

Railroad

The Sussman Shank railroad group is a team of lawyers with deep, industry-specific experience and knowledge that can't be found elsewhere in the Pacific Northwest. We counsel railroads on many issues and help them navigate the labyrinth of specialized industry-related laws and regulations.

Our railroad team has 75+ years of experience advocating for and defending railroad companies, including large Class 1 freight railroads, short lines, and commuter lines. We handle the diverse scope of issues and services that the industry demands.

Our specialties include responding to, investigating, and defending crossing accidents and injury claims brought under the Federal Employers Liability Act (FELA), the Federal Safety Appliance Act (SAA), the Locomotive Inspection Act (LIA), and the Federal Railroad Safety Act (FRSA). We also defend toxic tort claims, such as silica and asbestos exposure claims.

There is no substitute for experience in these specialized areas of the law, and our team has that experience. We have extensively handled and litigated every aspect of these high-stakes cases, from initial evidence preservation and investigation through motion practice and trial. Our experience allows us to quickly identify the key legal and factual issues necessary for the best defense of the case, and also to identify and recommend the most qualified and appropriate expert witnesses. We stay abreast of the latest tactics and arguments from the plaintiffs' bar, and the best strategies in responding to the same.

Our team also specializes in representing railroad companies in areas beyond injury litigation. These areas include defending against employment claims, as well as representing our railroad clients in real estate and property law cases, particularly those related to railroad crossings and real property disputes surrounding railroad rights-of-way. Often crossing cases arise due to development or other factors, such as when a formerly lightly-traveled crossing begins to receive heavy use.

Practice Area Chair

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OUR ADVANTAGE

Adapting to Changing Plaintiff Strategies

The plaintiffs' bar in railroad matters is aggressive, and constantly testing and applying new tactics, during discovery, motion practice, and at trial. Our railroad team is familiar with this dynamic, and has the experience and skillset necessary to not only adapt to and effectively and efficiently anticipate and counteract them.

Technology-Forward Defense

Similar to other industries, technology has become an increasingly vital component in railroad litigation. Our adept team can identify the necessary information and collaborate with clients to efficiently and effectively collect and organize evidence without incurring excessive expenses.

Our team utilizes technology resources such as the discovery management platform Everlaw, to streamline the discovery process. We also use TrialDirector and other presentation platforms to effectively manage and present cases in court.

AREAS OF EXPERTISE

- FELA litigation, including traumatic and occupational claims
- Employment law disputes
- Appellate law
- Commercial contracts
- Environmental, asbestos, and toxic tort matters
- Freight disputes
- Grade crossing accidents
- Insurance
- Locomotive, freight car, track, and other equipment issues and claims
- Property damage
- Real Estate disputes and transactions
- Regulatory compliance
- Third-party recovery litigation for contribution and indemnity

REPRESENTATIVE WORK

Federal Employers Liability Act (FELA)/Toxic and Cumulative Cases

- In an FELA case involving an acute back injury claim based on allegations of bad ballast and walkway conditions at a siding in eastern Oregon, we worked with our client to investigate the case, develop a trial strategy, and try the strict-liability case to a jury for three weeks. At the conclusion of trial, the jury awarded damages far below plaintiff's last demand.
- In an FELA case involving allegations of negligence under the FELA and strict liability under the Federal Safety Appliance Act (FSAA) related to an allegedly defective pin lifter and coupler assembly on a railcar, we achieved a favorable verdict on behalf of railroad client following a 3-week trial.
- In a FELA case involving damages allegedly suffered as a result of a software malfunction on a piece of heavy machinery, we won full indemnity (including attorney fees and costs) on summary judgment against the third-party software designer and manufacturer based on product liability and contract theories.
- In an FELA lawsuit involving a toxic tort, obtained dismissal of client based on lack of personal jurisdiction pursuant to *Damiller AG v. Bauman*.

Railroad Crossings and Third-Party Litigation

- We have significant experience handling railroad crossing cases throughout the Pacific Northwest. We are knowledgeable on the state and federal regulatory and statutory framework governing railroad crossings, and we are well versed in the unique legal issues and defenses that arise in crossing cases, including federal and state law preemption. We have also handled many other types of third-party lawsuits, including car and bicycle accidents, as well as personal injuries of all sorts.
- In a grade crossing case involving a claim for \$35 million against a railroad client, obtained summary judgment on behalf of our client (which was upheld by the Oregon Supreme Court) based on federal preemption of claims involving crossing signalization, layout, and design.
- In another grade crossing case involving two separate lawsuits, we obtained dismissal of national railroad carrier from both lawsuits following the filing of summary judgment motions based on federal preemption under the Federal Railroad Safety Act (FRSA). The plaintiffs' allegations concerned alleged false activation of crossing gates. After reviewing the motions, and without filing a response, both plaintiffs voluntarily dismissed the railroad from their respective lawsuits.

Property Damage

- Our team has handled many property damage matters, including train delay and locomotive damage claims, derailment investigations and response, fire, trespass, livestock, and landslide litigation.

Employment

- We have handled multiple employment matters for our railroad clients over the years, including claims for wrongful discharge, discrimination, and retaliation.

Appellate/Insurance Coverage

- Our partner Tom Christ and his team have extensive experience handling appeals and insurance coverage all over the Pacific Northwest. Tom is one of the most prominent appellate lawyers in the state and has handled over 400 appellate cases. The firm also has interpreted insurance provisions in agreements between railroads and third parties, determining the existence of coverage. Other firm partners have also assisted railroads in obtaining coverage when coverage was disputed by an insurance carrier.

Land Use & Real Estate Transactions and Litigation

- We have worked on many cases involving real estate transactions and litigation for our railroad clients. One example of our work on real estate matters involved a lawsuit concerning a dispute with a municipality in Washington state over a lease agreement for a pipeline located underneath our railroad client's right-of-way property. In that case, we recovered over \$1,000,000 in back lease payments for our client.
- We have also helped railroad clients (both Class 1 and short lines) reach favorable settlements in third-party lawsuits involving claims of quiet title and prescriptive easement over railroad rights-of-way and private grade crossings.

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