



2. Solely for the purposes of compliance with Texas Rule of Civil Procedure 47, Plaintiffs state that they seek monetary relief in excess of \$1 million.

**PARTIES**

3. At the time of his death, the deceased, Reinaldo Garcia Pena, resided in Starr County, Texas.

4. Plaintiff Elizabeth Garcia is the surviving spouse of Reinaldo Garcia Pena and is an individual residing in Starr County, Texas. She has appeared in this action and may be served through her counsel pursuant to Texas Rule of Civil Procedure 21a.

5. Plaintiff Maday Garcia is the surviving daughter of Reinaldo Garcia Pena and is an individual residing in Starr County, Texas. She has appeared in this action and may be served through her counsel pursuant to Texas Rule of Civil Procedure 21a.

6. Plaintiff Maria Del Jesus Garcia is the surviving daughter of Reinaldo Garcia Pena and is an individual residing in Starr County, Texas. She has appeared in this action and may be served through her counsel pursuant to Texas Rule of Civil Procedure 21a.

7. Defendant Upton Assets, LLC (“Upton Assets”) is a domestic for-profit limited liability company operating and doing business in the State of Texas. Upton Assets has appeared in this action and may be served through its counsel pursuant to Texas Rule of Civil Procedure 21a.

8. Defendant Axis Transport, LLC (“Axis Transport”) is a domestic for-profit limited liability company operating and doing business in the State of Texas. Axis Transport has appeared in this action and may be served through its counsel pursuant to Texas Rule of Civil Procedure 21a.

9. Defendant Salazar Service & Trucking Corp. (“Salazar”) is a domestic for-profit corporation operating and doing business in the State of Texas. Salazar has appeared in this action and may be served through its counsel pursuant to Texas Rule of Civil Procedure 21a.

10. Defendant the Estate of Angel Alaffa (the “Estate” or “Alaffa”) is named as a party to this suit because Angel Alaffa died on the date of the explosion that is the subject of this suit and prior to the filing of this petition. The Estate has appeared in this action through its Representative, Administrator, and/or Executor Vianey Lopez, who is the surviving spouse of Angel Alaffa and an individual residing in Starr County, Texas. At the time of his death, the deceased, Angel Alaffa, resided in Starr County, Texas. The Estate has appeared in this action and may be served through its counsel pursuant to Texas Rule of Civil Procedure 21a.

11. Defendant Thomas O. Hanks, Jr. is an individual residing in the State of Texas. He is the sole member of Upton Assets and Axis Transport. Mr. Hanks has appeared in this action and may be served through his counsel pursuant to Texas Rule of Civil Procedure 21a.

12. Defendant John Thomas Sims is an individual residing in the State of Texas. Mr. Sims has appeared in this action and may be served through his counsel pursuant to Texas Rule of Civil Procedure 21a.

**JURISDICTION AND VENUE**

13. The Court has subject matter jurisdiction over this dispute because the amounts in controversy are within the jurisdictional limits of this Court.

14. The Court has personal jurisdiction over Defendants because Defendants have purposely availed themselves of the privileges and benefits of conducting business in Texas and/or committed a tort, which is the subject of this lawsuit, in whole or in part in Texas and/or were residents of Texas at the time of the events giving rise to this suit.

15. Venue is proper in Starr County, Texas because at least one Defendant resided in Starr County, Texas at the time of the events giving rise to Plaintiffs' claims. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2).

### FACTS

#### **A. The Facility**

16. This intervention stems from a tragic plant explosion that occurred at the Pecos Liquids Handling Facility located at 683 I-20, Pecos, Texas 79772 in Reeves County, Texas (the "Facility") on October 7, 2023.



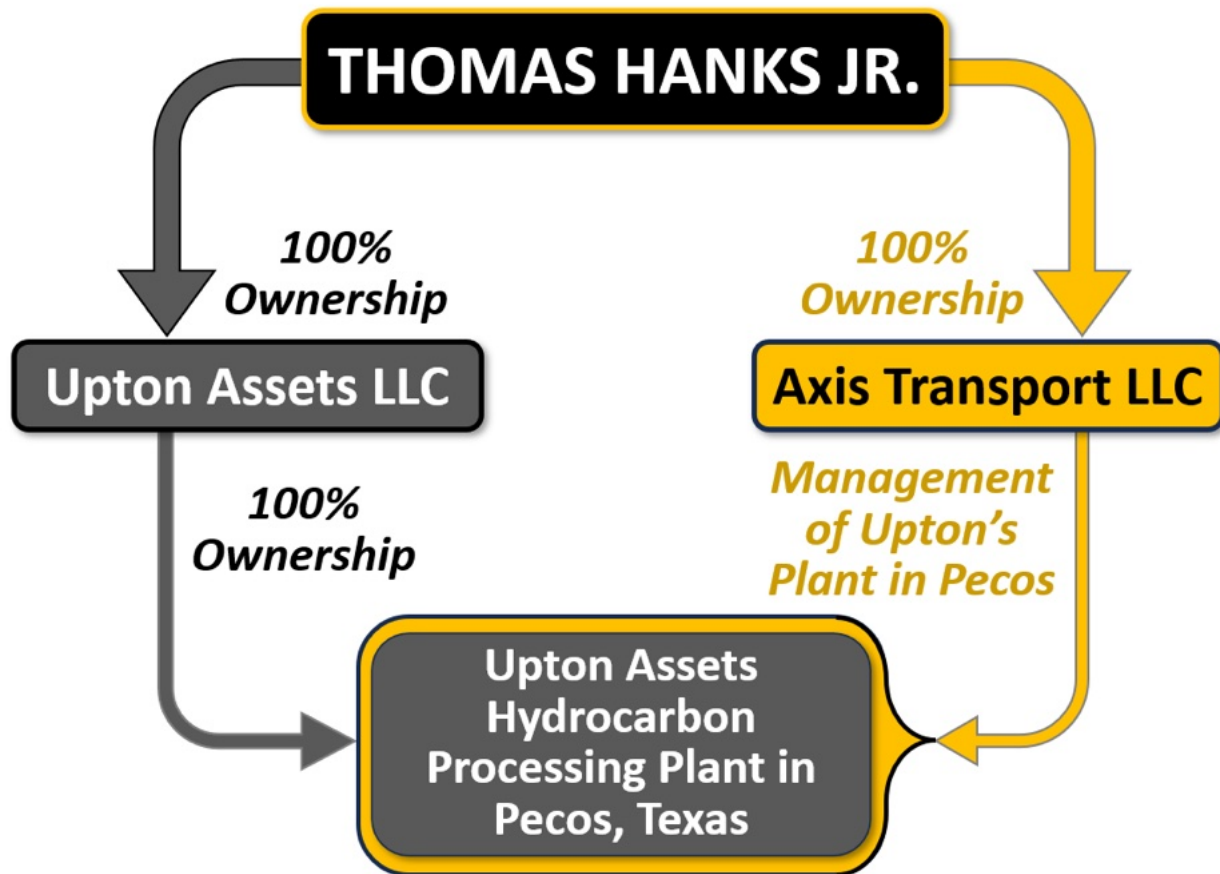
***Fig 1: The Facility***

17. The Facility receives, stores, processes, and transfers highly flammable natural gas liquids and condensate (collectively, "NGLs") from oil and gas fields throughout the Permian Basin and Reeves County. Due to these hazardous operations, the Facility is classified as a Process Safety Management ("PSM") facility under federal regulations, requiring strict adherence to enhanced safety protocols.

18. At all relevant times, Upton Assets, Axis Transport, Mr. Hanks, and/or Mr. Sims owned, leased, operated, and/or exercised control over the Facility and were responsible for overseeing and/or directing work at the Facility, implementing safe practices, policies, and procedures at the Facility, and/or maintaining a premises free from unreasonably dangerous conditions.

**B. The Corporate Shell Game**

19. Mr. Hanks is the sole member and owner of Upton Assets and Axis Transport, making all key operational decisions and maintaining complete control over both entities.



*Fig 2: Mr. Hanks' Empire*

20. Despite owning and operating a Facility handling highly hazardous materials, Mr. Hanks has no formal training in PSM and failed to employ or consult anyone with expertise in

PSM. Under oath, Mr. Hanks admitted that he had never read the PSM standard applicable to his Facility and could not identify any employee who had. His highest-ranking on-site Facility Manager, John Sims, likewise conceded he had no PSM training, no college degree, and no management qualifications.

21. Together, Mr. Hanks' entities function as a joint enterprise, deliberately blurring operational and financial boundaries. Although they claim to be independent businesses, Axis Transport and Upton Assets operate as a single, integrated enterprise under Mr. Hanks' control, strategically shifting assets, liabilities, and responsibilities to obscure accountability. Their relationship is not arms-length but carefully structured to shield liability while maintaining centralized control.

22. The financial structure of these entities reveals their lack of genuine independence. Upton Assets, despite purportedly owning a multi-million-dollar Facility processing massive quantities of hazardous materials, was initially capitalized with a mere \$3,500 when formed. Even more telling, Upton Assets received no additional capital contributions until March 2022—months after the Facility had been constructed and commenced operations in November 2021. Such grossly inadequate capitalization renders Upton Assets nothing more than a shell company, financially incapable of operating as a legitimate independent business entity or meeting financial obligations for catastrophic and foreseeable adverse events at its Facility.

23. These entities also function without maintaining proper corporate boundaries or requisite formal agreements. Despite their purportedly separate legal existence, no written agreement documents or defines the relationship between Upton Assets and Axis Transport, even though Axis Transport manages all operations at the Facility owned by Upton Assets. The

systematic absence of fundamental business agreements—standard practice in arms-length corporate relationships—demonstrates the fictitious separation of these entities.

24. Financial records provide further evidence of the entities' integration, revealing significant commingling of funds among Mr. Hanks' businesses. Bank statements show Axis Transport engaging in transactions referencing Upton Assets that conspicuously fail to appear in Upton Assets' financial records. Personnel operations similarly ignore corporate separateness, with individuals seamlessly performing duties across multiple entities without documented allocation of time, responsibility, or compensation.

25. The systematic disregard for corporate boundaries further extends to contractual authority, where employees of one entity routinely exercise binding authority over other purportedly separate entities. Julie Lang, an alleged employee of Axis Transport, for example, executes contracts binding Upton Assets. This cross-entity contractual authority operates without written agreements defining the scope of such authority. Such systematic delegation of contractual authority across purportedly separate corporate entities—without documented authorization or inter-company agreements—demonstrates the complete abandonment of corporate formalities.

26. The contracting arrangement for the Facility's original construction provides perhaps the most compelling evidence of this corporate facade. Rather than Upton Assets—the owner of the Facility—contracting for the design and installation of the Facility's infrastructure, Axis Marketing entered into an agreement with Fabrication & Construction Services for the construction of the Facility. Notably absent is any documented reimbursement or payment arrangement between Upton Assets and Axis Marketing for this substantial expenditure, conclusively demonstrating these entities function as a joint enterprise rather than separate businesses with distinct interests.

27. This elaborate corporate structure serves a singular purpose: to shield Mr. Hanks from liability while maintaining complete operational control and extracting profits unimpeded by corporate formalities. The systematic undercapitalization, deliberate absence of inter-company agreements, documented commingling of funds, unrestricted sharing of employees across entities, and irregular contracting practices collectively establish that these are not legitimate independent businesses but rather components of a joint enterprise and/or alter ego operation orchestrated by Mr. Hanks.

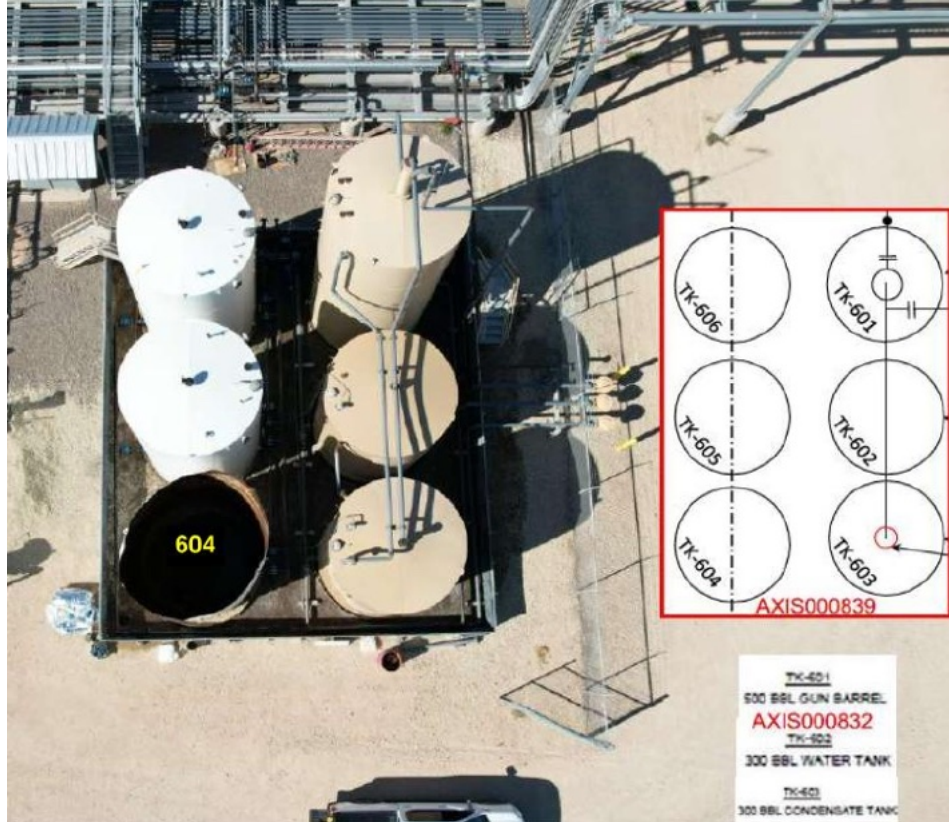
**C. The Project**

28. In the summer of 2023, Mr. Hanks initiated a project at the Facility to expand its tank battery. Initially, the Facility’s tank battery consisted of three tan colored tanks (TK601, TK602, and TK603).



**Fig 3: Original Tank Battery**

29. The project involved installing piping to connect three newly added white colored API storage tanks (TK604, TK605, and TK606) to the Facility.



**Fig. 4: The Project**

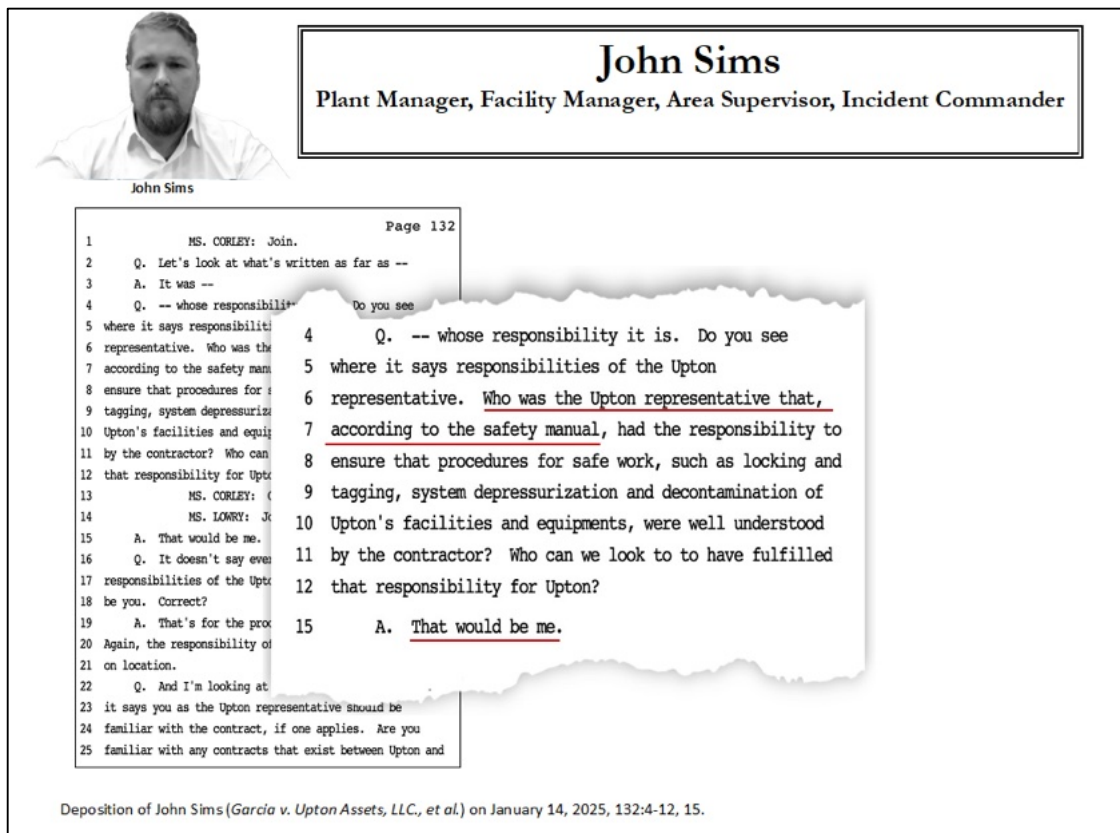
30. When completed, the project would allow the Facility to recover vapor from processing operations that would otherwise be lost and reinject it back into the Facility, thereby increasing the Facility’s revenue.

**D. The Workers from the Valley**

31. In July 2023, Charger Energy Services, LLC and/or Echo Maintenance, LTD submitted a bid for the Project. The bid was submitted directly to John Sims, the Facility Manager for the Facility.

32. Despite receiving formal bids from established companies, Mr. Hanks personally made the decision to bypass them in favor of hiring Reinaldo Garcia Pena, Angel Alaffa, Bryan Sepulveda, Reynol Garcia Pena, Alan Casiel Garza, Fernando Pena Garcia, Jesus Guzman Mendez, and Alexis Garcia (collectively, the “Workers from the Valley” or the “Crew”).

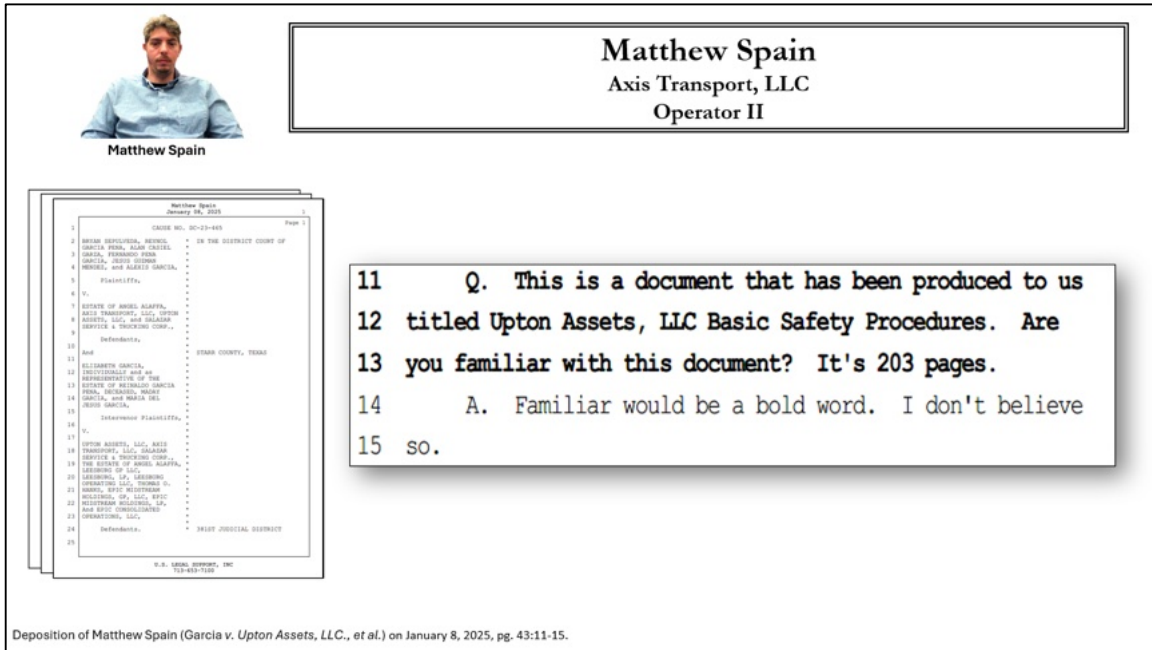
33. Mr. Hanks made this decision without conducting any due diligence or verifying the Crew's qualifications for the hazardous work involved. Despite personally making the decision to hire the Workers from the Valley for work at a PSM facility handling flammable materials, Mr. Hanks admitted under oath that he never provided them with the 200+ page Upton Assets safety manual that governs his Facility, nor did he ensure they received a copy of the safety manual, or proper safety training or orientation. John Sims, who was the Upton representative at the Facility responsible for ensuring that procedures for safe work were well understood by the Workers from the Valley, likewise never provided them with any safety training, orientation, or written safety procedures.



**Fig. 5: The Upton Assets Representative**

34. Matt Spain, the Axis Transport Operator II and the sole Axis Transport employee on duty at the Facility on October 7, 2023, similarly failed to provide the Workers from the Valley

with any safety training, orientation, or review of company safety procedures. Despite being on-site for weeks while the workers performed hazardous operations, Mr. Spain admitted under oath that he was not familiar with Upton Assets' Basic Safety Procedures for the Facility.



**Fig. 6: The Axis Transport Representative**

**E. Worker Exploitation and Misclassification**

35. Before the Workers from the Valley began work at the Facility, Mr. Hanks had them complete standard employment paperwork—including W-4 forms, direct deposit forms, and employee emergency contact forms—creating the reasonable expectation that they would be treated as employees with all associated benefits and protections.

36. Mr. Hanks then implemented a payment schedule requiring these workers to labor for weeks while away from their families and homes without compensation. He provided no advanced funds or per diems to the Workers from the Valley who had travelled over 500 miles to perform work at his Facility.

37. Although having them complete employee documentation, Mr. Hanks failed to add the Crew to Axis Transport's workers' compensation policy, exposing them to significant risk

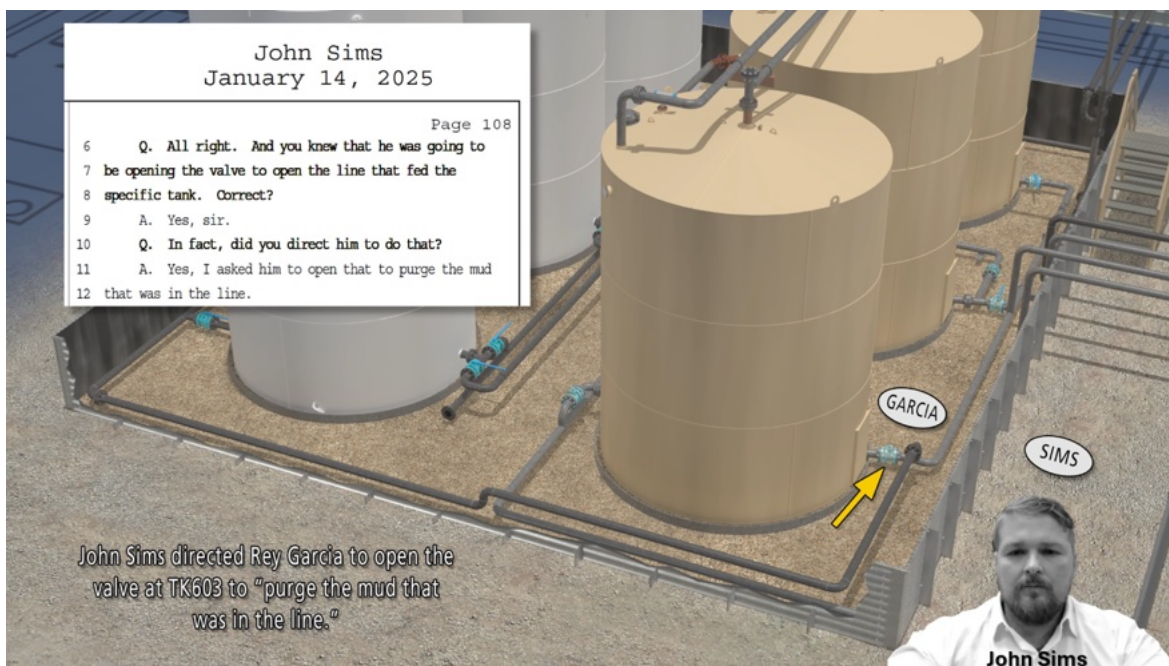
while working with hazardous materials in a dangerous environment. He instead instructed Facility Manager, John Sims, to classify these workers as “1099 employees”—a contradictory designation that does not exist under law or federal tax regulations.

38. All of this was done to maximize the personal profit and pecuniary gain of Thomas O. Hanks, Jr.

**F. The Dangerous Condition**

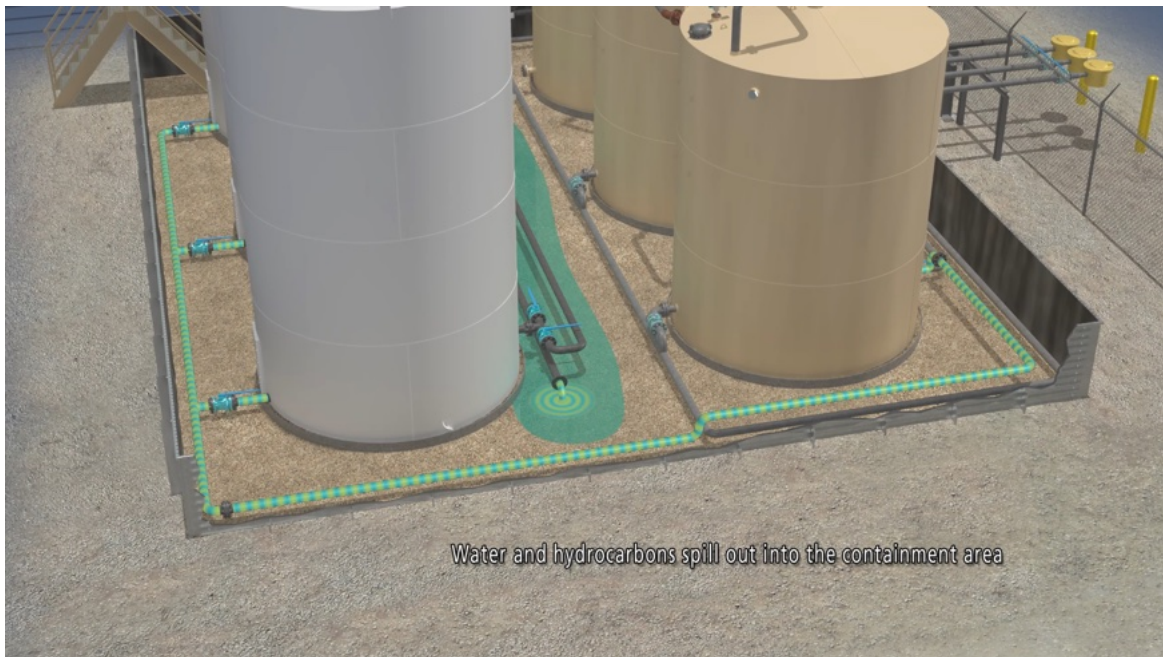
39. On October 4, 2023, John Sims created a catastrophically dangerous condition at the Facility. The Workers from the Valley had been installing piping to connect three newly installed white tanks to the existing brown tank battery, work that included welding new piping to existing systems. During this process, the workers had placed mud in the piping lines. When Mr. Sims learned about this mud in the lines, he became concerned that it would interfere with future product flow through the system.

40. To address this concern, Mr. Sims instructed Reinaldo Garcia to open a valve to “purge the mud that was in the line.”



**Fig 7: Sims Directing Garcia**

41. Once Mr. Sims directed Garcia to open the valve, he walked away from the area. With the valve left open, liquid hydrocarbons flowed uncontrolled through the piping system and into the tank battery area. The hydrocarbon flow continued, spilling throughout the containment area and creating a massive accumulation of flammable liquids on the ground where the workers were required to continue their operations.



**Fig 8: Flammable Hydrocarbons Flood the Containment Area and TK604**

42. This uncontrolled release created an extraordinarily dangerous work environment. As Alexis Garcia (a Worker from the Valley) testified, the hydrocarbon spill was so extensive that it reached “four or five inches” deep in the containment area. The spilled hydrocarbons not only created a slip hazard but, more critically, generated flammable vapors that would accumulate in the confined workspace. The presence of liquid hydrocarbons and their associated vapors in the containment area made any subsequent hot work—including the welding operations—

extraordinarily dangerous, as ignition sources could trigger a catastrophic explosion in the vapor-laden environment.

**G. The Tank Cleaning**

43. The dangerous hydrocarbon spill Mr. Sims created on October 4, 2023 required an immediate response. Accordingly, on October 5, 2023, Upton Assets hired Salazar – which Salazar itself claims was done pursuant to the parties’ Master Service Contract<sup>1</sup> – to clean TK 604 and the containment area of the hazardous hydrocarbons that had accumulated as a result of Mr. Sims’ actions. In other words, Salazar was hired to transport fresh water to the Facility and recover and remove contaminated fluids from TK604 and the containment area — not to construct, alter, renovate, repair, or maintain any component of the Facility.

44. Salazar markets itself as a provider of specialized tank cleaning services, claiming to possess the necessary expertise to perform hazardous tank cleaning with precision and excellence. Salazar’s actual performance at the Facility, however, fell far short of professional standards and industry practices.

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<sup>1</sup> In Salazar’s 166g Motion to Reconsider, filed in this Court on March 25, 2026, Salazar unequivocally claims as follows: “Pursuant to Upton’s Master Service Contract with Salazar, Salazar was requested to bring two vacuum trucks to the Upton facility.” According to Salazar’s website, its vacuum trucks are “essential tool[s] in . . . cleaning tanks and vessels.”

# Revolutionizing Oil & Gas Transportation with Tradition and Innovation


**Salazar Service: Where Legacy Meets Modernity in West Texas.**

Founded in Andrews, Texas, by the visionary Salazar brothers in 1996, Salazar Service has transformed from a humble beginning into a leading provider of premium oil and gas transportation services. Starting with a single, salvaged tri-plex pressure pump and a '79 International truck, Jose "Lupe" Guadalupe and Porfirio "Pilo" Salazar embarked on an ambitious journey fueled by hard work, resilience, and a steadfast commitment to quality.

Today, Salazar Service stands as a testament to the power of innovation, dedication, and the enduring value of family roots. Our services honed over decades of experience in the field, encompassing a comprehensive suite of solutions tailored to meet the dynamic needs of the oil and gas industry. From load and tests on wells to tank cleaning, chemical pumping, and a myriad of specialized services, we are equipped to handle any challenge with precision and excellence.

**Fig 9: Salazar Website**

45. As part of the cleaning process, Salazar supplied fresh water and a vacuum truck to facilitate the removal of hazardous contents from the containment area and TK604. Salazar dispatched Manuel Cruz to deliver two loads of fresh water (240 barrels).



**Manuel Cruz**  
Water Truck Driver  
Salazar Service & Trucking Corp.

Page 11

1 Q. And on October 5th, 2023, as an employee of  
2 Salazar Service & Trucking Corp., it was your job to drop  
3 off two loads of fresh water at the Pecos facility.  
4 True?

5 A. Very true, sir.

6 Q. And those two loads  
7 used to clean out certain tanks at the Pecos facility.  
8 Isn't that true?

9 A. That's true, sir.

10 Q. And Salazar Service  
11 in the business of cleaning  
12 facility. Isn't that true?

13 MR. GERRA:

14 A. It's true, sir.

15 Q. And you're familiar  
16 that exist at the Pecos facility  
17 those as part of your job with  
18 Corp. Isn't that true?

19 A. It's true, sir.

20 Q. Now, how long have you worked with Salazar  
21 Service & Trucking Corp.?

22 A. Eight years.

23 Q. And what is your job position or job title with  
24 Salazar Service & Trucking Corporation?

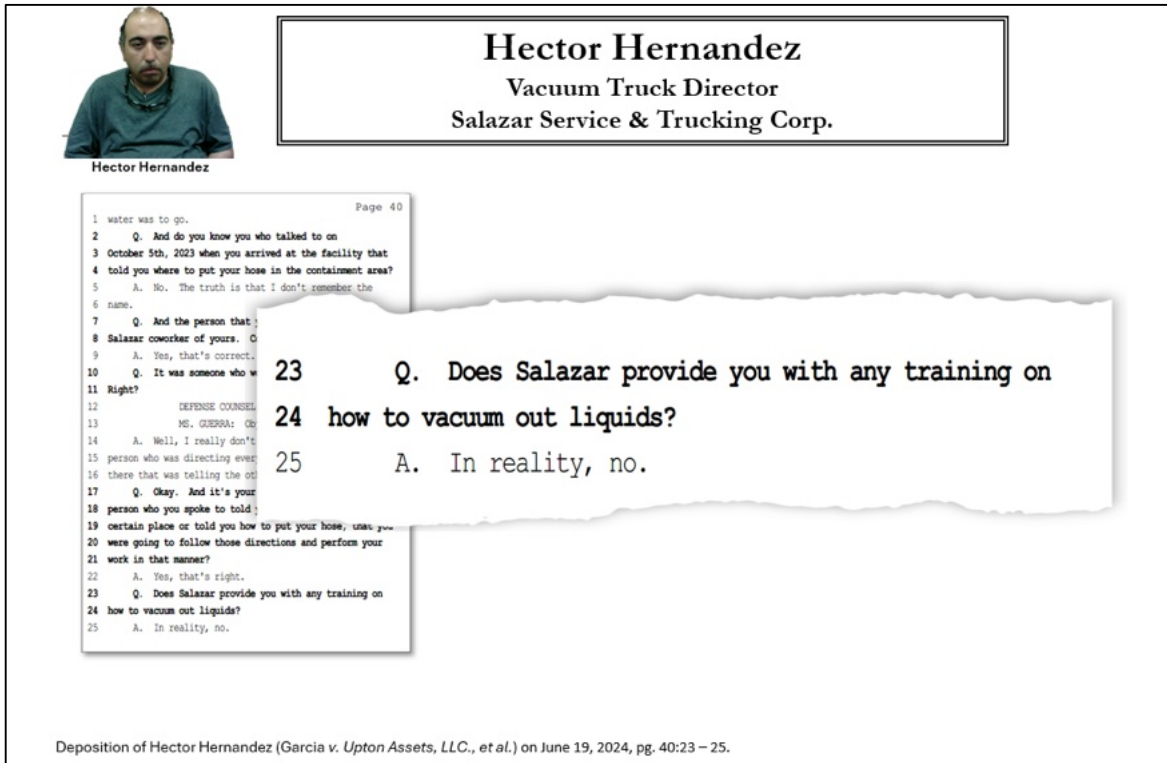
25 INTERPRETER: Interpreter's asking for

6 Q. And those two loads of fresh water were to be  
7 used to clean out certain tanks at the Pecos facility.  
8 Isn't that true?  
9 A. That's true, sir.

Deposition of Manuel Cruz (Garcia v. Upton Assets, LLC., et al.) on June 18, 2024, pg. 11:6-9.

**Fig 10: Salazar Furnishes Water to Clean TK604**

46. Salazar then assigned Hector Hernandez to operate a vacuum truck to extract the hydrocarbons that the water had flushed from TK604. However, Salazar failed to provide Mr. Hernandez with any training on how to safely and properly perform the task.

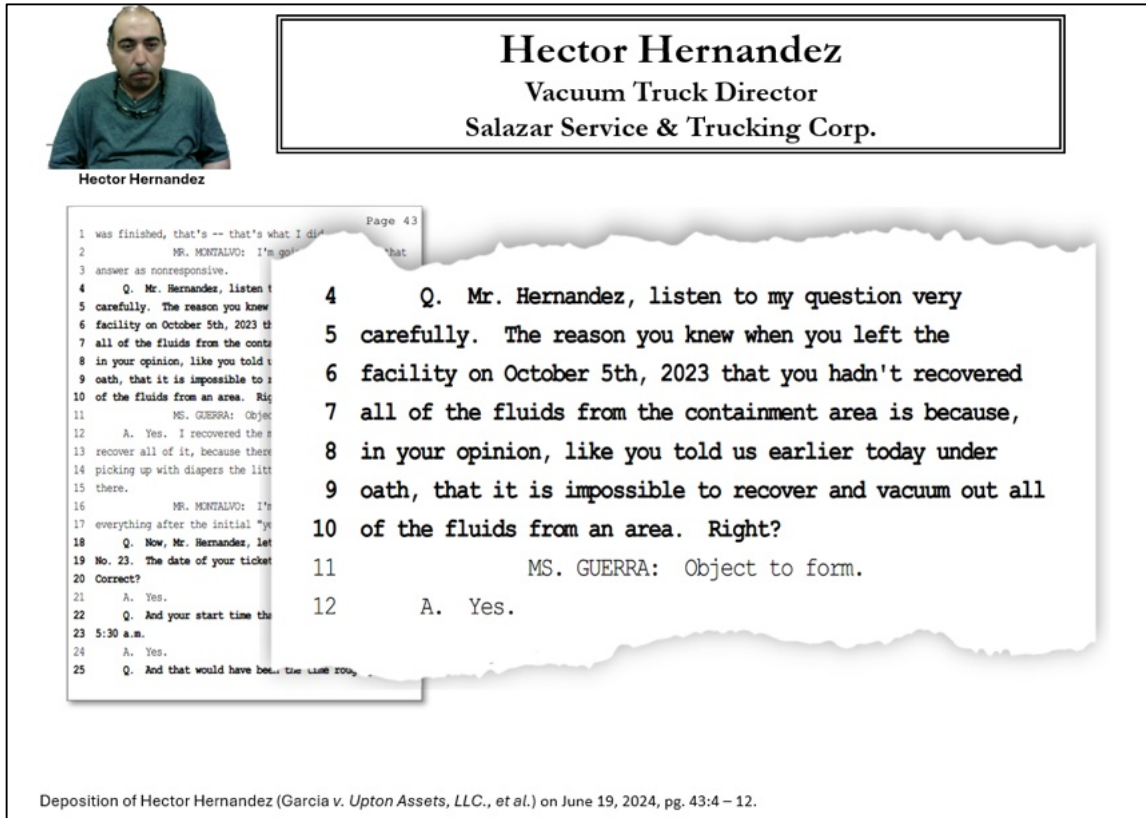


**Fig II: Salazar's Lack of Training**

47. Once on site at the Facility, Salazar's on-site representative refused to enter the hazardous containment area and instead pushed the dangerous work onto the untrained Workers from the Valley while maintaining control over the operation. Specifically, Mr. Hernandez handed the Workers from the Valley a hose and directed them on how to clean the area, including TK604. The Workers from the Valley relied on Mr. Hernandez to provide the tools and instructions necessary to clean TK604, while Mr. Hernandez remained outside the containment area directing the work. By delegating its contracted tank cleaning work to untrained workers while retaining supervisory control over the operation, Salazar's acts and omissions directly caused and contributed to the incomplete removal of hazardous hydrocarbons from TK604.

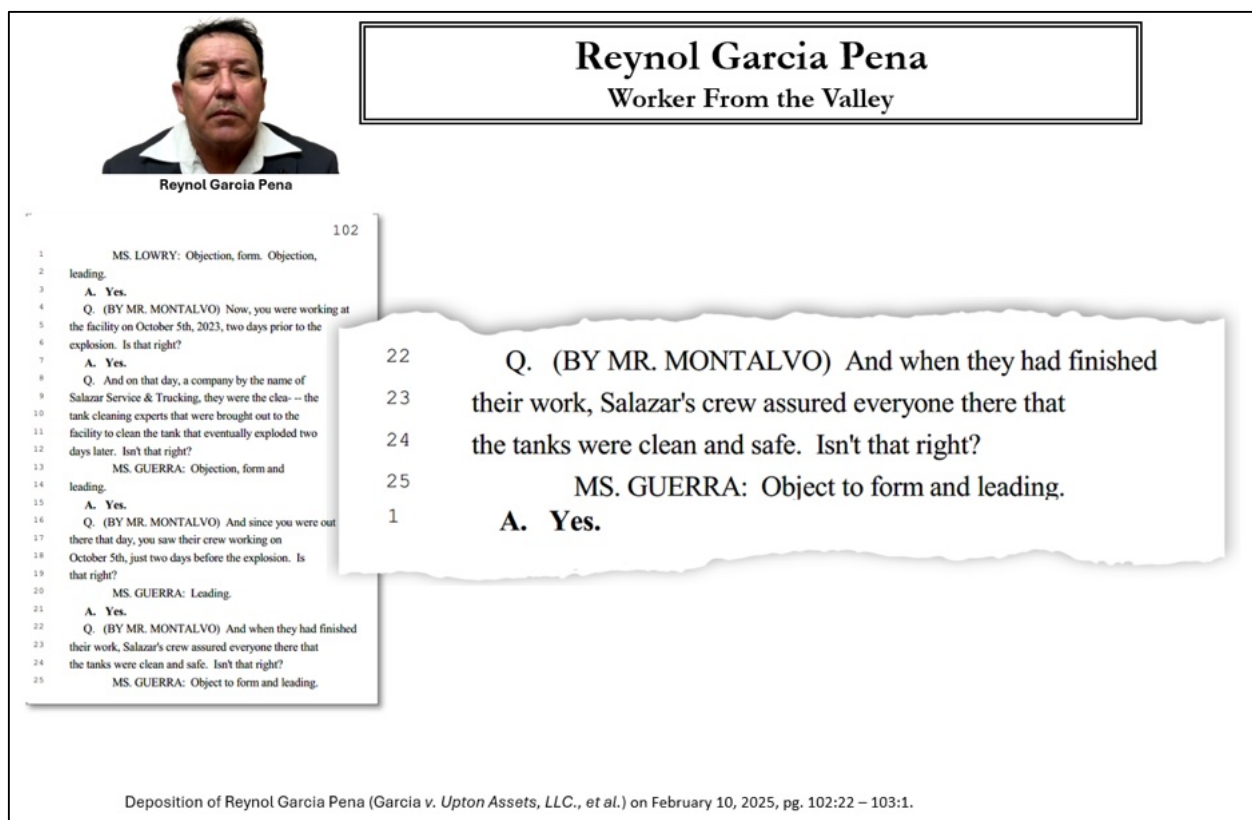
48. Salazar then compounded its misconduct by making materially false safety assurances upon which the Workers from the Valley reasonably relied. Indeed, before leaving the Facility, Salazar informed the Workers from the Valley that the area and TK604 were clean and

safe. These assurances, however, were false. Salazar’s own vacuum truck operator admitted under oath he did not and could not remove all the hazardous liquid from containment, leaving dangerous hydrocarbons in place.



**Fig 12: Salazar’s Knowledge of Incomplete Work**

49. The Workers from the Valley had no reason to doubt these expert assurances from the company hired specifically for its specialized tank cleaning expertise. They had no reason to doubt the assurances that TK604 was clean and safe to work on. The workers reasonably relied on Salazar’s representations that the tank was safe for continued work operations.



**Fig 13: Salazar’s False Assurances**

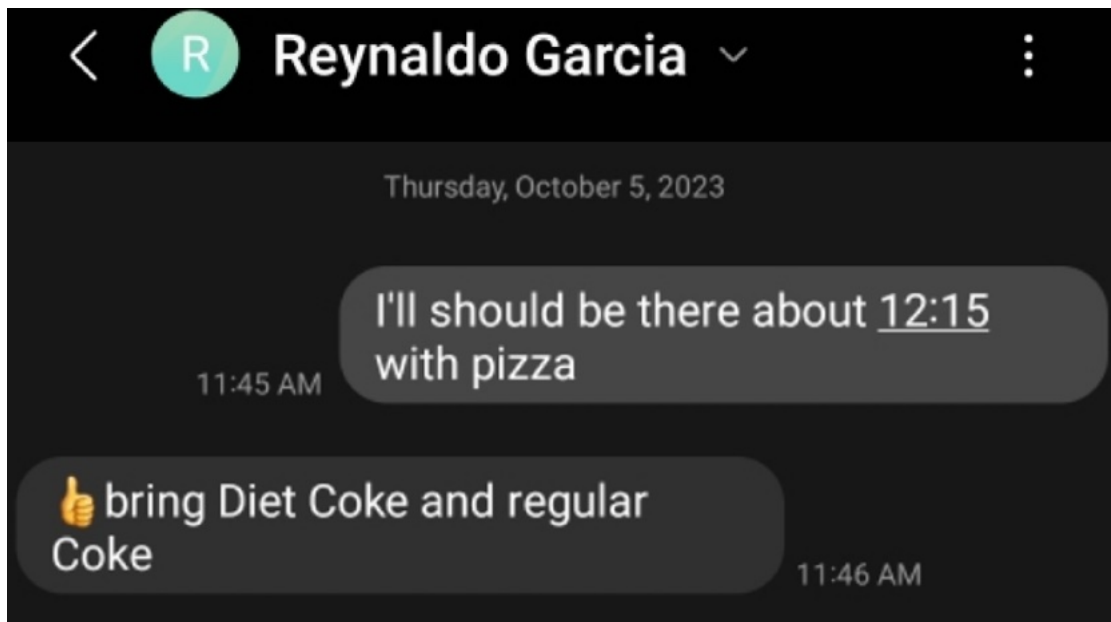
50. Salazar’s failure to perform the contracted remediation, its delegation of hazardous duties to untrained laborers, and its false declarations of safety directly exposed the Workers from the Valley to deadly hydrocarbons and set the stage for the catastrophe that followed.

51. All told, the services Salazar performed using its vacuum trucks — which included transporting fresh water to the Facility and recovering contaminated fluids and hazardous materials from TK 604 and the containment area — did not involve construction, alteration, renovation, repair, or maintenance of any building, structure, or improvement to real property. Salazar did not install, modify, or repair any component of the Facility. No pipe was welded, no valve was replaced, and no structural component of the Facility was modified or altered. Instead, the loss and damages claimed in this lawsuit arose directly and proximately from Salazar’s negligent performance of the services it was hired to perform, which involved transporting fresh water to the Facility and recovering/removing contaminated fluids from TK604 and the containment area.

## H. The Pizza Party

52. On the same day that Salazar completed its inadequate work and falsely declared the work area safe, Mr. Sims implemented additional pressure on the Workers from the Valley to accelerate completion of the project. Having received Salazar's assurances that the work area was now safe for continued operations, facility management moved to intensify the work schedule through a calculated ultimatum disguised as workplace appreciation.

53. On October 5, 2023 at approximately 11:45 a.m., Mr. Sims sent a text message to Reinaldo Garcia stating: "I'll should be there about 12:15 with pizza."



*Fig 14: Mr. Sims' text to Reinaldo Garcia*

54. What appeared to be a gesture of appreciation was instead a calculated ultimatum designed to extract maximum productivity from workers who had labored for weeks without compensation. When Mr. Sims arrived with the pizza, he gathered the Workers from the Valley and delivered a stark message: finish the project by Sunday, or be replaced by another crew who could complete the work by Monday when product needed to flow through the system.

55. The timing and context of this ultimatum revealed its true nature as worker exploitation. The Workers from the Valley had been at the Facility for nearly three weeks, working long days away from their families, yet had not received a single dollar in compensation. Despite this, Mr. Sims threatened to terminate their employment unless they accelerated their pace to meet his artificial deadline.

56. Jesus Guzman Mendez, one of the workers present during the pizza gathering, testified that the ultimatum made him feel “a little pissed off” and that “it kind of sucked” because “it was like we were working for free.” He described the financial hardship of being away from home without pay, stating he “was having to dip into my savings” and that “it’s not easy being . . . working away from home.” Alexis Garcia characterized Mr. Sims’ actions more bluntly, testifying that “it wasn’t a safety meeting, it was just like, you know, just . . . threaten us.”

57. This ultimatum placed the Workers from the Valley under tremendous psychological and financial pressure. Having invested weeks of unpaid labor with no guarantee of compensation, they faced the devastating prospect of losing everything if they failed to meet Mr. Hanks’ arbitrary deadline. The message was clear: work faster or lose not only future employment, but potentially all compensation for the weeks of work already performed.

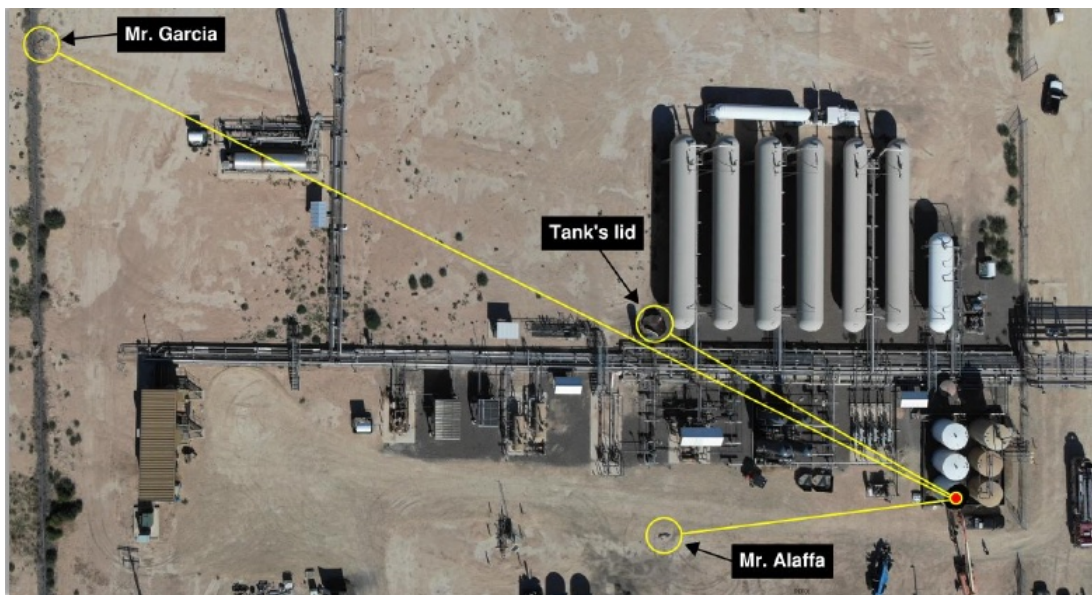
#### **I. The Explosion**

58. The Workers from the Valley, who had been working at the Facility without pay since September 19, 2023, had labored tirelessly without compensation to complete the Project. Under the directive of Mr. Sims and Mr. Hanks to complete the project before Monday, Reinaldo and Angel ascended on a man lift to the top of TK604 to perform work on Saturday, October 7, 2023.



**Fig 15: Reinaldo and Angel on TK604**

59. As Angel began to weld, the tank suddenly and violently exploded, causing fatal injuries to both Reinaldo and Angel. The force of the explosion was so severe that their bodies were thrown significant distances from their work location.



**Fig. 16: Explosion**

60. Upton Assets, Axis Transport, Mr. Hanks, and Mr. Sims failed to implement or enforce even the most basic safety precautions required by Upton Assets' own policies, OSHA regulations, and industry standards, including: proper Hot Work Permit procedures (OSHA 1910.252, NFPA 51B); Lockout/Tagout for control of hazardous energy (OSHA 1910.147); Process Safety Management requirements (OSHA 1910.119); Hazard Communication program (OSHA 1910.1200); Fire Prevention standards (OSHA 1926.352); tank cleaning requirements before welding (OSHA 1926.352(i)); the General Duty Clause obligation to provide a workplace free from recognized hazards (OSHA Section 5(a)(1)); and Upton's own written safety policies covering Safe Work Permit Systems (Section 401), Hot Work Permits (Section 402), Lockout/Tagout (Section 404), Hazard Communication (Section 102), Contract Work on Upton Properties (Section 801), as well as Upton's Contractor Safety/Environmental Checklist requirements.

61. Reinaldo Garcia Pena, a hardworking family man died without ever receiving a penny in payment for his work at the Upton Facility. The surviving members of the Workers from the Valley would not be paid for their work until October 10, 2023, three days after the explosion that took Reinaldo's life.

**J. The Post-Explosion Investigation**

62. Following the deadly explosion, Upton Assets, Axis Transport, and/or Mr. Hanks hired Richard Eskind of The Vital Companies—a safety consultant with 27 years of experience—to assist with investigating the explosion and conduct a safety audit of the Facility. Mr. Eskind's investigation revealed that while the Facility had formal written safety policies, Defendants failed to implement or enforce them.



Ricky Eskind

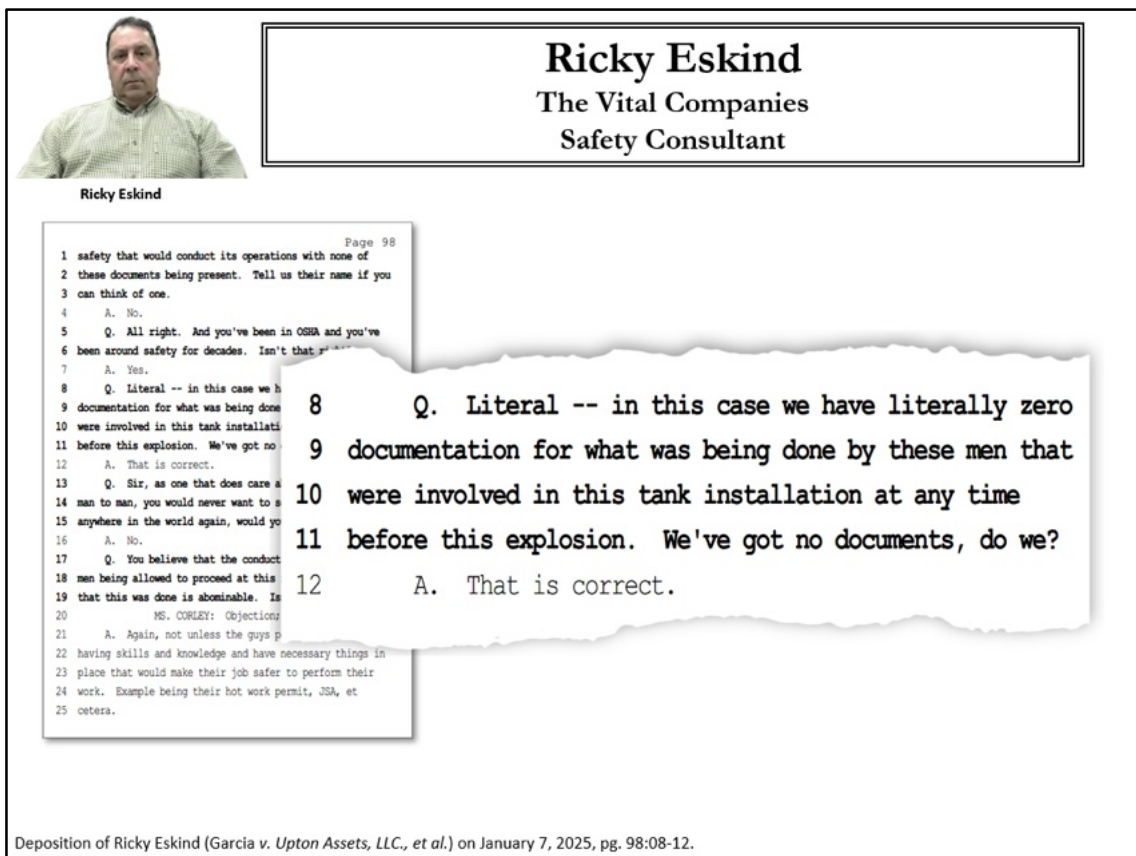
**Ricky Eskind**  
The Vital Companies  
Safety Consultant

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1 where there's going to be hydrocarbons. That's a risk,  
2 isn't it?  
3 A. Yes.  
4 Q. And that's -- they ought to have a subjective  
5 awareness of that risk and they should have their own  
6 permitting process to deal with that?  
7 A. Unless the contractor  
8 accepted by the company.  
9 Q. Right. And you have  
10 that, have you?  
11 A. No, sir.  
12 Q. So since we don't have  
13 to my question, Upton and Axis  
14 rules and policies and make sure  
15 shouldn't they?  
16 A. Yes.  
17 Q. But in this case, despite having the rules and  
18 procedures, there was an indifference and none of them  
19 were followed. Isn't that true?  
20 MS. CORLEY: Objection; form.  
21 MS. LOWRY: Join.  
22 A. Yes.

Deposition of Ricky Eskind (Garcia v. Upton Assets, LLC., et al.) on January 7, 2025, pg. 139:17 - 22.

**Fig. 17: Mr. Eskind Testimony**

63. Under oath, Mr. Eskind testified that there was “literally zero documentation” for the work being performed at TK604 before the explosion. Despite having contractor orientation checklists, hot work permits, and other safety procedures in their written policies, Defendants provided none of these safety documents to the Workers from the Valley.

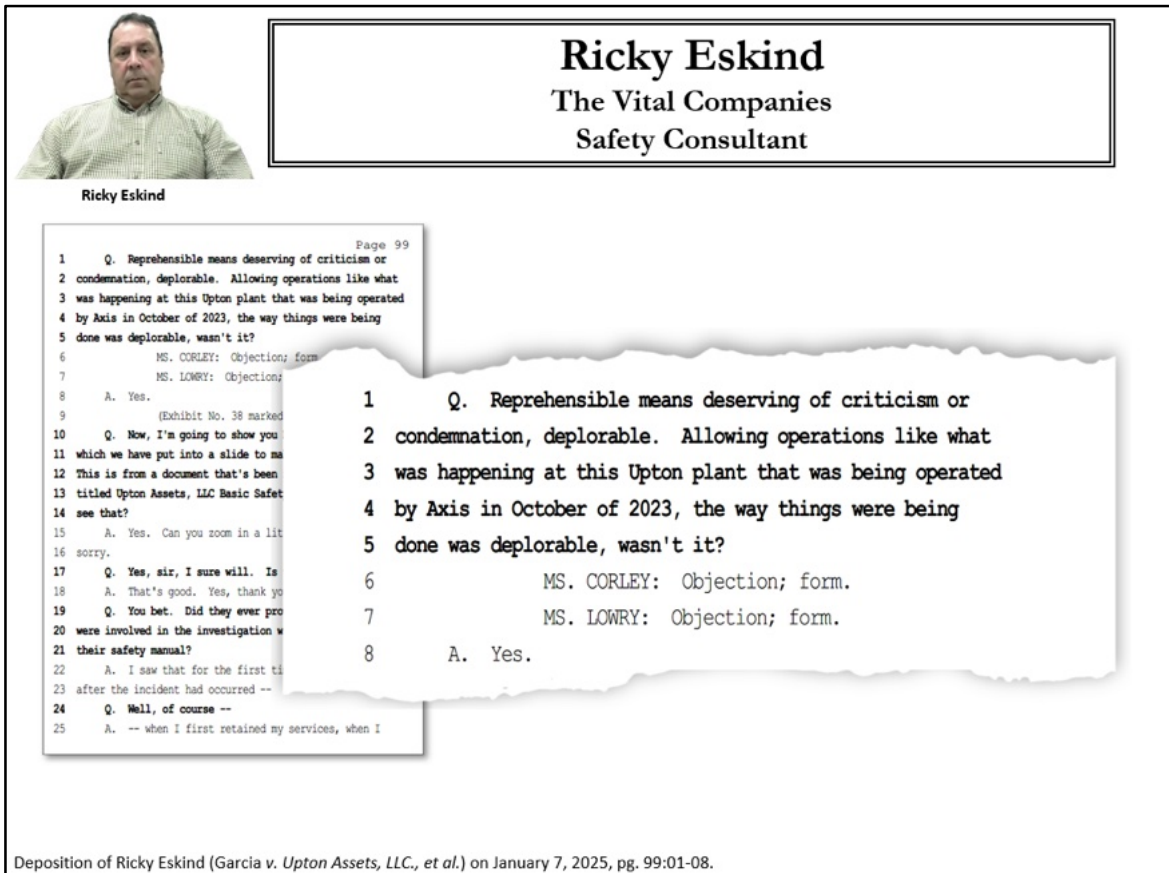


**Fig. 18: Mr. Eskind Testimony**

64. Mr. Eskind’s investigation further confirmed there were no records of any safety meetings, no evidence of safety inspections, no contractor vetting process, and no training or orientation ever provided to Reinaldo or the other workers before they began performing hazardous work at the Facility. The investigation also revealed that the Facility’s lockout/tagout procedures were “at risk,” meaning that despite having policies to prevent flammable hydrocarbons from traveling through pipes, they lacked the necessary equipment and procedures to implement them properly.

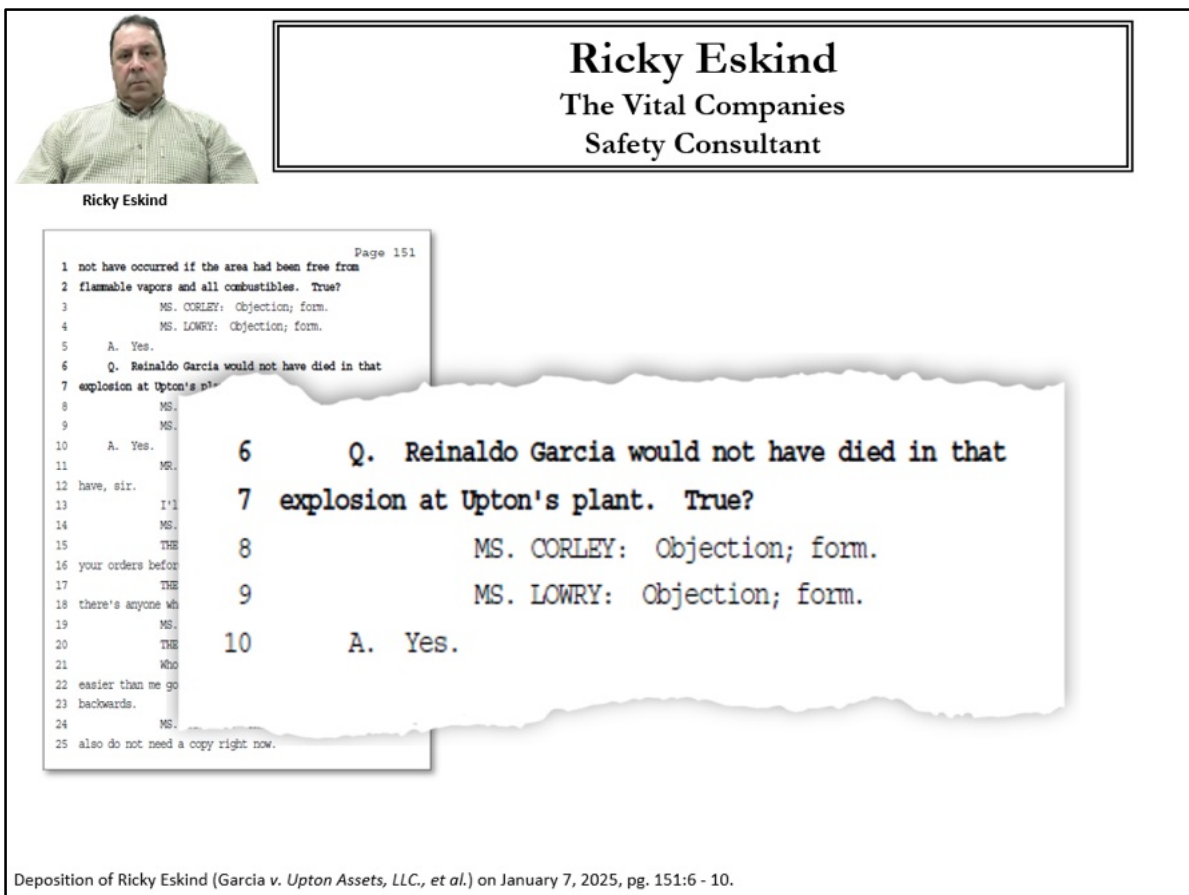
65. When asked whether this conduct posed “an extreme degree of risk” to the health, safety, and welfare of the Workers from the Valley considering the probability and the magnitude of the potential harm, Mr. Eskind agreed. In fact, Mr. Eskind testified that in his decades of safety experience, he could not name a single company that cares about safety that would operate with

none of these required safety documents being completed. When questioned about Defendants' conduct, Mr. Eskind characterized their allowing operations to proceed in this manner as "deplorable."



**Fig. 19: Mr. Eskind Testimony**

66. All told, Mr. Eskind confirmed that Defendants had actual subjective awareness of the risks associated with hot work near hydrocarbon tanks but chose not to follow their own safety policies. His investigation concluded that had Defendants followed their own work permit system, all lines and vessels to the tank would have been properly identified and isolated, atmospheric testing would have been performed, the work area would have been free from flammable vapors, and the explosion that killed Reinaldo would not have occurred.



**Fig. 20: Mr. Eskind Testimony**

**CAUSE OF ACTION**

**Negligence against Upton Assets and Axis Transport**

67. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

68. Defendants Upton Assets and Axis Transport had a duty to exercise a degree of care that a reasonable and prudent company would exercise to avoid harm to others under the same or similar circumstances as to those described herein.

69. Defendants Upton Assets and Axis Transport breached such duty.

70. The negligent, careless, and reckless disregard of said duty by Defendants Upton Assets and Axis Transport consisted of the following acts and/or omissions:

- a. Failure to ensure products, services, equipment and worksite

- were safe for their intended use;
- b. Failure to establish safety protocols to work on the premises;
  - c. Failure to recognize and eliminate work hazards;
  - d. Failure to warn of work hazards;
  - e. Failure to properly select and train contractors and employees for the work performed at the premises;
  - f. Failure to provide adequate maintenance and inspections of the premises;
  - g. Failure to provide proper equipment;
  - h. Failure to properly install equipment;
  - i. Failure to properly use equipment;
  - j. Failure to provide a safe environment and worksite free from hazards;
  - k. Failure to ensure that the conditions surrounding the subject tank and premises were safe and controlled to prevent the release and presence of explosive gases and/or materials;
  - l. Failure to ensure that no explosion or fire would occur at the subject site; and
  - m. Failure to operate as safe and prudent owners, operators, contractors, and/or employees would operate under the same or similar circumstances.

71. Defendants Upton Assets and Axis Transport's breach caused fatal injuries to Reinaldo Garcia Pena, which were proximately caused by Defendants Upton Assets and Axis Transport's negligent, careless, and reckless disregard of said duty.

**CAUSE OF ACTION**  
**Negligence against Salazar**

72. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

73. Defendant Salazar had a duty to exercise a degree of care that a reasonable and prudent company would exercise to avoid harm to others under the same or similar circumstances as to those described herein.

74. Defendant Salazar breached such duty.

75. The negligent, careless, and reckless disregard of said duty by Defendant Salazar consisted of the following acts and/or omissions:

- a. Failure to ensure products, services, equipment and worksite were safe for their intended use;
- b. Failure to establish safety protocols to work on the premises;
- c. Failure to recognize and eliminate work hazards;
- d. Failure to warn of work hazards;
- e. Failure to properly select and train contractors and employees for the work performed at the premises;
- f. Failure to provide proper equipment;
- g. Failure to properly use equipment;
- h. Failure to provide a safe environment and worksite free from hazards;
- i. Failure to ensure that the conditions surrounding the subject tank and premises were safe and controlled to prevent the release and presence of explosive gases and/or materials;
- j. Failure to ensure that no explosion or fire would occur at the subject site; and
- k. Failure to operate as safe and prudent owners, operators, contractors, and/or employees would operate under the same or similar circumstances.

76. Defendant's breach caused fatal injuries to Reinaldo Garcia Pena, which were proximately caused by Defendant Salazar's negligent, careless, and reckless disregard of said duty.

77. Further, as Salazar itself claimed in its Rule 166(g) Motion filed in this Court, the services Salazar performed on October 5, 2023 were performed pursuant to the Master Service Contract between Upton Assets and Salazar. Taking Salazar's position as true, the bodily injury and death of Reinaldo Garcia Pena was necessarily caused in whole or in part by Salazar's acts and omissions in the performance of its ongoing operations under that contract.

**CAUSE OF ACTION**  
**Negligent Selection against Upton Assets**

78. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

79. Defendant Upton Assets had a duty to exercise reasonable care in selecting, retaining, and utilizing Axis Transport to manage and operate the Facility. This duty arose because Upton Assets selected Axis Transport to perform work that involved a risk of physical harm unless it was skillfully and carefully done, particularly given the Facility's classification as a PSM facility handling hazardous natural gas liquids and condensate.

80. Defendant Upton Assets breached this duty by negligently selecting Axis Transport to operate the Facility despite knowing or having reason to know of Axis Transport's lack of qualifications and expertise necessary for the safe operation of a PSM facility.

81. The negligent selection by Defendant Upton Assets consisted of the following acts and/or omissions:

- a. Selecting Axis Transport despite knowing that John Sims, the Facility Manager, had no PSM training, no college degree, and no management qualifications for operating a facility handling hazardous materials;

- b. Failing to verify that Axis Transport had personnel with the specialized knowledge and training required for PSM facility operations;
- c. Selecting Axis Transport despite knowing that no employee at Axis Transport had expertise in Process Safety Management standards applicable to the Facility;
- d. Failing to conduct adequate due diligence regarding Axis Transport's safety training, personnel qualifications, and ability to implement and enforce PSM requirements; and
- e. Failing to ensure that the selected operator had the necessary qualifications to protect workers and third parties from the foreseeable risks associated with PSM facility operations.

82. It was foreseeable to Defendant Upton Assets that selecting an unqualified operator for a PSM facility would create unreasonable risks of harm to workers, including Reinaldo Garcia Pena, due to the inherently hazardous nature of the operations involving flammable natural gas liquids and the strict safety protocols required by federal regulations.

83. Defendant Upton Assets' negligent selection of Axis Transport was a proximate cause of the explosion and Reinaldo Garcia Pena's death, as the safety failures that led to the catastrophic explosion would not have occurred had Upton Assets selected a qualified operator with proper PSM training and expertise.

84. As a result of Defendant Upton Assets' negligent selection, Plaintiffs have suffered the damages described herein.

**CAUSE OF ACTION**  
**Negligent Undertaking against Salazar**

85. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

86. Defendant Salazar undertook to perform tank cleaning services that it knew or should have known were necessary for the Workers from the Valley's protection and safety.

Specifically, Salazar undertook to clean TK604 and the containment area of hazardous hydrocarbons and to provide proper instruction and direction to ensure the work area was safe for continued operations. The Workers from the Valley reasonably relied upon Salazar's undertaking, including relying on Salazar to provide proper tools and instructions necessary to clean TK604 and the containment area, following Salazar's directions on how to clean the area, and relying on Salazar's representations that TK604 and the containment area were clean and safe for continued work operations.

87. Defendant Salazar breached its duty to exercise reasonable care in performing its undertaking by failing to properly and completely remove hazardous liquids and hydrocarbons from TK604 and the containment area, improperly directing and instructing the Workers from the Valley to perform hazardous cleaning work while Salazar's representative remained outside the containment area, making materially false safety assurances that TK604 and the containment area were clean and safe when Salazar knew or should have known dangerous hydrocarbons remained, and failing to warn the Workers from the Valley of the ongoing hazardous conditions.

88. Defendant Salazar's negligent performance of its undertaking increased the Workers from the Valley's risk of harm by creating a false sense of security about the safety of continued work operations in an area that remained contaminated with dangerous hydrocarbons.

89. As a direct and proximate result of Salazar's negligent undertaking, Reinaldo Garcia Pena was killed in the explosion, causing the damages alleged herein.

90. Further, as Salazar itself claimed in its Rule 166(g) Motion filed in this Court, the services Salazar performed on October 5, 2023 were performed pursuant to the Master Service Contract between Upton Assets and Salazar. Taking Salazar's position as true, the bodily injury and death of Reinaldo Garcia Pena was necessarily caused in whole or in part by Salazar's acts and omissions in the performance of its ongoing operations under that contract.

**CAUSE OF ACTION**  
**Negligence against Mr. Hanks**

91. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

92. Defendant Thomas O. Hanks, Jr. had a duty to exercise a degree of care that a reasonable and prudent person would exercise to avoid harm to others under the same or similar circumstances as those described herein. This duty existed independent of his status as the owner of Upton Assets and Axis Transport and arose from his personal decisions, actions, and direct participation in the management and control of the operations and work at the Facility.

93. Defendant Thomas O. Hanks, Jr. breached such duty.

94. The negligent, careless, and reckless disregard of said duty by Defendant Thomas O. Hanks, Jr. consisted of the following acts and/or omissions, which constitute individual and personal acts of negligence for which Defendant Thomas O. Hanks, Jr. is personally, individually, and directly liable:

- a. Failure to properly vet or verify qualifications of workers before assigning them to perform hazardous work;
- b. Failure to provide workers with the Facility's safety manual when he knew or should have known of the risks associated with the work;
- c. Failure to ensure workers received proper safety orientation and training;
- d. Failure to ensure that proper work permits were issued before welding commenced at the Facility;
- e. Failure to implement or enforce required safety procedures at the Facility;
- f. Failure to obtain proper training in Process Safety Management despite owning/operating the Facility; and

- g. Failure to provide a safe environment and worksite free from hazards.

95. Defendant Thomas O. Hanks, Jr.'s breach caused fatal injuries to Reinaldo Garcia Pena, which were proximately caused by Defendant Thomas O. Hanks, Jr.'s negligent, careless, and reckless disregard of said duty.

**CAUSE OF ACTION**  
**Negligence against Mr. Sims**

96. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

97. Defendant John Thomas Sims had a duty to exercise a degree of care that a reasonable and prudent person would exercise to avoid harm to others under the same or similar circumstances as those described herein. This duty arose from his personal decisions, actions, and direct participation in the management and control of the operations and work at the Facility.

98. Defendant John Thomas Sims breached such duty.

99. The negligent, careless, and reckless disregard of said duty by Defendant John Thomas Sims consisted of the following acts and/or omissions, which constitute individual and personal acts of negligence for which Defendant John Thomas Sims is personally, individually, and directly liable:

- a. Failure to properly vet or verify qualifications of workers before assigning them to perform hazardous work;
- b. Failure to provide workers with the Facility's safety manual when he knew or should have known of the risks associated with the work;
- c. Failure to ensure workers received proper safety orientation and training;
- d. Failure to ensure that proper work permits were issued before welding commenced at the Facility;

- e. Failure to implement or enforce required safety procedures at the Facility;
- f. Failure to obtain proper training in Process Safety Management despite operating the Facility; and
- g. Failure to provide a safe environment and worksite free from hazards.

100. Defendant John Thomas Sims' breach caused fatal injuries to Reinaldo Garcia Pena, which were proximately caused by Defendant John Thomas Sims' negligent, careless, and reckless disregard of said duty.

**CAUSE OF ACTION**  
**Negligence against Alaffa**

101. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

102. Defendant Alaffa had a duty to exercise a degree of care that a reasonable and prudent person would exercise to avoid harm to others under the same or similar circumstances as to those described herein.

103. Defendant Alaffa breached such duty.

104. The breach of said duty by Defendant Alaffa consisted of the following acts and/or omissions:

- a. Failure to adhere to safety rules and guidelines; and
- b. Failure to refrain from work involving ignitions or flames in an area that contained flammable materials.

105. Defendant Alaffa's breach caused fatal injuries to Reinaldo Garcia Pena, which were proximately caused by Defendant Alaffa's disregard of said duty.

**CAUSE OF ACTION**  
**Gross Negligence against All Defendants**

106. Plaintiffs incorporate by reference each and all of the allegations contained in the

preceding paragraphs as though fully set forth herein.

107. The above-referenced acts and/or omissions by Defendants constitute gross negligence as that term is defined in Section 41.001(11) of the Texas Civil Practice and Remedies Code. Defendants were heedless and reckless, constituting an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and Defendants were aware of the risk but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others, including Reinaldo Garcia Pena. The above acts and/or omissions were singularly and cumulatively the proximate cause of the occurrence in question and the resulting death of Reinaldo Garcia Pena, and damages sustained by Plaintiffs.

108. Defendants' acts and/or omissions described above, when viewed from the standpoint of Defendants at the time of the act and/or omission, involved an extreme degree of risk, considering the probability of harm to Reinaldo Garcia Pena and to others. Defendants had actual, subjective awareness of the risk involved in the above-described acts and/or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, and/or welfare of others, including Reinaldo Garcia Pena.

109. Therefore, Plaintiffs are entitled to punitive and/or exemplary damages.

**CAUSE OF ACTION**  
**Premises Liability Against Upton Assets,  
Axis Transport, and Mr. Hanks**

110. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

111. Defendants Upton Assets, Axis Transport, and Mr. Hanks owned, occupied, and/or controlled the area where Reinaldo Garcia Pena was killed. The condition of the area where Reinaldo Garcia Pena was killed posed an unreasonable risk of harm and Defendants Upton Assets,

Axis Transport, and Mr. Hanks had actual knowledge or reasonably should have known of the unreasonably dangerous conditions of the premises and of the tank. Moreover, Reinaldo Garcia Pena did not have actual knowledge of the unreasonably dangerous conditions.

112. Defendants Upton Assets, Axis Transport, and Mr. Hanks' breach of these duties proximately caused Reinaldo Garcia Pena's fatal injuries and damages.

**CAUSE OF ACTION**  
**Alter Ego and Corporate Veil Piercing Theories Against  
Mr. Hanks, Upton Assets, and Axis Transport**

113. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

114. Plaintiffs would show that the separate identities or corporate form of Upton Assets and Axis Transport must be disregarded to prevent the use of the corporate fiction as an unfair device to inflict injustice on Plaintiffs and others similarly situated. The entities are operated as a mere tool or business conduit of one another and there is such a unity of interest and ownership amongst these entities that the separate personalities of the corporations no longer exist. These entities are the alter egos of Mr. Hanks, who exercises such dominion and control over them that they are mere instrumentalities through which he conducts his personal business. This unity of interest includes common ownership or control, commingling of assets and operations, lack of corporate formalities, inadequate capitalization, and/or the use of the corporate structure to perpetrate a fraud or injustice.

115. Plaintiffs would further show that the Defendants have used the corporate form as a fiction and as a means to perpetrate fraud and an illegal purpose and that the corporate form of Upton Assets and Axis Transport must be disregarded because the entities are inadequately capitalized in light of the nature and risk of their business. The corporate structures were

established by Mr. Hanks as a sham to avoid personal liability while maintaining complete control over operations, assets, and decision-making.

**VICARIOUS LIABILITY**  
**Joint Enterprise Between Upton Assets and  
Axis Transport**

116. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

117. At all relevant times, Defendants Upton Assets and Axis Transport were engaged in a joint enterprise in the operation and management of the Facility.

118. A joint enterprise existed between Upton Assets and Axis Transport because:

- a. Upton Assets and Axis Transport had an express or implied agreement with respect to the operation of the Facility and their coordinated business activities in processing and handling natural gas liquids and condensate at the Facility;
- b. Upton Assets and Axis Transport shared a common business purpose of generating revenue and profits from the operation of the Facility;
- c. Upton Assets and Axis Transport had a community of pecuniary interest in the common purpose of the enterprise, as both entities benefited financially from the Facility's operations; and
- d. Upton Assets and Axis Transport had an equal right to a voice in the direction of the enterprise through their shared control structure, whereby Mr. Hanks exercised complete control over both entities, personnel from both entities made binding decisions affecting Facility operations, and both entities participated in operational decision-making regarding the Facility without regard to corporate formalities.

119. Under the doctrine of joint enterprise, each party to the joint enterprise is considered an agent of the other and becomes liable for the negligent acts of the other. Therefore, Upton Assets is vicariously liable for the negligent acts and omissions of Axis Transport that proximately caused

the death of Reinaldo Garcia Pena and Axis Transport is vicariously liable for the negligent acts and omissions of Upton Assets that proximately caused the death of Reinaldo Garcia Pena.

**VICARIOUS LIABILITY**  
**Borrowed Employee Against Upton Assets**

120. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

121. At all relevant times, although Defendant John Thomas Sims was generally employed by Axis Transport, he was acting as a borrowed employee of Upton Assets.

122. At all relevant times, Upton Assets and Mr. Hanks had the right to direct and control the details of Sims' work at the Facility, including his authority to manage facility operations, direct contractor work, and make operational decisions regarding the Project.

123. At all relevant times, Defendant John Thomas Sims was acting within this borrowed employment relationship when he committed the negligent acts alleged herein.

124. Therefore, under the borrowed employee doctrine, Upton Assets is vicariously liable for the negligent acts of its borrowed employee John Thomas Sims that proximately caused Reinaldo Garcia Pena's death.

**DAMAGES**

125. Plaintiffs incorporate by reference each and all of the allegations contained in the preceding paragraphs as though fully set forth herein.

126. Under the survival statute and as Representative of the Estate of Reinaldo Garcia Pena, Deceased, Plaintiff Elizabeth Garcia seeks to recover all elements of damages recoverable under Texas law, including pain and mental anguish, medical expenses, funeral, and burial expenses, exemplary damages, pre-judgment and post-judgment interest, and court costs from

Defendants. No administration of the estate of Reinaldo Garcia Pena, Deceased, is necessary or pending.

127. Under the wrongful death statute as the surviving spouse and daughters of Reinaldo Garcia Pena, Deceased, Plaintiffs Elizabeth Garcia, Maday Garcia, and Maria Del Jesus Garcia seek to recover all elements of damages recoverable under Texas law, including pecuniary loss, loss of consortium, companionship, society, of the family relationship, care, comfort, solace, protection, services, mental anguish, physical relationships, inheritance, pre-judgment, and post-judgment interest, and court costs from Defendants.

128. Furthermore, Defendants are liable for exemplary damages and compensatory damages arising from their negligence and gross negligence described above.

**DEMAND FOR JURY TRIAL**

129. Plaintiffs hereby demand a jury trial.

**RESERVATION OF RIGHTS**

130. These allegations against Defendants are made acknowledging that investigation and discovery, although undertaken, are continuing in this matter. As further investigation and discovery are conducted, additional facts will surely be uncovered that may and probably will necessitate further, additional and/or different allegations, including the potential of adding additional parties to the case or dismissing parties from the case. The right to do so, under Texas law, is expressly reserved.

**PRODUCTION OF DOCUMENTS SELF-AUTHENTICATING**

131. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiffs hereby provide actual written notice that all documents produced in this litigation shall be used by Plaintiffs at pretrial proceedings and trial. Hence, all documents produced in this litigation are deemed self-

authenticating for use in any pretrial proceeding or at trial. Any objections thereto by any party shall be in writing or placed on the record, giving Plaintiffs a reasonable opportunity to establish the challenged document's authenticity.

**REQUIRED DISCLOSURE**

132. Pursuant to Texas Rule of Civil Procedure 194(a), Defendants are required to disclose, within thirty (30) days of the filing of the first answer, the information or material described in Rule 194.2(b) 1-12. Any Defendant that is served or otherwise joined after the filing of the first answer must make their initial disclosures within thirty (30) days after being served or joined.

**PRAYER**

For these reasons, Plaintiffs Elizabeth Garcia, Individually and as Representative of the Estate of Reinaldo Garcia Pena, Deceased, Maday Garcia, and Maria Del Jesus Garcia pray that Defendants Upton Assets, LLC, Axis Transport, LLC, Salazar Service & Trucking Corp., the Estate of Angel Alaffa, Thomas O. Hanks, Jr., and John Thomas Sims be cited to appear and answer in this case, and that upon a final hearing of this cause, judgment be entered for Plaintiffs against Defendants for damages in an amount within the jurisdictional limits of this Court together with pre-judgment interest, post-judgment interest, costs of court, and all other and further relief to which Plaintiffs are entitled, whether at law or in equity.

Respectfully submitted,

**THE AMMONS LAW FIRM, LLP**

*/s/ Heriberto R. Montalvo*

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2026, a true and correct copy of the foregoing was served on all counsel of record via electronic e-service in compliance with the Texas Rules of Civil Procedure.

/s/ Heriberto R. Montalvo  
Heriberto R. Montalvo

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Jordan Fischer-Columbo on behalf of Heriberto Montalvo  
Bar No. 24102231  
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Envelope ID: 112996029  
Filing Code Description: Motion  
Filing Description: Sixth Amended Petition in Intervention  
Status as of 3/30/2026 9:03 AM CST

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