



1.2 Venue is proper in the Northern District of Texas because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Texas, Dallas Division pursuant to 28 U.S.C. § 1391(a)(2).

1.3 Defendants Zhuoye Lighter Manufacturing Co. Ltd. and Zhuoye Lighter (USA) Co. Ltd. ("Zhuoye Defendants") have previously appeared in and defended one or more lawsuits in Texas in the Northern District containing allegations that a lighter manufactured by Defendants was defective and caused personal injury or death.

1.4 All Defendants' contacts with the State of Texas are continuous and systematic, such that the court has general personal jurisdiction over Defendants.

1.5 Lighters manufactured by Defendants are routinely sold in Texas through local and national dealers in the Northern District of Texas and who routinely do business in the Northern District of Texas.

1.6 Defendants purposely market and sell their lighters through distributors in the Northern District of Texas.

1.7 Accordingly, Defendants have purposefully availed themselves of the privileges and benefits of conducting business in Texas.

1.8 Defendants' alleged liability in this case arises from or is related to the sale, distribution, and/or use of their lighters in Texas.

1.9 The Court's exercise of personal jurisdiction over Defendants comports with due process.

1.10 Defendants are deemed to reside in the Northern District of Texas pursuant to 28 U.S.C. § 1391 (a)(1)(c) in that they regularly conduct business in Dallas, Texas, and are subject to personal jurisdiction in Dallas, Texas.

## II. PARTIES

2.1 Plaintiff Everett Clemmer is a citizen of the State of Texas and is a resident Stephenville, Texas. He is the natural biological father of William Byron Clemmer and Independent Executor of the Estate of William Byron Clemmer, Deceased who was killed in the incident made the basis of this suit. Plaintiff Everett Clemmer has standing to bring a survival action in accordance with Tex. Civ. Prac. & Rem. Code §71.021 and a wrongful death action pursuant to Tex. Civ. Prac. & Rem. Code §71.002. Plaintiff brings suit Individually and for and on Behalf of all those Entitled to Recover for his Death Under the Texas Wrongful Death and Survival Acts.

2.2 Defendant Zhuoye Lighter Manufacturing Co. Ltd. is a Chinese corporation doing business in the State of Texas. At all times pertinent to this Complaint, Defendant Zhuoye Lighter Manufacturing Co. Ltd. was and is in the business of designing, manufacturing, marketing, promoting, advertising, and selling lighters. Defendant Zhuoye Lighter Manufacturing Co. Ltd. transacts business in this State, either alone and/or by and through its subsidiaries, and derives substantial revenues from business in the State of Texas. Defendant Zhuoye Lighter Manufacturing Co. Ltd. may be served with process in this action by delivering summons and copy of this complaint with process by serving its President, pursuant to The Convention on the Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters, commonly referred to as The Hague Convention.

2.3 Defendant Zhuoye Lighter (USA) Co. Ltd. is a California corporation doing business in the State of Texas. At all times pertinent to this Complaint Defendant Zhuoye Lighter (USA) Co. Ltd. was and is in the business of designing, manufacturing, marketing, promoting, advertising, and selling lighters. Defendant Zhuoye Lighter (USA) Co. Ltd. transacts business in this State, either alone and/or by and through its

subsidiaries, and derives substantial revenues from business in the State of Texas. Defendant Zhuoye Lighter (USA) Co. Ltd. may be served with process in this action by delivering summons and copy of this complaint to its registered agent, Hui Ling Luo, 388 E. Valley Blvd., Ste. 212, Alhambra, California 91801.

### III. FACTS

3.1 On or about April 10, 2008, William Clemmer was working at Square One Machine Shop in Stephenville, Texas when he attempted to use an "MK" lighter to light a cigarette. Shortly after the cigarette was lit, the "MK" lighter suddenly and expectedly exploded in his pocket. As a result of the lighter failure, Mr. Clemmer's clothing caught fire and burned 55% total body surface area including third degree burns to his groin and upper body, chest, abdomen, back, neck, face, and scalp causing him severe and excruciating pain and suffering. Mr. Clemmer was promptly care-flighted to Parkland Hospital in Dallas, Texas where he received constant care for twenty-six days until his death on May 6, 2008.

3.2 As a direct and proximate result of defects in the "MK" lighter, William Clemmer suffered severe injuries that later caused his untimely death.

3.3 The "MK" lighter's design, manufacturing and marketing defects made the basis of this lawsuit were a producing cause of the incident made the basis of this lawsuit.

3.4 The "MK" lighter's design, manufacturing and marketing defects made the basis of this lawsuit were a producing cause of the severe injuries of William Clemmer and damages of Plaintiff.

3.5 The "MK" lighter's design, manufacturing and marketing defects made the basis of this lawsuit were a proximate cause of the incident made the basis of this lawsuit.

3.6 The "MK" lighter's design, manufacturing and marketing defects made the basis of this lawsuit were a proximate cause of the severe injuries to William Clemmer.

#### **IV. CAUSE OF ACTION STRICT PRODUCT LIABILITY AGAINST DEFENDANTS**

4.1 At all times material hereto, the Zhuoye Defendants were in the business of designing, manufacturing and marketing lighters such as the subject "MK" lighter, and did design, manufacture and market the subject "MK" lighter.

4.2 The Zhuoye Defendants are thus the manufacturer and seller of the subject "MK" lighter and are liable under the doctrine of strict product liability in tort for injuries caused by any defects in the subject "MK" lighter.

4.3 The Zhuoye lighter which caused injuries, suffering and eventual death of William Clemmer was unreasonably dangerous and defective in design, manufacture and marketing and unreasonably dangerous, defective, and otherwise unsafe for its intended purpose at the time it left the control of Zhuoye and at the time it was sold. Such defects were a producing and proximate cause of the incident and the injuries to William Clemmer and the damages sustained by the Plaintiff.

4.4 The "MK" lighter suffered from defects regarding its ability to properly extinguish and capacity to explode causing serious injury and/or death.

4.5 Moreover, safer alternative designs existed at the time the product was manufactured. The safer alternative designs would have prevented or significantly reduced the risk of the incident and the Plaintiff's injuries and damages, without substantially impairing the product's utility. Furthermore, the safer alternative designs were economically and technologically feasible at the time the product left the control of

Zhuoye by the application of existing and/or reasonably achievable scientific knowledge.

4.6 At the time of the incident, the lighter and its components were in substantially the same condition as they were at the time they left control of Zhuoye.

## V. NEGLIGENCE

5.1 Defendants committed unreasonable acts of omission and commission, which, collectively and severally, constitute negligence. Such negligence was a proximate cause of the injuries to William Clemmer, the physical pain and mental anguish he suffered, his death, and of the injuries and damages suffered by Plaintiff.

5.2 At all times mentioned herein, Defendants were engaged in the business of and had a duty to manufacture, fabricate, design, assemble, distribute, test, inspect, service, repair, market, warrant, maintain, modify, warn, instruct, and/or advertise the subject "MK" lighter, and each and every component part thereof, in a reasonable manner, and which Defendants knew, or in the exercise of reasonable care should have known, would be used without inspection for defects in its parts, mechanisms, manufacture or design.

5.3 At all times mentioned herein, Defendants negligently, recklessly, and/or carelessly manufactured, fabricated, designed, assembled, tested, distributed, sold, inspected, marketed, warranted, warned, instructed, and/or advertised the "MK" lighter and each and every component part thereof, and that same was causing and in fact did cause personal injuries to the consumer thereof while being used in a manner reasonably foreseeable, thereby rendering the same unsafe and dangerous for use by the consumer, user or bystander.

## **VI. GROSS NEGLIGENCE**

6.1 Defendants committed acts of omission and commission, which collectively and severally, constituted gross negligence. The failure to properly manufacture, fabricate, design, assemble, distribute, test, inspect, service, repair, market, warrant, maintain, modify, warn, instruct, and/or advertise, was gross negligence. The gross negligence was a proximate cause of the injuries of William Clemmer, the physical pain and mental anguish he suffered, his death, and of the damages suffered by Plaintiff.

## **VII. INADEQUATE STANDARDS**

7.1 Applicable mandatory safety standards issued by the Federal Government or any other agency or group, if any, were inadequate to protect the public from unreasonable risks of injury or damage and Defendants have withheld or misrepresented information or material relevant to the government's or agency's determination of adequacy of the safety standards or regulations at issue in this action.

## **VIII. BREACH OF IMPLIED WARRANTIES AGAINST ALL DEFENDANTS**

8.1 At all times relevant to the complaint, the Zhuoye Defendants were merchants in the business of supplying goods, namely the "MK" lighter.

8.2 The subject lighter was a good and/or product sold for consumer usage.

8.3 All Defendants breached the implied warranties of merchantability and fitness for a particular purpose in that the subject lighter was not fit for ordinary use or for the intended use for which it was purchased.

8.4 These breaches of implied warranty were a proximate cause of the incident made the basis of this suit, the injuries to William Clemmer, and the damages sustained by the Plaintiff, which are in an amount far in excess of the minimum \$75,000.00 jurisdictional limits of the federal courts.

8.5 Any notice or other conditions precedent to this action or required by law have been met, or are otherwise waived or excused.

### IX. COMPENSATORY DAMAGES

9.1 As a producing, direct and proximate result of the incident, injuries, and damages for which all Defendants are liable, Plaintiff seeks and is entitled to general, special, economic and noneconomic, wrongful death and survival damages, as applicable to Plaintiff, in an amount in excess of the minimum jurisdictional limits of the court, as determined to be just and fair by the jury. Such damages include, but are not necessarily limited to:

*a. Wrongful Death Damages*

- (1) pecuniary loss in the past and future;
- (2) loss of consortium, companionship and society in the past and future;
- (3) mental anguish in the past and future;
- (4) loss of inheritance;
- (5) loss of community estate and addition to estate;
- (6) all other damages allowed by law and equity.

*b. Survival Damages*

- (1) pain and mental anguish;
- (2) medical expenses;
- (3) funeral and burial expenses; and
- (4) all other damages allowed by law and equity.

9.2 The damages sought are greatly in excess of the minimum jurisdictional limits of the court.

## **X. EXEMPLARY DAMAGES**

10.1 As a result of the gross negligence of all Defendants, said Defendants should have exemplary damages assessed against it in such an amount as the jury may find appropriate.

10.2 Such gross negligence was a proximate cause of the incident made the basis of this suit, the injuries and death of William Clemmer and the damages sustained by the Plaintiff, which are in an amount far in excess of the minimum \$75,000.00 jurisdictional limits of the federal courts.

10.3 Plaintiff seeks an award of exemplary damages at the time of the trial in an amount determined to be just by the jury.

## **XI. PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

11.1 Plaintiff seeks pre-judgment and post-judgment interest as allowed by law.

## **XII. JURY DEMAND**

12.1 Plaintiff respectfully requests a trial by jury.

## **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this cause be set for trial before a jury, and that Plaintiff recovers judgment of and from Defendants for actual and exemplary damages in such amount as the evidence may show and the jury may determine to be proper, together with prejudgment interest, post-judgment interest, reasonable attorneys' fees, costs of court, and such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,



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