

ST. LOUIS

DAILY RECORD

Daily Business and Legal News Since October 16, 1890

© 2003

BY DONNA WALTER
Managing Editor

St. Louis jury awards \$4.1 million to railroad man for ruptured disc

A St. Louis City jury awarded \$4.1 million to a Clinton, Iowa, locomotive engineer who was injured in a slow-motion train derailment.

Patrick Johnson, 44, was in the lead locomotive traveling at roughly 6 mph when the rail broke underneath him on May 11, 2001; he was thrown around in the cab of the locomotive and suffered a ruptured disc in his neck.

Johnson's attorney is Jerry Schlichter of Schlichter, Bogard & Denton. Johnson's lawsuit against Union Pacific Railroad Co. alleged that the railroad failed to maintain the track properly and that a drainage problem left the track with insufficient support and with a propensity to break.

"We were able to show that there had been defective rail, either broken rail or spreading rail, twice in the eight-day period before this — the second incident which was 12 hours before this happened — and that on both those occasions it had happened when there had been rain on those days," Schlichter said.

The railroad denied fault and said the broken rail could not have been foreseen, Schlichter said. Union Pacific was represented by Theodore Williams of Williams, Venker & Sanders. He could not be reached for comment. Schlichter said the railroad is likely to appeal the jury verdict.

According to testimony from his doctor, Johnson could not return to work as a locomotive engineer. "His doctor said that he cannot return to work at the railroad as a locomotive engineer because of the vibrations and because of the need to be alert and attentive," Schlichter said. "We said he could not do that because he is in pain, and the pain prevents him from concentrating, and when he takes prescription medication for the pain, that makes him drowsy and has those side effects."

A significant part of Schlichter's case alleged that

Union Pacific's vocational rehabilitation program was merely a litigation strategy rather than a legitimate program. He explained that a vocational rehabilitation counselor sent numerous letters to Johnson about the program, but when the counselor failed to answer questions Schlichter posed about the counselor's relationship with the railroad, Johnson chose to find an independent vocational rehabilitation counselor instead.

Union Pacific denied that its vocational rehabilitation program was related to the railroad's attorneys or its claims department, but Johnson began receiving letters from the counselor after the railroad had notice that he had hired an attorney, said Schlichter.



Jerry Schlichter

"At trial we were able to produce testimony that, after denying that he initiated the process, the claim agent, who was an agent of the lawyers, later, when confronted with a document, admitted that he had been involved in initiating this vocational rehab and that when the case was over they would close the employee's file rather than continue to do anything for him," he said.

"The railroad produced a witness who had been through vocational rehab and had a lawsuit which was settled but had been placed in a job during the pretrial period and who remains in the job today," he added. "We said that he was a poster child

that they deliberately developed to testify before juries and that his circumstances were different because he had a settlement, whereas the railroad was denying our client's right to compensation and we were going to verdict.

"This has significant implications for all cases against Union Pacific Railroad because this is a companywide program and practice. Clearly, the jury believed our position that it was a litigation strategy and a letter-writing campaign rather than a legitimate vocational rehab program," Schlichter said.

Johnson, who was a locomotive engineer for 25 years, comes from a long line of railroad men, said Schlichter; his father was a locomotive engineer for 42 years, his grandfather for 50 years and his great-great-uncle for 52 years.

The jury entered its verdict on April 30.