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CORPORATION  
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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

12  
13 NATIONAL RAILROAD PASSENGER  
CORPORATION,

14 Plaintiff,

15 v.

16 BURTON OLSON TRUCKING  
17 COMPANY, JOSÉ MARTINEZ,  
E. M. THARP, INC.

18 Defendants.  
19

Case No. 1:09-CV-01190-OWW-SKO

**ORDER ON MOTIONS IN LIMINE OF  
PLAINTIFF NATIONAL RAILROAD  
PASSENGER CORPORATION**

Trial Date: March 30, 2011  
Time: 9:00 a.m.  
Courtroom: 3, 7<sup>th</sup> Floor  
Judge: Oliver W. Wanger

20 All parties having appeared before the Honorable Oliver W. Wanger for a hearing on  
21 Motions in Limine on March 22, 2011, and the Court having considered the papers and arguments  
22 submitted in support of and in opposition to the motions, and good cause appearing,  
23

24 IT IS ORDERED:

25 1. Regarding Amtrak’s Motion in Limine No. 1 To Limit or Exclude Any Testimony  
26 That the Braking Performance of the Subject Tractor-Trailer Exceeded the USDOT Standards, the  
27 Court reserves ruling on the motion subject to further briefing on the issue.  
28

1           2.       Regarding Amtrak’s Motion in Limine No. 2 To Limit or Exclude Opinion  
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 3       Testimony From E.M. Tharp’s Expert Ashley Dunn Regarding the Negligence of The Tractor-  
 4       Trailer Operator (Martinez) and the Owner (Burton Olson) and That Their Negligence was the  
 5       “Cause” of the Accident, the court rules that Dr. Dunn cannot testify regarding such matters if  
 6       such testimony is without foundation or is based on speculation without supporting evidence. Dr.  
 7       Dunn will not be allowed to testify regarding the effect of pumping the brakes beyond what was  
 8       stated in his expert report and deposition testimony. The court defers its ruling further until Dr.  
 9       Dunn is called as a witness, at which time the court will conduct a voir dire examination of Dr.  
 10       Dunn outside the presence of the jury and the court will then rule further on the motion.

11           3.       Regarding Amtrak’s Motion in Limine No. 3, To Limit or Exclude Testimony  
 12       From E.M. Tharp’s and Burton Olson Trucking’s Damages Expert Douglas Morgan, the Court  
 13       ruled: the motion to exclude E.M. Tharp’s and Burton Olson Trucking’s Damages Expert  
 14       Douglas Morgan was GRANTED in part. Mr. Morgan will not be permitted to offer opinions on  
 15       plaintiffs’ “loss of use” damages.  
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17           Amtrak’s challenge to Douglas Morgan’s opinions regarding the “excessiveness” of  
 18       Amtrak’s repair damages were not considered by the Court and Amtrak requests that this aspect  
 19       of the motion in limine be addressed prior to the commencement of trial.  
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21           4.       Regarding Amtrak’s Motion in Limine No. 4, To Limit or Exclude Opinion  
 22       Testimony From E.M. Tharp’s Expert Lew Grill, the court DEFERS ruling until Mr. Grill is  
 23       called as a witness, at which time the court will conduct a voir dire examination of Mr. Grill  
 24       outside the presence of the jury, and the court will then examine the foundation for Mr. Grill’s  
 25       testimony and rule on the motion.

26           5.       Regarding Amtrak’s Motion in Limine No. 5, To Preclude E.M. Tharp’s Experts  
 27       From Offering Opinions Not Contained in Their Reports, the motion is GRANTED reciprocally.  
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6. Regarding Amtrak’s Motion in Limine No. 6, To Exclude Expert Testimony of E.M. Tharp’s Undisclosed Experts, the motion is GRANTED. No undisclosed experts, including E.M. Tharp employees, will be permitted to offer opinions of the standard of care or other expert-related matters.

7. Regarding Amtrak’s Motion in Limine No. 7, To Preclude E.M. Tharp From Calling Witnesses Other Than Those Produced in Response to Amtrak’s 30(b)(6) Deposition Notices to Testify to Designated Topics, the motion is GRANTED.

DATED: March 30, 2011

/s/ Oliver W. Wanger  
HONORABLE OLIVER W. WANGER