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 Norma L. Favela
 District Clerk
 El Paso District

IN THE 41st JUDICIAL DISTRICT COURT
 EL PASO COUNTY, TEXAS

EVERADO CHUCA LALO, JR.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Cause No. 2011-DCV01002
PHILLIP SEAN BIAGAS, Individually	§	
and d/b/a B.S. TRUCKING, DANIEL	§	
ESTRADA, and RJ BORDER/IDEALEASE	§	
OF EL PASO,	§	
	§	
Defendants.	§	

PLAINTIFF'S FIRST AMENDED PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES EVERADO CHUCA LALO, JR. (hereinafter referred to as "Plaintiff") complaining of PHILLIP SEAN BIAGAS Individually (hereinafter referred to as "Defendant BIAGAS") and d/b/a B.S. TRUCKING (hereinafter referred to as "Defendant TRUCKING"), DANIEL ESTRADA (hereinafter referred to as "Defendant ESTRADA"), and RJ BORDER/IDEALEASE OF EL PASO (hereinafter referred to as "Defendant RJ BORDER", and for cause of action would respectfully show the Court as follows:

I.

Pursuant to Rule 190, discovery in this case will be conducted in Level 2.

II.

Plaintiff is a resident of El Paso, Texas.

Defendant BIAGAS, Individually and d/b/a Defendant TRUCKING has been served answered and is proper before the court.

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EXHIBIT B



Defendant ESTRADA is a resident of El Paso has been served answered and proper before the court.

Defendant RJ BORDER has been served answered and proper before the Court.

III.

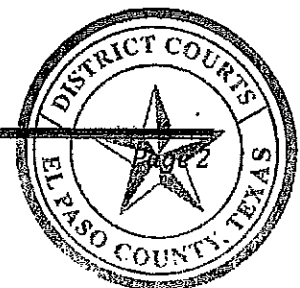
The injuries and damages suffered by Plaintiff and made the basis of this action arose out of an occurrence on or about December 8, 2009 in Gaines County, Texas. At such time and place, Plaintiff was sleeping in a tractor being driven by Defendant ESTRADA, traveling southbound on U.S. 62 near the city limits of Seminole in Gaines County, Texas, when Defendant ESTRADA veered to the east or failed to control the vehicle to prevent it from veering to the east, and both the tractor in which Plaintiff was a passenger, and the attached trailer, overturned onto their left sides. The tractor and trailer were owned by Defendant RJ BORDER and rented to Defendant BIAGAS and/or Defendant TRUCKING. Both tractor and trailer came to rest on their left sides facing west across the inside southbound lane and the center median. Defendant ESTRADA failed to safely operate and maintain control of the tractor and trailer under the circumstances present at the time of the incident, causing severe injuries to Plaintiff.

IV.

Plaintiff alleges that the incident and Plaintiff's damages were proximately caused by one or more of the following alternative theories of negligence on the part of Defendants:

1. Failure to use due care in operating a tractor/trailer rig.
2. Failure to control the tractor/trailer rig.
3. Failure to warn of the dangers.
4. Failure to pay attention.

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5. Failure to take proper corrective action.
6. Driver inattention.
7. Failure to turn to the left or right to avoid the turn-over.
8. Driving recklessly.
9. Failure to safely apply brakes to avoid the turn-over.
10. Failure to adequately train and supervise its driver.
11. Failure to implement safety precautions to prevent injuries such as those suffered by Plaintiff in similar circumstances.
12. In failing to establish and enforce safety rules and regulations.
13. Failing to teach and educate its employees on the proper procedures under similar circumstances.

Each of which acts or omissions was other than what a reasonable and prudent person would have been doing under the same or similar circumstances. Each of which acts or omission was a proximate cause of Plaintiff's damages.

V.

NEGLIGENT HIRING, TRAINING, SUPERVISION

Defendants had a duty to exercise due care in hiring, supervising, training and retaining employees. More particularly, Defendants BIAGAS and TRUCKING had a duty to use ordinary care in hiring employees; a legal duty to protect the public including Plaintiff by inquiring into the competence and qualifications of employees; a legal duty to use ordinary care in adequately supervising their employees; and, a legal duty to use ordinary care to adequately train their employees.

Defendants BIAGAS and TRUCKING breached their duties and such breach was a direct and proximate cause of Plaintiff's injuries and damages.

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Defendants BIAGAS and TRUCKING were negligent by breaching their duty to Plaintiff in one or more of the following alternative theories of negligence:

1. Failure to adequately train and supervise its driver.
2. Failure to implement safety precautions to prevent injuries such as those suffered by Plaintiff in similar circumstances.
3. In failing to establish and enforce safety rules and regulations.
4. Failing to teach and educate its employees on the proper procedures under similar circumstances.

One or more of the foregoing acts and omissions constituted negligence. For this, one or more of the foregoing acts or omissions was a proximate cause of the damages and injuries to Plaintiff.

VI.

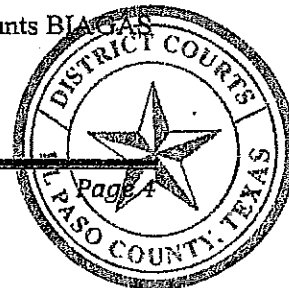
VICARIOUS LIABILITY

Plaintiff would show that Defendants BIAGAS and TRUCKING are liable for the damages and injuries which were caused by the negligence of their employees, agents and representatives. Defendants BIAGAS and TRUCKING are liable for the acts or omissions of their employees and agents, including those of Defendant ESTRADA. In addition, Defendants BIAGAS, TRUCKING and RJ LEASING owed a duty of care to Plaintiff because of their right of control which arose through the course of dealing. Defendants BIAGAS, TRUCKING and RJ LEASING are liable under the doctrine of respondeat superior; master/servant; principal;agent.

VII.

Under Texas law, Defendants BIAGAS and TRUCKING had a non-delegable duty to provide a safe workplace to its employees. (See Tex. Lab. Code §411.103.) Defendants BIAGAS

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and TRUCKING failed to ensure a safe work place for Plaintiff. Defendants BIAGAS and TRUCKING failed to become a subscriber under the Worker's Compensation Act of this State.

VIII.

Plaintiff would show that the damages and injuries were caused by the negligence of Defendants, their employees, agents and representatives. Plaintiff would show that Defendants BIAGAS & TRUCKING owed a duty to Plaintiff, that Defendants BIAGAS & TRUCKING breached such duty, and that such breach was a proximate cause of the injury and the resulting damages to Plaintiff. Defendants BIAGAS & TRUCKING were negligent by breaching their duty to Plaintiff in one or more of the following alternative theories of negligence:

1. Failure to furnish Plaintiff with a safe place to work.
2. Failure to train Defendant ESTRADA.
3. Negligent co-workers like Defendant ESTRADA.
4. Failure to establish and enforce safety rules and regulations.
5. Failure to train, supervise, and enforce rules and regulations as to Defendant ESTRADA.
6. Failure to properly train, educate, instruct and supervise Defendant ESTRADA in the performance of his duties.
7. Negligence per se in violating OSHA Standards Section 1926.20, General Safety and Health Provisions, by permitting laborers to work in surroundings or under working conditions which are hazardous or dangerous to his health or safety.
8. Negligence per se in violating OSHA Standards Section 1926.20 1(b) by failing to do one or more of the following (A) initiating and maintaining such programs as may be necessary to comply with OSHA safety law,(B) failing to have a competent person (as defined by OSHA) perform frequent and regular inspections of the area C) Failing to have a competent safety person in the area.

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9. Failing to adequately train, educate, or provide instructions and orders to persons.
10. Failing to provide proper safety manuals and instructions to employees responsible for safety.
11. Failing to provide operation and safety manuals to drivers.

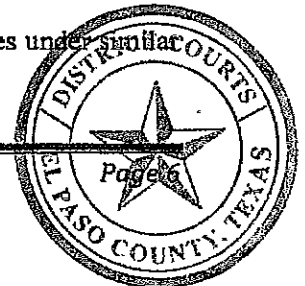
IX.

PLAINTIFF'S CLAIM OF NEGLIGENT ENTRUSTMENT AGAINST DEFENDANT RJ

Defendant RJ entrusted the truck to Defendant TRUCKING a company that fails to train the drivers; that fails to assure that they follow Federal Motor Vehicle Transportation Acts, the Rules of the Road, Texas Statutes, including but not limiting:

1. Failure to use due care in operating a tractor/trailer rig.
2. Failure to control the tractor/trailer rig.
3. Failure to warn of the dangers.
4. Failure to pay attention.
5. Failure to take proper corrective action.
6. Driver inattention.
7. Failure to turn to the left or right to avoid the turn-over.
8. Driving recklessly.
9. Failure to safely apply brakes to avoid the turn-over.
10. Failure to adequately train and supervise its driver.
11. Failure to implement safety precautions to prevent injuries such as those suffered by Plaintiff in similar circumstances.
12. In failing to establish and enforce safety rules and regulations.
13. Failing to teach and educate its employees on the proper procedures under similar circumstances.

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14. Driving while texting;
15. Driving at a high rate of speed; and
16. Ignoring the weather conditions.

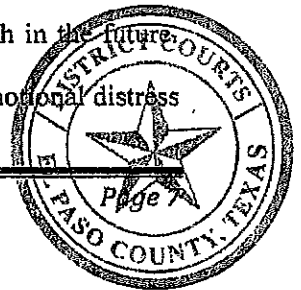
Defendant RJ Entrusted the vehicle to a company that does not provide a safe working place for the employees and misuses the trucks by having unqualified, untrained individuals operating the same. Defendant RJ negligently leased to Defendant BIAGAS and TRUCKING vehicles placing the public and the other employees in danger. Such negligence was a proximate cause of Plaintiff's injuries and damages.

X.

As a direct and proximate result of the negligence of Defendants, Plaintiff has suffered bodily injuries. As a further result of the accident and the injuries described above, Plaintiff has incurred expenses for medical care, nursing services, attention and other expenses. These expenses incurred were necessary for the care and treatment of the injuries sustained by Plaintiff, and the charges made and to be made were the usual and customary charges for such services in El Paso County, Texas. Plaintiff will require further medical care, nursing services and attention, and will incur reasonable expenses in the future for such medical needs.

As a result of the collision, Plaintiff suffered lost wages and loss of wage earning capacity. Plaintiff will continue to suffer a loss of wage earning capacity in the future. Plaintiff was prevented from performing his household duties and will continue to be unable to perform his household duties in the future. Plaintiff has suffered physical pain and suffering in the past and will continue to suffer physical pain and suffering in the future. Plaintiff has suffered mental pain and anguish in the past and will continue to suffer mental pain and anguish in the future. Plaintiff has suffered emotional distress in the past and will continue to suffer emotional distress

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in the future. As a result of the injuries described above, Plaintiff has suffered and will continue to suffer impairment to his body. Plaintiff has suffered disfigurement. Plaintiff has suffered damages within the jurisdictional limits of this Court.

XI.

Defendants have asked Plaintiff to plead the maximum amount of actual damages. Some damages are unliquidated and cannot be easily calculated in monetary terms. Plaintiff request the jury be fair and reasonable in its determination of damages including punitive in an amount not to exceed \$2,000,000.00. Plaintiff has been impaired, unable to work, and in need of surgery as a result of Defendant's negligence.

XII.

Plaintiff respectfully has requested a trial by jury of the issues in this case.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer and that upon final trial, Plaintiff have judgment against Defendants, for all relief requested, for costs, for pre-judgment and post judgment interest, and for such other relief, general and special, at law or in equity, to which Plaintiff is entitled.

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