

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA**

NATIONAL RAILROAD PASSENGER CORPORATION,)
)

Plaintiff,)

vs.)

JOHN DAVIS TRUCKING COMPANY, INC.,)
a Nevada corporation,)

Defendant.)

3:11-cv-00461-HDM-VPC

**MINUTES OF COURT
AUGUST 18, 2014**

JOHN DAVIS TRUCKING COMPANY, INC.,)
a Nevada corporation,)

Counterclaimant,)

vs.)

NATIONAL RAILROAD PASSENGER CORPORATION, UNION PACIFIC RAILROAD COMPANY, and DOES 1-5)

Counter-defendants.)

UNION PACIFIC RAILROAD COMPANY,)

Counterclaimant,)

vs.)

JOHN DAVIS TRUCKING COMPANY, INC.,)
a Nevada corporation,)

Counter-defendant.)

PROCEEDINGS: JURY TRIAL (DAY 11)

PRESENT:

THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE

Deputy Clerk: Paris Rich Court Reporter: Kathryn French

At 10:53 a.m., the Court convenes.

Mark Landman, Vincent Castillo, John Moore, and Liza Sui Mendoza are present on behalf of Plaintiff and Counter-defendant NATIONAL RAILROAD PASSENGER CORPORATION (“Amtrak”) and Counter-defendant and Counterclaimant UNION PACIFIC RAILROAD (“UPRR”) with electronic technician Mark Anton.

Steven Jaffe and Karen Bashor are present on behalf of Defendant JOHN DAVIS TRUCKING COMPANY, INC. Stephen Thompson, George Kirklin, Rick Pope, and Gary Di Grazia are present on behalf of Counterclaimant JOHN DAVIS TRUCKING COMPANY, INC. with electronic technician Megan Thompson. Also present are John Davis and Shane Davis, corporate designees of John Davis Trucking Company, Inc.

Outside the presence of the jury, the Court and counsel discuss a procedural issue regarding the reading of depositions designations to the jury.

At 11:02 a.m., the jury enters the courtroom.

Mr. Landman and Mr. Castillo read the remaining portions of the Deposition of FRANK GABEL dated February 4, 2013 to the jury.

JAMES EVERETT PRUITT, called on behalf of John Davis Trucking Company, Inc., is sworn, examined on direct by Mr. Thompson, and released subject to recall.

Defendant’s Exhibits D-624 (1-9) and D-601 (103) are received into evidence.

At 12:36 p.m., the jury is admonished and excused.

The Court admonishes Witness Pruitt and requests he wait outside the courtroom during the recess.

Outside the presence of the jury, the Court and counsel discuss the specifics regarding any possible existence of another download log and related issues. The Court and counsel further confer.

At 12:45 p.m., the Court stands at recess.

At 1:07 p.m., the Court reconvenes with all parties and the jury present

JAMES EVERETT PRUITT, resumes the witness stand, is further examined on direct by Mr. Thompson, and released subject to recall.

Defendant’s Exhibits D-601 (58), (65), (87), (68) (85), (150) (151), D-666 (2), D-667 (1), and D-672 (1) are received into evidence.

At 2:31 p.m., the jury is admonished and excused.

Outside the presence of the jury, the Court and counsel confer regarding the schedule for the remainder of the trial day.

Mr. Kirklin presents statements relating to the presentation of the Deposition of Forrest Ballinger. **IT IS ORDERED, the Plaintiff/Counter-defendant's [687] Motion to Preclude Introduction of Deposition Testimony of Railroad Expert Forrest Henry Ballinger is DENIED.**

The Court recites statements regarding the testimony of Dr. Harvey Levine and [694] John Davis Trucking's Memorandum Renewing its Request to Admit Evidence of Eight Other Instances of Bad Faith Spoliation by Union Pacific Railroad. **IT IS ORDERED, the Court RESERVES on [694] Memorandum, however, the Court advises that Dr. Levine does not need to be on call for testimony at trial.**

The Court addresses [693] John Davis Trucking's Memorandum Regarding the Admissibility of Eilis Logan's Former Deposition Testimony with attached exhibits. The Court, Mr. Pope, Mr. Landman, and Mr. Thompson confer.

At 2:46 p.m., the Court stands at recess.

At 2:49 p.m., the Court reconvenes with all parties and the jury present.

JAMES EVERETT PRUITT, resumes the witness stand, is cross-examined by Mr. Castillo, examined by Mr. Thompson on redirect, examined on re-cross by Mr. Castillo, further examined on redirect by Mr. Thompson, and excused.

Defendant's Exhibit D-817 (1) is received into evidence.

Mr. Kirklin and Mr. Landman read the portions of the Deposition of JONATHAN HINES dated July 11, 2013 to the jury.

At 5:01 p.m., the jury is admonished and excused until Tuesday, August 19, 2014 at 8:15 a.m.

Outside the presence of the jury, the Court and counsel confer regarding the trial schedule for Tuesday, August 19, 2014.

Ms. Chambers provides the deposition designations of Forrest Ballinger for the Court's consideration.

Mr. Castillo addresses the consent order issue as related to Witness Fotiadis. The Court and counsel confer.

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Jury Trial (Day 12) is continued to Tuesday, August 19, 2014 at 8:15 a.m. in Reno Courtroom 4 before Howard D. McKibben. IT IS SO ORDERED.

At 5:05 p.m., the Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich
Deputy Clerk