

Railcar Lawsuits Raise Safety Questions

Union Pacific, BNSF Claim Contractors' Faulty Repair Work Led to Derailments in Court Battle Over Who Pays Damages

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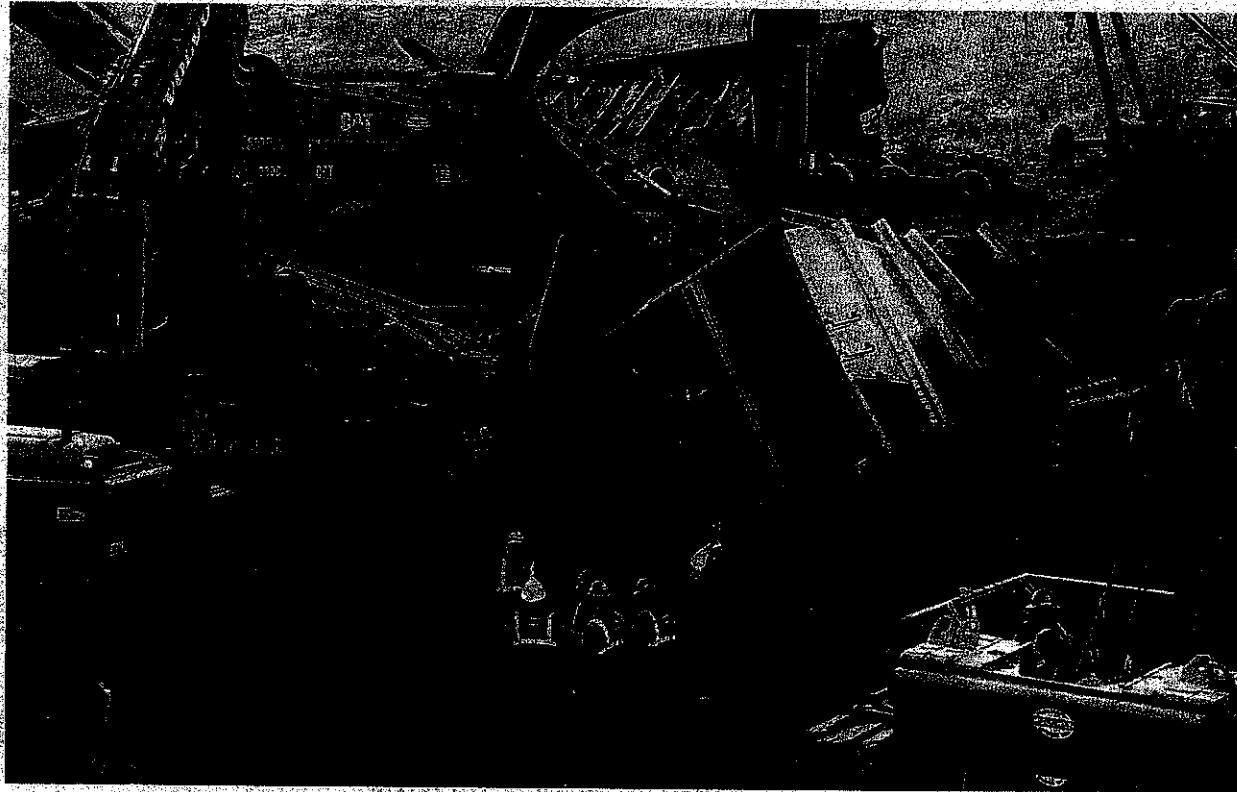
Over the past few decades, American railroads and railcar owners have outsourced an increasing amount of repair and maintenance work to outside contractors.

Now, at a time when a series of train derailments have raised alarms over rail safety, two major railroads are battling the contractors in court. They are charging that, in some cases, the contractors created hazards by failing to do repair work properly. The two sides are also fighting over who should be blamed for derailments caused by broken axles and thus bear the cost of damages.

Railroad operator Union Pacific Corp. has sued both Progress Rail Services Corp., a unit of Caterpillar Inc., and Greenbrier Cos., the owner of a rival repair service, over what it alleges was inadequate work that led to several derailments in the past few years. BNSF Railway Co., another big railroad, has sued Progress Rail on similar grounds over a December 2010 derailment near Jamestown, N.D.

Representatives of Progress Rail and Greenbrier declined to comment on the suits, which both companies are contesting in court. Despite the litigation, Progress Rail is "a valued supplier," a BNSF spokesman said. Both Progress Rail and Greenbrier said they follow railroad-industry standards in doing their repair work.

The lawsuits show a disagreement between railroads and repair firms over who is responsible for ensuring that the nation's 1.2 million freight cars are in safe condition. The issue is drawing more scrutiny after recent



Union Pacific sued Progress Rail for about \$5 million in damages from two derailments, one of which was near Martin Bay, Neb., in 2010, above.

rail accidents in the U.S. and Canada highlighted the risks of trains hauling crude oil and other hazardous materials. The derailment of a crude-oil train in Lac-Mégantic, Quebec, last July killed 47 people.

None of the derailments cited in these lawsuits involved trains carrying crude oil, but the maintenance problems uncovered by the litigation could affect any kind of freight train.

Raymond Hasiak, a Union Pacific lawyer, argued in a federal-district court in Omaha last June that repair firms like Progress

Rail take on the role of "gatekeeper," determining which wheels and axles are safe to continue using. "Everybody depends upon them to look at the axles and determine this is an axle that is appropriate to be put back into service," Mr. Hasiak said, adding that "the safety of all the rails in North America [is] dependent upon this."

A lawyer for Progress Rail, Michael Coyle, said the company wasn't responsible for the derailments cited in the lawsuit and had carefully followed procedures mandated by the Associa-

tion of American Railroads, a trade group. "We do it exactly the way the American Association of Railroads...tells us how to do it," Mr. Coyle said.

In the Omaha court case, Union Pacific sued Progress Rail for about \$5 million in damages arising from two derailments of trains hauling coal, one in DeWitt, Iowa, in July 2007 and another near Martin Bay, Neb., in January 2010. In the latter derailment, Union Pacific's Mr. Hasiak told the jury, 33 railcars were "ripped up and thrown all over the landscape." Neither de-

railment resulted in injuries.

In both cases, Union Pacific alleged that Progress Rail failed to inspect and refurbish axles properly before returning them to service, resulting in axle breakdowns that knocked the trains off the rails.

Progress Rail's Mr. Coyle told the jury the railcars' axles wore out partly because they were supporting weights greater than they were designed to handle. The derailments, he said, had "nothing to do with anything that Progress Rail did."

A jury returned a verdict in

favor of Progress Rail last June. Union Pacific has appealed that decision.

During the trial, the two sides argued over whether railroads were allowing too much weight to be put on so-called Class F axles. Those axles were designed to support 263,000 pounds. In the early 1990s, though, railroads began using them for weights of as much as 286,000 pounds as a way to carry more freight.

A 2006 report from the Transportation Technology Center, an arm of the Association of American Railroads, found that there was a "significant increase" in failures of Class F axles carrying the heavier loads beginning in the early 2000s.

Along with putting more weight on the axles, the railroads were using railcars more intensively, leaving them idle less often, the report found. At the same time, the report said, railroads had outsourced more of the repair and maintenance of railcars, and ownership of many railcars had shifted from railroads to leasing companies, electric utilities and others. "It is likely that all of these combined factors have contributed something to the increased number of accidents related to axles," the report said.

Research showed that "surface damage" on the Class F axles of heavily used railcars could cause cracks, a spokeswoman for the Association of American Railroads said in response to questions from The Wall Street Journal. As a result, she said, since 2007 the trade group has imposed stricter repair and inspection requirements. Those actions, she said, have led to a decrease in derailments caused by broken axles in recent years.

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