

CAUSE NO. _____

**ANTHONY BAILEY, JEROD BONIN
and JONATHAN TARVER**
Plaintiffs,

v.

**WESTLAKE CHEMICAL
CORPORATION, WESTLAKE
MANAGEMENT SERVICES, INC.
and EAGLE US 2 LLC**
Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

___ **JUDICIAL DISTRICT**

PLAINTIFFS' ORIGINAL PETITION

COME NOW, Anthony Bailey, Jerod Bonin and Jonathan Tarver (“Plaintiffs”), and file their Original Petition against Westlake Chemical Corporation, Westlake Management Services, Inc., and Eagle US 2 LLC (collectively “Defendants”), and in support would respectfully show this Honorable Court the following:

I.

DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiffs intend that discovery be conducted under Level 3.

II.

PARTIES

2. Plaintiff, Anthony Bailey, is a resident of Glenmora, Louisiana.
3. Plaintiff, Jerod Bonin, is a resident of Jennings, Louisiana.
4. Plaintiff, Jonathan Tarver, is a resident of Pitkin, Louisiana.
5. Defendant, Westlake Chemical Corporation (“Westlake Chemical”), is a foreign corporation doing business in the State of Texas with its principal place of business located at 2801

Post Oak Boulevard, Suite 600, Houston, Texas 77056. Defendant may be served through its registered agent: CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

6. Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Westlake Chemical” with regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of any party or one of the Court.

7. Defendant, Westlake Management Services, Inc. (“Westlake Management”), is a foreign corporation doing business in the State of Texas with its principal place of business located at 2801 Post Oak Boulevard, Suite 600, Houston, Texas 77056. Defendant may be served through its registered agent: CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

8. Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Westlake Management Services” with regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of any party or one of the Court.

9. Defendant, Eagle US 2 LLC (“Eagle”), is a foreign limited liability company doing business in the State of Texas with its principal place of business located at 2801 Post Oak Boulevard, Suite 600, Houston, Texas 77056. Defendant may be served through its registered agent: CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

10. Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Eagle US 2” with regard to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas

Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of any party or one of the Court.

III.
JURISDICTION AND VENUE

11. The Court has jurisdiction of the subject matter of this lawsuit and the amount in controversy is above the minimum jurisdictional limits of this Honorable Court as Plaintiffs seek aggregate monetary relief over \$1,000,000.00. *See* TEX. R. CIV. P. 47. Additionally, removal to federal court would be improper because this lawsuit does not involve a federal question, this lawsuit lacks diversity and/or because of the forum defendant rule.

12. Pursuant to Texas Civil Practice and Remedies Code Section 15.002(a)(3), Harris County is a proper venue because Defendants Westlake Chemical Corporation, Westlake Management Services, Inc., and Eagle 2 US LLC's principal offices in the State of Texas are located in Harris County, Texas.

IV.
FACTUAL BACKGROUND

13. On or about January 26, 2022, Plaintiffs Anthony Bailey, Jerod Bonin and Jonathan Tarver were working at the Westlake Chemical Lake Charles South facility in Westlake, Louisiana. The chemical plant was owned by Defendant Eagle and operated by Defendants Eagle, Westlake Chemical and Westlake Management.

14. As Plaintiffs were working in the chemical plant, an ethylene dichloride tank exploded. Plaintiffs were subjected to intense fire, heat and pressure as they were blown off their feet and knocked to the ground. As a result of the incident, Plaintiffs suffered serious and significant injuries to their heads, necks, backs, knees, shoulders, hearing as well as burns.

V.
CAUSES OF ACTION AGAINST
DEFENDANT EAGLE

A. NEGLIGENCE

15. At the time and on the occasion in question, Defendant Eagle committed acts and omissions, which collectively and separately constituted negligence. Defendant Eagle had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendant Eagle breached that duty in one or more of the following ways:

- a. Failing to properly supervise the site;
- b. Failing to provide adequate training;
- c. Failing to provide a safe workplace;
- d. Failure to keep a proper lookout;
- e. Failure to inspect, maintain, repair and/or service the subject equipment;
- f. Failure to detect and monitor flammable gases in the area where Plaintiffs were working;
- g. Failure to properly purge the equipment, lines and process of flammable gases;
- h. Failure to monitor the site;
- i. Failing to warn of a dangerous condition;
- j. Failure to properly oversee safety in the work area;
- k. Violating OSHA regulations and standards; and
- l. Other acts or omissions deemed negligent.

16. Such negligence, either singularly or in combination, proximately caused Plaintiffs' injuries and damages.

B. PREMISES LIABILITY

17. Defendant Eagle 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 Defendant Eagle had actual knowledge, or reasonably should have known, of the unreasonably dangerous condition. Moreover, Plaintiffs did not have actual knowledge of the unreasonably dangerous condition.

18. Plaintiffs were invitees who entered Defendant Eagle's premises with their knowledge and for their benefit. Defendant Eagle had a duty to either warn Plaintiffs of this unreasonably dangerous condition or make the unreasonably dangerous condition reasonably safe. Defendant Eagle breached this duty by failing to warn Plaintiffs of this known unreasonably dangerous condition. Defendant Eagle also breached this duty by failing to make this known unreasonably dangerous condition reasonably safe.

19. Defendant Eagle's breach of these duties proximately caused Plaintiffs' injuries and damages.

C. GROSS NEGLIGENCE

20. Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendant Eagle, taken singularly or in combination, constitute gross negligence and were the proximate cause of Plaintiffs' injuries and damages. Defendant Eagle's acts and/or omissions, when viewed objectively from its standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant Eagle had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such

gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

VI.
CAUSES OF ACTION AGAINST
DEFENDANTS WESTLAKE CHEMICAL AND WESTLAKE MANAGEMENT

A. NEGLIGENCE

21. At the time and on the occasion in question, Defendants Westlake Chemical and Westlake Management committed acts and omissions, which collectively and separately constituted negligence. Defendants Westlake Chemical and Westlake Management had a duty to exercise ordinary care, meaning the degree of care that would be used by any entity of ordinary prudence under the same or similar circumstances. Defendants Westlake Chemical and Westlake Management breached that duty in one or more of the following ways:

- a. Failing to properly supervise the site;
- b. Failing to provide adequate training;
- c. Failing to provide a safe workplace;
- d. Failure to keep a proper lookout;
- e. Failure to inspect, maintain, repair and/or service the subject equipment;
- f. Failure to detect and monitor flammable gases in the area where Plaintiffs were working;
- g. Failure to properly purge the equipment, lines and process of flammable gases;
- h. Failure to monitor the site;
- i. Failing to warn of a dangerous condition;
- j. Failure to properly oversee safety in the work area;
- k. Violating OSHA regulations and standards; and
- l. Other acts or omissions deemed negligent.

22. Such negligence, either singularly or in combination, proximately caused Plaintiffs' injuries and damages.

B. GROSS NEGLIGENCE

23. Plaintiffs allege that all acts, conduct, and/or omissions on the part of Defendants Westlake Chemical and Westlake Management, taken singularly or in combination, constitute gross negligence and were the proximate cause of Plaintiffs' injuries and damages. Defendants Westlake Chemical and Westlake Management's acts and/or omissions, when viewed objectively from their standpoint at the time such acts and/or omissions occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risk, but proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs with an intentional state of mind. Such gross negligence was a proximate cause of the occurrence and Plaintiffs' injuries and damages. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

VII.
DAMAGES

24. As a result of this incident, Plaintiffs sustained serious injuries and seek compensation for the following damages:

- a. Past and future mental anguish;
- b. Past and future physical pain and suffering;
- c. Past and future bodily impairment and disability;
- d. Past and future medical expenses;
- e. Past and future lost wages or loss of earning capacity;
- f. Loss of household services;
- g. Loss of enjoyment of life;

- h. Disfigurement and scarring;
- i. Costs of suit;
- j. Pre-judgment and post-judgment interest as allowed by law; and
- k. Any and all other damages to which Plaintiffs may be justly entitled.

VIII.
TRCP 193.7

50. Pursuant to Texas Rule of Civil Procedure 193.7, Defendants are hereby put on actual notice that any documents produced in response to written discovery will be used in pretrial proceedings and at trial and will be deemed authentic unless they make valid objections to authenticity pursuant to this rule.

IX.
PRESERVATION OF EVIDENCE

51. Plaintiffs hereby request and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit and the damages resulting therefrom, including, but not limited to, photographs; videotapes; audiotapes; recordings; business or medical records; bills; estimates; invoices; checks; correspondence; memoranda; files; facsimiles; email; voice mail; text messages; investigation; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiffs, the referenced incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that citation issue and be served upon Defendants in a form and manner prescribed by law, requiring that Defendants appear and answer, and that upon final hearing or final trial hereof, the Court enter judgment in their favor

for actual damages, exemplary damages, costs of court, pre- and post-judgment interest at the maximum rate allowed by law, and for each other and further relief to which they may be justly entitled.

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,
AGOSTO, AZIZ & STOGNER**

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ATTORNEYS FOR PLAINTIFFS

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.

Jessica Dean on behalf of Muhammad Aziz
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Status as of 3/21/2022 9:13 AM CST

Associated Case Party: ANTHONY BAILEY

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