Administrative Office of the Courts

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STATE SUPREME COURT RULES AGAINST CHALLENGE TO AWARD OF DAMAGES FOR CONSTRUCTION WORKER'S DEATH

SANTA FE – The state Supreme Court ruled Monday that the family of a construction worker killed in a job site accident cannot challenge a jury verdict awarding damages to individual family members but nothing to the ironworker's estate.

The Court's unanimous decision reversed a ruling by the Court of Appeals that had granted a new trial on the issue of damages to the estate.

A wrongful death lawsuit was brought by Virginia Saenz acting in three different capacities: individually, on behalf of a daughter and as the personal representative of the estate of her late husband, Charles Anthony "Tony" Saenz. Two adult sons joined the lawsuit as plaintiffs. Saenz was killed in 2008 when he fell from a 30-foot wall during the construction of a movie theater in Las Cruces.

A jury awarded compensatory damages of $482,000 to Mrs. Saenz, $50,000 to the couple's daughter and $25,000 each to each of the sons. Each of them also received $10,000 in punitive damages. The jury awarded no damages to the construction worker's estate. The jury had assigned 45% of the fault for the accident to the general contractor for the theater project, 30% to the subcontractor that was Saenz's employer and 25% of the fault to the worker, who was not using a safety device at the time of his fall.

The family (plaintiffs in the lawsuit) sought a new trial, contending that there was no substantial evidence at trial to support the lack of damages to the estate. The Supreme Court affirmed the Third Judicial District Court's denial of the new trial and the judgment in the case.

"We hold that Plaintiffs waived the right to challenge the verdict on appeal because they contributed to ambiguity in the verdict and failed to object to the verdict prior to the jury's discharge," the Court said in an opinion written by Senior Justice Petra Jimenez Maes.

Changes made at the family's request to standardized jury instructions and a special verdict form created confusion among jurors over how to allocate damages, according to the Court. The jury, during its deliberations, had submitted a question to the district court on whether damages to the estate included damage amounts to the surviving family members.

The appeal did not involve a claim of juror instruction error. However, the Court directed one of its rule committees to consider whether changes are needed in a verdict form and uniform jury instructions to "ensure that jurors understand how to allocate damages between the personal representative for the wrongful death estate and the individual claimants, if any."

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To read the decision in *Saenz v. Ranack Constructors, Inc*., No. S-1-SC-35515, please visit the New Mexico Compilation Commission's website using the following link:

http://www.nmcompcomm.us/nmcases/nmsc/slips/SC35,515.pdf