

United States District Court
Southern District of Texas

ENTERED

November 27, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CHRISTOPHER BARDEN, §
Individually and on behalf of the §
Estate of Anthony Barden, §
Plaintiff, §

v. §

CIVIL ACTION NO. H-17-2717

AMF BOWLING CENTERS INC., §
d/b/a AMF Willow Lanes, §
Defendant. §

MEMORANDUM AND ORDER

This case is before the Court on the Motion to Designate an Unknown Responsible Third Party (“Motion”) [Doc. # 6] filed by Defendant AMF Bowling Centers Inc. d/b/a AMF Willow Lanes (“AMF”), to which no opposition has been filed. Having reviewed the record and the applicable legal authorities, the Court **grants** the Motion.

In pertinent part, § 33.004 of the Texas Civil Practice and Remedies Code, provides that “[a] defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party.” Under § 33.011(6) of the Texas Practice & Remedies Code, a “responsible third party” means “any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or

omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these.” See TEX. CIV. PRAC. & REM. CODE § 33.011(6); *Werner v. KPMG LLP*, 415 F. Supp. 2d 688, 702-03 (S.D. Tex. 2006); *Cortez v. Frank’s Casing Crew & Rental Tools*, 2007 WL 419371 (S.D. Tex. Feb. 2, 2007). If a person is held to be a responsible third party, that person is to be included in the list of parties the jury may consider for allocation of responsibility for the plaintiff’s damages. See TEX. CIV. PRAC. & REM. CODE § 33.003.

Plaintiff alleges that Anthony Barden was struck and killed by a hit-and-run driver while he was walking on the Tomball Parkway service road. Plaintiff filed this lawsuit alleging that AMF violated the Texas Dram Shop Statute by serving alcoholic beverages to Barden even though he was obviously intoxicated. Defendant seeks to designate as a responsible third party the driver who struck and killed Barden. Because the driver’s identity is currently unknown, Defendant seeks to designate the driver as “John Doe.”

Based on the foregoing, Defendant has adequately alleged a factual basis for naming John Doe as a responsible third party. As a result, it is hereby

ORDERED that the Motion to Designate an Unknown Responsible Third Party [Doc. # 6] is **GRANTED**. If evidence is presented at trial to indicate that John Doe

contributed to causing Plaintiff's injury, that party will be included on the verdict form as a potential responsible third party.

SIGNED at Houston, Texas, this **27th** day of **November, 2017**.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE