

CAUSE NO. CC-21-00138-E

JOSE REFUGIO TAPIA-SILVA,  
*PLAINTIFF*

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IN THE COUNTY COURT

VS.

AT LAW NO. 5

PERFORMANCE SPRAY FOAM, INC.,  
*DEFENDANT*

DALLAS COUNTY, TEXAS

**PLAINTIFF'S FIRST AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Jose Refugio Tapia-Silva (hereinafter referred to as by name or as "Plaintiff"), complaining of and against Performance Spray Foam, Inc., (hereinafter referred to as by name or as "Defendant"), and for cause will show unto this honorable Court the following:

**I.**

**DISCOVERY CONTROL PLAN**

1. Plaintiff's claims are to be controlled by Discovery Plan III, pursuant to Tex. R. Civ. P. 190.4.

**II.**

**RELIEF**

2. Plaintiff seeks monetary relief in excess of \$250,000, but under \$1,000,000.00.

**III.**

**JURISDICTION AND VENUE**

3. The amount in controversy far exceeds this Court's minimum jurisdictional amount.

4. All or a substantial part of the acts or omissions giving rise to this claim occurred in Dallas County; therefore, venue is proper in Dallas County pursuant to C.P.R.C. § 15.002(a)(1).

**IV.**

**JURY DEMAND**

5. Plaintiff respectfully requests that a jury be convened to try the factual issues of this case.

**V.**  
**PARTIES**

6. Plaintiff is a resident of Dallas County, Texas.

7. Defendant Performance Spray Foam, Inc. (hereafter “Defendant Performance Spray”).  
Defendant has been served and has answered.

8. Whenever in this petition it is alleged that a Defendant committed any act or omission, it is meant that the Defendant’s officers, directors, vice-principals, agents, servants, and/or employees committed such act or omission and that, at the time such act or omission was committed, it was done with the full authorization, ratification, or approval of that Defendant or was done in the routine and normal course and scope of employment of that Defendant’s officers, directors, vice-principals, agents, servants, and/or employees. Accordingly, Defendant had actual knowledge of all adverse actions and conduct against Plaintiff through Defendant’s respective officers, directors, vice-principals, agents, servants, and/or employees.

**VI.**  
**CAUSE OF ACTION**

9. Plaintiff Tapia-Silva will show the Court that, on or about April 15, 2020, under all relevant times, Plaintiff was working at 10228 Woodford Drive, Dallas, Texas 75229, hereinafter “job site,” in the construction of a residential building when Plaintiff suffered on the job injuries. Plaintiff was a licensee working as an electrician installing electrical wires in the attic when he unknowingly stepped on an attic access hole that had been covered with a piece of plastic causing Plaintiff to fall about 10 feet unto the cement floor and suffer injuries. Plaintiff was in his professional trade’s course and scope of employment unrelated to insulation in the same area of Defendant’s professional trade in their course and scope of employment.

10. As a direct and proximate result of the above acts and/or omissions, singularly and/or combined, Plaintiff sustained painful injuries and has had to endure suffering, mental anguish, and emotional pain as a consequence of his inability to work and provide for himself.

11. Defendant created a hidden hazard in the shared work area and failed to place barriers, warning signs, and/or barricades. Defendant owed an additional duty to warn others of the danger Defendants created in the shared workspace but failed to do so resulting in Plaintiff's injuries and damages. It was the Defendant's negligence and gross negligence that proximately caused Plaintiff's injuries and damages.

**VII.**  
**NEGLIGENCE OF DEFENDANT**

12. Defendant's acts or omissions constituted negligence and/or gross negligence in following acts of negligence, to wit:

- a. In creating a hidden hazard;
- b. In failing to place warning signs, barricades, or barriers warning others working near or around the shared work area of the hidden hazard;
- c. In failing to take measures to reasonably necessary to warn licensees, including Plaintiff, from the hidden hazard;
- d. In acting with disregard for the safety and welfare of licensees, specifically including Plaintiff;
- e. In failing to use due care to avoid injury to others working near or around the shared workspace, including Plaintiff;
- f. In failing to provide adequate supervision to its employees, agents, and/or workers; and
- g. In failing to act as a reasonably prudent person would have done under the same or similar circumstances.

13. As a direct and proximate result of these and other acts and omissions, whether taken singularly or in any combination, Plaintiff suffered injuries and damages. Defendant and their

respective agents, servants, and employees also were negligent by failing to follow the minimum industry standards in one or more of the following, specifically including, but not limited to, the following:

- a. In failing to instruct its licensees in the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment to control or eliminate any hazards or other exposure to injury, as required by 29 C.F.R. § 1926.21(b)(2);
- b. In failing to require its licensees to wear the appropriate protection when exposed to hazardous conditions, as required by 29 C.F.R. § 1910.138(a);
- c. In failing to provide its licensees with the appropriate protection relative to the tasks to be performed, the conditions present, the duration of use, and the hazards and potential hazards, as required by 29 C.F.R. § 1910.138(b);
- d. In failing to initiate and maintain a safety program, which provides for frequent and regular inspections of the job site, materials, and equipment used there to be made by a competent person to address potential safety and health hazards, as required by 29 C.F.R. §1926.20(b)(1) and (2); and
- e. In failing to comply with the applicable OSHA standards and thereby ignoring the cumulative wisdom of the construction industry on which work conditions or procedures are unsafe.

14. The acts and omissions listed above demonstrate Defendant's reckless disregard for other licensees working near or around the shared workspace. Furthermore, it is Plaintiff's belief that Defendant at all relevant times knew of the improperly secured access hole. Therefore, the conduct of Defendant solely and proximately caused the occurrence that made the basis of this cause and Plaintiff's injuries and damages.

#### **VIII. PREMISES LIABILITY**

15. Plaintiff alleges, in the alternative, that Defendant was the owner and/or in possession of the premises where Plaintiff's incident forming the basis of this cause occurred. Plaintiff and Defendant shared workspaces with Defendant's knowledge. Specifically, Plaintiff was a licensee

acting reasonably on the job site shared with Defendant. The conduct of Defendant, by creating a hidden danger and failing to warn other licensees, such as Plaintiff, was the proximate cause of Plaintiff's damages in the following acts of negligence, to wit:

- a. In creating a hidden hazard in the shared workspace;
- b. In failing to place warning signs, barricades, and/or barriers near or around the hidden hazard and thereby protect other licensees, such as Plaintiff;
- c. In failing to provide a safe area for its licensees in order to avoid injuries;
- d. In failing to provide all appropriate equipment which is standard and to take other reasonably necessary measures to help ensure that Plaintiff, and other licensees would not experience any foreseeable injuries on the premises;
- e. In failing to take any steps to ensure a safe environment and/or safe conditions for licensees on the premises, such as Plaintiff;
- f. In failing to suspend operations on the premises until the hazardous condition no longer existed;
- g. In failing to ensure compliance with the safety policies and procedure, if any; and
- h. In failing to timely observe and inspect the work-related project in order to correct any unsafe practice or condition and thereby protect its licensees, such as Plaintiff.

16. In the alternative, it is Plaintiff's belief that Defendant at all relevant times had care and control of the premises for safety and security purposes but failed to keep him safe. The work site on the premises presented a dangerous condition which posed an unreasonable risk of harm to licensees, including Plaintiff. Defendant knew or reasonably should have known of the dangerous condition. Defendant had a duty to use ordinary care to ensure that the premises did not present a danger to licensees, including Plaintiff. This duty includes the duty to inspect and the duty to warn or to cure. Defendant breached the duty of ordinary care, by proof of Plaintiff injuries. Defendant further failed to warn Plaintiff of the dangerous conditions of the site. Defendant's breach of duty proximately caused Plaintiff's injuries and damages complained of herein.

**X.**  
**DAMAGES**

17. As a direct and proximate result of the negligent conduct of Defendant, Plaintiff suffered severe injuries. Consequently, Plaintiff required immediate and lasting medical attention, and has been subjected to extensive therapy and in all reasonable medical probability, will require surgery in the future. In addition, since the incident, Plaintiff has suffered from severe pain and suffering never experienced prior to the accident.

18. Moreover, as a consequence Defendant's negligent acts and/or omissions, Plaintiff suffered physical impairment, permanent disfigurement, lost wages, loss of earning capacity, as well as severe physical and mental pain, suffering, and mental anguish. In all reasonable probability, Plaintiff will continue to suffer in this manner for a long time into the future, if not for the balance of his natural life.

19. Solely as a result of the injury, Plaintiff required surgery and has incurred reasonable and customary doctors', pharmacy, and medical expenses for necessary medical treatment. There is more than reasonable probability that Plaintiff will incur additional reasonable expenses for necessary medical care and attention in the future. By reason of the foregoing injury and damages, Plaintiff sustained damages far in excess of the minimum jurisdictional limits of the Court.

**XI.**  
**EXEMPLARY DAMAGES**

20. Defendant's conduct entitles Plaintiff to recover exemplary damages under section 41.003 of the Texas Civil Practice and Remedies Code. Plaintiff seeks recovery of exemplary damages for harm that was the direct result of Defendant's gross negligence. Defendant's acts and omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm to others, such as Plaintiff. Defendant had actual, subjective awareness of the risks involved, but

nevertheless preceded with wanton disregard and conscious indifference for the rights, safety, and welfare of others. As such, Plaintiff requests the trier of fact to punish and deter Defendant, and others like them, from such conduct in the future. Plaintiff, therefore, seeks damages in an amount to be determined by the trier of fact, commensurate with:

- a. the nature of the wrong committed by Defendant;
- b. the character of Defendant's course of conduct;
- c. the degree of culpability of the wrongdoer herein;
- d. the helpless and dependent nature of the victim in this case; and
- e. the severity, frequency, degree, and extent that Defendant such conducts.

**XII.**  
**NOTICE OF USE OF DOCUMENTS**

21. Pursuant to Texas Rules of Civil Procedure 166a(d) and 193.7, Plaintiff hereby gives notice to Defendant that he intends to use all discovery products, responses, and documents exchanged and produced between the parties as summary judgment evidence, in any pretrial proceeding, and/or at trial in this cause.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final verdict, Plaintiff be awarded judgment against the Defendant including but not limited to the following legal damages:

- a. Actual medical bills in an amount exceeding but not limited to the medical price for Plaintiff, all of which are necessary and reasonable for these types of services;
- b. Future medical care expenses in an amount found to be reasonable and just by the trier of fact;
- c. Monetary damages for past and future physical pain and suffering and mental anguish found to be reasonable and just by the trier of fact;

- d. Monetary damages for past and future physical impairment as found to be reasonable and just by the trier of fact;
- e. Monetary damages for past and future permanent disfigurement in an amount to be determined by the trier of fact;
- f. Monetary damages for lost wages incurred for and past and future loss of earning capacity, in an amount to be determined by the trier of fact;
- g. Exemplary and punitive damages, as found to be reasonable by the trier of fact;
- h. Pre and post judgment interest at the maximum legal rate;
- i. Costs of Court; and
- j. Such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

**LAW OFFICES OF DOMINGO A. GARCIA, P.C.**

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**ATTORNEYS FOR PLAINTIFF  
JOSE REFUGIO TAPIA-SILVA**

**CERTIFICATE OF SERVICE**

This is to certify that on the 27<sup>th</sup> day of April, 2021, a true and correct copy of the foregoing document was delivered to all counsel of record in accordance with the Texas Rules of Civil Procedure as follows:

*Via e-service:*

Rhonda J. Thompson, Esq.  
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*Attorney for Defendant*

*/s/ Paul Hornung* \_\_\_\_\_  
Paul Hornung

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gracie Cisneros on behalf of Paul Hornung  
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Envelope ID: 52850371  
Status as of 4/27/2021 10:25 AM CST

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