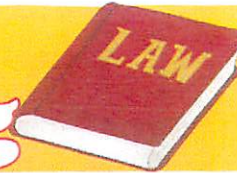




Around Our Town... Legally Speaking



Train Dangers and Railroad Hazards – Part II



Trains have been around for more than 150 years and they continue to play a vital role in our economy. However, thousands of people are injured by trains in the United States every year.

ACCIDENTS HAPPEN

If an accident with a train happens, the nature of the injured person's claim may depend on what the person was doing at the time he or she was injured. People who are hurt in a collision with a train may have

a negligence claim against the railroad. To prevail on a negligence claim requires showing that the railroad owed the person some duty of care, and that the railroad breached this duty and caused some injury.

Although trains usually have the right of way, this does not mean that trains may go barreling through crossings at top speed at all times. Instead, the operator of the train must use reasonable care, which may mean slowing down in built-up areas and keeping a sharp lookout for vehicles or pedestrians. Reasonable care may also require a railroad to erect the appropriate warning and signal devices in order to alert people when a train is coming.

Railroads owe a higher obligation to the passengers who "ride the rails." For historical reasons, railroads are usually treated as common carriers, which means that although they are not insurers of the safety of their passengers, they may have an affirmative obligation to protect them from harm, including injuries that might occur when the train is derailed. All of the facts and circumstances surrounding the accident can affect the determination of whether the railroad was or was not negligent.

If the accident involves an employee of the railroad, the claim is subject to a federal law called the Federal Employers' Liability Act (FELA). Unlike most workers' compensation laws, which protect workers who have been hurt at work regardless of fault, FELA requires that the injured worker show that the railroad was negligent. Railroads do have a general obligation to provide workers with a safe place to work, and if the worker is injured because the railroad did not provide him or her with the appropriate tools or equipment, the railroad may be guilty of negligence.

Nothing in this article should be construed as legal advice. You must consult with an attorney for the application of the law to your specific circumstances. The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise.

R. Michael Shickich is the founder of the Injury Law Firm located in Casper. The focus of his practice is personal injury and wrongful death cases.



FACTS ABOUT RAILROAD ACCIDENTS

- On average, there is a train collision or derailment every two hours.
- A train carrying hazardous materials derails about every two weeks.
- More than one-half of accidents involving trains occur at unprotected crossings.