

THE CIRCUIT COURT, THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CIVIL DIVISION

JOHN CHARLES HUNKER, as
Personal Representative of the
ESTATE OF JAMES R. HUNKER,
deceased,

Plaintiff,

vs.

WASTE SERVICES OF FLORIDA, INC.,
a Delaware Corporation authorized to do
business in Florida, and
JOHN E. GATLING,

Defendants.

CASE NO.
DIVISION

12-09486

DIVISION B

FILED
CLERK OF CIRCUIT COURT
2012 JUN 14 PM 1:13
HILLSBOROUGH CO. FLORIDA
CIRCUIT CLERK

JURY TRIAL DEMANDED

COMPLAINT
(For Wrongful Death)

Plaintiff, JOHN CHARLES HUNKER, as Personal Representative of the ESTATE OF JAMES R. HUNKER, deceased, sues Defendant, WASTE SERVICES OF FLORIDA, INC. a Delaware corporation authorized to do business in Florida ("WSFI") and Defendant, JOHN E. GATLING, and alleges as follows:

1. This is an action for damages which exceed \$15,000.00, exclusive of interest and costs, brought in accordance with the Florida Wrongful Death Act, Section 768.16 - 768.26 Fla. Stat.
2. At all times material hereto, the decedent, JAMES R. HUNKER, was a resident of Hillsborough County, Florida, and the events giving rise to this cause of action all occurred in Hillsborough County, Florida.
3. At all times material hereto, Defendant, JOHN E. GATLING, has been and is a resident of Hillsborough County, Florida.
4. Defendant, WSFI, is a Delaware corporation authorized to do business in Florida and which maintains an office for the transaction of its customary business in Hillsborough County, Florida.
5. Plaintiff, JOHN CHARLES HUNKER, has been appointed as the Personal Representative of the ESTATE OF JAMES R. HUNKER. Letters of Administration were issued to him by the Circuit Court of Hillsborough County, Florida, Probate Case No. 11-2107; a true copy of said Letters of Administration are attached hereto and incorporated herein by reference as Exhibit "A".

6. This action is brought by Plaintiff on behalf of the ESTATE OF JAMES R. HUNKER and the heirs at law of decedent, JAMES R. HUNKER. Decedent is survived by his siblings; decedent was not married at the time of his death.

7. On October 16, 2010, Defendant, JOHN E. GATLING, while in the scope and course of his employment with Defendant, WSFI, was operating a garbage truck owned by Defendant, WSFI, in or near the parking lot of an apartment complex located at 13722 23rd Street, in Tampa, Florida. On that date and at that location, Defendant, JOHN E. GATLING, approached a metal trash dumpster owned by Defendant, WSFI; the dumpster weighed approximately 1100 pounds. Upon approaching the dumpster, Defendant, JOHN E. GATLING, observed decedent, JAMES R. HUNKER, in close proximity to the dumpster. Defendant, JOHN E. GATLING, engaged the dumpster with the forks of the WSFI truck, initiated the lifting mechanism of the truck such that it lifted the dumpster to dump the trash into the truck. Upon returning the dumpster to the ground, Defendant, JOHN E. GATLING, failed to exercise due care and to observe the presence of decedent, JAMES R. HUNKER, at or near the front of the truck at a location where the dumpster would be lowered. Defendant, JOHN E. GATLING, lowered the dumpster to the ground upon which he realized that the dumpster was resting unevenly on the ground. As a result, Defendant, JOHN E. GATLING, lifted the dumpster, moved it to the right and lowered it to the ground a second time. Once again Defendant, JOHN E. GATLING, observed that the dumpster was uneven on the ground; Defendant, JOHN E. GATLING, then exited his truck to determine the cause and observed that decedent, JAMES R. HUNKER, was underneath the dumpster.

8. As the direct and proximate result of the aforesaid acts, decedent, JAMES R. HUNKER, was crushed and died at the scene of the incident.

9. At the time of his death, decedent, JAMES R. HUNKER, although an adult, suffered from a mental or emotional disability which caused him to be like a child in terms of his ability to care for and protect himself.

10. On the date of the incident, the subject dumpster was located at an apartment complex where many young children live and is immediately adjacent to an elementary school and to a community center. As such, Defendant, JOHN E. GATLING, and Defendant, WSFI, were on notice of the need to exercise appropriate due care when operating the truck, including in the lifting and lowering of the dumpster.

11. Defendant, JOHN E. GATLING, and Defendant, WSFI, owed a duty to exercise due care in

the operation of the truck, including in the lifting and lowering of the dumpster, in such a way as not to endanger the life of nearby persons, including decedent, JAMES R. HUNKER. Defendant, JOHN E. GATLING, and Defendant, WSFI, owed a duty to operate the truck, including in the lifting and lowering of the dumpster, in conformity with the manufacturer's operating manual and safety recommendations. Defendant, JOHN E. GATLING, and Defendant, WSFI, knew or reasonably should have known, that an operator of the WSLI truck had limited visibility from his position inside the cab of the truck; Defendant, JOHN E. GATLING, and Defendant, WSFI, knew or reasonably should have known, that once a driver lowered the dumpster below a certain point, he could not see the ground where he intended to place the dumpster. Prior to lowering the dumpster onto decedent, JAMES R. HUNKER, Defendant, JOHN E. GATLING, did not exit the truck to determine the safety of lowering the dumpster to the ground nor did Defendant, JOHN E. GATLING, have anyone assisting him to act as a spotter to make sure the area was safe to lower the dumpster. Defendant, WSFI, was negligent in failing to provide adequate personnel to assure the safe operation of its truck, and in particular with regard to the raising and lowering of the dumpster. Defendant, JOHN E. GATLING, breached his duties of care and acted with reckless disregard for the safety of others, including decedent, JAMES R. HUNKER, thereby resulting in the wrongful death of decedent, JAMES R. HUNKER. The seriousness of the actions of Defendant, JOHN E. GATLING, was enhanced by the fact that Defendant, JOHN E. GATLING, knew decedent, JAMES R. HUNKER, was in the vicinity of the dumpster, and upon first learning that something was underneath the dumpster, instead of lifting the dumpster and inspecting the cause, Defendant, JOHN E. GATLING, raised the dumpster, moved it to the right, and lowered it again onto decedent, JAMES R. HUNKER. The actions of Defendant, JOHN E. GATLING, were so reckless or wanting in care that they constituted a conscious disregard or indifference to the life, safety, and rights of persons exposed to his conduct, including decedent, JAMES R. HUNKER.

12. Defendant, WSFI, is liable for the negligent acts of its employee, Defendant, JOHN E. GATLING, as alleged. In addition, Defendant, WSFI, owed a duty to train and supervise its employee, Defendant, JOHN E. GATLING, in the safe operation of the truck, including in the lifting and lowering of the dumpster, in such a way as not to endanger the lives of others, including that of decedent, JAMES R. HUNKER. Defendant, WSFI, also owed a duty to warn persons nearby the location of WSFI's dumpsters of the danger posed by the lifting and lowering of said dumpsters. Defendant, WSFI, also owed a duty to establish and implement safety procedures and to provide sufficient manpower to conduct its dumpster operations safely and with due regard for the safety of others, including decedent, JAMES R. HUNKER.

Defendant, WSFI, knew or reasonably should have known that Defendant, JOHN E. GATLING, as the driver operating the truck in question, could not see the ground during a pivotal portion of the lifting and dumping process. Defendant, WSFI, knew or reasonably should have known that in order to make sure the ground was safe to lower the dumpster, its driver needed to exit the vehicle or to have a spotter to observe the location for lowering the dumpster. Defendant, WSFI, did not have in place safety procedures to accomplish this nor did Defendant, WSFI, provide a person to act as spotter and observe on behalf of the driver, Defendant, JOHN E. GATLING. Defendant, WSFI, breached its duty of care by failing to supervise and train Defendant, JOHN E. GATLING, by failing to warn members of the public of the dangers posed by the lifting and lowering of its dumpster, by failing to establish and implement safety procedures whereby the driver could determine the safety of lowering the dumpster, by failing to adhere to the manufacturers' recommended operating and safety recommendations; and by failing to provide sufficient manpower to conduct its dumpster operations safely and with due regard for the safety of others; the breach of its duties by Defendant, WSFI, resulted in or contributed to the wrongful death of decedent, JAMES R. HUNKER. The actions of Defendant, WSFI, were so reckless or wanting in care that they constituted a conscious disregard or indifference to the life, safety, and rights of persons, including decedent, JAMES R. HUNKER, who are exposed to WSFI's conduct and the conduct of its employee, Defendant, JOHN E. GATLING.

13. As the direct and proximate result of the aforesaid acts of the Defendant, JOHN E. GATLING, and of Defendant, WSFI, Plaintiff, on behalf of the Estate and the heirs of decedent, has (a) incurred medical, funeral and burial expenses for decedent, JAMES R. HUNKER; (b) suffered loss of earnings of decedent, JAMES R. HUNKER; and (c) suffered loss of prospective net accumulations of the ESTATE OF JAMES R. HUNKER.

14. Because the acts of Defendant, JOHN E. GATLING, and Defendant, WSFI, were so reckless or wanting in care that they constituted a conscious disregard or reckless indifference to the life, safety, and rights of decedent, JAMES R. HUNKER, Plaintiff intends and reserves the right, upon proper showing in the record, to amend and seek punitive damages against Defendant, JOHN E. GATLING, and Defendant, WSFI.

15. All conditions precedent to this action have been satisfied or have occurred.

WHEREFORE, Plaintiff demands judgment against Defendant, JOHN E. GATLING, and Defendant, WSFI, individually and/or jointly and severally, awarding relief as follows:

A. Awarding general and special damages as alleged in paragraph 13 above;

B. Reserving the right to allow Plaintiff to amend and seek an award for punitive damages as determined by the Court;

C. Awarding costs of this action; and

D. Granting such other relief as the Court deems proper.

Plaintiff demands a jury trial of all issues so triable.

Dated this 11th day of June, 2012.

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