

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SEMINOLE COAL RESOURCES, LLC,

Plaintiff,

v.

CSX TRANSPORTATION, INC. and
SPERRY RAIL, INC.

Defendants.

Civil Action No. 16-C-1026

**DEFENDANT CSX TRANSPORTATION, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT**

Defendant, CSX Transportation, Inc. ("CSXT") hereby provides its Answer and Defenses to Plaintiff's Amended Complaint (the "Complaint").

PARTIES AND JURISDICTION

1. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1, and therefore denies the same.

2. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 2, and therefore denies the same.

3. CSXT admits that it is a Virginia corporation with its principal place of business in Jacksonville, Florida. CSXT further admits that it is a subsidiary of CSX Corporation and that CSX Corporation is a publicly traded company on the New York Stock Exchange. CSXT also admits that CSXT operates a railroad in the eastern United States with a rail network of approximately 21,000 miles serving customers in 23 states, including the State of West Virginia.

4. CSXT admits that CSXT contracts with Sperry Rail, Inc. to conduct certain rail testing. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 4, and therefore denies the same.

5. CSXT admits that this Court has venue and jurisdiction over this action as it pertains to CSXT. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5 as they pertain to Sperry Rail, Inc.

6. The allegations in Paragraph 6 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies the same.

STATEMENT OF FACTS

7. CSXT admits that a CSXT train comprised of 110 tanker cars en route from North Dakota to Virginia derailed on February 16, 2015 in or near Mount Carbon in Fayette County, West Virginia and that some of the derailed cars carried crude oil. Except as specifically admitted herein, CSXT denies the allegations in Paragraph 7.

8. CSXT admits that the derailment occurred on tracks owned by CSXT. CSXT denies the remaining allegations in Paragraph 8.

9. CSXT admits that Sperry was engaged by CSXT to conduct rail testing. Except as specifically admitted herein, CSXT denies the allegations contained in Paragraph 9.

10. CSXT admits that Sperry was engaged by CSXT to conduct rail testing and that CSXT relies on Sperry to report any detected flaws to CSXT so that CSXT may take appropriate action. The remaining allegations in Paragraph 10 constitute conclusions of law to which no

response is required of CSXT. To the extent a response is required, CSXT denies the remaining allegations in Paragraph 10.

11. CSXT admits that Sperry conducted an inspection of certain track owned by CSXT on or about December 17, 2014, including the section of track that would later become the site of the February 16, 2015 derailment.

12. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies the same.

13. CSXT admits that CSXT received a report from Sperry concerning its inspection of CSXT track on or about December 17, 2014. CSXT denies that it received notice or knowledge of any flaw or defect identified by Sperry during this inspection. The remaining allegations in Paragraph 13 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT denies the remaining allegations in Paragraph 13.

14. CSXT denies that it received notice or knowledge of any flaw or defect allegedly identified by Sperry during its December 2014 inspection of the track on which the derailment later occurred. The remaining allegations in Paragraph 14 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT denies the remaining allegations in Paragraph 14.

15. CSXT admits that Sperry conducted an inspection of certain track owned by CSXT on or about January 12, 2015, including the section of track that would later become the site of the February 16, 2015 derailment.

16. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 16, and therefore denies the same.

17. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17, and therefore denies the same.

18. CSXT admits that CSXT received a report from Sperry concerning its inspection of CSXT track on or about January 12, 2015. CSXT denies that it received notice or knowledge of any flaw or defect allegedly identified by Sperry during this inspection. The remaining allegations in Paragraph 18 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT denies the remaining allegations in Paragraph 18.

19. CSXT denies that it received notice or knowledge of any flaw or defect allegedly identified by Sperry during its January 2015 inspection of the track on which the derailment later occurred. The remaining allegations in Paragraph 19 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT denies the remaining allegations in Paragraph 19.

20. The allegations in Paragraph 20 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT admits that under certain conditions, a vertical split head defect can cause a rail to break. Except as specifically admitted, CSXT denies the allegations in Paragraph 20.

21. CSXT denies the allegations in Paragraph 21.

22. CSXT admits that the Federal Railroad Administration ("FRA") conducted an investigation into the cause of the derailment.

23. CSXT admits the allegations in Paragraph 23.

24. CSXT states that the FRA's October 9, 2015 Accident Findings Report speaks for itself and denies plaintiffs' characterization of that Report. CSXT otherwise denies the

allegations in Paragraph 24, and specifically denies that the FRA's October 9, 2015 Report is admissible in this civil action for any purpose.

25. CSXT admits that some derailed rail cars released some or all of their contents, that some of the derailed cars carried crude oil, and that a fire and evacuation occurred and water service was interrupted for some communities near the site of the derailment. CSXT denies the remaining allegations in Paragraph 25.

26. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 26, and therefore denies the same.

27. Upon information and belief, CSXT admits that Governor Tomblin declared a state of emergency for Kanawha and Fayette counties following the derailment.

28. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 28, and therefore denies the same.

29. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 29, and therefore denies the same.

30. CSXT states that it established a community outreach center and claims payment process following the derailment; that CSXT paid some claims for lost wage by impacted people unable to work because of the derailment, and that those payments included, but were not limited to, some people who worked for Walter Energy; and that CSXT engaged PriceWaterhouse Coopers ("PWC") to work with CSXT and Walter Energy in an attempt to resolve claims for business interruption arising from the derailment. Except as specifically admitted herein, CSXT denies the allegations in Paragraph 30.

31. Upon information and belief, CSXT states that it had no discussions with Maple Coal Company or Atlantic Leasco with respect to their asserted business interruption claims.

CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 31, and therefore denies the same.

32. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 32, and therefore denies the same.

33. CSXT states that it engaged PWC to work with CSXT and Walter Energy as they attempted to resolve claims for business interruption arising from the derailment. Except as specifically admitted herein, CSXT denies the allegations in Paragraph 33.

34. CSXT states that it offered to resolve the business loss claims asserted by Walter Energy, and that its offer was not accepted. Except as specifically admitted herein, CSXT denies the allegations in Paragraph 34. Pursuant to Federal Rule of Evidence 408, CSXT further denies that the parties' pre-suit negotiations are admissible in this action as evidence of the validity or amount of the plaintiff's claim.

COUNT I - NEGLIGENCE

35. CSXT repeats and incorporates herein by this reference its responses set forth above as if fully set forth herein.

36. The allegations in Paragraph 36 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT denies the allegations in Paragraph 36.

37. The allegations in Paragraph 37 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT denies the allegations in Paragraph 37.

38. CSXT denies the allegations in Paragraph 38.

39. CSXT denies the allegations in Paragraph 39.

COUNT II – PRIVATE NUISANCE

40. CSXT repeats and incorporates herein by this reference its responses set forth above as if fully set forth herein.

41. The allegations in Paragraph 41 constitute conclusions of law to which no response is required of CSXT. To the extent a response is required, CSXT denies the allegations in Paragraph 41.

42. CSXT denies the allegations in Paragraph 42.

COUNT III – ESTOPPEL - CSXT

43. CSXT repeats and incorporates herein by this reference its responses set forth above as if fully set forth herein.

44. CSXT states that CSXT was contacted after the derailment by representatives of Walter Energy and that these representatives asserted to CSXT that their business had been disrupted as a result of the derailment. CSXT denies the remaining allegations contained therein

45. CSXT states that it paid some claims for lost wage by impacted people unable to work because of the derailment, and that those payments included, but were not limited to, some people who worked for Walter Energy. CSXT also states that Walter Energy provided certain information concerning its alleged business interruption claims to PWC, as requested by CSXT. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 45, and therefore denies the same.

46. CSXT lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46, and therefore denies the same.

47. CSXT denies the allegations in Paragraph 47. CSXT states that it complied with its stated effort to come to a mutually agreeable resolution, and states that plaintiff or its predecessors failed to engage in reasonable discussions.

48. CSXT denies the allegations in Paragraph 48.

SEPARATE AND AFFIRMATIVE DEFENSES

CSXT alleges and asserts the following separate affirmative defenses in response to the allegations in the complaint:

1. CSXT denies each and every paragraph, averment, item and matter set forth in the Complaint which has not been specifically admitted.
2. Plaintiff lacks standing to the extent plaintiff does not own or have the legal right to assert the claims asserted in the complaint.
3. Some or all causes of action of the Complaint are barred by the economic loss doctrine.
4. Some or all causes of action of the Complaint are preempted by federal law.
5. Some or all of plaintiff's claims are or may be barred, extinguished, or the relief they seek limited because the damages or injuries alleged are the result of pre-existing, intervening or superseding causes, or other acts beyond CSXT's control.
6. To the extent plaintiff failed to mitigate, minimize or avoid alleged damages or losses, any recovery must be reduced by corresponding sums.
7. Some or all of plaintiff's claims are or may be barred or the relief it seeks limited to the extent damages or injuries alleged are caused by the negligence, fault, or want of care of the plaintiff and/or third parties beyond CSXT's control. Although CSXT is presently unable to

specifically identify such non-parties, to the extent it does so through discovery and other investigation, CSXT will move to amend its Answer accordingly.

8. Some or all of plaintiff's claims are or may be barred by the equitable doctrines of estoppel, waiver, and/or related equitable doctrines.

9. At all times alleged in the plaintiff's Complaint, plaintiff's negligence may have caused or contributed to the injuries and/or damages alleged, and if not the sole cause of plaintiff's injuries and/or damages, such negligence may have been a contributing factor to those injuries and/or damages and CSXT asks that the Court compare and quantify any negligence of the plaintiffs and/or its assignees to that of all other parties to this action. If that negligence is more than the combined negligence of all other parties to this action, the plaintiff is barred from any recovery herein.

10. To the extent plaintiff's Complaint asserts that plaintiff is entitled to recover punitive or exemplary damages, CSXT asserts the following defenses:

(a) Plaintiff's claims for punitive damages violate, and are therefore barred by, the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America on grounds including the following:

(i) It is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(ii) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for

different alleged acts of wrongdoing, which infringes upon the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(iii) The procedures to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(iv) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(v) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

(vi) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes upon the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amended of the United States Constitution;

(vii) The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution;

(viii) The award of punitive damages to the plaintiff in this action would constitute a deprivation of property without due process of law; and

(ix) The procedures pursuant to which punitive damages are awarded permit the

imposition of an excessive fine and penalty.

(b) Plaintiff's claims for punitive damages violate and are therefore barred by the provision of the Constitution of the State of West Virginia, including, but not limited to, Article III, Sections 4, 5, 6 and 10, on grounds including the following:

(i) it is a violation of the Due Process and Equal Protection Clauses to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(ii) the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;

(iii) the procedures to which punitive damages are awarded fail to provide a limit on the amount of the award against defendant;

(iv) the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages;

(v) the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;

(vi) the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct;

(vii) the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;

(viii) the award of punitive damages to the plaintiff in this action would

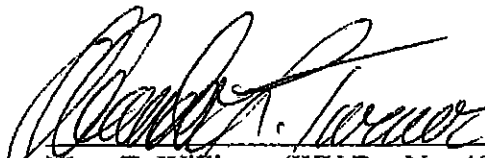
constitute a deprivation of property without due process of law; and

(ix) the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

11. CSXT reserves the right to assert any and all additional affirmative defenses it deems necessary to its defense, during, or upon the conclusion of, investigation and discovery.

JURY TRIAL DEMANDED

CSXT demands a jury trial on all issues so triable.

 (WVSB# 10839)

Marc E. Williams (WV Bar No. 4062)

& Robert L. Massie (WV Bar No. 5743)

Melissa Foster Bird (WV Bar No. 6588)

NELSON MULLINS RILEY & SCARBOROUGH LLP

949 Third Avenue, Suite 200

Huntington, WV 25701

Phone: 304.526.3501

Fax: 304.526.3541

Email: marc.williams@nelsonmullins.com

Email: bob.massie@nelsonmullins.com

Email: melissa.fosterbird@nelsonmullins.com

Counsel for CSX Transportation, Inc.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SEMINOLE COAL RESOURCES, LLC,

Plaintiff,

v.

CSX TRANSPORTATION, INC. and
SPERRY RAIL, INC.

Defendants.

Civil Action No. 16-C-1026

CERTIFICATE OF SERVICE

This undersigned attorney hereby certifies that a true and correct copy of the foregoing "*CSX Transportation Inc.'s Answer and Affirmative Defenses To Plaintiff's Amended Complaint*" has been served upon the following individuals listed below on the 26th day of September, 2016, via United States mail, postage prepaid.

Shawn P. George, Esq.
GEORGE & LORENSEN PLLC
1526 Kanawha Blvd., East
Charleston, WV 25311
Counsel for Plaintiff

John R. Hoblitzell, Esq.
John D. Hoblitzell, Esq.
KAY CASTO & CHANEY PPLC
P.O. Box 2031
Charleston, WV 25327-2031
Counsel for Defendant Sperry Rail Services, Inc.

