

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Type of Case: Personal Injury - FELA

Scott Kowalewski,

Court File No. 27-CV-17-145

Plaintiff,

ORDER

v.

BNSF Railway Company,
A Delaware corporation,

Defendant.

The above-entitled matter came before the Honorable Amy Dawson, on April 6, 2018, in Hennepin County, Minnesota, pursuant to the Court's March 2, 2018 Order to Show Cause. Dan Hawes, Esq., and Patrick Sweeney, Esq., appeared on behalf of Defendant BNSF Railway Company ("BNSF"). Paula Jossart, Esq., appeared on behalf of Plaintiff Scott Kowalewski ("Kowalewski"). Barry O'Neil, Esq., and Michelle Keihl, Esq., appeared on behalf of Patrick Sweeney ("Sweeney").

Having reviewed the files, records, and proceedings herein, along with the submissions of counsel for the parties and Sweeney, the Court makes the following:

Findings of Fact, Conclusions of Law, and Order

1. Plaintiff has sought sanctions pursuant to Rule 37 of the Minnesota Rules of Civil Procedure and the Court's inherent authority, as well as a contempt finding.
2. Minnesota Courts are vested with "considerable inherent judicial authority necessary to their 'vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws.'" *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995).

3. “The task of determining what, if any, sanction is to be imposed is implicated by the broad authority provided the trial court.” *Id.* at 119.
4. Plaintiff’s attorneys worked on a contingency fee basis. Plaintiff’s attorneys submitted Affidavits of Paula Jossart, Joseph Sayler, and Amy Powell, enumerating estimates of the number of hours spent working on liability and causation matters in the above-captioned matter as a result of Defendant’s misconduct. This misconduct is outlined in the Court’s February 5, 2018 Order. After assigning reasonable hourly rates to the work performed by these three individuals, Plaintiff’s attorneys have submitted a reasonable hourly attorney fee award estimate of \$1,153,507.50.
5. Upon review of Plaintiff’s counsel’s attorney’s fees estimates, the Court finds them to be reasonable, credible, not speculative, and finds that \$1,153,507.50 in attorneys’ fees were incurred as a direct result of Defendant’s misconduct.
6. Plaintiff’s counsel asserts that a total of \$126,193.76 in case costs and expenses were incurred in the above-captioned matter. It asserts that \$89,649.25 of these costs and expenses were necessitated by Defendant’s misconduct and are largely attributable to expert witness fees necessitated by Defendant’s misconduct.
7. The Court finds the Plaintiff incurred \$89,649.25 in costs and expenses as a direct result of Defendant’s misconduct.
8. In addition, as a result of Defendant’s misconduct, Plaintiff’s injury was likely exacerbated and the monetary recovery process was slowed down. Plaintiff’s course of treatment and prognosis was detrimentally changed because of Defendant’s misconduct. If the Defendant had not engaged in misconduct, including: failing “to inspect and preserve” the 11 hydrocarbon cars that were humped on Track 14 on the date of his exposure; refusing to comply with the Court’s September 13, 2017 Order Granting Plaintiff’s Motion to Compel production of the 11 hydrocarbon cars for inspection at the Northtown yard; failing to preserve “shipping papers and documents concerning the exact contents of the 11 hydrocarbon cars;” failing to “preserve or produce video and audio of the scene/exposure;” and failing to obey the Court’s October 13, 2017 Order Granting Plaintiff’s Motion to Compel by “not producing the BNSF Claims Manual in place on the day of the accident,” among other discovery abuses, then Plaintiff would have been able to recover compensation at least three years earlier. Plaintiff would have been able to begin a lawsuit earlier and would have been collecting post-judgment interest for at least three years.
9. Minnesota’s post-judgment interest rate for a judgment or award over \$50,000 is ten percent per year until paid. Minn. Stat. § 549.09, subd. 1(b)(2).
10. At trial, the jury returned a verdict of \$15,343,573.00. Plaintiff’s injuries occurred on January 19, 2014. Plaintiff initiated the present case on January 5, 2017, after nearly three years of compensation for his injuries being delayed by Defendants. Three years’ worth

of post-judgment interest on \$15,343,573.00 at ten percent per annum results in a total of \$4,603,125.90.

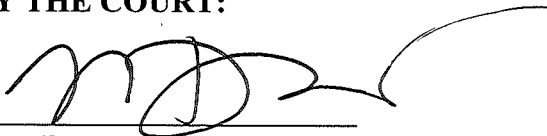
11. As a sanction for its misconduct, the Court orders Defendant to pay attorney's fees of \$1,153,507.50, as well as costs and expenses of \$89,649.25, to Plaintiff. The Court imposes additional financial sanctions of \$4,600,000.00 in post-judgment interest lost by Plaintiff as a result of the three-year delay caused by Defendant's misconduct.
12. The Court declines to grant Plaintiff's request for an additional settlement conference, but encourages the parties to engage in settlement discussions.
13. The Court declines to find Sweeney or Sweeney Law Firm, P.A. in contempt of Court.
14. BNSF's Demand for Criminal Procedures is **DENIED**.

LET JUDGMENT BE ENTERED IMMEDIATELY.

Dated:

June 27, 2018

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Amy Dawson', written over a horizontal line.

Amy Dawson
Judge of District Court