

**IN THE CIRCUIT COURT OF                      COUNTY, MISSISSIPPI**

**VS.**

**CIVIL ACTION NO.**

## COMPLAINT

COMES NOW,                      and                      , Plaintiffs, by and through their attorneys of record, and files their Complaint against the Defendant                      , and in support thereof would most respectfully show unto the Court the following, to-wit:

1. Plaintiff is an adult resident citizen of County, Mississippi, whose address is .

2.                is unlicensed in Mississippi, but eligible to do business in the State of Mississippi, pursuant to 83-21-12 of the Mississippi Code, 1972, as amended, and insured the vehicle owned by the City of                for risk of loss by collision, said vehicle was operated by plaintiff                on the date of the subject accident.

3. At all times hereinafter mentioned, Defendant \_\_\_\_\_ was a corporation organized and existing under the laws of the State of \_\_\_\_\_, and was duly authorized and empowered to carry on and conduct its business in the State of Mississippi as a foreign corporation engaged as an occurred in the City of \_\_\_\_\_ County, Mississippi.

5. At all times herein mentioned, Defendant owned and operated a railroad in the City of \_\_\_\_\_, \_\_\_\_\_ County, Mississippi. A portion of the tracks and right-of-way of the said railroad extends in a \_\_\_\_\_ and \_\_\_\_\_ direction over, on and across \_\_\_\_\_, which is a public drive extending in an \_\_\_\_\_ and \_\_\_\_\_ direction within said City of \_\_\_\_\_; that automatic signal lights were not installed at the crossing by defendant. That said lights were needed at the subject intersection to flash on and off to warn motorists of defendants' machinery, trains, and/or other mechanical devices. That \_\_\_\_\_ is a heavily traveled and congested thoroughfare at said crossing.

6. On \_\_\_\_\_, \_\_\_\_\_, at approximately \_\_\_\_\_ a.m./p.m., Plaintiff \_\_\_\_\_, and while on duty as a police patrol officer for the City of \_\_\_\_\_, was exercising due care, and was driving his/her \_\_\_\_\_ police patrol car in a \_\_\_\_\_ direction on \_\_\_\_\_ approaching the hereinabove described crossing, which was dark and had no flashing warning devices. As Plaintiff approached defendant's tracks, Defendant's train was backing and in a \_\_\_\_\_ direction on said tracks, and gave plaintiff no warning of its presence on said tracks. Plaintiff applied his/her brakes and did everything possible to avoid an impact with defendant's train, however was unable to do so and collided with said train. Plaintiff suffered serious, painful injuries as hereinafter stated.

7. Plaintiffs would further show unto this Honorable Court that in the furtherance of his/her master's business so that all acts of negligence of the said                      were and are to be imputed to his/her employer,                      , defendant herein named.

8. Plaintiffs charge and allege that at the time and on the occasion in question and immediately prior thereto, Defendant, in addition to the negligence set forth hereinabove, was negligent in various acts and omissions, including the following, which negligence was the proximate cause or the proximate contributing cause of the incident in question:

1. By negligently not providing flashing lights at said intersection to warn motorists of the presence of its trains, and or machinery. Said intersection was hazardous, and the absence of said flashing lights endangered the motorists using the subject public thoroughfare;

2. By failing and neglecting to cause a flagman/watchman or other person to be stationed at the intersection for the purpose of warning the general public of its approaching machinery;

3. By failing and neglecting to warn of the approaching machinery on seeing that an unusually dangerous situation existed and having an opportunity to realize and appreciate the danger to persons using the crossing;

4. By running the train and/or machinery into the intersection so that it caused plaintiff                      to collide with said train and or/machinery, without having given any signal or warning;

5. By maintaining an unusually dangerous and extraordinarily hazardous crossing at said time and place; and

6. By not providing proper illumination at said

9. As a direct and proximate result of the aforesaid acts and conduct of Defendant, the automobile Plaintiff was operating was demolished, and as a result thereof, plaintiff was required to pay to the City of                      , its policyholder and insured, the sum of \$                      , plaintiff                      subsequently obtained the sum of \$                      for the sale of the salvage vehicle, which leaves a net amount of \$                      for which said plaintiff                      has subrogation rights, and brings suit for.

10. Additionally, Defendant                      owed Plaintiff the duty to make reasonable inspections of the rails and crossings over which its trains and machinery would travel to determine if said rails and crossings were reasonably safe and reasonably protected for the motoring public using such crossing, and to remedy or have remedied any defects or dangerous conditions revealed by such inspections.

11. Plaintiff would further show that the Defendants had created an unusually dangerous condition at said crossing by allowing motor vehicles to pass over said tracks without providing proper lights and warning of said railroad crossing. Since said crossing was

unreasonably dangerous, ordinary care required the railroad company to meet the peril with unusual precautions; that because of the dangerous condition resulting from the unusually high number of motorists using said crossing, the Defendants had the duty of exercising caution commensurate to the situation to avoid a collision with the Plaintiff, as by a less amount of speed or stated, was gross negligence, and was the proximate cause or proximate contributing cause of Plaintiff's accident and injuries. Plaintiff would show that the Defendants should have recognized that the said crossing was unusually dangerous, and they failed to protect the motorists traveling on said road, in as much as it maintained an automatic signal light at the parallel intersection of the aforesaid railroad right of way, even though the signal did not work when this particular piece of machinery crossed the intersection.

12. That as a direct and proximate result of the negligence of Defendants as aforesaid, Plaintiff sustained severe, and painful injuries including, but not limited to, injuries to his/her head, neck, shoulders, knees and legs, and body; that Plaintiff's muscles, tendons, ligaments and tissues of the neck and back were severely sprained, strained and injured, he/she required hospitalization for treatment of said injuries, and he/she sustained lacerations and contusions to his/her body and face; that it was necessary for Plaintiff to be treated by a physician as a result of the injuries sustained in said accident, and Plaintiff has incurred substantial hospital, doctors, drug and other medical expenses. Plaintiff has suffered extreme physical pain, mental anguish, and discomfort. All as a result of the negligence of the Defendants. Plaintiff was free of injuries before the aforesaid accident, and free of any contributory negligence associated with the occurrence of the subject accident.

13. The aforesaid acts and omissions of the Defendants were so grossly negligent, wanton, reckless and in such complete insured, the City of for loss of the vehicle operated by plaintiff and has suffered a net loss in the amount of \$

WHEREFORE, Plaintiff brings this suit and demands judgment of and from the Defendant, in the sum of (\$) for actual or compensatory damages and, additionally in the sum of (\$) for punitive or exemplary damages; Plaintiff sues and demands judgment in the amount of \$ , together with all costs of Court to be taxed herein.

Respectfully submitted,

, Plaintiff

By: \_\_\_\_\_

OF COUNSEL: