



# 130 YEARS OF HELPING SHAPE PENNSYLVANIA'S RAIL INDUSTRY



**PENNSYLVANIA  
Rail Freight Seminar**

**May 19th - 21st 2010**  
Harrisburg Hilton  
1 North Second Street  
Harrisburg, PA 17101

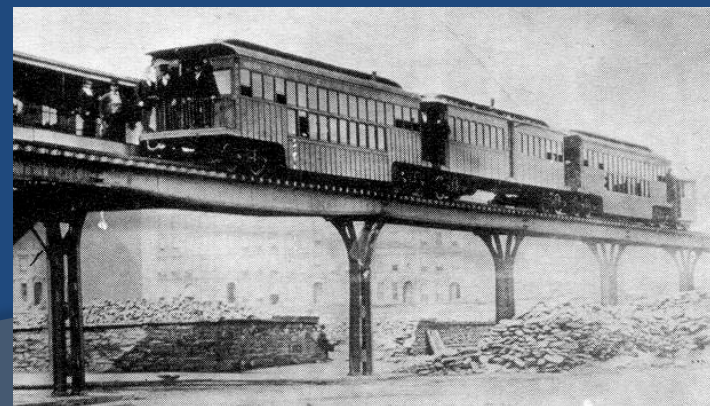


# Significant Successes in Diverse Legal Areas

Since the firm's beginnings, Nauman Smith has achieved significant results for the railroad industry before state and federal courts and the Public Utility Commission involving such diverse matters as railroad infrastructure; liability in crossing, lading and passenger matters; as well as in labor/employee relations.

# Infrastructure Cases

- *Duncan v. Pennsylvania Railroad Co.*, Pennsylvania Supreme Court 1880
- *Harrisburg v. Pennsylvania Railroad Co.*, Dauphin County Court of Common Pleas 1907
- *Consolidated Rail Corp. v. City of Harrisburg*, Pennsylvania Supreme Court 2004



# *Duncan v. Pennsylvania Railroad Co.,* Pennsylvania Supreme Court 1880.

- Established the Pennsylvania Railroad's right to construct branch lines on purchased railroads.
- Railroad constructed a bridge across the Schuylkill River, where JFK Boulevard now located, to a station at Fifteenth Street.



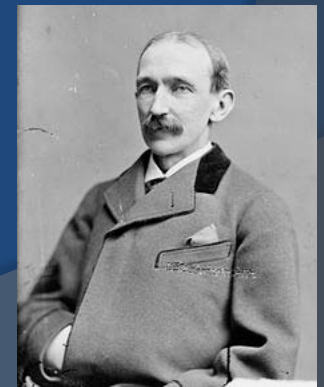
PENNSYLVANIA RAILROAD COMPANY'S BRIDGE OVER SCHUYLKILL RIVER ON FIFTEENTH STREET (LATER RAILROAD)  
PHILADELPHIA



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# Significance of Duncan

- “the case is one of so much importance to the city and Commonwealth, as well as to the parties” and “this case involves interests of very great magnitude, and may become a precedent of importance with regard to future litigation” (quotes from judges in underlying decisions on appeal).

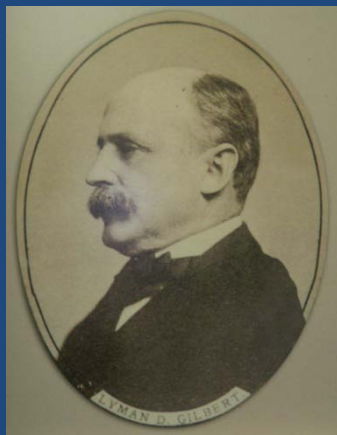


Wayne  
Mac Veagh

# *Harrisburg v. Pennsylvania Railroad Co.,* Dauphin County Court of Common Pleas 1907

- Firm attorneys successfully argued that a railroad company should be allowed to construct and operate its own water mains on and through its property to supply water for its own purposes.

Early Pennsylvania  
Railroad Station



Lyman D. Gilbert

Pennsylvania Railroad  
Station in 1905



## *Consolidated Rail Corp. v. City of Harrisburg,* Pennsylvania Supreme Court 2004

- ⦿ City refused to pay cost of relocating water line to accommodate track lowering project, even though contract obligated it to do so.
- ⦿ PUC held that track lowering was for railroad's benefit and it should bear costs, so railroad sued to enforce contract rights in court of common pleas.

# Consolidated Rail (Continued)

- Pennsylvania Supreme Court affirmed the parties' contract rights even when the PUC orders payment for rail-highway crossing work in the first instance contrary to the contract.



Benjamin C. Dunlap Jr.

# Significance of Conrail v. Harrisburg

- ◎ The case preserved the right of railroads to enforce their rights under literally thousands of contracts with public utilities.



# Liability - Crossing Cases

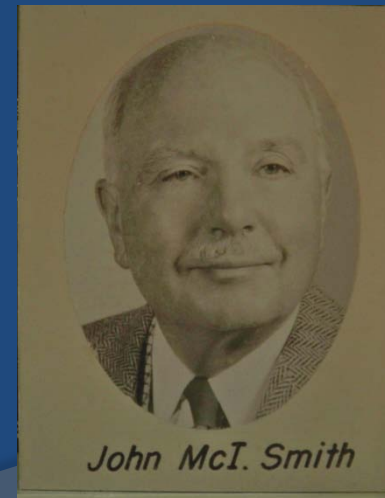
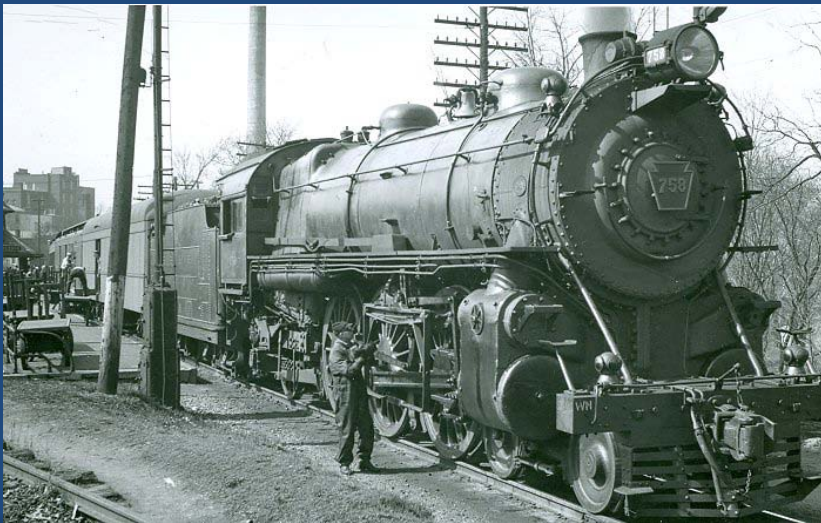
- *Schwenk v. Pennsylvania Railroad Co.*,  
Pennsylvania Supreme Court 1934
- *Scibelli v. Pennsylvania Railroad Co.*,  
Pennsylvania Supreme Court 1954
- *Krentz v. Consolidated Rail Corp.*,  
Pennsylvania Supreme Court 2006

*Schwenk v. Pennsylvania R.R. Co.*,  
Pennsylvania Supreme Court 1934

- ⦿ Judgment against railroad thrown out because driver and passenger of vehicle, who were aware of danger, did not continually watch, look and listen when crossing railroad tracks.
- ⦿ Court held accident could have been avoided, or at least passenger's injuries avoided, had the driver and passenger been vigilant.

# Significance of Schwenk

- Established that not only driver of a vehicle, but also the adult passengers, have a continuing duty to stop, look and listen when traveling over a rail-highway crossing.



John McI. Smith

*Scibelli v. Pennsylvania Railroad Co.*,  
Pennsylvania Supreme Court 1954

- Children, who frequently played in area along the railroad's right-of-way, hopped onto flatcar while the train was stopped and one child was injured.
- Even if railroad was aware of this, railroad owed no duty to children under the "playground doctrine," as any duty it may have had to keep area safe where they normally played did not extend to train itself.

# Significance of Scibelli

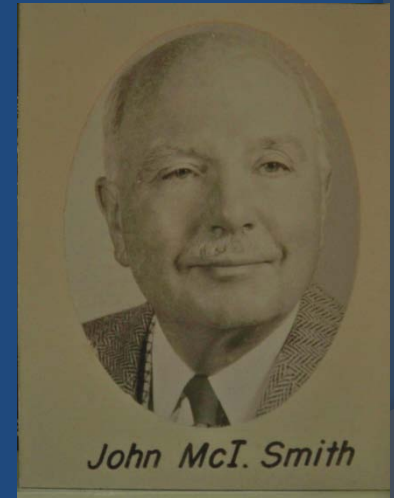
- Affirmed that railroad had no duty to provide guards to keep people from climbing upon trains.

Bethlehem Steel Company



*Wilhelm E. Shissler*

Wilhelm E. Shissler



*John McI. Smith*

John McI. Smith

*Krentz v. Consolidated Rail Corp.*,  
Pennsylvania Supreme Court 2006

- ⦿ Motorist was injured when he drove under a train stopped at a crossing.
- ⦿ Pennsylvania Supreme Court upheld rule that railroads do not owe a duty to warn when trains are occupying a crossing.
- ⦿ Court also held that Pennsylvania's blocked crossing statute was preempted under the Federal Rail Safety Act.

# Significance of Krentz

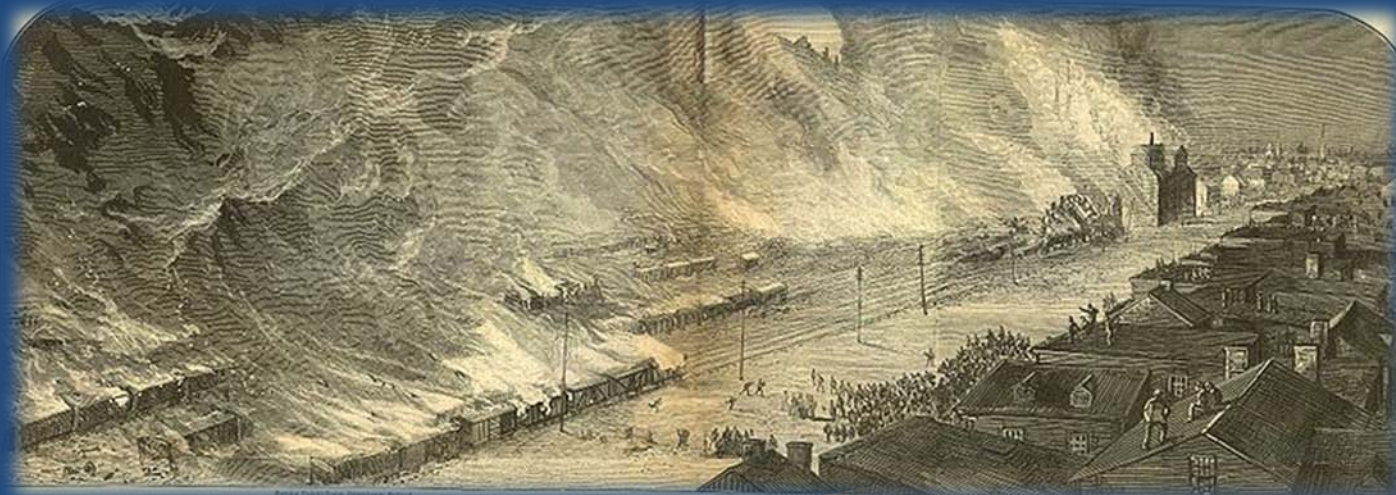
- The Pennsylvania Supreme Court unanimously reaffirmed the occupied crossing rule as a complete bar to recovery on a negligence claim. The Court also found for the first time that Pennsylvania's blocked crossing statute was preempted under the Federal Rail Safety Act.



Craig J.  
Staudenmaier

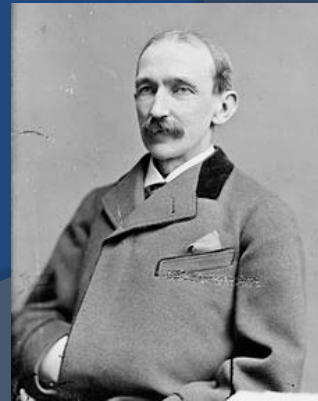
# Liability – Lading Cases

- *Hall v Pennsylvania Railroad Co.*,  
United States District Court 1880
- *Alwine v. Pennsylvania Railroad Co.*,  
Pennsylvania Supreme Court 1940



*Hall v. Pennsylvania R.R. Co.,*  
United States District Court 1880

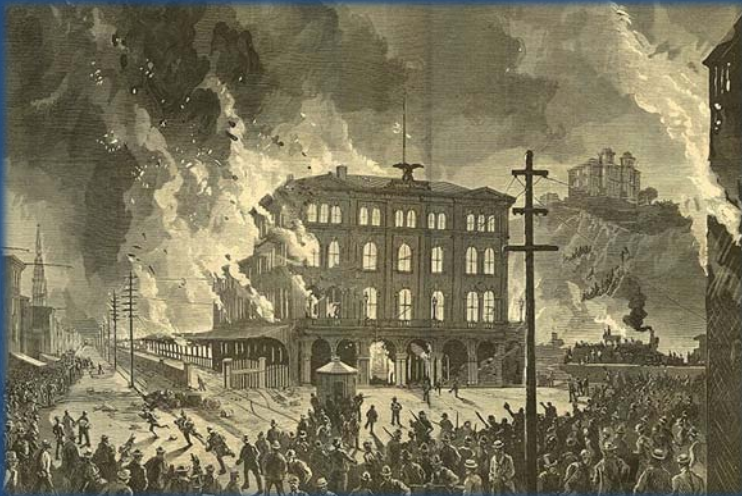
- Striking railroad employees in Pittsburgh started a fire that destroyed a shipper's goods.
- Shipper argued that an exception in the bill of lading that made carrier not liable if goods destroyed by fire should not apply because carrier permitted goods to come into Pittsburgh during strike and could have circumvented strike by meeting employees' demands.



Wayne  
Mac Veagh

# Hall Continued

- Court held that the railroad could not be held liable for the actions of a lawless mob, so exception to liability applied.



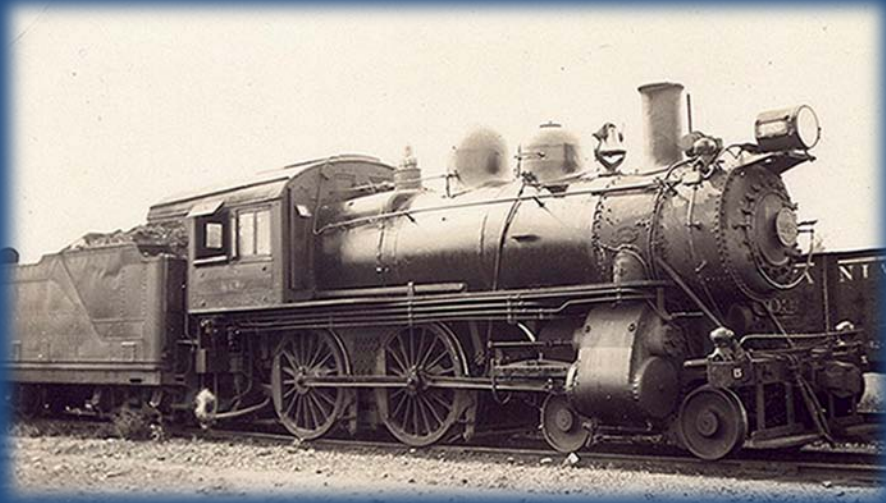
*Alwine v. Pennsylvania R. Co.,*  
Pennsylvania Supreme Court 1940

- Cattle shipped from Canada were injured while in the custody of an intermediate carrier. The Pennsylvania Railroad, which made final delivery, was sued.
- Firm attorneys successfully argued that provision of the Interstate Commerce Act making both the receiving carrier and the delivering carrier liable for all damages on a through bill of lading did not apply when the shipment originates in a foreign country.



# Liability-Passenger Cases

- *Picking v. Pennsylvania Railroad Co.*,  
United States District Court 1946



# *Picking v. Pennsylvania Railroad Co.,* United States District Court 1946

- Railroad was sued for false imprisonment and constitutional violations in connection with the transportation of persons in the custody of peace officers from Pennsylvania to New York.



# Picking Continued

- Court held that since railroads were required to transport such persons while in the custody of peace officers, and the warrants were valid on their face, the railroad was simply doing its duty and claims were dismissed.



# Labor/Employee Relations Cases

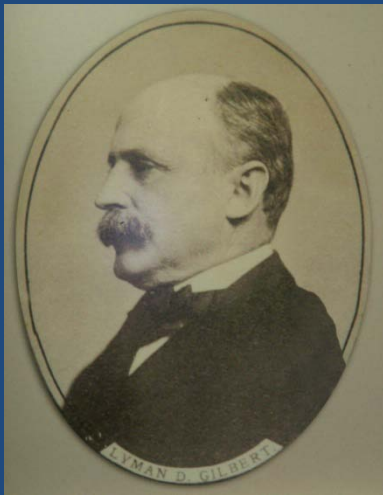
- *Machamer v. Pennsylvania Railroad Co.*, Dauphin County Court of Common Pleas 1902
- *Pennsylvania Railroad Co. v. Driscoll*, Pennsylvania Supreme Court 1939
- *United States v. Pennsylvania Railroad Co.*, Pennsylvania Supreme Court 1949
- *Pennsylvania Railroad Co. v. Schwartz*, Pennsylvania Supreme Court 1958

*Machamer v. Pennsylvania R.R. Co.*,  
Dauphin Country Court of Common Pleas 1902

- ⦿ Railroad operated savings plan for its employees.
- ⦿ Administrator of deceased employee's estate challenged the beneficiary of the plan proceeds by arguing that railroad was operating an illegal banking business.
- ⦿ Court held that since railroad was not seeking to earn a profit from the savings plan, it was not a banking business.

# Significance of Machamer

- Supported that a railroad could offer savings plans to its employees.



Lyman D Gilbert



# *Pennsylvania R.R. Co. v. Driscoll,* Pennsylvania Supreme Court 1939

- The Full Crew Act of 1937 prescribed the size of crews required to operate trains of various types, size and purpose.
- Pennsylvania Supreme Court found challenged provisions unconstitutional as applied to the Pennsylvania Railroad because the provisions were unreasonably costly to implement and did not increase safety.



# Significance of Driscoll

- The state thereafter entered into consent decrees in favor of every railroad in Pennsylvania in the exact terms of the relief granted to the Pennsylvania Railroad.

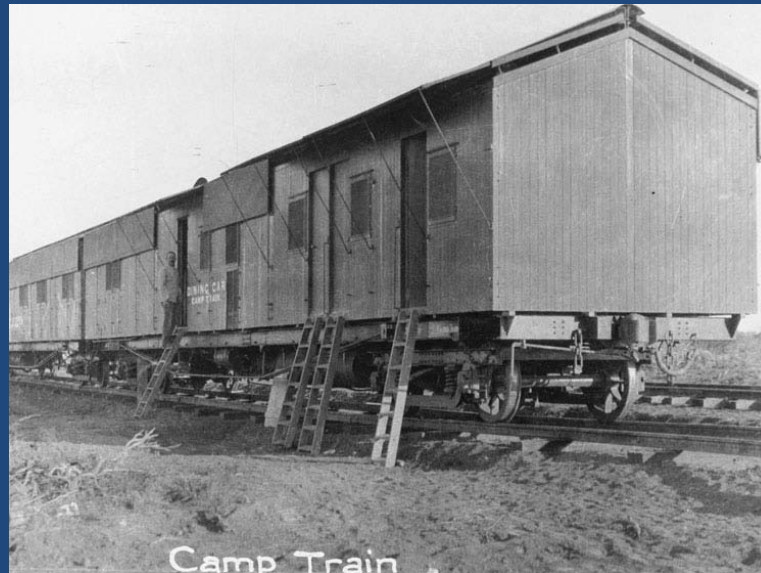
# *United States v. Pennsylvania Railroad Co.,* Pennsylvania Supreme Court 1949

- Railroad accused of violating Hours of Service Act.
- Train crew had pulled off on a siding, was relieved of duty and had options for both food and rest.



# United States v. Pennsylvania Railroad (Continued)

- Three-hour break was sufficient to break the continuity of their service, and railroad was not liable for violation of the Act.

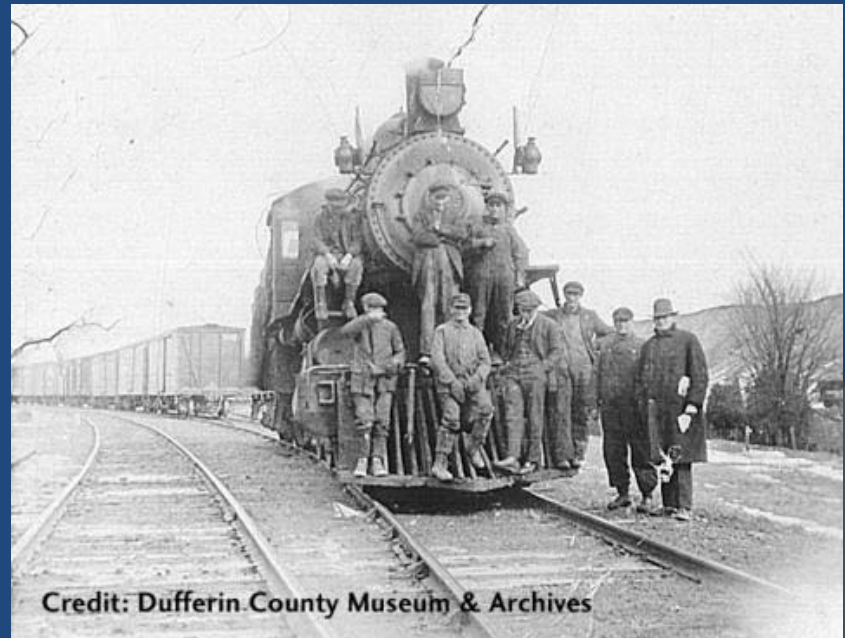


# *Pennsylvania Railroad Co. v. Schwartz*, Pennsylvania Supreme Court 1958

- Firm successful in negating remaining provisions of Full Crew Act of 1937 after state attorney general attempted enforcement.
- Pennsylvania Supreme Court held that since bulk of the Act had been declared unconstitutional, the remaining provisions were not severable and enforceable on their own.

# Significance of Schwartz

- Effectively negated any state regulation of crew sizes.



# Nauman, Smith, Shissler and Hall Still In Action

- Nauman Smith continues in its second century of effective, precedent-setting legal representation of the Pennsylvania rail industry
- Nauman Smith is still helping build the future for Pennsylvania's Railroads!



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