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Westlaw Journal Product Liability

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RICO

By Ronald V. Baker

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NORFOLK SOUTHERN RAILOADED BY TIE SUPPLIER, SUIT SAYS

Norfolk Southern Railway Co. v. Boatright Railroad Products

Boatright Railroad Products Inc. sold millions of substandard railroad ties to Norfolk Southern Railway Co. that are now degrading and will require premature replacement, according to a complaint filed in the U.S. District Court for the Northern District of Alabama.

Norfolk Southern Railway Co. v. Boatright Railroad Products Inc. et al., No. 17-cv-1787, *complaint filed* (N.D. Ala. Oct. 23, 2017).

The freight railroad, one of the nation's largest, seeks \$50 million for losses it sustained in the purchase of more than 4.7 million improperly treated wooden railroad ties between 2009 and 2014, according to the suit.

Norfolk Southern says it was defrauded and faces additional material and labor costs to replace the ties as they continue to degrade, long before their ordinary lifespan.

The suit says Boatright, two of its executives and a former Norfolk Southern employee who oversaw the railroad's acquisition of the ties violated the Racketeer Influenced and Corrupt Organizations Act, [18 U.S.C.A. § 1961](#).

Norfolk Southern alleges the defendants had a plan to sell railroad ties that were not treated with specified preservatives. According to the suit, when Boatright owner Shane Boatright purchased the railroad's former tie supplier in 2009, he ordered employees to stop treating ties with creosote.

He told them instead to "make them black' by whatever means necessary" so they would appear to meet quality and preservation specifications, the suit says. His workers used substances such as paint and used motor oil to comply with the demand, according to the complaint.

The suit further claims former Norfolk Southern employee Jimmy L. Watt received as much as \$128,000 in cash from Boatright Railroad Products while he was tie inspector at Boatright's Alabama production facility.

Boatright gave Watt properly treated wood samples to show Norfolk Southern superiors, leading them to believe the ties at issue were of the same quality: creosote-treated and dried in line with purchase order requirements, the suit says.

Norfolk Southern says it discovered the scheme in 2016 -- two years after Boatright sold the wood processing company -- when its former employees revealed that many of the Boatright ties were inferior and improperly treated.

Inspections of already-installed ties in 2017 revealed that Boatright had used unacceptable wood species, improper drying techniques and counterfeit substances to give the appearance that the ties met contract standards, Norfolk Southern says.

The railroad adds that it began noticing premature degradation of Boatright ties in 2016 and 2017, requiring an accelerated tie replacement schedule.

*2 The suit includes causes of action against all defendants for RICO-based conspiracy, civil conspiracy and fraud, as well as a breach of warranty claim and an alternate-negligence claim specifically against Boatright Railroad Products.

Attorneys:

Plaintiff: [Annette L. Kinderman](#), Cabaniss, Johnston, Gardner, Dumas & O'Neal, Birmingham, AL; [Christopher Merrick](#), Keenan Cohen & Merrick, PC, Ardmore, PA

Company: Norfolk Southern Corp.

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