

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNION PACIFIC RAILROAD)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
PROGRESS RAIL SERVICES)
CORPORATION,)
)
Defendant.)

8:10-cv-00038-LSC-FG3

ORDER

This matter is before the court on Union Pacific's Motion to Compel (Docs. 56, 57, 58 & 59). The court has also considered Progress Rail's response (Docs. 67, 68 and 54), Union Pacific's reply (Docs. 69, 70 & 71), and taken judicial notice of the court file. The parties have complied with NECivR 7.0.1(i).

The original complaint, filed January 27, 2010, alleges that Progress Rail negligently failed to inspect and evaluate the axles it supplied for rail cars used in hauling coal on Union Pacific trains. Progress Rail allegedly failed to remove corrosion pits from the axles to avoid fatigue cracking and failure of the axle, resulting in the derailment of a Union Pacific train near DeWitt, Iowa on July 14, 2007.

In early September 2010, Union Pacific began making arrangements to schedule the Rule 30(b)(6) deposition of Progress Rail.

On September 17, 2010, Union Pacific was granted leave to amend its complaint to add a claim for negligence involving the derailment of a Union Pacific train near Martin Bay, Nebraska on January 14, 2010. The Amended Complaint was filed September 24, 2010 (Doc. 42). Progress Rail responded by filing a motion to dismiss (Doc. 45, filed October 12, 2010), and a motion to stay discovery (Doc. 53, filed October 27, 2010) pending the court's ruling on the motion to dismiss.

Union Pacific filed its Motion to Compel on November 9, 2010 in responses to Progress Rail's motion to stay discovery. Progress Rail's motion to dismiss was denied on December 9, 2010 (Doc. 72), at which time its motion to stay discovery was denied as moot. Progress Rail was given until January 14, 2010 to respond to Plaintiff's Second Set of Interrogatories and Second Requests for Production of Documents.

Progress Rail subsequently filed its Answer (Doc. 80) and served supplemental discovery responses (Doc. 81). Union Pacific served amended notices (Docs. 82 & 83) for the Rule 30(b)(6) deposition of Progress Rail, to be taken January 27, 2011.

Considering all these developments, it appears that most of the issues raised in the Motion to Compel have become moot. If Union Pacific intends to challenge the adequacy of Progress Rail's supplemental responses, that matter will be discussed at the time of the parties' Rule 16 conference on January 24, 2011. Deadlines for identifying trial witnesses, trial exhibits (i.e., Interrogatories Nos. 11 & 12, Document Request No. 15), and supplementing responses to contention interrogatories (i.e., Interrogatory No. 17) will also be established during the Rule 16 conference.

IT IS ORDERED:

1. The Motion to Compel (Doc. 56) is denied without prejudice.
2. Union Pacific's "Unopposed Notice of Correction" (Doc. 71) is approved, and the court has disregarded the statements identified in the Notice.

DATED January 21, 2011.

BY THE COURT:

**s/ F.A. Gossett, III
United States Magistrate Judge**