

IN THE CIRCUIT COURT OF TENNESSEE  
ELEVENTH JUDICIAL DISTRICT, AT CHATTANOOGA

██████████ b/n/f ██████████ )  
██████████ and ██████████; )  
██████████, individually; )  
and ██████████, individually, )  
PLAINTIFFS, )  
vs. )  
DURHAM SCHOOL SERVICES, L.P.; and )  
JOHNTTHONY WALKER, individually and )  
as employee or agent of DURHAM )  
SCHOOL SERVICES, L.P., )  
DEFENDANTS )

DOCKET NO: 16C1376  
DIV: \_\_\_\_\_  
JURY DEMAND

FILED IN OFFICE  
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LARRY L. HENRY, CLERK  
BY: JLN DC

COMPLAINT

Plaintiffs ██████████ b/n/f ██████████ and ██████████; ██████████  
██████████, individually; and ██████████, individually (collectively "Plaintiffs"), through counsel  
and for their Complaint against Defendants Durham School Services, L. P. ("Durham"); and  
Johnthony Walker ("Walker"), individually and as employee or agent of Durham, state as  
follows:

1. Plaintiffs are residents and citizens of Hamilton County, Tennessee.
2. Defendant Durham is a Delaware corporation qualified to do business in this State with its principal place of business at 1431 Opus Place, Suite 200, Downers Grove, IL 60515, and can be served through its registered agent C T Corporation System, Suite 2021, 800 S. Gay Street, Knoxville, Tennessee 37929.
3. Defendant Walker is an adult resident of Hamilton County, Tennessee and can be served at the Hamilton County Jail, where he is currently being held as criminal charges are pending against him as a result of the bus crash that occurred on November 21, 2016, in Chattanooga, Tennessee (the "Bus Crash").

4. Jurisdiction is proper in this district and venue is proper in this forum as Plaintiffs' claims against Defendants arise from the Bus Crash that occurred in Hamilton County, Tennessee.

5. Plaintiff [REDACTED] is the 9-year-old minor son of Plaintiff [REDACTED] and Plaintiff [REDACTED] and is a student at Woodmore Elementary School.

6. Defendant Durham operates a full-service student transportation company through the use of employees, agents, servants, and contractors who perform student transportation services within the scope of their employment, actual authority, apparent authority, agency, or contract with Defendant Durham.

7. Defendant Walker at all relevant times was acting as an employee, contractor, or agent of Defendant Durham with actual and apparent authority to provide student transportation services for Defendant Durham.

8. At the time of the Bus Crash, Defendant Walker was operating a school bus as an employee or agent of Defendant Durham for the purpose of transporting children to their homes from Woodmore Elementary School.

9. Defendant Durham owns and maintains the school bus Defendant Walker was driving at the time of the Bus Crash.

10. At the time of the Bus Crash on Talley Road in Chattanooga, Tennessee, Defendant Walker was operating Defendant Durham's school bus negligently, carelessly, and recklessly by traveling too fast under the circumstances. Defendant Walker's negligent, careless, and reckless operation of Defendant Durham's school bus caused him to lose control of the bus, strike a telephone pole and tree, and flip the bus on its side.

11. Plaintiff [REDACTED] was a passenger on Defendant Durham's bus driven by its agent or employee Defendant Walker.

12. Plaintiff [REDACTED] sustained significant, disfiguring, and permanent personal injuries, experienced pain and suffering as a result of those personal injuries, and has suffered

psychological damages as a result of this crash. Plaintiff [REDACTED] has incurred and will incur considerable medical and other expenses as a result of this crash.

13. Plaintiffs [REDACTED] and [REDACTED] have incurred and will incur considerable medical and other expenses on behalf of their son [REDACTED] as a result of this crash and have been deprived of the good and valuable services of their child. Further, and independently of their son's injuries, Plaintiffs [REDACTED] and [REDACTED] have suffered extreme mental anguish and psychological damage as a result of this crash.

14. Upon information and belief, Defendant Walker had been involved in at least one other school bus crash this academic year while driving Defendant Durham's bus.

15. Upon information and belief, prior to the Bus Crash students and parents had lodged complaints with Woodmore Elementary School regarding Defendant Walker's performance as a bus driver, and prior to the Bus Crash, Defendant Walker told a Woodmore Elementary School representative that he did not care about the students in the bus he drove for Defendant Durham.

#### **COUNT I - Walker**

16. Plaintiffs repeat the factual allegations of paragraphs 1 through 15.

17. Defendant Walker was operating Defendant Durham's bus in a negligent, careless, and reckless manner and was the proximate cause of the collision that injured Plaintiffs. Defendant Walker failed to operate Defendant Durham's bus in accordance with Tennessee's "Rules of the Road" including but not limited to *Tennessee Code Annotated* :

(a) § 55-8-136(b) (duty to exercise due care);

(b) § 55-8-123 (failure to maintain traffic lane);

(c) § 55-8-152 (speed limits);

(d) § 55-10-101 (death or personal injury);

(e) § 55-10-102 (damage to vehicle); and

(f) § 55-10-205 (reckless driving).

18. Additionally, Defendant Walker was operating Defendant Durham's bus in a negligent, careless, and reckless manner by:

(a) failing to operate it as an ordinary and prudent person would have done under the conditions and circumstances;

(b) failing to keep a proper lookout in the direction in which he was traveling;

(c) failing to exercise caution; and

(d) failing to keep the bus under control.

19. Defendant Walker's negligent, careless, and reckless operation of Defendant Durham's bus caused Plaintiff [REDACTED] to sustain significant and permanent personal injuries, pain and suffering, and psychological injury. He has incurred and will incur considerable medical and other expenses as a result of this crash as well as diminished earning capacity.

20. Defendant Walker's negligent, careless, and reckless operation of Defendant Durham's bus caused Plaintiff [REDACTED] severe mental anguish, psychological injury, and emotional distress that has caused and will cause her to incur further significant medical and other expenses for both herself and her minor son, Plaintiff [REDACTED], and she has been deprived of the invaluable services of her minor son.

21. Defendant Walker's negligent, careless, and reckless operation of Defendant Durham's bus caused Plaintiff [REDACTED] severe mental anguish, psychological injury, and emotional distress that has caused and will cause him to incur further significant medical and other expenses for both himself and his minor son, Plaintiff [REDACTED], and he has been deprived of the invaluable services of his minor son.

22. Defendant Walker's conduct described in paragraphs 10, 17, and 18 above was reckless. Defendant Walker was aware of but consciously disregarded the risks associated with his conduct and the nature of that disregard constitutes a gross deviation from the standard of care that an ordinary person would have exercised under all of the circumstances. Accordingly, Defendant Walker's reckless indifference to the care and well-being of his student passengers

justifies a separate award of punitive damages against him, pursuant to Tennessee Code Annotated § 29-39-104 and *Hodges v. S.C. Toof and Company*, 833 S.W.2d 896 (Tenn.1992)..

#### COUNT II - Durham

23. Plaintiffs repeat the factual allegations of paragraphs 1 through 15.

24. Defendant Durham owns the school bus Defendant Walker was driving at the time of the crash. Accordingly, pursuant to *Tennessee Code Annotated* §§ 55-10-311 and 55-10-312, Defendant Walker was operating the bus with Defendant Durham's authority, consent, and knowledge, and for its use and benefit within the course and scope of Defendant Walker's employment. Defendant Durham also knew or should have known that Defendant Walker was an incompetent or reckless driver. Therefore, Defendant Walker's negligence is imputed to Defendant Durham, and Defendant Durham is liable for all of Plaintiffs' injuries and damaged caused by Defendant Walker due to its negligent entrustment of the bus to him.

25. Independent of Defendant Walker's negligence, Defendant Durham negligently failed to establish and to enforce policies and procedures to ensure that its school bus operators were properly hired, trained, supervised, investigated, and disciplined.

26. Independent of Defendant Walker's negligence, Defendant Durham negligently failed to properly hire, train, supervise, investigate, and discipline Defendant Walker when it had knowledge of Defendant Walker's prior negligent, careless, and reckless operation of its school bus, as well as Defendant Walker's indifference to the needs of their student passengers.

27. Independent of Defendant Walker's negligence, Defendant Durham negligently failed to use that degree of skill and care required of a student transportation company under the circumstances that existed at the time of the crash.

28. As a direct result of Defendant Durham's negligence as set forth above, Plaintiff [REDACTED] sustained significant and permanent personal injuries, pain and suffering, and severe psychological injury. He has incurred and will incur considerable medical and other expenses as a result of this crash, as well as diminished earning capacity.

29. As a direct result of Defendant Durham's negligence as set forth above, Plaintiff [REDACTED] sustained severe mental anguish, psychological injury, and emotional distress that has caused and will cause her to incur further significant medical and other expenses for both herself and her minor son, Plaintiff [REDACTED], and she has been deprived of the invaluable services of her minor son.

30. As a direct result of Defendant Durham's negligence as set forth above, Plaintiff [REDACTED] sustained severe mental anguish, psychological injury, and emotional distress that has caused and will cause him to incur further significant medical and other expenses for both himself and his minor son, Plaintiff [REDACTED], and he has been deprived of the invaluable services of his minor son.

31. Defendant Durham's continued employment and utilization of Defendant Walker with knowledge of Defendant Walker's driving record, operational conduct, and indifference to student passengers constitutes a reckless disregard for the well-being of the student passengers and a gross deviation from the standard of care that an ordinary person would have exercised under all of the circumstances. Such reckless indifference to what it knew or should have known about Defendant Walker's driving skills and conduct as its employee or agent, and the harm that reckless indifference caused to Plaintiffs, necessitates and justifies the imposition of punitive damages against it pursuant to Tennessee Code Annotated § 29-39-104 and *Hodges v. S.C. Toof and Company*, 833 S.W.2d 896 (Tenn.1992).

### **COUNT III - Declaratory Judgment**

32. Plaintiffs repeat the factual allegations of paragraphs 1 through 15.

33. Plaintiff [REDACTED], a 9-year-old boy, suffered permanent and debilitating personal injuries when Defendants caused this bus crash. Plaintiff [REDACTED] suffered serious psychological and emotional injuries in that crash when he was forced to lie trapped and bleeding in the bus for almost 2 hours while surrounded by friends and classmates who were similarly injured or killed.

34. The Tennessee Constitution in Article 1, § 6, entitled "Trial by jury; jurors", states "That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors." (Emphasis added). The Tennessee General Assembly, however, has violated Plaintiffs right to a jury trial by arbitrarily determining in *Tennessee Code Annotated* § 29-39-102 that Plaintiffs' pain and suffering, or "non-economic damages", shall not exceed \$750,000. Plaintiffs contend such an artificial limitation on their pain and suffering damages is arbitrary, not based on quantifiable or objective factors, and is an unconstitutional interference with Plaintiffs' right to have a jury quantify their pain and suffering and other non-economic damages.

35. Plaintiffs show that there is a controversy between their Tennessee constitutional right to an inviolate trial by jury and the Tennessee General Assembly's unconstitutional and arbitrary limitation a jury's right to determine noneconomic damages, and that it is necessary for this Court to determine the respective rights of the parties pursuant to *Tennessee Code Annotated* § 29-14-101 *et seq.*

WHEREFORE, Plaintiffs pray as follows:

A. that process issue and a copy of this Complaint be served upon Defendants, requiring their response in accordance with the rules of this Court;

B. that at the trial of this cause, judgment be entered in favor of Plaintiff [REDACTED] and against Defendant Walker as a result of Defendant Walker's negligence for compensatory damages in an amount within the sound discretion of the jury;

C. that at the trial of this cause, judgment be entered in favor of Plaintiff [REDACTED] and against Defendant Durham as a result of Defendant Durham's negligence, both direct and imputed, for compensatory damages in an amount within the sound discretion of the jury;

D. that at the trial of this cause, judgment be entered in favor of Plaintiff [REDACTED] and against Defendant Walker as a result of Defendant Walker's negligence for compensatory damages in an amount within the sound discretion of the jury;

E. that at the trial of this cause, judgment be entered in favor of Plaintiff [REDACTED] and against Defendant Walker as a result of Defendant Walker's negligence for compensatory damages in an amount within the sound discretion of the jury;

F. that at the trial of this cause, judgment be entered in favor of Plaintiff [REDACTED] and against Defendant Durham as a result of Defendant Durham's negligence, both direct and imputed, for compensatory damages in an amount within the sound discretion of the jury;

G. that at the trial of this cause, Plaintiffs be awarded judgment for punitive damages against Defendant Walker and Defendant Durham in amounts within the sound discretion of the jury so as to deter similar future conduct:

H. that a jury of 12 persons be impaneled to try the issues when joined;

I. that the costs of this cause and discretionary costs be taxed against Defendants;

and

J. that Plaintiffs have such other, further, and general relief, including all special damages, to which they may be entitled.

**Dated this 29<sup>th</sup> day of November, 2016**

**EVANS HARRISON HACKETT, PLLC**

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