

Tonya Pointer

NO. DC-17-02833

DARWYN HANNA and MARIE HANNA VS. ECHO TOURS & CHARTERS, L.P. D/B/A ECHO TRANSPORTATION; ET&C GP, LLC; TBL GROUP, INC.; AND CSX TRANSPORTATION, INC.	§ § § § § § § § § §	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS ___ JUDICIAL DISTRICT
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**PLAINTIFFS' ORIGINAL PETITION
AND REQUEST FOR TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs, Darwyn Hanna and Marie Hanna (collectively referred to as "Plaintiffs"), and files this their Original Petition, and as grounds thereof, would show as follows:

Discovery Control Plan

Plaintiffs allege that discovery in this case is intended to be conducted under Texas Rules of Civil Procedure, Rule 190.2; Discovery Control Plan Level 3.

Plaintiffs

1. Plaintiffs, Darwyn Hanna and Marie Hanna, are residents of Bastrop County, Texas.

Defendants

2. Defendant, Echo Tours & Charters, L.P. d/b/a ECHO Transportation, (hereinafter referred to as "ECHO"), is a Texas limited partnership, and ECHO Transportation's principal office is in Dallas, Texas. Defendant ECHO may be served with process by serving its registered agent, Elisa C. Fox, 801 Cherry Street, Suite 2000, Unit No. 46, Fort Worth, Texas, 76102.

3. Defendant, ET&C GP, LLC (hereinafter referred to as "ECHO"), is a Texas limited liability company with its principal office in Dallas, Texas. Defendant ECHO may be served with process by serving its registered agent, Elisa C. Fox, 801 Cherry Street, Suite 2000, Unit No. 46, Fort Worth, Texas, 76102.

4. Defendant, TBL Group, Inc., (hereinafter referred to as "ECHO"), is a Texas corporation with its principal office in Dallas, Texas. Defendant ECHO may be served with process by serving its registered agent, Elisa C. Fox, 801 Cherry Street, Suite 2000, Unit No. 46, Fort Worth, Texas, 76102.

5. Defendant, CSX Transportation, Inc., (hereinafter referred to as "CSXT"), is a foreign corporation authorized to do business in the State of Texas. Defendant CSXT may be served with process by serving its registered agent, C. T. Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas, 75201.

Jurisdiction and Venue

6. There is no basis for federal diversity jurisdiction because both Plaintiffs are residents of the State of Texas and so is Defendant ECHO. Further, Plaintiffs are not pleading any claims preempted in *Norfolk v Shanklin*, 529 U.S. 344, 120 S.Ct. 1467, 146 L.Ed.2d 374 (2000); or *CSX Transportation, Inc. v Easterwood*, 507 U.S. 658, 113 S.Ct. 1732, 123 L.Ed.2d 387 (1993), or those cases progeny.

7. The Court has subject matter jurisdiction over the controversy because the damages are within the jurisdictional limits of the court.

8. Venue is proper in Dallas County pursuant to 15.002(a)(3) and 15.005 of the Texas Civil Practice and Remedies Code. ECHO's principal place of business (according to its website and based on how its operations are structured) is in Dallas County at 9314 West Jefferson Blvd, which

makes venue here proper according to 15.002(a)(3). Venue is also proper in Dallas County pursuant to Section 15.005, as Plaintiffs have established proper venue against one defendant (ECHO), which means that this Court also has venue for all other defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

Facts

9. On March 7, 2017, a CSXT train traveling on a CSXT track violently struck a casino tourist bus owned and operated by ECHO. This tragic collision occurred at a railroad crossing on Main Street in Biloxi, Mississippi. The crossing was the responsibility of CSXT and Plaintiff alleges the crossing was an extra hazardous crossing.

10. The tourist bus originated from Austin, Texas and from Bastrop, Texas. The tourist bus was carrying approximately 50 passengers, largely members of the Bastrop Seniors Center.

11. The tourist bus was owned and operated by ECHO. ECHO took the passengers from the Austin/Bastrop area to casinos along the Mississippi Gulf Coast.

12. On day three of the trip, while traveling from one casino to another casino in Biloxi, the tourist bus attempted to travel across a railroad crossing located on Main Street.

13. However, the tourist bus got stuck on the crossing, where it remained for approximately five minutes until it was struck by the CSXT train.

14. The driver of the tourist bus failed to heed the warning sign located near the track that warned of a “humped” crossing.

15. The CSXT train failed to apply its brakes in order to avoid the collision.

16. Moreover, CSXT failed to properly design and maintain the crossing, as a Pepsi truck got stuck on this same crossing two months earlier and likewise was struck by a CSXT train.

17. The collision with the tourist bus resulted in serious injuries to each of the Plaintiffs named herein, as well as serious injuries or deaths to the roughly 46 other passengers on the tourist bus.

Request for Temporary Injunction and Temporary Restraining Order

18. Plaintiffs herein request a temporary injunction and temporary restraining order to prevent Defendants herein from destroying any evidence related to the accident herein, including the engine(s), the black boxes on the engines and/or bus, any videotapes or other recordings, written documents, records, information or other evidence that would result in the Plaintiffs' being unable to properly investigate this claim and determine the exact sequence of events that caused this fatal collision. Plaintiffs further request a temporary injunction and temporary restraining order requiring that the vehicles involved in the collision be preserved for inspection and not be repaired or modified until Plaintiffs' experts have the opportunity to inspect them.

19. In addition, Plaintiffs herein request a temporary injunction and temporary restraining order requiring that the tourist bus operated by ECHO involved in the collision be preserved for inspection and not be repaired or modified until Plaintiffs' experts have the opportunity to inspect them. Plaintiffs further request a temporary injunction and temporary restraining order requiring ECHO to preserve any videotapes or other recordings, written documents or other evidence pertaining to this accident. This includes any videotapes obtained by ECHO from witnesses or businesses in the area.

20. If Plaintiffs' application is not granted, harm is imminent because Defendants could destroy evidence related to the sequence of events. Without the Temporary Injunction and Temporary Restraining Order, Plaintiffs will be permanently harmed and unable to fully investigate the cause of this accident.

21. Plaintiffs herein stand willing and able to post a bond.

22. In order to preserve the status quo and the due process rights of Plaintiffs during the pendency of this action, each Defendant should be cited to appear and show cause why it should not be temporarily restrained as requested hereinabove.

Negligence and Gross Negligence of Defendant CSXT

23. The accident made the basis of this case was caused by the negligence and gross negligence of CSXT as follows:

- a. Failing to keep a proper lookout;
- b. Failing to slow and/or stop the train in order to avoid a specific individual hazard;
- c. Failing to properly train its employees to keep appropriate lookout;
- d. Failing to have proper posting of emergency telephone numbers and the proper crossing number to report problems on the tracks in order to prevent a collision;
- e. Failing to properly inspect the track and take reasonable precautions to prevent individuals from placing themselves in harm's way due to the steep grade at the crossing;
- f. Failing to operate said train at a reasonable rate of speed given the circumstances prior to and until the accident;
- g. Failing to get off the throttle and apply its brakes in a timely manner;
- h. Failing to get off the throttle and properly apply the brakes in a timely manner in order to avoid the collision;
- i. Failing to perform any studies, inspection or analysis into the past problems at the crossing, most recently the incident involving the Pepsi truck;
- j. Operating the train in a reckless manner; and
- k. Allowing the crossing to become an extra-hazardous crossing due to surrounding conditions (steep grade, loose gravel,).

24. Plaintiffs would further show the Court that the accident was caused proximately and/or solely as a result of the negligence, negligence per se and gross negligence of CSXT, without any negligence attributable to the Plaintiff.

25. Plaintiff would also show that this crossing was ultra-hazardous and dangerous due to the steep grade and the potential for "high centering" a vehicle in the area. This crossing was the responsibility of CSXT, who failed to properly maintain the crossing.

26. All of the above acts and/or omissions, singly or in combination with the others, constituted negligence and gross negligence that were the proximate causes of the injuries suffered by Plaintiffs as described herein. In addition, these acts involve an extreme degree of risk, considering the probability and magnitude of potential harm to others, and a conscious indifference to the rights, safety and welfare of others. Therefore, Plaintiffs are entitled to multiple, special, exemplary and/or punitive damages against CSXT in an amount to be determined by a jury. CSXT owes a high degree of care to these Plaintiffs.

27. As a result of the negligence, negligence per se and gross negligence of CSXT, Plaintiffs were seriously injured when the train crashed into their tourist bus.

Causes of Action for Negligence and Gross Negligence Against ECHO

28. Plaintiffs allege liability for the gross negligence of ECHO for attempting to cross this crossing in a tourist bus and for stopping the tourist bus on the railroad tracks. Plaintiffs would show that ECHO was negligent and grossly negligent in one or more of the following:

- a. In stopping on a railroad crossing;
- b. In failing to heed the warning sign located near the track warning of a humped crossing;
- c. In failing to keep a proper lookout after stopping on a railroad crossing;
- d. In failing to protect the passengers it was carrying; and
- e. In failing to call the railroad to alert CSXT that its tourist bus was stopped on the tracks at this crossing.

29. All of the above acts and/or omissions, singly or in combination with the others, constituted negligence and gross negligence which were the proximate causes of the injuries suffered by Plaintiffs as described herein. In addition, these acts involve an extreme degree of risk, considering the probability and magnitude of potential harm to others, and a conscious indifference

to the rights, safety and welfare of others. Therefore, Plaintiffs are entitled to multiple, special, exemplary and/or punitive damages against Defendants in an amount to be determined by a jury. ECHO owed a high degree of care to these Plaintiffs.

Damages - Claims of Darwyn Hanna

30. Plaintiff, Darwyn Hanna, is entitled to recover the following damages:
 - a. Pain and suffering in the past;
 - b. Pain and suffering in the future;
 - c. Mental anguish sustained in the past as a result of fearing for death as the train barreled toward crashing into him;
 - d. Mental anguish sustained in the future as a result of fearing for death as the train barreled toward crashing into him;
 - e. Loss of companionship and society sustained in the past as a result of the injuries of his wife;
 - f. Loss of companionship and society which, in reasonable probability, he will sustain in the future as a result of the injuries of his wife; and
 - g. Exemplary damages based on the Defendants' gross negligent conduct

31. All of the above listed elements of damages were brought about to occur and were proximately caused by the above referenced conduct of the Defendants herein.

Damages - Claims of Marie Hanna

32. Plaintiff, Marie Hanna, is entitled to recover the following damages:
 - a. Pain and suffering in the past;
 - b. Pain and suffering in the future;
 - c. Mental anguish sustained in the past as a result of fearing for death as the train barreled toward crashing into her;
 - d. Mental anguish sustained in the future as a result of fearing for death as the train barreled toward crashing into her;

- e. Loss of companionship and society sustained in the past as a result of the injuries of her husband;
- f. Loss of companionship and society which, in reasonable probability, she will sustain in the future as a result of the injuries of her husband; and
- g. Exemplary damages based on the Defendants' gross negligent conduct

All of the above listed elements of damages were brought about to occur and were proximately caused by the above referenced conduct of the Defendants herein.

33. Plaintiffs would further show that as a direct and proximate result of the incident, Plaintiffs have suffered extreme physical pain, suffering, mental anguish, and in all probability, will be forced to endure physical pain, suffering, and mental anguish for an undetermined length of time in the future, and probably for the rest of their life.

Prejudgment Interest

- 34. Plaintiffs are entitled to prejudgment interest on the damages they have sustained.

Rule 47 Statement

- 35. Pursuant to Rule 47, Plaintiffs seek monetary relief over \$1,000,000.

Jury Demand

- 36. Plaintiffs hereby respectfully demand a trial by jury.

Self-Authentication

37. Plaintiffs hereby invoke Rule 193.7 of the Texas Rules of Civil Procedure regarding Self-Authentication. This is a notice that Plaintiffs may use in pre-trial or trial any pleading filed or document produced by any of the Defendants.

Prayer

38. For these reasons, Plaintiffs ask that Defendants be cited to appear and answer and that Plaintiffs have judgment against Defendants for the following:

- a. Actual damages within the jurisdictional limits of this court;
- b. Exemplary damages as allowed by law;
- c. Pre-judgment (from the date of injury through the date of judgment) and post-judgment interest as allowed by law;
- d. Costs of suit; and
- f. All other relief, in law and in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

WELLER, GREEN, TOUPS & TERRELL, L.L.P.
Post Office Box 350
Beaumont, Texas 77704
(409) 838-0101
Fax: (409) 832-8577

BY: /s/ Mitchell A. Toups

MITCHELL A. TOUPS
STATE BAR NO. 20151600

Gregory K. Evans
TX Bar No.
LAW OFFICES OF GREGORY K. EVANS
3900 Essex, Suite 690
Houston, TX 77027
(713) 840-1299
(281) 254-7886 FAX
greg@gevanlaw.com

Peter Malouf
TX Bar No. 24006539
The Law Office of Peter G. Malouf
PO Box 12745
Dallas, Texas 75225
(972) 971-5509
Email: pm@pmaalouflaw.com

ATTORNEYS FOR PLAINTIFFS

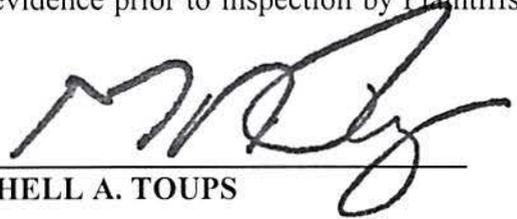
THE STATE OF TEXAS

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COUNTY OF JEFFERSON

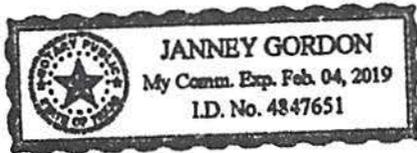
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Before me, the undersigned Notary Public, on this day personally appeared Mitchell A. Toups, who, after being duly sworn, stated under oath that he is an attorney for the Plaintiffs in this action; that he has read the above Request for Temporary Restraining Order and states that the facts concerning the preservation of the evidence, including restraint from repair or modification of the vehicles and engine, and preservation of the videotapes, other documents and evidence are important to the rights of my clients, and the destruction of this evidence prior to inspection by Plaintiffs' experts will result in imminent harm to my clients.



MITCHELL A. TOUPS

SUBSCRIBED AND SWORN TO BEFORE ME on March 9, 2017, to certify which witness my hand and official seal.



NOTARY PUBLIC, STATE OF TEXAS