



Rail Conference

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STANDARDS, WHO NEEDS STANDARDS?

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Standards – with a capital S

- **Standards –**
 - What are they?
 - What kind?
 - Issued by whom?
- **Who needs them?**

They're Good for You and They Don't Hurt

Refresher:

- They don't hurt – unless you don't follow them
- Federal Rules and Standards can **preempt** state law causes of action
 - What does “**preemption**” mean?
 - Examples: push – pull, crossing protection, train speeds
- Transit agency's own policies/standards can define “standard of care”
 - Can be helpful if you comply
 - Can be painful if you don't

But remember.....

Last year's conclusion –

- They don't hurt
- Unless you don't follow them
- And then they do.....

Recent Developments

Flood Damage –

- *K Mart v. The Kroger Co., et al. (N.D. Mississippi, January 2014)*
- K Mart claimed that KCS failure to remove alleged excessive debris under a bridge caused flooding in its store

Recent Developments – cont'd

- KCS response:
 - We complied with FRA bridge inspection regs
 - We exceed required frequencies
 - Inspections didn't show excessive debris

Recent Developments – cont'd

Court said:

- Evidence, including compliance with FRA bridge inspection standards, confirmed no dispute as to whether KCS had complied with its duty of care

Recent Developments – cont'd

BUT NOTE – *MD Mall Associates v. CSX Transportation, Inc.* (3rd Circuit, May 2013)

- FRA rules about bridge inspection don't **preempt** state law negligence claims
- APTA has intervened in a case in PA that's testing this
 - No ruling yet

Recent Developments – cont'd

ADA Compliance:

- Last year: New York MTA *Spivey* decision (2009) – proof that MTA had satisfied **internal** agency rule about 6” gap shows compliance with standard of care

Recent Developments – cont'd

This year:

Curtin v. Metro North RR – (2013, NY Supreme Court) – Metro North could offer compliance with ADA standard for platform gap as **EVIDENCE** of no negligence, but not conclusive

Recent Developments – cont'd

ADA Compliance – cont'd:

2012 Decision involving NYC Transit (*Tzilianos v. New York City Transit*, 3rd Appellate Division, 2012) ruled that compliance with internal rules and standards shows “exercise of due care”

- But note: it doesn't conclusively establish immunity from suit
- It's evidence of exercise of due care, but doesn't necessarily win the day

Recent Developments – cont'd

Another decision about RR's internal policies establishing a standard of care:

- *Menard v. CSX Transportation, Inc. (D. Mass., 2014)*
- Railroad's trespasser policy does NOT establish a "standard of care"
- That's an obligation created by and imposed by law
- Railroad's policies CAN show options available to RR though

Standards, who needs 'em...

- **Answer:**
- **You do.**
- **Recent case law confirms, that as long as you follow internal standards, they may not help**
- **But they wouldn't hurt.....**

QUESTIONS?

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