

SIXTH JUDICIAL DISTRICT  
COUNTY OF LUNA  
STATE OF NEW MEXICO

CHARLES RUMPH and NORMA RUMPH,  
individually, and ONEBEACON INSURANCE  
COMPANY, a foreign corporation,

Plaintiffs,

vs.

No.: CV 2009-00331

GOVINDER GHUMAN  
and DEOL BROTHERS EXPRESS, LLC  
d/b/a DEOL BROTHERS EXPRESS TRUCKING,

Defendants.

**AMENDED COMPLAINT FOR DAMAGES FROM NEGLIGENCE, NEGLIGENCE  
PER SE, RES IPSA LOQUITUR, LOSS OF CONSORTIUM, AND PUNITIVE  
DAMAGES**

COME NOW the Plaintiff's, Charles Rumph and Norma Rumph, by and through their attorneys of record, the BRANCH LAW FIRM (Turner W. Branch and Frank Balderrama), and Plaintiff OneBeacon Insurance Company, by and through their attorney of record, PARNALL LAW OFFICES, (Bertrand R. Parnall), and for their causes of action, state as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Charles Rumph is a resident of the City of Benton, County of Scott, State of Missouri.
2. Plaintiff Norma Rumph is a resident of the City of Benton, County of Scott, State of Missouri.
3. Plaintiff OneBeacon Insurance Company (hereinafter referred to as "OneBeacon") is a foreign corporation in the insurance industry, doing business in the State of

New Mexico.

4. Plaintiff Charles Rumph is insured by Plaintiff OneBeacon pursuant to the terms of a group occupational accident insurance policy.

5. Upon information and belief, Defendant Deol Brothers Express, LLC and d/b/a Deol Brothers Express Trucking (hereinafter “Defendant Deol Brothers”) is incorporated under the laws of the state of California. Deol Brothers can be served with process through its registered agent, Inderjit Singh Deol, 8707 Coleraine Ct, Bakersfield, California 93313.

6. Upon information and belief, Defendant Govinder Ghuman (hereinafter referred to as “Defendant Ghuman”) is a resident of the City of Bakersfield, County of Kern, and State of California.

7. Based upon information and belief, Defendant Deol Brothers, at all times material hereto, was doing business in the state of New Mexico.

8. All acts complained of herein occurred on State Intersection 10 in the City of Deming, County of Luna, and State of New Mexico.

9. At all times relevant hereto, Defendant Ghuman was acting in the course and scope of his employment with Defendant Deol Brothers while driving through in Luna County, New Mexico.

10. Jurisdiction is proper in this Court pursuant to New Mexico’s long arm statute, N.M.S.A. § 38-1-16 (1978) and N.M.S.A § 38-3-1 (2003), since this cause of action arises out of the operation of a motor vehicle on the intersections of New Mexico.

11. Venue is proper in this Court pursuant to N.M.S.A § 38-3-1 (2003).

## **STATEMENT OF FACTS**

12. On or about April 15, 2009, Plaintiff Charles Rumph and his wife, Norma Rumph, were traveling in a tractor trailer in an easterly direction on Interstate 10 in Luna County, New Mexico.

13. At all times hereto, Plaintiff Charles Rumph was operating his vehicle in a safe and proper manner.

14. On April 15, 2009 at approximately 11:20 pm Defendant Ghuman was operating a commercial motor vehicle with an attached trailer heading eastbound on Interstate 10 from California hauling a load of oranges for his employer, Defendant Deol Brothers.

15. Defendant Deol Brothers was the registered owner of the vehicle Defendant Ghuman was driving on or about April 15, 2009.

16. At the aforesaid date and place, Defendant Ghuman operated the tractor trailer in a careless, reckless, and negligent manner so as to lose control of his tractor-trailer, such that it rolled onto its side and rested in the inside lane of the freeway.

17. When Plaintiff Charles Rumph realized that Defendant Ghuman's trailer was blocking the inside lane of the freeway, he attempted to maneuver his vehicle to avoid a collision.

18. Unfortunately, Plaintiff Charles Rumph's tractor collided with the rear end of Defendant Ghuman's trailer.

19. After the impact, the Plaintiff's traveled across the median to the west bound side of the interstate, ran through a barbed wired fence, and drove up a sand mount where it made its final resting place facing north.

20. Defendant Ghuman was cited for careless driving and for lack of English proficiency, a federal requirement to operate a commercial motor vehicle.

21. Following the incident, Plaintiff Charles Rumph was transported to Thomason General Hospital in El Paso, Texas; Plaintiff Norma Rumph was transported to Memorial Hospital in Deming, New Mexico for medical treatment.

22. Defendant Ghuman did not sustain any injuries in the collision.

23. As a direct and proximate result of the negligent acts and/or omissions of the Defendants, Plaintiff Charles Rumph sustained severe injuries including a near amputation of his right ring finger, a fracture to his right tibia/fibia, rib fractures, lacerations on his head, an open wound on his left knee, and multiple cuts and bruises on his body; he was air lifted to Thomason Hospital.

24. As a direct and proximate result of the negligent acts and/or omissions of the Defendants, Plaintiff Norma Rumph sustained serious injuries including abrasions on her head, knee contusions, lower back pain, and cuts and bruises throughout her body; she was transported by ambulance to Memorial Hospital.

**COUNT 1: NEGLIGENCE AND RESPONDEAT SUPERIOR**

25. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 24 as fully set forth herein.

26. At all times material hereto, Defendant Ghuman was an employee, agent, and/or servant of Defendants Deol Brother's, and was acting within the course and scope of that relationship and in furtherance of the legitimate business activities of said Defendants.

27. Defendant Deol Brother's are liable for the injuries and damages sustained by

Plaintiffs by application of the Doctrine of Respondeat Superior.

28. Defendant Ghuman had a duty to the general public, specifically Plaintiffs, to exercise ordinary care while operating a vehicle.

29. Defendant Ghuman failed to exercise ordinary care while operating his tractor-trailer thus causing the subject collision.

30. Defendant Ghuman failed to use ordinary care that a reasonable and prudent automotive driver would have under the same or similar circumstances by the following acts and/or omissions, including, but not limited to:

- a. Failing to keep a proper lookout;
- b. Failing to keep alert and attentive to the surrounding conditions;
- c. Failing to maintain control of the vehicle;
- d. Failing to warn of danger after the initial crash;
- e. Failing to take appropriate affirmative actions to prevent foreseeable injuries after the initial crash.

31. As a direct and proximate result of Defendant's negligent acts and/or omissions, Plaintiffs Charles and Norma Rumph collided with Defendant Ghuman's trailer and suffered severe physical injuries that required medical treatment. Plaintiffs may require future medical treatment for their injuries, all in an amount not presently determinable, but to be proven at the time of trial.

32. As a further direct and proximate result of Defendant's negligent acts and/or omissions, Plaintiffs suffered a loss of recreation activities and loss of enjoyment of life, and will

likely continue to suffer such losses in the future, all in an amount not presently determinable, but to be proven at the time of trial.

33. As a further direct and proximate result of Defendant's negligent acts and/or omissions, Plaintiffs suffered from emotional distress, mental anguish, loss of wages, loss of benefits, loss of earning capacity and other damages, and will likely continue to suffer such losses in the future, all in an amount not presently determinable, but to be proven at the time of trial.

34. As a further direct and proximate result of Defendant's negligent acts and/or omissions, Plaintiff OneBeacon Insurance has paid and will continue to pay medical and disability benefits to Mr. Rumph and is therefore contractually and equitably subrogated to his claims.

35. Defendants are liable to Plaintiff OneBeacon for the damages they caused.

### **COUNT 2: NEGLIGENCE PER SE**

36. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 35 as fully set forth herein.

37. At the time of the aforesaid collision, there were in force and effect certain New Mexico Statutes that were violated by Defendant Ghuman, including but not limited to the following:

- a. N.M.S.A. '66-7-3, Required obedience to traffic laws;
- b. N.M.S.A. '66-8-113, Reckless driving ("Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and

at a speed or in a manner so as to endanger or be likely to endanger any person or property....”);

- c. N.M.S.A. '66-8-114(a), Careless driving. (“Any person operating a vehicle on the highway shall give his full time and entire attention to the operation of the vehicle”);
- d. N.M.S.A. '66-8-114(b), Careless driving (“Any person who operates a vehicle in a careless, inattentive or imprudent manner, without due regard for the width, grade, curves, corners, traffic, weather and road conditions and all other attendant circumstances is guilty of a misdemeanor”);
- e. N.M.S.A. '66-7-104, Obedience to traffic control devices (“The driver of any vehicle shall obey the instructions of any official traffic-control device....”); and
- f. Any other federal, state, or local statute or regulation governing the control of vehicles while driving.

38. At the time of the collision Defendant Ghuman was acting in the scope of his employment with Defendants Deol Brother’s.

39. Plaintiffs were in the class of persons intended to be protected by the above laws, as contemplated by the New Mexico Legislature or other government body.

40. Plaintiffs were members of the class of persons sought to be protected by said statutes.

41. Defendant Ghuman violated said statutes without just cause or excuse.

42. As a direct and proximate result of Defendant’s statutory violations, Plaintiffs

Charles Rumph, Norma Rumph and OneBeacon Insurance Company suffered injuries and/or damages complained of herein.

**COUNT 3: RES IPSA LOQUITOR**

43. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 42 as fully set forth herein.

44. The injury to Plaintiffs was proximately caused by Defendant Ghuman's vehicle, which was stationary in the roadway without any signs or signals alerting oncoming traffic.

45. The vehicle projecting into the I-10 roadway was Defendant Ghuman's responsibility to manage and control.

46. A stationary vehicle in the middle of a busy highway without any signs or signals to warn oncoming traffic, the event causing injury to Plaintiffs Charles and Norma Rumph, is of a kind which does not ordinarily occur in the absence of negligence on the part of the driver in control of the vehicle, Defendant Ghuman.

47. As a direct and proximate result of Defendants negligent acts and/or omissions, Plaintiffs Charles Rumph, Norma Rumph and OneBeacon Insurance Company suffered injuries and/or damages complained of herein.

**COUNT 4: LOSS OF CONSORTIUM**

48. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 47 as fully set forth herein.

49. Plaintiffs Charles and Norma Rumph are husband and wife.



50. As a direct and proximate result of the negligence of Defendants, Plaintiffs suffered a loss of consortium, as that term is legally defined.

51. That loss of consortium includes, but is not limited to, the deprivation and temporary loss of an intimate relationship, impairment of companionship, impairment of the family relationship, loss of household services, mental and emotional anguish, and other associated trauma related to the harms experienced by Plaintiffs Charles and Norma Rumph.

52. As a direct and proximate result of Defendants' negligent acts and/or omissions, Plaintiffs Charles and Norma Rumph suffered a loss in an amount not presently determinable, but to be proven at the time of trial.

#### **COUNT 5: PUNITIVE DAMAGES**

53. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 52 as fully set forth herein.

54. Defendant's intentional and reckless acts and omissions complained of in the causes of action stated above are of such an egregious nature, in reckless, wanton, willful and total disregard of the rights of the Plaintiffs, that in addition to actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter these types of intentional and reckless acts and omissions from occurring in the future are appropriate.

WHEREFORE, Plaintiffs pray that Judgment be entered in their favor and against Defendants in an amount to be proven at the time of trial, for compensatory damages, punitive damages, incidental expenses and for costs associated with the bringing of these causes of action,

for pre-trial interest and post-trial interest, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

BRANCH LAW FIRM

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