

2. Plaintiff Melissa Garcia is a resident of Nueces County, Texas, and is the surviving spouse and Representative of the Estate of Oberlin Garcia, Deceased.

3. Plaintiff Amy Garcia Morales is a resident of Nueces County, Texas and is the surviving daughter of Oberlin Garcia, Deceased.

4. Plaintiff Conrado Garcia is a resident of Nueces County, Texas and is the surviving son of Oberlin Garcia, Deceased.

5. Plaintiff Oberlin Garcia, Jr. is a resident of Nueces County, Texas and is the surviving son of Oberlin Garcia, Deceased.

6. Defendant BASF Corporation (hereinafter referred to as “BASF”) is a foreign for-profit corporation doing business in Texas. Defendant BASF Corporation has been served and made an appearance in this cause of action.

III. **VENUE AND JURISDICTION**

7. Plaintiffs seek monetary relief of over \$1,000,000.00. The Court has jurisdiction over the lawsuit because the amount in controversy exceeds the Court’s minimum jurisdictional requirements. This court has jurisdiction over the parties because Defendants do business and/or have principal offices in Texas.

8. Venue is proper in Harris County, Texas pursuant to §15.002(a)(3).

IV. **FACTUAL BACKGROUND**

9. On or about May 16, 2016, Mr. Oberlin Garcia, Sr., Deceased, a commercial truck driver employed by Service Transport, arrived at a chemical plant owned, operated, and controlled by BASF Corporation in Livonia, Michigan, with a hazardous load of Diphenylmethane-4,4’-Diisocyanate (MDI). Upon arrival, Mr. Garcia reportedly checked in with BASF personnel at the

gate and was instructed shortly thereafter to prepare his tanker for unloading. Mr. Garcia parked his tractor-trailer in front of the Carbis platform where the tanker was to be unloaded. Mr. Garcia was then informed that BASF's policy and practice at this facility in Livonia, Michigan, required truck drivers to climb to the top of the tanker and open the "crash box" lids without fall protection equipment prior to unloading the chemicals from the tanker. Mr. Garcia exited the cab of his tractor, walked to the access ladder on the side of the tanker and climbed to the top to lift open the "crash box" lids in preparation for backing the tanker into position under the Carbis platform. As Mr. Garcia reached the top of the ladder, he reached toward the "crash box" lid while holding onto an extension of the ladder. As he reached, his right foot slipped from the rung of the ladder resulting in Mr. Garcia falling over 10 feet to the concrete pavement. As a result, Mr. Garcia sustained severe and catastrophic injuries which ultimately led to his tragic and untimely death.

10. At the time of the incident in question, operations were being performed under the direction, control, and supervision of all of the Defendant. At all relevant times, Defendant retained control over the specific manner, method, means, and details of the work being performed at the job site. At all relevant times, Defendant had actual knowledge of the specific manner, method, means, and details of the work performed at the job site. At the time of the incident, workers, including Mr. Garcia, were directed by Defendant to perform operations and maintenance in a specific manner that was inherently dangerous.

11. Defendant operated both independently, as well as jointly and in concert with each other, when they each contracted to provide for the products and services required to transport, load, and unload chemicals at the subject chemical plant where Oberlin Garcia was fatally injured. Accordingly, the Defendant is individually, jointly, and severally liable for their acts and

omissions, which directly and proximately caused the conditions that led to Oberlin Garcia's fatal injuries and Plaintiffs' damages.

12. Each of these acts and/or omissions, whether taken singularly or in any combination constitute negligence and gross negligence which proximately caused the death of Oberlin Garcia, and other losses as specifically set forth herein, all of which Plaintiffs suffered and which Plaintiffs will continue to suffer in the future, and for the rest of their lives.

V.
WRONGFUL DEATH CLAIM OF OBERLIN GARCIA

13. Plaintiffs incorporate each and every allegation of the aforementioned paragraphs as if fully set forth herein.

14. Oberlin Garcia is survived by his wife, Melissa Garcia, and his three children Amy Garcia Morales, Conrado Garcia, and Oberlin Garcia, Jr.

15. Plaintiffs bring this wrongful death action pursuant to Texas Civil Practice & Remedies Code § 71.001, *et seq.*, seeking to recover damages arising from the wrongful, untimely and tragic death of Oberlin Garcia, as predicated upon the facts and legal theories set forth herein. At such time, Decedent Oberlin Garcia was in good health with a normal life expectancy.

16. Plaintiffs have suffered and will continue to suffer tremendous emotional and financial harm, for which damages are hereby sought under the applicable Texas Wrongful Death Act.

VI.
SURVIVAL CLAIM OF OBERLIN GARCIA

17. Plaintiffs incorporate by reference all other paragraphs of this petition as if fully set forth herein.

18. Plaintiffs assert this cause of action pursuant to Texas Civil Practice & Remedies

Code § 72.021. Plaintiff, Melissa Garcia, as Representative of the Estate of Oberlin Garcia, seeks damages for the physical pain and mental anguish and other damages suffered by Oberlin Garcia. Despite having suffered horrific and fatal injuries from Defendant's negligent and grossly negligent conduct, Oberlin Garcia did not die instantly. As a direct and proximate results of Defendants' negligence, carelessness, and reckless conduct, Oberlin Garcia suffered severe bodily injuries and mental anguish at the time of his death.

19. Had he lived, the Decedent, Oberlin Garcia, would have been entitled to bring these causes of action against Defendants.

20. At the time of his injuries and subsequent death, Oberlin Garcia was in reasonably good health with a normal life expectancy. Oberlin Garcia suffered tremendous harm and injuries for which damages are sought under the applicable Survival Statute. Such damages were proximately caused by the negligence and gross negligence described herein.

VII.
CAUSES OF ACTION AGAINST DEFENDANT
BASF CORPORATION

A. NEGLIGENCE

21. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

22. At all times relevant to the incident in question, BASF was an owner and/or operator of chemical plants, and of the specific chemical plant in question. As such, BASF owed Oberlin Garcia a duty to act as a reasonable and chemical plant owner and operator. BASF failed to exercise ordinary care relevant to the incident in question and breached its duty owed to Oberlin Garcia. BASF committed acts of omission and commission, which collectively and severally constituted negligence, negligence *per se*, gross negligence, and recklessness; which negligence,

negligence *per se*, gross negligence and recklessness were a proximate cause of Plaintiffs' damages. This negligence and gross negligence includes, but is not limited to the following:

- a. Failing to ensure work by truck drivers at BASF facilities was performed in compliance with industry custom and practice and applicable standards;
- a. Failing to provide safety equipment, training, and/or information to truck drivers working at BASF facilities regarding the dangerous condition(s) known to BASF and which existed at the time of the subject incident;
- b. Failing to ensure company standards and safety programs were appropriate and adequate, and/or to ensure standards and requirements that were imposed were followed;
- c. Failing to design, plan, manage, own, operate, possess, inspect, evaluate, audit, construct, maintain, alter, and/or control BASF facilities, including the subject premises, in a manner so as to eliminate known and obvious dangers to it;
- d. Failing to exercise reasonable care for the safety of all employees, contractors, subcontractors, independent contractors, and other invitees at BASF facilities, including the safety of Oberlin Garcia;
- e. Failing to hire and/or train personnel competent to inspect and/or maintain BASF facilities, including the subject premises, to ensure each facility is in a reasonably safe condition, free of conditions posing an unreasonable risk of harm;
- f. Permitting or causing BASF facilities, including the subject premises in an unsafe, inferior, and/or defective manner;
- g. Failing to discover, warn of, recommend repair, and/or repair the dangerous condition(s) which was known to BASF and existed at the time of the subject incident at BASF facilities, including the subject premises;
- h. Failing to instruct and/or warn Oberlin Garcia of dangerous condition(s) known to BASF and which existed at the time of the subject incident at BASF facilities, including the subject premises;
- i. Permitting or causing the violation of 29 CFR 1910.23(c)(1);
- j. Permitting or causing the violation of 29 CFR 1926.501(b)(1);
- k. Permitting or causing the violation of 29 CFR 1926.95(a);

- l. Permitting or causing the violation of 29 CFR 1910.132(a);
- m. Permitting or causing the violation of 29 CFR 1910.28(a)(1);
- n. Acting without due regard to the rights, safety, and position of Oberlin Garcia, with regard inspecting and maintaining BASF facilities, including the subject premises;
- o. Failing to properly inspect, maintain, and/or manage BASF facilities, including the subject premises;
- p. Maintaining and retaining control over BASF facilities and the work performed by truck drivers such as Oberlin Garcia, and failing to use due care, and acting without due regard to the rights, safety, and position of truck drivers such as Oberlin Garcia;
- q. Failing to provide adequate safety policies and procedures at BASF facilities, including the subject facility;
- r. Failing to implement policies and procedures at BASF facilities, including the subject premises, to ensure that truck drivers, such as Oberlin Garcia, were not subjected to unreasonably dangerous condition(s) known to BASF and which existed at the time of the subject incident;
- s. Failing to properly supervise the work Mr. Garcia was instructed to perform at the time of the incident;
- t. Allowing hazardous conditions to exist at BASF facilities, including the subject premises at the time of the incident;
- u. Directing, controlling and supervising the work being performed by Oberlin Garcia, in a negligent manner;
- v. Directing employees, agents, contractors, and others to perform work in an inherently unsafe manner;
- w. Failing to train all personnel on site regarding the risks associated with unloading tanker trucks without fall protection equipment;
- x. Failing to have written guidelines regarding the sequence of the work to be performed;
- y. Failing to utilize, apply and communicate appropriate engineering analysis or hazard analysis with respect to drivers such as Oberlin Garcia unloading tanker trucks;

- z. Failing to render aid;
- aa. Failing to properly communicate safety measures and safety procedures to its contractors performing work at the subject chemical plant;
- bb. Failing to provide safe access to the top of tankers for workers such as Mr. Garcia;
- cc. Failing to ensure proper fall protection is available for truck drivers, such as Mr. Garcia, where tanks are loaded, unloaded and inspected;
- dd. Failing to ensure all employees and truck drivers, such as Mr. Garcia, were trained in task expectations;
- ee. Failing to provide training for truck drivers, such as Mr. Garcia, on using fall arrest systems;
- ff. Failing to include fall protection and fall arrest systems in facility design for use by truck drivers such as Mr. Garcia;
- gg. Failing to design and follow preventative maintenance programs for all devices and systems (e.g., fall arrest systems, stairs, walkways) that are part of the fall exposure reduction strategy;
- hh. Failing to adopt a safety based performance program to drive awareness for falls and consequences;
- ii. Failing to assure all workers performing work tasks are properly trained per federal, state and local regulations;
- jj. Failing to ensure that adequate fall protection and other safety measures were utilized by workers;
- kk. Failing to furnish its employees and/or contractors with necessary safety equipment, including fall protection equipment;
- ll. Failing to furnish reasonable and safe equipment and/or instrumentalities with which its employees and/or contractors were to labor;
- mm. Failing to furnish its employees and/or contractors with a reasonable and safe workplace;
- nn. Creating and allowing a dangerous condition to exist on the subject premises; and despite having knowledge of the dangerous condition, failing to remedy the condition to make the subject premises reasonably safe and/or to adequately warn Oberlin Garcia, and others similarly situated, regarding the

dangerous condition;

- oo. Failing to maintain the subject chemical plant in a reasonably safe condition, free of conditions posing an unreasonable risk of harm;
- pp. Failing to exercise reasonable care in maintaining the subject chemical plant and the unloading platform;
- qq. Failing to inspect or initiate a reasonable inspection of the subject chemical plant;
- rr. Failing to operate, maintain, and/or manage the chemical plant in a reasonably safe manner to ensure the safety of their business invitees and/or licensees, including Oberlin Garcia;
- ss. Failing to provide employees with proper instruction, training and supervision; and
- tt. Other negligent acts.

23. Each of these acts and omissions, singularly or in combination with others, constituted negligence and proximately caused the occurrence made the basis of this action, including the fatal injuries sustained by Oberlin Garcia.

24. At all material times, Defendant BASF knew or, in the exercise of reasonable care, should have known of the dangerous and hazardous condition on its premises and/or the condition had existed for a sufficient length of time so that Defendant BASF knew or should have known of the condition and could have easily remedied the condition.

25. Pleading further and in the alternative, Defendant BASF and any other appropriate parties are jointly liable for Plaintiffs' harm under the theories of joint and several liability; acting in concert; respondeat superior; agency; non-delegable duty; alter ego; actual and apparent authority; participatory liability; aiding and abetting; joint enterprise; and/or ratification.

B. NEGLIGENCE ACTIVITY

26. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set

forth herein.

27. Pleading further and in the alternative, Plaintiffs would show that at all material times, BASF knew or, in the exercise of reasonable care, should have known of the dangerous and hazardous condition on its premises and/or the condition had existed for a sufficient length of time so that BASF knew or should have known of the condition and could have easily remedied the condition.

28. Plaintiffs would further show that BASF, as the owner, operator, and controller of the subject premises had overall responsibility for the activities at the job site and the various contractors working at the subject premises. Plaintiffs would further show that BASF engaged in negligent activity or negligent undertaking and such negligence was a proximate cause of Oberlin Garcia's injuries and damages.

29. Plaintiffs would further show BASF had a contractual right of control of the operations at the subject premises and BASF was negligent in the exercise of that control, to wit the subject incident occurred. BASF had actual control over the operations that were occurring at the subject premises on the day of the incident in question, and BASF was negligent in the exercise of that control, to wit the subject incident occurred.

30. Each of these acts and omissions, singularly or in combination with others, constituted negligence and proximately caused the occurrence made the basis of this action, including the fatal injuries sustained by Oberlin Garcia.

C. NEGLIGENCE UNDERTAKING

31. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

32. Pleading further and in the alternative, Plaintiffs would show that at all material

times, BASF knew or, in the exercise of reasonable care, should have known of the dangerous and hazardous condition on its premises and/or the condition had existed for a sufficient length of time so that BASF knew or should have known of the dangerous and hazardous condition and could have easily remedied the condition.

33. BASF was negligent on the grounds of negligent undertaking. BASF had a duty to inspect, maintain, and repair the subject premises where Oberlin Garcia was fatally injured. In doing so, BASF undertook to perform services that it knew or should have known were necessary for the protection of contractors working on the subject premises. BASF failed to exercise reasonable care in performing those services by failing to inspect, maintain, and repair the subject chemical plant where Oberlin Garcia was working at the time of the subject incident.

34. Each of these negligent acts and omissions, whether taken singularly or in any combination, was a proximate cause of the occurrence made the basis of this action, including the fatal injuries sustained by Oberlin Garcia.

D. NEGLIGENCE PER SE

35. Plaintiffs incorporate by reference all other paragraphs of this petition as if fully set forth herein.

36. BASF, as the owner and operator of a chemical plant in general, and of the specific chemical plant in question, had a duty to follow all applicable federal and state safety regulations. BASF committed acts of omission and commission, which collectively and severally constituted negligence *per se*, and which proximately caused the incident, the injuries to and death of Oberlin Garcia, as well as the damages of Plaintiffs herein. The incident in question resulted from the failure of BASF to comply with all applicable federal and state safety regulations including, but not limited the following:

- a. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR 1910.23(c)(1);
- b. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR 1926.501(b)(1);
- c. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR 1926.95(a);
- d. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1926.451;
- e. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1926.452;
- f. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1926.453;
- g. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1926.501;
- h. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1926.502;
- i. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1926.760;
- j. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1926.1052;
- k. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR 1910.132(a);
- l. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR 1910.28(a)(1);
- m. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1910.23;
- n. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1910.28;
- o. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1910.29;
- p. Violation of a Statute, Rule, or Regulation then existing by failing to comply with

minimum safety standards in violation of 29 CFR §1910.66;

- q. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1910.67; and
- r. Violation of a Statute, Rule, or Regulation then existing by failing to comply with minimum safety standards in violation of 29 CFR §1910.68.

37. The Code of Federal Regulations sections referenced above are designed to protect a class of persons to which Oberlin Garcia belonged against the type of injury and death suffered by Oberlin Garcia and are of the type that may impose tort liability. BASF's violation of the referenced sections of the Code of Federal Regulations was without legal excuse.

38. BASF's breach of the duty imposed by the referenced statute, law, and regulation proximately caused injury to, and the death of Oberlin Garcia and the resulting damages to Plaintiffs herein.

39. Plaintiffs ask this Court to take judicial notice of all applicable statutes, laws, and administrative regulations pursuant to Texas Rule of Evidence 201.

E. PREMISES LIABILITY

40. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

41. In the alternative, Plaintiffs would show that at all times relevant herein, BASF was in possession and/or control of the premises where Oberlin Garcia was injured. At the time of the incident, Oberlin Garcia was an invitee on BASF's premises because he entered the premises with BASF's knowledge and for their mutual benefit. There was a dangerous condition on the premises that posed an unreasonable risk of harm to Oberlin Garcia and others similarly situated. The condition was such that a risk of harm was so great that it was both unreasonable and foreseeable.

42. BASF knew or should have known of this unreasonable and foreseeable risk of

harm to Oberlin Garcia others similarly situated. BASF failed to adequately warn Oberlin Garcia of the condition and failed to make the condition reasonably safe. BASF's failure to warn Oberlin Garcia of the condition and failure to make the condition reasonably safe was the proximate cause of his severe personal injuries and resulting death.

43. Each of these acts and omissions, singularly or in combination with others, constituted negligence and proximately caused the occurrence made the basis of this action, including the subsequent injuries sustained by Plaintiffs.

F. NEGLIGENCE, TRAINING, SUPERVISION, and RETENTION

44. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

45. BASF owed a duty to all workers and independent contractors performing the contracted work at the subject chemical plant to hire, supervise and train, competent employees.

46. BASF breached that duty in one or more of the following aspects:

- a. Failing to ensure that the representative on the premises had the requisite knowledge, training and skill to adequately supervise the work being performed on the subject premises;
- b. Failing to ensure that the representative had the requisite knowledge, training and skill to properly instruct the workers on the premises;
- c. Failing to ensure that the representative had the requisite knowledge, training and skill to recognize unsafe operations and/or cease operations due to safety concerns;
- d. Failing to ensure that the representative had the requisite knowledge, training and skill to understand that his/her presence was required at the jobsite through the "three point" method to ensure compliance with proper procedures and applicable regulations, and to guarantee that operations and procedures were completed in a safe manner;
- e. Failing to properly supervise operations; and
- f. Other negligent acts.

47. As a direct and proximate result of BASF's various failures, actions, and omissions, Plaintiffs have suffered irreparable harm making the basis of this suit.

G. RESPONDEAT SUPERIOR

48. Plaintiffs further allege that at the time the incident made the basis of this lawsuit occurred, and at all material times hereto, BASF's agents, servants and/or employees were acting within the course and scope of their employment and in the furtherance of the business interest of BASF. In this regard, Plaintiffs plead and invoke the doctrine of respondeat superior and allege that each negligent and grossly negligent act and/or omission on the part of the BASF's agents, servants and employees is imputed to BASF, and that BASF is vicariously liable for all negligent and grossly negligent acts and/or omissions alleged herein to have been perpetrated by BASF.

H. GROSS NEGLIGENCE

49. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

50. Plaintiffs would show the Court and jury that the conduct of BASF described herein constitutes gross negligence as defined in Texas Civil Practice & Remedies Code § 41.001(11)(A)-(B). As a result of BASF's gross negligence, Plaintiffs are entitled to exemplary damages.

51. "Gross negligence" according to the Texas Civil Practice & Remedies Code § 41.001(11)(A)-(B) means an act or omission:

- a. which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- b. of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

52. BASF is liable to Plaintiffs for gross negligence—to wit:
- a. BASF consciously and/or deliberately engaged in recklessness, willfulness, wantonness and/or malice through Enterprise BASF's actions, and/or inactions, and BASF should be held liable for punitive and exemplary damages to Plaintiffs; and
 - b. BASF's actions or inactions directly and proximately caused injury to Oberlin Garcia, which resulted in the death and damages detailed below.

53. Plaintiffs would further show that BASF had the power and ability to correct safety and health violations itself or require others to correct them. Further, BASF intentionally created the conditions which required Mr. Garcia to climb the tanker's ladder per BASF company policy at this facility in Livonia, Michigan, to open the "crash box" lids so that BASF's direct employees would not be required to use fall protection equipment to open the "crash box" doors after the tanker was moved into the unloading bay. BASF also had the ability and responsibility to either provide fall protection equipment to truck drivers, including Mr. Garcia, and/or its own direct employees which would allow them to open the "crash box" lids in the unloading bay, or to modify the existing Carbis platform so that it could be used by BASF's direct employees to open and close "crash box" lids.

54. Plaintiffs would further show that BASF had actual and subjective knowledge of the fall hazards associated with climbing the tanker ladders and opening and closing the heavy "crash box" lids on top of the MDI tankers. While BASF had instituted engineering controls for the safety of its own direct employees through the installation and use of the Carbis platform, BASF also had knowledge that the "crash box" lids atop the MDI tankers presented time-consuming and logistical problems due to the design of the Carbis platform.

55. Plaintiffs would further show that BASF intentionally perpetuated a work practice at its facility which would expose truck drivers, including Mr. Garcia, to fall hazards when

attempting to open and close the “crash box” lids in preparation to entering the unloading bay beneath the Carbis platform by refusing to provide Mr. Garcia and other truck drivers with the same safety protection that BASF provides to its own employees performing the exact same job activity. In fact, BASF’s corporate representative testified that BASF would not have allowed direct employees of BASF to conduct any work at a height above 4-feet without wearing fall protection equipment. Further compounding the danger to drivers such as Mr. Garcia, after the unloading process is complete, BASF requires drivers to climb to the top of their tankers for a second time without any fall protection equipment in order to close the “crash box” lids at the top of the tanker prior to leaving the BASF facility in Livonia, Michigan.

56. Plaintiffs would further show that BASF’s own safety training video titled, “**Fall protection for truck drivers,**” indicates drivers should stop and ensure safety first.¹ BASF stresses in the safety training video:²

“It’s for your safety, use it! Don’t go up to your trailer without any fall protection. Just one click could save your life.”

“So look... we, BASF, your boss and especially your family don’t want to lose you so don’t go up to your trailer without any fall protection.”

57. Plaintiffs would further show that BASF was aware of the extreme degree of risk and no revisions to the Carbis Platform and/or failed to provide other types of fall protection for its contractors working on site. BASF failed to ensure that all hazards were remedied prior to allowing contractors such as Mr. Garcia to begin performing work on the premises.

58. Plaintiffs would further show that the limitations on exemplary damages set forth in section 41.008 of the Texas Civil Practice & Remedies Code, do not apply because Defendant

¹ BASF Company Video, Fall-protection System for truck driver at BASF; <https://www.youtube.com/watch?v=nBJ6vtLhDGk>

² *Id.*

BASF conduct constituted an aggravated assault upon Oberlin Garcia, as defined by sections 22.01 and 22.02 of the Texas Penal Code, to-wit: Defendant BASF intentionally, knowingly or recklessly caused serious bodily injury to Oberlin Garcia as described herein. Plaintiffs therefore sue for unlimited exemplary damages against Defendant BASF, pursuant to Texas Civil Practice and Remedies Code sections 41.008(c)(4), in the amount determined by the trier of fact. Plaintiffs reserve the right to plead additional conduct as described in section 41.008(c) as discovery reveals it.

59. As a direct and proximate result of such gross negligence of BASF, Plaintiffs are entitled to exemplary damages.

J. INHERENTLY DANGEROUS ACTIVITY

60. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

61. Alternatively, and without waiving the foregoing, because the activities involved in the operation on the day of the incident were inherently dangerous, BASF had a non-delegable duty to avoid harm to third parties by the negligence of an independent contractor.

62. Operating and maintaining a chemical plant in the loading and unloading of chemicals from tanker trucks is an activity that is dangerous in its normal, non-defective state.

63. The hazards resulting in Oberlin Garcia's injuries were not pre-existing conditions on the premises—rather they were dangerous conditions created under BASF's direct control and under BASF's express approval and direction.

64. Because operating and maintaining a chemical plant in the loading and unloading of chemicals from tanker trucks is an inherently dangerous activity, BASF retains a non-delegable duty to avoid harm to Oberlin Garcia and others arising from the negligence of an agent, employee,

or independent contractor who performs such work.

IX.
DAMAGES & EXEMPLARY DAMAGES

65. Plaintiffs incorporate by reference all other paragraphs of this petition as if fully set forth herein.

66. Plaintiffs seek unliquidated damages in an amount that is within the jurisdictional limits of the Court.

67. As a direct and proximate result of the conduct of the Defendant's intentional, negligent, and grossly negligent acts and/or omissions described above, Plaintiffs suffered substantial injuries and damages for which they seek recovery in an amount that the jury determines to be fair and reasonable, including the following damages:

- a. Loss of Consortium in the past and future, including loss of the father-son, father-daughter, and husband-wife relationships, including loss of affection, society, assistance, emotional support, care, comfort, solace, companionship, protection, and services;
- b. Past and future loss of companionship and society, including loss of the father-son, father-daughter, and husband-wife relationships, including the loss of the positive benefits flowing from the love, comfort, companionship, and society.
- c. Past and future pecuniary losses, including earning capacity, advice, counsel, services, care, maintenance, support, and contributions that he would, in reasonably probability, have received had Oberlin Garcia lived;
- d. Past and future lost wages and earnings;
- e. Past and future medical expenses;
- f. Past and future mental anguish; and
- g. Loss of inheritance.

68. Plaintiffs seek monetary damages from Defendant to compensate them for the following elements of damages, including but not limited to:

- a. The physical pain and suffering of Oberlin Garcia from the date of the incident until his untimely death;
- b. The mental anguish that Oberlin Garcia experienced from the date of the incident until his untimely death;
- c. The disfigurement suffered by Oberlin Garcia from the date of the incident until his untimely death;
- d. Physical impairment suffered by Oberlin Garcia from the date of the incident until his untimely death;
- e. Future pecuniary losses including loss earning capacity; and
- f. All reasonable and necessary expenses for any medical care received by Oberlin Garcia incident until his untimely death;
- g. Funeral and burial expenses of Oberlin Garcia.

69. For each of the foregoing, Plaintiffs seek damages in an amount within the Court's jurisdictional limits.

A. ESTATE OF OBERLIN GARCIA

70. As a result of the injuries to and the death of Oberlin Garcia, his estate sustained survival damages including conscious pain and mental anguish suffered by him prior to his death as well as reasonable medical and funeral expenses, for which recovery is sought herein in an amount far in excess of the minimal jurisdictional limits of this Court.

B. PLAINTIFFS' DAMAGES FOR WRONGFUL DEATH OF OBERLIN GARCIA

71. As a result of Oberlin Garcia's death, Plaintiffs have suffered damages in the past and in the future, including mental anguish, loss of companionship and society, loss of financial support and pecuniary loss.

C. EXEMPLARY DAMAGES AGAINST BASF CORPORATION

72. Plaintiffs incorporate by reference all other paragraphs of this petition as if fully set forth herein.

73. Plaintiffs would further show that the limitations on exemplary damages set forth in section 41.008 of the Texas Civil Practice & Remedies Code, do not apply because Defendant BASF conduct constituted an aggravated assault upon Oberlin Garcia, as defined by sections 22.01 and 22.02 of the Texas Penal Code, to-wit: Defendant BASF intentionally, knowingly or recklessly caused serious bodily injury to Oberlin Garcia as described herein. Plaintiffs therefore sue for unlimited exemplary damages against Defendant BASF, pursuant to Texas Civil Practice and Remedies Code sections 41.008(c)(4), in the amount determined by the trier of fact. Plaintiffs reserve the right to plead additional conduct as described in section 41.008(c) as discovery reveals it.

X.
NOTICE OF SELF-AUTHENTICATION

74. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendant is hereby notified that the production by Defendant of any document in response to written discovery authenticates the document for use against Defendant in any pre-trial proceeding or at trial.

XI.
PRE- AND POST-JUDGMENT INTEREST

75. Plaintiffs seek pre- and post-judgment interest as allowed by law.

XII.
JURY DEMAND

76. Plaintiffs request a trial by jury for all issues of fact. A jury fee has been paid.

XIII.
PRAYER

WHEREFORE, FACTS CONSIDERED, Plaintiffs pray that the citation be issued, that upon trial or hearing of this cause that judgment be rendered against the Defendant; that the judgment bear interest as allowed by law; for pre-judgment and post-judgment interest; that costs

of Court be taxed against the Defendant; and for such other and further relief, at law and in equity,
to which the Court or jury believes Plaintiffs are justly entitled.

Respectfully submitted,

HILLIARD MARTINEZ GONZALES LLP

By: /s/ Alexander Hilliard

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record, pursuant to the Texas Rules of Civil Procedure on this 27th day of October, 2022.

/s/ Alexander Hilliard
Alexander Hilliard

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.

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