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December 8, 1995

**BY HAND**

Honorable Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
Twelfth Street and Constitution Avenue, N.W.  
Room 2215  
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corp.,  
et al. -- Control & Merger -- Southern Pacific  
Rail Corp., et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of Applicant's Objections to KCS' Discovery Requests (UP/SP-30). Also enclosed is a 3.5 disk containing the text of this pleading in WordPerfect 5.1 format.

I would appreciate it if you would date-stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely,

Michael A. Listgarten

Member of the Bar of New York  
State

Not admitted to the Bar of the  
District of Columbia

Attorney for Union Pacific  
Corporation, Union Pacific  
Railroad Company and Missouri  
Pacific Railroad Company

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Office of the Secretary

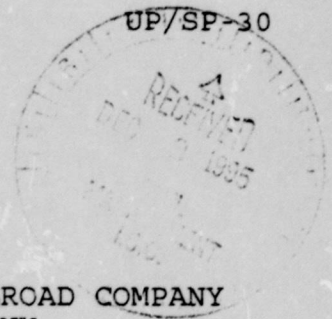
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BEFORE THE  
INTERSTATE COMMERCE COMMISSION



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY  
AND MISSOURI PACIFIC RAILROAD COMPANY  
-- CONTROL AND MERGER --  
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC  
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY  
COMPANY, SPCSL CORP. AND THE DENVER AND  
RIO GRANDE WESTERN RAILROAD COMPANY

APPLICANTS' OBJECTIONS TO KCS' DISCOVERY REQUESTS

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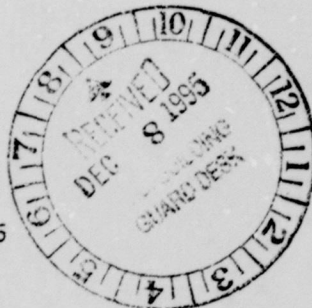
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December 8, 1995

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BEFORE THE  
INTERSTATE COMMERCE COMMISSION

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Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY  
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC  
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY  
COMPANY, SPCSL CORP. AND THE DENVER AND  
RIO GRANDE WESTERN RAILROAD COMPANY

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APPLICANTS' OBJECTIONS TO KCS' DISCOVERY REQUESTS

Applicants Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"), Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCL") and The Denver and Rio Grande Western Railroad Company ("DRGW"), submit the following objections to the discovery requests served by the Kansas City Southern Railway Company ("KCS") on November 13, 1995. These objections are made pursuant to paragraph 1 of the Discovery Guidelines applicable to this proceeding, which provides that objections to discovery requests shall be made "by means of a written objection containing a general statement of the basis for the objection."

Applicants intend to file written responses to the KCS discovery requests on December 15, 1995. These responses will provide a substantial amount of information (including documents) in response to many of the requests,



notwithstanding the fact that objections to the requests are noted herein. It is necessary and appropriate at this stage, however, for Applicants to preserve their right to assert permissible objections.

GENERAL OBJECTIONS

The following objections are made with respect to all of the interrogatories:

1. Applicants object to production of documents or information subject to the attorney-client privilege.
2. Applicants object to production of documents or information subject to the work product doctrine.
3. Applicants object to production of documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.
4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Interstate Commerce Commission or the Securities and Exchange Commission or clippings from newspapers or other public media.
5. Applicants object to the production of draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.
6. Applicants object to the inclusion of Philip F. Anschutz and The Anschutz Corporation in the definitions of "Applicants" and "SP" as overbroad.

7. Applicants object to the extent that the interrogatories seek highly confidential or sensitive commercial information that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the definition of "identify" insofar as it requests home telephone numbers on grounds that such information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. Applicants object to the definition of "relating to" as unduly vague.

10. Applicants object to Definition 21 as overbroad.

11. Applicants object to Instruction 1 insofar as it requests that objections be served prior to December 8 and responses be served prior to December 15.

12. Applicants object to Instructions 2, 4, 5, 9, 10 and 11 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

13. Applicants object to Instructions 6 and 7 as unduly burdensome.

14. Applicants object to Instruction 5 insofar as it requests that responsive documents be sent to KCS's attorneys rather than put in the depository.



ADDITIONAL OBJECTIONS TO SPECIFIC INTERROGATORIES

In addition to the General Objections, Applicants make the following objections to the interrogatories.

Interrogatory 1: Describe the discussions that led to the Agreement and Plan of Merger. This description should include when the discussions first took place, the date and manner of subsequent discussions, the identity of the persons participating in those discussions, and a description of all documents that refer to, relate to or evidence such discussions.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 2: Describe all presentations made to or by any of the Applicants, including their officers or Board of Directors, whether generated in-house or by outside consultants (such as presentations or analyses presented by or to investment bankers or others), (a) that discuss the advantages or disadvantages of the Transaction generally or (b) that discuss the competitive impact of the Transaction on Applicants and/or any of their shippers or shipper groups (served by one or the other or jointly), and/or any Western Class 1 Railroads and/or their shippers or shipper groups, or (c) that discuss market shares, competition, competitors, markets, traffic growth, revenue increases, revenue share increases, rate increases, or expansion into product or geographic markets resulting from the Transaction, and identify all documents that refer to, relate to or evidence the presentations referred to in your response.

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 3: Identify all public statements, speeches, press releases, advertisements, letters, publications,



testimony, filings with the ICC or the Securities and Exchange Commission or any other state or federal agency, presentations to securities analysts, communications to stockholders, presentations and communications to members of Congress and their staffs, presentations and communications to members of the ICC and their staffs, and communications distributed to employees, made by any Applicant or any of their officers with the rank of Vice President or above, or by any of their directors, or by any person or entity holding five percent (5%) or more of the shares of any Applicant, or by any attorney or financial advisor of any Applicant, relating (a) to this proceeding, (b) to the Transaction, (c) to proposed mergers or consolidations of UP or SP with each other or with any other Western Class 1 Railroad or with any other entity that controls one or more railroads, or (d) to UP's or SP's actual, planned, or anticipated growth or expansion.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 4: Identify all documents relating to the Transaction that have been sent to shippers, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, or any state or local government body or agency, including, but not limited to, documents relating to the effects of the Transaction on competition or documents used in communicating about the Transaction with shippers, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, or any state or local government body or agency.

Additional Objections: Applicants object to this interrogatory as unduly burdensome.

Interrogatory 5: Identify all communications between Applicants or among Applicants and any third party (such as accountants, investment bankers, financial advisors, securities or financial analysts or consultants) relating to the Transaction, including: (a) any benefits, synergies, or efficiencies relating to the Transaction, (b) the fairness to Applicants' shareholders of any agreement relating to the Transaction, (c) the application of pooling or purchase accounting treatment to the Transaction, and/or (d) the projected effect of the increased cost of the Transaction on the Applicants' financial condition; and identify all

documents that refer to, relate to or evidence the communications referred to in your response.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 6: Identify all documents that refer to, relate to or evidence the Applicants' respective quarterly meetings with securities and financial analysts, including transcriptions of the meetings, presentations made at the meetings, and any documents prepared for, during, or as a result of such meetings.

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 7: Identify all documents relating to any allegation or suggestion that the terms of the Transaction may be unfavorable to shareholders of any of the Applicants.

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 8: Identify all documents that discuss actions that the Applicants will or may be able to take legally after consummation of the Transaction as a result of the immunity under 49 U.S.C. § 11341(a) from the antitrust laws.

Additional Objections: Applicants object to this interrogatory as unduly vague and overbroad in that it includes requests for information that is neither relevant nor



reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 9: Identify all correspondence between Applicants or with any other railroads regarding any potential rail merger or acquisition, including, but not limited to, (a) possible negotiated conditions relating to the instant merger or the BN/Santa Fe merger; (b) the competitive impact of either merger; (c) UP's withdrawal of its opposition to the BN/Santa Fe merger; (d) UP's withdrawal of its bid for Santa Fe and/or SFP; (e) UP's withdrawal of its bid for the Denver-Fort Worth trackage rights in the BN/Santa Fe proceeding; or (f) the merger or acquisition in whole or part of any other Class 1 Railroad.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 10: Identify each railroad with whom either Applicant discussed the competitive effects of the UP/SP merger, the dates of such discussions, and the participants in such discussions; and identify all documents that refer to, relate to or evidence such discussions. This request includes, but is not limited to, the "about a dozen railroads . . . with the exception of the eastern railroads . . ." referred to in the September 26, 1995 UP Teleconference with financial analysts.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 11: Identify all documents relating to the possible imposition by the Commission of conditions on the approval of the Transaction, including the possible reasons why the Commission might impose such conditions and the revenue and traffic impacts of the conditions.

Additional Objections: None.



Interrogatory 12: Describe the course of negotiations through which the BN/SF Agreement was reached, including, but not limited to, (a) the dates of each meeting, conference or communication leading up to the Agreement, (b) the identity of each participant, (c) where any meetings or conferences took place, and (d) the identity of each document that refers to, relates to, or evidence such communications.

Additional Objections: Applicants object to this interrogatory as unduly burdensome.

Interrogatory 13: Identify all studies, analyses, and reports, including all work papers related thereto, and other communications (including prior agreements) between and among the railroads involved that relate to, led up to or formed the basis for the BN/SF Agreement.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome.

Interrogatory 14: Identify all studies, analyses and/or reports undertaken by either Applicant or by outside consultants, such as investment bankers, economists, or others, that relate to the BN/SF Agreement, and/or to the competitive impact of (a) the UP/SP merger; (b) the proposed UP/Santa Fe merger; and/or (c) the Burlington Northern/Santa Fe merger. This request includes, but is not limited to, (a) studies quantifying the benefits of the Transaction, (b) studies quantifying the expected costs of the Transaction resulting from conditions requested by other carriers, and (c) studies quantifying the difference between the Applicants' original anticipated costs and the costs anticipated in light of the BN/SF Agreement.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 15: Identify any agreements, understandings, or arrangements between any of the Applicants and BNI, BN, SFP, Santa Fe or BNSF (a) reached in connection with the abandonment by UP or SP of their attempt to oppose the BN/SF merger, including the withdrawal by UP and SP of their opposition to the BN/SF merger, or (b) relating to any conditions sought by BN, BNI, SFP, Santa Fe or BNSF as to the Transaction; and identify all documents that refer to, relate

to or evidence the agreements, understandings, or arrangements referred to in your response. If there are no such agreements, understandings, or arrangements, describe in detail any discussions or negotiations regarding the possibility of such agreements, and identify any documents that refer to, relate to or evidence such negotiations or discussions.

Additional Objections: Applicants object to this

interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 16: Identify all documents received by any of the Applicants from BN, BNI, SFP, Santa Fe or BNSF relating to the potential benefits or competitive effects of the Transaction.

Additional Objections: None.

Interrogatory 17: Identify each trackage rights agreement to which any Applicant (or its predecessor in interest) is a party that involves tracks as to which the Applicant has granted, assigned or sold trackage rights or tracks to BNSF. Your response should include agreements as to which the Applicant (or its predecessor in interest) is either the grantor or the grantee of the trackage rights and agreements entered into prior to January 1, 1993.

Additional Objections: Applicants object to this

interrogatory as unduly vague and unduly burdensome, and as seeking information that is neither relevant nor calculated to lead to the discovery of admissible evidence.

Interrogatory 18: Identify each trackage rights agreement between any Applicant and BNSF that grants, assigns or sells to BNSF trackage rights that the Applicant acquired by virtue of one of the agreements identified in your response to interrogatory no. 17.

Additional Objections: Applicants object to this

interrogatory as unduly vague and as seeking information that



is neither relevant nor calculated to lead to the discovery of admissible evidence.

Interrogatory 19: Identify all documents that refer to, relate to or evidence agreements that grant, assign or sell to SP operating rights of any kind as to the following: (a) the Galveston, Houston and Henderson Railroad between Houston and Galveston; (b) the Santa Fe between Forth Worth and Kansas; (c) the Soo Line between Kansas City and Chicago; (d) BN between Kansas and Chicago; and (e) UP between Denver and Kansas City. This interrogatory includes agreements prior to January 1, 1993 and includes, but is not limited to, settlement agreements and trackage rights agreements, together with all amendments or modifications thereto.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 20: Identify all documents, including correspondence, agreements, arrangements, understandings, studies, analyses and reports, that discuss competition between or among any of the Applicants for any traffic.

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 21: Identify each instance of a shipper on a UP line having requested lower rates in order to compete with a shipper on an SP line and vice versa, and identify all documents that refer to, relate to or evidence the requests referred to in your response.

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor



reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 22: Identify all documents, including correspondence, memos (internal and external), notes of meetings or conversations or other documents, that refer to, relate to or evidence negotiations or other communications with shippers in which the shipper sought to obtain either (1) lower rates or other adjustments to the transportation contract or tariff or (2) improved service, based on the fact that one of the Applicants provided an alternative means of transportation or represented an alternative carrier to another of the Applicants.

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 23: Identify all correspondence to or from any Applicant and any shipper (other than correspondence identified in response to a prior interrogatory) relating to (a) the Transaction or (b) the BN/Santa Fe merger.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 24: For the twenty-five largest central Kansas grain shippers served by either Applicant, identify all correspondence regarding rates or service for each commodity for each origin and destination pair from January 1, 1990, through and including the date of your response.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is

neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 25: Identify all documents that refer to, relate to or discuss competition, impacts on competition or reduction in competition resulting from the Transaction or from the BN/Santa Fe merger. This request includes, but is not limited to, UP's "original evaluation of Southern Pacific [and] the competitive concessions that [UP] felt [it was] going to have to give up," referenced in the September 26, 1995 UP Teleconference with financial analysts.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 26: Identify all shipper facilities to which both UP and SP have the right to quote rates without the concurrence of the other, or through the existing advance concurrence of the other by agreement, including points accessible directly or by means of trackage or switching rights, or any other means by which a railroad may serve points located on the line of another railroad, and identify all documents that refer to, relate to or evidence your response.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 27: Describe all discussions relating to the possibility of constructing a new rail line in order to give SP access, in competition with UP, to a shipper served by UP, by identifying the dates, locations, and participants in such discussions, the identities of the affected shippers, and all documents that refer to, relate to or evidence such discussions.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and



overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 28: Describe all discussions relating to the possibility of constructing a new rail line in order to give UP access, in competition with SP, to a shipper served by SP, by identifying the dates, locations, and participants in such discussions, the identities of the affected shippers, and all documents that refer to, relate to or evidence such discussions.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 29: Identify, by shipper, origin and destination, and five-digit STCC code, any traffic as to which UP and SP have bid against each other, including the dates and results of the bidding, where the revenues at issue were in excess of \$250,000 annually to either Applicant, and identify all documents that reflect the traffic referred to in this response.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 30: Identify all documents in the possession, custody or control of any Applicant that refer to, relate to or evidence the anticipated ability of the Consolidated System to respond to or deter rate reductions by any other Western Class 1 Railroad.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome.

Interrogatory 31: Identify all documents that refer to or relate to anticipated or potential changes in rates if the



Transaction is implemented, including increases in contract or tariff rates for transportation or related services, increases in charges for equipment, reductions in shipper allowances or refunds, acceleration of increases under rate escalation clauses, and deferral of rate decreases under rate reduction clauses. Your response may exclude documents that do not relate to either Applicant's 150 largest shippers, measured by revenue in 1993 and 1994.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome.

Interrogatory 32: Describe the likely effect of the Transaction on the ability of Applicants to increase or maintain rates, and identify all traffic that would probably be affected by such increase or maintenance of rates, including all assumptions underlying your response to this interrogatory and the reasons why each Applicant believes such effects are likely, and identify all documents that refer to, relate to or evidence your response.

Additional Objections: None.

Interrogatory 33: Describe all plans of Applicants relating to the extent of passthrough to shippers of any cost savings gained as a result of the Transaction, and identify all documents that refer to, relate to or evidence the passthrough of such savings. Your response may exclude plans that do not relate to either Applicants' 150 largest shippers, measured by revenue in 1993 and 1994.

Additional Objections: None.

Interrogatory 34: Identify all studies, analyses and reports relating to (a) the ability of Applicants to retain in whole or in part any cost savings gained as a result of the Transaction, and not pass through such cost savings to shippers in the form of rate reductions or service improvements, (b) the allocation of such cost savings as between Applicants and shippers, and/or (c) the relative benefits to Applicants and to shippers of such cost savings.

Additional Objections: None.

Interrogatory 35: Identify all documents that refer to, relate to or evidence Applicants' rate plans, rate forecasts, or rate strategies concerning any intermodal or intramodal service in the event the Transaction is implemented.

Additional Objections: None.

Interrogatory 36: Describe all shipper or receiver surveys conducted by either Applicant from January 1, 1989, through December 31, 1994, including, but not limited to the date of each, the questions asked, the names of all shippers who responded, the responses given by each responding shipper, and identify all documents that refer to, relate to or discuss the survey based on conclusions reached by the party initiating the survey.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 37: Identify the "Seven Governors" referred to as supporting the Transaction in the October 23, 1995 issue of *Traffic World* (pp. 22-23), together with all federal elected officials whom Applicants contend support the Transaction.

Additional Objections: None.

Interrogatory 38: Identify each "shipper conference, conversation, etc." referred to in the September 26, 1995 UP Teleconference with financial analysts by stating the date, participants and an identification of all documents that refer to, relate to or evidence such communications. This request includes, but is not limited to (a) the meetings between shippers and Dick Davidson in Washington on September 25, 1995; (b) meetings with Ron Burns on September 26, 1995; (c) shippers who came to UP's offices on September 26, 1995; (d) the customers or customer groups solicited by SP's marketing team or other SP personnel; and (e) the shippers from whom Applicants received support letters.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome.

Interrogatory 39: State the name, address and job title or position of all individuals (a) with whom you consulted, or (b) who participated in preparation of your responses to these interrogatories, or (c) who have knowledge concerning the facts contained in your responses to these interrogatories.

Additional Objections: Applicants object to this interrogatory as unduly burdensome and overbroad in that



includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 40: Identify each document not identified in response to a prior interrogatory to which you referred or on which you relied in preparation of your responses to these interrogatories.

Additional Objections: Applicants object to this interrogatory as unduly burdensome.

APPLICANTS' OBJECTIONS TO KCS' FIRST REQUESTS FOR ADMISSIONS

Request No. 1 of Kansas City Southern Railway Company's First Requests for Admission, served on November 13, 1995, requests that Applicants admit the following:

That prior to September 1994, UP and SP engaged in discussions about a possible merger of their respective railroads.

Applicants object to this request as overbroad in that it seeks information about merger discussions without regard to the January 1, 1993 time limit used with respect to the interrogatories or to any other time limit.

Applicants also object to the instructions to the Requests for Admission to the extent that they exceed the requirements of the applicable discovery rules, and they incorporate herein General Objections 1 through 5, 7 and 11 that were made with respect to the interrogatories.



Respectfully submitted,

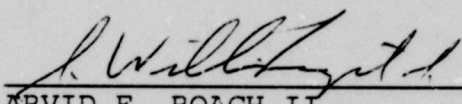
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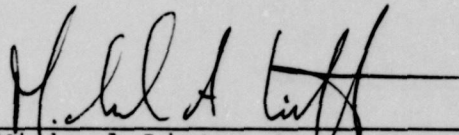
December 8, 1995

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of December 1995, I have caused to be served on the following counsel for Kansas City Southern Railroad Company copies of "Applicants' Objections to KCS' Discovery Requests" via facsimile and United States mail:

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The Kansas City Southern Railway Company  
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Kansas City, Missouri 64105  
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(202) 274-2950  
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Michael Listgarten

STB

FD

32760

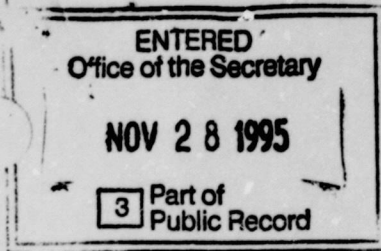
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BEFORE THE  
INTERSTATE COMMERCE COMMISSION



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY  
AND MISSOURI PACIFIC RAILROAD COMPANY  
-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC  
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY  
COMPANY, SPCSL CORP. AND THE DENVER AND  
RIO GRANDE WESTERN RAILROAD COMPANY

SCOTT MANATT, OBJECTING PETITIONER

PETITION TO REOPEN AND RECONSIDER THE PROCEDURAL  
SCHEDULE ORDER AND PROTECTIVE ORDER

Comes now Scott Manatt, and in opposition to the Petition to Establish Procedural Schedule and to reopen and reconsider the schedule order and protective order, states:

Scott Manatt is in opposition to the merger of Union Pacific and Southern Pacific Rail under the proposed filing under 49 U.S.C. §§ 11343-45. The said schedule is inappropriate and unfavorable to opponents of the applicant for the following reasons:

1. This Petitioner is situated in the State of Arkansas more than one thousand miles from the Washington D. C. area and will not have an opportunity to timely and meaningfully meet the schedules therein. That all communications with the said Petitioner will be by mail and that under FRCP (Federal Rules of Civil Procedure) Rule 6 (e), generally three days is added to any time as opposed to being shortened when mail is involved. To require a trip to the Washington Depository is an unwarranted hardship on the objecting party.

2. It is Petitioners belief and therefore is alleged that the Interstate Commerce Commission has received reduction in force notices and that said

agency, as far as the reviewing authority, ceases to exist on December 31, 1995, except for pending matters. The time period of F + 90 for protest is an inadequate period after notification of the public generally. F + 140 and F + 155 are inappropriate in that the discovery cannot possibly be had during said period of time. That the order was rendered ex parte as to the public.

3. That the Commission has recognized the establishment of a schedule and Petitioner recognizes a need for a schedule but not having been a party to the BN/Santa Fe matter, would suggest that this schedule does not provide a fair opportunity to accommodate all parties. It does provide an opportunity to the applicant for a quick decision to advance the interest of the applicant to the detriment of those objecting.

4. The Petitioner respectfully objects to any waivers, modest departures or other changes from the procedures and time tables and set forth in 49 C.F.R. § 1152.25 (d) (6) and (7), and would submit that under C.F. R. § 1152.24 (e) (5) this modification should not be allowed in that non railroad parties are entitled to an opportunity to be heard and that a departure would be changing the rule book without the benefit of notice and would violate the rules of publication and notice intended protected by the requirement of publication into the C. F. R.

5. The Petitioner is in opposition to the proposed guidelines in Appendix A filed by the applicant specifically in the following particulars. This proposal is a multi-billion dollar merger that effects and affects persons throughout America and should not be had or considered in less than a very deliberate fashion. That the objections to discovery within five days from the date of discovery is violative of the Federal Rules of Civil Procedure, Rule 6 (e), which gives an additional three days when by mail. In addition, under F. R. C. P., we are entitled to thirty days to object to Interrogatories, see F. R. C. P. 33, and answer within said time frames. Petitioner respectfully further submits that to require each party to place all exhibits or correspondence in a depository open to all parties and to



have said depository in the Washington, D. C. area is designed to insure no American citizen, tax payer, aggrieved party or party in opposition shall have an opportunity without inordinate expense and delay to review the documents when and as filed in the public interest.

6. That this Petitioner is a real party in interest, in that this Petitioner maintains and therefore alleges that the rails in America are unsafe as manifest by the lawsuit filed by Petitioner in the United States District Court for the Eastern District of Arkansas against Union Pacific Railroad and Amtrak Railroad for the wrongful death of Petitioner's 19 year old son, by reason of said child alleged to have been caught in a boot like vise or trap of a Union Pacific rail. That this party, having paid the price of the death of his son, is entitled to be heard and to have meaningful discovery and access to all books, records, and files incidental to this proposed merger that will or could continue to allow unsafe and unsound rails being maintained in the Country. To further extend that same condition by thousands of miles of additional rail is adverse to the public interest. That the applicant, at the Administrative Law Judge hearing, would propose to totally ignore the Federal Rules of Civil Procedure and recognizing that same are not binding on an administrative procedure, none-the-less, they are good guides to what is practical, what is feasible, and what would be construed generally as proper or reasonable notice. That to alter the rules would usurp the power of the Congress of the United States which enacted 49 U.S.C. 11341 et. seq. into the law of the United States.

7. Petitioner objects to the entry of a protective order which would limit or attempt to limit the use of materials in making a decision that effects the public interest, the American tax payer, the traveling public, the tariff rates of the United States, abandoned rail lines and potential for abuse under the Antitrust laws, and also to allow this decision to be made based upon secrecy in communication under the Freedom of Information Act is not allowed under law.



That there is no reason, fact, thing or circumstance why publicly supported companies should be allowed to shroud themselves in secrecy, and further as set forth in Paragraph (4) be able to charge for making copies at the expense of the opposing parties to render said materials unavailable by reason of the volumes of materials and the charges incidental thereto to the lesser advantaged objecting parties.

8. The Petitioner objects to the limitation on discovery until such time of course as (1) the application is filed, and (2) the meaningful opportunity has been had to review the application and a determination as to the amount of discovery which may be necessary to bring the facts forward to the commission and the American people and availability of all documents or exhibits reviewed or to be reviewed by the Commission.

9. The Petitioner respectfully objects to all depositions being conducted in the Washington, D. C. area which provision is designed to limit as a prior restraint on an opportunity to be heard by the American people, and Petitioners such as the undersigned, by forcing a cost factor of travel to Washington, D. C. in order to exercise the rights of an interested party. In addition, the notice requirement of twenty-four hours prior to the scheduled deposition is inadequate and insufficient to allow an interested party to travel from the State of Arkansas, even to the Washington D. C. area, if he should elect to attend and/or participate.

10. The undersigned petitioner respectfully requests the Court to review any protective order so far as it pertains to or attempts to limit the expression of speech or fair public comment by an interested citizen of the United States as to an Order that was entered and to which the undersigned Petitioner has not had an opportunity to be heard to date. That said order is exparte as to this objecting Petitioner. That a requirement that all parties who have access to make a knowledgeable inquiry into this matter sign a protective order is not

based soundly in constitutional law when involving a "fundamental right" and the standard of strict scrutiny. This Petitioner believing that he has a fundamental right of free speech and to discuss any matter, fact, thing or circumstance in which he has an interest and in which he appears as an interested party should not be silenced by a publicly trading company's desire to withhold information from the public's right to make or have an informed opinion as to the public interest. The prior restraint upon the liberty interest or the right to speak out under the First Amendment requires an overwhelming and compelling public reason to which the applicant cannot comply in that it does not exist.

11. Having said thus, the Petitioner respectfully requests that the A.L.J. review the reopen and reconsider the Protective Order and the schedule, and if appropriate, limit its scope and further hold the applicant to a standard of strict scrutiny, standard of overwhelming public concern when same affects fundamental right.

12. That by reason of the Petitioner herein appearing pro se, the Paragraph (8) limitation allowing the discovery only to be served either on the depository or upon the party propounded, is again an effort to limit knowledge and to allow the matter to proceed without American input, and to give advantage to the applicant and limit the public right to know and to participate on a timely basis. This effectively denies the Petitioner the right to be heard as Congress intended.

13. As to Paragraph (9) of the proposal, the Petitioner objects to same, and in as much as the Petitioner is not in the Washington area, under 49 C.F.R. pt. 1114, there should be no modifications of any rules between parties in which the objecting Petitioner, such as the undersigned, are given an opportunity to be heard and agreed or make a record in opposition.



14. The Petitioner respectfully submits to the I.C.C. that Petitioner's 19 year old son, a walking pedestrian on a County cross road, got his foot caught in a rail on a Union Pacific rail, was struck and killed by an Amtrak train by reason of the rails being unsafe. That the Petitioner and the Petitioner's family own land contiguous to and joining the railroad right of way at said location and has standing to maintain this action in the public interest. That a copy of the wrongful death action is attached hereto as filed in the United States District Court for the Eastern District of Arkansas, Case Number J-C-95-219, and is requested that it be made a part of the record, so far as this affects the safety standards of the rails throughout the United States.

15. That the Petitioner believes and therefore alleges that Union Pacific essentially takes the position of stonewalling on information to such extent that they will attempt to run off the disadvantaged and less financed opponents and by use of the money and the power position of the railroads in America, same being the American railroad, utilizes this superior position literally, "railroad," their way through to achieve and obtain that to which they are not entitled.

16. The Petitioner expressly reserves the right and herewith formally requests and notices the I.C.C. that before any ruling hereon, the Petitioner desires an opportunity to testify and be heard. Further Petitioner herewith formally demands notice of all proceedings, depositions, communications, hearings, telephone conferences or transmittal of documents or information in any way associated with, tied to, or incidental to this application or any of the parties herein and forthwith respectfully request to be a party any such proceedings. Further, notice of any final order is expressly reserved for appeal purposes if without notice and opportunity to be heard by the undersigned.

17. Petitioner further objects to the exclusive jurisdiction of this matter being in the Washington, D. C. area, and respectfully submits that jurisdiction should be retained in the United States District Court for the State of Arkansas

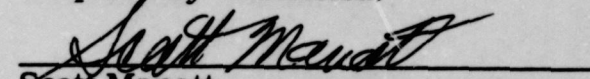


as to any hearings necessary that may affect this Petitioner, same being District Court's of the United States, and would suggest that the forum in Washington, D. C. is an inconvenient forum and works for the applicant but adverse to the 14th Amendment and this Petitioner. That Union Pacific does business in all states and that some of the proposed abandoned lines affect the Delta Region in the State of Arkansas, and that the District Court's in the State of Arkansas, should have jurisdiction in the event of an appeal of any and all decisions in this matter affecting the public interest in Arkansas.

18. Petitioner expressly request that the Petitioner be declared a party in interest with required notices of all mailings, communications, memorandums, rules and orders to be forwarded to the undersigned. Petitioner appears pro se, although Petitioner is a licensed attorney, licensed in the United States District Court, Eastern District of Arkansas, 8th Circuit Court of Appeals and is licensed to practice before and has filed cases in the United States Supreme Court, under Bar Number 70044.

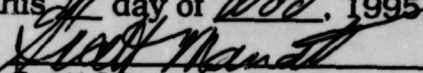
WHEREFORE, Petitioner prays that the protective order and the schedule order and each of them be reopened and reconsidered and set aside. Further, Petitioner would pray that all times be expanded to allow the maximum public input and that all notices required be given.

Respectfully Submitted,

  
\_\_\_\_\_  
Scott Manatt  
P.O. Box 473  
Corning, Arkansas 72422  
(501) 857-3163

CERTIFICATE OF SERVICE

I, Scott Manatt, certify that I have served a copy of the foregoing pleading upon attorneys for ~~all parties~~ to this action, by mailing a copy properly addressed by U.S. Mail, postage prepaid, this 24 day of Dec, 1995.

  
\_\_\_\_\_  
Scott Manatt  
P.O. Box 473  
512 West Second Street  
Corning, Arkansas 72422

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

SCOTT MANATT, Individually, and As Father  
of Scott Manatt, Jr., Now deceased and Separately  
In His capacity As Personal Representative of the  
Estate of Scott Manatt, Jr., Now Deceased;  
SHARON MANATT Individually and As Mother  
of Scott Manatt Jr. Now Deceased; MITZI MANATT  
Individually and as Surviving Sister of Scott Manatt, Jr.,  
Now Deceased; and Yvette Manatt, Individually and as  
Surviving Sister of Scott Manatt, Jr., Now Deceased;

PLAINTIFF

VS.

NO. J-C-95-219

UNION PACIFIC RAILROAD COMPANY, A Foreign  
Corporation, and NATIONAL RAILROAD PASSENGER  
CORPORATION A/K/A AMTRAK, A Corporation Created  
and doing business Under the Rail Passenger Service Act  
of 1970, and B.D. WILDER as Engineer and Agent of National  
Railroad Passenger Corporation a/k/a Amtrak

DEFENDANTS

**COMPLAINT**

Come plaintiffs, **SCOTT MANATT, individually**, and as surviving father of Scott Manatt, Jr., now deceased; and separately in his capacity as Personal Representative of the Estate of **Scott Manatt, Jr.**, now deceased; **SHARON MANATT**, individually and as surviving mother of Scott Manatt, Jr., now deceased; **MITZI MANATT**, individually and as surviving sister of Scott Manatt, Jr., now deceased; and **YVETTE MANATT**, individually and as surviving sister of Scott Manatt, Jr., now deceased; and for their cause of action against defendants, UNION PACIFIC RAILROAD COMPANY, a foreign corporation ("Union Pacific"), and NATIONAL RAILROAD PASSENGER CORPORATION a/k/a AMTRAK, a corporation created and doing business under the Rail Passenger Service Act of 1970 ("Amtrak"), 45 U.S.C.S. § 541 et seq. and B. D. WILDER, as agent and train engineer of National Railroad Passenger Corporation a/k/a Amtrak; state:

**PARTIES**

1. Plaintiff, Scott Manatt, individually and as surviving father of Scott Manatt, Jr., now deceased, is an adult person residing in Corning, Clay County, Arkansas. On October 1993, Scott Manatt in his separate capacity as Personal Representative of the Estate of Scott Manatt, Jr., now deceased, was appointed Personal Representative of that **estate** by order of the Clay County



Probate Court in case number P-93-20 Plaintiff, Scott Manatt, in his capacity as Personal Representative of the Estate of Scott Manatt, Jr., now deceased, is the duly appointed and qualified acting personal representative of said estate and may prosecute all claims against defendants on behalf of said estate pursuant to A.C.A. §16-62-102 and the applicable provisions of the Arkansas Probate Code.

2. Plaintiff, Sharon Manatt, individually and as the spouse of plaintiff, Scott Manatt, is the surviving mother of Scott Manatt, Jr., now deceased. Plaintiff, Mitzi Manatt, individually, is the surviving sister of Scott Manatt, Jr., now deceased. Plaintiff, Yvette Manatt, individually, is the surviving sister of Scott Manatt, Jr., now deceased.

3. Defendant, Union Pacific Railroad Company, upon information and belief is a foreign corporation organized and doing business under the laws of the state of other than Arkansas, but having substantial ongoing operations in this state and in particular in Clay County, Arkansas, and having substantial property and assets located in this state and in particular in Clay County, Arkansas. This defendant upon information and belief derives substantial income from transportation of goods and products, operations, and various business activities occurring within the state of Arkansas. The agent for service of process of this corporation is William H. Sutton, who may be served at 2000 First Commercial Building, Little Rock, AR 72201.

4. Defendant, National Railroad Passenger Corporation a/k/a Amtrak is a foreign corporation organized and doing business under the Rail Passenger Service Act of 1970, U.S.C. The **agent for service of process** for this corporation is not on file with the office of the Secretary of State of Arkansas to the best information and belief of the plaintiff but may be served at Washington D. C. at the main office of the defendant by serving the Secretary of the Corporation by certified mail and pursuant to title 45 USCS §546m, the corporation is deemed to be a citizen of the District of Columbia for the purpose of the Original Jurisdiction of the District Courts of the United States.

5. Defendant, B. D. Wilder, upon information and belief is an adult person and resident of Lonoke County, Arkansas and is a party in his capacity as agent and Train Engineer of Defendant National Railroad Passenger Corporation, A/K/A/ AMTRAK.

#### **JURISDICTION AND VENUE**

6. This court has subject matter jurisdiction over the claims herein set



forth and alleged and has in personam jurisdiction over all parties to this action. Union Pacific Railroad Company, upon information and belief is a foreign corporation organized and doing business under the laws of a state other than Arkansas. Defendant, National Railroad Passenger Corporation a/k/a Amtrak is a foreign corporation organized and doing business under the Rail Passenger Service Act of 1970 (45 USCS 541 et seq.) authorized by a specific act of the Congress of the United States both of which defendants are not residents of the State of Arkansas and Diversity exist. The amount in controversy is in excess of the Jurisdictional Amount necessary for federal jurisdiction and is in excess of \$50,000.00 and this court has jurisdiction of the parties and the subject matter of this litigation pursuant to 28 USCS 1332.

Venue of this action is proper both in the Western District of Clay County, Arkansas, (State Court) where the fatal accident to be described occurred and ALSO in the United States District Court for the Eastern District of Arkansas, Jonesboro Division.

**BACKGROUND FACTS COMMON TO ALL COUNTS/CLAIMS**

7. During the early morning hours of Tuesday, October 5, 1993, Scott Manatt, Jr., now deceased, and others departed a vehicle in north Clay County, Arkansas, that had become disabled on a county road. While walking back to their homes at Corning, Arkansas, a distance of a few miles from the location of the disabled vehicle, these individuals came upon a rural crossing of County Road 148 and railroad tracks (North of Corning, Arkansas in Clay County, Arkansas approximately one and one half miles from their vehicle) which upon information and belief were at all times herein mentioned and are currently owned, maintained, constructed, and operated by Union Pacific, (a multi-billion dollar company) but for certain purposes were leased or licensed to Amtrak so that Amtrak could conduct rail passenger service on an interstate basis from and to other states through the state of Arkansas, including Clay County.

8. Upon information and belief under an arrangement not fully known to plaintiffs, Union Pacific and Amtrak entered into a lease arrangement or license agreement so that Amtrak could use and utilize the tracks of Union Pacific at certain locations within the state of Arkansas to operate one or more rail passenger trains to transport passengers for profit from locations out of state to locations within the state of Arkansas and to other locations also out of state.

9. In connection with said track lease or license arrangement, Union Pacific and Amtrak owed a duty to pedestrians and persons operating vehicles at the intersection of County Road 148 and the tracks in question to use ordinary care to construct, maintain, repair, inspect, and insure through appropriate actions that said crossing was safe for the purposes for which it was intended, i.e., the crossing of the tracks by both vehicles and pedestrians.

10. The crossing in question was constructed by Union Pacific with wooden railroad ties, planks and other materials so that vehicles on the rural gravel road crossing the tracks could traverse the tracks. In constructing the subject crossing, wooden railroad ties, planks or other materials were laid and situated in various places on both sides of each rail parallel to the tracks so that a fairly smooth surface should or would be provided for the use of vehicles and/or pedestrians crossing the tracks at said graded crossing for County Road 148.

11. In constructing the crossing over the tracks and otherwise maintaining and repairing it, however, Union Pacific and/or Amtrak left considerable space, a crevice, or a void, between the wooden crossties, planks or other materials laid parallel to the tracks such that the foot or leg of a normal sized walking person (pedestrian) could become entrapped between the rail and the edge of crossties and under the flange of the rail and could not be removed. At the time of the fatal accident to be described, the space between the edge of the cross tie and the rail varied at each end on the subject crossing such that a pedestrian entering upon the subject crossing, particularly in the night time, unaware of the hazard created, was in grave danger of having his foot or leg entrapped in said space such that it could not be removed upon a train approaching in time to avoid death or serious injury. The crevice created could not be seen during the hours of darkness. The cross tie also stuck up approximated one and one half inch thereby creating a stumbling block, was not lighted in any way whatsoever and had no warning or alert devices of any kind at said crossing of the hazards there created and poorly maintained by Union Pacific, the defendant.

12. Upon information and belief, Union Pacific and/or Amtrak did not routinely and by the use of ordinary care and in a prudent manner inspect the subject graded crossing to determine if it was at all times herein mentioned safe for the use of both vehicles and pedestrians. In particular, these defendants negligently and without using ordinary care failed to determine that a space of 3 inches to 4 inches or more between the wooden cross tie



and the track where the accident hereinafter described occurred would create a hazardous crossing for pedestrians such that injury or death was a foreseeable event at said crossing. The subject cross tie created a trap for a pedestrian by having the North end of an eight foot cross tie set a distance of four and one eighth inches from the metal track and the South end of said cross tie at three inches from the metal track and was a boot like vise to any person who should step into same which fact was known or reasonably should have been known to Union Pacific, the defendant.

13. At all times herein mentioned, Union Pacific and Amtrak failed to and did not equip the subject graded crossing with a crossing gate, a bell and light signal, or other suitable safety devices or signals which would warn the public generally and the late Scott Manatt, Jr. in particular of the dangerous nature of said graded crossing. That the defendant Union Pacific, had actual knowledge of the crevice and hole created and the stumbling blocks created by their cross ties and failed to warn the public, or light the trap or in any way attempt to lessen the risk to the traveling public, including pedestrians. That this is a willful and wanton disregard for the safety of the public generally including pedestrians and for the late Scott Manatt, Jr. specifically.

14. Upon information and belief, immediately prior to 4:24 a.m. on the morning of Tuesday, October 5, 1993, Amtrak while operating train no. 21 approached said crossing from the north at a speed believed to be approximately 65 m.p.h. or in excess thereof, but believed contrary to the requirements and mandates of A.C.A. §23-12-410 failed to warn motorists or pedestrians which may have been on, near or about said graded crossing of the approach of said train by not sounding a whistle or bell beginning 80 rods or 1/4 mile from said crossing and continuing the sounding of the bell or whistle until the passenger train had passed the crossing. The track North and South of the subject crossing is and was substantially level, and the visibility from the train's locomotive was unlimited and unimpaired for miles on either side of the crossing, even at night. The subject crossing was not obstructed in any manner by overhanging trees, brush, buildings or any other obstructions. The Westernmost cross tie was placed above ground level and during the hours of darkness is a stumbling block for any person crossing or walking over said rail and roadway.

15. Immediately prior to the events resulting in the death of Scott Manatt, Jr., now deceased, the late Scott Manatt, Jr., (Scotty), was on the subject graded crossing along with others after an extended walk attempting



to locate assistance in order to return to Corning, Arkansas, the home of his parents with whom he was residing at the time of his death. As the passenger train operated by Amtrak approached the subject graded crossing from the North, while attempting to leave the subject crossing, the right foot and lower right leg of the late Scott Manatt, Jr. became entrapped in or near the center of the crossing in a crevice between the west rail of the track and a wooden railroad tie such that the late Scott Manatt, Jr., (Scotty), was unable to extricate his right foot and leg from the crevice or space prior to being struck in the upper right portion of his body by the right front of the Amtrak engine (commonly known as the cattle guard) as it crossed over the subject crossing. The resulting blow to the late Scott Manatt, Jr. (Scotty's) upper right body in the shoulder blade area caused massive internal injuries which immediately or substantially thereafter caused his death. In addition, the force of the impact to his upper body resulted in the immediate breaking of his lower right leg in 3 or more places caused by the twisting, violent extraction of the right foot and right leg from the crevice in which they had become entrapped although upon information and belief no portion of the train engine actually struck the lower right leg of the late Scott Manatt, Jr., (Scotty). Upon impact, the body of the late Scott Manatt, Jr., (Scotty), was thrown in a southwesterly direction away from the subject crossing approximately 35 feet where it was immediately discovered by the 3 bystander companions who had been with the late Scott Manatt, Jr., (Scotty), at the time of and immediately prior to his death. The lead engine of the Amtrak train traveled just less than approximately one-half mile to final stop.

16. The surviving companions of the late Scott Manatt, Jr., (Scotty), immediately called law enforcement/emergency response authorities in Corning, Clay County, Arkansas, in an effort to preserve the life of the late Scott Manatt, Jr., (Scotty), upon finding his body near the subject crossing. However, upon the arrival of the medical personnel and law enforcement authorities at the accident scene, it was determined almost immediately that the late Scott Manatt, Jr. appeared to have a pulse for several minutes but was dying and Scotty had suffered a fatality. Efforts to revive the late Scott Manatt, Jr., (Scotty), by CPR at the scene proved unsuccessful. Scott Manatt, Jr., (Scotty), was pronounced dead at the scene by Richard Ermert, Jr., the Deputy Coroner of Clay County, Arkansas. Approximately two and one half hours after the death, plaintiffs were notified of this tragedy. The body had been moved, reports, investigations of the railroad and communications to the

railroad had been had without authorization or approval and the railroad (Union Pacific) had obtained the information needed to defend the negligence of the Railroad, all without the knowledge of the family. This conduct was outrageous. The funeral for the late Scott Manatt, Jr. was held on October 7, 1993, in Clay County, Arkansas.

**NEGLIGENCE OF AMTRAK AND B. D. WILDER**

17. Amtrak through their agent and engineer, B. D. Wilder, immediately prior to and at the time of the fatal accident in question that resulted in the death of Scott Manatt, Jr., now deceased, were guilty of negligence in the following particulars, to-wit:

(a) Failure to use ordinary care to keep a proper lookout under the circumstances then and there existing for pedestrians at the subject graded crossing while operating the passenger train in question in violation of A.C.A. §23-12-907;

(b) Operating the Amtrak passenger train at an excessive rate of speed under the conditions then and there existing thereby causing his death;

(c) Failure to use ordinary care in violation of Arkansas statutory requirements to sound the whistle and bell signals required by A.C.A. §23-12-410 which if properly sounded for the time and distance (1/4 mile) required by applicable law would have warned the deceased and the bystanders of the approach of a speeding train and would have thereby prevented the fatal accident which is the subject of this action;

(d) Failure to use ordinary care to brake or otherwise slow or bring the subject Amtrak passenger train to a stop after observing first one Pedestrian and then the late Scott Manatt, Jr. on or about the graded crossing in question.

(e) Failure to use ordinary care to maintain the subject crossing in a manner safe for pedestrians and motorists by avoiding the existence of a crevice or space between the crossties and the west rail to the end that the foot, leg or other body parts of a pedestrian would not become entrapped in the, crevice or space between the rail and wooden crossties, preventing impact with an oncoming train in the night time.

(f) Failure of the Amtrak engineer, B. D. Wilder, who as the engineer was in charge of the engine of said Amtrak passenger



train to require the fireman, J. D. Starr, sitting next to him in the locomotive, to also keep a proper lookout for pedestrians who might be on, near, or about the tracks or subject crossing during the evening hours so as to avoid their injury or death.

(g) Failure of B. D. Wilder to disembark and render emergency treatment.

(h) Having affixed to the front of the engine of the train, a device known as a cattle guard, designed to remove animals from the track by throwing them from the track, constructed of Steel, knowing that this device causes death. That knowing of the cattle guard, the engineer did not brake the train but continued at the same speed even with a known peril ahead which failure to slow increased the chance that Scott Manatt, Jr. could not extricate his foot in time to live. This conduct is outrageous, willful and is wanton disregard for human life.

18. Each of the above acts of negligence committed by Amtrak and B. D. Wilder as their agent and engineer was the proximate cause of the wrongful death of the late Scott Manatt, Jr., now deceased, for which these defendants and each of them should respond in appropriate damages to plaintiffs.

#### **NEGLIGENCE OF UNION PACIFIC**

19. Union Pacific immediately prior to and at the time of the fatal accident herein described was guilty of negligence in the following particulars, to-wit:

(a) Failure to construct, maintain, repair and inspect the subject graded crossing in a manner that it would be safe for both motorists and pedestrians who might utilize it.

(b) Failure to use asphalt or other filler materials to eliminate the crevices or space between the rail and crossties thereby eliminating the hazard for pedestrians that existed at the time of the fatal accident in question and resulted in the wrongful death of the late Scott Manatt, Jr.

(c) Failure to equip the subject graded crossing in question with any warning devices or safety devices except the cross buck signs and otherwise failing to warn both motorists and pedestrians of the dangerous nature of this crossing.

(d) Failure to warn Amtrak and its agents of the dangerous and hazardous nature of the subject graded crossing so that all



passenger trains operated by Amtrak would proceed cautiously while approaching said crossing so as not to endanger the lives or property of pedestrians and motorists using such.

(e) Failure to light the crossing in such a manner that any person including the late Scott Manatt, Jr. would have an opportunity to see the stumbling block and the crevice created by the negligence of Union Pacific.

(f) Failure to place the cross tie on the west side parallel to the track at a uniform width to avoid a "boot like vise" effect and failure to place the west cross tie at a flush ground level to avoid any person or persons including the late Scott Manatt, Jr. from tripping over same.

(g) The intentional creation of a trap for the unwary, including the late Scott Manatt, Jr. by constructing and engineering the crossing in such a manner as same was a trap into which one could step, which would take time to extricate one's foot from during the hours of darkness and being unaware of its existence of the stumbling block, the crevice and the design and how to get free of same in an emergency situation.

(h) That the defendant Union Pacific has actual knowledge of the inadequate maintenance of the rails for the first 15 miles into Arkansas from the State of Arkansas and has had numerous derailments of trains in the City of Corning, Arkansas and many collisions both with vehicles and pedestrians along this section of track. That it is cheaper to litigate than to repair the defective rails, to eliminate the traps, to tie down the rails, and to safeguard crossings. That the history of this section of rail is known or reasonable should be known by the defendants as unsafe and dangerous. That knowing this history, the defendants willfully had failed to correct the situation which was the proximate cause of the death of Scott Manatt, Jr. for which willful conduct and wanton disregard punitive damages are appropriate and for which the defendants and each of them are liable to the plaintiffs.

(i) Failure to provide adequate lighting and/or other warning to allow any reasonable pedestrian, including Scott Manatt, Jr. to be forewarned of the impending danger at said crossing.

20. Each of the aforementioned acts of negligence committed by Union

Pacific was the proximate cause of the wrongful death of the late Scott Manatt, Jr., now deceased, on October 5, 1993.

#### **DAMAGES**

21. Scott Manatt solely in his capacity as the personal representative and administrator of the estate of Scott Manatt, Jr., now deceased, is entitled to recover the funeral expenses for the funeral and burial of his deceased son in the total amount of \$9,369.20 consisting of \$4,516.20 paid to Ermert Funeral Home of Corning, and \$4,853.00 paid for a monument for the deceased.

22. Scott Manatt solely in his capacity as the personal representative and administrator of the estate of Scott Manatt, Jr., now deceased, is also entitled to recover any expense of ambulance service and paramedics who attended the deceased at the time of his wrongful death.

23. Scott Manatt solely in his capacity as the personal representative and administrator of the estate of Scott Manatt, Jr., now deceased, is entitled to recover an amount which will fairly compensate the estate of the deceased for any conscious pain, terror and suffering of the late Scott Manatt, Jr. prior to his death as may be shown by the proof and evidence.

24. Scott Manatt, Sr., Sharon Manatt, Mitzi Manatt, and Yvette Manatt, as the surviving family members of the late Scott Manatt, Jr., now deceased, have suffered both normal grief and more than the usual amount of grief caused by and directly related to the death of Scott Manatt, Jr. and are entitled to the award of a fair and reasonable sum to compensate them for their mental anguish and suffering caused by and as a proximate result of the death of their beloved son and brother. Plaintiffs individually seek an appropriate sum as may be shown by the proof and evidence to be awarded them by this court and jury to compensate them for their mental anguish resulting from the unexpected, tragic, sudden and violent death of the late Scott Manatt, Jr., now deceased.

25. Scott Manatt individually and as father of the late Scott Manatt, Jr., now deceased, and Sharon Manatt, individually and as mother of the late Scott Manatt, Jr., now deceased, are entitled to recover from the defendants the reasonable expected earnings discounted to present value, which would have been paid to them by the deceased, notwithstanding the deceased had reached his majority, and for such length of time as the proof and evidence may indicate such earnings would have been paid to these plaintiffs by the deceased for their support and benefit. Plaintiffs state that the deceased was



living at home with them at the time of his death and would for the foreseeable future have made a financial contribution to the household.

26. Plaintiffs are entitled to recover all court costs and other expenses incurred by them in the prosecution of this action.

27. All damages awarded plaintiffs are to be assessed jointly and severally against the defendants or, in the alternative, against any defendant or defendants found liable by the jury for such damages as shown by the proof and evidence.

28. The plaintiffs reserve the right to amend this complaint and allege additional causes of action as discovery proceeds and the investigation continues.

### **PUNITIVE DAMAGES**

29. That the defendant Union Pacific willfully and wantonly and without regard for human life maintained the crossing in an unsound, unsafe manner, known to be unsafe and a trap and so maintains said traps on the rail crossing throughout America without regard to the health, safety or welfare of those they reasonably foresee as crossing said rails, including the late Scott Manatt, Jr. That these crossing could be made safe for a very minor expense per crossing, but the plaintiff believes and therefore maintains that Union Pacific prefers litigation to repair in Total disdain and disregard for the live of Scott Manatt, Jr. and others who cross the rails during the hours of darkness. That Punitive damages should be awarded in an amount as determined and fixed by the jury.

**WHEREFORE**, plaintiffs, SCOTT MANATT, individually, and as father of Scott Manatt, Jr., now deceased; and in his capacity as Personal Representative of the Estate of Scott Manatt, Jr.; SHARON MANATT, individually and as mother of Scott Manatt, Jr., now deceased; MITZI MANATT, individually and as surviving sister of Scott Manatt, Jr., now deceased; and YVETTE MANATT, individually and as surviving sister of Scott Manatt, Jr., now deceased; pray judgment for monetary damages, consequential, actual, compensatory and punitive jointly and severally against defendants, UNION PACIFIC RAILROAD COMPANY, a foreign corporation, and NATIONAL RAILROAD PASSENGER CORPORATION a/k/a AMTRAK, a corporation created under the Rail Passenger Service Act of 1970, and B. D. WILDER as engineer and/or agent of NATIONAL RAILROAD PASSENGER CORPORATION a/k/a AMTRAK, or against any such defendant or defendants in such amounts as the proof and evidence may show these defendants are



liable to them for all or a portion of the aforementioned damages incurred and suffered and to be incurred and suffered by them; for recovery of the court costs and other expenses herein expended; and, for all other proper relief to which they may be entitled. That the plaintiff prays that the Jury Award Punitive Damages as against the Defendants and each of them in such sums as to deter the defendants from this type of conduct in the future in such sums as to a Jury would be appropriate as against a multi billion dollar corporation not in excess of One Hundred Million Dollars (\$100,000,000.00).

Further Plaintiff prays that this matter be heard by Jury Trial of 12.

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SCOTT MANATT, Individually, Pro Se and  
As Father of Scott Manatt, Jr., Now  
Deceased; and In His Capacity  
As Personal Representative of the Estate of  
Scott Manatt, Jr. ; SHARON MANATT,  
Individually and As Mother of Scott  
Manatt, Jr., Now deceased; MITZI  
MANATT, Individually and As Surviving  
Sister of Scott Manatt, Jr. , Now Deceased;  
and YVETTE MANATT, Individually and As  
surviving Sister of Scott Manatt, Jr., Now  
Deceased, PLAINTIFFS

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