

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SEMINOLE COAL RESOURCES, LLC,
A Delaware Limited Liability Company,

Plaintiff(s),

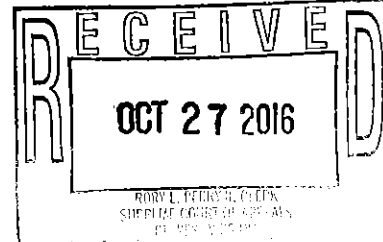
vs.

Kanawha County Circuit Court
Civil Action No. 16-C-1026

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

Defendant(s).

TO: THE HONORABLE CHIEF JUSTICE



MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Defendants, CSX Transportation, Inc., ("CSXT") by counsel Marc E. Williams, Robert L. Massie, and the law firm of Nelson, Mullins, Riley & Scarborough, LLP, and Sperry Rail, Inc., ("Sperry") by counsel, John R. Hoblitzell, John D. Hoblitzell, III, and Kay Casto & Chaney, PLLC, respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

- ☒ There are no known related actions.
- ☐ The following related actions could be the subject of consolidation, and are
 - ☐ now pending
 - or
 - ☐ may be filed in the future. (Please list case style, number, and Court if any)

Note: There are claims by individual property owners resulting from the February 16, 2015 derailment at issue currently pending before the United States District Court for the Southern District of West Virginia, at Huntington. *See* Case No. 3:15-cv-13328. However, these cases are not subject to consolidation with this case in that they are pending in federal court and are not disputes between business entities.

This action involves: (Please check all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Breach of Contract; | <input type="checkbox"/> Sale or Purchase of Commercial Products |
| <input type="checkbox"/> Sale or Purchase of Commercial Entity; | Covered by the Uniform Commercial Code; |
| <input type="checkbox"/> Sale or Purchase of Commercial Real Estate; | <input type="checkbox"/> Terms of a Commercial Lease; |

- | | |
|---|---|
| <input type="checkbox"/> Commercial Non-consumer debts; | <input type="checkbox"/> Injunctive and Declaratory Relief Between Commercial Entities; |
| <input type="checkbox"/> Internal Affairs of a Commercial Entity; | <input type="checkbox"/> Liability of Shareholders, Directors, Officers, Partners, etc.; |
| <input type="checkbox"/> Trade Secrets and Trademark Infringement; | <input type="checkbox"/> Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest; |
| <input type="checkbox"/> Non-compete Agreements; | <input type="checkbox"/> Shareholders Derivative Claims; |
| <input type="checkbox"/> Intellectual Property, Securities, Technology Disputes; | <input type="checkbox"/> Commercial Bank Transactions; |
| <input checked="" type="checkbox"/> Commercial Torts; | <input type="checkbox"/> Franchisees/Franchisors; |
| <input type="checkbox"/> Insurance Coverage Disputes in Commercial Insurance Policies; | <input type="checkbox"/> Internet, Electronic Commerce and Biotechnology |
| <input checked="" type="checkbox"/> Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity; | <input checked="" type="checkbox"/> Disputes involving Commercial Entities; or |
| <input type="checkbox"/> Anti-trust Actions between Commercial Entities; | <input type="checkbox"/> Other (Describe) _____ |

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: **On February 16, 2015, a CSXT unit train transporting crude oil derailed near the community of Mount Carbon, West Virginia. The derailment resulted in the closure of roads in the area and the loss of power and water for a short period of time. Defendant Sperry Rail, Inc. is a contractor of CSXT that provides non-destructive testing of rail to search for internal rail flaws utilizing sophisticated, patented ultrasonic and induction technologies. Seminole Coal Resources, LLC is the alleged purchaser in bankruptcy of claims held by two former entities that conducted coal mining operations allegedly impacted by the derailment.**

This matter concerns claims by Seminole Coal Resources, LLC, for recovery of damages allegedly sustained by Maple Coal Company, LLC and Atlantic Leasco, LLC as a result of the February 16, 2015 derailment. Seminole Coal Resources alleges it purchased these claims as part of its purchase of certain non-core assets of Walter Energy, including the assets of Maple Coal Company, LLC and Atlantic Leasco, LLC, out of Walter Energy and its subsidiaries' consolidated bankruptcy proceedings, which is pending in the U.S. Bankruptcy Court for the Northern District of Alabama. Generally, the claims seek recovery for business interruption damages, including a lost shipment of coal, employee wages, and some alleged property damage to a coal preparation facility believed to be owned and/or operated by Maple Coal Company, LLC. These claims present particularized issues with respect to ownership of the claims and damages, including the valuation of damages allegedly sustained by a loss of and/or delay in the shipment of coal. All parties to this case are business entities and will benefit from the specialized knowledge and

treatment that this Division can bring to commercial tort claims, and in particular claims involving complex issues of valuation of business interruption damages.

Moreover, with regard to Sperry Rail, Inc., this matter concerns claims of professional negligence in connection with its rendering of professional services to CSXT, a commercial entity. This issue will be decided in the context of interstate rail transport, which is highly regulated by the federal government, whose regulations preempt claims based on alleged violations of common and/or state law standards of care. Additionally, the services Sperry renders are highly technical and unique and involve issues of interpretation of complex, proprietary systems and technology for which specialized treatment will be helpful.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents: 1) Complaint of Maple Coal Company; 2) Motion to Dismiss of Sperry Rail, Inc.¹; 3) Amended Complaint of Seminole Coal Resources, LLC; and 4) Answers of Sperry Rail, Inc., and CSXT to Amended Complaint.

In regard to expedited review, the Movant:

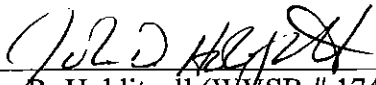
- ☒ DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.
- ☐ hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: _____

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

¹ Due to their volume, the exhibits to Sperry Rail, Inc.'s Motion to Dismiss have been omitted.

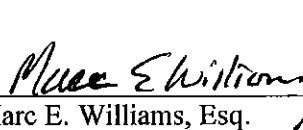
Respectfully submitted this 27th day of October, 2016.

**Sperry Rail, Inc.,
By Counsel,**



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John D. Hoblitzell III (WV SB # 9346)
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CERTIFICATE OF SERVICE

I, John R. Hoblitzell/John D. Hoblitzell, II, do hereby certify that on this 27th day of October, 2016, I have served the foregoing "Motion to Refer Case to Business Court Division," with attachments by either hand delivery or first class mail to:

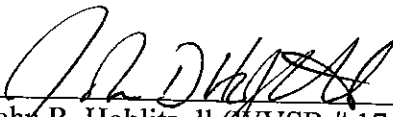
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The Hon. James C. Stucky
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