

CAUSE NO. 2014-25121

WILLIAM R. DOWLING
JACKI W. DOWLING, Individually and
as Next Friends of
FORREST D. DOWLING, minor
FAITH C. DOWLING, minor
FOSTER B. DOWLING, minor,
Plaintiffs,

and

CITY OF HOUSTON,
Intervenor,

v.

CRITERIUM SYSTEMS, INC. d/b/a
SOUTHWEST INNS
HARENDRA MATHURIA, Individually
and d/b/a BHOJAN,
Defendants,

and SABINA BEBEE,
Intervenor.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11th JUDICIAL DISTRICT

ORIGINAL PETITION IN INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CITY OF HOUSTON ("COH"), hereinafter referred to as Intervenor,
and would make and file this its Original Petition in Intervention in connection with the
above captioned and numbered cause of action, and as grounds therefore would respectfully
show unto this Honorable Court as follows:

I.

1.1 Intervenor is a certified self-insured for purposes of workers' compensation under the Texas Labor Code.

1.2 Plaintiffs, WILLIAM R. DOWLING and JACKI DOWLING, are represented by Keith M. Fletcher, 9821 Katy Freeway, Suite 925, Houston, Texas 77024, and a copy of this Petition will be served upon them through their counsel of record.

1.3 Intervenor, SABINA BEBEE, is the surviving mother of Robert Bebee, deceased, and is represented by Roy Camberg, The Camberg Law Firm, P.C., 17225 El Camino Real, Suite 444, Houston, Texas, 77058, and a copy of the Petition will be served upon her through her counsel of record.

1.4 Defendant, CRITERIUM SYSTEMS, is represented by Robbie A. Moehlmann, Donato, Minx, Brown, & Pool, P.C., 3200 Southwest Freeway, Suite 2300, Houston, Texas 77027, and a copy of the Petition will be served upon it through its counsel of record.

1.5 Defendants, HARENDRA MATHURIA and d/b/a BHOJAN, are represented by David W. Medack and William E. Calvert III, Heard & Medack, P.C., 9494 Southwest Freeway, Suite 700, Houston, Texas, 77074, and a copy of the Petition will be served upon them through their counsel of record.

II.

2.1 At all times material, Intervenor COH provided workers' compensation insurance coverage to its employees, specifically to COH's employees, William Dowling and

Robert Bebee. This coverage provides medical and income benefits to COH's covered employees who are injured while in the course and scope of their employment.

2.2 On or about May 31, 2013, a fire occurred on or near the Southwest Inn premises located at 6855 Southwest Freeway, Houston, Texas, 77074. Plaintiff William Dowling and Robert Bebee, firefighters with the Houston Fire Department, were called to the scene to put out the fire. Plaintiff William Dowling and his team were inside the building when the roof collapsed on them. Four firefighters were killed, including Robert Bebee, and an additional thirteen were injured, including Plaintiff Dowling, whose legs were amputated as a result.

2.3 With respect to the workers' compensation benefits paid to Plaintiff William Dowling and Sabina Bebee, City Of Houston, as Intervenor, adopts and incorporates verbatim all of the claims and allegations of Plaintiff's Original Petition and Sabina Bebee's Petition in Intervention, and any subsequent amendments thereto, against Criterium Systems, Inc. d/b/a Southwest Inns, and Harendra Mathuria, individually and d/b/a Bhojan. Each of the items of negligence alleged by said Plaintiff and Intervenor, either singularly or in conjunction, was the actual and proximate cause of the injuries of William Dowling and Robert Bebee, for whom COH as Intervenor has paid workers' compensation benefits.

III.

3.1 The amount of workers' compensation benefits paid to date by the COH to or on behalf of William Dowling, as determined under the Texas Labor Code, and the amount of the COH's statutory lien presently equals \$2,492,136.63 in workers' compensation benefits, which represents \$129,244.00 in compensation benefits and \$2,362,892.63 in

medical benefits to or on behalf of William Dowling. COH, as Intervenor, is the holder of a statutory lien created by the Texas Labor Code. The amount of workers' compensation benefits paid to date by the COH to or on behalf of Sabina Bebee, as determined under the Texas Labor Code, and the amount of the COH's statutory lien presently equals \$96,228.35 in workers' compensation benefits, which represents \$85,072.00 in compensation benefits and \$11,156.35 in medical benefits to or on behalf of Sabina Bebee. COH, as Intervenor, is the holder of a statutory lien created by the Texas Labor Code.

3.2 Under Sections 417.001 *et seq.* of the Texas Labor Code, COH, as Intervenor, may pursue and by the filing of this intervention does pursue a claim against Defendants to recoup the amount of the COH's statutory lien for workers' compensation benefits paid.

3.3 As to any amounts recovered by Plaintiff William Dowling and Intervenor Sabina Bebee, if any, that exceed the amount of reimbursement to the COH for benefits paid, COH, as Intervenor, also seeks to assert its right to an advance against future benefits that such Plaintiff and Intervenor are entitled to receive.

3.4 COH as Intervenor further requests that in the event of a settlement or recovery by the Plaintiff William Dowling or the Intervenor Sabina Bebee in this matter, that the COH's rights to receive first monies, to be fully and completely reimbursed for past benefits paid and to recoup its statutory credit against future benefits not be compromised by the allocation of settlement or recovered monies among the several Plaintiffs and Intervenor Sabina Bebee in this matter.

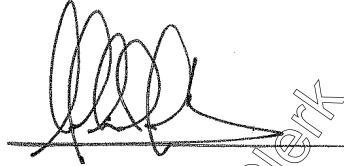
IV.

4.1 Intervenor COH has been forced to employ the law firm of PAPPAS & SUCHMA, P.C. to file this Original Petition in Intervention, and to try the same in the event this cause of action should be reached for trial. Intervenor COH is therefore entitled to recover a reasonable amount of attorney's fees, which this Intervenor claims to be in the amount of at least Five Thousand and No/100 Dollars (\$5,000.00) and which sum is reasonable for the services rendered to date and to be rendered by said law firm in this Intervention proceeding.

WHEREFORE, PREMISES CONSIDERED, Intervenor, CITY OF HOUSTON, prays that it be subrogated to the rights of the Plaintiffs herein, WILLIAM R. DOWLING and JACKI W. DOWLING, and of the Intervenor SABINA BEBEE, any recovery against Defendants, CRITERIUM SYSTEMS, INC. d/b/a SOUTHWEST INNS and HARENDRA MATHURIA, individually and d/b/a BHOJAN to the extent of the total sums which it has been required to pay to the said Plaintiffs, for any and all other and additional expenses in connection with the said injuries, for reasonable attorney's fees in the amount of at least Five Thousand and No/100 Dollars (\$5,000.00), and for all such other and further relief, both general and special, at law and in equity, to which this Intervenor may show itself justly entitled.

Respectfully submitted,

PAPPAS & SUCHMA, P.C.



By: _____

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ATTORNEYS FOR INTERVENOR
CITY OF HOUSTON

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record, by certified mail, return receipt requested, hand delivery and/or facsimile on the 27th day of May, 2015, as follows:

Via Certified Mail: 7014 3490 0000 3111 1524

Keith M. Fletcher
9821 Katy Freeway, Suite 925
Houston, Texas 77024

Via Certified Mail: 7014 3490 0000 3109 5640

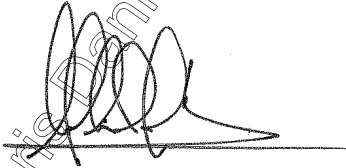
Robbie A. Moehlmann
Donato, Minx, Brown, & Pool, P.C.
3200 Southwest Freeway, Suite 2300
Houston, Texas 77027

Via Certified Mail: 7014 3490 0000 3109 5657

David W. Medack
William E Calvert III
Heard & Medack, P.C.
9494 Southwest Freeway, Suite 700
Houston, Texas 77074

Via Certified Mail: 7014 3490 0000 3109 5664

Roy Camberg
The Camberg Law Firm, P.C.
17225 El Camino Real, Suite 444
Houston, Texas 77058

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

Michael J. Portele