

Cause No. _____

Lisa Hooper, individually and	§	In the District Court of
as representative of the Estate	§	
of Jerry Hooper, deceased, and as	§	
representative and next friend of	§	
minor children Tonya Dannielle	§	
Hooper, Joey Martin Welch, Jonathan	§	
Tyler Hooper, and Jacob Christen	§	
Hooper	§	
	§	Harris County, Texas
vs.	§	
	§	
Kinder Morgan Marine Services LLC	§	_____ Judicial District

Plaintiff's Original Petition and Request for Disclosures

Plaintiff, Lisa Hooper, Individually and as Representative of the Estate of Jerry Hooper, Deceased, and as representative and next friend of minor children, Tonya Dannielle Hooper, Joey Martin Welch, Jonathan Tyler Hooper, and Jacob Christen Hooper, complaining of Kinder Morgan Marine Services LLC and files this Original Petition for cause of action would show as follows:

1. Discovery Level

Plaintiff intends to conduct discovery in this matter under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. Per Texas Rule of Civil Procedure 47(c)(5), and Plaintiff seeks an amount exceeding \$1,000,000.00.

2. Parties

Plaintiff, Lisa Hooper, and all minor children are residents of Missouri. Decedent was a resident of Missouri.

Defendant, Kinder Morgan Marine Services LLC is a Texas corporation doing business in the State of Texas for the purpose of accumulating monetary profit. Kinder Morgan Marine Services LLC maintains its principal place of business at 500 Dallas St., Suite 1000, Houston, Texas 77002.

3. Venue, Non-Removability & Jurisdiction

Venue is proper in Harris County, Texas pursuant to Tex. Civ. Prac. & Rem. § 15.0181(c)(1), (e)(1) and (e)(2) because this suit is brought under the Jones Act, Harris County is the county where the defendant's principal office in this state is located, all or a substantial part of the events and omissions giving rise to the claims asserted herein occurred on inland waters in or outside this state, and neither the Decedent nor Plaintiff resided in Galveston County at the time the cause of action accrued.

This case is non-removable because it is filed under the Jones Act (46 U.S.C. § 30104) which incorporates the general provisions of the FELA, including its anti-removal provision under 28 U.S.C. § 1445(a), and because Plaintiff invokes the savings' to suitors clause of 28 U.S.C. 1333 [derived from 'The Judiciary Act of 1789'] by filing this action in state court with a jury demand; thereby making this maritime

law case non-removable with no other independent basis for federal court jurisdiction. Moreover, the forum-defendant rule otherwise prevents removal.

The Court has personal jurisdiction over Kinder Morgan Marine Services LLC because it has committed acts that constitute doing business in the state of Texas for purposes of the Texas long-arm statute (Tex. Civ. Prac. & Rem. § 17.042), and those same acts constitute minimum contacts sufficient to satisfy the constitutional standards in this case. Additionally, dispute-blind jurisdiction is proper because Kinder Morgan Marine Services LLC is fairly regarded at home in the state of Texas. Jurisdiction over Kinder Morgan Marine Services LLC does not offend traditional notions of fair play or substantial justice.

This Court has subject matter jurisdiction in this matter since Plaintiff's damages exceed its minimum jurisdictional limits.

4. Background & Legal Claims

This case is brought under the Jones Act, general maritime law, and the common law. Mr. Hooper was an American seaman assigned to the *Austin Stone* tug (owned and operated by Defendant Kinder Morgan Marine Services LLC) and/or Defendant's fleet of vessels, which at all relevant times were (or consisted of) vessels in navigation operating on the inland waters of the Mississippi River near Blytheville, Arkansas.

On or about the January 9, 2016, Mr. Hooper was working as a deckhand assigned the *Austin Stone* tug vessel owned and operated by Defendant Kinder Morgan Marine Services LLC. During the evening January 9, 2016, Defendant, and or its employees, and/or agents negligently caused Mr. Hooper and other deckhands to service and traverse multiple barges under hazardous weather and poor lighting conditions. As a result of these unreasonably dangerous working conditions, Mr. Hooper was unable to return to the *Austin Stone* and fell into the Mississippi River. Kinder Morgan Marine Services LLC employees unsuccessfully attempted to recover Mr. Hooper, and in their attempts dislodged Mr. Hooper's life jacket from his body. Nearly two weeks after this incident Mr. Hooper's body has still not been recovered; he is presumed to be deceased.

Plaintiff would show that nothing Mr. Hooper (also referred to as "Decedent") did or failed to do on the occasion in question caused or in any way contributed to cause his death. To the contrary, the occurrences in which Decedent died were proximately caused by the negligence, as that term is understood in law, of the Defendant, its agents, servants and employees, who were acting in the course and scope of their employment for Defendant at all times material to this action.

Defendant owed to Decedent a duty to furnish him a safe place to work and a seaworthy vessel, and as applied to Decedent, the Defendant failed in those respects,

and such unseaworthiness of the vessel in question caused and resulted in the death of Jerry Hooper and the injuries and damages sustained by Plaintiff. These conditions were brought about and caused by the Defendant.

Defendant proximately caused the occurrences in question. Defendant breached its legal duties and caused damages and injuries to Jerry Hooper.

Before being injured, Mr. Hooper was an able-bodied seaman. Mr. Hooper did nothing to cause or contribute to his injuries.

5. Inadequate Training

Defendant failed to adequately train its employees, supervisors, and managers. This failure by Defendant to adequately train its employees, supervisors, and managers caused or contributed to this tragic event. Defendant had the knowledge, experience, resources, and expertise to adequately train its employees, supervisors, and managers to prevent such tragic incidents like this one, but failed to do so. Due to Defendant's inadequate training of its employees, supervisors, and managers, Defendant is and should be held responsible for this tragic event.

6. Lack of Qualification

Defendant failed to ensure that its employees, supervisors, and managers were adequately qualified not just to work under its employ, but also to ensure such persons were adequately qualified to respond to man overboard situations. Defendant

had the knowledge, experience, resources, and expertise to hire qualified and/or adequately qualify its employees, supervisors, and managers to prevent such tragic incidents, but failed to do so. Due to Defendant's hiring of unqualified employees, supervisors, and managers and well as Defendant's failure to qualify its employees, supervisors, and managers, Defendant is and should be held responsible for this tragic event.

7. Lack of Supervision

Defendant failed to adequately supervise its employees, supervisors, and managers. This failure by Defendant to adequately supervise its employees, supervisors, and managers caused or contributed to this tragic event. Defendant had the knowledge, experience, resources, and expertise to adequately supervise its employees, supervisors, and managers to prevent such tragic incidents, but failed to do so. Due to Defendant's inadequate supervision of its employees, supervisors, and managers, Defendant is and should be held responsible for this tragic event.

8. Legal Damages

In the incident made the basis of this suit, Decedent is presumed to have died. By reason of those injuries and the damages flowing in law therefrom, this suit is maintained.

Because of the Death of Jerry Hooper, Plaintiffs have suffered mental anguish and, in reasonable probability, will continue to suffer mental anguish into the future. Plaintiffs have also suffered pecuniary losses due to the death their husband and father including the amount of money that decedent would have expected to receive for the remainder of his life expectancy and work expectancy, had he survived. Plaintiff also claims pecuniary loss for the loss of services, support, loss of nurture, loss of inheritance, loss of fringe benefits and pre death pain and suffering.

It is yet too early to ascertain the full extent of the damages sustained by Plaintiff, and Plaintiff specifically reserves the right to amend this pleading for a certain amount in the future. The damages are in excess of the minimum jurisdictional limits of this honorable Court.

6. Pennsylvania Rule

Defendant violated maritime safety rules and caused Mr. Hooper's death. Under *The Pennsylvania Rule*, Defendant has the burden to prove that the safety violations did not cause or contribute to Mr. Hooper's death.

7. Pre- and Post-Judgment Interest

Plaintiff is entitled to pre-judgment interest in accordance with law and equity as part of her damages, along with post-judgment interest to the extent allowed by law.

8. Jury Demand & Request for Disclosure

Plaintiff demands a trial by jury. Further Defendant is requested to answer disclosures pursuant to the Texas Rules of Civil Procedure.

9. Prayer

Plaintiff Lisa Hooper prays that Defendant be cited to appear and answer herein, that upon final trial and hearing hereof, Plaintiff recover her damages in accordance with the evidence, that she recover costs of Court herein, that she recover attorney fees and interest, both pre-judgment and post-judgment, to which she is entitled under law, and for such other and further relief, general and special, legal and equitable to which she may show herself justly entitled.

Respectfully submitted,

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