

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BRIAN HOPKINS, LIANA HOPKINS and  
SEAN HOPKINS,

Plaintiffs,

-against-

NATIONAL RAILROAD PASSENGER  
CORPORATION a/k/a AMTRAK,

Defendant.

-----X

ANSWER

08 2965 (J. GARAUFIS) (M.J. LEVY)

Defendant National Railroad Passenger Corporation, a/k/a Amtrak (“Amtrak”), by its attorneys, Landman Corsi Ballaine & Ford P.C., hereby answers the Complaint herein as follows:

WITH RESPECT TO THE INTRODUCTION

FIRST: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "1" of the Complaint.

WITH RESPECT TO THE PARTIES

SECOND: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the Complaint.

THIRD: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Complaint.

FOURTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the Complaint.

FIFTH: Defendant Amtrak admits the truth of each and every allegation contained in paragraph “5” of the Complaint.

SIXTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "6" of the Complaint, except admits that Amtrak regularly transacts business within New York.

SEVENTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the Complaint.

**WITH RESPECT TO THE FACTS**

EIGHTH: Defendant Amtrak admits the truth of each and every allegation contained in paragraph "8" of the Complaint.

NINTH: Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the Complaint, except admits that Amtrak operates electrified railroad lines in portions of the eastern United States.

TENTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "10" of the Complaint.

ELEVENTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "11" of the Complaint.

TWELFTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "12" of the Complaint.

THIRTEENTH: Defendant Amtrak admits the truth of each and every allegation contained in paragraph "13" of the Complaint.

FOURTEENTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "14" of the Complaint.

FIFTEENTH: Defendant denies knowledge or information sufficient to form a belief as

to the truth of the allegations contained in paragraph "15" of the Complaint.

SIXTEENTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "16" of the Complaint.

SEVENTEENTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "17" of the Complaint.

EIGHTEENTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "18" of the Complaint.

NINETEENTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "19" of the Complaint.

**WITH RESPECT TO THE INCIDENT**

TWENTIETH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of the Complaint.

TWENTY-FIRST: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of the Complaint.

TWENTY-SECOND: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "22" of the Complaint.

TWENTY-THIRD: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "23" of the Complaint.

TWENTY-FOURTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "24" of the Complaint.

TWENTY-FIFTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the Complaint.

TWENTY-SIXTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the Complaint.

TWENTY-SEVENTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of the Complaint.

TWENTY-EIGHTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the Complaint.

TWENTY-NINTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the Complaint.

THIRTIETH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the Complaint.

THIRTY-FIRST: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "31" of the Complaint.

THIRTY-SECOND: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "32" of the Complaint.

**WITH RESPECT TO THE FIRST CAUSE OF ACTION**

THIRTY-THIRD: With respect to the allegations contained in paragraph "33" of the Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "FIRST" through "THIRTY-SECOND" of this Answer with the same force and effect as if fully set forth at length herein.

THIRTY-FOURTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "34" of the Complaint.

THIRTY-FIFTH: Defendant Amtrak denies the truth of each and every allegation

contained in paragraph "35" of the Complaint.

THIRTY-SIXTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "36" of the Complaint.

THIRTY-SEVENTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "37" of the Complaint.

THIRTY-EIGHTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "38" of the Complaint.

THIRTY-NINTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "39" of the Complaint.

FORTIETH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "40" of the Complaint.

**WITH RESPECT TO THE SECOND CAUSE OF ACTION**

FORTY-FIRST: With respect to the allegations contained in paragraph "41" of the Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "FIRST" through "FORTIETH" of this Answer with the same force and effect as if fully set forth at length herein.

FORTY-SECOND: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "42" of the Complaint.

FORTY-THIRD: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "43" of the Complaint.

FORTY-FOURTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "44" of the Complaint.

FORTY-FIFTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "45" of the Complaint.

FORTY-SIXTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "46" of the Complaint.

FORTY-SEVENTH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "47" of the Complaint.

FORTY-EIGHTH: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "48" of the Complaint.

**WITH RESPECT TO THE THIRD CAUSE OF ACTION**

FORTY-NINTH: With respect to the allegations contained in paragraph "49" of the Complaint, defendant repeats, reiterates and realleges each and every response contained in paragraphs "FIRST" through "FORTY-EIGHTH" of this Answer with the same force and effect as if fully set forth at length herein.

FIFTIETH: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "50" of the Complaint.

FIFTY-FIRST: Defendant Amtrak denies the truth of each and every allegation contained in paragraph "51" of the Complaint.

FIFTY-SECOND: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "52" of the Complaint.

FIFTY-THIRD: Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "53" of the Complaint.

FIFTY-FOURTH: Defendant Amtrak denies the truth of each and every allegation

contained in paragraph "54" of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

FIFTY-FIFTH: Any injuries suffered by plaintiffs were caused solely by the negligence of plaintiff Brian Hopkins and not by any negligence of the defendant Amtrak.

**SECOND AFFIRMATIVE DEFENSE**

FIFTY-SIXTH: Any injuries suffered by plaintiffs were caused, in part, by the negligence of plaintiff Brian Hopkins, and any recovery by plaintiffs must be diminished in proportion to that part of his injuries attributable to his own negligence.

**THIRD AFFIRMATIVE DEFENSE**

FIFTY-SEVENTH: Any injuries suffered by plaintiff were not caused by a negligent act or omission of defendant Amtrak or any individual acting under its direction or control.

**FOURTH AFFIRMATIVE DEFENSE**

FIFTY-EIGHTH: If plaintiff has sustained any damages in this matter, which defendant Amtrak denies, then defendant Amtrak's liability, if any, shall be limited in accordance with Article 16 of the New York Civil Practice Law and Rules.

**FIFTH AFFIRMATIVE DEFENSE**

FIFTY-NINTH: Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

SIXTIETH: Plaintiffs' claims are barred because plaintiff Brian Hopkins assumed the risk of injury by his own actions that were the sole cause of his alleged injuries.

**SEVENTH AFFIRMATIVE DEFENSE**

SIXTY-FIRST: Plaintiffs' claims for punitive damages are barred by various provisions of the Constitution of the United States and the State of Massachusetts.

**EIGHTH AFFIRMATIVE DEFENSE**

SIXTY-SECOND: This action should be transferred to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1404.

**NINTH AFFIRMATIVE DEFENSE**

SIXTY-THIRD: This action is barred because plaintiff Brian Hopkins' own negligence was greater than any alleged negligence of Amtrak.

**WHEREFORE**, defendant Amtrak demands judgment dismissing the Complaint herein, together with its costs and disbursements, and such other and further relief as this Court deems appropriate.

Dated: New York, New York  
July 29, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By: 

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

**Jelena Brigida**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at BROOKLYN, NEW YORK.

That on the 29th day of July, 2008, deponent served the within **ANSWER** upon

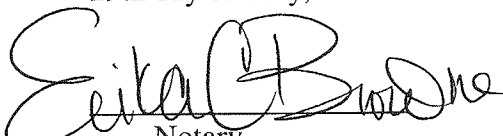
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attorneys in this s action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
\_\_\_\_\_  
Jelena Brigida

Sworn to before me this  
29th day of July, 2008

  
Notary

**ERIKA C. BROWNE**  
NOTARY PUBLIC, State of New York  
No. 02BR6160682  
Qualified in New York County  
Commission Expires Feb. 12, 2011