

\$80 PAID

CAUSE NO. DC-22-01998

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| GLORIA MYERS | § | IN THE DISTRICT COURT |
| <i>Plaintiff</i> | § | |
| | § | |
| v. | § | DALLAS COUNTY, TEXAS |
| | § | |
| JOHN ANDREW VILLARREAL and | § | |
| GALEN WADE HUDSON | § | |
| <i>Defendants</i> | § | 134TH DISTRICT COURT |

DEFENDANT GALEN WADE HUDSON'S MOTION FOR NEW TRIAL

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Defendant Galen Wade Hudson (“Hudson”) files this Motion for New Trial, for which the fee has been paid, and, alternatively, Request for Remittitur. In the event this Court does not set aside the January 17, 2025 Final Judgment and enter a take-nothing judgment for Hudson, then at the very least, a new trial should be granted or the damages substantially remitted.¹ In support of this Motion, Hudson respectfully shows the Court as follows.

INTRODUCTION

This personal injury lawsuit arises from an automobile collision involving Plaintiff Gloria Myers and Defendant John Andrew Villarreal. Plaintiff sued three defendants: (i) Villarreal, who was intoxicated at the time of the collision and struck Plaintiff’s vehicle, for negligence; (ii) Hudson, the owner of the vehicle that Villarreal was driving at the time of the collision, for negligently entrusting the vehicle to a reckless or incompetent driver; and (iii) Texas Farm Bureau Insurance, the insurer of Plaintiff’s underinsured motorist insurance policy, for breach of the insurance policy.

Prior to trial, Plaintiff resolved her claims against Texas Farm Bureau Insurance. On November 6, 2024, the matter was called for trial. Plaintiff presented a claim against Villarreal for negligence and a claim against Hudson for negligent

¹ By filing this Motion for New Trial and Request for Remittitur, Hudson does not waive, and expressly reserves, all points and requests for relief made in other motions and objections, including but not limited to Defendant’s Second Motion for Judgment Notwithstanding the Verdict, which is contemporaneously filed with this Motion. As explained in Defendant’s Second Motion for JNOV, Hudson believes this Court should vacate its Final Judgment and render a take-nothing judgment. By pleading in this Motion that there is factually insufficient evidence in support of the Court’s judgment, that the damages should be remitted, or that a new trial should be granted, Hudson does not waive his no-evidence challenges or any other challenge in the Second Motion for JNOV.

entrustment solely based on entrusting a vehicle to an unlicensed driver (an entrustment theory never pleaded by Plaintiff). On November 8, 2024, the jury returned its verdict and on a vote of 10-2 found the following:

| <u>JURY QUESTIONS</u> | |
|---|------------|
| <u>QUESTION NO. 1:</u> | |
| Did the negligence, if any, of John Villarreal proximately cause the occurrence in question? | |
| As to John Villarreal, you are instructed that negligence means the failure to use ordinary care, that is, failing to do which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances. | |
| Answer "Yes" or "No": | |
| Answer | <u>Yes</u> |
| <u>QUESTION NO. 2:</u> | |
| Did Galen Hudson negligently entrust to John Villarreal the vehicle that John Villarreal was operating on the day of the automobile incident in question? | |
| As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villarreal, if Galen Hudson knew or should have known that John Villarreal was an unlicensed driver. | |
| Answer "Yes" or "No": | |
| Answer | <u>Yes</u> |

See Jury Verdict at p. 4, attached as Exhibit A.

No comparative fault question was submitted, although Hudson requested a comparative fault question be included in the Charge of the Court. The jury awarded compensatory damages totaling \$1,651,270.91. *Id.* at p. 5. This Court accepted the verdict and subsequently signed a Final Judgment on January 17, 2025. See Final Judgment, attached as Exhibit B.

If this Court does not disregard all of the jury's findings adverse to Hudson and enter a take-nothing judgment, then Hudson asserts in this Motion for New Trial that, at the very least (i) a new trial should be granted or (ii) the damages should be eliminated in whole or part, drastically reduced, or a remittitur ordered for the following reasons:

- **Multiple charge error.** The following errors in the Charge of the Court warrant a new trial: (i) failure to instruct the jury to determine whether Hudson's alleged negligence was a proximate cause, (ii) deviating from

Pattern Jury Charge 10.12, (iii) omitting a new and independent cause instruction, and (iv) omitting a comparative fault question.

- ***Insufficient evidence to support the jury's adverse liability finding in Question 2.*** The evidence is factually insufficient to support Hudson's liability for negligent entrustment because (i) Hudson did not know Villarreal did not have a license, (ii) Hudson's entrustment was not a proximate cause of the collision, and (iii) a new an independent cause broke any causal connection between Hudson's entrustment and collision.
- ***Insufficient evidence to support the jury's damages awards in Question 3.*** The compensatory damages awarded are not supported by sufficient evidence. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of the damage awards in Question 3.
- ***Improper jury argument.*** Arguments made during closing arguments were improper and incurable, requiring a new trial. First, the jury was invited to consider and find negligent entrustment based on other theories of liability—reckless or incompetent driver—that were ***not*** submitted to the jury. Additionally, improper arguments suggested that Hudson be held to a higher standard of care and duty based on an employer-employee relationship. These arguments were improper, incurable, and require a new trial.
- ***New trial in the interest of justice.*** If judgment is not rendered for Hudson, then, at the very least, Hudson is entitled to a new trial in the interest of justice.

ARGUMENT AND AUTHORITIES

I. Governing standards.

Texas Rule of Civil Procedure 320 governs new trials and provides in relevant part:

New trials may be granted and judgment set aside for good cause, on motion or on the court's own motion on such terms as the court shall direct. New trials may be granted when the damages are manifestly too small or too large. When it appears to the court that a new trial should be granted on a point or points that affect only a part of the matters in controversy and that such part is clearly separable without unfairness to the parties, the court may grant a new trial as to that part only,

provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested....

TEX. R. CIV. P. 320.

Additionally, a trial court should order a new trial when a jury's findings are so against the great weight and preponderance of the evidence as to be manifestly unjust. *See id.*; *see also Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 424 (Tex. 2001). When a defendant attacks the factual sufficiency of an adverse finding on a plaintiff's issue, the defendant must show there is insufficient evidence to support the adverse finding. *Star Enter. v. Marze*, 61 S.W.3d 449, 462 (Tex. App.—San Antonio 2001, pet. denied). The court must consider all the evidence in the record when reviewing a factual sufficiency challenge and may set aside the verdict if the evidence supporting the finding is so weak as to be clearly wrong and manifestly unjust. *See Plas-Tex, Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 445 (Tex. 1989).

Trial courts have historically been afforded broad discretion in granting new trials. *See Champion Int'l Corp. v. Twelfth Ct. of Appeals*, 762 S.W.2d 898, 899 (Tex. 1988) (orig. proceeding) (per curiam); *Wichita Falls Traction Co. v. Cook*, 60 S.W.2d 764, 768 (Tex. [Comm'n Op.] 1933) (orig. proceeding) ("If the court thinks that the ends of justice have not been attained by the verdict of the jury, it is clearly its duty to set aside the judgment rendered on the verdict."). This Court has considerable discretion to grant a new trial, both under Rule 320 and in the interest of justice. *See Champion Int'l Corp.*, 762 S.W.2d at 899; *Johnson v. Carlin*, No. 14-16-00126-CV, 2018 WL 4925099, at *4 (Tex. App.—Houston [14th Dist.] Oct. 11, 2018, no pet.).

As explained below, a new trial is warranted under Rules 320 and 324 and in the interest of justice. Alternatively, this Court should reduce or remit the damages awarded by the jury because they are excessive and against the great weight and preponderance of the evidence.

II. Errors in the Charge of the Court warrant a new trial.

Texas Rule of Civil Procedure 278 provides in relevant part: “The court shall submit the questions, instructions and definitions in the form provided by Rule 277, which are raised by the written pleadings and the evidence.” TEX. R. CIV. P. 278. This rule provides a substantive, non-discretionary directive to trial courts requiring them to submit requested questions to the jury if the pleadings and any evidence support them. That is, a trial court has no discretion in determining the law or applying the law to the facts, and a clear failure to analyze or apply the law correctly constitutes an abuse of discretion. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992).

A judgment will be reversed for a charge error if the error was harmful because it probably caused the rendition of an improper judgment or probably prevented the appellant from properly presenting the case to the court of appeals. *Thota v. Young*, 366 S.W. 678, 687 (Tex. 2012); see TEX. R. APP. P. 44.1(a). Charge error is generally considered harmful if it relates to a contested, critical issue, as in this case. *Columbia Rio Grande Healthcare, LP v. Hawley*, 284 S.W.3d 851, 856 (Tex. 2009). And to determine whether an alleged error is harmful, courts consider the pleadings, the evidence presented at trial, and the charge as a whole. *Island Recreational Dev. Corp. v. Republic of Tex. Sav. Ass’n*, 710 S.W.2d 551, 555 (Tex. 1986).

A. Charge error in Question 2 (negligent entrustment) requires a new trial.

The Court submitted negligent entrustment in Question 2 as follows:

QUESTION NO. 2:

Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

Hudson objected to the above question and instead requested instructions and questions that tracked PJC 10.12:

PJC 10.12 Negligent Entrustment—Reckless, Incompetent, or Unlicensed Driver

As to *Edna Entrustor*, "negligence" means entrusting a vehicle to a *reckless* driver if the entrustor knew or should have known that the driver was *reckless*. Such negligence is a proximate cause of an [*injury*] [*occurrence*] if the negligence of the driver to whom the vehicle was entrusted is a proximate cause of the [*injury*] [*occurrence*].

QUESTION _____

Did the negligence, if any, of the persons named below proximately cause the [*injury*] [*occurrence*] in question?

Answer "Yes" or "No" for each of the following:

Answer the question as to *Edna Entrustor* only if you have answered "Yes" as to *David Driver*.

1. *David Driver* _____
2. *Edna Entrustor* _____
3. *Paul Payne* _____

Perhaps most fatally, the entrustment question in Question 2 did not ask whether Hudson's alleged negligence was a proximate cause to the collision. Straying from the PJC, the Court submitted the trustee's liability and entrustor's liability in two separate questions—rather than one question as prescribed in PJC 10.12. *See* State Bar of Texas, Texas Pattern Jury Charges—General Negligence, Intentional

Personal Torts & Workers' Compensation, PJC 10.12 & cmt. (2022), attached as Ex. C.

Part of the function behind submitting both the entrustor and trustee in a single question is to sufficiently tie the trustee's conduct to the entrustment and to compel the jury to find whether proximate cause exists as to **both** the entrustor and the trustee. This is particularly important because Texas law requires a negligent act by the trustee and a separate, independent negligent act by the entrustor. See *Endeavor Energy Resources, LP v. Cuevas*, 593 S.W.3d 307, 311 (Tex. 2019) ("And we have explained that a negligent-entrustment claim requires negligent acts by two parties: the owner's negligence in entrusting property to another, and the trustee's negligence in using that property.").

But here, Question 2 neglected to ask the jury whether Hudson's entrustment was a proximate cause of the occurrence:

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| <p>QUESTION NO. 2:</p> <p>Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?</p> <p>As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.</p> <p>Answer "Yes" or "No":</p> <p>Answer <u>Yes</u></p> |
|--|

Not only is this omission charge error, but requires a take-nothing judgment in Hudson's favor, as discussed in Hudson's Second JNOV Motion, because there is no jury finding on proximate cause as to Hudson.

Additionally, to the extent the Court attempted to submit negligence per se in Question 2, the governing statute requires actual knowledge, not just constructive

knowledge, that a driver had no license. *See* TEX. TRANSP. CODE § 521.458(b); *see also* *Mundy v. Pirie-Slaughter Motor Co.*, 206 S.W.2d 587, 588–89 (Tex. 1947) (recognizing negligent entrustment based on the license requirement arises from Texas statutes that prohibit an owner from ***knowingly*** permitting an unlicensed driver to operate the owner’s vehicle). Therefore, to the extent Question 2 attempted to submit negligence per se, the question erroneously allowed the jury to find negligence based on whether Hudson should have known when the relevant statute requires actual knowledge. It is undisputed that Hudson had no knowledge that Villarreal did not have a license. And still, Question 2 fails to ask the jury to determine whether Hudson’s negligent entrustment or any negligence by Hudson was a proximate cause of the collision. The error requires a take-nothing judgment, or at the very least, a new trial.

B. Omission of new and independent cause instruction requires a new trial.

Because Villarreal’s conduct—consuming alcohol and driving—constitutes a new and independent cause, the jury should have been instructed so. A “new and independent cause” is an act or omission of a separate and independent agency, not reasonably foreseeable, destroys any causal connection between the act or omission inquired about and the occurrence in question. *See Columbia Rio Grande Healthcare, LP v. Hawley*, 284 S.W.3d 851, 857–58 (Tex. 2009).

Here, the evidence established at least a fact question meriting submission of this instruction permitting the jury to consider whether any causal connection between an act or omission by Hudson and the subject collision was broken by

curiam) (“The Legislature’s use of the word ‘shall,’ as opposed to ‘may,’ means . . . a mandatory, not a discretionary, duty . . .”).

Under Texas law, the task of apportioning responsibility—notably a requisite for imposing joint and several liability—is indisputably reserved for the factfinder. Therefore, in this case, where more than one defendant was submitted in the charge, the jury was required to apportion responsibility under 33.003.

Furthermore, Rule 277 requires the trial court to submit comparative fault when required by statute. Texas Rule of Civil Procedure 277 provides in relevant part:

In any cause in which the jury is required to apportion the loss among the parties ***the court shall submit a question*** or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable.

TEX. R. CIV. P. 277 (emphasis added). Rule 277 is a noteworthy procedural rule because it specifically addresses the issue of fault apportionment and requires the trial court to submit the issue to the jury when required by statute. *See id.* The rule is clear on its face, and there is nothing in the rule or procedural rules that relieves the trial court of this requirement.

In this case, the jury was required to apportion fault pursuant to Chapter 33. In turn, under Rule 277, this Court was required to submit a question to the jury so that it could make its requisite apportionment of fault. This did not happen.

And to compound the issue, this Court found Hudson and Villarreal jointly and severally liable in the Final Judgment without the required jury findings. In other

words, there was no legal or factual basis for imposing joint and several liability in the Final Judgment.

More specifically, there is no finding in the jury verdict that supports imposing joint and several liability against Hudson. For instance, no jury finding satisfies 33.013(b)(1). *See* TEX. CIV. PRAC. & REM. CODE §33.013(b)(1) (defendant is jointly and severally liable for damages if the percentage of individual responsibility is greater than 50%). Likewise, there is no finding of joint venture or enterprise, alter ego, or conspiracy supporting joint and several liability. *See id.* § 33.013(b)(2) (defendant is jointly and severally liable for damages if the defendant, with specific intent to harm others, acts in concert to commit certain crimes); *Greenberg Traurig, P.C. v. Moody*, 161 S.W.3d 56, 90 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Carroll v. Timmers Chevrolet, Inc.*, 592 S.W.2d 922, 926 (Tex.1979)) (conspiracy can support joint and several liability); *see also Hart v. Moore*, 952 S.W.2d 90, 99 (Tex. App.—Amarillo 1997, pet. denied) (alter ego can support joint and several liability).

There are no findings that allowed this Court to hold Hudson jointly and severally liable for all damages. Moreover, this Court had no legal basis to weigh the evidence and determine whether Hudson is jointly and severally liable. In light of this fundamental error that resulted in a joint and several liability finding against Hudson despite the lack of any factual or legal basis, a new trial must be granted.

III. A new trial is required because of factually insufficient evidence of liability and damages.

If a defendant attacks the factual sufficiency of an adverse finding on a plaintiff's issue, the defendant must show there is insufficient evidence to support the adverse finding. *Star Enter. v. Marze*, 61 S.W.3d 449, 462 (Tex. App.—San Antonio 2001, pet. denied). The court must consider all the evidence in the record when reviewing a factual sufficiency challenge and may set aside the verdict if the evidence supporting the finding is so weak as to be clearly wrong and manifestly unjust. *See Plas-Tex, Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 445 (Tex. 1989).

A. The evidence is factually insufficient to support the liability finding in Question 2.

To recover for negligent entrustment, Plaintiff was required to prove the following elements: “(1) entrustment of a vehicle by the owner; (2) to an unlicensed, incompetent, or reckless driver; (3) that the owner knew or should have known to be unlicensed, (4) that the driver was negligent on the occasion in question and (5) that the driver’s negligence proximately caused the accident.” *Schneider v. Esperanza Transmission Co.*, 744 S.W.2d 595, 596 (Tex. 1987); *Robson v. Gilbreath*, 267 S.W.3d 401, 405 (Tex. App.—Austin 2008, pet. denied). Importantly, Plaintiff’s negligent entrustment claim against Hudson “require[d] separate negligent acts by two parties: [Hudson’s] negligence in entrusting property to another, **and** the trustee’s negligence in using that property.” *Endeavor Energy*, 593 S.W.3d at 311 (emphasis added).

Therefore, Plaintiff was required to establish “not only that [Villarreal’s] negligence proximately caused the harm,” *4Front Engineered Sols., Inc. v. Rosales*,

505 S.W.3d 905, 909 (Tex. 2016), but also that “the risk that caused the entrustment [] to be negligent also proximately caused the plaintiff’s injuries,” *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 240 (Tex. 2010). *Endeavor Energy*, 593 S.W.3d at 311 (emphasis added). “Both negligent acts must proximately cause the injury.” *Id.* Thus, “[f]or entrustment to be a proximate cause, the defendant entrustor should be shown to be reasonably able to anticipate that an injury would result as a natural and probable consequence of the entrustment.” *Schneider*, 744 S.W.2d at 596. In simpler terms, Plaintiff was required to prove “that the risk that caused the entrustment to be negligent caused the accident at issue.” *Oney v. Crist*, 517 S.W.3d 882, 891 (Tex. App.—Tyler 2017), *pet. granted, judgm’t vacated w.r.m.*, No. 17-0317, 2018 WL 11483411 (Tex. Apr. 27, 2018) (rendering judgment on negligent-entrustment claims).

First, there is factually insufficient evidence that Hudson knew or should have known that Defendant Villareal had an expired license at the time of entrustment. The evidence presented by Plaintiff suggested that the extent of the relationship between Hudson and Defendant Villareal was that they were friends, and that Hudson had helped Villareal find work in the past. The evidence also showed that Hudson knew that Villareal owned a vehicle which required mechanical repairs, prompting Villareal’s need to borrow a vehicle. These facts do not lead to a finding that Hudson had or should have had any knowledge that Villareal’s license had expired at the time of entrustment, nor did any other evidence presented at trial.

Second, there is factually insufficient evidence to support proximate cause. In fact, there is no proximate cause finding by the jury as to Hudson. This alone requires a take-nothing judgment in favor of Hudson. But in the alternative requires a new trial.

And even had the jury been asked to determine proximate cause as to Hudson, there is insufficient evidence of causation. Instead, the evidence at trial established that Villareal's licensure status did not cause Plaintiff's injuries but rather Villareal's actions of later becoming intoxicated and attempting to drive is what proximately caused Plaintiff's injuries. As such, the evidence showed that the risk which allegedly caused Hudson's entrustment to Villareal to be negligent did not cause the collision.

Regarding the foreseeability element of proximate cause, Supreme Court in *Allways* relied on the rule in *Schneider* that for "entrustment to be a proximate cause, the defendant entrustor should be shown to be reasonably able to anticipate that an injury would result as a natural and probable consequence of the entrustment." *Allways Auto Group, Ltd. v. Walters*. 530 S.W.3d 147 (Tex. 2017); 744 S.W.2d at 596. In reliance on that rule, the Court found that where the entrustor's conduct does "no more than furnish the condition that makes the plaintiff's injury possible," ... "the connection between the defendant and the plaintiff's injuries [is] too attenuated to constitute legal cause." *Id.*

At most, the evidence at trial suggested that Hudson did no more than "furnish the condition that made the Plaintiff's injury possible." *Id.* The evidence at trial showed that Villareal was not visibly intoxicated at the time of the entrustment and

that Hudson had no reason to believe that Villareal would later drive while intoxicated. So, because Hudson could not have reasonably anticipated that “an injury would result as a natural and probable consequence of the entrustment,” Hudson’s entrustment of the vehicle was not shown to be a proximate cause of the Plaintiff’s injuries. *Schneider*, at 596. Because the foreseeability element was not met, Plaintiff failed to show that Hudson proximately caused the Plaintiff’s injuries.

Third, while intoxication is a risk associated with a driver being reckless or incompetent, intoxication is not a risk involved with the license requirement. The conduct complained of—Villarreal driving while intoxicated—is not a risk associated with obtaining a license—ability to pass a basic driver’s test based on knowledge of the rules of the road and an eye exam. As a matter of law, Hudson cannot be liable for entrustment based on the license requirement where the underlying conduct of the driver is driving while intoxicated unbeknownst to Hudson.

In sum, the evidence was insufficient to support to show any of these elements, much less satisfy all of them. Specifically, there is factually insufficient evidence that:

- Villarreal was an unlicensed driver;
- Hudson knew or should have known Villarreal was an unlicensed driver;
- The risk that allegedly caused the entrustment to be negligent proximately caused the “occurrence,” as that term is defined in the jury charge, or proximately caused any injuries to Plaintiff;
- Villarreal was negligent; and
- Villarreal’s negligence proximately caused the “occurrence,” as that term is defined in the jury charge, or proximately caused any injuries to Plaintiff.

See Goodyear Tire & Rubber Co. v. Mayes, 236 S.W.3d 754, 758 (Tex. 2007) (articulating elements of negligent entrustment claim).

B. The evidence is factually insufficient to support the damages awarded in Question 3. Alternatively, the damages award is excessive, warranting a new trial or remittitur by this Court.

“The standard of review for an excessive damages complaint is factual sufficiency of the evidence.” *Mar. Overseas Corp.*, 971 S.W.2d at 406. It is well settled that “[t]here must be evidence that the amount found is fair and reasonable compensation, just as there must be evidence to support any other jury finding.’ Rather than limit review of noneconomic damages to elastic, impractical standards like the ‘shocks the conscience’ test, our precedent instead requires evidence of both the ‘existence of compensable mental anguish’ and ‘evidence to justify the amount awarded.’” *Gregory v. Chohan*, 670 S.W.3d 546, 550 (Tex. 2023) (citations omitted). In other words, “[j]uries cannot simply pick a number and put it in the blank.” *Id.* at 551 (citation omitted). Instead, “[t]o guard against arbitrary outcomes and to ensure that damages awards are genuinely compensatory, the plaintiff in a [] case should be required to demonstrate a rational connection, grounded in the evidence, between the injuries suffered and the dollar amount awarded.” *Id.* “[T]he jury’s discretion is by no means unlimited and . . . the *amount* awarded must be supported by *evidence*.” *Id.* at 557.

Sufficiency review of non-economic damages is critical to ensuring that recoveries are not arbitrary and only compensate plaintiffs for actual injuries, not as “a disguised disapproval of the defendant.” *Bentley v. Bunton*, 94 S.W.3d 561, 605 (Tex. 2002). Thus, Texas law requires courts to determine not only that there is

sufficient evidence of the existence of *some* damage, but also that there is sufficient evidence to justify the *amount* found by the jury. *Gregory*, 670 S.W.3d at 551; *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996).

A jury has discretion to award damages within the range of evidence presented at trial. *City of Houston v. Harris Cnty. Outdoor Advert. Ass'n*, 879 S.W.2d 322, 334 (Tex. App.—Houston [14th Dist.] 1994, writ denied). However, awards must be based on the facts, testimony, and evidence presented at trial—not on jury’s passions or sympathies. *See Gregory*, 670 S.W.3d at 562 (holding that there must be “a rational connection, grounded in the evidence, between the injuries suffered and the amount awarded”); *Saenz*, 925 S.W.2d at 614 (explaining that there must be evidence of amounts found by the jury as “fair and reasonable compensation, just as there must be evidence to support any other jury finding”). A jury cannot simply pick a number and put it in the blank. *Saenz*, 925 S.W.2d at 614. Because our system breaks down when jurors lose their objectivity and yield to emotion—whether consciously or subconsciously, whether in sympathy for or bias against either party—courts cannot simply “rubber stamp” a jury’s non-economic damages award. *See Gunn Infiniti, Inc. v. O’Byrne*, 996 S.W.2d 854, 860 (Tex. 1999) (instructing courts to closely scrutinize non-economic damages awards).

This is a case in which such a breakdown occurred. Whether considered singularly or collectively, the jury’s damages awards are grossly excessive. The jury awarded a total of \$1,651,270.91 in damages in answering Question 3. But there is insufficient evidence to support either the total cumulative award, or any of the

individual amounts awarded for the individual damages categories. Here, the Court should grant a new trial because the jury's answers to Question 3, both singularly and especially cumulatively, are not supported by factually sufficient evidence. Also, the findings in Question 3, both singularly and especially cumulatively, are against the overwhelming (and conclusive) weight of the evidence.

1. Factually insufficient evidence of \$50,000.00 for physical pain sustained in the past (Question 3(a)).

“A party may establish the existence of conscious pain and suffering by circumstantial evidence. Pain and suffering may be inferred or presumed as a consequence of *severe* injuries. The duration of the pain and mental anguish is an important consideration.” *HCRA of Tex., Inc. v. Johnston*, 178 S.W.3d 861, 871 (Tex. App.—Fort Worth 2005, no pet.) (internal citations omitted) (emphasis added). Although the jury has broad discretion in awarding physical pain damages, “there must ‘be some evidence to justify the amount awarded,’ as a jury ‘cannot simply pick a number and put it in the blank.’” *Id.* (quoting *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996)).

Here, the jury's answer to Question 3(a) (past physical pain) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(a) that Gloria Myers sustained \$50,000.00 in past physical pain.
- The jury's answer to Question 3(a) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Because the evidence is factually insufficient to support the jury's finding in Question 3(a), the finding cannot stand. If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any award in Question 3(a) because the award is excessive and not supported by sufficient evidence.

2. Factually insufficient evidence of \$50,000.00 for physical pain that, in reasonable probability, Plaintiff will sustain in the future (Question 3(b)).

Similarly, there is insufficient evidence to support the jury's finding in Question 3(b) that Plaintiff will sustain \$50,000.00 in future physical pain. *See Anderson v. Durant*, 550 S.W.3d 605, 619 (Tex. 2018). Plaintiff offered insufficient evidence of future physical pain or that such physical pain will continue to substantially disrupt her daily routine in the future. *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995).

The jury's answer to Question 3(b) (future physical pain) cannot stand and a new trial should be granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(b) that Gloria Myers will sustain \$50,000 in future physical pain.
- The jury's answer to Question 3(b) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Because the evidence is factually insufficient to support the jury's finding in Question 3(b), that finding cannot stand. If judgment is not rendered for Hudson,

then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any award in Question 3(b) because the award is excessive and not supported by factually sufficient evidence.

3. Factually insufficient evidence of the \$50,000.00 for mental anguish sustained in the past (Question 3(c)).

There is insufficient evidence to support the jury's finding in Question 3(c) that Plaintiff sustained \$50,000.00 in past mental anguish. Mental anguish is a "high degree of mental pain and distress" that is "more than mere worry, anxiety, vexation, embarrassment, or anger." *Parkway*, 901 S.W.2d at 444; *Lefton v. Griffith*, 136 S.W.3d 271, 279 (Tex. App.—San Antonio 2004, no pet.). The plaintiff's evidence must describe "the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiffs' daily routine." *Parkway*, 901 S.W.2d at 444.

In this case, there is insufficient evidence that Plaintiff's daily routine was substantially disrupted. Also, there is insufficient evidence of past duration of mental anguish. *Griffith*, 136 S.W.3d at 279 (reversing jury mental anguish award where plaintiff failed to prove "the duration of her anguish"; it was "not clear how long she 'was unable to sleep, was depressed, and suffered from anxiety'"). The jury's answer to Question 3(c) (past mental anguish) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(c) that Gloria Myers sustained \$50,000 in past mental anguish.

- The jury’s answer to Question 3(c) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Because the evidence is factually insufficient to support the jury’s finding in Question 3(c), that finding cannot stand. If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any award in Question 3(c) because the award is excessive and not supported by factually sufficient evidence.

4. Factually insufficient evidence of \$50,000.00 for mental anguish that, in reasonable probability, Plaintiff will sustain in the future (Question 3(d)).

Similarly, there is insufficient, evidence to support the jury’s finding in Question 3(d) that Plaintiff will sustain \$50,000.00 in future mental anguish. Plaintiff offered insufficient evidence that she would suffer, in reasonable probability, a “high degree of mental pain and distress” that is “more than mere worry, anxiety, vexation, embarrassment, or anger” in the future. *Woodruff*, 901 S.W.2d at 444; *Griffith*, 136 S.W.3d at 279. Plaintiff offered insufficient evidence that her daily routine will continue to be substantially disrupted in the future, either. Accordingly, the jury’s answer to Question 3(d) (future mental anguish) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury’s finding in Question 3(d) that Gloria Myers will sustain \$50,000 in future mental anguish.
- The jury’s answer to Question 3(d) is against the overwhelming weight of the evidence.

- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Because the evidence is factually insufficient to support the jury's finding in Question 3(d), the jury's findings in Question 3(d) for past mental anguish cannot be sustained. If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any award in Question 3(d) because the award is excessive and not supported by factually sufficient evidence.

5. Factually insufficient evidence of the \$50,000.00 for physical impairment sustained in the past (Question 3(e)).

Damages for physical impairment (in either the past or future) are available only if the plaintiff has suffered a loss that is distinct from any pain and suffering he may have suffered. *See Blankenship v. Mirick*, 984 S.W.2d 771, 777 (Tex. App.—Waco 1999, pet. denied). Rather, to recover damages for physical impairment, the plaintiff must prove that effect of their physical impairment produces a “distinct loss that is substantial and for which he should be compensated.” *Katy Springs & Mfg., Inc. v. Favalora*, 476 S.W.3d 579, 599 (Tex. App.—Houston [14th Dist.] 2015, pet. denied).

No factually sufficient evidence supports the jury's finding in Question 3(e) that Plaintiff sustained \$50,000.00 in past physical impairment or that this amount would fairly and reasonably compensate Plaintiff for any past physical impairment. Therefore, the jury's answer to Question 3(e) (past physical impairment) cannot stand and a new trial granted for one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(e) that that Gloria Myers sustained \$50,000 in past physical impairment.

- The jury's answer to Question 3(e) is against the overwhelming weight of the evidence.
- These damages are excessive and if not reversed should be substantially remitted.

If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any award in Question 3(e) because the award is excessive and not supported by factually sufficient evidence.

6. Factually insufficient evidence of the \$50,000.00 for physical impairment that, in reasonable probability, Plaintiff will sustain in the future (Question 3(f)).

Similarly, there is insufficient, evidence to support the jury's finding in Question 3(f) that Plaintiff will sustain \$50,000.00 in future physical impairment. There is factually insufficient evidence that Plaintiff would suffer, in reasonable probability, future physical impairment distinct from any pain and suffering she may have suffered. *See Blankenship*, 984 S.W.2d at 777. The jury's answer to Question 3(f) (future physical impairment) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(f) that Gloria Myers will sustain \$50,000 in future physical impairment.
- The jury's answer to Question 3(f) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction

in damages with respect to all or part of any award in Question 3(f) because the award is excessive and not supported by factually sufficient evidence.

7. Factually insufficient evidence of \$381,270.90 for past medical expenses (Question 3(g)).

No factually sufficient evidence supports the jury's finding in Question 3(g), or that of \$381,270.90 would fairly and reasonably compensate Plaintiff for any past medical care expenses. Specifically, the jury's answer to Question 3(g) (past medical expenses) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(g) that Gloria Myers sustained \$381,270.90 in past medical expenses.
- The jury's answer to Question 3(g) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Therefore, the jury's award in Question 3(g) cannot stand. If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of the award in Question 3(g) because the award is excessive and not supported by factually sufficient evidence.

8. Factually insufficient evidence of \$450,000.00 for expenses of necessary medical care that, in reasonable probability, Plaintiff will sustain in the future (Question 3(h)).

There is insufficient evidence of Plaintiff's future medical care and expenses. To support an award of future medical expenses, a plaintiff must show a reasonable probability that expenses resulting from the injury will be required in the future.

Rosenboom Mach. & Tool, Inc. v. Machala, 995 S.W.2d 817, 828 (Tex. App.—Houston [1st Dist.] 1999, pet. denied); see *Ibrahim v. Young*, 253 S.W.3d 790, 808 (Tex. App.—Eastland 2008) (orig. proceeding). To make such a showing, a claimant must prove a reasonable probability both that they will incur future medical expenses **and** the reasonably probable amount of those expenses. *Ibrahim*, 253 S.W.3d at 808.

“[T]he jury can make its determination of the amount of future medical expenses and care based on the injuries suffered by the plaintiff, the medical care rendered before trial, the progress toward recovery under the treatment received, and the condition of the injured party at the time of trial.” *LMMM Hous. #41, Ltd. v. Santibanez*, No. 01-16-00724-CV, 2018 WL 4137971, at *10 (Tex. App.—Houston [1st Dist.] Aug. 30, 2018, no pet.); see also *Whole Foods Mkt. Sw., LP v. Tijerina*, 979 S.W.2d 768, 781 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (“The reasonable value of future medical care may be established by evidence of the reasonable value of past medical treatment.”).

Where evidence at trial supporting a claim for future medical costs includes a doctor’s or lay witness’s speculation, not based on a reasonable medical probability, and where a party has not established with reasonable medical probability that they will incur future medical expenses, those damages are **not recoverable as a matter of law**. *Whole Foods*, 979 S.W.2d at 782 (holding trial court erred in entering judgment and award must be reduced because “[t]his court will not uphold an award of future medical costs based on speculation”). That is what occurred here—pure speculation and conclusory statements asserted by Plaintiff as to her future medicals.

Plaintiff only offered pure speculation and conclusory assertions as to Plaintiff's future medicals, including as to what additional treatment she would actually obtain.

Lastly, the law and the question submitted in the Court's Charge required the jury to award—in *present value*—future medical expenses. However, Plaintiff did not present any evidence of the present value amount for these damages. Nor did Plaintiff give the jury any information how to calculate present value. Thus, the evidence is insufficient to support the future medical expenses award.

The evidence offered by Plaintiff is woefully insufficient to support an award of future medical expenses. The jury's answer to Question 3(h) (future medical expenses) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(h) that Gloria Myers will sustain \$450,000.00 in future medical expenses.
- The jury's answer to Question 3(h) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Because the evidence is factually insufficient to support the jury's award in Question 3(h), that finding cannot stand. If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any award in Question 3(h) because the award is excessive and not supported by factually sufficient evidence.

9. Factually insufficient evidence of \$140,000.00 of past loss earning capacity (Question 3(i)).

There is insufficient evidence to support the jury's finding in Question 3(i), that Plaintiff sustained \$140,000.000 of past loss earning capacity. Plaintiff's "calculations" of Plaintiff's past loss earning capacity are speculative and unfounded. Earning capacity is an assessment of what the plaintiff's capacity to earn a livelihood actually was and the extent to which that capacity has been impaired. *See Hospadales v. McCoy*, 513 S.W.3d 724, 743 (Tex. App.—Houston [1st Dist.] 2017, no pet.). The focus is on the plaintiff's "capacity to earn, *see id.*, but the jury must not "journey into the realm of conjecture." *See Koko Motel, Inc. v. Mayo*, 91 S.W.3d 41, 52 (Tex. App.—Amarillo 2002, pet. denied). The jury must determine the loss of earning capacity based on the facts available in the particular case. *See id.*

The jury's answer to Question 3(i) (past loss earning capacity) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(i) that Gloria Myers sustained \$140,000.00 in past loss of earning capacity.
- The jury's answer to Question 3(i) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Because the evidence is factually insufficient to support the jury's award in Question 3(i), that finding cannot stand. If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any

award in Question 3(i) because the award is excessive and not supported by factually sufficient evidence.

10. Factually insufficient evidence of \$380,000 for loss of earning capacity that, in reasonable probability, Plaintiff will sustain in the future (Question 3(j)).

For the same reasons, there is insufficient, evidence to support the jury's finding in Question 3(j), that Plaintiff, in reasonable probability, will sustain \$140,000.000 in future loss earning capacity. Loss of future earning capacity is the plaintiff's diminished capacity to earn a living after the trial. *Tagle v. Galvan*, 155 S.W.3d 510, 519 (Tex. App.—San Antonio 2004, no pet.). The jury has discretion in determining the amount of damages for loss of future earning capacity. *See id.* But, to support an award for such damages, the plaintiff must introduce evidence sufficient to allow the jury to reasonably measure loss of future earning capacity in monetary terms. *See id.* There must be some evidence that the plaintiff had the capacity to work prior to the injury, and that her capacity was impaired as a result of the injury. *Id.* at 520.

The jury's answer to Question 3(j) (future loss of earning capacity) cannot stand and a new trial granted for any one or more of the following reasons:

- Factually insufficient evidence supports the jury's finding in Question 3(j) that Gloria Myers will sustain \$380,000.00 in future loss of earning capacity.
- The jury's answer to Question 3(j) is against the overwhelming weight of the evidence.
- In the alternative, these damages are excessive and if not reversed should be substantially remitted.

Because the evidence is factually insufficient to support the jury's award in Question 3(j), that finding cannot stand. If judgment is not rendered for Hudson, then, at a minimum, Hudson is entitled to a new trial. Alternatively, this Court should order a remittitur or reduction in damages with respect to all or part of any award in Question 3(j) because the award is excessive and not supported by factually sufficient evidence.

IV. Incurable jury arguments warrant a new trial.

During closing arguments, Plaintiff's counsel made numerous improper—and incurable—arguments to the jury. These arguments included (i) inviting the jury to consider the alleged recklessness and competency of Villarreal, rather than just his licensure status—the only entrustment theory submitted to the jury, and (ii) inviting the jury to consider the alleged employment relationship between Villarreal and Hudson, thus confusing the issues by insinuating a non-applicable higher standard of care for Hudson, when course and scope was not an issue in this case. These improper arguments were designed for one purpose, and one purpose only: to improperly incite the passions and prejudices of the jurors and confuse the issues relating to Hudson's standard of care. Such tactics constitute improper—and incurable—jury argument thus warranting a new trial.

A. Applicable legal standards.

“To prevail on a claim that improper argument was incurable, the complaining party generally must show that the argument by its nature, degree, and extent constituted such error that an instruction from the court or retraction of the argument could not remove its effects.” *Living Centers of Tex., Inc. v. Penalver*, 256

S.W.3d 678, 680–81 (Tex. 2008), judgment modified on reh’g (June 20, 2008); *see also* *Tex. Employers’ Ins. Ass’n v. Haywood*, 153 Tex. 242, 266 S.W.2d 856, 858 (1954).

Courts apply the following test to analyze the amount of harm from the argument:

[W]hether the argument, considered in its proper setting, was reasonably calculated to cause such prejudice to the opposing litigant that a withdrawal by counsel or an instruction by the court, or both, could not eliminate the probability that it resulted in an improper verdict.

Living Ctrs., 256 S.W.3d 681.

“[J]ury argument[s] that strike[] at the appearance of and the actual impartiality, equality, and fairness of justice rendered by courts [are] incurably harmful not only because of its harm to the litigants involved, but also because of its capacity to damage the judicial system.” *Id.* These types of arguments are not subject to a general harmless error analysis. *Id.* Relevant to the present facts, **“[u]nsupported, extreme, and personal attacks on opposing parties and witnesses can similarly compromise the basic premise that a trial provides impartial, equal justice.”** *Id.* (emphasis added); *Standard Fire Ins. Co. v. Reese*, 584 S.W.2d 835, 839 (1979).

While there is some leeway given to counsel in making closing remarks, there are absolute boundaries. Texas Rule of Civil Procedure 269 provides that during final arguments, “[m]ere personal criticism by counsel upon each other shall be avoided, and when indulged in shall be promptly corrected as a contempt of court.” TEX. R. CIV. P. 269(e). “Trial courts are not required to wait for objections before correcting improper argument, but should guard against such conduct and correct it *sua sponte*.” *Living Ctrs.*, 256 S.W.3d 681 (finding incurable jury argument despite counsel not

objecting at the time of argument and instead countering it during their respective closing argument) (citing TEX. R. CIV. P. 269(g)). These incurable arguments “strike at the courts’ impartiality, equality, and fairness, and inflict damage beyond the parties and the individual case under consideration if not corrected. Such arguments damage the judicial system itself by impairing the confidence which our citizens have in the system, and courts countenance very little tolerance of such arguments.” *Id.*; *see also Reese*, 584 S.W.2d at 840 (“The injection of new and inflammatory matters into the case through argument has in exceptional instances been regarded as incurable by an instruction.... [A]n affront to the court and the equality which it must portray will be dealt with harshly.”).

This Court has the opportunity to remedy this situation before it is brought to the attention of the appellate courts.

B. Improper jury argument as to the alleged recklessness and competency of Villarreal.

Here, Plaintiff’s counsel spent the majority of his time arguing that Hudson was liable for entrusting a vehicle to an alleged reckless and incompetent driver. The problem with this jury argument is that Plaintiff purposefully restricted her negligent entrustment case to the license requirement. The closing argument invited the jury to consider whether Hudson knew about Villarreal’s prior alcohol consumption and “emotional” conduct in determining negligent entrustment. But that evidence is not probative at all of the license requirement and the only theory of entrustment submitted to the jury.

C. Improper jury argument as to the alleged employment relationship between Villarreal and Hudson.

Further, Plaintiff's counsel continually argued the existence of an employment relationship between Villarreal and Hudson, arguing that if "Hudson, the boss man, is going to ask one of his workers to drive that pick-up truck...he's got an obligation at that point to make sure that the driver, in this case Mr. Villarreal, is licensed." Such arguments are not only irrelevant given the fact that course and scope was not at issue in this case but are legally inaccurate. These particular arguments rise to the level of inflammatory and incurable jury arguments because Plaintiff's intended to invoke an inapplicable higher burden of care relating to their negligent entrustment claim against Hudson. *See* PJC 10.12 cmt.²

Any one of the above improper and incurable arguments warrants a new trial. Taken together, the effect of all of them is overwhelming and mandates a new trial. *See Tex. Emp. Ins. Ass'n v. Hacker*, 448 S.W.2d 234, 242 (Tex. Civ. App.—Fort Worth 1969, writ ref'd n.r.e.) ("[R]eversible error is presented by the record in this case because of the cumulative effect of the erroneous argument of plaintiff's counsel."); *see also Brown v. Hopkins*, 921 S.W.2d 306, 319 (Tex. App.—Corpus Christi 1996, no writ) ("Texas law recognizes that multiple errors, even if considered harmless taken

² "Under the common law, an employer owes a duty to the general public to ascertain the qualifications and competence of the employees and independent contractors it hires, "especially when the employees are engaged in occupations that require skill or experience and that could be hazardous to the safety of others." *Morris v. JTM Materials, Inc.*, 78 S.W.3d 28, 49 (Tex. App.—Fort Worth 2002, no pet.); *see also Martinez v. Hays Construction, Inc.*, 355 S.W.3d 170, 180 (Tex. App.—Houston [1st Dist.] 2011, pet. denied) (negligent hiring case), *disapproved of on other grounds by Gonzalez v. Ramirez*, 463 S.W.3d 499 (Tex. 2015) (to the extent *Martinez* holds that employer was liable as a motor carrier under federal regulations). If employment requires driving a vehicle, the employer has an affirmative duty to investigate the employee or independent contractor's competency to drive. *Martinez*, 355 S.W.3d at 180 (citing *Mireles v. Ashley*, 201 S.W.3d 779, 782–83 (Tex. App.—Amarillo 2006, no pet.), and *Morris*, 78 S.W.3d at 49))." PJC 10.12 cmt.

separately, may result in reversal and remand for a new trial if the cumulative effect of such errors is harmful.”).

V. A new trial is warranted in the interest of justice.

In addition to the grounds requiring a new trial discussed above, a new trial should be granted in the interests of justice, especially given the absence of a causation finding as to Hudson, the unsupported liability findings, and the incurable jury arguments. If judgment is not rendered for Hudson, then, at the very least, Hudson is entitled to a new trial in the interest of justice.

CONCLUSION AND PRAYER

For the above-stated reasons, the Final Judgment should be set aside. At the very least, Defendant Galen Wade Hudson is entitled to a new trial or, alternatively, the damages must be eliminated in whole or part, drastically reduced, or a remittitur ordered. Defendant Galen Wade Hudson requests any other relief to which he may be entitled.

Respectfully submitted,

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***Attorneys for Defendant,
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CERTIFICATE OF SERVICE

I certify that on February 14, 2025, a true and correct copy of the foregoing was served upon all counsel of record in accordance with the requirements set forth in Rule 21a of the Texas Rules of Civil Procedure.

/s/ E. Marie Jamison
E. Marie Jamison

Exhibit A

ORIGINAL

FILED

CAUSE NO. DC-22-01998

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GLORIA MYERS,

IN THE DISTRICT COURT

VS.

**JOHN ANDREW VILLAREAL;
GALEN WADE HUDSON,**

**FELICIA PITRE
DISTRICT CLERK
134TH JUDICIAL DISTRICT
DALLAS CO., TEXAS
Ferris DEPUTY
DALLAS COUNTY, TEXAS**

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are included in this Jury Charge, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I have previously given you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in Court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS AND INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Physical impairment” means a loss or diminution of the injured party’s ability to engage in tasks or activities for one’s own benefit or enjoyment. In assessing damages for physical impairment, you may consider the loss of enjoyment of life. The effect of the physical impairment must be substantial and extend beyond any pain, suffering, mental anguish or lost wages, or diminished earning capacity.

“Proximate cause” means a cause that was a substantial factor in bringing about an occurrence and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

“Occurrence” means the incident that occurred on or about February 23, 2021.

JURY QUESTIONS

QUESTION NO. 1:

Did the negligence, if any, of John Villarreal proximately cause the occurrence in question?

As to John Villarreal, you are instructed that negligence means the failure to use ordinary care, that is, failing to do which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Answer "Yes" or "No":

Answer Yes

QUESTION NO. 2:

Did Galen Hudson negligently entrust to John Villareal the vehicle that John Villareal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villareal, if Galen Hudson knew or should have known that John Villareal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

If you answered "yes" to Question No. 1 or Question No. 2, then answer Question No. 3. Otherwise, do not answer Question 3.

QUESTION NO. 3:

What sum of money, if paid now in cash, would fairly and reasonably compensate Gloria ~~Meyers~~ ^{Meyers} for injuries sustained, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Answer separately, in dollars and cents for damages, if any.

a. Physical pain sustained in the past.

Answer: \$ 50,000

Myers

b. Physical pain that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 50,000

c. Mental anguish sustained in the past.

Answer: \$ 50,000

Myers

d. Mental anguish that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 50,000

e. Physical impairment sustained in the past.

Answer: \$ 50,000

Myers

f. Physical impairment that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 50,000

g. Reasonable expenses of necessary medical care incurred in the past.

Answer: \$ 381,270.91

h. Reasonable ~~expenses~~ of necessary medical care that, in reasonable probability, Gloria ~~Myers~~ will incur in the future.

Answer: \$ 450,000

i. Loss of earning capacity sustained in the past.

Answer: \$ 140,000

j. Loss of earning capacity that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 380,000

Myers

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
 2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
 - If 11 jurors agree on every answer, those 11 jurors sign the verdict.
 - If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.


JUDGE PRESIDING

Verdict Certificate

Check one:

Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

X Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

- 1. Steffine Tovar
2. Whittaker Mims
3. Jetha M. Sullivan
4. Lydia Martinez Guzman
5. Anyson Lambrecht
6. Kristi Etheredge
7. Chnshtan Bawn
8. Crystal Garland
9. Chikitia Benjamin
10. Robert Alent
11.

- Steffine Tovar
Whittaker Mims
Jetha M. Sullivan
Lydia Martinez Guzman
Anyson Lambrecht
Kristi Etheredge
Chnshtan Bawn
Crystal Garland
CHIKITIA BENJAMIN
ROBERT ALENT

Exhibit B

CAUSE NO. DC-22-01998

| | | |
|----------------------------|---|-------------------------------------|
| GLORIA MYERS | § | IN THE DISTRICT COURT |
| <i>Plaintiff,</i> | § | |
| | § | |
| vs. | § | |
| | § | |
| JOHN ANDREW VILLARREAL and | § | 134 th JUDICIAL DISTRICT |
| GALEN WADE HUDSON and | § | |
| TEXAS FARM BUREAU | § | |
| INSURANCE | § | |
| <i>Defendants.</i> | § | DALLAS COUNTY, TEXAS |

FINAL JUDGMENT

This Court called this case to a jury trial on November 4, 2024. The parties appeared personally and through their counsel of record and announced ready for trial.

After voir dire, the Court duly empaneled a jury of twelve jurors. The jury heard the testimony, evidence, and arguments of counsel, and the Court submitted the case to the jury on November 8, 2024. On that same date, in response to the Charge of the Court, the jury made findings that the Court received, filed, and entered of record. The Charge of the Court, including the jury’s answers, is attached as Exhibit “A” and incorporated herein by reference.

It appears to the Court that the jury returned its 10-2 verdict in favor of Plaintiff and against Defendants John Andrew Villareal and Galen Wade Hudson. The jury found both John Villareal and Galen Wade Hudson negligent.

IT IS ORDERED, ADJUDGED AND DECREED that the Court hereby renders judgment for Plaintiff Gloria Myers against Defendants John Villareal and Galen Wade Hudson, who are jointly and severally liable, for past damages of \$671,270.91 and future damages of \$980,000.00; it is further

ORDERED, ADJUDGED, and DECREED that Plaintiff Gloria Myers shall recover from Defendants John Villareal and Galen Wade Hudson, jointly and severally, prejudgment

interest on past damages of \$671,270.91 awarded in this Judgment, at the rate of 7.75% simple interest, commencing on the date of suit against Defendants John Villareal and Galen Wade Hudson, February 18, 2022, through an estimated Judgment date of January 17, 2025 (thus ending accrual on January 17, 2025), in the sum of \$151,388.37 ($[\$671,270.91 \times .0775] \times 2.91$ years), and \$142.51 per day after January 17, 2025, until the day before the Court signs this final judgment; it is further

ORDERED, ADJUDGED, AND DECREED that Plaintiff shall recover from Defendants John Villareal and Galen Wade Hudson, jointly and severally, post-judgment interest on the amounts awarded in this Judgment (including prejudgment and court costs) at a rate of 7.75% per annum, compounded annually, beginning on the date the Court signs this Judgment and ending on the date the Judgment is satisfied; it is further

ORDERED, ADJUGED AND DECREED that Plaintiff shall recover her taxable costs of court from Defendants John Villareal and Galen Wade Hudson; it is further

ORDERED, ADJUDGED, AND DECREED that all writs and processes for the enforcement and collection of this judgment may issue as necessary.

This is a Final Judgment and that disposes of all claims and all parties and is appealable.

SIGNED this ____ day of _____, 2025.

Dale B. Tillery

Digitally signed by Dale B. Tillery
DN: cn=Dale B. Tillery, o=134th Judicial
District Court, ou=Judge,
email=dtillery@dallascourts.org, c=US
Date: 2025.01.17 12:26:41 -06'00'

**HON. DALE TILLERY
PRESIDING JUDGE**

APPROVED AS TO FORM, ONLY:

/s/ Carlos B. Balido

Carlos A. Balido
Texas Bar No. 01631230
Walters Balido & Crain
Meadow Park Tower, Suite 1500
10440 North Central Expressway
Dallas, Texas 75231
Tel: 214-204-2100
Fax: 214-204-2101
BalidoEDocsNotifications@wbclawfirm.com

/s/ Mark Teague

Mark Teague
State Bar No. 244003039
THE LECRONE LAW FIRM, PC
Wall Street Plaza
123 North Crockett Street, Suite 200
Sherman, TX 75090
TEL: 903.813.1900
FAX: 903.813.1944
Eservice@lecronelaw.com

EXHIBIT A

ORIGINAL

FILED

CAUSE NO. DC-22-01998

24 NOV -8 PM 4:25

GLORIA MYERS,

IN THE DISTRICT COURT

VS.

**FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS**

**JOHN ANDREW VILLAREAL;
GALEN WADE HUDSON,**

**134TH JUDICIAL DISTRICT
Ferris DEPUTY
DALLAS COUNTY, TEXAS**

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are included in this Jury Charge, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I have previously given you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in Court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS AND INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Physical impairment” means a loss or diminution of the injured party’s ability to engage in tasks or activities for one’s own benefit or enjoyment. In assessing damages for physical impairment, you may consider the loss of enjoyment of life. The effect of the physical impairment must be substantial and extend beyond any pain, suffering, mental anguish or lost wages, or diminished earning capacity.

“Proximate cause” means a cause that was a substantial factor in bringing about an occurrence and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

“Occurrence” means the incident that occurred on or about February 23, 2021.

JURY QUESTIONS

QUESTION NO. 1:

Did the negligence, if any, of John Villarreal proximately cause the occurrence in question?

As to John Villarreal, you are instructed that negligence means the failure to use ordinary care, that is, failing to do which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Answer "Yes" or "No":

Answer Yes

QUESTION NO. 2:

Did Galen Hudson negligently entrust to John Villarreal the vehicle that John Villarreal was operating on the day of the automobile incident in question?

As to Galen Hudson, you are instructed that negligence means entrusting a vehicle to John Villarreal, if Galen Hudson knew or should have known that John Villarreal was an unlicensed driver.

Answer "Yes" or "No":

Answer Yes

If you answered "yes" to Question No. 1 or Question No. 2, then answer Question No. 3. Otherwise, do not answer Question 3.

QUESTION NO. 3:

What sum of money, if paid now in cash, would fairly and reasonably compensate Gloria ~~Meyers~~ ^{Meyers} for injuries sustained, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Answer separately, in dollars and cents for damages, if any.

a. Physical pain sustained in the past.

Answer: \$ 50,000

Myers

b. Physical pain that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 50,000

c. Mental anguish sustained in the past.

Answer: \$ 50,000

Myers

d. Mental anguish that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 50,000

e. Physical impairment sustained in the past.

Answer: \$ 50,000

Myers

f. Physical impairment that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 50,000

g. Reasonable expenses of necessary medical care incurred in the past.

Answer: \$ 381,270.91

h. Reasonable ~~expenses~~ of necessary medical care that, in reasonable probability, Gloria ~~Myers~~ will incur in the future.

Answer: \$ 450,000

i. Loss of earning capacity sustained in the past.

Answer: \$ 140,000

j. Loss of earning capacity that, in reasonable probability, Gloria ~~Myers~~ will sustain in the future.

Answer: \$ 380,000

Myers

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.


JUDGE PRESIDING

Verdict Certificate

Check one:

Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

X Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

- 1. Steffine Tovar
2. Whittaker Mims
3. Jetha M. Sullivan
4. Lydia Martinez Guzman
5. Anyson Lambrecht
6. Kristi Etheredge
7. Chnsrain Bacon
8. Crystal Garland
9. Chikitia Benjamin
10. Robert Alent
11.

- Steffine Tovar
Whittaker Mims
Jetha M. Sullivan
Lydia Martinez Guzman
Anyson Lambrecht
Kristi Etheredge
Chnsrain Bacon
Crystal Garland
CHIKITIA BENJAMIN
ROBERT ALENT

Exhibit C

PJC 10.12 **Negligent Entrustment—Reckless, Incompetent,
or Unlicensed Driver**

As to *Edna Entrustor*, “negligence” means entrusting a vehicle to a *reckless* driver if the entrustor knew or should have known that the driver was *reckless*. Such negligence is a proximate cause of an [*injury*] [*occurrence*] if the negligence of the driver to whom the vehicle was entrusted is a proximate cause of the [*injury*] [*occurrence*].

QUESTION _____

Did the negligence, if any, of the persons named below proximately cause the [*injury*] [*occurrence*] in question?

Answer “Yes” or “No” for each of the following:

Answer the question as to *Edna Entrustor* only if you have answered “Yes” as to *David Driver*.

1. *David Driver* _____
2. *Edna Entrustor* _____
3. *Paul Payne* _____

COMMENT

When to use. PJC 10.12 submits the common-law doctrine of negligent entrustment to a reckless driver. In an appropriate case, the words *incompetent*, *reckless* or *incompetent*, or *unlicensed* should be substituted for *reckless*. Negligent entrustment requires (1) entrustment of a vehicle by the owner (2) to an unlicensed, incompetent, or reckless driver (3) that at the time of the entrustment the owner knew or should have known to be unlicensed, incompetent, or reckless; and (4) the driver’s negligence on the occasion in question (5) proximately caused the accident. *4Front Engineered Solutions, Inc. v. Rosales*, 505 S.W.3d 905, 909 (Tex. 2016); *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 758 (Tex. 2007); *Williams v. Steves Industries, Inc.*, 699 S.W.2d 570 (Tex. 1985), *superseded by statute on other grounds as stated in Transportation Insurance Co. v. Moriel*, 879 S.W.2d 10, 20 n.11 (Tex. 1994), *superseded by statute on other grounds by U-Haul International, Inc. v. Waldrip*, 380 S.W.3d 118 (Tex. 2012). The doctrine of negligent entrustment may be applied to tangible property other than motor vehicles. *4Front Engineered Solutions, Inc.*, 505 S.W.3d at 909 n.5 (addressing entrustment of forklift and listing other examples of tangible personal property subject to entrustment including, e.g., firearms).

Note that PJC 10.12 consists of two parts—an instruction, to be given immediately after the definition of “negligence,” and a broad-form question.

Statutory standard for unlicensed drivers. “A person may not authorize or knowingly permit a motor vehicle owned by or under the control of the person to be operated on a highway by any person in violation of this chapter.” [Tex. Transp. Code § 521.458\(b\)](#). “This chapter” prohibits, among other things, a person, unless expressly exempted under chapter 521, from “operat[ing] a motor vehicle on a highway in this state unless the person holds a driver’s license issued under this chapter.” [Tex. Transp. Code § 521.021](#). Where a statute requires a driver to be legally licensed to operate a vehicle, then permitting the driver to operate it without a license would constitute negligence per se. *4Front Engineered Solutions, Inc.*, [505 S.W.3d at 911](#) (citing *Mundy v. Pirie-Slaughter Motor Co.*, [206 S.W.2d 587](#), 589–90 (Tex. 1947)). See PJC 5.1 comment, “Two types of negligence per se standards.”

Beware, however, that “[t]he reference to an unlicensed driver arises from cases alleging negligent entrustment of an automobile, and is based on the fact that Texas statutes require all drivers to be licensed and prohibit an owner from knowingly permitting an unlicensed driver to operate the owner’s vehicle.” *4Front Engineered Solutions, Inc.*, [505 S.W.3d at 909](#) n.6 (citing *Mundy*, [206 S.W.2d at 589–90](#)). If Texas law does not require a license to operate a particular piece of equipment (e.g., a forklift) or prohibit an owner from permitting an unlicensed person from operating a particular piece of equipment, the lack of a license would be inapplicable to the negligent entrustment issue. See *4Front Engineered Solutions, Inc.*, [505 S.W.3d at 909](#) n.6 (citing *Mundy*, [206 S.W.2d at 589–90](#)).

Proximate cause of entrustor. “For entrustment to be a proximate cause, the defendant entrustor should be shown to be reasonably able to anticipate that an injury would result from a natural and probable consequence of the entrustment.” *Schneider v. Esperanza Transmission Co.*, [744 S.W.2d 595](#) (Tex. 1987) (not foreseeable that employee would become intoxicated and allow others to drive company vehicle, where employee’s only record was of speeding tickets); see also *Always Auto Group, Ltd. v. Walters*, [530 S.W.3d 147](#), 148 (Tex. 2017) (not foreseeable that driver, who was visibly intoxicated when he was provided loaner vehicle, would get drunk eighteen days later and cause a collision); *Hanson v. Green*, [339 S.W.2d 381](#), 383 (Tex. App.—Texarkana 1960, writ ref’d) (finding negligence, if any, of father in entrusting car to unlicensed, minor daughter was not a proximate cause of plaintiff’s injuries and damages, where—unbeknownst to father—daughter entrusted car to unlicensed, minor friend).

Thus, negligent entrustment is considered a proximate cause of the collision if the risk that caused the entrustment to be negligent caused the accident at issue. *TXI Transportation Co. v. Hughes*, [306 S.W.3d 230](#), 240–41 (Tex. 2010) (neither driver’s status as illegal alien nor fact that he had used fake Social Security number to obtain his commercial driver’s license was proximate cause of accident); see also *Endeavor*

Energy Resources, L.P. v. Cuevas, 593 S.W.3d 307, 311 (Tex. 2019). Concerning whether the presumption of proximate cause set out in the second sentence of this instruction should apply in a double-entrustment case, see *Schneider*, 744 S.W.2d 595 (where risk that caused entrustment to be negligent did not cause collision, entrustment was not proximate cause of collision).

If only entrustor is sued. If only the entrustor is sued, the driver’s conduct would not be inquired about, and the predicating instruction, “Answer the question as to *Edna Entrustor* only if you have answered ‘Yes’ as to *David Driver*,” should be omitted. It is sufficient that the instruction state that if the driver’s negligence proximately caused the collision, the entrustor’s negligence is considered the proximate cause of the collision.

Caveat when both entrustor and trustee are joined. Whether the entrustor should be submitted in the comparative causation question is uncertain. See *Bedford v. Moore*, 166 S.W.3d 454 (Tex. App.—Fort Worth 2005, no pet.); *Rosell v. Central West Motor Stages, Inc.*, 89 S.W.3d 643 (Tex. App.—Dallas 2002, pet. denied); *Loom Craft Carpet Mills, Inc. v. Gorrell*, 823 S.W.2d 431 (Tex. App.—Texarkana 1992, no writ). Also see Justice Jefferson’s dissent in *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 694 (Tex. 2007).

Modify “negligence” definition to refer only to parties other than entrustor. The basic definition of “negligence,” PJC 2.1, which precedes this instruction, should be modified by adding the phrase “when used with respect to the conduct of [*include names of parties other than the entrustor’s*]” after the first word, “negligence,” to inform the jury that the more specific definition of negligence in PJC 10.12 applies only to the entrustor. See PJC 2.1 comment, “Modify if ‘ordinary care’ not applicable to all.”

Duty to investigate. Under the common law, an employer owes a duty to the general public to ascertain the qualifications and competence of the employees and independent contractors it hires, “especially when the employees are engaged in occupations that require skill or experience and that could be hazardous to the safety of others.” *Morris v. JTM Materials, Inc.*, 78 S.W.3d 28, 49 (Tex. App.—Fort Worth 2002, no pet.); see also *Martinez v. Hays Construction, Inc.*, 355 S.W.3d 170, 180 (Tex. App.—Houston [1st Dist.] 2011, pet. denied) (negligent hiring case), *disapproved of on other grounds by Gonzalez v. Ramirez*, 463 S.W.3d 499 (Tex. 2015) (to the extent *Martinez* holds that employer was liable as a motor carrier under federal regulations). If employment requires driving a vehicle, the employer has an affirmative duty to investigate the employee or independent contractor’s competency to drive. *Martinez*, 355 S.W.3d at 180 (citing *Mireles v. Ashley*, 201 S.W.3d 779, 782–83 (Tex. App.—Amarillo 2006, no pet.), and *Morris*, 78 S.W.3d at 49)).

An employer is also required by state statute to investigate a driver’s driving record with the Department of Public Safety and to verify that he has a valid license before

entrusting a vehicle to him to transport persons or property. [Tex. Transp. Code § 521.459\(a\)](#); see *North Houston Pole Line Corp. v. McAllister*, 667 S.W.2d 829, 835 (Tex. App.—Houston [14th Dist.] 1983, no writ) (former article 6687b, section 37, imposed “duty to know”). In the context of a commercial motor vehicle, the Federal Motor Carrier Safety Regulations require an employer to, among many other things and subject to certain limited exemptions, investigate each employed driver’s motor vehicle record and Department of Transportation–regulated employment history during the preceding three years. See [49 C.F.R. pt. 391](#), subpt. C (“Background and Character”); [49 C.F.R. pt. 391](#), subpt. G (“Limited Exemptions”).

Use of “injury” or “occurrence.” See discussion at PJC 4.1 Comment.

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Associated Case Party: GLORIA MYERS

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| George Quesada | | quesada@textrial.com | 2/14/2025 8:03:53 PM | SENT |
| Dana Chandler | | dchandler@textrial.com | 2/14/2025 8:03:53 PM | SENT |
| Jody Rodenberg | | jrodenberg@textrial.com | 2/14/2025 8:03:53 PM | SENT |
| Bethzabeth Loya | | bloya@textrial.com | 2/14/2025 8:03:53 PM | SENT |
| Coral Dimopoulos | | cdimopoulos@textrial.com | 2/14/2025 8:03:53 PM | SENT |
| Ariana Chalajour | | achalajour@textrial.com | 2/14/2025 8:03:53 PM | SENT |

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| Carlos Balido | 1631230 | balidoedocsnotifications@wbclawfirm.com | 2/14/2025 8:03:53 PM | SENT |
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| Mark A. Teague | | eservice@lecronelaw.com | 2/14/2025 8:03:53 PM | SENT |
| Francine Ly | | fly@dallascourts.org | 2/14/2025 8:03:53 PM | SENT |
| Brooke Miller | | brooke@colanerifirm.com | 2/14/2025 8:03:53 PM | SENT |
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| Jessica Z. Barger | | barger@wrightclosebarger.com | 2/14/2025 8:03:53 PM | SENT |

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Michelle Heigelmann on behalf of Marie Jamison
Bar No. 24044647
heigelmann@wrightclose.com
Envelope ID: 97424123
Filing Code Description: Motion - New Trial - \$80
Filing Description: GALEN WADE HUDSON'S
Status as of 2/17/2025 3:02 PM CST

Case Contacts

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| Marie Jamison | | jamison@wrightclosebarger.com | 2/14/2025 8:03:53 PM | SENT |
| Emily C.Freeman | | freeman@wrightclosebarger.com | 2/14/2025 8:03:53 PM | SENT |