

PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 12-1934

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MD MALL ASSOCIATES, LLC  
Trading as MacDade Mall Associates, L.P.,  
Appellant,

v.

CSX TRANSPORTATION , INC.

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. No. 11-cv-4068)  
District Judge: Hon. Juan R. Sanchez

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Argued  
January 8, 2013

Before: RENDELL, FISHER, and JORDAN, *Circuit  
Judges.*

(Filed: April 30, 2013)

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Marc B. Kaplin [ARGUED]  
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ORDER AMENDING OPINION

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JORDAN, *Circuit Judge*.

IT IS NOW ORDERED that the above-captioned opinion be amended as follows:

At the top of page 21, in the sentence beginning “The railroad’s argument”, “in *Strozyk*” shall be deleted, and, in the citation that follows, “*Strozyk*, 358 F.3d at 273” shall be deleted and replaced with “*See supra* at 18-19”.

On page 22, following the cite to “*Cowden v. BNSF Ry. Co.*, ... (E.D. Mo. 2010)” insert: “*rev’d on other grounds*, 690 F.3d 884, 893-94 (8<sup>th</sup> Cir. 2012) (reversing as premature the grant of summary judgment because the district court had raised FRSA regulations for the first time *sua sponte* and did not give plaintiff an opportunity to ‘submit[] evidence of FRSA violations’ or to separately evaluate whether railroad breached duty imposed by FRSA)”.

/s/ Kent A. Jordan  
Circuit Judge

DATED: May 30, 2013  
PDB/cc: All Counsel of Record