

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF BRYAN ARMENTA LOPEZ, etc., et al.,)	1:08-cv-1496 OWW GSA
Plaintiffs,)	SCHEDULING CONFERENCE ORDER
v.)	Discovery Cut-Off: 3/17/10
NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK"); JOHN HAMILTON CONE; BURLINGTON NORTHERN SANTA FE CORPORATION; CALIFORNIA PUBLIC UTILITIES COMMISSION; STANISLAUS COUNTY; CITY OF RIVERBANK; and DOES 1 to 200, inclusive,)	Non-Dispositive Motion Filing Deadline: 4/2/10
Defendants.)	Dispositive Motion Filing Deadline: 4/19/10
)	Settlement Conference Date: 3/31/10 10:30 Ctrm. 10
)	Pre-Trial Conference Date: 6/28/10 11:00 Ctrm. 3
)	Trial Date: 8/10/10 9:00 Ctrm. 3 (JT-10 days)

I. Date of Scheduling Conference.

April 3, 2009.

II. Appearances Of Counsel.

Moreno, Becerra & Casillas by Danilo J. Becerra, Esq.,
appeared on behalf of Plaintiffs.

Lombardi, Loper & Conant, LLP, by Jason P. Shane, Esq.
appeared on behalf of Defendants National Railroad Passenger
Corporation and BNSF Railway Company.

1 Dan Farrar, Esq., appeared on behalf of Defendant County of
2 Stanislaus.

3 III. Summary of Pleadings.

4 1. At the intersection of Claribel Road and Terminal
5 Avenue in an unincorporated section of the County of Stanislaus,
6 there is a four-way stop sign. Approximately 45 feet west of the
7 stop sign for the eastbound lane of Claribel Road, there is a
8 railroad grade crossing, where a single track of BNSF's Stockton
9 Subdivision crosses Claribel Road, heading in a north-south
10 direction. The railroad crossing is equipped with train-
11 activated warning devices, including, but not limited to, mast
12 mounted flashing lights, gongs, and crossing gates.

13 2. On or about May 8, 2007, Maricruz Corral was traveling
14 eastbound on Claribel Road in a Chevrolet Tracker owned by Lucio
15 Corral Rodriguez. Amongst others, decedents Diana Villareal-
16 Lopez, Ramona Lopez-Verduga, and Brian Armenta-Lopez (hereinafter
17 collectively "decedents") were passengers in the vehicle. As
18 Maricruz Corral approached the railroad grade crossing on
19 Claribel Road, just west of Terminal Avenue, there were cars
20 backed up behind the stop sign at the intersection of Claribel
21 Road and Terminal Avenue. Maricruz Corral pulled up behind the
22 stopped cars and stopped her car on the tracks, despite the
23 presence of warnings to not stop thereon. As a train, owned by
24 the State of California and operated by Amtrak, was approaching
25 traveling in a northbound direction, Maricruz Corral failed to
26 clear the tracks, and the train struck the vehicle. All of the
27 vehicle's occupants died at the scene as a result of the
28 collision. Defendants contend that Maricruz Corral's presence on

1 the tracks and inability to clear the tracks were the result of
2 her negligence.

3 3. Plaintiffs are heirs of the decedents and have brought
4 claims against the County, Riverbank, BNSF, and Amtrak for
5 dangerous conditions of land, and negligence.

6 IV. Orders Re Amendments To Pleadings.

7 1. Plaintiffs' counsel has indicated that Defendants,
8 California Public Utilities Commission and City of Riverbank,
9 have been dismissed from the lawsuit without prejudice.
10 Defendants, DOES 1 through 200, inclusive are HEREBY ORDERED
11 DISMISSED, WITHOUT PREJUDICE, with the understanding that the
12 provisions of Federal Rule of Civil Procedure 15 shall govern the
13 joinder of parties and claims as may be justified by discovery
14 and in accordance with the policies underlying Rule 15. The
15 Estate of Bryan Armenta Lopez is ORDERED DISMISSED WITHOUT
16 PREJUDICE. The Estate of Ramona Lopez Verdugo is ORDERED
17 DISMISSED WITHOUT PREJUDICE.

18 V. Factual Summary.

19 A. Admitted Facts Which Are Deemed Proven Without Further
20 Proceedings.

21 1. Bryan Armenta Lopez is deceased, as a result of
22 the train collision that is the subject of this lawsuit.

23 2. Atilano Armenta Lopez is the biological father of
24 Bryan Armenta Lopez.

25 3. Plaintiff Brenda Figueroa Lopez is the biological
26 daughter of Ramona Lopez, who was also killed in the railroad
27 accident.

28 4. Jesus Villareal and Aida Lopez Verdugo are the

1 biological parents of decedent, Diana Villareal Lopez, who was
2 also killed in the train accident.

3 5. Roberto Lopez Valenzuela, son of Jesus Villareal,
4 was also killed in the railroad accident.

5 6. Roberto Lopez is the father of Ramona Lopez
6 Verdugo who was killed in the railroad accident.

7 7. Rosario Verdugo is the wife of Roberto Lopez and
8 the mother of decedent Ramona Lopez Verdugo.

9 8. Araceli Armenta Lopez is the adopted daughter of
10 decedent Ramona Lopez Verdugo.

11 9. Plaintiff Julian Armenta Valenzuela is believed to
12 be the husband of decedent Ramona Lopez Verdugo. This is a
13 matter into which continuing investigation is being conducted.

14 10. At the intersection of Claribel Road and Terminal
15 Avenue in an unincorporated section of the County of Stanislaus,
16 there is a four-way stop sign.

17 11. Approximately 45 feet west of the stop sign of the
18 eastbound lane of Claribel Road, there is a railroad grade
19 crossing, where a single track of BNSF's Stockton Subdivision
20 crosses Claribel Road, heading in a north-south direction.

21 12. The railroad crossing is equipped with train-
22 activated warning devices, including, but not limited to, mast-
23 mounted flashing lights, gongs and crossing gates.

24 13. On or about May 8, 2007, Maricruz Corral was
25 traveling eastbound on Claribel Road in a Chevrolet Tracker owned
26 by Lucio Corral Rodriguez.

27 14. Amongst others, decedents Diana Villareal-Lopez,
28 Ramona Lopez-Verdugo, and Brian Armenta-Lopez were passengers in

1 the vehicle.

2 15. As Maricruz Corral approached the railroad grade
3 crossing on Claribel Road, just west of Terminal Avenue, there
4 were cars backed up behind the stop sign at the intersection of
5 Claribel Road and Terminal Avenue.

6 16. A train owned by the State of California, operated
7 by Amtrak and traveling in a northbound direction struck Maricruz
8 Corral's vehicle.

9 17. All of the vehicle's occupants died at the scene
10 as a result of the collision.

11 B. Contested Facts.

12 1. Defendants contend that there were adequate signs
13 present warning drivers to not stop on the railroad tracks.
14 Plaintiffs dispute the adequacy and placement of any warning
15 signs.

16 2. Defendants contend that Maricruz Corral pulled up
17 behind stopped cars in front of her and stopped her car on the
18 tracks, despite the presence of warnings to not stop thereon, and
19 thereafter failed to clear the tracks, causing the train to
20 strike her vehicle. Plaintiffs dispute the manner in which
21 Maricruz Corral approached the railroad tracks.

22 3. All remaining facts are contested.

23 VI. Legal Issues.

24 A. Uncontested.

25 1. Jurisdiction exists under 28 U.S.C. § 1331 and 45
26 U.S.C. § 501, the statute incorporating the National Railway, and
27 28 U.S.C. § 1349, as the United States owns more than half of the
28 issued and outstanding common stock of the National Railroad

1 Passenger Corporation.

2 2. Venue is proper under 28 U.S.C. § 1391.

3 3. The parties agree that as to state law claims, the
4 substantive law of the State of California provides the rule of
5 decision, including Government Code § 835. It is as yet
6 unresolved whether or not state law is preempted by the Federal
7 Rail-Highway Safety Act or other federal statutes.

8 B. Contested.

9 1. All remaining legal issues are disputed.

10 VII. Consent to Magistrate Judge Jurisdiction.

11 1. The parties have not consented to transfer the
12 case to the Magistrate Judge for all purposes, including trial.

13 VIII. Corporate Identification Statement.

14 1. Any nongovernmental corporate party to any action in
15 this court shall file a statement identifying all its parent
16 corporations and listing any entity that owns 10% or more of the
17 party's equity securities. A party shall file the statement with
18 its initial pleading filed in this court and shall supplement the
19 statement within a reasonable time of any change in the
20 information.

21 IX. Discovery Plan and Cut-Off Date.

22 1. The parties shall make their initial disclosures on or
23 before April 17, 2009.

24 2. The parties are ordered to complete all non-expert
25 discovery on or before December 16, 2009.

26 3. The parties are directed to disclose all expert
27 witnesses, in writing, on or before December 16, 2009. Any
28 rebuttal or supplemental expert disclosures will be made on or

1 before January 20, 2010. The parties will comply with the
2 provisions of Federal Rule of Civil Procedure 26(a)(2) regarding
3 their expert designations. Local Rule 16-240(a) notwithstanding,
4 the written designation of experts shall be made pursuant to F.
5 R. Civ. P. Rule 26(a)(2), (A) and (B) and shall include all
6 information required thereunder. Failure to designate experts in
7 compliance with this order may result in the Court excluding the
8 testimony or other evidence offered through such experts that are
9 not disclosed pursuant to this order.

10 4. The parties are ordered to complete all discovery,
11 including experts, on or before March 17, 2010.

12 5. The provisions of F. R. Civ. P. 26(b)(4) shall
13 apply to all discovery relating to experts and their opinions.
14 Experts may be fully prepared to be examined on all subjects and
15 opinions included in the designation. Failure to comply will
16 result in the imposition of sanctions.

17 X. Pre-Trial Motion Schedule.

18 1. All Non-Dispositive Pre-Trial Motions, including any
19 discovery motions, will be filed on or before April 2, 2010, and
20 heard on May 7, 2010, at 9:00 a.m. before Magistrate Judge Gary
21 S. Austin in Courtroom 10.

22 2. In scheduling such motions, the Magistrate
23 Judge may grant applications for an order shortening time
24 pursuant to Local Rule 142(d). However, if counsel does not
25 obtain an order shortening time, the notice of motion must comply
26 with Local Rule 251.

27 3. All Dispositive Pre-Trial Motions are to be
28 filed no later than April 19, 2010, and will be heard on May 24,

1 2010, at 10:00 a.m. before the Honorable Oliver W. Wanger, United
2 States District Judge, in Courtroom 3, 7th Floor. In scheduling
3 such motions, counsel shall comply with Local Rule 230.

4 XI. Pre-Trial Conference Date.

5 1. June 28, 2010, at 11:00 a.m. in Courtroom 3, 7th Floor,
6 before the Honorable Oliver W. Wanger, United States District
7 Judge.

8 2. The parties are ordered to file a Joint Pre-
9 Trial Statement pursuant to Local Rule 281(a)(2).

10 3. Counsel's attention is directed to Rules 281
11 and 282 of the Local Rules of Practice for the Eastern District
12 of California, as to the obligations of counsel in preparing for
13 the pre-trial conference. The Court will insist upon strict
14 compliance with those rules.

15 XII. Motions - Hard Copy.

16 1. The parties shall submit one (1) courtesy paper copy to
17 the Court of any motions filed that exceed ten pages and any
18 motions that have exhibits attached. Exhibits shall be marked
19 with protruding numbered or lettered tabs so that the Court can
20 easily identify such exhibits.

21 XIII. Trial Date.

22 1. August 10, 2010, at the hour of 9:00 a.m. in Courtroom
23 3, 7th Floor, before the Honorable Oliver W. Wanger, United
24 States District Judge.

25 2. This is a jury trial.

26 3. Counsel's Estimate Of Trial Time:

27 a. 10 days.

28 4. Counsel's attention is directed to Local Rules

1 of Practice for the Eastern District of California, Rule 285.

2 XIV. Settlement Conference.

3 1. A Settlement Conference is scheduled for March 31,
4 2010, at 10:30 a.m. in Courtroom 10 before the Honorable Gary S.
5 Austin, United States Magistrate Judge.

6 2. Unless otherwise permitted in advance by the
7 Court, the attorneys who will try the case shall appear at the
8 Settlement Conference with the parties and the person or persons
9 having full authority to negotiate and settle the case on any
10 terms at the conference.

11 3. Permission for a party [not attorney] to attend
12 by telephone may be granted upon request, by letter, with a copy
13 to the other parties, if the party [not attorney] lives and works
14 outside the Eastern District of California, and attendance in
15 person would constitute a hardship. If telephone attendance is
16 allowed, the party must be immediately available throughout the
17 conference until excused regardless of time zone differences.
18 Any other special arrangements desired in cases where settlement
19 authority rests with a governing body, shall also be proposed in
20 advance by letter copied to all other parties.

21 4. Confidential Settlement Conference Statement.

22 At least five (5) days prior to the Settlement Conference the
23 parties shall submit, directly to the Magistrate Judge's
24 chambers, a confidential settlement conference statement. The
25 statement should not be filed with the Clerk of the Court nor
26 served on any other party. Each statement shall be clearly
27 marked "confidential" with the date and time of the Settlement
28 Conference indicated prominently thereon. Counsel are urged to

1 request the return of their statements if settlement is not
2 achieved and if such a request is not made the Court will dispose
3 of the statement.

4 5. The Confidential Settlement Conference

5 Statement shall include the following:

6 a. A brief statement of the facts of the
7 case.

8 b. A brief statement of the claims and
9 defenses, i.e., statutory or other grounds upon which the claims
10 are founded; a forthright evaluation of the parties' likelihood
11 of prevailing on the claims and defenses; and a description of
12 the major issues in dispute.

13 c. A summary of the proceedings to date.

14 d. An estimate of the cost and time to be
15 expended for further discovery, pre-trial and trial.

16 e. The relief sought.

17 f. The parties' position on settlement,
18 including present demands and offers and a history of past
19 settlement discussions, offers and demands.

20 XV. Request For Bifurcation, Appointment Of Special Master,
21 Or Other Techniques To Shorten Trial.

22 1. At this time, no bifurcation or other trial shortening
23 is expected.

24 XVI. Related Matters Pending.

25 1. There are two related matters entitled Lucio Corral
26 Rodriguez v. County of Stanislaus, et al., Case Number 1:08-cv-
27 00856 OWW and State Farm Automobile Insurance Co. v. Brenda
28 Beatrice Figueroa Lopez, et al., (interpleader), Superior Court

1 of California, County of Stanislaus, Case Number 634210.

2 XVII. Compliance With Federal Procedure.

3 1. The Court requires compliance with the Federal
4 Rules of Civil Procedure and the Local Rules of Practice for the
5 Eastern District of California. To aid the court in the
6 efficient administration of this case, all counsel are directed
7 to familiarize themselves with the Federal Rules of Civil
8 Procedure and the Local Rules of Practice of the Eastern District
9 of California, and keep abreast of any amendments thereto.

10 XVIII. Effect Of This Order.

11 1. The foregoing order represents the best
12 estimate of the court and counsel as to the agenda most suitable
13 to bring this case to resolution. The trial date reserved is
14 specifically reserved for this case. If the parties determine at
15 any time that the schedule outlined in this order cannot be met,
16 counsel are ordered to notify the court immediately of that fact
17 so that adjustments may be made, either by stipulation or by
18 subsequent scheduling conference.

19 2. Stipulations extending the deadlines contained
20 herein will not be considered unless they are accompanied by
21 affidavits or declarations, and where appropriate attached
22 exhibits, which establish good cause for granting the relief
23 requested.

24 3. Failure to comply with this order may result in
25 the imposition of sanctions.

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27 IT IS SO ORDERED.

28 Dated: April 6, 2009

/s/ Oliver W. Wanger

1 UNITED STATES DISTRICT JUDGE
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