

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil case no. 12-cv-01772-RM-CBS

PATRICK G. WADE,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY, a corporation,

Defendant.

ORDER

Plaintiff's November 1, 2013 Motion In Limine To Prohibit Evidence or Argument Concerning Assumption of Risk and Union Pacific's Empowerment Rule (ECF No. 48) is hereby DENIED WITHOUT PREJUDICE. Both parties agree that assumption of risk is not available as a defense in FELA cases. Defendant has asserted that it "has no intention on relying on an assumption of risk as an affirmative defense, arguing assumption of risk, or introducing evidence of assumption of risk during trial." (ECF No. 59 at 2.) As far as whether pieces of evidence are relevant to the defense of contributory negligence or whether they should be deemed inadmissible as relevant only to assumption of risk, that question will be taken up in context as it arises at trial.

Notwithstanding the foregoing, Counsel is hereby prohibited from making reference to the "empowerment rule" during opening argument or *voir dire* without specific leave of Court.

DATED this 27th day of November, 2013.

BY THE COURT:



RAYMOND P. MOORE

United States District Judge