No.15-0732

IN THE
SUPREME COURT OF TEXAS

UNIVERSITY OF THE INCARNATE WORD,
Petitioner,
v.

VALERIE REDUS, Individually, and ROBERT M. REDUS, Individually and as Administrator of the Estate of Cameron M. Redus
Respondents.

FROM THE COURT OF APPEALS
FOR THE FOURTH COURT OF APPEALS DISTRICT OF TEXAS
AT SAN ANTONIO

RESPONDENTS' BRIEF ON THE MERITS

BURFORD PERRY, LLP
Brent C. Perry
State Bar No. 15799650
Robert R. Burford
State Bar No. 03371700
700 Louisiana, Suite 4545
Houston, Texas 770002
(713) 401-9790
(713) 993-7739 (Facsimile)
bperry@burfordperry.com

THE HERRERA LAW FIRM
Jorge A. Herrera
State Bar No. 24044242
Frank Herrera, Jr.
State Bar No. 09531000
111 Soledad, Suite 1900
San Antonio, TX 78205
(210) 224-1054
(210) 228-0887 (Facsimile)
jherrera@herreralaw.com

ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

No.15-0732

IN THE SUPREME COURT OF TEXAS

UNIVERSITY OF THE INCARNATE WORD,
Petitioner,
v.

VALERIE REDUS, Individually, and ROBERT M. REDUS, Individually and as Administrator of the Estate of Cameron M. Redus
Respondents.

FROM THE COURT OF APPEALS
FOR THE FOURTH COURT OF APPEALS DISTRICT OF TEXAS
AT SAN ANTONIO

RESPONDENTS' BRIEF ON THE MERITS

Respondents Valerie Redus and Robert M. Redus file their response to Petitioner University of the Incarnate Word's Brief on the Merits.

STATEMENT OF THE CASE

Nature of the case:	The underlying suit is a tort action for personal injury and wrongful death. The matter before this Court is limited to review of the appellate court's dismissal of an interlocutory appeal for want of jurisdiction.
Trial judge:	Hon. Cathleen Stryker
Trial court:	15oth Judicial District Court of Bexar County
Trial court's disposition:	The trial court denied the Plea to the Jurisdiction and Motion to Dismiss filed by defendant University of the Incarnate Word.
Appeals court parties:	*Appellant:* University of the Incarnate Word *Appellees:* Valerie and Robert M. Redus
Appeals court and participating justices:	Fourth Court of Appeals at San Antonio; opinion by Justice Jason Pulliam, joined by Justices Karen Angelini and Patricia O. Alvarez
Court of Appeals Disposition:	*University of the Incarnate Word v. Redus*, 474 S.W.3d 816 (Tex. App.—San Antonio 2015, pet. filed) Dismissed interlocutory appeal for want of jurisdiction. See also *In re University of the Incarnate Word*, 469 S.W.3d 255 (Tex.App.—San Antonio 2015, orig. proceeding). Staying all trial court proceedings pending resolution of the interlocutory appeal.

STATEMENT REGARDING JURISDICTION

The underlying interlocutory appeal arises from the trial court's denial of University of the Incarnate Word's ("UIW") plea to the jurisdiction. Clerk's Record ("CR") 418. UIW, a "private institution of higher education," claims "governmental unit" status under the Texas Tort Claims Act for its law enforcement activities. See TEX. EDUC. CODE § 61.003 9(15) ("private institution" definition) and TEX. CIV. PRAC. & REM. CODE § 101.001(3) ("governmental unit" definition). The Fourth Court of Appeals dismissed UIW's appeal for want of jurisdiction, and declined to address UIW's motion to dismiss. See *UIW v. Redus*, 474 S.W.3d at 824.

Judgments in interlocutory appeals are generally final in the courts of appeals. TEX. GOVT. CODE § 22.225(b)(3). This Court always has jurisdiction to determine whether a court of appeals correctly determined its jurisdiction. *Klein v. Hernandez*, 315 S.W.3d 1, 3 (Tex. 2010). A trial court's denial of a motion to dismiss is not a proper subject for an interlocutory appeal. TEX. CIV. PRAC. & REM. CODE § 51.014.

The issue before this Court is whether the court of appeals rightly dismissed the interlocutory appeal for want of jurisdiction. The answer turns on whether UIW is a "governmental unit" under TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8) and thus entitled to bring an interlocutory appeal.

Section 51.014(a)(8), TEX. CIV. PRAC. & REM. CODE, permits an interlocutory appeal of an order that "grants or denies a plea to the jurisdiction by a *governmental unit* as that term is defined in Section 101.001." [italics added]

Section 101.001(3) gives a four-part definition of a "governmental unit." The broadest definition, and the one on which UIW relies, is provision (D): "[A]ny other *institution, agency, or organ of government* the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution." [italics added]

ISSUE PRESENTED

Whether a "private institution of higher education" is a "governmental unit" to the extent it "employ[s] and commission[s] peace officers" for the limited purposes permitted by TEX. EDUC. CODE § 51.212?

FACTUAL AND PROCEDURAL BACKGROUND

Respondents Valerie and Robert M. Redus sued UIW and its officer Christopher Carter on state law claims arising from their son Cameron's death on December 6, 2013. CR at 1. Carter, a UIW Campus Police Officer, shot Cameron Redus five times, killing him on the sidewalk at Cameron's off campus apartment in Alamo Heights. Carter suspected that Cameron was intoxicated when he approached him and knew that Cameron was unarmed when he shot him several minutes later.

UIW cites to its pleadings and the Reduses' Original Petition in the Statement of Facts and in arguing the motion to dismiss. Petitioner's Brief at 3-6, and 19.[1] Pleadings are generally not competent evidence, even if sworn or verified. *Laidlaw Waste Systems v. City of Wilmer*, 904 S.W.2d 656, 660 (Tex. 1995). The Reduses filed their First Amended Petition on March 16, and attach it as Appendix A, should the Court want a detailed statement of their factual contentions and causes of action.

[1] UIW appears to argue that the Reduses are effectively asserting § 1983 claims and that this bolsters UIW's claim to "governmental unit" status. Petitioner's Brief at 5-6. U.S. District Judge David Ezra held that the Original Petition asserts "valid causes of action under state law" and remanded the underlying suit to state court after UIW made the same arguments in federal court. *Redus v. University of the Incarnate Word*, 61 F.Supp.3d 668, 678 (W.D.Tex. 2014).

A. Plea to the Jurisdiction Evidence

UIW applied for and received a license to establish a law enforcement agency, citing TEX. EDUC. CODE § 51.212(a) as authority, which allows "governing boards of private institutions of higher education...to employ and commission peace officers." CR at 206. Carter is a licensed Texas peace officer. CR at 197-204.

B. The Underlying Case

The Fourth Court of Appeals briefly recited the factual allegations that are relevant to the interlocutory appeal:

> It is undisputed that UIW is a private institution of higher education and operates its own police department. This suit arises from an incident in which a UIW police officer, Cpl. Christopher Carter, conducted a DWI traffic stop and detention of UIW student Cameron Redus. During the detention Officer Carter shot Redus five times, resulting in Redus's death.

UIW v. Redus, 474 S.W.3d at 817. The Reduses assert state law causes of action against UIW and Christopher Carter for:

> (1) negligence and gross negligence based upon UIW's failure to exercise reasonable care in the hiring, training and employment of its police officers; (2) negligence, negligence per se, and gross negligence based upon Officer Carter's unwarranted use of excessive force; (3) wrongful death; and (4) survival.

Id. at 817-818. Minimal substantive discovery has occurred in this case, and the facts are not otherwise before this Court.

C. Procedural History of the Case

UIW's "Procedural History" (Petitioner's Brief at 5-7) includes argument and mischaracterization of documents not relevant to this Court's jurisdiction. The relevant procedural dates and events are:

• May 6, 2014	Valerie and Robert Redus filed suit. CR 1.
• June 2	UIW removed the suit without raising governmental immunity. CR 22 and 37.
• November 25	The federal court remanded for lack of a federal question. See *Redus v. University of the Incarnate Word*, 61 F.Supp.3d 668 (W.D.Tex. 2014)
• February 13, 2015	UIW amended its answer and asserted governmental immunity. CR 109-124.
• March 2	The trial court denied UIW's plea to the jurisdiction. CR 418.
• August 26	The Fourth Court of Appeals dismissed UIW's appeal for lack of jurisdiction. 474 S.W.3d at 816.
• December 9	UIW filed its Petition for Review.

Both the removal and the interlocutory appeal delayed substantive discovery in this action. See *In re University of the Incarnate Word*, 469 S.W.3d 255 (Tex.App.—San Antonio 2015, orig. proceeding) (staying all proceedings in the trial court pursuant to TEX. CIV. PRAC. & REM. CODE § 51.014(c)).

SUMMARY OF THE ARGUMENT

UIW states the issue before this Court as whether UIW's Campus Police is an "institution, agency, or organ of government."[2] See TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D). The plain statutory language and relevant precedents confirm that neither UIW nor its Campus Police is a "governmental unit."

UIW, a "private institution of higher education," asks the Court to designate its Campus Police as a "governmental unit" so that UIW can claim sovereign immunity and wholly or partially bar the Reduses' claims. UIW frames its arguments around emotion rather than the law: Whether the Legislature intended UIW's Campus Police to have "second-class status" (Petitioner's Brief at 2); whether its officers "put themselves in harm's way" (*id*. at 1); or whether the Reduses "seek to exploit the fortuity that this...law-enforcement agency belongs to a private entity" (*id*. at 6).

The fundamental failure in UIW's argument is the inability to identify any justification for and source of sovereign immunity for a private university. State, county, and municipal law enforcement agencies are entitled to sovereign immunity because they are part of the sovereign—the

[2] UIW is less than clear in making this statement: "It [UIW] is, however, a 'governmental unit' as to one specific function—law enforcement." Petitioner's Brief at 8. This is probably because the Campus Police has no identity separate from UIW.

state or one if its subdivisions—not because they enforce the law. UIW has no basis for the interlocutory appeal. This Court should deny UIW's Petition for Review or, alternatively, affirm the Court of Appeals judgment.

ARGUMENT

A. Law enforcement agencies have sovereign immunity based on whether each agency's governing body is part of the sovereign, not based on their authority to enforce state law.

Several Texas statutes establish law enforcement agencies, entitle various entities to form law enforcement agencies, or allow entities to employ peace officers. These enabling statutes, rather than the law enforcement function, provide the justification for and the source of sovereign immunity.

The Texas Tort Claims Act defines the extent to which a "governmental unit" waives its sovereign immunity and can be sued for property damage or personal injury. TEX. CIV. PRAC. & REM. CODE § 101.021. Sovereign immunity includes both immunity from liability and from suit. *Brown & Gay v. Olivares*, 461 S.W.3d 117, 121 (Tex. 2015).

Justice Hecht explained sovereign immunity in his concurrence in *Brown & Gay*:

> Immunity protects the government. An independent contractor is not the government. Therefore, immunity does not protect an independent contractor.

Id. at 129. His syllogism is equally true if "private university" replaces

"independent contractor." Justice Lehrman, writing for the Court, noted that current justifications for sovereign immunity "revolve around protecting the public treasury," which is not a concern if the defendant is a private university. *Id*. at 121.

The Department of Public Safety, a law enforcement agency, is entitled to sovereign immunity because it is part of the state government. "The [DPS] is an agency of the state to enforce the laws protecting public safety...." TEX. GOVT. CODE § 411.002(a). It is a "governmental unit" under TEX. CIV. PRAC. & REM. CODE § 101.001(3)(A), as one of "the several agencies of government that collectively constitute the government of this state...."

Smaller municipalities are entitled to "establish and regulate a municipal police force." TEX. LOC. GOVT. CODE § 341.001(a). Home rule, or larger, municipalities also may "form a police department." Municipalities and their police departments have sovereign immunity because they are "governmental units" as "political subdivision[s] of this state, including any city...." TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B). Similar statutes apply to counties and their sheriffs, constables, and deputies. See TEX. LOC. GOVT. CODE § 85.001, et seq., and § 86.001, et seq.

Numerous educational institutions are entitled to employ peace officers. TEX. EDUC. CODE § 37.081 (school districts); § 51.203 (state

institutions of higher education) and § 51.212 (private institutions of higher education). School districts (TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B)) and state institutions (*id.* at § 101.001(3)(A)) are "governmental units" and have sovereign immunity. Private institutions are not and do not.

This Court stated in *Brown & Gay* that "[w]hile sovereign immunity developed as a common-law doctrine, we 'have consistently deferred to the Legislature to waive such immunity.'" 461 S.W.3d at 121, quoting *Reata Constr. Corp. v. City of Dallas,* 197 S.W.3d 371, 375 (Tex.2006). The statutes establish that the identity of the party being sued determines the availability of sovereign immunity, not the party's function. Because no statute designates a private university as a "governmental unit" under TEX. CIV. PRAC. & REM. CODE § 101.001(3), neither the UIW nor its Campus Police is entitled to sovereign immunity.

B. There is no reason to look beyond the statutes because the statutes confirm that UIW is not a "governmental unit."

UIW argues that its Campus Police should be a "governmental unit" because the department performs an "indisputably government function." Petitioner's Brief at 6. There is no legal doctrine—nor does UIW cite to any—by which a private institution's independent decision to perform a government function turns all or part of the private institution into a "governmental unit."

This Court noted in *Brown & Gay*, again quoting *Reata*, that "'it remains the judiciary's responsibility to define the boundaries of the... doctrine and to determine under what circumstances sovereign immunity exists in the first instance.'" 461 S.W.3d at 122. Unlike the engineering firm in *Brown & Gay*, UIW does not argue that its "governmental unit" status derives from its government contractor status. UIW argues that its Campus Police is an independent, stand-alone "governmental unit."

Citing *K.D.F. v. Rex*, 878 S.W.2d 589 (Tex.1994), this Court stated in *Brown & Gay*, that "private parties exercising independent discretion are not entitled to sovereign immunity." 461 S.W.3d at 124. UIW, in arguing for "governmental unit" status for its Campus Police, is a "private party" exercising "independent discretion."

This Court has always looked to statutes in deciding similar cases. In *Klein v. Hernandez*, 315, S.W.2d 1, 2 (Tex. 2010), the plaintiff sued Baylor College of Medicine for malpractice by its physicians at Ben Taub Hospital, a public hospital. The Supreme Court noted that:

> Baylor [College of Medicine] is a private, non-profit medical school, but is also a 'supported medical school,' which means that it has contracts with the Texas Higher Education Coordinating Board and receives state funding specifically allocated for training physicians who provide medical care at public hospitals such as Ben Taub.

Justice Willett noted in his concurrence in *Klein*, 315 S.W.3d at 10, that "the statute [TEX. HEALTH & SAFETY CODE § 312.006(a)] compels the answer 'by its own terms.'"

The Court unanimously agreed that § 312.006(a) established that "a supported medical school *does not need to be a governmental unit*—like UT Medical Branch—to be entitled to immunity; the Health and Safety Code bestows such status by its own terms." *Id*. at 8 (italics added). The Court held that the statute provided immunity to Baylor and—contrary to UIW's argument—did not hold that a Baylor was entitled to sovereign immunity in the absence of the statute providing immunity to a "supported medical or dental school.[3]

This Court's holding in *Klein* would only be useful to UIW there were a similar statute limiting the liability of private university campus police departments. See TEX. HEALTH & SAFETY CODE § 312.006(b) ("The limitation on liability...applies regardless of whether the...supported medical school...is a 'governmental unit' as defined by Section 101.001."). Because no such statute exists, *Klein* does not support UIW's argument.

C. Section 101.001(3)(D) does not provide any support for

[3] See Petitioner's Brief at 12: "In *Klein*, this court pointed to an express statutory designation of certain private entities as 'governmental units.'" There is no express designation. The statute limits the liability of a "supported medical or dental school" without regard to whether it is a "governmental unit." TEX. HEALTH & SAFETY CODE § 312.006(a) and (b).

UIW's claim to "governmental unit" status.

Because UIW, unlike Baylor College of Medicine, cannot point to a specific immunity statute, UIW relies solely on the perceived breadth of "governmental unit" in TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D):

> [A]ny other *institution, agency, or organ of government* the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution." [italics added]

UIW argues, largely based on this Court's holding in *LTTS Charter School, Inc. v. C2 Construction, Inc.*, 342 SW.3d 73 (Tex. 2011). Because TEX. EDUC. CODE § 51.212 authorizes private universities to commission and employ peace officers, the argument goes, UIW's Campus Police derives its status from "laws passed by the legislature" and is, therefore, a "governmental unit." Petitioner's Brief 15-19.

Justice Guzman in dissent, joined by Justices Jefferson and Medina, specifically noted that the perceived breadth of § 101.001(3) is more limited than it otherwise appears. *Id.* at 84. The plain language of § 101.001(3)(D) requires that the "governmental unit" be: (1) an "institution, agency, or organ of government," *and* (2) derive its "status and authority" from the Constitution or "laws passed by the legislature."

The UIW Campus Police *might* meet the second requirement,[4] but not the first. UIW, unlike Universal Academy in *LTTS Charter School,* has no claim to being an "institution, agency, or organ of government."[5] Voluntarily performing a government function initiative has never been sufficient to turn a private party exercising independent discretion into a "governmental unit."

UIW argues that the appellate court "applied this Court's decision in *LTTS [Charter School]*, but to the wrong construct." Petitioner's Brief at 12. UIW wants this Court to hold that the Campus Police is a "governmental unit" based on the argument that the Campus Police are an "integral part of the state's law enforcement system" and should be treated as such. Petitioner's Brief at 9.

What UIW fails to discuss is that a key statute, TEX. EDUC CODE § 12.105, establishes that an "open-enrollment charter school is part of the

---

[4] Justices Guzman, Jefferson, and Medina argue in dissent that Universal Academy obtained its charter from the State Board of Education rather than a statute. *Id*. at 84. UIW admittedly obtains its license to operate a Law Enforcement Agency from TCOLE. CR 206. The Education Code only authorizes UIW to "employ and commission peace officers" and does not address the formation of a law enforcement agency. TEX. EDUC. CODE § 51.212(a).

[5] See the Code Construction Act, Tex. Gov't Code § 311.001, et seq. The act provides that statutes be "read in context and construed according to the rules of grammar and common usage." *Id*. at § 311.011. If a statute is ambiguous, then the Court can look to such things as the "object sought to be attained" and the "consequences of a particular construction." *Id*. at § 311.023. The statute must be read as "institution of government, agency of government, or organ of government." Any reading that allows for all "institutions" deriving their authority from laws passed by the legislature to claim sovereign immunity would make sovereign immunity virtually unlimited.

public school system of this state." No statute designates UIW as a part of the public higher education system or its Campus Police as part of an otherwise undefined "public law enforcement system."[6]

The appellate court summarized *LTTS Charter School* and identified several factors to consider in determining whether UIW could claim "governmental unit" status:

> whether UIW, as an institution: (1) is "part of the Texas public-school system"; (2) is created by and governed by the Education Code or other statute; (3) receives statutory entitlement to state or other government funding; (4) must comply with Texas's regulatory and accountability system and rules pertaining to public schools; or (5) is granted authority of all powers given to traditional public schools.

474 S.W.3d at 821. The appellate court found that UIW did not "satisfy the definition of 'governmental unit' as that phrase is defined in Section 101.001(3)(D)." *Id*. at 824.

Texas statutes distinguish between public and private institutions of higher education. Compare TEX. EDUC. CODE § 61.003(8)(public) and (15)(private). Public and private universities have separate statutes enabling them to employ and commission peace officers. See TEX. EDUC. CODE § 51.203 (public) and § 51.212 (private). The statutes accord different

[6] There is no statute defining a "public system of law enforcement" that UIW could join. UIW (the institution, not the campus police) can enter into a "mutual assistance agreement" with a municipality (not just its police department). Tex. Educ. Code § 51.2125.

powers, privileges, and immunities to licensed peace officers based on whether they are employed by a public or private institution. *Id.*[7]

The statute that enables UIW to commission and employ peace officers "requires that [UIW] be a private or independent institution." 474 S.W.3d at 823 (citing TEX. EDUC. CODE § 51.212). This is directly contrary to the statute declaring all "open enrollment charter schools to be 'part of the public school system of this state.'" *LTTS Charter School*, 342 S.W.3d at 77 (quoting TEX. EDUC. CODE § 12.105). Neither the plain language of § 101.001(3)(D) nor this Court's opinion in *LTTS Charter School* provide support for UIW's argument that its Campus Police is a "governmental unit."

The amendment creating TEX. EDUC. CODE § 51.212(f), which requires a campus police department to comply with the Public Information Act "only with respect to information relating solely to law enforcement activities," does not add to UIW's arguments. It does not apply retroactively or change the law in any way relevant to the Reduses' claims against UIW. The court of appeals correctly noted that "the newly-enacted statute [amendment to § 51.212] does not apply to this case nor weigh in UIW's favor, as it is not yet in effect." 474 S.W.3d at 823.

---

[7] UIW's "second class status" argument, if it has any validity, should be directed to the Legislature rather than the Supreme Court. Section 51.212 contemplates a narrower range of "powers, privileges, and immunities" for officers employed by private institutions than for those employed by public institutions.

The "legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place." *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 136 (Tex. 2010). No statute made UIW's Campus Police a governmental body for any purpose when the Reduses filed this suit. That the Legislature decided that § 51.212(f) was necessary suggests that a "campus police department" was not a "governmental body" for *any* purpose prior to its enactment.

D. UIW conflates the various types of immunity available to it and its employees and, as a consequence, needlessly injects confusion and delay into the litigation.

Sovereign immunity belongs to the sovereign. Charitable immunity belongs to charities. UIW wants to be both. See CR at 109, 120 (¶ 63), and 122 (¶ 76). They are mutually exclusive. See TEX. CIV. PRAC. & REM. CODE § 84.007(f) ("This chapter does not apply to a governmental unit...").

Charitable immunity limits damages recoverable against a charity and its employees unless the underlying acts are "intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others. *Id*. §§ 84.005, 84.006, and 84.007(a).[8] This Court recently held that both a private university and its peace officer employees are entitled to an

[8] The evidentiary burden necessary to overcome both qualified and charitable immunity is the basis for the Reduses' factual pleadings and causes of action. See App. A (Plaintiffs' First Amended Petition) and Petitioner's Brief at 6 and 19. The allegations of which UIW complains at page 19 of its brief are not in the Amended Petition.

interlocutory appeal of any denial of a motion for summary judgment based on an assertion of immunity. *Rice University v. Refaey*, 459 S.W.3d 590, 593 (Tex. 2015).

As with sovereign immunity, charitable immunity belongs to the charity. Provided that UIW can meet the requirements of the Charitable Immunity Act, UIW and Officer Carter will have a damages defense that is neither beneficial nor fortuitous for the Reduses. UIW's arguments that its Campus Police are being treated to "second-class status" and that its officers are "in harm's way" ring hollow to parents whose unarmed son was shot five times and killed by a campus police officer who did not face any serious threat of death or physical injury on the morning of December 6, 2013.

After taking six months to obtain the remand to state court of UIW's unjustified removal to federal court, the Reduses have spent the last 17 months opposing the private university's claim to be a "governmental unit." The interests of both justice and prejudice against delay favor allowing the Reduses to conduct discovery in the underlying case and move toward a trial and resolution. The Fourth Court of Appeals was correct to dismiss the action, and this Court should deny UIW's Petition for Review or, in the alternative, affirm the judgment.

PRAYER

For these reasons, respondents Valerie and Robert M. Redus ask the Court to deny University of the Incarnate Word's Petition for Review or, in the alternative, affirm the judgment of the Fourth Court of Appeals and to grant them all other and further relief to which they are entitled.

BURFORD PERRY, LLP

By _____

Brent C. Perry
State Bar No. 15799650
700 Louisiana, Suite 4545
Houston, Texas 770002
(713) 401-9790
(713) 993-7739 (Facsimile)
bperry@burfordperry.com

Attorney for Respondents

OF COUNSEL:

Robert R. Burford
State Bar No. 03371700
Burford Perry, LLP
700 Louisiana, Suite 4545
Houston, TX 77002
713-401-9790
713-993-7739 (Facsimile)
rburford@burfordperry.com

Jorge A. Herrera
State Bar No. 24044242
Frank Herrera, Jr.
State Bar No. 09531000
The Herrera Law Firm
111 Soledad, Suite 1900
San Antonio, TX 78205
210-224-1054
210-228-0887 (Facsimile)
jherrera@herreralaw.com
fherrera@herreralaw.com

Mason W. Herring
State Bar No. 24071746
Herring Law Firm
2727 Allen Parkway, Suite 1150
Houston, TX 77019
832-500-3170
832-500-3172 (Facsimile)
mherring@herringlawfirm.com

Certificate of Compliance

As required by Tex. R. App. P. 9.4(i)(2)(d) and (3), I certify that the number of words in this Petition for Review is 4,522. I relied on the computer program used to prepare the document for the word count.

Brent C. Perry

Certificate of Service

I certify that a true and correct copy of the foregoing Respondents Brief on the Merits has been served on the following counsel of record by electronic filing in accordance with Tex. R. App. P. 9.5(b), on July 11, 2016.

Laurence S. Kurth
Matthew Wymer
Beirne, Maynard & Parsons, LLP
112 East Pecan St., Suite 2750
San Antonio, TX 78205

Wallace B. Jefferson
Amy Warr
State Bar No. 00795708
Alexander, DuBose, Jefferson & Townsend, LLP
515 Congress Ave, Suite 2350
Austin, Texas 78701
Counsel for Petitioner UIW

Robert A. Valadez
Shelton & Valadez
600 Navarro St., Suite 500
San Antonio, TX 78205
Counsel for Defendant Christopher Carter

Brent C. Perry

APPENDIX A

CAUSE NO. 2014-CI-07249

VALERIE REDUS, INDIVIDUALLY, AND ROBERT M. REDUS, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ROBERT CAMERON REDUS	§	**IN THE DISTRICT COURT**
	§	**OF BEXAR COUNTY, TEXAS**
V.	§	
UNIVERSITY OF INCARNATE WORD AND CHRISTOPHER CARTER	§	**150TH JUDICIAL DISTRICT**

PLAINTIFFS' FIRST AMENDED PETITION

Plaintiffs Valerie Redus, Individually, and Robert M. Redus, Individually and as Administrator of the Estate of Cameron Redus, file their First Amended Petition complaining of defendants University of the Incarnate Word ("UIW") and Christopher J. Carter ("Carter") and would respectfully show the Court as follows:

I. RELIEF SOUGHT

1.1. Plaintiffs seek monetary relief over $1,000,000.

II. DISCOVERY CONTROL PLAN

2.1 Pursuant to Tex. R. Civ. P. 190.4, plaintiffs intend to conduct discovery under a Level 3 Discovery Control Plan. This case is currently governed by an Agreed Scheduling Order.

III. PARTIES

3.1 Plaintiffs are Texas residents.

3.2 University of the Incarnate Word is a Texas nonprofit corporation with its principal office located at 4301 Broadway, San Antonio, Texas in Bexar County. UIW has appeared and answered.

3.3 Christopher J. Carter is an individual residing in Bexar County, Texas. He has appeared and answered.

IV. VENUE AND JURISDICTION

4.1 Venue is proper in Bexar County, Texas under Tex. Civ. Prac. & Rem. Code § 15.002(a)(1)-(3) because all or a substantial part of the events or omissions giving rise to the claims made the basis of this lawsuit occurred in Bexar County, Texas and because both defendants are residents of Bexar County, Texas.

4.2 This Court has personal jurisdiction over all parties, who are Texas residents, and subject matter jurisdiction because plaintiffs' damages exceed the minimum jurisdictional limits of this Court.

V. FACTUAL BACKGROUND

A. Christopher Carter left no human alive who could challenge his likely false and faulty justification for using deadly force.

5.1. UIW hired Christopher Carter as a Campus Police Officer in May 2011. He had responded to a job posting that stated: "Officers are responsible for patrolling various UIW campuses and facilities in their entirety." The posting said that he would be working "within the area under the control and jurisdiction of UIW." It did not mention any general community patrol responsibilities. There are no indications that UIW ever assigned Carter responsibilities beyond UIW-controlled campuses.

5.2 Assuming TCOLE records are accurate, Carter had one hour of weapon retention training, one hour of firearms training, and two hours of tactical

firearms training at UIW in July 2011. Later that year, he took a two-hour online course in the use of force in a jail. He was certified to carry a Glock Model 22 .40 caliber pistol in November 2013. He had previously taken a course on intermediate use of force in 2007.

5.3. In the use of intermediate force course, Carter may have learned that a baton may be used to obtain compliance when the officer has a reasonable cause to believe that a suspect committed a crime and the suspect refuses to comply with the officer's direction prior to searching or handcuffing. He may have learned that deadly force is never used unless the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to himself (as an officer) or to others.

5.4 Had he been properly trained, Carter would have known that an unarmed, intoxicated Cameron Redus, at 5'9" and 130 pounds did not present a "significant threat of death or serious physical injury to himself or to others." Carter is reported to be over 6' tall and weigh over 250 pounds. Cameron was not carrying any weapons and was unarmed—if he ever had Carter's baton—for at least 90 seconds when Carter shot him five times in eight seconds.

5.5. Cater may have known that driving while intoxicated is a Class B Misdemeanor in Texas. Carter might also have known that resisting arrest is a Class A Misdemeanor, and that using a deadly weapon to resist arrest may raise the offense to a Third Degree Felony. Knowing that he had badly mishandled an arrest and shot and killed an unarmed student, Carter made up a story that the

intoxicated, unarmed student took his baton and used it on him. Carter left no one alive to argue whether it actually happened or not, and no police were on the scene until three minutes after the shooting.

5.6. Cameron Redus was intoxicated on the morning of December 6, 2013 and should not have driven home. After initially cooperating with Carter's commands, Cameron did become increasingly disrespectful and confrontational toward Officer Carter. But he never posed a significant threat of death or serious physical injury to Carter. Cameron behaved like a drunk 23-year old, and UIW Campus Police should have been trained to deal with drunk college students.

5.7. Christopher Carter shot Cameron Redus five times because he was poorly trained and equipped and frustrated at his inability to forcibly subdue a drunk student half his size. He shot Cameron because he did not know where he was and, consequently, could not get assistance. Not once during the 11-minute encounter did Carter mention his baton. Not once did he take any step consistent with a standard traffic stop for an intoxicated driver. Carter's recklessness, conscious indifference, and reckless disregard in arresting and shooting Cameron lies squarely on UIW's doorstep.

B. UIW Campus Police have no history of patrolling anywhere other than the UIW campus and the school zones at campuses under UIW's control.

5.8. UIW publishes "Clery Act Crime Logs" on its website. The Clery Act requires institutions with a police or security department to maintain a public crime log documenting the "nature, date, time, and general location of each crime"

and its disposition, if known. Incidents must be entered into the log within two days. The log must be accessible to the public.

5.9 UIW encourages its officers to report everything. For example, Christopher Carter reported in May 2013 that he was a witness to a possible suicide while off duty. Prior to November 2011, or about six months after Carter began at UIW, the Crime Logs do not identify the officers involved in each report.

5.10. From November 2011 through December 2013, the Crime Logs show that Carter issued six citation for school zone violations—two for speeding on April 30, 2013 and four for cell phone use on August 19, 2013. Carter arrested two individuals at the St. Anthony's High School (which is part of UIW) parking lot for possession of marijuana in July 2013. He issued one citation in March 2013 for disobeying a traffic barricade in an unspecified off campus location, most likely the construction areas near campus.

5.11. Carter was working the Third Shift on December 6, 2013. The primary duty of this shift is to maintain the UIW campus in a lockdown state and monitor traffic through the Campus Police kiosk.

C. Christopher Carter failed to stop Cameron on Broadway, failed to obtain backup, and failed to perform any standard sobriety tests, even though Cameron Redus complied with his initial demands.

5.12 On Thursday evening, December 5, 2013, Cameron Redus finished classes at the UIW campus and left to meet friends and celebrate the end of the semester by exchanging gifts at a local restaurant. After spending the evening with

friends at a restaurant and other establishments, he left the Brass Monkey at 2702 N. St. Mary's after 1:30 a.m. on Friday, December 6.

5.13. Cameron drove his Ford Ranger pickup directly to his residence at the Treehouse Apartments at 101 Arcadia Place in Alamo Heights. During the evening, he did not return to the UIW campus. He was legally intoxicated when he drove, according to the Bexar County Medical Examiner's findings.

5.14. Cameron was driving northward on Broadway between Hildebrand and Burr when he passed UIW Campus Police Officer Christopher J. Carter on Carter's right. Cameron slowed his speed to match that of Officer Carter, who began following him without turning on his flashing lights.

5.15. Cameron took about 90 seconds to drive .7 miles to the intersection of Broadway and Arcadia Place, a speed of less than 3o miles per hour. He turned right on Arcadia Place, left into the Treehouse Apartments parking lot, and right into a parking place between two parked vehicles in a covered parking area near his apartment building.

5.16. Officer Carter was on campus duty that night and left to get food at the Whataburger at 3130 Broadway, less than one mile south of UIW's campus. He was close to turning left into campus with his food when Cameron passed him.

5.17. Carter made no attempt to stop Cameron on Broadway, and Cameron made no attempt to evade him. Carter turned on his flashing lights when he turned right onto Arcadia Place, and not before then. He pulled into the Treehouse Apartments parking lot behind Cameron's truck. Plaintiffs do not have any record

of Carter contacting anyone at the UIW Campus Police during the almost two minutes he followed Cameron.

5.18. Cameron got out of his Ford Ranger and headed toward his apartment. Carter exited his truck and told Cameron, “Stay right there.” Cameron responded, “That’s fine, that’s fine.” Cameron’s speech was slurred, indicating intoxication. Carter told Cameron to put his hands on the hood of his truck. Cameron complied.

5.19. While Cameron waited, Carter contacted the UIW Campus Police to tell him that he was at the first light past Preston in the apartment complex parking lot behind the bank. Carter was nowhere near any street named Preston and he was not behind a bank. Carter made no serious effort at providing a precise location even though Cameron presented no physical threat or risk of flight.

5.20. Carter again told Cameron to keep his hands on the hood. He then asked Cameron, while frisking him, “Is there anything in your pockets I need to be worried about?” Cameron truthfully responded, “No, sir.” Carter did not remove Cameron’s billfold from his rear pocket.

5.21. At this point, Carter had been in verbal contact with Cameron for about one minute. Carter had not told Cameron he was under arrest, had not requested identification, and had not initiated any standard sobriety tests, which could have determined whether Cameron presented any threat. A person who cannot stand on one leg, walk and turn, or pass a horizontal gaze test—all standard

sobriety tests—is not likely to be able to physically threaten serious injury to someone twice his size with a baton and a gun.

D. Christopher Carter spent the next several minutes attempting to forcibly subdue Cameron Redus, and Cameron resisted his force.

5.22. Without further questioning, Carter told Cameron to put his hands behind his back and attempted to place handcuffs on him. Cameron objected and resisted. He told Carter, "You're freaking me out, man." He said, "I feel like I'm getting raped now." Carter replied that he was not getting raped and that he should put his hands behind his back. Cameron resisted, "You're scaring me."

5.23. Almost two minutes into their encounter, Carter told Cameron that he was "under arrest." Carter did not never gave a reason for the arrest and did not perform any sobriety tests. The Bexar County Medical Examiner was first to determine whether Cameron was intoxicated.

5.24. Carter most likely had Cameron in a bear hug, a shocking, awkward, and uncomfortable action by an officer with a baton and a gun in his belt who was not following any standard arrest procedure. Cameron told Carter, "If you're trying to do some weird shit with me, I'm not down with that." He told Carter that he was uncomfortable with Carter pressing against his buttocks.

5.25. Cameron continued to resist handcuffing for several minutes. Carter told Cameron to put his hands behind his back. Cameron responded that he could not because Carter was squeezing him. Carter ignored Cameron's questions and told Cameron not to look at him and to face away from him. At five minutes into

the encounter, Carter again told Cameron that he was being arrested. Cameron's phone began buzzing and continued to buzz for at least the next two minutes.

5.26. During their entire verbal encounter, Cameron never gave Carter a reason to believe that he was a flight risk or that he was a danger to anyone else. Cameron did refuse to be handcuffed by an officer who did not know his location, was acting alone, followed no standard police practices, and exhibited awkward, unusual, and unnecessary physical force.

E. Christopher Carter chose physical force over assistance from other police when he refused to stop and determine his location.

5.27. Cameron was still in front of his truck seven minutes after Carter first spoke to him. UIW Campus Police contacted Carter in order to locate him. Carter again said he was at the apartments behind the bank off Broadway past Preston. He told someone to "look for the blue lights." Almost eight minutes in, Carter asked Cameron for his address. Then he asked Cameron, "What's the street right here?"

5.28. Cameron's phone continued to buzz. Shortly after this exchange, Carter told Cameron to "Stop resisting, God dammit." Carter, rather than responding to the radio calls attempting to locate him, raised the physical contact level between him and Cameron. Carter never mentioned his baton, although he and Cameron had extensive dialogue.

5.29. Over nine minutes into their encounter, Cameron complained, "You're fucking choking me, dude." Carter three times directed Cameron to "stop." Cameron extricated himself from the chokehold and complained, "You tried to

fucking choke me." Carter responded, "Stop or I will shoot." This was the first time that Carter mentioned any weapon.

5.30. Cameron asked Carter, "You're going to fucking shoot me for trying to make you not choke me right now?" Carter told Cameron not to put his leg up and to stop resisting, indicating that they were in physical contact with each other ten minutes into the encounter. Several times, Carter responded to Cameron's resistance, "Stop or I will shoot you." Cameron repeatedly asked, "Are you going to shoot me?" Carter repeatedly told Cameron to "stop." Ten minutes in, Carter said for the third time, "Stop or I will shoot you."

5.31. Cameron told Carter, "You are pathetic. You are pathetic. You're going to shoot me if I don't stop?" Carter responded, "Yes." Carter never told Cameron to lower his fist or gave any indication that he was in any physical danger from Cameron, even though Cameron continued to resist Carter's force and make profane statements.

F. To end their 11-minute encounter, Christopher Carter shot Cameron Redus five times at close range because he was frustrated by Cameron's refusal to submit to his physical force.

5.32. Their last thirty seconds involved an intense physical struggle. Carter told Cameron to "stop" or "stop God dammit" eight times. Then he told Cameron to get back. He fired six shots from his Glock Model 22 in a span of seven to eight seconds. Five hit Cameron. Two of the shots, one through his left eye and another in his back, were judge to be fatal by the Bexar County Medical Examiner. Both

were from close range and left stippling on Cameron's face and back. The trajectories of these two shots were downward.

G. Several minutes after killing Cameron Redus, Christopher Carter first mentioned his baton.

5.33. After thirty seconds of heavy breathing, Carter contacted UIW Police to tell them that he had fired shots. He finally told them that he was in Alamo Heights. According to Alamo Heights Police Chief Richard Pruitt, they arrived on the scene because someone called them directly about the shooting. They arrived three minutes after the shooting. There are two municipal police departments less than one mile from the Treehouse Apartments—Terrell Hills is located two blocks away—but Carter lacked the judgment, training, and awareness to stand down and get assistance.

5.34. Four minutes after he shot Cameron, Carter first said that Cameron took his baton. He later said that he had to "bear hug" Cameron in front of his truck, when Cameron took the baton away and hit him a couple of times. He said he knocked it out of his hands and put Cameron in a headlock. Cameron escaped the headlock—most likely when Cameron complained about choking—and had a chance to leave.

5.35. Even if Cameron had the baton, he lost it before escaping from the headlock over 90 seconds before Carter shot him. The Alamo Heights police found the baton on the ground near the scene. It had been there, and out of anyone's grasp, for at least 90 seconds when Carter fired the first shot.

H. UIW did not supervise, equip, or train Christopher Carter to handle the situation he chose to encounter on December 6, 2013.

5.36. Chief Richard Pruitt noted that Alamo Heights officers are supplied with numerous forms of intermediate force—namely pepper spray and tasers—to handle resistant suspects. He noted that they use situational training to prepare them to deal with dangerous situations. Nothing that Christopher Carter did on December 6 suggested that he was properly supervised, equipped, or trained to properly and successfully effect an off-campus arrest for driving while intoxicated. As Chief Pruitt noted, the result would have been different if his officers were involved.

VI. UIW'S UNSUPPORTED ALLEGATIONS

6.1. Defendant University of the Incarnate Word has made very specific allegations in its original answer filed on June 2, 2014 and its amended answer filed on February 13, 2015. Many of these allegations are unsupported by the evidence as it now exists. All paragraph references are to UIW's amended answer.

6.2 UIW alleges in paragraph 19 that Carter gave detailed instructions to persons at UIW to contact Alamo Heights for assistance. No recording of this contact has been produced.

6.3. UIW alleges in paragraph 21 that Carter activated his emergency lights to initiate a traffic stop at Broadway and Harrigan Court. Carter first activated his flashing red and blue lights on Broadway at Arcadia Place.

6.4 UIW alleges in paragraph 22 that Redus sped up and made a series of maneuvers to evade Carter. Cameron, after passing Carter, drove at a generally constant rate of speed below 30 miles per hour in the most direct route to the Treehouse Apartments.

6.5. UIW alleges in paragraph 26 that Cameron immediately challenged Carter. Cameron's first response to Carter's commands was "That's fine, that's fine."

6.6 UIW alleges in paragraph 27 that Carter informed Cameron that he was stopped on suspicion of drunk driving. Carter did not even inform Redus that he was "under arrest" until two minutes into their encounter and mentioned the purpose of the stop, if at all, several minutes later.

6.7. UIW alleges that Cameron would not allow Carter to complete a "pat down." Carter, in the process of completing the pat down, asked Cameron if he had anything of concern in his pocket. Cameron truthfully replied, "No, sir." Carter never asked for Cameron's identification, which is standard police protocol in all traffic stops. Cameron's first resistance was to Carter's handcuffing attempts.

6.8. UIW alleges in paragraph 33 that Cameron lifted his leg and kicked Carter in the chest. Carter never mentioned Cameron kicking him during their encounter. He did tell Cameron, "Don't put your leg up." Carter never indicated that Cameron did not comply with his command.

6.9. UIW makes allegations regarding Carter's baton in paragraphs 35 and 36. As explained above, Carter never mentioned his baton during the encounter

with Cameron. The Alamo Heights police found Carter's extended baton and handcuffs on the ground.

6.10. The statement in paragraph 42 that Carter was "in legitimate fear for his life" from an unarmed Cameron Redus is insulting. Carter had a gun and was twice Cameron's size. Carter shot Cameron because he was untrained, unprepared, exhausted, and frustrated.

6.11. UIW alleges in paragraph 45 that Cameron committed three felonies. These allegations are almost certainly unjustified. Resisting arrest is a misdemeanor unless the suspect uses a deadly weapon to resist arrest. Aggravated assault of a peace officer only occurs if the assailant causes serious bodily injury or uses or exhibits a deadly weapon. The offense of taking a weapon from an officer is subject to a defense of opposing excessive force. Given that Carter never mentioned his baton during the encounter and declined medical assistance, these alleged felonies are not provable.

VII. NEGLIGENCE AND GROSS NEGLIGENCE OF UIW

7.1 Defendant University of the Incarnate Word had a duty to exercise reasonable care in the hiring, training and employment of its police officers. UIW recklessly failed to exercise reasonable care in hiring, training, supervising and retaining defendant Carter by failing to ensure that he had the necessary training, understanding, and skill one would expect from someone hired as a campus police officer. UIW's reckless conduct was a breach of duty and a proximate cause of the injuries sustained by plaintiffs.

7.2 Cameron Redus would be alive if UIW had adequately trained and supervised defendant Carter. UIW had notice that Carter lacked knowledge of the standards and requirements for his work and that he posed a risk or danger to others, yet failed to take steps to limit these risks. Liability is imputed to UIW under the doctrine of *res ipsa loquitur* because the incident could not have happened in the absence of UIW's negligence and gross negligence.

7.3 UIW acted with reckless disregard for the safety of the public, most notably Robert Cameron Redus, by not properly hiring, training and supervising its police department and the campus police officers.

VIII. CARTER'S NEGLIGENCE, NEGLIGENCE PER SE AND GROSS NEGLIGENCE

8.1 Christopher Carter used excessive force when he shot Cameron Redus, an unarmed man. Even though Cameron Redus posed no threat to Christopher Carter, he recklessly shot him five times, including two shots from sufficiently close range to leave stippling on Cameron's skin.

8.2 Upon information and belief, Carter violated UIW's deadly force policy. In the alternative, Carter acted pursuant to an arrest or used excessive force pursuant to a policy, habit, custom and/or practice of UIW promulgated by UIW's Police Department which allowed unnecessary force to be used in the apprehension of decedent Cameron Redus. As a result of the unwarranted use of excessive force, Cameron Redus suffered fatal injuries leaving his parents without a son and four siblings without a brother.

8.3 Alternatively, Carter was acting at all times under the direction and control of UIW. UIW acts through its Chief of Police, Supervisors, Agents, Officers, President, and Trustees, who are responsible for establishing UIW's policies for its officers and operations. Carter was acting pursuant to official policy or the practice, custom, and usage of UIW at all times. UIW directly or indirectly approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of Carter.

8.4 Alternatively and in addition, Christopher Carter violated one or more section of Chapter 19 of the Texas Penal Code.

IX. RESPONDEAT SUPERIOR

9.1 UIW is responsible for the actions of Christopher Carter under the doctrine of respondeat superior. Cameron Redus was fatally shot by Carter, who used excessive force. Carter was a UIW employee who was acting in the scope of his employment when he committed the acts described above.

X. WRONGFUL DEATH

10.1 Plaintiffs bring this wrongful death action pursuant to Tex. Civ. Prac. & Rem. Code § 71.002. Cameron Redus was a student, employee, son, brother, friend, and entrepreneur at the time of his death. During his short time in this life, he brought incalculable joy to plaintiffs' lives as well as to amongst others. He was the son of plaintiffs Robert M. Redus and Valerie Redus. Plaintiffs have experienced the one loss that is every family member's greatest fear: They have buried their beloved son.

10.2 Plaintiffs have suffered, and will continue to suffer, a loss of consortium and damage to the child/parent relationship, including the loss of love, affection, solace, comfort, companionship, society, assistance, and emotional support from their son as a proximate result of defendants' negligence.

10.3 As a proximate cause of defendants' negligence, plaintiffs have suffered severe mental depression and anguish, grief, and sorrow as a result of Cameron's death, and in all reasonable probability will continue to suffer indefinitely into the future.

10.4 Plaintiffs also suffered pecuniary loss and loss of inheritance due to the death of Cameron Redus that defendants' proximately caused.

XI. SURVIVAL ACTION

11.1 Plaintiffs bring this survival action in their capacity as the legal heirs of decedent pursuant to Tex. Civ. Prac. & Rem. Code § 71.021. Defendants' negligent acts were a proximate cause of tremendous conscious pain, suffering, terror, mental anguish to Cameron Redus preceding his eventual death. The estate of Cameron Redus is entitled to recover damages for:

1. Cameron Redus's conscious physical pain and suffering suffered by prior to his death;

2. His conscious mental anguish suffered prior to his death; and

3. Funeral and burial expenses for Cameron Redus.

XII. CONDITIONS PRECEDENT AND OTHER MATTERS

12.1 All conditions precedent have been performed or have occurred, notice has been given to Defendants.

12.2 The acts alleged above were done with conscious indifference and reckless disregard for the safety of others.

XIII. DAMAGES

13.1 Plaintiffs' damages are substantial and well in excess of the jurisdictional minimums of this Court. The determination of the value of each element of damages is peculiarly within the province of the jury. Plaintiffs do not, at this time, seek any certain amount of damages for any of the particular elements of damages; they instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate plaintiffs. Defendants, however, have demanded to know the maximum amount to which plaintiffs could claim they are entitled. Plaintiffs specifically plead they do not believe their damages exceed $26,000,000.[1] Plaintiffs do not seek to infringe upon the jury's Constitutional responsibilities, but are required by law to assign a maximum amount. Plaintiffs reserve the right to either file a trial amendment or an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low.

[1] This is the amount of UIW's applicable insurance policies.

XIV. EXEMPLARY DAMAGES

14.1 Plaintiffs' injuries resulted from defendants' gross negligence, which entitles plaintiffs to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

14.2 Defendants acted with reckless disregard for the safety of the public, most notably Cameron Redus.

14.3 Furthermore, exemplary damages are recoverable under Tex. Civ. Prac. & Rem. Code § 71.021 as part of the survival action brought by the Estate of Cameron Redus because Cameron, had he lived, would have been able to recover exemplary damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray that defendants be cited to appear and answer herein and that upon final trial and other hearing of this cause, plaintiffs recover damages from defendants in accordance with the evidence, including economic damages, non-economic damages and exemplary damages as the jury deems them deserving; that plaintiffs recover costs of court herein expended; that plaintiffs recover interest to which they are justly entitled under the law, both prejudgment and post judgment; and for such other further relief, both general and special, both in law and in equity, to which plaintiffs may be justly entitled.

Respectfully submitted,

LAW OFFICE OF BRENT C. PERRY, PC

_____

BRENT C. PERRY
STATE BAR NO. 15799650
800 COMMERCE STREET
HOUSTON, TX 77002
TEL: (713) 334-6628
FAX: (713)237-0415
BRENTPERRY@BRENTPERRYLAW.COM
ATTORNEY IN CHARGE

HERRING LAW FIRM
MASON W. HERRING
STATE BAR NO. 24071746
4640 BANNING DRIVE
HOUSTON, TEXAS 77027
(832) 500-3170 – TELEPHONE
(832) 500-3172 – FACSIMILE
MHERRING@HERRINGLAWFIRM.COM

THE HERRERA LAW FIRM

/S/ JORGE A. HERRERA
FRANK HERRERA, JR.
STATE BAR NO. 09531000
FHERRERA@HERRERALAW.COM
JORGE A. HERRERA
STATE BAR NO. 24044242
JHERRERA@HERRERALAW.COM
111 SOLEDAD, SUITE 1900
SAN ANTONIO, TEXAS 78205
TEL: 210.224.1054
FAX: 210.228.0887

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that Plaintiffs' First Amended Petition was sent to the below-listed counsel by electronic service in compliance with Tex. R. Civ. P. 21 and 21a on March 16, 2015.

Laurence S. Kurth
Matthew Wymer
Beirne, Maynard & Parsons, LLP
112 East Pecan St., Suite 2750
San Antonio, TX 78205
Counsel for Defendant UIW

Robert A. Valadez
Shelton & Valadez
600 Navarro St., Suite 500
San Antonio, TX 78205
Counsel for Defendant Christopher Carter

By:_____
Brent C. Perry