

## Kent Rutter in Law360: Texas High Court Swats Employee's West Nile Virus Suit

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**PRACTICES** Appellate, Litigation

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The Texas Supreme Court on Friday determined that Union Pacific Railroad Co. is shielded from a worker's suit alleging that he was infected with the West Nile virus on the job, because state common law limits a property owner's liability for harm from indigenous animals.

Union Pacific had argued that the common law defense of "*ferae naturae*," which essentially means "wild animals," can apply to the claim of injured worker William Nami, which was brought under the Federal Employers Liability Act. The doctrine, Union Pacific told the court, limits the liability of the property owner as long as he or she didn't attract the indigenous animals to the property. A jury found and an appellate court upheld that Union Pacific was liable to Nami and awarded him \$752,000.

In reversing the lower court, the high court held that in this case, Nami knew of the risks and had been warned by Union Pacific as well, and that the FELA does not exclude the *ferae naturae* doctrine. The court wrote that the prevalence of mosquitoes in the area was "painfully obvious to all," and referenced the city limits sign for the city of Sweeney that proclaims it the "Mosquito Capital of the World" ...

[Kent Rutter](#) of Haynes Boone, who represented Union Pacific in the matter, told Law360 on Friday that the court's opinion is an important one not just for railroads nationwide, but for every property owner in Texas.

"We were very pleased with the decision," he said. "It's important for railroads because the court properly recognized that even though in some respects railroads have greater responsibilities than other employers under federal law, that doesn't mean they are responsible" for the injuries Nami suffered in this case.

According to the opinion, Nami, 58, had worked for Union Pacific for 32 years when, in September and October 2008, he was working in Brazoria County operating large machinery for the company. He was working in a humid and damp region, with standing water and tall grass that was still recovering from Hurricane Ike.

A jury found that Union Pacific was liable to Nami, who alleged that he contracted the virus while working outdoors in an area where the railroad knew there were mosquitoes infected with West Nile but failed to warn or protect him.

On appeal, Union Pacific argued that if left to stand, the appellate court's ruling would have far-reaching implications and would put employers and private citizens alike who own land in the state vulnerable to these types of suits. Landowners would have to go to absurd lengths, they argued, to protect against wild animals ...

Union Pacific is represented by Rutter, [Christina Crozier](#) and [William Feldman](#) of Haynes Boone

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*Excerpted from Law360. To read the full article, please [click here](#) (subscription required).*