

NEW MEXICO INJURY ATTORNEY BLOG

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Employers Protected from Liability for Gross Negligence Toward Employee Safety

The recent New Mexico Court of Appeals case of *May v. DCP Midstream* illustrates as clearly as anything the lack of worker's remedies for work injuries caused by their employer's negligence. The case shows the absolute disdain for worker safety embodied by the Worker's Compensation Act which is purportedly for the protection of workers.

In a nutshell, the Court granted the defendant summary judgment on May's personal injury claims because the evidence failed to meet the extraordinary requirements established by *Delgado v. Phelps Dodge*. The case is remarkable in its blunt statement of a worker's right to compensation for the negligence of his or her employer.

The case involved a gas pipeline that was altered for special maintenance procedures. Despite warnings from employees regarding danger to workers, the company failed to return the pipeline to its normal operational condition. The failure to return the pipeline to its normal condition created significant safety hazards to workers. The defendant admitted that the altered condition of the pipeline created an unnecessary and dangerous condition to employees. The defendant also admitted that it knew of the danger and should have returned the pipeline to its normal operational condition.

Mr. May was indeed badly injured while working on the pipeline. He filed suit for personal injuries caused by the gross negligence of his employer. The defendant moved for summary judgment on the basis of the Worker's Compensation exclusivity provisions under the Act which limit a worker's recovery to worker's compensation coverage. The remedies under the Worker's Compensation Act are generally grossly inadequate in cases of serious personal injuries. Specifically, no punitive damages are allowed no matter how egregious the employer's conduct.

Remarkably, the Court stated "there is little doubt that Defendants were negligent, perhaps even grossly negligent." However, gross negligence is not enough under New Mexico law. Under *Delgado*, the employer must have forced an employee "to perform a task in a specific dangerous circumstance in which the employer should have been clearly aware of a substantial likelihood of injury or death." Thus, the Court despite the evidence showing that the employer knew of the danger and failed to correct it despite the ease with which it could be done and the warnings from employees, found that employer was safe from liability beyond the Worker's Compensation Act.

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The degree to which the Courts will go to protect employer's against liability for their grossly negligent conduct is captured by the following language from the Court:

"An employer's disregard for safety requirements designed to help prevent injury and death on the job does not mean that an employer "specifically and willfully caused the employee to enter harm's way, facing virtually certain serious injury or death, as contemplated under Delgado."

Keep this language in mind the next time you hear the tired refrain that trial lawyers and greedy plaintiffs are a threat to business and the very American way of life.

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