

Straight Track - A Hoey & Farina Newsletter

Straight Track #259



Railroad Offers Free Legal Advice To Injured Employees

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Hoey & Farina received a copy of a slick new brochure that a major railroad distributed recently to its employees. The purpose of the brochure, as claimed by the railroad, is to answer all questions concerning an on duty injury.

The handout proclaims that its employees are the railroad's "most important resource." (Based on my experience, every railroad should view the contract employees as its most important resource!) However, I offer the opinion that what the brochure fails to mention is that only **uninjured** employees are valuable assets for this railroad. Moreover, the brochure is an attempt by the railroad to mislead its employees as to their rights under the Federal Employers' Liability Act ("FELA") as well as discourage its employees from hiring an attorney. Once you are injured on the job, you are a **liability** to the railroad, not an asset. And, in case you did not know, railroads today are **ruthlessly efficient** in minimizing their liabilities.

The attitude of railroads towards injured employees is reminiscent of the line from the movie, "The Godfather," where Sal Tessio, surrounded by the Corleone family soldiers and facing retribution for betraying Michael Corleone, says to the enforcers: "Tell Mike it was only business. I always liked him." Railroad supervisors might like you, but once you are injured, you are a liability. And, ruthlessly, minimizing a liability is "**only business**" to the railroad.

Keeping that in mind, let's look at some of the free advice that the railroad is giving its employees about their rights under the FELA in its slick, new brochure.

The brochure is in Question and Answer format. Anticipating what railroaders often ask, one of the questions reads: "Am I required to make an injury report?" In its response, the railroad states: "The supervisor will notify the appropriate claim agent that you have been injured and, as soon as it is appropriate, the claim agent will contact you. As a part of the required investigation into the accident by the claim agent, you will be asked to describe how you were injured... The claim agent must determine the facts and make a permanent record of exactly what occurred..."

It is important to note that you have no contractual obligation to give a statement to the claim agent and the claim agent has absolutely no right to get a statement from you. The claim agent has the initial responsibility to help investigate and prepare the railroad's defense of any FELA claim against the railroad. So, the railroad, in this case, as set forth in its brochure, is asking you to assist the railroad in its determination of liability against you, and the person you are assisting in his investigation will be the individual determining the facts of your claim against the railroad!

Another question presented asks: "Since my case could go to court, and I have the right to sue, doesn't it make sense for me to have a lawyer to represent me from the beginning?"

The railroad responds, in part: "In deciding whether to employ a lawyer, you should remember that you have three years from the time of your injury to start a court action, **so there is no need to hire a lawyer immediately**. It is a good idea to try to reach a suitable agreement with the claim agent before employing a lawyer." (Emphasis added.)

This free legal advice from the railroad is **seriously misleading**. There often is an **urgent** need for immediately hiring a lawyer to **preserve crucial evidence**. Let's compare two common scenarios.

In the first situation, Ralph Railroader is injured because of a defective switch in the rail yard. As required, Ralph promptly reports the accident, and tells his supervisor of the defective switch. Ralph is unable to work, and the railroad tells him that it will advance money to Ralph as long as he does not talk to or hire a lawyer.

Ralph, having read the railroad's brochure, remembers he has three years to file a lawsuit. He delays calling an attorney at the encouragement of the railroad's supervisor and claim agent. However, unknown to Ralph, the railroad sends a supervisor to inspect the switch. Although the switch is defective, Ralph does not get a copy of the inspection report. The railroad repairs the switch and the defect is no longer apparent. He believes that the railroad will not deny that its switch was defective because, "Why would the railroad give him money against his settlement if the railroad wasn't at fault?"

For more than two years, Ralph talks regularly to the railroad's claim agent about his claim, but he gets nowhere in trying to negotiate a fair settlement. Unfortunately for Ralph, there is a rule of evidence law that generally prevents a plaintiff from presenting evidence that a defective switch was repaired after an accident.

So, after more than two years of worry, medical treatment and one-sided negotiations, Ralph hires an attorney. By then, it is too late to have an independent expert inspect the equipment for Ralph. The defective switch has been repaired, and it is impossible to verify that it was defective on the date of the accident. Ralph had a great case, but he failed to act fast to save the evidence. Now the evidence is gone, and the value of Ralph's case is drastically decreased. He took the railroad's advice that "**there is no need to hire a lawyer immediately**." Ralph got a bum steer from the railroad.

When a railroader is seriously injured, it is often of utmost importance to hire a skilled, competent, F.E.L.A. firm **immediately** to preserve the evidence. If the injured railroader retains Hoey & Farina, we can promptly file a lawsuit, and - running to court - obtain an order from the judge commanding the railroad to preserve the scene of the accident pending inspection by experts hired by Hoey & Farina.

In the second scenario, if Ralph had promptly hired Hoey & Farina, we would have been able to obtain a court order commanding the railroad to preserve the defective switch so that it could be reviewed by an expert hired by Hoey & Farina.

In one of the cases handled by Hoey & Farina, a railroad denied that its equipment was defective. But Hoey & Farina was able to preserve the evidence when the expert hired by Hoey & Farina **videotaped** his inspection of the equipment. And it was obvious, **just by watching the videotape**, that the equipment was defective.

At trial, the railroad had its expert testify that the equipment was not defective. But the videotape presented at trial by Hoey & Farina showed, in delightful detail, that the equipment really was defective. The railroad's expert sounded like the old Marx Brothers' movie where Groucho - playing the part of Dr.

Hackenbush - asked: "**Who are you going to believe, me or those two crooked X-Rays?**" Hoey & Farina had videotape, while the railroad was stuck with Dr. Hackenbush. The question for the jury at trial: "Who are you going to believe - the videotape or Dr. Hackenbush?"

The free legal advice from the railroad is "**there is no need to hire a lawyer immediately.**" But free legal advice from a railroad about your claim against the railroad is worth what you paid for it - **Nothing!**

If you are seriously injured, and you do not immediately hire an attorney to protect your rights under the FELA, you are rolling the dice. Without an attorney, you are gambling that crucial evidence won't evaporate. **If you are seriously injured, act fast to save the evidence.** Call Hoey & Farina, the advice is free and will help you make the decision that is best for you. (888) 425-1212.