

11-0385

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

VICKIE J. AKERS,

2010 OCT 13 10 2:13

Plaintiff,

v.

JILL CHANDLER
CLERK
CABELL WV

CIVIL ACTION NO. 08-C-0656
JUDGE DAVID PANCAKE

CSX TRANSPORTATION, INC.,

Defendant.

FINAL JUDGMENT ORDER

On Monday, September 20, 2010, came the parties for trial of the above-styled civil action. Plaintiff, Vickie Akers, was represented by Robert F. Daley and Aaron Rihn of Robert Peirce & Associates. Defendant, CSX Transportation, Inc., was represented by Melissa Foster Bird and Jeremy C. Hodges of Nelson Mullins Riley & Scarborough, LLP.

The Court and counsel conducted voir dire of the potential jurors and a jury of six qualified citizens of Cabell County, West Virginia and one qualified alternate juror was seated. Opening statements were made by both parties. Ms. Akers testified on her own behalf on Monday September 20, 2010 following opening statements. On Tuesday, Plaintiff called Robert O. Andres, Ph.D., Dr. Edward J. Doyle, and Anthony M. Gamboa, Ph.D. as witnesses. Plaintiff also admitted exhibits in this case.

Plaintiff rested her case-in-chief on Tuesday September 21, 2010. Defendant moved for a Judgment as a Matter of Law pursuant to Rule 50 of the West Virginia Rules of Civil Procedure. Defendant's Motion was denied by the Court. Defendant then called Kathleen M. Deken, M.Ed. as a witness (by deposition). On Wednesday September 22, 2010, Defendant called R. Todd Brown, Ph.D., Roger Simmons, Jim Fischer, and Dr. Michael W. Weiss as witnesses. Defendant also admitted documents as exhibits in its case. Defendant rested its

case on Wednesday, September 22, 2010. At the end of Defendant's evidence, Defendant renewed its Judgment as a Matter of Law pursuant to Rule 50 of the West Virginia Rules of Civil Procedure. This Motion was denied. At the end of Defendant's evidence, Plaintiff moved for a Judgment as a Matter of Law as to the issue of contributory negligence pursuant to Rule 50 of the West Virginia Rules of Civil Procedure. Plaintiff's Motion was denied by the Court.

On Thursday September 23 2010 the Court verbally charged the jury with the law. Closing arguments were made by both parties. The alternate juror was excused from service. The jury retired to deliberate at approximately 1:15 p.m. with the admitted exhibits. At approximately 2:50 p.m. the jury returned a unanimous verdict as follows:

Question 1: Was CSX Transportation, Inc. negligent in failing to provide a reasonably safe place for Ms. Akers to work?

Answer: No.

[The remaining questions were left blank pursuant to the Verdict Form instructions.]

Signed: Robert Day (Foreperson) Date: 9-23-10

The Verdict Form was properly signed and dated by Foreperson, Robert Day. Plaintiff requested to poll the jury. Each juror indicated that the verdict was unanimous.

It is the ORDER of this Court that Judgment in favor of the Defendant, CSX Transportation, Inc., shall be and hereby entered with respect to this civil action. Juror costs associated with the trial of this matter will be assessed to Plaintiff.

ENTERED this 13th day of October, 2010.

STATE OF WEST VIRGINIA
COUNTY OF CABELL
I, ADELL CHANDLER, CLERK OF THE CIRCUIT
COURT FOR THE COUNTY AND STATE ABOVE SAID
DO HEREBY CERTIFY THAT THE ABOVE IS
A TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON _____
GIVEN UNDER MY HAND AND SEAL OF SAID COURT

THIS _____
Adell Chandler CLERK
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA

[Signature]
REED DAVID PANCAKE
ENTERED Circuit Court Civil Order Book
No. _____ Page _____ this

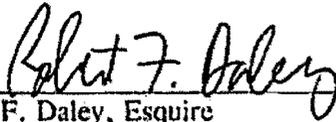
Prepared by:



Melissa Foster Bird, Esquire, WVSN 6588
Jeremy C. Hodges, *Pro Hac Vice*
Nelson Mullins Riley & Scarborough LLP
P.O. Box 1856
Huntington, WV 25719-1856

Counsel for Defendant,
CSX TRANSPORTATION, INC.

Approved by:



w/permission & by J.C. Hodges

Robert F. Daley, Esquire
WV I.D. No.: 7929
ROBERT PEIRCE & ASSOC., P.C.
2500 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1912

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

VICKIE L. AKERS,

Plaintiff,

v.

CSX TRANSPORTATION, INC.,
a Virginia corporation,

Defendant.

2011 JAN 31 10 11:08

ADELL CHANDLER
CIRCUIT CLERK
CIVIL ACTION NO. 08-C-0656

Judge David M. Pancake

ORDER DENYING PLAINTIFF'S MOTION FOR NEW TRIAL

This matter is before the Court on Plaintiff's Motion for a New Trial. A hearing was held on this motion on December 21, 2010. After reviewing the parties' respective briefs, hearing arguments of counsel, and otherwise being fully informed of the issues presented therein,

It is the ORDER of this Court that Plaintiff's Motion for a New Trial is DENIED.

The Clerk is directed to send certified copies of this Order to all counsel of record and any unrepresented parties addressed as follows:

Robert F. Dalcy
Aaron Rihn
ROBERT PEIRCE & ASSOC., P.C.
2500 Gulf Tower
707 Grant Street
Pittsburg, PA 15219

Melissa Foster Bird
Jeremy C. Hodges
NELSON MULLINS RILEY &
SCARBOROUGH, LLP
949 Third Avenue / Suite 200
Huntington, W.V. 25701

Entered this 31st day of January, 2011



Judge David Pancake

PREPARED BY:

STATE OF WEST VIRGINIA
COUNTY OF CABELL
I, ADELL CHANDLER, CLERK OF THE CIRCUIT
COURT FOR THIS COUNTY AND STATE AFORESAID
DO HEREBY CERTIFY THAT THE FOREGOING IS
A TRUE COPY FROM THE RECORDS OF SAID COURT
ENTERED ON 1/31/11
GIVEN UNDER MY HAND AND SEAL OF SAID COURT
THIS 31st day of January, 2011
 ADELL CHANDLER
CLERK
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA

ENTERED Circuit Court Civil Order Book

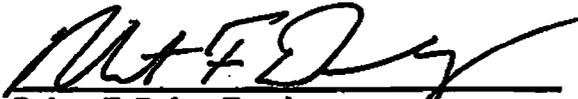
Page _____ this



Melissa Foster Bird (WV Bar No.: 6588)
Jeremy C. Hodges (WV Bar No.: 11424)
Nelson Mullins Riley & Scarborough LLP
949 Third Avenue, Suite 200
Huntington, WV 25701
(304) 526-3500

**Counsel for Defendant,
CSX Transportation, Inc.**

APPROVED BY:



Robert F. Daley, Esquire
WV I.D. No.: 7929
ROBERT PEIRCE & ASSOC., P.C.
2500 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1912

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF APPEAL was served by overnight delivery, this 1st day of March, 2011, upon the following parties:

Rory Perry, II, Clerk
West Virginia Supreme Court of Appeals
1900 Kanawha Boulevard
E-317, Main Building 1
East Wing, Capitol Complex
Charleston, WV 25305-0831

Adell Chandler, Clerk of Courts
Circuit Court of Cabell County, West Virginia
Cabell County Courthouse
750 Fifth Avenue, Room 114
Huntington, WV 25701

Melissa G. Foster-Bird, Esquire
Nelson Mullins Riley & Scarborough, LLP
949 Third Ave., Suite 200
Huntington, WV 25701

Marcia Dudley
Room 214
750 Fifth Avenue
Huntington, WV 25701

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
ROBERT F. DALEY, ESQUIRE
WV I.D. No.: 7929
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219