

Velva L. Price
District Clerk
Travis County
D-1-GN-16-004492
Ruben Tamez

D-1-GN-16-004492

CAUSE NO. _____

EVANGELOS VOUTSINAS
SURVIVING SPOUSE AND SOLE
HEIR

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

V.

THE TEXAS DEPARTMENT OF
TRANSPORTATION

126TH
_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION, REQUEST FOR DISCLOSURE,
REQUESTS FOR ADMISSION, INTERROGATORIES,
AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW, Plaintiff Evangelos Voutsinas surviving spouse and sole heir of Carol Voutsinas and files this, his Original Petition, Request for Disclosure, Request for Admission, Interrogatories and First Request for Production of Documents complaining of Defendant The Texas Department of Transportation (“TxDOT”) for causes of action would show the following:

DISCOVERY CONTROL PLAN

1. Plaintiff intends for discovery in this case to be controlled by Tex.R.Civ.P. 190.4 (Level 3).

JURY DEMAND

2. Pursuant to Rules 216 and 217 of the Texas Rules of Civil Procedure, Plaintiff requests a jury trial of this matter. Accordingly, Plaintiff tenders the proper jury fee with the filing of the Original Petition in this matter.

PARTIES

3. Plaintiff Evangelos Voutsinas resides in Bastrop County, Texas.
4. Defendant TxDOT is a governmental entity, and can be served with process by serving Texas Secretary of State, Carlos H. Cascos, located at 1019 Brazos Street, Austin, TX 78701 or wherever he may be found.

VENUE AND JURISDICTION

5. Venue is proper in this Court by virtue of Tex. Civ. Prac. & Rem. Code §15.002 in that the cause of action which is the subject of this case arose in whole or in part in Travis County. Furthermore, this Court has jurisdiction in that Plaintiffs' damages are within the jurisdictional limits of this Court.

FACTS

6. Plaintiff's claim is based on a vehicular accident occurring on October 23, 2015 at the 14700 block of US Highway 290 East in Manor, Texas.

7. At the time of the accident, Carol Voutsinas was traveling eastbound on Highway 290 East when she was struck head on by a tow truck. The impact forced her vehicle into the ditch striking a telephone pole. Ms. Voutsinas was pronounced deceased on the scene. The tow truck was traveling westbound on Highway 290 East when the vehicle began to hydroplane and slid across the unprotected median striking Ms. Voutsinas's vehicle.

8. The above-referenced accident was proximately caused by the condition of the road surface and/or negligence of the Defendant. Pleading upon information and belief, the road surface was so worn and slick that it was dangerous and defective thereby contributing to the accident which caused Ms. Voutsinas' death. Texas Department of Transportation (TxDOT) was a possessor of Highway 290. Pleading upon information and belief, the condition of the road created an unreasonable risk of harm that the defendant had actual knowledge of and that Carol Voustinas did not have knowledge of. Pleading further upon information and belief, Defendant breached this duty to Plaintiff by failing to adequately warn the driving public of the road's condition and failed to make repairs to the road surface to make it safe. Pleading further

upon information and belief, Defendant's conduct proximately caused injury.

Following the accident, TxDOT constructed changes to Highway 290 and roto-milled the surface to improve its safety in wet weather. Moreover, after another fatality in close proximity to the collision made the basis of this case, TXDOT placed warning signs warning the public of the dangerous road conditions.

9. Pleading further upon information and belief, TxDOT was responsible for the approval and supervision of the road construction activities on Highway 290. Pleading in the alternative, the road construction activities of TxDOT constitute a nuisance resulting in damage to Plaintiffs' property. All conditions precedent for Plaintiffs to file suit have occurred. Plaintiffs supplied Defendant with notice of the claim as provided by law.

CAUSES OF ACTION

Premise Liability

10. The Plaintiffs incorporate by reference all preceding paragraphs in this pleading. Pleading in the alternative and upon information and belief, Defendant is a governmental and possessor of highway in question. The condition of the roadway where the tow truck was being driven was defective and posed an unreasonable risk of harm to the public and Plaintiff. Plaintiff alleges that Defendant had actual knowledge of the dangerous condition of Highway 290 between Elgin and Manor, Texas at the time of the collision. Plaintiff did not have actual knowledge of the dangerous condition. Defendant breached the duty by failing to warn of the danger and in eliminating the dangerous condition. Defendant's breach of this duty proximately caused Carol Voutsinas' death and Plaintiff's injuries. The Defendant, if it were a private person, would be liable for this dangerous condition. Defendant failed to conduct proper maintenance of the highway in question. Moreover, there is no exception to waiver of immunity

in this instance and Plaintiff has provided pre-suit notice of this claim as required by law.

Alternatively, the Defendant had pre-suit actual notice of this claim.

Special Defect

11. The Plaintiff incorporates by reference all preceding paragraphs in this pleading. Pleading in the alternative and upon information and belief, Defendant is a governmental and possessor of highway in question. The condition of the roadway where the tow truck was being driven was a special defect and posed an unreasonable risk of harm to the public and Plaintiff. Plaintiff alleges that Defendant knew or should have known of the dangerous condition of Highway 290 between Elgin and Manor, Texas at the time of the collision. Defendant breached the duty by failing to warn of the danger and in eliminating the dangerous condition. Defendant's breach of this duty proximately caused Carol Voutsinas' death and Plaintiff's injuries. The Defendant, if it were a private person, would be liable for this dangerous condition. Defendant failed to conduct proper maintenance of the highway in question. Moreover, there is no exception to waiver of immunity in this instance and Plaintiff has provided pre-suit notice of this claim as required by law. Alternatively, the Defendant had pre-suit actual notice of this claim.

Wrongful Death Claims

12. The Plaintiff incorporates by reference all preceding paragraphs in this pleading. Pleading in the alternative and upon information and belief, Plaintiff Mr. Voutsinas was the husband of decedent Carol Voutsinas at the time of her death. The decedent's death was caused by the Defendant's wrongful acts, neglect, carelessness, unskillfulness and/or default. Decedent would have been entitled to bring suit for her injuries if she had lived. As a result of Defendant's actions, Plaintiff was injured.

Survival Claims

13. The Plaintiffs incorporate by reference all preceding paragraphs in this pleading. Pleading in the alternative and upon information and belief, Plaintiff Evangelos Voutsinas is the sole heir of Carol Voutsinas. Carol Voutsinas was killed in an automobile collision on October 23, 2015. Had she lived, she would have had a cause of action for personal injury to her health, reputation or person before she died and would have been entitled to bring an action for her injuries if she had lived. Moreover, Defendant's conduct and wrongful acts caused her injuries.

PERSONAL INJURIES AND DAMAGES

14. As a result of Defendant's actions, Plaintiff seeks the following damages:

- (a) Medical/Funeral Expenses: Decedent incurred bodily injuries that were caused by the incident in question. Plaintiff has incurred medical expenses in the past and funeral expenses;
- (b) Physical Pain & Mental Anguish: Decedent may have endured physical pain and mental awareness of her impending death;
- (c) Mental Anguish: Plaintiff has endured mental anguish in the past and may endure mental anguish in the future.
- (d) Loss of Spouses & Household Services: Plaintiff has lost the value of his spouses' services in the past and in the future.
- (f) Pecuniary Loss: Plaintiff seeks the pecuniary loss in the past and in the future he would have received from Carol Voutsinas had she lived.
- (g) Loss of Companionship and Society: Plaintiff seeks to recover these damages sustained in the past and that he will reasonably suffer in the future.
- (h) Loss of Inheritance: Loss of present value of the assets of the deceased that would have been added to and left to the estate and left at natural death to Evangelos Voutsinas.

15. All conditions precedent to Plaintiffs' right to recover the relief sought herein have occurred or have been performed.

PLAINTIFF'S REQUEST FOR DISCLOSURE

16. Plaintiff requests, pursuant to Rule 194 of the Texas Rules of Civil Procedure, that you disclose, within 50 days of service of this request, the information or material described in Rule

194.2 (a) - (i), (j) & (k) namely:

- (a) The correct names of the parties to the lawsuit;
- (b) The name, address, and telephone number of any potential parties;
- (c) The legal theories and, in general, the factual bases of Defendant's claims or defenses;
- (d) The amount and any method of calculating economic damages;
- (e) The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
- (f) For any testifying expert:
 - 1. The expert's name, address, and telephone number;
 - 2. The subject matter on which the expert will testify;
 - 3. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the Defendant, documents reflecting such information;
 - 4. If the expert is retained by, employed by or otherwise subject to the control of the Defendant:
 - A. all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - B. the expert's current resume and bibliography;
- (g) Any indemnity and insuring agreements described in Rule 192.3(f);
- (h) Any settlement agreements described in Rule 192.3(g);
- (i) Any witness statements described in Rule 192.3(h);
- (j) All medical records and bills obtained by the Defendant by virtue of an authorization furnished by the Plaintiff.

- (k) The name, address, and telephone number of any person who may be designated as a responsible third party.

PLAINTIFFS' FIRST REQUEST FOR PRODUCTION

17. Plaintiffs request, pursuant to Rule 196 of the Texas Rules of Civil Procedure, the Defendant produce the following documents to the undersigned's office within 50 days of service of this request. Please be reminded that all documents produced shall be organized either as they are kept in the usual course of business or labeled to correspond with the categories in the request.

1. All photographs, diagrams, drawings, graphs, charts electronic or videotape recordings of the accident or surrounding circumstances related to the claim(s) made the basis of this case.
2. All accident or incident reports prepared by any peace officer investigating the cause of the accident at issue in this case.
3. A copy of any document relied upon to deny liability for this accident.
4. All accident reports and investigative materials for all accidents that have occurred on Highway 290 between Manor, Texas and Elgin, Texas in the past five years.
5. All claim reports, photographs, videos, black box recordings, audio tapes, emails, documents, correspondence, invoices, statements or other records reflecting all investigations and inspections of the accident made the subject matter of this case, before anticipating litigation.
6. All documents, correspondence, invoices, statements and other records sent to or received from any third party concerning the accident made the basis of this suit, before anticipating litigation.
7. All documents reflecting any communication with the Plaintiffs or a third party regarding the claim made the basis of this suit.
8. All documents reflecting any repairs performed on Highway 290 from Manor, Texas to Elgin, Texas from 2006 to the present.
9. All documents, reports, complaints concerning all other accidents on Highway 290 from Manor, Texas to Elgin, Texas from 2006 to the present.
10. All documents or evidence reflecting any testing of the asphalt or road conditions on

- Highway 290 from Manor, Texas to Elgin, Texas from 2006 to the present.
11. Copy of any lawsuit naming you as a party involving the condition of Highway 290 from Manor, Texas to Elgin, Texas from 2006 to the present.
 12. All documents reflecting any studies, tests, or inspections of the Highway 290 or its surface characteristics from 2006 to the present.
 13. All photos, videos, models, diagrams or other demonstrative aids that will be used at trial.
 14. Copies of all depositions on written questions, including documents produced by the deponent.

INTERROGATORIES

18. Plaintiffs request, pursuant to Rule 197 of the Texas Rules of Civil Procedure, that Defendant responds to the following interrogatories within 50 days of service of this request.

1. If you contend that the personal injuries of the Plaintiff were not caused by the premise defect alleged in this lawsuit, state with particularity the facts upon which you base your contention.
2. Please identify all persons present at the scene of the accident and all persons who arrived within one hour of the accident.
3. Please list all potential witnesses you intend on calling at trial.
4. Please explain why highway 290 was repaired and roto-milled between Manor, Texas and Elgin, Texas in 2016.
5. Please list and describe the testing data collected that led you to repair and or roto-mill Highway 290 between Manor, Texas and Elgin, Texas in 2016.
6. Please explain why you placed a warning sign alerting motorists of a previous fatal accident on Highway 290 in 2016 between Manor, Texas and Elgin, Texas.
7. Please identify all persons to whom you have given signed written or recorded statements regarding this accident and the date thereof.
8. Please give a concise statement of facts that describe how you contend the accident took place.
9. Please state all facts that support your contention that Defendant is not liable for the accident that killed Carol Voutsinas on October 23, 2015.

10. Please state all facts that support any defense or affirmative defense you assert in this case.
11. Please explain the facts that support any request for admission you denied.
12. Please list all steps you took to make Highway 290 between Manor, Texas and Elgin, Texas safe for the driving public in the past ten years.

REQUESTS FOR ADMISSIONS

19. Plaintiffs request, pursuant to Rule 198 of the Texas Rules of Civil Procedure, that Defendant responds to the following requests for admissions within 50 days of service of this request. Please admit or deny the following:

1. You received notice as required by the T.T.C.A. from Plaintiffs.
2. No exception to the waiver of immunity exists in this case.
3. Plaintiff was killed as a result of the crash.
4. You failed to resurface Highway 290 where the crash at issue took place prior to October 23, 2015.
5. You failed to warn motorists that Highway 290 in the west bound lanes at the area where the crash occurred was dangerous when wet.
6. You are aware of multiple fatalities on Highway 290 between Manor, Texas and Elgin, Texas since 2000.
7. You are aware of multiple accidents on Highway 290 between Manor, Texas and Elgin, Texas since 2000.
8. You conducted studies of the road surface of Highway 290 between Manor, Texas and Elgin, Texas from 2006 to the present.
9. You took correct measures to change the road surface of Highway 290 between Elgin, Texas and Manor, Texas in 2016.
10. The road surface on westbound Highway 290 where the accident made the basis of this case occurred was dangerous on October 23, 2015.
11. The surface of Highway 290 between Manor, Texas and Elgin, Texas was a premise

defect.

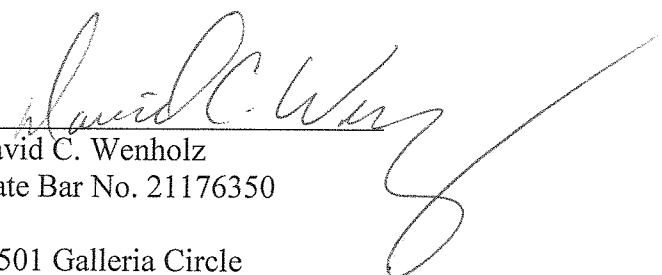
RELIEF SOUGHT

20. Plaintiffs pray that Defendant TxDOT be cited to appear and answer that upon the trial of this case the Plaintiff recover the following damages:

- (a) Judgment for a sum within the jurisdictional limits of the court for the damages listed above in an amount determined by the jury that is fair given the circumstances;
- (b) Pre-Judgment interest at the maximum rate allowed by law;
- (c) Post-Judgment interest at the maximum rate allowed by law;
- (d) Court costs; and such other relief, at law or in equity to which Plaintiffs may be justly entitled.

RESPECTFULLY SUBMITTED,

THE WENHOLZ LAW FIRM PLLC



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