

PARTIES

1. Plaintiffs are residents, Texas.
2. Defendant City of Dallas is a municipal corporation that may be served with process by serving the City Secretary Deborah Watkins at 1500 Marilla Street, Room 5D South, City Hall, Dallas, Texas, 75201.
3. Defendant Super Seer Corporation is a Colorado corporation in good standing and can be served with process through its registered agent for service, Super Seer Corporation, 3989 Evergreen Parkway, Evergreen, CO 80439.
4. Defendant Hillary Clinton is a resident of New York, New York, and is also the Secretary State for the United States of America. Secretary of State Clinton can be served at U.S. Department of State, 2201 C Street NW, Washington, DC 20520.
5. Defendant Hillary Clinton For President, Inc., is a District of Columbia not for profit corporation registered with the Secretary of State as doing business in Texas, and can be served by serving its registered agent National Registered Agents, Inc., at the registered address of 16055 Space Center Blvd. Ste. 235, Houston, TX 77062-6212.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction of this cause because the accident made the basis of this suit took place in Dallas County and the actions of the Defendants leading to the Plaintiffs damages took place in Dallas County, Texas and because the amount in controversy exceeds the minimum jurisdictional limits of this court.
7. The Court has personal jurisdiction over Defendants Seer, Clinton and Clinton, Inc. because each does and has done business in Texas by committing a tort in whole

or in part in this State (including but not limited to the torts alleged to have been committed by each below in this Petition), by entering into contracts with Texas residents to be performed in whole or in part in Texas, and by other acts that constitute doing business in Texas. Plaintiff's cause of action arises out of the business done by Seer, Clinton and Clinton, Inc. in Texas and its contacts with Texas. In addition, Seer, Clinton and Clinton, Inc. have engaged in continuous and systematic contacts with the State of Texas so as to warrant the exercise of personal jurisdiction over them by courts in Texas. Seer, Clinton's and Clinton, Inc.'s acts constituting doing business in Texas and its contacts with Texas are sufficient to support both specific and general personal jurisdiction over it by this Court.

8. This Court has personal jurisdiction over all other Defendants because they are residents of the State of Texas.

9. Dallas does not have governmental immunity. Immunity has been waived by the legislature of the State of Texas under the Tort Claims Act because Victor Lozada's injuries and death were caused by a condition or use of real property, namely Dallas's street, and conditions and use of tangible personal property, namely the motorcycle helmet, when Dallas would be liable to Plaintiffs if it were a private person. TEX. CIV. PRAC. REM. CODE §101.021(a)(2). Plaintiffs' claims arise from one or more roadway defects which were special defects. TEX. CIV. PRAC. & REM. CODE §101.022; *State Dep't of Highways v. Zachary*, 824 S.W.2d 813, 815, 817 (Tex. App.—Beaumont 1992, writ denied); *State v. McBride*, 601 S.W.2d 552, 558 (Tex. Civ. App.—Waco 1980, writ ref'd n.r.e.). No notice to Dallas of the claim was required because Dallas had actual notice that death occurred and that Victor Lozada and Plaintiffs received some injury and that

Dallas' negligent and grossly negligent conduct caused the death and Plaintiffs injuries and damages. Plaintiffs have provided to Dallas any required notice.

10. Venue is proper in Dallas County under §15.002(1) of the Texas Civil Practices and Remedies Code, as all or a substantial part of the events giving rise to this claim occurred in Dallas County.

CONDITIONS PRECEDENT

11. Plaintiffs would show that all conditions precedent to their recovery have occurred or been fulfilled.

FACTS

12. On or about February 22, 2008, City of Dallas Police Officer Victor A. Lozada was assigned to ride a motorcycle in the motorcade of then presidential candidate and U.S. Senator, now Secretary of State, Hillary Clinton. Officer Lozada was a 20-year veteran of the Dallas Police Department, earning over 135 commendations. Clinton and Clinton, Inc. gave Dallas short and inadequate notice of the motorcade.

Grossly Inadequate Training

13. After 20 years on the force, Officer Lozada trained as a motorcycle officer and had graduated very shortly before being assigned the dangerous job of "motor jockey" in the motorcade. He was not properly trained for an assignment as dangerous as a motorcade; nor was he experienced enough. On January 25, 2008, less than one month before his death, Officer Lozada's trainer recommended that he have at least two more weeks of training, since he did not think that Officer Lozada was ready to ride on duty. In spite of this the City of Dallas did not provide Officer Lozada with the additional training necessary to properly equip him to perform his job safely. In fact, in an act of

what can only be gross negligence and in disregard of Officer Lozada's safety and well being the City of Dallas graduated Officer Lozada from training when it knew that he was not fully and properly prepared to handle the extremely dangerous conditions faced by a motorcycle officer.

14. On or about February 22, 2008, Officer Lozada was assigned to motorcade duty to escort Clinton in the Dallas area. Although the protocol for the City of Dallas was to always perform an advance planning, run throughs and meetings regarding all such motorcade assignments, the City of Dallas failed to do so in this instance. The City of Dallas had not required any kind of run through, special training or a practice run for Officer Lozada or any of the officers. The City of Dallas's did not properly train motorcycle officers, did not properly brief them of the road conditions, the route, any special hazards associated with the route. Further, riding a motorcade is one of the most dangerous assignments for a motorcycle officer and Officer Lozada did not have enough training or experience to be assigned this duty, especially an assignment where no advance training, practice runs or oversight was provided. Essentially not only did the City of Dallas know that Officer Lozada was not ready for such a dangerous assignment but they acted with conscious disregard of its own policies, protocols and procedures which were designed to protect officers such as Officer Lozada.

Clinton's Failures

15. The lack of training and preparedness was in part caused by the failure of the Clinton and Clinton, Inc. to timely request motorcade assistance from Dallas. Defendant Clinton held the position of First Lady for a period of eight (8) years, during which she participated in numerous motorcades. Defendant Clinton knew from her experience as

First Lady and later as a Senator/First Lady, that motorcade escorts require sufficient notice and advance coordination to be performed safely. Clinton knew from first hand eyewitness observation that the officers conducting the motorcycle escort detail were required to operate at very dangerous speeds and that a motorcade required careful planning and coordination. In spite of this knowledge Clinton and Clinton, Inc. failed to provide such advance notice and timing. In fact, Clinton and Clinton, Inc. waited so long to request the motorcycle escort that there was insufficient time to adequately prepare for the safety and well being of the officers including Officer Lozada. Upon information and belief, the delay was caused in part due to indecision within Clinton, Inc. as to whether to demand a motorcycle escort. Never-the-less, Clinton and Clinton, Inc.'s failure to timely request motorcycle assistance assured that there would be inadequate time to properly prepare and train for the escort and was a proximate cause of Officer Lozada's death.

The Fatal Crash

16. This assignment required Officer Lozada to overtake the motorcade at speeds up to 70 mph, well in excess of the posted speed limits, and slingshot ahead of it then stop abruptly at an intersection before the motorcade arrives. The motorcycle officer stops traffic at the intersection until the last car of the motorcade goes through, then speeds ahead of the motorcade in order to reach the next intersection ahead of the first car of the motorcade. It was during one of these slingshot maneuvers after passing Clinton's limousine that the fatal crash occurred.

17. Around 9:13 a.m. on February 22, 2008, Officer Lozada sped ahead of the Clinton motorcade at the Houston Street viaduct. At a speed of around 70 mph, Officer

Lozada lost control of his motorcycle due to a condition of the roadway, which was a special defect. Had there been sufficient time to properly train and prepare for the escort Officer Lozada would have been aware of the road conditions along the motorcade route and what hazards were out there. Officer Lozada's motorcycle ran up onto a sidewalk lining the viaduct, hit the concrete railing, and then slammed head-on into a concrete outcropping. Officer Lozada was thrown some distance from his motorcycle onto the roadway.

Helmet Defects

18. The helmet that Officer Lozada was wearing was manufactured by Speer. The helmet was defective. During the course of the accident the clasp holding his chin strap together on his helmet disengaged causing his helmet to come off. The Helmet was manufactured by Speer, and was dangerously defective. The helmet should not have come off, none-the-less it did causing Officer Lozada fatal and traumatic injuries to his head and brain.

911 Failures

19. After Officer Lozada's crash, he lay on the roadway for over 12 minutes before a fire department ambulance was dispatched. The delay in dispatching the ambulance crew to the scene remains unexplained to this day. The unnecessary delay in dispatching the ambulance crew to the scene of the crash was as a result of fatal flaws in the 911 system and how the police department and fire department communicate. Those flaws and failures still exist to this day. Any chance for life saving measures were destroyed by the inexcusable negligence and gross negligence in the operation of the 911 system. If an officer escorting a former First Lady and then current Presidential

candidate in downtown Dallas has to wait an unreasonable period of time to get an ambulance dispatched to the scene of his accident, no citizen in Dallas is safe. The dispatch records from the City of Dallas Fire Department establish that the call was dispatched at 9:30:54 am and that the DFD arrived at the scene at 9:31:04 and that they were at Officer Lozada's side ready to render aid at 9:32:00 am. The one minute six second response time was admirable, the delay in dispatching for approximately 12 minutes is inexcusable. Yet the City of Dallas after repeated requests by the Plaintiffs have failed to remedy those 911 failures and the Dallas Fire Department has refused to even discuss the matter with Plaintiffs. The problems with the 911 system reflects a general disregard towards the safety health and well being of the residents and visitors of Dallas and the employees both sworn and unsworn of the Dallas Police Department.

CAUSE OF ACTION: NEGLIGENCE

20. Plaintiffs would show that the accident made the basis of this lawsuit resulted from the negligence of all Defendants, both separately and together. The Defendants' conduct, separately and together, constituted negligence, and such negligent conduct was a proximate cause of the accident and injuries made the basis of this lawsuit.

21. Dallas' negligent actions or omissions include, but are not limited to, one or more of the following:

- a. Failure to properly maintain public streets in a manner safe for drivers on public roads including Officer Victor Lozada;
- b. Failure to warn of the unsafe conditions of the roadway where the accident took place;
- c. Failure to make safe the unsafe conditions of the roadway where the accident took place;
- d. Failure to warn of the special defects in roadway;
- e. Failure to make safe the special defects in the roadway;
- f. Designing an unsafe roadway.

22. Seer's negligent actions or omissions include, but are not limited to, one or more of the following:

- a. Failure to properly design the helmet for use by a motorcyclist;
- b. Failure to properly manufacture the helmet;
- c. Failure to properly inspect the helmet before it was sold;
- d. Failure to design the helmet in such a way that the chin strap clasp would not separate
- e. Failure to warn the public of that the helmet was unsafe to use and subject to coming off of the motorcycle driver;
- f. Designing the clasp of the helmet in such a way that the clasp would release during an accident;
- g. Manufacturing a defective helmet including but not limited to the chin strap and clasp.

23. Defendant Clinton's negligent actions or omissions include, but are not limited to, one or more of the following:

- a. Waiting to late to request motorcade coverage;
- b. Failure to allow adequate to time to prepare the motorcade coverage;
- c. Failure to properly and adequately coordinate the motorcade and any request for motorcycle escort;
- d. Failure to maintain safe speed forcing the motorcycle officers to use a dangerous speed to keep the motorcade moving.

24. Defendant Clinton, Inc.'s negligent actions or omissions include, but are not limited to, one or more of the following:

- a. Waiting to late to request motorcade coverage;
- b. Failure to allow adequate to time to prepare the motorcade coverage;
- c. Failure to properly and adequately coordinate the motorcade and any request for motorcycle escort;
- d. Failure to maintain safe speed forcing the motorcycle officers to use a dangerous speed to keep the motorcade moving.

Plaintiffs would show that one, some, or all of the above foregoing acts and/or omissions, or others on the part of Defendants, separately and together, constitute negligence and proximately caused the occurrence and Plaintiffs' injuries and damages.

Further Plaintiffs would show that Defendants' actions, both separately and together, as also constitute gross negligence.

STRICT LIABILITY - PRODUCTS LIABILITY - 402(A)

25. Speer is the manufacturer of a product (the helmet worn by Officer Lozada) which is unreasonably and dangerously defective in its design, its manufacture, and as marketed.

26. The defective nature of the product was a proximate and producing cause of the damages to the Plaintiffs, thus rendering Speer strictly liable. The specific product in question is Police Motorcycle Helmet. The Helmet in question was in substantially the same condition on February 22, 2008 as it was, when it was originally placed into the stream of commerce by Defendant Speer.

27. The defective nature of the product was a proximate and producing cause of the damages to the Plaintiffs, thus rendering Speer strictly liable.

28. It was entirely foreseeable to and well known by the Defendant that accidents and incidents involving its helmet, such as occurred herein, would on occasion take place during the normal and ordinary use of a motorcycle. In fact the helmet is marketed and sold to protect the end consumer in the event of such an accident.

29. Defendant designed, manufactured, marketed assembled and tested said helmet in question to be unreasonably dangerous and defective within the meaning of Section 402 (A) Restatement (Second) Torts in that the helmet was unreasonably dangerous as designed, manufactured, assembled, marketed, and tested for the following reasons:

- a. the helmet was susceptible to come off during accidents, depriving the user of any protection of the head and brain;

- b. the clasp on the chin strap on the helmet was defective in that it failed to stay clasped and once released allowed the helmet to fly off of Officer Lozada;
- c. the design of the clasp and helmet did not contemplate any type of back up system to hold the helmet on in the event of failure of the clasp even though such a failure was foreseeable;
- d. the design of the helmet, chin strap and clasp created a single point of failure even though it was foreseeable that such a failure could happen and would lead to severe injuries and death.

30. The defective nature of the Speer helmet as set forth herein, rendered it unreasonably dangerous and was a proximate and producing cause of the deaths of the plaintiffs and the Plaintiffs' resulting damages.

31. Speer made representations of material facts, as alleged hereinafter, concerning the character and quality of the line of product sold by them known generally as the Police Motorcycle Helmet and of the helmet referred to in this Petition in particular, of such a nature as to render the Defendant strictly liable for the deaths, injuries and damages suffered by the Plaintiffs.

32. All of this conduct, under the circumstances of this case, was known by Speer prior to the design and sale of the helmet in question and proximately caused the death, injuries and damage to the Plaintiffs, thus rendering Speer liable to the Plaintiffs under common law and the doctrine expressed in *Restatement (Second) of Torts*, §402A and 402B.

33. Moreover, a safer alternative design existed at the time the product was manufactured and left the possession of Defendant Speer. The safer alternative design would have prevented or significantly reduced the risk of the Plaintiffs injuries or the Plaintiffs' damages, without substantially impairing the product's utility. Further the safer

alternative design was economical and technologically feasible at the time the product left the control of Defendant Speer by application of existing or reasonably achievable scientific knowledge.

34. Plaintiffs allege there is no applicable federal mandatory safety standard or regulation aimed at providing safety regarding the helmet in question and the defective chin strap and clasp involved. To the extent that Defendant claims there is an applicable safety standard or regulation, any such standard or regulation was inadequate to protect the public from unreasonable risk of injury or damage. Furthermore, Plaintiffs contend that compliance with any helmet safety standard prescribed under any state or federal act does not exempt a person from liability at common law.

MISREPRESENTATION

35. Defendant made representations of material facts, as alleged hereinafter, concerning the character and quality of the line of product sold by it known generally as the Police Motorcycle Helmet of such a nature as to render the Defendant strictly liable for the injuries and damages suffered by Plaintiffs.

36. Defendant, acting by and through its agents, engaged in a course of advertising, marketing and promoting of the helmet, which included express and implied misrepresentations of material fact concerning the character and quality of the helmet through advertising, marketing and promotional activities, the totality of which, taken as a whole, falsely represented that the helmet was suitable for use as a police motorcycle helmet and had been adequately tested for regular and foreseeable use and for safety and crashworthiness in foreseeable accidents.

37. All of this conduct, under the circumstances of this case, was undertaken by Defendant Speer prior to the design and purchase of the helmet in question and proximately caused the injuries and damages suffered by Plaintiffs, thus rendering Defendant liable to Plaintiff under common law and the doctrine expressed in Restatement (Second) of Torts § 402B.

BREACH OF WARRANTY

38. The helmet in question is a “good” for purposes of the Texas Uniform Commercial Code (“UCC”) and at the time the helmet was sold, Speer was a “merchant” with respect to goods of that kind. Speer breached the implied warranties of “merchantability” and “fitness for particular purpose” as set forth in Tex.Bus.& Comm.Code §§2.314 and 2.315 by selling the helmet in question when it was not fit for the ordinary purpose for which such goods are used and by Speer’s failing in its requirement to use its skill or judgment to provide suitable goods, all of which conduct caused the safety, stability, maneuverability, and road worthiness problems described more fully herein. In particular, the helmet was not crashworthy, in that the clasp and chin strap was defective and subject to releasing and allowing the helmet to come off during any accident and that there was no back or redundant methods to keep the helmet on and the chin strap secured. The above breach of warranties was a proximate and/or producing cause of Plaintiffs’ deaths, injuries and damages.

GROSS NEGLIGENCE

39. This cause of action is further brought for the gross negligence of Defendant Speer. Plaintiffs will prove that Defendant Speer committed acts or omissions which

when viewed objectively from the standpoint of the actor at the time of this occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and of which the actor had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscience indifference to the rights, safety, or welfare of others. In other words, Speer had actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others, including Plaintiffs. Each of the negligent acts committed by the Defendant Speer rose to a level, which constituted gross negligence such that the imposition of exemplary damages is warranted.

DTPA VIOLATIONS - SPEER

40. Plaintiffs are consumers as defined, interpreted and contemplated by the Texas Deceptive Trade Practices--Consumer Protection Act ("DTPA"), and have complied with the notice provisions of §17.505 of the DTPA of their intent to invoke the protection and provisions of the DTPA. Plaintiffs agree that their DTPA claims will be abated until the expiration of the statutory sixty (60) days. All other conditions precedent to the maintenance of a DTPA action have been satisfied.

41. Defendant, Speer, has violated the DTPA in at least the following particulars:
- (a) §17.50(a)(2) breach of warranty;
 - (b) §17.50(a)(3) unconscionable action by virtue of the introduction into the stream of commerce of the helmet such as the one in question with the defects and shortcomings referenced herein;
 - (c) §17.46(b)(5) representing that the helmet in question had characteristics that it did not have;
 - (d) §17.46(b)(7) representing the Helmet was of a particular standard, quality, or grade when in fact it was not; and

- (e) §17.46(b)(23) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

42. Each of the foregoing, singularly or collectively, constituted violations of the DTPA, which violations were a producing cause of Plaintiffs' actual damages.

TREBLE DAMAGES—DTPA

43. Plaintiffs seek treble damages pursuant to §17.50(b)(1) of the DTPA due to Defendants' "knowing" violations of the DTPA.

ATTORNEY'S FEES AND EXPENSES-DTPA

44. Plaintiffs hereby make claim for attorney's fees and expenses pursuant to §17.50(d) of the DTPA. Plaintiffs have been forced to employ an attorney for the purposes of developing and prosecuting their claims, and as such have obligated themselves to the payment of attorney's fees and expenses. Plaintiffs will request the submission of an issue on attorney's fees both in terms of contingent fee and hourly rate and make an election after verdict and prior to judgment.

WRONGFUL DEATH

45. Plaintiff Theresa Lozada is the surviving spouse of Victor Lozada, Deceased; the remaining plaintiffs are the surviving children of Victor Lozada, Deceased. The Defendants in this case are corporate entities and an individual and Defendants' negligent and grossly negligent acts caused injury to the Decedent, which resulted in the death of Victor Lozada. Had the Decedent survived, however, they would have been entitled to bring an action for their injuries against Defendants. Additionally, Defendants' actions caused Plaintiffs to suffer damages, including, but not limited to, loss of support

and loss of consortium. Plaintiffs bring their wrongful death claims against Defendants under the Texas Wrongful Death Act, Sections et seq. 71.002 TEX. CIV. PRAC. & REM. CODE. Plaintiffs also bring their wrongful death claims under the constitution of the State of Texas.

CAUSE OF ACTION: GROSS NEGLIGENCE

46. As set out above, Defendants' actions, constitute not only negligence, but also gross negligence. Defendants' acts and omissions, when viewed objectively from the standpoint of the actor at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. As a result, each of the Defendants' acts and omissions constitute gross negligence and Plaintiffs are entitled to the recovery of exemplary damages.

47. Due to Defendants' grossly negligent conduct, Plaintiffs seek punitive damages and/or exemplary damages in an amount to be determined by the trier-of-fact. As an element of the punitive damages, Plaintiffs also seek the recovery of attorney's fees and costs in prosecuting this claim.

48. Plaintiffs have a claim recognized by the Texas Constitution for the death of Officer Lozada as a result of Dallas gross negligence. That claim is further supported by the Texas Labor Code.

DAMAGES

49. As a result of the incident made the basis of this lawsuit, Plaintiffs sustained injuries and damages. Those injuries and damages include but are not limited to, the

death of Officer Lozada. Officer Lozada suffered from major head trauma, including skull fracture, brain hemorrhage, brain contusions, fractures of 5 ribs and both wrists.

50. Plaintiffs suffered damages proximately caused by Defendants' negligence, both separately and together, and seek damages including but not limited to the following:

- a. Loss of economic support in the past and in the future;
- b. Loss of advice and counsel;
- c. Loss of spouse's services;
- d. Loss of parent's services;
- e. Loss of support;
- f. Loss of financial contributions;
- g. Medical expenses and funeral expenses
- h. Mental anguish and pain and suffering of the decedents;
- i. Mental anguish and pain and suffering of the Plaintiffs;
- j. Loss of companionship and society;
- k. Loss of inheritance;
- l. DTPA damages as set forth above;
- m. Pre-judgment interest from the date of the accident; and
- n. Post-judgment interest from the date on judgment in this matter.

REQUEST FOR JURY TRIAL

51. Contemporaneous with the filing herewith, Plaintiffs have paid a jury fee and make demand that the case be brought before the jury for trial on all matters.

REQUEST FOR DISCLOSURES

52. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request Defendants disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure. Plaintiffs specifically request the responding party to produce responsive documents at the undersigned law offices within fifty (50) days of service of this request.

53. **WHEREFORE, PREMISES CONSIDERED**, Plaintiffs pray that Defendants be cited to appear and answer herein, that upon final trial and hearing hereof, Plaintiffs recover against Defendants damages in accordance with the evidence, that Plaintiffs recover punitive damages, that Plaintiffs recover costs of Court herein expended, that Plaintiffs recover interest to which they are entitled justly under the law, and for such other and further relief, both general and special, both in law and in equity, to which Plaintiffs may be entitled justly.

Respectfully submitted,

THE SCHILLER FIRM



David A. Schiller, State Bar No. 00794601
John D. Exline, State Bar No. 06758100
Elisse V. Woelfel, State Bar No. 24058183
2309 W. Parker Road
Plano, TX 75023
Tel: (469) 467-9200
Fax: (469) 467-9600

ATTORNEYS FOR PLAINTIFFS