

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JORGE OLIVARES,

Plaintiff,

v.

Case No. 17-2397

**NATIONAL RAILROAD PASSENGER
CORPORATION, *doing business as Amtrak,*
et al.,**

Defendants.

MEMORANDUM & ORDER

This matter comes before the court upon defendant National Railroad Passenger Corporation, doing business as Amtrak (“Amtrak”)’s Motion for Judgment on the Pleadings (Doc. 48). Defendant Amtrak’s motion seeks judgment in its favor on Counts I and V because they are common-law tort claims for negligence and gross negligence, seeking loss of consortium and punitive damages. Defendant Amtrak argues that such claims are preempted and precluded by the Federal Employers’ Liability Act.

On April 23, 2018, plaintiff Jorge Olivares filed a Motion for Leave to Amend the Complaint (Doc. 50) and a Memorandum in Opposition to defendant Amtrak’s Motion (Doc. 51). Plaintiff’s motion explains that his proposed amended complaint will remove the claims that are the subject of defendant Amtrak’s motion for judgment on the pleadings, and asks the court to deny the motion on this basis.

Based on these filings, it appears that defendant Amtrak’s motion should be denied without prejudice. If the motion for leave to amend is denied or defendant Amtrak finds that the issues in its motion are not addressed by plaintiff’s amended pleading, defendant Amtrak may file a renewed motion for judgment on the pleadings.

IT IS THEREFORE ORDERED that defendant Amtrak's Motion for Judgment on the Pleadings (Doc. 48) is denied without prejudice.

Dated April 27, 2018, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge