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## Attorney: CN was warned of hazardous track conditions before Two Harbors derailment

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By: **Tammy Francois**, Lake County News Chronicle

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The attorney for the CN crew members injured in the Two Harbors train derailment Dec. 5 blamed the incident on the company's failure to remove snow and ice from the tracks, and said the company had been informed earlier in the day of unsafe conditions between the Highland siding and Waldo and the four-mile descent into the rail yard in Two Harbors.

The derailment occurred after 1 p.m., the same day another runaway train had been reported on the same track farther north. That train's crew managed to regain control of the train; the second was not as fortunate, according to the attorneys. CN officials declined to comment directly on their version of the day's events.

"The railroad had advance knowledge of the storm and information from knowledgeable railroaders about conditions," said attorney Cortney LeNeave, who is representing the injured crew members from the derailed train. "If attempts were made to clear the snow, they were inadequate. As a consequence, these guys were not going to be able to control that train. The railroad knew it, but they kept sending the train on track with deep snow." He said that CN's decision-making did not reflect a regard for the well-being of its employees.

"When you put profits over safety, this is what happens," he said.

CN spokesman Patrick Waldron said the company won't comment on specifics of the derailment or what actions were undertaken to address crew concerns about track conditions the day of the derailment. He said, however, that CN has strategies in place to keep its trains moving during inclement weather.

"In general, CN has a winter operation plan which includes a number of actions that can be taken in the event of severe weather," Waldron said. They include "positioning mechanical experts to do needed repairs on equipment and engineering forces; employees who respond to any issues on the tracks."

Waldron would not confirm or deny that there was snow removal activity on the tracks the day of the derailment, but said that the company has machinery to do the job when it is deemed necessary.

"All these things are part of CN's response to extreme weather in winter months," he said.

CN is investigating the incident, as is the Federal Railroad Administration and NTSB, according to both Waldron and LeNeave.

LeNeave said there were four men aboard the train that derailed. Two were operating the train and two were riding back to the yard, having finished their shift. As the train began its descent from Waldo to the yard, the crew was unable to slow the cars and it gathered speed along the four-mile stretch. Two men jumped from the train as it barreled toward the yard, LaNeave said.

Clyde Larson, a former DM&IR railroad employee who now works for LeNeave's law firm, said that the crew was faced with a difficult decision.

"It's a 20 mile-an-hour track. They went into emergency at 25 miles per hour," he said, referring to the crew's application of full braking power. Despite the effort, the train continued to accelerate. Two of the men opted to exit and "they jumped at 50 mph," Larson said. One man remains in the hospital and two are under a doctor's care, said LeNeave.

Dan Murphy, a retired CN engineer with 22 years of experience operating trains along DM&IR/CN tracks, including the stretch from Waldo to Two Harbors where the runaway occurred, said the 2.9 percent grade requires expertise at the best of times, but the combination of weather and a cold braking system are potentially dangerous.

"Waldo is the steepest hill we've got in the Iron Range division," said Murphy, who is not affiliated with either the attorneys or with CN.

"The most challenging thing I've found is to start a train down that hill from Waldo in the cold and deep snow," Murphy said. "One of the things that people need to understand about operating a train in the snow and cold is that brakes don't work until they get hot. When I say hot, I mean you could burn your hand if you touch the wheels after arriving in Two Harbors. Until they get hot, you've got no friction."

In cold conditions, ice and snow can build up, dramatically reducing the train's ability to brake, Murphy said. With cars carrying the equivalent of three semi loads of iron ore — a weight of approximately 80 tons — the descent into Two Harbors is nothing to take for granted.

"That's a lot of tonnage. If you're not a believer the first time you come down that hill, you'll be a believer by the time you get to the bottom," he said.

In Murphy's experience it's highly probable that the engineer of the runaway train had applied two to two and a half times the braking effort that would have been necessary during the summer, but it was not enough.

"The only other thing he had was emergency, and he applied that. It wasn't enough," he said.

Murphy said he knows the engineer who was operating the train the day of the derailment and called him a "seasoned engineer; someone who has been there for a long time. He's conscientious, a good employee who tried to do his best. He doesn't deserve anyone poor mouthing him. "

Murphy said this month's derailment was one of the two most serious train-related incidences he's seen since 1974 when he started working on railroads. The other was the collision that ended his career Sept. 30, 2010. After a lengthy investigation by the National Transportation Safety Board, he contacted the Lake County News-Chronicle to address what he said were inaccuracies in its findings. The NTSB reported that cellphone use was a factor in the crash, an assertion that Murphy emphatically disputes.

"There is no cellphone service five to six miles before the crash site and for 27 miles beyond the site," he said in February. "If I had been on the phone at the time of the crash, there would have been dead people."

The day of the crash Murphy was operating a northbound train on the CN track just outside of Two Harbors in an area without electronic signals to control train traffic. He rounded a curve near milepost 13.5, with just seconds to react before colliding with a loaded southbound train operating without proper authority.

"The train was in emergency within seconds of the time that I saw the train," an action that he said reduced the train's speed by 10 mph before impact, possibly saving lives.

Both Murphy and the train's conductor were aboard the train when the collision occurred, each now experiencing ongoing medical issues. Records show that Murphy filed suit against CN, but he declined to talk about the outcome.

More information about the events of Dec. 5 will become available when the train's black box is analyzed. Similar to those used to determine the events leading up to airline disasters, the box will provide information about the function of the train's systems and actions of the crew in the moments leading up to the derailment.