

CP FORCED TO ADMIT LIABILITY FOR MINOT DERAILMENT AND ANHYDROUS AMMONIA SPILL; YJB SUCCESSFULLY SETTLES INJURY CLAIMS OF N.D. FAMILY

On January 18, 2002, near Minot, North Dakota, the calm quiet of the night air was shattered by a violent crash as a speeding freight train left the tracks and derailed. After leaving the tracks, a number of rail cars ruptured, releasing a thick toxic cloud of anhydrous ammonia that blanketed Minot and the surrounding area. Because Minot is home to an air force base and strategic military weaponry,



because the vapor cloud was so dense they could not see even a few feet out of their windows, and because this event occurred right on the heels of September 11, 2001, many Minot residents initially feared that they were under attack by terrorists. As time passed and more information became available, they learned of the derailment and ammonia spill, but most residents were unable to get away from the cloud and remained prisoners in their own homes. As a result of being exposed to this chemical cloud, one person died that night and hundreds of others sustained permanent and life altering injuries.

Investigations into the derailment revealed that it was not caused by any errors on the part of the train's crew members (who at all times acted appropriately and

(continued on page 2)

CARPAL TUNNEL CLAIMS SETTLE SUCCESSFULLY

YJB recently settled the FELA claims of five engineers and two conductors for carpal tunnel injuries. The settlements were reached after five days of trial during which YJB attorney Bob Wendt demonstrated the working conditions that contributed to the injuries.

In 2003 Bob created and successfully litigated a new way of pursuing carpal tunnel claims on behalf of injured rails. He brought together six injured workers in a "consolidation order" that allowed all of their cases to be litigated together. This most recent group of settlements was also combined in a consolidation order. These cases mark the first time in United States history that personal injury claims from separate incidents, other than asbestos or toxic torts, have been brought together in a consolidation order. This groundbreaking legal strategy puts greater pressure on railroads to take these types of injuries seriously, and it is extremely advantageous to rails that suffer cumulative trauma injuries.

(continued on page 4)

LAW OFFICES OF

**YAEGER
JUNGBAUER &
BARCZAK, PLC**

IN THIS ISSUE:

Minot Settlements
Page 1

Carpal Tunnel Settlements
Page 1

The Facts About Carpal Tunnel
Page 4

YJB Welcomes New Field Representatives
Page 6

What is the Importance of Safety Statutes?
Page 7

Six YJB Attorneys Selected as "Best Lawyers in America"
Page 8

(continued from page 1)

were simply unable to do anything to foresee or prevent the crash), but rather the catastrophic failure of the CP's main line track due to a broken joint bar that the CP could have, and should have, known about and fixed, but did not.

Among those injured were members of the Juntunen family - Henry, Linda, and their son Joey. The Juntunens lived less than 500 yards from the derailment site and were awakened that night by the sound of a tank car exploding virtually in their back yard. Shortly after being jarred awake, the Juntunens heard and felt another loud crash, which turned out to be their neighbors slamming their pickup truck into the side of the house. The neighbors were attempting to flee, but the ammonia cloud was so dense that they could not see where they were going and they crashed headlong into the Juntunen home, knocking loose a section of the foundation and shattering a large window, through which the ammonia began to invade even more rapidly.

Unbeknownst to the Juntunens, who could not see anything through the fog, the neighbors (a husband and wife) had stumbled out of their truck and staggered blindly through the cloud of ammonia before passing out in their driveway. Fortunately, the wife was able to revive herself and make it to the front door, where she knocked and Linda let her in. Upon learning that the woman's husband was still lying in the driveway, Henry and Joey (whose leg was in a brace due to a recent hockey injury and knee surgery) sacrificed their own safety and went outside to try to save him. Unfortunately, they were unable to lift the man because he was unresponsive, extremely heavy, and because his skin was



essentially melting off due to his exposure.

Feeling the physical effects of their ongoing exposure, and feeling certain that they were going to die if they stayed there, the Juntunens decided that they must try to flee their home. By then, enough time had passed for the ammonia cloud to dissipate slightly, and they were able to get themselves and their neighbor into Henry's truck and drive to a makeshift rescue post that had been set up about a mile away. As a result of the derailment, all of the Juntunens suffered very serious, permanent injuries to their eyes and respiratory systems, as well as significant psychological injuries.

Following their receipt of injuries, the Juntunens (along with nearly 70 other individual Minot residents) retained YJB attorneys Paula Jossart and Ron Barczak to represent them in their injury claims against the CP. These clients know that YJB is uniquely qualified to handle claims of this nature, number, and magnitude, as a result of the firm's 75 year history of major railroad litigation. Over that time, YJB attorneys have handled countless derailment cases and have successfully litigated hundreds, if not thousands, of cases against the CP and its predecessors on behalf of injured rails and others. Barczak, Jossart, and the entire YJB team were well aware of the tactics the CP

would employ to avoid responsibility for the derailment, and were able to head them off in each such attempt.

Throughout the course of the case CP tried to stall, pushing for a trial date far into the future (2006 or 2007), fighting the Juntunen's legitimate requests for information through the discovery process, and when forced to provide the information, trying to bury the plaintiffs in paper, sending dozens of boxes of documents in hopes that the important ones would be missed.

Unfortunately for the CP, YJB knew what was coming and had a team of attorneys, paralegals, investigators, law clerks, and support staff standing ready to do the work and keep the pressure on for an early trial date. Led by paralegals Gail Sand and Cecilia Mazique, the YJB team thoroughly examined each and every document that the CP produced (exceeding 25 boxes), finding those that helped form the basis for the plaintiffs' claims. Meanwhile, Jossart and Barczak were taking depositions of CP management officials, conducting inspections of the rail and other track components involved in the derailment, and working with leading railroad and medical experts across the country. These efforts proved very successful and produced evidence sufficient to underscore the CP's negligence and fault in multiple respects. For example:

- CP violated multiple federal safety regulations;

- CP used old, worn out, undersized 100 pound rail as Continuous Welded Rail ("CWR") mainline track despite knowing that it was inadequate, substandard and

inappropriate for such use (as evidenced by multiple defective track conditions and corresponding service failures in the months and years leading up to the derailment).

-CP failed to properly inspect, maintain and repair its tracks and joint bars.

-CP failed to follow its own internal rules regarding the inspection, maintenance and repair of CWR;

-CP discontinued ultrasonic testing which would have detected the cracked joint bar and prevented the derailment;

-CP failed to follow its own joint elimination program, which required temporary joints to be welded within a reasonable time (typically 30-60 days). The cracked joint bar at the derailment site was part of a "temporary" joint that had been in place for 20 months;

-CP failed to properly staff and train its maintenance of way forces, and it repeatedly reduced those forces to levels that were inadequate to deal with the multiple defective track conditions that existed in and around the area of the derailment;

-CP greatly increased the tonnage load over the substandard 100 pound rail in the years leading up to the derailment despite its knowledge of multiple defective track conditions, and despite its knowledge that a nearly identical derailment had occurred less than 10 miles away on this same stretch of track just eight years prior, causing catastrophic burn injuries to a teenaged boy.

At the same time, the YJB legal writing department was fighting the

railroad's motions in court. One of the main legal issues in the case had to do with the CP's attempt to avoid liability by hiding behind a concept known as "preemption." The CP moved to dismiss all of the plaintiffs' cases arguing that by enacting the Federal Rail Safety Act of 1970 (FRSA), Congress gave exclusive control over the railroads to the Federal Railroad Administration, thus precluding the individual states from regulating their conduct. The CP went on to argue that because the FRA has established civil penalties for violations of federal safety regulations, the state courts are powerless to provide a remedy to people injured by the railroads' negligence. In other words, the railroad was arguing that the only potential liability it would face for severely injuring hundreds of people (most of whom were sleeping comfortably in their beds at the time of the derailment) was an administrative fine by the FRA.

YJB led the charge in this "preemption" battle that lasted over three months and involved hundreds of pages of legal briefing and hours of courtroom argument. Citing United States and Minnesota Supreme Court precedent (as well as supporting authority from courts across the nation), YJB attorney Chris Moreland explained that the FRSA explicitly reserved a very important regulatory role for the individual states in matters of railroad safety, allowing them to adopt and enforce laws, regulations, or orders related to railroad safety until the Secretary of Transportation "prescribes a regulation or issues an order covering the subject matter of the State requirement." In other words, Congress recognized that there would be gaps in federal regulatory coverage and reserved the

right to fill those gaps to the individual states. Moreland went on to explain that courts throughout the country have consistently held that injured plaintiffs may bring their claims in court and receive damage awards (as opposed to the administrative penalties argued by the CP) in cases where the railroads have violated federal regulations or its own internal rules.

The Judge agreed with YJB and denied the CP's motion to dismiss the cases. Facing the overwhelming evidence that YJB had developed establishing its fault for the derailment, the CP was forced to admit liability before the trial, and shortly thereafter it settled the Juntunens' cases.

Speaking after the settlement Jossart noted, "This was a case of corporate irresponsibility where the CP valued profits over safety and chose to line its pockets rather than maintain its tracks. For the last 3 ½ years our clients have been paying for that choice. Now it's the CP's turn." Barczak agreed, and noted that from the client's perspective, the derailment is still something they have to deal with daily. Speaking on behalf of the Juntunens Barczak said, "They are glad to be done with the court case and are very happy with the result, but they wish that none of this had ever happened. They continue to live with the horror of that night and the injuries they suffered every day. It was extremely difficult to have their home engulfed in that chemical cloud and to know that although they did everything they could to help, one of their neighbors died right outside their house."

CARPAL TUNNEL SETTLEMENTS

(continued from page 1)

"This is a huge benefit to anyone who has a carpal tunnel claim," Bob said. "It gives each individual a greater pool of resources to draw on, from medical and safety experts, to legal work and court time. There are so many carpal tunnel claims that it could take an injured rail years to bring a case to court. With a consolidation order, everyone gets their day in court much sooner."

Also at issue in the case were the railroad's systematic efforts to hide the number of claims filed and deny any knowledge of the risk factors, thereby attempting to absolve themselves of liability. Bob fought hard for his clients and ultimately won settlements that fairly compensated them for their injuries. "The railroads kept secrets about their knowledge of how the railroad work environment creates the circumstances for carpal tunnel to happen." Bob said, "We are stepping up to fight for those who have been overlooked by the railroads."

The Yaeger firm is leading the charge in carpal tunnel litigation on behalf of railroad workers. The firm's ability to develop new legal strategies and apply them in a court of law is a testament to our dedication to defending the rights of Union railroad workers throughout the country. We understand the seriousness of an injury and the impact it can have on a person's life and we are committed to helping them in their time of need.

CARPAL TUNNEL: THE FACTS

Carpal Tunnel Syndrome (CTS) is a condition that can cause severe pain and discomfort in your hands and fingers. If untreated it can lead to permanent nerve damage and reduced hand function.

CTS is caused by a compression of the median nerve, which runs from the forearm to the hand and carries signals between the brain and the muscles of the hand and fingers. The median nerve goes through a "tunnel" formed by the carpal ligament and carpal bones of the wrist. If these tissues are damaged due to force, awkward posture, and repetition, the tissues will become inflamed, creating pressure inside the carpal tunnel and compressing the nerve. This compression will lead to symptoms of pain, tingling and numbness.

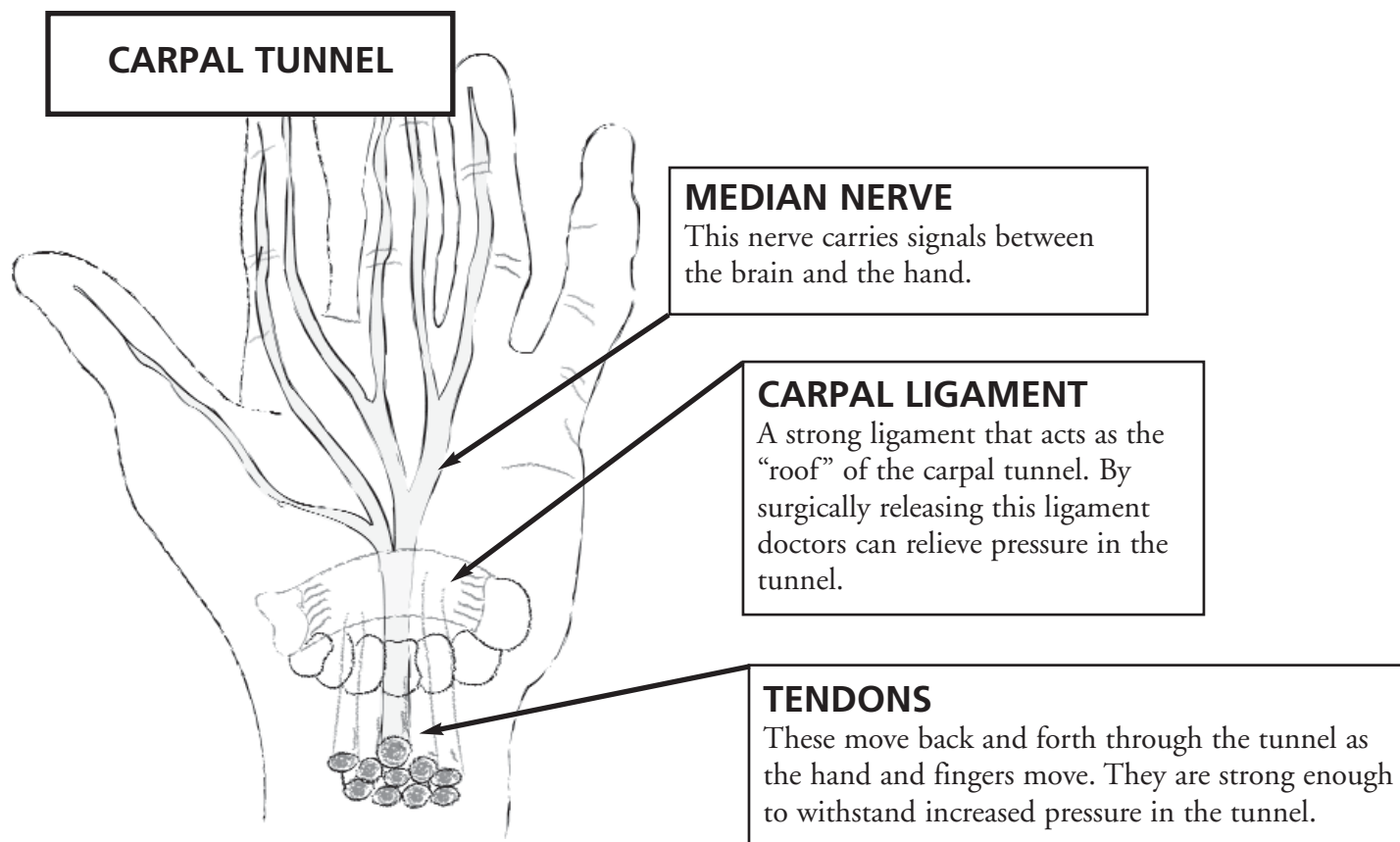
Carpal Tunnel Syndrome is one of many cumulative trauma disorders that are often referred to as "repetitive stress injuries", "overuse syndrome," and "wear and tear disorders". In the railroad industry these types of injuries may be caused by workplace factors including repetitive motions, forceful exertions, forceful gripping, vibration, and awkward postures.

These repeated physical stresses may create tiny tears (microtraumas) in muscles and tendons, leading to inflammation. Because the muscles and joints are used over and over, they become fatigued increasing the likelihood of injury. Rest is needed to allow the circulatory system time to provide the muscles with nutrients and allow muscles time to repair damaged tissue. If the activity that lead to the injury is carried out on a regular basis, the symptoms will get progressively worse as pressure builds up over time.

If you have symptoms of pain and tingling in your hands and fingers, you may have carpal tunnel syndrome and as with any injury you should consult with your doctor to find out what can be done about the condition.

Testing:

Nerves are like wires. They carry electrical impulses to and from your brain and the muscles in your body. In the case of carpal tunnel, when the median nerve is compressed those electrical impulses will travel slower through the nerve. By sending electrical impulses through the nerve and measuring the delay, an "Electrical Conduction Test" can detect if the nerve is compressed.



Treatment:

The best treatment starts with early recognition and intervention, preferably in the earliest stages of the symptoms. In less advanced cases the physician may recommend non-surgical treatment, which may include the use of anti-inflammatories and/or wrist splints. In those cases where the disease process is more advanced, surgery is often recommended.

The carpal ligament acts as the roof of the carpal tunnel. A surgeon can relieve pressure on the nerve by releasing the carpal ligament. This type of surgery may take anywhere from a few weeks to a few months to recover from, and in the vast majority of cases the patient is able to eventually return to normal work activities.

Carpal Tunnel and the Federal Employers' Liability Act:

If the injuries leading to carpal tunnel are caused in whole or in part by the conditions in the workplace that were not reasonably safe, a worker may be entitled to compensation. The railroad industry has not fully responded in recognizing the workplace risks associated with carpal tunnel. Equipment and work procedures have not been generally modified to minimize the problem. Little has been done to educate its employees about prevention or how to recognize the symptoms.

The time limit in which injured workers must file suit is within three years of the date when they knew or reasonably should have known that they suffered from carpal tunnel related to their work. Because the start of this time period may be difficult to determine, it is best to seek legal advice if you, the employee, recognize symptoms which signal the onset of carpal tunnel. These claims can be difficult and complicated, not only due to the medical issues but also because non-work behavior such as recreational activities may contribute to CTS symptoms. The sooner you seek legal counsel, the sooner these issues can be evaluated to determine if you have a viable claim.

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 a YJB attorney before taking any action. Our attorneys are available to answer questions and give free initial advice.

CONTACT US:

Minneapolis Office:

800-435-7888

612-333-6371

Yaeger, Jungbauer &

Barczak, PLC

745 Kasota Avenue

Minneapolis, MN 55414

St. Louis Area Office:

800-878-4074

314-621-1775

Yaeger, Jungbauer, Barczak

& Wendt, LLC

1010 Market St.

Suite 1440

St. Louis, MO 63101

YJB WELCOMES NEW FIELD REPRESENTATIVES



Dennis Beck worked on the railroad for 33 years, twenty-five of them doing signal maintenance in Iowa. Dennis spent fifteen years as a Local Chairman and four years as a Vice General Chairman, and was active in securing contracts and benefits for his fellow union members. After an injury in 2003 took him out of service, Dennis witnessed firsthand the role that attorneys play in getting fair compensation

for injuries and better safety rules for the workers. He said, "The Yaeger firm really helped me and my guys in the field. After I left the railroad I wanted to give back. I wanted to use my experience to stand up for what is right, get the word out, and help people."

Dennis lives in Le Grande, Iowa. He spends his time hunting, fishing and woodworking, and he is a former Saddle Bronco Riding State Champion. He will be representing YJB in Iowa and throughout the country.

Mike BeBout will be representing the firm in the Eugene, Oregon area, where he spent forty years working for the railroad. Mike began his career as a fireman for the Southern Pacific before spending thirty-two years as an Engineer for the UP.

Mike is looking forward to staying in touch with Union members and getting to know the new hires in his area. Mike said, "A lot of the new hires don't have a lot of information about FELA and what to do if they're injured. I'm hoping to help them learn about the protection the FELA gives them, and watch out for their interests."

Mike is a wilderness volunteer with the Forest Service. A former triathlete, Mike spends his free time long distance cycling, canoeing, and hiking.

WWW.YJBLAW.COM

The Yaeger, Jungbauer & Barczak website is a great source for further information about the FELA and the work our firm does. It includes current updates on FELA news, past issues of the Yaeger Report, complete biographical information about each of our attorneys, and link to other resources on the internet.

WHAT IS THE IMPORTANCE OF SAFETY STATUTES?

The FELA was enacted by Congress at the turn of the twentieth century, and around the same time they also enacted a number of other statutes that have come to be known as the Federal Safety Appliance Act (FSAA) and the Federal Locomotive Inspection Act (formerly called the Boiler Inspection Act) (LIA).

The FSAA pertains to railroad "vehicles" and requires that the railroad use only cars that are equipped with properly functioning "safety appliances." Examples of such "safety appliances" include, but are not limited to, couplers, sill steps, hand brakes, ladders, running boards, handholds and grab irons. In turn, the LIA governs locomotives and requires that the railroads use only locomotives of which all parts and appurtenances are in proper condition and safe to operate without unnecessary danger of personal injury. While technically distinct from the FELA, the FSAA and LIA were also enacted for the safety of railroad workers and they supplement the broader protections of the FELA by imposing an absolute and continuing duty on the railroad to provide certain specific safe equipment. In this regard, the Supreme Court has explained that the FSAA and LIA "are substantively if not in form amendments to the Federal Employers' Liability Act," and are "supplemental to it, having the purpose and effect of facilitating employee recovery, not of restricting such recovery or making it impossible."

A railroad's violation of the FSAA or LIA in a FELA case is significant for a number of reasons. Generally speaking, when a railroad employee is injured on the job and brings a FELA claim, he is required to prove that the railroad was negligent in some way. However, when the railroad's violation of the FSAA or LIA has caused or contributed to the injury, the employee does not have to prove that the railroad was negligent. In this regard, the United States Supreme Court has explained that the railroads' liability under the FSAA and LIA "is not based upon the carrier's negligence," but rather, "the duty imposed is an absolute one and the carrier is not excused by any showing of care, however assiduous."

Additionally, in the typical FELA negligence case, the railroad can argue that the employee's own negligence caused the accident and injury. If the jury finds that to be the case, the employee's recovery will be reduced in proportion to his own percentage of fault. However, in cases where the railroad's violation of the FSAA or LIA has caused or contributed to the injury, contributory negligence is eliminated as an available defense. In other words, the railroad will be precluded from arguing that the injured employee's own negligence caused the accident, and the employee's recovery will not be reduced by reason of any such alleged negligence.

Obviously, a comprehensive explanation of the FSAA and LIA is well beyond the scope of this limited article, but it is important for all railroaders to be aware that they exist to protect them while working on and around locomotives and rail cars.

BEST LAWYERS

(continued from page 8)

Yaeger, Jungbauer & Barczak now has more lawyers listed in the Railroad Law section than any other single firm, including both plaintiffs and defense firms. This fact emphasizes YJB's status as the preeminent FELA plaintiff's firm in the country.

For over 75 years our firm has fought for the rights of injured rails. During that time, Yaeger, Jungbauer & Barczak has become synonymous with FELA, because of our commitment, compassion, and unparalleled quality of service. Our attorneys have handled FELA claims in over thirty states, tirelessly traveling throughout America, and providing the best legal service available to injured railroad workers and their families. YJB is proud of this tradition and is honored by the distinction bestowed on these attorneys by their peers.

Since its inception in 1983, Best Lawyers has become universally regarded as the definitive guide to legal excellence in the United States. Inclusion in Best Lawyers is considered a singular honor, because the list is based on an exhaustive peer-review survey in which 18,000 leading attorneys throughout the country cast more than a half million votes on the legal abilities of other lawyers in their specialties, and because lawyers are not required or allowed to pay a fee to be listed.

LAW OFFICES OF

**YAEGER
JUNGBAUER &
BARCZAK, PLC**

745 Kasota Avenue
Minneapolis, MN
55414

PRSR STD
U.S. Postage
PAID
Permit #27324
Minneapolis, MN
55401

News and Information for Railroad Employees and Their Families



www.yjblaw.com

SUBSCRIBE TO THE YAEGER REPORT:

If you would like to receive the Yaeger Report by mail, or report any change of address, you may call 1-800-435-7888 or 1-800-243-4253, or e-mail your name and address to yrsub@yjblaw.com

Contact the editors:
yreditor@yjblaw.com

Visit our website
<http://www.yjblaw.com>

SIX YJB ATTORNEYS SELECTED AS BEST LAWYERS IN AMERICA

Continuing nearly ten years of recognition, YJB Partners Bill Jungbauer and Ron Barczak were again selected for inclusion in the prestigious publication *The Best Lawyers in America*® 2006 (Copyright 2005 by Woodward/White, Inc., of Aiken, S.C.). In 2006 YJB Partners Bob Dolan, Mike Weiner, Lou Jungbauer and Greg Yaeger joined them in that distinction. All six were listed in the Railroad Law section of the book, in recognition of their excellent work on behalf of railroad workers.

Bill Jungbauer



Ron Barczak



Lou Jungbauer



Greg Yaeger



Mike Weiner



Bob Dolan

(continued on page 7)