

The Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DENNIS BALSLEY,)	Case No. O9-05168 RJB
)	
Plaintiff,)	JOINT
)	PRETRIAL ORDER
vs.)	
)	
BNSF RAILWAY COMPANY,)	
a Delaware corporation,)	
)	
Defendant.)	

JURISDICTION

This is a civil action arising under the Federal Employers' Liability Act, 45 U.S.C. § 51 *et. seq.*. Jurisdiction is vested in this court by virtue of 28 U.S.C. § 1331.

CLAIMS AND DEFENSES

The Plaintiff will pursue at trial the following claims:

- 1. Violation of 45 U.S.C. § 51 *et. seq.*

Defendant asserts the following affirmative defenses:

- 1. Defendant provided Plaintiff with a reasonably safe place to work, as required by the Federal Employers Liability Act (FELA).
- 2. Plaintiff's claims are precluded by the Federal Railroad Safety Act (FRSA) and Interstate Commerce Commission Termination Act (ICCTA).

SUPPLEMENTAL JOINT PRETRIAL ORDER -
09-05168 RJB
Pg. 1

PAUL S. BOVARNICK, Of Counsel
ROSE SENDERS AND BOVARNICK, LLP
1205 N.W. 25th Avenue
Portland, OR 97210
Telephone (503) 227-2486
Facsimile (503) 226-3131

1 3. Plaintiff's injuries and claimed damages were caused in whole or in part by some
2 combination of the following: Plaintiff's own actions or inactions, comparative fault, preexisting
3 medical condition and superseding causes, none of which were the fault of BNSF.

4 4. Plaintiff's recovery of damages, if any, must be denied or reduced in
5 proportion to those other causes.

6 5. Plaintiff has failed to mitigate his damages as required under the FELA.

7 6. Defendant is entitled by law to offset or deduct any amounts paid, or amounts that
8 will be paid to Plaintiff, either through Railroad Retirement Board payments, advances or
9 supplemental sickness benefits claimed by Plaintiff, relevant to this litigation.

10 7. Plaintiff's receipt of Railroad Retirement Board Occupational Disability Annuity
11 payments preclude any claim for wage loss for the same time period(s), or Plaintiff must forfeit
12 and reimburse past and future RRB Occupational Disability and Annuity payments.

13 8. Plaintiff's back injury claim is barred to the extent that it is subject to the release
14 or waiver entered into between Plaintiff and BNSF or its predecessor.

15 ADMITTED FACTS

16 **The following facts are admitted by the parties:**

17 1. This Court has jurisdiction over Plaintiff's claims against Defendant pursuant to
18 45 U.S.C. § 51 *et. seq.*

19 2. Defendant is an interstate carrier by rail and engaged in interstate transportation
20 and commerce. Defendant operates a system of railroad tracks in the State of Washington, and
21 that said system included lines of track in the district where this action is filed.

22 3. Plaintiff was born on April 14, 1953 and is 57 years old.

23 4. Plaintiff began working for Defendant on November 11, 1976.

24 5. Plaintiff became an engineer in 1979.

25 6. On April 8, 2006, Plaintiff injured his ankle during a crew change at Rocky Point,
26 Washington.

1 **Plaintiff contends as follows:**

2 1. That Plaintiff's injuries to his left ankle and lumbar spine are the result of
3 Defendant's failure to provide him with a safe place to work in violation of 45 U.S.C. § 51 *et.*
4 *seq.*

5 2. That Defendant was negligent in that: (a) it required Plaintiff to disembark his
6 locomotive on main line ballast; and (b) it failed to instruct Plaintiff to disembark at other safer
7 nearby locations.

8 3. Plaintiff claims that he sustained severe and permanent injuries to his left ankle
9 and the bones, muscles, tissues, nerves, ligaments and internal parts thereof.

10 4. Plaintiff claims that his ankle injury lead him to fall and injure his low back, and
11 that this fall resulted in an injury to his lumbar spine and a consequent lumbar fusion surgery.

12 5. Plaintiff claims that as a result of the injuries to his ankle, he has been
13 permanently disabled from returning to work for the railroad, and that he has lost and will suffer
14 a loss of wages and benefits.

15 6. Plaintiff claims that he suffered permanent impairment of his earning capacity as
16 a result of the injuries to his left ankle.

17 7. Plaintiff claims he has suffered sustained significant pain, emotional distress and
18 loss of enjoyment of life as a result of the injuries to his ankle and back, and that following his
19 recovery from his back surgery, that he has continued to suffer the same due to the injury to his
20 ankle, and will sustain such damage into the future on a permanent basis.

21 8. Plaintiff was not contributorily negligent in causing his injury.

22 9. Plaintiff did not fail to mitigate his damages.

23 **The Defendant contends as follows:**

24 1. Defendant BNSF was not negligent because: (a) BNSF provided a reasonably
25 safe place to work; (b) using mainline ballast, and stepping off locomotives and other railroad
26 vehicles onto it, are necessary to railroad operations; (c) BNSF trains its employees on the
27 proper method of disembarking locomotives onto mainline ballast; (d) Plaintiff had stepped off

1 locomotives onto mainline ballast safely and without injury for 27 years; (e) the ballast where
2 Plaintiff twisted his ankle conformed to federal regulations, was properly maintained, and was
3 defect-free; and (f) each of the other crew members stepped off the locomotive at the same place
4 on the mainline ballast safely.

5 2. With regard to Plaintiff's claim for damages, Defendant contends that Plaintiff
6 cannot recover any damages because BNSF was not negligent.

7 3. Defendant further contends that: (a) the accident did not cause all of Plaintiff's
8 subsequent medical issues claimed; (b) Plaintiff did not mitigate his damages as required by law;
9 (c) Plaintiff may not recover lost wages for any months that he received Railroad Retirement
10 Board Occupational Disability Annuity payments; and (d) Plaintiff's calculation of future wage
11 loss is improper.

12 ISSUES OF LAW

13 **The following are the issues of law which the parties agree are to be determined by**
14 **the court:**

- 15 1. Motions in Limine as presented by the parties.
- 16 2. The jury instructions submitted by the parties.
- 17 3. The verdict form.

18 **Plaintiff's statement of issues of law to be determined by the court:**

- 19 1. None.

20 **Defendant's statement of issues of law to be determined by the court:**

- 21 1. Issues of law that are contained in Defendant's trial brief.

22 EXPERT WITNESSES

23 (a) Each party shall be limited to one expert witness for each issue pursuant to court
24 rules.

25 (b) The names and addresses of the expert witnesses to be used by each party at the
26 trial and the issue upon which each will testify are:

1 **(1) On behalf of Plaintiff;**

2 (A) Ray Duffany
3 6221 Linday Court
 W. Bloomfield, MI, 48324

4 Mr. Duffany will testify consistent with his deposition, July 24, 2010 report.

5 (B) Jeffery B. Opp.
6 7600 E. Arapahoe Rd., Ste. 100
 Centennial, CO, 80112

7 Mr. Opp will testify consistent with his deposition, July 22, 2010 report.

8 (C) Merril Cohen
9 15 S. Grady Way, Suite 410
 Renton, WA 98057

10 Ms. Cohen will testify consistent with her deposition, June 29, 2010 report and any
11 amendments to that report, subject to any objection by Defendant.

12 **(2) On behalf of Defendant:**

13 (A) Eugene Toomey, M.D.
14 c/o Machaon Medical Evaluations
15 801 Broadway, Suite 922
 Seattle, WA 98122
 (206) 323-1999

16 Dr. Toomey will testify via videotaped perpetuation deposition taken January 12, 2011
as designated by the parties.

17 (B) Lawrence Murphy, M.D.
18 c/o Machaon Medical Evaluations
19 801 Broadway, Suite 922
 Seattle, WA 98122
 (206) 323-1999

20 Dr. Murphy will testify consistent with the issues addressed in his report or deposition in
21 this case.

22 (C) Stan Owings
23 Owings and Associates, Inc.
24 11422 Des Moines Memorial Drive,
 Seattle, WA 98168

25 Mr. Owings will testify consistent with the issues addressed in his report or deposition
26 in
27 this case.

1 (D) Dr. David Knowles
2 3302 Fuhrman Ave E., Suite 111
3 Seattle, WA 98102

4 Dr. Knowles will testify consistent with the issues addressed in his report or deposition
5 in this case.

6 (E) William Paxton, P.E.
7 P.O. Box 109
8 Ebony, VA 23845

9 Mr. Paxton will testify consistent with the issues addressed in his report or deposition in
10 this case.

11 (F) Brian Heikkila
12 Full Service Railroad Consulting
13 1622 River Road W.
14 P.O. Box 489
15 Plains, MT 59859

16 Mr. Heikkila will testify consistent with the issues addressed in his report or deposition
17 in this case.

18 (G) Any expert listed by Plaintiff

19 OTHER WITNESSES

20 The names and addresses of witnesses, other than experts, to be used by each party at
21 the time of trial and the general nature of the testimony of each are:

22 (a) On behalf of Plaintiff:

23 1. Robert E. Carlson, M.D.
24 122 3rd St. NE, Auburn
25 WA 98002.

26 Dr. Carlson will testify via videotaped perpetuation deposition. He will offer testimony
27 as Plaintiff's primary treating physician, and will testify as to the nature and extent of Plaintiff's
28 ankle and back injuries, his diagnosis, care, treatment, and prognosis. It is anticipated that Dr.
Carlson will causally relate his diagnosis and the need for treatment and surgery, and Plaintiff's
consequent disability, to Plaintiff's April 8, 2006 on the job injury, subject to objection by
Defendant.

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1 2. Eugene Hister - will testify.
2 4803 244th Street Court
3 East Graham, WA 98338.

4 Will testify to the circumstances of Plaintiff's injury as well as his experience with
5 mainline ballast and crew changes, and to his intention to work past the age of 61.

6 **Defendant objects to new subjects of testimony that were not previously disclosed.**

7 3. Pete Etzold - will testify.
8 1511 ½ NW 62nd Street
9 Seattle, WA 98107.

10 Will testify to the circumstances of Plaintiff's injury as well as his experience with
11 mainline ballast and crew changes.

12 4. Gary Larsen - will testify.
13 2688 Elm Drive
14 Brier, WA 98036.

15 Mr. Larsen is a BNSF engineer, familiar with crew change procedures and conditions in
16 the area in which Plaintiff was injured and in which he ordinarily changes crews, as well as to
17 the hazards posed by mainline ballast.

18 **Defendant objects to new subjects of testimony that were not previously disclosed,**
19 **as well as any issues that require expert testimony.**

20 5. Thomas Frederick - will testify.
21 20422 SE 286th St.
22 Covington, WA 98042.

23 Mr. Frederick is a Union Pacific engineer, familiar with crew change procedures and
24 conditions in the area in which Plaintiff was injured and in which he ordinarily changes crews.

25 6. Dennis Balsley - will testify.
26 17711 Rhodes Lake Rd. East
27 Bonney Lake, WA, 98391.

28 Mr. Balsley is the Plaintiff and has knowledge of the circumstances surrounding his
injury, BNSF crew change practices, ballast and his damages.

 7. Jane Balsley - will testify.
 17711 Rhodes Lake Rd. East
 Bonney Lake, WA, 98391.

 Mrs. Balsley is Plaintiff's wife and will testify about Plaintiff's pre-injury conditions,

1 his relationship with his job, his retirement plans and the effect of her husband's injuries on his
2 life.

- 3 8. Dennis Balsley Jr. - possible witness only.
4 17711 Rhodes Lake Rd. East
5 Bonney Lake, WA, 98391.

6 Dennis Balsley Jr. is Plaintiff's son and will testify about Plaintiff's pre-injury
7 conditions, his relationship with his job, his retirement plans and the effect of his father's
8 injuries on his life.

- 9 9. Deana R. Whitesel - possible witness only.
10 9717 Pacific Ave. #17
11 Tacoma, WA 98444.

12 Ms. Whitesel is Plaintiff's daughter and will testify about Plaintiff's pre-injury
13 conditions, his relationship with his job, his retirement plans and the effect of her father's
14 injuries on his life.

- 15 10. Michael Kesten - possible witness only.
16 10430 S.W. 43rd St.
17 Portland, OR 97219.

18 Mr. Kesten participated in the inspection of Rocky Point, Longview Junction and the
19 Kelso Depot and took photographs. He will testify to the authenticity of the photographs if
20 necessary.

- 21 11. Plaintiff may call any fact witness listed by Defendant.

- 22 12. Mr. Kevin Wilde
23 BNSF Director of Safety Reporting and Analysis
24 c/o Montgomery Scarp MacDougall
25 1218 Third Avenue, Suite 2700
26 Seattle, WA 98101

27 Portions of Mr. Wilde's deposition will be read into the record subject to objection(s) by
28 defendant.

(b) On behalf of Defendant:

1. Anthony Boldra
BNSF, Terminal Manager
c/o Montgomery Scarp MacDougall
1218 Third Avenue, Suite 2700
Seattle, WA 98101

1 Mr. Boldra was the Terminal Manager for Tacoma at the time Plaintiff reported his
2 alleged injuries. He is a possible witness only and if called would testify with regard to the
3 facts and circumstances surrounding the same as well as any matters covered in his deposition.

4 2. Ivan Hartsoch
5 Longview Switching Company, Operations Manager
6 c/o Montgomery Scarp MacDougall
7 1218 Third Avenue, Suite 2700
8 Seattle, WA 98101

9 Mr. Hartsoch is a possible witness only. Mr. Hartsoch participated in a post-incident
10 inspection of the incident location and if called would testify regarding the facts and
11 circumstances of the same, and as well as any matters covered in his deposition.

12 3. Scott Unick
13 BNSF, Assistant Corridor Superintendent
14 c/o Montgomery Scarp MacDougall
15 1218 Third Avenue, Suite 2700
16 Seattle, WA 98101

17 Mr. Unick is expected to testify regarding dispatch practices, railroad operations, crew
18 change locations, and why Plaintiff's crew was instructed to stop at Rocky Point, and as well as
19 any matters covered in his deposition.

20 4. Jeffrey Wright
21 BNSF, Supervisor of Engineering Support
22 c/o Montgomery Scarp MacDougall, PLLC
23 1218 3rd Avenue, Suite 2700
24 Seattle, WA 98101
25 (206) 625-1801

26 Mr. Wright was the General Manager of Longview Switching on the date of Plaintiff's
27 incident. Mr. Wright participated in a post-incident inspection of the incident location and is a
28 possible witness only who if called would testify regarding the facts and circumstances of the
same, and as well as any matters covered in his deposition.

5. Casey Wright
BNSF, Supervisor of Engineering Support
c/o Montgomery Scarp MacDougall, PLLC
1218 3rd Avenue, Suite 2700
Seattle, WA 98101
(206) 625-1801

1 Mr. Wright was a BNSF Roadmaster whose territory included Rocky Point at the time
2 of
3 the time of the alleged incident and is expected to testify regarding the facts and circumstances
4 surrounding the same. Mr. Wright is also expected to testify regarding track/ballast maintenance
5 and inspection, both generally and at or near Rocky Point, and as well as any matters covered in
6 his deposition.

7 6. Steve Matzdorf
8 BNSF Terminal Manager (Vancouver, WA)
9 c/o Montgomery Scarp MacDougall, PLLC
10 1218 Third Avenue
11 Seattle, WA 98101
12 (206) 625-1801

13 Mr. Matzdorf is familiar with the BNSF territory including Rocky Point, Washington.
14 He is expected to testify relating to safety and operations issues, including crew change
15 locations, as well as the video reenactment that was performed after Plaintiff's incident, and as
16 well as any matters covered in his deposition.

17 7. Eugene Aster
18 c/o Montgomery Scarp MacDougall
19 1218 3rd Avenue, Suite 2700
20 Seattle, WA 98101
21 (206) 625-1801

22 Mr. Aster is expected to testify regarding BNSF's track inspection policies and rules,
23 including FRA track inspection requirements and/or disembarking a vehicle onto mainline
24 ballast, and as well as any matters covered in his deposition.

25 8. Joel Howard
26 BNSF Assistant Director Maintenance Production Ballast
27 c/o Montgomery Scarp MacDougall, PLLC
28 1218 Third Avenue
Seattle, WA 98101
(206) 625-1801

Mr. Howard is expected to testify about mainline ballast procurement, sizing, sourcing,
distribution, purpose, and/or history, and as well as any matters covered in his deposition.

9. Ashley Stevens
BNSF Medical Department, NW Division
c/o Montgomery Scarp MacDougall, PLLC

1 1218 3rd Avenue, Suite 2700
2 Seattle, WA 98101
3 (206) 625-1801

4 Ashley Stevens is expected to testify regarding medical return to work and vocational
5 rehabilitation issues both generally and in reference to plaintiff's claims, and as well as any
6 matters covered in her deposition.

7 10. Joan Costa
8 BNSF Medical Department, NW Division
9 c/o Montgomery Scarp MacDougall, PLLC
10 1218 3rd Avenue, Suite 2700
11 Seattle, WA 98101
12 (206) 625-1801

13 Ms. Costa is a possible witness and may testify regarding medical return to work issues,
14 vocational rehabilitation, and as well as any matters covered in her deposition.

15 11. Kris Osmus
16 BNSF Claims Representative
17 c/o Montgomery Scarp MacDougall, PLLC
18 1218 3rd Avenue, Suite 2700
19 Seattle, WA 98101
20 (206) 625-1801

21 Ms. Osmus interviewed plaintiff, inspected the site of the incident, and took
22 photographs. She is expected to testify, if necessary, regarding same and to authenticate the
23 photographs and the transcript/audio recording of her interview with plaintiff.

24 12. Danny Thomassen
25 Retired BNSF Claims Representative
26 c/o Montgomery Scarp MacDougall, PLLC
27 1218 3rd Avenue, Suite 2700
28 Seattle, WA 98101
(206) 625-1801

Mr. Thomassen assisted plaintiff with his post-incident recovery, including providing
plaintiff with an exercise bike, microwave, mini-fridge, and rental car. Mr. Thomassen is a
possible witness only, and will be called if necessary to authenticate documents relating to the
same, including Exhibit A-22.

13. Michael Kesten
10430 S.W. 43rd St.
Portland, OR 97219

1 Mr. Kesten participated in the inspection of Rocky Point, Longview Junction and the
2 Kelso Depot and took photographs. He is a possible witness only.

- 3 14. Rocky Point Market employee/owner (female, name presently unknown).
4 2000 N Pacific Ave
5 Kelso, WA 98626-4009

6 This witness a possible witness only who testify about lighting at the Rocky Point
7 Market.

8 15. Witness(es), as may be required, for impeachment testimony relating to
9 Plaintiff's receipt of Railroad Retirement Board disability annuity payments.

10 16. Any witnesses listed by Plaintiff.

11 17. Any other witness(es) needed to authenticate documents.

EXHIBITS

Plaintiff's Exhibits:

Exhibit No.	Description	Admissibility Stipulated	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
1.	Photo of ballast, coffee cup, tracks and train at Rocky Point - Img. 3523			X
2.	Photo of BNSF locomotive 2876 at Rocky Point - Img. 3530			X
3.	Photo of ballast, coffee cup, tracks and train at Rocky Point - Img. 3546.			X
4.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3572.			X
5.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3573.			X
6.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3574.			X
7.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3575.			X

8.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3576.			X
9.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3577.			X
10.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3578.			X
11.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3579.			X
12.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3580.			X
13.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3581.			X
14.	Photo of ballast, feet of man walking and track at Rocky Point - Img. 3582.			X
15.	Photo of gas station taken from tracks at Rocky Point - Img. 3613.		X	
16.	Photo of ballast and tracks at Rocky Point - Img. 3651.			X
17.	Photo of ballast and tracks at Rocky Point - Img. 3652.			X
18.	Photo of ballast, track and concrete pad at Kelso Depot - Img. 3698.		X	
19.	Photo of ballast, track and concrete pad at Kelso Depot - Img. 3710.		X	
20.	Photo of ballast, track and concrete pad at Kelso Depot - Img. 3711.		X	
21.	Photo of ballast, track, loading pad and building at Kelso Depot - Img. 3719.		X	
22.	Photo of train arriving at Kelso Depot - Img. 3740.		X	
23.	Photo of ballast, tracks and locomotive at Longview Junction - Img 3751.			X
24.	Photo of ballast and tracks at			X

	Longview Junction - Img. 3754.			
25.	Photo of ballast, foot and train at Longview Junction - Img. 3763.			X
26.	Photo of ballast, track, switch and locomotive at Longview Junction - Img. 3822.			X
27.	Photo of ballast, track and trains at Longview Junction - Img. 3827.			X
28.	Photo of ballast, tracks, train and light poles at Longview Junction - Img. 3876.			X
29.	Photo of ballast, tracks, train and light poles at Longview Junction - Img. 3878.			X
30.	Aerial photograph - Img. 1001.			X
31.	Aerial photograph - Img. 1020.			X
32.	Aerial photograph - Img. 1023.			X
33.	Aerial photograph - Img. 1042.			X
34.	Aerial photograph - Img. 1056.			X
35.	Aerial photograph - Img. 1116.			X
36.	Post surgical photograph of Plaintiff's 1 st surgery on his left ankle. (Img. # P8053123)		X	
37.	Post surgical photograph of Plaintiff's 1 st surgery on his left ankle. (Img.#P8063135)		X	
38.	Post surgical photograph of Plaintiff's 1 st surgery on his left ankle. (Img.#P8063137)		X	
39.	Post surgical photograph of Plaintiff's 2 nd surgery on his left ankle. (Img.#P1130090).		X	
40.	Post surgical photograph of Plaintiff's 2 nd surgery on his left ankle.(Img.#P1130091).		X	

41.	Post surgical photograph of Plaintiff's 2 nd surgery on his left ankle.(Img.#P1130092).		X	
42.	Post surgical photograph of Plaintiff's 2 nd surgery on his left ankle.(Img.#P2180112).		X	
43.	Photo of Plaintiff's cabin - Cabin photo 1.	X		
44.	Photo of Plaintiff's cabin - Cabin photo 2.	X		
45.	Photo of Plaintiff operating a wood splitter - Log splitter photo.	X		
46.	Medical illustration of left ankle surgeries.			X
47.	Medical illustration of spine re-fusion.			X
48.	Plaintiff's work history (BNSF Bates#000183-000196).		X	
49.	2005 BNSF Engineering Instructions.		X	
50.	Plaintiff's Medical Mgt. file (BNSF Bates# 000666-00789).		X	
51.	BNSF Train Dispatcher's Operator's and Control Operator's Manual (BNSF Bates#000947-001028).		X	
52.	BNSF System Special Instructions (BNSF Bates#001029-001084).		X	
53.	Train Dispatcher Notices (BNSF Bates# 001085-001099).		X	
54.	BNSF TY&E Safety Rules (BNSF Bates#001100-001143).		X	
55.	Dispatcher recording (audio).		X	
56.	Inspection reports (BNSF Bates #000222- 000281).		X	
57.	Plaintiff's BNSF Personal Injury Report (BNSF Bates#000397-000400).		X	

58.	BNSF Supervisors Report (BNSF Bates#000401-000419).		X	
59.	BNSF Track Inspection Field Manual (BNSF Bates#000461-000588).		X	
60.	Injury reports involving ballast (NW Division - BNSF Bates#001144-001557)		X	
61.	Reserved			
62.	Reserved			
63.	Train Activity Report/Safety Checklist (BNSF Bates#000201).	X		
64.	Reserved			
65.	Hand drawn diagram (BNSF Bates# 000203).	X		
66.	Reserved			
67.	Reserved			
68.	Peter Etzold hand written statement (BNSF Bates# 000206).	X		
69.	Reserved			
70.	Reserved			
71.	Reserved			
72.	“Walking on Ballast” video.		X	
73.	“Walking on Ballast” video transcript.			X
74.	Deposition transcript of Jeff Wright.		X	
75.	Reserved			
76.	Deposition transcript of Philip Aster.		X	
77.	Deposition transcript of Ashley Stevens.		X	
78.	Deposition transcript of Ivan Hartsoch.		X	
79.	Deposition transcript of Joel Howard.		X	
80.	Reserved			

81.	Reserved			
82.	Deposition transcript of Eugene Toomey.		X	
83.	Report of Eugene Toomey dated May 1, 2010	X		
84.	Deposition transcript of William Paxton			
85.	Report of William Paxton dated July 27, 2010		X	
86.	Deposition transcript of Scott Unick.		X	
87.	Deposition transcript of Steve Matzdorf.		X	
88.	Reserved			
89.	Deposition transcript of Joan Costa		X	
90.	Deposition transcript of Brian Heikkila.		X	
91.	Report from Brian Heikkila dated August 19, 2010.	X		
92.	Report from David Knowles dated August 20, 2010.	X		
93.	Deposition transcript of Stan Owings.		X	
94.	Report from Stan Owings dated July 23, 2010.	X		
95.	Misc. job applications.			X
96.	SAP E-Recruiting Job Posting - Transportation Management Trainee.			X
97.	SAP E-Recruiting Job Posting - Mechanical Management Trainee.			X
98.	Switchman's lantern			X
99.	Reserved			
100.	Deposition transcript of Kevin Wilde		X	

101.	Reserved			
102.	Reserved			
103.	Exhibit 3 of Kevin Wilde's deposition - BNSF injury reports		X	
104.	Exhibit 4 of Kevin Wilde's deposition - BNSF injury reports		X	
105.	Anatomical Ankle model	X		
106.	Jeffery Opp Reports		X	
107.	NW Division Timetable (BNSF bates 000284-000367)	X		
108.	Rocky Point, WA Track Chart (BNSF bates 000283)	X		
109.	Misc. docs from Plaintiff's personal file (BNSF bates 00041, 00043-51)	X (Bates 00047-51)	X (Bates 00041, 00043-46)	
110.	Misc. docs from Plaintiff's personal file (BNSF bates 000589-000609)	X		
111.	Reserved			
112.	Reserved			
113.	Reserved			
114.	Reserved			
115.	Reserved			
116.	Good Samaritan Hospital Records, 10/19/10 through 08/22/89	X		
117.	Enumclaw Medical Center Records – Dr. Clark, 09/24/09 through 06/09/88	X		
118.	Sound Family Medicine Records, 01/12/11	X		
119.	Outpatient Physical Therapy, 07/09/07 through 09/28/06	X		
120.	Cascade Orthopedics – Dr. Carlson, 11/04/10 through 05/30/06	X		

121.	Puget Sound Specialty – Dr. Bishop, 09/13/04 through 1/26/04	X		
122.	Cascade Orthopedics – Dr. Smith, 07/30/08 through 03/19/08	X		
123.	Auburn Diagnostic Imaging Services, 03/04/08 through 05/31/06	X		
124.	Auburn Regional Medical Center, 04/23/08 through 04/06/07 02/26/07 (Cascade Surgery)	X		
125.	St. Joseph Medical Center, 04/09/06 through 11/30/03	X		
126.	Reserved			
127.	Reserved			
128.	Reserved			

Defendant's Exhibits:

Exhibit No.	Description	Admissibility Stipulated	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
A-1	05/01/10 report, Dr. Eugene Toomey	X		
A-2	CV, Eugene Toomey		X	
A-3	05/02/10 report, Dr. Lawrence Murphy			X
A-4	CV, Dr. Lawrence Murphy			X
A-5	08/20/10 report, Dr. David Knowles			X
A-6	CV, Dr. David Knowles		X	
A-7	07/23/10 report, Stan Owings			X

A-8	CV, Stan Owings		X	
A-9	08/19/10 report, Brian Heikkila		X	
A-10	CV, Brian Heikkila		X	
A-11	7/27/10 report, William Paxton		X	
A-12	CV, William Paxton		X	
A-13	Railroad work activity photos (BNSF 000947- 000953)			X
A-14	OPUS notes (BNSF 000670 - 000678)		X	
A-15	4/15/10 letter from Paul Bovarnick to Bradley Scarp.		X	
A-16	5/27/10 letter from Paul Bovarnick to Bradley Scarp (BNSF 000790)		X	
A-17	6/4/10 letter from Ashley Stevens to Paul Bovarnick (BNSF 000789)		X	
A-18	5/7/10 letter from Ashley Stevens to Plaintiff (BNSF 000788)		X	
A-19	7/10/09 letter from Ashley Stevens to Plaintiff (BNSF 000787)		X	
A-20	4/11/06 inspection report (BNSF 000221)		X	
A-21	4/24/07 email to Danny Thomassen from Plaintiff (BNSF 000141)		X	
A-22	Busy Body Home Fitness Exercise Bike information (BNSF 000142)			X
A-23	Statement of Eugene Hister. (BNSF 000207)		X	
A-24	Medical Records (Exhibit 7 to		X	

	Balsley deposition)			
A-25	Employee Injury/Occupational Illness Report (BNSF 00001)		X	
A-26	BNSF Employee Transcript (BNSF 00002 - 00004)		X	
A-27	Reimbursement Payments (BNSF 00026 - 00036)		X	
A-28	2006 Release and settlement agreement (BNSF 000946)		X	
A-29	Track Inspection Field Manual (BNSF 000461 - 000588)		X	
A-30	Site inspection photos (BNSF 001144 - 001148, 001196 - 001203)			X
A-31	FRA track inspection records (BNSF 000255 - 000281)		X	
A-32	BNSF Monthly Track Inspection Records (BNSF 000222 - 000254)		X	
A-33	Plaintiff's photo of gas station taken from tracks at Rocky Point - Img. 3612.			X
A-34	Typed statement of Kris Osmus (BNSF 000202)			X
A-35	Reserved			
A-36	Plaintiff's responses to BNSF's 1 st and 2 nd Requests for Admission.		X	
A-37	Typed statement of Jeffrey Wright (BNSF 000198)			X
A-38	Typed statement of Jeffrey Cox (BNSF 000209)			X
A-39	Handwritten statement of Anthony Boldra (BNSF 000208)			X
A-40	Reenactment video.			X

1	A-41	Balsley Employee Monthly Earnings History (BNSF 00007)		X	
2					
3	A-42	Skoog Worklife Expectancies of Railroad Workers Based on the Twenty-Third Actuarial Valuation.			X
4					
5	A-43	Incident Team Review (BNSF 000199)			X
6					
7	A-44	4/12/06 Recorded Statement of Dennis Balsley (Audio)		X	
8					
9	A-45	4/12/06 Recorded Statement of Dennis Balsley (Transcript)		X	
10					
11	A-46	System Special Instruction Item 8. (BNSF 001029- 001084)		X	
12					
13	A-47	BNSF Railway Class I Railroad Annual Report to the Surface Transportation Board for the year ending December 31, 2006		X	
14					
15	A-48	Air Brake & Train Handling Rules 100, 102.		X	
16					
17	A-49	Rocky Point track chart. (BNSF 000210 - 000211)		X	
18					
19	A-50	Cascade Orthopedics medical records (Exhibits 1 and 2 to Robert Carlson, MD deposition; June 18, 2008 and July 30, 2008 notes from Terry Smith, MD)		X	
20					
21	A-51	Plaintiff's cabin/property photos. (BNSF 001204 - 001210)			X
22					
23	A-52	TYE Safety Rule S-1.5.3. (BNSF 001100 - 001143)		X	
24					
25	A-53	3/3/08 RRB Vocational Report (5 pages, produced in Plaintiff's responses to BNSF's 1 st Request for Production No. 2)		X	
26					
27	A-54	3/3/08 RRB Application for Determination of Employee's Disability (10 pages, produced in		X	

	Plaintiff's response to BNSF's 1 st Requests for Production No. 2)			
A-55	11/6/08 Complete Internal Medicine Evaluation by Rex Alvord, MD (7 pages, produced in Plaintiff's responses to BNSF's 1 st Request for Production No. 2)			X
A-56	Expert reports referenced in Plaintiff's pretrial statement.			X
A-57	Cohen test materials and results produced by Plaintiff		X	
A-58	Northwest Timetable. (BNSF 000284 - 000367)		X	
A-59	GCOR 1.1.2, 6.29, 6.19, 6.32, 6.23. (BNSF 001178 - 001186)		X	
A-60	Balsley handwritten statement/Jeffery Cox statement (BNSF 00008).		X	
A-61	BNSF post-incident site inspection photographs (BNSF 00214, 001216)			X
A-62	BNSF post-incident site inspection photographs produced in BNSF's 4 th Supplemental Responses to plaintiff's first requests for production (BNSF 001211 - 001215)			X
A-63	General Track Bulletin (BNSF 000368-000382)		X	
A-64	Hand drawn diagram (BNSF Bates# 000204).			X
A-65	Hand written statement (BNSF Bates #000205).			X
A-66	Deposition transcript of Lawrence Murphy.		X	
A-67	Reserved			

1	A-68	Reserved			
2					
3	A-69	Reserved			
4					
5	A-70	Reserved			
6					
7	A-71	Reserved			
8					
9	A-72	Reserved			
10					
11	A-73	Reserved			
12					
13	A-74	Reserved			
14					
15	A-75	Reserved			

ACTION BY THE COURT

Plaintiff’s proposed Actions:

(a) This case is scheduled for trial before a jury on January 24, 2011, at 9:00 a.m..

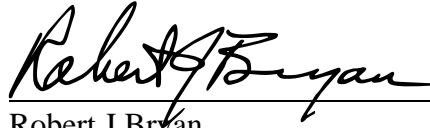
(b) Trial briefs shall be submitted to the court on or before November 22, 2010.

(c) Jury Instructions requested by either party shall be submitted to the court on or before December 10, 2010. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before December 10, 2010.

(d) Other court rulings.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest justice.

1 DATED the 20th day of January, 2011.

2
3 

4 Robert J Bryan
5 United States District Judge

6
7 FORM APPROVED and SUBMITTED on January 20, 2011

8
9 s/ Paul S. Bovarnick
10 Paul Bovarnick, WSBA #32706
11 Attorney for Plaintiff

12 s/ Bradley Scarp
13 Bradley Scarp, WSBA #21453
14 Attorney for Defendant