

CAUSE NO.E-194,278

CHRISTOPHER SMITH, JESSIKA SMITH,	§	IN THE DISTRICT COURT OF
JESSIKA SMITH AS NEXT FRIEND FOR	§	
ADDISON DIANE SMITH, TY SMITH,	§	
YANCE FLORES, INDIVIDUALLY,	§	
JOHNSYE MCDONALD, INDIVIDUALLY	§	
AND AS PERSONAL REPRESENTATIVE	§	JEFFERSON COUNTY, TEXAS
OF THE ESTATE OF CHAD ERIC	§	
MCDONALD AND AS NEXT FRIEND FOR	§	
CHAD KAYDEN MCDONALD,DEBORAH	§	
CREEKMORE, INDIVIDUALLY,TERRY	§	172 nd JUDICIAL DISTRICT
CREEKMORE, INDIVIDUALLY AND AS	§	
PERSONAL REPRESENTATIVE OF THE	§	
ESTATE OF DUSTIN CREEKMORE,	§	
EDUARDO PENA, ALEXXUS JERMAINE	§	
HUMPHREY, JOSHUA BORDELON AND	§	
SHEDRICK NOLEN	§	
	§	
	§	
vs.	§	
	§	
EXXONMOBIL CORPORATION	§	
	§	

PLAINTIFFS' FIFTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW **Crystal Bordelon as Temporary Administrator of the Estate of Dustin Creekmore, and Sandra Tomplait as next friend for Madylin Nemawae Ecko Wright**, hereinafter referred to as Plaintiffs, complaining of **ExxonMobil Corporation** hereinafter referred to as Defendant(s), Exxon or ExxonMobil and **Clean Harbors Industrial Services, Inc and Clean Harbors Environmental Services, Inc.** hereinafter referred to as Clean Harbors and Defendant(s), and **Signature Industrial Services, Inc.** hereinafter referred to as Signature and Defendant(s) and for cause of action would show unto the Court the following.

I.

Plaintiffs hereby invoke Level 3 under Tex. R. Civ. P. 190.2(c).

II.

Plaintiff, Crystal Bordelon, is a resident of Angelina County, Texas. The last three digits of her social security number are 433. On June 24, 2013, the Honorable Judge Earl Stover of Tyler County appointed Crystal Bordelone as Temporary Administrator of the Estate of Dustin Lee Creekmore.

Plaintiff, Sandra Tomplait as next friend for Madylin Nemawae Ecko Wright, a minor child, is a resident of Jefferson County, Texas. The last three digits of his social security number are 639.

Defendant, **ExxonMobil Corporation** is before this honorable Court.

Defendant, **Clean Harbors Industrial Services, Inc.** is before this honorable Court.

Defendant, **Clean Harbors Environmental Services, Inc.** is before this honorable Court.

Defendant, **Signature Industrial Services, Inc.** is before this honorable Court.

III.

Plaintiffs allege that venue is proper in Jefferson County, Texas because the incident made the basis of this suit occurred in Jefferson County, Texas. Moreover, Plaintiffs allege that this Court has jurisdiction herein in that the amount in controversy is within the jurisdictional requirements of this Court.

IV.

On or about April 17, 2013, Plaintiff, Dustin Creekmore, deceased, was working in the course and scope of his employment with Signature Group as contract maintenance employees at Defendant ExxonMobil's facility in Beaumont Texas. While performing their duties an explosion occurred in and around one of Defendant's heat exchanger units. Particularly, a fire erupted from the unit, causing serious injuries and death to Plaintiffs. Defendant, ExxonMobil, and Defendant, Clean Harbors, caused and/or contributed to injuries suffered by Plaintiffs by failing to properly test, clear, clean, or monitor the heat exchanger at issue where Plaintiffs were severely injured, as it was their duty to do so. Plaintiffs would show that because of the negligence and carelessness of the Defendant ExxonMobil, and Defendant, Clean Harbors which existed and were allowed to exist at the job site, Plaintiff was caused to suffer the severe, painful and disabling injuries, resulting in his death which are made the basis of this suit and which are set out with particularity herein below.

V.

Plaintiffs allege that Defendant ExxonMobil, and Defendant Clean Harbors, through their respective agents, servants, and/or employees negligently caused or negligently permitted such condition to exist, in spite of the fact that Defendant ExxonMobil, and Defendant, Clean Harbors knew, or in the exercise of ordinary care should have known, of the existence of the condition.

VI.

On the occasion in question, Defendants, acting through its respective

agents, servants and/or employees, was guilty of negligence toward the deceased

Plaintiff in the following respects:

- a. In failing to warn of a dangerous condition that posed an unreasonable risk of harm to deceased;
- b. In failing to properly maintain premises in a safe condition;
- c. In failing to correct a dangerous condition;
- d. In failing to properly inspect, test, clear and clean the heat exchanger at issue and
- e. In committing various acts and/or omissions of negligence, both statutory and common law, to be specified in detail at the time of trial.

Each of the foregoing negligent acts and/or omissions, whether taken singularly or in combination, was a proximate cause of Dustin Creekmore's death and damages, which are described below.

VII.

Plaintiff Crystal Bordelon, Temporary Administrator of the Estate of Dustin Lee Creekmore, would show that as a result of the Defendant's acts and/or omissions, negligence and gross negligence, as described herein, that the Estate of Dustin Lee Creekmore has suffered substantial damages. As a proximate result of the occurrence made the basis of this suit, Dustin Creekmore sustained severe bodily injuries which ultimately resulted in his death. Dustin Creekmore also suffered loss of income (both past and future), pre-death extreme pain, pre-death suffering and mental anguish, including fear of impending death, as a result of the occurrence made the basis of this suit. Further, Plaintiff seeks recovery of reasonable and necessary funeral and burial expenses for Dustin Creekmore.

XV.

Madylin Nemawae Ecko Wright is a child of Dustin Creekmore, deceased. Madylin Nemawae Ecko Wright was four (4) years when her father died. Sandra Tomplait as Next Friend for Madylin Nemawae Ecko Wright would show because of the death of his father, the minor child, Madylin Nemawae Ecko Wright has sustained pecuniary losses from the death of his father, including losses of support, services, advice, counsel, and contributions of a pecuniary value that he would, in reasonable probability, have received from his father during his lifetime had he lived. Further, the minor child, Madylin Nemawae Ecko Wright has suffered a loss of inheritance and the loss of additions to the estate of his deceased father. In all reasonable probability, these injuries, damages and losses will occur into the future and probably for the remainder of his life.

XIX.

Plaintiffs further allege that Defendant ExxonMobil, and Defendant Clean Harbors acts and/or omissions, as described herein, were the result of Defendant ExxonMobil, and Defendant Clean Harbors heedless and reckless disregard for the rights of these Plaintiffs. Defendant ExxonMobil, and Defendant Clean Harbors acts and/or omissions when viewed objectively involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant ExxonMobil, and Defendant Clean Harbors had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others. By reason of the Defendant

ExxonMobil, and Defendant Clean Harbors gross negligence and malice, Plaintiffs hereby seek recovery of exemplary damages.

XX.

In the alternative, based on reasonable information and belief and out of an abundance caution in the preserve the legal rights of the Crystal Bordelon as Temporary Administrator of the Estate of Dustin Creekmore, Deceased, and Sandra Tomplait as next friend for Madylin Nemawae Ecko Wright further allege that Defendant, Signature's acts and/or omissions, as described herein, were the result of Defendant, Signature's heedless and reckless disregard for the rights of these Plaintiffs. Defendant, Signature's acts and/or omissions when viewed objectively involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant, Signature had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others. By reason of the Defendant, Signature's gross negligence and malice, Plaintiffs hereby seek recovery of exemplary damages.

XXI.

As a result of the facts hereinabove alleged, Plaintiffs have been made to suffer and sustain at the hands of the Defendants general and special damages in an amount in excess of the jurisdictional requirements of this Court and in such amount as the evidence may show proper at the time of trial. While the amount of the Plaintiffs' damages are the sole province of the jury, Plaintiffs are required to

plead a minimum amount of damages. In accordance with Tex. R. Civ. Pro. 47, Plaintiffs are seeking damages in excess of \$1,000,000.00.

XXII.

Your Plaintiffs further assert a claim for pre-judgment interest for all elements of damage.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants be cited to appear and answer herein as the law directs, and that upon final hearing hereof, Plaintiffs have and recover judgment of and from the Defendants, pursuant to the above and foregoing allegations in such amount as the evidence may show proper at the time of trial, for costs of Court, interest on said sums from date of judgment until paid, and for such other and further relief, both general and special, at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

PROVOST★UMPHREY
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(409) 835-6000
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/S/ JAMES PAYNE

By: _____
JAMES PAYNE
STATE BAR NO. 00788171
MATTHEW C. MATHENY
STATE BAR NO. 24039040

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record by Certified Mail, Return Receipt Requested and/or Hand Delivered, and/or Facsimile machine, and/or email on this the ____TH day of _____, 2015.

/S/ JAMES PAYNE

JAMES PAYNE
MATTHEW C. MATHENY