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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

ALLSTATE INSURANCE COMPANY, as
subrogee of various insureds; et al.,

Plaintiffs,

v.

CONWAY CONSTRUCTION COMPANY,
an Oregon corporation; and RAINIER
STEEL, INC., a Washington corporation;
and STATE OF WASHINGTON,
DEPARTMENT OF TRANSPORTATION,

Defendants.

UNIONVILLE RANCH, LLC, a
Washington limited liability company; et al.,

Plaintiffs,

v.

CONWAY CONSTRUCTION COMPANY,
an Oregon corporation; and RAINIER
STEEL, INC., a Washington corporation;
and THE STATE OF WASHINGTON,

Defendants.

SWAUK VALLEY RANCH, LLC, a

PRIMARY CASE CAUSE
NO. 13-2-28819-2 KNT

TRIAL PLAN

CONSOLIDATED CAUSE
NO. 13-2-21326-5 SEA

CONSOLIDATED CAUSE
NO. 13-2-40762-1 KNT

1 Washington limited liability company,

2 Plaintiff,

3 v.

4 CONWAY CONSTRUCTION COMPANY,
5 an Oregon corporation; and RAINIER
6 STEEL, INC., a Washington corporation,

7 Defendants.

CONSOLIDATED CAUSE
NO. 13-2-27675-5 KNT

8 ELAINE F. WISE, an individual; et al.,

9 Plaintiffs,

10 v.

11 CONWAY CONSTRUCTION COMPANY,
12 an Oregon corporation; and RAINIER
13 STEEL, INC., a Washington corporation,

14 Defendants.

CONSOLIDATED CAUSE
NO. 13-2-36485-9 KNT

15 STATE OF WASHINGTON,
16 DEPARTMENT OF NATURAL
17 RESOURCES, a state government agency,

18 Plaintiff,

19 v.

20 CONWAY CONSTRUCTION COMPANY,
21 an Oregon corporation; and RAINIER
22 STEEL, INC., a Washington corporation,

23 Defendants.

24 CONSOLIDATED CAUSE
25 NO. 14-2-01803-7 KNT

26 UNITED SERVICES AUTOMOBILE

1 ASSOCIATION, as subrogee for various
insureds; et al.,

2 Plaintiffs,

3 v.

4 CONWAY CONSTRUCTION COMPANY,
5 an Oregon corporation; and RAINIER
STEEL, INC., a Washington corporation,

6 Defendants.

CONSOLIDATED CAUSE
NO. 14-2-01798-7 KNT

8 AIG PROPERTY CASUALTY
9 COMPANY, formerly known as CHARTIS
PROPERTY CASUALTY COMPANY, as
10 subrogee of various insureds; et al.,

11 Plaintiffs,

12 v.

13 CONWAY CONSTRUCTION COMPANY,
14 an Oregon corporation; and RAINIER
STEEL, INC., a Washington corporation;
15 and STATE OF WASHINGTON,
DEPARTMENT OF TRANSPORTATION,

16 Defendants.

CONSOLIDATED CAUSE
NO. 14-2-01791-0 KNT

18 FARMERS INSURANCE COMPANY OF
19 WASHINGTON, as subrogee of various
insureds; et al.,

20 Plaintiffs,

21 v.

22 CONWAY CONSTRUCTION COMPANY,
23 an Oregon corporation; and RAINIER
STEEL, INC., a Washington corporation;
24 and STATE OF WASHINGTON,
DEPARTMENT OF TRANSPORTATION,

25 Defendants.

1 **I. JURY SELECTION MATTERS**

2 A. **Size of Venire:** 150 prospective jurors

3 B. **Questionnaire:** The parties shall submit an agreed proposed questionnaire by
4 August 10, 2015. The questionnaire shall be no longer than two pages.

5 C. **Length of voir dire:** The maximum length of voir dire shall be two days, with
6 all plaintiffs, on one hand, and all defendants, on the other hand, evenly sharing
7 whatever times remains after the Court completes its voir dire.

8 D. **Number of peremptory challenges:**

9 1. Plaintiffs: ten (10) total

10 2. Defendants: ten (10) total

11 a. Conway: two (2) peremptory challenges

12 b. Rainier: two (2) peremptory challenges

13 c. WSDOT: two (2) peremptory challenges

14 d. Shared: four (4) peremptory challenges (majority vote among
15 three defendants to use)

16 E. **Number of jurors selected:** Fifteen (15) with the Court to identify the three
17 (3) alternates at the close of the case.

18 **II. DIVISION OF RESPONSIBILITY AMONG COUNSEL**

19 A. **Lead Counsel Selection.**

20 1. Plaintiffs' Trial Committee

21 a. Andrew Biviano (Wise)

22 b. Jim Breitenbucher (Puget Sound Energy)

23 c. Bryan Campbell (Allstate)

24 d. Craig Evezich (Farmers/Met Life)

25 e. Michael Helgren (Unionville)

26 f. Todd Henry (Swauk Valley)

- 1 g. Rod Nelson (Hoover)
- 2 h. Mike Rollinger (Washington Department of Natural Resources
- 3 (DNR))

4 The Plaintiffs' Trial Committee will assign specific trial responsibilities to specific attorneys to
5 ensure an efficient and effective presentation of all the plaintiffs' cases (with disagreements not
6 affecting the ability of DNR to effectively try its case resolved by a majority vote of Plaintiffs'
7 Trial Committee). The Court recognizes the concerns raised by the non DNR Plaintiffs about
8 two State agencies -- DNR and WSDOT -- being on opposite sides of this case. Counsel for
9 DNR is therefore prohibited from disclosing any discussions and decisions of the Plaintiffs'
10 Trial Committee to anyone without prior permission of the Court. Absent extenuating
11 circumstances that will be reported to the Court, each member of the Plaintiffs' Trial
12 Committee is expected to be in court for all phases of the trial.

13 2. Defendants' Lead Counsel

- 14 a. Conway Construction: Francis Floyd and Sean Moore
- 15 b. Rainier Steel: Grant Lingg and Scott Samuelson
- 16 c. WSDOT: Andrew Bohrsen and Randy Gimple

17 Defendants' Lead Counsel will assign specific trial responsibilities to specific attorneys to
18 ensure an efficient presentation of the defendants' cases. Absent extenuating circumstances
19 that will be reported to the Court, Defendants' Lead Counsel are expected to be in court for all
20 phases of the trial.

21 **B. Trial Activities.**

- 22 1. Pretrial Motions: Any party may submit pretrial motions, and there is
23 no restriction on the number of parties who may do so. The parties are
24 encouraged to submit consolidated pretrial motions whenever possible to
25 limit the burden on the Court and to avoid wasting time on duplicative
26 motions.

1 2. Opening Statements:

2 a. The plaintiffs shall be limited to ninety (90) minutes, with ten
3 (10) minutes allocated to DNR and allocation of the remaining
4 time among the plaintiffs to be decided by the Plaintiffs' Trial
5 Committee.

6 b. The defendants shall be limited to ninety (90) minutes, with the
7 allocation of time evenly decided between the defendants.

8 3. Examination of witnesses, objections, and number per witness:

9 a. Because the plaintiffs have common interests in many matters
10 but also have additional, differing interests, the Court should
11 anticipate and permit examination and cross examination of
12 witnesses sufficient to fairly frame the issues. It is suggested the
13 Court should routinely permit cross examination of all witnesses
14 by counsel for each defendant and in most instances by not more
15 than counsel for three plaintiffs. If any particular plaintiff can
16 demonstrate a differing interest such that there is a need for
17 additional questioning, that party should be allowed to conduct
18 additional questioning to the extent necessary to address that
19 particular plaintiff's specific interest. The Court will not permit
20 duplicative questions.

21 b. The attorneys responsible for examination of the witness will
22 also make any objections he or she believes appropriate
23 regarding that witness and will conduct any cross examination of
24 the witness.

25 4. Closing arguments:

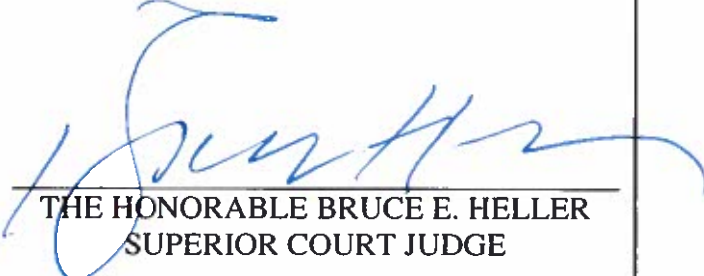
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a. The plaintiffs shall be limited to two (2) hours, with no more than fifteen (15) minutes allocated to DNR and allocation of the remaining time among the plaintiffs to be decided by the Plaintiffs' Trial Committee.

b. The defendants shall be limited to two (2) hours, with the allocation of time evenly decided between the defendants.

5. Jury Instructions: Each side shall submit a single unified set of plaintiffs' proposed instructions and a single unified set of defendants' instructions in addition to the instructions on which all parties agree. Any party may also submit supplemental proposed instructions that are not duplicative of the proposed instructions submitted on behalf of either the plaintiffs' side or the defendants' side.

Dated this 13th day of Aug., 2015.



THE HONORABLE BRUCE E. HELLER
SUPERIOR COURT JUDGE