

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**KENNETH WADE BURRESS and  
PRISCILLA BURRESS**

**PLAINTIFFS**

**V.**

**1:01-CV-00072--WRW**

**UNION PACIFIC RAILROAD  
COMPANY, et al.**

**DEFENDANTS**

**MISSOURI & NORTHERN ARKANSAS  
RAILROAD COMPANY, INC.**

**THIRD-PARTY PLAINTIFF**

**CONAGRA POULTRY COMPANY**

**THIRD-PARTY DEFENDANT**

**ORDER**

**1. ConAgra's Motion in Limine No. 1 (Doc. No. 417) has two parts:**

- **Request to bar reference to "Irrelevant Other Lawsuits/Jury Verdicts"** is GRANTED, since testimony about other lawsuits is generally irrelevant. However, if ConAgra takes the position (and puts on evidence) that Arkansas juries do not issue large monetary awards, the Railroads may counter with relevant cases.
- **Testimony about Duty and Law** -- see paragraph 6, ruling on ConAgra's Motion in Limine regarding Michael Deatherage.

**2. ConAgra's Motion in Limine to Exclude Charles Culver From Testifying as an Expert Witness. (Doc. No. 419) is DENIED as MOOT, since Mr. Culver was not listed as a potential witness on the Railroads' May 18, 2009 witness list.<sup>1</sup>**

**3. ConAgra's Motion in Limine to Exclude Vaughn Berry from Testifying as an Expert Witness (Doc. No. 420) is DENIED as MOOT, since Mr. Berry was not listed as a potential witness on the Railroads' May 18, 2009 witness list.<sup>2</sup>**

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<sup>1</sup>Doc. No. 425.

<sup>2</sup>*Id.*

**4. ConAgra's Motion in Limine to Exclude Allan J. Blackwell from Testifying as an Expert Witness (Doc. No. 421)** is DENIED as MOOT, since Mr. Blackwell was not listed as a potential witness on the Railroads' May 18, 2009 witness list.<sup>3</sup>

**5. ConAgra's Motion in Limine to Preclude Evidence of Punitive Damages (Doc. No. 422)** is DENIED.

**6. ConAgra's Motion to Exclude the Deposition Testimony of Michael Deatherage (Doc. No. 428)** is GRANTED in PART and DENIED in PART. The Railroads will not be permitted to present Deatherage's testimony that makes conclusions of law, *e.g.*, "that's against the law" or "They were -- actually had violated the -- the regulation -- its Part 230 dealing w/ engineer certification . . . ."

**7. ConAgra's Motion in Limine to Exclude Testimony of Kenneth Burress and/or Priscilla Burress (Doc. No. 450)** is DENIED. However, it seems to me that the Burress' testimony, generally, should be limited to events before the March, 2004, settlement.

**8. ConAgra's Motion in Limine Regarding Attorneys' Fees, Attorneys' Contracts, Litigation Expense, and Similar Evidence (Doc. No. 452)** is DENIED.

**9. The Railroads' Motion in Limine to Exclude Evidence of Collateral Sources of Compensation (Doc. No. 440)** is GRANTED.

**10. The Railroads' Motion in Limine to Exclude Evidence of Settlement Offers and Negotiations** (between the Railroads and ConAgra) (Doc. No. 433) is GRANTED.

IT IS SO ORDERED this 27th day of May, 2009.

/s/ Wm. R. Wilson, Jr. \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup>*Id.*