

Commentary

Jury finds fraud by forewoman

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You may remember Cynthia Cortez, the self-appointed jury forewoman in Brownsville who appeared in this column six months ago for bamboozling Ford Motor Co. into settling a lawsuit for \$3 million through an act of legal terror.

After a six-week trial, she began the deliberations by asking if anyone else wanted to be foreman. When nobody spoke up, she announced she would do the job.

A few days later, after a weekend off and a Monday on which she phoned claiming a sick child, she sent the judge a note asking, "What is the maximum amount that can be awarded?"

It was punctuated with a smiley face.

Now a second Brownsville jury has thrown the settlement out after hearing a week's worth of testimony. It found that Cortez sent the note "for the purpose of fraudulently inducing Ford to settle with the Castillo family."

The note panicked the Ford lawyers, who thought the trial went well. After seeing the note, they quickly agreed to plaintiff's lawyer Mark Cantu's demand for the \$3 million.

Only after the agreement was filed with the court did District Judge Abel Limas notify the jury that their work was done. As is customary in many courts, the lawyers met with the jurors to discuss the case.

Ford's lawyers were stunned when jurors asked why they had settled. The jurors had quickly determined that the Explorer's roof was not faulty and were nearing a consensus in favor of Ford on the only other issue — whether a design issue caused the Explorer to be unstable.

The jurors agreed they had not authorized Cortez to send her explosive note.

Based on these and further conversations with jurors, Ford refused to honor the settlement. Cantu, a McAllen lawyer who stood to earn nearly \$2 million of the \$3 million, sued the company for breach of contract.

But Limas (who was defeated for re-election last November) denied the company's request to be allowed to put Cortez (and other jurors) under oath and take her deposition. What's more, the Corpus Christi Court of Appeals, on a 2-1 vote, upheld his decision, citing the importance of jury secrecy.

But the Texas Supreme Court unanimously ruled in Ford's favor, and they were permitted to take sworn statements from the jurors.

Forewoman Cortez, both in a deposition and on the stand, insisted that she remembered almost nothing about what took place in the jury room. That was part of the evidence that led a jury last week to throw out the settlement.

Jury is questioned

So why would Cortez send the note? The jury was asked that question but does not appear to have given its opinion.

Judge Elia Cornejo Lopez presented the jury with a numbered, five-part question about the note, and one space at the bottom to answer.

The jury answered “yes” to the entire question but put check marks or a “y” by four of the parts, including whether the note was (1) “a material misrepresentation,” and was sent (2) “with the intent that Ford Motor Company rely on the representation.”

But they did not mark the portion that read (3) “sent by or at the direction of plaintiffs or their agents or representatives with the knowledge that it was false.”

Ford's in-house counsel Peter Tassie testified during the trial that the night before the final day of deliberations Cantu told him that if a note came out from the jury indicating they were deliberating on damages, his demand would go up from \$1.96 million to \$3 million.

“It was strange that he would give a specific figure, rather than just say the amount would go up,” said Jaime Saenz, a Brownsville lawyer for Ford.

Cantu did not return a phone call seeking comment. He and his clients can appeal this jury's decision, seek to retry its original case or drop the matter.

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