

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

Randall Anderson, Thomas Bauer,)	
Perry Bochmann, William Dahna,)	
Steven Derry, Brent Hildahl,)	
Robert Hogeboom, Kenneth Johnson,)	
Charles Leonard, J.B. Linneman,)	
James P. Manna, Reginald Nelson,)	
David Ohlrich, Anthony Pierce,)	
Cameron Polly, James Prevail,)	
David Ransford, James Sandman,)	
John Turner, Craig Walsh, John Doe(s),)	
United Transportation Union, Local 418,)	
Burlington System Division of the)	
Brotherhood of Maintenance of Way)	
Employes, and the Burlington Northern))	
System Federation of the Brotherhood)	
of Maintenance of Way Employes,)	
Plaintiffs,)	
)	
v.)	
)	
Burlington Northern and Santa Fe)	FIRST AMENDED
Railway Company, a Delaware Corp.,))	COMPLAINT
Defendant.)	

NATURE OF CASE

1. This action against Burlington Northern Santa Fe (“BNSF”) seeks declaratory judgment, damages, and injunction to remedy BNSF’s victimization of Plaintiffs for demanding compliance with governmental and industry safety requirements, and to protect the public, state and local governments, and BNSF shareholders from the consequences of the enhanced probability of accidents involving nuclear and hazardous waste resulting from noncompliance with safety requirements.

JURISDICTION

2. Jurisdiction over the parties and subject matter is predicated upon 28 U.S.C. §1331, (federal question), 28 U.S.C. §2201 (declaratory judgment), and the pendant state claims. The amount in controversy exceeds \$75,000.

VENUE

3. Within the District of Northern Iowa Western Division, BNSF operates a rail line, maintains an office and employs managers , committed many of the acts and omissions forming the gravamen of the Complaint, and is where most of the Plaintiffs live and usually work.

PARTIES

Individual Plaintiffs:

4. Each individual plaintiff, John Doe(s), and shareholder plaintiff shares in common with the others (these facts are incorporated by reference into the Paragraphs 5 – 26 that they:
- a. are members of the United Transportation Union “(UTU”);
 - b. reside in or near Sioux City, Iowa;
 - c. are Iowa citizens and taxpayers, unless otherwise designated;
 - d. are employed by BNSF as a train service employees in Iowa, unless otherwise designated;
 - e. are being now and will be in the future personally damaged by these actions and omissions of the BNSF;
 - f. as a direct result of the conduct of the BNSF, are legitimately fearful:
 - 1. of losing their jobs;
 - 2. of being subject to loss of their federal job qualifications;
 - 3. of being injured at work;
 - 4. of being physically and emotionally damaged by the turmoil and pressure in the workplace because of the situation;

5. and worried that a haz-mat loss will jeopardize themselves, their families, and community.

5. Randall Anderson, is a train engineer residing in Sioux City, Iowa.
6. Thomas Bauer is a train service employee residing in or near Sioux City, Iowa.
7. Perry Bochmann, is a train service employee residing in Sioux City, Iowa.
8. William Dahna is a train service employee residing in Sioux City, Iowa.
9. Steven Derry is a a trainman residing in South Sioux City, Iowa.
10. Brent Hildahl, is a utility operating (switchman-trainman) residing in Sioux City, Iowa.
11. Robert Hogeboom is a train service employee residing in Sioux City, Iowa.
12. Kenneth Johnson is a train service employee residing in or near Sioux City, Iowa.
13. Charles Leonard is employed as a train service employee residing in or near Sioux City, Iowa.
14. James Linneman, a conductor with over 25 years experience, is a resident of Lincoln, Nebraska.. Linneman was fired in 2001 specifically because he complied with Federal requirements as to testing train air brake systems and removing defective cars prior to departure. Linneman originally filed an action under Nebraska law, which BNSF removed to federal court in Nebraska. While that case was in preliminary stages, Linneman filed a stipulated dismissed under the Nebraska law, without prejudice to any rights he had under any other laws. Linneman then joined this much larger, related action.
15. James P. Manna is a train service employee residing in or near Sioux City, Iowa.
16. Reginald Nelson is a train service employee in Iowa but resides in South Dakota.
17. David Ohlrich is a train service employee residing in Sioux City, Iowa.

18. Anthony Pierce is a train service employee residing in or near Sioux City, Iowa.
18. Camear Polly is a train service employee residing in Sioux City Iowa.
19. James Prevail,, resides in or near Sioux City, Iowa, is an Iowa citizen, and is as a train service employee in Iowa.
20. James Sandman is a train service employee residing in or near Sioux City, Iowa.
21. Craig Walsh is a train service employee residing in or near Sioux City, Iowa.
22. John Doe(s), are approximately 120 similarly situated train service employees working under authority of the Sioux City Terminal Managers, at least 90 are Iowa residents, most live within 100 miles of Sioux City, Iowa.

Labor Organizations Plaintiffs:

23. United Transportation Union Local 418 represents many of the Plaintiff's and is labor organization as defined in 45 U.S.C. §151, *et.seq.* As a result of the conduct of the BNSF, its members are fearful of losing their jobs, of being subject to loss of federal job qualifications, of being injured at work, of being physically and emotionally damaged by the turmoil and pressure in the workplace because of the situation, and worried that a haz-mat loss will jeopardize them, their families, and community.
24. The Burlington System Division of the Brotherhood of Maintenance of Way Employes and the Burlington Northern System Federation of the Brotherhood of Maintenance of Way Employes, are two different system divisions of unions of railroad employees (collectively "BMWE"), organized pursuant to 45 U.S.C. §151, *et.seq.* They have standing for thousands of employees of the BNSF, including those in the BNSF's Iowa workforce. As a direct result of the conduct of the BNSF, its members are fearful of losing their jobs, of being subject to loss of federal job qualifications, of being injured at work, being physically and emotionally damaged by the

turmoil and pressure in the workplace because of the situation, and worried that a haz-mat loss will jeopardize them, their families, and community. The BMW Division are plaintiffs in the First, Third, and Fifth causes of action only.

SHAREHOLDER INDIVIDUALS:

- 25. David Ransford is a train service employee residing in or near Sioux City and has been a shareholder of the BNSF stock since fall, 1996.
- 26. John Turner is train service employee residing in or near Sioux City and has been a shareholder of the BNSF stock since fall, 1996.

Defendant BNSF:

- 27. Defendant BNSF is:
 - A. A Delaware corporation;
 - B. headquartered in Ft. Worth, Texas;
 - C. employing approximately 33,000 workers, does business and operates a line of rail in 28 states and is an “employer” under Iowa Law and the law of 27 other states;
 - D. the nation’s second largest railroad system, it is a common carrier and a railroad as defined by the Railway Labor Act (“RLA”);
 - E. operating in Iowa where it has substantial facilities, track, and train traffic including a terminal and facilities in Sioux City, Iowa and most of the managers involved in certain facts of this case are primarily located in Sioux City, Iowa.

GENERAL ALLEGATIONS

- 28. BNSF carries huge amounts of hazardous materials throughout its rail operations.
- 29. “Hazardous materials” is defined, *inter alia* by 49 C.F.R subchapter C, § 171.8 (p. 85) and “...means a substance of material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to the health, safety and property when transported in commerce, and has

designated as hazardous under § 5103 of Federal Hazardous Materials Transportation Law (49 U.S.C. 5103).”

30. BNSF carries substantial amounts of low level nuclear waste throughout its rail operations.
31. BNSF is about to embark on carrying huge amounts of high level nuclear waste from all points of origination in its rail operation terminating at Yucca Mountain, Nevada.
32. BNSF currently is and plans to be a future carrier of hazardous materials including but not limited to high level radioactive fuel elements from nuclear reactors, BNSF STCC Code 28-197-10; high level radioactive isotopes, articles, and materials, BNSF STCC Code 28-197-11; high level radioactive special solids, BNSF STCC Code 28-197-45; high level radioactive material shipping containers, BNSF STCC Code 34-919-40; uranium flourides, oxides, etc, BNSF STCC Code 28-197-20; thorium and uranium metal scraps, BNSF STCC Codes 40-219-42, 45; low level radioactive waste, BNSF STCC Code 40-291-06; and other forms of liquid and solid hazardous waste and related materials, high level radioactive isotopes, articles, and materials, BNSF STCC Codes 40-48.
33. BNSF currently is and plans to be a future carrier or transfer carrier of these hazardous materials by transporting them throughout its 28 state service area in heavily populated cities including but not limited to Chicago, Des Moines, Omaha, Sioux City, Council Bluffs, Denver, Minneapolis, Los Angeles, San Francisco, Portland, Las Vegas, and Seattle.
34. *Inter alia*, BNSF made a presentation January 21-23, 2002 at Santa Fe, New Mexico at a Packaging Transportation Conference representing that it could move high level nuclear waste as a low cost alternative, as a means of reducing pollution and that they could do it without any safety concerns.
35. A statutory and regulatory condition precedent to BNSF carrying hazardous materials low level nuclear waste and high level nuclear waste is the affirmative statement by the BNSF to federal and state regulators that it will safely and carefully transport these lethal materials in strict accordance with statutory and regulatory requirements.

36. BNSF knows or should know that federal and state rail transportation regulators rely on it for accurate and timely reporting of all safety concerns, issues, problems, personal injury accidents, property damage accidents, both latent and patent.
37. BNSF knows or should know that its customers, including the United States Government rely on it to safely move their property in compliance with all applicable regulations and standards.
38. BNSF knows or should know that its employees, including but not limited to the plaintiff organizations and individual plaintiffs, rely on it to safely move hazardous materials, low level and high level nuclear waste, and that these employees expect BNSF to notify them of any and all exposure to potential injurious effects of the cargo being carried.
39. BNSF knows or should know that state, county, municipal and other units of local government rely on it to comply with all applicable safety standards and regulations in order to safeguard the public and governmental property and operations.
40. BNSF has and is engaging in non-disclosure of its actual safety practices, omissions, and risks to the FRA, to other regulators, and to its shareholders and prospective shareholders.
41. BNSF has and is engaging in non-disclosure of its actual accident and/or injury incidents to the FRA, to other regulators, and to its shareholders and prospective shareholders.
42. The BNSF as part of its “Responsible Care at BNSF” web site provides a “rail carrier self-assessment protocol” and admits that it maintains “non-FRA reportable accident statistics.”
43. The Sioux City, Iowa Terminal Management and others have for at least 15 years and still is perpetrating a serious pattern and practice of directing employees to non-compliance with safety requirements
44. Rail workers at the terminal and elsewhere have been and are threatened and intimidated by BNSF if they engage in standard required inspections, tests and safety practices.

45. Some of these requirements and procedures arise under FRA provisions, some under BNSF Rules; some under both of those, and some under AAR (American Association of Railroads) recommended practices, many of these implemented by BNSF Circulars, Technical Specifications and Bulletins.
46. Upper BNSF management is and has been fully aware of this behavior by local management, has refused to act, and acts of local management are supported and condoned by the BNSF.
47. All railroad employees are required by law to obey Federal regulations, disregard of which can lead to civil penalties, including fines and disqualification .
48. They are also subject to discipline or dismissal by BNSF if they fail to do so.
49. All railroad employees are required to comply with BNSF operating rules, which often incorporate AAR & Federal requirements and they are subject to dismissal if they fail to do so, even if an officer told them to violate it. Management claims it has unrestricted discretion to dismiss any employee for any claimed reason, even if wholly fabricated at any time.
50. Railroad employees in this terminal face an impossible choice between being dismissed / disciplined if they do perform and comply with required tests, inspections and standards or being disqualified, and fined by the government if they do not perform such inspections and tests.
51. They may also be fired by BNSF officials in any terminal in the event one of the non-complying trains is inspected.
52. This has created an extremely hostile and hazardous work environment, since many tests and requirements are being conducted haphazardly or not at all, and the pressure from BNSF to choose

between obeying the law and maintaining employment creates severe anxiety and fear.

53. BNSF continues these practices and has intensified them.
54. Safety practices which are routine in Lincoln, or the Twin Cities and, almost universally on BNSF are not required or done at the Sioux City, Iowa, terminal. This is and has become well-known to BNSF employees and officers in surrounding terminals, that safety practices are frequently not followed at Sioux City Terminal. These acts of Sioux City Terminal managers are known to and condoned by upper BNSF management.
55. Employees in the Sioux City Terminal have been repeatedly ordered or otherwise coerced to dispense with or not complete required testing of air brake systems on trains prior to departure; to skip many types of inspection of inbound and outbound trains for defective cars; not to switch out and remove defective cars from trains; to run trains without required rear-end and head-end monitoring and communication devices, and many other similar circumventions of rules and regulations.
56. When the employees do perform required safety tests they have been: removed from service, charged with insubordination, threatened with dismissal, berated and screamed at, generally threatened with punishment, and actually punished and singled out for retaliatory adverse treatment.
57. Employees reporting these problems to local or higher BNSF management or to state or federal authorities' are retaliated against harshly and frequently.
58. The employees have attempted all forms of internal efforts to correct or ameliorate these problems.

59. The reason that BNSF insists the crews disregard such procedures and requirements is that BNSF will be more profitable when train departures and overall operations can be expedited.
60. BNSF management directing the employees to circumvent detailed requirements for inspections, required equipment and procedures to avoid production of the congestion and delay problems arising from regulatory compliance
61. That in fact a great many necessary and required safety tests and inspections are carried out in an incomplete, inadequate and perfunctory method, if done at all at Sioux City Terminal as a result of the above acts by Defendant, and many trains are leaving with both known and unknown defects in equipment, and untested systems which have not had minimally adequate or proper operating tests, or in some cases none at all.
62. That a large volume of traffic moves through Sioux City Terminal, including a substantial volume of hazardous materials of many types, including anhydrous ammonia LP gas, liquid chloride, numerous flammable gases and liquids, ethyl alcohol, a wide variety of chemicals, the tracks are authorized and anticipated to carry nuclear waste.
63. FRA requirements are not a part of the collective bargaining agreements between UTU, BLE and BNSF, and are not bargainable.
64. BNSF maintains that safety rules, bulletins, and practice manuals are not part of the collective bargaining agreements- BNSF asserts sole discretion over safety requirements as a matter of management prerogative.
65. There is no clause requiring arbitration of safety retaliation issues in the collective bargaining agreements applicable, nor is there any type of provision covering retaliation for safety compliance.

66. BNSF uses a device called a 'switch' to permit trains to move from its mainline tracks onto sidings.
67. Locks are generally used on switches because, as early as 1912, there were reported cases of vandals moving the switch levers so that trains would derail or collide with other trains.
68. The BNSF has been using the same generic padlocks on its more than 100,000 switches for about 20 years.
69. A common BNSF key opens all switch locks.
70. There are thousands of keys for these locks floating around in 28 states in which BNSF does business:
 - A. Current employees carry the keys;
 - B. A large number of ex-employees (including those who have been fired or laid-off) have these keys;
 - C. The keys are collectors' items are offered for sale for as little as \$6 at railfan swap meets, over the internet and in mailing lists; and
 - D. There are many counterfeit keys in circulation as well.
71. However, these locks are so simple to pick that ordinary cotter pins are routinely used to open them by even switchmen, are so insecure that a modest rap on them with a hammer can pop them open.
72. Historically and recently, vandals have been tampering with these locks, relining the switches, and causing serious damage and injuries.
73. Yet, the BNSF has not changed its procedures or its equipment nor utilized central track control ("CTC") which would guarantee that no such accident could occur.
74. BNSF has interfered with FRA investigations to try to have them reclassified by the FRA as employee negligence rather than as vandalism.
75. The inherent lethality of the cargoes being carried by BNSF now and in the future poses grave and unacceptable levels of risk to the plaintiffs, and every other interested party including property owners within miles of rail lines, and all

units of government in those areas. This freight includes extremely hazardous materials which is carried through the heart of many of America's largest cities and smallest towns.

76. The risk of lethal disasters is increased by the willful actions of the BNSF in ordering its employees to disregard and not comply with federal safety standards.
77. The enhanced risk of lethal disasters is additionally enhanced by the failure and refusal of BNSF to inform the regulators of its reckless policies.
78. The enhanced risk of lethal disasters is further magnified by the laxness of the regulators who, in effect, have been captured by the regulated.
79. Statistics filed by the BNSF with the Federal Railway Administration show that there has been more than a 100% increase in human factor accidents on BNSF rail lines since 1996.
80. Yet the regulator whose databases contain this public information have reported to the public and the Congress in its Safety Insurance and Compliance Program, year-2002 accomplishments that human-factors-caused accidents had actually decreased.
81. Statistically significant beyond the 95% rate, the increase in BNSF human factor accidents is directly attributable to the massive decline in total numbers of employee hours spent on the job.
82. BNSF's statistics of total employee hours has dropped from 85.5 million in 1998 to 68 million in 2003, a decrease of 22.2%.
83. Upon information and belief, the influence of the Association of American Railroads and lobbyists for Class I railroads fully explains the laxness of the regulated by the FRA.
84. The total number of FRA inspectors has declined by significant numbers.
85. Notwithstanding the paucity of inspectors those inspectors found 337,230 defects in the 72,355 inspections performed as of February 5, 2004 on the BNSF.
86. In particular, FRA inspectors performed 8,687 inspections of BNSF hazardous materials shipments and reported 32,331 defects.

87. These defects included 11 occasions where train cars loaded with hazardous materials were put in the wrong placement in trains in direct contravention of federal requirements and safety standards.
88. The same hazardous material inspections demonstrated more than 2,000 safety defects with diesel locomotives, 3,646 defects of safety appliances of cars and locomotives, and more than 2,700 violation of safety regulations of power brakes of train cars and locomotives.
89. These hazardous material violations were not limited to the materials themselves or the equipment, but also included more than 1,000 violations of operating practices, all of which are strictly subject to federal regulation.
90. Furthermore, there are more than a 1,000 violations of signal requirements imposed by federal regulators affecting the movement of hazardous materials and more than 12,000 violations of track quality and inspection requirements.
91. The total number of defects found by FRA inspectors increased from approximately 25% from 2002 to 2003, a fact not mentioned by the FRA in its Safety Assurance and Compliance Program Report.
92. Consistent with disregard of federal safety requirements and laxness of the regulator the following is a list of just some of the accidents caused by the BNSF in the year 2003:
- February 5, 2003--Silsbee, Texas, a runaway cut of cars collided with the locomotives that were in pursuit in those cars.
 - February 13, 2003--Scotts Bluff, Nebraska, side collision.
 - March 2, 2003--Brush, Colorado, rear-end collision.
 - March 10, 2003--Seattle, Washington, a freight train struck the side of an opposing train.
 - March 18, 2003--Clarendon, Texas, a freight train derailed two locomotives and 28 cars.
 - March 21, 2003--Newcastle, Wyoming, a unit coal train derailed 35 cars.
 - March 29, 2003--Ogles, Texas, a freight train derailed 28 cars.
 - April 11, 2003--Olathe, Kansas, a unit coal train derailed 27 cars.

- April 11, 2003--Slayton, Texas, a freight train derailed 6 cars resulting in a release of hazardous materials and a subsequent evacuation.
- May 1, 2003--Lapine, Oregon, freight train collided head-on with a hi-rail vehicle.
- May 2, 2003--Seattle, Washington, a freight train struck the rear-end of another train.
- May 6, 2003--Dant, Texas, a freight train collided with a hi-rail vehicle.
- May 5, 2003--Hazard, Nebraska, a work train collided with the rear-end of another train and the resultant derailment struck a third train.
- May 17, 2003--Matfield Green, Kansas, an eastbound freight train struck the side of a westbound freight train.
- June 20, 2003--Minneapolis, Minnesota, a remote control yard switcher derailed 42 cars.
- July 28, 2003--Bisbee, Texas, a freight train collided head-on with a standing train.
- September 17, 2003--Chriesman, Texas, a freight train struck the rear-end of another train.
- October 1, 2003--Udall, Kansas, a freight train struck a hi-rail vehicle sitting on the main track at an interlock.
- The FRA does not provide December statistics for any year (for reasons unknown).

93. The FRA, consistent with its status as a ‘captured government agency’, reported for the year ending December 31, 2003, that it was proud of the safety record of the BNSF in light of the higher traffic volumes it was carrying.

94. The BNSF files human factor accidents reports with the FRA and has approximately 50 categories of human error descriptions; but none of those categories include mismanagement as a possible source of human factor accidents.

95. On information and belief, BNSF’s refusal to comply with federal safety requirements and standards, is, by itself, a form of human factor accident and should have been reported as such.

96. DOE is about to contract with railroads including BNSF to haul nuclear waste for profit.
97. DOE is informing the public and state and local government that using these railroads, including BNSF, is safe.
98. DOE is wrong, it is not safe to move nuclear waste by rail across the BNSF.
99. DOE could not lawfully enter into such contracts if it knew the truth of the unsafe conditions of BNSF operations.
100. BNSF has not disclosed material facts to the DOE, shareholders, or other necessary parties about its inability to guarantee safe movement of nuclear waste across its system or even to assess risk/reward ratios for this material.
- A. It has materially deficient track infrastructure.
 - B. It has materially deficient operating practices of its equipment.
 - C. It is partially uninsured (self-insured) and lacks financial resources to pay for a mass loss.
 - D. It has not disclosed prior haz-mat accidents including nuclear.
 - E. It has not disclosed details of any actual or proposed indemnity clause.
101. BNSF cannot be trusted to perform contractual terms since it has a long track record as a scofflaw because it purposely disregards legal requirements when it chose not tell the regulators and shareholders the truth about:
- a. BNSF system wide thousands of unsafe switches;
 - b. BNSF causes of thousands of work related injuries;
 - c. BNSF disregards safety standards.
 - D. BNSF disregards worker protection laws, both federal and state, most recently in the secretive genetic testing of its injured workers.
 - E. Suppression of complaints by workers and shippers.
 - F. Failed to tell the truth about causing and not remediating environmental hazards such as denying culpability for the Mandan, North Dakota diesel spills which leached as much as 2 million gallons in the aquifer over 50 years.
102. BNSF actions are purposeful:

- a. less reporting means less downtime, less cost of repair, less cost of operations, less regulator intervention;
 - b. no reporting means enhanced profit lines, keeping stock prices artificially high, and keeps stock ratings artificially high;
103. BNSF actions endanger:
- a. employees by creating a higher risk of accident, injury, and death, adversely affecting families by the former facts, and creating incidents resulting in adverse job actions and discipline including firing.
 - b. property of BNSF, of ordinary citizens, and of federal, state and local government
 - c. health of the community since more accidents will happen, many in cities, many involving hazardous materials including nuclear shipments
 - d. financial health of BNSF itself since it is self-insured
104. BNSF has general and specific duties of safety to the general public.
105. BNSF has general and specific duties of safety toward its employees.
106. BNSF has general and specific duties of safety toward its customers.
107. BNSF has general and specific duties to its current and prospective shareholders disclose, discuss, and account for financially material operational risks.
108. BNSF has general and specific duties of and related to safety to federal, state, and local governments in the jurisdictions in which it operates or effects.
109. BNSF, one of only two Class I railroad companies operating west of the Mississippi River, uses its size and monopolistic/oligarchic position, by itself and through its role in its associations such as that of the American Railroads (“AAR”), to significantly influence and attempt to influence legislative and executive processes in all levels of government.
110. All governmental entities involved in the process of formulating and enforcing regulatory policy, procedures, and regulations, rely on the BNSF and AAR to provide accurate information concerning all aspects of rail economics and safety.
111. BNSF knows or should know that governmental entities involved in the process of formulating regulatory policy, procedures, and regulations, rely on the

BNSF and AAR to provide accurate information concerning all aspects of rail economics and safety.

112. When the Congress of the United States enacted Nuclear Waste Policy Act, 42 U.S.C. § 10101, it declared that it is in the national interest to move to and store in a specially constructed facility inside Yucca Mountain, Nevada, all high level nuclear waste produced by the nation's nuclear electric production facilities.

113. The United States Department of Energy ("DOE") is charged with the responsibility of planning, promulgating, and implementing a system to transport safely high level nuclear waste from the nation's nuclear electric production facilities to the Yucca Mountain facility.

114. DOE plans to use rail carriers including the BNSF to transport significant amounts of high level nuclear waste.

115. DOE studies and decisions relying on those studies specifically state that they assume the accuracy of the safety reporting of the railroads to the Federal Railway Administration ("FRA").

116. *Inter alia*, to accommodate demands of the private power industry and nuclear material transporters, the Congress of the United States enacted and extended the Price-Anderson Act, 42 U.S.C. § 2011, 2210.

117. The Price-Anderson Act ("PAA"), *inter alia*, limit risks of damage cap for nuclear accidents to nuclear producers to the extent of the Fund (currently \$9.3b net), and empowers DOE to indemnify transportation contractors for up to \$560 million, waives defenses, and purports to pre-empt state law tort claims.

118. Congress extended PAA with explicit reference to and knowledge that railroad transportation of high level nuclear waste was intended based on assurances from regulators, rail associations like AAR, and BNSF and other rail carriers that these materials could be safely moved.

119. To implement PAA the federal government promulgated an indemnity agreement to be used by nuclear contractors including transporters such as railroads and it is found at 10 C.F.R. § 140.92 Appendix B.

Division One: Action for declaratory judgment defining duties under FRA safety sensitive disqualification procedures.

120. All previous paragraphs are hereby incorporated by reference as though fully set forth in this paragraph.

121. The “managerial misconduct” flaunts the FRA proscription of rail carrier violations of rail safety standards which control operating procedures, define equipment fitness for use, and mandate inspection and testing.

122. The manager misconduct violates those FRA regulations found at 49 C.F.R., Subpart C, §171.1(b-c), which prohibit a rail carrier from transporting any cargo in violation of hazardous materials requirements.

123. This manager misconduct, unremedied by the BNSF pursuant to the terms of 49 C.F.R. Subpart C, §225.33(a)(1-10?), violates the mandate of the FRA which prohibits a rail carrier from violating rail safety standards, reflected in numerous sections of 49 C.F.R, parts 209-240.

124. This managerial conduct also violates the conditions established by the provisions of 49 U.S.C. 20101 et seq.

125. Violations of the type contained in paragraphs 60-63, supra, are defined by FRA regulations, 49 C.F.R. Subpart D, §209.303(a-b) as ‘safety sensitive’ violations, among the most serious kind of FRA safety violations.

126. Federal law requires the FRA to perform its non-delegable duty to initiate proceedings against management employees as well as non management employees for violating safety sensitive requirements.

127. The FRA received actual notice of the facts contained in Par 65 both by receipt of copies of prior judicial complaints and by supplemental information provided to it.

128. Despite the actual notice of the violations of federal laws, regulations, and standards, the FRA has not initiated a proceeding against management officers under 49 C.F.R., Subpart D, §209.305.

129. BNSF failed to report to the FRA its management misconduct.

130. BNSF failed to request that FRA commence disqualification

proceedings based on this management misconduct.

131. Plaintiffs cannot initiate complaints against their own managers without realistically expecting the retaliation described in paragraphs 34-35, supra, , and which is a unfortunately a normal part of their BNSF workplace experience.

132. Plaintiffs have standing to assert these claims and are entitled to declaratory judgment which, inter alia, answers the following questions concerning their relative rights and duties:

A. Is the BNSF legally required to contemporaneously notify the FRA of potential violations of FRA safety sensitive requirements, regulations, and/or standards committed by its management employees?

B. Is the BNSF legally required to contemporaneously request that the FRA commence disqualification proceedings against its management employees for potential violations of FRA safety sensitive requirements, regulations, and/or standards?

C. Is the BNSF, as an agent or deputy of the FRA, required to commence its own disqualification proceedings for potential violations of FRA safety sensitive requirements, regulations, and/or standards by its management employees?

D. If “C” is answered in the affirmative, does BNSF have a duty to report its action to the FRA for parallel or subsequent proceedings or other reasons?

E. Does the FRA, once it has possession of any credible information identifying an incident, pattern or practice of events evidencing possible violations of duty for safety sensitive management employees, have a duty to commence disqualification proceedings?

F. If “E” is answered in the affirmative, is the duty to investigate management employees the same duty as to investigate non-

management employees?

133. If this Court determines that BNSF has any legal duties pursuant to paragraphs 71 (a-c), supra, Plaintiffs request preliminary and permanent injunctive relief so that they are protected from current and future management misconduct described in this Complaint.

134. Injunctive relief of this type is the only real protection of their legal rights possible since:

A. The non-management employees cannot refuse to comply with federal regulations and standards without being subjected to civil and criminal penalties;

B. The non-management employees cannot refuse to comply with BNSF orders without being subjected to BNSF investigations and retaliation including but not limited to being fired;

C. The non-management employees and their unions cannot protect themselves by agreeing to only to strictly comply rules without being dragged into expensive and destructive judicial proceedings to defend themselves against accusations of violations of unfair labor practices of ‘working by rule’.

135. Money damages by themselves do not provide an adequate remedy for the management misconduct by BNSF.

136. The Court has the ability to fashion the requested remedies through, inter alia:

A. its declaratory judgment powers;

B. its equitable powers;

C. its ability to supplement the federal common law of labor law;

D. To recognize an implied remedy for violating whistle-blower protection pursuant to 49 C.F.R., Part 225, §225.33 (a)(2), and

E. Waive bond requirements in this type of action..

Prayer for relief:

137. Wherefore, Plaintiff’s prays for a declaration of the parties’ rights

and duties, for injunctive and ancillary relief proscribing the offending conduct, and such other relief as are appropriate including costs of litigation and attorney's fees.

SECOND CAUSE OF ACTION:
VIOLATIONS OF THE IOWA PUBLIC POLICY DOCTRINE

138. There is a strong public policy supporting the obedience and enforcement of required and necessary safety procedures and equipment in public transportation, including specifically railroad transport; and the Plaintiff's and other employees acts obeying the rules; refusing orders to disobey or opposing and reporting order to disobey are all protected activities the Iowa Public Policy Tort Doctrine.

139. That the removal from service, threats of dismissal, dismissed, discipline, harassment, punishment and other hostile work environment all constitute adverse employment actions.

140. That the protected activities are the determining factor in the adverse actions.

141. The acts continue to be done and continue to cause apprehension and emotional distress as well as income loss to named and unnamed Plaintiffs, as well as risk to the public and property of Sioux City and areas of track in that area of track and facilities controlled from Sioux City.

Prayer for relief:

142. Plaintiff's prays all relief afforded at law and equity, including back pay, emotional distress, costs of litigation, attorney's fees and exemplary damages to the extent allowed, all to Plaintiff's damage in the sum of \$250,000., and for injunctive relief proscribing the offending conduct in the future, and a declaration of the parties' rights and duties. Plaintiffs' request costs and attorneys fees herein.

THIRD CAUSE OF ACTION:
DECLARATORY JUDGMENT PERMITTING RIGHT TO ENGAGE IN
SAFETY AND/OR POLITICAL STRIKES

143. The named individuals and labor organizations cannot lawfully, acquiesce, or comply with BNSF's demanded actions.

144. BNSF demands, *inter alia*: circumvention of safety tests and inspections required and necessary under FRA regulations, BNSF rules, and AAR industry recommended practices. These demands are illegal under laws of the State of Iowa, the State of Nebraska, and under Federal law and regulation (49 U.S.C § 20101 et seq, 49 CFR Sec. 200 et seq.)

145. Nothing in the collective bargaining agreements permits BNSF to require circumvention of required safety regulations as a condition of employment.

146. A provision or practice requiring such actions in a collective bargaining agreement would be unlawful per se.

147. The individual plaintiffs and their union representatives have the unlimited right to engage in political strikes to protest the fact that:

a. the federal government has not allocated sufficient financial and human resources to these issues of public and transportation worker safety related to the movement hazardous waste.

B. The federal government has not permitted open, public, and honest disclosure and discussion of these issues of public and transportation worker safety related to movement of hazardous waste.

C. Congress, under Price Anderson Act, has created such serious ambiguities about the rights of rail workers injured in a nuclear accident as to cause them to refuse to work on movement of nuclear materials.

D. The BNSF has not been stopped by the FRA from engaging in an unlawful practice to dismiss and discipline employees as punishment

for performing required tests and inspections.

148. The individual plaintiffs and their union representatives have the unlimited right to engage in safety strikes to protest the unsafe conditions which threaten the life, livelihood, and property rights of all Americans.

PRAYER FOR RELIEF

149. Plaintiffs specifically request declarations of law that Plaintiff labor organizations have a right to engage in political and safety strikes over the issues listed in Paragraph 147, *supra*, that an order be issued protecting the individual Plaintiffs from retaliation for having brought this action, and for such other relief as is appropriate.

FOURTH CAUSE OF ACTION: DECLARATORY JUDGMENT STATING BNSF DUTIES UNDER FEDERAL SECURITIES LAWS

150. The Plaintiffs and Defendants are entitled to declaratory judgment to clarify their rights and responsibilities arising under the complex web of relevant federal and state statutes, regulations, and agency and judicial decisions which include, *inter alia*:

A. The Nuclear Waste Policy Act (“NWPA”), 42 U.S.C. § 10101, *et. seq.*, (NWPA provides that the federal government will take title to all high level nuclear waste to be moved off the property of nuclear electric generating companies and shipped to Yucca Mountain.)

B. The Price-Anderson Act (“PAA”), 42 U.S.C. § 2011, 2210, *et. seq.* (PAA empowers the federal government to enter into a contract with a rail transporter of all high level nuclear waste whether to Yucca Mountain or other places).

C. The False Claims Act (“FCA”), 31 U.S.C. § 3729, *et. seq.* (FCA provides that a government contractor violates federal law and is liable if it knowingly presents to the United States a false or fraudulent claim for payment or approval).

D. The Staggers Act (“Staggers”), 49 U.S.C. §10101, *et. seq.*,

E. 49 U.S.C. 5126;

F. The 1933 Securities Act, 15 U.S.C. §78a-78ll:

G. The 1934 Securities Act, 15 U.S.C. 77a-77aa, and its implementing regulations and interpretations found in 17 CFR §240.10b5; 2. S.E.C. Reg. S-K, §229.30SEC SAB No. 92 (6/93) , SFAS #5, APB Opinion #22, and FRR #36 interpretation of 303.

151. The terms of a rail transportation contract necessarily will include federal payment for the movement of the nuclear waste and full indemnity from damage claims in exchange for its safe and timely movement.

152. The federal government's promise to provide indemnity may mean that if there is a liability claim proven against the rail carrier arising out of the transport of the high level nuclear waste, the federal government will pay the damages up to the limit of \$50 million and use its power to prohibit any recoveries by Plaintiffs, whether individual, corporate, or governmental, beyond that amount.

153. Provides that a government contractor violates federal law and is liable if it knowingly presents to the United States a false or fraudulent claim for payment or approval, 31 U.S.C. § 3729(a)(1), or knowingly makes, uses a false record or statement to get a false or fraudulent claim paid or approved by the Government, 31 U.S.C. § 3729(a)(2), or conspires to do so, 31 U.S.C. § 3729(a)(3). "Knowing and knowingly" are defined as meaning that a person "has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information, and no specific proof of intent to defraud is required.". 31 U.S.C. § 3729(b). A "claim" is defined any including "any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor ... if the Government will reimburse such contractor or other recipient for any portion of the money or property which is requested or demanded." 31 U.S.C. § 3729 (c).

154. DOE has or soon will be entering into contracts with BNSF to enable it to haul high level nuclear waste for profit.

155. BNSF will be required by DOE to execute the indemnity contract found at 10 C.F.R. §140.92 Appendix B.

156. DOE has and is relying on the representations made by the BNSF that it has such good and proven safety systems and safety record that the DOE can logically conclude that the BNSF has the capacity to safely move high level nuclear waste.

157. In turn, DOE is informing the public and state and local government that using BNSF and other rail carriers is a very safe method to move high level nuclear waste to Yucca Mountain from all over the United States and that the citizenry and its representatives has nothing to worry about.

158. DOE is wrong, it is not safe to move nuclear waste by rail across the BNSF.

159. DOE would not enter into such contracts if it knew the truth of the unsafe conditions of BNSF operations.

160. The Plaintiffs request that the Court issue a declaratory judgment by providing the legal answers “yes” to the following questions, the result of which then shall define their relative rights and responsibilities:

a. has the BNSF made a “claim” under the FCA if the statements made by the BNSF to the federal government to request the creation of the Price Anderson Act based indemnity agreement are false or fraudulent?

b. do the Plaintiffs have standing to file a FCA *Qui Tam* action if the BNSF made a “claim” under the FCA if the statements made by the BNSF to the federal government to request the creation of the Price Anderson Act based indemnity agreement are false or fraudulent in advance of the indemnity agreement being made or high level nuclear waste not yet having been transported?

c. if an indemnity agreement was proffered, accepted, high level

nuclear waste transported and there was a resulting mass liability claim, would the federal government refuse to honor the indemnity agreement if it was induced by false or fraudulent claims?

d. should the risk of claims for indemnity by BNSF being refused by the federal government because they were induced by false or fraudulent claims be disclosed to shareholders and prospective shareholders in its annual reports, 10-K, 10-Q, proxy solicitations, Management Discussion and Analysis, all as required pursuant to the 1934 Securities Act, 15 U.S.C. §78a-78ll, the 1933 Securities Act: 15 U.S.C. 77a-77aa, 17 CFR §240.10b5; S.E.C. Reg. S-K, §229.303, SEC SAB No. 92 (6/93) , SFAS #5, APB Opinion #22, and FRR #36 interpretation of 303?

E. Is BNSF subject to assessments, excise taxes, or other forms of possible acts to spread the liability risks either before or after an incident or accident or do doctrine such as illegal exactions or taking protect the corporation from such government actions?

161. Plaintiff shareholders Ransford and Turner bring this action as a derivative action on behalf of themselves. After liability is established in this matter, they intend to amend the Complaint to represent all other union employee stockholders of BNSF that are similarly situated.

162. Plaintiffs have made no efforts to have this suit brought for BNSF by its board of directors because any effort to do so would be futile. Efforts would be futile because, *inter alia*, BNSF does not listen to its employees, particularly about safety related issues, BNSF obviously has made a decision not to disclosure to the investing public it is carrying high level nuclear materials and the risks inherent in that activity

163. BNSF has a duty to disclose to the investing public that it is now and intends to in the future carry high level nuclear waste, that it cannot guarantee the safety of its movements of this material and other highly hazardous material, that its safety practices create undisclosed and excessive financial risk to the corporation, and that the law is so

ambiguous that it cannot make assurances to its shareholders that the corporation will be a going concern in the event of a major incident or accident involving these materials, that it has not sought relief from appropriate federal regulatory authorities.

164. As its prayer for relief under this Fourth Cause of Action, the Plaintiffs request that the Court:

- a. to enter declaratory judgment as requested in Paragraph 116;
- b. to enjoin, prohibit, and bar the BNSF from entering into any agreements with the federal government to transport high level nuclear waste;
- c. to order BNSF to fully and accurately report to its shareholders and prospective shareholders the truth about its safety record and risks of its operation including but not limited to its transportation of hazardous materials including high and low level nuclear materials;
- d. to order such supplemental equitable relief as it deems appropriate under the circumstances;
- e. and to award reasonable attorney fees and costs to the Plaintiffs and their counsel.

**Fifth Cause of Action: Declaratory Judgment under Paa Defining
Railroad Workers Right to Relief.**

165. PAA denies monetary compensation to transportation industry workers injured in the course of moving high level nuclear materials workers if they have worker's compensation rights.

166. Railroad workers do not have traditional worker's compensation rights but instead FELA governs their rights.

167. FELA is a fault driven system and railroad employees may not recover unless the carrier is negligent in some regard.

168. Railroad employees need a declaratory judgment clearly

enunciating their rights to recover under PAA in the event of their injury related to movement of nuclear materials.

Prayer for relief:

169. Plaintiffs requests a declaratory judgment that PAA provides that rail transportation workers are eligible for benefits and damages because they are not part of a workman's compensation system.

PLAINTIFFS REQUEST TRIAL BY JURY

Dated: _____

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