

of Antonio de Jesus Torres-Palacios and on behalf of wrongful-death beneficiaries Catalina Palacios, decedent's mother, and Jose Maria Torres, decedent's father.

3. Defendant GEM MOBILE TREATMENT SERVICES, INC. (hereafter "GEM") has appeared and answered through its attorney of record Christopher McKinney of Orgain Bell & Tucker, LLP, 2211 Norfolk Street, Suite 520, Houston, TX 77098.

III. JURISDICTION AND VENUE

4. The subject matter in controversy exceeds the minimal jurisdictional limits of the Court. Intervenor seeks more than \$1,000,000 in relief in actual and exemplary damages from Defendant for which judgment is sought by this pleading.

5. Venue is proper in Chambers County as the events giving rise to the cause of action occurred in Chambers County.

IV. FACTS

6. On November 5, 2012, Antonio de Jesus Torres-Palacios ("Decedent" or "Mr. Torres-Palacios") was employed by Armor Industrial Fabricators, Inc. ("Armor") as a fabricator. Armor was at all relevant times in the business of fabrication of equipment and components in industrial processes. Defendant GEM Mobile Treatment Services, Inc. ("GEM") is a mobile vapor and wastewater treatment company that works primarily in the petrochemical industry. In the fall of 2012, GEM hired Armor to modify and add a relief valve to one of the transfer pipes on a scrubber owned by GEM.

7. On November 5, 2012, Mr. Torres-Palacios was on a crew assigned to cut a hole in a transfer pipe and weld a component on a scrubber owned by GEM. GEM had delivered the scrubber to Armor for this purpose and knew that the job required cutting with a plasma cutter and welding. The scrubber had contained a quantity of diesel fuel and other volatile, toxic and flammable materials and vapors prior to its delivery to Armor. Armor was unaware of the prior use of the scrubber or the contents of the

scrubber. Armor had a long-standing policy that all equipment brought to be modified or fabricated must be clean and ready for the contracted work. The GEM employee who delivered the scrubber represented it was clean and free of harmful and flammable material. The scrubber, however, was not adequately cleaned – unbeknownst to Mr. Torres-Palacios and his co-workers.

8. Mr. Torres-Palacios was assigned the duty of catching the slag from the cut so that it would not fall into the scrubber tank. To accomplish this, he had to hold his right arm inside the tank and catch the slag as it fell. About one-third of the way through the cut, the volatile chemicals remaining in the scrubber from its last use ignited and the tank exploded. The explosion was so severe that Mr. Torres-Palacios' arm was mostly ripped off and he was launched into the air; the concussion from the blast blew out lights inside an adjacent building. Mr. Torres-Palacios landed on top of the scrubber and suffered additional burns and other injuries. Mr. Torres-Palacios survived for some time and, later that same day, died of the injuries he received in the explosion. As a result of this incident, Mr. Morris sues for survival damages on behalf of the Estate of Mr. Torres-Palacios' and on behalf of Mr. Torres-Palacios' parents, the statutory wrongful death beneficiaries whom he supported during his working life and for exemplary damages due to the gross negligence of Defendant GEM.

V. LIABILITY

A. GEM MOBILE TREATMENT SERVICES, INC.

1. Negligence and Negligence Per Se

9. GEM had a duty to either make the scrubber safe to work on or warn Armor that the scrubber still contained hazardous, flammable vapors and chemicals. GEM did neither and Mr. Torres-Palacios was killed as a result of GEM's breaches of these duties. The explosion made the basis of this lawsuit, and Intervenor's resulting damages, were proximately caused by the negligent conduct of Defendant GEM in one or more of the following respects:

- a. Failing to clean the scrubber sufficiently to make it safe to work on;
- b. Failing to properly complete cleaning the scrubber after undertaking the duty to clean it of volatile and flammable chemicals;
- c. Delivering the scrubber to Armor while it contained volatile and/or flammable vapors, fumes and/or liquid, in violation of state and federal regulations and Armor's policies;
- d. Failing to warn Armor, and Mr. Torres-Palacios specifically, that the scrubber contained harmful, flammable vapors, fumes and liquid;
- e. Failing to place required warning signs and/or placards on the tank alerting Mr. Torres-Palacios of the potential presence of flammable vapors, fumes and/or liquids in violation of state and federal regulations; and
- f. Representing that the scrubber was clean and safe to work on when it was not.

Each of these acts and omissions, singularly or in combination with others, constituted negligence and negligence per se that proximately caused the occurrence made the basis of this action, Mr. Torres-Palacios' death and Intervenor's damages. Defendant GEM's breach of the applicable duties listed above were the producing and proximate cause of Mr. Torres-Palacios' death and Intervenor's damages.

2. Gross Negligence

10. Intervenor incorporates the preceding paragraphs as if fully set forth herein. Pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.002(a)-(b), 71.003(a), 71.004(b), 71.009, and 71.010, Intervenor is entitled to recover from Defendant exemplary damages, because Defendant was grossly negligent and that gross negligence caused the wrongful death of the Decedent and the damages suffered by Intervenor.

11. Viewed objectively from Defendant's viewpoint at the time of the incident, delivering a scrubber to Armor while it still contained flammable fumes and vapors involved an extreme degree of risk that was borne out on November 5, 2012. Defendant had contracted with Armor to cut and weld a component on the scrubber. Only Defendant was in a position to know that the scrubber contained volatile chemical and fumes. Defendant was told to only deliver clean and safe equipment for fabrication and modification. Defendant affirmatively represented that the scrubber was clean and safe to work on. Defendant had actual, subjective awareness of the risk of an explosion in the scrubber at the time of the incident, as evidenced by its own policies and procedures and the training provided to its own employees. Despite its knowledge of the risks, Defendant was consciously indifferent to Mr. Torres-Palacios' safety and welfare and delivered the scrubber in a condition that caused the explosion complained of herein. Despite knowing scrubber had contained diesel fuel and volatile chemicals and was improperly prepared for repair, Defendant delivered the scrubber with no warnings and asked that Decedent perform welding on it. The risk of harm attendant to GEM's acts and omissions was unacceptably high and the harm that resulted as a consequence was grave. Defendant's gross negligence and/or malice was a producing and proximate cause of Mr. Torres-Palacios' death and Intervenor's damages.

B. SURVIVAL

12. Intervenor incorporates the preceding paragraphs as if fully set forth herein. Pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021, this action for the injuries sustained by Decedent survives his death. This statute permits Intervenor (in his capacity as Administrator) to prosecute and recover damages for the claims set forth above. Accordingly, Intervenor seeks such and all survival damages under TEX. CIV. PRAC. & REM. CODE § 71.021 et seq.

C. WRONGFUL DEATH

13. Intervenor incorporates the preceding paragraphs as if fully set forth herein. Pursuant to TEX. CIV. PRAC. & REM. CODE § 71.001, et. seq. Intervenor is entitled to recover from Defendant the actual damages attributable to the wrongful death of Decedent on behalf of his mother, father and all wrongful death beneficiaries.

VI. DAMAGES

14. Antonio De Jesus Torres-Palacios' death will have a life-long impact on his parents. They have suffered severely and will continue to suffer mentally from the pain of losing a beloved son. Mr. Torres-Palacios' parents also lost the value of the financial support their son consistently provided to them. Intervenor hereby makes claim for all damages under the wrongful death statute as described above.

15. Mr. Morris also claims, on behalf of the Torres-Palacios Estate, for Mr. Torres-Palacios' conscious pain and suffering as he was burned and crushed to death in the explosion, for funeral and burial expenses, and for exemplary damages.

VII. JURY DEMAND

16. Intervenor demands that all issues of fact in this case be tried to a properly impaneled jury and has tendered the applicable jury fee.

VIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Intervenor prays that on final trial of the cause Intervenor have and receive:

1. Judgment against the Defendant for actual damages in a sum in excess of the minimum jurisdictional limits of the Court, with pre- and post-judgment interest as at the highest rate allowed by law;
2. Exemplary Damages;

3. Costs of suit; and
4. Such other and further relief to which Intervenor may be justly entitled, whether in law or in equity.

Respectfully Submitted,

HEARD ROBINS CLOUD LLP



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CERTIFICATE OF SERVICE

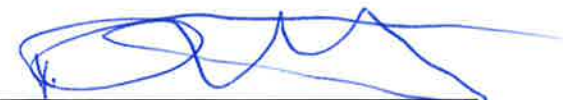
This is to certify that on this **15th day of January, 2015**, a true and correct copy of the above and foregoing document was served by certified mail, return receipt requested, hand delivery, and/or facsimile transmittal to the following counsel of record:

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From: Tommie Yeiter-Vicknair
Date: January 15, 2015
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MESSAGE

Flores et al. v. Armor et al.

Re: Intervenor Keith Morris' First Amended Petition in Intervention

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