

Atty. No. 48935

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

ROBERT LINDNER, as special administrator)
of the Estates of BURTON R. LINDNER and)
ZORINE LINDNER, deceased,)

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY,)

Defendant.

No.

TRIAL BY JURY DEMANDED

COMPLAINT AT LAW

NOW COMES the Plaintiff, ROBERT LINDNER, as Special Administrator of the Estate of BURTON R. LINDNER and ZORINE LINDNER, deceased, by and through his attorneys, FISHER & LAMONICA, P.C., and complaining against the Defendant, UNION PACIFIC RAILROAD COMPANY, states as follows:

Allegations Common to All Counts

1. The Plaintiff, ROBERT LINDNER, is the duly appointed Special Administrator of the Estates of his Parents, BURTON R. LINDNER and ZORINE LINDNER, deceased, having been appointed by the Law Division of the Circuit Court of Cook County prior to the filing of this Complaint at Law and, pursuant to 740 ILCS 180/2.1, he carries with him the authority to bring this action.

2. On and about July 4, 2012, the Plaintiff's decedents, BURTON R. LINDNER and ZORINE LINDNER, were residents of the Village of Glenview, County of Cook, State of

Illinois.

3. On and about July 4, 2012, and at all times relevant herein, the Defendant UNION PACIFIC RAILROAD COMPANY (hereinafter, "UPRR"), was a foreign corporation, registered in the State of Illinois and transacting business in the County of Cook.

4. On and about July 4, 2012, and at all times relevant herein, the Defendant UPRR, owned and operating a railroad line with tracks at or near Shermer Road, just south of Willow Road in the County of Cook, State of Illinois.

5. On and about July 4, 2012, and at all times relevant herein, the Defendant UPRR, owned and maintained certain bridge structures for its rail lines, including the bridge and viaduct structure over the roadway at or near Shermer Road, just south of Willow Road, in the County of Cook, State of Illinois.

6. On and about July 4, 2012, and at all times relevant herein, the Defendant, UPRR, owned, operated and maintained the physical rail lines/track at or near the viaduct structure near Shermer Road, just south of Willow Road, in the County of Cook, State of Illinois.

Count I- Wrongful Death-Negligence
(UNION PACIFIC RAILROAD COMPANY)
(BURTON R. LINDNER)

7. The Plaintiff incorporates and alleges general allegation paragraphs 1 through 6 as if fully set out in this Count I.

8. On July 4, 2012, at approximately 1:45pm, the Plaintiff's decedents, BURTON LINDNER and his wife, ZORINE LINDNER, were traveling in their car under the aforementioned UPRR viaduct at Shermer Road, just south of Willow Road, in the County of Cook, State of Illinois.

9. At said time and place, a freight train, operated by the Defendant, UPRR, was traveling on the rail tracks over the viaduct at said location.

10. On July 4, 2012, at said time and place, the aforementioned freight-train, owned, operated and controlled by the Defendant, UPRR, derailed and left the tracks.

11. On July 4, 2012, at approximately 1:45pm the aforementioned railway viaduct owned, operated and controlled by the Defendant, UPRR, at Shermer Road, just south of Willow Road, collapsed onto the roadway below.

12. At the time of the aforementioned collapse, the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, were in their car, under the viaduct.

13. On July 4, 2012, at approximately 1:45pm, 28 rail cars each weighing 75 to 85 tons and the bridge structure collapsed onto the vehicle in which BURTON LINDNER and ZORINE LINDNER were riding, crushing it.

14. On July 4, 2012, and at all times relevant herein, the Defendant UPRR, owed a duty to the public at large, including the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, to maintain and construct its viaducts in a safe condition so that its trains do not derail and crush cars that are passing below.

15. On July 4, 2012, and at all times relevant herein, the Defendant UPRR, owed a duty to the public at large, including the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, to maintain its train tracks in a safe condition so that its trains do not derail and crush cars that are passing below.

16. On July 4, 2012, and at all times relevant herein, the Defendant UPRR, owed a

duty to the public at large, including the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, to maintain its train cars in a safe condition so that they do not derail and crush cars that are passing below.

17. Despite said duty, the Defendant, UNION PACIFIC RAILROAD COMPANY, a foreign corporation, was guilty of one or more of the following wrongful acts and/or omissions:

- a. Carelessly and negligently failed to maintain its tracks in a reasonably safe condition;
- b. Carelessly and negligently failed to maintain its train cars in a reasonably safe condition;
- c. Carelessly and negligently failed to properly repair tracks;
- d. Carelessly and negligently failed to properly construct tracks at and near the aforementioned viaduct;
- e. Carelessly and negligently failed to take notice of dangerous and unsafe operating conditions;
- f. Carelessly and negligently failed to appreciate defects in the track condition;
- g. Carelessly and negligently failed to appreciate defects in its trains;
- h. Carelessly and negligently failed operate its trains in a reasonably safe manner at this location;
- i. Carelessly and negligently failed to inspect the track;
- j. Carelessly and negligently conducted an inadequate inspection of the track.

18. As a direct and proximate result of one or more of the above negligent acts and/or omissions of Defendant, UPRR, BURTON LINDNER was crushed to death by the defendant's train on July 4, 2012, and suffered greatly prior to his demise.

19. By reason of the untimely death of his father, the Plaintiff, ROBERT LINDNER and MATTHEW LINDNER, and their spouses and children suffered certain injuries and losses

including loss of companionship and society, grief and sorrow, all of which are compensable under the Wrongful Death Act, 740 ILCS 180, *et seq.*

20. The Plaintiff further seek damages permitted by the Wrongful Death Act, including, but not limited to, future economic damages including lost income in addition to funeral expenses and costs and other expenses associated with her untimely demise.

21. The Plaintiff seeks damages in excess of \$50,000.00, the minimum amount necessary for the Law Division.

WHEREFORE, the Plaintiff, ROBERT LINDNER, individually, and as Administrator of the Estate of BURTON R. LINDNER, deceased, and MATTHEW LINDNER, as heirs, pray for judgment in their favor and against the Defendants, UNION PACIFIC RAILROAD COMPANY for all injuries and losses compensable under the Wrongful Death Act, costs of this litigation, and any other relief this Court deems appropriate.

Count II- Wrongful Death-Negligence
(UNION PACIFIC RAILROAD COMPANY)
(ZORINE LINDNER)

7. The Plaintiff incorporates and alleges general allegation paragraphs 1 through 6 as if fully set out in this Count I.

8. On July 4, 2012, at approximately 1:45pm, the Plaintiff's decedents, ZORINE LINDNER, and her husband, were traveling in their car under the aforementioned UPRR viaduct at Shermer Road, just south of Willow Road, in the Count of Cook, State of Illinois.

9. At said time and place, a freight train, operated by the Defendant, UPRR, was

traveling on the rail tracks over the viaduct.

10. On July 4, 2012, at said time and place, the aforementioned freight-train that was owned, operated and controlled by the Defendant, UPRR, derailed.

11. On July 4, 2012, at approximately 1:45pm the aforementioned railway viaduct owned, operated and controlled by the Defendant, UPRR, at Shermer Road, just south of Willow Road, collapsed.

12. At the time of the aforementioned derailment and collapse, the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, were in their car, traveling under the viaduct.

13. On July 4, 2012, at approximately 1:45pm, 28 rail cars each weighing 75 to 85 tons and the bridge structure collapsed onto the vehicle in which BURTON LINDNER and ZORINE LINDNER were riding, crushing it.

14. On July 4, 2012, and at all times relevant herein, the Defendant UPRR, owed a duty to the public at large, including the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, to maintain and construct its viaducts in a safe condition so that its trains do not derail and crush cars that are passing below.

15. On July 4, 2012, and at all times relevant herein, the Defendant UPRR, owed a duty to the public at large, including the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, to maintain its train tracks in a safe condition so that its trains do not derail and crush cars that are passing below.

16. On July 4, 2012, and at all times relevant herein, the Defendant UPRR, owed a

duty to the public at large, including the Plaintiffs decedents, BURTON LINDNER and ZORINE LINDNER, to maintain its train cars in a safe condition so that they do not derail and crush cars that are passing below.

17. Despite said duty, the Defendant, UNION PACIFIC RAILROAD COMPANY, a foreign corporation, was guilty of one or more of the following wrongful acts and/or omissions:

- a. Carelessly and negligently failed to maintain its tracks in a reasonably safe condition;
- b. Carelessly and negligently failed to maintain its train cars in a reasonably safe condition;
- c. Carelessly and negligently failed to properly repair tracks;
- d. Carelessly and negligently failed to properly construct tracks at and near the aforementioned viaduct;
- e. Carelessly and negligently failed to take notice of dangerous and unsafe operating conditions;
- f. Carelessly and negligently failed to appreciate defects in the track condition;
- g. Carelessly and negligently failed to appreciate defects in its trains;
- h. Carelessly and negligently failed operate its trains in a reasonably safe manner at this location;
- i. Carelessly and negligently failed to inspect the track;
- j. Carelessly and negligently conducted an inadequate inspection of the track.

18. As a direct and proximate result of one or more of the above negligent acts and/or omissions of Defendant UPRR, ZORINE LINDNER was crushed to death by the defendant's train on July 4, 2012, and suffered greatly prior to his demise.

19. By reason of the untimely death of his mother, ZORINE LINDNER, the Plaintiff, ROBERT LINDNER and MATTHEW LINDNER, and their spouses and children

suffered certain injuries and losses including loss of companionship and society, grief and sorrow, all of which are compensable under the Wrongful Death Act, 740 ILCS 180, *et seq.*

20. The Plaintiff further seek damages permitted by the Wrongful Death Act, including, but not limited to, future economic damages including lost income in addition to funeral expenses and costs and other expenses associated with her untimely demise.

21. The Plaintiff seeks damages in excess of \$50,000.00, the minimum amount necessary for the Law Division.

WHEREFORE, the Plaintiff, ROBERT LINDNER, individually, and as Administrator of the Estate of ZORINE LINDNER, deceased, and MATTHEW LINDNER, as heirs, pray for judgment in their favor and against the Defendants, UNION PACIFIC RAILROAD COMPANY for all injuries and losses compensable under the Wrongful Death Act, costs of this litigation, and any other relief this Court deems appropriate.

Count III- WRONGFUL DEATH
(Doctrine of Res Ipsa Loquitur)

NOW COMES the Plaintiff, ROBERT LINDNER, as administrator of the Estates of BURTON R. LINDNER, and ZORINE LINDNER, by and through his attorneys, FISHER & LAMONICA, P.C., relying on the doctrine of Res Ipsa Loquitur and complaining of the Defendant, UNION PACIFIC RAILROAD COMPANY, states, in the alternative, as follows:

1-16. The Plaintiff realleges and incorporates paragraphs 1 through 16 of Count I and 1 through 16 of Count II as if fully set out as paragraphs 1 through 16 of this Court III.

17. That at all times relevant herein, the Defendant UNION PACIFIC RAILROAD COMPANY, through the acts of its various agents, servants and employees, exclusively controlled and managed those instrumentalities used in the operation of the freight train over the viaduct at or near Shermer Road, including the train, tracks, and viaduct.

18. That due to the Defendants aforesaid control and management of the instrumentalities, because the aforesaid occurrence does not ordinarily occur in the absence of negligence, the doctrine of *Res Ipsa Loquitur* is an inference of negligence that can be applied to the Defendant, UNION PACIFIC RAILROAD COMPANY.

19. That at all times relevant herein, through the Defendant's train derailing and crushing the car that was occupied by the Plaintiff's decedent, the Defendant, UNION PACIFIC RAILROAD COMPANY, through the acts of its various agents, servants and employees, was then and there guilty of negligence.

20. That as a direct and proximate result of one or more of the aforementioned wrongful acts and/or omissions of the Defendant, UNION PACIFIC RAILROAD COMPANY, on July 4, 2012, the BURTON R. LINDNER and ZORINE LINDNER, were crushed to death.

21. The Plaintiff seeks damages in excess of \$50,000.00, the minimum amount necessary for the Law Division.

WHEREFORE, the Plaintiff, ROBERT LINDNER, as Special Administrator of the Estate of BURTON R. LINDNER and ZORINE LINDNER, pray for judgment in his favor and against the Defendant, UNION PACIFIC RAILROAD COMPANY, for injuries and

losses including loss of companionship and society, grief and sorrow, all of which are compensable under the Wrongful Death Act, 740 ILCS 180, *et seq.*

Respectfully submitted,

FISHER & LAMONICA, P.C.

Erron H. Fisher

Michael J. LaMonica

Erron H. Fisher
Michael J. LaMonica
FISHER & LAMONICA, P.C.
150 South Wacker Drive, Suite 650
Chicago, IL 60606
312/345-0500
(f) 312/345-0550
Atty. No.: #48935