

IN THE CIRCUIT COURT OF
CHARITON COUNTY, MISSOURI

BRIAN MARRA and)
CHRISTOPHER MARZULLO,)
)
Plaintiffs,)

Cause No: _____

v.)

BNSF RAILWAY COMPANY,)
Serve at:)
Jeffery Laney)
2135 E. Sunshine St., Ste 203)
Springfield, MO 65804)

and)

MS CONTRACTING, LLC,)
Serve at:)
MS Contracting, LLC)
C/o Michael E. Sattman)
25851 Hwy M)
Brookfield, MO 64628)

TRIAL BY JURY REQUESTED

and)

MICHAEL SATTMAN,)
Serve at:)
25851 Hwy M)
Brookfield, MO 64628)

and)

NATIONAL RAILROAD PASSENGER)
CORPORATION, D/B/A AMTRAK,)
Serve at:)
CT Corporation)
1015 15th Street NW)
Suite 1000)
Washington, DC 20005)

Defendants.)

PETITION

Plaintiffs Brian Marra and Christopher Marzullo (together, “Plaintiffs”), by and through counsel, Schlichter, Bogard & Denton, LLP, state as follows for their Petition against Defendants BNSF Railway Company, MS Contracting, LLC, Brian Sattman, and National Railroad Passenger Corporation, d/b/a Amtrak (collectively, “Defendants”):

Parties, Jurisdiction, and Venue

1. Plaintiffs Brian Marra and Christopher Marzullo have at all times relevant hereto been residents of Cook County, State of Illinois.

2. At all relevant times, Defendant MS Contracting, LLC (“MS Contracting”), was and is a transportation carrier organized and existing under the laws of the State of Missouri and is authorized and does do business in the State of Missouri, including Chariton County, and has its principal place of business in Missouri. The subject incident and negligent acts of MS Contracting, occurred in Chariton County, Missouri, in this District.

3. At all relevant times, Defendant Michael Sattman, was and is a resident of the state of Missouri, the principal owner and shareholder of MS Contracting, LLC, the Chief Operating Officer, and the person responsible for the training of drivers of MS Contracting, LLC.

4. At all relevant times, National Railroad Passenger Corporation, d/b/a Amtrak (“Amtrak”), has been a common carrier by railroad engaged in interstate commerce and owns, controls, and operates a passenger railroad running into and through Chariton County, Missouri, and has its principal place of business in the District of Columbia.

5. At all relevant times, BNSF Railway Company (“BNSF”) has been a common carrier by railroad engaged in interstate commerce and owns, controls, and operates a freight railroad running into and through Chariton County, Missouri, and has its principal place of

business in Texas.

6. Venue is proper in this Court pursuant to R.S.Mo. § 508.010.4 because the alleged acts and omissions of Defendants and Plaintiffs' injuries occurred in Chariton County, Missouri.

Factual Background

7. This action arises from a catastrophic railroad crossing collision and train derailment that occurred on June 27, 2022, in Chariton County in or near Mendon, Missouri on BNSF Railway Company's tracks at or near a grade road crossing located at County Road 113 (also known as Porche Prairie Avenue) (the "subject crossing").

8. The subject crossing consists of a public road, Porche Prairie Avenue/County Road 113, which intersects two parallel main line railroad tracks, over which trains operate at high speeds up to 90 mph in both directions.

9. BNSF constructed, owned, operated, and was responsible for maintaining the subject crossing, signals, and railroad tracks.

10. The public road and tracks at the subject crossing intersected at a severe angle, obstructing the sightline for motorists on the lookout for oncoming trains, which problem was compounded by a steep vertical approach on both sides of the tracks and vegetation that further impeded visibility. Additionally, the surfaces of the roadways at the crossing were narrow, had significant drop-offs on either side, and were rough, poorly maintained and covered with gravel. These conditions, which had existed for years, were a further distraction for motorists and made traversing the crossing while simultaneously keeping a lookout for trains difficult.

11. Despite the safety deficiencies of the subject crossing, BNSF did not have active warning devices such as bells, gates, or lights to warn motorists that a train was imminently approaching. Instead, the crossing had only crossbucks—i.e., unilluminated signs—indicating

that railroad tracks were nearby, which provide no indication to motorists when a train is actually coming down the tracks, as opposed to gates and/or flashing lights which provide approximately 30 seconds of advanced warning that a train is imminently approaching the crossing and prevents intrusion onto the tracks when such would be hazardous.

12. Moreover, BNSF did not regularly maintain the crossing as required, and allowed loose gravel to accumulate, thereby slowing down vehicles which approached and crossed the tracks.

13. On or about June 27, 2022, at approximately 1 p.m., Plaintiffs were passengers aboard an Amtrak passenger train as it traveled eastbound through Chariton County on BNSF's railroad track.

14. As the Amtrak train approached the subject crossing, a dump truck operated by an agent and employee of MS Contracting and Michael Sattman was traveling in a northbound direction and entered the crossing.

15. At that time, the dump truck was loaded with concrete aggregate and being transported by Defendants' driver, in the scope of his employment, to a work site north of the subject crossing.

16. The aforementioned Amtrak train was proceeding at a high rate of speed from west to east. Defendants' driver came across the tracks and did not remove the dump truck from the crossing.

17. The train collided with the obstructing dump truck, causing the train to derail and flip onto its side before skidding to a stop.

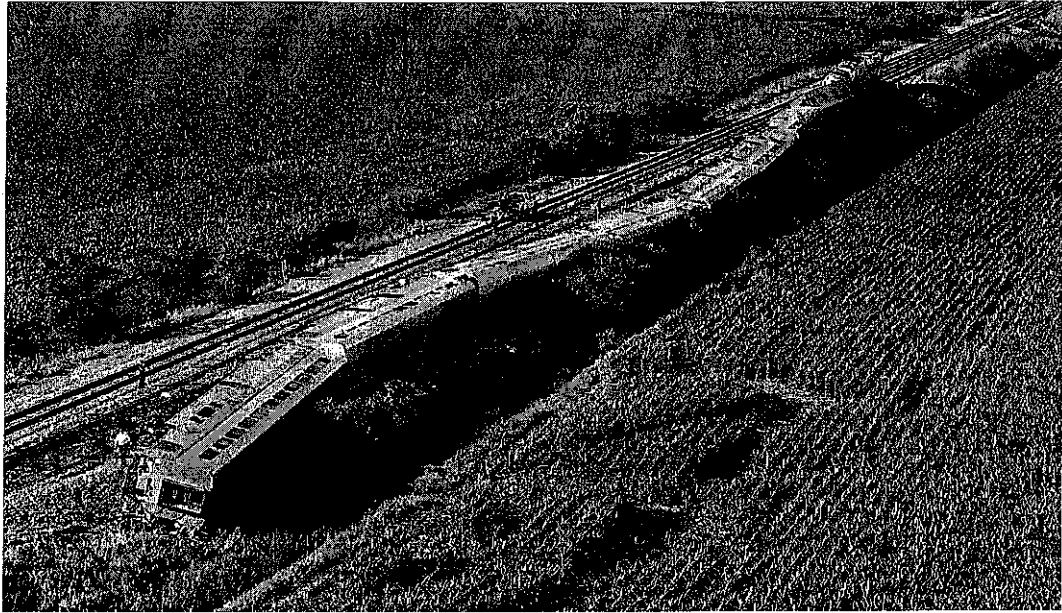


Figure 1: Amtrak passenger train on Monday, June 27, 2022, after derailing near Mendon, Mo. Source: AP News

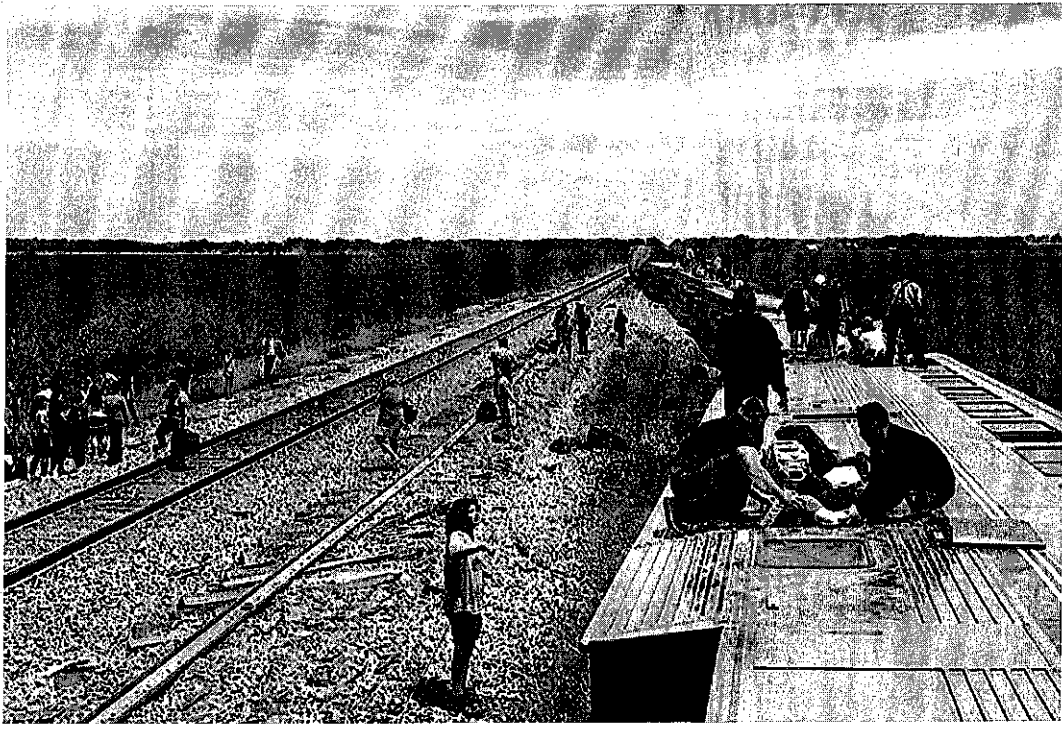


Figure 2: Passengers climb from the derailed Amtrak train on June 27, 2022. Source: AP News

18. As a result of the collision, the Plaintiffs were violently thrown within the derailed Amtrak train and sustained serious injuries.

19. Before the subject derailment, safety complaints had been raised for years by residents of the area regarding visual obstruction and the dangerous condition of the subject crossing, including complaints about poor maintenance, the steep grade of the roadways adjacent to the crossing, severe angle at which the tracks intersected the roadways, drop-offs on the sides of the roadway, excessive vegetation along the margins of the tracks, and high rate of speed of passing trains.

20. One such resident was Mike Spencer, a longtime farmer in Mendon, Missouri, who raised safety complaints regarding the subject crossing and unsuccessfully advocated for changes at the crossing for years.

21. Approximately two weeks before the derailment, Mr. Spencer posted a video of the subject crossing to his Facebook account, writing "We have to cross [the subject crossing] with farm equipment to get to several of our fields... We have been on the [railroad] for several years about fixing the approach by building the road up, putting in signals, signal lights or just cutting the brush back."

22. Shortly after Mr. Spencer posted the video, his wife, Sheryl, commented, foreshadowing the tragedy that followed, "They are waiting till someone gets hit."

23. In an interview with the Kansas City Star, Mr. Spencer indicated one concern "was that the approach on [the crossing] is very, very steep... You can't see over it... It's very treacherous... There's no way you can pull up there and stop and go on."

24. Mr. Spencer and others in the Mendon community have been in discussion with the railroad [BNSF], a safety engineer from MoDOT, a county commissioner and a railroad engineer with the goal of improving safety at the crossing, but nothing has been done. "They were concerned, but not concerned enough to do anything," Spencer said.

25. Another local farmer, Daryl Jacobs, told the Kansas City Star, “[The crossing] needs arms on it or signals... It’s so dang steep. I heard that [dump] truck just stalled out today going up it... And this dang brush along these railroad tracks all needs to be cleared back.”

26. Based on the long history of complaints, BNSF knew or should have known that the subject crossing posed an unreasonable danger to the public, particularly since passenger trains, trains hauling hazardous materials, and slow-moving farm equipment and industrial vehicles frequently traversed the crossing.

27. In addition, while most of the trains passing the crossing are freight trains operating at speeds around 50 mph, there are two Amtrak trains daily, which operate at about 90 mph—almost twice the speed of freight trains. This reduces the time for observation of a train by an approaching driver almost in half.

28. On July 1, 2021, the Missouri Department of Transportation (MoDOT) commissioners approved a Statewide Transportation Improvement Program (“STIP”) budget, including \$400,000 in funding to “[i]ninstall lights and gates and roadway improvement at [the subject] public BNSF crossing 005284Y,” entirely funded by federal and state tax dollars.

29. In February 2022, the Missouri Department of Transportation (MoDOT) published its Missouri State Freight and Rail Plan, identifying necessary crossing safety improvements for the subject crossing to include the same “lights and gates and roadway improvements” previously identified in the STIP.

30. Following MoDOT’s approval of nearly \$400,000 in funding to make the safety upgrades, these funds went unused and no upgrades were made.

31. Despite the long history of complaints from residents and the State of Missouri’s conclusions that safety improvements were needed at the subject crossing, BNSF implemented

no changes, did not maintain the crossing, did not correct the loose gravel or pave the crossing, and failed to ensure adequate sight line distances for approaching drivers, and continued moving more than 60 freight trains and high-speed passenger trains over the crossing, daily.

COUNT I - NEGLIGENCE
(Plaintiff Brian Marra v. Defendant BNSF Railway Company)

32. Plaintiff realleges and incorporates by reference paragraphs 1-31 as if fully set forth herein.

33. Defendant BNSF owed a duty of reasonable care to employees of Amtrak, including Plaintiffs, as BNSF maintains an agreement with Amtrak whereby Amtrak is given access to its tracks, including at the subject crossing, which BNSF owns, operates, and has responsibility to maintain in good, sufficient, and reasonably safe condition.

34. The collision and resulting injuries to Plaintiff Brian Marra were the direct result of one or more of the following acts of negligence by BNSF, both directly and vicariously through its agents and/or employees:

- a. It failed to adequately construct, inspect and/or maintain the subject crossing, including the track, margins of the track, and the roadways intersecting and/or adjacent to the track, as required by R.S.Mo. § 389.610, constituting negligence per se;
- b. it failed to adequately construct, inspect, and/or maintain the subject crossing in accordance with the requirements of Mo. Code Regs. title 7 § 265-8.130, including the crossing geometry requirements contained therein and line of sight angles, constituting negligence per se;
- c. it failed to construct, inspect and/or maintain the subject crossing in accordance with industry standards set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways and Part 8 of the American Railway Engineering and Maintenance of Way Association's Guidelines for the Design, Construction or Reconstruction of Highway-Railway At-Grade Crossings;
- d. it failed to construct and maintain the subject crossing in accordance with its own internal rules, policies, procedures, and guidelines;

- e. it failed to install and/or implement necessary crossing safety improvements, including "lights and gates and roadway improvements," identified for the subject crossing by MoDOT in July 2021 and again in February 2022;
- f. it unreasonably delayed in installing and/or implementing necessary crossing safety improvements, including "lights and gates and roadway improvements," identified for the subject crossing by MoDOT in July 2021 and again in February 2022;
- g. it failed to adequately warn Amtrak, its crews and passengers, including plaintiffs, of known safety hazards at the subject crossing, including from the recommendations for crossing safety improvements and safety complaints received in the weeks before the subject crossing collision;
- h. It failed to adequately warn motorists of obstructed sight lines, steep grade, and loose gravel at the subject crossing;
- i. it failed to issue a slow order at the subject crossing, even after receiving safety complaints and recommendations for necessary crossing safety improvements identified for the subject crossing by MoDOT in July 2021 and again in February 2022;
- j. it failed to install track sensing devices to warn train crews of vehicles and obstructions on crossings, as recommended by the NTSB;
- k. it failed to erect and maintain proper and adequate crossing protection and warning devices, including but not limited to advanced warning signs, at the subject crossing to warn motorists of an oncoming train;
- l. it failed to install and/or implement adequate warning devices at the subject crossing, including automatic gates and/or flight light signals, in accordance with the requirements of 49 C.F.R. § 646.214, constituting negligence per se;
- m. it violated 49 CFR § 213.37 and/or R.S.Mo. § 389.665 by failing to control vegetation and by the impaired vision alongside the tracks at or near the subject crossing, constituting negligence per se;
- n. it maintained an unreasonably dangerous crossing, in light of a combination of known hazards including the high track speed limit, steep grade/incline of intersection roadways, loose gravel, angle of intersection, drop-offs on the sides of the roadways, and vegetation in the area; and
- o. it failed to properly maintain the crossing by allowing loose gravel to

accumulate, thereby slowing approaching vehicles as they traveled through the crossing.

35. As a direct result of one or more of the foregoing negligent acts or omissions, Plaintiff Brian Marra sustained injuries to his neck, head, back, legs, and left arm; he has experienced and will continue to experience physical pain and emotional distress; he has incurred medical expenses and is reasonably certain to incur medical expenses in the future; and he will lose wages and benefits; all to his damage.

WHEREFORE, Plaintiff Brian Marra requests judgment on Count I of this Petition against Defendant BNSF Railway Company, in a sum which is fair and reasonable in excess of Twenty-Five Thousand Dollars (\$25,000), plus costs of suit and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT II – NEGLIGENCE

(Plaintiff Christopher Marzullo v. Defendant BNSF Railway Company)

36. Plaintiff realleges and incorporates by reference paragraphs 1-31 as if fully set forth herein.

37. Defendant BNSF owed a duty of reasonable care to employees of Amtrak, including Plaintiffs, as BNSF maintains an agreement with Amtrak whereby Amtrak is given access to its tracks, including at the subject crossing, which BNSF owns, operates, and has responsibility to maintain.

38. The collision and resulting injuries to Plaintiff Christopher Marzullo were the direct result of one or more of the following acts of negligence by BNSF, both directly and vicariously through its agents and/or employees:

- a. It failed to adequately construct, inspect and/or maintain the subject crossing, including the track, margins of the track, and the roadways intersecting and/or adjacent to the track, as required by R.S.Mo. § 389.610, constituting negligence per se;

- b. it failed to adequately construct, inspect, and/or maintain the subject crossing in accordance with the requirements of Mo. Code Regs. title 7 § 265-8.130, including the crossing geometry requirements contained therein and line of sight angles, constituting negligence per se;
- c. it failed to construct, inspect and/or maintain the subject crossing in accordance with industry standards set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways and Part 8 of the American Railway Engineering and Maintenance of Way Association's Guidelines for the Design, Construction or Reconstruction of Highway-Railway At-Grade Crossings;
- d. it failed to construct and maintain the subject crossing in accordance with its own internal rules, policies, procedures, and guidelines;
- e. it failed to install and/or implement necessary crossing safety improvements, including "lights and gates and roadway improvements," identified for the subject crossing by MoDOT in July 2021 and again in February 2022;
- f. it unreasonably delayed in installing and/or implementing necessary crossing safety improvements, including "lights and gates and roadway improvements," identified for the subject crossing by MoDOT in July 2021 and again in February 2022;
- g. it failed to adequately warn Amtrak, its crews and passengers, including plaintiffs, of known safety hazards at the subject crossing, including from the recommendations for crossing safety improvements and safety complaints received in the weeks before the subject crossing collision;
- h. It failed to adequately warn motorists of obstructed sight lines, steep grade, and loose gravel at the subject crossing;
- i. it failed to issue a slow order at the subject crossing, even after receiving safety complaints and recommendations for necessary crossing safety improvements identified for the subject crossing by MoDOT in July 2021 and again in February 2022;
- j. it failed to install track sensing devices to warn train crews of vehicles and obstructions on crossings, as recommended by the NTSB;
- k. it failed to erect and maintain proper and adequate crossing protection and warning devices, including but not limited to advanced warning signs, at the subject crossing to warn motorists of an oncoming train;

- l. it failed to install and/or implement adequate warning devices at the subject crossing, including automatic gates and/or flight light signals, in accordance with the requirements of 49 C.F.R. § 646.214, constituting negligence per se;
- m. it violated 49 CFR § 213.37 and/or R.S.Mo. § 389.665 by failing to control vegetation and by the impaired vision alongside the tracks at or near the subject crossing, constituting negligence per se;
- n. it maintained an unreasonably dangerous crossing, in light of a combination of known hazards including the high track speed limit, steep grade/incline of intersection roadways, loose gravel, angle of intersection, drop-offs on the sides of the roadways, and vegetation in the area; and
- o. it failed to properly maintain the crossing by allowing loose gravel to accumulate, thereby slowing approaching vehicles as they traveled through the crossing.

39. As a direct result of one or more of the foregoing negligent acts or omissions, Plaintiff Christopher Marzullo sustained injuries to his head, neck, back, and torso; he has experienced and will continue to experience physical pain and emotional distress; he has incurred medical expenses and is reasonably certain to incur medical expenses in the future; and he will lose wages and benefits; all to his damage.

WHEREFORE, Plaintiff Christopher Marzullo requests judgment on Count II of this Petition against Defendant BNSF Railway Company, in a sum which is fair and reasonable in excess of Twenty-Five Thousand Dollars (\$25,000), plus costs of suit and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT III – PUNITIVE DAMAGES
(Plaintiffs v. Defendant BNSF Railway company)

40. Plaintiff realleges and incorporates by reference paragraphs 1-39 as if fully set forth herein.

41. BNSF's conduct was willful and wanton, done with reckless indifference and/or conscious disregard for the safety of Plaintiffs and others, both directly and vicariously through

its agents and/or employees, in that it knew of the unreasonably dangerous condition of the subject crossing for years and failed to take any action to reduce or eliminate the local hazards which had been the subject of numerous safety complaints and state action.

42. Based on the facts alleged herein, BNSF knew or should have known that its conduct and/or omissions would result in injuries to Plaintiffs and that it continued such conduct and/or omissions in reckless indifference and/or conscious disregard for the safety of Plaintiffs and others.

WHEREFORE, Plaintiffs Brian Marra and Christopher Marzullo request judgment on Count III of this Petition against Defendant BNSF Railway Company, in a sum sufficient to punish BNSF and deter others from similar conduct, plus costs of suit and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT IV - NEGLIGENCE

(Plaintiff Brian Marra v. Defendant MS Contracting, LLC and Michael Sattman)

43. Plaintiff realleges and incorporates by reference paragraphs 1-31 as if fully set forth herein.

44. MS Contracting and Michael Sattman owed a duty of reasonable care in the hiring, training and supervision of its employees, including the driver of the aforementioned dump truck, and are vicariously liable for the negligence of their driver of the aforementioned dump truck who was working in the course of his employment.

45. The collision and resulting injuries to Plaintiff Brian Marra were the direct result of one or more of the following acts of negligence by MS Contracting and Michael Sattman, both directly and vicariously through their agent, driver and/or employee:

- a. it failed to operate its dump truck with reasonable care;
- b. it failed to keep a careful and proper lookout for oncoming trains or other

traffic;

- c. it failed to ensure that its dump truck would clear the crossing;
- d. it failed to yield the right-of-way to an oncoming train;
- e. it failed to look and listen for trains as the vehicle approached the railroad grade crossing;
- f. it failed to heed audible signals given of the train's approach to the crossing, including the repeated sounding of the train's horn;
- g. they failed to adequately train and supervise their driver;
- h. they negligently entrusted their driver to drive one of their dump trucks and/or entrusted U.S.D.O.T. authority to a driver which they knew or should have known was unqualified by training and experience;
- i. they failed to adequately test their drivers, to ensure they were competent;
- j. they failed to have an adequate fleet and driver safety program; and
- k. they violated Missouri statutes, including R.S.Mo. § 300.140 (Obedience to traffic control devices) and § 300.295 (Obedience to signal indicating approach of train), constituting negligence per se.

46. As a direct result of one or more of the foregoing negligent acts or omissions, Plaintiff Brian Marra sustained injuries to his neck, head, back, legs, and left arm; he has experienced and will continue to experience physical pain and emotional distress; he has incurred medical expenses and is reasonably certain to incur medical expenses in the future; and he will lose wages and benefits; all to his damage.

WHEREFORE, Plaintiff Brian Marra requests judgment on Count IV of this Petition against Defendant MS Contracting, LLC, and Michael Sattman in a sum which is fair and reasonable in excess of Twenty-Five Thousand Dollars (\$25,000), plus costs of suit and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT V - NEGLIGENCE

(Plaintiff Christopher Marzullo v. Defendant MS Contracting, LLC, and Michael Sattman)

47. Plaintiff realleges and incorporates by reference paragraphs 1-31 as if fully set forth herein.

48. MS Contracting and Michael Sattman owed a duty of reasonable care in the hiring, training and supervision of its employees, including the driver of the aforementioned dump truck, and are vicariously liable for the negligence of their driver of the aforementioned dump truck who was working in the course of his employment.

49. The collision and resulting injuries to Plaintiff Christopher Marzullo were the direct result of one or more of the following acts of negligence by MS Contracting and Michael Sattman, both directly and vicariously through their agent, driver and/or employee:

- a. it failed to operate its dump truck with reasonable care;
- b. it failed to keep a careful and proper lookout for oncoming trains or other traffic;
- c. it failed to ensure that its dump truck would clear the crossing;
- d. it failed to yield the right-of-way to an oncoming train;
- e. it failed to look and listen for trains as the vehicle approached the railroad grade crossing;
- f. it failed to heed audible signals given of the train's approach to the crossing, including the repeated sounding of the train's horn;
- g. they failed to adequately train and supervise their driver;
- h. they negligently entrusted their driver to drive one of their dump trucks and/or entrusted U.S.D.O.T. authority to a driver which they knew or should have known was unqualified by training and experience;
- i. they failed to adequately test their drivers, to ensure they were competent;
- j. they failed to have an adequate fleet and driver safety program; and

- k. they violated Missouri statutes, including R.S.Mo. § 300.140 (Obedience to traffic control devices) and § 300.295 (Obedience to signal indicating approach of train), constituting negligence per se.

50. As a direct result of one or more of the foregoing negligent acts or omissions, Plaintiff Christopher Marzullo sustained injuries to his head, neck, back and torso; he has experienced and will continue to experience physical pain and emotional distress; he has incurred medical expenses and is reasonably certain to incur medical expenses in the future; and he will lose wages and benefits; all to his damage.

WHEREFORE, Plaintiff Christopher Marzullo requests judgment on Count V of this Petition against Defendant MS Contracting, LLC, and Michael Sattman in a sum which is fair and reasonable in excess of Twenty-Five Thousand Dollars (\$25,000), plus costs of suit and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT VI – FELA NEGLIGENCE
(Plaintiff Brian Marra v. Defendant Amtrak)

51. Plaintiff realleges and incorporates by reference paragraphs 1-31 as if fully set forth herein.

52. This action arises under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 et seq. and asserts a claim from on duty injuries sustained by Plaintiff Marra on or about June 27, 2022, while in the course of employment with Defendant Amtrak in Chariton County, Missouri. Accordingly, this court has subject matter jurisdiction of this federal cause of action pursuant to 28 U.S.C. § 1331.

53. At all times relevant, Plaintiff Marra has been employed by Defendant Amtrak as a conductor, regularly transporting passenger trains between states.

54. At all times relevant, Defendant Amtrak was a common carrier by railroad engaged in interstate commerce through and between the several states, and Plaintiff Marra was,

at the time of the injuries complained of in this Petition, working in furtherance of Defendant Amtrak's interstate commerce.

55. Plaintiff Marra's injuries were caused, in whole or in part, by one or more of the following acts of negligence by Defendant Amtrak and/or its agents and employees:

- a. it failed to provide Plaintiff Marra with a reasonably safe place to work;
- b. it failed to provide Plaintiff Marra with reasonably safe conditions to work, including but not limited to failing to maintain trackside vegetation so that it did not create a safety hazard for train crews and removing such vegetation when it did become a safety hazard and/or implement slow orders in light of the specific local hazard until the subject vegetation was removed;
- c. it failed to adequately warn Plaintiff Marra of the dangerous subject crossing;
- d. it failed to provide a safe field of vision or line of sight of the subject crossing, in light of the speed in which it was traveling, and the grade, slope, and nearby vegetation by the subject crossing, which created a specific local safety hazard;
- e. it failed to implement a slow order approaching the subject crossing, in light of the grade, slope, and nearby vegetation by the subject crossing, as well as the poor line of sight, obstructions, and documented need for safety improvements at the crossing by MoDOT in July 2021 and again in February 2022;
- f. it violated 49 CFR § 213.37 and/or R.S.Mo. § 389.665 by failing to control vegetation and by the impaired vision alongside the tracks at or near the subject crossing, constituting negligence per se;
- g. it failed to ensure that the subject crossing was adequately constructed and/or maintained in accordance with the requirements of Mo. Code Regs. title 7 § 265-8.130, constituting negligence per se; and
- h. it failed to warn plaintiffs of an approaching dangerous condition at the crossing.

56. As a direct result of one or more of the foregoing negligent acts or omissions, Plaintiff Brian Marra sustained injuries to his neck, head, back, legs, and left arm; he has

experienced and will continue to experience physical pain and emotional distress; he has incurred medical expenses and is reasonably certain to incur medical expenses in the future; and he will lose wages and benefits; all to his damage.

WHEREFORE, Plaintiff Brian Marra requests judgment on Count VI of this Petition against Defendant Amtrak in a sum which is fair and reasonable in excess of Twenty-Five Thousand Dollars (\$25,000), plus costs of suit and for such other and further relief as this Court deems just and proper under the circumstances.

COUNT VII – FELA NEGLIGENCE
(Plaintiff Christopher Marzullo v. Defendant Amtrak)

57. Plaintiff realleges and incorporates by reference paragraphs 1-31 as if fully set forth herein.

58. This action arises under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 et seq. and asserts a claim from on duty injuries sustained by Plaintiff Marzullo on or about June 27, 2022, while in the course of employment with Defendant Amtrak in Chariton County, Missouri. Accordingly, this court has subject matter jurisdiction of this federal cause of action pursuant to 28 U.S.C. § 1331.

59. At all times relevant, Plaintiff Marzullo has been employed by Defendant Amtrak as a conductor, regularly transporting passenger trains between states.

60. At all times relevant, Defendant Amtrak was a common carrier by railroad engaged in interstate commerce through and between the several states, and Plaintiff Marzullo was, at the time of the injuries complained of in this Petition, working in furtherance of Defendant Amtrak's interstate commerce.

61. Plaintiff Marzullo's injuries were caused, in whole or in part, by one or more of the following acts of negligence by Defendant Amtrak and/or its agents and employees:

- a. it failed to provide Plaintiff Marzullo with a reasonably safe place to work;
- b. it failed to provide Plaintiff Marzullo with reasonably safe conditions to work, including but not limited to failing to maintain trackside vegetation so that it did not create a safety hazard for train crews and removing such vegetation when it did become a safety hazard and/or implement slow orders in light of the specific local hazard until the subject vegetation was removed;
- c. it failed to adequately warn Plaintiff Marzullo of the dangerous subject crossing;
- d. it failed to provide a safe field of vision or line of sight of the subject crossing, in light of the speed in which it was traveling, and the grade, slope, and nearby vegetation by the subject crossing, which created a specific local safety hazard;
- e. it failed to implement a slow order approaching the subject crossing, in light of the grade, slope, and nearby vegetation by the subject crossing, as well as the poor line of sight, obstructions, and documented need for safety improvements at the crossing by MoDOT in July 2021 and again in February 2022;
- f. it violated 49 CFR § 213.37 and/or R.S.Mo. § 389.665 by failing to control vegetation and by the impaired vision alongside the tracks at or near the subject crossing, constituting negligence per se;
- g. it failed to ensure that the subject crossing was adequately constructed and/or maintained in accordance with the requirements of Mo. Code Regs. title 7 § 265-8.130, constituting negligence per se; and
- h. it failed to warn plaintiffs of an approaching dangerous condition at the crossing.

62. As a direct result of one or more of the foregoing negligent acts or omissions, Plaintiff Christopher Marzullo sustained injuries to his head, neck, back, and torso; he has experienced and will continue to experience physical pain and emotional distress; he has incurred medical expenses and is reasonably certain to incur medical expenses in the future; and he will lose wages and benefits; all to his damage.

WHEREFORE, Plaintiff Christopher Marzullo requests judgment on Count VII of this Petition against Defendant Amtrak in a sum which is fair and reasonable in excess of Twenty-Five Thousand Dollars (\$25,000), plus costs of suit and for such other and further relief as this Court deems just and proper under the circumstances.

PLAINTIFF DEMANDS TRIAL BY JURY

SCHLICHTER BOGARD & DENTON, LLP

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