

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JERRY A. BROWNING,

Plaintiff,

v.

Civil Action No.: 23-C-213

CSX TRANSPORTATION, INC.,
a Virginia corporation,

Defendant.

COMPLAINT

1. Plaintiff, Jerry A. Browning, is a citizen and resident of Salt Rock, West Virginia. Plaintiff Browning was employed by CSX Transportation, Inc. or its predecessors from 1977 through 2003.

2. Defendant, CSX Transportation, Inc. [sometimes hereinafter collectively referred to as "CSX"] is a Virginia corporation with its principal place of business in Jacksonville, Florida, which is authorized to do business in the State of West Virginia and which has done or is doing business in Kanawha, West Virginia. CSX is and was, at all times relevant hereto, engaged in interstate commerce in and throughout the several states of the United States as a common carrier by rail; and for the purpose hereof did operate locomotives, railroad cars and repair facilities and transacted substantial business throughout the State of West Virginia, and elsewhere.

3. At all times relevant, the defendant or its predecessor, was the plaintiff's employer within the meaning of the Federal Employer Liability Act, 45 U.S.C. §1 *et seq.*

4. During the course of the plaintiff's employment, the defendant and its predecessor were engaged in interstate and intrastate commerce as a common carrier by rail, and all or part of

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the plaintiff's duties were in furtherance of and did closely, directly and substantially affect interstate commerce. As such, the rights and liabilities of the parties were and are governed by the Federal Employer's Liability Act, 45 U.S.C. §1 *et seq.*, which Act grants this Court jurisdiction over this action and makes venue proper in Kanawha County, West Virginia.

5. From 1977 to 2003 plaintiff was employed by the defendant and its predecessor as a trackman. Plaintiff worked out of defendant's C&O Huntington Division located in the Barborsville, West Virginia yard maintaining railroad track in, among others, Kanawha County, West Virginia.

6. Beginning in 1977 and throughout his employment with the defendant and its predecessor, the plaintiff was engaged in the performance of his duties as a trackman in furtherance of interstate commerce and was required to work on, with and around tie machines, rail laying machines, back hoes, tamper machines, spiker machines, scarfars, and air compressors operated with diesel fuel which caused him to be exposed to diesel fumes and exhaust.

7. During a portion of plaintiff's employment with defendant, he worked out of the Alum Creek, West Virginia yard. During this time frame, defendant supplied ice to the track crews for use and consumption during the work shift. At one time, ice blocks were maintained in the tool house at Alum Creek, West Virginia. Diesel fuel was stored in the tool house during this time as well and permitted to contaminate the ice which was used for human consumption. Plaintiff ingested the diesel-fuel contaminated ice while working for defendant.

8. Plaintiff was exposed to ballast dust and silica during the preparation of the track beds while employed by defendant.

9. Plaintiff was further exposed to creosote during the unloading and placement of

creosoted-railroad ties while employed by defendant.

10. Furthermore, throughout his employment with the defendant and its predecessor, plaintiff's job duties exposed him to herbicides and pesticides as the defendant would spray herbicides for weed control along the track right-of-way.

11. Plaintiff's exposure to diesel fuel, diesel fumes and exhaust, creosote, silica, dust, and herbicides and pesticides as well as other occupational fumes, dusts, gases, and other cancer causing agents in the performance of his job duties as a trackman for CSX contributed, in whole or in part, to his development of renal cell carcinoma, diagnosed in May 2020.

12. Plaintiff hereby states that the cause of action accrued less than three years prior to the commencement of this suit pursuant to 45 U.S.C. §56.

F.E.L.A. NEGLIGENCE

13. Plaintiff repeats the allegations of the preceding paragraphs of this Complaint as if repeated herein verbatim.

14. During the plaintiff's employment, the defendant and its predecessor, by and through their agents, servants and employees, owed plaintiff a duty of due and reasonable care in providing plaintiff a reasonably safe place within which to work but nevertheless negligently and carelessly committed one or more of the following acts or omissions in violation of the Federal Employers' Liability Act, to wit:

(a) failed to furnish the plaintiff with a reasonably safe place in which to work;

(b) failed to furnish the plaintiff with safe and suitable tools and equipment with which to do his work, including, but not limited to, adequate protective facial masks and/or

protective respiratory inhalation devices;

(c) failed to warn the plaintiff of the hazardous effects of exposure to dangerous diesel fumes and exhaust, diesel fuel, creosote, silica, and herbicides, pesticides, as well as other occupational fumes, dusts, and gases, when defendant and its predecessor knew or should have known of the hazardous effect they were having on the plaintiff and that such knowledge could materially affect the plaintiff's conduct in protecting his own safety and health;

(d) failed to inquire of the suppliers or producers of the various materials as to the hazardous nature of the same;

(e) failed to reduce exposure to the dangerous diesel fuel, diesel fumes and exhaust, creosote, silica, dust, and herbicides and pesticides as well as other occupational fumes, dusts, gases, when defendant and its predecessor knew or should have known of the hazardous effect they were having on the plaintiff;

(f) failed to test for and adequately test dangerous and toxic diesel fuel, diesel fumes and exhaust, creosote, silica, dust, and herbicides and pesticides as well as other occupational fumes, dusts, gases so as to determine their hazardous nature prior to requiring the plaintiff to work with or work in the same;

(g) failed to test and adequately test the plaintiff's health resulting from exposure to dangerous and toxic diesel fuel, diesel fumes and exhaust, creosote, silica, dust, and herbicides and pesticides as well as other occupational fumes, dusts, gases, prior to, or concurrent with requiring the plaintiff to work with the same so as to permit an early detection of any harmful impact such exposure may have on the plaintiff;

(h) failed to require the use of safe methods of handling dangerous and toxic

substances, materials, fumes, exhausts and dusts;

(i) failed to prepare, exercise, and enforce a safety plan and safe method for removing diesel fuel, diesel fumes and exhaust, creosote, silica, dust, and herbicides and pesticides as well as other occupational fumes, dusts, gases from the locomotive yards and along the maintained right-of-way so as to prevent injury and/or disability to the plaintiff;

(j) failed to exercise reasonable care in publishing and enforcing a safety plan concerning but not limited to diesel fuel, diesel fumes and exhaust, creosote, silica, dust, and herbicides and pesticides as well as other occupational fumes, dusts, gases;

(k) failed to exercise adequate, if any, care for the health and safety of employees, including the plaintiff;

(l) failed to prevent unsafe practices from becoming standard practice;

(m) failed to provide a work environment reasonably free of airborne diesel fuel, diesel fumes and exhaust, creosote, silica, dust, and herbicides and pesticides as well as other occupational fumes, dusts, gases which defendant and its predecessor knew or should have known was hazardous to the health of the plaintiff; and

(n) was generally negligent, breached its duty of due care, and failed to provide plaintiff with a reasonably safe place to work.

15. While in the performance of his duties as an employee of the defendant and its predecessor and in conjunction with, and in the scope and course of that employment, the negligent acts or omissions on the part of the defendant and its predecessor, as described above, contributed in whole or in part, to the plaintiff's development of renal cell carcinoma, his permanent injury and disability; his physical pain, suffering and mental anguish; and his medical

care and expenses resulting from the treatment of the plaintiff's disorder.

16. Furthermore, as a result of the plaintiff's injury arising from the negligence of the defendant and its predecessor as described heretofore, the plaintiff's enjoyment of life has been greatly diminished.

17. As a result of the injuries sustained by the plaintiff, he was caused to undergo extensive medical treatment to his body. The plaintiff suffered pain, nervousness, and mental anguish, and the use, movement and function of his entire body has been severely impaired; and his enjoyment of life was greatly reduced. The plaintiff further alleges that as a result of his health problems, he was forced to incur medical expenses by way of doctor, hospital and drug bills in an effort to treat his condition.

18. The aforementioned medical expenses were incurred for necessary care and treatment of the injuries resulting from the acts and/or omissions complained of. The charges were reasonable and they were the customary charges made for such services in the area in which they were rendered.

WHEREFORE, the plaintiff respectfully requests the following relief:

- A. Judgment against the defendant for a sum within the jurisdictional limits of the court for all damages incurred;
- B. Pre and post-judgment interest at the legal rate;
- C. Costs of this suit; and
- D. All other relief to which the plaintiff may be justly entitled.

PLAINTIFF DEMANDS A TRIAL BY JURY.

JERRY A. BROWNING, Plaintiff

By 

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