

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

JIMMY EDWARDS, ROBERT HUNT
and DOLORES HUNT, and CLIFFORD
MCKELLAR, JR. and EMMA
MCKELLAR on behalf of themselves and
all others similarly situated,

Case No. 7:18-cv-169

PLAINTIFFS,

vs.

CLASS ACTION COMPLAINT

CSX CORPORATION, CSX
TRANSPORTATION, INC., and CSX
INTERMODAL TERMINALS, INC.,

(JURY TRIAL DEMANDED)

DEFENDANTS.

Plaintiffs Jimmy Edwards, Robert Hunt and Dolores Hunt, and Clifford McKellar, Jr. and Emma McKellar by and through their undersigned counsel, on behalf of themselves and all other persons and entities similarly situated, allege:

PARTIES

1. Plaintiff Jimmy Edwards (“Edwards”) is the owner of real property located at 66 National Avenue, Lumberton, North Carolina, which was damaged by flooding after Hurricane Florence.
2. Plaintiffs Robert Hunt and Dolores Hunt (collectively, “Hunt”) own real property located at 2404 Arnold St., Lumberton, North Carolina 28358 and 2405 Arnold St., Lumberton, North Carolina 28358, which were both damaged by flooding after Hurricane Florence.

3. Plaintiffs Clifford McKellar, Jr. and Emma McKellar (collectively, “McKellar”) own real property located at 2410 Arnold St., Lumberton, North Carolina 28358 Arnold St., which was both damaged by flooding after Hurricane Florence.

4. CSX Corporation is a corporation organized and existing under the laws of the State of Virginia with a principal place of business at 500 Water Street (c-115), Jacksonville, Florida 32202. CSX Corporation is licensed to do business in North Carolina and maintains minimum contacts with the State of North Carolina to satisfy the due process clause of the United States Constitution.

5. CSX Transportation, Inc. is a corporation organized and existing under the laws of the State of Virginia with a principal place of business at 500 Water Street, Jacksonville, Florida 32202. CSX Transportation, Inc. is licensed to do business in North Carolina and maintains minimum contacts with the State of North Carolina to satisfy the due process clause of the United States Constitution.

6. CSX Intermodal Terminals, Inc. is a corporation organized and existing under the laws of the State of Virginia with a principal place of business at 550 Water Street, Jacksonville, Florida 32202. CSX Intermodal Terminals, Inc. is licensed to do business in North Carolina and maintains minimum contacts with the State of North Carolina to satisfy the due process clause of the United States Constitution.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and cost, and because all Defendants are citizens of another State.

8. Prosecution and venue of this class action in this district is proper under 28 U.S.C. § 1391 because Defendants do business herein, many Plaintiffs and Class Members reside and do business herein, and the events or omissions giving rise to the claims asserted herein occurred in this district.

FACTUAL ALLEGATIONS

9. On or about September 10, 2018, and for days thereafter following Hurricane Florence, the city of Lumberton experienced devastating flooding. Numerous homes and vehicles in South Lumberton and West Lumberton were damaged or destroyed by water which poured through a gap in city levees. This gap was created by a railway underpass owned by CXS Corporation, CSX Transportation, Inc., and CSX Intermodal Terminals, Inc. (collectively “CSX” or “Defendants”). The result was extensive flooding and damage to homes and businesses in Lumberton, North Carolina and displacement of hundreds of residents in what has been called “one of the poorest populations in what is arguably the least developed part of the state.”¹

10. Upon information and belief, CSX was aware that the underpass was a point of vulnerability for major flooding in Lumberton, ignored reports warning of the need for a permanent floodgate, and refused city officials’ pleas for permission to build a temporary berm to protect against forecasted Hurricane Florence flooding.

11. CSX knew of the potential for catastrophic damages if the underpass was not protected by a floodgate. It was at this very site on the railroad’s property that water from the Lumber River poured into Lumberton after Hurricane Matthew in October 2016 causing catastrophic flooding that displaced 1500 residents for months and killed at least one person.

¹ Doug Clark Bock, *Two Years After a Devastating Hurricane, A North Carolina Town is Again at the Center of the Flood*, The New Yorker, September 18, 2018, available at <https://www.newyorker.com/news/dispatch/two-years-after-a-devastating-hurricane-a-north-carolina-town-is-again-at-the-center-of-the-flood>, (last accessed September 22, 2018)

A. A History of Vulnerability and Flooding Through the CSX Railway Underpass

12. In or around 1977, levee construction along the Lumber River was completed, though not to the design specifications dictated by the Soil Conservation Service of the USDA.

13. In particular, the CSX Railroad underpass at Interstate 95 was constructed at a lower elevation than the designs specified, and a ten-foot earthen dike that was to be constructed to mitigate potential flooding was never put in place.²

14. In May 2003, the decision to accredit the levee was called into question by the North Carolina Floodplain Mapping Program. It was determined in conversations with the Federal Emergency Management Agency (“FEMA”), that the levee was not considered to provide adequate protection from flooding because the planned closure of the levee had not been built. Sandbagging at the CSX Railroad underpass was determined insufficient, because it was not a closure device that was a structural part of the levee system as required by 44 C.F.R. 65.10(b)(2).³

15. In October 2016, Hurricane Matthew struck North Carolina, and the waters of Lumber River flooded through the CSX railway underpass, causing substantial damage to Lumberton and displacing more than 1,500 Lumberton residents.⁴

16. In May 2018, North Carolina Emergency Management and the North Carolina Department of Transportation released a report titled “Lumber Basin Flood Analysis and Mitigation Strategies Study,” which concluded that a permanent solution, such as a floodgate at

² North Carolina Emergency Management and North Carolina Department of Transportation, *Lumber River Basin Flood Analysis and Mitigation Strategies Study*, May 2018, available at https://files.nc.gov/rebuildnc/documents/files/lumber_mitigation_report.pdf, (last accessed September 22, 2018).

³ Id.

⁴ Doug Clark Bock, *Two Years After a Devastating Hurricane, A North Carolina Town is Again at the Center of the Flood*, *The New Yorker*, September 18, 2018, available at <https://www.newyorker.com/news/dispatch/two-years-after-a-devastating-hurricane-a-north-carolina-town-is-again-at-the-center-of-the-flood>, (last accessed September 22, 2018);.

the CSX Railroad underpass, would reduce damage from floods equivalent to those caused by Hurricane Matthew by approximately 80%, saving about 2,000 buildings and \$232.6 million.⁵

17. Despite an offer by North Carolina Emergency Management and the Golden LEAF Foundation to provide \$3.5 million in funding, when Hurricane Florence hit, no floodgate had been built to bridge the gap in the levees created by the CSX railway underpass.⁶

18. Lumberton Mayor Bruce Davis stated that the delay in building the floodgate was a result of delays caused by CSX, stating “[t]he holdup is that we don’t have permission from the railroad to get on that property and do anything[,]” as only the governor could override CSX and force them to participate in building a permanent floodgate.⁷

B. CSX Inaction and Obstruction of Efforts to Prepare for Hurricane Florence

19. In the weeks leading up to Hurricane Florence’s landfall, CSX failed to attend meetings regarding flood mitigation.⁸

20. Early the week of September 10, 2018, Lumberton city officials requested permission from CSX to build a sandbag berm across the underpass to fill the gap in the levee system and help mitigate potential flooding.⁹

21. According to Davis, Lumberton city officials were told multiple times that CSX would consider anyone attempting to stem the flooding from the underpass to be a trespasser.¹⁰

⁵ North Carolina Emergency Management and North Carolina Department of Transportation, *Lumber River Basin Flood Analysis and Mitigation Strategies Study*, May 2018, available at https://files.nc.gov/rebuildnc/documents/files/lumber_mitigation_report.pdf, (last accessed September 22, 2018); Phil McCausland, *Rail Company Blamed for Hurricane Florence Flooding in North Carolina Town*, NBC News, September 21, 2018, available at <https://www.nbcnews.com/news/us-news/rail-company-blamed-hurricane-florence-flooding-north-carolina-town-n911526>, (last accessed September 23, 2018).

⁶ Phil McCausland, *Rail Company Blamed for Hurricane Florence Flooding in North Carolina Town*, *supra*.

⁷ *Id.*

⁸ *Id.*

⁹ Chris D’Angelo and Dave Jamieson, *CSX Railroad Fought a North Carolina City’s Desperate Attempt to Prevent Devastating Flooding*, September 20, 2018, available at https://www.huffingtonpost.com/entry/lumberton-north-carolina-flooding-florence-csx-railroad_us_5ba286a0e4b09e34df25f6f0, (last accessed September 23, 2018).

¹⁰ *Id.*

22. Lumberton City Planner Brandon Love said CSX threatened to sue anyone who tried to place sandbags across the underpass.¹¹

23. As Hurricane Florence came closer, Lumberton city leaders petitioned North Carolina Governor Roy Cooper to intervene and allow sandbags to be placed across the CSX railway underpass.¹²

24. On Friday September 14, 2018, Governor Cooper issued an emergency order greenlighting construction of the sandbag berm.¹³

25. Though a mix of volunteers, city officials, and National Guard members were able to construct a temporary berm and buy time for Lumberton residents, the berm broke around 2:00 p.m. on Sunday September 17, 2018.¹⁴

26. State Senator and Robeson County Republican Danny Britt faults CSX, stating “CSX has not been a good community partner,” and that “[i]f we had the floodgate, we wouldn’t have had any damage in West Lumberton.”¹⁵

27. On Friday September 21, 2018, reports were projecting a second surge in flooding of the Lumber River.¹⁶

C. Damage to Plaintiffs and Class Members

28. As of the time of this filing, much of Lumberton remains underwater.

¹¹ Id.

¹² Chris D’Angelo and Dave Jamieson, *CSX Railroad Fought a North Carolina City’s Desperate Attempt to Prevent Devastating Flooding*, September 20, 2018, available at https://www.huffingtonpost.com/entry/lumberton-north-carolina-flooding-florence-csx-railroad_us_5ba286a0e4b09e34df25f6f0, (last accessed September 22, 2018).

¹³ Id.

¹⁴ Id.

¹⁵ Colin Campbell, *Lumberton Didn’t Fix a Big Weakness Before Florence. So Residents Tried a DIY Defense*. The News and Observer, September 19, 2018, available at <https://www.newsobserver.com/news/politics-government/article218692775.html>, (last accessed September 23, 2018).

¹⁶ Michael Perchick, *Lumber River Expected to Crest for a Second Time Since Florence*, ABC News, September 21, 2018, available at <https://abc11.com/lumber-river-expected-to-crest-for-the-second-time/4306504/>, (last accessed September 23, 2018).

29. Due to the mandatory evacuations and extensive flooding, Plaintiffs and all others similarly situated have been devastated by the loss of homes and business.

30. Accordingly, this Class Action Complaint is filed on behalf of those persons (individuals and entities) seeking private (non-governmental) economic loss and property damages.

31. This Complaint asserts claims under federal common law and federal statutory law, seeking damages for the Classes defined in the Class Allegations section of this Complaint, including actual, compensatory, and punitive damages, arising from the flooding of the CSX railway underpass.

32. CSX could have prevented this catastrophe by using proper risk management practices, following industry standards, heeding the advice of experts, and responding to town requests for permission to construct temporary berms. However, CSX chose not to provide or allow for precautionary measures, and to save money and time at the expense of safety. Their cost-cutting measures were taken with willful, wanton, and reckless indifference to the economic interests, businesses, and property of Plaintiffs and Class Members described herein.

33. CSX made decisions impacting the safety of the health, welfare, and value of the people, businesses, and property of the Plaintiffs and Class Members in the direction of short-term gain, through reduced cost, rejecting adequate and responsible risk-analysis checks and balances to weigh cost and time versus risk and safety. The result was predictable in that the outcome mirrored the extensive flooding and damage that took place during Hurricane Matthew in 2016.

34. Moreover, because CSX's conduct endangered the health and safety of a large region and population, caused and increased the risk of serious injury and bodily harm, and

affected a financially vulnerable population, the degree of reprehensibility of CSX's conduct is at the highest level.

35. The flooding of the CSX railway underpass has caused, and continues to cause, devastating economic damage. For example, businesses have lost and continue to lose income; and property owners have suffered the loss, damage, and/or diminution of the value of their properties.

36. Plaintiffs Edwards and Hunt have suffered economic injury, damage, and/or losses as a result of the catastrophic flow of water through the CSX railway underpass and onto their properties and hundreds of other properties in West Lumberton and South Lumberton.

CLASS ACTION ALLEGATIONS

A. Class Definitions and Exclusions

37. Plaintiffs seek certification of the following Classes:

Area Residents Class:

All persons who own real property in Lumberton, North Carolina, and whose homes, vehicles or other real property suffered damage due to flooding from the CSX railway underpass after Hurricane Florence.

Area Business Class:

All persons who own a business in Lumberton, North Carolina, that lost income due to flooding from the CSX railway underpass after Hurricane Florence.

38. Excluded from the Classes are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) CSX and any entity in which CSX has a controlling interest or which has a controlling interest in CSX and their legal representatives, assigns and successors of CSX; and (c) all persons who properly execute and file a timely request for exclusion from the Classes or are currently in litigation with CSX.

A. Numerosity of the Class/Impracticability of Joinder — F.R.C.P. 23(a)(1)

39. The Classes consists of hundreds of individuals and businesses that have been economically damaged by the flooding of the CSX railway underpass, making joinder impracticable. Class members can be informed of the pendency of this action by print, Internet, and broadcast notice.

B. Commonality — F.R.C.P. 23(a)(2).

40. Common questions of law and fact exist as to all members of the Classes. Because CSX's behavior here is governed by federal regulations, the Class Members will be subject to common questions of law.

41. Furthermore, the factual bases of CSX's conduct are common to all Class Members and represent a common thread of reckless conduct and decisions, gross negligence and willful, wanton, and reckless indifference for the rights of others, resulting in injury to all members of the Class. Each Class Member's claim arises from the same course of planning, decisions, and events, and each Class Member will make similar legal and factual arguments to prove CSX's outrageous, willful, reckless, wanton, and deplorable conduct and liability.

42. CSX's conduct presents a series of significant factual questions with common answers, including:

- a. Whether CSX negligently, outrageously, willfully, wantonly, and/or recklessly caused and/or contributed to the railway underpass flooding;
- b. Whether CSX knew or should have known of the risk of the railway underpass flooding; and
- c. Whether CSX's conduct in failing to work to build a permanent floodgate after Hurricane Matthew was outrageous, grossly negligent, willful, wanton, or reckless.

- d. Whether CSX's conduct in failing to take temporary protective and preventative measures prior to the onset of Hurricane Florence was outrageous, grossly negligent, willful, wanton, or reckless.
- e. Whether CSX's conduct in refusing to allow Lumberton city officials to take temporary protective and preventative measures prior to the onset of Hurricane Florence was outrageous, grossly negligent, willful, wanton, or reckless.

43. Common questions of fact also exist with respect to the punitive damages liability of CSX to the Class, including CSX's outrageous, grossly negligent, willful, reckless, and wanton conduct; the calculation of the amount of punitive damages that may be imposed upon each of the Defendants consistent with due process; intra-class equity with respect to the allocation and utilization of punitive damages; and the most practicable and most equitable allocation, disbursement, and utilization of such damages for punishment of CSX's wrongful conduct toward Plaintiffs, the Classes, and society, and in fulfillment of the deterrent policy and purpose of punitive damages.

C. Typicality — F.R.C.P. 23(a)(3)

44. The claims in this Class Action Complaint are typical of the claims of the Classes in that they represent the various types of non-governmental economic losses and property damage caused by the flooding of the CSX railway underpass. Each Class Member's claim arises from the same course of planning, decisions, and events, and each Class Member will make similar legal and factual arguments to prove CSX's outrageous, grossly negligent, willful, reckless, and wanton conduct and liability.

E. Adequacy of Representation — F.R.C.P. 23(a)(4)

45. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have retained counsel with substantial experience in prosecuting mass tort and complex class actions. Plaintiffs and their counsel are committed to prosecuting this action

vigorously on behalf of the Classes and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Class.

D. Class Certification under F.R.C.P. 23(b)(3) — Predominance and Superiority

46. The common issues of fact and law presented in this action, including those specified above, predominate with respect to the claims of the Classes over any questions affecting only individual Class members. Fundamentally, all Plaintiffs' claims arise out of a single course of conduct by CSX that caused the flooding of the railway underpass. Although this is a single event, single location mass disaster that has affected, and will continue to affect many individuals and businesses, its wide-ranging effects can be traced back to one single root: a chain of decisions and actions made jointly and severally by a small group of actors. Plaintiffs will present common proof with respect to CSX's failure to take reasonable precautions or allow the city to do so — proof that is the same for each member of the Class.

47. Plaintiffs' proof of CSX's outrageous, grossly negligent, willful, reckless, and wanton conduct will involve the same cast of characters, events, discovery, documents, fact witnesses, and experts. Common questions of fact also predominate concerning the determination of the aggregate quantum of punitive damages, necessary to fulfill the punishment and deterrence goals of such damages.

48. Because CSX's behavior here is governed by federal regulations, the Class Members will be subject to common questions of law.

49. A class action is superior to the only other method available for the adjudication of CSX's outrageous, grossly negligent, willful, reckless, and wanton conduct — individual litigation and multiple trials. The repetitive individual litigation of CSX's conduct by all members of the Classes is inefficient, impracticable, economically infeasible, and potentially

unfair, particularly in light of the unique context of CSX's course of conduct and its unprecedented impact upon the Classes, the economy, and society.

50. It would be unduly burdensome on the courts to undergo the individual re-litigation of the same facts and legal issues in hundreds of cases. The consideration of common questions of fact and law via this class action will conserve judicial resources and promote a fair and consistent resolution of these claims.

CLAIM I

NEGLIGENCE

51. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs as if fully restated here, in the claim for negligence under federal common law.

52. At all times material hereto, CSX were responsible for the operation and maintenance of the railway underpass near Interstate 95 in Lumberton, North Carolina.

53. At all times material hereto, CSX owed and breached duties of ordinary and reasonable care to Plaintiffs in connection with the operation and maintenance of the railway underpass, and additionally owed and breached duties to Plaintiffs and Class Members to guard against and/or prevent the risk of flooding through the CSX railway underpass.

54. Plaintiffs, as owners, lessors, lessees, and/or operators of real property or businesses at or near the CSX railway underpass in Lumberton, North Carolina were within an appreciable zone of risk and, as such, CSX were obligated to protect them.

55. CSX knew of the dangers associated with the break in the levies created by the CSX railway underpass and failed to take appropriate measures to prevent damage to Plaintiffs' and the Classes' properties and businesses.

56. CSX was under a duty to exercise reasonable care while operating and maintaining the railway underpass to ensure that it did not put nearby Lumberton residents and business owners at risk of catastrophic flooding.

57. CSX was under a duty to exercise reasonable care to ensure that its underpass did not create a risk of catastrophic flooding and damage to nearby residents and landowners.

58. CSX knew or should have known that the acts and omissions described herein could result in significant damage to Plaintiffs and the Classes.

59. CSX failed to exercise reasonable care while operating and maintaining the railway underpass and thereby breached duties owed to Plaintiffs and the Classes.

60. CSX failed to exercise reasonable care by not facilitating or participating in the building of a permanent floodgate after the damage caused by the CSX railway underpass flooding during Hurricane Matthew.

61. CSX failed to exercise reasonable care by not building or facilitating the building of a temporary berm prior to Hurricane Florence's landfall.

62. CSX failed to exercise reasonable care in refusing to allow Lumberton city officials to build a temporary berm to prevent flooding anticipated by Hurricane Florence.

63. CSX failed to exercise reasonable care in threatening Lumberton city officials with lawsuits should they attempt to build a temporary berm to prevent flooding anticipated by Hurricane Florence.

64. CSX failed to exercise reasonable care to ensure that adequate safeguards, protocols, procedures and resources would be readily available to prevent and/or mitigate the effects of flooding of the railway underpass, and thereby breached duties owed to Plaintiffs and the Classes.

65. In addition to the foregoing acts of negligence, Plaintiffs aver that the flooding of the CSX railway underpass was caused by the joint, several, and solidary negligence and fault of following non-exclusive particulars:

- a. Failing to build a permanent structure to breach the gap in the levee system caused by the railway underpass;
- b. Failing to build a permanent floodgate;
- c. Failing to adequately prepare for flooding in anticipation of Hurricane Florence;
- d. Acting in a careless and negligent manner without due regard for the safety of others;
- e. Failing to promulgate, implement and enforce rules and regulations pertaining to the safe operations of the railway underpass during times of flooding;
- f. Failing to take appropriate action to avoid or mitigate flooding of the railway underpass;
- g. Impeding city officials from taking steps to prevent and/or mitigate potential flooding;
- h. Failing to timely bring the flooding under control;
- i. Such other acts of negligence and omissions as will be shown at the trial of this matter.

66. Plaintiffs are entitled to a judgment finding CSX liable, and solitarily, to Plaintiffs for economic and property damages suffered as a result of CSX's negligence and awarding Plaintiffs adequate compensation therefor in amounts determined by the trier of fact.

67. The injuries to Plaintiffs and the Classes were also caused by and/or aggravated by the fact that CSX failed to take necessary actions to mitigate the danger associated with its operations.

68. As a direct and proximate result of CSX's negligence, Plaintiffs and the Classes have suffered a loss of business income, loss of the use and destruction of their homes, and damages associated and inconvenience sustained by the mandatory evacuations.

CLAIM II

GROSS NEGLIGENCE AND WILLFUL MISCONDUCT

69. Plaintiffs reallege each and every allegation set forth in all preceding paragraphs as if fully restated here, in this claim for relief for gross negligence and willful misconduct under federal common law.

70. CSX owed and breached duties of ordinary and reasonable care to Plaintiffs in connection with the maintenance and operation of the CSX railway underpass, and additionally owed and breached duties to Plaintiffs and the Classes to guard against and/or prevent the risk of the flooding of the CSX railway underpass.

71. CSX breached its legal duty to Plaintiffs and failed to exercise reasonable care and acted with reckless, willful, and wanton disregard in the negligent operation of the CSX railway underpass and the failure to adequately prepare for anticipated flooding.

72. CSX knew or should have known that its wanton, willful, and reckless misconduct would result in a disastrous and devastating flooding that would endanger the life and safety of the residents of Lumberton and cause damage to those affected by flooding of the CSX railway underpass.

73. CSX acted with gross negligence, willful misconduct, and reckless disregard for human life and the safety and health of the environment and Plaintiffs and the Classes by, *inter alia*, disregarding reports calling for construction of a permanent structure to bridge the gap in the levees caused by the CSX railway underpass.

74. CSX acted with gross negligence, willful misconduct, and reckless disregard for human life and the safety and health of the environment and Plaintiffs and the Classes by, *inter alia*, disregarding proper safety procedures; failing to ensure that that adequate safeguards, protocols, procedures and resources would be readily available to prevent and/or mitigate the effects of the flooding of the CSX railway underpass.

75. CSX acted with gross negligence, willful misconduct, and reckless disregard for human life and the safety and health of the environment and Plaintiffs by, *inter alia*, recklessly refusing to allow Lumberton city officials to take adequate measures to guard against anticipated flooding.

76. As a direct and proximate result of CSX's gross negligence, willful misconduct, and reckless disregard for human life and the safety and health of the environment and Plaintiffs, Plaintiffs and Classes have suffered a loss of and damages to homes and businesses, and damages associated and inconvenience sustained by the mandatory evacuations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in Plaintiffs' favor and against CSX, as follows:

1. certifying this action as a class action and appointing Plaintiffs' counsel to serve as Class Counsel;
2. awarding Plaintiffs and the members of the class actual damages, including compensatory and consequential damages, in an amount to be determined at trial;
3. awarding Plaintiffs and the members of the class exemplary or punitive damages;
4. awarding Plaintiffs and the members of the class pre-judgment and post-judgment interest;
5. awarding Plaintiffs and the members of the class such costs and disbursements as are incurred in prosecuting this action, including reasonable attorneys' and experts' fees; and,

6. granting Plaintiffs and the members of the class such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial for any and all claims pled herein in which a jury trial is available by law.

Respectfully submitted, this the 24th day of September, 2018.

By: /s/ Daniel K. Bryson
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jimmy Edwards, Robert Hunt and Dolores Hunt, and Clifford McKellar, Jr. and Emma McKellar on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Robeson, NC
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Whitfield Bryson & Mason LLP
900 W. Morgan St.
Raleigh, NC 27603; Telephone # 919-600-5000

DEFENDANTS

CSX Corporation, CSX Transportation, Inc., and CSX Intermodal Terminals, Inc.

County of Residence of First Listed Defendant Virginia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question *(U.S. Government Not a Party)*
- 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332

Brief description of cause:
Damage to property from flooding

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 09/24/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel K. Bryson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
for the
Eastern District of North Carolina

Jimmy Edwards, Robert Hunt and Dolores Hunt, and
Clifford McKellar, Jr. and Emma McKellar on behalf
of themselves and all other similarly situated,

Plaintiff(s)

v.

CSX Corporation, CSX Transportation Inc., and CSX
Intermodal Terminals, Inc.

Defendant(s)

Civil Action No. 7:18-CV-169

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

CSX Corporation
Registered Agent: Secretary of State
2 South Salisbury Street
Raleigh, NC 27601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Daniel K. Bryson
Matthew E. Lee
Whitfield Bryson & Mason LLP
900 W. Morgan St.
Raleigh, NC 27603

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 7:18-CV-169

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Jimmy Edwards, Robert Hunt and Dolores Hunt, and Clifford McKellar, Jr. and Emma McKellar on behalf of themselves and all other similarly situated,

Plaintiff(s)

v.

CSX Corporation, CSX Transportation Inc., and CSX Intermodal Terminals, Inc.

Defendant(s)

Civil Action No. 7:18-cv-169

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

CSX Intermodal Terminals, Inc.
Registered Agent: CT Corporation System
160 Mine Lake Ct., Ste. 200
Raleigh, NC 27615

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel K. Bryson
Matthew E. Lee
Whitfield Bryson & Mason LLP
900 W. Morgan St.
Raleigh, NC 27603

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 7:18-cv-169

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Jimmy Edwards, Robert Hunt and Dolores Hunt, and Clifford McKellar, Jr. and Emma McKellar on behalf of themselves and all other similarly situated,

Plaintiff(s)

v.

CSX Corporation, CSX Transportation Inc., and CSX Intermodal Terminals, Inc.

Defendant(s)

Civil Action No. 7:18-CV-169

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

CSX Transportation, Inc.
Registered Agent: CT Corporation System
160 Mine Lake Ct., Ste. 200
Raleigh, NC 27615

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel K. Bryson
Matthew E. Lee
Whitfield Bryson & Mason LLP
900 W. Morgan St.
Raleigh, NC 27603

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 7:18-CV-169

PROOF OF SERVICE

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I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: