

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
21<sup>ST</sup> JUDICIAL CIRCUIT  
STATE OF MISSOURI

JOSE LUIS VALLE RABAGO, as a )  
 Claimant on the Wrongful Deaths of )  
 Marisol Perez Flores and )  
 Luis Fernando Valle Perez, )  
 )  
 MARIO ALEJANDRO RAMOS CURA, )  
 And ERIKA YASMIN GOMEZ-OURA, )  
 as Claimants on the Wrongful Death )  
 of Maria Julieta Cura Santos, )  
 )  
 ELOISA PEREZ FLORES, Individually, )  
 )  
 JUAN CARLOS RIOS CASTILLO, )  
 And ELOISA PEREZ FLORES, as )  
 Claimants on the Wrongful Death of )  
 Cristian Adrian Rios Perez, )  
 )  
 OSWALDO GALO MENDEZ, )  
 RENE GALO MENDEZ, )  
 SERGIO ALBERTO GALO MENDEZ, )  
 JOSE GUSTAVO GALO MENDEZ, )  
 YULIANA GALO MENDEZ, as )  
 Claimants on the Wrongful Death of )  
 Maria Tita Mendez Rueda, )  
 )  
 DANIEL PEREZ HERNANDEZ, as a )  
 Claimant on the Wrongful Deaths of )  
 Griselda Rangel Velasquez and )  
 Emily Marleth Perez Rangel, )  
 )  
 FERMIN MARTINEZ CASTILLO, as a )  
 Claimant on the Wrongful Death of )  
 Abrahana Sanchez Sanchez, )  
 )  
 JUAN CARDENAS GARCIA, as a )  
 Claimant on the Wrongful Death of )  
 Maria de Lourdes Faz Velazquez, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )

KANSAS CITY SOUTHERN, INC., )  
 Serve Registered Agent )  
 CT CORPORATION SYSTEM )  
 120 South Central Avenue )  
 Clayton, MO 63105, )  
 )  
 And )  
 )  
 KANSAS CITY SOUTHERN RAILWAY CO. )  
 Serve Registered Agent, )  
 CT CORPORATION SYSTEM )  
 120 South Central Avenue )  
 Clayton, MO 63105, )  
 )  
 And )  
 )  
 KANSAS CITY SOUTHERN DE )  
 MEXICO, S.A. de C.V., )  
 Serve Person In Charge )  
 427 West 12<sup>th</sup> Street )  
 Kansas City, MO 64105 )  
 )  
 Defendants. )

**JURY TRIAL DEMANDED**

**PETITION FOR DAMAGES**

COME NOW, PLAINTIFFS, by and through undersigned counsel of record, and for their causes of action against DEFENDANT KANSAS CITY SOUTHERN, INC., DEFENDANT THE KANSAS CITY SOUTHERN RAILWAY COMPANY, and DEFENDANT KANSAS CITY SOUTHERN DE MEXICO, state and allege as follows:

**COMMON ALLEGATIONS PLAINTIFFS**

1. PLAINTIFF JOSE LUIS VALLE RABAGO, is, and was at all times relevant, a resident of Sabinas, Coahuila, Mexico. He is the husband of decedent, Marisol Perez Flores and the father of Luis Fernando Valle Perez. PLAINTIFF, JOSE LUIS VALLE RABAGO, is authorized to bring, and does bring, the wrongful death claims for Marisol Perez Flores' death and Luis Fernando Valle Perez's death, and as husband and father and as a member of the class entitled to make such a claim under R.S.Mo. § 537.080.

2. PLAINTIFFS MARIO ALEJANDRO RAMOS CURA and ERIKA YASMIN GOMEZ-OURA are, and were at all times relevant, residents of Houston, Texas. They are the son and daughter, respectively, of decedent, Maria Julieta Cura Santos. MARIO ALEJANDRO RAMOS CURA and ERIKA YASMIN GOMEZ-OURA, are authorized to bring, and do bring, the wrongful death claim for Maria Julieta Cura Santos' death, as her natural children and as members of the class entitled to make such a claim under R.S.Mo. § 537.080.

3. PLAINTIFF ELOISA PEREZ FLORES, is and was at all times relevant, a resident of Sabinas, Coah., Mexico, and brings this action on behalf of herself for personal injuries sustained as a result of the collision described herein.

4. PLAINTIFFS ELOISA PEREZ FLORES and JUAN CARLOS RIOS CASTILLO, are and were at all times relevant, residents of Sabinas, Coah., Mexico. They are the natural parents of decedent Cristian Adrian Rios Perez, and are authorized to bring, and do bring, the wrongful death claim for Cristian Adrian Rios Perez's death, as his natural parents and as members of the class entitled to make such a claim under R.S.Mo. § 537.080.

5. PLAINTIFFS OSWALDO GALO MENDEZ, RENE GALO MENDEZ, SERGIO ALBERTO GALO MENDEZ, JOSE GUSTAVO GALO MENDEZ, and YULIANA GALO MENDEZ are, and were at all times relevant, residents of Nuevo Laredo, Tamps, Mexico and Laredo, Texas. They are the natural children of decedent, Maria Tita Mendez Rueda. PLAINTIFFS, OSWALDO GALO MENDEZ, RENE GALO MENDEZ, SERGIO ALBERTO GALO MENDEZ, JOSE GUSTAVO GALO MENDEZ, and YULIANA GALO MENDEZ, are authorized to bring, and do bring, the wrongful death claim for Maria Tita Mendez Rueda's, as her natural children and as members of the class entitled to make such a claim under R.S.Mo. § 537.080.

6. PLAINTIFF DANIEL PEREZ HERNANDEZ, is, and was at all times relevant, a resident of Nuevo Laredo, Tamps., Mexico. He is the husband of decedent, Griselda Rangel Velasquez and the father of Emily Marleth Perez Rangle. PLAINTIFF DANIEL PEREZ HERNANDEZ, is authorized to bring, and does bring, the wrongful death claims for Griselda Rangle Velasquez's death and Emily Marleth Perez Rangle's death, and as husband and father and as a member of the class entitled to make such a claim under R.S.Mo. § 537.080.

7. PLAINTIFF FERMIN MARTINEZ CASTILLO, is, and was at all times relevant, a resident of Sabinas Hidalgo, Coah., Mexico. He is the husband of decedent, Abrahana Sanchez Sanchez. PLAINTIFF FERMIN MARTINEZ CASTILLO, is authorized to bring, and does bring, the wrongful death claims for Abrahana Sanchez Sanchez's death, and as husband and as a member of the class entitled to make such a claim under R.S.Mo. § 537.080.

8. PLAINTIFF JUAN CARDENAS GARCIA, is, and was at all times relevant, a resident of Sabinas, Coahuila, Mexico. He is the husband of decedent, Maria de Lourdes Faz Velazquez. PLAINTIFF JUAN CARDENAS GARCIA, is authorized to bring, and does bring, the wrongful death claims for Maria de Lourdes Faz Velazquez's death, and as husband and as a member of the class entitled to make such a claim under R.S.Mo. § 537.080.

9. Hereinafter, the above-named Plaintiffs may collectively be referred to as "Plaintiffs" when appropriate or individually identified when necessary. Hereinafter, the decedents of the above-named Plaintiffs may collectively be referred to as "Decedents" when appropriate or individually identified when necessary.

#### **DEFENDANTS**

10. DEFENDANT KANSAS CITY SOUTHERN, INC. ("KCS") is a Missouri Corporation, doing its usual and customary business in the State of Missouri, and may be

served through its Registered Agent at the above listed address. KCS owns, controls and operates a railroad running across the entire State of Missouri, and its World Headquarters is located in Missouri. KCS is a transportation holding company that owns and controls railroad investments in the U.S., Mexico and Panama. Its primary U.S. holding is The Kansas City Southern Railway Company. Its primary international holdings include Kansas City Southern de Mexico, S.A. de C.V.

11. DEFENDANT KANSAS CITY SOUTHERN RAILWAY COMPANY (“KCSR”) is a Missouri Corporation, doing its usual and customary business in Missouri, and may be served through its Registered Agent at the above listed address. KCSR owns, controls and operates a railroad running across the State of Missouri, and its World Headquarters is located in Missouri.

12. DEFENDANT KANSAS CITY SOUTHERN DE MEXICO (“KCSM”) is wholly owned, controlled, and operated by KCS, a Missouri Corporation with its World Headquarters located in Missouri.

13. Hereinafter, the above-named Defendants may be collectively identified as “KCS Defendants” when appropriate or identified individually when necessary.

#### **VENUE AND JURISDICTION**

14. Venue is proper and convenient in this Court pursuant to 508.010.5(3) R.S.Mo. in that the Plaintiffs herein were first injured in a foreign country in connection with railroad operations therein and the KCS Defendants satisfy the requirements of said statute. Further, the Missouri legislature has, by its enactment of this statute, made the exercise of personal jurisdiction over said defendants proper and in compliance with the traditional bases of jurisdiction, namely, the presence, domicile and consent of the KCS Defendants. Additionally,

KCS Defendants hold themselves out as owning and controlling the railway in Mexico as demonstrated by their public statements including but not limited to that “Kansas City Southern operates a U.S.-Mexico cross-border network that is only one interchange away from any major market in North America.”

15. The case cannot be removed due to the existence of two Missouri citizen Defendants and the “forum defendant” rule for removal. 28 U.S.C. 1442(b)(2).

16. Joinder of the claims of the Plaintiffs herein is proper under Rule 52.05 in that each of their respective rights to relief arose out of the same transaction, occurrence or series of transactions or occurrences and involves questions of law or fact common to all of them that will arise in the action.

#### **FACTUAL BACKGROUND**

17. On or about February 13, 2015, Plaintiffs and/or their Decedents were passengers on a passenger bus that was approaching a grade crossing owned, operated and controlled by the KCS Defendants in Nuevo Leon, Mexico in the municipality of Anáhuac. The bus was sliced in half by a speeding northbound freight train owned, operated and controlled by the KCS Defendants. Said violent collision was without proper warning at the unprotected crossing.

18. The KCS Defendants, their employees, agents, and servants were careless, negligent, reckless and intentionally acted in a willful and wanton manner with respect to their construction, repair, maintenance, and control of the tracks, the crossing and the surrounding property, in breach of their statutory and common law duties.

19. Plaintiffs and the Decedents were members of the class of persons that the statutes violated by the KCS Defendants were designed to protect, and the resulting injuries were of the type that said statutes were designed to prevent.

20. The careless, negligent, reckless and intentional conduct of the KCS Defendants caused or contributed to cause the collision, and, as a direct and proximate result, Plaintiffs and/or Decedents suffered serious injuries and/or death, thereby entitling Plaintiffs to the damages set forth under Missouri's Wrongful Death Act, the common law, and to punitive damages.

**COUNT I - NEGLIGENCE**

21. Plaintiffs adopt each and every allegation of the preceding paragraphs 1 through 20 of this Petition.

22. KCS Defendants owned title and/or interest in the railroad train, tracks, and/or right-of-way for the crossing at issue and the site of the collision.

23. KCS Defendants had a duty to maintain the crossing in a safe, reasonable, and proper manner.

24. KCS Defendants had a duty and the legal authority to construct and maintain the crossing and right-of-way, including the approaches thereto, in a safe, reasonable and proper manner.

25. KCS Defendants had a duty to maintain adequate warning devices at the crossing and the approaches to the crossing to warn motorists of both the dangers posed by this unusually hazardous crossing and of oncoming trains.

26. KCS Defendants were subject to and had a duty to follow the applicable Manual on Uniform Traffic Control Devices (MUTCD) for the maintenance of streets, highways and railroad grades and crossing, including the crossing where the collision took place, which Manual sets a well-known industry standard for railway companies.

27. KCS Defendants had a duty to maintain and clear their right of way of foliage, brush, trees and other growth, pursuant to common law and Mo. Rev. Stat. § 389.665.

28. KCS Defendants knew, or should have known, of the dangerous and defective conditions at the crossing and the approaches to the crossing in sufficient time prior to the collision to take measures to protect against said dangerous and defective conditions.

29. KCS Defendants were careless, negligent, reckless, and intentionally acted in the following willful and wanton respects, in breach of their statutory and common law duties:

- A. KCS Defendants failed to maintain their crossing and right-of-way in a safe and reasonable condition.
- B. KCS Defendants failed to adequately and properly mark the crossing to provide motorists with sufficient information for reasonable safe passage through the crossing.
- C. KCS Defendants failed to construct and/or maintain the crossing to allow safe passage for the motoring public.
- D. KCS Defendants failed to adequately clear the crossing and right-of-way of brush, trees, debris and other visual obstructions as required by Mo. Rev. Stat. § 389.665, constituting negligence per se.
- E. KCS Defendants failed to place and/or maintain proper railroad warning devices at the crossing.
- F. KCS Defendants failed to instruct their maintenance and train crews on issues of safety for the motoring public and entrusted maintenance and security of the crossing to said crews, knowing or having reason to know, that they lacked proper instruction.
- G. KCS Defendants failed to instruct their maintenance and train crews on issues of safety and security for the motoring public and permitted the operation of the



train, knowing or having reason to know, that said crews lacked proper instruction.

- H. KCS Defendants failed to identify and address specific individual local hazards and failed to train their crews and other employees to identify and address specific individual local hazards.
- I. KCS Defendants failed to warn and advise their agents, servants, and employees of the dangerous conditions of the subject crossing.
- J. KCS Defendants failed to properly train their agents, servants, and employees to notify the company of crossings, including the subject crossing, that inadequately warn the motoring public of the approach of a train.
- K. KCS Defendants failed to follow their own rules and regulations as related to the safe and proper operation of their train and railroad system.
- L. KCS Defendants instructed their crews and other employees that there is nothing the railroad can do to prevent accidents or reduce risks to the motoring public at grade crossings, including the subject crossing, despite the knowledge that such an assertion is false.
- M. A significant history of prior collisions and incidents resulting in deaths, injuries, and near-collisions, substandard sight distances, substandard crossing design and construction, inadequate signage and markings, high traffic volumes, and improper maintenance all combined to render the crossing in question abnormally dangerous or extra-hazardous.
- N. The conditions surrounding this crossing were such that KCS Defendants were bound to know that they were unusual and that the roadway was thereby

rendered more dangerous by reason of the approach thereto than if the surrounding conditions had not existed; and it was their duty to have taken reasonable precautions commensurate with and required by the circumstances to protect persons approaching the crossing for the purpose of crossing thereon, that might not have been required under other conditions.

- O. At this crossing, KCS Defendants were aware, or should have been aware of: (a) high traffic volumes; (b) use by hazardous materials trucks; (c) high speed trains with limited sight distances; (d) high speed traffic with limited sight distances; and (e) a significant accident and incident history.
- P. Despite this knowledge, KCS Defendants failed to use ordinary care to give a warning reasonably sufficient to permit the motoring public, including this bus and the passengers, to use the crossing with reasonable safety.
- Q. The warning devices maintained by KCS Defendants at the crossing were not adequate to address the safety needs of the motoring public given the specific, individual hazardous conditions which were known, or should have been known, to KCS Defendants.
- R. KCS Defendants failed to install gates with flashing light signals, despite knowing, or having reason to know, that this particular crossing met the industry standards for the same as embodied in 23 CFR §646.214(b)(3) for many years before this collision, and as such, violated the KCS Defendants' duty to install gates with flashing lights at this crossing.
- S. KCS Defendants failed to cooperate with the local road authority to provide information to the local road authority necessary to lessen the risk to the

motoring public, despite knowing, or having reason to know, of the abnormally dangerous nature of this crossing.

- T. KCS Defendants elected to totally ignore their joint obligations concerning crossing safety by failing to evaluate the crossing and work with local road authorities to improve the safety of the crossing.
- U. KCS Defendants failed to adequately train their maintenance crews and train crews, regarding the dangers posed by inadequate sight distances, inadequate vegetation control and other dangerous conditions at their crossings, including the subject crossing.
- V. KCS Defendants refused to upgrade the safety of their crossings, including the subject crossing.
- W. KCS Defendants refused to evaluate their crossings, including the subject crossing, to determine safety issues that affect the motoring public.
- X. KCS Defendants instructed their agents and employees in such a manner to create a belief that the railroad has absolutely no duty to provide safe and adequate crossings for the motoring public.
- Y. KCS Defendants and others conspired to ignore their legal duties to provide safe and adequate grade crossings and/or safe and adequate warning devices at their grade crossing, including the subject crossing.
- Z. KCS Defendants failed to work jointly with local road authorities to provide adequate and safe crossings for the motoring public.
- AA. KCS Defendants failed to adopt an effective management plan, policy or program to supervise and monitor the safety practices of their train crews, maintenance crews and supervisors of those crews.

- BB. KCS Defendants failed to adopt an effective management plan, policy or program to ensure the installation of active safety devices at this crossing within a reasonable time after they knew, or should have known, that the crossing should have active safety devices.
- CC. KCS Defendants failed to adopt an effective management plan, policy or program to encourage their personnel to notify the company of dangerous conditions at their crossings, including the subject crossing.
- DD. KCS Defendants knew, or should have known, that their failure to train their maintenance and train crews, to properly educate and disseminate information regarding the dangers posed by inadequate sight distances and vegetation control at crossings, and to operate their train locomotive in a reasonable and prudent manner would result in unnecessary injury and loss of life.
- EE. KCS Defendants knew, or should have known, that their failure to supervise and monitor the safety practices of their train crews, maintenance crews, and supervisors of those crews, and further failing to implement policies and procedures which would better ensure the safety of the motoring public, would result in unnecessary serious injury and loss of life.
- FF. KCS Defendants' corporate management decisions established a corporate policy by which KCS Defendants failed to acknowledge their common law duties to recognize dangerous railroad crossings and to take actions to reduce or eliminate the dangers to motorists caused by trains passing through these dangerous crossings, including the subject crossing.

30. The train crew of said train, respectively, were agents, employees, and servants of KCS Defendants, and operated the train in the scope and course of their employment with KCS Defendants and for the sole purpose of the furtherance of the business interests of KCS Defendants, making KCS Defendants liable for their negligence.

31. KCS Defendants had the right to control and did, in fact, control the actions and conduct of the train crew on said train so as to make KCS Defendants liable for their negligence.

32. KCS Defendants had a general duty to operate the train in a safe, reasonable and proper manner, which includes, but is not limited to, a duty to keep a careful lookout, a duty to operate the train at a speed safe for then-existing local conditions, a duty to slow or decelerate for a known specific local hazard, and a duty to sound an adequate warning of the train's approach to crossings, including the subject crossing.

33. KCS Defendants were careless, negligent, reckless, and intentionally acted in the following willful and wanton respects in breach of their statutory and common law duties:

- A. KCS Defendants, individually and by and through the train crew, failed to exercise due care to decelerate or slacken the speed of the train in response to the specific individual hazards and dangerous conditions of the crossing which were known or should have been known to have existed at the time of the collision.
- B. KCS Defendants, individually and by and through the train crew, failed to remedy the specific individual hazardous and dangerous conditions, which were present at the crossing at the time of the collision, despite knowing, or having reason to know, of said conditions.

- C. KCS Defendants, individually and by and through the train crew, failed to slow, decelerate and/or brake in sufficient time to avoid the unwavering vehicle after the collision became imminent.
- D. KCS Defendants, individually and by and through the train crew, failed to request that the existing warning devices be upgraded to adequately warn motorists of the dangerous conditions at the crossing, to request the existing warnings devices be modified to specifically warn of the conditions, to request that the crossing be closed or redesigned to eliminate the conditions, to notify the company of the specific individual hazards and dangerous conditions; to request that company issue a slow order and/or speed restriction for train operation across the crossing until the conditions were remedied. KCS Defendants, individually and by and through the train crew, failed to cease or significantly slow train operation across the crossing until the conditions were remedied.
- F. KCS Defendants, individually and by and through the train crew, failed to approach the crossing with reasonable caution though it knew or had reason to know of prior collisions and incidents involving trains and automobiles at the crossing.
- G. KCS Defendants, individually and by and through the train crew, failed to keep a proper, careful, and vigilant lookout.
- H. KCS Defendants, individually and by and through the train crew, failed to ring a bell, sound a horn, sound a whistle, or otherwise sound a warning at a distance of at least 80 rods from said crossing and to keep same sounding until said train

had crossed said road and by also wholly failing to sound a whistle, horn, or other warning at the distance of at least 80 rods from said crossing and by failing to sound said whistle, horn, or bell at intervals until said train had crossed said road all as required by Mo. Rev. Stat. § 389.990, constituting negligence per se.

- I. KCS Defendants, individually and by and through the train crew, failed to sound a horn warning for the distance, sequence, and duration required by the railroad rules, railroad industry standard and/or applicable industry standard as set forth in applicable regulations.
- J. KCS Defendants, individually and by and through the train crew, failed to sound a warning to adequately warn the motorist of the train's approach in enough time for the motorist to take effective action to avoid the collision.
- K. KCS Defendants, individually and by and through the train crew, failed to notify, warn, and/or advise the workers, railroaders, dispatchers, or other agents, servants, and employees of the KCS Defendants of the specific individual hazards and dangerous conditions of the crossing.

34. As a direct and proximate result of the aforesaid negligence and intentional acts and/or omissions of KCS Defendants, Decedents were killed, and the class members on their behalf whom make this claim suffered and will continue to suffer by reason of said wrongful death, pecuniary losses, funeral expenses, losses related to the decedent's consortium, services, companionship, comfort, instruction, guidance, counsel, and support, entitling Plaintiffs to damages under R.S.Mo. § 537.090.

35. As a direct and proximate result of the aforesaid negligence and intentional acts and/or omissions of KCS Defendants, Plaintiff Eloisa Perez Flores was caused to suffer serious

and permanent bodily injuries, pain, suffering, mental anguish, loss of enjoyment of life, future pain and suffering, incurred substantial medical expenses and will in the future be required to expend such additional sums for medical treatment and is entitled to damages under the common law.

36. Additionally, as the conduct of KCS Defendants showed willful misconduct, wanton recklessness and/or a want of care indicative of complete indifference to consequences and showed complete indifference to or conscious disregard for the safety of others, Plaintiffs are entitled to aggravating circumstances damages.

WHEREFORE, Plaintiffs pray for judgment against KCS Defendants for an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), for aggravating circumstances and punitive damages in an amount sufficient to punish them and to deter others from similar conduct, together with interest and costs, and for such other and further relief as the Court deems just and proper.

## **COUNT II – WRONGFUL DEATH**

37. Plaintiffs adopt each and every allegation of the preceding paragraphs 1 through 36 of this Petition.

38. As a direct and proximate result of the aforesaid negligence and intentional acts and/or omissions of KCS Defendants, decedents Marisol Perez Flores, Luis Fernando Valle Perez, Maria Julieta Cura Santos, Cristian Adrian Rios Perez, Maria Tita Mendez Rueda, Griselda Rangel Velasquez, Emily Marleth Perez Rangel, Abrahana Sanchez Sanchez, and Maria de Lourdes Faz Velazquez, were killed, and the class members on their behalf whom make this claim suffered and will continue to suffer by reason of said wrongful death pecuniary losses, funeral expenses, and losses related to the decedent's consortium, services,



companionship, comfort, instruction, guidance, counsel, training and support, entitling said Plaintiffs to damages under R.S.Mo. § 537.090.

39. Additionally, as the conduct of KCS Defendants showed willful misconduct, wanton recklessness and/or a want of care indicative of indifference to consequences and showed complete indifference to or conscious disregard for the safety of others, Plaintiffs as said class members are entitled to aggravating circumstances damages.

WHEREFORE, Plaintiffs pray for judgment against KCS Defendants for an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), for aggravating circumstances and punitive damages in an amount sufficient to punish them and to deter others from similar conduct, together with interest and costs, and for such other and further relief as the Court deems just and proper.

### **COUNT III – ALTER EGO-LIABILITY**

40. Plaintiffs adopt each and every allegation of the preceding paragraphs 1 through 39 of this Petition.

41. KCS is a transportation holding company that owns and controls railroad investments in the U.S., Mexico, and Panama. Its primary U.S. holding is KCS. Its primary international holding is KCSM.

42. KCS exerts such dominion and control over KCSR and KCSM that KCSR and KCSM have no separate mind, will or existence of their own, and are but an alter-ego of their principal, KCS.

43. The control of KCSR by KCS is such that KCSR is merely a business conduit of KCS.

44. The control of KCSM by KCS is such that KCSM is merely a business conduit of KCS.

45. The arrangement between KCS, KCSR and KCSM is not being employed for a proper purpose, but rather, KCSR and/or KCSM are being used by KCS as a shield to avoid liability for the actions and omissions it has taken resulting in the damages to Plaintiffs alleged herein.

46. KCS controls KCSR and/or KCSM, not merely through majority or complete stock control (which it has), but also by completely dominating the finances of each and by dominating the policy and the business practices which led to the events giving rise to this lawsuit.

47. KCS is attempting to utilize a corporate veil in this case to commit a fraud or wrong, to perpetuate the violation of statutory or other positive legal duty, or dishonest or unjust act in contravention of the Plaintiffs' legal rights.

48. The control KCS exerts over KCSR and/or KCSM is tied to the breach of KCS', KCSR's and KCSM's duties to the Plaintiffs herein that proximately caused the injuries and deaths suffered.

49. KCS and KCSM have common directors and officers. Both companies' board of directors and/or officers were previously chaired by one individual: Michael R. Haverty, who was the Chairman and CEO of both companies, KCS and KCSM. Both companies are now run by Dave Starling, a close friend of Haverty and a spokesman for KCS since 2008. When asked about KCS' acquisition of *TFM* and another railroad, the Texas Mexican Railway Co. (which eventually became KCSM) in an April 2003 interview with The Kansas City Star, former CEO Haverty was quoted as saying, "The goal has always been that at some point, we would consolidate the three companies."

50. Further evidence that there is no distinction between KCSM and KCS is that the officers and directors of each company routinely serve across company lines. Evidence of this

can be found in an August 12, 2009, news release generated by KCS announcing that David R. Ebbrecht, former Vice President of Transportation of KCSR, would direct the operations of KCSR. This release also states that Mr. Ebbrecht accepted the position of Senior Vice President Operations of KCSM.

51. Evidence of this intermingling of executives can also be found in KCSM's Form 10-Q, for example the August 2009 filed 10-Q. First, KCSM chose to have this filing reviewed and a "Report of Independent Registered Public Accounting Firm" was prepared by KPMG, LLP, in Kansas City, Missouri. That report of KCSM was on July 30, 2009 by Michael W. Upchurch, who serves on the Board of Directors for KCSR and is the Executive Vice President and Chief Financial Officer of KCS, and Mary K. Stadler, who is a Senior Vice President and Chief Accounting Officer of KCS. Many other key financial documents of KCSM contained in that report were signed by Mr. Upchurch.

52. As of April 1, 2005 KCS became KCSM's controlling, and only, stockholder with full power to direct its business. Moreover, KCS and KCSM are managed and controlled by common officers, directors and executives.<sup>1</sup> Finally, KCS's own website describes KCSM as a "wholly-owned subsidiary of KCS".<sup>2</sup>

53. On December 30, 2005, KCSM and KCS entered into a Management Services Agreement under which KCS provides to KCSM general guidance, oversight, consultation services, and management expertise in connection with the business and operations of KCSM. The Management Services Agreement became effective as of April 1, 2005 and will continue in full force and effect until terminated by either party. During 2007 and 2008 KCS charged

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<sup>1</sup> <http://www.kcsouthern.com/en-us/about-us/boards-of-directors>.

<sup>2</sup> <http://www.kcsouthern.com/en-us/about-us/company-history>.

\$16.8 million and \$15.9 million, respectively, to KCSM under the agreement. In other words, KCS is completely controlling KCSM, indeed it is operating the railroad that it claims KCSM operates in an effort to avoid liability here under a written contract to provide management services for KCSM.

54. The officers of KCS have treated KCSM as their personal business without regard for the separate corporate form of that entity, and they have made all decisions regarding the day-to-day operations of KCSM and have totally dominated and controlled it to the extent that KCSM is the alter ego of KCS.

55. KCS finances KCSM.

56. KCSM has grossly inadequate capital.

57. KCS pays the salaries and other expenses or losses of KCSM.

58. KCSM has substantially no business except with KCS and/or no assets except those conveyed to it by KCS.

59. In the publicly filed documents of KCS and/or in the statements of its officers, KCSM is described as a department or division of KCS and KCSM's business and/or financial responsibility is referred to as KCS's own.

60. KCS uses the property of KCSM as its own.

61. The directors and executives of KCSM do not act independently in the interest of KCSM but take orders from KCS in its interest.

62. The formal legal requirements of the separate corporation are not observed.

63. In KCS' publicly available annual report for the year 2010, under the heading "One Network, One Team", KCS states:

*Since KCS acquired full ownership of KCSM in April 2005, management has striven to create one integrated network operated by one integrated team. In addition to*

*its strong rebound from the severe recession, KCS made a remarkable recovery from a devastating hurricane that made landfall in Mexico at the end of the second quarter. These achievements provide indisputable evidence that we have a coordinated, highly motivated and talented workforce, and a franchise second to no other North American railroad in terms of its current growth profile.*

*Since 2005, KCS has assembled a talented management team. A spirit of mutual respect, cooperation and commitment to KCS pervades our entire business. This team spirit is not divided in two at the border between the U.S. and Mexico; it is truly one network, one team. And, not only were the network and team responsible for record-setting profitability in 2010, they form the base from which KCS will grow in 2011 and beyond.*

64. The 2010 annual report further states, "KCS, as the holding company, supplies its various subsidiaries with managerial, legal, tax, financial and accounting services."

65. The day-to-day operations of KCSM are managed, controlled and operated by U.S.-based KCS or KCSR managers and employees. For instance, on information and belief, U.S.-based managers routinely work in KCSM's Sanchez rail yard across the U.S. Border. Said managers routinely have meetings in Monterrey, Mexico at which their attendance is required in furtherance of the Mexican operations. These very same managers are not accompanied by union locomotive engineers and conductors since their union contracts would not allow their work past the international bridge. Instead, the managers perform managerial work for and on behalf of KCSM in Mexico as supervisors of Mexican employees and operations. Additionally, even when not in Mexico, orders and instructions come from these managers in the U.S. and are called into Mexico by phone by the U.S.-based managers.

WHEREFORE, Plaintiffs request this Court to ignore any separate corporate existence of KCSR and KCSM from KCS, and instead, treat KCS, KCSR and KCSM as a single entity; that this should be done to prevent a fraud, wrong or injustice that will occur if the corporate veil is not pierced to impose liability on KCS for its own negligent actions and inactions, along with the negligent actions and inactions of KCSR and/or KCSM; that this Court find that the

corporate cloak was and is being used to justify wrong and perpetrate fraud because KCS is attempting to shield itself from tort liability in this case by claiming it had nothing to do with the actions and inactions of KCSR and/or KCSM; and for the reasons stated above find the corporate fiction must be disregarded and KCS liable for the damages suffered by Plaintiffs.

**REQUEST FOR TRIAL BY JURY**

Plaintiffs hereby request a trial by jury on all issues.

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/s/Eric D. Holland

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