

Truck firm: 8/18/12 Videos can't be trusted

Rail companies' footage altered, filings suggest

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Lawyers for the trucking company involved in last year's deadly Amtrak crash east of Reno filed new court documents suggesting that Union Pacific Railroad altered a video of the rail crossing gates and filed new witness statements saying the gates did not work at the time of the crash.

"Despite the massive forces released in the collision, nothing is seen or heard of this violent event in the video Amtrak and Union Pacific have offered up to the NTSB as being from this accident," Steve Jaffe, lawyer for John Davis Trucking, said in a motion to dismiss two federal lawsuits by the two railroads.

The rail companies sued the trucking

See CRASH, Page 6A

company, claiming it was negligent and its driver responsible for the crash on June 24, 2011. John Davis Trucking countered and filed motions to dismiss.

"One only sees that about two and one-half seconds before the lead locomotive in this particular video reaches the crossing, the gates suddenly appear in the down position," the motion said. "But if they had been down at the time of the accident ... the gate for the northbound traffic would have been destroyed or broken just as it was later broken when vehicles ran through it in August 2011 and March 2012."

And in the audio portion of the video from the leading and trailing locomotives, only the sound of the train passing over switches and other normal train noises can be heard. The audio caught no sound of the impact, the smashing of metal or the explosion of fuel, the motion said.

"The lack of visual and audible signatures of this violent

collision in the videos supplied by Amtrak and Union Pacific impeaches their value as evidence," Jaffe said. "The fact that the forward video shows the gate down a couple of seconds before the crossing is itself evidence that the video cannot be taken seriously.

"If the gate had been down, as shown in the video, it would have been destroyed or broken."

And Steve Hamilton, who was driving north on U.S. 95 just after the crash, "would not have seen the gate stopped in its descent only about one-third of the way down," the motion said.

Messages left with Union Pacific seeking comment were not immediately returned. A spokesman for Amtrak said the company's response would be in court filings.

Both companies have said in court documents that the crossing gates were working at the time of the accident.

Driver Lawrence Valli was driving north on U.S. 95 on June 24, 2011, when he slammed into the westbound California Zephyr carrying 218 people. Valli and five on board died and dozens were injured.

To date, 15 lawsuits are pending, including three in U.S. District Court in Reno between the rail companies and John Davis Trucking.

Union Pacific and Amtrak have claimed that Valli failed to heed the warnings — the rail crossing gates and flashing lights. But Jaffe has filed court documents claiming the gates were not working and the rail companies altered or destroyed evidence to suggest that they were operating.

U.S. District Court Judge Howard McKibben ruled Aug. 1 that Jaffe's motion on evidence was filed too early. McKibben denied Jaffe's motion and said it could be resubmitted after the parties in the lawsuit complete their exchange of discovery materials. But on Aug. 8, McKibben confused the issue by granting Jaffe's motion to seal certain materials supporting his motion to dismiss. Jaffe said the evidence has not been released by the National Transportation Safety Board, so he is obligated to keep it sealed.

The NTSB is investigating the crash and is expected to release its report in a few months.

In his response to the rail-

road companies' objection to his motion to dismiss, Jaffe attached statements from witnesses who said the crossing gates were broken on the day of the crash.

In his written statement, Steve Hamilton of Silver Springs said he was driving north on U.S. 95 on the morning of June 24, 2011, and was about a half mile from the crossing when he saw smoke and saw the train moving slowly on the west side of the crossing.

"At that time I did not notice any flashing warning lights on the railroad crossing," Hamilton said.

He parked and walked to the burning train and saw the remains of the truck and one of its trailers scattered along the south side of the tracks, he said.

"I observed that the arm of the gate crossing for northbound traffic on U.S. Highway 95 was at about a 33- to 45-degree angle and that it had a rope or cord hanging from it," he said. "It looked like it had damage to the tip. There was an axle and trailer wheels located north of the gate arm, which I thought strange if the gate arm had come down before the truck col-

lided with the train."

He said he did not remember seeing the southbound gate when he drove around the crossing.

The railroad companies have said that they had to remove the gate to repair the tip, which they said had been damaged in the crash. But Jaffe has said in court documents that the tip had been damaged in a crash at the site in 2010. He submitted photos to support this claim.

Another witness, Adam Arthur Cheatham, who was on the train when it was hit, said in a statement to the Nevada Highway Patrol that the train "rocked back and forth" after the impact and he heard a "very loud impact noise."

After he climbed out, he said he spoke with others at the scene, and "it was obvious by the long skid marks that the haul truck was attempting to stop."

"When I inspected the road obstacles, (they) were undamaged with skid marks traveling right to them. It was obvious by no damage to them that they were not down at the time of the accident," Cheatham said in his statement.