

CAUSE NO. 19-CV-2055

DAMON MATTHEWS

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IN THE DISTRICT COURT

VS.

GALVESTON COUNTY, TEXAS

TEXAS DEPARTMENT OF
TRANSPORTATION

Galveston County - 122nd District Court

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
& REQUEST FOR DISCLOSURE**

NOW COMES, DAMON MATTHEWS, Plaintiff herein, and for cause of action respectfully shows:

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under a LEVEL TWO (2) DISCOVERY CONTROL PLAN.

PARTIES

2. Plaintiff Damon Matthews is an individual and a resident of Texas.

3. Defendant Texas Department of Transportation is a division of the State of Texas and may be served with process by serving its executive director, James M. Bass, at 125 East 11th Street, Austin, Texas 78701, or wherever he may be found. Plaintiff requests issuance of citation at this time.

VENUE

4. The facts giving rise to this action accrued within the County of Galveston. Thus, venue is proper in Galveston County, Texas pursuant to Civ.Prac.Rem. Code § 15.002(a)(1).

Status Conference set 1-30-20

STATEMENT OF FACTS APPLICABLE TO ALL COUNTS

5. On or about November 4, 2017, Plaintiff was riding a motorcycle on his way to the yearly Galveston motorcycle event commonly referred to as the Lone Star Rally. Plaintiff was traveling south bound on Highway 3 and attempting to enter onto the southbound lanes of Interstate 45. While traveling on the on ramp to enter onto Interstate 45, Plaintiff unexpectedly drove his motorcycle through an obstruction in the roadway, a sizable hole or pothole, which impaired his ability to travel on the road, and which presented an unexpected and unusual danger. The obstruction caused Plaintiff to lose control of his motorcycle and he was ejected off the bike. Plaintiff suffered immediate and severe injuries.

6. In light of the above, Plaintiff contends the obstruction in the roadway which proximately caused his damages is a special defect. Therefore, immunity is waived for Plaintiff's claims under the Texas Tort Claims Act.

7. Further, the roadway in issue, an on ramp to Interstate 45, was at all times relevant under the care, custody and control of the Defendant.

8. Additionally, numerous motorcycle riders, tens of thousands, attend the yearly motorcycle event heading to Galveston in the direction the Plaintiff was travelling. Thus, Defendant knew or should have reasonably known of the dangers presented to the numerous motorcycle riders traveling this roadway for the yearly event. Consequently, Plaintiff pleads that the Defendant, and or their agents and employees, allowed to remain and failed to warn of an unreasonably dangerous obstruction upon the roadway, and

generally failed to use ordinary care to protect the Plaintiff from this dangerous condition, all of which proximately caused him to suffer personal injuries.

9. In sum, the Defendant's, and or their agents and employee's negligence, proximately caused Plaintiff to suffer general damages, past and future medical expenses, past and future lost earning capacity and wages, permanent impairment and scarring, and other damages, all of which Plaintiff pleads for judgment.

TRCP 47 (C) STATEMENT ON DAMAGES

10. Pursuant to TRCP 47 (c) Plaintiff states that the relief sought in this suit is monetary relief over \$200,000.00 but not to exceed \$1,000,000.00.

COUNT ONE

For Premises Liability Negligence cause of action against Defendants, Plaintiffs allege as follows:

11. Plaintiff hereby adopts and re- alleges each and every paragraph of the Statement of Facts Applicable to All Counts as if fully copied and set forth at length herein.

12. The obstruction in the roadway constitutes a special defect. As a result, the Defendant owed Plaintiff a duty in the exercise of ordinary and reasonable care to protect him from a dangerous condition of which the Defendant is or reasonably should be aware.

13. Defendant breached the above- mentioned duties by failing to exercise ordinary and reasonable care in the following manners:

- a. Allowing the unreasonable dangerous obstruction to remain in the roadway;

- b. Failing to warn the Plaintiff of the unreasonable dangerous obstruction in the roadway;
- c. Negligently failing to maintain the roadway;
- d. Negligently failing to inspect the roadway;
- e. Negligently failing to repair or otherwise take measures to ensure the roadway was safe and usable;
- f. In some other manner yet unknown to Plaintiff.

14. Each of the aforementioned negligent acts and or omissions constituted either singularly or taken in combination a proximate cause of Plaintiff's losses and damages including but not necessarily limited to general damages as allowed by law, past and future necessary and reasonable medical expenses, past and future lost earning capacity and lost wages, permanent injury, physical impairment, and scarring, all for which Plaintiff pleads for judgment against Defendant.

15. Lastly, to the extent the above referenced negligent acts and or omissions were committed by Defendant's agents and or employees, Defendant is liable for their negligence under the applicable theory of agency and principal or respondeat superior, which Plaintiff pleads herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer for all causes of action asserted herein, and that upon final trial the Court award him:

- 1. Judgment for losses and damages as set forth above;
- 2. Pre-judgment interest;
- 3. Post Judgment interest;

4. Costs of Court;
5. Other and such further relief that Plaintiff may be entitled in both equity and in law.

Respectfully submitted,



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