

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

RICKY H. SIMPSON,)

Plaintiff,)

v.)

NORFOLK SOUTHERN RAILWAY)
COMPANY, in its individual capacity, and)
and as successor-by-merger to Southern)
Railway Company,)

Defendant.)

SUMMONS

Plaintiff Demands
A Jury Trial

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to Complaint on the subscribed at their office at 28 Bridgeside Blvd., Mount Pleasant, South Carolina, 29464, within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

MOTLEY RICE LLC

By: John E. Guerry, III
John E. Guerry, III, SC Bar #7268
Plaintiff's Attorney

June 23rd, 2021
Mount Pleasant, South Carolina

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COMPLAINT

Plaintiff, RICKY H. SIMPSON, by and through counsel of record, states as follows:

1. Plaintiff Ricky H. Simpson is a citizen and resident of the State of Virginia.
2. Plaintiff Ricky H. Simpson was employed by Defendant Norfolk Southern Railway Company (“NS”), and Southern Railway Company (“Southern”), prior to Southern’s merger with NS.
3. Plaintiff was in the employ of NS and/or Southern during the time period spanning 1978-2012.
4. During his employment with NS and/or Southern (sometimes collectively referred to as “NS” herein), Plaintiff worked in the state of South Carolina, as well as other states, including but not limited to Virginia, North Carolina, and Georgia.
5. Defendant NS, which is also the successor-by-merger to Southern, is a Virginia corporation with its principal place of business at Three Commercial Place, Norfolk, Virginia, which has done or is doing business in Greenville, South Carolina. NS 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 South Carolina, including Greenville County, and elsewhere.

6. The Defendant, NS, is responsible for any and all acts or omissions of NS and Southern.

7. During the course of Plaintiff's employment, NS was engaged in interstate commerce as a common carrier by rail, and all or part of the duties of Plaintiff, were in furtherance of and did closely, directly and substantially affect interstate commerce; wherefore, the rights and liabilities of the parties were and are governed by the Federal Employer's Liability Act, 45 U.S.C. § 51 et seq., which grants this Court jurisdiction over this action.

8. During the period from 1978 – 2012, Plaintiff was employed by NS and performed duties associated with laborer, machine operator, and welder helper positions for Maintenance of Way.

9. During the course of Plaintiff's employment with the Defendant, Plaintiff was negligently exposed to dangerous and toxic levels of diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances at excessive levels and for unreasonably extended periods of time, on a daily and continuous basis, without appropriate personal protective equipment, adequate ventilation, adequate work instruction, and/or adequate warnings of potential hazards.

10. Exposure to dangerous and toxic substances and chemicals including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliants, pesticides, chemicals, and sprays and other dangerous and toxic substances caused, in whole or in part, Plaintiff's Acute Myeloid Leukemia.

11. Plaintiff was diagnosed with Acute Myeloid Leukemia on April 23, 2020. Accordingly, this action is filed within the three (3) year time period prescribed by 45 U.S.C § 51 et seq.

12. At all times relevant hereto, Plaintiff was unaware of the dangerous propensities of the dangerous and toxic substances and chemicals to which he was exposed, including diesel exhaust, gasoline exhaust, gasoline, creosote, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliants, pesticides, chemicals, and sprays and other dangerous and toxic substances.

COUNT I
(Federal Employer's Liability Act)

13. Plaintiff realleges and incorporates the factual and jurisdictional allegations of Paragraphs 1- 12 as if restated verbatim herein.

14. Defendant NS and its predecessor(s), by and through their duly authorized agents, servants and employees, as it relates to Plaintiff, were negligent, in violation of the Federal Employers' Liability Act, through one or more of the following negligent acts or omissions:

- (a) in failing to provide Plaintiff with a reasonably safe place within which to work;
- (b) in failing to limit Plaintiff's exposure to hazardous substances;

(c) in failing to warn Plaintiff of the danger of his chronic exposure to hazardous substances;

(d) in failing to furnish Plaintiff with safe and suitable safety garments, tools and other personal protective equipment, including adequate protective masks, protective inhalation devices, and/or protective gloves, which would minimize Plaintiff's exposure to hazardous substances;

(e) in failing to warn Plaintiff of the true nature and hazardous effects of the dangerous and toxic levels of diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances to which he was exposed;

(f) in failing to operate its facilities in a safe and reasonable manner;

(g) in failing to provide instructions or a method for the safe use and/or safe encountering of the dangerous and toxic substances and chemicals including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances to which he was exposed;

(h) in failing to provide adequate, if any, instructions in the use of and/or encountering of dangerous and toxic substances and chemicals including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including

but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances;

(i) in failing to test these products, substances, and/or materials prior to requiring employees to work with or around the same, to determine their hazardous nature;

(j) in failing to formulate and implement a safe method of handling dangerous and toxic substances and chemicals including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances and thereby exposing Plaintiff to concentrations sufficient to cause disease;

(k) in failing to provide Plaintiff with safe and proper ventilation systems in appropriate areas;

(l) in allowing unsafe practices to become the standard practice;

(m) in failing to exercise reasonable care in publishing and enforcing a safety plan and method of working with or around dangerous and toxic levels of substances and chemicals including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances;

(n) in failing to inspect or monitor Plaintiff's work place and/or equipment to discover the presence of hazardous substances;

(o) in requiring employees to work with or around hazardous products or materials;

(p) in failing to exercise adequate, if any, care for the health and safety of employees, including the Plaintiff;

(q) in failing to test and examine Plaintiff periodically to determine if he was subject to any ill effects of his exposure to diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances;

(r) in failing to furnish Plaintiff with necessary and proper supervision in the performance of his assigned duties;

(s) in failing to inspect its locomotives, rail cars, facilities, or premises periodically in order to ascertain the existence of any unsafe conditions related to exposure to dangerous and toxic levels of diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances;

(t) in failing to warn Plaintiff of reasonably foreseeable hazardous conditions existing with Defendant's equipment;

(u) in failing to conduct adequate, if any, industrial hygiene, epidemiological or medical studies related to dangerous and toxic substances and chemicals including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances, and their effect on the

employees of the Defendant;

(v) in failing to satisfy contemporary industrial and relevant governmental safety standards;

(w) in failing to timely install adequate engineering controls to protect workers such as Plaintiff from exposure and/or over-exposure to toxic substances;

(x) in failing to timely implement medical monitoring and testing of employees such as Plaintiff to determine their exposure and/or over-exposure to toxic substances; and

(y) in failing to design and/or implement adequate administrative controls to prevent employees and workers such as Plaintiff's exposure and/or over-exposure to dangerous and toxic substances and chemicals, including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliants, pesticides, chemicals, and sprays and other dangerous and toxic substances.

15. While in the performance of his duties as an employee of Defendant NS and its predecessor(s), and in the scope and course of that employment, the above-enumerated acts and/or omissions of Defendant NS and its predecessor(s), contributed in whole or in part, to Plaintiff's development of Acute Myeloid Leukemia and Plaintiff's damages incident thereto.

16. As a result of the exposures referred to herein, Plaintiff has suffered great pain, mental anguish, severe injuries and a reduction in enjoyment of life and/or life expectancy, as he suffers from the disease Acute Myeloid Leukemia.

17. As a result of his development of Acute Myeloid Leukemia, Plaintiff has incurred, and continues to incur, medical expenses by way of doctor, hospital and drug bills.

COUNT II
(Locomotive Inspection Act)

18. Plaintiff realleges and incorporates the factual and jurisdictional allegations of Paragraphs 1-17 as if restated verbatim herein.

19. Plaintiff was employed by the Defendant and its predecessor(s), where he was exposed, during the time period 1978 – 2012, to dangerous and toxic substances and chemicals including diesel exhaust, gasoline exhaust, gasoline, creosote, secondhand tobacco smoke, welding fumes, benzene-containing substances, solvents, chemicals and other fumes, as well as other occupational hazards including but not limited to dusts, gases, weed defoliant, pesticides, chemicals, and sprays and other dangerous and toxic substances in the course of his employment as a laborer, machine operator, and welder helper positions for Maintenance of Way and continued in his employment in this and other capacities working in, on and about locomotives and their appurtenances, and was engaged in the performance of his duties at the time he was exposed to these dangerous and toxic substances.

20. That at all times relevant hereto, the Defendant and its predecessor(s) were engaged in interstate commerce as a common carrier by rail, by reason whereof the rights and liabilities of the parties were and are governed by the Act of Congress known as the Locomotive Inspection Act, 49 U.S.C. Section 20701, et seq.

21. That the Defendant and its predecessor(s), by and through their agents, servants and employees, violated the Locomotive Inspection Act, in that it failed to provide Plaintiff with a locomotive and its appurtenances which were in a proper and safe condition, and safe to work on or about, by committing one or more of the acts or omissions as described in Paragraph Fourteen (14) of Plaintiff's Complaint.

22. That as a direct and proximate result of one or more of the above foregoing acts or omissions on the part of the Defendant and its predecessor(s), Plaintiff was forced to work on or about defective and unsafe locomotives and their appurtenances, all of which resulted in his injuries, including the development of Acute Myeloid Leukemia and the damages incident thereto, which are described in Plaintiff's Complaint.

DAMAGES AND JURY DEMAND

23. WHEREFORE, Plaintiff demands judgment against Defendant NS in an amount in excess of the jurisdictional limitation and to be determined by the trier of fact, the costs of this action, and, for such other and further relief as this Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

This 23rd day of June, 2021.

COUNSEL FOR PLAINTIFF,

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