Griffioen v. Cedar Rapids & Iowa City Ry. Co.

Supreme Court of Iowa

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Reporter

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Judges: MANSFIELD, Justice. All justices concur except Appel, Wiggins, and Hecht, JJ., who dissent.

Opinion by: MANSFIELD

Opinion

MANSFIELD, Justice.

This case is yet another outgrowth from the terrible flooding that struck our state a decade ago. Property owners in Cedar Rapids have sued the owners of certain railroad bridges across the Cedar River, alleging that their misguided efforts to protect those bridges from washing out worsened the effects of the flooding for other property owners. We must decide whether the property owners' state-law damage claims against the railroad bridge owners are preempted by the Federal Interstate Commerce Commission Termination Act (ICCTA). *See* 49 U.S.C. § 10501(b) (2006). The ICCTA confers "exclusive" jurisdiction on the Federal Surface Transportation Board over "transportation by rail carriers" and over the "construction" or "operation" of rail tracks or "facilities." *Id.* The ICCTA expressly provides "exclusive" remedies "with respect to regulation of rail transportation" and expressly preempts any other "remedies provided under Federal or State law." *Id.*

After careful review of the ICCTA and authorities interpreting it, we conclude this federal law does indeed preempt the property owners' action alleging that the railroads' design and operation of their railroad bridges resulted in flood damage to other properties. Accordingly, we affirm the district court's ruling granting the defendants' motion for judgment on the pleadings.

Our decision is consistent with the federal authorities examining this question of federal law. Clearly, not all state-law tort claims involving railroads are preempted by the ICCTA. But state tort claims like the ones alleged here that involve second-guessing of decisions made by railroads to keep their rail lines open are expressly preempted by Title 49 § 10501(b) of the ICCTA. *See Tubbs v. Surface Transp. Bd.*, 812 F.3d 1141, 1144-46 (8th Cir. 2015) (quoting § 10501(b) and then concluding that it preempts the plaintiffs' tort claims "as applied"); *Jones Creek Inv'rs, LLC v. Columbia County*, 98 F. Supp. 3d 1279, 1291-94 (S.D. Ga. 2015) (agreeing with the railroad's contention that the ICCTA "expressly preempts [the plaintiff's] state law tort claims"); *Waubay Lake Farmers, Ass'n v. BNSF Ry.*, No. 12-4179-RAL, 2014 U.S. Dist. LEXIS 120160, 2014 WL 4287086, at *6 (D.S.D. Aug. 28, 2014) (finding that plaintiffs' state-law tort claims "fall squarely within the express terms of the ICCTA's preemption clause"); *In re Katrina Canal Breaches Consol. Litig.*, No. 05-4182, 2009 U.S. Dist. LEXIS 14460, 2009 WL 224072, at *4-6 (E.D. La. Jan. 26, 2009) (describing § 10501(b) as an "express preemption provision" and applying it to preempt plaintiffs' state-law tort claims); *Maynard v. CSX Transp., Inc.*, 360 F. Supp. 2d 836, 842 (E.D. Ky. 2004) (stating that "section 10501(b) of the ICCTA expressly preempts Plaintiff's [common-law tort] claims"); *A & W Props., Inc. v. Kan. City S. Ry.*, 200 S.W.3d 342, 347 (Tex. App. 2006) (finding that there is no "blanket exception" from section 10501(b) for state-law tort claims and that "preemption is express" for the tort claims asserted by the plaintiff).

Two categories of state-law tort claims typically are not preempted by the ICCTA. One is a tort claim that challenges a railroad's activities other than the maintenance and operation of its rail lines. *See Guild v. Kan. City S. Ry.*, 541 F. App'x 362, 368 (5th Cir. 2013) (declining to find that a state-law tort claim that the defendant damaged plaintiff's private spur track by temporarily parking train cars of excessive weight on that private track was preempted); *Emerson v. Kan. City S. Ry.*, 503 F.3d 1126, 1130 (10th Cir. 2007) (finding that § 10501(b) does not preempt a claim relating to a railroad "discarding old railroad ties into a wastewater drainage ditch adjacent to the tracks and otherwise failing to maintain that ditch"); *Rushing v. Kan. City S. Ry.*, 194 F. Supp. 2d 493, 499-501 (S.D. Miss. 2001) (finding that § 10501(b) preempted tort claims relating to the railroad's operation of its switch yard but not relating to its erection of an earthen berm outside the switch yard); *Jones v. Union Pac. R.R.*, 79 Cal. App. 4th 1053, 94 Cal. Rptr. 2d 661, 666-67 (Ct. App. 2000) (finding no preemption where there was a triable issue whether the railroad ran its engines and sound "solely to harass plaintiffs" rather than for safety reasons or "in furtherance of [defendant's] railroad operations").

A second category of claims are those relating to rail safety, where a separate, narrower preemption provision in the Federal Rail Safety Act (FRSA) applies. *See* 49 U.S.C. § 20106; *Tyrrell v. Norfolk S. Ry.*, 248 F.3d 517, 523-25 (6th Cir. 2001) (finding that the FRSA rather than the ICCTA governed a trainman's

personal injury claim and the claim was not preempted); *Waneck v. CSX Corp.*, No. 1:17cv106-HSO-JCG, 2018 U.S. Dist. LEXIS 53032, 2018 WL 1546373, at *4-6 (S.D. Miss. Mar. 29, 2018) (finding in a personal injury case that tort claims relating to the design and maintenance of the crossing and related rail structures were governed by the ICCTA and therefore preempted, whereas claims relating to the railroad's failure to slow the train related to rail safety, were therefore governed by the FRSA, and were not preempted).

In short, "there is nothing in the case law that supports [the] argument that, through the ICCTA, Congress only intended preemption of economic regulation of the railroads." *City of Auburn v. U.S. Gov't*, 154 F.3d 1025, 1030 (9th Cir. 1998). If a state-law tort claim requires second-guessing of a railroad's operation and management of its own rail lines as opposed to other activities, and the claim does not pertain to rail safety, it is preempted by the ICCTA. Hence, after careful consideration, we conclude this tort action seeking a large sum of damages for flooding allegedly caused by the railroads' maintenance of their rail bridges is preempted. In this instance, as in many preemption cases, we do not believe further development of the record is needed, and accordingly we affirm the district court's grant of judgment on the pleadings.

I. Background Facts & Proceedings.

Because this case was resolved on a motion for judgment on the pleadings, we assume the truth of the

facts stated in the pleadings. *See Hussemann ex rel. Ritter v. Hussemann*, 847 N.W.2d 219, 222 (Iowa 2014) ("The court should grant a party's motion for judgment on the pleadings only if the uncontroverted facts stated in the pleadings, taken alone, entitle a party to judgment."). Certain facts can also be judicially noticed. *See* Iowa R. Civ. P. 1.415. In the summer of 2008, Iowa residents experienced devastating flooding. Cedar Rapids was hit particularly hard with the worst flooding in its history. More than ten square miles were impacted by the floodwaters, and an estimated 10,000 residents were displaced by the flood.

The plaintiffs own property in Cedar Rapids. The defendants—Cedar Rapids and Iowa City Railway Company, Union Pacific Railroad Company, Union Pacific Corporation, and Alliant Energy Corporation—own railroad bridges traversing the Cedar River in Cedar Rapids. On June 10, 2008, the defendants parked railcars laden with rocks on their bridges to weigh down the bridges in an effort to keep them from washing away during the flooding. Two days later, two of the four bridges collapsed.

The fallen railcars clogged the Cedar River and therefore caused or exacerbated the damage to plaintiffs' property. The two bridges that did not collapse also caused damage when the rising water reached the railcars atop the bridges, creating a dam effect and diverting water to low-lying areas.

On June 7, 2013, the plaintiffs filed a class action petition at law in the Linn County District Court,

alleging negligence, strict liability for engaging in an abnormally dangerous or ultra-hazardous activity, and strict liability based on violations of Iowa Code sections 468.148 and 327F.2 (2009). The plaintiffs sought actual damages of $6 billion and punitive and treble damages.[1]

The defendants removed the action to the United States District Court for the Northern District of Iowa on the theory that the plaintiffs' claims were completely preempted by the ICCTA. The district court denied the plaintiffs' motion to remand, held that complete preemption applied, and dismissed the case. *Griffioen v. Cedar Rapids & Iowa City Ry.*, 977 F. Supp. 2d 903, 908-09 (N.D. Iowa 2013). The United States Court of Appeals for the Eighth Circuit reversed and remanded. *Griffioen v. Cedar Rapids & Iowa City Ry.*, 785 F.3d 1182, 1192 (8th Cir. 2015). That court reasoned,

> The absence from the ICCTA of a substitute federal cause of action that would embrace the Griffioen Group's claims leads us to conclude that Congress has not expressed the clear intent necessary to overcome the exceptionally strong presumption against complete preemption. . . .

Id. At the same time, the court added, "Our holding is, of course, limited to the issue of federal-question

[1] No damage figure is alleged in the petition, *see* Iowa R. Civ. P. 1.403(1), but the plaintiffs made two filings with the district court asserting that the defendants' actions caused $6 billion in damages.

jurisdiction, and so we offer no views regarding any preemption defense that may be raised in state court." *Id.*

Following remand to the Linn County District Court, the defendants moved for judgment on the pleadings based on preemption. In its ruling on February 12, 2016, the district court granted the motion for judgment on the pleadings. The court reasoned,

> The uncontroverted facts, as stated in the pleadings, establish that the ICCTA expressly preempts the state law claims stated by Plaintiffs. The bridges at issue with respect to Plaintiffs' claims are . . . inextricably intertwined with the railroad Defendants' tracks, which affects rail transportation. Plaintiffs, having made complaints about how the railroad Defendants loaded and positioned their rail cars; as to where and when they parked their rail cars; and as to the design, construction and maintenance of the bridges, have stated claims that go directly to rail transport regulation. . . . Plaintiffs are complaining about actions taken by the railroad Defendants that are an essential part of the railroads' operations, and that would result in Plaintiffs managing or governing the operations of the railroads. . . .
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> . . . .
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> Plaintiffs' state law claims are expressly preempted by federal law because the claims fall within the scope of the ICCTA preemption clause.

The plaintiffs appealed, and we retained the appeal.

II. Standard of Review.

We review a district court's ruling on a motion for judgment on the pleadings for the correction of errors at law. *Hussemann*, 847 N.W.2d at 222. "The district court should only grant the motion if the pleadings, taken alone, entitle a party to judgment." *Meinders v. Dunkerton Cmty. Sch. Dist.*, 645 N.W.2d 632, 633 (Iowa 2002).

III. Analysis.

A. The ICCTA. In 1995, Congress enacted the ICCTA, which abolished the Interstate Commerce Commission and created the Surface Transportation Board (STB). ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (codified at 49 U.S.C. §§ 10101-16106). The purpose of the ICCTA was to create "the direct and complete pre-emption of State economic regulation of railroads" and thereby deregulate the economic activity of the industry. H.R. Rep. No. 104-311, at 82, 95 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 793, 793, 807; *see also* S. Rep. No. 104-176, at 2, 5, 7 (1995) (noting that because "the Committee [was] impressed with the positive effects rail deregulation . . . had on the railroad industry," the bill as initially proposed would "significantly reduce[] regulation of surface transportation industries" and would "continue[] the deregulation theme" of the past several years).

To accomplish this deregulation, Congress vested the STB with exclusive regulation of rail transportation and operations, including remedies related to railway transportation. The ICCTA contains an express preemption provision:

> The jurisdiction of the Board over—
>
> (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b).

> "[T]ransportation" includes—
>
> (A) a locomotive, car, vehicle, . . . property, . . . instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail . . . ; and
>
> (B) services related to that movement. . . .

Id. § 10102(9). Railroad bridges, like railroad crossings, railroad tracks, and roadbeds for tracks, meet this statutory definition. *See Pere Marquette Hotel Partners v. United States*, No. 09-5921, 2010 U.S. Dist. LEXIS 36413, 2010 WL 925297, at *4 (E.D. La. Mar. 10, 2010). "[R]ailroad" as statutorily defined includes bridges. 49 U.S.C. § 10102(6)(A).

The defendants' position is that the property owners' claims are expressly preempted by the foregoing language in the ICCTA.[2] They contend that the defendants' decisions to park railcars loaded with rock on railroad bridges in order to keep those bridges open, and their prior construction of those bridges, related to the "construction" and "operation" of "facilities," as to which the STB's jurisdiction is exclusive. They maintain that allowing an Iowa district court to second-guess those decisions in an action seeking billions of dollars in damages would amount to "regulation of rail transportation."

The property owners disagree. They argue the ICCTA preempts only state laws that *directly* regulate transportation. It does not preempt state laws of

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[2] Here and below, the railroads have argued only express preemption. The district court relied on express preemption in granting the railroads' motion. Thus, any question of implied preemption – preemption based on something other than 49 U.S.C. § 10501(b) – is not before us.

One can debate the proper terminology to use. Section 10501(b) has express preemptive language. When the question is the reach of that language, we believe it is one of express preemption. *See State v. Martinez*, 896 N.W.2d 737, 746 (Iowa 2017).

general applicability that have only an *incidental* effect on transportation. They contend that the present state-law damages action falls in the latter category.

Notably, when a statute contains an express preemption clause, the Supreme Court has highlighted that "we do not invoke any presumption against preemption." *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. ___, ___, 136 S. Ct. 1938, 1946, 195 L. Ed. 2d 298 (2016). Instead, courts "focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *Id.* (quoting *Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582, 594, 131 S. Ct. 1968, 1977, 179 L. Ed. 2d 1031 (2011)). In addition, interstate rail operations have traditionally been subject to "among the most pervasive and comprehensive of federal regulatory schemes." *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318, 101 S. Ct. 1124, 1130, 67 L. Ed. 2d 258 (1981). Thus, such operations are not historically an area of primarily state concern.

B. Previous ICCTA Flooding Cases. In granting the motion for judgment on the pleadings, the district court relied primarily on a series of other flood-related cases interpreting the ICCTA. In each of these cases, the plaintiffs' tort claims were found to be preempted; federal law gave primacy to the railroads' federally protected interests in maintaining their rail lines.

For example, in *Jones Creek Investors, LLC*, the plaintiffs claimed the railroad's activities upstream

caused their lake to be permeated with sediment, which led to extensive flooding of their golf course. 98 F. Supp. 3d at 1283-84. The court found the culverts at issue were "not some incidental or peripheral venture [the railroad company] undertook that was unrelated to its railway transportation services." *Id.* at 1294. Importantly, the court determined that "[a]ny state tort claims against [the railroad company] for damages resulting from this construction to its infrastructure effectively govern [the railroad company's] ability to keep its rail lines in safe, working order." *Id.* As a result, the plaintiffs' claims "stemming from the failure, construction, design, and operation of the culverts [were] preempted by the ICCTA." *Id.*

In *Tubbs*, the plaintiffs' tort claims resulting from flooding caused by the railroad having raised an embankment were found to be preempted by the ICCTA. 812 F.3d at 1145-46. The STB had concluded the state law claims would "unreasonably burden or interfere with rail transportation" and were preempted because they were "based on alleged harms stemming directly from the actions of a rail carrier . . . in designing, constructing, and maintaining an active rail line—actions that clearly are part of transportation by rail carriers." *Id.* at 1145-46. The court found the "structural standards applicable to an earthen embankment on which a railroad runs . . . would have a significant impact on the construction and maintenance of a rail line." *Id.* at 1146. The court affirmed the STB decision because the plaintiffs' claims "would, in essence, subject construction of elevated railroad embankments to state

regulation for height, width, and drainage via negligence actions." *Id.*

Similarly, in *Maynard*, the plaintiffs sought damages and injunctive relief in part for the railroad's use of a sidetrack for coal loading operations, which allegedly blocked the plaintiffs' access to their properties and caused drainage from adjoining properties onto their properties. 360 F. Supp. 2d at 837-38. In finding that the plaintiffs' common law negligence and nuisance claims were preempted, the court noted that the sidetracks were essential to the railroad's operations, and allowing the use of the sidetracks to be controlled by the plaintiffs' claims "would interfere with the movement of commerce. . . . Because it [was the railroad company's] construction and operation of the side tracks in this case which [gave] rise to Plaintiffs' claims, those claims [were] expressly preempted by the ICCTA." *Id.* at 841-42.

Likewise, in *Waubay Lake Farmers Ass'n*, the plaintiffs brought class-action common-law damage claims against a railroad, claiming its culvert beneath the railroad bed was not large enough and therefore caused flooding to various properties. 2014 U.S. Dist. LEXIS 120160, 2014 WL 4287086, at *2. The court held the plaintiffs' common law claims essentially sought to "manage or govern" the railroad company's construction of its roadbed. 2014 U.S. Dist. LEXIS 120160, [WL] at *6. "Plaintiffs may not use state common law and a state statute to regulate, and indeed seek to compel, [the railroad company's] reconstruction of its culvert, roadbed, and tracks." *Id.*

Also, in *Village of Big Lake v. BNSF Railway*, the plaintiffs sought injunctive relief against the railroad's violation of a municipal floodplain management ordinance and a state law regarding drainage of railroad right-of-ways and roadbeds. 382 S.W.3d 125, 126 (Mo. Ct. App. 2012). The ordinance required any entity whose actions might impact the floodplain to conduct studies and seek the municipality's permission before taking such action. *Id.* at 126-27. After a flood had occurred, the municipality sued the railroad for building up its railway bed in violation of the ordinance and the state law, basing its claim on the same premise as in the instant case—that the railroad's actions increased the amount of damage that would otherwise have occurred. *Id.* at 127. The court found the ordinance and the statute fell into

> two broad categories of state and local actions that are categorically preempted [by the ICCTA] . . . : (1) "any form of state or local permitting or preclearance, that, by its nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the [STB] has authorized" and (2) "state or local regulation of matters directly regulated by the [STB]—such as the construction, operation or abandonment of rail lines. . . ."

Id. at 128-29 (second and third alterations in original) (quoting *Pere Marquette Hotel Partners*, 2010 U.S. Dist. LEXIS 36413, 2010 WL 925297, at *5).

In *A & W Properties, Inc.*, a property owner sued a railroad for injunctive relief and damages on state statutory and common law theories, alleging the railroad's refusal to enlarge a culvert threatened flooding of its property. 200 S.W.3d at 343-44. The court reasoned, "The question for this Court is whether A & W's claims and the remedies they seek involve 'regulation of rail transportation.'" *Id.* at 351 (quoting 49 U.S.C. § 10501(b)). The court concluded they did and found preemption. *Id.*

In *In re Katrina Canal Breaches Consolidated Litigation*, the court found that property owners' state-law tort claims against a railroad, which arose out of the catastrophic Hurricane Katrina flooding, were preempted. 2009 U.S. Dist. LEXIS 14460, 2009 WL 224072, at *1, *6. The claims were based on the railroad's alleged "negligent design and construction of roadbeds and other areas of track." 2009 U.S. Dist. LEXIS 14460, [WL] at *5. The court explained,

> The application of state law negligence principles to assess and evaluate the suitability of the design and construction of a railroad crossing, railroad tracks, and roadbed for railroad tracks qualifies as an attempt at state law "regulation" in respect to rail transportation.

Id.[3]

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[3] The plaintiffs contend that another flood-related case, *Emerson*, 503 F.3d 1126, supports their position. Although *Emerson* did not find preemption, it also does not concern rail

transportation and is therefore not on point. *See id.* at 1130. In *Emerson*, landowners brought a tort suit claiming that improper disposal of discarded railroad ties and vegetation debris had caused flooding of their property. *Id.* at 1128. The lawsuit, in other words, arose out of the railroad's rubbish disposal activities, not its efforts to move freight or passengers. *See id.* As the Tenth Circuit explained,

> We do not think that the plain language of this statute can be read to include the conduct that the Landowners complain of here—discarding old railroad ties into a wastewater drainage ditch adjacent to the tracks and otherwise failing to maintain that ditch. These acts (or failures to act) are not instrumentalities "of any kind related to the movement of passengers or property" or "services related to that movement." Rather, they are possibly tortious acts committed by a landowner who happens to be a railroad company. Because these acts or omissions are not "transportation" under § 10102(9), the ICCTA does not expressly preempt the generally applicable state common law governing the Railroad's disposal of waste and maintenance of the ditch.

Id. at 1129-30 (citation omitted).

Likewise, *Iowa, Chicago & Eastern Railroad v. Washington County*, 384 F.3d 557 (8th Cir. 2004), is not on point because it involved joint highway-rail transportation, not railroad transportation. The issue there was that a county wanted four bridges rebuilt—two carrying the highway at issue over the railroad and two carrying the railroad at issue over the highway. *Id.* at 558. The railroad did not want to bear any of the costs and sought a declaratory judgment seeking to block the state administrative proceeding on the basis of federal preemption. *Id.* The Eighth Circuit, supported by the views of the Federal Department of Transportation and the STB, concluded that the railroad's "broad ICCTA preemption argument [was] unsound and that more narrow federal preemption or supremacy issues [were] premature." *Id.* at 562. It elaborated,

> Congress for many decades has forged a federal-state regulatory partnership to deal with problems of rail

These cases appear to stand for two propositions. First, the ICCTA can preempt traditional common-law damage causes of action, as well as state statutes that would regulate railroad transportation. This is consistent with United States Supreme Court precedent that express preemption of state "requirements"

> and highway safety and highway improvement in general, and the repair and replacement of deteriorated or obsolete railway-highway bridges in particular. ICCTA did not address these problems.

Id. at 561. In granting judgment on the pleadings in the instant case, the district court found Washington County

> distinguishable because it involved bridges that intersected with highways, which is a highway safety issue that incorporates state regulations. In the case at bar, the bridges serve railroad purposes only and do not support a highway crossing for motor vehicles.

Also not on point is the recent decision of *Gordon v. New England Central Railroad*, No. 2:17-cv-00154, 2017 U.S. Dist. LEXIS 202405, 2017 WL 6327105 (D. Vt. Dec. 8, 2017). There the court held that a trespass claim was not preempted, although it was a "close question." 2017 U.S. Dist. LEXIS 202405, [WL] at *10. The railroad had repaired its line using rip-rap rock. 2017 U.S. Dist. LEXIS 202405, [WL] at *3. The rip-rap was rolling into the plaintiff's property on a regular basis. 2017 U.S. Dist. LEXIS 202405, [WL] at *3-4. Thus, the case involved a direct physical invasion of the plaintiff's property by material placed by the railroad. *See id.* The court held that the plaintiff's request to have the railroad ordered "to remove the trespassing material" was not preempted, even though it might result in a brief disruption of rail service. 2017 U.S. Dist. LEXIS 202405, [WL] at *8, *10.

The key point about the *Gordon* case is that there had been a direct physical invasion of the plaintiff's property. Notably, the *Gordon* court distinguished four of the flood cases we have discussed in the main text because they did not involve "a railroad's trespass on non-railroad property." 2017 U.S. Dist. LEXIS 202405, [WL] at *9 n.3.

includes requirements imposed after-the-fact through common-law damages litigation. *See, e.g., Riegel v. Medtronic Inc.*, 552 U.S. 312, 324, 128 S. Ct. 999, 1008, 169 L. Ed. 2d 892 (2008) ("[R]eference to a State's 'requirements' includes its common-law duties."); *Bates v. Dow Agroscis, LLC*, 544 U.S. 431, 439, 452, 125 S. Ct. 1788, 1795, 1803, 161 L. Ed. 2d 687 (2005) (finding common law actions to be preempted by a provision of the Federal Insecticide, Fungicide, and Rodenticide Act that said certain states "shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter" (quoting 7 U.S.C. § 136v (2000)); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 515, 521-22, 112 S. Ct. 2608, 2617, 2620, 120 L. Ed. 2d 407 (1992) (determining common-law actions were preempted by a provision of the Public Health Cigarette Smoking Act of 1969 stating that "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes" whose packages were labeled in accordance with federal law (quoting 15 U.S.C. § 1334(b))). If a common-law damages action can impose a "requirement," it can also "regulate."

The Supreme Court recently noted, "As we have recognized, state 'regulation can be . . . effectively exerted through an award of damages,' and '[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.'" *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637, 132 S. Ct. 1261, 1269, 182 L. Ed. 2d 116

(2012) (alteration in original) (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247, 79 S. Ct. 773, 780, 3 L. Ed. 2d 775 (1959)); *see Maynard*, 360 F. Supp. 2d at 840 ("[S]everal federal circuit and district courts . . . have consistently held that the ICCTA preempts state common law claims with respect to railroad operations."); *Pejepscot Indus. Park, Inc. v. Me. Cent. R.R.*, 297 F. Supp. 2d 326, 333 (D. Me. 2003) ("[T]his Court joins other courts in recognizing that awards of damages pursuant to state tort claims may qualify as state 'regulation' when applied to restrict or burden a rail carrier's operations."); *see also CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664, 113 S. Ct. 1732, 1737, 123 L. Ed. 2d 387 (1993) (finding that the preemptive clause in the former version of the Federal Railroad Safety Act covering any state "law, rule, regulation, order, or standard relating to railroad safety" embraced "[l]egal duties imposed on railroads by the common law" (quoting 45 U.S.C. § 434 (repealed 1994))).

Second, the ICCTA appears to protect railroads from tort damage liability to property owners under state law when the railroads are taking action to preserve their own transportation facilities. As the district court put it here, "[I]f a railroad is acting to protect its tracks and bridges from floodwaters and to keep the interstate shipment of goods moving, those actions are protected under federal law."

The plaintiffs rely, however, on a widely used test under the ICCTA, and it is to that test we now turn.

C. The "Reasonably Said to Have the Effect of Managing or Governing Rail Transportation" Test. The plaintiffs urge us to follow what they call "the *Franks* test." In *Franks Investment Co. v. Union Pacific Railroad*, the plaintiffs filed a lawsuit challenging a railroad's closure of private railroad crossings that the plaintiffs had used for decades to access their lands. 593 F.3d 404, 406 (5th Cir. 2010) (en banc). The en banc Fifth Circuit found that this action invoking Louisiana property law was not preempted by the ICCTA. *Id.* at 413.

Although the railroad tried to argue its tracks were railroad facilities for purposes of the ICCTA's preemption clause, the court found this claim had been waived. *Id.* at 409. Instead, it limited the railroads to their prior argument that the crossings themselves were facilities. *See id.*

The Fifth Circuit said that "the relevant part of Section 10501(b) is its second sentence," i.e., the sentence providing that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." *See id.* at 408, 410 (quoting 49 U.S.C. § 10501(b)). Thus, it found "persuasive" a prior Eleventh Circuit decision that Congress narrowly tailored the ICCTA's preemption clause

> to displace only "regulation," i.e., those state laws that may reasonably be said to have the effect of "manag[ing]" or "govern[ing]" rail transportation, . . . while permitting the continued application of laws having a more

> remote or incidental effect on rail transportation.

Id. at 410 (quoting *Fla. E. Coast Ry. v. City of W. Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001)) (alterations in original). As the Fifth Circuit elaborated, "The text of Section 10501(b), with its emphasis on the word regulation, establishes that only laws that have the effect of managing or governing rail transportation will be expressly preempted." *Id.* Again, the court reiterated, "To the extent remedies are provided under laws *that have the effect of regulating rail transportation*, they are preempted." *Id.*[4]

The court found that this dispute over the opening or closing of four private rail crossings did not have the effect of managing or governing rail transportation. *Id.* at 411. At most, it "may have an incidental effect on railroad transportation." *Id.*

Notably, the court found no basis for distinguishing between a state administrative order, as had been involved in an earlier crossing case, and state common law: "In either case, preventing the railroad owner

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[4] The plaintiffs characterize the *Franks* test as preempting state law only when it "directly" manages or regulates transportation, but this is not what the test says. To illustrate, the United States Court of Appeals for the Eleventh Circuit, which originated the test, found that a nuisance claim brought by property owners based on a railroad's construction and use of a new side track was preempted, notwithstanding the plaintiffs' contention that their claim was "not directly related to the operation and use of the side track." *Pace v. CSX Transp., Inc.*, 613 F.3d 1066, 1069 (11th Cir. 2010).

from making its own decisions regarding railroad crossings creates the same amount of potential interference with railroad operational decisions." *Id.* at 409-10.

And the court distinguished its own precedent that preempted "a state law tort suit against a railroad company for allowing trains to block railroad crossings." *Id.* at 411 (citing *Friberg v. Kan. City S. Ry.*, 267 F.3d 439 (5th Cir. 2001)). The court noted,

> It is clear that a tort suit that attempts to mandate when trains can use tracks and stop on them is attempting to manage or govern rail transportation in a direct way, unlike a state law property action regarding railroad crossings.

Id.

The *Franks* test has been applied in other cases. *See, e.g., Ezell v. Kan. City S. Ry.*, 866 F.3d 294, 299-300 (5th Cir. 2017) (finding that the ICCTA preempted state-law personal injury negligence claims based upon the amount of time a train blocked a crossing); *Delaware v. Surface Transp. Bd.*, 859 F.3d 16, 21 (D.C. Cir. 2017) (holding that the ICCTA preempted a Delaware law prohibiting the nonessential idling of locomotives in residential areas at night); *Guild*, 541 F. App'x at 366-67 (holding that the ICCTA preempted a claim seeking to force a railroad to add a switch to its tracks but not a claim requesting damages for the railroad's use of the plaintiffs' own private spur line); *Elam v. Kan. City S. Ry.*, 635 F.3d 796, 806-08, 813 (5th Cir.

2011) (concluding that the ICCTA preempted a state-law negligence-per se personal injury claim based upon violation of Mississippi's antiblocking law but not a failure to warn claim); *Ass'n of Am. R.R.s v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097-98 (9th Cir. 2010) (determining that the ICCTA preempted state antipollution regulations limiting pollution produced by idling trains); *PCS Phosphate Co. v. Norfolk S. Corp.*, 559 F.3d 212, 218-20 (4th Cir. 2009) (holding that the ICCTA did not preempt the enforcement of voluntary contractual agreements entered into by railroads or their predecessors); *Adrian & Blissfield R.R. v. Village of Blissfield*, 550 F.3d 533, 538, 541 (6th Cir. 2008) (finding the ICCTA did not preempt a state law requiring a railroad to pay for sidewalks and pedestrian crossings); *City of Siloam Springs v. Kan. City S. Ry.*, No. 12-5140, 2012 U.S. Dist. LEXIS 128155, 2012 WL 3961346, at *1, *3 (W.D. Ark. Sept. 10, 2012) (deciding that a condemnation action seeking an easement under a railroad bridge was preempted by the ICCTA because "the proposed trail easement contemplates structural modifications to a railroad bridge—which is unquestionably a 'facility' of KCSR"); *Murphy v. Town of Darien*, No. FBTCV136039787, 2017 Conn. Super. LEXIS 691, 2017 WL 1656911, at *1, *4 (Conn. Super. Ct. Apr. 10, 2017) (determining the ICCTA preempted a personal injury claim predicated on the railroad's operation of a "through train on a track immediately adjacent to the platform when reasonable care required Metro-North to select an interior track away from the platform").

The *Franks* test was applied in some of the flooding cases we have already cited where state-law tort claims were preempted. *See Jones Creek*, 98 F. Supp. 3d at 1291; *Waubay Lake Farmers Ass'n*, 2014 U.S. Dist. LEXIS 120160, 2014 WL 4287086, at *5-6. The STB itself has applied it. *See Tubbs*, 812 F.3d at 1143.

Contrary to the plaintiffs, we believe that the *Franks* test supports preemption here. The test focuses on whether the legal requirement at issue relates to rail transportation, as opposed to something else with only incidental effects on rail transportation. Thus, laws, ordinances, and common-law damage actions challenging where and when railroads placed their railcars on their transportation lines or how they constructed those lines are generally preempted. *See, e.g., Ezell*, 866 F.3d at 298; *Delaware*, 859 F.3d at 21; *Guild*, 541 F. App'x at 366-67; *Elam*, 635 F.3d at 807; *Friberg*, 267 F.3d at 443-44; *City of Siloam Springs*, 2012 U.S. Dist. LEXIS 128155, 2012 WL 3961346, at *3; *Murphy*, 2017 Conn. Super. LEXIS 691, 2017 WL 1656911, at *4. Incidental burdens on transportation—such as the type of warnings provided or whether a private crossing is open or closed—are usually not preempted. *See, e.g., Elam*, 635 F.3d at 814; *Adrian & Blissfield R.R.*, 550 F.3d at 541.[5]

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[5] *See also MD Mall Assocs., LLC, v. CSX Transp., Inc.*, 288 F. Supp. 3d 565, 596-97 (E.D. Pa. 2017) (stating in dicta that an action to compel a railroad to install a drainage pipe was not preempted in the absence of evidence that it would interfere with railroad operations, while ruling for the railroad on other grounds).

The petition here falls into the former category. After identifying parties and grounds for jurisdiction and venue, the petition alleges that the defendants own four separate "railroad bridge[s]." Pet. ¶¶ 24-27 (June 7, 2013).[6] It then alleges that on June 10, 2008, railcars filled with rock were positioned by the defendants on those bridges. *Id.* ¶¶ 28-31. Next, it alleges that these bridges and railcars filled with rock obstructed the flow of water. *Id.* ¶¶ 32-35. Further, it alleges that the defendants "failed to build, maintain, inspect, and keep in good repair" these four bridges, and that two of the bridges collapsed on June 12, further blocking the flow of water. *Id.* ¶¶ 36-40. Lastly, it alleges that the "Defendants' actions caused flooding and/or exacerbated flooding in Cedar Rapids, Linn County, Iowa causing great and extensive property damage and other damage to Plaintiffs and all others similarly situated." *Id.* ¶ 41. These are the sum total of the plaintiffs' factual allegations.

D. Is There a "One-Time Event" Exception to Preemption? In addition to the *Franks* test, the plaintiffs cite a few unpublished district court cases, urging that "[e]ven where a tort action involves actual rail operations, it is not preempted by the ICCTA where the railroad's negligent activity involves a one-time event." However, after examining the plaintiffs'

[6] Different defendants allegedly had ownership of and responsibility for different bridges, but for purposes of this appeal, such distinctions do not matter.

legal authority, we are not persuaded that such an exception exists.

These decisions did indeed involve one-time events, as tort cases typically do. Procedurally, though, they are remand decisions, where the only legal issue was whether *complete* preemption existed. Furthermore, unlike the flooding cases relied on by the district court, these cases arose out of personal injuries, not decisions by railroads to prioritize their economic interests in keeping their rail lines open and running over possible damage or economic harm to other property in Cedar Rapids.

In *Staley v. BNSF Railway*, the railroad "blocked the guarded crossing and forced motorists to use the unguarded crossing without providing adequate warnings for unseen oncoming trains." No. CV 14-136-BLG-SPW, 2015 U.S. Dist. LEXIS 24275, 2015 WL 860802, at *7 (D. Mont. Feb. 27, 2015). Thus, the case centered not on the operation of trains per se, but on their operation combined with a failure to warn. *See id.* The court found *Elam* the "persuasive" precedent—i.e., the case where the court found the negligence-per se claim based on placement of the trains preempted, but found no preemption of failure to warn. *See id.* No one contends here that warnings by the defendants would have made any difference; the gravamen of the plaintiffs' petition is entirely the defendants' maintenance and operation of their rail lines across the Cedar River. *Staley* is not on point.

In *Battley v. Great West Casualty Insurance*, the court declined to find that a negligence claim against a railroad for refusing to move a train so emergency responders could get through to an accident scene was preempted. No. 14-494-JJB, 2015 U.S. Dist. LEXIS 35170, 2015 WL 1258147, at *2, *4-5 (M.D. La. Mar. 18, 2015). The *Battley* case did involve train operations. *See* 2015 U.S. Dist. LEXIS 35170, [WL] at *4. Yet, it does not bear any resemblance in the current case. The court's brief decision pointed to the "incidental and limited effect on rail transportation" of any judgment. 2015 U.S. Dist. LEXIS 35170, [WL] at *5. The case before us, by contrast, involves not a refusal to move a train for an emergency vehicle, but the actions taken by railroads to construct and maintain four rail bridges across the Cedar River and then to seek to preserve those rail bridges by positioning rail cars full of rock on them before the flooding. The economic stakes were high, and the economic judgment being sought ($6 billion) is also high.

Finally, in *Anderson v. Union Pacific Railroad*, a personal injury action had been brought by the plaintiffs after a train derailed, allegedly due in part to poor maintenance of a railroad bridge. No. 10-193-DLD, 2011 U.S. Dist. LEXIS 108076, 2011 WL 4352254, at *1 (M.D. La. Sept. 16, 2011). The court described the case as "a simple suit for personal injury damages based on state law negligence." 2011 U.S. Dist. LEXIS 108076, [WL] at *4. In declining to find complete preemption and instead remanding the case to state court, the federal court explained, "The fact that defendant may

have a defense to plaintiffs' claims based on a federal law or regulation does not provide the basis for federal question jurisdiction and, therefore, does not support removal of plaintiffs' claims." *Id.*

The plaintiffs' efforts to rely on these "garden-variety tort" cases falter because, among other things, the present case is not a garden-variety tort. Rather than a personal injury claim based on a limited, discrete aspect of a railroad's operations, this is a tug-of-war over responsibility for catastrophic economic damages. The plaintiffs' claims arise out of allegations that the defendants' four rail bridges were built and maintained to suit the railroads and not Cedar Rapids property owners and, with the floodwaters coming, the defendants took a series of actions to prioritize keeping their bridges and rail lines open in lieu of preserving the city as a whole.[7] Imposing the liability sought by the plaintiffs on the railroads would not have an "incidental" effect but would, undoubtedly, affect the actions taken by these railroads and others with respect to their rail bridges in the future whenever flooding is possible. That may be a desirable social policy, assuming the plaintiffs' allegations are true, but it is a policy that under the ICCTA must come from the federal government.

Along similar lines, the plaintiffs have not persuaded us that the Federal Railroad Safety Act (the FRSA) bears upon the present dispute. *See* 49 U.S.C.

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[7] The plaintiffs argue that their case is both a "garden-variety tort" and involves a "unique set of facts." It can't be both.

§§ 20101-20153 (2006 & Supp. III). This Act was adopted "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." *Id.* § 20101. It authorizes a plethora of safety-related rules and regulations. *Id.* §§ 20131-20153.

Section 20106 of the FRSA provides that "[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable." *Id.* § 20106(a)(1). It allows a state to "adopt or continue in force a law, regulation, or order related to railroad safety or security" subject to certain criteria. *Id.* § 20106(a)(2). And it includes the following "[c]larification":

> Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—
>
> > **(A)** has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of this section;
> >
> > **(B)** has failed to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries; or

> **(C)** has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

Id. § 20106(b)(1).

Thus, by its terms, the savings clause in the FRSA does not preserve *all* state-law property-damage claims against a railroad. It merely clarifies that *the FRSA* does not preempt them. *See id.* Section 20106(b) of the FRSA therefore does not alter the preemptive force of the ICCTA. *See Maynard*, 360 F. Supp. 2d at 843 ("[T]he ICCTA is a separate and distinct statute from the FRSA.").

In reconciling the two statutes, courts have uniformly held that the FRSA deals with rail safety, and the ICCTA with economic issues relating to railroad operations and facilities. As the court explained in *Waubay Lake*, "When the state statute addresses rail safety, then courts analyze preemption under FRSA. When the state statute addresses construction or economic concerns, then courts analyze preemption under ICCTA." 2014 U.S. Dist. LEXIS 120160, 2014 WL 4287086, at "4 (citations omitted) (applying ICCTA rather than FRSA preemption analysis to flood case); *see also Cannon v. CSX Transp., Inc.*, No. 84373, 2005-Ohio-99, 2005 WL 77088, at *3-4 (applying ICCTA rather than FRSA preemption to homeowners' state tort claims that "excessive railway vibrations caused significant damages to their homes"). This helps explain why in the few personal injury cases cited above, courts did not find ICCTA preemption. *See Ezell*, 866 F.3d at

300 & n.6 (noting that "[i]n some cases, it may be difficult to discern whether a particular state law or claim is better characterized as an economic or safety regulation" and deciding that a negligence-per se personal injury claim based on a Mississippi antiblocking statute was barred by the ICCTA). This is not such a borderline case. The petition challenges decisions made by the railroads regarding the construction of their bridges and the placement of trains on those bridges not because they caused a personal injury, but because they allegedly had the foreseeable effect of causing flood-related property losses.[8]

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[8] The plaintiffs also pled claims under Iowa Code sections 327F.2 and 468.147. These sections provide,

> Every railroad company shall build, maintain, and keep in good repair all bridges, abutments, or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way, except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section.

Iowa Code § 327F.2.

> Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person,

IV. Conclusion.

For the foregoing reasons, we affirm the district court order granting judgment on the pleadings based on ICCTA preemption.

AFFIRMED.

All justices concur except Appel, Wiggins, and Hecht, JJ., who dissent.

Dissent

APPEL, Justice (dissenting).

I respectfully dissent.

The main question here is what Congress meant when it declared in the Interstate Commerce Commission Termination Act (ICCTA) that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State Law." 49 U.S.C.

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the person shall be liable in treble the amount of such damages.

Id. § 468.148.

The plaintiffs have not briefed anything relating to section 468.148, and so we deem that claim waived for purposes of this appeal. *See In re Estate of Waterman*, 847 N.W.2d 560, 568 n.11 (Iowa 2014) ("They have not briefed that issue on appeal. We therefore deem this argument waived and need not consider it further here."). The plaintiffs' claim under section 327F.2 is preempted for the same reasons as the common law claims we have already discussed.

§ 10501(b)(2) (2006). The ICCTA abolished the Interstate Commerce Commission with all its regulatory authority over rates, certificates of convenience, and gateways, and replaced the intense and detailed regulatory regime with a market-based approach.

Ordinarily, one would distinguish government economic regulation, or the legislative or quasi-legislative development of generally applicable law, from case-by-case tort law, which focuses not on economic regulation of an industry but instead on the recovery of losses caused by the harmful conduct of another. State tort law is distinct from economic regulation. The purpose of state tort law "is not to manage or govern rail transportation." *Guild v. Kan. City S. Ry.*, 541 F. App'x 362, 367 (5th Cir. 2013). While regulations protect the public interest generally, the purpose of state tort law is to provide remedies to injured parties. *See Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 69-70 (Iowa 2014) (outlining differences between common law causes of action and regulatory regimes in the pollution context).

Congress, however, expressly wished to preempt state "regulation of rail transportation." State statutes and administrative regulations regarding railroad operations in the public interest are thus expressly preempted by the ICCTA. For example, a state anti-blocking statute amounts to a "regulation of rail transportation" because it applies only to railroads and regulates the operations of railroads at railroad crossings. *Elam v. Kan. City S. Ry.*, 635 F.3d 796, 807 (5th Cir. 2011).

But there is no express language in the ICCTA suggesting that Congress sought to preempt traditional state tort law of general application. As noted by the United States Court of Appeals for the Eleventh Circuit, "Congress narrowly tailored the ICCTA preemption provision to displace only 'regulation,' i.e., those state laws that may reasonably be said to have the effect of 'manag[ing]' or 'govern[ing]' rail transportation." *Fla. E. Coast Ry. v. City of West Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001).

Further, courts "start with the assumption that the historic police powers of the States were not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 1152, 91 L. Ed. 1447 (1947). This rule should be dispositive here. But even if ambiguity can be somehow engineered on the issue of preemption of traditional state tort law, "when the text of an express pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors preemption.'" *Freeman*, 848 N.W.2d at 76 (quoting *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77, 129 S. Ct. 538, 543, 172 L. Ed. 2d 398 (2008)). Under current caselaw, if Congress wished to preempt state tort law under prevailing caselaw, it must use unambiguous language. It did not do so. There is no express preemption.

Beyond state law claims that directly address the economic behavior of railroads, the preemption of state tort law, if it occurs at all under the ICCTA, arises only from implied preemption. But this is an uphill road for

the railroads. Implied preemption arises only when the intent of Congress to occupy the entire field is "clear and manifest." *Lubben v. Chi. Cent. & Pac. R.R.*, 563 N.W.2d 596, 599 (Iowa 1997) (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664, 113 S. Ct. 1732, 1737, 123 L. Ed. 2d 387 (1993)). In other words, courts do not have the authority to stretch preemption outside the four corners of the congressional language absent really strong reasons that compel such judicial improvement of the statute. There is plainly no "clear and manifest" intent in the ICCTA to preempt state tort law that does not directly affect the regulation of transportation. As a result, the district court's finding of preemption should be reversed.

But there is more. Even assuming there is a basis for implied preemption of some generally applicable state tort claims, such implied preemption should arise only when the state law tort has an incidental impact on the railroad that significantly affects the manner in which the railroad conducts its economic affairs. Determining whether the incidental impacts of tort law would functionally be the equivalent of an economic regulation is generally a fact-specific undertaking. The focus of the fact-specific inquiry should be on how important the challenged conduct is to the day-to-day economic operations of the railroad. If, without the challenged conduct, the railroad can operate perfectly well with very little economic impact, then the state law claim only incidentally affects railroad operations and does not amount to a prohibited backdoor state

regulation of rail transportation, and the state law lawsuit may proceed.

In determining whether the indirect or incidental impact of a state-law tort action amounts to a "regulation of rail transportation," the amount of damage caused by the alleged tortious conduct is irrelevant. Congress did not use the preemption language to impose some kind of cap on damages. That would be a far too tortured interpretation of the plain language of § 10501(b)(2). The focus must be on the degree to which tort liability will cause a change in the economic environment under which the railroads operate in the future.

For example, in *A&W Properties, Inc. v. Kansas City Southern Railway*, 200 S.W.3d 342, 345 (Tex. App. 2006), a plaintiff sought to force a railroad to repair a culvert. The railroad in moving for summary judgment offered an affidavit that in order to make the changes required by the plaintiff, the railroad would have to spend more than half-a-million dollars, shut down the stretch of track temporarily, and operate trains at dramatically reduced speeds during various periods of construction. *Id.* at 344.

Other cases that assume that implied preemption might be available under the ICCTA require that in order for implied preemption to occur, the effect of the state claim must "unreasonably" burden or interfere with rail transportation. *Or. Coast Scenic R.R. v. Or. Dep't of State Lands*, 841 F.3d 1069, 1077 (9th Cir. 2016); *Tex. Cent. Bus. Lines Corp. v. City of Midlothian*,

669 F.3d 525, 530 (5th Cir. 2012); *Elam*, 635 F.3d at 805. Determining whenever a state-law tort action "unreasonably" burdens or interferes with railway transportation raises a fact question not amenable to resolution on a motion to dismiss on the pleadings. *See Elam*, 635 F.3d at 813 ("Our inquiry [into whether a state-law tort claim unreasonably burdens or interferes with railroad operations] is 'fact-based.'" (quoting *Franks Inv. Co. v. Union Pac. R.R.*, 593 F.3d 404, 414 (5th Cir. 2010))). The burden of proving that a state cause of action "unreasonably" burdens or interferes rests with the railroad. *Id.* at 813-14.

In this case, there has been no factual development on the key issue. It is conceivable, for example, that a factual record might be developed that could show that the actions taken by the railroads were not only negligent, but entirely unnecessary even to protect the interests of the railroad. It could be, for instance, that other sensible alternatives were available that would have adequately protected the railroad's interests without causing dramatic adverse effects downstream and that the economic environment in which railroads operate would not be materially changed by the tort lawsuit. In short, it could well be that a tort result that says, "You cannot pile cars with rocks on railroad bridges during times of flooding," will not be a burden at all on future railroad operations because equally effective alternatives are available to the railroads. Even if the court were to adopt a broad view of implied preemption under the ICCTA, the plaintiffs

are entitled to explore the issue further, and the motion to dismiss in this case, in my view, was improper.

I acknowledge, as I must, that there is an alphabet soup of federal authority that is less demanding in its preemption analysis under the ICCTA. Some of the authority has a run-for-the-exit quality, embracing a conclusory notion that unquantified and unexamined "burdens" of state tort law "unreasonably interfere" with railroad operations. For example, some federal authority broadly concludes that because the state law tort might impose costs that are "inextricably linked to rail transportation," preemption occurs. *Jones Creek Inv., LLC v. Columbia County*, 98 F. Supp. 3d 1279, 1293 (S.D. Ga. 2015). In my view, this approach is off the mark and imports into the ICCTA a hostility to state tort law and its underlying compensatory policies at the expense of fidelity to the actual language of the ICCTA, its purpose of providing economic deregulation, and the previously generally accepted preemption principles embraced by the United States Supreme Court.

Whether the United States Supreme Court wishes to more closely align the caselaw with congressional intent and the court's traditional approach to preemption remains to be seen. In the absence of Supreme Court action, this case now sends a clear message to Congress, namely, that if Congress wishes to prevent preemption of nonregulatory state tort law and statutory law claims when it enacts economic deregulation, it had better state so expressly. The limitations of ordinary language in economic deregulation legislation are

no longer a reliable barrier to expansive approaches to implied preemption.

For the above reasons, I would not run for the exit, but would reverse the holding of the district court.

Wiggins and Hecht, JJ., join this dissent.

IN THE IOWA DISTRICT COURT
IN AND FOR LINN COUNTY

Mark Griffioen, et al.,	)	**No. LACV078694**
Plaintiffs,	)	**RULING**
vs.	)	(Filed Feb. 12, 2016)
Cedar Rapids and Iowa City Railway Company, et al.,	)	
Defendants.	)	

Hearing took place on October 30, 2015 on the Motions for Judgment on the Pleadings and Alternative Motions to Stay Proceedings filed by Defendants Union Pacific Railroad Company and Union Pacific Corporation, and by Cedar Rapids and Iowa City Railway Company (hereinafter CRANDIC) and Alliant Energy Corporation. Appearances were made by Attorneys Russell G. Petti, C. Brooks Cutter, Sam Sheronick, Eric J. Ratinoff, Amy E. Keller and Edward A. Wallace on behalf of Plaintiffs; by Attorneys Charles T. Hvass, Alice E. Loughran, and Bruce E. Johnson on behalf of Defendant Union Pacific Corporation and Railroad Company; by Attorneys Timothy R. Thornton and Kevin H. Collins on behalf of Defendant Alliant Energy Corporation and CRANDIC; and by Attorney Jeffrey C. McDaniel on behalf of Defendants Hawkeye Land Company and Rick and Marsha Stickle. Having considered the file, relevant case law, and written and oral arguments of counsel, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

This action was commenced on June 7, 2013, when Plaintiffs filed a Class Action Petition at Law. Plaintiffs and the putative class members to this case own property in Cedar Rapids, Iowa, which sustained damage in the historic Cedar River flooding of 2008. Defendants are the owners of railroad bridges. Plaintiffs contend that, prior to the 2008 flood, Defendants parked railcars loaded with rocks on their respective railroad bridges, which caused the bridges to collapse and dammed the river. Plaintiffs also contend the railcars that did not collapse also caused damage, in that when the water rose on the river as it usually does during springtime, the bridges acted like a dam, diverting water to low-lying areas. Plaintiffs claim Defendants' actions caused or exacerbated the 2008 flooding of the Cedar River.

Plaintiffs have stated causes of action that include strict liability under state law for engaging in abnormally dangerous or ultrahazardous activity; violations of Iowa Code § 468.148; violations of Iowa Code § 327F.2; and state common law negligence. The matter was removed to federal court in July, 2013, and subsequently remanded to this Court by an Order entered on June 4, 2015 by United States District Court Judge Edward J. McManus. The Court incorporates as if set forth in full herein the content of the United States Court of Appeals, Eighth Circuit, opinion in *Griffioen v. Cedar Rapids and Iowa City Ry. Co.*, 785 F.3d 1182 (8th Cir. 2015), in which the Eighth Circuit Court of Appeals held that "there is no hard line requirement

for the form and time for non-removing defendants to consent to removal of a case from state to federal court," "representation in railroad company's timely notice of removal that codefendants consented to removal was sufficient to indicate consent on behalf of codefendants," and "Interstate Commerce Commission Termination Act's (ICCTA) administrative cause of action did not provide a federal cause of action for property owners' claims, and thus their claims were not preempted by ICCTA." *Id*. The Eighth Circuit specifically limited its holding "to the issue of federal-question jurisdiction, and so we offer no views regarding any preemption defense that may be raised in state court." *Id*. at 1192.

Following remand to this Court, the pending Motions for Judgment on the Pleadings and Alternative Motions to Stay Proceedings were filed. In support of the Motions, the moving Defendants have argued that this matter is appropriate for judgment on the pleadings because there is preemption of Plaintiffs' claims under the ICCTA. Defendants contend that Plaintiffs' causes of action would constitute regulation of rail transportation, which is preempted by the ICCTA, and because the ICCTA preempts all substantive claims against the moving Defendants, Plaintiffs' claims for punitive damages and piercing the corporate veil likewise fail. In the alternative, the moving Defendants seek a stay of this matter for referral to the Surface Transportation Board (STB) for expert administrative resolution.

Plaintiffs resist the Motions, arguing that the Court can only grant dismissal of Plaintiffs' claims if Plaintiffs can show no conceivable facts establishing a right to relief. Plaintiffs contend their claims are not preempted, and this case requires a fact-based inquiry and is not appropriate for dismissal by the Court at this stage of proceedings. Plaintiffs do not believe that the STB would find Plaintiffs' claims to be within the scope of ICCTA preemption. Plaintiffs state that if the Court is inclined to find ICCTA preemption, the Court should grant Plaintiffs' leave to amend to allege Plaintiffs' damages are due to Defendants' negligence rather than weather or railroad operations.

In addition to expanding on the arguments made in their initial Motions, Defendants reply that any attempt by Plaintiffs to amend the pleadings would be futile because Plaintiffs' claims still would be based on railroad operations, which are subject to preemption. Following the hearing, Defendants submitted supplemental authority that they claim supports their arguments. Plaintiffs resist Defendants' reliance on this supplemental authority. The Court hereby grants to Defendants the right to submit the supplemental authority brought to the Court's attention on January 4, 2016, and has considered all arguments made by Plaintiffs and Defendants with respect to the supplemental authority.

CONCLUSIONS OF LAW AND ANALYSIS OF ISSUES

Iowa Rule of Civil Procedure 1.954 provides:

> Any party may, at any time, on motion, have any judgment to which that party is entitled under the uncontroverted facts stated in all the pleadings, or on any portion of that party's claim or defense which is not controverted, leaving the action to proceed as to any other matter of which such judgment does not dispose.

I.R.Civ.P. 1.954.

"The proper function of a motion for judgment on the pleadings is to test the sufficiency of the pleadings to present appropriate issues for trial." *Roush v. Mahaska State Bank*, 605 N.W.2d 6, 8 (Iowa 2000). "The motion is only appropriate when the pleadings, taken alone, entitle a party to judgment." *Id*. at 8-9.

"The federal preemption doctrine derives from the Supremacy Clause of the Federal Constitution." *Huck v. Wyeth, Inc.*, 850 N.W.2d 353, 362 (Iowa 2014). "'Congress has the power to preempt state law.'" *Staff Management v. Jimenez*, 839 N.W.2d 640, 652 (Iowa 2013) (citing *Arizona v. U.S.*, 132 S.Ct. 2492, 2500, 183 L.Ed.2d 351, 368 (2012)). "There are at least three scenarios where federal law will preempt state law: (1) Congress may enact a statute with an express preemption provision, (2) Congress may occupy the field with a regulatory framework so pervasive . . . that Congress left no room for the states to supplement it, or (3) the

state law is an obstacle for Congress's objectives and purposes." *Id*.

In the Eighth Circuit's *Griffioen* opinion, the Eighth Circuit noted that the ICCTA contains an express preemption provision, "which states, in pertinent part:

> (b) The jurisdiction of the [STB] over—
>
> (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.
>
> 49 U.S.C. § 10501(b).
>
> The foregoing provision reflects a clear indication of Congress's preemptive intent with respect to the matters set forth therein. It expressly provides for preemption of state

remedies. It also grants the STB exclusive jurisdiction, using language that is even more powerful than that found in other jurisdictional provisions that the Supreme Court has held support complete preemption. *Cf. Metro. Life Ins.*, 481 U.S. at 65, 107 S.Ct. 1542 (analyzing Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(f)); *Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557, 559-62, 88 S.Ct. 1235, 20 L.Ed.2d 126 (1968) (analyzing Labor Management Relations Act, 29 U.S.C. § 185). This language may be powerful enough to suggest that Congress intended that the ICCTA completely preempt certain state-law claims. *See Fayard v. Ne. Vehicle Servs., LLC*, 533 F.3d 42, 46 (1st Cir.2008) ("[T]he ICCTA uses language that could support complete preemption in an appropriate case."); *PCI Transp., Inc. v. Fort Worth & W. R.R. Co.*, 418 F.3d 535, 544 (5th Cir.2005) (holding that the plain language of § 10501 supports complete preemption of some claims). The purposes and legislative history of the ICCTA also suggest that Congress may have intended complete preemption of certain state-law claims. *See Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1086 (8th Cir.1989) (noting that courts may look to the purposes and history of a statute to determine Congress's preemptive intent). For example, a House Report highlights the need for uniform federal regulation of railroads and states that "changes are made to reflect the direct and complete pre-emption of

> State economic regulation of railroads." H.R.Rep. No. 104-311, at 95-96 (1995).

Griffioen, 785 F.3d at 1189-90. 49 U.S.C.A. § 10102(6) and (9) defines tracks and bridges as types of railroad facilities that are protected from state regulation. *See* 49 U.S.C.A. § 10102(6) and (9).

There are many cases discussing issues relating to ICCTA preemption, several of which have been cited in support of the parties' positions, and subsequently distinguished by the parties. In determining the outcome of the pending Motions, the Court notes, as the parties have argued, that it is necessary to examine cases from other jurisdictions. All counsel have done a capable and thorough job of presenting the Court with these authorities and arguing their respective positions, and the Court has considered and reviewed all cases cited by the parties and has conducted its own research into these issues. However, the Court has been able to narrow the cases down to a few that the Court finds to be most persuasive, and the Court will discuss those authorities below.

In *Village of Big Lake v. BNSF Ry. Co., Inc.*, 382 S.W.3d 125 (Mo. Ct. App. 2012), the Missouri Court of Appeals considered an action brought by the Village of Big Lake, seeking injunctive relief against BNSF Railway Company, Inc. and the Missouri Highways and Transportation Commission on grounds that the railroad raised the height of a railroad track without complying with the Village's floodplain management ordinance, and that the Commission violated an

ordinance in construction of a highway. *Id*. "The Ordinance requires any entity, before taking actions that might impact the flood plain within the Village, to conduct a hydrological and hydraulic study, to provide the results of the studies to the Village, and to seek the Village's express permission prior to conducting work that might have impact on the flood plain or upon any flooding conditions and consequences." *Id*. at 126-27. In seeking relief, the Village

> alleged that BNSF violated the Ordinance when it:
>
> > [B]uilt up its railway bed on several occasions within the past fifteen (15) years and, most recently, in June of 2010 without notifying the Village first, without conducting a hydrological and hydraulic study that was to be provided to the Village, and without seeking the Village's approval prior to the bed buildup.
>
> It asserted that the build-up of the railroad bed created artificial barriers that confined and held flood waters from the flood of 2010 in substantially greater amount than otherwise would have occurred causing flood damage to a vast number of properties lying within the Village. The Village also alleged that BNSF, in building up the railroad bed, failed to comply with section 389.660. Finally, the Village alleged that in raising Highway 111 at the intersection of the highway and the rail line, MHTC violated the Ordinance and contributed to the artificial construction and

> holding of flood waters to the detriment of the Village and its citizens.

Id. at 127.

The Court cited to applicable preemption law, and specifically noted that the "ICCTA vests the [STB] with exclusive jurisdiction over 'transportation by rail carriers' and 'the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.'" *Id*. at 128 (citing 49 U.S.C.A. § 10501(b)). "'It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations.'" *Id*. (citing *CSX Transp., Inc. v. Ga. Public Serv. Comm'n*, 944 F.Supp. 1573, 1581 (N.D.Ga. 1996)). The Court went on to hold:

> The Ordinance and statute at issue in this case fall into the two broad categories of state and local actions that are categorically preempted by the ICCTA. The Ordinance is a form of local permitting or preclearance process requiring BNSF to conduct a hydrological and hydraulic study, provide the results to the Village, and obtain a permit from the Village before constructing a line within the southern border of the Village. Section 389.660 requiring suitable openings, ditches, and drains through and along roadbeds involves the construction of a railroad bed over which the STB has exclusive jurisdiction pursuant to section 10501(b) of the ICCTA. "[T]he congressional intent to preempt this kind of state and local

> regulation is explicit in the plain language of the ICCTA and the statutory framework surrounding it." *City of Auburn*, 154 F.3d at 1031. Since the Ordinance and statute fall within the categories of action that are per se preempted, no further factual inquiry is necessary. The Ordinance and section 389.660 are, therefore, preempted by the ICCTA. *See*, e.g., *Pere Marquette Hotel Partners*, 2010 WL 925297, at *5-6 (claims alleging negligent design and construction of railroad crossing and roadbed that caused flooding related directly to construction of railroad tracks over which the STB has exclusive jurisdiction and were preempted by the ICCTA); *Maynard v. CSX Transp., Inc.*, 360 F.Supp.2d 836, 842-43 (E.D.Ky.2004) (nuisance claims alleging that drainage of railroad side tracks and their foundation was inadequate related to the railroad's construction and operation of the side tracks and were expressly preempted by the ICCTA); *A & W Properties,* 200 S.W.3d at 347 (action partly based on state statute to compel railroad to rebuild a culvert in roadbed to prevent flooding was expressly preempted by ICCTA). The trial court properly dismissed the Village's claims against BNSF. The point is denied.

Id. at 130.

In *Maynard* (as discussed by the *Big Lake* Court), the United States District Court for the Eastern District of Kentucky considered an action brought by landowners against railroad CSX Transportation, Inc.,

alleging that CSX's use of a sidetrack for coal loading operations blocked access to the landowners' property for excessive time periods, and that the side track permitted drainage from adjoining properties to escape onto the landowners' property. *Maynard,* 360 F.Supp.2d at 836. The Court held:

> The side tracks at issue in this case are an essential part of CSX's railroad operations and assist in providing rail service to the AEP Kentucky Coal's loading facility adjacent to Plaintiff's property. But-for the side track, a train being used to transport coal would have to stay on the mainline track, which would interfere with the movement of commerce. The side tracks allow the mainline track to be open for other rail travel, which enhances the movement of commerce on the rail lines. Because of their essential role, side tracks are a vital part of CSX's railroad operations. Because it is CSX's construction and operation of the side tracks in this case which give rise to Plaintiffs' claims, those claims are expressly preempted by the ICCTA.

Id. at 842.

In *A&W Properties, Inc. v. Kansas City Southern Ry. Co.*, 200 S.W.3d 342 (Tex. App. 2006) (also discussed by the *Big Lake* Court), the Texas Court of Appeals considered claims by a landowner against The Kansas City Southern Railway Company regarding the landowner's demand that the railroad enlarge a culvert through which a creek flowed, which property was

adjacent to the landowner's property. *Id.* at 342. The Court held:

> A & W attempts to draw what it calls a preemption "rule" for courts to employ in making preemption determinations under the ICCTA. A & W's proposed "rule" would provide:
>
> > [O]nly those state laws that either directly regulate rail operations or that have a significant economic impact on railroads [are] preempted, and that the ICCTA does not preempt state laws enacted under the state's police power that do not directly regulate rail operations and that do not have a significant economic impact on railroads.
>
> We reject A & W's attempt to qualify the directive of the ICCTA in this proposed "rule." The preemption provision of the ICCTA—in all its breadth—is the rule we must employ. To do so, we need not look beyond the clear language of the statute: "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." The question for this Court is whether A & W's claims and the remedies they seek involve "regulation of rail transportation." . . . We conclude the Railroad established as a matter of law that they do.
>
> A & W's claims for breach of statutory duty (pursuant to both article 6328 and section 11.086 of the water code), nuisance, negligence, trespass, and injunctive relief are preempted

> by the ICCTA. Accordingly, the trial court correctly granted summary judgment on those claims, and we overrule A & W's issue insofar as it addresses those claims.

Id. at 350-51.

In *Waubay Lake Farmers Association v. BNSF Railway Company*, Civil No. 12-4179-RAL, 2014 WL 4287086 (D.S.D. 2014), an unpublished opinion that this Court nonetheless finds persuasive, the United States District Court for the District of South Dakota considered the plaintiff's claim that an undersized culvert beneath the BNSF railroad bed had caused flooding of the plaintiff's properties. *Id*. at *1. The Court held:

> Plaintiffs tort claims allege that BNSF has a duty "to maintain . . . and *to alter* the *facilities* to match current conditions" and "to *construct* culverts in its roadbed of a sufficient capacity to carry off the surface waters." Doc. 78 at ¶¶ 19-20 (emphasis added). BNSF allegedly breached that duty by failing to reconstruct its facilities, culverts, and roadbed. Plaintiffs seek damages, an injunction, and an order requiring BNSF to replace Culvert 647.80 with a culvert with a higher capacity. This logically would require BNSF to halt use of its tracks to remove the existing culvert beneath the track and indeed beneath the current level of water, which likely would mean some demolition and rebuilding of its railway and roadbed. By requesting such relief, Plaintiffs seek to "manage or govern" how BNSF constructs its

> roadbed and operates its tracks by requiring replacement of a submerged culvert beneath the roadbed. *Franks*, 593 F.3d at 411. Thus, to the extent that Plaintiffs' claims are based on state law, such claims fall squarely within the express terms of the ICCTA's preemption clause. Plaintiffs may not use state common law and a state statute to regulate, and indeed seek to compel, BNSF's reconstruction of its culvert, roadbed, and tracks. *Guckenberg v. Wis. Cent. Ltd.*, 178 F.Supp.2d 954, 958 (E.D.Wis.2001).

Id. at *6.

Even more recently, in *Jones Creek Investors, LLC v. Columbia County, Georgia*, No. CV 111-174, 2015 WL 1541409 (S.D. Ga. 2015), the United States District Court for the Southern District of Georgia considered a plaintiff's claim that, in relevant part, a railroad's upstream activities caused a lake to be inundated with sediment, in turn causing plaintiff's golf course to become flooded every time it rained. *Id*. at *1. The Court considered whether the plaintiff's claims sought to "manage" or "govern" rail transportation, or whether they imposed merely a "remote or incidental" effect on rail transportation. *Id*. at *13. The Court held:

> [R]eplacing the failed culvert at the CSXT crossing was not some incidental or peripheral venture CSXT undertook that was unrelated to its railway transportation services. The replacement was an integral and necessary repair to the railway infrastructure. Any state tort claims against CSXT for damages

> resulting from this construction to its infrastructure effectively govern CSXT's ability to keep its rail lines in safe, working order. As such, JCI's state law claims against CSXT stemming from the failure, construction, design, and operation of the culverts are preempted by the ICCTA.

Id. at *14.

Very recently, the Eighth Circuit Court of Appeals issued an opinion in the case of *Tubbs v. Surface Transp. Bd.*, No. 14-3898, 2015 WL 9465907 (8th Cir. 2015). The Court finds the facts of *Tubbs* are especially relevant to the facts of the case at bar:

> The Tubbses own a 550-acre farm near the Missouri River. BNSF owns and operates a railroad track over an earthen embankment that bisects the Tubbses' farm. Because of its height, the embankment blocks the free flow of water across the landscape even though BNSF maintains drainage conduits through the embankment to avoid excess buildup of water. On occasion, BNSF has raised the embankment to prevent water from spilling over the tracks and interrupting rail traffic. But as the height of the embankment increased, BNSF did not provide additional drainage capacity or buttress the structural foundation of the embankment to support the increased volume of dammed water. In anticipation of the 2011 flood season, BNSF elevated the embankment. Unfortunately, record-setting flood waters breached the freshly raised embankment later that summer. The resulting rapid

> flow of water washed away the fertile soil on the Tubbses' farm.
>
> The Tubbses filed suit in state court against BNSF and its contractor, Massman Construction Company, seeking damages for state-law torts, including trespass, nuisance, negligence, inverse condemnation, and statutory trespass. The state court stayed the litigation and permitted the Tubbses to seek clarification from the Board with respect to whether the ICCTA preempts their state-law claims.

Id. at *1. There was a review of the claim by the STB, described as follows:

> Upon review, the Board concluded that the ICCTA preempted the Tubbses' state-law claims but that they retained a federal claim based on BNSF's alleged violation of federal regulations under the Federal Railroad Safety Act (FRSA). The Board's preemption analysis noted that "[s]ection 10501(b) categorically preempts states or localities from intruding into matters that are directly regulated by the Board," and that "state and local actions may be preempted . . . if they would have the effect of unreasonably burdening or interfering with rail transportation." The Board reasoned that the Tubbses' state-law tort claims are preempted because "they would have the effect of managing or governing rail transportation." The Board followed precedent from a number of courts that have applied the unreasonable-burden-or-interference analysis. Additionally, the Board rejected the

> Tubbses' contention that preemption applies only when there is a federal equivalent of the preempted state-law remedy. Finally, the Board concluded that section "10501(b) does not preempt the FRSA regulations on drainage under railroad tracks. [The Tubbses'] tort claims based on alleged violations by BNSF of these regulations are therefore also not preempted by § 10501(b)."

Id.

On appeal, the Eighth Circuit denied the Tubbses' petition for review of the decision of the STB, finding that the Tubbses failed to properly challenge the STB's use of the unreasonable-burden-or-interference test for as-applied preemption under the ICCTA. *Id*. at *3. The Eighth Circuit also found that STB's findings were supported by substantial evidence in the record as a whole. *Id*. at *4-5.

The aforementioned cases make clear that, as argued by Union Pacific in its Reply Brief, if a railroad is acting to protect its tracks and bridges from floodwaters and to keep the interstate shipment of goods moving, those actions are protected under federal law.

While the Court finds that the previously cited cases are persuasive and controlling on the question of preemption in this case, the Court also finds it necessary to address the case of *Iowa Chicago & Eastern R.R. Corp. v. Washington County, Iowa*, 384 F.3d 557 (8th Cir. 2004), which was briefed extensively by the parties and argued at the time of hearing. The

Washington County Court considered the following facts and procedural history:

> The interstate rail line of the Iowa, Chicago & Eastern Railroad Corporation (IC & E) includes four bridges in Washington County, Iowa. The County wants all four bridges replaced because their antiquated design results in "substandard highway safety conditions at all four sites." Two bridges carry the rail line over County highways. According to the County, they have "severely deficient vertical clearances for highway traffic," and one is too narrow. The other two carry highways over the rail line. One was destroyed by fire and has not been replaced. The other has a sharp crest, creating the risk that trucks, farm equipment, school busses, and emergency vehicles will "bottom out" on the crossing. IC & E maintains that the three remaining bridges and the fourth crossing are sufficient for railroad purposes. It is unwilling to finance road improvements that benefit trucking competitors but not the railroad.
>
> The County and IC & E first negotiated replacing the bridges. IC & E agreed to cooperate but refused to provide funding. In January 2002, the County petitioned the Iowa Department of Transportation ("IDOT") for a ruling that IC & E must pay for replacement bridges to comply with Iowa Code § 327F.2. IDOT referred the petition to the Department of Inspections and Appeals for a hearing to determine, among other issues, "the portion of the expense to be paid by each party to the

> controversy." Iowa Code § 327G.17. Before that hearing was completed, the parties obtained a stay, and IC & E commenced this action against the County and the Director of IDOT, seeking a declaratory judgment that § 327F.2 is preempted by the Interstate Commerce Commission Termination Act of 1995 ("ICCTA").

Id. at 558. The Eighth Circuit held:

> We therefore conclude that, on this record, IC & E has failed to establish that ICCTA's preemption provision preempts the state administrative proceedings commenced by IDOT in response to the County's petition that IC & E be ordered to replace the four bridges at its own expense pursuant to Iowa Code § 327F.2. Our holding is necessarily narrow because the state proceedings are incomplete and the States do not operate in this arena free of federal involvement. For example, should the parties obtain federal funding for one or more of these bridge projects, federal law would apportion the project costs. State laws requiring IC & E to pay or share those costs, including § 327F.2, would then be expressly preempted. *See* 23 C.F.R. § 646.210(a); *Shanklin*, 529 U.S. at 352, 120 S.Ct. 1467. Moreover, even if federal funds do not participate, IDOT's application of § 327F.2 to a particular bridge project must be consistent with the long-standing constitutional principle that State and local governments may require railroads to pay for the cost of railway-highway bridges "made necessary by

> the rapid growth of the communities," but "such allocation of costs must be fair and reasonable." *Atchison, Topeka & Santa Fe Ry. v. Pub. Util. Comm'n*, 346 U.S. 346, 352, 74 S.Ct. 92, 98 L.Ed. 51 (1953); *see Nashville, Chattanooga & St. Louis Ry. v. Walters*, 294 U.S. 405, 428-32, 55 S.Ct. 486, 79 L.Ed. 949 (1935); *Erie R.R. v. Bd. of Pub. Util. Comm'rs.*, 254 U.S. 394, 410, 41 S.Ct. 169, 65 L.Ed. 322 (1921). These more narrow issues of federal law may not be addressed until IC & E's share of any bridge replacement costs has been determined.

Id. at 561-62.

The Court concludes it is appropriate to determine, as a matter of law and on the pleadings currently before the Court, whether Plaintiffs' action is preempted by federal law. "Whether a state statute or common law cause of action is preempted by federal law is a question of law we review *de novo*." *Friberg v. Kansas City Southern Ry. Co.*, 267 F.3d 439, 442 (5th Cir. 2001). Therefore, with the previously cited authorities in mind, and for the following reasons, the Court concludes, as a matter of law, that Plaintiffs' state law claims are preempted by federal law.

The uncontroverted facts, as stated in the pleadings, establish that the ICCTA expressly preempts the state law claims stated by Plaintiffs. The bridges at issue with respect to Plaintiffs' claims are, as CRANDIC put it, inextricably intertwined with the railroad Defendants' tracks, which affects rail transportation.

Plaintiffs, having made complaints about how the railroad Defendants loaded and positioned their rail cars; as to where and when they parked their rail cars; and as to the design, construction and maintenance of the bridges, have stated claims that go directly to rail transport regulation. As in *Big Lake, Maynard*, *A&W, Waubay*, *Jones Creek*, and *Tubbs*, Plaintiffs are complaining about actions taken by the railroad Defendants that are an essential part of the railroads' operations, and that would result in Plaintiffs managing or governing the operations of the railroads. The Court agrees with the railroad Defendants' assertion that any attempt by Plaintiffs to amend their Petition would be futile, in that Plaintiffs' currently stated claims and their proposed amended claims, at their very core, are based on Defendants' rail operations, which requires express preemption of Plaintiffs' claims under the ICCTA.

As to Plaintiffs' reliance on the *Washington County* case, the Court finds *Washington County* is distinguishable because it involved bridges that intersected with highways, which is a highway safety issue that incorporates state regulations. In the case at bar, the bridges serve railroad purposes only and do not support a highway crossing for motor vehicles.

Plaintiffs' state law claims are expressly preempted by federal law because the claims fall within the scope of the ICCTA preemption clause. Therefore, the Motions for Judgment on the Pleadings filed by Defendants Union Pacific Railroad Company and Union

Pacific Corporation, and by CRANDIC and Alliant Energy Corporation should be granted.

RULING

IT IS THEREFORE ORDERED that the Motions for Judgment on the Pleadings filed by Defendants Union Pacific Railroad Company and Union Pacific Corporation, and by CRANDIC and Alliant Energy Corporation, are **GRANTED**. The Alternative Motions to Stay Proceedings are moot. Plaintiffs' claims against Defendants Union Pacific Railroad Company and Union Pacific Corporation, and against CRANDIC and Alliant Energy Corporation, are dismissed as a matter of law. Costs associated with the dismissal of Plaintiffs' claims against Defendants Union Pacific Railroad Company and Union Pacific Corporation, and against CRANDIC and Alliant Energy Corporation, are assessed to Plaintiffs. Because the remaining Defendants did not join in the Motions for Judgment on the Pleadings, Plaintiffs' claims remain active against all Defendants other than Defendants Union Pacific Railroad Company and Union Pacific Corporation, and CRANDIC and Alliant Energy Corporation.

Clerk to notify.

[SEAL]

State of Iowa Courts

Type:	OTHER ORDER
Case Number	**Case Title**
LACV078694	MARK GRIFFIOEN ET AL VS CEDAR RAPIDS & IOWA CITY RAILWAY ET

So Ordered

/s/ Paul D. Miller

Paul D. Miller,
District Court Judge,
Sixth Judicial District
of Iowa

IN THE SUPREME COURT OF IOWA

No. 16–1462

Linn County No. LACV078694

ORDER

(Filed Jul. 18, 2018)

MARK GRIFFIOEN, JOYCE LUDVICEK, MIKE LUDVICEK, SANDRA SKELTON, BRIAN VANOUS, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs-Appellants,

vs.

CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY, ALLIANT ENERGY CORPORATION, UNION PACIFIC RAILROAD COMPANY, UNION PACIFIC CORPORATION,

Defendants-Appellees.

After consideration by this court, the petition for rehearing in the above-captioned case is hereby overruled and denied.

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[SEAL]

State of Iowa Courts

Case Number	**Case Title**
16-1462	Griffioen v. Cedar Rapids & Iowa City Railway Company

So Ordered

/s/ Mark S. Cady
Mark S. Cady, Chief Justice

[Electronically signed on 2018-07-17]

49 U.S.C. § 10501. General jurisdiction

(a)

(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

(A)only by railroad; or

(B)by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

(A)a State and a place in the same or another State as part of the interstate rail network;

(B)a State and a place in a territory or possession of the United States;

(C)a territory or possession of the United States and a place in another such territory or possession;

(D)a territory or possession of the United States and another place in the same territory or possession;

(E)the United States and another place in the United States through a foreign country; or

(F)the United States and a place in a foreign country.

(b) The jurisdiction of the Board over—

(1)transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2)the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection—

(A)the term "local governmental authority"—

(i)has the same meaning given that term by section 5302 of this title; and

(ii)includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B)the term "public transportation" means transportation services described in section 5302 of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over—

(A)public transportation provided by a local government authority; or

(B)a solid waste rail transfer facility as defined in section 10908 of this title, except as provided under sections 10908 and 10909 of this title.

(3)

(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

(i)safety;

(ii)the representation of employees for collective bargaining; and

(iii)employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the

ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

IN THE IOWA DISTRICT COURT
FOR LINN COUNTY

MARK GRIFFIOEN, JOYCE LUDVICEK, MIKE LUDVICEK, SANDRA SKELTON, BRIAN VANOUS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS, -vs- CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY, ALLIANT ENERGY CORPORATION, UNION PACIFIC RAILROAD COMPANY, UNION PACIFIC CORPORATION, HAWKEYE LAND CO., HAWKEYE LAND II CO., HAWKEYE LAND NFG, INC., STICKLE ENTERPRISES, LTD., MIDWESTERN TRADING, INC., MIDWEST THIRD PARTY LOGISTICS, INC. aka MIDWEST 3PL, STICKLE GRAIN CO., STICKLE WAREHOUSING, INC., RICK STICKLE, MARSHA STICKLE DEFENDANTS.	Law CASE NO. 78694

CLASS ACTION PETITION AT LAW

****JURY TRIAL DEMANDED****

(Filed Jun. 7, 2013)

COME NOW Plaintiffs, on behalf of themselves individually, and on behalf of all others similarly situated, and state for their causes of action against Defendants:

COMMON FACTUAL ALLEGATIONS:

1. Plaintiffs are informed and believed and thereon allege all of the following facts in this Petition, inclusive. At all times material hereto, Plaintiff Mark Griffioen was a resident of Swisher, Johnson County Iowa and owned real property and personal property located in Cedar Rapids, Iowa that was damaged by the 2008 Flood located at the following addresses: 611 A Avenue SW, 721 Second Avenue SW, and 1004 Second Avenue SW; this Plaintiff also suffered other damages as a result of the Flood of Cedar Rapids, Iowa in June 2008 (hereinafter referenced as the "2008 Flood" and/or the "Flood of 2008").

2. At all times material hereto, Plaintiff Joyce Ludvicek was a resident of Cedar Rapids, Linn County, Iowa and owned real property/real estate and personal property located in Cedar Rapids, Iowa at 2025 D Street SW that was damaged by the 2008 Flood; this Plaintiff also suffered other damages as a result of the 2008 Flood.

3. At all times material hereto, Plaintiff Mike Ludvicek was a resident of Swisher, Johnson County, Iowa and owned real property/real estate and personal property located in Cedar Rapids, Iowa at 2214 D Street SW that was damaged by the 2008 Flood; this Plaintiff also suffered other damages as a result of the 2008 Flood.

4. At all times material hereto, Plaintiff Sandra Skelton was a resident of Cedar Rapids, Linn County, Iowa and owned real property/real estate and personal property located in Cedar Rapids, Iowa at 1125 Tenth Street NW that was damaged by the 2008 Flood; this Plaintiff also suffered other damages as a result of the 2008 Flood.

5. At all times material hereto, Plaintiff Brian Vanous was a resident of Quasqueton, Buchanan County, Iowa and owned real property/real estate and personal property located in Cedar Rapids, Linn County, Iowa that was located at 425 Second Street SE that was damaged by the 2008 Flood; this Plaintiff also suffered other damages as a result of the 2008 Flood.

6. Defendant Cedar Rapids and Iowa City Railway Company (hereinafter referenced as "CRANDIC") is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

7. Defendant CRANDIC is a subsidiary wholly owned by corporate parent Defendant Alliant Energy Corporation.

8. Defendant Union Pacific Railroad Company is a corporation incorporated in the state of Delaware, domiciled in the state of Nebraska, and doing business in the state of Iowa

9. Defendant Union Pacific Corporation is a corporation incorporated in Utah, domiciled in Nebraska, and doing business in the state of Iowa.

10. Defendant Union Pacific Railroad Company and Defendant Union Pacific Corporation are hereinafter collectively and jointly referenced as "Union Pacific" or "UP" or "Union Pacific Defendants" or "UP Defendants").

11. Defendant Alliant Energy Corporation (hereinafter referenced as "Alliant") is a corporation incorporated in Wisconsin, and domiciled in Wisconsin, and doing business in the state of Iowa.

12. Defendant Hawkeye Land Co. is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

13. Defendant Hawkeye Land II Co. is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

14. Defendant Hawkeye Land NFG, Inc. is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

15. Defendant Stickle Enterprises, LTD., also known as Hawkeye Land Co., is a corporation

incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

16. Defendant Midwestern Trading, Inc. is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

17. Defendant Midwest Third Party Logistics, Inc., also known as Midwest 3PL, is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

18. Defendant Stickle Grain Co. is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

19. Defendant Stickle Warehousing, Inc. is a corporation incorporated in the state of Iowa, domiciled in the state of Iowa, and doing business in the state of Iowa.

20. Defendant Rick Stickle is a resident of, and domiciled in, Iowa.

21. Defendant Marsha Stickle is a resident of, and domiciled in, Iowa.

22. For purposes of this action, Defendant Hawkeye Land Co., Defendant Hawkeye Land II Co., Defendant Hawkeye Land NFG, Inc., Defendant Stickle Enterprises, LTD., d/b/a Hawkeye Land Co., Defendant Midwestern Trading, Inc., Defendant Midwest Third Party Logistics, Inc. d/b/a 3PL, Defendant Stickle Grain Co., Defendant Stickle Warehousing, Inc.,

Defendant Rick Stickle, and Defendant Marsha Stickle shall be collectively referenced herein as "Stickle Defendants," as all Stickle Defendants jointly and severally engaged in the conduct taken by any one or more of the corporations and/or persons enumerated in this paragraph.

23. The damages resulting from the injuries alleged herein occurred in Linn County, Iowa.

24. On or about June 10, 2008, Defendant CRANDIC owned a railroad bridge near Eight Avenue SE by the Penford Plant in Cedar Rapids, Iowa (hereinafter referenced as "CRANDIC Penford Plant Railroad Bridge").

25. On or about June 10, 2008, the UP Defendants owned a railroad bridge intersecting with First Street NW near the Quaker Oats Plant in Cedar Rapids, Iowa (hereinafter referenced as "UP Quaker Plant Railroad Bridge").

26. On or about June 10, 2008, all Defendants owned a railroad bridge near the Cargill Corn Milling Plant near 16th Street SE and A Street SW in Cedar Rapids, Iowa (hereinafter referenced as "Defendants' Cargill Plant Railroad Bridge").

27. On or about June 10, 2008, the UP Defendants owned a railroad bridge near C Street SW and Ely Road SW near the Alliant's Prairie Creek Power Generating Station in Cedar Rapids, Iowa (hereinafter referenced as "UP Prairie Creek Power Plant Railroad

Bridge" or "Union Pacific Prairie Creek Power Plant Railroad Bridge").

28. On or about June 10, 2008, the UP Defendants filled two lines of joined railcars with rock to weigh them down and positioned the two side-by-side lines of joined railcars on the UP Defendants' Quaker bridge which spans the Cedar River in Cedar Rapids, Iowa.

29. On or about June 10, 2008, Defendant CRANDIC and Defendant Alliant filled a line of joined railcars with rock to weigh them down and positioned the line of joined railcars on Defendant CRANDIC's Penford Plant Bridge which spans the Cedar River in Cedar Rapids, Iowa.

30. Plaintiffs are informed and believe and thereon allege that on or about June 10, 2008, all Defendants filled railcars with rock for weight and positioned the railcars on Defendants' Cargill Plant Railroad Bridge which spans the Cedar River in Cedar Rapids, Iowa, or in the alternative, all Defendants did not fill the railcars with rock for weight and did not position the railcars on Defendants' Cargill Plant Railroad Bridge which spans the Cedar River in Cedar Rapids, Iowa.

31. On or about June 10, 2008, the UP Defendants filled two lines of joined railcars with rock to weigh them down and positioned the two side-by-side lines of joined railcars on the UP Defendants' Prairie Creek Railroad Bridge which spans the Cedar River in Cedar Rapids, Iowa.

32. After the UP Defendants parked their railcars on Defendant UP's Quaker Plant Bridge on or about June 10, 2008, the UP Defendants' train bridge and railcars began to impede water on the Cedar River from flowing downstream while increasingly diverting, obstructing, and/or damming drains and/or other drainage improvements from being able to carry away water.

33. After Defendant CRANDIC parked its railcars on Defendant CRANDIC's Penford Railroad Bridge on or about June 10, 2008, Defendant CRANDIC's train bridge and railcars began to impede water on the Cedar River from flowing downstream while increasingly diverting, obstructing, and/or damming drains and/or other drainage improvements from being able to carry away water.

34. After all Defendants parked their railcars on all Defendants' jointly owned Cargill Plant Railroad Bridge on or about June 10, 2008, this train bridge and railcars began to impede water on the Cedar River from flowing downstream while increasingly diverting, obstructing, and/or damming drains and/or other drainage improvements from being able to carry away water.

35. After the UP Defendants parked their railcars on the UP Defendants' Prairie Creek Power Plant Railroad Bridge on or about June 10, 2008, the UP Defendants' train bridge and railcars began to impede water on the Cedar River from flowing downstream while increasingly diverting, obstructing, and/or

damming drains and/or other drainage improvements from being able to carry away water.

36. On or about June 12, 2008, Defendant CRANDIC's rail bridge collapsed, spilling the still joined railcars and rock ballast they were carrying into the Cedar River, increasingly impeding water on the Cedar River from flowing downstream while diverting, obstructing, and/or damming drains and/or other drainage improvements from being able to carry away water.

37. Defendant CRANDIC failed to build, maintain, inspect, and keep in good repair CRANDIC's Penford Plant Railroad Bridge spanning the Cedar River.

38. On or about June 12, 2008, all Defendants' jointly owned Cargill Plant Railroad Bridge collapsed, dropping over half of this substantial railroad bridge into the Cedar River increasingly impeding water on the Cedar River from flowing downstream while diverting, obstructing, and/or damming drains and/or other drainage improvements from being able to carry away water; in the alternative, on or about June 12, 2008, all Defendants' jointly owned Cargill Plant Railroad Bridge collapsed, dropping over half of this a substantial railroad Bridge and the railcars loaded on to this bridge into the Cedar River increasingly impeding water on the Cedar River from flowing downstream while diverting, obstructing, and/or damming drains and/or other drainage improvements from being able to carry away water.

39. The UP Defendants failed to build, maintain, inspect, and keep in good repair the UP Defendants' Quaker Plant Railroad Bridge, and UP's Prairie Creek Power Plant Railroad Bridge spanning the Cedar River in Cedar Rapids, Iowa.

40. All Defendants failed build, maintain, inspect, and keep in good repair all Defendants' jointly owned Cargill Plant Railroad Bridge

41. Defendants' actions caused flooding and/or exacerbated flooding in Cedar Rapids, Linn County, Iowa causing great and extensive property damage and other damage to Plaintiffs and all others similarly situated.

42. The corporate veil separating Defendant Alliant from Defendant CRANDIC should be pierced as noted herein below, thereby making Defendant Alliant liable to Plaintiffs for Defendant CRANDIC's duties, obligations, liabilities, and responsibilities because, among other things: Defendant Alliant created Defendant CRANDIC as a mere shell, sham, and alter ego of the parent corporation, Defendant Alliant; Defendant CRANDIC is a subsidiary corporation wholly owned by Defendant Alliant, the parent corporation; Defendant CRANDIC was and is undercapitalized, particularly given the extent of the risk and resultant harm caused by its actions leading to the Flood of 2008; Defendant Alliant has affirmatively controlled the day to day decision-making of Defendant CRANDIC such that Defendant CRANDIC cannot make most decisions on its own without the permission and/or consent

of Defendant Alliant; Defendant CRANDIC and Defendant Alliant share common officers and directors; Defendant Alliant has disregarded the separation of its corporate existence from Defendant CRANDIC; Defendant CRANDIC was created as a separate corporate entity primarily as a means to perpetuate fraud and/or injustice and indeed, injustice would be promoted if Defendant Alliant was not held accountable for Defendant CRANDIC's actions in causing and/or exacerbating the Flood of 2008; and Defendant Alliant and Defendant CRANDIC's finances and obligations are not kept separate.

43. The corporate veil separating Defendant Union Pacific Corporation from Defendant Union Pacific Railroad Company should be pierced as noted herein below, thereby making Defendant Union Pacific Corporation liable to Plaintiffs for Defendant Union Pacific Railroad Company's duties, obligations, liabilities, and responsibilities because, among other things: Defendant Union Pacific Corporation created Defendant Union Pacific Railroad Company as a mere shell, sham, and alter ego of the parent corporation, Defendant Union Pacific Corporation; Defendant Union Pacific Railroad Company is a subsidiary corporation wholly owned by Defendant Union Pacific Corporation, the parent corporation; Defendant Union Pacific Railroad Company was and is undercapitalized, particularly given the extent of the risk and resultant harm caused by its actions causing and/or exacerbating the Flood of 2008; Defendant Union Pacific Corporation has affirmatively controlled the day to day decision-making of

Defendant Union Pacific Railroad Company such that Defendant Union Pacific Railroad Company cannot make most decisions on its own without the permission and/or consent of Defendant Union Pacific Corporation; Defendant Union Pacific Railroad Company and Defendant Union Pacific Corporation share common officers and directors; Defendant Union Pacific Corporation has disregarded the separation of its corporate existence from Defendant Union Pacific Railroad Company; Defendant Union Pacific Railroad Company was created as a separate corporate entity primarily as a means to perpetuate fraud and/or injustice and indeed, injustice would be promoted if Defendant Union Pacific Corporation was not held accountable for Defendant Union Pacific Railroad Company's actions in leading to the Flood of 2008; Defendant Union Pacific Corporation and Defendant Union Pacific Railroad Company's finances and obligations, etc. are not kept separate; etc.

44. The corporate veil separating the Stickle Defendants should be pierced as noted herein below, thereby making all Stickle Defendants liable to Plaintiffs for all Stickle Defendants' duties, obligations, liabilities, and responsibilities because, among other things: the Stickle Defendants were created as a mere shell, sham, and alter ego of the Stickle Defendants; the Stickle Defendants are subsidiary corporations wholly owned by one another; the Stickle Defendants were and are undercapitalized, particularly given the extent of the risk and resultant harm caused by its actions causing and/or exacerbating the Flood of 2008; the Stickle Defendants have affirmatively controlled

the day to day decision-making of one another such that the Stickle Defendants cannot make most decisions independently without the permission and/or consent of Defendant Rick Stickle or Defendant Marsha Stickle; the Stickle Defendants share common officers and directors; the Stickle Defendants have disregarded the separation of its corporate existence from one another and from Defendant Rick Stickle and Defendant Marsha Stickle; the Stickle Defendants were created as a separate corporate entity primarily as a means to perpetuate fraud and/or injustice and indeed, injustice would be promoted if all of the Stickle Defendants were not held accountable for the Stickle Defendants' actions in leading to the Flood of 2008; the Stickle Defendants' finances and obligations, etc. are not kept separate; etc.

45. All Defendants should all be held jointly and severally liable for causing and/or exacerbating the extensive flooding leading to the damages enumerated herein because, among other things:

a. the conduct of all Defendants' was cumulative conduct and/or aggregate conduct and/or inextricably linked and connected conduct leading to the extensive damages noted herein;

b. all Defendants aided and abetted one another and/or were concerted actors in making the decision to place weighed down railcars on their respective bridges and/or failed to build, maintain, inspect, and/or repair their respective bridges which caused flooding and/or exacerbated flooding causing Plaintiffs and all

others similarly situated to suffer the damaged enumerated herein; AND

c. All Defendants jointly own the Cargill Plant Railroad Bridge which collapsed into the Cedar River near downtown Cedar Rapids, causing and/or exacerbating the Flood of 2008.

46. The amount in controversy and damages resulting from the injuries alleged herein exceed the minimal jurisdictional monetary requirements.

CLASS ACTION ALLEGATIONS:

47. Plaintiffs bring this action pursuant to Rule 1.261 of the Iowa Rules of Civil Procedure on behalf of themselves and on behalf of all others similarly situated, as members of the proposed Plaintiffs' class. The proposed class is initially defined as all persons and entities who suffered real and/or personal property damage and/or loss and/or the diminished value of such property and/or other damages as the result of flooding in Cedar Rapids, Linn County, Iowa in June of 2008. The proposed subclasses are initially defined as the following:

a. Residential real estate/real property owners (e.g. residential home/dwelling owners, etc.) who suffered partial loss and/or complete loss and/or the diminished value of each such parcel of real estate/real property as well as any partial loss and/or complete loss and/or diminished value of any personal property/items as well as other damages as a result of the Flood

of 2008; as used in this action, "personal property" shall mean all property which is not real property/real estate;

b. Commercial and/or Business real estate/ real property owners (e.g. owners of land and/ or buildings and/or other improvements, etc. used for commercial/business and/or industrial and/or agricultural use, etc.) who suffered partial loss and/or complete loss and/or the diminished value of each such parcel of real estate/real property as well as any partial loss and/or complete loss and/or diminished value of any personal property/items as well as any other damages as a result of the Flood of 2008; as used in this action, "personal property" shall mean all property which is not real property/real estate;

c. Owners of personal property/items who suffered partial loss and/or complete loss and/or the diminished value of personal property/ items as well as other damages as a result of the Flood of 2008 whether such persons' property/items were owned by individuals, businesses, or any other person or entity; as used in this action, "personal property" shall mean all property which is not real property/ real estate;

AND

d. Other damages.

48. The class is so numerous that joinder of individual Plaintiffs who suffered property damage as defined herein as a result of the Flood of 2008 would be

impracticable. Based upon public information, Plaintiffs and all others similarly situated include, but are not limited to, persons who suffered the damages enumerated herein related to at least 5,390 residential parcels; at least 1,049 commercial parcels; at least 84 industrial parcels; at least 51 agricultural parcels; at least 486 non-profit properties/facilities; moreover, at least 18,623 persons lived in flood-impacted areas;

49. There exists questions of law and fact common to the class which predominate over questions affecting only individual class members including, but not limited to:

a. Whether and to what extent Defendants caused and/or exacerbated and/or contributed to the flooding;

b. Whether Defendants' actions subject them to strict liability;

c. Whether Defendants' were negligent;

d. Whether, and to what extent, Defendants engaged in abnormally dangerous activity for which they are strictly liable;

e. Whether, and to what extent, Defendants engaged in ultrahazardous/extra-hazardous activity for which they are strictly liable;

f. Whether, and to what extent, Defendants' actions prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating flooding;

g. Whether and to what extent Defendants' actions dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating flooding;

h. Whether Defendants Alliant and CRANDIC failed to properly build, maintain, and inspect the CRANDIC Penford Plant Railroad Bridge spanning the Cedar River in Cedar Rapids, Iowa;

i. Whether the Union Pacific Defendants failed to properly build, maintain, and inspect their railroad bridges spanning the Cedar River in Cedar Rapids, Iowa;

j. Whether all Defendants failed to properly build, maintain, and inspect their railroad bridges spanning the Cedar River in Cedar Rapids, Iowa;

k. Whether Plaintiffs and proposed class members were injured by the Defendants' acts or omissions;

l. Whether Plaintiffs and the proposed class members are entitled to damages, and, if so, the appropriate amount of such class-wide measures of damages;

m. Whether Plaintiffs and the proposed class members are entitled to punitive damages, and, if so, the appropriate amount of such class-wide measures of punitive damages;

50. Given the extensive nature of the damage involved in the Flood of 2008, together with the large

numbers of persons and entities damaged by the Flood of 2008, a class action is the quintessential superior means of achieving justice in the fairest and most efficient manner because, among other things:

a. the adjudication of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for a party opposing the class;

b. as a result of the sheer magnitude of damages suffered, separate adjudications by individual members of the class would result in an unfair and unjust allocation of Defendants' limited assets and resources relative to the extraordinary damages caused by Defendants which would substantially impair or preclude the ability of individual class members from being able to obtain a fair and proportionate share of justice/damages; and

c. the questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, and a class action is superior to any other available method for the fair and efficient adjudication of this action.

51. Plaintiffs have retained lawyers who are experienced litigators with very substantial class action experience and expertise. The lawyers have agreed to advance the costs of the out-of-pocket expenses of this litigation and have the ability to do so.

DIVISION ONE:

COUNT I: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against Defendant CRANDIC and Defendant Alliant and state:

52. Plaintiffs hereby replead Paragraphs one (1) through fifty-one (51) above, as if fully set forth here.

53. Defendant CRANDIC and Defendant Alliant are jointly, severally, and strictly liable for the damages suffered by Plaintiffs and all others similarly situated when Defendants engaged in abnormally dangerous activity and/or ultrahazardous activity and/or extra-hazardous activity when Defendants chose to load a line of connected railcars with heavy rock ballast weight and chose to place such railcars on Defendant CRANDIC's 105 year old Penford Plant Railroad Bridge spanning the Cedar River in downtown Cedar Rapids causing the bridge to collapse which caused flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein;

54. Defendant CRANDIC and Defendant Alliant should be held jointly and strictly liable for damages suffered by Plaintiff's and all others similarly situated because, among other things, by choosing to load a line of connected railcars with heavy rock weight and by choosing to place such railcars on Defendants' 105 year old Penford Plant Railroad Bridge spanning the Cedar River in downtown Cedar Rapids causing the bridge to

collapse which caused flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein, Defendant CRANDIC and Defendant Alliant engaged in abnormally dangerous activity and/or ultrahazardous activity, and or extra-hazardous activity including, but not limited to:

a. Defendants' actions prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating flooding;

b. Defendants' actions dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating flooding;

c. Defendants failed to properly build, maintain, inspect, and keep in good repair Defendant CRANDIC's Penford Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa, causing extensive flooding and/or exacerbating flooding;

55. As a direct and proximate result of Defendants' actions, Plaintiffs and all others similarly situated have suffered property damage and diminution in property value including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/ items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved in and/or damaged by floodwaters caused by and/or exacerbated by Defendant CRANDIC and Defendant Alliant's actions; AND

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT II: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against Defendant CRANDIC and Defendant Alliant and state:

56. Plaintiffs hereby replead Paragraphs one (1) through fifty-five (55) above, as if fully set forth here.

57. Pursuant to Iowa Code § 468.148, Defendant CRANDIC and Defendant Alliant are jointly, severally, and strictly liable for the damages suffered by Plaintiffs and all others similarly situated because, among

other things, Defendant CRANDIC and Defendant Alliant violated Iowa Code § 468.148 when Defendants chose to load connected railcars weighted down with heavy rock ballast and place such railcars on Defendants' 105 year old Penford Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa causing this bridge to collapse causing flooding and/or exacerbated flooding because, among other things:

> a. Defendants' actions dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating the flooding;
>
> b. Defendants' actions prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating the flooding; AND
>
> c. Defendants failed to properly build, maintain, inspect, and keep in good repair Defendant CRANDIC's Penford Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa, causing extensive flooding and/or exacerbating the flooding;

58. As a direct and proximate result of Defendants' actions, Plaintiffs and all others similarly situated have suffered property damage and diminution in property value as outlined herein including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved in and/or damaged by floodwaters caused by and/or exacerbated by Defendant CRANDIC and Defendant Alliant's actions; AND

d. Other damages.

59. Defendants have on a number of occasions elected to load connected railcars weighted down with heavy rock ballast and place such railcars on Defendants' 105 year old Penford Plant Railroad Bridge spanning the Cedar River in downtown Cedar Rapids, Iowa as well as on their other railroad bridges.

60. Plaintiffs are entitled to double and/or treble damages as a result of Defendants' actions pursuant to Iowa Code § 468.148.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages plus double and/or treble damages pursuant to Iowa Code § 468.148, for cost of this action, together with interest as provided by law, and for such other relief to

which Plaintiffs and all others similarly situated are entitled.

COUNT III: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against Defendant CRANDIC and Defendant Alliant and state:

61. Plaintiffs hereby replead Paragraphs one (1) through sixty (60) above, as if fully set forth here.

62. Pursuant to Iowa Code § 327F.2, Defendant CRANDIC and Defendant Alliant are jointly, severally, and strictly liable for the damages suffered by Plaintiffs and all others similarly situated when Defendants chose to load connected railcars weighted down with heavy rock ballast and place such railcars on Defendants' 105 year old Penford Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa causing this bridge to collapse and caused flooding and/or exacerbated flooding because, among other things:

a. Defendants failed to properly build, maintain, inspect, and keep in good repair Defendant CRANDIC's Penford Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa, causing extensive flooding and/or exacerbating the flooding;

b. Defendants' actions prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating the flooding; AND

c. Defendants' actions dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating the flooding;

63. Defendant CRANDIC and Defendant Alliant should be held strictly liable for damages suffered by Plaintiffs and all others similarly situated because, among other things, Defendant CRANDIC and Defendant Alliant violated Iowa Code § 327F.2 as evidenced by, among other things, the collapse of Defendants' 105 year old Penford Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa causing this bridge to collapse and caused flooding and/or exacerbated flooding.

64. As a direct and proximate result of Defendants' actions, Plaintiffs and all others similarly situated have suffered real property and personal property damage and diminution in property value as outlined herein including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved in and/or damaged by floodwaters

caused by and/or exacerbated by Defendant CRANDIC and Defendant Alliant's actions; AND

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT IV: NEGLIGENCE

COMES NOW Plaintiffs and all others similarly situated and state for this cause of action against Defendant CRANDIC and Defendant Alliant:

65. Plaintiffs hereby replead Paragraphs one (1) through sixty-four (64) above, as if fully set forth here.

66. Defendant CRANDIC and Defendant Alliant should be held jointly liable for damages suffered by Plaintiffs and all others similarly situated for the reasons set forth herein.

67. In loading a line of connected railcars with rock weight and placing such railcars over Defendants' Penford Plant Railroad Bridge in downtown Cedar Rapids on or about June 10, 2008 which led that bridge to collapse on or about June 12, 2008 causing flooding and/or exacerbating flooding, Defendant CRANDIC and Defendant Alliant were negligent in—but not limited to—one or more of the following particulars:

a. in failing to build, maintain, and keep in good repair all bridges, abutments, an/or other construction necessary to enable such bridge(s) to cross over the Cedar River, causing extensive flooding and/or exacerbating the flooding;

b. in damming up, diverting, obstructing a ditch, drain, or other drainage improvement authorized by law, causing extensive flooding and/or exacerbating the flooding; AND

c. Defendants' actions prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating the flooding.

68. Defendant CRANDIC and Defendant Alliant's negligence was a proximate cause of injuries and damages to Plaintiffs' and others similarly situated.

69. By reason of Defendant CRANDIC and Defendant Alliant's negligence, Plaintiffs and all others similarly situated have and will continue to suffer injuries and damages including but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property

being involved in and/or damaged by floodwaters caused by and/or exacerbated by Defendant CRANDIC and Defendant Alliant's actions; AND

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT V: PUNITIVE DAMAGES:

COME NOW Plaintiffs and all others similarly situated for this cause of action against Defendant CRANDIC and Defendant Alliant and state:

70. Plaintiffs hereby incorporate by this reference Paragraphs one (1) through sixty-nine (69) above, as if fully set forth here.

71. Defendant CRANDIC and Defendant Alliant's conduct herein constituted a willful, wanton, and reckless disregard for the rights and safety of Plaintiffs and all others similarly situated, causing them extensive real property and personal property damage and diminution in real property and personal property values. Punitive damages are necessary to punish Defendants while discouraging and deterring Defendants and others from engaging in similar conduct in the future.

72. Defendant CRANDIC and Defendant Alliant's intentional act of placing connected railcars weighted down with heavy rock ballast on Defendants' 105 year old CRANDIC Penford Plant Railroad Bridge under the circumstances then existing was unreasonable and in disregard of a known or obvious risk that was so great as to make it highly probable that harm will follow.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their damages plus punitive damages sufficient to punish Defendants while deterring and discouraging Defendants and all others from taking similar action in the future, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT VI: PIERCING THE CORPORATE VEIL:

COME NOW Plaintiffs and all others similarly situated for this cause of action against Defendant Alliant and Defendant CRANDIC and state:

73. Plaintiffs hereby incorporate by this reference Paragraphs one (1) through seventy-two (72) above as if fully set forth here.

74. Defendant Alliant is the sole shareholder of Defendant CRANDIC.

75. Defendant CRANDIC is a wholly owned subsidiary of Defendant Alliant.

76. By virtue of the catastrophic damages caused by CRANDIC as outlined in this action, Defendant CRANDIC is indebted to Plaintiffs and all others similarly situated.

77. Based upon information and belief, Defendant CRANDIC's assets are insufficient to cover Defendant CRANDIC's indebtedness to Plaintiffs and all others similarly situated.

78. Defendant Alliant has abused the corporate privilege and the corporate veil should be pierced because, among other things:

a. Defendant CRANDIC is undercapitalized;

b. Defendant CRANDIC is particularly undercapitalized relative to the enormous risk Defendant CRANDIC undertook when it loaded its 105 year old Penford Plant Railroad Bridge spanning the entire Cedar River in the heart of downtown Cedar Rapids with a line of joined rail cars weighted down with heavy rock ballast weight;

c. Defendant CRANDIC's finances are not kept separate from Defendant Alliant's finances;

d. Defendant CRANDIC's obligations are paid by Defendant Alliant and vice versa;

e. Defendant CRANDIC is used to promote fraud or illegality;

f. Defendant CRANDIC does not follow corporate formalities.

g. Defendant CRANDIC is a mere sham;

h. Defendant CRANDIC is a mere alter ego of Defendant Alliant;

i. Defendant CRANDIC and Defendant Alliant's funds, obligations, assets, debts, etc. are commingled and intertwined;

j. Defendant CRANDIC and Defendant Alliant share a number of shared/common Boards of Directors, Officers, and other personnel and departments;

k. Defendant Alliant controls and runs Defendant CRANDIC's day to day operations to the extent that Defendant CRANDIC virtually has no ability to run its affairs or make decisions without the strict oversight, management, decision-making power, and control of Defendant Alliant;

l. Defendants have abused the corporate privilege; AND

m. Plaintiffs and all other similarly situated will suffer extreme injustice if the corporate veil is not pierced.

79. Accordingly, Defendant CRANDIC's corporate veil should be pierced so that Defendant Alliant can—along with Defendant CRANDIC—be held liable for the catastrophic damages to Plaintiffs and all others similarly situated when Defendant CRANDIC and Defendant Alliant undertook the risk of placing joined

and weighted railcars on the 105 year CRANDIC Penford Plant Railroad Bridge spanning the Cedar River in downtown Cedar Rapids.

WHEREFORE, Plaintiffs and all others similarly situated pray that Defendant CRANDIC's corporate veil be pierced so that Defendant CRANDIC and Defendant Alliant can both be held jointly and severally liable for such amount that will fully, fairly, and adequately compensate plaintiffs and all others similarly situated for their and damages while additionally providing double and/or treble damages plus punitive damages sufficient to punish Defendant CRANDIC and Defendant Alliant while deterring and discouraging Defendant CRANDIC and Defendant Alliant and all others from taking similar action in the future, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

DIVISION TWO:

COUNT I: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against Defendant Union Pacific Corporation and Defendant Union Pacific Railroad Company (collectively referenced herein as "UP Defendants") and state:

80. Plaintiffs hereby replead Paragraphs one (1) through seventy-nine (79) above, as if fully set forth here.

81. The UP Defendants are jointly and strictly liable for the damages suffered by Plaintiffs and all others similarly situated when the UP Defendants engaged in abnormally dangerous activity and/or ultrahazardous activity and/or extra-hazardous activity when the UP Defendants, among other things:

a. chose to load two lines of connected railcars with heavy rock ballast weight and chose to place the two lines of railcars side by side on the UP Defendants' Quaker Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein; AND

c. chose to load a line of connected railcars with heavy rock ballast weight and chose to place such railcars on the UP Defendants' Prairie Creek Power Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein.

82. The UP Defendants should be held strictly liable for damages suffered by Plaintiffs and all others similarly situated because, among other things, the UP Defendants engaged in abnormally dangerous activity and/or ultrahazardous activity, and or extra-hazardous activity including, but not limited to:

a. the UP Defendants' actions with respect to all of their bridges prevented water from flowing

down the Cedar River, causing extensive flooding and/or exacerbating flooding;

b. the UP Defendants' actions with respect to all of their bridges dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating flooding;

83. As a direct and proximate result of the UP Defendants' actions and decisions, Plaintiffs and all others similarly situated have suffered property damage and diminution in property value including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved in and/or damaged by floodwaters caused by and/or exacerbated by Defendant Union Pacific's actions; and

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages,

for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT II: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against the UP Defendants and state:

84. Plaintiffs hereby replead Paragraphs 1-83 above, as if fully set forth here.

85. Pursuant to Iowa Code § 468.148, the UP Defendants are jointly and strictly liable for the damages suffered by Plaintiffs and all others similarly situated when the UP Defendants, among other things:

a. chose to load two lines of connected railcars with heavy rock ballast weight and chose to place the two lines of railcars side by side on Defendant Union Pacific's Quaker Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein; AND

b. chose to load a line of connected railcars with heavy rock ballast weight and chose to place such railcars on Defendant Union Pacific's Prairie Creek Power Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in

damages suffered by Plaintiffs and all others similarly situated as outlined herein.

86. The UP Defendants should be held strictly liable for damages suffered by Plaintiffs and all others similarly situated because, among other things, the UP Defendants actions related to their railroad bridges as noted herein violated Iowa Code § 468.148 by, among other things:

> a.. the UP Defendants' actions with respect to their bridges dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating flooding; AND
>
> b. the UP Defendants' actions with respect to their three bridges prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating flooding;

87. As a direct and proximate result of Defendants' actions and decisions, Plaintiffs and all others similarly situated have suffered property damage and diminution in property value as outlined herein including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/ items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved in and/or damaged by floodwaters caused by and/or exacerbated by Defendant Union Pacific's actions; AND

d. Other damages.

88. The UP Defendants have on a number of occasions elected to load connected railcars weighted down with heavy rock ballast and place such railcars on the UP Defendants' railroad bridges spanning the Cedar River in and near downtown Cedar Rapids, Iowa and elsewhere.

89. Plaintiffs and all others similarly situated are entitled to double and/or treble damages as a result of Defendants' actions pursuant to Iowa Code § 468.148.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages plus double and/or treble damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT III: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against the UP Defendants and state:

90. Plaintiffs hereby replead Paragraphs 1-89 above, as if fully set forth here.

91. Pursuant to Iowa Code § 327F.2, the UP Defendants are jointly and strictly liable for the damages suffered by Plaintiffs and all others similarly situated when the UP Defendants, among other things:

a. chose to load two lines of connected railcars with heavy rock ballast weight and chose to place the two lines of railcars side by side on the UP Defendants' Quaker Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein; AND

b. chose to load a line of connected railcars with heavy rock ballast weight and chose to place such railcars on the UP Defendants' Prairie Creek Power Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein.

92. The UP Defendants should be held strictly liable for damages suffered by Plaintiffs and all others similarly situated because, among other things, the UP

Defendants violated Iowa Code § 327F.2 when the UP Defendants engaged in activities including, but not limited to:

> a. Defendants' actions with respect to loading railcars on Defendants' bridges which prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating flooding; AND
>
> b. Defendants' actions with respect to loading railcars on Defendants' bridges dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating flooding;

93. As a direct and proximate result of Defendants' actions and decisions, Plaintiffs and all others similarly situated have suffered real property and personal property damage and diminution in property value as outlined herein including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property

being involved and/or damaged by floodwaters caused by and/or exacerbated by Defendants' actions; AND

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT IV: NEGLIGENCE

COMES NOW Plaintiffs and all others similarly situated and state for this cause of action against the UP Defendants and state:

94. Plaintiffs hereby replead Paragraphs 1-93 above, as if fully set forth here.

95. The UP Defendants are jointly liable as they were negligent in—but not limited to—one or more of the following particulars:

a. when they chose to load two lines of connected railcars with heavy rock weight and chose to place the two lines of railcars side by side on the UP Defendants' Quaker Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein; AND

b. when they chose to load a line of connected railcars with heavy rock ballast weight and chose to place such railcars on the UP Defendants' Prairie Creek Power Plant Railroad Bridge in Cedar Rapids preventing/diverting water from going downstream causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein.

c. in failing to build, maintain, and keep in good repair all bridges, abutments, an/or other construction necessary to enable such bridge(s) to cross over the Cedar River, causing extensive flooding and/or exacerbating the flooding;

d. in damming up, diverting, obstructing a ditch, drain, or other drainage improvement authorized by law, causing extensive flooding and/or exacerbating the flooding; AND

e. Defendants' actions with respect to their railroad bridges as outlined herein prevented/diverted water from flowing down the Cedar River, causing extensive flooding and/or exacerbating the flooding.

96. The UP Defendants' negligence was a proximate cause of injuries and damages to Plaintiffs' and others similarly situated.

97. By reason of the UP Defendants' negligence, Plaintiffs and all others similarly situated have and will continue to suffer injuries and damages including but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved and/or damaged by floodwaters caused by and/or exacerbated by the UP Defendants' actions; AND

d. Other damages

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT V: PUNITIVE DAMAGES:

COME NOW Plaintiffs and all others similarly situated for this cause of action against the UP Defendants and state:

98. Plaintiffs hereby replead Paragraphs 1-97 above, as if fully set forth here.

99. The UP Defendants' conduct herein constituted a willful, wanton, and reckless disregard for the

rights and safety of Plaintiffs and all others similarly situated, causing them extensive real property damage and personal property damage and diminution in both real property and personal property values. Punitive damages are necessary to punish the UP Defendants while discouraging and deterring the UP Defendants and all others from engaging in similar conduct in the future.

100. The UP Defendants' intentional act of placing connected railcars weighted down with heavy rock on the UP Defendants' Quaker Plant Railroad Bridge and Prairie Creek Power Plant Railroad Bridge (or in the alternative, failing to properly build, inspect, and maintain their bridges) under the circumstances then existing was unreasonable and in disregard of a known or obvious risk that was so great as to make it highly probable that harm will follow.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their damages plus punitive damages sufficient to punish the UP Defendants while deterring and discouraging the UP Defendants and all others from taking similar action in the future, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT VI: PIERCING THE CORPORATE VEIL:

COME NOW Plaintiffs and all others similarly situated for this cause of action against Defendant Union Pacific Corporation and Union Pacific Railroad Company and states:

101. Plaintiffs hereby incorporate by this reference Paragraphs 1-100 above as if fully set forth here.

102. Defendant Union Pacific Corporation is the sole shareholder of Defendant Union Pacific Railroad Company.

103. Defendant Union Pacific Railroad Company is a wholly owned subsidiary of Defendant Union Pacific Corporation.

104. By virtue of the catastrophic damages caused by Union Pacific Railroad Company as outlined in this action, Defendant Union Pacific Railroad Company is indebted to Plaintiffs and all others similarly situated.

105. Based upon information and belief, Defendant Union Pacific Railroad Company's assets are insufficient to cover Defendant Union Pacific Railroad Company's indebtedness to Plaintiffs and all others similarly situated.

106. Defendant Union Pacific Corporation has abused the corporate privilege and the corporate veil should be pierced because, among other things:

a. Defendant Union Pacific Railroad Company is undercapitalized;

b. Defendant Union Pacific Railroad Company is particularly undercapitalized relative to the enormous risk Defendant Union Pacific Railroad Company undertook when it loaded all its railroad bridge spanning the entire Cedar River in Cedar Rapids with dual lines of joined rail cars weighted down with heavy rock;

c. Defendant Union Pacific Railroad Company's finances are not kept separate from Defendant Union Pacific Railroad Company's finances;

d. Defendant Union Pacific Railroad Company's obligations are paid by Defendant Union Pacific Corporation and vice versa;

e. Defendant Union Pacific Railroad Company is used to promote fraud or illegality;

f. Defendant Union Pacific Railroad Company does not follow corporate formalities.

g. Defendant Union Pacific Railroad Company is a mere sham;

h. Defendant Union Pacific Railroad Company is a mere alter ego of Defendant Union Pacific Corporation;

i. Defendant Union Pacific Railroad Company and Defendant Union Pacific Corporation's funds, obligations, assets, debts, etc. are commingled and intertwined;

j. Defendant Union Pacific Railroad Company and Defendant Union Pacific Corporation share a number of shared/common Boards of Directors, Officers, and other personnel and departments;

k. Defendant Union Pacific Corporation controls and runs Defendant Union Pacific Railroad Company's day to day operations to the extent that Defendant Union Pacific Railroad Company virtually has no ability to run its affairs or make decisions without the strict oversight, management, decision-making power, and control of Defendant Union Pacific Corporation;

l. Defendants have abused the corporate privilege; AND

m. Plaintiffs and all other similarly situated will suffer extreme injustice if the corporate veil is not pierced.

107. Accordingly, Defendant Union Pacific Railroad Company's corporate veil should be pierced so that Defendant Union Pacific Corporation can—along with Defendant Union Pacific Railroad Company—be held liable for the catastrophic damages to Plaintiffs and all others similarly situated when Defendant Union Pacific Railroad Company and Defendant Union Pacific Company undertook the risk of placing joined and weighted railcars on all of their old railroad bridge spanning the Cedar River in downtown Cedar Rapids.

WHEREFORE, Plaintiffs and all others similarly situated pray that Defendant Union Pacific Railroad Company's corporate veil be pierced so that Defendant

Union Pacific Railroad Company and Defendant Union Pacific Corporation can both be held jointly and severally liable for such amount that will fully, fairly, and adequately compensate plaintiffs and all others similarly situated for their and damages while additionally providing double and/or treble damages plus punitive damages sufficient to punish Defendant Union Pacific Railroad Company and Defendant Union Pacific Corporation while deterring and discouraging Defendant Union Pacific Railroad Company and Defendant Union Pacific Corporation and all others from taking similar action in the future, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

DIVISION THREE:

COUNT I: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against all Defendants and state:

108. Plaintiffs hereby replead Paragraphs 1-107 above, as if fully set forth here.

109. All Defendants are jointly, severally, and strictly liable for the damages suffered by Plaintiffs and all others similarly situated when all Defendants engaged in abnormally dangerous activity and/or ultrahazardous activity and/or extra-hazardous activity when all Defendants, among others things, chose to

load a line of connected railcars with heavy rock weight and chose to place such railcars on all Defendants' jointly owned Cargill Plant Railroad Bridge in Cedar Rapids causing this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein or, in the alternative, all Defendants chose not to properly build, inspect, and maintain all Defendants' jointly owned Cargill Plant Railroad Bridge in Cedar Rapids causing this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein.

110. All Defendants should be held jointly, severally, and strictly liable for damages suffered by Plaintiffs and all others similarly situated because, among other things, all Defendants engaged in abnormally dangerous activity and/or ultrahazardous activity, and or extra-hazardous activity including with respect to their jointly owned Cargill Plant Railroad Bridge, including but not limited to:

a. All Defendants' actions with respect to their jointly owned Cargill Plant Railroad Bridge prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating flooding;

b. All Defendants' actions with respect to their jointly owned Cargill Plant Railroad Bridge dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing

extensive flooding and/or exacerbating flooding; AND

c. All Defendants failed to properly build, maintain, inspect, and keep in good repair all Defendants' jointly owned Cargill Plant Railroad Bridge spanning over the Cedar River near downtown Cedar Rapids, Iowa, causing extensive flooding and/or exacerbating flooding;

111. As a direct and proximate result of all Defendants' actions and decisions, Plaintiffs and all others similarly situated have suffered property damage and diminution in property value including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved in and/or damaged by floodwaters caused by and/or exacerbated by all Defendants actions; AND

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and

adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT II: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against all Defendants and state:

112. Plaintiffs hereby replead Paragraphs 1-111 above, as if fully set forth here.

113. Pursuant to Iowa Code § 468.148, all Defendants are strictly, severally, and jointly liable for the damages suffered by Plaintiffs and all others similarly situated when all Defendants chose, among other things, to load a line of connected railcars with heavy rock weight and chose to place such railcars on all Defendants' Cargill Plant Railroad Bridge in Cedar Rapids causing this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein, or in the alternative, all Defendants chose not to properly build, inspect, and maintain all Defendants' Cargill Plant Railroad Bridge in Cedar Rapids causing this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein.

114. All Defendants should be held jointly, severally, and strictly liable for damages suffered by Plaintiffs and all others similarly situated because, among other things, all Defendants' actions related to all Defendants' jointly owned Cargill Plant Railroad bridge as noted herein violated Iowa Code § 468.148 by, among other things:

a.. All Defendants with respect to their jointly owned Cargill Plant Railroad Bridge dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating flooding;

b. All Defendants took action with respect to their jointly owned Cargill Plant Railroad Bridge which prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating flooding; AND

c. All Defendants' failure to properly build, maintain, inspect, and keep in good repair all Defendants' jointly owned Cargill Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa, caused extensive flooding and/or exacerbating flooding;

115. As a direct and proximate result of all Defendants' actions and decisions, Plaintiffs and all others similarly situated have suffered property damage and diminution in property value as outlined herein including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved in and/or damaged by floodwaters caused by and/or exacerbated by all Defendants' actions; AND

d. Other damages.

116. Defendants have on a number of occasions elected to load connected railcars weighted down with heavy rock ballast and place such railcars on Defendants' railroad bridges spanning the Cedar River in and near downtown Cedar Rapids, Iowa and elsewhere.

117. Plaintiffs and all others similarly situated are entitled to double and/or treble damages as a result of Defendants' actions pursuant to Iowa Code § 468.148.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages plus double and/or treble damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT III: STRICT LIABILITY

COME NOW Plaintiffs and all others similarly situated for this cause of action against all Defendants and state:

118. Plaintiffs hereby replead Paragraphs 1-117 above, as if fully set forth here.

119. Pursuant to Iowa Code § 327F.2, all Defendants are jointly, severally, and strictly liable for the damages suffered by Plaintiffs and all others similarly situated when all Defendants, among other things, chose to load a line of connected railcars with heavy rock weight and chose to place such railcars on all Defendants' Cargill Plant Railroad Bridge in Cedar Rapids causing this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein, or in the alternative, when all Defendants chose not to properly build, inspect, and maintain all Defendants' Cargill Plant Railroad Bridge in Cedar Rapids causing this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein.

120. All Defendants should be held jointly, severally, and strictly liable for damages suffered by Plaintiffs and all others similarly situated because, among other things, all Defendants violated Iowa Code § 327F.2 when all Defendants engaged in activities including, but not limited to:

a. All Defendants' failure to properly build, maintain, inspect, and keep in good repair all Defendants' jointly owned Cargill Plant Railroad Bridge spanning over the Cedar River in downtown Cedar Rapids, Iowa, causing extensive flooding and/or exacerbating flooding;

b. All Defendants' actions with respect to their jointly owned Cargill Plant Railroad Bridge prevented water from flowing down the Cedar River, causing extensive flooding and/or exacerbating flooding; AND

c. All Defendants' actions with respect to their jointly owned Cargill Plant Railroad bridge dammed, diverted, and/or obstructed drains and/or other drainage improvements designed to carry away water, causing extensive flooding and/or exacerbating flooding;

121. As a direct and proximate result of all Defendants' actions and decisions, Plaintiffs and all others similarly situated have suffered real property and personal property damage and diminution in property value as outlined herein including, but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/ items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved and/or damaged by floodwaters caused by and/or exacerbated by all Defendants actions; AND

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT IV: NEGLIGENCE

COMES NOW Plaintiffs and all others similarly situated and state for this cause of action against all Defendants and state:

122. Plaintiffs hereby replead Paragraphs 1-121 above, as if fully set forth here.

123. All Defendants are jointly and severally liable when they were all negligent in—but not limited to—the following with respect to all Defendants' jointly owned Cargill Plant Railroad Bridge:

a. when all Defendants chose to load a line of connected railcars with heavy rock weight and chose to place such railcars on all Defendants' jointly owned Cargill Plant Railroad Bridge in Cedar Rapids causing

this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein, or in the alternative, when all Defendants chose not to properly build, inspect, and maintain all Defendants' jointly owned Cargill Plant Railroad Bridge in Cedar Rapids causing this bridge to collapse causing flooding and/or the exacerbation of flooding resulting in damages suffered by Plaintiffs and all others similarly situated as outlined herein.

b. when all Defendants failed to build, maintain, and keep in good repair all bridges, abutments, an/or other construction necessary to enable such bridge(s) to cross over the Cedar River, causing extensive flooding and/or exacerbating the flooding;

c. in damming up, diverting, obstructing a ditch, drain, or other drainage improvement authorized by law, causing extensive flooding and/or exacerbating the flooding; AND

d. Defendants' actions with respect to their jointly owned Cargill Plant Railroad Bridge as outlined herein prevented/diverted water from flowing down the Cedar River, causing extensive flooding and/or exacerbating the flooding.

124. All Defendants negligence was a proximate cause of injuries and damages to Plaintiffs' and others similarly situated.

125. By reason of all Defendants' common negligence, Plaintiffs and all others similarly situated have

and will continue to suffer injuries and damages including but not limited to:

a. Total and/or partial loss of real property/real estate whether owned by: a person, a business, or any other person or entity;

b. Total and/or partial loss of personal property/items whether owned by: a person, a business, or any other person or entity;

c. Diminution in value of real property/real estate and/or personal property/items—whether owned by: a person, a business, or any other person or entity—by virtue of such property being involved and/or damaged by floodwaters caused by and/or exacerbated by all Defendants' actions; AND

d. Other damages.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their and damages, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

COUNT V: PUNITIVE DAMAGES:

COME NOW Plaintiffs and all others similarly situated for this cause of action against all Defendants and state:

126. Plaintiffs hereby replead Paragraphs 1-125 above, as if fully set forth here.

127. All Defendants' conduct herein was concerted and constituted a willful, wanton, and reckless disregard for the rights and safety of Plaintiffs and all others similarly situated, causing them extensive real property damage and personal property damage and diminution in both real property and personal property values and other damages. Punitive damages are necessary to punish all Defendants while discouraging and deterring all Defendants and others from engaging in similar conduct in the future.

128. All Defendants' concerted and intentional act of placing connected railcars weighted down with heavy rock ballast on Defendants' jointly owned Cargill Plant Railroad Bridge (or in the alternative, failing to properly build, inspect, and maintain all Defendants' jointly owned Cargill Plant Railroad Bridge) under the circumstances then existing was unreasonable and in disregard of a known or obvious risk that was so great as to make it highly probable that harm will follow.

WHEREFORE, Plaintiffs and all others similarly situated pray for such amount that will fully, fairly, and adequately compensate them for their damages plus punitive damages sufficient to punish all Defendants while deterring and discouraging all Defendants and all others from taking similar action in the future, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

DIVISION FOUR:

COUNT I: PIERCING THE CORPORATE VEIL:

COME NOW Plaintiffs and all others similarly situated for this cause of action against the Stickle Defendants and state:

129. Plaintiffs hereby replead Paragraphs 1-128 above as if fully set forth here.

130. Defendant Rick Stickle and Defendant Marsha Stickle are the only shareholders of the Stickle Defendant entities.

131. The Stickle Defendants have liberally disregarded their corporate separation by, among other things, identifying various Stickle Defendants by the names of other various Stickle Defendants.

132. By virtue of the catastrophic damages caused by Hawkeye Land Co, one of the Sickle Defendants that is joint owner of the Cargill Plant Bridge that collapsed during the Flood of 2008, Hawkeye Land Co. is indebted to Plaintiffs and all others similarly situated.

133. Based upon information and belief, Hawkeye Land Co. assets are insufficient to cover its indebtedness to Plaintiffs and all others similarly situated ho suffered damages as a result of the 2008 Floods.

134. Defendant Hawkeye Land Co. and the other Sickle Defendants have abused the corporate privilege

and the corporate veil should be pierced because, among other things:

a. Defendant Hawkeye Land Co. is undercapitalized;

b. Defendant Hawkeye Land Co. is particularly undercapitalized relative to the enormous risk Defendant Hawkeye Land Co. undertook when it loaded its jointly owned Cargill Plant Railroad Bridge spanning the entire Cedar River in Cedar Rapids with joined rail cars weighted down with heavy rock, or in the alternative, when it failed to build, maintain, and repair its jointly owned Cargill Plant Railroad Bridge.

c. Defendant Hawkeye Land Co.'s finances are not kept separate from the Stickle Defendants' finances and vice versa;

d. Defendant Hawkeye Land Co.'s obligations are paid by the Sickle Defendants and vice versa;

e. Defendant Hawkeye Land Co. is used to promote fraud or illegality;

f. Defendant Hawkeye Land Co. does not follow corporate formalities.

g. Defendant Hawkeye Land Co. is a mere sham;

h. Defendant Hawkeye Land Co. Company is a mere shell and/or alter ego of the Stickle Defendants;

i. Defendant Hawkeye Land Co. funds, obligations, assets, debts, etc. are commingled and

intertwined with the other Stickle Defendants and vice versa;

j. Defendant Hawkeye Land Co. and the Stickle Defendants share all the same Boards of Directors, Officers, and other personnel and departments;

k. The Stickle Defendants controls and run Defendant Hawkeye Land Co.'s day to day operations to the extent that Hawkeye Land Co. virtually has no ability to run its affairs or make decisions without the strict oversight, management, decision-making power, and control of the Stickle Defendants;

l. the Stickle Defendants have abused the corporate privilege; AND

m. Plaintiffs and all other similarly situated will suffer extreme injustice if the corporate veil is not pierced.

135. Accordingly, Defendant Hawkeye Land Co.'s corporate veil should be pierced so that Defendant Hawkeye Land Co. can—along with all of the other Stickle Defendants—be held liable for the catastrophic damages to Plaintiffs and all others similarly situated when Defendant Hawkeye Land Co., the other Stickle defendants, and all other Defendants undertook the risk of placing joined and weighted railcars on all of their old railroad bridge spanning the Cedar River in downtown Cedar Rapids and/or when they failed to build, maintain, inspect, and repair Defendants' jointly owned Cargill Plant Railroad Bridge.

WHEREFORE, Plaintiffs and all others similarly situated pray that Defendant Hawkeye Land Co.'s corporate veil be pierced so that Defendant Hawkeye Land Co. and all of the other Stickle Defendants can all be held jointly and severally liable for such amount that will fully, fairly, and adequately compensate plaintiffs and all others similarly situated for their and damages while additionally providing double and/or treble damages plus punitive damages sufficient to punish all Defendants while deterring and discouraging all Defendants and all others from taking similar action in the future, for cost of this action, together with interest as provided by law, and for such other relief to which Plaintiffs and all others similarly situated are entitled.

JURY TRIAL DEMANDED

COME NOW Plaintiffs and all others similarly situated hereby demand a trial by jury.

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