

AMG

v.

OF

LUBBOCK COUNTY, TEXAS

2.02 Plaintiff Heather Heinrich is the daughter of H.V. Newman and a resident of the State of Texas. The last three digits of her driver's license number are 012.

2.03 Plaintiff Shanna St. Clair is the daughter of H.V. Newman and a resident of the State of Texas. The last three digits of her driver's license number are 484.

2.04 Upon information and belief, Defendant Helena Chemical Company (Defendant Helena) is a corporation doing business in the state of Texas. Defendant Helena can be served with process through its registered agent: C T Corporation System at 1999 Bryan St., Ste. 900 Dallas, TX 75201.

2.05 Upon information and belief, Defendant Wesley Alan Wright (Defendant Wright) is an individual and resident of Hockley County, Texas. Defendant Wright may be served with process at his last known address at 3132 W Houston, Levelland, TX 79336, or wherever he may be found.

2.06 Defendant Texas Department of Transportation (TxDOT) is an agency of the state of Texas and is a governmental unit as defined by the Texas Tort Claims Act. Defendant TxDOT may be served through the Texas Secretary of State at the following address: P.O. Box 12079, Austin, Texas 78711-2079.

III. VENUE AND JURISDICTION

3.01 Venue is mandatory in Lubbock County, Texas, pursuant to TEX. CIV. PRAC. REM. CODE § 101.102(a) because it is the county in which all or a substantial part of the events/omissions giving rise to the cause of action occurred.

3.02 The amount of the Plaintiffs' damages is substantial and well in excess of the jurisdictional minimums of this Court. Many elements of damage cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damage is peculiarly within the province of the jury. Plaintiffs do not at this time seek any certain amount of damages for any of these particular elements of damage, but would instead rely upon the collective wisdom

of the jury to determine an amount that would fairly compensate Plaintiffs and hold Defendants accountable for their conduct. However, in order to comply with the pleading requirements of TEX. R. CIV. P. 47(c)(5), Plaintiffs plead that they seek monetary relief over \$1,000,000. Plaintiffs also seek judgment for all other relief to which Plaintiffs are entitled.

IV. DEFENDANT TXDOT'S WAIVER OF IMMUNITY

4.01 This is a claim brought under the Texas Tort Claims Act (TTCA), and Texas Civil Practice & Remedies Code chapter 101. The Court has jurisdiction over this claim because the TTCA waives governmental immunity for claims involving personal injury or death caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant under Texas law. TEX. CIV. PRAC. REM. CODE § 101.021(2). This claim, as more fully set out below, involves H.V. Newman's death caused by the absence of a traffic-control device, more specifically, a stop sign, and the claim is not exempt.

4.02 The Court also has jurisdiction over this claim because the TTCA waives a defendant's governmental immunity for claims involving personal injury or death caused by a premises defect that posed an unreasonable risk of harm, about which the defendant had actual knowledge and the plaintiff did not, and for which the defendant would be liable to the plaintiff under Texas law if it were a private person. TEX. CIV. PRAC. REM. CODE §§ 101.021(2), 101.022(a). This claim, as set out more fully below, involves H.V. Newman's death caused by a premises defect that posed an unreasonable risk of harm, about which defendant had actual knowledge and plaintiff did not, and for which defendant would be liable to plaintiff under Texas law if it were a private person.

4.03 The Court similarly has jurisdiction over this claim because the TTCA waives a defendant's governmental immunity for claims involving personal injury or death caused by the negligence of the defendant's employees in the use or condition of personal property, if that

employee would be personally liable to the plaintiff under Texas law. TEX. CIV. PRAC. REM. CODE § 101.021(2). This claim, as set out more fully below, involves H.V. Newman's death caused by the negligence in the use and misuse of the stop sign at the intersection of FM 2641 and FM 179 by defendant's employees, and those employees would be personally liable to Plaintiffs under Texas law.

4.04 Plaintiffs provided notice as required by the Texas Tort Claims Act, Texas Civil Practice & Remedies Code § 101.101(a), through a letter dated August 11, 2017. Plaintiffs' letter was served within 6 months of the incident giving rise to the claim and provides the information required.

V. FACTS

5.01 On or about July 27, 2017, H.V. Newman Jr. was driving his Chevrolet El Camino headed south on FM 179 near Shallowater, TX. Defendant Wright was driving a Chevrolet pickup travelling east on FM 2641 approaching the intersection with FM 179. As Defendant Wright approached the intersection, he passed an intersection ahead sign, a stop ahead sign, a TxDOT vehicle with its flashing hazard lights on, and a stop bar painted on the roadway. Defendant Wright never slowed down as he passed the warning signs and collided with H.V. Newman's car at the intersection. Mr. Newman suffered fatal injuries from the crash.

5.02 Defendant Helena Chemical Company owned the Chevrolet pickup that Defendant Wright was driving at the time of the collision. Defendant Wright was acting in the scope of his employment for Defendant Helena at the time of the collision.

5.03 The Texas DPS Crash Report indicates that the stop sign on the intersection of FM 2641 and FM 179 was not in place. Defendant TxDOT employees were working out on FM 2641 and apparently failed to place a temporary stop sign.

5.04 Defendants' negligence proximately caused the collision, the death of Mr. Newman, and the resulting damages sustained by Plaintiffs.

VI. CAUSES OF ACTION

Negligence – Defendant Wright

6.01 Defendant Wright's negligence was the proximate cause of the collision and said Defendant was negligent in many respects including, but not limited to, the following:

- a. In failing to stop at the intersection;
- b. In failing to heed warning signs on the road;
- c. In failing to control his speed;
- d. In failing to keep a proper lookout;
- e. In failing to take proper evasive action to avoid a collision;
- f. In failing to apply his brakes; and
- g. In operating a vehicle in a careless manner.

Respondeat Superior of Defendant Helena

6.02 Vicarious liability for Plaintiffs' damages attaches to Defendant Helena through *respondeat superior* in the following respects:

- a. Defendant Wright was an employee of Defendant Helena at the time of the incident;
- b. Defendant Wright was working in the course and scope of his employment at the time of the incident;
- c. Defendant Wright was acting in furtherance of Defendant Helena's business at the time of the incident;
- d. Defendant Wright was working for the accomplishment of the object for which he was hired; and
- e. Defendant Wright's negligence is a proximate cause of Plaintiffs' injuries and damages.

Injury by Traffic-Control Device – TxDOT

6.03 Defendant TxDOT is a unit of government that was responsible for the maintenance and placement of the stop sign at the intersection of FM 2641 and FM 179 in Lubbock County, Texas.

6.04 At the time of the crash, the stop sign located at the intersection of FM 2641 and FM 179 was missing. On or about July 27, 2017, Defendant TxDOT had actual notice that the traffic device at that location was missing because TxDOT employees removed the stop sign but had no temporary stop sign up at the time of the crash. A governmental entity must, within a reasonable time after notice, correct the absence of a traffic-control device. Defendant TxDOT also breached its duty by failing to warn of the missing stop sign.

6.05 Defendant TxDOT would be liable to Plaintiffs under Texas law if it were a private person. Defendant TxDOT would be liable if it were a private employer under the theory of *Respondeat Superior* for the actions and inactions of its employees either in removing the stop sign, failing to warn oncoming traffic of the missing stop sign, and/or failing to replace the missing stop sign.

Injury by Premises Defect – TxDOT

6.06 Defendant TxDOT is a unit of government that owned, controlled, and occupied the intersection at FM 2641 and FM 179 located in Lubbock County, Texas.

6.07 In the alternative to the count above, H.V. Newman died as a result of a condition on Defendant TxDOT's premises that posed an unreasonable risk of harm. The stop sign at the intersection of FM 2641 and FM 179 was missing.

6.08 Defendant TxDOT had actual knowledge of the dangerous condition on the premises. Employees of Defendant TxDOT were working near the intersection and failed to warn traffic that was passing through of the missing stop sign.

6.09 H.V. Newman did not know of the dangerous condition. Mr. Newman could not have known of the missing stop sign because he was travelling on FM 179 and had the right-of-way.

6.10 Defendant TxDOT had a duty to make the premises safe, either by warning of the dangerous condition or by eliminating the risk of harm, but defendant breached its duty by doing neither.

6.11 Defendant would be liable to Plaintiffs under Texas law if it were a private person. Defendant TxDOT would be liable if it were a private employer under the theory of *Respondeat Superior* for the actions and inactions of its employees in removing the stop sign, failing to warn oncoming traffic of the missing stop sign, and/or failing to replace the missing stop sign.

6.12 Defendant TxDOT's breach of duty proximately caused Mr. Newman's death.

Injury by Use of Personal Property – TxDOT

6.13 Defendant TxDOT is a governmental unit that had employees tasked with the maintenance and repairs of the stop sign at the intersection of FM 2641 and FM 179.

6.14 In the alternative to the counts above, H.V. Newman died as a result of Defendant TxDOT's employees' negligent use of tangible personal property. Prior to H.V. Newman Jr.'s death, Defendant TxDOT's employees removed the stop sign on FM 2641, which was in the course and scope of their employment.

6.15 Defendant TxDOT employees would be personally liable to Plaintiffs under Texas law. Road workers have a duty to use reasonable and ordinary care to prevent injury to others. TxDOT employees failed to use reasonable and ordinary care when they failed to put up a temporary stop sign at the intersection of FM 2641 and FM 179.

6.16 TxDOT employees' use of tangible personal property proximately caused H.V. Newman Jr.'s death.

VII. DAMAGES

7.01 The allegations of the preceding and succeeding paragraphs are incorporated herein by reference for all purposes.

Wrongful Death Claims

7.02 Plaintiffs have suffered a severe loss associated with the death of H.V. Newman Jr., and the resulting destruction of the husband-wife and parent-child relationship, including the loss of the positive benefits flowing from the love, comfort, companionship, and society from Mr. Newman, Deceased.

7.03 As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered damages for the wrongful death of H.V. Newman Jr. as follows:

- a. Pecuniary loss sustained in the past and which will reasonably be sustained in the future;
- b. Loss of companionship and society sustained in the past and which will reasonably be sustained in the future;
- c. Mental anguish sustained in the past and which will reasonably be sustained in the future;
- d. Loss of consortium; and
- e. Loss of care & support.

VIII. CONDITIONS PRECEDENT

8.01 All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the Defendants be cited to appear and answer and that upon final trial by jury, Plaintiffs recover against Defendants the following:

1. Compensatory damages as set forth above;
2. Pre-judgment and post-judgment interest as allowed by law;
3. Costs of court; and
4. Such other, further and different relief to which Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

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/s/ Chad Inderman

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ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs hereby respectfully demand a trial by jury in this cause and herewith pay the required fee.

/s/ Chad Inderman

Chad Inderman