



2024 Tournament Problem

The characters in this mock trial competition are fictitious and any resemblance to persons living or dead is purely coincidental. The events that take place in this mock trial competition are also fictitious.

Authored by Judge Christine Weems '00

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**CASEY FITZWALLACE, §
INDIVIDUALLY AND AS LEGAL §
REPRESENTATIVE OF THE ESTATE §
OF JIMMY HUNDSTROM, DECEASED §**

V.

Defendants

7TH DISTRICT COURT

1. Casey Fitzwallace filed suit individually and as legal representative of the Estate of Jimmy Hundstrom against Teeter Landon and Bosque Ranch doing business as Paradise Valley Landscaping for their negligence in causing the death of Jimmy Hundstrom.
2. The case bifurcated the issue of liability and damages. The liability phase was tried and the jury returned a verdict finding Defendants liable for the death of Jimmy Hundstrom.
3. The parties have identified Exhibits **A-Q** to this Pretrial Conference Report as documents related to this proceeding. The parties have also identified Exhibits **F-L** as the depositions taken in this case. These exhibit markings were used by both parties throughout the discovery phase of this case including depositions as well as the through trial.
4. Exhibits **F-S** are original and authentic.
5. Plaintiff will call two of **FOUR** potential witnesses: Casey Fitzwallace, Lynelle Perry, Colby Mayfield or Kelly Sheperd.

6. Defendants will call two of **FOUR** potential witnesses: Teeter Landon, J.D. Lewis, Ainsley Hayes or Kelly Sheperd.
7. In addition, either party may offer the deposition testimony of the witnesses not called live. All witnesses were properly listed by both parties.
8. All depositions and transcripts of testimony were signed under oath.
9. The parties have stipulated that whichever of those not called live are unavailable for purposes of Federal Rule of Evidence 804 and may be called by deposition. Parties must tender to the opposing party immediately prior to trial which portions of the depositions they intend to offer in their case in chief – either by page line designation or by providing a highlighted copy of the deposition testimony.
10. Other than what is contained in Exhibits **A-S**, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
11. The medical billing records for Exhibit **Q** are too voluminous to attach to the Court's record. The parties stipulated at the pretrial conference that there is nothing in the billing records to contradict the assertions made in the affidavit and that the total amount of the Deceased Plaintiff's medical bills total \$125,000.00.
12. To the extent expert witnesses offer expert opinions, each expert's qualifications and methodology meet the standards under the Federal Rules of Evidence. The parties need not tender the expert.
13. The expert challenge deadline has passed and neither party has moved to challenge the qualifications or methodology of the other side's expert witness. No further objections to their qualifications or methodology will be entertained.
14. The Court has adopted the findings and law found in the Texas Supreme Court case of *Sarah Gregory and New Prime, Inc. v. Jaswinder Chohan, et al.* decided on June 16, 2023. The Texas Supreme Court case has been determined to be binding on this Court and is applicable to this case.
15. The Court has drafted its own jury charge. The Court will not accept amendments or additions to Exhibit **A**. However, Plaintiff is permitted to drop claims for damages at the time of trial. The charge will not be changed; however Plaintiff may argue to the jury that they are no longer seeking specific elements of damages.

SIGNED this the 29th day of January, 2024.

/s/ Taylor Sheridan
JUDGE PRESIDING

ATTACHMENTS

- A. Verdict Form for the Liability Phase
- B. Jury Charge for the Damages Phase
- C. Original Petition
- D. Answer
- E. Relevant Provisions of South Texas Law
- F. Deposition of Casey Fitzwallace
- G. Deposition of Lynelle Perry
- H. Deposition of Colby Mayfield
- I. Deposition of Dr. Kelly Shepherd
- J. Deposition of Teeter Landon
- K. Deposition of J.D. Lewis
- L. Deposition of Ainsley Hayes
- M. South Texas Peace Officer Crash Report
- N. Photo of the Crash
- O. Photo of the Crash
- P. Dr. Kelly Shepherd Curriculum Vitae
- Q. Medical Billing Affidavit of Alastor City Memorial Hospital
- R. Text messages between Casey Fitzwallace and Jimmy Hundstrom
- S. *Texas Supreme Court opinion in Gregory v. Chohan*

QUESTION NO.1

Did the negligence, if any, of those named below proximately cause the incident in question?

For the purposes of this question, “negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Also, “proximate cause” means that cause which, unbroken by any new and independent cause, that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. To be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

“New and independent cause” means the act or omission of a separate and independent agency, not reasonably foreseeable, that destroys the causal connection, if any, between the act or omission inquired about and the injury in question and thereby becomes the immediate cause of such injury.

As used herein, a “person” includes individuals and corporations.

Answer “Yes” or “No” for each of the following:

- 1) Bosque Ranch, Inc. d/b/a
Paradise Valley Landscaping

Yes

- 2) Teeter Landon

No

- 3) Ryan Bohen

No

- 4) Lynelle Perry

Yes

- 5) Jimmy Hundstrom

Yes

If you answered "Yes" to Question No. 1 for more than one of those named below, then answer the following questions. Otherwise, do not answer the following question.

QUESTION NO. 2

What percentage of the negligence that caused the occurrence do you find to be attributable to each of those found by you to have been negligent?

Assign percentages of responsibility only to those you found caused or contributed to cause the injury or occurrence. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Answer:

- | | | |
|--------|---|--------------|
| 1. | Bosque Ranch, Inc. d/b/a
Paradise Valley Landscaping | <u>75</u> % |
| 2. | Teeter Landon | <u>0</u> % |
| 3. | Ryan Bohen | <u>0</u> % |
| 4. | Lynelle Perry | <u>15</u> % |
| 5. | Jimmy Hundstrom | <u>10</u> % |
| TOTAL: | | <u>100</u> % |

CAUSE NO. 21-6666-CV

CASEY FITZWALLACE,	§	IN THE DISTRICT COURT OF
INDIVIDUALLY AND AS LEGAL	§	
REPRESENTATIVE OF THE ESTATE	§	
OF JIMMY HUNDSTROM, DECEASED	§	
	§	
Plaintiff	§	
	§	
V.	§	CAPITOL COUNTY, SOUTH TEXAS
	§	
TEETER LANDON AND BOSQUE	§	
RANCH INC. DOING BUSINESS AS	§	
PARADISE VALLEY LANDSCAPING	§	
	§	
Defendants	§	7 TH DISTRICT COURT

JURY CHARGE

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the internet. Do not post information about the case on the internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back

into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision or your evaluation of the evidence admitted or testimony heard in this case. As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of but that can affect what we see and hear, how we remember what we see and hear, and how we make decisions. Because you are making important decisions as the jurors in this case, you must evaluate the evidence carefully, and you must not jump to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. Our system of justice is counting on you to render a just verdict based on the evidence, not on biases.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

QUESTION NO. 1

What sum of money, if paid now in cash, would fairly and reasonably compensate Jimmy Hundstrom for his damages, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Jimmy Hundstrom. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

a. Physical pain.

“Physical pain” means the conscious physical pain experienced by Jimmy Hundstrom before his death as a result of the occurrence in question.

Answer: _____

b. Mental anguish.

“Mental anguish” means the emotional pain, torment, and suffering experience by Jimmy Hundstrom before his death as a result of the occurrence in question.

Answer: _____

c. Medical expenses.

“Medical expenses” means the reasonable amount of medical expenses incurred by Jimmy Hundstrom before his death.

Answer: _____

QUESTION NO. 2

What sum of money, if paid now in cash, would fairly and reasonably compensate Casey Fitzwallace for their damages, if any, resulting from the death of Jimmy Hundstrom?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Jimmy Hundstrom. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Loss of companionship and society sustained in the past.

“Loss of companionship and society” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Casey Fitzwallace, in reasonable probability, would have received from Jimmy Hundstrom had he lived.

Answer: _____

- b. Loss of companionship and society that, in reasonable probability, Casey Fitzwallace will sustain in the future.

Answer: _____

- c. Mental anguish sustained in the past.

“Mental anguish” means the emotional pain, torment, and suffering experienced by Casey Fitzwallace because of the death of Jimmy Hundstrom.

Answer: _____

- d. Mental anguish that, in reasonable probability, Casey Fitzwallace will sustain in the future.

Answer: _____

PRESIDING JUROR

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

INSTRUCTIONS FOR SIGNING THE VERDICT CERTIFICATE

1. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.
If eleven jurors agree on every answer, those eleven jurors sign the verdict.
If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

/s/ Taylor Sheridan
JUDGE PRESIDING

CAUSE NO. _____

**CASEY FITZWALLACE, Individually §
and as Legal Representative of the Estate §
of JIMMY HUNDSTROM, Deceased §**

Plaintiff §

V. §

**TEETER LANDON and BOSQUE §
RANCH INC. Doing Business As §
PARADISE VALLEY LANDSCAPING §**

Defendants §

IN THE DISTRICT COURT OF

CAPITOL COUNTY, SOUTH TEXAS

_____ DISTRICT COURT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CASEY FITZWALLACE, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF JIMMY HUNDSTROM, DECEASED, Plaintiff herein, and file this their Original Petition complaining of TEETER LANDON AND BOSQUE RANCH INC. DOING BUSINESS AS PARADISE VALLEY LANDSCAPING, Defendants herein, and for cause(s) of action would respectfully show unto this Honorable Court and Jury as follows:

**I.
PARTIES**

1. Plaintiff CASEY FITZWALLACE (hereinafter "Plaintiff") is a natural person residing in Alastor City, Capitol County, South Texas. Plaintiff is the surviving parent of JIMMY HUNDSTROM, Deceased.

2. Defendant TEETER LANDON is a South Texas resident who may be served with process at 14 Elm Street, Alastor City, South Texas 76659.

3. Defendant BOSQUE RANCH INC. DOING BUSINESS AS PARADISE VALLEY LANDSCAPING (hereinafter PARADISE VALLEY LANDSCAPING) is a South Texas corporation doing business in the State of South Texas for the purposes of accumulating monetary profit, with its principal place of business located at 1000 Chief Way, Suite 3, Capitol City, South Texas 76660. Defendant PARADISE VALLEY LANDSCAPING may be served with process by serving its registered agent, Thomas Rainwater, 1000 Chief Way, Suite 3, Capitol City, South Texas 76660 or wherever they may be found for service.

II. **VENUE AND JURISDICTION**

4. Venue is proper in Capitol County, Texas, pursuant to §15.002 of the South Texas Civil Practice and Remedies Code as all or a substantial part of the events or omissions giving rise to the claim occurred in South Texas County, Texas.

5. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court. This Court has personal jurisdiction over all parties as set out in paragraph I.

III. **FACTS**

6. On or about August 3, 2021, Defendant TEETER LANDON, under the course and scope of his employment with Defendant PARADISE VALLEY LANDSCAPING was traveling on the Adele Webber Freeway headed from a jobsite in Alastor City to the company headquarters in Capitol City in a 2021 Ford F550 truck (hereinafter referred to as “Company Truck”) that was leased and operated by Defendant PARADISE VALLEY LANDSCAPING. Defendant PARADISE VALLEY LANDSCAPING entrusted the Company Truck to Defendant TEETER LANDON for use in the course and scope of its business. On the day of the incident, a trailer

owned and controlled by Defendant PARADISE VALLEY LANDSCAPING was hitched to the Company Truck.

7. On the date of the incident, JIMMY HUNDSTROM was a passenger in a vehicle owned and operated by Ryan Bohen that was following the Company Truck from the jobsite to the company headquarters. One other PARADISE VALLEY LANDSCAPING employee – Gator Gabriel– also rode in the truck with Ryan Bohen.

8. The Company Truck was hauling landscaping boulders and a Kubota hydraulic backhoe. The cargo was not properly secured. About five miles outside Alastor City, the backhoe moved and caused the landscaping boulders to spill onto the highway. As the truck driven by Ryan Bohen came upon the boulders on the freeway, Bohen stopped and Bohen along with JIMMY HUNDSTROM, and Gator Gabriel exited the vehicle to move the boulders from the freeway shoulder to the nearby grass.

9. At the same time, Lynelle Perry was traveling westbound on the Adele Webber Freeway. Lynelle Perry saw the boulders in the road and swerved to miss it. When she did, the Cadillac struck JIMMY HUNDSTROM and pinned him between Perry's vehicle and Bohen's truck. The impact also propelled the Bohen truck into Gator Gabriel.

10. JIMMY HUNDSTROM passed away two days later as a result of the injuries he sustained in this incident.

IV. **NEGLIGENCE OF DEFENDANT TEETER LANDON**

11. Defendant TEETER LANDON had a duty to exercise the degree of care that a reasonably careful and prudent person would use to avoid harm to others in the same or similar circumstances similar as described in this Petition. Plaintiff's injuries were proximately caused by

Defendant TEETER LANDON'S negligent, careless and reckless disregard of that duty. Such disregard for this duty consisted of, but is not limited to, the following acts and/or omissions:

- a. Failing to use reasonable care in operating a vehicle;
- b. Failing to use reasonable care in loading a trailer;
- c. Failing to use reasonable care in transporting a trailer;
- d. Failing to use reasonable care in securing cargo to the trailer;
- e. Failing to use reasonable care to follow safe industry practices; and
- f. Creating an unsafe roadway for other drivers in violation of S. TEX. TRANSP. CODE §533.001.

12. Each of the above referenced acts or omissions by Defendant TEETER LANDON directly and proximately caused Plaintiff's injuries and damages. Nothing JIMMY HUNDSTROM (also referred to as Deceased Plaintiff) did or failed to do contributed to or proximately caused the incident in question or the resulting damages.

V.
NEGLIGENCE OF DEFENDANT PARADISE VALLEY LANDSCAPING

13. Plaintiff incorporates the facts and allegations contained above.

14. Defendant PARADISE VALLEY LANDSCAPING, in addition to its own negligence as described below, is vicariously liable for Defendant TEETER LANDON'S negligence under the doctrine of respondeat superior as Defendant TEETER LANDON was in the course and scope of his employment with Defendant PARADISE VALLEY LANDSCAPING.

15. Defendant PARADISE VALLEY LANDSCAPING had a duty to exercise the degree of care that a reasonably careful and prudent company would use to avoid harm to others under circumstances similar to those described herein. Plaintiffs' injuries were proximately caused by Defendant PARADISE VALLEY LANDSCAPING'S negligent, careless and reckless

disregard of that duty. Such disregard for this duty consisted of, but is not limited to, the following acts and/or omissions:

- a. Failing to use reasonable care in entrusting the Company Truck to TEETER LANDON;
- b. Failing to use reasonable care in training employees regarding cargo securement; and
- c. Failing to use reasonable care in instituting, implementing, and enforcing policies, procedures, and protocols regarding cargo securement.

16. Each of the above referenced acts or omissions by Defendant PARADISE VALLEY LANDSCAPING directly and proximately caused Plaintiff's injuries and damages. Nothing Deceased Plaintiff did or failed to do contributed to or proximately caused the incident in question or the resulting damages.

VI.

SURVIVAL ACTION AND DAMAGES

17. Plaintiff CASEY FITZWALLACE bring this survival action in their capacity as the legal heirs of Deceased Plaintiff JIMMY HUNDSTROM pursuant to S. TEX. CIV. PRAC. REM. Code Section 71.021. The negligent acts of Defendants were a proximate cause of tremendous conscious pain, suffering, terror, mental anguish and the eventual death of JIMMY HUNDSTROM. The ESTATE OF JIMMY HUNDSTROM is entitled to recover and seeks to recover the following damages:

- a. Conscious physical pain and mental anguish suffered by JIMMY HUNDSTROM prior to his death;
- b. Mental anguish suffered by JIMMY HUNDSTROM prior to his death and
- c. Medical expenses incurred by JIMMY HUNDSTROM prior to his death.

VII.
WRONGFUL DEATH ACTION AND DAMAGES

18. Plaintiff CASEY FITZWALLACE brings this wrongful death action pursuant to S. TEX. CIV. PRAC. REM. Code Section 71 as the surviving parent of JIMMY HUNDSTROM. Plaintiff CASEY FITZWALLACE has suffered and will continue to suffer a loss of consortium and damage to the parent/child relationship, including the loss of positive benefits flowing from the love, affection, solace, comfort, companionship, society, assistance, and emotional support from their child as a proximate result of the negligence of Defendants.

19. As a proximate result of the negligence of Defendants, Plaintiff CASEY FITZWALLACE have suffered severe mental depression and anguish, grief, and sorrow as a result of the death of their child and in all reasonable probability will continue to suffer such indefinitely into the future.

VIII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff CASEY FITZWALLACE, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF JIMMY HUNDSTROM, DECEASED pray that Defendants TEETER LANDON AND BOSQUE RANCH INC. DOING BUSINESS AS PARADISE VALLEY LANDSCAPING be cited to appear and answer herein and, upon final hearing of this cause, Plaintiff has judgment against Defendants for damages described herein, for actual damages, exemplary damages, costs of suit, pre- and post-judgment interest at the highest legal rate, and for such other and further relief, both general and special, at equity and in law, to which Plaintiff may show themselves justly entitled.

Respectfully submitted,

TREECE LAW FIRM

T. Gerald Treece

SBN: 00000721

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Telephone: (713) 659-8040

Email: tgt@treecelaw.com

ATTORNEYS FOR PLAINTIFF

CAUSE NO. 21-6666-CV

Casey Fitzwallace, Individually and as	§	IN THE DISTRICT COURT OF
Legal Representative of the Estate of	§	
Jimmy Hundstrom, Deceased	§	
Plaintiff	§	
	§	
V.	§	CAPITOL COUNTY, SOUTH TEXAS
	§	
Teeter Landon and Bosque Ranch, Inc.	§	
Doing Business As Paradise Valley	§	
Landscaping,	§	
Defendants	§	7TH DISTRICT COURT

**DEFENDANTS BOSQUE RANCH INC. DOING BUSINESS AS PARADISE
VALLEY LANDSCAPING AND TEETER LANDON'S ORIGINAL ANSWER**

COME NOW, Defendants Bosque Ranch Inc. doing business as Paradise Valley Landscaping and Teeter Landon and file their Original Answer and in support thereof would show as follows:

GENERAL DENIAL

1. Defendants generally deny all of the material allegations contained in Plaintiff's Petition ("Plaintiff's Petition") including any supplements or amendments thereto and demands strict proof thereof as permitted by Rule 92 of the South Texas Rules of Civil Procedure.

OTHER DEFENSES AND ASSERTIONS

2. The death of Jimmy Hundstrom and any alleged subsequent injuries and damages by Plaintiffs, were proximately caused by the negligence, recklessness, or intentional conduct of Jimmy Hundstrom in that he failed to exercise ordinary care under the circumstances present prior to the alleged subject incident. In the event Jimmy Hundstrom's percentage of responsibility is determined to be 51% or more, Plaintiffs' recovery shall be barred in total pursuant to Section

33.001 of the South Texas Civil Practice and Remedies Code. If Plaintiffs are not barred from recovery, the Court shall reduce the amount of damages to be received by a percentage equal to Jimmy Hundstrom's percentage of responsibility, pursuant to Section 33.002(a) of the South Texas Civil Practice and Remedies Code.

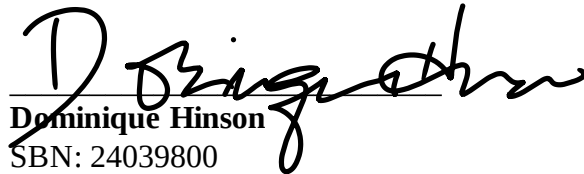
3. Defendants would further show that the incident made the basis of this suit was caused solely by the conduct of third parties or instrumentalities not connected with the Defendants or alternatively, that the conduct of third parties or instrumentalities not connected with the Defendants solely caused the incident in question. This includes, but is not limited to, Lynelle Perry and Ryan Bohen and the Defendants hereby designate them both as responsible third parties in the death of Jimmy Hundstrom.

REQUEST FOR RELIEF

Defendants Bosque Ranch, Inc. doing business as Paradise Valley Landscaping and Teeter Landon hereby request that judgment be entered in their favor denying Plaintiffs any relief, and awarding Defendants such other and further relief, general or special, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

HINSON & STENHOUSE, PLLC



Dominique Hinson

SBN: 24039800

Hayley Stenhouse

SBN: 24052423

440 Louisiana, Suite 1202

Alastor City, South Texas 77002

Telephone: (713) 665-2232

Email: dhinson@hinsonstenhouse.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been forwarded to all known counsel of record as listed below by e-service, on April 10, 2022.

E-served

T. Gerald Treece
Shaun Devine
Treece Law Firm
1303 San Jacinto Street
Alastor City, South Texas 77002
tgt@treecelaw.com

/s/ Hayley Stenhouse
Hayley Stenhouse

RELEVANT LAW

CIVIL PRACTICE AND REMEDIES CODE

TITLE 4. LIABILITY IN TORT

CHAPTER 71. WRONGFUL DEATH; SURVIVAL; INJURIES OCCURRING OUT OF STATE

SUBCHAPTER A. WRONGFUL DEATH

Sec. 71.002. CAUSE OF ACTION. (a) An action for actual damages arising from an injury that causes an individual's death may be brought if liability exists under this section.

(b) A person is liable for damages arising from an injury that causes an individual's death if the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default.

Sec. 71.003. APPLICATION; CERTAIN CONDUCT EXCEPTED. (a) This subchapter applies only if the individual injured would have been entitled to bring an action for the injury if the individual had lived or had been born alive.

Sec. 71.004. BENEFITTING FROM AND BRINGING ACTION. (a) An action to recover damages as provided by this subchapter is for the exclusive benefit of the surviving spouse, children, and parents of the deceased.

(b) The surviving spouse, children, and parents of the deceased may bring the action or one or more of those individuals may bring the action for the benefit of all.

SUBCHAPTER B. SURVIVAL

Sec. 71.021. SURVIVAL OF CAUSE OF ACTION. (a) A cause of action for personal injury to the health, reputation, or person of an injured person does not abate because of the death of the injured person or because of the death of a person liable for the injury.

(b) A personal injury action survives to and in favor of the heirs, legal representatives, and estate of the injured person. The action survives against the liable person and the person's legal representatives.

(c) The suit may be instituted and prosecuted as if the deceased injured person were alive.

CAUSE NO. 21-666-CV

CASEY FITZWALLACE INDIVIDUALLY	\$	IN THE DISTRICT COURT OF
AND AS LEGAL REPRESENTATIVE	\$	
OF THE ESTATE OF JIMMY	\$	
HUNDSTROM, DECEASED	\$	
Plaintiff,	\$	
	\$	CAPITOL COUNTY, SOUTH TEXAS
V.	\$	
	\$	
TEETER LANDON AND BOSQUE	\$	
RANCH, INC. D/B/A PARADISE	\$	
VALLEY LANDSCAPING	\$	
Defendants	\$	7TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

CASEY FITZWALLACE

FEBRUARY 5, 2023

ORAL DEPOSITION of CASEY FITZWALLACE, produced as a witness at the instance of DEFENDANTS, and duly sworn, was taken in the above-style and numbered cause on February 5, 2023 from 10:01 am to 12:20 pm, before Stephanie Sullivan in and for the state of Texas recorded by machine shorthand at the offices of Treece Law Firm, 1303 San Jacinto Street, Alastor City, South Texas 77002, pursuant to the South Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto, that the deposition shall be read and signed before any notary public.

A P P E A R A N C E S

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1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MS. DOMINIQUE HINSON:

4 Q. Good morning. Please state your name for the
5 record?

6 A. Casey Fitzwallace.

7 Q. I understand that you are Jimmy Hundstrom's parent.
8 I'm so sorry for your loss.

9 A. Thank you. It has been a difficult time for us.

10 Q. I understand. We are here today because you have
11 sued my clients for causing your son's death.

12 A. Yes.

13 Q. So I need to ask you some questions. I'm not trying
14 to be insensitive.

15 A. I understand. I have been involved in litigation
16 before.

17 Q. I realized you have. Let's start there.

18 A. Okay.

19 Q. Please describe your experience in litigation.

20 A. I had to file a lawsuit for the death of Jean.

21 Q. Who is Jean?

22 A. My spouse. They passed away four years ago. A
23 year and a half before Jimmy died. The last couple of years
24 have been really hard.

1 Q. I'm so sorry to hear that. But you understand why
2 I have to ask you some questions?

3 A. Yes. I understand. Please go ahead.

4 Q. Tell me about that lawsuit that you had previously
5 filed.

6 A. My spouse Jean underwent elective surgery and it
7 did not go well. There was a problem with the anesthesia and
8 they coded. The doctors were not able to revive Jean.

9 Q. When did that happen?

10 A. January 24, 2019.

11 Q. What kind of surgery was it?

12 A. Honestly, it was a face lift. Jean was worried
13 about getting older and looking older. We were both concerned
14 about it actually. I had a face lift the year before without
15 any problems. And Jean used to say that they wanted to look
16 as young as I did.

17 Q. How old was Jean?

18 A. We were both the same age - 47. I know that makes
19 us sound vain. Honestly, I never thought Jean looked old but
20 they were supportive when I got my surgery done that I wanted
21 to be equally supportive of their surgery. Obviously, I wished
22 we had both just decided to grow old gracefully. The stress
23 of losing Jean and then losing Jimmy has just been too much.

24 Q. You filed suit over Jean's death?

1 A. Yes, for medical malpractice. Thankfully, the case
2 settled out of court. Jimmy and I both got millions of
3 dollars, but nothing will ever replace losing Jean.

4 Q. How did Jimmy take Jean's death?

5 A. Not well. I think he blamed me for Jean's death.
6 Jean died in January of Jimmy's senior year. Jimmy had planned
7 to go to college in New York at NYU to stay close to the
8 family, but at the last second he applied to the University
9 of South Texas.

10 Q. Do you know why he chose to go to the University of
11 South Texas?

12 A. His best friend J.D. Lewis was going to go there.
13 I also think he went because his birth mom lived there.

14 Q. Let's talk about that. Jimmy was adopted?

15 A. Yes.

16 Q. Was there any particular reason why you chose to
17 adopt?

18 A. We had tried, but weren't successful. We had the
19 financial means to adopt so we decided to go that route.

20 Q. I'm sorry, we haven't talked a lot about your
21 background. You live in New York City?

22 A. Yes. Jean was in finance. I am a publishing agent.
23 New York City was the perfect place to be.

24 Q. Is that where y'all met?

1 A. No. We both grew up in Simsbury, Connecticut, but
2 we both knew we didn't want to stay there. Jean went to
3 Columbia. I went to Yale. We got married right after
4 graduation and moved to New York.

5 Q. At some point, you decided to adopt?

6 A. Yes. We went through an agency who told us about
7 Jimmy's mother, Ainsley. She was a teenager in South Texas
8 who came from a good home and did well in school. She knew
9 she couldn't take care of him without derailing her
10 future. She was going to be the first in her family to go to
11 college so she had decided to give him up.

12 A. Did you meet her before Jimmy was born?

13 Q. Absolutely. We wanted to meet her. Just to make
14 sure. She was very kind and smart. We actually flew down
15 a couple of times to South Texas before we agreed to adopt
16 her son - just to make sure.

17 A. When did you get Jimmy?

18 Q. We were both actually there when he was born. When
19 we agreed to adopt Jimmy, Ainsley was 7 months pregnant. We
20 agreed to provide for her and take care of her and her family.
21 They were all great people. And on July 6, 2003, Jean and I
22 were there the day Jimmy was born. Jimmy was our son ever
23 since.

24 Q. Where does the name Hundstrom come from?

1 A. Jean's last name. We flipped a coin and Jean won.

2 Jean never let me forget it. I really miss Jean.

3 Q. I'm so sorry. Do you need a break?

4 A. No. I would rather get this over with please.

5 Q. Okay. Let's talk about your relationship with
6 Jimmy. How would you characterize it?

7 A. It was good. I mean, as good as it can be. Parenting
8 is almost always good cop/bad cop, right? We spoiled Jimmy.
9 He was our only child. But the way things turned out, Jean
10 was always the easy going parent. The fun one. I was always
11 the one who had to say no all of the time.

12 Q. Did y'all raise Jimmy on your own?

13 A. We had help. We had to get help - Jean and I were
14 both working full time. Jimmy had a nanny until he went to
15 high school.

16 Q. How did he refer to you and Jean?

17 A. He always referred to us by our names. Call us
18 progressive, but we wanted to raise him to be respectful of
19 people and we think part of that is using our names. But it
20 didn't mean that we weren't affectionate to each other.

21 Q. Did y'all take family trips together?

22 A. We did. Like if Jean had a work trip or I had one,
23 we would just take the family long. It was fun. We've gone
24 all over the country and the world.

1 Q. Was he in public school?

2 A. Oh god no. Not in Manhattan. We sent him to private
3 school. St. Emmanuel's. He went there from kindergarten to
4 high school.

5 Q. You had mentioned earlier that Jimmy was upset with
6 you about Jean's death?

7 A. I think so. I had told you that Jimmy was closer to
8 Jean. I think Jimmy thought I forced Jean to have the face
9 lift. Like I didn't love Jean as is and that I wanted Jean to
10 look younger. Jimmy was wrong, but you can't tell a 17-year-
11 old they're wrong. They believe what they want.

12 Q. When did he decide to change colleges?

13 A. It was only a month or two after Jean died. I was
14 really sad he wanted to leave, but at the same time, I knew
15 the tighter I tried to hold on to him, the further away Jimmy
16 was going to go.

17 Q. When did he leave for South Texas?

18 A. Right after graduation. I offered to get him a
19 townhouse right outside of campus. But he wanted to live in
20 the dorms. So he moved into the same coed dorm his high
21 school best friend was going to be living in.

22 Q. You had mentioned the best friend before...

23 A. J.D. Lewis. They have been best friends since
24 middle school.

1 Q. Did you know J.D. well?

2 A. As much as any parent can know their kids' friends.
3 J.D. came over. I could recognize their parents. But we
4 weren't social together or anything. I like J.D. Good kid.

5 Q. Did Jimmy ever come home?

6 A. No. He didn't want to come to New York. He said he
7 didn't want to deal with the snow and cold weather.

8 Q. Did you ever go visit him?

9 A. I did for Christmas. I got a hotel room for a couple
10 of days. It was tough to get away at the time. One of my
11 writers had just released a holiday book and we were
12 coordinating a massive ad campaign so I had to work a lot
13 while I was there. But I saw Jimmy when I could. And J.D. had
14 dinner with us too. It was so good to see Jimmy.

15 Q. When was the last time you saw Jimmy?

16 A. I flew into town over the fourth of July for a
17 book reading of one of my writers and we got to have dinner
18 and catch up. But I would also FaceTime him during the school
19 year. Jimmy was pretty busy himself. So we talked pretty
20 regularly.

21 Q. By pretty regularly, what do you mean by that?

22 A. At least every other week. Sometimes weekly.

23 Q. Okay. How was Jimmy doing in school? Do you know?

24 A. He did very well. He was on the Dean's List his

1 first semester. His grades started to slide his second
2 semester so we had a talk about that.

3 Q. What was he studying?

4 A. He wasn't sure yet. He didn't have to declare yet.
5 Jimmy had just finished his first year and had been taking
6 the fundamentals. I think he was leaning towards maybe
7 business, like Jean?

8 Q. Did he come home for the summer?

9 A. No. He wanted to stay in Alastor City with his
10 friends. I got him an apartment for the summer. He didn't
11 want to take any classes though. I told him if he was going
12 to stay for the summer, he was going to have to get a job.
13 That's how he ended up working for Paradise Valley
14 Landscaping. One of his friends worked there.

15 Q. I'd like to turn your attention to the accident.

16 A. Okay. You know I wasn't there.

17 Q. Right. I want to know how you heard about it.

18 A. I got a call from a police officer. I'm not sure
19 how they got my number.

20 Q. What did they tell you?

21 A. That he had been involved in a serious crash.

22 Q. Do you remember the officer's name?

23 A. I don't. I was in shock when I heard the news. I
24 went on autopilot thinking about just getting to Jimmy. He

1 was all I had left.

2 Q. When did you arrive?

3 A. After midnight. I flew down in a friend's plane so
4 I could get here quickly. I had to be with him at the
5 hospital.

6 Q. Tell me about his time at the hospital.

7 A. It was excruciating. There was nothing I could do.
8 I just sat there and tried to be a calming influence but
9 inside I was losing it. This was my son and he was in such
10 bad shape.

11 Q. Was he conscious?

12 A. At times. But he was in so much pain that the
13 doctors kept him sedated most of the time. I talked to him
14 anyway. I wanted him to know what he meant to us.

15 Q. Was he ever conscious enough to talk to you?

16 A. The day after the accident, he came out of the coma.
17 He talked about how much he hurt, but he seemed eerily calm.
18 Like he knew. He asked if I was going to be okay.

19 Q. What did you say?

20 A. I was honest. I said I didn't think I would be. And
21 then he told me he wanted me to be okay so I could move on.
22 He thanked me for adopting and changing his life. Then he
23 went to sleep. He died the following day without waking
24 again.

1 Q. Could you tell if he was in pain?

2 A. I'm sure he was. But I also know he was on a lot
3 of medications.

4 Q. Were you with him when he died?

5 A. I was. I viewed every moment with him as a gift.

6 Q. Did Jimmy have any visitors while he was at the
7 hospital?

8 A. Some of his friends from school came to visit and
9 provide their support. Including J.D. Lewis. Like I had
10 said, J.D. is a sweet kid.

11 Q. Did his birth mother Ainsley Hayes ever come to the
12 hospital?

13 A. I don't remember ever seeing her there, but there
14 was always a lot going on.

15 Q. Do you know if Jimmy had ever reached out to his
16 birth mother while he was in South Texas?

17 A. No. I have no idea. But I think he would've told me
18 if he had.

19 Q. Why do you say that?

20 A. Because we have never hidden from him that he was
21 adopted. We knew that at some point, he would probably try
22 to find his mother. It was inevitable. Even after Jean died,
23 I would've been supportive of him eventually meeting her.

24 Q. Did anyone from Paradise Valley Landscaping come to

1 the hospital?

2 A. Rip Wheeler did.

3 Q. Did you talk to him?

4 A. Yes. He said he was sorry.

5 Q. How did you respond?

6 A. That I loved how people think that phrase entitles
7 them to absolution from the people whose lives they have
8 ruined.

9 Q. Why have you decided to sue the landscaping company
10 and one of its employees?

11 A. Because none of this would've happened if they had
12 done their job. You can't drive a trailer on a public roadway
13 without securing what you're carrying. They didn't. They
14 loaded too much on the trailer. The company didn't pay
15 attention.

16 Q. Why do you say that?

17 A. My lawyer told me that. I asked why this happened
18 and that is the response I got. You are responsible for
19 compensating the victim for what you caused. The landscaping
20 company and the foreman who was in charge of loading the rocks
21 should pay for the harm they caused.

22 Q. Did you know Jimmy was using drugs?

23 A. Jimmy didn't use drugs.

24 Q. You know that they found marijuana in his system at

1 the time of his death and that his co-workers admitted that
2 they smoked pot with him before the left.

3 A. Jimmy didn't use drugs. They probably peer
4 pressured him into it. Jimmy never wanted to offend anyone
5 so he probably took it and did it to not make things awkward.

6 Q. No further questions. I pass the witness.

7 EXAMINATION BY MS. SHAUN DEVINE

8 Q. You had mentioned that you thought Jimmy blamed you
9 for Jean's death.

10 A. I think maybe so.

11 Q. Do you have any reason to think Jimmy didn't love
12 you?

13 A. No reason at all. We were the only family each other
14 had left.

15 Q. Are your parents living?

16 A. No. Both of my parents are dead. Jean's parents
17 are still in Simsbury, but I never got along with them so
18 they never visited us and we never visited them.

19 Q. Do you think Jimmy should've been in the road trying
20 to move the rocks off the road?

21 A. He wasn't in the road. He was on the shoulder.
22 That's different. And yes, Jimmy was being Jimmy. He was
23 trying to help people. If he thought something was a problem,
24 he was going to try to fix it. And he worked for the

1 landscaping company, the landscaping company caused the
2 boulders to be on the road, and the driver of the car he was
3 in stopped to get them out of the road.

4 Q. Do you blame the driver that stopped to retrieve
5 the rocks?

6 A. No. He was helping, just as Jimmy was.

7 Q. Do you blame the woman who hit Jimmy with her car?

8 A. No. She was driving on the highway. You don't expect
9 to encounter 100-pound boulders in the road when you're
10 driving on a major freeway at 70 miles per hour.

11 Q. Casey, how have you been handling things since
12 Jimmy's passing?

13 A. I'm not going to lie. It was hard. I already wasn't
14 in the best place. I had been seeing a therapist when Jean
15 died. I started seeing that therapist less and less over time,
16 especially once things started getting better with Jimmy and
17 I. But once Jimmy was killed, I started going back to therapy
18 again because it was just all too much.

19 Q. How often were you going to a therapist after Jean
20 died?

21 A. Every other week. Sometimes weekly depending on
22 what was going on.

23 Q. How often did it wane down to?

24 A. Well as things were getting better, I was going

1 more like every month. Jimmy was talking to me more so that
2 made a huge difference.

3 Q. When did that start?

4 A. Maybe right after the first anniversary of Jean's
5 death. I was coping better.

6 Q. And then after Jimmy died?

7 A. I go every week. I still go every week. It has
8 not been easy.

9 Q. Thank you. We will reserve our remaining questions
10 for trial. I pass the witness.

END OF DEPOSITION

CAUSE NO. 21-666-CV

CASEY FITZWALLACE INDIVIDUALLY	\$	IN THE DISTRICT COURT OF
AND AS LEGAL REPRESENTATIVE	\$	
OF THE ESTATE OF JIMMY	\$	
HUNDSTROM, DECEASED	\$	
Plaintiff,	\$	
	\$	CAPITOL COUNTY, SOUTH TEXAS
V.	\$	
	\$	
TEETER LANDON AND BOSQUE	\$	
RANCH, INC. D/B/A PARADISE	\$	
VALLEY LANDSCAPING	\$	
Defendants	\$	7TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

LYNELLE PERRY

OCTOBER 12, 2022

ORAL DEPOSITION of LYNELLE PERRY, produced as a witness at the instance of DEFENDANTS, and duly sworn, was taken in the above-style and numbered cause on October 12, 2022 from 9:33 am to 10:25 am, before Stephanie Sullivan in and for the state of Texas recorded by machine shorthand at the offices of the Treece Law Firm, 1303 San Jacinto Street, Alastor City, South Texas 77002, pursuant to the South Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto, that the deposition shall be read and signed before any notary public.

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1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MS. HAYLEY STENHOUSE:

4 Q. Good morning. Your name please?

5 A. Lynelle Jean Perry.

6 Q. You were involved in an accident on the interstate
7 in Newtown?

8 A. I was.

9 Q. And someone died in that accident, right?

10 A. Yes, but it wasn't my fault.

11 Q. But you are the one who hit Jimmy Hundstrom?

12 A. I was but he shouldn't have been in the road.

13 Q. Actually he was on the shoulder, correct?

14 A. I guess that's right but it was still dangerous.

15 And the rocks should never have been on the road. The were
16 incredibly dangerous.

17 Q. Let's talk about what you had been doing that day.

18 Where had you been?

19 A. When?

20 Q. Before you got in your car and got on the Adele
21 Webber Freeway that day.

22 A. I had been at Celebrations with friends.

23 Q. Is that in Alastor City?

24 A. Yes it is.

1 Q. What is Celebrations?

2 A. A Campbell Alastor bistro. It is near the town

3 square.

4 Q. What were you doing there?

5 A. Having an early dinner.

6 Q. Did you eat alone?

7 A. No, I met two friends.

8 Q. Who were they?

9 A. Craig Priesmeyer and Morgan Bird.

10 Q. What did you eat?

11 A. I shared some spinach artichoke dip as an appetizer

12 and then I had a salad as my meal.

13 Q. Did you have any alcoholic drinks?

14 A. No. I had sparkling water with my meal.

15 Q. When did you leave Celebrations?

16 A. A little after 6:30. We talked outside the

17 restaurant for a few minutes before walking to our cars.

18 Q. What kind of car do you own?

19 A. Now or then?

20 Q. Let's start with then.

21 A. I had a 2021 silver Cadillac Escalade.

22 Q. You no longer have it?

23 A. Correct. It was totaled in the accident. I had to

24 get a new vehicle afterwards.

1 Q. What did you get next?

2 A. A 2022 Range Rover. It is silver too.

3 Q. Okay. When you left Celebrations in your Cadillac,

4 where were you headed?

5 A. Home.

6 Q. Where's home?

7 A. Capitol City.

8 Q. Where in Capitol City?

9 A. On Billings Street. Near Shenendoah Lake.

10 Q. Were you by yourself?

11 A. Yes.

12 Q. Were you using your cell phone?

13 A. I was using it to listen to a podcast called the

14 Weekly Dose. It's how I catch up on recent medical news and

15 information about the pharmaceutical industry.

16 Q. Why do you listen to that podcast?

17 A. I like it and it helps me stay on top of my

18 industry.

19 Q. What kind of industry are you in?

20 A. I'm in pharmaceutical sales.

21 Q. Who are your clients?

22 A. Doctors.

23 Q. So you spend a lot of time at hospitals?

24 A. Not really. More like the professional buildings

1 that are attached to hospitals. I go to the doctors' offices.

2 Q. I understand that you were also talking on your
3 cell phone while you were driving?

4 A. I took a couple of calls on the way.

5 Q. Who did you talk to?

6 A. My husband. He was checking where I was.

7 Q. Were there others?

8 A. Yes.

9 Q. Who else?

10 A. My assistant. He was telling me about my schedule
11 for the rest of the week.

12 Q. Is that it?

13 A. That's all I can remember.

14 Q. And you were smoking while you were driving, right?

15 A. I was. It is the one place I can smoke nowadays.

16 Q. Do you think it's safe to listen to a podcast, take
17 phone calls and smoke cigarettes while you're driving?

18 A. That's all legal. There's nothing wrong with
19 multitasking. I pay attention to the road.

20 Q. Was it dark while you were driving?

21 A. No, it was starting to get dark. My lights came on
22 automatically.

23 Q. How fast were you going?

24 A. I'm not certain but it was below the speed limit.

1 Q. What was the speed limit there?

2 A. 75. So I think I must've been driving around 65.

3 Q. Were there many vehicles on the road?

4 A. Some but it wasn't super crowded.

5 Q. Did you slow down as you rounded the curve just

6 before Bunker Hill?

7 A. I think so. I was talking to Ben.

8 Q. Who is Ben?

9 A. My assistant.

10 Q. Describe what happened after you rounded the curve?

11 A. I saw something in the road and a car in the center

12 median. I slammed on my brakes and swerved to miss them.

13 Q. Did you see the vehicle or people on the right?

14 A. Not until after I swerved and by then, it was too

15 late. I tried to stop but I couldn't.

16 Q. Did you see the people before you hit them?

17 A. No, I covered my eyes when I realized that I was

18 going to hit something.

19 Q. Did you ever uncover your eyes?

20 A. Yes. I could feel that I hit something hard and

21 then I uncovered my eyes and saw a man that looked like he

22 was pinned between my car and a truck. It was horrible.

23 (witness starts to cry)

24 Q. Do you need a break, Ms. Perry?

1 A. No. I really want to just get this over with please.

2 Q. Okay. I know these are some hard questions, but I
3 need you tell us what you can remember. Did the man you hit
4 - did he look like he was conscious?

5 A. I don't know. I don't think so. His eyes were
6 closed but I can't tell you for sure. It was just all very
7 overwhelming. My arm and leg were in so much pain and at the
8 same time, there was this young man that I had just hit. I
9 was in total shock.

10 Q. You said your eyes were covered, but did you hear
11 anyone cry out or anything at the time of impact?

12 A. I think I yelled. I can't remember if I heard
13 anything other than horrible impact.

14 Q. What did you do next?

15 A. I was able to back up my car just a little bit but
16 then my car died.

17 Q. What happened to the man when you backed up?

18 A. His body just kind of fell. I couldn't see it any
19 more. I think some people had come running over to him.

20 Q. What did you do next?

21 A. I couldn't get out of the car. My arm and leg were
22 broken and I was in so much pain. They had to pull me out of
23 the car because I couldn't move.

24 Q. Do you have any other specific recollection from

1 the accident?

2 A. Only that I was in severe pain. It was a terrible
3 accident.

4 Q. Were you conscious?

5 A. I was.

6 Q. So you went to the hospital?

7 A. Yes

8 Q. Which one?

9 A. Presbyterian Hospital in Alastor City.

10 Q. And you went by ambulance?

11 A. Yes.

12 Q. How long did you stay at the hospital?

13 A. Three days.

14 Q. When did you learn that someone had died in the
15 accident?

16 A. While I was in the hospital.

17 Q. Who told you?

18 A. The police officer.

19 Q. Which one?

20 A. I don't remember.

21 Q. What did he tell you?

22 A. He came to talk to me about the accident. He asked
23 questions about it and told me that the young man I had hit
24 had died.

1 Q. Did you know about what happened to anyone else at
2 the scene?

3 A. The officer told me that someone other people had
4 been injured. I felt horrible, but there was nothing I could
5 do. I had been pretty injured myself.

6 Q. Did you see anyone else injured at the scene.

7 A. At the scene? No. I was in so much pain and there
8 was so much going on to get me out of my car.

9 Q. Did the officer ask you about anything else?

10 A. He wanted to know about some stuff that happened
11 while I was in college.

12 Q. What was that?

13 A. I had a DUI in 2012.

14 Q. Let me get a little background about you. Where are
15 you from?

16 A. I grew up in Capitol City. I went off to college at
17 Oregon State for a couple of years before coming home.

18 Q. Did you graduate?

19 A. No. I started working in sales and have been doing
20 it ever since.

21 Q. How old are you?

22 A. 31.

23 Q. What did you study in college?

24 A. I was in the pre-med program.

1 Q. Who did you go to work for when you came back from
2 Oregon?

3 A. Eli Lilly.

4 Q. Do you still work for them?

5 A. No. I switched to Pfizer in 2015.

6 Q. You mentioned you were married.

7 A. I am. His name is Clint Morrow.

8 Q. What does he do?

9 A. He's a doctor. I met him while selling
10 pharmaceuticals. He was one of my clients.

11 Q. Do you have any children?

12 A. One son. John. He's five years old.

13 Q. Thank you. I pass the witness.

14 EXAMINATION BY T. GERALD TREECE

15 Q. Good afternoon. I'm Gerald Treece. Do you
16 understand that I represent the plaintiff in this case?

17 A. Yes.

18 Q. Did you threaten to sue Paradise Valley
19 Landscaping?

20 A. Yes.

21 Q. But you didn't?

22 A. No. They paid me so I didn't have to.

23 Q. How much did they pay you?

24 A. \$200,000 and they paid for the value of my Cadillac.

1 Q. And in exchange for that, you agreed not to sue
2 them, correct?

3 A. Correct.

4 Q. Do you know that they are blaming you for the crash?

5 A. No. They are?

6 Q. The landscaping company is claiming they are not
7 responsible for the crash because you were driving too fast
8 and not paying attention.

9 A. Well, that's crazy talk. It's not true. There
10 wasn't anything I could do.

11 Q. I have no further questions. I pass the witness.

12 EXAMINATION BY HAYLEY STENHOUSE

13 Q. You also settled claims with the Plaintiff, didn't
14 you?

15 A. I believe that is correct. My insurance company
16 did.

17 Q. How much did you end up paying Casey Fitzwallace?

18 A. I only have a \$100,000 policy so that was what was
19 paid.

20 Q. I have nothing further at this time. I will reserve
21 the remainder of my questions for the time of trial.

END OF DEPOSITION

CAUSE NO. 21-666-CV

CASEY FITZWALLACE INDIVIDUALLY	\$	IN THE DISTRICT COURT OF
AND AS LEGAL REPRESENTATIVE	\$	
OF THE ESTATE OF JIMMY	\$	
HUNDSTROM, DECEASED	\$	
Plaintiffs,	\$	
	\$	
V.	\$	CAPITOL COUNTY, SOUTH TEXAS
	\$	
TEETER LANDON AND BOSQUE	\$	
RANCH, INC. D/B/A PARADISE	\$	
VALLEY LANDSCAPING	\$	
Defendants	\$	7TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

COLBY MAYFIELD

NOVEMBER 16, 2022

ORAL DEPOSITION of COLBY MAYFIELD, produced as a witness at the instance of PLAINTIFF, and duly sworn, was taken in the above-style and numbered cause on November 16, 2022 from 9:07 am to 12:14 pm, before Rebecca Hogg in and for the state of Texas recorded by machine shorthand at the offices of the Treece Law Firm, 1303 San Jacinto Street, Alastor City, South Texas 77002, pursuant to the South Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto, that the deposition shall be read and signed before any notary public.

A P P E A R A N C E S

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1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MR. T. GERALD TREECE:

4 Q. Good morning! Please state your name for the
5 record.

6 A. I am Colby Mayfield and I am a highway patrol
7 officer with the South Texas Department of Public Safety.

8 Q. How old are you?

9 A. 37

10 Q. How long have you been working at the South Texas
11 Department of Public Safety?

12 A. Eighteen years.

13 Q. What is your current rank?

14 A. I'm a commander.

15 Q. Where is your office?

16 A. It is in Capitol City, a block from the courthouse.

17 Q. Are you assigned to work in a particular part of
18 the state?

19 A. No. I have work throughout the state but most of
20 work is in and around Alastor City.

21 Q. Where did you go to school?

22 A. I went to South Texas University. I have a degree
23 in psychology.

24 Q. Did you go to DPS trooper training school?

1 A. Yes, I did?

2 Q. Here in South Texas?

3 A. Yes, in Capitol City.

4 Q. How long was that training school?

5 A. When I did it, it was 27 weeks. It is now only
6 18 weeks long. But I trained for the first year I was a
7 trooper. I followed another trooper to learn all that was
8 required of the job.

9 Q. Have you trained other troopers?

10 A. I have. I've also taught at trooper school.

11 Q. Officer Mayfield, you understand that we are here
12 to discuss a car crash that happened on August 3, 2021 outside
13 Alastor City, right?

14 A. Yes, sir.

15 Q. Did you review anything to prepare for your
16 deposition?

17 A. I did.

18 Q. What did you look at?

19 A. The South Texas Peace Officer's Crash Report that
20 my colleague prepared.

21 Q. Which colleague?

22 A. Donnie Haskell.

23 Q. I'm handing a document marked as Exhibit M. Is
24 this the document you reviewed?

1 A. It is.

2 Q. Do you recall when you first learned of the crash
3 we are here to talk about?

4 A. I believe it was a little after seven in the evening
5 on August 3, 2021.

6 Q. How did you hear about it?

7 A. I was contacted by dispatch.

8 Q. How did they contact you?

9 A. I received a text on my cell phone.

10 Q. Why did they contact you?

11 A. I am a member of the collision investigation team.
12 Dispatch sent me the text so I could go to the scene of the
13 accident.

14 Q. What is the collision investigation team?

15 A. It is a group of officers who are assigned to
16 respond to traffic accident scenes to investigate what
17 happened. There are usually 10 to 15 officers on the team.

18 Q. How many reported to this crash site?

19 A. Two. Donnie Haskell and myself.

20 Q. Were other law enforcement officers at the scene?

21 A. Yes. Two from Alastor City PD and two from Bunker
22 Hill PD.

23 Q. What did these other officers help do?

24 A. They closed the interstate down so all westbound

1 traffic had to be diverted to the access road.

2 Q. Let's go back to your training for a second. I
3 assume you received some specific training as a member of the
4 collision investigation team?

5 A. I did. We take a number of classes. The first is
6 a week-long introductory accident investigation class. The
7 next is the advanced class and it expands on the first one
8 and is two weeks long. And there are several specialized
9 classes you can also take focusing on accident
10 reconstruction, commercial motor vehicles, motorcycles, head-
11 on collisions - things like that.

12 Q. So I assume you completed the introductory course?

13 A. Yes.

14 Q. Did you also complete the advanced course?

15 A. I did.

16 Q. What types of things did you learn in those classes?

17 A. I learned techniques on how to investigate traffic
18 accidents. How to analyze skid marks. How to measure
19 distance. How to conduct basic speed calculations. How to
20 properly prepare a sketch of the scene.

21 Q. Anything else?

22 A. Nothing I can think of.

23 Q. Have you completed any other courses?

24 A. I completed a three-day course dealing with

1 motorcycle accidents.

2 Q. Any others?

3 A. Not that I can think of.

4 Q. Turning to the August 3, 2021 car crash that we are
5 here to talk about today, did you see any skid marks at the
6 scene?

7 A. Yes.

8 Q. Do you know which vehicle they belonged to?

9 A. The Camry and the Escalade.

10 Q. Did you take any measurements at the scene?

11 A. I didn't. But I told Donnie to take the
12 measurements.

13 Q. Did you take any speed calculations at the scene?

14 A. I did not.

15 Q. Did anyone?

16 A. I think Donnie did.

17 Q. Did you take any photographs?

18 A. I did not.

19 Q. Why not?

20 A. Donnie was supposed to take photos.

21 Q. I'm showing you what has been marked as Exhibit N
22 and Exhibit O. You've seen these before, correct?

23 A. Yeah. They are two photographs from the scene.

24 They were taken after the vehicles were pulled apart to get

1 the driver and the pedestrian out of the wreckage.

2 Q. Were there any photos taken of the individuals who
3 were injured?

4 A. Donnie took them, but those photo files were
5 corrupted somehow after they were downloaded. We couldn't
6 retrieve them and Donnie had already deleted them off his
7 phone.

8 Q. Donnie deleted the photos? Is that allowed?

9 A. Yes. It's standard policy. After the photos are
10 downloaded into our system, it's okay for the officer to
11 delete the photos off of the camera or their phone. Usually
12 it's not an issue, but in this instance, somehow the files
13 got corrupted and we couldn't open them anymore after they
14 were downloaded.

15 Q. Do you know who Donnie took photos of?

16 A. I think he took photos of everyone. I can't tell
17 you exactly when though. The priority was to get them all the
18 medical treatment they needed and they all needed to go to
19 the hospital so we were more concerned about getting them
20 there safely.

21 Q. Did you prepare any sketches or diagrams of the
22 scene of the car crash?

23 A. Donnie prepared a diagram.

24 Q. I'd like for you to look at Exhibit M again.

1 Is this Donnie's sketch?

2 A. Yes.

3 Q. Is this how you recall the scene.

4 A. I think so.

5 Q. How can you be certain?

6 A. It looks like it. But that's why I had Donnie
7 draw up the scene.

8 Q. Okay. How many officers were at the scene?

9 A. A bunch. At least 6.

10 Q. Please describe your understanding of how the
11 car crash that killed Jimmy Hundstrom occurred.

12 A. A vehicle traveling westbound on the Adele Webber
13 Freeway lost cargo. Another vehicle stopped to retrieve the
14 cargo. A third vehicle swerved to avoid the cargo and struck
15 the second vehicle. Two of the second vehicle occupants were
16 hit in the accident.

17 Q. Did you speak to anybody who was in the crash?

18 A. I did. I spoke to the driver in the lead vehicle.

19 Q. Do you remember their name?

20 A. Let me see. Teeter Landon.

21 Q. What are you looking at?

22 A. Donnie's report.

23 Q. The report we were talking about before that's
24 marked as Exhibit M?

1 A. Yeah.

2 Q. Did you talk to anyone else there?

3 A. I also talked to the one of the two people who
4 were in the vehicle with Jimmy Hundstrom.

5 Q. Who did you talk to?

6 A. Ryan Bohen. I didn't speak to Gator Gabriel.

7 Q. Why didn't you talk to Gator?

8 A. Gator Gabriel was injured in the accident and by
9 the time I got to the accident site, he had already been
10 loaded into an ambulance. I tried to speak to him, but he was
11 in so much pain that not much he said was coherent.

12 Q. Were his injuries serious?

13 A. They were.

14 Q. But he survived?

15 A. Yes he did.

16 Q. Do you know what he is doing now?

17 A. I don't know.

18 Q. Did you have the chance to talk to Jimmy Hundstrom
19 or Lynelle Perry at the scene?

20 A. Briefly. Right when I got to the scene, both were
21 separately being loaded into the ambulances.

22 Q. So the police arrived at the scene after the
23 ambulances?

24 A. That is correct.

1 Q. What did you talk to Jimmy about?

2 A. He was incredibly calm. He asked how the driver was
3 doing and then he asked how Gator was doing.

4 Q. Did that seem unusual to you?

5 A. It did. His injuries were catastrophic, but he was
6 asking about others.

7 Q. How did he appear to you?

8 A. I think he had to have been in a tremendous amount
9 of pain. His clothes were all bloody and we were pretty sure
10 he had broken bones, but he had to have been in shock. He
11 seemed really calm.

12 Q. What was his condition when you tried to speak with
13 him?

14 A. He was already strapped onto a cart being
15 transported into an ambulance. But he was conscious.

16 Q. What about your conversation with Lynelle Perry?

17 A. She was frantic and complaining about her pain. She
18 was angry that someone dumped big rocks on to the freeway and
19 she said that someone should have to pay for that. She kept
20 saying that it wasn't her fault.

21 Q. Now your understanding is based only on what people
22 told you at the scene, is that correct?

23 A. Correct. I wasn't there when it happened. But
24 that's not uncommon in a car accident investigation.

1 Q. Anything else you learn in your investigation of
2 this car crash?

3 A. The driver that hit Jimmy Hundstrom - Lynelle Perry
4 - had a DUI conviction in 2012.

5 Q. Was Lynelle Perry ever charged with any crime
6 relating to this car crash?

7 A. She was not.

8 Q. Was there any evidence that she was impaired in
9 any way at the time of the collision?

10 A. No.

11 Q. If there were any evidence of alcohol, drugs or any
12 kind of impairment on Lynelle Perry, that would be on the
13 crash report, right?

14 A. Correct.

15 Q. Did you see the rocks on the road when you arrived
16 at the scene?

17 A. I did. There were 8 of these huge rocks in the
18 right westbound lane and 4 landed in the left westbound lane.
19 One landed in the center median and 13 others landed on the
20 shoulder to the right of the right westbound lane.

21 Q. Do you know how much each rock weighed?

22 A. About 100 pounds each.

23 Q. Where did the lead vehicle park - the one with the
24 boulders?

1 A. On the shoulder to the right of the freeway, about
2 1500 feet beyond the debris in the roadway.

3 Q. The car that Mr. Hundstrom was in, where did they
4 park?

5 A. Same shoulder but back by where the boulders were.

6 Q. Do you have any evidence that shows that Jimmy
7 Hundstrom was in the roadway at all when this crash occurred?

8 A. No

9 Q. This happened just after a curve in the interstate,
10 is that correct?

11 A. Yes, leading into Bunker Hill.

12 Q. What was the speed limit there?

13 A. 75.

14 Q. Is there a slower speed limit around the curve?

15 A. No. The curve is so gradual that you don't really
16 need to slow down.

17 Q. Do you have anything else you want to add?

18 A. Cargo that is improperly loaded and secured can be
19 dangerous to the driver, the vehicle and everyone else on the
20 road. By following proper cargo loading and securement
21 guidelines, drivers can make sure they and their cargo can
22 get to their destination safe and intact without putting
23 anyone else in harm.

24 Q. Pass the witness.

1 EXAMINATION BY MS. HAYLEY STENHOUSE

2 Q. Good afternoon. I just need to ask you some
3 follow up questions, Officer.

4 A. Okay. Go ahead.

5 Q. If a driver is traveling on a high-speed highway
6 with a 75-mile per hour speed limit, is it your belief that
7 it is reasonable to expect that one would see 26 100-pound
8 boulders in the road?

9 A. I think it would be totally unexpected.

10 Q. Having unexpected boulders on a high speed road and
11 having to maneuver where vehicles were going left and others
12 were parked on the right - is that something you would
13 reasonably expect drivers to anticipate as they rounded that
14 curve?

15 A. Not at all.

16 Q. You referenced the police report a lot during your
17 testimony, correct?

18 A. Yes. Sorry about that, but I see a lot of accidents
19 and I needed it to refresh my memory about the details.

20 Q. How many car wrecks have you investigated since
21 the car crash where Jimmy Hundstrom died?

22 A. I'm not sure.

23 Q. More than fifty?

24 A. Yes.

1 Q. More than a hundred?

2 A. Yes.

3 Q. More than two hundred?

4 A. Probably?

5 Q. And this police report, Exhibit M, Officer Haskell

6 made it, correct? Or you refer to him as Donnie?

7 A. Yes. Donnie made the report.

8 Q. But you're listed as the investigating officer?

9 A. Yes. Not unusual. He and I were both there and I

10 have a higher rank, so it was natural he would list me.

11 Q. Did you do anything to double check the accuracy of

12 this report?

13 A. What did you mean?

14 Q. Did you do anything to double check the information

15 in this report to make sure it was report before it was

16 finalized?

17 A. No.

18 Q. Has Officer Haskell ever had any problem with his

19 reports or documentation before?

20 A. Now that I think of it, there was one time where he

21 was disciplined for being sloppy in his reporting. He swapped

22 the information on the cars in the wreck and wrote some other

23 things down incorrectly.

24 Q. How was it discovered?

1 A. When the investigating officer had to testify about
2 that accident, the information in the report didn't comport
3 with his notes.

4 Q. Was Donnie Haskell disciplined about this?

5 A. Yes. He was required to do additional class work.

6 Q. When did this happen?

7 A. Maybe two years ago? In 2020.

8 Q. Do you have any personal notes from the accident
9 that happened on August 3, 2021?

10 A. I do not. I was relying on Donnie to take notes.
11 I think he learned his lesson from what happened that other
12 time.

13 Q. You had mentioned earlier that there was no
14 evidence that Lynelle Perry was impaired at the time of the
15 accident. I want to talk to you about some of the other people
16 there. Was there any evidence that any of the other people
17 involved in this accident were impaired at the time of the
18 accident?

19 A. At the time, I wasn't aware of anything.

20 Q. And since then?

21 A. Yes. I understand that Jimmy Hundstrom and Gator
22 Gabriel had marijuana in their system at the time of the
23 wreck. Apparently, Ryan Bohlen may have been smoking marijuana
24 with them.

1 Q. How did you know Jimmy Hundstrom had marijuana in
2 his system?

3 A. Blood tests taken at the hospital proved it. Same
4 with Gator Gabriel.

5 Q. Why do you think Ryan Bohen may have been smoking
6 marijuana?

7 A. Donnie told me that Gator had told his doctor that
8 he had been smoking marijuana with Ryan on the jobsite. I
9 never confirmed that to be true and I don't think Donnie did
10 either. But it may have happened.

11 Q. And none of this made it into the report?

12 A. It doesn't look like it.

13 Q. Does their use of marijuana change your thoughts
14 regarding the cause of this accident?

15 A. Not at all.

16 Q. I pass the witness.

END OF DEPOSITION

CAUSE NO. 21-666-CV

CASEY FITZWALLACE INDIVIDUALLY	\$	IN THE DISTRICT COURT OF
AND AS LEGAL REPRESENTATIVE	\$	
OF THE ESTATE OF JIMMY	\$	
HUNDSTROM, DECEASED	\$	
Plaintiffs,	\$	
	\$	
V.	\$	CAPITOL COUNTY, SOUTH TEXAS
	\$	
TEETER LANDON AND BOSQUE	\$	
RANCH, INC. D/B/A PARADISE	\$	
VALLEY LANDSCAPING	\$	
Defendants	\$	7TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

DR. KELLY SHEPHERD

JANUARY 19, 2023

ORAL DEPOSITION of DR. KELLY SHEPHERD, produced as a witness at the instance of PLAINTIFF, and duly sworn, was taken in the above-style and numbered cause on January 19, 2023 from 9:04 am to 1:14 pm, before Rebecca Hogg in and for the state of Texas recorded by machine shorthand at the offices of the Treece Law Firm, 1303 San Jacinto Street, Alastor City, South Texas 77002, pursuant to the South Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto, that the deposition shall be read and signed before any notary public.

A P P E A R A N C E S

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1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MR. T. GERALD TREECE:

4 Q. Good morning, Doctor. Can you please state your
5 name for the record?

6 A. Kelly Shepherd.

7 Q. And I think I already gave it away, but what do
8 you do for a living?

9 A. I'm a medical doctor.

10 Q. I'm showing you what has been marked as Exhibit P.
11 Could you tell us what that is?

12 A. Yes. It's my CV.

13 Q. How are you involved in the case we are here to
14 talk about today?

15 A. I was one of the doctors who treated Jimmy Hundstrom
16 and Gator Gabriel last August.

17 Q. How did you come to be their doctor?

18 A. I was working at Alastor City Memorial Hospital
19 when they were brought in.

20 Q. Were you their only doctor?

21 A. No. They were both in pretty bad shape so they
22 both had many doctors.

23 Q. Let's talk first about Jimmy Hundstrom. What
24 condition did he show up in?

1 A. Jimmy was not in a good condition at all. He had
2 been struck by an oncoming vehicle and pinned between it and
3 another vehicle that was parked at the roadside. He had
4 multiple broken bones and had lost a lot of blood.

5 Q. Did Jimmy have a traumatic brain injury?

6 A. Yes.

7 Q. Can you explain what that is?

8 A. Sure. A traumatic brain injury occurs when the
9 brain is hit, either because of a direct blow to the head or
10 because it strikes the inside of the skull when the head is
11 jostled. Like in a standard car wreck, the brain and head
12 will move forward while the seat belt holds back the rest of
13 the body, which can cause the brain to hit the inside of the
14 skull and become injured. Jimmy's brain injuries were severe.

15 Q. Where else was Jimmy injured?

16 A. He had injuries to his neck and back. His spinal
17 cord that ran from his neck and low back had been seriously
18 injured leaving Jimmy with extensive paralysis.

19 Q. What other injuries did he suffer from?

20 A. Jimmy had broken ribs which punctured both lungs.
21 He had injuries to his digestive tract, kidneys, spleen and
22 liver. There was probably more, but honestly, we were having
23 to balance keeping him alive with treating his injuries.

24 Q. Anything else?

1 A. Jimmy had broken bones in his arms, legs and pelvis.

2 Q. What was done to treat Jimmy?

3 A. Anything and everything we could. Jimmy was

4 unconscious. We tried to figure out the extent of his injuries

5 while we tried to keep him alive.

6 Q. Did he immediately undergo surgery?

7 A. Yes. We did one the night he came in. We went back

8 in the next day and unfortunately, he died the following

9 morning.

10 Q. Was he conscious the entire time?

11 A. No. We had him in a medically induced coma most

12 of the time because of how bad his injuries were. He

13 briefly came out of it on the day after.

14 Q. What was his condition like?

15 A. He was strangely calm but was saying weird things.

16 Q. Like what?

17 A. Well Casey came into the room so we were going to

18 leave them alone. But as I was walking out, I heard him

19 say "Ainsley?" and I heard Casey gasp.

20 Q. Did you hear anything else?

21 A. Not really. We let him be with Casey. Casey had

22 been constantly by his side so we gave them some privacy.

23 Q. Do you recall how long he was conscious?

24 A. Maybe 10 minutes or so?

1 Q. And then what happened?

2 A. He lost consciousness and never regained it.

3 Q. When did Jimmy pass away?

4 A. The next day. So his third day in the hospital.

5 Q. What was the cause of death?

6 A. Complications from the car collision.

7 Q. What was the official time of death?

8 A. 10:08 a.m.

9 Q. Did you speak to his friends and family?

10 A. I spoke to his parent Casey Fitzwallace as well as

11 a lot of his college friends. A woman I understood to be his

12 birth mother also came by and I spoke to her.

13 Q. Do you recall the name of the birth mother?

14 A. No. I just remember that Casey did not want her

15 there.

16 Q. What makes you say that?

17 A. Casey kept glaring at her while I was talking to

18 her. And Casey never spoke to her that I saw.

19 Q. Do you talk to any of Jimmy's coworkers?

20 A. Yes, those that weren't already in the hospital.

21 Q. And his bosses?

22 A. Yes, I think his name was Rip?

23 Q. Okay. And you said you also treated Gator Gabriel?

24 A. Yes.

1 Q. What was his condition like?

2 A. He had a broken rib, a punctured lung, a broken leg

3 and assorted cuts and abrasions.

4 Q. Was he conscious?

5 A. He was.

6 Q. Was his blood tested?

7 A. Yes.

8 Q. What, if anything, did you learn from his blood?

9 A. He had marijuana in his system.

10 Q. When was the test taken?

11 A. At around 10PM the same day of the accident.

12 Q. Did you have the chance to ask him about it?

13 A. I did. I wanted to see if we could pinpoint when

14 and how it entered his system.

15 Q. When did you talk to him?

16 A. Wednesday morning. The day after they were brought

17 in.

18 Q. What did Gator tell you?

19 A. That he, Jimmy and Ryan had each smoked two joints

20 while waiting to leave the museum.

21 Q. Were you able to confirm that?

22 A. Yes.

23 Q. How?

24 A. Well, at least with Jimmy I was able to confirm it.

1 I tested his blood and it tested positive for marijuana.

2 Q. What about Ryan?

3 A. I don't think I ever met him.

4 Q. As far as you know, was he ever admitted?

5 A. Not that I was ever made aware of.

6 Q. Did you tell anyone about the marijuana in their
7 systems.

8 A. Yes. I told one of the police officers.

9 Q. Was it Colby Mayfield?

10 A. That doesn't sound right.

11 Q. Donnie Haskell?

12 A. I think that sounds right. That name sounds right.

13 Q. Based on what you know, do you think marijuana
14 played any part in causing Jimmy Hundstrom's injuries?

15 (BY MS. DOMINIQUE HINSON) Objection form.

16 A. What?

17 Q. You can answer the question. Based on what you
18 know, do you think marijuana played any part in causing Jimmy
19 Hundstrom's injuries?

20 A. I don't see how.

21 Q. Thank you. I have nothing further at this time.

22 EXAMINATION BY MS. DOMINIQUE HINSON

23 Q. You had mentioned that Jimmy Hundstrom was
24 unconscious when he arrived at the hospital?

1 A. Yes.

2 Q. And except for roughly ten minutes, he was pretty
3 much unconscious the entire time?

4 A. Yes. Because of the severity of his injuries and
5 the surgeries he had to undergo, we put him in a medically
6 induced coma for a bit.

7 Q. His brief moment of consciousness, how did that
8 happen?

9 A. Sometimes it does. We had really strong pain meds
10 in an IV line to him.

11 Q. How do those pain meds effect people?

12 A. It depends. Some people will get really disoriented
13 and not know who people are or what's going on. Some people
14 will get really aggressive because of it. Others will actually
15 have hallucinations. Some will come off like they are
16 seriously sleep deprived. Like they become delusional.

17 Q. This may seem like a stupid question, but when a
18 patient is unconscious, can they feel pain?

19 A. Not really. That's why we will usually put them in
20 a coma. So they don't suffer. But we also don't want them
21 thrashing or moving around a lot where it could cause them
22 further damage.

23 Q. Was that the case with Jimmy? Did you have any
24 reason to believe that he was suffering when he was in the

1 hospital?

2 A. He was unconscious most of the time and even that
3 brief time he was conscious, he was on a lot of meds. I doubt
4 he felt much of anything during that time.

5 Q. Thank you. I have no further questions. I pass the
6 witness.

7 EXAMINATION BY MR. T. GERALD TREECE

8 Q. You said that when Jimmy briefly regained
9 consciousness, that he seemed resigned. Do you think
10 Jimmy knew he was going to die?

11 (BY MS. DOMINIQUE HINSON) Objection form.

12 A. I think so. He was eerily calm. I think he
13 knew that he didn't have much time left.

14 Q. Thank you, Doctor. Pass the witness.

END OF DEPOSITION

CAUSE NO. 21-666-CV

CASEY FITZWALLACE INDIVIDUALLY	\$	IN THE DISTRICT COURT OF
AND AS LEGAL REPRESENTATIVE	\$	
OF THE ESTATE OF JIMMY	\$	
HUNDSTROM, DECEASED	\$	
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TEETER LANDON AND BOSQUE	\$	
RANCH, INC. D/B/A PARADISE	\$	
VALLEY LANDSCAPING	\$	
Defendants	\$	7TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

TEETER LANDON

DECEMBER 3, 2022

ORAL DEPOSITION of TEETER LANDON, produced as a witness at the instance of PLAINTIFF, and duly sworn, was taken in the above-style and numbered cause on DECEMBER 3, 2022 from 9:15 am to 12:14 pm, before Rebecca Hogg in and for the state of Texas recorded by machine shorthand at the offices of the Hinson & Stenhouse, PLLC, 440 Louisiana, Suite 1202, Alastor City, South Texas 77002, pursuant to the South Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto, that the deposition shall be read and signed before any notary public.

A P P E A R A N C E S

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1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MS. SHAUN DEVINE:

4 Q. Please state your name.

5 A. Teeter Landon.

6 Q. How old are you?

7 A. 33.

8 Q. Where are you from?

9 A. I was born in Alastor City and was raised just
10 outside the city in Abelour. Very small town in the country.
11 My parents and grandparents still live there. That's where I
12 went to high school.

13 Q. Did you go to college?

14 A. I went to college at the University of Wyoming and
15 graduated with an Agricultural Economics degree. I moved to
16 Alastor City to find myself and I'm still here.

17 Q. Are you married?

18 A. Not anymore. Avery and I got a divorce two years
19 ago.

20 Q. Do y'all have any children?

21 A. Two. A boy, Laramie. He's 8. Cheyenne, my daughter,
22 is 6.

23 Q. What do you do?

24 A. I'm a landscaper for Paradise Valley Landscaping.

1 Q. How long have you been there?

2 A. Four years.

3 Q. What did you do before that?

4 A. I worked for a plant nursey in Alastor City.

5 Q. Why did you leave?

6 A. Rip was one of my customers. He bought plants from
7 me for his landscaping business. Over time, we became friends.
8 He kept asking me to come work for him and one day, I finally
9 said yes.

10 Q. What do you do for Paradise Valley Landscaping?

11 A. I was primarily responsible for plantings. It's
12 what I know so Rip trusted me to take care of it. Ryan knew
13 hardscapes better so he handled that.

14 Q. What are hardscapes?

15 A. Hardscapes refer to all of the non-living elements
16 in landscaping, such as a brick patio, a stone wall or a
17 wooden arbor.

18 Q. Is there a special term for the living elements?

19 A. Some refer to them as soft scapes. I refer to them
20 simply as plantings. And when I refer to plantings, I mean
21 all of the living and organic elements in a garden or on a
22 lawn, such as trees, flowers and grass.

23 Q. Did you have a formal title?

24 A. I was a supervisor.

1 Q. Did you have any responsibilities other than the
2 plantings?

3 A. I was in charge of hiring and training the crew and
4 to deal with clients in carrying out the landscaping designs.

5 Q. Let's talk about the project in Alastor City. What
6 was it?

7 A. It was an extensive redesign of the gardens of the
8 Museum of Fine Arts in Alastor City.

9 Q. What was the budget?

10 A. About \$800,000.

11 Q. How did the boulders come into play?

12 A. We were providing a lot of limestone boulders to be
13 strategically placed throughout the museum grounds.

14 Q. On August 3, 2021, what were you doing that day?

15 A. It was day one of the project and so the first thing
16 we were going to do is drop off all of the boulders and place
17 them around the museum where they would go so we could put
18 the plantings around it.

19 Q. Did everything go as planned at the museum?

20 A. Unfortunately no. Carson had a problem with the
21 boulders.

22 Q. What do you mean by that?

23 A. So Taylor picked out the boulders that we
24 delivered, but Carson hadn't seen them and she didn't like

1 them. The limestone was chalky and she wanted something
2 smooth. She asked to replace the limestone with granite.

3 Q. Was that something y'all could do?

4 A. Sort of. Carson wanted to pick out exactly what
5 she wanted.

6 Q. What were you going to do with the limestone
7 boulders that you were trying to deliver that day?

8 A. We made arrangements to get the limestone boulders
9 and the backhoe we brought with us back to Capitol City.

10 Q. So had you actually unloaded the rocks?

11 A. Yes. We had unloaded a bunch of the rocks and then
12 Carson came out and saw them and told us she didn't like them.
13 So we had to load them back up.

14 Q. How did you load them up?

15 A. So we loaded the backhoe back up first on the
16 trailer attached to the truck I was driving. We then loaded
17 the boulders back on the trailer.

18 Q. How were they loaded?

19 A. We lifted them one at a time. We teamed up two of
20 us on each boulder. Gator lifted a couple of them by himself
21 but he gave up after a couple. They were heavy.

22 Q. How long did it take you to load the trailer?

23 A. A little more than an hour.

24 Q. After loading the trailer, did you immediately

1 leave to go back to Capitol City?

2 A. No. I had a meeting with Carson and Taylor.

3 Q. What did the crew do during your meeting?

4 A. Ryan, Gator and Jimmy waited by the trailer. It
5 wasn't a planned meeting. Carson and Taylor wanted to walk
6 through a few things on the project with me. We thought it
7 was just going to take a couple of minutes, but it ended up
8 being like 45 minutes long.

9 Q. Where was your meeting?

10 A. Inside the museum.

11 Q. So you weren't around the others during that time?

12 A. I was not.

13 Q. Do you know what they were doing during that time?

14 A. No, I don't.

15 Q. Were they acting strange to you during the day?

16 A. No.

17 Q. Were they acting strange before you left the
18 jobsite?

19 A. No.

20 Q. Were they acting strange at the scene of the crash?

21 A. A little. Just before the accident, Jimmy had to
22 take a minute because he was coughing so much that he was
23 stumbling around and his nose started bleeding. When I saw
24 him, his eyes were red. I told him to steady himself so he

1 sat on the back bumper of Ryan's truck.

2 Q. So let's go back a second. When did you end up
3 leaving for Capitol City?

4 A. I'm not sure exactly at what time, but it was
5 beginning to get dark. I had turned my headlights on so maybe
6 6:30, 6:45.

7 Q. Did the load appear stable when you left?

8 A. It did.

9 Q. How fast were you driving?

10 A. I was under the speed limit.

11 Q. Do you know how fast you were going?

12 A. Not exactly.

13 Q. When did the load start feeling unstable?

14 A. When we went around the curve.

15 Q. What happened?

16 A. The trailer started shifting and rocking.

17 Q. What did you do?

18 A. Tried to slow down and gain control.

19 Q. What happened next?

20 A. I wasn't sure at the time but I later learned that
21 the backhoe moved. I don't know if it slid or shifted or
22 what. But somehow it bumped into the boulders causing a
23 bunch of them to end up on the road.

24 Q. Did you lose all of them?

1 A. No. Some stayed on the trailer with the backhoe.

2 Q. Did they all end up on the freeway?

3 A. No. Most actually ended upon the shoulder and in
4 the grass. There were a few of them on the road.

5 Q. Did you pull over?

6 A. Yeah. I ended up going a bit before I realized what
7 had happened. I think someone has told me it was like almost
8 1500 feet?

9 Q. Where did you pull over?

10 A. On the right side of the shoulder. On the pavement.

11 Q. Why didn't you pull over onto the grass?

12 A. I was worried about how wet the grass was. I was
13 worried about potentially getting stuck because it had rained
14 the night before.

15 Q. What did you do next?

16 A. I walked back to see where the boulders were.

17 Q. Did anybody else stop?

18 A. So Ryan was following behind. He stopped and pulled
19 over by where the boulders were.

20 Q. So they were about 1500 feet behind your trailer?

21 A. Yes.

22 Q. What did they do?

23 A. I could see they had pulled over and it looked Ryan,
24 Gator and Jimmy got out of the truck and were starting to

1 pick up the boulders out of the road or roll them off the
2 pavement.

3 Q. Did you see the crash happen?

4 A. Yeah. It was horrible.

5 Q. What happened?

6 A. Ryan was off in the grassy median in the center.
7 Gator was off by the front of their truck putting down a
8 boulder. Jimmy was rolling one off the road, but he was by
9 the back of their truck. This silver Escalade comes around
10 the curve, swerve to the right to avoid the boulders still in
11 the road and runs right into Jimmy just as he stood up. Jimmy
12 was crushed between the Escalade and the truck.

13 Q. What did you do?

14 A. I ran over there to try to help.

15 Q. What did you do to help?

16 A. Well the Escalade backed up a little bit and as
17 soon as Jimmy was freed, he just collapsed. I tried to catch
18 him but he was all bloody and I didn't know how badly he was
19 hurt and I didn't want to accidentally make it worse.

20 Q. Did anyone call 911?

21 A. I think Ryan did? I think I looked over at one point
22 and he was on the phone and then I thought I saw him helping
23 to get the lady out of the Escalade.

24 Q. How long did it take an ambulance to get there?

1 A. It felt like forever with everyone injured. Gator
2 was hit by the car, the lady in the Escalade was hurt and of
3 course Jimmy was in horrible shape. I think someone else
4 pulled over to help with Gator? The first ambulance came and
5 they immediately started to work on Jimmy. He was the one
6 most badly hurt. Cops showed up shortly after that.

7 Q. Was Jimmy conscious?

8 A. Not really. I think he was moaning a little bit.
9 He was probably in a lot of pain. I'm sorry, I was just in
10 such shock about his condition and trying to get him
11 comfortable without further injuring him.

12 Q. You said the first ambulance came and started to
13 to work on Jimmy?

14 A. Yeah. They got him onto a cart and put him in the
15 back of the ambulance.

16 Q. Did you talk to them?

17 A. Only to tell them what happened.

18 Q. You said the police showed up. Did you talk to them?

19 A. Yeah, I did.

20 Q. How long did you stay?

21 A. I waited until all of the ambulances came and took
22 everyone away. While I waited, I moved all of the boulders
23 that I could out of the road. Some of the cops helped me.

24 Q. And then what?

1 A. I drove to the hospital. I called Rip along the
2 way.

3 Q. What did Rip have to say?

4 A. That he was going to go straight to the hospital
5 and for me to keep him posted.

6 Q. Did you make it to the hospital?

7 A. I did. I checked in on Gator and Jimmy. I also
8 called Jimmy's family to let them know.

9 Q. Did you ever get to talk to Jimmy?

10 A. No. He never regained consciousness as far as I
11 knew.

12 Q. Do you still work for Paradise Valley Landscaping?

13 A. Yes.

14 Q. You were never disciplined for what happened, were
15 you?

16 A. By Paradise Valley? No.

17 Q. They didn't suspend you at all?

18 A. No. They didn't need to. It was all just an
19 accident. A horrible accident.

20 Q. Do you feel responsible at all for Jimmy's death?

21 (BY MS. DOMINIQUE HINSON): Objection form.

22 Q. No further questions. I pass the witness.

23 EXAMINATION BY MS. DOMINIQUE HINSON

24 Q. Do you think Jimmy did anything wrong?

1 A. No. I personally think he was just trying to help.

2 Q. Do you think Ryan did anything wrong?

3 A. I think Ryan was just trying to help too.

4 Q. How do you feel about what happened to Jimmy?

5 A. It's just horrible. I still have nightmares about

6 it. I feel horrible that Jimmy died. He was a great kid and

7 my friend. I feel so badly for his family. Dealing with his

8 loss will be difficult for all of us. But accidents happen.

9 If I could turn back time and do things differently, I would.

10 As much as I'd like to though, I can't.

11 Q. Thank you, Teeter. I have no further questions. I

12 pass the witness.

END OF DEPOSITION

CAUSE NO. 21-666-CV

CASEY FITZWALLACE INDIVIDUALLY	\$	IN THE DISTRICT COURT OF
AND AS LEGAL REPRESENTATIVE	\$	
OF THE ESTATE OF JIMMY	\$	
HUNDSTROM, DECEASED	\$	
Plaintiffs,	\$	
	\$	CAPITOL COUNTY, SOUTH TEXAS
V.	\$	
	\$	
TEETER LANDON AND BOSQUE	\$	
RANCH, INC. D/B/A PARADISE	\$	
VALLEY LANDSCAPING	\$	
Defendants	\$	7TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

J.D. LEWIS

MARCH 9, 2023

ORAL DEPOSITION of J.D. LEWIS, produced as a witness at the instance of DEFENDANTS, and duly sworn, was taken in the above-style and numbered cause on MARCH 9, 2023 from 9:06 am to 11:21 am, before Stephanie Sullivan in and for the state of Texas recorded by machine shorthand at the offices of the Hinson & Stenhouse, PLLC, 440 Louisiana, Suite 1202, Alastor City, South Texas 77002, pursuant to the South Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto, that the deposition shall be read and signed before any notary public.

A P P E A R A N C E S

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1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MS. DOMINIQUE HINSON:

4 Q. Please state your name for the record.

5 A. J.D. Lewis.

6 Q. How are you involved in this case?

7 A. I am - was - Jimmy Hundstrom's best friend.

8 Q. This might be very difficult for you so if you ever
9 need a break, just let me know.

10 A. Okay.

11 Q. How long have you known Jimmy?

12 A. Practically our entire lives. We went to school
13 together in New York City at St. Emmanuels. Jimmy was always
14 really nice to me.

15 Q. Were you born in New York City?

16 A. Born and raised. Manhattan proper.

17 Q. Did your families hang out together back then?

18 A. No. They didn't run in the same "social circles"
19 - if you know what I mean.

20 Q. What do you mean by that?

21 A. Our parents didn't hang out with the same crowd.
22 Jimmy's parents were very hoity-toity. Jimmy was at St.
23 Emmanuel's because they could afford his tuition as well as
24 the generous donation you had to make every year. I was at

1 St. Emmanuel's because my mom was the assistant principal
2 there and my dad taught English.

3 Q. Was this ever an issue between you and Jimmy?

4 A. No. At least I never thought so.

5 Q. How did you and Jimmy meet?

6 A. I don't remember who talked to who first. I just
7 suddenly remember seeing him all of the time and we were
8 hanging out all the time - like every day.

9 Q. When was that?

10 A. I think it was in junior high when we started
11 hanging out a lot. I had always seen him around, but we
12 weren't like real friends until junior high.

13 Q. What did y'all have in common?

14 A. Back then? Probably nothing. We just hung out
15 because we liked each other.

16 Q. Did you know that Jimmy was adopted?

17 A. Yeah. We all knew.

18 Q. How?

19 A. Jimmy told us.

20 Q. What do you know about Jimmy's relationship with
21 his parents?

22 A. I think it was okay. They were a little weird.
23 Like Jimmy always called them Jean and Casey. Never mom or
24 dad or anything like that. They worked a ton. I think one

1 was in publishing and the other one was in something financial
2 so he had a nanny a lot to kind of make sure he had dinner
3 and got his homework done. That sort of thing.

4 Q. Did they take trips together?

5 A. I think sometimes one of them would have a work
6 trip and they would just take the whole family. Does that
7 count? But if you're talking like a trip of just the family
8 to do something fun and not involving work - if they did it,
9 I never heard about it.

10 Q. Did you ever get to meet Jimmy's parents?

11 A. Not really. Every once in a while, I would be over
12 there when they came home from work, but they never really
13 hung out and talked to us. I did see Casey Fitzwallace at
14 Jean's funeral and again when Casey visited Jimmy over
15 Christmas our freshman year. They invited me to dinner with
16 them.

17 Q. What did you think of them?

18 (BY MS. SHAUN DEVINE) Objection, form.

19 Q. You can answer.

20 A. They were nice enough. Jean more so than Casey.
21 They had a ton of money and weren't afraid to flaunt it. And
22 it seemed like they spent it to make sure Jimmy had everything
23 he needed growing up.

24 Q. Would you say Jimmy was spoiled?

1 A. Not at all. Well maybe. Let me put it this way, if
2 they spoiled him, Jimmy never let it show. He was the nicest
3 guy. He always shared what he had. He always looked out for
4 others. I really miss him. He was my best friend.

5 Q. Did Jimmy ever talk about his parents and his
6 relationship with them?

7 A. Yeah. Over the years.

8 Q. Was Jimmy closer to one parent over the other?

9 A. Yeah. He was totally closer to Jean. Jean was the
10 one Jimmy would go to first when he had good news to share or
11 had to tell them something bad like a bad grade or whatever.

12 Q. Do you know why that was?

13 A. Jean was super easy going. Even when I saw them,
14 Jean would really be the only one who talked to us - even if
15 it wasn't very much or for very long. Casey was more uptight.
16 Too busy to really deal with us, if you know what I mean. I
17 think Jimmy thought Jean was there for him more.

18 Q. Did Jimmy have a bad relationship with Casey?

19 A. I wouldn't say that. He just wasn't as close to
20 Casey. I think things changed though when Jean died in January
21 of our senior year of high school.

22 Q. What do you mean by that?

23 A. Jimmy thought Casey forced Jean into getting
24 plastic surgery. That Jean didn't want it, but did it to

1 please Casey. So when Jean died because of it, Jimmy blamed
2 Casey. Thought that Casey cared too much about how Jean
3 looked and how they looked together.

4 Q. How do you know all of this?

5 A. He told me. Plus you could tell. The funeral was
6 brutal. He wouldn't acknowledge Casey at all. He was very
7 stiff and wouldn't let Casey hug on him at all. He was
8 pissed.

9 Q. Do you think he ever got over it?

10 A. I think he was really mad for a long time. He was
11 supposed to go to Columbia in New York for college but at the
12 last second decided to follow me to the University of South
13 Texas.

14 Q. Why were you going to the University of South Texas?

15 A. I got a debate scholarship there. Full ride. So
16 it wasn't my first choice, but it's a good school and it was
17 going to be free.

18 Q. Are you still there?

19 A. Yeah. I'm in the second semester of my junior year.

20 Q. How old are you?

21 A. 20 years old. I turn 21 this summer.

22 Q. Did you live with Jimmy your freshman year?

23 A. No. We lived in the same coed dorm, but he had his
24 own room. I had a roommate. But Jimmy and I hung out together

1 all of the time.

2 Q. How did Jimmy do in school? Do you know?

3 A. Great his first semester. He was on the Dean's
4 List. We both were.

5 Q. Did his second semester not go as well?

6 A. He got really depressed after the first anniversary
7 of Jean's death. I know he started to reach out to Casey more.

8 Q. You said Casey visited during Christmas?

9 A. Yeah. It was nice. Casey seemed more engaged than
10 before. Casey still had to work, but ultimately I think they
11 connected better than they had for a while. Jimmy seemed
12 happy about it.

13 Q. Do you know what if anything, Jimmy did about his
14 depression?

15 A. He actually reached out to his birth mom. Turns
16 out she lived in Alastor City. Because he was 18, he could
17 get the information from the adoption agency and he reached
18 out to her.

19 Q. Do you know if anything came of that?

20 A. They met a couple of times. He would talk about
21 what a nice person she was and how he had half siblings that
22 he got to meet. He seemed really happy about it.

23 Q. Did you ever get to meet her?

24 A. No. We had talked about it maybe our sophomore

1 year, but of course that never happened.

2 Q. Do you know if Casey knew that Jimmy had reached
3 out to his birth mother?

4 A. I don't think he ever told her.

5 Q. How did you find out about what happened to Jimmy?

6 A. One of our friends also worked at Paradise Valley.
7 Brett got Jimmy the job there. Brett called me and let me
8 know.

9 Q. What is Brett's last name?

10 A. Brett Hargis.

11 Q. Was he working on the date of the accident?

12 A. No. I think he was working on a delivery to another
13 project.

14 Q. Did you ever visit Jimmy at the hospital?

15 A. Yes.

16 Q. Was he conscious when you saw him?

17 A. No. He was out.

18 Q. Did you see Casey when you were there?

19 A. I did. I gave Casey a hug and said I was sorry they
20 were having to go through this. They were a wreck.

21 Q. Thank you. I have no further questions. I pass the
22 witness.

23 EXAMINATION BY MS. SHAUN DEVINE

24 Q. Jimmy was your best friend?

1 A. Yes. I still miss him.

2 Q. I'm so sorry for your loss.

3 A. Thanks.

4 Q. Y'all hung out a lot?

5 A. Almost everyday. Especially once we got to UST.

6 Q. Did you know whether Jimmy was using marijuana?

7 A. Yeah he did. He smoked from time to time. He didn't

8 react really well to it physically, but he really only did it

9 socially.

10 Q. How often would he smoke pot?

11 A. I don't know. It was more like if someone pulled

12 out a joint or a bong, he would take a hit off of it. I don't

13 think he went out of his way to buy it.

14 Q. You said he didn't react well to it physically.

15 What did you mean by that?

16 A. His eyes would get red and super watery and he would

17 cough a lot. He would always say it was rough going down.

18 Q. But he did it anyway?

19 A. Yeah.

20 Q. Do you know if he ever smoked pot while he was

21 working?

22 A. He never mentioned it, but it wouldn't surprise

23 me. According to Brett, those guys were smoking all of

24 the time.

1 Q. You were pretty loyal to Jimmy growing up?

2 A. Absolutely. I would've done anything for Jimmy.

3 Because I know he would've done anything for me or any of his

4 friends. Jimmy was just an amazing human being.

5 Q. But you didn't get along with his parents?

6 A. I never said that.

7 Q. Well, you didn't really like Casey Fitzwallace, did

8 you?

9 A. You're talking about the thing with my mom? I wasn't

10 happy about it.

11 Q. Tell us what you're talking about.

12 A. Look, I know what you're getting at.

13 Q. When you were in high school, your mom was up for

14 a promotion to become principal at St. Emmanuel's, is that

15 right?

16 A. Yeah. She had worked there for years.

17 Q. But your mom ultimately didn't get that job, did

18 she?

19 A. No. A friend of Casey Fitzwallace's got the job

20 instead. And the school got a lot of new computers around

21 that same time.

22 Q. Were you bitter about it?

23 A. I wasn't happy.

24 Q. Did you ever tell Jimmy?

1 A. He knew. I didn't hide my feelings.

2 Q. Did you purposefully try to avoid Casey when
3 you were in high school because of this?

4 A. I'm not going to say I tried to be around when
5 Casey was.

6 Q. The person who got the job as principal of St.
7 Emmanuel's over your mom, you can't say they were unqualified
8 for the job?

9 A. I was in high school at the time. I have no idea.

10 Q. You weren't made privy to the selection process
11 for that job?

12 A. Of course not. I was just a kid.

13 Q. Did you similarly hold a grudge against Jean?

14 A. I think Jean was too busy to be any way involved in
15 anything at the school so I don't know if they even asked
16 him.

17 Q. That doesn't really answer my question. Did you also
18 hold a grudge against Jean for what happened to your mom?

19 A. I like Jean. So I guess your answer is no.

20 Q. Why are you testifying here today?

21 A. I was subpoenaed to come testify. Plus I was Jimmy's
22 best friend. I probably knew him best at the time he died.

23 Q. Better than his own parent?

24 A. Maybe.

1 Q. Do you understand that Casey Fitzwallace is suing
2 Paradise Valley Landscaping for what happened to Jimmy?

3 A. Yes.

4 Q. What do you think about that?

5 (BY MS. DOMINIQUE HINSON) Objection, form.

6 A. I don't know why they're doing it. Money isn't going
7 to bring back Jimmy and Casey already has enough money.

8 Q. I have nothing further for this witness at this
9 time. I pass.

END OF DEPOSITION

CAUSE NO. 21-666-CV

CASEY FITZWALLACE INDIVIDUALLY\$ IN THE DISTRICT COURT OF
AND AS LEGAL REPRESENTATIVE \$
OF THE ESTATE OF JIMMY \$
HUNDSTROM, DECEASED \$
Plaintiffs, \$
\$
V. \$
\$
TEETER LANDON AND BOSQUE \$
RANCH, INC. D/B/A PARADISE \$
VALLEY LANDSCAPING \$
Defendants \$ CAPITOL COUNTY, SOUTH TEXAS
7TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

AINSLEY HAYES

MARCH 21, 2023

ORAL DEPOSITION of AINSLEY HAYES, produced as a witness at the instance of DEFENDANTS, and duly sworn, was taken in the above-style and numbered cause on MARCH 9, 2023 from 9:00 am to 11:45 am, before Stephanie Sullivan in and for the state of Texas recorded by machine shorthand at the offices of the Hinson & Stenhouse, PLLC, 440 Louisiana, Suite 1202, Alastor City, South Texas 77002, pursuant to the South Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto, that the deposition shall be read and signed before any notary public.

A P P E A R A N C E S

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1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MS. HAYLEY STENHOUSE:

4 Q. Good morning. Please state your name for the
5 record, please.

6 A. Ainsley Hayes.

7 Q. Did you know Jimmy Hundstrom?

8 A. I did.

9 Q. How did you know him?

10 A. I actually gave birth to him in 2002.

11 Q. So you are his actual birth mother?

12 A. Yes.

13 Q. And you gave him up for adoption to Casey
14 Fitzwallace and Jean Hundstrom, is that correct?

15 A. Yes.

16 Q. Can I ask you for the circumstances around that?

17 A. Sure. I was 17 years old when I got pregnant. A
18 drunken hook up with my best friend at the time. I had just
19 started my freshman year of college. I knew I didn't want to
20 get an abortion but at the same time, I was at the University
21 of South Texas on a prestigious journalism scholarship. My
22 parents were helpful but as you might imagine, they weren't
23 supportive of me not finishing college, especially since I
24 had a scholarship paying for most of it.

1 Q. Why did you go the adoption route?

2 A. Well, there were a couple of months in there where
3 I naively believed I could pull off going to school and a
4 baby. I got really sick about halfway through and barely
5 made it through my finals and realized I couldn't do both.
6 So my parents helped me find an adoption agency - Blue Hope.
7 They matched me pretty quick.

8 Q. Was that Casey Fitzwallace and Jean Hundstrom?

9 A. Yes. They flew down to South Texas. They were a
10 really nice couple. They lived in New York and had the
11 financial means to take care of the baby. We met a couple of
12 times actually.

13 Q. Did you ever go to New York to meet them?

14 A. No. I was already 7 months pregnant and I had
15 never flown before. I just thought it wasn't a good idea. But
16 Blue Hope had vetted them and gave me the information about
17 them and their background and financial and family history.

18 Q. How many times did you meet with Casey and Jean?

19 A. Probably 2 or 3. It was just as much about them
20 getting to know me as it was for me to get to know them.

21 Q. Why was that important?

22 A. I knew I was giving up all of my rights to the baby,
23 but we agreed that whenever the baby was ready, they could
24 reach out to me so that there could be the possibility of

1 some future relationship - even if it wasn't as a
2 mother/child. I wanted to make sure that the baby was going
3 to be raised by good people. And I'm sure they wanted to make
4 sure that they weren't adopting some spawn of satan.

5 Q. Did you eventually decide to let them adopt your
6 baby?

7 A. Yes.

8 Q. Why?

9 A. I didn't grow up poor, but we weren't rich either.
10 They had money and they were nice. That's all I wanted - for
11 my baby to have all of the things I didn't have and to have
12 a nice comfortable life with parents that cared for them.

13 Q. What were the terms of the adoption?

14 A. I had about two months left when we came to an
15 agreement. They gave me \$750 to cover buying new maternity
16 clothes. They also gave me \$5,000 a month for those last two
17 months which I used to pay my parents' mortgage since I was
18 living at home. It was summertime so I wasn't in school so
19 all I did was just made sure I took care of myself and the
20 baby and then on July 6, 2002, I went into labor.

21 Q. Were Casey and Jean there for the birth of the baby?

22 A. Yes. Jimmy was born on his due date and so for like
23 the two weeks before that, Casey and Jean were both in Alastor
24 City. It was nice. I actually got to know them better and I

1 felt even better about handing over the baby to them.

2 Q. What happened after you had Jimmy?

3 A. I saw him once more after he was all cleaned up
4 and then two days later they left with him.

5 Q. Was that hard for you?

6 A. Yes. But I want to be clear about something. They
7 were both so nice. They were willing to stay longer and give
8 me some time with Jimmy before they left. But I didn't want
9 that time. I was worried that if I bonded with him, I wasn't
10 going to be able to give him up. It was hard enough as it
11 was. I wanted to rip off the band-aid so to speak.

12 Q. While Jimmy was growing up, did you ever have any
13 communication with Casey, Jean or Jimmy?

14 A. No. I wanted to buckle down and just focus on
15 school and my life. I figured if anything happened with
16 Jimmy, someone would probably let me know.

17 Q. Why did you think that?

18 A. I don't know why. Casey and Jean had my contact
19 information and they were just so nice. I think I trusted
20 them.

21 Q. Did you graduate from the University of South
22 Texas?

23 A. I did.

24 Q. Let me jump forward a bit. How old are you now?

1 A. 38.

2 Q. What do you do for a living?

3 A. I'm an editor for the Alastor City Chronicle. I
4 also write freelance articles for a bunch of different
5 magazines and websites.

6 Q. Do you write on a particular topic?

7 A. Mainly pop culture and politics. I'm also working
8 on a new podcast. So I have a lot going on right now.

9 Q. Are you married?

10 A. Yes. Zach Scott and I have been married for about
11 seven years now.

12 Q. Does he know that you had previously given up a
13 child for adoption?

14 A. Yes. He's actually met Jimmy.

15 Q. Well before we get there, let me ask you a few more
16 background questions. Do you and Zach have any kids of your
17 own?

18 A. Yes. We have a boy and a girl. Ryan and Eliza.
19 Twins. They are four.

20 Q. So your husband has met Jimmy. At what point did
21 Jimmy reappear in your life?

22 A. So around November of 2020, I got an email out of
23 the blue. It was from Jimmy. He was in the middle of his
24 freshman year of college at the University of South Texas. He

1 said he had been thinking about me a lot and was wondering if
2 it would be okay if we met.

3 Q. How did that make you feel?

4 A. I was shocked by also really happy to know that
5 Casey and Jean had kept their word to me. That they didn't
6 hide from Jimmy that he was adopted or who I was.

7 Q. So did you meet with him?

8 A. Yes. We ended up meeting for the first time at a
9 coffeeshop by campus.

10 Q. What was that like?

11 A. Surreal. He looked so much like me. But we chatted
12 for about an hour. He told me about what happened Jean and
13 how he had a falling out with Casey because of it. I told him
14 about my family and he seemed really excited to know that he
15 had half-siblings.

16 Q. Did you ever see him after that?

17 A. We started messaging and chatting. I think he was
18 kind of lonely. He moved from New York to South Texas.
19 That's quite a way to go and I don't think he knew very many
20 people here when he moved down.

21 Q. When was the next time you saw him?

22 A. Right before the holidays. He came over for dinner
23 and that's when he met the twins and my husband Zach. We
24 talked about how Casey was going to come over Christmas and

1 how he wasn't looking forward to him. I asked him to look at
2 things through Casey's eyes - losing Jean and all and then
3 having your son move all the way across the country to go to
4 school. Casey was all alone and probably missing him
5 tremendously.

6 Q. Was that weird?

7 A. Not really. Look, I wasn't really his parent, but
8 I was a parent and I understood how I would feel if something
9 happened to Zach. I think he appreciated the advice.

10 Q. When did you see him next?

11 A. Well we talked right after the new year. He had
12 spent the holidays with Casey, but still didn't seem to trust
13 her. Sounds like they had a complicated relationship.

14 Q. When was the next time you saw him?

15 A. He dropped off flowers for Mother's Day and he
16 asked if it was okay if he could call me "mom".

17 Q. What did you say to that?

18 A. I told him it was weird because he already had
19 parents and technically I gave up all of my rights to him.
20 He said that he always called Jean and Casey by their names.
21 It was what they wanted. But he always wanted to be able to
22 use the word "mom" or "dad". I told him I wasn't really
23 comfortable with it, but by the summer, he was doing it
24 anyway and I just let him.

1 Q. How often were you talking to him throughout the
2 spring of 2021?

3 A. Pretty regularly. Maybe 2 or 3 times a month.
4 Usually when something was going on with him that he wanted
5 to vent about.

6 Q. Did he ever want to vent about Casey?

7 A. A couple of times. Apparently she somehow found out
8 that he had reached out to me and didn't like it very much.
9 He said he didn't care and wanted to keep getting to know me
10 and his half siblings better.

11 Q. How did you find out about the accident?

12 A. I honestly don't remember who called me. But I got
13 a call the day after the accident that Jimmy was in the
14 hospital. I think someone might have just been going through
15 his phone and just letting everyone know.

16 Q. What did you do when you found out?

17 A. I went to the hospital to try to see him.

18 Q. Did you get to see him?

19 A. No. The door to his room was closed. I didn't
20 want to disturb whatever might be going on so I asked a
21 nurse to let them know I was there and that I wanted to
22 see Jimmy. She came back out and said that they weren't
23 going to let me in to see him.

24 Q. Did you know who the nurse meant when she said

1 "they" weren't going to let you see him?

2 A. A doctor who came out shortly and gave me an
3 update about Jimmy told me that Casey Fitzwallace was in
4 the room with Jimmy so that must've been who it was.

5 Q. What did the doctor tell you about Jimmy's
6 condition?

7 A. It was not good. That he had a lot of broken bones,
8 a pretty bad brain injury and a lot of internal organ damage.
9 He wasn't expected to last the week.

10 Q. Did you ever get to see him before he died?

11 A. I did not. It was very upsetting. I was just getting
12 to know him. And then I lost him again.

13 Q. Was there a memorial service for him?

14 A. I believe there was one in New York for him. I
15 reached out to Casey about it but I never received a return
16 phone call.

17 Q. Thank you for your time. I have no further questions
18 at this time.

19 EXAMINATION BY MR. T. GERALD TREECE

20 Q. Ms. Hayes, I know this is going to be difficult,
21 but I do have to ask you some questions.

22 A. Certainly.

23 Q. You understand that you are here testifying in a
24 wrongful death lawsuit with a survival right of action for

1 Jimmy's estate?

2 A. I guess? I just know that I'm here because
3 Jimmy was killed and I was subpoenaed to testify.

4 Q. Okay. Well let me put it this way. Did you have
5 an understanding of whether Jimmy was financially well off?

6 A. Yes. I knew his parents were very well off, but
7 then I knew he received a sizable settlement from the
8 medical malpractice lawsuit involving the death of Jean.

9 Q. Do you know that Jimmy died without a will?

10 A. That doesn't surprise me. Jimmy was 19 years old
11 when he died. I don't know any 19 year olds with a will.
12 I couldn't imagine it.

13 Q. So the money that he had as well as any amounts
14 a jury chooses to award for his own pain and suffering as a
15 a result of the wreck that killed him, that would go into
16 his estate and be distributed to his next of kin.

17 A. Okay.

18 Q. So even though you are his birth mother, you are
19 not considered a next of kin in the eyes of the law because
20 you gave up all of your parental rights to Jimmy when he
21 was born.

22 A. What are you getting at?

23 Q. Well you also know that the parents and children
24 of a person who died as a result of someone else's

1 negligence potentially has a wrongful death claim where you
2 could be awarded money for the loss of a loved one?

3 A. Okay.

4 Q. Again, even though you are the birth mother, you
5 know you don't have a wrongful death claim for Jimmy's
6 death because you are not legally his mother.

7 A. Is that why you think I'm here? Because you
8 think I want money from this?

9 Q. I just wanted to make sure you were aware of your
10 legal position here.

11 A. Yes sir. I know very well that I gave up all of
12 my rights to him as his mother when he was born, but that
13 doesn't mean that I wasn't allowed to have a relationship
14 with him now that he was an adult.

15 Q. Yes you can. But you understand that your
16 relationship with him at the time of his death is not one
17 that would entitle you to compensation in this lawsuit.

18 A. That's disgusting for you to even suggest that.
19 I'm not here asking for money. I'm here for Jimmy.

20 Q. I just want to make sure that everything is
21 clear. Not only are you not entitled to any compensation
22 for the loss of Jimmy, but the only person who is entitled
23 is Casey Fitzwallace. Do you understand that?

24 A. So?

1 Q. You don't like Casey Fitzwallace, do you?

2 A. I don't like how people with money think they can
3 just boss people around without regard for anybody else's
4 feelings. I didn't get to say good bye to Jimmy because of
5 Casey.

6 Q I have no further questions at this time. Pass
7 the witness.

END OF DEPOSITION

☐ FATAL ☐ CMV ☐ SCHOOL BUS ☐ RAILROAD ☐ MAB ☐ SUPPLEMENT ☐ ACTIVE SCHOOL ZONE

Total Num. Units **3** Total Num. Persons **5** TxDOT Crash ID

South Texas Peace Officer's Crash Report

Mail to: Texas Department of Transportation, Crash Data and Analysis, P.O. Box 149349, Austin, TX 78714, Questions? Call 844/274-7457

Refer to Attached Code Sheet for Numbered Fields

*=These fields are required on all additional sheets submitted for this crash (ex.: additional vehicles, occupants, injured, etc.).

Page 1 of 5

IDENTIFICATION & LOCATION	*Crash Date (MM/DD/YYYY) 08/03/2021		*Crash Time (24HRMM) 19:00		Case ID 150065819		Local Use 1141869	
	*County Name CAPITAL COUNTY				*City Name BUNKER HILL			
	☒ Yes ☐ No In your opinion, did this crash result in at least \$1,000 damage to any one person's property?				Latitude (decimal degrees) 29.762166		Longitude (decimal degrees) -95.410556	
	ROAD ON WHICH CRASH OCCURRED *1 Rdwy. Suffix IH *Hwy. Num. 1 2 Rdwy. Part Block Num. 3 Street Prefix *Street Name ADELE WEBBER 4 Street Suffix FWY ☐ Crash Occurred on a Private Drive or Road/Private Property/Parking Lot ☐ Toll Road/Toll Lane Speed Limit 75 Const. Zone ☐ Yes ☒ No Workers Present ☐ Yes ☒ No Street Desc.							
VEHICLE, DRIVER, & PERSONS	INTERSECTING ROAD, OR IF CRASH NOT AT INTERSECTION, NEAREST INTERSECTING ROAD OR REFERENCE MARKER At Int. ☐ Yes ☒ No 3 Rdwy. Suffix Hwy. Num. 2 Rdwy. Part Block Num. 3 Street Prefix Street Name 4 Street Suffix Distance from Int. or Ref. Marker ☐ FT ☒ MI 3 Dir. from Int. or Ref. Marker Reference Marker Street Desc. R/R Num.							
	Unit Num. 1		5 Unit Desc. 1		☒ Parked Vehicle ☐ Hit and Run		LP State TX LP Num. 02BZJ8 VIN 1FDWF36Y88ED68525	
	Veh. Year '21		A. Veh. Color BL		Veh. Make FORD		Veh. Model F550	
	8 DL/ID Type 1		DL/ID State STX		DL/ID Num. 26851775		9 DL Class A 10 CDL End.	
	11 DL Rest.		DOB 02/11/1989 (MM/DD/YYYY)					
	Address (Street, City, State, ZIP) 141 WEST 12TH, ALASTOR CITY, S. TEXAS 76654							
	Person Num. 1		12 Prin. Type 1		13 Seat Position 1		Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line LANDON, TEETER	
	14 Injury Severity N		Age 30		15 Ethnicity 99		16 Sex 1	
	17 Eject 1		18 Restr. 1		19 Airbag 1		20 Helmet 97	
	21 Sol. N		22 Alc. Spec. 96		Alc. Result		23 Drug Spec. 96 24 Drug Result 97 25 Drug Category 97 Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.	
☒ Owner ☐ Lessee Owner/Lessee Name & Address ELITE SOLUTIONS, LLC, 477 KIWI LN., CAPITOL CITY, S. TX 76665 Proof of Fin. Resp. ☒ Yes ☐ Expired ☐ No ☐ Exempt 26 Fin. Resp. Type Fin. Resp. Name BLAKELY INSURANCE Fin. Resp. Num. 2016HYNLKHU8732 Fin. Resp. Phone Num. 27 Vehicle Damage Rating 1 27 Vehicle Damage Rating 2 - - Vehicle Inventoried ☐ Yes ☒ No Towed By Towed To								
VEHICLE, DRIVER, & PERSONS	Unit Num. 2		5 Unit Desc. 1		☐ Parked Vehicle ☐ Hit and Run		LP State S.TX LP Num. KVI395 VIN 9DK37B39DKE13SC5	
	Veh. Year '18		A. Veh. Color RED		Veh. Make DODGE		Veh. Model 4X4 RAM 1500 SPORT	
	8 DL/ID Type 1		DL/ID State STX		DL/ID Num. 47298649		9 DL Class A 10 CDL End.	
	11 DL Rest.		DOB 10/16/1987 (MM/DD/YYYY)					
	Address (Street, City, State, ZIP) 306 LANTANA LANE, CAPITOL CITY, S. TX 76668							
	Person Num. 1		12 Prin. Type 1		13 Seat Position		Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line RYAN BOHEN	
	14 Injury Severity N		Age 34		15 Ethnicity 99		16 Sex 1	
	17 Eject		18 Restr.		19 Airbag		20 Helmet	
	21 Sol.		22 Alc. Spec.		Alc. Result		23 Drug Spec. 24 Drug Result 25 Drug Category Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.	
	☒ Owner ☐ Lessee Owner/Lessee Name & Address RYAN BOHEN, 306 LANTANA LANE, CAPITOL CITY, S. TX 76668 Proof of Fin. Resp. ☒ Yes ☐ Expired ☐ No ☐ Exempt 26 Fin. Resp. Type Fin. Resp. Name ALL COUNTY MUTUAL Fin. Resp. Num. 2021YJLWEFS872666 Fin. Resp. Phone Num. 27 Vehicle Damage Rating 1 06 - BD - 012 27 Vehicle Damage Rating 2 - - Vehicle Inventoried ☐ Yes ☒ No Towed By APPLE TOWING Towed To CAPITOL COUNTY STORAGE YARD							

☐ FATAL	☐ CMV	☐ SCHOOL BUS	☐ RAILROAD	☐ MAB	☐ SUPPLEMENT	☐ ACTIVE SCHOOL ZONE	Total Num. Units: 3	Total Num. Persons: 5	TxDOT Crash ID:
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South Texas Peace Officer's Crash Report

Mail to: Texas Department of Transportation, Crash Data and Analysis, P.O. Box 149349, Austin, TX 78714, Questions? Call 844/274-7457

Refer to Attached Code Sheet for Numbered Fields

*These fields are required on all additional sheets submitted for this crash (ex.: additional vehicles, occupants, injured, etc.).

Page 1 of 5

IDENTIFICATION & LOCATION	*Crash Date (MM/DD/YYYY)	08/03/2021	*Crash Time (24HRMM)	19:00	Case ID	150065819	Local Use	1141869												
	*County Name	CAPITAL COUNTY	*City Name	BUNKER HILL	☒ Outside City Limit															
	In your opinion, did this crash result in at least \$1,000 damage to any one person's property?		☒ Yes ☐ No	Latitude (decimal degrees)	29.762166	Longitude (decimal degrees)	-95.410556													
	ROAD ON WHICH CRASH OCCURRED																			
	*1 Rdwy. Sgn.	1H	*Hwy. Num.	1	2 Rdwy. Part		3 Street Prefix		* Street Name	ADELE WEBBER	4 Street Suffix	FWY								
	☐ Crash Occurred on a Private Drive or Road/Private Property/Parking Lot		☐ Toll Road/Toll Lane	Speed Limit	75	Const. Zone	☐ Yes ☒ No	Workers Present	☐ Yes ☒ No	Street Desc.										
	INTERSECTING ROAD, OR IF CRASH NOT AT INTERSECTION, NEAREST INTERSECTING ROAD OR REFERENCE MARKER																			
	At Int.	☐ Yes ☒ No	3 Rdwy. Sgn.		Hwy. Num.		2 Rdwy. Part		Block Num.		3 Street Prefix		Street Name		4 Street Suffix					
	Distance from Int. or Ref. Marker		☐ FT ☒ MC	3 Dir. from Int. or Ref. Marker				Reference Marker			Street Desc.			R/R Num.						
	Unit Num.	1	5 Unit Desc.	1	☒ Parked Vehicle ☐ Hit and Run	LP State		LP Num.	028238	VIN	1FDWF36Y88ED68525									
Veh. Year	'21	A. Veh. Color	BL	Veh. Make	FORD			Veh. Model	F550			7 Body Style	PK	☐ Pol., Fire, EMS on Emergency (Explain in Narrative if checked)						
8 DL/ID Type	1	DL/ID State	STX	DL/ID Num.	26851775			9 DL Class	A	10 CDL End.			11 DL Rest.	DOB 02/11/1989 (MM/DD/YYYY)						
Address (Street, City, State, ZIP)														141 WEST 12TH, ALASTOR CITY, S. TEXAS 76654						
VEHICLE, DRIVER, & PERSONS	Person Num.	12 Prin. Type	13 Seat Position	Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line			14 Injury Severity	Age	15 Ethnicity	16 Sex	17 Eject	18 Restr.	19 Airbag	20 Helmet	21 Sol.	22 Al. Spec.	Alc. Result	23 Drug Spec.	24 Drug Result	25 Drug Category
	1	1	1	LANDON, TEETER			N	30	99	1	1	1	1	97	N	96		96	97	97
															Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.					
	☒ Owner ☐ Lessee														Owner/Lessee Name & Address ELITE SOLUTIONS, LLC, 477 KIWI LN., CAPITOL CITY, S. TX 76665					
	Proof of Fin. Resp.		☒ Yes ☐ No	☐ Expired ☐ Exempt	26 Fin. Resp. Type	Fin. Resp. Name BLAKELY INSURANCE			Fin. Resp. Num. 2016HYNLKHU8732											
	Fin. Resp. Phone Num.					27 Vehicle Damage Rating 1				27 Vehicle Damage Rating 2						Vehicle Inventoried	☐ Yes ☒ No			
	Towed By					Towed To														
	Unit Num.	2	5 Unit Desc.	1	☐ Parked Vehicle ☐ Hit and Run	LP State	S.TX	LP Num.	KVI395	VIN	9DK37B39DKE13SC5									
	Veh. Year	'18	A. Veh. Color	RED	Veh. Make	DODGE			Veh. Model	4X4 RAM 1500 SPORT			7 Body Style	PK	☐ Pol., Fire, EMS on Emergency (Explain in Narrative if checked)					
	8 DL/ID Type	1	DL/ID State	STX	DL/ID Num.	47298649			9 DL Class	A	10 CDL End.			11 DL Rest.	DOB 10/16/1987 (MM/DD/YYYY)					
Address (Street, City, State, ZIP)														306 LANTANA LANE, CAPITOL CITY, S. TX 76668						
VEHICLE, DRIVER, & PERSONS	Person Num.	12 Prin. Type	13 Seat Position	Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line			14 Injury Severity	Age	15 Ethnicity	16 Sex	17 Eject	18 Restr.	19 Airbag	20 Helmet	21 Sol.	22 Al. Spec.	Alc. Result	23 Drug Spec.	24 Drug Result	25 Drug Category
	1	1		RYAN BOHEN			N	34	99	1										
															Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.					
	☒ Owner ☐ Lessee														Owner/Lessee Name & Address RYAN BOHEN, 306 LANTANA LANE, CAPITOL CITY, S. TX 76668					
	Proof of Fin. Resp.		☒ Yes ☐ No	☐ Expired ☐ Exempt	26 Fin. Resp. Type	Fin. Resp. Name ALL COUNTY MUTUAL			Fin. Resp. Num. 2021YJLWFEFS872666											
	Fin. Resp. Phone Num.					27 Vehicle Damage Rating 1	06 - BD - 012			27 Vehicle Damage Rating 2						Vehicle Inventoried	☐ Yes ☒ No			
	Towed By		APPLE TOWING			Towed To		CAPITOL COUNTY STORAGE YARD												

Case ID **150065819**

TxDOT
Crash ID

Page 3 of 5

DISPOSITION OF INJURED/KILLED	Unit Num.	Prim. Num.	Taken To	Taken By	Date of Death (MM/DD/YYYY)	Time of Death (24HR:MM)
	3	1	ALASTOR CITY PRESBYTERIAN HOSPITAL	ONE STATE STAR EMS		

CHARGES	Unit Num.	Prim. Num.	Charge	Citation/Reference Num.

DAMAGE	Damaged Property Other Than Vehicles	Owner's Name	Owner's Address

CMV	Unit Num.	☐ 10,001 + LBS.	☐ TRANSPORTING HAZARDOUS MATERIAL	☐ 9 + CAPACITY	CMV Disabling Damage? ☐ Yes ☐ No	28 Veh. Oper.	29 Carrier ID Type	Carrier ID Num.
	Carrier's Corp. Name			Carrier's Primary Addr.			30 Veh. Type	
	31 Bus Type	☐ RGWV ☐ GVWR	HazMat Released ☐ Yes ☐ No	32 HazMat Class Num.	HazMat ID Num.	33 HazMat Class Num.	HazMat ID Num.	33 Cargo Body Style
	Trailer 1 Unit Num.	☐ RGWV ☐ GVWR	34 T/B, Type	CMV Disabling Damage? ☐ Yes ☐ No	Trailer 2 Unit Num.	☐ RGWV ☐ GVWR	34 T/B, Type	CMV Disabling Damage? ☐ Yes ☐ No
	Sequence Of Events	35 Seq. 1	35 Seq. 2	35 Seq. 3	35 Seq. 4			

FACTORS & CONDITIONS	36 Contributing Factors (Investigator's Opinion)				37 Vehicle Defects (Investigator's Opinion)				Environmental and Roadway Conditions							
	Unit #	Contributing	May Have Contrib.		Unit #	Contributing	May Have Contrib.		38 Weather Cond.	39 Light Cond.	40 Entering Roads	41 Roadway Type	42 Roadway Alignment	43 Surface Condition	44 Traffic Control	
									1	6	97	3	1	1	17	

NARRATIVE AND DIAGRAM	Investigator's Narrative Opinion of What Happened (Attach Additional Sheets if Necessary) SEE ATTACHED NARRATIVE	Field Diagram - Not to Scale SEE ATTACHED DRAWING

INVESTIGATOR	Time Notified (24HR:MM)	How Notified	Time Arrived (24HR:MM)	Report Date (MM/DD/YYYY)
	19:06	DISPATCHED	19:14	08/06/2021
	Invest. Comp. ☒ Yes ☐ No	Investigator Name (Printed) COLBY MAYFIELD		
ORJ Num. TX1010000	*Agency SOUTH TEXAS DEPARTMENT OF PUBLIC SAFETY			ID Num. 526227
Service/Region/DA SOPD1D				

UNIT 1 HAD A TRAILER THAT WAS TRANSPORTING A BACKHOE AND LANDSCAPING BOUNDERS FROM THE ALASTOR CITY MUSEUM OF FINE ARTS TO PARADISE VALLEY LANDSCAPING'S COMPANY HEADQUARTERS IN CAPITOL CITY. THE DRIVER STATED THAT THE TRAILER "SHIFTED," "ROCKED," AND "JERKED FROM SIDE TO SIDE." THEY APPLIED BRAKES AND STOPPED UNIT 1 ON THE PAVED SHOULDER. THEY STATED THAT THEY REALIZED THAT SOME OF THE BOULDERS HAD FALLED OFF OF THE TRAILER. UNIT 1 DRIVER WAS WALKING BACK ALONG THE SHOULDER TO WHERE THE BOULDERS WERE. THEY STATED THAT UNIT 2 ALSO PULLED OVER ON THE SHOULDER BEHIND UNIT 1 BY A NUMBER OF FEET. THE THREE INDIVIDUALS THAT WERE IN THE VEHICLE WERE IN THE PROCESS OF MOVING BOULDERS OUT OF THE STREET WHEN THE UNIT 1 DRIVER SAW UNIT 3 APPROACH, SWERVE SUDDENLY TO AVOID HITTING THE BOULDERS AND STRUCK UNIT 2 THAT WAS PARKED. UNFORTUNATELY, ONE OF THE PEOPLE WHO HAD BEEN RIDING IN UNIT 2 - JIMMY HUNDSTROM - WAS PINNED BETWEEN UNIT 2 AND UNIT 3. UNIT 2 WAS PUSHED INTO ANOTHER PASSENGER OF UNIT 2 - GATOR GABRIEL WHO WAS STANDING IN THE GRASS.

THE DRIVER OF UNIT 3 - LYNELLE PERRY - HAD TO BE ASSISTED TO GET OUT OF HER CAR BECAUSE OF HER INJURIES. SHE WAS TAKEN BY AMBULANCE TO ALASTOR CITY PRESBYTERIAN HOSPITAL.

JIMMY HUNDSTROM WHO WAS PINNED BETWEEN UNITS 2 AND 3 WAS TAKEN BY SILVER STAR EMS TO ALASTOR CITY MEMORIAL HOSPITAL.

GATOR GABRIEL WAS WAS STRUCK WHEN UNIT 2 WAS PUSHED INTO HIM WAS TAKEN BY RED RIVER EMS ALSO TO ALASTOR CITY MEMORIAL HOSPITAL.

TEETER LANDON, DRIVER OF UNIT 1 AND RYAN BOHEN, DRIVER OF UNIT 2 WERE UNINJURED.

NO CITATIONS WERE ISSUED AS LIABILITY COULD NOT BE DETERMINED.

ADDITIONAL NARRATIVE

GRASS

GRASS CENTER
MEDIAN

Ford
Trailer
14.73
ft.

Dodge
Cadillac

W
↑

Numbered Fields on the CR-3 Refer to the Numbered Lists on this Code Sheet. Each list includes the codes that may be entered on the form and the description of each code.

Law Enforcement and TxDOT Use ONLY.
Form CR-3CS 1/1/2017

IDENTIFICATION AND LOCATION	1. Roadway System IH = Interstate US = US Highway SH = State Highway FM = Farm to Market RR = Ranch Road RM = Ranch to Market BI = Business Interstate BU = Business US BS = Business State BF = Business FM SL = State Loop TL = Toll Road AL = Alternate SP = Spur CR = County Road PR = Park Road PV = Private Road RC = Recreational Road LR = Local Road/Street (Street, Road, Ave., Blvd., Pl., Trl., Beach, Alley, Boat Ramp, etc.)		2. Roadway Part 1 = Main/Proper Lane 2 = Service/Frontage Road 3 = Entrance/On Ramp 4 = Exit/Off Ramp 5 = Connector/Flyover 98 = Other (Explain in Narrative)		3. Street Prefix, Direction from Int. or Ref. Marker N = North NE = Northeast E = East SE = Southeast S = South SW = Southwest W = West NW = Northwest		4. Street Suffix RD = Road ST = Street DR = Drive AVE = Avenue BLVD = Boulevard PKWY = Parkway LN = Lane FWY = Freeway HWY = Highway WAY = Way TRL = Trail LOOP = Loop EXPY = Expressway CT = Court CIR = Circle PL = Place PARK = Park CV = Cove																
	5. Unit Description 1 = Motor Vehicle 2 = Train 3 = Pedalcyclist 4 = Pedestrian 5 = Motorized Conveyance 6 = Towed/Trailer 7 = Non-Contact 98 = Other (Explain in Narrative)	6. Vehicle Color BGE = Beige BLK = Black BLU = Blue BRZ = Bronze BRO = Brown CAM = Camouflage CPR = Copper GLD = Gold GRY = Gray GRN = Green MAR = Maroon MUL = Multicolored ONG = Orange PNK = Pink PLE = Purple RED = Red SIL = Silver TAN = Tan TEA = Teal (green) TRQ = Turquoise (blue) WHI = White YEL = Yellow 98 = Other (Explain in Narrative) 99 = Unknown		7. Body Style P2 = Passenger Car, 2-Door P4 = Passenger Car, 4-Door PK = Pickup AM = Ambulance BU = Bus SB = Yellow School Bus FE = Farm Equipment FT = Fire Truck MC = Motorcycle SV = Sport Utility Vehicle PC = Police Car/Truck PM = Police Motorcycle TL = Trailer, Semi-Trailer, or Pole Trailer TR = Truck TT = Truck Tractor VN = Van EV = Neighborhood Vehicle 98 = Other (Explain in Narrative) 99 = Unknown		8. Driver License/ID Type 1 = Driver License 2 = Commercial Driver Lic. 3 = Occupational 4 = ID Card 5 = Unlicensed 98 = Other 99 = Unknown		9. Driver License Class A = Class A AM = Class A and M B = Class B BM = Class B and M C = Class C CM = Class C and M M = Class M 5 = Unlicensed 98 = Other/Out of State 99 = Unknown		10. Commercial Driver License Endorsements H = Hazardous Materials N = Tank Vehicle P = Passenger S = School Bus T = Double/Triple Trailer X = Tank Vehicle with Hazardous Materials 5 = Unlicensed 96 = None 98 = Other/Out of State 99 = Unknown													
11. Driver License Restrictions A = With corrective lenses B = LOFS 21 or over C = Daytime driving only D = Speed not to exceed 45 mph E = No manual transmission equipped CMV F = Must hold valid learner lic. to MM/DD/YY G = TRC 545.424 applies until MM/DD/YY H = Vehicle not to exceed 26,000 lbs GVWR I = MC not to exceed 250cc J = Licensed MC operator 21 or over in sight K = Intrastate only L = No air brake equipped CMV M = No Class A passenger vehicle N = No Class A and B passenger vehicle O = No tractor-trailer CMV Q = LOFS 21 or over vehicle above Class B R = LOFS 21 or over vehicle above Class C S = Outside rearview mirror or hearing aid T = Automatic transmission U = Applicable prosthetic devices V = Medical Variance W = Power steering X = No cargo in CMV tank vehicle Y = Valid TX vision or limb waiver required Z = No full air brake equipped CMV P1 = For Class M TRC 545.424 until MM/DD/YY P2 = To/from work/school P3 = To/from work P4 = To/from school P5 = To/from work/school or LOFS 21 or over P6 = To/from work or LOFS 21 or over P7 = To/from school or LOFS 21 or over P8 = With telescopic lens P9 = LOFS 21 or over bus only P10 = LOFS 21 or over school bus only P11 = Bus not to exceed 26,000 lbs GVWR P12 = Passenger CMVs restrict to Class C only P13 = LOFS 21 or over in veh equip w/airbrake P14 = Operation Class B exempt veh authorized																							
12. Person Type 1 = Driver 2 = Passenger/Occupant 3 = Pedalcyclist 4 = Pedestrian 5 = Driver of Motorcycle Type Vehicle 6 = Passenger/Occupant on Motorcycle Type Vehicle 98 = Other (Explain in Narrative) 99 = Unknown										13. Seat Position 1 = Front Left 2 = Front Center 3 = Front Right 4 = Second Seat Left 5 = Second Seat Center 6 = Second Seat Right 7 = Third Seat Left 8 = Third Seat Center 9 = Third Seat Right 10 = Cargo Area 11 = Outside Vehicle 13 = Other in Vehicle 14 = Passenger in Bus 16 = Pedestrian, Pedalcyclist, or Motorized Conveyance 98 = Other (Explain in Narrative) 99 = Unknown		14. Injury Severity A = Incapacitating Injury B = Non-Incapacitating Injury C = Possible Injury K = Killed N = Not Injured 99 = Unknown		15. Ethnicity W = White B = Black H = Hispanic A = Asian I = Amer. Indian/Alaskan Native 98 = Other 99 = Unknown		16. Sex 1 = Male 2 = Female 99 = Unknown		17. Ejected 1 = No 2 = Yes 3 = Yes, Partial 97 = Not Applicable 99 = Unknown		18. Restraint Used 1 = Shoulder and Lap Belt 2 = Shoulder Belt Only 3 = Lap Belt Only 4 = Child Seat, Facing Forward 5 = Child Seat, Facing Rear 6 = Child Seat, Unknown		19. Airbag 1 = Not Deployed 2 = Deployed, Front 3 = Deployed, Side 4 = Deployed, Rear 5 = Deployed, Multiple 97 = Not Applicable 99 = Unknown	
20. Helmet Use 1 = Not Worn 2 = Worn, Damaged 3 = Worn, Not Damaged 4 = Worn, Unk. Damage 97 = Not Applicable 99 = Unknown if Worn										21. Solicitation Y = Solicit N = No Solicit		22. Alcohol Specimen Type 1 = Breath 2 = Blood 3 = Urine 4 = Refused 96 = None 98 = Other (Explain in Narrative)		27. Vehicle Damage Rating In most cases, enter in the format XX-ABC-Y, where XX is the Direction of Force (1-12), ABC is the Damage Description 2- or 3-letter code, and Y is the Damage Severity (0-7). In special cases, use: VB-1 = vehicle burned, NOT due to collision VB-7 = vehicle catches fire due to the collision TP-0 = top damage only VX-0 = undercarriage damage only MC-1 = motorcycle, moped, scooter, etc. NA = Not Applicable (Farm Tractor, etc.)									
23. Drug Specimen Type 2 = Blood 3 = Urine 4 = Refused 96 = None 98 = Other (Explain in Narrative)										25. Drug Category 2 = CNS Depressants 3 = CNS Stimulants 4 = Hallucinogens 6 = Narcotic Analgesics 7 = Inhalants 8 = Cannabis 10 = Dissociative Anesthetics 11 = Multiple Drugs (Explain in Narrative) 97 = Not Applicable 98 = Other Drugs (Explain in Narrative) 99 = Unknown		26. Financial Responsibility Type 1 = Liability Insurance Policy 2 = Proof of Liability Insurance 3 = Insurance Binder 4 = Surety Bond 5 = Certificate of Deposit with Comptroller 6 = Certificate of Deposit with County Judge 7 = Certificate of Self-Insurance											
24. Drug Test Result 1 = Positive 2 = Negative 97 = Not Applicable 99 = Unknown										25. Drug Category 2 = CNS Depressants 3 = CNS Stimulants 4 = Hallucinogens 6 = Narcotic Analgesics 7 = Inhalants 8 = Cannabis 10 = Dissociative Anesthetics 11 = Multiple Drugs (Explain in Narrative) 97 = Not Applicable 98 = Other Drugs (Explain in Narrative) 99 = Unknown		26. Financial Responsibility Type 1 = Liability Insurance Policy 2 = Proof of Liability Insurance 3 = Insurance Binder 4 = Surety Bond 5 = Certificate of Deposit with Comptroller 6 = Certificate of Deposit with County Judge 7 = Certificate of Self-Insurance											

Numbered Fields on the CR-3 Refer to the Numbered Lists on this Code Sheet. Each list includes the codes that may be entered on the form and the description of each code.

COMMERCIAL MOTOR VEHICLE	28. Vehicle Operation 1 = Interstate Commerce 2 = Intrastate Commerce 3 = Not in Commerce 4 = Government 5 = Personal	29. Carrier ID Type 1 = US DOT 2 = TxDOT 3 = ICC/MC 96 = None 98 = Other (Explain in Narrative)	30. Vehicle Type 1 = Passenger Car 2 = Light Truck 3 = Bus (9-15) 4 = Bus (>15) 5 = Single Unit Truck 2 Axles 6 Tires 6 = Single Unit Truck 3 or More Axles 7 = Truck Trailer 8 = Truck Tractor (Bobtail) 9 = Tractor/Semi Trailer 10 = Tractor/Double Trailer 11 = Tractor/Triple Trailer 98 = Other (Explain in Narrative) 99 = Unknown Heavy Truck	31. Bus Type 0 = Not a Bus 1 = School Bus (Public or Private) 2 = Transit 3 = Intercity 4 = Charter 5 = Other 6 = Shuttle 9 = Not Reported/ Unknown	32. Hazardous Material Class Number 1 = Explosives 2 = Gases 3 = Flammable Liquids 4 = Flammable Solids 5 = Oxidizers and Organic Peroxides 6 = Toxic Materials and Infectious Substances 7 = Radioactive Materials 8 = Corrosive Materials 9 = Miscellaneous Dangerous Goods
	33. Cargo Body Style 1 = Bus (9-15) 2 = Bus (>15) 3 = Van/Enclosed Box 4 = Cargo Tank 5 = Flatbed 6 = Dump 7 = Concrete Mixer 8 = Auto Transporter 9 = Garbage Refuse 10 = Grain Chips Gravel 11 = Pole 13 = Intermodal 14 = Logging 15 = Vehicle Towing Another Vehicle 97 = Not Applicable 98 = Other (Explain in Narrative)			34. Trailer Type 1 = Full Trailer 2 = Semi-Trailer 3 = Pole Trailer	
35. Sequence of Events 1 = Non-Collision: Ran Off Road 2 = Non-Collision: Jackknife 3 = Non-Collision: Overturn Rollover 4 = Non-Collision: Downhill Runaway 5 = Non-Collision: Cargo Loss Or Shift 6 = Non-Collision: Explosion Or Fire 7 = Non-Collision: Separation of Units 8 = Non-Collision: Cross Median/Centerline 9 = Non-Collision: Equipment Failure 10 = Non-Collision: Other 11 = Non-Collision: Unknown 12 = Collision Involving Pedestrian 13 = Collision Involving Motor Vehicle in Transport 14 = Collision Involving Parked Motor Vehicle 15 = Collision Involving Train 16 = Collision Involving Pedalcycle 17 = Collision Involving Animal 18 = Collision Involving Fixed Object 19 = Collision With Work Zone Maintenance Equipment 20 = Collision With Other Movable Object 21 = Collision With Unknown Movable Object 98 = Other (Explain in Narrative)					
FACTORS AND CONDITIONS	36. Factors and Conditions 1 = Animal on Road - Domestic 2 = Animal on Road - Wild 3 = Backed without Safety 4 = Changed Lane when Unsafe 14 = Disabled in Traffic Lane 15 = Disregard Stop and Go Signal 16 = Disregard Stop Sign or Light 17 = Disregard Turn Marks at Intersection 18 = Disregard Warning Sign at Construction 19 = Distraction in Vehicle 20 = Driver Inattention 21 = Drove Without Headlights 22 = Failed to Control Speed 23 = Failed to Drive in Single Lane 24 = Failed to Give Half of Roadway 25 = Failed to Heed Warning Sign 26 = Failed to Pass to Left Safely 27 = Failed to Pass to Right Safely 28 = Failed to Signal or Gave Wrong Signal 29 = Failed to Stop at Proper Place 30 = Failed to Stop for School Bus 31 = Failed to Stop for Train 32 = Failed to Yield ROW – Emergency Vehicle 33 = Failed to Yield ROW – Open Intersection 34 = Failed to Yield ROW – Private Drive 35 = Failed to Yield ROW – Stop Sign 36 = Failed to Yield ROW – To Pedestrian 37 = Failed to Yield ROW – Turning Left 38 = Failed to Yield ROW – Turn on Red 39 = Failed to Yield ROW – Yield Sign 40 = Fatigued or Asleep 41 = Faulty Evasive Action 42 = Fire in Vehicle 43 = Fleeing or Evading Police 44 = Followed Too Closely 45 = Had Been Drinking 46 = Handicapped Driver (Explain in Narrative) 47 = Ill (Explain in Narrative) 48 = Impaired Visibility (Explain in Narrative) 49 = Improper Start from Parked Position 50 = Load Not Secured 51 = Opened Door Into Traffic Lane 52 = Oversized Vehicle or Load 53 = Overtake and Pass Insufficient Clearance 54 = Parked and Failed to Set Brakes 55 = Parked in Traffic Lane 56 = Parked without Lights 57 = Passed in No Passing Lane 58 = Passed on Right Shoulder 59 = Pedestrian FTYROW to Vehicle 60 = Unsafe Speed 61 = Speeding – (Over Limit) 62 = Taking Medication (Explain in Narrative) 63 = Turned Improperly – Cut Corner on Left 64 = Turned Improperly – Wide Right 65 = Turned Improperly – Wrong Lane 66 = Turned when Unsafe 67 = Under Influence – Alcohol 68 = Under Influence – Drug 69 = Wrong Side – Approach or Intersection 70 = Wrong Side – Not Passing 71 = Wrong Way – One Way Road 73 = Road Rage 74 = Cell/Mobile Device Use - Talking 75 = Cell/Mobile Device Use - Texting 76 = Cell/Mobile Device Use - Other 77 = Cell/Mobile Device Use - Unknown 98 = Other (Explain in Narrative)				
	37. Vehicle Defects 5 = Defective or No Headlamps 6 = Defective or No Stop Lamps 7 = Defective or No Tail Lamps 8 = Defective or No Turn Signal Lamps 9 = Defective or No Trailer Brakes 10 = Defective or No Vehicle Brakes 11 = Defective Steering Mechanism 12 = Defective or Slick Tires 13 = Defective Trailer Hitch 98 = Other (Explain in Narrative)	38. Weather Condition 1 = Clear 2 = Cloudy 3 = Rain 4 = Sleet/Hail 5 = Snow 6 = Fog 7 = Blowing Sand/Snow 8 = Severe Crosswinds 98 = Other (Explain in Narrative) 99 = Unknown	39. Light Condition 1 = Daylight 2 = Dark, Not Lighted 3 = Dark, Lighted 4 = Dark, Unknown Lighting 5 = Dawn 6 = Dusk 98 = Other (Explain in Narrative) 99 = Unknown	40. Entering Roads 2 = Three Entering Roads – T 3 = Three Entering Roads – Y 4 = Four Entering Roads 5 = Five Entering Roads 6 = Six Entering Roads 7 = Traffic Circle 8 = Cloverleaf 97 = Not Applicable 98 = Other (Explain in Narrative)	
41. Roadway Type 1 = Two-Way, Not Divided 2 = Two-Way, Divided, Unprotected Median 3 = Two-Way, Divided, Protected Median 4 = One-Way 98 = Other (Explain in Narrative)	42. Roadway Alignment 1 = Straight, Level 2 = Straight, Grade 3 = Straight, Hillcrest 4 = Curve, Level 5 = Curve, Grade 6 = Curve, Hillcrest 98 = Other (Explain in Narrative) 99 = Unknown	43. Surface Condition 1 = Dry 2 = Wet 3 = Standing Water 4 = Snow 5 = Slush 6 = Ice 7 = Sand, Mud, Dirt 98 = Other (Explain in Narrative) 99 = Unknown	44. Traffic Control 2 = Inoperative (Explain in Narrative) 3 = Officer 4 = Flagman 5 = Signal Light 6 = Flashing Red Light 7 = Flashing Yellow Light 8 = Stop Sign 9 = Yield Sign 10 = Warning Sign	11 = Center Stripe/Divider 12 = No Passing Zone 13 = RR Gate/Signal 15 = Crosswalk 16 = Bike Lane 17 = Marked Lanes 18 = Signal Light With Red Light Running Camera 96 = None 98 = Other (Explain in Narrative)	



EXHIBIT N – 1



EXHIBIT O - 1

Dr. Kelly Shepherd, MD

CURRICULUM VITAE

Work Address: Alastor City Memorial Hospital
13 Boardwalk Place
Alastor City, South Texas 76661

Tel: 254-123-7654

Fax: 254-123-7655

Date of Birth: XX/XX/1977

Place of Birth: Jackson, South Texas

EDUCATION:

2001 BSc. (Psychology) University College
University of London, London, England, UK

2005 MBBS (Medicine), University College Hospital University of
London, London, England, UK

INTERNSHIP:

2005 Alastor City Memorial Hospital
Alastor City, South Texas.
*6 month internship with rotations in Physical Medicine and
Rehabilitation*

RESIDENCY:

2006-2008 Northwestern University Hospital
Chicago, Illinois
2 ½ year residency with emphasis in Neurology

ACADEMIC APPOINTMENTS:

2009-2011 Instructor in Medicine
University of South Texas School of Medicine
Alastor City, South Texas

HOSPITAL APPOINTMENTS:

2008 - 2010 Assistant Physician
Alastor City Memorial Hospital
Alastor City, South Texas

2011 - present Physician
Alastor City Memorial Hospital
Alastor City, South Texas

HONORS AND AWARDS:

2010 Teaching Award:
Society of Teaching Scholars
University of South Texas School of Medicine

2014 Private Neurology Association
Achievement Award

List of Presentations available upon request

**CASEY FITZWALLACE, §
INDIVIDUALLY AND AS LEGAL §
REPRESENTATIVE OF THE ESTATE §
OF JIMMY HUNDSTROM, DECEASED §**

V.

Defendants

7TH DISTRICT COURT

JIMMY HUNDSTROM's reasonable medical expenses that were made necessary as a result of this treatment at **ALASTOR CITY MEMORIAL HOSPITAL** from August 3 – 5, 2021 was **\$125,000.00**.

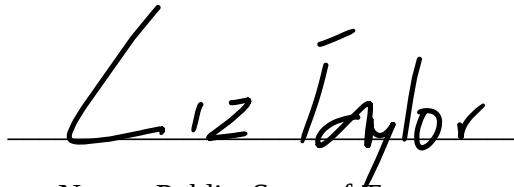
A handwritten signature in black ink, appearing to read "Dea Bull", written over a horizontal line.

Affiant

SWORN TO AND SUBSCRIBED before me on the __27th__ day of __January__, 2023.

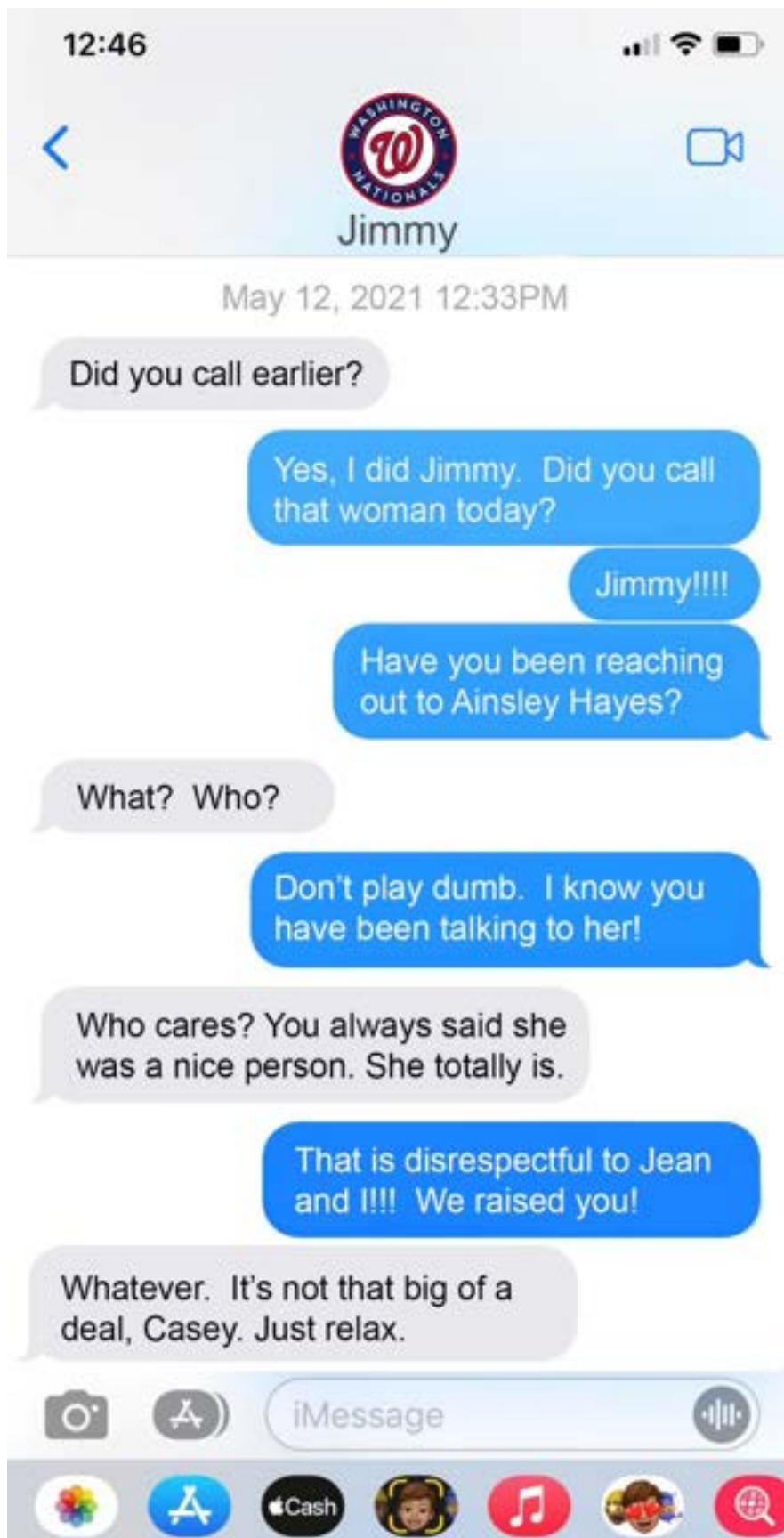
My commission expires:

12-11-25

A handwritten signature in black ink, appearing to read "Liz Taylor", written over a horizontal line.

Notary Public, State of Texas

Notary's printed name: Liz Taylor





670 S.W.3d 546

Supreme Court of Texas.

Sarah GREGORY and New Prime, Inc., Petitioners,

v.

Jaswinder CHOCHAN, et al., Respondents

No. 21-0017

|

Argued January 31, 2023

|

OPINION DELIVERED: June 16, 2023

Synopsis

Background: Widow of trucker, individually and on behalf of their children and trucker's estate, and trucker's parents brought wrongful death action against driver of jackknifed truck that blocked interstate, allegedly causing multi-vehicle accident at which trucker was killed while outside his truck, and against driver's employer, alleging vicarious liability, as well as claims for negligent entrustment, supervision, and training. After granting widow's and parents' motion to strike driver and employer's designations of responsible third parties, and following jury trial, the County Court at Law No. 5, Dallas County, [Mark Greenberg](#), J., entered judgment against driver and employer and awarded approximately \$16.8 million to widow, children, estate, and parents. Driver and employer appealed. The Dallas Court of Appeals, en banc, [Reichek](#), J., [615 S.W.3d 277](#), affirmed. Driver and employer petitioned for review.

Holdings: The Supreme Court, [Blacklock](#), J., held that:

[1] no evidence supported award of \$15,065,000 in noneconomic damages for mental anguish and loss of companionship;

[2] trial court was not justified in striking designation of trucking company as a responsible third party; and

[3] trial court committed harmful error in prohibiting jury from considering whether third party was partially responsible for trucker's death.

Reversed and remanded.

[Devine](#), J., filed concurring opinion in which [Boyd](#), J., joined.

[Bland](#), J., filed opinion concurring in part and concurring in the judgment.

Procedural Posture(s): On Appeal; Judgment; Motion to Strike.

West Headnotes (30)

[1] **Appeal and Error** Mental or emotional injury; pain and suffering

When properly called upon, appellate courts have a duty to ensure that the damages awarded for a non-financial, emotional injury are the result of a rational effort, grounded in the evidence, to compensate the plaintiff for the injury.

[2] **Appeal and Error** Mental or emotional injury; pain and suffering

Appellate courts do not fully discharge their duty to ensure that the damages awarded for a non-financial, emotional injury are the result of a rational effort, grounded in the evidence, to compensate the plaintiff for the injury merely by concluding that a verdict is not so excessive or unreasonable as to shock the judicial conscience.

[3] **Damages** Mental suffering and emotional distress

When reviewing mental anguish damages, there must be evidence that amount found is fair and reasonable compensation, just as there must be evidence to support any other jury finding.

1 Case that cites this headnote

[4] **Appeal and Error** Mental or emotional injury; pain and suffering

When reviewing mental anguish damages, appellate courts require existence of compensable mental anguish and evidence to justify the amount awarded.

1 Case that cites this headnote

[5] **Damages** 🔑 Mental suffering and emotional distress

While the impossibility of any exact evaluation of mental anguish requires that juries be given a measure of discretion in finding noneconomic damages, that discretion is limited.

[6] **Death** 🔑 Mental suffering or emotional distress of plaintiff or beneficiary

To guard against arbitrary outcomes and to ensure that mental anguish damages awards are genuinely compensatory, plaintiff in wrongful death case is required to demonstrate rational connection, grounded in evidence, between injuries suffered and dollar amount awarded.

[7] **Damages** 🔑 Mental Suffering and Emotional Distress

Damages 🔑 Grounds for Exemplary Damages

Mental anguish and loss of companionship damages are neither punitive nor exemplary; they are compensatory.

[8] **Death** 🔑 Loss of society

Death 🔑 Mental suffering or emotional distress of plaintiff or beneficiary

While precision in calculating mental anguish and loss of companionship damages in wrongful death action is not required, and surely cannot be achieved when placing a dollar value on the emotional toll of losing a loved one, some rational basis for the size of the judgment is a minimal requirement on which the law must insist.

[9] **Death** 🔑 Mental suffering or emotional distress of plaintiff or beneficiary

“Mental anguish” is the emotional pain, torment, and suffering that plaintiff would, in reasonable

probability, experience from the wrongful death of a family member.

[10] **Death** 🔑 Loss of services

Death 🔑 Loss of society

“Loss of companionship” recoverable in wrongful death action is the loss of positive benefits flowing from the love, comfort, companionship, and society the named plaintiff would, in reasonable probability, experience if the decedent lived.

[11] **Damages** 🔑 Nature and theory of compensation

Compensatory damages awards are meant to compensate victims, not to punish or deter tortfeasors.

1 Case that cites this headnote

[12] **Appeal and Error** 🔑 Material Considered on Review

Death 🔑 Elements of Compensation

Unsubstantiated anchors, i.e., reference to objects or values with no rational connection to the facts of the case, introduced as a way to assist jury in wrongful death action in “valuing a human life” are not the type of information a jury can rightfully rely on when crafting a verdict awarding noneconomic damages, and on appellate review, such suggestions are of no assistance in rationally explaining why the amount of noneconomic damages awarded reasonably compensates the decedent's family.

[13] **Death** 🔑 Elements of Compensation

In wrongful death cases, ratio between economic and noneconomic damages need not be considered, since emotional trauma and loss experienced by the decedent's loved ones is different in kind from any lost income the family suffers because of the death.

[14] Damages 🔑 Mental suffering and emotional distress

Just as evidence of existence of mental anguish damages generally must establish nature, duration, and severity of anguish suffered, same kind of evidence of nature, duration, and severity will naturally also be relevant to amount awarded.

1 Case that cites this headnote

[15] Damages 🔑 Mental suffering and emotional distress

Requirement that some evidence support amount of damages for emotional injury is not requirement of precise quantification or requirement that particular type of evidence must always be proffered; it is instead merely requirement that amount of damages must have rational basis grounded in evidence.

[16] Appeal and Error 🔑 Mental or emotional injury; pain and suffering**Damages** 🔑 Mental suffering and emotional distress

Parties defending an award of damages for emotional injury cannot just assert that the amount justifies itself; instead, when the record lacks evidence directly supporting the amount found, parties and reviewing courts must explore whether there is any other rational explanation of how the evidence supports the finding.

[17] Damages 🔑 Mental suffering and emotional distress

Required rational basis for mental anguish damages award may come from evidence suggesting a quantifiable amount of damages, such as testimony about the potential financial consequences of severe emotional trauma.

[18] Appeal and Error 🔑 Mental or emotional injury; pain and suffering

On appeal, if reasons offered in justification of amount of non-financial, emotional injury awarded are rational and do not partake of prohibited motives, courts should defer to jury's verdict.

[19] Death 🔑 Necessity of proving loss or injury and the amount thereof**Death** 🔑 Elements of Compensation

Rational reason, grounded in evidence, must be given by plaintiff seeking noneconomic damages in wrongful death action, whose burden it is to prove damages; only then can juries and judges rationally assess whether amount is reasonable and just compensation for injuries suffered.

[20] Damages 🔑 Amount of damages

It is plaintiff's responsibility, as party with burden of proof, to articulate reasonable inference connecting size of verdict and evidence.

[21] Death 🔑 Necessity of proving loss or injury and the amount thereof

To survive legal sufficiency challenge to award of noneconomic damages, wrongful death plaintiff should bear burden of demonstrating both (1) the existence of compensable mental anguish or loss of companionship and (2) a rational connection, grounded in the evidence, between the injuries suffered and the amount awarded.

[22] Death 🔑 Damages

No evidence supported award of \$15,065,000 in noneconomic damages for mental anguish and loss of companionship awarded to widow, children, and parents of trucker, in wrongful death action against driver of jackknifed truck that blocked interstate, allegedly causing multi-vehicle accident at which trucker was killed while outside his truck, and driver's employer, although widow's testimony supported existence of mental anguish and loss of companionship

damages; widow's testimony gave no indication of what amount of damages would have been enough to indemnify family for the loss suffered, and only arguments provided to justify amount of damages were impermissible appeals to irrelevant considerations, such as price of fighter jets and employer's total miles driven.

[More cases on this issue](#)

[23] Death 🔑 **Damages**

Proof of a family relationship constitutes some evidence of mental anguish in a wrongful death action.

[1 Case that cites this headnote](#)

[24] Appeal and Error 🔑 **Mental or emotional injury; pain and suffering**

The “shocks the conscience” standard for reviewing damages awarded for non-financial, emotional injury for excessiveness is inherently subjective because the consciences of appellate judges will surely differ in their assessment of damages awards.

[25] Appeal and Error 🔑 **Mental or emotional injury; pain and suffering**

Whether or not it is reversible error to “shock the conscience” of appellate judge, it is error to allow verdict awarding non-financial, emotional injury damages to stand when no rational basis for verdict's amount is proffered.

[26] Appeal and Error 🔑 **Excessive award; remittitur**

Reviewing court's conclusion that a jury's verdict awarding noneconomic damages was motivated by improper passion, prejudice, or a desire to punish a defendant, is basis for reversal, even if there is otherwise evidence in the record that meets legal standards for award.

[27] Appeal and Error 🔑 **Damages or other relief**

When sufficient evidence exists to support the existence of noneconomic damages but not the amount awarded, the Supreme Court reverses and remands.

[28] Parties 🔑 **Application and proceedings thereon**

Driver of jackknifed truck that blocked interstate, allegedly causing multi-vehicle accident, and driver's employer produced sufficient evidence to raise genuine issue of fact regarding trucking company's responsibility for at least a portion of damages in wrongful death action brought by widow of trucker who was killed in accident, and thus trial court was not justified in striking designation of trucking company as a responsible third party; expert witness and accident survivor provided testimony that trucking company's driver negligently operated his vehicle, either by driving it too fast in inclement conditions such that he could not avoid crash, as other trucks did, or by overcorrecting vehicle, and total obstruction of road was caused, in part, by trucking company driver's negligence. *Tex. Civ. Prac. & Rem. Code Ann. § 33.004(l)*.

[2 Cases that cite this headnote](#)

[More cases on this issue](#)

[29] Appeal and Error 🔑 **New parties; joinder**

A trial court's ruling on a motion to strike the designation of a responsible third party presents a question of law that is reviewed de novo. *Tex. Civ. Prac. & Rem. Code Ann. § 33.004(a)*.

[2 Cases that cite this headnote](#)

[30] Appeal and Error 🔑 **New parties; joinder**
Parties 🔑 **Persons who may be brought in, and grounds in general**

Trial court committed harmful error requiring new trial in striking designation of third party trucking company as responsible third party, thereby prohibiting jury from considering whether third party trucking company was partially responsible for trucker's death, in widow's wrongful death action against driver

of jackknifed truck that blocked interstate, allegedly causing multi-vehicle accident at which trucker was killed while outside his truck, and against driver's employer; parties had substantive right to allow jury to determine proportionate responsibilities for widow's damages. [Tex. Civ. Prac. & Rem. Code Ann. § 33.004\(l\)](#).

[1 Case that cites this headnote](#)

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***549** On Petition for Review from the Court of Appeals for the Fifth District of Texas

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[Michael H. Bassett](#), [Sadie A. Horner](#), Dallas, for Respondents Perales, Alma J., Vasquez, William.

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[John Blaise Gsanger](#), Houston, [Quentin Brogdon](#), Dallas, for Amicus Curiae Texas Trial Lawyers Association.

Opinion

Justice [Blacklock](#) announced the Court's judgment and delivered an opinion, in which Chief Justice [Hecht](#) and Justice [Busby](#) joined in full, and in which Justice [Bland](#) joined except as to Parts II.C.2 and II.D.

***550** This case arises from a fatal accident on an icy, unlit stretch of highway near Amarillo. An eighteen-wheeler driven by Sarah Gregory jackknifed across lanes of traffic, and the resulting pileup caused four deaths. Among those killed was Bhupinder Deol, a truck driver, but more importantly a husband, son, and father of three.

Deol's wife and family brought a wrongful death action against Gregory and her employer, New Prime, Inc. The jury awarded approximately \$16.8 million to Deol's family. Noneconomic damages—awarded to six family members for past and future mental anguish and loss of companionship—accounted for just over \$15 million of the total. On appeal, the defendants challenged the size of the noneconomic damages award. The en banc court of appeals affirmed, concluding that the award was not “flagrantly outrageous, extravagant, and so excessive that it shocks the judicial conscience.” [615 S.W.3d 277, 314 \(Tex. App.—Dallas 2020\)](#). The chief issue before this Court is the size of the noneconomic damages award.

[1] [2] Assigning a dollar value to non-financial, emotional injuries such as mental anguish or loss of companionship will never be a matter of mathematical precision. But when properly called upon, appellate courts have a duty to ensure that the damages awarded for a noneconomic injury are the result of a rational effort, grounded in the evidence, to *compensate* the plaintiff for the injury. As we held over

twenty years ago in *Bentley v. Bunton*, courts do not fully discharge that duty merely by concluding that a verdict is not so “excessive or unreasonable” as to shock the judicial conscience. 94 S.W.3d 561, 606 (Tex. 2002). We said almost 140 years ago that “[w]hat shocks the conscience or manifests passion or prejudice in the jury are tests too elastic for practical use in the great majority of cases.” *Gulf, C. & S. F. Ry. Co. v. Dorsey*, 66 Tex. 148, 18 S.W. 444, 445 (1886). Our precedent requires courts reviewing the size of noneconomic damages awards to do more than consult their consciences.

[3] [4] As we have said before when reviewing mental anguish damages, “[t]here must be evidence that the amount found is *551 fair and reasonable compensation, just as there must be evidence to support any other jury finding.” *Saenz v. Fidelity & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996) (emphasis added). Rather than limit review of noneconomic damages to elastic, impractical standards like the “shocks the conscience” test, our precedent instead requires evidence of both the “existence of compensable mental anguish” and “evidence to justify the amount awarded.” *Id.*

[5] [6] Today's case requires us to apply these principles from our prior holdings regarding mental anguish damages for the first time to a wrongful death claim. “While the impossibility of any exact evaluation of mental anguish requires that juries be given a measure of discretion in finding damages, that discretion is limited.” *Bentley*, 94 S.W.3d at 606 (quoting *Saenz*, 925 S.W.2d at 614). No matter the cause of action, the results of litigation should always be justifiable based on evidence and reason. “Juries cannot simply pick a number and put it in the blank.” *Id.* To guard against arbitrary outcomes and to ensure that damages awards are genuinely compensatory, the plaintiff in a wrongful death case should be required to demonstrate a rational connection, grounded in the evidence, between the injuries suffered and the dollar amount awarded.

[7] [8] Mental anguish and loss of companionship damages are neither punitive nor exemplary. They are compensatory. That label is illusory if courts do not require a rational connection between the amount awarded and the evidence of injury. While precision is not required—and surely cannot be achieved when placing a dollar value on the emotional toll of losing a loved one—some rational basis for the size of the judgment is a minimal requirement on which the law must insist.

Here, the plaintiffs produced—and the court of appeals recounted—sufficient, even ample, evidence demonstrating the *existence* of compensable mental anguish and loss of companionship suffered by Deol's family. But nothing in the record or in the plaintiffs' arguments demonstrates a rational connection between the injuries suffered and the *amount* awarded. The arguments made to the jury regarding the proper amount included references to the price of fighter jets, the value of artwork, and the number of miles driven by New Prime's trucks. Rather than rationally connect the evidence to an amount of damages, these arguments did just the opposite by encouraging the jury to base an ostensibly compensatory award on improper considerations that have no connection to the rational compensation of Deol's family.

We also agree with Gregory and New Prime that the trial court incorrectly excluded a responsible third party from the jury charge. Because a reasonable jury could have determined that another company's truck was at least partly responsible for Deol's death, the trial court should not have denied the defendants' request to designate that company as a responsible third party.

The judgment of the court of appeals is reversed, and the case is remanded for a new trial.

I.

Around midnight on November 23, 2013, Sarah Gregory was driving a New Prime eighteen-wheeler eastbound on Interstate 40 toward Amarillo. The road was icy, traffic was light, and Gregory was traveling at 58 miles per hour. The highway had two lanes in each direction, divided by a median. In response to brake lights indicating a traffic jam a half a mile or so ahead, Gregory applied the brakes. The *552 truck began to slide on the ice, and she lost control of it. The truck “jackknifed,” which means that its trailer began to skid, pushed the cab out of alignment with the trailer, and eventually folded the cab back toward the trailer, rendering the truck immovable. When the truck came to rest, it was blocking the entire left lane and some of the right lane. Gregory did nothing to warn the drivers behind her of the obstruction. The highway was unlit, so approaching drivers had little notice of the hazard shrouded in the darkness ahead.

A tragic multi-vehicle pileup ensued. In addition to the New Prime truck, the accident involved two passenger vehicles and six other eighteen-wheelers. The first two vehicles to arrive on

the scene were both trucks—a Maryland Trucking Company truck driven by Bhupinder Deol and a Danfreight Systems truck. Deol came first. Both trucks managed to steer around the New Prime truck on the right, but the Danfreight truck clipped Deol's truck after both had passed by. Deol's truck eventually stopped on the right shoulder of the road not too far past the disabled New Prime truck, and the Danfreight truck stopped on the grass between the highway and the feeder road.

Next came a truck owned by ATG Transportation. Unlike the two trucks before it, the ATG truck did not make it around the New Prime truck. Instead, its driver veered right and lost control. The ATG truck turned onto its side on the right shoulder, blocking most of the remaining space between the New Prime truck and the right edge of the highway. Only a few feet of space separated Gregory's truck, jackknifed on the left, from the ATG truck, overturned on the right.

Following behind the ATG truck was a van driven by Guillermo Vasquez.¹ Vasquez saw the ATG truck fall over on the right side of the road and steered left in response, but he could not avoid the wall of trucks almost entirely blocking the road. The Vasquez van hit the New Prime truck at less than ten miles per hour. A Prius followed the Vasquez van, crashing at high speed into the ATG truck on the right.² At this point, neither Deol nor the Vasquez van's passengers had been seriously injured. The next truck, however, struck the back of the Vasquez van at 56 miles per hour. This truck belonged to P&O Transport. After that collision, the final two trucks—belonging to DOD Reynolds and CDO Express Diversified—collided with the P&O truck.

Some time before the P&O truck arrived, Deol left his truck to assist victims of the accident. Adam Moseley, a DPS officer who responded to the scene, testified that Deol's injuries suggested he had been killed when the Vasquez van—pushed forward by the force of the successive collisions with the P&O, DOD, and CDO trucks—rolled over and crushed him.

Deol's estate and family sued Gregory and New Prime, among others, seeking compensatory damages for (1) economic losses caused by Deol's death, (2) Deol's conscious pain and suffering, and (3) the mental anguish and loss of companionship suffered by his wife, three children, and parents. The estates and families of the other decedents intervened in the litigation, but the Jones parties later settled, leaving the families of Deol, Vasquez, and Perales to go to trial. The jury's verdict awarded almost \$39 million to the plaintiffs, *553 and Deol's family's share of the final

judgment was \$16,447,272.31. Deol's family's noneconomic damages accounted for \$15,065,000 of the verdict.³

After the verdict, Gregory and New Prime settled with the Vasquez and Perales parties. Gregory and New Prime appealed, raising a host of issues. On appeal, the Deol parties were the only remaining plaintiffs. On its own motion, the court of appeals took the case en banc before a panel opinion was issued. A 10–4 majority affirmed the judgment on all issues. The defendants now raise three issues in this Court. They contend that (1) the court of appeals reviewed the amount of the noneconomic damages award under an overly deferential standard of review, (2) the amount of the award finds no support in the evidence, and (3) ATG should have been designated as a responsible third party. As explained below, we largely agree with Gregory and New Prime.

II.

A.

Noneconomic damages are the exception, not the norm, in tort law. The common law has long hesitated to recognize mental or emotional injuries absent an accompanying physical injury. *E.g.*, *Lynch v. Knight* (1861) 11 Eng. Rep. 854, 863 (“Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone.”).⁴ Consistent with the common law tradition, this Court first allowed recovery of mental anguish damages in personal injury cases only when there was an accompanying physical injury to the plaintiff. *Hill v. Kimball*, 76 Tex. 210, 13 S.W. 59, 59 (1890). We later expanded that rule to allow recovery when the mental anguish produces some physical manifestation. *Gulf, C. & S. F. Ry. Co. v. Hayter*, 93 Tex. 239, 54 S.W. 944, 945 (1900). The chief justifications for the common law's skepticism of mental anguish damages were “[t]he inherently subjective nature of mental anguish,” “the concomitant potential for false claims,” and the resistance of non-pecuniary, emotional injuries to rational monetization. *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 442 (Tex. 1995).

In keeping with the common law, this Court in wrongful death cases long adhered to the pecuniary loss rule, a “well settled” principle that damages for wrongful death “are measured by the pecuniary injury to the respective parties entitled,” *554 and not by reference to a surviving party's pain or mental anguish. *March v. Walker*, 48 Tex. 372, 375 (1877).

Not until comparatively recently did our precedent depart from this rule. In 1983, our decision in *Sanchez v. Schindler* departed from the common law's traditional teaching about the difficulty of assigning a dollar value to non-physical injuries and charted a new course for wrongful death cases, reasoning that “present social realities” demanded that “the antiquated and inequitable pecuniary loss rule” be abandoned. 651 S.W.2d 249, 251 (Tex. 1983). We expressed optimism that injuries such as these “are not too speculative to be given a monetary value,” although we offered little advice on how that might be done. *Id.* at 253.

Three years after opening the door to mental anguish damages in wrongful death cases in *Sanchez*, we also abandoned—as to wrongful death cases at least—the venerable prohibition on recovery of mental anguish damages without a physical manifestation. *Moore v. Lillebo*, 722 S.W.2d 683, 685–86 (Tex. 1986). *Moore* held for the first time that family members could recover for both mental anguish and loss of companionship without a showing of physical manifestation. *Id.* Since *Sanchez* and *Moore*, this Court has not had occasion to elaborate on how the wrongful death damages authorized by these decisions should be reviewed on appeal.

We have, however, decided other cases involving mental anguish damages that shed light on the inquiry. For personal injury cases in general, we have in the years since *Sanchez* and *Moore* held that “evidence of the nature, duration, and severity of [] mental anguish” is required to establish the existence of mental anguish damages. *Parkway*, 901 S.W.2d at 444; *Serv. Corp. Int'l v. Guerra*, 348 S.W.3d 221, 231 (Tex. 2011) (“Even when an occurrence is of the type for which mental anguish damages are recoverable, evidence of the nature, duration, and severity of the mental anguish is required.”).

A year later, building on *Parkway*, we concluded in a personal injury case that “[n]ot only must there be evidence of the existence of compensable mental anguish, there must also be some evidence to justify the amount awarded.” *Saenz*, 925 S.W.2d at 614 (emphasis added); *Hancock v. Variyam*, 400 S.W.3d 59, 68 (Tex. 2013) (“There must be both evidence of the existence of compensable mental anguish and evidence to justify the amount awarded.”). Rejecting the notion that “[t]ranslating mental anguish into dollars is necessarily an arbitrary process,” we held that a jury's discretion in crafting these verdicts is not unlimited. *Saenz*, 925 S.W.2d at 614. In short, “[j]uries cannot simply pick a number and put it in the blank.” *Id.*

In the years since *Parkway* and *Saenz*, we have applied these limitations on recovery in a line of defamation cases involving mental anguish damages. *Bentley*, 94 S.W.3d at 606; *Hancock*, 400 S.W.3d at 68; *Bennett v. Grant*, 525 S.W.3d 642, 648 (Tex. 2017); *Anderson v. Durant*, 550 S.W.3d 605, 618–20 (Tex. 2018). In *Bentley*, we applied the requirement announced in *Saenz* for the first time, overturning a \$7 million mental anguish verdict in favor of Bentley even though “[t]he record le[ft] no doubt that Bentley suffered mental anguish.” 94 S.W.3d at 606. That record indicated that (1) Bentley could not sleep, (2) he experienced embarrassment in public life, (3) his family life was disrupted, (4) his children were distressed at school, (5) he felt depressed, and (6) he felt that his honor and integrity had been irrevocably impugned. *Id.* at 606–07. But “all of this [wa]s no evidence that Bentley suffered mental anguish damages in the amount of \$7 million.” *Id.* at 607 (emphasis added).

*555 The court of appeals disregarded *Bentley* and later cases, which require evidence justifying the amount of mental anguish damages, by distinguishing between defamation and wrongful death. We are not convinced that this distinction makes a difference. *Bentley*, a defamation case, quotes *Saenz*, a personal injury case, at great length. *Bentley*, 94 S.W.3d at 606 (quoting *Saenz*, 925 S.W.2d at 614). Our precedent thus cannot support the notion that defamation cases are somehow unique. Nor do we see any valid basis on which to carve out special rules for appellate review of noneconomic damages in wrongful death cases, as opposed to non-death injury cases or defamation cases. Though the magnitude of mental anguish may often be heightened in wrongful death cases, the jury's task is the same: “They must find an amount that, in the standard language of the jury charge, ‘would fairly and reasonably compensate’ for the loss.” *Id.* A wrongful death case is no different in this regard.

All acknowledge the inherent difficulty in assigning a dollar value to the anguish and loss suffered by the grieving family of an accident victim, but this is what we ask juries to do. The nature of this undertaking—compensating people with money for emotional injuries that are difficult to monetize—is not fundamentally different when the emotional injuries are caused by a death rather than by defamation as in *Bentley* or by a non-fatal personal injury as in *Saenz*. In any factual context, including wrongful death, the approach we stated in *Saenz* and repeated in *Bentley* applies to the legal-sufficiency review of damages awarded for noneconomic injury:

Not only must there be evidence of the existence of compensable mental anguish, there must also be some evidence to justify the amount awarded. We disagree with the court of appeals that “translating mental anguish into dollars is necessarily an arbitrary process for which the jury is given no guidelines.” *Fidelity & Guaranty Insurance Underwriters v. Saenz*, 865 S.W.2d 103, 114 (Tex. App.—Corpus Christi 1993). While the impossibility of any exact evaluation of mental anguish requires that juries be given a measure of discretion in finding damages, that discretion is limited. Juries cannot simply pick a number and put it in the blank. They must find an amount that, in the standard language of the jury charge, “would fairly and reasonably compensate” for the loss. Compensation can only be for mental anguish that causes “substantial disruption in ... daily routine” or “a high degree of mental pain and distress.” *Parkway v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995). There must be evidence that the amount found is fair and reasonable compensation, just as there must be evidence to support any other jury finding. Reasonable compensation is no easier to determine than reasonable behavior—often it may be harder—but the law requires factfinders to determine both. And the law requires appellate courts to conduct a meaningful evidentiary review of those determinations.

Bentley, 94 S.W.3d at 606 (quoting *Saenz*, 925 S.W.2d at 614) (cleaned up).

B.

[9] [10] Holding that some evidence must justify the amount of noneconomic damages awarded does not fully answer the question, however. If we take seriously the notion that mental anguish and loss of companionship damages are meant to reasonably *compensate* surviving family members for their injuries—as our cases undoubtedly *556 do⁵—then we must grapple with the difficulties that inevitably arise when courts attempt to evaluate the size of these compensatory awards.

[11] “Compensation is the chief purpose of damages awards in tort cases.” *J&D Towing, LLC v. Am. Alt. Ins. Corp.*, 478 S.W.3d 649, 655 (Tex. 2016); see also *id.* at 655 n.14 (quoting Fowler Harper et al., *Harper, James and Gray on Torts* § 25.1, at 574 (3d ed. 2007)) (“The cardinal principle of damages in Anglo-American law is that of *compensation*

for the injury caused to the plaintiff by the defendant's breach of duty.”)). Compensatory damages awards are meant to compensate victims, not to punish or deter tortfeasors. This basic premise of our civil justice system is no less true in a wrongful death case than in any other context. No matter what the compensatory damages are compensating for, they are supposed to be “[r]easonable and proper compensation ... sufficient to place the plaintiff in the position in which he would have been absent the defendant's tortious act.” *Id.* at 655.

Applying this simple-sounding rule to noneconomic injuries is far from simple. The unavoidable truth is that money cannot genuinely compensate for emotional trauma, whether or not tort law claims otherwise. Money's inability to truly compensate for mental anguish is most starkly demonstrated in a wrongful death case. How can money “place the plaintiff[s] in the position” they were in before Deol died?⁶ Obviously it cannot. The economic loss in this case may be readily ascertainable, but the noneconomic harm transcends quantification entirely. At Deol's death, Jaswinder Chohan lost far more than just a source of financial support. She lost her husband.⁷ Three children lost their father. Two parents were delivered the terrible news that they had outlived their son.

Any attempt to monetize the grief experienced by those whose loved ones die suddenly and prematurely will fail in its paltry attempt to compensate with money that which is priceless. The love we feel for those closest to us—and the pain we would feel at their passing—far exceeds any price that could ever be paid. Even as we establish legal standards in an attempt to promote rationality and non-arbitrariness in the damages awarded by courts, we are well aware of the insurmountable imperfection of any attempt to use money damages to compensate for the emotional injuries alleged in a wrongful death case. Imperfect justice is all that can be offered to grieving families who cannot truly be made whole, but it should be said that the entire enterprise of assigning dollar values to matters of the heart is exceedingly imperfect indeed.⁸ Nevertheless, existing *557 Texas law authorizes such recoveries, and our justice system must proceed in this realm, as in all others, on the basis of evidence and reason.

We must insist that every aspect of our legal system—including the way we compensate grieving families for the wrongful death of a loved one—yields rational and non-arbitrary results based on evidence and reason, to the extent possible. Any system that countenances the arbitrary “picking

numbers out of a hat” approach to compensatory damages awards is not providing the rational process of law that we are obligated to provide, or at least to strive for.

As explained above, our precedents in *Parkway*, *Saenz*, *Bentley*, and later cases require legally sufficient “evidence of the nature, duration, and severity” of mental anguish to support both the *existence* and the *amount* of compensable loss. *Parkway*, 901 S.W.2d at 444; *Saenz*, 925 S.W.2d at 614; *Bentley*, 94 S.W.3d at 606. These decisions acknowledge the inherent indeterminacy of noneconomic awards and the discretion that must be afforded to juries asked to assign a dollar value to emotional injury. But they also make clear that the jury’s discretion is by no means unlimited and that the *amount* awarded must be supported by *evidence*. The logic of these precedents applies with equal force to wrongful death cases.

The en banc majority did not look to these non-death cases for guidance because, in its view, “[d]eath is different.” 615 S.W.3d at 304. While that statement is accurate in almost every conceivable application, it is not accurate when it comes to assessing damages for noneconomic injuries. No matter the source of the mental anguish or loss of companionship suffered, our precedent is clear that “there must be ... evidence to justify the amount awarded” in compensatory damages, just as there must be evidence to support any other relief afforded by our judicial system. *Hancock*, 400 S.W.3d at 68.

C.

Having established that (1) our precedent requires that the *amount* of damages awarded must be based on evidence and (2) emotional injuries are in their nature resistant to monetary quantification, we turn to the question of how a wrongful death plaintiff could establish the required connection between an emotional injury and an amount of damages.

1.

We begin with a few examples of how not to do so. During closing argument, counsel for Vasquez and Perales (other decedents) attempted to support the large request for noneconomic damages using a tactic that some amici refer to as “unsubstantiated anchoring.”⁹ We understand unsubstantiated anchoring to be a tactic whereby attorneys

suggest damages amounts by reference to objects or values with no rational connection to the facts of the case. Analogies employed by counsel in this case included a \$71 million Boeing F-18 fighter jet and a \$186 million painting by Mark Rothko.

***558** Of course, the cost of a fighter jet, the auction price of a coveted painting, or any other expensive comparator are all equally flawed analogies. After learning that a particular aircraft or painting sells for many millions of dollars, jurors are no closer to gaining a sense of how to compensate the family for their injuries. The self-evident purpose of these anchors, however, is to get jurors to think about the appropriate damages award on a magnitude similar to the numbers offered, despite the lack of any rational connection between reasonable compensation and the anchors suggested. Unsubstantiated anchors like those employed here have nothing to do with the emotional injuries suffered by the plaintiff and cannot rationally connect the extent of the injuries to the amount awarded.

[12] Decedents’ counsel offered these examples to the jury with the stated purpose of helping them “place a monetary value on human lives.” That statement misunderstands the task a jury faces when asked to award damages for mental anguish or loss of companionship. Such awards are not meant to place a value on human life, which would be an even more nebulous and speculative task than monetizing mental anguish and loss of companionship. Unsubstantiated anchors introduced as a way to assist a jury in “valuing a human life” are not the type of information a jury can rightfully rely on when crafting a verdict. And on appellate review, such suggestions are of no assistance in rationally explaining why the amount of noneconomic damages awarded reasonably compensates the decedent’s family.

Another unsubstantiated anchor offered in this case vividly exemplifies the potential for such numbers to improperly influence verdicts. After referencing expensive paintings and military aircraft, counsel for Vasquez and Perales urged the jury to give defendants their “two cents worth” for every one of the 650 million miles that New Prime’s trucks drove during the year of the accident. The exact request was “[t]wo cents worth for each [decedent]; six cents a mile for the six hundred and fifty [million] miles ... they traveled in the year that they took these people’s lives.” Counsel argued that “for four years I’ve been trying to give this company and their lawyers my two cents worth[;] ... [f]or four years I’ve been trying and they won’t listen to me.” He then asked the jury to give New Prime

their “two cents worth” instead. The unmistakable purpose of this argument is to suggest that New Prime can afford a large award and that it should be punished for denying Chohan and her family justice for Deol's death. But punitive damages are not at issue here; only compensatory damages are, and the “two cents a mile” argument has nothing to do with compensation.

This improper argument may have influenced the jury. Accounting for three decedents, the “two cents a mile” calculation yields \$39 million in damages. The combined final jury verdict was \$38.8 million, so it is not difficult to conclude that the improper argument influenced the result. This is especially the case when we are given no other explanation for the size of the award. The only discernible basis for the amount awarded in this case that appears from the evidence or the argument of counsel is the “two cents a mile” suggestion, which matches the amount awarded within one-half of one percent.

Chohan urges that the Court should not consider these comments because they were made by counsel for Vasquez and Perales, not her own. We do not find that distinction convincing. The parties tried their wrongful death claims simultaneously to the same jury, which heard closing argument from both attorneys before deliberation. As a result, the improper argument *559 might very well have affected the jury's deliberations as to all three decedents. If the jury's total award was influenced by the unsubstantiated “two cents a mile” suggestion, then improper considerations influenced the amount awarded to Deol's family just as much as they influenced the amount awarded to the Vasquez and Perales plaintiffs.

The Texas Rules of Civil Procedure speak clearly to this issue. “Counsel shall be required to confine the argument strictly to the evidence and to the arguments of opposing counsel.” TEX. R. CIV. P. 269(e). It should go without saying that the cost of a painting, a military aircraft, or a percentage of a company's revenue are not “evidence” to which “counsel shall be required to confine the argument.” Courts have an obligation to prevent improper jury argument and “will not be required to wait for objections to be made when the rules as to arguments are violated.” TEX. R. CIV. P. 269(g). The trial court should have done so in response to the unsubstantiated anchors suggested by counsel.

[13] Chohan's counsel asked the jury to use Deol's economic damages as a reference for both mental anguish and loss

of companionship. Petitioners and some amici embrace the use of economic damages as a benchmark for noneconomic damages, and the courts of appeals take a mixed approach to the issue.¹⁰ The usefulness of such ratios will vary depending on the nature of the case. In wrongful death cases, however, we reject any requirement that the ratio between economic and noneconomic damages must be considered. The emotional trauma and loss experienced by the decedent's loved ones is different in kind from any lost income the family suffers because of the death. To suggest that greater pecuniary loss necessarily justifies greater noneconomic damages is to suggest that the families of a well-paid decedent suffer more grief and pain than the families of those with less income. Our consciences should indeed be shocked by such a suggestion. The severity of mental anguish and loss of companionship felt by surviving family members does not correlate with economic status. If—as the law demands—noneconomic damages are calculated to compensate a decedent's family members for their suffering, we cannot endorse a rule under which a *560 wealthier family can recover more mental anguish damages than another family could *simply because* the wealthier decedent stood to earn more during his life.¹¹

This is not to say that economic damages can never be considered when assessing noneconomic damages. There are certainly circumstances in which some types of economic damages might correlate with noneconomic damages. For example, the family of a decedent who suffers for an extended time in the hospital before passing away might suffer more mental anguish due to the strain of dealing with medical bills and insurance hassles while coping with the death of a loved one. In those circumstances, economic damages would also be higher because of the medical expenses associated with a long hospital stay. But the possibility that economic and noneconomic damages may correlate or inform one another in certain situations does not mean that they are necessarily connected in all cases or that the ratio between the two is always a useful tool. Like other unsubstantiated anchors, unexamined use of the ratio between economic and noneconomic damages—without case-specific reasons why such analysis is suitable—cannot provide the required rational connection between the injuries suffered and the amount awarded.

2.

[14] If unsubstantiated anchors and unexamined ratios are not useful tools, then how can a party discharge its

obligation to support an amount of noneconomic damages with evidence? To begin with, just as evidence of the *existence* of mental anguish damages generally must establish the “nature, duration, and severity” of the anguish suffered, *Guerra*, 348 S.W.3d at 231, the same kind of evidence—of “nature, duration, and severity”—will naturally also be relevant to the *amount* awarded.

In some cases, there may be direct evidence supporting quantification of an amount of damages, such as evidence of the likely financial consequences of severe emotional disruption in the plaintiff's life. Or there may be evidence that some amount of money would enable the plaintiff to better deal with grief or restore his emotional health. While money itself cannot alleviate grief or truly compensate for emotional trauma, it may be that money can provide access to all kinds of things that may help the person who has endured such an experience.

[15] [16] We do not offer these examples to suggest that in all cases there must be direct evidence of a quantifiable amount of damages. In other words, the requirement that some evidence support the amount of damages for emotional injury is not a requirement of precise quantification or a requirement that a particular type of evidence must always be proffered. It is instead merely a requirement that the amount of damages must have a rational basis grounded in the evidence. This requirement flows ineluctably from our prior holding that “[t]here must be evidence that the amount found is fair and reasonable compensation, just as there must be evidence to support any other jury finding.” *Bentley*, 94 S.W.3d at 606 (quoting *Saenz*, 925 S.W.2d at 614). As with any evidentiary-sufficiency requirement, parties defending an award of damages cannot *561 just assert that the amount justifies itself. Instead, when the record lacks evidence directly supporting the amount found, parties and reviewing courts must explore whether there is any other rational explanation of *how* the evidence supports the finding. See *Crim Truck & Tractor Co. v. Navistar Int’l Transp. Corp.*, 823 S.W.2d 591, 592 n.1 (Tex. 1992) (framing the sufficiency inquiry as including “whether the evidence offered has a tendency to prove the existence of a material fact”). As we held in *Bentley* and *Saenz*, the amount of a noneconomic damages award is subject to these conventional requirements of “meaningful evidentiary review,” just like “any other jury finding.” *Bentley*, 94 S.W.3d at 606 (quoting *Saenz*, 925 S.W.2d at 614).

[17] The required rational basis for the award may come from evidence suggesting a quantifiable amount of damages, such as testimony about the potential financial consequences of severe emotional trauma. Or the rational basis may be revealed by lawyer argument rationally connecting the amount sought—or on appeal, the amount awarded—to the evidence. Accord *Sheffield Dev. Co. v. City of Glenn Heights*, 140 S.W.3d 660, 675 (Tex. 2004) (observing in the context of constitutional law that a “rational basis” for government action should be found “if one can be conceived,” whether or not government officials had that basis in mind when they acted). We will not speculate here about all the permissible ways in which parties may demonstrate that a rational connection between the evidence and the amount awarded exists or is lacking. But merely asserting, without rational explanation, that any amount picked by the jury is reasonable compensation simply because a properly instructed jury picked the number is to argue that a jury may “simply pick a number and put it in the blank.” *Saenz*, 925 S.W.2d at 614. That is exactly what we have said must not be done. *Id.* Such an arbitrary approach to damages is no more defensible in a wrongful death case than in any other case.

If awarding and reviewing noneconomic damages is to be a rational and non-arbitrary exercise, as we surely must insist that it be, then courts and jurors alike should be told *why* a given amount of damages, or a range of amounts, would be reasonable and just compensation. Mathematical precision is by no means required, but it is not enough for the plaintiff or his attorney merely to assert, without rational explanation, that a given amount or a given range is reasonable and just. We do not doubt that those who argue for such damages to juries and who seek to uphold them on appeal genuinely believe the amounts they seek and obtain are reasonable and just compensation for the injuries suffered. But one party's genuine belief is no rational basis for a judgment. There must be a *reason given* for why the belief is valid, a *reason given* for why the amount sought or obtained is reasonable and just. And it must be a rational reason grounded in the evidence. ¹²

[18] [19] [20] If the amount sought is genuinely thought to be reasonable and just *562 compensation, then there should be an articulable reason why that is so. An attorney asking a jury to award that amount in damages should be expected to articulate the *reason why* the amount sought is reasonable and just, so the jury can rationally decide whether it agrees. And on appeal, if the reasons offered in justification of the amount awarded are rational and do not partake of prohibited motives, courts should defer to the jury's verdict. Again, we do

not place any limits, in this opinion, on the reasons by which a plaintiff might justify the amount he seeks or the amount he has been awarded. We hold only that a rational reason, grounded in the evidence, must be given by the plaintiff, whose burden it is to prove the damages. Only then can juries and judges rationally assess whether the amount is reasonable and just compensation for the injuries suffered.¹³

[21] In sum, to survive a legal-sufficiency challenge to an award of noneconomic damages, a wrongful death plaintiff should bear the burden of demonstrating both (1) the existence of compensable mental anguish or loss of companionship and (2) a rational connection, grounded in the evidence, between the injuries suffered and the amount awarded.

D.

With these standards in mind, we examine the proceedings below. To determine whether the award was excessive, the en banc court of appeals employed essentially a two-step framework.

[22] First, it gave a detailed account of Chohan's trial testimony indicating that she, her three children, and Deol's parents all had a close relationship with Deol during his life and were deeply grieved by his passing. 615 S.W.3d at 309–14. The unenviable task of explaining how she and each of her family members had been affected by Deol's death fell to Chohan alone. Her testimony is thorough, saddening, and as the en banc majority notes, accounts for nearly fifty pages of a lengthy reporter's record. *Id.* at 310. As to her own relationship with Deol, she testified that they shared a “very, very close” relationship, and he was her “best friend.” The night of the accident was particularly traumatic for her, and she described the moment that she heard the news of his passing as “the saddest moment of her life.” She began taking antidepressants, and the loss of Deol's support meant she had to relocate the family, which created additional disruption and discomfort in all of their lives, including hers. She finds herself particularly saddened by Deol's passing at milestones in their children's lives.

As to the children, both sons quite understandably reacted emotionally to their father's death. Both were very attached to him. Since the time of the accident, the older son, who used to be happy and outgoing, is now quiet and keeps to himself. The younger son is less active than before *563 and has gained

weight. As for the daughter, who was only seven months old at Deol's death, she sees pictures of her father around the house and asks when he is coming home.

Finally, Chohan testified that Deol was very close to his parents, who lived with them. They enjoyed spending time cooking and gardening together. Since his death, his mother cries several times a day. Though Deol's father is more reserved in his grief, Chohan testified that the family's entire home life has changed for the worse and that everyone is greatly saddened by Deol's passing.

After surveying this evidence, the court of appeals turned to the second step of its review. Noting that the jury was properly instructed on the definitions of mental anguish and loss of companionship and the types of evidence relevant to each, *id.* at 311–12, the court concluded that the verdict displayed no indication that the award was motivated by “passion, prejudice, sympathy, or other circumstances not in evidence,” *id.* at 314. Nor was the award “flagrantly outrageous, extravagant, [or] so excessive that it shock[ed] the judicial conscience.” *Id.* With those observations, it began and ended its analysis, affirming the verdict as sufficiently supported by the evidence. *Id.*

That approach is not so much wrong as it is incomplete. While we agree with both the majority and Justice Schenck's dissent that Chohan's testimony is sufficient evidence that Deol's family suffered compensable mental anguish and a loss of companionship,¹⁴ the testimony is no evidence, standing on its own, of the *amount* of damages incurred on account of that suffering. Crucially, plaintiffs' counsel at no point in these proceedings has attempted to proffer a rational argument justifying either the amount sought or the amount awarded. At trial, the only arguments provided to justify an amount of damages were impermissible appeals to irrelevant considerations, such as fighter jets and New Prime's total miles driven. *See supra* at 557–59. On appeal, the plaintiffs' suggested approach is that as long as the jury is properly instructed and no improper motive is evident, then the jury may essentially “pick a number and put it in the blank.” *Saenz*, 925 S.W.2d at 614. But that is precisely the kind of arbitrariness our precedent attempts to avoid by insisting on “evidence to justify the amount awarded.” *Id.*

[23] Chohan's testimony gave the jury much to work with when deliberating the first question related to damages: their existence. As we said in *Moore*, proof of a “family relationship constitutes some evidence” of mental anguish.

722 S.W.2d at 686. Chohan's testimony, in addition to proving the family relationships, provides an explanation for how each member of the family grieved Deol's loss. It gives examples of appreciable ways in which each of their lives was made worse by his passing. But it does not give any indication of what amount of damages would be enough "to indemnify the injured [plaintiffs] for the loss suffered."¹⁵ After hearing her testimony, no reasonable jury, however attentive, properly instructed, and well-intentioned, would be any closer to rationally assigning a monetary value to the losses she described. While Chohan's testimony satisfies *Parkway's* requirement that a plaintiff introduce legally sufficient "nature, duration, and severity" evidence, 901 S.W.2d at 444, it does not satisfy *Saenz's* requirement that "there must also be some *564 evidence to justify the amount awarded." 925 S.W.2d at 614.

[24] [25] [26] Nor does it suffice to simply conclude, as the en banc majority did, that the result neither shocks the conscience nor arises from bias or prejudice. We said almost 140 years ago that:

What shocks the conscience or manifests passion or prejudice in the jury are tests too elastic for practical use in the great majority of cases. They readily dispose of rare extremes. But the cases which need a rule are those which press the bounds of reason without transgressing; they disturb, but do not shock, the conscience; voice a severe, but not necessarily an enraged or prejudiced, jury.

Dorsey, 18 S.W. at 445. The "shocks the conscience" standard is inherently subjective because the consciences of appellate judges will surely differ in their assessment of damages awards. As we said in *Bentley*, a court of appeals' factual-sufficiency review of the amount of damages for excessiveness—which is where the "shocks the conscience" standard has been employed—does not "displace[] [the court of appeals'] obligation, and ours, to determine whether there is any evidence at all of the *amount* of damages determined by the jury." 94 S.W.3d at 606. Applying only the vague and subjective "shocks the conscience" standard is therefore not enough.¹⁶ Whether or not it is reversible error to "shock the

conscience" of an appellate judge, it is error to allow a verdict to stand when no rational basis for the verdict's amount is proffered, as is the case here.

The court of appeals detailed Chohan's testimony and then stated that its conscience was not shocked. But it made no attempt to reason from the testimony to an explanation for why \$15 million reasonably compensates Deol's family for the many injuries Chohan described. Nor did the plaintiffs' counsel assist in that regard. Indeed, the only argument offered at any point in this case that could explain the size of this award is the impermissible "two cents a mile" exhortation by counsel for Vasquez and Perales. No other explanation for the award's size has been proffered. Because no rational connection has been proffered between the amount awarded and the evidence of the "nature, duration, and severity" of the noneconomic damages suffered by Deol's family—and no such connection is apparent from the record—we must conclude that no evidence supports the amount awarded. The award of noneconomic damages must therefore be reversed.

[27] When sufficient evidence exists to support the existence of damages but not the amount awarded, we reverse and remand. See *ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 882 (Tex. 2010).¹⁷ Typically, in such a case, we would *565 remand to the court of appeals to consider a remittitur. *Id.* But because in this case we also remand for a new trial due to the responsible-third-party issue, we will remand the entire case to the trial court for a new trial.

III.

[28] Finally, we consider the responsible-third-party issue. Before trial, Gregory and New Prime sought to designate several responsible third parties, including ATG, Danfreight, CDO, and each of their drivers. At the request of Deol's family, the trial court struck the designations before trial and later reaffirmed its ruling after presentation of the evidence.¹⁸

In this Court, the defendants complain only about the exclusion of ATG as a responsible third party. Their theory as to ATG's responsibility is as follows. Though the New Prime truck was blocking all of the left lane and most of the right lane of traffic, the two trucks that encountered the crash site before ATG were able to successfully navigate around the hazard to the right. It was not until the ATG truck arrived on the scene, tipped over, and blocked all remaining clearance

on the right that the accident became unavoidable for the approaching vehicles. When the Vasquez van arrived soon after, it had no way to avoid the obstacles in front of it. The defendants contend that ATG's driver bore much of the responsibility for the fact that the accident was unavoidable for approaching vehicles, including the Vasquez van and the ensuing vehicles that caused the Vasquez van to crush Deol. They reason that if Gregory was responsible for Deol's death because her negligence created an obstructed road ultimately causing a later collision that killed Deol, then ATG's driver must likewise be at least partly responsible because the later, deadly collision was not unavoidable until the ATG driver's negligence resulted in a total obstruction of the road.¹⁹

For her part, Chohan contends that ATG was properly excluded as a responsible third party because the defendants produced no evidence as to (1) duty,²⁰ (2) *566 negligence, or (3) causation. As to negligence, Chohan contends that, at most, the defendants point to evidence that the ATG driver “steered aggressively to the right” and spun out, which, given the circumstances created by Gregory's prior jackknife of the New Prime truck, was eminently understandable. Chohan thus contends that the defendants did not introduce sufficient evidence of negligence on the part of ATG. As to causation, Chohan argues that ATG played no part in making the crashes that led to Deol's death more likely because the New Prime truck was the but-for cause of the Vasquez van's crash. Had the New Prime truck not been jackknifed in the left lane, Chohan contends, the Vasquez van could have safely avoided the overturned ATG truck by travelling in the left lane.

The court of appeals affirmed the trial court's decision to exclude ATG, reasoning that the Vasquez van's involvement in the crash was solely attributable to [Gregory's negligence](#). 615 S.W.3d at 299.

“A defendant may seek to designate a person as a responsible third party.” [TEX. CIV. PRAC. & REM. CODE § 33.004\(a\)](#). “After adequate time for discovery, a party may move to strike ... on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage.” *Id.* § 33.004(l). Then, the burden shifts to the designating party to “produce[] sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.” *Id.*

[29] “Consistent with the statute's language, [the] courts of appeals have described the standard of review as mirroring

a no-evidence summary judgment” under [Texas Rule of Civil Procedure 166a\(i\)](#). *In re Eagleridge Operating, LLC*, 642 S.W.3d 518, 525–26 (Tex. 2022) (collecting cases).²¹ We agree. The similarity between the statutory responsible-third-party standard and the no-evidence summary judgment standard is obvious. See *City of Keller v. Wilson*, 168 S.W.3d 802, 825 (Tex. 2005) (“The standards for taking any case from the jury should be the same, no matter what motion is used.”). Regardless of the procedural context, to ask “[w]hether the proof establishes as a matter of law that there is no genuine issue of fact” is to ask a question of law, which means that review of the denial of a responsible-third-party designation is de novo. *Ham v. Equity Residential Prop. Mgmt. Servs. Corp.*, 315 S.W.3d 627, 631 (Tex. App.—Dallas 2010, pet. denied).

We cannot agree with the courts below that “there is no evidence that [ATG] is responsible for any portion of [Deol's family's] injury.” [TEX. CIV. PRAC. & REM. CODE § 33.004\(l\)](#). Instead, the evidence of the ATG driver's role in bringing about the dangerous conditions that caused the deadly collision would have permitted a reasonable *567 jury to assign partial responsibility to ATG for Deol's death.

To begin with, there was evidence that the ATG driver's negligence—and not solely the negligence of Gregory—resulted in a total obstruction of the road. An expert witness for the plaintiffs testified that the ATG driver “steered aggressively to the right” with “well beyond the normal steering input that you would use,” which “led to the [ATG] tractor trailer spinning out and then ultimately rolling over onto its left side.” That same witness agreed that it would be “fair to say that any motor vehicle reacting to [the condition of the roadway] that lost traction, just like Ms. Gregory had done, was also failing to properly control their speed.” A surviving passenger from the Vasquez van testified that, right before the ATG truck crashed, it “went straight up in the air like it was [a] catapult. And you could actually see the bottom of the trailer and the axles underneath as it went up.” Other passengers from the van provided a similar version of events. Additionally, the ATG truck was the only truck to overturn during the entire course of events. Two other trucks had previously encountered the jackknifed New Prime truck, and unlike the ATG truck, both were able to steer clear of it on the right.

From this testimony, a reasonable jury could have concluded that the ATG driver negligently operated his vehicle, either by driving it too fast in inclement conditions such that he could

not avoid the crash to the right, as other trucks did, or by overcorrecting his vehicle in an attempt to steer to the right.

Chohan's argument in both the trial court and the court of appeals focused less on the ATG driver's negligence and more on causation. The court of appeals affirmed solely on that basis, reasoning that Gregory's truck, not the ATG truck, was solely responsible for causing the Vasquez van to crash because:

The evidence showed that, but for Gregory's vehicle blocking the road with no hazard warning signal, Vasquez would have had ample space and time to stop his vehicle and get off the road, notwithstanding the location of the ATG Transportation truck. Because it was due to Gregory's actions that the Vasquez van was placed in the position it was before being pushed over Deol, the evidence is insufficient to establish that any act or omission by ATG Transportation was a substantial factor in causing Deol's death.

615 S.W.3d at 299.

There are two problems with this reasoning. First, while it is true that Gregory's truck blocked the Vasquez van from travelling safely along the highway in the left lane (and in most of the right lane), it is just as true that the ATG truck blocked the Vasquez van from avoiding the accident on the right—as two earlier large trucks had done. Before the ATG truck arrived on the scene, two other trucks had safely passed the New Prime truck on the right, avoiding any serious accident. But after the ATG truck fell and blocked the right side of the road, any possibility that later drivers who approached the accident could safely navigate around the accident was eliminated. When the Vasquez van arrived shortly thereafter, its driver had no choice but to crash into either the New Prime truck on the left or the ATG truck on the right. Indeed, it was only because the ATG truck flipped over in front of the Vasquez van that its driver was compelled to move into the left lane to begin with. We cannot know whether the Vasquez van and the later vehicles would have crashed into the New Prime truck had the fallen ATG truck not

blocked the rest of the road, but there can be little doubt on this *568 record that the total obstruction of the road increased the likelihood of later collisions, including the one that killed Deol.

Second, even if it were true that the New Prime truck was the sole cause of the Vasquez van's crash, the Vasquez van's crash did not kill Deol. The evidence indicated that later collisions by subsequent vehicles pushed the van onto Deol. Thus, it is not enough to say, as the court of appeals did, that “it was due to Gregory's actions that the Vasquez van was placed in the position it was before being pushed over Deol.” *Id.* at 299. It was not the van's presence that killed Deol; it was instead the van's being “pushed over Deol” by later collisions. Regardless of what caused the Vasquez van's presence at the scene, a reasonable juror could have concluded that the later, deadly collisions were made more likely by the total obstruction of the road and that the total obstruction was caused, in part, by the ATG driver's negligence.

The court of appeals was correct to conclude that “but for Gregory's vehicle blocking the road,” “Vasquez would have had ample space and time to ... get off the road.” *Id.* But the mere fact that one person's behavior is a but-for cause of an injury does not mean that another's behavior is not also a substantial factor in causing the same injury. Gregory's negligent operation of her truck was the first cause in a series of events that led to a tragedy. Although the accident would not have occurred but for Gregory's actions, a reasonable jury could have concluded that the ATG driver's actions turned an already dangerous situation into a deadlier one by closing off the ability of drivers approaching the scene to avoid a crash.

[30] For these reasons, there was “sufficient evidence to raise a genuine issue of fact regarding [ATG's] responsibility” for Deol's death. *TEX. CIV. PRAC. & REM. CODE* § 33.004(l). Prohibiting the jury from considering ATG's partial responsibility for Deol's death was harmful error because litigants have a “significant and substantive right to allow the fact finder to determine the proportionate responsibility of all responsible parties.” *In re Coppola*, 535 S.W.3d 506, 509 (Tex. 2017). A new trial is therefore required. *See id.* (“Allowing a case to proceed to trial despite erroneous denial of a responsible-third-party designation would skew the proceedings and potentially affect the outcome of the litigation”) (cleaned up).

IV.

The judgment of the court of appeals is reversed, and the case is remanded to the trial court for a new trial on all remaining issues between the remaining parties.

Justice Devine filed an opinion concurring in the judgment, in which Justice Boyd joined.

Justice Bland filed an opinion concurring in part and concurring in the judgment.

Justice Lehrmann, Justice Huddle, and Justice Young did not participate in the decision.

Justice Devine, concurring, joined by Justice Boyd.

The value of a life is inherently unquantifiable. Grief, loss, loneliness, longing, pain, and suffering simply have no market value. The injury—the *anguish*—caused by the untimely loss of a loved one defies calculation, quantification, and measurement, but it is no less real, no less enduring, and—under Texas law—no less compensable. As the plurality opinion concedes, the evidence here validates the existence of such an injury. So, the ultimate question is: who decides the value of a man's worth to his family?

***569** We have long entrusted such abstract concepts to the community through its duly empaneled jury representatives. And we have upheld the jury's determination with just as much respect when the outcome was a zero damages award as when it was a much more significant one. But even as we must acknowledge that damage awards may occasionally exceed the bounds of our reasonable expectations, we ought to have faith in the jury system. As part of that system, judges—at every step of the way—have an opportunity to grade the jury's papers and offer a remedy for excessive awards.¹ But an intrinsic quandary exists: What constitutes “meaningful review” when there is no objectively correct answer? How can anyone measure the unmeasurable?

Today's plurality opinion explores the dilemma courts and juries face when asked to award monetary compensation for injuries that have no market value. Much of the guidance the plurality offers is helpful. But the opinion ventures far afield from what is necessary to decide this case and, more problematically, advocates a new evidentiary standard that is not only foreign to our jurisprudence but also incapable of

being satisfied.² Though I concur in the judgment remanding for a new trial, I do not join the opinion.

As the plurality says, the rules governing damages for noneconomic injuries like mental anguish and pain and suffering apply in wrongful-death cases just as in personal-injury cases.³ That being so, claimants bear the burden of establishing both the existence and amount of such damages, just as they do for economic damages.⁴ To meet that burden, they must produce evidence sufficient to support the amount awarded.⁵ That means they cannot engage in “unsubstantiated anchoring” by asking fact-finders to rely on evidence that has nothing to do with the pain or anguish they've suffered.⁶ Nor can they ask or encourage the fact-finder to simply “pick a number” unrelated to the nature, duration, and severity of the noneconomic injury or ***570** anguish.⁷ Rather, the amount the fact-finder awards must, but must only, reasonably and fairly compensate claimants for their injuries.⁸ That amount cannot be based on mere passion, prejudice, or improper motive.⁹ And to uphold these requirements, both trial courts and appellate courts must engage in a meaningful review, just as they do for economic damages.¹⁰

But while the plurality makes an earnest effort to supply guidance and guardrails, the opinion overreaches and yet still comes up short. In the quest to eliminate the uncertainty of elastic standards that have long balanced jury discretion with judicial oversight, the plurality offers an impossible one. The newly articulated standard the plurality champions requires claimants to establish a “rational connection between the amount awarded and the evidence of injury.”¹¹ Applying that standard here to the surviving spouse's “thorough, saddening, and ... lengthy” testimony about the nature, duration, and severity of her family's suffering and loss, the plurality finds “no evidence” to meet it.¹² But what the plurality conspicuously refuses to say is what evidence would *ever* suffice.¹³ The best the plurality can offer the bench, the bar, and these litigants is: we'll know it if we see it.

But we will never see it. As the plurality itself acknowledges, “money cannot genuinely compensate for emotional trauma” because such “noneconomic harm transcends quantification entirely.”¹⁴ Pain and anguish are not “difficult to monetize” due to the “‘impossibility of any *exact* evaluation’”;¹⁵ they are *easy* to monetize but *impossible* to objectively quantify.¹⁶

By ignoring this basic truth, the plurality sets up a Sisyphean pursuit that would burden litigants and the legal system with costly do-over trials.¹⁷

The plurality agrees that juries should consider the “nature, duration, and severity” *571 of the claimant's pain and anguish,¹⁸ as do I. But even those factors cannot establish that a particular claimant's pain and anguish is “worth” any particular amount of compensation. A claimant who—based on nature, duration, and severity—sustains one hundred hypothetical “units” of pain or anguish should recover ten times as much as one who sustains only ten units, but that consideration points to no particular amount unless we know what one unit of pain and anguish is worth. The reality is that, although pain and anguish are compensable as a matter of law, no one can ever know what one unit is “worth” in the monetary sense, because pain and anguish is wholly nonpecuniary and has no market value.

The plurality implies that a claimant's financial costs of treating or dealing with pain and anguish could conceivably provide some basis for deciding an appropriate amount of compensation,¹⁹ but those costs represent economic losses. And although the amount of economic losses could theoretically provide some “substantiated” anchoring,²⁰ it certainly will not do so in all cases. Beyond that, the plurality simply refuses to “speculate” about the permissible forms of evidence or argument that could support a particular amount in a given case.²¹ At the same time, they would require claimants and their counsel to find that evidentiary needle in the haystack. *But there is no needle there.* By definition, nonpecuniary losses inherently have no pecuniary measure.

For that reason, fairly and justly compensating tort victims for noneconomic injuries boils down to a policy choice. This Court has long recognized that Texas law should allow monetary compensation for those who suffer emotional trauma due to the wrongful conduct of another. And like the highest courts of our sister states,²² we *572 have long entrusted that question to juries, counting on our community representatives to apply common sense, community values, and their own life experiences in finding the appropriate amount to compensate their fellow human beings who are suffering.²³ Of course, the jury's decision *573 must be based on evidence of the nature, duration, and severity of the claimant's suffering—and it cannot be based on noncompensatory motivations. But the reality is it can *never*

actually be based on evidence establishing that the injury was “worth” a particular monetary amount.

In abiding by the Texas Constitution²⁴ and the law antecedent to it,²⁵ our compensatory-damages regime has long allowed community standards to inform how much money, if any, a wrongdoer must pay to compensate Texans for their noneconomic injuries.²⁶ Under that standard, judges play an important role in determining whether a particular award was “manifestly unjust,” “shock[s] the conscience,” or “clearly demonstrate[s] bias.”²⁷ Keeping in *574 mind this careful balance between judge and jury, the plurality's opinion is fundamentally at odds with the Court's admonishment today that “disregarding a jury's verdict is an unusually serious act that imperils a constitutional value of immense importance—the authority of a jury.”²⁸ To that end, I would not, as the plurality does, offer a solution that effectively neutralizes the jury's role by requiring them to rely on evidence a claimant simply cannot present.²⁹

Of course, nothing would prevent the Legislature from constructing a policy-based approach to noneconomic losses.³⁰ But because any approach must equate monetary amounts with injuries that have no market value, and each case is unique, that approach would suffer from the same challenges a jury faces when endeavoring, in good faith, to provide a truly fair and reasonable compensatory amount.³¹

One thing is clear, however: as the electorate's chief policymaker, the Legislature is much better equipped to balance any tension between the Constitutional command of just compensation and the plurality's concerns about the potential for arbitrariness.³² The plurality's inability to articulate any way tort victims could satisfy the standard it proffers proves just how ill-suited courts are to the legislative function. But if there be a compelling need for a change, as the plurality suggests, policy choices like those implicated here are well within the Legislature's wheelhouse. In fact, the “rationally connected” standard the plurality advocates proves the point because it was cribbed from the statute imposing caps on medical-malpractice *575 damages.³³ While any legislatively imposed constraints on compensatory noneconomic damages would necessarily be arbitrary,³⁴ a legislative approach would at least offer Texans a path to participate in the decision-making process. The

plurality's approach would shape policy through hamster-wheel litigation.³⁵ That is a cure worse than the disease.

The plurality opinion would effect a sea change in the law without providing any reasonably defined parameters.³⁶ More questions are raised than even the plurality can hazard to answer. While I don't think we should ever impose a change in the law that we cannot reasonably explain, I certainly would not do so in a case destined for a new trial for other reasons.

With much respect for my colleagues' diligent work on a difficult and confounding question, I cannot join an opinion that does so much and so little at the same time. However, I agree that defense counsel's improper jury argument could have influenced the damages award, and I join the judgment remanding for a new trial because the jury charge erroneously excluded a responsible third party.

Justice Bland, concurring in part.

The parties agree that a jury's imposition of mental anguish damages must be reasonable and consistent with due process, requiring judicial review.¹ The difficulty lies in articulating a workable legal standard for evaluating such damages, particularly when the damages are not linked to an underlying physical injury. The plurality and Justice Devine agree that the mental anguish damages in this case must be reversed but differ in their approach to that judicial standard.²

The common ground in their opinions, however, provides a framework for deciding *576 this case. Both the plurality and Justice Devine agree that mental anguish damages must be based on the evidence.³ Both agree that juries must not measure mental anguish damages using improper yardsticks.⁴ Both agree that the jury in this case was told in error that it should use measures that have no legitimate role in deciding compensation for mental anguish: artwork, fighter jets, and the number of miles a defendant's company has driven.⁵ To resolve the challenge to the mental anguish damages in this case, we neither need to adopt the plurality's standard for determining whether the evidence demonstrates a rational connection to the amount awarded for every case, nor

reject such a standard as Justice Devine advocates. We instead should leave further development of the law to a case in which the jury is properly informed about what to consider and, importantly, not told to apply measurements wholly outside the mental anguish evidence presented.⁶

Counsel's unchecked directives to the jury to employ mental anguish measurements based on standards that depart from the evidence render the verdict legally infirm under long-standing common law.⁷ It is settled law that appellate courts must review mental anguish damages to confirm that they are not the result of passion or prejudice.⁸ This part of the common law standard does not require a subjective determination that a given verdict *577 "shocks the conscience."⁹ It focuses on inputs: whether the jury was exhorted to consider improper measurements for mental anguish, placing the amount awarded outside a reasonable range based on the evidence. The jury in this case was told to base mental anguish damages on passion (that the trucking company should be punished with a two-cent fine as mental anguish damages for each mile its fleet had driven) and prejudice (that the high cost of fighter jets and artwork should inform mental anguish damages).¹⁰ As the plurality observes, these arguments destroyed any rational connection the verdict has to the mental anguish evidence presented.¹¹

Other cases will present challenges closer to the boundaries of judicial review. For now, it is enough to say that the mental anguish verdict in this case is legally infirm under either the plurality's or Justice Devine's articulation of the appropriate standard for review. I join all but Parts II.C.2 and II.D of the plurality opinion, leaving for another day the resolution of the debate as to the precise standard of judicial review. I concur on the common ground for reversal in this case: the jury's mental anguish verdict was infected by repeated requests to use improper measures to assess mental anguish damages, warranting a new trial.

All Citations

670 S.W.3d 546, 66 Tex. Sup. Ct. J. 1086

Footnotes

- 1 Five of Vasquez's family members were riding in the van with him. His wife Alma and his son-in-law Hector Perales were among the deceased.
- 2 Another decedent was Tracy Jones, a passenger in the Prius.
- 3 The jury verdict awarded Deol's wife Jaswinder Chohan \$7,437,500, including (1) \$350,000 for loss of past companionship, (2) \$2,625,000 for loss of future companionship, (3) \$525,000 for past mental anguish, and (4) \$3,937,500 for future mental anguish. It awarded each of his two sons \$2,445,000, including (1) \$160,000 for loss of past companionship, (2) \$1,200,000 for loss of future companionship, (3) \$160,000 for past mental anguish, and (4) \$925,000 for future mental anguish. His daughter was awarded \$1,457,500, including (1) \$160,000 for loss of past companionship, (2) \$1,200,000 for loss of future companionship, (3) \$5,000 for past mental anguish, and (4) \$92,500 for future mental anguish. Finally, each of Deol's parents were awarded \$640,000. Both received \$160,000 for each category of damages. Economic losses and Deol's conscious pain and suffering accounted for the rest of the verdict.
- 4 See also *Blake v. Midland Ry. Co.* (1852) 118 Eng. Rep. 35, 42 (“[W]e are of opinion that the learned Judge at the trial ought more explicitly to have told the jury that, in assessing the damages, they could not take into their consideration the mental sufferings of the plaintiff for the loss of her husband”); *Baker v. Bolton* (1808) 170 Eng. Rep. 1033, 1033 (“In a civil Court, the death of a human being could not be complained of as an injury; and in this case the damages, as to the plaintiff’s wife, must stop with the period of her existence.”).
- 5 E.g., *Moore*, 722 S.W.2d at 688. Mental anguish is “the emotional pain, torment, and suffering that the named plaintiff would, in reasonable probability, experience from the death of the family member.” *Id.* Loss of companionship is the loss of “positive benefits flowing from the love, comfort, companionship, and society the named plaintiff would, in reasonable probability, experience if the decedent lived.” *Id.*
- 6 See *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 152 (Tex. 2014) (“[M]oney does not equate to peace of mind.”).
- 7 For one man's estimation of his own anguish upon the death of his wife, see C.S. Lewis, *A Grief Observed* (1961).
- 8 Similar considerations have led jurisdictions like the State of New York to ban recovery for noneconomic losses in wrongful death cases altogether. See *Liff v. Schildkrout*, 49 N.Y.2d 622, 633–34, 427 N.Y.S.2d 746, 404 N.E.2d 1288 (1980) (noting that the New York wrongful death statute limits recovery to pecuniary injuries). Indeed, on the very day we heard oral arguments in this case, the Governor of New York vetoed a bill that would have authorized the recovery of noneconomic damages in wrongful death actions. Carolyn Gusoff, *Gov. Kathy Hochul Vetoes Grieving Families Act, But Families of Victims of Fatal Tragedies Aren't Giving Up*, CBS NEW YORK (Feb. 1, 2023), <https://www.cbsnews.com/amp/newyork/news/grieving-families-act-vetoed-governor-hochul/>.
- 9 Brief for Am. Prop. Cas. Ins. Ass'n, Ins. Council of Tex., and Nat'l Ass'n of Mut. Ins. Cos. as Amici Curiae in Support of Petitioners, at 26–27.
- 10 Compare *JNM Express, LLC v. Lozano*, 627 S.W.3d 682, 701–02 (Tex. App.—Corpus Christi–Edinburg 2021, pet. pending) (entertaining an argument that “the ratio of non-economic damages to economic damages” was “approximately 17:1,” but ultimately tossing it for inadequate briefing), *FTS Int'l Servs., LLC v. Patterson*, No. 12-19-00040-CV, 2020 WL 5047913, at *1 (Tex. App.—Tyler Aug. 26, 2020), pet. granted, cause remanded, No. 20-0795, 2023 WL 2358215 (Tex. Jan. 27, 2023), *Lane v. Martinez*, 494 S.W.3d 339, 351 (Tex. App.—Eastland 2015, no pet.) (“This large ratio of non-pecuniary damages to pecuniary damages ... lead[s] us to the conclusion that the jury's awards of non-pecuniary damages [are] not supported by factually sufficient evidence.”), and *Hous. Livestock Show and Rodeo, Inc. v. Hamrick*, 125 S.W.3d 555, 581 n.24 (Tex. App.

—Austin 2003, no pet.), with *Alonzo v. John*, 647 S.W.3d 764, 778–79 (Tex. App.—Houston [14th Dist.] 2022, pet. filed) (expressing skepticism about using the ratio of economic and noneconomic damages and upholding an award as supported by sufficient evidence despite a 24:1 disparity between the two), *Emerson Elec. Co. v. Johnson*, 601 S.W.3d 813, 844 n.18 (Tex. App.—Fort Worth 2018), *aff'd on other grounds by* 627 S.W.3d 197 (Tex. 2021) (concluding that the court need not consider the ratio of economic and noneconomic damages awards, but nevertheless concluding that the ratio was not excessive), and *Simmons v. Bisland*, No. 03-08-00141-CV, 2009 WL 961522, at *7 (Tex. App.—Austin April 9, 2009, pet. denied) (“The applicable standard of review requires us to uphold non-economic damage awards that are supported by the evidence, regardless of any ratio of non-economic damages to economic damages.”).

- 11 Additionally, we agree with the dissent below that ratios between economic and noneconomic damages are particularly ill-suited for a wrongful death claim “because it is brought by the surviving family members, not the decedent whose primary economic loss is captured in a separate claim.” 615 S.W.3d at 319 (Schenck, J., concurring in part and dissenting in part).
- 12 Although neither party advocates for a comparative method under which the size of damages awards can be justified based on the damages previously awarded in factually similar cases, several amici suggest such an approach. We do not foreclose the possibility that comparison to other cases may play some role in a plaintiff’s effort to establish that a given amount of noneconomic damages is reasonable and just compensation rationally grounded in the evidence. We have in the past invoked similar reasoning. See *Anderson*, 550 S.W.3d at 620 (“The jury’s \$400,000 award appears to be excessive compared to awards in cases involving similar or more egregious behavior....”). We will not endeavor here to define the permissible uses of verdict comparisons.
- 13 Some amici support a standard that asks what “a reasonable person could possibly estimate as fair compensation.” *Waste Mgmt. of Tex., Inc.*, 434 S.W.3d at 153 (quoting RESTATEMENT (SECOND) OF TORTS § 905 cmt. i). The Fifth Circuit has characterized Texas law as employing a similar standard. *Longoria v. Hunter Express, Ltd.*, 932 F.3d 360, 365 (5th Cir. 2019). Because a juror acting reasonably could only award a specific amount of money if there was a rational connection between that amount and the evidence adduced at trial, we understand both our approach and the Restatement’s as asking essentially the same question. The question is “what verdict is within the bounds of reasonable inference from the evidence.” *Miller v. Md. Cas. Co.*, 40 F.2d 463, 465 (2d Cir. 1930) (Learned Hand, J.). It is the plaintiff’s responsibility, as the party with the burden of proof, to articulate the “reasonable inference” connecting the size of the verdict and the evidence.
- 14 Gregory and New Prime concede as much. Pet. Br. on the Merits, at 38–39.
- 15 *Compensatory Damages*, BLACK’S LAW DICTIONARY (11th ed. 2019).
- 16 Whatever the limited value of the “shocks the conscience” inquiry, if a reviewing court concludes that a jury’s verdict was motivated by improper passion, prejudice, or a desire to punish a defendant, this remains a separate basis for reversal, *even if* there is otherwise evidence in the record that meets the legal standards articulated here. Texas courts often say that they “will set aside the verdict only where the record clearly indicates that the award was based on passion, prejudice, or improper motive, or is so excessive so as to shock the conscience.” *E.g.*, *Sanchez v. Balderrama*, 546 S.W.3d 230, 237 (Tex. App.—El Paso 2017, no pet.). Though our decisions in *Parkway*, *Saenz*, and *Bentley* augment that standard of review, they do not eliminate it. “Passion, prejudice, or improper motive” remains an independent basis for reversal.
- 17 See also *Swinnea*, 318 S.W.3d at 882 (“We also hold that while legally sufficient evidence does not exist to prove the lost profits awarded by the trial court, legally sufficient evidence does exist to prove some reasonably certain amount of lost profits. We therefore also reverse the portion of the court of appeals’ judgment that

ERI take nothing on its claims for lost profit damages and punitive damages and remand the case to the court of appeals to consider a remittitur, as well as any other remaining issues, before remanding the case to the trial court.”).

- 18 In their briefing before this Court on the responsible-third-party issue, both petitioners and respondents engage with the full extent of the evidence presented at trial. Thus, they ask this Court to review the trial court’s second, post-trial ruling on the issue, rather than the initial pre-trial ruling. We decide the issue as presented, by applying the statutorily dictated responsible-third-party standard to the trial evidence.
- 19 Chohan contends that Gregory and New Prime waived this objection because, at the charge conference, they objected to ATG’s exclusion from the jury questions pertaining to the Vasquez and Perales parties but made no objection about the questions directed at Deol. We disagree. Gregory and New Prime designated ATG as a responsible third party, opposed the plaintiffs’ motion to strike the designation on the record, moved for reconsideration multiple times after the first attempt was unsuccessful, and obtained a ruling on the record. There are six pages of the reporter’s record dedicated to back-and-forth argument on this point. The Texas Rules of Appellate Procedure require that the record reflect a timely objection stating the grounds for the ruling sought and a ruling on the request. [TEX. R. APP. P. 33.1\(a\)](#). Gregory and New Prime’s preservation efforts satisfy those procedural requirements.
- 20 We do not consider this objection in depth because the record contains a police report demonstrating that the driver of the truck was also the owner of ATG Transportation. That is some evidence implicating the entity. Chohan’s negligence and causation objections are more substantial, and we give them lengthier consideration.
- 21 Compare [TEX. CIV. PRAC. & REM. CODE § 33.004\(l\)](#) (“After adequate time for discovery, a party may move to strike the designation of a responsible third party *on the ground that there is no evidence* that the designated person is responsible for any portion of the claimant’s alleged injury or damage. The court shall grant the motion to strike unless a defendant produces *sufficient evidence to raise a genuine issue of fact* regarding the designated person’s responsibility for the claimant’s injury or damage.”) (emphasis added), with [TEX. R. CIV. P. 166a\(i\)](#) (“After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment *on the ground that there is no evidence* of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces *summary judgment evidence raising a genuine issue of material fact*.”) (emphasis added).
- 1 [Bentley v. Bunton](#), 94 S.W.3d 561, 606-07 (Tex. 2002) (holding that “[t]he record leaves no doubt that Bentley suffered mental anguish” but that “is no evidence that Bentley suffered mental anguish damages in the amount of \$7 million,” which is “far beyond any figure the evidence can support”).
- 2 The plurality opinion also employs language hinting that, rather than requiring the *appealing party* to demonstrate the *absence* of a rational basis for the jury’s damages award, the *prevailing party* would (or should) bear the burden on appeal to justify the jury’s award. If the plurality were indeed shifting the appellate burden to the prevailing party, that would be an unprecedented change in the law. See, e.g., *ante* at 562 (“to survive a legal-sufficiency challenge to an award of noneconomic damages, a wrongful death *plaintiff* should bear the burden of demonstrating both (1) the existence of compensable mental anguish or loss of companionship and (2) a rational connection, grounded in the evidence, between the injuries suffered and the amount awarded.”) (emphases added)); *id.* at 562–63, 564 (asserting that even with “thorough,” “sad[],” and “lengthy” evidence of the nature, duration, and severity of mental anguish, no evidence will support a jury’s noneconomic damages award if the *prevailing party* fails to proffer a sufficient appellate argument explaining the award’s size as opposed to holding the losing party to the burden of explaining how such testimony is so *legally inadequate* as to amount to *no evidence* of the amount awarded); *id.* at 563 (“Crucially, plaintiffs’

counsel at no point in these proceedings has attempted to proffer a rational argument justifying ... the amount awarded.”).

3 *Id.* at 550–51.

4 *Id.* at 550–51, 557.

5 *Id.* at 550–51, 557, 561–62.

6 *Id.* at 557–58.

7 *Id.* at 550–51, 554–55, 561.

8 *Id.* at 555.

9 *Id.* at 564 n.16.

10 *Id.* at 555–56, 561.

11 *Id.* at 550–51, 560–61, 561–62 (asserting that this novel mandate flows “ineluctably” from our precedent).

12 *Id.* at 562–64.

13 *Id.* at 560–62.

14 *Id.* at 556.

15 *Id.* at 550–51, 555 (emphases added) (quoting *Bentley v. Bunton*, 94 S.W.3d 561, 606 (Tex. 2003)).

16 See *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 153 (Tex. 2014) (“[C]ompensatory damages offer a pecuniary remedy for [a] non-pecuniary harm that a plaintiff has suffered.... [N]on-pecuniary damages do not require certainty of actual monetized loss. Instead, they are measured by an amount that ‘a reasonable person could possibly estimate as fair compensation.’” (footnote omitted) (quoting RESTATEMENT (SECOND) OF TORTS § 905 cmt. i.)); see also *Compensate*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, at 463 (2002) (“to be equivalent to (as in value or effect)” “[to] make up for: counterbalance” “to make amends”); *Compensate*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, at 376 (5th ed. 2016) (“[t]o make ... reparation to”); *Compensate*, BLACK’S LAW DICTIONARY, at 353 (11th ed. 2019) (“To make an amendatory payment to; recompense (for an injury)[.]”).

17 When there is some evidence of some amount of damages, we cannot render and must continue remanding. See *ERI Consulting Eng’rs, Inc. v. Swinnea*, 318 S.W.3d 867, 882 (Tex. 2010); see also *ante* at 564–65. This is not a workable system. Cf. *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 274 (Tex. 2012) (“While no system is infallible, endless litigation, in which nothing was ever finally determined, would be worse than the occasional miscarriage of justice.”).

18 See *ante* at 554, 557 (quoting *Serv. Corp. Int’l v. Guerra*, 348 S.W.3d 221, 231 (Tex. 2011), and *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995)).

19 *Id.* at 560–61.

20 See *id.* at 560–61.

21 *Id.* at 561.

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of proof as to monetary value[.]”); *Stackiewicz v. Nissan Motor Corp.*, 100 Nev. 443, 686 P.2d 925, 932 (1984) (“We have long held that ‘[i]n actions for damages in which the law provides no legal rule of measurement it is the special province of the jury to determine the amount that ought to be allowed,’ so that a court ‘is not justified in reversing the case or granting a new trial on the ground that the verdict is excessive, unless it is so flagrantly improper as to indicate passion, prejudice or corruption in the jury.’ ... ‘[T]he elements of pain and suffering are wholly subjective. It can hardly be denied that, because of their very nature, a determination of their monetary compensation falls peculiarly within the province of the jury.... We may not invade the province of the fact-finder by arbitrarily substituting a monetary judgment in a specific sum felt to be more suitable.’ ” (quoting *Forrester v. S. Pac. Co.*, 36 Nev. 247, 134 P. 753, 768 (1913), and *Brownfield v. Woolworth Co.*, 69 Nev. 294, 248 P.2d 1078, 1079-81 (1952))).

- 23 See, e.g., *Anderson v. Durant*, 550 S.W.3d 605, 618 (Tex. 2018) (holding that because noneconomic damages “are not amenable to calculation with ‘precise mathematical precision,’ ” the jury “has latitude in determining the award” so long as the jury awards “ ‘an amount that a reasonable person could possibly estimate as fair compensation’ ” (quoting *Brady v. Klentzman*, 515 S.W.3d 878, 887 (Tex. 2017), and *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 153 (Tex. 2014))); *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 772 (Tex. 2003) (“[W]hether to award damages and how much is uniquely within the factfinder’s discretion.”); *Lucas v. United States*, 757 S.W.2d 687, 720 n.21 (Tex. 1988) (Phillips, C.J., dissenting) (“As to non-economic damages, on the other hand, there is no formula or even definition which has proved useful in their assessment. The appropriate amount is instead left to the discretion, experience and common sense of the finder of fact.”); *Gulf, C. & S.F. Ry. Co. v. Johnson*, 91 Tex. 569, 44 S.W. 1067, 1067-68 (1898) (stating that in cases where the jury is “authorized to take into consideration such mental and physical pain and suffering, and the nature, extent, and probable duration of the injury” when assessing damages, the law “in a large measure commits to the common sense and sound discretion of the jury the amount to be assessed”).
- 24 TEX. CONST. art. V, §§ 6(a) (“[The] Court of Appeals shall have appellate jurisdiction ... [and] the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error.”), 10 (“In the trial of all causes in the district courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury[.]”); *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002) (“[A]ppellate courts ... must maintain the respective constitutional roles of juries and appellate courts[.]”); see also U.S. CONST. amend. VII (“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”).
- 25 See, e.g., *Fulton v. Craddock*, Dallam 458, 458 (Tex. 1842) (“Upon an inspection of the record and looking into the testimony, we find the proof, although contradictory, to be somewhat stronger in support of Craddock’s right to recover; under such circumstances the court will presume (especially after several verdicts) that the jury, who are the proper triers of the facts, have found correctly; we cannot therefore disturb the verdict. This is required by the genius and spirit of our laws; if it were otherwise, courts might render juries useless, and usurp the power of ascertaining facts which according to the principles of the constitution belong to juries in a court of law.”).
- 26 See *In re Rudolph*, — S.W.3d —, —, 2023 WL 4035804 (Tex. 2023). [21-0135, slip op. at 22-24].
- 27 *Golden Eagle Archery*, 116 S.W.3d at 773; see *Sanchez v. Schindler*, 651 S.W.2d 249, 253 (Tex. 1983) (observing that “fear of excessive verdicts is not a sufficient justification” for denying noneconomic damages because “[t]he judicial system has adequate safeguards to prevent recovery of damages based on sympathy or prejudice rather than fair and just compensation for the plaintiff’s injuries”); see also TEX. CONST. art. V, § 6(a) (courts of appeals review for factual sufficiency); TEX. R. CIV. P. 315 (remittitur), 320 (“New trials may be granted when the damages are manifestly too small or too large.”); TEX. R. APP. P. 46.1–.5

(remittitur); TEX. R. EVID. 401 (relevance), 403 (excluding relevant evidence for prejudice, confusion, or other reasons); *In re Columbia Med. Ctr.*, 290 S.W.3d 204, 210 (Tex. 2009) (observing that trial courts can order remittitur and grant new trials and intermediate appellate courts can review the record for factual sufficiency); COMM. ON PATTERN JURY CHARGES, STATE BAR OF TEX., TEXAS PATTERN JURY CHARGES: GENERAL NEGLIGENCE, INTENTIONAL PERSONAL TORTS & WORKERS' COMPENSATION PJC 1.3 (2020) (including instructions to jurors to “not let bias, prejudice, or sympathy play any part in [their] decision” and to “[b]ase [their] answers only on the evidence admitted in court and on the law that is in these instructions and questions”).

28 *Rudolph*, — S.W.3d at —. [21-0135, slip op. at 13].

29 “Preservation of the justice system enshrined in our constitutions, with public participation through the jury system, is worth every effort the legal system can muster.” Justice Nathan L. Hecht, *Jury Trials Trending Down in Texas Civil Cases*, 69 TEX. B.J. 854, 856 (2006). While the system will not always get it right, in my experience it's better to adopt standards that will enable courts to strive for justice for all instead of imposing standards that will ensure injustice to many. See *Univ. of Ariz. Health Scis. Ctr. v. Super. Ct.*, 136 Ariz. 579, 667 P.2d 1294, 1298 (1983) (“[T]he hue and cry in many tort cases ... is no more than the fear that some cases will be decided badly. Undoubtedly, the system will not decide each case correctly in this field, just as it does not in any field, but here, as in other areas of tort law, we think it better to adopt a rule which will enable courts to strive for justice in all cases rather than rely upon one which will ensure injustice in many.”).

30 See TEX. CONST. art. III, § 66(b)–(c) (authorizing the Legislature by statute to “determine the liability for all damages and losses, however characterized, other than economic damages”).

31 See, e.g., Michael J. Saks, Lisa A. Hollinger, Roselle L. Wissler, David Lee Evans & Allen J. Hart, *Reducing Variability in Civil Jury Awards*, 21 LAW & HUM. BEHAV. 243, 245-46 (1997) (discussing the use of damage caps and noting that they are “arbitrary” and “bear no relationship to the level of compensable harm suffered by a plaintiff”); David. M. Studdert, Allen Kachalia, Joshua A. Salomon, and Michelle M. Mello, *Rationalizing Noneconomic Damages: A Health-Utilities Approach*, 74 LAW & CONTEMP. PROBS. 57, 69 (Summer 2011) (critiquing the damage-schedule approach as “inherit[ing] whatever heuristics and inaccuracies attended those original valuations”).

32 See *Strickland v. Medlen*, 397 S.W.3d 184, 196 (Tex. 2013) (observing that the Legislature is best equipped to weigh and initiate broad changes to social and civil-justice policy); *Patel v. Tex. Dep't of Licensing & Reg.*, 469 S.W.3d 69, 95 (Tex. 2015) (Willett, J., concurring) (“Judicial duty requires courts to act judicially by adjudicating, not politically by legislating.”).

33 Compare *ante* at 551 (“The plaintiff in a wrongful death case should be required to demonstrate a rational connection, grounded in the evidence, between the injuries suffered and the dollar amount awarded.”), with Act of June 2, 2003, 78th Leg., R.S., ch. 204, §§ 10.01, .11(b)(2), 2003 Tex. Gen. Laws 847, 873-75, 884 (enacting medical-malpractice caps on non-economic damages with current version at TEX. CIV. PRAC. & REM. CODE §§ 74.301–.303 and stating the legislative purpose for enacting the statute was to “ensure that awards are rationally related to actual damages”).

34 See *Lucas v. United States*, 757 S.W.2d 687, 689-90 (Tex. 1988).

35 See *supra* note 17 and accompanying text.

36 Contrary to the plurality's assertion otherwise, the requirement of a “*rational connection* between the amount awarded and the evidence of injury,” *ante* at 551 (emphasis added), is a clear transition from the requirement that there must be “*some evidence* to justify the amount [of mental anguish damages] awarded,” *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996) (emphasis added). The plurality cannot

point to authority from this Court or any other that has ever required claimants to establish a “rational connection” between noneconomic damages and the amount awarded. “Rational connection” is a concept tied to legislative actions, such as in policy statements for legislative enactments, see *supra* note 31, and cases evaluating the constitutionality of legislative caps on noneconomic damages, see, e.g., *Lucas*, 757 S.W.2d at 694-95; *Verba v. Ghaphery*, 210 W.Va. 30, 552 S.E.2d 406, 413-15 (2001) (Starcher, J., dissenting); *State ex rel. Ohio Acad. of Trial Laws. v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062, 1092 (1999); *Butler v. Flint Goodrich Hosp. of Dillard Univ.*, 607 So. 2d 517, 520 (La. 1992).

- 1 See *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996) (“[T]he law requires appellate courts to conduct a meaningful evidentiary review of [damages] determinations.”). *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 443–44 (Tex. 1995) (outlining the historical development of constraints on such damages).
- 2 *Ante* at 551–52 (plurality op.); *ante* at 575 (Devine, J., concurring).
- 3 *Ante* at 555 (plurality op.); *ante* at 569–70, 572–73 (Devine, J., concurring).
- 4 *Ante* at 557–59 (plurality op.); *ante* at 569–70, 572–73 (Devine, J., concurring).
- 5 *Ante* at 557–59 (plurality op.); *ante* at 575 (Devine, J., concurring). Although Justice Devine does not join the plurality opinion, he agrees with the plurality’s resolution of the responsible third party issue. *Id.*
- 6 The court of appeals held that “[n]one of the awards at issue here meet [the passion, prejudice, or improper motive] criteria.” 615 S.W.3d 277, 314 (Tex. App.—Dallas 2020). It did not grapple with the effect of counsel’s pleas for measurements outside the evidence; rather, it contrasted the improper arguments with other, correct statements of law and the jury charge. *Id.* at 308. Those statements and instructions, however, gave no guidance as to the correct measurement, leaving the verdict open to a no-evidence challenge that the amount awarded in damages was based on passion or prejudice. See *Saenz*, 925 S.W.2d at 614; *Parkway*, 901 S.W.2d at 444.
- 7 As early as 1855, this Court has remanded for a new trial where the verdict “is so excessive as to warrant the belief that the jury have been [misled] either by passion, prejudice or ignorance” or “by some undue influence, perverting the judgment.” *Thomas v. Womack*, 13 Tex. 580, 584 (1855).
- 8 *Thomas*, 13 Tex. at 584 (indicating the court may set aside an excessive verdict when “there is reason to believe that the jury were actuated by passion, or by some undue influence, perverting the judgment”); *Ft. Worth & D.C. Ry. Co. v. Robertson*, 16 S.W. 1093, 1094–95 (Tex. [Comm’n Op.] 1891) (declining to set aside jury verdict when there was no indication the jury had “been misled, or their verdict has been influenced by corruption, passion, or prejudice”); *City of Ft. Worth v. Johnson*, 19 S.W. 361, 362 (Tex. Comm’n App. 1892, judgm’t affirmed) (suggesting a jury verdict is infirm if “the amount of the verdict is so disproportionate to the character of the injury and its effect as to indicate the existence of passion, prejudice, or improper motive on the part of the jury”). These early cases came long before Texas permitted recovery for mental anguish apart from physical injury. As the law expanded to allow recovery of damages in more situations, the grounds for reversal also expanded. See *Saenz*, 925 S.W.2d 607 at 614; *Parkway*, 901 S.W.2d at 443–44. As this law developed, Texas courts did not abandon this review. See *Pope v. Moore*, 711 S.W.2d 622, 624 (Tex. 1986) (indicating remittitur is appropriate where the jury’s finding is manifestly unjust, even without a showing that the jury was inflamed by passion, prejudice, or improper motive).
- 9 See *ante* at 563–64 (plurality op.).
- 10 The jury’s mental anguish verdict is markedly close to the two-cent fine. Counsel’s exhortation to the jury to give New Prime “your two cents worth” for each mile driven by company truckers over the course of a year encouraged jurors to punish New Prime according to the size of its business rather than to compensate for

grief. The jury awarded \$38,801,775, an amount within one-half of one percent of the total suggested by counsel's "two cents" argument. Nothing in the record links this number to the evidence presented.

[11](#) *Ante* at 557–59 (plurality op.).