

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI**

In Re Farmland Industries

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)
)
)

Case No 02-50557

**COMPLAINT OF DEBTOR BURLINGTON NORTHERN AND SANTA
FE RAILROAD COMPANY FOR RELIEF FROM STAY**

I.

Plaintiff is a creditor of the above named party and is a party in interest in these proceedings.

II.

Defendant Farmland is the above named debtor.

III.

This is an action under 11 USCS sec 362(d) for relief d from the automatic stay arising from the filing of the petition in the above captioned proceeding. The Court has jurisdiction pursuant to 28 USCS Sec 1334.

IV.

The Burlington Northern and Santa Fe Railway Company is a defendant in a an action pending in the Circuit Court of Jackson County, Missouri, Case No 03 CV 210737 in which the debtor Farmland Industries has been joined as a third party defendant.

V.

The basis of the action is indemnity for a FELA claim as shown by the attached copies of the complaint and the third party petition.

VI.

This bankruptcy action was pending at the time the complaint was filed and prohibits, among other things, further proceedings in the above described action.

VII.

Plaintiff is entitled to relief for the reason the railroad will not be adequately protected if the stay is allowed to remain in full force and effect in that the debtor is responsible for any injuries sustained by the plaintiff in the state action.

WHEREFORE, the Burlington Northern and Santa Fe Railway Company prays that, after such notice as the court deems appropriate, the court grant relief from the automatic stay and terminate or annul the stay with respect to the action in the Circuit Court of Jackson County Missouri against BNSF.

Dated this 16th day of December, 2003.

William P. Coates, Jr. - #39974
COATES & LOGAN, LLC
6804 West 107th Street, Suite 250
Overland Park, KS 66212
(913) 381-4000
Telecopier: (913) 381-4011
E-Mail: wpc@coateslogan.com
Attorney for Plaintiff The Burlington
Northern and Santa Fe Railway
Company

IN THE CIRCUIT COURT OF JACKSON COUNTY, KANSAS
AT KANSAS CITY

MICKEY L. CARPENTER,)	
)	
Plaintiff,)	
)	
)	
vs.)	
)	
THE BURLINGTON NORTHERN AND)	Case No. 03-CV-210737
SANTA FE RAILWAY COMPANY,)	Division No. 4
)	
Defendant and)	
Third-Party)	
Plaintiff,)	
)	
vs.)	
)	
FARMLAND INDUSTRIES, INC.,)	
)	
Third-Party)	
Defendant.)	
)	
)	

ANSWER

COUNT I

Defendant, for its answer to Count I of plaintiff's petition, alleges and states as follows:

FIRST DEFENSE

1. Count I of plaintiff's petition fails to state a claim against defendant upon which relief may be granted.

SECOND DEFENSE

2. Each and every allegation of fact and conclusion of law contained in Count I of plaintiff's petition is denied, except as otherwise specifically admitted herein.

THIRD DEFENSE

3. Defendant admits the allegations contained in the first paragraph of Count I of plaintiff's petition, alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth paragraph of Count I of plaintiff's petition and, therefore, denies same, specifically denies the allegations contained in the second, third, fifth, sixth, seventh, eighth, and ninth paragraphs of Count I of plaintiff's petition, and denies each and every other allegation not specifically admitted herein.

FOURTH DEFENSE

4. If plaintiff sustained injury or damage as alleged in Count I of his petition, which defendant denies, then the negligence or contributory negligence of plaintiff caused or contributed to cause such injuries or damages, in one or more of the following particular acts or omissions:

- (a) Failure to exercise reasonable care for his own safety and protection;
- (b) Failure to maintain a careful and vigilant lookout for his own safety;
- ©) Failure to maintain proper and adequate control of his own body;
- (d) Failure to maintain safe and proper balance;
- (e) Failure to properly inspect the equipment in question;
- (f) Failure to take proper precautions to protect his own person;

- (g) Failure to follow safe work procedures and methods;
- (h) Failure to timely report any allegedly unsafe conditions of which he was aware to proper supervisory personnel;
- (I) Failure to consider and employ alternate approaches to the tasks described in Count I of plaintiff's petition;
- (j) Violating defendant's operating and safety rules; and
- (k) Failure to take reasonable steps to avoid consequences to himself and/or mitigate his damages;
- (l) Such other particulars of negligence or contributory negligence as may become known through pre-trial discovery.

FIFTH DEFENSE

5. If plaintiff sustained injury or damage as alleged in Count I of his petition, which defendant denies, then the negligence or contributory negligence of plaintiff was the sole cause thereof and any damages to which plaintiff may be entitled are subject to reduction, as provided in 45 U.S.C. §53.

SIXTH DEFENSE

6. Plaintiff's alleged injuries claimed in Count I of his petition were not reasonably foreseeable by defendant.

SEVENTH DEFENSE

7. If plaintiff sustained injury or damage as alleged in Count I of his petition, which defendant denies, then such injury or damage resulted from plaintiff's misuse and/or abuse of available equipment.

EIGHTH DEFENSE

8. Plaintiff's injuries and damages, if any, as alleged in Count I of plaintiff's petition, resulted from intervening and superceding causes, rather than any act or omission on the part of defendant.

NINTH DEFENSE

9. Plaintiff failed to mitigate his damages and/or to take reasonable steps to avoid consequences to himself.

TENTH DEFENSE

10. Defendant specifically denies any failure to furnish plaintiff a reasonably safe place in which to work.

ELEVENTH DEFENSE

11. Count I of plaintiff's petition should be dismissed based on the doctrine of *forum non conveniens*.

TWELFTH DEFENSE

12. Defendant is entitled, pursuant to 45 U.S.C. *et seq.*, as well as otherwise permitted by law, to offset or deduct any amounts paid or amounts that will be paid to plaintiff, either through Railroad Retirement Board payments, advances, supplemental sickness benefits that plaintiff claims relevant in this litigation.

THIRTEENTH DEFENSE

13. Plaintiff's injuries or conditions pre-existed the incident described in Count I of his petition.

FOURTEENTH DEFENSE

14. Count I of plaintiff's petition is barred by the expiration of the applicable statute of limitations.

WHEREFORE, defendant prays that plaintiff takes nothing by reason of Count I of his petition and that defendant recover its costs herein expended.

COUNT II

Defendant, for its answer to Count II of plaintiff's petition, alleges and states as follows:

FIRST DEFENSE

15. Defendant incorporates herein by reference, as though fully set out, all admissions, denials, affirmative defenses, and all other averments set forth hereinabove, in response to Count I of plaintiff's petition.

SECOND DEFENSE

16. Count II of plaintiff's petition fails to state a claim against defendant upon which relief may be granted.

THIRD DEFENSE

17. Defendant alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the tenth and twelfth paragraphs of Count II of plaintiff's petition and, therefore, denies same, specifically denies the allegations contained in the eleventh, thirteenth, and fourteenth paragraphs of Count II of plaintiff's petition, and

denies each and every other allegation not specifically admitted herein.

WHEREFORE, defendant prays that plaintiff take nothing by reason of Count II of his petition and that defendant recover its costs herein expended.

THIRD-PARTY PETITION

Defendant and third-party plaintiff, The Burlington Northern and Santa Fe Railway Company, for its cause of action against third-party defendant Farmland Industries, Inc., alleges and states as follows:

1. Defendant and third-party plaintiff The Burlington Northern and Santa Fe Railway Company is a Delaware corporation duly authorized to do business in the State of Missouri.

2. Third-party defendant Farmland Industries is a foreign corporation doing business in the State of Missouri.

3. In the underlying action, plaintiff alleges that he sustained personal injury in a fall which resulted when a grab iron on a railroad car unexpectedly broke on March 22, 2002.

4. The grab iron in question failed as a result of a faulty or defective weld performed by or on behalf of third-party defendant Farmland Industries, Inc.

5. The faulty or defective welding performed by or on behalf of third-party defendant Farmland Industries, Inc. was a latent defect which could not have been detected by defendant/

third-party plaintiff The Burlington Northern and Santa Fe Railway Company.

6. In the event that defendant/third-party plaintiff The Burlington Northern and Santa Fe Railway Company becomes liable to plaintiff, then and in that event, third-party defendant Farmland Industries, Inc. is liable to defendant/third-party plaintiff The Burlington Northern and Santa Fe Railway Company for all such injuries and damages sustained by plaintiff.

WHEREFORE, defendant and third-party plaintiff The Burlington Northern and Santa Fe Railway Company prays for judgment against third-party defendant Farmland Industries, Inc. in whatever amount may be recovered by plaintiff from defendant/third-party plaintiff The Burlington Northern and Santa Fe Railway Company, for its costs and attorneys' fees, and for such other and further relief as the court deems just and proper.

William P. Coates, Jr. - #39974
COATES & LOGAN, LLC
6804 West 107th Street, Suite 250
Overland Park, KS 66212
(913) 381-4000
Telecopier: (913) 381-4011
E-Mail: wpc@coateslogan.com
Attorney for Defendant and Third-
Party Plaintiff The Burlington
Northern and Santa Fe Railway
Company

DEMAND FOR JURY TRIAL

Defendant/third-party plaintiff The Burlington Northern and Santa Fe Railway Company demands a trial by a jury of twelve persons on all issues herein.

William P. Coates, Jr.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served this ____ day of June, 2003, by placing a copy of same in the United States mail, first-class postage prepaid, and properly addressed to:

Thomas R. Hill
9233 Ward Parkway, Ste. 240
Kansas City, MO 64114
Attorney for Plaintiff

William P. Coates, Jr.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

MICKEY L. CARPENTER,

Plaintiff,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,
a Delaware corporation,

Defendant.

03CV210737

Case No.

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PETITION FOR DAMAGES

COMES NOW the Plaintiff above-named and for his claims and causes of action against the above-named Defendant, states and alleges as follows:

COUNT ONE

I.

That at all times material herein, Plaintiff Mickey L. Carpenter was and is a resident of the State of Kansas.

II.

That at all times material herein, Defendant Burlington Northern and Santa Fe Railway Company (hereinafter "BNSF") was a corporation duly organized and existing under the laws of the State of Delaware, and was duly licensed and empowered to operate a system of railroads as a common carrier of freight for hire in and through the State of Missouri and elsewhere, and within and through the state and county wherein this action is filed.

III.

That at all times material herein, the Plaintiff was in the employ of the Defendant working as a conductor, and that at the time of the occurrence of the accident alleged herein, all or part of Plaintiff's duties were in the furtherance of the Defendant's business of interstate commerce.

IV.

That the Plaintiff brings this action under the Federal Employers' Liability Act, Title 45, U.S.C. §51, et seq., and that this action is timely commenced within the meaning of 45 U.S.C. §56.

V.

That on or about the 22nd day of March, 2002, Plaintiff was in the course and scope of his employment working in Defendant's Columbus yards in Columbus, Kansas. Plaintiff was required to tie down Defendant's train by setting hand brakes on its railroad cars. While boarding the east side of railroad car FLIX2507, both hands were on the grab iron. As he swung up to the brake platform, suddenly and without warning the grab iron broke, causing Plaintiff to fall backwards, and as a result thereof, Plaintiff was caused to suffer severe and permanent injuries.

VI.

That the aforesaid injuries came about as a direct result of the negligence of Defendant BNSF, its agents, employees and officers in failing to provide a safe place to work in violation of Title 45 U.S.C. §§ 51-60 in one or more of the following particulars, to wit:

- (a) In failing and neglecting to provide Plaintiff with safe and proper equipment to do said work;
- (b) In failing and neglecting to provide proper supervision of the work assigned to Plaintiff;
- (c) In failing and neglecting to properly warn Plaintiff;
- (d) In failing and neglecting to adopt, enforce and carry out safe customs and practices in doing said work;
- (e) In failing and neglecting to adopt, install, implement and enforce safe methods and procedures for the described operation;
- (f) In failing and neglecting to inspect, maintain and repair its cars and equipment;
- (g) In negligently creating and permitting dangerous and hazardous conditions to exist on its trains, equipment and cars where its employees were required to work; and
- (h) In negligently assigning Plaintiff to work on its train and railroad cars which were unsafe and dangerous in that they were equipped with unsafe and defective grab irons.

VII.

That one or more of these acts of negligence, as heretofore set forth in Paragraph VI, caused injury and damage to Plaintiff Mickey L. Carpenter.

VIII.

That as a result thereof, Plaintiff Mickey L. Carpenter sustained severe, permanent, and disabling injuries to his back, and other parts of his body, and the related muscles, nerves, bones, tissues, ligaments and internal parts thereof.

IX.

That as a direct result of the negligence of Defendant BNSF, as heretofore set forth in Paragraph VI, Plaintiff Mickey L. Carpenter was seriously and permanently injured. That he has suffered, now suffers and will in the future continue to suffer great and excruciating permanent physical pain. That Plaintiff Mickey L. Carpenter has incurred fair and reasonable medical expenses, and may in the future require additional medical care and treatment. That these injuries have caused Plaintiff Mickey L. Carpenter a loss in wages and a diminution of earning capacity.

WHEREFORE, Plaintiff Mickey L. Carpenter for his first cause of action prays that judgment be entered against Defendant BNSF for recovery of reasonable damages in an amount sufficient to fully compensate Plaintiff for the losses and damages, together with his costs and disbursements and reasonable attorneys' fees herein.

COUNT TWO

X.

That Plaintiff re-alleges Paragraphs I through VI of Plaintiff Mickey L. Carpenter's cause of action under Count One as though set forth at length and in detail herein.

XI.

Plaintiff further alleges that he was injured by reason of the Defendant's violation of the Federal Safety Appliance Act, commonly known as the FSAA, 49 U.S.C. §20301, et seq. (former version at 45 U.S.C. §1-16), in that it used or allowed to be used on its railroad line a railroad vehicle, equipment of car

which was defective, improperly used and unsafe in that it was equipped with an unsafe and defective grab iron so that the Plaintiff was caused to be injured and damaged as hereinafter set forth.

XII.

That Title 49, Chapter 203 of the FSAA (formerly 45 U.S.C. §§ 1-16) and 49 C.F.R. comprise "statutes enacted for the safety of employees" within the meaning of 45 U.S.C. §53, and that Plaintiff's injury was caused, in whole or in part, by Defendant's aforesaid violation of the FSAA and accompanying federal regulations and statutes.

XIII.

That as a result thereof, Plaintiff Mickey L. Carpenter sustained severe, permanent, and disabling injuries to his back, and other parts of his body, and the related muscles, nerves, bones, tissues, ligaments and internal parts thereof.

XIV.

That as a further result thereof, Plaintiff Mickey L. Carpenter was seriously and permanently injured. That he has suffered, now suffers and will in the future continue to suffer great and excruciating permanent physical pain. That Plaintiff Mickey L. Carpenter has incurred fair and reasonable medical expenses, and may in the future require additional medical care and treatment. That these injuries have caused Plaintiff Mickey L. Carpenter a loss in wages and a diminution of earning capacity.

WHEREFORE, Plaintiff Mickey L. Carpenter for his second cause of action prays that judgment be entered against Defendant BNSF for recovery of reasonable damages in an amount sufficient to fully compensate Plaintiff for the losses and damages, together with his costs and disbursements and reasonable attorneys' fees herein.

JURY TRIAL DEMANDED

Dated: April 22, 2003

**YAEGER, JUNGBAUER, BARCZAK
& VUCINOVICH, PLC**
Robert T. Dolan
745 Kasota Avenue
Minneapolis, MN 55414
Telephone: (612) 333-6371
Facsimile: (612) 333-3619

-and-

HILL, BEAM-WARD & KRUSE, L.L.C.

By: 

Thomas R. Hill, # 94648

9233 Ward Parkway, Suite 240
Kansas City, MO 64114-3311
Telephone: (816) 523-9010
Facsimile: (913) 339-9653

ATTORNEYS FOR PLAINTIFF