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DEPUTY

CAUSE NO. 09-14756

DONNIE WADE AND KATRINA WADE §  
INDIVIDUALLY AND on BEHALF of §  
THE ESTATE OF DONNIE WADE, II §

IN THE DISTRICT COURT

Plaintiffs

OF DALLAS COUNTY, TEXAS

v.

PHI BETA SIGMA FRATERNITY, INC.; §  
GULF PORT REGIONAL CHAPTER OF §  
PHI BETA SIGMA FRATERNITY, INC.; §  
DELTA THETA CHAPTER OF PHI BETA §  
SIGMA, INC.; ALPHA SIGMA SIGMA §  
CHAPTER OF PHI BETA SIGMA, INC.; §  
MARVIN JACKSON, DEAN OF MIP OF §  
ALPHA SIGMA SIGMA CHAPTER OF §  
PHI BETA SIGMA, INC.; AND PRAIRIE §  
VIEW A & M UNIVERSITY, §

Defendants.

134th-G

JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION  
AND EMERGENCY APPLICATION  
FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs Donnie Wade and Katrina Wade, Individually and on Behalf of The Estate of Donnie Wade, respectfully file this Petition complaining of the above-referenced Defendants and seeking recovery to the full extent applicable by law under the Texas Wrongful Death Statute, TEX. CIV. PRAC. & REM. CODE § 71.001, et seq., the Texas Survival Statute, TEX. CIV. PRAC. & REM. CODE § 71.021, and all other applicable laws. Plaintiffs complain of the various acts listed below and for their wrongful death and survival causes of action which would show the Court and Jury as follows:

**I. DISCOVERY CONTROL PLAN**

Plaintiffs intend to conduct discovery under Level 3 in accordance with Texas Rule of Civil Procedure 190.

## II. PARTIES

Plaintiffs bring this cause of action in their capacity as the Decedents' only heirs and legal representatives. Plaintiffs are all beneficiaries entitled to bring this action pursuant to Section 71.004 of T.R.C.P.

Phi Beta Sigma Fraternity, Inc. (hereinafter referred to as "Defendant" and "Defendant Phi Beta Sigma") is a corporation that may be served through its registered agents, Lawrence Miller or Lonell Johnson at 145 Kennedy Street, NW, Washington, D.C., 20011-5260. Phi Beta Sigma Fraternity, Inc. may also be served through its registered agent, Tom Dixon at 4599 Pine Hill Road, Shreveport, Louisiana 71107-2711.

Gulf Port Regional Chapter of Phi Beta Sigma, Inc. (hereinafter referred to as "Defendant" and "Defendant Gulf Port") is a corporation that may be served through its international office's registered agents, Lawrence Miller or Lonell Johnson at 145 Kennedy Street, NW, Washington, D.C., 20011-5260. Phi Beta Sigma Fraternity, Inc. may also be served through its registered agent, Tom Dixon at 4599 Pine Hill Road, Shreveport, Louisiana 71107-2711.

Dangerous Delta Theta Chapter of Phi Beta Sigma, Inc. hereinafter referred to as "Defendant" and "Defendant Dangerous Delta Theta") is a corporation that may be served through its international office's registered agents, Lawrence Miller or Lonell Johnson at 145 Kennedy Street, NW, Washington, D.C., 20011-5260. Phi Beta Sigma Fraternity, Inc. may also be served through its registered agent, Tom Dixon at 4599 Pine Hill Road, Shreveport, Louisiana 71107-2711.

Alpha Sigma Sigma Chapter of Phi Beta Sigma, Inc. hereinafter referred to as "Defendant" and "Defendant Alpha Sigma") is a corporation that may be served through its international office's registered agents, Lawrence Miller or Lonell Johnson at 145 Kennedy

Street, NW, Washington, D.C., 20011-5260. Phi Beta Sigma Fraternity, Inc. may also be served through its registered agent, Tom Dixon at 4599 Pine Hill Road, Shreveport, Louisiana 71107-2711.

Marvin Jackson, Dangerous Delta Theta MIP Chair, (hereinafter referred to as “Defendant” and “Frat Brother Jackson”) may be served at his place of residence, 4000 E. Renner Road #1835, Richardson, Texas 75082.

Prairie View A & M University, (hereinafter referred to as “Defendant” and “Prairie View”) is a corporation that may be served at 689 Anne Preston Street, Prairie View, TX 77446.

All Defendants are collective referred to as “Defendants.”

### **III. JURISDICTION AND VENUE**

The subject matter in controversy is within the jurisdictional limits of this Court.

This Court has jurisdiction over Defendants because said Defendants purposefully availed themselves of the privilege of conducting activities in Texas and established minimum contacts sufficient to assert jurisdiction and the assertion of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice.

Plaintiffs would show that Defendants had continuous and systematic contacts with Texas sufficient to establish jurisdiction. Plaintiffs would also show that the cause of action arose from or relates to the contacts of Defendants to Texas to assert specific jurisdiction. Plaintiffs would further show that Defendants engaged in activities constituting business in Texas pursuant Section 17.042 of the TEX. CIV. PRAC. & REM. CODE.

Venue in Dallas County is proper in this cause under Section 15.002(a)(1) of the TEX. CIV. PRAC. & REM. CODE because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Dallas County.

#### IV. FACTS

Donnie Wade, II entered Prairie View A & M University full of life, possessing a unique zeal and earnest desire to serve others. His loved ones, friends and community recall Donnie's selfless interest in the needs of others, which was reflected in his choice to major in Biology with intent to become a medical doctor. Involvement in service organizations and community based activities was the norm for Donnie in his local community as well as on the campus of Prairie View A & M University. In light of this, it was no surprise when Donnie excitedly chose to join Phi Beta Sigma, Incorporated. As the only boy child of Reverend Donnie Wade and Katrina Wade of Dallas, Texas, Donnie Wade, II desired to become a part of a brotherhood that embodied "Culture for Service and Service for Humanity," while promoting brotherhood, scholarship and service. Unfortunately, Donnie's dream to become a medical doctor and continue servicing his community was quickly brought to a halt.

Thirteen Prairie View A & M University students gathered at Dangerous Delta Theta Chapter of Phi Beta Sigma, Incorporated's (AKA Dangerous Delta Theta) initial interest meeting on September 29, 2009. All were anticipating acceptance in Phi Beta Sigma Fraternity, Inc. On October 9, 2009, the applicants attended a Membership Intake Process (MIP) meeting and received interviews on October 14, 2009. After which, ten hopeful applicants became pledges of Dangerous Delta Theta Phi Beta Sigma Fraternity, Inc. after receipt of an MIP acceptance letter, a line number and a request that each pledge pays an initial intake fee of \$900. The MIP letter was signed by Marvin Jackson, MIP Chairman, who is identified as Fraternity (Frat) Brother Jack. Evidence proves and witness statements confirm that Donnie received Dangerous Delta Theta's MIP acceptance letter and paid the required initiation fee. However, the excitement initially experienced by Donnie and the new Dangerous Delta Theta members of Phi Beta Sigma, drastically dropped as a result of instant, systematic and continuous hazing incidents.

Documented evidence reveals that hazing began on September 29, 2009 and increased systematically through October 20, 2009. These serious hazing incidents by older Phi Beta Sigma fraternity brothers on Prairie View A & M University campus led directly to Donnie's death. Specifically, witness testimony suggests that Phi Beta Sigma required Donnie to adhere to a strict water and bread diet during the initial stages of his pledge process. Evidence also confirms older Frat brothers of Phi Beta Sigma requested pledges to do chores, purchase alcohol, pick up and pay for the Frat brothers' food, as well as other personal items for the older Frat brothers, including use of pledges' student ID cards to wash clothing. Purchasing food and other items was not the worst hazing incidents Dangerous Delta Theta new members experienced. Evidence indicates that Phi Beta Sigma's Fall 2010 line were also beaten with paddles. This process, according to witness testimony, was ironically used as a pledging tool as well as a bonding mechanism to make the pledges "closer as a group of brothers."

On October 15, 2009, Donnie Wade, II and his fellow Phi Beta Sigma pledges were directed via text messages to attend a mandatory exercise session behind the ROTC building at Hempstead High School in Hempstead, Texas. (Physicals were not requested or required before Phi Beta Sigma commenced its traditional exercise session and pledge process.) Frat Brother Jack directed the mandatory exercise routine, which he also experienced as a new Phi Beta Sigma member. Frat Brother Jack's testimony and witness statements indicate that the rigorous exercise routine is a customary initiation practice. Boots, white t-shirts, sweat shirts and pants and white dress shirts, which are referred to as "sets" were purchased by Donnie and fellow Phi Beta Sigma members on October 19, 2009. The "sets" were used during Dangerous Delta Theta's pledge process.

October 20, 2009, at around 4:00 a.m. marked the climax of the reckless hazing

conduct of Phi Beta Sigma Fraternity, Inc. The dreadful day commenced when Donnie Wade, II, and fellow Phi Beta Sigma members woke up, as previously scheduled by older Frat brothers, to attend a mandatory exercise routine at 5:00 a.m. at Hempstead High School. Testimony reveals that Donnie Wade II and other new members were coached to perform what witnesses identify as an “Indian run.” “All parties line up and the back person sprints to the front and then continues this process around the track.” According to witnesses’ testimony, “Donnie was falling behind a little bit on the Indian run and they all had to help Donnie out to cross the finish line.”

After the Indian run, Donnie and other new members performed what one witness identified as a “snake.” The witness stated, “you run up one bleacher, over and down the next bleacher and then up the next bleacher and so on.” Different witness testimony all indicate Donnie showed signs of fatigue and over exertion during the rigorous and traditional Phi Beta Sigma initiation process. Yet, the process continued.

Next, Donnie endured push-ups and approximately thirty jumping-jacks; then, Donnie and other new members were given thirty seconds to return to Hempstead High School track. Evidence suggests that the new Phi Beta Sigma group at this juncture suffered through “six-inchers.” Six inchers, as described by witness testimony, occurs “when you lay on your back and hold your legs up about six inches off the ground” for a certain length of time. Donnie reached his ultimate level of exertion performing six inchers as he was unable to stand up after completing the first set of six inchers. Donnie was visibly injured. At this time fellow members questioned Donnie’s ability to continue. Donnie advised them that “he was hurting.” Eventually, Donnie stood up, and collapsed a second time.

Frat Brother Jack advised the group that “Donnie was alright and that he was just tired.” Sadly, the Defendants failed to acknowledge the severity of Donnie’s circumstance. One witness testimony states that Frat Brother Jack laughed as the pledges assisted Donnie. Apparently, Frat

Brother Jack was directing Phi Beta Sigma's traditional and customary exercise session and unfortunately did not believe Donnie was in critical condition. This exercise routine had previously been planned, agreed upon, ratified, sanctioned and approved by the officers, active members and alumni of Phi Beta Sigma. Nevertheless, new members checked Donnie's pulse and breathing at the track, and witnesses state Donnie had a strong pulse. Water was given to Donnie and then splashed on Donnie's face. Noticing that Donnie's condition was failing, new members picked Donnie up and started to place him in his car. At this time, it was believed that Donnie had passed out.

An innocent bystander approached the Defendants and offered medical help to Donnie Wade II. However, Phi Beta Sigma, Incorporated recklessly denied any assistance and advised the bystander medical help would not be necessary. Frat Brother Jack and Phi Beta Sigma members also failed to contact 911 for assistance. Then, after a short passage of time, the members loaded Donnie Wade, II into his vehicle and drove him to his home in Brookside. Upon arriving at Donnie's home in Brookside, two members volunteered to take Donnie Wade, II, to the hospital. About thirty minutes after Phi Beta Sigma members arrived at the hospital, they were advised Donnie Wade, II was dead. CPR was performed on Donnie at the hospital and other efforts to save his life were taken. However, the hopeful attempts to save Donnie's life were in vain. Donnie Wade, II was pronounced dead on October 20, 2009.

Evidence indicates that Phi Beta Sigma Fraternity, Inc. is responsible for Donnie Wade, II's death. The organization's reckless and negligent behavior, as previously discussed, led to Donnie collapsing at Hempstead High School's track. Particularly, Phi Beta Sigma's traditional and customary initiation process led to Donnie's death. Frat Brother Jack was the catalyst in which Phi Beta Sigma's pledge process was carried out. This exercise routine had previously been planned, agreed upon, ratified, sanctioned and approved by the officers, active members

and alumni of Phi Beta Sigma. The organization recognized this practice as Frat Brother Jack had previously experienced similar hazing incidents. The members and/or alumni of the Fraternity encouraged others to engage in such activities and/or wholly failed to stop such activities and report the same to the Fraternity authorities and risk managers.

During Donnie's initiation process, members and/or alumni of the frat negligently, intentionally, knowingly, and/or recklessly endangered the mental or physical health or safety of the new members for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in the Fraternity. The members and/or alumni of the Fraternity encouraged others to engage in such activities and/or wholly failed to stop such activities and report the same to the Fraternity authorities and risk managers.

Further, Phi Beta Sigma Incorporated is liable because the members failed to accept and/or demand medical assistance from the innocent bystander. They also failed to get Donnie immediate assistance. Donnie was taken from Hempstead High to Donnie's Home in Brookside and then to North Cypress Medical Center. Additionally, Phi Beta Sigma, Incorporated are liable because the organization is avoiding liability. Witness testimony suggests that Frat Brother Jack requested that new members lie and state that he was not present during the exercise session on October 20, 2009. Phi Beta Sigma planted allegations that their Fall 2010 line was not a part of Phi Beta Sigma, further fabricating the truth: claiming the new members went out on their own and performed the exercises.

Donnie Wade, II did not have any preexisting conditions, prior to his death. Evidence indicates that Phi Beta Sigma's traditional, routine and reckless hazing and grossly negligent pledge process led to Donnie's death. Donnie's interest and focus has always been his community and servicing others. The only culpability Donnie has is choosing an organization that placed their personal interest before the interest of service, safety and more importantly,

human life. As a result, Phi Beta Sigma Fraternity is liable for the untimely, yet, avoidable death of Donnie Wade, II.

## V. VICAROUS LIABILITY

Additionally, this Defendant is responsible and liable for the negligent and grossly negligent acts and/or omissions of its officers, members, agents, employees, alumni and/or representatives of the Phi Beta Sigma, Incorporated and Prairie View A & M University. The Defendants are as follows:

**Phi Beta Sigma Fraternity, Inc., Gulf Port Regional Chapter of Phi Beta Sigma Fraternity, Inc., Dangerous Delta Theta Chapter of Phi Beta Sigma, Alpha Sigma Sigma Chapter of Phi Beta Sigma, Marvin Jackson, Dean of MIP of Alpha Sigma Sigma Chapter of Phi Beta Sigma, Inc.; and Prairie View A & M University.**

These Defendants, each individually and as officers, members, agents, employees, alumni and/or representatives of Phi Beta Sigma Fraternity, Incorporated and or Prairie View A & M University failed to exercise the ordinary care of a reasonably prudent person under the same or similar circumstances, particularly with regard to the following acts and/or omissions:

## VI. NEGLIGENCE

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein. Defendant Phi Beta Sigma, Incorporated International Fraternity, acting by and through its officers, members, agents, employees, alumni and/or representatives, failed to exercise the ordinary care of a reasonably prudent international fraternal organizational under the same or similar circumstances. Phi Beta Sigma, Incorporated was aware of, or should have been aware of, but consciously disregarded the dangerous condition created by Dangerous Delta Theta Chapter of Phi Beta Sigma's (AKA Dangerous Delta Theta) conduct as set out herein, and as a result, owed a duty of care to Donnie Wade, II, particularly with regard to the following acts and/or omissions:

- a. Engaging, encouraging and supporting others to engage pledges and members in activities constituting violations of fraternity bylaws, rules, policies, standards and regulations, including, but not limited to, purchasing alcohol and subjecting minors to acts of hazing;
- b. Engaging, encouraging and supporting others to engage in activities constituting violations of the Texas Education Code;
- c. Failing to report violations of the policies, standards, bylaws, Constitution, rules and regulations of Dangerous Delta Theta Chapter of Phi Beta Sigma, Incorporated and/or the international office of Phi Beta Sigma Fraternity, Inc.;
- d. Failing to report incidents of hazing to Prairie View A & M University officials;
- e. Failing to report incidents of hazing to appropriate law enforcement agencies;
- f. Failing to supervise fraternity activities, members and pledges;
- g. Failing to educate fraternity members and pledges;
- h. Creating an unreasonably dangerous condition and failing to properly render first aid and assistance;
- i. Failing to properly monitor, supervise, control, and regulate fraternity-sponsored Activities, especially the exercise routine;
- j. Failing to properly train, educate, inform, monitor and supervise fraternity chapter Advisors participating in the exercise routine;
- k. Failing to properly monitor the safety, health and welfare of fraternity pledges and new members;
- l. Failing to promulgate national standards and to educate and to enforce its member chapters, members and pledges to comply with international standards relative to hazing and exercising and paddling and alcohol, particularly in light of Defendants' knowledge and

experience relative to injuries and deaths which have occurred on college campuses nationwide as a result of such activities;

m. Failing to promulgate national standards and to educate and to enforce its member chapters, members and pledges on, and to enforce, national standards relative to the use and/or abuse of alcohol by fraternity members for fraternity purposes, particularly in light of the Defendants' knowledge and experience relative to injuries and deaths which have occurred on college campuses nationwide as a result of the use and abuse of alcohol by fraternity members.

n. Failing to promulgate national standards and failing to adopt, to enforce and to educate its member chapters, members and pledges on rules relative to hazing, drinking alcohol and sleep deprivation, particularly in light of the Defendants' knowledge and experience with serious and substantial injuries and deaths related to and associated with hazing, underage drinking, alcohol and substance abuse which have occurred nationwide with students who have been subjected to or engaged or encouraged others to engage in such behaviors in particular;

o. Failing to promulgate national standards and failing to adopt, to enforce and to educate its member chapters, members and pledges on rules relative to the use and abuse of alcohol by fraternity members and pledges, particularly in light of the Defendants' knowledge and experience with exercising and physical activity which have led to the deaths that have occurred nationwide;

p. Failing to promulgate national standards and failing to adopt, to enforce and to educate its member and pledges on appropriate methods with which to interact between and amongst themselves, especially during the rush and initiation process, particularly in light of the Defendants' knowledge and experience with fraternity rush and imitation related injuries and deaths with have occurred nationwide with students who have been subjected to or engaged or encouraged others to engage in such behaviors;

q. Failing to promulgate national standards and failing to adopt, to enforce and to educate its member chapters, members and pledges relative to the appropriate measures to be taken in the event that a fellow fraternity member or pledge is observed to be engaging in hazing, being hazed, or participating in other harmful or dangerous behaviors, including underage drinking, substance, abuse physical activity, paddling, and/or behaviors which may result in excessive alcohol consumption, over exertion, and/or physical harm, particularly and amongst themselves, in light of the Defendants' knowledge and experience with related injuries and deaths with have occurred nationwide with students who have been subjected to or engaged or encouraged others to engage in such behaviors;

r. Promoting, encouraging, condoning and tolerating activities by Dangerous Delta Theta fraternities and their members and pledges which it knows or in the exercise of ordinary care should have known pose an unreasonable risk of harm to members and pledges of the fraternity, which violates NIC rules, regulations, policies and standards, University rules, regulations, polices and standards, and federal, state and local laws and ordinances;

Each of these acts and omissions, singularly or in combination with others, constituted negligence which proximately caused the occurrence made the basis of this action and Plaintiffs' injuries and damages.

## VII. NEGLIGENCE PER SE

The acts and/or omissions referenced above constitute violations of §51.936 of the Texas Education Code which make hazing illegal and are intended to protect fraternity pledges and members like Donnie Wade, II and other persons similarly situated. Defendants Dangerous Delta Theta committed "organization hazing offenses" because it either condoned or encouraged hazing or, in the alternative, because a combination of their officers, members, agents,

employees, alumni and/or representatives committed or assisted in the commission of hazing as described above.

The anti-hazing statute was designed, at a minimum, to protect the health, safety and well-being of students joining a student organization. The Decedent, Donnie Wade, II was within the class of persons the statute was designed to protect. The type of harm Donnie suffered was the type which the statute was designed to prevent. The previous acts and/or omissions were singularly or in combination a proximate cause of the occurrence in question and the resulting injuries to and the death of Donnie Wade, II. The violation of the statute establishes negligence per se against Defendant Dangerous Delta Theta.

#### **VIII. GROSS NEGLIGENCE**

Defendants' conduct is such that an award of exemplary damages is appropriated. Defendants' conduct when viewed objectively from their standpoint at the time of the occurrence in question involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others of which Defendants had actual, subjective awareness of the risks involved but Defendants nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others.

Moreover, Defendants owed a duty to Donnie Wade, II by virtue of his moral and social relationship of trust and confidence. Defendants violated this trust and failed to educate fraternity members and pledges as to the proper procedures for rendering aid to those who became overly exhausted or seriously injured during the semester and the exercise session. Additionally, Defendants failed to distribute or enforce the fraternity's Risk Management Policy, thereby failing to train fraternity members and pledges as to the contents of the Risk Management Policy.

Defendants breached their duty by failing to exercise the standard of care required of fraternal organizations or that were created as members of a fraternal organization under the same or similar circumstances, particularly with regard to the following acts and/or omissions:

a. Failing to adopt, enforce, or implement appropriate methods of interacting between and amongst pledges and members of Dangerous Delta Theta, especially during the exercise routine;

b. Failing to distribute to Dangerous Delta Theta members and pledges educational materials, the Risk Management Policy, the Constitution, bylaws, regulations, rules, policies and standards and other materials to educate and instruct members and pledges on appropriate standards of conduct regarding hazing and other fraternity activities and events;

c. Engaging, encouraging and supporting others to subject pledges to activities constituting violations of fraternity bylaws, rules, policies, standards and regulations;

d. Engaging, and supporting others to subject pledges to activities constituting violations of the Texas Education Code;

e. Failing to report incidents of hazing to Prairie View A & M University officials;

f. Failing to report incidents of hazing to appropriate law enforcement agencies;

g. Failing to supervise fraternity activities, members and pledges;

h. Failing to educate fraternity members and pledges;

i. Creating an unreasonably dangerous condition and failing to properly render first aid and assistance;

j. Failing to properly monitor, supervise, control, and regulate fraternity-sponsored activities, especially the exercise routine;

k. Failing to properly train, educate, inform, monitor and supervise fraternity chapter advisors participating in the exercise routine; and

1. Failing to properly monitor the safety, health and welfare of fraternity pledges and new members.

### **IX. RES IPSA LOQUITUR**

Additionally, and in the alternative, Defendants are liable to Plaintiffs for the damages resulting from the wrongful death Donnie Wade, II under the theory of *res ipsa loquitur*. The death of the Donnie Wade, II was caused by an instrumentality within the exclusive control, management and supervision of Defendants and their agents, servants, and employees.

Plaintiffs would further show that an occurrence such as this does not ordinarily happen unless the persons or entities in control fail to exercise that degree of ordinary care to which Donnie Wade, II was entitled to expect. This raises a legal inference that the Defendants, through their agents, servants, or employees, failed to exercise ordinary care under the circumstances, entitling the jury to conclude that Defendants, their agents, servants, or employees were, in fact, negligent, and Plaintiffs therefore relies upon the legal doctrine of *res ipsa loquitur*, meaning "the thing speaks for itself."

Further, Defendants should be required to come forward, and try to disprove, if they can, their failure to exercise ordinary care herein. All of the foregoing conduct, both of omission and commission, on the part of Defendants, constituted proximate causes of the injuries and damages to Plaintiffs herein, for which Defendants are jointly and severally liable.

### **X. WRONGFUL DEATH**

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

Pursuant to TEX. CIV. PRAC. & REM. CODE § 71.002(b), 71.004(b), 71.009, and 71.010, Plaintiffs are entitled to recover from Defendants the actual damages attributable to the wrongful death of Decedent. Plaintiffs are also entitled to recover mental anguish damages. Further, because Defendants' acts and omissions resulted from gross negligence, exemplary damages

*Cause No. \_\_\_\_\_; Donnie Wade and Katrina Wade, Individually and on Behalf of the Estate of Donnie Wade v. Phi Beta Sigma Fraternity, Inc. et al, in the \_\_\_\_\_ Judicial District of Dallas County, Texas. Plaintiffs' Original Petition & Emergency Application for Temporary Restraining Order, Page 15*

should be awarded against Defendants in an amount to be determined by the jury in this case.

## **XI. SURVIVAL**

Plaintiffs incorporate 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 Decedents survive their deaths. This statute permits Plaintiffs (in their capacity as heirs) to prosecute and recover compensatory and exemplary damages for the claims set forth above.

No administration of the estate of Donnie Wade, II, Deceased, is pending or necessary at this time as Plaintiffs, natural parents of the Decedent, are in possession of the Decedent's property.

Accordingly, Plaintiffs seek such damages under TEX. CIV. PRAC. & REM. CODE § 71.021.

## **XII. DAMAGES**

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiffs suffered substantial damages, including the following:

- a. Physical pain and mental anguish sustained in the past
- b. Loss of earning capacity sustained in the past
- c. Reasonable medical care and expenses in the past
- d. Punitive Damages
- e. Physical impairment in the past
- f. Loss of Consortium in the past, including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations

- g. Loss of Consortium in the future including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations
- h. Loss of Parental Consortium in the past, including damages to the parent child relationship, including loss of care, comfort, solace, companionship, protection, services, and/or parental love
- i. Loss of Household Services in the past
- j. Loss of Household Services in the future

To limit what a jury can ultimately award to Plaintiffs, Defendants have requested the court demand that Plaintiffs amend their pleading and state an absolute maximum amount of damages sought in this case, even though Plaintiffs believe that such an act impermissibly invades the province of the jury and that in making this demand, Defendants are suggesting that jurors are unable to carry out their constitutional duty to decide this case based upon the facts and arrive at a full and fair measure of damages suffered by Plaintiffs. Plaintiffs will comply with Defendants' demand and so that no unwarranted restrictions are placed on the jury's ability to fairly decide the case, and in light of the recent trend of juries to awards for compensatory damages in cases of this nature (not even considering the element of punitive damages), Plaintiffs plead in response to Defendants' demand that his actual damages do not exceed \$30,000,000.00.

Furthermore, the law affords an award of punitive damages as the sole vehicle for the civil punishment of a company. In other words, in this context, the law recognizes that it is impossible to put a company in jail; consequently, the law provides punitive damages to punish a company in certain situations. In this regard, Plaintiffs acknowledge that it is the jury's responsibility to take part in the process by which corporations may be punished, and that in

doing so, the jury is called upon to consider not only the egregious nature of Defendants' conduct, but the effect which an award of punitive damages will likely have upon these particular Defendants.

If it is shown that Defendants were grossly negligent, and the jury decides that this is wrong and it ought to be stopped and people ought to be protected, Defendants ought to be punished with an award of punitive damages large enough that Defendants are held up as an example to influence other companies not to be grossly negligent in providing a safe workplace for their employees. Although believing that an award of punitive damages is entirely within the province of the jury, but being forced to comply with Defendants' request that Plaintiffs plead a maximum amount of punitive damages and consistent with the goal of not placing any unwarranted restrictions on the jury's ability to fairly decide the case, and based on recent jury verdicts for punitive damages involving companies that appear to be comparable to Defendants, Plaintiffs plead that the maximum amount of punitive damages sought by Plaintiffs is \$67,000,000.00, an amount likely commensurate with Defendants' profit.

Such amount is pled by Plaintiffs (at Defendants' insistence) due to the egregious nature of Defendants' conduct, Defendants' willful disregard for the life of Donnie Wade, II and Defendants' substantial financial wealth, inasmuch as the jury is asked to consider that an award of especially significant damages will have a negative economic effect on Defendants' business which would, in turn, have the positive effect of deterring Defendants and others like Defendants from operating their financially successful business at the expense of the lives of their employees.

Furthermore, because Defendants' conduct constitutes a felony under § 22.02 of the TEX. PENAL CODE, as set forth more particularly hereinabove, Plaintiffs are entitled to an award of

exemplary damages which is not subject to limitation under § 41.008(b) of the TEX. CIV. PRAC. & REM. CODE, pursuant to § 41.008(c)(4) of the TEX. CIV. PRAC. & REM. CODE.

### **XIII. JURY DEMAND**

Plaintiffs demand that all issues of fact in this case be tried to a properly impaneled jury.

### **XIV. REQUESTS FOR DISCLOSURE**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, all parties named herein as Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2(a)-(k).

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiffs against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Defendants per Section 41.006, Chapter 41, TEX. CIV. PRAC. & REM. CODE, excluding interest, and as allowed by Sec. 41.008, Chapter 41, TEX. CIV. PRAC. & REM. CODE, together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiffs may be entitled at law or in equity.

Respectfully submitted,  
**KELLEY|WITHERSPOON, LLP**



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Kevin Kelley  
State Bar No. 24038993  
Nuru Witherspoon  
State Bar No. 24039244  
2614 Main  
Dallas, Texas 75226  
(972) 850-0500  
(972) 850-0400 Telecopier

**ATTORNEYS FOR PLAINTIFFS**