

CAUSE NO. 18-08-00200-CVK

JASON AGUILAR, MARINES ARIAS, § IN THE DISTRICT COURT
DANIEL ARIAZA, SANJUANITA §
ARIAZA, LUIS CASTANEDA, ITASCA §
DAVIS, JENNIFER JENNINGS, BECKY §
LANDER, KEVIN LANDER, ERNEST §
LOYA, ALEJANDRA MARTINEZ, §
MIGUEL MARTINEZ, CHRISTY §
MCINTIRE, STEVEN MCINTIRE, §
BLANCA MENDOZA, MATT MIRRO, §
JENNY PHAM, DANIEL RAY, LAVINIA §
RAY, RAUL RAMOS, ERNNIE SALINAS, §
JEFFREY TARRANT, MICHAEL VEAL, §
MICHAEL WARDWELL, AND SHAUN §
WILLIAMS. §

PLAINTIFFS,

VS.

81st **JUDICIAL DISTRICT**

NEWPARK DRILLING FLUIDS, LLC, §
AND COTTON COMMERCIAL §
USA, INC. §

DEFENDANTS,

§ KARNES COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiffs, Jason Aguilar (“Mr. Aguilar”), Marines Arias (“Ms. Arias”), Daniel Ariaza (“Mr. Ariaza”), Sanjuanita Ariaza (“Mrs. Ariaza”), Luis Castaneda (“Mr. Castaneda”), Itasca Davis (“Ms. Davis”), Jennifer Jennings (“Ms. Jennings”), Becky Lander (“Mrs. Lander”), Kevin Lander (“Mr. Lander”), Ernest Loya (“Mr. Loya”), Alejandra Martinez (“Mrs. Martinez”), Miguel Martinez (“Mr. Martinez”), Christy McIntire (“Mrs. McIntire”), Steven McIntire (“Mr. McIntire”), Matt Mirro (“Mr. Mirro”), Jenny Pham (“Mrs. Pham”), Daniel Ray (“Mr. Ray”), Lavinia Ray (“Mrs. Ray”), Raul Ramos (“Mr. Ramos”), Ernie Salinas (“Mr.

Salinas”), Jeffrey Tarrant (“Mr. Tarrant”), Mike Wardwell (“Mr. Wardwell”) and Shaun Williams (“Mr. Williams”) (collectively referred to hereinafter as “Plaintiffs”), complaining of and against Defendants, Newpark Drilling Fluids, LLC (“Newpark”), Cotton Commercial USA, Inc. (“Cotton”) (Newpark and Cotton will be collectively referred to hereinafter as “Defendants”), and for such causes of action, would respectfully show unto the Honorable Court as follows:

I. SUMMARY

This is a fire case. Despite the abnormally and unreasonably dangerous nature associated with the storage and transport of volatile chemicals, Newpark operated their drilling fluid products and technical services facility in a negligent and unsafe manner near an apartment complex, a RV park, a hotel and other businesses in the middle of Kenedy, Texas. On or about July 1, 2018, the Newpark facility and the chemicals stored in the facility caught on fire. A series of negligent decisions, including the failure to properly service, maintain and keep operational the sprinkler system, by Newpark and operators at the facility led directly to the spread of the fire that contaminated the surrounding residences and businesses. The fire created a dangerous situation around the facility and overwhelmed residents, fire fighters, police officers and medical professionals responding to the scene of the fire.

II. DISCOVERY CONTROL PLAN LEVEL

1. Plaintiffs intend that discovery be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

III. MONETARY RELIEF SOUGHT

2. Pursuant to Tex. R. Civ. P. 47(c)(5), Plaintiffs are seeking monetary relief herein of over \$1,000,000.00.

IV. PARTIES AND SERVICE

3. Plaintiffs are residents of Kenedy, Karnes County, Texas.

4. Defendant Newpark Drilling Fluids, LLC (“Newpark”) has its principal place of business at 2700 Research Forest Dr., Ste. 100. Defendant Newpark Drilling Fluids, LLC may be served by serving its registered agent for service of process CT Corporation System, 1021 Main Street, Suite 1150, Houston, TX 77002.

5. Defendant Cotton Commercial USA, Inc. (“Cotton”) has its principal place of business at 5443 Katy Hockley Cut-Off Road, Katy, TX 77493. Defendant Cotton Commercial USA, Inc. may be served by serving its registered agent for service of process Capitol Corporate Services, Inc., 206 E. 9th Street, Suite 1300, Austin, TX 78701.

V. VENUE AND JURISDICTION

6. This Honorable Court has subject matter jurisdiction over this suit. The damages sought are within the jurisdictional limits of this Honorable Court.

7. Venue in this Honorable Court is proper as against Defendants pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) as all or a substantial part of the acts or omissions giving rise to the claims herein arose in Karnes County, Texas.

VI. FACTUAL BACKGROUND

8. On or about July 1, 2018 a fire occurred at the Newpark facility located at 337 N. Sunset Strip St., Kenedy, TX 78119. The aforementioned location is a drilling fluid products and technical services facility. Despite the abnormally and unreasonably dangerous nature associated with the storage and transport of volatile chemicals, Newpark operated their business in a negligent and unsafe manner near an apartment complex, a RV park, a hotel and other businesses in the middle of Kenedy, Texas.

9. A series of negligent decisions, including the failure to properly service, maintain and keep operational the sprinkler system, by Newpark and operators at the facility led directly to the spread of the fire that contaminated residences and businesses. The fire created a dangerous situation around the facility and overwhelmed residents, fire fighters, police officers and medical professionals responding to the scene of the fire.

10. Plaintiffs are tenants at Country Village Apartments and Country Village RV Park located respectively at 369 and 304 Freeny Dr., Kenedy, TX 78119 across the street from and on the same block as the Newpark facility. Plaintiffs were evacuated from their respective residences by first responders during the fire because the large amount of smoke, threat of explosions and of the fire spreading was too great a risk to remain in their residences. During the evacuation, emergency responders left the front doors of the evacuated residences open which allowed smoke, soot and chemical residues to enter Plaintiffs' residences. The fire burned for the next five days from July 1, 2018 through July 6, 2018. Throughout the duration of the fire, Plaintiffs were forced to find alternative housing. Additionally, smoke from the fire infiltrated their residences and caused extensive damage to Plaintiffs' personal property.

11. Prior to the arrival of first respondents, Plaintiffs were alerted by a Country Village Apartment maintenance worker that there was a fire. In a traumatic sequence of events, Plaintiffs were forced to leave behind personal property and pets in their residences. Plaintiffs were initially told by first responders that they would be able to return to their residences within a few hours. After approximately six hours of waiting in nearby parking lots and not knowing what was happening to their residences, Plaintiffs were told that they would not be able to return to their residences. Some Plaintiffs and their families – including children as young as two weeks old – were forced to sleep in their vehicles, others left town to stay with family and others sought refuge

in local hotels.

12. During the next few days, Plaintiffs were allowed back on to the property for no longer than a few minutes to rush into their smoke laden residences to collect their necessary belongings and pets. Each Plaintiff has a unique story regarding how they were physically impacted by their exposure to the smoke, soot and chemical residues that filled their residences.

13. Due to their exposure to the smoke, soot and chemical residues, Plaintiffs have experienced and continue to experience various personal injuries, including but not limited to, respiratory complications, headaches, dizziness, nausea, fainting, sore throats, itching and burning eyes. Additionally, Plaintiffs missed time from work and will continue to miss time from work due to the fire and have incurred lost wages. The aforementioned sequence of events and the uncertainty of what the future may hold for Plaintiffs has caused each of them to suffer a great deal of mental anguish. In terms of their mental anguish, Plaintiffs are fearful for their safety and for the safety of their minor children, worried about the cancer causing and toxic chemicals they have been exposed to, are experiencing disruption of their normal sleep patterns due to anxiety and worried about their ability to continue to work and provide for their families.

14. On or about July 7, The Kenedy Police Department advised residents living in Country Village RV Park and Country Village Apartment Units 2, 3, 4 and 5 that they could return to the respective residences. On or about July 8, 2018, the remaining apartment units were cleared. Upon information and belief, Newpark hired Cotton to remediate Plaintiffs' residences. However, upon returning to their residences, Plaintiffs discovered smoke damage, soot, ash and chemical residues on their personal belongings and on the window seals and walls of their residences. Furthermore, the strong odor of smoke and chemicals remained in their residences even after the residences were purported to have been remediated. To add insult to injury, Plaintiffs also

discovered that many of their personal items were stolen out of their residences during the fire and subsequent evacuation.

15. Newpark has failed to provide adequate assurances to Plaintiffs that their residences are safe and habitable. As a result, many Plaintiffs cannot live in their residences and fear that the smoke damage, soot, ash and chemical residue on the surfaces of their residences, air conditioning vents and personal property poses a serious health risk to them and their children. Plaintiffs also fear that the carcinogenic chemicals may cause them to have cancer in the future. The uncertainty and fear the toxic smoke, soot, ash and carcinogenic chemical residues have caused Plaintiffs to suffer a great deal of mental anguish. As a result, Plaintiffs need alternative housing arrangements until the remediation process is complete and adequate assurances have been made that their homes are safe. Plaintiffs are currently in limbo and are struggling to make ends meet due, in part, to having to pay rent while also having to pay out of pocket costs for alternative housing, medical bills and replacing personal property items that have been destroyed. Plaintiffs have begun receiving medical treatment for the mental and physical symptoms they have suffered as a result of being exposed to the smoke and chemicals released by the fire and the medical bills will continue to mount in this matter.

VII. EMPLOYEE, AGENCY, RESPONDEAT SUPERIOR, VICARIOUS LIABILITY AND DIRECT LIABILITY AS AGAINST BOTH DEFENDANTS

16. Paragraphs 1-15 above are hereby adopted and incorporated by reference.

17. All of the employees and/or agents of Defendant Newpark and Defendant Cotton were acting within the course and scope of their employment and/or agency at all times for activities alleged in this petition.

18. Plaintiffs therefore invoke the doctrines of employee, agency, respondeat superior, vicarious liability, direct liability and any and all other related theories of liability based upon the

employer-employee and/or principal-agent relationship of the Defendants and their employees and/or agents.

VIII. NEGLIGENCE AND GROSS NEGLIGENCE AS AGAINST DEFENDANT NEWPARK

19. Paragraphs 1-18 above are hereby adopted and incorporated by reference.

20. Defendant Newpark is liable to Plaintiffs for negligently destroying Plaintiffs' personal property and causing Plaintiffs' to suffer serious personal injuries.

21. The dangerous nature of Newpark's business activities of storing and transporting drilling fluids imposed a common law duty on Newpark to conduct their business activities with the degree of care commensurate with the danger involved and with skill. By causing extensive damage to Plaintiffs' personal property and serious personal injuries to Plaintiffs, Newpark breached their common law duties.

22. Newpark is liable for various acts of negligence and gross negligence. Each of the acts of negligence and gross negligence were a proximate cause of the personal property damages and serious personal injuries sustained by Plaintiffs. The various acts of negligence and gross negligence include, but are not limited to, the following:

- a. Failing to conduct their business activities with the degree of care commensurate with the danger involved;
- b. Failing to perform with the care that would have been maintained by a drilling fluids storage and technical services company of ordinary prudence under the same or similar circumstances;
- c. Failing to perform with the skill that would have been maintained by a drilling fluids storage and technical services company of ordinary prudence under the same or similar circumstances;

- d. Failing to safely store hazardous chemicals at the Newpark facility;
- e. Failing to safely transport hazardous chemicals in and out of the Newpark facility;
- f. Failing to safely load and unload hazardous chemicals onto trucks at the Newpark facility;
- g. Failing to properly service, maintain and keep operational the sprinkler system(s) at the Newpark facility;
- h. Failing to properly service, maintain and keep operational the smoke detectors, fire alarms and other types of fire protection equipment at the Newpark facility;
- i. Failing to contain the spread of the fire into Plaintiffs' apartments and RVs; and
- j. Destroying the contents of and personal property in Plaintiffs' apartments and RVs.

23. Each and/or all of the foregoing negligent acts and/or omissions, as well as, those pled throughout this pleading on the part of each and/or all of the Defendants, was and/or were a proximate cause of the occurrence in question and resulting damages to Plaintiffs set forth herein. The acts and/or omissions of Defendants set forth herein were committed with gross negligence and/or malice, as those terms are used in Chapter 41 of the Texas Civil Practices and Remedies Code, such as to justify the imposition of punitive damages against Defendant Newpark.

24. Plaintiffs seek as against Defendant Newpark, based upon negligence and/or gross negligence, damages for personal property loss, actual damages, out of pocket expenses, physical pain and mental anguish in the past; physical pain and mental anguish that in reasonable probability will be sustained in the future; medical bills in the past; medical bills that in reasonable probability will be incurred in the future; lost wages in the past and future; loss of earnings capacity in the past

and future; disfigurement sustained in the past; disfigurement that in reasonable probability will be sustained in the future; physical impairment sustained in the past; and physical impairment that in reasonable probability will be sustained in the future; punitive damages; costs of court; pre-judgment interest; and post-judgment interest.

IX. NEGLIGENCE ACTIVITIES AS AGAINST DEFENDANT NEWPARK

25. Paragraphs 1-24 above are hereby adopted and incorporated by reference.

26. Defendant Newpark was engaged in negligent activities that made the drilling fluids storage and technical services operations that were being conducted on July 1, 2018 at the Newpark facility unreasonably dangerous and unsafe. Newpark's negligent activities proximately caused the personal property damages and serious personal injuries sustained by Plaintiffs.

27. Each and/or all of the foregoing negligent acts and/or omissions, as well as, those pled throughout this pleading on the part of each and/or all of the Defendants, was and/or were a proximate cause of the occurrence in question and resulting damages to Plaintiffs set forth herein. The acts and/or omissions of Defendants set forth herein were committed with gross negligence and/or malice, as those terms are used in Chapter 41 of the Texas Civil Practices and Remedies Code, such as to justify the imposition of punitive damages against Defendant Newpark.

28. Plaintiffs seek as against Defendant Newpark, based upon negligent activities, damages for personal property loss, actual damages, out of pocket expenses, physical pain and mental anguish in the past; physical pain and mental anguish that in reasonable probability will be sustained in the future; medical bills in the past; medical bills that in reasonable probability will be incurred in the future; lost wages in the past and future; loss of earnings capacity in the past and future; disfigurement sustained in the past; disfigurement that in reasonable probability will be sustained in the future; physical impairment sustained in the past; and physical impairment that in

reasonable probability will be sustained in the future; punitive damages; costs of court; pre-judgment interest; and post-judgment interest.

X. PRIVATE NUISANCE AS AGAINST DEFENDANT NEWPARK

29. Paragraphs 1-28 above are hereby adopted and incorporated by reference.

30. Defendant Newport is liable to Plaintiffs for private nuisance. The elements of a cause of action for private nuisance are: (1) the plaintiffs have a private interest in land; (2) the defendants interfered with or invaded the plaintiffs' interest by conduct that was (a) negligent, (b) intentional and unreasonable, and/or (c) abnormal and out of place in its surroundings; (3) the defendants' conduct resulted in a condition that substantially interfered with the plaintiffs' private use and enjoyment of the land; and (4) the nuisance caused injury to the plaintiffs. The elements of private nuisance are met in this case.

31. Plaintiffs have an interest in the land where they live at the Country Village Apartments and Country Village RV Park located respectively at 369 and 304 Freeny Dr., Kenedy, TX 78119 across the street from and on the same block as the Newport facility made the basis of Plaintiffs' petition. Defendants have invaded the property interest Plaintiffs have in 369 and 304 Freeny Dr. by the negligent conduct set forth above which caused toxic smoke, soot and chemical residues to penetrate Plaintiffs' residences. Moreover, Defendant Newport's conduct was abnormal and out of place in its surroundings. The smell of smoke and chemicals has and continues to linger inside Plaintiffs' residences. This conduct has substantially interfered with the use of the land as homes for Plaintiffs and their families. Plaintiffs have been injured in that the actions of Defendant Newport have caused Plaintiffs to incur extensive personal property damages and to suffer various personal injuries, including but not limited to, respiratory complications, headaches, dizziness, nausea, fainting, sore throats, itching and burning eyes. Plaintiffs have been further

injured in that Plaintiffs have missed time from work and will continue to miss time from work due to the fire and have incurred lost wages. The aforementioned sequence of events and the uncertainty of what the future may hold for Plaintiffs has caused each of them to suffer a great deal of mental anguish. In terms of their mental anguish, Plaintiffs are fearful for their safety and for the safety of their minor children, worried about the cancer causing and toxic chemicals they have been exposed to, are experiencing disruption of their normal sleep patterns due to anxiety and are worried about their ability to continue to work and provide for their families. Plaintiffs have statutory and common law standing to assert this cause of action.

32. The acts of Defendants, as set forth herein on private nuisance, were committed by Defendant Newpark with fraud and/or malice, as those terms are used in Chapter 41 of the Texas Civil Practices and Remedies Code, such as to justify the imposition of punitive damages against Defendant Newpark.

33. Plaintiffs seek as against Defendant Newpark, based upon private nuisance, damages for personal property loss, actual damages, out of pocket expenses, physical pain and mental anguish in the past; physical pain and mental anguish that in reasonable probability will be sustained in the future; medical bills in the past; medical bills that in reasonable probability will be incurred in the future; lost wages in the past and future; loss of earnings capacity in the past and future; disfigurement sustained in the past; disfigurement that in reasonable probability will be sustained in the future; physical impairment sustained in the past; and physical impairment that in reasonable probability will be sustained in the future; punitive damages; costs of court; pre-judgment interest; and post-judgment interest.

XI. NEGLIGENCE AS AGAINST DEFENDANT COTTON

34. Paragraphs 1-33 above are hereby adopted and incorporated by reference.

35. Defendant Cotton is liable to Plaintiffs for negligently undertaking to perform services for Plaintiffs.

36. When Cotton agreed to remediate Plaintiff's respective residences, it knew that the services it agreed to undertake were necessary to protect the Plaintiffs' interests in their residences. Nonetheless, Cotton negligently undertook the performance of its common law and contractual duties by failing to exercise reasonable care in performing its services.

37. Cotton, among other things, failed to effectively remediate Plaintiffs' respective residences which caused a continuing health risk to Plaintiffs and also converted Plaintiffs' personal property.

38. Plaintiffs relied on Cotton's agreement to remediate their respective residences in that they only agreed to return to their residences based on assurances that their residences were properly remediated and safe to live in.

39. Cotton's negligent undertaking has caused Plaintiffs to incur personal property damages and serious personal injuries. Plaintiffs seek as against Defendant Cotton, based upon negligent undertaking, damages for personal property loss, actual damages, out of pocket expenses, physical pain and mental anguish in the past; physical pain and mental anguish that in reasonable probability will be sustained in the future; medical bills in the past; medical bills that in reasonable probability will be incurred in the future; lost wages in the past and future; loss of earnings capacity in the past and future; disfigurement sustained in the past; disfigurement that in reasonable probability will be sustained in the future; physical impairment sustained in the past; and physical impairment that in reasonable probability will be sustained in the future; punitive damages; costs of court; pre-judgment interest; and post-judgment interest.

XII. CONVERSION AS AGAINST DEFENDANT COTTON

40. Paragraphs 1-39 above are hereby adopted and incorporated by reference.

41. Due to the evacuation ordered by the City of Kenedy, Plaintiffs were unable to protect their property during the days immediately following the fire. Defendant Cotton illegally exercised dominion and control over numerous personal property items owned by Plaintiffs. Cotton converted these personal property items by taking them while inside Plaintiffs' respective residences during their negligent remediation attempts. The whereabouts of Plaintiffs' converted personal property is unknown, but needs to be returned to Plaintiffs.

42. Plaintiffs seek an award of money to compensate for the loss and/or damages resulting from the conversion of the personal property at issue in this matter.

43. The conversion committed by Cotton justifies the imposition of punitive damages against Defendant Cotton.

44. Plaintiffs seek, as a result of the conversion on the part of Defendant Cotton, Plaintiffs' actual damages, punitive damages, costs of court, pre-judgment interest, and post-judgment interest.

XIII. REQUESTS FOR DISCLOSURE

45. Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

XIV. JURY DEMAND

46. Plaintiffs respectfully request a trial by jury.

XV. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to

appear and answer herein; that upon a final trial by jury, that a Judgment be rendered for Plaintiffs against the Defendants for actual damages, out of pocket expenses, physical pain and mental anguish in the past; physical pain and mental anguish that in reasonable probability will be sustained in the future; medical bills in the past; medical bills that in reasonable probability will be incurred in the future; lost wages in the past and future; loss of earnings capacity in the past and future; disfigurement sustained in the past; disfigurement that in reasonable probability will be sustained in the future; physical impairment sustained in the past; and physical impairment that in reasonable probability will be sustained in the future; punitive damages in an amount the jury deems reasonable; costs of court; pre-judgment interest; and post-judgment interest; and for such other and further relief to which the Plaintiffs may show themselves justly entitled.

Respectfully submitted,

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