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20 and as Personal Representative of the heirs of
21 Michael Wilcox, deceased

22 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
23 IN AND FOR THE COUNTY OF MARICOPA

24 TINA M. WILCOX, individually and as
25 Personal Representative of the heirs of
26 Michael Wilcox, deceased,

Plaintiff,

vs.

BNSF RAILWAY COMPANY, a
Delaware corporation; and DOES ONE
through TWENTY, inclusive,

Defendant.

CASE NO. CV 2011-000477

**SECOND AMENDED COMPLAINT
FOR DAMAGES**

Wrongful Death
Federal Employers' Liability Act
Arizona Administrative Code R14-5-110

(Assigned to the Honorable Randall
Warner)

1 By this Second Amended Complaint, Plaintiff TINA WILCOX, individually,
2 and as Personal Representative of the heirs of Michael Wilcox, deceased, complains of
3 defendant, BNSF RAILWAY COMPANY (hereinafter referred to as "BNSF"), a
4 corporation, and DOES ONE through TWENTY, inclusively, and alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. That the true names or capacities, whether individual, corporate,
7 associate or otherwise, of defendants named herein as DOES ONE through TWENTY,
8 inclusive, are unknown to plaintiff who therefore sues said defendants by such
9 fictitious names; plaintiff will amend her complaint to show such true names and
10 capacities when the same have been ascertained. Each of the defendants DOE was in
11 some manner careless and negligent, or otherwise legally responsible, concerning the
12 events and circumstances herein referred to and caused injury and damages thereby to
13 plaintiff as hereinafter set forth.

14 2. That at all times herein mentioned, each defendant was the agent,
15 partner, servant, employer, independent contractor and/or joint venturer of each other
16 defendant and, at all times herein mentioned, was acting within the course and scope
17 of said agency, partnership, employment, contract or joint venture.

18 **FIRST CAUSE OF ACTION**

19 **(Federal Employers' Liability Act)**

20 3. Paragraphs 1 and 2 of the Complaint are incorporated by reference as
21 though fully set forth below.
22

23 4. That at all times herein mentioned, defendant BNSF was and is a duly
24 organized and existing corporation doing business in the State of Arizona, and other
25 states; that defendant was at all times herein mentioned, and now is, engaged in the
26 business of a common carrier by railroad in interstate commerce in said State of

1 Arizona, and other states; that BNSF conducts business in and around Maricopa
2 County, Arizona.

3 5. That at all times herein mentioned, BNSF was a common carrier by
4 railroad engaged in interstate commerce, and plaintiff was employed by BNSF in such
5 interstate commerce, and the injuries complained of arose while plaintiff was
6 performing duties in the furtherance of, or affecting, interstate commerce.

7 6. That this action is brought under and by virtue of the provisions of the
8 Federal Employers' Liability Act, hereinafter referred to as "FELA," 45 U.S.C. §§ 51,
9 *et seq.*

10 7. That on or about February 7, 2009, deceased, MICHAEL WILCOX was
11 employed by defendant BNSF, a corporation, as a conductor, and was working as a
12 crew member of a certain train on defendant's mainline track at or near Holbrook,
13 Arizona.

14 8. That at said time and said place, acting in the course and scope of his
15 employment, Michael Wilcox, deceased, was in the process of releasing certain hand
16 brakes on his train which had been previously stopped in a westbound direction on
17 mainline track number two.

18 9. Plaintiffs allege that defendant BNSF owed to Michael Wilcox,
19 deceased, the duty of exercising ordinary care to provide deceased with a reasonably
20 safe place in which to work and to institute and oversee reasonably safe procedures
21 and methods for the performance of said work; further, Plaintiffs, allege that defendant
22 BNSF, a corporation, acting through its agents, servants, and employees, other than
23 deceased, failed its aforesaid duties and was negligent in one or more of the following
24 particulars:
25

26

1 a. That said train was caused to be stopped at an unsafe location on a
2 mainline track where no walkway existed at said location for deceased to use to
3 perform his work between mainline track number one and mainline track number two;

4 b. That defendant failed to train, instruct, require, and provide the
5 deceased with appropriate personal protective equipment for the circumstances in
6 which defendant required him to work, including but not limited to, high visibility
7 workwear, warning clothing, retro-reflective workwear, and/or other personal protective
8 equipment which would have enabled plaintiff's coworkers to detect his presence and
9 location. Defendant's failures in violation of 29 CFR 1910, Subpart I regarding
10 personal protective equipment.

11 c. That deceased's crew was not dispatched in a timely manner such
12 that they could have relieved the prior crew directly without the necessity of having to
13 perform any extended trackside duties in an unsafe location.

14 d. That the dispatcher knew, or should have known, that stopping
15 the westbound train on the mainline at Holbrook without a relief crew already at the
16 location would require that the train be tied down (secured by tightening a certain
17 number of handbrakes on several railcars of the train trailing the locomotives).

18 e. That, at the location in Holbrook where the train was located,
19 there is no significant artificial lighting, resulting in dark and dangerous conditions and
20 a lack of visibility.

21 f. That BNSF knew that an eastbound train was approaching the
22 location where Mr. Wilcox was working on the adjoining mainline track, but neither
23 directed the eastbound train to stop nor Mr. Wilcox's crew to stop work until said train
24 had passed; and

25 g. That said eastbound train knew, or should have known via the
26 dispatcher that there would be men on the ground working between mainline one and

1 two, yet failed to control their speed such that they could stop in half the distance of
2 travel thereby avoiding striking and killing Mr. Wilcox.

3 10. That as a direct result of said carelessness and negligence of defendant
4 hereinabove set forth, MICHAEL WILCOX, deceased, was struck by the said
5 eastbound train and severely injured and caused to suffer excruciating pain and
6 suffering which ultimately caused his death some time later.

7 **SECOND CAUSE OF ACTION**

8 **(Arizona Administrative Code R14 -5 -110)**

9 11. Paragraphs 1 through 10 of the Complaint are incorporated by reference
10 as though fully set forth below.

11 12. As and for a second and separate cause of action, plaintiff, TINA
12 WILCOX, individually and as Personal Representative of the heirs of MICHAEL
13 WILCOX, deceased, complains of defendant BNSF and alleges as follows:

14 13. That this action is brought under and by virtue of the provisions of the
15 Federal Employers' Liability Act, "FELA," namely, 45 U.S.C. § 54a and, by
16 incorporation, the Arizona Administrative Code ("A.A.C. ") R14 -5 -110.

17 14. That at all times herein mentioned, defendant BNSF, as deceased's
18 employer, was under a statutory obligation to comply with A.A.C. §14 -5 -110, a
19 safety regulation, in connection with walkways adjacent to the subject railroad tracks
20 where defendant BNSF knew or should have known, that its employees would be
21 required to perform trackside duties.

22 15. That at all times herein mentioned, defendant BNSF violated A.A.C.
23 §14-5-110 in that at the subject location no adequate walkway of any kind or type was
24 provided.
25
26

1 16. That the conduct regulated by A.A.C. §14 -5 -110 is intended to promote
 2 the safety of railroad workers. Said administrative code section was drafted for, and
 3 intended to protect trainmen such as deceased, MICHAEL WILCOX.

4 17. That the defendant, BNSF Railway Company's decision to allow
 5 deceased to perform trackside work, to wit: releasing the handbrakes on a number of
 6 rail cars, without a walkway of any kind, next to a live rail, was a violation of A.A.C.
 7 §14-5-110 and played a part in causing the death of MICHAEL WILCOX when he
 8 was struck by a passing eastbound train.

9 **THIRD CAUSE OF ACTION**

10 **(FELA – Violation of 49 C.F.R. Part 220)**

11 As and for a third, separate and distinct cause of action, plaintiff, TINA
 12 WILCOX, individually and as Personal Representative of the heirs of MICHAEL
 13 WILCOX, deceased, complains of Defendant BNSF and alleges as follows:

14 18. Plaintiff incorporates by reference each and every allegation in
 15 Paragraphs 1 through 17, inclusively, as if fully set forth herein.

16 19. That this cause of action is brought under and by virtue of the provisions
 17 of the Federal Employers’ Liability Act, “FELA,” 45 U.S.C. §§ 51 *et seq.*, in
 18 particular, 45 U.S.C. §§ 53 and 54a, which incorporate railroad safety regulations
 19 under 49 C.F.R. Part 220, namely, 49 C.F.R. §§ 220.21 *et seq.*, regarding the
 20 requirements for radio communication procedures.

21 20. 49 C.F.R. Part 220 includes the following requirements for radio
 22 communications by train crews: proper identification over the radio, 49 C.F.R. §
 23 220.27; properly initiating radio transmissions, 49 C.F.R. § 220.31; properly receiving
 24 radio transmissions, 49 C.F.R. § 220.33; properly ending radio transmissions, 49
 25 C.F.R. § 220.35; and, properly completing radio communications and ensuring that
 26 messages are fully understood, 49 C.F.R. § 220.45.

1 21. That at said time and place, the crew of the approaching train failed to
2 comply with the aforesaid radio communications requirements in that the crew failed
3 to properly communicate their location and time of arrival with the crew of the parked
4 train, thereby failing to give Mr. Wilcox vital information about the location of their
5 approaching train, and in so doing, caused Mr. Wilcox to be fatally struck by the
6 moving train, and the damages as aforesaid.

7 **FOURTH CAUSE OF ACTION**

8 **(FELA – Violation of Company Operating Rules)**

9 As and for a fourth, separate and distinct cause of action, plaintiff, TINA
10 WILCOX, individually and as Personal Representative of the heirs of MICHAEL
11 WILCOX, deceased, complains of Defendant BNSF and alleges as follows:

12 22. Plaintiff incorporates by reference each and every allegation in
13 Paragraphs 1 through 17, inclusively, as if fully set forth herein.

14 23. That this cause of action is brought under and by virtue of the provisions
15 of the Federal Employers’ Liability Act, “FELA,” 45 U.S.C. §§ 51 et seq., in
16 particular, 45 U.S.C. §§ 53 which incorporates Defendant’s internal operating rules,
17 namely, General Code of Operating Rules (“GCOR”) by virtue of 49 C.F.R. §§ 220.21
18 220.43, 49 C.F.R. Part 217, which requires Defendant to file its GCOR rules with the
19 FRA and requires Defendant to ensure that its employees comply with said rules,
20 namely, GCOR 2.0 et seq., and 5.0 et seq., regarding radio rules; and GCOR 5.8.2,
21 regarding rules for sounding warnings with locomotive horns.

22 24. That at said time and place, the crew of the approaching train failed to
23 comply with the aforesaid radio communications and locomotive horn warning
24 requirements in that the crew failed to sound the locomotive horn when it approached
25 Holbrook where Mr. Wilcox was performing trackside duties, and failed to properly
26 communicate their location and time of arrival with the crew of the parked train,

1 thereby failing to give Mr. Wilcox vital information about the location of their
2 approaching train, and in so doing, caused Mr. Wilcox to be fatally struck by the
3 moving train, and the damages as aforesaid.

4 **WHEREFORE**, plaintiff prays for judgment against defendant BNSF
5 RAILWAY COMPANY, for general damages, for such special damages as may
6 hereafter be ascertained, for post judgment interest as allowed by law, for her costs of
7 suit incurred herein, and for such other relief as to the court may seem proper.

8 Dated this 6th day of March, 2015.

10 ST. JOHN & ROMERO, PLLC

12 /s/ Jason J. Romero

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17 COPY of the foregoing was
18 Mailed and e-mailed this
19 6th day of March, 2015 to:

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