

**STATE OF NEW
MEXICO COUNTY
OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

**DARTAGNIAN DAVID TERRAZAS-RYMARZ,
VICTOR PEREZ, JUAN AVILA,
LUIS JAIME REYNA-AGUILAR,
ARMANDO AGUIRRE-PEREZ,
and RAMON GILBERTO ARTIAGA,
Plaintiffs**

v.

NO. D-101-CV-2020-02260

Case assigned to Ellenwood, Kathleen McGarry

**HERRERA SCHOOL BUSES, INC., doing
business as, HERRERA SCHOOL BUSES AND COACHES, INC.
Defendant.**

**PLAINTIFFS' COMPLAINT FOR PERSONAL
INJURIES AND PUNITIVE DAMAGES**

Plaintiffs, DARTAGNIAN DAVID TERRAZAS-RYMARZ, VICTOR PEREZ, JUAN AVILA,
LUIS JAIME REYNA-AGUILAR, ARMANDO AGUIRRE-PEREZ, and RAMON
GILBERTO ARTIAGA against Defendant HERRERA SCHOOL BUSES, INC., doing
business as, HERRERA SCHOOL BUSES AND COACHES, INC.:

1. DARTAGNIAN DAVID TERRAZAS-RYMARZ, an individual, is a resident of Bernalillo County, New Mexico.
2. Plaintiff VICTOR PEREZ, an individual, is a resident of Bernalillo County, New Mexico.
3. Plaintiff JUAN AVILA, an individual, is a resident of Santa Fe County, New Mexico.
4. Plaintiff LUIS JAIME REYNA-AGUILAR, an individual, is a resident of Bernalillo County, New Mexico.

5. Plaintiff ARMANDO AGUIRRE-PEREZ, an individual, is a resident of Bernalillo County, New Mexico.

6. Plaintiff RAMON GILBERTO ARTIAGA, an individual, is a resident of Bernalillo County, New Mexico

7. Defendant HERRERA SCHOOL BUSES, INC., doing business as, HERRERA SCHOOL BUSES AND COACHES, INC. (referred to as “HERRERA SCHOOL BUSES”) is a for-profit corporation headquartered in Albuquerque, New Mexico, and incorporated in New Mexico. HERRERA SCHOOL BUSES is engaged in business as a common carrier of passengers in the State of New Mexico and outside the state. HERRERA SCHOOL BUSES holds itself out as “the largest motor coach company in New Mexico.” HERRERA SCHOOL BUSES can be served through its registered agent, Martin Herrera, at 10605 Central Ave. NW, Albuquerque, New Mexico 87121. Plaintiffs request issuance of papers for service at this time.

8. Venue is proper in this Court pursuant to NMSA § 38-3-1(A) because Plaintiff Juan Avila is a resident of Santa Fe County, NM.

BACKGROUND

9. On September 29, 2020, Defendant HERRERA SCHOOL BUSES was operating a motor coach, a 2019 MCI Charter Bus owned by Defendant, carrying approximately 33 passengers (hereinafter referred to as the Subject Vehicle) westbound on the I- 40 near Vega, Texas.

10. HERRERA SCHOOL BUSES was at all material times a common carrier of passengers. Under New Mexico law, the special relationship of common carriers to their passengers creates a heightened duty. A common carrier of passengers for hire must exercise the highest degree of care in promoting the safety of its passengers. *Hole v. Womack*, 1965-NMSC-

126, ¶ 16, 75 N.M. 522, 527, 407 P.2d 362, 365.

11. HERRERA SCHOOL BUSES entered into an agreement in New Mexico with the Plaintiffs, all New Mexico residents, to transport them to a conference in Georgia and return them to Albuquerque, New Mexico.

12. During the return trip, the Defendant's bus driver failed to control the bus and failed to maintain his lane. He veered into a lane of traffic on the highway that was closed for construction. After driving through multiple traffic cones, he collided with multiple concrete support beams off the travelled roadway.

13. The collision caused injuries to Plaintiffs.

14. The crash and injuries occurred as a result of the negligence of HERRERA SCHOOL BUSES.

15. Each of the acts and/or omissions was a cause of the damages and injuries alleged herein.

COUNT I: NEGLIGENCE OF HERRERA SCHOOL BUSES

16. Plaintiffs re-allege the preceding paragraphs of this complaint as if set forth in full.

17. At all times material hereto, HERRERA SCHOOL BUSES was in the business of transporting passengers as a common carrier on public roadways for profit and held themselves out as having special expertise in that industry. HERRERA SCHOOL BUSES had the duty to use ordinary care in hiring, training, and supervising its staff, as well as inspecting and maintaining its vehicles.

18. The Plaintiffs were foreseeable victims of HERRERA SCHOOL BUSES' negligence and gross negligence. HERRERA SCHOOL BUSES could foresee that if it failed to hire, train and supervise safe drivers and staff or failed to maintain safe vehicles it could cause

harm to the passengers it transported for hire as well as other people sharing the road with a their drivers.

19. At all times relevant hereto, HERRERA SCHOOL BUSES' employees, including the driver of the subject passenger bus, who on information and belief was Mr. Jerry Buckner, were acting in the course and scope of their employment, and/or for the furtherance of the business objective of HERRERA SCHOOL BUSES.

20. Mr. Buckner owed Plaintiffs a duty to drive the subject vehicle in a safe manner.

21. The incident described above, and the resulting injuries, medical bills and other damages suffered by Plaintiffs, were proximately caused by the negligent conduct of Defendant, including but not limited to:

- a. Failing to maintain a single lane;
- b. Failing to drive reasonably and prudently;
- c. Failure to use reasonable care;
- d. Failure to properly maintain the vehicle;
- e. Failure of Defendant to properly train its driver;
- f. Failure of Defendant to properly supervise its driver;
- g. Defendant's negligently hiring its driver;
- h. Failure of Defendant to properly maintain its vehicle in a safe manner;
- i. Failure of Defendant to repair and maintain its vehicle;
- j. Driving while fatigued;
- k. Driving while distracted;
- l. Driving without controlling the vehicle;
- m. Failing to keep a lookout;

- n. Exceeding the reasonable and safe speed in a construction zone;
- o. Failing to stay within the travelled roadway;
- p. Driving under the influence of drugs and/or alcohol, or otherwise impaired;
- q. Operating the passenger bus in a careless and reckless manner;
- r. Failing to maintain control of the passenger bus; and
- s. Failing to observe and avoid obstacles readily visible in the passenger bus's line of travel.

22. Each of the foregoing acts and/or omissions, taken together or individually, constitute negligence and each actually and proximately caused the collision and the injuries and damages sustained by Plaintiffs.

23. As a direct and proximate result of Mr. Buckner's negligence, this crash occurred or the crash was exacerbated and caused or contributed to cause of the Plaintiffs' damages.

COUNT II: NEGLIGENCE PER SE OF HERRERA SCHOOL BUSES

24. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth and stated herein.

25. Defendant's negligence described herein violated statutory law under the Federal Motor Carrier Regulations. Specifically, Defendant violated:

- a. FMCSR § 395.8 – Failing to maintain the record of duty status.
- b. FMCSR §§ 392.80 and 392.82 – Texting and using a hand-held mobile phone while driving and permitting or encouraging a driver to do so.
- c. FMCSR §§ 395.1 and 395.5– Hours of service violations, including the record of duty status, are the responsibility of the motor carrier and the driver.
- d. FMCSR § 395.20-.24 – Failing to install and use an electronic logging device.
- e. FMCSR § 382.209, .211, .217, .303 – Failing to conduct and require a post-crash

drug test.

- f. FMCSR § 391.23 – Failure to investigate a driver’s background.
- g. FMCSR §§ 379.7; 382.401; 390.31; 391.21, .23, .25, .27, .33, .43; 395.8; and 396.17 - Failure to retain required records.
- h. FMCSR § 392.3 - In requiring or permitting its drivers to operate a commercial motor vehicle while fatigued.
- i. FMCSR § 391.11 - In allowing Defendant’s driver to operate a commercial motor vehicle in violation of 49 C.F.R.
- j. FMCSR § 396.11 – failing to require the driver to perform pre- and post-trip inspections.
- k. FMCSR § 396.3 – failing to inspect, repair, and maintain the subject vehicle.
- l. FMCSR § 396.7 – operating a motor vehicle while unsafe.
- m. FMCSR § 390.11 – failing to require observation of driver regulations; and
- n. FMCSR § 391 – hiring an unqualified driver.
- o. FMCSR § 392.3 - regarding an ill or fatigued operator;
- p. FMCSR § 392.6 - regarding schedules to conform to speed limits;
- q. FMCSR § 395.3 - regarding maximum driving time;
- r. FMCSR § 383.110 - regarding general knowledge;
- s. FMCSR § 383.111 - regarding required knowledge; and
- t. FMCSR § 383.113 - regarding required skills.
- u. FMCSR § 391.11 regarding driver qualifications;
- v. FMCSR § 391.13 regarding driver training;
- w. FMCSR § 391.25 regarding annual review of driver safety;

- x. FMCSR § 391.27 regarding annual reports of driving violations;
- y. FMCSR § 391.31 regarding driver road testing; and
- z. FMCSR § 391.51 regarding qualification and records files.

26. Failing to abide by these laws constitute negligence per se. The laws listed in this section are designed to protect a class of person, to which Plaintiffs belongs, against the type of injury suffered by Plaintiffs.

27. Defendant's violations of the laws listed in this section were without legal excuse.

28. As a direct and proximate result of Defendant's breach of duties imposed under the above laws, Plaintiffs suffered actual damages.

DAMAGES

29. As a result of the acts and omissions set forth in this Complaint and as will be identified in discovery, Plaintiffs suffered personal injuries as a result of the conduct described above and seek damages, in the past and future, including but not limited to:

- a. The reasonable expenses of necessary medical care and treatment;
- b. The reasonable value of nonmedical expenses required as a result of injuries;
- c. The nature, extent and duration of his injuries, including disfigurement;
- d. Pain and suffering;
- e. Loss of enjoyment of life;
- f. Loss of earning capacity and income;
- g. Punitive damages in the maximum amount allowed by law in the maximum amount.

30. Defendant's actions were malicious, willful, wanton, reckless and/or grossly negligent and Plaintiff is seeking punitive damages.

31. Plaintiff also seeks all costs of court, and pre-judgment and post-judgment interest in the maximum amount allowed by law.

32. Other damages contemplated by law in amounts to be determined at trial.

WHEREFORE, Plaintiff prays for judgment as follows: Against Defendant for injuries and damages caused by Defendant's negligence in a sum to be determined and fixed by the trier of fact as to be fair and just, for attorney's fees, courts costs, pre- and post- judgment interest and all other appropriate relief.

Respectfully Submitted:

/s/ Jonathon C. Clark

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