

CAUSE NO. 2021-63749

Bennie McKenzie,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
Westlake Chemical Corporation;	§	
Westlake Chemical Energy LLC;	§	
Westlake Chemical OpCo LP;	§	
Cardinal Culinary Services, LLC; and	§	
Wastewater Specialties, LLC	§	
	§	
<i>Defendants.</i>	§	189th JUDICIAL DISTRICT

PLAINTIFFS' SIXTH AMENDED PETITION

COMES NOW, Bennie McKenzie, Brian K. Jones, Ricky Crumbley, Robert Cleveland, Gary Magnum, Damian Rice, Eugene Sonnier, Adrian Payagan, True Abel, Kenyon Hadley, Jonathan Pitts, Christian Sutton, Nima Ghannad Ranjbar, Deanna Frazier, Paul Thierry, Jeffrey Massey, Britta Murdock, Dave Davis, Anjoneka West, Edward James, Javonte Harris, and Courtney Sonnier (“Plaintiffs”) complaining of Westlake Chemical Corporation, Westlake Chemical Energy LLC, Westlake Chemical OpCo LP (“Westlake Defendants”), Cardinal Culinary Services, LLC, and Wastewater Specialties, LLC (collectively, “Defendants”) and would respectfully show the Court the following:

I.

DISCOVERY LEVEL

1. Discovery in this matter may be conducted under Level 2 of the Texas Rules of Civil Procedure.

II.

NATURE OF ACTION

2. This suit arises out of injuries suffered by Plaintiffs when they were severely injured as a direct result of Defendants' negligent and grossly negligent conduct.

III.

JURISDICTION AND VENUE

3. Plaintiffs' claims arise under the laws of Texas.

4. This Court has jurisdiction over Plaintiffs' claims because (1) Plaintiffs are not making any federal claims, and (2) complete diversity of citizenship is lacking under 28 U.S.C. § 1441(b) and 28 U.S.C. § 1332(c) as Plaintiffs and certain Defendants are citizens of Texas. Thus, this lawsuit is not removable.

5. Venue for this suit is proper in Harris County under section 15.002(a)(3) of the Texas Civil Practice & Remedies Code because at least one Defendant maintains its headquarters and principal place of business in Harris County, Texas.

IV.

PARTIES

6. Plaintiff Bennie McKenzie is a resident of Texas.

7. Plaintiff Brian K. Jones is a resident of Texas.

8. Plaintiff Ricky Crumbley is a resident of Texas.

9. Plaintiff Robert Cleveland is a resident of Texas.

10. Plaintiff Gary Magnum is a resident of Texas.

11. Plaintiff Damian Rice is a resident of Texas.

12. Plaintiff Eugene Sonnier is a resident of Texas.

13. Plaintiff Adrian Payagan is a resident of Texas.

14. Plaintiff True Abel is a resident of Texas.
15. Plaintiff Kenyon Hadley is a resident of Texas.
16. Plaintiff Jonathan Pitts is a resident of Texas.
17. Plaintiff Christian Sutton is a resident of Texas.
18. Plaintiff Nima Ghannad Ranjbar is a resident of Texas.
19. Plaintiff Deanna Frazier is a resident of Texas.
20. Plaintiff Paul Thierry is a resident of Texas.
21. Plaintiff Jeffrey Massey is a resident of Alabama.
22. Plaintiff Britta Murdock is a resident of Louisiana.
23. Plaintiff Dave Davis is a resident of Texas.
24. Plaintiff Anjoneka West is a resident of Louisiana.
25. Plaintiff Edward James is a resident of Texas.
26. Plaintiff Javonte Harris is a resident of Louisiana.
27. Plaintiff Courtney Sonnier is a resident of Texas.
28. Defendant Westlake Chemical Corporation is a foreign corporation with its principal place of business in Houston, Texas. Defendant Westlake Chemical Corporation has appeared and answered in this suit, and may be served through its attorney of record: William R. Moye, Marilyn S. Cayce, Megan Foy, THOMPSON, COE, COUSINS & IRONS, LLP, One Riverway, Suite 1400, Houston, Texas 77056.

29. Defendant Westlake Chemical Energy LLC is a foreign limited-liability company with its principal place of business in Houston, Texas. Defendant Westlake Chemical Energy LLC has appeared and answered in this suit, and may be served through its attorney of

record: William R. Moyer, Marilyn S. Cayce, Megan Foy, THOMPSON, COE, COUSINS & IRONS, LLP, One Riverway, Suite 1400, Houston, Texas 77056.

30. Defendant Westlake Chemical OpCo LP (“Westlake OpCo”) is a foreign limited partnership with its headquarters in Houston, Texas. Westlake Chemical OpCo LP has appeared and answered in this suit, and may be served through its attorney of record: William R. Moyer, Marilyn S. Cayce, Megan Foy, THOMPSON, COE, COUSINS & IRONS, LLP, One Riverway, Suite 1400, Houston, Texas 77056.

31. Defendant Cardinal Culinary Services, LLC (“Cardinal”) is a Texas limited-liability company that does a substantial amount of business throughout the State. Cardinal may be served with process through its registered agent, Michael D. Robinson II at 5950 FM 517 Road, Alvin, Texas 77511.

32. Defendant Wastewater Specialties, LLC (“Wastewater”) is a foreign limited-liability company that does a substantial amount of business in the state of Texas. The Court has jurisdiction over Wastewater because Wastewater is registered to do business in Texas and at least one other Defendant is a resident of Texas. This defendant may be served with process through its registered agent: Corporate Creations Network, Inc., 5444 Westheimer #1000, Houston, Texas 77056

V.

FACTS

33. On or about September 27, 2021, Plaintiffs were working at Westlake Chemical’s Petro Complex 2 (“Plant”) in Sulphur, Louisiana performing industrial maintenance and cleaning operations. The Plant is owned by Defendant Westlake OpCo LP and operated by Westlake Defendants to manufacture ethylene, styrene, and polyethylene.

34. At the time of the explosion, the Plant was undergoing industrial cleaning and maintenance. Upon information and belief, Westlake Defendants hired Defendants Cardinal and Wastewater among others, to perform these industrial services and repairs.

35. Just before midnight on September 27, 2021, Plaintiffs were operating within the course and scope of their duties when an explosion and fire erupted in the area of the Plant where Plaintiffs were working. As a result of the overpressure from the blast and ensuing fire, Plaintiffs suffered severe mental and physical injuries to all parts of their bodies, including but not limited to, their heads, necks, backs, arms, torsos, and legs.

36. Plaintiffs are undergoing continuous medical treatment for these severe and life altering injuries which include pain and suffering, mental anguish and psychological trauma for which they will likely never recover.

VI.

CAUSES OF ACTION

A. Negligence and Gross Negligence Against All Defendants

37. Plaintiffs repeat and re-allege each allegation contained above.

38. Defendants are negligent and grossly negligent for the following reasons:

- a. failure to properly supervise their crew;
- b. failure to properly train their employees;
- c. failure to provide adequate medical treatment;
- d. failure to provide a safe workplace;
- e. failure to properly inspect the equipment in question;
- f. failure to properly maintain the equipment in;
- g. failure to properly secure the area surrounding the subject equipment prior to its use;

- h. failure to properly supervise the setup of the equipment;
- i. failure to provide proper instruction for the use of the equipment;
- j. failure to detect that the equipment in question was inadequate and not fit for use;
- k. failure to properly construct and design the pipeline(s) involved in the incident;
- l. failure to adequately secure all flammable gases from the pipeline(s) involved in the incident;
- m. failure to warn those individuals at the work site that the equipment in question was dangerous;
- n. failure to properly attend to poorly maintained equipment causing leaks of flammable gases when conducting maintenance;
- o. failure to detect highly flammable gases in the areas where Plaintiff was working;
- p. failure to correct or remedy the dangerous situation knowing residual gases were in the atmosphere where Plaintiff was working; and
- q. other acts deemed negligent and grossly negligent.

39. As a direct and proximate result of Defendants' negligence and gross negligence, Plaintiffs sustained severe injuries to their bodies and minds, which resulted in physical pain, mental anguish, and other medical problems. Plaintiffs have sustained severe pain, physical impairment, cognitive injury, discomfort, mental anguish, and distress. In all reasonable probability, Plaintiffs' physical pain, physical impairment, and mental anguish will continue indefinitely. Plaintiffs have also suffered a loss of earnings in the past, as well as a loss of future earning capacity. Plaintiffs have incurred and will incur pharmaceutical and medical expenses in connection with their injuries.

40. Specifically, as a direct and proximate result of Defendants' negligent and grossly negligent acts and/or omissions, Plaintiffs suffered severe and debilitating injuries when they sustained injuries after the explosion caused by flammable gases at the Plant. Plaintiffs have already been forced to seek medical attention just days after the incident and will require future medical care to obtain any sort of recovery. Plaintiffs have been damaged in a sum far in excess of the minimum jurisdictional limits of this Honorable Court, for which they now sue.

41. Plaintiffs are also entitled to exemplary damages because the aforementioned actions and/or inactions of Defendants amounts to gross negligence. Defendants were aware of the risks involved with performing maintenance operations at a plant that produced flammable petrochemicals but nevertheless, proceeded in conscious indifference to Plaintiffs' safety and welfare. Defendants' actions and/or inactions, viewed objectively, subjected Plaintiffs to an extreme degree of danger.

42. Plaintiffs sustained their injuries because of Defendants' negligence, gross negligence, and malice. As a proximate result of Defendant's negligence and gross negligence, Plaintiffs suffered actual damages in excess of the jurisdictional limits of this Court.

B. Premises Liability Against Westlake OpCo

43. Plaintiffs repeat and re-allege each allegation contained above.

44. At all material times, Westlake OpCo owned, occupied, and/or controlled the area where Plaintiffs were injured. The condition of the area where Plaintiffs were injured posed an unreasonable risk of harm, and Westlake OpCo had actual knowledge or reasonably should have known of the unreasonably dangerous conditions. Nor did Plaintiffs have actual knowledge of the unreasonably dangerous conditions.

45. Plaintiffs were invitees who entered Westlake OpCo's premises with Westlake OpCo's knowledge and for Westlake OpCo's benefit. Westlake OpCo had a duty to either warn Plaintiffs of the unreasonably dangerous conditions or make the unreasonably dangerous conditions reasonably safe. Westlake OpCo breached this duty by failing to warn Plaintiffs of the known and unreasonably dangerous conditions and by failing to make the unreasonably dangerous conditions reasonably safe. Westlake OpCo's breach proximately caused Plaintiffs' injuries.

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VII.

DAMAGES

46. As a result of said occurrences, all Plaintiffs sustained severe injuries to their bodies, which has caused physical pain, mental anguish, and other medical problems. Plaintiff Ricky Crumbly suffered permanent disfigurement after he was burned on his face and arms.

47. All Plaintiffs have sustained severe pain, physical impairment, discomfort, mental anguish, and distress. In all reasonable probability, Plaintiffs physical pain, physical impairment, and mental anguish will continue indefinitely. Plaintiffs have also suffered a loss of earnings in the past, as well as a loss of future earning capacity. Plaintiffs have incurred and will incur pharmaceutical and medical expenses in connection with their injuries.

48. Plaintiffs are also entitled to punitive damages because the aforementioned actions of Defendants were grossly negligent. Plaintiffs' injuries were caused by malicious,

willful, reckless, or wanton acts or omissions of Defendants, or alternatively the gross negligence of Defendants' employees, agents, or representatives.

VIII.

JURY TRIAL

49. Plaintiffs hereby request a trial by jury on all claims.

IX.

PRAYER

Plaintiffs pray that this citation issue and be served on Defendants in a form and manner prescribed by law, requiring Defendants appear and answer, and that upon final hearing, Plaintiffs have judgment against Defendants in a total sum in excess of the minimum jurisdictional limits of this Court, plus pre-judgment and post-judgment interests, all costs of Court, and all such other relief to which Plaintiffs show themselves justly entitled. As required by Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs affirmatively state that they seek damages in excess of \$1,000,000 and pray for relief and judgment, as follows:

- Compensatory damages against Defendants;
- Actual damages;
- Consequential damages;
- Pain and suffering;
- Exemplary damages;
- Past and future mental anguish;
- Past and future impairment;
- Past and future economic loss;
- Past and future disfigurement;

- Interest on damages (pre- and post-judgment) in accordance with law;
- Plaintiffs' reasonable attorneys' fees;
- Costs of court;
- Expert witness fees;
- Costs of copies of depositions; and
- Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to all counsel of record in accordance with the Texas Rules of Civil Procedure on this 25th day of January 2022.

/s/ Kurt Arnold

Kurt Arnold

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Crystal DeLeon on behalf of Kurt Arnold
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Status as of 1/25/2022 7:55 AM CST

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