

CAUSE NO. **92375**

ADELEMIRA CHAVEZ, Individually and  
On behalf of JAIME RODRIGUEZ

Plaintiffs,

V.

RIGO YANEZ, Individually and d/b/a  
METRO BORE,  
CIRCLE L CONSTRUCTION, INC.,

Defendants.

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IN THE DISTRICT COURT

40<sup>th</sup> JUDICIAL DISTRICT

ELLIS COUNTY, TEXAS

**PLAINTIFFS' FIRST AMENDED PETITION, REQUESTS FOR DISCLOSURE AND APPLICATION FOR TEMPORARY RESTRAINING ORDER and EXPEDITED DISCOVERY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs Adelemira Chavez, Individually and on behalf of Jaime Rodriguez, complaining of Defendants Rigo Yanez, Individually and d/b/a Metro Bore and Circle L Construction, Inc., and for cause of action would respectfully show this Court the following:

**I.**

**DISCOVERY LEVEL**

Plaintiffs intend for discovery to be conducted pursuant to 190.4 of the Texas Rules of Civil Procedure (level 3).

**II.**

**PARTIES**

Plaintiffs are residents of Ellis County, Texas.

Defendant, Rigo Yanez, is a resident of Dallas County, Texas and may be served with

citation at: 102 E. Fairmeadows Drive, Duncanville, Texas 75116.

Defendant, Circle L Construction, Inc. has been served and will hopefully be filing an answer within the allotted timeframe they have to answer.

### III.

#### **JURISDICTION AND VENUE**

This Court has jurisdiction over this dispute, the amount in question being in excess of the jurisdictional minimum of this Court. Venue is proper in Ellis County because all parties reside in this county and the occurrence in question occurred in Ellis County.

### IV.

#### **FACTS**

This litigation arises from a gas explosion at Plaintiffs' Waxahachie, Ellis County residence on Monday, September 21, 2015. The facts may be summarized as follows:

On Thursday afternoon September 17<sup>th</sup>, Defendant Metro Bore, a subcontractor of Defendant Circle L Construction, Inc., was boring in the easement in front of Plaintiffs' home using a horizontal directional drilling machine as a part of a project to install AT&T U-verse fiber-optic cable in the Saddlebrook Estates neighborhood. Defendant Metro Bore ripped through the natural gas service line serving a home across the street from Plaintiffs' home and shattered a large section the 4" sewer line serving Plaintiffs' home. Natural gas escaped underground and seeped into the sewer system and the into the sewer line connected to the Plaintiffs' residence. On Friday, September 18<sup>th</sup>, Metro Bore experienced mechanical difficulty with its equipment and spent the day cleaning up hydraulic fluid from the street and moved their equipment from the site.

On the morning of September 21<sup>st</sup>, Plaintiffs were inside their residence located at 113 Arabian, Waxahachie, Texas preparing breakfast. Plaintiffs were completely unaware that the

natural gas service line serving their home had been ripped in two or that their 4" sewer line had also been breached by Defendant Metro Bore. Ms. Chavez turned on her electric cooktop and her home immediately exploded in a fireball. The explosion turned the Plaintiffs' home into a pile of rubble severely burning Mr. Rodriguez on his face and arms. Ms. Chavez sustained a fractured right arm and 2<sup>nd</sup> and 3<sup>rd</sup> degree burns on her face, arms, stomach, back and legs.

## V.

### **DAMAGES**

Plaintiffs sue for recovery of monetary damages in an amount within the jurisdiction of the Court. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs in good faith plead the value of this case is over one million dollars (\$1,000,000.00). Plaintiffs reserve the right to amend this amount if a jury awards an amount in excess of one million dollars (\$1,000,000.00). Plaintiffs' medical care and treatment is ongoing.

## VI.

### **NEGLIGENCE AND GROSS NEGLIGENCE-METRO BORE AND CIRCLE L**

Plaintiffs would show that at the time and on the occasion in question, Defendants Circle L Construction, Inc. and Metro Bore failed to exercise that degree of care and caution which would have been exercised by a reasonably prudent horizontal directional drilling contractor and subcontractor in one or more of the following particulars:

- A. Defendant Metro Bore was negligent and grossly negligent in failing to maintain their equipment in good working order;
- B. Defendant Metro Bore was negligent and grossly negligent in creating and allowing a dangerous condition to exist by negligently severing the natural gas and sewer lines at issue; and

- C. Defendant Metro Bore negligently trained and supervised their employees to safely operate its equipment.
- D. Defendant Circle L was negligent in hiring and subcontracting Metro Bore to perform horizontal directional drilling services without making a reasonable inquiry into Metro Bore's ability to perform the drilling in a safe and prudent manner in accordance with established industry best practices.
- E. Defendant Circle L contracted with AT&T to perform the drilling at issue and controlled the work being performed and negligently failed to supervise Metro Bore's drilling activities.

Plaintiffs would show that one, some, or all of the above and foregoing acts or omissions on the part of Defendants was/were the sole and only cause(s) of the gas explosion and Plaintiffs' damages made the basis for suit and constitute negligence and gross negligence.

#### **VIII.**

#### **JURY DEMAND**

In accordance with Rule 216 of the Texas Rules of Civil Procedure, Plaintiffs demand a trial by jury

#### **IX.**

#### **CONDITIONS PRECEDENT SATISFIED**

All conditions precedent have been fully satisfied or excused as Plaintiffs provided Defendant Metro Bore with written notice of this suit and application for temporary restraining order. The TRO is necessary in order to compel Defendant Metro Bore to safeguard the following horizontal directional drilling equipment, including the following items: 1) strike alarm, 2) entire locating system, including the handheld digital locator, 3) drill bit assembly equipped

with electronic beacon, 4. The 2006 Vermeer 20x22 Horizontal Directional Drilling machine complete with repeat electronic display and 5. all downhole tools.

X.

**APPLICATION FOR TEMPORARY EX PARTE RESTRAINING ORDER and**  
**REQUEST FOR EXPEDITED DISCOVERY**

The above-referenced facts demonstrate negligent and grossly negligent acts committed by Defendant Metro Bore for which Plaintiffs and the public at large are entitled to the protections provided with injunctive relief. Plaintiffs seek to conduct an inspection and non-destructive testing of the equipment at issue in the presence of all Defendants experts and with Metro Bore present. The inspection and testing will provide for an orderly inspection giving all parties and their experts a full and fair opportunity to inspect and test the equipment before it is sold, disposed of or becomes damaged, changed, altered or repaired. The above-referenced facts also demonstrate that Plaintiffs are likely to succeed on the merits of this lawsuit, and that material changes to and/or destruction of the equipment sought to be preserved threatens imminent and irreparable harm to all parties for which no adequate remedy at law exists.

Under the laws of equity, immediate injunctive relief is appropriate here since Defendant Metro Bore owns and controls the equipment at issue and on information and belief continues to use it in the ordinary course of his business subjecting it to further wear, tear and spoliation. The restraining order should issue immediately because Defendant Metro Bore's negligent conduct placed the unsuspecting public at grave risk of personal and financial injury. The relief requested is needed immediately to protect Plaintiffs and all similarly situated

parties ability to prepare this case for trial. All or part of the relief requires restraint of Defendant Metro Bore's equipment until such time during the pendency of the 14 day temporary restraining Order during which the parties will conduct tests and inspect the equipment.

WHEREFORE, premises considered, Plaintiffs respectfully request that the Court enter a temporary restraining order:

- A. Requiring Defendant Rigo Yanez, Individually and d/b/a Metro Bore, his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the order on the TRO by personal service or otherwise, from engaging in a deliberate effort to repair, alter, modify, destroy or otherwise spoliage or dispose of the equipment sought to be tested and inspected.
- B. Granting Plaintiffs their costs, including reasonable attorney's fees in accordance with § 38.001 of the TEXAS RULES OF CIVIL PRACTICE AND REMEDIES CODE and their request for expedited discovery in order to prepare for the injunction hearing.
- C. Setting this matter for hearing within fourteen (14) days to determine if a temporary injunction should issue during the pendency of this lawsuit; and
- D. Awarding Plaintiffs such other and further relief to which they may be justly entitled.
- E. In support of Plaintiffs' Application for Temporary Restraining Order, Plaintiffs offer the sworn affidavit of Tom Carse (See **Exhibit 1**)

Plaintiffs have met their burden by establishing such elements which must be present before injunctive relief can be granted by this Court, therefore, Plaintiffs are entitled to a Temporary Restraining Order.

**XI.**

**ATTORNEY'S FEES**

Pursuant to chapter 37.009 and 38.001 et seq. of the Texas Civil Practice & Remedies Code and section 17.50(d) of the Texas Business & Commerce Code, Plaintiffs seek recovery of their reasonable and necessary attorney's fees at the trial of this cause, and if necessary on appeal to the Court of Appeals and if further necessary on a petition for review to the Texas Supreme Court and if further necessary on granting of that petition by the Texas Supreme Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that upon final trial, Plaintiffs have judgment against and recover, jointly and severally, from said Defendants:

1. Actual, special and exemplary damages in amounts to be determined by a jury;
2. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
3. All costs of Court;
4. Such other and further relief, both general and special, at law or in equity, to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

**CARSE LAW FIRM**



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**Tom Carse**

State Bar No. 00796310  
6220 Campbell Road, Suite 401  
Dallas, Texas 75248  
Telephone: 972/503-6338  
Facsimile: 972/503-6348  
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and

**Timothy M. Dortch**  
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Facsimile: 214/712-9540  
Email: [Michah.Dortch@cooperscully.com](mailto:Michah.Dortch@cooperscully.com)

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument and each attachment thereto was served upon the attorney of record for the party said instrument is directed, and a copy of the foregoing was served upon attorneys for all other parties to the above cause (and upon each party who is not represented by an attorney of record in said cause) in accordance with Rule 21a, Tex.R.Civ.P., on this the 6<sup>th</sup> day of October, 2015.



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Tom Carse



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ELLIS COUNTY, TEXAS

**AFFIDAVIT OF TOM CARSE**

**STATE OF TEXAS**

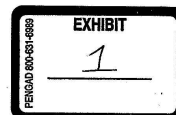
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**COUNTY OF DALLAS**

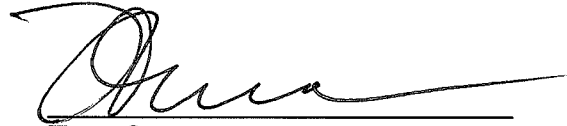
On this day, Thomas Carse, appeared before me, the undersigned notary public, and after I administered the oath to him, upon oath, he stated:

“My name is Thomas Carse, I am more than 21 years of age and capable of making this affidavit and all statements herein are true and correct and within my personal knowledge. I am the attorney for the Plaintiffs in the above-identified and numbered cause.

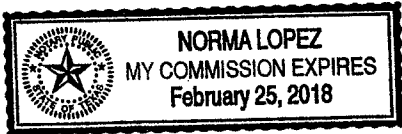
“I have read the subject of *Plaintiffs’ First Amended Petition, Requests for Disclosure and Application for Temporary Restraining Order and Expedited Discovery* and the statements contained therein are true and correct to the best of my knowledge.”



Further Affiant sayeth not."

  
Tom Carse

SWORN TO and SUBSCRIBED before me on the 6<sup>th</sup> day of October,  
2015.



  
NOTARY PUBLIC, STATE OF TEXAS