



ST. LOUIS POST-DISPATCH

Law Firm Goes Undefeated in Railroad Trials

By Tim McClaughlin
Of the Post-Dispatch

When an unhinged metal flag smacked conductor Greg Haskin in the head, his employer, Union Pacific Corp., dismissed the injury as a superficial scalp wound.

Even as blood streamed down his face, Haskin said, his supervisors were more concerned about the company's safety record than his welfare.

"A manager told me, 'You don't want this to be a reportable accident, because it will follow you around the rest of your career,'" Haskin said. "They even argued about whose vehicle I was going to bleed in."

But a jury took Haskin's subsequent claims of debilitating headaches seriously. It awarded him \$3 million of damages in April after an eight-day trial in St. Louis.

Haskin was represented by the Schlichter Bogard & Denton law firm, which over the last two years is undefeated in railroad-worker injury cases that have gone to trial.

Nine jury trials — in places such as St. Louis; Little Rock, Ark.; and Wichita, Kan. — have resulted in total awards of \$21.7 million.

Five of those verdicts have been against Union Pacific, which declined to comment.

Jerome Schlichter, the attorney for Haskin, said: "The juries see the problems facing railroad workers. There's a tendency by corporate defendants to let their economic power affect their judgment about what happens in court."

But even as Schlichter and his firm rack up big-ticket wins in court, statistics show that the safety of railroad workers has improved significantly in recent years. In May, the Federal Railroad Administration said that reportable employee injuries decreased 10.5 percent in 2003 and that they were down 30 percent since 2000.

But in Haskin's case, the injury never became part of the official record.

He didn't receive medical treatment the day he was injured in November 2001, so the accident didn't qualify as a reportable incident or as a blemish on Union Pacific's safety record.

Schlichter and transportation-union officials say many injuries in the industry go unreported because railroad workers fear disciplinary action or other retaliation. Schlichter said the intimidation has increased since the industry's consolidation in the 1990s.

Tom White, a spokesman for the Association of American Railroads, said there's nothing to back up that claim. "It's one of those things that plaintiffs' lawyers like to say, but they don't have any evidence."

Yet, he acknowledged that injuries and accidents in the railroad industry remain an expensive proposition. And a single jury award in favor of a worker can push a small railroad company into financial distress, he said.

The rail industry blames the Federal Employers Liability Act, which allows railroad workers to sue companies over their injury claims. Congress passed the legislation to make the industry less dangerous in response to thousands of worker deaths and injuries in the late 1800s and early 1900s.

The industry has failed in its attempts to abolish or reform the law. Even at Union Pacific, one of the largest railroad companies in the nation, awards filed under FELA loom large on its financial statements.

For example, Union Pacific's expenses for personal-injury events for the three months ended March 31 were \$100 million. A jury verdict for \$30 million, excluding interest, awarded for a grade-crossing accident in 1998 boosted that expense. The company also carried a liability of \$671 million, accrued for future personal-injury costs, at the end of March.

A third-generation railroad worker, Haskin, 31, sued Union Pacific under FELA after being struck in the head at the company's rail yard in Kansas City, Kan. He said the St. Louis jury sided with him, in part, because of the arrogance and cavalier attitude displayed by some managers.

For example, a Union Pacific manager drove Haskin to a business and industry medical clinic, where he was examined by an eye doctor, instead of one of the hospital emergency rooms they passed, Schlichter said.

After the doctor said the head wound needed stitches, the company manager reminded Haskin that getting stitches would make the incident a reportable accident, which could have a detrimental effect on his railroad career, Haskin said.

"I was scared. I thought they were going to fire me," he said.

Haskin went home that day without getting medical treatment. He said it was the beginning of debilitating headaches and depression that continue to plague him.

Still, he continued to work at Union Pacific two years after the accident.

"The only thing Greg Haskin ever wanted to do was work on the railroad like his dad did and his grandfather did," Schlichter said.

Attorneys for Union Pacific have asked the judge in the case to set aside the \$3 million verdict. They say there's no competent evidence that he suffered a serious, permanent and disabling head injury.

In court papers, the railroad's attorneys describe the injury as a "superficial scalp laceration." Haskin saw several doctors, "but none found any objective evidence of any physical injury other than evidence of the scalp laceration," according to the court papers.

In a deposition, Dr. Michael E. Ryan, a neurologist, said, "Well, it was my impression that it was a pretty minor accident."

Haskin said his pain is real. In an attempt to relieve the headaches, doctors inserted a probe heated to 176 degrees into the back of his skull, court records show. The idea was to create a block on the occipital nerve that branches along the base of the skull.

Haskin said the procedure provided little relief. "I'd give back every nickel of the amount of money I was awarded to get back the life I had," he said.