



Schlichter Bogard & Denton



IN THIS ISSUE

**“A COMPANY LAWYER
IN DISGUISE” - WHAT
TO EXPECT WHEN
SPEAKING TO A
RAILROAD CLAIM
AGENT**

**“DON’T TOUCH THAT
GENERAL RELEASE!” -
THE RISK IN SETTling
TOO SOON**

**“YOU’RE NOT
WALKING ALONE” -
THE STEPS INVOLVED
IN HANDLING FELA
CLAIMS/ WHAT TO
EXPECT**

Volume 1, Issue IV of SB&D's Railroad Injury Newsletter

Welcome to Volume 1, Issue IV of Schlichter Bogard & Denton's Railroad Injury newsletter exclusively covering railroad-related topics.

This quarter, our nationally-recognized attorneys address important questions related to interacting with railroad claim agents, the steps involved in bringing a FELA lawsuit, and the risk in settling a case too soon.

We hope you enjoy the fourth issue of the SB&D Railroad Injury Newsletter. As always, we are here to answer any questions you may have: 800-USE-LAWS | railroad@uselaws.com

Sincerely,



Jerry Schlichter & Nelson Wolff

“A Company Lawyer in Disguise” – What to Expect When Speaking to a Railroad Claim Agent

After a railroad worker becomes injured while on the job, the next step is often speaking with a railroad Claim Agent. We understand that this may be extremely intimidating, especially because it is no secret that the Claim Agent—a “company lawyer in disguise”—is ultimately an agent for the railroad, and will try to minimize your injuries. We have created a scenario below that we hope may prove helpful should a Claim Agent try to talk to you in the future.

The Scenario

Cory, a Conductor for ABC Railroad, was walking on the walkway of an engine on a Friday evening when he slipped on oil, injuring his back. Other than some slight soreness, Cory felt relatively unharmed. He stood up, noticed the oil, and filled out an injury report, but didn’t think he was hurt much. Over the weekend, however, he visited his doctor, who examined him and gave him pain medication. Cory decided that he felt well enough to return to work when he was called for service.

Cut to Monday. Cory is called to report for duty. Upon arriving at the depot, Cory sees Alex, ABC Railroad’s seemingly friendly Claim Agent, walking by. Alex asks Cory how he’s doing.

Question 1: Cory still feels mostly fine. The injury isn’t that severe, and he doesn’t want to appear uncooperative. Should he talk to Alex?

1. Yes. He was injured, and he deserves compensation.
2. No. He doesn’t know for sure whether he will have more back problems.

Answer: The correct answer is B. Cory should not give a statement to the Claim Agent. Cory’s condition may worsen, and he is not required by company rules to give a statement. Anything he says in the statement will be used against him by the Railroad.

Question 2: Alex the Claim Agent pushes hard for a statement. He pulls out his iPhone to record it. Cory suddenly grows nervous and asks if the conversation could wait until his Union Representative is present. Alex reassuringly tells Cory that it would be best for everyone if he gave a statement as quickly as possible. That way, the Railroad can get the ball rolling on reimbursing him for the doctor’s visit. “After all,” Alex says with a smile, “Union Reps and lawyers really only slow things down, and we want to help get you reimbursed as fast as we can!”



(Cont.) What should Cory do?

1. Continue speaking with Alex. After all, he does want to get reimbursed as quickly as possible.
2. Politely end the conversation and walk away.

Answer: The correct answer is B. Alex (working on behalf of the railroad) may be attempting to get Cory to hurt his case. Cory just doesn’t know if he will have future problems, so he should get legal advice. He should walk away without giving a statement.

Question 3: Cory begins to walk away. Alex grows nervous and calls out to Cory: “Hold on! Actually, now that you have brought this injury to my attention, you must give me your statement.” Is Alex right? Does Cory need to talk to the Claim Agent?

1. Yes.
2. No. Alex is completely wrong, and Cory should keep walking away. He has a legal right to refuse to talk, and his claim is not in jeopardy.

Answer: The correct answer is B. To put it bluntly, Alex is dead wrong, and he knows it.

Question 4: Let’s say Cory decided not to walk away from the conversation. (For the reasons we explained above, this isn’t what he should do). Alex asks Cory how much money he’d like to receive as a settlement. What should Cory do?

1. Give the Claim Agent a number.
2. Say he is not going to discuss the claim or an amount.

Answer: The correct answer is B. Cory can’t possibly know the extent of his injury at this time, so he should not state any settlement amount.

(Cont) Question 5: Which of the following defenses is available for the Railroad?

1. The Railroad made the workplace "safe enough."
2. No other crew member made a complaint.
3. The Railroad didn't do anything wrong.
4. ABC Railroad had no knowledge of the oil. How can they be responsible for something that they couldn't have anticipated?
5. None of the above.

Answer: The answer is E. Option A is wrong, because (under the FELA) the Railroad has an obligation to provide a safe place to work, not merely one that is "safe enough." Option B is also wrong. Just because another injured employee didn't fall on the oil does not mean that the injury is Cory's fault. Option C is a form of "passing the buck." Under the FELA, the Railroad is required to inspect locomotives daily, and to keep locomotives clear of walking hazards. Finally, Option D is not a defense. The FELA requires that locomotives be free of walking hazards even if the Railroad is not aware of them.

We hope that this quiz provided some helpful guidance if a Claim Agent tries to talk to you.

We strongly encourage you to contact our nationally recognized Railroad Injury lawyers as soon as possible, who will be able to provide specific legal advice. [1]

[1] The information contained in this newsletter is provided for informational purposes only and does not constitute legal advice. Reading this newsletter and information contained herein does not constitute formation of an attorney-client relationship. Every potential case must be assessed in accordance with its unique facts and circumstances. If you believe you may have a legal claim, please request a free, confidential case evaluation with our team today.

"Don't Touch that General Release!" – The Risk in Settling Too Soon

Picture this. You fell and hit your head while working for the Railroad, an incident which caused you to be off work for one week. When you are released to go back to work, a Claim Agent calls and offers you a settlement in the amount of your medical bills and lost wages. You need the money, and you need it in a hurry, so you grab the nearest ball-point pen and go to sign the settlement agreement and general release. The pen is about to touch the signature line when...

Wait!

Although you want to take the money, a settlement is premature. If you are injured in an accident for which the Railroad is at fault, be sure that you do not jump at the first sight of a settlement offer. There are a variety of reasons why settling too early could actually prove to be financially harmful, as illustrated by the following scenarios.

Scenario 1: The pen is about to touch the signature line when... you scrawl your signature and accept the deal. Unfortunately, over the next several months, you develop headaches, and they get worse. You return to work, but don't know if you can continue or if the headaches will go away... Unfortunately, the settlement agreement you signed only covered your previous medical bills, and the release means that you have voluntarily cleared the railroad of any further financial responsibility. While the original settlement was a quick fix, you made a big mistake.

Conclusion 1: Because it can often be difficult (if not impossible) to determine the extent of your injuries, you should never rush to ink a settlement agreement. If your symptoms worsen and persist (possibly even throughout the remainder of your life), you will have no recourse.

(Cont.) **Scenario 2:** The pen is about to touch the signature line when... you autograph your name and accept the deal. As it turns out, you only had a partial picture of your full medical bills when you spoke to the Claim Agent. In the coming months, you receive additional bills. You return to the Railroad to ask them to cover the rest of your bills, and they refuse. At this point, you threaten to sue them. In response, they merely chuckle and show you the general release that you signed, wherein you voluntarily released all of your future claims pertaining to this accident and freed them from all liability.

Conclusion 2: When you sign a release, you are doing just that: releasing the Railroad from any liability. As discussed in Scenario 1, a major disadvantage of settling too soon is that you may not have the fullest picture of your injuries or whether you will miss time in the future. By signing a release, you are signing away your right to sue the Railroad for anything connected to the injury, including additional injuries, costs, bills, and lost wages.

Scenario 3: The pen is about to touch the signature line when... you ink your initials and accept the deal. Later that afternoon, you overhear the Claim Agent talking to a Railroad official. "You'll never believe it. I was authorized to offer him three times the amount of money, but the fool accepted the first offer right away! I'm going to be a hero to the Company and get a promotion." To put it bluntly, you shortchanged yourself, and you were taken advantage of by a cunning Claim Agent.

Conclusion 3: It is best to get advice from a knowledgeable FELA attorney if you receive an offer. Your best way of making an informed decision is to get advice.

Final Scenario: The pen is about to touch the signature line when... you change your mind and decide to hire an experienced FELA attorney to help you navigate this tricky process. Your attorney helps you discover the full range of damages that you may be owed, including medical bills, pain and suffering, and lost income. You are armed with the knowledge and representation necessary to receive the compensation you deserve.

Final Conclusion: If you have sustained an injury while working for your Railroad employer, you need not navigate the claims process alone. We strongly encourage you to contact our nationally recognized Railroad Injury lawyers as soon as possible. We can help you analyze the facts of your case, provide legal advice, and handle your claim. [1]

[1] The information contained in this newsletter is provided for informational purposes only and does not constitute legal advice. Reading this newsletter and information contained herein does not constitute formation of an attorney-client relationship. Every potential case must be assessed in accordance with its unique facts and circumstances. If you believe you may have a legal claim, please request a free, confidential case evaluation with our team today.

"You're not walking alone" – The Steps Involved in Handling FELA Claims/ What to Expect



If you have been injured, and have us represent you, the process from that point is described below. What next steps do you need to take after you get an attorney? What might your case look like if it winds up in court? In this article, we aim to provide a quick and easy roadmap through the litigation process, so that you never feel like you are "walking alone."

(Cont.) Phase 1: The Investigation

After your injury, the first step of the process is to fill out a report detailing the accident with your employer. However, as we advised above, before you speak to a Claim Agent or put pen to any sort of paper, we highly recommend you consult with a seasoned FELA attorney so that your rights are protected.

If you want to call our national award-winning team here at Schlichter Bogard & Denton, the number is 800-873-5297 (800-USE-LAWS), or you can fill out an inquiry form on our website (<http://uselaws.com/contact/>).

You will get a prompt response.

Once we begin representing you, we will do an investigation of your case. We'll ask the following questions:

- How did the injury occur?
- How was the railroad responsible for the accident? Were there unsafe procedures or unsafe equipment?
- What is the extent of your injuries, and how long are you expected to be off work?
- How were you financially/emotionally impacted by the injury?

Meanwhile, the Railroad will almost certainly claim that they are not at fault, and that you could have avoided the injury. They will challenge the extent of your injury, and time off work. We will guide you through this process. You should avoid saying anything about your injury or condition on social media during this time because the Railroad will look for that and try to use it against you.

Phase 2: Workup of the Case

After the case is filed in court, we will be getting information and documents from the Railroad and obtaining your medical records. The Railroad will also be sending written questions to be answered by you with our guidance. At some point, the Railroad will take your deposition, which is a question and answer process similar to a railroad investigation. We will fully prepare you for that, and will be present with you during the deposition, as with every step of the way.

Phase 3: Conclusion of the Case

Your case will usually end with one of two results -either a trial or a settlement out of court. If there is a trial, we will, of course, handle everything that needs to be done to protect your interests. The trial may last a few days or a little over a week., after which the jury will decide the case. We will put on evidence and witnesses which build the strongest possible case for you. Following trial, either party can appeal the verdict to a higher court, which could result in upholding the jury's verdict, or a new trial.

You can rest assured that we will guide you seamlessly throughout the process, answering any questions you may have and providing you with recommendations regarding the best path forward every step of the way. We are proud of the results we have obtained for our clients and of the unmatched track record we have built in fighting successfully for railroad workers.

Don't hesitate to contact us for advice. 800-USE-LAWS | railroad@uselaws.com

*Top-tier,
uncompromising
representation
to America's railroad
workers.*

That's our brand.



Questions?

As always, our team of nationally recognized Railroad Injury attorneys are available to answer any questions you have. Contact our office at railroad@uselaws.com or 800-USE-LAWS.