

IN THE CIRCUIT COURT OF CHARITON COUNTY, MISSOURI
NINTH JUDICIAL CIRCUIT

ROBERTA BUNECICKY,)
)
 and)
)
 FRANCIS BUNECICKY,)
)
 Plaintiffs,)
)
 v.)
)
 MS CONTRACTING, LLC,)
 a Missouri Limited Liability Company,)
 Serve Registered Agent via Personal Service:)
 MICHAEL E. SATTMAN)
 25851 Highway M)
 Brookfield, Missouri 64628,)
)
 and)
)
 BILLY DEAN BARTON II, deceased,)
 by Defendant *ad litem*, Joseph Hoffman,)
 Serve via Personal Service:)
 Joseph Hoffman)
 Hughes Lawyers, LLC)
 1314 South 18th Street)
 St. Louis, Missouri 63104,)
)
 Defendants.)

Case No.: _____

PETITION FOR DAMAGES

COME NOW Plaintiffs, Roberta Bunecicky and Francis Bunecicky, by and through their attorneys of record, and for their Petition for Damages against Defendant MS Contracting, LLC, and Defendant Billy Dean Barton, II, deceased, by Defendant *ad litem*, Joseph Hoffman, hereby allege and state as follows:

PARTIES

1. Plaintiff Roberta Bunecicky is, and was at all times relevant hereto, a resident of

the State of Pennsylvania.

2. Plaintiff Francis Bunecicky is, and was at all times relevant hereto, a resident of the State of Pennsylvania.

3. At all relevant times, Plaintiff Roberta Bunecicky and Plaintiff Francis Bunecicky were and are lawfully married.

4. Defendant MS Contracting, LLC (“MS Contracting”) is, and was at all times relevant hereto, a Missouri Limited Liability Company with its principal place of business in Brookfield, Linn County, Missouri. MS Contracting may be served with process through its registered agent, Michael E. Sattman at 25851 Highway M, Brookfield, Missouri 64628.

5. Prior to, and at the time of the collision on June 27, 2022, Defendant Billy Dean Barton, II (“Barton”) was a resident of the State of Missouri.

6. At all times relevant hereto, Barton was acting in the course and scope of his employment with MS Contracting.

7. Barton was killed in the collision detailed herein on June 27, 2022. Pursuant to RSMo. § 537.021.1(2), Joseph Hoffman, attorney-at-law of the law firm of Hughes Lawyers, LLC has consented to serve as Defendant *ad litem* for Barton. Mr. Hoffman may be served with process at 1314 South 18th Street, St. Louis, Missouri 63104. Decedent Barton, through his Defendant *ad litem* Joseph Hoffman, are referred to collectively herein as “Barton.”

JURISDICTION AND VENUE

8. Jurisdiction is proper before this Court pursuant to RSMo. § 506.500 because the tortious actions, negligent and reckless conduct described herein occurred in Chariton County, Missouri.

9. Venue is proper in this Court pursuant to RSMo. § 508.010.4 because the tortious

actions, negligent and reckless conduct of Defendants MS Contracting and Barton occurred in Chariton County, Missouri, and the causes of action accrued in this jurisdiction.

FACTS OF THE COLLISION

10. This case arises from the derailment of an Amtrak passenger train travelling on BNSF Railway Company-owned tracks that occurred following a collision at the BNSF Railway Company railroad crossing; the derailment occurred on June 27, 2022, near Mendon, Missouri, in Chariton County.

11. Defendant MS Contracting owns and operates a contracting company which is located at 25851 County Road M in Brookfield, Missouri 64248.

12. Prior to, and on June 27, 2022, Defendant Barton was an employee of Defendant MS Contracting; unfortunately, Barton was killed in this collision.

13. On June 27, 2022, on behalf of and at the direction of Defendant MS Contracting, Defendant Barton was operating a 2007 Kenworth 2900 dump truck which was owned by MS Contracting bearing VIN# 1NKWXBEX97J177480 (the “Dump Truck”) performing rock hauling service for a levee project in Chariton County, Missouri.

14. In Chariton County, there is a public road called Porche Prairie/County Road 113, which intersects two parallel mainline BNSF Railway Company railroad tracks over which trains operate at high speeds in both directions; this railroad crossing is identified as U.S. DOT No. 005284Y, (the “Porche Prairie Crossing”), and it is situated just west of Mendon, Missouri.

15. The Porche Prairie Crossing is a “passive” crossing with no “active” warning devices, such as automatic flashing lights and gate arms, to alert a driver to the presence of an oncoming high-speed 90 miles per hour train.

16. While operating the Dump Truck loaded with rock northbound on Porche Prairie

Road to make a delivery for and on behalf of MS Contracting to the levee project, Defendant Barton attempted to drive across the BNSF Railway Company-owned and maintained Porche Prairie Crossing.

17. BNSF Railway Company owns the tracks and right-of-way property at the Porche Prairie Crossing, and it was legally responsible to keep it reasonably safe for the public.

18. The Porche Prairie Crossing has, and had at the time, a large hump and steep grade on approach that must be traversed by drivers, as well as being situated on a skewed angle making it difficult for drivers to see down the tracks while trying to cross.

19. Members of the public, including local residents and farmers, had complained to BNSF Railway Company about the dangerous nature of the Porche Prairie Crossing before the tragic derailment detailed herein.

20. At the same time Defendant Barton was attempting to cross the dangerous Porche Prairie Crossing northbound, a rapidly approaching Amtrak Southwest Chief passenger train (“the Train”) loaded with over 280 passengers was traveling toward the Porche Prairie Crossing on the BNSF Railway Company owned tracks in a northeasterly direction, rapidly approaching at approximately 90 miles per hour.

21. As Barton attempted to cross the Porche Prairie Crossing, the Train struck the Dump Truck causing a violent collision, resulting in the Dump Truck being completely destroyed, and causing the Train to derail from the tracks.

22. The Train consisted of two locomotives and eight cars, and carried over 280 passengers.

23. The collision between the Train and the Dump Truck – and the Train’s subsequent derailment – caused fatalities and personal injuries to the passengers on the Train.

24. Plaintiff Roberta Bunecicky was a passenger on the Train at the time of the collision and derailment.

25. Plaintiff Francis Bunecicky was a passenger on the Train at the time of the collision and derailment.

26. At all relevant times to this Petition, the actions of Barton were: (1) within the course and scope of his employment and/or agency with Defendant MS Contracting; (2) with Defendant MS Contracting's authority, consent, and knowledge; and (3) for Defendant MS Contracting's benefit under its direction and control.

27. At all relevant times, the Dump Truck was owned and operated on behalf of Defendant MS Contracting, for the benefit of and/or at the direction of Defendant MS Contracting.

COUNT I – NEGLIGENCE
(Defendants MS Contracting and Barton)

28. Plaintiffs hereby incorporate by reference each and every allegation contained in Paragraphs 1 through 27 of the Plaintiffs' Petition as if fully stated herein.

LEGAL THEORIES AND CONCLUSIONS OF LAW

29. Defendant Barton was the employee and/or agent of Defendant MS Contracting and Defendant MS Contracting is liable for the negligent actions of Defendant Barton which directly contributed to cause this derailment.

30. Under the doctrines of vicarious liability and *respondeat superior*, Defendant MS Contracting is responsible and liable for the negligence of its employees and agents, including its driver Defendant Barton, while acting within the course and scope of his employment with Defendant MS Contracting.

31. Defendant Barton was acting within the course and scope of his employment with Defendant MS Contracting when the collision and derailment occurred.

32. Defendant Barton and Defendant MS Contracting owed a duty of care to Plaintiffs to operate the Dump Truck in a reasonably safe manner.

33. Defendant Barton and Defendant MS Contracting breached their respective duties of care to the Plaintiffs in the operation of the Dump Truck over the Porche Prairie Crossing, and such breach of duty directly contributed to cause the collision and derailment

34. BNSF Railway Company, as the owner of the Porche Prairie Crossing, the right-of-way property around the Porche Prairie Crossing, and the entity responsible for the maintenance of the Porche Prairie Crossing, was negligent in its maintenance of the Porche Prairie Crossing, but such negligence on the part of BNSF Railway Company does not absolve Defendant MS Contracting and Defendant Barton from their negligence and duties of care owed to Plaintiffs.

35. In the alternative to the negligence of BNSF Railway Company, Defendant MS Contracting and its driver Defendant Barton were themselves negligent in the operation of the Dump Truck over the Porche Prairie Crossing by failing to operate the Dump Truck in a reasonably safe manner and by failing to yield the right-of-way to the oncoming Train. This allegation is made in addition to the negligence of BNSF Railway Company. BNSF Railway Company had the legal duty to keep its grade crossing reasonably safe for travelers. BNSF was itself negligent in failing to properly maintain the Porche Prairie Crossing in a reasonably safe manner that would allow for the public to safely traverse the Porche Prairie Crossing and not be put in danger, to include passengers on a train.

36. In the alternative to the negligence of BNSF Railway Company, Defendant MS Contracting and its driver Defendant Barton were themselves negligent by their actions and/or inactions in the operation of the Dump Truck while attempting to cross the Porche Prairie Crossing, which directly contributed to cause the collision between the Train and the Dump Truck and

subsequent derailment.

37. Under Missouri law there can be more than one proximate cause for a train wreck and derailment. In addition to the negligent acts of BNSF Railway Company directly causing or directly contributing to cause the train wreck and derailment on June 27, 2022, Plaintiffs allege that Defendants MS Contracting and Defendant Barton were also a direct and proximate cause of the train wreck and derailment, which caused or contributed to cause the injuries and damages to Plaintiffs.

38. Under Missouri law there can be more than one proximate cause for a train wreck and derailment. In addition to the negligent acts of BNSF Railway Company directly causing or directly contributing to cause the train wreck and derailment on June 27, 2022, Plaintiffs allege that as a direct and proximate result of the negligent acts and omissions of Defendant MS Contracting and its employees and agents, including Defendant Barton, Plaintiff Roberta Bunecicky and Plaintiff Francis Bunecicky have suffered serious, severe, and permanent physical and mental injuries, including past and future pain and suffering, property damages, past lost earnings and future loss of earnings and earning capacity, past and future medical and hospital expenses, loss of enjoyment of life, and emotional distress. These injuries and damages are permanent and progressive in nature and will continue to cause damages to Plaintiffs in the future. Plaintiff Roberta Bunecicky and Plaintiff Francis Bunecicky claim all damages allowed by Missouri law.

COUNT II – LOSS OF CONSORTIUM
(Defendants MS Contracting and Barton)

39. Plaintiffs hereby incorporate by reference each and every allegation contained in Paragraphs 1 through 38 of the Plaintiffs' Petition as if fully stated herein.

40. At all relevant times, Plaintiff Roberta Bunecicky was the lawfully wedded spouse

of Plaintiff Francis Bunecicky, and lives and cohabitates with Plaintiff Francis Bunecicky as his spouse.

41. As a direct and proximate result of the injuries to Plaintiff Francis Bunecicky, Plaintiff Roberta Bunecicky suffers loss of affection, care, companionship, and services that Plaintiff Francis Bunecicky provided prior to the injuries and that Plaintiff Roberta Bunecicky has been required to take on since Plaintiff Francis Bunecicky became injured, all in excess of \$25,000.00.

42. As a direct and proximate result of the injuries to Plaintiff Roberta Bunecicky, Plaintiff Francis Bunecicky suffers loss of affection, care, companionship, and services that Plaintiff Roberta Bunecicky provided prior to the injuries and that Plaintiff Francis Bunecicky has been required to take on since Plaintiff Roberta Bunecicky became injured, all in excess of \$25,000.00

WHEREFORE Plaintiffs, Roberta Bunecicky and Francis Bunecicky, pray for judgment against Defendant MS Contracting and Defendant Barton, for fair and reasonable damages, in a fair and reasonable sum, which sum for each is in excess of this Court's jurisdictional minimum of Twenty-five Thousand Dollars (\$25,000.00), together with their costs and damages incurred herein, and for such other relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all of the above issues.

Respectfully submitted,

DAVIS, BETHUNE & JONES, LLC

By /s/ Grant L. Davis

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