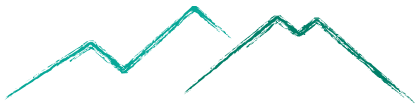


WINTER - SPRING 2009



ROSSI COX VUCINOVICH
FLASKAMP P.C.

Rail Update



- Serving Railroad Workers and Their Families Since 1968 -

CONTACT

Washington Office

10900 NE 8th Street
Suite 1122
Bellevue, WA 98004-4456
Telephone: (425) 646-8003
Fax: (425) 646-8004
Toll-Free: 866-357-RAIL
(7245)

Colorado Office

3801 East Florida Avenue
Suite 905
Denver, CO 80210-2500
Telephone: (303) 759-3500
Fax (303) 759-3180
Toll-Free: 800-325-4014

Minnesota Office

One Corporate Center I
7401 Metro Boulevard
Suite 148
Edina, MN 55439
Telephone: (651) 688-7699
Fax: (651) 688-7785
Toll-Free: 866-900-FELA
(3352)

Oregon Office

1500 SW 1st Avenue
Suite 700
Portland, OR 97201
Telephone: (503) 621-3000
Toll-Free: 866-357-RAIL
(7245)

Nebraska Office

5000 Central Park Drive
Suite 204
Lincoln, NE 68504-3465
Telephone: (402) 434-9288
Toll-Free: 800-325-4014

The information in this newsletter is not legal advice.

Why FELA Matters to Younger Railroad Workers

You didn't grow up hearing about FELA. It's not taught in schools and most of the general public doesn't even know it exists. But as a railroad employee, it is a law that you will want to know and understand.

FELA is your own special compensation law. It gives you rights and protections that virtually no other employment sector has. It can potentially provide you with recoveries for injuries at better than 10 to one compared to typical state workers' compensation laws. Passed in 1908, FELA is as relevant today as it was then.

Railroad work remains one of the most dangerous occupations today. Employees risk serious injury or death working around heavy moving equipment in all types of weather, day or night. Rely-

ing on your employer to furnish and maintain reasonably safe working conditions is no guarantee against injury, as each year railroad accidents seriously hurt or take the life of workers.

Congress enacted FELA to acknowledge these risks. As the U.S. Supreme Court said, "...[FELA] is a response to the special needs of railroad workers who are daily exposed to the risks inherent in railroad work and are helpless to provide adequately for their own safety."

No law can keep you safe, return physical health or bring back a loved one. And no law can ease that pain, either. But FELA is there to make the railroad a safer place to work and to ensure workers the right to pursue compensation in the event of

death or injury. This unique



www.rcvpc.com

law has protected railroad workers and their families for over a hundred years, and today stands as the best worker safety and compensation law in the United States.

Visit our website to learn more and watch a short FELA video featured on our home page.

The 'Unsafe Worker' Myth

Over the last decade, thousands of employers have broadened work responsibilities after downsizing and increased hours and pace of work for remaining employees. This massive restructuring, while aimed at increasing productivity and profits, has also contributed to an increase in work-related injuries. So why do many of these injuries go unreported? Usually, it's because of "behavioral safety programs" that focus solely on the employee's conduct. The railroads operating in the United States wholeheartedly endorsed this approach and many have implemented safety programs of their own.

What They Really Do. Behavioral safety programs are the new tool for intimidating workers into not reporting injuries. While the stated goal is to reduce injuries, in reality these programs oftentimes seek to shift responsibility to provide a safe working environment from the employer to the employee, contrary to FELA. *Continued on back.*

www.rcvpc.com

The 'Unsafe Worker' Myth continued

Where it Began. Behavioral-based safety programs can be traced back to 1930 and the work of H.W. Heinrich. Heinrich, an insurance investigator, wanted to learn why so many accidents occurred within the workplace. It was soon clear he had an inherent employer bias.

Heinrich researched accident reports completed only by supervisors looking to blame the employee for the injury. He then concluded "employees' unsafe acts" caused a staggering 88% of workplace accidents. Though discredited by critics, this figure is still quoted today in many safety programs.

Heinrich's "research" ultimately formed the basis for today's unsafe worker myth.

Things to Consider:

- ◆ **Behavioral safety programs focus exclusively on the employee's actions, often characterizing them as 'carelessness,' or 'conscious or unconscious unsafe behaviors.'**
- ◆ **Employees subject to these programs are more likely NOT to report an injury for fear of being labeled an 'unsafe worker.'**
- ◆ **Peer pressure and pressure from management are reasons employees don't report an injury.**
- ◆ **The stated goal is to reduce injuries; the actual effect is to reduce the *reporting* of injuries.**
- ◆ **If you don't report your injury, you could seriously undermine your ability to recover what you are legally entitled to under the law or forfeit that right entirely.**

What You Can Do. Don't buy into the "unsafe worker myth." Under FELA, it is the employer's duty to provide a safe working environment, not yours.

Workers can and should file unsafe condition reports, advise union safety officers of unsafe conditions, report all violations to safety hotlines, participate in union-supported safety programs, and contact their Union Designated Legal Counsel for advice after an injury occurs.

If you have questions about this article or your employer's Behavioral Safety Program, please call us.

www.rcvpc.com

SPOTLIGHT:

John J. Rossi

Growing up in North Denver, John Rossi heard plenty of stories about railroading from his dad, an engineer, and his granddad, a section foreman, both of whom worked for the Denver & Rio Grande Western Railroad. While it sounded exciting, John had different plans. He wanted to be another kind of engineer - one who worked on oil rigs.



After graduating from the Colorado School of Mines, John moved to Houston to work for an oil company. He was married with three young children before completing law school. "Law school first came up while I was working for the oil company," John recalled. "My boss suggested it and then convinced me to go." Once in law school, John had found his calling. "While I liked engineering, I really loved the law," he said.

In 1966, John started his own firm with friend and fellow classmate, James Morrisard, practicing general law. One of his first clients was Sam Fleming, then General Chairman of the Maintenance of Way Employees Union for the Union Pacific Railroad. Sam liked John's work, and asked if he would handle FELA cases.

He initially started out as local counsel for a California law firm and then worked his way into the practice. FELA cases were interesting, challenging, and gave John an opportunity to work with many people from his own Italian community. He quickly decided to focus on FELA.

Since then, John has become a nationally recognized, preeminent FELA attorney with a long and distinguished career advancing the rights of injured railroad workers. He has tried over 200 cases and settled over a thousand more all on behalf of railroad employees or their families. John's work helped create the FELA we have today.

John is a past President of the Academy of Rail Labor Attorneys, and was named one of the "Best Lawyers in America" for his excellence in personal injury litigation and railroad law. Martindale-Hubbell, the most prominent lawyer-ranking organization within the United States, awarded him its highest rating.

John is a hunter, fisherman and animal lover. He and his wife, Mary Lee, are also avid travelers, and Africa is their preferred destination spot. "I read a lot about Africa and always wanted to go to the continent," John said. The couple has traveled to Tanzania, Botswana, Zimbabwe, Namibia, Egypt, Kenya, Rwanda, Zaire, Burundi and South Africa, mostly on safaris to see the native animals.

John's favorite experience was gorilla-trekking in Rwanda. "We were up close with the mothers and their babies, but the silver-backed male wouldn't come near me." We'll consider that the gorilla's loss.