

# Settlement: \$740,000

Case: *Xiong v. Burlington Northern Santa Fe Railroad*

Court: *Superior Court - Fresno County*

Pltf Atty: **Jeffery R. Neubarth, Oakland**

Deft Atty: *Confidential*

Judge: *Confidential*

**Settlement: \$740,000**

Facts: *Plaintiff a 5 yr old minor was injured when a train in the Fresno Ghetto where he lived ran over his feet while he was playing on the train tracks*

Contentions: *That the BNSF train should not have been going through a neighborhood where children are known to play without parental supervision; that BNSF was negligent. Plaintiff testified that he was just putting pennies on the tracks at the time, and got sucked under the wheels. That numerous reports to the contrary were incorrect.*

Defense: *That plaintiff was train-hopping; getting on a train without permission, a common right of passage for young boys in Fresno, in violation of Civil Code 1714.7, and the case was therefore absolutely barred. The code states that "no person who is injured while getting on a moving locomotive train/car without authority from the owner thereof, shall recover any damages from the owner or operator thereof. As such defendants claimed that they were entitled to summary judgment.*

*Defendants pointed to medical records wherein it was stated that "patient states that he was trying to jump on a train and got his feet caught". Defendants also noted that the minor's mother told he Fresno Bee that "my son told me that he got injured while jumping on the train."*

*Also, claimed that the minor's parents should not have let him play on RR tracks because it is dangerous.*

Injury: *Bi-lateral partial foot amputation; emotional distress*

Medicals: *\$41,000 CA State Medi-Cal Lien*

Pltf Experts: *Robert Hitson, Ret. Engineer/RR Foreman, Eugene OR  
Gavin Tablada, M.D., Prostetist, Fresno  
Yoshio Setoguchi, M.D., Fresno  
Claudette Vranko, R.N. Lgal case Review/Medcal Records*

Deft Experts: *Confidential*