

NO. 096-267963-13

MARIA LEMUS and	§	IN THE DISTRICT COURT
SERGIO MOLINA, individually and	§	
as next friends of	§	
SERGIO E. MOLINA, a minor child,	§	
Plaintiffs	§	
	§	
V.	§	96 TH JUDICIAL DISTRICT
	§	
CLEBURNE METAL WORKS LLC	§	
d/b/a CLEBURNE SHEET METAL,	§	
FRED COUCH, TONYA COUCH, and	§	
ETHAN COUCH,	§	
Defendants.	§	TARRANT COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

Maria Lemus and Sergio Molina, individually and as next friends of Sergio E. Molina, a minor child, Plaintiffs, complain of Cleburne Metal Works LLC d/b/a Cleburne Sheet Metal, Fred Couch, Tonya Couch, and Ethan Couch, Defendants, and for cause of action show this Honorable Court the following:

I. DAMAGES

1. Plaintiffs disclose that they are seeking damages in excess of One Million Dollars (\$1,000,00.00). *Texas Rule of Civil Procedure 47(c)*.
2. Plaintiffs disclose that they are seeking damages in the maximum amount of \$20,000,000.00 (Twenty Million Dollars). Their damages are enormous, cannot be determined at this time, and are within the province of the jury to determine at time of trial.

II. DISCOVERY CONTROL PLAN

3. Plaintiffs request that discovery be conducted under Level 3, Rule 190.4, *Texas*

III. PARTIES

Plaintiffs:

4. Maria Lemus, whose Texas driver's license number is *****683 and whose Social Security number is ***-**-*805, resides in Fort Worth, Texas.

5. Sergio Molina, whose Texas driver's license number is *****486 and whose Social Security number is ***-**-*470, resides in Fort Worth, Texas.

6. Sergio E. Molina, a minor child, has no driver's license. His Social Security number is ***-**-*826. He resides in Fort Worth, Texas.

Defendants:

7. Cleburne Metal Works LLC d/b/a Cleburne Sheet Metal ("Defendant Company") is a corporation duly formed and existing under the laws of the State of Texas. It may be served with process by serving its president and registered agent, Fred Couch, 6432 Nine Mile Bridge Road, Fort Worth, Texas 76135, 4324 Silver Creek Road, Fort Worth, Texas 76108, or at 1719 Burleson Retta Road, Burleson, Texas 76028 or wherever he may be found.

8. Fred Couch, a Texas resident, may be served at 6432 Nine Mile Bridge Road, Fort Worth, Texas 76135, 4324 Silver Creek Road, Fort Worth, Texas 76108, 1719 Burleson Retta Road, Burleson, Texas 76028, or wherever he may be found.

9. Tonya Couch, a Texas resident, may be served at 4324 Silver Creek Road, Fort Worth, Texas 76108, 1719 Burleson Retta Road, Burleson, Texas 76028 or wherever she may be found.

10. Ethan Couch, a Texas resident, may be served at 4324 Silver Creek Road, Fort Worth, Texas 76108, 1719 Burleson Retta Road, Burleson, Texas 76028, or wherever he may be found.

IV. JURISDICTION AND VENUE

11. Plaintiffs sue for an amount in excess of the jurisdictional minimum of this Court. Venue is proper in Tarrant County because the motor vehicle collision that is the subject of this litigation occurred in this county and all parties reside in this county.

V. FACTS

12. This lawsuit arises out of one of the most catastrophic motor vehicle collisions in Tarrant County history.

13. Late on the night of Saturday, June 15, 2013 at approximately 11:58 p.m., Defendant Ethan Couch was speeding in a huge red 2012 Ford F-350 pickup truck on Burleson-Retta Road in Burleson, Tarrant County, Texas.

14. The truck was owned by Defendant Cleburne Metal Works LLC d/b/a Cleburne Sheet Metal which is based in Fort Worth. The truck was entrusted to Ethan Couch by his father, Defendant Fred Couch, the president of Defendant Company.

15. Ethan Couch significantly had only turned 16 two months before, on April 11, 2013.

16. Ethan Couch's driver's license significantly restricted him to driving only when a licensed operator aged 21 or over (e.g. his mother or father, Defendants Fred and Tonya Couch) was seated next to him in the front seat.

17. Couch significantly was a small boy, only weighing 120 pounds and standing 5 feet, 8 inches tall.

18. Couch had started drinking that evening and violated Texas state law since he was many years under the legal drinking age of 21.

19. Couch apparently stole more beer from the Wal-Mart in Burleson and further violated Texas state law.

20. Couch continued drinking in his home, unsupervised by his parents, Defendants Fred and Tonya Couch, or any other adults.

21. Couch, who did not have the required licensed driver who was at least 21 years of age next to him in the front seat, left to go “joy riding” in his father’s company’s truck.

22. Sergio E. Molina was a passenger in the bed of the truck. There were five other young passengers inside the truck and another boy was seated next to him in the bed.

23. Couch left his unsupervised home at 1719 Burleson Retta Road and rapidly accelerated his powerful truck. In the few seconds it took for him to arrive at 1551 Burleson Retta Road, a distance of only two tenths (.2) of a mile away, it is estimated that he was *already* traveling at a speed of approximately 70 miles per hour on this narrow, unlit residential street. The speed limit is only 40 miles per hour, which would be fast on this narrow road at night.

24. **Couch was Driving While Intoxicated (DWI).His blood alcohol content was an incredibly high .24 g/dL -- three times the legal limit of .08 g/dL.** *Texas Penal Code*, Section 49.04.

25. **Couch was also Driving Under the Influence (DUI). His blood alcohol content was an incredibly high 24 times the legal limit of “any detectable amount” for a person under the age of 21 years of age.** *Texas Alcoholic Beverage Code*, Section 106.041(a).

26. Ahead of Couch to the right, a 2000 Mercury Mountaineer was parked off the road with a flat tire. Four “Good Samaritans” had generously come to the scene to assist its driver and were standing outside of the vehicle.

27. Couch was not watching the road ahead of him and may have been texting and/or using his cell phone.

28. Instead of slowing down and even stopping to help, as these other people had done,

Couch lost control of Defendant Company's truck at approximately 70 miles per hour. The boy drove off the road, struck a Mercury Mountaineer, and crashed his truck into the four pedestrians. Couch also hit a Chevrolet Silverado before crashing the truck into a tree. Couch's truck flipped upside down and landed on its roof.

29. Sergio E. Molina was hurled from the truck and landed on his head.

30. The four pedestrians tragically lost their lives.

31. In addition to the deceased, nine other people were injured, not including Couch. Property damage to the vehicles was enormous. It is miraculous that more people were not killed.

32. Officer Robert Kelley of the Tarrant County Sheriff's Office and other law enforcement officials investigated the cause of the collision and concluded that Couch's driving while intoxicated, speeding, and negligence were the sole proximate causes of the horrific collision.

33. A copy of the Texas Peace Officer's Crash Report is attached as Exhibit "A" and is incorporated by reference for all purposes.

34. **It is believed that Couch will be charged with four counts of intoxication manslaughter and two or more counts of intoxication assault.**

35. Young Couch *already* had a history of alcohol-related offenses before this collision. On February 10, 2013 – when he was only 15 years old – Couch was apparently arrested at approximately 1:00 a.m. drinking vodka and/or beer by the Police Department of Lakeside, Texas and charged with the criminal offenses of

A. Minor in Consumption of Alcohol; and

B. Minor in Possession of Alcohol.

36. **Couch plead no contest to these charges and was sentenced on or about March 19, 2013 -- less than three months before this alcohol-fueled collision.**

37. Couch's mother, Defendant Tonya Couch, was present at this court hearing and was obviously aware of Ethan Couch's problem with illegally drinking alcohol.

VI. NEGLIGENCE: ETHAN COUCH

38. Ethan Couch had a duty to exercise the degree of care that a reasonably careful driver would use to avoid harm to others under circumstances similar to those described herein.

39. Plaintiffs' damages and injuries were proximately caused by Ethan Couch's negligent, careless, and reckless disregard of said duty.

40. The negligent, careless, and reckless disregard of duty of Ethan Couch consisted of, but is not limited to, the following violations of Texas state law, acts and omissions:

A. Driving while intoxicated in violation of the *Texas Penal Code*, Section 49.04(a);

B. Driving a motor vehicle while intoxicated and causing serious bodily injury to another person in violation of the *Texas Penal Code*, Section 49.07(a) (intoxication assault – third degree felony);

C. Driving a motor vehicle while intoxicated and causing the death of another person by accident or mistake in violation of the *Texas Penal Code*, Section 49.08(a) (intoxication manslaughter – second degree felony);

D. Driving his vehicle in excess of the posted speed limit of 40 miles per hour in violation of the *Texas Transportation Code*, Section 545.351(b)(5);

E. Driving recklessly in violation of the *Texas Transportation Code*, Section 545.401;

F. Driving an open-bed pickup truck when a child younger than 18 years of age is occupying the bed of the truck in violation of the *Texas Transportation Code*, Section

545.414(a);

G. Driving a motor vehicle with more than one passenger in the vehicle who is under 21 years of age who is not a family member in violation of the *Texas Transportation Code*, Section 545.424(a)(2), the Texas Graduated Driver License Program;

H. Failing to operate his vehicle at a reasonable and prudent rate of speed under the conditions and having regard for actual and potential hazards then existing in violation of the *Texas Transportation Code*, Section 545.351(b)(1);

I. Failing to control the speed of his vehicle as necessary to avoid colliding with another person or vehicle that is on the highway in violation of the *Texas Transportation Code*, Section 545.351(b)(2);

J. Failing to drive at an appropriate reduced speed if a special hazard exists with regard to traffic, including pedestrians or highway conditions in violation of the *Texas Transportation Code*, Section 545.351(c)(5);

K. Failing to maintain a clear and reasonable distance between Defendant's vehicle and the other vehicles which would permit him to bring it to a safe stop without colliding into the other vehicles in violation of the *Texas Transportation Code*, Section 545.062(a);

L. Failing to drive in a single lane of traffic in violation of Section 545.060(a)(1) of the *Texas Transportation Code*;

M. Failing to drive with a licensed driver 21 years or older seated in the front seat in violation of Section 545.424 of the *Texas Transportation Code*;

N. Consuming alcohol while being a minor in violation of the *Texas Alcoholic Beverage Code*, Section 106.04;

- O. Driving while under the influence of alcohol while being a minor in violation of the *Texas Alcoholic Beverage Code*, Section 106.041;
- P. Possessing an alcoholic beverage(s) while being a minor in violation of the *Texas Alcoholic Beverage Code*, Section 106.06;
- Q. Failing to abide by the above-listed 16 laws of the State of Texas which constitutes negligence *per se*;
- R. Failing to apply his brakes in a timely and prudent manner to avoid the collisions;
- S. Failing to turn to the right or left in a timely and prudent manner to avoid the collisions;
- T. Failing to take proper evasive action to avoid the collisions;
- U. Failing to keep a proper lookout for Plaintiff's safety that would have been maintained by a driver of ordinary prudence under the same or similar circumstances;
- V. Failing to warn Plaintiffs that he would be operating a vehicle recklessly and in his drunken condition on the night in question;
- W. Driving while looking at his cell phone, texting, emailing, or otherwise using a cellular device which diverted his attention from the road in front of him;
- X. Failing to drive in a reasonable and prudent manner;
- Y. Failing to obtain or have the necessary knowledge, training and experience to safely operate his vehicle;
- Z. Failing to maintain control of his vehicle;
- AA. Failing to exercise the degree of care as would have been exercised by a driver of ordinary prudence under the same or similar circumstances; and

BB. Failing to regard the safety and welfare of other drivers and pedestrians.

41. Each of the foregoing acts and/or omissions, taken together or individually, constitutes negligence and each proximately caused the collision and the injuries and damages sustained by Plaintiffs.

42. The negligence of Defendant Ethan Couch, by violating the above-listed statutes in the *Texas Penal Code*, the *Transportation Code*, and the *Texas Alcoholic Beverage Code*, constitutes negligence as a matter of law.

VII. NEGLIGENCE PER SE: ETHAN COUCH

43. Ethan Couch's conduct described herein constitutes an unexcused breach of duty imposed by the traffic laws and regulations of the United States, the State of Texas and Tarrant County, including but not limited to the *Texas Penal Code*, the *Texas Transportation Code*, and the *Texas Alcohol Beverage Code*.

44. Plaintiffs are members of the class of drivers and passengers using the roads and highways of Texas and Tarrant County that these laws and regulations were designed to protect.

45. Couch's unexcused breach of the duty imposed by these laws and regulations proximately caused Plaintiff's injuries described herein.

VIII. NEGLIGENT ENTRUSTMENT: CLEBURNE METAL WORKS LLC d/b/a CLEBURNE SHEET METAL

46. On June 15, 2013 Cleburne Metal Works LLC d/b/a Cleburne Sheet Metal was the owner of the truck operated by Ethan Couch.

47. Defendant Company entrusted the truck on the highways of Texas to Ethan Couch, a drunk, reckless, inexperienced, previously arrested, and incompetent driver.

48. The president and owner of Defendant Company, Fred Couch, was the father of Ethan Couch. He knew, or through the exercise of reasonable care should have known, that his son was a reckless and incompetent driver.

49. As described above, Ethan Couch was negligent on the occasion in question.

50. Ethan Couch's negligence was the proximate cause of Plaintiffs' damages.

51. The negligent, careless, and reckless disregard of duty of Defendant Company consisted of, but is not limited to, one or more of the following acts and omissions:

A. Failing to properly train Ethan Couch in the use of its company's truck;

B. Entrusting its company's truck to Couch;

C. Permitting Couch to operate its company's truck without a licensed driver who was 21 years of age or old next to him in the front seat;

D. Permitting Couch to operate its company's truck in an unsafe manner;

E. Permitting Couch to operate its company's truck after he was convicted of being a minor in possession of alcohol and a minor in consumption of alcohol when he was only 15 years old, and only a few months before this fatal collision occurred;

F. Failing to properly supervise Couch; and

G. Failing to establish, enforce and follow company safety policies and procedures.

IX. NEGLIGENT ENTRUSTMENT: FRED COUCH

52. Defendant Fred Couch, the father of Ethan Couch, is the owner of Defendant Company.

53. On June 15, 2013 Fred Couch entrusted his company's truck on the highways of Texas to Ethan Couch, a drunk, reckless, inexperienced, untrustworthy, and incompetent driver.

54. Ethan Couch already had two alcohol-related offenses despite the fact that he had just turned 16 years old.

55. Fred Couch knew, or through the exercise of reasonable care should have known, that his son was a reckless and incompetent driver and that he might drive his company's truck when he was intoxicated.

56. Fred Couch was not present supervising his son, Ethan Couch, prior to the collision.

57. Plaintiffs Maria Lemus and Sergio Molina, who were not present in the Couch's home before the collision, relied on said Defendant to properly supervise his son in *loco parentis* and insure that their child would not be injured.

58. As described above, Ethan Couch was negligent on the occasion in question.

59. Ethan Couch's negligence was the proximate cause of Plaintiffs' damages.

60. The negligent, careless, and reckless disregard of duty of Fred Couch consisted of, but is not limited to, one or more of the following acts and omissions:

- A. Entrusting his company's truck to Couch;
- B. Failing to properly train Ethan Couch in the use of his company's truck;
- C. Permitting Couch to operate his company's truck without a licensed driver who was 21 years of age or older next to him in the front seat;
- D. Permitting Couch to operate his company's truck in an unsafe manner;
- E. Permitting Couch to operate his company's truck after he was convicted of being a minor in possession of alcohol and a minor in consumption of alcohol when he was only 15 years old, and just a few months before this catastrophic collision;
- F. Failing to properly supervise Couch;
- G. Failing to warn Plaintiffs that his son would be operating the vehicle in his

drunken and reckless condition on the night in question; and

H. Failing to establish, enforce and follow his company's safety policies and procedures.

X. NEGLIGENT ENTRUSTMENT: TONYA COUCH

61. Defendant Tonya Couch is the mother of Ethan Couch.

62. On June 15, 2013 Tonya Couch entrusted the truck on the highways of Texas to Couch, a drunk, reckless, and incompetent driver.

63. Couch had two alcohol-related convictions despite the fact that he had just turned 16 years old.

64. Tonya Couch knew, or through the exercise of reasonable care should have known, that her son was a reckless and incompetent driver.

65. Tonya Couch was not present supervising her son, Ethan Couch, prior to the collision.

66. Plaintiffs Maria Lemus and Sergio Molina, who were not present in the Couch's home before the collision, relied on said Defendant to properly supervise her child, Ethan Couch, in *loco parentis* and insure that their child would not be injured.

67. As described above, Ethan Couch was negligent on the occasion in question.

68. Ethan Couch's negligence was the proximate cause of Plaintiffs' damages.

69. The negligent, careless, and reckless disregard of duty of Tonya Couch consisted of, but is not limited to, one or more of the following acts and omissions:

A. Entrusting the truck to Ethan Couch;

B. Failing to properly train Ethan Couch in the use of her husband's company's truck;

C. Permitting Ethan Couch to operate the truck without a licensed driver who

was 21 years of age or older next to him in the front seat;

D. Permitting Couch to operate the truck in an unsafe manner;

E. Permitting Couch to operate her husband's company's truck after he was convicted of being a minor in possession of alcohol and a minor in consumption of alcohol when he was only 15 years old, and just a few months before this catastrophic collision;

F. Failing to properly supervise Couch; and

G. Failing to warn Plaintiffs that her son would be operating the vehicle in his drunken and reckless condition on the night in question.

XI. DAMAGES

70. As a result of the collision described above, Plaintiff Sergio E. Molina suffered catastrophic injuries including a **traumatic brain injury**. His skull was fractured. He developed a subdural hematoma.

71. **Sergio has been in a coma or vegetative state since the collision almost three months ago.**

72. **Sergio has already had to undergo several surgeries to his brain and skull and may have to undergo additional brain surgeries in the future. He has also developed illnesses and infections and has been injured while he has been hospitalized.**

73. Sergio's entire body was bruised, battered, and contused. He suffered from multiple injuries which may be permanent and which have had a serious effect on his health and well-being. Sergio has endured unimaginable physical pain and mental suffering and will continue to suffer extreme pain and mental anguish long into the future if not for the rest of his life.

74. **Sergio's medical expenses already exceed the estimated sum of \$600,000.00 (Six Hundred Thousand Dollars).**

75. **It is not known what his lifetime medical expenses will be, but they may exceed \$10,000,000.00 (Ten Million Dollars) or more, especially if round-the-clock medical care is required. It is not clear when, if ever, Sergio will be able to get out of a bed.**

76. At the time of this collision, Sergio E. Molina was only 15 years of age. He had a life expectancy of an additional 64 years according to the Vital Statistics of the United States, 2008, Life Tables, Volume IIK, Table B, a copy of which will be used at the the trial of this cause. Sergio was in good health and was able to carry out the regular activities of daily life. As a result of this collision, Sergio's ability to carry out the regular activities of daily life and live a normal life has been severely impaired. This ability will be impaired long into the future, if not for the balance of his remaining life.

77. As a direct and proximate result of the collision, Sergio. E. Molina was caused to suffer and incur the following damages:

- A. Medical care and expenses in the past for the necessary care and treatment of the injuries resulting from the collision, such charges being reasonable and necessary and the usual and customary charges where provided;
- B. Medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Physical impairment and disability in the past;
- F. Physical impairment and disability in the future;
- G. Mental impairment and disability in the past;
- H. Mental impairment and disability in the future;

- I. Loss of wage earning capacity;
- J. Mental anguish in the past;
- K. Mental anguish in the future;
- L. Loss of educational opportunity;
- M. Loss of intellectual function;
- N. Loss of body capacities;
- O. Disfigurement; and
- P. Loss of enjoyment of life

78. As a result of the collision described above, Plaintiffs Sergio Molina and Maria Lemus have had to care for their son. Maria Lemus had to leave her job so that she could be next to her son almost all day and night. Maria also has three young children that she has to take care of. Plaintiffs have suffered actual damages in excess of the minimum jurisdictional limits of the Court, including but not limited to mental anguish and emotional trauma, loss of wages in the past, loss of wage earning capacity, reasonable and necessary costs of medical care and treatment including doctors, hospitals, nurses, medicine and other services and supplies in the past, reasonable and necessary costs of medical care and treatment including doctors, hospitals, nurses, medicine and other services and supplies in the future, loss of the services of a minor child, loss of enjoyment of life, gasoline, automobile, parking, and other expenses driving to and staying at Sergio's hospitals and doctors, and other damages.

XII. EXEMPLARY DAMAGES

79. Ethan Couch's acts or omissions described above, when viewed from his standpoint at the time of the collision, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Sergio E. Molina and others. Ethan Couch had actual, subjective

awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others. Based on the facts stated herein, Plaintiffs requests that exemplary damages be awarded to them from Ethan Couch.

80. Defendant Company's acts or omissions described above, when viewed from the standpoint of said Defendant, at the time of the collision, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to the minor Plaintiff and others. Defendant Company had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others. Based on the facts stated herein, Plaintiffs request that exemplary damages be awarded to them from Defendant Company.

81. Fred Couch's acts or omissions described above, when viewed from his standpoint at the time of the collision, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to the minor Plaintiff and others. Fred Couch had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others. Based on the facts stated herein, Plaintiffs request that exemplary damages be awarded to them from Fred Couch.

82. Tonya Couch's acts or omissions described above, when viewed from her standpoint at the time of the collision, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to the minor Plaintiff and others. Tonya Couch had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others. Based on the facts stated herein, Plaintiffs request that exemplary damages be awarded to them from Tonya Couch.

83. Plaintiffs are entitled to recover exemplary damages from Defendants. *Texas Civil Practices & Remedies Code*, Sections 41.008(c)(7) and (14)

XIII. OTHER CLAIMS

84. Plaintiffs further assert all other legal causes of action against Defendants and any related entity of Defendants, including any predecessors and successors in interest, any individuals who have fraudulently or otherwise depleted the assets of Defendants, any other person responsible for the losses alleged herein which may exist at law arising from the facts and events described herein.

XIV. NOTICE TO DEFENDANTS: FRAUDULENT CONVEYANCES

85. Defendants are prohibited from selling transferring, hiding, encumbering, diminishing the value of, or in any way disposing of their assets pursuant to the Uniform Fraudulent Transfer Act, Chapter 24, *Texas Business and Commerce Code*.

XV. TRIAL BY JURY

86. Plaintiffs hereby request a trial by jury.

XVI. REQUESTS FOR DISCOVERY

87. Plaintiffs request that Defendants individually respond to the attached Requests for Disclosures.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to appear and answer herein, and that upon final trial, judgment be entered for Plaintiffs against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages; pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the maximum rate allowed by law; costs of court; and such other and further relief to which they may be entitled, at law or in equity.

Respectfully submitted,

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