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ST. LOUIS CITY

FELA

(1) Jerry Miller v. Union Pacific Railroad

Cause #902-10801. Division #4 Judge Hon. David C. Mason

Plaintiff's Attorney: Joseph L. Bauer, 900 Walnut Suite 520, St. Louis, MO 63102-1137.

Phone #(314) 241-7700 (Bauer & Baebler)

Defendant's Attorney: Theodore J. Williams, Jr. One Metropolitan Square, Suite 2600, St. Louis, MO 63102-2740, phone #(314) 621-5070 (Armstrong Teasdale).

The following information is from plaintiff's attorney; defendant's attorney was unavailable for comment.

Type of Claim: Brakeman injured while coupling train; plaintiff, 39 years old at the time, alleged while he was employed by defendant as a brakeman, he attempted to open a knuckle in order to couple two railroad cars. Plaintiff claimed that the pinlifter stopped halfway up and caused sharp pain in his low back; when he stepped to the side to avoid falling under a moving rail car, he stepped into a hole and caused further injury to his back. Plaintiff contended defendant violated the Safety Appliance Act and the Federal Employees Liability Act by using a car on its line with a defective pinlifter and by not properly maintaining its property in allowing a hole on railroad's siding.

Defendant denied the car was in use on its line and denied it was negligent under the FELA. Further, defendant claimed plaintiff failed to mitigate his damages and was able to work. Defendant brought into evidence a thirty-minute videotape of plaintiff engaged in activities that defendant contended were inconsistent with plaintiff's alleged inability to work. The incident occurred during late morning hours; no adverse weather. Defendant was self-assured.

Damages Alleged: ruptured lumbar disc, operated, permanent disability, psychological injury, depression, medical specials; none; wage loss: \$195,000 to date of trial.

Plaintiff's Expert: Dr. George Schoedinger, Orthopedic Surgeon, treating doctor, from St. Louis, MO, live; Dr. Edwin Wolfgram, Psychiatrist, treating doctor, from St. Louis MO, live; Dr. Samuel Bernstein, Vocational Rehabilitation, from St. Louis, MO live; John McDonald, Railroad Equipment Maintenance Expert, from Cleveland, OH, live.