

**Case Name:** BNSF Railway Company v. LaFarge Southwest, Inc.

**Date Decided:** February 12th, 2009

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** U.S.D.C. New Mexico

**Judge:** Judge Armijo

**Citation:** 2009 WL 4279771 (D.N.M.)

**Background:**

Before this Court was plaintiff's, BNSF Railway Company ("BNSF") Motion in Limine to exclude expert opinions and testimony of claimant's expert relating to railroad operations. The action arose from a fatal collision between an eastbound freight train operated by a BNSF Railway Company engineer, and a commercial dump truck being driven by decedent Carol Duran, a contractor for third party defendant, Lafarge Southwest Inc. ("Lafarge"). One year after the accident, the claimant's proposed expert witness on accident reconstruction, visited the scene of the accident. The expert took photographs meant to establish what the engineer and conductor should have seen as their train approached the crossing. The expert also included accident report, deposition testimony of the engineer and conductor, and geometry measurements of the track to determine the "relative positioning of various objects". On the basis of his review, the expert opined that the train crew was "obviously inattentive and failed to maintain a proper lookout..." prior to the accident. BNSF moved to exclude the expert's opinions as to the train crew's duties as both (1) beyond his area of expertise and (2) not likely to assist the jury

**Issue:**

Did this Court grant BNSF's motion to in limine to exclude claimant's expert opinion testimony?

**Overall Issues Discussed or Touched Upon in this Case:**

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**Held:**

First, the Court held that the expert was qualified through experience, training, and education as an expert in the field of accident reconstruction. The expert has been the President of a group that specializes in forensic traffic accident reconstruction consulting and special investigations. He has been in the field for 20 years. Moreover, claimant's expert has been accredited since 1993 as a traffic accident reconstructionist through the Accreditation Commission for Traffic Accident Reconstruction. BSNF sought to exclude the expert's proposed opinions to the extent they are directed to the standard of care applicable to railroad operations including when the BNSF crew should have seen the truck, should have sounded

the horn, and should have engaged emergency braking. Specifically, BSNF objected to the expert's opinion relating to railroad operations, concluding that the crew was "inattentive". As such, this Court found that the claimant's expert was not qualified to provide an opinion as to the duties of the train crew. However, the Court further explained that even if they did determine claimant's expert to provide an opinion about the duties of the crew would not be helpful to the jury. This Court found that they are based on the belief that the crew was under the duty to blow the horn when they could have reasonably seen the obstruction in the roadway. Accordingly, this Court granted BNSF's motion in limine and excluded claimant's expert testimony.

**Comments:**

Rule 702 of the Federal Rules of Evidence imposes a "gatekeeping" obligation on this Court to ensure that expert testimony is not admitted to trial unless it is relevant and reliable. The relevance of the testimony is weighed under Federal Rule of Evidence 403, which weighs the probative value (importance of the evidence) with the prejudicial effect (potential bias it may create). In examining expert testimony the Court must also determine whether (1) the testimony is based upon sufficient facts or data (2) it is the product of reliable principles and methods, and (3) the witness has applied the principles/methods reliably to the facts. Steve Gordon