

IN THE CIRCUIT COURT OF GREENBRIER COUNTY, WEST VIRGINIA

PAUL RATCHFORD,

PLAINTIFF,

VS

CIVIL ACTION NO. 08-C-

**CSX CORPORATION,
a Virginia corporation;
CSX HOTELS, INC.,
a West Virginia corporation;
MICHAEL J. WARD, Individually;
BRUCE ROSENBERGER, Individually;
HEAD COACH, INC., a Georgia corporation
and HOWARD SHAPIRO, Individually,
DEFENDANTS.**

2008.08.21 11:10:20

COMPLAINT

Now comes Paul Ratchford, Plaintiff, by Counsel, Barry L. Bruce, Hamilton D. Skeens, and Barry L. Bruce and Associates, L. C., and for his Complaint against Defendants states as follows:

PARTIES AND JURISDICTION

1. Plaintiff was at all times herein mentioned a resident of Greenbrier County, West Virginia.
2. Defendant, CSX Hotels, Inc. (hereinafter "CSX"), is a West Virginia corporation with its principal place of business located at 300 W. Main Street, White Sulphur Springs, Greenbrier County, West Virginia, and is a wholly owned subsidiary of CSX Corporation.
3. CSX Corporation, is a Virginia corporation with its principal place of business located at 500 Water Street, Jacksonville, Florida, and is authorized to and does business in West Virginia.

4. At all times relevant hereto CSX Corporation owned, operated and/or managed CSX which in turn owned, operated and/or managed The Greenbrier Resort (hereinafter the "Greenbrier"), located at 300 W. Main Street, White Sulphur Springs, West Virginia.

5. Defendant, Michael J. Ward, is a Florida resident and is Chief Executive Officer of CSX Corporation.

6. Defendant, Bruce Rosenberger, is now and was at all times herein mentioned a resident of Greenbrier County, West Virginia.

7. Defendant, Head Coach, Inc., is a Georgia corporation with its principal place of business at 2272 Valley Brook Way, Atlanta, Georgia, and conducts business in West Virginia.

8. Defendant, Howard Shapiro, is a Georgia resident and is president of Head Coach, Inc.

9. Venue is proper in Greenbrier County as the events giving rise hereto occurred therein pursuant to West Virginia Code §51-2-2, *et seq.*

FACTUAL BACKGROUND

10. Paragraphs 1 through 9 are incorporated herein by reference as though restated.

11. In June 2006 and prior to that time, Plaintiff, Paul Ratchford, was General Manager of the Ritz Carlton Resort in Half Moon Bay, California.

12. In June 2006 Defendant, CSX and/or CSX Corporation, through Spencer Stuart, an executive search firm, contacted Plaintiff regarding the President's position at the Greenbrier.

13. During the next three months Plaintiff and CSX and/or CSX Corporation engaged in employment interviewing and negotiations which included the Plaintiff visiting the Greenbrier.

14. On or about August 24, 2006, an employment offer letter was faxed to Plaintiff from Robert Haulter, Senior Vice President of Human Relations for CSX Corporation.

15. After receiving the offer letter, Plaintiff informed Defendant, CSX and/or CSX Corporation, through Ted Kleisner, Bruce Rosenberger, and Spencer Stuart's representative, Ann Fastiggi, that he did not believe he could accept the offer due to the impact it would have on his family. Whereupon, Ted Kleisner, then President of CSX Hotels, Inc., and Bruce Rosenberger, invited Plaintiff and his wife to return to Greenbrier County to reconsider the employment opportunity.

16. During the second visit to the Greenbrier by Plaintiff and his wife, Ted Kleisner and Bruce Rosenberger emphasized the fact that this was a job that Plaintiff would have for the remainder of his working career, he was the man for job, and assuring him there were no down sides to the acceptance. Mr. Kleisner stated that the Greenbrier had a history of keeping Presidents for a long period of time and indicated that he had been employed by the Greenbrier for 25 years. Both Mr. Kleisner and Bruce Rosenberger again assured Plaintiff that if he desired he could keep that position for the rest of his career.

17. Based upon further assurances given by CSX and/or CSX Corporation, Plaintiff decided to accept the position, and, upon his return to California, on or about September 5, 2006, Plaintiff signed the non-integrated offer letter and faxed it to Mr. Robert J. Haulter. See letter attached as Exhibit I.

18. At the time Plaintiff accepted the position as President, the Greenbrier was experiencing a financial loss of approximately fifteen million dollars (\$15,000,000) per year and was reduced to a four star rated resort from its prior five star rating in the resort industry.

19. CSX charged the Plaintiff with the tasks of, among others, making the Greenbrier profitable, returning it to its prior level of prestige in the resort industry and improving the image of the Greenbrier to attract younger patrons, i.e. "GenXers".

20. Beginning in late 2006 and into 2007, Plaintiff took actions necessary to accomplish his job duties as aforesaid and in doing so, stopped unethical and possibly illegal conduct at the Greenbrier and any changes made by Plaintiff at The Greenbrier Resort were with prior approval of Mr. Ward.

21. Defendant Rosenberger was an executive employee at the Greenbrier and reported directly to the Plaintiff. Defendants Head Coach Inc. and Shapiro contracted with CSX to assist Plaintiff with internal coaching of senior leadership and offer team building recommendations regarding the operation of the Greenbrier.

22. Upon information and belief, Defendants Rosenberger and Shapiro reported information directly to CSX and/or CSX Corporation without Plaintiff's knowledge or consent with the purpose to interfere with the business contract between Plaintiff and CSX and/or CSX Corporation and in retaliation for the Plaintiff's new business policies.

23. Beginning in January, 2007, and at various times thereafter, Plaintiff attended performance review meetings with senior management of both CSX and CSX Corporation as well as meetings with Defendant Shapiro and received positive feedback on his job performance.

24. On September 18, 2007, Michael Ward, Chief Executive Officer of CSX Corporation, without cause or explanation and within a 45 second conversation, terminated the Plaintiff's employment.

COUNT ONE
VIOLATION OF THE WAGE PAYMENT AND COLLECTION ACT,
WEST VIRGINIA CODE SECTION 21-5-1, *ET SEQ*

25. Paragraphs 1 through 24, are incorporated herein by reference as though restated.

26. Plaintiff's non-integrated employment agreement, Exhibit I, provided that Plaintiff receive \$700,000 in severance benefits and 1200 shares of stock upon his termination and, pursuant to West Virginia Code §21-5-4.b, required that Plaintiff be paid in full within seventy-two hours for all his wages and benefits. The term "wages" as defined in §21-5-1.c. states "...wages shall also include then accrued fringe benefits capable of calculation and payable directly to an employee..." Plaintiff was not paid his accrued wages owed him within seventy-two hours nor was he paid his severance benefits within seventy-two hours.

27. At the time of his termination on September 18, 2007, Plaintiff had unpaid wages due him of \$2,916.67 that were paid to him on September 28, 2007, not within the three-day time period provided under said statute.

28. On or after December 7, 2007, Defendant, CSX and/or CSX Corporation, sent to Plaintiff a check in the amount of \$8,750.01 to cover "any potential treble damages on those wages;" however, said Defendant deducted withholdings from said money. Treble damages are compensatory damages and not wages, and Defendant, CSX and/or CSX Corporation were and are in violation by withholding deductions from said check.

29. Defendant, CSX and/or CSX Corporation, issued Plaintiff 1200 shares of stock on October 23, 2006, and a check for the severance pay of \$700,000 due Plaintiff on October 26,

2007, which are beyond seventy-two hours of Plaintiff's termination and in violation of the statute.

30. Defendant, Michael Ward, was an officer of CSX Corporation and knowingly permitted the corporation to violate the provisions of the West Virginia Wage Payment and Collection Act.

31. Defendant, CSX and/or CSX Corporation is in violation of West Virginia Code §21-5-1, *et seq.*, the West Virginia Wage Payment and Collection Act, by not paying accrued fringe benefits "capable of calculating and payable directly to the employee" within seventy-two hours as provided by §21-5-4.(b).

WHEREFORE, pursuant to West Virginia Code §21-5-4.(c), Plaintiff demands payment of \$2,100,000 and 3600 shares of stock as treble damages and, pursuant to §21-5-12., costs of this action, including reasonable attorney fees.

**COUNT TWO
BREACH OF CONTRACT**

32. Paragraphs 1 through 31, are incorporated herein by reference as though restated.

33. CSX and/or CSX Corporation made substantial promises, orally and in writing, to Plaintiff to lure him away from a very lucrative and prestigious position at the Half Moon Bay resort and accept the position of President of the Greenbrier.

34. Plaintiff relied on the promises as aforesaid including, but not limited to, a thirty thousand (\$30,000) two year travel benefit and company paid housing for two years.

35. CSX and/or CSX Corporation breached its employment agreement with the Plaintiff proximately causing him economic and consequential damages.

WHEREFORE, Plaintiff demands payment of all monies and damages due him pursuant to his employment contract.

**COUNT THREE
WRONGFUL DISCHARGE**

36. Paragraphs 1 through 35 are incorporated herein by reference as though restated.
37. When Plaintiff was hired by Defendants, CSX, CSX Corporation, Defendant, Michael Ward, told Plaintiff he had to accomplish three goals to be successful:
- A. Return the Company to profitability - stop the \$15 million per year loss.
 - B. Get back Mobil five star hotel rating.
 - C. Change the image of the Company to attract the "GenXers"
38. Plaintiff's contract (Exhibit I) had a discharge for cause clause that required Defendant, Michael Ward, to give written notice to Plaintiff of any cause issues prior to termination - none were given to Plaintiff.
39. During the Plaintiff's investigation into how to return the Company to profitability, he uncovered that the executives of CSX and/or CSX Corporation were receiving an enormous amount of free benefits for themselves, their families, and their friends all at great expense to the Greenbrier.
40. CSX executives were receiving free meals and excessive discounts from the food and beverage outlets and greatly discounted merchandise from the Greenbrier shops. None of such benefits were being attributed as "income" to said executives, all in contravention of West Virginia tax laws. Said executives were also receiving hotel rooms free or at greatly discounted rates. Executives had accounts with the Greenbrier known as "city ledger accounts", all of

which were not paid or paid at a fraction of their cost to said executives. Plaintiff also learned that CSX Corporation executives and families, including retired executives and directors, received highly discounted rooms and meals, all without counting same as income.

41. Plaintiff immediately discontinued these policies and reported his findings to Michael Ward and others at CSX Corporation.

42. Plaintiff advised Defendant, Michael Ward, he was going to stop the aforesaid policy and institute a policy that all employees would be limited to a flat 25% discount which was approved by Michael Ward.

43. Plaintiff's investigation uncovered that executives of CSX and CSX Corporation were receiving "free" medical/physical examinations from The Greenbrier Clinic, an independently owned and operated business, in exchange for said business not having to pay fair market rent to the Company. Again, the employees receiving these benefits did not count same as income in contravention of West Virginia tax laws.

44. West Virginia has a strong public policy to require persons, firms and corporations that do business in West Virginia to, among other obligations, account, collect, withhold and pay all applicable state and federal taxes due and owing. *See W. Va. Code § 11-9-1 et. seq.*

45. Plaintiff had an obligation to see that CSX properly reported income of employees to reflect expenses related to same and withhold taxes from their income including fringe benefits.

46. CSX, CSX Corporation and/or Michael Ward willfully, wantonly, recklessly and wrongfully discharged Plaintiff in violation of West Virginia's strong public policy as aforesaid

because Plaintiff's insistence in correcting irregularities of fringe benefits to executives and members not being reported as indicated under West Virginia law; by insisting upon stopping the practice of gratuitous medical examinations for executive employees in exchange for free rent to the Greenbrier Clinic; and the practice of giving free rooms and meals to CSX Corporation current and retired executives all in violation of public policy of the State of West Virginia.

**COUNT FOUR
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP**

47. Paragraphs 1 through 46 are incorporated herein by reference as though restated.

48. Plaintiff had a contractual employment relationship with CSX and/or CSX Corporation to improve the Greenbrier's operations as aforesaid.

49. Defendant Rosenberger was Plaintiff's subordinate and was responsible to report directly to and assist Plaintiff in the management and operation of the Greenbrier.

50. Defendant Head Coach, Inc., and Defendant Shapiro were contractually obligated to assist and report to the Plaintiff regarding the management and operation of the Greenbrier.

51. Upon information and belief, Defendants Rosenberger, Head Coach, Inc., and/or Shapiro, individually and/or in concert with one another, contacted CSX Corporation and/or Michael Ward without Plaintiff's knowledge or consent with the intent and purpose to interfere with the employment contract between Plaintiff and CSX and/or CSX Corporation and in retaliation for the Plaintiff's new business policies.

52. The intentional, willful, wanton and/or reckless acts of Defendants Rosenberger, Head Coach, Inc., and Shapiro proximately caused the CSX and/or CSX Corporation to breach its employment contract with and wrongfully discharge Plaintiff proximately causing him economic and consequential damages.

COUNT FIVE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

53. Paragraphs 1 through 52 are incorporated herein by reference as though restated.

54. The Defendants' conduct as aforesaid was and is outrageous and unjustified.

55. As a direct and proximate result of the Defendants' conduct, the Plaintiff has suffered severe emotional distress, has come under a physician's care and has been diagnosed with Post Traumatic Stress Disorder.

56. As a further result of the Defendants' conduct, the Plaintiff has been stigmatized in the resort management industry such that he has been, and remains, hindered in obtaining employment comparable to his prior positions.

57. The Defendants' outrageous, willful, wanton, reckless and/or tortious conduct proximately caused the Plaintiff to suffer severe emotional distress, incur expenses for medical treatment and be otherwise damaged.

COUNT SIX
CALIFORNIA LABOR STATUTE VIOLATION

58. Paragraphs 1 through 57 are incorporated herein by reference as though restated.

59. Plaintiff believes and therefore asserts that CSX and/or CSX Corporation's employees, Ted Kleisner and Bruce Rosenberger, did not have actual authority, rather only apparent authority, to make the assurances regarding the President's position at the Greenbrier and such misrepresentations were intentionally and fraudulently made in order to induce Plaintiff to take the President's position.

60. Plaintiff reasonably relied on such fraudulent misrepresentations to his detriment.

61. Plaintiff, relying upon CSX employees' fraudulent representations to him, purchased a house at The Sporting Club much to his financial detriment.

62. Further, due to his wrongful termination, Plaintiff has been stigmatized and may never regain the stature he had in the hotel resort industry.

63. Section 970 of the California Labor Statute states:

No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:

(a) The kind, character, or existence of such work;

(b) The length of time such work will last, or the compensation therefor;

(c) The sanitary or housing conditions relating to or surrounding the work;

(d) The existence or nonexistence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer and the persons then or last engaged in the performance of the labor for which the employee is sought.

64. Section 971 makes a violation of section 970 a misdemeanor criminal offense and section 972 states: "In addition to such criminal penalty, any person, or agent or officer thereof who violates any provision of Section 970 is liable to the party aggrieved, in a civil action, for double damages resulting from such misrepresentations. Such civil action may be brought by an aggrieved person or his assigns or successors in interest, without first establishing any criminal liability."

65. Clearly, CSX and/or CSX Corporation are guilty of a violation of the afore-cited sections of the California Labor statutes and are liable to the Plaintiff for double damages.

**COUNT SEVEN
FRAUD**

66. Paragraphs 1 through 65 are incorporated herein by reference as though restated.

67. CSX and/or CSX Corporation's misrepresentations not only violated the California Labor Statute as aforesaid; the misstatements also rise to the level of fraud.

68. But for Ted Kleisner and Bruce Rosenberger's misrepresentations regarding the President's position at the Greenbrier as aforesaid, the Plaintiff would not have accepted the job, uprooted his family and traveled across the country from California to West Virginia.

69. The Plaintiff justifiably relied upon the misrepresentations under the circumstances.

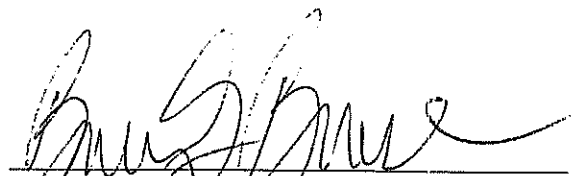
70. As a direct and proximate result of CSX and/or CSX Corporation's fraud, the Plaintiff has suffered the equivalent of a career death sentence in the resort industry. Plaintiff suffers from Post Traumatic Stress and has come under a psychologists' care. Plaintiff purchased a home in West Virginia as he had full intention to stay at the Greenbrier for the rest of his working career; a decision that was completely reasonable given Ted Kleisner and Bruce Rosenberger's statements to Plaintiff about the President's position.

71. CSX and/or CSX Corporation's actions in this case were willful, wanton, reckless and fraudulent. As such, the Plaintiff is entitled to punitive damages to deter CSX and/or CSX Corporation from engaging in this kind of conduct in the future.

WHEREFORE, Plaintiff prays that he be awarded judgment against the Defendants, jointly and severally, in the amount of fifty million dollars (\$50,000,000) to compensate him for his injuries and damages, including but not limited to, severe emotional distress, as well as punitive damages to deter the Defendant's outrageous conduct in the future, interest, attorney fees, costs of this action, and for such other and further relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

PLAINTIFF,
BY COUNSEL



Barry L. Bruce, State Bar ID # 511
Hamilton D. Skeens, State Bar ID # 7226
BARRY L. BRUCE & ASSOCIATES, L.C.
P. O. Box 388
Lewisburg, WV 24901
Telephone: (304) 645-4182
Facsimile: (304) 645-4183



August 24, 2006

Paul Ratchford
29 Pinehurst Lane
Half Moon Bay, CA 94019

Dear Paul:

We are excited to offer you the position of President of CSX Hotels, Inc. ("The Greenbrier" or "Company") reporting to Michael Ward effective _____, 2006. In accordance with our discussions, this letter confirms the terms of your employment. As we have discussed, this employment offer is contingent upon your passing a medical examination which will include a drug screen. If you are in agreement, please sign and return one original to my attention.

Annual Base Salary

You will receive an initial annual base salary of \$350,000 ("Base Salary"), payable in accordance with The Greenbrier's customary payroll practices. During your employment, your Base Salary may be reviewed on a periodic basis for possible increases.

Bonus (target incentive opportunity)

In addition to your Base Salary, you shall have the opportunity to receive an annual bonus ("Annual Bonus") based upon a target incentive equal to 60% of your Base Salary, on the same terms and conditions established for your peers. The Annual Bonus shall be based upon pre-established annual targets for The Greenbrier, and will be adjusted based on your individual performance. It shall equal an amount, as determined by the Company, ranging from 0% to 160% of the target incentive of 60% mentioned above. Thus, initially your bonus could range from \$0 to \$336,000. If the Company awarded you a bonus equal to 100% of the target, the bonus would equal \$210,000. Any bonus will be paid at the same time as your peers receive their bonuses. Any bonus paid in 2006 will be prorated.

Other Benefits and Obligations

You will also receive the following additional benefits: (i) \$200,000, as a cash signing bonus to be paid as soon as practicable after your Employment Date (defined as your first day of employment with The Greenbrier); (ii) 6,000 restricted shares of CSX common stock to be received in accordance with a separate agreement entitled "Restricted Stock Agreement" to be sent to you under separate cover (the restrictions will end upon the vesting of the shares which occurs on the fifth anniversary of your Employment Date; (iii) \$30,000 per year for a two-year period beginning on your Employment Date to cover your personal travel expenses; (iv) \$15,000 per year as a perquisite payable in a lump sum in the first quarter, in addition to other amenities to which you will be provided at The Greenbrier consistent with your peers; (v) Company-paid housing for two years; and, (vi) four weeks of vacation annually. You agree, however, that within two years of your Employment Date, you will relocate your permanent residence to White Sulpher Springs, West Virginia or the surrounding area.

Mr. Paul Ratchford
Page 2
August 24, 2006

You will also be entitled to participate in any long term incentive plan if one is implemented by The Greenbrier (no long term incentive plan is currently in place but one is expected to be implemented in 2007) to the same extent as peer executives with a value to be determined by the Company.

Severance

In the event the Company terminates your employment, other than for cause, or you terminate employment for good reason, prior to your completion of five years of employment with the Company, you will receive a lump sum severance payment equal to two years of your then current Annual Base Salary. "Cause" means (i) the willful and continued failure to substantially perform your duties with the Company (other than any such failure resulting from disability as defined by the CSX Corp. Long Term Disability Plan), after the Chief Executive Officer of CSX Corp. delivers to you a written demand for substantial performance that specifically identifies the manner in which the Chief Executive Officer believes that you have not substantially performed your duties, or (ii) the willful engaging in illegal conduct or gross misconduct, including acts of moral turpitude, which is materially and demonstrably injurious to the Company or its affiliates. Your termination of employment for "good reason" means termination by you within 60 days after, and as a result of: (i) the assignment to you of any duties materially inconsistent with this Agreement, or any other action by the Company that results in a material diminution in your position, authority, duties or responsibilities; or (ii) any failure by the Company to comply with any provision of this Agreement, other than an isolated, insubstantial and inadvertent failure that is not taken in bad faith and is remedied by the Company promptly after receipt of notice thereof from you.

CSX looks forward to you coming on board and if you have any questions, please don't hesitate to call me at 904.366.5603.

Very truly yours,

Robert J. Haulter
Senior Vice President, Human Resources
CSX Corporation

Agreed to and accepted:

Paul Ratchford

Dated: _____