

Schlichter Bogard



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Volume IV, Issue I of Schlichter Bogard's Railroad Injury Newsletter

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

This quarter, our nationally-recognized attorneys address the importance of documented safety reporting. We also share some recent news featured in ProPublica.

We hope you enjoy this issue of the Schlichter Bogard 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



Empowering Railroad Workers: The Importance of Documented Safety Reporting

by Jon Jones, Associate Attorney

In previous editions of this newsletter, we discussed the Federal Employers' Liability Act (FELA), the law governing railroad injury claims. Under this law, injured workers must prove that the railroad was negligent in failing to provide safe working conditions, equipment or methods.

To prove negligence, the worker must show that the railroad knew or should have known about a hazardous work condition yet failed to take address these hazards. Attorneys sometimes refer to this concept as "notice." or "foreseeability." If the railroad created a hazard, such as failing to remove old tie butts after completing track work, then it certainly had notice of that hazard. If the railroad did not create the hazard, it can be deemed to have notice if any employee reports it to management. If another worker subsequently trips on this debris and is injured, the railroad will be deemed to have notice. Thus, employee reports to management become crucial evidence in proving railroad at fault.

However, not all safety reporting is created equal. To be most effective, it is important to make a formal written report. If a safety issue is only reported verbally, the railroad may deny it ever received notice of a hazardous conditions. Documented reports are much harder to deny. An experienced and reputable railroad injury law firm, like Schlichter Bogard, will know how to obtain these documented reports from the railroad, even if it means getting a court order to force their production.

It is important to know how to document safety reports at work because procedures can vary by railroad. Some have safety hotlines or safety meetings. If uncertain, ask your union representative for help. But simply talking to a manager about a safety issue—even a manager that you like—does not guarantee that the issue will be documented much less addressed.

In a recent case, a railroad worker was assigned to stay at a hotel after working away from home. The worker slipped and fell in the hotel's slippery shower that was not coated with an anti-slip surface and suffered career-ending injuries. We were able to identify several coworkers who had also experienced slips/falls at this hotel—and had verbally reported it to their managers—even though the railroad denied awareness of any problems.

Fortunately, during litigation, we were able to find a two-year-old email in which a railroad manager had notified the hotel management of multiple safety complaints regarding the slippery shower hazards. This documented email was undeniable evidence of “notice” and bolstered the argument that the railroad was negligent in failing to reduce the risk of injury to its workers, such as providing nonslip surfaces. This was proof of negligence against the railroad—that it knew about the hazard but did not fix it and kept putting workers in harm's way.

Ultimately, we were able to obtain a substantial settlement for this injured worker.

While most railroads *claim* safety is a top priority, documented safety reporting actually forces the railroads to *make* safety a top priority. Taking the time and effort to report safety hazards can help you and others hold railroads accountable and improve workplace safety for all.





ProPublica Articles Highlighting Rail Industry Safety Abuses and Coverups Feature Two Schlichter Bogard Clients

In recent investigative reports by ProPublica, the rail industry's safety practices and cover-ups have been brought to light, with Schlichter Bogard Senior Partner, Nelson Wolff, playing a pivotal role through his representation of injured railroad workers.

One case involves Christopher Cole, a switchman who was boarding a moving train when he was struck by a sign that was posted too close to the tracks. Cole was knocked off the train and run over by the train, resulting in the amputation of both legs.

Cole's employer, Kansas City Southern Railway (KCS), attempted to hide critical evidence. In the article, Wolff emphasized how KCS's actions were part of a broader pattern within the industry to obscure injury causes and avoid accountability. In November 2022, a jury found KCS violated a state clearance law and that the practice of getting on moving equipment was unsafe and awarded Cole a historic \$12 million verdict, marking a significant victory for railroad worker rights.

Another case in ProPublica's investigation featured Scotty Bragg, another train service employee represented by Nelson Wolff, this time against BNSF Railway. Bragg suffered debilitating spine injuries in November 2021 when the train he was operating went over rough track conditions. BNSF failed to report this injury to the Federal Railroad Administration (FRA) as a way to deny Bragg any compensation. By gathering important evidence supporting the claim, we were able to obtain a favorable settlement.

ProPublica's exposé reveals a disturbing trend of underreported worker injuries and deaths within the railroad industry, signaling a systemic problem with unsafe working conditions and concealment of resulting injuries. Federal regulations mandating injury reporting are circumvented through loopholes, allowing companies to evade accountability and jeopardize worker safety.

The combined efforts of legal advocacy, such as that undertaken by Schlichter Bogard, and investigative journalism are crucial in holding the rail industry accountable for its safety practices. Calls for stricter oversight and penalties resonate in light of these revelations, emphasizing the urgent need to prioritize the well-being of railroad workers and ensure transparency in reporting safety incidents.



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

That's our brand.

Questions?

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.

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

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