

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.:

CAROL OSTROWSKI as personal representative
of the Estate of JAMES OSTROWSKI,
Plaintiff,

vs.

BRIGHTLINE TRAINS FLORIDA, LLC,
BRIGHTLINE HOLDINGS LLC, FLORIDA
EAST COAST RAILWAY, L.L.C., FLORIDA
EAST COAST INDUSTRIES, LLC, and
RAILPROS FIELD SERVICES, INC.
Defendants.

COMPLAINT

Plaintiff, CAROL OSTROWSKI, as Personal Representative of the Estate of JAMES OSTROWSKI, sues Defendants, BRIGHTLINE TRAINS FLORIDA, LLC (hereinafter referred to as “BT”), BRIGHTLINE HOLDINGS LLC, (hereinafter referred to as “BH”), FLORIDA EAST COAST RAILWAY, L.L.C. (hereinafter referred to as “FECR”), FLORIDA EAST COAST INDUSTRIES, LLC hereinafter referred to as “FECI”), and RAILPROS FIELD SERVICES, INC. (hereinafter referred to as “RFS”), and alleges:

JURISDICTION VENUE AND PARTIES

1. This is a wrongful death action in excess of fifty thousand dollars (\$50,000.00), exclusive of costs and interest for each claim.

2. This is an action pursuant to Fla. Stat. § 768.16 (Florida’s Wrongful Death Act). The survivors pursuant to the Statute are CAROL OSTROWSKI, his wife, and three children of the Decedent, JAMES OSTROWSKI, Stacy Louizos, Holly Ostrowski, and James Ostrowski, Jr.

3. At all times hereto, Plaintiff, CAROL OSTROWSKI, as Personal Representative of the Estate of JAMES OSTROWSKI, deceased, was a citizen of the United States, domiciled in the State of Florida as a resident of Broward County.

4. The Decedent, JAMES OSTROWSKI, was born on August 30, 1948.

5. At all times material hereto, Defendant, BT, was a Florida limited liability company with its principal place of business in Miami, Florida until August 2022 when it switched to a foreign limited liability company out of Delaware.

6. At all times material hereto, Defendant, BH, was a foreign limited liability company out of Delaware since its inception under a different legal name in 2019.

7. At all times material hereto, Defendant, FECR, was a Florida Limited Liability Company licensed to do business in Broward County, Florida that owns or co-owns a 351-mile stretch of railway from Jacksonville to Miami.

8. At all times material hereto, Defendant, FECI, was a Florida Limited Liability Company licensed to do business in Palm Beach County, Florida through November 2018 when it switched to a foreign limited liability company out of Delaware, that owns or co-owns a 351-mile stretch of railway from Jacksonville to Miami.

9. At all times material hereto, Defendant, RFS, was a foreign corporation licensed to do business in Palm Beach County, Florida that helped railroad companies with operational services.

10. Venue is proper in Palm Beach County, Florida as the incident giving rise to this Complaint occurred in Palm Beach County, Florida.

HISTORICAL FACTS

11. In 1895, Henry Flagler merged multiple railways in north Florida before constructing a rail system connecting Fort Lauderdale and Miami in 1896. That railway would be known as the Florida East Coast Corridor, the “FEC Corridor”.

12. In 2007, a private equity firm, Fortress Investment Group, purchased FECI and spun off the entity now known as FECR. FECR would remain the freight line that would operate along the railway created back in 1895 and FECI would keep the rights to passenger rail along that corridor along with the real-estate operation.

13. In December 2007, a corporation named FDG Passenger Row Holdings LLC, managed by Defendant, FECR, submitted paperwork to start doing business in Florida.

14. In July 2012, FDG Passenger Row Holdings LLC would change its name to All Aboard Florida – Operations LLC.

15. For years, these various entities would represent to municipalities along this corridor that this high-speed passenger rail would be privately funded without the use of any taxpayer dollars.

16. Until approximately 2017, this corridor consisted of only one train track in the South Florida area. It was expanded to accommodate the high-speed passenger rail.

17. In 2017, before the U.S. House Transportation and Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous Materials, FECI executive director Mike Reininger acknowledged that this corridor was jointly owned by Defendant FECR and Defendant FECI.

18. Eventually, in 2018, All Aboard Florida – Operations LLC would change its name to Brightline Trains LLC and interestingly, all correspondence related to the change was to be sent to FECI Executive Vice President and Secretary Kolleen O.P. Cobb.

19. During a short venture with British Tycoon Richard Branson in March 2019, Brightline Trains LLC changed its name to Virgin Trains USA Florida LLC, and again, all correspondence related to the change was to be sent to FECI Executive Vice President and Secretary Kolleen Cobb.

20. In July 2019, Virgins Trains USA Florida, LLC would reach out to Mayor Scott Singer via an open letter regarding the creation of a Boca Raton Station. In that letter, it was represented that “VTUSA will: ... [f]und the construction of a VTUSA train station, ..., [f]und the necessary rail infrastructure improvements, [c]onstruct the necessary rail infrastructure improvements...”

21. Another legal entity was created called Virgin Trains USA LLC in October 2019, presumably to oversee the entire proposed high-speed rail that would include a West Coast high-speed rail.

22. In August/September 2020, when the joint venture between Branson and FECI soured, Virgin Trains USA Florida LLC became Defendant, BT, pursuant to the direction of FECI Executive Vice President and Secretary Kolleen Cobb and Virgin Trains USA LLC became Defendant, BH.

23. Defendant FECR created Defendant BT, to be run and/or operated in conjunction with Defendant FECI, a high-speed passenger rail traveling along a railroad corridor designed and constructed in the 1800s, with additional oversight and involved from Defendant BH.

GENERAL FACTS

24. When the Brightline train service was ready to begin services from West Palm Beach to Fort Lauderdale, multiple deaths occurred during the test runs in 2017 prior to official

service being started and upon the commencement of service after January 13, 2018, two more people were killed in the trains first week of operation.

25. This caused multiple elected officials to call into question BT's ability to safely operate a 21st century high-speed rail on the 1800s era railway jointly owned by Defendants FECR and FECL.

26. On January 13, 2018, Congressman Brian Mast tweeted to BT to "stop victim blaming and take responsibility for the fact that your trains are killing people. Trains should stop running until massive safety flaws are resolved."

27. Congressman Mast would go on to say "[t]hese deaths clearly indicate there are safety issues, and Brightline has a long history of straight-up lying to the people of Florida, so at this point they cannot be trusted to decide whether their trains are safe."

28. In a letter to U.S. Department of Transportation Secretary Elaine Chao, Senator Bill Nelson sought an investigation into the safety of higher-speed railroad crossings, specifically asking "...that you examine these incidents to determine whether additional actions need to be taken to improve grade crossing safety."

29. Senator Marco Rubio sent his own letter to Secretary Chao where he urged "...the Department of Transportation to work with Brightline, the Florida Department of Transportation, local governments and the surrounding communities to implement appropriate safety measures and confirm proper infrastructure is in place to avoid future fatal accidents."

30. Congressman Bill Posey said "...a lot of people would support a rail if it didn't go through the middle of our downtowns, and our neighborhoods, and if it were actually safe, which this clearly is not."

31. State Senator Debbie Mayfield responded to the flurry of deaths by asking “the corporate big wigs at Brightline...[h]ow many lives must be lost before you own up to your corporate responsibility.”

32. State Representative Erin Grall called for the rail to be shutdown, specifically stating “Public safety is the primary concern of each and every elected official in Florida. Until the Brightline service can demonstrate an ability to run a safe service, it should be shut down.”

33. When faced with this this extensive political and public backlash that threatened to shut BT down for good, BT has affirmatively and repeatedly represented publicly to all of Florida and the American people, that it would commit to undertaking additional safety measures in excess of the minimum federal requirements.

34. In 2018, Patrick Goddard, in his capacity as President and CEO of BT, unequivocally pledged to undertake safety measures beyond the minimum federal requirements, including the addition of electronic warning signage, signage extensions to both sides of crossings, television train safety public service announcement campaigns, and “street teams” of individuals throughout the rail corridor. Here, Mr. Goddard pledged that “[BT is] here because safety systems are in place—they work—yet we recognize that we need to amplify the message around safety.”

35. One of the most significant signs that was temporarily added at crossing was a “Look Both Ways” sign. It is unclear why that signage was added and why it was eventually removed.

36. While making these representations about their undertaking of safety improvements, Defendants BT, BH, FECR, FECL, would also take the position that it was the responsibility of each municipality to make safety improvements and to maintain all improvements.

37. Defendants would represent that they would be making safety improvements while seeking billions of dollars of funding from the federal government, but whether they would actually use any of this funding for safety has yet to be seen.

38. In 2018, President Patrick Goddard unequivocally told a House Oversight Committee that Brightline went above and beyond federal standards. He was also faced with questions about testimony previously given by Michael Reininger, the eventual CEO of Defendant BH, that contradicted his current testimony.

39. Mr. Goddard was also asked about allegations that the Defendants encouraged local community leaders to seek to made crossings within their municipality “Quiet Zones” so that the Brightline would not have to blow it’s horn while crossing intersections and disturb residents who lived near the rail.

40. Mr. Goddard, who BT stated was responsible for safety decisions, came from the hospitality industry without any background in rail.

41. At a subsequent hearing in 2021, Michael Reininger, the CEO of BH, who has never been an officer of Defendant BT, testified before the US House of Representatives Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous materials. Defendant(s) BT and/or BH, summarized his testimony “as the CEO of Brightline” and that “[w]e use existing road alignments and infrastructure corridors to leverage previous investments, reduce environmental impacts, lower costs, speed execution and build a basis for profitability.”

42. That summarizes the Brightline Defendants’ primary goal – to build a basis for profitability – yet they continually try to represent that safety is their number one priority.

43. Brightline would provide financial and technical assistance to municipalities where its train operation would go through in an effort to encourage city officials to acquiesce to the

operation of the railroad through the municipality along and help assist the city with the necessary guidance to create “Quiet Zones” along the way.

44. The Brightline has been named the Deadliest Train in America based on its death rate per mile, a death rate almost three times higher than the second deadliest railway in the country, and all of the named Defendants are responsible for allowing that to continue.

45. The Brightline is so well known as a modality of death that there are X (formerly Twitter) accounts, Instagram Accounts, and other social media accounts that provide regular updates when the Brightline hits or kills someone.

46. Brightline intended to open up the Boca Raton station in Fall of 2022, and as of October 25, 2022, the station was still not operational. The Brightline Defendants had to collectively work to complete the station while continuing the operation of the Brightline Railroad system.

SPECIFIC FACTS TO THIS INCIDENT

47. On October 25, 2022, the decedent, JAMES OSTROWSKI, was crossing the train tracks located at or near the intersection of SW 18th Street and S. Dixie Highway in Boca Raton, Florida.

48. He was heading eastbound from the southwest side of SW 18th Street.

49. This particular railroad crossing was in a “Quiet Zone” which required the presence of additional advanced warnings to drivers and pedestrians. Those additional warnings included a “No Train Horn” sign in compliance with Federal Law and the Manual on Uniform Traffic Control Devices.

50. On the date of time of the incident, the sign that purportedly was there to warn drivers and pedestrians of the “Quiet Zone” did not comply with Federal Law and the Manual on Uniform Traffic Control Devices as the lettering on the sign was faded and essentially invisible.

51. This particular crossing also has significant visibility issues preventing individuals west of the tracks to see trains heading northbound on the tracks. There is a significant curve with the track angled from southwest to northeast and lots of foliage.

52. Prior to October 25, 2022, there were issues with the tracks in the area given the construction being done at the Boca Raton station and other operational issues.

53. As such, one or more of the Brightline Defendants, BT, BH, FECR, and/or FECL, would hire RFS to provide operational services at this particular intersection.

54. At the time of the incident, there was a roadway worker in charge or “flagger” employed by Defendant RFS, on behalf of one or more of the co-Defendants, to provide operational services at this crossing. He was located east of the tracks south of SW 18th street.

55. Decedent, JAMES OSTROWSKI, would begin to cross the railroad tracks and almost a step before safely making it across, he was stuck by the Brightline train and killed.

56. The roadway worker in charge or “flagger” working for Defendant RFS, on behalf of one or more of the co-Defendants, was allegedly facing eastbound, away from the tracks, when the incident occurred.

57. On information and belief, the failure to have a “No Train Horn” sign warning of the “Quiet Zone”, combined with the presence of the roadway worker in charge or “flagger” facing away from the tracks, the lack of any train horn, and the history of recent issues at the particular crossing, led the decedent to believe he could safely cross the tracks only to ultimately be killed.

COUNT I – NEGLIGENCE AGAINST BT

Plaintiff repeats and realleges paragraphs 1 through 57 as though fully set forth herein.

58. On or about October 25, 2022, the decedent, JAMES OSTROWSKI, was struck and killed by the Brightline train in Palm Beach County Florida owned and/or operated, in whole or in part, by Defendant BT.

59. JAMES OSTROWSKI's death was preceded by countless other deaths along the railway corridor during the operation of the Brightline train, some of which occurred under similar circumstances, where warning signs with either inadequate or improperly maintained.

60. Upon information and belief, Defendant BT knew or should have known that the signage required under the Federal Railroad Act and the Manual on Uniform Traffic Control Devices was not present west of the train tracks at the SW 18th Street crossing.

61. At all times material hereto, the Defendant, BT, owed the decedent a duty of reasonable care in the operation and/or maintenance of said train and the surrounding area where the incident occurred, included any and all advanced warning signage.

62. Defendant, BT, would repeatedly pledge to undertake additional safety measures in excess of the minimum federal requirements, owed the decedent a duty of reasonable care to reasonably maintain, retain, or improve upon the additional safety measures they affirmative chose to undertake and represented they would undertake, such that the public would not face increased risk.

63. Defendant, BT breached said duties when failed to adopt the safety measures it pledged to undertake and failed to comply with Federal law, resulting in its train striking and killing JAMES OSTROWSKI.

64. At the time and place referenced above, Defendant BT, breached their duty and was negligent, including but not limited to, one or more of the following ways, individually or in conjunction with other ways by:

- a. Traveling at an unreasonable rate of speed based considering the lack of proper safety measures at this particular crossing, especially in light of a prior incidents at this crossing, the unique particularized curve of the track south of the crossing, and the failure to have advance warning signs in compliance with Federal law;
- b. Failing to maintain or retain safety measures that BT had publicly represented it would be undertaking to prevent preventable accidents which harmed pedestrians and vehicles;
- c. Failing to have proper warning signs, signals, and other safety measures at this particular crossing designated as a “Quiet Zone” that would adequately mitigate the risk of high-speed rail in an urban environment;
- d. Allowing visible obstructions to exist at this particular crossing that prevented vehicles and pedestrians on the west side of the track from seeing southbound trains;
- e. Failing to take reasonable safety precautions that other lower speed rail systems that operate through metropolitan areas across Florida and the United States utilize;
- f. Failing to comply with its own safety plan, rule, or standard that it created pursuant to a regulation or secretarial order and represented would exceed federal safety minimums;

- g. Providing inadequate financial and technical assistance to governmental entities responsible for the crossing and the surrounding area;
 - h. Accepting federal funding for safety improvements but failing to make sufficient safety improvements;
 - i. Relying upon an agreement, to which BT is not a party or signatory, to claim municipalities throughout Palm Beach County are responsible for safety improvements and maintenance, in order to avoid making such improvements themselves;
 - j. Using an 1800s era rail corridor without sufficient safety improvements to handle a 21st century high-speed rail;
 - k. Failing to make any operational changes after countless deaths along its rail system that would minimize the risk of future deaths;
 - l. Failing to require co-Defendants, BH, FECR or FECI to improve the safety features at crossings or require local municipalities to do so prior to continuing operation;
 - m. A combination of one or more of these failures;
 - n. Additional acts of negligence to be discovered during the discovery process.
65. As a direct and proximate result of the Defendant BT's negligence, JAMES OSTROWSKI was wrongfully killed.

DAMAGES

66. As a direct and proximate result of the Defendant's negligence, the Plaintiff claims:

As to the Survivors and Estate

- a. Lost companionship and protection, mental pain and suffering;

- b. Medical and funeral expenses;
- c. Future loss of support and services;
- d. Loss of prospective net accumulations;
- e. Medical and funeral expenses that have become a charge against the Estate.

WHEREFORE, Plaintiff, CAROL OSTROWSKI, as Personal Representative of the Estate of JAMES OSTROWSKI, demands trial by jury and judgment for damages against the Defendant, BT, plus interest and costs, together with whatever other relief the Court deems just and proper.

COUNT II – NEGLIGENCE AGAINST BH

Plaintiff repeats and realleges paragraphs 1 through 57 as though fully set forth herein.

67. On or about October 25, 2022, the decedent, JAMES OSTROWSKI, was struck and killed by the Brightline train in Palm Beach County Florida owned and/or operated, in whole or in part, by Defendant BH.

68. JAMES OSTROWSKI's death was preceded by countless other deaths along the railway corridor during the operation of the Brightline train, some of which occurred under similar circumstances, where warning signs with either inadequate or improperly maintained.

69. Upon information and belief, Defendant BH knew or should have known that the signage required under the Federal Railroad Act and the Manual on Uniform Traffic Control Devices was not present west of the train tracks at the SW 18th Street crossing.

70. At all times material hereto, the Defendant, BH, owed the decedent a duty of reasonable care in the operation and/or maintenance of said train and the surrounding area where the incident occurred, included any and all advanced warning signage.

71. Defendant, BH, would repeatedly pledge to undertake additional safety measures in excess of the minimum federal requirements, owed the decedent a duty of reasonable care to reasonably maintain, retain, or improve upon the additional safety measures they affirmatively chose to undertake and represented they would undertake, such that the public would not face increased risk.

72. Defendant, BH, breached said duties when failed to adopt the safety measures it pledged to undertake and failed to comply with Federal law, resulting in its train striking and killing JAMES OSTROWSKI.

73. At the time and placed referenced above, Defendant BH, breached their duty and was negligent, including but not limited to, one or more of the following ways, individually or in conjunction with other ways by:

- a. Traveling at an unreasonable rate of speed based considering the lack of proper safety measures at this particular crossing, especially in light of a prior incidents at this crossing, the unique particularized curve of the track south of the crossing, and the failure to have advance warning signs in compliance with Federal law;
- b. Failing to maintain or retain safety measures that BH had publicly represented it would be undertaking to prevent preventable accidents which harmed pedestrians and vehicles;
- c. Failing to have proper warning signs, signals, and other safety measures at this particular crossing designated as a “Quiet Zone” that would adequately mitigate the risk of high-speed rail in an urban environment;

- d. Allowing visible obstructions to exist at this particular crossing that prevented vehicles and pedestrians on the west side of the track from seeing southbound trains;
- e. Failing to take reasonable safety precautions that other lower speed rail systems that operate through metropolitan areas across Florida and the United States utilize;
- f. Failing to comply with its own safety plan, rule, or standard that it created pursuant to a regulation or secretarial order and represented would exceed federal safety minimums;
- g. Providing inadequate financial and technical assistance to governmental entities responsible for the crossing and the surrounding area;
- h. Accepting federal funding for safety improvements but failing to make sufficient safety improvements;
- i. Relying upon an agreement, to which BH is not a party or signatory, to claim municipalities throughout Palm Beach County are responsible for safety improvements and maintenance, in order to avoid making such improvements themselves;
- j. Using an 1800s era rail corridor without sufficient safety improvements to handle a 21st century high-speed rail;
- k. Failing to make any operational changes after countless deaths along its rail system that would minimize the risk of future deaths;
- l. Failing to require co-Defendants, BT, FECR or FECI to improve the safety features at crossings or require local municipalities to do so prior to continuing operation;
- m. A combination of one or more of these failures;

n. Additional acts of negligence to be discovered during the discovery process.

74. As a direct and proximate result of the Defendant BH's negligence, JAMES OSTROWSKI was wrongfully killed.

DAMAGES

75. As a direct and proximate result of the Defendant's negligence, the Plaintiff claims:

As to the Survivors and Estate

- a. Lost companionship and protection, mental pain and suffering;
- b. Medical and funeral expenses;
- c. Future loss of support and services;
- d. Loss of prospective net accumulations;
- e. Medical and funeral expenses that have become a charge against the Estate.

WHEREFORE, Plaintiff, CAROL OSTROWSKI, as Personal Representative of the Estate of JAMES OSTROWSKI, demands trial by jury and judgment for damages against the Defendant, BH, plus interest and costs, together with whatever other relief the Court deems just and proper.

COUNT III – NEGLIGENCE AGAINST FECR

Plaintiff repeats and realleges paragraphs 1 through 57 as though fully set forth herein.

76. On or about October 25, 2022, the decedent, JAMES OSTROWSKI, was struck and killed by on the railway owned, in whole or in part, by Defendant FECR, by a train owned and operated by co-Defendant(s) BT and/or BH.

77. JAMES OSTROWSKI's death was preceded by countless other deaths along the railway corridor during the operation of the Brightline train, some of which occurred under similar circumstances, where warning signs with either inadequate or improperly maintained.

78. Upon information and belief, Defendant FECR made no substantive changes that would improve the safety at this particular crossing after numerous prior incidents, despite knowing that its current signage and equipment was inadequate to protect individuals from the dangers associated with operating a high-speed rail along a 19th century railway.

79. Furthermore, Defendant FECR continued to allow co-Defendant(s) BT and/or BH to run its high-speed rail along the rail system owned by Defendant FECR without requiring substantive safety improvements or operation changes.

80. In allowing co-Defendant(s) BT and/or BH to run its high speed rail along the rail system owned by Defendant FECR, FECR owed the decedent a duty of care to reasonably maintain or retain additional safety measures such that the public would not face increased risk.

81. The Defendant, FECR breached said contractual and public duties when failed to require BT and/or BH to adopt the safety measures it pledged to undertake, resulting in its train striking and killing JAMES OSTROWSKI.

82. At the time and placed referenced above, Defendant FECR, breached their duty and was negligent, including but not limited to, one or more of the following ways, individually or in conjunction with other ways by:

- a. Allowing co-Defendant(s) BT and/or BH to operate their train at an unreasonable rate of speed based considering the lack of proper safety measures at this particular crossing, especially in light of a prior incidents at this crossing, the unique particularized curve of the track south of the crossing, and the failure to have advance warning signs in compliance with Federal law;
- b. Allowing co-Defendant(s) BT and/or BH to operate their train on its railway without maintaining or retaining safety measures that BT and/or BH had publicly

represented it would be undertaking to prevent preventable accidents which harmed pedestrians and vehicles;

- c. Failing to have proper warning signs, signals, and other safety measures at this particular crossing designated as a “Quiet Zone” that would adequately mitigate the risk of high-speed rail in an urban environment;
- d. Allowing visible obstructions to exist at this particular crossing that prevented vehicles and pedestrians on the west side of the track from seeing southbound trains;
- e. Failing to take reasonable safety precautions that other lower speed rail systems that operate through metropolitan areas across Florida and the United States utilize;
- f. Failing to comply with its own safety plan, rule, or standard that it created pursuant to a regulation or secretarial order and represented would exceed federal safety minimums;
- g. Providing inadequate financial and technical assistance to governmental entities responsible for the crossing and the surrounding area;
- h. Accepting federal funding for safety improvements but failing to make sufficient safety improvements;
- i. Allowing co-Defendant(s) BT and/or BH to rely upon an FECR contract that they are not a party or signatory, to claim municipalities throughout Palm Beach County are responsible for safety improvements and maintenance, in order to avoid making such improvements themselves;
- j. Using an 1800s era rail corridor without sufficient safety improvements to handle a 21st century high-speed rail;

- k. Failing to make any operational changes after countless deaths along its rail system that would minimize the risk of future deaths;
 - l. Failing to require co-Defendants BT and/or BH to improve its operations after countless deaths in order to continue operating along the FEC corridor;
 - m. A combination of one or more of these failures;
 - n. Additional acts of negligence to be discovered during the discovery process.
83. As a direct and proximate result of the Defendant FECR's negligence, JAMES OSTROWSKI was wrongfully killed.

DAMAGES

84. As a direct and proximate result of the Defendant's negligence, the Plaintiff claims:

As to the Survivors and Estate

- a. Lost companionship and protection, mental pain and suffering;
- b. Medical and funeral expenses;
- c. Future loss of support and services;
- d. Loss of prospective net accumulations;
- e. Medical and funeral expenses that have become a charge against the Estate.

WHEREFORE, Plaintiff, CAROL OSTROWSKI, as Personal Representative of the Estate of JAMES OSTROWSKI, demands trial by jury and judgment for damages against the Defendant, FECR, plus interest and costs, together with whatever other relief the Court deems just and proper.

COUNT IV – NEGLIGENCE AGAINST FECI

Plaintiff repeats and realleges paragraphs 1 through 57 as though fully set forth herein.

85. On or about October 25, 2022, the decedent, JAMES OSTROWSKI, was struck and killed by on the railway owned, in whole or in part, by Defendant FECI, by a train owned and operated by co-Defendant(s) BT and/or BH.

86. JAMES OSTROWSKI's death was preceded by countless other deaths along the railway corridor during the operation of the Brightline train, some of which occurred under similar circumstances, where warning signs with either inadequate or improperly maintained.

87. Upon information and belief, Defendant FECI made no substantive changes that would improve the safety at this particular crossing after numerous prior incidents, despite knowing that its current signage and equipment was inadequate to protect individuals from the dangers associated with operating a high-speed rail along a 19th century railway.

88. Furthermore, Defendant FECI continued to allow co-Defendant(s) BT and/or BH to run its high-speed rail along the rail system owned by Defendant FECI without requiring substantive safety improvements or operation changes.

89. In allowing co-Defendant(s) BT and/or BH to run its high speed rail along the rail system owned by Defendant FECI, FECI owed the decedent a duty of care to reasonably maintain or retain additional safety measures such that the public would not face increased risk.

90. The Defendant, FECI breached said contractual and public duties when failed to require BT and/or BH to adopt the safety measures it pledged to undertake, resulting in its train striking and killing JAMES OSTROWSKI.

91. At the time and placed referenced above, Defendant FECI, breached their duty and was negligent, including but not limited to, one or more of the following ways, individually or in conjunction with other ways by:

- a. Allowing co-Defendant(s) BT and/or BH to operate their train at an unreasonable rate of speed based considering the lack of proper safety measures at this particular crossing, especially in light of a prior incidents at this crossing, the unique particularized curve of the track south of the crossing, and the failure to have advance warning signs in compliance with Federal law;
- b. Allowing co-Defendant(s) BT and/or BH to operate their train on its railway without maintaining or retaining safety measures that BT and/or BH had publicly represented it would be undertaking to prevent preventable accidents which harmed pedestrians and vehicles;
- c. Failing to have proper warning signs, signals, and other safety measures at this particular crossing designated as a “Quiet Zone” that would adequately mitigate the risk of high-speed rail in an urban environment;
- d. Allowing visible obstructions to exist at this particular crossing that prevented vehicles and pedestrians on the west side of the track from seeing southbound trains;
- e. Failing to take reasonable safety precautions that other lower speed rail systems that operate through metropolitan areas across Florida and the United States utilize;
- f. Failing to comply with its own safety plan, rule, or standard that it created pursuant to a regulation or secretarial order and represented would exceed federal safety minimums;
- g. Providing inadequate financial and technical assistance to governmental entities responsible for the crossing and the surrounding area;

- h. Accepting federal funding for safety improvements but failing to make sufficient safety improvements;
 - i. Allowing co-Defendant(s) BT and/or BH to rely upon an FECR contract that they are not a party or signatory, to claim municipalities throughout Palm Beach County are responsible for safety improvements and maintenance, in order to avoid making such improvements themselves;
 - j. Using an 1800s era rail corridor without sufficient safety improvements to handle a 21st century high-speed rail;
 - k. Failing to make any operational changes after countless deaths along its rail system that would minimize the risk of future deaths;
 - l. Failing to require co-Defendants BT and/or BH to improve its operations after countless deaths in order to continue operating along the FEC corridor;
 - m. A combination of one or more of these failures;
 - n. Additional acts of negligence to be discovered during the discovery process.
92. As a direct and proximate result of the Defendant FECI's negligence, JAMES OSTROWSKI was wrongfully killed.

DAMAGES

93. As a direct and proximate result of the Defendant's negligence, the Plaintiff claims:

As to the Survivors and Estate

- a. Lost companionship and protection, mental pain and suffering;
- b. Medical and funeral expenses;
- c. Future loss of support and services;
- d. Loss of prospective net accumulations;

- e. Medical and funeral expenses that have become a charge against the Estate.

WHEREFORE, Plaintiff, CAROL OSTROWSKI, as Personal Representative of the Estate of JAMES OSTROWSKI, demands trial by jury and judgment for damages against the Defendant, FECL, plus interest and costs, together with whatever other relief the Court deems just and proper.

COUNT V – NEGLIGENCE AGAINST RFS

Plaintiff repeats and realleges paragraphs 1 through 57 as though fully set forth herein.

94. On or about October 25, 2022, the decedent, JAMES OSTROWSKI, was struck and killed by on the railway owned and/or operated, in whole or in part, by the co-Defendants.

95. Upon information and belief, one or more of the co-Defendants contracted with Defendant RFS to provide operational services including but not limited to roadway workers in charge or “flagger” services.

96. Defendant, RFS, promotes itself as a being “Not Just Another Flagging Company” with “safety being paramount to [them] as an employer.”

97. Defendant, RFS, further promotes itself for flagging “for numerous capital and maintenance-of-way projects along the railroads, including double track and siding construction, track rehabilitation, yard reconstruction, quiet zone construction, utility installations, and surveys.”

98. Defendant, RFS, conducts “regular safety calls, onsite meetings, and inspections to provide the best possible service.”

99. Defendant, RFS, as a provider of operational field services at this crossing, had a duty to ensure that its actions protection individuals like JAMES OSTROWSKI at the track, and also to refrain from taking any action that may mislead JAMES OSTROWSKI into believing the roadway worker in charge or “flagger” was there for his safety.

100. Defendant, RFS, had a duty to ensure that the roadway worker in charge or “flagger” was properly trained for the safety of everyone crossing the railroad tracks, including but not limited to, JAMES OSTROWSKI.

101. At the time and place referenced above, Defendant RFS, breached their duty and was negligent, including but not limited to, one or more of the following ways, individually or in conjunction with other ways by:

- a. Failing to properly hire, train, retain, or supervise, the roadway worker in charge or “flagger” present at the time of the incident;
- b. Failing to properly inspect the railroad crossing to ensure that the advance warning signs were in compliance with Federal Law and the Manual on Uniform Traffic Control Devices;
- c. Failing to notify the co-Defendants of issues at the particular railroad crossing;
- d. Failing to notify the co-Defendants that they would be unable to properly perform their roadway worker in charge or “flagger” duties;
- e. Failing to comport with their self-proclaimed compliance and safety based representations made to encourage one or more of the co-Defendants to hire them for this particular project;
- f. A combination of one or more of these failures;
- g. Additional acts of negligence to be discovered during the discovery process.

102. As a direct and proximate result of the Defendant RFS’s negligence, JAMES OSTROWSKI was wrongfully killed.

DAMAGES

103. As a direct and proximate result of the Defendant’s negligence, the Plaintiff claims:

As to the Survivors and Estate

- a. Lost parental companionship, loss instruction and guidance and mental pain and suffering;
- b. Medical and funeral expenses;
- c. Future loss of support and services;
- d. Loss of prospective net accumulations;
- e. Medical and funeral expenses that have become a charge against the Estate.

WHEREFORE, Plaintiff, CAROL OSTROWSKI, as Personal Representative of the Estate of JAMES OSTROWSKI, demands trial by jury and judgment for damages against the Defendant, RFS, plus interest and costs, together with whatever other relief the Court deems just and proper.

Signed and dated this 24th day of October 2024.

KOGAN AND DiSALVO, P.A.

3615 West Boynton Beach Blvd.

Boynton Beach, FL 33436

Phone: (561) 375-9500

Fax: (561) 374-7898

By: /s/ Todd Baker

TODD L. BAKER, ESQ.

Florida Bar No.: 88181

Email: tlbaker@koganinjurylaw.com