

2.02 Sutapa Dube is an individual and a citizen of the State of California. She is the surviving daughter of Asok Dube, deceased, who was also a citizen and resident of California.

2.03 Sujata Dube is an individual and a citizen of the State of California. She is the surviving daughter of Asok Dube, deceased, who was also a citizen and resident of California.

2.04 Sophia Dube is an individual and a citizen of the State of Texas. She is the surviving daughter of Asok Dube, deceased, who was a citizen and resident of California.

2.05 Defendant, James McDuffee is an individual and a citizen of the State of Texas. Defendant can be served with process by serving him at his home address, 7609 W. Dunn Street, Trailer 19, Odessa, Texas 79763, or wherever he may be found.

2.06 Byrd Oilfield Services, LLC, is a Texas company which can be served by serving its registered agent Kay Hight at, 5019 Maple, Abilene, Texas 79602, or wherever she may be found.

3.00 JURISDICTION & VENUE

3.01 The amount in controversy is within jurisdictional limits of this Court.

3.02 Wise County is the proper venue for this action pursuant to the Texas Civil Practice and Remedies Code, Section 15.001(a)(1), *et seq.*, because Defendant Byrd Oilfield Services, LLC maintains a principal office in this county.

4.00 STATEMENT OF FACTS

4.01 On March 24, 2013, Asok Dube was traveling west on I-20 in Ector County with his wife, Namita Dube. At this same time, James McDuffee, was operating a commercial vehicle on the same stretch of roadway. Mr. Dube was traveling in the left lane, as Defendant McDuffee was in the lane to his right. Suddenly, and without

warning, Defendant McDuffee began changing lanes into the side of Mr. Dube's 2007 Toyota Yaris. Mr. Dube swerved to the left, in order to avoid being crushed by Defendant McDuffee's vehicle. Mr. Dube lost control of his vehicle as it left the roadway, crossed the median, and crashed head-on into a 2005 Toyota Camry traveling the opposite direction, driven by John Bailey and occupied by Joan Bailey. Due to the force of the crash, Mr. Asok Dube and John Bailey died of their injuries, and Ms. Namita Dube and Joan Bailey were seriously injured.

4.02 At the time of the collision James McDuffee was employed by or the agent acting on behalf of Defendant Byrd Oilfield Services, LLC and James McDuffee was operating a motor vehicle in the course and scope of his employment and/or agency on behalf of Defendant Byrd Oilfield Services, LLC.

4.03 As a direct and/or proximate cause of the collision Asok Dube was subjected to an extremely frightening and agonizingly painful set of events that culminated in his death.

5.00 CLAIMS AGAINST DEFENDANT JAMES MCDUFFEE

5.01 At all times relevant to the occurrence in question, James McDuffee had a duty to act as a reasonable and prudent motorist would have acted under the same or similar circumstances. James McDuffee breached this duty in one or more respects including, but not limited to: failing to maintain a proper lookout, failing to keep his vehicle under control, changing lanes when unsafe and/or failing to maintain a single lane of travel.

5.02 The above acts and/or omissions were a proximate cause of the collision in question and the resulting injuries and damages sustained by Asok Dube and Plaintiffs.

6.00 **CLAIM AGAINST DEFENDANT BYRD OILFIELD SERVICES, LLC.**

6.01 Defendant Byrd Oilfield Services, LLC is vicariously liable for the damages proximately caused to Asok Dube and the Plaintiffs by virtue of the negligent conduct of its driver/employee/agent, James McDuffee.

6.02 At the time of the subject collision, James McDuffee was an employee and/or agent of Defendant Byrd Oilfield Services, LLC. Further, James McDuffee was acting within the course and scope of his employment and/or agency relationship on behalf of Defendant Byrd Oilfield Services, LLC at the time of the subject incident. That is, James McDuffee was acting in furtherance of the business of his employer and/or master.

6.03 Therefore, Defendant Byrd Oilfield Services, LLC is vicariously liable to Plaintiffs for the negligent acts and/or omissions of its employee/agent, James McDuffee, on the basis of *respondeat superior* and/or agency law.

7.00 **PROXIMATE CAUSE AND DAMAGES**

7.01 As a direct and proximate result of the negligent acts and/or omissions of Defendants, Plaintiffs have suffered substantial damages for which they seek recovery from Defendants.

7.02 Namita Dube, as the surviving spouse of Asok Dube, seeks wrongful death damages on behalf of herself individually consisting of past and future pecuniary loss, past and future loss of companionship and society, past and future mental anguish, and past and future loss of household services due to the wrongful death of her husband, Asok Dube.

7.03 Sutapa Dube, as a surviving daughter of Asok Dube, seeks wrongful death damages on behalf of herself individually consisting of past and future pecuniary loss,

past and future loss of companionship and society, past and future mental anguish, and past and future loss of household services due to the wrongful death of her father, Asok Dube.

7.04 Sujata Dube, as a surviving daughter of Asok Dube, seeks wrongful death damages on behalf of herself individually consisting of past and future pecuniary loss, past and future loss of companionship and society, past and future mental anguish, and past and future loss of household services due to the wrongful death of her father, Asok Dube.

7.05 Sophia Dube, as a surviving daughter of Asok Dube, seeks wrongful death damages on behalf of herself individually consisting of past and future pecuniary loss, past and future loss of companionship and society, past and future mental anguish, and past and future loss of household services due to the wrongful death of her father, Asok Dube.

7.06 Plaintiffs, as the surviving heirs of Asok Dube, seek survival damages for the conscious pain and mental anguish suffered by Asok Dube before his death, past medical expenses for medical treatment received by Asok Dube for his injuries and the reasonable funeral and burial expenses incurred on behalf of Asok Dube.

7.04 Plaintiffs also seek recovery for all costs of court, and prejudgment and post-judgment interest in the maximum amounts allowable by law.

8.00 PRAYER

Plaintiffs respectfully pray that Defendants be cited to appear and answer herein, and that upon a final hearing hereof, Plaintiffs recover a judgment over and against the Defendants for the damages as pled herein in amounts the jury determines to be fair and

reasonable, and for such other and further relief, at law and in equity, to which the Plaintiffs may show themselves justly entitled.

Respectfully submitted,
GROSSMAN LAW OFFICES, P.C.



Keith C. Purdue
SBN 24058060

E. Michael Grossman
SBN 08544500
12240 Inwood Rd., Suite 500
Dallas, Texas 75244
(214) 220-9191
(214) 220-9127 - Fax
ATTORNEYS FOR PLAINTIFFS

DEFINITIONS AND INSTRUCTIONS

As used herein, the words, defined below shall be deemed to have the following meanings unless indicated otherwise in an individual discovery request.

Statement: The term “Statement” as used in these requests shall mean (a) a written statement signed or otherwise adopted or approved by the person making it, and (b) stenographic, mechanical, electrical, or other type of recording, or any transcription, which is a substantial verbatim recital of a statement made by the person and contemporaneously recorded.

Possession/Custody/Control: The terms “Possession”, “custody”, or “control” shall include, constructive possession such that the person need not have actual possession. As long as the person has a superior right to compel the production from the third-party (including an agency, authority, or representative), the person has possession, custody, or control.

Persons with Relevant Knowledge: The term “Persons with relevant knowledge” shall include a person that has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirements of Rule 196 of the Texas Rules of Civil Procedure and personal knowledge is not required.

Settlement: The term “Settlement” shall mean any oral or written, disclosed or undisclosed, agreement, bargain, contract, settlement, partial settlement, limited settlement, “arrangement,” “deal,” “understanding,” loan agreement, credit agreement, contingent settlement, limitation on the amount of liability or judgment, or promise by or between Plaintiff and any party or potential party where Plaintiff has in any way released or compromised in whole or in part, directly or indirectly, or agreed to do so in the future, any of the matters in controversy in this lawsuit whether before, after, or during trial before or after any jury verdict that is returned in this lawsuit or a judgment is entered or rendered in this lawsuit.

Discovery Request: The term “Discovery Request” includes, but is not limited to an interrogatory, request for admission, and request for production of documents.

Representative: The term “representative” means any and all agents, employees, servants, officers, directors, or other natural persons or business or legal entities acting or purporting to act on behalf of the person in question, whether authorized to do so or not, with respect to the matter, subject matter, information, document, item, or tangible thing requested.

Counsel: The term “counsel” means the attorney(s) or law firm(s) retained to represent a party.

Person: The term “person” or “persons” means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not being limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, state, governmental agency, commission/Department of Insurance, bureau, department or any other entity.

Document: the terms “document”, “documents”, “documentation” include, but are not limited to: papers; books; accounts; drawings; graphs; charts; photographs; electronic or videotape recordings; data; and date compilations; writings of every kind, source and authorship; correspondence, records; negotiable instruments; communications and depictions in words, symbols, pictures, sound recordings, films, tapes; information stored in, or accessible through, computer or other information storage or retrieval systems; discovery responses, depositions or other discovery materials produced, disclosed, or made regarding any legal proceeding; statements; pleadings; pleadings; reports; citations; or writings. The terms include originals, drafts and non-identical copies of such documents. Any copy of any “document”, any alterations, notes, comments, or other material not included in the originals or copies referred to above shall be deemed a separate document.

Additionally, as to production of electronic data, of documents, of photographs, and of recordings:

- (i) Any and all *data or information which is in electronic or magnetic form* should be produced in the following form: (a) in written or printed form, and (b) in a finished useable form, which would include all necessary glossaries keys and indices for use and interpretation of the material.
- (ii) In connection with:
 - a. Production of *documents*, the Propounding Party requests that true and correct copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the reasonable cost of copies;
 - b. Production of *photographs*, the Propounding Party requests that true and correct color copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the reasonable cost of copies;
 - c. Production of recordings of any kind, whether they are oral, taped, or recorded statements, or recordings of an audio or visual nature, etc., Propounding Party requests that true and correct recording copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the recognizable costs of copies.

Genuine: The term “genuine” means free of forgery or counterfeiting. [See Tex. Bus. & Com. Code Ann. Sec. 1.201(18) (Vernon 1968)] To admit that a document is “genuine” is to admit that it is the document it purports to be.

Authentic: The term “authentic” means with respect to a writing or document that it is a true and correct copy of the document or writing and that the writing or document is in fact what it purports to be.

Business Record: The term “business record” means business record as defined and stated in Tex. R. Evid. 803(6).

Communication: the term “communication” means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and/or all other understandings between or among two or more persons.

Photograph: The terms “photograph” and “photographs” mean and include photographs, pictures, motion pictures, movies, films, videos, magnetically, electronically, digitally, as well as, chemically created or maintained images of any kind, as well as, photographic material of any kind.

Lost or Destroyed Documents: If it is claimed that any document, item or tangible thing has been lost, destroyed, or was once in your possession, custody or control but is no longer; then for each such documents, item or tangible thing, please so note in your response.

Privileged Information or Material: Unless specified, these discovery requests should not be read to request work product, privileged oral and written communications between the attorney and their client, or non-discoverable consulting experts (i.e. information or materials exempt from discovery via Tex. R. Civ. P. 192.3 (e), 192.5, Tex. R. Evid. 503.) The Propounding Party’s counsel in good faith invites Responding Party’s counsel to contact Propounding Party’s counsel should Responding Party’s counsel believe that a protective order is necessary regarding production or use of any of the information and/or documents, items or tangible things requested herein.

Withholding of Information, Documents, Items, or Tangible Things, and Claims of Privilege: If you claim or contend that you are entitled to withhold from production any or all information, documents, items or tangible things, identified herein on the basis of the attorney/client privilege, the work-product doctrine, or other ground, then with respect to information, documents, items or tangible things, please comply with Tex. R. Civ. P. 193.3(a), including but not limited to notice requirements, identification of the discovery request to which it relates, and the privilege(s) asserted.

The Word “Or”: As used herein, the word “or” appearing in a discovery request should not be read so as to eliminate any part of the request, but, whenever applicable, it should be interpreted as “and/or”. For example, an interrogatory stating “support or refer” should be read as “support and/or refer” if an answer that does both can be made.

Time Period: Unless a specific date or dates are set forth in any specific requests herein, you are directed that each discovery request shall be answered for the period of time up to and including the present date, through the date of the responses to discovery requests, and thereafter through trial. If after responding, responsive information or materials come into the possession of or within the possession, custody or control of the Responding Party, they are under a duty to timely amend or supplement pursuant to Rule 193.5 of the Texas Rules of Civil Procedure.

Ambiguity: Propounding Party's counsel in good faith invites Responding Party's counsel to contact Propounding Party's counsel should they believe that any of the discovery requests are ambiguous or, in the pursuit of judicial economy, should be more narrowly tailored and still provide the salient information and/or items. Propounding Party's counsel asks that such request be made in good faith and not to engage in gamesmanship or to limit or secret the discovery of responsive information and/or items.

Requests for interrogatories: If the Responding Party or their counsel is of the opinion that the interrogatories exceed the allowed number (exclusive of identification and authenticity interrogatories), then you are required to answer the allowed number and note your objection to the remaining; and Propounding Party's counsel in good faith invites Responding Party's counsel to contact Propounding Party's counsel to discuss such issue in advance.

Unless otherwise indicated by the inquiry or request, as used herein:

Propounding Party(ies): As used herein, "Propounding Party" means the party(ies) who propounded the subject discovery.

Responding Party(ies): As used herein, "Responding Party" means the party(ies) objecting to and/or providing discovery responses to the subject discovery.

Plaintiffs: As used herein, the term "Plaintiffs" refers to Namita Dube, Sutapa Dube, Sujata Dube, and Sophia Dube, Individually, as wrongful death beneficiaries, and on behalf of the Estate of Asok Dube and includes, as applicable Plaintiffs' agents, employees, representatives and/or assigns.

Defendant / James McDuffee: As used herein, the term "Defendant" refers to James McDuffee, whom is a defendant party in this suit, and, as applicable, includes his agents, employees, representatives, assigns and affiliates.

Incident/Accident/Occurrence/Occurrence in Question: As used herein, the term, "the incident", "the accident", "the occurrence", and "the occurrence in question" refer to the alleged event complained of in Plaintiff's Petition.

Negligent / Negligence: As used herein, the term, "negligent" and "negligence" mean the failure to use ordinary care, that is failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Ordinary Care: As used herein, the term, “ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Proximately Caused / Proximate Cause: As used herein, “proximately caused” and “proximate cause” mean that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred; and, in order to be a proximate cause, the act or omission complained of must be such that a person using “ordinary care” would have foreseen that the event, or some similar event, might be a reasonable result therefrom.

REQUEST FOR INTERROGATORIES

INTERROGATORY NO. 1: Please state the following:

- A. Your name (including all names or aliases by which you have ever been known), address, date of birth, social security number, driver’s license number and the name and addresses of your spouse and all ex-spouses;
- B. List the state(s) and all driver’s license numbers for all licenses issued to you for the five (5) year period preceding the collision in question;
- C. The name and address of your employer at the time of the collision in question;
- D. Your job description and position with Byrd Oilfield Services on the date in question; and
- E. The individual(s) for Byrd Oilfield Services who supervised or had authority to supervise the details of how you performed your work.

ANSWER:

INTERROGATORY NO. 2: With regard to the purpose of your travels on the date in question, please state the following:

- A. The point and time of the origination of your travel;
- B. Please state every place you stopped from the time your trip originated and why;
- C. Describe your route of travel;
- D. Describe all facts that you can recall leading up to the point of the collision in question, relative to the last ten (10) miles traveled by you before the collision in question.

ANSWER:

INTERROGATORY NO. 3: Were you acting within the course and scope of your employment with Byrd Oilfield Services at the time of the collision in question? That is, were you acting in the furtherance of the business of Byrd Oilfield Services at the time of the collision in question.

ANSWER:

INTERROGATORY NO. 4: Describe in your own words how the accident in question occurred and state specifically what you claim or contend was the cause or contributing cause of the collision in question, including a brief statement of the facts or information upon which such contention is based.

ANSWER:

INTERROGATORY NO. 5: Please state the sequence of events leading up to the accident in question, including, but not limited to, the speed of your truck in the 1-2 minutes preceding the collision, the speed of your truck at the time of the accident, the location of your truck at the time of the accident and whether you applied your brakes prior to the collision.

ANSWER:

INTERROGATORY NO. 6: Please identify all intoxicating beverages you consumed and all drugs and medications you took or which had been administered to you for the 48 hour period preceding the collision in question.

ANSWER:

INTERROGATORY NO. 7: Please identify all lawsuits or any other legal proceedings in which you have been a party or witness (civil or criminal) by stating the name and style of each case, the case number, and identify the party or parties involved, the date of the filings of the case or claim, the name and address of the attorney for the opposing party or parties, and the nature and result of each charge, suit or claim, including the dollar amount of any payment, judgment, settlement, fine or penalty.

ANSWER:

INTERROGATORY NO. 8: With regard to the commercial motor vehicle in question, please state:

- A. The name, address and telephone numbers of all passengers, specifying who was driving, and where the passengers were seated and what they were doing in the minutes leading up to the collision in question;
- B. The name and address of the owner;
- C. The date and place the vehicle was last services, inspected and/or repaired by anyone before the collision in question; and
- D. All conditions of the vehicle (mechanical, electrical, hydraulic, structural, brakes and/or design), if any, which you contend caused or contributed to cause the collision in question and the factual basis for any such contention.

ANSWER:

INTERROGATORY NO. 9: Do you contend that there was any defect in the roadway that caused or contributed to the cause of the collision in question? If so, please set forth all facts that support such a contention.

ANSWER:

INTERROGATORY NO. 10: Do you contend that any weather conditions caused or contributed to the cause of the collision in question? If so please set forth all facts that support such a contention.

ANSWER:

INTERROGATORY NO. 11: Did you have a valid commercial driver's license (CDL) to operate the commercial motor vehicle in question at the time of the collision in question? If so, please describe it as to type, license number, state of issuance, and any restrictions thereon, and if the license has ever been suspended, modified or revoked, give the detail of such. If you did not have a commercial driver's license (CDL), please explain why.

ANSWER:

INTERROGATORY NO. 12: Do you allege that someone else's conduct or some other condition or event caused or contributed to cause the collision in question? If so, please describe the identity of such other person, event or condition, and state all facts that support such a contention.

ANSWER:

INTERROGATORY NO. 13: Please describe all conversations you had with any of the occupant(s) of the vehicle(s) you collided with in the collision in question, or with their representatives following the collision in question.

ANSWER:

INTERROGATORY NO. 14: Have you ever been arrested? If so, please state when each arrest occurred, what county and state it occurred in, the reason for the arrest, the charges, the disposition (i.e. dismissed, convicted, plea bargain), and any fines or jail sentence received.

ANSWER:

INTERROGATORY NO. 15: Please state the name and address of each employer for whom you have worked for ten (10) years preceding the collision in question to the present, including the dates of employment, the reason for leaving any listed employment, your job duties, your rate of pay and your supervisor.

ANSWER:

INTERROGATORY NO. 16: Describe all evaluations, promotions, demotions, change of title or position, pay raises and/or disciplinary actions that you received from your employer at the time of the collision in question, including the dates of the change of title or position and the names of all persons responsible for said evaluations, promotions, demotions, raises, changes in title or position, and/or disciplinary actions, from the time you began employment through the present.

ANSWER:

INTERROGATORY NO. 17: Please identify all accidents in which you have been involved in and all citations and/or moving violations which you have received for the ten (10) years prior to the collision in question through the present.

For purposes of this interrogatory, identify means: (a) the dates of the accidents/citations; (b) the nature of the accidents/citations; (c) the disposition of the citations; (d) the location of the accidents; (e) the parties involved in the accidents; and (f) the identity of any police officers who arrived at the scene and/or wrote the police report.

ANSWER:

INTERROGATORY NO. 18: If you submitted to a test for alcohol and controlled substances following the collision in question, then please state the following. If you did not submit to such testing, please explain why?

- A. The date and time such test was administered;
- B. The name, address and telephone number of the person or facility that administered such test;
- C. The person(s) who instructed you to submit to such testing; and
- D. The results of such tests.

ANSWER:

INTERROGATORY NO. 19: Do you contend that Asok Dube did anything wrong or improper that caused or contributed to the cause of the collision in question? If so, then please describe what you contend he did wrong or improper, and how any such actions and/or inactions caused or contributed to the cause of the collision in question.

ANSWER:

INTERROGATORY NO. 20: Do you contend that the collision in question was caused, in whole or in part, by acts and/or omissions by a third party? If so, then please identify the name, address and telephone number of any such third party, and describe all such acts or inactions on their part that you contend caused or contributed to cause the collision in question.

ANSWER:

INTERROGATORY NO. 21: Do you contend that you did anything wrong or improper that caused or contributed to cause the collision in question? If so, then please describe what you contend you did wrong or improper, and how any such actions and/or inactions caused or contributed to cause the collision in question.

ANSWER:

INTERROGATORY NO. 22: Did Byrd Oilfield Services determine or inform you that the collision in question was deemed “preventable”? If so, then please state the name, address, telephone number and position with Byrd Oilfield Services of the person(s) who informed you of such determination and what they told you.

ANSWER:

INTERROGATORY NO. 23: Were you terminated, fired, let go, asked to leave or anything else that led to your leaving the employment of Byrd Oilfield Services after the collision in question? If so, who informed you of such event and what reasons were you given?

ANSWER:

INTERROGATORY NO. 24: Please describe all health conditions you had at the time of the collision in question and for the six (6) months prior, including, the condition you had, whether you took any medication for it and what you took, and the name, address and telephone numbers of all doctors, clinics, hospitals or healthcare providers you saw for any such condition.

ANSWER:

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Counsel: The term “counsel” means the attorney(s) or law firm(s) retained to represent a party.

Person: The term “person” or “persons” means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not being limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, state, governmental agency, commission/Department of Insurance, bureau, department or any other entity.

Document: the terms “document”, “documents”, “documentation” include, but are not limited to: papers; books; accounts; drawings; graphs; charts; photographs; electronic or videotape recordings; data; and date compilations; writings of every kind, source and authorship; correspondence, records; negotiable instruments; communications and depictions in words, symbols, pictures, sound recordings, films, tapes; information stored in, or accessible through, computer or other information storage or retrieval systems; discovery responses, depositions or other discovery materials produced, disclosed, or made regarding any legal proceeding; statements; pleadings; pleadings; reports; citations; or writings. The terms include originals, drafts and non-identical copies of such documents. Any copy of any “document”, any alterations, notes, comments, or other material not included in the originals or copies referred to above shall be deemed a separate document.

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Lost or Destroyed Documents: If it is claimed that any document, item or tangible thing has been lost, destroyed, or was once in your possession, custody or control but is no longer; then for each such documents, item or tangible thing, please so note in your response.

Privileged Information or Material: Unless specified, these discovery requests should not be read to request work product, privileged oral and written communications between the attorney and their client, or non-discoverable consulting experts (i.e. information or materials exempt from discovery via Tex. R. Civ. P. 192.3 (e), 192.5, Tex. R. Evid. 503.) The Propounding Party’s counsel in good faith invites Responding Party’s counsel to contact Propounding Party’s counsel should Responding Party’s counsel believe that a protective order is necessary regarding production or use of any of the information and/or documents, items or tangible things requested herein.

Withholding of Information, Documents, Items, or Tangible Things, and Claims of Privilege: If you claim or contend that you are entitled to withhold from production any or all information, documents, items or tangible things, identified herein on the basis of the attorney/client privilege, the work-product doctrine, or other ground, then with respect to information, documents, items or tangible things, please comply with Tex. R. Civ. P. 193.3(a), including but not limited to notice requirements, identification of the discovery request to which it relates, and the privilege(s) asserted.

The Word “Or”: As used herein, the word “or” appearing in a discovery request should not be read so as to eliminate any part of the request, but, whenever applicable, it should be interpreted as “and/or”. For example, an interrogatory stating “support or refer” should be read as “support and/or refer” if an answer that does both can be made.

Time Period: Unless a specific date or dates are set forth in any specific requests herein, you are directed that each discovery request shall be answered for the period of time up to and including the present date, through the date of the responses to discovery requests,

and thereafter through trial. If after responding, responsive information or materials come into the possession of or within the possession, custody or control of the Responding Party, they are under a duty to timely amend or supplement pursuant to Rule 193.5 of the Texas Rules of Civil Procedure.

Ambiguity: Propounding Party's counsel in good faith invites Responding Party's counsel to contact Propounding Party's counsel should they believe that any of the discovery requests are ambiguous or, in the pursuit of judicial economy, should be more narrowly tailored and still provide the salient information and/or items. Propounding Party's counsel asks that such request be made in good faith and not to engage in gamesmanship or to limit or secret the discovery of responsive information and/or items.

Requests for Production: Per Tex. R. Civ. P. 196, you are required to give complete written responses to each production item request. You are to produce the requested documents, items and tangible things, in your actual or constructive possession, custody or control, and in the actual or constructive possession, custody or control of your agents, counsel, representatives, and/or insurer. As to each request item number, you are also instructed and request is made that you organize and label each document, item and tangible thing to correspond with each category of the request for production and each production item request number. If a response and the accompanying production of documents, items and tangible things, given by the responding party is also fully responsive to and gives full production as to a subsequent request for production, then the responding party need only refer to the prior response when responding and producing as to the subsequent request for production. You are to produce the requested documents, items and tangible things, at the offices of the Propounding Party's counsel.

Unless otherwise indicated by the inquiry or request, as used herein:

Propounding Party(ies): As used herein, "Propounding Party" means the party(ies) who propounded the subject discovery.

Responding Party(ies): As used herein, "Responding Party" means the party(ies) objecting to and/or providing discovery responses to the subject discovery.

Plaintiffs: As used herein, the term "Plaintiffs" refers to Namita Dube, Sutapa Dube, Sujata Dube, and Sophia Dube, Individually, as wrongful death beneficiaries, and on behalf of the Estate of Asok Dube and includes, as applicable Plaintiffs' agents, employees, representatives and/or assigns.

Defendant / James McDuffee: As used herein, the term "Defendant" refers to James McDuffee, whom is a defendant party in this suit, and, as applicable, includes his agents, employees, representatives, assigns and affiliates.

Incident/Accident/Occurrence/Occurrence in Question: As used herein, the term, "the incident", "the accident", "the occurrence", and "the occurrence in question" refer to the alleged event complained of in Plaintiff's Petition.

Negligent / Negligence: As used herein, the term, “negligent” and “negligence” mean the failure to use ordinary care, that is failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Ordinary Care: As used herein, the term, “ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Proximately Caused / Proximate Cause: As used herein, “proximately caused” and “proximate cause” mean that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred; and, in order to be a proximate cause, the act or omission complained of must be such that a person using “ordinary care” would have foreseen that the event, or some similar event, might be a reasonable result therefrom.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: A copy of the front and back of all driver’s licenses held by you, including all commercial driver’s licenses.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: A copy of all maintenance records, repair orders, warranty work orders and service records pertaining to the subject commercial motor vehicle for the 6 month period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: A copy of all documents referred to in answering Plaintiff’s First Set of Interrogatories to you, identifying which documents were used to answer each respective interrogatory.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: A copy of all drawings, maps or sketches of the scene of the collision in question that you may use at the trial of this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: A color copy of all exhibits you intend to offer at trial.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: A copy of all checklists, logs or other written documents evidencing all pre-trip inspections of the subject commercial motor vehicle for the 30 day period preceding the collection in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: A color copy of all written policies and procedures, employment handbooks and/or employment manuals that you received when you first hired on with Byrd Oilfield Services and which you received during your employment with them.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: A color copy of all training manuals or other written training materials that you received while employed with Byrd Oilfield Services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: True and complete copies of all surveillance reports, investigative notes, photographs, movies and/or videotapes taken during any investigation, or surveillance of Plaintiffs at any time prior to the trial of this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: All incident/accident reports for any accident you were involved in for the 5 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: All documents given to you during your employment with Byrd Oilfield Services regarding any corrective actions to be taken in response to any state and/or federal agencies' findings concerning Byrd Oilfield Services' business operations for the 5 year period preceding the collision in question through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: A copy of any alcohol and/or controlled substance test that you submitted to as a result of the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: All documents relating to, pertaining to, referencing or documenting any review of the collision in question by your employer to determine whether the accident was preventable.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Please produce all printouts of the Electronic Control Module from the commercial motor vehicle in questions following the subject collision.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: Please produce a color copy of all post-accident photographs and videotapes of the commercial motor vehicle in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: Please produce a color copy of all post-accident photographs and videotapes of Asok Dube's vehicle that was in that was involved in the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: Please produce a color copy of all post-accident photographs and videotapes of the area and scene of the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: Please produce for copying, photographing and/or inspection all physical evidence that you have preserved arising from the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: Please produce a color copy of all news articles that you obtained regarding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: Please produce a copy of all 911 tapes, transcripts or call logs pertaining to the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: A copy of all ISO (International Standards Organization) standards, policies and procedures that you were given during your employment with Byrd Oilfield Services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: All documents pertaining to, referencing or relating to any determination by Byrd Oilfield Services or any of its employees or representatives, that the collision in question was “preventable”.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: All documents pertaining to any reprimands, corrective actions, counseling or termination you received during your employment with Byrd Oilfield Services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25: A copy of your Driver’s Daily Logs for the day of the incident and thirty days prior to the incident.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26: A copy of all sign-in sheets for any safety meetings or training sessions attended by you for the 3 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: A copy of all handouts, overhead slides, power point presentations or other written or visual materials that were given to you or presented to you at any safety meeting or training sessions you attended for the 3 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28: Please produce for inspection and copying the original of all Federal Motor Carrier Safety Regulations books and pocketbooks you have.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29: A copy of all notes, memos, correspondence, e-mails, Qualcomm messages, diaries or other documents relating or pertaining to the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30: A copy of all awards, certificates or other written materials regarding your driving qualifications/experience/training/performance for the past 10 years.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31: Please produce for inspection and download any and all mobile communication devices, including but not limited to cell phones and pagers in your vehicle at the time of the incident.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32: Detailed phone call logs showing all incoming and outgoing calls, texts, and e-mails for the day of the incident.

RESPONSE:

DEFINITIONS AND INSTRUCTIONS

As used herein, the words, defined below shall be deemed to have the following meanings unless indicated otherwise in an individual discovery request.

Statement: The term “Statement” as used in these requests shall mean (a) a written statement signed or otherwise adopted or approved by the person making it, and (b) stenographic, mechanical, electrical, or other type of recording, or any transcription, which is a substantial verbatim recital of a statement made by the person and contemporaneously recorded.

Possession/Custody/Control: The terms “Possession”, “custody”, or “control” shall include, constructive possession such that the person need not have actual possession. As long as the person has a superior right to compel the production from the third-party (including an agency, authority, or representative), the person has possession, custody, or control.

Persons with Relevant Knowledge: The term “Persons with relevant knowledge” shall include a person that has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirements of Rule 196 of the Texas Rules of Civil Procedure and personal knowledge is not required.

Settlement: The term “Settlement” shall mean any oral or written, disclosed or undisclosed, agreement, bargain, contract, settlement, partial settlement, limited settlement, “arrangement,” “deal,” “understanding,” loan agreement, credit agreement, contingent settlement, limitation on the amount of liability or judgment, or promise by or between Plaintiff and any party or potential party where Plaintiff has in any way released or compromised in whole or in part, directly or indirectly, or agreed to do so in the future, any of the matters in controversy in this lawsuit whether before, after, or during trial before or after any jury verdict that is returned in this lawsuit or a judgment is entered or rendered in this lawsuit.

Discovery Request: The term “Discovery Request” includes, but is not limited to an interrogatory, request for admission, and request for production of documents.

Representative: The term “representative” means any and all agents, employees, servants, officers, directors, or other natural persons or business or legal entities acting or purporting to act on behalf of the person in question, whether authorized to do so or not, with respect to the matter, subject matter, information, document, item, or tangible thing requested.

Counsel: The term “counsel” means the attorney(s) or law firm(s) retained to represent a party.

Person: The term “person” or “persons” means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not being limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, state, governmental agency, commission/Department of Insurance, bureau, department or any other entity.

Document: the terms “document”, “documents”, “documentation” include, but are not limited to: papers; books; accounts; drawings; graphs; charts; photographs; electronic or videotape recordings; data; and date compilations; writings of every kind, source and authorship; correspondence, records; negotiable instruments; communications and depictions in words, symbols, pictures, sound recordings, films, tapes; information stored in, or accessible through, computer or other information storage or retrieval systems; discovery responses, depositions or other discovery materials produced, disclosed, or made regarding any legal proceeding; statements; pleadings; pleadings; reports; citations; or writings. The terms include originals, drafts and non-identical copies of such documents. Any copy of any “document”, any alterations, notes, comments, or other material not included in the originals or copies referred to above shall be deemed a separate document.

Additionally, as to production of electronic data, of documents, of photographs, and of recordings:

- (v) Any and all *data or information which is in electronic or magnetic form* should be produced in the following form: (a) in written or printed form, and (b) in a finished useable form, which would include all necessary glossaries keys and indices for use and interpretation of the material.
- (vi) In connection with:
 - a. Production of *documents*, the Propounding Party requests that true and correct copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the reasonable cost of copies;
 - b. Production of *photographs*, the Propounding Party requests that true and correct color copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the reasonable cost of copies;
 - c. Production of recordings of any kind, whether they are oral, taped, or recorded statements, or recordings of an audio or visual nature, etc., Propounding Party requests that true and correct recording copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the recognizable costs of copies.

Genuine: The term “genuine” means free of forgery or counterfeiting. [See Tex. Bus. & Com. Code Ann. Sec. 1.201(18) (Vernon 1968)] To admit that a document is “genuine” is to admit that it is the document it purports to be.

Authentic: The term “authentic” means with respect to a writing or document that it is a true and correct copy of the document or writing and that the writing or document is in fact what it purports to be.

Business Record: The term “business record” means business record as defined and stated in Tex. R. Evid. 803(6).

Communication: the term “communication” means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and/or all other understandings between or among two or more persons.

Photograph: The terms “photograph” and “photographs” mean and include photographs, pictures, motion pictures, movies, films, videos, magnetically, electronically, digitally, as well as, chemically created or maintained images of any kind, as well as, photographic material of any kind.

Lost or Destroyed Documents: If it is claimed that any document, item or tangible thing has been lost, destroyed, or was once in your possession, custody or control but is no longer; then for each such documents, item or tangible thing, please so note in your response.

Privileged Information or Material: Unless specified, these discovery requests should not be read to request work product, privileged oral and written communications between the attorney and their client, or non-discoverable consulting experts (i.e. information or materials exempt from discovery via Tex. R. Civ. P. 192.3 (e), 192.5, Tex. R. Evid. 503.) The Propounding Party’s counsel in good faith invites Responding Party’s counsel to contact Propounding Party’s counsel should Responding Party’s counsel believe that a protective order is necessary regarding production or use of any of the information and/or documents, items or tangible things requested herein.

Withholding of Information, Documents, Items, or Tangible Things, and Claims of Privilege: If you claim or contend that you are entitled to withhold from production any or all information, documents, items or tangible things, indentified herein on the basis of the attorney/client privilege, the work-product doctrine, or other ground, then with respect to information, documents, items or tangible things, please comply with Tex. R. Civ. P. 193.3(a), including but not limited to notice requirements, identification of the discovery request to which it relates, and the privilege(s) asserted.

The Word “Or”: As used herein, the word “or” appearing in a discovery request should not be read so as to eliminate any part of the request, but, whenever applicable, it should be interpreted as “and/or”. For example, an interrogatory stating “support or refer” should be read as “support and/or refer” if an answer that does both can be made.

Time Period: Unless a specific date or dates are set forth in any specific requests herein, you are directed that each discovery request shall be answered for the period of time up to and including the present date, through the date of the responses to discovery requests, and thereafter through trial. If after responding, responsive information or materials come into the possession of or within the possession, custody or control of the Responding Party, they are under a duty to timely amend or supplement pursuant to Rule 193.5 of the Texas Rules of Civil Procedure.

Ambiguity: Propounding Party's counsel in good faith invites Responding Party's counsel to contact Propounding Party's counsel should they believe that any of the discovery requests are ambiguous or, in the pursuit of judicial economy, should be more narrowly tailored and still provide the salient information and/or items. Propounding Party's counsel asks that such request be made in good faith and not to engage in gamesmanship or to limit or secret the discovery of responsive information and/or items.

Requests for interrogatories: If the Responding Party or their counsel is of the opinion that the interrogatories exceed the allowed number (exclusive of identification and authenticity interrogatories), then you are required to answer the allowed number and note your objection to the remaining; and Propounding Party's counsel in good faith invites Responding Party's counsel to contact Propounding Party's counsel to discuss such issue in advance.

Unless otherwise indicated by the inquiry or request, as used herein:

Propounding Party(ies): As used herein, "Propounding Party" means the party(ies) who propounded the subject discovery.

Responding Party(ies): As used herein, "Responding Party" means the party(ies) objecting to and/or providing discovery responses to the subject discovery.

Plaintiffs: As used herein, the term "Plaintiffs" refers to Namita Dube, Sutapa Dube, Sujata Dube, and Sophia Dube, Individually, as wrongful death beneficiaries, and on behalf of the Estate of Asok Dube and includes, as applicable Plaintiffs' agents, employees, representatives and/or assigns.

Defendant: As used herein, the term "Defendant" refers to Byrd Oilfield Services, who is a defendant party in this suit, and, as applicable, includes his agents, employees, representatives, assigns and affiliates.

Incident/Accident/Occurrence/Occurrence in Question: As used herein, the term, "the incident", "the accident", "the occurrence", and "the occurrence in question" refer to the alleged event complained of in Plaintiff's Petition.

Negligent / Negligence: As used herein, the term, "negligent" and "negligence" mean the failure to use ordinary care, that is failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Ordinary Care: As used herein, the term, “ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Proximately Caused / Proximate Cause: As used herein, “proximately caused” and “proximate cause” mean that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred; and, in order to be a proximate cause, the act or omission complained of must be such that a person using “ordinary care” would have foreseen that the event, or some similar event, might be a reasonable result therefrom.

REQUEST FOR INTERROGATORIES

INTERROGATORY NO. 1: With regard to the Defendant, please state:

- A. The proper business or corporate name, including all names, parents, subsidiaries, affiliates and d/b/a and f/k/a entities by which you have ever been known.
- B. All divisions and subdivisions of Defendant having responsibility or involvement in the employment of James McDuffee, directing in whole or in part the details of his work, and directing his destination on the day in question and/or each division’s or subsidiaries’ role therein;
- C. The name, last known address and title of each officer of the Defendant on the date in question who had any duties, responsibilities or supervisory power with respect to the Defendant’s truck operations; and
- D. The name, address and title of the individual currently overseeing the operations, management and/or resolution of debts and claims of the Defendant.

ANSWER:

INTERROGATORY NO. 2: Please identify all individuals of Defendant who have or may have knowledge relating to each of the following areas of inquiry:

- A. Hiring, training and supervision of James McDuffee;
- B. Compliance with federal, state and local laws and regulations regarding hiring, training, supervision and operation of trucks/vehicles by individual drivers;
- C. Prior claims and lawsuits made against Defendant for personal injuries or property damage from 2003 – present;

- D. Designing and implementing Defendant’s safety program;
- E. Defendant’s chain of command; and
- F. The collision in question.

ANSWER:

INTERROGATORY NO. 3: Please state the purpose of James McDuffee’s travel at the time the collision in question occurred. Please include his point of origin, his intended destination, stops at any intermediate points prior to the collision in question, including the time that he left for his destination and the times of all intermediate stops.

ANSWER:

INTERROGATORY NO. 4: State whether or not James McDuffee was acting within the course and scope of any agency, employment, or service with you at the time of the collision in question.

ANSWER:

INTERROGATORY NO. 5: Describe in your own words your understanding of how the collision in question occurred and state specifically what your claim or contention will be regarding any cause or contributing cause of the collision in question, including a statement of the facts or information upon which this contention is based.

ANSWER:

INTERROGATORY NO. 6: Please describe the damage done to the truck in question, and give the cost of repair and identity of any person making repairs, if any.

ANSWER:

INTERROGATORY NO. 7: Please describe all conversations which you have had with the Plaintiffs, or with Plaintiffs' representatives following the collision in question.

ANSWER:

INTERROGATORY NO. 8: Do you contend that the collision in question was caused by any defect or failure on the part of the subject commercial motor vehicle? If so, please set forth the facts supporting your contentions.

ANSWER:

INTERROGATORY NO. 9: Do you contend that the collision in question was caused by any defect or condition on the roadway? If so, please set forth the facts supporting your contentions.

ANSWER:

INTERROGATORY NO. 10: Please identify all investigations of the collision in question that you conducted or which have been conducted on your behalf. Please include the date the investigation began and the date that it ended, and state the name, address and relationship to the Defendant of each individual who participated in any such investigation.

ANSWER:

INTERROGATORY NO. 11: Describe all promotions, demotions, change of title or position, and/or pay raises which James McDuffee received from you (or any of your affiliates), including the dates of the change of title or position and the names of all personas responsible for said promotions, raises, and changes in title or position of James McDuffee.

ANSWER:

INTERROGATORY NO. 12: If you requested that James McDuffee submit to a test for alcohol and controlled substances following the collision in question, then answer the following. If you did not request such testing, please explain why?

- A. The date and time such test was administered;
 - B. The name, address and telephone number of the person or facility that administered such test;
 - C. The person(s) who instructed James McDuffee to submit to such testing; and
 - D. The results of such tests.
-

ANSWER:

INTERROGATORY NO. 13: Please list all motor vehicle accidents and traffic violations/citations that James McDuffee was involved in and/or received to your knowledge while he was employed by you.

ANSWER:

INTERROGATORY NO. 14: Did you ever take any disciplinary action against James McDuffee during his employment with you? If so, please provide the dates of such action, and what action was taken and why.

ANSWER:

INTERROGATORY NO. 15: Please identify by name, address and telephone number of the following persons with your company:

- A. Person(s) responsible for hiring James McDuffee;
- B. Person(s) responsible for supervising James McDuffee;
- C. Person(s) responsible for safety at the time of the collision in question (i.e. Vice President of Safety, Safety Director, etc.); and
- D. Person(s) responsible for training James McDuffee.

ANSWER:

INTERROGATORY NO. 16: Please list those expert witnesses (if any) identified by Plaintiffs whom you contend are not qualified to render opinions under the standards set forth in *Robinson v. E.I. DuPont Denemours*, or in any subsequent opinion by Supreme Court of Texas which you contend extends the holdings of *Robinson*.

ANSWER:

INTERROGATORY NO. 17: If you contend any opinion of Plaintiffs' experts are not "reliable" within the meaning of *Robinson v. E.I. DuPont Denemours*, or any subsequent opinion by the Supreme Court of Texas which you contend extends the holdings of *Robinson*, please state the substance of that opinion and describe the basis for your contention.

ANSWER:

INTERROGATORY NO. 18: If you plan to use any evidence of criminal arrest and/or conviction to impeach any Plaintiff or any witness at the time of trial, please identify the nature of the charge, disposition, date of disposition and jurisdiction.

ANSWER:

INTERROGATORY NO. 19: Do you contend that Asok Dube did anything wrong which caused or contributed to cause the collision in question? If so, then please describe what you contend he did wrong, and how such actions or inactions caused or contributed to cause the collision in question.

ANSWER:

INTERROGATORY NO. 20: Do you contend that the collision in question was caused, in whole or in part, by any acts and or omissions by a third party? If so, then please identify the name, address and telephone number of any such third party, and describe all such acts and/or inactions on their part that you contend caused or contributed to cause the collision in question.

ANSWER:

INTERROGATORY NO. 21: Do you contend that James McDuffee did anything wrong that caused or contributed to cause the collision in question? If so, then please describe what you contend he did wrong, and how such actions caused or contributed to cause the collision in question.

ANSWER:

INTERROGATORY NO. 22: Please state the name, address, and telephone number of any witnesses you may call to testify at the trial of this case, including a brief description of such person's connection with the case.

ANSWER:

INTERROGATORY NO. 23: Did you determine the collision in question was "preventable"? If so, please state the name, address, telephone number, and position with your company of all persons who were involved in making such a determination, and provide a brief description of the factual basis for such determination.

ANSWER:

INTERROGATORY NO. 24: Please state the name, address, and telephone number of any passengers who were with James McDuffee at the time of the collision in question and what connection, if any, they had with your company.

ANSWER:

INTERROGATORY NO. 25: Please identify the date on which Defendant anticipated litigation as a result of the incident.

ANSWER:

DEFINITIONS AND INSTRUCTIONS

As used herein, the words, defined below shall be deemed to have the following meanings unless indicated otherwise in an individual discovery request.

Statement: The term “Statement” as used in these requests shall mean (a) a written statement signed or otherwise adopted or approved by the person making it, and (b) stenographic, mechanical, electrical, or other type of recording, or any transcription, which is a substantial verbatim recital of a statement made by the person and contemporaneously recorded.

Possession/Custody/Control: The terms “Possession”, “custody”, or “control” shall include, constructive possession such that the person need not have actual possession. As long as the person has a superior right to compel the production from the third-party (including an agency, authority, or representative), the person has possession, custody, or control.

Persons with Relevant Knowledge: The term “Persons with relevant knowledge” shall include a person that has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirements of Rule 196 of the Texas Rules of Civil Procedure and personal knowledge is not required.

Settlement: The term “Settlement” shall mean any oral or written, disclosed or undisclosed, agreement, bargain, contract, settlement, partial settlement, limited settlement, “arrangement,” “deal,” “understanding,” loan agreement, credit agreement, contingent settlement, limitation on the amount of liability or judgment, or promise by or between Plaintiff and any party or potential party where Plaintiff has in any way released or compromised in whole or in part, directly or indirectly, or agreed to do so in the future, any of the matters in controversy in this lawsuit whether before, after, or during trial before or after any jury verdict that is returned in this lawsuit or a judgment is entered or rendered in this lawsuit.

Discovery Request: The term “Discovery Request” includes, but is not limited to an interrogatory, request for admission, and request for production of documents.

Representative: The term “representative” means any and all agents, employees, servants, officers, directors, or other natural persons or business or legal entities acting or purporting to act on behalf of the person in question, whether authorized to do so or not, with respect to the matter, subject matter, information, document, item, or tangible thing requested.

Counsel: The term “counsel” means the attorney(s) or law firm(s) retained to represent a party.

Person: The term “person” or “persons” means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not being limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, state, governmental agency, commission/Department of Insurance, bureau, department or any other entity.

Document: the terms “document”, “documents”, “documentation” include, but are not limited to: papers; books; accounts; drawings; graphs; charts; photographs; electronic or videotape recordings; data; and date compilations; writings of every kind, source and authorship; correspondence, records; negotiable instruments; communications and depictions in words, symbols, pictures, sound recordings, films, tapes; information stored in, or accessible through, computer or other information storage or retrieval systems; discovery responses, depositions or other discovery materials produced, disclosed, or made regarding any legal proceeding; statements; pleadings; pleadings; reports; citations; or writings. The terms include originals, drafts and non-identical copies of such documents. Any copy of any “document”, any alterations, notes, comments, or other material not included in the originals or copies referred to above shall be deemed a separate document.

Additionally, as to production of electronic data, of documents, of photographs, and of recordings:

- (vii) Any and all *data or information which is in electronic or magnetic form* should be produced in the following form: (a) in written or printed form, and (b) in a finished useable form, which would include all necessary glossaries keys and indices for use and interpretation of the material.
- (viii) In connection with:
 - a. Production of *documents*, the Propounding Party requests that true and correct copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the reasonable cost of copies;
 - b. Production of *photographs*, the Propounding Party requests that true and correct color copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the reasonable cost of copies;
 - c. Production of recordings of any kind, whether they are oral, taped, or recorded statements, or recordings of an audio or visual nature, etc., Propounding Party requests that true and correct recording copies be provided in lieu of production of the originals, and in such event Propounding Party shall reimburse for the recognizable costs of copies.

Genuine: The term “genuine” means free of forgery or counterfeiting. [See Tex. Bus. & Com. Code Ann. Sec. 1.201(18) (Vernon 1968)] To admit that a document is “genuine” is to admit that it is the document it purports to be.

Authentic: The term “authentic” means with respect to a writing or document that it is a true and correct copy of the document or writing and that the writing or document is in fact what it purports to be.

Business Record: The term “business record” means business record as defined and stated in Tex. R. Evid. 803(6).

Communication: the term “communication” means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and/or all other understandings between or among two or more persons.

Photograph: The terms “photograph” and “photographs” mean and include photographs, pictures, motion pictures, movies, films, videos, magnetically, electronically, digitally, as well as, chemically created or maintained images of any kind, as well as, photographic material of any kind.

Lost or Destroyed Documents: If it is claimed that any document, item or tangible thing has been lost, destroyed, or was once in your possession, custody or control but is no longer; then for each such documents, item or tangible thing, please so note in your response.

Privileged Information or Material: Unless specified, these discovery requests should not be read to request work product, privileged oral and written communications between the attorney and their client, or non-discoverable consulting experts (i.e. information or materials exempt from discovery via Tex. R. Civ. P. 192.3 (e), 192.5, Tex. R. Evid. 503.) The Propounding Party’s counsel in good faith invites Responding Party’s counsel to contact Propounding Party’s counsel should Responding Party’s counsel believe that a protective order is necessary regarding production or use of any of the information and/or documents, items or tangible things requested herein.

Withholding of Information, Documents, Items, or Tangible Things, and Claims of Privilege: If you claim or contend that you are entitled to withhold from production any or all information, documents, items or tangible things, indentified herein on the basis of the attorney/client privilege, the work-product doctrine, or other ground, then with respect to information, documents, items or tangible things, please comply with Tex. R. Civ. P. 193.3(a), including but not limited to notice requirements, identification of the discovery request to which it relates, and the privilege(s) asserted.

The Word “Or”: As used herein, the word “or” appearing in a discovery request should not be read so as to eliminate any part of the request, but, whenever applicable, it should be interpreted as “and/or”. For example, an interrogatory stating “support or refer” should be read as “support and/or refer” if an answer that does both can be made.

Time Period: Unless a specific date or dates are set forth in any specific requests herein, you are directed that each discovery request shall be answered for the period of time up to and including the present date, through the date of the responses to discovery requests, and thereafter through trial. If after responding, responsive information or materials come into the possession of or within the possession, custody or control of the Responding

Party, they are under a duty to timely amend or supplement pursuant to Rule 193.5 of the Texas Rules of Civil Procedure.

Ambiguity: Propounding Party's counsel in good faith invites Responding Party's counsel to contact Propounding Party's counsel should they believe that any of the discovery requests are ambiguous or, in the pursuit of judicial economy, should be more narrowly tailored and still provide the salient information and/or items. Propounding Party's counsel asks that such request be made in good faith and not to engage in gamesmanship or to limit or secret the discovery of responsive information and/or items.

Requests for Production: Per Tex. R. Civ. P. 196, you are required to give complete written responses to each production item request. You are to produce the requested documents, items and tangible things, in your actual or constructive possession, custody or control, and in the actual or constructive possession, custody or control of your agents, counsel, representatives, and/or insurer. As to each request item number, you are also instructed and request is made that you organize and label each document, item and tangible thing to correspond with each category of the request for production and each production item request number. If a response and the accompanying production of documents, items and tangible things, given by the responding party is also fully responsive to and gives full production as to a subsequent request for production, then the responding party need only refer to the prior response when responding and producing as to the subsequent request for production. You are to produce the requested documents, items and tangible things, at the offices of the Propounding Party's counsel.

Unless otherwise indicated by the inquiry or request, as used herein:

Propounding Party(ies): As used herein, "Propounding Party" means the party(ies) who propounded the subject discovery.

Responding Party(ies): As used herein, "Responding Party" means the party(ies) objecting to and/or providing discovery responses to the subject discovery.

Plaintiffs: As used herein, the term "Plaintiffs" refers to Namita Dube, Sutapa Dube, Sujata Dube, and Sophia Dube, Individually, as wrongful death beneficiaries, and on behalf of the Estate of Asok Dube and includes, as applicable Plaintiffs' agents, employees, representatives and/or assigns.

Defendant: As used herein, the term "Defendant" refers to Byrd Oilfield Services, who is a defendant party in this suit, and, as applicable, includes his agents, employees, representatives, assigns and affiliates.

Incident/Accident/Occurrence/Occurrence in Question: As used herein, the term, "the incident", "the accident", "the occurrence", and "the occurrence in question" refer to the alleged event complained of in Plaintiff's Petition.

Negligent / Negligence: As used herein, the term, “negligent” and “negligence” mean the failure to use ordinary care, that is failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Ordinary Care: As used herein, the term, “ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Proximately Caused / Proximate Cause: As used herein, “proximately caused” and “proximate cause” mean that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred; and, in order to be a proximate cause, the act or omission complained of must be such that a person using “ordinary care” would have foreseen that the event, or some similar event, might be a reasonable result therefrom.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: A copy of the title to the truck in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: A copy of all maintenance records, repair orders, warranty work orders and service records pertaining to the subject tractor for the 12 month period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: A copy of all damage appraisals, repair estimates and repair orders/invoices regarding the damage done to the subject commercial motor vehicle as a result of the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: A copy of all documents referred to in answering Plaintiff's First set of Interrogatories to you, identifying which documents were used to answer each respective interrogatory.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: A copy of all drawings, maps or sketches of the scene of the collision in question that you may use at the trial of this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: A color copy of all exhibits you intend to offer at trial.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: A copy of all checklists, logs or other written documents evidencing all pre-trip inspections of the subject commercial motor vehicle for the 30 day period preceding the collection in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: A color copy of all written policies and procedures, employment handbooks and/or employment manuals including, but not limited to, any terms, conditions and procedures involving the employer/employee relationship; recruiting and hiring of new employees; promotions, demotions and discipline.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: All time sheets for James McDuffee for the 30 day period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: All documents showing the purpose of James McDuffee's travel on the date of the incident, including, but not limited to, memos, work orders, bills of lading and expense reimbursements.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: All pay stubs, federal w-2 forms, expense reimbursements, commissions, bonuses and any other documents or tangible evidence reflecting payment of money or benefits for any reason from you to James McDuffee for the 6 months period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: The complete payroll file, personnel file, Driver's Qualification file and any other state or federal Department of Transportation required file for commercial motor vehicle drivers for James McDuffee compiled by you, from and including his first date of employment through and including the last date of employment with you including, but not limited to, references employment application, driving tests, scores, evaluations, job description, performance reports, driver daily logs, physical examinations, traffic citations, driving histories, moving violations records, criminal records, drug test, alcohol tests, worker's compensation and health insurance claims.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Your complete investigative file compiled prior to the time that you "anticipated litigation" concerning the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: A copy of all leases, understandings, memoranda and other documents relating to the use and possession of the commercial motor vehicle in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Copies of the complete employee manual, instruction manual, policy and procedure manual and other materials issued to James McDuffee containing instructions, directions, suggestions or recommendations for proper and safe driving and operations.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: The complete in-house investigation conducted by or on your behalf in the ordinary course of business relative to all citations from OSHA, DOT, ICC or any federal or state agencies or inquires relevant to the collision in question, including, but not limited to all things prepared for, and/or presented in, any informal conference or closing conference between you and any governmental representatives (this request specifically included, but is not limited to all photographs, movies, videotapes, audiotapes, reports, memoranda, correspondence, written statements, and all correspondence between you and any such agencies.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: All letters, reports, memorandum, instructions, evaluations, correspondence and citations from and/or sent to OSHA, DOT, ICC, DPS or any other federal or state agencies received by and/or sent by you in the three-year period preceding and including the date in question and in the period of time since the date in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: All organizational charts of your company showing the structure of your company, including the various departments, sections and divisions of your operations for the 3 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: True and complete copies of all surveillance reports, investigate notes, photographs, movies and/or videotapes taken during any investigation, or surveillance of Plaintiff at any time prior to the trial of this case.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: All incident/accident reports for any accident James McDuffee was involved in for the past 5 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: Any and all notes, memos, correspondence and/or other documents generated in the period of time five (5) years prior to the date in question and through the present which relate to state and/or federal agencies' safety audits, safety reviews, inspections, findings, and/or analysis of your business operations.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: Any and all documents generated and/or distributed by you to your employees regarding the recordation of truck drivers' hours of operation and/or the maximum number of hours of operation by truck drivers for the year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: Any and all documents generated and/or distributed by you to your employees regarding corrective actions to be taken in response to any state and/or federal agencies' findings concerning your business operations for the 5 year period preceding the collision in question through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: Any and all documents and/or correspondence to and from you and state or federal agencies regarding corrective actions taken or to be taken by you in response to the agencies' safety audits, safety reviews, inspections, findings and/or safety investigations regarding your business operations, for the 5 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25: Please produce a copy of any alcohol and/or controlled substance test that James McDuffee submitted to as a result of the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26: Please produce all documents that consist of your employment policies and procedures and of which discuss or describe your policies with respect to policies for recruiting, criminal background checks, examination of driving records, drug screens, references from prior employment, promotions, operations of equipment, use of company vehicles, training, supervision, safety instruction, and/or discipline for employees such as James McDuffee that were in existence during the time period that James McDuffee was employed by you.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: Please produce all documents relating to, pertaining to, referencing or documenting any review of the collision in question by you pertaining to any preventability determination.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28: Please produce the printout of the Electronic Control Module from the commercial motor vehicle in question that documents the various actions of the subject tractor in the minutes or so leading up to the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29: Please produce a color copy of all post-accident photographs and videotapes of the commercial motor vehicle in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30: Please produce a color copy of all post-accident photographs and videotapes of the vehicle Plaintiff was in that was involved in the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31: Please produce a color copy of all post-accident photographs and videotapes of the area and scene of the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32: Please produce for copying, photographing, and/or inspection all physical evidence that you have preserved arising from the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33: Please produce a color copy of all news articles that you obtained regarding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34: Please produce a copy of all 911 tapes, transcripts or call logs pertaining to the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 35: A copy of all your Document Retention Policies that were in existence as of the date of the incident, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36: A copy of all ISO (International Standards Organization) standards, policies and procedures that your drivers were following for the 3 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 37: A copy of all documents contained in your claim file that were reviewed by anyone with your company in making the determination whether the subject accident was “preventable.”

RESPONSE:

REQUEST FOR PRODUCTION NO. 38: A copy of all policies and procedures of your Recruiting and Hiring Department, Safety Department and Compliance Department pertaining to the recruitment of new drivers, the screening process and criteria of new driver applicants, the hiring process and criteria for new drivers that were in existence at the time James McDuffee first came to work for you.

RESPONSE:

REQUEST FOR PRODUCTION NO. 39: A copy of any written documents or printouts from any computer screen pertaining to any action taken by you to demote, suspend, remove or prohibit James McDuffee from continuing to work as a driver following the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 40: A list of all videotapes used by you to train your drivers, like James McDuffee, for the 3 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 41: A copy of the Driver’s Daily Logs for James McDuffee from 30 days prior to and including the date of the incident.

RESPONSE:

REQUEST FOR PRODUCTION NO. 42: A copy of all sign-in sheets for any safety meetings or training sessions attended by James McDuffee for the 3 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 43: A copy of all handouts, overhead slides, power point presentations or other written or visual materials that were given to drivers or presented to them at any safety meeting or training sessions for the 3 year period preceding the collision in question.

RESPONSE:

REQUEST FOR PRODUCTION NO. 44: All audits or compliance reviews by the Federal Motor Carrier Safety Administration (“FMCSA”) for years 2006, to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 45: All findings, recommendations and safety ratings by the FMCSA with respect to any audits or compliance reviews for years 2006 to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 46: Documents reflecting the monthly statistics of accidents involving your drivers that resulted in injury or death, for years 2006 to present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 47: Your Accident Register for years 2006 to present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 48: Produce for inspecting and photographing the subject commercial motor vehicle.

RESPONSE:

REQUEST FOR PRODUCTION NO. 49: Any and all federal tax returns for Byrd Oilfield Services, for the years 2007 through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 50: All financial statement for Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 51: All cash flow statements for Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 52: Any and all balance sheets prepared by Byrd Oilfield Services, from January 1, 2007 through the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 53: Any and all profit and loss statements prepared for Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 54: True and correct copies of all audited financial statements for Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 55: Any reports for Byrd Oilfield Services, filed with any regulatory agencies from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 56: Any and all liens currently held against Byrd Oilfield Services

RESPONSE:

REQUEST FOR PRODUCTION NO. 57: Any and all liens currently held by Byrd Oilfield Services

RESPONSE:

REQUEST FOR PRODUCTION NO. 58: Any and all documents evidencing any transfer of assets from Byrd Oilfield Services to any individual, business, or other entity since January 1, 2007.

RESPONSE:

REQUEST FOR PRODUCTION NO. 59: Any and all bank statements evidencing checking accounts, operating accounts, cost accounts, trust accounts, savings accounts, certificates of deposit, money market funds, or other bank accounts owned by Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 60: Any and all documents evidencing ownership of any motor vehicles or trailers owned by Byrd Oilfield Services

RESPONSE:

REQUEST FOR PRODUCTION NO. 61: Any and all documents, including deeds, deeds of trust, or other real estate notes evidencing ownership of any real estate owned by Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 62: A complete inventory of all equipment, including but not limited to, equipment, mechanical equipment, and equipment for sale owned by Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 63: A complete inventory of all electronic equipment owned by Byrd Oilfield Services, such as computers, cash registers, and other office equipment from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 64: Any and all documents evidencing any stocks owned in any company or corporation by Byrd Oilfield Services, from January 1, 2006 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 65: Any and all documents evidencing any accounts receivable owned by Byrd Oilfield Services, from January 1, 2006 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 66: Any and all documents evidencing any mortgages held against Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 67: Any and all documents evidencing any loans made to employees of Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 68: Any and all documents evidencing any tangible assets not identified in the requests above and owned by Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 69: All statements, agreements or documents pertaining to savings or similar accounts belonging to Byrd Oilfield Services, from January 1, 2007 through the date of this request.

RESPONSE:

REQUEST FOR PRODUCTION NO. 70: All records, agreements or documents indicating or pertaining to any claim that Byrd Oilfield Services, may have against any insurance company. In the event that such records, agreements or documents do not indicate the name of the insurance company, the amount of the claim, or a description of the claim, you are to attach such information to the records, agreements or documents produced.

RESPONSE:

REQUEST FOR PRODUCTION NO. 71: All records, agreements or documents pertaining to or regarding any claim that Byrd Oilfield Services, might have against any person, whether living or dead, or any firm, entity or corporation. In the event that such records, agreements or documents do not identify the individual or entity involved, the amount of the claim, or provide a description of the claim, you are to attach such information to the records, agreements or documents produced.

RESPONSE:

REQUEST FOR PRODUCTION NO. 72: All pleadings or documents that have been filed in any lawsuit or proceeding now pending in any court in which Byrd Oilfield Services, is a Plaintiff or Defendant or otherwise involved, other than this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 73: All records, agreements or documents indicating or pertaining to any entitlement that Byrd Oilfield Services, may have to any federal, state or city income tax refund.

RESPONSE:

REQUEST FOR PRODUCTION NO. 74: All records, agreements or documents reflecting or pertaining to any judgments or decrees that are outstanding against Byrd Oilfield Services, and its shareholders. In the event that such records, agreements or documents do not list the style of each case, the case number, or the court which entered each judgment or decree, you are to attach such information to the records, agreements or documents produced.

RESPONSE:

REQUEST FOR PRODUCTION NO. 75: All records, agreements of documents reflecting or pertaining to ownership by Byrd Oilfield Services, or any interest in any work of art.

RESPONSE: