

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CITY OF OZARK, a municipal corporation)

Plaintiff,)

vs.)

UNION PACIFIC RAILROAD COMPANY,)
ARKANSAS STATE HIGHWAY)
COMMISSION, as Governing Body of the)
ARKANSAS STATE HIGHWAY AND)
TRANSPORTATION DEPARTMENT,)

CIVIL ACTION NO: 2:14-cv-02196-TLB

Defendants.

ANSWER OF UNION PACIFIC RAILROAD COMPANY
TO THE FIRST AMENDED COMPLAINT

For its Answer to the City's First Amended Complaint, Union Pacific Railroad Company states as follows:

1. Union Pacific denies that Plaintiff is entitled to the relief and orders requested in Paragraph 1 of the First Amended Complaint.

2. Union Pacific denies that Plaintiff is entitled to the relief and orders requested in Paragraph 2 of the First Amended Complaint.

3. Union Pacific incorporates herein its Answer to the Original Complaint, and its Motion to Dismiss the Original Complaint.

4. Union Pacific lacks information sufficient to form a belief as to when the City of Ozark was incorporated and thus denies that allegation, but admits the remaining allegations contained in Paragraph 4 of the First Amended Complaint.

5. Union Pacific admits the allegations contained in Paragraph 5 of the First Amended Complaint.

6. Union Pacific admits that Plaintiff does not seek damages from AH&TD, but denies the remaining allegations of Paragraph 6 of the First Amended Complaint. Union Pacific affirmatively states that AH&TD has been fraudulently joined in this action to destroy diversity jurisdiction and/or is a nominal party whose diversity should not be considered for jurisdictional purposes.

7. Paragraph 7 is not directed at Union Pacific and requires no answer.

8. Union Pacific denies the allegations contained in Paragraph 8 of the First Amended Complaint.

9. Union Pacific denies the allegations contained in Paragraph 9 of the First Amended Complaint.

10. Regarding the allegations of Paragraph 10 of the First Amended Complaint, Union Pacific denies that the venue is proper in Circuit Court, states that the exhibits speak for themselves and require no response by Union Pacific, admits that the tracks at issue are located in Franklin County, Arkansas, and denies all other allegations.

11. Union Pacific hereby incorporates and re-alleges its responses to paragraphs 1—10 as if set forth word for word.

12. Paragraphs 12 through 163, General Allegations of Fact, are not directed at Union Pacific and require no response. However, to the extent that they are directed at Union Pacific, Union Pacific lacks information sufficient to form a belief about the allegations, and thus Union Pacific denies them. Union Pacific specifically denies any allegation that the crossing was

illegally removed, or that Union Pacific acted with any bad faith in any of its actions. All exhibits speak for themselves and require no response by Union Pacific.

13. The allegations of paragraph 164 are denied.

14. Union Pacific denies that Plaintiff is entitled to the relief sought in paragraph 165 and denies all allegations.

15. Union Pacific hereby incorporates and re-alleges its responses to paragraphs 1—165 as if set forth word for word.

16. Union Pacific lacks sufficient information to admit or deny the allegations contained in paragraph 167 and therefore denies them.

17. Union Pacific lacks information sufficient to form a belief about the allegations contained in paragraph 168 and therefore denies them. Union Pacific specifically denies that the crossing was a public crossing.

18. Union Pacific lacks information sufficient to form a belief about the allegations contained in paragraphs 169 through 181 and therefore denies them. Union Pacific specifically denies any allegation that the crossing was illegally removed, or that Union Pacific acted with any bad faith in any of its actions. All exhibits speak for themselves and require no response by Union Pacific. Union Pacific specifically denies that the FRA inventory is reliable.

19. Union Pacific denies the allegations contained in Paragraph 182 of the First Amended Complaint.

20. Union Pacific states that it lacks information sufficient to form a belief about the allegations contained in paragraph 183 and thus denies them; the legal conclusions require no response.

21. Union Pacific denies the allegations contained in paragraph 184.

22. Union Pacific hereby incorporates and re-alleges its responses to paragraphs 1—184 as if set forth word for word.

23. Union Pacific denies the allegations contained in Paragraphs 186 through 195 of the First Amended Complaint.

24. Union Pacific hereby incorporates and re-alleges its responses to paragraphs 1—195 as if set forth word for word.

25. Union Pacific denies the allegations contained in Paragraphs 197 through 204 of the First Amended Complaint.

26. Union Pacific hereby incorporates its original Answer and its response to allegations 1—204 as if set out word for word herein.

27. The allegations contained in Paragraphs 206 through 209 are legal in nature and require no response. To the extent that a response is required, the allegations are denied.

28. Union Pacific lacks information sufficient to form a belief about the truth of the allegations contained in paragraph 210 and therefore denies.

29. The allegations contained in paragraphs 211 through 214 are denied.

30. Union Pacific hereby incorporates its original Answer and its responses to allegations 1—214 as if set out word for word herein.

31. The allegations contained in paragraphs 216—219, and the relief sought, are denied.

32. Union Pacific denies that Plaintiff is entitled to the relief sought in the Wherefore clause of the First Amended Complaint, including all sub-parts.

33. Union Pacific denies any allegation not specifically admitted herein.

34. Union Pacific demands a jury trial.

35. Pleading affirmatively, the First Amended Complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim.

36. Pleading affirmatively, the First Amended Complaint should be dismissed pursuant to Rule 12(b)(3) for improper venue.

37. Pleading affirmatively, the First Amended Complaint should be dismissed pursuant to the doctrine of laches.

38. Pleading affirmatively, the First Amended Complaint should be dismissed pursuant to the doctrine of waiver and estoppel.

39. Pleading affirmatively, the First Amended Complaint should be dismissed because the action is not ripe.

40. Pleading affirmatively, the state law causes of action alleged by Plaintiff should be dismissed because they are preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10101, *et seq.*

41. Pleading affirmatively, the condemnation action should be dismissed because the City lacks the authority to condemn the property and because of the prior public use doctrine.

42. Pleading affirmatively, the conversion claim should be dismissed because the statute of limitations has expired, Arkansas does not recognize a cause of action for conversion of real property, and the City does not have an ownership interest in the real property.

43. Pleading affirmatively, the statute of limitations bars this action.

44. Defendant reserves the right to plead and preserves objections on the basis (1) a lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted; (7) failure to join a party under Rule 19, if any; (8)

pendency of another action between the same parties arising out of the same transaction or occurrence; and, (9) the occurrences or defenses under Rule 8, including but not limited to, accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, comparative fault, discharge of bankruptcy, duress, estoppel, exclusiveness of remedy under the Worker's Compensation Commission law, failure of consideration, fraud, illegality, injury by fellow servant, license, payment, release, res judicata, set-off, statute of frauds, statute of limitations, waiver and any other matter constituting an avoidance or furtherance of defense.

Respectfully submitted,

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By: /s/ Jamie Huffman Jones
 Jamie Huffman Jones

CERTIFICATE OF SERVICE

I, Jamie Huffman Jones, hereby certify that the foregoing pleading was filed with the Clerk of Court using the CM/ECF Filing System on this 16th day of October, 2014, and said Clerk shall serve an electronic copy of same upon the following counsel of record:

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