

seriously hurt during the delivery. Mr. Horner told law enforcement that he was concerned Athena would report that she had been hit by the FedEx van. Mr. Horner told law enforcement that while Athena was in his FedEx vehicle, he tried to break Athena's neck, failed, and then strangled her until she died. Mr. Horner then drove Athena's body in his FedEx truck and concealed Athena's body in a remote area. Mr. Horner told law enforcement that he killed Athena because he was worried that Athena would tell her dad that she had been hit by the FedEx vehicle.

II. DISCOVERY CONTROL PLAN

2. Pursuant to Texas Rule of Civil Procedure 190.1 discovery is intended to be conducted under Level 3 of Rule 190.3 of the Texas Rules of Civil Procedure.

III. AMOUNT IN CONTROVERSY

3. As required by Texas Rule of Civil Procedure 47, Plaintiff states that they are seeking monetary relief of over \$1,000,000.00.

IV. PARTIES

4. Plaintiff Jacob Stand as Personal Representative of Athena Strand, deceased, is an individual residing in Paradise, Texas. The last three digits of his driver's license number are 423 and the last three digits of his social security number are 197.

5. Defendant Tanner Horner is an individual and is a resident of Dallas County, Texas. He may be served at 200 Rook Ramsey Dr., Decatur, TX 76234 or wherever he may be found.

6. Defendant Big Topspin, Inc. is a Texas for-profit corporation doing business in Dallas County, Texas and may be served with process through its registered agent Richard G. Davis III at 17418 River Hill Dr. Dallas, Texas 75287.

7. Defendant FedEx Ground Package System, Inc. is a foreign corporation doing business in Texas and may be served with process by serving its registered agent, CT Corporation, at 1999 Bryant Street, Suite 900, Dallas, Texas 75201.

V. JURISDICTION AND VENUE

8. This Court has personal jurisdiction over all of the parties in this suit because some or substantially all of Defendants' tortious acts occurred in Wise County, Texas and form the basis of this litigation.

9. This Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

10. Venue is proper in this Court pursuant to Texas Civil Practices & Remedies Code §15.002(a)(1) because all or a substantial part of the events giving rise to the Plaintiff's claims occurred in Wise County, Texas.

VI. STATEMENT OF FACTS

11. Athena Strand was a seven (7) year old girl. She lived with both her father Jacob Strand and her mother Maitlyn Gandy. Jacob and Maitlyn had divorced and shared custody of Athena. Jacob and Maitlyn are the sole beneficiaries under Texas's Wrongful Death Statute.

12. On November 30, 2022 in the afternoon Athena was playing in the front yard of her home in Paradise, Texas.

13. At 18:41 hours Athena's stepmother and Jacob's wife, Elizabeth Strand, called 911 to report that Athena was missing.

14. An extensive search was undertaken to find Athena.

15. Wise County Sheriff's Deputies learned that FedEx Ground had delivered a package to Athena's home around the time Athena went missing.

16. Wise County Sheriff's Deputies learned that the FedEx Ground route that Athena's home was on was serviced by Big Topspin, Inc.

17. Law enforcement was able to obtain video from the FedEx Ground van that had made the delivery to Athena's home. An FBI employee viewed the video and was able to discern that the driver of the FedEx Ground vehicle had taken a young girl matching Athena's appearance into the FedEx Ground vehicle.

18. Law enforcement located Defendant Horner, mirandized him, and interviewed him. Defendant Horner stated that when he was backing up in his FedEx Ground vehicle, he accidentally hit Athena with his vehicle. Defendant Horner stated that Athena was not seriously injured by his FedEx vehicle. Defendant Horner stated he panicked after hitting Athena with the FedEx Ground vehicle and put Athena in his FedEx Ground vehicle.

19. Defendant Horner stated Athena was alive when he placed her in his FedEx vehicle. Defendant said Athena was talking to him. Defendant Horner stated he tried to break Athena's neck, failed to do so, and then strangled her to death in the back of his FedEx Ground vehicle.

20. Defendant Horner told law enforcement that he strangled Athena because she was going to tell her father about being hit by the FedEx Ground vehicle Defendant Horner was operating.

21. Defendant Horner never reported to Big Topspin or FedEx ground that he had hit Athena with his FedEx vehicle.

22. Defendant Tanner Horner is an employee of Big Topspin and is authorized to wear a FedEx Ground uniform and drive a vehicle conspicuously bearing the FedEx Ground logo to deliver packages to FedEx Ground customers who live on FedEx Ground routes that Big Topspin services for FedEx Ground.

23. FedEx Ground retains significant control over the specific manner in which Big Topspin and its employees and contractors deliver FedEx Ground packages and maintains significant control over Big Topspin and its employees.

24. FedEx Ground delivery drivers have recently committed numerous assaults, rapes and murders of persons across the country. In each of these cases FedEx stated that they were “appalled”. In 2021 a New York a delivery driver lured teenagers into his FedEx delivery vehicle and sexually assaulted the teenagers. In 2022 a FedEx driver located in Utica, New York murdered a woman on his route and burned her house to the ground. In March of 2022 a FedEx driver in Connecticut broke into a woman’s home on his route and held her at gunpoint. On December 22, 2021 a FedEx Ground driver in North Carolina was charged with breaking into 11 homes along his FedEx delivery route: stolen jewelry and guns were located in the driver’s FedEx Ground vehicle.

25. In this case a FedEx spokeswoman addressed the media as follows, “words cannot describe our shock and sorrow at the reports surrounding this tragic event”.

26. FedEx has continued their normal business operations although it is clear that their current efforts, if any, to ensure that they are not putting dangerous persons in a position of trust wearing FedEx uniforms, driving FedEx branded vehicles, and sending them to the doorsteps of the homes of nearly every person in America is woefully inadequate to avoid endangering the public.

VII. ASSAULT BY INFLICTION OF BODILY INJURY – TANNER HORNER

27. To the extent not inconsistent herewith, Plaintiff incorporates by reference all of the above facts and paragraphs as if set forth fully herein.

28. Defendant Tanner Horner intentionally, knowingly, and recklessly made contact with Athena Strand's body including but not limited to striking her to attempt to break her neck and strangling her to death.

29. Big Topspin and FedEx Ground are jointly and severally liable for the acts and/or omissions of Defendant Horner through the theories of respondeat superior, ostensible agency, actual agency, and/or other agency principles.

30. Defendant Horner's wrongful conduct resulted in the following damages: past and future medical and burial expenses; past and future pain and suffering; past and future mental anguish; past and future lost earning capacity; past and future lost income; past and future loss of consortium; past and future loss of society and companionship; and past and future loss of enjoyment of life. In addition to each of these damages, Plaintiffs also seek prejudgment and post-judgment interest as well as compensable court costs.

**VIII. NEGLIGENCE – BIG TOPSPIN, INC & FED EX GROUND PACKAGE
SYSTEM, INC.**

31. To the extent not inconsistent herewith, Plaintiffs incorporate by reference all of the above facts and paragraphs as if set forth fully herein.

32. Big Topspin and FedEx Ground each had a duty to exercise ordinary care, that is, to do what a person of ordinary prudence would have done under the same or similar circumstances.

33. Big Topspin and FedEx Ground did not use that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

34. Big Topspin and FedEx Ground breached the duty of care, including but not limited to, the following ways:

- a. In the negligent hiring of Defendant Tanner Horner;
- b. In failing to properly investigate Defendant Tanner Horner's criminal history, mental health history, and prior employment;
- c. In failing to properly supervise Defendant Tanner Horner;
- d. In the reckless employment of Defendant Tanner Horner;
- e. In failing to implement safety policies and procedures;
- f. In failing to enforce safety policies and procedures;
- g. In failing to promulgate reasonable safety rules for its employees;
- h. In failing to implement an effective safety policy for FedEx Ground delivery drivers;
- i. In failing to enforce safety standards;
- j. In failing to supervise and direct safety personnel and managers; and
- k. In failing to monitor company compliance with safety policies and procedures.

35. Each and all of the foregoing acts, both of omission and commission, were negligent and constituted negligence, and were each and all, independently and/or concurrently the sole proximate cause of the incident and damages to Plaintiff made the basis of this suit, including past and past and future medical and burial expenses; past and future pain and suffering; past and future mental anguish; past and future lost earning capacity; past and future lost income; past and future loss of consortium; past and future loss of society and companionship; and past and future loss of enjoyment of life. In addition to each of these damages, Plaintiffs also seek prejudgment and post-judgment interest as well as compensable court costs.

**IX. NEGLIGENCE ENTRUSTMENT - BIG TOPSPIN, INC & FED EX
GROUND PACKAGE SYSTEM, INC.**

36. To the extent not inconsistent herewith, Plaintiff incorporates by reference all of the above facts and paragraphs as if set forth fully herein.

37. Big Topspin and FedEx Ground supplied Defendant Horner with the FedEx vehicle that he drove to Athena Strand's home as well as a FedEx Ground uniform to wear.

38. Big Topspin and FedEx Ground knew or should have known that Defendant Horner would use the motor vehicle in a manner involving an unreasonable risk of harm as described in the paragraphs above. Big Topspin and FedEx Ground have been further negligent with allowing Defendant Horner to work as a delivery driver in a residential area in which he came into contact with vulnerable members of the public, including children.

39. The death of Athena Strand resulted from Defendant Horner's use of his FedEx Ground uniform and vehicle, resulting in the following damages to Plaintiff: past and past and future medical and burial expenses; past and future pain and suffering; past and future mental anguish; past and future lost earning capacity; past and future lost income; past and future loss of consortium; past and future loss of society and companionship; and past and future loss of enjoyment of life. In addition to each of these damages, Plaintiffs also seek prejudgment and post-judgment interest as well as compensable court costs.

**X. GROSS NEGLIGENCE - BIG TOPSPIN, INC & FED EX GROUND
PACKAGE SYSTEM, INC.**

40. To the extent not inconsistent herewith, Plaintiff incorporates by reference all of the above facts and paragraphs as if set forth fully herein.

41. Big Topspin and FedEx Ground's course of conduct shows a reckless indifference to consequences without the exertion of any substantial effort to avoid them. Big Topspin and FedEx Ground acted willfully, wantonly, and/or with reckless disregard to the consequences to

Plaintiff. Big Topspin and FedEx Ground actions and inactions constituted an extreme risk of harm to the public, including Athena Strand. Big Topspin and FedEx Ground's had a subjective awareness of this risk and proceeded in spite of the risk with conscious indifference.

42. Big Topspin and FedEx Ground as a result of their conduct, policies, failure to train, failure to investigate, failure to supervise, and other acts and omissions, had subjective knowledge that hiring and retaining Defendant Tanner Horner would involve an unreasonable risk of harm to FedEx Ground's and Big Topspin's customers and hired and retained Mr. Horner in spite of the extreme risk of harm with conscious indifference.

43. Defendant Horner's conduct resulted from the actions and inaction of corporate officers, directors and managers of Big Topspin and FedEx Ground in one or more of the following respects:

- a. In the negligent hiring of Defendant Tanner Horner;
- b. In failing to properly investigate Defendant Tanner Horner's criminal history, mental health history, and prior employment;
- c. In failing to properly supervise Defendant Tanner Horner;
- d. In the reckless employment of Defendant Tanner Horner;
- e. In failing to implement safety policies and procedures;
- f. In failing to enforce safety policies and procedures;
- g. In failing to promulgate reasonable safety rules for its employees;
- h. In failing to implement an effective safety policy for FedEx Ground delivery drivers;
- i. In failing to enforce safety standards;
- j. In failing to supervise and direct safety personnel and managers;

k. In failing to monitor company compliance with safety policies and procedures;
and,

l. In entrusting the FedEx uniform and FedEx vehicle to Defendant Horner;

44. Big Topspin and FedEx Ground acts and/or omissions as described above proximately caused harm to Plaintiff which resulted in the following damages: past and future medical and burial expenses; past and future pain and suffering; past and future mental anguish; past and future lost earning capacity; past and future lost income; past and future loss of consortium; past and future loss of society and companionship; and past and future loss of enjoyment of life. In addition to each of these damages, Plaintiffs also seek prejudgment and post-judgment interest as well as compensable court costs.

XI. EXEMPLARY DAMAGES

45. To the extent not inconsistent herewith, Plaintiff incorporates by reference all of the above facts and paragraphs as if set forth fully herein.

46. Defendants acted with gross negligence and malice, which justifies an award of punitive damages under Texas law. The acts or omissions of Defendants constitute gross negligence and malice, as those terms are defined in Texas Civil Practice and Remedies Code section 41.001(7), (11).

47. Further, the limit on exemplary damages in Texas Civil Practice and Remedies Code section 41.008 does not apply because Plaintiff seek recovery of exemplary damages based on conduct described as a felony in Texas Penal Code section 19.02, murder.

48. The grossly negligent and malicious acts and/or omissions of Defendants were a proximate cause of actual damages to Plaintiff in an amount within the jurisdictional limits of this Court, for which Plaintiffs seek judgment.

XII. JURY DEMAND

49. Plaintiff respectfully request that the trial of this cause be by jury, and Plaintiffs will tender the requisite fee.

XIII. REQUEST FOR DISCLOSURES

50. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose within fifty (50) days of service of this request, the information and/or material described in Rule 194.2.

XIV. PRAYER

51. For these reasons, Plaintiff asks that the court issue citation for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendant for the following:

- a. Past and future medical and burial expenses;
- b. Past and future pain and suffering;
- c. Past and future mental anguish;
- d. Past and future lost earning capacity;
- e. Past and future lost income;
- f. Past and future loss of household services;
- g. Past and future loss of consortium;
- h. Past and future loss of society and companionship;
- i. Past and future loss of enjoyment of life;
- j. All other economic damages allowed by law;
- k. Exemplary damages without cap or limitation;
- l. Prejudgment and post-judgment interest at the maximum rate allowable by law;
- m. Costs of Court; and

n. All other relief to which Plaintiff may be justly entitled, at law or in equity.

Dated the 12th day of December 2022.

Respectfully submitted

/s/ Jason Bowles

R. Jason Bowles

Bowles Law Firm

4811 Hardware Drive, N.E., Suite D-5

Albuquerque, New Mexico 87109

Telephone: (505) 217-2680

Email: jason@bowles-lawfirm.com

--and--

PAUL BELEW, PLLC.

P.O. Box 2409

Decatur, Texas 76234

(817) 703 - 8312

(877) 817 - 3731 Facsimile

BY: /s/ PAUL BELEW

Paul Belew

State Bar No.: 00794926

pbelew@gmail.com

ATTORNEY(S) FOR PLAINTIFF JACOB STRAND as
Personal Representative of ATHENA STRAND, deceased.