

STATE OF NEW MEXICO  
IN THE SECOND JUDICIAL DISTRICT  
COUNTY OF BERNALILLO

ENDORSED  
FILED IN MY OFFICE THIS

SEP - 2 2010

*Quantita M. Duran*  
CLERK DISTRICT COURT

JOE GRIEGO, ELOY VIGIL, RAMON MOLINA,  
SIN FRONTERAS ORGANIZING PROJECT,  
and HELP-NEW MEXICO, INC.

PLAINTIFFS,

vs.

No. CV 2009-10130

THE NEW MEXICO WORKERS' COMPENSATION  
ADMINISTRATION, and  
GLENN SMITH, in his official capacity  
as Director of the Workers'  
Compensation Administration

DEFENDANTS.

**SECOND AMENDED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF FOR CIVIL RIGHTS VIOLATIONS**

Plaintiffs, through their undersigned counsel, bring this action for declaratory and injunctive relief, pursuant to Article II, § 4 and § 18 of the New Mexico Constitution and the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to 44-6-15 (1975), against the New Mexico Workers' Compensation Administration and its Director.

Plaintiffs are a farm and ranch laborer and organizations that represent farm and ranch laborers. Plaintiffs challenge the provision of the New Mexico Workers' Compensation Act that excludes farm and ranch laborers from the workers' compensation protections extended to other workers in New Mexico. While defendants generally require all employers in the state with three or more employees to provide workers' compensation coverage to their workers, employers of farm and ranch laborers do not have to do so. This exclusion, codified as NMSA § 52-1-6(A), discriminates against farm and ranch

laborers, treating them differently from other New Mexican workers with no legitimate, important, or compelling interest under the New Mexico Constitution.

Plaintiffs seek a declaration from this court stating that defendants' exclusion of farm and ranch laborers from the workers' compensation system violates plaintiffs' rights to equal protection and their inalienable rights under the New Mexico Constitution.

Plaintiffs also request that this Court use its inherent power in equity to enter an injunction prohibiting defendants from excluding plaintiffs from workers' compensation coverage.

#### **JURISDICTION AND VENUE**

- 1 This Court has jurisdiction over this action and over the parties. Jurisdiction is proper pursuant to the Declaratory Judgment Act, NMSA 1978 §§ 44-6-1 to 44-6-15 and the New Mexico Constitution, Art. VI, Section 13.
- 2 Venue is proper pursuant to NMSA 1978, § 38-3-1 (Cum. Supp. 1994). All of the acts complained of occurred within New Mexico. Furthermore, venue within the Second Judicial District is proper as defendants New Mexico Workers' Compensation Administration and Glenn Smith both reside in Albuquerque, New Mexico.

#### **PARTIES**

- 3 Plaintiff Joe Griego is a resident of Valencia County, New Mexico, whose rights, status and other legal relations are affected by the New Mexico Workers' Compensation Act and its interpretation and administration by defendants.

- 4 Plaintiff Ramon Molina is a resident of Dona Ana County, New Mexico, whose rights, status and other legal relations are affected by the New Mexico Workers' Compensation Act and its interpretation and administration by defendants.
- 5 Plaintiff Eloy Vigil is a resident of Roosevelt County, New Mexico, whose rights, status and other legal relations are affected by the New Mexico Workers' Compensation Act and its interpretation and administration by defendants.
- 6 Plaintiff Sin Fronteras Organizing Project (hereinafter "Sin Fronteras") is located in El Paso, Texas. Sin Fronteras was founded to help farm laborers empower themselves and improve their lives. The Board of Directors is comprised almost only of farm laborers and former farm laborers. Sin Fronteras has a direct and self-evident interest in the health and well-being of farm and ranch laborers who labor in New Mexico's fields, and their families. For over 25 years, Sin Fronteras has worked to improve the lives of farm and ranch laborers in New Mexico, and, for the past 15 years, Sin Fronteras has operated "El Centro de los Trabajadoras Agrícolas Fronterizas" (the Center for Agricultural Workers on the Border), a central location where New Mexico's field laborers congregate, are picked up and taken to work at various farms in New Mexico, dropped off after work, and occasionally eat and sleep. Sin Fronteras has members who are farm and ranch laborers who have been injured at work in New Mexico and were unable to obtain workers' compensation coverage. Moreover, Sin Fronteras represents farm laborers on important public policy matters that impact their lives.
- 7 Plaintiff HELP-New Mexico, Inc. (hereinafter "HELP-NM") is a statewide community and faith based organization with over 37 offices across New Mexico.

HELP-NM has a direct and self-evident interest in the health and well-being of farm and ranch laborers and their families. Some of HELP-NM's founders were farm laborers; some of HELP-NM's board members are farm laborers or retired farm laborers; and HELP-NM was created, in part, to serve New Mexican families who labor in our fields. Part of HELP-NM's mission is to assist migrant and seasonal farm laborer families. For over 43 years, HELP-NM has provided services to farm laborers and their families, including providing education, job training, pesticide-safety training, healthcare, and housing. Additionally, HELP-NM has created spin-off organizations which serve farm laborers and their families. On an annual basis, HELP-NM provides direct service to over 500 New Mexican farm laborers. HELP-NM represents New Mexican farm laborers who have been injured on the job and excluded from workers' compensation. Moreover, HELP-NM represents indigent New Mexicans on important public policy matters which impact their lives.

- 8 Defendant Workers' Compensation Administration is the entity to be sued regarding the constitutionality of workers' compensation statutes under the Declaratory Judgment Act and is a person for purposes of the Declaratory Judgment Act, NMSA 1978, § 44-6-13.
- 9 Defendant Smith, as the Director of the Workers' Compensation Administration, is the New Mexico state official broadly charged with administering the workers' compensation system and with enforcing the New Mexico Workers' Compensation Act; he is therefore the official to be sued in this matter under the Declaratory Judgment Act, NMSA 1978, § 44-6-13.

## FACTS

- I. Plaintiff Joe Griego was severely injured at work and is excluded from coverage under the Workers' Compensation Act because he is a "farm and ranch laborer."
- 10 Plaintiff Joe Griego has worked in New Mexican dairies as a milker for years without workers' compensation coverage. Most recently, he worked at the Tres Hermanos Dairy in Veguita, New Mexico from September 2008 until November 2008.
- 11 At Tres Hermanos, Mr. Griego worked 6 days a week, from 1:30 a.m. until 10:30 a.m.. His job included milking, cleaning the milking machinery, and moving the cows and bulls to various locations within the farm. Tres Hermanos Dairy paid Mr. Griego \$65 per day.
- 12 On November 22, 2008, while working as a milker at Tres Hermanos Dairy in Veguita, New Mexico, Plaintiff Joe Griego was attacked by a bull. As a result of this attack, Mr. Griego suffered severe injuries which required emergency medical attention and subsequent hospitalization.
- 13 Mr. Griego continues to need medical care for his injuries and is still unable to work due to these injuries.
- 14 Other than a payment of \$5,000, neither Tres Hermanos Dairy nor its insurance carrier has paid for Mr. Griego's extensive medical bills.
- 15 While Mr. Griego has been unable to work for over nine months due to an injury that occurred at the Dairy, the Dairy has only provided Mr. Griego with a total of \$1800 in lost wages.

- 16 Mr. Griego is unemployed. He has sought health care through a local hospital charity care program, and recently, through a state and federally funded health care coverage program. The family is now living solely on Mr. Griego's wife's income which has placed the Griego family in severe financial distress. Mr. Griego and his family are receiving public benefits in order to stay afloat.
- 17 As a milker, Mr. Griego is a "farm and ranch laborer" and therefore, is not covered by the Workers' Compensation Act of New Mexico.
- 18 However, in order to preserve his claim for workers' compensation, Mr. Griego filed a claim with the Workers' Compensation Administration.
- 19 When he went to file his claim, staff of the workers' compensation administration told him that as a milker, he was not eligible for benefits. However, he was permitted to file his claim.
- 20 At a mediation at the workers' compensation administration, the mediator informed Mr. Griego that as a milker, he was not eligible for benefits.
- 21 While Mr. Griego's claim has not yet been dismissed, dismissal is expected due to the farm and ranch laborer exclusion.
- 22 Mr. Griego's only recourse to recover for this work-related injury is to file a negligence action against his employer, Tres Hermanos Dairy, and to prove that his employer was at fault for his injuries sustained on the job. He must also overcome any common law defenses Tres Hermanos Dairy may raise.
- 23 By contrast, when an employee who is covered by workers' compensation is injured on the job, that worker is entitled to payment of his medical costs and lost wages and does not have to file a regular civil lawsuit. If the employer refuses to

make these payments the employee can file a claim with the Workers'

Compensation Administration which will usually resolve the matter expediently.

**II. Plaintiff Ramon Molina was severely injured at work and is excluded from coverage under the New Mexico Workers' Compensation Act because he is a "farm and ranch laborer".**

24 Plaintiff Ramon Molina worked as a milker at Dominguez Farms, Inc.

(Dominguez Farms) in Mezquite, New Mexico from 2001 until December, 2008 without worker's compensation coverage.

25 At Dominguez Farms Mr. Molina worked rotations of eight hours a day for eight days straight and then two days off. He made \$400 every eight days.

26 On December 27, 2008, while working as a milker at the Dominguez Farms, Mr. Molina was attacked by a bull. The bull threw him up in the air twice and, once on the ground, continued to ram Mr. Molina with his head, hitting him against the fence post. As a result of this attack, Mr. Molina suffered severe injuries which required immediate medical attention and subsequent surgery.

27 Mr. Molina still requires another surgery on his shoulder stemming from the injury sustained at the Dominguez Farms but has not obtained it because he cannot afford it.

28 Mr. Molina is unable to go back to dairy work, the only type of work he knows, because he has not regained the requisite strength in his arms and shoulders to do so.

29 Other than a payment of \$1,196.27 from its medical limited liability insurance policy to the medical provider, Dominguez Farms has not paid for Mr. Molina's extensive medical bills which total over \$20,000. On several occasions, Mr.

Molina asked for financial assistance from the Dominguez Farms owner who repeatedly told him no and to use the hospital indigent funds.

30 Mr. Molina applied for assistance through the Dona Ana County Indigent Fund, a fund supported by tax payer dollars, which paid for some, but not all of his bills.

31 Mr. Molina has been unemployed since December 2008. Dominguez Farms has not paid him anything in lost wages.

32 In order to stay afloat Mr. Molina does odd jobs here and there, but his earnings are not enough to pay his bills.

33 As a milker, Mr. Molina is a "farm and ranch laborer" and therefore, is not covered by the Workers' Compensation Act of New Mexico.

34 Mr. Molina filed a workers' compensation claim, which was dismissed because he is considered a "farm laborer".

35 Mr. Molina's only recourse to recover for this work-related injury is to file a negligence action against his employer, Dominguez Farms, and to prove that his employer was at fault for his injuries sustained on the job. He must also overcome any common law defenses Dominguez Farms may raise.

36 By contrast, when an employee who is covered by workers' compensation is injured on the job, that worker is entitled to payment of his medical costs and lost wages and does not have to file a regular civil lawsuit. If the employer refuses to make these payments the employee can file a claim with the Workers' Compensation Administration which will usually resolve the matter expediently.

**III. Plaintiff Eloy Vigil was severely injured at work and is excluded from coverage under the New Mexico Workers' Compensation Act because he is a "farm and ranch laborer".**

- 37 Plaintiff Eloy Vigil was born and raised in Portales, New Mexico. He has worked as a milker for New Mexican dairies for the last thirty years without workers' compensation coverage. Most recently he worked at the James Idsinga & Son Dairy (Idsinga Dairy) in Portales, New Mexico. He worked 6 days a week from 6:30 a.m. until 5:30 p.m. He brought home \$940 every two weeks. The dairy did not provide health insurance.
- 38 On March 8, 2010, while working as a milker at the Idsinga Dairy, Mr. Vigil was injured by a cow while cleaning one of the milking machines with iodine. When he went to reach for a towel to wipe the iodine off the machine, one of the cows kicked his hand against a nearby pipe. Three of his fingers on his left hand were severely injured.
- 39 Mr. Vigil immediately went to the hospital where x-rays revealed that he had shattered the tops of the bones of his left index, middle and ring finger. The bone on one of these fingers was severed. He required surgery and subsequent occupational therapy to rehabilitate his hand. To date, he is unable to use his hand and it is unlikely that he will ever regain full use of it.
- 40 Although Mr. Vigil continues to need occupational therapy, he does not attend because he cannot pay for it, and he cannot pay for the follow-up medical care for his injuries. He is still unable to work due to these injuries.
- 41 Other than a partial payment from some of Mr. Vigil's medical bills from its medical limited liability insurance policy, Idsinga Dairy has not paid for Mr. Vigil's extensive medical bills which total over \$10,000.

- 42 While Mr. Vigil was unable to work for over three months due to the injury, the Idsinga Dairy has only provided him with \$940, less than two weeks worth of lost wages.
- 43 Currently, Mr. Vigil is unemployed and looking for work that does not involve extensive use of his hand. Because Mr. Vigil is not working, his family struggles to pay their car and utility payments and are close to having the car repossessed and the utilities shut off.
- 44 Mr. Vigil filed a claim for workers' compensation coverage which was dismissed by the Workers' Compensation Administration since, as a milker, Mr. Vigil is considered a "farm and ranch laborer."
- 45 Mr. Vigil's only recourse to recover for this type of work-related injury is to file a negligence action against his employer, Idsinga Dairy, and to prove that his employer was at fault for his injuries sustained on the job. He must also overcome any common law defenses Idsinga Dairy may raise. Because negligence would be extremely difficult to prove in this case, Mr. Vigil does not have any realistic avenues to recovery.
- 46 In contrast, when an employee who is covered by workers' compensation is injured on the job, that worker is entitled to payment of his medical costs and lost wages and does not have to file a regular civil lawsuit. If the employer refuses to make these payments the employee can file a claim with the Workers' Compensation Administration which will usually resolve the matter expediently.

IV. **Plaintiff Sin Fronteras has members who are farm and ranch laborers who were injured on the job and were excluded from workers' compensation coverage, as well as members who are farm and ranch**

**laborers who labor in New Mexico's fields and face an imminent threat of being injured on the job and excluded from workers' compensation coverage.**

- 47 Over the past twenty years, Sin Fronteras has had many members who have been injured laboring in New Mexico's fields and have been excluded from workers' compensation coverage.
- 48 For example, recently, a laborer in New Mexico's chile fields slipped in the mud while picking chile and injured her ankle; her employer did not provide her with any type of compensation and she was not able to see a doctor.
- 49 Another laborer fell while carrying chile in a wet field and landed on the wheel of a trailer and broke his hand; his employer did not provide him with any type of compensation or medical care and the laborer was unable to work for 8 months. This laborer has 8 children and his family was devastated during the 8 months that he was unable to work.
- 50 Another laborer fell in a wet chile field while picking chile and dislocated his shoulder. His employer sent him to a chiropractor but the chiropractor was unable to mend his shoulder. The laborer ended up in the hospital where he was treated and billed over \$4000 for his care. The laborer was out of work for 3 months due to this injury and the employer did not provide him with any lost wages or assistance with medical bills.
- 51 Additionally, Sin Fronteras has hundreds of other members who are in imminent danger of being injured while working in New Mexico's fields and being left without health care or lost wages because they are excluded from workers compensation coverage. Most, if not all, of these laborers have no health care

coverage, and are not trained or educated to do any work other than farm labor. Because farm and ranch labor is a dangerous job, these laborers are in danger of being financially devastated when a working family member is injured, unable to work, unable to access health care and unable to obtain lost wages from their employer.

52 Sin Fronteras also represents agricultural laborers on matters of great public importance that impact their lives.

**III. Plaintiff HELP-NM represents New Mexican farm and ranch laborers who were injured on the job and excluded from workers' compensation coverage as well as New Mexican farm and ranch laborers who face an imminent threat of being injured on the job and excluded from workers' compensation coverage.**

53 HELP-NM represents farm and ranch laborers who have been injured while doing agricultural labor in New Mexico and have been excluded from workers' compensation. For example, recently, a man working in the onion fields lifted a 50 pound sack of onions which caused him to develop a hernia. He is currently only able to work a couple of hours a day due to this injury and, while he is scheduled to have surgery in a few weeks, he has no way to pay for this medically necessary procedure. His employer has not provided him with any compensation or medical care.

54 The families that HELP-NM serves are in imminent danger of being injured while working in New Mexico's fields and being left without health care or lost wages because they are excluded from workers' compensation coverage. HELP-NM represents many farm laborer families that do not have any type of health care coverage, and are not trained or educated to do any work other than farm labor.

Because farm and ranch labor is a dangerous job, these families are in danger of being financially devastated when a working family member is injured, unable to work, unable to access health care and unable to obtain lost wages from their employer.

55 Moreover, HELP-NM represents New Mexican farm laborer families on this issue of great public importance concerning the constitutionality of a New Mexico statute.

IV. **The New Mexico Workers' Compensation Act is an unconstitutional statutory scheme, treating farm and ranch laborers differently from other similarly situated workers.**

56 The New Mexico workers' compensation scheme unconstitutionally creates two widely disparate systems of law governing compensation for work-related injuries in New Mexico, one for covered workers and one for laborers who are excluded from the Act.

57 The New Mexico Workers' Compensation Act, § 52-1-1 NMSA 1978 et. seq requires employers of three or more workers to provide workers' compensation insurance to their employees to cover the medical expenses and a portion of the wages lost due to accidental injuries that are proximately caused by or arise out of employment. § 52-1-2 NMSA 1978.

58 Pursuant to § 52-1-8 NMSA 1978:

In an action to recover damages for a personal injury sustained by an employee while engaged in the line of his duty as such or for death resulting from personal injuries so sustained in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent, or servant of the employer, it shall not be a defense:

- A. that the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence;

- B. that the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant; and
- C. that the injury of [or] death was caused, in whole or in part by the want of ordinary care of the injured employee where such want of care was not willful.

59 Thus, the workers' compensation statute mandates that employees covered by the Act who are injured on the job do not have to pursue regular civil remedies and prove negligence in order to be compensated for the injury. Moreover, employees covered by the Act do not have to defeat an employer's common law defenses of comparative negligence, assumption of the risk or the fellow-servant rule.

60 Instead, covered workers file a claim with their employer, and if the employer does not provide coverage, the worker files an administrative claim with the Workers' Compensation Administration, simply showing that the employee sustained injuries caused by a work-related accident, and is thus eligible for workers' compensation coverage.

61 In essence, workers' compensation in New Mexico is a no-fault insurance system covering on-the-job injuries. Under the workers' compensation system, an injured worker must accept compensation amounts scheduled by law as his or her exclusive remedy, and the employer is liable for those scheduled amounts, irrespective of negligence.

62 The purposes of the workers' compensation statutes are to ensure that industry, rather than society, bears the burden of providing compensation for work-related injuries in addition to providing a quick, efficient relief for employees injured on the job. Thus, the requirement to establish negligence is abolished so as to ensure that employers are protected from expensive civil recovery while still bearing the

burden of providing compensation for their employees injured on-the-job.

Additionally, employees are guaranteed quick relief for these work-related injuries.

63 Section 52-1-6(A) of the Workers' Compensation Act provides that the Act does not apply to employers of farm and ranch laborers.

64 Accordingly, unless their employers voluntarily decide to provide workers' compensation, farm and ranch laborers, i.e. laborers who work directly with crops and/or animals, cannot avail themselves of the provisions of the Act. Instead, farm and ranch laborers who are injured on the job can only pursue common law remedies for negligence. Thus, in addition to having to go to court (most likely needing legal counsel), they also have to overcome the common law defenses of comparative negligence, assumption of the risk, and/or the fellow servant rule, as a precondition of maintaining a successful action for damages for work-related injuries.

65 The operation and effect of the farm and ranch laborer exclusion is to establish two widely disparate systems of law governing compensation for work-related injuries. While virtually all other workers in New Mexico enjoy the opportunity to recover compensation for work-related injuries only by making the necessary showing that the injury is work-related, farm and ranch laborers must satisfy the far more difficult, and in most cases insuperable, burden of establishing not only the employer's negligence, but also of overcoming common law defenses.

66 Excluding farm and ranch laborers from the workers' compensation system results in the dissimilar treatment of similarly situated groups of workers. Farm

and ranch labor is just as dangerous, or more so, than many other types of work; yet farm and ranch laborers are still excluded from the Act. Farm and ranch labor is considered the third most dangerous industry, following manufacturing and construction, both of which are covered by the Act.

67 Also, farm and ranch labor is similar to other work which happens on a farm or ranch, like loading trucks, driving trucks, or working in a warehouse. However, farm and ranch workers who do not work primarily and directly with the crops or animals are covered by the Act, while farm and ranch laborers whose primary responsibilities deal directly with crops or animals are not covered. The Act creates a legislative classification which treats similar groups dissimilarly.

**A. Workers' compensation coverage is an important right.**

68 New Mexico has a long history of guaranteeing its citizens the right to recovery for work-related injuries, while excluding farm and ranch laborers.

69 Over the past century, more and more workers have been brought into our no-fault workers' compensation system, to the point where the Act only excludes farm and ranch laborers and private domestic servants.

70 The New Mexico Legislature enacted the state's first Workers' Compensation Act in 1917. However, that law only required coverage for "extra-hazardous occupations" and farm and ranch labor was not included.

71 In 1937, the Legislature first expressly excluded employers of farm and ranch laborers from any requirement to provide coverage.

- 72 In 1973, the Legislature made compliance with the Act's provisions mandatory for most New Mexico employers; however, it continued to exclude employers of farm and ranch laborers.
- 73 In 1990, the New Mexico Legislature held a special session solely for the purpose of amending the Workers' Compensation Act. The farm labor exclusion was not changed.
- 74 The right to recovery for on-the-job injuries is an important right in New Mexico, and has become a central component in the employer-employee relationship throughout the past century for the vast majority of workers in our state. The workers' compensation statute embodies this right of recovery for workers in New Mexico.
- 75 Farm and ranch laborers are restricted from exercising the important right to workers' compensation coverage due to the legislative exclusion.

**B. Farm and ranch laborers are a protected class.**

- 76 According to the New Mexico Department of Workforce Solutions, as well as the New Mexico Workers' Compensation Administration, over 10,000 people work as farm and ranch laborers in New Mexico every year.
- 77 New Mexico field laborers are paid an average of \$7,000 a year; New Mexico dairy workers are paid an average of \$18,000 a year. New Mexico farm and ranch laborers are paid far less than the average wage for New Mexicans at large.
- 78 Almost all farm and ranch laborers are without any type of health insurance.
- 79 Farm and ranch laborers are generally uneducated and, at the very least, are less educated than most other workers in the state.

- 80 Farm and ranch laborers are comprised principally of racial and national origin minorities, specifically people of Mexican and Mexican-American descent.
- 81 Farm and ranch laborers have been historically subjected to discrimination and are politically powerless in New Mexico, resulting in legislative exclusions such as this one, as well as certain exclusions from the New Mexico minimum wage laws. *See* NMSA (1978) §50-4-21, 22 and 24. Additionally, the National Labor Relations Act of 1935 excludes agricultural workers from protections that most other workers have to organize into unions and to bargain collectively. 29 U.S.C. § 152 (1947).

**C. There is no legitimate, important or compelling governmental interest to treat farm and ranch laborers differently from other New Mexican workers for purposes of workers' compensation coverage.**

- 82 No compelling, important or even legitimate state interest exists for distinguishing between farm and ranch laborers and the remainder of the New Mexican workforce for the purpose of establishing legal standards and procedures governing recovery of compensation for work-related injuries.
- 83 There is no compelling, important or legitimate state interest for requiring farm and ranch laborers to prove negligence and overcome common law defenses in order to recover for work-related injuries, while the remainder of the workforce is solely required to prove that the injury was work-related.
- 84 The Workers' Compensation Administration would be able to administer the program to farm and ranch laborers just as it administers it to all other workers. Many other states, including Idaho, Arizona, Colorado, Montana, Oregon and

California, are already administering workers' compensation to farm and ranch laborers.

- 85 The agricultural industry is similar to other covered industries, like the construction, service and roofing industry, where there are sub-contractors, part-time employees, multiple employers and frequent changes in employers.
- 86 The Workers' Compensation Act already explicitly addresses how to deal with contract labor and casual employment. See §§ 52-1-22 and 55-1-23 NMSA 1978. Thus, the fact that farm labor is sometimes hired through a contractor does not make it harder to administer workers' compensation to farm and ranch laborers than workers in other industries.
- 87 The Workers' Compensation Act already addresses how to deal with seasonal, temporary and part-time employees. See § 52-1-20 NMSA 1978. Thus, the fact that farm and ranch laborers move from job to job, work multiple jobs or work seasonal jobs makes them no more difficult to cover than other similarly situated workers who are already covered by the Act .
- 88 Current law directs how claims filed by workers who work for multiple employers will be handled. It ensures that the employee must prove that an injury was caused at a particular job. See § 52-1-28 NMSA 1978.
- 89 The costs of administering the Workers' Compensation Act is covered by fees collected from workers and employers.
- 90 The Workers Compensation Act mandates that employers of three or more employees (who are not farm and ranch laborers) purchase workers compensation insurance for their employees. Out of the approximately 15,000 agricultural

businesses in NM only 1,749 agricultural businesses— 11 % —have 3 or more workers. However, that 11% of the farms employs approximately 89% of the farm and ranch laborers in the state.

- 91 According to the U.S. Department of Agriculture, net farm income in New Mexico over the past five years averaged nearly \$700 million per year.
- 92 Separate estimates by the Workers' Compensation Administration and the National Council on Compensation Insurance lead to a similar conclusion: the estimated cost of premiums to cover agricultural workers industry-wide if the exemption were removed is less than \$10 million, roughly 1% of annual net farm income in New Mexico.
- 93 Currently, because farm and ranch laborers are defined as only those who work primarily with crops or animals, farms and ranches are required to purchase workers' compensation coverage for some of their employees, but just not for those that they decide are farm and ranch laborers.
- 94 Farm and ranch laborers need workers' compensation coverage as much as or more than other covered workers and any argument that it is not necessary, cost effective or easily administered for farm and ranch laborers does not justify their exclusion.
- 95 The Workers' Compensation Act protects both employers and employees since it is the exclusive remedy for unintentional injuries suffered on the job (*see* § 52-1-9 NMSA 1978), and it contains measures to promote the safety of the workplace. *See* § 52-1-6.2, and §§ 52-1-10, 11 and 12.

96 All other industries in New Mexico, including the construction industry, are required to provide workers' compensation coverage.

**COUNT I:**  
**(VIOLATION OF THE RIGHT TO EQUAL PROTECTION UNDER  
ARTICLE II, § 18 OF THE NEW MEXICO CONSTITUTION)**

97 Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

98 Article II, § 18 of the New Mexico Constitution provides:

No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.

99 Defendants violate Plaintiffs' right to equal protection under Article II, § 18 of the New Mexico Constitution by excluding them from the protections of the Workers' Compensation Act. Farm and ranch laborers are similarly situated to workers in other industries as well as to other farm and ranch workers who are covered by the Workers' Compensation Act. Both groups of employees face the prospect of being injured on the job. Yet, farm and ranch laborers are treated differently under the Workers' Compensation Act.

100 Farm and ranch laborers belong to a protected class. They have minimal education levels; they live in poverty; they principally belong to racial and national origin minorities and their ability to advocate for themselves within the political system is extremely limited.

101 Farm and ranch laborers, unlike other workers similarly situated, are excluded from the important right to workers' compensation coverage.

102 The disparate treatment between farm and ranch laborers and other types of employees articulated in § 52-1-6(A) of the New Mexico Workers' Compensation Act is not closely related to a compelling governmental interest, substantially related to an important government interest, or rationally related to a legitimate governmental purpose.

103 Plaintiffs have suffered harm, and will continue to suffer irreparable harm for which there is no adequate remedy at law as a direct and proximate result of defendants' violations of plaintiffs constitutionally guaranteed right to equal protection.

**COUNT II:**  
**(VIOLATION OF INHERENT RIGHTS UNDER ARTICLE II, § 4 OF THE  
NEW MEXICO CONSTITUTION)**

104 Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

105 Art. II, § 4 of the New Mexico Constitution provides:

“All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.”

106 By excluding farm and ranch laborers from the protections of the workers' compensation system, defendants violate plaintiffs' inherent and inalienable rights of life, liberty, safety, and happiness, by impermissibly infringing on plaintiffs' ability to work safely on the job, to recover death benefits for their family if they are killed, to receive medical treatment when injured on-the-job, and to receive wage replacement if they are disabled.

107 Plaintiffs have suffered harm, and will continue to suffer irreparable harm for which there is no adequate remedy at law as a direct and proximate result of defendants' violation of plaintiffs' inherent rights.

**COUNT III**  
**(WORKERS' COMPENSATION BENEFITS FOR JOE GRIEGO)**

108 Plaintiffs incorporate by reference all of the preceding allegations as if fully set forth herein.

109 Mr. Griego is not required to exhaust his administrative remedies before filing this civil rights suit.

110 Because the farm and ranch labor exclusion is unconstitutional, Joe Griego is entitled to full workers' compensation benefits for the injury that he suffered at Tres Hermanos Dairy on November 22, 2008.

**COUNT IV**  
**(WORKERS' COMPENSATION BENEFITS FOR RAMON MOLINA)**

111 Plaintiffs incorporate by reference all of the preceding allegations as if fully set forth herein.

112 Mr. Molina is not required to exhaust his administrative remedies before filing this civil rights suit.

113 Because the farm and ranch labor exclusion is unconstitutional, Ramon Molina is entitled to full workers' compensation benefits for the injury that he suffered at Dominguez Farms on December 27, 2008.

**COUNT V**  
**(WORKERS' COMPENSATION BENEFITS FOR ELOY VIGIL)**

114 Plaintiffs incorporate by reference all of the preceding allegations as if fully set forth herein.

115 Mr. Vigil is not required to exhaust his administrative remedies before filing this civil rights suit.

116 Because the farm and ranch labor exclusion is unconstitutional, Eloy Vigil is entitled to full workers' compensation benefits for the injury that he suffered at the Idsinga Dairy on March 8, 2010.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that the Court:

a. Declare that §52-1-6(A) of the NM Workers' Compensation Act or, in the alternative, defendant's interpretation and administration of it, violates plaintiffs' rights secured by the Equal Protection Clause of Article II, § 18 of the New Mexico Constitution as alleged herein;

b. Declare that §52-1-6(A) of the Workers' Compensation Act or, in the alternative, defendant's interpretation and administration of it, violates plaintiffs' inherent rights protected by Article II, § 4 of the New Mexico Constitution, as alleged herein;

c. Declare that the New Mexico Constitution prohibits defendants from excluding plaintiffs and all other farm and ranch laborers, from the same workers' compensation benefits that are available to other New Mexican workers;

d. Enjoin defendants from excluding plaintiffs and all other farm and ranch laborers from enjoying the same workers' compensation benefits that workers in other industries in New Mexico receive.

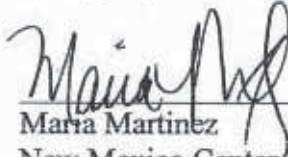
- e. Order defendants to provide workers' compensation coverage to plaintiff Joe Griego for the injuries he suffered at Tres Hermanos Dairy on November 22, 2008.
- f. Order defendants to provide workers' compensation coverage to plaintiff Ramon Molina for the injuries he suffered at Dominguez Farms on December 27, 2010.
- g. Order defendants to provide workers' compensation coverage to plaintiff Eloy Vigil for the injuries he suffered at the Idsinga Dairy on March 8, 2010.
- h. Order any other such relief as the Court deems just and proper.

Dated: September 2<sup>nd</sup>, 2010

RESPECTFULLY SUBMITTED,



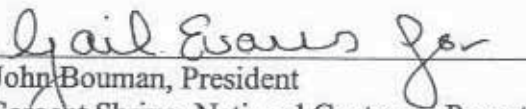
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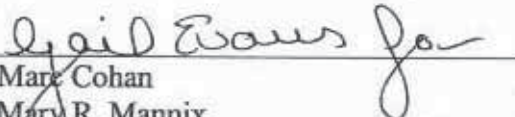


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CERTIFICATE OF SERVICE

I hereby certify that, on this 2<sup>nd</sup> day of September, 2010, true and correct copies of the foregoing were mailed and e-mailed to the following:

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