

# Schlichter Bogard



## IN THIS ISSUE

**FIRM UPDATE: NAME CHANGE**

**THE PITFALLS OF POSTING: HOW SOCIAL MEDIA CAN BE USED AGAINST YOU IN COURT**

**THE DEBATE OVER REQUIRING TWO-PERSON TRAIN CREWS**

## Volume III, Issue III of Schlichter Bogard's Railroad Injury Newsletter

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

This quarter, our nationally-recognized attorneys address firm updates and important questions surrounding the dangers of posting on social media and the debate over requiring two-person train crews

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

Sincerely,



Jerry Schlichter & Nelson Wolff



---

## Firm Update: Name Change

Our firm has a new name: Schlichter Bogard & Denton is now **Schlichter Bogard**.

While our name is changing, our mission is not. We will continue to be a leading trial firm focused on aggressively pursuing justice for individuals harmed by corporate wrongdoing. Our contact information, and contact information for our attorneys and staff, will remain exactly the same.

For more than 30 years, it has been our privilege to seek justice for individuals. We look forward to continuing to do so as **Schlichter Bogard**.



## **The Pitfalls of Posting: How Social Media Can Be Used Against You in Court**

*by Jon Jones, Associate Attorney*

Electronic communication has become the main way that we connect with our family, friends, and coworkers. Text messages, emails, and social media postings are convenient and effective, but they can also spell trouble when you pursue an injury claim against the railroad. This article examines the potentially serious impact of electronic communications on your injury claim, from a trial lawyer's perspective, and provides guidelines to effectively manage your written communications and social media activities after a workplace injury:

Once you click "post" or "send," electronic communications are out there forever. They are preserved in an electronic record for anyone to find. From the moment you report a workplace injury—even before a lawsuit is filed—it is likely that railroad claims representatives and their lawyers will search for your social media postings for information that they can use to challenge your injury claim. During litigation, courts often allow the railroad to obtain a record of your private communications, cell phone records, and online posting of comments and photos in the hope of discovering statements about how you got hurt and your activities before and after the incident that are inconsistent with a claimed disability. Even when social media is posted by your family or friends, it can still be discovered. Here are some general tips on how to minimize these risks:

1) Avoid electronic communications about the injury incident itself, including how it happened and who is at fault. Discussion about these facts and opinions with others before consulting with an attorney can prevent the assertion of valid legal claims later.

2) Don't use electronic communications to discuss advice provided by your attorneys' office. This could be construed as a waiver of your attorney client privilege that otherwise ensures your communications are private.

3) Avoid electronic communications about the extent of your injury, symptoms, and treatment. While it is natural to reassure loved ones you are okay, especially when the adrenaline is running high and before you've been evaluated by medical specialists, these communications often downplay the extent of your injuries in an attempt to comfort your loved ones. But, later, they can be used by the railroad to argue your injuries were not very severe. If you want to communicate how you are doing, it is best to do so verbally in private conversations in person or by phone when no one else is present.

4) Set your social media pages to "private" and have your immediate family do the same. You can find instructions on how to do this on the internet or just ask your 15-year-old relative - they will surely know how! This privacy setting allows you to identify the few friends and family you allow to view content on your social media page. Beware that some social media platforms, like Tiktok, cannot be made private. And, even if your pages are set to "private," you should still be cautious about what you post online, because the railroad's lawyers may ask the court to require you to produce downloads or copies of certain "private" posts and photos from social media.

5) Avoid posting/sharing photos of family events, activities, and trips on social media because those too can be used to diminish the amount of your disability. Although you may be asked to disclose this information during a deposition, oftentimes a few photos can project a happier and more active you than what really occurred. For example, photos of someone who is recovering from back surgery, getting on a boat and riding around on a lake, will not show the pain that person experiences the next day. Even seemingly innocent posts can have major consequences. Photos of a family trip to Mexico to celebrate a special event, even if prepaid and planned years in advance, can convey to a jury that you are wealthy and don't need compensation, in addition to thinking that you are not hurt. Your social media posts are unlikely to actually help your case.

6) Explain to your friends/family that their social media posts may be targeted by the railroad's prying eyes as they look for any evidence to hurt your case. They should also be careful about who they talk to and what information they share in person or online until your case has been completed.

7) A final and easy to remember rule of thumb, don't post anything online unless you are comfortable with a jury seeing this in your injury trial.

If you have any question about social medial or need assistance with a railroad injury case, the attorneys of Schlichter Bogard are here to help.





## The Debate Over Requiring Two-Person Train Crews

*by Matt Strauser, Associate Attorney*

The train derailment in East Palestine, Ohio, earlier this year shines a new light on the dangers of precision scheduled railroading or PSR. This corporate philosophy increased train length but decreased the safety of communities, operations, and employees. The Court overseeing the many cases arising from the derailment has appointed Schlichter Bogard to the steering committee tasked with litigating all the claims. Many firms from throughout the country applied for a position on the steering committee, and the Judge evaluating these applications selected Schlichter Bogard based on its successful track record of taking on railroads on behalf of workers.

In response to the derailment and its widespread harm, Ohio has enacted legislation that mandates two-person train crews. But the railroad industry has sued to block enforcement of this requirement, arguing that federal law “preempts” or supersedes state railroad laws. In short, it claims that because the Federal Railroad Administration (FRA) has exclusive authority to enact laws governing interstate railroad operations, no state can enact a law where the FRA has authority to act, even if it has not done so. Railroads also claim that a mandate of two-person crews is simply unnecessary and the extra cost would cost too much, thereby reducing their record earnings.

Surprisingly, this preemption argument has worked in the past. Several other states, including California, Colorado, Illinois, Nevada, and Washington, previously enacted similar laws. But Illinois and Wisconsin federal courts ruled that federal law preempted the states' train crew size regulation. A similar ruling here could hurt railroad safety and reduce the number of railroad jobs.

However, if the FRA or the U.S. Congress enacts a regulation mandating two-person train crews, then the preemption argument cannot help the railroads in courts. In 2016, the FRA administrator appointed by the Obama administration proposed a regulation that generally would have required two-person railroad crews. But in 2019, the Trump administration withdrew the proposed rule and instead proposed a new law that would impose a maximum of one-person train crews. Fortunately, a court found that proposed rule invalid. Then, in 2022, the Biden Administration again proposed a two-person crew for most operations. Separately, legislation adopted by both political parties in the U.S. Senate, the Rail Safety Act of 2023, would also require two-person train crews as well as mandatory hot box detectors over every track carrying hazardous materials. This law has widespread support among rail worker unions. However, that bill has so far stalled in the Republican controlled U.S. House of Representatives, and it remains to be seen what if any parts may be adopted and made into law. If that happens, or the FRA adopts its current proposed rule, then the lawsuit over the recent Ohio law may become moot.

Railroaders should pay special attention to these legal conflicts because the survival of the two-person crew law directly affects railroad safety and employment security. In addition, the FRA's shifting position on train crew size and railroad safety also serves as a reminder that who we elect as President and to represent us at the federal and state levels can significantly affect laws promoting rail safety.

We hope that you found this newsletter informative and helpful. As always, if you have any questions, please [contact our team](#).\*

\*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.



**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](mailto:railroad@uselaws.com) or 800-USE-LAWS.**