

IN THE CIRCUIT COURT OF THE 4th
JUDICIAL CIRCUIT IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO:
DIVISION:

CHRISTINE A. CELLA, as Personal
Representative of the Estate of
MICHAEL B. CELLA, deceased,
for the Benefit of the Estate of
MICHAEL B. CELLA; CHRISTINE A.
CELLA, Individually, and on Behalf of
Plaintiffs ELENA CELLA and LOGAN CELLA,
surviving minor heirs of MICHAEL
B. CELLA, deceased,

Plaintiffs,

vs.

CSX TRANSPORTATION, INC., a foreign
corporation and NATIONAL RAILROAD
PASSENGER CORPORATION d/b/a AMTRAK,
a foreign corporation,

Defendants. _____ /

COMPLAINT

COMES NOW, CHRISTINE A. CELLA, as Personal Representative of the Estate of MICHAEL B. CELLA, her lawful spouse, for the benefit of The Estate of MICHAEL B. CELLA; CHRISTINE A. CELLA, Individually, and on Behalf of Plaintiffs ELENA CELLA and LOGAN CELLA, Surviving Minor Heirs of MICHAEL B. CELLA, Deceased, and sues the Defendant, CSX TRANSPORTATION, INC. (hereinafter "CSXT") and Defendant NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK (hereinafter "AMTRAK"), and alleges:

JURISDICTIONAL AND VENUE ALLEGATIONS

1. This is an action for damages in excess of \$15,000, exclusive of interest and costs.

2. Plaintiff, CHRISTINE A. CELLA, is an adult citizen who at all times material hereto resides in Orange Park, Florida, who was lawfully married to the decedent, MICHAEL B. CELLA, at the time of his death, and who will be appointed Personal Representative of the Estate of MICHAEL B. CELLA. Plaintiff, CHRISTINE A. CELLA, is also the surviving spouse and an heir and beneficiary of the deceased, MICHAEL B. CELLA, and is the proper party to bring this action for wrongful death.

3. Plaintiff, ELENA CELLA, is a minor citizen who at all times material hereto resides in Orange Park, Florida, who is the natural daughter of the deceased, MICHAEL B. CELLA, and a surviving heir at law and wrongful death beneficiary of the deceased, who brings this action by and through her natural mother, CHRISTINE A. CELLA.

4. Plaintiff, LOGAN CELLA, is a minor citizen who at all times material hereto resides in Orange Park, Florida, and he is the natural son of the deceased, MICHAEL B. CELLA, and a surviving heir at law and wrongful death beneficiary of the deceased, who brings this action by and through his natural mother, CHRISTINE A. CELLA.

5. At all times material hereto, Defendant, CSXT, was a railroad company owned and operated as a common carrier engaged in interstate commerce which was doing business in the State of Florida with its principal place of business in Duval County, Jacksonville, Florida and is subject to the jurisdiction of this Court pursuant to F.S.A. § 48.193 and subject to this venue pursuant to F.S.A. §§ 47.021 and 47.051.

6. At all times material hereto, Defendant, AMTRAK, was a railroad company owned and operated as a common carrier engaged in interstate commerce which was doing business in Duval County, Jacksonville, Florida, and MICHAEL B. CELLA, decedent, was an employee of said railroad and was working within the course and scope of his employment and in furtherance of interstate commerce.

7. This action against Defendant, AMTRAK, is brought pursuant to the provisions of the Federal Employers' Liability Act (FELA), 45 U.S.C. § 51, and venue is proper in this Court pursuant to 45 U.S.C. § 56 and F.S.A. §47.051 in that Defendant, AMTRAK, is a foreign corporation that has an agent or other representative and is and was doing business in Duval County, Florida.

DEADLY AMTRAK TRAIN CRASH

8. On or about February 4, 2018, at approximately 2:35 a.m., in the vicinity of Cayce, South Carolina, Amtrak Passenger Train 91 (hereinafter referred to as "Amtrak Train") was proceeding southbound along the CSX S-Line mainline track en-route to Miami, Florida when the train was improperly and unexpectedly diverted into a side track known as the Silica Siding by means of a mainline switch which, at all times material hereto, was carelessly, negligently and recklessly misaligned and locked in the reverse position towards the Silica Siding and away from the mainline track by one or more employees of Defendant, CSXT.

9. As the Amtrak Train diverted away from the mainline track and through the misaligned switch, as described above, the said train entered the Silica Siding which, at all times material hereto, was occupied by a parked CSXT freight train.

10. At all times material hereto and despite efforts by the Amtrak operating train crew to avoid a dangerous collision, the lead locomotive of the Amtrak Train violently collided with the parked CSXT freight train thereby injuring a number of the occupants of the Amtrak Train and causing the tragic, untimely, death of its conductor, MICHAEL B. CELLA, decedent, age 36, who at the time of the collision was situated in the cab of the lead locomotive of the Amtrak Train.

DARK TERRITORY

11. At all times material hereto Defendant, CSXT, was responsible, as the track owner of the S-Line, for inspecting and maintaining the subject mainline track, the Silica Siding, the misaligned mainline switch referenced above, and the track side signals which were designed to assist mainline trains, such as the Amtrak Train, to safely proceed over the S-Line track in the area of the alleged incident.

12. At all times material hereto and upon information and belief, Defendant, CSXT, at some time prior to the alleged incident, deliberately disabled and/or suspended the track side signals along its S-Line in the area where the Amtrak Train was traveling immediately prior to the alleged incident, thereby causing a portion of the S-Line to be converted to dark territory.

13. At all times material hereto and while the subject S-Line was removed from active signalization, as alleged above, the operating crew of the Amtrak Train was without the benefit of any track side signals and/or positive train control, a system that if implemented could have likely prevented the two trains in this case from colliding.

14. At all times material hereto, the misaligned switch, as alleged above, was

situated in then dark territory and devoid of a switch position indicator thereby causing the position of the switch not to be clearly visible at all times.

15. At all times material hereto and as the Amtrak Train proceeded to enter the dark territory, as alleged above, the locomotive engine crew of the Amtrak Train had to rely on communications between Defendant, AMTRAK's managers, officers and employees working in concert with Defendant, CSXT's managers, officers and employees, to make certain that despite the signal suspension along the S-Line the engine crew of the Amtrak Train, including MICHAEL B. CELLA, decedent, was properly instructed and adequately informed of the conditions involving the track, the signals and the switch governing the Silica Siding.

16. At all times material hereto and because Defendant, CSXT, forced the S-Line in the area of the alleged incident into dark territory, as alleged above, CSXT and its managers, officers and employees were required to comply with Operating Rule 704 with specific regard to EC-1/EC-1e authority, which essentially required a system of communications between the CSXT employees at the location of the Silica Siding and CSXT dispatcher with specific reference to the positioning of the subject mainline switch including but not limited to when that switch was reversed to the Silica Siding and when it was restored to its normal position along the S-Line track.

17. At all times material hereto, Defendant, CSXT and its managers, officers and employees were required to comply with Operating Rule 505 which required the CSXT employees at the location of the Silica Siding to complete a switch position awareness form ("SPAF") and further required communications by and between the said employees and

CSXT dispatcher by specifically noting: (a) the location of the switch operated, (b) that the switch was restored and locked to the normal position, (c) the time the switch was lined in reverse to the Silica Siding, (d) the time the switch was restored and locked to the normal position, and (e) the name of the employee who operated the switch.

COUNT I
(Negligence Against Defendant CSXT)

Plaintiffs reallege and incorporate herein by reference Paragraphs 1-17 above and further allege:

18. At the time and place described above, Defendant, CSXT, its agents, its officers, and/or employees were guilty of one or more of the following negligent acts or negligent omissions which proximately caused the death of MICHAEL B. CELLA, decedent, which acts and omissions are set out herein by way of illustration and not limitation:

- (a) In negligently failing to maintain its property in a reasonably safe condition and correct or warn of dangers that the defendant knew or should have known of, and which MICHAEL B. CELLA, decedent, did not or should not have known of by the use of reasonable care; and/or
- (b) In negligently disabling and/or suspending its track side signal system along its S-Line and thereby forcing the said track into dark territory without a reasonably safe, tested and implemented procedure to safeguard passenger trains, such as the Amtrak Train, proceeding over this segment of the S-Line at the time and place of the alleged incident; and/or
- (c) In negligently failing to restore the subject mainline switch to its normal position after the CSXT freight train traveled through the said switch and into the Silica Siding where the train came to a stop; and/or
- (d) In negligently failing to check the position of the misaligned switch leading to the Silica Siding before releasing track authority on that segment of the S-Line that is involved in the alleged incident; and/or

- (e) In negligently failing to notify the operating crew of the Amtrak Train that the subject switch leading to the Silica Siding was misaligned against the passenger train's mainline movement; and/or
- (f) In negligently failing to adequately communicate with Defendant, AMTRAK's, managers, officers and employees of the condition of the signal suspension along the S-Line, as alleged above, the existence of dark territory, as alleged above, the existence of the misaligned track switch, as alleged above, and the lack of positive train control in the area of the dark territory, as alleged above; and/or
- (g) In negligently failing to comply with Operating Rule 704 in that it failed to properly implement and/or enforce EC-1/EC-1e authority which required specific communications between the CSXT employees at the Silica Siding and its dispatcher with specific regards to the positioning of the subject mainline track switch; and/or
- (h) In negligently failing to comply with Operating Rule 505 in that it failed to properly implement and/or enforce the requirements of the switch position awareness form ("SPAF"); and/or
- (i) In negligently failing to train, test and otherwise educate its employees, managers and officers with regards to its operating rules and specifically the requirements and implementation of CSXT Operating Rules 704 and 505, as stated above; and/or
- (j) In negligently failing to make reasonably certain that employees operating and/or verifying the position of the subject switch conducted adequate job briefings in accordance with 49 C.F.R. § 218.103(b)(1); and/or
- (k) In negligently failing to make reasonably certain that employees operating or verifying the position of the subject switch were qualified on Defendant's operating rules relating to the operation of the switch in accordance of 49 C.F.R. § 218.103(b)(2); and/or
- (l) In negligently failing to be individually responsible for the position of the switch in use in violation of 49 C.F.R. § 218.103(b)(3); and/or
- (m) In negligently failing to visually determine that the subject switch was properly lined for the intended route in violation of 49 C.F.R. § 218.103(b)(4); and/or

- (n) In negligently failing to designate the normal position of the subject switch in writing and to make reasonably certain that the switch shall be lined and locked in that position when not in use in accordance with 49 C.F.R. § 218.105(b); and/or
- (o) In negligently failing to install and/or keep in good operating repair the subject switch so that when Defendant, CSXT, suspended its signal system, as alleged above, the switch would be equipped with a position indicator that was clearly visible at all times in accordance with 49 C.F.R. §213.135(g); and/or
- (p) In negligently failing to adopt and comply with an operating rule which complies with the provision of 49 C.F.R. § 218.103 which requires employees who operate or verify the position of a hand-operated switch to do the following:
 - (1) Conduct job briefings;
 - (2) Be qualified on the railroad's operating rules relating to the operation of the switch;
 - (3) Be individually responsible for the position of the switch in use;
 - (4) Visually determine that the switch is properly lined for the intended route;
 - (5) Visually determine that the points fit properly and the switch position indicator corresponds with the switch's position; and/or
- (q) In negligently failing to adopt and comply with an operating rule which complies with the provision of 49 C.F.R. § 218.105(b) which requires the Defendant to designate the normal position of the subject mainline switch in writing and the switch shall be lined and locked in that position when not in use except when:
 - (1) The train dispatcher directs otherwise with respect to the position of the mainline switch and the necessary protection is provided; or
 - (2) The mainline switch is left in charge with a crewmember of another train, a switch tender, or a roadway worker in charge; and/or

- (r) In negligently failing to conduct adequate job briefings required for mainline switches to the extent that before a train or a train crew leaves the location where any switch was operated all crewmembers shall have verbal communication to confirm the position of the switch in accordance 49 C.F.R. § 218.105(c); and/or
- (s) In negligently failing to comply 49 C.F.R. § 218.105(d) which requires that in non-signaled territory, before an employee releases the limits of a mainline track authority and a hand-operated switch is used to clear the mainline track, and, prior to departing the switch's location:
 - (1) The employee releasing the limits, after conducting a job briefing, shall report to the train dispatcher that the mainline switch has been restored to its normal position and locked;
 - (2) If the report of the switch position is correct, the train dispatcher shall repeat the reported switch position information to the employee releasing the limits and ask whether that is correct; and
 - (3) The employee releasing the limits shall then confirm to the train dispatcher that this information is correct; and/or
- (t) In negligently failing to properly maintain a written program of instruction, training, and examination of employees for compliance with operating rules implementing the requirements of 49 C.F.R. §218, subpart F as required by 49 C.F.R. § 218.95 with regard to hand-operated switches in non-signaled territory; and/or
- (u) In negligently failing to comply with 49 C.F.R. § 220.13, *et. seq.* which requires that employees shall immediately report by the quickest means available hazardous conditions which could result in death or injury, damage to property or serious disruption of railroad operations; and/or
- (v) In negligently failing to properly apply for approval to discontinue or materially modify block signal systems, interlockings, traffic control systems, automatic train stop, train control, or cab signal systems, or other similar appliances, devices, methods, or systems in violation of 49 C.F.R. § 235.1, *et. seq.*; and/or

- (w) In negligently failing to conduct an adequate job briefing in violation of CSX Safe Way Rule GS-3; and/or
- (x) In negligently failing to comply with its CSX Safe Way Rule ES-24 which imposes upon its employees the duty to always return mainline switches to normal position when they have finished using them; and/or
- (y) In negligently failing to use reasonably safe alternative methods in connection with its train operations in areas involving signal suspension; and/or
- (z) In negligently failing to furnish its managers, officers and employees with adequate training and instruction in the safe performance of their assigned tasks; and/or
- (aa) In failing to use the degree of care and caution of a reasonably prudent person under same or similar circumstances together with other negligent acts and/or omissions which may be disclosed by discovery; and/or
- (ab) In negligently managing and supervising its railroad operations.

19. As a direct and proximate result of one or more of the foregoing negligent acts or omissions, MICHAEL B. CELLA, decedent, suffered a wrongful death, and as a result thereof, his Estate, his Spouse, his surviving daughter and his surviving son have suffered the following damages:

- (a) The Estate of MICHAEL B. CELLA has sustained a loss of net accumulations of the decedent; and
- (b) The Estate of MICHAEL B. CELLA and/or CHRISTINE A. CELLA have sustained funeral and related expenses due to the decedent's untimely death; and
- (c) CHRISTINE A. CELLA, the surviving spouse, has lost and will continue to lose the support and services of the decedent, MICHAEL B. CELLA, the companionship and protection of the decedent, and has sustained and will continue to sustain future severe mental pain and suffering as a result of the decedent's untimely death; and

- (d) Plaintiff, ELENA CELLA, surviving daughter, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of her father, MICHAEL B. CELLA, and has and will continue to endure mental pain and suffering; and
- (e) Plaintiff, LOGAN CELLA, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father, MICHAEL B. CELLA, and has and will continue to endure mental pain and suffering.

WHEREFORE, Plaintiffs demand judgment against the Defendant, CSXT, for special and general damages, court costs, and any other relief deemed appropriate, and further demands a trial by jury of all issues triable as a matter of right by a jury.

COUNT II

(FELA Negligence Against Defendant AMTRAK)

Plaintiffs reallege and incorporate herein by reference Paragraphs 1-19 above and further allege:

20. At the time and place described above, Defendant, AMTRAK, its agents, its officers, and/or employees were guilty of one or more of the following negligent acts or negligent omissions which caused or contributed to the cause of the decedent MICHAEL B. CELLA's death which acts and omissions are set out herein by way of illustration and not limitation:

- (a) In negligently failing to furnish MICHAEL B. CELLA, decedent, with a reasonably safe place to work; and/or
- (b) In negligently failing to provide reasonably safe and adequately maintained track facilities including an operational track side signal system, an operational system when the signals are suspended, and the mainline track switch involved in the alleged incident; and/or

- (c) In negligently failing to discover and thereafter warn MICHAEL B. CELLA, decedent, of the misaligned mainline switch while, at the same time, requiring the Amtrak Train to operate in dark territory over the S-Line, as alleged above; and/or
- (d) In negligently failing to adequately communicate with decedent and his locomotive engineer concerning the condition of signal suspension in the area of the alleged incident and the rules and procedures governing train operations under such circumstances; and/or
- (e) In negligently failing to ensure that the S-Line was reasonably safe for travel at the time and place of the alleged incident; and/or
- (f) In negligently failing to ensure that its managers, officers and employees adequately communicated with Defendant, CSXT's, managers, officers and employees concerning the implementation of alternative procedures once CSXT disabled its track side signal system in the area of the alleged incident; and/or
- (g) In negligently failing to install and/or keep in good operating repair the subject switch so that when Defendant, CSXT, suspended its signal system, as alleged above, the switch would be equipped with a position indicator that was clearly visible at all times in accordance with 49 C.F.R. §213.135(g); and/or
- (h) In negligently failing to take any additional precautionary measures upon learning that Defendant, CSXT, had disabled the signal system in the subject area of track to ensure the Amtrak Train would be able to safely travel over the dark territory; and/or
- (i) In negligently managing and supervising its railroad operations.

21. As a result of the aforesaid negligent acts and/or negligent omissions of the Defendant, in or whole or in part, even in the slightest, as described above, MICHAEL B. CELLA, decedent, was forced to endure the horrendous fear of his pending demise as the Amtrak Train approached the deadly collision point thereby giving rise to great conscious pain and suffering in the moments prior to the collision and subsequently suffered a wrongful death as a result of his fatal wounds suffered in the alleged incident.

22. CHRISTINE A. CELLA, as Personal Representative of the estate of MICHAEL B. CELLA, deceased, pursuant to 45 U.S.C. §51, makes the following claims on behalf of the decedent's estate, herself as the surviving spouse and on behalf the decedent's minor children:

- (a) The conscious pain and suffering sustained by the decedent from the time the Amtrak Train was wrongfully diverted onto the Silica Siding to the moment of his death following the alleged collision with the CSXT freight train that was sitting in said siding.
- (b) The expenses of the decedent's hospitalization, medical treatment, and funeral/burial expenses.
- (c) The economic value of the maintenance and support which the surviving spouse and decedent's minor children would have reasonably received based upon the probable future earnings of the decedent.
- (d) The economic loss to the surviving spouse and surviving children of their prospective inheritance from the decedent.
- (e) The economic value of the loss of the care, attention, instruction, training, advice, counseling and guidance, which the decedent was likely to render to his surviving spouse and minor children except for his wrongful death.
- (f) The economic value of the loss of services that the decedent would have likely provided for and on behalf of his surviving spouse.
- (g) The economic value to the surviving spouse and minor children for the loss of the decedent's society, companionship, counsel, protection and attention.
- (h) The economic value of the pension rights under the Railroad Retirement Act which reasonably would have accrued except for the untimely death of the decedent.

- (i) The economic value of the retirement/pension income and fringe benefits of the decedent's work and employment which would have accrued in the future and projected increases and such benefits and the economic value of such contributions therefrom as would have reasonably been enjoyed by the surviving spouse and decedent's minor children.
- (j) The economic value of the loss of benefits reasonably expected to have accrued to the surviving spouse and decedent's minor children except for the wrongful death of the decedent.

WHEREFORE, Plaintiff, CHRISTINE A. CELLA, as Personal Representative of the Estate of MICHAEL B. CELLA, deceased, demand judgment against the Defendant, AMTRAK, for special and general damages, court costs, and any other relief deemed appropriate, and further demands a trial by jury of all issues triable as a matter of right by a jury.

DATE: February 8, 2018

ROSSMAN, BAUMBERGER, REBOSO &
SPIER, P.A.
Attorneys for Plaintiff
9155 S. Dadeland Blvd.
Suite 1200
Miami, Florida 33156
Tel: (305) 373-0708
Fax: (305) 577-4370

By: /s/ Howard A. Spier
HOWARD A. SPIER, ESQ.
Florida Bar No.: 334571
MATTHEW J. GROSSMAN, ESQ.
Florida Bar No. 111517
has@rbrlaw.com
grossman@rbrlaw.com
vicky@rbrlaw.com
eservice@rbrlaw.com