

CAUSE NO. \_\_\_\_\_

**JACKI DOWLING, Individually and  
on Behalf of the ESTATE OF  
WILLIAM DOWLING, DECEASED and  
as Next Friend of F.D. and FORREST  
DOWLING, FAITH DOWLING,  
RICK DOWLING and MARY DOWLING  
*Plaintiffs,***

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**IN THE DISTRICT COURT OF**

vs.

**HARRIS COUNTY, TEXAS**

**MOTOROLA SOLUTIONS, INC.,  
*Defendant.***

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**JUDICIAL DISTRICT  
(Jury Demanded)**

**PLAINTIFFS' ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

JACKI DOWLING, Individually and on Behalf of the ESTATE OF WILLIAM DOWLING, DECEASED, and as Next Friend of FOSTER DOWLING and FORREST DOWLING, FAITH DOWLING, RICK DOWLING and MARY DOWLING, (collectively referred to as "Plaintiffs"<sup>1</sup>) file this Petition against Defendant MOTOROLA SOLUTIONS, INC., (referred to as "Motorola" or "Defendant" unless otherwise indicated) and show the following:

**I.**

**DISCOVERY CONTROL PLAN**

1.1 This lawsuit is requested to be governed by a Level 3 Discovery Control Plan as provided by the Court or as agreed to by the parties.

**II.**

**REQUEST FOR DISCLOSURE**

2.1 Plaintiffs ask Defendant to disclose and produce the information and material

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<sup>1</sup> Jacki Dowling is the surviving widow of William Dowling. F.D., a minor, Faith Dowling and Forrest Dowling are the biological children of Jacki and William Dowling. Rick and Mary Dowling are the biological parents of William Dowling.



provided for production and discovery under TRCP 194.2(a)-(l).

**III.**  
**PARTIES**

3.1 Plaintiffs are Texas residents and reside within Harris County as of the filing of this suit.

3.2 Motorola Solutions, Inc. (“Motorola”) is a Delaware corporation doing business in the State of Texas and can be served with process by serving its registered agent, CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

**IV.**  
**BRIEF NOTICE FACTS**

4.1. On May 31, 2013, Captain William Dowling, deceased, sustained a massive brain injury rendering him mentally incompetent. He sustained the permanent injury while engaged in firefighting and rescue efforts at the SW Inn Hotel in Houston, Texas. His irreversible brain injury occurred when mission critical emergency radio equipment provided by defendant delayed rescuers from reaching him in time to prevent a substantial loss of oxygen to his brain when he was trapped inside the burning structure. Captain Dowling’s brain damage was catastrophic and permanent. Loss of oxygen to his brain left him with the mental capacity of a 5-6-year old child. From the time of the fire until his death, he was unable to manage any of his life affairs, unable to talk, unable to walk, unable to drive, unable to write, unable to feed himself, unable to bathe himself or attend to any meaningful life functions. He was wholly dependent on others to provide him with 24-hour round the clock care just to live.<sup>2</sup> His loving wife, Jacki, and three (3) children, Faith, Forrest and Foster, along with caring nurses and parents had to make all decisions for him

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<sup>2</sup> See Exhibit 5, a day in the life video of Captain Dowling after the fire in question.

and care for him. Legally, Captain Dowling was mentally incompetent and of unsound mind continually from the date of the May 31, 2013 fire to the date of his death on March 7, 2017.<sup>3</sup>

4.2 Captain Dowling's brain injury and resulting damages were caused by defective, untested and faulty emergency radio devices supplied, manufactured, designed, marketed and sold by defendant Motorola. Four other Houston firefighters (Beebe, Garner, Renaud, and Sullivan) died in the same fire because of the same type delays caused by Motorola's faulty radio equipment. Instead of dying, Captain Dowling "survived" to live a horrible and excruciatingly painful four more years as a child trapped in a completely broken body. All of the horror and death the Dowling plaintiffs have sustained were caused by Motorola's faulty digital radio equipment being used on the day of the fire.

4.3 Motorola marketed and sold the radio equipment to the City of Houston, Captain Dowling's employer, just weeks before the fire in question. Motorola represented that its new digital trunk radio system was fit, reliable and suitable for the intended purpose of instantly communicating emergency radio messages. Motorola claimed that when "seconds matter" its radios would dependably transmit needed rescue messages without unreasonable delay.<sup>4</sup> Captain Dowling believed in and relied on those representations prior to the fire. He bravely undertook his firefighting duties on the day of the fire believing that the defendant's radios would reliably perform if he got into trouble. They did not! Unknown to Captain Dowling, the Motorola digital radios on that day would prove to be anything but reliable. Indeed, the evidence shows that instead of the radios being reliable, the Motorola radio system actually blocked and prevented needed emergency transmissions to get through more than 339 times before Captain Dowling could be

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<sup>3</sup> Attached as Exhibit 1 is the medical opinion of Captain Dowling's treating medical doctor, Dr. Peter Bigler, MD, attesting to the medical fact that Captain Dowling lacked the mental capacity to handle his personal or business affairs from the date of the fire up to the date of his death.

<sup>4</sup> See attached Exhibit 2, one of Motorola's advertisements relating to its radios.

rescued from the building. Such blocked transmissions caused a loss of up to 27 minutes of useless or unusable rescue time to reach and recover Captain Dowling from the burning structure.

Loss of useable radio time in an emergency situation not only delayed actual rescue efforts to reach Captain Dowling, it also belonged the amount of time Captain Dowling was without breathable air in the fire. The delays contributed to his permanent and irreversible brain injury.<sup>5</sup> Plaintiffs have retained experts to review the performance of the Motorola radios on the date of the fire. The experts have been able to pinpoint how the radios profoundly failed during the time of the fire. See Exhibit 3, attached.<sup>6</sup> With diminishing oxygen in his air tank, and delays in the rescuers' ability to effectively communicate to reach him, Motorola's radios robbed Captain Dowling of not only seconds, but more than enough minutes of needed time to prevent his brain injury. Plaintiffs will show that but for the loss of time caused by the faulty radio equipment, Captain Dowling would not have sustained the brain injury complained of in this suit.

4.4 Following are but a few of the documented failures of the radio equipment experienced during the fire in question:

- a. There were an excessive number of "bonks" which caused firefighters and rescuers to be completely shut out of the radio system or unable to access any frequency on the system in order to communicate;
- b. After the roof collapse trapping Captain Dowling, rescuers and firefighters were blocked by the radio system from using their radios more than 339 times;
- c. Motorola's radio system repeatedly experienced digital delays between the time a rescuer or firefighter would speak into a radio and the time the message was actually sent and received by another user of the system;

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<sup>5</sup> In addition to the Motorola radios failing, Motorola had approved the use of thermally-untested Scott microphones to be attached to the radios. During the fire plastic covering on the wires of the microphones melted allowing the wires to touch and short out the radio transmissions during the fire. Motorola should never have approved the use of these untested and unfit microphones for firefighting.

<sup>6</sup> Exhibit 3 is an initial expert report detailing the multiple failings and mishaps of Motorola's radio equipment during the fire and rescue efforts being litigated in this case. The City of Houston Fire Department also commissioned a post-fire investigation which also confirmed many of the same problems with the performance of the Motorola radios during the fire as are outlined in this suit.

- d. There were excessive “quick keys” which also blocked entire radio talk groups from communicating. The “quick keys” occurred when in the hectic environment of the fire a radio microphone button was accidentally struck. Tragically, each of these quick keys froze or blocked entire talk groups between 3-4 seconds from using the system. Minutes of lost time was caused by this faulty design/programming of the radios;
- e. The Motorola radios would also suddenly stop communicating with one another even though the radios would be within a few feet of one another. Instead of communicating, the radios would display an “out of range” notice preventing communications;
- f. Confusion was caused by Motorola’s programming of the radios to use the same “bonk” tone for both the “out of range” and “Talk Group” busy tones. Rescuers could not decipher from the radio tone if the Talk Group was busy or whether they needed to move to improve reception;
- g. Motorola approved the use of thermally-untested Scott microphone wiring to be used in foreseeable fire conditions. Such untested wiring allowed the wire housing to melt, exposing the unsheathed wiring allowing the wires to touch shorting out the system;
- h. Because of shorts caused by the melted wiring, false radio signals were sent across the system suggesting voluntary radio activity by trapped firefighters. Such false signals misdirected the efforts of rescuers from victims like Captain Dowling to “ghost” transmissions;
- i. The radios allowed “bleed over” to occur—this occurred when one Talk Group on the radios would suddenly and inexplicably transfer over to another Talk Group without any input or intent of the radio operators. When “bleed over” occurred, it increased the number of bonks tying up the radio system;
- j. Overriding firefighter communications by OEC radios with no notification to the firefighters in the building. Such would prevent firefighters and rescuers from knowing if the emergency transmissions had been heard despite indications that the message had been successfully transmitted;
- k. Motorola’s radios had “Emergency Call” buttons that were unusable in a fire because the buttons were not conducive to use with firefighter gloves, resulting in the preposterous situation that a firefighter in a fire would have to remove protective her gloves to activate the radio's emergency call button.<sup>7</sup>

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<sup>7</sup> Despite multiple firefighters on scene being trapped and injured not one “Emergency Call Button” was activated in the SW Inn Fire.

4.5 Because of the numerous failings, programming errors and defects in and with the Motorola radio equipment nearly 27 minutes of useless radio time occurred. Brain damage begins when the brain is robbed of oxygen in three (3) minutes. Without effective radio communications firefighters and rescuers were forced to resort to unreliable and ineffective ways of communicating—i.e., by using hand signals, gestures, face-to-face communications, moving to different spots just to be seen or heard, etc. Loss of effective radio communications contributed to Captain Dowling being deprived of oxygen and his resulting permanent brain injury. The non-performance of the Motorola radio system during the SW Inn fire was hardly consistent with Motorola’s advertisements claiming the system was reliable or fit for use in emergency firefighting and rescue efforts.

4.6 Disturbingly, Motorola was well-aware of problems with its digital radio equipment well before the SW Inn fire. It had and was receiving numerous complaints about the radios malfunctioning before Captain Dowling’s injuries. And, in spite of such actual knowledge Motorola still marketed and sold its troubled radios to the City of Houston. It did so by misrepresenting that the devices possessed characteristics, qualities and reliability that they did not in fact possess. Plaintiffs complain that such deceptive marketing is actionable in this case and exposes Motorola to punitive and treble damages.

4.7 Motorola warranted that its radio equipment was suitable and fit for the foreseeable purposes to which it was being used at the time of the fire in question. However, the performance of that equipment on the date of the fire demonstrated it was not fit or suitable. Motorola breached both the implied and express warranties associated with the radio system it provided to Captain Dowling, the deceased Houston firefighters, and City of Houston. As a result, Captain Dowling

suffered enhanced and permanent damages and injuries because of Motorola's defective radio equipment.

4.9 In addition to designing, manufacturing, marketing, and selling defective and unfit radio equipment for use by emergency rescue personnel, Motorola marketed its radio equipment without reasonable warnings. Instead of warning of reasonably known limitations and defects, Motorola in fact misled and/or misrepresented the suitability and fitness of its radio equipment, including failing to disclose that the radios were not reliable to transmit emergency communications in a fire. Motorola failed to warn Captain Dowling of the risks and dangerous conditions its radios created for him in case of a fire or needed rescue efforts. Motorola's duties to Captain Dowling were non-delegable because they concerned life-safety issues.

4.10 In addition to pursuing Captain Dowling's survival claims against Motorola in this lawsuit, this suit is also brought on behalf of all wrongful death beneficiaries of Captain Dowling, including his wife, Jacki Dowling, individually, and as next friend of their minor son Foster, and their adult children, Faith Dowling (daughter) and Forrest Dowling (son). Captain Dowling's parents, Rick and Mary Dowling also bring wrongful death claims against defendant. No debts of the estate of Captain Dowling are known to exist. All wrongful death beneficiaries are named in this suit and each of them seeks damages, both compensatory and punitive, from Motorola totaling in aggregate in excess of \$25,000,000.00, plus additional punitive damages within the sound discretion of the court and/or jury. The survival claims of Captain Dowling seek compensatory damages against Motorola totaling more than \$20,000,000.00, plus additional punitive damages within the sound discretion of the court and/or jury.

**V.**  
**LIMITATIONS DO NOT BAR ANY OF PLAINTIFFS' CLAIMS**

5.1 Captain Dowling suffered a catastrophic, irreversible and permanent brain injury on May 31, 2013 leaving him with the mental capacity of a 5-6 year old child. He was mentally incompetent and of an unsound mind continuously from the date of the fire to the date of his death on March 7, 2017.<sup>8</sup> Because of his mental incapacity (“unsound mind”), any applicable statutes of limitation were tolled during the entire period of his disability and incapacity pursuant to Tex. Civ. Prac. & Rem. Code Section 16.001(a)(2); see also, *Ruiz v. Conoco, Inc.* 868 S.W.2d 752 (Tex. 1993) (disability of an individual tolls limitations even if a prior suit had been filed in the name of the incompetent individual).<sup>9</sup> Accordingly, between May 31, 2013 and March 7, 2017 all statutes of limitations pertaining to Captain Dowling’s claims were tolled. On the date of his death, March 7, 2017, the applicable two (2) year statute of limitations for the wrongful death claimants’ claims commenced pursuant to Tex. Civ. Prac. & Rem. Code Section 16.003. Plaintiffs have timely filed this suit within two years of Captain Dowling’s death.

**VI.**  
**NEGLIGENCE**

6.1 Plaintiffs complain that Motorola was negligent in at least one or more of the following non-exhaustive particulars:

- a. representing their radio components and equipment were fit and suitable for use during fire conditions of the type Captain Dowling encountered;
- b. failing to reasonably warn regarding the limitations and defects in their equipment;
- c. negligently marketing their radio equipment;

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<sup>8</sup> See Attached Exhibit 1, medical opinion of Captain Dowling’s personal physician, Dr. Peter Bigler, MD.

<sup>9</sup> See attached Exhibit 4, a copy of the Texas Supreme Court’s *Ruiz* opinion. It may be suggested in this case that because a suit was previously filed in the name of Captain Dowling. The reasoning in *Ruiz* destroys such a contention that limitations must have run because of that act. As the *Ruiz* Court observed, the controlling issue is the mental incapacity of the individual.



- d. failing to reasonably test and design their equipment for fire conditions;
- e. negligently programming or failing to properly program the radios and radio system before allowing them to become operational;
- f. unreasonably approving the use of the Scott E-Z Radio System before reasonably testing the devices for use in fire conditions with the Motorola radios;
- g. knowingly marketing digital radios as reliable with actual knowledge they were not;
- h. pursuing profit over the safety of the firefighters/first responders;
- i. failing to reasonably design the radios for the intended or foreseeable use by firefighters/rescuers;
- j. knowing the actual danger their equipment posed but deceptively representing and marketing its suitability, qualities and characteristics that were in fact false; and
- k. negligent product liability, as well as strict product liability.

**VII.**  
**PRODUCT LIABILITY/FAILURE TO WARN**

7.1 For reasons alleged herein, and as may be proved at trial, Motorola is liable for one or more of the following non-exhaustive claims that was/were a proximate or producing cause of Plaintiffs' damages: product liability, design defect, manufacturing defect, deceptive trade practices, strict product liability, negligent product liability, marketing defect, failure to warn, breach of warranty (implied and express), and enhanced damages suffered by Plaintiffs. The defects included at least the following:

- representing that the Motorola radio system provided reliable communications when life and limb were at stake;
- representing that the Motorola radio system would provide reliable controls for command and field operations;
- failing reasonably to disclose restrictions and/or limitations of the system and radios;
- failing to disclose known problems with the radio devices before making them operational by Captain Dowling;
- providing unreasonable and/or incomplete instructions on how the radios and radio system would fail or operate in real life fire scenarios;

- failing to provide reasonable warnings to firefighters regarding operational limitations of the radio system; and
- overstating the abilities and reliability of the radio devices and communication system.

Had Plaintiffs known that defendant's radio devices, equipment and/or communications system were not reliable or fit for their intended purposes as advertised and marketed by defendant, or that the devices would interfere with, impede and frustrate the ability of rescuers to reasonably communicate with one another during the firefighting and rescue efforts, they would not have taken the risks they did take or would have taken other measures to safeguard against risks that resulted in the injuries and damages complained about in this suit.

### **VIII.** **DECEPTIVE TRADE PRACTICES**

8.1 Motorola engaged in deceptive trade practices within the state of Texas and is subject to statutory treble and/or punitive damages. Motorola knowingly misrepresented characteristics, abilities, qualities, suitability and/or fitness of its radios and radio system used at the time of the fire in question that were false. Captain Dowling was a foreseeable and intended user of the equipment and sustained actual damages as alleged in this suit. All plaintiffs seek actual and punitive damages from Motorola for its deceptive, false and knowing marketing behavior which caused or produced damages alleged in this case.

### **IX.** **AGENCY AND RESPONDEAT SUPERIOR THEORIES**

9.1 Motorola is liable under theories of ostensible, apparent, implied and express agency, as well as ratification or adoption of the conduct/behavior of others. Motorola is also liable under theories of *respondeat superior* and vice principal liability.

**X.**  
**GROSS NEGLIGENCE**

10.1 Plaintiffs would further show that each of the acts, conduct and omissions of the Motorola, taken singularly and/or in combination, constitutes gross negligence, legal malice and were proximate and/or producing causes of the injuries and damages asserted by plaintiffs in this suit. The conduct, acts and omissions of Motorola involved an extreme degree of risk, considering the probability and magnitude of potential harm, and Motorola had subjective awareness of the risks involved but nevertheless proceeded with conscious indifference to the rights, safety and welfare of Captain Dowling, other firefighters and the plaintiffs. Such gross negligence/legal malice entitles Plaintiffs to recover exemplary/punitive damages against Motorola.

**XI.**  
**BREACH OF WARRANTY**

11.1 The allegations contained herein are incorporated by reference as if set forth in full.

11.2 Plaintiffs further allege and intend to show that Motorola breached express, statutory and/or implied warranties, including but not limited to the warranties of fitness, use, reliability and appropriateness of its radio devices as emergency life-safety devices and fire/rescue communications equipment. Plaintiffs, as well as the City of Houston, provided pre-suit notice to Motorola regarding the defects complained of herein prior to this suit being instituted.

**XII.**  
**DAMAGES**

12.1 All plaintiffs seek damages for injuries and Captain Dowling's suffering and resulting death, including but not limited to each of the following: (a) past pain and suffering; (b) future pain and suffering; (c) past disfigurement; (d) future disfigurement; (e) past impairment; (f) future impairment; (g) past mental anguish; (h) future mental anguish; (i) past lost wages; (j) future

lost wages; (k) past medical, burial, counseling and other expenses; and (l) future medical and other expenses.

12.2 The sum of Plaintiffs' damages is within the jurisdictional limits of this Court as alleged above. All conditions precedent to bring all claims in this case have occurred or have been performed.

**XIII.**  
**NOTICE OF INTENT TO USE DOCUMENTS**

13.1 Notice is provided that Plaintiffs intend to use any and all materials, tangible things, information and/or documents produced and/or obtained via discovery in this case, subject to applicable evidentiary rules and court rulings. This statement is not intended to be, nor is it, any admission that matters exchanged in discovery in this case are admissible in evidence.

**XIV.**  
**JURY DEMAND**

14.1 Plaintiffs demand a jury trial and the appropriate jury fee will be paid in accordance with the law.

**XV.**  
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs, seek at least the following non-exhaustive relief:

- 1) Actual damages as alleged herein;
- 2) Punitive damages as alleged herein;
- 3) Cost and interest (pre-and post-judgment);
- 4) Attorney's fees as permitted or authorized by law or in equity; and
- 5) All other relief to which Plaintiffs may be entitled.

Respectfully submitted,

**THE HALL LAW GROUP, PLLC**

*/s/ Benjamin L. Hall, III*

**Benjamin L. Hall, III**

State Bar No. 08743745

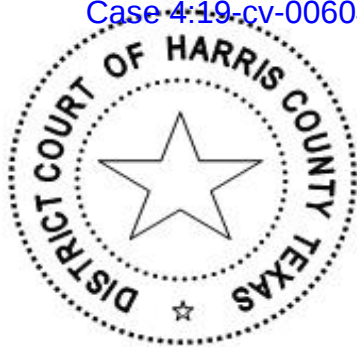
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**ATTORNEYS FOR PLAINTIFF**



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this February 20, 2019

Certified Document Number: 83953053 Total Pages: 13

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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