

CAUSE NO. 25-02-25598-CVR

MARIA ARAUJO, Individually and as the  
Widow and Representative of the Estate of  
PHILLIP ARAUJO, and as Next Friend of  
A.A., Minor, A.A., Minor, and F.A., Minor  
And ADALBERTO ARAUJO, JR.  
Individually and DAHELIA ARAUJO,  
Individually and as the Natural Parents of  
PHILLIP ARAUJO, Deceased,

and

TAMRA BURT, Individually and as the  
Widow and Representative of the Estate of  
CLAY ELDEN BURT, and ALLISON  
BEARD, Individually, AUSTIN BURT,  
Individually and ETHAN BURT,  
Individually, and KAREN BURT,  
Individually and as the Natural Parent of  
CLAY ELDEN BURT, Deceased

*Plaintiffs,*

and

UNION PACIFIC RAILROAD COMPANY,  
*Intervenor-Plaintiff,*

v.

BOSS HEAVY HAUL, LLC; JASON  
WAYNE MELIUS; BENNETT ON-SITE  
SERVICES, LLC; COWBOY SERVICES,  
INC.; OPTIMIZED PROCESS DESIGNS  
LLC; BENNETT INTERNATIONAL  
GROUP, LLC and BENNETT MOTOR  
EXPRESS, LLC

*Defendants.*

IN THE DISTRICT COURT OF  
REEVES COUNTY, TEXAS  
143rd JUDICIAL DISTRICT

<b>BOSS HEAVY HAUL, LLC,</b>	§
<b><i>Counterclaim-Plaintiff,</i></b>	§
	§
<b>v.</b>	§
	§
<b>UNION PACIFIC RAILROAD COMPANY,</b>	§
<b><i>Counterclaim-Defendant.</i></b>	§
	§

**DEFENDANT BOSS HEAVY HAUL, LLC’S COUNTERCLAIMS**

Counterclaim-Plaintiff Boss Heavy Haul, LLC (“BOSS”), for itself and as assignee of Optimized Process Designs, LLC (“Optimized”), files these Counterclaims against Intervenor-Plaintiff/Counterclaim-Defendant Union Pacific Railroad Company (“Union Pacific”) and alleges as follows:

**I. INTRODUCTION**

1. Union Pacific is responsible for the disastrous December 2024 train crash at the Cedar Street grade crossing in downtown Pecos (the “Crossing”) that underlies this action. Among other wrongful conduct, Union Pacific recklessly maintained the Crossing as a dangerous “humped crossing” with steep inclines, while knowing that the Crossing daily experiences heavy industrial traffic and was the site of a 2019 crash between a Union Pacific train and a truck-trailer. And in the moments leading up to the December 2024 crash, the Union Pacific train crew inexplicably failed to take any measures to stop or slow the train until it was only one-quarter of a mile away from the Crossing, even though the crew had a clear view from over a mile away of a specific and individualized hazard: BOSS’s oversized load that was over 15 feet in height and flanked by a police escort and two pilot cars with flashing emergency lights.

2. While Union Pacific’s negligence in this case was particular to the site of and events leading up to the crash, this case is sadly only one example of Union Pacific’s extensive, ongoing pattern of malfeasance. Within the last half-year alone, and just within Texas, a Union Pacific train

transporting highly flammable ethanol derailed in Waxahachie<sup>1</sup>; a Union Pacific train transporting flammable liquefied petroleum gas derailed in downtown Longview<sup>2</sup>; a Union Pacific train struck and killed one of its own employees at a railroad crossing in Nacogdoches;<sup>3</sup> a Union Pacific train transporting hazardous materials including hydrochloric acid and propane derailed near Gordon<sup>4</sup>; a Union Pacific train derailed near Prairie View<sup>5</sup>; a Union Pacific train crashed into an 18-wheeler that had gotten stuck on its tracks in Schertz<sup>6</sup>; and another Union Pacific train crashed into a City of Bryan work truck in Bryan.<sup>7</sup> Thus, while BOSS brings its claims specifically to recover its damages from the Pecos crash (the “Collision”), this case also has broader implications as an opportunity to hold Union Pacific accountable for serially wreaking havoc on lives and property throughout the State of Texas.

3. On December 18, 2024, shortly before 5:00pm, a BOSS-owned truck-trailer combination was transporting an oversized industrial load<sup>8</sup> (collectively, the “Truck”) through Pecos, toward the Truck’s destination in Mentone, Texas. At the time, BOSS was operating lawfully under, and travelling along a route mandated by, a valid permit from the Texas Department of Motor Vehicles. Although applicable regulations and practice did not require it to do so, BOSS had taken the extra precaution of hiring a uniformed police escort with flashing emergency lights to accompany the Truck throughout its entire cross-state journey, along with the

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<sup>1</sup> <https://www.cbsnews.com/texas/news/waxahachie-train-derailment-ethanol-cleanup-2025/>.

<sup>2</sup> <https://news-journal.com/2025/07/17/train-derails-in-downtown-longview-blocking-off-city-streets/>.

<sup>3</sup> <https://www.ketk.com/news/local-news/union-pacific-railroad-worker-killed-by-train-in-nacogdoches-officials-say/>.

<sup>4</sup> <https://nypost.com/2025/08/12/us-news/35-union-pacific-train-cars-derail-in-horrific-scene-in-small-texas-town/>.

<sup>5</sup> <https://abc13.com/post/waller-county-train-derailment-least-20-boxcars-overturned-business-290/18046901/>.

<sup>6</sup> <https://foxsanantonio.com/features/where-the-locals-go/train-collision-with-18-wheeler-raises-safety-concerns-in-schertz>.

<sup>7</sup> <https://www.wsaw.com/2025/11/08/video-shows-city-worker-jumping-out-vehicle-after-train-collision/>.

<sup>8</sup> This oversized industrial load (the “Cargo”) was owned by third-party Optimized. Pursuant to a valid, binding, and express contract of assignment, Optimized assigned to BOSS any and all of its claims for damages to the Cargo that were caused by the Collision.

requisite front and rear pilot cars.

4. Upon reaching the Crossing, the police escort and the front pilot driver crossed before the Truck and waited on the other side, and neither of them—nor the rear pilot car driver—saw, heard, or otherwise received any indication of an approaching train. There were no signals warning of an approaching train. The police escort and pilot car drivers thus had no reason to (and did not) prevent the Truck driver—who likewise received no warning or indication of an approaching train—from traversing the Crossing. The Truck driver had to proceed deliberately to cross the tracks safely, because Union Pacific recklessly maintained the Crossing as a humped crossing despite knowing that thousands of trucks traverse the Crossing daily and that there was a prior 2019 accident at the Crossing between a Union Pacific train and a truck-trailer (among at least six other Union Pacific accidents in Pecos since 2018 alone).

5. Meanwhile, as the Truck carefully entered the Crossing, a Union Pacific train approximately one-and-a-half miles away was barreling toward the Crossing at nearly its maximum speed of 70 miles per hour. Yet despite clear weather, excellent visibility, and over a mile of straight track in front of the train—and even though an individual of average height standing on the same track can see a normal-sized car at the Crossing from a mile away—the Union Pacific train crew waited until the train was one-quarter of a mile from the Crossing (15 seconds before impact) to throttle down and one-fifth of a mile from the Crossing (11 seconds before impact) to engage the emergency brake, the only brake that was ever engaged. The train's speed barely decreased to 64 miles per hour at the time of impact—such a high speed that the front locomotive lifted off the tracks as it pulverized the Truck and ejected the conductor.

6. The Union Pacific train crew thus negligently failed to stop or slow down when faced with an obvious, specific, and individualized hazard: an oversized industrial load over 15



feet in height and flanked by three vehicular escorts with flashing emergency lights. In addition to violating its common-law duties of care, the crew also violated the first two rules of Union Pacific's General Code of Operating Rules: "In case of doubt or uncertainty, take the safe course" (Rule 1.1.1) and "Employees must be careful to prevent injuring themselves or others." (Rule 1.1.2). The crew certainly had sufficient opportunity to at least slow down significantly, which would have avoided most (and the most tragic) of the ensuing damage; in the 2019 crash at the Crossing, the train had slowed down to 20 miles per hour before colliding with the truck-trailer and none of the train crew were killed or even injured.

7. Union Pacific therefore caused the December 2024 crash both through its reckless maintenance of the Crossing and its grossly negligent operation of the train in the moments leading up to the crash—among other instances of its negligent and wrongful conduct. BOSS brings these counterclaims to hold Union Pacific accountable for the damages it caused BOSS, as well as to expose and correct the egregious disregard for public safety that Union Pacific has exhibited in its operations at the Crossing and other crossings and railroads throughout Texas.

## **II. PARTIES**

8. Plaintiff Boss Heavy Haul, LLC is a Georgia limited liability company, with its principal places of business at 1001 Industrial Parkway, McDonough, Georgia 30253.

9. Defendant Union Pacific Railroad Company is a Delaware corporation, with its principal place of business in Omaha, Nebraska.

## **III. JURISDICTION AND VENUE**

10. The Court has personal jurisdiction over Defendant Union Pacific because it availed itself of the benefits and protections of the laws of the State of Texas by, among other things, conducting substantial business in, and maintaining continuous and systematic contacts with, Texas. The Court also has personal jurisdiction over Union Pacific because it committed the torts

and other unlawful misconduct described herein in Texas. The Court also has personal jurisdiction over Union Pacific because it has explicitly consented to personal jurisdiction by, among other things, filing its pleadings in this action.

11. BOSS's damages, which exceed \$1,000,000, satisfy the amount-in-controversy requirements of the Court.

12. Venue is proper under Texas Civil Practice & Remedies Code §15.002(a)(1), because all or a substantial part of the events or omissions giving rise to these Counterclaims occurred in Reeves County, Texas. Venue is also proper pursuant to Texas Civil Practice and Remedies Code §15.062 because these Counterclaims are properly joined to the existing action in this Court.

#### **IV. FACTS**

##### **a. Union Pacific's Failure to Maintain the Crossing**

13. The Crossing is a public railroad grade crossing intersecting U.S. Route 285, a major transportation corridor. The Crossing lies along a Union Pacific mainline track that accommodates approximately 18 trains per day, with allowable speeds up to 70 miles per hour ever since the maximum was increased in 2016 from 45 miles per hour. Vehicular traffic at the Crossing is substantial, with approximately 15,000 vehicles traversing every day. A significant portion of this traffic—nearly one-third—consists of heavy trucks and oilfield equipment haulers.

14. The Crossing has an excessively steep incline grade such that it constitutes a dangerous "humped crossing" that is particularly difficult for large industrial haulers to traverse. The approach to the Crossing has ruts and depressions in the pavement, resulting in severely low ground clearance—likewise particularly hazardous for tractor-trailers.

15. Although the Crossing is equipped with standard warning devices such as lights and crossing arms, these devices are triggered only by the approach of a train and do not account for traffic obstructions. Given the high allowable train speeds, humped crossing, and substantial industrial vehicular traffic at the Crossing, the crossing arms also engage too late—only 25 seconds before an incoming train is predicted to occupy the Crossing. And when the crossing arms fail to close completely due to an obstruction, that fact is not communicated to the train crew or dispatcher. Union Pacific also failed to equip the Crossing with available technologies that utilize radar or lidar to detect obstructions at grade crossings or other obstruction-detecting technologies such as inductive loops or RailSentry.<sup>9</sup>

16. Prior to the Collision, the Crossing also lacked any signage warning of low ground clearance hazards, despite the frequency of heavy loads traversing the Crossing and the obvious gouge marks from vehicles striking the incline due to its excessively steep grade. The markings in the following photographs provide compelling visual evidence of the repeated difficulty faced by low-clearance vehicles attempting to traverse the Crossing and demonstrate Union Pacific's long-standing reckless disregard for the hazardous conditions.

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<sup>9</sup> RailSentry provides more security against collisions between trains and vehicles by integrating with PTC to notify train engineers of track obstructions. RailSentry has been available since October 2023 and takes only 60 days to deploy. RailSentry monitors over 400 trains daily and there have been zero collisions in its deployment areas.







17. Union Pacific has recklessly maintained the Crossing as a humped crossing and allowed the Crossing to deteriorate badly, despite Union Pacific's longstanding awareness and recognition of both the defective crossing conditions in Pecos and its own responsibility to repair



those conditions. For example, in a 2020 deposition in a case stemming from a 2018 crash in Pecos, Union Pacific's Senior Supervisor for Public Safety, Buck Russel, testified that he and his colleagues were instructed by "higher ups at Union Pacific" to provide asphalt work at crossings in Reeves County because of "vehicles becoming high centered on the crossings, potential collisions, injuries to our crews, [and] the motoring public." Russel further explained that Union Pacific paid for the work in part because Reeves County "didn't have a lot of financial resources, so to ask them to do it wasn't going to happen."

18. And before the Collision, Union Pacific was aware that the Crossing specifically required significant upgrading—indeed, a complete rehaul. Since at least last year, Union Pacific has been planning to replace the Crossing in 2025, and prior to the Collision, it had already placed construction materials and working equipment at and around the Crossing for that purpose. Those materials, including a rock pile, were left on-site at the Crossing during the Collision and may have made the Truck seem smaller to the crew and thereby reduced their sense of urgency to stop or slow down once they detected it:



Union Pacific removed its construction materials from the Crossing the day after the Collision, but it was too little too late. And though prior to the Collision, Union Pacific was aware of the need to repair the Crossing and had made plans to do so—including by storing construction materials adjacent to the Crossing that might obstruct the sightlines of its train crews—Union Pacific did not reduce the maximum speed of its trains or take any other steps to mitigate the danger of those specific defective conditions pending the repair.

19. Union Pacific’s longstanding knowledge of the defective local crossing conditions was and is based at least in part on the plethora of crossing accidents in Pecos involving Union Pacific; since 2018, Union Pacific has reported at least seven such incidents in Pecos to the U.S. Department of Transportation including a 2019 incident at the Crossing when a Union Pacific train crashed into a truck-trailer.<sup>10</sup> All of these accidents occurred after Union Pacific, in 2016, increased the local speed limit on the track from 45 mph to 70 mph so that it could move shipments faster and make more money without regard for the safety of those crossing the tracks, its crew, or local bystanders.

20. Despite this history, prior to the Collision, Union Pacific—in violation of its own rules and standards—had provided no emergency-response training anywhere in the vicinity of Pecos, Reeves County, or the adjacent areas. While Union Pacific claims, among other things, that “Providing no-cost training to public-responders is Union Pacific’s most substantial preparedness effort” and that it “catalogued every fire department that may respond to an incident along the Union Pacific network, [and] each year [Union Pacific] team members offer training or information to assist fire departments in their preparation for a potential incident,” the closest training Union Pacific provided to Pecos was 96 miles away and Union Pacific failed to invite the

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<sup>10</sup> Department of Transportation Federal Railroad Administration Highway-Rail Crossing Accident/Incident Report Nos. 0118ST005, 0418FW039, 0819TO031, 0719TO028, 1019TO013, 0922TO027, and 0923TO047.

local responders from Pecos. Prior to the Collision, Union Pacific also maintained no liaison with Pecos, and even after the Collision, it took Union Pacific until September 2025 to coordinate emergency response training, despite specific requests from the city of Pecos in early 2025. Union Pacific's failure to live up to its own standards and provide preparedness training to Pecos emergency responders is especially negligent given Union Pacific's longstanding knowledge of the defective local crossing conditions and the history of Union Pacific accidents in Pecos.

21. In sum, these characteristics—a humped crossing, high-speed rail traffic, heavy truck use, defective road grade conditions, the absence of low-clearance warnings, and a lack of local preparedness training for emergency responders—separately and even more so together, made the Crossing particularly hazardous.

**b. BOSS Carefully Transports a Large Load in the Lead-up to the Collision**

22. On the date of the Collision, the Truck was transporting a demethanizer tower from Houston, Texas, to a gas processing facility in Mentone, Texas. Recognizing the complexity and potential hazards of moving such a large load, BOSS assigned two professional pilot drivers to accompany the Truck and retained a police motorcycle escort as an extra safety precaution to accompany the Truck throughout its entire route.

23. At the time of the Collision, the Truck was traveling northbound on U.S. Route 285. As the Truck began traversing the Crossing, there was no indication whatsoever that a Union Pacific train was approaching, as no horns were audible and no warning devices had engaged to warn of the impending danger. Indeed, BOSS later learned that at the time the Truck entered the Crossing, the Union Pacific train was on a portion of the track that was not visible and approximately 1.38 miles from the Crossing. As a result, neither the pilot vehicle drivers nor the



uniformed police escort saw or heard the train in time to warn the Truck driver not to proceed over the Crossing.

24. Moreover, in traversing the Crossing, the Truck driver and escorts took great care to cross safely and efficiently and avoid having the trailer hang up on the steeply graded approach to the tracks and the humped crossing. For example, the police and front pilot car escorts preceded the tractor-trailer across the tracks, and the police officer stopped traffic in both directions while the Truck traversed the Crossing. The rear-escort driver also pulled up beside the Truck as it was traversing the Crossing and exited his own vehicle to monitor closely the Truck's air tanks to make sure they did not catch on the tracks. The following frame from the rear escort's vehicle camera shows the police officer across the tracks halting traffic while the rear escort monitors the Truck from the side:



25. Due to the humped nature of the Crossing, the Truck needed to proceed deliberately to safely cross the tracks. While the Truck was crossing the tracks—approximately 25 seconds before the train reached the Crossing—the warning devices at the Crossing activated and the crossing arms came down and hit the oversized load.

**c. Union Pacific’s Failures Cause the Collision**

26. On the date of the Collision, Union Pacific’s train was traveling at high speed westbound from Shreveport, Louisiana toward Los Angeles, California. Visibility around the Crossing at the time of the Collision was optimal, with clear weather conditions and no precipitation. The over one-mile-long straight alignment of the railroad tracks approaching the Crossing provided the engineer and conductor, who occupied elevated positions at the front of the lead locomotive, with a clear view of the Crossing from a substantial distance away (at least one mile). At least one mile before reaching the Crossing, the engineer and conductor must therefore have seen—or at the very least, should have seen—both the 15-foot-high Truck occupying the Crossing and the police and pilot escorts with flashing emergency lights. Indeed, from one mile away on the same track, an individual of average height can see a normal-sized car at the Crossing.

27. To the extent that the train crew could not adequately see the Crossing due to the position of the sun or obstructions adjacent to the track that were within Union Pacific’s control (such as the aforementioned rock pile), the crew should have reduced the train’s speed to adjust to those conditions. Relatedly, prior to the trip, Union Pacific should have notified the train crew (who therefore should have been aware) of the forthcoming construction work to replace the Crossing and the construction materials and equipment that Union Pacific placed at and around the Crossing, which would require extra caution in the train’s approach to the Crossing. Union Pacific likewise should have made sure that the train crew was aware of potential dangers

considering the known high-traffic pattern at the Crossing, including the regular crossings by oversized loads like the Truck at issue, and the history of prior collisions and poor crossing conditions in and around Pecos, which were well-known to Union Pacific for many years and which Union Pacific acknowledged through its (belated) plans to replace the Crossing.

28. Despite all this, the train crew maintained its high speed as it neared the Crossing and negligently failed to initiate any braking measures whatsoever until 11 seconds (or 0.2 miles) before impact, despite having over a mile of straight track and approximately a full minute or more to take action and apply emergency brakes before entering the Crossing. Because of the crew's failure to brake in a timely manner, the train had barely reduced its speed by the time it pulverized the Truck at approximately 64 miles per hour. By stark contrast, prior to the 2019 crash at the Crossing, the Union Pacific train had slowed down to 20 miles per hour before impact and there were no injuries, let alone fatalities.

29. There is also evidence that in addition to the favorable sight conditions and Union Pacific's foreknowledge of the Crossing's defective condition, Union Pacific also received a specific instruction to slow down over a minute before the train crew engaged any brakes. Specifically, data logs from the operative positive train control ("PTC") system appear to demonstrate that the train was provided a "Restricted Proceed" signal during the 73 seconds leading up to the accident, beginning when the train was approximately 1.5 miles away from the Crossing. Such a signal requires a train to slow down to "A speed that will permit stopping within one-half the range of vision, but not exceeding 20 miles per hour" (49 CFR 236.812). Discovery will reveal the extent to which Union Pacific ignored PTC signals and/or maintained a faulty PTC/CTC system that combined with the other aspects of its negligence to cause the Collision.

30. The train crew also failed to use the safety equipment built into the train to protect them: a re-enforced nose at the front of the locomotive that is specifically designed to save the crew from serious injury and death should they be faced with a collision of this magnitude. Even after the engineer belatedly engaged the emergency brake, he still had 11 seconds (more than enough time) to take the few steps down from the cab into the nose, and the conductor had even more time to do so. The following picture from inside the cab of a substantially similar locomotive demonstrates the ease and speed with which the crew could have accessed the nose:



31. But this was not just the train crew's failing; there is nothing in the crew's training records to suggest that Union Pacific trained either of them on when to make use of this safe haven. Post-accident analysis of the nose found that it was intact, including the collision posts installed to

help maintain its structure in the event of a collision. This analysis is confirmed by the following picture of the nose after the Collision, which demonstrates that it absorbed the impact of the Collision remarkably well, whereas the locomotive's cab (where the engineer and conductor remained) was entirely destroyed:



32. The train crew thus failed to keep a proper lookout and/or delayed its response in a manner inconsistent with reasonable railroad operating practices where there is an observable, specific, individualized hazard, as there was at the Crossing. Without question, the train crew knew or should have known that there was an oversized Truck on the Crossing and that a collision was imminent without timely braking, but the train crew failed to take reasonable action to avoid or substantially mitigate the Collision. Had the train crew operated the train in a manner consistent with reasonable operating practices, the collision would have been significantly mitigated or entirely avoided. There were no fatalities or injuries resulting from the 2019 crash at the Crossing,

when the Union Pacific train slowed down to 20 miles per hour before impact. The delayed reaction in this case by Union Pacific's employees—together with Union Pacific's reckless maintenance of the Crossing—directly caused the occurrence and severity of the collision, resulting in extensive property damage, serious personal injuries, and tragic fatalities.

33. Union Pacific's failure to provide emergency-response training anywhere near Pecos also may have contributed to the fatal consequences of the engineer's injuries. As reported by a local fire chief who served as the on-scene incident commander after the Collision, when the local emergency responders arrived at the scene—the first of whom arrived right before 5:04 pm, less than 5 minutes after the Collision occurred—they encountered thousands of gallons of diesel fuel that had spilled from the train and formed into a large pool that was at risk of catching fire because the train locomotives were still running. Due to Union Pacific's failure to provide them with any preparedness training, none of the local responders knew how to shut down the locomotives, and they were therefore at risk themselves while responding to the scene of the Collision. The obstructions and risks of the flammable fuel pool and running locomotives significantly interfered with and delayed the local responders' efforts until Union Pacific's relief crew arrived and shut down the locomotives. As a result of this delay, it was only at 5:23:40 pm—over 24 minutes after the accident occurred—that the local police discovered the critically injured engineer and called for emergency medical services. The engineer eventually succumbed to his injuries at approximately 8:05 pm, but had responders been able to get to him earlier, that could have been the difference between life and death.

34. In sum, Union Pacific's negligence in, among other things, (i) maintaining the Crossing as a humped crossing and relatedly failing to properly maintain the tracks, equipment, and infrastructure at the Crossing, (ii) leaving construction materials and other visual obstructions

at and around the Crossing, (iii) failing to maintain a proper lookout, (iv) failing to exercise timely braking procedures, (v) failing to provide emergency-response training anywhere within 96 miles of Pecos, despite its knowledge of the defective local crossing condition and the history of accidents in Pecos; (vi) failing to train its crew as to when and how to access the nose, and (vii) failing to operate its train in a reasonably cautious manner under the circumstances directly caused the Collision and subsequent damages, including the extensive damage to BOSS's truck-trailer and the Cargo.

## **V. CAUSES OF ACTION**

### **COUNT I NEGLIGENCE**

35. BOSS incorporates all paragraphs 1 through 34 hereof as if fully restated and re-alleged herein.

36. The train and the tracks, equipment, and infrastructure at and around the Crossing involved in the Collision were owned and/or operated by Union Pacific, which was legally responsible for their safe operation. Union Pacific employed, trained, and controlled the engineer and conductor of the train and the persons responsible for identifying, determining, engineering, selecting, installing, and maintaining the Crossing. At all times relevant hereto, all such persons were acting within the course and scope of their employment and/or agency for Union Pacific.

37. As the owner and operator of the train, Union Pacific had a duty to—but did not—exercise that degree of care that a company of ordinary prudence would have used under the same or similar circumstances. Union Pacific was thus negligent in discharging its duties, including by failing to comply with federal law and regulation; failing to comply with its own operating rules; and otherwise breaching its duty of care. Its negligence included, among other things:



- i. Failing to adequately and properly mark the Crossing to provide motorists with sufficient information for safe passage over the Crossing;
- ii. Maintaining the Crossing as a dangerous humped crossing, and otherwise failing to design, construct, and maintain the Crossing in a safe and reasonable manner so as to avoid injury or accident;
- iii. Failing to clear the Crossing and right-of-way or property of brush, trees, vegetation, debris, equipment, supplies, and other visual obstructions and visual clutter that interfere with motorists' view of approaching trains or the train crew's view of specific, individualized hazards at the Crossing;
- iv. Failing to accurately evaluate the safety and dangers of the Crossing and the approaches thereto, and failing to take reasonable actions to mitigate those dangers;
- v. Failing to erect and maintain suitable warning and traffic signs at the Crossing to comply with the Federal Highway Administration's Manual on Uniform Traffic Control Devices;
- vi. Failing to erect and maintain suitable signs of warning and/or caution at the Crossing given its angled grade and steep approach;
- vii. Failing to repair, and/or correct (and/or work with local road authorities and/or adjoining landowners to construct, repair, and/or correct) the dangerous, extra hazardous, and/or unreasonable and unsafe approach grade;
- viii. Failing to repair, and/or correct (and/or work with local road authorities and/or adjoining landowners to construct, repair, and/or correct) the excessively steep angle of approach at the Crossing for northbound and southbound vehicular traffic;
- ix. Failing to repair and/or correct the dangerous conditions at the Crossing, including defective track, equipment, and infrastructure at and around the Crossing;
- x. Failing to take any of the actions described above and herein despite the special dangers and/or extra-hazardous conditions which existed at and/or near the Crossing, including without limitation the physical obstructions to vision, the volume and speed of vehicular and train traffic, the track arrangement and elevation, the steep grade of the approach to the Crossing, the lack of marking on the roadway, and other factors that would affect sight or hearing of ordinary signals;
- xi. Failing to slow or stop the train to avoid a specific, individual hazard;
- xii. Failing to adequately train its employees, including its train crews, to recognize foreseeable risks and take appropriate action;



- xiii. Failing to adequately train its crews to timely apply brakes and/or otherwise respond to an emergency, including by entering the nose of the train upon realization of an imminent collision;
- xiv. Failing to identify the Crossing as either a local hazard or an otherwise dangerous and/or extra-hazardous crossing, as evidenced by the significant volume of traffic at the Crossing and the multiple prior collisions;
- xv. Permitting trains to operate at full speed through the Crossing when it was a local hazard or an otherwise dangerous and/or extra-hazardous crossing;
- xvi. Failing to provide preparedness and emergency-response training to the emergency responders in Pecos or anywhere within 96 miles of Pecos; and
- xvii. Failing to ensure that the Crossing was reasonably safe.

38. Further, Union Pacific's employees Araujo (the train's conductor) and Burt (the train's engineer) owed a duty of ordinary care to act as a railroad conductor and railroad engineer of ordinary prudence would act in the same or similar circumstances. However, Araujo and Burt were negligent in discharging their duties. Their negligence included, among other things:

- i. Operating the train without keeping a proper and sufficient lookout;
- ii. Failing to slow or stop the train to avoid a specific, individual hazard;
- iii. Failing to slow, decelerate, brake, or slacken the speed of the train in response to the specific hazards at the Crossing, which were known or should have been known to have existed at the time of the Collision;
- iv. Failing to brake within a reasonable period of time;
- v. Failing to throttle down within a reasonable time;
- vi. Failing to enter the nose of the locomotive after recognizing that a collision was imminent;
- vii. Failing to take the safe course in the event of doubt or uncertainty;
- viii. Failing to be careful to prevent injuring themselves or others; and
- ix. Failing to take any of the actions described above and herein despite the special dangers and/or extra-hazardous conditions which existed at and/or near the Crossing, including without limitation the physical obstructions to vision, the

volume and speed of vehicular and train traffic, the track arrangement and elevation, the steep grade of the approach to the Crossing, the defective track and infrastructure at the Crossing, the lack of markings on the roadway, and other factors that would affect sight or hearing of ordinary signals.

39. Each of the foregoing acts or omissions, by itself or in combination with others, constituted negligence, which proximately caused the Collision and BOSS's and Optimized's injuries and damages.

## **COUNT II** **GROSS NEGLIGENCE**

40. BOSS incorporates all paragraphs 1 through 39 hereof as if fully restated and re-alleged herein.

41. All of the above acts and/or omissions, including those listed in paragraphs 37 and 38, singularly or in combination with the others, constituted gross negligence, which were the proximate causes of the injuries and damages suffered by BOSS. In addition, Union Pacific acted with conscious and malicious disregard for the general public and BOSS's safety. Union Pacific's acts and omissions involved an extreme degree of risk considering the specific, individual hazard at the Crossing, and because the Crossing was otherwise a local hazard, ultra-hazardous, and dangerous due, among other things, to the steep grade and the potential for oversized vehicles at the Crossing, the defective track and infrastructure at the Crossing, and the fact there were no warning devices at the scene regarding the danger of the Crossing.

## **COUNT III** **RESPONDEAT SUPERIOR**

42. BOSS incorporates all paragraphs 1 through 41 hereof as if fully restated and re-alleged herein.

43. Union Pacific is liable for the negligence of its employees and agents, pursuant to the doctrine of *respondeat superior*, because its employees and agents were acting in the course

and scope of their employment and/or agency at the time of the Collision and at the time of the events that caused the Collision.

**VI. DAMAGES, COSTS, AND INTEREST**

44. BOSS incorporates all paragraphs 1 through 43 as if fully restated and re-alleged herein.

45. As a direct proximate result of the negligent acts and/or omissions described above, BOSS and Optimized have suffered injuries and damages for which BOSS seeks recovery from Union Pacific.

46. BOSS also seeks recovery for all costs of court and prejudgment and post-judgment interest at the maximum rates allowed by law.

**VII. DEMAND FOR JURY TRIAL**

47. BOSS hereby demands trial by jury.


**VIII. PRAYER**

WHEREFORE, BOSS respectfully requests, upon a final hearing, that the Court enter judgment against Union Pacific in favor of plaintiff in the amount of its actual damages, punitive damages, prejudgment interest, post-judgment interest, attorneys' fees, court costs, and for any other relief, both at law and in equity, to which the plaintiff may show itself justly entitled.

Dated: December 4, 2025

Respectfully submitted,

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By: \_\_\_\_\_

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Envelope ID: 108719930

Filing Code Description: Counter Claim/Cross

Action/Interpleader/Intervention/Third Party

Filing Description: Counterclaims by Boss Heavy Haul, LLC

Status as of 12/4/2025 2:41 PM CST

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