



Schlichter Bogard & Denton



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Volume II, Issue III of SB&D's Railroad Injury Newsletter

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

This quarter, our nationally-recognized attorneys address important questions surrounding precision railroading and the steps to take following a workplace injury.

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

Sincerely,



Jerry Schlichter & Nelson Wolff



Schlichter Bogard & Denton Welcomes Matt Strauser to Our Award-Winning Railroad Injury Team

Meet the newest member of our Railroad Injury team: Matt Strauser.

Matt joins Schlichter Bogard & Denton from an East Coast plaintiff's firm, where he focused his practice on the representation of seriously injured individuals. Prior to entering private practice, Matt clerked from 2020 to 2021 for U.S. District Judge John A. Gibney Jr., and from 2019 to 2020 for Circuit Court Judges Mary Jane Hall and Jerrauld C. Jones.

Matt graduated summa cum laude from William & Mary Law School, where he served as president of the school's National Trial Team, was inducted into the Order of the Barristers, and served as Symposium Editor for the William & Mary Law Review. Before law school, Matt worked for the Mississippi Teacher Corps. He received his B.A. cum laude from Princeton.

Matt has a unique understanding of personal injury. While at Princeton, he played Division 1 football as a defensive lineman. Following an injury, his days as a collegiate football player were abruptly ended. That said, he remained a part of the program for three additional years, assisting with practice and recruiting efforts. In the years that followed, Matt dedicated his life's work to help make injury victims whole.

Matt grew up in Western Tennessee and has family in nearby Southern Illinois. He and his wife have now made St. Louis their home.



Precision Railroading: What it is and How it May Affect You

by Scott Gershenson, Counsel

Several railroads across the country have implemented a new service model called “Precision Scheduled Railroading,” also known as PSR. While railroad board rooms have praised this model as a way to “maximize capacity and yield the greatest efficiency,” PSR is essentially a cost-cutting measure—a corporate strategy to boost freight volume and increase profits for railroad shareholders. As a result, PSR has created new challenges and safety hazards for railroad employees, and it is important that workers are aware of these issues and report safety hazards if they encounter them while on the job.

A concept originally developed in the 1990s by a railroad executive, PSR is a practice that focuses on picking up railcars on a fixed schedule, without considering how adding railcars would affect the length of train. Part of PSR practices can also include operating trains with fewer crew members. Railroads claim that this practice provides “more reliable service” to their freight customers who are receiving products transported on these railcars. In reality, this is a thinly veiled attempt to increase profits for the railroads by maximizing their freight traffic, while placing less of a priority on railroad safety. By increasing trains’ length and cutting down workers for their freight operations, railroads are needlessly exposing their employees to an increased risk of safety hazards. Consequences of PSR include the following:

- Increased responsibility for each train crew employee where crew sizes are reduced. This results in additional work and creates a rushed work environment and contributes to a stressed/fatigued work force.
- Greater chance for derailment due to lengthy trains;
- Service delays due to reduced workforce;
- Reduction in quality of train inspections by carmen, leading to a risk of increased safety hazards on trains;
- Lack of experience by employees who have to take on new, unfamiliar roles/responsibilities in a reduced crew; and
- Potential risk of increased collision with long trains on networks where Positive Train Control is not implemented.

The practice of PSR, coupled with new restrictive railroad attendance policies, creates an environment where employees are overworked, fatigued, and under significant pressure to meet unrealistic, time-sensitive freight deadlines. It is critical that employees try their best to stay alert and attentive under these circumstances. If they detect unsafe working conditions or equipment, they should immediately report those hazards, in writing, to railroad managers, and retain a copy of those written complaints for their records. Employees should then provide a copy to their local union representative. Railroad employees should also report to management if they are too overworked and cannot safely complete their work in the limited time frame provided.

Importantly, railroaders are protected from being disciplined or terminated under the Federal Rail Safety Act in response to reporting certain safety concerns at work. As a result, it is unlawful for the railroad to take any sort of employment revenge against its employees for voicing their concerns about specific safety-related issues, and employees should be vigilant about reporting safety matters to management.

Should you have any questions about precision railroading, or questions regarding safety hazards, unsafe work conditions, or equipment, do not hesitate to contact our office.





What Next? Your Game Plan After Being Injured On the Job

by Jon Jones, Associate

As discussed in past volumes of this newsletter, if you are injured while working as a railroad employee, you may have a legal claim against the railroad under the Federal Employers Liability Act (FELA). This is the only remedy for railroaders who are hurt on the job. Unlike other industries where injured employees receive workers' compensation benefits regardless of their employers' fault for an injury, railroad employees must prove that the railroad negligently caused their injury. If they cannot, the railroad has no obligation to compensate you, even if the injury results in significant medical bills or renders you unable to work.

From the moment a work injury occurs, the railroad's officials, lawyers, and claims department personnel work together to build a case against the injured employee. They perform inspections, reenactments, and collect evidence from the scene. They speak to witnesses, take recorded statements, and review train data. They may ask you to visit a railroad-friendly doctor, or they may send a trainmaster to ask you questions in your hospital room. All of this is done with the goal of denying that the railroad has any responsibility for the injury, effectively pinning the blame on the injured employee, and minimizing the amount of compensation that the employee ultimately receives.

The railroad's response to an injury incident is well-rehearsed, with a clear game plan. For that reason, it is equally important that you have a clear game plan. So, what can you do to set yourself up for success, prevent the railroad from taking advantage of you, and avoid the many pitfalls that exist in the wake of an injury? Here are a few steps to remember:

Step 1: Complete an Injury Report

Fill out an incident/injury report and keep a copy for your records. You should keep it short and sweet, but be complete. It is important to identify defective equipment (e.g. slick surface on a locomotive, difficult-to-throw switches, loose handholds, etc.), hazardous work conditions (e.g. debris or uneven walkway surface, poor yard lighting, tools or PPE being unavailable, etc.), and whether another person's conduct contributed to the incident. You should list all eyewitnesses on your report, along with their phone numbers. You should also note that you did not do anything wrong, and that there was nothing you could have done to prevent the injury.

If you are in a lot of pain, severe distress, or are on medication that may interfere with your thinking ability, you need not immediately complete a report. Rather, you can wait until after you have received medical treatment and are mentally ready. However, you should try to fill out your injury report promptly, and keep in mind that some railroads have rules about how long you have to fill out a report.

Step 2: See Your Doctor

After a work injury, you need to see a doctor. Whether you take an ambulance ride to the hospital, visit a local urgent care, or see your family doctor, it should be done as soon as possible. You should tell the doctor about any problems you have related to the injury incident and describe how it happened and what you were doing at the time. If you have aggravated a preexisting condition because of this new injury, it is in your best interest to share that with your doctor. Tell the doctor about these prior problems, even if they occurred long ago, and describe how the new problems are different from the old injuries. If your doctor gives you physical limitations or holds you out of work, it is important to comply with those limitations.

Do not get treated by a railroad's doctors or nurses. If they work for the railroad, they are not truly neutral. The railroad is prohibited by law from interfering with your medical treatment, or preventing you from seeing a doctor of your choosing.

Step 3: Do Not Give a Statement to Claims Representatives

Claims representatives are heavily involved in the litigation process and work directly with the railroad's lawyers. You are not obligated to provide them with a written or recorded statement and should avoid doing so. They are trained to gather information to undermine your legal claims and help the railroad avoid responsibility. Likewise, you should not sign anything, including releases or medical authorizations, without first speaking to an attorney. (Check out Volume I, Issue IV of our Newsletter to learn more about general releases and the risks in settling too soon).

Step 4: Talk to Your Union Representative

Your union representatives can help guide you through the process. Among other things, they will be able to help you file for RRB sickness benefits and supplemental disability benefits, which you should do if you are unable to work.

Step 5: Keep Your Records

Keep records of your lost wages, out of pocket expenses, and medical bills or records received from your doctors.

While these types of records are helpful to support an injury claim, not all records are created equal. If you file a lawsuit, keep in mind that the railroad will have an opportunity to ask for documents and communications relating to the injury incident. For that reason, it is good practice to avoid posting about your injury/incident on social media, refrain from discussing it via email or text, and keep spoken discussions limited to what people need to know. When you speak with an attorney or your spouse, those conversations are protected—but there are no similar protections when talking with others.

Step 6: Promptly Contact an Attorney

One of the best ways to protect your rights and set yourself up for success is to promptly contact an attorney. We highly recommend reaching out to a member of our national award-winning railroad injury team here at Schlichter Bogard & Denton. Our firm commands respect throughout the railroad industry for our aggressive representation of all crafts of railroad employees, including engineers, conductors, switchmen, maintenance of way workers, carmen, and shop craft employees. We are one of a very small group of plaintiffs' law firms that have consistently been named by U.S. News & World Report as "National Tier 1" railroad injury firms. Our precedent-setting victories on behalf of railroad workers throughout the country are unrivaled.

We often hear from railroaders who call our office that they wish they had called sooner, but worried that their injury was not serious enough, that it was too early in the process, or that they might be able to resolve their claim with the railroad directly. None of these should stop you from picking up the phone. When your livelihood and ability to provide for your family is on the line, it is always worth making a prompt call to an attorney. For more information, and to submit a request to speak to an attorney, please feel free to visit: www.uselaws.com/railroad-injury-claims

Finally, if you ever find yourself needing to remember these steps in a hurry, please feel free to check out our app, where we lay out a shorter version of these six steps. Simply search "uselaws" in the app store to download a copy of our app today.

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 or 800-USE-LAWS.