

IN THE CIRCUIT COURT OF CHARITON COUNTY, MISSOURI

MATTHEW E. RAFFERTY)
41363 Orange Place)
Hemet, CA 92544)

Plaintiff,)

v.)

NATIONAL RAILROAD PASSENGER)
CORPORATION, D/B/A AMTRAK,)

Serve at:)
CT Corporation)
1015 15th Street NW)
Suite 1000)
Washington, DC 20005)

and)

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

Defendants.)

Case No: _____

PETITION

TRIAL BY JURY REQUESTED

COMES NOW THE PLAINTIFF in the above-captioned cause, Mr. Matthew E. Rafferty, by and through undersigned counsel, and for his causes of action against Defendant National Railroad Passenger Corporation, d/b/a Amtrak (Defendant Amtrak), and Defendant MS Contracting, LLC (Defendant MS Contracting) states as follows:

JURISDICTION AND VENUE

1. Plaintiff is a citizen of the State of California and a resident of Riverside County, California, residing at 41363 Orange Place, Hemet, California 92544. He was injured in a train

collision that took place on June 27, 2022, in Chariton County, Missouri.

2. At all times relevant to this cause of action, Defendant Amtrak has been a common carrier by railroad engaged in interstate commerce and owns, controls, and operates a passenger railroad running into and through the various states of the United States of America, including Illinois, Missouri, Kansas, and other states, including into and through Chariton County, Missouri. Amtrak's principal place of business is in the District of Columbia. Amtrak's registered agent for service of process is CT Corporation; 1015 15th Street NW, Suite 1000, Washington, DC 20005.

3. On or about June 27, 2022, and at all times relevant to this petition, Plaintiff was working in the employ of Defendant Amtrak on Defendant Amtrak's Southwest Chief Train 4 (the Southwest Chief), and parts of Plaintiff's duties were in furtherance of interstate commerce and directly and substantially affected such commerce. On or about said date, and at all times relevant to this petition, Plaintiff was working within the course and scope of his employment by Defendant Amtrak, and the work he was doing was in furtherance of his duties in the employ of Defendant Amtrak engaged in and directly and substantially affecting interstate commerce.

4. The action against Amtrak is brought under the Federal Employers' Liability Act, 45 U.S.C. §§ 51, *et sequitur* (the FELA). Jurisdiction over Amtrak is proper in this Court pursuant to the concurrent jurisdiction provisions of 45 U.S.C. § 56 and R.S.Mo. § 506.500. Defendant Amtrak's negligent acts and omissions and violations of law described in this petition took place in Chariton County, Missouri.

5. The action against Defendant MS Contracting is brought under the common law and for violation of law set out herein, below. Jurisdiction over MS Contracting is proper in this Court pursuant to R.S.Mo. § 506.500 because Defendant MS Contracting's negligent acts and omissions and violations of law described in this petition took place in Chariton County,

Missouri.

6. Jurisdiction over Defendant MS Contracting is proper in this Court pursuant to R.S.Mo. § 506.500 because Defendant MS Contracting's negligent acts and omissions and violations of law described in this petition took place in Chariton County, Missouri.

7. Venue is proper over Defendant Amtrak and Defendant MS Contracting in this Court pursuant to R.S.Mo. § 508.010.4 because Plaintiff was first injured by the negligent acts and omissions and violations of law of the defendants that took place in Chariton County, Missouri.

8. By reason of 28 U.S.C. § 1445 and the fact that the causes of action against the two defendants arise out of the same incident and not separate and distinct occurrences, and therefore, are not separate and distinct causes of action, both the FELA case against Defendant Amtrak and the common law case against Defendant MS Contracting may not be removed to federal court. *See Pike v. Burlington N. R.R.*, 1996 U.S. Dist. LEXIS 10020, 1996 WL 403784.

FACTUAL BACKGROUND

9. The causes of action set out in this petition arise from a railroad crossing collision and train derailment that occurred on June 27, 2022, in Chariton County in or near Mendon, Missouri, on tracks at or near a grade road crossing located at County Road 113, also known as Porche Prairie Avenue.

10. The 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.

11. 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.

12. Despite the safety deficiencies of the subject crossing, the crossing 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. These crossbucks provided no indication to motorists when a train is actually coming down the tracks, as opposed to gates and/or flashing lights which provide advanced warning that a train is imminently approaching the crossing and prevents intrusion onto the tracks when such would be hazardous.

13. Moreover, the crossing was not regularly maintained as required, and therefore, loose gravel was allowed to accumulate, thereby slowing down vehicles which approached and crossed the tracks.

14. On or about June 27, 2022, at approximately 1 p.m., Plaintiff was working in Defendant Amtrak's employ aboard the Southwest Chief as it traveled eastbound through Chariton County.

15. At the time of the collision, the Southwest Chief was over-crowded, carrying over 280 passengers and 12 crewmembers.

16. As the Amtrak train approached the subject crossing traveling at a high rate of speed west to east on the tracks, a dump truck operated by an agent and employee of Defendant MS Contracting was traveling on Porche Prairie Avenue/County Road 113 in a northbound

direction and entered the crossing.

17. The dump truck was loaded with concrete aggregate being transported by Defendant MS Contracting's driver, in the scope of his employment, to a work site north of the subject crossing.

18. As the Southwest Chief approached the crossing, Defendant MS Contracting's driver drove across the tracks and did not remove the dump truck from the crossing before the Southwest Chief arrived at the crossing.

19. The Southwest Chief collided with the dump truck and flipped onto its side before skidding to a stop.

20. As a result of the collision, Plaintiff was thrown around violently and then landed on his back against a window on the upper deck of the second sleeper car within the derailed train, and he suffered the serious injuries described below.

21. 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.

22. 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.

23. 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.”

24. Shortly after Mr. Spencer posted the video, his wife, Sheryl, commented, “They are waiting till someone gets hit.”

25. 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.”

26. 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.”

27. Based on the long history of complaints and Defendant Amtrak’s non-delegable duty to perform reasonable inspections of the places where it routinely sends its employees to work, such as and including the subject crossing, Defendant Amtrak knew or should have known that the subject crossing posed an unreasonable danger to the public and its employees who work on them, particularly since passenger trains, trains hauling hazardous materials, and slow-moving farm equipment and industrial vehicles frequently traversed the crossing.

28. The problems with the crossing identified and explained by local residents, above, were compounded when the train was a passenger train, like the Southwest Chief, as opposed to a freight train. Most of the trains passing the crossing are freight trains operating at speeds around 50 mph, but the two, daily Amtrak trains operate over the crossing at approximately 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.

29. 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]nstall lights and gates and roadway improvement at [the subject] public BNSF crossing 005284Y.”

30. 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.

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

32. Despite the long history of complaints from residents and the State of Missouri’s conclusions that safety improvements were needed at the subject crossing, no changes were implemented, and Defendant Amtrak did nothing to maintain the crossing, to correct the loose gravel or pave the crossing, and Defendant Amtrak did nothing to create adequate sight line distances for approaching drivers. What Defendant Amtrak did do was continue running its trains full of passengers and employees such as Plaintiff at high speeds over the crossing.

COUNT I - AMTRAK

33. Plaintiff herein incorporates Paragraphs 1 through 32, above, the same as if they were set out in their entirety.

34. Under the FELA, Defendant Amtrak owed Plaintiff a non-delegable duty to exercise reasonable care for his safety. The crossing and the train’s approach to it were Plaintiff’s workplace where Defendant Amtrak assigned Plaintiff to perform his duties in Amtrak’s employ on the date of the collision. Defendant Amtrak’s non-delegable duty extended to taking

reasonable precautions, and following all applicable laws, to make the crossing and the train and vehicular approaches to the crossing a reasonably safe place for Plaintiff to work.

35. Plaintiff's injuries were caused, in whole or in part, by the negligence of Defendant Amtrak, and/or by Defendant Amtrak's violation of law that satisfies the negligence element of the case, including without limitation in the following respects: Defendant Amtrak failed to furnish and provide Plaintiff with a reasonably safe place to work; reasonably safe conditions for work; reasonably safe methods of work; reasonably safe tools, appliances, and equipment with which to work; and reasonably safe and adequate help, in that Defendant Amtrak, by and through its officers, agents, and employees other than Plaintiff:

- a. Failed to reasonably construct, inspect, maintain, and repair the crossing at issue to make it reasonably safe for vehicles, such as and including Defendant MS Contracting's truck, to use, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- b. Failed to reasonably promulgate, follow, and enforce reasonable rules, customs, practices, policies, and procedures for the construction, inspection, maintenance, and repair of Defendant Amtrak's crossings, including the crossing at issue, to make them reasonably safe for vehicles, such as and including Defendant MS Contracting's truck, to use, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- c. Failed to reasonably train, educate, and instruct its officers, agents, and employees in the aforesaid reasonable rules, customs, practices, policies, and procedures for

the construction, inspection, maintenance, and repair of Defendant Amtrak's crossings, including the crossing at issue, to make them reasonably safe for vehicles, such as and including Defendant MS Contracting's truck, to use, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.

- d. 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.
- e. Failed to adequately construct, inspect, and/or maintain the crossing at issue, 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.
- f. Failed to reasonably adequately construct, inspect, maintain, and repair the crossing at issue 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.
- g. Failed to construct, inspect, maintain and repair 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, when Defendant Amtrak knew, or in the exercise of ordinary care should have known,

that it was reasonably likely that employees, including Plaintiff, would be injured thereby.

- h. Failed to reasonably construct and maintain the subject crossing in accordance with its own internal rules, policies, procedures, and guidelines, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- i. 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, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- j. 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, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- k. Failed to reasonably adequately warn motorists of obstructed sight lines, steep grade, and loose gravel at the subject crossing, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- l. Failed to take reasonable action 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, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.

- m. Failed to reasonably install track sensing devices to warn train crews of vehicles and obstructions on crossings, as recommended by the NTSB, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- n. Failed to take reasonable action 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, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- o. 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 23 C.F.R. § 646.214, constituting negligence per se.
- p. Failed to reasonably properly maintain the crossing by allowing loose gravel to accumulate, thereby slowing approaching vehicles as they traveled through the crossing, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- q. Violated 49 CFR § 213.37 and/or R.S.Mo. § 389.665 by failing to control

vegetation and by reason of the impaired vision alongside the tracks at or near the subject crossing, constituting negligence per se.

- r. Failed to reasonably maintain trackside vegetation so that it did not create a safety hazard for train crews, failed to reasonably remove such vegetation when it did become a safety hazard, and/or failed to reasonably implement slow orders in light of the specific local hazard until the subject vegetation was removed, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- s. Failed to reasonably provide a reasonably safe field of vision or line of sight for the subject crossing, in light of the speed at which trains were authorized to travel there, and the grade, slope, and nearby vegetation in the area of the subject crossing, which created a specific local safety hazard, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- t. 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, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- u. Failed to implement a slow order approaching the subject crossing in light of the grade, slope, and nearby vegetation in the area of 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, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.

- v. Failed to reasonably warn its employees, including Plaintiff, of dangers at the crossings over which Defendant Amtrak sent them in their work, including those dangers set out and described in the foregoing subparagraphs, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- w. Failed to provide reasonably adequate supervision and/or training to its train crew, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- x. Failed to reasonably adequately train and/or instruct the crews who operate its trains, including the crew operating the train at issue, to be reasonably vigilant for and to reasonably react to hazards, such as and including the MS Contracting truck, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- y. Failed to reasonably look for, observe, and/or appreciate the hazard posed by the MS Contracting truck, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- z. Failed to take reasonable action to slow down its train as it approached the

- specific, local hazard of the MS Contracting truck, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
- aa. Unreasonably overcrowded its train beyond its reasonably safe capacity, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
 - bb. Failed to promulgate, follow, and enforce reasonable rules, customs, practices, policies and procedures designed to reasonably protect employees, including Plaintiff, against the foregoing acts and omissions, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
 - cc. Failed to train, educate, and instruct its officers, agents, and employees in reasonable rules, customs, practices, policies and procedures designed to reasonably protect employees, including Plaintiff, against the foregoing acts and omissions, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
 - dd. Failed to reasonably warn its employees, including Plaintiff, that Defendant Amtrak was engaging in the acts and omissions set out and described in the foregoing subparagraphs, when Defendant Amtrak knew, or in the exercise of ordinary care should have known, that it was reasonably likely that employees, including Plaintiff, would be injured thereby.
36. As a direct result of the aforesaid negligence of Defendant Amtrak, Plaintiff

sustained injuries to his back, neck, shoulders, upper and lower extremities, and his buttocks. Plaintiff also suffers from anxiety, depression and post-traumatic stress disorder. He has undergone medical care and treatment, including physical therapy and counseling, and Plaintiff will be required to seek medical care and treatment in the future. The strength, use and function of Plaintiff's body, and general health and strength have been weakened, diminished and impaired. As a result of said injuries, Plaintiff has suffered and will continue to suffer physical pain and suffering and mental anguish. Because of said injuries, Plaintiff has lost capacity for the enjoyment of life in the past and will suffer loss of capacity for the enjoyment of life in the future.

37. Prior to these injuries, Plaintiff was a strong, able-bodied person, capable of earning substantial wages and fringe benefits through his work on the railroad. On account of these injuries, Plaintiff has lost his earnings and will in the future lose his earnings and his power to work and labor, and his earning capacity has been permanently weakened, diminished and impaired. As a direct result of the aforesaid injuries, Plaintiff has been caused to incur the medical costs and expenses associated with the treatment of his injuries and may in the future incur medical costs and expenses associated with the treatment of his injuries. Further, as a direct result of these injuries, Plaintiff has been unable to perform his usual and normal household services and may in the future be unable to perform such services. By reason of the facts herein alleged, Plaintiff has suffered damages for which he should be awarded a reasonable sum.

REQUEST FOR RELIEF - AMTRAK

WHEREFORE, Plaintiff requests and prays for judgment against Defendant Amtrak in an amount in excess of the minimum jurisdictional of this Court, for costs incurred herein, for post-judgment interest allowed by law, for all relief allowed under FELA not specifically requested in

this Petition, and for any and all other relief to which Plaintiff is entitled.

COUNT II – MS CONTRACTING, LLC

37. Plaintiff herein incorporates Paragraphs 1 through 32, above, the same as if they were set out in their entirety.

38. Plaintiff's aforesaid injuries were proximately caused by the negligence of Defendant MS Contracting, and/or by Defendant MS Contracting's violation of law that satisfies the negligence element of the case, in that Defendant MS Contracting, directly and/or vicariously through its officers, agents, and employees for whom it is vicariously liable:

- a. Failed to operate its dump truck with reasonable care, when it knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- b. Failed to keep a careful and proper lookout for oncoming trains or other traffic when it knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- c. Failed to ensure that its dump truck would clear the crossing, when it knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- d. Failed to yield the right-of-way to the oncoming train, when it knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- e. Failed to look and listen for trains as the vehicle approached the railroad grade crossing, when it knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured

thereby.

- f. Failed to adequately train and supervise the driver of its dump truck, when Defendant MS Contracting knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- g. Negligently entrusted one of its dump trucks, and/or entrusted U.S.D.O.T. authority, to a driver whom Defendant MS Contracting knew or should have known was unqualified by training and experience, when Defendant MS Contracting knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- h. Failed to adequately test its drivers, including the driver of its dump truck, to ensure they were competent, when Defendant MS Contracting knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- i. Failed to have an adequate fleet and driver safety program, when Defendant MS Contracting knew, or in the exercise of ordinary care should have known, that it was reasonably likely that someone, including Plaintiff, would be injured thereby.
- j. 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.

39. As a direct result of the aforesaid negligence of Defendant Amtrak, Plaintiff sustained injuries to his back, neck, shoulders, upper and lower extremities, and his buttocks. Plaintiff also suffers from anxiety, depression and post-traumatic stress disorder. He has

undergone medical care and treatment, including physical therapy and counseling, and Plaintiff will be required to seek medical care and treatment in the future. The strength, use and function of Plaintiff's body, and general health and strength have been weakened, diminished and impaired. As a result of said injuries, Plaintiff has suffered and will continue to suffer physical pain and suffering and mental anguish. Because of said injuries, Plaintiff has lost capacity for the enjoyment of life in the past and will suffer loss of capacity for the enjoyment of life in the future.

40. Prior to these injuries, Plaintiff was a strong, able-bodied person, capable of earning substantial wages and fringe benefits through his work on the railroad. On account of these injuries, Plaintiff has lost his earnings and will in the future lose his earnings and his power to work and labor, and his earning capacity has been permanently weakened, diminished and impaired. As a direct result of the aforesaid injuries, Plaintiff has been caused to incur the medical costs and expenses associated with the treatment of his injuries and may in the future incur medical costs and expenses associated with the treatment of his injuries. Further, as a direct result of these injuries, Plaintiff has been unable to perform his usual and normal household services and may in the future be unable to perform such services. By reason of the facts herein alleged, Plaintiff has suffered damages for which he should be awarded a reasonable sum.

REQUEST FOR RELIEF – MS CONTRACTING

WHEREFORE, Plaintiff requests and prays for judgment against Defendant MS Contracting in an amount in excess of the minimum jurisdictional of this Court, for costs incurred herein, for post-judgment interest allowed by law, for all relief allowed under common law and/or FELA not specifically requested in this Petition, and for any and all other relief to which Plaintiff is entitled.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury under the provisions of Mo. Sup. Ct. Rule 69.01.

Respectfully submitted,

/s/ Christopher H. Leach
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