

INJURY LAW ALERT

SUMMER 2007 ISSUE

TRAIN DANGERS, RAILROAD HAZARDS

Trains have been around for over 150 years and they continue to play a vital role in our economy. They transport goods over long distances far more cheaply than do planes or trucks. However, all those trains mean that there are frequent accidents and, because trains are so large, these accidents can cause very serious injuries. Thousands of people are injured by trains in the United States every year. Such an injury may give rise to a claim against a railroad.

Careful!

Of course, the best way to deal with train collisions is to prevent them in the first place. Drivers and pedestrians need to remember that trains are large and heavy, and they take a long time to stop. Trains are confined to their tracks and if you are on the tracks, they will probably hit you. Drivers who are crossing a railroad track should carefully check for trains before crossing the tracks, even if the crossing is equipped with warning devices such as lights and gates.

Drivers must be especially careful at crossings where there is more than one set of tracks, because a train on the first set of tracks may obscure their view of a train on the second set of tracks. Never cross the tracks unless there is room for your car to drive completely off of the tracks on the other side. If a train is anywhere in sight, wait for it to pass. Needless to say, ***do not drive around lowered crossing gates***. It is far better to be a few minutes late than dead.

Pedestrians also need to exercise caution and should follow the same rules as drivers. Pedestrians should cross train tracks only at marked crossings, and they should not walk across or fish from a train trestle because they may be trapped if a train arrives unexpectedly. Train tracks should never be used as paths or walkways. In fact, pedestrians should be very careful even when

walking beside railroad tracks because trains hang over the edge of the tracks by at least three feet on each side—cargo may extend this distance even further.

Accidents Happen

Unfortunately, people are sometimes involved in an accident with a train. If this 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.

Get Legal Help

Railroad injury lawsuits can involve navigating a minefield of state and federal laws and will require showing that the railroad should be liable under the particular circumstances of the case. Do not do it alone. Get the help of an experienced personal injury attorney who can help you assess your claim and pursue all available sources of recovery.

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.
- The federal government says that 80% of all railroad crossings have inadequate warning devices.
- It takes a train traveling at 55 mph a mile to stop after the emergency brakes are applied.

AGING TIRES CAN CAUSE ACCIDENTS

Cars are expensive to own and require the owner to continually buy “consumables” such as gas, oil, filters, spark plugs, and windshield wipers. Among these consumables are tires, and most car owners understand that they will have to replace their tires every so often because the treads will become worn.

However, did you know that you may also need to replace your tires because of their age, even if you have not driven very far and even if the tires look fine? This is because tires are usually made of rubber (real or synthetic), and all rubber products deteriorate with age, even if they are not

actually being used.

Research conducted in the aftermath of the Firestone tire/Ford Explorer problems a few years back shows that tires as few as six years old may pose a danger to users because of age-related deterioration, and even the tire industry (which has consistently downplayed the problem of old tires) has issued an advisory to its members recommending that tires should be replaced after 10 years.

Although many tires are purchased new and are used long before six years have passed, some are not. Some people do not drive their cars very often or very far, and six years may pass before the tire tread becomes worn enough to need replacing. Other people buy used or reconditioned tires, the age of which may be difficult to determine.

In addition, how many of us have a spare tire in the trunk of our car that is more than six years old? Placing such an old spare on a car can present a danger all its own.

Tread Separation

The specific problem posed by old tires is the phenomenon of tread separation. This separation is caused by oxidation, a process that causes the structure of the rubber to break down. When the rubber breaks down, the tread (the part of the tire that touches the road) can separate from the rest of the tire when the car is moving. Some people believe that it is much harder to control a car when the tread separates from the tire than it is to control one after an ordinary blowout.

When the tread partially separates, it pulls the car to one side, and drivers compensate by pulling the wheel in the other direction. However, when the tread separates completely and falls off, the driver will be overcompensating, and this overcompensation can cause the vehicle (SUVs especially) to swerve into oncoming traffic or to roll over. This means that tread separation can be a much more dangerous matter than can an ordinary tire problem.

Tire safety experts have estimated that hundreds of deaths or serious injuries have occurred that can be attributed to age-related tire failure. To reduce the number of these deaths or injuries,

consumer advocates have asked the federal government to require tires to be marked with an easy-to-understand “expiration date” so that a purchaser may easily determine its age.

Calculate the Age of Your Tires

The government is considering this request, but, until then, consumers can check the 10- or 11-digit DOT identification number on their tires. The last 3 or 4 digits of this number show a tire’s age: The first 2 give the week it was made (03 = the 3rd week of the year; 51 = the 51st week of the year), and the last 2 digits (or just the last digit for tires made in 1999 or earlier) show the year (03 = 2003), so a tire marked “1104” would have been made in the 11th week of 2004, and currently would be about 2-1/2 years old.

The moral of the story is to make sure that you replace your tires, including spares, regularly and not use a tire that you know is old, even if it does not appear to be worn. However, if you or someone you know has been the victim of an age-related tire failure, you may have a products liability claim against the tire’s manufacturer, seller, or even the car company that used the tires on its vehicles. Each case depends on its facts, and, because such cases are so complex and require the testimony of so many experts, it is best to have a lawyer help you determine whether you have a claim.

INSURANCE COMPANY SECRETS

When dealing with insurance companies, it is important to understand a few of their secrets so that you can get the settlement you deserve:

- Insurers make money in part by denying you benefits. They may try to discourage you from seeking medical treatment (especially from chiropractors), or they may tell you that rental car coverage is limited to a set number of days. In most cases, this is not true, and, if you are not at fault, you are entitled to have all of your reasonable damages and expenses

covered.

- Insurance companies track every claim you make. When dealing with an insurance company, assume that it knows the history of every claim you have ever made, even if a claim was with a different company.
- The adjustor is not your friend. Despite his protests, he is not there to help you—he is there to reduce the insurance company's payment as much as possible. You are also not required to give an adjustor a recorded statement or a medical authorization. If you feel you are not being treated fairly, it may be time to get an attorney involved.

SAFETY WITH ELECTRICITY

Electricity is an irreplaceable part of our modern world. In fact, it is hard to imagine what it was like living in the days before electricity. However, it is important to remember that, as useful as it is, electricity can be dangerous. Remember these safety tips:

1. Do not touch electrical power lines, EVER. If working near a power line, call the electric company to have it shut off. If the power line is down, stay away.
2. Do not run electrical wiring under carpets or across floors, even if the wiring is covered by tape. Walking on wires will eventually result in the insulation being worn away, increasing the chances of your being shocked or of starting a fire.
3. Inspect your electrical cords regularly. If a cord is frayed or damaged, have it replaced.
4. Use grounded (three-pronged) plugs. Do not use a grounded plug in a non-grounded outlet.
5. Install ground fault circuit interrupters (GFCIs) on outlets that are near water, such as those in the kitchen and bathroom.
6. Do not pull on electrical cords, and do not carry corded appliances and power tools around by their cords.
7. When in doubt, leave electrical work to a qualified electrician. When working with

electricity, you may get only one mistake, and, since that mistake can kill, you will not learn much.

DANGEROUS DRUGS: TRASYLOL

Trasylol is the only FDA-approved drug for the prevention of blood loss during heart surgery. By boosting the body's ability to stop bleeding, it can help reduce the need for blood transfusions. Unfortunately, it can also have dangerous side effects, including kidney failure, heart failure, and stroke.

A recent study shows that Trasylol may double the risk of kidney damage, as well as increase the risk of heart attack by nearly 50%.

The FDA recently issued a Public Health Advisory urging physicians who use Trasylol to carefully monitor patients for the occurrence of toxicity to the kidneys, heart, and central nervous system. The FDA also revised the labeling requirements to strengthen safety warnings and limit usage of the drug to specific situations.

If you have suffered kidney failure or heart problems following heart surgery, you may have been treated with Trasylol and you may be entitled to compensation for your injuries. Contact our firm to discuss your case.

THANKS

Thank you for trusting our firm with your legal needs. If you or someone you know has been injured due to somebody else's carelessness, please call us. We want to help.