

CAUSE NO. 2019-81830

CECILIA CRUZ, INDIVIDUALLY	§	IN THE DISTRICT COURT OF
AND AS NEXT FRIEND AND AS	§	
REPRESENTATIVE OF ULYSSES D.	§	
CRUZ AND XXXXXX X. CRUZ, A	§	
MINOR, AND ANGELO G. CRUZ,	§	
<i>Plaintiffs,</i>	§	HARRIS COUNTY, TEXAS
	§	
	§	
vs.	§	
	§	
	§	
ALLIED AVIATION FUELING	§	
COMPANY OF HOUSTON, INC. and	§	270th JUDICIAL DISTRICT
REGINALD WILLIS,	§	
<i>Defendants.</i>	§	

PLAINTIFFS' SECOND AMENDED PETITION

Cecilia Cruz, Individually and as Next Friend and as Representative of Ulysses D. Cruz and XXXXXX X. Cruz, a Minor, and Angelo G. Cruz (“Plaintiffs”) hereby file this Second Amended Petition complaining of Allied Aviation Fueling Company of Houston, Inc. and Reginald D. Willis and, for cause of action, would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, discovery in this lawsuit is intended to be conducted under Level 3.

II. PARTIES

2. Plaintiff Cecilia Cruz is an individual who resides in The Woodlands, Texas.

3. Due to the injuries Ulysses D. Cruz suffered, including, but not limited, to paraplegia, brain injury, stroke, and emotional distress, Plaintiff Cecilia Cruz also brings an action as next friend and as representative of Ulysses D. Cruz, her husband, because his physical and mental impairments prevent him from properly caring for his own interests in this litigation. *See* Tex. R. Civ. P. 44.

4. Plaintiff XXXXXX X. Cruz, a Minor, is the daughter of Plaintiffs Cecilia Cruz and Ulysses D. Cruz and is represented by Cecilia Cruz, pursuant to Texas Rule of Civil Procedure 44. Plaintiff XXXXXX X. Cruz currently resides in The Woodlands, Texas.

5. Plaintiff Angelo G. Cruz is the adult son of Plaintiffs Cecilia Cruz and Ulysses D. Cruz, and he currently resides in The Woodlands, Texas.

6. Defendant Reginald Willis (“Defendant Willis” or “Willis”) is an individual who resides in Houston, Harris County, Texas. This Defendant has already appeared and answered.

7. Defendant Allied Aviation Fueling Company of Houston, Inc. (“Allied Fueling Houston”) is a domestic company incorporated in Texas, with operations at 2050 Fuel Storage Rd., Houston, Texas 77073, and with a principal place of business in Houston, Texas, as it has represented to the Texas Comptroller. This Defendant has already appeared and answered.

8. Plaintiffs expressly invoke their rights under Rule 28 of the Texas Rules of Civil Procedure to have the true name(s) of the parties substituted at a later time upon the motion of any party or of the Court. Plaintiffs specifically invoke the right to institute this suit against any Defendant in any other name(s) that any Defendant has used or which has been used to designate any Defendant.

9. In the event any parties are misnamed or are not included herein, it is Plaintiffs’ contention that such was a “misidentification”, “misnomer,” and/or such parties are/were “alter egos” of parties named herein. Alternatively, Plaintiffs contend that such “corporate veils” should be pierced to hold such parties properly included in the interest of justice.

III. JURISDICTION, VENUE, AND RULE 47 STATEMENT

10. The subject matter of this action and the amount in controversy are within the jurisdictional limits of this Court.

11. Venue of this lawsuit is proper in Harris County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the causes of action occurred in Harris County, Texas.

12. Plaintiffs make the following statement of damages at this time, as required by Texas Rule of Civil Procedure 47. Plaintiffs are seeking monetary relief over \$1,000,000 for damages that arise out of the incident that makes the basis of this lawsuit.

13. Although Plaintiffs' claims exceed \$75,000.00, jurisdiction is improper in federal court because Plaintiffs and Defendants are citizens of Texas, the state in which this action is brought. Therefore, removal of this action would be improper. 28 U.S.C.A. § 1441(b)(2).

IV. FACTS

14. On the morning of September 7, 2019, Plaintiff Cecilia Cruz's husband, Ulysses D. Cruz ("Ulysses"), was working his job as a wing walker for United Airlines at Intercontinental Airport in Houston, Texas.

15. One of the jobs of a wing walker is to walk behind each wingtip, near the rear of an airplane, as the airplane is being towed back from the gate, to make sure that the wings and the airplane are clear of any obstructions. Wing walkers, who wear bright yellow vests and hold bright orange wands, are also a signal to any vehicles operating within the airport operations area to stop because an aircraft is departing from the gate. All vehicles within the airport operations area must yield to aircraft.

16. On that particular morning, around 7:30 a.m., Ulysses was walking behind the right wingtip, near the rear of United Airlines airplane #N86336, as the plane was being pushed back from gate 79 in terminal B. He was negligently struck by a van driven by Defendant Willis that was owned by Defendant Allied Fueling Houston. Defendant Willis was an employee of Defendant Allied Fueling Houston. To be clear, this is an auto/pedestrian collision case.

17. When Defendant Willis crashed into Ulysses, it threw him many feet and into the concrete, causing serious and extensive injuries to Ulysses.

18. As a result of Defendant Willis's negligence and gross negligence, and Allied's negligence and gross negligence, Ulysses was severely injured and had to be transported by ambulance to Memorial Hermann Hospital in the Woodlands. As a result of the collision, Ulysses has suffered, and continues to suffer, serious and debilitating injuries and Plaintiffs Cecilia Cruz, his wife, and XXXXXX X. Cruz and Angelo G. Cruz, his daughter and son, have suffered damages and other harms.

V. CAUSES OF ACTION

A. NEGLIGENCE, NEGLIGENCE PER SE, AND GROSS NEGLIGENCE (*Against Defendant Reginald Willis*)

19. Plaintiffs incorporates all paragraphs above herein by reference.

20. Defendant Willis had a duty to exercise the degree of care that a reasonably prudent person driving a vehicle in the operations area of an airport would use to avoid harm to others under circumstances similar to those described herein.

21. Ulysses and Plaintiffs' injuries and damages were proximately caused by Defendant Willis's negligent, careless, and reckless disregard of said duty.

22. On the occasion in question, the collision and Ulysses and Plaintiffs' injuries and damages were proximately caused by the negligence, carelessness, and recklessness of Defendant

Willis in at least, but not limited to, one or more of the following ways:

- a. By driving his vehicle while blinded by the sun;
- b. By driving his vehicle outside the designated roadway;
- c. Failing to yield the right-of-way to an aircraft being pushed out of the gate and to the wing walker;
- d. Disregarding the directions of a flagger/wing walker;
- e. Failing to maintain a proper lookout while operating a motor vehicle, as would have been done by a reasonable person exercising ordinary prudence under the same or similar circumstances;
- f. Failing to look for an aircraft pushing back or see it pushing back;
- g. Failing to look out for a wing walker or see the wing walker;
- h. Failing to stop his vehicle when he could not maintain a proper lookout, was blinded by the sun and/or when the aircraft was pushing back and/or when the wing walker was in the area;
- i. Failing to control his speed under the circumstances;
- j. Operating his motor vehicle at a speed above the posted safe limits, which also constitutes negligence per se;
- k. Failing to take proper evasive action or properly apply his brakes to avoid an impending collision, as would have been done by a reasonable person exercising ordinary prudence under the same or similar circumstances;
- l. Failing to control his vehicle, as would have been done by a reasonable person exercising ordinary prudence under the same or similar circumstances; and
- m. By driving his vehicle in willful or wanton disregard for the safety of persons working in the airport operations area.

23. Each and all of the above and foregoing acts and omissions, singularly or in combination with others, constituted negligence and/or negligence per se which proximately caused the occurrence made the basis of this suit and Ulysses and Plaintiffs' injuries and damages pled herein.

24. Further, the acts and omissions of Reginald Willis set forth above and particularly, but not limited to, his willful and complete disregard for the health and safety of Ulysses D. Cruz and others by: a) continuing to drive the van when he could not see, despite his actual awareness of risk and the objective nature of the extreme degree of the risk given the probability and magnitude of the potential harm; b) by driving the van off the marked roadway when he could not see; and c) by not stopping completely when required by the rules or circumstances. These along with others constitute gross negligence. Such gross negligence was a proximate cause of the occurrence and Ulysses and Plaintiff's injuries and damages.

B. NEGLIGENCE AND GROSS NEGLIGENCE (*Against Allied Fueling Houston*)

25. Plaintiffs incorporate all paragraphs above herein by reference.

26. Defendant Allied Fueling Houston also committed acts and omissions, which collectively and severally, constituted negligence and which proximately caused Ulysses and Plaintiffs' injuries and damages.

27. Defendant Allied Fueling Houston had a duty to exercise ordinary care, meaning the degree of care that would be used by a company of ordinary prudence under the same or similar circumstances.

28. Defendant Allied Fueling Houston breached its duty in at least, but not limited to, one or more of the following ways:

- a. Failing to provide adequate training to employees;

- b. Failing to provide a vehicle with proper safety equipment, or that could be used legally on the streets of Harris County;
- c. Allowing its drivers to exceed the speed limits under the circumstances;
- d. Failing to supervise and/or monitor the conduct of employees;
- e. Failing to create or enforce safety rules for employees that would be driving in the airport operations area;
- f. Failing to hire competent drivers; and
- g. Placing a vehicle in use that had not properly been maintained, inspected or repaired.

29. These breaches, among others, constituted negligence. Such negligence was a proximate cause of the occurrence in question and the injuries and damages sustained by Ulysses and Plaintiffs. Further, vice principals of Allied Fueling, or those acting in a managerial capacity, notified and/or approved the acts and conduct of Defendant/Employee, Reginald Willis. Further, Defendant knowingly placed a vehicle in service it knew was not properly maintained, repaired and/or inspected, and Defendant knew it did not have proper safety equipment in place at the time of the accident. These acts also constitute gross negligence.

C. RESPONDEAT SUPERIOR – VICARIOUS LIABILITY (*Against Allied Fueling Houston*)

30. Plaintiffs incorporate all paragraphs above herein by reference.

31. Plaintiffs further plead that, at the time of the Defendant Willis's negligence and gross negligence, Defendant Willis was acting in furtherance of Defendant Allied Fueling Houston's business, within his general authority as an employee of Defendant Allied Fueling Houston, and/or to accomplish an object related to his employment; or alternatively, Defendant Willis was on a mission on behalf of Defendant Allied Fueling Houston.

32. Defendant Allied Fueling Houston accordingly is vicariously liable for Defendant Willis's acts of negligence and gross negligence, which are imputed on Defendant Allied Fueling Houston under the doctrine of *Respondeat Superior*, and which proximately caused Ulysses and Plaintiffs' injuries and damages.

D. GROSS NEGLIGENCE (*All Defendants*)

33. Plaintiffs incorporate all paragraphs above herein by reference.

34. Plaintiffs allege that all the above acts and omissions on the part of Defendants, taken singularly or in combination, constitute gross negligence and were the proximate cause of Ulysses and Plaintiffs' injuries and damages.

35. Defendants' acts and omissions, when viewed objectively from the Defendants' standpoint at the time such acts and omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety, and welfare of Ulysses. Such gross negligence was a proximate cause of the occurrence and Ulysses and Plaintiffs' injuries and damages.

36. Because Defendants are liable for gross negligence, punitive and/or exemplary damages should be assessed against them in an amount to be determined by the jury, as a deterrent to future bad conduct and as a punishment for their bad acts and omissions.

VI. DAMAGES

37. Plaintiffs incorporate all paragraphs above herein by reference.

38. As a proximate cause of Defendants' negligence and gross negligence and the acts and omissions of Defendants set forth herein, Plaintiffs Cecilia Cruz, Individually and as Representative of Ulysses D. Cruz and XXXXXX X. Cruz, a Minor, and Angelo G. Cruz, have suffered one or more of the following damages, which are within the jurisdictional limits of this Court:

- a. Physical pain and mental anguish sustained in the past and, in reasonable probability, will be sustained in the future by Ulysses Cruz (individually and this claim is brought through his next friend, Cecilia Cruz);
- b. Loss of earning capacity sustained in the past and, in reasonable probability, will be sustained in the future by Ulysses Cruz (individually and this claim is brought through his next friend, Cecilia Cruz);
- c. Disfigurement sustained in the past and, in reasonable probability, will be sustained in the future by Ulysses Cruz (individually and this claim is brought through his next friend, Cecilia Cruz);
- d. Physical impairment sustained in the past and, in reasonable probability, will be sustained in the future by Ulysses Cruz (individually and this claim is brought through his next friend, Cecilia Cruz);
- e. Medical care expenses sustained in the past and, in reasonable probability, will be sustained in the future by Ulysses Cruz (individually and this claim is brought through his next friend, Cecilia Cruz);
- f. Loss of household services sustained in the past and, in reasonable probability, will be sustained in the future by Cecilia Cruz, individually and as next friend and representative of Ulysses Cruz and XXXXXX X. Cruz, and Angelo G. Cruz;
- g. Loss of consortium sustained in the past and, in reasonable probability, Cecilia Cruz will sustain in the future;
- h. Loss of parental consortium sustained in the past and, in reasonable probability, will be sustained in the future by XXXXXX X. Cruz and Angelo G. Cruz;
- i. Punitive and/or exemplary damages;
- j. Costs of suit and court;

k. Pre- and post-judgment interest; and

l. Any and all other damages to which Plaintiffs may be justly entitled under law.

39. Based on the above enumerated injuries and damages which were caused by the negligent acts and/or omissions of Defendants, Plaintiffs plead for actual damages, in an amount that the jury deems reasonable under the circumstances.

40. Plaintiffs would further show that the conduct of Defendants constitutes gross negligence, as that term is defined and understood under Texas law. Accordingly, Plaintiffs seek exemplary damages from Defendants, in addition to actual and/or compensatory damages.

VII. PREVIOUS OR SUBSEQUENT CONDITION

41. If necessary, Plaintiffs would show that if Ulysses D. Cruz suffers from any subsequent injury or suffered from any pre-existing conditions, then such injury and/or condition was a result of, was aggravated by, and/or was exacerbated by the negligence and gross negligence of Defendants.

VIII. NOTICE REGARDING PRODUCTION OF SELF-AUTHENTICATING DOCUMENTS

42. Pursuant to Texas Rule of Civil Procedure 193.7, Defendants are hereby put on actual notice that any documents produced in response to written discovery will be used in pretrial proceedings and at trial and will be deemed authentic unless Defendants make valid objections to authenticity pursuant to this rule.

IX. PRESERVATION OF EVIDENCE

43. Plaintiffs hereby request and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit and the damages resulting therefrom, including, but not limited to, photographs; videos; audio tapes or recordings; other recordings; business or medical records; bills; estimates; invoices;

checks; correspondence; memoranda; files; facsimiles; email; voice mail; text messages; investigation; cellular telephone records; calendar entries; and any electronic image, data, or information related to Ulysses and/or Plaintiffs, the referenced incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

X. PRAYER

44. Wherefore, Plaintiffs Cecilia Cruz, Individually and as Representative of Ulysses D. Cruz and XXXXX Cruz, a Minor, and Angelo G. Cruz, prays that, upon a final hearing hereof, Plaintiffs have judgment against Defendants for actual damages in an amount the jury deems reasonable under the circumstances, which are in excess of the minimum jurisdictional limits of the Court, and exemplary damages, together with pre-judgment interest, post-judgment interest, costs of court, and for such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

/s/ Randall O. Sorrels

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record by electronic service on February 26, 2021.

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/s/ Randall O. Sorrels _____

Randall O. Sorrels