

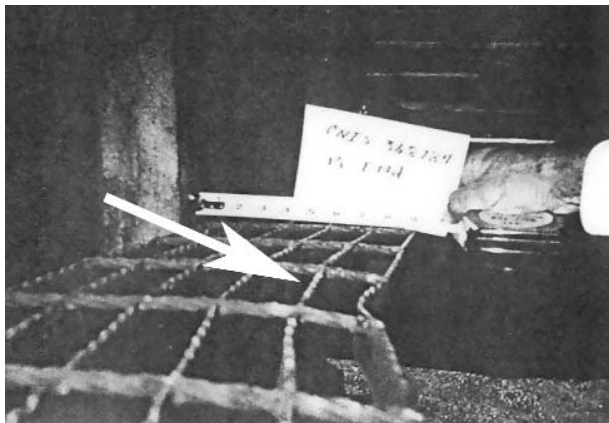
DEFECTS? WHAT DEFECTS?

Three examples of cases in which the railroad claimed that their post accident inspections revealed "no defects."

Case # 1 - The plaintiff was injured when he encountered the bent platform to the right. Not knowing that the plaintiff had obtained photos of the hazardous condition, the railroad claimed that there was no defect and fixed the platform before taking photos and turning them over.



Case # 2 - The plaintiff suffered fatal injuries when he fell between moving cars while riding a cut due to the bent platform shown to the right. The railroad's post accident inspection report included the following entries: "no defect found . . ." and "safety appliance on this is in proper limits and secured." Unfortunately for



the railroad, YJB attorneys had performed an exhaustive investigation of the accident and had discovered, despite the railroad's best efforts to suppress the information, that this photo existed prior to modification to the car, which proved that the platform was bent and defective.

(continued on page 2)

FELA CASE PROVES FRA/NTSB WRONG

by Bill Jungbauer



Railroad carriers want to abolish the Federal Employer's Liability Act (FELA). Also some government agencies would like to abolish the FELA.

Most people believe that government agencies such as the FRA and the NTSB can and will protect the best interests and rights of railroad workers and the public. A review of the Motley, Minnesota BN train collision is a good example

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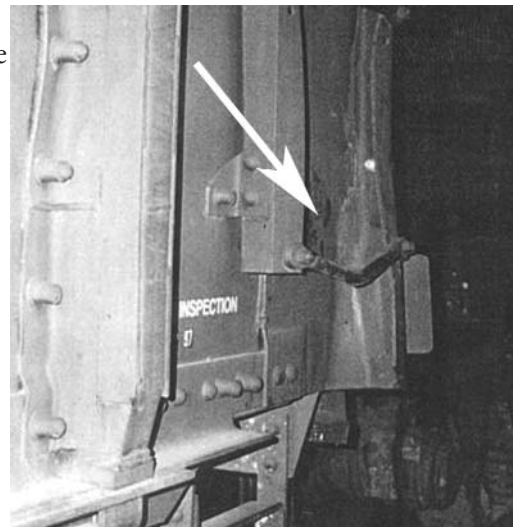
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DEFECTS? *(continued from page 1)*

Case # 3 - The plaintiff lost his right leg below the knee when he fell between moving cars due to the bent and insecure ladder rung pictured to the right. Within three days of the accident, YJB attorneys sent a letter to the railroad's Vice President of Operations and its Claims Manager demanding that the car "be maintained in its accident condition without change." Despite this fact, the railroad secretly repaired and straightened the ladder rung before sending a return letter stating "the equipment involved . . . was not damaged or defective and has already been returned to service." Again, YJB attorneys had been working with the plaintiff's local union representatives and had ensured that photos were taken prior to the railroad's secret repair to document the defective condition of the ladder rung.



For years we have warned our railroad friends and clients of the aggressive and often dishonest steps that the Carriers will take in an attempt to avoid paying the damages they rightfully owe under the FELA to employees that were injured by their negligence and/or failure to provide safe and proper equipment. We have published articles in the Yaeger Report, and our attorneys and field representatives have spoken at union meetings across the country on this subject. While the three scenarios described above are a few of the more blatant incidents we have come across, the sad fact is that the improper suppression or destruction of evidence (also called "spoliation") by railroads in an attempt to avoid FELA liability is not at all an uncommon practice. This unfortunate fact was hammered home at a recent trial where one of the issues was the railroad's destruction of post accident inspection reports documenting the defective condition of a locomotive that caused the plaintiff's injuries. At trial, a representative of the railroad testified that the failure to retain the reports was an oversight, and that such actions were rare across the system. YJB proved that claim to be untrue by providing the court with a number of orders and opinions from district and appellate courts across the country sanctioning that particular railroad for other incidents of "spoliation" of evidence.

It is critical for injured railroaders to be aware of the lengths to which the railroads will go in trying to defeat valid FELA claims, and to take steps to protect themselves. More specifically, when involved in an injury situation it is important for the employee to document any defective condition that may have contributed in any way to the accident by reporting the condition; by making sure it is observed (and photographed if possible) by others who will be able to testify as to the condition should the railroad try to pull any tricks like the ones described above; and by talking to his or her local union officials and consulting with a qualified FELA attorney at YJB. The railroads have huge Claims and Law Departments looking out for their interests. Make sure you have someone looking out for yours.

(all three of the cases above were handled by YJB Partner Bill Jungbauer)

FELA CASE *(continued from page 1)*

of what can go wrong in a major investigation of a high profile rail disaster.

Two BN coal trains collided on June 14, 1984 at Motley, Minnesota, killing engineer James Little of Duluth, MN, engineer James Munnings of Superior, WI, and brakeman Art Mattila of Superior, WI. The collision occurred in "dark territory" (no signals). The initial investigation focused on dispatcher error.

About a month after the accident, FRA chairman John Riley called a press conference in Denver, CO, to publicly announce initial FRA findings; that all three decedents were legally drunk at the time of the accident. Television channels jumped on the FRA statement and ran stories blasting the drunk crew members. One series on Channel 5 Television (KSTP Twin Cities) was entitled, "Riding High."



The NTSB followed the FRA's lead and initially concluded that the deceased crewmembers were drunk. The NTSB held deposition hearings, but refused to allow the families of the deceased to participate or ask questions. FRA, NTSB, the Burlington Northern Railroad and various unions were allowed to participate, but not the families of the falsely accused decedents, or their representatives. Family members of the three deceased crewmembers protested the government findings, but to no avail. FRA chairman, John Riley, refused to reconsider his statements claiming that the Armed Forces Institute of Pathology had done the post mortem testing.

The reputations of three good railroad employees had been nationally, publicly destroyed by the government agencies whose job it was to fairly investigate this horrible rail disaster. Of course, there would be no recovery for the families of the three decedents if they had been drunk on the job, as the chairman of the FRA had publicly proclaimed.

Their reputations had been destroyed by government agencies whose job it was to investigate the disaster

However, the families had one last chance... the Federal Employers Liability Act (FELA). Under the FELA, the families had a voice. Their lawyers could question the government, publicly or privately, on their behalf. The families wanted the government to answer how train crews could operate trains if they truly had blood alcohol readings of between 0.20 to 0.30, much more intoxicated than the then limits for drivers of 0.10. John Riley, head of the FRA, did not care to discuss the situation. The NTSB was not willing to discuss the question of how anyone with such blood alcohol readings could possibly operate a coal train.

On behalf of the families, YJB attorney Bill Jungbauer talked to many local pathologists who did not dare take on the Armed Forces Institute of Pathology findings. Finally, a medical study performed in England on two RAF pilots who had died in an air crash showing blood alcohol readings of 0.50 was discovered. The English study concluded that there must have been some flaw in the post mortem testing since no one could pilot a fighter jet if they had a blood alcohol reading of 0.50. The study further concluded that the post mortem testing could be flawed if the body of a decedent was exposed to heat and was not immediately recovered. The study concluded that the body, if exposed to heat, could produce alcohol in a process known as putrefaction where sugars in the stomach are distilled into alcohol with intense heat over time.

This scientific study was not enough for the FRA. However, experts at the NTSB now began to question the toxicological findings in the Motley case. In view of this evidence, NTSB agreed to have an additional hearing on the subject and the case, and concluded they would accept this type of post mortem testing. The reputations of three train crew members was restored. NTSB changed the method of post mortem toxicological testing to prevent such an injustice from ever happening again. Now samples are drawn from the vitreous humor of the eye of a decedent rather than the stomach or other areas of the body.

Thanks to the FELA, the families saw the good names of their husbands and fathers restored, and received fair compensation.

The true cause of the collision was now clearly identified: dispatcher error in dark territory and lack of dispatcher training and supervision rather than allegedly drunk crew members.

If the FELA had not existed, the cases would have been closed and finished when FRA chairman John Riley held his press conference in Denver. However, thanks to the FELA, the families saw the good names of their husbands and fathers restored and were able to receive fair compensation for damages under the FELA. The government identified a major flaw in post mortem testing and remedied the problem for future cases. The FRA and NTSB learned that dark territory single main line track was a danger that had to be dealt with. The FELA serves as a check and balance against big companies and big government agencies attacking Truth and the Rights of railroad workers and their families.

IN MEMORIAM: CHUCK FAULDER

Chuck Faulder's commitment to rails, his sense of humor and his genuine desire to help people will be greatly missed by his friends and associates at Yaeger, Jungbauer and Barczak.

The loss of Chuck in a car accident this December was both sudden and deeply tragic for his family and friends.

Chuck started his career with the Burlington Northern Railroad in 1973 as a carman helper. He became an apprentice and was upgraded to a journeyman carman where he installed and tested airbrakes. In 1979 he was hired by the State of Nebraska as the first locomotive and car inspector for the state. His next eighteen years were spent making sure that the railroad locomotives and equipment operating in Nebraska were in compliance with State and Federal laws. He was considered a fair and trusted inspector and developed long term friendships with many union members. In 1997 he started working as a YJB Field Representative in the Nebraska area. He was known throughout the state as "Mr. Nebraska", always bringing a warm smile and good cheer when he traveled in Nebraska and neighboring states.



He is survived by his wife Terri, by sons Christopher and Grant, and by his daughter Jordan.

I am lucky enough to have worked with Chuck since he started at YJB in 1997, and I have a lot of great memories of him. But I think what I will remember and miss the most is the way he was able to touch the lives of almost everyone he met in such a positive way.

I was able to see for myself just how much Chuck was loved and respected all across his home state of Nebraska during the course of our many trips back and forth from Lincoln/Omaha to North Platte (and all points in between) in his big old - and I mean OLD - Caddy. On one of our first trips, when I was still a relatively new lawyer, we were putting on a seminar for new hires in North Platte. I was a bit nervous because I hadn't met some of the union officials who were going to be there, and it can be tough for younger attorneys to establish themselves in the world of FELA where many of the main players have been around for what seems like forever. As it turns out, I didn't need to worry because Chuck stepped up to the podium, told a few lawyer jokes at my expense, and then basically said "this guy is with me, and he's okay." That's all it took because Chuck had earned his reputation as a man of honesty and integrity, and his word was the gold standard. We had a great seminar, and then spent the rest of the day meeting with clients and prospects in the Faulder Suite at the Quality Inn (where he was quite a celebrity). Every one of them had at least one story about how Chuck had gone out of his way to help them and make their lives a little easier in the difficult time that follows an injury.

As great of a field rep and co-worker as Chuck was (and he was one of the best - always very proud to work for YJB and eternally loyal to the firm), he was an even greater person. He was a dedicated husband, father and son, and he would do anything to help his family and friends (often at great inconvenience to himself). I learned a lot from Chuck, not only about railroads and working with the men and women who make them run, but about life. And I miss him very much.

Chris Moreland
YJB Attorney

BRIX *(continued from page 8)*

Brix will end up paying a premium of \$41.50 a month for a plan that gives him comprehensive 80%-20% coverage. All his shots will be covered and he doesn't have to face any stinking company nurses.

"Now we don't worry so much about him chasing cars or eating rat poison," Rachel said. "Things are so much better for all of us, especially Karl. He used to make Brix wear a helmet everytime they went for a walk, and it scared the kids in the neighborhood. Now they don't have to be embarrassed. The health plan has really given all of us the confidence we need to be ourselves."

When Brix was asked by telephone about this new relaxed attitude in the Frisinger house, he replied by chewing on the receiver and barking.

"Look," Karl said, "I know he's just a dog and this all might seem silly, but after being at YJB for two years and seeing how important good health insurance is for people, I just felt like he needed some protection too. We all need someone looking out for us."

CONDUCTOR AWARDED FIFTY TIMES MORE THAN RAILROAD'S OFFER

On February 9, 2005 a Casper, Wyoming jury awarded a \$500,000 verdict to a railroader who was injured in the course of his job.

Thomas Murry, 65, a Union Pacific conductor from Rawlins, WY, sustained injuries to his shoulder when the bus transporting him went off Interstate 80 on Halloween of 2003. The injuries permanently disabled Murry and prevented him from returning to his job. The defendant offered \$10,000 as a settlement for the injury claim.



YJB attorney Bob Dolan filed suit against the UP and the bus company in Wyoming Federal Court. The UP had contracted with Rock Springs-Jackson Bus Lines to transport Murry from Green River to Rawlins. Dolan argued that under the FELA the UP was responsible for the actions of the bus line.

Murry, a Navy veteran and 47-year railroad employee, planned to continue work on the railroad until age 67. He sought compensation for lost future earnings and benefits.

The railroad's offer shows how little they thought of Murry and his claim. However, justice prevailed when the jury agreed with Dolan's arguments on behalf of Murry in their positive verdict. This case once again illustrates the importance of having an experienced FELA lawyer on your side when dealing with the railroad.

BOB DOLAN: TOP 40 IN ADR



YJB Partner Bob Dolan was recently named one of the top forty lawyers in Minnesota for Alternative Dispute Resolution by Minnesota Law & Politics magazine.

ADR is a process which allows disputing parties the opportunity to resolve their disagreements prior to entering litigation. By using a neutral mediator such as Bob, the parties may be able to reach a resolution quickly and amicably.

Bob has experience in the areas of personal injury, railroad, product liability, wrongful death and criminal defense law. Bob has been helping accident victims and their families since 1972, having tried well over 200 cases in his career. Bob has attained the highest possible legal ability rating (AV) from Martindale-Hubbell, the national rating organization for attorneys.

Bob is a member of the Minnesota and National Association of Trial Lawyers, American Board of Trial Advocates, Minnesota and Hennepin County Bar Associations and Citizen Member Hennepin County Human Resources Board. Bob is also a qualified mediator and arbitrator.

PAULA JOSSART ATTORNEY OF THE YEAR

YJB attorney Paula Jossart was recently named a Minnesota Attorney of the Year for 2004 by Minnesota Lawyer magazine. Paula is one of fifteen lawyers in Minnesota who were given this prestigious award for their "achievements, commitment to service and/or involvement in newsworthy events" over the past year.

The award recognizes Paula's work for her client Robert Reimer, a North Dakota boiler repairman who was severely burned in a boiler accident. After having his claim entirely dismissed and eventually reinstated by a higher court, Reimer received a jury verdict in excess of \$12.2 million. Paula, along with YJB partner Robert Dolan, paralegal Amy Powell and firm researchers, represented Robert Reimer through six years of legal proceedings that at times seemed hopeless.



Reimer, 53, who worked for a heating and cooling company in Fargo, N.D., was testing the boiler of a public school swimming pool, when a pipe broke off, releasing a torrent of 250 degree pressurized water and steam that caused third-degree burns over 67 percent of Reimer's body.

In 1998 Reimer brought suit against the city and the school. The federal court judge overseeing the matter agreed with the defendants' position that Reimer was an expert and should have known that an improperly maintained pipe could fall out of a boiler just by being brushed. The judge dismissed the suit. Despite this initial loss, Reimer and the YJB team refused to give up. They appealed the case and found recourse in the Eighth Circuit Court of Appeals, which overturned the lower court's decision and allowed Mr. Reimer to continue his claim against the city and school.

Jossart and Dolan presented evidence at trial revealing that the defendants were remiss in maintaining the boiler. The chief engineer in charge of the boiler admitted to never having read the manufacturer's boiler manual, which clearly stated how to maintain the very problem that the pipe was exhibiting. The defendants also failed to inform Reimer of safety concerns regarding the pipe that were raised earlier that day, leaving Reimer completely unaware of any dangers regarding the boiler.

"It's been a long six years for the Reimers," Paula said. "But I believe, and so does Mr. Reimer, that it was good to finally have our day in court. Mr. Reimer feels totally vindicated by the jury's finding of fault. It was clear from the beginning that fault was mainly in the hands of those in charge of the maintenance of that pipe and not Mr. Reimer. We just kept fighting and the jury agreed."

This case clearly demonstrates Paula's dedication to her clients and a talent for litigation that she has brought to the firm since 1999.

Prior to working at YJB, Paula was the editor of a newspaper chain in North Dakota, her home state. Her undergraduate degree is in Journalism and Spanish, which she received at the University of North Dakota in Grand Forks.

At YJB, Paula focuses on litigating personal injury, motor vehicle accidents, railroad accidents, and wrongful death claims, as well as FELA cases.

Paula said, "Our attorneys are not afraid to push the boundaries, not afraid to go to the limit of trying a case if need be so that you can have your day in court. We offer aggressive competent representation because we care and believe in each one of our clients."

YJB WELCOMES NEW FIELD REPRESENTATIVES

The attorneys and staff of YJB are delighted to have two new field reps as part of our team. They will play a valuable part in providing Union members with support and information about FELA.

Jimmie Clark spent twelve years working for the BNSF out of Great Falls, Montana, where he has lived for the last thirty years. Jimmie has been active in Union safety committees and looks forward to working at YJB in a way that will keep him actively involved in helping his union brothers and sisters.



Jimmie enjoys hunting, fishing and riding his Harley. He is currently relocating to North Dakota and will be working for YJB in North Dakota, Montana, and parts of Minnesota.

Gary Lebsack grew up in Laramie, Wyoming. A longtime railroad buff, he worked as a brakeman for the UP out of Green River, Wyoming. Gary said, "I want to help people that are in the same situation I was. When people get injured they don't know what's going on or who to believe. It's scary, and they need advice they can trust."



Gary likes golfing and fly-fishing. He will be working in Wyoming, Colorado, Utah and parts of Idaho.

SORAN AND COLGAN BECOME FULL TIME YJB EMPLOYEES

Dan Soran, a part-time field representative from Cheyenne, has joined the firm full time. Dan has been with us since 2002. He previously worked for the BNSF and served as local chairman for conductors, brakemen and yardmen in Cheyenne.



We are pleased to have Dan working with us. He perhaps put the mission of our firm best when he said "I appreciate the opportunity to assist my fellow railroaders when they are most vulnerable, after an injury."

Dan Colgan has been with the YJB since 2000 as a part time field representative. He has joined the firm full time as a legal investigator / field rep.



Dan spent 28 years on the Milwaukee Soo Line and others, and served as a local chairman and vice-general chairman. His extensive knowledge and expertise will be an invaluable resource in his role as a legal investigator.

We welcome Dan to the investigation department and look forward to his continuing role of taking first calls in the Minneapolis office and attending Union functions in Minnesota and Wisconsin.

PLEASE NOTE...

We realize that there are many more questions and concerns than can be addressed in our newsletter. The Yaeger Report is intended to be used as a general information source only and does not constitute legal advice under any circumstances. Consult an attorney before taking any action. Our attorneys are available to answer questions and give free initial advice.

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**THINK YOU HAVE A GOOD
HEALTH PLAN?**

Meet Brix the dog. This adorable Labrador Retriever is the proud owner of YJB law clerk Karl Frisinger and his wife Rachel.

Brix, is a graduate of the University of Minnesota School of Veterinary Medicine's Puppy Class, an avid chewer of shoes, and well on his way to 90lbs. He also has a health plan. A good one.

Brix is well aware of the dangers of being a puppy in today's world, so when he went shopping for a health plan he wanted something that would provide him with coverage for everything from heartworm to a thorn in the paw.

He ultimately settled on a premium plan through the American Kennel Club. "I think this plan will fit in really well with my active lifestyle of tail wagging," said Brix.

