

Personal Injury Law Podcast

by Rosenfeld Injury Lawyers

Train Crash Attorneys Look At Laws and Safety in Amtrak Crash Aftermath

Johathan Rosenfeld:

Hi, I am Jonathan Rosenfeld, and today I am joined by my colleague, Gerry Bekkerman. Gerry is a Chicago attorney at Taxman, Pollock, Murray & Bekkerman, and today we are going to talk about train safety. And in particular, we're going to talk about the recent Amtrak collision. Gerry, first off, thank you for joining me today, I appreciate it.

Gerald Bekkerman:

Of course. Happy to be here.

Johathan Rosenfeld:

Now, Gerry, before we start even getting into things, I was doing some intensive research on this topic and I was frankly, I was sort of blown away. I was looking at some federal railroad administration data and while train transportation is really known as being a safe method of transport, there still are a significant number of crashes that occur each year. In 2020, according to federal railroad data, there were 4,200 crashes, about 360 deaths, and those numbers actually increased a little bit, over the past year or so. So, this is a real source of injury and a real source of death, unfortunately. And I guess to begin with, knowing that these are real cases and they are things that do happen more frequently than we'd like to think, I sort of want to get into just some basic information with you. In terms of the causes of train crashes, what are the main causes of train crashes that you're seeing?

Gerald Bekkerman:

Well, Jon, thank you very much for having me on this podcast, as always. When it comes to are common causes of train accidents, what we've seen in our practice and my colleagues have seen, include most often, lack of train maintenance. Those would include certain inspection violations. So maintenance performance, these are not tracks you can just let be, these are not trains you can just operate without any skill, without any experience. There's certain regulations, there's certain inspection requirements, statutory and not, and commonplace in the industry that need to be followed. A major cause of course is speeding, reckless train operation, or we call it operator error. That's simple as the conductor fell asleep of the wheel. The conductor was running late because he was stopping and he was under pressure to get to a certain destination at a certain time, so he was running over the speed limit.

Gerald Bekkerman:

The operator wasn't checking for cross lines. Wasn't checking signals. Wasn't looking ahead. We've seen operators falling asleep, honestly. So's a lot of causes, operator errors, speeding and reckless train operating are certainly a significant cause. Wet, greasy or oily floors on platforms, believe it or not, can be a cause of derailments. The condition and maintenance of the platform is relevant. People get injured on the platform itself, not on the train. So we're not talking about a derailment or injury while on board in movement, but an injury with the onboarding. So egress or ingress are the fancy legal terms, getting on and off the train. Trip and fall hazards themselves on trains also do come up in our cases every now and then. So this will be a very commonplace, trip and fall premises liability, but within the train car itself. Is it a properly safe and secure train car that's being operated by the company?

Gerald Bekkerman:

And obviously a third party driver that's stopped on railroad crossings, okay? They may also be a fault. So it's got nothing to do with the train company. It's got nothing to do with the operator or the error or the speed, but someone's recklessly going around to gates, and that could be just a soccer mom in a hurry to get to practice, or it could be a truck driver skirting the laws, because he wants to make a delivery on time, an Uber driver, whatever, if they get onto the tracks and impede the trains path, that would also be a cause that we've seen commonly in our accident cases.

Johathan Rosenfeld:

So, it basically, sort of goes without saying that there's almost an infinite number of ways that these accidents can happen. As long as you have human beings operating these machines, these large powerful machines, there's an opportunity for a serious accident. In terms of train crashes, and we don't have to specifically target the Amtrak crash right now. But in general, when we're looking at railroad and train crashes, who are you sort of targeting in a lawsuit? Who are you bringing the case against? Obviously, there's a lot of investigation needs to be done, but who are some of the responsible parties, for some of these accidents?

Gerald Bekkerman:

Sure. The primary responsible parties going to be of course the operator of the train car. So Amtrak of course, we just had that horrific tragedy in Montana, but there's other railroad lines that are common, Union Pacific and things like that, that are old established companies. Amtrak obviously is the biggest transporter of human beings within the continental United States, federally funded and supported. But the train operator's typically, more often than not, an employee of that company, whether it be Amtrak, Union Pacific or the like. Sometimes they're subcontracted out, but that's pretty rare, usually they're employees. So the primary target of litigation and injury lawsuits for injured victims in train derailment or train accident or train injury cases, is going to be the company, okay? If its other operator, if it's on the train, it's within transit. When we're on platforms, okay, local and state entities could have control over certain places where you'll get into those fancy legal words, egress and ingress, or enter and exit the train, who controls the platform?

Gerald Bekkerman:

Who's responsible for cleaning that platform from hazards, snow and ice, the like, and what are the laws that protect those entities? Usually municipalities, that's a fancy word again, for local towns. So we're looking at the corporate structure, usually the corporation that is operating the train, it could be numerous. We've seen joint ventures, which is maybe one or two train companies that do business across the United States. They join up to run certain routes and share responsibility. They're primarily looking though at the train company, the corporation, whether it's Amtrak or similar. Their employees, anybody they do business with or subcontract with, to operate and/or any local municipalities or towns that own the platforms.

Johathan Rosenfeld:

Great. So, obviously, and it goes without saying that as employees, when they're employed in their capacity with the railroad, they're agents of the company, and they're covered, the company is obligated to indemnify the individual. So it's essentially, as an agent of the company, you're basically bringing a lawsuit against the company itself, as opposed to the individual. Now, one of the issues in any type of commuter railroad case is the whole issue of common carrier. Back in the day, long time ago, when you and I were in law school, we spent a lot of time talking about common carriers and the different degrees of care that they owed to people. And while we sometimes we sort of forget about some of those things, in a situation like this, this bringing it full circle, where you have a crash, one of the issues that comes up front and center is common carrier. Can you talk a little bit about what a common carrier is and sort of how that applies to a situation involving a train crash?

Gerald Bekkerman:

Sure. Digging back in my law school books here, but no, in all seriousness, common carrier is something we do deal with on a very common basis. So a common carrier is a duty to its passengers to exercise the highest degree of care. So not only care for them... Let me put it this way. You and I, Jon, if we are getting into an auto accident, we owe each other a general duty of care. So don't drive like an idiot, don't drive drunk, be responsible, when you're walking down the street, don't knock into people, if you have a dog, leash it. Act reasonable to each other.

Gerald Bekkerman:

A common carrier, which would include a taxi cab, a train company, train operators, people that transport the general public to and from for profit, they're called common carriers. And they have an extra high duty, okay? A highest degree of care. Not only to carry them safely, people, to their destinations, but to provide them with a reasonable opportunity to leave safely. So it sounds like, don't trap people on a train, but yes, that's what it sounds like. Allow somebody to board your train in a safe manner without injury, transport them safely from destination A to destination B, and allow them to safely exit at their destination without harm and injury, all right? What's the logic behind that? A lot of, at least in Illinois, and a lot of states are similar. The Supreme Court, appellate courts, have kind of justified this by saying, "Due to the unique control it possesses over its passenger safety, a common carrier, such as a train operator, owes its passengers, the highest duty of care, consistent with practical operation of its conveyances."

Gerald Bekkerman:

A little bit of a better standard. What does that mean for an attorney like us and our law firm? That means when we sue and litigate against train companies for injuries and train accidents, our burden to me, it's a little bit better, our case is just a little bit stronger. The jury's going to hear instructions that aren't going to just compare what you and I do when we're out in the world to each other. It's going to hold these train companies to a higher standard and it's more favorable and it leads to the potential to get more compensation for our clients.

Johathan Rosenfeld:

That's really a good explanation of common carrier. We just got to remember the highest degree of care. Now, if someone's injured in a train crash, okay? Obviously the first thing they need to do is get medical attention. They need to get things sorted out. But from a legal perspective, the applicable law that goes into these cases is a little bit more intricate than it would appear on the surface. There's different laws that apply to different types of personal injury cases and train crashes are really no different. In terms of the applicable law for a situation, we can talk about things in abstract or we can sort of talk about things a little bit more specific in terms of an Amtrak crash. If you're in Chicago, you're taking the Amtrak train from Chicago to Seattle and there's a collision in Montana, on the surface, it seems, well, I don't know, you bring the case where you bring the case. But when you evaluate a situation like that, what type of laws are you looking at in bringing a case?

Gerald Bekkerman:

Sure. Well, the victim of a train crash, may be able to bring a cause of action depending on the specific facts, of course, against the transit agency or the companies, for example, Amtrak, the owner of the track, the operator of the train, the driver of a vehicle that may get in its path, or the equipment manufacturer, if it gets to be a product liability case. And you can claim common losses such as medical expenses. So your injuries, your hospital bills, lost income if you're injured and prohibited from returning to work, both in the past and in the future, future surgeries, future medical costs, rehabilitation therapy, et cetera, psychological care, as well as future and past pain and suffering and what we call noneconomic damages. So inability to enjoy activities and lead the life you used to lead before you were in this train accident.

Gerald Bekkerman:

So you can recover those damages, but given the nuances you just described with your example, with a train leaving Chicago, going to Seattle and the occurrence happening in Montana, we get into this really fun law school concept. I'm sure you remember Jon, which is called federal preemption, which is basically, hopefully our listeners can understand what state law versus federal law is. But in essence, what preemption is and how it relates to train cases is that the law of the state, whether it be Illinois, Montana, or Washington, where the train was going, it's preempted under the supremacy clause of the constitution, right? And so there's something that was adopted by the US federal government without boring everybody called the Federal Railroad Safety Act, which preempts state law tort claims, only if they substantially assume the subject matter of the relevant state law. What does that mean? It means there's a federal law that guides and regulates most tort or injury cases or railroad accidents when they happen interstate.

Gerald Bekkerman:

So this accident that we just occurred, this tragedy was in Montana. There's a lot of injured people. The investigation will eventually conclude that something probably went wrong in Montana. However, something could have also probably gone wrong in Illinois where this train started its journey or potentially in Washington where it would've ended the journey. We just don't quite know yet. But in these kind of situations, where do you bring the lawsuit, Illinois, Montana? There's a lot of different state laws, variances, et cetera. The Federal Railroad Safety Act and federal preemption, kind of sets a standard, okay? If you allege issues relating to training of operators, failure to maintain qualifications and the employees working for the railroad, et cetera. Those are all things that would be preempted or federal law kind of trump's state law. Federal law places, why does it matter, I guess, okay? So it provides a pretty safe pathway for an attorney like us to follow when determining how to sue, what to sue, what allegations to alleged, et cetera.

Gerald Bekkerman:

It also places a caps on what a victim of a train crash may recover. Now cap, the aggregate allowable awarding to all injured railroad passengers. So for example, in this Amtrak collision, there's 50 something injured plaintiffs, passengers, there's some fatalities. The estates of those people could bring claims, including punitive damages to punish the railroad, if something egregious happened. Our caps at \$200 million, okay? And that sounds like a massive number, but with 50, 60, maybe more, traumatically injured people, the lawyers involved in the litigation need to kind of huddle up, the claims are usually consolidated, brought in one courtroom, overseen by one judge with the understanding that in totality, 200 million will be the maximum recoverable by everybody. Whether it's the death cases, the injuries, et cetera, all right?

Gerald Bekkerman:

So for example, Amtrak is required because it's under this Federal Railroad Safety Act, it's federally funded and backed, it has to require a total minimum liability insurance coverage for claims in the amount of \$200 million, at a minimum. Again, it seems like a lot, but if you aggregate, add up all the cases, all the victims, that number does come into play at some point.

Johathan Rosenfeld:

My head's spinning a little bit, but-

Gerald Bekkerman:

Sorry about that. It's a little professorial of me.

Johathan Rosenfeld:

No. Look, my head spins a lot, but you really did a nice job breaking that down for people. I think, the bottom line is, is a victim of any type of injury. This is actually what you just described is sort of the, in my mind's eye, reason number one, why you want to get a lawyer who has experience with the particular situation that you're dealing with, because this stuff gets real complicated, real quickly. And if you are sort of trying to navigate this on your own, you're in for a dog fight.

Johathan Rosenfeld:

Now, the last thing I want to talk with you about is, a lot of time in situations like this, people, families involved in the case, such as the Amtrak crash, may be reading news reports, they may be watching the news, people like to pontificate about everything. They like to throw out ideas, "Oh, the track was old. Oh, the locomotive was going too fast. The weather. Wasn't perfect." People just go on and on and on. And everyone's got the right to take a stab at things. And there is an investigation that's being done by the NTSB, which is extremely thorough. These people who investigate these cases really are pros. This is their job. They're very thorough. They know what to look for.

Johathan Rosenfeld:

But they really do, this is a process. They do take their time as they should, when it comes to investigating these cases, talking to witnesses, looking at physical evidence. But what I want to get back to here is if someone, an individual who is involved in this, or if they have a family member who is involved in this, and they're looking at the news reports and they're like, "Well, I don't know, maybe it's Amtrak, maybe it's some other party, I don't really know what to do. Do I need to wait for the investigation to be done?" What would you suggest that they do in terms of protecting their legal rights today and in the foreseeable future?

Gerald Bekkerman:

Sure. Well, listen, right now, everyone can conjecture and guess what happened. The NTSB, the National Transportation Safety Board, and a lot of people smarter than you and I, and their expertise, are investigating what happened. These investigations take a while. What do injured people do? What should they do? Well, they certainly shouldn't sit around and wait. Obviously, if you were on that train, if you were injured or if you're involved in any train accident, where you're injured, you need to contact a competent attorney that has experience in litigating these specific unique cases that have federal preemption issues, that have caps on damages issues, and a host of other issues that really can't be done by your run of the mill family rules and trust lawyer, or somebody that handled your divorce.

Gerald Bekkerman:

Specialists like our firm, specialists like yourself, that work in tort law that work in injury law exclusively, and that have the resources and the skills to travel to the scene, to work with other attorneys, to work across multiple jurisdictions, be licensed in federal court and member of the Federal Trial Bar like myself and members of my firm that have at least 50 hours of trial experience and are certified to handle these kind of cases.

Gerald Bekkerman:

You need to contact a law firm like ours and like yourself and work on cases like these. Why? You need resources. If we get a contact or if you get a contact Jon, and we decide to work together on a case for somebody injured in this Amtrak incident, the first thing we're going to do is we're going to retain an expert, okay? Who's going to know what the NTSB is looking for, that's going to keep us apprised in the investigation. We're going to get an opportunity to preserve evidence. We're going to contact Amtrak or any other business corporation or municipality that had anything to do, potentially with this derailment. We'll ask them to preserve evidence, allow us to inspect, allow us to retain experts and bring them out. This all costs money.

Contingency fee cases, as I hope your audience knows, the lawyers take on risk of the cost of the case.

Gerald Bekkerman:

So a firm like ours, if we were to work together in a case for somebody in this incident, Jon, we would spend the kind of money and the time and resources it would take to figure out what happened, okay? That's important. You need to obviously preserve your rights, preserve your evidence. That's what we would do in a situation like this. And that's why it's important that anybody that does potentially have a claim and maybe is confused, do I need to hire a Montana attorney? Do I have to go to somebody in Washington because I live there? Or do I go to Chicago? This is a national case. Cases are national, federal law applies, and what you need is an experienced, competent attorney that knows what they're doing.

Johathan Rosenfeld:

Excellent, excellent points. The only thing I would just throw in the mix is that, a lot of times in these situations where there are multiple plaintiffs, that sort of derive out of one incident, it is always nice to have an experienced attorney who is going to bat for you, who is in a sea of plaintiffs and in a sea of attorneys, they're willing to really do what it takes to look out for your best interest. And certainly I've seen you do this in other situations, similar, where there's mass injury, mass catastrophic injuries. So, hopefully people will listen to this and if they have questions, they'll reach out to you and get some answers. But Gerry, as usual, amazing insight today, very, very helpful. I appreciate your time. I look forward to talking with you again. Peace be with you, talk to you soon.

Gerald Bekkerman:

Thank you. Appreciate it as always, Jon. Thank you, listeners. Bye bye.

Johathan Rosenfeld:

Take care.