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**TORTS**  
**Semester I, 2003-04**

UNM School of Law  
Final Examination

Professor Margaret Montoya  
Friday, December 19, 2003  
1:30 p.m. to 4:30 p.m.

**INSTRUCTIONS**

1. If you are not typing your exam, please write legibly. Use only the right side of the bluebook pages and skip every other line. Please do not use pencil to write the exam.
2. If you are typing your exam, use only one side of the paper.
3. You will have three hours (180 minutes) to write this exam and it will be worth 45% of your final grade.
4. **Don't forget to put your exam number on your bluebooks.**
5. This is a closed book exam. You are not allowed to consult your notes, outlines, or summaries.

**Take a deep breath and good luck.**

### Question #1. 30 points

Wells Fargo Alarm Services Division (Wells Fargo) installed a burglar and fire alarm system at premises owned by Arett Sales Corporation (Arett). After Wells Fargo began monitoring the system, but prior to the time the system became fully operational, Wells Fargo contracted with Advanced Automatic Sprinkler Protection Systems, Inc. (Advanced) to perform certain services on the system. Although Advanced asked both Wells Fargo and Arett whether the system was operational and monitored, both responded it was not. On the morning of May 10, 1990, Advanced proceeded to perform the necessary services without first testing whether the system was operational and without taking steps to shut the system down. At no time during the course of the services being performed by Advanced was the alarm monitoring system or the local fire dispatch center notified that service was being performed on the Arett system. The failure to give such notice was contrary to both the internal policies of Wells Fargo and the standards of the National Fire Protection Association. It is likely that proper notification would have prevented a response to the false alarm that resulted from the performance of services on Arett's alarm system.

Additionally, on the morning on which Advanced was working on the system, the Wells Fargo monitoring station received two supervisory signals, which are indicative of a problem with the system. Although proper procedures mandated that the monitoring station contact the client to determine the nature of the problem, the monitoring station never contacted Arett. Had Wells Fargo followed proper procedure, it would have learned that service was being performed on the system and could have made the necessary notation to avoid reporting the subsequent false alarm. Two minutes after the second supervisory signal was received, an alarm was received at the monitoring station indicating the existence of a fire at Arett. Although an alarm after a supervisory signal often means that a system is being serviced and that the alarm is false, the monitoring station erroneously notified the Waterbury fire department that a fire was in progress at Arett's business. At approximately 11:20 a.m. Waterbury Fire Engine Company 11 was dispatched to respond to the alarm. Engine Company 11 was operating Engine #9, a spare vehicle in use because their primary vehicle was undergoing repairs.

Prior to the alarm, James Morotto, the engine driver, had been advised that the brakes were not functioning properly. When Morotto tested the brakes, they appeared to be adequate. Later that morning Morotto noticed that the brakes were not operating properly so he drove the engine to the city garage for repairs. The mechanic noted that the brakes need minor adjustments but informed Morotto that he was unable to attend to the task until after lunch.

The alarm from Arett was received after the Engine Company 11 returned to the station but before the brakes were repaired. Because the roads were wet, Morotto flipped a switch to eliminate power to the engine's front brakes because, although this

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maneuver reduces braking power by about 50%, it is usually safer to operate without front brakes on wet roads. Once the engine began to descend a hill at a speed of fifteen miles per hour, Morotto realized that the brakes had failed. The engine's auxiliary brake also failed so Morotto veered into a parking lot to avoid cars stopped at the bottom of the hill. Morotto struck an embankment and lost control of the vehicle and struck a tree. As a result of the collision, two firefighters died and two were seriously injured. The brake failure was caused by a leak in a water hose that had been neglected by the city.

As employees of the city, the firefighters have received benefits under the Waterbury Workers' Compensation Act but their damage award was limited by the Act's statutory schedule of payments. Consequently, the injured firefighters and the estates of the deceased firefighters have brought a separate action against Arett, Advanced, and Wells Fargo, the companies involved in transmitting the false alarm. The defendants have filed a motion for summary judgment alleging that they did not proximately cause the injuries to the plaintiffs. (Note: you are to ignore any workers' compensation issues.)

Assume you are the clerk for the trial judge. You have been instructed to prepare a memorandum analyzing the arguments that the two opposing parties are likely to make in support of or in opposition to this motion. The judge has also asked for your recommendation on whether to grant or deny the motion.

[This fact pattern is adapted from *Lodge v. Arett Sales Corp.*, 246 Conn. 563 (1998).]

**Question No. 2. 15 points.**

On his way to work on Friday, October 12, 1990, William Piner stopped his truck to let a pedestrian cross the street. While he was stopped, a car driven by Billy Jones hit Piner's truck from behind. Police were called to investigate the incident. Piner waited for the police to finish their investigation before calling Dr. Lisa Padilla, his primary physician, to complain of pain in his neck, upper back, left arm, and head. The doctor's staff told Piner that she was busy but that he would be seen later in the day. Piner considered fixing the broken taillights on his truck, but instead decided to return to work until he heard from Dr. Padilla.

Later the same day, Piner was driving to lunch when the car ahead of him stopped to allow pedestrians to cross the street. Piner stopped and was again hit from the rear by a vehicle driven by Cynthia Richardson. Now, in considerable pain, Piner again called and talked with Doctor Padilla. She was still occupied but told him to come to the office for a check-up. He waited for hours to see Dr. Padilla but eventually left her office without being seen. He was finally treated on Sunday at the emergency

room. Piner suffered serious injuries as a result of the two collisions plus the delay in being treated. The medical experts are unable to attribute any particular part of Piner's injuries to one accident or the other or to the subsequent delay in being seen by a doctor.

Piner's damages amount to \$200,000. Billy Jones has left the jurisdiction and is not involved in the litigation. The jury has concluded that Richardson and Padilla are liable and Piner was contributorily negligent. Assume that this case is being tried this year in New Mexico and that you represent the plaintiff. How should the damages be apportioned among the parties? Explain your answer and show your calculations.

[This fact pattern is loosely adapted from *Piner v. Superior Ct.*, 192 Ariz. 182 (1999).]