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Wage Continuation Versus Advancements In Controlling FELA Injury Claims

by Christopher J. Hoare, Esq.

As a former Amtrak claims agent, I have made some observations on the use of wage continuation programs for injured employees that you may find useful.

In my experience, the effectiveness of wage continuation programs in actually achieving their intended goal of preventing a claimant from becoming a plaintiff is minimal. Because of the long statute of limitations under the FELA, an injured railroad worker could conceivably collect his or her wages for almost three years before announcing that he or she has retained counsel. At that point, it is more difficult to settle a FELA case where wage continuation has been collected by the claimant. The wage continuation amount becomes a lien that must be repaid by the settler of a FELA claim. The claimant has to collect nearly his entire net wage loss or more if the injured worker also collected Railroad Retirement and Supplemental Sickness benefits. Claimants receiving most or all of their pre-accident earnings also have a disincentive to return to work and their wage loss seems to be longer than claimants collecting only RRB. Lastly, the wage continuation becomes regarded by the rank and file as a "right" or "entitlement" owed to every injured worker regardless of the facts of the FELA accident or the actual extent of the injuries involved as opposed to an accommodation that the railroad will make under the right circumstances on a discretionary basis.


In the case of FELA accidents where the claimant appears to be legitimately injured and free from comparative negligence, railroads would be better counseled to consider a program of need-based settlement advancements. Under such a program, early contact with the claimant and the family will

emphasize the railroad's genuine concern with the employee's health and financial well being. The claims professional or trusted management member meets with the injured worker and together they make an inventory of the family's monthly expenses. The railroad comes up with a sensible, flexible advancement aimed at tying the employee over until he or she is back to work on light duty or until RRB commences. Doing so allows the railroad to tailor the advancement amount only to the needs of the worker and keeps the employee eager to return to his or her own position or light duty sooner. The advancements are issued bi-weekly and collected in person to allow the claims professional ample contact with the injured worker to demonstrate the railroad's continued commitment to the employee's return to duty. This arrangement encourages a mutual cooperative relationship instead of a one-way entitlement. Face-to-face contacts with the injured worker allow ample opportunity to secure a written statement from the employee, medical management of his or her treatment, and light-duty opportunities. It's a win-win for the employee and the railroad.

Hopefully, when the time comes to settle the case, the employee is recovered, back to work, and the railroad has built up some good will with the employee.

The settling employee still has some expectation of a settlement amount above the advancement amount.

The other advantage is that the next time that an employee is injured, the railroad has not set a wasteful precedent and has the flexibility to decline to offer advancements to the worker depending on the individual facts and circumstances.

Advancements are more work than wage continuation but well worth the extra effort. 

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Capehart Scatchard News

Capehart Scatchard is pleased to announce that **Christopher J. Hoare** has joined its Transportation and Litigation Departments in the Mt. Laurel office.

A resident of Robbinsville, Mr. Hoare joins Capehart Scatchard as a Shareholder. He focuses his practice in railroad litigation. For over 16 years, he has represented Class I and short line railroads in cases involving FELA, grade crossing collisions, trespasser fatalities, construction accidents, passenger injuries, collections, property damage, and other matters. Prior to his admission to the bars of Pennsylvania and New Jersey in 1992, Mr. Hoare was employed as an Amtrak senior claims agent for six years. He is also admitted to the bar in the state of New York (2007).



Mr. Hoare received his law degree from Seton Hall University and his B.A. degree from Rutgers University. After college, he worked for the engineering departments of Conrail and Amtrak for five years before becoming a claims agent in Amtrak's Law Department for six years. He is a member of the National Association of Railroad Trial Counsel (NARTC). 

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John K. Fiorilla, Esq. is a member of the Litigation and Transportation Groups. He focuses his practice in the railroad industry and helping to create and present railroad management policy and positions with diversified management and litigation experience as both house counsel and local counsel for Class I and Shortline Railroads. He has specific experience in presenting finance, real estate, operations, engineering, government affairs, and customer service positions.

TOPICS YOU WOULD LIKE TO SEE ADDRESSED

If you have any suggestions for future articles, please call Mr. Fiorilla at 856.234.6800 or email them to jfiorilla@capehart.com.

"In a higher world it is otherwise; but here below to live is to change, and to be perfect is to have changed often."

— John Cardinal Newman