

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NATIONAL RAILROAD)
PASSENGER CORP., and)
CSX TRANSPORTATION, INC.,)
)
Plaintiffs,)
)
v.)
)
GUY M. TURNER, INCORPORATED,)
a/k/a TURNER TRANSFER,)
)
Defendant.)

CASE NO. 4:15-cv-00068

COMPLAINT

THE PARTIES

1. Plaintiff National Railroad Passenger Corp. (“Amtrak”) is a corporation created by an Act of Congress, 45 U.S.C. § 501 et seq., now codified at 49 U.S.C. § 24101 et seq., and the United States government owns more than half of Amtrak’s capital stock. Amtrak has its principal place of business located in the District of Columbia and possesses legal capacity to sue.

2. Plaintiff CSX Transportation, Inc. (“CSXT”), is a corporation organized under the laws of the Commonwealth of Virginia with its principal place of business located in Jacksonville, Florida, and possesses legal capacity to sue.

3. Defendant Guy M. Turner, Incorporated, is a corporation organized under the laws of the State of North Carolina with its principal place of business located in Greensboro, North Carolina. Turner Transfer is a division of Guy M. Turner, Incorporated. Upon information and belief, “Turner Transfer” is a name under which Guy M. Turner, Incorporated,

conducts certain business activities or by which Guy M. Turner, Incorporated, is otherwise sometimes known. Guy M. Turner, Incorporated, is hereinafter referred to as “Turner Transfer.”

JURISDICTION AND VENUE

4. This Court has jurisdiction over the claims of plaintiff Amtrak in this matter pursuant to 28 U.S.C. §§ 1331 and 1349.

5. This Court has jurisdiction over the claims of plaintiff CSXT pursuant to 28 U.S.C. § 1332 due to the fact that there is complete diversity between the parties and the amount in controversy is greater than \$75,000.00.

6. This Court’s exercise of jurisdiction over the claims of plaintiff CSXT is also proper pursuant to 28 U.S.C. § 1367.

7. Venue is properly laid in the United States District Court for the Eastern District of North Carolina pursuant to 28 U.S.C. § 1391(b)(2) because it is a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

FACTUAL ALLEGATIONS

Introductory Statement

8. This case arises from the collision of an oversized and overweight tractor-trailer owned and operated by Turner Transfer and an Amtrak passenger train that occurred on March 9, 2015, in Halifax, North Carolina, on track owned by CSXT. The driver of the Turner Transfer vehicle knowingly blocked a railroad grade crossing in disregard of a sign expressly stating, “Do Not Stop on Tracks.” The Turner Transfer driver failed to notify CSXT or Amtrak that the vehicle was blocking the crossing. As a result of the collision, the locomotive and baggage car of the Amtrak train derailed.

Background Information

9. Plaintiff CSXT owns railroad tracks in the State of North Carolina, including the track on which the accident described herein occurred.

10. Amtrak provides intercity passenger rail service by utilizing track owned by other railroads, including CSXT.

11. Turner Transfer owns and operates a fleet of tractors and trailers.

12. Turner Transfer advertizes and represents to the public that it specializes in carrying “over dimensional” and overweight machinery and equipment.

The Turner Transfer Vehicle

13. On March 9, 2015, a vehicle owned and operated by and registered to Turner Transfer (“Turner Transfer vehicle”) was hauling industrial electrical systems and equipment from Clayton, North Carolina, to New Jersey. The task involved use of a 2015 Peterbilt tractor-trailer (with three trailers) totaling a length of 164 feet.

14. At all times relevant to this complaint, the Turner Transfer vehicle was being operated by John Devin Black, an employee of Turner Transfer: 1) within the course and scope of his employment; 2) with Turner Transfer’s authority, consent, and knowledge, and 3) for Turner Transfer’s benefit and under its direction and control.

15. Turner Transfer is liable for the conduct of Mr. Black that is at issue in this case pursuant to N.C. Gen. Stat. § 20-71.1.

16. The acts and omissions of Mr. Black at issue in this case are also imputed to Turner Transfer through the doctrine of respondeat superior.

17. While in the process of transporting its load on March 9, 2015, the Turner Transfer vehicle was escorted by two civilian vehicles and a North Carolina Highway Patrol oversize load escort.

18. Upon information and belief, the two civilian vehicles escorting the Turner Transfer vehicle were being driven and operated by employees or agents of Turner Transfer and at the direction and under the control of Turner Transfer, which exercised the right to control both the means and the details of the process by which its agents were to accomplish their task. Specifically, upon information and belief, the driver of the lead escort vehicle was John Gatt, and the driver of the rear escort vehicle was Kevin Colvard.

19. The acts and omissions of Mr. Gatt and Mr. Colvard at issue in this case are imputed to Turner Transfer through the doctrine of respondeat superior.

20. Additionally, the activity for which Turner Transfer employed Mr. Gatt and Mr. Colvard was inherently dangerous in that it involved recognizable and substantial dangers to others. Turner Transfer thus had a nondelegable duty to provide for the safety of others. Turner Transfer knew or should have known that its activities were inherently dangerous, but nevertheless failed to take reasonable precautions to avoid injury or ensure that such precautions were taken.

21. On March 9, 2015, the Turner Transfer vehicle was traveling in an easterly direction on N.C. Highway 903/125, when it proceeded onto a public railroad crossing (Crossing No. 629659J) (“the crossing”) located in Halifax, Halifax County, North Carolina.

22. At the time the Turner Transfer vehicle arrived at the crossing, it was daylight and weather conditions were clear.

23. On its approach to the crossing, the Turner Transfer vehicle passed an advance warning disc, pavement warnings indicating the presence of the railroad crossing, a cross-buck sign, and a sign reading “Do Not Stop on Tracks.”

24. Additionally, the crossing is equipped with active warning devices including three signal masts and a cantilever with flashing lights, two gates, and bells, which were all in good working condition on the date in question.

25. The Turner Transfer vehicle stopped on the crossing, and remained on the crossing for an extended period of time while it made multiple failed attempts to complete a left turn onto US 301 North Bypass.

26. The driver of the Turner Transfer vehicle as well as the drivers of its escort vehicles knew or should have known that the Turner Transfer vehicle was unlawfully blocking a railroad crossing.

27. At no time did Messrs. Black, Gatt or Colvard, or anyone else on their behalf, notify CSXT or Amtrak that the Turner Transfer vehicle was blocking the crossing.

The Resulting Collision

28. At approximately 12:19 p.m., Amtrak train 80 was traveling north through a curve as it approached the public railroad crossing blocked by the Turner Transfer vehicle.

29. The Amtrak train consisted of a lead locomotive and seven cars and was carrying 213 passengers and an eight person crew.

30. The engineer operating the Amtrak train applied the train’s emergency brakes in advance of the collision.

31. Despite the efforts of the Amtrak engineer, the train collided with the Turner Transfer vehicle on the crossing.

32. As a result of the collision, the locomotive and baggage car of the Amtrak train derailed.

33. Prior to the collision, the lights, bells, and gates at the crossing activated and provided warning of the train's approach.

34. In addition, the Amtrak train provided timely and adequate warning of its approach by the sounding of its bell and its horn.

35. Neither CSXT nor Amtrak received prior notice that the Turner Transfer vehicle was blocking the crossing.

36. At all times and in all respects relevant to this action, both Amtrak and CSXT acted reasonably and prudently.

COUNT I: NEGLIGENCE/GROSS NEGLIGENCE

37. The allegations of paragraphs 1 through 36 are re-alleged and incorporated herein by reference.

38. When it entered upon the crossing on March 9, 2015, Turner Transfer owed a duty of reasonable care to CSXT, Amtrak, and the passengers and crew aboard the Amtrak train.

39. Turner Transfer breached its duty of care to CSXT, Amtrak, and the passengers and crew aboard the Amtrak train.

40. Turner Transfer's driver was negligent, grossly negligent, reckless, and/or willful and wanton in one or more of the following ways:

- a. he failed to maintain a proper lookout for his own safety and the safety of others;
- b. he entered upon a railroad grade crossing despite not having sufficient space on the other side of the crossing to accommodate the vehicle he was

operating without obstructing the passage of other vehicles, pedestrians, and/or railroad trains in violation of N.C. Gen. Stat. § 20-142.5;

- c. he drove recklessly, carelessly, and heedlessly in willful or wanton disregard of the rights or safety of others and without due care and circumspection thereby endangering people and property in violation of N.C. Gen. Stat. § 20-140;
- d. he willfully and unlawfully impeded or prevented movement of railroad trains and impaired the operation of railroad equipment in violation of N.C. Gen. Stat. § 14-279.1;
- e. he willfully and unlawfully put or placed the Turner Transfer vehicle over a railroad track and caused damage to rails and railroad track in violation of N.C. Gen. Stat. § 14-278;
- f. he stopped on the railroad tracks in disregard of the sign warning: “Do Not Stop on Tracks;”
- g. he failed to warn CSXT or Amtrak that his vehicle was on the crossing;
- h. he failed to have someone else warn CSXT or Amtrak that his vehicle was on the crossing;
- i. he failed to adequately investigate the route for his trip;
- j. he failed to observe open and obvious conditions;
- k. he failed to keep his vehicle under proper control;
- l. he changed gears while on the track in violation of the standards set forth in the Commercial Driver License Manual and N.C. Gen. Stat. § 20-142.3.

- m. he failed to approach the crossing with the expectation that a train was coming in violation of the standards set forth in the Commercial Driver License Manual;
- n. he failed to see that his movement could not be made in safety;
- o. he backed up a tractor-trailer on a highway;
- p. he operated his vehicle carelessly, heedlessly, recklessly, willfully, and wantonly, in disregard of his own safety and the safety of others, without due caution and circumspection and in a manner so as to endanger persons and property;
- q. he failed to notify CSXT or Amtrak of his intent to cross the track with an oversize/overweight vehicle;
- r. he failed to yield the right-of-way to the train;
- s. he was trespassing on a railroad right-of-way in violation of N.C. Gen. Stat. § 14-280.1;
- t. he failed to remove himself from the path of an approaching train even though it was plainly visible, sounding its horn, and otherwise giving timely and adequate warning of its approach;
- u. he carelessly and heedlessly failed to obey a train horn, bell, and headlight;
- v. he carelessly and heedlessly failed to obey the flashing lights, bells, and gates that were functioning and giving warning of the train's approach;
and

w. he was negligent, grossly negligent, reckless, and/or willful or wanton in other respects to be shown at the trial of this action.

41. The above acts and omissions of Mr. Black are imputed by law to Turner Transfer.

42. Additionally, the drivers of the Turner Transfer escort vehicles were negligent, grossly negligent, reckless, and/or willful or wanton with respect to the vehicle they were escorting in one or more of the following ways:

- a. they failed to see that a movement could not be made in safety;
- b. they failed to observe open and obvious conditions;
- c. they failed to adequately investigate the route for their trip;
- d. they failed to notify CSXT or Amtrak of their intent to cross the track with an oversize/overweight vehicle;
- e. they failed to warn CSXT or Amtrak that the vehicle they were escorting was stopped on the crossing in violation of the standard set forth in the North Carolina Department of Transportation's Certified Escort Vehicle Operator Handbook; and/or
- f. they were negligent, grossly negligent, reckless, and/or willful or wanton in other respects to be shown at the trial of this action.

43. The above acts and omissions of the escort drivers are imputed by law to Turner Transfer.

44. Upon information and belief, Turner Transfer failed to adequately inspect the intended route of its vehicle and failed to properly prepare for any potential complications prior to the incident. Specifically, Turner Transfer failed to remove or make other proper

arrangements as to all obstructing traffic signals, signs, and utility poles from the vehicle's route, in violation of 19A NCAC 02D .0607(h)(9).

45. Upon information and belief, Turner Transfer failed to notify CSXT or Amtrak of its intent to cross the track with an oversize/overweight vehicle.

46. As a direct and proximate result of the acts and omissions of Turner Transfer, its employees and agents, Amtrak's rolling stock sustained significant damage. As a direct and proximate result of the acts and omissions of Turner Transfer, its employees and agents, Amtrak also incurred labor costs, suffered delays and disruption to its service, and has been or will be subjected to other economic and financial losses due to the collision, including but not limited to the costs of making alternative travel arrangements for its passengers and crew, medical and related expenses for its passengers and crew, the costs of responding to the collision, and damages resulting from the loss of use of its equipment.

47. As a direct and proximate result of the acts and omissions of Turner Transfer, its employees and agents, CSXT's railroad track and signal equipment sustained significant damage. As a direct and proximate result of the acts and omissions of Turner Transfer, its employees and agents, CSXT also incurred labor costs, suffered delays and disruptions to its service, and has been or will be subjected to other economic and financial losses due to the collision, including but not necessarily limited to the costs of responding to the collision and damages resulting from the loss of use of its equipment.

48. The aforementioned damages to Amtrak exceed \$75,000.

49. The aforementioned damages to CSXT exceed \$75,000.

**COUNT II: NEGLIGENT/GROSSLY NEGLIGENT
HIRING, SUPERVISION, AND ENTRUSTMENT**

50. The allegations of paragraphs 1 through 49 are re-alleged and incorporated herein by reference.

51. Turner Transfer was negligent, grossly negligent, reckless, and/or willful and wanton in its hiring, retaining, and supervising of Mr. Black and in entrusting its vehicle to him.

52. Upon information and belief, Mr. Black has a history of numerous safety violations, including violations for speeding, for operating overweight vehicles and driving with a revoked license.

53. Mr. Black's record manifests a pattern and practice of disregarding safety laws.

54. Both the position in which Turner Transfer employed Mr. Black and the task he was assigned on March 9, 2015, required careful adherence to traffic laws and other appropriate safety standards.

55. The type of work engaged in by Turner Transfer requires it to carefully investigate the background and driving record of each driver.

56. A reasonable investigation of Mr. Black's driving record would have revealed a history of safety violations.

57. Turner Transfer knew or should have known of Mr. Black's record of safety violations.

58. Mr. Black was incompetent for the position he held at Turner Transfer, and was incompetent to operate the Turner Transfer vehicle, an ultra-hazardous vehicle due to its dimensions and weight.

59. Turner Transfer either knew or, through the use of ordinary and reasonable care in oversight and supervision, should have known of Mr. Black's incompetency and unfitness.

60. As a direct and proximate result of Mr. Black's incompetency and unfitness, Amtrak and CSXT sustained damages.

61. Turner Transfer also failed to adequately train and supervise Mr. Black to ensure that he complied with traffic laws and respected the safety of others.

62. Accordingly, Turner Transfer was negligent, grossly negligent, reckless, and/or willful and wanton in its hiring, retaining, and supervising of Mr. Black. Additionally, Turner Transfer was negligent, grossly negligent, reckless, and/or willful and wanton in entrusting its vehicle to Mr. Black.

63. As a direct and proximate result of the acts and omissions of Turner Transfer, Amtrak and CSXT sustained damages as described above.

COUNT III: PUNITIVE DAMAGES

64. The allegations of paragraphs 1 through 63 are re-alleged and incorporated herein by reference.

65. Upon information and belief, in addition to the actions and omissions described above, Turner Transfer directed Mr. Black to proceed on a route which its management knew or should have known presented obstacles for which Turner Transfer did not take appropriate precautions.

66. Moreover, Turner Transfer did not notify Amtrak or CSXT that it intended to send an oversized vehicle along a route that would take the vehicle over the crossing, followed immediately by a difficult and sharp left turn.

67. A permit issued to Turner Transfer by the North Carolina Department of Transportation set forth the route Mr. Black was to take on the date of the accident. The permit expressly mandated that: "Issuance of a permit by the NCDOT does not imply nor guarantee the

clearance width or height along permitted route of travel. It is the responsibility of permit holder to check route prior to travel thereon.”

68. Turner Transfer had the duty to properly inspect the route prior to sending its vehicle along that route.

69. Turner Transfer recklessly failed to properly inspect its route and recklessly neglected to insure that there was adequate clearance for its vehicle.

70. Turner Transfer’s management nevertheless willfully and wantonly sent Mr. Black on the designated route without having taken appropriate precautions, thereby knowingly or recklessly placing people and property in danger.

71. Accordingly, for the above reasons and other reasons to be shown at trial of this matter, Turner Transfer’s officers, directors, or managers authorized, participated in and/or condoned the grossly negligent and willful and wanton conduct at issue, and Amtrak and CSXT are each entitled to an award of punitive damages pursuant to N.C. Gen. Stat. § 1D-1 et seq.

COUNT IV: INDEMNITY AND ALTERNATIVELY CONTRIBUTION

72. The allegations of paragraphs 1 through 71 are re-alleged and incorporated herein by reference.

73. As a result of the March 9, 2015 collision, CSXT and Amtrak have been and/or will be named as defendants in actions seeking damages for personal injuries to Amtrak passengers, Amtrak crew members and others (“personal injury claimants”). If CSXT and/or Amtrak were negligent in any manner, which is denied, then their negligence was at most passive and inactive and the negligence of Turner Transfer, its employees and agents, as alleged in paragraphs 1 through 71 above was active and primary and a proximate cause of all alleged damages suffered by all personal injury claimants.

74. CSXT and Amtrak have been and/or will be required to defend themselves in actions brought by personal injury claimants as a result of the negligent conduct of Turner Transfer, its employees and agents, in which CSXT and Amtrak did not join, and CSXT and Amtrak are therefore entitled to complete indemnity from Turner Transfer.

75. In the alternative, should it be determined that CSXT and/or Amtrak were negligent, which is again denied, then the negligence of Turner Transfer, its employees and agents concurred with the denied negligence of CSXT and/or Amtrak as a proximate cause of the injuries and damages of personal injury claimants, and CSXT and Amtrak are entitled to contribution from Turner Transfer pursuant to N.C. Gen. Stat. § 1B-1 et seq.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs National Railroad Passenger Corp. (“Amtrak”) and CSX Transportation, Inc., respectfully pray the Court as follows:

1. That they have a trial by jury on all issues so triable;
2. That they each have and recover from defendant compensatory damages in excess of \$75,000.00, plus interest as provided by law;
3. That they each have and recover an appropriate amount of punitive damages;
4. That they each have indemnity or alternatively contribution from defendant for any personal injury judgments against them as a result of the March 9, 2015 collision;
5. That costs of the action be taxed to defendant; and
6. That plaintiffs be granted such other and further relief as the Court may deem just and proper.

This the 1st day of May, 2015.

Respectfully submitted,

/s/ John C. Millberg

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