



of the accident.”<sup>1</sup>

It is undisputed that Gray’s state law claims based on inadequate crossing warnings and excessive train speeds are preempted by federal law. Accordingly, Defendant BNSF’s motion for partial summary judgment (docket entry #52) is GRANTED, and Plaintiff’s state law claims based on inadequate warnings at the crossing at issue and excessive train speed are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED THIS 14<sup>TH</sup> DAY OF SEPTEMBER, 2010.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE

---

<sup>1</sup>Docket entry #64, ¶ 2. Gray alleges that Defendants were negligent because “they operated their train at a high rate of speed excessive for conditions existing there and then.” Compl., ¶ 11(a). It is undisputed that at the time of the accident at issue, the train in question was traveling on a Class 4 track at 53 miles per hour, *See* BNSF’s St. Facts, ¶ 3, *see also* Local Rule 56.1(c), less than the 60 mile-per-hour maximum speed limit set under the Federal Railroad Safety Act. *See* 49 U.S.C. § 20106; 49 C.F.R. § 213.9.