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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

5 JEANYNE JAMES, ROBIN COLBERT, JANE  
6 DREVO, SAM DREVO, BROOKE EDGE  
7 AND BILL EDGE, SR., LORI FOWLER, IRIS  
8 HAMPTON, JAMES HOLLAND, RACHELLE  
9 MCMASTER, KRISTINA MONTOYA,  
10 NORTHWEST RIVER GUIDES, LLC,  
11 SHARIENE STOCKTON AND KEVIN  
12 STOCKTON, VICTOR PALFREYMAN,  
13 PALFREYMAN FAMILY TRUST, AND  
14 DUANE BRUNN, individually and on behalf  
15 of all others similarly situated,

16 Plaintiffs,

17 v.

18 PACIFICORP, an Oregon corporation; and  
19 PACIFIC POWER, an Oregon registered  
20 electric utility and assumed business name of  
21 PACIFICORP,

22 Defendants.

23 SHYLO SALTER, *et al.*,

24 Plaintiffs,

25 v.

26 PACIFICORP, *et al.*,

Defendants.

AMY ALLEN, *et al.*,

Plaintiffs,

v.

PACIFICORP, *et al.*,

Defendants.

Case No. 20CV33885 (Lead Case) ✓

PLAINTIFFS' MOTION TO ENTER CASE  
MANAGEMENT ORDER 10

**ORAL ARGUMENT REQUESTED**

**EXPEDITED CONSIDERATION  
REQUESTED**

Case Assigned to: Hon. Steffan Alexander

Case No. 21CV33595 (Related Case)

Case No. 20CV37430 (Related Case)

PLAINTIFFS' MOTION TO ENTER CASE MANAGEMENT ORDER 10

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1 21<sup>ST</sup> CENTURY CENTENNIAL INSURANCE  
COMPANY, *et al.*,

2 Plaintiffs,

3 v.

4 PACIFICORP, *et al.*,

5 Defendants.

Case No. 22CV26326 (Related Case)

6 ALLSTATE VEHICLE AND PROPERTY  
7 INSURANCE COMPANY, *et al.*,

8 Plaintiffs,

9 v.

10 PACIFICORP, *et al.*,

11 Defendants.

Case No. 22CV29976 (Related Case)

12 MICHAEL BELL, *et al.*,

13 Plaintiffs,

14 v.

15 PACIFICORP, *et al.*,

16 Defendants.

Case No. 22CV30450 (Related Case)

17 FRERES TIMBER, INC., *et al.*,

18 Plaintiffs,

19 v.

20 PACIFICORP, *et al.*,

21 Defendants.

Case No. 22CV29694 (Related Case)

23 MARGARET DIETRICH, *et al.*,

24 Plaintiffs,

25 v.

26 PACIFICORP, *et al.*,

Defendants.

Case No. 22CV29187 (Related Case)

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SUSAN CADY, *et al.*,  
Plaintiffs,  
v.  
PACIFICORP, *et al.*,  
Defendants.

Case No. 22CV13946 (Related Case)

CLIFFORD LOGAN, *et al.*,  
Plaintiffs,  
v.  
PACIFICORP, *et al.*,  
Defendants.

Case No. 22CV29859 (Related Case)

C.W. SPECIALTY LUMBER, *et al.*,  
Plaintiffs,  
v.  
PACIFICORP, *et al.*,  
Defendants.

Case No. 22CV41640 (Related Case)

**PLAINTIFFS' MOTION TO ENTER CASE MANAGEMENT ORDER 10**

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1 **UTCR 5.010 AND 5.050(1) STATEMENT**

2 The parties conferred by email regarding this motion and were unable to reach  
3 agreement. Plaintiffs request oral argument, with the Parties appearing in person, and estimate  
4 argument will take approximately 1 hour.

5 **EXPEDITED CONSIDERATION REQUESTED**

6 Pursuant to SLR 5.015(3), Plaintiffs request expedited consideration and argument on  
7 this motion at the earliest date the Court is available.

8 **I. INTRODUCTION**

9 Over the past six months, the Parties have engaged in extensive mediation—including  
10 multiple in-person mediation sessions—with Eric English of Resolution Strategies LLP. Lead  
11 Counsel and the mediator made extensive efforts to reach a global resolution. But the mediation  
12 has now ended without settlement.

13 The failure of the mediation is not surprising in light of PacifiCorp’s public positions  
14 concerning this case. PacifiCorp has repeatedly stated that it will resolve claims for economic  
15 damages, but not noneconomic damages. Earlier this month, Berkshire Hathaway’s Greg Abel, in  
16 front of a live-streamed audience of Berkshire Hathaway shareholders, explained PacifiCorp’s  
17 views that “there’s legislature [sic] and case law in Oregon that says wildfire non-economic  
18 damages should not be awarded,” that “all the litigation will be challenged” because parts are  
19 “unfounded,” and—most tellingly—that this litigation “will take many years to be resolved, as  
20 Warren [Buffett] highlighted in” Berkshire Hathaway’s 2023 Annual Report.<sup>1</sup>

21 Lead Counsel urge the Court to contact the mediator, Mr. English, to determine the extent  
22 to which Berkshire Hathaway’s views about Oregon law and its predictions about this Court’s  
23 ability to drive cases to verdict have prevented PacifiCorp from reaching a mediated settlement.  
24 Lead Counsel waive the mediation privilege for the sole purpose of communications between the  
25

26  

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<sup>1</sup> See Ex. 1 to the Declaration of Cody Berne (“Berne Decl.”), Tr. of May 4, 2024, Meeting of the Shareholders of Berkshire Hathaway at 26, 29.

1 Court and Mr. English regarding the Parties’ settlement positions and decisions and invite  
2 PacifiCorp to do the same.

3 In any event, it is now clear that for the thousands of survivors of PacifiCorp’s Labor Day  
4 fires, a litigated resolution—rather than a mediated one—will be required. More than 1,350  
5 survivors recently filed their own short-form complaints, and Lead Counsel expect many more  
6 claims to be filed over the coming weeks and months. Those claims come from survivors who,  
7 more than three years after the fires, need relief now. Many remain displaced, after having lost  
8 everything. Others are elderly or are facing life-threatening ailments. Still others have died since  
9 the fires, leaving only their estate to pursue justice against PacifiCorp.

10 The Court’s mechanism for driving these fire victims’ claims to resolution must emphasize  
11 expediency. To that end, and building upon the lessons learned from the first two damages trials,  
12 Lead Counsel now seek entry of Case Management Order #10 (“CMO 10”). Berne Decl. Ex. 3  
13 (Lead Counsel’s Proposed CMO 10). Through CMO 10, Lead Counsel propose the creation of a  
14 special-purpose wildfire docket designed to resolve at least 50 class members’ claims for damages  
15 each month moving forward. CMO 10 is fair, achievable, and necessary. Through entry of CMO  
16 10, this Court can swiftly bring resolution to the thousands of Oregonians harmed by PacifiCorp’s  
17 fires. The Court should grant this motion.

## 18 II. ARGUMENT

### 19 A. Despite the Parties’ Best Efforts, Mediation Has Concluded Without a Global 20 Resolution.

21 Following the Phase II trials, CMO 8 directed the parties to establish a mediation protocol  
22 that would address the remaining absent class members’ claims. (*See* CMO 8 ¶ 5.i.) As a result,  
23 the Parties jointly engaged an Oregon mediator, Eric English, to help them explore a global  
24 resolution for all absent class members. For the past six months, the Parties engaged in a  
25 continuous mediation in hopes of reaching such a resolution, which included three in-person  
26 sessions. Unfortunately, as of this past Monday, May 27, those mediation efforts have

1 formally concluded without a settlement.

2 In parallel, Berkshire Hathaway hosted its annual shareholder meeting in Omaha, Neb., on  
3 May 4, 2024. During that meeting, Warren Buffett and Greg Abel, Chairman of Berkshire  
4 Hathaway Energy, answered questions live in front of a large audience of shareholders. The topic  
5 of PacifiCorp and its 2020 wildfire liabilities was one of the first subjects raised. In response, Mr.  
6 Abel explained that:

7 And when I think of PacifiCorp, we're in a place where first and foremost, all the  
8 litigation will be challenged because the basis for it at least we believe there's  
9 places where it's unfounded and we'll continue to challenge it. And it will take  
many years to be resolved as Warren highlighted in the letter.

10 Berne Decl. Ex. 1 at 26:14-20. Mr. Abel then clarified Berkshire Hathaway's primary rationale:

11 So if you go back to the wildfires we have in Oregon and the claims you're hearing  
12 filed for there's economic damages associated with them. And those harms should  
13 receive the economic damages associated with that. *But unfortunately, and even*  
14 *though there's legislature and case law in Oregon that says wildfire, non-economic*  
*damages should not be awarded.* There's very substantial non-economic damages  
being awarded there.

15 *Id.* at 28:25-29:8 (emphasis added). Mr. Abel did not mention the Court's repeated rulings  
16 since 2022, nor the long line of Oregon caselaw, confirming the availability of non-  
17 economic damages. Just last year, the Oregon Supreme Court cited approvingly to long-  
18 established Oregon case law allowing for the recovery of non-economic damages for the  
19 invasion of individuals' interests in the use and enjoyment of their land. *Moody v. Oregon*  
20 *Cnty. Credit Union*, 371 Or 772, 786, 542 P3d 24 (2023) (citing *Macca v. Gen. Tel. Co.*  
21 *of Nw.*, 262 Or 414, 419, 495 P2d 1193 (1972)).

22 As a result of Berkshire's refusal to accept Oregon law, and the Parties' now-concluded  
23 mediation, a litigated resolution will unfortunately be necessary for the thousands of Oregonians  
24 harmed by PacifiCorp's Labor Day 2020 fires.

1 **B. The Court Should Establish a Special-Purpose Wildfire Docket Through Which To**  
2 **Determine Each Class Member’s Damages.**

3 As before, PacifiCorp continues to assert its right to trial by jury for the determination of  
4 each class member’s damages. Berne Decl. ¶ 5. It is therefore necessary to devise a process through  
5 which such trials can occur while simultaneously expediting the determination of damages. CMO  
6 10 would establish a special-purpose wildfire docket that, in broad strokes, provides:

- 7 • A trial process through which up to five consolidated damages trials for collectively  
8 50 absent class members would occur each month;
- 9 • An assignment system through which a rotation of judges within the Circuit Court  
10 for the County of Multnomah would preside over those trials;<sup>2</sup>
- 11 • The use of the Parties’ already-agreed short-form complaints and answers to  
12 expedite the Parties’ pleadings; and
- 13 • The use of this Court’s prior orders and evidentiary rulings to establish uniform,  
14 streamlined written and oral discovery, as well as uniform trial documents—  
15 including neutral statements, motions *in limine*, jury instructions, and verdict forms.

16 Through this process, this Court can adjudicate up to 600 claims per year—and resolve all  
17 absent class members’ claims for damages in a few years.

18 **C. The Court has the Power to Establish a Specialized Docket.**

19 Numerous statutes and rules permit entry of CMO 10. This Court has the inherent power  
20 to manage its docket and caseload. *See Landis v. North Am. Co.*, 299 US 248, 254 (1936) (noting  
21 that every trial court has the “inherent power” to “control the disposition of the causes on its  
22 docket” considering the “economy of time and effort for itself, for counsel, and for litigants”).  
23 State and local rules further provide the power to establish a specialized and expedited docket. *See*  
24 ORS 1.171(2)-(4) (Presiding judge; powers and duties), ORS 1.175(2) (Priority on court dockets);  
25 ORCP 1 B (“These rules shall be construed to secure the just, speedy, and inexpensive  
26 determination of every action.”); ORCP 32 E, ORCP 36 B-C (allowing court to limit scope of  
discovery); ORCP 46 B (discovery sanctions); UTCR 7.020(5) (trial date one year from filing

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<sup>2</sup> Including Plan B judges but excluding *pro tem* judges and referees.

1 unless good cause shown); and UTCR 7.030(4) (trial date two years from filing in complex cases  
2 unless good cause shown).

3 Nor would this be a novel use of the Court's powers. In the early 2000s, for example,  
4 asbestos claims overwhelmed courts. In Multnomah County alone, there were hundreds of claims  
5 filed, which led to the creation of an asbestos specific docket. *See In Re: All Asbestos Exposure*  
6 *Cases Filed in Multnomah County*, No. 0003-0000B. The Presiding Judge at that time entered a  
7 series of general CMOs to manage the growing number of asbestos related cases. *See Berne Decl.*  
8 Ex. 2. Similar to CMO 10, the Presiding Judge also created a process by which trials would be set  
9 continuously throughout the year. *Id.*

10 **D. CMO 10 Honors the Parties' Due Process Rights.**

11 CMO 10 is also consistent with due process. Due process must balance the parties' interests  
12 and "is not a technical conception with a fixed content unrelated to time, place and circumstance."  
13 *Mathews v. Elridge*, 424 US 319, 334-335 (1976) (holding that due process determination requires  
14 the balancing of (1) "the private interest that will be affected by the official action," (2) the "risk  
15 of an erroneous deprivation," and (3) the "Government's interest, including the function involved  
16 and the fiscal and administrative burdens\* \* \*").

17 Here, the Court must balance PacifiCorp's demand for jury trials with the sheer number of  
18 people PacifiCorp harmed and the implications of further delay. CMO 10 would cause no unfair  
19 prejudice to PacifiCorp. It adheres closely to the structure and provisions of CMO 8, which  
20 established the now tested and proven process of expedited, consolidated trials. It also provides all  
21 the protections necessary to ensure a just and fair trial.

22 Beyond that, CMO 10 would accomplish for survivors what cannot occur absent a  
23 specialized docket. The sheer number of fire survivors renders it impossible to determine  
24 everyone's damages in their lifetime under any regular docket. Many Plaintiffs are elderly. For  
25 example, Lead Counsel estimates that nearly 20% of the class may be over 75 years of age, with a  
26 considerable number of class members well into their 80s and 90s. And just while this case has

1 been pending, some survivors have passed away—an inevitability that is sure to continue. Other  
2 survivors continue to be displaced after losing everything and lack the resources to rebuild their  
3 lives. Many more live every day with the trauma of losing everything. And all the survivors need  
4 resolution now.

5 Article I, section 10 of the Oregon Constitution provides that justice “shall be administered  
6 \* \* \* *completely and without delay*, and every [person] shall have remedy by due course of law[.]”  
7 *State ex rel. Oregonian Publ’g Co. v. Deiz*, 289 Or 277, 282, 613 P2d 23 (1980) (discussing  
8 constitutional protection of right to open administration of justice under the Oregon Constitution  
9 as more stringent than that offered by the Federal Bill of Rights); *Sch. Dist. No. 12 of Wasco Cty.*  
10 *v. Wasco Cty.*, 270 Or 622, 632, 529 P2d 386 (1974). CMO 10 provides the only available process  
11 that appropriately balances the Parties’ interests and offers a way forward to fulfill that promise.

12 **E. Resolution of Class Members’ Claims is Only Possible Through CMO 10.**

13 Ultimately, a specialized docket designed to expedite the determination of class members’  
14 damages is the only realistic path to resolve this litigation. Trials for just a few class members  
15 every few months, for example, would permit PacifiCorp to simply wait out class members who  
16 need relief now, deferring the cost of those liabilities. The same would be true for a years-long  
17 “bellwether” process, such as the one proposed by PacifiCorp prior to the entry of CMO 8. There  
18 are no more “data points” necessary to evaluate the class members’ claims, and PacifiCorp does  
19 not need any more information about the various types of claims and their value. Under either  
20 approach, justice will likely be foreclosed forever for many survivors. A specialized docket is  
21 necessary.

22 **F. This Court Should Separately Set a Trial for Bodily Injury Plaintiff Kathleen**  
23 **Becherer**

24 Relatedly, just as the Court directed prior to the first Phase II trial, proposed CMO 10 would  
25 exclude from its expedited and consolidated trial process claims involving serious personal injury.  
26 Lead Counsel are unaware of a material number of such claims. That said, one such claim, for

1 class member Kathleen Becherer, is presently awaiting a trial date. *See* Dec. 22, 2023 Order  
2 Rescheduling Plaintiff Mary Kathleen Becherer's Phase II Damages Trial. Contemporaneous with  
3 the entry of CMO 10, Plaintiffs also request the Court set a trial date for determination of Ms.  
4 Becherer's damages.

### 5 III. CONCLUSION

6 It is time to chart a course for the future of this litigation. For the reasons set forth above,  
7 this Court should enter CMO 10 and should separately set a trial date for determination of class  
8 member Kathleen Becherer's damages.

9 Dated this 31st day of May, 2024.

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PAGE 8 - PLAINTIFFS' MOTION TO ENTER CASE MANAGEMENT ORDER 10

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I hereby certify that I caused to be served a correct copy of the foregoing **PLAINTIFFS’ MOTION TO ENTER CASE MANAGEMENT ORDER 10** on the following named person(s) on the date and manner indicated below, addressed to said person(s) at the address of each shown below per UTCR 21.100 as follows:

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17 DATED this 31st day of May, 2024.

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