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P.6

CAUSE NO. 2005-01510

AMY DE WEERD

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IN THE DISTRICT COURT

V.

HARRIS COUNTY TEXAS

MOTIVA ENTERPRISES, LLC,
SHELL OIL CO.,
SAUDI REFINING, INC.
EQUIVA SERVICES, LLC and
JOHN DOE

164TH JUDICIAL DISTRICT

FILED
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CHARLES B. CLERK
DISTRICT CLERK
HARRIS COUNTY, TEXAS
2006 DEC 11 PM 4:38
BY 12-11-06 DEPUTY

PLAINTIFF'S SECOND AMENDED PETITION

COMES NOW, AMY DE WEERD, Plaintiff herein, and for cause of action respectfully show:

STATEMENT OF FACTS APPLICABLE TO ALL COUNTS

1. Plaintiff herein intends to conduct discovery under a LEVEL THREE (III) DISCOVERY CONTROL PLAN.
2. Defendant, MOTIVA ENTERPRISES, LLC is a Delaware limited liability corporation believed to be a joint venture between Defendant Shell Oil Co. and Defendant Saudi Refining, Inc. and duly appeared and answered herein
3. Defendant SHELL OIL CO. is a Delaware corporation and duly appeared and answered herein
4. Defendant SAUDI REFINING, INC. is a Delaware corporation and duly appeared and answered herein.
5. Defendant EQUIVA SERVICES, LLC is a terminated Delaware limited liability corporation who may be served with process by serving their registered agent for service CT Corporation System at 350 N. St Paul Street, Dallas, Texas 75201.
6. Defendant John Doe is any other person or entity who owns, manages or control the business or premises in question during the relevant time all as more fully shown below. Defendants answered this lawsuit within an allegation that the Plaintiff's injuries were caused by another person or entity over which they had no control. However, they fail to state who such entity or person they refer to. Thus, in the event the business or premises in question was during the relevant time owned, managed or controlled by

such other, Plaintiff brings her suit against this unnamed person or entity before the statute of limitations runs.

7. Plaintiff Amy de Weerd is an individual and a resident of Harris County, Texas. Further, this cause of action accrued within Harris County, Texas. Thus, venue is proper in Harris County pursuant to Civ.Prac.Rem. Code § 15.002(a)(1).
8. On or about March 11, 2003 Plaintiff went to Defendants' Shell gas station in Kingwood, Texas to purchase gas for her vehicle. Plaintiff inserted the self-serve gasoline pump nozzle into her vehicle and placed the pump on automatic. However, the automatic shut off feature failed to stop the gasoline's flow. The gasoline continued to pump out severely dosing Plaintiff with gasoline. Further, Defendants' employees and or agents were not equipped with the necessary and proper equipment and supplies to treat Plaintiff's gasoline exposure. This gasoline exposure proximately caused immediate and severe damages and injuries to Plaintiff including but not necessarily limited to general damages as allowed by law, past and future necessary and reasonable medical expenses, lost earnings and diminished future earning capacity, and to Plaintiff permanent and disabling injury.

REQUEST FOR DISCLOSURE

Plaintiff herein request that the defendants provide all the information contained in Tex.R.Civ.P. 194(2) within fifty days of service of this suit.

COUNT ONE

For Negligence and Gross negligence cause of action against Defendants, Plaintiff alleges as follows:

1. Plaintiff hereby adopts and realleges each and every Paragraph of the Statement of Facts Applicable To All Counts as if fully copied and set forth at length herein.
2. Defendants owed to Plaintiff a duty in the exercise of ordinary and reasonable care to manage and operate the gasoline station in question in a careful and prudent manner.
3. Defendants breached the above mentioned duties by failing to exercise ordinary and reasonable care while managing and operating the gasoline station in question.

4. Defendants' negligent, careless, and reckless acts and or omission caused which proximately caused Plaintiff's resulting losses and damages include but are not necessarily limited to the following:
 - a. Defendants failed to properly maintain the gas pump in question;
 - b. Defendants failed to properly train the employees and or agent that manage and operate the gas station in question;
 - c. Defendants failed to properly supervise the employees and or agents that manage and operate the gas station in question;
 - d. Defendants failed to possess the necessary safety equipment and supplies to treat gasoline exposure;
 - e. Defendants' employees and or agents that manage and operate the gas station in question failed to turn of the gas pump in a reasonable amount of time;
 - f. Defendants failed to maintain a proper emergency shut off valve on the gas pump in question;
 - g. Defendants failed to keep a proper lookout over their gas pumps;
 - h. Defendants failed to warn Plaintiff of the dangers of using the automatic shut off feature gas pump in question;
 - i. Allowed an unreasonably dangerous condition to remain on their premises in that they offered the use of an automatic shut off feature that did not function;
 - j. Failed to properly and reasonably inspect their gasoline pumps and associated hardware;
 - k. In some other manner yet unknown to Plaintiff.
5. Each of the aforementioned negligent acts and or omissions constituted either singularly or taken in combination a proximate cause of Plaintiff's losses and damages including but not necessarily limited to general damages as allowed by law, past and future necessary and reasonable medical expenses, lost earnings and diminished future earning capacity; and to Plaintiff permanent and disabling injury.
6. Defendants' negligent acts and or omissions illustrate a conscious disregard for the rights of the Plaintiff. In particular the Defendants acted maliciously and or recklessly and therefore should be treated as gross negligence and Plaintiff requests that the court award to her exemplary damages in an amount that exceeds the minimum jurisdictional limits of this court.
7. Lastly, to the extent Defendants' employees and or agents negligently caused Plaintiff's damages Defendants are liable for their employees or

agent's negligent acts and or omissions under the applicable theory of respondeat superior and or agency and principal.

COUNT TWO

For Breach of Implied Warranty cause of action against Defendants, Plaintiff alleges as follows:

1. Plaintiff hereby adopts and realleges each and every Paragraph of the Statement of Facts Applicable To All Counts as if fully copied and set forth at length herein.
2. Defendants sold gasoline through a self-service gas pump at the station in question and Plaintiff at the time in question bought gasoline from Defendants through their self-service pump.
3. Defendants at all times relevant had reason to know that Plaintiff would use their self-service gasoline pumps to purchase their gasoline and Plaintiff relied on Defendants' skill and judgment in providing self-serve gasoline pumps in which to purchase their gasoline.
4. Defendants' breached the implied warranty of fitness for a particular purpose and merchantability, i.e. the automatic shut off feature on the pump in question, although offered for use, did not function, or in some other manner yet unknown to Plaintiff.
5. Plaintiff suffered personal injury as a result of Defendants' breach as more fully detailed above.

COUNT THREE

For Deceptive Trade Practices Act (DTPA) cause of action against Defendants, Plaintiff alleges as follows:

1. Plaintiff hereby adopts and realleges each and every Paragraph of the Statement of Facts Applicable To All Counts as if fully copied and set forth at length herein.
2. The above breach of implied warranty, among others, as plead above constitutes a violation under DTPA, Tex.Bus.&Com. Code §17.50(a)(2) under which Plaintiff brings claim.
3. Defendants' above mentioned breach of implied warranty was a producing cause of Plaintiff's damages.

4. Lastly, notice under the DPTA, Tex.Bus.&Com. Code §17.505(a)(2), is impracticable due to the upcoming statute of limitations.

COUNT FOUR

For Products Liability – Marketing Defect cause of action against Defendants, Plaintiff alleges as follows:

1. Plaintiff hereby adopts and realleges each and every Paragraph of the Statement of Facts Applicable To All Counts as if fully copied and set forth at length herein.
2. Plaintiff pleads that use of the Defendants' gasoline pump in general and in particular the automatic pump / shut off feature carried the inherent risk of harm in its intended use, i.e. exposing customers to gasoline. Further, Defendants knew or could reasonably foresee this risk.
3. Next, the pump that Plaintiff used contained a defect in that the automatic shut off feature did not function as customary and expected.
4. Defendants' failure to warn Plaintiff of the defect in issue proximately caused her to suffer the losses and damages as more fully plead above.

WHEREFORE PREMISES CONSIDERED Plaintiff prays that the Defendants be cited to appear and answer for all causes asserted herein, and that upon final trial the Court award her:

1. Judgment for losses and damages as set forth above;
2. Pre-judgment interest;
3. Post-judgment interest;
4. Costs of Court;
5. Additional damages;
6. Attorney's fees;
7. Exemplary damages;
8. Other and such further relief that Plaintiff may be entitled both in equity and in law.

Respectfully submitted,

J.W. Stringer
11811 North Freeway, Suite 500
Houston, Texas 77060
281 591 4770
Fax 281 591 4771
State Bar No. 00788487

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that the foregoing pleading was served in accordance with T.R.Civ.P. 21 on the _____ day of _____, 2006.

J.W. STRINGER

Unofficial Copy Office of Chris Daniel District Clerk