

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CIVIL ACTION NO. 2018-CP-32-_____
	)	
	)	
JAMES DAYMON,	)	
	)	
Plaintiff,	)	
	)	SUMMONS
v.	)	
	)	
CSX TRANSPORTATION, INC.	)	
	)	
Defendant.	)	

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated: February 7, 2018

(SIGNATURE PAGE TO FOLLOW)

Respectfully submitted:

**SOLOMON LAW GROUP, LLC**

\_\_\_\_\_  
s/Carl L. Solomon

**Carl L. Solomon (7306)**

Carl@solomonlawsc.com

**Daryl L. Bush (78895)**

Daryl@solomonlawsc.com

**Reginald C. Hair (102727)**

Reginald@solomonlawsc.com

Post Office Box 1866

Columbia, South Carolina 29202

(803) 391-3120 (office)

(803) 509-7033 (facsimile)

And

**POTTROFF & KARLIN, LLC**

**Robert L. Pottroff, KS #10220**

*(Pending Admission Pro Hac Vice)*

**Nathan L. Karlin, KS #26392**

*(Pending Admission Pro Hac Vice)*

320 Sunset Avenue

Manhattan, Kansas 66502-3757

Phone: 785-539-4656

Fax: 785-539-1750

Email: bob@pottroff.com

Email: nathan@pottroff.com

Of Counsel, applying for Pro Hac Vice  
admission to this court.

**Attorneys for Plaintiffs**

Columbia, South Carolina

February 7, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CIVIL ACTION NO. 2018-CP-32-_____
	)	
	)	
JAMES DAYMON,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	JURY TRIAL DEMANDED
	)	
CSX TRANSPORTATION, INC.	)	
	)	
Defendant.	)	

---

**COMPLAINT FOR DAMAGES**

---

COMES NOW, James Daymon, by and through his attorneys, and files this Complaint as a party-plaintiff complaining of CSX Transportation, Inc., and for such cause of action would respectfully show the Court as follows:

**I. PARTIES**

**Plaintiff**

1. Plaintiff James Daymon is an individual and resident of the State of Florida.

**Defendant**

2. Defendant CSX Transportation, Inc. (hereinafter, “CSX” or “Defendant Railroad”) is a foreign corporation duly organized and existing under the laws of Virginia with its principal place of business in the State of Florida. CSX owns and conducts railroading business in the State of South Carolina. CSX may be served with process through its registered agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

3. At all times pertinent hereto, all employees of CSX were acting in their individual capacity and also as agents of CSX, within the scope of their employment and authority, and in the furtherance of the business of CSX. All the acts and omissions of the employees of 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.

## II. JURISDICTION AND VENUE

4. The train wreck giving rise to this litigation occurred in Lexington County, South Carolina.

5. Jurisdiction is proper before this Court, as this case deals with personal injuries from a train vs. train collision and subsequent derailment that occurred within Lexington County, in the State of South Carolina, is the subject of South Carolina common law, and Plaintiff and Defendant CSX are residents of the State of Florida.

6. Venue is proper in this Court pursuant to § 15-7-30 of the South Carolina Code of Laws, as amended. The incident giving rise to this litigation occurred in Lexington County, South Carolina.

7. Pursuant to 49 U.S.C. § 20106, this case was appropriately brought in state court rather than federal court. Plaintiff reserves the right to amend this Complaint as needed to further establish why this case was appropriately brought in the Court of Common Pleas, Eleventh Judicial Circuit, Lexington County, South Carolina. All allegations herein related to Defendant Railroad are based upon and should be interpreted to state causes of action seeking damages under state law for personal injury or property damage, based upon one or more of the following:

- a. Defendant Railroad has failed to comply with the Federal standard of care established by a 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;

- b. Defendant Railroad has failed to comply with its own plans, rules, or standards that Defendant Railroad created pursuant to a regulation or order issued by either of the Secretaries; or
  - c. Defendant Railroad has failed to comply with State laws, regulations, and orders that are not incompatible with subsection (a)(2) of 49 U.S.C. Section 20106.
8. All allegations set forth in this Complaint are based upon information and belief.
9. All allegations set forth in each of the paragraphs in this Complaint are incorporated by reference into each of the other sections and paragraphs contained in this Complaint, as if fully set forth therein.

### **III. FACTS AND ALLEGATIONS**

10. In the early hours of Sunday morning, February 4, 2018, Plaintiff was riding as a passenger on an Amtrak train commonly referred to as the Silver Service (hereinafter the “Silver Service Train”), which originated in New York, New York, with its destination in Miami, Florida.

11. The Silver Service Train was traveling southbound through Cayce, Lexington County, South Carolina.

12. The Silver Service Train was operating over a set of railroad tracks owned, maintained, and operated by CSX.

13. The railroad signals which the Silver Service Train was operating pursuant to were maintained and controlled by CSX. However, CSX had intentionally taken down its signal system along this section of track prior to February 4, 2018. As a result, the railroad switches were being manually controlled by CSX. Train operations were being manually directed by CSX through telephone communications.

14. Prior to the Silver Service Train's arrival in the CSX railyard, CSX improperly locked with a padlock the rail switch, which erroneously directed through trains, like the Silver Service Train, into the CSX railyard onto the wrong set of tracks which were already occupied by parked trains and railcars.

15. At approximately 2:45 a.m. on February 4, 2018, the Silver Service Train was traveling at approximately 56 miles per hour as it was intending to pass through the CSX railyard in Cayce, South Carolina. As a result of the improper locking of the switch by CSX, the Silver Service Train was directed onto the wrong set of tracks which were already occupied.

16. At the same time as the Silver Service Train was directed onto the wrong set of tracks, a CSX freight train was idling on that set of tracks. The Silver Service Train's engineer applied the brakes in an attempt to avoid the train wreck, but his train crashed head-on into the idling CSX freight train (hereinafter "the train wreck"). An aerial photograph which illustrates the catastrophic nature of this train wreck is reproduced below:



17. The violent train wreck resulted in the death of two Amtrak employees and serious injury to well over 100 passengers of the Silver Service Train, including Plaintiff.

#### **IV. CAUSES OF ACTION**

##### **COUNT 1 GENERAL LIABILITY ISSUES**

18. Plaintiff restates and re-alleges each and every other paragraph (and subparagraph) of this Complaint, including those paragraphs appearing above and below, and by this reference incorporates the same as though fully set forth herein.

19. CSX has a duty to exercise reasonable care to avoid injuring or killing members of the public. In this case CSX breached their duty by failing to exercise reasonable care.

20. As a direct and proximate result of the Defendant's breach of this duty, Plaintiff suffered damages, as alleged in Section V of this Complaint. All acts or omissions of Defendant

constitutes negligence, gross negligence, negligence *per se*, willful and wanton conduct, recklessness, intentional conduct, and demonstrate a reckless and intentional disregard for the safety of the traveling public.

**COUNT 2**  
**NEGLIGENCE, NEGLIGENCE *PER SE* AND GROSS NEGLIGENCE OF CSX**

21. Plaintiff restates and re-alleges each and every other paragraph (and subparagraph) of this Complaint, including those paragraphs appearing above and below, and by this reference incorporates the same as though fully set forth herein.

22. CSX is responsible for inspecting and maintaining its rail tracks, including the switches where this train wreck occurred to ensure it is safely and properly aligned. This includes ensuring its switches are aligned correctly so trains are operating on the correct set of tracks.

23. CSX is also responsible for proper dispatching of trains over its tracks.

24. The train wreck described in this Complaint is a direct and proximate result of CSX's negligence, gross negligence, negligence *per se*, reckless disregard, and/or willful and wanton conduct in:

- a) Failing to properly align railroad track switches which resulted in the Amtrak Train operating over the incorrect set of tracks.
- b) Failing to ensure the railroad switches were properly aligned prior to the Silver Service Train's arrival pursuant to federal regulations 49 C.F.R. Part 218 *et seq.*, common law, and CSX's own rules created pursuant to such regulations;
- c) Failing to properly maintain the rail signals where this train wreck occurred;
- d) Failing to warn the Silver Service Train of the improperly aligned switch where this train wreck occurred;
- e) Failing to properly maintain a dispatch system to properly direct trains, such as the Silver Service Train, pursuant to federal regulations 49 C.F.R. Parts 220 and 241, common law, and CSX's own rules;



- f) Failing to have adequate and reasonable safeguards in place to notify the Amtrak Train in a timely manner that it was on the incorrect track and there was an impending train wreck with a stopped freight train. This includes, but is not limited to failing to timely installation of Positive Train Control;
- g) Failing to halt rail operations over this track or place a speed restriction on this section of track when CSX's train signals were intentionally taken down and it had improperly aligned a switch;
- h) Failing to adequately instruct, train and test its employees on the safe and correct operation of its switches;

25. In addition to currently known misconduct of CSX, Plaintiff seeks to develop such additional facts during discovery in this litigation to further establish the extent to which CSX has engaged in negligent, grossly negligent, willful and wanton conduct that caused the train wreck.

26. As a direct and proximate result of CSX's wrongful conduct as alleged herein, Plaintiff suffered damages, as alleged in Section V of this Complaint.

**COUNT 3**  
**INTENTIONAL DISREGARD FOR PUBLIC SAFETY**

27. Plaintiff restates and re-alleges each and every other paragraph (and subparagraph) of this Complaint, including those paragraphs appearing above and below, and by this reference incorporates the same as though fully set forth herein.

28. The conduct of CSX in all of the aforementioned allegations was willful and wanton and demonstrated a reckless disregard for the safety of the traveling public. CSX has intentionally elected to disregard legal duties owed to the traveling public.

29. CSX has demonstrated a pattern of conduct by failing to enforce its own policies and procedures as well as federal and state laws providing for the safety of the public. This pattern of conduct has condoned and ratified the conduct of its employees and agents to

disregard duties owed to the traveling public.

30. CSX has made a deliberate decision that it will be cheaper to pay compensatory damages for claims resulting from train wrecks and derailments than to install and maintain an appropriate train control system.

31. “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 Safety Board's Most Wanted List. 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.” *See* [https://www.nts.gov/news/events/Pages/2013\\_Train-Control\\_FRM.aspx](https://www.nts.gov/news/events/Pages/2013_Train-Control_FRM.aspx).

32. The CSX tracks were not equipped with Positive Train Control (“PTC”). 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. *See* [https://en.wikipedia.org/wiki/2008\\_Chatsworth\\_train\\_collision](https://en.wikipedia.org/wiki/2008_Chatsworth_train_collision).

33. In 2015, CSX and the other major freight railroads defied the Rail Safety Improvement Act of 2008 by threatening an industry-wide shut down if they were required to implement Positive Train Control by the December 31, 2015, deadline. Congress and President Obama relented and moved the deadline to December 31, 2018. Prior to this train wreck involving the Silver Service Train in Lexington County, South Carolina, CSX had already announced that “they won't make the 2018 deadline for full implementation of positive train control.” *See* <http://www.ttnews.com/articles/norfolk-southern-csx-say-they-wont-make-2018->

deadline-train-control-safety-system.

34. This train wreck comes on the heels of CSX announcing 2017 fourth-quarter profits of \$4.14 billion. It is totally unjustifiable for CSX to take annual profits in the billions of dollars and simultaneously refuse to fund Positive Train Control to protect the lives of people who ride on its tracks.

35. CSX's conduct as set forth herein constitutes malice.

36. As a direct and proximate result of CSX's complete and intentional disregard for the safety of the traveling public as alleged herein, Plaintiff suffered damages as alleged in Section V of this Complaint.

WHEREFORE, Plaintiff prays for judgment on Count 3, and each and every other Count of this Complaint, in his favor and against Defendant, in a fair and reasonable sum for actual damages in excess of \$75,000.00, punitive damages, costs incurred and expended herein, and attorneys' fees, together with prejudgment and post-judgment interest, and other relief as the Court deems just and proper.

#### V. PLAINTIFF'S DAMAGES

37. Plaintiff restates each and every other paragraph (and subparagraph) of this Complaint, including those paragraphs appearing above and below, and by this reference incorporates the same as though fully set forth herein.

38. That as a direct and proximate result of the aforesaid acts and omissions of CSX, Plaintiff was seriously injured as a result of blunt force trauma.

39. That as a direct and proximate result of the Defendant's negligence, gross negligence, negligence *per se*, recklessness, willful, wanton and intentional wrongful acts, as set forth hereinabove, Plaintiff suffered permanent and long-lasting injuries both economic and non-

economic, including, but not limited to the following:

- a) The reasonable, usual and customary cost of the past, present, and future medical care rendered to Plaintiff;
- b) The increased living and medical expenses caused by the injuries suffered as a result of the train wreck, including, but not limited to, the amount of increased expenses as determined by a life care planner, physician or economist;
- c) Lost wages and future earnings capacity;
- d) Past, present, and future physical and mental pain and suffering;
- e) Past, present, and future loss of enjoyment of life;
- f) Past, present, and future loss of function of the body and mind;
- g) Past, present, and future disability and psychological injuries;
- h) Past, present, and future pain and suffering, disfigurement, inconvenience and loss of time;
- i) Property damage; and
- j) In other respects as may be revealed through discovery or at trial.

40. The negligence, gross negligence, negligence *per se*, willful and wanton conduct, recklessness, intentional conduct, and reckless and intentional disregard for the safety of the traveling public of Defendant, as described hereinabove, was a direct and proximate cause of Plaintiff's injuries and damages hereinabove alleged, and Plaintiff has been damaged as set forth above in an amount in excess of \$75,000.00.

#### **VI. DEMAND FOR JURY TRIAL AND RIGHT TO AMEND**

41. Plaintiff demands a trial by jury on all causes of action.
42. Plaintiff specifically reserves the right to amend this Complaint.

#### **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. Actual damages in an amount as determined by a jury;
2. Punitive damages in an amount as determined by a jury;
3. Costs and attorney's fees; and
4. Other and further relief as the court deems just and proper.

[Signature Page Attached]

Respectfully submitted:

**SOLOMON LAW GROUP, LLC**

s/ Carl L. Solomon

**Carl L. Solomon (7306)**

Carl@solomonlawsc.com

**Daryl L. Bush (78895)**

Daryl@solomonlawsc.com

**Reginald C. Hair (102727)**

Reginald@solomonlawsc.com

Post Office Box 1866

Columbia, South Carolina 29202

(803) 391-3120 (office)

(803) 509-7033 (facsimile)

And

**POTTROFF & KARLIN, LLC**  
**Robert L. Pottroff, KS #10220**  
*(Pending Admission Pro Hac Vice)*  
**Nathan L. Karlin, KS #26392**  
*(Pending Admission Pro Hac Vice)*  
320 Sunset Avenue  
Manhattan, Kansas 66502-3757  
Phone: 785-539-4656  
Fax: 785-539-1750  
Email: bob@pottroff.com  
Email: nathan@pottroff.com

Of Counsel, applying for Pro Hac Vice  
admission to this court.

**Attorneys for Plaintiffs**

Columbia, South Carolina

February 7, 2018