

II. PARTIES

2.01 Plaintiff, Purviben Vyas, brings these claims Individually and as next friend of her minor child, D.V. Purviben Vyas and her child are residents of Harris County, Texas. Pursuant to TEX. CIV. PRAC. REM. CODE § 30.014, the last three digits of Purviben Vyas's driver's license number and social security number, respectively, are 015 and 020.

2.02 Plaintiff, Irma Plascencia Velazquez , brings these claims Individually and as next friend of her minor children, I.D and M.D. Irma Plascencia Velazquez and her children are residents of Collin County, Texas. Pursuant to TEX. CIV. PRAC. REM. CODE § 30.014, the last three digits of Irma Plascencia Velazquez driver's license number and social security number, respectively, are 035 and 5123.

2.03 Plaintiff, Aracely E. Jaime Gonzalez, brings these claims Individually and she is a resident of Collin County, Texas. Pursuant to TEX. CIV. PRAC. REM. CODE § 30.014, the last three digits of Aracely E. Jaime Gonzalez's driver's license number and social security number, respectively, are 340 and 4529.

2.04 Defendant Weatherford US, LP (Defendant Weatherford) is a Louisiana limited partnership with a principal office in this state located in Harris County, TX, at 2000 St. James Pl., Houston, TX, and can be served with process through its attorney, Todd Mensing, of Ahmad, Zavitsanoa, Anaipakos, Alavi, & Mensing, PC, 1221 McKinney, Suite 2500, Houston, TX 77010.

2.05 Defendant Samie Lee Whittington (Defendant Wittington) is a resident of Fort Bend County, Texas and was an employee of Defendant Weatherford at the time of the incident making the basis of this suit. Defendant Whittington may be served with process at his last known address at 2527 Morning Meadow Dr., Missouri City, TX 77489, or wherever he may be found.

III. VENUE AND JURISDICTION

3.01 Venue is proper in Harris County, Texas, pursuant to TEX. CIV. PRAC. REM. CODE § 15.002(a)(3) because it is the county of a principal office in the State of Texas of Defendant Weatherford.

3.02 The amount of the Plaintiffs' damages are substantial and well in excess of the jurisdictional minimums of this Court. Plaintiffs plead that they seek monetary relief over \$1,000,000.00. Plaintiffs also seek judgment for all other relief to which Plaintiffs are entitled. Plaintiffs reserve the right to file an amended pleading on this issue.

IV. FACTS

4.01 On or about July 18, 2018, Samie Lee Whittington, was on the job for Defendant Weatherford. As a part of his job duties, he was provided a company vehicle and equipment trailer that Weatherford required him to haul on Interstate 20 through Ector County, Texas. At approximately 9:15 am, Defendant Whittington was westbound on I-20 in the Weatherford combined vehicle. In his vehicle he had both his personal and work cell phones. As he travelled in the outside lane of I-20, vehicles began slowing in front of him. Distracted by one of his cell phones or other objects in the vehicle, Defendant Whittington chose not to watch the road or the vehicle in front of him and did not observe the vehicles slowing

4.02 Several vehicles slowed to a stop in the roadway for traffic, including the Plaintiffs' vehicle. Still choosing to engage in activity rather than watch the road and vehicles in front of him, Defendant Whittington and his Weatherford combined vehicle, weighing in excess of 30,000 pounds slammed into the rear of one of the stopped vehicles that was unfortunately stopped in front of it. Inside that vehicle were Ivan Dominguez Jaimes and Kewalkumar Vyas.

4.03 Being so heavy and traveling at such a high rate of speed, the force of the Weatherford vehicle's impact was powerful. It shoved the Plaintiffs' much smaller and lighter Nissan Sentra into the vehicle in front of it. The force was great enough that it also pushed the vehicle in front of Plaintiffs into the next car in front as well. The Weatherford vehicle proceeded to run over the Plaintiffs' vehicle pushing the Sentra into the guardrail.

4.04 Following the crash, a fire started on and in the Sentra. Both Mr. Vyas and Mr. Jaimes were unable to escape and were ultimately killed in the fire.

4.05 Defendant Weatherford is an interstate motor carrier with both USDOT and TXDOT numbers assigned to it. Defendant Weatherford's work required its employees to cross state lines on several occasions. Defendant Weatherford owned the trailer that Defendant Whittington was hauling and the truck Defendant Whittington was driving at the time of the wreck was part of a fleet of vehicles managed by ARI Fleet LT at Defendant Weatherford's request for the use of it and its employees. Defendant Whittington was in the course and scope of his employment for Defendant Weatherford at the time of the collision.

4.06 Defendants' negligence proximately caused the collision, the resulting deaths of both Kewalkumar Vyas and Ivan Dominguez Jaimes, and the damages that Plaintiffs sustained as a result of deaths of their loved ones in the crash.

V. CAUSES OF ACTION

Negligence – Defendant Whittington

5.01 Defendant Whittington'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 control his speed;
- b. In failing to keep a proper lookout;

- c. In failing to take proper evasive action to avoid a collision;
- d. In failing to apply his brakes;
- e. In failing to maintain a safe following distance;
- f. In operating the vehicle in a careless manner;
- g. In operating the vehicle while texting and driving and/or using a phone;
- h. In operating the vehicle while distracted; and
- i. In operating the vehicle while fatigued.

Negligence *Per Se* – Defendant Whittington

5.02 At the time of this collision, the State of Texas had in full force and effect various traffic statutes. The conduct of Defendant Whittington breached said traffic statutes. The following statutes create standards of conduct and Defendant Whittington’s conduct represents unexcused violations of these standards. Plaintiffs belong to the class of persons to which these statutes were meant to protect. Defendant Whittington’s conduct constitutes negligence *per se* in the following respects:

- a. In failing to maintain a safe following distance so that Defendant could safely stop without striking the preceding vehicle in violation of Texas Transportation Code § 545.062;
- b. In failing to control speed in violation of Texas Transportation Code §545.351;
- c. In operating the vehicle while texting and driving in violation of 49 C.F.R. §392.80; and
- d. In operating the vehicle while using a hand-held mobile telephone in violation of 49 C.F.R. §392.82.

Negligence *Per Se* – Defendant Weatherford

5.03 At the time of this collision, the State of Texas had in full force and effect various traffic statutes. The conduct of Defendant Weatherford breached said traffic statutes. The following

statutes create standards of conduct and Defendant Weatherford's conduct represents unexcused violations of these standards. Plaintiffs belong to the class of persons to which these statutes were meant to protect. Defendant Weatherford's conduct constitutes negligence *per se* in the following respects:

- a. In failing to require its drivers to keep a Driver's record of duty status in violation of 49 C.F.R. § 395.8;
- b. In requiring its drivers to operate a commercial motor vehicle while fatigued in violation of 49 C.F.R. § 392.3;
- c. In failing to require Defendant Whittington to submit an application for employment in accordance with 49 C.F.R. § 391.21;
- d. In failing to keep a Driver Qualification File for Defendant Whittington in violation of 49 C.F.R. § 391.51; and
- e. In allowing Defendant Whittington to operate a commercial motor vehicle in violation of 49 C.F.R. § 391.11.

Negligent Entrustment, Hiring, Training, Supervision, and Retention – Defendant Weatherford

5.04 The conduct of Defendant Weatherford constitutes negligence in many respects including but not limited to the following:

- a. Defendant Weatherford failed to safely entrust its trucks to competent employees;
- b. Defendant Weatherford failed to hire, supervise, and train competent employees;
- c. Defendant Weatherford failed to retain competent employees;
- d. Defendant Weatherford failed to fire incompetent or dangerous employees; and
- e. Each foregoing breach, singularly or in combination with other acts or omissions proximately caused Plaintiffs' injuries and damages.

Respondeat Superior of Defendant Weatherford

5.05 Vicarious liability for Plaintiffs' injuries and damages attaches to Defendant Weatherford through *respondeat superior* in the following respects:

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

VI. DAMAGES

WRONGFUL DEATH OF KEWALKUMAR VYAS

Plaintiff Purviben Vyas

6.01 As a direct, proximate, and producing result of the conduct of Defendants, as described above, Purviben Vyas sustained a loss of the positive benefits flowing from the love, comfort, companionship, and society that she would, in all reasonable probability, have received from her husband, Kewalkumar Vyas, had he lived. Purviben Vyas has also suffered a loss of the care, maintenance support, services, advice, counsel, and reasonable contributions of a pecuniary value provided by her husband, Kewalkumar Vyas. Further, she has suffered severe mental anguish, including emotional pain, torment and suffering as a result of the wrongful death of Kewalkumar Vyas. These damages will, in all reasonable probability continue in the future.

Plaintiff D.V., a Minor Child

6.02 As a direct, proximate, and producing result of the conduct of Defendants, as described above, D.V., a minor, sustained a loss of the positive benefits flowing from the love, comfort, companionship, and society that she would, in all reasonable probability, have received from her father, Kewalkumar Vyas, had he lived. D.V. has also suffered a loss of the care, maintenance support, services, advice, counsel, and reasonable contributions of a pecuniary value provided by her father, Kewalkumar Vyas. Further, she has suffered severe mental anguish, including emotional pain, torment and suffering as a result of the wrongful death of Kewalkumar Vyas. These damages will, in all reasonable probability continue in the future.

SURVIVAL DAMAGES OF KEWALKUMAR VYAS

6.03 Plaintiff Purviben Vyas, as the representative of the Estate of Kewalkumar Vyas brings this action pursuant to Section 71.021 of the Texas Civil Practice and Remedies Code, commonly referred to as the “Survival Statute.” Plaintiff would show that Kewlakumar Vyas was not killed instantly in the incident in question but suffered conscious physical pain and mental suffering prior to his death. The following damages survived to his estate, for which Plaintiff sues:

- a. Physical pain and mental anguish; and
- b. Funeral and burial expenses.

WRONGFUL DEATH OF IVAN DOMINGUEZ JAIMES

Plaintiff Irma Plascencia Velazquez

6.04 As a direct, proximate, and producing result of the conduct of Defendants, as described above, Ms. Velazquez sustained a loss of the positive benefits flowing from the love, comfort, companionship, and society that she would, in all reasonable probability, have received from her husband, Ivan Dominguez Jaimes, had he lived. Ms. Velazquez has also suffered a loss of the care,

maintenance support, services, advice, counsel, and reasonable contributions of a pecuniary value provided by her husband, Ivan Dominguez Jaimes. Further, she has suffered severe mental anguish, including emotional pain, torment and suffering as a result of the wrongful death of Ivan Dominguez Jaimes. These damages will, in all reasonable probability continue in the future.

Plaintiff I.D., a Minor Child

6.05 As a direct, proximate, and producing result of the conduct of Defendants, as described above, I.D., a minor, sustained a loss of the positive benefits flowing from the love, comfort, companionship, and society that he/she would, in all reasonable probability, have received from his/her father, Ivan Dominguez Jaimes, had he lived. I.D., a minor, has also suffered a loss of the care, maintenance, support, education, services, advice, counsel, and reasonable contributions of a pecuniary value provided by his/her father, Ivan Dominguez Jaimes. Further, the minor has suffered severe mental anguish, including emotional pain, torment and suffering as a result of the wrongful death of Ivan Dominguez Jaimes. These damages will, in all reasonable probability continue in the future.

Plaintiff M.D., a Minor Child

6.06 As a direct, proximate, and producing result of the conduct of Defendants, as described above, M.D., a minor, sustained a loss of the positive benefits flowing from the love, comfort, companionship, and society that he/she would, in all reasonable probability, have received from his/her father, Ivan Dominguez Jaimes, had he lived. M.D., a minor, has also suffered a loss of the care, maintenance, support, education, services, advice, counsel, and reasonable contributions of a pecuniary value provided by his/her father, Ivan Dominguez Jaimes. Further, the minor has suffered severe mental anguish, including emotional pain, torment and suffering as a result of the

wrongful death of Ivan Dominguez Jaimes. These damages will, in all reasonable probability continue in the future.

SURVIVAL DAMAGES OF IRMA PLASCENCIA VELAZQUEZ

6.07 Plaintiff Irma Plascencia Velazquez, as the representative of the Estate of Ivan Dominguez Jaimes brings this action pursuant to Section 71.021 of the Texas Civil Practice and Remedies Code, commonly referred to as the “Survival Statute.” Plaintiff would show that Ivan Dominguez Jaimes was not killed instantly in the incident in question but suffered conscious physical pain and mental suffering prior to his death. The following damages survived to his estate, for which Plaintiff sues:

- a. Physical pain and mental anguish; and
- b. Funeral and burial expenses.

SURVIVAL DAMAGES OF ARACELY E. JAIMES GONZALEZ

6.08 During his lifetime, Ivan Dominguez-Jaimes was industrious, affectionate, loving, compassionate, energetic, cooperative, patient, attentive, and a good father and son to his minor children and his mother Aracely E. Jaimes Gonzalez. He gave guidance, advice, counsel, protection, comfort, services, care and attention to his mother and children. His death has deprived Aracely E. Jaimes Gonzalez of the love and society of her son, the right to that affection, solace, comfort, companionship, and assistance. His death has caused his mother to suffer the loss of his care, advice, maintenance, services, counsel and support.

6.09 Plaintiff would show that as a direct and proximate result of the acts and/or omissions committed by Defendants, Aracely E. Jaimes Gonzalez seeks all damages to which she is entitled, both at law and in equity, including past and future loss of maternal consortium.

VII. EXEMPLARY DAMAGES

7.01 The above-mentioned acts of negligence on the part of Defendants were of such character as to make Defendants guilty of gross negligence. Defendants' acts of negligence when viewed objectively from the standpoint of Defendants, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of this risk, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs. The gross negligence of Defendants was a proximate cause of the collision and of the injuries and damages suffered by the Plaintiffs. As a result of Defendants' gross negligence, Plaintiffs seek and are entitled to an award of exemplary damages.

VIII. DISCOVERY

8.01 Under Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests that all Defendants, disclose within 50 days of the service of this request, the information or material described in Rule 194.2.

8.02 Under Texas Rule of Civil Procedure 198, Plaintiff requests that Defendant respond to Plaintiff's First Requests for Admissions within 50 days of the service of the request. Plaintiff's Requests for Admissions are attached hereto.

8.03 Under Texas Rule of Civil Procedure 197, Plaintiff requests that each Defendant respond to Plaintiff's Requests for Interrogatories within 50 days of the service of this request. Plaintiff's Requests for Interrogatories are attached hereto.

8.04 Under Texas Rule of Civil Procedure 196, Plaintiff requests that each Defendant respond to Plaintiff's Requests for Production within 50 days of the service of this request. Plaintiff's Requests for Production are attached hereto.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that upon final trial by jury, Plaintiffs recover against Defendants the following:

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

Respectfully submitted,

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JURY DEMAND

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

/s/ Jonathon C. Clark
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