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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RANDY'S TRUCKING, INC., and STAR )  
INSURANCE COMPANY, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CITY OF SHAFTER, etc., et al., )  
 )  
Defendants. )  
 )  
 )  
AND RELATED ACTIONS, CROSS- )  
ACTIONS, AND THIRD PARTY ACTIONS )  
 )

1:08-cv-0819 OWW SKO  
FINAL PRETRIAL ORDER  
Motion in Limine Date:  
8/27/10 12:00 Ctrm. 3  
Trial Date: 9/8/10 9:00  
Ctrm. 3 (JT-8 days)

I. JURISDICTION AND VENUE

1. This Federal Court has original jurisdiction over the claims against Defendants National Railroad Passenger Corp. ("Amtrak") because Defendant was incorporated by an Act of Congress (45 U.S.C. § 501, et seq.) and the United States of America owns more than 50% of Amtrak's capital stock (28 U.S.C. § 1349). (*In re Tail Collision Near Chase, Maryland*, (D. Md. 1987) 680 F.Supp. 728, 731.)

2. BNSF claims jurisdiction of BNSF's cross-claim is based upon diversity. 28 U.S.C. § 1367.

3. Defendants Amtrak and BNSF have settled with all

1 Plaintiffs other than Randy's Trucking, Inc., and Star Insurance  
2 Company, and stipulations are being circulated to remand the  
3 remaining Plaintiff claims settled by Amtrak back to state court.

4 II. JURY/NON-JURY

5 1. The parties demand a jury trial.

6 III. FACTS

7 A. Undisputed Facts

8 1. On July 19, 2007, a train v. truck collision occurred  
9 in Shafter, California involving Randy's Trucking, Inc., tractor-  
10 tanker rig driven by Defendant Sandoval and insured by Plaintiff  
11 Star Insurance Company and an Amtrak train traveling over  
12 Defendant BNSF Railway Company's tracks. The truck belonging to  
13 Plaintiff Randy's Trucking, Inc., and insured by Plaintiff Star  
14 Insurance Company, suffered property damage.

15 2. The Amtrak train and the BNSF railroad tracks and  
16 signaling devices were also damaged.

17 3. Randy's Trucking, Inc. is a corporation licensed to do  
18 and doing business in the State of California.

19 4. Defendant Sandoval is an individual resident of the  
20 Eastern District of California.

21 5. Star Insurance Company is a corporation licensed to  
22 conduct a casualty insurance business in California.

23 6. Amtrak is a public corporation doing business within  
24 the Eastern District of California.

25 7. Burlington Northern & Santa Fe Railroad is a  
26 corporation, successor to Atchison Topeka & Santa Fe Railroad  
27 doing business as a railroad in the Eastern District of  
28 California.

1 B. Disputed Facts

2 1. Whether Amtrak and its agents and employees were  
3 negligent in the operation of the train that struck the Randy's  
4 vehicle.

5 2. Whether BNSF exercised due care in exercising control  
6 over the operation of its railway crossing.

7 3. Whether the train-activated warning devices at the  
8 subject railroad crossing functioned as designed at the time of  
9 the accident.

10 4. Whether Fernando Sandoval was either inattentive or  
11 deliberately tried to beat the train to the crossing.

12 5. Whether Fernando Sandoval exercised due care in  
13 operating the tractor-trailer in question.

14 6. Whether the State of California exercised due care in  
15 the placement of its traffic control devices at the subject  
16 railway crossing.

17 7. Whether placement of traffic control devices  
18 constituted a dangerous condition on public property.

19 8. Whether settlements of the related passenger claims and  
20 claims under the Federal Employer's Liability Act against Amtrak  
21 were reasonable.

22 9. Negligence, causation, and the nature and extent of  
23 damages for Randy's Trucking, Inc., Star Insurance, Amtrak and  
24 BNSF.

25 IV. DISPUTED EVIDENTIARY ISSUES

26 1. The parties know of no anticipated dispute concerning  
27 admissibility of live and deposition testimony, physical and  
28 demonstrative evidence, or the use of special technology at

1 trial.

2 V. SPECIAL FACTUAL INFORMATION

3 A. Plaintiffs.

4 1. On July 19, 2007, a train v. truck collision occurred  
5 in Shafter, California involving a Randy's Trucking, Inc.  
6 tractor-truck driven by Sandoval, insured by Plaintiff Star  
7 Insurance Company, and an Amtrak train traveling over BNSF  
8 tracks.

9 2. Randy's, Star and Sandoval contend that the State of  
10 California is liable for this accident.

11 B. Defendants

12 Plaintiff Randy's Trucking, Inc., and Star Insurance Company  
13 claimed damages:

14 1. Star Insurance Company payments to Randy's Trucking,  
15 Inc.: \$30,509.78.

16 2. Two \$1,000 deductibles paid by Randy's Trucking, Inc.,  
17 for damages paid by Star Insurance: \$2,000.

18 3. Replacement trailer purchased by Randy's Trucking,  
19 Inc.: \$36,865.

20 4. Loss of revenue by Randy's Trucking, Inc., from date of  
21 accident to time of placement of replacement trailer into service  
22 (8/29/08): \$246,240 gross. (Computed at \$60 per hour x 12 hours  
23 per day x 6 days per week x 52 weeks, plus \$4,320 x 5 weeks.)

24 5. Amtrak is claiming damages of \$1,005,433.60 in  
25 equipment repair, loss of use of equipment, train delay,  
26 reimbursement of passenger injury settlements, train engineer  
27 medical costs, work element costs, and prejudgment interest.

28 6. BNSF is claiming damages for labor, materials, train

1 delay, incentives and other losses, including repair to tracks  
2 and equipment, totaling \$1,052,080.54, plus interest of  
3 \$330,324.44 to date of trial of September 8, 2010.

4 VI. RELIEF SOUGHT

5 1. Randy's Trucking, Inc., Star Insurance Company, Amtrak  
6 and BNSF seek money damages in the amounts as per paragraphs  
7 above.

8 VII. DISPUTED ISSUES OF LAW

9 1. Randy's contends that its driver Sandoval was  
10 obligated, pursuant to California Vehicle Code § 22450(a) to come  
11 to a complete stop at the stop sign on the western side of the  
12 railroad crossing, leaving a portion of his trailer on the  
13 railroad tracks.

14 2. BNSF and Amtrak contend that Sandoval violated Vehicle  
15 Code § 22451(a)(1).

16 3. Randy's contends that the placement of the stop sign at  
17 the subject intersection by the State of California was in  
18 violation of Vehicle Code § 21350, et seq. (proper placement of  
19 stop signs), was negligent and created a dangerous condition of  
20 public property.

21 4. Both Amtrak and BNSF claim the issues related to  
22 adequacy of devices at crossing and design of crossing, and  
23 issues related to train speed and engineer training are preempted  
24 by federal law. Randy's, Sandoval, and Star contend that no  
25 preemption argument can affect the State of California's  
26 potential liability for the placement of the stop sign and stop  
27 limit line where Mr. Sandoval was located at the time of the  
28 incident.

VIII. ABANDONED ISSUES

1  
2 1. Although not abandoned, no claims against the State  
3 shall be tried in this action.

4 2. All passenger personal injury claims against Amtrak and  
5 BNSF have been settled, claims against the City of Shafter and  
6 County of Kern dismissed, and claims against the State removed to  
7 State Court.

8 3. Potential claims for comparative indemnity as between  
9 Amtrak and the Randy's Trucking Plaintiffs have not been  
10 abandoned or dismissed. They are reserved.

11 IX. WITNESSES

12 1. Jennifer M. Quinonez  
13 853 Oakmont St.  
14 Shafter, CA 93263  
889-7077

15 2. Fernando M. Sandoval  
16 621 Lucard St.  
Taft, CA 93268  
(661) 765-2604

17 3. Stacy C. Breazeale  
18 1303 3rd  
Oakland, CA  
(510) 529-9421

19 4. Ranny McCowen  
20 1303 3rd  
Oakland, CA  
(707) 628-7010

22 5. Lorraine Moran  
23 2265 W. Sandy  
Caruthers, CA 93609  
(661) 637-1067

24 6. Christa Bennett  
25 1303 3rd  
Oakland, CA  
26 (707) 628-7010

27 ///

28 ///

- 1 7. Pam Keilor  
2 281 Pine St.  
3 Shafter, CA 93263  
4 746-6215
- 5 8. Matthew R. Cardoza  
6 11608 Linda Lee  
7 Bakersfield, CA 93312  
8 587-363
- 9 9. Ronald J. Cardoza  
10 11608 Linda Lee  
11 Bakersfield, Ca 93312  
12 587-0363
- 13 10. Jeffrey S. Cardoza  
14 8767 Greenfield Park Dr.  
15 Bakersfield, CA 93307  
16 833-8178
- 17 11. Pete Van Nuys  
18 735 S. San Joaquin  
19 Stockton, CA 93705
- 20 12. Derek Diep  
21 1303 3rd St.  
22 Oakland, CA
- 23 13. Lisa Williams  
24 43321 Holster Dr.  
25 Bakersfield, CA 93312  
26 (661) 587-4259
- 27 14. Greg Rowe  
28 Employee of Randy's Trucking
15. Randy Griffith  
Principal of Randy's Trucking
16. Representative of Star Insurance Company
17. Robert Crommelin, expert
18. Matt King, Ph.D., expert
19. April Bacon  
BNSF employee, damages
20. M.T. Casper  
BNSF employee; work train crew
21. Kyle Clem  
BNSF employee; damages

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- 1        22.    Marc Cooter  
          Accident witness
- 2                Shafter Police Department
- 3        23.    A.J. Gonzalez
- 4                BNSF employee; work train crew
- 5        24.    M.T. Hopkins
- 6                BNSF employee; work train crew
- 7        25.    Jorge Jaime
- 8                Accident witness
- 9                Shafter Police Department
- 10       26.    Jennifer K. Lamkin
- 11                BNSF employee; damages
- 12       27.    Diana Burnett
- 13                Accident witness
- 14                Shafter Police Department
- 15       28.    James Newell
- 16                BNSF employee; damages
- 17       29.    Ken A. Schoenborn
- 18                BNSF employee; damages
- 19       30.    Dennis Skeels
- 20                BNSF, Manager Signals
- 21       31.    John Stilley
- 22                BNSF, Manager Public Projects
- 23       32.    Pat Newell
- 24                BNSF, Roadmaster
- 25       33.    Jim Flynn - expert
- 26       34.    Brian Heikkila - expert
- 27       35.    Charles Yeaser - expert
- 28       36.    Nancy Miller
- Amtrak employee; damages
37.    Steven Cates, or
- State of California's person most knowledgeable
- regarding federal funding for crossing
- signalization (preemption issue)
- Additional BNSF Witnesses:
38.    CHP Officer Marc Cooter
39.    CHP Officer Jorge Jaime



1 40. CHP Officer Diana Burnett

2 Additional National Railroad Passenger  
3 Corporation and BNSF Railway Company Witness:

4 41. Adam C. Richardson  
5 BNSF Division Engineer

6 Counsel are each ordered to submit a list of witnesses to  
7 the court along with a copy for use by the Courtroom Deputy  
8 Clerk, on the same date and at the same time as the list of  
9 exhibits are to be submitted as ordered below.

10 CAUTION

11 Counsel are cautioned that expert witnesses, including  
12 percipient experts, must be designated as such. No witness, not  
13 identified as a witness in this order, including "rebuttal"  
14 witnesses, will be sworn or permitted to testify at trial.

15 X. EXHIBITS, SCHEDULES AND SUMMARIES

16 The following is a list of documents or other exhibits that  
17 the parties expect to offer at trial.

18 CAUTION

19 Only exhibits so listed will be permitted to be offered into  
20 evidence at trial, except as may be otherwise provided in this  
21 order. No exhibit not designated in this pretrial order shall be  
22 marked for identification or admitted into evidence at trial.

23 1. Authority for expenditures and BNSF Engineering Summary  
24 Report.

25 2. Map showing mileposts.

26 3. Invoice 5/22/08 \$1,052,080.24 with attachments.

27 4. Maintenance of "Way Labor, Summary and Details."

28 5. Material costs, signal and other.

6. Calculations for use tax and material handling.

- 1           7.     Calculations for Recovered Material Credit.
- 2           8.     Invoice payment listing and outside invoice copies.
- 3           9.     Work train expense calculation and detail.
- 4           10.    Train/Locomotive Delay, listing, calculation and  
5 detail.
- 6           11.    Amtrak Loss of Incentives, listing, calculation and  
7 detail.
- 8           12.    Pre- and post-accident photographs of crossing.
- 9           13.    Inspection reports of crossing.
- 10          14.    Dispatch tape transcripts.
- 11          15.    Signal ticket.
- 12          16.    Traffic collision report.
- 13          17.    Contract with Department of Transportation June 14,  
14 1976 to upgrade crossing with No. 9 and No. 9A configuration with  
15 federal funds.
- 16          18.    Track bulletins.
- 17          19.    Track chart.
- 18          20.    Track timetables.
- 19          21.    Caltrans as-built plans for subject roadway.
- 20          22.    Brian Heikkila report with exhibits.
- 21          23.    James Flynn report with exhibits.
- 22          24.    Enlargements, color reproductions and slides for  
23 presentation purposes of above documents.
- 24          25.    Matt King report with exhibits.
- 25          26.    Robert Crommelin report with exhibits.
- 26          27.    Scale diagram of accident scene.
- 27          28.    Documents supporting amounts paid by Star Insurance  
28 Company for damage to property of Randy's Trucking, Inc.

1           29.    Contract for purchase of replacement trailer by Randy's  
2 Trucking, Inc.

3           30.    California Public Utilities Commission documents  
4 disclosed pursuant to Resolution L-391.

5           31.    Federal Railroad Administration prior accident reports  
6 (2) .

7           32.    Charles Yeaser report with exhibits.

8           33.    Photographs of Amtrak damages.

9           34.    Department of Transportation Crossing Accident reports.

10          35.    Event Recorder Custody Log.

11          36.    Tabular and graph data from locomotive event recorder.

12          37.    Crossing Signal Inspection Reports, 7/31/06 to 7/05/07.

13          38.    Deposition exhibits produced by witness John Stilley.

14          39.    Deposition exhibits produced by witness Robert Skeels.

15          40.    Deposition exhibits produced by witness Thomas H.  
16 Andrews .

17          41.    Deposition exhibits of witness Randy Griffith, Vol. 1 &  
18 2 .

19          42.    Crossing and signal plans described as "BNSF 7200 903-  
20 907 Shafter."

21          43.    Documents regarding Amtrak work element costs.

22          44.    Documents regarding Amtrak train delay damages.

23    XI.   DISCOVERY DOCUMENTS

24          Only specifically designated discovery requests and  
25 responses will be admitted into evidence.  Any deposition  
26 testimony shall be designated by page and line and such  
27 designations filed with the Court on or before August 9, 2010.  
28 The opposing party shall counter-designate by line and page from

1 the same deposition and shall file written objections to any  
2 question and answer designated by the opposing party and filed  
3 with the court on or before August 20, 2010.

4 Written discovery shall be identified by number of the  
5 request. The proponent shall lodge the original discovery  
6 request and verified response with the courtroom deputy one day  
7 prior to trial. The discovery request and response may either be  
8 read into evidence, or typed separately, marked as an exhibit, as  
9 part of the exhibit marking process, and offered into evidence.

10 1. National Railroad Passenger Corporation's Responses to  
11 Randy's Trucking, Inc. and Star Insurance Company's Request for  
12 Admissions, Set No. One.

13 2. BNSF Responses to Randy's Request for Production of  
14 Documents, Set One.

15 3. BNSF Responses to Randy's Request for Admissions, Set  
16 One.

17 4. Amtrak's Responses to Randy's Request for Admissions,  
18 Set One.

19 5. BNSF Responses to Randy's Request for Production of  
20 Documents, Set Two.

21 6. BNSF Responses to Randy's Request for Production of  
22 Documents, Set Three.

23 7. BNSF Responses to Randy's Request for Admissions, Set  
24 Two.

25 8. Amtrak's Responses to Randy's Request for Admissions,  
26 Set Two.

27 9. Form Interrogatories, Set One, from Randy's Trucking,  
28 Inc. and Star Insurance Company to State of California,

1 Department of Transportation, Superior Court of the State of  
2 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

3 10. Responses from State of California, Department of  
4 Transportation, to Form Interrogatories, Set One, from Randy's  
5 Trucking, Inc. and Star Insurance Company to State of California,  
6 Department of Transportation, Superior Court of the State of  
7 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

8 11. Requests for Admission, Set One, from Randy's Trucking,  
9 Inc. and Star Insurance Company to State of California,  
10 Department of Transportation, Superior Court of the State of  
11 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

12 12. Responses from State of California, Department of  
13 Transportation, to Requests for Admission, Set One, from Randy's  
14 Trucking, Inc. and Star Insurance Company to State of California,  
15 Department of Transportation, Superior Court of the State of  
16 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

17 13. Requests for Production of Documents, Set One, from  
18 Randy's Trucking, Inc. and Star Insurance Company to State of  
19 California, Department of Transportation, Superior Court of the  
20 State of California for the County of Kern, Case No. S-1500-CV-  
21 263835 SPC.

22 14. Responses from State of California, Department of  
23 Transportation, to Requests for Production of Documents, Set One,  
24 from Randy's Trucking, Inc. and Star Insurance Company to State  
25 of California, Department of Transportation, Superior Court of  
26 the State of California for the County of Kern, Case No. S-1500-  
27 CV-263835 SPC.

28 15. Special Interrogatories, Set One, from Randy's

1 Trucking, Inc. and Star Insurance Company to State of California,  
2 Department of Transportation, Superior Court of the State of  
3 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

4 16. Responses from State of California, Department of  
5 Transportation, to Special Interrogatories, Set One, from Randy's  
6 Trucking, Inc. and Star Insurance Company to State of California,  
7 Department of Transportation, Superior Court of the State of  
8 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

9 17. Form Interrogatories, Set Two, from Randy's Trucking,  
10 Inc. and Star Insurance Company to State of California,  
11 Department of Transportation, Superior Court of the State of  
12 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

13 18. Responses from State of California, Department of  
14 Transportation, to Form Interrogatories, Set Two, from Randy's  
15 Trucking, Inc. and Star Insurance Company to State of California,  
16 Department of Transportation, Superior Court of the State of  
17 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

18 19. Special Interrogatories, Set Two, from Randy's  
19 Trucking, Inc. and Star Insurance Company to State of California,  
20 Department of Transportation, Superior Court of the State of  
21 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

22 20. Responses from State of California, Department of  
23 Transportation, to Special Interrogatories, Set Two, from Randy's  
24 Trucking, Inc. and Star Insurance Company to State of California,  
25 Department of Transportation, Superior Court of the State of  
26 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

27 21. Requests for Admission, Set Two, from Randy's Trucking,  
28 Inc. and Star Insurance Company to State of California,

1 Department of Transportation, Superior Court of the State of  
2 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

3 22. Responses from State of California, Department of  
4 Transportation, to Requests for Admission, Set Two, from Randy's  
5 Trucking, Inc. and Star Insurance Company to State of California,  
6 Department of Transportation, Superior Court of the State of  
7 California for the County of Kern, Case No. S-1500-CV-263835 SPC.

8 23. Requests for Production of Documents, Set Two, from  
9 Randy's Trucking, Inc. and Star Insurance Company to State of  
10 California, Department of Transportation, Superior Court of the  
11 State of California for the County of Kern, Case No. S-1500-CV-  
12 263835 SPC.

13 24. Responses from State of California, Department of  
14 Transportation, to Requests for Production of Documents, Set Two,  
15 from Randy's Trucking, Inc. and Star Insurance Company to State  
16 of California, Department of Transportation, Superior Court of  
17 the State of California for the County of Kern, Case No. S-1500-  
18 CV-263835 SPC.

19 25. Form Interrogatories propounded by State of California  
20 to Randy's Trucking, and Responses thereto by Randy's Trucking,  
21 Superior Court of the State of California for the County of Kern,  
22 Case No. S-1500-CV-263835 SPC.

23 26. Special Interrogatories propounded by State of  
24 California to Randy's Trucking, and Responses thereto by Star  
25 Insurance, Superior Court of the State of California for the  
26 County of Kern, Case No. S-1500-CV-263835 SPC.

27 27. Deposition transcripts of:

28 a. Fernando Sandoval Munguia (aka Sandoval)

- b. Randy Griffith, Vols. 1 & 2
- c. Lisa Williams
- d. Pam Keilor
- e. James Flynn
- f. John Stilley
- g. Robert Skeels
- h. Thomas H. Andrews
- i. Matthew R. Cardoza
- j. Ronald J. Cardoza
- k. Jeffrey Cardoza
- l. Jennifer Quinonez
- m. Kyle Clem (BNSF PMK)
- n. Brian Heikkila
- o. Charles Yeaser (Amtrak PMK)

XII. STIPULATIONS

1. The parties agree to good faith settlements of Plaintiffs Smith and Knott and agree that those cases shall be remanded to State Court.

XIII. AMENDMENTS - DISMISSALS

1. Plaintiffs Smith and Knott are settling out of this Federal case with good faith settlements - unopposed by Randy's Trucking/Sandoval. With such dismissals, the cases of Smith and Knott must be remanded back to State Court.

XIV. FURTHER TRIAL PREPARATION

A. Trial Briefs.

Counsel are directed to file a trial brief in this matter on or before September 2, 2010. No extended preliminary statement of facts is required. The brief should address disputed issues



1 of substantive law, disputed evidentiary issues of law that will  
2 not be resolved in limine, and any other areas of dispute that  
3 will require resolution by reference to legal authority.

4 B. Duty of Counsel To Pre-Mark Exhibits.

5 1. Counsel for the parties are ordered to meet and conduct  
6 a joint exhibit conference on August 25, 2010, at 10:00 a.m. at  
7 the law offices of Erickson, Arbuthnot, 2440 West Shaw, Fresno,  
8 California for purposes of pre-marking and examining each other's  
9 exhibits and preparing an exhibit list. All joint exhibits will  
10 be pre-marked JX1-JX100; all of the Randy's Trucking Plaintiff's  
11 exhibits will be pre-marked with numbers 101-200; all of BNSF  
12 Defendant's exhibits will be pre-marked with numbers 201-300; and  
13 all of the Amtrak Defendant's exhibits will be pre-marked with  
14 numbers 301-400.

15 2. Each and every page of each and every exhibit shall be  
16 individually Bates-stamped for identification purposes, and  
17 paginated with decimals and arabic numerals in seriatim; i.e.,  
18 1.1, 1.2, 1.3 . . . .

19 3. Following such conference, each counsel shall have  
20 possession of four (4) complete, legible sets of exhibits, for  
21 use as follows:

22 a. Two (2) sets to be delivered to the Courtroom  
23 Deputy Clerk, Renee Gaumnitz, no later than 4:00 p.m. on  
24 September 3, 2010, an original for the court and one for the  
25 witness.

26 b. One (1) set to be delivered to counsel for the  
27 opposing party and one (1) set to be available for counsel's own  
28 use.

1 4. Counsel are to confer to make the following  
2 determination as to each of the exhibits proposed to be  
3 introduced into evidence and prepare separate indexes, one  
4 listing joint exhibits, one listing each party's exhibits:

5 a. Joint exhibits, i.e., any document which both  
6 sides desire to introduce into evidence, will be marked as a  
7 joint exhibit (JX), and numbered JX1-\_\_\_\_. Joint exhibits shall  
8 be listed as such in the exhibit list in a column that notes they  
9 are admitted into evidence without further foundation;

10 b. As to any exhibit, not a joint exhibit, to which  
11 there is no objection to its introduction into evidence, the  
12 exhibit will be marked as Plaintiff's Exhibit \_\_\_\_, or Defendant's  
13 Exhibit \_\_\_\_ in evidence, and will be listed in the exhibit list  
14 as the exhibit of the offering party;

15 c. The exhibit list shall include columns for noting  
16 objections to exhibits. The first column will list any  
17 objections as to foundation; i.e., Plaintiff's Foundation 2 -  
18 "not authenticated."

19 d. The exhibit list shall include a second column for  
20 noting substantive objections to exhibits based on any other  
21 grounds; i.e., "hearsay, improper opinion, irrelevant."

22 e. The exhibit list shall include a description of  
23 each exhibit on the left-hand side of the page, and the three  
24 columns outlined above (as shown in the example below).

25 List of Exhibits

	<u>Admitted</u>	<u>Objection</u>	<u>Other</u>	
<u>Exhibit #</u>	<u>Description</u>	<u>In Evidence</u>	<u>To Foundation</u>	<u>Objection</u>

1 f. The completed exhibit list shall be delivered to  
2 Renee Gaumnitz CRD on or before September 3, 2010, at 4:00 p.m.

3 g. If originals of exhibits cannot be located, copies  
4 may be used, however, the copies must be legible and accurate.  
5 If any document is offered into evidence that is partially not  
6 legible, the Court sua sponte will exclude it from evidence.

7 C. Discovery Documents.

8 1. Counsel shall file a list of discovery documents with  
9 Renee Gaumnitz CRD at the same time and date as the witness and  
10 exhibit lists are lodged with her, unless the discovery documents  
11 are marked as exhibits, which counsel intend to use at trial by  
12 designating by number, the specific interrogatory, request for  
13 admission, or other discovery document. Counsel shall comply  
14 with the directions of subsection XII (above) for introduction of  
15 the discovery document into evidence.

16 D. Motions In Limine.

17 1. The motions in limine shall be filed by August 9, 2010,  
18 and any responses shall be filed by August 20, 2010. The Court  
19 will conduct a hearing on motions in limine in this matter on  
20 August 27, 2010, at 12:00 p.m. in Courtroom 3, Seventh Floor,  
21 before the Honorable Oliver W. Wanger United States District  
22 Judge, at which time all evidentiary objections, to the extent  
23 possible, will be ruled upon, and all other matters pertaining to  
24 the conduct of the trial will be settled.

25 E. Trial Documents.

26 1. Exhibits To Be Used With Witness. During the trial of  
27 the case, it will be the obligation of counsel to provide  
28 opposing counsel not less than forty-eight hours before the

1 witness is called to the witness stand, the name of the witness  
2 who will be called to testify and to identify to the Court and  
3 opposing counsel any exhibit which is to be introduced into  
4 evidence through such witness that has not previously been  
5 admitted by stipulation or court order or otherwise ruled upon,  
6 and to identify all exhibits and other material that will be  
7 referred to in questioning of each witness. If evidentiary  
8 problems are anticipated, the parties must notify the court at  
9 least twenty-four hours before the evidence will be presented.

10 F. Counsel's Duty To Aid Court In Jury Voir Dire.

11 1. Counsel shall submit proposed voir dire questions, if  
12 any, to Renee Gaumnitz CRD at [rgaumnitz@caed.uscourts.gov](mailto:rgaumnitz@caed.uscourts.gov) on or  
13 before September 2, 2010, at 4:00 p.m. Counsel shall also  
14 prepare a joint "statement of the case" which shall be a neutral  
15 statement, describing the claims and defenses for prospective  
16 jurors, to be used in voir dire.

17 2. In order to aid the court in the proper voir dire  
18 examination of the prospective jurors, counsel are directed to  
19 lodge with the Court the day before trial a list of the  
20 prospective witnesses they expect to call if different from the  
21 list of witnesses contained in the Pre-Trial Order of the Court.  
22 Such list shall not only contain the names of the witnesses, but  
23 their business or home address to the extent known. This does  
24 not excuse any failure to list all witnesses in the Pre-Trial  
25 Order.

26 3. Counsel shall jointly submit, to Renee Gaumnitz CRD the  
27 Friday before trial, a neutral statement of the claims and  
28 defenses of the parties for use by the court in voir dire.

1 G. Counsel's Duty To Prepare And Submit Jury Instructions.

2 1. All proposed jury instructions shall be filed and  
3 served on or before September 3, 2010, by 4:00 p.m. Jury  
4 instructions shall be submitted in the following format.

5 2. Proposed jury instructions, including verdict forms,  
6 shall be submitted via e-mail to dpell@caed.uscourts.gov  
7 formatted in WordPerfect for Windows X3. Counsel shall be  
8 informed on all legal issues involved in the case.

9 3. The parties are required to jointly submit one set of  
10 agreed upon jury instructions. To accomplish this, the parties  
11 shall serve their proposed instructions upon the other fourteen  
12 days prior to trial. The parties shall then meet, confer, and  
13 submit to the Court the Friday before the trial is to commence,  
14 one complete set of agreed-upon jury instructions.

15 4. If the parties cannot agree upon any instruction, they  
16 shall submit a supplemental set of instructions designated as not  
17 agreed upon by September 3, 2010, at 4:00 p.m.

18 5. Each party shall file with the jury instructions any  
19 objection to non-agreed upon instructions proposed by any other  
20 party. All objections shall be in writing and shall set forth  
21 the proposed instruction objected to in its entirety. The  
22 objection should specifically set forth the objectionable matter  
23 in the proposed instruction and shall include a citation to legal  
24 authority explaining the grounds for the objection and why the  
25 instruction is improper. A concise statement of argument  
26 concerning the instruction may be included. Where applicable,  
27 the objecting party shall submit an alternative proposed  
28 instruction covering the subject or issue of law.

1           6.    Format.   The parties shall submit one copy of each  
2 instruction.   The copy shall indicate the party submitting the  
3 instruction, the number of the proposed instruction in sequence,  
4 a brief title for the instruction describing the subject matter,  
5 the test of the instruction, the legal authority supporting the  
6 instruction, and a legend in the lower lefthand corner of the  
7 instruction: "Given," "Given As Modified," "Withdrawn" and  
8 "Refused" showing the Court's action with regard to each  
9 instruction and an initial line for the judge's initial in the  
10 lower right-hand corner of the instruction.   Ninth Circuit Model  
11 Jury Instructions should be used where the subject of the  
12 instruction is covered by a model instruction.

13           7.    All instruction should be short, concise,  
14 understandable, and neutral statements of the law.   Argumentative  
15 or formula instructions will not be given, and should not be  
16 submitted.

17           8.    Parties shall, by italics or underlining, designate any  
18 modifications of instructions from statutory authority, or any  
19 pattern instruction such as the Model Circuit Jury Instructions  
20 or any other source of pattern instructions, and must  
21 specifically state the modification made to the original form  
22 instruction and the legal authority supporting the modification.

23           9.    Proposed verdict forms shall be jointly submitted or if  
24 the verdict forms are unagreed upon, each party shall submit a  
25 proposed verdict form.   Verdict forms shall be submitted to the  
26 Courtroom Deputy Clerk on the first day of the trial.

27           10.   Failure to comply with these rules concerning the  
28 preparation and submission of instructions and verdict forms may

1 subject the non-complying party and/or its attorneys to  
2 sanctions.

3           XV. USE OF LAPTOP COMPUTERS/POWERPOINT FOR  
4                           PRESENTATION OF EVIDENCE

5           1. If counsel intends to use a laptop computer for  
6 presentation of evidence, they shall contact Renee Gaumnitz CRD  
7 at least one week prior to trial. The Courtroom Deputy Clerk  
8 will arrange a time for any attorney to bring any laptop to be  
9 presented to someone from the Court's Information Technology  
10 Department, who will provide brief training on how the parties'  
11 electronic equipment interacts with the court's audio/visual  
12 equipment. If counsel intend to use PowerPoint, the resolution  
13 should be set no higher than 1024 x 768 when preparing the  
14 presentation.

15           2. ALL ISSUES CONCERNING AUDIO-VISUAL MATERIALS AND  
16 COMPUTER INTERFACE WITH THE COURT'S INFORMATION TECHNOLOGY SHALL  
17 BE REFERRED TO THE COURTROOM DEPUTY CLERK.

18           XVI. FURTHER DISCOVERY OR MOTIONS

19           1. The Motion to remand Plaintiff cases of Smith and Knott  
20 to State Court has been granted.

21           XVII. SETTLEMENT

22           1. The parties conducted an all day mediation with Lee M.  
23 Jacobson, Esq., on June 24, 2010. It was suggested that all  
24 claimants against Defendants Randy's Trucking/Sandoval make a  
25 joint demand for the insurance policy limits of \$3 million. To  
26 date, no such demand has been forthcoming.

27           XVIII. SEPARATE TRIAL OF ISSUES

28           1. The issue of liability will be tried in a first

1 phase of the trial, followed by, if necessary, a damages phase.  
2 The two phases shall be tried before the same jury in a  
3 continuous trial.

4 XIX. IMPARTIAL EXPERTS, LIMITATIONS OF EXPERTS

- 5 1. Unnecessary.

6 XX. ATTORNEYS' FEES

- 7 1. No attorneys' fees are sought.

8 XXI. ESTIMATE OF TRIAL TIME

- 9 1. Eight days.

10 XXII. TRIAL DATE

11 1. September 8, 2010, at 9:00 a.m., in Courtroom 3, on the  
12 Seventh Floor.

13 XXIII. NUMBER OF JURORS AND PEREMPTORY CHALLENGES

14 1. There are three sides to this case: Randy's Trucking  
15 Plaintiffs shall have four peremptory challenges; the Defendants  
16 shall share four peremptory challenges. There will be an eight  
17 person jury.

18 XXIV. AMENDMENT OF FINAL PRETRIAL ORDER

19 1. The Final Pretrial Order shall be reviewed by the  
20 parties and any corrections, additions, and deletions shall be  
21 drawn to the attention of the Court immediately. Otherwise, the  
22 Final Pretrial Order may only be amended or modified to prevent  
23 manifest injustice pursuant to the provisions of Fed. R. Civ. P.  
24 16(e).

25 XXV. MISCELLANEOUS

- 26 1. Protective Order will be sought regarding disclosure of

27 ///

28 ///



1 "BNSF 7200 903-907 Shafter."

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3 IT IS SO ORDERED.

4 Dated: July 30, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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