

ORIGINAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: *[Signature]*
DEPUTY CLERK

SHUMEKA M. DURHAM, Individually and
As a Representative of the Estate of
CARTIZE B. DURHAM, deceased,
and as Next Friend of CHRISTIAN B. DURHAM
and CALEB BARNARD DURHAM, minors, and
DEBORAH JEAN DURHAM;
ELENA SPENCE, Individually and as
A Representative of the Estate of
MARK A. SPENCE, deceased,
and as Next Friend of MARK ANDREW SPENCE, minor,
MARK T. SPENCE, KIM R. SPENCE;
ELIZABETH SKOGLUND, Individually and
As a Representative of the Estate of
CHRISTIAN SKOGLUND, deceased,
PHILIP SKOGLUND, KAY SKOGLUND,

**COMPLAINT AND
DEMAND FOR
TRIAL BY JURY**

SA09CA0815 FB

Plaintiffs,

v.

DYNCORP, INC., a Delaware corporation
for profit;

Corporate Headquarters:
3190 Fairview Park Drive, Suite 700
Falls Church, VA 22042

Resident Agent in Texas:
C T Corporation System
350 North St. Paul St.
Dallas, TX 75201

and

DYNCORP INTERNATIONAL INC.,
a Delaware corporation for profit

Corporate Headquarters:
3190 Fairview Park Drive, Suite 700
Falls Church, VA 22042

Resident Agent in Texas:
C T Corporation System
350 North St. Paul St.
Dallas, TX 75201

and

DYNCORP INTERNATIONAL LLC,
a Delaware limited liability company;

Corporate Headquarters:
3190 Fairview Park Drive, Suite 700
Falls Church, VA 22042

Resident Agent in Texas:
C T Corporation System
350 North St. Paul St.
Dallas, TX 75201

Defendants, jointly and severally.

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COMES NOW Plaintiffs Shumeka M. Durham, individually and as a representative of the estate of Cartize B. Durham, deceased, and as next friend of Christian B. Durham and Caleb Barnard Durham minors, and Deborah Jean Durham, Elena Spence, individually and as a representative of the Estate of Mark A. Spence, deceased, and as next friend of Mark Andrew Spence, minor, Mark T. Spence, Kim R. Spence, Elizabeth Skoglund, individually and as a representative of the estate of Christian Skoglund, deceased, Philip Skoglund, Kay Skoglund, by and through undersigned counsel, and for this cause of action against Defendants DynCorp, Inc., DynCorp International Inc., and DynCorp International LLC, and state as follows:

THE PARTIES AND FACTS COMMON TO ALL COUNTS

1. At all times material to this cause of action, Plaintiff Shumeka M. Durham, surviving spouse of Cartize B. Durham, deceased, has been appointed as Executrix of the Estate of Cartize B. Durham, deceased by the Probate Court of Bexar County, Texas. She is the mother of Christian B. Durham and Caleb Barnard Durham, the minor children of Cartize B. Durham, deceased. Cartize B. Durham was an individual residing in the State of Texas and stationed in Italy while serving on active duty in the U.S. Air Force, and a resident of Texas. Plaintiff Deborah Jean Durham, surviving parent of Cartize B. Durham, deceased, is an individual residing in Louisiana. Plaintiff Elena Spence, surviving spouse of Mark A. Spence, deceased, is an individual residing in the State of New York and is a resident of New York. Plaintiff Elena

Spence, surviving spouse of Mark A. Spence, deceased, has been appointed as Representative of the Estate of Mark A. Spence, deceased by the Surrogate's Court of Erie County, New York.

She is the mother of Mark Andrew Spence, the minor child of Mark A. Spence, deceased. Mark A. Spence was an individual residing in the State of New York and stationed in Italy while serving on active duty in the U.S. Air Force, and a resident of New York. Plaintiff Mark T.

Spence, surviving parent of Mark A. Spence, deceased, is an individual residing in New York.

Plaintiff Kim R. Spence, surviving parent of Mark A. Spence, deceased, is an individual residing in New York. Plaintiff Elizabeth Skoglund, surviving spouse of Christian Skoglund, deceased, is an individual residing in the State of New York and is a resident of New York. Plaintiff

Elizabeth Skoglund, surviving spouse of Christian Skoglund, deceased, has been appointed as Representative of the Estate of Christian Skoglund, deceased by the Surrogate's Court of St.

Lawrence County, New York. Christian Skoglund was an individual residing in the State of New York and stationed in Italy while serving on active duty in the U.S. Army, and a resident of

New York and Wisconsin. Plaintiff Philip Skoglund, surviving parent of Christian Skoglund, deceased, is an individual residing in Wisconsin. Plaintiff Kay Skoglund, surviving parent of

Christian Skoglund, deceased, is an individual residing in Wisconsin. Plaintiff Shumeka M.

Durham, surviving spouse of Cartize B. Durham, deceased, is an individual residing in the State of Texas and is a resident of Texas.

2. At all times material to this cause of action, Defendant DynCorp, Inc., Defendant DynCorp International Inc. and Defendant DynCorp International LLC (hereinafter collectively referred to as "the DynCorp defendants") were and are legal entities incorporated for profit in the state of Delaware and maintaining their principal places of business in Virginia, but conducting

substantial, regular, continuous and systematic business within the State of Texas, their businesses being the selling, marketing, distributing and provision of independent contractor technical services to various civilian and military government agencies. Over the years, the DynCorp defendants have generated substantial revenues from the State of Texas and other States in the United States and the District of Columbia, as well as internationally.¹ The DynCorp defendants receive more than 90% of their annual revenues from the federal government, and reported revenue of \$2.1 billion dollars in 2008 and \$3.1 billion dollars in 2009.² The DynCorp defendants have approximately 15,000 employees. *Id.*

3. At all times material to this cause of action, the DynCorp defendants were independent contractors that were awarded a service contract to maintain, service and inspect certain UH-60 Black Hawk helicopters in Aviano Italy, owned by the U.S. Army, including without limitation, a service contract to inspect and repair a certain UH-60A Black Hawk helicopter, Serial No. 88-26025, which crashed, and gave rise to this litigation. Negotiation of the agreement and oversight of the service contract and aviation training occurred or was to occur in the State of Texas by and through the DynCorp defendants' aviation division(s), as well as by and through DynCorp defendants' employees stationed in Italy.

4. On or about November 8, 2007, Plaintiffs Cartize B. Durham Mark A. Spence, and Christian Skoglund, were passengers in the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, during an incentive flight in Aviano, Italy.

5. On or about November 8, 2007, the subject UH-60A Black Hawk helicopter,

¹ See Internet, at <http://www.dyn-intl.com> & <http://ir.dyn-intl.com/financials.cfm>.

² See Internet, at <http://www.reuters.com/article/pressRelease/idUS222588+03-Jun-2009+BW20090603>

Serial No. 88-26025, suffered a catastrophic maintenance-related failure of the flight control system and loss of yaw control while in-flight, due to improper re-installation and/or mis-rigging by the DynCorp defendants' employees, causing the flight crew to lose control of the helicopter and crash, which caused severe injuries to Plaintiff (as more fully alleged below).

6. On or about November 8, 2007, the flight crew of the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, was operating the aircraft properly, within the limitations of the aircraft (sufficient power for out-of-ground-effect (OGE) hover), within the standards of flight, and within the parameters of their briefing. The flight crew did nothing wrong to cause the loss of yaw control leading to the accident.

7. The improper maintenance by the DynCorp defendants was performed contrary to the manner mandated under the DynCorp defendants' service contract with the U.S. Army and maintenance instructions, causing an in-flight loss of control and crash. The improper maintenance by the DynCorp defendants caused the left hand yaw bellcrank lever to repeatedly impact the left side yaw vertical control tube/rod, due to missing mechanical stops and/or mis-rigging, which in turn caused the failure of the yaw control system. Post-accident investigation revealed evidence of repeated strikes on the left hand yaw vertical control tube/rod, which were not caused by impact with the ground.

8. Complaints consistent with this condition were reported to the DynCorp defendants before the crash, whose employees, agents or assignees failed to take appropriate action to correct the condition. The DynCorp defendants violated their contractual obligations and failed to correct the defect and placed the aircraft back into service bypassing safety protocols in place to ensure such aircraft are not returned to service in a defective condition.

9. The DynCorp defendants' records show that they removed and reinstalled the flight control tubes and torqued them. Post crash analysis indicates that the DynCorp defendants utilized incorrect hardware, failed to properly torque parts, and installed hardware incorrectly even though their records falsely indicate otherwise.

10. The subject UH-60A Black Hawk helicopter, Serial No. 88-26025's left side yaw flight controls were accessed during its last Preventative Maintenance Inspection 2 (PMI-2), which was performed from February to April of 2007 by the DynCorp defendants. During the PMI-2, the DynCorp defendants' employees and/or agents removed the flight controls, inspected them for damage, re-installed the flight controls, and then rigged them. When the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, came out of the PMI-2 maintenance performed by the DynCorp defendants, there were latent maintenance discrepancies with regard to the flight controls. These discrepancies were not known to the flight crew or the U.S. Army.

11. Prior to November 8, 2007, the DynCorp defendants had actual and constructive knowledge of problems with the flight control system in the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, but failed to properly inspect, service and remedy same and/or warn Plaintiffs, the flight crew or the U.S. Army of the mis-rigging. There were reports well before the accident to the DynCorp defendants' employees and agents of clicking and/or popping sounds when pilots would run through routine pedal movements and flight control checks, but these reports were improperly processed, inspected, serviced and maintained by the DynCorp defendants.

12. At all times material to this complaint, the DynCorp defendants failed to warn the Plaintiffs, the flight crew or the U.S. Army of the improper installation and mis-rigging of the

flight controls, and failed to warn that the DynCorp defendants did not comply with the contract and maintenance requirements.

13. Post-accident analysis revealed a pattern of neglect on the part of the DynCorp defendants. The subject helicopter exhibited pre-existing damage on the yaw bellcrank and its control tube/rod and numerous flight control grounding faults identified on this aircraft. Also post-accident, the U.S. Army found numerous other maintenance and/or rigging discrepancies on this and other aircraft that had been maintained by the DynCorp defendants.

14. The DynCorp defendants caused a tort and the consequences of a tort to occur in the State of Texas.

JURISDICTION

15. Each condition precedent to maintaining this cause of action has accrued. The amount in controversy, exclusive of costs and interest, exceeds the minimum amount required by this Court, and jurisdiction is otherwise proper before this Court.

16. Jurisdiction is founded upon diversity of citizenship, 28 U.S.C. § 1332, in that: (a) at all times material to this cause of action, Plaintiffs was a resident of the State of Texas; (b) at all times material to this cause of action, the DynCorp defendants were and are incorporated in the State of Delaware with their principal places of business in the State of Virginia; and (c) the amount in controversy exceeds the minimum amount of \$75,000.00 exclusive of costs and interest.

VENUE

17. Venue is proper before this Court pursuant to 28 U.S.C. 1391(a).

COUNT I **NEGLIGENCE/GROSS NEGLIGENCE**

18. Plaintiffs re-avers and re-alleges each prior allegation as if specifically restated herein, paragraph for paragraph and word for word.

19. The DynCorp defendants owed Plaintiffs certain duties in the service, maintenance and inspection of the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, pursuant to law, industry practice and the maintenance contract between the U.S. Army and the DynCorp defendants.

20. Notwithstanding their duties, the DynCorp defendants breached those and other duties when they negligently:

- a. failed to maintain and properly service the subject UH-60A Black Hawk helicopter with due care, diligence and circumspection, which contributed to the in-flight failure of the helicopter's bellcrank and yaw control system and resultant loss of control; and/or
- b. failed to comply with its service contract with the U.S. Army, which lead to the in-flight failure of the helicopter's bellcrank and yaw control system and resultant loss of control; and/or
- c. improperly certified as airworthy and released for flight operations the subject UH-60A Black Hawk helicopter when it was in a dangerous, defective and un-airworthy condition, which lead to the in-flight failure of the helicopter's bellcrank and yaw control system and resultant loss of directional control; and/or
- d. failed to properly inspect and test the subject UH-60A Black Hawk helicopter with due care, diligence and circumspection to insure that the maintenance of the helicopter's bellcrank and yaw and pitch control system was properly installed

- and functioning; and/or
- e. failed to comply with the requirements of Defendants' service contract with the U.S. Army and its maintenance instructions, which led to a failure to detect the improper installation and mis-rigging of flight controls, causing a failure of the bellcrank assembly and yaw and pitch control system and resultant loss of directional control; and/or
 - f. failed to comply with the maintenance and inspection requirements for the subject UH-60A Black Hawk helicopter and its bellcrank assembly and yaw and pitch control system, rendering the helicopter susceptible to an in-flight failure and loss of control; and/or
 - g. failed to comply with mandatory maintenance standards in the service contract with the U.S. Army, leading to an in-flight failure of the subject UH-60A Black Hawk helicopter's bellcrank assembly and yaw and pitch control system, and its resulting loss of control; and/or
 - h. improperly removed and reinstalled the flight control tubes, failed to use the correct hardware, failed to properly torque components, and/or installed hardware incorrectly even though DynCorp records falsely indicate otherwise; and/or
 - i. failed to warn the pilots and passengers and the U.S. Army of the substandard service, substandard maintenance and substandard inspection procedures and practices and improper installation and mis-rigging of flight controls, that caused the in-flight failure of the subject UH-60A Black Hawk helicopter's bellcrank assembly and yaw and pitch control system, and resultant loss of control; and/or

- j. failed to properly inspect, oversee, train, instruct, and supervise the DynCorp defendants' mechanics in the requirements of its service contract with the U.S. Army, which led to improper maintenance and service of the subject UH-60A Black Hawk helicopter's bellcrank assembly and yaw and pitch control system, and resultant loss of control; and/or
- k. otherwise failed to adhere to U.S. Army service protocol and maintenance and inspection practices required by the contract and failed to warn of known dangers and hazards in the subject maintenance and improperly performed maintenance and overhaul of parts and components on the UH-60A Black Hawk helicopter, which led to the crash and injuries to Plaintiffs and others.

21. The actions and inactions by the DynCorp defendants constituted willful and wanton conduct, and also gross negligence, evidencing a reckless disregard of the consequences and a lack of concern as to whether an injury would result.

22. As a direct and proximate result of the DynCorp defendants' negligence and gross negligence and willful and wanton conduct, Plaintiffs suffered substantial physical and emotional pain and suffering and serious injuries and damages as a result of the helicopter crash (as more fully alleged below), and claims for all allowable damages under applicable law.

WHEREFORE, Plaintiffs respectfully moves this Court to grant judgment in their favor in an amount which is reasonable in light of the facts, law and evidence, including interest, costs and attorneys fees. Plaintiffs demand trial by jury on all counts so triable as of right.

COUNT II
BREACH OF WARRANTIES EXPRESS AND IMPLIED

- 23. Plaintiffs re-avers and re-alleges each prior allegation as if specifically restated

herein, paragraph for paragraph and word for word.

24. The DynCorp defendants warranted both expressly and impliedly that the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, was airworthy, maintained according to the requirements contained in the service contract with the U.S. Army, and reasonably fit for its intended uses and purposes.

25. The DynCorp defendants also warranted both expressly and impliedly that the DynCorp mechanics were properly supervised and trained in the requirements and standards of the service contract and maintenance of the subject UH-60A Black Hawk helicopter, Serial No. 88-26025.

26. Notwithstanding their warranties, the DynCorp defendants materially breached them in that the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, was not airworthy, was not maintained according to the requirements contained in the service contract, was not reasonably fit for its intended uses and purposes, the DynCorp mechanics were not properly supervised, instructed and trained in the requirements of the service contract and the required and proper maintenance of the subject UH-60A Black Hawk helicopter, Serial No. 88-26025.

27. As a proximate result of the DynCorp defendants' breach of express and implied warranties, Plaintiffs suffered substantial physical and emotional pain and suffering and serious injuries and damages as a result of the helicopter crash (as more fully alleged below), and claims for all allowable damages under applicable law.

WHEREFORE, Plaintiffs respectfully moves this Court to grant judgment in his favor in an amount which is reasonable in light of the facts, law and evidence, including interest, costs

and attorneys fees. Plaintiffs demands trial by jury on all counts so triable as of right.

COUNT III
NEGLIGENT AND/OR INTENTIONAL MISREPRESENTATION

28. Plaintiffs re-avers and re-alleges each prior allegation as if specifically restated herein, paragraph for paragraph and word for word.

29. The DynCorp defendants represented that all maintenance required under its service contract with the U.S. Army was performed as mandated in the contract and the U.S. Army and Plaintiffs materially relied upon those factual representations.

30. The DynCorp defendants represented that their mechanics were properly supervised, instructed and trained in performing maintenance required under its service contract with the U.S. Army and the U.S. Army and Plaintiffs materially relied upon those factual representations.

31. The DynCorp defendants knew that the foregoing representations were false when made to the U.S. Army and Plaintiffs. The DynCorp defendants knew or reasonably should have known that their mechanics were improperly trained, inadequately supervised, and improperly instructed by the DynCorp defendants in the performance of maintenance and in the requirements of the service contract; and that certain maintenance was performed incorrectly and/or not at all by the DynCorp defendants on the bell crank assembly and yaw and pitch control system and other systems, on the subject UH-60A Black Hawk helicopter, Serial No. 88-26025. This information was not disclosed to Plaintiffs nor to the U.S. Army.

32. As a proximate result of the material misrepresentations by the DynCorp defendants and Plaintiff's reliance thereupon, Plaintiffs suffered substantial physical and emotional pain and suffering and serious injuries and damages as a result of the helicopter crash

(as more fully alleged below), and claims for all allowable damages under applicable law.

WHEREFORE, Plaintiffs respectfully moves this Court to grant judgment in his favor in an amount which is reasonable in light of the facts, law and evidence, including interest, costs and attorneys fees. Plaintiffs demand trial by jury on all counts so triable as of right.

COUNT IV
TEXAS SURVIVAL STATUTE

33. Plaintiffs seek damages against Defendants under the Texas Survival Statute (TEX. CIV. PRAC. & REM. CODE ANN. § 17.021), for losses including lost wages, pain, suffering, and mental anguish sustained prior to the deaths of Mark A. Spence, Christian Skoglund, and Cartize B. Durham. They are entitled to recover the maximum amounts of damages allowed by law.

COUNT V
TEXAS WRONGFUL DEATH ACT

34. Plaintiffs seek damages against Defendants under the Texas Wrongful Death Act (TEX. CIV. PRAC. & REM. CODE § 17.002), for losses including pain, suffering, and mental anguish sustained by them because of the deaths of Mark A. Spence, Christian Skoglund, and Cartize B. Durham. They are entitled to recover the maximum amount of damages allowed by law.

COMPENSATORY AND PUNITIVE DAMAGES

35. As a proximate result of the aforementioned negligence, breach of express and implied warranties, and negligent and/or intentional misrepresentation of the DynCorp

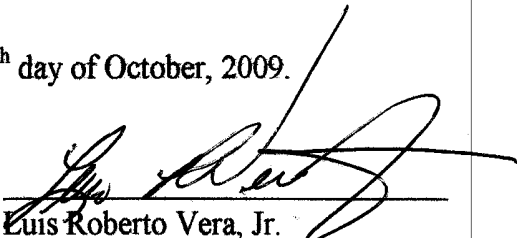
defendants, Plaintiffs was severely injured and claims all damages allowable under the applicable law, including, without limitation, pre impact pain and suffering and fright and terror; physical pain and suffering; medical expenses in the past, present and future; damages to compensate for scarring and disfigurement in the past, present and future; loss of services in the past, present and future; loss of consortium, companionship, comfort and guidance in the past, present and future; mental and emotional anguish, sorrow, stress, mental suffering, and pain and shock in the past, present and future; and all other damages permitted and applicable by law.

36. The United States of America, United States Air Force and United States Army on behalf of the United States have incurred and will continue to incur medical costs for the care of the crew and passengers of the subject UH-60A Black Hawk helicopter, Serial No. 88-26025, and/or funeral expenses for those killed in the crash on November 8, 2007.

37. Plaintiffs also seeks recovery of exemplary and/or punitive damages for the willful, wanton, careless and reckless conduct of the DynCorp defendants. The DynCorp defendants were consciously aware of the wrongfulness and harmfulness of their conduct and yet continued to act in the same manner in deliberate contravention to the rights of Plaintiffs. The conduct was so outrageous, oppressive and/or intolerable in that it created a substantial risk of tremendous harm to others, including, without limitation, Plaintiffs.

WHEREFORE, Plaintiffs respectfully moves this Court to grant judgment in his favor in an amount which is reasonable in light of the facts, law and evidence, including interest, costs and attorneys fees. Plaintiffs demands trial by jury on all counts so triable as of right.

Respectfully submitted this 5th day of October, 2009.



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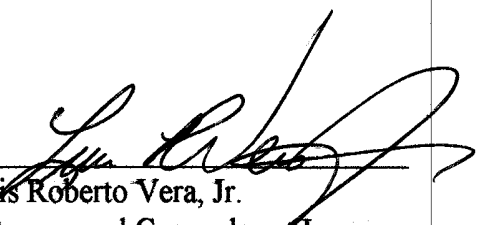
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JURY DEMAND

Plaintiff herein demands a trial by jury on all counts so triable as of right.

Respectfully submitted this 5th day of October, 2009.



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