


unnecessary hearing on Defendants' special exceptions making the presently scheduled hearing of February 28, 2008.

II.
PARTIES

Plaintiffs Talmadge Waldrip and Bernice Waldrip reside in Forney, Texas.

Plaintiff Dinah Simington resides in Mesquite, Texas.

Plaintiff Annabeth Boyd resides in Rockwall, Texas.

Defendant U-Haul International, Inc. d/b/a U-Haul and U-Haul Co. of Arizona and U-Haul Co. of Texas (including any d/b/a of U-Haul Co. of Texas to specifically include the U-Haul Co. of Texas d/b/a U-Haul Co. of Dallas) U-Haul Co. of Florida (hereafter occasionally referred to collectively as "U-Haul" or "U-Haul Defendants" or "Defendant of U-Haul") are a foreign corporations that can be identified as the company which rents, leases and sells trucks and trailers and moving implements bearing the logo resembling, "" found in the Annual Report of its holding company, Amerco, and which was the owner and insured of the truck which is the subject of this lawsuit and whom were involved in the maintenance, inspection, servicing and repair of the subject vehicle (VIN: 1HT3UZRM5JH624210) and which have answered and appeared herein.

Defendants East Fork Enterprises, Inc., East Fork Enterprises, Inc., d/b/a Jot'Em Down Store (a/k/a Jot 'Em Down Hardware) and d/b/a Wood Finisher's Source are Texas Corporations with the same address of 613 East Highway 80 Sunnyvale, Dallas County, Texas 75182. They have been served and cited to appear and have answered.

Larry Boyd is not a Defendant in this case.

III.
RESPONDEAT SUPERIOR & AGENCY

Whenever in this Petition it is alleged that a Defendant did or failed to do any particular act and/or omission, it is meant that Defendant U-Haul International, Inc. (hereafter referred to from time to time as "UHI"), acting individually, or by and through its agents, contractual agents, true agents, officers, directors, servants, and employees, either did or failed to do that particular act and/or omissions, in the course and scope of his employment, agency or contract with Defendant, and in the furtherance of UHI Defendant's business. Additionally and in the alternative, throughout this petition whenever it is alleged that a Defendant did or failed to do any particular act and/or omission, it is meant that Defendant U-Haul Co. of Texas (including any d/b/a there-under), acting individually, or by and through its agents, contractual agents, true agents, officers, directors, servants, d/b/a's and employees, either did or failed to do that particular act and/or omissions, in the course and scope of his employment, agency or contract with Defendant, and in the furtherance of Defendant's business. As a matter of fact and pursuant to contract, the Jot 'em down, East Fork and Larry Boyd defendants are agents of the U-Haul defendants. U-Haul Co. of Texas is an agent of UHI.

IV.
SUBJECT MATTER JURISDICTION, PERSONAL JURISDICTION, & VENUE

Pursuant to the relevant portions of the GOVERNMENT CODE, this Court has subject matter jurisdiction because Plaintiff's damages are within the minimum jurisdictional limits required by law. Additionally, this Court also has personal jurisdiction over the aforementioned Defendant because said entity is doing business in Texas, recruit employees or agents in Texas, engage in contracts in Texas and have committed a tort in Texas within the meaning of TEXAS CIVIL PRACTICE AND REMEDIES CODE § 17.042.

As explained in § 15.002 of the CIVIL PRACTICE AND REMEDIES CODE, venue is proper in Dallas County because a substantial part of the acts or omissions giving rise to this cause occurred in Dallas County including the transaction related to renting a defective motor vehicle to Plaintiff and making materially false representations to Plaintiff and because the two of the Defendants' principal places of business are located in Dallas County, Texas.

V.

FACTUAL PREDICATE GIVING RISE TO PLAINTIFF'S CAUSES OF ACTION

This case involves a near fatal incident. On September 20, 2006 Defendants leased a U-Haul box truck (hereafter in this litigation referred to from time to time as the "subject vehicle") to Annabeth Boyd. Defendants represented and warranted that the vehicle was fit for use and fit for the road. On the contrary, the vehicle was unfit for use. Defendants leased the truck to Boyd who made it known that she could not drive a vehicle with a standard transmission. Defendant parked the vehicle for Boyd at her storage space where it could wait for Boyd's father, Talmadge Waldrip, to drive the vehicle.

Upon information and belief, Larry Boyd was assigned the subject vehicle. Boyd was merely an Agent of U-Haul (UHI and U-Haul Co. of Texas and U-Haul Co. of Texas d/b/a U-Haul Co. of Dallas – collectively "U-Haul") and U-Haul was responsible for the condition of the vehicle and placing and maintaining the vehicle in the stream of commerce. Unbeknownst to Boyd, U-Haul was actually aware of the defects in the vehicle and was recalcitrant in their duties related to inspection, maintenance and repair. The marketing company president Lynn Buck testified that the agency was with Jot 'Em Down Store; there are actually two agency contracts for East Fork Enterprises, one for each of the d/b/a's.

Talmadge Waldrip drove the vehicle a few miles east to his shop. Exercising ordinary care, he parked the vehicle properly. After climbing down from the vehicle, the truck rolled

backwards while the door was still open from Waldrip's egress. The door knocked Waldrip to the ground as the truck rolled backwards and rolled over him, crushing his mid-section including his pelvis causing massive, life-threatening injuries to him and his body generally as a result.

The brakes and gears on the truck were in a state of disrepair. This status was the cause of the truck crushing Plaintiff Waldrip. The status of the truck and its state of disrepair rendered it unfit for its intended purpose. All conditions precedent have been met.

The events and circumstances leading up to the occurrence in question were the result of a systemic, company wide pattern of mismanagement and poor inspection, conflicting inspection policies and/or practices, negligent fleet replacement patterns, maintenance, repair practices and woeful incompetence. Policies and procedures, as they are actually practiced by U-Haul throughout North America facilitate a complete indifference to the rights, safety and welfare of any person near U-Haul vehicles. These policies, procedures and practices allow dangerous vehicles and implements on the road in spite of actual knowledge that many of the U-Haul vehicles are in poor condition rendering them dangerous and unfit for their intended purpose.

More specifically, the vehicle in question had traveled over 230,000 miles prior to use by Plaintiff. Most recently, the truck was in Canada, then Virginia after which it traveled to Florida where it spent much of 2005. In late 2005 the vehicle was received at a U-Haul owned location in Dallas (managed by James Guinn) on the Hawn Freeway and then transferred to a U-Haul location in Dallas on Ferguson Road. U-Haul Defendants (in Florida, Phoenix and Dallas) were actually aware of the parking brake condition at this time. By May 2006 the DOT inspection for the vehicle expired. To date, U-Haul has failed to explain in discovery or otherwise this deficiency. In spite of this blatant safety deficiency, and further in spite of its own policies that would force the vehicle out of service after May 2006, the vehicle was "Safety Certified". The

sticker of an Area Field Manager, Jason Crews, was placed on the truck during the first week of July 2006. The sticker was either placed their fraudulently, through a practice widely documented at U-Haul known as "Hanging Paper" or in the alternative, Crews never truly performed the inspection at all.

U-Haul policies, as represented to its dealer/agents such as Boyd, require that the vehicle be safety inspected every 30 days and DOT inspected within every twelve months. Neither was done for the subject truck. The AFM "certified" the vehicle in the first week of July 2006 even though its DOT inspection was outdated.

The procedures and practices of U-Haul are dangerously inconsistent. On one hand safety inspections are to be done every thirty days, however, on the other hand the personnel performing the inspections are confused by the issue and from time to time suggest they are only required every ninety days. At all relevant times the stated inspection period in the U-Haul policies was for an inspection every 30 days. From the time of the Crews "Certification" until the occurrence in question, the truck had only traveled a few hundred miles but experienced many mishaps. During that period of time, the renters who used the vehicle experienced multiple problems, including brake problems and gear shifting problems.

VI.

CAUSES OF ACTION AND DEFENDANT'S ACTS AND/OR OMISSIONS IN NEGLIGENCE

Plaintiffs will show on the occasion in question, the Defendants were negligent, negligent, and acted with gross neglect and violated provisions of the UCC including but not limited to the following respects and that Defendants' acts/or omissions were the proximate cause of Plaintiffs' injuries and damages.

1. Failing inspect the subject vehicle for defects;
2. Failing to properly respond to notice of dangerous condition of the subject vehicle and other similar vehicles;
3. Failing to maintain the vehicle properly;
4. Entrusting a vehicle to woefully incompetent agents and employees including Boyd;

5. Negligently hiring, entrusting and associating incompetent agents;
6. Failing repair the vehicle;
7. Failing to warn Plaintiffs and users of the vehicle of defects;
8. Failure to provide a safe and road-worthy vehicle;
9. Negligently representing that the vehicle was safe;
10. Failure to exercise ordinary care;
11. Failure to do what a reasonably prudent company would do under the same or similar circumstances;
12. Defendant failed to warn the Plaintiff of known dangers;
13. Failure to use that degree of prudence and caution so as to protect Plaintiffs from the defects in associated with the vehicle; and
14. Failing to properly hire and train maintenance employees and agents.

Each of above and foregoing acts constitute negligence and a violation of Article 2A of the UCC on the part of the Defendants and each act or omission, either separately or jointly, was a proximate and producing cause of the injures and damages sustained by Plaintiffs. The conduct of the defendants constitutes gross negligence; Plaintiffs therefore now sue for exemplary damages. Defendants should be held strictly liable for the unreasonably dangerous nature of the vehicle in question.

The pleadings herein do not include any claim for exemplary damages against the East Fork Enterprises, Inc., Defendant; any act attributable to this Defendant were only acts within the course and scope of its agency with the other Defendants. As such the U-Haul defendants are vicariously liable for the acts, omissions and UCC violations of East Fork Enterprises.

VII. **BUSINESS & COMMERCE CODE VIOLATIONS**

Defendants had a duty to inspect, maintain and repair the vehicle prior to leasing it to Plaintiffs. Defendants represented to Plaintiffs that the vehicle was in good condition and of good quality, which was and is a material misrepresentation, inducing reliance on the part of Plaintiffs, and proximately caused or was the producing cause of Plaintiffs' actual and special damages related to the personal injury associated damages and losses sustained from the inability

to move business merchandise with the truck including repair and replacement, incidental, consequential damages and damages related to loss of revenue and profits.

Additionally, a result of these acts discussed above and this above-mentioned conduct, Defendants conduct constitutes interference with an existing contract and business relationship.

The actions and conduct of the Defendant were in violation of Article 2A of Texas' UCC provisions. The vehicle was not fit for its intended purpose and Defendants breached the warranties provided for under the Act. Plaintiffs plead for all available remedies pursuant to Article 2A of the Texas Uniform Commercial Code.

VIII.
ACTUAL & SPECIAL DAMAGES

Pursuant to the relevant portions of the TEXAS FINANCE CODE, Plaintiffs plead for pre and post judgment interest at the maximum legal allowable rate. Plaintiffs were severely injured and/or damaged as a proximate and/or producing result of the aforementioned negligence, negligence and UCC violations. Plaintiffs have sustained lost wages and wage earning capacity in the past and in reasonable probability, will sustain such losses in the future. Plaintiffs have suffered pain and mental anguish in the past and in reasonable probability will suffer from such in the future.

Plaintiff Talmadge Waldrip has sustained physical pain and mental anguish and physical impairment or physical incapacity and in reasonable probability will remain that way in the future. Plaintiff sustained reasonable medical expenses as a result of the defendant's negligence in the past and in reasonable probability will sustain medical expenses in the future. Waldrip has further suffered disfigurement in the past and will suffer such disfigurement for the balance of his life. Plaintiff has incurred reasonable and necessary attorney fees for which he now sues.

More specifically, Plaintiff Talmadge Waldrip would show the following:

- 1.) As a result of the negligence of the Defendants described herein, Plaintiff has incurred reasonable and necessary medical expenses and in all reasonable probability such medical expenses will continue in the future;
- 2.) Plaintiff has experienced mental anguish in the past as a result of his physical injuries and, in all reasonable probability, will sustain mental anguish in the future as a result of his physical injuries;
- 3.) Plaintiff has experienced physical pain and suffering in the past as a result of his injuries, and in all reasonable probability, will continue to sustain physical pain and suffering in the future as a result of his injuries;
- 4.) Plaintiff has experienced physical impairment or physical incapacity in the past as a result of this incident and, in all reasonable probability, will continue to experience physical impairment in the future;
- 5.) Plaintiff has experienced physical disfigurement in the past as a result of this incident and, in all reasonable probability, will continue to experience physical disfigurement in the future;
- 6.) Plaintiff has experienced loss of earning capacity, lost wages, and will continue to suffer loss of earning capacity in the future;
- 7.) Losses related to business merchandise including incidental, consequential, loss of use, and interference with a contract, lost revenue and lost profits all in the past and future; and
- 8.) Losses in the form of all recoverable damages.

Plaintiff Beatrice Waldrip has suffered a loss of marital consortium, house hold services and nursing services all in the past and in reasonable probability in the future for the balance of her life while Talmadge Waldrip survives.

Plaintiff Annabeth Boyd has suffered mental anguish in the past and will continue to suffer mental anguish for the balance of her life as a result of the occurrence in question and the knowing or intentional DTPA violations of U-Haul and the other Defendants. She further has suffered damages from a loss of parental consortium in the past and will continue to suffer this loss for the balance of the life of Talmadge Waldrip. She is also damaged in the form of lost

revenue, lost profits, incidental and consequential damages (all in the past and future) and reasonable and necessary attorney's fees.

Plaintiff Dinah Simington has suffered damages from a loss of parental consortium in the past and will continue to suffer this loss for the balance of the life of Talmadge Waldrip.

Defendants in this case have sought to require Plaintiffs to state a maximum amount plead. In response to that the Plaintiffs state that the amount of damages sought, based upon the injuries, damages, conduct and conditions relevant here are within the sound discretion of the jury; that said, pursuant to the Rules of Civil Procedure Defendants have filed an exception forcing the Plaintiffs to state a maximum amount; in response Plaintiffs state that no Plaintiff will seek more than \$19,000,000.00 in this case.

Each of these acts and omissions of Defendant singularly, collectively, and/or disjunctively was negligent of each and all, a proximate cause of the incident made the basis of this lawsuit and of the injuries and damages suffered by the Plaintiff.

IX.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein and, that upon final trial, Plaintiffs have judgment against Defendant for all damages proved, all of which are within the jurisdictional limits of this Court, attorney's fees, costs of Court, exemplary damages and for pre-judgment interest in accordance with the law and for interest on the judgment until the time the judgment is paid for such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By:

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon Counsel of Record for all parties pursuant to the Texas Rules of Civil Procedure on this _____ day of _____, 2008 via hand or mail.

MARQUETTE WOLF