Journal;
- "AG's Advice on Tie-breaking Vote Based on Law, not Politics," Feb. 6, 1987 Albuquerque Journal;
- Att'y Gen. Op. No. 87-41 (1987) (public sector collective bargaining);
- Att'y Gen. Op. No. 87-56 (1987) (whether there is a current binding collective bargaining agreement between a state agency and AFSCME);
- Att'y Gen. Op. No. 87-01 (1987) (whether the Lt. Governor may vote in the case of a tie in the election of the president pro tempore);
- Hughes v. Oklahoma and Baldwin v. Fish and Game Commission: The Commerce Clause and State Control of Natural Resources, 66 Va. L. Rev. 1143 (1980).

LECTURES, SPEECHES, AND OTHER PUBLIC PRESENTATIONS

- Panel Member on "Changes in the Technology of Voting and Vote Counting: or, How to Forestall a Florida Frasco in New Mexico and Other States" at The 2001 Conference on Campaigns, Elections, Restricting, and Money to Fund the Elections System, a continuing legal education seminar sponsored by The University of New Mexico School

of Law and State Bar of New Mexico, Albuquerque, New Mexico (April 20, 2001);

- Presentation on "Preparing the Fact Witness for his Deposition" in continuing legal education seminar on "Taking and Defending Effective Depositions in New Mexico," Lorman Education Services, Albuquerque, New Mexico (May 16, 2000).
- Presentation on "Appellate Law Practice" in continuing legal education seminar, Lorman Education Services, Albuquerque, New Mexico (December 16, 1993).
- Mock Appellate Advocacy Judge, The University of New Mexico School of Law, Advocacy Seminar (April 1993).
- Presentation on "Proceedings in the Supreme Court of the United States" in continuing legal education seminar on "Appellate Law Practice," Lorman Education Services, Indian Pueblo Cultural Center, Albuquerque, New Mexico (December 11, 1992).
- Prayers, Fundraiser for William Davis, Republican candidate for Attorney General of New Mexico, Hyatt Hotel, Albuquerque, New Mexico (Aug. 11, 1990).
- Speech, Pro-Life Rally, Batuan Park, Albuquerque, New Mexico (April 28, 1990).
- Speech on Pro-Life Plank, Republican Party of New Mexico Platform Convention, Clarion Four Seasons Hotel, Albuquerque, New Mexico (April 7, 1990).
- Presentation on "Practice Before Administrative Agencies," continuing legal education seminar, University of New Mexico School of Law, Albuquerque, New Mexico, December 1, 1989.
- Lecture, "The Fourth Amendment and The Exclusionary Rule," Professor Leo Romero's Criminal Law Class, University of New Mexico School of Law, Albuquerque, New Mexico (April 3, 1989).
- Expert Witness Testimony before Senate Judiciary Committee, 1989 New Mexico Legislature for Senator Joe Harvey on Parental Consent Bill, Santa Fe, New Mexico (March 4, 1989).
- Lecture, "Federalism: In Search of a Neutral Judicial Principle," Federalist Society, University of New Mexico School of Law, Albuquerque, New Mexico (Oct. 24, 1988).
- Participant in Moot Oral Argument on Hazlewood at "Media Forum: First Amendment and Freedom of Speech" Seminar, New Mexico Law-Related Education Project, Albuquerque, New Mexico (Oct. 14, 1988).

- Speaker at American Freedom Coalition Citizenship '88 Seminar, "Your Vote and the Law. How the Legislative Process Works and How to Lobby," Albuquerque AmFac Hotel, Albuquerque, New Mexico (Aug. 20, 1988);
- Accepting Statesman of the Year Award for the Honorable Hal Stratton, Attorney General of New Mexico, National Right to Work Awards Luncheon, Board of Directors Annual Meeting and 13th Annual Concerned Educators Against Forced Unionism Seminar, Crystal City, Virginia (May 14, 1988);
- Lecture, "Alternatives to the Exclusionary Rule," Professor William S. Dixon's Constitutional Law Class, University of New Mexico School of Law, Albuquerque, New Mexico (1988);
- Many Legislative Committee Appearances on behalf of Attorney General Hal Stratton from December, 1986 to February, 1988;
- Introduction of the Honorable Patrick E. Higginbotham, Circuit Judge, United States Court of Appeals for the Fifth Circuit, Inaugural Speaker for New Mexico Federalist Society (November, 1987);
- "Prayer in New Mexico Schools," Talk for Inez Elementary School PTA Meeting, Albuquerque, New Mexico (Sept. 15, 1987);
- Judge, High School Moot Court Competition, New Mexico Law-Related Education Project, Albuquerque, New Mexico (April, 1987);
- Panel Member, "Views on Preparing Petitions and Oppositions to Certiorari - How to Get in or Stay Out Of the High Court"; Judge, Moot Court Panel, Supreme Court Seminar, National Association of Attorneys General, Washington, D.C. (Jan. 22-23, 1987);
- Speaker, "Legislative Update," Victims Rights Convention, Albuquerque, New Mexico (1987);
- Lecture, "Public Sector Collective Bargaining for New Mexico Schools," New Mexico Association of School Superintendents, Santa Fe, New Mexico (1987);
- Class Presentation on SEC v. Dirks and Insider Trading, Professor Frank Gill and Dean Theodore Parmall's Securities Law Seminar, University of New Mexico School of Law, Albuquerque, New Mexico (April, 1986);
- Lecture, "Raising Capital" for Dr. Gordon R. Bopp's "Entrepreneurship Class," Socorro Technological Innovation Center, New Mexico Institute of Mining & Technology, Socorro, New Mexico (Feb. 16, 1986);

- Judge, Intramural Moot Court Competition, University of New Mexico School of Law, Albuquerque, New Mexico (April 24, 1984); and
- Master of Ceremonies and Introduction for the Honorable J. Skelly Wright, Senior Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit, Annual Banquet of Virginia Law Review, Charlottesville, Virginia (Feb. 14, 1981).

I could not find copies of all my speeches or CLE presentations. I did not attempt to locate all my notes for Sunday school classes or sermons because those are not really "speeches."

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was January 2003.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not been a judge.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have not been a judge.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

- Chairman, New Mexico Sentencing Guidelines Commission, appointed by Governor Garrey Carruthers May, 1988; confirmed by New Mexico Senate, March 1989; resigned June, 1989;
- Deputy Attorney General, 1987-1988; appointed by the Honorable Harold D. Stratton, then Attorney General and now Chairman of the United States Consumer Product Safety Commission;

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Justice Lewis F. Powell, Jr.
The Supreme Court of the United States
Washington, D.C. 20543
1982-1983, Law Clerk

The Honorable Collins J. Seitz, Chief Judge
United States Court of Appeals for the Third Circuit
Federal Building, 844 King Street
Wilmington, Delaware 19804
1981-1982, Law Clerk

2. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Browning & Peifer, P.A.
20 First Plaza, Suite 725
Post Office Box 25245
Albuquerque, New Mexico 87125

(505) 247-4800
Shareholder and Director (1990-present)

Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third Street N.W., Suite 2200
Post Office Box 1888
Albuquerque, New Mexico 87103
Shareholder and Director, February 1988 to June 1990

Attorney General Harold D. Stratton
New Mexico Department of Justice
Bataan Memorial Building, Suite 260
Santa Fe, New Mexico 87503
1987-1988, Deputy Attorney General

Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third Street N.W., Suite 2200
Post Office Box 1888
Albuquerque, New Mexico 87103
1983-1987, Associate

Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Summer 1981, Summer Associate

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

While at the Rodey law firm, I worked in the corporate department and the commercial litigation department, eventually deciding that I enjoyed litigation more than a corporate practice. I then concentrated on commercial litigation, particularly on the more complex cases in the office -- antitrust, securities fraud, and some civil rights. Most of my work was for corporate defendants and for governmental entities.

When I became Deputy Attorney General in 1987, my clients were entirely governmental entities and governmental officers and agents. I advised all the agencies of the state, had an active litigation practice in both state and federal court, and also was involved in approving all new prosecutions and presentations to grand juries.

When I returned to Rodey, I returned to the commercial litigation department. My practice resembled what it had been from 1983 to 1986. Most of my work was for corporate defendants and for governmental entities.

In 1990, when I co-founded Browning & Peifer, P.A., my practice began to change. While my practice initially resembled my work at Rodey, and I primarily represented corporate defendants in court, our small firm began to take more plaintiff cases. While my own practice for many years resembled what it was at Rodey, representing corporate clients as both defendants and plaintiffs, the firm has always been about 60% billable work and 40% contingency, which is for plaintiffs. Our firm is presently about 50-50 between billable and contingency work, with most of my own practice now being for plaintiffs, most of whom are individuals.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

At Rodey, typical clients were: Mobil Oil, Shearson Lehman Brothers/American Express, Business Men's Assurance Company, Valley Improvement Association. I specialized in complex commercial litigation, particularly those in federal court involving federal substantive and procedural law -- antitrust, securities, and class actions.

At the Attorney General's office, I primarily did the state's civil work. I represented the Governor, the Corrections Department, Human Services Department. I tried to do the Attorney General's high profile cases at the Supreme Court and in federal court involving water and tax cases, civil rights cases involving the prisons and mental institutions, public employment issues, legislative retirement, and public retirement fund.

At Browning & Peifer, I have continued to represent many corporate clients -- Prudential Securities, Shearson, Texaco, Mellon Bank -- and governmental agencies and officials -- Governor Gary Johnson, the Department of Taxation and Revenue, New Mexico Coal Surface Mining Commission. However, I am currently representing a number of individuals and small companies against insurance companies and governmental agencies.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Almost all our firm work is litigation, so I appear in court frequently. I have been mostly a litigator since I left law school. The number of hearings and trials varies greatly; I am sometimes in the courtroom several times a week and month, and then I will sometimes go a while without being in court. But I am often during those stretches in discovery or filing briefs.

2. What percentage of these appearances was in:
(a) federal courts;

45%

(b) state courts of record;

50% state court

(c) other courts,

5% arbitrations, state agency proceedings.

3. What percentage of your litigation was:

(a) civil:

99%

(b) criminal

1%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I recall ten cases that I have tried to a judgment. I was lead counsel for my client in three, junior counsel in two, and co-counsel in five. I have had other trials and many evidentiary hearings, and have had many other cases end with a judgment as a result of the court granting motions to dismiss or motions for summary judgment

5. What percentage of these trials was:

(a) jury:

60% of the above trials were jury trials.

(b) non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your

participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

ANSWER:

It is difficult for me to pick the ten most significant cases, so I tried to pick four representative cases from my Rodey years, two from the Attorney General years, and four from the last 13 years with Browning & Peifer, P.A.

Brashar v. Mobil Oil Corp., 626 F.Supp. 434 (D.N.M. 1984)

Summary of Case: The Plaintiff, Brashar, worked on a drilling rig for third-party defendant Coleman Drilling Company. Brashar alleged that he suffered injuries from hydrogen sulfide poisoning, but could not sue Coleman because the Workmen's Compensation Act barred an action against his employer. Brashar thus sued the producer, Mobil.

Coleman and Mobil had entered into a written drilling contract. According to the terms of the contract, Coleman agreed to indemnify and hold harmless Mobil for claims arising from personal injury to Coleman's employees resulting from the work to be performed by Coleman. Coleman also agreed to carry employer's liability insurance. Coleman agreed to reimburse Mobil for expenses and attorneys' fees in investigating or defending any claims against Mobil.

Mobil added Coleman and others as third-party defendants. Mobil moved for summary judgment asking the court to declare the contract provisions were valid and enforceable. New Mexico had enacted §56-7-2 NMSA 1978, which stated that an agreement which purports to indemnify the indemnitee for damages "arising from the sale or concurrent negligence of the indemnitee" is void and unenforceable. Coleman tried to argue that the indemnification clause violated the public policy expressed in §56-7-2 and that New Mexico courts should not enforce the contract. The district court rejected this argument, holding that there was no conflict between Texas and New Mexico law. The court found contractual indemnity is permitted, if covered by liability insurance, under both states' law.

Hence, the indemnification provision was valid if covered by liability insurance. If Coleman failed to provide such insurance, it would be liable for resulting injury to Mobil for breaching its promise to provide such insurance. Thus, the court entered summary judgment for Mobil.

The case settled shortly after the court granted the summary judgment. Mobil paid nothing. It received some reimbursement of its fees and costs.

My Participation and final disposition: I represented Mobil and was involved in the case from beginning to the end. I was the associate on the case, taking care of the document productions, many depositions, and witness interviews. Most important, I drafted the successful motion for summary judgment

(a) Dates: 1983 to 1985

(b) Court: United States District Court for the District of New Mexico

The Honorable Bobby R. Baldeck,
Senior Judge, United States Court of Appeals for the
Tenth Circuit (then District Judge, United States District Court for the
District of New Mexico)

(c) My co-counsel:

Jackson G. Akin
Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third Street N.W., Suite 2200
Post Office Box 1888
Albuquerque, New Mexico 87103
Telephone: (505) 265-5900

Counsel for Plaintiff Gary Brashar:

David Pittard
formerly of: Briones & Pittard, P.A.
333 East Main Street
Farmington, New Mexico 87401
(505) 325-0258

Mr. Pittard now works and resides, I believe, in Texas:

1304 San Antonio Street
Austin, Texas
(512) 472-3223
and/or
404 Sycamore Drive
Cedar Park, Texas
(512) 260-8590

Counsel for Third-Party Defendant Reliance Insurance Co.:

Paul Butt
Alfred L. Greene, Jr.
Butt, Thornton & Bachr
4101 Indian School Rd., NE, Suite 300S
Post Office Box 3170
Albuquerque, New Mexico 87190
(505) 884-0777

Counsel for Third-Party Defendants George Coleman and
Coleman Drilling Company:

Richard L. Gerding
Gerding & O'Loughlin
Post Office Box 1020
Farmington, New Mexico 87499-1020
(505) 325-1804

Counsel for Third-Party Defendant Portable Logging and St. Paul Ins.
Corp.:

Margo J. McCormick
Clerk for the Honorable Richard I. Puglisi
United States Magistrate
333 Lomas Blvd., NW, #730
Albuquerque, New Mexico 87102
(505) 348-2360

[Ms. McCormick then worked for Miller, Stratvert, Torgerson & Brandt in
Albuquerque, New Mexico.]

Docket No., Civ. No. 83-1226BB

**Phelps Dodge Corp. v. Revenue Division of the New Mexico Department of Taxation
& Revenue, 103 N.M. 20, 702 P.2d 10 (Ct. App. 1985), cert. denied, June 25, 1983.**

Summary of Case: In 1983, the New Mexico Court of Appeals held that certain mining companies were exempt from the payment of compensating and gross receipts tax by reason of their payment of the resources tax. Phelps Dodge filed a request for a refund of compensating taxes previously paid by it during the reporting period of 1980 through 1983. The Department did not immediately rule on the request for refund, but instead went to the legislature and secured the passage of HB6, which modified the right to claim tax exemptions. The legislative amendment expressly stated that the judiciary misconstrued the statute. After securing the

retroactive legislation, the Department then denied Phelps Dodge's refund request.

Phelps Dodge sued the Department for a tax refund. Phelps Dodge filed a motion for partial summary judgment. The Court entered a summary judgment for Phelps Dodge, directing the Department to refund compensating taxes previously paid by Phelps Dodge incident to its mining operations in New Mexico.

The Department appealed. The Court of Appeals held that a request for tax refund under §7-1-26 NMSA was a "pending case" within the meaning of art. IV, §34 of the state constitution and that the legislature's enactment of HB6, with retroactive application, violated the state constitution. The Court of Appeals also rejected the Department's contention that the statute was curative and held that HB6 was a change of law, not a clarification. The court held that HB6 had no retroactive effect. The Supreme Court denied the Department's petition for certiorari.

The Court of Appeals affirmed the district court's judgment ordering a refund. The end result was that Phelps Dodge received a multi-million dollar refund.

My participation and final disposition: My firm represented Phelps Dodge. As an associate, I played a major role in drafting the motion for summary judgment and all appellate briefs. I was involved in all phases of strategy and had direct contact with the corporate representatives for Phelps Dodge. The end result was the case settled favorably for Phelps Dodge after the major legal issues were resolved on appeal.

(a) Date: 1983 to 1985 (maybe 1986)

(b) Court(s):

First Judicial District, County of Santa Fe, State of New Mexico:

The Honorable Lorenzo F. Garcia, United States
Magistrate
333 Lomas Blvd., NW, Chambers #680
Albuquerque, New Mexico 87102
(505) 348-2320

Judge Garcia was then District Judge in the First Judicial District Court in Santa Fe;

Court of Appeals of New Mexico:

Judge (s): Donnelly (Chief Judge), Wood, and Neal;

Supreme Court of New Mexico

(c) Co-counsel:

Charles L. Saunders, Jr
83 Via Oreada
Corrales, New Mexico 87048
(505) 898-9005

[Mr. Saunders was at the Rodey law firm at the time]

Counsel for the Defendant:

Frank Katz
1300 Canyon Road
Santa Fe, New Mexico 87501
(505) 982-4342 (office at his home)

[Mr. Katz was, at that time, in-house counsel for the Taxation and Revenue Department].

Docket No.: 8676 at the Court of Appeals
D-101-CV-308404920 First Judicial District

State of New Mexico v. United States, 831 F.2d 265 (Fed. Cir. 1987)

Summary of Case: Under the Mineral Leasing Act of 1920, Congress authorized the Secretary of Interior to lease certain federally owned lands containing oil and gas deposits to parties who would extract these resources. Lessors under this Act pay a royalty to the government of not less than 12 1/2 % of the value of the production removed from the leased land. The Secretary of the Treasury pays 50% of those proceeds to the states where the leased lands are located. In 1980, Congress enacted the Crude Oil Windfall Profit Tax Act, which imposed a tax on windfall profits realized from the extraction of domestic oil.

New Mexico originally brought suit in the United States Court for the District of New Mexico, arguing that the United States had improperly paid the state its share of federal royalties from post-tax royalties. The district court found for New Mexico, but the United States Court of Appeals for the Tenth Circuit held that the district court lacked jurisdiction. The case was transferred to the United States Claims Court.

On December 30, 1986, the Claims Court granted the United States' motion for summary judgment, holding that the payments should be made on a post-tax royalty basis. The Claims Court reasoned that the windfall profit tax is imposed upon oil, New Mexico's interest in the royalty does not become fixed until the royalty is converted into money by sale, and, therefore, New Mexico could only receive a share of the post-tax royalty.

The Federal Circuit Court of Appeals affirmed the Claim Court's judgment. The Federal Court found that the legislative history of the Windfall Profit Tax Act revealed that Congress'

purpose in taxing federal royalties was to reduce payments to the states. The Court of Appeals found that Congress did not want the states to obtain a windfall through inflated royalties that would accrue from the deregulation of the price of oil. Thus, the United States' "royalty oil" was not exempt from the windfall profit tax. The United States acted in accordance with the applicable statute when it subtracted the amount of the tax from the total royalty before it calculated the state's share of it.

My participation and final disposition: The Claims Court ruled on December 30, 1986. I became Deputy Attorney General on January 2, 1987. I helped outside counsel draft the briefs for the Federal Circuit and I argued the case in the Federal Circuit. After the State of New Mexico lost the case in the Federal Court, the Attorney General, upon my advice, decided not to seek further appellate review.

- (a) Date: 1987
- (b) Courts: United States Court of Appeals for the Federal Circuit
Judges(s): Markey (Chief Judge), Davis, and Bissell
- (c) Co-counsel

The Honorable Harold (Hal) D. Stratton, Chairman
United States Consumer Product Safety Commission
4330 East West Highway, Suite 724
Bethesda, Maryland 20814
Telephone: 301/504-7900

[Chairman Stratton was then the Attorney General of New Mexico]

Stephen Charas
Sutin Thayer & Browne, P.C.
6565 Americas Parkway, NE, Suite 1000
Albuquerque, New Mexico 87103-1945
(505) 883-3413

Counsel for the United States: John S. McCarthy, Department of Justice

Docket No(s):
District Court: D-101-CV-308404920
Court of Appeals: 87-1210 (Appellate Docket Number)

Jackson v. Fort Stanton Hosp. & Training School, 757 F.Supp. 1231 (D.N.M. 1990)

- 757 F.Supp. 1243 (D.N.M. 1990)

- 964 F.2d 980 (10th Cir. 1992)

Summary of Case: Twenty-one developmentally disabled clients of the State's mental health facilities filed this civil rights class action in 1987 seeking deinstitutionalization remedies. Specifically, the plaintiffs challenged the institutionalization of developmentally disabled persons at Fort Stanton Hospital and Training School and Los Lunas Hospital and Training School.

In 1988, the district court allowed more than 125 parents and guardians of residents at Fort Stanton and Los Lunas to intervene. The intervenors opposed the plaintiffs' efforts to require mandatory transfer of the institutions' residents to community-based facilities.

In 1989, the district court certified a class of all persons who at the time resided and would reside at Fort Stanton and Los Lunas, or would be transferred from these two institutions to other facilities. The court created two subclasses. The original plaintiffs represented a subclass that sought both closure of Fort Stanton and Los Lunas and community placement of the residents. Intervenors comprised the other subclass seeking to improve the conditions at the institutions, but opposing mandatory transfers of the institutions' residents.

The State filed a motion to disqualify the judge when he contacted the court-appointed expert directly. The court held that a reasonable person would not have doubted that the judge's opinion was important and was based solely on the merits of the case.

After many days of evidentiary hearings on requests for emergency relief beginning in late 1987, the main trial began in 1989 and lasted eight weeks, some in 1990. In the course of the trial, many witnesses, most of whom were presented as experts, testified; over eight hundred exhibits were admitted into evidence; and over 10,000 pages of transcripts were recorded. The case largely went against the State and the court awarded the plaintiffs substantial relief.

The Defendants did not appeal from the district court's 1990 order, but instead elected to attempt to comply with the planning and corrections process that the district court ordered. The Intervenors, on the other hand, appealed the 1990 order, contending that the district court erred with respect to its holding that section 504 of the Rehabilitation Act and the due process clause require transfer of certain residents at Fort Stanton and Los Lunas.

The Tenth Circuit held that the portions of the district court's 1990 order requiring that the defendants submit plans both for the correction of deficiencies at Fort Stanton and Los Lunas and also for the transfer of residents whose IDTs recommend community placement was not independently appealable. The Tenth Circuit also concluded that it should not exercise its discretion at that time to address otherwise nonappealable issues. The Tenth Circuit thus reversed in part and remanded the case.

I represented: I think I represented the following Defendants (I know I represented most of the state institutions, but I do not know which ones were parties when I was Deputy Attorney General).

Fort Stanton Hospital and Training School;
 Los Lunas Hospital and Training School
 New Mexico Health and Environment Department
 Dennis Boyd, Secretary of New Mexico Health and Environment Department
 Carolyn KJintworth, Acting Administrator, Los Lunas Hospital and Training
 School
 David Lacourt, Ph.D., Administrator, Fort Stanton Hospital and Training School
 New Mexico Human Services Department
 Alex Valdez, Secretary of the New Mexico Human Services Department
 New Mexico Department of Education
 New Mexico Board of Education
 Catherine Smith, Member of the New Mexico Board of Education
 Lynn Medlin, Member of the New Mexico Board of Education
 Rudy Castellano, Member of the New Mexico Board of Education
 John W. Bassett, Member of the New Mexico Board of Education
 L. Grady Mayfield, Member of the New Mexico Board of Education
 Herman Wisenteiner, Member of the New Mexico Board of Education
 Maria Chavez, Member of the New Mexico Board of Education
 Melvin Martinez, Member of the New Mexico Board of Education
 David McMann, Member of the New Mexico Board of Education
 Millie Pogna, Member of the New Mexico Board of Education
 Gerald Thomas, Member of the New Mexico Board of Education
 Emmalow Rodriguez, Member of the New Mexico Board of Education
 J. James Sanchez, Member of the New Mexico Board of Education
 Virginia Trujillo, Member of the New Mexico Board of Education
 Gordon King, Member of the New Mexico Board of Education
 Alan Morgan, New Mexico Superintendent of Public Instruction
 Jim L. Newby, Ph.D., Director of Special Education for the State of New Mexico

My participation and final disposition: This case was filed in 1987 while I was Deputy Attorney General of New Mexico. I participated in early hearing(s) and strategy. I toured all the state's mental health facilities and worked with the Governor's office, Human Service Department, the Attorney General, and outside counsel to formulate a defense strategy. I was largely responsible for selecting Joel Klein and Paul Smith to represent New Mexico. I also reviewed briefing while I was at the Attorney General's office and perhaps afterwards. I did not have much involvement in the case after I left the Attorney General's office in 1988.

- (a) Date: 1987 to 1988 (my involvement was while I was Deputy AG; the case lasted longer than that)
- (b) Courts.

United States District Court for the District of New Mexico

The Honorable James A. Parker, Chief Judge, United States District Court for the District of New Mexico

United States Court of Appeals for the Tenth Circuit

Circuit Judges Logan and Tacha, and the Honorable H. Dale Cook, Senior District Judge for the United States District Court for the Northern District of Oklahoma, sitting by designation.

(c) Co-counsel: There were many but the primary counsel was -

The Honorable Harold (Hal) D. Stratton, Chairman
United States Consumer Product Safety Commission
4330 East West Highway, Suite 724
Bethesda, Maryland 20814
Telephone: (301) 504-7900

[Mr. Stratton was then Attorney General of New Mexico]

Joel I. Klein
Chancellor
Office of the Chancellor
NYC Department of Education
52 Chambers Street, Room #320, B4
New York, New York 10007
(212) 374-0200

Paul M. Smith
[now with Jenner & Block, 601 Thirteenth St., NW, Twelfth Floor,
Washington, D.C. 20005, Telephone: (202) 639-6000]

Rebecca L. Brown
Professor, Vanderbilt University School of Law
237 Law School Building
2201 West End Avenue
Nashville, Tennessee 37235
(615) 322-3239

Mr. Klein, Mr. Smith, and Ms. Brown were at the time with Onek, Klein & Farr in Washington, D.C.

Robert Tabor Booms
Burt Thornton & Baehr, P.C.
Post Office Box 3170
Albuquerque, New Mexico 87190-3170

(505) 884-0777

[Mr. Booms was an Assistant Attorney General for the State of New Mexico]

The Honorable Tom Udall
United States Congressman
Third Congressional District
502 Conner
Washington, D.C. 20515
(202) 225-6190

[Congressman Udall was Attorney General after Chairman Stratton. I did not work on the case with Mr. Udall]

Nancy A. Taylor
47 Lincoln Avenue
Northampton, Massachusetts 01060-2323
(413) 584-6979

[Ms. Taylor was, at the time of the appeal to the Tenth Circuit, an Assistant Attorney General for the State of New Mexico]

Jerry A. Dickinson
New Mexico Department of Health
Post Office Box 26110
Santa Fe, New Mexico 87502-0110
(505) 827-0004

Beth W. Schaefer
705 Viento Drive
Santa Fe, New Mexico 87501
(505) 984-8249

[Ms. Schaefer was a Special Assistant Attorney General for the State of New Mexico at the time of the trial]

Patricia E. Bustamante
New Mexico Department of Health
Post Office Box 26110
Santa Fe, New Mexico 87502-0110
(505) 827-2988

Christopher D. Coppin
New Mexico Attorney General's Office

1046

111 Lomas Boulevard N.W., # 300
Albuquerque, New Mexico 87102-2368
(505) 222-9000

James P. Bieg
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1357
123 E. Marcy Street # 101
Santa Fe, New Mexico 87504-1357
(505) 954-3916

[Mr. Bieg was, at the time of the trial, an Assistant Attorney General for the State of New Mexico]

Counsel for the Plaintiff: There were many, but it appears the chief counsel was:

Frank J. Laskin (not at Center any more)
Judith A. Gran
Timothy M. Cook (not at Center any more)
Public Interest Law Center of Philadelphia
51st Floor, 1735 Market Street
Philadelphia, Pennsylvania 19103-7599
(215) 665-8500

Peter M. Cuba
122 Tulane, S.E.
Albuquerque, New Mexico 87106-1440
(505) 256-7690

Philip B. Davis
814 Marquette, N.W.
Albuquerque, New Mexico 87102-1959
(505) 242-1904

Counsel for Intervenor:

Paul L. Bideman
University of New Mexico Institute of Public Law
1117 Stanford N.E.
Albuquerque, New Mexico 87131-0001
(505) 277-5006

Robert D. Levy
Geer, Wissel & Levy, P.A.
Post Office Box 7549

20 First Plaza N.W. # 306
Albuquerque, New Mexico 87194-7549
(505) 243-1733

Daniel W. Shapiro
Shapiro and Bettinger, L.L.P.
4273 Montgomery Boulevard N.E. # 110E
Albuquerque, New Mexico 87109-6746
(505) 888-6463

Marlene Foster
New Mexico Public Defenders
301 N. Guadalupe Street # 101
Santa Fe, New Mexico 87501-5502
(505) 827-3931

[Ms. Foster was, at least at the time of the district court trial, with the Protection and Advocacy System for New Mexico with Developmental Disabilities]

Ann Tilford Sims
Post Office Box 187
10 Nightshade Court
Los Lunas, New Mexico 87031-0187
(505) 865-1449

[Ms. Sims was, at the time of the trial, with a firm in Belen, New Mexico]

Nancy Koenigsberg
New Mexico Center on Law & Poverty
5301 Central Avenue N.E. # 913
Albuquerque, New Mexico 87108-1530
(505) 255-2840

[Ms. Koenigsberg was, at the time of the trial, with the Protection and Advocacy System in Albuquerque]

Guardian ad Litem

Barbara Bergman
UNM School of Law
University of New Mexico
117 Stanford Drive, N.E.
Albuquerque, New Mexico
(505) 277-3304

Counsel for Appellants-in-Intervention:

Kent Winchester
Post Office Box 7906
Albuquerque, New Mexico 87194-7906
(505) 247-3800

Roberta Beyer
Oldaker Oldaker & Norris P.A.
500 Marquette NW, #630
Albuquerque, New Mexico 87102 5302
(505) 247-3700

Vernon W. Salvador
2400 Rio Grande Blvd., #541
Albuquerque, New Mexico 87104-3240
(505) 363-5868

Docket No. - CIV No. 87-0839 JP

Lyon Development Co. v. Business Men's Assurance Company of America, 1994
U.S. App. LEXIS 9589 (10th Cir. May 3, 1994), and 76 F.3d 1118 (10th Cir. 1996).

Summary of Case: The Plaintiff, Lyon Development Company ("LDC") and the Defendant, Business Men's Assurance Company of America ("BMA"), had a partnership to develop a retirement resort community in Santa Fe, New Mexico. BMA exercised a buy-sell agreement. Shortly before its response time was to expire, LDC brought an action alleging that BMA's exercise of the buy-sell provision, its course of dealing, and its refusal to seek additional financing from the lender, constituted breach of contract, breach of fiduciary duty, and economic compulsion. BMA counterclaimed against LDC for breach of contract and breach of fiduciary duty.

In 1992, the district court granted partial summary judgment in favor of BMA, finding that BMA's exercise of the buy-sell provision was valid in all respects. On appeal, the United States Court of Appeals for the Tenth Circuit reversed, holding that the validity of BMA's conduct could not be determined without first developing the facts surrounding LDC's claims for breach of contract, breach of fiduciary duty, and economic compulsion.

On remand, the case was tried before a jury. The jury returned a verdict in favor of BMA on all of LDC's claims. The jury also found that LDC had breached its contract with BMA. The district court then granted BMA's motion for a judgment as a matter of law on all of the parties' claims and counterclaims, issuing an extensive rule 50(b) judgment. Finding that no reasonable jury could have returned a verdict against BMA on its claims of breach of contract for marketing

advances, the court awarded BMA \$176,094 in damages as a matter of law and later awarded interest on that amount.

On appeal of the district court's judgment, the Tenth Circuit held that the district court did not err in determining that the guaranty was unambiguous, that it did not modify the partnership, and that the guaranty did not require LDC's consent before the buy-sell provision could be invoked. The Tenth Circuit affirmed the judgment rejecting claims for breach of contract and of a fiduciary duty and for economic compulsion. The appellate court affirmed the District Court's award of costs, but reversed the district court's award of \$176,094 on BMA's counterclaim.

I represented: Business Men's Assurance Company of America.

My participation and final disposition: I was involved in this case shortly after it was filed. I was involved in all facets of discovery, and took or defended most of the depositions. I was involved in all briefing. I was second chair at trial, and took a majority of the witnesses. I had primary responsibility for the damages issues and witnesses. The case was resolved by a successful jury trial and affirmance of the judgment by the Tenth Circuit.

(a) Date: 1988 to 1996

(b) Courts:

First Judicial District Court, County of Santa Fe, State of New Mexico
The Honorable Petra Jimenez Maes, District Judge
(case was removed to federal court)

United States District Court for the District of New Mexico
The Honorable Juan G. Burciaga, District Judge United States
District Court for the District of New Mexico

United States Court of Appeals for the Tenth Circuit:

1st Appeal: Circuit Judges Logan, Seymour, and Moore

2d Appeal: Circuit Judges Briscoe and Logan, and the Honorable Ralph G.
Thompson, United States District Judge, United States District of
Oklahoma (sitting by designation)

(c) My co-counsel:

Bruce Hall
Edward R. Ricco
Rodley, Dickason, Sloan, Akin & Robb, P.A.
201 Third Street N.W., Suite 2200

1050

Post Office Box 1888
Albuquerque, New Mexico 87103
(505) 765-5900

and

David C. Davenport, Jr.
Post Office Box 998
Santa Fe, New Mexico 87504-0998
(505) 983-1193

[Mr. Davenport was at the Rodey law firm during the time of this case.]

Gordon McCulloch
Bradley & McCulloch
Post Office Box 288
Breckenridge, Colorado 80424-0288
(970) 266-3995

Plaintiff's counsel:

Randolph B. Felker
Marana G. Geer
Felker Ish Ritchie & Greer
911 Old Pecos Trail
Santa Fe, New Mexico 87505-0366
(505) 988-4483

Bruce S. Garber
Garber & Hallmartz, P.C.
P.O. Box 850
Santa Fe, New Mexico 87504-0850
(505) 983-3233

H. Vern Payne
Payne & Rocha, P.C.
2060 N. Main Street, #D
Los Lunas, New Mexico 87034-6368
(505) 865-5001

Robert M. Hall
Payne & Hall, P.C.
201 Third Street N.W., #1600
Albuquerque, New Mexico 87102-3368

1051

(505) 883-1313

Charles D. Olmstead (deceased)
Comeau, Maldegan, Templeman & Indall, L.L.P.
141 E. Palace Ave. (87501)
Post Office Box 669
Santa Fe, New Mexico 87504-0669
(505) 982-4611

W. Patrick Harman
The Harman Law Firm P.C.
3355 W. White Oak Lane
Highlands Ranch, Colorado 80129-4659
(303) 703-6919

Joseph W. Halpern
Heather R. Hanneman
Holland & Hart, L.L.P., Denver
555 Seventeenth Street, Suite 3200
Denver, Colorado 80202-3979
(303) 293-8000

(Holland & Hart was appellate counsel on the second appeal).

Counsel for Defendants Deven Enterprises, Inc. and Hensley Group Ltd.,

Stephen P. Curtis
2701 San Pedro Dr., NE
Albuquerque, New Mexico 87110-3300
Telephone: (505) 884-9999

Counsel for Defendant Bradbury & Stamm Construction Co., Inc.,

Timothy M. Sheehan
Sheehan, Sheehan & Stelzner, P.A.
707 Broadway Blvd., NE
Albuquerque, New Mexico 87102
(505) 247-0411

Susan C. Leon (Little)
Susan C. Little & Associates, P.A.
4501 Indian School Road, NE, Suite 101
Albuquerque, New Mexico 87190-3509
(505) 254-7767

[Ms. Leon worked at the Albuquerque firm of Sheehan, Sheehan & Stelzner while she was representing Bradbury & Stamm]

Counsel for Defendant Toronto Dominion Inc.

David M. Lindley
Winthrop Stinson, now Pillsbury Winthrop
One Battery Park Plaza
New York, New York 10004-1490
(212) 858-1000

Docket No.: District Court: DC No. CIV-88-229-JB
Appeal No. 1: 92-2264
Appeal No. 2: Nos. 94-2202, 95-2000 & 95-2096

Schmidt v. St. Joseph's Hospital, 105 N.M. 681, 736 P.2d 135 (Cl. App. 1987)

Summary of Case: Schmidt underwent surgery for the removal of a hydrocele, which was caused by the accumulation of fluid in a testicle. The surgery was performed at St. Joseph's Hospital by Dr. Knight. The anesthesiologist, our client, was Dr. Broderick.

Schmidt sued the hospital and the two doctors, alleging malpractice and res ipsa loquitur. Our firm filed a motion for summary judgment, and the district court granted it. On appeal, the Court of Appeals affirmed the judgment.

The issue on appeal was the interaction of a plaintiff's duty under rule 56 to respond with evidence to a motion for summary judgment and the doctrine of res ipsa. The Court of Appeals held that res ipsa loquitur applied to medical malpractice actions, but did not relieve the injured person from establishing a prima facie case. The Court of Appeals held that the application of res ipsa does not negate a plaintiff's obligation to establish the existence of some genuine issue of material fact. The court also stated that expert testimony is required to rebut the prima facie showing that defendants adhered to recognized medical standards of the community and that their actions were not the proximate cause of plaintiff's injury. The Court of Appeals held that the hospital and doctors were entitled to summary judgment because the injured person failed to make a prima facie case.

I represented Defendant Dr. Thomas E. Broderick.

My participation and final disposition: I drafted the appellate brief that protected the judgment my co-counsel had secured in the district court. The case was resolved in my client's favor when the Court of Appeals affirmed the summary judgment for my client.

(a) Date: I worked on this case in 1986.

(b) Court(s):

Second Judicial District Court, County of Bernalillo, State of New Mexico
The Honorable Philip R. Ashby, District Judge

New Mexico Court of Appeals
Donnelly (Chief Judge), Garcia, and Fruman

(c) Co-counsel:

Bruce Hall
Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third Street N.W., Suite 2200
Post Office Box 1888
Albuquerque, New Mexico 87103
(505) 765-5900

Plaintiff's Counsel.

John J. Duhigg
Duhigg Cronin Spring Berlin & Benese
Post Office Box 527
Albuquerque, New Mexico 87103-0527
(505) 243-3751

Counsel for Defendant St. Joseph's Hospital

Carl J. Butkus
Butkus Gay & Jahner PC
500 Marquette Ave., NW, #720
Albuquerque, New Mexico 87102
(505) 842-5715

Counsel for Defendant Ian Knight, M.D.

The Honorable Bruce D. Black, District Judge
United States District Court
District of New Mexico
Albuquerque Division
Chambers 640
333 Lomas Blvd., NE, Suite 270
Albuquerque, New Mexico 87102
(505) 348-2260

[at the time of this case, Judge Black was in private practice at Campbell & Black

in Santa Fe, New Mexico]

Docket No.: 8520 at Court of Appeals

Yates Exploration v. Valley Improvement Association,
108 N.M. 405, 773 P.2d 350 (1989)

Valley Improvement Association, Inc. v. Marco, No. VA-92-468-CV, (13th Judicial District, County of Valencia, State of New Mexico, filed on December 30, 1992)

Summary of Case:

Yates: The Plaintiffs were past and present owners of lots in two subdivisions located in Valencia County, New Mexico. Horizon, a land development corporation, created VIA, a New Mexico nonprofit corporation, to be a civic organization representing the lot owners. After the formation of VIA, Horizon deeded all of the subdivision lots to VIA, who in turn deeded the properties back to Horizon subject to certain indentures. Then, between 1969 and 1981, Horizon sold thousands of individual lots subject to the indentures that empowered VIA to assess and collect annual charges on each lot.

In 1986, several VIA members and lot owners filed a case and requested that the court certify the case as a class action. The Plaintiffs in their lawsuit against VIA alleged that, while VIA had collateral funds in excess of \$15,000,000.00, VIA had actually used negligible amounts to benefit the properties. The Plaintiffs did not join in their suit the original development corporation, Horizon. The District Court denied VIA's motion to join Horizon as a necessary party to this action. VIA then attempted to join Horizon as a third-party defendant, seeking contribution, indemnity, and other relief from Horizon. The District Court dismissed the third-party complaint. The Supreme Court affirmed the dismissal.

VIA reached settlements with some of the Plaintiffs, and the Court dismissed their claims. VIA filed a motion for summary judgment against the remaining Plaintiffs. There were about nineteen (19) hearings in the summer of 1988, and considerable discovery.

After an eight-day class certification hearing, the court denied the Plaintiffs' motion for class certification.

In 1992, the Court granted the Plaintiffs leave to file an amended complaint a third time. The complaint added a new Plaintiff and ten counts -- including derivative claims and claims for actual and punitive damages -- and three officers or directors of VIA. The Court dismissed the slander of title claim, all claims for relief for predecessors in interest, and all claims for punitive damages except on three counts.

VIA filed a motion asking the Court to dismiss the Plaintiffs' challenge to the covenants' running with the land. In 1995, the Court denied VIA's motion to dismiss the Plaintiffs'

challenge to the covenants' running with the land. The case then settled.

The Court approved the Settlement Agreement and Release in Full in 1997. The Court dismissed the case with prejudice at the same time.

Marco. In 1992, VIA filed an action as creditor and lien holder to collect debts and to foreclose its liens on certain parcels of real property. Some defendants filed counterclaims. The Counterclaim sought to bring as a class action several claims that were similar to those being litigated in the Yates matter.

The counterclaim also sought class certification. VIA successfully resisted certification of the class. VIA also filed a motion to dismiss at least some of the Counterclaimants' claims.

By 1996, only one counterclaim remained. That one counterclaim brought one count to declare the covenant to pay assessments invalid. It was identical to the Count 1 in the Third Amended Complaint in the Yates matter. VIA prepared a motion for summary judgment to dismiss all that defendant's counterclaims.

By 1997, the court had dismissed all counterclaims. VIA foreclosed on the last counterclaimant's lots, and VIA conducted a foreclosure sale on some of the foreclosed lots.

I represented: Valley Improvement Association, Inc

My participation and final disposition: I began working on the Yates case in 1988. I was involved in all phases of discovery, was one of three lawyers that was involved in the class certification hearing, was involved in the briefing of motions and the appellate briefs, handled most of the hearings, and was the primary negotiator of the settlement.

In the Marco case, I was the primary lawyer defending against the counterclaims, handling all discovery and hearings.

(a) Date: 1988 to 1997

(b) Court(s):

Thirteenth Judicial District, County of Valencia,
State of New Mexico

District Judges for Yates case

(1) The Honorable William W. Deaton
United States Magistrate Judge
Chief United States District Court for the District of New Mexico
333 Lomas Blvd., NW, Chambers #670
Albuquerque, New Mexico 87102

(505) 348-2300

[Deaton was, in the early phases of the case, a judge on the Court Second Judicial District Court, County of Bernalillo, State of New Mexico]

(i) The Honorable Susan M. Conway
District Judge, Division XVIII, Second Judicial District Court
State of New Mexico
400 Lomas Blvd., NW
County Courthouse
Albuquerque, New Mexico 87103
(505) 841-7536

(iii) District Judge for Marco case:

The Honorable John W. Pope
District Judge, Division I
Thirteenth Judicial District
County of Valencia, State of New Mexico
Valencia County Courthouse
Los Lunas, New Mexico 87031
(505) 865-4639

Supreme Court Justices for Yates case

Justices Scarborough, Stowers, and Baca. All are now retired from the bench. Their current addresses are:

(i) Tony Scarborough
Scarborough Law Office
Post Office Box 268
Española, New Mexico 87110-7733
(505) 268-0947

(ii) Harry E. Stowers, Jr.
Branch Law Firm
813 Ranchitos Rd. NW
Albuquerque, New Mexico 87114-1208
(505) 243-3500

(iii) Joseph F. Baca
Albuquerque, New Mexico
(505) 821-6881

(c) Co-counsel:

Robert St. John
William S. Dixon
Charles K. Purcell
Rodey, Dickason, Sloan, Akin & Robb, P.A.
201 Third Street N.W., Suite 2200
Post Office Box 1888
Albuquerque, New Mexico 87103
(505) 765-5900

Eric D. Lamphere
6609 Casa Loma Loop, NE
Albuquerque, New Mexico 87109
(505) 857-0663

Counsel for Plaintiffs in Yates case: There were a number of counsel over the years, but the primary lawyers were:

The Honorable Jonathan B. Sutin, Judge
New Mexico Court of Appeals
1117 Stanford, NE
Albuquerque, New Mexico 87131
(505) 841-4609

{then an attorney at the Albuquerque law office of Sutin, Thayer & Browne}

Roger V. Eaton
Eaton Martinez Hart & Valdez, P.C.
1801 Rio Grande Blvd., NW
Albuquerque, New Mexico 87104-2566
(505) 343-1776

Vernon W. Salvador
2400 Rio Grande Blvd., #541
Albuquerque, New Mexico 87104-3240
(505) 363-5868

Ronald Greenspan
Greenspan & Mulvaney
142 Lincoln Ave., #400
Santa Fe, New Mexico 87501-2067
(505) 982-2333

[Mr. Greenspan was with the Cohen & Cohen firm of Santa Fe at the time

we were working on the VIA case]

Counsel for Defendants-Counterdefendants in Marco case:

There was a number of counsel and some defendants/counterdefendants were pro se, but one significant lawyer was:

Louis N. Colon
1421 White Plains
Bronx, New York 10472-1702
(718) 863-5286

Counsel for Third-Party Defendants Horizon Corporation:

John Houghton
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
P.O. Box 2168
500 4th St., NW, #1000
Albuquerque, New Mexico 87102

Kevin T. Riedel
formerly w. Modrall, Sperling, Roehl, Harris & Sisk, P.A.
500 4th St., NW, #1000
Albuquerque, New Mexico 87103-2168
(505) 848-1800

[current address: 4740 Quail Run, Las Cruces, New Mexico 75235-1611]

J. Douglas Foster
(formerly with Modrall, Sperling, Roehl, Harris & Sisk, P.A.)
now at Foster Johnson McDonald Lucero Koinis, LLP
40 First Plaza, NW, #735-N
Albuquerque, New Mexico 87102-2175
(505) 243-3000

Docket No.: Yates case: VA-86-61-CV-M5-CV-86-61
Marco case: VA-02-468-CV
Supreme Court Docket No. in Yates: No. 17790

Ballen v. Prudential Bache Securities, Inc., 23 F.3d 335 (10th Cir. 1994)

Summary of Case. The plaintiff, Sam Ballen, sued Prudential Bache Securities, Inc., and Prudential Bache Properties, Inc. ("Prudential") alleging damages arising from Prudential's violation of Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §1961.

Prudential filed a motion to dismiss Mr. Ballen's complaint. The district court dismissed Mr. Ballen's first complaint but without prejudice, allowing Mr. Ballen an opportunity to plead his fraud allegations with more specificity. Mr. Ballen filed an amended complaint, and Prudential filed a second motion to dismiss. The district court dismissed Mr. Ballen's amended complaint with prejudice pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to plead the racketeering acts with sufficient particularity to state a RICO claim.

On appeal, the Tenth Circuit did not address all of the issues, because it found that the statute of limitations had not been tolled and thus Mr. Ballen's claims were time barred. The Tenth Circuit affirmed the District court's judgment for Prudential.

I represented Prudential Bache Securities, Inc. and Prudential Bache Properties, Inc.

My participation and final disposition: I was the lead attorney on all aspects of the case, helping to draft all briefs and arguing the cases in the District Court and in the Tenth Circuit. The Tenth Circuit affirmed the District Court's judgment for Prudential and against the Plaintiff, Mr. Ballen.

(a) Date: 1993 to 1994

(b) Court(s):

United States District Court for the District of New Mexico:
The Honorable Juan G. Burejaga, United States District
Judge:

United States Court of Appeals for the Tenth Circuit.

The Honorable Byron R. White, Associate Justice of the
Supreme Court of the United States, sitting by designation
pursuant to 28 U.S.C. 294 (a); Circuit Judges Tacha and
Brorby

(c) Co-counsel:

Jane Wishner
Browning & Peifer, P.A.
20 First Plaza, Suite 725
Albuquerque, New Mexico 87102
(505) 247-4800

Plaintiff's Counsel:

R.A. Dean Carlton
The Carlton Firm, P.C.
Dallas, Texas

[Mr. Carlton now works for Fiedler, Akin, Frank & Carlton, 12801 North Central Expressway, #450, Dallas, Texas 75243-1881, (972) 490-7300]

James C. Compton
Singer, Smith & Williams, P.A.
Albuquerque, New Mexico

Mr. Compton is now with:

Burt, Thomson & Baehr
4101 Indian School Rd., NE, Suite 300S
Post Office Box 3170
Albuquerque, New Mexico 87190
(505) 884-0777

Docket Nos.:

District Court: D.C. No. CIV-91-519-JB
Tenth Circuit: No. 93-2083

Baker v. Yogi Bhajan, a/k/a Harbhajan Singh Yogiji Khalsa, a/k/a Siri Sing Sahiob Harbhajan Singh Khalsa Yogiji, et. al., 117 N.M. 278, 871 P.2d 374 (1994)

Summary: The plaintiff, Baker, was a recruit in the New Mexico State Police Academy. The State Police Department ("NMSP") discharged him. Before becoming a candidate for employment as a police officer with the NMSP, Baker had been a member of the Sikh community and had been an employee of AKAL Security, Inc. a Sikh-run business.

Baker sued members of the Sikhs and operators of AKAL Security, Inc. (the "Sikhs") for defamation. Baker alleged that the NMSP dismissed him because the Sikhs maliciously defamed him to NMSP officials, the New Mexico Attorney General, and the New Mexico Governor's Office. The defendants filed a motion for summary judgment, arguing that the Sikhs' statements to government officials about Baker were privileged.

The District Court granted an award of summary judgment against Baker and in favor of the Sikhs. The District Court granted the Sikhs' motion for summary judgment on the grounds of absolute privilege. The Court of Appeals was unable to reach a decision and certified the case to the Supreme Court. The Supreme Court concluded that certain alleged defamatory statements were absolutely privileged under Baker's consent to waiver of liability and that summary judgment based upon these statements was proper. The Supreme Court thus affirmed in part and reversed in part.

On remand, the parties conducted further discovery. The defendants filed a motion for summary judgment. The District Court denied the motion and a motion to reconsider. The case subsequently settled.

The parties I represented:

- (i) Guru Terath Singh Khalsa
- (ii) Guru Jot Singh Khalsa
- (iii) Hari Kaur Khalsa
- (iv) Sikh Dharma of New Mexico, Inc.
- (v) 3HO Foundation of New Mexico, Inc
- (vi) 3-H-O Foundation
- (vii) Siri Singh Sahib of Sikh Dharma Brotherhood

My participation and final disposition: I became involved when the case was at the appellate level. I argued the case in the Court of Appeals, the motion for summary judgment and the motion to reconsider in the District Court on remand; and conducted all discovery for my clients on remand.

The case settled after the Supreme Court's decision.

(a) Date of representation: 1990 to 1998

(b) Court(s):

First Judicial District Court, County of Santa Fe, State of New Mexico

The Honorable Steve Herrera, District Judge

The Honorable Stephen Pfeffer, District Judge (Division VI)

Court of Appeals of New Mexico

The Honorable Harris L. Hartz,
then Judge on the New Mexico Court of Appeals
(now a Judge on the United States Court of Appeals for the
Tenth Circuit.)

The Honorable William W. Bivins, then Court of Appeals Judge
(now retired);

The Honorable Pamela B. Minzner, then Court of Appeals Judge
(now Supreme Court Justice);

Supreme Court of New Mexico

The Honorable Stanley F. Frost, Justice (deceased)

The Honorable Richard E. Ransom, Justice (retired)

The Honorable Justice Joseph F. Baca, Chief Justice (retired)

(c) Co-counsel:

Jane B. Wishner
Browning & Peifer, P.A.
20 First Plaza, Suite 725
P.O. Box 25245
Albuquerque, New Mexico 87125
(505) 247-4800

Counsel for Plaintiff:

Herbert M. Silverberg
Silverberg Law Offices
811 St. Michaels Drive
Santa Fe, New Mexico 87505-7641
(505) 989-5015

Counsel for Defendants Akal Security, Inc., Guru Taj Singh Khalsa and
Daya Singh Khalsa

Thomas C. Bird
Russell Moore
Keleher & McLeod, P.A.
Post Office Box AA
201 Third Street, N.W., 12th Floor
Albuquerque, New Mexico 87103-1626
(505) 346-4646

Counsel for Defendant Yogi Bhajan:

Daniel C. Lill
Daniel Cott Lill, P.A.
423 Sixth Street, N.W.
Albuquerque, New Mexico 87102-2004

David N. Greer
Post Office Box 27731
Albuquerque, New Mexico 87125-7731
(505) 842-6117

[Mr. Greer was associated with Mr. Lill's office at least in the early years of this case]

The Honorable Jonathan B. Sutin, Judge
New Mexico Court of Appeals
1117 Stanford, NE
Albuquerque, New Mexico 87131
(505) 841-4609

[Judge Sutin was, at the time of this case, an attorney at the Albuquerque law office of Sutin, Thayer & Browne]

Counsel for Amicus Curiae State Police:

Albert Roland Fogere
NM Department of Public Safety
Post Office Box 1628
Santa Fe, New Mexico 87504-1628
(505) 827-9036

Docket No. (i) District Court: D-101-CV-88-02786
(ii) Court of Appeals: 12,519
(iii) Supreme Court: 20,532

Public Service Company of New Mexico, et al. v. Lyons, et al., 129 N.M. 487, 10 P.3d 166 (Ct.App.2000)

Summary: PNM, a public utility company, is partial owner of the Palo Verde Nuclear Generator Station located in Maricopa County, Arizona. Federal regulations require PNM to assure that there will be sufficient funds to decommission the three units of the plant when those units have reached the end of their useful lives. In 1986, estimates projected that PNM would need to assure the availability of \$500 million for its share of decommission costs in the years 2024, 2025, and 2027.

In 1987, PNM created a settlor-directed, revocable trust to meet its decommissioning obligations. Plaintiff Mellon Bank is trustee of the decommissioning trust. The corpus of the trust was invested in a corporate-owned life insurance ("COLI") program called the Cost of Money Reduction Program ("COMReP"). COLI programs are designed to provide tax-free money to fund corporate obligations by using life insurance policies to insure corporate employees. Between 1987 and 1988, PNM used the decommissioning trust corpus to purchase 1729 life insurance policies issued by a number of Defendants and their predecessors.

The Plaintiffs -- PNM and Mellon -- alleged in their complaint that these investments were made based on representations from numerous Defendants that the returns would be

sufficient to satisfy PNM's decommissioning obligations under federal law. The Plaintiffs later discovered that the COMReP insurance investment scheme would not yield sufficient funds for PNM to meet its future obligations. This difference would have left the trust short of the decommissioning obligations by some \$372 million in date-of-license expiration dollars.

The Plaintiffs sued the Defendants under numerous theories. Some of the Defendants removed the case. The Plaintiffs moved to remand. Mellon and Towers are both citizens of Pennsylvania; thus, there was not complete diversity between the partners. The federal court found that Mellon had in fact stated a claim for negligence against Towers. The federal court also denied Tower's Motion to Dismiss Mellon and remanded to state court.

Some of the Defendants filed a motion to dismiss the complaint under rule 9(b) of the New Mexico Rules of Civil Procedure. The Court denied those motions.

By 1999, the Plaintiffs produced 70,000 pages of documents in the lawsuit. They also submitted a log book of documents that were protected by the attorney-client privilege and the work product doctrine. The Defendants filed a motion to compel production of privileged documents relevant to the Plaintiffs' assertion that they did not discover the alleged improper conduct until 1997.

The trial court granted the Defendants' motion. The district court ruled that PNM, by asserting claims of fraudulent concealment, equitable estoppel, and equitable tolling in their complaint to avoid statutory limitations, implicitly waived the attorney-client privilege and the protection of the work product doctrine as to its and its attorney's knowledge, documents, and communications that relate to the issues of fraudulent concealment, equitable tolling, or equitable estoppel as pled in the complaint. The Plaintiffs filed an application for interlocutory appeal from this order. The Court of Appeals granted the application. On appeal, the Court of Appeals held that the Plaintiffs' invoking of equitable tolling did not implicitly waive attorney-client privilege as to documents relevant to their knowledge of their claim.

After remand, the parties entered into a mediation in San Francisco before an experienced mediator. The case settled favorably to the Plaintiffs.

The party I represented: Mellon Bank, N.A., Trustee of the Public Service Company of New Mexico Master Decommissioning Trust

My participation and final disposition: I was involved in all facets of this case, including the drafting of the complaint and the shaping of the theories. I was extensively involved in the briefing, both in federal court, state district court, and the appellate court, and I argued many of the motions in the state district court. I also did much of the discovery, conducting discovery in Omaha, Nebraska and defending depositions in Atlanta and in Albuquerque.

The case settled favorably for my client after the victory in the Court of Appeals.

(a) Date of representation: March 5, 1998 to June 29, 2000 (date case

settled)

(b) Name of Court(s).

First Judicial District Court, County of Santa Fe, District of New Mexico

The Honorable T. Glenn Ellington, District Judge

The United States District Court, For the District of New Mexico

The Honorable Martha Vazquez, District Judge, United States District Court for the District of New Mexico

Court of Appeals of New Mexico

The Honorable Rudy S. Apodaca, Judge

The Honorable Richard S. Bossom, Judge
(now Supreme Court Justice)

The Honorable M. Christina Armijo, Judge
(now a federal court judge)

The case was assigned to the following state judges, but they were excused because of challenges: The Honorable Carol Vigil; the Honorable Petra Jimenez Maes; the Honorable Art Encinas; the Honorable Daniel A. Sanchez; the Honorable James A. Hall; the Honorable Stephen D. Pfeffer; the Honorable Michael E. Vigil; the Honorable Barbara J. Vigil.

Supreme Court The Defendants' petition for certiorari was withdrawn as part of the settlement. The Justices on the Supreme Court at that time were:

Chief Justice Pamela B. Minzner
Justice Joseph E. Baca
Justice Gene E. Franchini
Justice Patricio M. Serna
Justice Petra Jimenez Maes

Co-counsel: David G. Campbell
Osborn Maledon, P.A.
The Phoenix Plaza
2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2794
(602) 640-9306

Charles R. Peifer
Cerianna L. Mullins
Jane B. Wishner

Browning & Peifer, P.A.
20 First Plaza, Suite 725
Post Office Box 25245
Albuquerque, New Mexico 87125
(505) 247-4800

Counsel for Plaintiff PNM:

David F. Cunningham
Mary E. Walta
White, Koch, Kelly & McCarthy, P.A.
Post Office Box 737
433 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 466-3786

Kevin V. Reilly
4 Enebro Road
Santa Fe, New Mexico 87508-8838

[at the time of the case, Mr. Reilly was associated with White,
Koch, Kelly & McCarthy, P.A., in Santa Fe]

Counsel for Defendant The Equitable Life Assurance
Society of the United States:

John W. Boyd
Freedman, Boyd, Daniels, Hollander, Goldberg & Cline, P.A.
20 First Plaza, Suite 700
Post Office Box 25326
Albuquerque, New Mexico 87125-0326
(505) 842-9960

Richard A. Rosen
Ronald P. Repogle
Paul, Weiss, Ruffind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

Counsel for Defendant Loyd Williams:

Mel E. Yost
Christopher M. Grimmer
Schauer, Yost & Patterson, P.C.

1067

Post Office Box 9570
125 Lincoln Ave. #223
Santa Fe, New Mexico 87504-9570
(505) 982-9911

Counsel for Defendant Kidder Peabody & Co., Inc.:

Jeffrey A. Brannen
Wesley G. Handy
Comeau Maldegen Templeman & Indall, L.L.P.
Post Office Box 669
141 E. Palace Ave.
Santa Fe, New Mexico 87504-0669
(505) 982-4611

Counsel for Defendants John Lyons, Financial Marketing Services, Inc. and
COMReP, Inc.

John M. Eaves
Eaves, Bardacke, Baugh, Kierst & Kiernan, P.A.
Post Office Box 35670
6400 Uptown Blvd., N.E., #110-W
Albuquerque, New Mexico 87176-5670
(505) 888-4300

David H. Paige
Nichioletti, Hornig, Campise & Sweeney
Wall Street Plaza
88 Pine Street, 7th Floor
New York, New York 10005
(212) 220-3780

Counsel for Defendant Massachusetts Mutual Life Insurance Co. and
Connecticut Mutual Life Insurance Co.

Lynan G. Sandy (deceased)
Miller, Stratvert & Forgeron, P.A.
Post Office Box 25687
500 Marquette N.W., #1100
Albuquerque, New Mexico 87125-0687
(505) 842-1950

Vaughan C. Williams
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square

1068

New York, New York 10036
(212) 735-3000

Alan R. Fridkin
Second Vice President
General Counsel
Massachusetts Mutual Life Insurance Co.
1295 State Street
Springfield, MA 01111
(413) 744-6093

Counsel for Defendant Bernard Sperman:

Luis G. Stelzner
Robert P. Warburton
Sheehan, Sheehan & Stelzner, P.A.
Post Office Box 271
Albuquerque, New Mexico 87103-0271
(505) 247-0411

Counsel for Defendant General American Life Insurance Co.:

Marshall G. Martin
Stanley Kotosky, Jr.
Hinkle, Hensley, Shanor & Martin, L.L.P.
500 Marquette N.W., #1300
Albuquerque, New Mexico 87102-5300
(505) 768-3500

Counsel for Defendant New England Mutual Life Insurance Co. and Metropolitan Life Insurance Co.:

Rex D. Throckmorton
Charles K. Purcell
Rodey, Dickenson, Sloan, Akin & Robb, P.A.
Post Office Box 1888
201 Third Street N.W. #2200
Albuquerque, New Mexico 87103-1888
(505) 765-5900

Donald A. Wall
Squire Sanders & Dempsey, LLP
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4498

1069

(602) 528-4000

Counsel for Defendant Towers Perrin, Forster & Crosby, Inc.:

William C. Madison
Madison, Harbour, Mroz & Brennan, P.A.
Post Office Box 25467
201 Third Street N.W. #1600
Albuquerque, New Mexico 87125-0467
(505) 242-2177

Ralf B. Levey
Daniel R. King
King & Spalding, LLP
191 Peachtree Street, N.E.
Atlanta, Georgia 30303-1763
(404) 572-4600

Counsel for Defendant Deloitte & Touche USA, L.L.P.:

John B. Pound
Herrera, Long, Pound & Komer, P.A.
Post Office Box 5098
2200 Brothers Rd.
Santa Fe, New Mexico 87502-5098
(505) 987-8405

Frank B. Vanker
Richard D. Bernstein
Sidley & Austin
One First National Plaza
Chicago, Illinois 60603
(312) 853-7000

Counsel for Defendants Kutak Rock & and P. Thomas Pogge:

Norman S. Thayer
Sutin, Thayer & Browne, P.C.
Post Office Box 1945
6565 Americas Pkwy N.E. #1000
Albuquerque, New Mexico 87103-1945
(505) 883-3390

Edward G. Warin
McGrath, North, Mullin & Kratz, P.C.

1070

Suite 1400 One, Central Park Plaza
222 South Fifteenth Street
Omaha, Nebraska 68102
(402) 341-3670

Docket No(s): (i) State District Court: No. SF 98-815(e)
(ii) Federal District Court: CIV-98-642 MVA/CS
(iii) Court of Appeals of New Mexico: 20,575
(iv) Supreme Court: Nos. 26,445 26,446

19. Legal Activities. Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

(a) While I was at the Rodey firm, from 1984-1986, I was the associate at the firm on the Moncor litigation, a series of class actions involving the first bank holding company to go into bankruptcy. Our firm represented American Express/Shearson Lehman, the underwriter for Moncor's second public offering. We were initially successful in opposing class certification, but eventually settled the case.

(b) While I was Deputy Attorney General of New Mexico, I helped the State of New Mexico formulate its strategy to challenge a consent decree under which the federal court supervised the state prison system. We hired Joel Klein (former Assistant Attorney General during the Clinton Administration, now Chancellor of the New York City School system) to assist us in this litigation.

(c) While I was Deputy Attorney General, I also supervised the Civil Division, which advised all state agencies, boards, and commissions. I reviewed, edited, and approved all formal opinions, including important ones on the Public Retirement Association. I then handled the significant litigation that arose out of these issues in state district court, in the state court of appeals, and in the state supreme court.

(d) In 1998, my partner and I tried the first class action in San Francisco in many years. See Howard v. Everex Systems, Inc., 228 F.3d 1057(9th Cir. 2000). We represented the plaintiff class in a securities class action against an officer and director of Everex, a defunct maker of computers, and others in federal court.

(e) My firm represented the Governor of New Mexico in the redistricting cases in 2001 and 2002. There were two trials, one for the congressional redistricting and one for the state house's redistricting. The Governor's proposal prevailed in the congressional trial.

(f) I was a member and later chairman of the Committee on Admissions and Grievances for the United States District Court for the District of New Mexico. I was appointed and reappointed by two separate chief judges of the District. The Committee handled all applications for admissions to the bar and grievances filed against lawyers serving before the federal court for about eight years.

(g) I was one of the directors from New Mexico for the American Judicature Society. I later became the Young Lawyers' Representative on the AJS's Executive Society. I also served as a member of Judicature's Editorial Committee.

(h) Board of County Commissioners v. Liberty Group, 1994 U.S. App. LEXIS 9589 (10th Cir. May 3, 1994).

A county government in New Mexico adopted a policy of investing some of its funds in government backed securities. The state auditor discovered one of the brokers for the county had been charging an undisclosed markup. The county plaintiff filed an action alleging defendant broker violated rule 10b-5, 17 C.F.R. 240.10b-5. The jury returned a verdict for the county. The county then served a writ of garnishment on my client, Prudential-Bache Securities, Inc. I secured an order quashing the writ. The brokers appealed the judgment; the county appealed the order quashing the writ of garnishment. The United States Court of Appeals for the Tenth Circuit reversed the judgment, thus making it unnecessary for the Tenth Circuit to consider the county's contention that the trial court erred in quashing the garnishment writ.

(i) Resolution Trust Corp. v. Cumjgr, 1993 U.S. Dist. LEXIS 19010 (D.N.M. Oct. 25, 1993).

The Resolution Trust Corporation ("RTC") sued various former directors, attorneys, and others of a failed thrift institution. The RTC asserted that the defendants and others were liable for negligence, negligence per se, gross negligence, and breach of fiduciary duty. My clients were three elderly former directors. After lengthy and difficult negotiations, my clients and the RTC worked out a settlement agreement, even though most of the defendants did not settle at that time. The federal district court concluded that the settlement was fair, reasonable, and adequate, and would result in

substantial savings in time and money to the court and the litigants. The court approved the settlement agreement, which included a claims bar and a judgment reduction.

- (j) Strata Production Co. v. Mercury Exploration Co., 121 N.M. 622, 916 P.2d 822 (1996).

My client, Strata Production Company, an oil producer, brought an action against an oil exploration company for breach of contract and negligent misrepresentation based on the defendant's failure to deliver the entire working and net revenue interests it had contracted to provide Strata in connection with a drilling farmout agreement. The trial court found for Strata. I did not try the case, but wrote the brief on appeal. The Supreme Court of New Mexico found that the parties had a unilateral contract and that the defendant had not modified its unilateral offer to Strata before Strata accepted it by performance. The Supreme Court held that the parties' farmout agreement expressly provided that it was on an option basis, that the option held open the underlying unilateral contract offer for a certain period, and that there was substantial evidence that Strata reasonably relied on the option to accept the unilateral farmout agreement within the allotted time and without modification. The opinion required the Uniform Jury Instruction Committee in New Mexico to revise certain UJI's.

- (k) Executive Sports Club, Inc. v. First Plaza Trust, 123 N.M. 78, 937 P.2d 63 (1998).

I represented defendant First Plaza Trust in a trial in which First Plaza Trust prevailed. The plaintiff appealed, and First Plaza moved to dismiss the appeal as untimely. While the Supreme Court denied the motion to dismiss the appeal, the published opinion has clarified the law in New Mexico on when an appellant may elect to file a timely notice of appeal when the prevailing party files a motion for attorneys' fees. First Plaza subsequently prevailed on the appeal, and the judgment was affirmed.

- (l) I served as the mediator in TMBR/Sharp Drilling, Inc., et al. v. Arrington Oil & Gas, et al., No. CV-2001-315 C (Fifth Judicial District, County of Lea, State of New Mexico). The case was a very complex oil and gas litigation, and the case was successfully mediated over a two-day period in Midland, Texas.

(m) While Deputy Attorney General of New Mexico, I had supervisory responsibility for the Consumer Protection Division. I assisted the Honorable Hal Stratton, then Attorney General and now Chairman of the Consumer Product Safety Commission, on two key disputes:

- i. The Attorney General's Office brought the largest single consumer protection action in the State's history against Frontier Ford and several of its employees. See State v. Frontier Ford, Inc., CV-88-08375 (2d Jud. Dist. Ct. filed Nov. 3, 1988). The Attorney General filed a lawsuit, alleging that the defendants had systematically and willfully engaged in a pattern of acts designed to coerce and confuse prospective purchasers into signing documents that they did not want to sign, buying vehicles they

did not want to buy, and paying more for the vehicles than they agreed to pay. See id., Complaint ¶17. Frontier Ford subsequently (after I left the AG's office) entered into a settlement agreement with the Attorney General under which Frontier Ford was obligated to pay \$1,200,000 (\$600,000 in restitution to consumers, and a \$600,000 civil penalty to the State).

ii. Public Service Company of New Mexico ("PNM") proposed a restructuring plan because of the heavy financial burden of its \$1.2 billion investment in the Palo Verde Nuclear Power Plant in Arizona. The Attorney General opposed PNM's plan and proposed his own plan which maintained Public Service Commission ("PSC") oversight of the rate-making process and created more competition in the utility industry. PNM subsequently (after I left the AG's office) withdraw its restructuring proposal from consideration by the PSC.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

ANSWER: I currently do not have a deferred income arrangement with my law firm, but any deferred compensation will be a sum certain determined at the time of my departure based on my percentage of work completed. My compensation from the firm will end at the time I leave the firm or no later than three months after I leave. It is difficult to determine what my final check will be from the firm, as it depends on receipts and profits during that quarter. At the time I leave, I will also receive my investment in the firm, which is about \$42,500.00.

I cannot withdraw money from my firm's profit-sharing and pension plan until next year. I will then roll these retirement funds into my individual retirement accounts.

I will continue to own my investments, but do not expect to receive any other benefits from previous business relationships.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I intend to follow rigorously the requirements of 28 U.S.C. §455 and the Judicial Code of Conduct for United States Judges.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

ANSWER: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copy of the financial disclosure report required by the Ethics in Government Act of 1978 is attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

SEE ATTACHMENT - Net Worth statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.
- Member of Executive Finance Committee for "People for Pete" Domenici campaign (Senator Domenici's reelection campaign) (2002);
 - Co-hosted fundraiser for Senator Domenici on July 1, 2002 in Roswell, New Mexico;
 - Host fundraiser for election campaign for the Honorable Rod Kennedy, Judge, New Mexico Court of Appeals (2002);
 - Contributions to many candidates and the New Mexico Republican Party in 2002 election cycles and other election cycles;
 - Co-Chairman, New Mexico Layers for Bush-Cheney (2000);
 - Member, Finance Committee, Campaign to Re-elect Judge Jonathan Sutin (2000);
 - Our firm was retained in 1992 by the Buchanan campaign to get him on the Republican primary ballot, which we successfully did. We were paid for that work. Neither I nor the firm played any other role in that campaign;

- Treasurer and campaign chairman, Marshall for State Senate (1984-1986);
- Bernalillo County GOP Ballot Security Committee (1984-1986);
- Member, Harris Hartz for New Mexico Supreme Court Steering Committee (1985 to Spring 1986);
- Hosted fundraiser for Steve Schiff's campaign for congress (1988);
- Dinner Committee, then Senator and later Vice-President Dan Quayle, Albuquerque, New Mexico (1988);
- Hosted fundraiser for Corky Morris' campaign for U.S. Senator (1988);
- Assisting Lawyer for Kerry Morris, Republican candidate for metropolitan judge, in O'Toole v. Morris, No. CV-86-02806 (2d Judicial District Bernalillo County, New Mexico, hearing on September 9, 1986), rev'd No. 16,655 (S. Ct. 1986) (ballot case),
- I have not listed all the contributions and fundraisers that I have made and attended. I have also not listed yard signs I have put in my yard or vocal support given.