

automatic when suddenly and unexpectedly the pump nozzle shot up out of the car. 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 ailed 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 self-serve gas pump in question;
 - i. 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. Defendant 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. Defendant's breached the implied warranty of fitness for a particular purpose and merchantability, i.e. the self-service gasoline pump was not fit for the purchase of their gasoline in that its volume was too heavy such that it caused the pump nozzle to expel from Plaintiff's vehicle, 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.

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,



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State Bar No. 00788487

Attorney for Plaintiff

Unofficial Copy Office of Chris Daniel District Clerk



COUNTY AUDITOR'S FORM 9999A
HARRIS COUNTY, TEXAS (REV. 10/99)

OFFICIAL RECEIPT

2 NO 215478

CHARLES BACARISSE DISTRICT CLERK

ACTION: DTPA-DECEPTIVE TRADE PRAC CASE: C-200501510 TRANS NO: 7069934 COURT: 164
STYLE PLT: DE WEERED, AMY

DEP: MOTIVA ENTERPRISES LLC (DELAWARE LIMITED LIABILITY

FEE	DESCRIPTION	QTY	AMOUNT	PAYMENT 1	CHECK	4772	
100	FILING NEW CASE	1	50.00	PAYMENT 2			184.00
121	CITATION WITH 1 COPY	3	24.00				
195	SECURITY SERVICE FEE	1	5.00	AMOUNT TENDERED:			-----
198	DC RECORDS PRESERVAT	1	5.00	TOTAL AMOUNT:			184.00
199	RECORD PRESERVATION	1	5.00	AMOUNT APPLIED:			184.00
450	JUDICIAL FILING FEE	1	40.00				184.00
452	LEGAL SRVC FEE-CIVIL	1	10.00	CHANGE:			
475	LAW LIBRARY	1	15.00				.00
525	STENO FEE	1	15.00	RECEIVED STRINGER, JAMES W.			
601	DISPUTE RESOLUTION F	1	10.00	OF 11811 N FRWY STE 500			(00788487)
775	APPELLANT JUDICIAL F	1	5.00	HOUSTON, TX 77060			

ONE HUNDRED EIGHTY-FOUR DOLLARS AND 0/100***** DOLLARS
PAYMENT DATE: 01/07/2005 FILE DATE: 01/07/2005

ASSESSED BY: VAZQUEZ, ARGENTINA
VALIDATED 01/10/2005 BY: CARLTON, SHARON JANE

