

AGEE V. WACKENHUT SERVS., 120 N.M. 498, 903 P.2d 240 (S. Ct. 1995)

**ROBERT C. AGEE, JAY M. COHN, TERRY HALL, WILLIAM E. NORTON,
JAMES B. PHELPS, ERNEST SANCHEZ, DEAN SHRADER, GEORGE
F. TOLE, and BARBARA ZAVITZ,
Plaintiffs-Petitioners,**

vs.

WACKENHUT SERVICES INCORPORATED, Defendant-Respondent.

NO. 23,134

SUPREME COURT OF NEW MEXICO

120 N.M. 498, 903 P.2d 240

September 27, 1995, Decided

OPINION

ORDER

We grant the petition for writ of certiorari to the Court of Appeals on the questions presented and conclude that, to claim relief for prima facie torts, petitioners' complaint need not have stated that the culpable act or acts were done "maliciously." If a malicious act is an element of prima facie tort, a question we do not decide, any such element is adequately averred in the elements itemized in SCRA 1986, 13-1631 (Repl. Pamp. 1991) (uniform jury instruction stating definition and elements of prima facie tort). The necessary averments appear at paragraphs 67 through 72 of the first amended complaint. Consequently, we remand this appeal to the Court of Appeals to decide whether, as urged in the response to the petition for writ of certiorari, the Court of Appeals has reached the right result because petitioners lacked standing to maintain prima facie tort claims or because the claims lacked merit as a matter of law under the facts as petitioners pled them.