
CASE STUDY

FELA INJURY

The railroad's shortcut cost their worker an eye.
Now it will cost the railroad \$3.75 million.

MARC WIETZKE

- FLYNN & WIETZKE, P.C. -



A Publication of



TABLE OF CONTENTS

4

Worker vs PATH

6

The Evidence

8

Lifetime Injury

10

Long Suffering

12

The Verdict

14

The Analysis

ONE WORKER

ONE

DEVASTATING

INJURY

When a PATH worker was hurt because of railroad negligence, a jury held it accountable.

Worker vs PATH

February 2014

On his first day as a permanent employee, 31 year-old "John" was pulling pin spikes in the tunnels using a claw bar and a half washer, a technique created by the railroad. It was a tough spike, and he and his partner did what they had been trained to do, muscle it out. But the spike head was corroded, and the heat-treated washer popped through in an instant.

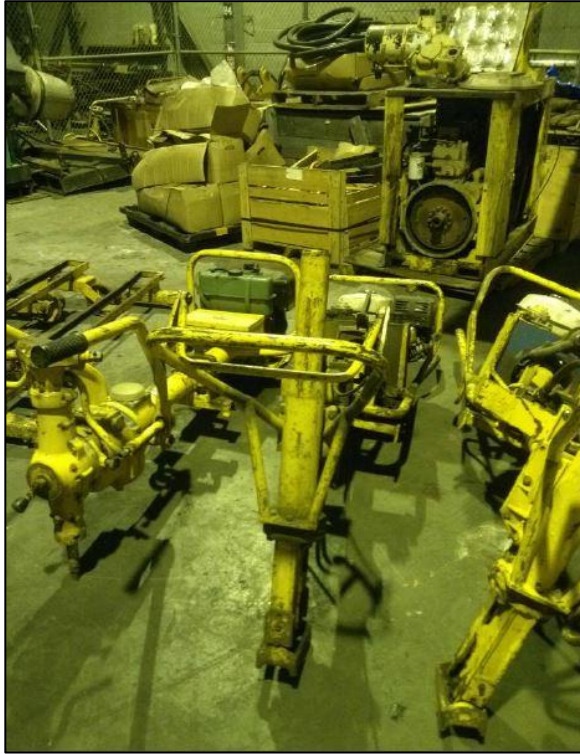
Less than half a second later, John was on his knees clutching his right eye. The washer had ruptured his globe – from 12 o'clock to 3 o'clock . At the hospital John was forced into emergency surgery. Doctors told him they didn't expect to save the vision in that eye. The surgeons did succeed in saving his eye, but he would go on to more painful surgeries in the coming months.

After the accident, John learned the railroad had a hydraulic spike puller, which could have been used in lieu of the manual technique.

This year a jury found the railroad negligent and ordered it to pay John \$3.75 million.

Share this ebook:





Spike puller that PATH chose not to issue to its workers.

[Photo by Flynn & Wietzke](#)

Share this ebook:



THE EVIDENCE

Railroad was negligent

In this case study we'll examine the three components that led the jury to conclude PATH was negligent:

- 1. They created the tool:** The company had owned a machine for over 15 years for this exact job, a spike puller. But PATH didn't use it because then it couldn't pull as many spikes in a given time period. In other words, efficiency, and avoiding overtime costs, was more important than safety.
- 2. They created the technique:** These washers had popped through for years, flying around the tunnels and hitting people in the arms, although no one had been hit in the eye.
- 3. They created the trouble:** John was wearing the glasses assigned to him. Glasses which frequently slid around in the hot dirty tunnels when doing violent work. Though they were in use in other places, the railroad didn't provide goggles. Fitted with elastic bands, these goggles provide full eye coverage.

Share this ebook:



“

The spike puller is heavy, and it's slower than a claw bar.

Is it worth getting a few less spikes done to make sure that everyone goes home with BOTH eyeballs? ”

- Marc Wietzke

Share this ebook:



LIFETIME INJURY

A PASSION THWARTED

Before the accident, and since he was a teenager, John was a martial arts competitor and instructor. More than a hobby or part-time job, it's his passion.

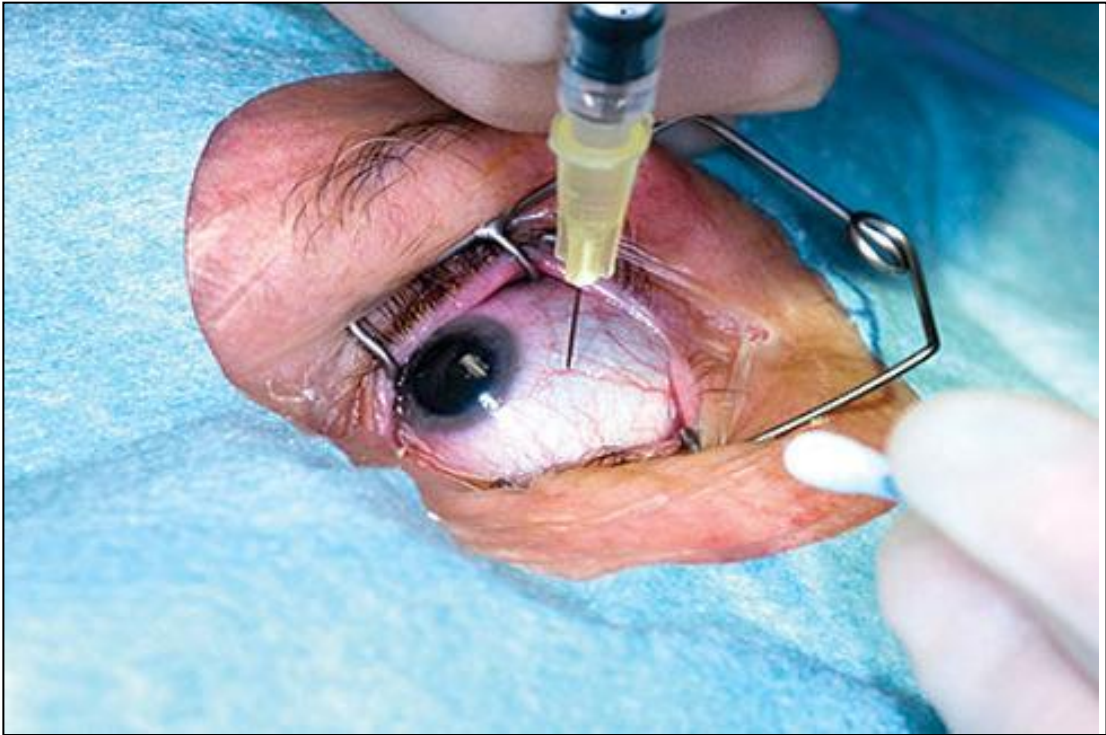
He opened a gym years ago so he could pass along his love for the sport to others, and provide them the same solace he finds in it. He is teacher to 100 students, coach and trainer to another 10.

With the injury and each surgery and recovery John lost time and ability in the gym.

So how badly does it hurt when you tell someone like that to back off, to give up his passion?

Share this ebook:





In each of his five surgeries, John has had to lie awake while the surgeon used a metal spreader to open his eye and insert a needle directly into his eyeball.

[Photo by Flynn & Wietzke](#)

Share this ebook:



LONG SUFFERING

DAMAGES OWED

Unlike a broken arm or twisted knee that heals but stays a little tricky, John's eye wound is a complicated injury. And for him the path to healing is worse than the original injury. Since then he's had four more surgeries and the looming likelihood of more.

What's worse, these surgeries come with a high level of anxiety.

- Each surgery requires John to lie awake, under restraints, while a needle is inserted directly into his eye.
- To remove sutures the doctors must slide a blade across his eyeball.
- He now faces a 49 percent chance of glaucoma.
- His eye sight has deteriorated and he now suffers from photosensitivity and blurry vision. Before the accident it was 20/20, now it is 20/70.

In total John had five surgeries, 29 weeks lost work and a net wage loss of \$27,000.

Share this ebook:



“ How much
do you pay to
compensate someone
who must endure a
knife sliding across his
eye?

”

- Marc Wietzke

Share this ebook:



THE VERDICT

QUICK AND CLEAR

In federal court attorney Marc Wietzke showed the jury that:

- The company chose not to use a tool designed to prevent this lifelong injury.
- PATH knew muscling out spikes caused shrapnel injuries.
- John was wearing the glasses assigned to him, and was not provided with goggles that would have given him full eye coverage.
- This injury would have a lifelong effect on this 31 year-old husband and father.

The result:

- ❖ **After a quick deliberation in February 2014, the jury came back with a verdict of \$3,750,000 with no blame placed on John.**

Share this ebook:





John was injured in a PATH tunnel like this one.

[Photo by Flynn & Wietzke](#)

Share this ebook:



THE ANALYSIS

FELA law holds railroad accountable

Thanks to the Federal Employers' Liability Act, known as FELA, attorney Marc Wietzke successfully sued the railroad on John's behalf, arguing that the railroad had a better, safer tool for the job and access to safer eyewear and chose not to use them, effectively choosing efficiency over worker safety.

In trial witnesses testified that employees got cuts on their arms from these same flying metal bits. The railroad knew of the danger and yet:

- ❖ It didn't do anything about it.
- ❖ It didn't warn it's workers.
- ❖ It didn't use different tools.
- ❖ It didn't provide different protection.
- ❖ It didn't teach to avoid.

Prior to trial, the railroad thought so little of his claim that it never offered a single dollar in settlement, saying at best, it was worth less than \$100,000.

Share this ebook:



SAFETY IS

YOUR RIGHT

If you were injured on the railroad,
FELA only protects you if you use it.

[CLICK HERE](#)
[TO START](#)
[YOUR CASE](#)

A Publication of

