



Survival Statute, (TEX. CIV. PRAC. & REM. CODE § 71.021), complaining of USAI, LP f/k/a Porky Realty Investments, LP, Laura Briggs-Tafel, J.D., P.C., Laura Briggs-Tafel, J.D., Roosevelt White, Roosevelt White Construction, LLC, Bill Calloway, Calloway White Construction, Jason Morden, Town of Highland Park, City of Dallas and John Does Nos. 1-10 (collectively hereinafter referred to as “Defendants”) and for cause of action would respectfully show the Court the following:

**I.**  
**DISCOVERY**

1. Discovery in this cause is requested to be conducted under Level 3 in accordance with Texas Rule of Civil Procedure 190 and Plaintiff requests that the Court enter a Docket Control Order consistent with that intent.

**II.**  
**PARTIES**

2. Plaintiff, Tiffany Renee McCullers, is Texas citizen and is the widow of Calvin Marcus McCullers, Jr. (“Decedent”) who died prematurely as a proximate cause of the Defendants’ acts and omissions in the State of Texas.

3. Defendant, USAI, LP f/k/a Porky Realty Investments, LP, is a limited partnership duly formed and existing under the laws of the state of Texas, having its principal place of business located at 1550 Edison Street, Ste. 104, Dallas, Texas

75207-3705. Defendant may be served through and by its registered agent for service of process as follows:

Laura Briggs-Tafel, J.D., P.C.  
c/o USAI, LP  
1550 Edison Street, Ste. 104  
Dallas, Texas 75207-3705

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

4. Defendant, Laura Briggs-Tafel, J.D., P.C. is a Texas professional corporation having its principal address located at 1550 Edison Street, #104, Dallas, Texas 75207. Defendant may be served through and by its officers and directors as follows:

Laura Briggs-Tafel  
c/o Laura Briggs-Tafel, J.D., P.C.  
1550 Edison Street, Ste. 104  
Dallas, Texas 75207-3705

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

5. Defendant, Laura Briggs-Tafel, J.D., is a Texas citizen who may be served with process at her residence and/or place of business at 4309 Fairfax Avenue, Dallas, Texas 75205, or where ever she may be found.

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

6. Defendant, Roosevelt White, is a Texas citizen who may be served with process at his residence and/or place of business at 129 Timber Ridge Drive, Murphy, Texas 75094, or where ever he may be found.

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

7. Defendant, Roosevelt White Construction, LLC, is a limited liability company duly formed and existing under the laws of the state of Texas, with is principal address located at 11857 Judd Court, Suite 208, Dallas, Texas 75243. Defendant may be served through and by its registered agent for service of process as follows:

Meg Q. White  
c/o Roosevelt White Construction, LLC  
11857 Judd Court, Suite 208  
Dallas, Texas 75243

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

8. Defendant, Bill Calloway, is a Texas citizen who may be served with process at his residence and/or place of business at 4505 Pomona Rd., Dallas, Texas 75209, or where ever he may be found.

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

9. Defendant, Calloway & White Construction, is a Texas limited liability company was, at all relevant times, doing business in the state of Texas, with its principal address located at 4927 Forest Bend Rd., Dallas, Texas 75244. Defendant may be served through and by its officers and directors as follows:

Bill Calloway  
c/o Calloway & White Construction  
4505 Pomona Rd.  
Dallas, Texas 75209

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

10. Defendant, Jason Morden, is a Texas citizen who may be served with process at his place of employment at 4700 Drexel Drive, Highland Park, Texas 75205, or where ever he may be found.

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

11. Defendant, Town of Highland Park, is a government entity, with a principal address located at 4700 Drexel Drive, Highland Park, Texas 75205. Defendant may be served with process by serving its authorized agent as follows:

Matthew Boyle, Esquire  
c/o Town of Highland Park  
Boyle & Lowry, LLP  
4201 Wingren Drive, Suite 108  
Irving, Texas 75062

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

12. Defendant, City of Dallas, is a government entity, with a principal address located at 1500 Marilla St., Room 5 D South, Dallas, Texas 75201. Defendant may be served with process by serving its authorized agent as follows:

Bilierae Johnson, City Secretary  
c/o City of Dallas  
1500 Marilla St. #7DN  
Dallas, Texas 75201

Plaintiff requests that a citation be issued to Defendant to allow for service of process.

13. Defendants, John Does Nos. 1-10, are individuals and/or entities located in or near the State of Texas, some or all of whom were involved in and/or aware of the circumstances which caused and/or contributed to the death of the Decedent, which is the subject of this action.

### **III.** **JURISDICTION & VENUE**

14. This court has jurisdiction over the Defendants because they have either conducted business in Texas, committed a tort in Texas, have had continuous contacts with Texas or reside in Texas. In addition, the damages for which Plaintiff brings suit exceeds the minimal jurisdiction limits of the court.

15. Venue is also proper in Dallas County, Texas because all or a substantial part of the events giving rise to the case occurred in Dallas County. (See, Tex. Civ. Prac. & Rem. Code Ann. §15.002(a)(1).

#### **IV. FACTS**

16. In the early morning hours of July 5, 2016, the Decedent, Calvin Marcus McCullers, Jr., a Southern Methodist University police officer, was working an off-duty security job guarding a home located at 4100 St. John's Drive, Highland Park, Texas ("the Home"), which was undergoing renovations at the time.

17. On information and belief, at all times relevant hereto, the Home was owned by Defendants, USAI, LP f/k/a Porky Realty Investments, LP and/or Laura Briggs-Tafel, J.D. ("the Owner defendants").

18. At all times relevant hereto, renovations to the Home were being performed by Defendants, Roosevelt White, Roosevelt White Construction, LLC, Bill Calloway and/or Calloway & White Construction ("the General Contractor defendants").

19. On information and belief, Jason Morden, who was acting at the time as an agent, servant and/or employee of Defendants, USAI, LP f/k/a Porky Realty Investments, LP, Laura Briggs-Tafel, J.D., P.C., Laura Briggs-Tafel, J.D., Roosevelt

White, Roosevelt White Construction, LLC, Bill Calloway and/or Calloway & White Construction hired the Decedent to work as the security guard for the Home.

20. The Home borders Turtle Creek.

21. On information and belief, at all times relevant hereto, Turtle Creek was maintained, operated, inspected and/or repaired by Defendants, Town of Highland Park and/or the City of Dallas.

22. On information and belief, prior to July 5, 2016, Turtle Creek had a history of overflowing its banks and inundating the property on which the Home was located when it rained.

23. On information and belief, prior to July 5, 2016, all of the Defendants to this action were aware that Turtle Creek had a history of overflowing its banks and inundating the property on which the Home was located when it rained.

24. On information and belief, all of the Defendants to this action knew or should have known that Turtle Creek created a dangerous condition to those in its immediate vicinity, including Decedent herein, when it rained.

25. On information and belief, prior to and/or upon Decedent's arrival at the Home, Defendant, Jason Morden, instructed the Decedent to park his vehicle, a Dodge Charger, in a location between the Home and Turtle Creek and to use his vehicle as his post.



26. On information and belief, at all times material hereto, Defendant Jason Morden, was acting as an agent, servant and/or employee of Owner defendants and/or General Contractor defendants.

27. During the time that Decedent was guarding the Home, a storm occurred in area.

28. When the storm occurred, Decedent was sitting in his vehicle which was parked in the location as directed by the Defendants.

29. As Decedent was sitting in his vehicle, without warning, waters from Turtle Creek rose above its banks and quickly engulfed his vehicle.

30. At approximately 1:32 a.m., Decedent called for help to the Highland Park dispatcher. At that time, the water was rising up the sides of his vehicle.

31. By the time the police arrived at the scene, the flooding was so severe that they were not able to reach the Decedent.

32. As the water began to push the Decedent's vehicle into the raging Turtle Creek, he attempted to escape from the passenger side of his vehicle.

33. The water pushed Decedent's vehicle into the raging waters of Turtle Creek where it was swept away.

34. A search was commenced by rescue workers for the Decedent and his vehicle.

35. On or about July 5, 2016, the rescue workers found Decedent's vehicle.

36. On August 26, 2016, rescue workers found Decedent's body.
37. The Certificate of Death lists the cause of death as drowning.
38. Decedent is survived by his wife, Tiffany Renee McCullers, and their six (6) children.

**V.**  
**NEGLIGENCE**

**(Plaintiff vs. Town of Highland Park and City of Dallas)**

39. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

40. At all times relevant hereto, Defendants, Town of Highland Park and City of Dallas, owed the Decedent a duty to use reasonable care in the development, maintenance, repair, and/or operation of Turtle Creek.

41. Defendants breached their aforesaid duty to Decedent in one or more of the following ways:

- a. Failing to properly develop, maintain, inspect, repair and/or operate Turtle Creek to prevent it from causing flash flooding to the neighborhood where the Home was located;
- b. Failing to warn Decedent and others of the substantial risk of flash flooding presented by Turtle Creek in the location where the Home was located;
- c. Failing to install appropriate fencing or other guards to prevent Decedent and other similarly situated persons from being drawn into Turtle Creek when it overflowed its banks;

- d. Failing and/or omitting to do those things necessary to avoid an unreasonable risk of harm to Decedent and other similarly situated persons caused by flash flooding from Turtle Creek;
- e. Failing to comply with applicable codes, regulations, guidelines, policies, procedures and/or industry customs and practices.

42. As a direct and proximate result of the aforesaid negligent, careless and/or reckless acts and/or omissions, the Decedent was pulled into the raging waters of Turtle Creek where he died.

## **VI.** **NEGLIGENCE**

**(Plaintiff vs. USAI, LP f/k/a Porky Realty Investments, LP, Laura Briggs-Tafel, J.D., P.C., Laura Briggs-Tafel, J.D., Roosevelt White, Roosevelt White Construction, LLC, Bill Calloway, Calloway White Construction and Jason Morden)**

43. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

44. At all times relevant hereto, Defendants, of USAI, LP f/k/a Porky Realty Investments, LP, Laura Briggs-Tafel, J.D., P.C., Laura Briggs-Tafel, J.D., Roosevelt White, Roosevelt White Construction, LLC, Bill Calloway, Calloway & White Construction, and Jason Morden, owed the Decedent a duty to use reasonable care to provide him with a safe place to work and to not expose him to any unreasonable risks of harm.

45. Defendants breached their aforesaid duty to Decedent in one or more of the following ways:

- a. Directing Decedent to park his vehicle in a location that was subject to flash flooding from Turtle Creek when it rained;
- b. Failing to warn Decedent to park his vehicle in a safe location;
- c. Failing to warn Decedent that the property on which the Home was located was subject flash flooding from Turtle Creek when it rained;
- d. Failing to warn Decedent that the location in which he was directed to park his vehicle was subject flash flooding from Turtle Creek when it rained;
- e. Failing to install appropriate fencing or other guards to prevent Decedent and his vehicle from being drawn into Turtle Creek when it overflowed its banks;
- f. Failing and/or omitting to do those things necessary to avoid an unreasonable risk of harm to Decedent caused by flash flooding from Turtle Creek;
- g. Failing to comply with applicable codes, regulations, guidelines, policies, procedures and/or industry customs and practices.

46. As a direct and proximate result of the aforesaid negligent, careless and/or reckless acts and/or omissions, the Decedent was pulled into the raging waters of Turtle Creek where he died.

## **VII.** **VICARIOUS LIABILITY**

**(Plaintiff vs. USAI, LP f/k/a Porky Realty Investments, LP, Laura Briggs-Tafel, J.D., P.C., Laura Briggs-Tafel, J.D., Roosevelt White, Roosevelt White Construction, LLC, Bill Calloway, Calloway White Construction and Jason Morden)**

47. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

48. Upon information and belief, the respective agents and employees of the Owner defendants and/or General Contractor defendants provided direction to Decedent concerning where he should park his vehicle on date of the accident and were acting within the course and scope of their employment with these defendants. Because defendants' employees and agents were acting within the course and scope of their employment with the respective defendants, Plaintiff invokes the common law doctrine of vicarious liability against these defendants for the individual acts and omissions of their respective employees.

**VIII.**  
**PREMISES LIABILITY**

**(Plaintiff vs. Town of Highland Park and City of Dallas)**

49. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

50. Immediately prior to his death, Decedent was an invitee of the Owner defendants and/or General Contractor and was providing security guard services at the Home.

51. At all times relevant hereto, the condition of Turtle Creek posed an unreasonable risk and danger because it was prone to severe flooding. Defendants Town of Highland Park and/or City of Dallas knew or reasonably should have known of this condition that caused and contributed to the circumstances that lead

to Decedent's death. In fact, on March 19, 2006, two women were swept into Turtle Creek after their car stalled at the intersection of Fitzhugh and St. John's Drive. Defendants Town of Highland Park and/or City of Dallas knew this. Despite having such knowledge, Defendants Town of Highland Park and/or City of Dallas failed to inspect and make safe the dangerous condition of Turtle Creek and they failed to give Decedent adequate warning of the unreasonably dangerous condition.

52. At all times relevant hereto, Defendants Town of Highland Park and/or City of Dallas owed the Decedent a duty to use ordinary care to keep Turtle Creek in a reasonably safe condition and to protect and/or warn against unreasonable risks of harm so that he may avoid them.

53. At all times relevant hereto, Defendants Town of Highland Park and/or City of Dallas owed the Decedent a duty not to injure him willfully, wantonly, or through gross negligence.

54. Defendants Town of Highland Park and/or City of Dallas breached their aforesaid duty to Decedent in one or more of the following ways:

- a. Failing to adequately warn Decedent of the unreasonably dangerous condition of Turtle Creek; and
- b. Failing to make the unreasonably dangerous condition safe.

55. As a direct and proximate result of the aforesaid condition of Turtle Creek, which was under Defendants Town of Highland Park's and/or City of Dallas' ownership, possession, maintenance and/or control at all relevant times, and

Defendants Town of Highland Park's and/or City of Dallas' breach of duty, the Decedent was swept into the raging waters of Turtle Creek where he died.

**IX.**  
**PREMISES LIABILITY**

**(Plaintiff vs. USAI, LP f/k/a Porky Realty Investments, LP, Laura Briggs-Tafel, J.D., P.C., Laura Briggs-Tafel, J.D., Roosevelt White, Roosevelt White Construction, LLC, Bill Calloway, Calloway White Construction and Jason Morden)**

56. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

57. Immediately prior to his death, Decedent was an invitee of Defendants and was providing security guard services at the Home owned, controlled, maintained and/or possessed by Defendants.

58. During the time Decedent was guarding the home, the property posed an unreasonable risk and danger because it was prone to severe flooding. Defendants knew and/or reasonably should have known of this condition that caused and contributed to the circumstances that lead to Decedent's death. Despite having such knowledge, Defendants failed to inspect and make safe the dangerous condition and Defendants failed to give Decedent adequate warning of the unreasonably dangerous condition.

59. At all times relevant hereto, Defendants owed the Decedent a duty to use ordinary care to keep the premises in a reasonably safe condition and to protect and/or warn against unreasonable risks of harm so that he may avoid them.

60. At all times relevant hereto, Defendants owed the Decedent a duty not to injure him willfully, wantonly, or through gross negligence.

61. Defendants breached their aforesaid duty to Decedent in one or more of the following ways:

- a. Failing to adequately warn Decedent of the unreasonably dangerous condition of the Property; and
- b. Failing to make the condition reasonably safe.

62. As a direct and proximate result of the aforesaid condition that existed at the Home, which was under Defendants' ownership, possession, maintenance and/or control at all relevant times, and Defendants' breach of duty, the Decedent was swept into the raging waters of Turtle Creek where he died.

**X.**  
**WRONGFUL DEATH**  
**(Plaintiff vs. All Defendants)**

63. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

64. Plaintiff, Tiffany Renee McCullers, is the statutory beneficiary of the decedent. Defendants exist as corporations, government entities, and individuals.



These defendants knew of should have known about the dangerous condition presented by Turtle Creek and were negligent in failing to properly repair, operate, improve, maintain, inspect and/or warn about this dangerous condition which lead to the Decedent's death. Had the Decedent survived, he would have been entitled to bring a cause of action against Defendants for his injuries. Plaintiff, Tiffany Renee McCullers, has suffered injury as a result of Decedent's death and brings this action on behalf of herself, individually, and on behalf of the estate and heirs-at-law of the Decedent.

**XI.**  
**SURVIVAL DAMAGES**  
**(Plaintiff vs. All Defendants)**

65. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

66. Plaintiff, Tiffany Renee McCullers, brings this action as heir and for the benefit of all beneficiaries of the Estate of Estate of Calvin Marcus McCullers, Jr. under §71.021 of the Texas Civil Practice and Remedies Code, along with all other damages they may claim at common law.

67. As a direct and proximate result of the Defendants' negligent acts complained herein, Decedent sustained various injuries that caused his death. In addition, between the time of his injuries and his death, Decedent suffered horrible physical pain, suffering, and mental anguish for which Plaintiff brings this action.

**XII.**  
**WRONGFUL DEATH DAMAGES**

**(Plaintiff vs. All Defendants)**

68. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

69. Plaintiff, Tiffany Renee McCullers, also brings this action as heir and for the benefit of all beneficiaries of the Estate of Calvin Marcus McCullers, Jr. for their damages sustained and benefits due under the Wrongful Death Act outlined in § 71.001 through 71.011 of the Texas Civil Practice and Remedies Code.

70. During his lifetime, Decedent was industrious, affectionate, loving, compassionate, energetic, cooperative, patient, attentive, and a provider to his loved ones. He provided guidance, advice, counseling, protection, comfort, services, care, attention, and financial and emotional support to Plaintiff. Decedent's death has caused Plaintiff and the respective beneficiaries to be deprived of these things.

71. In the future, Decedent would have continued to provide care, advice, services, counseling and financial and emotional support to the Plaintiff and the respective beneficiaries.

72. As a result of the above-described negligence of the Defendants, Plaintiff and the respective beneficiaries have suffered and will continued to suffer certain losses for which Plaintiff brings this suit.

73. The Decedent's injuries and subsequent death has caused Plaintiff and the respective beneficiaries to suffer actual damages, funeral expenses, pecuniary loss, loss of care, advice, maintenance, counseling, support and reasonable contributions of pecuniary value in reasonable probability the beneficiaries would have received had decedent lived; loss of inheritance, loss of earnings capacity, loss of household services and mental anguish as a result of the death of the Decedent.

**XIII.**  
**PREJUDGMENT INTEREST**

74. Plaintiff seeks prejudgment interest pursuant to section 304.102 of the Texas Finance Code.

**XIV.**  
**CONDITIONS PRECEDENT**

75. All conditions precedent to Plaintiff's right to recover has been performed or has occurred.

**XV.**  
**PRESERVATION OF EVIDENCE**

76. Plaintiff demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident that made the basis of this lawsuit, or damages resulting therefrom, including photographs, videotapes, audiotapes, recordings, business or medical records, bills, estimates, invoices, checks, receipts, measurements, inspections, files, facsimiles, emails, voicemails,

text messages, investigations, cellular phone records, calendar entries, any electronic images, data, or information related to the Defendants, the referenced incident, and any damages resulting therefrom.

77. Failure to maintain these items will constitute spoliation of the evidence.

**XVI.**  
**JURY DEMAND**

78. Plaintiff hereby demands a jury trial on all issues triable as of right by a jury and tenders its jury fee with this Petition.

**XVII.**  
**REQUEST FOR DISCLOSURE**

79. Defendants are requested, within fifty (50) days of service of this Petition, to provide the information or materials listed in Rule 194.2, 190.2(b)(6) of the Texas Rules of Civil Procedure.

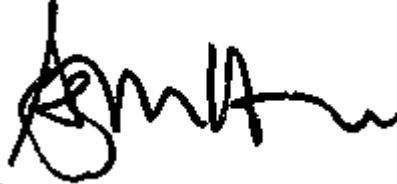
**XVIII.**  
**PRAYER**

80. Plaintiff respectfully requests that Defendants be cited to appear and answer, and that the court enter judgment against Defendants, jointly and severally, in favor of Plaintiff for compensatory damages in an amount to be determined at the time of trial for actual damages, pre-judgment and post judgment interest at the

highest rate allowed by law, costs, and such other and further relief, general or special, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

**COZEN O'CONNOR**

A handwritten signature in black ink, appearing to read 'SMH', written over a horizontal line.

By: \_\_\_\_\_

Stephen M. Halbeisen

State Bar No. 00795837

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**ATTORNEYS FOR PLAINTIFFS**