

CIV-120807-CIV-BS1200419-CASEEN-140502



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Case Number: BS1200419
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Action Code: CASEEN
Action Date: 08/07/12
Action Time: 2:05
Action Seq: 0002
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Complaint and Party information entered



NEW FILE

AUG 07 2012

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SUMMONS ISSUED & FILED BY Wanda Ford DEPUTY

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15 Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO - BARSTOW DISTRICT

16 CHARLES R. DAVIDSON III,)
17)
18 Plaintiff,)
19 vs.)
20)
21 BNSF RAILWAY COMPANY,)
22 a corporation, AND DOES 1)
23 THROUGH 5, inclusive,)
24 Defendants.)

Cause No. CIVBS1200419

COMPLAINT FOR DAMAGES
FEDERAL EMPLOYERS'
LIABILITY ACT
(45 U.S.C. § 51 et seq.)
PLAINTIFF DEMANDS TRIAL
BY JURY ON ALL COUNTS

24 Plaintiff Charles R. Davidson III ("Charles Davidson"), by and through his
25 attorneys and for his causes of action against defendant BNSF Railway Company and
26 defendants Does 1 through 5 states as follows:
27

- 28 1. Plaintiff Charles Davidson is a resident of California.



1 2. Defendant BNSF Railway Company is a corporation organized under the
2 laws of a state other than California, and it maintains offices, yards, and track and does
3 business within San Bernardino County, California.

4 3. Defendant BNSF Railway Company is a common carrier by rail, engaging
5 in interstate commerce.
6

7 4. The true names and/or capacities whether individual, corporate, associate,
8 governmental, or otherwise of defendants Does 1 through 5, inclusive and each of them,
9 are unknown to plaintiff who therefore sues those defendants by fictitious names and will
10 amend the Complaint to show their true names and or capacities when they are ascertained.
11 Plaintiff is informed and believes, and thereupon alleges, that each defendant designated
12 herein as a Doe was responsible negligently, strictly, or in some other actionable manner
13 for the tasks, conditions, exposures, events, and happenings alleged herein, which
14 proximately caused the injuries and damages to plaintiff as hereinafter alleged.
15

16 5. Plaintiff is informed and believes, and thereupon alleges, that at all times
17 mentioned herein defendants, and each of them, were the agents, servants, employees
18 and/or consultants of their co-defendants and as such were acting within the course, scope,
19 and authority of that agency and/or employment and that each and every defendant when
20 acting as the principal was negligent in the selection or hiring of each defendant as an
21 agent, servant, employee, and/or assistant.
22

23 6. Plaintiff is or was employed by defendant BNSF Railway Company as a
24 Fireman & Oiler, and all or a part of plaintiff's duties as an employee of defendant were in
25 furtherance of interstate commerce or closely and directly affected interstate commerce.
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and the guardrail. Defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

(b) Defendant failed to provide plaintiff with reasonably safe and adequate help in that plaintiff's coworker failed to follow plaintiff's instruction for him to back up the honey wagon to allow adequate room between the honey wagon and the guardrail. Defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

(c) Defendant failed to properly train its employees on the safe operation of the honey wagon regarding forward and reverse shifting patterns/movements resulting thereof. Defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

(d) Defendant failed to periodically review its equipment operation procedures with its employees to ensure they were knowledgeable of the safe operation of equipment, specifically the honey wagon. Defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

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(e) Defendant failed to ensure its employees were knowledgeable and current with safety rules and instructions on the proper and safe method to safely operate equipment, specifically the honey wagon. Defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

(f) Defendant failed to provide reasonably safe methods of work in that an adequate designated parking space should have been provided to safely park the honey wagon. Defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

(g) Defendant failed to provide reasonably safe and adequate equipment, specifically the honey wagon, to perform the required work and defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm; and

(h) Defendant failed to provide reasonably adequate and safe conditions for work for the above reasons and defendant knew or in the exercise of ordinary care should have known thereof and that such failure would reasonably likely cause substantial harm.

10. As a result, in whole or in part, of the aforesaid acts and/or omissions of negligence on the part of the defendant BNSF Railway Company, its agents, servants and/or employees, plaintiff sustained the following severe, painful, permanent and

1 progressive bodily injuries and damages, including severe bruising, contusion, straining
2 and spraining of his right knee and lower extremity with severe bruising, contusion,
3 wrenching, twisting, tearing, spraining, straining and scarring of the tissues, bones, joints,
4 nerves, veins, arteries, vascular structures, tendons, meniscuses, ligaments, tissues, cartilage,
5 muscles and supporting structures thereof, all of which have resulted in severe pain,
6 limitation of motion, loss of function, sensory changes, and dysfunction and he will suffer
7 same in the future.
8

9 11. Plaintiff states that by reason of the foregoing he has been required to
10 undergo necessary medical, hospital, surgical, and therapeutic care and treatment and that
11 plaintiff will be required to undergo such additional medical, hospital, possibly surgical,
12 and therapeutic care and treatment in the future; that he has incurred and become obligated
13 for the aforesaid care and treatment, and plaintiff will be required to incur and become
14 obligated for such additional care and treatment in the future. He has suffered wage loss
15 and a loss of earning capacity; and he has suffered from severe pain, suffering, mental
16 distress, weakness, loss of function, sensory changes, limitation of movement, and a loss of
17 enjoyment of life.
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19

20 WHEREFORE, plaintiff prays for judgment against defendant as follows:
21

22 1. For general damages in a sum within the jurisdictional limits
23 according to proof;

24 2. For the reasonable value of medical and hospital care required thus
25 far and reasonably to be required in the future;

26 3. For the reasonable value of loss of earnings and loss of earning
27 capacity thus far and reasonably likely in the future;
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4. For pain, suffering, mental distress, disfigurement, and loss of enjoyment of life;

5. For interest as prescribed by basic California law on any and all damages alleged to have been suffered herein; and

6. For costs of suit, and for such other and further relief as the Court shall deem proper.

COUNT II

12. Plaintiff incorporates the allegations from paragraphs 1-11 as if set out fully herein.

13. On or about December 2, 2011, while in the course and scope of his employment with defendant at its Diesel Service Facility in Barstow, California, plaintiff was attempting to close the derail at or around the east end of track 12. As plaintiff was pushing the handle forward, all of a sudden and unexpectedly, it started forcefully going backward causing both of plaintiff's knees to hyperextend and thereby cause awkward, stressful, and unusual positions causing injury, stress, and strain, as hereinafter set forth.

14. Defendant BNSF Railway Company, in violation of the FELA, was negligent in one or more of the following acts or omissions:

- (a) Defendant failed to provide reasonably safe and adequate tools, equipment and appliances to perform the required work in that the derail was dangerous, defective, and unsafe and defendant knew, or

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in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

(b) Defendant failed to provide reasonably safe, proper, and adequate methods for work, and defendant knew or in the exercise of ordinary care should have known thereof and that such failure would reasonably likely cause substantial harm;

(c) Defendant failed to provide reasonably proper and adequate supervision in that supervision should have ensured that proper and adequate help was provided to routinely inspect, maintain and repair the subject derail and defendant knew, or in the exercise of ordinary care should have known thereof and that such failure was reasonably likely to cause substantial harm;

(d) Defendant failed to implement, follow and enforce applicable rules and policies associated with the proper and safe maintenance and operation of derails in its Diesel Service Facility including FRA, AAR, OSHA, and other similar standards and defendant knew or in the exercise of ordinary care should have known thereof and that such condition would likely cause substantial harm;

(e) Defendant failed to warn, train and instruct plaintiff on how to properly inspect a derail for defects prior to operating it and defendant knew or in the exercise of ordinary care should have known thereof and that such condition would likely cause substantial harm; and

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(f) Defendant failed to provide reasonably safe conditions for work as set forth above and defendant knew or in the exercise of ordinary care should have known thereof and that such failure would reasonably likely cause substantial harm.

15. As a result, in whole or in part, of the aforesaid acts and/or omissions of negligence on the part of the defendant BNSF Railway Company, its agents, servants and/or employees, plaintiff sustained the following severe, painful, permanent and progressive bodily injuries and damages, including severe bruising, contusion, straining and spraining of his right and left knees and lower extremities with severe bruising, contusion, wrenching, twisting, tearing, spraining, straining and scarring of the tissues, bones, joints, nerves, veins, arteries, vascular structures, tendons, meniscus, ligaments, tissues, cartilage, muscles and supporting structures thereof, all of which have resulted in severe pain, limitation of motion, loss of function, sensory changes, and dysfunction and he will suffer same in the future.

16. Plaintiff states that by reason of the foregoing he has been required to undergo necessary medical, hospital, surgical, and therapeutic care and treatment and that plaintiff will be required to undergo such additional medical, hospital, possibly surgical, and therapeutic care and treatment in the future; that he has incurred and become obligated for the aforesaid care and treatment, and plaintiff will be required to incur and become obligated for such additional care and treatment in the future. He has suffered wage loss and a loss of earning capacity; and he has suffered from severe pain, suffering, mental distress, weakness, loss of function, sensory changes, limitation of movement, and a loss of enjoyment of life.

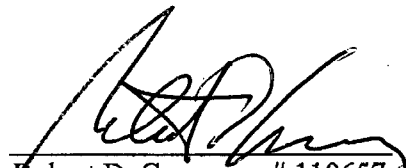
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WHEREFORE, plaintiff prays for judgment against defendant as follows:

1. For general damages in a sum within the jurisdictional limits according to proof;
2. For the reasonable value of medical and hospital care required thus far and reasonably to be required in the future;
3. For the reasonable value of loss of earnings and loss of earning capacity thus far and reasonably likely in the future;
4. For pain, suffering, mental distress, disfigurement, and loss of enjoyment of life;
5. For interest as prescribed by basic California law on any and all damages alleged to have been suffered herein; and
6. For costs of suit, and for such other and further relief as the Court shall deem proper.

8/7/2012

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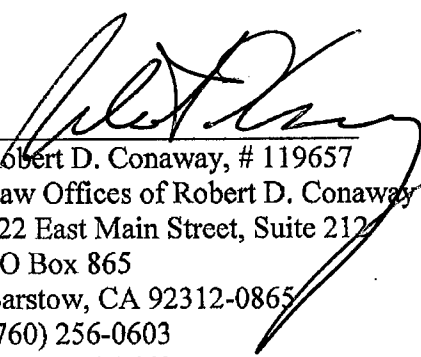
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PLAINTIFF DEMANDS TRIAL BY JURY ON ALL CAUSES OF ACTION.

8/7/2012

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 ATTORNEY FOR (Name): Plaintiff Charles R. Davidson III

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino - Barstow District
 STREET ADDRESS: 235 East Mountain View Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: Barstow, CA 92311
 BRANCH NAME: Civil Division

FOR COURT USE ONLY

FILED - BARSTOW
 SAN BERNARDINO COUNTY
 SUPERIOR COURT

AUG 07 2012

BY Wendy Ford
 DEPUTY

CASE NAME:
 Charles R. Davidson III v. BNSF Railway Company, et al.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 CIVBS1200419

JUDGE:
 DEPT:

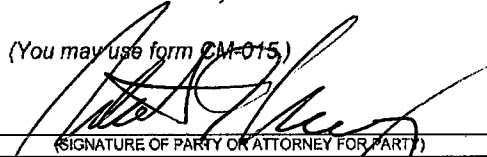
Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input checked="" type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p> | <p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p> | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p> |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties d. Large number of witnesses
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): The Complaint for Damages contains two counts, both under the FELA
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:
 Robert D. Conaway
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)



NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.