

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

VS.

CIVIL ACTION NO.

ANSWER

COMES NOW Defendant (" ") and responds to the Complaint filed herein against it as follows:

1. Defendant admits the resident allegations of numbered paragraph 1.
2. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations of numbered paragraph 2 and, therefore, denies same.
3. Defendant admits the resident allegations of numbered paragraph 3.
4. Defendant admits the allegations of numbered paragraph 4.
5. Defendant admits that Defendant owned railroad tracks and operated trains on said tracks in the City of , County, Mississippi, that the tracks and right-of-way at the location of the subject accident extend generally in a and direction, over, on and across , which is a public drive extending generally in an and direction within the City of and that automatic signal light were not installed at the crossing by Defendant. Defendant denies all other allegations contained in numbered paragraph 5.
6. Defendant admits that on , at approximately a.m./p.m., Plaintiff , while on duty as a police patrol officer for the City of , was driving a police patrol car in a general east/west/north/south direction on approaching the subject crossing, which crossing had no flashing warning devices. Defendant further admits that as Plaintiff approached the subject crossing, Defendant's train was and had been occupying said crossing and was backing in a generally northerly direction on said tracks. Defendant admits that Plaintiff applied the vehicle's brakes and that the vehicle skidded and collided into the side of said train. Defendant denies all other allegations contained in paragraph 6.
7. Defendant denies that was guilty of any negligence which caused or contributed to the subject accident. Defendant admits the remaining allegations of numbered paragraph 7.
8. Defendant denies the allegations of numbered paragraph 8 and all subparagraphs contained immediately thereunder.
9. Defendant denies that Defendant was guilty of any negligent acts or conduct, which caused or contributed to the accident in question. Defendant is without information or

knowledge sufficient to form a belief as to the truth of the remaining allegations of numbered paragraph 9 and, therefore, denies same.

10. Numbered paragraph 10 contains allegations of law, not fact; therefore, no answer is required of Defendant. However, if an answer is required of Defendant, Defendant denies the allegations of numbered paragraph 10.

11. Defendant denies the allegations of numbered paragraph 11.

12. Defendant denies the allegations of numbered paragraph 12.

13. Defendant denies the allegations of numbered paragraph 13.

14. Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations of numbered paragraph 14 and, therefore, denies same.

Defendant denies that Plaintiff is entitled to recover a judgment against the Defendant in the amount sued for or any other amount.

#### AFFIRMATIVE DEFENSES

And now having fully answered the allegations of the Plaintiff's Complaint, Defendant further answering by way of affirmative defenses, states as follows:

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted as the Defendant's train occupied the crossing at the time of and prior to the collision and such occupancy of the subject crossing constitutes all of the warning to which Plaintiffs were entitled under law.

2. The Plaintiff was guilty of the operation of his/her vehicle immediately prior time of the accident in question by:

(a) Failing to heed the warnings of the train occupying the crossing and stop his/her vehicle prior to reaching the crossing;

(b) Failing to yield the right-of-way to the train occupying the crossing which was plainly visible and in close and obvious proximity to the Plaintiff;

(c) Failing to keep a reasonable and proper lookout;

(d) Failing to maintain his/her vehicle under reasonable and proper control;

(e) Failing to operate his/her vehicle at a reasonable and proper speed under the circumstances;

(f) Operating his/her vehicle at an excessive rate of speed under the existing circumstances and in excess of the lawful speed limit; and

(g) Failing to keep a proper lookout for trains occupying the subject crossing when he/she knew or should have known of the crossing's location.

Defendant would show that said acts of negligence constitute the sole proximate cause of the subject accident or, in the alternative, constitute a proximate contributing cause.

3. Plaintiffs' claims, insofar as they seek recovery based upon failure to erect or install additional warning devices at the subject crossing, are preempted by federal law pursuant to the Rail Safety Act of 1970 (45 U.S.C. Sec. 434) and the Highway Safety Act of 1973 (23 U.S.C. Sec. 130, et. sea, as amended), and the regulations issued by the Secretary of Transportation pursuant thereto, which vested all legal duties related to such claims in the public authorities of the State of Mississippi, which was required to, and did accept and undertake such duties so as to remain qualified for its continued receipt of federal highway funding.

And now having fully answered the allegations contained in the Complaint, Defendant demands that it be dismissed and discharged at the cost of the Plaintiffs.

Respectfully submitted,

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ATTORNEY FOR DEFENDANT

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, \_\_\_\_\_, attorney for Defendant \_\_\_\_\_ do hereby certify that I have this day caused a true and correct copy of the above and foregoing Answer to be served by United States mail, postage prepaid, to the following:

ATTORNEY FOR PLAINTIFF

THIS, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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