

STATE OF NORTH DAKOTA
COUNTY OF CASS

DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

Bryan Thompson,)	
)	
Plaintiff,)	Court File No. <u>09-2015-CV-00785</u>
vs.)	
)	COMPLAINT
BNSF Railway Company,)	JURY TRIAL DEMANDED
a Delaware Corporation,)	
)	
Defendant.)	

Comes now the Plaintiff, Bryan Thompson, and for his claims and causes of action against the Defendant, BNSF Railway Company, a Delaware corporation, states and alleges as follows:

COUNT ONE

[¶1] That the Plaintiff brings this action under the Federal Employers' Liability Act, Title 45, United States Code, §51, et seq., and that this action is timely commenced within the meaning of 45 U.S.C. §56.

[¶2] That at all times material herein, the Defendant, BNSF Railway Company (BNSF), was the owner of, and was operating various tracks and yards and had substantial operations in the County of Cass, State of North Dakota, and was and is engaged as a common carrier in interstate commerce.

[¶3] That at all times material herein, the Plaintiff was in the employ of Defendant working as a locomotive engineer, and that at the time of the occurrence of the accident herein, all or part of Plaintiff's duties were in the furtherance of the Defendant's business of interstate commerce.

[¶4] That on the date of the incident which is the subject of this lawsuit, Plaintiff was a resident of Cass County, North Dakota.

[¶5] That as of the date of the incident that is the subject of this lawsuit, Defendant conducted significant business activity in Cass County, including a rail yard and headquarters for supervisory employees.

[¶6] That this incident occurred in Cass County and that venue is proper in this county and Court.

[¶7] That on or about 30th day of December, 2013, Plaintiff was in the course and scope of his employment working as a locomotive engineer for Defendant on its train at or near Casselton, North Dakota in Cass County. Plaintiff was operating Defendant's locomotive consist pulling a loaded eastbound oil tanker train. At or near Casselton, North Dakota, as Plaintiff's train approached and was passing an opposing westbound grain train on the adjacent tracks, suddenly and without warning a railcar from the opposing train derailed onto Plaintiff's track. Despite Plaintiff's best efforts to slow and stop his train, his lead locomotive struck the railcar, causing the locomotive to derail. A number of oil tankers near his now derailed locomotive exploded and caught fire. As a result, Plaintiff was caused to suffer severe and permanent injuries and damages.

[¶8] That Defendant violated the Federal Employers' Liability Act, 45 U.S.C. §51, et seq., in the following ways:

- A. Failing and neglecting to provide Plaintiff with a reasonably safe place to work;
- B. Failing to warn Plaintiff of the dangers of hauling explosive oil tank railcars and the tendencies of these railcars to rupture and explode upon suffering damage.
- C. Failing and neglecting to properly inspect, maintain and repair its railroad cars, equipment, and track.
- D. Failing and neglecting to adopt, install, implement and enforce safe methods of transporting hazardous products;

- E. Negligently and carelessly allowing and permitting unsafe and dangerous conditions to exist on its tracks and equipment;
- F. That the derailment occurred on property owned by BNSF and involved equipment owned, operated and maintained and controlled by BNSF. Derailments such as this do not occur absent failure of BNSF to properly and safely conduct its train operations, perform required track maintenance; and inspect its equipment;
- G. Other acts of negligence as shown in discovery of this case.

As a result, Plaintiff was caused in whole or in part to be injured and damaged as herein set forth.

COUNT TWO

Comes now the Plaintiff, and for his second cause of action against the Defendant, stating and alleging:

[¶9] Realleges Paragraphs 1 – 8 of Plaintiff's first cause of action herein as though set forth at length and in detail herein.

[¶10] That Defendant violated of 49 U.S.C § 20302 *et. seq.* the Federal Safety Appliance Act, by using a railroad car on its line in a defective condition. That Defendant's FSAA violation holds Defendant strictly liable for Plaintiff's damages and bars the affirmative defense of contributory negligence.

COUNT THREE

Comes now the Plaintiff, and for his third claim and cause of action against the above-named Defendant, stating and alleging:

[¶11] Realleges Paragraphs 1 - 10 of Plaintiff's first and second causes of action herein as though set forth at length and in detail herein.

[¶12] That the damages sustained by Plaintiff and the resulting damages were caused, in whole or in part, by the Defendant's violation of the Code of Federal Regulations, including 49 CFR, Parts 213, *et seq.*, and as such implicates 45 U.S.C. § 51 *et seq.*, and §53 specifically and, as such, Defendant is strictly liable for the injuries and damages sustained by Plaintiff.

[¶13] That Defendant's aforementioned C.F.R. and §53 violations, hold Defendant strictly liable for Plaintiff's damages and bars evidence of contributory negligence.

[¶14] That as a result of Defendant's negligence and statutory violations, individually and collectively, Plaintiff was injured, has suffered pain and loss of enjoyment of life in the past and will suffer pain and loss enjoyment of life in the future; has incurred expenses for medical treatment and hospitalization, and will incur these expenses in the future; has suffered loss of earnings and loss of future earning capacity; and has suffered permanent injury and disability, all to his injury and damage.

WHEREFORE, Plaintiff Bryan Thompson prays judgment against the above-named Defendant, BNSF Railway Company for recovery of reasonable damages in an amount sufficient to fully compensate Plaintiff for the losses and damages, together with his costs and disbursements, pre and post-judgment interest, and reasonable attorneys' fees herein.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Dated this 4th day of March, 2015.

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By: 

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