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MISSOURI LAWYERS WEEKLY

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Trial Report

Woman Severely Injured In Accident With Train Crossing Was 90 Percent 'Sight-Obstructed'

\$160 Million Verdict

The plaintiff was a 34-year-old woman who was severely injured when a car she was riding in was struck by a train. She sued Union Pacific Railroad, Amtrak and the driver of the car.

The accident happened on Aug. 29, 1997 at an "uncontrolled" rural grade crossing on County Road NE 501, just south of Highway 50 near Warrensburg. The train was traveling between 65 mph and 70 mph at the time of the accident. The plaintiff suffered traumatic brain injury, depression, a broken neck, a crushed chest with numerous broken ribs and a broken sternum, collapsed lungs, laceration of the liver, four fractures of the pelvis, fractured vertebrae, and a fractured hand and ankle. She also claimed that she had permanent cognitive impairment and is no longer able to care for her two children.

The plaintiff contended that Union Pacific was knew the crossing was dangerous but did nothing to warn of the danger or change the operation of the trains, and that it was negligent in failing to provide gates and warning lights there.

According to the plaintiff, cars at the crossing had only four seconds' visual notice of approaching trains due to a 90 percent "sight-distance" obstruction. Her evidence showed that there was only one warning device and a set of faded crossbucks at the crossing, and that the advance warning sign was lying in a ditch.

The plaintiff said that 11 months before the accident, the state had recommended the installation of lights and gates due to the sight limitations at the crossing. She also pointed out that another collision occurred at the crossing after the state's recommendation and four months before the plaintiff's wreck, resulting in the death of a 22-year-old man.

The manager of a local concrete plant testified he had complained to Union Pacific that his truck drivers could not see approaching trains from the crossing. Five people who lived near the crossing testified they had had near-misses at the crossing prior to the wreck that killed the 22-year-old. The assistant engineer on the Amtrak train also testified that he had had five or six near misses at the crossing and considered it "extra dangerous."

As for Amtrak's liability, the plaintiff said that the wreck could have been avoided if the engineer had hit the brake immediately upon seeing the car.

Union Pacific contended that it was the state government's responsibility to determine what warning devices were appropriate for the crossing.

The jury returned a verdict for the plaintiff, assessing compensatory damages at \$40,366,517.99, and punitives at \$120 million.

* * *

Type of Action: Negligence

Type of Injuries: Brain damage, 20 broken bones, cognitive impairment, loss of ability to care for children, permanent disability

Court/Case Number/Date: Jackson County Circuit Court/CV97-31927/ Sept. 27, 1999

Caption: *Alcorn v. Union Pacific Railroad, et al.*

Judge, Jury, or ADR: Jury

Name of Judge: Charles E. Atwell

Special Damages Claimed: \$366,517.99 past medical expense, \$1,127,495 future medical expense, \$516,146 lost wages

Verdict or Settlement: \$160,366,517.99 million verdict

Allocation of Fault: 75 percent to Union Pacific, 25 percent to Amtrak, zero percent to Curtis Edwards (car driver)

Last Offer: \$500,000

Last Demand: \$5,750,000

Attorneys for Plaintiff: Grant L. Davis and Thomas C. Jones, Kansas City

Insurance Carrier: Lloyd's of London, Lexington Insurance Co., Transportation and Railroad Assurance Co. Ltd., Railroad Association Insurance Ltd., and XL Insurance Co.

Plaintiff's Experts: Bernard Abrams, Columbus, Ohio (visibility/human factors); Kenneth Heathington, Knoxville, Tenn. (civil engineer); Dr. Lenworth Johnson, Columbia (ophthalmologist); Dr. Brick Johnstone, Columbia (psychiatrist); Dr. Gerald McNamara, Kansas City (orthopedist); Dr. Jon Rupright, Columbia (neuropsychologist); James Scott, Kingsport, Tenn. (train operations); Dr. Wayne Stillings, St. Louis (psychiatrist); Dr. Gary Yarkony, Chicago (physiatrist, life care plan); Dr. John Ward, Prairie Village, Kan. (economist)

Defendants' Experts: Dr. Jeffrey Brick, Kansas City (ophthalmologist); Dr. Edwin Carter, St. Louis (orthopedic surgeon); Dr. James England, St. Louis (vocational rehabilitation); Dr. Richard Katz, St. Louis (rehabilitation); Dr. William Koller, St. Louis (neurologist); Frank Landy, Boulder, Colo. (human factors); Jay Pfeiffer, Wichita, Kan. (train operations/sight distance); Dr. Richard Wetzel, Kansas City (neuropsychologist); Gary Wolfe, Atlanta (train operations); Dr. Sean Yutzy, St. Louis (psychiatrist)

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