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SKAMANIA COUNTY
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10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
12 **COUNTY OF SKAMANIA**

13 LANCE DOUGLAS BROOKS,

14 Plaintiff,

15 v.

16 BNSF RAILWAY COMPANY,

17 Defendant.

Case No.: 24-2-00019-30

Unlimited Jurisdiction

**COMPLAINT FOR DAMAGES
AND INJURIES**

JURY TRIAL DEMANDED

Damages in excess of \$100,000

1 Plaintiff Lance Douglas Brooks (“Plaintiff”), by and through his undersigned counsel,
2 hereby files the following complaint for damages and injuries (“Complaint”) against
3 Defendant BNSF Railway Company (“BNSF”).

4 **I. INTRODUCTION**

5 1. This Complaint arises from a catastrophic wildfire known as the “Tunnel 5
6 Fire” that was caused by BNSF’s train engine with a known propensity to cause fires and
7 lack of vegetation management on July 2, 2023.



17 **Photo credited: Jurgen Hess**

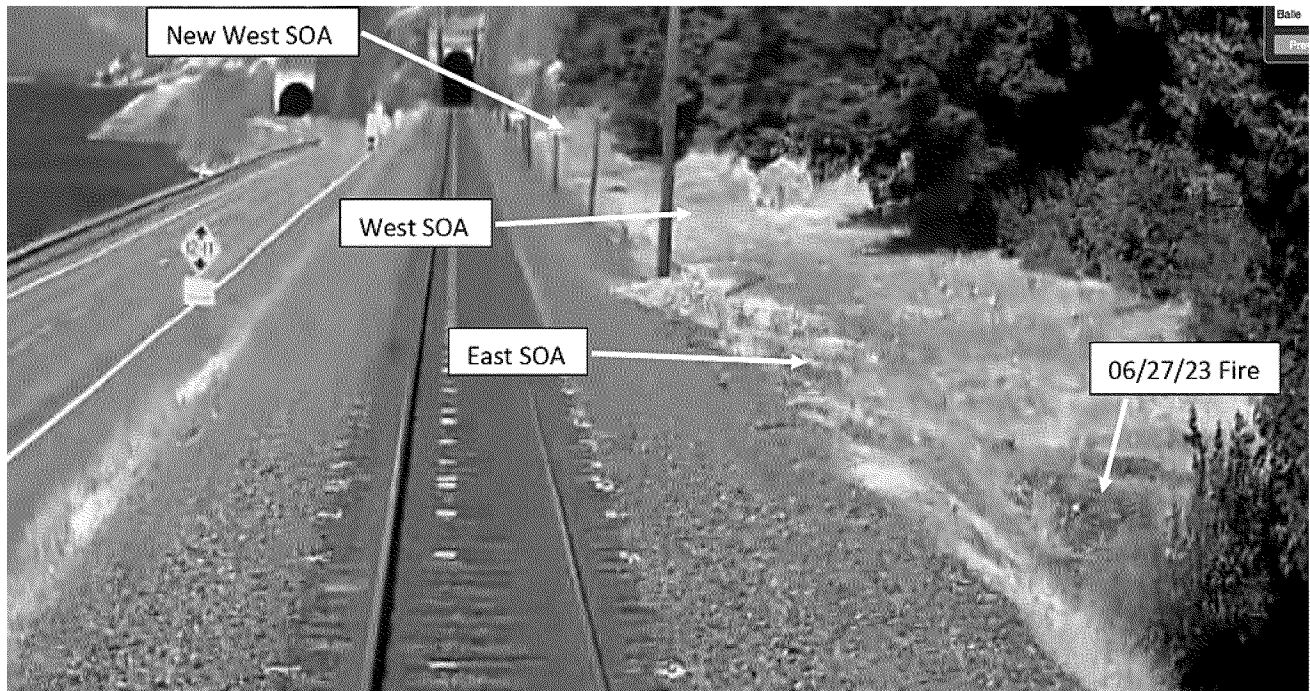
**The Tunnel 5 Fire near White Salmon. Photo
18 courtesy of Heather Tianen.**

19 2. The Tunnel 5 Fire started when BNSF operated a 46-year-old locomotive with
20 a non-turbocharged engine that emitted diesel carbon emissions and brake debris. This
21 then started a fire in three areas over an approximately 690-foot distance, all on the North
22 side of the tracks and East of Tunnel 5, causing sparks to contact surrounding vegetation.
23 The fire quickly spread displacing about 1,000 residents, including Plaintiff, destroying 10
24 homes, and burning over 500 acres. At least 40 fire engines, 256 firefighters and other
25 personnel, five helicopters, six dozers and 16 water tenders were employed to fight the fire.

26 3. Plaintiff now sues BNSF for damages and all other available remedies arising
27 from the harms caused by the Tunnel 5 Fire.



12 The BNSF train shortly before it ignited the Tunnel 5 fire. Washington DNR/Bryan Baller



24 This image was captured by an Amtrak train's forward-facing camera about two and a half
25 hours before the start of the Tunnel 5 Fire. A note in the bottom right corner indicates the area
26 where a small fire burned just days before the Tunnel 5 Fire caused by BNSF track
27 maintenance. (Photo: Wash. DNR)
28

1 **II. PARTIES**

2 **A. Plaintiff**

3 4. Plaintiff is an individual who is, at all times relevant to this pleading, was a
4 resident in Skamania County impacted by the Tunnel 5 Fire. Plaintiff was a renter of
5 residential property that was completely destroyed in the fire, along with his personal
6 property. Plaintiff was forced to evacuate and remained displaced until he found another
7 property to rent. The Tunnel 5 Fire injured Plaintiff personally, interfered with his
8 personal rights and interests in his property, and damaged his property as described
9 herein.

10 **B. Defendant**

11 5. Defendant BNSF is and was, at all times relevant to this pleading, a Delaware
12 corporation doing business in the State of Washington and specifically in Skamania
13 County. At all times relevant to this pleading, BNSF's business activities in Skamania
14 County include the operation of a railroad and the construction of, use, maintenance, and
15 ownership of railroad lines. BNSF acted as a common carrier to members of the public in
16 Washington, including residents of Skamania County, and was granted the power of
17 eminent domain. BNSF acted through its employees and agents.

18 **III. JURISDICTION & VENUE**

19 6. Venue is proper in Skamania County as the Tunnel 5 Fire ignited in
20 Skamania County and Plaintiff's property is located in Skamania County. Defendant was
21 operating its business and as a common carrier in Skamania County when it caused the
22 Tunnel 5 Fire. Defendant resided and/or conducted business in Skamania County at the
23 time it committed the acts and omissions that give rise to this Complaint.

24 7. The Superior Court of Skamania, as a court of general jurisdiction, has
25 subject-matter jurisdiction over this unlimited civil case, as well as personal jurisdiction
26 over the Defendant.

27 **IV. FACTS COMMON TO ALL CAUSES OF ACTION**

28 **A. Defendant has a duty to safely maintain and operate its railway.**

1 8. Defendant acts as a common carrier throughout western states, including
2 Washington. It owns, operates, maintains, and repairs railroads and a railway system
3 that transports supplies and provides transportation to residents, businesses, schools,
4 and industries in Washington, including in and around Skamania County.

5 9. Operating a railway is a matter of public concern. Defendant owes a duty to
6 operate its railway in a safe and prudent manner. The dangers and risks associated with
7 the operation of a railway in vegetated areas require Defendant to exercise an increased
8 level of care to protect the public and the communities in which its railway operates.
9 Moreover, Defendant has a level of expertise in the operation of a railway far beyond that
10 of a layperson and, as such, owes a heightened duty commensurate with this expertise.

11 10. Defendant has a duty to safely operate, monitor, maintain, and repair its
12 railway and tracks with the highest level of care to ensure that they do not cause fires.
13 This duty includes not operating an older non-turbocharged engine train known to start
14 fires and not operating a train engine or boiler without a spark arrester. Defendant's duty
15 also includes maintaining the track, the land, and vegetation around its tracks to ensure
16 that vegetation, objects, and structures will not ignite due to sparks, debris, emissions, or
17 other material caused by Defendant's operation of its railway.

18 **B. Defendant designed, constructed, used and maintained its railway in a**
19 **manner that would allow a fire to ignite.**

20 11. Defendant designed their railway to operate during all times of the year in
21 Washington to transport goods to the public.

22 12. Defendant designed, constructed, used, and maintained the train with a non-
23 turbocharged diesel burning engine that omitted oversized exhaust particles with a
24 propensity to start a fire. Defendant also designed, constructed, used, and maintained the
25 train wheels with lubrication pads that omitted sparks and hot scraps allowing a fire to
26 start. Defendant could have designed or used a train with a safer turbocharged engine that
27 did not omit exhaust particles likely to start a fire but failed to do so. Defendant's decision
28 was a cost-saving one that allowed older trains to remain operational despite their known
propensity to cause fires.

1 13. Defendant designed and constructed its tracks to go over, next to, and near
2 dry vegetation and trees that posed an increased risk of igniting should they come into
3 contact with sparks, debris, emissions, or other materials caused by operational trains.
4 Defendant could have designed its tracks to be covered, or further from dry vegetation, and
5 therefore less likely to ignite a fire, but failed to do so.

6 14. Defendant had a responsibility to maintain and continuously upkeep its
7 railway system, including trains and tracks, and to implement vegetation management
8 programs and protocols to ensure the safe transportation of goods to the public. It failed to
9 do so and allowed its railway system to age and deteriorate.

10 **C. Defendant knew about the extreme fire risks and what to do to prevent**
11 **wildfires during extreme weather conditions.**

12 15. In October 1991, dozens of fires, later dubbed Firestorm, destroyed more
13 than 110 homes and resulted in the death of a pregnant woman outside her car.

14 16. More than a decade later, in August 2005, 100 homes were destroyed in the
15 Blue Mountains when a Columbia Rural Electric Association line sparked against a
16 deadened tree and burned 52,000 acres.¹

17 17. In 2007, the Broughton Fire burned 200 acres and seven structures
18 (including five houses) in the precise location as the Tunnel 5 Fire. The Broughton Fire
19 was determined to have been caused by BNSF's grinding of nearby railroad tracks.

20 18. Since 2010, Washington, California, and Oregon have seen increasing and
21 destructive wildfire, with hundreds of thousands of acres burning each year. In 2020,
22 Washington was second only to California in the number of acres burned because of
23 human-caused wildfire.

24 19. In 2015, according to the Washington State Department of Resources
25 ("DNR"), BNSF's railway caused a catastrophic wildfire in Spokane County known as the
26 "Fish Lake Fire."

27 20. According to the DNR investigation of the Tunnel 5 Fire, sparks from a
28

¹ Chuck Thompson, The Columbian, *Investigation finds BNSF Railway at fault for Tunnel Five Fire (9/12/2023)*.

1 BNSF track grinding machine had started brush fires just east of the Tunnel 5 Fire five
2 and eight days earlier.²

3 21. Defendant also knew it was common practice among other railway operators
4 not to use older non-turbocharged engines in the area where the Tunnel 5 Fire ignited
5 during summer months due to their propensity to start fires. The type of train that
6 caused the fire was primarily limited to operating within train yards and depots.³

7 22. Thus, Defendant knew that its railway could cause fires and that
8 Washington was in a high wildfire risk area.

9 23. The Tunnel 5 Fire started in hot, dry, windy conditions that resulted in red
10 flag warnings for risk of the fire spreading. A combination of strong winds, low relative
11 humidity, and warm temperatures can contribute to extreme fire behavior. All of which
12 were present prior to and on July 2, 2023, in Skamania County, Washington.

13 24. On July 2, 2023, the dry windy conditions during the hot summer month
14 created the perfect environment for a single spark to rage into a catastrophic fire.

15 25. Accordingly, prior to and on July 2, 2023, Defendant knew about the
16 extreme threat of fires in Skamania. However, Defendant intentionally, willfully, and
17 with complete disregard for the safety of others, operated a known fire-prone locomotive
18 in an area with dry overgrown vegetation due to Defendant's lack of vegetation
19 management.

20 **D. Defendant's actions predictably and inevitably led to a fire igniting on July**
21 **2, 2023.**

22 26. Before July 2, 2023, Defendant knew that operating the non-turbocharged
23 fire prone train during summer months in and near Skamania County posed an extreme
24 fire risk. It also knew that wildfires are on average ten times larger than other types of
25 fires.

26 27. Defendant knew that the dry weather, high temperatures, high winds, and
27 extreme terrain, would result in a single spark causing a catastrophic uncontrollable

28 ² *Id.*

³ *Id.*

1 wildfire. Defendant also knew that if its railway started a fire, it would spread at a
2 critically fast rate to the Plaintiff's property. The Tunnel 5 Fire caused Plaintiff's entire
3 home to burn down along with Plaintiff's personal property. Plaintiff was forced to
4 evacuate.

5 28. Defendant also knew that its railway did not use available technologies and
6 safety equipment to mitigate fire risk, including a spark arrester, spark shields,
7 turbocharged engine, and spark resistant brake pads.

8 29. Despite this, Defendant knowingly operated a fire prone locomotive in a fire
9 prone area during a high fire threat.

10 30. The fire started as a result of sparks, hot debris, particles, emissions, and
11 other materials from Defendant's locomotive igniting the overgrown vegetation on and
12 next to Defendant's tracks.

13 31. As expected, the high temperatures in combination with winds gusting up to
14 20 miles per hour poured fire over the landscaping scorching hundreds of acres within
15 minutes. The fire started in a rural area of mountainous terrain causing a challenge for
16 the experienced firefighters. The fire was unstoppable, forcing firefighters to focus on
17 saving lives and initiating evacuations.

18 32. The Washington State Department of Natural Resources (D.N.R.) conducted
19 site visits and collected and are currently examining BNSF materials and debris, including
20 72 solid polymer pads and 2 possible carbon emission particles.

21 33. The Tunnel 5 Fire was caused by Defendant's locomotive and tracks. The
22 Tunnel 5 Fire occurred because: (1) Defendant's railway and locomotives were intended,
23 designed, and constructed to operate and transport goods to the public travelling in
24 vegetated areas; (2) Defendant negligently, recklessly, and wantonly failed to maintain and
25 operate its railway in a safe and prudent manner; (3) Defendant negligently, recklessly,
26 and wantonly failed to maintain the appropriate clearance area between the tracks and
27 surrounding vegetation; (4) Defendant's aging locomotive was intended, designed, and
28 constructed with poorly designed system with a propensity to ignite fires; (5) Defendant

1 failed to appropriately utilize fire safety equipment, including spark arresters or spark
2 shields; and (6) Defendant knew the surrounding vegetation was dry due to the severe
3 drought.

4 34. The conditions and circumstances surrounding the ignition of the Tunnel 5
5 Fire, including the nature and condition of Defendant's railway, low humidity, high
6 temperatures, strong winds, and tinder-like dry vegetation were foreseeable by any
7 reasonably prudent person and, therefore, were certainly foreseeable to Defendant, with
8 its special knowledge and expertise as a railway operator and common carrier.

9 35. The Tunnel 5 Fire caused Plaintiff to evacuate and be displaced from his
10 home. Plaintiff's home was destroyed, along with his personal belongings forcing Plaintiff
11 to find another rental. As a result, Plaintiff has suffered substantial harms, including:
12 damage to, destruction, and loss of personal property; out-of-pocket expenses directly and
13 proximately incurred as a result of the fire; alternative living expenses; evacuation
14 expenses; personal injuries; medical bills; lost wages; and annoyance, inconvenience,
15 disturbance, and loss of quiet enjoyment of property. The harms caused by the Defendant
16 are extensive and ongoing.

17 **V. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Inverse Condemnation**

20 **Washington Constitution Article 1, Section 16**

21 36. All previous paragraphs are incorporated into this cause of action.

22 37. Article 1, Section 16 of the Washington State Constitution states that no
23 private property shall be taken or damaged for public or private use without just
24 compensation having been first made.

25 38. On July 2, 2023, Plaintiff was the renter of property in the area of the Tunnel
26 5 Fire. Plaintiff's personal property was kept at his rental property.

27 39. Prior to and on July 2, 2023, Defendant had designed, constructed, installed,
28 operated, controlled, used, and/or maintained the railway, locomotive, and track within
BNSF's railway system for the purpose of transporting goods to the public. Thus, Defendant

1 operates as a common carrier.

2 40. On July 2, 2023, Defendant was aware of the inherent dangers and risks that
3 operating a fire prone locomotive in a fire prone area during summer months would ignite
4 a wildfire like the Tunnel 5 Fire.

5 41. Defendant is engaged in constructing, operating, and maintaining a railway.
6 RCW 80.32.060 gives Defendant the right and power of eminent domain. Thus, Defendant
7 has the power of condemnation.

8 42. Defendant intentionally undertook the actions and inactions described above,
9 including inadequately managing vegetation, improperly maintaining its equipment, using
10 equipment that was not firesafe during high-risk fire conditions, and operating a fire prone
11 locomotive during hot, dry, windy conditions.

12 43. Defendant acted knowingly and intentionally running its old locomotive when
13 there was a high fire risk operation such that Tunnel 5 Fire was a foreseeable and probable
14 outcome and in fact did cause the Tunnel 5 Fire, which damaged and destroyed personal
15 property belonging to Plaintiff. Defendant also interfered, and substantially interfered,
16 with the use, access, enjoyment, and value, of Plaintiff's personal property.

17 44. Thus, Defendant has taken property from Plaintiff without adequate or just
18 compensation.

19 45. The damage to Plaintiff, was the necessary, certain, predictable, and/or
20 inevitable result of Defendant's actions.

21 46. The damage to Plaintiff outweighs the risk and harm from the improvements
22 Defendant undertook to transport goods to the public.

23 47. Justice, fairness, and the law require that Defendant compensate Plaintiff for
24 the taking of his property in an amount to be proven at trial.

25 48. Plaintiff further seeks, pursuant to RCW 8.25.070, to recover all reasonable
26 costs, disbursements, and expenses, including reasonable attorney, appraisal, and other
27 fees, actually incurred because of this proceeding in the trial court and/or in any appellate
28 proceeding in which Plaintiff prevails on any issue.

1 inspections of BNSF tracks, locomotives, and railway;

2 f. Failing to promptly de-activate or de-commission older locomotives
3 with non-turbocharged diesel burning engines with a propensity to
4 cause fires;

5 g. Failing to properly train and supervise employees and agents
6 responsible for operation, maintenance, and inspection of
7 locomotives, tracks, and the railway system; and/or

8 h. Failing to implement and follow regulations and reasonably prudent
9 practices to avoid fire ignition.

10 53. Defendant's negligence was a substantial factor in causing Plaintiff to suffer
11 damages including, but not limited to, destruction of and damage to personal property and
12 cherished possessions, discomfort, evacuation damages, fear, emotional distress,
13 annoyance, inconvenience, and loss of quiet enjoyment. Plaintiff seeks damages to be
14 determined according to proof at trial.

15 **THIRD CAUSE OF ACTION**
16 **Trespass to Personal Property**

17 54. All previous paragraphs are incorporated into this cause of action.

18 55. On July 2, 2023, Plaintiff was a resident and owner of personal property in
19 the area of the Tunnel 5 Fire.

20 56. Defendant negligently and/or recklessly allowed the Tunnel 5 Fire to ignite
21 and/or spread out of control, which caused damage to Plaintiff's personal property.

22 57. Plaintiff did not grant permission for any fire, smoke, or ash to enter his
23 personal property.

24 58. This trespass was a substantial factor in causing Plaintiff to suffer damages
25 including, but not limited to, destruction of and damage to personal property and cherished
26 possessions, discomfort, annoyance, inconvenience, and loss of quiet enjoyment. Plaintiff
27 seeks damages to be determined, according to proof at trial.

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1 **FOURTH CAUSE OF ACTION**
2 **Nuisance**

3 59. All previous paragraphs are incorporated into this cause of action.

4 60. On July 2, 2023, Plaintiff was a tenant and owner of personal property in the
5 area of the Tunnel 5 Fire.

6 61. Defendant's actions and inactions violated RCW 7.48.120 and 7.48.150 by
7 creating a condition and/or permitting a condition to exist that was harmful to health;
8 offensive to the senses; an obstruction to the free use of property, so as to annoy and
9 endanger the comfortable enjoyment of life, property, health and safety; unlawfully
10 obstructed the free passage or use, in the customary manner, of public streets and
11 highways; and a completely predictable fire hazard.

12 62. These conditions interfered with Plaintiff's quiet enjoyment of his home and
13 personal property causing him to evacuate.

14 63. These conditions also affected a substantial number of people at the same
15 time.

16 64. At no time did Plaintiff consent to Defendant's actions and inactions in
17 creating these conditions.

18 65. An ordinary person would be reasonably annoyed and disturbed by
19 Defendant's actions and inactions in creating these conditions.

20 66. Defendant's actions and inactions in creating these conditions were a
21 substantial factor in causing Plaintiff to suffer damages including, but not limited to,
22 destruction of and damage to personal property and cherished possessions, discomfort,
23 annoyance, inconvenience, loss of quiet enjoyment. Plaintiff seeks damages to be
24 determined according to proof at trial.

25 67. The seriousness of the harm Defendant caused Plaintiff outweighs any public
26 benefit that Defendant may provide.

27 **FIFTH CAUSE OF ACTION**
28 **Negligent Infliction of Emotional Distress**

68. All previous paragraphs are incorporated into this cause of action.

- 1 and/or lost personal property;
- 2 ii. Loss of the use, benefit, goodwill, and enjoyment of Plaintiff's
- 3 personal property;
- 4 iii. Loss of wages, earning capacity and/or business profits and/or any
- 5 related displacement expenses;
- 6 iv. Prejudgment interest from July 2, 2023;
- 7 v. Pursuant to RCW 8.25.070 and all other applicable law, all
- 8 reasonable costs, disbursements, and expenses, including
- 9 reasonable attorney, appraisal, and other fees, actually incurred
- 10 because of this proceeding in the trial court and/or in any appellate
- 11 proceeding in which Plaintiff prevails on any issue; and
- 12 vi. Such other and further relief as the Court shall deem proper, all
- 13 according to proof.

14 b. For all other claims:

- 15 i. General and/or special damages determined on an individual basis
- 16 according to proof;
- 17 ii. Loss of the use, benefit, goodwill, and enjoyment of Plaintiff's
- 18 personal property;
- 19 iii. Loss of wages, earning capacity, goodwill, and/or business profits or
- 20 proceeds and/or any related displacement expenses;
- 21 iv. Evacuation expenses and alternate living expenses;
- 22 v. Attorneys' fees, expert fees, consultant fees, and litigation costs and
- 23 expense, as allowed under any and all applicable law;
- 24 vi. Prejudgment interest from July 2, 2023; and
- 25 vii. Any and all other and further such relief as the Court shall deem
- 26 proper, all according to proof.

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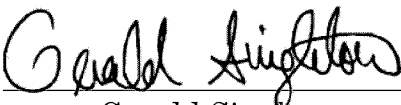
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VII. JURY TRIAL DEMAND

Plaintiff hereby respectfully requests that this Court provide them with a jury trial on all causes of action for which a jury trial is available under the law. Plaintiff's damages are in excess of \$100,000.

SINGLETON SCHREIBER, LLP

Dated: January 29, 2024

By: 
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