

CAUSE NO. _____

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|-------------------------------------|---|---------------------------------|
| PATRICK SMITH | § | IN THE DISTRICT COURT OF |
| Plaintiff, | § | |
| v. | § | |
| | § | _____ JUDICIAL DISTRICT |
| | § | |
| HOUSTON MOLD & TOOL INC. | § | |
| | § | |
| Defendant. | § | HARRIS COUNTY, TEXAS |

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Patrick Smith (“Plaintiff”), and files this original petition complaining of and against Houston Mold and Tool Inc., (“Defendant”), and for cause of action against said Defendant would respectfully show the Court as follows:

I. DISCOVERY LEVEL & RELIEF SOUGHT

Discovery in this case is intended to be conducted under Level 2 of Tex. R. Civ. P. 190.3.

Pursuant to TEX. R. CIV. P. 47(B) and (C), Plaintiff seeks only monetary relief of \$250,000.00 or less and non-monetary relief and a demand for judgment for all other relief to which Plaintiff deems entitled and the damages sought are within the Court’s jurisdictional limits.

II. PARTIES

Plaintiff is a resident of Harris County, Texas.

Defendant, Houston Mold & Tool Inc., is a domestic for-profit corporation authorized to do business in Texas and may be served with process by and through its registered agent, John F Nichols, SR c/o Nichols Law PLLC, 5020 Montrose, Ste 400 Houston, TX 77006 or wherever it may be found.

III. JURISDICTION & VENUE

Venue is proper in Harris County, Texas pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a) Harris County, Texas is the county in which all or substantial part of the event or omissions giving rise to the claim occurred. In addition, Defendant Houston Mold & Tool, Inc. resides did and continues to do business in Harris County, Texas. Thus, venue is proper.

The Court has jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional limit of the Court.

IV. FACTS

This lawsuit has become necessary due to damages sustained by Plaintiff, Patrick Smith at Houston Mold & Tool, Inc., located in Humble, Harris County, Texas during the course of his employment. Plaintiff was injured while torching out a piece of material and as a result suffered second and third degree burns to his leg and has permanent scarring and disfigurement. The material plaintiff was working with comes in rings, a spiral well, and once you break it from the ring it springs out. Usually, it springs about 5 inches. This one sprung about 12 inches. It had been welded so tight it sprung further out. Leading to Plaintiff's injuries. Defendant did not have the machine to provide the support necessary to prevent it from springing open like it did.

In addition to his physical injuries, plaintiff also missed days of work following the injury, which resulted in further losses. The necessary gear for a job such as this, typically requires goggles graded for that type of work, gloves, leather apron or garment to protect yourself and face cover or face shield.

Mr. Smith was never supplied any of the necessary safety gear or equipment to perform his duties. He had on goggles and a pair of gloves only. Mr. Smith had no guidance or supervision while operating said machinery. No one was monitoring him. He also lacked the

proper training and certifications to do such task. Defendant had not given the Plaintiff any formal training on this task.

After Plaintiff was injured, he still had no formal training or proper gear to do the job however, after returning to work he was asked again to perform the same dangerous tasks without any additional training or preparation and without the proper safety gear. After refusing to perform the task under those conditions Defendant terminated Plaintiff from the company, because he refused to risk his life, limbs and safety again by performing the same task under the same conditions.

V. CAUSES OF ACTION

A. NEGLIGENCE OF HOUSTON MOLD & TOOL, INC.

Defendant owed a duty to Plaintiff. The occurrence made basis of this suit and the resulting injuries and damages were proximately caused by the negligence of Defendant Houston Mold & Tool Inc. because of the variety of acts and omissions of Defendant, including but not limited to one or more of the following:

- i. In failing to exercise ordinary care in training employees;
- ii. In failing to exercise ordinary care in supervising and monitoring its employees;
- iii. In failing to exercise reasonable care to avoid a foreseeable risk of injury to employees;
- iv. In failing to use ordinary care to provide a safe environment;
- v. In failing to ensure safety policies and procedures were enforced and followed; and
- vi. In failing to exercise reasonable care;
- vii. In failing to provide safe instrumentalities and equipment with which employees performs their job-related duties;
- viii. Lack of or failure to enforce safety rules and procedures; and
- ix. Failing to exercise ordinary care by not repairing or replacing faulty conditions of equipment or machinery.

B. GROSS NEGLIGENCE

Plaintiff will further show that the acts and/or omissions of Defendants involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Defendant had actual subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, and/or welfare of others, including Plaintiff. As such, Defendants' actions and omissions constitute gross negligence and malice as those terms understood by law. Therefore, Plaintiff prays that punitive damages be awarded against Defendant. Defendants and their employees, agents, representatives and/or servants acted knowingly and/or recklessly committing gross negligence. Accordingly, Plaintiff is entitled to exemplary damages. Plaintiff pleads the foregoing facts and theories cumulatively and alternatively, with no election or waiver of rights or remedies.

VI. DAMAGES

Because of the nature of actions and omissions of Defendants actions, Plaintiff seeks punitive damages. As a result of the occurrences in question, Plaintiff sustained personal injuries, mental anguish, physical pain and suffering, permanent disfigurement and scarring and medical expenses in the past and future.

Plaintiff will respectfully request the Court and Jury to determine the amount of loss Plaintiff has incurred and will incur in the future not only from a financial standpoint but also in terms of good health and freedom from pain and worry. There are certain elements of damages provided by law that the Plaintiff is entitled to have the Jury in this case consider separately to determine the sum of money for each element that will fairly and reasonably compensate Plaintiff for the injuries, damages and losses incurred from the date of the accident in question until the time of trial of this case. Those elements of damages are as follows:

1. The physical pain that the Plaintiff has suffered from the date of the occurrence in question up to the time of trial;
2. The mental anguish that the Plaintiff has suffered from the date of the occurrence in question up to the time of trial;
3. The amount of reasonable medical expenses necessarily incurred in the treatment of the Plaintiff's injuries from the date of the occurrence in question up to the time of trial;
4. The physical impairment which Plaintiff has suffered from the date of the occurrence in question up to the time of trial

VII. REQUIRED DISCLOSURE

Pursuant to Texas Rules of Civil Procedure 194, Plaintiff seeks that Defendants disclose the required disclosures within the required number days of filing their answer as per the Rules of Civil Procedure.

VIII. JURY DEMAND


Plaintiff respectfully request a trial by jury.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff pray that Defendant be cited to appear and answer and that upon final hearing, Plaintiff recover judgment against Defendant for damages suffered as they may appear at trial thereof, actual and exemplary damages, prejudgment and post-judgment interest, costs of court, and such other relief to which Plaintiff may be entitled.

Respectfully Submitted,

LAW OFFICE OF CRYSTAL S. WILEY

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