

DOCKET NO. 175

NUMBER	TERM	YEAR
576	November	1961

Eugene Miller

VERSUS

New York Central Railroad Company

**In the Court of** COMMON PLEAS OF

## **Clearfield County.**

EUGENE MILLER

Of November Term, 1962

No. 576

Term, 1962

**Plaintiff's**

## Bill of Costs

At February

Term, 1963

## VERSUS

**NEW YORK CENTRAL RAILROAD  
COMPANY ET AL**

CLEARFIELD COUNTY, SS:

Personally appeared before me ..... **Joseph J. Lee** ....., who being duly sworn, saith the above Bill of Costs is correct, that the witnesses named were ~~subpoenaed~~, necessary, material, and in attendance as above stated, and that the mileage is correct as he believes.

Sworn to and subscribed before me this

4th day of February, A. D. 1963 (Signature) Lee

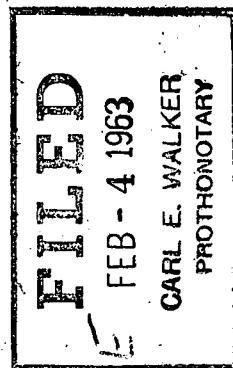
., Prothonotary

No. 576 November 61 Term, 1961

EUGENE MILLER

Versus

THE NEW YORK CENTRAL RAILROAD  
COMPANY ET AL



Joseph G. Lee

Attorney

Now Feb. 4, 1963, service accepted by copy

*Bell, Alberthal & Sloope*  
*Richard A. Bell*  
*Atty for Def.*  
*New York Central R.R.*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

Eugene Miller

No. 576 November Term, 1961

vs

Complaint in Trespass

New York Central Railroad  
Company

SHERIFF'S RETURN

Now, February 1, 1962 at 11:35 o'clock A.M. served the within Complaint in Trespass on New York Central Railroad Company at their office Clearfield, Clearfield County, Pennsylvania by handing to Arthur M. Kerin, Freight Agent, he being in charge of office, a true and attested copy of the original Complaint in Trespass and made known to him the contents thereof.

Costs: Sheriff Reese \$8.50  
( Pd. by Atty. Lee )

Sworn to before me this 21st  
day of February A.D. 1963

*Carl C. Walker*

Prothonotary

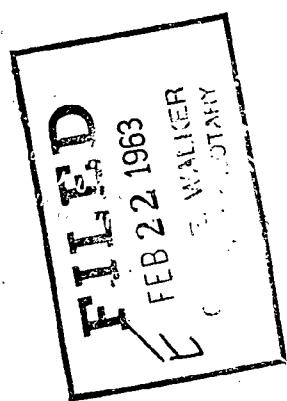
PROTHONOTARY

My Commission Expires  
1st Monday Jan. 1966

So Answers,

*James B. Reese*

James B. Reese  
Sheriff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER :  
VS. : : No. 576 November Term, 1961  
THE NEW YORK CENTRAL RAILROAD : : IN TRESPASS  
COMPANY : :

TO: Carl E. Walker, Prothonotary,

Sir:

Issue writ to join Harold Byron McGee of Mahaffey R. D.,  
Pennsylvania as an Additional Defendant to the claim of Eugene Miller and also  
to the Counter-Claim of The New York Central Railroad Company.

BELL, SILBERBLATT & SWOOP  
By



Attorneys for Defendant

COMPLAINT AGAINST ADDITIONAL DEFENDANT

NOW, comes The New York Central Railroad Company, by its attorneys,  
Bell, Silberblatt & Swoope, and files this Complaint against Harold Byron  
McGee in the manner and form following:

- (1). That the Plaintiff in the above entitled action is an individual residing in Mahaffey R. D., Clearfield County, Pennsylvania.
- (2). That The New York Central Railroad Company is a corporation engaged as a common carrier of goods in intrastate and interstate commerce and maintains facilities in Bell Township, Clearfield County, Pennsylvania.
- (3). That the Plaintiff, Eugene Miller, filed an action In Trespass against The New York Central Railroad Company for injuries to a truck on or about October 20, 1959 as a result of a collision with a train of The New York Central Railroad Company, operating on a tract of land in Bell Township, Clearfield County, Pennsylvania, owned by Harold Byron McGee.

(4). That Harold Byron McGee and Zoe Miller, Additional Defendants, had entered into a contract for the sale of timber in September or October of 1959, said agreement not being recorded.

(5). That Harold Byron McGee is the grandson and heir of H. H. McGee, who, by a Deed dated October 21, 1895 and recorded in Clearfield County in Deed Book 88, at Page 548 for a consideration of One Thousand (\$1000.00) Dollars, granted to the Pittsburgh and Eastern Railroad Company a right-of-way containing 6.769 acres.

(6). That The New York Central Railroad Company is the successor to the Pittsburgh and Eastern Railroad Company and has the right to maintain tracks through the property of Harold Byron McGee, said Deed providing for the establishment of a crossing over the tracks at a location to be selected by the Grantors in said Deed.

(7). That said Deed also contained the following provision:

"And the said parties of the first part for themselves, their heirs, executors and administrators for the consideration aforesaid do hereby remise, release and forever discharge the Pittsburgh and Eastern Railroad Company, its contractors, servants, agents, employees, successors and assigns of and from any and all actions, cause of actions, suits, debts, injury, damage and claims of any and all description which they or either of them, now have, or which they or either of them, their or either of their heirs, executors and administrators hereafter shall, or may have, for, upon or by reason of the location and construction of a railroad through, over, along and across the above described land".

(8). That said Deed was recorded in Clearfield County on October 21, 1895 in the Office of the Recorder of Deeds in and for said county.

(9). That said Deed was of record on or prior to October 20, 1959.

(10). That the crossing, at which the collision occurred referred to in the suit of Eugene Miller against The New York Central Railroad Company, was not on a public road or a private road, but a farm crossing.

(11). That Pennsylvania Highway Route #219, a Pennsylvania State

Highway, runs through or adjoining the property of Harold Byron McGee.

(12). That there existed also on the property of Harold Byron McGee a private road with an over-head bridge over the track of The New York Central Railroad Company, which private road with the over-head bridge, was located within a few hundred feet of the farm crossing.

(13). That the farm crossing was seldom used and was only permitted to remain because of a request of the land owners, but the load limit existing on the over-head bridge would not permit certain excesses of weights, and the crossing, at which the collision occurred on October 20, 1959, was only used occasionally when a load of excessive weight was required to be moved across the railroad tracks too heavy for the over-head bridge.

(14). That as a result of the lack of use, the land owners had permitted said road to become grownup, to such an extent that the brush, trees and other foliage existed on October 20, 1959 to such indensity that there was little view of anyone traveling through the woods on this farm road until the right-of-way of The New York Central Railroad Company was reached.

(15). That the farm crossing referred to in the suit of Eugene Miller to the aforesaid number and term exists on a curve, so that the view of the users of The New York Central Railroad for a train in a westerly direction was limited to approximately one hundred (100) feet.

(16). That Harold Byron McGee, as owner of said land, gave no notice to The New York Central Railroad Company of his intention to permit the purchasers of his timber to use the farm crossing provided for The New York Central Railroad Company by his predecessors in title.

(17). That on the afternoon of the 20th day of October, 1959, Jackson Miller was operating a truck registered in the name of his brother, Eugene Miller, hauling logs for his mother, Zoe Miller, to and over said farm crossing.

(18). That on said date and time, The New York Central Railroad Company was operating a train consisting of two diesel locomotives, eighteen cars and a caboose in a westerly direction and had given an audible warning

of the approach of said train which was for a crossing which existed a short distance to the northeast of this farm crossing, which signal, both bell and whistle, were heard by the men working in the woods a short distance from the location of the farm crossing.

(19). That Jackson Miller was operating said truck with the cab door closed.

(20). That the said Jackson Miller was operating an International Truck with a load of logs, which proceeded out of the woods onto the crossing; said International Truck being registered for a gross weight of 47,000 pounds and having license No. ZZ 305 G.

(21). That Jackson Miller was by himself on the 20th day of October, 1959.

(22). That on said 20th day of October, 1959, he had driven loaded trucks of logs over said crossing previously and was acquainted with the nature thereof.

(23). That the load carried by the said Jackson Miller was in excess of the 6 ton limit of the over-head bridge.

(24). That on the 20th day of October, 1959, Jackson Miller was traveling in low gear over the crossing and had proceeded across the crossing to the extent that his rear wheels were on the tracks at the time the train came into view.

(25). That the weather was fair and clear on the 20th day of October, 1959.

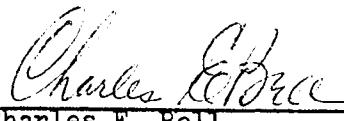
(26). That Harold Byron McGee is liable over to the original Defendant for any suits or cause of actions instituted by reason of the clause in the Deed from his grandfather to The New York Central Railroad Company, and also by reason of his failure to give notice to The New York Central Railroad Company of his desire that the purchasers of his timber be permitted to use such crossing.

WHEREFORE, the Defendant asks that a Judgment be rendered in its favor and against the Additional Defendant, Harold Byron McGee, in the amount of such sum that will secure it from all liability in this action.

BELL, SILBERBLATT & SWOOPES  
By

  
\_\_\_\_\_  
Attorneys for Defendant

THE NEW YORK CENTRAL RAILROAD COMPANY  
By

  
\_\_\_\_\_  
Charles E. Bell

STATE OF PENNSYLVANIA : SS:  
COUNTY OF CLEARFIELD : .

Before me, the undersigned officer, personally appeared CHARLES E. BELL, who, being duly sworn according to law, deposes and states that he is Trainmaster for The New York Central Railroad Company, and that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Charles E. Bell

Sworn and subscribed to  
before me this 7<sup>th</sup> day  
of March , 1962.

Carl E. Harker

FROTHONOTARY  
My Commission Expires  
1st Monday Jan. 1966

Labour and Material used in repairing Diesel Unit #5640 at Collinwood O  
Diesel Shop on L. O. 118006-59 account Wreck

sheet 1 of 3

Item	Price	Amount
1 New Hand Box Assembly	NYC # 8144326	* 4463 ea
20 " 1/2" Elastic Tape	1117928	0501 ..
32 " 9/8" " "	1117934	10 "
26 " 3/4" " "	1117937	119 "
1 " Steel Plate "12 57 3/4 x 12 1/8	1514253	1328 ..
3 " " "	1514253	13277 ..
1 " Elbow	8083627	1837 ..
7 " Housing	8297414	1515 ..
5 " Grab Iron	8124382	3332 ..
1 " " "	8124382	333 ..
4 " Bracket	8144275	189 ..
2 " Weatherstrip	8146436	106 ..
1 " Grab Iron	8146679	2092 ..
2 " Hand Rail	8146680	441 ..
6 " Side Rail	8146713	7448 ..
1 " Hand Rail	8148249	520 ..
1 " Box Assembly	8156642	4067 ..
1 S.H. Air Compressor	8186227	26127 ..
1 NEW Brake Assembly	8194043	12249 ..
2 " Housing PA-AAG-2000	2514746	131 ..
b " Handle	8031902	1767 ..
b " "	8031902	1767 ..
1 " Handhold	8141322	2205 ..
5 " support	8144274	11368 ..
b " support	8144274	11368 ..
1 " Grab Iron	8146678	2244 ..
8 " Slide	8146733	12125 ..
b " Track Assembly	8149922	4607 ..
b " Track Assembly	8104552	348 ..
25 " Hog Head Bolts 9/8" x 2"	4543734	08 ..
4 " Hand Tongs "256	2312349	7885 ..
1 " 6 white Cotton Drap 60" wide	2416764	192 ..

Labor and Material used in repairing Diesel unit #5640 at Collinwood, Ohio  
Diesel shop on L.O. 118006-59 account Wreck

Sheet 2 of 3

Item	Price	Amount
92 New Bolts 7/16" x 1 1/2"	NYC # 8129472	\$ 029 ea 2.67
36 " Nuts	8135324	07 .. 2.52
1 " Handrail	8147991	22 05 .. 22.05
1 " Box Assembly	8152421	44 49 .. 44.49
1 " Manifold Filter	8152431	28 12 .. 28.12
1 " Manifold Filter	8152432	19 60 .. 19.60
3 Gal. Gray Lacquer	4717158	4 44 gal 13.31
3 " White Lacquer	4717134	4 553" 13.66
9 " Black Lacquer	4717140	3 73 .. 33.59
2 " Black Enamel	4706783	3 565" 7.13
1 " Gray Enamel	4706855	425 .. 4.25
3 " Surface	4729259	3 533" 10.60
3 " Thinner	4729789	823 .. 2.47
15 " Thinner	4729816	166 .. 24.89
1 New Handrail	8147990	22 05 ea 22.05
2 Gal Black Enamel	4706783	3 565 gal 7.13
3 " Gray Enamel	4706855	4.247" 12.74
1 " Green Enamel	4706867	434 .. 4.34
4 " Surface	4729259	3 535" 14.14
3 " Thinner	4729789	823 .. 2.47
16 " Thinner	4729816	166 .. 26.54
3 " White Lacquer	4717134	4.553" 13.66
10 " Black Lacquer	4717140	3.732" 37.32
3 " Gray Lacquer	4717158	4.44 .. 13.31
1 "	9920169	1.71 ea 1.71
4 "	9920167	.78" 3.13
1 "	9920170	254 .. 2.54
4 "	9920166	.02" .07
2 "	9920171	10 29 .. 20.58
1 "	9920174	78" 78
1 "	9920175	78" 78
2 "	9920172	499 .. 9.98

MATERIAL CONTINUED ON SHEET 3, TOTAL

\$ 1350.73

Labor and Material used in repairing Diesel Unit #5640 at Collinwood Ohio  
Diesel Shop on Lot order 118006-59 account Wreck

sheet 3 of 3

<u>Labor</u>	\$ 1371.99
<u>Plus 15%</u>	1028.99
	<u>\$ 2400.98</u>

<u>Material</u>	\$ 1350.73
<u>Plus 15%</u>	202.61
	<u>\$ 1553.34</u>

<u>Total Labor and Material</u>	<u>\$ 3954.32</u>
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Prepared in office of  
District Auditor of Expenditures  
Detroit Michigan  
May 27, 1960  
File 039,000

To Mr. G. L. Zeider  
Sup't Diesel Shop  
Collinwood Ohio

your file 40.4 OE X 5640

Defendant's Exhibit "A"

*Atty for Plaintiff*  
IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
No. 576 November Term, 1961  
IN TRESPASS

EUGENE MILLER

VS.

THE NEW YORK CENTRAL RAILROAD  
COMPANY & ZOE MILLER, JACKSON  
(JACK) MILLER and HAROLY BYRON  
MCGEE, Additional Defendants

COMPLAINT AGAINST ADDITIONAL  
DEFENDANT

(Harold Byron McGee)

To the within named Additional  
Defendant:

You are hereby notified to  
plead to the enclosed Complaint  
within twenty (20) days from the  
service hereof.

BELL, SILBERBLATT & SWOOP  
By

*John Lee*  
Atto~~ney~~ for Plaintiff  
John Lee  
March 8 1962

C. F. WALKER  
PROTHONOTARY

BELL, SILBERBLATT & SWOOP  
ATTORNEYS AT LAW  
CLEARFIELD TRUST CO. BLDG.  
CLEARFIELD, PENNA.

Service accepted 3-10-62  
*John Lee*  
*Atty for Plaintiff*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER :  
VS. : No. 576 November Term, 1961  
: :  
THE NEW YORK CENTRAL RAILROAD COMPANY:  
AND :  
ZOE MILLER : IN TRESPASS  
JACKSON MILLER :  
HAROLD BYRON MCGEE,  
Additional Defendants :  
: :

AMENDMENT OF COMPLAINT AGAINST JACKSON MILLER

The New York Central Railroad Company, Defendant, desires to amend the Complaint against Jackson Miller, by eliminating paragraph twenty-eight (28), and adding new paragraphs as follows:

(28). By reason of the careless, negligent manner by which the said Jackson Miller operated the motor vehicle, the diesel engine of The New York Central Railroad Company, was damaged to such an extent that it could not be used, and had to be transported to Collinwood, Ohio for repairs.

(29). That the New York Central Railroad Company was deprived of the use of said diesel engine from the date of the accident, October 20, 1959 for a period of forty-one (41) days. The loss per day amounting to \$47.043. The total damages for loss of use for the forty-one (41) days amounting to \$1928.76 for which sum the New York Central Railroad Company asks that Judgment be rendered in its favor, and against Jackson Miller for the loss of use of said engine as herein set out.

(30). That in addition thereto, that it was necessary to transport said damaged engine from the place where it was injured in Bell Township, Clearfield County to Collinwood, Ohio, a distance of two hundred and fifty-eight (258) miles. The expense of such transportation amounting to six (6) cents per mile, or a total of \$15.48 for which sum, The New York Central Railroad Company asks that a Judgment be rendered in its favor, and a-

against Jackson Miller, at the trial of this cause.

(31). That the cost of the repairs made at the Collinwood Diesel Locomotive Shop, totaling \$3,954.32 for labor and materials as shown in an itemized statement attached hereto, marked Defendants Exhibit "A" and made part hereof.

(32). That the loss of use of said diesel engine, and the cost of having it repaired, was caused by the negligent manner in which the said Jackson Miller operated his motor vehicle, and the said Jackson Miller is liable to the New York Central Railroad Company for the money expended by them, being the transportation charges, the loss of use, and the cost of repairs, totaling the sum of \$5898.56 for which sum The New York Central Railroad Company asks that a ~~verdict~~ be rendered in its favor, and against the said Jackson Miller, at the trial of this case.

(33). That the said Jackson Miller is solely liable for the damages sustained by Eugene Miller, or is jointly liable with the New York Central Railroad for any damages sustained by the said Eugene Miller.

WHEREFORE, The New York Central Railroad Company, prays that a Judgment be rendered on its Counter-Claim against the said Jackson Miller, and that the liability, if any, on the claim of Eugene Miller, be determined at the trial of this cause.

BELL, SILBERBLATT & SWOOP  
By

  
\_\_\_\_\_  
Attorneys for Defendant

THE NEW YORK CENTRAL RAILROAD COMPANY  
By

  
\_\_\_\_\_  
Charles E. Bell

STATE OF PENNSYLVANIA:  
: SS  
COUNTY OF CLEARFIELD :

Before me, the undersigned officer, personally appeared CHARLES E. BELL, who, being duly sworn according to law, deposes and states that he is Trainmaster for the New York Central Railroad Company, and that the facts set forth in the foregoing Amended Complaint are true and correct to the best of his knowledge, information and belief.

Charles E. Bell

Charles E. Bell

Sworn and subscribed to  
before me this 31 day  
of March , 1962.

Carl E. Walker

Labor and Material used in repairing Diesel Unit #5640 at Collinwood, O  
Diesel Shop on L.C. 118006-59 account Wreck

sheet 1 of 3

Item	Price	Amount
1 New Hand Box Assembly	# 4463 ea	\$ 4463
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32 " 9/8" " "	1117934	10 .. 320
26 " 3/4" " "	1117937	119 .. 309
1 " Steel Plate "12 57 3/4 x 12 1/8	1514253	13 28 .. 13 28
3 " " "	1514253	13 277 39 83
1 " Elbow	8083627	18 37 .. 18 37
2 " Housing	80977414	1 515 .. 303
5 " Grab Iron	8124382	3 332 .. 16 66
1 " " "	8124382	3 33 .. 333
4 " Bracket	8144275	1 89 .. 7 56
2 " Weatherstrip	8146436	1 06 .. 2 12
1 " Grab Iron	8146679	20 92 .. 20 92
2 " Hand Rail	8146680	4 41 .. 8 82
6 " Side Rail	8146713	7 448 .. 44 69
1 " Hand Rail	81468249	5 20 .. 5 20
1 " Box Assembly	8156642	40 67 .. 40 67
1 S.H. Air Compressor	8186227	261 27 .. 261 27
1 NEW Brake Assembly	8194043	122 49 .. 122 49
2 " Housing PN-A-88-2000	2514746	1 31 .. 2 62
6 " Handle	8031902	1767 .. 106
6 " "	8031902	1767 .. 106
1 " Handhold	8141322	22 05 .. 22 05
5 " Support	8144274	11 368 .. 56 84
6 " Support	8144274	11 368 .. 68 21
1 " Grab Iron	8146678	22 44 .. 22 44
8 " Slide	8146733	1 2125 .. 9 70
6 " Gear Assembly	8149922	4 607 .. 27 64
6 " Gear Assembly	8104552	3 48 .. 20 87
25 " Hex Head Bolts 9/8" x 2"	4543734	08" 198
4 " Hand Tape #256	2312349	7 885 .. 31 54
1 " 6 white cotton Duck 60" wide	2416764	192 .. 192

continued on sheet #2

: Labor and Material used in repairing Diesel Unit #5640 at Collinwood, also  
Diesel Shop on L.O. 118006-59 account Wreck

Sheet 2 of 3

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92 New Bolts $\frac{5}{16}$ " x $\frac{1}{2}$ "	NYC # 8129472	\$ 0.29 ea
36 " Nuts	8135324	0.72 ..
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1 " Box Assembly	8152421	44.49 ..
1 " Manifold Filter	8152431	28.12 ..
1 " Manifold Filter	8152432	19.60 ..
3 Gal. Gray Lacquer	4717158	4.44 gal
3 " White Lacquer	4717134	4.553 "
9 " Black Lacquer	4717140	3.73 ..
2 " Black Enamel	4706783	3.565 ..
1 " Gray Enamel	4706855	4.25 ..
3 " Surfacer	4729259	3.533 ..
3 " Thinner	4729789	8.23 ..
15 " Thinner	4729816	1.66 ..
1 new Handrail	8147940	22.05 ea
2 Gal Black Enamel	4706783	3.565 gal
3 " Gray Enamel	4706855	4.247 ..
1 " Green Enamel	4706867	4.34 ..
4 " Surfacer	4729259	3.535 ..
3 " Thinner	4729789	8.23 ..
16 " Thinner	4729816	1.66 ..
3 " White Lacquer	4717134	4.553 ..
10 " Black Lacquer	4717140	3.732 ..
3 " Gray Lacquer	4717158	4.44 ..
1 "	9920169	1.71 ea
4 "	9920167	7.8 ..
1 "	9920170	2.54 ..
4 "	9920166	0.2 ..
2 "	9920171	10.29 ..
1 "	9920174	7.8 ..
1 "	9920175	7.8 ..
2 "	9920172	4.99 ..

MATERIAL CONTINUED ON SHEET 3, TOTAL: \$ 1350.73

Labor and Material used in repairing Diesel Unit #5640 at Collinwood Ohio  
Diesel shop on Lot order 118006-59 account Wreck

sheet 3 of 3

<u>Labor</u>	<u>\$ 1371.99</u>
<u>Plus 15%</u>	<u>1028.99</u>
	<u>\$ 2400.98</u>

<u>Material</u>	<u>\$ 1350.73</u>
<u>Plus 15%</u>	<u>202.61</u>
	<u>\$ 1553.34</u>

<u>Total Labor and Material</u>	<u>\$ 3954.32</u>
---------------------------------	-------------------

Entered in office of  
District Auditor of Expenditures  
Detroit Michigan  
May 27, 1960  
File 039.000

To Mr. A. L. Zeider  
Dupont Diesel Shop  
Collinwood Ohio

your file 40.4 OE X 5640

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
NO. 576 NOVEMBER TERM, 1961  
IN TRESPASS

EUGENE MILLER

VS.  
THE NEW YORK CENTRAL RAIL-  
ROAD COMPANY, AND

ZOE MILLER  
JACKSON MILLER  
HAROLD BYRON MCGEE,  
Additional Defendants

AMENDMENT OF COMPLAINT  
AGAINST JACKSON MILLER

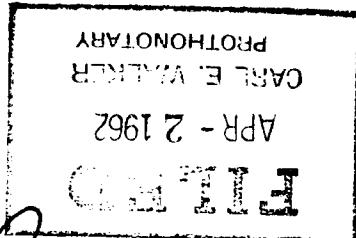
TO WITHIN NAMED DEFENDANT  
You are hereby required to  
file an affidavit of defense  
to the within Amended Com-  
plaint within 20 days after  
the date of service thereof.

BELL, SILBERBLATT & SWOOP  
BY

*John Bell*  
Attorney for the Defendant

BELL, SILBERBLATT & SWOOP  
ATTORNEYS AT LAW  
CLEARFIELD TRUST CO. BLDG.  
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA



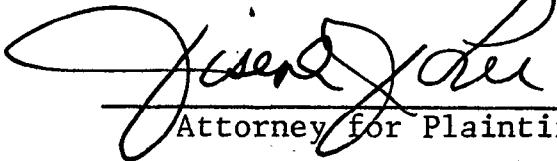
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EUGENE MILLER :  
VS : No. 576 November Term, 1961  
THE NEW YORK CENTRAL RAILROAD : Trespass  
COMPANY ET AL :  
:

P R A E C I P E

TO CARL E. WALKER, PROTHONOTARY

SIR:

Please place the above case on the trial list for the  
coming term of Court.

  
\_\_\_\_\_  
Attorney for Plaintiff

Dated: July 20, 1962

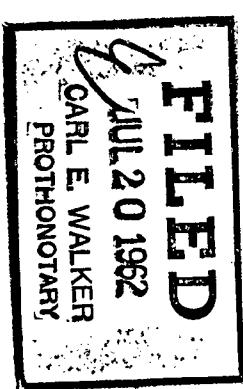
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 576 November Term, 1961  
Trespass

EUGENE MILLER

VS

THE NEW YORK CENTRAL RAILROAD  
ET AL.

P R A E C I P E .



EUGENE MILLER

VERSUS

THE NEW YORK CENTRAL RAILROAD

COMPANY

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PA.

No. 576 Term November, 1961

IN TRESPASS

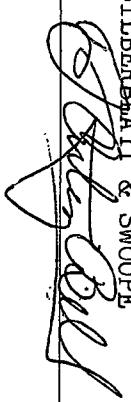
To Carl E. Walker

Prothonotary.

Sir: Enter our appearance for the Defendant.

in above case.

BELL, SILBERBLATT & SWOOP  
By



Attorney for Defendant

17

No. 576 Term November, 19 61

EUGENE MILLER

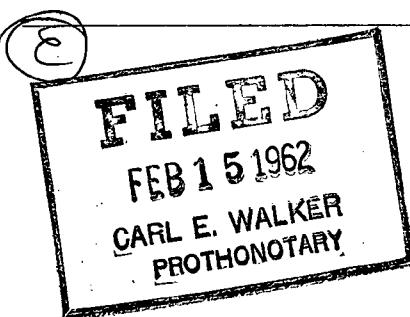
vs.

THE NEW YORK CENTRAL RAILROAD

COMPANY

APPEARANCE

For the Defendant



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER

VS

No. 576 November Term, 1961

THE NEW YORK CENTRAL RAILROAD  
COMPANY ET AL

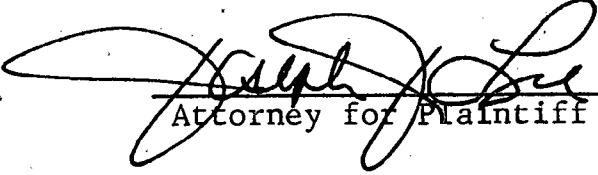
Trespass

P R A E C I P E

TO CARL E. WALKER, PROTHONOTARY

SIR:

Please place the above case on the trial list for the coming  
term of Court.

  
Attorney for Plaintiff

Dated: December 4, 1962

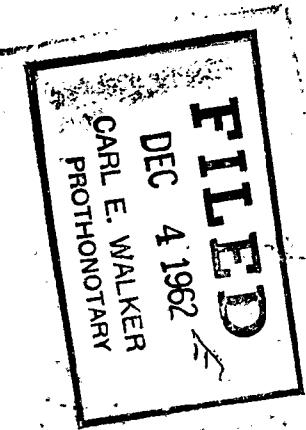
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 576 November Term, 1961  
Trespass

EUGENE MILLER

VS ..

THE NEW YORK CENTRAL RAILROAD  
COMPANY ET AL

P R A E C I P E



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

EUGENE MILLER :  
VS : No. 576 November Term 1961  
THE NEW YORK CENTRAL RAILROAD :  
COMPANY, defendant, :  
HAROLD BYRON McGEE, Additional :  
Defendant : IN TRESPASS

O P I N I O N

On the motion of the original defendant to add Harold Byron McGee as an additional defendant, it is averred that the plaintiff was injured while operating a truck over the defendant's railroad, on a crossing located on land belonging to the proposed additional defendant.

The original complaint is an action for damages sustained by the plaintiff, when struck by the defendant's train, on this crossing.

Other than the fact that the additional defendant owns the land over which the railroad passes, and the crossing is on that portion of the defendant's track within the limits of the land owned by additional defendant, no liability on the part of the defendant is averred, other than the conclusion that the additional defendant is liable over.

In JOSAL, INC. VS. ROLLING PARK HOMES, INC., 195 Pa. Superior Court 646, the joinder of additional defendants, under Civil Procedural Rule 2252 (a), must aver or set forth facts which would permit the plaintiff to sue such additional defendant directly,

for the injury for which he has sued the original defendant.

This rule was later followed in GRELLER VS. HORTTER BUILDING CORP., 198 Pa. Superior Court 32 (Advance Sheets issued June 15, 1962).

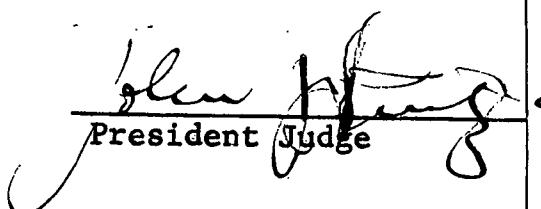
Therefore, the preliminary objection to the addition of Harold Byron McGee must be sustained.

O R D E R

NOW, June 27, 1962, the Preliminary Objection to the addition of Harold Byron McGee as additional defendant, is sustained; and Harold Byron McGee is stricken from the record as a party to the action.

Exception noted.

BY THE COURT

  
John H. Lang  
President Judge

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
IN TRESPASS  
No. 576 November Term 1961.

EUGENE MILLER

VS

THE NEW YORK CENTRAL RAILROAD  
COMPANY, defendant,  
HAROLD BYRON McGEE, additional  
defendant.

OPINION and ORDER



JOHN J. PENTZ  
PRESIDENT JUDGE  
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER

VS : : No. 576 November Term, 1961  
NEW YORK CENTRAL RAILROAD : : Trespass  
COMPANY : :

C O M P L A I N T

COMES NOW, Eugene Miller, and by his attorney, Joseph J. Lee, files this Complaint against the New York Central Railroad Company upon a cause of action whereof the following is a statement:

(1). Plaintiff is an individual and resides at R.D. 1, Mahaffey, Clearfield County, Pennsylvania.

(2). Defendant New York Central Railroad Company is a corporation engaged primarily as a common carrier of goods in intra-state and inter-state commerce, and maintains facilities consisting of rights-of-way and railroad tracks, rolling stock and power units in Pennsylvania, and more particularly in Clearfield County.

As part of its system the defendant maintains a single track running between McGees Mills, Clearfield County, and Cherry Tree, Indiana County, and which crosses a dirt road approximately one mile west of McGees Mills, which said crossing had, prior to the date of the hereinafter averred events, been in existence for many years and which said crossing was in fact maintained by the defendant.

(3). On or about October 20, 1959 plaintiff was the owner of a 1957 International Truck which was leased orally to Zoe Miller for use in her business.

(4). On said date at approximately 2:45 P.M. said truck was being driven by Jack Miller, employee of Zoe Miller, and while on the business of Zoe Miller.

(5). As the driver approached the crossing, there being no railroad crossing signals or signs being placed at the same, he brought said vehicle to a halt and observed both to his left and right, and neither hearing nor seeing any train on the track, started across the crossing.

(6). As the plaintiff's vehicle was crossing the track a train of the defendant came around a curve to the east of the truck and came in violent contact with the plaintiff's vehicle, and doing damage thereto as hereinafter alleged.

(7). The defendant was at that time causing a train consisting of an engine and approximately 18 cars to be operated on said tracks travelling in a generally westerly direction. Said train was being operated by C.S. Simcox, engineer, and was at the time on the defendant's business.

(8). At the time and place aforesaid the defendant company, through its employee, was negligent as follows:

(a). In causing a train to be operated in the vicinity of a crossing which the defendant, through its employees, knew or should have known was and had been in existence and use for a great number of years, without maintaining thereon any warning device for the use of the public in general and the plaintiff's driver in particular.

(b). In failing to warn the plaintiff's driver by giving any audible sound of its approach to the crossing.

(c). By failing to give any warning of any nature prior to its train coming around a bend that its train was approaching said crossing where it knew or should have known the same might be in use by members of the public and the plaintiff's driver in particular.

(d). In causing said train to be operated at an excess-

ive rate of speed under the circumstances.

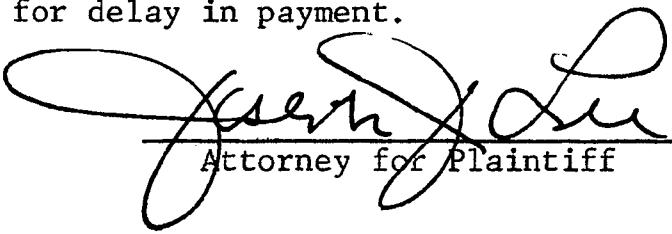
(e). In causing the train to be operated in such a manner as not to be able to bring said train to a halt when the engineer rounded the turn and first observed the defendant's driver on the crossing.

(f). In causing the train to be operated in a careless manner.

(9). As the result of the defendant's negligence as aforesaid, the plaintiff's vehicle was so damaged as to be a total loss.

Immediately prior to the accident the plaintiff's truck had a value of \$8000.00, and immediately after the accident it had a salvage value of \$1500.00. Thus, as the result of the defendant's negligence aforesaid the plaintiff has sustained a \$6500.00 loss.

WHEREFORE, plaintiff claims there is due and owing **him** from the defendant the sum of \$6500.00, together with interest thereon computed at the lawful rate from October 20, 1959 to the date of verdict by way of damages for delay in payment.

  
\_\_\_\_\_  
Attorney for Plaintiff

STATE OF PENNSYLVANIA:  
:SS  
COUNTY OF CLEARFIELD :

EUGENE MILLER, being duly sworn according to law, deposes and says that the facts set forth in the within Complaint are true and correct to the best of his knowledge, information and belief.

Eugene Miller  
(Eugene Miller)

Sworn and subscribed to before  
me this 25 day of January, 1962.

William J. Thomas

WILLIAM J. THOMAS, Notary Public  
PUNXSUTAWNEY, JEFFERSON CO., PA.  
My Commission Expires Feb. 21, 1963

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 576 November Term, 1961  
Trespass

EUGENE MILLER

VS

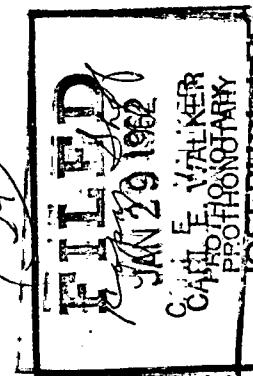
NEW YORK CENTRAL RAILROAD  
COMPANY

C O M P L A I N T

TO THE WITHIN NAMED DEFENDANT:

You are hereby notified to  
answer to the within Complaint  
within 20 days from service  
hereof.

*John Miller*  
Attorney for Plaintiff  
340



ATTORNEY-AT-LAW  
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER

VS.

THE NEW YORK CENTRAL RAILROAD COMPANY: IN TRESPASS  
and ZOE MILLER, JACKSON MILLER, and :  
HAROLD BYRON McGEE, Additional :  
Defendants :  
:

ANSWER OF THE NEW YORK CENTRAL RAILROAD COMPANY

NOW, comes Bell, Silberblatt & Swoope, attorneys for the New York Central Railroad Company, and answers to the complaint filed in the above entitled case as follows:

1. Paragraph (1) is admitted.

2. Paragraph (2) is admitted except that it is averred that there is a private road with an overhead crossing located approximately at the location mentioned in said paragraph, and that there is also located a short distance therefrom a farm crossing but there is no public road over said farm crossing.

3. In answer to paragraph (3) it is admitted the plaintiff was an owner of an International truck but as to whether it was orally leased to Zoe Miller is unknown to the defendant, which fact is therefore denied and strict proof thereof required at the trial of this cause.

4. In answer to paragraph (4) it is admitted that about the time and place mentioned Jackson Miller, son of Zoe Miller and brother of Eugene Miller, was operating Eugene Miller's truck hauling logs. As to whether the logs were the property of Zoe Miller, Eugene Miller or someone else is unknown and the fact

is therefore denied, and on the contrary it is averred that Dallas Miller, deceased father of Eugene Miller and Jackson Miller and husband of Zoe Miller, had a contract to cut logs and the logs were being transported and removed in compliance with that contract. As to whether Jackson Miller was an employee of Zoe Miller of Eugene Miller is unknown to the defendant and the same is therefore denied and strict proof required at the trial of this cause, said Jackson Miller stating he was not paid by anyone and that he was driving his brother's truck with his knowledge and consent. The said Eugene Miller was in the woods at the time and helped load the truck on said 20th day of October, 1959.

5. Paragraph (5) of the complaint is denied and strict proof is required at the trial of this cause, the defendant not knowing what the said Jackson Miller did or heard at the time and place in question.

6. Paragraph (6) is admitted.

7. Paragraph (7) is admitted unless the length of the train consisted of a greater or lesser number of cars it would be denied and strict proof thereof required as material.

8. In answer to paragraph (8) it is denied that the New York Central Railroad Company was negligent in any respect. It is specifically denied (a) that there was any reason to believe said farm crossing was being used at that time and place (b) that warning had not been given; and (c) it is denied the train was operated at an excessive rate of speed under the circumstances or in a manner so as not to be able to bring it to a halt under the facts and circumstances ordinarily occurring; and (d) it is denied the train was operated in a careless manner.

9. It is specifically denied that said truck was totally destroyed or that the plaintiff suffered a loss of \$6500 by reason thereof.

The defendant files new matter and counterclaim as follows:

1. That Harold Byron McGee, the owner of the farm, and either Dallas Miller or Zoe Miller, his widow, had entered into a contract for the sale of timber on said tract in September or October of 1959. The said agreement is not recorded.

2. That the crossing at which the collision occurred referred to in the suit of Eugene Miller against the New York Central Railroad Company was neither a public nor a private road but was a farm crossing.

3. That the farm crossing was seldom used and only permitted to remain at the request of the landowner, Harold Byron McGee, to facilitate his moving of farm machinery and other supplies across said farm crossing at his convenience.

4. That on the afternoon of the 20th day of October Jackson Miller was operating a truck registered in the name of his brother, Eugene Miller, hauling logs out of said woods. Said enterprise was a family enterprise for which Jackson Miller received no wages but his brother, Eugene Miller, was fully aware that he was operating said truck at the time and place aforesaid.

5. That on said date and time, the New York Central Railroad Company was operating a train consisting of two diesel

locomotives, eighteen cars and a caboose in a westerly direction and had given an audible warning of the approach of said train which was for a crossing which existed a short distance to the northeast of this farm crossing, which signal, both bell and whistle, were heard by the men working in the woods a short distance from the location of the farm crossing.

6. That Jackson Miller was operating said truck with the cab door closed.

7. That the said Jackson Miller was operating an International truck with a load of logs, which proceeded out of the woods onto the crossing; the said International truck was registered for a gross weight of 47,000 pounds and having license No. 22 305 G.

8. That Jackson Miller was by himself on the 20th day of October, 1959.

9. That on said 20th day of October, 1959, he had driven loaded trucks of logs over said crossing previously and was acquainted with the nature thereof.

10. That the load carried by the said Jackson Miller was in excess of the six ton limit of the truck.

11. That on the 20th day of October, 1959, Jackson Miller was traveling in low gear over the crossing and had proceeded across the crossing to the extent that his rear wheels were on the tracks at the time the train came into view.

12. That the weather was fair and clear on the 20th day of October, 1959.

13. By reason of the careless, negligent manner by which the said Jackson Miller operated the motor vehicle, the diesel engine of the New York Central Railroad Company was damaged to such an extent that it could not be used, and had to be transported to Collinwood, Ohio for repairs.

14. That the New York Central Railroad Company was deprived of the use of said diesel engine from the date of the accident, October 20, 1959, for a period of forty-one (41) days. The loss per day amounted to \$47.043. The total damages for loss of use for the forty-one (41) days amounted to \$1928.76.

15. That in addition thereto it was necessary to transport said damaged engine from the place where it was injured in Bell Township, Clearfield County to Collinwood, Ohio, a distance of two hundred and fifty-eight (258) miles. The expense of such transportation amounted to six (6) cents per mile, or a total of \$15.48 for which sum the New York Central Railroad Company asks that a judgment be rendered in its favor and against Eugene Miller at the trial of this cause.

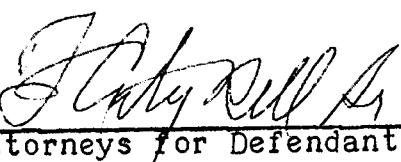
16. That the cost of repairs made at the Collinwood Diesel Locomotive Shop totaled \$3,954.32 for labor and materials as shown in an itemized statement attached hereto marked Defendant's Exhibit A and made a part hereof.

17. That the loss of use of said diesel engine and the cost of having it repaired was caused by the negligent manner in which the said Jackson Miller operated his motor vehicle, and the said Eugene Miller is liable to the New York Central Railroad Company for the money expended by them, being the transportation charges, the loss of use and the cost of repairs totaling

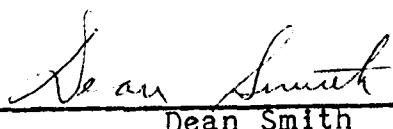
the sum of \$5,898.56 for which sum the New York Central Railroad Company asks that a verdict be rendered in its favor and against the said Eugene Miller at the trial of this cause.

WHEREFORE, the defendant asks that judgment be rendered in its favor and against Eugene Miller in the case of Eugene Miller against the defendant, and in favor of the defendant on the counter-claim and against Eugene Miller for the amount thereof.

BELL, SILBERBLATT & SWOOP  
By

  
\_\_\_\_\_  
Attorneys for Defendant

THE NEW YORK CENTRAL RAILROAD  
COMPANY  
By

  
\_\_\_\_\_  
Dean Smith

STATE OF PENNSYLVANIA

:

SS:

COUNTY OF CLEARFIELD

:

On this, the 17th day of October, 1962, before me, the undersigned officer, personally appeared DEAN SMITH, who being duly sworn according to law, deposes and states that he is Yardmaster for the New York Central Railroad Company, and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

Dean Smith

Dean Smith

Sworn and subscribed to  
before me this 17th day of  
October, 1962.

Carl E Walker

PROTHONOTARY

My Commission Expires  
1st Monday Jan. 1966

## DEFENDANT'S EXHIBIT A

labor and Material used in repairing Diesel Unit #5640 at Collinwood, O  
Diesel Shop on L.O. 118906-57 account Wrecks

sheet 1 of 3

Item	Price	Amount
1 New Brake Assembly	NYC # 8144326	* 44 63 ea
20 " 1/2" Elbow Nut	1117928	1001 .. 1 02
32 " 9/8" " "	1117934	10 " 3 20
26 " 3/4" " "	1117937	119 " 3 09
1 " Steel Plate "12 57 $\frac{1}{4}$ x 12 1 $\frac{3}{8}$	1514253	13 28 .. 13 28
3 " " "	1514253	13 277 .. 39 83
1 " Elbow	8083627	1837 .. 1837
2 " Housing	8097414	1 515 .. 3 03
5 " Grab Iron	8124382	3 332 .. 16 66
1 " " "	8124382	3 33 .. 3 33
4 " Bracket	8144275	1 89 .. 7 56
2 " Weatherstrip	8146436	1 06 .. 2 12
1 " Grab Iron	8146679	20 92 .. 20 92
2 " Hand Rail	8146680	4 41 .. 8 82
6 " Side Rail	8146713	7 448 .. 44 69
1 " Hand Rail	8146849	5 20 .. 5 20
1 " Box Assembly	8156642	40 67 .. 40 67
1 S.H. Air Compressor	8186227	261 27 .. 261 27
1 New Brake Assembly	8194043	122 49 .. 122 49
2 " Housing PN-PA10-2000	2514746	1 31 .. 2 62
6 " Handle	8031902	1767 .. 1 06
6 " "	8031902	1767 .. 1 06
1 " Handwheel	8141322	22 05 .. 22 05
5 " Support	8144274	11 368 .. 56 84
6 " Support	8144274	11 368 .. 68 21
1 " Grab Iron	8146678	22 44 .. 22 44
8 " Slide	8146733	1 2125 .. 9 70
6 " Gear Assembly	8149922	4 607 .. 27 64
6 " Gear Assembly	8104552	3 48 .. 20 87
25 " Hex Head Bolts 9/8" x 2"	4543734	08 .. 1 98
4 " Hand Tongs 7 1/2"	2312349	7 885 .. 31 54
1 " 6 white cotton Duck 60" wide	2416764	192 .. 1 92

continued on sheet #2

Labor and Material used in repairing Diesel Unit #5640 at Collinwood, Ohio  
Diesel shop on L 0 118006-59 account Wreck

Sheet 2 of 3

Item	Price	Amount
92 New Botts 7/16" x 12"	NYC # 8129472	\$ 2.67
36 " Nuts	6135324	2.52
1 " Handrail	8147991	22.05
1 " Box Assembly	8152421	44.49
1 " Manifold Filter	8152431	28.12
1 " Manifold Filter	8152432	19.60
3 Gal. Gray Lacquer	4717158	13.31
3 " White Lacquer	4717134	13.66
9 " Black Lacquer	4717140	33.59
2 " Black Enamel	4706783	7.13
1 " Gray Enamel	4706855	4.25
3 " Surfaces	4729259	10.60
3 " Thinner	4729789	2.47
15 " Thinner	4729816	24.89
1 New Handrail	8147990	22.05
2 Gal. Black Enamel	4706783	7.13
3 " Gray Enamel	4706855	12.74
1 " Green Enamel	4706867	4.34
4 " Surfaces	4729259	14.14
3 " Thinner	4729789	2.47
16 " Thinner	4729816	26.54
3 " White Lacquer	4717134	13.66
10 " Black Lacquer	4717140	37.32
3 " Gray Lacquer	4717158	13.31
1 "	9920169	1.71
4 "	9920167	3.13
1 "	9920170	2.54
4 "	9920166	.07
2 "	9920171	20.58
1 "	9920174	.78
1 "	9920175	.78
2 "	9920172	.99

MATERIAL CONTINUED ON SHEET 3, TOTAL \$ 1350.73

Labor and Material used in repairing Diesel Unit #5640 at Collinwood Ohio  
Diesel shop on Lot Order 118006-59 account Wreck

sheet 3 of 3

Labor

Plus 15%

\$ 1371.99

1028.99

\$ 2400.98

Material

Plus 15%

\$ 1350.73

202.61

\$ 1553.34

Total Labor and Material

\$ 3954.32

Prepared in office of

District Auditor of Expenditures

Detroit Michigan

May 27, 1960

File 039.000

To Mr. A. L. Zader  
Dept Diesel Shop  
Collinwood Ohio

your file 40.4 OE X 5640

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER

VS.

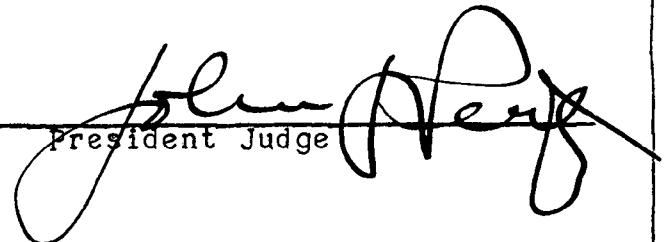
THE NEW YORK CENTRAL RAILROAD COMPANY  
and ZOE MILLER, JACKSON MILLER, and  
HAROLD BYRON McGEE, Additional  
Defendants

... : No. 576 November Term,  
... : 1961  
... : IN TRESPASS

ORDER OF COURT

NOW, October 18, 1962, permission to file an  
Answer and Counter-claim by the defendant against the original  
plaintiff in this case is granted by the Court.

By the Court,

  
\_\_\_\_\_  
President Judge

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 576 November Term, 1961  
IN TRESPASS

EUGENE MILLER

VS.

THE NEW YORK CENTRAL  
RAILROAD COMPANY

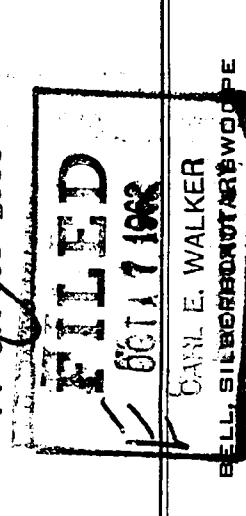
ANSWER AND NEW MATTER

To the within Plaintiff:

You are hereby notified  
to plead to the within new  
matter within twenty (20)  
days from receipt thereof.

BELL, SILBERBLATT & SWOOPER  
By

*F. Cortez Bell*



COMMERCIAL PRINTING CO., CLEARFIELD, PA.

*Sievin accepted 10-17-62*  
*Joseph Sievin*  
*Atty for Plaintiff*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

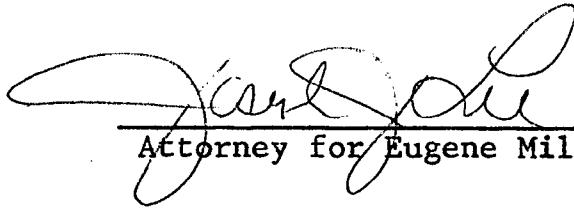
EUGENE MILLER :

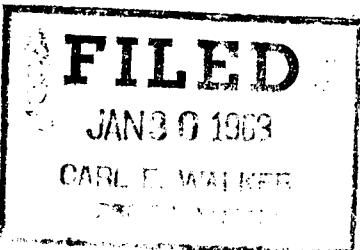
VS : No. 576 November Term, 1961

NEW YORK CENTRAL RAILROAD  
COMPANY ET AL :

PLAINTIFF'S ADDITIONAL POINT  
FOR CHARGE

1(a). The jury may find that the defendant Railroad Company constructed the crossing where the accident occurred by virtue of some agreement, the details of which are not available, they having continuously maintained and repaired the crossing for many years. The law assumes that there was a contract for such a siding, and such maintenance is conclusive evidence of the company's duty to maintain. Jennings vs. Susquehanna and New York R.R. Co., 84 Pa. Superior 442.

  
\_\_\_\_\_  
Attorney for Eugene Miller



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER :  
VS : No. 576 November Term, 1961  
THE NEW YORK CENTRAL : Trespass  
RAILROAD COMPANY ET AL :  
:

POINT FOR BINDING INSTRUCTIONS

AND NOW, January 30, 1963, comes the Additional Defendant, Zoe Miller, by counsel, and moves the Court to instruct the jury as follows:

(1). That under all of the evidence and the law, the verdict of the jury must be for the Additional Defendant, Zoe Miller.

*Xay G. Miller*  
\_\_\_\_\_  
Attorney for Zoe Miller,  
Additional Defendant

FILED  
JAN 30 1963  
CARL E. WALKER  
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER

:

VS

: No. 576 November Term, 1961

:

THE NEW YORK CENTRAL  
RAILROAD COMPANY ET AL

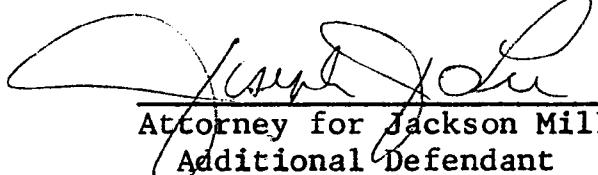
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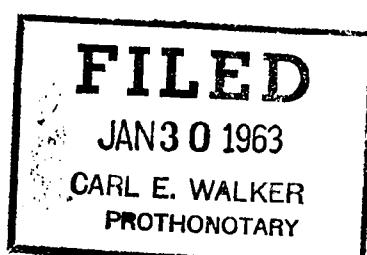
Trespass

POINT FOR BINDING INSTRUCTIONS

AND NOW, January 30, 1963, comes the Additional Defendant, Jackson Miller, by counsel, and moves the Court to instruct the jury as follows:

(1). That under all of the evidence and the law, the verdict of the jury must be for the Additional Defendant, Jackson Miller.

  
\_\_\_\_\_  
Attorney for Jackson Miller,  
Additional Defendant



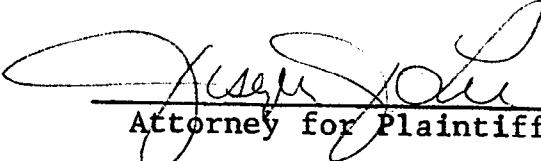
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

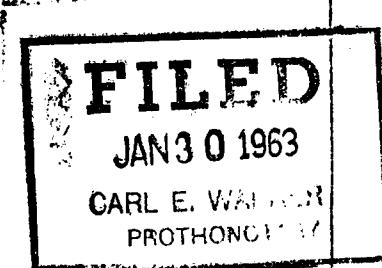
EUGENE MILLER :  
VS : No. 576 November Term, 1961  
THE NEW YORK CENTRAL :  
RAILROAD COMPANY ET AL : Trespass

POINT FOR BINDING INSTRUCTIONS

AND NOW, January 30, 1963, comes Eugene Miller, the plaintiff, by counsel, and moves the Court to instruct the jury as follows:

(1). That under all of the evidence and the law, the verdict of the jury must be for the Plaintiff, on the defendant's Counterclaim.

  
\_\_\_\_\_  
Attorney for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER :  
VS. : No. 576 November Term, 1962  
NEW YORK CENTRAL RAILROAD : IN TRESPASS  
COMPANY, and ZOE MILLER and :  
JACKSON MILLER, Additional :  
Defendants :  
:

MOTION FOR BINDING INSTRUCTIONS

NOW, January 30, 1963, comes Bell, Silberblatt & Swoope, attorneys for the New York Central Railroad Company, and moves your Honorable Court to instruct the jury that under the evidence in this case judgment should be entered in favor of the New York Central Railroad Company in the case of Eugene Miller versus said New York Central Railroad Company to the above number and term.

BELL, SILBERBLATT & SWOOP  
By



\_\_\_\_\_  
Attorneys for New York Central Railroad  
Company

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA,  
No. 576 November Term, 1962  
IN TRESPASS

EUGENE MILLER

V.S.

NEW YORK CENTRAL RAILROAD  
COMPANY, and ZOE MILLER and  
JACKSON MILLER, Additional  
Defendant

MOTION FOR  
BINDING INSTRUCTIONS

BELL, SILBERBLATT & SWOPE  
ATTORNEYS AT LAW  
CLEARFIELD TRUST CO. BLDG.  
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

—Lap over margin—

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER :  
VS : No. 576 November Term, 1961  
THE NEW YORK CENTRAL :  
RAILROAD COMPANY ET AL : Trespass

PLAINTIFF, EUGENE MILLER'S, POINTS  
FOR CHARGE

(1). Under the testimony the jury <sup>may</sup> ~~must~~ find that the plaintiff, Eugene Miller, was the owner of the logging truck involved, and that he leased this to Zoe Miller, his mother, under an oral arrangement whereby she was to use the truck in her private lumbering business - paying as rental therefor the monthly installments due the Brookville Bank towards the purchase of the machine on behalf of the plaintiff, Eugene Miller. Thus, the jury <sup>may</sup> ~~should~~ find that Zoe Miller was a bailee of the truck and that Eugene Miller was the bailor.

(2). Under the evidence there is nothing to warrant a finding that Jackson Miller was the employee of Eugene Miller inasmuch as there has been no showing of any responsibility running from Jackson Miller to Eugene Miller.

(3). The evidence warrants a finding by the jury that Jackson Miller was in fact the employee of Zoe Miller and was driving the truck on the sole business of his mother, and the jury may so find.

(4). If the jury finds that Eugene Miller was the bailor of the truck and that he had no interest in the business of Zoe Miller, the bailee of the truck, other than as an employee of Zoe Miller, and if the jury find that the damages to the truck were caused by the negligence of Jackson Miller and the New York Central Railroad Company, the jury must bring in a verdict in favor of

Eugene Miller against the Railroad Company, Zoe Miller, and Jackson Miller.

(5). The jury may find that the damage to the plaintiff's truck was caused solely by the negligence of the New York Central Railroad Company.

(6). If the jury finds that the Railroad crossing in question was maintained by employees of the Railroad Company, then the Railroad Company, and its employees, is chargeable with notice of the existence of the crossing and is chargeable further with notice that said crossing was in use or likely to be used by Harold Byron McGee or persons doing business with him, and the Railroad Company has a duty of reasonable or ordinary care to give a warning of an approaching train. *Holt vs. Pennsylvania Railroad Company*, 206 Pa. 356, *Masnack vs. Pennsylvania Railroad Company*, 106 P.L.J. 427, *Jennings vs. Susquehanna N.Y.R. Co.*, 84 Pa. Superior 442.

(7). The Railroad Company in this instance, knowing that the view of approaching trains at the McGee crossing was considerably restricted for an unduly short distance, is bound to take that fact into consideration and to so regulate the running of its trains as to make it possible for a driver to cross the tracks in safety if, when just before entering upon them, the driver has stopped, looked and listened and no trains were within sight or sound. *Minella vs. Penna. Railroad Co.*, 309 Pa. 479. Therefore, in this instance the jury may find that the Railroad was negligent in not regulating its trains so as to permit the plaintiff's vehicle to cross the tracks safely.

(8). The jury may find that the driver, Jackson Miller, stopped, looked and listened before attempting to cross the railroad tracks, and if the jury so finds, then the said Jackson Miller was

not negligent in proceeding to cross the tracks after observing nothing as he was lawfully on the same. Minella vs. Penna. Railroad Company, *supra*.

(9). If the jury finds that the plaintiff's vehicle was occupying the crossing prior to any notice to the driver of the approaching train and that the engineer failed to slacken the train's speed and stop the train in order to avert an accident, then the jury should find that the Railroad Company was negligent. *Schaeffer vs. Reading Transit Co.*, 302 Pa. 220.

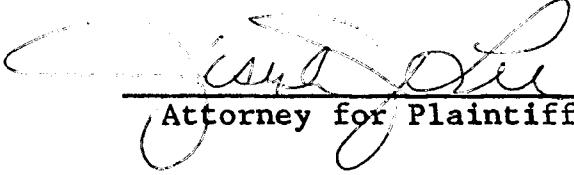
(10). If the jury finds that the train proceeded to bear down on the plaintiff's vehicle and did not give any signals or attempt to stop the train prior to the accident, then you may find that the Railroad Company's employees are guilty of reckless or intentional disregard of the plaintiff's vehicle, and such recklessness would impute itself to the Railroad Company. *Naugle vs. Reading Co.*, 145 Pa. Superior 341.

(11). An engineer must keep a constant lookout ahead and have such control of his locomotive as to avoid dangers ordinarily incident to its operation and such unusual and unexpected dangers as he sees in them to avoid. Thus, if the jury finds that the engineer in this instance failed to keep a lookout ahead and failed to have control of his locomotive in order to avoid striking the plaintiff's vehicle, then you may bring in a verdict for the plaintiff against the Railroad Company. *Hinton vs Pittsburgh Railways Co.*, 359 Pa. 381.

(12). If the jury finds that Jackson Miller stopped, looked and listened before attempting to cross the railroad tracks and that his view was limited by the nature of the crossing, and that he had almost cleared the crossing before being struck, then you may find that Jackson Miller was not guilty of negligence and

that the sole cause of the accident was the negligence of the Railroad Company. Peck vs. Buffalo, Rochester and Pittsburgh Railroad, 283 Pa. 402.

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for Plaintiff

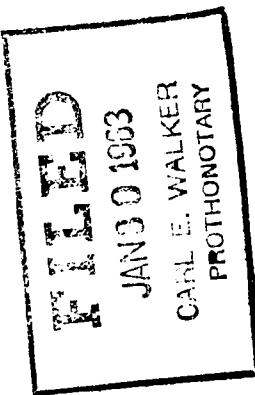
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 576 November Term, 1961  
Trespass

EUGENE MILLER

VS

THE NEW YORK CENTRAL RAILROAD  
COMPANY ET AL

PLAINTIFF, EUGENE MILLER'S  
POINTS FOR CHARGE



JOSEPH J. LEE  
ATTORNEY-AT-LAW  
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EUGENE MILLER :  
VS. : No. 576 November Term, 1962  
NEW YORK CENTRAL RAILROAD :  
COMPANY, and ZOE MILLER and : IN TRESPASS  
JACKSON MILLER, Additional :  
Defendants :

POINTS FOR CHARGE

The Court is requested to charge the jury as follows:

(1). When a man dies without a Will, his estate vests one-third in his widow and two-thirds in his children, subject to the payment of debts.

(2). A joint venture is a combination of two or more persons in some specific venture without any actual partnership or corporate designation.

(3). All members of a joint venture may be liable jointly and severally for a tort committed by one of them in conducting the business of the joint venture.

(4). If Eugene Miller, as an heir of Dallas Miller and son of Zoe Miller, participated in the work of cutting and removing the logs, he would be responsible with the other members of the joint venture for any negligence of any other member engaged in said operation.

(5). If you find that Eugene Miller was engaged in a joint enterprise with Jackson Miller, and that Jackson Miller was guilty of negligence in the operation of the truck, then Eugene Miller cannot recover.

(6). The liability of the owner of a motor vehicle for the negligent act of a driver of his vehicle rests on the relationship of master and servant or of principal and agent between the owner and the driver. If Eugene Miller was participating in a joint venture, he would be in the position of master.

(7). It is possible that the control over the driver of a motor vehicle may continue with the owner even though he has leased the truck to some other party, and it is possible for the jury to determine under some circumstances that both the lessor and lessee are liable for the acts of said driver.

(8). The New York Central Railroad Company is only liable if the jury is satisfied by the weight of the evidence that the New York Central Railroad Company, its agents, servants or employees, were negligent in some respect.

(9). The evidence shows that this accident occurred not at a public or private crossing, as the terms are usually used, but at a farm crossing.

(10). The New York Central Railroad Company and its employees hold a less duty of care in approaching a farm crossing than approaching a public crossing, and the degree of care would be in relation to the amount of use of said farm crossing.

(11). There is no requirement for the ringing of a bell or blowing of a whistle in approaching a farm crossing.

(12). The farm crossing in this case was placed at a location selected by the owners of the land and not by the New York Central Railroad Company.

(13). The evidence shows that the farm crossing was located at one end on a curve, and the jury must determine whether the New York Central Railroad Company and its employees were negligent in approaching said farm crossing at the rate of speed and under the circumstances that existed in this case.

(14). Where Eugene Miller, knowing that the farm crossing was dangerous, instructed his brother to use the same, he assumed the risk of damage to his truck.

(15). Under all the evidence in the above entitled case, your verdict should be for the New York Central Railroad Company in the case of Eugene Miller versus said railroad company.

BELL, SILBERBLATT & SWOOPES  
By

  
\_\_\_\_\_  
Attorneys for the New York Central  
Railroad Company

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA,  
No. 576 November Term, 1961  
IN TRESPASS

EUGENE MILLER

VS.

NEW YORK CENTRAL RAILROAD  
COMPANY, and ZOE MILLER and  
JACKSON MILLER, Additional  
Defendants

POINTS FOR CHARGE



BELL, SILBERBLATT & SWOOP  
ATTORNEYS AT LAW  
CLEARFIELD TRUST CO. BLDG.  
CLEARFIELD, PENNA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

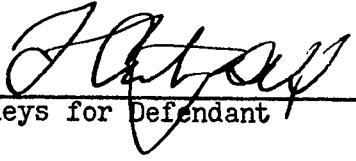
EUGENE MILLER :  
VS. : No. 576 November Term, 1961  
THE NEW YORK CENTRAL RAILROAD :  
COMPANY : IN TRESPASS

TO: Carl E. Walker, Prothonotary,

Sir:

Issue writ to join Zoe Miller of Mahaffey R. D., Pennsylvania as an Additional Defendant to the claim of Eugene Miller and also to the Counter-Claim of The New York Central Railroad Company.

BELL, SILBERBLATT & SWOOP  
By

  
\_\_\_\_\_  
Attorneys for Defendant

COMPLAINT AGAINST ADDITIONAL DEFENDANT

NOW, comes The New York Central Railroad Company, by its attorneys, Bell, Silberblatt & Swoope, and files this Complaint against Zoe Miller, in the manner and form following:

- (1). That the Plaintiff in the above entitled action is an individual residing at Mahaffey R. D., Clearfield County, Pennsylvania.
- (2). That The New York Central Railroad Company is a corporation engaged as a common carrier of goods in intrastate and interstate commerce and maintains facilities in Bell Township, Clearfield County, Pennsylvania.
- (3). That the Plaintiff, Eugene Miller, filed an action In Trespass against The New York Central Railroad Company for injuries to a truck on or about October 20, 1959 as a result of a collision with a train of The New York Central Railroad Company, operating on a tract of land in Bell Township, Clearfield County, Pennsylvania, owned by Harold Byron McGee.

(4). That Harold Byron McGee and Zoe Miller, Additional Defendants, had entered into a contract for the sale of timber in September or October of 1959, said agreement not being recorded.

(5). That Harold Byron McGee is the grandson and heir of H. H. McGee, who, by a Deed dated October 21, 1895 and recorded in Clearfield County in Deed Book 88, at Page 548 for a consideration of One Thousand (\$1000.00) Dollars, granted to the Pittsburgh and Eastern Railroad Company a right-of-way containing 6.769 acres.

(6). That The New York Central Railroad Company is the successor to the Pittsburgh and Eastern Railroad Company and has the right to maintain tracks through the property of Harold Byron McGee, said Deed providing for the establishment of a crossing over the tracks at a location to be selected by the Grantors in said Deed.

(7). That said Deed also contained the following provision:

"And the said parties of the first part for themselves, their heirs, executors and administrators for the consideration aforesaid do hereby remise, release and forever discharge the Pittsburgh and Eastern Railroad Company, its contractors, servants, agents, employees, successors and assigns of and from any and all actions, cause of actions, suits, debts, injury, damage and claims of any and all description which they or either of them, now have, or which they or either of them, their or either of their heirs, executors and administrators hereafter shall, or may have, for, upon or by reason of the location and construction of a railroad through, over, along and across the above described land".

(8). That said Deed was recorded in Clearfield County on October 21, 1895 in the Office of the Recorder of Deeds in and for said county.

(9). That said Deed was of record and available to the Additional Defendant, Zoe Miller, at the time of the entering into of an agreement with Harold Byron McGee.

(10). That the crossing, at which the collision occurred referred to in the suit of Eugene Miller against The New York Central Railroad Company, was not on a public road or a private road, but a farm crossing.

(11). That Pennsylvania Highway Route #219, a Pennsylvania State Highway, runs through or adjoining the property of Harold Byron McGee.

(12). That there existed also on the property of Harold Byron McGee a private road with an over-head bridge over the track of The New York Central Railroad Company, which private road with the over-head bridge, was located within a few hundred feet of the farm crossing.

(13). That the farm crossing was seldom used and was only permitted to remain because of a request of the land owners, but the load limit existing on the over-head bridge would not permit certain excesses of weights, and the crossing, at which the collision occurred on October 20, 1959, was only used occasionally when a load of excessive weight was required to be moved across the railroad tracks too heavy for the over-head bridge.

(14). That as a result of the lack of use, the land owners had permitted said road to become grownup, to such an extent that the brush, trees and other foliage existed on October 20, 1959 to such indensity that there was little view of anyone traveling through the woods on this farm road until the right-of-way of The New York Central Railroad Company was reached.

(15). That the farm crossing referred to in the suit of Eugene Miller to the aforesaid number and term exists on a curve, so that the view of the users of The New York Central Railroad for a train in a westerly direction was limited to approximately one hundred (100) feet.

(16). That Zoe Miller, as the owner and contractor of the timber to be cut, gave no notice to The New York Central Railroad Company of her intention to have her trucks use said crossing, nor did anyone else ever give any notice to the proper officials of The New York Central Railroad Company on her behalf.

(17). That on the afternoon of the 20th day of October, 1959, Jackson Miller was operating a truck registered in the name of his brother, Eugene Miller, hauling logs for his mother, Zoe Miller, to and over said farm crossing.

(18). That on said date and time, The New York Central Railroad

Company was operating a train consisting of two diesel locomotives, eighteen cars and a caboose in a westerly direction and had given an audible warning of the approach of said train which was for a crossing which existed a short distance to the northeast of this farm crossing, which signal, both bell and whistle, were heard by the men working in the woods a short distance from the location of the farm crossing.

(19). That Jackson Miller was operating said truck with the cab door closed.

(20). That the said Jackson Miller was operating an International Truck with a load of logs, which proceeded out of the woods onto the crossing; said International Truck being registered for a gross weight of 47,000 pounds and having license No. ZZ 305 G.

(21). That Jackson Miller was by himself on the 20th day of October, 1959.

(22). That on said 20th day of October, 1959, he had driven loaded trucks of logs over said crossing previously and was acquainted with the nature thereof.

(23). That the load carried by the said Jackson Miller was in excess of the 6 ton limit of the over-head bridge.

(24). That on the 20th day of October, 1959, Jackson Miller was traveling in low gear over the crossing and had proceeded across the crossing to the extent that his rear wheels were on the tracks at the time the train came into view.

(25). That the weather was fair and clear on the 20th day of October, 1959.

(26). That Eugene Miller has filed an action against The New York Central Railroad Company for damages to his truck in the amount of Six Thousand Five Hundred (\$6500.00) Dollars, for which sum the Additional Defendant's employee, Jackson Miller, was solely liable to the said Eugene Miller for the amount of said damages or jointly liable with The New York Central Railroad Company for any sum that may be due.

(27). That The New York Central Railroad Company's engine was injured, as a result of which, it was necessary that the same be transported to Collinwood, Ohio to be repaired at the Diesel Shop.

(28). That the cost of the repairs made at the Collinwood Diesel Locomotive Shop totaled Three Thousand Nine Hundred Fifty-four and 32/100 (\$3954.32) for labor and materials, as shown on an identified statement attached hereto, marked Defendant's Exhibit "A" and made a part hereof.

(29). That because of the negligence of the Additional Defendant, The New York Central Railroad Company was put to an additional expense for the transporting of said engine from the scene of the accident; the amount of said cost for transportation to and from Collinwood, Ohio totaling Seven Hundred and Fifty (\$750.00) Dollars.

(30). That The New York Central Railroad Company was deprived of the use of said engine; said loss of use being a period in excess of ten (10) days and estimated at the rate of Fifty (\$50.00) Dollars per day, or a total of Five Hundred (\$500.00) Dollars, for which sums it is asked that a verdict be rendered in favor of the Defendant at the trial of this cause.

(31). That this Additional Defendant is liable to Eugene Miller for any damages sustained by him and liable to The New York Central Railroad Company for its loss and damages, or this Additional Defendant is jointly liable with The New York Central Railroad Company for any damages sustained by Eugene Miller, if any.

WHEREFORE, the Defendant asks that a Judgment be rendered in its favor and against the Additional Defendant, Zoe Miller, in the amount of such sum that will secure it from all liability in this action.

BELL, SILBERBLATT & SWOOP  
By

  
Attorneys for Defendant

THE NEW YORK CENTRAL RAILROAD COMPANY  
By

  
Charles E. Bell

STATE OF PENNSYLVANIA : SS:  
COUNTY OF CLEARFIELD :

Before me, the undersigned officer, personally appeared CHARLES E. BELL, who, being duly sworn according to law, deposes and states that he is Trainmaster for The New York Central Railroad Company, and that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Charles E. Bell

Sworn and subscribed to  
before me this 7<sup>th</sup> day  
of March , 1962.

Carl E. Walker

PROTHONOTARY  
My Commission Expires  
1st Monday Jan. 1966

Labor and Material used in repairing Diesel Unit #5640 at Collinwood, L  
Diesel Shop on L. O. 118006-59 account Wreck.

sheet 1 of 3

Item	Price	Amount
1 New Hand Box Assembly	NYC # 8144326	# 4463 ea
20 " 1/2" Elastic Nut	1117928	0501 ..
32 " 9/8" " "	1117934	10 "
26 " 3/4" " "	1117937	119 "
1 " Mesh Plate "12 57 3/4 x 12 1/8	1514253	13 28 "
3 " " "	1514253	13 277 ..
1 " Elbow	8083627	18 37 ..
2 " Housing	80977414	1 515 ..
5 " Grab Iron	8124382	3 332 ..
1 " " "	8124382	3 33 ..
4 " Bracket	8144275	1 89 ..
2 " Weatherstrip	8146436	1 06 ..
1 " Grab Iron	8146679	20 92 ..
2 " Hand Rail	8146680	4 41 ..
6 " Side Rail	8146713	7 448 ..
1 " Hand Rail	81468249	5 20 ..
1 " Box Assembly	8156642	40 67 ..
1 S.H. Air Compressor	8186227	261 27 ..
1 NEW Brake Assembly	8194043	122 49 ..
2 " Housing PN-ARR-2000	2514746	1 31 ..
6 " Handle	8031902	1767 ..
6 " "	8031902	1767 ..
1 " Handhold	8141322	22 05 ..
5 " Support	8144274	11 368 ..
6 " Support	8144274	11 368 ..
1 " Grab Iron	8146678	22 44 ..
8 " Slide	8146733	1 2125 ..
6 " Tread Assembly	8149922	4 607 ..
6 " Tread Assembly	8104552	3 48 ..
25 " Hex Head Bolts 9/8" x 2"	4543734	08 ..
4 " Hand Tape #256	2312349	7 885 ..
1 " Hand Tape #256	2416714	192 ..

Repair and Material used in repairing Diesel Unit #5640 at Colliewood, which  
Diesel Dropped on L O 118006-59 account Wreck

sheet 2 of 3

Item	Price.	Amount
1/2 New Bolt 7/16" X 1 1/2"	NYC # 8129472	\$ 0.27 ea
36 " Nuts	8135324	07 ..
1 " Handrail	8147991	22.05 ..
1 " Box Assembly	8152421	44.49 ..
1 " Manifold Filter	8152431	28.12 ..
1 " Manifold Filter	8152432	19.60 ..
3 Gal. Gray Lacquer	4717158	4.44 gal
3 " White Lacquer	4717134	4.553 "
9 " Black Lacquer	4717140	3.73 ..
2 " Black Enamel	4706183	3.565 ..
1 " Gray Enamel	4706855	4.25 ..
3 " Surfacer	4729259	3.533 ..
3 " Thinner	4729789	823 ..
15 " Thinner	4729816	1.66 ..
1 New Handrail	8147990	22.05 ea
2 Gal Black Enamel	4706783	3.565 gal
3 " Gray Enamel	4706855	4.247 ..
1 " Green Enamel	4706867	4.34 ..
4 " Surfacer	4729259	3.535 ..
3 " Thinner	4729789	823 ..
16 " Thinner	4729816	1.66 ..
3 " White Lacquer	4717134	4.553 ..
10 " Black Lacquer	4717140	3.732 ..
3 " Gray Lacquer	4717158	4.44 ..
1 "	9920169	1.71 ea
4 "	9920167	.78 ..
1 "	9920170	2.54 ..
4 "	9920166	.02 ..
2 "	9920171	10.29 ..
1 "	9920174	.78 ..
1 "	9920175	.78 ..
2 "	9920172	4.99 ..

MATERIAL CONTINUED ON SHEET 3, TOTAL \$ 1350.73

Labor and Material used in repairing Diesel Unit #5640 at Collinwood Ohio  
Diesel Shop on Lot Order 118006-59 account Wreck

sheet 3 of 3

<u>Labor</u>	\$ 1371.99
<u>Plus 15%</u>	1028.99
	\$ 2400.98

<u>Material</u>	\$ 1350.73
<u>Plus 15%</u>	202.61
	\$ 1553.34

<u>Total Labor and Material</u>	\$ 3954.32
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Prepared in office of  
District Auditor of Expenditures  
Detroit Michigan

May 27, 1960  
File 039.000

To Mr. G. L. Zeider  
Super Diesel Shop  
Collinwood Ohio

your file 40.4 OE X 5640

Defendant's Exhibit "A"

*Joe Lee*

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
No. 576 November Term, 1961  
IN TRESPASS

EU GENE MILLER

VS.

THE NEW YORK CENTRAL RAILROAD  
COMPANY & ZOE MILLER, JACKSON  
(JACK) MILLER and HAROLD BYRON  
MCGEE, Additional Defendants

COMPLAINT AGAINST ADDITIONAL  
DEFENDANT  
(Zoe Miller)

To the within named Additional  
Defendant:

You are hereby notified to  
plead to the enclosed Complaint  
within twenty (20) days from the  
service hereof.

BELL, SILBERBLATT & SWOOPES  
By

*Carl E. Walker*  
Attnorneys for Plaintiff  
March 8, 1962  
CARL E. WALKER  
PROTHONOTARY

BELL, SILBERBLATT & SWOOPES  
ATTORNEYS AT LAW  
CLEARFIELD TRUST CO. BLDG.  
CLEARFIELD, PENNA.

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

LAST OVER MATERIA

In the Court of

Common Pleas

Clearfield County.

EUGENE MILLER

Of November Term, 1961

No. 576

Defendant's

Bill of Costs

VERSUS

At November

Term, 1963

NEW YORK CENTRAL RAILROAD COMPANY,  
and ZOE MILLER and JACKSON MILLER,  
Additional Defendants

Harry Stonebraker	2 Days in Court at \$5.00 per day 7c per mile actually traveled 418 miles	10 00	
P. O. Cleveland, Ohio		29 26	
John Kreiger	2 Days in Court at \$5.00 per day 7c per mile actually traveled 742 miles	10 00	
P. O. Detroit, Michigan		51 94	
Clifford Simcox	2 Days in Court at \$5.00 per day 7c per mile actually traveled	10 00	
P. O. Clearfield, Pennsylvania			
E. R. Perks	2 Days in Court at \$5.00 per day 7c per mile actually traveled	10 00	
P. O. Clearfield, Pennsylvania			
John Dougherty	2 Days in Court at \$5.00 per day 7c per mile actually traveled	10 00	
P. O. Clearfield, Pennsylvania			
V. L. Taylor	2 Days in Court at \$5.00 per day 7c per mile actually traveled	10 00	
P. O. Clearfield, Pennsylvania			
C. B. Taylor	2 Days in Court at \$5.00 per day 7c per mile actually traveled	10 00	
P. O. Clearfield, Pennsylvania			
William Bloom	2 Days in Court at \$5.00 per day 7c per mile actually traveled	10 00	
P. O. Clearfield, Pennsylvania			
Byron McGee	1 Days in Court at \$5.00 per day 7c per mile actually traveled	5 00	
P. O. Mahaffey, Pennsylvania			
P. O.	Days in Court at \$5.00 per day 7c per mile actually traveled		
P. O.	Days in Court at \$5.00 per day 7c per mile actually traveled		
J. B. Walker	Serving subpoenas 1 Witness	2 50	
P. O. Clearfield, Penna.	Miles distance 28	5 50	
Whole amount of Bill		174 20	

CLEARFIELD COUNTY, SS:

Personally appeared before me L. E. Farnham, who being duly sworn, saith the above Bill of Costs is correct, that the witnesses named were subpoenaed, necessary, material, and in attendance as above stated, and that the mileage is correct as he believes.

Sworn to and subscribed before me this  
30th day of January, A. D. 1963  
Oscar Walker, Prothonotary

PROTHONOTARY

My Commission Expires  
1st Monday Jan. 1966

No. 576 November Term, 1961

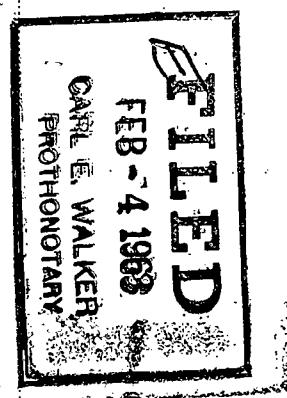
EUGENE MILLER

Versus

NEW YORK CENTRAL RAILROAD COMPANY,

and ZOE MILLER and JACKSON MILLER,

Additional Defendants



Attorney

Service accepted 2-4-63  
Joseph A. De  
Attn: for Plaintiff

5:20 P.M.

CONSTABLE'S RETURN

To be mailed promptly to the Clerk of the Court at Clearfield

CLEARFIELD COUNTY, ss:  
24<sup>th</sup> day of JANUARY 1962

served the within subpoena on the within named

*Harold Bryon*  
*mc Ghee*

By reading the same to each of them.

No. ..... Services \$ 2.50  
Miles actually traveled direct 28 5.50  
Total - - - \$ 8.00

Personally appeared before me the subscriber,

*J.B. Walker*

who, being duly sworn, deposes and says that he made the number of services and true as stated, and that he traveled the number of miles above set out in making services of this Subpoena and that said miles were necessarily traveled.

*J.B. Walker*  
Constable

Sworn and subscribed before me this  
24<sup>th</sup> day of JANUARY 1962, A.D.

*Harry G. Ganoe*

HARRY G. GANOE  
JUSTICE OF THE PEACE  
CLEARFIELD, PENNA.  
MY COMMISSION EXPIRES JAN. 3, 1966

Common Pleas Subpoena

No. 576 November Term Term, 1962

EUGENE MILLER

VERSUS

NEW YORK CENTRAL RAILROAD CO.

SUBPOENA

of defendant

Filed

PROTHONOTARY

CLEARFIELD COUNTY, ss:

The Commonwealth of Pennsylvania to

Harold Byron McGee, and bring with you the agreement of Dallas Miller for  
the purchase of said timber

WE COMMAND YOU, that setting aside all manner of business and excuses whatsoever, you be and appear in your proper person before our Judges, at Clearfield, at our County Court of Common Pleas there to be held for Clearfield County, on the 5th Tuesday ~~McGraw~~ of January ~~1963~~ at 9:00 A.M. next, there to testify the truth according to your knowledge in a certain case now pending in our said court, and then and there to be tried, wherein Eugene Miller

is Plaintiff, and New York Central Railroad Co., defendant, and Zoe Miller and Jackson

Miller, Additional defendants

Defendant, and that on the part of the defendant \_\_\_\_\_ And this you are not to omit under penalty of five hundred pounds.

WITNESS, the Honorable JOHN J. PENTZ, President of our said court at Clearfield, Pa., the 24th day of January

Anno Domini, one thousand nine hundred and sixty-three

*Carl E. Walker*

**PROTHONOTARY**  
Prothonotary  
My Commission Expires  
1st Monday Jan. 1966