

ZENAIDA PRESAS, INDIVIDUALLY,
and as HEIR of and ADMINISTRATRIX
OF THE ESTATE of FELIPE PRESAS,
SR., Deceased; ZENAIDA PRESAS, on
Behalf of and for the Benefit of JAVIER
LUIS PRESAS and GABRIEL JUAQUIN
PRESAS, INDIVIDUALLY and as HEIRS
of FELIPE PRESAS, SR.; and FELIPE
PRESAS, JR., INDIVIDUALLY and as
HEIR of FELIPE PRESAS, SR.,

Plaintiffs,

vs.

DRILTECH MISSION, LLC,

Defendant,

vs.

V & V INDUSTRIES, INC. d/b/a 2V
INDUSTRIES, INC.; PRECISION
FLUIDS, INC.; AND PEOPLESOURCE,
INC.,

Defendants.

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

141ST JUDICIAL DISTRICT

Handwritten signature
JUL 16 2015
TARRANT COUNTY

PLAINTIFFS' SECOND AMENDED PETITION

Zenaida Presas, Individually and as Administratrix of the Estate of and Heir of Felipe Presas, Sr.; [✓]Zenaida Presas, on Behalf of and for the Benefit of Javier Luis Presas and Gabriel Juaquin Presas, Individually and as Heirs of [✓]Felipe Presas, Sr.; [✓]and Felipe Presas, Jr., Individually, and as Heir of [✓]Felipe Presas, Sr., Deceased ("Plaintiffs"), file their Second Amended Petition against [✓]Driltech Mission, L.L.C., V & V Industries, Inc. d/b/a 2V Industries, Inc.; Precision Fluids, and PeopleSource, Inc., as follows:

IMAGED

I. DISCOVERY

1. Plaintiffs intend to conduct discovery under Level 2 of TEX. R. CIV. P. 190.

II. NATURE OF ACTION

2. This is a wrongful death and survival action arising from the death of Felipe Presas, Sr. ("Felipe Sr.").

III. PARTIES

3. Zenaida Presas, Felipe Sr.'s surviving spouse, and Felipe Presas, Jr. ("Felipe Jr."), Felipe Sr.'s surviving son, are individuals and residents of Fort Bend County, Texas. Zenaida Presas also brings this case (i) in her capacity as Administratrix of Felipe Presas, Sr.'s Estate; and (ii) on behalf of and for the benefit of her sons, Javier Luis Presas and Gabriel Juaquin Presas, Mr. Presas' sons and heirs, pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.004(b) and 71.021.

4. Driltech Mission, LLC ("Driltech") is a Delaware Limited Liability Company located in Mansfield, Tarrant County, Texas. Driltech Mission, LLC has already been served with process and therefore no service is necessary at this time.

5. V & V Industries, Inc. d/b/a 2V Industries, Inc. ("2V") is a Michigan Corporation doing business in Texas. V & V Industries, Inc.'s addresses for service of process is its home office, 48553 West Road, Wixom, Michigan 48393 c/o Ram D. Bedi. Pursuant to TEX. CIV. PRAC. & REM. CODE §17.044(b), the Secretary of State is an agent for service on non-resident V & V Industries, Inc. because (1) the non-resident engages in business in Texas, (2) the non-resident does not maintain a regular place of business in Texas, (3) the non-resident does not have a designated agent for service of process in Texas, and (4)

the lawsuit arises out of the non-resident's business in Texas. In addition, Pursuant to TEX. CIV. PRAC. & REM. CODE §17.044(a), the Secretary of State is an agent for service on non-resident V & V Industries, Inc., because the non-resident defendant (1) is required to maintain a resident agent in Texas; (2) engages in business in Texas; and (3) has not designated or maintained a resident agent for service of process. 2V manufactured SMF 500, which was distributed by Precision Fluids as Synmax 3300.

6. Precision Fluids, Inc. ("Precision Fluids") is a Texas Corporation doing business in Texas. Precision Fluids distributed Synmax 3300 a/k/a SMF 500. Precision Fluids has entered an appearance and therefore no citation is necessary at this time.

7. PeopleSource, Inc. ("PeopleSource") is a Texas Corporation doing business in Texas and can be served by serving its registered agent Pat Loper a/k/a Patricia Loper, 11511 Katy Freeway, Suite 150, Houston, Texas 77079.

IV. JURISDICTION AND VENUE

8. Venue is proper in Tarrant County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE §15.002, because all or a substantial part of the events giving rise to the claims occurred in Tarrant County, Texas. As a separate basis for venue, Driltech's principal office is in Tarrant County.

9. This Court has subject matter jurisdiction because the amount in controversy exceeds the minimum jurisdictional amount of this Court.

V. FACTUAL BACKGROUND

10. This cause of action arises out of the death of Felipe Presas, Sr. on or about January 16, 2000. Felipe, Sr. was involved in the manufacturing of drill bits in the Driltech facility in Mansfield. Felipe, Sr. was employed by PeopleSource.

11. While at the facility, he came into contact with mist from metalworking fluids. The facility lacked adequate ventilation and engineering controls, causing Felipe, Sr., to breathe airborne contaminants, which in turn impaired his respiratory functioning and caused him fatal lung damage.

12. While at the facility, Felipe, Sr. was exposed to a mist/aerosol (the "mist") of Synmax 3300/SMF 500 (the "fluids"). The fluids (and therefore the mist) were bio-contaminated with dangerous fungus and/or bacteria. Though Precision Fluids and 2V knew or should have known that the fluids could develop bacterial and fungal colonies and become dangerous to the human pulmonary/respiratory system and therefore fatal, they not only failed to adequately warn of this hazard, they promoted the fluids as bio-resistant and as an alternative to other fluids that could develop bacterial and fungal colonies. Upon information and belief, these very fluids had been linked to outbreaks of pneumonitis at automobile manufacturing facilities where they were used, but Precision Fluids and 2V failed to disclose this.

13. As a result of the occurrence described above, Felipe, Sr., suffered severe personal injuries, resulting in an agonizing death.

VI. NEGLIGENCE AND GROSS NEGLECT OF DRILTECH

14. Plaintiffs incorporate all factual allegations made above.

15. Driltech was negligent and acted with gross neglect/malice in the following ways:

- a. failure to provide proper equipment and engineering controls;
- b. failure to provide proper warnings; and
- c. providing a defective and faulty environment and fluids.

16. Each of the above listed acts and/or omissions, taken singularly or in any combination rise to the level of gross neglect/malice. Driltech's acts and omissions, when

viewed objectively from the standpoint of the actor at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of harm to others. Driltech had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others. Therefore, Driltech acted with gross neglect and acted with malice for which it is liable for exemplary damages.

VII. GROSS NEGLIGENCE OF PEOPLESOURCE

17. Plaintiffs incorporate all factual allegations made above.
18. PeopleSource acted with gross neglect/malice in the following ways:
 - a. failure to provide proper equipment and engineering controls;
 - b. failure to provide proper warnings; and
 - c. failure to maintain a safe work place.

19. Each of the above listed acts and/or omissions, taken singularly or in any combination rise to the level of gross neglect/malice. PeopleSource's acts and omissions, when viewed objectively from the standpoint of the actor at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of harm to others. PeopleSource had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others. Therefore, PeopleSource acted with gross neglect and acted with malice for which it is liable for exemplary damages.

VIII. LIABILITY OF THE METAL WORKING FLUID DEFENDANTS

20. Plaintiffs incorporate all factual allegations made above.
21. The metal working fluid defendants, 2V and Precision Fluids, manufactured or distributed the metal working fluids to which Felipe, Sr. was exposed. Those metal working fluids were a proximate cause of Felipe, Sr.'s death.

22. The metal working fluid defendants negligently designed and/or marketed the metal working fluids at issue, and made material misrepresentations (and material omissions) concerning the characteristics of Synmax 3300/SMF 500, proximately causing Felipe Sr.'s injuries and Plaintiffs' damages.

23. Each of the above listed acts and/or omissions, taken singularly or in any combination rise to the level of gross neglect/malice. The metal working fluid defendants' acts and omissions, when viewed objectively from the standpoint of the actor at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of harm to others. The metal working fluid defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others. Therefore, the metal working fluid defendants acted with gross neglect and acted with malice for which they are liable for exemplary damages.

24. The metal working fluids were unreasonably dangerous as a result of marketing and design defects, and therefore the metal working fluid defendants are liable for Plaintiffs' damages under the doctrine of strict products liability. RESTATEMENT (SECOND) OF TORTS § 402(A). The defects were a producing cause of Plaintiffs' damages.

25. By their actions, the metal working fluid defendants breached the implied warranties of merchantability and fitness for a particular purpose, causing Felipe Sr.'s injuries and Plaintiffs' damages.

IX. CAUSATION AND DAMAGES

26. Plaintiffs incorporate all factual allegations made above.

27. As a proximate/producing result of Defendants' tortious acts and/or omissions and the product defects described herein, Felipe, Sr., suffered severe personal

injuries that resulted in an agonizing death, pain, mental anguish, medical expenses, and funeral and burial expenses, for which Plaintiffs are entitled to recover.

28. As a proximate/producing result of Defendants' tortious acts and/or omissions and the product defects described herein, Plaintiffs have suffered and will continue to suffer: pecuniary loss; loss of support; loss of companionship, society and consortium; mental anguish; and loss of inheritance.

29. For Defendants' gross neglect/malice, Plaintiffs seek exemplary damages.

X. ALTERNATIVE PLEADINGS

30. To the extent facts and/or causes of action pled in this Amended Petition are in conflict, they are pled in the alternative.

XI. JURY DEMAND

31. Plaintiffs hereby request a trial by jury; the jury fee having been deposited with the clerk.

XII. PRAYER

Accordingly, Plaintiffs pray that upon final trial of this cause, they have judgment against Defendants and Third-Party Defendants for:

- i. damages as set forth above (compensatory and exemplary) in an amount above the minimum jurisdictional amounts of this Court;
- ii. prejudgment interest at the maximum rate allowed by law;
- iii. postjudgment interest at the maximum rate allowed by law;
- iv. all costs of court; and

- v. such other and further relief, both general and special, at law and in equity to which Plaintiffs may show themselves justly entitled to receive.

Dated: April 12, 2002
Houston, Texas

Respectfully submitted,

SOLAR & ASSOCIATES, L.L.P.

By: 

J. Michael Solar

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John M. Padilla

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

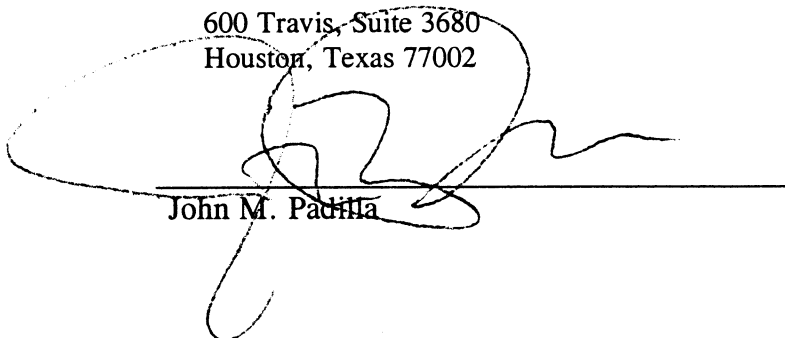
I hereby certify that a true and correct copy of the above and foregoing has been forwarded by Certified Mail Return Receipt Requested, Hand Delivery, Federal Express, Fax, and/or United States Mail, First Class on April 12, 2002 to the following:

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