

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY**

**LAUREN WEBB and DEBBIE
FRANCISCO, individually, and on behalf of
all others similarly situated,**

Plaintiff,

v.

CSX TRANSPORTATION, INC.

Defendant.

Case No.: 6:23-cv-00211-REW

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Lauren Webb and Plaintiff Debbie Francisco, individually and on behalf of the putative class of all similarly situated persons, hereby bring this action against Defendant CSX Transportation, Inc. (“CSX”) and, based upon personal knowledge and on investigation of counsel and review of public documents and information, allege as follows:

INTRODUCTION

1. On November 22, 2023, at approximately 2:30 p.m., Thanksgiving Eve became a day of chaos and catastrophe for residents living in Rockcastle County, Kentucky, when a nearby train derailment caused a devastating chain reaction – a chemical spill followed by a deadly fire that poured poisonous gases into their community.

2. The train derailment involved at least sixteen (16) train cars operated by CSX. Two of the cars contained molten sulfur, three cars contained magnesium hydroxide, and one car was empty but had previously held methanol. CSX confirmed that at least the cars containing molten sulfur were breached, and part of the spilled sulfur caught on fire.

3. When molten sulfur burns, it releases sulfur dioxide into the air. Sulfur dioxide is a colorless gas with a strong scent. Depending on the level of exposure, sulfur dioxide can cause a range of serious harms to those who come into contact with the gas. It can cause irritation to the eyes, nose and throat, breathing difficulties, and even life-threatening damage to the respiratory system.

4. Due to immediate reports from nearby residents of sulfur-like odors and symptoms related to sulfur dioxide exposure such as burning eyes and throats, Plaintiffs and Class Members who lived in the area near the derailment were encouraged to leave their belongings behind and evacuate their homes, as many of them were preparing for the Thanksgiving holiday.

5. The fire continued to burn for nearly 24-hours, all while poisonous gas continued to fill the atmosphere.



6. Governor Andy Beshear declared a state of emergency in the Commonwealth of Kentucky and directed that the Commonwealth activate resources, including Kentucky Emergency Management and the Kentucky National Guard, as needed to help protect the community. Governor Beshear further instructed residents to stay clear of the area so that state, local and CSX officials could respond.

7. Local officials lifted the evacuation on the afternoon of Thanksgiving Day, November 23.

8. Subsequent to the derailment, CSX made a public statement that the derailment occurred due to a failed wheel bearing on one of the train cars.

9. CSX claims that the bearing that failed did not get hot enough to trigger an alarm from the last one of the railroad's trackside detectors that the train passed. A wheel bearing has to be at least 170 degrees hotter than the ambient temperature to trigger an alarm. Without the alarm, the crew was unable to stop the train to prevent a derailment.

10. Before the derailment, the train passed a railroad trackside detector and then traveled approximately 21 miles before the wheel bearing completely failed. The train was still two miles away from the next trackside detector.

11. Across CSX's networks in the eastern United States, the detectors are an average of 14.9 miles apart. According to CSX, however, on less traveled tracks the detectors are sometimes farther apart, as was the case here.

12. The train derailment and subsequent chemical fire resulting in dangerous air pollution for the surrounding community would never have occurred if not for a number of failures by CSX.

13. CSX's train should never have been operated in such a reckless manner that its

wheel bearings would fail and cause derailment, especially when the train carried highly toxic and combustible substances. The derailment was preventable had CSX placed detectors closer together, as they do on more frequently traveled tracks and more closely monitored the train's wheel bearings.

14. Further, after derailment, the integrity of cars containing highly toxic and combustible substances should not have breached.

15. As a result of CSX's failures, Plaintiffs and Class Members have been exposed to toxic and noxious chemicals.

16. Plaintiffs and others in the community have suffered significant and sustained irritation to their throats, eyes, lungs, mouths and lips, and had their properties invaded by dangerous plumes of chemical smoke.

17. Plaintiffs bring this class action seeking relief from CSX's reckless and willfully indifferent conduct.

PARTIES

18. Plaintiff Lauren Wells is a citizen of Kentucky and lives in Rockcastle County. As a result of Defendant's reckless conduct, Plaintiff has been exposed to high levels of toxic chemicals.

19. Plaintiff Debbie Francisco is a citizen of Kentucky and lives in Rockcastle County. As a result of Defendant's reckless conduct, Plaintiff has been exposed to high levels of toxic chemicals.

20. Defendant CSX is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Virginia with its principal place of business located at 500 Water Street, 15th Floor, Jacksonville, Florida.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5 million, exclusive of interest and costs. There are more than 100 Class Members, and Plaintiffs and the Class Members and Defendant are citizens of different states.

22. This Court has jurisdiction over Defendant because Defendant operated its railway enterprise in this District. Through its regular business operations in this District, Defendant intentionally and regularly availed itself of the markets and jurisdiction in this District, conferring this Court with personal jurisdiction over Defendant.

23. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) because a substantial part of the events and omissions giving rise to this action occurred in this District, and Defendant's railway operations in this District caused harm to Plaintiffs and Class Members in this District.

BACKGROUND FACTS

24. CSX is a leading supplier of rail-based freight transportation in North America.

25. CSX operates over 21,000 miles of track and has access to 70 ports and nationwide transloading and warehousing services.

26. On the afternoon of November 22, 2023, as families were preparing for their Thanksgiving celebrations, a wheel bearing failed on a 16-car train traveling near Livingston, Kentucky. The 16-car train was carrying hazardous and combustible materials.

27. At approximately 2:30 p.m., the train derailed from the tracks. Upon information and belief, CSX initially told local first responders that there was nothing to worry about, as the cars were carrying substances that were food grade. That, however, was not true. Instead, two of the 16 cars that derailed carried molten sulfur, which caught fire after the cars were breached.

28. Local emergency responders in Rockcastle County worked through the night into Thanksgiving, November 23, to extinguish the fire. The conflagration could not be extinguished for nearly 24 hours.

29. While the fire was burning, sulfur dioxide poured into the atmosphere and the neighboring communities.

30. Sulfur dioxide (SO₂) is most noteworthy as an environmental pollutant. Sulfur dioxide a colorless gas with a characteristic, irritating, pungent odor. Exposure to sulfur dioxide may cause irritation of mucous membranes, throat, esophagus, and eyes; reflex cough; increase in respiratory rate associated with decrease in depth of respiration; decrease in nasal mucus flow; variable effects on tracheal and bronchial mucus flow; decrease in forced expiratory volume and flow; decrease in airway conductance; and increase in airway resistance.¹

¹ See <https://www.ncbi.nlm.nih.gov/books/NBK208295/> (last accessed Nov. 27, 2023)..

DOH Guidance on Short-term Sulfur Dioxide (SO₂) Advisory Levels

SO ₂ Conc. (ppm) ¹	Color Code & Air Quality Condition	Air Quality Description	Recommended Action/Activity ²		
			Sensitive Groups ³	People Experiencing Health Effects ³	Everyone Else
0 – 0.10	Green (Good)	Considered satisfactory & poses little or no risk	Highly sensitive individuals may be affected at these levels		Potential health effects not expected
0.11-0.20	Yellow (Moderate)	Acceptable, however, may be moderate health concern for small number of people	Be aware that levels are slightly elevated	If you experience breathing difficulties, such as chest tightness or wheezing, stop activities, use a rescue inhaler and find a place to sit down and rest.	Potential health effects not expected, however actions to reduce exposure to vog may be useful
0.21–1.00	Orange (Unhealthy for Sensitive Groups)	Members in sensitive groups, including healthy individuals with mild asthma, may experience health effects. They may be affected at lower levels than general public. Toward the upper end of this range, most asthmatics who are active outdoors are likely to experience some breathing difficulties. General public not expected to be affected in this range.	Avoid outdoor activities that cause heavy breathing or breathing through the mouth ¹	If you experience breathing difficulties, such as chest tightness or wheezing, stop activities, use a rescue inhaler and find a place to sit down and rest.	Potential health effects not expected, however actions to reduce exposure to vog may be useful
1.01–3.00	Red (Unhealthy)	Everyone may begin to experience health effects. Members of sensitive groups may experience more serious health effects.	Avoid outdoor activities & remain indoors	Consider leaving the area	Avoid outdoor activities that cause heavy breathing or breathing through the mouth ⁴
3.01–5.00	Purple (Very Unhealthy)	Triggers health alert, meaning everyone may experience more serious health effects.	Avoid outdoor activities & remain indoors	Leave the area & seek medical help	Avoid outdoor activities & remain indoors
> 5.01	Maroon (Hazardous)	Triggers health warnings of emergency conditions. Entire population is more likely to be affected.	Avoid outdoor activities & remain indoors. Leave the area if directed by Civil Defense	Leave the area & seek medical help	Avoid outdoor activities & remain indoors. Leave the area if directed by Civil Defense

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31. As the fire was burning and toxic sulfur dioxide permeated the air, local residents began reporting that they were experiencing respiratory symptoms, including the onset of asthma attacks and throat and eye irritation.

32. Local residents were first approached in the evening of November 22, 2023 by officials told to evacuate their homes and places of business. As the blaze continued to soar and pollute the air, officials went house to house once again in the early morning hours of November 23, 2023, telling residents that it was imperative they leave their homes and seek safety elsewhere.

33. Finally, on November 25, 2023, CSX completed the removal of all 16 derailed cars. By November 26, 2023, crews claim to have removed all off the released chemicals and approximately 2,500 tons of impacted soil and replaced it with clean material. Unfortunately for those breathing in the toxic fumes, the remediation efforts were too little too late.

34. The train derailment and subsequent catastrophe was entirely preventable had CSX adhered to industry best practices and standards.

35. The railroad industry, specifically Class I railroads such as CSX, has long recognized the serious risk posed by faulty wheel bearings and railroad operators have installed thousands of hot bearing detectors (HBDs) across the railroad network. Hot bearing detectors alarm crews of faulty wheel bearings.

36. Indeed, just this year, CSX agreed to install additional hot bearing detectors across their routes, with the goal of achieving average spacing of 15 miles as an industry best practice.²

37. On the day of the train derailment, the 16-car train had traveled over 21 miles since passing a hot bearing detector. The next hot bearing detector was not available for another two miles.

38. CSX knew or should have known that over 23 miles between hot bearing detectors, as was the case in Livingston, was unreasonable, negligent, reckless, and not in accordance with industry standards.

39. CSX knew or should have known that sulfur dioxide that would be emitted by setting fire molten sulfur is extremely toxic.

40. CSX knew or should have known that a breach of its cars containing molten sulfur and magnesium hydroxide would cause individuals in nearby communities to be exposed to, and injured by, extremely toxic gas.

41. An explosive and fiery plume of thick black smoke formed a mushroom cloud and dispersed this toxic chemical for miles.

² See <https://www.trains.com/trn/news-reviews/news-wire/class-i-railroads-announce-new-hot-bearing-safety-measures-in-wake-of-east-palestine-derailment/> (last accessed Nov. 27, 2023).

CSX Violated Federal Regulations

42. The aforementioned conduct by CSX violated several federal regulations.

43. CSX failed to properly perform inspections under 49 C.F.R. §215.13(a) (pre-departure inspections), §215.15 (periodic inspections), § 215.11(a-b) (requiring qualified and knowledgeable inspectors), §215 Appendix D, §217.1, § 217.9(b), and § 217.11(a) (requiring training employees on policies and proper testing and inspection procedures) to that Part, which includes the appropriate inspection procedures. Under Appendix D, the inspection had to include the wheels, brakes, and “[a]ny other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.”

44. Because hazardous materials were involved, CSX further failed to inspect and test for leakage, defects, and “any other condition that makes the tank car unsafe for transportation...” 49 C.F.R. §§173.31(a)(3), (d)(1)(ii), (vi), 173.301(a)(3), 174.9(a-b), 180.205(d)(1), 180.205(f), 180.509(a)(1-2), 180.509(b)(1,4), 180.509(d)(1, 3-6), 180.509(e)(1,4), 180.509(h, j, k), 180.511(a-b, d, f, h), 180.503 (defining “defects”). CSX did not ensure that only qualified employees performed any inspections and testing, as required by 49 C.F.R. § 179.7(c). CSX did not adequately make its own procedures for inspections, as required by 49 C.F.R. §§ 179.7(a)(2), 179.7(b)(3, 5-7, 9-12), 180.501(b). The inspection had to be “a careful and critical examination of a tank car and its appurtenances performed by qualified personnel following the owner's qualified procedures.” 49 C.F.R. § 180.503 (emphasis added). If the inspection or testing revealed a safety risk or regulatory violation, then CSX could not transport the hazardous material. 49 C.F.R. §§ 173.301(a)(2), 174.3, 174.9(c), 174.50, 179.7(f), 180.205(h). CSX did not ensure that the hazardous material was safely loaded, as required by 49 C.F.R. § 171.1(b)(4,9,11-13). CSX also had to certify that the hazardous material is in proper condition for transport. 49 C.F.R. §§ 171.2(i), 172.204(a)(1), 172.205(f); 49 U.S.C. § 5104(a)(1).

45. CSX violated these regulations by failing to perform inspections, inadequately performing inspections, and/or operating a car that failed inspections.

46. In addition, CSX continued in service a car with a roller bearing that shows signs of having been overheated, which violated 49 C.F.R. §215.115(a)(1).

47. CXS further violated the regulations that required it to hire, train, test and supervise skilled engineers, conductors, and safety-related employees. *See* engineer hiring regulations (49 C.F.R. §§ 240.105(b), 240.203(a), 240.209, 240.211(a)), engineer training (§ 240.123(a-b)), engineer testing (§ 240.125(a-c), 240.127(a-d), 240.303, & 240 Appendix E), and engineer supervision (§ 240.129(a-e), 240.201(a, d-e), 240.309(a-c)); conductor hiring (49 C.F.R. §§ 242.109(a), 242.119(b-c)), conductor training (§ 242.119(a, l)), conductor testing (§ 242.121(a-c), 242.123(a-d)), and conductor supervision (§242.215(a-c)); safety-related employee hiring (49 C.F.R. § 243.201(c)), safety-related employee training (§ 243.101(a)(1), 49 C.F.R. § 243.201(c-e)), and safety-related employee testing (§ 243.205(a)).

48. CSX also failed to properly develop and implement risk reduction programs (RRP), risk-based hazard management programs (HMP), and safety performance evaluation processes. As the regulations explain, “Risk reduction means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of safety risk mitigation strategies. It includes systematic procedures, practices, and policies for the management of safety risk.” 49 C.F.R. § 271.5. Further, the regulations require a plan for “[s]afety culture,” which “means the shared values, actions, and behaviors that demonstrate a commitment to safety over competing goals and demands.” *Id.* CSX violated 49 C.F.R. §271.101(a), & 271 Appendix A (each railroad shall establish and fully implement an RRP meeting the requirements of that part that promotes positive safety culture and that includes a HMP and a safety performance evaluation component); 271.103 (HMP requires analyzing accidents and other hazards and preparing plan to mitigate future

risks); 271.105 (requiring safety monitoring for accidents and hazards); 271.107(a) (requiring safety training); 271.109(b) (requiring railroad to consider new technologies to mitigate risks, including electronically-controlled pneumatic brakes); 271.111(a) (requiring safety training).

49. Because hazardous materials were involved, CSX was also required to have an emergency plan for accidents. 49 C.F.R. § 172.602(a)(4-5). CSX was required to have a systematic training and testing program to ensure that employees know the HMTA regulations, “accident prevention methods,” and how to respond to emergencies. See 49 U.S.C.A. § 5107(c); 49 C.F.R. §§ 172.700(b), 172.702(a), 172.704(a)(1-3), (c), 173.1(b), 179.7(d-e).

50. CSX violated these regulations by not having an adequate plan in place to prevent the derailment or to prevent the release of hazardous materials after the derailment.

51. CSX’s aforementioned conduct, which violated these regulations, caused the derailment and the release of hazardous materials after the derailment.

Plaintiffs and Class Members Were Exposed and Injured

52. Plaintiff Lauren Webb lives in Livingston, Kentucky, a town adjacent to the train derailment. Her home is approximately two miles from the site of the derailment. As a result of CSX’s recklessness, her and her family were surrounded by toxic smoke in their home. As a local firefighter, after ensuring her children were safe and removed from their home, Plaintiff Webb attempted to help control the fire for over 13 hours. Finally, she was advised by local authorities that the situation was too dangerous and she should leave. Plaintiff Webb has suffered and continues to suffer from a sore throat, trouble breathing, headaches, and a respiratory infection since her exposure to the toxins released from the CSX train derailment. Indeed, she sought medical treatment in the local emergency room and was advised her symptoms were consistent with sulfur dioxide exposure. Plaintiff Webb lives with ongoing pulmonary irritation and fear for the long-term consequences to her health.

53. Plaintiff Debbie Francisco lives in Rockcastle County, approximately one mile from the site of the train derailment. As a result of CSX's recklessness, her house was surrounded by thick, toxic smoke. Plaintiff Francisco and her family evacuated their home on the evening of November 22, 2023, upon orders from local authorities that the air quality was too dangerous for them to breathe. Plaintiff Francisco has suffered from a burned throat, irritated nose, and postnasal drip since her exposure to the toxins released from the CSX train derailment. She lives with ongoing fear for the long-term consequences to her health.

CLASS ALLEGATIONS

54. Plaintiffs seek relief on behalf of themselves and as representatives of all others who are similarly situated. Pursuant to Fed. R. Civ. P. Rule 23(a), (b)(2), (b)(3) and (c)(4), Plaintiffs seek certification of a class defined as follows:

All natural persons who resided or were present in the evacuation zone of the CSX Train Derailment in Rockcastle County, Kentucky on November 22, 2023.

55. Excluded from the Class is Defendant and any of its affiliates, parents or subsidiaries; all employees of Defendant; all persons who make a timely election to be excluded from the Class; government entities; and the judges to whom this case is assigned, their immediate families, and court staff.

56. Plaintiffs hereby reserve the right to amend or modify the class definition with greater specificity or subclassing after having had an opportunity to conduct discovery.

57. The proposed Class meets the criteria for certification under Rule 23(a), (b)(2), (b)(3) and (c)(4).

58. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Consistent with Rule 23(a)(1), the members of the Class are so numerous and geographically dispersed that the joinder of all members is impractical. While the exact number of Class Members is unknown to Plaintiffs at this time, the

proposed Class includes hundreds of residents who were unlawfully exposed to or inconvenienced by the derailment. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

59. **Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3).** Consistent with Rule 23(a)(2) and with 23(b)(3)'s predominance requirement, this action involves common questions of law and fact that predominate over any questions affecting individual Class members. The common questions include:

- a. Whether Defendant operated its railroad enterprise negligently, recklessly, intentionally or otherwise tortiously;
- b. Whether Defendant owed a duty of care to Plaintiffs and the Class;
- c. Whether the duty of care owed to the Class included the duty to protect Plaintiffs and the Class against unreasonable harm through exposures to unsafe and unnecessarily high levels of toxic chemicals;
- d. Whether Defendant breached its duty to warn Plaintiffs and the Class of the health risks and consequences of exposure to chemicals originating from their train derailment;
- e. Whether medical monitoring and early detection will provide benefits to members of the Class; and
- f. Whether Plaintiffs and the Class are entitled to relief and the nature of that relief.

60. **Typicality. Fed. R. Civ. P. 23(a)(3).** Consistent with Rule 23(a)(3), Plaintiffs' claims are typical of those of the putative Class Members. Plaintiffs reside or work in the vicinity of the derailment, and bring claims based upon the same legal theories as those of the other Class

Members.

61. Plaintiffs and the other Class Members sustained damages, including out-of-pocket expenses, emotional distress, loss of property value, and increased risks of future illness as a direct and proximate result of the same wrongful acts or omissions in which Defendants engaged.

62. Plaintiffs' damages and injuries are akin to those of Class Members, and Plaintiffs seek relief consistent with the relief of Class Members.

63. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Consistent with Rule 23(a)(4), Plaintiffs are adequate representatives of the Class because Plaintiffs are members of the Class and are committed to pursuing this matter against Defendant to obtain relief for the Class. Plaintiffs have no conflicts of interest with the Class. Plaintiffs' Counsel are competent and experienced in litigating class actions. Plaintiffs intend to vigorously prosecute this case and will fairly and adequately protect the interests of Class Members.

64. **Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The quintessential purpose of the class action mechanism is to permit litigation against wrongdoers even when damages to individual plaintiffs may not be sufficient to justify individual litigation. Here, the damages suffered by Plaintiffs and the Class, while important to them, are relatively small compared to the burden and expense required to individually litigate their claims against Defendant. Thus, individual litigation to redress Defendant's wrongful conduct would be impracticable. Individual litigation by each Class member would also strain the court system. Individual litigation creates the potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication,

economies of scale, and comprehensive supervision by a single court.

65. **Injunctive and Declaratory Relief.** Class certification is also appropriate under Rule 23(b)(2) and (c). Defendant, through its uniform conduct, acted or refused to act on grounds generally applicable to the Class as a whole, making injunctive and declaratory relief appropriate to the Class as a whole.

66. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification because such claims present only particular, common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein.

67. Finally, all members of the proposed Class are readily ascertainable as they are all current or former residents of defined tracts. Class Members can be identified, and their contact information ascertained for the purpose of providing notice to the Class.

CAUSES OF ACTION

COUNT I—MEDICAL MONITORING

68. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in paragraphs 1 through 67 as if fully set forth here.

69. Plaintiffs and Class Members have been significantly exposed to dangerous toxins far higher than normal background levels. The fire resulting from Defendant's train derailment emitted dangerous toxins that have been proven to cause long-term medical problems for humans.

70. Plaintiffs and Class Members were significantly exposed to dangerous toxins due to Defendant's tortious actions, including Defendant's negligent, ultrahazardous, and willful and wanton conduct, as further described above and below.

71. As a proximate result of their exposure to dangerous toxins, Plaintiffs and Class Members have acquired a significantly increased risk of contracting serious disease. For example,

reactive airways dysfunction syndrome (RADS) is a non-immune-mediated asthma-like syndrome that can develop after exposure to sulfur dioxide. This increased risk makes periodic diagnostic medical examinations reasonably necessary.

72. Monitoring procedures exist that makes early detection possible and beneficial. These monitoring procedures are different than those normally recommended in the absence of toxic exposures and are reasonably necessary due to Plaintiffs' and Class Members' exposures to sulfur dioxide.

73. As a result, Plaintiffs and the Class should be awarded the quantifiable costs of such a monitoring regime.

74. Defendant owed Plaintiffs and Class Members a duty to operate their railway enterprise in a manner which would not cause Plaintiffs and Class Members injury or harm.

75. Defendants negligently breached its duty of care by causing the train to derail by failing to adhere to industry standards, and by allowing the release of molten sulfur from the train cars.

76. Defendant owed Plaintiffs and Class Members a duty of reasonable care and preventing unreasonable harm commensurate with the risk of operating a railroad.

77. Because of the likelihood of contamination of neighboring areas and exposure to their occupants, Defendants had a duty to investigate the extent to which sulfur dioxide and other toxic chemicals released from the derailment was likely contaminating the air at levels to materially increase nearby residents' (including Plaintiffs' and the Class') likelihood and risks of developing diseases.

78. Defendant breached its duty of reasonable care and preventing unreasonable harm by, among other things:

- a. Emitting dangerous volumes of sulfur dioxide into the environment;

- b. Failing to employ safe methods to adequately control their railway enterprises and ensure derailments did not occur;
- c. Failing to ensure the adequacy and operation of hot bearing detectors;
- d. Failing to ensure equipment such as wheel bearing and axels were in good working condition;
- e. Failing to utilize corporate policies and procedures that would prevent derailments from occurring;
- f. Failing to route railcars carrying hazardous materials in such a way as to avoid populated areas;
- g. Failing to have or implement a responsible emergency response plans that would minimize and contain the release of toxic chemicals into the environment;

79. As a direct and proximate result of Defendant's negligence, Plaintiffs and Class Members inhaled dangerous levels of toxic chemicals, acquired increased risks of developing diseases, and a resulting present need for medical monitoring.

COUNT II – ULTRAHAZARDOUS ACTIVITIES

80. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in paragraphs 1 through 67 as if fully set forth here.

81. The transportation of highly toxic and combustible carcinogens is abnormally dangerous and cannot be made safe by the exercise of the utmost care. The ignition of molten sulfur resulted, and continues to result, in emissions highly toxic substances to surrounding communities, which pose a high degree of risk to Plaintiffs and Class Members.

82. There is likelihood that emissions of sulfur dioxide will result in health problems for individuals who inhale the gas. This risk cannot be eliminated as long as sulfur dioxide is

emitted into populated areas.

83. The activities conducted by Defendant are exceedingly dangerous and offer little or no value to the surrounding community.

84. Because these activities are ultrahazardous, Defendant is strictly liable for any injuries proximately resulting from them.

85. As a direct and proximate result of Defendant's ultrahazardous activities, Plaintiffs and Class Members were significantly exposed to toxic chemicals, and have suffered discomfort, inconvenience, loss of use and enjoyment of property, emotional distress, diminution in property value, increased risks of future illness, and the present need for medical monitoring to ensure early detection of any such disease or illness.

86. Defendant's conduct as alleged herein shows that Defendant acted maliciously, with aggravated or egregious fraud, and/or intentional disregard for Plaintiff's rights so as to warrant the imposition of punitive damages.

COUNT III—NEGLIGENCE

87. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in paragraphs 1 through 67 as if fully set forth here.

88. Defendant owed Plaintiffs and Class Members a duty to operate their railway enterprise in a manner which would not cause Plaintiffs and Class Members injury or harm.

89. Defendants owed Plaintiffs and Class Members a duty to use reasonable care in the transportation of hazardous materials through the Livingston, Kentucky area.

90. Defendant negligently breached its duty of care by causing the train to derail and by allowing the release of sulfur dioxide from the train cars.

91. Defendant owed Plaintiff and Class Members a duty of reasonable care and preventing unreasonable harm commensurate with the risk of operating a railroad.

92. Because of the likelihood of contamination of neighboring areas and exposure to their occupants, Defendant had a duty to investigate the extent to which sulfur dioxide released from the train derailment was likely contaminating the air at levels to materially increase nearby residents' (including Plaintiffs' and the Class') likelihood and risks developing health conditions.

93. Defendant negligently breached its duty of reasonable care and preventing unreasonable harm by, among other things:

- a. Emitting dangerous volumes of sulfur dioxide and other harmful chemicals into the environment;
- b. Failing to employ safe methods to adequately control its railway enterprises and ensure derailments did not occur;
- c. Failing to ensure the adequacy and operation of hot bearing detectors in accordance with industry standards;
- d. Failing to ensure equipment such as wheel bearing and axels were in good working condition;
- e. Failing to utilize corporate policies and procedures that would prevent derailments from occurring;
- f. Failing to route railcars carrying hazardous materials in such a way as to avoid populated areas;
- g. Failing to have or implement a responsible emergency response plans that would minimize and contain the release of toxic chemicals into the environment;

94. As a direct and proximate result of Defendant's ultrahazardous activities, Plaintiff and Class Members were significantly exposed to toxic chemicals, and have suffered discomfort, inconvenience, loss of use and enjoyment of property, emotional distress, diminution in property

value, increased risks of future illness, and the present need for medical monitoring to ensure early detection of any such disease or illness.

95. Defendant's conduct as alleged herein shows that Defendant acted maliciously, with aggravated or egregious fraud, and/or intentional disregard for Plaintiffs' rights so as to warrant the imposition of punitive damages.

COUNT IV—WILLFUL & WANTON CONDUCT

96. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in paragraphs 1 through 67 as if fully set forth here.

97. At all times relevant, Defendant owed a duty to refrain from willful and wanton conduct and/or conduct which exhibited an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs and those living in the areas near its railways.

98. Defendant was at all relevant times aware that its transportation of toxic and combustible materials could result in extreme physical harm to individuals in communities surrounding its railways.

99. Notwithstanding its duty, Defendant breached its duty by, among other things:

- a. Failing to operate, maintain, inspect and/or repair the railway and railcars in such a way to ensure their safe and proper operation, particularly when transporting hazardous materials;
- b. Failing to ensure proper procedures or systems for timely identifying any malfunctions of the railway and railcars in order to prevent or mitigate derailments while transporting such hazardous materials;
- c. Failing to ensure proper safety procedures in the event of a mechanical

- malfunction of the railway or railcars while transporting such hazardous materials;
- d. Failing to ensure a proper mechanism for stopping or slowing malfunctioning railcars in a timely manner to avoid a derailment while transporting such hazardous materials;
 - e. Failing to prevent over-loading the train with too many railcars or materials;
 - f. Failing to load the railcars consistent with accepted practice;
 - g. Failing to load the railcars in a proper way, avoiding placement of heavier cars in the rear, with particular consideration to whether the planned route is downhill; and
 - h. Failing to transport and dispose of hazardous materials in a manner which would not cause Plaintiffs injury or harm.

100. Defendant's failures in these and other respects in the face of actual knowledge regarding the risks of unreasonable harm constitute willful, wanton, reckless and outrageous conduct, and demonstrates an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs and Class Members

101. As a direct and proximate result of each Defendant's willful and wanton conduct, Plaintiffs and Class Members were significantly exposed to toxic chemicals, and have suffered discomfort, inconvenience, loss of use and enjoyment of property, emotional distress, diminution in property value, increased risks of future illness, and the present need for medical monitoring to ensure early detection of any such disease or illness.

102. Defendant's conduct as alleged herein shows that Defendant acted maliciously, with aggravated or egregious fraud, and/or intentional disregard for Plaintiffs' rights so as to warrant

the imposition of punitive damages.

COUNT V—PRIVATE NUISANCE

103. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in paragraphs 1 through 67 as if fully set forth here.

104. Defendant has unreasonably contaminated real property within at least the half mile evacuation radius of the derailment.

105. Defendant's train derailment caused noxious fumes, smoke, and odors that Plaintiffs and Class members could not escape, even while inside their homes. The noxious fumes, smoke, and odors caused by Defendant's train derailment significantly interfered with Plaintiffs' and Class members' quiet enjoyment and use of their property.

106. Plaintiffs, unlike the public generally, have suffered specific injuries as a result of Defendant's tortious conduct, including the pollution of their land, aggravation, inconvenience, fear, anxiety, property damages, and out-of-pocket expenses.

107. Defendant's improper transportation, discharge, and ignition of highly toxic and combustible chemicals constitutes a private nuisance. This nuisance has directly and proximately caused Plaintiffs to presently suffer, and continue suffering in the future, loss of use and enjoyment of their property, discomfort, inconvenience, emotional distress, diminution in property value, present medical issues, increased risks of future illness, and the present need for medical monitoring to ensure early detection of any such disease or illness.

108. Defendant's conduct as alleged herein shows that Defendant acted maliciously, with aggravated or egregious fraud, and/or intentional disregard for Plaintiffs' rights so as to warrant the imposition of punitive damages.

COUNT VI—TRESPASS

109. Plaintiffs repeat, reallege, and incorporate by reference the allegations contained in

paragraphs 1 through 67 as if fully set forth here.

110. Defendant, through its activities alleged herein, allowed hazardous materials to enter and contaminate Plaintiffs' property. Defendant intentionally, knowingly, and negligently discharged toxic chemicals onto the real property of Plaintiffs and Class Members.

111. At all times, Defendant's conduct displayed indifference to and disregard for Plaintiffs' rights to their land.

112. Defendant's intentional, knowing, and negligent discharge of highly toxic chemicals into Plaintiffs' and Class Members' property has interfered with the rights of Plaintiffs to use and enjoy their property and constitutes trespass and continuing trespass. Defendant's trespass has substantially impaired Plaintiffs' rights of use and enjoyment of their property and has caused Plaintiffs to presently suffer, and continue suffering in the future, loss of use and enjoyment of their property, discomfort, inconvenience, aggravation, fear, emotional distress, diminution in property value, increased risks of future illness, and the present need for medical monitoring to ensure early detection of any such disease or illness.

113. Defendant's conduct as alleged herein shows that Defendant acted maliciously, with aggravated or egregious fraud, and/or intentional disregard for Plaintiffs' rights so as to warrant the imposition of punitive damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all Class Members proposed in this Complaint, respectfully request that the Court enter judgment in their favor and against Defendant as follows:

- a. For an Order certifying the Class, as defined above, and appointing Plaintiffs and their Counsel to represent the Class;
- b. For damages, including compensatory, punitive, and exemplary damages, in an

- amount determined to be just and reasonable;
- c. For an award in an amount determined just and reasonable to fund a medical monitoring program;
 - d. For an award of attorney's fees, costs, and litigation expenses, as allowed by law;
 - e. For prejudgment interest on all amounts awarded;
 - f. For injunctive and declaratory relief, as allowed by law and
 - g. Such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Dated: November 28, 2023.

Respectfully submitted,

/s/ Josh Autry

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**Pro Hac Vice Application Forthcoming*