

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

AARON E. RICHARDS,

PLAINTIFF,

V.

CIVIL ACTION NO: 3:08-0079

CSX TRANSPORTATION, INC.,  
a corporation,

DEFENDANT,

**ANSWER OF DEFENDANT,  
CSX TRANSPORTATION, INC. TO  
COMPLAINT OF PLAINTIFF, AARON E. RICHARDS**

COMES NOW Defendant, CSX Transportation, Inc. and files the within Answer to the Complaint and states as follows:

**FIRST DEFENSE**

The Complaint filed herein fails to state a cause of action upon which relief can be granted.

**SECOND DEFENSE**

1. Answering Paragraph I of the Complaint, Defendant states that it is subject to the jurisdiction of the Federal Employer's Liability Act, if proper proof as required by this act is presented. Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted therein regarding the timeliness of the filing of this action and demands strict proof thereof.

2. Answering Paragraph II of the Complaint, Defendant states that it admits the allegations contained therein.

3. Answering Paragraph III of the Complaint, Defendant states that it admits employment. Defendant states that it is without knowledge or information sufficient to form a

belief as to the truth of the matters asserted therein regarding the exact duties of Plaintiff and whether or not such duties were in furtherance of interstate commerce, and demands strict proof thereof.

4. Answering Paragraphs IV, V and VI of the Complaint, Defendant states that it denies the allegations contained therein.

5. Except as hereinabove specifically admitted, the Defendant denies each and every allegation contained in the Complaint.

6. Defendant denies that it is liable for the demand for judgment or for any other sum.

### **THIRD DEFENSE**

Defendant denies that at the time of the alleged incident that Plaintiff was acting within the scope of his employment with the Defendant.

### **FOURTH DEFENSE**

Defendant denies that it violated the Federal Employers' Liability Act, or any other law or laws and further denies that it was negligent or breached any duty owing to the Plaintiff.

### **FIFTH DEFENSE**

Defendant states that if Plaintiff received injuries while employed by the Defendant, those injuries were proximately caused by his own negligence and he is not entitled to recovery in this action.

### **SIXTH DEFENSE**

Defendant states that the accident and injuries, if any, of which Plaintiff complains were proximately contributed to by the negligence of the Plaintiff.

### **SEVENTH DEFENSE**

Defendant states that the injuries and damages, if any, of which Plaintiff complains, were exacerbated by Plaintiff's failure to mitigate his damages.

**EIGHTH DEFENSE**

Defendant would further show that Plaintiff's alleged injuries and damages were caused, in whole or in part, by pre-existing conditions, or other contributory or concurrent conditions or factors, including events occurring prior or subsequent to the occurrence made the basis of Plaintiff's claim against Defendant. Accordingly, damages, if any, must be apportioned and Defendant is only responsible for damages, if any, for which it is found responsible.

**NINTH DEFENSE**

Any injury, disability or damage alleged by the Plaintiff was proximately caused by an act or acts, or omission or omissions, on the part of others and not this Defendant and, accordingly, recovery or relief against this Defendant is barred.

**TENTH DEFENSE**

Defendant states that any injury, loss or damage alleged by the Plaintiff was proximately caused or contributed to by a superseding or intervening cause or causes other than an act or omission on the part of this Defendant and, thus, the Plaintiff is barred from any recovery herein, or the damages, if any, must be apportioned and this Defendant is only responsible for damages, if any, for which it is found responsible.

**ELEVENTH DEFENSE**

Defendant states that the Plaintiff was guilty of comparative negligence and therefore any recovery should be reduced proportionately.

**TWELFTH DEFENSE**

Defendant states that the alleged incident underlying Plaintiff's claim was not reasonably foreseeable by Defendant, CSX Transportation, Inc.

**THIRTEENTH DEFENSE**

Defendant states that the accident and resulting injuries, if any, of which the Plaintiff complains, was proximately caused by the sole negligence of the Plaintiff and any recovery is therefore barred.

**FOURTEENTH DEFENSE**

Plaintiff's claims, in whole or in part, may be preempted by federal law.

**FIFTEENTH DEFENSE**

Defendant reserves the right to amend its answer to include additional affirmative defenses should discovery and investigation reveal such further affirmative defenses.

WHEREFORE, having fully answered, Defendant, CSX Transportation, Inc. prays that the Complaint be dismissed with prejudice as to this Defendant with all costs cast upon the Plaintiff.

**CSX TRANSPORTATION, INC.**

By: 

Of Counsel

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CSX TRANSPORTATION, INC.**

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he served the foregoing "Answer of Defendant, CSX Transportation, Inc., to Complaint of Plaintiff, Aaron E. Richards" upon the following individuals by depositing true copies thereof in the regular manner in the United States mail, postage prepaid, at Huntington, West Virginia, on the 26<sup>th</sup> day of February, 2008:

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