

19th JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE,

STATE OF LOUISIANA

NO. _____

DIVISION _____

JOSE VALDIVIA

VERSUS

**BROCK INDUSTRIAL SERVICES, LLC;
BROCK SERVICES, LLC; and
PHILLIPS 66 COMPANY**

FILED: _____

DEPUTY CLERK

ORIGINAL PETITION

NOW INTO COURT through undersigned counsel comes JOSE VALDIVIA (hereinafter "Plaintiff"), complaining of BROCK INDUSTRIAL SERVICES, LLC; BROCK SERVICES, LLC; and PHILLIPS 66 COMPANY and for cause of action would respectfully show the Court the following:

I.

NATURE OF ACTION

1. Plaintiff sues the Defendants for negligence and substantially certain or intentional conduct causing the injuries to Plaintiff for an incident that occurred at Phillips 66's Lake Charles refinery.

II.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this controversy as this is a case brought pursuant to general tort law. Further, Plaintiff has been damaged in a sum far in excess of the minimum jurisdictional limits of this Honorable Court, for which Plaintiff now sues.

3. The Court has jurisdiction over Defendants because, among other things, the underlying tortious actions of Defendants occurred in the state of Louisiana.

4. This case is not removable because complete diversity is lacking because Plaintiff and certain Defendants are both residents of Texas for purposes of diversity. Plaintiff also is not making any claims that would implicate a federal question. Additionally, for complete clarity, and without limiting damages sought, Plaintiff seeks damages far in excess of \$75,000.

5. Venue is proper in East Baton Rouge Parish because it is the parish of venue for several defendants under LA. CODE CIV. PROC. art 42. Specifically, each of the named Defendants are foreign companies that are licensed to do business in Louisiana and maintain their Principal Business Establishments in Louisiana in East Baton Rouge Parish. *See* LA. CODE CIV. PROC. art 42(4).

6. Further, Defendants are joint obligors, so venue in East Baton Rouge Parish is proper also as to the other Defendants. *See* LA. CODE CIV. PROC. art. 73; *Scarborough v. McDermott*, 2002-1235 (La. App. 4 Cir. 11/20/02); 833 So. 2d 436, 444.

III.

PARTIES

7. Plaintiff Jose Valdivia is a person of full age and majority, who resides and is domiciled in Texas.

8. BROCK INDUSTRIAL SERVICES, LLC is a foreign limited liability company that does a substantial amount of business in Louisiana. For diversity purposes, BROCK INDUSTRIAL SERVICES, LLC is a citizen of Texas. BROCK INDUSTRIAL SERVICES, LLC may be served through its registered agent: Corporation Service Company, at 501 Louisiana Avenue, Baton Rouge, Louisiana 70802.

9. BROCK SERVICES, LLC is a foreign limited liability company that does a substantial amount of business in Louisiana. For diversity purposes, BROCK SERVICES, LLC is a citizen of Texas. BROCK SERVICES, LLC may be served through its registered agent: Corporation Service Company, at 501 Louisiana Avenue, Baton Rouge, Louisiana 70802.

10. Throughout this petition Defendants BROCK INDUSTRIAL SERVICES, LLC and BROCK SERVICES, LLC will be collectively referred to as the Brock Defendants.

11. PHILLIPS 66 COMPANY (“Phillips 66”) is a foreign corporation that does a substantial amount of business in Louisiana. For diversity purposes, PHILLIPS 66 COMPANY is a citizen of Texas. PHILLIPS 66 COMPANY may be served through its registered agent: Corporation Service Company, at 501 Louisiana Avenue, Baton Rouge, Louisiana 70802.

12. The Brock Defendants and Phillips 66 all maintain their principal business establishments in Louisiana at 501 Louisiana Avenue, Baton Rouge, Louisiana 70802.

IV.

FACTS

13. This lawsuit is necessary as a result of serious personal injuries that Plaintiff sustained on or about August 2, 2022. Plaintiff was working at Phillips 66’s Lake Charles refinery when the incident occurred.

14. Plaintiff was working near scaffolding on the evening of the incident when without warning a large piece of metal was dropped on Plaintiff’s head. While Plaintiff was wearing his hard hat, and appropriate PPE, the piece of metal fell from such a height and with such force that it caused Plaintiff severe injuries.

15. Plaintiff was knocked unconscious and lost sensation in his legs. Plaintiff has already undergone significant in-patient rehabilitation and suffers from a severe brain injury as well as serious orthopedic injuries.

16. The incident occurred because of unsafe work practices, unsafe work planning, use of unsafe equipment, lack of supervision, and other reasons as to be discovered through the course of this lawsuit.

V.

CLAIMS

A. Negligence and Intentional Tort (substantial certainty) against All Defendants

17. Plaintiff repeats and re-alleges each allegation contained above.

18. The proximate, contributing, and legal causes of Plaintiff's injuries include the negligence, recklessness, and intentional (or substantially certain) conduct of the Defendants. Plaintiff was not at fault.

19. Defendants were negligent, reckless, and committed intentional (or substantially certain) conduct for the following non-exclusive reasons:

- a. Failing to plan the job properly;
- b. Failing to supervise the job;
- c. Failing to use adequate equipment;
- d. Failing to secure materials;
- e. Failing to protect from falling objects;
- f. Failing to secure objects at heights;
- g. Failing to identify hazards on the jobsite;
- h. Failing to use proper equipment to lift materials;
- i. Failing to use proper equipment to secure materials at heights;
- j. General violations of OSHA regulations, including but not limited to 29 C.F.R. 1926 and 29 C.F.R. 1910, among others;
- k. Failing to follow internal policies and procedures;
- l. Failing to follow industry standards;
- m. Failing to adequately train employees and contractors;
- n. Failing to utilize available safety equipment;
- o. Unsafe work practices relating to working at heights and securing materials at heights;
- p. Unsafe work practices with allowing individuals to work in areas where they are exposed to falling object hazards;
- q. Unsafe work practices with regard to using safety precautions before lifting heavy materials at heights;
- r. Improper and inadequate training related to material handling at heights;

- s. Unsafe design and configuration the scaffolding in the area where Plaintiff was injured;
- t. Unsafe and/or and lack of safe managerial policies, procedures, and training relating to the handling of materials at heights and use of scaffolding;
- u. Unsafe and inadequate supervision, including but not limited to supervision by Defendants' managers, supervisors, and employees at the time of the incident;
- v. Failure to provide adequate safety equipment;
- w. Failure to provide a safe working environment;
- x. Instructing and/or authorizing the Defendants to perform work in an unsafe manner;
- y. Failure to warn Plaintiff of hidden dangers; and
- z. Other acts deemed negligent, reckless, or substantially certain to cause injury.

20. Additionally, the incident sued hereupon was substantially certain to occur. The dangerous nature and manner of work being performed made it substantially certain that an object would fall and cause substantial injury. Defendants knew of the serious risks to Plaintiff and failed to act to prevent the incident. Due to the unsafe nature of the work, it was only a matter of time before this incident would occur.

21. Defendants owed a duty consistent with the foregoing and breached each of the foregoing duties. These breaches were the proximate, contributing, and legal cause of Plaintiff's injuries. As a result of Defendants' negligence, recklessness, and/or intentional torts, Plaintiff has suffered severe physical, emotional, and psychological injuries.

B. Premises Liability against Phillips 66.

22. Plaintiff repeats and re-alleges each allegation contained above.

23. The proximate, contributing, and legal causes of Plaintiff's injuries include the fault of Phillips 66 as the premises owner. Plaintiff was not at fault.

24. As the premises owner, Phillips 66 had a duty to:

- a. Act in all respects as a reasonable person to avoid creating and/or maintaining risks of harm to others.
- b. Keep the premises where the incident occurred in a reasonably safe condition; and
- c. Discover any unreasonably dangerous condition on the premises, and either correct the condition or warn potential victims of its existence.

25. Phillips 66 failed to maintain the premises, including where the incident occurred, in a reasonably safe condition. Additionally, the scaffolding where Plaintiff was working at the time of the incident were unreasonably dangerous, and Phillips 66—which knew or should have known of these conditions—did not warn Plaintiff of the dangerous conditions. Nor did Phillips 66 make reasonable efforts to eliminate the dangerous conditions.

26. Phillips 66 had actual knowledge of the unreasonably dangerous conditions in area where Plaintiff was working but failed to warn Plaintiff of the unreasonably dangerous conditions.

27. At all material times, Plaintiff was on the premises by the request of Defendants. In other words, Plaintiff was not trespassing, and he had permission to perform the work he was engaging in at the time of the incident.

28. Phillips 66 owed a duty consistent with the foregoing and breached each of the foregoing duties. These breaches were the proximate, contributing, and legal cause of Plaintiff's injuries. As a result of Phillips 66's negligence, Plaintiff suffered severe physical injury and psychological injuries. Phillips 66 is therefore liable for Plaintiff's injuries.

VI.

PRAYER FOR RELIEF

29. As a direct and proximate result of Defendants' conduct, Plaintiff suffered severe and permanent injuries. Thus, Plaintiff bring this action for damages, which include,

but are not limited to, physical pain and suffering, mental pain, anguish, and distress, loss of enjoyment of life, impairment, loss of earnings, and medical expenses.

30. WHEREFORE, Plaintiff prays that Defendants be cited to appear and answer this Petition and that after due proceedings be had, that there be relief and judgment entered herein against Defendants as pleaded above and as follows:

- a. Compensatory damages against Defendants;
- b. Actual damages;
- c. Consequential damages;
- d. Pain and suffering;
- e. Past and future mental anguish;
- f. Impairment;
- g. Past and future economic loss;
- h. Interest on damages (pre and post-judgment) in accordance with the law;
- i. Recoverable court costs; and
- j. Such other and further relief as the Court may deem just and proper.

VII.

RESERVATION OF RIGHTS

31. Plaintiff reserves the right to prove the amount of damages at trial and to amend this Petition to add additional claims upon further discovery and as investigation continues.

VIII.

JURY TRIAL DEMAND

32. Plaintiff hereby demands a trial by jury.

Respectfully Submitted,

ARNOLD & ITKIN LLP

A handwritten signature in black ink, appearing to read 'R Christensen', written over a horizontal line.

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