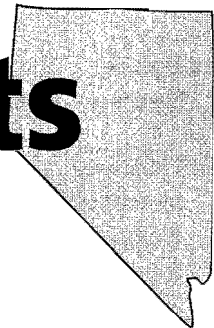


# West's Jury Verdicts Nevada Reports



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**West's® Jury Verdicts - Nevada Reports**

Published since April 2005

**Director:** Jackie M. Kusnierek

**Publisher:** Todd A. Wolfe, Esq.

trialsdigest@thomson.com

**Managing Editor:** June Hight, Esq.

**Jury Verdict Editor:** Bryce Lambden, Esq.;

Stephanie Boram

**West's® Jury Verdicts - Nevada Reports**

(ISSN 1932-6742) is published monthly by

West, a Thomson Reuters business.

Cite as: *West's J.V. Nev. Rep.*, Vol. \_\_, Iss. \_\_, p. \_\_ (2009)

Thomson Reuters

610 Opperman Drive, P.O. Box 64833

St. Paul, MN 55164-9752

800-689-9378; Fax: 800-764-9378;

Customer Service: 800-328-4880

**Subscription Rate** (12 issues)

\$294 Print version

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**CARSON CITY**


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## Purchasers Awarded \$5.2M Following Water Rights Dispute

*White v. Bertagnolli*

**Westlaw Citation:**  
2009 WL 3757699

**Type of Case:**

Real Property • Water Rights  
RICO • Civil  
Fraud & Misrepresentation • Fraud  
Fraud & Misrepresentation • Negligent Misrepresentation  
Contracts • Breach  
Professional Malpractice • Engineer

**Specific Liability:**

Business sold temporary water rights as permanent, breached contract

**General Injury:**

Monetary damages

**Jurisdiction:**

State: Nevada  
County: Carson City  
Court: District Court of Nevada, First Judicial District, Carson City

**Related Court Documents:**

Defendant Bertagnolli's trial statement: 2009 WL 3696548  
Defendant Western's trial statement: 2009 WL 3696547  
Plaintiffs' amended trial statement: 2009 WL 3753747  
Verdict form re: White: 2009 WL 3696572  
Verdict form re: Retiremen: 2009 WL 3696573  
Judgment re: White: 2009 WL 3710562  
Judgment re: Retiremen: 2009 WL 3710561

**Case Name:**

*Jack White, an individual; Jack White Custom Homes, a Nevada corporation; DaytonValley Estates LLC, a Nevada LLC; and Retiremen LLC, a Nevada limited liability company v. Tim Eugene Bertagnolli, an individual; T.E. Bertagnolli & Associates Inc. d/b/a Bertagnolli Aggregates, a Nevada corporation; Dennis Smith, an*

*individual; David D. Winchell, an individual; Western Engineering & Surveying Services, a general partnership; and Does I-L, inclusive*

**Docket/File Number:**

08-00067B

**Verdict:**

Plaintiffs, \$5,188,289.00

**Verdict Date:**

Oct. 28, 2009

**Judge:**

James E. Wilson Jr.

**Attorneys:**

*Plaintiffs:* J.D. Sullivan and Gene M. Kaufmann, Sullivan Law Offices, Minden, Nev.  
*Defendants (Bertagnolli and T.E. Bertagnolli):* Day R. Williams, Carson City, Nev.  
*Defendants (Smith, Winchell and Western):* Justin M. Clouser, J.M. Clouser & Associates, Minden, Nev.

**Trial Type:**

Jury

**Breakdown of Award:**

\$4,956,289.00 to plaintiffs White, Jack White Custom Homes and DaytonValley LLC for breach of contract and negligent misrepresentation against defendant Bertagnolli and T.E. Bertagnolli  
\$232,000.00 to plaintiff Retiremen for breach of contract, negligent misrepresentation and fraud against defendant Bertagnolli and T.E. Bertagnolli

**Summary of Facts:**

In 2004 Western Engineering & Surveying Services, Jack White, Jack White Custom Homes and DaytonValley Estates LLC were working together on a subdivision called Heritage Ranch. Heritage Ranch consisted of 211 residential units on 55 acres of land in the Dayton Valley of Lyon County, Nev. Western, White's project engineer, reportedly prepared all of the plans and submissions for approval of the project by Lyon County. White said Western was also in charge of locating the water rights needed for approval for Heritage Ranch and acted as White's agent in locating rights.

According to White, Western introduced Tim Eugene Bertagnolli and T.E. Bertagnolli & Associates Inc., doing business as Bertagnolli Aggregates, to White; Bertagnolli

claimed he had water rights to sell to White and that the rights could be transferred by White to Lyon County for permanent quasi-municipal use and serve as a basis for Lyon County's approval of Heritage Ranch.

On Oct. 12, 2004, White and Bertagnolli allegedly agreed on a price of \$8,000 per acre-foot of water for 150 acre-feet. On Nov. 3, Bertagnolli reportedly reduced the number of acre-feet to 125 and increased the price by \$500 per acre-foot. On the same date, White and Bertagnolli signed a Basic Water Rights Purchase Agreement whereby Bertagnolli agreed to sell 125 acre-feet, permit numbers 52898, 52899 and 62112, to White for a total cost of \$1,062,500. White said he paid the \$1,062,500 to Bertagnolli two days later.

White said that in June 2005, Western gave the State Engineer a report of conveyance of the 125 acre-feet and a copy of the Water Rights Deed. Western, in August 2005, filed an Application for Permission to Change Point of Diversion, Manner of Use and Place of Use of Public Waters with the State Engineer. The application was signed by an agent of Lyon County, Chuck Zimmerman, and the application requested that the previous industrial use of the water be changed to quasi-municipal use and that the point of diversion be changed to the Cardelli Well. White claimed the requested change would allow Lyon County to provide Heritage Ranch with water directly from Dayton Public Utilities.

In September 2005, the State Engineer confirmed assignment to White of the 125 acre-feet as a portion of permit number 62112; however, he did not act on the change application. Western advised the State Engineer that notice of the change in the application was given to the owners of domestic well sites within 2,500 feet of the Cardelli Well. From 2004 until 2008, Western reportedly filed applications with the State Engineer for extensions of time to prove beneficial use of the water rights from permit number 62112.

According to Western, the State Engineer denied the application because the 125 acre-feet of water rights sold by Bertagnolli was temporary. In June 2008, White learned the change application would be denied and sent Bertagnolli a rescission demand, which Bertagnolli ignored. White sought the return of the \$1,062,500 in exchange for return of the 125 acre-feet of water.

In a separate transaction in December 2004, reportedly at Western's recommendation, Retiremen LLC, the successor-in-interest to water rights purchased by D&D Tire Inc., entered into a Basic Water Rights Purchase Agreement

with Bertagnolli and paid Bertagnolli \$150,000 for 10 acre-feet of water. Western later told Retiremen to take care of the deed to the water rights. For this, Retiremen hired water rights attorney Ross DeLipkau.

White, Jack White Custom Homes, DaytonValley Estates and Retiremen filed a complaint in the Carson City County District Court against Bertagnolli; T.E. Bertagnolli; Western; Dennis Smith, a general partner in Western and water rights surveyor; and David D. Winchell, a general partner in Western and water rights surveyor. The plaintiffs alleged that from 2004 until 2008, Bertagnolli unsuccessfully attempted to sell and lease his essentially worthless water rights to other persons besides White and Retiremen. Further, the plaintiffs alleged the defendants were guilty of racketeering, fraud, negligent misrepresentation and breach of contract. Plaintiff White and his related entities sought \$20 million in damages and plaintiff Retiremen sought approximately \$1 million in damages.

Defendants Bertagnolli and T.E. Bertagnolli argued that the issue was strictly between the plaintiffs and defendant Western. Defendants Bertagnolli and T.E. Bertagnolli claimed the plaintiffs agreed to hold them harmless and indemnify them against any claims or third-party claims. Defendants Bertagnolli and T.E. Bertagnolli also claimed defendant Western caused the dispute by telling everyone Bertagnolli's water rights were transferable to Dayton.

Defendants Western, Smith and Winchell claimed that at no time did they act as a broker for White or receive money from the transaction.

Prior to trial, defendants Bertagnolli and T.E. Bertagnolli offered \$500,000 to plaintiff White and his related entities to settle, the plaintiffs' counsel reported. The defendants also offered \$75,000 to plaintiff Retiremen to settle.

According to plaintiffs' counsel, defendants Western, Smith and Winchell offered nothing prior to trial, but settled on the fourth day of trial for a stipulated judgment of \$1 million, collectible only against their liability insurance. In addition, defendant Western agreed to trade its interest in 101 acre-feet of permanent water rights for the 125 acre-feet of temporary water rights plaintiff White had purchased from defendant Bertagnolli.

After eight days of trial and four hours of deliberation in October 2008, a jury of eight unanimously voted in favor of the plaintiffs and against defendants Bertagnolli and

T.E. Bertagnolli in the amount of \$5,188,489, awarding plaintiff White and his entities \$4,956,289 and plaintiff Retiremen \$232,000.

The plaintiffs' counsel reported that the insurance carriers for defendants Western and Bertagnolli were notified late, denied coverage and did not provide a defense or otherwise participate in the action.

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## CLARK COUNTY

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### Minor Settles for \$738K For Wrongful Death of Father

*In re: J.D.S.M.*

**Westlaw Citation:**

2009 WL 3757703

**Type of Case:**

Wrongful Death • Adult  
Vehicle Negligence • Motor Vehicle v. Motor Vehicle  
Vehicle Negligence • Rear-End  
Vehicle Negligence • Truck  
Vehicle Negligence • Interstate/Freeway  
Vehicle Negligence • Impaired Driver  
Vicarious Liability

**Specific Liability:**

Minor's father killed in rear-end collision

**General Injury:**

Death

**Jurisdiction:**

State: Nevada  
County: Clark  
Court: District Court of Nevada, Eighth Judicial District,  
Clark County

**Case Name:**

*In re: J.D.S.M.*

**Docket/File Number:**

A586730

**Settlement:**

Plaintiff, \$738,167.30

**Settlement Date:**

April 13, 2009

**Judge:**

Jessie Walsh

**Attorneys:**

*Plaintiff:* Leonard H. Stone, Shook & Stone Chtd.,  
Las Vegas, Nev.

*Defendant:* None mentioned

**Trial Type:**

Settlement

**Breakdown of Settlement:**

\$412,821.02 to plaintiff for damages  
\$72,576.41 to plaintiff for a medical lien and funeral costs  
\$246,055.74 to plaintiff for attorney fees  
\$6,714.13 to plaintiff for costs

**Summary of Facts:**

On June 5, 2007, Richard J. Moon, 19, was operating a 2000 Jaguar, traveling north on US-95 in Clark County, Nev. At the same time and place, Isaak Jack Bougas operated a 2001 Freightliner tractor, pulling a 2000 Boydston trailer, owned by Athens Auto Transport, and was also traveling north on US-95. The tractor-trailer reportedly struck the rear of Moon's vehicle, which overturned on its left side, struck a dirt embankment on its top and continued in a northerly direction, coming to rest on the shoulder east of the roadway, facing south. Moon was airlifted to University Medical Center, where he was pronounced dead.

Investigating officers deemed Bougas to be at fault for the accident and issued a warrant request for several violations, including driving for extended hours. According to the Nevada Highway Patrol report, Bougas was either fatigued or asleep when he struck Moon's vehicle. Moon was survived by J.D.S.M., his 10-day-old child.

Athens Auto Transport's insurance carrier, Northland Insurance, agreed to settle J.D.S.M.'s claims for \$738,167.30. Athens Auto Transport's policy limit was \$750,000, and it previously paid \$11,832.70 for vehicle property damage. According to the police records, the Jaguar was reported as a stolen vehicle in Los Angeles, Calif. Judge Jessie Walsh approved the settlement in April 2009.