Washington Legal Foundation
Advocate for freedom and justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302

September 21, 2012

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

(*Choate v. Indiana Harbor Belt Railroad Co.*)

The Illinois Supreme Court yesterday overturned 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 victory for the Washington Legal Foundation (WLF), which filed a brief urging reversal.

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 Supreme Court agreed, holding that landowners are not liable for injuries to trespassing children unless the injured child—due to his age and maturity—was incapable of appreciating the risks involved.

In upholding liability, the lower courts had held that it was up to a jury to decide whether children jumping onto trains fully appreciate the dangers they are facing. If the jury finds that they do not fully appreciate the danger, the courts held, then railroads can be held liable for failing to take more effective measures to keep children away from their tracks. The Supreme Court disagreed, holding that whether a child of a given age and maturity appreciates the risks involved is a question of law to be decided by the courts. It went on to determine that boys who are nearly 13 years old are well aware that jumping onto a moving train is dangerous.

"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. "The Supreme Court correctly recognized that those exceptions are not 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 involved 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. The boy managed to grab a ladder, but one of his legs swung under the train and was crushed.

The boy had been caught trespassing on 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,

as had his mother. 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 boy $6.4 million in damages. It also determined that he was 40% responsible for the injuries, a finding that caused the final damages award to be reduced to $3.9 million. The railroad appealed, asserting that it owed no duty of care to the trespassing youth. An appeals court affirmed the trial court judgment, but the Illinois Supreme Court has now reversed.

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 was 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.

The Court agreed with WLF 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, the court held. 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, it held.

WLF is a public interest law and policy center with supporters in all 50 States. WLF has appeared in numerous courts in cases raising tort reform issues. WLF filed its brief on behalf of the Illinois Civil Justice League and the Allied Educational Foundation.

* * *

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.