



**I.**  
**DISCOVERY TRACK**

1.1 Plaintiffs plead that this case should be assigned to Discovery Track Three pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, and will seek an agreed Order or other Court Order to this effect.

**II.**  
**PARTIES**

2.1 Plaintiff, Dee Voigt, is an individual citizen and resident of McMahan, Texas. He is bringing his individual wrongful death claims for the loss of his mother, Peggy Hoffman. He is also bringing claims as the Representative of the Estate of Peggy Hoffman, and on behalf of all those entitled to recover for the death of Peggy Hoffman, under the Texas Wrongful Death Act.

2.2 Defendant, ECHO Tours and Charters, LP d/b/a ECHO Transportation (hereafter referred to as ECHO), is a Texas limited partnership with its principal place of business in Dallas, Texas. ECHO can be served at its principal place of business located at 9314 West Jefferson Blvd., Dallas, TX 75211.

2.3 Defendant, TBL Group Inc. (hereafter referred to as TBLG), is a Texas corporation with its principal place of business in Houston, Texas. TBLG can be served with process through its registered agent, Elisa Fox, at 801 Cherry Street, Unit 46, Fort Worth, TX 76102.

2.4 Defendant, Diamond Tours, Inc. (hereafter referred to as Diamond Tours), is a Florida Corporation with its principal place of business in Fort Meyers, Florida. Diamond Tours can be served with process through its registered agent, E. Murray Moore Jr., at 215 S. Monroe Street, Suite 200, Tallahassee, FL 32302.

2.5 Defendant, John Doe, was the driver of a passenger bus involved in the

accident giving rise to this lawsuit. Plaintiffs have sought, but are unable to obtain, exact identifying information as to John Doe. Defendant Doe is an individual believed to be employed by ECHO. Defendant Doe is believed to be a resident of Texas.

2.6 CSX Transportation, Inc. is a Virginia corporation doing business in the State of Texas with its principal place of business in Jacksonville, Florida. CSX Transportation, Inc. can be served with process through its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

### III. JURISDICTION AND VENUE

3.1 The amount in controversy far exceeds the minimal jurisdictional limits of this Court. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiffs state that they seek, by their lawsuit, monetary relief over \$1,000,000.00.

3.2 Venue in this case is proper in Dallas County, Texas, under the general venue rule of Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code, because it is the county of defendant, ECHO's principal place of business at the time the cause of action accrued.

3.3 Venue is proper in Dallas County as to all Defendants pursuant to Section 15.005 of the Texas Civil Practice and Remedies Code because venue is proper in Dallas County as to Defendant ECHO, and because all of Plaintiffs' claims arise out of the same transaction, occurrence, or series of transactions or occurrences.

3.4 Plaintiffs expressly disavow that any claims are being made pursuant to federal law, treaties, or constitution. Although the amount in controversy exceeds \$75,000.00, there is a lack of complete diversity because at least one plaintiff and one defendant are both citizens of Texas. Further, one or more of the properly joined and

served Defendants are citizens of the state in which this action is brought. Any removal, or consent to removal, of this case to federal court would be improper.

#### IV. GENERAL ALLEGATIONS OF FACTS

4.1 On March 7, 2017, an ECHO bus traveling from Austin, Texas to Biloxi, Mississippi was struck by a CSX freight train, leaving at least four people dead and numerous passengers injured. The accident happened at approximately 2:15 p.m., as the northbound charter bus, carrying more than 40 people, was stopped, straddling the tracks at the Main Street railroad crossing in Biloxi, Mississippi. The charter bus appeared unable to move from the crossing, when the 52-car train, pulled by three locomotives, slammed into the charter bus. The force of the collision pushed the bus approximately 200 feet after impact.

4.2 A "Humped" crossing sign indicating low ground clearance was posted several feet in advance of grade crossing.

4.3 After the accident, it took more than thirty minutes for witnesses and emergency crews to remove injured passengers through the emergency windows. The investigation into the cause of the accident is ongoing.

4.4 Defendant John Doe was driving the bus in the course and scope of his employment for ECHO. Peggy Hoffman of Lockhart, Texas was a passenger in the bus and paid consideration to Diamond Tours for transportation in the Echo bus. As a result of this accident, Peggy Hoffman suffered serious personal injuries, which ultimately resulted in her death. Mrs. Hoffman, a retired assistant principal of Lockhart High School, was traveling to South Mississippi on a seven-day charter trip organized by Bastrop Senior Center.

4.5 Two months prior, on January 5, 2017, another CSX Transportation train hit a Pepsi delivery vehicle at precisely the same Main Street crossing. The tractor-trailer had become hung up and immobilized by the steep grade at the crossing. The driver of the Pepsi truck, after he was unable to move his vehicle, called for help and had attempted to flag down the CSX train before it ultimately crashed into his stopped truck.

4.6 In fact, at this precise crossing there have been sixteen (16) similar accidents since 1976.

4.7 Dallas-based ECHO is a wholly owned subsidiary of TBLG. ECHO and TBLG are common carriers who are in the business of carrying passengers for hire, hold themselves out for hire by the public, and are available for hire by the general public. The Defendants were in the course of acting as common carriers with regard to Peggy Hoffman, at the time of the subject incident.

## **CLAIMS FOR RELIEF**

### **V. NEGLIGENCE**

5.1 Defendants JOHN DOE, ECHO, TBLG, and Diamond Tours committed actions of omission and commission, which collectively and severally, constituted negligence, which were proximate causes of the death of Ms. Hoffman.

5.2 Defendant John Doe had a duty to exercise a high degree of care and breached that duty by:

- (a) failing to control the bus;
- (b) failing to keep a proper lookout as a reasonable and prudent person would have done;

- (c) failing to act as a reasonable and prudent person would have done; and
- (d) failing to abide by and/or observe traffic signs.

5.3 Defendant ECHO is liable for the conduct of Defendant John Doe under the doctrine of *respondent superior* because John Doe, at all relevant times, acted within the course and scope of his employment for Echo. At the time of the incident, Defendant John Doe was operating the vehicle in the course and scope of his employment and/or agency for Defendant Echo. Defendant Echo intentionally granted Defendant John Doe the authority to act on behalf of Echo. The relevant acts of Defendant John Doe were performed while in the employment of Echo, to further its business, to accomplish the objective for which Defendant John Doe was hired, and within the scope of his employment or within the authority delegated to him. Defendant Echo, therefore, is vicariously liable for the negligence of Defendant John Doe.

5.4 Defendant ECHO committed acts of omission and commission, which collectively and severally constituted negligence and which were a proximate cause of the injuries and the damages of Plaintiffs.

5.5 Defendants, ECHO and TBLG had a duty to exercise a high degree of care and breached that duty by acts of negligence that include, but are not limited to, failing to properly train drivers of vehicles regarding the appropriate methods and procedures for safely handling the vehicle and its passengers in emergency situations.

5.6 The negligence of Defendants ECHO, TBLG, and John Doe on the occasion in question was a proximate cause of the occurrence in question and the injuries and the damages of Plaintiffs.

5.7 ECHO and TBLG are jointly and severally liable for the damages arising out of this incident because they are a joint enterprise and/or joint venture with regard to the operation and maintenance of the charter bus.

**VI.  
CAUSE OF ACTION AGAINST CSX TRANSPORTATION - NEGLIGENCE**

6.1 CSX Transportation committed acts of commission and omission, collectively and severally, constituting negligence, which were a proximate cause of the accident, the death of Peggy Hoffman, and Plaintiffs' damages.

6.2 CSX Transportation had a duty to maintain the subject railroad crossing where the incident occurred, including the duty to maintain the condition of the roadway traversing the crossing and its grade. CSX Transportation owed a duty to the driving public to act reasonably when maintaining the subject railroad crossing, to ensure that the crossing was not ultrahazardous or so dangerous that persons using ordinary care could not pass over it safely. It also had a duty to act reasonably to adequately warn the driving public of the existence of any ultra hazardous conditions in the crossing. CSX Transportation failed to act reasonably, because, at the time of the subject collision, the railroad failed to prevent the ultra hazardous conditions.

6.3 CSX Transportation's acts and omissions proximately caused the subject train/vehicle collision, the death of Peggy Hoffman, and Plaintiffs' damages.

**VII.  
COMPENSATORY DAMAGES**

7.1 As a result of the injuries and death of Peggy Hoffman, Plaintiff Dee Voigt, seeks compensatory damages from the defendants arising from the injuries he suffered to the degree of care, maintenance, services, advice, counsel, love, comfort, affection, protection, emotional support, companionship, and society, which he

otherwise would have received from his mother, Peggy Hoffman; mental anguish; and any pecuniary damages, all of which were sustained in the past and in reasonable probability will be sustained in the future, in an amount in excess of \$75,000.00.

7.2 As a result of the conduct of Defendants, Peggy Hoffman's Estate seeks monetary damages from Defendants to compensate for pain and suffering, mental anguish, medical expenses, and funeral and burial expenses of Peggy Hoffman.

**VIII.  
PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

8.1 Plaintiffs seek pre-judgment and post-judgment interest as provided by law.

**IX.  
RESERVATION OF RIGHTS**

9.1 Plaintiffs reserve the right to prove the amount of damages at trial. Plaintiffs reserve the right to amend their petition and add additional counts and/or parties as discovery continues.

**X.  
CONDITIONS PRECEDENT**

10.1 All conditions precedent to Plaintiffs' right to recover and Defendants' liability have been performed or have occurred.

**XI.  
JURY DEMAND**

11.1 Plaintiffs request a trial by jury.

**XII.  
REQUESTS FOR DISCLOSURE**

12.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, all parties named herein as Defendants are to disclose, within fifty (50) days of service of this

request, the information and material described in the Texas Rules of Civil Procedure 194.2(a)-(l).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, that this cause be set for trial before a jury, and that Plaintiffs recover judgment of and from Defendants for their damages, in such amount as the evidence shows and the jury determines to be proper, together with pre-judgment interest and post-judgment interest, costs of suit, and such other and further relief to which Plaintiffs may show themselves to be entitled, whether at law or in equity.

Respectfully submitted,

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