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Comments

Railroad Liability for Fires in Louisiana

The liability of a railroad for the damage resulting from a fire caused by its operation is determined in accordance with the ordinary principles of tort law. Plaintiff carries the burden of proving, by a preponderance of the evidence, that some part of the railroad's operation was conducted negligently and that this negligence caused the damage for which he seeks reparation.¹ In many instances the evidence employed to establish that the railroad's operation caused the fire may also serve to establish

1. *Edrington v. Louisville, N.O. & T. Ry.*, 41 La. Ann. 96, 6 So. 19 (1889); *Meyer v. Vicksburg, S. & P. R.R.*, 41 La. Ann. 639, 6 So. 218 (1889).

the railroad's negligence. It is probably for this reason that satisfactory proof of cause is often said to place upon the defendant railroad the burden of exonerating itself.² Such statements, while open to criticism, reflect actual practice very accurately.³

The questions presenting the greatest difficulty in this field of tort liability concern proof of the causal relation between the railroad's operation and the occurrence of the fire.

The Causal Relation

Plaintiff must prove that the sparks or embers which caused the fire were emitted during the negligent railroad operation.⁴ Plaintiff is sometimes able to prove this by the testimony of eye witnesses.⁵ Usually, however, he must rely upon some form of circumstantial evidence. Such evidence may relate to the time elapsing between the passage of the train and the appearance of the fire, the adequacy of the railroad's spark-arresting equipment, or the trainmen's method of operating the engine. The safety history of the railroad with regard to fires, weather conditions, and the absence of other assignable causes of the fire are also relevant.

Time elapsing between passage of train and appearance of fire. The length of the period between the passage of a locomotive and the appearance of a fire affects the plausibility of the inference that the railroad's operation started the fire. But the element of time, while it may strengthen this inference, will not alone justify it.⁶ For instance, the mere occurrence of a fire in a

2. Lemann Co. v. Texas & P. Ry., 128 La. 1089, 55 So. 684 (1911); Missouri Pac. Ry. v. Texas & P. Ry., 41 Fed. 917 (E.D. La. 1890).

3. For a discussion of burden of proof in Louisiana, see Malone, *Res Ipsa Loquitur and Proof by Inference—A Discussion of the Louisiana Cases*, 4 LOUISIANA LAW REVIEW 70, 84 (1941).

4. Fuller v. Chicago, R.I. & P. Ry., 137 La. 997, 69 So. 804 (1915).

5. Missouri Pac. Ry. v. Texas & P. Ry., 41 Fed. 917 (E.D. La. 1890) (witness saw engine emit sparks which rose fifty feet, and were carried one hundred feet); Givens v. Yazoo & M.V.R.R., 176 La. 796, 798, 146 So. 751 (1933) (witness said "a number of sparks" were emitted and five minutes after train passed, grass was seen burning on edge of right-of-way); Bowie Lumber Co. v. Morgan's Louisiana & T.R.R. & S.S., 154 La. 407, 410, 97 So. 591, 592 (1923) ("Locomotive emitted sparks about the size of a buckshot or pea"); Haas v. Hines, 150 La. 599, 91 So. 58 (1922) (cinders were heard rattling on tin roof as train passed); Palmetto Moss Factory v. Texas & P. Ry., 145 La. 555, 563, 82 So. 700, 703 (1919) ("live cinders were thrown as the train passed, some of which fell on and burned the clothes and flesh of persons farther away even than the moss factory"); Tortorice v. Yazoo & M.V.R.R., 142 La. 229, 76 So. 620 (1917) (witnesses saw sparks falling on shingle roof as train passed); Edrington v. Louisville, N.O. & T. Ry., 41 La. Ann. 96, 98, 6 So. 19, 20 (1889) (train emitted sparks "as large as the end of the thumb").

6. Ellis v. New Orleans Great Northern R.R., 169 La. 797, 802, 126 So. 64, 66 (1930) (fire broke out "immediately" after train passed over right-of-way

building a few minutes after a train has passed cannot, by itself, support the conclusion that the fire was caused by the railroad.⁷ The time factor may also be employed by the defendant to show that the fire could not have been caused by sparks emitted by its engine because the period of time between the passage of the train and the occurrence of the fire was either too brief⁸ or too long.⁹

Adequacy of the spark-arresting equipment. The probability is great that an engine operated with a faulty spark arrester emits sparks. With this in view, the courts have resolved the issue of cause in favor of the plaintiff when railroad engines have been equipped with spark arresters incapable of preventing the emission of dangerous sparks,¹⁰ or equipped with none at all.¹¹ The causal relation has also been established by showing that railroad employees handled spark-arresting equipment carelessly.¹² Conversely, proof that the railroad equipped its engines with adequate spark arresters usually weakens the inference that the fire was caused by the railroad.¹³

filled with dry grass, weeds and debris, in dry, windy weather); *Lemann Co. v. Texas & P. Ry.*, 128 La. 1089, 1092, 55 So. 684, 685 (1911) ("train had passed only a very short while before the fire," previous fires had occurred under similar circumstances); *Thomason v. Kansas City Southern Ry.*, 122 La. 995, 1005, 48 So. 432, 435 (1909) (fire occurred "a short time" after a locomotive emitting sparks passed the building).

7. *Dudley v. St. Louis, I.M. & S. Ry.*, 133 La. 80, 62 So. 413 (1913) (fire occurred one and one-half minutes after newly overhauled and inspected engine had passed).

8. *Ibid.* (sacks of rice, known to burn slowly, were "blazing" one and one-half minutes after train had passed).

9. In *Coats v. Texas & P. Ry.*, 168 La. 815, 817, 123 So. 335, 336 (1929) the court said: "If we accept the theory that sparks were blown by the wind from the pile of burning ties on the right of way, it seem incredible that any sparks should have ignited the bagging . . . near the buildings and should have remained dormant from 11 a.m. to 12:20 a.m. [the next day]"; *Bowie Lumber Co. v. Morgan's Louisiana & T.R.R. & S.S.*, 154 La. 407, 97 So. 591 (1923) (dry cypress boards, which burn rapidly, caught fire one hour after train passed).

10. *Bowie Lumber Co. v. Morgan's Louisiana & T.R.R. & S.S.*, 154 La. 407, 97 So. 591 (1923) (locomotive had jagged hole in spark arrester near smoke stack).

11. *Davis v. Natchez, Red River & Texas R.R.*, Gunby's Dec. 95 (La. App. 1885) (engine was operated without a spark arrester and used wood as fuel while emitting "an unusual volume of large sparks").

12. *Easterly v. Natalbany Lumber Co.*, 171 La. 459, 131 So. 298 (1930) (employees dumped large quantities of live coals from ash pan).

13. In *Laurel Hill Gin & Mfg. Co. v. Yazoo & M.V.R.R.*, 149 La. 224, 225, 88 So. 801 (1921), the Supreme Court said: "Perhaps the supposition that the fire was started by sparks from the locomotive would be the most plausible theory of the origin of the fire, if defendant had not proven that the locomotive was equipped with a standard spark arrester, in good condition, and that nothing was done with the engine to cause it to throw sparks an extraordinary distance when it passed the ginhouse."

Method of operation. The manner in which trainmen operate an engine may afford evidence that the train caused the fire. The courts have found that fire escaped from an engine where the engineer made a "flying switch,"¹⁴ where he ran the engine at high speeds on a right-of-way filled with combustibles,¹⁵ and where firemen put on extra fuel while passing a building.¹⁶ Such practices naturally increase the fire hazard which may already exist by reason of high winds,¹⁷ dry weather,¹⁸ or the proximity of exposed property to the right-of-way.¹⁹

Safety history of the railroad. Evidence of the previous occurrence of fires along the right-of-way under conditions similar to those present in a given case is relevant and admissible²⁰ to establish that the railroad operation caused the fire. Plaintiffs have made effective use of such evidence, especially when unusually hazardous railroad operations have already forced property owners to take precautions against the emission of dangerous sparks.²¹ Even evidence that a particular engine was known to emit dangerous sparks has been held admissible.²²

The effect of wind conditions. The direction and the velocity of wind, though not conclusive, are relevant in establishing the causal relation between railroad sparks and the fire. The courts have considered such evidence in determining the particular

14. *Fuller v. Chicago, R.I. & P. Ry.*, 137 La. 997, 1001, 69 So. 804, 806 (1915) (train was engaged in a "flying switch" which caused "a violent exhaust of steam and a profuse emission of sparks and live cinders. . .").

15. *Ellis v. New Orleans Great Northern R.R.*, 169 La. 797, 802, 126 So. 64, 66 (1930) (fire started on right-of-way filled with dry grass, weeds, and debris, after train passed "pulling hard, puffing, and blowing").

16. *Tortorice v. Yazoo & M.V.R.R.*, 142 La. 229, 76 So. 620 (1917) (firemen put on extra fuel while passing plaintiff's building, thereby increasing the volume of sparks which witnesses saw falling on shingle roof).

17. *Ellis v. New Orleans Great Northern R.R.*, 169 La. 797, 802, 126 So. 64, 66 (1930) (train passed "pulling hard, puffing, and blowing" while heavy wind was blowing toward plaintiff's property, twenty feet away).

18. *Fuller v. Chicago, R.I. & P. Ry.*, 137 La. 997, 69 So. 804 (1915) (train made "flying switch" during hot, dry season with wind blowing cinders toward building).

19. *Tortorice v. Yazoo & M.V.R.R.*, 142 La. 229, 76 So. 620 (1917) (firemen put on extra fuel as engine passed building sixty-five feet away).

20. *Lemann Co. v. Texas & P. Ry.*, 128 La. 1089, 55 So. 684 (1911).

21. *Lemann Co. v. Texas & P. Ry.*, 128 La. 1089, 1091, 55 So. 684, 685 (1911) (railroad operation became so hazardous that some of the buildings along the right-of-way "had been roofed with iron sheeting to protect them from fire from passing engines").

22. *Haas v. Hines*, 150 La. 599, 91 So. 58 (1922); *Lemann Co. v. Texas & P. Ry.*, 128 La. 1089, 1091, 55 So. 684, 685 (1911) (sparks "were being constantly emitted").

direction in which a fire spread,²³ as well as in cases involving the previous occurrence of fires on the same side of the right-of-way.²⁴ When, because of drought or proximity to exposed property, railroad operation is particularly hazardous, wind has been an important element in the proof of cause.²⁵ When stronger evidence is present in the case, however, the wind factor plays a relatively minor role.²⁶

The effect of dry weather. Since dry weather conditions tend to create a fire hazard, evidence of such conditions supports the inference that a fire was caused by the railroad. This is particularly true when there exists no explanation for its occurrence other than the railroad operation.²⁷ On the other hand, when the engine is equipped with a proper spark arrester, and there is no evidence pointing to the emission of sparks, the element of dryness may be effectively employed by defendant to suggest the existence of other assignable causes of the fire.²⁸ In denying recovery, the courts have frequently emphasized the probable existence of such causes, especially when evidence that the railroad started the fire is slight. Thus, it seems that the

23. *Luikart v. Yazoo & M.V.R.R.*, 150 La. 615, 91 So. 64 (1922) (path of fire was triangular in shape, indicating that wind had fanned the fire, which started at apex of triangle, toward burned premises); *Luikart v. Yazoo & M.V.R.R.*, 148 La. 349, 86 So. 894 (1921) (fire started in hayfield ten minutes after train passed, and spread to barn fanned by strong wind blowing from track toward barn).

24. *Walker Mercantile Co. v. Yazoo & M.V.R.R.*, 152 La. 1052, 95 So. 219 (1922) (building burned, after three fires had occurred on same side of track, within two miles of burned premises, when wind was blowing in same direction).

25. *Ellis v. New Orleans Great Northern R.R.*, 169 La. 797, 802, 126 So. 64, 66 (1930) (train was "pulling hard, puffing and blowing" during a dry season, twenty feet from building, with heavy wind blowing toward plaintiff's premises); *Fuller v. Chicago, R.I. & P. Ry.*, 137 La. 997, 69 So. 804 (1915) (engineer made a "flying switch" during dry season with wind blowing toward exposed property; wind blew cinders onto shingle roof).

26. *Kentwood Lumber Co. v. Illinois Cent. R.R.*, 65 F.2d 663 (5th Cir. 1933) (court found that cause of fire was dairy boiler smokestack which emitted sparks, although wind was blowing toward the dairy, not the burned premises).

27. *Ellis v. New Orleans Great Northern R.R.*, 169 La. 797, 126 So. 64 (1930) (right-of-way was filled with dry grass, weeds and debris; fire started on right-of-way after train passed); *Walker Mercantile Co. v. Yazoo & M.V.R.R.*, 152 La. 1052, 95 So. 219 (1922) (fire started in yard covered with dry sawdust); *Luikart v. Yazoo & M.V.R.R.*, 150 La. 615, 91 So. 64 (1922) (dry hay was ignited in field after railroad employees were seen burning grass on right-of-way adjacent to field); *Luikart v. Yazoo & M.V.R.R.*, 148 La. 349, 86 So. 894 (1921) (dry hay in field was ignited after train passed).

28. *United Lands Co. v. Louisiana Ry. & Nav. Co.*, 171 La. 542, 544, 131 So. 664, 665 (1930) (during "unprecedented dry season" fire started in swamp three hundred feet from burned property); *Bowie Lumber Co. v. Morgan's Louisiana & T.R.R. & S.S.*, 154 La. 407, 97 So. 591 (1923) (during dry season, dry cypress lumber caught fire one hour after train passed; it was proved that dry cypress rarely smoulders, but bursts readily into flames).

possible existence of other assignable causes of a fire has been employed as additional support for the courts' conclusions and not as the basis for them.

Negligence of the Railroad

Plaintiff must prove that the operation which caused the fire was negligently conducted. In railroad fire cases, negligence has usually been associated with either the railroad's use of faulty equipment or the careless management of equipment.

The best equipment cannot entirely prevent the escape of sparks from a coal-burning steam engine. For this reason, one Louisiana decision indicates that the installation of equipment conforming to the generally accepted standard of safety within the railroad industry discharges the railroad's duty in regard to safety equipment.²⁹ This view is consistent with the "approved appliances in general use" standard applied in other jurisdictions.³⁰ There is, however, some authority for the contrary view that evidence of conformity to one standard does not necessarily show the impracticability of maintaining a higher one, since the generally accepted standard may not be a reasonably safe one.³¹

The operation of an engine without a spark arrester violates both the ordinary standard of reasonable care and specific statutes.³² On the other hand, proof of the adequacy of the spark arrester is generally a good defense. A number of cases indicate that such proof is a complete defense, but in these cases, plaintiff's evidence of causal relation was weak.³³ In other cases, where evidence of cause was strong, the court has considered the emission of sparks conclusive proof that the spark arrester was inadequate.³⁴ This has resulted in a conflict in the decisions which, however, seems more apparent than real.

29. Haas v. Hines, 150 La. 599, 91 So. 58 (1922); Gumbel v. Illinois Cent. R.R., 48 La. Ann. 1180, 20 So. 703 (1896).

30. The cases in other jurisdictions are collected in Note, 68 A.L.R. 1400, 1421 (1930).

31. MORRIS ON TORTS c. 5, § 5 (1953).

32. LA. R.S. 56:1480, 1495 (1950).

33. Laurel Hill Gin & Mfg. Co. v. Yazoo & M.V.R.R., 149 La. 224, 88 So. 801 (1921); Gumbel v. Illinois Cent. R.R., 48 La. Ann. 1180, 20 So. 703 (1896); Meyer v. Vicksburg, S. & P.R.R., 41 La. Ann. 639, 6 So. 218 (1889).

34. In Palmetto Moss Factory v. Texas & P. Ry., 145 La. 555, 564, 82 So. 700, 703 (1919), the court said: "If a properly equipped engine could not have started the fire in the manner in which . . . the evidence shows this one to have been started, *this one undoubtedly must have been faulty.*" (Italics supplied.) Luikart v. Yazoo & M.V.R.R., 148 La. 349, 86 So. 294 (1921); Tortorice v. Yazoo & M.V.R.R., 142 La. 229, 76 So. 620 (1917); Fuller v. Chicago, R.I. & P. Ry., 137 La. 997, 69 So. 804 (1915).

Even if a railroad installs satisfactory equipment, the careless management of that equipment may constitute negligence.³⁵ For instance, the courts have found negligence in "firing" an engine during a dry season,³⁶ in "firing" an engine while pulling a load uphill near exposed property,³⁷ and in operating an engine so that it is "puffing and blowing" dangerous sparks onto property twenty feet away.³⁸ Similarly, evidence of trainmen's failure to take extra precautions when the hazard of operation has been increased by high winds,³⁹ dry weather,⁴⁰ or proximity to exposed property⁴¹ has served to prove the railroad's negligence as well as to establish the causal relation. Again, causing a profuse emission of sparks by burning wood in an engine has been held to constitute negligence.⁴²

Louisiana courts, like those of other jurisdictions, have decided a number of cases involving railroad liability for fire damage arising from unusual situations. Some of these suggest the extent of railroad liability for damage caused by fires started by third persons. Thus a railroad whose employees failed to take precautions against a fire started by a mob was held liable for the resulting destruction of goods in transit on the railroad.⁴³ In another case, plaintiff recovered from the railroad the value of two carloads of rice destroyed by a fire caused by the accidental mixing of flood water with unslaked lime in another car.⁴⁴ In one decision plaintiff was denied recovery when a locomotive blocked a street for "a few minutes," thereby delaying a fire engine on its way to plaintiff's burning home; however, the court's opinion makes it clear that recovery was denied only because the brief delay was found not to have caused the damage complained of.⁴⁵ In a somewhat different type of case, a railroad

35. *Missouri Pac. Ry. v. Texas & P. Ry.*, 41 Fed. 917 (E.D. La. 1890).

36. *Ellis v. New Orleans Great Northern R.R.*, 169 La. 797, 126 So. 64 (1930).

37. *Tortorice v. Yazoo & M.V.R.R.*, 142 La. 229, 76 So. 620 (1917).

38. *Ellis v. New Orleans Great Northern R.R.*, 169 La. 797, 126 So. 64 (1930).

39. *Ibid.* (train passed "pulling hard, puffing, and blowing" while heavy wind was blowing toward plaintiff's property twenty feet away).

40. *Fuller v. Chicago, R.I. & P. Ry.*, 137 La. 997, 69 So. 804 (1915) (train made "flying switch" during hot, dry season, with wind blowing cinders toward building).

41. *Tortorice v. Yazoo & M.V.R.R.*, 142 La. 229, 76 So. 620 (1917) (firemen put on extra fuel as engine passed building sixty-five feet away).

42. *Davis v. Natchez, Red River and Texas R.R.*, Gunby's Dec. 95 (La. App. 1885).

43. *Japhet & Co. v. Southern Ry.*, 8 La. App. 706 (1927).

44. *National Rice Milling Co. v. N.O. & N.E.R.R.*, 132 La. 615, 61 So. 708 (1913).

45. *Boutte v. Morgan's Louisiana & Texas R.R. & S.S.*, 157 La. 799, 103 So. 158 (1925).

was held liable for damage to a parked car caused by the collision of two other vehicles, whose drivers had been blinded by dense smoke from a brush fire on the railroad's right-of-way.⁴⁶

Railroad liability for fires is not always based upon negligence. For example, in one case a fire of unknown origin in a railroad car threatened defendant's depot. In an effort to save the building, the car was moved, causing the destruction of plaintiff's property.⁴⁷ The court based liability not on negligence but upon what one writer refers to as "incomplete privilege."⁴⁸

Contributory Negligence

As a general rule, a landowner may act on the assumption that a railroad will not negligently start a fire on his property. For this reason, if he takes precautions against the normal dangers incident to the prudent operation of a railroad, he is not guilty of contributory negligence.⁴⁹ Thus, one case states that the failure of a landowner to plow a "fire guard" on his land adjacent to a railroad right-of-way did not constitute contributory negligence.⁵⁰ Yet, a lessee of a cotton gin was held guilty of contributory negligence in spreading loose cotton on a platform to dry forty-four feet from a railroad track,⁵¹ while the owner of the gin was allowed recovery for his loss when the fire spread to his gin.⁵² The test for contributory negligence therefore seems to be whether or not the owner's property is so near to the right-of-way as to be endangered by even a prudently operated locomotive.⁵³ There is, however, a dearth of Louisiana cases on this subject, and the result reached in any given case would seem to depend upon the application of the general principles of the law of torts.

William C. Hollier

46. *Graham v. Kansas City Southern Ry.*, 54 So.2d 822 (La. App. 1951).

47. *Latta v. New Orleans & N.W. Ry.*, 131 La. 272, 59 So. 250 (1912).

48. BOHLEN, *STUDIES IN THE LAW OF TORTS* 614 (1926); *RESTATEMENT, TORTS* § 263 (1934). In *Latta v. New Orleans & N.W. Ry.*, 131 La. 272, 279, 281, 284, 59 So. 250, 252, 253, 254 (1912), the court said: "[T]he judgment for plaintiff is based on the proposition that defendant had no right to sacrifice plaintiff's property in order to save its own. . . . [P]laintiff is entitled to recover upon the grounds that defendant had no right, legal or moral, to destroy his property in order to save its own. . . . it cannot be denied that . . . it [defendant] was more at fault than plaintiff and hence that, agreeably to a well-recognized rule, being the least innocent of two innocent sufferers . . . it should bear the loss."

49. The leading case is *LeRoy Fibre Co. v. Chicago, Mil. & St. P. Ry.*, 232 U.S. 340 (1914).

50. *Ellis v. New Orleans Great Northern R.R.*, 169 La. 797, 126 So. 64 (1930).

51. *Haas v. Hines*, 150 La. 599, 91 So. 58 (1922).

52. *Ibid.*

53. See note 49 *supra*.