

## RAILROAD/HIGHWAY CROSSING SAFETY

Recently, our United States Supreme Court dealt a serious blow to public safety. The Court held that as long as federal funds have been used to install warning devices at railroad crossings (no matter how inadequate or unsafe), then a victim who has been struck by a train is left without a remedy against the railroad. Federal Funds are now used at most crossings on public roads. This ruling effects the safety of all of us and our families.

In 1970, Congress enacted the *Federal Railroad Safety Act* which gave the Secretary of Transportation authority to issue regulations and orders for every area of railroad safety. The idea was to make laws and regulations and orders related to safety nationally as uniform as practical. Three years after passing that Act, Congress enacted the *Highway Safety Act of 1973* which created the Federal Railway-Highway Crossing Program. That program makes funds available to the states for projects for the elimination of hazards including the construction of warning devices at railroads. This includes both the cross-buck which is considered a passive warning device and lights or gates which are active warning devices. Under this regulation, the states have diagnostic teams which are required to survey crossings which are extremely hazardous. Unfortunately, not all crossings are regularly surveyed for safety. Under the federal regulations, the states are required to "conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule or projects for this purpose." At a minimum, the funding must "provide signs at all railway-highway crossings".

It is unfortunate that all of the highway crossings have not been efficiently surveyed by the diagnostic team. Many of those that have been surveyed have not been reviewed in years. Some of the crossings have not been reviewed at all and have only the minimum signage put up where there needs to be train activated warning devices. That was the circumstance involved in the case that went up before the Supreme Court.

The case arose out of the tragic death of Eddie Shanklin. Shortly after 5 a.m. on October 3, 1993, Mr. Shanklin drove his truck eastward on Oakwood Church Road in Gibson County, Tennessee. As Mr. Shanklin crossed the railroad tracks that intersect with the road, he was struck and killed by the train operated by Norfolk Southern Railroad Company. The crossing was only equipped with an advance warning sign and reflectorized cross-bucks. Mr. Shanklin's widow brought suit against the railroad for having an inadequate warning at the crossing. A jury assigned 70% of the responsibility to Norfolk Southern Railroad and 30% to Mr. Shanklin, and as a result an amount of \$430,000 was awarded to the widow. The trial court agreed with the jury that the warnings were inadequate and the Sixth Circuit Court of Appeals agreed that the warnings were inadequate and that the railroad should not be insulated from liability for the dangerousness of its crossings.

Unfortunately, the U.S. Supreme Court disagreed. The Court held that as long as any federal funds were used to install the signs, it did not matter whether the diagnostic team had actually surveyed the crossing to determine if those signs were adequate for the protection of the public.

The U.S. government responsible for installing the warning signs filed a brief siding with the Shanklin Family telling the Court that the reflectorized signs were "a minimum protection" and the crossing had not been reviewed by the diagnostic studies to analyze and see if the crossing needed more adequate warnings.

The Court held that "whether the state should have originally installed different or additional devices, or whether conditions at the crossing had changed such that automatic gates and flashing lights would be appropriate, it is immaterial to the pre-emption question."

Two Justices, Ginsberg and Stevens, dissented from the majority of the Court. These Justices pointed out that "No authority, federal or state, has found that the signs in place at the scene of the Gibson County accident were adequate to protect the safety, as distinguished from a bare minimum. Nevertheless, the Court today holds that wholesale federal funding of improvements at 196 crossings throughout 11 West Tennessee counties pre-empt all state regulation of safety devices at each individual crossing. As a result, Respondent Dedrea Shanklin cannot recover under state court law for the railroad's failure to install adequate safety devices. In the state of Tennessee, because it used federal money to provide at least minimum protection, it is stopped from requiring the installation of adequate devices at any of the funded crossings." . . . "The upshot of the Court's decision is that state negligence law is displaced with no substantive federal standard of conduct to fill the void. That outcome defies common sense and sound policy." The dissenting Justices also pointed out the absurdity of the Court's ruling by stating "today the railroads have achieved a double windfall; the federal

government foots the bill for installing safety devices; and that same federal expenditure spares the railroad from tort liability, even for the inadequacy of devices designed only to secure the `minimum' protection Congress envisions for all crossings."

As you can see, juries have now been replaced by an inadequate federal law to determine safety at our railroad crossings. This is a further erosion of the right to trial by jury. As a result, innocent people will be killed or maimed and the railroads will enjoy the immunity that has been bestowed upon them by the federal government.