

**IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

**JANICE MILLS**, Individually, and **K. M.**,  
a minor, by and through her next friend and  
parent, **JANICE MILLS**.

**Plaintiffs,**

**v.**

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

**Defendants.**

**Civil Action No.** 3:18-575-MBS

**COMPLAINT  
JURY TRIAL DEMANDED**

COME NOW Plaintiffs Janice Mills (hereinafter “Ms. Mills”) and K.M., a minor, by and through her next friend and parent, Janice Mills (hereinafter “K.M.”) (collectively the “Plaintiffs”), by and through the undersigned counsel and pursuant to the Federal Rules of Civil Procedure, and file this Complaint for Damages against Defendants CSX Transportation, Inc., and National Railroad Passenger Corporation d/b/a Amtrak, alleging as follows:

**I. NATURE OF THE ACTION**

1. This action arises out of the February 4, 2018 head-on train collision (“the Collision”) between Amtrak Passenger Train 91 (“the Amtrak Train”), operated by Defendant National Railroad Passenger Corporation d/b/a Amtrak (“Defendant Amtrak”), and a local freight train, No. F777 03, owned and operated by Defendant CSX Transportation, Inc. (“Defendant CSX”), near Cayce, South Carolina.

2. In the early hours of February 4, 2018, the Amtrak Train was proceeding southbound along Defendant CSX’s S-Line mainline track near Cayce, South Carolina (“the S-

Line”), en route along Defendant Amtrak’s Silver Star passenger train route from New York City towards a final destination in Miami, Florida.

3. As detailed herein, as a result of the combined and respective tortious actions of Defendant CSX and of Defendant Amtrak, in the early hours of February 4, 2018, the Amtrak Train left the S-Line mainline track and its lead locomotive violently collided with Defendant CSX’s stationary local freight train F777 03, which was located on a siding away from the mainline track (“the Siding”).

4. At the time of the Collision, Plaintiff Ms. Mills and Plaintiff K.M. were passengers on the Amtrak Train, travelling from their home in Virginia towards their intended destination, the Walt Disney World Resort in Orlando, Florida.

5. The Collision has directly and proximately caused serious physical and emotional injuries, as well as property damages, to Plaintiff Janice Mills and to Plaintiff K.M.

6. These events form the basis of Plaintiffs’ negligence and emotional distress claims asserted herein. Plaintiffs also seek actual and consequential damages as well as punitive damages to halt and deter such conduct from taking place in the future

## **II. PARTIES, JURISDICTION & VENUE**

7. At all times relevant, Plaintiff Janice Mills is and was a citizen and resident of the Commonwealth of Virginia, residing in Keswick, Fluvanna County, Virginia. Plaintiff Janice Mills was a properly ticketed passenger en route to Orlando, Florida on the Amtrak Train on February 4, 2018.

8. At all times relevant, Plaintiff K.M., is and was a citizen and resident of the Commonwealth of Virginia, residing in Keswick, Fluvanna County, Virginia. Plaintiff K.M. was a properly ticketed passenger en route to Orlando, Florida on the Amtrak Train on February 4,

2018. Plaintiff K.M., a minor, brings the claims asserted herein by and through her next friend and parent Janice Mills.

9. Defendant CSX Transportation, Inc. ("Defendant CSX") is a foreign corporation with its principal place of business in the State of Florida. CSX owns and conducts railroading business in the State of South Carolina. Defendant CSX may be served with process through its registered agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223. At all times relevant herein, Defendant CSX conducted substantial business in South Carolina and these causes of action arise out of a tort committed in whole or in part within South Carolina and which resulted in injuries South Carolina, and, therefore, personal jurisdiction is proper under South Carolina Code § 36-2-802 and South Carolina Code § 36-2-803.

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

11. The Defendant National Railroad Passenger Corporation a/k/a Amtrak (hereinafter "Amtrak") is a Corporation organized and existing under the laws of the United States of America with its principal place of business located at 60 Massachusetts Avenue, Washington, D.C. 20002. Pursuant to 49 U.S.C. § 24301(b) Amtrak may be served with process by certified mail directed to Eleanor D. Acheson, Chief Legal Officer, General Counsel & Corporate Secretary, National Railroad Passenger Corporation 1 Massachusetts Avenue, NW, Washington, DC 20001. Alternatively, Defendant Amtrak may be served through its registered agent, CT Corporation, 1015 15th Street NW, Suite 1000, Washington, DC 20005. At all times relevant herein, Defendant

Amtrak conducted substantial business in South Carolina and these causes of action arise out of a tort committed in whole or in part within South Carolina and which resulted in injuries South Carolina, and, therefore, personal jurisdiction is proper under South Carolina Code § 36-2-802 and South Carolina Code § 36-2-803.

12. At all times relevant, Defendant Amtrak was a for-profit railroad company owned and operated as a common carrier engaged in interstate commerce which was doing business in the State of South Carolina.

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

14. This Honorable Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332.

15. This Court also has original jurisdiction in this case pursuant to 28 U.S.C. § 1331, as Defendant Amtrak is an entity incorporated by the United States Congress. *See, e.g., Aliotta v. Nat'l R. R. Passenger Corp.*, 315 F.3d 756 (7th Cir. 2003).

16. Venue is proper in the United States District Court for the District of South Carolina pursuant to 28 U.S.C. § 1391 because:

a. As set forth herein, a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in the District of South Carolina within the meaning of 28 U.S.C. §1391(b)(2);

b. Defendant CSX resides in the District of South Carolina within the meaning of 28 U.S.C. § 1391(c)(2);

c. Defendant Amtrak resides in the District of South Carolina within the meaning of 28 U.S.C. § 1391(c)(2);

d. Defendant CSX is subject to the Court's personal jurisdiction with respect to this action; and

e. Defendant Amtrak is subject to the Court's personal jurisdiction with respect to this action.

17. Venue is proper in this division under L.R. 3.01(A) (1) as a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred within, and Defendant CSX and Defendant Amtrak each does business related to the events and omissions alleged herein, within the Columbia Division of the United States District Court for the District of South Carolina.

18. Trial by Jury is demanded pursuant to Federal Rule of Civil Procedure 38.

**CONDITIONS PRECEDENT**

19. All conditions precedent to the filing of this action and to the Plaintiffs' right to the relief sought have occurred, have been performed, or have been excused.

**FACTS COMMON TO ALL COUNTS**

20. Defendant Amtrak is a national rail operator with approximately 21,000 route miles in 46 states, the District of Columbia and three Canadian provinces. Amtrak operates more than 300 trains each day to more than 500 destinations. Amtrak has approximately 20,000 employees.

21. On February 4, 2018, Defendant Amtrak was operating the Amtrak Train over the S-Line railroad tracks owned, operated and maintained by Defendant CSX.

22. At all times relevant, the normal method of train operation on the CSX subdivision and the S-Line near Cayce, South Carolina was a traffic control system with wayside signals.

23. During normal operations on the S-Line prior to February 3, 2018, these signal indications would authorize movement in either direction along the section of track in question.

24. Defendant CSX, as the track owner of the S-Line, had a responsibility to inspect and maintain the subject mainline track, the Siding, the mainline switch, 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 incident.

25. However, on February 3, 2018, Defendant CSX deliberately disabled and/or suspended the track side signals along its S-Line in the area where the Amtrak Train would travel on February 4, 2018, thereby causing a portion of the S-Line to be converted to dark territory.

26. As a result of Defendant CSX's deliberate disabling and/or suspension of the track side signals along its S-Line in the area where the Amtrak Train would travel on February 4, 2018, the normal signals would not operate during standard train operations.

27. Defendant CSX did not re-engage and/or halt the suspension of the track side signals along its S-Line after those signals were deliberately disabled and/or suspended on February 3, 2018. Instead, Defendant CSX's personnel stopped work near the Collision site at approximately 7:00 p.m. on February 3, 2018, deliberately and knowingly leaving the signals disabled and/or suspended.

28. Due to Defendant CSX's deliberate disabling and/or suspension of the track side signals along its S-Line in the area where the Amtrak Train would travel on February 4, 2018, Defendant CSX and Defendant Amtrak could only move trains through absolute blocks in the work territory via the use of track warrants.

29. Defendant CSX's deliberate disabling and/or suspension of the track side signals along its S-Line in the area where the Amtrak Train would travel on February 4, 2018 was a direct and proximate cause of the Collision and of Plaintiffs' injuries and damages.

30. Subsequently, in the early morning hours of February 4, 2018, the Amtrak Train was traveling southbound, intending to pass through Defendant CSX's railyard on the S-Line near Cayce, South Carolina.

31. While proceeding southbound, the Amtrak Train was improperly and unexpectedly diverted from the main track means of a reversed hand-thrown switch which, at all times material hereto, was carelessly, negligently and recklessly misaligned and locked in the reverse position towards the Siding and away from the mainline track by one or more employees of Defendant CSX.

32. As a result of the improper and unexpected diversion, the Amtrak Train was directed onto the Siding which, at the time, was occupied by Defendant CSX's stationary local freight train No. F777 03.

33. After entering into the Siding, the lead locomotive of the Amtrak Train violently collided with Defendant CSX's stationary local freight train No. F777 03.

34. At all times material hereto, the misaligned switch 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.

35. When the Amtrak Train proceeded to enter the dark territory, Defendant CSX was obligated to engage in adequate communications with, *inter alia*, Defendant Amtrak and its officials to ensure, that despite the signal suspension along the S-Line, that crew of the Amtrak

Train, was properly instructed and adequately informed of the conditions involving the track, the signals and the switch governing the Siding.

36. Defendant CSX failed to engage in or maintain communications with, *inter alia*, Defendant Amtrak and its officials to ensure that the crew of the Amtrak Train was properly instructed and adequately informed of the conditions on the S-Line, including the track, the signals and the switch governing the Siding after the signals were suspended, and that failure by Defendant CSX was a direct and proximate cause of the Collision and of Plaintiffs' injuries and damages.

37. Because Defendant CSX created a dark territory condition on the S-Line as alleged above, it was required to ensure that its dispatcher was provided with information on the positioning of the subject mainline switch, whether the mainline switch had been reversed to the Siding, and whether that switch had been restored to its normal position along the S-Line track.

38. Defendant CSX failed to ensure its dispatcher was provided with information on the positioning of the subject mainline switch, whether the mainline switch had been reversed to the Siding, and whether that switch had been restored to its normal position along the S-Line track, which was a direct and proximate cause of the Collision and of Plaintiffs' injuries and damages.

39. Because Defendant CSX created a dark territory condition on the S-Line as alleged above, it was required complete a switch position awareness form ("SPAF") to ensure that its dispatcher was apprised of *inter alia*: (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.

40. Defendant CSX failed to complete a switch position awareness form ("SPAF") to ensure that its dispatcher was apprised of *inter alia*: (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, which was a direct and proximate cause of the Collision and of Plaintiffs' injuries and damages.

41. When the Amtrak Train proceeded to enter the dark territory, as alleged above, Defendant Amtrak was obligated to engage in adequate communications with, *inter alia*, Defendant CSX and its officials to ensure, that despite the signal suspension along the S-Line, that crew of the Amtrak Train, was properly instructed and adequately informed of the conditions involving the track, the signals and the switch governing the Siding.

42. Defendant Amtrak failed to engage in or maintain communications with, *inter alia*, Defendant CSX and its officials to ensure that the crew of the Amtrak Train was properly instructed and adequately informed of the conditions on the S-Line, including the track, the signals and the switch governing the Siding after the signals were suspended, and that failure by Defendant Amtrak was a direct and proximate cause of the Collision and of Plaintiffs' injuries and damages.

43. Upon information and belief, at or before the time that the Amtrak Train was directed onto the Siding, Defendant Amtrak failed to take adequate precautions to ensure that it had a track warrant to proceed.

44. Defendant Amtrak's failure to take adequate precautions to ensure that it had a track warrant to proceed was a direct and proximate cause of the Collision and of Plaintiffs' injuries and damages.

45. Additionally, at the time of the Collision, neither the Amtrak Train nor Defendant CSX's S-Line was equipped with positive train control ("PTC"), a system that if implemented could have likely prevented the two trains in this case from colliding.

46. PTC is a GPS communication and processor-based train control technology designed to prevent train-to-train collisions.

47. PTC provides real-time information to train crew members about the areas in which a train must be slowed or stopped and the speed limits at approaching curves and other reduced-speed locations, among other things.

48. PTC warns the train crew of the train's safe braking distance in curved or reduced-speed locations, and displays the same on screens inside the locomotive's cab.

49. The PTC system automatically stops a train if the train operator fails to begin stopping or slowing a train down within a speed-restricted area.

50. If the engineer does not respond to the warnings and on-screen displays, PTC automatically activates the brakes and stops the train safely.

51. The NTSB issued its first recommendation calling for automatic train control in 1970; 20 years later in 1990, the need for a safety redundancy system on railroads still existed, and positive train separation (which was renamed positive train control in 2001) was first placed on the NTSB's Safety Board's Most Wanted List.

52. In March 2005, the NTSB held a symposium on PTC to reinvigorate the dialogue between the railroad industry and state and federal agencies on issues relevant to the implementation of PTC systems.

53. In 2008, Congress mandated the implementation of PTC as a result of the tragic 2008 train wreck in Chatsworth, California between a Metrolink passenger train and a Union Pacific freight train. In that train wreck, 25 people were killed and 135 others were injured.

54. In 2015, Defendant CSX and other entities in the Railroad industry defied the Rail Safety Improvement Act of 2008 by threatening an industry-wide shut down if they were required

to implement PTC by the December 31, 2015 deadline. Congress and President Obama relented and moved the deadline to December 31, 2018.

55. Prior to this Collision, Defendant CSX had already announced that it would not comply with the 2018 deadline for full implementation of PTC.

56. At all times relevant hereto, PTC systems were available, feasible and intended to improve safety on the Amtrak Train.

57. At all times relevant hereto, PTC systems were available feasible and intended to improve safety on Defendant CSX's S-Line.

58. At the time of the Collision, PTC systems were operational on various stretches of railroad throughout the United States.

59. At all times relevant to this accident, Defendant Amtrak knowingly failed to equip the Amtrak Train with a PTC system.

60. At all times relevant to this accident, Defendant CSX knowingly failed to equip its S-Line mainline track near Cayce, South Carolina with a functional PTC system.

61. Defendant Amtrak's failure to use readily available and safer train control and/or alert system technology was a proximate cause of the Collision and Plaintiffs' injuries and damages.

62. Defendant CSX's failure to use readily available and safer train control and/or alert system technology was a proximate cause of the Collision and Plaintiffs' injuries and damages.

**FIRST CAUSE OF ACTION**  
**Negligence and Gross Negligence**  
**(Against Defendant CSX)**

62. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

63. At all times relevant, Defendant CSX has a duty to exercise reasonable care to avoid injuring members of the public, including the Plaintiffs.

64. At all times relevant, Defendant CSX owed a duty to exercise reasonable care to ensure that passengers traveling on its S-Line track, including the Plaintiffs, would not be harmed by dangerous conditions that Defendant CSX caused and/or contributed to.

65. At all times relevant, Defendant CSX owed a duty to passengers traveling along its S-Line, including the Plaintiffs, to maintain its property in a reasonably safe condition and correct or warn of dangers that it knew or should have known of, and which the Plaintiffs did not or should not have known of by the use of reasonable care.

66. At all times relevant, Defendant CSX owed a duty to not disable and/or suspend its track side signal system along its S-Line, thereby forcing said track into dark territory without exercising care to ensure that reasonably safe, tested and implemented procedures were put in place to safeguard train passengers, such as the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

67. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to restore the subject mainline switch to its normal position in timely manner to prevent the risk of harm to individuals, such as the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

68. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to check the position of the misaligned switch leading to the Siding before releasing track authority on the segment of the S-Line involved in the Collision, in order to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over that segment of the S-Line at the time and place of the Collision.

69. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to notify the operating crew of the Amtrak Train that the subject switch leading to the Siding was misaligned against the passenger train's mainline movement to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

70. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to adequately communicate with Defendant Amtrak's managers, officers and employees about the condition of the signal suspension along the S-Line, the existence of dark territory, the existence of the misaligned track switch, and the lack of positive train control in the area of the dark territory to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

71. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with the Federal standards of care established by regulations or orders issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of 49 U.S.C. Section 20106.

72. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with its own plans, rules, or standards which Defendant CSX created pursuant to a regulation or order issued by either of the Secretaries.

73. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with State laws, regulations, and orders that are not incompatible with subsection (a)(2) of 49 U.S.C. Section 20106.

74. At all times relevant, Defendant CSX owed a duty to passengers traveling along its

tracks, including the Plaintiffs, to comply with its Operating Rule 704, a plan, rule, or standard which Defendant CSX created pursuant to a regulation or order issued by the Secretary of Transportation and/or the Secretary of Homeland Security, and thereby properly implement and/or enforce EC-1/EC-1e authority requiring specific communications between (a) the CSX's employees at the Siding and (b) its dispatcher with specific regards to the positioning of the subject mainline track switch, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

75. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with its Operating Rule 505, a plan, rule, or standard which Defendant CSX created pursuant to a regulation or order issued by the Secretary of Transportation and/or the Secretary of Homeland Security, so as to properly implement and/or enforce the requirements of the switch position awareness form ("SPAF") to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

76. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to train, test and otherwise educate its employees, managers and officers with regards to its operating rules and specifically the requirements and implementation of CSX's Operating Rules 704 and 505, plans, rules, or standards which Defendant CSX created pursuant to a regulation or order issued by the Secretary of Transportation and/or the Secretary of Homeland Security, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

77. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, 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), a standard of care established by a regulation or order issued by the Secretary of Transportation, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

78. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, 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), a standard of care established by a regulation or order issued by the Secretary of Transportation, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

79. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to be responsible for the position of the switch in use under 49 C.F.R. § 218.103(b) (3), a standard of care established by a regulation or order issued by the Secretary of Transportation, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

80. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, 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), a standard of care established by a regulation or order issued by the Secretary of Transportation, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

81. At all times relevant, Defendant CSX owed a duty to passengers traveling along its

tracks, including the Plaintiffs, 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), a standard of care established by a regulation or order issued by the Secretary of Transportation, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

82. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to install and/or keep in good operating repair the subject switch so that when Defendant CSX 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), a standard of care established by a regulation or order issued by the Secretary of Transportation, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

83. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision by adopting and complying with operating rules consistent with the provision of 49 C.F.R. § 218.103, a standard of care established by a regulation or order issued by the Secretary of Transportation, which requires employees who operate or verify the position of a hand-operated switch to do the following:

- (i) Conduct job briefings;
- (ii) Be qualified on the railroad's operating rules relating to the operation of the switch;
- (iii) Be individually responsible for the position of the switch in use;



- (iv) Visually determine that the switch is properly lined for the intended route; and/or
- (v) Visually determine that the points fit properly and the switch position indicator corresponds with the switch's position.

84. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision by adopting and complying with operating rules consistent provision of 49 C.F.R. § 218.105(b), a standard of care established by a regulation or order issued by the Secretary of Transportation that requires the Defendant CSX 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.

85. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, 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 with 49 C.F.R. § 218.105(c), a standard of care established by a regulation or order issued by the Secretary of Transportation, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

86. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with 49 C.F.R. § 218.105(d), a standard of care established by a regulation or order issued by the Secretary of Transportation requiring 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 that:

- (i) 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;

(ii) 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/or

(iii) The employee releasing the limits shall then confirm to the train dispatcher that this information is correct.

87. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, 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, a standard of care established by a regulation or order issued by the Secretary of Transportation with regard to hand-operated switches in non-signaled territory, in order to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

88. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with 49 C.F.R. § 220.13, *et seq.*, a standard of care established by a regulation or order issued by the Secretary of Transportation 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, in order to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

89. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, 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.*, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

90. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to conduct an adequate job briefing, in keeping with CSX Safe Way Rule GS-3, and to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

91. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with 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, in order to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

92. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to utilize reasonably safe alternative methods in connection with its train operations in areas involving signal suspension in order to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

93. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to furnish its managers, officers and employees with adequate training and instruction in the safe performance of their assigned tasks; to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

94. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to use the degree of care and caution of a reasonably prudent person under same or similar circumstances to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

95. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to use readily available and safer train control and/or alert system technology, including but not limited to PTC, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

96. At all times relevant, Defendant CSX owed a duty to passengers traveling along its tracks, including the Plaintiffs, to manage and supervise its railroad operations, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

97. Defendant CSX was negligent, grossly negligent, willful, wanton, reckless and careless in operating, inspecting, maintaining, communicating about and controlling the S-Line and its mainline switch and signals and breached duties it owed to Plaintiff Ms. Mills and to Plaintiff K.M., resulting in personal injuries and property damages, by:

- (i) Failing to exercise reasonable care to avoid injuring members of the public, including the Plaintiffs;
- (ii) Failing to maintain its property in a reasonably safe condition and correct or warn of dangers that it knew or should have known of, and about which the Plaintiffs did not or should not have known of by the use of reasonable care;
- (iii) Disabling and/or suspending its track side signal system along its S-Line and

thereby forcing said track into dark territory without exercising care to ensure that reasonably safe, tested and implemented procedures were put in place to safeguard train passengers, such as the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision;

(iv) Failing to restore the subject mainline switch to its normal position in timely manner to prevent the risk of harm to individuals, such as the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision;

(v) Failing to check the position of the misaligned switch leading to the Siding before releasing track authority on that segment of the S-Line that is involved in the Collision;

(vi) Failing to properly notify the operating crew of the Amtrak Train that the subject switch leading to the Siding was misaligned against the passenger train's mainline movement;

(vii) Failing to adequately communicate with Defendant Amtrak's managers, officers and employees about the condition of the signal suspension along the S-Line, the existence of dark territory, the existence of the misaligned track switch, and the lack of positive train control in the area of the dark territory;

(viii) Failing to comply with the Federal standards of care established by regulations or orders issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of 49 U.S.C. Section 20106;

(ix) Failing to comply with its own plans, rules, or standards that Defendant CSX created pursuant to a regulation or order issued by either of the Secretaries;

(x) Failing to comply with State laws, regulations, and orders that are not incompatible

with subsection (a)(2) of 49 U.S.C. Section 20106;

(xi) Failing to comply with its Operating Rule 704, a plan, rule, or standard which Defendant CSX created pursuant to a regulation or order issued by the Secretary of Transportation and/or the Secretary of Homeland Security, and thus failing to properly implement and/or enforce EC-1/EC-1e authority which required specific communications between the CSX's employees at the Siding and its dispatcher with specific regard to the positioning of the subject mainline track switch;

(xii) Failing to comply with Operating Rule 505, a plan, rule, or standard which Defendant CSX created pursuant to a regulation or order issued by the Secretary of Transportation and/or the Secretary of Homeland Security, and thus failing to properly implement and/or enforce the requirements of the switch position awareness form ("SPAF");

(xiii) Failing to train, test and otherwise educate its employees, managers and officers with regard to its operating rules and specifically the requirements and implementation of CSX's Operating Rules 704 and 505, which are plans, rules, or standards which Defendant CSX created pursuant to a regulation or order issued by the Secretary of Transportation and/or the Secretary of Homeland Security;

(xiv) 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), a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xv) Failing to make reasonably certain that employees operating or verifying the position of the subject switch were qualified on Defendant CSX's operating rules relating

to the operation of the switch in accordance of 49 C.F.R. § 218.103(b)(2), a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xvi) Failing to be responsible for the position of the switch in use under 49 C.F.R. § 218.103(b)(3), a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xvii) 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), a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xviii) 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), a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xix) Failing to install and/or keep in good operating repair the subject switch so that when it suspended its signal system 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), a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xx) Failing to adopt and comply with operating rules consistent with the provision of 49 C.F.R. § 218.103, a standard of care established by a regulation or order issued by the Secretary of Transportation which requires employees who operate or verify the position of a hand-operated switch to do the following:

- (a) Conduct job briefings;
- (b) Be qualified on the railroad's operating rules relating to the operation of the switch;

- (c) Be individually responsible for the position of the switch in use;
- (d) Visually determine that the switch is properly lined for the intended route;  
and/or
- (e) Visually determine that the points fit properly and the switch position indicator corresponds with the switch's position.

(xxi) Failing to adopt and comply with operating rules consistent provision of 49 C.F.R. § 218.105(b), a standard of care established by a regulation or order issued by the Secretary of Transportation that requires the Defendant CSX 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;

(xxii) 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), a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xxiii) Failing to ensure compliance with 49 C.F.R. § 218.105(d), a standard of care established by a regulation or order issued by the Secretary of Transportation 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:

- (a) 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;



(b) 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/or

(c) The employee releasing the limits shall then confirm to the train dispatcher that this information is correct.

(xxiv) Failing to 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, a standard of care established by a regulation or order issued by the Secretary of Transportation with regard to hand-operated switches in non-signaled territory;

(xxv) Failing to comply with 49 C.F.R. § 220.13, *et seq.*, a standard of care established by a regulation or order issued by the Secretary of Transportation 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;

(xxvi) 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.*, a standard of care established by a regulation or order issued by the Secretary of Transportation;

(xxvii) Failing to conduct an adequate job briefing in keeping with CSX Safe Way Rule GS-3;

(xxviii) Failing to comply with CSX Safe Way Rule ES-24 which imposes upon Defendant

CSX's employees the duty to always return mainline switches to normal position when they have finished using them;

(xxix) Failing to utilize reasonably safe alternative methods in connection with its train operations in areas involving signal suspension;

(xxx) Failing to furnish its managers, officers and employees with adequate training and instruction in the safe performance of their assigned tasks;

(xxxi) Failing to use readily available and safer train control and/or alert system technology, including but not limited to PTC;

(xxxii) Failing to manage and supervise its railroad operations; and

(xxxiii) On such other and further particulars as the evidence may show.

98. The breaches of aforementioned duties owed by Defendant CSX to Plaintiff Ms. Mills and to Plaintiff K.M. were each a direct and proximate cause of the Collision.

99. Defendant CSX's breaches of each of the aforementioned duties was a direct and proximate cause of:

- (i) Plaintiff Ms. Mills' serious personal injuries;
- (ii) Plaintiff Ms. Mills' physical pain and suffering – past, present and future;
- (iii) Plaintiff Ms. Mills' post-traumatic stress, mental and emotional pain and suffering – past, present and future;
- (iv) Plaintiff Ms. Mills' loss of enjoyment of life – past, present and future;
- (v) Plaintiff Ms. Mills' loss of function of the body and mind – past, present and future;
- (vi) Plaintiff Ms. Mills' disability and psychological injuries – past, present and future;
- (vii) Plaintiff Ms. Mills' suffering, disfigurement, inconvenience and loss of time – past, present and future;

- (viii) Plaintiff Ms. Mills' medical expenses – past, present and future;
- (ix) Plaintiff Ms. Mills' increased living and medical expenses caused by the injuries suffered – past, present and future;
- (x) Plaintiff Ms. Mills' lost wages and future earnings capacity;
- (xi) Damage and/or destruction of Plaintiff Ms. Mills' personal property; and
- (xii) Such other injuries, damages, and particulars as the evidence may show.

100. Defendant CSX's breaches of each of the aforementioned duties was a direct and proximate cause of:

- (i) Plaintiff K.M.'s serious personal injuries, including laceration of her liver due to the concussive impact of the Collision;
- (ii) Plaintiff K.M.'s physical pain and suffering – past, present and future;
- (iii) Plaintiff K.M.'s post-traumatic stress, mental and emotional pain and suffering – past, present and future;
- (iv) Plaintiff K.M.'s loss of enjoyment of life – past, present and future;
- (v) Plaintiff K.M.'s loss of function of the body and mind – past, present and future;
- (vi) Plaintiff K.M.'s disability and psychological injuries – past, present and future;
- (vii) Plaintiff K.M.'s suffering, disfigurement, inconvenience and loss of time – past, present and future;
- (viii) Plaintiff K.M.'s medical expenses – past, present and future;
- (ix) Plaintiff K.M.'s increased living and medical expenses caused by the injuries suffered – past, present and future;
- (x) Damage and/or destruction of Plaintiff K.M.'s personal property; and
- (xi) Such other injuries, damages, and particulars as the evidence may show.

101. By reason of the foregoing, Plaintiff Janice Mills and Plaintiff K.M., a minor, by and through her next friend and parent, Janice Mills, are each entitled to recover for all general and special damages for which Defendant CSX was a proximate cause.

102. WHEREFORE, Plaintiff Janice Mills and Plaintiff K.M., a minor, by and through her next friend and parent, Janice Mills, each respectively demand judgment against Defendant CSX for all actual and compensatory damages suffered as well as for punitive damages in an amount sufficient to keep such wrongful conduct from being repeated, together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

**SECOND CAUSE OF ACTION**  
**Negligence and Gross Negligence**  
**(Against Defendant Amtrak)**

103. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

104. At all times relevant, Defendant Amtrak was a common carrier and owed passengers on the Amtrak Train, including Plaintiff Janice Mills and Plaintiff K.M., the highest duty of care.

105. At all times relevant, Defendant Amtrak owed a duty to passengers traveling on the Amtrak Train, including the Plaintiffs, to comply with the Federal standards of care established by regulations or orders issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of 49 U.S.C. Section 20106.

106. At all times relevant, Defendant Amtrak owed a duty to passengers traveling on the Amtrak Train, including the Plaintiffs, to comply with its own plans, rules, or standards that

Defendant Amtrak created pursuant to a regulation or order issued by either of the Secretaries.

107. At all times relevant, Defendant Amtrak owed a duty to passengers traveling along its tracks, including the Plaintiffs, to comply with State laws, regulations, and orders that are not incompatible with subsection (a)(2) of 49 U.S.C. Section 20106.

108. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs 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 Collision.

109. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs to discover and warn the Plaintiffs of the misaligned mainline switch.

110. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs to ensure that it was reasonably safe for the Amtrak Train travel at along the S-Line the time and place of the Collision.

111. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs to ensure that its managers, officers and employees adequately communicated with Defendant CSX and its managers, officers and employees concerning the implementation of alternative procedures once Defendant CSX disabled its track side signal system in the area of the Collision.

112. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs to engage in adequate communications with Defendant CSX and its officials ensure that, despite the signal suspension along the S-Line, that the crew of the Amtrak Train, was properly instructed and adequately informed of the conditions involving the track, the signals and the switch governing the Siding.

113. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs to ensure that

it had a valid track warrant in order to proceed with the travel of the Amtrak Train along the S-Line and/or the Siding.

114. At all times relevant, Defendant Amtrak owed a duty ensure that the subject switch was equipped with a position indicator to make sure that, in the event that Defendant CSX suspended its signal system, that the switch would nevertheless be clearly visible at all times in accordance with 49 C.F.R. §213.135(g).

115. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs to learn that Defendant CSX 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.

116. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs, learning that Defendant CSX had disabled the signal system in the subject area of track, to take u additional precautionary measures to ensure the Amtrak Train would be able to safely travel over the dark territory.

117. At all times relevant, Defendant Amtrak owed a duty to the Plaintiffs to manage and supervise its railroad operations in a safe manner.

118. At all times relevant, Defendant Amtrak had a duty to maintain its property in a reasonably safe condition and correct or warn of dangers that it knew or should have known of, and which the Plaintiffs did not or should not have known of by the use of reasonable care.

119. At all times relevant, Defendant Amtrak had a duty 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 to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

120. At all times relevant, Defendant Amtrak had a duty to use readily available and safer train control and/or alert system technology, including but not limited to PTC, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision.

121. Defendant Amtrak was negligent, grossly negligent, willful, wanton, reckless and careless in operating, inspecting, maintaining, communicating about and controlling the Amtrak Train while it traveled along the S-Line and/or Siding and breached duties it owed to Plaintiffs Ms. Mills and to Plaintiff K.M. by:

- (i) Failing to exercise the highest duty of care, which it owed as a common carrier, to avoid injuring its passengers, including the Plaintiffs;
- (ii) Failing to comply with the Federal standards of care established by regulations or orders issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of 49 U.S.C. Section 20106;
- (iii) Failing to comply with its own plans, rules, or standards that Defendant CSX created pursuant to a regulation or order issued by either of the Secretaries;
- (iv) Failing to comply with State laws, regulations, and orders that are not incompatible with subsection (a)(2) of 49 U.S.C. Section 20106;
- (v) Failing to exercise reasonable care to avoid injuring its passengers, including the Plaintiffs;
- (vi) 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 Collision;

- (vii) Failing to discover and warn the Plaintiffs of the misaligned mainline switch;
- (viii) Failing ensure that that it was reasonably safe for the Amtrak Train travel at along the S-Line the time and place of the Collision;
- (ix) Failing to ensure that its managers, officers and employees adequately communicated with Defendant CSX and its managers, officers and employees concerning the implementation of alternative procedures once Defendant CSX disabled its track side signal system in the area of the Collision;
- (x) Failing to engage in adequate communications with Defendant CSX and its officials to ensure that, despite the signal suspension along the S-Line, that crew of the Amtrak Train, was properly instructed and adequately informed of the conditions involving the track, the signals and the switch governing the Siding;
- (xi) Failing to ensure that it had a valid track warrant in order to proceed with the travel of the Amtrak Train along the S-Line and/or the Siding;
- (xii) Failing to ensure that the subject switch was equipped with a position indicator to make sure that, if and when Defendant CSX suspended its signal system, that the switch would nevertheless be clearly visible at all times in accordance with 49 C.F.R. §213.135(g);
- (xiii) to install and/or keep in good operating repair the subject switch so that when Defendant CSX 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);
- (xiv) Failing to learn that Defendant CSX had disabled the signal system in the area of the track to ensure the Amtrak Train would be able to safely travel over the dark territory;



(xv) Failing to take additional precautionary measures upon learning that Defendant CSX 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.

(xvi) Failing to manage and supervise its railroad operations in a safe manner;

(xvii) Failing to maintain its property in a reasonably safe condition and correct or warn of dangers that it knew or should have known of, and which the Plaintiffs did not or should not have known of by the use of reasonable care;

(xviii) 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 to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision;

(xix) Failing to use readily available and safer train control and/or alert system technology, including but not limited to PTC, to prevent the risk of injury to train passengers, including the Plaintiffs, proceeding over this segment of the S-Line at the time and place of the Collision; and

(xx) Such other and further particulars as the evidence may show.

122. The breaches of aforementioned duties owed by Defendant Amtrak to Plaintiff Ms. Mills and to Plaintiff K.M. were each a direct and proximate cause of the Collision.

123. Defendant Amtrak's breaches of each of the aforementioned duties was a direct and proximate cause of:

- (i) Plaintiff Ms. Mills' serious personal injuries;
- (ii) Plaintiff Ms. Mills' physical pain and suffering – past, present and future;

- (iii) Plaintiff Ms. Mills' post-traumatic stress, mental and emotional pain and suffering – past, present and future;
- (iv) Plaintiff Ms. Mills' loss of enjoyment of life – past, present and future;
- (v) Plaintiff Ms. Mills' loss of function of the body and mind – past, present and future;
- (vi) Plaintiff Ms. Mills' disability and psychological injuries – past, present and future;
- (vii) Plaintiff Ms. Mills' suffering, disfigurement, inconvenience and loss of time – past, present and future;
- (viii) Plaintiff Ms. Mills' medical expenses – past, present and future;
- (ix) Plaintiff Ms. Mills' increased living and medical expenses caused by the injuries suffered – past, present and future;
- (x) Plaintiff Ms. Mills' lost wages and future earnings capacity;
- (xi) Damage and/or destruction of Plaintiff Ms. Mills' personal property; and
- (xii) Such other injuries, damages, and particulars as the evidence may show.

124. Defendant Amtrak's breaches of each of the aforementioned duties was a direct and proximate cause of:

- (i) Plaintiff K.M.'s serious personal injuries, including laceration of her liver due to the concussive impact of the Collision;
- (ii) Plaintiff K.M.'s physical pain and suffering – past, present and future;
- (iii) Plaintiff K.M.'s post-traumatic stress, mental and emotional pain and suffering – past, present and future;
- (iv) Plaintiff K.M.'s loss of enjoyment of life – past, present and future;
- (v) Plaintiff K.M.'s loss of function of the body and mind – past, present and future;
- (vi) Plaintiff K.M.'s disability and psychological injuries – past, present and future;

- (vii) Plaintiff K.M.'s suffering, disfigurement, inconvenience and loss of time – past, present and future;
- (viii) Plaintiff K.M.'s medical expenses – past, present and future;
- (ix) Plaintiff K.M.'s increased living and medical expenses caused by the injuries suffered – past, present and future;
- (x) Damage and/or destruction of Plaintiff K.M.'s personal property; and
- (xi) Such other injuries, damages, and particulars as the evidence may show.

125. By reason of the foregoing, Plaintiff Janice Mills and Plaintiff K.M., a minor, by and through her next friend and parent, Janice Mills, are each entitled to recover for all general and special damages for which Defendant Amtrak was a proximate cause.

126. WHEREFORE, Plaintiff Janice Mills and Plaintiff K.M., a minor, by and through her next friend and parent, Janice Mills, each respectively demand judgment against Defendant Amtrak for all actual and compensatory damages suffered as well as for punitive damages in an amount sufficient to keep such wrongful conduct from being repeated, together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

**THIRD CAUSE OF ACTION**

**Negligent Infliction of Emotional Distress on behalf of Plaintiff Ms. Mills  
(Against Defendant CSX and Defendant Amtrak)**

126. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

127. The negligent acts and/or omissions of the Defendants complained of herein caused serious personal injuries to Plaintiff Ms. Mills.

128. As a direct and proximate result of the personal injuries she sustained, Plaintiff Ms.

Mills has also suffered severe mental and emotional distress.

129. The negligent acts and/or omissions of the Defendants complained of herein caused serious personal injuries to Plaintiff K.M., including but not limited to laceration of Plaintiff K.M.'s liver.

130. Plaintiff Ms. Mills is the parent and guardian of Plaintiff K.M.

131. Plaintiff K.M. was in close proximity to Plaintiff Ms. Mills at the time of the Collision, as both Plaintiffs were passengers in a sleeper car located on the Amtrak Train.

132. Plaintiff Ms. Mills contemporaneously perceived the injuries sustained by Plaintiff K.M. as a result of the Collision.

133. As a direct and proximate result of all Defendants' negligent acts and/or omissions causing injuries to Plaintiff K.M., Plaintiff Ms. Mills suffered additional severe mental and emotional distress distinct from that arising out of her own personal injuries.

134. By reason of the foregoing, Plaintiff Ms. Mills is entitled to recover for all general and special emotional distress damages proximately caused by Defendants.

135. WHEREFORE, Plaintiff Janice Mills demands judgment against CSX and Amtrak, jointly and severally, for all actual and compensatory damages recoverable for the emotional distress she has suffered, as well as for punitive damages in an amount sufficient to keep such wrongful conduct from being repeated, together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

**FOURTH CAUSE OF ACTION**  
**Negligent Infliction of Emotional Distress on behalf of Plaintiff K.M.**  
**(Against Defendant CSX and Defendant Amtrak)**

136. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth

fully herein.

137. The negligent acts and/or omissions of the Defendants complained of herein caused serious personal injuries to Plaintiff K.M.

138. As a direct and proximate result of the personal injuries she sustained, Plaintiff K.M. has also suffered severe mental and emotional distress.

139. The negligent acts and/or omissions of the Defendants complained of herein caused serious personal injuries to Plaintiff Ms. Mills.

140. Plaintiff K.M. is the daughter of Plaintiff Ms. Mills.

141. Plaintiff K.M. was in close proximity to Plaintiff Ms. Mills at the time of the Collision, as both Plaintiffs were passengers in a sleeper car located on the Amtrak Train.

142. Plaintiff K.M. contemporaneously perceived the injuries sustained by Plaintiff Ms. Mills as a result of the Collision.

143. As a direct and proximate result of all Defendants' negligent acts and/or omissions causing injuries to Plaintiff Ms. Mills, Plaintiff K.M. has suffered additional severe mental and emotional distress distinct from that arising out of her own personal injuries.

144. By reason of the foregoing, Plaintiff K.M. is entitled to recover for all general and special emotional distress damages proximately caused by Defendants.

145. WHEREFORE, Plaintiff K.M., by and through her parent and next friend, Janice Mills, demands judgment against Defendant CSX and Defendant Amtrak, jointly and severally, for all actual and compensatory damages for the emotional distress she has suffered, as well as for punitive damages in an amount sufficient to keep such wrongful conduct from being repeated, together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

**FIFTH CAUSE OF ACTION**  
**Punitive Damages**  
**(Against Defendant CSX and Defendant Amtrak)**

146. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

147. The actions and inactions of the Defendants were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to Plaintiff Ms. Mills and to Plaintiff K.M.

148. More specifically, the Defendants acted with a conscious and flagrant disregard for the rights and safety of the Plaintiffs, and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of the Plaintiffs.

149. The Defendants' conscious and flagrant actions and inactions, evincing a conscious disregard for the rights and safety of the Plaintiffs, and/or their deliberately engagement in willful, wanton and reckless disregard for the life and safety of the Plaintiffs, were respectively and collectively a proximate cause of Plaintiffs' injuries and damages.

150. By reason of the foregoing, the Defendants are liable for punitive and exemplary damages.

151. By reason of the foregoing, Plaintiff Janice Mills and Plaintiff K.M., a minor, by and through her next friend and parent, Janice Mills, are each entitled to recover for all general and special damages for which Defendants were a proximate.

152. WHEREFORE, Plaintiff Janice Mills and Plaintiff K.M., a minor, by and through her next friend and parent, Janice Mills, each respectively demand judgment against Defendant CSX and Defendant Amtrak for all actual and compensatory damages suffered as well as for punitive damages in an amount sufficient to keep such wrongful conduct from being repeated,

together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray as follows:

- (i) For a trial by jury and judgment against all Defendants;
- (ii) For such sums as actual and other compensatory damages, including pain and suffering and permanent impairment, in an amount as a jury may determine and in excess of the minimum jurisdictional limit of this Honorable Court;
- (iii) For exemplary and punitive damages against all Defendants, in an amount as a jury may determine to halt such conduct;
- (iv) For the costs of this suit, including attorney's fees; and
- (v) For such other and further relief to which they may be entitled and as this Honorable Court may deem just and proper.

Respectfully submitted,

By: /s/ Mary Schiavo  
Mary Schiavo, Esq. (D.S.C. No. 10755)  
Marlon Kimpson, Esq. (D.S.C. No. 7487)  
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**ATTORNEYS FOR PLAINTIFFS**