

Your Right to Legal Counsel When Injured

The Federal Employers' Liability Act (FELA) was enacted by a Congress that was enraged over the dismal safety records of the railroads and their lack luster efforts to lessen the injuries and deaths caused through the carrier's careless disregard for the safety of their employees. It provides the exclusive remedy for any railroad employee injured solely through the fault of his or her railroad employer. The Law is unique to the railroad industry. It was enacted to provide monetary relief to those railroad employees who were injured through the negligence of, or violation of certain safety laws by, the employing railroad. Another reason for its enactment was to give the railroads an incentive to provide a safer work environment for their employees. In order for an injured railroad employee to recover under the Law he or she must prove the injury resulted, in whole or in part, due to the fault of the railroad. (Of course, either party may initiate settlement negotiations and settle their dispute if they choose to do so; however, experience has proven that the best settlements only occur when the railroad knows that the injured worker is prepared to prove the case in Court.) Congress gave injured employees the right to prove their cases against the railroads in both the Federal and State Courts of the United States.

The instant that an injury occurs the injured employee and his employer become legal adversaries, and are so recognized under the Law and by the Courts. The railroad has a right to use all its resources to defend itself against any claim or suit by its employee and it prepares in advance by hiring claim agents, officers, and railroad attorneys prior to the incident. The railroad's team is ready to swing into action as soon as the injury occurs to protect the railroad's interests. The railroad has no duty to inform the injured employee of his or her rights under the Law or to gather or protect the evidence the injured employee needs to prove the case. The injured employee has the burden of proving the railroad was negligent and to seek and recover damages for the railroad's negligent acts or omissions. The injured employee has the right to seek legal representation to protect his or her rights and to get fair and adequate compensation for injury caused by the fault of the railroad. Unfortunately few employees know this and rely upon the railroad to protect their interests until its too late.

Rail labor soon became aware that its members could not receive the benefits of the FELA without being adequately informed about the Law and without knowing knowledgeable attorneys who would represent them for a fair fee. The various rail unions soon developed programs to inform their members about the FELA, and recommended certain attorneys to their members who could competently represent them under the FELA. These recommended attorneys are the "Designated Legal Counsel" of your union who have been selected for their proven experience, special knowledge of the railroad industry, and loyalty to the principles of your union.

On two occasions attacks were directed against rail labor's efforts to inform their members about the FELA and the existence of Designated Legal Counsel. The railroads supported the efforts of State Bar Associations to eliminate the unions' programs to educate their members and to eliminate the union's right to recommend competent legal counsel to their members. On both occasions the U.S. Supreme Court, based on the 1st and 14th amendments of the U.S. Constitution, ruled that rail unions and every member of those unions had the right to inform their members about the FELA and to recommend "Designated Legal Counsel," selected by their union. In those rulings, U.S. Supreme Court stated in clear and unequivocal language that:

"The Trainmen and other railroad Brotherhoods were the moving forces that brought about the passage of the Safety Appliance Act in 1893 to make railroad work less dangerous; they also supported passage of the Federal Employers' Liability Act of 1908 to provide for recovery of damages for injured railroad workers and their families by doing away with harsh and technical common-law rules which sometimes made recovery difficult or even impossible. It soon became apparent to the railroad workers, however,

that simply having these federal statutes on the books was not enough to assure that the workers would receive the full benefit of the compensatory damages Congress intended they should have. Injured workers or their families often fell prey on the one hand to persuasive claims adjusters eager to gain a quick and cheap settlement for their railroad employers, or on the other to lawyers either not competent to try these lawsuits against the able and experienced railroad counsel or too willing to settle a case for a quick dollar.”

“A State could not by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, cf. *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799, and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics. The State can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts to vindicate their legal rights. The right to petition the courts cannot be so handicapped.”

“The Brotherhood admits that it advises injured members and their dependents to obtain legal advice before making settlement of their claims and that it recommends particular attorneys to handle such claims. The result of the plan, the Brotherhood admits, is to channel legal employment to the particular lawyers approved by the Brotherhood as legally and morally competent to handle injury claims for members and their families. It is the injunction against this particular practice which the Brotherhood, on behalf of its members, contends denies them rights guaranteed by the First and Fourteenth Amendments. We agree with this contention.”

"It cannot be seriously doubted that the First Amendment's guarantees of free speech, petition and assembly give railroad workers the right to gather together for the lawful purpose of helping and advising one another in asserting the rights Congress gave them in the Safety Appliance Act, statutory rights which would be vain and futile if the workers could not talk together freely as to the best course to follow. The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected give the wisest counsel. That is the role played by the members who carry out the legal aid program. And the right of the workers personally or through a special department of their Brotherhood to advise concerning the need for legal assistance – and, most importantly, what lawyer a member could confidently rely on - - is an inseparable part of this constitutionally guaranteed right to assist and advise each other." See *Cite 377 US1, 84 S.Ct. 1113.*

The right to use and recommend “Designated Legal Counsel” was therefore found, by the U.S. Supreme Court, to be necessary to achieve the goals of the F.E.L.A. It is a right the Railroads, for its own self-serving monetary interests, tried to take from you. Your union and its Designated Legal Counsel fought hard to give you the right to be informed about the Law and to recommend Designated Legal Counsel to your fellow employees. The U.S. Supreme Court found these rights essential for effective enforcement of the FELA.

Don't you think it would be wise to protect these rights by calling Designated Legal Counsel if you are injured and by recommending Designated Legal Counsel to your fellow members or their families if they become injured? Call your Designated Legal Counsel and get the advice you need as soon as possible – remember the railroad and its attorneys are working against an injured employees' interests immediately upon learning of the injury or death. Give yourself and/or your fellow employee the opportunity to have someone working for you by allowing Designated Legal Counsel to advise and/or represent you

immediately. Even the playing field. – You can call Hoey & Farina 24 hours a day at 1-888-425-1212 to get the help you need immediately!