

122nd VBA SUMMER MEETING

**Riding the Rails:
Casey Jones, You'd Better
Watch Your Speed**

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The Basics

- ▶ Railroads have common carrier obligation
 - Freight as well as passenger
 - “holding out” to provide service
- ▶ Common carrier obligation →
Heightened Duty of Care
 - Reduced in some states, but not Virginia
- ▶ Virginia: duties of common carrier defined in cases, not codified

Passengers' Rights

- ▶ Common law: Responsibilities of carriers to passengers quite clearly articulated
 - Not codified in Virginia
- ▶ Previously, VA Code conferred numerous rights and accompanying remedies for passengers –
- ▶ Repealed: 1996
- ▶ But: Conductors, engineers, station employees are “conservators of the peace”

Passengers' Bill of Rights

- ▶ New Jersey: proposed “Passenger Bill of Rights” or “Pledge”
 - 10 points – to be enforced by Consumer Protection Agency – for example:
 - ❖ On time operation
 - ❖ Clear announcements
 - ❖ Information about delays and alternative routes
 - ❖ Safe, clean stations
 - ❖ Heated, A/C equipment
 - ❖ Well-trained, courteous, responsive employees

Passengers' Bill of Rights – cont'd

- ▶ New York agencies: 9 point “Pledge”:
 - ❖ Safe Reliable Ride
 - ❖ Accurate and Timely Information
 - ❖ Courteous Employees
 - ❖ Clean Environment
 - ❖ Alternate Transportation
 - ❖ Comfort
 - ❖ Weather Emergency Notification
 - ❖ Service Disruption Procedures
 - ❖ Waiver Refund Processing Fee

Passenger Remedies

- ▶ No Passenger Bill of Rights or “Pledge” in VA
- ▶ But some remedies are available – carriers still responsible for injuries to passengers, etc.
- ▶ But – VA state law limits liability for passenger RR’s to \$250 Million (VA Code §56.446.1)
- ▶ Federal damages cap: 49 U.S.C. §28103
 - Substantial limit on availability of punitive damages
 - Requires showing of “conscious, flagrant indifference to the rights or safety of others”
- ▶ Damages (including punitives) capped at \$200 Million

Passenger Remedies – cont'd

- ▶ Recent safety statutes added requirement that passenger carriers have plan for addressing needs of families of passengers involved in an accident
 - 49 U.S.C. §24316
 - 49 C.F.R. Part 840

Other Remedies

- ▶ Surface Transportation Board: power to investigate late performance
 - 49 U.S.C. §24308(f)
- ▶ STB can award damages to Amtrak (not passenger) if host carrier is causing delays

CONCLUSION

- ▶ Carriers' duty is less elevated than under old common law rules
- ▶ No Passenger Bill of Rights in Virginia
- ▶ But –
 - negligence, other tortious actions can lead to big damages against passenger railroads
- In other words:
Casey Jones, you'd better watch your speed

QUESTIONS:

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