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## News Story

# KC Jury Awards \$160M For RR Crossing Accident Union Pacific Said State Responsible For Safety

By Chris Brown

A 34-year-old woman who was severely injured in a railroad crossing accident has won a \$160 million verdict in Jackson County circuit court against Union Pacific and Amtrak.

The jury rejected Union Pacific's defense that it had no duty to put gates and warning lights at the grade level crossing near Warrensburg, Mo., where a fatal collision had occurred just four months earlier.

The woman suffered brain damage, permanent cognitive impairment and numerous broken bones when the car in which she was a passenger was hit by an Amtrak train.

She claimed that Union Pacific's crossing was unsafe and that the train failed to brake quickly enough upon seeing her approaching car.

### Blame The Driver

Union Pacific blamed the driver of the car for the accident and said the state government, not the railroad, was responsible for the safety of railroad crossings.

The jury assigned 75 percent of the fault to Union Pacific, 25 percent to Amtrak, and none to the driver, who was also a defendant. The punitive damages -- \$120 million -- were assessed against Union Pacific alone.

Grant L. Davis of Kansas City, who represented the plaintiff along with Thomas C. Jones, said that the railroad was well aware that the crossing was dangerous but had done nothing to warn drivers or change the operation of trains at the crossing.

"This is a company with 65,000 employees and annual revenues of \$10 billion, but it doesn't have a single worker whose job it is to see if crossings are dangerous," said Davis. "The company never took responsibility, and showed no remorse.

"If Union Pacific would take responsibility, crossings would be safer and fewer people would be killed."

Theodore J. Williams Jr. of St. Louis, who represented Union Pacific, did not respond to requests for comment. A verdict report on the case, *Alcorn v. Union Pacific Railroad, et al.*, CV97-31927, Sept. 27, appears on page five.

### Uncontrolled Crossing

The accident happened at 5:00 p.m. on Aug. 29, 1997 at an uncontrolled grade level crossing on County Road NE 501, just south of Highway 50 near Warrensburg.

Plaintiff Kimberly Alcorn was a passenger in a car driven by a friend, Curtis Edwards. They were returning to Sedalia after visiting a mall in Independence.

According to the driver, there was only one warning device at the crossroads, a set of faded crossbucks, and the advance warning sign was in a ditch off the roadway.

The train was traveling between 65 mph and 70 mph at the time of the collision. Alcorn suffered a fractured neck, a crushed chest with numerous broken ribs and a broken sternum, a broken pelvis, hand, femur, ankle and vertebrae, an injured liver and collapsed lungs. But more significantly, she suffered permanent brain damage and the loss of memory and motor coordination. She was also left unable to care for her two teen-age daughters.

Edwards suffered only minor injuries.

### **Extremely Dangerous**

Davis contended in trial that Union Pacific, as the owner of the track, was responsible for keeping the crossing safe.

The heart of the case, according to Davis, was the mountain of evidence that the crossing was extremely dangerous -- and that Union Pacific knew it was.

"These trains come suddenly out of a cut in the landscape at around 70 mph," said Davis. "And the way that crossing is configured, the trains are hidden until the last minute -- or seconds, really.

"The driver has about four seconds to see and react to the train, and that's not nearly enough time."

The poor visibility at the crossing had drawn the attention of state inspectors almost a year before the accident, said Davis. "Eleven months earlier, Union Pacific was out there with state inspectors who found that the crossing was 90 percent 'sight-obstructed'," he said. "And as a result, the state recommended the installation of lights and gates."

Davis said the assistant engineer on the Amtrak train that struck the car considered the crossing to be "extremely dangerous." "He testified that he had had five to six near-misses at the crossing, including one with a propane truck," related Davis

And the Amtrak engineer had actually been involved in an accident at the crossing just four months earlier in which a 22-year-old man was killed.

"These Amtrak guys were in constant contact with Union Pacific dispatchers," said Davis. "And they were working under Union Pacific work rules that required them to report near misses -- and, of course, accidents.

"There was no doubt at all that Union Pacific knew."

Davis was also able to show that the crossing was considered dangerous by residents of the surrounding area. "We put an ad in the paper looking for people who had had near-misses at that crossing, and ended up finding nine. We put five of them on the stand.

"And when you consider how many people usually answer ads like that -- what is it, about 5 percent? -- there's probably a hundred more out there."

The owner of a local concrete plant provided further corroboration both for the danger of the crossing and the claim that Union Pacific knew of the danger. "This guy from the concrete plant testified that he got a complaint from Union Pacific that his trucks were coming too close to their trains," said Davis. "So he called them back and said, 'Your trains are coming too close to my trucks.'"

Davis pointed out that the near-misses happened with Union Pacific freight trains as well as Amtrak trains. "They had 21 trains a day coming through this crossing, and most of them were Union Pacific trains," Davis explained.

### **Near-Miss Reports**

Union Pacific rules require engineers to report near-misses, said Davis -- and Union Pacific maintained on the

stand that it kept track of all such reports.

However, the railroad denied that its records showed there were near-misses for the crossing where Alcorn was injured.

But Davis was able to demonstrate that no records were kept at all.

"A railroad official claimed in his deposition that there was no notice in the records of near-misses and no notice of accidents. So I asked him, 'Are you aware that we are here because of a wreck at that crossing on Aug. 29, 1997?' And he said, 'I guess so.' So I asked him, 'Where's the record?'"

"He said they didn't have one. And I guarantee you that in Union Pacific's file to this day, there's no record of this accident or the one a few months earlier that killed a man."

The railroad contended that the accident was the driver's fault, said Davis. "Union Pacific's answer was, 'It's a big old train, you can see it if you're paying attention, but the driver wasn't paying attention.'"

But Davis' experts testified that the crossing was dangerous even for drivers who paid attention.

"The driver has only four seconds to react at this crossing," said Davis. "And that's only if the driver happens to be looking the right way as he approaches."

"But the driver doesn't know which direction the train might be coming from. He has to be concerned about both directions. So if he looks the other way as the train is appearing, then looks back, he probably only has about two seconds, and he's past the point of no return."

Davis bolstered his argument with testimony from an expert in human reaction time. "Our expert said that the typical human reaction time to a simple stimulus is three-fourths of a second, but it slows to between two and a half and five seconds if you have to make a decision -- such as, 'Should I put on my brakes or speed up to avoid this train?'"

"Our expert said that four seconds was simply not enough time."

Davis also pointed out that Union Pacific incorporated a much more realistic estimate of reaction time in its standards for crossing gates and lights. "Under the standard for gates and lights, the gates have to be down 20 seconds before the train reaches the crossing," he said. "Now if 20 seconds is the standard when you have lights and gates, it seems pretty obvious that four seconds is not good enough without them."

To help the jurors analyze the question of fault, Davis told them to consider what each party knew. "The railroad knew that there was a 90 percent sight-obstruction, that the state government had previously recommended that gates and lights be installed at the crossing, that there had been a fatal wreck there in April of 1997, that there were numerous near-misses there."

"And what did the driver know? Only that a train was coming, and it was coming fast."

### **Common Law Duty**

Union Pacific also contended that it was the state government's responsibility, not the railroad's, to make crossings safe.

But Davis insisted that the railroads have a common law responsibility to ensure safety at crossings.

"This is a matter of law, really," said Davis. "The Missouri common law is clear on this, and Union Pacific, with all of its railroad lawyers, knows perfectly well what the common law says about crossing safety."

According to Davis, the railroad denied liability on the basis of a 1913 statute that, by its interpretation, placed exclusive responsibility for crossing safety on the state government. But Davis contended that the statute's purpose was to ensure uniformity in the design of lights and gates across the state.

"This statute has the same effect as building codes," said Davis. "You have to get a building permit to build a building, of course, but that doesn't mean the state builds the building for you. It's the same way here. The railroad still has to install the lights and gates."

Davis drove home the railroad's responsibility with an argument drawn from common sense. "The railroad is trying to say that it's everybody's job but theirs, it's the state government's job, it's the federal government's job. But it's Union Pacific that runs 20 trains a day down these tracks, it's Union Pacific that inspects every inch of the tracks every two weeks, it's Union Pacific that receives regular feedback from engineers about crossings.

"Their position was that there could be accident after accident after accident at this crossing, but they weren't responsible until the state government told them to do something.

"This is what got the jury angry -- this waiting for the government to come knocking."

### **Corporate Welfare**

Davis argued that Union Pacific's motive for ignoring the problems of crossing safety was simple: money. "This isn't exactly cheap," said Davis. "The cost of the gates and lights for this crossing is about \$200,000. And of course, the systems have to be maintained, which the railroad just hates doing.

"But it's all just part of the cost of doing business."

The railroad's decision-making was further distorted, according to Davis, by a federal program that pays the railroad to install gates and lights at crossings.

"The railroad basically decided to shirk its responsibility in order to tap into corporate welfare," said Davis. "They were faced with a decision, 'Should we pay for these systems with our own money, or should we let the government pay us for it?' And they chose the government."

They also chose the government's timetable, said Davis. "Private industry can come in and install gates and lights in about 30 days," he said. "But look at how the government program works -- it took from September 1996 to March 1999 to get them installed at this crossing."

As for the size of the verdict, Davis contended it came from the jury's grasp of what he called "the big picture."

"This is the largest railroad in the country, and it doesn't even have a single employee whose job it is to figure out which crossings are dangerous," said Davis. "They say it's the government's deal, but that's just bull.

"This is a verdict that says, 'We want you to change the way you do business, to quit denying your duty and quit trying to push it onto someone else's lap.'"

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