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

DAVID CREWS, CLERK  
By D. Houston  
Deputy

**Helen Gable and Jerry Gable**

**Plaintiffs**

**VS.**

**CIVIL ACTION NO. CV09-130(P)(L)**

**Burlington Northern Santa Fe Railway  
Company, Brian Hauber, James Pitchford  
and John Does 1-5**

1:09cv272-M-D

**Defendants**

**COMPLAINT**

COMES NOW, Helen Gable and Jerry Gable, Plaintiffs, by and through their attorney of record, and files their Complaint against the Defendants Burlington Northern Santa Fe Railway Company, Brian Hauber, James Pitchford and John Does 1-5, and in support thereof would most respectfully show unto the Court the following, to-wit:

1. Plaintiffs Helen Gable and Jerry Gable are adult resident citizens of Lee County, Mississippi, whose address is 1605 Joyner, Tupelo, Mississippi 38804.

2. Defendant Burlington Northern Santa Fe Railway Company, hereinafter referred to as "Burlington," is a corporation organized and existing under the laws of the State of Mississippi and was duly authorized and empowered to carry on and conduct its business in the State of Mississippi on the date of the subject incident. Defendant may be served with process by serving its Registered Agent, CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, MS 39232.

3. Defendant Brian Hauber is an adult resident citizen of Lee County, Mississippi, whose address is 113 West Shore Drive, Slatillo, Mississippi 38866, and may be served with process at this address.

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4. Defendant, James Pitchford, whose address is unknown, was the conductor of the Burlington train at the time Helen Gable was injured in the incident complained of herein.

5. Defendant John Doe #1 is the unknown engineer on the Burlington train at the time Helen Gable was injured in the incident complained of herein. When the engineer's name and address are discovered, he will be named in place of John Doe #1.

6. John Does #2 through #5 are unknown fictitious persons or entities who may have caused or contributed to the negligence and injury and damages to the Plaintiffs. When and if said fictitious persons or entities are made known to Plaintiffs, their names will be substituted for John Does #2 through #5.

7. At all times herein mentioned, Defendant Burlington Northern Santa Fe Railway Company owned and operated a railroad in the City of Tupelo, Lee County, Mississippi. A portion of the tracks and right-of-way of the said railroad extends in a northwest and southeast direction over, on and across Lumpkin Street, which is a public drive extending in a north and south direction within said City of Tupelo.

8. On October 15, 2006, at approximately 2:30 p.m., Plaintiff Helen Gable, while taking pictures of her niece's daughter, was exercising due care, and standing on the railroad tracks near the hereinabove described crossing. As Plaintiff was standing, facing northwest on the defendant's tracks, Defendant's train was coming in a southeast direction at a high rate of speed which exceeded the maximum speed limit set by regulations of the Federal Railroad Administration under the Federal Railroad Safety Act for the Lumpkin Boulevard/Trace Avenue crossing and at least one half mile northwest of said crossing. Plaintiff immediately left the tracks and did everything possible to avoid an impact with defendant's train, however her foot caught in the rocks on the slope about 6' down the slope from the train tracks and a piece of metal "cable,

wire or banding” swinging off the side of said train hit the Plaintiff, cutting her right leg almost off. Plaintiff suffered serious, painful injuries as hereinafter stated.

9. Plaintiffs would further show unto this Honorable Court that Brian Hauber was the trainmaster on said train and James Pitchford was the conductor on said train and in the furtherance of their master's business so that all acts of negligence of the said Brian Hauber and James Pitchford were and are to be imputed to their employer, Burlington Northern Santa Fe Railway Company.

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

#### DUTY

A. The railroad company, “Burlington,” has a duty to inspect all cars on it’s trains to make sure no cables, banding or other wire or metal is attached to any of the railroad cars which could injure anyone who was near the tracks.

B. The railroad company, “Burlington,” has a duty to mark it’s tracks and any easement around the tracks as Private Property - No Trespassing.

C. The railroad company, “Burlington,” has a duty to prevent people accessing it’s tracks for purposes of pleasure, such as hiking, photography, etc.

D. The railroad company, "Burlington," has a duty to assure that speed limits for its trains do not exceed the maximum speed limits set by regulations of the Federal Railroad Administration for the areas in which they are traveling, and that said speed limits are enforced.

E. The railroad company, "Burlington," has a duty to inspect the railroad tracks in order to remove cables, banding or other wire or metal that might become attached to a railroad car and injure anyone who is near the tracks.

F. The conductor, James Pitchford, has a duty to stop the train to refrain from grossly negligently injuring anyone, even a trespasser, when the conductor sees the trespasser is in peril.

G. "Burlington" had a duty not to violate the speed limits set by the Federal Railroad Administration and said violation of the regulation is negligence per se.

#### BREACH OF DUTY

A. The Defendant, "Burlington," through its trainmaster Brian Hauber, failed to inspect all railroad cars on its train and to remove any cables, banding or other wire or metal that was attached to any of the railroad cars in order that Plaintiff or any member of the public would not be injured by swirling metal such as the swirling metal that injured Helen Gable.

B. The Defendant, "Burlington," failed to properly mark the train tracks as Private Property – No Trespassing.

C. The Defendant, "Burlington," regularly allows individuals to access its tracks by allowing a hiking trail in a national park, the Natchez Trace, to cross its tracks, and by allowing individuals to take pictures while on Defendant's train tracks, and by allowing other trespassers to access the railroad tracks. "Burlington" knew that many people were using its

property and that there was great danger in the people using said railroad tracks and right of way near it's high speed trains.

D. Defendant, "Burlington," through it's engineer, conductor and trainmaster, caused the train to go at a dangerously high rate of speed, in excess of the maximum speed set by the regulations of the Federal Railroad Administration, through the residential area of Tupelo where Helen was taking pictures on the railroad tracks, and the speed of the train was so fast that she only cleared the track so the train would not hit her, but did not have time enough to get completely off the railroad right of way so the swirling cable or metal would not hit her. "Burlington" violated the speed regulations of the Federal Railroad Administration and is negligent per se.

E. The Defendant, "Burlington," failed to inspect the railroad tracks and to remove cables, banding or other wire or metal that might have become attached to a railroad car and injure anyone who was near enough to the railroad tracks to be injured by a swirling cable, banding, wire or other metal such as that swirling metal that injured Helen Gable.

F. The conductor, James Pitchford, whose address is unknown to Plaintiffs, observed that Helen Gable was in a perilous position, but said conductor did not timely take appropriate action to stop the train so as to prevent a swirling wire, cable, banding or other metal attached to a railroad car from hitting Helen and causing her serious injury.

G. "Burlington" violated the speed limit set by the Federal Railroad Administration and this was negligence per se.

CAUSATION

A. Due to the Defendants' failure to inspect all railroad cars on it's train to make sure no cables, banding or other wire or metal were attached to any of the railroad cars, Helen Gable was injured by swirling metal hanging off of a railroad car or attached to it.

B. Due to "Burlington's" failure to properly mark the tracks and easement as Private Property - No Trespassing, Helen Gable was unaware she should not be in the vicinity of the tracks, thereby causing her to be injured by swirling metal hanging off of a railroad car or attached to it.

C. Due to "Burlington" allowing individuals to access it's tracks while hiking in the Natchez Trace National Park, generally walking on the tracks, and allowing pictures to be taken on it's train tracks on a regular basis, Helen Gable was unaware she should not be in the vicinity of the tracks, thereby causing her to be injured by swirling metal hanging off of a railroad car or attached to it.

D. Due to the excessive rate of speed, in excess of the limit set by the Federal Railroad Administration, at which the train was traveling, even though Helen Gable left the tracks shortly after seeing the train, she was unable to get far enough away from the tracks so as to avoid a swirling wire, cable, banding or other metal attached to a railroad car which hit Helen and caused her serious injury.

E. Due to "Burlington's" failure to inspect the railroad tracks in order to remove cables, banding or other wire or metal that might become attached to a railroad car and injure anyone who was near enough to the railroad tracks to be injured by a swirling cable,

banding, wire or other metal, Helen Gable was injured by swirling metal hanging off of a railroad car or attached to it.

F. Due to the conductor's failure to timely stop the train after he saw Helen Gable in a perilous situation, a swirling wire, cable, banding or other metal attached to a railroad car hit Helen and caused her serious injury.

#### DAMAGES

11. That as a direct and proximate result of the negligence of Defendants as aforesaid, Plaintiff, Helen Gable, sustained severe, and painful injuries including, but not limited to, injuries to her right leg, and that some of the Plaintiff's muscles, tendons, ligaments and tissues of the right leg were severed, the upper leg bone was cut in two and she required hospitalization for treatment of said injuries; that it was necessary for Plaintiff to be treated by a physician as a result of the injuries sustained in said incident; that Plaintiff had to endure six surgeries to repair the damage to her right leg; that Plaintiff had to be treated in a nursing home as a result of the injuries sustained in said incident; that Plaintiff had to endure months of physical therapy as a result of the injuries sustained in said incident; and Plaintiff has incurred substantial hospital, doctors, drug and other medical expenses. Plaintiff has suffered extreme physical pain, mental anguish, and discomfort, as well as loss of wage earning capacity. All as a result of the negligence of the Defendants. Plaintiff was free of injuries before the aforesaid incident, and free of any contributory negligence that proximately caused her injuries.

12. That as a direct and proximate result of the negligence of Defendants as aforesaid, Plaintiff Jerry Gable, husband of Helen Gable, sustained a loss of consortium with his wife. Plaintiff Helen Gable was unable to perform any of her usual duties and responsibilities around the house, she was unable to work to contribute to the family's income, and Plaintiff Jerry Gable,

was unable to perform his usual work in construction, as he was needed at home to take care of Helen. In addition, Plaintiff Jerry Gable suffered extreme mental anguish as a result of his wife's injuries, and suffered the loss of sexual pleasures with his wife.

WHEREFORE, Plaintiffs Helen Gable and Jerry Gable bring this suit and Helen demands judgment against all of the defendants jointly and severally in the amount of five million dollars (\$5,000,000.00) for her mental anguish, pain and suffering, including loss of enjoyment of life and loss of sexual relations, the sum of Three hundred twenty six thousand, six hundred twenty six dollars and 87 cents (\$326,626.87) for medical care, hospital and doctor bills, and the sum of not less than three hundred sixty one thousand seven hundred twenty five (\$361,725.00) for loss of wage earning capacity for a total sum of five million six hundred eighty eight thousand three hundred fifty one dollars and 87 cents (\$5,688,351.87).

Plaintiff Jerry Gable demands judgment against all of the defendants jointly and severally in the amount of seven hundred fifty thousand dollars (\$750,000.00) for his mental anguish and loss of consortium and sexual relations with his wife.

Plaintiffs demand all costs be paid by the Defendants.

This the 13<sup>th</sup> day of October, 2009.

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