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IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
LINCOLN COUNTY, ILLINOIS

PAT GILMORE AND LESLIE GILMORE,)
SPECIAL ADMINISTRATORS OF THE)
ESTATE OF HALEY GILMORE, DECEASED,)
Plaintiffs)

v.)

MIDWESTERN STATES RAILROAD)
COMPANY,)
Defendant)

No. 2000 ISBA 424

COMPLAINT

Now come the Plaintiffs, Pat Gilmore and Leslie Gilmore, Special Administrators of the Estate of Haley Gilmore, Deceased, and state and allege the following for their Complaint against the Defendant:

1. The Plaintiffs, Pat Gilmore and Leslie Gilmore, are the duly appointed Special Administrators of the Estate of Haley Gilmore, Deceased.
2. Defendant, Midwestern States Railroad Company, is at all pertinent times herein mentioned, a corporation duly organized and existing, and engaged in the business of common carrier by rail within Lincoln County, Illinois.
3. The Plaintiff's decedent, Haley Gilmore, left surviving as legal heirs, Pat Gilmore and Leslie Gilmore, parents, both of whom have been appointed as Special Administrators of the Estate of Haley Gilmore, Deceased.
4. Center Road is now, and at all times mentioned herein, was a public road running generally in a north and south direction in Lincoln County, Illinois, and owned, maintained and supervised by Lincoln County, Illinois.
5. At all times herein mentioned, Defendant, Midwestern States Railroad Company, owned and operated trains on certain railroad tracks which they also owned within Lincoln County, Illinois. In particular, certain of those tracks made a grade crossing over Center Road in Lincoln County, Illinois, said tracks running in a generally north to south direction, but crossing Center Road at a right angle.

6. It is apparent from the public's use of the location, design and configuration of the subject crossing that there has been created a condition that is not reasonably safe.

7. That the Defendant, Midwestern States Railroad Company, has the duty to construct and maintain its property in a reasonably safe condition, inclusive of designs or plans which result in an unsafe condition, and to correct such unreasonably unsafe, dangerous conditions of which Defendant has knowledge.

8. That on May 10, 1999, Plaintiff's decedent was the driver of a vehicle traveling northbound on Center Road in Lincoln County, Illinois.

9. That at about the same time and place, a Midwestern States Railroad train was proceeding northward on the intersecting railroad track.

10. That at the railroad grade crossing on Center Road, the Midwestern States Railroad Company train did forcibly strike and collide with the pick-up truck being driven by Plaintiff's decedent which directly and proximately caused the death of Haley Gilmore and the damages as hereafter more fully described.

11. That the collision aforesaid and the resulting death of Haley Gilmore and the damages hereafter alleged were the direct and proximate result of the negligence, carelessness, faults and omissions of the Defendant Midwestern States Railroad Company in one, more or all of the following particulars, to wit:

a. Defendant Midwestern States Railroad Company negligently failed to keep the right of way adjacent to its tracks at the grade crossing described hereinabove clear of trees and vegetation where such things materially obscure the view of approaching vehicles to trains approaching the subject intersection;

b. Defendant Midwestern States Railway Company negligently operated its train at a speed that was excessive for the conditions then and there existing at that crossing;

c. Defendant Midwestern States Railway Company by and through its train crew negligently failed to keep a cautious and careful lookout as the train approached the grade crossing;

d. Defendant Midwestern States Railway Company by and through its train crew negligently failed to timely apply the brakes on the train when the crew knew or should have known that a collision would occur absent prompt action by the train crew;

e. Defendant negligently failed to stop or slow the train to avoid a collision;

f. Defendant failed to properly maintain and operate the grade crossing hereinabove described and other subject property owned by them at all times so as to cause and create an undue and unreasonable risk and danger all as more particularly hereinabove set forth;

g. Defendant negligently failed to comply with its own operating rules requiring engineers to sound train whistles before the crossing and to continue

until the crossing was fully occupied by the train.

12. As a direct and proximate result of one or more of the negligent acts or omissions, Haley Gilmore sustained severe permanent injuries to head and body, both internally and externally, which resulted in death.

13. As a direct and proximate result of the decedent's death, the parents of Haley Gilmore have suffered loss of society, advice, companionship, and other pecuniary injuries.

14. This action is brought under 740 ILCS 180/0.01, et seq., the Illinois Wrongful Death Statute.

WHEREFORE, the Plaintiff's Pat Gilmore and Leslie Gilmore, Special Administrators of the Estate of Haley Gilmore, Deceased, prays that judgment be entered in their favor and against the Defendant Midwestern States Railway Company for a sum in excess of \$15,000, plus costs, interest, attorney's fees, and such other relief as the Court may deem just and equitable. Plaintiff respectfully demands a bench trial.

PAT GILMORE AND LESLIE GILMORE,
SPECIAL ADMINISTRATORS OF THE ESTATE
OF HALEY GILMORE, Plaintiff

By: _____
Their Attorneys

STATEMENT OF FACTS

On May 10, 1999 a Midwestern States Railroad company ("MSR") freight train was travelling at approximately 54 miles per hour, heading north on tracks in rural Lincoln County, Illinois.

It was 1:45 p.m. on a clear afternoon when the train rounded a bend and approached an at-grade crossing of the MSR tracks with Center Road, a two lane county highway maintained by the Lincoln County Highway Department. While the crossing is clear of vegetation, there are stands of trees about 1/4 of a mile north and south of the crossing. As required by state regulations, the Engineer began blowing the train's whistle as the train approached the whistle post, which was 1/4 mile from the crossing. Engineer Martin indicated that the whistle began blowing as the train cleared the copse of trees.

The crossing is an un-gated crossing on Center Road, but has flashing lights, bells, and advance warning clearly painted on the highway pavement at the approach to the crossing. One prior, non-fatal, motor vehicle-train collision occurred at this particular crossing over six years before.¹

Engineer Jan Martin, a 20-year veteran with Midwestern States Rail was driving the train on May 10, 1999. Martin had an impeccable record with Midwestern and was well known with the Company as being a clear headed, serious employee with a commitment to safety and adherence to all rules and regulations.

As the train rounded the bend and exited the trees, Martin noted that a pick-up truck was travelling along the frontage road that paralleled the railroad tracks and appeared to be trying to match the train's speed. Martin states in his/her witness affidavit that he/she began blowing the train's whistle in an attempt call attention to the train, while at the same time easing off the controls to help the train reduce speed.

The freight train had two engines and was pulling 66 fully loaded cars. Martin also states in his/her affidavit that he/she knew that given the weight and speed of the train, if the truck did not reduce or increase speed significantly, there would be a collision.

The driver of the truck was Haley Gilmore. Gilmore had two passengers in the truck, Madison Bagley and Terry Agnew. At the time of the accident, all three were 17 years of age. Gilmore was killed instantly. Bagley and Agnew were both seriously injured and were hospitalized for a number of months following the accident. Both sustained head injuries and were unconscious for a period of days

¹ The non-fatal accident occurred when a car stalled on the tracks, the driver exited the car and the train collided with the stalled car, pushing it from the tracks. While the car was severely damaged, there were no physical injuries to the driver of the car or the train crew.

following the accident.

Ari Milano owns a farm in rural Lincoln County. Milano's farmlands are divided by the Midwestern States Rail tracks and Milano uses the crossing a number of times each week to gain access to the family farmland. Milano was returning from the fields at 1:45 p.m. on May 10. Milano was on the same side of the tracks as the truck and witnessed the accident.

The Taiteville Community Hospital and the Taiteville fire department ambulance service both responded to the 911 call placed by the train personnel. Taiteville Community Hospital is located 2 miles South of the Center Road crossing, on Center Road. Response time for this accident was under 5 minutes.

The parents of Haley Gilmore, Pat and Leslie Gilmore, are suing Midwestern States Rail Company for the wrongful death of their child. They allege that the rail crossing was not adequately marked, that the train failed to warn, and that the Engineer of the train failed to take adequate action to avoid the accident.

Witnesses for the Prosecution (teams must choose two)

Leslie Gilmore, parent of Haley Gilmore (deceased)

Madison Bagley, passenger in truck hit by the train

Ashton Keshner, Illinois Community Safety Alliance,
expert witness

Witnesses for the Defense (teams must choose two)

Jan Martin, RR Engineer

Ari Milano, Farmer

Morgan Kelly, retired NTSA personnel, expert witness

Affidavit of Jan Martin
Railroad Engineer - WITNESS FOR DEFENDANT

My name is Jan Martin. I am 45 years of age. I live in Taiteville, Illinois and have worked for Midwestern States Rail Company for 20 years.

Midwestern States Rail is a good company. They train their employees well. They're sticklers for regulations and safety. Each month, all the Engineers get safety memos that we need to read and sign. They go into our files so the company knows that we're completely up to date on all state, federal and local regulations.

On May 10, my train was travelling at a little under 60 miles per hour, 60 was the maximum speed allowed on those tracks. I was heading north on tracks in rural Lincoln County, Illinois. It was 1:45 p.m. and I was on schedule. That's a good thing.

It was a clear afternoon and the day had been pretty uneventful up to that time. But when I rounded the bend and approached 8.6, every engineer's nightmare started to play out. As I pulled out of the trees and approached the whistle post, I noticed a truck that looked like it was trying to race the train. Blowing the whistler is as automatic as breathing. You see the whistle posts up ahead and your hand is already on the whistle. When I saw that truck, I blew the whistle for all it was worth. The usual horn warning for crossings is two long, a short, and then a long until the locomotive enters the crossing, but this time I gave a series of long blasts. I was trying to get the attention of the driver.

I knew that Crossing 8.6 was an un-gated crossing, but I sure hoped that the flashing lights, bells and the train's whistle would make that truck slow down.

I released the throttle and began using the hydraulic brakes, hoping that the brakes along with the low-grade increase would help to slow the train in time. Given the size and weight of the train, it was pretty much a given that unless the whistle and all the flashing lights at the crossing didn't deter the driver, then the people in the truck were in big trouble.

My train that night had two engines and was pulling 66 fully loaded cars. Given the weight and speed of the train, if the truck didn't either slow down or speed up, I knew there would be a collision. My stomach was in knots. I'd heard from other engineers who had been through things like this. They said that time slows down.

Everything is in slow motion. Your memory never fades. You always see the face of the driver as they turn and realize what's going to happen. It's just like they said. It's awful.

I guess I was pretty lucky. But the driver sure wasn't. That poor kid. By the time I was able to stop the train, I was at least a mile down the tracks. I set the brake

and called to the brakeman. While I was stopping the train, I'd used the train's communication system to relay an emergency message to alert the local 911 system, then I left the brakeman with the engine and ran back to the crossing.

By the time I got there, paramedics were already at the scene helping the two kids who had been thrown from the truck. The scene was like something from a bad movie. It didn't seem real. The truck was overturned and the fire crew was working to cut off the driver side door. I could still hear the stereo blaring. There was so little blood on the two kids who had been thrown free. It looked like they were sleeping.

After being an engineer for 20 years, nothing surprises me anymore. I've had too many close calls to even count. It's unbelievable that people think they can race a train and win. I've seen 2 people crushed and killed by train's I've been steering. There have been others who have been hurt or maimed; I've lost count of those too. I'd say at least 15. The worst part is, when you see someone pull onto those tracks, all you can do is sound the whistle, set the brake and pray they get out of the way. It's sad really, all that training, all the safety warnings, devices, laws and more that are out there to protect the public...and I still see trucks, busses, even school busses, go around lowered gates to try to beat the train.

Being an engineer can be stressful, especially when the train is pulling through populated areas. That's where we slow and sound that whistle.

I'd say that about 95% of engineers I know have had some sort of counseling to help deal with the stress. Midwestern States Rail has a certified counselor on staff who helps us through some of the emotional issues after we witness accidents or even close calls. I've been seeing the company counselor in group sessions about every other month since the first fatal crash I witnessed about 18 years ago. It helps to talk about it, especially with the other engineers who have seen the same kind of accidents and have the same kinds of frustrations. It's a pitiful waste of human life.

I sometimes wonder what happened to stop, look and listen? Sure seems like people are ignoring that important lesson more and more.

**Affidavit of Ari Milano
Farmer, Lincoln County, IL - WITNESS FOR DEFENDANT**

My name is Ari Milano and I own a farm in Lincoln County, right outside of Taiteville. I've farmed that land for over 10 years. The land has been in my family for over 100 years.

The farm is divided by the Midwest Regional railroad tracks. It's been that way for as long as I can remember. I must cross the Center Road crossing at least fifteen or twenty times a week. There's usually not much traffic out this way. Only thing out here is my farm, and the railroad tracks.

On May 10 I was returning from one of my fields. It was a little before 2:00 p.m. My tractor had been making funny noises, I'd been listening for a ping noise it had been making for about an hour and I had decided to finish work early that afternoon and get home to check things out before dinner that evening.

I did hear the train coming that day; it makes a low rumbling noise and then the whistle blows as it comes out of the trees. It's a pretty sight, really. Almost majestic. Even with the crazy noise my tractor was making, I could still hear the train coming.

Anyhow. I was on a small rise a bit north and east of the crossing. I saw the train coming and I saw the truck driving along the frontage road. Looked like a real race was going on...except the train always goes that fast. It's a regular freight. Comes through daily. It's been coming through right on schedule for so long, I sometimes seem to block out the noise of the train and the whistle. I can't say for sure whether the whistle was blowing, but I do know that the lights were flashing at that crossing. That I do remember quite clearly. I never saw brake lights on the truck at all. They must never have known what hit them.

When the crash happened, I was in a field less than a quarter mile away from the tracks and I was facing the train and the frontage road. I saw the whole thing happen. I've witnessed some pretty awful things in my life. Farm accidents can be brutal. But I've never seen or heard anything like this. When a train hits a smaller vehicle, and let's face it, pretty much anything is going to be smaller than a train engine, there's no contest. The driver of the car is always going to lose and lose big. I had my cell-phone with me. I turned off the tractor's engine and immediately dialed 911. They said they'd already received a report from the train. By the time I finished the call, I heard a siren approaching. Those kids were lucky. The Taiteville Community Hospital is on the edge of town only about 5 miles from where the accident happened.

When I got down to the crossing, a state trooper was already on hand and was giving assistance to one of the kids who had been thrown from the train. I asked what I could do. The trooper asked if I'd seen what happened and asked that I

stay at the scene. By then, more sirens were approaching. The ambulances got there about 4 or 5 minutes after the crash. It seemed like an eternity.

At first I thought, maybe those kids hadn't seen the train. The crops in my fields couldn't have blocked the view. It was early May. I'd been planting, but the beans and corn were just starting to sprout at that time. Then I thought, maybe the weeds around the crossing had blocked the view of the flashing lights, but then I remembered that I'd spoken with the crew that was out trimming just days before this accident. The view was clear.

It was an amazing thing. The train didn't seem to be hurt at all. It was screeching and moaning as it tried to stop. Tons of equipment, fully loaded, really does grind to a stop. Must have taken the freighter about a mile to finally drag to a full stop.

I feel for the train engineer and for anyone who has to witness that kind of destruction and pain up close. I feel sorry for the kids. I feel sorry for the parents. Heck, I even feel sorry for me. I haven't been the same since seeing that mess. I wake up sweating some nights wondering if there was something that could have been done to stop the accident.

**Affidavit of Morgan Kelly,
National Transportation Safety Alliance expert - WITNESS FOR DEFENDANT**

My name is Morgan Kelly. Until 18 months ago, I served as central regional supervisor for the National Transportation Safety Alliance. It was my job to investigate public transportation or freight accidents. I worked for the NTSA for 18 years.

I have a degree in structural engineering and statistics from Southwest Illinois University and a master's degree in physics and engineering from Hampton College in Spring Village, Illinois. During my studies at Hampton College, I worked for the Eastern Seaboard Railroad as a quality control officer. It was my job to review specifications for train engines and see that they were as safe as they could be.

During my tenure with the NTSA, I investigated over 100 rail crossing accidents, 25 air crashes, and over 200 regional transportation accidents. Those numbers may seem low for a career that has spanned 18 years, but believe me, they seem high to me. It takes months to reconstruct some of the accidents, and it's painstaking, emotionally draining work, especially when there has been a fatality.

I suppose you could say we got lucky in this instance. The engine that was in use by Midwestern States Rail was equipped with a number of safety features and the engine itself was relatively new. It had only been in use for about 10 months.

For instance the brake system has a series of hydraulic pumps that act almost like anti-lock brakes. No train is going to be able to stop on a dime. They are just too heavy and they move too fast. But this one had a better stop zone than most of the older models.

The distance from the whistle post at the edge of the trees to the crossing is 1/4 mile. This is industry standard. All trains must blow their whistles when they approach the whistle post.

This train's whistle is standardized. It must reach a certain decibel level and the blast must be sustained in certain areas for specific lengths of time. For instance, when a train passes through a community, the train is supposed to whistle before every grade crossing. That whistle is a wake up call to the public. It is to be utilized at very specific times and for very specific purposes. The study of the train involved in this particular accident found that the whistle was able to achieve the specified decibel level. In fact, it was, perhaps, a bit louder than it needed to be according to federal regulations.

The train in question was also equipped with an "event recorder" which is something like the black box found in airlines. The train's event recorder provides information on rate of speed, amount of fuel utilized, when and for how long the whistle blows, etc. This train, at the time of impact, was travelling at 54.3 miles

per hour as it passed through the trees and approached the whistle post. On impact, the train had slowed to 50.2 miles per hour. It is important to realize that a number of factors are at play when one tries to stop a train. The weight of the train, the incline or decline of the ground, the weather, all play a role. This train was fully loaded with coal, steel and automobiles. It had 66 cars. When the engineer laid on the whistle and applied the emergency brakes, he/she was doing everything he/she could to stop that train.

The maximum rate of speed allowed by state and federal regulation on those tracks is 60 miles per hour. With a load as heavy as this train was carrying, the rate of speed, approximately 54 miles per hour, is standard.

In addition, that crossing was clear. Weeds had been cut back and no crops were tall enough to obstruct the view of a train approaching from either direction. Vehicles using that crossing had an unobstructed view for at least a quarter mile in each direction. That's plenty of time. That is a definite adequate warning of a coming train.

I saw photos of the truck after the crash at the rural Taiteville crossing and I visited the crash site. It's very common for vehicles in train collisions to exhibit a tremendous amount of damage. This truck was no different. What was unusual was the amount of dirt on the truck. The visibility could have been seriously reduced, given the layers of dust on the one remaining window, the one on the passenger side. The windshield was gone so it was virtually impossible to tell if that glass was dirty until a sufficient amount had been collected and reconstructed. After a partial reconstruction, it did appear that the windshield and other windows were covered with a significant amount of dust. It would be my guess that the driver's view may have been affected by the dirt on the windows.

I read the 911 report and the rescue personnel indicated that the truck stereo was still playing while they were attempting to remove Haley Gilmore, the driver, from the vehicle. The reports indicate that the stereo was loud, with the volume control turned to about 3/4 volume capacity. That kind of volume, added to the dirty windows and any lack of attention on the part of the driver and/or the passengers, contributed to this fatality.

There was absolutely no indication that the driver and passengers were drinking. No alcohol was found in the truck or near the crash site. There was no drug use involved either.

Another contributing factor would be that, in addition to the loud stereo and the dirty windows, the air conditioner was running, thus reducing the ability to hear the train whistle.

A high percentage of vehicle-train collisions happen at crossings with active warning devices, flashing lights, gates, bells. This means that drivers need to be

paying better attention. If motorists obeyed all existing traffic laws, there would be far fewer motor vehicle/train collisions.

In 1996, the latest report issued by the NHTSA about 54% of Illinois' rail-highway crossings are equipped with automatic warning devices; however, 63 percent of Illinois' crossing accidents and 65% of Illinois' crossing fatalities happened at these gated and signaled crossings. This obviously because signalized crossings have more vehicular traffic traversing them, thus increasing the accident exposure factor at these crossings. The 63 percent figure for accidents at crossings with automatic warning devices is down from an average of 71 percent over the last 16 years. In 1997, 70 accidents occurred at crossings equipped with gates, 47 accidents occurred at crossings with flashing lights, 66 accidents occurred at crossbuck crossings, and two occurred at crossings with other types of warning.

In Illinois, Public Act 89-186, which became effective January 1, 1996, increased the penalty in Illinois for disregarding a railroad crossing warning device from a \$75 moving violation to a mandatory \$500 fine or 50 hours of community service.

Something professionals call the exposure factor is the daily average number of trains multiplied by the daily average number of vehicles that use a crossing. Statistics prove that more accidents occur at crossings with gates than crossings with only flashing light signals. Crossing provided with automatic flashing light signals and gates accounted for 38 percent of the 1997 crossing accidents, but have 85 percent of the total exposure factor.

While the installation of automatic warning devices is an important means of lowering the number of individuals involved in train-vehicle collisions, this alone will not eliminate all accidents at railroad crossings. This particular crossing is actually pretty safe. There has only been one non-fatal collision at the site and that was over five years ago. That is a good record for a rural crossing that's been in use for over 75 years.

A railroad has no duty to install warnings at a grade crossing in excess of what is called for by statute. If there is a substantial risk that a driver, in the exercise of ordinary care, may be unable to avoid colliding with a train that is being operated over the crossing, then something above and beyond flashing lights on crossbucks may be necessary. In a rural setting like the one where this accident occurred, had the driver exercised ordinary care, or any care at all, this accident would not have happened.

This train was where it was supposed to be, when it was supposed to be there. It was proceeding at a rate of speed lower than allowable by law and the engineer performed all duties required by law, and then some.

I am very sorry for Haley Gilmore and for his parents. But, this accident, like far

too many others, should serve as a warning to all drivers and pedestrians alike. Drivers need to obey crossing safety rules and signs. When you are issued a driver's license, you assume certain responsibilities. One of those is obeying the rules. Drivers need to show they care about their own safety and the safety of their passengers, by paying attention. It may not always be fun, but it is absolutely necessary.

It is my belief that, given the information we were able to gain from the black box and from speaking with the engineer, Jan Martin, that Martin did everything possible to stop that train and avoid a collision. Sometimes the engineer's hands are virtually tied behind his/her back. Those trains have to stay on the tracks, they can't swerve.

**Affidavit of Ashton Keshner, expert witness, Illinois Community Safety Alliance
- WITNESS FOR PLAINTIFF**

My name is Ashton Keshner, I am President and Chief Fiscal Officer of the Illinois Community Safety Coalition. The Coalition maintains records of all fatal accidents in the state of Illinois. All accidents are categorized and statistics are maintained by county, type of accident, fatalities, and a number of other factors. ICSC is a not-for-profit corporation and relies on public donations.

I founded the Coalition after my brother was killed in a train accident seven years ago. That accident didn't have to happen. Alan was doing everything right. He was minding his own business, driving where he was supposed to be driving, obeying the speed limit, hadn't been drinking or doing drugs. He pulled onto a set of un-gated rural railroad tracks and was killed when a passenger train going 67 miles per hour hit him.

I have a degree in public policy and political science from the University of Chatham. After graduation I worked for the Illinois Railworkers Association and got firsthand knowledge and experience with regard to railway regulations, safety concerns and practices, and during that time I lobbied successfully for a number of public policy community safety bills.

Statistics in Illinois show that rail crossing accidents since 1990 have decreased, although it looks as though that may be changing. Statistics in some recent evaluations show that they may actually be on the rise. That does not make me happy...there are already far too many accidents and fatalities.

The Alliance is currently working to increase awareness of grade crossing safety, is drafting legislation that would provide for Illinois to have 100 percent of grade crossings either gated or over or underpassed by the year 2010. We are also constantly fundraising to provide public service announcements and educational materials on community safety.

First and foremost, a railroad as a duty of ordinary care to protect the safety of motorists. This means that roads should be clearly marked to indicate that a rail crossing is ahead. State and federal laws address this matter and have established where and how the markings should be made. At some crossings where there is a minimum of vehicular traffic, the railroads do the minimum that is allowable. However, due to the serious nature of the hazard these rail crossings create, the lack of precautions of any kind at a railroad crossing can constitute wanton misconduct by the railroad. The crossing at Center road had painted X's on the roadway, a sign was posted the required distance before the crossing and the crossing was marked with crossbucks and flashing lights. Was that enough? Obviously not. In addition, this crossing, in the middle of farmland, with stands of trees on either side of the crossing, had the potential to be classified as extra-hazardous. That means that someone, even exercising

ordinary care, could still be in danger unless extra precautions were taken, like gating the crossing.

Some people and state, federal and local governments think that closing rail crossings can help. I think that's a mistake. Removing crossings that are considered redundant will only make local people travel farther to the next crossing, make them more anxious and impatient, and could create additional danger to our communities.

There may also be a move at the federal level to mandate train whistles at every crossing. If this were already established policy, there would be a reduction in accidents. If the train doesn't blow its whistle, there are now ways to have the crossing gates or mechanical devices nearby blow a horn or whistle directed at oncoming vehicular traffic. These devices can also be equipped with strobe lights or other incredibly effective alerting systems.

It is the Coalition's position that the easiest and surest way to prevent rail-crossing fatalities is to ensure that all crossings are gated, or that there simply are no grade crossings at all. Some countries actually build over or underpasses for all rail crossings. Unfortunately, current industry standards and federal regulations have not yet produced a train that will automatically whistle when it passes the whistle post. It's still up to the engineer. And that's where human error can come into play. Of course, if it were automatic, then there would still be a chance that there would be a system failure, but at least there would be a back-up. Automatic AND human systems are both needed to warn the public of the approaching danger.

The technology is now available to equip all trains with large, multi-colored headlights, almost strobe-like...impossible to ignore, even in broad daylight. Everyone sees police, fire and rescue vehicles coming up behind them...and it's because of the lights. If your stereo is too loud, you'll still see the lights on those vehicles. Why don't trains have those? Because it costs too much? You can't tell me it would be too expensive. I've been lobbying for legislation at the federal level that would require all passenger and freight trains to be equipped with these kinds of strobe lights. If that train in rural Taiteville had been equipped with a colored strobe light, I'm certain that kid would be alive and we wouldn't be here in this court.

There are other things that could be done. Instead of tiny crossing arms with little lights that can be dimmed by dust, why not have larger lights on those crossbucks that strobe and demand greater attention? Expense? The industry is currently testing equipment that will actually reach out and grab a car if it tries to enter a railroad crossing when a train is approaching. There are amazing technologies out there. They just aren't being utilized.

The railroads have a duty. A duty to warn people that trains are coming. They

absolutely should be held accountable for accidents like this one. They had a duty to adequately warn those kids that a train was bearing down on them at 50 or 60 some miles per hour. If the whistle didn't blow, or if it wasn't loud enough, if the headlamp was too dim, if the flashing lights on the crossbars were obscured by weeds or dust and dirt, all contribute to the negligence of the railroad.

There is negligence, and there is something called contributory negligence. Under Illinois law, a motorist who has breached the duty of ordinary care is not automatically barred from pursuing a claim against the railroad. That's important to remember. If those kids were 50% or less negligent, the family can still recover in a negligence action. That also means that the railroad must bear at least 50% of the blame. I think they do. Besides, if you punish the railroads often enough, hit them where it hurts, in their bank accounts, then they may decide it would be cheaper to equip the trains and crossings with appropriate warning devices.

**Affidavit of Leslie Gilmore,
parent of Haley Gilmore (deceased) - WITNESS FOR PLAINTIFF**

My name is Leslie Gilmore. Haley Gilmore was my only son. He was our only child. He was only 17 years old when he was killed.

I am so angry. The railroads are saying that this accident is all my kid's fault. I don't buy that. I think that the railroads bear some of the responsibility for this kind of accident. Sometimes more than a simple, small crossing sign with dim lights needs to be out there to warn of the possible dangers of an oncoming train. Some of the witnesses don't remember hearing the train whistle. Why aren't they automatic? There are bar scanners on toll-roads, why not on trains? When a train pulls past a certain spot, the whistle should automatically sound, long and loud. Lights should flash at the crossing and on the train. Was that train's headlight on? Was it on as brightly as it should have been? Was the whistle blowing? Was it loud enough? The transportation people admit that dirty windows and loud stereos and air conditioning can prevent drivers from hearing the warning signals...well, why haven't they done something about that? Why aren't the whistles louder? Longer? More blaring? Why aren't there crossing gates at those rural crossings? Especially the ones where the approaches are visibly blocked by trees, or high crops, or billboard signs, or whatever?

That train should have been able to slow down after the engineer said he/she thought there might be a problem. Did the brakes fail? I know trains take a long time to stop, but if it had slowed a bit more, maybe the accident wouldn't have been fatal and my kid would have just had a head injury like Madison and Terry.

I raised my child to obey the laws of this country. Haley was a respectful, intelligent, thinking person with the brightest future imaginable. I feel like losing Haley is not just my personal loss, not just our family's loss, but a real loss for the world. Haley was so special.

I don't want the money we're asking for from the railroad company for my own personal gain. I do think that the railroad and that engineer acted irresponsibly in this instance and they should be punished so that they will take greater care in the future.

My family plans to put any funds that we gain through this court process into a scholarship fund to be used by students from Taiteville High School. I'd personally like to offer scholarships to kids who want to go into politics and governmental regulation. Maybe one of Haley's friends will become a legislator and work toward mandating safer grade crossings everywhere in the state and in the country...not just at those in populated areas. Why are the people who live in cities more important than those that live in the country? Are their lives worth more than Haley's?

Haley was a wonderful child. Obedient, socially aware, caring. A parent couldn't

want for anything more in a child. His grades were good; he was involved in student council and 4-H activities. He had everything to live for. He was our only child. Haley was going to graduate early. June of 1999. We got the truck as a graduation present. We were so proud.

Haley had been raised to obey the law. And he was a smart kid. Not daring or stupid. I can't remember a time when we had to worry about him making a bad decision. It seemed like Haley always knew right from wrong and didn't mind at all doing what was right.

He loved that truck. From the minute we pulled into the driveway and handed him the keys, he was in love. He was constantly washing, waxing, and dusting that truck. For his birthday in July, he had asked for a liner so the truck bed wouldn't get scratched.

Haley had been driving since his sixteenth birthday, almost a full year. Never had a speeding ticket, a parking ticket or anything of the kind. The local police are pretty strict with the kids too. They don't let them get away with anything. If Haley had been cruising and causing problems, we would have heard about it.

One time, when Haley was younger, about 12 or so, we were driving back from a family picnic and saw a car racing a train. That car almost didn't make it. Haley spoke of that for weeks after the incident, and I know it still had some affect. Haley mentioned that near miss the day he took the driver's test. I can't believe that Haley or any of those kids in that car were racing that train. To suggest such a thing is just plain silly, especially as Haley was the driver.

On the day of the accident, Haley had called me at work to let me know that he and two of his friends were going to be out driving the truck on some of the county roads. They wanted to test out the stereo to see how loud it could play but they didn't want to bother any of the neighbors in town. That's how thoughtful Haley was. He always thought of others.

I told him to be careful. I always did. Not that I really thought he needed reminding. He was always careful.

Anyhow, I got a call at about 2:30 p.m. from a doctor at Taiteville Hospital saying that Haley had been in an accident and that we should get down there as soon as possible. I could tell by the doctor's voice that something was very wrong. By the time we got to the emergency room, the parents of the other two kids were there and they were all crying. I knew the news was going to be bad but it never really occurred to me that Haley would be dead.

When the doctor told us, we just collapsed. It seemed so impossible. Our baby was gone. Out of our lives. Only a memory. It's too horrible.

They are saying that Haley was racing the train. That sounds impossible to me. I've never known him to be anything but sensible, especially about something as serious as driving...and with passengers. Caution seemed to be his byword. And then they said that some farmer hadn't even seen the truck's tail lights flash, like the kids just didn't see the train. That got me to wondering if the train had blown its whistle to warn the kids. That crossing out there doesn't have a gate, just some old crossing signs that the kids shoot at every year.

Haley was a trusting kind of kid. I'd bet my life that those lights weren't working right. If they weren't I'd also be willing to bet that the railroad company will find any number of witnesses to say that everything was working the way it was supposed to work. They won't want to pay for their mistake, their carelessness. They won't want to pay for taking my son away.

If those lights had been working, my son would have obeyed that signal. If he'd heard a train's whistle, he would have obeyed the law and stopped. He would have stopped had there been any indication that a train was approaching.

Our consolation now is that they tell us that Haley died instantly. Never knew what hit him. We are also thankful that the other two passengers survived. I am glad their parents don't have to go through what we've gone through.

**Affidavit of Madison Bagley
Passenger in truck that was hit by the train - WITNESS FOR PLAINTIFF**

My name is Madison Bagley. I'm seventeen years old and live in Taiteville, Illinois with my parents.

On May 10, I went for a ride in the country with my two friends Haley Gilmore and Terry Agnew. Haley had gotten a new truck from his parents as an early graduation present. We had been playing around with the truck's stereo system and wanted to ride out into the countryside to really test the sound. I was sitting next to the door, Terry was in the middle and Haley was driving.

I'm not at all familiar with the area outside of Taiteville. I moved here about a few years ago when my dad, a police officer, got a job in Taiteville. I met Haley and Terry at school. We had an instant rapport. We all liked school, especially history and literature classes, we all liked tennis, and probably best of all, we all liked the same kind of music. We were planning on writing music together someday.

Anyhow, on that day, we were all out driving around on the back country roads, listening to the stereo, singing along and just having a good time. School was going to be out in a few weeks and we'd been making plans to get together at least a few times a week to write lyrics.

When the train hit the truck, I was thrown clear. My head was cut pretty bad and I was in a coma for almost two full weeks. I'm ok now, I guess. I don't remember the crash at all. I don't remember anything for two weeks after the crash. I woke up in a hospital bed two weeks after the accident. My parents and grandparents and my kid sister were all in the room. They were all crying. I had no idea what had happened. They had to tell me that Haley was killed and that Terry was in the next room, still in a coma.

I don't remember anything that happened after the crash...but I have started to remember things that lead up to the accident. I remember turning onto a narrow road and heading alongside some railroad tracks. I was looking straight ahead. I never saw or heard the train. I remember we were all singing along with the song that was playing on the radio. The truck windows were rolled up. We had been on some gravel roads out in the country and had been laughing about how we were all going to have to help clean the truck. We had the air conditioner running...and the radio. I know people will wonder if we had been drinking or doing drugs. We hadn't. Never had. We each had a bottle of water and that was all. None of us smoked or drank. And we sure didn't do drugs.

We started the day in town at a local diner. We got into the truck, turned on the radio and drove through town. We passed a few of our friends and they honked and waved. We had the radio and the air conditioner on then, just like we did when we were in the country. We heard the car horns, but we sure didn't hear

that train whistle.

I know for a fact that Haley was a careful driver. I never had any concerns about my safety when I was riding with Haley. I do know that Haley had a deal with his parents. If he maintained a perfectly clean driving record, no speeding tickets, not even a parking ticket, they'd keep paying the insurance. If Haley got a ticket, the deal was off and he would assume full responsibility for all insurance costs. Haley took that deal very seriously. Heck, Haley spoke a lot about a near collision he saw one time. Someone was racing a train and almost didn't make it across. That really got to Haley.

I can't remember a time Haley ever exceeded the speed limit. I can't remember Haley ever even thinking about parking in a restricted area. Haley was sort of a nut about people parking in handicap spaces. He even talked about starting a community police effort to monitor the vehicles parked in those spaces. Haley had a cousin who uses a wheelchair. Haley was pretty aware of the importance of keeping those spaces for the people who really needed them.

I'd guess that we were travelling at about 45 or 50 miles per hour before we slowed to round the curve that leads to the crossing. I've been out there since being released from the hospital. I wanted to put some flowers by the small white cross that the school kids put up in memory of Haley. The road runs along side the railroad tracks for a bit. Part of that distance, there are trees between the tracks and the road so you can't see the tracks or the trains that might be coming.

But then the road gently curves, right after the trees stop, and the crossing is there. Only about a half or quarter mile after the trees. We slowed down to make the curve, I do remember that, but then Haley started to speed back up again. Haley must not have noticed the signals at all. I know I didn't notice them.

The white cross is right next to the railroad crossing warning sign, they call them crossbucks. I know that every time I see a sign like that, or hear a train whistle, or cross tracks, I'll think of Haley. There are flashing lights on the crossbuck sign, but no gates. I hope they gate that crossing now.

I don't remember ever hearing the train whistle and I don't remember seeing the flashing lights on the crossbuck sign. I don't remember Haley braking or swerving.

We were just cruising and that train must have come out of nowhere. I don't remember hearing the train and I don't remember the crash. I guess I'm grateful for that. I guess I'm also pretty grateful that the rescue folks got there so fast.

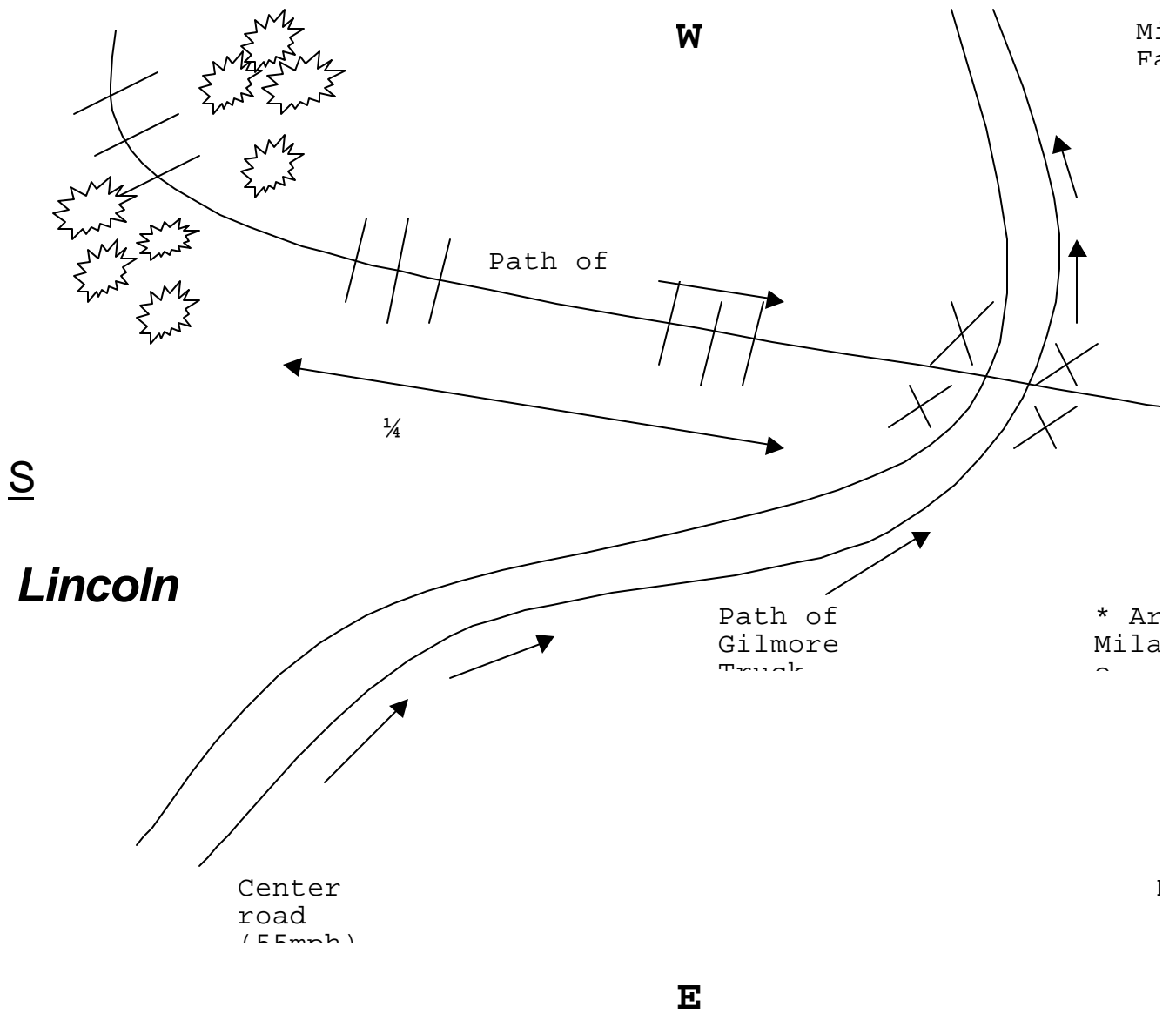
STIPULATIONS

STIPULATED: Jan Martin, Engineer for the Midwestern States Railway, does not have a mental health problem. His/Her discussions with a company counsellor in group sessions is established company protocol for engineers who have witnessed accidents.

STIPULATED: The railroad tracks run north and south, the road also runs north to south and intersects after a sweeping curve to intersect the tracks at a right angle (see drawing attached). The intersection is at the top of a slight hill. The speed limit on Center Road is 55 m.p.h.)

STIPULATED: There was another non-fatal auto/train collision at the crossing in question. This accident occurred six years prior to this case, involved a stalled car on the tracks that the driver abandoned in time to avoid injury. No person sustained injury as a result of this accident, but the car was seriously damaged.

MAP



STATUTES

Illinois Compiled Statutes
Vehicles - Illinois Vehicle Code
625 ILCS 5/
(625 ILCS 5/)
ARTICLE XII. SPECIAL STOPS REQUIRED

(625 ILCS 5/11-1201)

Sec. 11-1201. Obedience to signal indicating approach of train.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing such person must exercise due care and caution as the existence of a railroad track across a highway is a warning of danger, and under any of the circumstances stated in this Section, the driver shall stop within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely.

The foregoing requirements shall apply when:

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
2. A crossing gate is lowered or a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
3. A railroad train approaching a highway crossing emits a warning signal and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;
4. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
5. A railroad train is approaching so closely that an immediate hazard is created.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(c) The Department, and local authorities with the approval of the Department, are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

(d) At any railroad grade crossing provided with railroad crossbuck signs, without automatic, electric, or mechanical signal devices, crossing gates, or a human

flagman giving a signal of the approach or passage of a train, the driver of a vehicle shall in obedience to the railroad crossbuck sign, yield the right-of-way and slow down to a speed reasonable for the existing conditions and shall stop, if required for safety, at a clearly marked stopped line, or if no stop line, within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he or she can do so safely. If a driver is involved in a collision at a railroad crossing or interferes with the movement of a train after driving past the railroad crossbuck sign, the collision or interference is prima facie evidence of the driver's failure to yield right-of-way.

(e) A violation of any part of this Section shall result in a mandatory fine of \$500 or 50 hours of community service.

(f) Local authorities shall impose fines as established in subsection (e) for vehicles that fail to obey signals indicating the presence, approach, passage, or departure of a train.

(Source: P.A. 89-186, eff. 1-1-96; 89-658, eff. 1-1-97.)

(625 ILCS 5/11-1201.1)

Sec. 11-1201.1. Automated Railroad Crossing Enforcement System.

(a) For the purposes of this Section, an automated railroad grade crossing enforcement system is a system operated by a law enforcement agency that records a driver's response to automatic, electrical or mechanical signal devices and crossing gates. The system shall be designed to obtain a clear photograph or other recorded image of the vehicle, vehicle operator and the vehicle registration plate of a vehicle in violation of Section 11-1201. The photograph or other recorded image shall also display the time, date and location of the violation.

(b) Commencing on January 1, 1996, the Illinois Commerce Commission and the Commuter Rail Board of the Regional Transportation Authority shall, in cooperation with local law enforcement agencies, establish a two year pilot program within a county with a population of between 750,000 and 1,000,000 using an automated railroad grade crossing enforcement system. The Commission shall determine the 3 railroad grade crossings within that county that pose the greatest threat to human life based upon the number of accidents and fatalities at the crossings during the past 5 years and with approval of the local law enforcement agency equip the crossings with an automated railroad grade crossing enforcement system.

(c) For each violation of Section 11-1201 recorded by an automatic railroad grade crossing system, the local law enforcement agency having jurisdiction shall issue a written Uniform Traffic Citation of the violation to the registered owner of the vehicle. The Uniform Traffic Citation shall be delivered to the registered owner, by mail, within 30 days of the violation. The Uniform Traffic Citation shall include the name and address of vehicle owner, the vehicle registration number, the offense

charged, the time, date, and location of the violation, the first available court date and that the basis of the citation is the photograph or other recorded image from the automated railroad grade crossing enforcement system.

(d) The Uniform Traffic Citation issued to the violator shall be accompanied by a written document which explains the violator's rights and obligations and how the violator can elect to proceed by either paying the fine or challenging the issuance of the Uniform Traffic Citation.

(e) Any photograph or other recorded image evidencing a violation of Section 11-1201 shall be admissible in any proceeding resulting from the issuance of the Uniform Traffic Citation. Photographs or recorded images made by an automatic railroad grade crossing enforcement system shall be confidential, and shall be made available only to the defendant, governmental and law enforcement agencies for the purposes of adjudicating a violation of Section 11-1201 of the Illinois Vehicle Code.

(f) Rail crossings equipped with an automatic railroad grade crossing enforcement system shall be posted with a sign visible to approaching traffic stating that the railroad grade crossing is being monitored, that citations will be issued, and the amount of the fine for violation.

(g) The cost of the installation and maintenance of each automatic railroad grade crossing enforcement system shall be paid from the Grade Crossing Protection Fund if the rail line is not owned by Commuter Rail Board of the Regional Transportation Authority. If the rail line is owned by the Commuter Rail Board of the Regional Transportation Authority, the costs of the installation and maintenance shall be paid from the Regional Transportation Authority's portion of the Public Transportation Fund.

(h) The Illinois Commerce Commission shall issue a report to the General Assembly at the conclusion of the two year pilot program on the effectiveness of the automatic railroad grade crossing enforcement system.

(Source: P.A. 89-454, eff. 5-17-96; 90-14, eff. 7-1-97.)

(625 ILCS 5/11-1202)

Sec. 11-1202. Certain vehicles must stop at all railroad grade crossings.

(a) The driver of any of the following vehicles shall, before crossing a railroad track or tracks at grade, stop such vehicle within 50 feet but not less than 15 feet from the nearest rail and, while so stopped, shall listen and look for the approach of a train and shall not proceed until such movement can be made with safety:

1. Any second division vehicle carrying passengers for hire;

2. Any bus that meets all of the special requirements for school buses in Sections 12-801, 12-803, and 12-805 of this Code;

3. Any other vehicle which is required by Federal or State law to be placarded when carrying as a cargo or part of a cargo hazardous material as defined in the "Illinois Hazardous Materials Transportation Act".

After stopping as required in this Section, the driver shall proceed only in a gear not requiring a change of gears during the crossing, and the driver shall not shift gears while crossing the track or tracks.

(b) This Section shall not apply:

1. At any railroad grade crossing where traffic is controlled by a police officer or flagperson;

2. At any railroad grade crossing controlled by a functioning traffic-control signal transmitting a green indication which, under law, permits the vehicle to proceed across the railroad tracks without slowing or stopping, except that subsection (a) shall apply to any school bus;

3. At any streetcar grade crossing within a business or residence district; or

4. At any abandoned, industrial or spur track railroad grade crossing designated as exempt by the Illinois Commerce Commission and marked with an official sign as authorized in the State Manual on Uniform Traffic Control Devices for Streets and Highways.

(Source: P.A. 89-658, eff. 1-1-97.)

Illinois Compiled Statutes
Civil Procedure
Code of Civil Procedure
735 ILCS 5/

(735 ILCS 5/2-1116)

Sec. 2-1116. Limitation on recovery in tort actions; fault.

(a) The purpose of this Section is to allocate the responsibility of bearing or paying damages in actions brought on account of death, bodily injury, or physical damage to property according to the proportionate fault of the persons who proximately caused the damage.

(b) As used in this Section:

"Fault" means any act or omission that (i) is negligent, willful and wanton, or

reckless, is a breach of an express or implied warranty, gives rise to strict liability in tort, or gives rise to liability under the provisions of any State statute, rule, or local ordinance and (ii) is a proximate cause of death, bodily injury to person, or physical damage to property for which recovery is sought.

"Contributory fault" means any fault on the part of the plaintiff (including but not limited to negligence, assumption of the risk, or willful and wanton misconduct) which is a proximate cause of the death, bodily injury to person, or physical damage to property for which recovery is sought.

"Tortfeasor" means any person, excluding the injured person, whose fault is a proximate cause of the death, bodily injury to person, or physical damage to property for which recovery is sought, regardless of whether that person is the plaintiff's employer, regardless of whether that person is joined as a party to the action, and regardless of whether that person may have settled with the plaintiff.

(c) In all actions on account of death, bodily injury or physical damage to property in which recovery is predicated upon fault, the contributory fault chargeable to the plaintiff shall be compared with the fault of all tortfeasors whose fault was a proximate cause of the death, injury, loss, or damage for which recovery is sought. The plaintiff shall be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought. The plaintiff shall not be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is not more than 50% of the proximate cause of the injury or damage for which recovery is sought, but any economic or non-economic damages allowed shall be diminished in the proportion to the amount of fault attributable to the plaintiff.

(d) Nothing in this Section shall be construed to create a cause of action.

(e) This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

Sec. 2-1116. Limitation on recovery in tort actions.

In all actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, the plaintiff shall be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought. The plaintiff shall not be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is not more than 50% of the proximate cause of the injury or damage for which recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of fault attributable to the plaintiff.

(735 ILCS 5/2-1117)

Sec. 2-1117. Several liability.

(a) In any action brought on account of death, bodily injury to person, or physical damage to property in which recovery is predicated upon fault as defined in Section 2-1116, a defendant is severally liable only and is liable only for that proportion of recoverable economic and non-economic damages, if any, that the amount of that defendant's fault, if any, bears to the aggregate amount of fault of all other tortfeasors, as defined in Section 2-1116, whose fault was a proximate cause of the death, bodily injury, economic loss, or physical damage to property for which recovery is sought.

(b) Notwithstanding the provisions of subsection (a), in any healing art malpractice action based on negligence or wrongful death, any defendants found liable shall be jointly and severally liable if the limitations on non-economic damages in Section 2-1115.1 of this Act are for any reason deemed or found to be invalid.

This amendatory Act of 1995 applies to causes of action filed on or after its effective date.

Sec. 2-1117. Joint liability.

Except as provided in Section 2-1118, in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant who could have been sued by the plaintiff, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants who could have been sued by the plaintiff, shall be jointly and severally liable for all other damages.

Illinois Compiled Statutes
Civil Liabilities
Wrongful Death Act
740 ILCS 180/

(740 ILCS 180/)

(740 ILCS 180/0.01) Sec. 0.01. Short title. This Act may be cited as the Wrongful Death Act.

(740 ILCS 180/1)

Sec. 1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony. No action may be brought under this Act if the decedent had brought a cause of action with respect to the same underlying incident or occurrence which was settled or on which judgment was rendered.

This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

Sec. 1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

(740 ILCS 180/2)

Sec. 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the economic and non-economic damages resulting from such death, to the surviving spouse and next of kin of such deceased person.

In every such action, the jury shall determine the amount of damages to be recovered without regard to and with no special instruction as to the dollar limits on recovery imposed by this Section. However, recovery of non-economic damages in each such action shall be allowed only in accordance with the provisions of Section 2-1115.1 of the Code of Civil Procedure.

The amount recovered in any such action shall be distributed by the court in which the cause is heard or, in the case of an agreed settlement, by the circuit court, to each of the surviving spouse and next of kin of such deceased person in the proportion, as determined by the court, that the percentage of dependency of

each such person upon the deceased person bears to the sum of the percentages of dependency of all such persons upon the deceased person.

Where the deceased person left no surviving spouse or next of kin entitled to recovery, the damages shall, subject to the following limitations inure, to the exclusive benefit of the following persons, or any one or more of them:

(a) to the person or persons furnishing hospitalization or hospital services in connection with the last illness or injury of the deceased person, not exceeding \$450;

(b) to the person or persons furnishing medical or surgical services in connection with such last illness or injury, not exceeding \$450;

(c) to the personal representatives, as such, for the costs and expenses of administering the estate and prosecuting or compromising the action, including a reasonable attorney's fee. In any such case the measure of damages to be recovered shall be the total of the reasonable value of such hospitalization or hospital service, medical and surgical services, funeral expenses, and such costs and expenses of administration, including attorney fees, not exceeding the foregoing limitations for each class of such expenses and not exceeding \$900 plus a reasonable attorney's fee.

Every such action shall be commenced within 2 years after the death of such person but an action against a defendant arising from a crime committed by the defendant in whose name an escrow account was established under the "Criminal Victims' Escrow Account Act" shall be commenced within 2 years after the establishment of such account. For the purposes of this Section 2, next of kin includes an adopting parent and an adopted child, and they shall be treated as a natural parent and a natural child, respectively. However, if a person entitled to recover benefits under this Act, is, at the time the cause of action accrued, within the age of 18 years, he or she may cause such action to be brought within 2 years after attainment of the age of 18.

In any such action to recover damages, it shall not be a defense that the death was caused in whole or in part by the contributory negligence of one or more of the beneficiaries on behalf of whom the action is brought, but the amount of damages given shall be reduced in the following manner.

The trier of fact shall first determine the decedent's contributory fault in accordance with Sections 2-1116 and 2-1107.1 of the Code of Civil Procedure. Recovery of damages shall be barred or diminished accordingly. The trier of fact shall then determine the contributory fault, if any, of each beneficiary on behalf of whom the action was brought:

- (1) Where the trier of fact finds that the contributory fault of a beneficiary

on whose behalf the action is brought is not more than 50% of the proximate cause of the wrongful death of the decedent, then the damages allowed to that beneficiary shall be diminished in proportion to the contributory fault attributed to that beneficiary. The amount of the reduction shall not be payable by any defendant.

(2) Where the trier of fact finds that the contributory fault of a beneficiary on whose behalf the action is brought is more than 50% of the proximate cause of the wrongful death of the decedent, then the beneficiary shall be barred from recovering damages and the amount of damages which would have been payable to that beneficiary, but for the beneficiary's contributory fault, shall not inure to the benefit of the remaining beneficiaries and shall not be payable by any defendant.

The trial judge shall conduct a hearing to determine the degree of dependency of each beneficiary upon the decedent. The trial judge shall calculate the amount of damages to be awarded each beneficiary, taking into account any reduction arising from either the decedent's or the beneficiary's contributory fault.

Any defendant shall be permitted to intervene as of right, upon motion, in all proceedings affecting the determination of dependency under this Section. Any judgment pursuant to this Section shall not become final until all determinations to be made under this Section have been concluded in the circuit court.

This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

Sec. 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, to the surviving spouse and next of kin of such deceased person.

In every such action, the jury shall determine the amount of damages to be recovered without regard to and with no special instruction as to the dollar limits on recovery imposed by this Section. In no event shall the judgment entered upon such verdict exceed \$20,000 where such death occurred prior to July 14, 1955, and not exceeding \$25,000 where such death occurred on or after July 14, 1955 and prior to July 8, 1957, and not exceeding \$30,000 where such death occurs on or after July 8, 1957 and prior to the effective date of this amendatory Act of 1967, and without limitation where such death occurs on or after the effective date of this amendatory Act of 1967.

The amount recovered in any such action shall be distributed by the court in which the cause is heard or, in the case of an agreed settlement, by the circuit

court, to each of the surviving spouse and next of kin of such deceased person in the proportion, as determined by the court, that the percentage of dependency of each such person upon the deceased person bears to the sum of the percentages of dependency of all such persons upon the deceased person.

* * *

Illinois Compiled Statutes
Vehicles
Illinois Vehicle Code
625 ILCS 5/

ARTICLE IV. SAFETY REQUIREMENTS FOR RAIL CARRIERS

(625 ILCS 5/18c-7401)

Sec. 18c-7401. Safety Requirements for Track, Facilities, and Equipment.

(1) General Requirements. Each rail carrier shall, consistent with rules, orders, and regulations of the Federal Railroad Administration, construct, maintain, and operate all of its equipment, track, and other property in this State in such a manner as to pose no undue risk to its employees or the person or property of any member of the public.

Every rail carrier operating in the State of Illinois shall construct and maintain every highway crossing over its tracks within the State so that the roadway at the intersection shall be as flush with the rails as super-elevated curves will allow, and, unless otherwise ordered by the Commission, shall construct and maintain the approaches thereto at a grade of not more than 5% within the right of way for a distance of not less the 6 feet on each side of the centerline of such tracks; provided, that the grades at the approaches may be maintained in excess of 5% only when authorized by the Commission.

Every rail carrier operating within this State shall remove from its right of way at all grade crossings within the State, such brush, shrubbery, and trees as is reasonably practical for a distance of not less than 500 feet in either direction from each grade crossing. The Commission shall have power, upon its own motion, or upon complaint, and after having made proper investigation, to require the installation of adequate and appropriate luminous reflective warning signs, luminous flashing signals, crossing gates illuminated at night, or other protective devices in order to promote and safeguard the health and safety of the public. Luminous flashing signal or crossing gate devices installed at grade crossings, which have been approved by the Commission, shall be deemed adequate and appropriate. The Commission shall have authority to determine the number, type, and location of such signs, signals, gates, or other protective devices which, however, shall conform as near as may be with generally recognized national standards,

and the Commission shall have authority to prescribe the division of the cost of the installation and subsequent maintenance of such signs, signals, gates, or other protective devices between the rail carrier or carriers, the public highway authority in interest, and in instances involving the use of the Grade Crossing Protection Fund, the Illinois Department of Transportation.

It is the public policy of the State of Illinois to enhance public safety by establishing safe grade crossings. In order to implement this policy, the Illinois Commerce Commission is directed to conduct public hearings and to adopt specific criteria by July 1, 1994, that shall be adhered to by the Illinois Commerce Commission in determining if a grade crossing should be opened or abolished. The following factors shall be considered by the Illinois Commerce Commission in developing the specific criteria for opening and abolishing grade crossings:

- (a) timetable speed of passenger trains;
- (b) distance to an alternate crossing;
- (c) accident history for the last 5 years;
- (d) number of vehicular traffic and posted speed limits;
- (e) number of freight trains and their timetable speeds;
- (f) the type of warning device present at the grade crossing;
- (g) alignments of the roadway and railroad, and the angle of intersection of those alignments;
- (h) use of the grade crossing by trucks carrying hazardous materials, vehicles carrying passengers for hire, and school buses; and
- (i) use of the grade crossing by emergency vehicles.

The Illinois Commerce Commission, upon petition to open or abolish a grade crossing, shall enter an order opening or abolishing the crossing if it meets the specific criteria adopted by the Commission.

Except as otherwise provided in this subsection (3), in no instance shall a grade crossing be permanently closed without public hearing first being held and notice of such hearing being published in an area newspaper of local general circulation.

(4) Freight Trains - Radio Communications. The Commission shall after hearing and order require that every main line railroad freight train operating on main tracks outside of yard limits within this State shall be equipped with a radio communication system. The Commission after notice and hearing may grant exemptions from the requirements of this Section as to secondary and branch lines.

(625 ILCS 5/18c-7402)

Sec. 18c-7402. Safety Requirements for Railroad Operations.

(2) Other Operational Requirements.

(a) Bell and Whistle-Crossings. Every rail carrier shall cause a bell, and a whistle or horn to be placed and kept on each locomotive, and shall cause the same to be rung or sounded by the engineer or fireman, at the distance of a least 1,320 feet, from the place where the railroad crosses or intersects any public highway, and shall be kept ringing or sounding until the highway is reached; provided that at crossings where the Commission shall by order direct, only after a hearing has been held to determine the public is reasonably and sufficiently protected, the rail carrier may be excused from giving warning provided by this paragraph.

(b) Speed Limits. Each rail carrier shall operate its trains in compliance with speed limits set by the Commission. The Commission may set train speed limits only where such limits are necessitated by extraordinary circumstances effecting the public safety, and shall maintain such train speed limits in effect only for such time as the extraordinary circumstances prevail.

EXHIBITS

All affidavits and exhibits are authentic and may not be disputed at trial, signed or unsigned, dated or undated.

Students may only introduce into evidence those exhibits given in the case materials. Teams may NOT cite as authority any material that may be cited or footnoted in the given materials.

Props and enlargements are NOT permitted. Costumes are considered props and are not allowed.

EXHIBIT A

The effectiveness of gates as a means of deterring accidents can be shown in the following table by comparing the exposure factor percentage to the total accidents percentage for each type of warning device:

<u>PROTECTION TYPE</u>	<u>EXPOSURE FACTOR</u>	<u># OF ACCIDENTS</u>	<u>% OF TOTAL</u>
Gates	85%	70	38%
Flashing lights	12%	47	25%
Crossbucks	2%	66	36%
Other	1%	2	1%

Thus, crossings equipped with gates have 85% of the rail and vehicular traffic, but only 38% of the accidents; flashing lights have only 12 percent of such traffic, but 25 % of the accidents; and crossbucks have only two percent of such traffic, but 36 % of the accidents.

EXHIBIT B

Accident Statistics for 1997

<u>Warning Device</u>	<u>Crossings</u>	<u>Accidents</u>	<u>Fatalities</u>	<u>Injuries</u>
Lights & gates	2258	70	8	23
Flashing lights	2610	47	9	22
Wig Wag signals	21	0	0	0
Bells	43	0	0	0
Traffic signals	2	0	0	0
TOTAL ACTIVE	4934	117	17	45
Stop signs	69	0	0	0
Crossbuck signs	3696	66	9	27
Manual/No devices	405	2	0	1
TOTAL PASSIVE	4170	68	9	28
TOTALS	9104	185	26	73

JURY INSTRUCTIONS

10.01 Negligence

Negligence is the failure to do something that a reasonably careful person would do or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances.

10.02 Ordinary Care

Ordinary Care means the care a reasonably careful person would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances.

B10.03 Duty to Use Ordinary Care

It was the duty of the plaintiff, before and at the time of the occurrence, to use ordinary care for his own safety. A plaintiff is contributorily negligent if (1) he fails to use ordinary care for his own safety and (2) his failure to use such ordinary care is a proximate cause of the death. The plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury or damage for which recovery is sought, does not bar his recovery. However, the total amount of damages to which he would otherwise be entitled is reduced in proportion to the amount of his negligence. This is known as comparative negligence. If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury or damage for which recovery is sought, the defendant shall be found not liable.

10.04 Duty to Use Ordinary Care--Adult--Defendant

It was the duty of the defendant, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff. That means it was the duty of the defendant to be free from negligence.

10.08 Careful Habits as Proof of Ordinary Care

If there is evidence tending to show that the decedent was a person of careful habits, you may infer that decedent was in the exercise of ordinary care for his/her own safety and for the safety of others at and before the time of the occurrence, unless the inference is overcome by believable evidence. In deciding the issue of the exercise of ordinary care by the decedent, you may consider this inference and any other evidence upon the subject of decedent's care.

11.0 Contributory Negligence

The expression Contributory Negligence means negligence on the part of the plaintiff that proximately contributed to the cause of death.

11.01 Contributory Negligence--Adult--Definition

When the expression Contributory Negligence is used, it means negligence on the part of the plaintiff that proximately contributed to cause the death.

12.0 Specific Factors Affecting Negligence and Contributory Negligence

12.05 Negligence--Intervention of Outside Agency

If you decide that the decedent was negligent and this his/her negligence was a proximate cause of injury to the plaintiff, it is not a defense that something else may also have been a cause of the injury. However, if you decide that the

sole proximate cause of injury to the plaintiff was something other than the conduct of the defendant, then your verdict should be for the defendant.

15.01 Proximate Cause--Definition

When the expression Proximate Cause is used, it means any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

B21.02 Burden of Proof on the Issues

The plaintiff has the burden of proving each of the following propositions: First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent; Second, that the plaintiff was injured; Third, that the negligence of the defendant was a proximate cause of the injury to the plaintiff.

If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant. On the other hand, if you find from your consideration of all the evidence that each of these propositions has been proved, then you must consider the defendant's claim that the plaintiff was contributorily negligent.

As to that claim, the defendant has the burden of proving both of the following propositions:

- A. That the plaintiff acted or failed to act in one of the ways claimed by the defendant as stated to you in these instructions and that in so acting, or failing to act, the plaintiff was negligent;
- B. That the plaintiff's negligence was a proximate cause of his injury.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has not proved both of the propositions required of the defendant, then your verdict should be for the plaintiff and you will not reduce the plaintiff's damages.

If you find from your consideration of all the evidence that the defendant has proved both of the propositions required of the defendant, and if you find that the plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the defendant.

If you find from your consideration of all the evidence that the plaintiff has proved all of the propositions required of the plaintiff and that the defendant has proved both of the propositions required of the defendant, and if you find that the plaintiff's contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the plaintiff and you will reduce the plaintiff's damages in the manner stated to you in these instructions.

B21.07 Burden of Proof on the Issue of Contributory Negligence-- Causes of Action Accruing After 11/25/86

If you find in favor of the plaintiff and against the defendant, you must then

consider defendant's claim that the plaintiff was contributorily negligent. As to that claim, the defendant has the burden of proving both of the following propositions:

A. That the plaintiff acted or failed to act in one of the ways claimed by the defendant as stated to you in these instructions and that in so acting, or failing to act, the plaintiff was negligent;

B. That the plaintiff's negligence was a proximate cause of his injury.

If you find from your consideration of all the evidence that the plaintiff has proved all of the propositions required of him and that the defendant has not proved both of the propositions required of him, then your verdict should be for the plaintiff and you will not reduce the plaintiff's damages.

If you find from your consideration of all the evidence that the plaintiff has proved all of the propositions required of him and that the defendant has proved both of the propositions required of him, and if you find that the plaintiff's contributory negligence was greater than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the defendant.

If you find from your consideration of all the evidence that the plaintiff has proved all the propositions required of him and that the defendant has proved both of the propositions required of him, and if you find that the plaintiff's contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the plaintiff and you will reduce the plaintiff's damages in the manner stated to you in these instructions.

70.01 Duty of Driver Using Highway

It is the duty of every driver of a vehicle using a public highway to exercise ordinary care at all times to avoid placing himself or others in danger and to exercise ordinary care at all times to avoid a collision.

73.01 Duty of Driver Crossing Tracks

A railroad crossing is a place of danger. If you believe from the evidence that as the decedent was approaching the crossing he knew, or, in the exercise of ordinary care should have known, that a train approaching the crossing was so close to the crossing that it would be likely to arrive at the crossing at about the same time as the plaintiff's vehicle, then it was the duty of the decedent to yield the right of way to the train.

73.02 Speed at Which Trains are Run

The law does not establish a speed limit at which the defendant shall operate its trains, but the speed must be consistent with the exercise of ordinary care on the part of the defendant.

73.03 Duty of Railroad to Sound Bell, Whistle or Horn Before Intersection

There was in force in the State of Illinois at the time of the occurrence in question a statute which provided:

Every railroad corporation shall cause a bell and a whistle or horn to be placed and kept on each locomotive to be rung or sounded by the engineer or fireman at a distance of at least one quarter mile from the place where the railroad crosses or intersects any public highway and shall be kept ringing or sounding until the

highway is reached.

If you find that the defendant violated the statute on the occasion in question, then you may consider that fact together with all of the other facts and circumstances in evidence in determining whether or not the defendant was negligent immediately before and at the time of the occurrence.

INFORMATION

THE FOLLOWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. WITNESSES ARE NOT REQUIRED TO KNOW THIS INFORMATION AND MOCK TRIAL STUDENT LAWYERS SHOULD NOT ASK QUESTIONS ON THE FOLLOWING.

According to 1996 nationwide statistics, only 37 percent of the nation's rail-highway crossings (excluding Illinois') were provided with automatic warning devices. Approximately 54% of Illinois' rail-highway crossings are equipped with automatic warning devices; however, 63 percent of Illinois' crossing accidents and 65% of Illinois' crossing fatalities happened at these crossings. This is largely due to the obvious reason that signalized crossings have more vehicular traffic traversing them, thus increasing the accident exposure factor at these crossings. Eight fatalities occurred at crossings provided with automatic flashing light signals and gates and nine occurred at crossings provided with automatic flashing light signals. Nine fatalities occurred at crossings with crossbucks. The 63 percent figure for accidents at crossings with automatic warning devices is down from an average of 71 percent over the last 16 years. In 1997, 70 accidents occurred at crossings equipped with gates, 47 accidents occurred at crossings with flashing lights, 66 accidents occurred at crossbuck crossings, and two occurred at crossings with other types of warning.

Public Act 89-186, which became effective January 1, 1996, increased the penalty in Illinois for disregarding a railroad crossing warning device from a \$75 moving violation to a mandatory \$500 fine or 50 hours of community service.

The exposure factor is the daily average number of trains multiplied by the daily average number of vehicles that use a crossing. More accidents occur at crossings with gates than crossings with only flashing light signals. Crossing provided with automatic flashing light signals and gates accounted for 38 percent of the 1997 crossing accidents, but have 85 percent of the total exposure factor.

While the installation of automatic warning devices is an important means of lowering the number of individuals involved in train-vehicle collisions, this alone will not eliminate all accidents at railroad crossings.

Thank you.