



Schlichter Bogard & Denton



IN THIS ISSUE

SCHLICHTER BOGARD & DENTON OBTAINS SETTLEMENT THAT HIGHLIGHTS IMPORTANCE OF CREATIVE AND DILIGENT ADVOCACY

FIRM UPDATE: SCHLICHTER BOGARD & DENTON OBTAINS \$1.1 MILLION SETTLEMENT FOR AUTO ACCIDENT VICTIM

TRAIN DERAILMENTS: WHAT YOU NEED TO KNOW ABOUT THIS SIGNIFICANT SAFETY HAZARD

FIRM UPDATE: ANDREW SCHLICHTER APOINTED TO PLAINTIFFS' STEERING COMMITTEE IN EAST PALESTINE, OHIO TRAIN DERAILMENT LITIGATION

Volume III, Issue II of SB&D's Railroad Injury Newsletter

Welcome to Volume III, Issue II of Schlichter Bogard & Denton's Railroad Injury newsletter exclusively covering railroad-related topics.

This quarter, our nationally-recognized attorneys address firm updates and important questions surrounding derailments (like that experienced in East Palestine, Ohio).

We hope you enjoy this issue of the SB&D Railroad Injury Newsletter. As always, we are here to answer any questions you may have: [800-USE-LAWS](tel:800-USE-LAWS) | railroad@uselaws.com

Sincerely,



Jerry Schlichter & Nelson Wolff



Schlichter Bogard & Denton Obtains Settlement that Highlights Importance of Creative and Diligent Advocacy

by Nelson Wolff, Partner

Schlichter Bogard & Denton is pleased to announce that we have obtained a substantial settlement for an injured railroad worker. In this case, the conductor was riding the side of the forward most railroad car while it was being shoved as part of a train over a public grade crossing at a relatively low rate of speed when a motorist tried to cross the tracks in front of the train, resulting in a collision. The conductor was thrown from the train and into the car, sustaining a traumatic injury which required surgery and extensive therapy before he was able to return to work. A claim was filed against the motorist for failing to yield the right of way. A settlement was reached with the motorist and her insurance company that fully compensated the injured worker. Later, another claim was filed, this time against the railroad employer. Our firm asserted that the railroad's practice of requiring crews to ride on the side of trains through crossings was unsafe, particularly where, like here, there were no crossing gates. Alternatively, we argued that the railroad should have provided a flagger to protect the crossing. Ultimately, the railroad agreed to pay an additional substantial amount to settle the claim. Moreover, the railroad is now reevaluating its policies and taking steps to reduce the risk of future injuries, something that would be unlikely had we not pursued this claim.

Some additional takeaways from this case: Crossing collisions more commonly occur at high speeds with commercial motor vehicles that fail to look both ways before crossing or that try to race across the tracks before the train arrives. State and federal laws require motorists to yield the right of way to trains and the motorist is almost always at fault when a train collision occurs.

But, what if the train crew worker is seriously injured and permanently disabled, and the motorist does not have insurance or it is limited? In such a situation, the railroad worker may face a disastrous situation and could be undercompensated unless a claim can be made against the railroad. Our firm has represented railroad workers for decades across much of the U.S. in a wide variety of crossing collision cases and has had success in arguing several theories for which railroads can be held accountable. In addition to the theories noted above, we have successfully argued that railroads know crossing collisions will happen, even if they cannot predict when. Yet, they generally fail to train employees how to protect themselves and minimize the risk of injuries. Instead, railroads claim that there are too many types of collisions and employees should look out for themselves. However, when injuries occur, the railroad often argues that the worker did something wrong. We have also argued that the failure to timely implement/activate positive train control can cause crossing collisions, in addition to train-on-train collisions. In some cases, large commercial vehicles get stuck on humped crossings, and yet the railroad's failure to post a hotline number to call and alert a dispatcher to stop trains was shown to be a contributing cause of the collision. Similarly, unsafe crossings and poor vegetation maintenance by the railroad can make a crossing more dangerous, as does the failure to install crossing guards and flashing lights. Long ago, we successfully argued that locomotive designs should be more crashworthy and crash resistant. Ultimately, the FRA did enact regulations requiring such protections. Finally, poor train make up, including placing empty railcars immediately behind the much heavier locomotives can cause relatively minor crossing collisions to become much more severe—even deadly.

Thus, while it can be challenging to hold railroads responsible for employee injuries caused by a negligent motorist at a grade crossing, creative and diligent advocacy by railway safety attorneys like those at Schlichter Bogard & Denton can balance the scales of justice and hold railroads accountable for their share of responsibility and to compensate injured workers.





Firm Update

Schlichter Bogard & Denton Obtains \$1.1 Million Settlement for Auto Accident Victim

Schlichter Bogard & Denton has obtained a \$1.1 million settlement on behalf of a civilian injured in a car wreck with an on-duty New Madrid County police officer.

On July 2, 2021, our client, a resident of New Madrid, Missouri, sustained multiple injuries when the car she was driving southbound on State Highway 61 crashed into a New Madrid County police vehicle that had been traveling northbound before making a sudden left, failing to yield the right of way to our client and totaling both vehicles.

Our client sustained a fractured vertebra in her neck, which required fusion surgery, as well ligament and fibrocartilage tears, torn meniscus, and de Quervain syndrome in her wrist, which required additional surgery.

We are profoundly grateful to have been of service to this client.



Train Derailments: What You Need to Know About This Significant Safety Hazard

by Scott Gershenson, Counsel

A derailment in East Palestine, Ohio in early February 2023 made national headlines – a Norfolk Southern train carrying toxic materials derailed and caused a massive explosion. In the aftermath, residents in Ohio and Western Pennsylvania became increasingly concerned about the potentially serious health and environmental risk factors associated with the derailment. Although the authorities are still investigating, the National Transportation Safety Board initially concluded that a wheel bearing on the train improperly overheated, and passed sensors that should have identified this and other mechanical issues with the train. This incident has sparked great public discussion about derailments, why they occur, and the safety measures that should be taken by this largest rail carriers to prevent them. It also underscores the importance of the Federal Employers' Liability Act ("FELA") that protects railroad workers who are injured as a result of a derailment.

Unfortunately, derailments are too common. According to the Federal Railroad Administration (FRA), there were 1,164 derailments in 2022 alone, which is almost 3 derailments every day. Derailments appear to be the result of railroad companies placing profits over safety as seen in several recent cost-cutting measures. Railroads have enacted protocols such as "Precision Scheduled Railroading" (PSR) that increase the length of trains but reduce personnel. This practice has resulted in fewer carmen on staff to inspect trains before they depart. It has also led to longer trains (sometimes 2-3 miles) to be hastily assembled by fewer transportation employees in shorter time periods. At times, trains lack proper power distribution and make up. Further aggravating

matters, railroads have instituted harsh attendance policies, requiring their personnel to essentially stay “on call” at all times, contributing to severe fatigue and lack of concentration when a shift begins. Although longer trains and less personnel are key to higher profits for railroad companies, they can contribute to potentially disastrous situations for employees and their families.

Railroad workers can be seriously injured when a derailment occurs. Experts and government officials alike have called for new safety measures, such as additional inspection technology without reducing carmen-led inspections, modifying company attendance policies to allow workers more time off to rest, and increasing time allowed to inspect and assemble trains. However, railroads have pushed back against many of these proposed safety measures, claiming that these will not reduce the risk of derailments and will cost too much. There is also concern that the FRA has failed to properly track certain important factors that may contribute to train derailments, such as the length of each train involved in a derailment or crash. Safety advocates are calling for such data to be included in FRA reporting and analyzed as a contributing factor.

Regardless of the potential success of these safety efforts, the FELA provides injured railroad workers with the right to pursue a claim against their railroad employer when it fails to provide reasonably safe equipment and/or methods of work. For example, if the railroad provides a train that has defective equipment that overheats and a derailment results, it may be liable under the FELA. Our firm has handled many train derailment cases involving defective equipment, improper/delayed assignment of train crews, and failure to implement life-saving technologies like positive train control. We have also brought lawsuits on behalf of injured Amtrak employees and passengers arising from last summer’s catastrophic collision in Mendon, Missouri. We are also helping to lead a class action arising from the East Palestine derailment. If you have any questions about train derailments, please contact our firm for more information.





Firm Update

Andrew Schlichter Appointed to Plaintiffs' Steering Committee in East Palestine, Ohio Train Derailment

Schlichter Bogard & Denton partner Andrew Schlichter has been appointed to the Plaintiffs' Steering Committee in litigation filed on behalf of individuals affected by the February 3, 2023 East Palestine, Ohio train derailment. The appointment was made on April 5, 2023 by order of U.S. District Judge Benita Y. Pearson.

The Court's order consolidated over thirty lawsuits against Norfolk Southern and appointed interim class counsel, noting that such counsel was "critically important in a case of this nature, as it is an ongoing event affecting potentially thousands of residents, property owners, and businesses in East Palestine, Ohio and the surrounding area."

The litigation concerns the February 3, 2023 derailment of a Norfolk Southern train carrying various toxic chemicals in East Palestine, Ohio, which caused various harmful pollutants to spread throughout surrounding communities. Schlichter Bogard & Denton is seeking to help individuals who suffered harm as the result of this environmental disaster.

We hope that you found this newsletter informative and helpful. As always, if you have any questions, please contact our team.*

**The information contained in this newsletter is provided for informational purposes only and does not constitute legal advice. Reading this newsletter and information contained herein does not constitute formation of an attorney-client relationship. Every potential case must be assessed in accordance with its unique facts and circumstances. If you believe you may have a legal claim, please request a free, confidential case evaluation with our team today.*



*Top-tier,
uncompromising
representation
to America's railroad
workers.*

That's our brand.



Questions?

As always, our team of nationally recognized Railroad Injury attorneys are available to answer any questions you have. Contact our office at railroad@uselaws.com or 800-USE-LAWS.