

Highway M, Brookfield, Missouri 64628.

JURISDICTION AND VENUE

4. This Court has federal question subject matter jurisdiction over the claims of plaintiff Amtrak in this matter pursuant to 28 U.S.C. §§ 1331 and 1349. The Court also has diversity subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because this action is between citizens of different states, and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. This Court's exercise of jurisdiction over the claims of plaintiff Amtrak is also proper pursuant to 28 U.S.C. § 1367.

6. Venue is properly laid in the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b)(2) because it is a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred, and because MS Contracting resides within the Eastern District of Missouri.

FACTUAL ALLEGATIONS

7. This case arises from the derailment of an Amtrak passenger train on June 27, 2022.

8. Amtrak provides passenger rail service by utilizing track owned by other railroads in the State of Missouri, including BNSF.

9. BNSF owns railroad tracks in the State of Missouri, including the track on which the incident and derailment described herein occurred.

10. MS Contracting owns and operates a contracting company which is located at 25851 County Road M in Brookfield, Missouri 64628.

11. On June 27, 2022, on behalf of and at the direction of MS Contracting, Billy Dean Barton II ("Barton"), an employee of MA Contracting, was operating a 2007 Kenworth dump truck

owned by MS Contracting bearing VIN# 1NKWXBEX97J177480 (the “Dump Truck”),

12. While utilizing the Dump Truck loaded with rock to make a delivery for and on behalf of MS Contracting, Barton attempted to cross a BNSF railroad grade crossing identified as U.S. Department of Transportation Crossing No. 005284Y, (the “grade crossing”) near Mendon, Missouri.

13. Despite the fact that it was unsafe, careless and reckless to do so because of the clearly visible approaching Amtrak Train 4, Barton failed to yield the right of way to the approaching Amtrak Southwest Chief Train 4 (“Train 4”), and instead attempted to cross the grade crossing which resulted in a collision between the Dump Truck and Train 4, causing Train 4 to derail.

14. Train 4 consisted of two locomotives and eight cars, and carried 289 occupants, including passengers and train crew members.

15. The collision between the Dump Truck and Train 4 – and the train’s subsequent derailment – caused fatalities and personal injuries to Amtrak passengers and employees as well as significant property damage, both real and personal, including significant damages to the BNSF track structure and the passenger cars and locomotives of the Amtrak Train 4.

16. At all relevant times to this Complaint, the actions of Barton were: (1) within the course and scope of his employment with MS Contracting; (2) with MS Contracting’s authority, consent, and knowledge; and (3) for MS Contracting’s benefit and under its direction and control.

17. At all times relevant to this complaint, the Dump Truck was owned and operated by, on behalf of MS Contracting, for the benefit of and/or at the direction of MS Contracting.

18. As a result of the tortious conduct of the defendant as alleged herein, Amtrak has incurred damages well in excess of \$75,000.

19. As a result of the tortious conduct of the defendant as alleged herein, BNSF has incurred damages well in excess of \$75,000.

COUNT I: NEGLIGENCE

20. The allegations of paragraphs 1 through 19 are re-alleged and incorporated herein by reference.

21. MS Contracting owed a duty of reasonable care to BNSF, Amtrak and the passengers and crew aboard Amtrak Train 4.

22. MS Contracting owed the highest degree of care to BNSF, Amtrak, and the passengers and crew aboard Amtrak Train 4.

23. MS Contracting breached its duty of care to BNSF, Amtrak and the passengers and crew aboard Amtrak Train 4.

24. At all times relevant, MS Contracting negligently, carelessly, and recklessly operated the Dump Truck, causing the collision with and derailment of Amtrak Train 4.

25. At all relevant times, MS Contracting, its agents, officers and/or employees negligently, carelessly and recklessly failed to properly maintain, inspect and/or repair the Dump Truck, causing the collision and derailment of Amtrak Train 4.

26. At all relevant times, MS Contracting, its agents, officers and/or employees negligently, carelessly and recklessly failed to properly train and supervise its employees, including Bill Barton, causing the collision and derailment of Amtrak Train 4.

27. At all relevant times, MS Contracting, its agents, officers and/or employees negligently, carelessly and recklessly failed to adopt, promulgate and enforce policies and procedures regarding the proper operation of its vehicles and trucks, including the Dump Truck, at railroad crossings, causing the collision and derailment of Amtrak Train 4.

28. MS Contracting and its agents, officers, or employees were negligent, grossly negligent, and/or reckless in one or more of the following ways:

- a. failing to use the highest degree of care in the operation of the Dump Truck in violation of § 304.012 RSMo ;
- b. operating the Dump Truck in a careless and imprudent manner in violation of § 304.012 RSMo.;
- c. failing to stop at the railroad crossing in violation of a posted stop sign and § 304.351 RSMo.;
- d. failing to stop at the railroad crossing at a point between 15 and 50 feet of the nearest rail of the railroad track and not proceed until it was safe to do so in violation of § 304.035.1 RSMo;
- e. failing to stop at the railroad crossing at a point between 15 and 50 feet of the nearest rail of the railroad track despite the fact that Amtrak Train 4 was clearly visible and in hazardous proximity to the crossing;
- f. failing to stop at the railroad crossing at a point between 15 and 50 feet of the nearest rail of the railroad track despite the presence of traffic signs and/or, devices at the railroad crossing;
- g. operating the Dump truck through the railroad crossing without sufficient undercarriage clearance necessary to prevent the undercarriage of the vehicle from contacting the railroad crossing in violation of § 304.035.4 RSMo;
- h. operating the Dump Truck, a commercial motor vehicle, at a rate of speed which did not permit the Dump Truck to stop before reaching the nearest rail of the railroad crossing in violation of § 304.035.5 RSMo;

- i. driving the Dump truck upon or over the railroad crossing without taking due caution to ascertain that the course was clear in violation of § 304.035.5 RSMo;
- j. failing to observe, heed and comply with the clearly visible and lawfully placed railroad crossing warning signs;
- k. failing to observe and hear the approaching Amtrak Train 4;
- l. failing to yield the right-of-way to the approaching Amtrak Train 4;
- m. failing to maintain control of the Dump Truck;
- n. failing to keep a proper lookout;
- o. negligently operating the vehicle while utilizing or otherwise being distracted by an electronic wireless communications device;
- p. failing to observe, hear and heed Amtrak Train 4 warning signals, including the train's horn, bells and lights;
- q. failing to train and supervise its employees, including Barton, in the proper procedures for operating the Dump Truck in a safe and prudent manner, and in particular, in the operation of the Dump Truck at railroad crossings;
- r. failing to supervise, test, observe and otherwise ensure that its employees, including Barton, were sufficiently qualified, knowledgeable and understood and followed the proper procedures for operating the Dump Truck in a safe and prudent manner, and in particular at railroad crossings;
- s. failing to properly inspect, maintain, and/or repair the Dump Truck to ensure it operated in a safe manner; and
- t. failing to follow proper loading procedures for the Dump Truck;

29. As a direct and proximate result of the acts and omissions of MS Contracting, its employees and agents, Amtrak's rolling stock and locomotives sustained significant damage, Amtrak incurred labor costs, suffered delays and disruption to its service, and has been or will be subjected to other economic and financial losses due to the collision, including but not limited to the costs of making alternative travel arrangements for its passengers and crew, medical and related expenses for its passengers and crew, the costs of responding to the collision, and damages resulting from the loss of use of its equipment.

30. As a direct and proximate result of the acts and omissions of MS Contracting, its employees and agents, BNSF's railroad track sustained significant damage, BNSF incurred labor costs, suffered delays and disruptions to its service, and has been or will be subjected to other economic and financial losses due to the collision, including but not limited to the costs of responding to the collision and damages resulting from the loss of use of its equipment.

31. The aforementioned damages to Amtrak exceed \$75,000.

32. The aforementioned damages to BNSF exceed \$75,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs National Railroad Passenger Corporation ("Amtrak") and BNSF Railway Company respectfully pray for judgment in their favor and against defendant MS Contracting, LLC in an amount exceeding \$75,000; for their costs of this action; and for such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs request a jury trial on all issues so triable.

Respectfully submitted,

/s/ Sean P. Hamer

Sean P. Hamer MO # 48153

Kelly L. Murphy MO # 75573

Scott R. Ast MO # 51699

Paula Brown MO # 45870

Alex McKenna MO # 72024

SCHARNHORST AST KENNARD GRIFFIN, P.C.

1100 Walnut, Suite 1950

Kansas City, Missouri 64106

Telephone: (816) 268-9400

Facsimile: (816) 268-9409

Email: shamer@sakg.com

kmurphy@sakg.com

pbrown@sakg.com

sast@sakg.com

amckenna@sakg.com

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
National Passenger Railroad Passenger Corp dba Amtrak
(b) County of Residence of First Listed Plaintiff District of Columbia
(c) Attorneys (Firm Name, Address, and Telephone Number)
Sean P. Hamer, Scharnhorst Ast Kennard & Griffin, 1100 Walnut, Ste. 1950, Kansas City, MO 64106 816-268-9400

DEFENDANTS
MS Contracting, LLC
County of Residence of First Listed Defendant Linn County, MO
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice; PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability; PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:
Property damage to Plaintiff rolling stock as a result of Defendant employee's negligence

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 6/30/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Sean P. Hamer

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

National Railroad Passenger Corp., dba Amtrak and
BNSF Railway Company

Plaintiff

v.

MS Contracting, LLC

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MS Contracting, LLC
Michael E. Sattman, Registered Agent
25851 Highway M
Brookfield, MO 64628

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sean P. Hamer
Scharnhorst Ast Kennard & Griffin
1100 Walnut, Ste. 1950
Kansas City, MO 64106

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: