THE YAEGER REPORT
A Newsletter for Friends and Clients of Yaeger, Jungbauer & Barczak, PLC

YJB SUMMER 2007

LAW OFFICES OF
YAEGER
JUNGBAUER &
BARCZAK, PLC

CASE 1
RR Worker Awarded $4,500,000

A jury in Minneapolis, Minnesota returned a verdict in the case of Steven Tennant v. Dakota, Minnesota & Eastern Railroad Company, ruling in favor of Plaintiff Steven Tennant of Helena, Montana in the amount of $4.5 Million. *"This is the largest FELA verdict in Minnesota History, and one of the largest, if not THE largest hand injury FELA verdicts in the entire nation,"* said Bill Jungbauer, President of the law firm of Yaeger, Jungbauer & Barczak of Minneapolis.

> "This is the largest FELA verdict in Minnesota History,"

Tennant was injured in the Rapid City, South Dakota railyard of the DM&E railroad. His right hand was crushed when he tried to push a board back onto a bulkhead flatcar. His hand slipped and was crushed as the wood load on the car shifted and pinched his hand.

> …his hand slipped and was crushed as the wood load on the car shifted…

The DM&E railroad claimed that Tennant violated its safety rules by getting on the wood car without using the ladder, by failing to anticipate that other

(continued on page 2)


The Mysterious Board

In This Issue:

YJB

RR Worker Awarded $4,500,000

(continued from page 1)

cars could roll into his track and by placing his hand into a dangerous area before it was crushed.

YJB lawyers Bill Jungbauer and Don Aldrich advised Tennant that the amount offered by the DM&E railroad was woefully inadequate and that he should go to go to trial. He did and was awarded $4,500,000 as follows:

- $328,572 for past pain, disability, disfigurement and emotional distress
- $170,000 for past wage loss
- $75,000 for past loss of fringe benefits
- $2,000 for past health care expenses
- $2,371,428 for future pain, disability, disfigurement and emotional distress
- $837,571 for future loss of earning capacity
- $253,000 for future loss of fringe benefits
- $475,000 for future health care expenses

Much of the case focused on the piece of wood that was hanging out from the bulkhead flat at the time of the accident. The railroad produced photos showing a piece of the board cut off and laying between the tracks (see photo on page 1). Tennant says he did not cut the board off. The railroad implied that Tennant was trying to take the board and broke it off at the time of the accident. No one ever explained how the board was cut from the car. The carman testified at trial that the board was not overhanging the car when he inspected the car after the accident. However, in cross examination Jungbauer got the carman to admit that he previously testified in the company investigation that the board was hanging over the car edge and that the carman had bad-ordered the car for that reason shortly after the accident. The bad-order tag and paperwork was missing at trial. That was it for the railroad.

The Tennants in Front of the Courthouse

"The jury did not accept the railroad's arguments," said attorney Bill Jungbauer, counsel for Tennant. *Juries are getting tired of corporate America refusing to live up to their responsibilities. If I could have asked for punitive damages, I would have,"* Jungbauer continued.

> "Juries are getting tired of corporate America refusing to live up to their responsibilities."

The Tennants thank the trial team which consisted of attorneys Bill Jungbauer, Don Aldrich and Karl Frisinger; Denny McGinley and Jack Leininger for investigations; Mary Jo Pickering, lead paralegal; and Julie Senske for secretarial support.

The case was tried before Judge George McGunnigle and a seven person jury in Hennepin Co. District Court. This verdict was Bill Jungbauer's fourth consecutive FELA trial result exceeding $1,000,000. YJB

"This is what unions do for their brothers and sisters... they tell the truth." STEVEN TENNANT

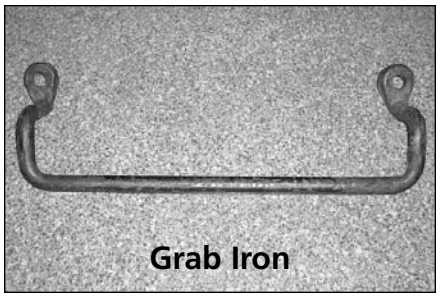
CASE 2

Glenn Ames vs. Union Pacific Railroad Company

Glenn Ames was three months shy of his 60th birthday when he suffered career-ending injuries. A grab iron suddenly broke, causing him to jump from a moving train in the Union Pacific's Nampa, Idaho rail yard. Veteran railroader Ames was able to land on his feet but the impact sent a shock wave through his lower back and body. Despite physical therapy and other rehabilitation modalities, his doctors concluded he could not return to the conductor job he loved and had performed for over 35 years.

> …a grab iron suddenly broke causing him to jump from a moving train…

Although this was an unwitnessed accident, the railroad, after depositions and other discovery, admitted its grab iron broke but denied any causative physical or other damages to Ames.



Grab Iron

Specifically, the railroad argued that any and all of his physical problems were related to long-standing degenerative disc disease, and that this incident was very minor because Ames did not fall to the ground nor did he suffer any immediate physical symptoms. The railroad relied on Ames' MRI to support its position that all his problems were related to pre-existing conditions.

The railroad further argued that Mr. Ames had told one of its managers that he was planning to retire at age 60 and that, even if they found the incident caused Ames' injury, he should only recover economic damages for the three months he was off until his 60th birthday. Despite the railroad's self-serving argument, the evidence showed that Ames wanted nothing more than to get back to being a conductor; he worked extensively for several years with physical therapists hoping that one day he would achieve that goal. When it was ultimately determined he would never be able to return to the railroad, Ames enrolled in college where he is currently working towards a degree in business.

The *'Yaeger Team,'* made up of primarily Ron Barczak, Roberta Freeman, Tricia Olson, Joe Dolan and Bobby Dolan, took the railroad to task on all issues, persuading a jury of ten after a week-long trial that the railroad's defective grab iron did result in significant physical and economic damage. The jury ultimately awarded Mr. Ames $420,000 for the losses he suffered as a result of the railroad's negligence. YJB

> …he worked extensively for several years with physical therapists…

Despite the railroad's self-serving argument, the evidence showed that Ames wanted nothing more than to get back to being a conductor…

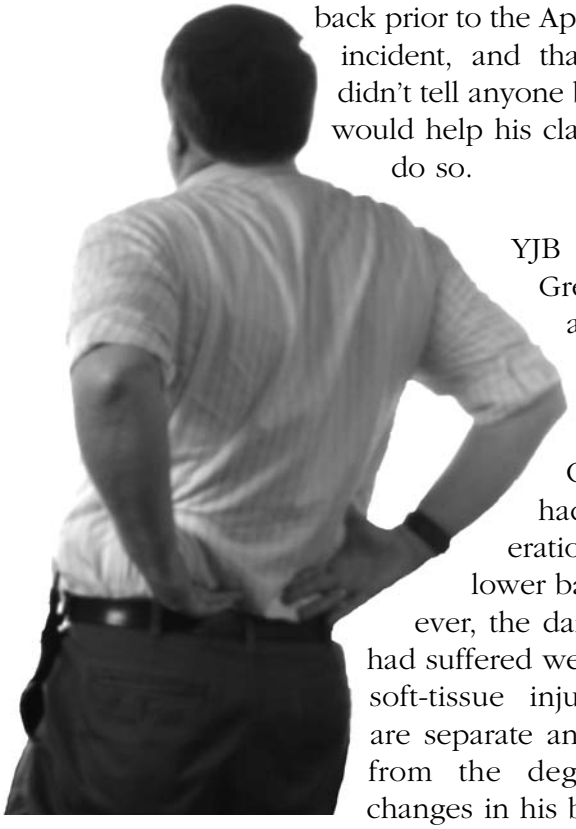
Switchman Awarded $1,000,000

(continued from page 8)

Following this incident, Crowell began to experience low back pain, but felt it was only a pulled muscle that would resolve on its own. He finished his shift and continued to work for the next two weeks. The pain became unbearable, so he sought medical treatment. His treating physician, a pain specialist, ultimately determined he suffered from myofascial low back pain, a condition that would continue for the rest of his life. Due to his injuries, both his treating physician and the railroad's own doctor took him off the job.

> Faced with an emergency situation, Crowell took decisive action…

At trial, the railroad denied any responsibility for his injuries, claiming all his lower back pain was due solely to pre-existing conditions. The Defendant's medical expert, Dr. James Burton, testified there was no evidence Crowell suffered any kind of traumatic injury, and all of his pain was unrelated to any activity he performed for the railroad. Dr. Burton even went so far as to allege Crowell had pain in his lower back prior to the April 9, 2003 incident, and that he just didn't tell anyone because it would help his claim not to do so.



YJB attorneys Greg Yaeger and Bob Dolan never denied Crowell had degeneration of his lower back; however, the damages he had suffered were due to soft-tissue injuries that are separate and distinct from the degenerative changes in his back.

Hand Brake

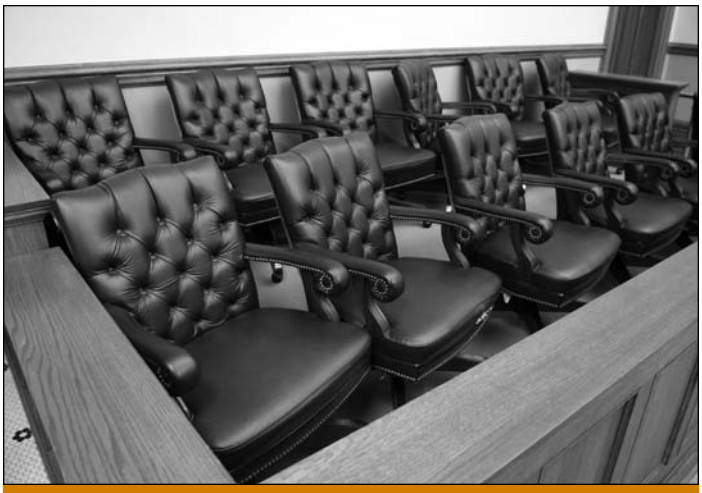
The jury agreed that Crowell's pain was solely due to the soft tissue injuries he suffered on April 9, 2003, and had nothing to do with the degeneration in his back. The evidence in the case established that Crowell had never complained of lower back pain prior to April 9, 2003, despite the degeneration of his spine.

> The jury agreed that Crowell's pain was solely due to the soft tissue injuries… and had nothing to do with the degeneration in his back.

It is also significant to note that the BNSF spent a great deal of time hammering Crowell on his efforts to mitigate his damages. The BNSF claimed that he could have taken a yardmaster position that would have been within his physical restrictions. This position pays more than what he was making before his injury. Unfortunately for the BNSF, Crowell had been a yardmaster several years prior to the accident and could not handle the position. Furthermore, despite the BNSF's claims,

…Crowell, in fact, had been mitigating his damages by going back to school after 27 years on the railroad…

Crowell, in fact, had been mitigating his damages by going back to school after 27 years on the railroad in order to improve his skills and make him more marketable in the job market. The jury also felt that Mr. Crowell's efforts to mitigate his damages by returning to school were reasonable, and they did not penalize him for not taking the yardmaster position.



In the end, the jury did not buy any of the BNSF's arguments.

Place these in your wallet. If you get injured, use the information to assist you in dealing with health care or railroad personnel.

INFORMATION FOR RAILROAD EMPLOYEES

1. If you are injured on the job, get immediate medical attention from doctors you choose.
2. Railroad officials are not permitted to discuss your case with your doctors unless you give specific permission.
3. Do not give a statement unless you have consulted with your union representative and/or the Yaeger Law Firm.
4. Your medical insurance will cover nearly all medical expenses for on-the-job injures even without the railroad's cooperation.

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INJURY CHECK LIST

Do: Fill out the accident report stating any unsafe conditions and unsafe cars or equipment contributing to injury.
Do: Tell fellow employees and take photos of the scene if possible.
Do: See your own doctor for treatment.
Do: Tell your doctor about the accident and all complaints, including head and back, even minor pains.
Do: Advise your doctor if you have recovered from previous injuries.
Do: Keep records of lost wages and other expenses.
Do: Report the accident to your union immediately.

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CASE 3
Mission Impossible

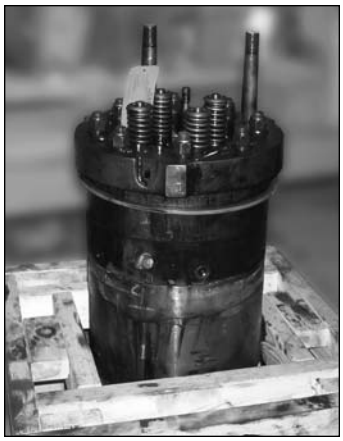
The Iowa, Chicago & Eastern Railroad (IC&E) sent employee Richard Collins on an impossible mission, and as a result, at age 61 and after 30 plus years of railroading, he was injured to the point he could no longer work as a locomotive mechanic. Despite claiming it did nothing wrong, the IC&E was hit with a verdict in excess of $165,000, and 100 percent fault for the accident.

> The IC&E sent employee Richard Collins on an impossible mission…

Richard Collins had been working for the IC&E in its Nahant Roundhouse in Davenport, Iowa for just over one year when he injured both of his shoulders while lifting a powerhead assembly at the roundhouse. The roundhouse, built in 1903, only recently started housing major repair work like the changing of powerhead assemblies. The facility is not equipped with proper lifting equipment, nor does it have a proper setup that would allow Collins to use mechanical lifting devices that are custom in the industry. Instead, Collins and a co-worker were forced to use a manual lifting device, along with their own power, to handle the 150-pound powerhead.

Collins was injured as he and his co-worker attempted to lift the powerhead. His co-worker lost his grip, and the two men did their best to control the heavy powerhead. The railroad's negligent work practices and inadequate equipment resulted in injury to both Collins' shoulders.

Claiming there is no requirement to have mechanical lifting devices, the railroad vigorously denied any liability at trial. Testimony from numerous employees called into question the truthfulness of management's claim that it required using the mechanical lifting device. In fact, more than four employees stated that they did not even know that the IC&E had a mechanical lifting device. Other testimony, including Mr. Collins', stated that only two of 12 locations at the roundhouse had room and accessibility for the mechanical lifting device. It was established and IC&E management confirmed there was no way Collins and his co-worker could have moved the locomotive to a location accessible to any of the lifting devices. This was due to two reasons: the antiquated set up at the roundhouse; and the locomotive was not moveable because a non-working locomotive was parked behind it.



The railroad tried to focus on the fact that Collins did not report his injury immediately. Collins reported his injury about two months after he was hurt, and he did not tell his doctors for the first few months about how and where he was injured.

> The facility is not equipped with proper lifting equipment…

Still, the jury returned a unanimous verdict. They found the railroad 100 percent at fault. It's a bit ironic, as Collins is the one who ordered the mechanical lifting devices for the Nahant Roundhouse. Collins ordered similar mechanical lifting devices when he worked for the I&M Rail Link. The I&M Rail Link operated this roundhouse before selling the railroad and its equipment to the IC&E.

The jury award also included past economic damages, past and present pain and suffering, and loss of function.

In addition to finding the railroad 100 percent at fault, the Hon. Judge Gary D. McKenrick also gave a jury instruction on spoliation since the evidence in the case revealed that the railroad intentionally did not disclose handwritten statements from Collins' co-workers, which railroad management received after Collins reported his injury.

The case was tried in Davenport, IA in front of Judge Gary D. McKenrick at the end of January 2007 by attorney Paula Jossart along with help from paralegal Gail Sand and investigators Joe Dolan & Dan Colgan. YJB

Attorneys that **FIGHT** for **YOU**

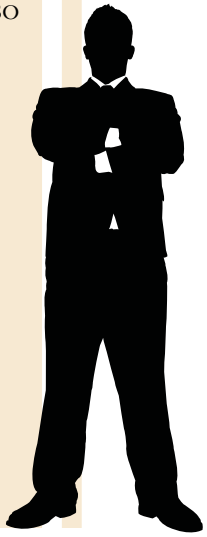
Every client, and every case, is equally important to YJB attorneys. While this edition of the *Yaeger Report* discusses several recent cases that went to trial, it is important to know that regardless of the nature of the injury or size of the potential verdict, Yaeger attorneys are always ready to fight for the client and take a case to trial.

> …regardless of the nature of the injury or size of the potential verdict, Yaeger attorneys are always ready to fight for the client…

Two examples illustrate this, the first being YJB partner Paula Jossart's **Collins v. IC&E case**, which is examined in this issue. Recently, Paula took to trial a different case, one where her client was catastrophically burned over most of his body and would never work again. When the defendants refused to make a fair offer to this burn victim, she took the case to trial and her client was awarded $12.5 million, one of the highest awards ever in Minnesota. (And, as a result, Paula was named by the *Minnesota Lawyer* as an Attorney of the Year.) In the **Collins v. IC&E case** discussed in this issue, Mr. Collins had made a good (but not complete) recovery. Yet, when the railroad refused to fairly compensate him for his past wage loss and his ongoing symptoms, she was just as willing to take the case to trial as with her catastrophic burn injury case. The result was a verdict of $165,000, vastly in excess of the railroad's offer.

In another example, YJB partners Mike Weiner and Chris Moreland handled one of the largest reported "**bad faith**" **insurance cases** in Minnesota history, recovering millions of dollars for their clients. It took a trial and two trips to the Minnesota Supreme Court to ultimately prevail, but these YJB attorneys were willing to undertake the journey because that is what needed to be done.

The cases of two young girls with **far less severe injuries** also warranted this devotion to their cause. In the girls' case, the school district that caused their facial and dental injuries claimed that it did not have to pay them anything because of an outdated Minnesota statute; these two YJB attorneys, joined in this case by associate attorney Erik Willer, were as willing to do whatever was necessary to recover for these young girls as for the clients in the earlier mentioned multi-million dollar bad faith case. YJB has been to the Minnesota Court of Appeals and Supreme Court twice on these young girls' case. And, once again, the YJB attorneys prevailed; on May 31, 2007, the Minnesota Supreme Court ruled in their favor, proving again that YJB attorneys fight for their clients' rights. YJB



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CASE 4
Switchman Awarded $1,000,000

On January 19, 2007, a Cascade County jury in Great Falls, Montana awarded $1,000,000 to a BNSF Railway switchman from Belt, Montana. The Plaintiff is a 27-year railroad veteran named Russell Crowell who suffered a career-ending soft tissue low back injury when he chased down and stopped a runaway train in BNSF's Great Falls railyard.

> …he chased down and stopped a runaway train in BNSF's Great Falls railyard.

Crowell was performing switching maneuvers in the Great Falls railyard when a runaway cut of cars collided with the train he was working on, causing a derailment. Immediately following the collision, Crowell saw another cut of cars on a different track heading for a second collision with his train. Faced with an emergency situation, Crowell took decisive action and ran down the tracks, jumped onto the runaway train and tied down the hand brake, stopping the train within a few feet of the first train, avoiding another collision.

(continued on page 4)