

CAUSE NO. D-09-00364

MELISSA J. HINKLE, Individually, and §
as the Representative of the Estate of §
CASEY ALEXANDER HINKLE, §
DECEASED §
Plaintiffs §

IN THE DISTRICT COURT

vs. §

235TH JUDICIAL DISTRICT

RANDY CRUME, Individually; §
REFRIGERATED DELIVERY §
SERVICE, INC.; RDS COMMERCIAL §
INVESTMENTS, LLC.; KKM §
CONSTRUCTION, INC.; and TEXAS §
DEPARTMENT OF §
TRANSPORTATION §
Defendants §

COOKE COUNTY, TEXAS

SECOND AMENDED ORIGINAL PETITION

Plaintiffs, Melissa J. Hinkle, Individually and as Representative of the Estate of Casey Alexander Hinkle, Deceased, files this their First Amended Original Petition against Randy Crume, Individually; Refrigerated Delivery Service, Inc.; RDS Commercial Investments, LLC; KKM Construction, Inc.; and the Texas Department of Transportation.

A. Discovery Control Plan

1.1 Discovery shall be according to a “Level Three” discovery control plan.

B. Parties

2.1 Melissa Hinkle, Individually and as Representative of the Estate of Casey Alexander Hinkle, Deceased, is an individual who resides in Tarrant County, Texas.

2.2 Defendant Randy Crume, Individually, is an individual who is a non-resident of Texas, residing in the State of Oklahoma, who has appeared and filed an answer.

2.3 Defendant Refrigerated Delivery Service, Inc. is a foreign corporation incorporated in Oklahoma authorized and doing business in Texas, who has appeared and filed an answer.

2.4 Defendant RDS Commercial Investments, LLC is a foreign limited liability company in Oklahoma and doing business in Texas, who has appeared and filed an answer.

2.5 Defendant RDS Commercial Investments, LLC is a foreign limited liability company in Oklahoma and doing business in Texas, who has appeared and filed an answer.

2.6 Defendant KKM Construction, Incorporated, is a foreign corporation incorporated in Arkansas authorized and doing business in Texas, who has appeared and filed an answer.

2.7 Defendant Texas Department of Transportation has appeared and filed an answer.

C. Jurisdiction and Permissive Venue

3.1 This Court has jurisdiction in this cause since the damages to Plaintiffs are within the jurisdictional limits of this Court.

3.2 Permissive venue is proper pursuant to Tex. Civ. Prac. & Rem. Code, Section 15.002(a)(2) *et seq.*, because all or part of the cause of action arose in Cooke County, Texas.

D. Background

4.1 On July 5, 2009, the Sunday of July 4th weekend, Dale Hinkle was the driver of a 1996 Ford Explorer. His passengers included his daughter Melissa J. Hinkle, 13 year-old Casey Hinkle, and Brittany D. Burnside. Mr. Hinkle had stopped or slowed at about Mile Marker 494 with other traffic for bridge construction/maintenance by Defendant KKM Construction, Inc. and/or Defendant Texas Department of Transportation under a contractual agreement. Defendants KKM Construction, Inc. and/or the Texas Department of Transportation were also to be supervising and/or monitoring the project. Defendant KKM Construction, Inc. and/or Defendant Texas

Department of Transportation were to have adequate warnings, directions, and/or plans for the construction traffic.

4.2 Mr. Hinkle was traveling north on IH-35, in Cooke County, Texas when Defendant Randy Crume's 2006 International truck/tractor semi-trailer violently struck the rear of Mr. Hinkle's vehicle. The traffic was backed up for miles due to inadequate warnings and/or monitoring and/or supervision of the construction area and traffic. The negligence of all of the Defendants was a cause of the fatal collision with Mr. Hinkle's vehicle. Both Mr. Hinkle and Casey Alexander Hinkle were killed on July 5, 2009, and Melissa J. Hinkle suffered serious injuries in this senseless fatal collision. It was in the same area where other crashes have occurred while the bridge construction/maintenance has been taking place. Multiple collisions had already occurred in this construction and congested area when members of the Hinkle family were killed and injured.

4.3 Even more recently, another fatal collision occurred in the same area which resulted in the fatalities of 3 more people on August 3, 2009, making a total of 5 deaths and countless injuries occurring in less than 30 days as a result of 18-wheeler collisions in the area where traffic was known to be congested in connection with the construction/maintenance of the bridge just south of Gainesville, Texas on Interstate 35W.

4.4 Melissa J. Hinkle was the natural mother of Casey Alexander Hinkle and the Representative for the Estate of Casey Alexander Hinkle.

4.5 Melissa J. Hinkle was also the natural daughter of Dale Hinkle.

E. General Causes of Action and Facts Underlying These Claims

5.1 This lawsuit arises out of the tragic, untimely, and unnecessary deaths of Dale Hinkle and Casey Alexander Hinkle on July 5, 2009, as well as for the personal injuries of Melissa J. Hinkle suffered in the fatal collision.

5.2 Melissa J. Hinkle also has a bystander claim due to her being in the zone of danger and involved in the fatal collision which killed her only son, as well as her father. She was forced to watch as her son and father both lay dead and/or dying in front of her eyes.

5.3 On July 5, 2009, Casey Alexander Hinkle was a passenger in the a 1996 Ford Explorer driven by Dale Hinkle and traveling north on IH-35, Cooke County, Texas at about Mile Marker 491 when Defendant Randy Crume's 2006 International truck/tractor semi-trailer, which was owned and/or operated by Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC, failed to control the operation of his truck/tractor semi-trailer; operated his truck/tractor semi-trailer in an unsafe manner; failed to maintain an assured clear distance between his truck/tractor semi-trailer and Mr. Hinkle's vehicle so that considering the speed of the vehicles, traffic, and the conditions of the highway, Defendant Randy Crume could safely stop without colliding with the preceding vehicle; and failed to control his speed which caused the fatal collision with Mr. Hinkle's vehicle, which resulted in the death of Casey Alexander Hinkle.

5.4 The evidence will show that Defendant Randy Crume became incapacitated and/or distracted while driving the 2006 International truck/tractor semi-trailer at the time of or immediately before the fatal collision, which resulted in the deaths of Dale Hinkle and Casey Alexander Hinkle, and also caused serious injuries to Melissa J. Hinkle. The evidence will also show that Randy Crume had significant medical issues for a number of years prior to this fatal collision. Mr. Crume has testified at length in his deposition to having emotional and physical issues. He has now been diagnosed with sleep apnea, although he previously had significant issues with snoring and weight gain. It is alleged that the medical condition of Randy Crume was a cause

of this fatal collision. Additionally, these medical issues were known by Refrigerated Delivery Systems, Inc. and RDS Commercial Investments, LLC before the fatal collision.

5.5 The acts and/or omissions of Defendant Randy Crume, Defendant Refrigerated Delivery Service, Inc., and/or Defendant RDS Commercial Investments, LLC on/or before July 5, 2009, also violated numerous provisions of the Texas Transportation Code and the Federal Carrier Safety Regulations, all of which were, singularly or in combination, negligence and a proximate cause of the fatal collision and Dale Hinkle's and Casey Alexander Hinkle's untimely and tragic deaths, as well as the cause of serious injuries to Melissa J. Hinkle, and resulting in Melissa J. Hinkle's bystander claim.

5.6 Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC were negligent by entrusting its truck to their driver, Defendant Randy Crume, when they knew or should have known that Defendant Randy Crume was incompetent or unfit to safely operate a truck/tractor semi-trailer on public streets and highways in that Defendant Randy Crume was reckless. Defendants Refrigerated Delivery Service, Inc. and/or RDS Commercial Investments, LLC knew, or in the exercise of due care, should have known that Defendant Randy Crume was an incompetent driver and would create an unreasonable risk of danger to persons or property on public streets and highways in Texas.

5.7 Defendants Refrigerated Delivery Service, Inc. and/or RDS Commercial Investments, LLC failed to properly train its driver, Defendant Randy Crume. Defendants Refrigerated Delivery Service, Inc. and/or RDS Commercial Investments, LLC are also responsible under the doctrine of *respondent superior* as Defendant Randy Crume was driving the 2006 International truck/tractor semi-trailer during the course and scope of his employment as defined by the Federal Motor Safety Carrier Regulations.

5.8 Defendants Refrigerated Delivery Service, Inc. and/or RDS Commercial Investments, LLC also failed to adequately monitor, supervise, and/or audit Defendant Randy Crume as a driver before July 5, 2009.

5.9 This fatality collision arose out of the negligence of Defendant KKM Construction, Inc.'s work in connection with the job requirements connected or associated with the construction project which it had contracted to perform on Interstate 35 in Cooke County, Texas, for the Defendant Texas Department of Transportation. Defendant KKM Construction, Inc., was also negligent in the manner in which they surveyed, audited, prepared, and implemented the safety aspects of their work regarding the job requirements connected or associated with the construction project which it had contracted to perform on Interstate 35 in Cooke County, Texas, for the Defendant Texas Department of Transportation. Defendant KKM Construction, Inc., also failed to adequately address safety and traffic issues for the area leading up to the immediate construction zone. Additionally, Defendant KKM Construction, Inc. was negligent in that it failed to properly place traffic controls; failed to properly warn traffic of any impending and dangerous situations; and failed to properly monitor traffic for the impending and dangerous traffic situation. Defendant KKM Construction, Inc. was negligent in that it failed to take corrective actions/measures to eliminate the dangerous condition of the roadway, and/or warn drivers of the same, after receiving actual notice of prior collisions at or very near the same location caused by the dangerous condition of the roadway and/or traffic and after receiving actual notice of the same dangerous condition at or very near the same location, before the July 5, 2009, fatal collision which is the basis of this lawsuit.

5.10 Defendant KKM Construction, Inc. was negligent in that it failed to properly place and provide proper warnings and/or signs warning of the dangerous condition of the highway and/or traffic and failed to properly stripe or use reflectors, cones, barrels or signs or warning devices to

warn of the lane being closed. Further, Defendant KKM Construction, Inc also failed to create and/or implement an adequate safety and traffic control plan for the area.

5.11 Defendant Texas Department of Transportation was negligent in that it failed to properly control the location where the July 5, 2009, fatal collision occurred, failed to adequately inspect the highway for traffic control and signage where the July 5, 2009, fatal collision occurred, and failed to maintain a safe highway while the bridge was under construction and/or maintenance at the location where the July 5, 2009, fatal collision occurred. Defendant Texas Department of Transportation also failed to monitor, supervise, and/or place adequate signage after being notified of its necessity and the danger presented.

5.12 Many complaints had been given before July 5, 2009, to Defendant Texas Department of Transportation and/or Defendant KKM Construction, Inc.'s regarding the lack of safety contributing to a dangerous condition created by the traffic congestion due to the bridge construction and/or maintenance. Defendant KKM Construction, Inc.'s crew was frequently absent from the worksite and the heavily traveled road leading to the construction zone. Even Texas Department of Public Safety troopers complained numerous times about the traffic dangers created by Defendant KKM Construction, Inc. to Defendant Texas Department of Transportation, but such prior complaints were ignored and/or chosen not to be dealt with. In fact, Defendant KKM Construction, Inc. had been in a significant dispute about the work done and to be done on this particular project. Defendant Texas Department of Transportation referred to Defendant KKM Construction, Inc.'s work as "sloppy." Defendant KKM Construction, Inc. was upset because Defendant Texas Department of Transportation had refused to allow Defendant KKM Construction, Inc. to take off on July 3, 2009. Defendant KKM Construction, Inc. not only failed to appear for any work on July 3, 2009, but also did not return to the area until July 6, 2009, the day after this

fatal collision took place. This was in spite of the fact that both Defendant Texas Department of Transportation and Defendant KKM Construction, Inc. had written communications between the two of them regarding the dangerous traffic congestion and back-ups as a result of Defendant KKM Construction, Inc.'s work in connection with the bridge project. Ironically, there had even been communication between these two Defendants on anticipated traffic problems for the July 4, 2009 (Saturday) holiday weekend. Defendant KKM Construction, Inc. chose to ignore pleas and concerns from both the public and the Department of Public Safety regarding the dangers that the traffic congestion and back-up had been posing, including prior collisions caused by Defendant KKM Construction, Inc.'s negligence in connection with the bridge project. A cause of this fatal collision was the negligence of Defendant KKM Construction, Inc.

5.13 Although Defendant Texas Department of Transportation may have been required to accept the low bid from Defendant KKM Construction, Inc. for the bridge project, Defendant Texas Department of Transportation was still obligated to help protect the traveling public from a danger that it and Defendant KKM Construction, Inc. knew or should have known about.

5.14 Defendant Texas Department of Transportation refused to take any corrective action to protect the traveling public and residents of the local area after Defendant KKM Construction Inc. created such a dangerous condition, choosing instead to allow liquidated damages of \$400 to \$800 a day as a fine *if* Defendant KKM Construction, Inc. went over its allotted 45-day construction deadline of August 3, 2009. Incredibly, Defendant Texas Department of Transportation chose to simply create a "significant paper trail" regarding all of the complaints about the dangerous conditions before July 5, 2009, instead of taking the necessary corrective measures and actions to prevent exactly what ended up taking place on July 5, 2009, and then again on August 3, 2009. Now at least 5 people have died and countless others have been injured, as Defendant KKM

Construction, Inc. and Defendant Texas Department of Transportation have chosen to stand idly by and allow the carnage to continue. As of the filing of this lawsuit, the dangerous conditions still exist in this area of IH-35 due to the construction and traffic.

F. Negligence and/or Negligence *per se* of Defendant Randy Crume

6.1 On July 5, 2009, Defendant Randy Crume was guilty of one or more of the following acts of negligence and/or negligence *per se*, among others, which proximately caused the fatal collision in question and the injuries and damages sustained by the Plaintiffs. Defendant Randy Crume owed a duty to other motorists, including Dale Hinkle, Casey Alexander Hinkle, and Melissa J. Hinkle, to operate his vehicle in a reasonable and prudent manner and he failed to do so. His negligent acts and/or omissions include, but are not limited to, the following:

- (a) Failing to maintain proper control of his vehicle as a person using ordinary care would have done under the same or similar circumstances;
- (b) Failing to take proper evasive action;
- (c) Failing to obtain or have the necessary knowledge, training and experience to safely operate his vehicle;
- (d) Failing to keep a proper lookout as a person using ordinary care would have done under the same or similar circumstances;
- (e) Failing to maintain an assured clear distance between his vehicle and Mr. Hinkle's vehicle so that considering the speed of the vehicles, traffic, and the conditions of the highway, Defendant Randy Crume could safely stop without colliding with the preceding vehicle, in violation of Texas Transportation Code §545.062;
- (f) Failing to properly apply his brakes as a person using ordinary care would have done in violation of § 545.351 of the Texas Transportation Code;
- (g) Failing to control his speed in violation of Texas Transportation Code § 545.351;
- (h) Failing to maintain a knowledge and understanding of state and federal motor carrier safety regulations pertaining to procedures for safe vehicle operations in violation of 49 C.F.R. § 383.111;

- (i) Failing to have required knowledge of vehicle operation in violation of 49 C.F.R. 383.111;
- (j) Failing to have required skills in vehicle operation in violation of 49 C.F.R. 383.113;
- (k) Failing to have knowledge and compliance with the regulations in violation of 49 C.F.R. 390.3;
- (l) Failing to operate his vehicle and equipment in violation of 49 C.F.R. 392.2;
- (m) Failing to operate his vehicle while fatigued in violation of 49 C.F.R. 392.3;
- (n) Failing to meet general qualifications in violation of 49 C.F.R. 394.11;
- (o) Operating a vehicle while in a condition likely to cause an accident in violation of 49 C.F.R. 396.7; and
- (p) Operating a vehicle while becoming incapacitated and/or distracted while driving the 2006 International truck/tractor semi-trailer at the time of the fatal collision.

6.2 All of the above acts and/or omissions, individually or in combination, were a proximate cause of the damages sustained by the Plaintiffs.

6.3 These acts by Defendant Randy Crume constituted negligence and/or negligence *per se* for which Defendant Randy Crume should be held liable for the untimely and tragic death of Casey Alexander Hinkle.

G. Negligence and/or Negligence *per se* of Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC

7.1 Defendant Refrigerated Delivery Service, Inc., and/or Defendant RDS Commercial Investments, LLC violated numerous federal and state statutes designed to protect and safeguard the motoring public, including the Plaintiffs, and Defendant Refrigerated Delivery Service, Inc., and/or Defendant RDS Commercial Investments, LLC are therefore liable for negligence and/or negligence *per se*. Such acts and/or omissions were a proximate cause of the damages in question.

7.2 On or about July 5, 2009, Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC were the owners and/or co-owners of the truck/tractor semi-trailer operated by Defendant Randy Crume which caused the fatal collision in question. Prior to and at the time in question, Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC entrusted its truck/tractor semi-trailer to Defendant Randy Crume for the purpose of operating it on the public streets and highways of Texas. Thereafter, Defendant Randy Crume operated said truck/tractor semi-trailer with the knowledge, consent and permission of Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC.

7.3 At such time, Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC knew or should have known that Defendant Randy Crume was incompetent or unfit to safely operate a truck/tractor semi-trailer on public streets and highways in that Defendant Randy Crume was reckless.

7.4 At such time, Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC knew, or in the exercise of due care, should have known that Defendant Randy Crume was an incompetent driver and would create an unreasonable risk of danger to persons or property on public streets and highways in Texas.

7.5 By way of example only, Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC violated at least the following:

- (a) 49 C.F.R. 383.111 (failure to have required knowledge of vehicle operation);
- (b) 49 C.F.R. 383.113 (failure to have required skills in vehicle operation);
- (c) 49 C.F.R. 390.3 (knowledge and compliance with the regulations);
- (d) 49 C.F.R. 390.11 (requiring observance of regulations);

- (e) 49 C.F.R. 390.13 (aiding, abetting or encouraging drivers to violate the law)
- (f) 49 C.F.R. 392.2 (operation in accordance with the law); and
- (g) 49 C.F.R. 392.3 (no operation while impaired).

7.6 Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC were also required to observe those rules and regulations violated by Defendant Randy Crume as listed above. The conduct of Defendant Refrigerated Delivery Service, Inc., and/or Defendant RDS Commercial Investments, LLC in this case was negligence and/or negligence *per se* resulting in damages to the Plaintiffs.

7.7 Defendant Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC are also liable for Plaintiffs' damages under the doctrine of *Respondent Superior* as Defendant Randy Crume was driving in the course and scope of his employment as defined by the Federal Motor Carrier Regulations, including 49 C.F.R. § 390.5.

H. Negligence and/or Negligence *per se* of Defendant KKM Construction, Inc.

8.1 Defendant KKM Construction, Inc., violated numerous statutes designed to protect and safeguard the motoring public, including the Plaintiffs, and Defendant KKM Construction, Inc. is also liable for negligence and/or negligence *per se*. Such acts and/or omissions were a proximate cause of the damages in question.

8.2 On or about July 5, 2009, Defendant KKM Construction, Inc., and its agents, servants and officers were under contract and the authority through Defendant Texas Department of Transportation.

8.3 Defendant KKM Construction, Inc. was negligent in that it failed to abide by its contract and is also liable for negligence and/or negligence *per se*. Such acts and/or omissions were a proximate cause of the damages in question.

8.4 Defendant KKM Construction, Inc. was negligent in that it failed to provide proper warnings, signs and/or other means necessary to properly warn or direct motorists from the dangerous condition of the highway, which its employees were responsible for creating and allowing it to continue. This includes inadequately placing stripes, reflectors, cones, barrels, signs, or warning devices to give notice to motorists of the dangerous conditions of the area.

8.5 Defendant KKM Construction, Inc. also failed to create and/or implement an adequate traffic safety control plan for the area.

8.6 Defendant KKM Construction, Inc. was guilty of one or more of the following acts of negligence and negligence *per se*, among others, which proximately caused the fatal collision in question and the injuries and damages sustained by the Plaintiffs. Defendant KKM Construction, Inc.'s negligent acts and/or omissions include, but are not limited to, the following:

- (a) Failing to adequately inspect the highway where the July 5, 2009, fatal collision occurred;
- (b) Failing to provide proper warnings and/or signs warning of the dangerous condition of the highway after notice was given of the danger to motorists;
- (c) Failing to maintain a safe highway while it is under construction after notice was given of the danger to motorists;
- (d) Failing to properly stripe or use reflectors, cones, barrels or signs or warning devices to warn of the lane being closed after notice was given of the danger to motorists;
- (e) Failing to take corrective actions/measures to eliminate the dangerous condition of the roadway, and/or warn drivers of the same, after receiving actual notice of prior collisions at or very near the same location caused by the dangerous condition of the roadway and after receiving actual notice of the same dangerous condition at or very near the same location, before the fatal collision in question;
- (f) Failing to properly control the location where the July 5, 2009, fatal collision occurred after notice was given of the danger to motorists;

- (g) Failing to maintain a safe highway while the bridge was under construction and/or maintenance at the location where the July 5, 2009, fatal collision occurred after notice was given of the danger to motorists;
- (h) Failing to respond and/or address the numerous complaints presented by several Texas Department of Public Safety troopers about the traffic dangers created by Defendant KKM Construction, Inc. after notice was given of the danger to motorists;
- (i) Failing to take any corrective action to protect the traveling public and residents of the local area after Defendant KKM Construction, Inc. created such a dangerous condition after notice was given of the danger to motorists;
- (j) Failing to require, implement and/or monitor an adequate traffic control plan after notice was given of the danger to motorists; and
- (k) Failing to monitor the activities of Defendant KKM Construction, Inc. after notice was given to Defendant Texas Department of Transportation about the dangerous road and traffic conditions.

8.7 Plaintiffs would show that all of the foregoing acts of negligence, singularly or in combination, were proximate causes of the fatal collision which is the basis of this suit and resulting injuries and damages to the Plaintiffs.

I. Negligence of Defendant Texas Department of Transportation

9.1 On or about July 5, 2009, Defendant Texas Department of Transportation was in direct or indirect control of the area in question when traffic became congested and/or was reduced to one lane of travel. This constitutes both a use of tangible personal property and a condition of real property. Further, Defendant Texas Department of Transportation had actual notice that the condition of the property created extremely dangerous traffic conditions and an unreasonable rise in the frequency of traffic collisions and injuries.

9.2 Defendant Texas Department of Transportation violated numerous laws designed to protect and safeguard the motoring public, including the Plaintiffs, and Defendant Texas Department of Transportation is liable for negligence and/or negligence *per se*. Such acts and/or omissions were a proximate cause of the damages in question.

9.3 Defendant Texas Department of Transportation was guilty of one or more of the following acts of negligence and negligence *per se*, among others, which proximately caused the fatal collision in question and the injuries and damages sustained by the Plaintiffs. Defendant Texas Department of Transportation's negligent acts and/or omissions include, but are not limited to, the following:

- (a) Failing to adequately inspect the highway where the July 5, 2009, fatal collision occurred;
- (b) Failing to provide proper warnings and/or signs warning of the dangerous condition of the highway after notice was given of the danger to motorists;
- (c) Failing to maintain a safe highway while it is under construction after notice was given of the danger to motorists;
- (d) Failing to properly stripe or use reflectors, cones, barrels or signs or warning devices to warn of the lane being closed after notice was given of the danger to motorists;
- (e) Failing to take corrective actions/measures to eliminate the dangerous condition of the roadway, and/or warn drivers of the same, after receiving actual notice of prior collisions at or very near the same location caused by the dangerous condition of the roadway and after receiving actual notice of the same dangerous condition at or very near the same location, before the fatal collision in question;
- (f) Failing to properly control the location where the July 5, 2009, fatal collision occurred after notice was given of the danger to motorists;
- (g) Failing to maintain a safe highway while the bridge was under construction and/or maintenance at the location where the July 5, 2009, fatal collision occurred after notice was given of the danger to motorists;
- (h) Failing to respond and/or address the numerous complaints presented by several Texas Department of Public Safety troopers about the traffic dangers created by Defendant KKM Construction, Inc. after notice was given of the danger to motorists;
- (i) Failing to take any corrective action to protect the traveling public and residents of the local area after Defendant KKM Construction, Inc. created such a dangerous condition after notice was given of the danger to motorists;

- (j) Failing to require, implement and/or monitor an adequate traffic control plan after notice was given of the danger to motorists; and
- (k) Failing to monitor the activities of Defendant KKM Construction, Inc. after notice was given to Defendant Texas Department of Transportation about the dangerous road and traffic conditions.

J. Causation

10.1 These acts and/or omissions by the Defendants, singularly or in any combination, were a proximate cause of the fatal collision and the untimely death of Dale Hinkle and Casey Alexander Hinkle, as well as the severe injuries of Melissa J. Hinkle and her bystander claim, which claims are now brought by the Plaintiffs.

K. Damages

1. Melissa J. Hinkle's Claims for the Wrongful Death of Her Only Son, Casey Alexander Hinkle

11.1 There are certain elements of damages provided by law, including the Wrongful Death Statute, that Melissa J. Hinkle, Individually, is entitled to have a jury in this case separately consider to determine the sum of money for each element that will fairly and reasonably compensate Melissa J. Hinkle, Individually, for the damages and losses incurred and to be incurred. Casey Alexander Hinkle, as previously stated, was Melissa J. Hinkle's only son. They were extremely close, much closer than most mothers and 13 year-old sons. To a large extent, Melissa J. Hinkle played the role of both mother and father to Casey Alexander Hinkle. This loss to her cannot be fully expressed by mere words in a lawsuit. How can a lawsuit possibly begin to describe the incredible sadness and despair shown by a mother holding,

stroking, and kissing the body of her dead son before he is buried? The Plaintiffs ask a jury to determine what this loss translates to under the law.

11.2 From the time of the negligence and other tortious conduct until the time of trial in this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the past are as follows:

- (a) The mental anguish, grief and bereavement that Melissa J. Hinkle has suffered in the past up to the time of trial; and
- (b) The loss of companionship, society, love and affection that Melissa J. Hinkle has suffered in the past up to the time of trial.

11.3 From the time of trial of this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the future are as follows:

- (a) The mental anguish, grief and bereavement that Melissa J. Hinkle will suffer in the future from the time of trial; and
- (b) The loss of companionship, society, love and affection that Melissa J. Hinkle will suffer in the future from the time of trial.

2. Melissa J. Hinkle's Claims for the Wrongful Death of Her Father, Dale Hinkle

11.4 There are certain elements of damages provided by law, including the Wrongful Death Statute, that Melissa J. Hinkle, Individually, is entitled to have a jury in this case separately consider to determine the sum of money for each element that will fairly and reasonably compensate Melissa J. Hinkle, Individually, for the damages and losses incurred and to be incurred. Dale Hinkle, as previously stated, was Melissa J. Hinkle's father. They were not only close, but Melissa J. Hinkle, Casey Alexander Hinkle, and Dale Hinkle all lived together at the time of the deaths of Casey and Dale. Dale Hinkle was known to be an extremely gifted

craftsman with wood products. He made several items in the household, including a beautifully carved breakfast table where the family frequently ate. It is no wonder that Melissa has great difficulty even looking at the table, much less eating at it, without feeling the loss of both her father and son when she looks at their empty chairs. The Plaintiffs ask a jury to determine what this loss translates to under the law.

11.5 From the time of the negligence and other tortious conduct until the time of trial in this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the past are as follows:

- (a) The mental anguish, grief and bereavement that Melissa J. Hinkle has suffered in the past up to the time of trial; and
- (b) The loss of companionship, society, love and affection that Melissa J. Hinkle has suffered in the past up to the time of trial.

11.6 From the time of trial of this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the future are as follows:

- (a) The mental anguish, grief and bereavement that Melissa J. Hinkle will suffer in the future from the time of trial; and
- (b) The loss of companionship, society, love and affection that Melissa J. Hinkle will suffer in the future from the time of trial.

3. **Melissa J. Hinkle, as Representative of the Estate of Casey Alexander Hinkle, Deceased**

11.7 There are certain elements of damages provided by law, including the Wrongful Death Statute, that Melissa J. Hinkle, as Representative of the Estate of Casey Alexander Hinkle, Deceased, is entitled to have a jury in this case separately consider to determine the sum of

money for each element that will fairly and reasonably compensate the Estate of Casey Alexander Hinkle for the damages and losses incurred.

11.8 Casey Alexander Hinkle survived the collision. The graphic description of the physical condition that he was in after the collision and before his ultimate death will be saved for trial. Suffice it to say that Casey's last period of time on earth was not pleasant.

11.9 From the time of the negligence and other tortuous conduct until the time of trial in this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate them for each element sustained in the past are as follows:

- (a) The physical pain and mental anguish that Casey Alexander Hinkle suffered in the past up to the time of his death; and
- (b) Reasonable and necessary medical, funeral, and burial expenses for Casey Alexander Hinkle.

4. Melissa J. Hinkle's Individual Personal Injuries

11.10 There are certain elements of damages provided by law, that Melissa J. Hinkle, Individually, is entitled to have a jury in this case separately consider to determine the sum of money for each element that will fairly and reasonably compensate her for her damages and losses incurred.

11.11 Melissa J. Hinkle suffered severe and permanent injuries in this collision. She has been under the care of an orthopedic surgeon and psychiatrist for her physical and emotional trauma. She has also received in-hospital care, and will take significant time for a recovery process from her injuries. She will forever bear the emotional scars and effects from the loss of the two people closest to her in this life, and will also have physical results from this collision.

11.12 From the time of the negligence and other tortuous conduct until the time of trial in this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the past are as follows:

- (a) The physical pain and suffering that Melissa J. Hinkle has suffered in the past up to the time of trial;
- (b) The mental pain and anguish that Melissa J. Hinkle has suffered in the past up to the time of trial;
- (c) The physical impairment that Melissa J. Hinkle has suffered in the past up to the time of trial;
- (d) The reasonable and necessary medical expenses that Melissa J. Hinkle has incurred in the past up to the time of trial; and
- (e) The loss of earnings/earning capacity that Melissa J. Hinkle has incurred in the past up to the time of trial.

11.13 From the time of trial of this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the future are as follows:

- (a) The physical pain and suffering that Melissa J. Hinkle will suffer in the future from the time of trial;
- (b) The mental pain and anguish that Melissa J. Hinkle will suffer in the future from the time of trial;
- (c) The physical impairment that Melissa J. Hinkle will suffer in the future from the time of trial;
- (d) The reasonable and necessary medical expenses that Melissa J. Hinkle will suffer in the future from the time of trial; and
- (e) The loss of earnings/earning capacity that Melissa J. Hinkle will suffer in the future from the time of trial.

5. Melissa J. Hinkle's Individual Bystander Claims

11.14 There are certain elements of damages provided by law, that Melissa J. Hinkle, Individually, is entitled to have a jury in this case separately consider to determine the sum of money for each element that will fairly and reasonably compensate her for her damages and losses incurred.

11.15 Melissa J. Hinkle was forced to witness the severe injuries and ultimate deaths of both her 13 year-old son and her father. In addition to her own injuries, she was also in the zone of danger that ended up taking the two most precious lives to her in the world. All of this happened in front of her. Who can even imagine what this must have been like? Under Texas law, Melissa J. Hinkle has what is recognized as a “bystander” claim.

11.16 From the time of the negligence and other tortuous conduct until the time of trial in this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the past are as follows:

- (a) The physical pain and suffering that Melissa J. Hinkle has suffered in the past up to the time of trial;
- (b) The mental pain and anguish that Melissa J. Hinkle has suffered in the past up to the time of trial;
- (c) The physical impairment that Melissa J. Hinkle has suffered in the past up to the time of trial;
- (d) The reasonable and necessary medical expenses that Melissa J. Hinkle has incurred in the past up to the time of trial; and
- (e) The loss of earnings/earning capacity that Melissa J. Hinkle has incurred in the past up to the time of trial.

11.17 From the time of trial of this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate her for each element sustained in the future are as follows:

- (a) The physical pain and suffering that Melissa J. Hinkle will suffer in the future from the time of trial;
- (b) The mental pain and anguish that Melissa J. Hinkle will suffer in the future from the time of trial;
- (c) The physical impairment that Melissa J. Hinkle will suffer in the future from the time of trial;
- (d) The reasonable and necessary medical expenses that Melissa J. Hinkle will suffer in the future from the time of trial; and
- (e) The loss of earnings/earning capacity that Melissa J. Hinkle will suffer in the future from the time of trial.

L. Additional Aggravating, Reckless and/or Dangerous Conduct Representing Statutory Gross Negligence and Punitive Damages

12.1 Plaintiffs would further show that the negligent acts and/or omissions of Defendants Randy Crume, Individually, Refrigerated Delivery Service, Inc., RDS Commercial Investments, LLC, and KKM Construction, Inc., as set forth above constitute an entire want to care as to indicate that such acts and/or omissions were the result of conscious indifference to the rights, safety and welfare of others, including Casey Alexander Hinkle, Dale Hinkle, and Melissa J. Hinkle, and thus amount to gross negligence as that term is defined by the laws of the State of Texas. As such, the jury should consider assessing punitive or exemplary damages.

12.2 The acts and/or omissions of the Defendants, when viewed objectively from their standpoint at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Further, the Defendants had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others, including Casey Alexander Hinkle, Dale Hinkle, and Melissa J. Hinkle. Thus, the Defendants are liable for gross neglect and exemplary damages.

M. Demand for Jury

13.1 Plaintiffs demand a jury trial.

N. Prayer

14.1 For these reasons, Plaintiffs pray that upon final trial they have judgment for their actual damages; punitive damages; pre-judgment and post-judgment interest; costs of court; and for all other relief to which they may be entitled.

14.2 Plaintiffs also pray that Defendants Refrigerated Delivery Service, Inc., and/or Defendant RDS Commercial Investments, LLC implement and adequately fund a driver hiring and training program which is designed and adhered to in such a way to actually prevent the type of egregious circumstances that led to a needless death from developing again. Defendants Refrigerated Delivery Service, Inc. and/or Defendant RDS Commercial Investments, LLC should be required to immediately correct their inadequate hiring and training practices, and to publicly acknowledge that such corrections and adequate funding for hiring and training improvement have taken place.

14.3 Additionally, Plaintiffs also pray that Defendant Randy Crume be required to undergo additional driver training and testing before being allowed to continue to drive as a professional truck driver.

14.4 Plaintiffs further pray that Defendant KKM Construction, Inc. immediately correct the dangerous condition existing in the area where this fatal collision and others have occurred in connection with their construction project and traffic problems. Defendant KKM Construction, Inc. should be required to immediately implement an adequate traffic control plan for this and any other construction project in which it engages. This would include appropriate warnings, signage, and traffic control to prevent the type of fatal collisions which have continuously occurred as a result of their conduct.

14.5 Plaintiffs pray that Defendant Texas Department of Transportation begin appropriate monitoring of construction contract like the one with Defendant KKM Construction, Inc. to make sure that adequate safety and traffic control issues are adopted and complied with, including sufficient warning and signage and traffic direction to prevent the type of needless and senseless deaths and injuries like those which have occurred on the area of IH-35 in question.

14.6 Plaintiffs pray that these Defendants take any other appropriate and necessary steps that will prevent the traveling public from being exposed to unnecessary dangerous risks in the areas of IH-35 affected by the construction in question.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On March 30, 2010, I certify that a true and correct copy of the above document was forwarded to all known counsel of record in accordance with the Texas Rules of Civil Procedure 21 and 21a.

Steven C. Laird