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Attorney for: Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ALICE BREEMAN, individually, in her
own right, and as the parent and natural
guardian of S.B-R, a minor,
A.B-R, a minor, and H.B-R, a minor
120 Jessup Street
Paulsboro, NJ 08066

Plaintiffs,

vs.

CONSOLIDATED RAIL CORPORATION,

and

NORFOLK SOUTHERN RAILWAY COMPANY
a/k/a NORFOLK SOUTHERN CORPORATION,

and

CSX TRANSPORTATION, INC.

Defendants.

CIVIL ACTION

JURY TRIAL DEMANDED

NO.

AMENDED COMPLAINT

1. Plaintiff, Alice Breeman, is an individual citizen and resident of the State of New Jersey, residing therein at 120 Jessup Street, Borough of Paulsboro, Gloucester County.

2. Plaintiff, Alice Breeman, brings this lawsuit as an individual and in her own right, and as parent and natural guardian of her minor children, S.B-R, A.B-R, and H.B-R.

3. Defendant, Consolidated Rail Corporation, is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal place of business and/or corporate headquarters located at 1717 Arch Street, 32nd Floor, Philadelphia, PA. 19103.

4. Defendant, Norfolk Southern Railway Company, a/k/a Norfolk Southern Corporation is a corporation duly organized and existing under and by virtue of the laws of the State of Virginia with its principal place of business located at Three Commercial Place, Norfolk, VA 23510.

5. Defendant, CSX Transportation, Inc. is a corporation duly organized and existing under and by virtue of the laws of a state other than New Jersey with its principal place of business and/or corporate headquarters located in Jacksonville, Florida and an office for the service of legal process at 2704 commerce Drive, Ste. B., Harrisburg, PA 17110.

6. At all times material hereto, none of the defendants were a citizen of, nor did they have a principal place of business in, the State of New Jersey.

7. Jurisdiction is based upon diversity of citizenship pursuant to 28 U.S.C. §1332 in that none of the plaintiffs are from the same state as any of the defendants and the amount in controversy exceeds \$75,000.00.

8. All the acts alleged to have been done or not to have been done by the defendants, were done or not done by their respective agents, servants, workmen and/or employees, acting in the course and scope of their employment for and on behalf of said defendants.

9. On or about the morning of November 30, 2012, and for some time prior thereto, the defendants, jointly and severally, owned a certain bridge known as the Paulsboro Bridge, which spanned the Mantua Creek, in Paulsboro, Gloucester County, New Jersey.

10. On or about the morning of November 30, 2012, and for some time prior thereto, the defendants, jointly and severally, controlled a certain bridge known as the Paulsboro Bridge, which spanned the Mantua Creek, in Paulsboro, Gloucester County, New Jersey.

11. On or about the morning of November 30, 2012, and for some time prior thereto, the defendants, jointly and severally, managed a certain bridge known as the Paulsboro Bridge, which spanned the Mantua Creek, in Paulsboro, Gloucester County, New Jersey.

12. On or about the morning of November 30, 2012, and for some time prior thereto, the defendants, jointly and severally, maintained a certain bridge known as the Paulsboro Bridge, which spanned the Mantua Creek, in Paulsboro, Gloucester County, New Jersey.

13. On or about the morning of November 30, 2012, and for some time prior thereto, the defendants, jointly and severally, operated a certain bridge known as the Paulsboro Bridge, which spanned the Mantua Creek, in Paulsboro, Gloucester County, New Jersey.

14. On or about the morning of November 30, 2012, and for some time prior thereto, the defendants, jointly and severally, were responsible for a certain bridge known as the Paulsboro Bridge, which spanned the Mantua Creek, in Paulsboro, Gloucester County, New Jersey.

15. The aforementioned bridge was built in approximately the year 1873.

16. The aforementioned bridge is a “swing bridge” and can be positioned to permit water travel to proceed along the Mantua Creek or positioned to permit rail traffic to proceed over the Mantua Creek.

17. During the approximate year prior to November 30, 2012, the defendants, jointly and severally, individually and/or through their respective agents, servants, workmen and/or employees, received no less than 23 “trouble tickets” reporting that the Paulsboro Bridge had malfunctioned.

18. Since October 27, 2012, approximately one month prior to this accident, the defendants, jointly and severally, individually and/or by their respective agents, servants, workmen and/or employees, received at least nine “trouble tickets” reporting the improper operation of the subject bridge and/or malfunctioning of the subject bridge.

19. On November 19, 2012, ten days before the subject accident, a rail crew reported to the defendants that the subject bridge had malfunctioned in that the track on the bridge failed to properly connect and lock with the track on either side of the bridge.

20. Approximately eight hours before the subject accident, another train crew reported to the defendants that the subject bridge had malfunctioned and failed to operate properly.

21. Federal and state laws and regulations required that the subject bridge be inspected every three months.

22. An inspection of the subject bridge should have been performed in September, 2012.

23. However, the defendants, jointly and severally, individually and/or by their respective agents, servants, workmen and/or employees, failed to perform the mandated inspection of the bridge in September, 2012 and/or failed to properly perform said inspection.

24. Prior to this accident, the defendants had employed a human operator whose job was to move the bridge into the proper position, lock the bridge to the tracks on either side of it, and inspect to make certain that the bridge was properly aligned and locked with the adjacent rails before any trains were permitted to move over the bridge.

25. Further, prior to this accident, in an attempt to save money, the defendants, jointly and severally, individually and/or through their respective agents, servants, workmen and/or employees, eliminated the human bridge operator position and replaced the human bridge operator with an electronic/mechanical system.

26. On the morning of November 30, 2012, one of the defendants' train crews proceeded to remotely move the Paulsboro bridge into its position to enable their train to travel over the Mantua Creek and further proceeded to remotely lock the tracks on the bridge to the tracks on either side of the bridge.

27. The bridge and its signal system were designed to present a green signal when in its proper position and when the track was properly locked. The bridge was also designed to present a red signal when the bridge was not properly positioned, or the track on the bridge was not properly locked to the track on either side of the bridge. Even though the train crew had used the remote control to properly align and lock the bridge, the signal remained red.

28. The defendants' train crew contacted the defendants' dispatcher and requested permission to cross the bridge despite the presence of a red signal.

29. On the morning of November 30, 2012, despite the presence of a red signal, the defendants' dispatcher authorized the same crew to travel across the Paulsboro bridge.

30. As the train was travelling across the defendants' Paulsboro bridge, the train derailed and four tank cars fell off of the bridge into the Mantua Creek below.

31. At or about the same time, the defendants' Paulsboro Bridge began to collapse.

32. One of the tank cars that derailed was carrying vinyl chloride and/or other toxic and dangerous substances and the vinyl chloride and/or other toxic and dangerous substances were

released from the car into both the water and the atmosphere.

33. The aforementioned accident was caused by the joint and several negligence of the defendants, individually and/or through their respective agents, servants, workmen and/or employees, including but not limited to the following:

- a. Failure to properly inspect the subject bridge;
- b. Failure to properly discover the defective, malfunctioning and unsafe condition of the subject bridge;
- c. Failing to repair the subject bridge;
- d. Failing to properly maintain the subject bridge;
- e. Failing to heed prior complaints that the subject bridge failed to operate properly, failed to properly align and failed to properly lock;
- f. Failing to heed the complaints of other crews both ten days before this accident and hours before this accident concerning the failure of the subject bridge to properly operate, properly align and properly lock;
- g. Permitting a train to operate over the subject bridge even though there was a red signal that indicated that the bridge was not properly aligned and/or was not properly locked;
- h. Failure to have properly trained personnel to detect the condition of the bridge, and whether the bridge was properly aligned and locked, prior to permitting the train to operate over it despite a red signal;
- i. Failure to have a human bridge operator who was trained to operate the bridge and to inspect it prior to any train travel over it;
- j. Failing to perform the mandated quarterly inspection on the subject bridge;
- k. Permitting hazardous, toxic, and extremely dangerous and poisonous substances to be transported across the bridge despite the presence of a red signal indicating that the bridge was not properly aligned and/or locked;
- l. Failing to take necessary and proper precautions for the safety of those individuals living, working, and otherwise situated in the vicinity of the subject bridge;
- m. Failing to warn those individuals living, working, and otherwise situated near the subject bridge that a hazardous substance was being transported across the bridge

despite the facts of the defendants, jointly and severally, knew or should have known that it was unsafe to operate a train across the bridge under the circumstances existing on the morning of November 30, 2012;

n. Violating statutes of the United States of America and the State of New Jersey, and regulations of federal and state departments and agencies with respect to the subject bridge and the movement of train traffic across it;

o. Failure to take necessary precautions despite engaging in an ultra-hazardous activity;

p. Failure to properly inspect, maintain and repair the signal system associated with the subject bridge;

q. Failure to comply with the defendants' own safety, operating and other rules, procedures and regulations;

r. Failure to comply with NORAC Rules;

s. Failure to have a qualified bridge mechanic or engineer, signal maintainer or signal department personnel, or maintenance of way personnel inspect the bridge and the tracks before permitting the train to travel over the bridge despite the red signal;

t. Permitting untrained and unqualified personnel to make the decision to proceed over the bridge despite the presence of the red signal.

34. As a result of the negligence, carelessness, and recklessness of the defendants, individually and through their respective agents, servants, workmen and/or employees, each of the plaintiffs were caused to come into contact with, ingest and inhale vinyl chloride and other dangerous and toxic fumes and substances released into the water and the atmosphere by the rail cars that derailed and/or fell off of the bridge.

35. All of the averments set forth in the foregoing paragraphs are incorporated in the following Counts as though set forth therein at length.

COUNT 1
ALICE BREEMAN VS. CONSOLIDATED RAIL CORP., NORFOLK SOUTHERN
RAILWAY COMPANY, a/k/a NORFOLK SOUTHERN CORP., AND CSX
TRANSPORTATION, INC.

36. As a result of the aforesaid accident, plaintiff sustained injuries to her body,

including but at this time not limited to, its bones, cells, tissues, nerves, muscles and functions. Plaintiff sustained injuries to her eyes; injuries to her skin; injuries to her respiratory system; neurological injuries; injuries to her internal organs; increased likelihood of developing cancer and the fears associated with that; diseases of the blood; and severe physical, emotional and psychological pain and suffering. Some or all of the above injuries are or may be permanent in nature. The full extent of plaintiff's injuries is not presently known.

37. As a result of the accident herein referred to, plaintiff has suffered a loss and impairment of earnings and earning power and will suffer the same for an indefinite time in the future; has undergone great physical pain and mental anguish and will undergo the same for an indefinite time in the future; has been obliged to and will have to continue to expend large sums of money in the future in an effort to effect a cure of her aforesaid injuries and has been unable to attend to the same for an indefinite time in the future, all to her great detriment and loss.

COUNT II

ALICE BREEMAN, AS PARENT AND NATURAL GUARDIAN OF S.B-R, A MINOR, VS. CONSOLIDATED RAIL CORP., NORFOLK SOUTHERN RAILWAY COMPANY, a/k/a NORFOLK SOUTHERN CORP., AND CSX TRANSPORTATION, INC.

38. As a result of the aforesaid accident, plaintiff sustained injuries to her body, including but at this time not limited to, its bones, cells, tissues, nerves, muscles and functions. Plaintiff sustained injuries to her eyes; injuries to her skin; injuries to her respiratory system; neurological injuries; injuries to her internal organs; increased likelihood of developing cancer and the fears associated with that; diseases of the blood; and severe physical, emotional and psychological pain and suffering. Some or all of the above injuries are or may be permanent in nature. The full extent of plaintiff's injuries is not presently known.

39. As a result of the accident herein referred to, plaintiff has suffered a loss and impairment of earnings and earning power and will suffer the same for an indefinite time in the future; has undergone great physical pain and mental anguish and will undergo the same for an indefinite time in the future; has been obliged to and will have to continue to expend large sums of money in the future in an effort to effect a cure of her aforesaid injuries and has been unable to attend to the same for an indefinite time in the future, all to her great detriment and loss.

40. As a result of the injuries sustained by the minor-plaintiff, as aforesaid, the

earnings of said minor have been impaired during her minority, to which parent-plaintiff is legally entitled, all of which are unavailable to their great financial damage and loss.

41. As a result of the injuries sustained by the minor-plaintiff as aforesaid, parent-plaintiff has been obliged to expend large sums of money for medicine and medical treatment in an effort to affect a cure of minor-plaintiff's aforesaid injuries, and she will be obliged to expend such sums for an indefinite time in the future, and until minor-plaintiff obtains her majority to their great detriment and loss.

COUNT III

ALICE BREEMAN, AS PARENT AND NATURAL GUARDIAN OF A.B-R, A MINOR, VS. CONSOLIDATED RAIL CORP., NORFOLK SOUTHERN RAILWAY COMPANY, a/k/a NORFOLK SOUTHERN CORP., AND CSX TRANSPORTATION, INC.

42. As a result of the aforesaid accident, plaintiff sustained injuries to her body, including but at this time not limited to, its bones, cells, tissues, nerves, muscles and functions. Plaintiff sustained injuries to her eyes; injuries to her skin; injuries to her respiratory system; neurological injuries; injuries to her internal organs; increased likelihood of developing cancer and the fears associated with that; diseases of the blood; and severe physical, emotional and psychological pain and suffering. Some or all of the above injuries are or may be permanent in nature. The full extent of plaintiff's injuries is not presently known.

43. As a result of the accident herein referred to, plaintiff has suffered a loss and impairment of earnings and earning power and will suffer the same for an indefinite time in the future; has undergone great physical pain and mental anguish and will undergo the same for an indefinite time in the future; has been obliged to and will have to continue to expend large sums of money in the future in an effort to effect a cure of her aforesaid injuries and has been unable to attend to the same for an indefinite time in the future, all to her great detriment and loss.

44. As a result of the injuries sustained by the minor-plaintiff, as aforesaid, the earnings of said minor have been impaired during her minority, to which parent-plaintiff is legally entitled, all of which are unavailable to their great financial damage and loss.

45. As a result of the injuries sustained by the minor-plaintiff as aforesaid, parent-plaintiff has been obliged to expend large sums of money for medicine and medical treatment in an effort to affect a cure of minor-plaintiff's aforesaid injuries, and she will be obliged to expend such sums for an indefinite time in the future, and until minor-plaintiff obtains her majority to their great

detriment and loss.

COUNT IV

ALICE BREEMAN, AS PARENT AND NATURAL GUARDIAN OF H.B-R, A MINOR, VS. CONSOLIDATED RAIL CORP., NORFOLK SOUTHERN RAILWAY COMPANY, a/k/a NORFOLK SOUTHERN CORP., AND CSX TRANSPORTATION, INC.

46. As a result of the aforesaid accident, plaintiff sustained injuries to her body, including but at this time not limited to, its bones, cells, tissues, nerves, muscles and functions. Plaintiff sustained injuries to her eyes; injuries to her skin; injuries to her respiratory system; neurological injuries; injuries to her internal organs; increased likelihood of developing cancer and the fears associated with that; diseases of the blood; and severe physical, emotional and psychological pain and suffering. Some or all of the above injuries are or may be permanent in nature. The full extent of plaintiff's injuries is not presently known.

47. As a result of the accident herein referred to, plaintiff has suffered a loss and impairment of earnings and earning power and will suffer the same for an indefinite time in the future; has undergone great physical pain and mental anguish and will undergo the same for an indefinite time in the future; has been obliged to and will have to continue to expend large sums of money in the future in an effort to effect a cure of her aforesaid injuries and has been unable to attend to the same for an indefinite time in the future, all to her great detriment and loss.

48. As a result of the injuries sustained by the minor-plaintiff, as aforesaid, the earnings of said minor have been impaired during her minority, to which parent-plaintiff is legally entitled, all of which are unavailable to their great financial damage and loss.

49. As a result of the injuries sustained by the minor-plaintiff as aforesaid, parent-plaintiff has been obliged to expend large sums of money for medicine and medical treatment in an effort to affect a cure of minor-plaintiff's aforesaid injuries, and she will be obliged to expend such sums for an indefinite time in the future, and until minor-plaintiff obtains her majority to their great detriment and loss.

COUNT V - PUNITIVE DAMAGES

ALICE BREEMAN, individually, in her own right, and as the parent and natural guardian of S.B-R, A.B-R, AND H.B-R, MINORS VS. CONSOLIDATED RAIL CORP., NORFOLK

SOUTHERN RAILWAY COMPANY, a/k/a NORFOLK SOUTHERN CORP., AND CSX TRANSPORTATION, INC.

50. Paragraphs 1-34 are fully incorporated herein.

51. On November 30, 2012, the defendants, individually and/or through their respective agents, servants, workmen and/or employees, instructed the train crew to proceed across the Paulsboro bridge even though there was a red signal indicating that the bridge was not properly aligned and that the tracks were not properly locked to the tracks on either side of the bridge.

52. On November 30, 2012, the defendants, individually and/or through their respective agents, servants, workmen and/or employees, instructed the train crew to proceed across the Paulsboro bridge even though approximately eight hours before this accident another train crew reported that the bridge had malfunctioned.

53. On November 30, 2012, the defendants, individually and/or through their respective agents, servants, workmen and/or employees, instructed the train crew to proceed across the Paulsboro bridge even though the year proceeding this accident the defendants received close to two dozen trouble tickets concerning the failure of this bridge to operate properly.

54. On November 30, 2012, the defendants, individually and/or through their respective agents, servants, workmen and/or employees, instructed the train crew to proceed across the Paulsboro bridge even though during the one month proceeding this accident, the defendants received nine trouble tickets concerning the failure of this bridge to operate properly.

55. On November 30, 2012, the defendants, individually and/or through their respective agents, servants, workmen and/or employees, instructed the train crew to proceed across the Paulsboro bridge even though the defendants failed to properly perform the mandated quarterly bridge inspection in September, 2012.

56. On November 30, 2012, the defendants, individually and/or through their respective agents, servants, workmen and/or employees, instructed the train crew to proceed across the Paulsboro bridge even though the defendants did not have a qualified bridge mechanic inspect the bridge before permitting the train's crew to travel over the bridge despite the red signal.

57. On November 30, 2012, the defendants, individually and/or through their respective agents, servants, workmen and/or employees, instructed the train crew to proceed across the Paulsboro bridge even though there was a red signal indicating that the bridge was not properly aligned and/or locked and the defendants knew that the train was carrying dangerous, toxic,

poisonous and caustic hazmat cargo.

58. At all times material hereto, the defendants, jointly and severally, individually and/or through their respective agents, servants, workmen and/or employees, acted in an outrageous, willful and grossly careless manner.

59. At all times material hereto, the defendants, jointly and severally, individually and/or through their respective agents, servants, workmen and/or employees, acted with a wanton disregard and reckless indifference to the rights and welfare, safety, health and life of the plaintiffs herein.

60. As a result of the outrageous, willful and grossly careless conduct of the defendants, in which there was a wanton disregard and reckless indifference to the rights and welfare of the plaintiffs herein, the plaintiffs are entitled to punitive damages against the defendants, jointly and severally.

WHEREFORE, plaintiffs demand upon each of the foregoing Counts compensatory damages for a sum in excess of One Hundred Fifty Thousand Dollars (\$150,000.00) and punitive damages for a sum not less than Ten Million Dollars (\$10,000,000.00).

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