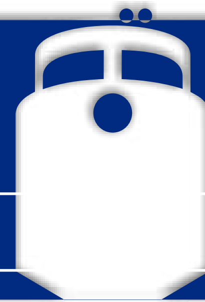
RAILROAD



KNOW YOUR RIGHTS

L E G A L N E W S

PROVIDED BY THE LAW OFFICES OF BRESCOLL & ASSOCIATES, P.C.

Fall 2002

TOP NEWS

Federal Employers' Liability Act

Railroad employees are not covered by workers' compensation laws for work-related injuries. If a railroad employee is injured at work, his/her rights to recover stem from a federal law known at the Federal Employers' Liability Act (FELA). The United States Supreme Court has noted that the FELA was "designed to put on the railroad industry some of the costs for the legs, eyes, arms, and lives which it consumed in its operations." The Supreme Court has also recognized that the FELA was enacted, in part, in response to the incredible dangers associated with working as a railroad employee, noting that in the earlier days of railroading, the odds against a railroad brakeman's dying a natural death were almost 4 to 1 and the average life expectancy of a switchman was just seven years.

However, unlike workers' compensation claims, the FELA generally requires that the employee prove that the railroad was, in some manner, at fault in causing or contributing to his/her injuries. Specifically, the FELA provides that the railroad will be liable in damages to its employees suffering an injury while employed by the carrier when an injury is caused, in whole or in part, by the negligence of any of its officers, agents, or employees, or by reason of any defects or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

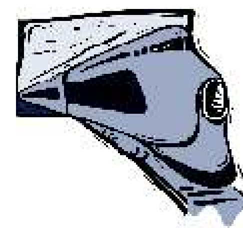
The courts have interpreted the FELA as requiring a railroad to provide its employees with a "safe place to work". An injured employee may recover damages when the railroad has assigned the employee to duties beyond his/her physical capacity, failed to enact or enforce proper safety rules, failed to maintain its equipment, failed to provide adequate manpower, failed to use proper ballast, or failed to provide proper tools or equipment.

The law also provides that, generally, the amount of money an employee is entitled to recover for an injury will be reduced by the percentage of fault that is attributed to the employee which had led to his/her injuries. Therefore, even in a situation where the railroad is clearly at fault, the railroad will generally do everything in its power to lay as much blame on the employee for an injury as it can in order to reduce the ultimate pay out it will have to make on an injury.

Slip and Fall on Large Sloping Ballast Results in $650,000 Settlement

Our client, a 43 year old car inspector, was coupling air hoses on railcars. He had to walk up to a thoroughfare track on steeply sloped ballast that was of the mainline-type rather than normal walkway yard ballast. This occurred because the railroad was in the process of moving the track and required employees to work on the track under construction. After our client coupled the air hose between two railcars, he stepped backward onto the steeply sloped ballast and slipped on a large rock causing him to fall backwards onto his left hip. He immediately felt stiffness in his lower back and reported the injury. Eventually he was treated by a neurosurgeon who diagnosed a lower back disc herniation and performed surgery. Brescoll & Associates, P.C. filed suit and we obtained a settlement in the amount of $650,000.

Retired Brakeman Obtains $125,000 Settlement



Throughout his railroad career as a brakeman, our client, now 57 years old, performed the normal strenuous activities of lifting drawbars, setting hand brakes and getting on and off of moving equipment. As a result of performing this work, he began having pain in both his hands and knees. He, therefore, retired at the end of the year and had arthroscopic surgery on his knees and carpal tunnel surgery to both his hands. Brescoll & Associates, P.C. alleged in a FELA lawsuit that our client's railroad employer negligently failed to provide him with a safe place to work in that it failed to warn him of the dangers of overuse syndrome, failed to properly train him in safe work methods and failed to provide proper manpower, tools and equipment. His case was settled for $125,000.

There are certain situations in which the railroad will be held absolutely responsible for injuries that occur, even in the absence of its negligence. These cases are known as Safety Appliance Act and Boiler Inspection Act cases. If an employee is injured as a result of a violation of these Acts, even the employee's own negligence cannot be used against him/her.

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Can I Treat With a Doctor Of My Choice?

If you sustain a back, shoulder, knee or similar serious injury at work, the railroad may refer you to one of its hand-selected doctors for long-term treatment. Should you wish to continue your treatment with a doctor of your own choice, the railroad may tell you that you will then be personally responsible for all your medical bills. This is generally not true. As a railroad employee you are covered by a medical insurance policy that will allow you to treat with virtually any doctor or hospital you desire (review your policy or speak with an insurance service representative for details). It certainly may be wise to receive treatment from a doctor you have chosen as opposed to one chosen for you by the railroad as your interests are probably vastly different than those of your employer. If you need assistance in finding and selecting a treating doctor, ask your fellow workers to recommend one to you, or speak with a FELA attorney familiar with qualified medical specialists in your area.

Brakeman Obtains $375,000 Settlement as a Result of Off-Duty Auto Accident Causing Cervical Sprain and Ankle Sprain

Our firm represented a 44 year old off-duty brakeman who entered an intersection in Port Huron in his personal vehicle on a flashing yellow light. The defendant driver entered the intersection on a flashing red light and collided with our client's vehicle. Our client was not seat-belted at the time of the accident and was thrown forward into the steering wheel and the right interior of his vehicle. He was taken to the emergency room of a local hospital where his injuries were diagnosed as a cervical sprain and right ankle sprain. Our client later treated with an orthopedic surgeon who casted his right ankle and prescribed physical therapy. Our client later returned to his normal gait and was able to stand on his heels and toes without discomfort. He did continue to experience discomfort when walking on uneven surfaces and, therefore, did not return to his brakeman's job. Brescoll & Associates, P.C. filed suit against the negligent driver and settled his lawsuit for $375,000.

Federal Employers' Liability Act

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Insurance Company's Failure to Pay $66,837.97 in Benefits Results in Judgment of $169,301

Our client, a middle-aged woman, was involved in a motor vehicle accident and began treating for neck pain, neck stiffness and headaches. When conservative treatment failed, she approached her automobile insurance company to see if they would pay for further diagnostic testing. Instead, the auto insurance company sent her to their "independent medical examiner". Following a brief examination, the insurance company's physician gave her a clean bill of health and then terminated her benefits She eventually had an MRI, myelograms, CAT scans, and EMGs that were positive indicating she had two damaged cervical discs. When we sent those positive test results to the auto insurance company, their response was simply to send our client back to the same "independent medical examiner" who again reported, following his "clinical examination", that he found no objective evidence of any injuries. The insurance company, predictably, decided to ignore the objective test results, ignore the opinions of our client's treating physicians, side with their own "independent medical examiner" and continued to refuse to pay any benefits. Our firm took the case to trial and our client was awarded every penny in benefits that she was seeking, $66,837.97, as well as an additional $102,463.82 in attorney fees, penalty interest, judgment interest and costs. The insurance company did not appeal and the entire judgment was paid.

Meet The Lawyers Who Work Hard For You

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MAKE SURE YOUR VEHICLE IS INSURED

The Michigan No-Fault Act requires that every registered car be insured. If you are convicted of driving without basic insurance, you may be charged with a crime, not just a civil infraction, and fined up to $500.00, put in jail up to one year, or both. If you own a car that does not have insurance and there is an accident involving that car, you may be sued and held personally liable for all damages that are sustained. If you are hurt in an accident involving a vehicle that you own that is not insured, you will not be paid for medical expenses, wage loss, loss of services or other benefits available under the Michigan No-Fault Act. Under the present law, if you are involved in an accident in a vehicle that you own that is not insured, you also will not be able to recover damages against the driver or owner of the other vehicle even if the other driver was dead drunk, ran a red light, hit your vehicle and rendered you a paraplegic.

BE CAREFUL WHO YOU LOAN YOUR CAR TO!

The Michigan No-Fault Act provides that if you lend your car to someone else and that individual is involved in an accident, you will be held financially liable for injuries and damages caused as a result of the negligent operation of the vehicle to the same extent as if you were driving the vehicle. Under Michigan law, even if you make a person promise to only drive to a certain place, not to lend the car to anyone else and not to drink and drive, and then that person goes to a different place than he or she said he or she was going, gets drunk, loans the car to another person that is intoxicated and then that person gets in an accident and kills someone, you will be held financially liable for that death to the same extent as the driver of your car.