



Ready for the Defense

Pedestrians at railroad crossings—1-year Tort Act vs. 2-year Contribution Act limitation

THIS MONTH'S COLUMN deals with two matters of importance to local government and its potential liability exposure:

- (1) A recent Illinois Commerce Commission study showing remarkably that 66 % of pedestrian-train collisions appear to be caused by pedestrians ignoring warning devices at railroad crossings.
- (2) A recent Illinois Appellate Court decision holding that in contribution actions brought against local government, the 2-year Contribution Act statute of limitations prevails over/controls over the 1-year Tort Immunity Act statute of limitations. (*Brooks v. Illinois Central Railroad Co.*, No. 1-04-2607 (1st Dist., filed 6/2/05).

The impact of *Brooks* on local government is this: a plaintiff has one year to sue, but a defendant has two years to sue for contribution.

Pedestrian Safety At Rail Grade Crossings

Both railroads and local government experience lawsuits involving railroad pedestrian-train collisions and allegations of negligence for failure to warn of the danger of trains on the railroad tracks. This despite the fact that railroad tracks are themselves an open and obvious warning of danger such that it is always necessary for pedestrians to stop and look both ways before crossing railroad tracks.

The Railroad Safety Section of the Illinois Commerce Commission, at the request of Senators Antonio Munoz and George Shadid, conducted a study of pedestrian-train collisions and issued a report entitled "Pedestrian Safety at Rail Grade Crossings in North-eastern Illinois" (April 2005) (available at www.icc.state.il.us). The report revealed a rather amazing fact—pedestrians more often than not ignore warnings of approaching trains at railroad crossings. The report contains five conclusions and two recommendations. The following conclusion warrants consideration:

"Conclusion 1—Sixty-six percent (22 of 33) of these pedestrian-train collisions

appear to have been caused by the pedestrian disregarding the warning devices provided that indicated a train was approaching; many of these crossings were equipped with pedestrian gates." (p. i.i.).

It so happens we are defending a village in a pedestrian-train collision death case and that I cross railroad tracks going to work daily and observe pedestrians walk around pedestrian crossing gates with bells ringing and lights flashing. From my observations, it appears pedestrians observe the crossing gates, lights and bells and look and see a train approaching and then believe they can cross before the "apparently slow-moving train" reaches them.

The ICC report recommends more public education, among considerations, to avoid these unfortunate accidents (25 of 39 pedestrian-train collisions studied resulted in death). Perhaps, local government can help pedestrians appreciate the grave danger of ignoring warnings at pedestrian crossings by one or more of the following:

- (1) Emphasize the fine for violation of pedestrian crossing warnings is \$500.
- (2) Ticketing pedestrians at locations where violations frequently occur.
- (3) Asking help from the local press and radio emphasizing two points:
 - (a) trains are moving faster than they appear—they look big and slow, but they are not;
 - (b) \$500 is a substantial fine to save a couple of minutes and maybe suffer death or injury.

The Brooks Case — 2-Year Contribution Act Trumps 1-Year Tort Act Limitation

You may recall our December 2004 column where in we discussed the Illinois Supreme Court decision in *Paszkowski v. Metropolitan Water Reclamation District of Greater Chicago*, 213 Ill.2d 1, 820 N.E.2d 401 (2004), which held that the 1-year Tort Immunity Act statute of limitations (745 ILCS 10/8-101) controlled over the 4-year Construction Act statute of limitations (735 ILCS 5/13-214). The *Paszkowski* case was the

latest of three Illinois Supreme Court decisions ruling the Tort Immunity Act 1-year limitation prevailed over other statutes of limitation in suits against local public entities.

It appeared that the Supreme Court in *Paszkowski* put to rest any future claims that any other statute of limitation, but the 1-year Tort Immunity Act, applied when local government is sued, by its statement as follows:

“... Given the breadth of this intent, we conclude, in keeping with *Ferguson* that the comprehensive protection afforded by § 8-101 necessarily controls over other statutes of limitations or repose.” (213 Ill.2d at 13, 820 N.E.2d at 408).

However, the First District Appellate Court has held that for contribution or indemnity actions against a local public entity, the 2-year Contribution Act (735 ILCS 5/13-204) and not the 1-year Tort Immunity Act (745 ILCS 10/8-101) limitation, applies. (*Brooks v. Illinois Central Railroad Co.*, No. 04-2607 (1st Dist., filed 6/2/05)) (2005 WL 1312943 (Ill.App. 1 Dist.)).

The issue in *Brooks* arose as follows. Plaintiff Rhonda Brooks, a minor, walked through a dilapidated fence on 10/4/02 onto railroad tracks and was struck by a train and sued Illinois Central and Metra. Illinois Central filed a contribution claim against Metra within two years of the date it was sued and served, but more than one year from such date. Metra sought and obtained dismissal of Illinois Central’s counterclaim for contribution under the 1-year statute. The trial court certified the issue of whether the 1-year or 2-year statute applied. The Appellate Court held the 2-year statute applied and reversed the dismissal of Illinois Central’s counterclaim.

The Issue: Which Statute Applies

The Appellate Court in *Brooks* held the 2-year Contribution Act limitation applied because the language therein states the Contribution Act “preempts all other statutes of limitation or repose.” The Act states, in part, as follows:

“(c) The applicable limitations period contained in subsection (a) or (b)—(the 2 years)—shall apply to all actions for con-

tribution or indemnity and shall preempt, as to contribution and indemnity actions only, all other statutes of limitation or repose. ...” (735 ILCS 5/13-204(c)).

Thus, there is a conflict. The Supreme Court in *Paszkowski* held the Tort Immunity Act prevailed over “other statutes of limitation or repose.”

The Contribution Act and Appellate Court in *Brooks* rely on the Contribution Act language that it “shall preempt all other statutes of limitation or repose.”

In *Brooks*, Metra filed a Petition for Rehearing which was denied and Metra has filed its Affidavit of Intent to Appeal to the Illinois Supreme Court.

Metra’s position in its Petition for Rehearing was this.

The Illinois Code of Civil Procedure, in Article XIII, Limitations, contains some 52 statutes of limitation, including the 4-year Construction Act (735 ILCS 5/13-214), discussed in *Paszkowski*, and the 2-year Contribution Act (735 ILCS 5/13-204), discussed in *Brooks*. Metra offers the argument that the Supreme Court’s decision in *Paszkowski*, stating the Tort Immunity Act “shall preempt all other statutes of limitation or repose,” means all of the statutes of limitation or repose in the Code of Civil Procedure, Article XIII, which includes the Contribution Act statute of limitations. And, Metra suggests the language in the Contribution Act stating it “shall preempt all other statutes of limitation or repose” means all other statutes of limitation found in the Code of Civil Procedure, Article XIII, Limitations—the 52 statutes of limitations or repose, and not the Tort Immunity Act statute of limitations which is contained in the Tort Immunity Act statutory scheme and not in the Code of Civil Procedure’s statutory scheme.

Conclusion

The rule that seemed certain—the 1-year Tort Immunity Act statute of limitations trumps all other statutes of limitations or repose—is now uncertain as to claims for contribution against local public entities. Whether the Illinois Supreme Court will resolve this conflict and, if so, how the Supreme Court will rule, is unknown and uncertain. As any developments arise, we will advise.