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
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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