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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NATIONAL RAILROAD PASSENGER CORPORATION,	)	1:09-cv-1190 OWW SKO
	)	
Plaintiff,	)	FINAL PRETRIAL ORDER
	)	
v.	)	Motion in Limine Date:
	)	3/17/11 12:00 Ctrm. 3
BURTON OLSON TRUCKING COMPANY,	)	
JOSE MARTINEZ, E.M. THARP, INC.,	)	Trial Date: 3/29/11 9:00
	)	Ctrm. 3 (JT-12 days)
Defendants.	)	
	)	
	)	

I. JURISDICTION AND VENUE

1. This Federal Court has original jurisdiction over the claims against defendant National Railroad Passenger Corporation ("Amtrak") because it 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 Rail Collision Near Chase, Maryland* (D. Md. 1987) 680 F.Supp. 728, 731.)

2. BNSF claims jurisdiction under 28 U.S.C. § 1367 (diversity).

3. No party contests jurisdiction or venue.

///

1 II. JURY/NON-JURY

2 1. All parties have demanded a jury trial of all issues.

3 III. FACTS

4 A. Undisputed Facts

5 a. Amtrak is chartered under the laws of the District  
6 of Columbia and has its principal place of business in the  
7 District of Columbia. Amtrak is authorized by Congress to engage  
8 in business in the State of California as a rail passenger  
9 carrier.

10 b. BNSF is a Delaware corporation with its principal  
11 place of business in Fort Worth, Texas. BNSF operates a railroad  
12 business throughout the United States, including the State of  
13 California.

14 c. Burton Olson is a sole proprietorship that  
15 maintains its principal place of business in the City of  
16 Kingsburg, Fresno County, California. It was the employer of  
17 Martinez at the time of the accident.

18 d. Martinez is an individual and is a resident of the  
19 City of Tipton, Tulare County, State of California. He was an  
20 employee of Burton Olson at the time of the accident.

21 e. E.M. Tharp, Inc. is a corporation licensed to do  
22 business in the State of California. E.M. Tharp, Inc. maintains  
23 its principal place of business in the City of Porterville,  
24 Tulare County, California.

25 f. The case concerns a collision that occurred May  
26 28, 2008, at the railroad crossing located at Kansas Avenue, near  
27 Tenth Avenue, Hanford, Kings County, California.

28 g. The railroad crossing has two sets of tracks—the

1 BNSF main line and a siding. The main line runs generally  
2 north/south and Kansas Avenue runs generally east/west.

3 h. The main line is a Class 5 track with maximum  
4 authorized timetable speed of 79 mph.

5 i. The accident involved a tractor trailer owned by  
6 Burton Olson, driven by Martinez; a passenger train operated by  
7 Amtrak; and a freight train owned and operated by BNSF.

8 j. Martinez was driving the tractor trailer westbound  
9 on Kansas Avenue. The Amtrak train was traveling northbound on  
10 the main line. The BNSF freight train was stationary, facing  
11 southbound, in the siding to the east of the mainline.

12 k. The subject railroad crossing was equipped with  
13 the following train activated warning devices: mast-mounted  
14 flashing lights, automatic gates, and gongs. Prior to the  
15 incident the tractor and dolly had been serviced by E.M. Tharp,  
16 Inc.

17 l. For westbound traffic on Kansas Avenue, there are  
18 two yellow warning signs, one approximately 960 feet east of the  
19 tracks, and the other one approximately 560 east of the tracks.  
20 These warning signs advise westbound traffic that there are two  
21 railroad tracks ahead and to prepare to stop when the warning  
22 devices start flashing.

23 m. The tractor trailer collided with the northbound  
24 Amtrak train, broad siding the locomotive and causing one of its  
25 passenger cars to derail. The derailed passenger car then  
26 sideswiped the stopped BNSF locomotive.

27 n. There is no contributory negligence on the part of  
28 Amtrak or BNSF.

1           o.    Amtrak sustained damages to one locomotive and  
2 four cars.

3           p.    Amtrak performed in-house mechanical repairs on  
4 Units 8205, 8011 and 8801.

5           q.    Amtrak contracted with Alstom (independent repair  
6 facility) to repair aspects of Units 8205, 8011 and 8801.

7           r.    BNSF owned the property on which the tracks at the  
8 crossing were located. BNSF and independent contractors it  
9 retained re-railed the Amtrak train and made repairs to the  
10 tracks and equipment at the crossing as a result of the accident.

11          s.    BNSF locomotives 112 and 160 were damaged in the  
12 accident and were repaired at BNSF facilities at Barstow,  
13 California, and Topeka, Kansas.

14 B.    Disputed Facts

15          1.    The scope of work requested by Burton Olson of E.M.  
16 Tharp, with respect to repair work.

17           b.    The actual scope of repair, service and inspection  
18 performed by E.M. Tharp.

19           c.    Whether Burton Olson requested E.M. Tharp to  
20 conduct a thorough inspection of the tractor and dolly when it  
21 brought the tractor trailer for service on May 8, 2008.

22           d.    Whether the automatic slack adjusters on the  
23 tractor were defective and in need of replacement when it was  
24 brought to E.M. Tharp on May 8, 2008.

25           e.    Whether E.M. Tharp performed any brake work on  
26 axle 2, passenger's side, of the tractor while being serviced in  
27 May 2008.

28           f.    Whether E.M. Tharp performed any brake service

1 relating on axle 1, of the tractor while being serviced in May  
2 2008.

3 g. Whether E.M. Tharp performed any brake work on  
4 axle 3 of the dolly while being serviced in May 2008.

5 h. The scope of Martinez's pre-trip/operation  
6 inspection.

7 i. Whether employees of Burton Olson performed the  
8 required pre-trip/operation inspections of Burton Olson  
9 equipment.

10 j. Whether Burton Olson performed proper maintenance  
11 of its equipment.

12 k. Whether Burton Olson employees inspected the  
13 brakes on the tractor trailer after E.M. Tharp's service in May  
14 2008.

15 l. Whether Burton Olson employees adjusted the brakes  
16 on the tractor trailer after E.M. Tharp's service in May 2008.

17 m. Whether Burton Olson enforced a company protocol  
18 for inspecting equipment prior to daily operation.

19 n. Whether the repair damages claimed by Amtrak, were  
20 reasonable, necessary and actually performed.

21 o. Whether the repair damages claimed by BNSF were  
22 reasonable, necessary and actually performed.

#### 23 IV. DISPUTED EVIDENTIARY ISSUES

##### 24 1. Plaintiffs Amtrak and BNSF:

25 a. The ability of E.M. Tharp and Burton Olson's  
26 expert witnesses to testify on issues including, but not limited  
27 to, causation.

28 b. The admissibility of certain regulations and

1 standards relating to the condition of the brakes on the subject  
2 tractor-trailer.

3 c. Whether the testimony of defendants' experts meet  
4 the standards held in *Daubert v. Merrell Dow Pharmaceuticals,*  
5 *Inc.* (1993) 509 U.S. 579.

6 These issues will be addressed by motions in limine.

7 Defendant Burton Olson:

8 a. Burton Olson and Martinez will object to the use  
9 of estimates of repair costs on grounds of relevance. It is  
10 their understanding that the repairs have been made. Thus the  
11 estimate of these repair costs by Mr. Yeaser is not relevant.

12 Defendant E.M. Tharp:

13 a. E.M. Tharp objects to the use of estimates of  
14 repair costs on grounds of relevance, speculation, and best  
15 evidence.

16 b. E.M. Tharp objects to the claimed damages of  
17 Amtrak and BNSF as they claim prejudgment interest prior to  
18 suffering the monetary loss and for items of damages for which  
19 prejudgment interest is not recoverable.

20 c. E.M. Tharp objects that evidence and documents  
21 which were demanded for production were not produced in a timely  
22 manner and withheld. They were not produced for use by Burton  
23 Olson, Martinez or E.M. Tharp's damage expert prior to  
24 preparation of his expert analysis.

25 d. The ability of Amtrak and BNSF experts to testify  
26 on any issues including, but not limited to, causation.

27 e. Whether the testimony of plaintiffs' experts meet  
28 the standards held in *Daubert v. Merrell Dow Pharmaceuticals,*

1 Inc. (1993) 509 U.S. 579.

2 V. SPECIAL FACTUAL INFORMATION

3 1. See Undisputed Facts and Disputed Factual Issues above.

4 VI. RELIEF SOUGHT

5 a. Amtrak is claiming damages for equipment repair,  
6 loss of use of equipment, train delay, reimbursement of passenger  
7 injury settlements, work element costs and prejudgment interest.

8	Equipment Damage (completed repairs by Alstom)	\$1,566,330
9	Equipment Damage (completed repairs by Amtrak)	\$187,041
10	Damage Estimate (yet-to-be-completed repairs)	\$120,809
11	Loss of Use	\$185,880
12	Debt Service	\$19,230
12	Passenger Inconvenience	\$ 3,572
12	Passenger Settlements	\$52,097
13	Amtrak General & Administrative Expense (6.54%)	\$123,523
14	TOTAL	\$2,258,482
15	Pre-judgment Interest	\$640,419
15	TOTAL	\$2,898,901

16 Amtrak is entitled to prejudgment interest under Civil Code  
17 § 3287, subd. (a) since its damages are certain or capable of  
18 being made certain by calculation. Civil Code § 3287, subd. (a)  
19 applies to tort actions for property damage. *Levy-Zenter Co. v.*  
20 *Southern Pac Transportation Co.* (1977) 74 Cal.App.3d 762, 769-  
21 770. Prejudgment interest stated above was calculated at the  
22 legal rate of 10% under Civil Code § 3289 from the date of the  
23 accident, May 28, 2008 to the date of trial, March 29, 2011  
24 (1,035 days).

25 b. BNSF is claiming damages for labor, materials,  
26 train delay, incentive payments to employees and other losses as  
27 follows:

1	Maintenance of Way Labor	\$40,859.68	
	Maintenance of Way Material	\$59,380.60	
2	Material Tax, Handling, and Freight	\$10,457.99	
	Material Credit	(272.65)	
3	Invoice Payments	\$51,389.30	
	Locomotives-damaged	\$47,828.01	
4	Locomotives-transportation to	\$ 8,379.21	
5	shop(s)		
	Locomotives-monthly minimum mileage	\$18,683 .20	
6	Locomotives loss of use/opportunity	\$151,939 .20	
	Train/Locomotive Delay and Related	\$24,145.11	
7			
	Crew Expenses		
8	Amtrak Incentives	\$6,500.00	
	SUBTOTAL LABOR, MATERIAL AND OTHER		\$419,289.65
9			
	CHARGES		
10	Payments to Gerardo Urzua		
	Advance payment	\$8,850	
11	Medical payments	\$98	
	Total payments to Gerardo	\$8,948	
12			
	Urzua		
13	Payments to Victor Baca		
	Advance payment	\$11,500.00	
14	Medical payments	\$1,620.35	
	Total payments to Victor Baca	\$ 13,120.35	
15	Payments to Phil Patterson		
	Advance payment	\$38,275	
16	Medical payments	\$160,314.15	
	Total payments to Phil	\$ 198,589.15	
17			
	Patterson		
18	SUBTOTAL PAYMENTS TO EMPLOYEES		\$220,657.50
	Pre-judgment Interest		\$181,464.46
19	TOTAL		\$821,411.61

20 BNSF is entitled to prejudgment interest under Civil Code §  
21 3287, subd. (a) since its damages are certain or capable of being  
22 made certain by calculation. Civil Code § 3287, subd. (a)  
23 applies to tort actions for property damage. *Levy-Zenter Co. v.*  
24 *Southern Pac Transportation Co.* (1977) 74 Cal.App.3d 762, 769-  
25 770. Prejudgment interest stated above was calculated at the  
26 legal rate of 10% under Civil Code § 3289 from the date of the  
27 accident, May 28, 2008 to the date of trial, March 29, 2011  
28 (1,035 days).



1 c. Burton Olson and Martinez: Amtrak is claiming  
2 damage in the amount of \$2,064,126.27 which includes  
3 \$1,800,000.00 for repairs; \$185,000.00 for loss of equipment and  
4 \$19,230 as Debt Service. BNSF is claiming damages in the amount  
5 of \$226,348.55 which includes \$57,828.01 for repair of two  
6 locomotives; \$151,939.20 for loss of use; \$16,581.34 for mileage  
7 cost; and \$161,000 for track repairs. Defendants have retained  
8 expert Doug Morgan of Railroad Industries, Inc. to evaluate both  
9 the Amtrak and BNSF claims.

10 As to the Amtrak claim, Mr. Morgan states that the  
11 photographs of the property do not depict damage severe enough to  
12 warrant such a high figure. Further, the cost of repairs comes  
13 from estimates and appraisals and not actual invoices. As to the  
14 loss of equipment (\$185,000), Mr. Morgan states that this claim  
15 has not been proven or substantiated and that charges should be  
16 based upon actual repair time and not "shop" time which could  
17 easily delay repair time.

18 With regards to the BNSF claim, Mr. Morgan disputes the loss  
19 of use claim (\$151,939.20). He states that BNSF is unable to  
20 prove that it was inconvenienced in that there are a number of  
21 stored serviceable locomotives that could have been used. As to  
22 the mileage cost (\$16,581.34), Mr. Morgan is of the opinion that  
23 this is really just an attempt at double billing.

24 In conclusion, Mr. Morgan stated that the costs and claims  
25 of both Amtrak and BNSF could have been reduced by over 50%.

## 26 VII. DISPUTED ISSUES OF LAW

### 27 A. Plaintiffs

28 1. The legal theories by plaintiffs against defendants

1 Martinez, Burton Olson Trucking, and E.M. Tharp are based on  
2 basic claims of negligence, violations of applicable standards of  
3 care for a tractor-trailer operator, owner, trucking company and  
4 maintenance facility. The theories against the defendants are  
5 based upon common law and statutory law. The statutory and  
6 regulatory violations include, but are not limited to, Commercial  
7 Vehicle Safety Alliance (CVSA) North American Standard Out-of-  
8 Service Criteria, as adopted 13 CCR § 1239 and California Vehicle  
9 Code § 24002.

10 VIII. ABANDONED ISSUES

11 1. None.

12 IX. WITNESSES

13 A. Plaintiffs

- 14 1. Desl Rementeria  
Alstom Employee
- 15 2. Tommy Aspinwall  
Alstom Employee
- 16 3. Linda Cunningham  
Alstom Contracts Manager
- 17 4. Ivan Iosif  
Amtrak Employee
- 18 5. Richard Campbell  
Amtrak Employee
- 19 6. Richard Olson  
Amtrak Employee
- 20 7. William Countess  
Amtrak Employee
- 21 8. Nancy Miller  
Amtrak Employee
- 22 9. Robert Cooley, Jr.  
Amtrak Employee
- 23 10. Steve Wong  
Amtrak Employee
- 24
- 25
- 26
- 27
- 28

- 1 11. Brad Queen  
Barstow
- 2
- 3 12. Ralph Hunt  
Barstow
- 4
- 5 13. Dennis Skeels  
BNSF Employee
- 6
- 7 14. Gabriel Chavez  
BNSF Employee
- 8
- 9 15. April Bacon  
BNSF Employee
- 10
- 11 16. Augustine Moreno  
BNSF Employee
- 12
- 13 17. Clarence P. Newell  
BNSF Employee
- 14
- 15 18. Daniel Rivera  
BNSF Employee
- 16
- 17 19. Gerry Urzua  
BNSF Employee
- 18
- 19 20. James C. Newell  
BNSF Employee
- 20
- 21 21. Ken Schoenborn  
BNSF Employee
- 22
- 23 22. M.L. Koogler  
BNSF Employee
- 24
- 25 23. Mary Jo Struttman  
BNSF Employee
- 26
- 27 24. Phil Patterson  
BNSF Employee
- 28
- 29 25. Shaun Lewis  
BNSF Employee
- 30
- 31 26. Victor Baca  
BNSF Employee
- 32
- 33 27. Ward Greisen  
BNSF Employee  
Barstow
- 34
- 35 28. Curtis Meyer  
BNSF Employee  
Topeka

- 1        29.    Rick Galvan  
2                BNSF Employee  
3                Topeka
- 4        30.    Mary Jo Struttman  
5                BNSF Employee; expert
- 6        31.    Burton Olson  
7                Burton Olson
- 8        32.    Jose Juan Martinez  
9                Burton Olson
- 10       33.    Jose Rosas  
11                Burton Olson
- 12       34.    Luz Collins  
13                Burton Olson
- 14       35.    Mike Munoz  
15                Burton Olson
- 16       36.    Sebrino Piceno  
17                Burton Olson
- 18       37.    Sharon Olson  
19                Burton Olson
- 20       38.    John Willbanks  
21                Burton Olson (former employee)
- 22       39.    Guillen Ezekiel  
23                California Highway Patrol
- 24       40.    Officer R. Chennault  
25                California Highway Patrol  
26                (Commercial), Badge 11522
- 27       41.    Stephen Profera  
28                California Highway Patrol (MAIT), ID A6477
- 29       42.    Marvin Sprinkman  
30                California Highway Patrol (MAIT), ID A8248
- 31       43.    Officer E. Guillen  
32                California Highway Patrol, Badge 011336
- 33       44.    Officer B. O'Dell  
34                California Highway Patrol, Badge 12177
- 35       45.    Sergeant Dan Gilmore  
36                California Highway Patrol, Badge 13686
- 37       46.    Officer J. Lehner  
38                California Highway Patrol, Badge 13808

- 1        47.    Andy Morse  
         CalTrans
- 2
- 3        48.    Dennis Winger  
         CalTrans
- 4
- 5        49.    Aaron Johnson  
         E.M. Tharp
- 6
- 7        50.    Brian Norden  
         E.M. Tharp
- 8
- 9        51.    Dean Rector  
         E.M. Tharp
- 10
- 11       52.    Dennis Waggoner  
         E.M. Tharp
- 12
- 13       53.    Edward Rockholt  
         E.M. Tharp
- 14
- 15       54.    Scott Hobson  
         E.M. Tharp
- 16
- 17       55.    Tim Mulvihill  
         E.M. Tharp
- 18
- 19       56.    Joshua Nice  
         E.M. Tharp (former employee [mechanic])
- 20
- 21       57.    William LeGette  
         E.M. Tharp (former employee [mechanic])
- 22
- 23       58.    Jeff Landstrom  
         E.M. Tharp Mechanic
- 24
- 25       59.    William Lawhead  
         E.M. Tharp Parts Manager
- 26
- 27       60.    Eric Metzler  
         E.M. Tharp Service Coordinator
- 28
- 29       61.    James Angle  
         E.M. Tharp Shop Foreman
- 30
- 31       62.    Ashley Dunn, Ph.D.  
         Expert
- 32
- 33       63.    Charles Yeaser  
         Expert
- 34
- 35       64.    Douglas Morgan  
         Expert

///

- 1 65. James Flynn, PE  
Expert
- 2
- 3 66. Lew Grill  
Expert
- 4
- 5 67. V. Paul Herbert, C.P.S.A.  
Expert
- 6
- 7 68. Jesus Rojo  
18026 10th Avenue  
Hanford  
Neighbor, witness
- 8
- 9 69. Karen Schaefer  
United Healthcare

10 B. BNSF's Witness List

- 11 1. Jose Juan Martinez  
Burton Olson Trucking
- 12
- 13 2. Sharon Olsen  
Burton Olson Trucking
- 14
- 15 3. M.L. Koogler  
BNSF Employee
- 16
- 17 4. Mary Jo Struttman  
BNFS Employee
- 18
- 19 5. Phil Patterson  
BNSF Employee
- 20
- 21 6. Victor Baca  
BNSF Employee
- 22
- 23 7. Gerry Urzua  
BNSF Employee
- 24
- 25 8. James C. Newell  
BNSF Employee
- 26
- 27 9. Clarence P. Newell  
BNSF Employee
- 28
- 29 10. Augustine Moreno  
BNSF Employee
- 30
- 31 11. Daniel Rivera  
BNSF Employee

32 ///  
33 ///

- 1 12. Jesus Rojo  
2 18026 10th Ave.  
3 Hanford  
4 Neighbor, witness
- 5 13. Officer E. Guillen  
6 Badge 011336, California Highway Patrol
- 7 14. Officer J. Lehner  
8 Badge 13808, California Highway Patrol
- 9 15. Officer B. O'Dell  
10 Badge 12177, California Highway Patrol
- 11 16. Sergeant D. Gilmour  
12 Badge 13686, California Highway Patrol
- 13 17. Officer R. Chennault  
14 Badge 11522, California Highway Patrol (Commercial)
- 15 18. Marvin Sprinkman  
16 ID A8248, California Highway Patrol (MAIT)
- 17 19. Stephen Profera  
18 ID A6477, California Highway Patrol (MAIT)
- 19 20. Robert Cooley, Jr.  
20 Amtrak employee
- 21 21. Steve Wong  
22 Amtrak employee
- 23 22. James Flynn, PE  
24 Expert
- 25 23. V. Paul Herbert, C.P.S.A.  
26 Expert
- 27 24. Mary Jo Struttman  
28 BNSF employee; expert
- 29 25. Ralph Hunt  
30 Barstow
- 31 26. Brad Queen  
32 Barstow
- 33 27. Charles Yeaser  
34 Expert
- 35 28. Ashley Dunn, Ph.D.  
36 Expert
- 37 29. Lew Grill  
38 Expert

- 1 30. Jeff Landstrom  
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- 2
- 3 31. William LeGette  
E.M. Tharp (former employee [mechanic])
- 4 32. John Willbanks  
Burton Olson former employee
- 5
- 6 33. Jonathan Nice  
E.M. Tharp (former employee [mechanic])
- 7 34. Jim Angle  
E.M. Tharp shop foreman
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- 9 35. Eric Metzler  
E.M. Tharp service coordinator
- 10 36. William Lawhead  
E.M. Tharp parts manager
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- 12 37. Sebrino Piceno  
Burton Olson
- 13 38. Mike Munoz  
Burton Olson
- 14
- 15 39. Karen Schaefer  
United Healthcare
- 16 40. Rick Galvan  
BNSF employee, Topeka
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- 18 41. Scott Hobson  
E.M. Tharp
- 19 42. Brian Norden  
E.M. Tharp
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- 21 43. Dean Rector  
E.M. Tharp
- 22 44. Dennis Waggoner  
E.M. Tharp
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- 24 45. Edward Rockholt  
E.M. Tharp
- 25 46. Aaron Johnson  
E.M. Tharp
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- 27 47. Tim Mulvihill  
E.M. Tharp

28 ///



- 1           48.   Jose Rosas  
            Burton Olson
- 2
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            Burton Olson
- 4
- 5           50.   Ken Schoenborn  
            BNSF employee
- 6
- 7           51.   Shaun Lewis  
            BNSF employee
- 8
- 9           52.   April Bacon  
            BNSF employee
- 10
- 11           53.   Curtis Meyer  
            BNSF employee, Topeka
- 12
- 13           54.   Ward Greisen  
            BNSF employee, Barstow

14 C.   Burton Olson's and Martinez's Witness List

- 15           1.    Jose Juan Martinez  
            Burton Olson Trucking
- 16
- 17           2.    Sharon Olson  
            Burton Olson Trucking
- 18
- 19           3.    M.L. Koogler  
            BNSF Employee
- 20
- 21           4.    Mary Jo Struttman  
            BNSF Employee
- 22
- 23           5.    Phil Patterson  
            BNSF Employee
- 24
- 25           6.    Victor Baca  
            BNSF Employee
- 26
- 27           7.    Gerry Urzua  
            BNSF Employee
- 28           8.    James C. Newell  
            BNSF Employee
9.    Clarence P. Newell  
            BNSF Employee
10.   Augustine Moreno  
            BNSF Employee
11.   Daniel Rivera  
            BNSF Employee

- 1 12. Jesus Rojo  
2 18026 10th Ave.  
3 Hanford  
4 Neighbor, witness
- 5 13. Officer E. Guillen  
6 Badge 011336, California Highway Patrol
- 7 14. Officer J. Lehner  
8 Badge 13808, California Highway Patrol
- 9 15. Officer B. O'Dell  
10 Badge 12177, California Highway Patrol
- 11 16. Sergeant D. Gilmour  
12 Badge 13686, California Highway Patrol
- 13 17. Officer R. Chennault  
14 Badge 11522, California Highway Patrol (Commercial)
- 15 18. Marvin Sprinkman  
16 ID A8248, California Highway Patrol (MAIT)
- 17 19. Stephen Profera  
18 ID A6477, California Highway Patrol (MAIT)
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- 21 21. Steve Wong  
22 Amtrak employee
- 23 22. James Flynn, PE  
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- 25 23. V. Paul Herbert, C.P.S.A.  
26 Expert
- 27 24. Mary Jo Struttman  
28 BNSF employee; expert
- 29 25. Ralph Hunt  
30 Barstow
- 31 26. Brad Queen  
32 Barstow
- 33 27. Charles Yeaser  
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- 35 28. Ashley Dunn, Ph.D.  
36 Expert
- 37 29. Lew Grill  
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- 9 35. Eric Metzler  
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- 10 36. William Lawhead  
E.M. Tharp parts manager
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- 12 37. Sebrino Piceno  
Burton Olson
- 13 38. Mike Munoz  
Burton Olson
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- 15 39. Karen Schaefer  
United Healthcare
- 16 40. Rick Galvan  
BNSF employee, Topeka
- 17
- 18 41. Scott Hobson  
E.M. Tharp
- 19 42. Brian Norden  
E.M. Tharp
- 20
- 21 43. Dean Rector  
E.M. Tharp
- 22 44. Dennis Waggoner  
E.M. Tharp
- 23
- 24 45. Edward Rockholt  
E.M. Tharp
- 25 46. Aaron Johnson  
E.M. Tharp
- 26
- 27 47. Tim Mulvihill  
E.M. Tharp

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- 1           48.   Jose Rosas  
              Burton Olson
- 2
- 3           49.   Luz Collins  
              Burton Olson
- 4
- 5           50.   Ken Schoenborn  
              BNSF employee
- 6
- 7           51.   Shaun Lewis  
              BNSF employee
- 8
- 9           52.   April Bacon  
              BNSF employee
- 10
- 11           53.   Curtis Meyer  
              BNSF employee, Topeka
- 12
- 13           54.   Ward Greisen  
              BNSF employee, Barstow
- 14
- 15           55.   Investigating Personnel  
              United States Department of Transportation  
              Federal Railroad Administration

16 D.   E.M. Tharp's Witness List

- 17           1.    Scott Hobson
- 18
- 19           2.    James Angle
- 20
- 21           3.    Eric Metzler
- 22
- 23           4.    Dean Rector
- 24
- 25           5.    Jeffrey Landstrom
- 26
- 27           6.    Edward Rockholt
- 28           7.    Tim Mulvihill
8.    Brian Nordin
9.    Dennis Waggoner
10.   William LeGette
11.   Aaron Johnson
12.   Jose Juan Martinez
13.   Jesus Rojo
14.   Joe Bernardino Morais

- 1 15. Tony Rocha Parreira
- 2 16. Officer Ezekiel Guillen
- 3 17. Officer Bill O'Dell
- 4 18. Officer J. Lehner
- 5 19. Sergeant Damon Gilmore
- 6 20. Marvin Sprinkman
- 7 21. Steven Profera
- 8 22. John Willbanks
- 9 23. Jared Lehner
- 10 24. Sharon Olson
- 11 25. Burton Olson
- 12 26. William Lawhead
- 13 27. Mary Jo Struttman
- 14 28. Nancy Miller
- 15 29. Ashley Dunn, Ph.D.
- 16 30. Lew Grill
- 17 31. Mike Munoz
- 18 32. Douglas B. Morgan
- 19 33. Paul Herbert
- 20 34. Jim Flynn
- 21 35. Charles Yeaser
- 22 36. Officer R.L. Chennault

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

27 CAUTION

28 Counsel are cautioned that expert witnesses, including

1 percipient experts, must be designated as such. No witness, not  
2 identified as a witness in this order, including "rebuttal"  
3 witnesses, will be sworn or permitted to testify at trial.

4 X. EXHIBITS, SCHEDULES AND SUMMARIES

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

7 CAUTION

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

12 A. Plaintiff Amtrak's Exhibit List

- 13 1. CHP Traffic collision report and supplemental MAIT  
14 report.
- 15 2. U.S. DOT Crossing Inventory Information as of 6/4/2008.
- 16 3. Federal Railroad Administration Form F6180.97 - BNSF  
17 Railway Company Highway/Rail Grade Crossing Accident/Incident.
- 18 4. BNSF General Track Bulletin No. 27235.
- 19 5. Two (2) photos of crossing arm post-accident.
- 20 6. One-hundred seventy-seven (177) photos of the accident  
21 scene, including the involved truck and trains, taken by BNSF.
- 22 7. Seventy-four (74) photos of the accident scene,  
23 including the involved truck and trains, taken by Amtrak.
- 24 8. BNSF Resource Operations Center Ticket Report dated  
25 5/28/2008.
- 26 9. BNSF Signal Ticket Report dated 5/28/2008.
- 27 10. BNSF Highway Grade Crossing Signal Post-Accident Test  
28 Check List.

- 1           11. BNSF Signal Maintenance and Repair Records for the
- 2 subject crossing, dated June 2007 through May 2008.
- 3           12. BNSF Bakersfield Subdivision Track Chart.
- 4           13. BNSF Spreadsheet detailing FRA track inspections
- 5 (1/1/2007 to 5/29/2008).
- 6           14. Appraisal Systems Group Damage Appraisal Reports for
- 7 Amtrak Unit 148.
- 8           15. Appraisal Systems Group Damage Appraisal Reports for
- 9 Amtrak Unit C8205.
- 10           16. Appraisal Systems Group Damage Appraisal Reports for
- 11 Amtrak Unit C8011.
- 12           17. Appraisal Systems Group Damage Appraisal Reports for
- 13 Amtrak Unit C8801.
- 14           18. Appraisal Systems Group Damage Appraisal Reports for
- 15 Amtrak Unit C8314.
- 16           19. Passenger Settlements List.
- 17           20. Settlement documents relating to injured-passenger
- 18 claims.
- 19           21. Data retrieved from the Locomotive Event Recorder of
- 20 Amtrak Unit 148. (Specialized software is required to interpret
- 21 this data. The software is not available to the public. Amtrak
- 22 had the data analyzed by one of their consultants. Defendants
- 23 will produce the report of the consultant if Plaintiff and Co-
- 24 Defendants agree such production shall not be considered as a
- 25 waiver of the attorney client or work product privilege.)
- 26           22. Select Voucher Invoice No. 72201547 (Payment to
- 27 Alstom).
- 28           23. Select Voucher Invoice No. 72201542 (Payment to

- 1 Alstom) .
- 2 24. Select Voucher Invoice No. 72201544 (Payment to
- 3 Alstom) .
- 4 25. Select Voucher Invoice No. 72201545 (Payment to
- 5 Alstom) .
- 6 26. Select Voucher Invoice No. 72201546 (Payment to
- 7 Alstom) .
- 8 27. Select Voucher Invoice No. 72201541 (Payment to
- 9 Alstom) .
- 10 28. Amtrak's Charter Rates.
- 11 29. Debt Service Spreadsheet for Locomotive.
- 12 30. Purchase Order for Alstom.
- 13 31. Amtrak's Summary of Expenses.
- 14 32. Summary Alstom Repair Expenses.
- 15 33. Alstom Invoice 722015 - 41 Car 8801.
- 16 34. Alstom Invoice 722015 - 42 Car 8011.
- 17 35. Alstom Invoice 722015 - 44 Car 8011.
- 18 36. Alstom Invoice 722015 - 45 Car 8205.
- 19 37. Alstom Invoice 722015 - 46 Car 8205.
- 20 38. Alstom Invoice 722015 - 47 Car 8205.
- 21 39. Amtrak Loss of Use Calculations.
- 22 40. Amtrak Equipment Rental Rates for Charter Services.
- 23 41. Alstom Repair Quote for Car 8011.
- 24 42. Alstom Repair Quote for Car 8205.
- 25 43. Alstom Repair Quote for Car 8801.
- 26 44. Amtrak Passenger Inconvenience Expenses.
- 27 45. J2 Engineering Report.
- 28 46. ASG (Appraisal Systems Group) Damage Appraisal.



- 1           47.   Gunite Automatic Slack Adjuster Parts Catalog.
- 2           48.   Gunite Automatic Slack Adjuster Maintenance and
- 3 Troubleshooting Guide.
- 4           49.   Gunite Service Bulletin (brake adjustment, testing
- 5 procedure).
- 6           50.   Accident scene sketch 5/30/08, M. Koogler.
- 7           51.   Traffic Collision Report #2008 05 0063 5/28/08,
- 8 including diagrams.
- 9           52.   Multidisciplinary accident investigation team report
- 10 #2008 05 0063, including charts, photos and diagrams.
- 11           53.   BNSF photos of gate, scene, quad, train and related
- 12 matters.
- 13           54.   Amtrak Groups A-E, photos of scene, train and related
- 14 matters.
- 15           55.   Burton Olson photos of scene, train, vehicle and
- 16 related matters.
- 17           56.   CHP photos of scene, train, vehicle and related
- 18 matters.
- 19           57.   CHP (MAIT) photos of vehicle and related matters.
- 20           58.   Report of inspection, 5/28/08, A. Moeno, BNSF
- 21 locomotive 11.
- 22           59.   Report of inspection, 5/28/08, A. Moeno, BNSF
- 23 locomotive 11.
- 24           60.   BNSF Daily Performance Report, 5/28/08.
- 25           61.   BNSF Event log, 5/28/08.
- 26           62.   BNSF 112 locomotive records, including locomotive work
- 27 report history.
- 28           63.   BNSF 160 locomotive records, including locomotive work

- 1 report history.
- 2 64. Burton Olson documents OBT #0001-9254.
- 3 65. J2 Engineering exhibits.
- 4 66. Western Motor Carrier exhibits.
- 5 67. E.M. Tharp document, vehicle condition history.
- 6 68. E.M. Tharp documents, workman's time, ticket & record.
- 7 69. E.M. Tharp documents, labor reconciliation 5/10-15/08.
- 8 70. E.M. Tharp documents, repair order PR 70000.
- 9 71. E.M. Tharp documents, mechanic notes PR 70000.
- 10 72. Accident scene sketch 5/30/08, M. Koogler.
- 11 73. Traffic Collision Report #2008 05 0063 5/28/08,
- 12 including diagrams.
- 13 74. Multidisciplinary accident investigation team report
- 14 #2008 05 0063, including charts, photos and diagrams.
- 15 75. BNSF photos of gate, scene, quad, train and related
- 16 matters.
- 17 76. Amtrak Groups A-E, photos of scene, train and related
- 18 matters.
- 19 77. Burton Olson photos of scene, train, vehicle and
- 20 related matters.
- 21 78. CHP photos of scene, train, vehicle and related
- 22 matters.
- 23 79. CHP (MAIT) photos of vehicle and related matters.
- 24 80. Report of inspection, 5/28/08, A. Moeno, BNSF
- 25 locomotive 160.
- 26 81. Report of inspection, 5/28/08, A. Moeno, BNSF
- 27 locomotive 112.
- 28 82. BNSF Daily Performance Report, 5/28/08.

- 1 83. BNSF Event log, 5/28/08.
- 2 84. BNSF 112 locomotive records, including locomotive work  
3 report history.
- 4 85. BNSF 160 locomotive records, including locomotive work  
5 report history.
- 6 86. Burton Olson documents BOT #0001-9254.
- 7 87. E.M. Tharp Reprint.
- 8 88. E.M. Tharp Reprint Customer Invoice.
- 9 89. E.M. Tharp Mechanic Notes.
- 10 90. E.M. Tharp Rule 26 disclosure.
- 11 91. E.M. Tharp Initial Write-up for repairs 5/8/08.
- 12 92. E.M. Tharp list of items working copy for mechanics EMT  
13 27-34.
- 14 93. E.M. Tharp list of items working copy for mechanics.
- 15 94. E.M. Tharp Vehicle Condition History.
- 16 95. E.M. Tharp Mechanics Timed Ticket and Record.
- 17 96. E.M. Tharp labor reconciliation 5/10-15/08.
- 18 97. E.M. Tharp Vehicle Condition History.
- 19 98. E.M. Tharp Mechanics Timed Ticket and Record.
- 20 99. E.M. Tharp labor reconciliation 5/10-15/08.
- 21 100. E.M. Tharp Response to Requests to Admission from  
22 Amtrak, Set One.
- 23 101. E.M. Tharp Response to Interrogatories/Admission from  
24 Amtrak, Set Two.
- 25 102. E.M. Tharp Response to Interrogatories from Amtrak, Set  
26 One.
- 27 103. E.M. Tharp Response to Requests for Admission from  
28 Amtrak, Set Two.

1           104. E.M. Tharp Response to Requests to Admission from  
2 Amtrak, Set Three.

3           105. E.M. Tharp Response to Request for Production of  
4 Documents from Amtrak, Set One.

5           106. E.M. Tharp Response to Request for Production of  
6 Documents from Amtrak, Set Two.

7           107. E.M. Tharp Response to Request for Production of  
8 Documents from Amtrak, Set Three.

9           108. E.M. Tharp Vehicle Condition History.

10          109. E.M. Tharp Mechanics Timed Ticket and Record EMT 52-64.

11          110. E.M. Tharp labor reconciliation 5/10-15/08.

12          111. Releases & Settlement Checks paid to Passengers.

13          112. E.M. Tharp's Production of Documents.

14          113. Report and file materials of E.M. Tharp/Burton Olson  
15 Trucking Expert Al Dunn and SEA Inc.

16          114. Report and file materials of E.M. Tharp/Burton Olson  
17 Trucking Expert Lew Grill.

18          115. Report and file materials of E.M. Tharp/Burton Olson  
19 Trucking Expert Doug Moran.

20 B.   Defendant BNSF's Exhibit List

21          1.    BNSF Railway Recap of all charges reflecting revised  
22 figure of \$419,289.65 for claimed damages.

23          2.    Revised calculations for use tax and material handling.

24          3.    Revised calculations for recovered material credit.

25          4.    Close out report, Topeka System Maintenance Terminal.

26          5.    Locomotive exceptions; Unit DIC (dead in consist)  
27 report reflecting transportation and repair; BNSF 112.

28          6.    Train delay printout.

1           7.    Emails reflecting labor and material repair regarding  
2 Barstow locomotive.

3           8.    Summary calculations for maintenance of way, labor  
4 charges.

5           9.    Labor charges by AFE.

6           10.   Material costs by AFE.

7           11.   Invoice payments summary.

8           12.   Invoices paid to MP Environmental Services, Inc.,  
9 Mainline Equipment, Hulcher Services, Inc., Callowbed Services  
10 Inc. and Bridgewater Equipment, Inc.

11          13.   Locomotive BNSF 112 repair itemization, Topeka  
12 (locomotives-damaged).

13          14.   Locomotive BNSF 160 repair itemization, Barstow  
14 (locomotives-damaged).

15          15.   Locomotives transportation to repair shops detail.

16          16.   Locomotive monthly minimum mileage cost.

17          17.   Locomotive loss of use/opportunity summary.

18          18.   Train/locomotive delay summary.

19          19.   Amtrak incentives lost, summary plus train detail  
20 reports.

21          20.   Loss of locomotive fuel detail.

22          21.   BNSF Railway billable labor overhead definitions and  
23 percentages (Engineering Department) (MoW, Signal, B&B) (2007  
24 Base Year).

25          22.   BNSF Railway billable labor overhead definitions and  
26 percentages (Mechanical Department) (2007 base year).

27          23.   Total loss of use and opportunity cost based on  
28 contribution from railway operations per horsepower hour for year

- 1 2007.
- 2 24. BNSF Railway average crew wages using 2006 data.
- 3 25. The BNSF Railway Company, train delay cost, train hour  
4 cost per road freight train hour, 2006 annual expenses and  
5 statistics.
- 6 26. United Healthcare statement of medical payments made  
7 for Victor Baca.
- 8 27. United Healthcare statement of medical payments made  
9 for Gerardo Urzua.
- 10 28. United Healthcare statement of medical payments made  
11 for Phil Patterson.
- 12 29. Accident scene sketch 5/30/08, M. Koogler.
- 13 30. Traffic collision report #2008 05 0063 5/28/08,  
14 including diagrams.
- 15 31. Multidisciplinary accident investigation team report  
16 #2008 05 0063, including charts, photos and diagrams.
- 17 32. BNSF photos of gate, scene, quad, train and related  
18 matters.
- 19 33. Amtrak Groups A-E, photos of scene, train and related  
20 matters.
- 21 34. Burton Olson photos of scene, train, vehicle and  
22 related matters.
- 23 35. CHP photos of scene, train, vehicle and related  
24 matters.
- 25 36. CHP (MAIT) photos of vehicle and related matters.
- 26 37. Advance payment documents to BNSF employees.
- 27 a. Gerry Urzua \$8,850;
- 28 b. Victor Baca \$11,500;

- 1 c. Phil Patterson \$38,275.
- 2 38. Report of inspection, 5/28/08, A. Moeno, BNSF  
3 locomotive 160.
- 4 39. Report of inspection, 5/28/08, A. Moeno, BNSF  
5 locomotive 112.
- 6 40. BNSF daily performance report, 5/28/08.
- 7 41. BNSF event log 5/28/08.
- 8 42. BNSF 112 locomotive records, including locomotive work  
9 report history.
- 10 43. BNSF 160 locomotive records, including locomotive work  
11 report history.
- 12 44. Burton Olson documents BOT #0001-9254.
- 13 45. James Flynn exhibits.
- 14 46. V. Paul Herbert exhibits.
- 15 47. E.M. Tharp document, vehicle condition history.
- 16 48. E.M. Tharp documents, workman's time, ticket & record.
- 17 49. E.M. Tharp documents, labor reconciliation 5/10-15/08.
- 18 50. E.M. Tharp documents, repair order PR 70000.
- 19 51. E.M. Tharp documents, mechanic notes PR 70000.
- 20 C. Burton Olson's and Martinez's Exhibit List.
- 21 1. AMTRAK - appraisal systems group - damage report.
- 22 2. AMTRAK - loss of use calculations.
- 23 3. AMTRAK - car repair quotes.
- 24 4. Photos of crossing arm post accident.
- 25 5. FRA track inspection records, 1/1/07-5/29/08.
- 26 6. Truck collision supplemental report.
- 27 7. Crossing inventory information.
- 28 8. Highway-rail grade crossing incident report.

- 1 9. General track bulletin.
- 2 10. BNSF slow order report, 5/28/08.
- 3 11. Evidence tag report, 4/28/09.
- 4 12. Resource operations center ticket report, 5/28/08.
- 5 13. Signal ticket report, 5/28/08.
- 6 14. BNSF inspection reports.
- 7 15. BNSF track chart - Bakersfield subdivision.
- 8 16. General release agreement.
- 9 17. FRA accident report AMTRAK BNSF, 5/28/08
- 10 18. Lew Grill report, 12/10/10.
- 11 19. Paul Herbert report, 12/21/10.
- 12 20. J2 engineering report.
- 13 21. Appraisal report, 8/18/08.
- 14 22. SEA, Inc. report, 12/10/10.
- 15 23. Doug Morgan report, 1/14/11.
- 16 D. E.M. Tharp's Exhibit List.
- 17 1. May 17, 2008 E.M. Tharp, Inc. "Reprint Customer
- 18 Invoice," Repair Order No. PR 70000.
- 19 2. E.M. Tharp, Inc. Repair Order Summary re 89 Peterbilt,
- 20 Serial No. 286979.
- 21 3. E.M. Tharp, Inc. mechanic notes, re repair order no.
- 22 70000.
- 23 4. May 13, 2008 E.M. Tharp, Inc. front end alignment
- 24 results re work order PR70000.
- 25 5. E.M. Tharp, Inc. air conditioning checklist.
- 26 6. April 4, 2008 E.M. Tharp, Inc. "Reprint Customer
- 27 Invoice," repair order No. PR69518.
- 28 7. April 2, 2008 E.M. Tharp, Inc. description of repairs



1 re unit no. 505.

2 8. April 2, 2008 E.M. Tharp, Inc. mechanic labor  
3 description re PR69518.

4 9. E.M. Tharp, Inc. mechanic notes dated "4-2" re clutch  
5 adjustment.

6 10. April 2, 2008 E.M. Tharp, Inc. "Review" re repair order  
7 no. PR69518.

8 11. May 8, 2008 E.M. Tharp, Inc. description of repairs re  
9 unit no. 505.

10 12. May 8, 2008 E.M. Tharp, Inc. mechanic labor description  
11 re PR 70000.

12 13. May 8, 2008 through May 14, 2008 E.M. Tharp, Inc.  
13 mechanic notes re repair order No. 70000.

14 14. Air conditioning checklist.

15 15. May 12, 2008 through May 13, 2008 E.M. Tharp, Inc.  
16 mechanic notes re repair order no. 70000.

17 16. June 5, 2008 MAIT Report No. 2008-05-0063.

18 17. 214 MAIT photographs as identified in the photo log of  
19 the MAIT report no. 2008-05-0063, page 25.

20 18. May 28, 2008 traffic collision report no. 2008 05 0063.

21 19. Photographs taken by CHP Officers B. O'Dell and D.  
22 Gilmore re traffic collision report no. 2008 05 0063.

23 20. E.M. Tharp, Inc. vehicle condition history, three  
24 pages.

25 21. August 12, 2003 E.M. Tharp, Inc. "Reprint Customer  
26 Invoice" re repair order no. PR46699.

27 22. E.M. Tharp, Inc. workman's time ticket and record,  
28 thirteen pages.

1           23. E.M. Tharp, Inc. labor reconciliation for 5/10/08  
2 through 5/15/08.

3           24. E.M. Tharp, Inc. dba Golden State Peterbilt's response  
4 to National Railroad Passenger Corporation Request for Production  
5 of Documents, Set 1.

6           25. E.M. Tharp, Inc. dba Golden State Peterbilt's Response  
7 to National Railroad Passenger Corporation Request for Production  
8 of Documents, Set 2.

9           26. E.M. Tharp, Inc. dba Golden State Peterbilt's Response  
10 to BNSF Railway Company's Request for Production of Documents,  
11 Set 1.

12           27. E.M. Tharp, Inc. dba Golden State Peterbilt's Responses  
13 to National Railroad Passenger Corp.'s Interrogatories, Set 1.

14           28. E.M. Tharp, Inc. dba Golden State Peterbilt's Responses  
15 to National Railroad Passenger Corp.'s Interrogatories, Set 2.

16           29. E.M. Tharp, Inc. dba Golden State Peterbilt's Responses  
17 to BNSF Railway Company's Interrogatories, Set 1.

18           30. National Railroad Passenger Corp.'s Responses to E.M.  
19 Tharp, Inc.'s Interrogatories, Set 1.

20           31. BNSF Railway Company's Responses to E.M. Tharp, Inc.'s  
21 Interrogatories, Set 1.

22           32. E.M. Tharp, Inc.'s Response to National Railroad  
23 Corporation's Requests for Admission, Set 1.

24           33. E.M. Tharp, Inc.'s Response to National Railroad  
25 Corporation's Requests for Admission, Set 2.

26           34. National Railroad Corporation's Responses to E.M.  
27 Tharp, Inc.'s Request for Production of Documents, Set 1.

28           35. Burton Olson's Response to E.M. Tharp, Inc.'s Request

- 1 for Production of Documents, Set 1.
- 2 36. Burton Olson's Response to National Railroad  
3 Corporation's Request for Admissions, Set 1.
- 4 37. Burton Olson's Response to E.M. Tharp, Inc.'s  
5 Interrogatories, Set 1.
- 6 38. Burton Olson's Responses to National Railroad  
7 Corporation's Interrogatories, Set 1.
- 8 39. Printout re Gunite Slack Adjuster Sales, Exhibit 8 to  
9 Lawhead deposition.
- 10 40. Parts Purchase History for Burton Olson, Exhibit 9 to  
11 Lawhead deposition.
- 12 41. Reprint of Customer Invoice, Exhibit 10 to Lawhead  
13 deposition.
- 14 42. Information Regarding Gunite Slack Adjusters Sales,  
15 Exhibit 8 to Struttman deposition.
- 16 43. Parts purchase history for Burton Olson, Exhibit 9 to  
17 Struttman deposition.
- 18 44. March 15, 2005 reprint customer invoice, Exhibit 10 to  
19 Struttman deposition.
- 20 45. Select voucher invoices, Exhibits 2-A through 2-F to  
21 Miller deposition.
- 22 46. Investigation techniques for a vehicle/train collision,  
23 Exhibit A to Lehner deposition.
- 24 47. E.M. Tharp repair order, Exhibit C to Willbanks  
25 deposition.
- 26 48. Repair printout, Exhibit D to Willbanks deposition.
- 27 49. Burton Olson document production, Exhibit E to  
28 Willbanks deposition.

- 1           50.   CHP Safetynet driver/vehicle inspection report,  
2 4320696, Exhibit F to Willbanks deposition.
- 3           51.   Inspection form, 32' end dump, Exhibit I to Willbanks  
4 deposition.
- 5           52.   Inspection form, end dump #ABC5631, Exhibit I to  
6 Willbanks deposition.
- 7           53.   Inspection form, 32' end dump, Exhibit J to Willbanks  
8 deposition.
- 9           54.   Driver's daily log, May 5, 2008, Exhibit K to Willbanks  
10 deposition.
- 11          55.   Truck and/or tractor maintenance & safety inspection,  
12 including two auto repair orders, Exhibit L to Willbanks  
13 deposition.
- 14          56.   BIT program administrative review, December 6, 2006,  
15 Exhibit M to Willbanks deposition.
- 16          57.   Safety compliance report/terminal record update,  
17 November 30, 2004, Exhibit N to Willbanks deposition.
- 18          58.   Driver and field work orientation and training log,  
19 Exhibit O to Willbanks deposition.
- 20          59.   Burton Olson Trucking's order of sale practice, Exhibit  
21 P to Willbanks deposition.
- 22          60.   Initial safety training log, Exhibit Q to Willbanks  
23 deposition.
- 24          61.   Powell's Garage Auto Repair order, August 17, 2006,  
25 Exhibit R to Willbanks deposition.
- 26          62.   Truck and/or tractor maintenance & safety inspection,  
27 Exhibit S to Willbanks deposition.
- 28          63.   Truck and/or tractor maintenance & safety inspection,

- 1 Exhibit T to Willbanks deposition.
- 2 64. Inspection log, Exhibit U to Willbanks deposition.
- 3 65. Powell's Garage Auto Repair order, January 19, 2008 and  
4 January 22, 2008, Exhibit V to Willbanks deposition.
- 5 66. Driver's vehicle inspection report, December 2, 2003,  
6 Exhibit W to Willbanks deposition.
- 7 67. Driver's vehicle inspection report, August 7, 2003,  
8 Exhibit X to Willbanks deposition.
- 9 68. Lubrication and inspection report, Exhibit Y to  
10 Willbanks deposition.
- 11 69. Lubrication and inspection report, Exhibit Y to  
12 Willbanks deposition.
- 13 70. Inspection log, Exhibit Z to Willbanks deposition.
- 14 71. Inspection log, Exhibit Z-1 to Willbanks deposition.
- 15 72. Lubrication and inspection report, Exhibit Z-2 to  
16 Willbanks deposition.
- 17 73. Full service form, work order #13061, Exhibit Z-3 to  
18 Willbanks deposition.
- 19 74. MAIT report, Exhibit A to Sprinkman deposition.
- 20 75. Sprinkman CV, Exhibit B to Sprinkman deposition.
- 21 76. CD of photos, Exhibit D to Sprinkman deposition.
- 22 77. E.M. Tharp Rule 26 documents 1-27, Exhibit 1 to LeGette  
23 deposition.
- 24 78. Two photographs of tractor, Exhibit 2 to LeGette  
25 deposition.
- 26 79. Sketch, Exhibit 3 to LeGette deposition.
- 27 80. "B" service checklist, Exhibit 4 to LeGette deposition.
- 28 81. 35-Point vehicle inspection, Exhibit 5 to LeGette

- 1 deposition.
- 2 82. BIT safety inspection, Exhibit 6 to LeGette deposition.
- 3 83. Annual vehicle inspection report, Exhibit 7 to LeGette  
4 deposition.
- 5 84. MAIT report, Exhibit 8 to LeGette deposition.
- 6 85. Drivers license information, Exhibit A to Martinez  
7 deposition.
- 8 86. November 27, 2007 drivers daily log, Exhibit C to  
9 Martinez deposition.
- 10 87. November 21, 2007 drivers daily log, Exhibit D to  
11 Martinez deposition.
- 12 88. Lazaro Pita business card, Exhibit E to Martinez  
13 deposition.
- 14 89. Load assignments, Exhibit F to Martinez deposition.
- 15 90. Google maps photo of incident location, Exhibit G to  
16 Martinez deposition.
- 17 91. Google maps photo of incident location, Exhibit H to  
18 Martinez deposition.
- 19 92. Photographs of incident, Exhibits A through E to O'Dell  
20 deposition.
- 21 93. Incident photographs, Exhibits A through C to Gilmore  
22 deposition.
- 23 94. E.M. Tharp Rule 26 documents, Exhibit 1 to Landstrom  
24 deposition.
- 25 95. Photograph of Burton Olson tractor, Exhibit 2 to  
26 Landstrom deposition.
- 27 96. Sketch, Exhibit 3 to Landstrom deposition.
- 28 97. "B" service checklist, Exhibit 4 to Landstrom

1 deposition.

2 98. 35-point vehicle inspection, Exhibit 5 to Landstrom  
3 deposition.

4 99. BIT safety inspection, Exhibit 6 to Landstrom  
5 deposition.

6 100. Annual vehicle inspection report, Exhibit 7 to  
7 Landstrom deposition.

8 101. MAIT report, Exhibit 8 to Landstrom deposition.

9 102. 72 photographs by Rickey Stansifer, SEA Limited, on  
10 October 23, 2008.

11 103. Burton Olson 1989 Peterbilt file.

12 104. Burton Olson 1984 Fruehauf file.

13 105. Burton Olson 1978 8 point dolly file.

14 106. File of Lew Grill.

15 107. Report of Lew Grill.

16 108. C.V. of Lew Grill.

17 109. File of Ashley Dunn, Ph.D.

18 110. Report of Ashley Dunn, Ph.D.

19 111. C.V. of Ashley Dunn, Ph.D.

20 112. File of Jim Flynn.

21 113. Report of Jim Flynn.

22 114. File of V. Paul Herbert, C.P.S.A.

23 115. Report of Douglas B. Morgan.

24 116. File of Douglas B. Morgan.

25 117. File of Charles Yeaser.

26 118. Report of Charles Yeaser.

27 119. All exhibits attached to the deposition of Burton  
28 Olson.

- 1           120. All exhibits attached to the deposition of Sharon  
2 Olson.
- 3           121. All exhibits attached to the deposition of Eric  
4 Metzler.
- 5           122. Audel Renteria driver's daily logs.
- 6           123. Jose Rosas driver's daily logs.
- 7           124. David Cebella driver's daily logs.
- 8           125. Burton Olson driver's daily logs.
- 9           126. Humberto Perez driver's daily logs.
- 10          127. Johnny Navarelle driver's daily logs.
- 11          128. Rene Beltran driver's daily logs.
- 12          129. Thomas Zuniga driver's daily logs.
- 13          130. Randy Harless driver's daily logs.
- 14          131. Arturo Rodriguez driver's daily logs.
- 15          132. Mike Munoz driver's daily logs.
- 16          133. Robert Powell driver's daily logs.
- 17          134. Teresa Atkins driver's daily logs.
- 18          135. Arturo Godinez driver's daily logs.
- 19          136. Seberino Picano driver's daily logs.
- 20          137. Juan Graciano driver's daily logs.
- 21          138. Brent Anderson driver's daily logs.
- 22          139. Donecio Rodriguez driver's daily logs.
- 23          140. Craig Pettyjohn driver's daily logs.
- 24          141. Rick Ontiveras driver's daily logs.
- 25          142. John Willbanks driver's daily logs.
- 26          143. Jose Martinez driver's daily logs.
- 27          144. Burton Olson's E.M. Tharp file.
- 28          145. Burton Olson's E.M. Tharp file 06.



- 1 146. Burton Olson's E.M. Tharp file 07.
- 2 147. Burton Olson's E.M. Tharp file 08.
- 3 148. Driver's vehicle inspection records 4-08 to 8-08.
- 4 149. Burton Olson's Robert Powell file 08.
- 5 150. Burton Olson's Robert Powell file #2.
- 6 151. Burton Olson's Robert Powell file 05.
- 7 152. Burton Olson's Reedley Truck & Trailer file 06.
- 8 153. Burton Olson's Viking Trailer file 05.
- 9 154. Burton Olson's Viking Trailer file 06.
- 10 155. Burton Olson's "BIT" CHP file.

11 XI. DISCOVERY DOCUMENTS

12 Only specifically designated discovery requests and  
13 responses will be admitted into evidence. Any deposition  
14 testimony shall be designated by page and line and such  
15 designations filed with the Court on or before March 2, 2011.  
16 The opposing party shall counter-designate by line and page from  
17 the same deposition and shall file written objections to any  
18 question and answer designated by the opposing party and filed  
19 with the court on or before March 14, 2011.

20 Written discovery shall be identified by number of the  
21 request. The proponent shall lodge the original discovery  
22 request and verified response with the courtroom deputy one day  
23 prior to trial. The discovery request and response may either be  
24 read into evidence, or typed separately, marked as an exhibit, as  
25 part of the exhibit marking process, and offered into evidence.

- 26 1. Angle, James deposition taken on 12/15/10.
- 27 2. Dunn, Ashley deposition taken on 01/26/11.
- 28 3. Flynn, Jim deposition will be taken on 02/09/11.

- 1 4. Gilmore, Damon deposition taken on 09/16/10
- 2 5. Grill, Lew deposition taken on 02/04/11
- 3 6. Guillen, Ezekiel deposition taken on 08/30/10.
- 4 7. Herbert, Paul deposition will be taken on 02/17/11.
- 5 8. Landstrom, Jeffrey deposition taken on 09/17/10.
- 6 9. Lawhead, William deposition taken on 11/11/10.
- 7 10. LeGette, William deposition taken on 09/17/10.
- 8 11. Lehner, Jared deposition taken on 08/31/10.
- 9 12. Martinez, Jose Juan deposition taken on 08/05/10,
- 10 09/15/10, 09/16/10.
- 11 13. Metzler, Eric deposition taken on 11/11/10.
- 12 14. Miller, Nancy J. deposition taken on 12/02/10.
- 13 15. Morgan, Douglas deposition will be taken on 02/15/11.
- 14 16. O'Dell, Bill deposition taken on 08/31/10.
- 15 17. Olson, Burton deposition taken on 10/12/10.
- 16 18. Olson, Sharon deposition taken on 10/12/10.
- 17 19. Profera, Steven S. deposition taken on 08/30/10.
- 18 20. Sprinkman, Albert Marvin deposition taken on 08/30/10.
- 19 21. Struttman, Mary Jo deposition taken on 11/15/10.
- 20 22. Willbanks, John M. deposition taken on 08/06/10,
- 21 09/15/10.
- 22 23. Yeaser, Charles deposition will be taken on 02/16/11.

## 23 XII. STIPULATIONS

- 24 1. None.

## 25 XIII. AMENDMENTS - DISMISSALS

- 26 1. No amendments to the pleadings, dismissals, additions
- 27 or substitutions of parties, or dispositions as to defaulting
- 28 parties are expected or requested at this time.

1                                   XIV.    FURTHER TRIAL PREPARATION

2    A.    Trial Briefs.

3           Counsel are directed to file a trial brief in this matter on  
4 or before March 19, 2011. No extended preliminary statement of  
5 facts is required. The brief should address disputed issues of  
6 substantive law, disputed evidentiary issues of law that will not  
7 be resolved in limine, and any other areas of dispute that will  
8 require resolution by reference to legal authority.

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

10           1.    Counsel for the parties are ordered to meet and conduct  
11 a joint exhibit conference on March 1, 2011, at a time and place  
12 to be agreed upon by the parties, for purposes of pre-marking and  
13 examining each other's exhibits and preparing an exhibit list.  
14 All joint exhibits will be pre-marked JX1000-JX2000; all of  
15 plaintiff Amtrak's exhibits will be pre-marked with numbers 1-  
16 200; all of BNSF's exhibits will be pre-marked with numbers 201-  
17 400; all of Burton Olson Trucking Company's and Jose Martinez's  
18 exhibits will be pre-marked with numbers 401-600; all of E.M.  
19 Tharp, Inc.'s exhibits will be pre-marked with numbers 601-900.

20           2.    Each and every page of each and every exhibit shall be  
21 individually Bates-stamped for identification purposes, and  
22 paginated with decimals and arabic numerals in seriatim; i.e.,  
23 1.1, 1.2, 1.3 . . . .

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

27                   a.    Two (2) sets to be delivered to the Courtroom  
28 Deputy Clerk, Renee Gaumnitz, no later than 4:00 p.m. on March

1 24, 2011, an original for the court and one for the witness.

2 b. One (1) set to be delivered to counsel for the  
3 opposing party and one (1) set to be available for counsel's own  
4 use.

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

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

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

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

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

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

1 List of Exhibits

2 Admitted Objection Other  
3 Exhibit # Description In Evidence To Foundation Objection  
4

5  
6 f. The completed exhibit list shall be delivered to  
7 Renee Gaumnitz CRD on or before March 24, 2011, by 4:00 p.m.

8 g. If originals of exhibits cannot be located, copies  
9 may be used, however, the copies must be legible and accurate.

10 If any document is offered into evidence that is partially not  
11 legible, the Court sua sponte will exclude it from evidence.

12 C. Discovery Documents.

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

21 D. Motions In Limine.

22 1. The motions in limine shall be filed by March 2,  
23 2011, and any responses shall be filed by March 14, 2011. The  
24 Court will conduct a hearing on motions in limine in this matter  
25 on March 17, 2011, at 12:00 p.m. in Courtroom 3, Seventh Floor,  
26 before the Honorable Oliver W. Wanger United States District  
27 Judge, at which time all evidentiary objections, to the extent  
28 possible, will be ruled upon, and all other matters pertaining to

1 the conduct of the trial will be settled.

2 E. Trial Documents.

3 1. Exhibits To Be Used With Witness. During the trial of  
4 the case, it will be the obligation of counsel to provide  
5 opposing counsel not less than forty-eight hours before the  
6 witness is called to the witness stand, the name of the witness  
7 who will be called to testify and to identify to the Court and  
8 opposing counsel any exhibit which is to be introduced into  
9 evidence through such witness that has not previously been  
10 admitted by stipulation or court order or otherwise ruled upon,  
11 and to identify all exhibits and other material that will be  
12 referred to in questioning of each witness. If evidentiary  
13 problems are anticipated, the parties must notify the court at  
14 least twenty-four hours before the evidence will be presented.

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

16 1. Counsel shall submit proposed voir dire questions, if  
17 any, to Renee Gaumnitz CRD at [rgaumnitz@caed.uscourts.gov](mailto:rgaumnitz@caed.uscourts.gov) on or  
18 before March 24, 2011, by 4:00 p.m. Counsel shall also prepare a  
19 joint "statement of the case" which shall be a neutral statement,  
20 describing the claims and defenses for prospective jurors, to be  
21 used in voir dire.

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

1 not excuse any failure to list all witnesses in the Pre-Trial  
2 Order.

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

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

7 1. All proposed jury instructions shall be filed and  
8 served on or before March 25, 2011, by 4:00 p.m. Jury  
9 instructions shall be submitted in the following format.

10 2. Proposed jury instructions, including verdict forms,  
11 shall be submitted via e-mail to [dpell@caed.uscourts.gov](mailto:dpell@caed.uscourts.gov)  
12 formatted in WordPerfect for Windows X3. Counsel shall be  
13 informed on all legal issues involved in the case.

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

20 4. If the parties cannot agree upon any instruction, they  
21 shall submit a supplemental set of instructions designated as not  
22 agreed upon by March 25, 2011, by 4:00 p.m.

23 5. Each party shall file with the jury instructions any  
24 objection to non-agreed upon instructions proposed by any other  
25 party. All objections shall be in writing and shall set forth  
26 the proposed instruction objected to in its entirety. The  
27 objection should specifically set forth the objectionable matter  
28 in the proposed instruction and shall include a citation to legal

1 authority explaining the grounds for the objection and why the  
2 instruction is improper. A concise statement of argument  
3 concerning the instruction may be included. Where applicable,  
4 the objecting party shall submit an alternative proposed  
5 instruction covering the subject or issue of law.

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

18 7. All instruction should be short, concise,  
19 understandable, and neutral statements of the law. Argumentative  
20 or formula instructions will not be given, and should not be  
21 submitted.

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

28 9. Proposed verdict forms shall be jointly submitted or if



1 the verdict forms are unagreed upon, each party shall submit a  
2 proposed verdict form. Verdict forms shall be submitted to the  
3 Courtroom Deputy Clerk on the first day of the trial.

4 10. Failure to comply with these rules concerning the  
5 preparation and submission of instructions and verdict forms may  
6 subject the non-complying party and/or its attorneys to  
7 sanctions.

8 XV. USE OF LAPTOP COMPUTERS/POWERPOINT FOR  
9 PRESENTATION OF EVIDENCE

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

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

23 XVI. FURTHER DISCOVERY OR MOTIONS

24 1. The parties shall conclude expert discovery on or  
25 before March 15, 2011.

26 XVII. SETTLEMENT

27 1. The parties mediated this case on January 27-28, 2011  
28 with James Dilling. The case did not settle.

1           2.     Defendants Burton Olson and Martinez have \$750,000  
2 available in policy limits and offered this full amount at  
3 mediation to settle both the State and Federal actions. To date,  
4 Mediator James Dilling, is still undergoing negotiations with the  
5 parties involved. Once settlement has been reached, we  
6 anticipate a motion for good faith settlement will have to be  
7 filed. As part of this settlement, Burton Olson and Martinez  
8 have agreed to continue to participate in this matter through  
9 trial.

10                           XVIII.   SEPARATE TRIAL OF ISSUES

11           1.     None.

12                           XIX.   IMPARTIAL EXPERTS, LIMITATIONS OF EXPERTS

13           1.     None.

14                           XX.   ATTORNEYS' FEES

15           1.     No party is seeking attorney's fees in this matter.

16                           XXI.   ESTIMATE OF TRIAL TIME

17           1.     Twelve days.

18                           XXII.   TRIAL DATE

19           1.     March 29, 2011, at 9:00 a.m., in Courtroom 3, on the  
20 Seventh Floor.

21                           XXIII.   NUMBER OF JURORS AND PEREMPTORY CHALLENGES

22           1.     This will be an eight person jury. Each party shall  
23 have four peremptory challenges. There are three sides, two  
24 Plaintiffs and two Defendants.

25                           XXIV.   AMENDMENT OF FINAL PRETRIAL ORDER

26           1.     The Final Pretrial Order shall be reviewed by the  
27 parties and any corrections, additions, and deletions shall be  
28 drawn to the attention of the Court immediately. Otherwise, the

1 Final Pretrial Order may only be amended or modified to prevent  
2 manifest injustice pursuant to the provisions of Fed. R. Civ. P.  
3 16(e).

4 XXV. MISCELLANEOUS

5 1. None.

6  
7 IT IS SO ORDERED.

8 Dated: February 16, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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