

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**SEMINOLE COAL RESOURCES, LLC,
a Delaware Limited Liability Company,**

Plaintiff,

v.

**Civil Action No. 16-C-1026
(Judge James C. Stucky)**

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

Defendants.

ANSWER OF SPERRY RAIL, INC.

Now comes the Defendant, Sperry Rail, Inc., by counsel, and files this Answer to the Amended Complaint of Seminole Coal Resources, LLC, against Defendants CSX Transportation, Inc. a Virginia corporation, and Sperry Rail, Inc., a Delaware corporation, as follows:

PARTIES AND JURISDICTION

1. In response to Paragraph 1 of the Amended Complaint, Sperry Rail, Inc. ("Sperry") admits that, according to available public filings, Seminole Coal Resources, LLC ("Seminole") is a Delaware LLC with its principal office address outside of West Virginia. Sperry lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 as to the location of Seminole's principal place of business, and, therefore, denies the same and demands strict proof thereof.

2. In response to Paragraph 2 of the Amended Complaint, Sperry admits that upon information and belief, Seminole acquired some of the assets of Maple Coal Company ("Maple")

and Atlantic Leaseco ("Atlantic"), but lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with regard to the assignment of the rights to assert the instant claims, and, therefore, denies the same and demands strict proof thereof.

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

4. Sperry admits that it is a Delaware corporation which does business in West Virginia and that Sperry, by contract with CSXT, provides certain non-destructive rail inspection services to CSXT, including in Kanawha County, West Virginia.

5. Sperry admits venue and jurisdiction are proper in Kanawha County, West Virginia.

6. In response to Paragraph 6 of the Amended Complaint, Sperry denies that the allegations in the Amended Complaint arise exclusively under State law, that State law defines the applicable standard of care, that any State law claims are not preempted by federal law, and that Sperry's acts or failures to act caused Plaintiff's alleged damage.

STATEMENT OF FACTS

7. In response to Paragraph 7 of the Amended Complaint, Sperry admits that on February 16, 2015, a CSXT train with two engines and 109 rail tank cars derailed in Mount Carbon, Fayette County, West Virginia.

8. In response to Paragraph 8 of the Amended Complaint, Sperry admits, upon information and belief, that CSXT owned and operated the railroad tracks where the Mount Carbon derailment occurred.

9. In response to Paragraph 9 of the Amended Complaint, Sperry admits that prior to the Mount Carbon derailment, CSXT contracted with Sperry to conduct non-destructive rail inspections employing ultrasonic and induction technologies and that Sperry conducted inspections of the CSXT tracks, including at various times the rails at the derailment location, pursuant to its contract with CSXT. Sperry denies the remaining allegations as stated in Paragraph 9 of the Amended Complaint.

10. In response to Paragraph 10 of the Amended Complaint, Sperry admits the purpose of Sperry's work was to detect internal flaws in the rails and to advise CSXT thereof. Sperry denies the remaining allegations as stated in Paragraph 10 of the Amended Complaint.

11. In response to Paragraph 11 of the Amended Complaint, Sperry admits that on December 17, 2014, Sperry conducted an inspection of the CSXT New River Subdivision Main 2 track at Mount Carbon in the area of the area of the February 16, 2015, derailment.

12. Sperry denies the allegations as stated in Paragraph 12 of the Amended Complaint.

13. Sperry denies the allegations as stated in Paragraph 13 of the Amended Complaint as stated. Sperry admits that CSXT did receive reports of the results of its inspections conducted on CSXT rails.

14. Sperry denies the allegations in Paragraph 14 of the Amended Complaint as stated as they pertain to Sperry. Sperry lacks knowledge or information sufficient to form a

belief as to the remainder of the allegations contained therein to the extent they pertain to individuals or entities other than Sperry.

15. In response to Paragraph 15 of the Amended Complaint, Sperry admits that on January 12, 2015, Sperry conducted an inspection of the CSXT New River Subdivision Main 2 track at Mount Carbon in the area of the February 16, 2015, derailment.

16. Sperry denies the allegations as stated in Paragraph 16 of the Amended Complaint.

17. Sperry denies the allegations as stated in Paragraph 17 of the Amended Complaint.

18. Sperry denies the allegations as stated in Paragraph 18 of the Amended Complaint as stated. Sperry admits that CSXT did receive reports of the results of its inspections conducted on CSXT rails.

19. Sperry denies the allegations in Paragraph 19 of the Amended Complaint as stated as they pertain to Sperry. Sperry lacks knowledge or information sufficient to form a belief as to the remainder of the allegations contained therein to the extent they pertain to individuals or entities other than Sperry.

20. Sperry denies the allegations as stated in Paragraph 20 of the Amended Complaint.

21. Sperry denies the allegations as stated in Paragraph 21 of the Amended Complaint.

22. Sperry denies the allegations as stated in Paragraph 22 of the Amended Complaint.

23. In response to Paragraph 23 of the Amended Complaint, Sperry admits that on October 9, 2015, the Federal Railway Administration ("FRA") issued a report regarding the February 16, 2015, Mount Carbon derailment.

24. In response to Paragraph 24 of the Amended Complaint, Sperry states that the FRA October 9, 2015, report is inadmissible and may not be used for any purpose in this litigation and Sperry is not required to admit or deny the content of an inadmissible document. Without waiving this objection, Sperry denies the findings and conclusions set forth in the FRA report and demands strict proof of same. Sperry further denies the remaining allegations in Paragraph 24 of the Amended Complaint.

25. Sperry denies the allegations in Paragraph 25 of the Amended Complaint.

26. Sperry has insufficient information to admit or deny Plaintiff's allegations in Paragraph 26 of the Amended Complaint and, therefore, denies the same and demand strict proof thereof.

27. Upon information and belief, Sperry admits Governor Tomblin declared a local state of emergency for a brief period in the immediate area of the February 16, 2015, Mount Carbon derailment.

28. Sperry denies the allegations as stated in Paragraph 28 of the Amended Complaint. Sperry admits one public road, State Rt. 61, was closed to traffic west of Armstrong Creek Road at the location of the derailment for a period of time following the derailment.

29. Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 29 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

30. Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 30 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

31. Sperry denies the allegations with respect to Sperry as stated in Paragraph 31 of the Amended Complaint. Sperry has insufficient information to admit Plaintiff's remaining allegations in Paragraph 31 of the Amended Complaint with respect to Plaintiff's communications with CSXT and, therefore, denies the same and demands strict proof thereof.

32. Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 32 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

33. Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 33 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

34. Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 34 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

COUNT I – NEGLIGENCE

35. In response to Paragraph 35 of the Amended Complaint, Sperry repeats and realleges all of its responses to the prior paragraphs of the Amended Complaint as if fully set forth herein.

36. Sperry denies the allegations as stated in Paragraph 36 of the Amended Complaint. Sperry expressly denies it owed any legal or contractual duties to Plaintiff arising out of the performance of its contract with CSXT.

37. Sperry denies the allegations as stated in Paragraph 37 of the Amended Complaint. Sperry expressly denies it owed any legal or contractual duties to Plaintiff arising out of the performance of its contract with CSXT.

38. Sperry denies the allegations as stated in Paragraph 38 of the Amended Complaint.

39. Sperry denies the allegations as stated in Paragraph 39 of the Amended Complaint.

COUNT II — PRIVATE NUISANCE

40. In response to Paragraph 40 of the Amended Complaint, Sperry repeats and realleges all of its responses to the prior paragraphs of the Amended Complaint as if fully set forth herein.

41. Paragraph 41 states a legal conclusion to which no response is required. Without waiving this objection, Sperry denies in response to Paragraph 41 of the Amended Complaint that it interfered with or otherwise disturbed Plaintiff's reasonable use and enjoyment of its property.

42. Sperry denies the allegations as stated in Paragraph 42 of the Amended Complaint.

COUNT III- ESTOPPEL-CSXT

43. In response to Paragraph 43 of the Amended Complaint, Sperry repeats and realleges all of its responses to the prior paragraphs of the Amended Complaint as if fully set forth herein

44. Plaintiff's allegations in Count III of the Amended Complaint are not addressed to Sperry. To the extent Sperry is required to respond, Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 44 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

45. Plaintiff's allegations in Count III of the Amended Complaint are not addressed to Sperry. To the extent Sperry is required to respond, Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 45 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

46. Plaintiff's allegations in Count III of the Amended Complaint are not addressed to Sperry. To the extent Sperry is required to respond, Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 46 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

47. Plaintiff's allegations in Count III of the Amended Complaint are not addressed to Sperry. To the extent Sperry is required to respond, Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 47 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

48. Plaintiff's allegations in Count III of the Amended Complaint are not addressed to Sperry. To the extent Sperry is required to respond, Sperry has insufficient information to admit Plaintiff's allegations in Paragraph 48 of the Amended Complaint and, therefore, denies the same and demands strict proof thereof.

Prayer for Relief

49. In response to the WHEREFORE Paragraph of Plaintiff's Amended Complaint, inclusive of subparagraphs (1) through (3), Sperry denies Plaintiff is entitled to any relief as against it.

50. Sperry denies any and all allegations not specifically admitted herein.

AFFIRMATIVE DEFENSES

51. Sperry asserts and reserves the following affirmative defenses pursuant to Rule 8(c) of the West Virginia Rules of Civil Procedure so as to avoid waiver should the same be shown to be applicable during discovery: assumption of the risk, contributory negligence, comparative negligence, estoppel, failure of consideration, payment, release, statute of limitations, waiver, failure to mitigate, sudden emergency, unavoidable emergency, superseding

intervening cause, and any and all other matters constituting an affirmative defense which may become apparent through the course of discovery.

52. Sperry asserts that Plaintiff lacks standing to assert the claims it asserts in its Amended Complaint and, therefore, the Court lacks subject matter and/or personal jurisdiction.

53. Plaintiff's Amended Complaint fails to state a claim against Sperry upon which relief can be granted.

54. Sperry states that, if the Plaintiff sustained the injuries and damages about which it complains, all of which are specifically denied, said injuries and damages were directly and/or proximately caused or substantially contributed to by reason of fault or negligence on the part of other individuals or entities and not by reason of any negligence on the part of Sperry.

55. To the extent that the Plaintiff asserts it is entitled to recover punitive damages from Sperry, then Sperry asserts the following defenses:

I. 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:

(a) 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(s) satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) 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 the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

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

(d) 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;

(e) 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;

(f) 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 the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and

(g) 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;

(h) the award of punitive damages to the Plaintiff(s) in this action would constitute a deprivation of property without due process of law; and

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

II. Plaintiff's claims for punitive damages violate, and are therefore barred by, the provisions of the Constitution of the State of West Virginia, including but not limited to, Article

3, Sections 4, 5, 6 and 10, on grounds including the following:

(a) 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(s) satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) 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;

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

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

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

(f) 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;

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

(h) the award of punitive damages to the Plaintiff(s) in this action would constitute a deprivation of property without due process of law; and

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

56. To the extent Plaintiff asserts claims for punitive damages, such claims are barred because of Plaintiff's failure to plead the necessary elements to sustain an award of punitive damages.

57. Sperry asserts the right to *pro rata* contribution among co-defendants pursuant to the common law and pursuant to W.Va. Code §55-7-13.

58. Sperry asserts that in the event liability may be assessed against it, which liability is denied, it is only severally, and not jointly liable, and asserts that it is entitled to an apportionment of fault to each of the parties to the action pursuant to W.Va. Code §55-7-24.

59. To the extent the Plaintiff suffered any of the damages or losses of which Plaintiff complains, which allegations are not admitted, it is averred that such were not in any manner caused or contributed to by any alleged wrongful act or omission on the part of Sperry

60. Sperry denies that it was negligent or otherwise culpable in any fashion and furthermore denies that it breached any duty that may have been owed to Plaintiff.

61. Sperry was not guilty of any negligence proximately causing or contributing to the damages allegedly sustained by the Plaintiff.

62. If Sperry was guilty of any negligence, which is denied, such negligence was not the proximate or contributing cause of the damages allegedly sustained by the Plaintiff.

63. Sperry complied with or exceeded the requirements of the terms of its contract with CSXT and completed all of its obligations in a workmanlike manner and within industry standards.

64. Sperry at all times acted in good faith and without malice or any intent to cause any harm to Plaintiff.

65. Sperry asserts that no special relationship exists between it and Plaintiff upon which a duty of care can be based.

66. Sperry asserts Plaintiff's claims are barred in whole or in part by the doctrine of preemption.

67. Sperry asserts that Plaintiff's claims are barred in whole or in part by the economic loss rule.

68. Sperry denies that any duties were owed to Plaintiff.

69. Sperry denies that this civil action is one in which prejudgment interest, if sought, can be properly awarded and, therefore, affirmatively moves that the portion of the Amended Complaint demanding prejudgment interest be dismissed.

70. Sperry reserves the right to file such cross-claims, counterclaims, third-party Amended Complaints and other pleadings as may be revealed to be appropriate through discovery or otherwise.

71. Sperry reserve the right to assert additional defenses and/or to add additional parties as may be revealed to be appropriate through discovery or otherwise.

72. Sperry reserves the right to amend its Answer, if appropriate, after full investigation and discovery.

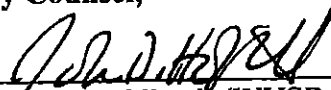
73. Sperry adopts and incorporates by reference all other applicable affirmative defenses stated by any and all other Defendants, but not specifically enumerated herein.

WHEREFORE, Defendant Sperry Rail, Inc., respectfully requests that Plaintiff's Amended Complaint against it be dismissed, with prejudice, and that it be awarded its costs and expenses, including attorney fees, incurred in defending this action, as well as any other such relief that the Court deems appropriate.

Submitted this 26th day of September, 2016.

SPERRY RAIL, INC.

By Counsel,



John R. Hoblitzell (WVSB # 1746)

John D. Hoblitzell III (WVSB # 9346)

Kay Casto & Chaney PLLC

P.O. Box 2031

Charleston, WV 25327-2031

Telephone: (304) 345-8900

Fax: (304) 345-8909

Email: jhoblitzell@kaycasto.com

Email: jdhoblitzell@kaycasto.com

Counsel for Defendant Sperry Rail, Inc.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**SEMINOLE COAL RESOURCES, LLC,
a Delaware Limited Liability Company,**

Plaintiff,

v.

**Civil Action No. 16-C-1026
(Judge James C. Stucky)**

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

Defendants.

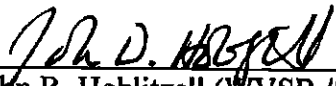
CERTIFICATE OF SERVICE

I do hereby certify that I served Sperry's Answer to Plaintiff's Amended Complaint, upon counsel of record this 26th day of September, 2016, by depositing a true and exact copy thereof in the U.S. Mail, postage prepaid addressed to the following:

Shawn P. George, Esquire
George & Lorensen LLC
1526 Kanawha Blvd., East
Charleston, WV 25311
PH: (304) 343-5555
Fax: (304) 342-2513
sgeorgeagandllaw.com
Counsel for Maple Coal Company

Marc E. Williams, Esq.
Robert L. Massie, Esq.
Melissa Foster Bird, Esq.
Nelson, Mullins, Riley & Scarborough, LLP
949 Third Ave., Suite 200
Huntington, WV 25701
(304) 526-3501
Counsel for CSX Transportation, Inc.

Scott L. Winkelman, Esq.
Clifford Zatz, Esq.
April N. Ross, Esq.
Carolyn Wagner, Esq.
Amelia Ashton, Esq.
Crowell & Moring, LLP
1001 Pennsylvania, Ave., N.W.
Washington D.C., 20004
(202) 624-2500
Counsel for CSX Transportation, Inc.



John R. Hoblitzell (WVSB # 1746)
John D. Hoblitzell III (WVSB # 9346)
Kay Casto & Chaney PLLC
P.O. Box 2031
Charleston, WV 25327-2031
Telephone: (304) 345-8900
Fax: (304) 345-8909
Email: jhoblitzell@kaycasto.com
Email: jdoblitzell@kaycasto.com
Counsel for Defendant Sperry Rail, Inc