

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MAPLE COAL COMPANY, a Delaware corporation,

Plaintiff,

v.

Civil Action No. **16C-1026**

**CSX TRANSPORTATION, INC., a Virginia
Corporation and SPERRY RAIL, INC. a
Delaware Corporation.**

Defendants.

COMPLAINT

Plaintiff, Maple Coal Company, by counsel, files this Complaint against Defendants CSX Transportation, Inc., a Virginia corporation, and Sperry Rail, Inc., a Delaware corporation, as follows:

PARTIES AND JURISDICTION

1. Maple Coal Company ("Maple") is a Delaware corporation with its principal place of business in West Virginia. At all relevant times, Maple has been in the business of coal mining.

2. Defendant CSX Transportation, Inc. ("CSXT") is a Virginia corporation with its principal place of business in Jacksonville, Florida. CSXT provides rail transportation services in West Virginia, including Kanawha County, West Virginia. CSXT is a wholly owned operating subsidiary of CSX, a New York Stock Exchange traded company.

3. Sperry Rail, Inc. ("Sperry") is a Delaware corporation, which is qualified to do and which does business in West Virginia. Sperry, by contract with CSXT, provides rail inspection and examination services, including in Kanawha County, West Virginia.

4. Venue and jurisdiction are proper because CSXT and Sperry at all relevant times conducted business in Kanawha County, West Virginia.

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5. Subject matter jurisdiction is proper because Plaintiff claims arise exclusively under West Virginia state common, case and statutory law and result directly from CSXT's and Sperry's acts and failures to act which caused Plaintiff substantial property damage and resultant economic harm in West Virginia. Plaintiff seeks no relief under any federal laws or regulations, assert no federal claims, and expressly disclaim any state law claim that is preempted by federal law.

STATEMENT OF FACTS

6. On February 16, 2015, a CSXT train with two engines and 109 rail tank cars filled with several hundred thousand gallons of highly flammable Bakken crude oil in transit from North Dakota to Yorktown, Virginia derailed in Mount Carbon, Fayette County, West Virginia.

7. CSXT directly, or by or through its corporate parent, CSX Corporation, owned, leased operated and/or controlled the rails where the derailment occurred.

8. Prior to the derailment, CSXT had hired and contracted with Sperry to conduct rail inspections, and where warranted by digital readings, or other information produced or made available during or after these inspections, to perform physical ground examinations and hand testing of CSXT's rails, including the rails at the derailment location at the time of the derailment.

9. One of the purposes of Sperry's work was to detect flaws in the rails and to advise CSXT thereof, or to make the information available to CSXT, so that those rails with flaws or defects could be further inspected, tested, monitored, repaired and/or replaced as necessary to avoid derailments and the consequences thereof. CSXT and Sperry each understood at all times relevant, that Sperry's work, if negligently or defectively performed, could foreseeably result in derailment and catastrophic damage and loss to third persons, including Plaintiff.

10. On or about December 17, 2014, Sperry conducted an inspection of the CSXT rails, including those at the point of derailment.

11. In the course of this inspection, the Sperry operator detected a condition or defect known as a "Vertical Split Head" ("VSH") in a rail located where the derailment would later occur. A VSH is a potentially dangerous condition that can lead to rail failure and derailment. The Sperry operator did not visually inspect, examine, test, nor recommend that anyone else visually, inspect, examine, or test this rail after detecting the VSH as required by company rule, applicable regulation, industry practice and reasonable prudence.

12. CSXT received, could have received or should have requested access to and actual or constructive notice and knowledge of the results of this Sperry rail inspection. CSXT had a duty to know the results of these important tests to undertake corrective measures and to avoid derailments and imminent danger to others, including Plaintiff.

13. CSXT did not perform, require or direct its employees, Sperry, or anyone else to perform any visual examination, hand testing or any other diagnostic procedure to confirm and/or evaluate the nature and extent of the VSH, or to remove and replace the defective rail, as required by company rule, applicable regulation, industry practice and reasonable prudence.

14. On or about January 12, 2015, a Sperry operator conducted another inspection of the CSXT rails, including those at the point of derailment.

15. In the course of this inspection, the Sperry operator detected a more significant VSH at the same location as the previous Sperry operator detected a VSH in the inspection of December 17, 2014.

16. The Sperry operator failed to conduct any visual examination of the VSH location and rail, or hand tests to confirm the flaw, as required by company rule, applicable regulation, industry practice and reasonable prudence.

17. CSXT received, could have received or should have requested access to and actual or constructive notice and knowledge of the results of this Sperry rail inspection. CSXT had a duty to know the results of these important tests to avoid derailments and imminent danger to others, including Plaintiff.

18. CSXT did not perform, require or direct its employees, Sperry, or anyone else to perform any visual examination, hand testing or any other diagnostic procedure to confirm the nature and extent of the VSH, or to remove and replace the defective rail, as required by company rule, applicable regulation, industry practice, or reasonable prudence.

19. Before the accident, it was well known, accepted and foreseeable by CSXT and Sperry that a VSH in a rail could cause a derailment and catastrophic loss and damages including to third parties such as Plaintiff.

20. Sperry's work, as described herein, was inherently and intrinsically dangerous and so defective due to Sperry's negligence, that it caused an imminent danger to third persons, including Plaintiff.

21. The Federal Railway Administration ("FRA") conducted an extensive investigation into the cause of the derailment.

22. On October 9, 2015, the FRA issued its report and findings regarding the cause of the derailment.

23. The FRA concluded, inter alia, that the derailment was preventable, but occurred as a direct result of the failure of CSXT and Sperry to train properly the operators; for the operator's

and CSXT's failures to perform the required visual ground and hand inspections after knowledge of the VSHs through digital rail flaw test data obtained during the inspections, or to follow up on that data and replace the defective rails.

24. CSXT's and Sperry's conduct was willful, wanton and malicious and/or reckless and/or so grossly negligent as to entitle Plaintiff to an award of punitive damages. As a direct result of the derailment, 14 to 17 rail tank cars spilling hundreds of thousands of gallons of highly flammable, hazardous and toxic Bakken crude oil onto the ground and into the Kanawha River, resulting in explosions, fires, interruption of necessary utilities and services, including water and emergency services, and the closure of roads, which lasted for several days.

25. As a direct result of the derailment and spill and its aftermath, several businesses, including Plaintiff, suffered property damage and were without necessary access, services, including water and emergency services and were forced to close.

26. As a further result of the derailment and spill, Governor Tomblin declared a state of emergency.

27. As a direct and proximate result of the derailment and spill, the public highways and roads servicing Plaintiff's location were closed.

28. As a result of these mandatory road closures and other factors related to the derailment, Plaintiff was forced to shut down its operations for several days. Each could not operate safely. Each lacked the necessary water and required access for ambulance, emergency and fire personnel, which must be available to Plaintiff's location at all times it operates. The derailment and cessation of business also caused substantial property damage to Plaintiff's structures, equipment and operations resulting in substantial economic loss and damages.

29. Within forty eight (48) hours after the derailment, CSXT knew that Plaintiff has closed its businesses and operations temporarily due to the derailment and its aftermath. CSXT acknowledged to Plaintiff's representatives CSXT's responsibility for the derailment and closure. CSXT began to process and to pay lost wage and benefit claims of Plaintiff's hourly employees as a result of their inability to work because of the derailment and closure. CSXT paid all of these lost wages and benefits, without any suggestion that they were not due, owing, or properly the responsibility of CSXT to pay as a result of the derailment. CSXT promised to quickly, efficiently, promptly and fairly compensate Plaintiff fully for its losses and damages. CSXT directed Plaintiff to work with Price Waterhouse Coopers ("PWC"), which was CSXT's accounting experts, agents and representatives working on the resolution of business property damage and interruption claims from the derailment.

30. CSXT made no mention of Sperry and Plaintiff was then not advised of any role Sperry had played in the negligent and defective rail inspections as set forth herein.

31. As a direct result of the derailment, and in spite of the closure, Plaintiff continued to incur and could not avoid incurring on-going costs and expenses, without the ability to generate any revenue. Many of Plaintiff's salaried employees were required to continue working, but not on their customary tasks. Instead, they did hourly operations related work and attempted to avoid mitigate and prevent further property damage from freezing water, pipes and equipment. They were not successful in preventing additional property damage from the derailment and resultant closure. Plaintiff was also unable to fill an order for coal at an above market price, which Plaintiff then had available for shipment, but could not ship due to the derailment and closure. When Plaintiff was able and permitted to re-open its operations and business, the order was no longer available. Plaintiff lost and could not replace that or other losses from not operating.

32. Beginning in February 2015, and for months after the derailment, CSXT, through its authorized consultant and representative, PWC and senior managers of Plaintiff exchanged information and documents so that CSXT could pay Plaintiff its losses and damages from the derailment, which CSXT acknowledged it owed and had a responsibility to pay.

33. Notwithstanding Plaintiff supplying to CSXT, through PWC, all the information and documents PWC requested of Plaintiff regarding its cost, expenses, losses and damages from the derailment and the acknowledgement of PWC that Plaintiff had suffered and incurred the losses submitted, as well as additional business interruption losses not submitted and confirmation that PWC needed no further information or documents for CSXT to pay Plaintiff its damages and losses, CSXT failed and refused to pay Plaintiff its damages and losses. Instead, CSXT offered Plaintiff less than Fifty Cents (\$.50) on the dollar as payment for these losses and damages.

COUNT I - NEGLIGENCE

34. Plaintiff repeats and realleges all the prior paragraphs of the Complaint as if fully set forth herein.

35. At all relevant times, CSXT had a duty to exercise reasonable care in the operation, inspection, monitoring, maintenance, repair and replacement of the rails and cars used to transport highly flammable, toxic Bakken crude oil and Sperry had a duty to exercise reasonable care in the inspection and monitoring of these rails and the training of its personnel to perform proper inspections and all necessary work to avoid rail failure and catastrophic loss.

36. CSXT and Sperry knew or in the exercise of reasonable care should have known, among other things, that the breach of these and related duties and the failure properly to operate, inspect, monitor, maintain, repair or replace the rails, which failed and caused the derailment, or the rail cars, could cause a derailment and catastrophic damage to residents and

businesses in proximity to the rails.

37. CSXT and Sperry failed to take reasonable measures and to exercise due care to meet these obligations or to train adequately their personnel to perform their respective duties, or to have or to enforce adequate rules, policies or procedures for the performance of these duties to prevent the foreseeable and unreasonable risks of harm and actual harm and damage from a derailment. Plaintiff suffered property loss, injury, damage and economic loss as a direct and proximate result of the derailment and CSXT and Sperry's breach of these duties of care and negligence.

38. Each Defendant had a duty to warn Plaintiff and others that each Defendant had failed to meet its duties, which arise from common law, statutory rules, codes, and regulations, industry custom and practice and reasonable prudence. Each Defendant breached this duty. The breach was willful, wanton, reckless and/or grossly negligent, in conscious disregard of the potential for harm to others, which in fact occurred. Plaintiff suffered damages proximately by each Defendant's breach of duties. Plaintiff was foreseeable victims of these acts, breaches and omissions and sustained foreseeable damages from the acts and omissions of each Defendant.

COUNT II – PRIVATE NUISANCE

39. Plaintiff repeats and realleges all the prior paragraphs of the Complaint as if fully set forth herein.

40. Plaintiff is entitled to the reasonable use and enjoyment of its property without interference, annoyance and/or disturbance of its ordinary use.

41. Defendants' acts and failures to act as alleged, proximately caused or contributed to the derailment and its aftermath, which improperly interfered with Plaintiff's operation of its lawful

businesses and caused damage to Plaintiff for which each Defendant is liable.

COUNT III- ESTOPPEL-CSXT

42. Plaintiff repeats and realleges all the prior paragraphs of the Complaint as if fully set forth herein.

43. Immediately after the catastrophic derailment, Plaintiff representatives contacted CSXT to advise of the closure of Plaintiff's businesses and operations due to the derailment, road closures and associated factors.

44. In reliance on CSXT's representations and actions including, in February, 2015, CSXT paid Plaintiff's hourly employees their lost wages and Plaintiff began communications with and supplied information to PWC, as directed by CSXT. This process continued for several months. Finally, after multiple joint telephone conferences and written submissions, complete with spreadsheets and supporting data, PWC confirmed it had all the information it had requested and needed from Plaintiff; understood Plaintiff's damage claims and the basis therefor; and that PWC would recommend that CSXT pay these amounts promptly to resolve, pay and settle Plaintiff's claims.

45. From inception of this process, Plaintiff made it clear to PWC and CSXT that Plaintiff was not then seeking to recover every dollar lost, nor looking to negotiate their damage claims, provided the payment of Plaintiff's damages was prompt and fair. Plaintiff was simply looking to be compensated quickly for the majority of its demonstrated losses and damages from the derailment. PWC and CSXT acknowledged, encouraged and agreed to this approach and CSXT said it sought a prompt, full and fair resolution of the claims.

46. Contrary to PWC's and CSXT's representations to Plaintiff, CSXT failed and refused to perform as represented and has failed and refused to offer to pay Plaintiff even half of its demonstrated losses from the derailment.

47. As a direct and proximate result thereof, CSXT is estopped to deny its liability to Plaintiff and responsibility to pay Plaintiff all property damages and losses suffered by Plaintiff, together with pre-judgment and post judgment interest, attorney's fees costs and expenses as determined by the jury or court.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a jury trial and judgment against Defendants as follows:

1) Compensatory damages, punitive damages, reasonable attorneys' fees, filing fees, and other reasonable costs and expenses of this action; 2) Prejudgment and post-judgment interest; and 3) Any other and further relief as this Court deems just and proper

MAPLE COAL COMPANY
By Counsel



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CERTIFICATE OF SERVICE

I, Shawn P. George, do hereby certify that I served Plaintiff's Complaint,
Interrogatories, Request for Production of Documents and Requests for Admission to
CSX Transportation, Inc. and Sperry Rail, Inc. on counsel of record this 6th day of July,
2016, by depositing a true and exact copy thereof in the U.S. mail, postage prepaid, as
follows:

Marc E. Williams, Esquire
Nelson Mullins
949 Third Ave., Suite 200
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Defendant, CSX Transportation, Inc.

John D. Hoblitzell, III, Esquire
John R. Hoblitzell, Esquire
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