

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

JESSICA CANTRELL,

Plaintiff,

vs.

NATIONAL RAILROAD
PASSENGER CORPORATION, a/k/a
AMTRAK,

Defendants.

CV-17-135-GF-BMM

ORDER

The Court conducted a Final Pretrial Conference in this case on May 2, 2019. (Doc. 58.) The Court reviewed with the parties all motions ruled upon by Judge Johnston at the February 13, 2019, Motion Hearing. (Doc. 49.) The parties discussed all remaining evidentiary issues. Whether Plaintiff's demonstrative Exhibit 12 may be admitted as a trial exhibit presents the only remaining issue. Plaintiff's proposed Exhibit 12 depicts an enhanced illustration of Plaintiff's L2 compression fracture. Plaintiff's proposed Exhibit 12 displays added red and blue color, and enlarged cracks to illustrate the compression fracture for the jury.

The admissibility of demonstrative evidence lies largely within the discretion of the district court. *Rogers v. Raymark Industries, Inc.*, 922 F.2d 1426,

1429 (9th Cir. 1991) (*citing Lies v Farrell Lines, Inc.*, 641 F.2d 765, 733 n.9 (9th Cir. 1981)). The Court has taken proposed Exhibit 12 under advisement. The Court determines that Plaintiff's use of proposed Exhibit 12, for demonstrative purposes only, would be appropriate to assist the jury in understanding Plaintiff's compression fracture.

The Court previously has admitted Plaintiff's Exhibit 16 into evidence. Exhibit 16 constitutes a true and accurate depiction of the MRI imaging. Plaintiff first shall show the jury Exhibit 16, depicting the same image without enhancement, during Plaintiff's direct examination of the treating physician. Plaintiff may then show the jury Exhibit 12 for demonstrative purposes. Demonstrative Exhibit 12 shall not be admitted into evidence. The Court determines that Plaintiff's use of admitted Exhibit 16, followed by the use of Exhibit 12 for demonstrative purposes, mitigates any potential harm raised by Defendant.

The Court shall instruct the jury as follows:

“Exhibit 16 depicts the actual MRI imaging of Plaintiff's compression fracture. Plaintiff seeks to use Exhibit 12 for demonstrative purposes. Demonstrative Exhibit 12 should not be considered evidence. Demonstrative Exhibit 12 constitutes an enhanced image of the MRI and is designed to help Plaintiff's expert describe the compression fracture during testimony.”

The Court directs the parties to raise immediately any objections to the proposed instruction, or any other issues that need to be raised before trial.

DATED this 6th day of May, 2019.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line underneath it.

Brian Morris
United States District Court Judge