

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

**DAVID HUGABOOM JR. AND
SAMANTHA HINES, as the Personal
Representatives of the ESTATE OF
DAVID R. HUGABOOM, deceased,**

Plaintiffs,

v.

Case No. _____

**WALBERTO GONZALEZ; and S.B. WEED
CONTROL LLC d/b/a S.B. TRANSPORT,**

Defendants,

**COMPLAINT FOR WRONGFUL DEATH, RESPONDEAT SUPERIOR,
AND PUNITIVE DAMAGES**

COME NOW the Plaintiffs, David Hugaboom Jr. and Samantha Hines, as the Personal Representatives of the Estate of David R. Hugaboom, deceased, by and through their attorneys of record, the BRANCH LAW FIRM (Turner W. Branch and Frank V. Balderrama) and for their causes of action, state as follows:

PARTIES AND VENUE:

1. Plaintiff David Hugaboom Jr. is the son of the deceased David R. Hugaboom and resides in the City of Albuquerque, County of Bernalillo, State of New Mexico.
2. Plaintiff Samantha Hines is the daughter of the deceased David R. Hugaboom and resides in the City of Albuquerque, County of Bernalillo, State of New Mexico.
3. Plaintiffs David Hugaboom Jr. and Samantha Hines are duly appointed Personal Representatives of the Estate of David R. Hugaboom.

4. Plaintiffs' decedent, David R. Hugaboom (hereinafter "Decedent Hugaboom"), was a resident of the City of Carlsbad, County of Eddy, State of New Mexico at the time of his death and at all times material to the allegations contained in this Complaint.

5. Decedent David R. Hugaboom died on January 27, 2011 at the age of 55 as the direct and proximate result of the negligent and reckless breaches of duty by the Defendants as outlined herein in this Complaint.

6. Based upon information and belief, Defendant Walberto Gonzalez (hereinafter referred to as "Defendant Gonzalez") is a resident of the City of El Paso, State of Texas at all times material to the allegations contained in this Complaint.

7. Upon information and belief, Defendant S.B. Weed Control LLC is a domestic limited liability corporation, incorporated in and under the laws of the State of New Mexico.

8. Upon further information and belief, Defendant S. B. Weed Control LLC was doing business as Defendant S.B. Transport in the State of New Mexico at all times material hereto.

9. Defendant S.B. Weed Control LLC d/b/a S.B. Transport (hereinafter referred to as "Defendant S.B. Transport") may be served with process through its registered agent, Scott Branson, located at 213 South Mesa, located in Carlsbad, New Mexico 88220.

10. Upon information and belief, at all times material hereto, Defendant Gonzalez was employed and working within the course and scope of his employment with S.B. Transport out of Carlsbad, New Mexico.

11. All acts complained of herein occurred in the City of Carlsbad, County of Eddy, State of New Mexico.

12. Jurisdiction and venue are proper with this Court pursuant to NMSA 1978 § 38-3-1 (2003).

STATEMENT OF FACTS:

13. Plaintiffs incorporate by reference as fully set forth herein each and every allegation contained in the preceding paragraphs of this Complaint.

14. On January 27, 2011, Defendant Gonzalez was operating a semi tractor-trailer owned by Defendant S.B. Transport, and was heading westbound on State Road 128 near the five mile marker in rural Eddy County near Carlsbad, New Mexico.

15. Decedent David R. Hugaboom was traveling eastbound, in the opposite direction of Defendant Gonzalez, on State Road 128 when the tractor-trailer driven by Defendant Gonzalez crossed the center line of a two lane roadway and struck the tractor trailer of Decedent Hugaboom.

16. Upon information and belief, Decedent Hugaboom attempted evasive maneuvers to try and avoid or lessen the impact of the collision just before impact.

17. Unfortunately for David R. Hugaboom, the drivers side of his tractor-trailer absorbed the brunt of impact from Defendant Gonzalez's tractor-trailer, killing him on scene.

18. Decedent David R. Hugaboom was unable to avoid the collision with the truck and the severe impact was fatal causing the Decedent David R. Hugaboom to die at the scene.

19. Defendant Gonzalez was air lifted to Lubbock, Texas for medical treatment.

20. As a result of the negligent acts and/or omissions of the Defendants, David R. Hugaboom lost his life at only fifty-three (53) years of age.

21. As a further result of the negligent acts and/or omissions of the Defendants, Decedent David R. Hugaboom and his Estate, suffered injuries and damages, all in an amount not presently determinable, but to be proven at the time of trial.

**FIRST CAUSE OF ACTION:
NEGLIGENCE & RESPONDEAT SUPERIOR**

22. Plaintiffs incorporate by reference as fully set forth herein each and every allegation contained in the preceding paragraphs of this Complaint.

23. Defendants owed a duty to exercise ordinary care in connection with their ownership, operation, maintenance, inspection, and upkeep of the tractor and trailer in question and in the furtherance of their business.

24. Defendants were individually and collectively responsible for the maintenance, repair, inspection, and upkeep of the tractor and trailer at issue in this case.

25. Defendants were also individually and collectively responsible for ensuring that the tractor and trailer and driver met all the requirements of state and federal rules and regulations for safety before being placed on the roadway.

26. Defendants were individually and collectively responsible for seeing that the requirements of the Federal Motor Carrier Safety Regulations and applicable state or federal rules or regulations regarding commercial motor vehicle drivers, commercial motor vehicles, and related record keeping were complied with.

27. Defendant S.B. Transport was individually and solely responsible for the hiring, retention, training, and supervision of Defendant Walberto Gonzalez.

28. At all times relevant hereto an employer-employee relationship existed between Defendant S.B. Transport and Defendant Walberto Gonzalez.

29. At all times material hereto, Defendant Gonzalez was acting in the course and scope of his employment with Defendant S.B. Transport when he breached his duties to the Decedent and such breaches, singularly or in combination with those of Defendant S.B. Transport, constitute negligence, gross negligence, and violations of state, and federal regulations which proximately caused Decedent Hugaboom's death.

30. The Defendants' negligent acts and/or omissions include, but are not limited to, the following:

a. Operating the tractor/trailer combination at an unreasonable rate of speed under the existing circumstances;

b. Failing to keep a proper lookout;

c. Failing to make timely application of brakes or to otherwise control speed;

d. Improper and unsafe lane change and passing;

e. Driving on the wrong side of the roadway;

f. Operating a tractor/trailer combination in an impaired state;

g. Allowing for the operation of a commercial motor vehicle while the drivers ability or alertness is so impaired, through fatigue, illness or any other cause, as to make it unsafe for him to begin or continue to operate the commercial motor vehicle;

h. Failing to properly supervise those hired to operate, maintain, or inspect Defendants' vehicles or equipment;

i. Failing to properly train those hired to operate, maintain, or inspect Defendants' vehicles or equipment;

j. Failing to establish a safety policy and/or safety protocol that would insure that no vehicle and/or equipment owned, operated, repaired, inspected, or maintained by

Defendants would be on the roadway when not in compliance with all requisite regulations and/or safety standards or when in a defective or dangerous condition;

k. Failing to establish educational and/or safety training programs for those responsible for the operation, maintenance, inspection, or upkeep of the vehicles or equipment owned or operated by Defendants so that those individuals were properly trained to ensure that such vehicles or equipment would not operate on the roadway in an unsafe, dangerous, or defective condition;

l. Violations of the New Mexico Transportation Code;

m. Violations of the Federal Motor Carrier Safety Regulations; and

n. Entrusting a tractor/trailer to Defendant Walberto Gonzalez, a reckless or incompetent driver, that Defendant S.B. Transport knew or should have known to be negligent, reckless or incompetent.

31. The negligence of the Defendants described above is and was a proximate cause of the trucking collision on January 27, 2011 which resulted in Mr. David R. Hugaboom's death.

32. A reasonable person in Defendants position would expect the above-mentioned intentional and reckless acts and omissions to directly and proximately cause great bodily harm and/or death to individuals, specifically the Decedent.

33. The breach of the duties owed to Decedent were the direct, actual, legal and proximate cause of Decedent's injuries, including his untimely death.

34. As a further direct and proximate result of Defendants negligent, intentional and reckless acts and omissions, Decedent Hugaboom suffered severe physical, emotional, and psychological pain and suffering between the time of recognizing that a collision was imminent

and unavoidable, and his untimely death, all in an amount not presently determinable, but to be proven at the time of trial.

35. The injuries relating to Decedent and his Estate, past, present and future were, are and will be due to the negligent, intentional and reckless acts and omissions of the Defendants without any contributing negligence on the part of Decedent Hugaboom.

**SECOND CAUSE OF ACTION:
WRONGFUL DEATH**

36. Plaintiffs incorporate by reference as fully set forth herein each and every allegation contained in the preceding paragraphs of this Complaint.

37. As a direct and proximate cause of the negligent acts and/or omissions of the Defendants, David R. Hugaboom died.

38. This action is brought pursuant to the New Mexico Wrongful Death Statute, N.M.S.A. §41-2-1.

39. This action is brought by Plaintiffs to recover on behalf of the Estate of David R. Hugaboom all damages legally available under the New Mexico Wrongful Death Act.

**THIRD CAUSE OF ACTION:
PIERCING THE CORPORATE VEIL**

40. Plaintiffs incorporate by reference as fully set forth herein each and every allegation contained in the preceding paragraphs of this Complaint.

41. The shareholders, officers, directors, and/or affiliates of Defendant S.B. Weed Control LLC d/b/a S.B. Transport, abused the corporate privilege such that they should be individually liable, jointly and severally, for corporate obligations arising from or related to this lawsuit.

42. Defendant S. B. Transport was organized and operated as a mere tool or business conduit of a person or another corporation, S.B. Weed Control LLC.

43. The creation of Defendant S. B. Transport was used to evade legal obligations including the duty of care owed by S.B. Weed Control LLC and their shareholders, officers, directors, and/or affiliates.

44. S.B. Weed Control LLC d/b/a Defendant S. B. Transport were not operated as separate business entities but integrated their resources to achieve a common business purpose.

45. The corporations are also liable for the actions of their principals or vice principals acting within the scope of their authority. Specifically, the shareholders, officers, directors, and/or affiliates of Defendant S.B. Weed Control LLC have authority to employ, direct, and discharge the corporations' employees of both Defendants Weed Control LLC and S.B. Transport, and engage in performing non-delegable duties of the corporation, and manage the business of the corporation.

46. For the foregoing reasons, the shareholders, officers, directors, and/or affiliates of Defendant S.B. Weed Control LLC d/b/a S.B. Transport should be individually liable, jointly and severally, for corporate obligations arising from or related to this lawsuit.

**FOURTH CAUSE OF ACTION:
PUNITIVE DAMAGES**

47. Plaintiffs incorporate by reference as fully set forth herein each and every allegation contained in the preceding paragraphs of this Complaint.

48. The acts and/or omissions of Defendants were of such an egregious nature, in reckless, wanton and total disregard to the rights of the public, including Plaintiffs, that in addition to actual damages ascertained and demonstrated by a preponderance of the evidence,

punitive damages or exemplary damages to punish and deter this type of act and omission from occurring in the future are appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court to enter final judgment in favor of Plaintiffs and against Defendants in an amount to be proven at the time of trial for all of Plaintiffs' damages, compensatory and other damages, including but not limited to, punitive damages, for costs associates with bringing this cause of action, for reasonable attorney fees as allowed by law, for pre-judgment interest and post-judgment interest, and for such other further relief as the Court deems just and proper.

Respectfully Submitted,

BRANCH LAW FIRM

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