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IN THE DISTRICT COURT OF BLACK HAWK COUNTY, IOWA

JOVIDA OWENS,	)	
Plaintiff,	)	
v.	)	**Case No. _____**
CANADIAN NATIONAL RAILWAY COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY; DAVID HILL	)	**PETITION AT LAW AND JURY DEMAND**
Defendants.	)	

PETITION

COME NOW Plaintiff, through her attorneys, and for her Petition in this matter states the following:

I. PARTIES

PLAINTIFF

1. Jovida Owens is an individual and resident of Waterloo, Black Hawk County, Iowa.

DEFENDANTS

2. Canadian National Railway Company ("CN") is a for-profit publicly traded and owned foreign corporation based out of Montreal, Canada. It is primarily a railroad company, operating over 14,000 miles of track in Canada and 4,000 miles of track in the United States. It has its principal place of business in the United States at its U.S. headquarters located at 17641 South Ashland Avenue, Homewood, Cook County, Illinois. CN engages in the business of railroad operations in the State of Iowa, owns rail lines in Iowa, and is the owner of the railroad

track over which this Incident occurred. CN may be served with legal service of process through its registered agent in the United States at The Corporation Company, 111 Eighth Avenue, New York, NY 10011, or through its President of U.S. operations, CN Vice-President Southern Region John Orr, who may be served at his office at the CN U.S. headquarters at 17641 South Ashland Avenue, Homewood, Cook County, Illinois.

3. Illinois Central Railroad Company ("ICRR") is a for-profit foreign company authorized and engaged in the business of railroad ownership and operations in the State of Iowa. It may be served with process through its registered agent: Corporation Service Company, 505 5th Ave, Suite 729, Des Moines, Iowa 50309.

4. Chicago Central & Pacific Railroad Company ("CC&P") is a for-profit foreign company authorized and engaged in the business of railroad ownership and operations in the State of Iowa. It may be served with process through its registered agent: Corporation Service Company, 505 5th Ave, Suite 729, Des Moines, Iowa 50309.

5. Canadian National Railway Company, Illinois Central Railroad Company, and Chicago Central & Pacific Railroad Company will hereinafter be referred to in the singular as "Defendant Railroad." Each reference to Defendant Railroad shall include Canadian National Railway Company, Illinois Central Railroad Company, and Chicago Central & Pacific Railroad Company as if each Defendant was individually referenced and each allegation was made against each Defendant.

6. David Hill ("Hill") is Defendant CC&P's Risk Mitigation Officer. Mr. Hill is resident of Waterloo, Iowa. Mr. Hill is based out of CC&P's Waterloo office located at 1006 East 4th Street, Waterloo, Iowa 50703. As part of Mr. Hill's responsibilities as Risk Mitigation Officer, Mr. Hill is required to investigate claims and incidents involving Defendant Railroad's

land and property. Mr. Hill is charged with the responsibility and duty to ensure safe operations of Defendant Railroad's railroad operation through the communities in which Defendant Railroad operates, including Waterloo, Iowa. Mr. Hill has made policy decisions for Defendant Railroad in Waterloo, Iowa, that are harmful to the safety of the public, including Plaintiff, which subjects him to civil liability for Plaintiff's injuries. Mr. Hill may be served with legal service of process in the State of Iowa at his office located at 1006 East 4th Street, Waterloo, Iowa 50703.

7. At all times pertinent hereto, all employees of the Defendant Railroad were acting in their individual capacity and also as agents of Defendant Railroad, within the scope of their employment and authority, and in the furtherance of the business of Defendant Railroad. All the acts and omissions of the employees of the Defendant Railroad are imputed to their employer, who is liable for such acts and omissions, as well as rendering the individual Defendants liable in their individual capacities.

II. JURISDICTION AND VENUE

8. Plaintiff incorporates the above paragraphs as though fully set forth herein.

9. The incident giving rise to this litigation occurred in Black Hawk County, Iowa.

10. Jurisdiction is proper before this Court, as this case deals with personal injuries from a moving vehicle accident that occurred within Black Hawk County, in the State of Iowa, is the subject of Iowa common law, Defendant Railroad does business within the State of Iowa, Defendant David Hill is a resident of the State of Iowa, and Plaintiff resides within the State of Iowa.

11. Venue is proper in the District Court for Black Hawk County, Iowa, as the incident giving rise to this litigation occurred in the City of Waterloo, Black Hawk County, Iowa.

I.C.A. § 617.3(7).

12. All allegations set forth in this Petition are based upon information and belief.

13. All allegations set forth in each of the paragraphs in this Petition are incorporated by reference into each of the other sections and paragraphs contained in this Petition, as if fully set forth therein.

III. FACTS AND ALLEGATIONS

14. Plaintiff hereby incorporates the above paragraphs as though fully set forth herein.

15. On Saturday April 22, 2017, Plaintiff was a pedestrian attempting to traverse the Defendant Railroad's tracks at the "Incident Site" on or near East 4th Street Crossing in Waterloo, Iowa, but her path was blocked by a standing Defendant Railroad freight train.

16. The "Incident Site" refers to the geographical location where Plaintiff suffered injuries. The geographical location where Plaintiff suffered damages is the Defendant Railroad's Waterloo Yard and, including but not limited to, the streets of 4th Street, Logan Avenue, Linden Avenue, Conger Street, Dawson Street, Columbia Street, Parker Street, Center Street, and Grandview Street, in Waterloo, Iowa.

17. After waiting a reasonable amount of time for Defendant Railroad's freight train to move, Plaintiff, a pedestrian and having no reasonable alternative to traverse the railroad tracks, attempted to traverse the crossing while Defendant Railroad's freight train was stopped and still blocking the crossing.

18. As Plaintiff was attempting to traverse the stationary train at the Incident Site, the train suddenly and without warning moved (the "Incident"). This sudden and unexpected movement caused the train to roll over Plaintiff's extremities, dragging Plaintiff an unknown distance down the tracks. As a result, Plaintiff sustained serious, permanent, and progressive

life-altering injuries and damages, including severe degloving injuries and the removal of nearly all of her skin on the back side of her body.

19. Defendant Railroad's train did not stop after it seriously injured Plaintiff. Plaintiff was subsequently found an unknown time later by another train. During this time, Plaintiff laid in agony next to Defendant Railroad's tracks near death.

20. At the time of the Incident the freight train did not sound an audible warning of its movement, nor were there any employees, such as flagman, to warn the walking public, including Plaintiff, of the trains impending movement. Nor did Defendants take any other precautions to ensure there were no pedestrians actively traversing its tracks before it began to move.

21. It has become common practice in Waterloo for Defendant Railroad to park its trains across the public crossings within the Incident Site. In doing so, Defendant Railroad uses the City of Waterloo as its extended rail yard. This conduct has cut Waterloo in half, preventing pedestrians, such as Plaintiff, from safely traversing the railroad tracks. This conduct has also prevented emergency vehicles from reaching citizens on the opposite side of the tracks, thereby creating a serious public safety hazard.

22. Having to crawl through and under trains parked across the tracks in the Incident Site is a safety hazard that is well-known to Defendant Railroad; it is a daily occurrence and requirement of pedestrians in Waterloo, especially those living near the Incident Site, given the periods of time far in excess of local ordinances, state law, and industry standards that Defendant Railroad's trains block the public crossings, yet Defendant Railroad has not taken adequate steps to enforce rules, educate or warn members of the public of the danger, nor has Defendant Railroad taken any steps to eliminate the hazard of blocked crossings.

23. Upon information and belief, the train that rolled over and injured Plaintiff blocked the East 4th Street Crossing for over ten minutes.

24. At all times pertinent hereto, Waterloo Ordinance § 7-6-3 required that trains not block railroad-street crossings for a period of time in excess of ten minutes. The train that seriously injured Plaintiff as she was attempting to traverse it was in clear and obvious violation of this ordinance.

25. At all times pertinent hereto, Iowa Code § 327g.32 required that trains shall not block railroad-street crossings for a period of time in excess of ten minutes. The train that seriously injured Plaintiff as she was attempting to traverse it was in clear and obvious violation of this code.

26. Rule 526 of Defendant Railroad's Operating Rules required that a "public crossing must not be blocked longer than ten (10) minutes unless it cannot be avoided." The train that seriously injured Plaintiff as she was attempting to traverse it was in clear and obvious violation of this internal rule.

27. There are multiple prior incidents where Waterloo residents were seriously injured when they attempted to traverse Defendant Railroad's tracks through trains that had been stopped for periods of time far in excess of local ordinances, state law, and industry standards, and then suddenly moved.

28. Upon information and belief, on or about November 12, 1991, a Waterloo resident boy lost his hand after a Defendant Railroad train suddenly moved that had been stopped for a period of time far in excess of local ordinances, state law, and industry standards on the tracks as the boy attempted to cross through the stopped train; this prior incident occurred around the East Fourth Street area in Waterloo, Iowa.

29. Upon information and belief, on or about May 25, 1992, a Waterloo resident boy lost his left arm after a Defendant Railroad train suddenly moved/backed-up that had been stopped for a period of time far in excess of local ordinances, state law, and industry standards on the tracks as the boy attempted to cross through the stopped train; this prior incident occurred around the Linden Avenue area in Waterloo, Iowa.

30. Upon information and belief, on or about September 5, 2011, a Waterloo resident woman lost her left arm, left leg, and right leg after a Defendant Railroad train that had been stopped for a period of time far in excess of local ordinances, state law, and industry standards on the tracks suddenly moved as the woman attempted to cross through the stopped train; this prior incident occurred around the Conger Street area in Waterloo, Iowa.

31. Upon information and belief, on or about September 6, 2017, a Waterloo resident woman lost her left leg after a Defendant Railroad train that had been stopped a period of time far in excess of local ordinances, state law, and industry standards on the tracks suddenly moved as the woman attempted to cross through the stopped train; this prior incident occurred around near the railroad tracks at Logan Avenue and Center Street in Waterloo, Iowa.

32. Since 2003, Defendant Hill has been employed as the Risk Mitigation Officer in Waterloo, Iowa, for Defendant Railroad. As part of Defendant Hill's responsibilities as Risk Mitigation Officer, Defendant Hill is required to investigate claim and incidents involving Defendant Railroad in Waterloo, Iowa.

33. Upon information and belief, citizens of Waterloo, Iowa, called Defendant Railroad numerous times in 2017, and the preceding years, to report trains blocking the public railroad crossing within the Incident Site, and the surrounding public railroad crossings in Waterloo, Iowa.

34. Through these prior incidents and multiple public complaints from residents, community leaders, and city officials, Defendants are fully aware of the public concern for safety and other issues that arise resulting from public street grade crossing blockages created by their trains. Defendant Railroad was called before the United States Surface Transportation Board ("STB") prior to the incident described herein to discuss the ongoing concern of blocked crossings. STB Hearing April 26, 2010.

35. At United States Surface Transportation Board Hearing on April 26, 2010, a representative of Defendant Railroad stated, "CN fully understands that lengthy grade crossing blockages, whether from stopped or moving trains, are a significant public concern." STB Hearing April 26, 2010.

36. Defendant Railroad was cited by the STB for failing to report blocked crossings at rail crossings in the Chicago suburbs. An independent audit released by the STB found that Defendant Railroad had reported only 14 incidents of trains blocking crossings longer than 10 minutes, when, in fact, the STB had identified 1,457 incidents.

37. The Defendant Railroad has voluntarily undertaken to provide a railroad police force.

38. The Defendant Railroad has voluntarily undertaken to work with local, state, and federal regulatory agencies to ensure compliance with various laws and regulations.

39. Defendant CN wholly owns and operates its subsidiaries Defendant ICRR and Defendant CC&P.

40. Defendant CN, including all of its U.S. subsidiaries (which includes Defendant ICRR and Defendant CC&P), constitutes one railroad for the purpose of working with the Federal Railroad Administration and the Surface Transportation Board.

41. At all relevant times, Defendant ICRR and Defendant CC&P reported to the President and CEO of Defendant CN.

42. The President and CEO of Defendant CN is also the President and CEO of all of Defendant CN's subsidiary companies, which includes Defendant ICRR and Defendant CC&P.

43. Defendant ICRR and Defendant CC&P do not have any of their own rulebook (operating rules, safety rules, etc.); rather, they have the "CN Southern Region" rulebooks.

44. Train building and dispatch operating for all of Defendant CN's North American lines is done out of Homewood, Illinois, from a building owned by Defendant ICRR (which is owned by Defendant CN), with such building bearing Defendant CN's logo.

45. The Waterloo Yard is owned and operated by Defendant CN as the whole owner of Defendant CC&P. The Federal Railroad Administration reports the yard as owned and operated by Defendant CN. The Standard Carrier Alpha Code on the Federal Railroad Administration Map of the Waterloo Yard for the carrier in control of the Waterloo Yard is Defendant CN.

46. Defendant CN's safety principles govern the Waterloo Yard. At the Waterloo Yard is a sign stating: "CN – Pride in Safety. (# of) Days Injury Free. Waterloo, Iowa. CN's Five Guiding Principles: Service, Cost Control, Asset Utilization, Safety, People."

47. At the railroad grade crossings within the Incident Site, including the crossing where this incident took place, is a sign on the signal box that states: "Signal Problems or Emergencies at this Crossing? Report this Number [crossing DOT number] to the Illinois Central Railroad, 1-800-995-7908." Upon calling that number, a caller will be greeted with, "Welcome to the CN emergency line."

48. Defendant CN's Manager of Public Works, Harlan Arians, was recently cited in a

Waterloo-Cedar Falls Courier Newspaper article on January 30, 2015, (wcfcourier.com) on the subject of the problem of trains blocking public crossings in Waterloo, wherein it was reported: "Harlan Arias, manager of public works for Canadian National Railway in Waterloo, also supported the city's push to have a grade-separated pedestrian path. Arians noted trains often block the track there for long periods of time due to the railroad yard at East Fourth Street."

49. According to Defendant CN's 2011 Annual Report, Defendant CN and its subsidiary railroads (which includes Defendant ICRR and Defendant CC&P) are managed as **one** business segment, with Defendant CN controlling all financial information and cash flow:

> The Company [CN] manages its rail operations in Canada and the U.S. as one business segment. Financial information reported at this level, such as revenues, operating income and cash flow from operations, is used by the Company's corporate management in evaluating financial and operational performance and allocating resources across CN's network. The Company's strategic initiatives are developed and managed centrally by corporate management and are communicated to its regional activity centers (the Western Region, Eastern Region and Southern Region), whose role is to manage the day-to-day service requirements of their respective territories, control direct costs incurred locally, and execute the strategy and operating plan established by corporate management.

50. Defendant CN's police force performed safety initiatives in Waterloo in 2012.

51. Defendant CN had a Regional Chief Engineer of the CN "Southern Region" – Chad Anderson – whose chief engineering responsibilities encompassed engineering (track maintenance) responsibilities over Waterloo, Iowa.

52. In his role as the "Chief Engineer over the Southern Region of the Canadian National Railway Company," Chad Anderson travelled to Waterloo to perform his responsibilities as they related to track engineering.

53. Capital funding issues for Waterloo, Iowa, (such as track upgrades, bridgework, pedestrian bridges, etc.) require Defendant CN's Board of Directors' approval.

54. Defendant CN's Board of Directors has final say (approval or disapproval) of

capital improvement projects for Waterloo, Iowa, and Defendant CN's Board of Directors could alter any budget submitted to it.

55. The track maintenance budget encompassing the region wherein Waterloo is located (CN Southern Region) is also determined by Defendant CN's Board of Directors.

56. Track maintenance and capital improvement budgets are set by Defendant CN on a "per region" (i.e., CN Southern Region) basis as opposed to a "per subsidiary railroad" basis.

57. Defendant CC&P does not have its own track inspection system, bridge inspection system, or injury reporting system (which is required by the Federal Railroad Administration); rather, Defendant CN maintains and oversees those systems.

58. In Waterloo, Iowa, if the railroad was approached to contribute funds to build a pedestrian bridge, the funds for such project would come from CN Southern Region funds, which is created, reviewed, and approved/disapproved by Defendant CN's Finance Committee.

59. Defendant CN receives all of the net income from Defendant CC&P and Defendant ICRR.

60. Defendant CN sets the expense account targets for Defendant CC&P and Defendant ICRR.

61. Defendant CN operates a central bank account that funds Defendant CC&P and Defendant ICRR every day.

62. All actual cash from Defendant CC&P and Defendant ICRR goes into Defendant CN's central bank account and is captured by Defendant CN on a daily basis.

63. All cash for the entire CN system is pooled by the corporate entity, Defendant CN, including the cash revenues from Defendant ICRR and Defendant CC&P.

64. The cash that goes into the centralized CN bank account is redistributed as needed

between the subsidiaries (which includes Defendant ICRR and Defendant CC&P) and Defendant CN, including for capital improvements.

65. Despite numerous prior incidents and being cited for unreasonably blocking public crossings, Defendant Railroad's blocking of crossings in Waterloo, Iowa, has persisted unabated. This has caused a serious public health and safety problem for the community.

IV. CAUSES OF ACTION

Count 1 – Negligence Against Defendant Railroad

66. Plaintiff incorporates the above paragraphs as though fully set forth herein.

67. Defendant Railroad, its agents and employees, had and have a duty under Iowa law to exercise reasonable care to avoid needlessly endangering members of the public, including Plaintiff.

68. Defendant Railroad, its agents and employees, had and have a duty under Iowa law to exercise reasonable care toward members of the public, including Plaintiff, with regard to conditions it creates and maintains on its land and property.

69. Defendant Railroad, its agents and employees, had and have a duty under Iowa law to exercise reasonable care toward members of the public, including Plaintiff, with regard to conditions it causes to be created on its land and property.

70. Defendant Railroad, its agents and employees, had and have a duty under Iowa law to exercise reasonable care in the maintenance of its premise and property for the protection of members of the public, including Plaintiff.

71. Defendant Railroad, its agents and employees, had and have a duty under its own rules to exercise reasonable care toward members of the public, including Plaintiff.

72. In this case, Defendant Railroad breached its duty by failing to exercise

reasonable care.

73. As a direct and proximate result of Defendant Railroad's breach of this duty of reasonable care, Plaintiff suffered damages, as hereafter alleged.

74. All acts or omissions of Defendant Railroad constitute negligence and, given Defendant Railroad's knowledge of the dangerous conditions on its land and property, Defendant Railroad's acts or omissions demonstrate an intentional disregard for the safety of the public, including Plaintiff. Defendant Railroad's conduct was in reckless disregard of the rights and safety of the Plaintiff and she is thereby entitled to an award of punitive damages against Defendant Railroad.

Failure to Provide a Safe Crossing

75. Plaintiff incorporates the above paragraphs as though fully set forth herein.

76. Pedestrian safety over railroad grade crossings is within the control of the Defendant Railroad by its compliance with two simple rules: (1) Give the public and pedestrians a safe place to cross the railroad tracks, and (2) Let pedestrians know when the train is moving toward them or is about to move. Defendant Railroad in this case refused to abide by these simple, common sense, and lifesaving rules.

77. Defendant Railroad, its agents and employees, have a duty to exercise reasonable care to those who cross the railroad's track on foot, those who have implicit permission to be on the railroad's right-of-way, and to those who Defendant Railroad knew or should have known were present on the right-of-way, by providing to the public and pedestrians a safe place to cross its tracks so as to avoid needlessly endangering members of the public, including Plaintiff. In this case, the Defendant Railroad breached its duty by the failure to exercise reasonable care in such regard by:

A. failing to construct a pedestrian foot bridge over its tracks (or other alternative means) to allow for the safe passage of pedestrians over Defendant Railroad's tracks;

B. failing to apply industry standards to evaluate the need for pedestrian crossings in Waterloo given that Defendant Railroad would negligently be blocking crossings in the community for extended periods of time giving pedestrians no safe manner to cross the tracks;

C. failing to report unsafe conditions at public pedestrian crossings, such as the number of blocked crossings and the duration of the blockages, to the city, county, state, or federal government and its agencies, which contributed to Defendant Railroad failing to take appropriate actions to remedy the unsafe conditions at the Incident Site, including the East 4th Street Crossing;

D. failing to cooperate with the local community (city, county, state) to develop safe means for pedestrians to cross over Defendant Railroad's tracks;

E. failing to properly warn of and address dangers to pedestrians of stopped trains over crossings;

F. failing to place a flagman or watchman at Incident Site, including the East 4th Street Crossing; to warn and advise the public and pedestrians that the incident train was engaged in switching operations and the train would be moving;

G. failing to properly fence its land, or right-of-way, within the Incident Site, including the East 4th Street Crossing;

H. failing to ensure the proper operation of the automatic flashing lights and gates at the Incident Site, including the East 4th Street Crossing;

I. failing to place proper warning signage at the Incident Site, including the East 4th Street Crossing; to warn and advise the public and pedestrians that the train was performing switching/coupling operations as it operated over and blocked the East 4th Street crossing;

J. failing to provide audible warning bells or a wayside horn at the crossing to alert pedestrians to the danger of a moving train at the Incident Site, including the East 4th Street Crossing;

K. failing to announce to pedestrians, such as Plaintiff, at the Incident Site, including the East 4th Street Crossing, of the danger that the train was active or about to move;

L. failing to maintain a railroad police force to an adequate size to execute, enforce or provide appropriate education of pedestrian/track issues related to trains blocking crossings within the Incident Site, including the East 4th Street Crossing;

M. failing to provide or allow for a safe place for pedestrians to cross the stretch of railroad track in the Incident Site and that area of Waterloo blocked by Defendant Railroad's trains; this lack of a safe place to cross created a hazardous condition at each of the crossings within the Incident Site; the lack of a safe crossing for pedestrians has been repeatedly ignored by management, along with train crews, maintenance crews, and other employees of the Defendant Railroad;

N. failing to relocate the Waterloo Yard to an area outside of the Incident Site to avoid blocking public crossings for extended periods of time;

O. failing to comply with Waterloo Ordinance § 7-6-3 by blocking the East 4th Street Crossing in excess of ten minutes, thereby creating a serious public health and safety hazard to citizens of Waterloo, Iowa, including Plaintiff;

P. failing to comply with Iowa Code § 327g.32 by blocking the East 4th Street Crossing in excess of ten minutes, thereby creating a serious public health and safety hazard to citizens of Waterloo, Iowa, including Plaintiff;

Q. failing to comply with its own rules by blocking the East 4th Street Crossing in excess of ten minutes, thereby creating a serious public health and safety hazard to citizens of Waterloo, Iowa, including Plaintiff; and

R. routinely ignoring the existence of hazardous conditions along the railroad tracks and to dissuade documentation of those conditions; as a result, Defendant Railroad's employees, are aware that Defendant Railroad condones the existence of these hazardous conditions, thereby perpetuating the hazardous conditions on Defendant's land and property, including its land in Waterloo, Iowa.

78. The above listed negligent acts and failures on the part of the Defendant Railroad, its agents and employees, were a direct and proximate cause of the injuries Plaintiff suffered herein described.

Failure to Operate the Train Safely

79. Plaintiff incorporates the above paragraphs as though fully set forth herein.

80. Defendant Railroad, its agents and employees, had and have a duty to exercise reasonable care to those who have implicit permission to be on Defendant Railroad's land, and to those who Defendant Railroad knew or should have known were present on its land, by operating its trains in such manner as to not needlessly endanger the public, including Plaintiff. In this case, the Defendant Railroad breached its duty of reasonable care by:

A. failing to provide adequate visual and audible warning of the movement of the train;

B. failing to sound an audible warning to Plaintiff that the train was active or about to move;

C. failing to sound a bell in such manner that it would be audible to Plaintiff at the East 4th Street crossing to warn Plaintiff that the train was active or about to move;

D. failing to sound a whistle or horn in such manner as to be audible to Plaintiff at the East 4th Street Crossing, so as to warn Plaintiff that the train was active or about to move;

E. failing to keep a proper lookout to ensure that Defendant Railroad's tracks and train were clear of people, including Plaintiff, prior to moving;

F. failing to ensure that switching/coupling operations take place solely within the confines of the Waterloo Yard by cutting the train to a reasonable length or otherwise ensuring it remain only in the Waterloo Yard;

G. failing to ensure a safe place to cross by not blocking the various crossings in Waterloo, Iowa, including the crossings located in the Incident Site;

H. engaging in switching/coupling operations outside of the Waterloo Yard and using the tracks present within the local community of Waterloo, including the Incident Site, to perform such yard operations;

I. failing to operate the train in such manner as to avoid a specific local hazard at the railroad tracks located within the Incident Site;

J. failing to take actions to prevent the train from Plaintiff over after seeing Plaintiff in a position of peril, or after such time Defendant Railroad should have known or had reason to know of Plaintiff being in a position of peril;

K. failing to prevent its trains from running over members of the Waterloo public after Defendant Railroad knew its trains created a dangerous condition on its land in Waterloo, Iowa;

L. failing to cut the train at the East 4th Street Crossing and/or other public crossings within the Incident Site to allow for the passage of pedestrians for the duration of time the train was stopped; and

M. failing to reduce the size of train to a length that would not extend out of the Waterloo Yard and into the public crossings Waterloo, including the crossings located within the Incident Site.

81. Defendant Railroad has condoned its employees' failure to modify train operations to account for hazards along the railroad tracks located in Waterloo, including the railroad tracks located within the Incident Site, and has adopted a routine practice of ignoring hazards it creates and maintains on its land and property. This intentional indifference to the safety of Plaintiff and the public was one of the contributing factors that caused this incident.

82. The above listed negligent acts and failures on the part of the Defendant Railroad, its agents and employees, were a direct and proximate cause of the injuries Plaintiff suffered herein described.

No Cooperation with Local Community and/or Road Authority

83. Plaintiff incorporates the above paragraphs as though fully set forth herein.

84. The Defendant Railroad has a duty to use reasonable care in the operation of its railroad which runs through public communities, including the City of Waterloo, so as to not needlessly endanger members of the public, such as Plaintiff. Defendant Railroad's duty of reasonable care includes cooperating with the local community and road authority to educate and inform the local community and road authority of the present and future dangers Defendant Railroad's railroad operation presents, and the measures that can be taken to reduce or eliminate such dangers created by Defendant Railroad's railroad operation.

85. Defendant Railroad is in a superior position of knowledge over the local community and road authority regarding the operation of trains through the local community and the known dangers presented by the operation of trains through communities.

86. Defendant Railroad, and the railroad industry generally, has touted about the amount of time it takes in trying to ensure the public is not placed in danger by railroad operations. The railroad industry, including Defendant Railroad, has voluntarily undertaken to inform the public of present and future dangers railroad operations create. The Federal Railroad Administration (FRA) – the U.S. governmental agency owned/headed by the citizens of the United States and charged by the citizens of the United States to regulate and enforce railroad safety – has documented the railroad industry's commitment to community safety and that it is the industry custom, standard, and duty for railroad industry members, such as Defendant Railroad, to approach all communities in which the railroad operates to educate and inform the community of the present and future dangers railroad operations present, as well as measures that can be taken to reduce or eliminate such dangers.[1]

87. The Defendant Railroad has failed to use reasonable care by disregarding the industry custom, standard, and duty to communicate with the local community and road authorities in Waterloo, Black Hawk County, Iowa, to educate and inform the members of the Waterloo community, including Plaintiff, of the dangers of Defendant Railroad's railroad operations through the community, particularly the danger to pedestrians and the public of obstructing crossings for extended periods of time within the Incident Site.

88. The Defendant Railroad has also failed to use reasonable care by disregarding the industry custom, standard, and duty to communicate with the local community and road

[1] US Dept. of Transportation – Federal Railroad Administration: "ROW Fatality and Trespass Prevention Workshop," St. Louis, Missouri. Aug. 14-16, 2012.

authorities in Waterloo, Black Hawk County, Iowa, to discuss reasonable alternatives to make pedestrian crossing of the Defendant Railroad's tracks safer, such as through the construction of a pedestrian footbridge over Defendant Railroad's tracks, or by cutting Defendant Railroad's trains at the crossings, or by reducing the length of Defendant Railroad's trains, or by constructing a yard outside of the populated city center of Waterloo so as to not block public crossings, or such other reasonable means of improved safety.

89. The above listed actions and failures and the breach of the industry custom, standards, and duty to cooperate with the local community and road authority on the part of the Defendant Railroad and its employees were a direct and proximate cause of the injuries Plaintiff suffered herein described.

Inadequate Police Force

90. Plaintiff incorporates the above paragraphs as though fully set forth herein.

91. The Defendant Railroad has a duty to use reasonable care in the operation of its trains and tracks which run though public communities so as to not needlessly endanger members of the public, such as Plaintiff; part of that duty includes the institution of a railroad police force to educate the public of and enforce safety protocols and regulations to reduce or eliminate the dangers of trains operating through local communities.

92. Defendant Railroad has voluntarily undertaken the duty to provide a railroad police force.

93. Defendant Railroad knows or should know that it has a police force which is inadequate to address pedestrian issues. The geographic territory for which a railroad police officer is to patrol is so large that pedestrian track issues are of little concern.

94. The lack of an adequate police force leads the public to a reasonable belief of

acquiescence by Defendant Railroad to members of the Waterloo public crossing under and through standing trains that obstruct pedestrian crossings due to the lack of any enforcement, warning, or prevention by the railroad police force.

95. The lack of an adequate number of employees on the railroad police force leads to the perception that certain behavior is acceptable due to the lack of enforcement of any rules prohibiting the behavior. The resulting message to the community is that the Defendant Railroad legally allows members of the public to crawl under its trains since there is no enforcement, education, or warning to the contrary.

96. Having to crawl through and under trains is a well-known issue and near-requirement of public pedestrians in Waterloo, especially those living near Defendant Railroad's tracks, given the extended periods of time that Defendant Railroad's trains block the public crossings, yet Defendant Railroad, including its police force, has not taken adequate steps to enforce rules, educate, or warn members of the Waterloo public of the danger.

97. The above listed failures on the part of the Defendant Railroad to provide an adequate railroad police force was a direct and proximate cause of the injuries Plaintiff suffered herein described.

No Training, Instruction, or Management of Defendant Railroad's Employees

98. Plaintiff incorporates the above paragraphs as though fully set forth herein.

99. Defendant Railroad has a duty to instruct employees concerning proper operating practices and operating rules, including the proper instruction, supervision, and monitoring of employees to help protect the Waterloo public, including Plaintiff, from unsafe practices and conditions created and maintained by Defendant Railroad. Defendant Railroad failed to appropriately instruct, supervise, and monitor its employees in that regard.

100. Defendant Railroad has instructed crews and employees that there is nothing they can do to prevent incidents or reduce risks to the Waterloo public who are present on Defendant Railroad's land and property, despite Defendant Railroad's knowledge that such an assertion is false.

101. Defendant Railroad has refused to conduct an accurate hazard analysis to determine the root-cause issues related to pedestrian crawl-under incidents; or, alternatively, if Defendant Railroad has conducted a hazard and root-cause analysis, it has failed to implement the lessons learned from such an analysis.

102. The root-cause, or contributing root-cause, of pedestrian crawl-under incidents, such as that experienced by Plaintiff, is the unreasonable extended period of time in which Defendant Railroad's trains block normal public pedestrian routes and the lack of any reasonable, safer, or alternative means to traverse the crossings located within the Incident Site while blocked.

103. Defendant Railroad has neglected training employees on how to identify, report, and correct unsafe pedestrian conditions on railroad trackage for the purpose of saving money on capital improvements such as the construction of a footbridge or the relocating of the Waterloo yard. Instead, Defendant Railroad seeks solely to blame the pedestrians injured without proper hazard and root-cause analysis as to the "how" and "why" the incident really happened; all despite having the knowledge of how to conduct a hazard and root-cause analysis of safety problems since Defendant Railroad undertakes such analysis with respect to employee safety and injuries.

104. Hazard and root-cause analysis is the industry custom, standard, and practice for railroad companies to properly and adequately address safety issues.

105. Defendant Railroad has created a culture and mindset within its company that the public/pedestrian is solely at fault for all pedestrian injuries involving trains, and Defendant Railroad's employees lack the necessary training and instruction to help prevent such injuries, which are preventable.

106. The above listed failure on the part of the Defendant Railroad to adequately train and instruct its employees on appropriate hazard and root-cause analysis, as well as the failure of management to conduct hazed and root-cause analysis into pedestrian injuries was a direct and proximate cause of the injuries Plaintiff OWENS suffered herein described. Defendant Railroad's culture and mindset and resultant lack of training is in reckless or intentional disregard for the rights and safety of Plaintiff which entitle her to an award of punitive damages.

Count 2 – Premises Liability Against Defendant Railroad

107. Plaintiff incorporates the above paragraphs as though fully set forth herein.

108. The public, including Plaintiff, has equal right to the reasonable use of pedestrian grade crossings located within the Incident Site, including the East 4th Street Crossing, as Defendant Railroad.

109. By obstructing and blocking crossings such as the East 4th Street crossing in Waterloo for unreasonable extended periods of time, Defendant Railroad knew, or in the exercise of reasonable care should have known, of the increased likelihood of pedestrians, such as Plaintiff, to cross under Defendant Railroad's stopped trains blocking the public's usual and customary pedestrian crossings over the tracks. By blocking the crossings within the Incident Site, including the East 4th Street Crossing, for such an extended period of time, Defendant Railroad invited the public, including Plaintiff, to attempt to cross over the tracks even while occupied by Defendant Railroad's trains.

110. By breaking down and building trains throughout its railroad tracks in Waterloo, Defendant Railroad has intentionally and without authority expanded its rail yard to encompass the City of Waterloo where it conducts these switching operations, which includes the Incident Site and the East 4th Street Crossing.

111. Defendant Railroad knew, or in the exercise of reasonable care should have known, of the conditions on its premises described herein, and that the conditions on its premises described herein involved an unreasonable risk of injury to a person in Plaintiff's position.

112. Defendant Railroad knew or in the exercise of reasonable care should have known:

A. The public and Plaintiff would not discover the conditions described herein, or

B. The public and Plaintiff would not realize the conditions described herein presented an unreasonable risk of injury, or

C. The public and Plaintiff would not protect themselves from the condition.

113. In this case, the Defendant Railroad breached its duty of reasonable care and was negligent in:

A. failing to make the East 4th Street grade crossing reasonably safe;

B. failing to give warnings of the conditions and risks of the dangers of the East 4th Street grade crossing at the time of the incident, including the danger that the train was about to move;

C. failing to ascertain the danger of a public pedestrian grade crossing being obstructed for an extended duration of time, and to take such steps after ascertaining to make the East 4th Street crossing safer;

D. by causing injury to Plaintiff by running her over repeatedly with the cars of the train after becoming aware of her presence and position of peril;

E. after becoming aware of the presence of Plaintiff in a position of peril,

failing to use reasonable care to avoid injuring Plaintiff by not operating the train to run her over or by warning her that the train was about to move;

F. by using the City of Waterloo as its yard to conduct switching and train building operations while not providing the necessary work force and warnings before a train makes a movement;

G. by using the City of Waterloo as its yard to conduct switching and train building operations while not providing the necessary barriers such as fencing around its yard operations and alternative access points for persons, such as Plaintiff, who need to travel to the other side of Defendant Railroad's improvised yard; and

H. by creating a dangerous situation in standing their train for an extended duration of time over the East 4th Street public crossing, giving the outward appearance to Plaintiff that the train was not going to be moving any time soon, thereby creating a hidden danger in that the train did move suddenly, unexpectedly and without warning, and Defendant Railroad failed to give proper warning or otherwise take reasonable steps to ensure Plaintiff's safety from such hidden danger.

114. The above listed failures and actions on the part of the Defendant Railroad, its agents and employees was a direct and proximate cause of the injuries Plaintiff suffered herein described.

Count 3 – Negligence Against Defendant David Hill

115. Plaintiff incorporates the above paragraphs as though fully set forth herein.

116. Defendant Hill has a personal duty to exercise reasonable care to Plaintiff.

117. Defendant Hill breached his duty to exercise reasonable care by:

A. Failing to report hazardous conditions that Mr. Hill knew, or should have known, would injure the Waterloo public, including Plaintiff;

B. Failing to specifically identify safety hazards on Defendant Railroad's land and property located within the Incident Site; and

C. Failing to perform root cause analyses into the injury risks and dangers

associated with blocked crossings, particularly within the Incident Site.

118. The above listed failures and actions on the part of the Defendant Hill was a direct and proximate cause of the injuries Plaintiff suffered herein described.

Count 4 – Intentional Disregard for Public Safety

119. Plaintiff incorporates the above paragraphs as though fully set forth herein.

120. Defendants Railroad's customs, policies, and conduct in all of the aforementioned allegations were intentional; Defendant Railroad has intentionally elected to disregard legal duties owed to pedestrians, such as Plaintiff.

121. Defendant Railroad has demonstrated a pattern of conduct by intentionally failing to enforce its own policies and procedures, as well as laws and regulations, as well as industry standards and customs providing for the safe operation of trains and railroad operations. This pattern of conduct has condoned and ratified the conduct of its employees and agents to disregard duties owed to public pedestrians, including Plaintiff.

122. Defendant Railroad's intentional conduct as described herein was a direct and proximate cause of the injuries Plaintiff suffered herein described. Defendant Railroad's intentional disregard to the rights and safety of Plaintiff entitle her to an award of punitive damages.

Count 5 – Punitive Damages Against Defendant Railroad

123. Plaintiff incorporates the above paragraphs as though fully set forth herein.

124. In doing the acts and making the omissions described and alleged above, Defendant Railroad acted with a wanton disregard for the rights, needs, and feelings of Plaintiff, and by reason thereof, Plaintiff demands exemplary and punitive damages against Defendant Railroad in an amount to be proven at trial.

Count 6 – Direct Participant Liability of Defendant CN

125. Plaintiff incorporates the above paragraphs as though fully set forth herein.

126. This Count is brought under a Direct Participant theory of liability and seeks an equitable remedy imposing liability on Defendant CN for the conduct mentioned in Counts 1, 2, 4, and 5.

127. At all relevant times, Defendant CN maintained final authority as to Defendant ICRR and Defendant CC&P's capital improvement projects in Waterloo, Iowa.

128. At all relevant times, Defendant CN received all of the net income from Defendant ICRR and Defendant CC&P.

129. At all relevant times, Defendant CN set the expense target accounts for Defendant ICRR and Defendant CC&P.

130. At all relevant times, Defendant ICRR and Defendant CC&P executed the strategy and operating plan established by Defendant CN.

131. At all relevant times, Defendant CN operated a central bank account that funds Defendant ICRR and Defendant CC&P on a daily basis.

132. At all relevant times, all actual cash from Defendant ICRR and Defendant CC&P went into Defendant CN's central bank account and is captured by Defendant CN on a daily basis.

133. At all relevant times, Defendant ICRR and Defendant CC&P were governed by Defendant CN's Southern Region rulebooks.

134. At all relevant times, the President and CEO of Defendant CN was also the President and CEO of Defendant ICRR and Defendant CC&P.

135. At all relevant times, Defendant CN mandated an overall business strategy for Defendant ICRR and Defendant CC&P and carried out that strategy by its own specific direction and authorization, which surpassed the control of a normal incident of ownership.

136. At all relevant times, Defendant CN knew of complaints of trains blocking crossings in Waterloo, Iowa, for periods in excess of ten minutes and despite such complaints, Defendant CN did not approve a request for additional police manpower in Waterloo knowing that such denial may endanger residents of Waterloo, including Plaintiff, in order to minimize operating costs and limit capital expenditures with the express intent to increase the earning for Defendant CN.

137. At all relevant times, Defendant CN was the parent company of Defendant ICRR and Defendant CC&P, throughout that time Defendant CN directed and implemented the policy and procedures for the day-to-day operations of Defendant CN.

138. Prior to the incident, Defendant CN was called before the United States Surface Transportation Board to discuss the ongoing concern of blocked crossings. STB Hearing April 26, 2010.

139. At all relevant times, Defendant CN knew or should have known that it was foreseeable that pedestrians in Waterloo, Iowa, would be at risk of injury and would likely suffer harm due to being forced to crawl through and under trains parked on the tracks for extended periods of time.

140. At all relevant times, Defendant ICRR and Defendant CC&P lacked the autonomy to increase its railroad police force in Waterloo, Iowa, without direct approval from Defendant CN.

141. At all relevant times, Defendant ICRR and Defendant CC&P lacked the autonomy

to construct a pedestrian footbridge in Waterloo, Iowa, without direct approval from Defendant CN.

142. At all relevant times, particularly in 2017, while under the direct control of Defendant CN, Defendant ICRR and Defendant CC&P increased its overall revenues without enlarging its railroad police force in Waterloo, Iowa.

143. At all relevant times, particularly in 2017, while under the direct control of Defendant CN, Defendant ICRR and Defendant CC&P increased its overall revenues without constructing a pedestrian footbridge in Waterloo, Iowa.

144. As a direct and proximate result of Defendant CN's direct participation in the affairs of Defendant ICRR and Defendant CC&P, which surpassed the control exercised as a normal incident of ownership, it is in the public's interest to impose liability on Defendant CN for the conduct mentioned herein, as a result of its direct participation in the affairs of Defendant ICRR and Defendant CC&P.

145. As a direct and proximate result of Defendant CN's direct participation in the affairs of Defendant ICRR and Defendant CC&P, which surpassed the control exercised as a normal incident of ownership, adherence to the fiction of a separate corporate existence between Defendant CN and its subsidiaries (Defendant ICRR and Defendant CC&P) would promote injustice; thus, liability should be imposed on Defendant CN for the conduct mentioned herein, as a result of its direct participation in the affairs of Defendant ICRR and Defendant CC&P.

146. As a direct and proximate result of Defendant CN's direct participation in the affairs of Defendant ICRR and Defendant CC&P, which surpassed the control exercised as a normal incident of ownership, Defendant CN created conditions which was a direct and proximate cause of the injuries Plaintiff OWENS suffered herein described.

DAMAGES

147. Plaintiff incorporates the above paragraphs as though fully set forth herein.

148. As a result of the acts alleged herein and failure to act as alleged herein, Plaintiff has suffered the following damages:

A. Past and future pain and suffering, including but not limited to loss of enjoyment of life;

B. Past and future special damages including medical and related costs;

C. Past and future lost wages and loss of earning capacity;

D. Past and future loss of function of full mind and body;

E. Permanent disfigurement;

F. Prejudgment and post-judgment interest as allowed by Iowa law;

G. Punitive and exemplary damages; and

H. Any additional relief deemed appropriate by the Court.

WHEREFORE, the Plaintiff, JOVIDA OWENS, demands judgment against Defendants in a dollar amount greater than that which to satisfy the jurisdictional limitation of this Court and such additional amounts as the jury and the Court shall deem proper, the costs of this suit, attorneys' fees, and any such other and further relief this Court deem just.

REQUEST FOR A JURY TRIAL

Plaintiff requests a trial by jury of all claims and counts against the named Defendants as stated herein.

FRERICHS LAW OFFICE, P.C.

Thomas P. Frerichs Bar No. AT0002705
106 East Fourth Street

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P.O. Box 328
Waterloo, IA 50704-0328
Tel.: (319) 236-7204
FAX: (319) 236-7206
tfrerichs@frerichslaw.com

and

DAVIS, BETHUNE & JONES, LLC
Thomas C. Jones, *pending PHV*
Timothy C. Gaarder, *pending PHV*
John S. Carroll, *pending PHV*
1100 Main Street, Suite 2930
Kansas City, Missouri 64105
Tel.: (816) 421-1600
FAX: (816) 572-5972
tjones@dbjlaw.net
tgaarder@dbjlaw.net
jcarroll@dbjlaw.net

and

POTTROFF & KARLIN, LLC
Robert L. Pottroff, *pending PHV*
Nathan L. Karlin, *pending PHV*
320 Sunset Avenue
Manhattan, Kansas 66502
Tel.: 785-539-4656
Fax: 785-539-1750
bob@pottroff.com
nathan@pottroff.com

and

RUBENS, KRESS & MULHOLLAND, LLC
Toby P. Mulholland, *pending PHV*
134 N. LaSalle, Suite 444
Chicago, Illinois 60602
Tel.: (312) 767-4916
Fax: (312) 252-5253
tpm@rubensandkress.com