

CV19-0502-173

CAUSE NO. _____

MARIA DE LOURDES BONILLA CATAÑO,	§	IN THE DISTRICT COURT
Individually and as Representative of the	§	
Estate of C.B., a Deceased Minor Child;	§	
SELENE SILVA, Individually and as	§	
Next Friend of J.T., a Minor Child; and	§	
CHRISTIAN D. TORRES ARENAS, Individually	§	
and as Next Friend of J.T., a Minor Child;	§	
	§	
<i>Plaintiffs,</i>	§	HENDERSON COUNTY, TEXAS
	§	
v.	§	
	§	
UNION PACIFIC RAILROAD COMPANY,	§	
ROBERT RAY; ROGER JOHNSON,	§	
ATHENS INDEPENDENT SCHOOL DISTRICT,	§	
and JOHN FRANKLIN STEVENS,	§	
	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs Maria de Lourdes Bonilla Cataño, Individually and as Representative of the Estate of C.B., a Deceased Minor Child; Selene Silva, Individually and as Next Friend of J.T., a Minor Child; and Christian D. Torres Arenas, Individually and as Next Friend of J.T., a Minor Child (collectively, "***Plaintiffs***"), file this Original Petition against Union Pacific Railroad Company, Robert Ray, Roger Johnson, Athens Independent School District, and John Franklin Stevens (collectively, "***Defendants***"). In support, Plaintiffs state the following:

SUMMARY

It was only a matter of time before someone died or was catastrophically injured at the Wofford Street crossing. That train crossing is a trap waiting to be sprung. It has a steep approach angle to a raised grade crossing. Westbound trains cross southbound traffic at less than a 30-degree angle. There are limited and obstructed lines of sight on approach that force southbound motorists to check

their blind spot to see if a train is going to appear suddenly from behind the trees. As many as eight trains per day blow through that crossing at speeds of up to 40 miles per hour. Not surprisingly, there have been two prior collisions between vehicles and trains at this crossing, including a prior injury collision as recently as October 2014. There should be little dispute that the Wofford Street crossing is not only dangerous but extra-hazardous.

Despite that, Union Pacific Railroad Company—the owner of the crossing and the only for-profit company to operate trains on it—continues to ignore the Wofford Street crossing’s obvious dangers. Instead of doing the right thing, Union Pacific inexplicably installed automatic gates and warning lights at the two adjacent crossings at Murchison Street and Wood Street, despite significantly less vehicular traffic at those locations. Compounding the danger, Union Pacific has failed to close the Wofford Street crossing, which would divert existing traffic to the safer, guarded crossings nearby at Murchison Street and Wood Street.

This created a recipe for disaster, and disaster struck on January 25, 2019, when a Union Pacific train struck a school bus. The result was catastrophic. Thirteen-year old C.B. was ejected from the school bus and killed after impact. Nine-year old J.T. survived but sustained severe and permanent injuries.

Prior to impact, the school-bus driver stopped, looked left, looked right, and attempted to cross the railroad tracks at Wofford Street, like he had done numerous times before. But this time, the school-bus driver got caught in the trap that Union Pacific laid for him and continues to lay today for all motorists in Henderson County. As a result, two families will never be the same again. For these reasons, Plaintiffs bring this lawsuit and demand a jury trial to send a message that Union Pacific should put safety first on Wofford Street and throughout Henderson County.

I.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to pursue discovery in the above-styled and numbered cause under Level 3, pursuant to Texas Rules of Civil Procedure 190.1 and 190.4.

II.

JURY DEMAND

2. Plaintiffs hereby demand a jury trial and tender the proper jury fee.

III.

REQUESTS FOR DISCLOSURES

3. Within fifty (50) days after service hereof, Plaintiffs request that Defendants disclose the information and materials described in Texas Rule of Civil Procedure 194.2.

IV.

PARTIES

4. Plaintiffs Maria de Lourdes Bonilla Cataño ("**Bonilla**"), individually and as the representative of the Estate of C.B., a deceased minor child, is an individual residing in Athens, Henderson County, Texas. Bonilla was the biological mother of C.B.

5. Plaintiffs Selene Silva ("**Silva**"), individually and as next friend of J.T., a minor child, is an individual residing in Athens, Henderson County, Texas. Silva is the biological mother of J.T.

6. Plaintiffs Christian D. Torres Arenas ("**Torres**"), individually and as next friend of J.T., a minor child, is an individual residing in Athens, Henderson County, Texas. Torres is the biological father of J.T.

7. Defendant Union Pacific Railroad Company ("**Union Pacific**" or "**UP**") is a foreign corporation with its principal office and principal place of business in Omaha, Nebraska. Union Pacific may be served with citation and process through its registered agent: CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

8. Defendant Robert Ray ("**Ray**") is an individual employee of Defendant Union Pacific who was the train's conductor at the time of this collision. Ray may be served with process wherever he may be found.

9. Defendant Roger Johnson (“**Johnson**”) is an individual employee of Defendant Union Pacific who was the train’s engineer at the time of this collision. Johnson may be served with process wherever he may be found.

10. Defendant Athens Independent School District (“**AISD**”) is a public educational institution in Henderson County, Texas. AISD may be served with process through the President of its Board of Trustees: Alicea Elliott, 104 Hawn Street, Athens, Texas 75751, or wherever she may be found.

11. Defendant John Franklin Stevens (“**Stevens**”) is an individual residing in Mabank, Kaufman County, Texas. Stevens may be served with process at his home address: 310 Rickrod Drive, Mabank, Texas 75147, or wherever he may be found.

V.

JURISDICTION AND VENUE

12. Venue is mandatory in Henderson County, pursuant to Section 15.0151(a) of the TEXAS CIVIL PRACTICE & REMEDIES CODE—because AISD is a political subdivision in a county with a population of 100,000 people or less.

13. This Court has jurisdiction over this matter because Plaintiffs’ damages exceed the minimum jurisdictional limits of the Court.

VI.

FACTUAL SUMMARY

14. Plaintiffs’ claims arise out of a collision that occurred on January 25, 2019, in Henderson County between a Union Pacific train and a school bus owned by the Athens Independent School District and operated by its employee, John Franklin Stevens.

15. Stevens—an employee or agent of AISD—was travelling southbound in the 700 block of North Wofford Street driving a yellow school bus owned by AISD. Upon information and belief, at all relevant times, Stevens was either (i) operating the school bus in the course and scope of his employment with AISD or (ii) was a permissive user of the school bus.

16. Thirteen-year old C.B. and nine-year old J.T. were passengers in the school bus. Their stop was the last of the day, and they were only four-tenths of a mile from home.

17. At the same time, Ray and Johnson—employees or agents of Union Pacific—were approaching the Wofford Street crossing¹ traveling southwest on the railroad operating a train owned by Union Pacific. At all relevant times, Ray and Johnson were operating the train in the course and scope of their employment with Union Pacific.

18. As Stevens approached the Crossing, he stopped the school bus. He looked left; he looked right. Then, Stevens attempted to drive the school bus up and over the steep Crossing at Wofford Street. Because the Crossing is dangerous and extra-hazardous, Stevens failed to see the approaching Union Pacific train.

19. Similarly, as their train approached the Crossing, Ray and Johnson failed to keep a proper lookout, failed to sound the horn when and as required, failed to apply the brake or put the train into an “emergency” within a reasonable period of time, failed to take proper evasive action, and failed to operate the train as a train conductor and engineer of ordinary prudence would under the same or similar circumstances. As a result, the train violently hit the school bus, pinning the bus across the train’s nose and driving it approximately three-tenths of a mile. The train finally stopped hundreds of feet to the west of the adjacent Murchison Street crossing.

¹ U.S. Department of Transportation Grade Crossing Identification No. 790453V (the “*Crossing*”).

20. Defendants proximately caused this collision and Plaintiffs' damages by allowing the school bus and train to collide at the Crossing, among other negligent acts or omissions, as alleged more specifically herein.

21. J.T., a minor child, sustained severe and catastrophic personal injuries as a result of this occurrence, and C.B., a minor child, died as a result of the injuries he sustained when he was ejected from the school bus in the collision's aftermath.

VII.

NEGLIGENCE ***(All Defendants)***

22. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

Negligence of Union Pacific, Ray, and Johnson

23. The train and the Wofford Street crossing involved in this collision were owned and/or operated by UP, who was legally responsible for their safe operation. UP employed, trained, and controlled the engineer (Ray) and conductor (Johnson) of the train and the persons responsible for selecting, installing, and maintaining the passive warnings at this Crossing. UP also employed, trained, and controlled the persons responsible, in whole or in part, for identifying, determining, selecting, and engineering reasonably prudent warning devices for this and other crossings nearby. At all times relevant hereto, all such persons were acting within the course and scope of their employment and agency for UP.

24. UP owed a duty of ordinary care to the Plaintiffs to act as a railroad of ordinary prudence would act in the same or similar circumstances. UP was, however, negligent in discharging its duties. Such negligence includes without limitation:

- Failing to adequately and properly mark the Crossing to provide motorists, including school bus drivers, with sufficient information for safe passage over the Crossing;
- Failing to design and construct the crossing in a safe and reasonable manner so as to avoid injuring the motoring public;
- Failing to clear its Crossing and right-of-way or property of brush, trees, vegetation, debris, and other visual obstructions and visual clutter that interfered with motorists' view of approaching trains;
- Failing to accurately evaluate the safety and dangers of the Crossing and the approaches thereto;
- Failing to install flashing light signals or flashing light signals with automatic gates at the Crossing;
- Failing to install appropriate and/or adequate signage at or in advance of the Crossing;
- Failing to erect and maintain suitable warning and traffic signs at the Crossing to comply with the Manual on Uniform Traffic Control Devices;
- Failing to erect and maintain suitable signs of warning and/or caution at the Crossing given its angled, grade, and steep approach;
- Failing to construct, repair, and/or correct (and/or work with local road authorities and/or adjoining landowners to construct, repair, and/or correct) the dangerous, extra-hazardous, and/or unreasonable and unsafe approach grade and approach angle of the Crossing;
- Failing to construct, repair, and/or correct (and/or work with local road authorities and/or adjoining landowners to construct, repair, and/or correct) the steep hump in the road elevating the railroad tracks above the roadway which caused school buses to take longer to traverse the Crossing while trying to start the bus on a steep grade;
- Failing to construct, repair, and/or correct (and/or work with local road authorities and/or adjoining landowners to construct, repair, and/or correct) the less-than-30-degree angle of approach at the crossing for westbound train traffic and southbound vehicular traffic;
- Failing to identify, report, correct, and/or warn of the inadequate sight triangles of the Crossing;

- Failing to work with local road authorities and/or adjoining landowners to identify, report, correct, and/or warn of the Crossing's inadequate sight triangles;
- Failing to take any of the actions described above and herein despite the special dangers and/or extra-hazardous conditions which existed at and/or near the Crossing, including without limitation the physical obstructions to vision, the volume and speed of vehicular and train traffic, the track arrangement and elevation, the less-than-30-degree approach angle for this train, the steep grade of the approach to the Crossing, the lack of markings on the roadway, and other factors that would affect sight or hearing of ordinary signals.
- Failing to adequately train its employees, including its train crews, to recognize foreseeable risks and take appropriate action;
- Failing to adequately train its crews concerning when and how to sound a horn to warn the public of an approaching train;
- Failing to supervise and monitor its train crews concerning the proper sounding of the train's horn;
- Failing to adequately train its crews to timely apply brakes, take evasive action, and/or respond to an emergency;
- Failing to identify the Crossing as a dangerous and/or extra-hazardous crossing, as evidenced by multiple prior collisions;
- Permitting trains to operate through the Crossing when it was dangerous and/or extra-hazardous;
- Failing to close the Crossing; and
- Failing to ensure that the Crossing was reasonably safe.

25. Ray and Johnson owed a duty of ordinary care to the Plaintiffs to act as a railroad conductor and railroad engineer of ordinary prudence would act in the same or similar circumstances. However, Ray and Johnson were negligent in discharging their duties. Such negligence includes without limitation:

- Operating the train without keeping a proper and sufficient lookout;

- Failing to sound an audible warning on the train's approach to the Crossing in the manner required by UP's plans, rules, and/or standards;
- Failing to sound an audible warning on the train's approach to the Crossing in the manner required by state and/or federal law;
- Failing to properly sound the train's horn, including failing to sound it loud enough, in the correct sequence, and/or for a sufficient duration;
- Failing to slow, decelerate, brake, or slacken the speed of the train or take other evasive action in response to the specific hazards at the Crossing, which were known or should have been known to have existed at the time of the collision with the subject school bus at the Crossing;
- Failing to brake, take proper evasive action, and/or place the train in "emergency" within a reasonable period of time; and
- Failing to take any of the actions described above and herein despite the special dangers and/or extra-hazardous conditions which existed at and/or near the Crossing, including without limitation the physical obstructions to vision, the volume and speed of vehicular and train traffic, the track arrangement and elevation, the less-than-30-degree approach angle for this train, the steep grade of the approach to the Crossing, the lack of markings on the roadway, and other factors that would affect sight or hearing of ordinary signals.

26. Each of the foregoing acts or omissions, singularly or in combination with others, constituted negligence, which proximately caused the above-referenced occurrence and Plaintiff's injuries and damages.

Negligence of AISD and Stevens

27. The school bus involved in this collision was owned and/or operated by AISD, who was legally responsible for its safe operation. AISD employed, trained, and controlled the driver of the school bus, Defendant Stevens. At all times relevant hereto, Stevens was acting within the course and scope of his employment.

28. AISD owed a duty of ordinary care to the Plaintiffs to act as a school district of ordinary prudence would act in the same or similar circumstances. AISD was, however, negligent in discharging its duties. Such negligence includes without limitation the negligent hiring, training, and supervision of Defendant Stevens. AISD was also negligent in routing school bus traffic through the Crossing, which is dangerous and/or extra-hazardous, when there are safer, guarded crossings nearby that have adequate warning devices.

29. Stevens owed a duty of ordinary care to the Plaintiffs to act as a school-bus driver of ordinary prudence would act in the same or similar circumstances. However, Stevens was negligent in discharging his duties. Such negligence includes without limitation:

- Failing to stop for a train;
- Failing to keep a proper lookout; and
- Driver inattention;

30. Each of the foregoing acts or omissions, singularly or in combination with others, constituted negligence, which proximately caused the above-referenced occurrence and Plaintiff's injuries and damages.

VIII.

RESPONDEAT SUPERIOR ***(UP and/or AISD)***

31. Plaintiffs incorporate all prior and subsequent paragraphs as if fully restated and re-alleged herein.

32. UP is liable for the negligence of Ray and/or Johnson, as alleged above, pursuant to the doctrine of *respondeat superior*, because Ray and Johnson were acting in the course and scope of their employment and/or agency at the time of the collision.

33. AISD is liable for Stevens's negligence as alleged above, pursuant to the doctrine of *respondeat superior*, because Stevens was acting in the course and scope of his employment and/or agency at the time of the collision.

IX.

DAMAGES, COSTS, AND INTEREST

34. As a direct proximate result of the negligent acts and/or omissions described above, Plaintiffs have suffered injuries and damages for which Plaintiffs seek recovery from Defendants.

35. Plaintiff Bonilla, Individually, seeks wrongful-death damages for her loss of C.B. in amounts the jury determines to be fair and reasonable consisting of the following:

- Pecuniary loss in the past;
- Pecuniary loss that, in reasonable probability, will be sustained in the future;
- Loss of companionship and society in the past;
- Loss of companionship and society that, in reasonable probability, will be sustained in the future;
- Mental anguish sustained in the past; and
- Mental anguish that, in reasonable probability, will be sustained in the future.

36. Plaintiff Bonilla, as Representative of the Estate of C.B., a deceased minor child, seeks survival damages in amounts the jury determines to be fair and reasonable consisting of the following:

- Physical pain;
- Mental anguish;
- Medical expenses; and

- Funeral and burial expenses.

37. Plaintiffs Selene Silva and Christian D. Torres Arenas, each individually and each as Next Friend of J.T., a Minor Child, seek damages in amounts the jury determines to be fair and reasonable consisting of the following:

- J.T.'s physical pain sustained in the past;
- Physical pain that, in reasonable probability, J.T. will sustain in the future;
- J.T.'s mental anguish sustained in the past;
- Mental anguish that, in reasonable probability, J.T. will sustain in the future;
- Loss of earning capacity that, in reasonable probability, J.T. will sustain in the future from the time of trial until J.T. reaches 18 years of age;
- Loss of earning capacity that, in reasonable probability, J.T. will sustain in the future after J.T. reaches 18 years of age;
- J.T.'s disfigurement sustained in the past;
- Disfigurement that, in reasonable probability, J.T. will sustain in the future;
- J.T.'s physical impairment sustained in the past;
- Physical impairment that, in reasonable probability, J.T. will sustain in the future;
- Medical care expenses incurred in the past on behalf of J.T.;
- Medical care expenses that, in reasonable probability, will be incurred on behalf of J.T. in the future from the time of trial until J.T. reaches 18 years of age;
- Medical care expenses that, in reasonable probability, J.T. will incur after reaching 18 years of age.

38. Plaintiffs also seek recovery for all costs of court and prejudgment and post-judgment interest at the maximum rates allowed by law.

X.

**RULE 47 STATEMENT OF
MONETARY RELIEF SOUGHT**

39. Plaintiffs simply request that the jury award damages in amounts that it believes to be fair and reasonable. Accordingly, only because it is expressly required by Texas Rule of Civil Procedure 47 and is necessary to make them eligible to recover an amount *more than* \$1,000,000, Plaintiffs affirmatively plead that they are seeking monetary relief in an amount (i) that the jury determines to be fair and reasonable and (ii) that is *more than* \$1,000,000.

XI.

PRAYER

WHEREFORE, Plaintiffs request that this Court enter judgment against Defendants and award Plaintiffs the following relief:

- (i) A sum of money—as determined by a jury to be fair and reasonable—within the jurisdictional limits of this Court for the damages indicated above;
- (ii) Pre-judgment and post-judgment interest at the maximum amount allowed by law;
- (iii) Costs of suit; and
- (iv) Such other and further relief to which Plaintiffs may be justly entitled.

RESPECTFULLY SUBMITTED:

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