

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

JEANYNE JAMES, ROBIN COLBERT,)	Case No. 20CV33885
JANE DREVO, SAM DREVO, BROOKE)	
EDGE AND BILL EDGE, SR., LORI)	
FOWLER, IRIS HAMPTON, JAMES)	
HOLLAND, RACHELLE MCMASTER,)	ORDER GRANTING, IN PART, ENTRY
KRISTINA MONTOYA, NORTHWEST)	OF CASE MANAGEMENT ORDER NO. 10
RIVER GUIDES, LLC, SHARIENE)	
STOCKTON AND KEVIN STOCKTON,)	
VICTOR PALFREYMAN,)	
PALFREYMAN FAMILY TRUST, and)	
DUANCE BRUNN, individual and on)	
behalf of all others similarly situated,)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
PACIFICORP, an Oregon Corporation;)	
and PACIFIC POWER, an Oregon)	
registered electric utility and assumed)	
business name of PACIFICORP,)	
)	
)	
Defendants.)	

The matters before the court are plaintiffs’ and defendants’ competing Motions for Entry of Case Management Order No. 10. The court held a hearing on August 29, 2024. Attorney Nicholas Rosinia appeared on behalf of plaintiffs. Attorney Alison Plessman appeared on behalf of defendants. On September 5, 2025, the parties submitted competing protocols and criteria for selection of bellwether absent Class Members. The court considered the pleadings, briefs, declarations, and arguments submitted to the court. For the reasons argued by the parties, plaintiffs’ and defendants’ competing Motions for Entry of Case Management Order No. 10 are GRANTED in part, and DENIED in part.

The Court adopts the Case Management Order 10, attached as **Exhibit A** to this Order. If any deadlines or due dates are on days in which the court is closed in observance of legal holidays, then the deadline or due date will be the preceding business day.

I. Pre-trial conference dates for Damages Trial Nos 3, 4, and 5.

The following pre-trial conference dates are ordered in this case:

- Damages Trial No. 3 – the pretrial conference hearing date is scheduled for: January 24, 2025 at 9:00 a.m. to 11:00 a.m., in-person.
- Damages Trial No. 4 – the pretrial conference hearing date is scheduled for: March 21, 2025 at 9:00 a.m. to 11:00 a.m., in-person.
- Damages Trial No. 5 – the pretrial conference hearing date is scheduled for: April 18, 2025 at 9:00 a.m. to 11:00 a.m., in-person.

II. Absent Class Member Selections and Assignments for Damages Trial Nos 3, 4, and 5.

In accordance with Case Management Order No 10, paragraphs 5(c) and 5(d), the seven absent Class Members randomly selected by the Court for Bellwether Damages Trials Nos 3, 4, and 5 are assigned to the following trials as follows:

- Damages Trial No. 3 – 1. Michael Sellers (Trial List no1285), 2. Lisa Dillingham (Trial List no 378), 3. Gregory J Denton (Trial List no 366), 4. Fawn Weaver (Trial List no 1466), 5. DDD’s LLC (Trial List no 353), 6. Judith Coates (Trial List no 275), 7. Misti Rooney (Trail List no 1125).
- Damages Trial No. 4 – 1. Bette Carter Living Trust (Trial List no 121), 2. Ronald Wick (Trial List no 1502), 3. Justin Hall (Trial List no 604), 4. Michele Lowry Pfohl (Trial List no 1129), 5. Junina Stinson (Trial List no 1352), 6. Richard Braham (Trial List no 152), 7. Darin Chase (Trial List no 241).
- Damages Trial No. 5 – 1. Cheryl Lonergan, Personal Representative (“PR”), Estate of Darrell Huber (Trial List no 251), 2. Randall Tinney, PR of the Estate of Elaine Tinney (Trial List no 1183), 3. Jackson Hall (Trial List no 602), 4. Jacob Jensen (Trial List no 738), 5. Shannon Shinn (Trial List no 1298), 6. Warren Mock (Trial List no 1007), 7. Robert Rumprik, PR of the Estate of Ramona Rumprik (Trial List no 1216).

III. Status conferences for Absent Class Member Selections and Assignments for Damages Trial Nos 6-11 and absent Class Members for trials in 2026.

The following status conference dates are ordered in this case for selection and assignment of absent Class Members for Damages Trial Nos 6-11 and absent Class Members for trials in 2026:

- Friday, November 1, 2024 at 8:30 a.m. via WebEx – selection and assignment of Class Members for Damages Trials 6, 7, and 8.
- Friday, February 28, 2025 at 8:30 a.m. via WebEx – selection and assignment of Class Members for Damages Trials 9, 10, and 11.
- Friday, August 15, 2025 at 8:30 a.m. via WebEx – selection and assignment of absent Class Members for trial in 2026.

IV. Deadlines, due dates, and timelines for Damages Trial No 3.

For Damages Trial No 3, the following timelines, due dates, and timelines will apply:

A. Discovery deadlines.

- Monday, October 7, 2024 – Plaintiffs must identify any availability conflicts and exclusions of minors for the seven (7) randomly selected plaintiffs and identify the three (3) priority plaintiffs for Damages Trial No 3.
- Wednesday, October 9, 2024 – Plaintiffs must submit the final trial slate for Damages Trial No 3.
- Monday, October 14, 2024 – Plaintiff’s must file Amended Short-Form Complaints for each of the ten (10) absent Class Members in Damages Trial No 3, consistent with the court’s rulings on PacifiCorp’s pending Motion to Make More Definite and Certain.
- Monday, October 21, 2024 – Defendants’ must file Short-Form Answers for the ten (10) absent Class Members in Damages Trial No 3.
- Monday, November 4, 2024 – The parties must complete initial document production.
- Monday, November 4, 2024 – The parties must disclose the names and, if known, addresses and telephone numbers of all persons, other than expert witnesses, likely to have knowledge, that the party may use to support their claims or defenses, unless the use would be solely for impeachment.
- Monday, November 4, 2024 – The parties must produce all insurance documents.
- Monday, November 14, 2024 – The parties may issue new document requests, without leave of court.
- Thursday, November 21, 2024 – The parties must provide written responses to any new document requests.
- Monday, December 2, 2024 – The parties shall complete document production in response to new document requests.

- Monday, November 18, 2024 – The parties may issue Requests for Admissions, without leave of court.
- Friday, December 6, 2024 – The parties must provide written responses to Request for Admissions.
- Tuesday, November 5, 2024 – Defendants’ may request property inspections, without leave of court.
- Friday, December 6, 2024 – Defendants must complete property inspections.
- Friday, December 13, 2024 – The parties must complete plaintiffs’ depositions including any perpetuation depositions.
- Friday, January 3, 2025 – The parties must complete all depositions.
- Tuesday, November 5, 2024 – Defendants may request ORCP 44 Exams, without leave of court.
- Friday, December 13, 2024 – Defendants must complete plaintiffs’ ORCP 44 Exams.
- **Friday, January 3, 2025 – Discovery Cutoff.**
- Friday, December 20, 2024 – The parties must file motions for summary judgment.
- Friday, January 3, 2025 – The parties must file response to motions for summary judgment.
- Tuesday, January 21, 2025 – Defendants must file any Motions to Offset.

A. Deadlines for trial materials.

- Monday, January 6, 2025 – The parties must file the joint neutral statement of the case, jury instructions, and verdict form.
- Monday, January 6, 2025 – The parties must file any motions *in limine*.
- Monday, January 13, 2025 – The parties must file responses to any motions *in limine*.
- Monday, January 6, 2025 – The parties must exchange any deposition designations.
- Monday, January 13, 2025 – The parties must exchange any objections to deposition designations and any counter-designations.
- Tuesday, January 21, 2025 – The parties must exchange responses or rebuttals to deposition designations.
- Monday, January 13, 2025 – The parties must file their trial exhibits.
- Tuesday, January 21, 2025 – The parties must file any objections to trial exhibits.
- Tuesday, January 21, 2025 – The parties shall exchange any proposed stipulations of facts that they believe are relevant but are not in dispute and confer regarding proposed stipulations.
- Thursday, January 23, 2024 – The parties must file any stipulations.
- Thursday, January 23, 2024 – The parties must file their trial exhibit lists.
- Thursday, January 23, 2024 – The parties must file their (fact) witness list.
- Thursday, January 23, 2024 – The parties must file any deposition designations and identify the basis for admissibility of the deposition as substantive evidence.

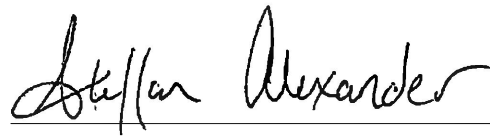
Any deadline in this Order may be extended upon good cause shown and with the Court's consent.

The parties shall confer on all motions, oppositions, and objections including, but not limited to motions *in limine*. Failure to confer may result in denial of a motion, opposition, or objection or forestall consideration of the same. "Conferring" means to talk in person or on the phone. See UTCR 5.010; see Multnomah County Motion Panel Statement, Sec IV (explaining that "[g]enerally, sending a text message or email is not considered conferring.").

V. Status conference dates for Damages Trial No 3.

The following status conference dates are ordered in this case for Damages Trial No 3:

- Friday, November 8, 2024 at 8:30 a.m. via WebEx.
- Friday, December 6, 2024 at 8:30 a.m. via WebEx.
- Friday January 3, 2025 at 8:30 a.m. via WebEx.



Circuit Court Judge Steffan Alexander

10/2/2024 3:22:35 PM

Case Management Order No. 10

The Court adopts the following Case Management Order No. 10 for Phase II Damages Trials nos. 3-11, pursuant to ORS 1.010(3) and (5), ORS 1.171(2)-(4), ORS 1.175(2), ORCP 1 B, ORCP 32 E, ORCP 36 B and C, ORCP 46 B, UTCR 7.020(5), UTCR 7.030(4), and the Court's inherent authority.

1. **Purpose and Scope:** The purpose of this Case Management Order (“Order”) is to create a process for administering and adjudicating the individual claims of Class Members in *James, et al. v. PacifiCorp, et al.* (20cv33885) who seek to have their damages determined during the bifurcated second phase of this action (referred to herein as “absent Class Members”) arising from the Labor Day 2020 fires. This Order supersedes and replaces all prior case management orders to the extent its provisions are inconsistent with or overlap in whole or in part with a prior case management order. Any deadline in this Order may be extended upon good cause shown and with the Court’s consent.¹ In addition, the timelines and deadlines in this Order do not apply to Damages Trial No 3, which will be governed by the timelines, due dates, and deadlines in the Order Granting, in part, Entry of Case Management Order No 10.
2. **Plaintiff Short-Form Complaints:** Plaintiffs shall file an amended Short-Form Complaint consistent with the Court’s rulings on PacifiCorp’s pending Motion to Make More Definite and Certain, within **180 days** before the first day of trial.
3. **Short-Form Answers:** Defendants will submit answers to each plaintiff’s damages complaint **170 days** before the first day of trial.
4. **Amended Pleadings:** Parties may amend a pleading without leave of court within **20 days** after it is served. Any response to an amended pleading is due within **10 days** of service of the amended pleading. Other than the deadlines expressly set forth in the foregoing, nothing in this paragraph modifies the application of ORCP 23 and Oregon rules governing pleadings.
5. **Bellwether Trials Selection Process:**
 - a. **Number of absent Class Members Selected Per Trial:** Damages Trials Nos. 3-11 shall each include ten (10) absent Class Members. The Class Members selected for trial shall present their individual damages consistent with the Parties’ *Stipulation Regarding Phase II Spousal and/or Other Family Members’ Damages*, entered on January 2, 2024. Should multiple members of the same household be randomly selected for inclusion in a damages trial, those households members shall each proceed to trial.
 - b. **Inclusion of Need-Based Plaintiffs:** Lead Counsel shall select three (3) absent Class Members to participate in each trial. Those Class Members shall be selected by Lead Counsel on the basis of need using the following criteria: (i) the Class Member is of advanced age, specifically seventy (70) years of age or older,

and/or (ii) the Class Member is suffering from sickness or illness that may impede their ability to participate in a later trial.

- c. **Random Selection Process:** The remaining seven (7) absent Class Members shall be randomly selected by the Court and/or the Court's designee from among the pool of absent Class Members who have filed short-form complaints in the *James* action. The random selection shall be performed by the Court according to its random selection tools or, alternatively, through the use of a random selection generator.
 - d. **Determining Trial Slates:** To select the absent Class Members who will participate in Damages Trials 3-11, for each Class Member randomly selected in accordance with paragraph 5.c, the Court will assign them to the first available trial date setting in the order of their selection. Within **5 days** of selection, for trials 3, 4, and 5, Lead Counsel shall confer with the Class Members selected and identify for PacifiCorp and the court any conflicts that would impede a chosen Class Member from participating in a specific trial – as well as, at that time, identify the Need-Based Plaintiffs selected by Lead Counsel. Within **7 days** of selection, the parties shall thereafter present the final trial slates to the Court or, absent agreement, Lead Counsel shall approach the court to address any scheduling conflicts or qualification issues related to the Need-Based Plaintiffs that remain. The Parties and Court shall thereafter repeat this process for Damages Trials Nos 6, 7, and 8 on **Friday, November 1, 2024**, and Damages Trials Nos. 9, 10, and 11 on **Friday, February 28, 2025**. On **Friday, August 15, 2025**, the Parties and Court shall hold a status conference related to administration, selection, and trial settings for absent Class Members' claims in 2026.
 - e. **Exclusion of Minors:** If a minor Class Member is randomly selected for trial, the Court shall disregard the selection and randomly select a different absent Class Member.
6. **Bellwether Discovery Process:** Each bellwether discovery cycle shall last 180 days counting backwards from the first day of trial. The below discovery schedule shall apply to each bellwether trial.
- a. **Disclosure of Witnesses:** Disclose the names and, if known, addresses and telephone numbers of all persons, other than expert witnesses, likely to have knowledge, that the party may use to support their claims or defenses, unless the use would be solely for impeachment. *See eg* UTCR 5.150 (3)(a)(i).
 - b. **Document Discovery:** Defendant's First Set of Requests for Production to All Individual Plaintiffs (September 13, 2024), and Plaintiffs' responses and objections shall be applicable to each absent Class Member who will participate in Damages Trials 3-11. The Court's orders relating to discovery in Phase II, Trials 1 and 2, shall apply to all individual plaintiffs, including any identified in

future complaints. Absent Class Members for a bellwether trial shall make complete document productions in response to Defendants' First Set of Requests for Production to All Individual Plaintiffs (September 13, 2024) by **150 days** prior to their trial. The parties may submit new document requests, without leave of court, up until **100 days** prior to the first day of trial, and between **100 days to 60 days** prior to the first day of trial only by written consent or by leave of court.

- c. **Deficiencies in Document Productions:** Defendants shall identify in writing any deficiencies or gaps in Plaintiffs' document production. Plaintiffs must supplement the document productions, if warranted, within **30 days**, subject to the Oregon rules governing production of documents.
- d. **Requests for Admission:** The Parties must make requests for admissions no later than 100 days prior to the first day of trial. Responses to requests for admissions shall be made within 30 days after service of the requests. Requests for admission will be governed by ORCP 45 and the Oregon rules governing discovery.
- d. **Depositions:** Depositions of bellwether Plaintiffs shall occur no later than **60 days** prior to the first day of trial. Depositions are limited to seven hours on the record. Extensions of time may be requested for good cause on a case-by-case basis. *See* fn 1. A perpetuation deposition of an absent Class Member must be completed **40 days** before the first day of the absent Class Member's trial. All depositions shall be completed at least **30 days** before the first day of trial.
- e. **ORCP 44 Medical Examinations:** Defendants must request any medical examinations for absent class members no later than **90 days** prior to the first day of trial. Examinations must occur no later than **45 days** prior to the first day of trial. Each party will produce medical examination reports within **30 days** of the completion of the medical examination or no later than **14 days** prior to the first day of trial, whichever is later. Other than the timing provisions in this paragraph, the same parameters laid out in the Court's March 7, 2023 Order shall apply.
- f. **Property Inspections:** Defendants must request real property inspections no later than **90 days** prior to the first day of trial. Property inspections shall be governed by ORCP 43. Property inspections shall occur no later than **45 days** prior to the first day of trial.
- g. **Discovery Disputes:** Any disputes that arise during the discovery process shall be resolved in summary fashion. The parties shall first meet and confer to resolve their disagreement. If they are unable to resolve their disagreement, they shall jointly approach the Court for relief within **3 days** after the completion of the conferral. The parties shall jointly submit a statement of their respective positions, not to exceed three double-spaced pages per side. There shall be no responses or replies unless ordered by the Court.

- h. **Discovery Deadline:** All discovery shall be completed at least **30 days** before the first day of trial. All discovery deadlines may be extended for good cause. *See* fn 1. An absent Class Member's failure to timely comply with a discovery obligation may result in removal from their assigned trial slate and/or substitution of the next randomly selected absent Class Member rather than postponement of an entire trial slate.
- i. **Motions for Summary Judgment:** Any party moving for summary judgment on an issue not addressed by the Court's prior ruling on an earlier summary judgment motion must do so no later than **43 days** prior to the first day of trial. Response briefs will be due **33 days** before the first day of trial. There will be no reply briefs.
- j. **Offset Information and Motions:** Plaintiffs shall request full insurance claims files from their insurers and produce those insurance documents to PacifiCorp no later than **120 days** prior to the first day of trial. PacifiCorp shall file a motion to offset economic damages **30 days** prior to the first day of trial. The response to the motion is due **7 days** after the verdict is received. The reply is due **5 days** later. This timeline is dependent on PacifiCorp receiving timely and complete insurance documentation from Plaintiffs. The motion and response shall not exceed five pages. The reply shall not exceed three pages. The parties' prior arguments and objections in connection with offset in Phase I and Phase II, Trials 1 and 2, are restated in each bellwether trial.

7. **Bellwether Trial Process:**

- a. **Neutral Statement of the Case, Jury Instructions, and Verdict Form:** The parties will use the same neutral statement, jury instructions and verdict form that were used in Phase II, Trial 2, subject to modifications to account for the specific plaintiffs, fires, and damages at issue. The neutral statement, jury instructions and verdict form will be due no later than **30 days** prior to the first day of trial.
- b. **Motions *In Limine*:** Motions *in limine* are due **30 days** prior to the first day of trial. Oppositions to motions *in limine* are due **15 days** prior to the first day of trial. Motions *in limine* must be limited to specific evidentiary issues not previously raised and resolved by the Court's prior rulings on Omnibus Motions *in Limine* for Phase I and Phase II, Trials 1 and 2.
- c. **Deposition Designations:** The parties must exchange deposition designations no later than **28 days** prior to the first day of trial. Parties must exchange objections and counter-designations to deposition designations no later than **21 days** prior to the first day of trial. Parties must exchange responses or rebuttal designations no later than **14 days** before the first day of trial. Parties must file deposition designations **10 days** before the first day of trial and *identify the basis for admissibility of the deposition designations as substantive evidence.*

- d. **Trial Exhibits:** The parties must exchange trial exhibit lists and stamped copies of all trial exhibits no later than **21 days** prior to the first day of trial. Objections to exhibits are due **14 days** prior to the first day of trial. Exhibit lists must be filed **10 days** prior to the first day of trial. If no objection is specified to a proffered exhibit, the exhibit shall be preadmitted if offered into evidence and received by the court.
- e. **Stipulations:** The parties shall exchange any proposed stipulations of facts that they believe are relevant but are not in dispute no later than **14 days** prior to the first day of trial and confer regarding proposed stipulations. In conferring, counsel shall notify opposing counsel of any objections to or disagreements with a proposed stipulated fact and specify the basis for any objection. Stipulations must be filed **10 days** prior to the first day of trial.
- f. **Witness List:** The parties will file their respective witness lists (other than expert witnesses) **10 days** before the first day of trial.
- f. **Testifying Expert Materials:** The file of a testifying expert must be turned over to the opposing party by 5:00 p.m. **2 days** before the expert is expected to testify. The file should include (1) the expert's current curriculum vitae; (2) materials the expert considered or relied upon in forming the expert's opinion; and (3) any demonstrative the expert intends to use. Parties must also provide an unredacted version of any exhibit that includes the expert's opinions or conclusions by 8:30 a.m. on the morning of the day the expert is expected to testify.
- g. **Pretrial Conference:** The Court will hold a pretrial conference **7 days** before the start of trial or subject to the court's availability based on other trial assignments.
- h. **12-Person Jury:** Each trial shall be presented before a 12-person jury.
- i. **Trial Time Allocation:** The schedule for each trial shall be:
- Day 1: Jury Selection and Opening Statements
 - Day 2: Plaintiffs' Case
 - Day 3: Plaintiffs' Case
 - Day 4: Plaintiffs' Case (.5 days); Defense Case (.5 days)
 - Day 5: Defense Case
 - Day 6: Plaintiff's Rebuttal Case (.5 days) and Closing Statements
 - Day 7: Jury Deliberations
8. **Conferral:** The parties shall confer on all motions, oppositions, and objections including, but not limited to motions *in limine*. Failure to confer may result in denial of a motion, opposition, or objection or forestall consideration of the same. "Conferring" means to talk in person or on the phone. *See* UTCR 5.010; *see* Multnomah County Motion Panel Statement, Sec IV (explaining that "[g]enerally, sending a text message or email is not considered conferring.").

9. **Mandatory Post-Trial Global Mediation:** Within **10 days** after the verdict is rendered in Damages Trial No 5, and within **30 days** after the verdict is rendered in Damages Trials Nos 8 and 11, respectively, the parties are required to engage in global mediation with the objective of resolving the claims of the remaining absent class members. Each trial attorney and party or representative of a corporation or insurance company who has full authority to settle and compromise the litigation shall appear in-person at the mediation. However, the court may permit telephone appearances for good cause. *See* SLR 6.012(3).

ⁱ *See ORCP 36 C* (stating that “[o]n motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: that the discovery not be had; that the discovery may be had only on specified terms and conditions”); *see also Bala v. Oregon Health & Sci. Univ.*, 2023 WL 3561449, at *1–2 (D. Or. May 14, 2023) (explaining that once the district court issues a scheduling order under Rule 16, the case “schedule may be modified only for good cause and with the judge’s consent.” * * * [d]istrict courts consider the following six factors when ruling on a motion to amend a Rule 16 scheduling order to reopen discovery: (1) whether trial is imminent, (2) whether the request is opposed, (3) whether the non-moving party would be prejudiced, (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and (6) the likelihood that the discovery will lead to relevant evidence.”); *see also District of Oregon, Local Rules of Civil Practice* (“LR”) 16.3(a) (providing that a party seeking to amend any court-imposed deadline must: (1) show good cause why the deadlines should be modified, (2) show effective prior use of time, (3) recommend a new date for the deadline in question, and (4) show the impact of the proposed extension on other existing deadlines, settings, or schedules.