

**IN THE DISTRICT COURT OF STEVENS COUNTY, KANSAS**

PAUL LOGAN CLARK,	)	
	)	
and	)	
	)	
JEFFERY WEAVER and KATHRYN	)	
WEAVER, individually, and as Special	)	Case No.: 07-CV-16
Co-Administrators of the Estate of DANIEL	)	Consolidated with Case No.
J. Weaver, a deceased minor,	)	07-CV-18
	)	Division No.: 1
Plaintiffs	)	Chapter 60
	)	
v.	)	
	)	
ARTURO CABEZAS, et al,	)	
	)	
Defendants	)	

**PLAINTIFFS' SUGGESTIONS IN OPPOSITION TO DEFENDANT MURFIN  
DRILLING COMPANY, INC.'S MOTION FOR SUMMARY JUDGMENT AND  
PLAINTIFFS' SUGGESTIONS IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR  
SUMMARY JUDGMENT**

COME NOW plaintiffs, by and through their counsel of record, Shamberg, Johnson & Bergman, Chtd., and Hutton & Hutton Law Firm, LLC, and hereby submit the following in support of their Response to Defendant Murfin Drilling Company, Inc.'s Motion for Summary Judgment and in support of Plaintiffs' Cross-Motion for Summary Judgment.

**INTRODUCTION**

In this personal injury/wrongful death litigation, plaintiff Paul Logan Clark ("Clark") seeks compensation for injuries, including paraplegia, sustained in a Stevens County, Kan., automobile accident. The same accident resulted in the death of Daniel Weaver, whose heirs also seek compensation in these consolidated cases. The June 14, 2005, accident occurred as plaintiff Clark was driving himself and 14-year-old Daniel Weaver to a golf tournament in Ulysses, Kan. While northbound on Highway 25 from Hugoton, Kan., plaintiff Clark's 2002

Ford Escape was struck head-on by a 2002 Chevrolet 2500 pickup truck driven by defendant Arturo Cabezas (“Cabezas”). Plaintiffs allege that defendant Cabezas was negligent in allowing his pickup truck to swerve across the center line and strike the Clark vehicle. The Stevens County Sheriff’s Office cited defendant Cabezas for driving left of the center line.

At the time of the accident, defendant Cabezas was employed by defendant Murfin Drilling Company, Inc., (“Murfin”) as a driller. As part of his employment, defendant Cabezas was transporting two crew members home from a drilling site when he lost control of his pickup truck and struck the Clark vehicle. Plaintiffs have brought a vicarious liability claim against defendant Murfin for defendant Cabezas’ negligence while in the scope and course of his employment. Plaintiffs have also brought an independent claim of negligence against defendant Murfin for negligently hiring, training, supervising and retaining defendant Cabezas.

Defendant has filed a Motion for Summary Judgment on three issues: 1) Whether defendant Cabezas was in the scope and course of his employment at the time of the accident; 2) Whether defendant Murfin is independently negligent in hiring, training, supervising and retaining defendant Cabezas; and 3) Whether decedent Daniel Weaver experienced conscious pain and suffering before his death.

Plaintiffs respectfully request that this Court deny defendant’s summary judgment motion on all three issues. Further, plaintiffs respectfully request that this Court grant Summary Judgment in Plaintiffs’ favor and determine that defendant Cabezas, as a matter of law, was within the scope and course of his employment at the time of the accident.

**PLAINTIFFS’ RESPONSE TO DEFENDANT MURFIN’S  
STATEMENT OF UNCONTROVERTED FACTS**

Defendants’ Statement of Uncontroverted Facts lists several “facts” that are not “material facts” and therefore have no probative force as to a controlling legal issue. Plaintiffs’ admission

as to these non-material facts being uncontroverted does not provide a basis for granting summary judgment.

1. Uncontroverted.

2. Uncontroverted.

3. Uncontroverted.

4. Uncontroverted.

5. Uncontroverted.

6. Uncontroverted.

7. Uncontroverted.

8. Uncontroverted.

9. Uncontroverted.

10. Controverted, to the extent that some Murfin drilling shifts last as long as 12 hours. (David Murfin Deposition, Exhibit J, 91:20-92:3; Eldon Bedford deposition, Exhibit A, 16:10-17:6).

11. Uncontroverted.

12. Uncontroverted.

13. Uncontroverted.

14. Uncontroverted.

15. Uncontroverted.

16. Controverted. Defendant Cabezas was still within the scope and course of his employment while driving home from the rig site with two members of his crew as passengers in his vehicle at the time of the June 14, 2005, accident. Defendant Murfin paid defendant Cabezas a per diem, based on mileage from his home to the rig site, to travel to and from the rig site. Defendant Murfin also paid the two crew members riding with defendant Cabezas a per diem

based on mileage from their home to the rig site. (Arturo Cabezas Deposition, Exhibit C, 31:23-32:20, 36:12-37:14; Miranda Deposition, Exhibit I, 34:5-24). Defendant Cabezas was required by Murfin, as a driller and supervisor, and by virtue of receiving mileage reimbursement, to drive Bedford and Jiminez home on the morning of June 14, 2005. (Defendant Arturo Cabezas' Responses to Plaintiff Clark's First Request for Admissions, Exhibit D). This issue is at the heart of this litigation and is discussed further in Plaintiffs' Statement of Additional Uncontroverted Facts. Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

17. Controverted. Some Murfin drillers forced their crew members to ride with them to rig sites. (Josh Miranda Deposition, Exhibit I, 39:22-40:7, 42:10-25). Defendant Cabezas forced roughneck Eldon Bedford to ride with Cabezas to and from rig sites, telling Bedford that he must ride with Cabezas or lose his job. (Bedford Depo, Exhibit A, 26:3-17, 39:18-40:10, 42:25-43:19, 46:6-21).

18. Controverted. One of defendant Cabezas' supervisory responsibilities as a driller is to make sure that his crew gets to the rig site. (Kelly Wilson Deposition, Exhibit M, 10:22-12:15, 19:25-20:5, Cabezas Deposition, Exhibit C, 34:2-35:3, 35:19-36:3).

19. Uncontroverted.

20. Uncontroverted.

21. Uncontroverted.

22. Uncontroverted.

23. Uncontroverted.

24. Uncontroverted.

25. Controverted. Please see Response to Statement No. 18, above. Please also see Defendant Cabezas' Responses to Plaintiff Clark's First Request for Admission, Exhibit D.

26. Uncontroverted.
27. Uncontroverted.
28. Controverted, to the extent that defendant Cabezas' tool pusher, Kelly Wilson, acted as a rubber stamp for roughnecks whom Cabezas hired. Wilson never refused to approve a roughneck whom a driller wanted to hire. (Wilson Deposition, Exhibit M, 27:18-21).
29. Uncontroverted.
30. Uncontroverted.
31. Uncontroverted.
32. Controverted, to the extent that defendant Cabezas had supervisory capacity as a driller over his crew. Please see Response to Statement No. 18 above. Further, defendant Cabezas' crew members considered him to be their supervisor. (Bedford Deposition, Exhibit A, 25:12-17; Miranda Deposition, Exhibit I, 28:3-12). Also, pursuant to oil industry custom, drillers are supervisors. (Bernie Meyer Deposition, Exhibit H, 35:6-11). At the rig site, the driller is in charge if the tool pusher is not there. (Wilson Deposition, Exhibit M, 10:22-24).
33. Uncontroverted.
34. Uncontroverted.
35. Uncontroverted.
36. Controverted, to the extent that a "per diem" may consist of two separate reimbursements—one for mileage to/from a rig site, and one for lodging if the rig site is more than 100 miles from an employee's home. (Meyer Deposition, Exhibit H, 11:1-6; Donna Burdick Deposition, Exhibit B, 37:9-13, 37:25-38:9; Exhibit 1 to Wilson Deposition, Exhibit M).
37. Uncontroverted.
38. Uncontroverted.

39. Controverted, to the extent that Mr. Meyer does not sign-off on payroll sheets unless he is at a rig site or unless a well is complete. (Meyer Deposition, Exhibit H, 18:3-16).

40. Controverted. Defendant Murfin paid roughnecks and drillers a per diem to travel to and from rig sites. Please see Responses to Nos. 16 and 18. Defendant Murfin, through its drillers, who had supervisory capacity, controlled what Murfin roughnecks did before they arrived at rig sites by requiring them to ride with drillers to rig sites. (Bedford Deposition, Exhibit A, 26:3-17, 39:18-40:10, 42:25-43:19; Miranda Deposition, Exhibit I, 42:10-25). Moreover, Murfin drillers' supervisory responsibilities included making sure that their crew members get to the rig sites. Please see Response to Statement No. 18, above. Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

41. Controverted. Please see Responses to Nos. 16, 18 and 40. By virtue of forcing roughnecks to ride with some drillers to rig sites, some Murfin drillers required the same roughnecks to ride home with them, thus controlling them after leaving a rig site. Please see Defendant Cabezas' Responses to Plaintiff Clark's First Request for Admission, Exhibit D. Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

42. Controverted. Please see Response to Statement No. 40, above.

43. Controverted. Please see Response to Statement No. 41, above.

44. Controverted. Please see Response to Statement No. 41, above.

45. Uncontroverted.

46. Controverted. Please see Responses to Nos. 16, 18, 40 and 41. Further, Murfin drillers (or deckhands, if they happened to drive other workers to or from a rig site) had supervisory capacity over their passengers to get them to the rig. (Wilson Deposition, Exhibit M,

83:14-84:1, 86:1-8). Moreover, crews carpooling to a rig site are more reliable at showing up for their shifts than are individuals who drive separately to a rig site. (Rodney Farr Deposition, Exhibit G, 24:8-17). Murfin benefits from carpooling by ensuring that employees get to remote and shifting rig sites. (Robert Young Deposition, Exhibit N, 143:8-145:6). Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

47. Controverted. Please see Response to Statement No. 40, above.

48. Controverted. Please see Responses to Statements Nos. 40-41, above.

49. Controverted. Please see Response to Statement No. 40, above.

50. Controverted, to the extent that a “per diem” may consist of two separate reimbursements—one for mileage to/from a rig site, and one for lodging, if the rig site is more than 100 miles from an employee’s home. (Meyer Deposition, Exhibit H, 11:1-6; Donna Burdick Deposition, Exhibit B, 37:9-13, 37:25-38:9; Exhibit 1 to Wilson Deposition, Exhibit M).

51. Uncontroverted.

52. Controverted, to the extent that having drillers and roughnecks present at rig sites facilitates Murfin’s drilling operations. (Murfin Deposition, Exhibit J, 90:18-25). The per diem is paid by defendant Murfin to field workers as compensation for travelling to and from rig sites. (Meyer Deposition, Exhibit H, 10:18-11:23; Farr Deposition, Exhibit G, 50:16-51:12).

53. Uncontroverted.

54. Uncontroverted.

55. Controverted. Some Murfin employees, including those on defendant Cabezas’ crew, could not decide how to spend their per diems. Murfin drillers, including defendant Cabezas, in their supervisory capacity, instructed passengers riding with drillers to and from rig sites to transfer their per diems to the driller. This practice was Murfin’s company policy.

(Miranda Deposition, Exhibit I, 22:14-25:2, 34:5-24, 41:11-24). A driller ensures that his crew members are at a rig site by picking them up and riding together to and from the rig sites. (Wilson Deposition, Exhibit M, 10:22-12:15). It was expected that crew members riding to and from a rig site with a driller would transfer or assign their per diems to their driller. (Wilson Deposition, Exhibit M, 16:21-27:7). Murfin tool pushers enforced these transfers. (Wilson Deposition, Exhibit M, 23:2-12). Defendant Cabezas handwrote on at least two time sheets of his crew that Murfin's payroll department was to transfer mileage per diems to defendant Cabezas. Defendant Cabezas then required at least one crew member to sign these time sheets. (Bedford deposition, Exhibit A, 33:23-36:23; Exhibit 2, pp. 000115 and 000117, Wilson Deposition, attached as Exhibit M). Crew members who refuse to transfer per diem payments must either drive themselves or lose their jobs. (Wilson Deposition, Exhibit M, 26:14-27:7). Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

56. Uncontroverted.

57. Uncontroverted.

58. Uncontroverted.

59. Controverted. Please see Responses to Statement Nos. 40, 41 and 55 above.

60. Controverted. Please see Responses to Statement Nos. 40, 41 and 55 above.

Defendant Murfin recognized and approved the practice of field workers assigning their per diem to the field worker who drove his vehicle to and from rig sites. (Wilson Deposition, Exhibit M, 20:6-21:14, 22:12-23:12; Farr Deposition, Exhibit G, 27:21-28:17; Meyer Deposition, Exhibit H, 13:4-14). Defendant Murfin facilitated the practice of per diem assignments or transfers by including them on their time sheets. (Exhibit 2, pp. 000115, to Wilson Deposition, Exhibit M).

Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

61. Controverted. Please see Responses to Statement Nos. 40, 41 and 55, above.

62. Controverted. Please see Responses to Statement Nos. 40, 41 and 55, above.

63. Uncontroverted.

64. Controverted. Please see Responses to Statement Nos. 40, 41 and 55, above.

65. Uncontroverted.

66. Controverted. Please see Responses to Statement Nos. 40, 41 and 55, above.

Further, at least one Murfin driller grew angry when employees wanted to drive rather than carpool with him, because he wanted the extra per diem payments. (Bedford Deposition, Exhibit A, 41:22-42:10).

67. Uncontroverted.

68. Uncontroverted.

69. Controverted, to the extent that defendant Murfin did more than merely “allow” employees to transfer per diem payments on their time sheets. In fact, Murfin time sheets include a line that reads: “PAY MY PER DIEM TO: \_\_\_\_\_.” (Burdick Deposition, Exhibit B, 45:21-46:11; Exhibit 2, pp. 000115 and 000117, Wilson Deposition, attached as Exhibit M). Further, Murfin does not charge its employees an administrative fee for transferring per diem payments, although it does charge employees a fee for payroll withholdings such as legal garnishments. (Burdick Deposition, Exhibit B, 23:6-8; 68:15-24). Please see Responses to Statements 55 and 60.

70. Controverted, to the extent that defendant Murfin’s policy facilitating per diem transfers might have begun more than 35 years ago. (Burdick Deposition, Exhibit B, 7:15-17, 68:25-69:12).

71. Controverted, to the extent that some employees are required to transfer their per diem payments. Please see Response to Statement No. 55, above.

72. Controverted, to the extent that some employees are required to transfer their per diem payments. Please see Response to Statement No. 55, above.

73. Uncontroverted.

74. Uncontroverted.

75. Uncontroverted.

76. Uncontroverted.

77. Uncontroverted.

78. Uncontroverted.

79. Uncontroverted.

80. Uncontroverted.

81. Uncontroverted.

82. Controverted, to the extent that defendant Cabezas, Eldon Bedford and Fernando Jiminez were still in the scope and course of their employment when the accident occurred. Please see Responses to Statements Nos. 16, 18, 40, 41, 55 and 60 above. Moreover, all three employees received workers compensation benefits for injuries sustained in the accident. Gallagher Bassett, the agency that handled defendant Murfin's workers compensation matters, determined that defendant Murfin's employees' personal injuries sustained in the June 14, 2005, accident were covered by workers compensation because they were in the course of their employment with defendant Murfin at the time of the accident. (D'Ann Drennan Deposition, Exhibit F, 24:21-25:4, 63:15-22, 65:15-65:25). Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

83. Uncontroverted.

84. Uncontroverted.
85. Uncontroverted.
86. Uncontroverted.
87. Uncontroverted.
88. Uncontroverted.
89. Uncontroverted.
90. Uncontroverted.
91. Uncontroverted.
92. Uncontroverted.
93. Uncontroverted.
94. Uncontroverted.
95. Uncontroverted.
96. Uncontroverted.

97. Controverted, to the extent that defendant Murfin confirmed Gallagher Bassett's determination that all three employees' personal injuries were covered by workers compensation. Please see Response to Statement No. 82, above, and Plaintiffs' Statement of Additional Uncontroverted Fact No. 14, below. Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

98. Uncontroverted. Murfin had "veto power" over decisions made by its agent, Gallagher Bassett, concerning compensability for workplace injuries. Defendant Murfin never used its "veto power" and never instructed Gallagher Bassett to not provide workers compensation benefits for the June 14, 2005, accident. (Young Deposition, Exhibit N, 37:24-38:20, 43:17-45:18). Moreover, defendant Murfin never disputed the coverage of workers compensation claims from the June 14, 2005, accident. (Drennan Deposition, Exhibit F, 90:23-

91:3). Further, this Statement of Uncontroverted Fact should be stricken as contrary to prior admissions of fact and law made by defendant Murfin.

99. Uncontroverted.

100. Controverted, to the extent that Bedford's injuries, in addition to those of defendant Cabezas and Jiminez, were covered under workers compensation. (Drennan Deposition, Exhibit F, 69:23-70:6).

101. Uncontroverted.

102. Uncontroverted.

103. Uncontroverted.

104. Uncontroverted.

105. Controverted. The accident occurred at 8:00 a.m. on June 14, 2005. (Duane Topliss Deposition, Exhibit L, 18:18-22). Weaver was pronounced dead at 9:36 a.m. (Plaintiffs' answers to first set of interrogatories at 20).

106. Uncontroverted.

107. Controverted, in part. Dr. Peterson testified he did not know whether or not Daniel Weaver became conscious during the time he was impacted. He would rely on people who were there. (Dr. Hubert Peterson Deposition, Exhibit K, 39:17-20).

108. Uncontroverted.

109. Controverted, in part. Paul Logan Clark was the driver of the SUV in which Daniel Weaver was a passenger. (Topliss Deposition, Exhibit L, 31:13-15). Mr. Clark recalls yelling for help after the impact. (Clark Deposition, Exhibit E, 52:6).

110. Uncontroverted.

111. Controverted, in part. Sheriff Topliss testified:

Q. Okay. Did you ever hear anything, any human motions or verbal things come from any of the individuals in the SUV?

A. There was a lot of things I heard. Some of them may have been from the SUV, but I mean, there was a lot of help me, please, help me.

**PLAINTIFFS' STATEMENT OF ADDITIONAL  
UNCONTROVERTED FACTS**

1. Robert Young is the treasurer, chief financial officer, and a director of defendant Murfin Drilling Company, Inc. (Young Deposition, Exhibit N, 6:19-21). Mr. Young was produced for deposition as an officer and corporate representative of defendant Murfin, pursuant to K.S.A. § 60-230(b)(5). (Young Deposition, Exhibit N, 10:3-11). Mr. Young has worked for defendant Murfin for 34 years and has been treasurer, CFO, and a director since 1991. (Young Deposition, Exhibit N, 6:21-24, 8:6-13).

2. Mr. Young learned about the June 14, 2005, automobile accident “almost immediately after it occurred,” in part because “it was probably in the history of our company the worst accident we’ve ever observed.” Mr. Young instructed defendant Murfin employee D’Ann Drennan to provide him with information about the accident. (Young Deposition, Exhibit N, 27:23-29:21).

3. Defendant Murfin employed an agent, Gallagher Bassett Services, Inc., 1300 E. 104<sup>th</sup> Street, Suite 200, Kansas City, MO, 64131, to manage workers compensation claims. Gallagher Bassett’s normal scope and authority of duties include determining whether defendant Murfin’s employees’ personal injuries are covered by workers compensation. Defendant Murfin retained “veto power” over Gallagher Bassett’s workers compensation determinations. Defendant Murfin never used its “veto power.” (Young Deposition, Exhibit N, 37:17-38:20).

