

CAUSE NO. 2013-CI-00118

JESSE RIVERA AND KATHY RIVERA §  
INDIVIDUALLY AND AS NEXT §  
FRIENDS OF JESSE RIVERA, JR., §  
a minor child §  
Plaintiffs, §

IN THE DISTRICT COURT

VS. §

73<sup>rd</sup> JUDICIAL DISTRICT

GLORIA CORDOVA §  
AUDI AG; and §  
VOLKSWAGEN GROUP OF §  
AMERICA, INC.; §  
Defendants §

BEXAR COUNTY, TEXAS

**PLAINTIFFS' EIGHTH AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come JESSE RIVERA and KATHY RIVERA, INDIVIDUALLY AND AS NEXT FRIENDS OF JESSE RIVERA JR., their Minor Child, and hereinafter called Plaintiffs, complaining of AUDI AG; VOLKSWAGEN GROUP OF AMERICA, INC.; and GLORIA CORDOVA, Defendants, and for cause of action would respectfully show the Court and Jury the following facts:

**I. INTRODUCTION**

1.1 Pursuant to Rule 190.1 of Texas Rules of Civil Procedure, this case should be assigned to discovery track Level 3. In accordance with this request, a docket control order has been entered by the court and is being adhered to by the parties.

**II. PARTIES**

2.1 Plaintiffs Jesse Rivera and Kathy Rivera are individuals residing in San Antonio, Bexar County, Texas. Plaintiffs, Jesse Rivera and Kathy Rivera are the parents of Jesse Rivera, Jr., a minor, and bring this suit individually and as next friends of their child. Jesse Rivera and Kathy Rivera bring this suit in their individual capacity to the extent they

are the parents and lawful guardians of their minor child, Jesse Rivera, Jr.. Further, it is likely that Jesse and Kathy will remain the lawful guardians of Jesse Rivera, Jr., for the remainder of their lives due to his disabling, severe brain injury.

2.2 Defendant, GLORIA CORDOVA, is a resident of Jourdanton, Atascosa County, Texas, and has been served with process and has answered.

2.3 Defendant, AUDI AG is a German corporation with its principal place of business located at Auto-Union Strasse (Ettinger Strasse) 1, 85057, Ingolstadt, Germany. Audi AG has been served with process and has answered. At all times herein mentioned, defendant Audi AG was, and is, authorized to do business within the State of Texas, and was, and is, engaged in the business of deriving profit from designing, manufacturing, warning, advertising, promoting and importing Audi automobiles for sale within the county of Bexar, State of Texas.

2.4 Defendant VOLKSWAGEN GROUP OF AMERICA, INC., is a foreign for-profit corporation, incorporated in the state of New Jersey, doing business in Texas, and has been served with process and has answered.

### **III. JURISDICTION AND VENUE**

3.1 This court has jurisdiction over this action, because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

3.2 Venue is proper in Bexar County under Tex. Civ. Prac. & Rem. Code § 15.002(a)(1), that being the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

### **IV. FACTS**

4.1 The term “vehicle in question” refers to a 2005 Audi A4 Quattro bearing

vehicle identification number (VIN) WAUDF68E35A436259. At the time of the incident in question, the vehicle in question was being driven by Jesse Rivera.

4.2 The vehicle in question was designed and manufactured by Audi AG (“Audi”). Volkswagen Group of America, Inc., (“VW”) distributed, advertised, developed owner’s manuals, sold, and took the lead with United States’ regulatory bodies to get the vehicle into the U.S. market. The Defendants are hereafter collectively referred to as the “VW Audi Defendants.”

4.3 On or about December 18, 2012, Plaintiff Jesse Rivera was lawfully stopped in the northbound lane of traffic in the 20700 Block of SH 16 in southern Bexar County, Texas. He had come to a complete stop due to a school bus loading children in the outside northbound lane of traffic. Suddenly and without warning, his stopped vehicle was unexpectedly struck from the rear by a vehicle driven by Defendant Cordova. Minor Plaintiff, Jesse Rivera, Jr. and his brother, Patrick Rivera were back seat passengers in the vehicle in question.

4.4 Jesse Rivera, Jr. was sitting in the left rear passenger seat directly behind Jesse Rivera, Sr., the driver of the Audi at the time of the incident. As a result of the collision to the vehicle in question, the driver’s seat back failed and collapsed rearward, allowing the head of Jesse Rivera Sr., to contact Jesse Rivera, Jr. As a result of said contact, Jesse Rivera, Jr., suffered severe, permanent and disabling injuries. Jesse Rivera, Sr., suffered an injury to the back of his head caused by hitting his son, Jesse. Patrick Rivera was sitting in the right rear passenger seat, directly behind an unoccupied front seat. Patrick Rivera suffered no apparent injury in the collision. He was transported to the emergency room, evaluated, and discharged home.

4.5 The vehicle in question had not been changed or altered, and was in substantially the same condition at the time of the incident that it had been in when it left the control of the VW Audi Defendants

## V. CAUSES OF ACTION AGAINST AUDI AG (AUDI) AND VOLKSWAGEN GROUP OF AMERICA (VW)

### A. DESIGN DEFECT

5.1 The vehicle in question was originally designed, manufactured by Audi AG (“Audi”), and sold and marketed by Volkswagen Group of America (“VW”).

5.2 Since the late 1980s, automobile manufacturers knew that rearward rotation of the front seats affect both front and rear seated occupant protection in a rear impact collisions. “In 1992 and 2001, the television program 60 Minutes featured segments on the seatback rigidity issue.” *Lloyd v. General Motors Corp.*, 266 F.R.D. 98, 111 (D. Md. 2010). Knowing the history with the “seatback strength issue” and while conceding that federal testing standards are inadequate, automobile manufacturers routinely test for seatback strength beyond federal standards. *See, e.g., Flax v. Daimler Chrysler Corp.*, 272 S.W.3d 521, 535 (Tenn. 2008) (“[B]oth of DCC’s experts on seat design agreed that compliance with FMVSS 207 alone is inadequate to protect passengers.”)

5.3 Prior to production, Audi conducted several tests to evaluate the performance of the seats in the Audi A4.<sup>1</sup> Audi’s “assessment criteria” was that “[t]he seatbacks, their anchorages, adjusters, and locking devices must not fail.”<sup>2</sup> As Audi’s design principle, plastic and elastic deformation “[was] permissible, but must not result in

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<sup>1</sup> Heiko Diederichs Deposition Transcript Vol. 1, 106:3-5.

<sup>2</sup> Heiko Diederichs Deposition Transcript Vol. 1, 109:18-110:9.

any additional risk of injury for the occupants.”<sup>3</sup> According to Audi, if they did experience a failure, they would have to redesign their seats before they could be sold in the United States.<sup>4</sup>

5.4 As part of this evaluation, Audi had sled tests conducted on their behalf to evaluate the performance of the seats in the Audi A4.<sup>5</sup> Certain tests were performed on the Audi seats with a specific safety criteria, described by Audi as follows:

Two tests are performed. You can see this “either/or” criteria here in this sentence. If I cannot manage to achieve the tilt of the backrest below or equal to 20 degrees, which is a very ambitious target, this second criteria is used for evaluation.<sup>6</sup>

Testing revealed that the seats did not meet the first criteria.<sup>7</sup>

5.5 Before production of the Audi A4, Audi looked at this test and allegedly planned to test the seats under the second criteria.<sup>8</sup> Under the second criteria the seats would be tested with a rear-seat passenger in what is referred to as a “knee-bolster test.”<sup>9</sup> Audi believed that a person’s knees sitting in the back seat would support the front seat and protect the rear passenger from injury.<sup>10</sup> With this in mind, in Audi’s proposed second test, there would be a dummy in the back and the force acting on the dummy’s knees would be measured to see if it exceeded the maximum acceptable force of ten kilonewtons.<sup>11</sup> If the force acting on the dummy’s knees did not exceed ten kilonewtons,

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<sup>3</sup> Heiko Diederichs Deposition Transcript Vol. 1, 112:3-114:10.

<sup>4</sup> Heiko Diederichs Deposition Transcript Vol. 1, 111:21-112:6.

<sup>5</sup> Heiko Diederichs Deposition Transcript Vol. 1, 132:7-14; 133:13-134:1.

<sup>6</sup> Heiko Diederichs Deposition Transcript Vol. 1, 120:5-121:18; 167:5-24.

<sup>7</sup> Heiko Diederichs Deposition Transcript Vol. 1, 121:6-9; 167:5-24.

<sup>8</sup> Heiko Diederichs Deposition Transcript Vol. 1, 173:7-11; 174:19-23.

<sup>9</sup> Heiko Diederichs Deposition Transcript Vol. 1, 173:7-24; 174:19-23.

<sup>10</sup> Heiko Diederichs Deposition Transcript Vol. 1, 171:8-17.

<sup>11</sup> Heiko Diederichs Deposition Transcript Vol. 1, 172:10-17.

Audi would consider this a “pass”<sup>12</sup> of the two-part safety criteria test and have no concerns selling it to the “American public.”<sup>13</sup>

5.6 However, VW Audi’s expert in “[p]erformance of seat design” does not know of any other automotive manufacturer that utilizes dummies in this way to pass this type of test:

Q. Okay. And if it does that, if the dummy’s knees do that, then it can pass the test, correct?

A. Correct.

Q. Okay. Do you know of any other automotive manufacturer that utilizes dummies in this way to pass this type of test?

A. No.<sup>14</sup>

....

Q. You’ve been doing this for 45 years.

A. Yes.<sup>15</sup>

Significantly, however, Audi never performed a test like this knee bolster test prior to production of the Audi A4<sup>16</sup> or, at any point, with a child dummy in the back seat to see if the child’s knees would safely support the seat back.<sup>17</sup>

**A. VW Manufactured And Sold The Audi A4 Knowing of The Seat Back System Failure, The Risk of Injury to Occupants, And The Existence of Safer Alternative Designs.**

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<sup>12</sup> Heiko Diederichs Deposition Transcript Vol. 1, 121:4-18;

<sup>13</sup> Heiko Diederichs Deposition Transcript Vol. 1, 167:12-168:11 and 174:19-23.

<sup>14</sup> Blaisdell Deposition Transcript 239:1-7.

<sup>15</sup> Blaisdell Deposition Transcript 239:19-20.

<sup>16</sup> Diederichs Deposition Vol. II 30:1-19 and 82:13-83:21.

<sup>17</sup> Heiko Diederichs Deposition Transcript Vol. II 91:16-20.

5.7 Volkswagen Group of America, Inc. also sold the Audi A4.<sup>18</sup> VW Audi manufactured or sold the Audi A4 with a seatback system that would allow the seatback to move rearward in a rear impact and the front seat occupant would ramp up the seat and intrude into the area occupied by the rear occupant. Their testing showed this occurrence:



Other automobile manufacturers' seatback systems would have contained front-seat occupants and thus, prevented this level of intrusion without relying on the knees of the rear-seat adult occupant. Safer alternative designs were available and in production before Audi manufactured and sold the Audi A4.

5.8 At the time the vehicle in question was sold, Audi was in the business of designing, manufacturing and selling vehicles such as the 2005 Audi Quattro. At all times pertinent to the occurrence made the basis of this lawsuit, Audi engaged in the business of designing, manufacturing, distributing and marketing automobiles to the

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<sup>18</sup> Volkswagen Group of America, Inc.'s "Response to Plaintiff Jesse Rivera's . . . Request for Admission," Response to Requests for Admissions No. 6.

general public throughout the United States, as well as within the state of Texas, through duly appointed retailers and distributors.

5.9 At the time the vehicle in question was designed, manufactured and sold by Audi, said vehicle was defective in design and unreasonably dangerous, in light of its utility and the risk involved in its use. The design defects include, but are not limited to, the vehicle's faulty seat and seat back system, which failed to perform safely during the accident sequence, allowing the driver to contact Jesse Rivera, Jr., thereby causing Jesse Rivera, Jr., severe, permanent and disabling injuries. The vehicle's seat and seat back system failed during the incident in question, which defective and unreasonably dangerous condition was a producing cause of the injuries and damages of Jesse Rivera, Jr.

5.10 At the time the vehicle in question was designed, manufactured and sold by Audi, the same was defective in design and unreasonably dangerous, with respect to the occupant restraint system, and its overall crashworthiness, which defective and unreasonably dangerous condition was a producing cause of the injuries to Jessie Rivera, Jr., and the physical pain and mental anguish he suffered. The vehicle in question was defective and unreasonably dangerous because safer, alternative designs existed at the time such vehicle was designed and manufactured, which would have prevented or significantly reduced the risk of injury without substantially impairing the product's utility, and that were economically and technologically feasible at the time the product left the control of Audi by the application of existing, or reasonably achievable, scientific knowledge.

5.11 Audi designed the seat and seat back, and occupant restraint system

utilized in the vehicles it manufactured, including the vehicle in question. The system consists of manual and passive components, which include items such as seats, seat back, sensors, modules, and seatbelts. At the time said vehicle was designed, manufactured and sold by Audi, the seat and seat back, and occupant restraint system was defective in design and unreasonably dangerous, which defective and unreasonably dangerous condition was a producing cause of the injuries and damages to Jesse Rivera, Jr.

5.12 Audi knew of the problems with the seat and seat back, and occupant restraint system in the vehicle in question and other Audi vehicles using the same or similar components. With this knowledge Audi chose to ignore those problems, and acted with conscious indifference and gross disregard to the public and Jesse Rivera, Jr.

5.13 The vehicle in question was defective and unreasonably dangerous because safer, alternative designs existed at the time this vehicle was designed and manufactured, which would have prevented, or significantly reduced, the risk of injury without substantially impairing the product's utility, and that were economically and technologically feasible at the time the product left the control of Audi by the application of existing, or reasonably achievable, scientific knowledge.

5.14 At the time of the incident, the vehicle was in substantially the same condition as it was at the time it was placed into the stream of commerce.

## **B. MANUFACTURING DEFECT**

5.15 At the time the vehicle in question was designed, manufactured, and sold by Audi, it contained manufacturing defects with regard to its seat and seat back system. These manufacturing defects were a producing cause of the injuries to Jesse Rivera, Jr.

5.16 “Under Texas law, a plaintiff has a manufacturing defect claim when a finished product deviates, in terms of its construction or quality, from the specifications or planned output in a manner that renders it unreasonably dangerous.” *Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 434 (Tex. 1997). This requirement distinguishes a manufacturing defect from a design defect. *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 42 (Tex. 2007). To prove a manufacturing defect, a plaintiff need not explain exactly how the defect came to exist in the product. *See Goodyear Tire & Rubber Co. v. Rios*, 143 S.W.3d 107, 111 (Tex. App.—San Antonio 2004, pet. denied) (“Strict liability does not require a specific showing of how a product became defective.”). Furthermore, neither direct evidence nor expert testimony is required to establish the existence of a manufacturing defect. *Id.*

5.17 Audi A4’s seat and seatback system deviated from Audi’s planned output. Audi’s seat specifications provide Audi’s stance on the role of controlled rearward deformation in rear occupant crash protection.<sup>19</sup> Heiko Diederichs, “a representative of Audi AG[,] who is an engineer and thus has expertise,” confirmed some of the Audi A4’s technical specifications for the seatback:

Q. Okay. Mr. Diederichs, let me show you what’s been marked as discovery Exhibit 16, it was discussed during your original deposition.

A. Yes.

Q. I understood those to be the Audi technical specifications?

A. Yes.<sup>20</sup>

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<sup>19</sup> Diederichs Deposition Vol. II 79:8-80:21; Diederichs Deposition Vol. I 16:18-17:5; 111:21-121:12; 124:15-16; 127:25-128:3; 129:8-11; 130:16-20; 131:7-13; 132:7-14; 133:15-134:1; 134:9-135:7; 137:15-25; 140:14-23; 151:15-20; 157:12-16; 167:9-17; 169:24-170:9; 173:7-11; Diederichs Deposition Vol. II 90:1-91:20.

<sup>20</sup> Diederichs Deposition Vol. II 79:8-15; Diederichs Deposition Vol. I 78:6-79:16 (“[I]t specifies all the requirements of Audi with respect to the seat.”).

....

Q. So do you understand that those are the technical specifications for our vehicle in our case?

A. It's the safe – those are the safety target specifications, yes.<sup>21</sup>

....

Q. To the extent there's an Audi specification on allowable seat back deformation in a test, would it be found in discovery Exhibit 16?

A. Yes, to the extent that it would be reflected in the degrees of angulation.<sup>22</sup>

Mr. Diederichs refers to the seat of the Audi A4 as the "Audi B7 seat."<sup>23</sup> Audi's specifications and planned output for the Audi B7 seat state:

The maximum dynamic deformation angle of the backrest may not exceed 20 degrees in relation to a torso angle set to 25 degrees, or the knee forces acting on a 50<sup>th</sup>-percentile, age-3 dummy sitting behind a 50<sup>th</sup>-percentile, age-3 dummy must not exceed ten kilonewtons. The backrest must not buckle.<sup>24</sup>

If that 20 degrees is exceeded, plastic deformation is permissible but it must not result in an additional risk of injury for the occupants. According to Audi, for the 95th percentile HIII dummy, gross deformation is allowed, but the seat must not impact the rear seat cross member. Audi's specifications and planned output reveals an appreciation for the importance of limiting dynamic rearward seat back deflection in order to reduce injury risk to both the seated occupant as well as those in the rear seat. But the Audi A4 did not meet these specifications or the planned output. Testing not only showed deformation that exceeded the 20 degrees, but it also resulted in an additional risk of injury for the

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<sup>21</sup> Diederichs Deposition Vol. II 80:2-6.

<sup>22</sup> Diederichs Deposition Vol. II 82:7-12.

<sup>23</sup> Diederichs Deposition Vol. I 16:11-17:5.

<sup>24</sup> Diederichs Deposition Vol. I 118:4-119:17.

occupants.

## C. NEGLIGENCE

5.18 Defendant VW Audi committed acts of omission and commission, which collectively and severally, constituted negligence, which negligence was a proximate cause of the serious and permanent injuries and damages suffered by Jesse Rivera, Jr.

5.19 Plaintiffs also allege negligence causes of action, but not a marketing product defect claim. Generally, strict products liability and negligence are separate causes of action with different elements. The Fifth Circuit and the Texas Supreme Court summarized the differences between product liability and negligence causes of action:

The care taken by the supplier of a product in its preparation, manufacture, or sale is not a consideration in strict liability; this is, however, the ultimate question in a negligence action. Strict liability looks at the product itself and determines if it is defective. Negligence looks at the act of the manufacturer and determines if it exercised ordinary care in design and production.

*Syrie v. Knoll Intern.*, 748 F.2d 304, 307-08 (5th Cir. 1984) (citing *Gonzales v. Caterpillar Tractor, Co.*, 571 S.W.2d 867, 871 (Tex. 1978)); see also *Garrett v. Hamilton Standard Controls, Inc.*, 850 F.2d 253, 256-57 (5th Cir. 1988). Thus, a negligence claim focuses on what the manufacturer knew rather than on the product.

5.20 VW Audi's conduct and knowledge of the seat failure and intrusion risk establish negligence. "[I]t is a negligence concept that permits the introduction of evidence on the care exercised in the manufacturer's selection of the design." *Syrie*, 748 F.2d at 308. The duty of ordinary care in the selection of the design and testing rests on common law negligence that a manufacturer of an article should use reasonable care in the design and manufacture of his product to eliminate any unreasonable risk of foreseeable

injury. As discussed above, the seat failure and intrusion risk have been known in the automotive industry for over twenty-five years. VW Audi, unlike any other manufacturer and seller of automobiles, developed safety criteria that would rely on the knees of the backseat occupant to prevent the intrusion risk. Audi, however, never ran this test prior to production of the Audi A4<sup>25</sup> or at any point, with the knees of a child dummy.<sup>26</sup> VW Audi not only knew of the intrusion risk, but also knew of the general recommendations to place children in the rear seat. At the time Audi placed the Audi A4 in the marketplace, it knew of the intrusion problem from the seatback collapse and the risk of injury and death to the most vulnerable group in our population, children. Audi's selection of this "safety criteria" and the use of a knee-bolster test to "pass" its safety criteria was a sham and a failure to exercise ordinary care.

5.21 Additionally, VW Audi failed to warn users and consumers that it purposefully designed its seats to collapse in a rear-impact collision knowingly allowing the front seat occupant to ramp up the seat and catastrophically collide with the most likely rear-seat occupant, a child. Generally, a manufacturer has a duty to warn if it "knows or should know of potential harm to a user because of the nature of its product." While VW Audi contends that it deliberately and proudly designed the front seats of the Audi A4 to collapse in a rear-impact collision, they do not warn users or consumers about the danger of placing children in the back seat.

5.22 The VW Audi defendant's failure to warn of a product's potential dangers when warnings are required is a failure to exercise ordinary care. VW Audi's failure to

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<sup>25</sup> Diederichs Deposition Vol. II 30:1-19 and 82:13-83:21.

<sup>26</sup> Diederichs Deposition Vol. II 89:20-91:20.

warn and mitigate the risk Audi AG created in designing the Audi A4's front seats to "yield" rearward and allow the occupant to ramp up the seat and eject towards the rear-seat occupant constitutes negligence.

#### **D. MALICE AND GROSS NEGLIGENCE**

5.23 As early as 2004, Audi performed testing to determine whether or not the seat in question was safe before the seat was incorporated into the vehicle and sold to the American Public. This included a test protocol pursuant to Federal Motor Vehicle Safety Standard 301. In these tests a vehicle is struck from behind at a speed that is intended to replicate a foreseeable accident. Crash test dummies are placed in the seats and the test is videotaped. Audi reviews the performance of the seats in the test to determine whether or not the test is a pass or a failure. A failure indicates that the seat is defective and reasonable engineering practice mandates that the seat be redesigned so that it is safe. During this testing, the front seats moved rearward in a manner that demonstrated an extreme degree of risk to both the seated occupants and any passengers in the back seat.

5.24 Audi has taken the position that there should not be more than 45 degrees of rearward seat movement in these tests. In addition, the movement, regardless of the number of degrees, cannot result in additional occupant injury. In one test, the driver's seat moved rearward approximately 60 degrees even though the dummy was anchored in place with straps. In another test the driver's seat moved rearward approximately 69 degrees and the passenger seat moved rearward approximately 70 degrees. These tests clearly demonstrate that anyone in the back seat of the vehicle would be at extreme risk of serious injury or death.

5.25 Audi viewed these tests before the vehicle was sold and had actual, subjective awareness of the risk involved, but nevertheless proceeded with production of the seat with conscious indifference to the rights, safety, and welfare of the Plaintiffs and the American Public.

5.26 With this knowledge Audi had a decision to make. This decision is the same corporate decision that Audi had with respect to their admitted manipulation of testing for their emission control devices. In particular, they could either redesign their seat or “change” the “testing” so that the seat would “pass.” In this case, like the emissions scandal, they chose the latter. After these test failures occurred, Audi ran another test. In this test they placed a crash test dummy in the back seat behind the driver with steel rods in its femurs. When the test was run, they utilized the “knees” of the dummy to keep the seat from moving rearward more than 45 degrees. The vehicle was then stamped “safe”, mass produced, and sold so that the flesh and bone of the back seat occupants could render the vehicle crashworthy. In a case like this, with a child in the back seat, there would be no such “protection.” Even experts for Audi admit that it is the only automotive manufacturer in the world that conducts this type of “testing.”

5.27 The Audi’s owner’s manual states that parents should “...make certain that all children, especially those 12 years and younger, always ride in the back seat properly restrained for their age and size” and “[t]he rear seat is generally the safest place in a collision.” Thus, Audi recommends that parents place their children in the back seat even though Audi knows the front seats will collapse on rear seat occupants.

5.28 Such conduct, like the emissions scandal, demonstrates a corporate

culture that puts profits over safety. While Audi saves time and money by rolling out a defective design, this comes at the expense of human life and the catastrophic injury to children such as Jessie Rivera, Jr.

## VI. NEGLIGENCE OF DEFENDANT GLORIA CORDOVA

Defendant, GLORIA CORDOVA, committed acts of omission and commission, which collectively and severally, constituted negligence, which negligence was a proximate cause of the collision made the basis of this suit, and of the injuries and damages to Jesse Rivera, Jr.

## VII. DAMAGES

A. **Jesse Rivera, Jr. Claim as to All defendants** - As a direct and proximate result of the collision and the aforesaid negligence of all Defendants, Plaintiffs, Jesse Rivera and Kathy Rivera, individually and as next friends of minor Plaintiff, Jesse Rivera, Jr., have incurred damages. Jesse and Kathy Rivera, as the parents and legal guardians of Jesse Rivera, Jr., have responsibility for past and future medical, rehabilitative, vocational and assistive living expenses that Jesse Jr., will need for his lifetime and for which his parents are financially responsible until the age of 18. To the extent Jesse Jr.'s parents are Plaintiffs in this case, it is for the fact they are financially responsible for caring for Jesse Jr. until he reaches age 18, and undoubtedly will continue to care for him as long as they live.

Furthermore, due to the severe nature of Jesse, Jr.'s, permanent and disabling traumatic brain injury, it is probable that Jesse Rivera, Jr., will never be competent to care for himself or live without assistance. As such, his parents' duty and responsibility to care for him will extend until the end of their lives. Damages Jesse Rivera, Jr., and his parents

have incurred include the following:

1. Reasonable and necessary medical expenses in the past for Jesse Rivera, Jr.;
2. Reasonable and necessary medical expenses which, in all reasonable probability, will be incurred in the future by Jesse Rivera, Jr.;
3. Physical pain suffered in the past by Jesse Rivera, Jr.;
4. Physical pain, which, in all reasonable probability, will be suffered in the future by Jesse Rivera, Jr.;
5. Mental anguish suffered in the past by Jesse Rivera, Jr.;
6. Mental anguish, which, in all reasonable probability, will be suffered in the future by Jesse Rivera, Jr.;
7. Physical impairment in the past of Jesse Rivera, Jr.;
8. Physical impairment which, in all reasonable probability, will be suffered in the future by Jesse Rivera, Jr.;
9. Lost wages in the past of Jesse Rivera, Jr.;
10. Loss of wage earning capacity which, in all reasonable probability, will be suffered in the future by Jesse Rivera, Jr.;
11. Disfigurement sustained in the past by Jesse Rivera, Jr.;
12. Disfigurement, which, in all reasonable probability, will be sustained in the future by Jesse Rivera, Jr.

#### **VIII. PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

Plaintiffs seek pre-judgment and post-judgment interest as allowed by law.

#### **IX. JURY DEMAND**

Plaintiffs have previously requested a trial by jury and have paid the requisite fee.

#### **X.**

Because of all of the above and foregoing, Plaintiffs have been damaged, and will

be damaged, in a sum deemed just and fair by the jury. Nearly all of the elements of damages for personal injury are unliquidated and, therefore, not subject to precise computation. Plaintiffs seek to recover damages in amounts the jury finds that the evidence supports and that the jury finds appropriate under all of the circumstances. The maximum amount of actual damages Plaintiffs seek to recover is not more than Two Hundred Million (200,000,000.00) dollars.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer herein, and that on final hearing of this cause, Plaintiffs have judgment against Defendants for actual and punitive damages, in a sum deemed just and fair by the jury, such sum being within the jurisdictional limits of this Court and in the amount identified in the immediately preceding paragraph; for costs of suit; for interest on the judgment; for pre-judgment interest; and for such other and further relief, in law or in equity, to which the Plaintiffs may show just entitlement.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record listed below, by ProDoc e-File and/or Certified Mail and/or U.S. mail and/or fax and/or any other appropriate method of service, on this the 26th day of January 2016.

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