

Railroad

Trial and Appellate Experience

Since opening its doors in 1935, Schnader has been known as a preeminent litigation firm at both the trial and appellate levels. Our litigation department, Schnader's largest, handles a high volume of work across the nation. Our attorneys are noted for their skill, aggressiveness, hard work, and ingenuity.

The inroads our litigators have made are especially apparent in our railroad practice, where our efforts have resulted in the establishment of new law and important clarification of existing law in trial and appellate courts throughout the country. Within the industry, we have addressed issues related to the Federal Employer Liability Act (FELA), labor and employment concerns, environmental exposure, tax matters, damages, common law negligence, bankruptcy, and numerous other procedural issues.

Our impact on the railroad industry is perhaps most exemplified by our representation of the Consolidated Rail Corporation (Conrail) in *Consolidated Rail Corporation v. Gottshall*. In *Gottshall*, the U.S. Supreme Court reversed two Third Circuit Court of Appeals decisions entered against Conrail and held that only those railroad employees who sustain or nearly sustain a physical impact on the job, i.e., employees who satisfy the common law zone of danger test, can sue for negligent infliction of emotional distress under the FELA. The decision is one of the few FELA decisions in the past 40 years in which the court has placed limits on the recovery available to plaintiffs. The court's opinion - clearly a significant victory for Conrail and the railroad industry - marked a turning point in the court's FELA jurisprudence and has had far-reaching implications for state and federal tort law generally. For instance, the plaintiff has recovered in only a handful of post-*Gottshall* cases regarding negligent infliction of emotional distress, in view of the strict requirements of the zone of danger test.

Other representations of note include:

- *Schweitzer v. Consolidated Rail Corp.*, a case in the U.S. Court of Appeals for the Third Circuit, where we established new law and obtained a major victory for Conrail in suits by former Reading and Penn Central employees who sought to impose liability on Conrail for asbestos-related injuries sustained while working for those former, reorganized railroads.
- *In the Matter of Penn Central Transportation Co.*, a case in the U.S. Court of Appeals for the Third Circuit, where we established Conrail's entitlement to bring claims against the Penn Central Corporation for environmental liabilities that had occurred prior to Penn Central's discharge from bankruptcy and prior to the enactment of CERCLA.
- Representation of Norfolk Southern Railway Corporation and Conrail in multiple class actions resulting from a 2012 derailment in Paulsboro, New Jersey.
- *Everett v. Norfolk Southern Railway Corporation*, where we were retained to argue an appeal from a trial verdict in the Georgia Court of Appeals and Supreme Court involving application of the U.S. Supreme Court's decision in *Consolidated Rail Corporation v. Gottshall*.
- Representation of a coalition of railroads as *amicus curiae* in a case in New Jersey Supreme Court involving railroads' eminent domain rights.
- Representation of a coalition of railroads as *amicus curiae* in a case in Pennsylvania Supreme Court involving Public Utilities Commission allocation of repair costs to railroads that use, but do not own, the property.
- Representation of Conrail in nationwide class action litigations brought by landowners challenging the right of telecommunications companies to install fiber-optic cable along the railroad's right of way, and of the railroad to grant the telecommunications companies the licenses to do so.
- Representation of Conrail in an arbitration against the Metropolitan Transit Authority and others involving apportionment of liability for environmental cleanup at Harmon Railroad Yard in New York, in which the arbitrators held that Conrail was not responsible for any portion of the clean-up.
- *Metro-North Commuter Railroad v. Buckley*, a case in which the U.S. Supreme Court, following the path it had charted in *Gottshall*, sharply curtailed the ability of rail employees to recover for emotional distress based on fear of developing illness from toxic exposure, where we represented Conrail and the Association of American Railroads as *amici* both in petitioning the Supreme Court for certiorari and, when the court granted the petition, on the merits.
- Representation of Conrail at all stages of the appellate process in the Ohio state courts in crossing accident cases involving federal preemption, the Ohio wrongful death statute, and the constitutionality of massive punitive damages awards.
- *Dale v. B&O*, where we represented the B&O Railroad in the Pennsylvania Supreme Court in a case that established the apportionment of damages principle in FELA litigation.
- *Denton v. Southern Railway Co.*, where we represented the Association of American Railroads as *amicus* before the Supreme Court of Tennessee in a case involving apportionment of damages and damages for fear of disease.
- *In re Erie Lackawanna Railway Co.*, a case in the U.S. Court of Appeals for the Sixth Circuit involving the imposition of FELA toxic tort liability on a railroad in liquidation.
- *Hileman v. Pittsburgh and Lake Erie Railroad*, where we represented the Association of American Railroads as *amicus* before the Pennsylvania Supreme Court in a case successfully establishing the right of FELA defendants not to have a jury charged regarding the ineligibility of plaintiffs for

workers' compensation benefits.

- *Morgan v. Monessen Southwestern Railway Co.*, in which we represented the Association of American Railroads and the National Association of Railroad Trial Counsel as *amicus* in the Pennsylvania Supreme Court in a case involving application of the state prejudgment interest rule to the FELA. Although unsuccessful in the Pennsylvania Supreme Court, the U.S. Supreme Court eventually granted a writ of certiorari and reversed the Pennsylvania Supreme Court's decision.
- Representation of Amtrak in construction litigation resulting from the Northeast Corridor Improvement Project.
- Successful representation of Conrail in numerous disputes before the Special Court, Regional Rail Reorganization Act of 1973, federal trial courts and arbitration panels arising out of Congress' relieving Conrail of the obligation to provide intracity commuter services.

Other Services

Schnader's railroad-related experience is not limited to litigation. The Firm has extensive experience in providing a broad range of services. The practice of the Firm has been concentrated in the representation of large corporations in jurisdictions throughout the U.S. involved in heavily regulated industries, including small-package delivery, television networking, passenger and commercial rail service, airlines, and banking.

We have unique experience and sensitivity evolved from decades of experience in representing companies in the transportation industry. Our lawyers have represented clients before the governing federal agencies and regulatory agencies in virtually every state. Our nonlitigation work on behalf of railroads has included matters in the areas of environmental, corporate, employee benefits, mergers and acquisitions, equipment leasing, real property (including railroad rights-of-way), and taxation.

Exemplary representations include:

- Representation of a large parcel delivery company in an action relating to the jurisdiction of the National Mediation Board and the applicability of the Railroad Labor Act to the company's intermodal operations.
- Representation of Consolidated Rail Corporation in the negotiation and sale of its passenger railroad operations and facilities on the East Coast, an action required by Congress under the Northeast Rail Services Act of 1981. These complicated transactions involved separate agreements with numerous states and transportation authorities covering tax, real estate, intellectual property, environmental and corporate matters.
- Representation of air carriers in a variety of contexts, including matters involving the employee protection provisions of the Airline Deregulation Act, grievance proceedings under the Railway Labor Act and employment-related disputes.

Our Lawyers

The Railroad Litigation Practice Group brings together highly experienced, multi-disciplined individuals well-suited to handle complex matters.

Our lawyers have represented railroads in a broad spectrum of matters in federal and state courts throughout the country. They work closely with other lawyers in the Firm who provide complimentary legal services to other elements of the transportation industry and who are highly experienced in the areas of environmental, tax, antitrust, product liability, and corporate law.

The members of the Railroad Litigation Practice Group belong to such organizations as the National Association of Railroad Trial Counsel, the American College of Trial Lawyers, the American Academy of Appellate Lawyers, the International Academy of Trial Lawyers, and the American Law Institute, and have been noted in *Who's Who in American Law*.

The members of the Railroad Litigation Practice Group include the lawyer who has successfully represented railroads in more than a dozen appeals throughout the country and whose victory in the U.S. Supreme Court for Conrail in *Gottshall* marked a turning point in FELA jurisprudence. In addition to our litigation capabilities in matters involving railroads and our appellate and trial experience in general, our broad experience in other areas of the transportation industry - most specifically, the aviation and maritime industries - makes us well-positioned to offer the highest quality of representation to railroads.

Contacts

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