

Missouri Lawyers

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WEEKLY

■ \$3.5M VERDICT (OUT-OF-STATE)

Iowa jury sides with conductor injured by tough railroad shift

BY LAWRENCE VIELE DAVIDSON
Special to Missouri Lawyers Media

An Iowa jury awarded a former railroad conductor more than \$3.5 million in a negligence case after he developed kidney failure he claims was caused by a physically brutal shift in single-digit windy weather.

Franklin David Barker, of Ankeny, Iowa, was a conductor for Union Pacific Railway Co. He worked on locomotives; braking, switching and coupling them for travel from Ames to Des Moines.

On the night of Jan. 29, 2007, Barker came to work near midnight to prepare trains for the trip to Des Moines. He walked the equivalent of several miles of snowy track to do repairs, such as to reset handbrakes on cars after repairing leaking air hoses on gaskets that caused unintentional emergency braking, his suit says.

"It was a junky grain train that needed all kinds of work," the lead attorney in the case, Christopher Leach at the Hubbell Law Firm in Kansas City, said in a telephone interview.

Barker said in his suit he asked for backup help from the dispatcher and was denied any help. One of the witnesses who did railroad work testified he would not have done as much work alone that Barker did on the night he was injured, Leach said.

Barker claimed defective equipment, among other things, contributed to unsafe working conditions, which violated federal railroad work safety laws in a January 2010 lawsuit in Polk County District Court. After the particularly rough shift, he went to the emergency room and was diagnosed with rhabdomyolysis, a breakdown of muscle fiber that releases myoglobin into the bloodstream and causes renal failure.

Because of Union Pacific, "the plaintiff has sustained life threatening, severe and permanent injuries," his lawyers said in court filings. "On account of these injuries plaintiff has undergone extensive medical care and treatment and plaintiff will be required to seek medical

treatment and life care in the future."

Barker, 56, has roughly half of the kidney function of a normal person and will likely need a kidney transplant when he is 65, Leach said. Another episode of overexertion or illness could worsen his state.

"He's maybe a bad virus away from having a kidney transplant," Leach said.

Union Pacific's arguments included that Barker's kidney damage was a pre-existing condition that was unforeseeable and the company was not responsible for his medical problems. Union Pacific said Barker had no proof that leaking gaskets caused the emergency braking problem that led Barker to do the extra work to fix them. Therefore, the railroad company says, the company did not violate the safety laws as Barker alleged. He made his claims under the Federal Employees' Liability Act, the Locomotive Inspection Act and the Safety Appliance Act.

There were no pretrial settlement talks, Leach said. Union Pacific had another similar trial involving personal injury claims with one of his clients less than a month earlier.

"They refused to negotiate," he said. "They thought we couldn't try both cases," he said.

On Jan. 12, after a week-long trial and after three hours of deliberating, 12 jurors sided with Barker.

Union Pacific's lead counsel Bruce Johnson didn't return an email and phone call seeking comment. Union Pacific has filed a motion for a new trial, Leach said.

Barker still works for the railroad but has curtailed a lot of his activities to avoid possible overexertion, Leach said. **MO**



Christopher H. Leach



Wes Shumate



Scott S. Bethune

PERSONAL INJURY

■ **Breakdown:** \$400,000 for past pain and suffering, \$1.25 million for future pain and suffering, \$24,975 in past lost earnings, \$178,050 for future lost earnings, \$1.38 million for future medical expenses, \$313,000 for loss of household services.

■ **Venue:** Polk County (Iowa) District Court

■ **Case number/date:** CL115929/Jan. 12, 2015

■ **Judge:** Douglas F. Staskal

■ **Plaintiff's experts:** Charles Culver, League City, Texas (railroad operations); Ann Koerner, Dublin, Ohio (life care planning); Walter Rockey, Hanover, Pennsylvania (railroad operations); Stan V. Smith, Chicago (accounting damages, economics)

■ **Defendant's experts:** Mony Fraer, Iowa City, Iowa (nephrology); Kevin Kregel, Iowa City, Iowa (human physiology)

■ **Caption:** Franklin David Barker v. Union Pacific Railway Co.

■ **Plaintiff's attorneys:** Christopher H. Leach, Hubbell Law Firm, Kansas City; Wes Shumate and Scott Bethune, Davis, Bethune & Jones, Kansas City; Joseph P. Gilligan, Gilligan & Reid, Des Moines, Iowa.

■ **Defendant's attorneys:** Bruce Johnson, Cutler Law Firm, West Des Moines, Iowa; Thomas Hayden, Hayden Reinhart, Pittsburgh, Pennsylvania