

# THORPESHWER



## Significant Cases

### **Thorpe Shwer Obtains Another Favorable Jury Verdict for Railroad Client**

**NOVEMBER 2019**

Thorpe Shwer attorneys Bill Thorpe, André Merrett, and Jamie Gill Santos recently obtained a favorable verdict on behalf of a major Class I interstate railroad following a two-week jury trial in the Superior Court of Maricopa County, Arizona. The case was brought under the Federal Employers' Liability Act by a former locomotive engineer who alleged that he injured his back while boarding a locomotive on mainline track in Holbrook, AZ. At trial, the plaintiff alleged that he was unable to return to work as a locomotive engineer. Plaintiff demanded between \$1,590,000 and \$2,250,000 in lost wages alone, in addition to damages for pain and suffering. Thorpe Shwer presented evidence that the plaintiff's symptoms were actually caused by longstanding pre-existing degenerative conditions, not the alleged incident, that at most any aggravation of those conditions resolved itself shortly after the injury, and that he failed to mitigate his damages by not returning to his position as a locomotive engineer, not engaging with the company's robust return to work program, not taking an exam that would have allowed him to return to work for the railroad as a supervisor, and by not pursuing jobs or careers outside the railroad in any meaningful way. The jury returned a verdict awarding the plaintiff only a fraction of the damages he sought during the trial. Bill, André, and Jamie were assisted by associate Matthew St. Martin and paralegal Carmen Boubek.

### **Thorpe Shwer Obtains Complete Victory for Client in Commercial Contract Suit, Including 100% Of Its Attorney's Fees**

**JUNE 2018**

On June 19, 2018, Thorpe Shwer attorneys Brad Shwer, Adam Reich, and Bill Thorpe finalized a two-year effort to obtain relief on behalf of one of its regional building and construction supply clients. The client retained Thorpe Shwer after two of its employees were injured in an accident caused by a brake failure while the employees were driving down a significant downgrade south of Payson, Arizona.

The client's post-accident inspection revealed that the brake failure was caused by a service contractor's failure to properly adjust the brakes following a recent brake replacement on the Truck. The contractor refused to settle the claim, arguing that there was no way to determine the cause of the accident without performing extensive and unnecessary destructive testing of the Truck's braking system. Because of the position taken by the contractor, Thorpe Shwer had no choice but to file suit on its client's behalf for breach of the contract between the parties.

Despite the numerous delay tactics imposed by the other side, Thorpe Shwer forced the contractor to a stipulated judgment for the full amount of the client's claimed damages less than one month before trial. After stipulating to the

judgment, the contractor refused to reimburse the client for its attorneys' fees, arguing that the fees were not recoverable, excessive, and unnecessary. The Court disagreed. After reviewing Thorpe Shwer's work in this case, the Court found that fees were recoverable and awarded the client 100% of the requested fees, plus costs, pre-judgment interest, and post-judgment interest. Congratulations to Brad, Adam, and the rest of the Thorpe Shwer team that assisted on this case in securing a great result for the client!

## **Thorpe Shwer Prevails on Motion to Dismiss in Franchisor Negligence and Vicarious Liability Claims**

**June 2018**

Thorpe Shwer attorneys Brad Shwer, Kristin Paiva, and Trevor Cox successfully defended one of the nation's largest franchisors in a matter in Florida state court. The complaint alleged various allegations of negligence and vicarious liability.

Following briefing and oral argument, the court granted the franchisor's motion to dismiss, with prejudice, dismissing all claims against the client. A dismissal with prejudice bars the plaintiff from amending the complaint to further allege these claims against the franchisor.

## **Thorpe Shwer Obtains Favorable Jury Verdict for Railroad Client**

**April 2018**

Thorpe Shwer attorneys Bill Thorpe and Adam Reich recently obtained a favorable verdict on behalf of a major Class I interstate railroad following a three-week jury trial in the Superior Court of Maricopa County, Arizona. The case was brought under the Federal Employers' Liability Act by a former conductor who alleged that he injured his right ankle and knee while dismounting a locomotive at the defendant's yard. At trial, the plaintiff alleged that he was unable to return to work as a conductor and that he would require additional treatment for his right knee in the future. Plaintiff requested over \$6 million in lost wages and pain and suffering damages. Bill and Adam presented evidence that the plaintiff's liability theory lacked merit, his claimed injuries were inconsistent with his description of the event, and he failed to mitigate his damages by abandoning two separate positions given to him by the defendant in favor of lower-paying positions as a firefighter. The jury returned a verdict allocating 75% of the fault to the plaintiff and awarding him only a small fraction of the damages he sought during the trial. Bill and Adam were assisted by Jamie Gill Santos and Katie Chaban.

## **Thorpe Shwer Obtains Stipulated Dismissal in Vicarious Liability Action Against Public Official**

**NOVEMBER 2017**

Attorneys Andrea Marconi, André Merrett, and Kristin Paiva obtained a stipulated dismissal for a public official in a high-profile case stemming from allegations of sexual misconduct committed by a university assistant coach. The complaint alleged that Thorpe Shwer's client was liable for actions or omissions allegedly taken during the investigation of Plaintiff's claims. After filing a motion for summary judgment on the basis of qualified immunity, Plaintiff agreed to a stipulated dismissal of the client.

## **Thorpe Shwer Obtains Dismissal in Franchisor Liability Action**

**NOVEMBER 2017**

Thorpe Shwer attorneys Kristin Paiva and Tyler Grim obtained a dismissal for one of the nation's largest franchisors in a matter in San Mateo County, California Superior Court. The complaint alleged various common law and statutory counts, including employment claims, negligence, vicarious liability, and negligent hiring, training, and

supervision.

## **Thorpe Shwer Prevails on Motion to Dismiss in Franchisor Liability Action**

**MARCH 30, 2017**

Attorneys Brad Shwer, Kristin Paiva, and Jamie Gill Santos successfully defended one of the nation's largest franchisors in three related matters in Florida state court. The complaints alleged various allegations of negligence. Following briefing and oral argument, the court granted the franchisor's motions to dismiss thereby dismissing all claims against the client.

## **Thorpe Shwer Successfully Obtained Summary Judgment in Promissory Note Action**

**JULY 21, 2016**

Thorpe Shwer attorneys Brad Shwer and Kristin Paiva successfully obtained summary judgment on behalf of a husband and wife seeking to recover damages resulting from a breach of a promissory note. After the judgment was issued, the parties entered into a favorable settlement agreement.

## **Thorpe Shwer Summary Judgment Victory for Its Railroad Client Affirmed by Ninth Circuit**

**MAY 05, 2016**

Thorpe Shwer attorneys Bill Thorpe, Brad Shwer, and Jamie Gill Santos successfully argued to the Ninth Circuit that the District of Nevada's ruling on summary judgment in favor of its major Class I railroad client should be affirmed. The case was brought by a trespasser who was struck along mainline track in New Mexico and sustained serious injuries. The trespasser's wife also sued. The plaintiffs raised numerous theories of liability against both the railroad operating the train involved in the accident, as well as another railroad that owned the tracks in question. The district court granted both railroads summary judgment on all claims, finding that the only duty owed to the trespasser under New Mexico law was not to willfully or wantonly injure him and that there was no evidence suggesting the railroads acted in such a manner. The plaintiffs appealed the summary judgment decision pertaining to the railroad operating the train to the Ninth Circuit. After extensive briefing in 2014, on April 13, 2016, the Ninth Circuit upheld the district court's granting of summary judgment in favor of the railroad.

## **Thorpe Shwer Prevails on Summary Judgment, Again, For National Railroad Client**

**FEBRUARY 24, 2016**

Attorneys William Thorpe, Brad Shwer, and Adam Reich successfully obtained summary judgment on behalf of a major Class I railroad in a matter in Maricopa County Superior Court. The case was brought by the injured driver and the representatives of a deceased passenger following a fatal grade crossing accident in Northern Arizona. The plaintiffs raised numerous theories of liability against the defendant, including claims related to the actions of the train crew, the physical characteristics of the crossing where the accident occurred, and several alleged violations of federal regulations. After extensive briefing in 2013 related to, among other things, federal preemption of the plaintiffs' claims, the court granted summary judgment to the defendant, resulting in the dismissal of all claims against the defendant. The plaintiffs appealed to the Arizona Court of Appeals, who upheld the majority of the trial court's decision. The Court of Appeals determined, however, that the trial court failed to consider one of the plaintiffs' claims and remanded for further proceedings. Following additional briefing on the remaining claim, the trial court again granted summary judgment, resulting in the second dismissal of all claims against the defendant.

## **Thorpe Shwer Obtains Complete Defense Verdict**

**NOVEMBER 18, 2015**

Thorpe Shwer attorneys William Thorpe and Adam Reich, along with Laurel Stevenson of Haden, Cowherd & Bullock in Springfield, Missouri, recently obtained a complete defense verdict on behalf of a major Class I interstate railroad, following a two-week jury trial in the Circuit Court of Pulaski County, Missouri. The case was brought by an injured plaintiff and his spouse arising out of an accident in which the plaintiff was struck by the defendant's train at a private grade crossing. At trial, the plaintiffs advanced numerous theories of liability concerning the physical characteristics of the crossing and the defendant's policies regarding the sounding of the train's horn on approach to private crossings. Plaintiffs claimed the injured party suffered a traumatic brain injury, spinal injuries, and multiple orthopedic injuries as a result of the accident. The trial court granted the defendant's motion for directed verdict at the close of the plaintiffs' case-in-chief on all but one theory of liability. During closing argument, plaintiffs' counsel asked the jury for an award of up to \$10,000,000. After only one hour of deliberation, the jury returned a complete defense verdict, assigning 100% of the fault for the accident to the injured plaintiff.

## **Thorpe Shwer Prevails on Motion to Dismiss in Franchisor-Liability Action**

**SEPTEMBER 18, 2015**

Thorpe Shwer attorneys Brad Shwer and Kristin Paiva successfully defended one of the nation's largest and fastest-growing franchisors with over 1,000 franchisee-owned locations in a matter in Nevada state court. Among other things, the complaint alleged claims for breach of contract, tortious and contractual breach of the implied covenant of good faith and fair dealing, negligent hiring/training/supervision/retention, infliction of emotional distress, vicarious liability, negligent business operations, and punitive damages. Following briefing and oral arguments, and within two months of the filing of the complaint, the court granted the motion to dismiss, thereby dismissing all claims against the client.

## **Thorpe Shwer Obtains Early Dismissal in Franchisor-Liability Action**

**MAY 26, 2015**

Thorpe Shwer attorneys Brad Shwer and Andrea Marconi successfully defended one of the nation's largest and fastest-growing franchisors with over 1,000 franchisee-owned locations in an employment-related matter in California state court. The complaint alleged, inter alia, retaliation under the California Fair Employment and Housing Act, wage and hour violations under the California Labor Code, and tort claims. Plaintiff dismissed all claims against our client without prejudice, less than two months after our firm's initial appearance and while Thorpe Shwer's motion for summary judgment was still pending.

## **Thorpe Shwer Prevails in BNSF Railway Company v. Seats Incorporated**

**MAY 5, 2015**

Thorpe Shwer attorneys Bill Thorpe, Brad Shwer, and Kristin Paiva represented BNSF Railway Company in an appeal brought before the Arizona Court of Appeals, Division I. The appeal involved the preemptive scope of the Locomotive Inspection Act, 49 U.S.C. § 20701, et seq. (the "LIA"). The Court of Appeals, in a 3-0 published decision, determined that the LIA did not preempt BNSF's state law cross-claims for indemnification and contribution against a locomotive seat manufacturer, holding: "although [the] LIA establishes uniform safety regulations and preempts claims based on a state-specific standard of care, it does not preempt claims based on the federal standard."

## **Thorpe Shwer Obtains Defense Verdict in Forcible Entry and Detainer Action**

## **SEPTEMBER 2014**

Thorpe Shwer attorneys Bill Thorpe, Adam Reich and Jamie Gill Santos obtained a defense verdict for a client following a two-day bench trial of a forcible entry and detainer action. The case was brought by a landlord to evict Thorpe Shwer's client, a successful, high-end nightclub in the Downtown Scottsdale Entertainment District. Thorpe Shwer aggressively defended the client through expedited discovery and trial, obtaining a complete victory, including a finding by the court that the client was entitled to recover its attorney's fees from the adverse party.