

Case Name: Justin R. Belisle v. BNSF Railway Company

Date Decided: March 9th, 2010

Originally Filed in: Kansas ()

Decided by: Kansas District Court (Federal)

Court: U.S.D.C. D. Kansas

Judge: Judge Melgren

Citation: 2010 WL 898199 (D.Kan.)

Background:

Plaintiff, Belisle, was employed by BNSF as a brakeman for a train that was preparing to depart its yard. Belisle was assigned the task of preparing the end of the train for departure. This procedure included installation, arming, and testing of turbine powered end-of-train-device which attached to the last car on the train. While working on or near the train, another train passed by on an adjacent track. The train, passing at approximately 50mph, struck Belisle as it passed. Belisle brought this action against BNSF under the FELA, Federal Employers Liability Act, claiming that BNSF negligently failed to furnish him with a reasonably safe place to work, reasonably safe methods for work, and reasonably safe conditions for work. Belisle filed motions to Exclude Expert Opinion Testimony offered by BSNSF and BNSF filed a motion in Limine to exclude Belisle's expert testimony and a motion to Bifurcate.

Issue:

Did this Court grant Belisle's motions to exclude BNSF's expert testimony and BSNF's Motion to Bifurcate?

Overall Issues Discussed or Touched Upon in this Case:

- *Spoilation of Evidence*
- *Expert Witness- Daubert Issues*
- *Ruling on Summary Judgment*
- *Procedural Issues - Federal*

Held:

First, Belisle sought to exclude the opinion testimony of John Michael and John Parmalee. Belisle claimed that John Michael failed to provide testimony based on any first hand knowledge of Belisle or his treatment but seeks to testify on the availability of prosthetic devices after reviewing Belisle's medical records. Belisle argued that John was not properly identified as an expert in prosthetics. Moreover, Belisle sought to exclude John Parmalee's testimony, who testified about life care analysis and annuities. Belisle made the same argument with regards to John Michael: that he had no first hand information in the case. BNSF argued, however, that Belisle's motion to exclude these experts was premature because Belisle failed to depose either individual and they have yet to be identified as expert witnesses.

Specifically, BSNF claimed that Belisle has no idea what either expert may say and he is raising an evidentiary objection based merely on speculation. This Court did find, however, that Michael's testimony would be subject to rule 702, the evidentiary rule governing expert witnesses. This Court found that the testimony related to the prosthetics for this use, based on his review of Belisle's medical records, would necessarily be based on Michael's specialized knowledge of the particular prosthetic devices and because BSNF failed to identify him as an expert, this Court did not allow the testimony. ' Furthermore, BSNF failed to establish how Parmalee will testify on the subjects of life care analysis and annuities without basing his opinions on some form of specialized knowledge. Accordingly, this Court did not allow Parmalee's testimony. This Court also examined BSNF's Motion for Bifurcation, allowing separate trials for separate issues. BSNF argued that the issues are separable and would avoid unfair prejudice. BSNF contended that Belisle's injuries were readily apparent to the jurors and his presence in the courtroom will arouse considerable juror sympathy. BSNF contended that introduction of descriptions of Belisle's injuries could be introduced after liability is decided. Belisle contended that evidence of his injuries must be presented to show how the accident occurred, intertwining both liability and damages. This Court agreed with Belisle and decided to rule against bifurcating the trial.

Comments:

Bifurcation, pursuant to the federal rules of civil procedure 42(b), provides that "for convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues". The party seeking bifurcation has the burden of showing that separate trials are proper in light of the general principle that a single trial tends to lessen the delay, expense and inconvenience. **Steve Gordon**