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Safety Group Closely Echoes Rail Industry

By WALT BOGDANICH

Judge Jack T. Marionneaux said the offer took him by surprise. Two years ago, while presiding over a state lawsuit involving a motorist killed at a Louisiana railroad crossing, Judge Marionneaux said he was among several people invited to ride on a train and learn about grade-crossing accidents.

"It was really a bit strange," Judge Marionneaux said in court proceedings. "I had never been called by a railroad to go take a ride until I got this case."

The train ride, staged for police officers and judges to demonstrate how drivers dart in front of trains, was part of a publicity campaign developed by a nonprofit rail-safety group called Operation Lifesaver. The group's message - which emphasizes the role of drivers, not the railroads, in causing crossing accidents - echoes the railroad industry's consistent courtroom defense. The invitation, the judge said, "offended me."

Judge Marionneaux declined the offer. He also vowed to empanel a grand jury if another such campaign was mounted during the trial.

Nor was he alone in worrying that Operation Lifesaver's message might taint the legal process. Since 2001, two other judges have taken action to stop the group from conducting publicity campaigns around the time of trials.

Operation Lifesaver is the nation's most influential rail-safety group, preaching its gospel of driver responsibility to judges, police officers, elected officials and the news media. No one disputes the value of its message - that drivers should pay attention at rail crossings - or the dedication of many of its volunteers. And its work is widely praised by police and community groups.

But documents show that the organization is tightly bound to the railroad industry, and critics, including many accident victims, say the group's message serves another agenda: to inoculate the railroads against liability in grade-crossing collisions.

Not only did a railroad help found Operation Lifesaver; rail industry officials make up half the organization's national board and provide much of the financing for its state chapters. It also gets

millions of dollars from the railroads' federal regulator, which is itself closely intertwined with the industry.

And even as Operation Lifesaver speaks out about changing drivers' behavior, it spends little time on a range of safety matters that are the responsibility of the railroads and is largely silent on the benefits of warning lights and gates, which many experts say are among the most effective of all safety devices.

In the view of its critics, Operation Lifesaver is another way the rail industry seeks to sidestep responsibility in grade-crossing accidents. This summer, The New York Times reported that railroads in some cases had destroyed or failed to keep important evidence in fatal grade-crossing cases and had failed to properly report hundreds of car-train collisions to federal authorities.

Blaming the Public?

Leila Osina said she was fired in 1995 as Operation Lifesaver's executive director after she objected to what she considered the group's pro-railroad slant. "The message was to blame the public for all railroad accidents and absolve the railroad from any responsibility," Ms. Osina said in a statement in 2000 in connection with a federal court case in Arkansas involving a car-train accident.

Operation Lifesaver's position is that the police and judges should crack down on drivers who do not obey traffic safety laws at crossings, but it offers little criticism of railroads that fail to remove overgrown vegetation at crossings, or fail to fix warning signs and signals, or fail to make sure that trains properly sound their horns and obey the speed limit.

An internal document from before 1995 also shows that speakers were instructed not to use terms like "rough crossing," "dangerous crossing" or "speeding train." Those terms "carry a negative connotation" and detract from the group's safety message, the document states.

Operation Lifesaver says this document is no longer used.

The current executive director, Gerri L. Hall, says her group is simply an educational organization with no hidden agenda. "Our education program isn't about who's at fault, it's about how a driver can take a role in safety," Ms. Hall said. "We want to empower them to make choices that are good. It isn't about placing blame."

Ms. Hall, who has led Operation Lifesaver since 1995, said that while some local volunteers had made unacceptable statements about the group's work in the past, she had worked to standardize its message. She said the group made safety presentations last year to about 1.3 million people, and she said that federal authorities say it has saved 11,000 lives since 1972. She also said Operation Lifesaver received "substantial" support from nonrailroad sources.

As for the comments made by Judge Marionneaux in Louisiana and the court actions to stop Operation

Lifesaver from conducting its media campaigns, Ms. Hall said she was unaware of the events that led to them.

Vicky Moore, whose son was killed nine years ago at a rural Ohio crossing where at least six other people have died, says she believes Operation Lifesaver lets railroads off the hook. "Everybody has a shared responsibility here, not just the driver," she said. "We do not feel that Operation Lifesaver represents the families or victims of this type of tragedy."

Ms. Moore and her husband, Dennis, try to do what Operation Lifesaver does not - with the money from their settlement with Conrail, they run an educational foundation that, among other things, helps finance the installation of lights and gates. They also erect billboards that offer another reason for grade-crossing collisions: "Bad Crossings Kill Good Drivers," one of their signs states.

Theirs is an issue that cuts angry and deep in the heart of rural and small-town America. On average, one person is killed every day at a railroad crossing. And while deaths have fallen sharply from a decade ago, there were 255 through August of this year, a 20 percent increase over the same period in 2003, according to the Federal Railroad Administration.

'A Tremendous Success'

Operation Lifesaver was co-founded by Union Pacific Railroad in Idaho in 1972 and quickly spread to other states through independent chapters. By 1986 there were many state chapters and the national version of Operation Lifesaver was incorporated by the Association of American Railroads, an industry trade association; Amtrak; and the Railway Progress Institute, a rail equipment supply group.

Since Ms. Osina left the national group, its board has expanded to include more members from outside the rail industry. It now has 10 voting members - half of them from the industry.

"We know what a tremendous success Operation Lifesaver Inc. has been," said Allan Rutter last fall before he stepped down as chief of the Federal Railroad Administration, which regulates the industry. The agency backs his words with taxpayer money; it has contributed \$7 million since 1997. Two other agencies, the Federal Highway Administration and the Federal Transit Administration, have collectively kicked in a similar amount.

Even so, the Operation Lifesaver program pays scant attention to unsafe crossings.

According to minutes of a 1992 meeting of Operation Lifesaver's development council, the signal-workers union notified the group that "warning device malfunctions are a factor in driver behavior at railroad crossings" and that the police should be told of this. The minutes show that the recommendation was unanimously rejected. Ms. Hall of Operation Lifesaver said she knew nothing of the meeting because it happened before she arrived.

On the issue of lights and gates, Ms. Osina, the former executive director, said she came to believe that the railroads did not want them.

"The board of directors openly acknowledged an aversion to the installation of lights and gates because of the maintenance cost for those devices," Ms. Osina said in her 2000 court statement. The government pays for the installation of lights and gates at crossings, but railroads must keep them working properly.

Their value was underscored in 2001 when the Missouri Supreme Court upheld a verdict against Union Pacific after an accident at a grade crossing that did not have lights and gates. In that case, the court noted, a Union Pacific representative said lights and gates reduced the probability of accidents by as much as 90 percent.

Ms. Hall said Operation Lifesaver did not advocate more lights and gates at crossings because it is "beyond the scope of what Operation Lifesaver is trying to do." By taking a position on the issue, she said, "the next thing that would happen to us is we would spend all of our time in court, I suppose, or be dragged into discussions with Congress about lights and gates and who will pay for them."

Although lights and gates are in place in fewer than half the nation's rail crossings, Operation Lifesaver emphasizes driver attitudes, arguing that impatient drivers often go around gated crossings.

Working With the Police

After a grade-crossing accident, Operation Lifesaver often offers its representatives as experts to be quoted in the local press. The group also tries to educate police officers through a program called Officer on the Train. Police officers, public officials and the news media are invited onboard a train with a camera mounted on the front of the engine. When drivers cross in front of the train, the police officers radio ahead to other officers waiting in cars, who then issue tickets to the drivers.

The resulting news coverage conveys a message espoused by the railroads. During one such train ride in 1996, for example, a police officer was quoted by a St. Louis newspaper as saying, "People are still running the gates and winning big lawsuits."

Operation Lifesaver also reaches out to the police is on its Web site with 14 "tips for law enforcement officers" who might end up investigating a car-train collision. After tips on how to safely secure an accident scene, the first mention of a possible cause for the accident is No. 7: "Look for evidence of suicide."

An older Operation Lifesaver guide, no longer used, noted that "a significant number of grade crossing 'accidents' are cleverly disguised suicides." The guide further stated that "the lack of physical evidence should not rule out that probability."

Some drivers do commit suicide at grade crossings, though the exact number is not known. But some

families of accident victims say railroads unfairly raise the specter of suicide as a way to escape responsibility for crashes.

In addition to police officers, Operation Lifesaver also focuses on judges with its message that reckless drivers are to blame for rail-crossing accidents. One way to reach them was outlined in a document titled "How to Gain the Attention of Judges," which suggested that the group's members "find out which judges are running for election and invite them to an interview to express their opinions."

Asked about the document, Operation Lifesaver said in a statement that a judge created it and distributed it at a national Operation Lifesaver conference in 2000. That judge, the statement said, believed other judges should know "about the importance of enforcing grade-crossing violations by drivers and railroad trespassing violations by pedestrians."

Judge Marionneaux of Louisiana said in October 2002 that Operation Lifesaver had crossed the line when it invited him to participate in Officer on the Train. "It looks like it's a simple invitation without any point," he said in court proceedings, noting that he was not the only judge invited to go along. "But what is the reason to ask a judge to go ride on a train?" The judge did not cite any evidence that the event was designed to influence his views or the jury's, but he said it made him feel uncomfortable nevertheless.

In another rail-crossing case, William R. Wilson Jr., a federal judge in Arkansas, tried in August 2001 to stop Operation Lifesaver from running its publicity campaign during the trial. Judge Wilson said he felt the order was necessary after a two-day regional event in which the news media and police officers were given train rides.

"I'm sure that a lot of crossing accidents are primarily due, or solely due, to driver disregard, negligence, trying to beat the train or whatever," Judge Wilson said in court proceedings. But he also said some of the educational materials did not "seem balanced," failing to mention that railroads sometimes "don't blow the whistle or sometimes they speed or sometimes crossings are not repaired right or sometimes the railroad lets vegetation grow up."

James Johnson, a former grade-crossing safety coordinator for Southern Pacific Railroad - now part of Union Pacific - testified in 2000 in yet another grade-crossing case that on two occasions he helped arrange Officer on the Train programs to coincide with trials.

Elizabeth S. Hardy, a lawyer who represents accident victims, said that on one occasion she had just picked a jury in a grade-crossing case "and the very next morning" Operation Lifesaver's message was being heard "eight to 10 times a day on television, on the radio."

Ms. Hardy, who late last year obtained a court order to stop the group from running a media blitz during a trial, complained that the railroads used the news media to show how their employees "suffer grievously" because of accidents caused by "stupid" motorists.

A spokeswoman for the Association of American Railroads said it was "patently false" that the industry used Operation Lifesaver to further its own agenda. Ms. Hall, the group's executive director, agreed.

"These are good people, and they are being besmirched by innuendo," Ms. Hall said. "This is a good organization with big hearts." She said plaintiffs' lawyers were behind the criticism of her group because, with the number of rail-crossing deaths declining, "they are losing their base of operation." Operation Lifesaver, she added, wants to look at all factors involved in accidents, including dangerous crossings.

But Ms. Moore, the mother whose son was killed by a train, remains unconvinced. She asked to join Operation Lifesaver's board last year, but the board unanimously rejected her, saying the group did not wish to become involved in "advocacy." Why, she asked in a letter to Operation Lifesaver, is she called an advocate, when railroad officials on the board are not?

Ms. Moore says she never received an answer.

Jenny Nordberg and Eric Koli contributed reporting for this article.