

NEW MEXICO INJURY ATTORNEY BLOG

PUBLISHED BY

COLLINS & COLLINS, P.C.

ATTORNEYS AT LAW

May 10, 2010

Broad Scope for Lawsuits for Malicious Abuse of Process

The recent New Mexico Supreme Court case of *Durham v. Guest* addressed the claim of malicious abuse of process. The case is remarkable for a number of reasons. In particular, the court ruled that arbitration proceedings constitute judicial processes though it is unnecessary to initiate judicial proceedings for the claim of malicious abuse of process.

The plaintiffs, Jamie and Travis Durham, sued attorney Suzanne Guest for malicious abuse of process for the illegitimate use of subpoenas in an Underinsured/Uninsured Motorist arbitration proceeding. Guest represented the Durham's insurance company, Allstate. The Durhams alleged that the subpoenas were issued in an effort to invade their privacy, ruin their reputations, cause the loss of employment and to inflict upon them emotional distress. They alleged this malicious behavior was the result of the Durham's failure to accept Allstate's offer of settlement. The Durhams also sued Allstate for bad faith insurance practices but the court's ruling addressed only the malicious abuse of process claims.

Defendant Guest answered that malicious abuse of process requires the initiation of judicial proceedings and arbitration did not constitute judicial proceedings. The district court agreed dismissing the Durhams' claims. The Supreme Court disagreed overruling both the district court and the appellate court on both these counts stating that arbitration is indeed a judicial process but that no judicial process is required for the claim of malicious abuse of process.

The court in so ruling restated the essential elements of malicious abuse of process as follows: "(1) the initiation of judicial proceedings against the plaintiff by the defendant; (2) an act by the defendant in the use of process other than such as would be proper in the regular prosecution of the claim; (3) a primary motive by the defendant in misusing the process to accomplish an illegitimate end; and (4) damages."

The case is important for a number of reasons. First, it seems to open up possible claims against insurance companies both in litigation and arbitration for the illegitimate use of subpoenas and perhaps other discovery. Secondly, malicious abuse of process may occur in arbitration proceedings which are commonly used in consumer rights cases such as debt collections and credit card disputes where arbitration is dictated by contract. This should give consumers a pretty good weapon to protect themselves against abuse during these proceedings. Finally, the

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>

elements reach a broad spectrum of possible cases. One that comes immediately to mind is a topic that we have been addressing in the past weeks which is the filing of false domestic violence charges.

Durham v. Guest seems to be perfectly situated to address cases of baseless and malicious filing of domestic violence actions. Though prosecutors are generally protected by judicial immunity and spouses enjoy limited protection against suits by their spouses, there is no such protection for boyfriends, girlfriends, ex spouses, or other non-spousal relations that file false claims of domestic violence, whether the false charges are brought civilly or criminally.

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.newmexicoinjuryattorneyblog.com/>