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COURT UPHOLDS LARGE TORT AWARD TO YOUTH WHO JUMPED ONTO MOVING TRAIN

(Choate v. Indiana Harbor Belt Railroad Co.)

The Appellate Court of Illinois this week upheld a \$3.9 million judgment awarded to a boy who was injured while attempting to jump onto a rapidly moving freight train. The decision in *Choate v. Indiana Harbor Belt Railroad Co.* was a setback for the Washington Legal Foundation (WLF), which filed a brief urging that the judgment be overturned.

WLF argued that landowners should not be held liable for failing to prevent trespassers from knowingly engaging in reckless behavior. WLF noted that the nearly 13-year-old boy admitted that he was aware of the danger of jumping onto trains and attempted to do so in order to impress his girlfriend. The appeals court disagreed, holding that it was up to a jury to decide whether children jumping onto trains fully appreciate the dangers they are facing. If they do not fully appreciate the danger, the court held, then railroads can be held liable for failing to take more effective measures to keep children away from their tracks.

“Common law has long understood that landowners owe no duty of care to trespassers, albeit it has created some exceptions when the trespassers are children,” said WLF Chief Counsel Richard Samp following the court’s decision. “But until now, those exceptions have never been deemed applicable when the danger into which the youth places himself is open and obvious to an average person of his age,” Samp said.

The case involves a boy who was playing with friends near railroad tracks in Chicago Heights, Illinois. When they saw a lengthy freight train passing by at 10 miles per hour, the boy announced that he intended to jump onto the train. Despite entreaties from his friends that the feat was too dangerous, the boy ran up to the tracks and attempted to grab onto one of the passing ladders – whose lowest rungs were more than two feet off the ground. After failing on his first two attempts, the boy managed to grab a ladder on his third attempt. But one of his legs swung under the train and was crushed.

The boy had been caught trespassing on at least two prior occasions by railroad police officers, who ordered him to stay away from the tracks and warned him of the dangers of moving trains. His mother had also warned him repeatedly of the danger, and he acknowledged that he understood the danger. His lawsuit nonetheless asserted that the

railroad was negligent because it should have constructed better fencing that would have done a better job of keeping children off of the tracks.

A jury awarded the plaintiff \$6.4 million in damages. It also determined that the boy was 40% responsible for the injuries, a finding that caused the final damages award to be reduced to \$3.9 million. The railroad appealed the verdict, asserting that it owed no duty of care to the trespassing youth.

In its brief urging that the damages award be overturned, WLF argued that, in general, a landowner owes no duty of care to a trespassing individual (whether an adult or a child) except not to willfully or wantonly injure him. Illinois has created an exception to the “no-duty” rule when the trespasser is a child and can make a number of showings, including a showing that the “dangerous condition” that resulted in the injury was one that is “likely to injure children because they are incapable, because of age and maturity, of appreciating the risk involved.”

WLF argued that while it is possible that very young children might not fully appreciate the dangers of moving trains, the average youth who is nearly 13 is fully aware of those dangers. Accordingly, the railroad is not liable for the injuries incurred by the trespassing boy – both because the average youth his age would have appreciated the danger and because the boy himself knew the danger he faced, WLF argued.

WLF added that it is irrelevant that some children lack the emotional maturity to refrain from activities they know to be highly dangerous. What is important is the fact that the minor can appreciate the risk, not that he will in fact avoid it, WLF argued. To rule otherwise would be, in effect, to transform landowners into insurers who are required to cover the costs of all injuries incurred by trespassers who come uninvited onto their property. The court did not disagree with WLF regarding the proper standards, but it held that whether those standards are met in a given case should be determined by the jury.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes substantial resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared in numerous federal and state courts in cases raising tort reform issues. WLF filed its brief on behalf of the Illinois Civil Justice League and the Allied Educational Foundation.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF’s brief is posted on its web site, www.wlf.org.