

2024-58913 / Court: 127

CAUSE NO: _____

ALYSSA HIGGINS, SAMANTHA
HIGGINS, and MYRA HIGGINS, Each
Individually and on Behalf of the Estate of
SCOTT HIGGINS
Plaintiffs,

v.

MARATHON PETROLEUM
COMPANY, LP, BLANCHARD
REFINING COMPANY, LLC, MISTRAS
GROUP, INC., UNIVERSAL PLANT
SERVICES, FLOWSERVE CORP. &
WORLEY FIELD SERVICES, INC. f/k/a
JACOBS FIELD SERVICES NORTH
AMERICA, INC.
Defendants.

IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs Alyssa Higgins, Samantha Higgins, and Myra Higgins each individually and on behalf of the Estate of Scott Higgins (“Petitioners”) file this Petition against Defendants Marathon Petroleum Company, LP, Blanchard Refining Company, LLC, Mistras Group, Inc., Universal Plant Services, Flowserve Corporation, and Worley Field Services, Inc. f/k/a Jacobs Field Services North America, Inc. (“Defendants”) and for cause of action respectfully shows this Honorable Court the following:

I. FACTUAL BACKGROUND

Scott Michael Higgins was a 55-year-old machinist and Union Representative of United Steelworkers Local 13-1. He leaves behind his mother and two daughters. Mr. Higgins’ family has described him as a loving and hardworking father. He often taught on the job and helped run the apprenticeship program. He was burned alive at Marathon Texas City Refinery on May 15, 2023.

Around 9:30 a.m. on May 15, 2023, Mr. Higgins and two others were working at the Ultraformer Unit #3 on the northwest corner of the refinery. While working in the area,

Ultraformer Unit #3 experienced a leak and petrochemical event resulting in a large explosion that was seen and heard by citizens across the city.

Mr. Higgins was working near the origin of the explosion. The flames quickly engulfed his body. The severity of the fire made it impossible for anybody to reach Higgins to render aid or pull him out of the flames. Higgins was unable to get to safety and ultimately burned to death near Ultraformer Unit #3.

The fire from the explosion continued to burn for four hours, releasing thousands of pounds of toxic compounds and chemicals into the air. Texas City residents saw the amount of black smoke in the area and thought there was an approaching “thunderstorm.”

Scott Higgins’ death was foreseeable and preventable. Scott Higgins died because Marathon and the other Defendants failed to properly and adequately build, manage, inspect, maintain, and repair Ultraformer Unit #3 and its surrounding machinery. More specifically, there was a loss of containment due to a broken pipe and pump in the unit, and a nearby cracked pipe. It is believed that this pipe and pump broke and cracked due to excessive vibrations and a lack of inspection and maintenance, and negligent construction of the pump and pad, for the pump. Defendant Universal Plant Services (“UPS”) acted as machinists and millwrights for this work. Indeed, Defendant UPS built, maintained, or inspected the pump and/or pad and did so in a negligent fashion. Defendant Mistras acted as an inspector for this work. Due to this negligent construction, maintenance, or inspection, a pipe and pump were left in operation that should have been replaced. This defective equipment eventually failed and caused the fire. Moreover, the deluge system at the plant failed and prevented the fire from being put out once it started. The deluge system had been non-operational for at least eight months prior to the fire that killed Mr. Higgins. Finally, Defendant Flowserve is believed to be the manufacturer of the pump at issue.

II. DISCOVERY CONTROL PLAN

Plaintiffs intend to conduct discovery under Level 2, pursuant to the Texas Rules of Civil Procedure.

III. PARTIES

Plaintiff Alyssa Higgins is an individual, residing in Texas. She is the daughter of Scott Higgins, deceased.

Plaintiff Samantha Higgins is an individual, residing in Texas. She is the daughter of Scott Higgins, deceased.

Plaintiff Myra Higgins is an individual, residing in Texas. She is the mother of Scott Higgins, deceased.

Defendant Marathon Petroleum Company, LP is a limited partnership doing business in the State of Texas. This Defendant may be served through its registered agent CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

Defendant Blanchard Refining Company, LLC is a limited liability company doing business in the State of Texas. This Defendant may be served through its registered agent CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

Defendant Mistras Group, Inc. is a corporation doing business in the State of Texas. This Defendant may be served through its registered agent Corporation Service Company dba CSC – Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

Defendant Universal Plant Services, Inc. is a corporation doing business in the State of Texas. This Defendant may be served through its registered agent Capitol Corporate Services, Inc. at 1501 S. MOPAC Expressway, Suite 220, Austin, Texas 78746.

Defendant, Flowserve Corporation, (“Flowserve”), is a foreign corporation registered and doing business in the State of Texas. This Defendant may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

Defendant, Worley Field Services, Inc., f/k/a Jacobs Field Services North America, Inc., (“Jacobs Field Services”), is a domestic corporation doing business in the State of Texas. This Defendant may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

IV. JURISDICTION AND VENUE

Plaintiffs seek damages within the jurisdictional limits of this Court. This Court has personal jurisdiction over Defendants because each Defendant does business in Texas, employs individuals in Texas, and/or conducts continuous and systemic business activities in this state. There is no federal question, and there is incomplete diversity of citizenship due to the presence of a plaintiff and at least one defendant who are residents and citizens of Texas. Removal would thus be improper.

This Court also has personal jurisdiction over Defendant Flowserve because Defendant Flowserve maintains contacts with the State of Texas that are continuous, systematic, and ongoing in such a manner that Defendant is “at home” in the forum state. Defendant Flowserve has purposefully availed itself of the benefits and protections of doing business in the State of Texas, such that it could reasonably expect to respond to Plaintiffs’ complaints herein. Specific jurisdiction is proper over Defendant Flowserve (under the stream of commerce plus theory) because Defendant Flowserve placed the Subject Pump and the Subject Seal into the stream of commerce, Defendant Flowserve specifically serves the Texas market as a marketplace for its goods, the Incident occurred in Texas, and Plaintiffs are also citizens of Texas. Jurisdictional facts supporting personal jurisdiction over Defendant Flowserve include, but are not limited to, as

follows:

- a. Flowserve designed, manufactured, and placed the Subject Pump and the Subject Seal into the stream of commerce;
- b. Flowserve conducts business in Texas;
- c. Flowserve actively seeks to serve the Texas market for its products, including pumps and seals;
- d. Flowserve urges Texans to purchase its products, including pumps and seals;
- e. Flowserve advertises and markets its products, including pumps and seals, in Texas;
- f. Flowserve sells its products, including pumps and seals, to customers in Texas and provides warranties for its products in Texas;
- g. Flowserve has offices, employees, manufacturing facilities, property and authorized dealers in Texas;
- h. Flowserve uses authorized dealers and distributors in Texas to provide information and services regarding its products, including pumps and seals, to customers in Texas;
- i. Flowserve has entered into contracts with Texas entities in Texas; and
- j. Flowserve has invoked the jurisdiction of Texas courts over the past ten (10) years.
- l. Defendant Flowserve therefore has sufficient minimum contacts with the State of

Texas which confer jurisdiction and therefore the exercise of specific jurisdiction over Flowserve would not offend traditional notions of fair play and substantial justice.

Venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code 15.002(a)(3) because several of the Defendants maintain their headquarters in this county.

V. CAUSES OF ACTION

A. NEGLIGENCE AND GROSS NEGLIGENCE — ALL DEFENDANTS

Plaintiffs re-allege every above allegation as if fully set forth below. Defendants, by and through their officers, employees, agents and representatives, committed acts of omission and

commission, which collectively and severally constituted negligence and gross negligence.

Defendants' acts included, but were not limited to:

1. Failing to recognize and remediate hazards;
2. Contributing to an unsafe work site;
3. Participating in and contributing to acts that caused the incident in question;
4. Failing to provide timely assistance, or to ensure other protections were in place;
5. Failing to properly install, maintain, test, and inspect the deluge system and equipment;
6. Failing to warn of a known hazard;
7. Failing to read, understand, and follow published safe work policies and procedures;
8. Promulgating and following unsafe work policies;
9. Creating latent dangers, but failing to warn of same;
10. Failing to ensure proper pumps and valves in the work area;
11. Failing to ensure the work area was free of hazardous gas and chemicals;
12. Failing to install, maintain, repair, and/or replace monitors at the facility;
13. Preparing and promulgating a schedule and plan that was unworkable and unsafe;
14. Failing to account in the schedule for unforeseen equipment issues;
15. Promulgating policies that were unsafe;
16. Failing to ensure a safe work area;
17. Failing to conduct necessary safety reviews and hazard assessments;
18. Failing to provide necessary protective equipment;
19. Failing to ensure that proper equipment was installed properly;
20. Failing to properly hire and train employees;
21. Failing to promulgate and enforce policies required for a safe work site; and

22. Failing to maintain a safe work site.

Said actions by Defendants were the proximate cause of Mr. Higgins' injuries and death, and the injuries suffered by Plaintiffs. Defendants' actions were knowing, reckless, and/or malicious, and when viewed objectively from these Defendants' standpoint, involve an extreme degree of risk considering the probability and magnitude of potential harm to others. Defendant knew the hazards posed by the chemicals contained in the pump and pipes, yet ordered tasks to go forward without providing the necessary protective equipment and without ensuring the proper construction, maintenance and monitoring of the work area. These Defendants had subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, and/or welfare of others. Therefore, Plaintiffs also seek punitive damages against Defendants.

B. AGENCY, RESPONDEAT SUPERIOR — ALL DEFENDANTS

Plaintiffs re-allege each previous allegation as if fully incorporated herein. Defendants had agents and/or servants at the job location, who were conducting work for Defendants. As such, Defendants are responsible for the conduct of their agents due to the relationship that existed, among other acts and omissions of negligence which may be shown during the trial of this cause.

C. RES IPSA LOQUITUR — ALL DEFENDANTS

Plaintiffs re-allege each aforementioned allegation as if fully incorporated herein. Defendants' negligence implicates the doctrine of res ipsa loquitur because the character of the event made the basis of this lawsuit is such that it would not have occurred without negligence.

D. DEFENDANT FLOWSERVE

a. STRICT LIABILITY

Plaintiffs bring strict liability claims against Defendant Flowserve for the Subject Pump and Subject Seal. The Subject Pump and Subject Seal were designed, manufactured, tested, marketed,

warrantied, sold, and placed into the stream of commerce by Defendant Flowserve in a defective and unreasonably dangerous condition to an extent beyond which would be contemplated by an ordinary user of the Subject Pump and Subject Seal. The Subject Pump and Subject Seal were in substantially the same condition at the time of the Incident as when placed in the stream of commerce.

The Subject Pump and Subject Seal were unreasonably dangerous by virtue of their design, manufacturing, and/or warranty defects. Defendant Flowserve defectively designed, manufactured and marketed the Subject Pump and Subject Seal, which rendered the Subject Pump and Subject Seal unreasonably dangerous for their intended and foreseeable use. This was a producing and proximate cause of the Incident as well as Plaintiffs' injuries and damages. Plaintiffs lacked knowledge of and could not have discovered through the exercise of reasonable care, the defective condition of the Subject Pump and Subject Seal in the manner and purpose for which it was intended. Defendant Flowserve therefore is strictly liable for Plaintiffs' damages.

At the time the Subject Pump and Subject Seal were manufactured, there existed safer alternative designs that would have prevented or significantly reduced the risks of the Incident and Plaintiffs' injuries. These alternative designs were both reasonable and economically and technologically feasible at the time the Subject Pump and Subject Seal left Defendant Flowserve's control.

b. STRICT LIABILITY: DESIGN DEFECT

The design of the Subject Pump and Subject Seal was defective and unreasonably dangerous because there was a condition of the Subject Pump and Subject Seal that rendered these products unreasonably dangerous as designed, taking into consideration the utility of the Subject Pump and Subject Seal and the risk involved in their use. More specifically, the Subject Pump and Subject Seal as designed failed to prevent leaking and the unexpected release of pressure and/or

fire explosion during operations, and the products were not designed or manufactured in accordance with specifications applicable to the pump and/or seal or their intended use which rendered these products easily susceptible to failure. Such defectively designed products did not provide protection against the reasonably foreseeable circumstances in which the Incident occurred.

At the time the Subject Pump and Subject Seal left Defendant Flowserve's control, there were safer alternative designs that were technologically and economically feasible at the time the Subject Pump and Subject Seal were designed and manufactured and would have prevented this Incident as well as Plaintiffs' injuries and damages. Such safer alternative designs would not have materially impaired the utility of the Subject Pump and/or Subject Seal.

c. STRICT LIABILITY: MANUFACTURING DEFECT

At all pertinent times, Defendant Flowserve was engaged in the business of designing, manufacturing, marketing, selling, and/or otherwise placing the Subject Pump and Subject Seal into the stream of commerce in Texas.

When the Subject Pump and Subject Seal left Defendant Flowserve's control, defects in the manufacture of the Subject Pump and Subject Seal were prone to fail in the foreseeable course of use. In particular, the Subject Pump and Subject Seal were defectively manufactured by Defendant Flowserve in that they failed to prevent leaking and the unexpected release of pressure and/or fire explosion during operations. The Subject Pump and Subject Seal were being used for their intended and foreseeable purpose at the time of the Incident. The defective manufacture of the Subject Pump and Subject Seal directly and proximately caused Plaintiffs' injuries and damages.

d. STRICT LIABILITY: MARKETING DEFECT/FAILURE TO WARN

Defendant Flowserve failed to give adequate and proper warnings and instructions regarding the dangers of the Subject Pump and Subject Seal, failures which rendered the Subject Pump and

Subject Seal defective and unreasonably dangerous and were a producing cause of Plaintiffs' injuries and damages. Defendant Flowserve failed to provide adequate warnings regarding the defectively designed Subject Pump and Subject Seal and was a producing cause of the Incident as well as Plaintiffs' resulting injuries and damages.

e. BREACH OF WARRANTY

Defendant Flowserve made express and implied warranties regarding the Subject Pump and Subject Seal, specifically that they were safe and not defective and could be used under the conditions and in the manner described. Defendant Flowserve warranted that the Subject Pump and Subject Seal were fit for their intended purpose and those warranties were relied upon at the time of purchase and use. If the aspects of the Subject Pump and Subject Seal had been as warranted by Defendant Flowserve, specifically that these products were safe for the intended use and not defective, Plaintiffs would not have suffered injuries and damages and/or would not have suffered the same degree of harm.

f. NEGLIGENCE

Defendant Flowserve committed acts of omission and commission, which collectively and/or severally constituted negligence, and such negligence proximately caused Plaintiffs' injuries and damages. Defendant's acts and/or omissions constituting negligence include, without limitation:

- a. Failing to properly design the Subject Pump and/or Subject Seal;
- b. Failing to properly manufacture the Subject Pump and/or Subject Seal;
- c. Failing to incorporate safety features into the design and manufacture of the Subject Pump and/or Subject Seal that would reduce or eliminate the propensity to fail;
- d. Failing to properly test the Subject Pump and/or Subject Seal;
- e. Failing to institute, execute and maintain adequate quality control and quality assurance processes and procedures;

- f. Failing to recall the Subject Pump and/or Subject Seal, or alternatively, to warn consumers of a known danger/defect in the Subject Pump and/or Subject Seal;
- g. Failing to disclose post-sale information known about the dangers or defects in the Subject Pump and/or Subject Seal;
- h. Concealing known dangers associated with the Subject Pump and/or Subject Seal;
- i. Failing to provide adequate warnings and instructions regarding the safe use of the Subject Pump and/or Subject Seal; and
- j. Other acts and/or omissions deemed negligent.

12. These breaches, among others, constituted negligence. Such negligence was a proximate cause of the Incident and Plaintiffs' resulting injuries and damages.

g. NEGLIGENCE UNDERTAKING

Defendant Flowserve also committed acts and/or omissions, singularly or in combination, that constituted negligent undertaking. Defendant undertook to design, manufacture, and/or provide certain products for use at refineries, such as the Refinery in question, including the Subject Pump and Subject Seal that were being used during operations and involved in the Incident in question. At all times material, Defendant Flowserve had a duty to use reasonable care to perform these tasks in a manner for the safety of workers using or near its products, including Plaintiffs. Defendant Flowserve undertook to perform such tasks that it new or should have known was necessary for the safety and protection of workers using or near its products, including Plaintiffs. Defendant Flowserve recognized or should have recognized performing such tasks in a safe manner were necessary for the protection of workers, including Plaintiffs. Workers, such as Plaintiffs, relied upon Defendant to properly perform tasks related to the design, manufacture, and sale of its products in a safe manner in order to prevent product failures and the Incident in question. Defendant failed to exercise reasonable care in the performance of this undertaking and thereby increased the risk of harm to the workers on site, including Plaintiffs. Such negligence and

failure to exercise reasonable care proximately caused the Incident as well as Plaintiffs' injuries and damages herein.

E. DEFENDANT JACOBS FIELD SERVICES

Defendant Jacobs Field Services was involved in the maintenance, inspection, repair, and service work to the Subject Pump, specifically including a retrofitting and/or upgrade performed prior to the Incident. At that time, the Subject Pump's retrofitting and/or upgrade included a change from API Seal Plan 11 to Plan 74, removal and repositioning of the motor, installation of shorter coupling between the pump and the motor, and replacement of the power end. During the retrofitting and/or upgrade performed, Defendant Jacobs Field Services failed to protect component parts of the Subject Pump that resulted in failure. A series of events directly related to Jacobs Field Services' improper retrofit and/or upgrade and commissioning procedure ultimately caused the fire explosion on May 15, 2023. Such was not only negligent, but grossly negligent.

As a result, these catastrophic failures in the Subject Pump resulting in the leak and fire explosion were a proximate cause of the Incident and Plaintiff's resulting injuries and damages herein. On June 20, 2019, Jacobs Field Services North America, Inc., filed a Certificate of Amendment changing the corporation's name to Worley Field Services, Inc. As a result, Defendant Worley Field Services, Inc., f/k/a Jacobs Field Services North America, Inc., is the proper entity in this suit as it relates to the allegations contained herein and in proximately causing the Incident.

A. DISCOVERY RULE

Plaintiffs plead the discovery rule.

VI. DAMAGES

This action is brought pursuant to §§ 71.001 - 71.012 of the Texas Civil Practice and Remedies Code, and any other laws that may be applicable to this action. Plaintiffs may bring action for the wrongful death of Mr. Higgins. Plaintiffs are entitled to recover damages for:

a. Pecuniary Loss: Pecuniary loss resulting from the death of Higgins, including, but not limited to, the loss of advice and counsel, care, maintenance, support, services, and earning capacity, as well as the reasonable contributions of pecuniary value that Plaintiffs would in reasonable probability have received from Higgins had he lived. Also, Plaintiffs are entitled to any expenses for medical or psychological treatment and funeral expenses.

b. Mental Anguish: Mental anguish suffered by the Plaintiffs as a result of the death of Higgins, including but not limited to the emotional pain, torment, and suffering that Plaintiffs would in reasonable probability, experience from the death of a family member.

c. Loss of Companionship and Society: Loss resulting from Higgins' death, including, but not limited to, love, companionship, comfort, and society that the Plaintiffs would in reasonable probability have experienced if Higgins had lived.

d. Loss of Inheritance: The earnings, if any, of Higgins, in excess of the amount he would have used for the support of himself and his family, and which in reasonable probability would have been added to his estate and left to Plaintiffs at his natural death had he lived.

Plaintiffs seek all damages allowed for a widow, children, and beneficiaries in a wrongful death action. Plaintiffs seek all damages allowed in a survival action. Plaintiffs seek exemplary damages. Plaintiffs seek pre-judgment and post-judgment interest, court costs, and any and all other damages to which they may be entitled.

VII. REQUEST FOR DISCLOSURE

Plaintiffs request that each Defendant disclose, within fifty (50) days of service of this Request for Disclosure, the information and/or material described in Rule 194.2.

VIII. JURY DEMAND

Plaintiffs respectfully demand a jury trial.

IX. PRAYER

Plaintiffs pray that Defendants be cited to appear and answer for their conduct, that this case be set for trial without delay. Plaintiffs seek damages in excess of \$1,000,000.00. Plaintiffs recover a judgment from Defendants, jointly and severally, for damages in such amount as the evidence may show and the trier of fact may determine to be proper, in addition to pre-judgment interest, post-judgment interest, costs, punitive damages, and all other and further relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

THE BUZBEE LAW FIRM

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