

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Rogers v. BNSF Railway Company, No. 1:19-cv-03083

If you are an individual who visited a BNSF Railway Company (“BNSF”) railyard in Illinois between April 4, 2014, and January 25, 2020, and provided your fingerprint for identification verification, a class action lawsuit may affect your rights.

*A federal court authorized this notice. **This is not a solicitation from a lawyer and is not notice of a lawsuit against you.***

*For more information, visit www.BNSFBIPAcclassaction.com.
Para una notificación en Espanol, visite www.BNSFBIPAcclassaction.com.*

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE A CLASS MEMBER IN A CLASS ACTION.

- A truck driver sued BNSF, alleging that it violated the Illinois Biometric Information Privacy Act (“BIPA”) by capturing his biometrics (fingerprints) for identification purposes when he visited BNSF’s railyards in Illinois to pick up and drop off loads of freight. BNSF denies such allegations BNSF denies that it violated BIPA.
- The Court has allowed the claims in this lawsuit to proceed as a class action on behalf of all individuals whose fingerprint information was registered using an Auto-Gate System at one of BNSF’s four Illinois intermodal facilities at any time between April 4, 2014, and January 25, 2020.
- The Court has not decided whether BNSF did anything wrong. There is not yet any money or relief available and no guarantee that there will be. However, your legal rights are affected, and you have a choice to make now.
- Your options are explained in this notice. **To ask to be excluded from this class action, you must act before August 29, 2022.**
- Class counsel must prove the claims against BNSF at an upcoming trial scheduled for September 19, 2022. If money or benefits are obtained from BNSF, you will be notified about how this relief will be distributed.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION

DO NOTHING	Stay in this class action. Await the outcome. By doing nothing, you will remain a member of the class. You will have the possibility of getting money or benefits that may come from a trial or a settlement. But you give up your right to sue BNSF separately about the same issues in this class action and will be bound by any judgment. If you stay in the class action, you will not be responsible for any legal fees or costs, although the trial court may award fees and costs to class counsel to be paid from any recovery from Defendant. <i>You do not need to do anything to stay in this class action.</i>
INTERVENE	Hire your own lawyer to represent you in this class action. If you wish to participate in the lawsuit through your own lawyer, you may do so. Your lawyer will need to enter an appearance in the lawsuit. You will be responsible for your own lawyer’s fees and costs.
ASK TO BE EXCLUDED	Get out of this class action. Get no benefits but keep your right to bring a separate lawsuit. If you ask to be excluded, you will <u>not</u> be able to share in any money or benefits that are later awarded. But you will keep any rights to sue BNSF separately about the same issues in this class action. If you choose to sue BNSF separately, you will be responsible for your own lawyer’s fees and costs.

*Issued pursuant to the June 11, 2022, Order of the Honorable Matthew F. Kennelly
(U.S. District Court, Northern Dist. of Illinois)*

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BASIC INFORMATION

1. Why did I get a notice?

Plaintiff's counsel has determined that you may be a member of a class action lawsuit. This notice explains that the Court has "certified" a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court holds a trial. The lawsuit is to decide whether the claims being made against BNSF on your behalf are correct. Judge Matthew F. Kennelly of the United States District Court for the Northern District of Illinois is overseeing this class action. The lawsuit is called *Rogers v. BNSF Railway Company*, Case No. 1:19-cv-03083.

2. What is this class action about?

This class action alleges BNSF captured, collected, received through trade, or otherwise obtained the biometrics of individuals who visited its Illinois facilities without receiving informed written consent from those individuals. Plaintiff, a truck driver, claims that BNSF required him to submit his fingerprint biometrics in order to gain access to BNSF's facilities in Illinois while he was delivering or picking up loads of freight. Plaintiff alleges that this practice of obtaining biometrics without informed written consent violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/et seq., and that Certified Class Members are entitled to recover statutory damages in the amount of \$1,000 per negligent violation in addition to other nonmonetary relief. BNSF denies these allegations.

3. What is a class action, and who is involved?

In a class action, one or more "plaintiffs," also called "class representatives" (in this case, Richard Rogers), sue on behalf of themselves and other people with similar claims. All the people with similar claims are together called the "class" or "class members." The company they sue (in this case, BNSF Railway Company) is called the "defendant." One court resolves the issues for all class members, except for those who exclude themselves from the class. A class action allows the claims of all class members to be more efficiently resolved than they would be in separate lawsuits and provides a remedy for class members whose individual damages are not large enough to justify their own separate lawsuits.

4. Why is this particular lawsuit a class action?

The Court decided that the claims in this case can be a class action and move toward a trial because this case meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that (a) there are more than enough people with similar claims, (b) there are legal questions and facts that are common to each of them, (c) Plaintiff's claims are typical of the claims of the rest of the class, (d) Plaintiff and the lawyers representing the class will fairly and adequately represent the class' interests, (e) common legal questions and facts will predominate over questions that affect only individuals, and (f) this class action will be more efficient than having many individual lawsuits.

More information about why the Court is allowing this lawsuit to be a class action is in the Court's order certifying the class, and the order of the appellate court affirming this order, available at www.BNSFBIPAClassAction.com.

THE CLAIMS IN THE CLASS ACTION

5. What is the lawsuit about?

In this lawsuit, Plaintiff has alleged that, when visiting BNSF's railyards in Illinois, he was required to submit his fingerprint biometrics in order to gain entrance to those facilities and drop off or pick up loads of freight. Plaintiff alleges that BNSF did not inform him or gain his informed written consent prior to capturing, collecting, receiving through trade, or otherwise obtaining his fingerprint biometrics. Plaintiff alleges that this practice of obtaining biometrics without informed written consent violated a law called the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/et seq., and that Certified Class Members are entitled to recover statutory damages in the amount of \$1,000 per negligent violation, in addition to other nonmonetary relief. More information on Plaintiff's allegations is available at www.BNSFBIPAClassAction.com.

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6. How does BNSF respond?

BNSF denies all of Plaintiff's allegations of wrongdoing and denies that it violated BIPA in any way. BNSF further disputes that this action satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and contends that this action should not proceed on behalf of a class. In addition, BNSF disputes that certain class members' claims can properly proceed in court and contends that such claims are barred by the statute of limitations for BIPA claims. More information on BNSF's responses to Plaintiff's allegations is available at www.BNSFBIPAClassAction.com.

7. Has the Court decided who is right?

No. The Court has not determined whether BNSF violated BIPA, nor has the Court determined what, if any, money or other relief is available to the class. By establishing the class and issuing this notice, the Court is not determining that Plaintiff will win or lose this case. Plaintiff must prove his claims at an upcoming trial. (See "The Trial" below on page 6.)

8. Is there any money available now?

No money or other benefits are available at this time. The Court has not yet decided whether BNSF did anything wrong. Further, the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how you may receive such benefits.

WHO IS IN THE CLASS?

9. Am I a part of this class?

Judge Kennelly has decided that the class includes:

All individuals whose fingerprint information was registered using an Auto-Gate System at one of BNSF's four Illinois facilities at any time between April 4, 2014, and January 25, 2020.

10. I'm still not sure if I'm part of this class.

If you received this notice via U.S. Mail, Plaintiff's counsel has determined that you are a member of the class. If you did not receive such a notice and are not sure whether you are included, you can get free help by calling, writing, or emailing the lawyers for the class at the contact information identified in question 14 below. (See "The Lawyers Representing You" below on page 5.)

YOUR RIGHTS AND OPTIONS

11. Do I have to do anything? What happens if I do nothing at all?

No, you do not have to do anything at all to stay in the class action, and staying in the class action is the only way to receive any potential money or other benefits from this case. If you do nothing, then you will automatically stay in the class action as a class member, and you will automatically be notified if you are entitled to receive any money or benefits from this case.

Keep in mind that if you stay in the class, regardless of whether Plaintiff wins or loses at trial, you will not be able to sue or continue to sue BNSF about the same issues that are the subject of this class action. You will also be legally bound by all orders the Court issues and judgments the Court makes in this class action, whether favorable or unfavorable to the class.

12. Why would I ask to be excluded?

If you exclude yourself from the class—which also means to remove yourself from the class, and is sometimes called “opting out” of the class—you won’t get any money or benefits from this lawsuit even if Plaintiff obtains them as a result of the trial between BNSF and Plaintiff. However, you may then be able to sue or continue to sue (at your own expense) BNSF regarding the claims at issue in this class action. If you exclude yourself, you will not be legally bound by the Court’s judgments in this class action.

If you start your own lawsuit against BNSF after you exclude yourself, you’ll have to hire and pay your own lawyer for the lawsuit, and you’ll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against BNSF, you should talk to your lawyer soon because your claims may soon be barred by a statute of limitations.

13. How can I ask to be excluded?

To ask to be excluded, you must send an “Exclusion Request” in the form of either a letter sent by U.S. Mail, an email stating that you want to be excluded from the BNSF BIPA class action,. Your Exclusion Request must include your complete name, address, email address, telephone number, and signature. Exclusion requests must be signed to be valid. If you choose to mail your Exclusion Request, send it to BNSF BIPA Class Action Lawsuit, P.O. Box 5803, Portland, OR 97228-5803. If you choose to email your Exclusion Request, email it to optout@BNSFBIPAClassAction.com. Exclusion Requests that are not postmarked, or emailed by **August 29, 2022**, will not be recognized.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in the case?

Yes, if you are a member of the class defined above and do not exclude yourself, you automatically have a lawyer representing you at no out-of-pocket cost to you. The Court has appointed lawyers that the Court has decided are qualified to represent you and all class members. These lawyers are called “class counsel” and are experienced in handling class actions and complex cases. The lawyers who have been appointed as class counsel are:

Myles McGuire
Evan M. Meyers
David Gerbie
Brendan Duffner
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More information about class counsel is available at www.McGPC.com.

15. Should I get my own lawyer?

You do not need to hire your own lawyer because class counsel is working on your behalf. However, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask them to appear in court for you in this case if you want someone other than class counsel to speak for you.

16. How will the lawyers be paid?

If class counsel recover money or benefits for the class, they may ask the Court for fees and expenses. You won’t have to pay these fees and expenses out of your own pocket. Rather, if the Court grants class counsel’s request, the fees and expenses would be either deducted from any money obtained for the class or paid separately by BNSF.

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THE TRIAL

17. How will the Court decide who is right?

The Court has scheduled a trial to decide who is right in this case. The trial will begin on **September 19, 2022**, if the case isn't resolved by a settlement or otherwise. Information about the date and location of the trial will be posted at www.BNSFBIPAClassAction.com.

If a trial goes forward, class counsel will have to prove Plaintiff's claims at a trial. During the trial, a jury will hear all the evidence to help them reach a decision about whether Plaintiff or BNSF is right about the claims in the lawsuit. There is no guarantee that Plaintiff will win or that they will get any money for the class.

18. Do I have to come to the trial?

You do not need to attend the trial. Class counsel will present the case for Plaintiff and the class members, and BNSF will present the defenses. The results of the trial will be posted at www.BNSFBIPAClassAction.com.

19. Will I get money or other relief after the trial?

If Plaintiff obtains money or benefits as a result of the trial or a settlement, you will be notified about how to obtain the money or benefits. We do not know how long this will take.

GETTING MORE INFORMATION

20. Are more details available?

Visit the website www.BNSFBIPAClassAction.com to find the Court's Order certifying the class, the Second Amended Complaint filed by Plaintiff, and BNSF's Answer to the Second Amended Complaint, among other documents. You may also speak to class counsel, whose contact information is listed below, free of charge.

Please do not contact the Court with questions about this case. The Court will not provide class members with legal advice or information about this case.

Please contact Class Counsel (listed below) if you have any questions about this notice.

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