

Form: Plaintiff's original petition-Wrongful Death

PREVIEW

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

1. DISCOVERY CONTROL PLAN

1.1 Plaintiff requests a Level [1, 2 or 3] discovery plan.

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2. PARTIES

2.1 Plaintiff, [Name] is an individual who resides in [Address] Texas. Plaintiff brings this suit on behalf of the Estate of [Name of decedent], an [adult or minor] now deceased.

2.2 Defendant, [select the appropriate clause]

Individual Defendant:

[Name], is an individual who resides in [City] [County] County, Texas and may be served with Citation at [his or her] residence, located at [Address], or at [his or her] business, located at [Address].

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Texas Corporate Defendant:

Defendant [Name] is a Texas corporation purportedly duly organized under the laws of Texas, and may be served with process by serving its registered agent, [Name], at the corporation's registered address, [Address].

Texas Limited Liability Company Defendant:

Defendant [Name] is a Texas Limited Liability Company purportedly duly organized under the laws of Texas, and may be served with process by serving its registered agent or managing partner, [Name], at the company's registered address, [Address].

THANK YOU

Foreign Corporation Defendant- Long Arm Statute Service

Defendant [Name] is a foreign corporation, nonresident of Texas, which has no Certificate of Authority for doing business in the state of Texas.

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Although [Name] engages in business in Texas, no agent has been designated for service of citation, and it has no regular place of business in Texas.

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As set forth in this petition, [Name] [described business done in Texas]. Because this lawsuit arises out of [Name]'s purposeful acts in Texas, the assumption of jurisdiction by this Court does not offend traditional notions of fair play and substantial justice. Pursuant to Tex. Rev. Civ. Stat Ann. art.17.044(a) & (b) (Vernon 1987), service of citation on [Name] may be accomplished by serving the Secretary of State of Texas who will forward such citation by certified mail, return receipt requested, to [Name] at [Name's mailing address use registered agent at home state].

Foreign Individual Defendant- Long Arm Statute Service

Defendant [Name] is a nonresident who engages in business in Texas. This defendant does not maintain a regular place of business in Texas, nor a designated agent for service of process.

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This lawsuit, in which [Name] is a party, arises out of the business done by [Name] in Texas. For these reasons, citation should be served on the Secretary of State of Texas under Tex. Civ. Prac. & Rem Code §17.044(b) (Vernon 1987).

A copy of the citation and petition should be mailed by the Secretary of State to this defendant at [Name's mailing address].

Limited Partnership Defendant

Defendant [Name] is a limited partnership chartered and existing under the laws of [state: i.e. Texas], and may be served with process by serving one of its general partners, [Name] at [Address] and may be served by serving another general partner, [Name] at [Address].

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3. NATURE OF SUIT

3.1 This is an action for damages instituted by [plaintiff(s)'s Name], wife of [Name of decedent], deceased, referred to in this Petition as decedent. Plaintiff is a beneficiary entitled to bring this action.

3.2 This is further an action for damages, instituted by [plaintiff(s)'s Name], individually and on behalf of the estate of [Name of decedent], deceased, for the wrongful death of her husband and brought pursuant to the Texas Wrongful Death and Survival Statute. Plaintiff(s) states that no administration has been established for the estate of the deceased, and no administration is necessary.

THANK YOU

4. VENUE

4.1 The subject matter of this suit arose in [Name] County. The Defendant resides in said county and Plaintiff maintains a place of business and does business in said County. Accordingly venue is proper in [Name] County, Texas.

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5.1 On or about _____ at approximately [Time] o'clock .m., decedent, a pedestrian, attempted to cross an intersection near [Address or description of landmark] in [County] County, Texas. As the decedent attempted to cross the road, Defendant(s) [Name of driver defendant(s)] violently struck decedent with the automobile [[he or she]] was driving.

5.2 Decedent was, at all times material to this Petition, exercising due care for personal safety. Decedent checked approaching traffic from all directions before proceeding to cross the street. Plaintiff(s) believes the decedent was or should have been readily visible to any oncoming vehicles.

5.3 Defendant(s) [Name of driver defendant(s)], at the time and on the occasion of the occurrence in question, was operating the vehicle that struck the decedent with a total disregard for the rights and safety of others.

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5.4 Defendant(s) [Name of owner defendant(s)], at the time and on the occasion of the occurrence in question, was the registered owner of the vehicle. Defendant(s) [Name of owner defendant(s)] negligently entrusted the vehicle to Defendant(s) [Name of driver defendant(s)], with a total disregard for the rights and safety of others.

6. DEFENDANT(S)'S UNLAWFUL CONDUCT

6.1 Defendant(s) [Name of driver defendant(s)] is liable to Plaintiff(s), because of [his or her] negligence, including but not limited to:

a. failing to see, such a look out for other vehicles as would have been done by an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of ordinary care, acting in the same or similar circumstances;

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b. operating the vehicle at a rate of speed in excess of that at which an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of ordinary care, acting in the same or similar circumstances would have operated the vehicle;

c. failing to apply the brakes as would have been done by an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of ordinary care, acting in the same or similar circumstances and in such a manner as to exhibit conscious indifference to the rights, welfare and safety of the decedent;

THANK YOU

d. failing to give any audible signal of the approach of the automobile, such as the application of the automobile's horn, as would have been done by an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of ordinary care, acting in the same or similar circumstances, in such a manner as to exhibit a conscious indifference to the rights, welfare and safety of the decedent;

e. failing to maintain proper control of the vehicle as would have been done by an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of

ordinary care, acting in the same or similar circumstances, and in failing to allow time to stop or swerve the vehicle and avoid the fatal collision with the decedent in such a manner as to exhibit a conscious indifference to the rights, welfare or safety of decedent;

f. placing decedent, by failing to exercise due care and the ordinary prudence of a person of [his or her] maturity and capacity, in a position of peril prior to being struck down by Defendant(s); and, after discovering decedent's peril, failing to realize that decedent could not escape from the peril and failing to exercise that care in the use of all of the means of [his or her] command to aid decedent as would have been done by an ordinary prudent person of [his or her] maturity and capacity, acting in the same or similar circumstances, thereby fatally striking decedent with [his or her] vehicle;

g. failing to stop and render assistance or seek assistance after violently striking decedent with [his or her] vehicle, as would have been done by an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of ordinary care, acting in the same or similar circumstances, thereby exhibiting a conscious indifference to the rights, welfare, or safety of the decedent;

h. each of these acts and omissions, singly or in combination with others, constituted negligence that proximately caused the violent collision and the massive injuries that decedent suffered and which consequently caused his untimely death.

6.2 Defendant(s) [Name of owner defendant(s)] is liable to Plaintiff(s), because the actions complained of herein, including but not limited to the following:

a. failing to ascertain the degree of care with which Defendant(s) [Name of driver defendant(s)] would operate Defendant(s)'s vehicle, as would have been done by an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of ordinary care, acting in the same or similar circumstances, thereby exhibiting a conscious indifference to the rights, welfare, and safety of others;

b. failing to have the vehicle under proper custody and control, as would have been done by an ordinary prudent person of the same age, experience, intelligence, and capacity, in the exercise of ordinary care, acting in the same or similar circumstances, thereby exhibiting a conscious indifference to the rights, welfare, and safety of others;

c. failing to exercise due care in entrusting the vehicle to the custody and operation of Defendant(s) [Name of defendant(s) driver], whose negligent operation of the vehicle was the proximate cause of the violent collision between the vehicle and decedent. Each of these acts and omissions, singly or in combination with others, constituted negligence which contributed to the violent collision between the vehicle and decedent and the resulting massive injuries and untimely death of decedent.

[Alternative claims]

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[List alternative theories and claims, select the paragraphs that apply if any]

Course and Scope of Employment

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6.1 On or about [date] which was the date of the incident which caused plaintiff's injuries, [name] defendant was acting in the course and scope of his or her employment and/or an agent or servant for and on behalf of [Employer's Name]. Accordingly, [Employer's Name]. is liable for [name] defendant actions and plaintiff's damages.

Gross Negligence:

6.2 At the time the of the incident complained of herein, [name] defendant [state the acts that were gross negligence, i.e.

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- a. Driving with a suspended driver license.
- b. Driving under the influence of drugs or alcohol (intoxicated)
- c. In willfully and wantonly operating the motor vehicle at an excessive rate of speed or traveling at a regular at a greater rate of speed than a person of ordinary prudence under the same or similar circumstances, without regard for the rights and safety of others;
- d. In willfully and wantonly failing to maintain proper control of the motor vehicle, without regard for the rights and safety of others;
- e. In recklessly driving a vehicle in willful or wanton disregard for the safety of persons or property.
- f. In willfully and wantonly following too closely, without regard for the rights and safety of others.
- g. In willfully and wantonly driving a vehicle without a valid driver license without regard for the rights and safety of others

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Plaintiff(s) would show that Defendant(s)' conduct constitutes a reckless disregard for the rights of others and /or was the result of conscious indifference to the rights, welfare and safety of others. Accordingly [name] defendant was grossly negligent and such gross negligence was a proximate cause of Plaintiff's damages. Plaintiff is therefore entitled to recover punitive damages from [name] defendant in the amount of \$[Amount of Damages].

Pleading for negligent of entrustment

Plaintiff(s) would show that at the time of the incident made the basis of this suit, [Defendant Driver's Name], was driving a motor vehicle owned by [Owner of the vehicle], that said Defendant, knew or had reason to know that to [Defendant Driver's Name], with the operation of a motor vehicle was negligent.

THANK YOU

Plaintiff would further show that by [Owner of the vehicle], knew or should have known that [Defendant Driver's Name], was not a prudent driver; and that by giving permission to [[he or she]] to operate the vehicle, constitutes negligent entrustment of a motor vehicle, and that such entrustment constitutes not only negligence but negligence per se.

Plaintiff would further show that [Defendant Driver's Name] proximately caused the collision in which Plaintiff sustained [his or her] injuries.

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Under or Uninsured Motorist

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At the time the of the incident complained of herein, [Defendant's name] was an uninsured motorist and was operating an uninsured motor vehicle, as that term is defined in Plaintiff's policy of insurance.

At that time, Plaintiff was insured by [Defendant Insurance Company's name] under policy number [Policy Number].

Plaintiff has timely and properly notified [Defendant Insurance Company's name] and [Defendant's name that cause the collision] of the collision.

Plaintiff has fully complied with all of the conditions of the insurance policy prior to filing this suit. Accordingly, all conditions precedent have been performed.

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Plaintiff has also presented [their/his/her] claim to [Defendant Insurance Company's name] more than thirty days prior to filing this petition. [Defendant Insurance Company's name] has failed and refused, and still fails and refuses to pay Plaintiff the uninsured or underinsured benefits under Plaintiff's policy as [Defendant Insurance Company's name] is contractually and legally obligated to do.

Plaintiff therefore sues for the [uninsured or underinsured] motorist benefits, reasonable attorney's fees, and prejudgment interest.

7. DAMAGES TO DECEDENT

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7.1 As a direct and proximate result of Defendant(s)'s negligence, decedent suffered massive injuries to the head, neck, back and other parts of his body, including a severely fractured skull. Decedent's entire body was bruised, battered, and lacerated, and decedent suffered extreme shock to his entire nervous system as a direct result of being struck and thrown approximately [Distance] feet by Defendant(s)'s automobile.

7.2 As a proximate result of this violent collision and the serious and massive injuries inflicted upon decedent by the negligence and extremely careless, willful, and malicious actions of the Defendant(s) as described above, decedent was declared dead upon arrival at the closest hospital to the scene of the injury.

THANK YOU

8. DAMAGES TO PLAINTIFF(S)

8.1 Defendant(s) are liable jointly and severally to Plaintiff(s) individually and on behalf of the Estate of [Name of decedent], for the following injuries and damages suffered by them:

a. At the time of his death, decedent was [Decedent Age] years of age. He was in excellent health, with a reasonable life expectancy of [life expectancy] years. Prior to his untimely death, decedent was earning approximately \$[Earnings] annually and reasonably expected increases in earnings of at least ten percent (10%) per year until retirement. During his lifetime,

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decendent performed numerous and usual tasks in and about the family residence, and gave advise, counsel, comfort, care, love and protection to his spouse, and supported his spouse. In all reasonable probability, he would have continued to provide for his spouse's support for the remainder of her natural life, but for the negligent conduct of the Defendant(s), which has deprived decendent the opportunity to do so, and Plaintiff(s) of the resulting benefit.

b. As a result of the untimely and unfortunate death of decendent, Plaintiff(s) has suffered mental anguish and lost financial and moral support, care, advice, attention, comfort, counsel, inheritance and love and affection as above described, all to the damage of Plaintiff(s) for a sum in excess of the minimum jurisdictional limits of the Court.

c. Plaintiff(s), would further show that \$ ____ would be reasonable compensation for the Decendent's pain and suffering, funeral expenses and loss of enjoyment of life.

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8.2 Plaintiff(s) has reason to believe that Defendant(s) acted with malicious intent towards decendent or exhibited gross negligence and/or conscious disregard for the rights, welfare and safety of decendent. Thus, Plaintiff(s) seeks exemplary damages in such an amount as may be found to be proper under the facts or the circumstances.

8.3 Plaintiff(s), individually and on behalf of the Estate of [Name of decendent], alleges damages far in excess of the minimum jurisdiction of the Court and specifically reserves the right to plead the damages with particularity when the damages are more fully known to her.

PRAYER

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Plaintiff(s) pray that Defendant(s) be and be cited to appear and answer this Petition, and that on final trial of the action, Plaintiff(s) have judgment of the Court as follows:

1. Damages for loss of financial support due to the untimely and wrongful death of her spouse in the just amount of \$ (years of income production times \$[Annual Income] per year), or such higher sum as the Court or Jury shall deem proper against Defendant(s) jointly and severally;

2. Damages for loss of value of work and other services performed on behalf of Plaintiff(s) by decendent, which Plaintiff(s) will now be required to find another to perform, in a just amount as the Court or Jury determines;

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3. Damages for loss of emotional support, society, care, advice, attention, comfort, counsel, love and affection, all of which Plaintiff(s) has been denied due to the untimely, unfortunate, and wrongful death of her spouse, in a just amount as the Court or Jury determines;

4. Damages proved at the time of trial for the reasonable costs of funeral and burial expenses which Plaintiff(s) was required to pay as a result of decendent's death;

5. Exemplary damages in such an amount as may be found proper and just under the facts and circumstances of this case, as determined by the Court or Jury;

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6. Costs of this lawsuit as proved at the time of trial;
7. Pre-judgment and post-judgment interest on judgment; and
8. Such other and further relief, both general and special, at law and in equity, to which Plaintiff(s) is entitled.

PREVIEW

Respectfully Submitted,

[Law Firm Name]

By _____

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[Attorney's Name]

Attorney for Plaintiff
[Attorney's Address]
[Telephone Number]
[Facsimile Number]
[Bar Card Number]

THIS DOCUMENT

THANK YOU

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