

# **OREGON TRIAL LAWYERS ASSOCIATION**

**319 SW Washington Street, #607**

**Portland, OR 97204**

**[www.oregontriallawyers.org](http://www.oregontriallawyers.org)**

**503-799-1017**

**Testimony of Arthur Towers and Paul Bovarnick  
Before the Joint Ways and Means Committee on Public Safety  
In Opposition to HB 2131A with the –A10 amendment  
June 27, 2017**

Thank you for the opportunity to testify today. OTLA members fight for safety and for victims of serious injuries and abuse. We seek to hold wrongdoers accountable for their negligence and bad acts when they cause injuries to others. We recognize that preventing catastrophes is the best way to keep Oregonians safe. We applaud the intent of HB 2131, but believe that small changes could substantially strengthen the bill.

We find the language at the bottom of page 1 and top of page 2 of the amendment problematic because it denies access to information to injured Oregonians. The same holds true for the language at the bottom of page 3 and top of page 4. In the next catastrophe, if people are seriously injured or die because of the negligence of the railroad, they should have access to information they need to prove the wrongdoing.

Under the –A10s, the public and private victims of poor spill response planning and poor execution of the plan would not have access to the contingency plans. They would have no way of comparing the actions a railroad took during a disaster with the steps that the railroad pledged to follow.

There are many problems with limiting public disclosure of the Hazardous Spill Emergency Response Plan. First, the agencies tasked with creating reviewing these plans can't know how to effectively respond if they can't reveal the plans to affected property owners, nor can those affected parties plan themselves. Secondly, DOJ can't see the plans, nor can the lawyers for affected public entities

and private citizens. So if individuals or the broader public are injured because either the plan itself was flawed, or it was poorly executed, they will effectively be without recourse of any sort.

But perhaps more importantly, the planning cannot be effective if the planners don't have information that only the public can provide. Unless you allow the public to be part of the planning, the planning will almost certainly reflect a lack of needed information. So you not only deny the planners the tools they need to make a successful plan, you deny the public the means to seek redress when the plan is either flawed or poorly executed. And the only beneficiary of that will be the railroads themselves.

We are also mystified why the bill would deny legislators access to plans. As you make future decisions about rail safety, this information would be very valuable in your deliberations. It would be important to understand how the contingency plans relied on internal railroad resources and how much the plans left to publicly funded responders. Perhaps the language in Section 2, subsection 9 (b) on page 2 would address this, but it is unclear.

In one of Mr. Bovarnick's cases, a train caught fire in the gorge. The action taken by the railroad was to have the engineer call 911. The local volunteer fire department determined that they could not reach the burning train, and begged the engineer to move it to a crossing where they could reach it. He did, and was seriously injured in the process. Fortunately, the volunteers included a railroad conductor, who determined that the source of the fire was a locomotive, which he was able to disable, though not before several acres had burned. Had the volunteer firefighter with those specialized skills not been present, thousands of gallons of fuel might have ended up in the Columbia and many more acres burned.

And just last month, one of Mr. Bovarnick's clients was dragged about 40 yards by a malfunctioning safety device, suffering fractures to his spine. Once again, the railroad's contingency plan was to call 911. Only this time, the railroad would not clear crossings to allow an ambulance to come to their injured employee's aid.

Injured Oregonians could be protected if the last sentence of Section 2 (6) on page 2 of the amendment was re-written to allow access to this information through judicial orders and subpoenas. The same change should be made in Section 9 (9) on page 3-4 of the amendment.

Allowing the public access to this both before and after a disaster makes it far more likely that the plans will actually work. Allowing public access to the plans also means that there will be much greater incentive to make these plans effective. Hiding these plans from the public means that their flaws will be concealed until it is too late. Hiding these plans from the public as this bill does also will deprive the victims of poor planning and execution of any remedy. That is not only unfair but leaves the injured individuals and business to bear the cost of the negligence of the railroads

We urge you to postpone action on this bill until these changes can be made.