

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS
RICHARD SHEPPARD ARNOLD UNITED STATES COURTHOUSE
500 W. CAPITOL, ROOM D444
LITTLE ROCK, ARKANSAS 72201-3325
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May 27, 2009

Mr. Robert L. Henry , III
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Little Rock, AR 72201-3414

Mr. Kirkman T. Dougherty
Hardin, Jesson & Terry - Fort Smith
Post Office Box 10127
Fort Smith, AR 72903-0127

Re: *Burress v. Union Pacific Railroad, et al*, 1:01-CV-00072-WRW

Dear Counsel:

In 2004, when this case was based on negligence and violations of the safety compliance act only 5-6 days was the estimate.¹ Why six days for what should be a pared down case? Please advise.

Issues of contributory negligence have been excluded and I have determined that there was, indeed, potential liability. The only issues for trial appear to be (1) whether the settlement amount was reasonable in view of Plaintiffs' injury, pain and suffering, lost earnings, and loss of consortium; and (2) whether the settlement was made in good faith based on Defendants' risk of exposure (which is analyzed based on the attorneys' and corporate representatives' beliefs in light of the information available at the time of settlement).

None of the witnesses below appear to be able to testify as to issues relevant at trial, as I understand them (this is not an all inclusive list): Mr. Dan Tinkle (ConAgra shift supervisor who witnessed the accident); Mr. Langley Puckett (a Transportation Specialist/Engineer who is ConAgra's "top guy in Batesville," who "inspected the safety appliances" on each rail car); Mr. Fern Sampson (a trainmaster for the Railroads); Mr. Richard Martin (a ConAgra employee with information about whether the couplers were working properly); Mr. Harvey Crouch (a civil engineer who wrote a report on the accident scene and knows regulations); and numerous EMTs and emergency room doctors.

Cordially,

/s/ Wm. R. Wilson, Jr.

Original to the Clerk of the Court
cc: Other Counsel of Record

¹In 2004, the Railroads estimated only five days (Doc. Nos. 195, 196) and ConAgra predicted six days for trial (Doc. No. 198).