

# HILDEBRAND MCLEOD & NELSON LLP

*REPRESENTING INJURED RAILROAD WORKERS SINCE 1926*

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## FOR THE SPOUSES OF RAILROAD EMPLOYEES:

The men and women working on the railroad are continually exposed to hazardous conditions. Because railroading is a dangerous business, it is vitally important that husbands and wives know what to do in the event of an on the job injury.

IT IS CRITICAL THAT SPOUSES HAVE THE PHONE NUMBERS OF THEIR LOCAL UNION REPRESENTATIVES ALONG WITH DESIGNATED LEGAL COUNSEL'S PHONE NUMBERS. Please print or request our tri-fold cards so you are prepared in the event of an injury.

Please see our listing of important questions below. Finding the answers to them as soon as possible will be of great benefit to you and your children in protecting your rights.

In the months and years to come, there will be strong efforts by the railroads in our country to abolish the Federal Employers' Liability Act. The reason the railroad will be working so hard in Washington to abolish the Act is that they know that it is of great benefit to railroad workers who are injured or to the families of railroad workers who are killed. Elimination of this Act would save the railroads untold amounts of monies, but would work hardship on railroad workers and their families, by deleting hard-earned rights and remedies. Only by understanding the Federal Employers' Liability Act and pursuing the rights and remedies contained in the Act can railroad workers protect themselves.

### **What if my husband died and a claims agent for the railroad offers to settle and wants me to sign a release. Do I?**

Before you do anything after a tragedy, you must be sure that you have fully recovered from the shock and grief the event will bring before you take any action. Frequently, a claims agent and some attorney's representatives will want you to make decisions which will affect the rest of your and your children's lives before you have had an opportunity to step back and look at what has happened. Until you are sure that you have your wits about you, you should not talk to the claims agent.

### **Can a member of my husband's union help?**

Absolutely. Most railroad workers have insurance policies and other provisions in their union contract which will assist the spouse and children in the event of catastrophic injury or death. Your local Union officers can help you apply for these monies and work to protect your rights..

### **When should I see an attorney?**

You should see an attorney who is experienced with the Federal Employers' Liability Act, the law which is designed to protect railroad workers when they are injured or killed on the job, as soon as you feel that you can make wise rational choices. It is important that you retain an attorney who is experienced with the Federal Employers Liability Act as the attorney will know where to go and how to preserve the evidence which will be necessary to protect your and your children's rights. It will benefit you and your children to retain an attorney as soon after the catastrophic event as possible, as the attorney knows that the danger in losing valuable and important evidence grows greater as time passes. It is important that the attorney you select has knowledge of how the railroad works and the duties assigned to railroad employees. Your spouse's union has approved and designated certain law firms as having the knowledge and experience necessary to protect your rights.

### **I have children and need money as soon as possible to pay for my house and living expenses. The claims agent offers me advances. Should I accept the advances and not go to a lawyer?**

Frequently, claims agents will tell injured railroad workers or the spouses of deceased railroad workers that they would love to help them out, but can only do so if they have not hired an attorney and if they will give a recorded statement. THIS IS NOT TRUE. The railroad, if it wants to help out any employee who is injured or the family of an employee who has been killed. Furthermore, there is no requirement that an injured employee provide a statement other than an accident report. These are means by which the claims agent tries to get evidence for the railroad to defeat your claim. It is the claim agent's job to minimize the railroads liability. The railroad will make an advance if it is a good business decision—just as when they furlough people. Although having money quickly from the claims agent can help in the short run, the potential of losing important facts and evidence in your case is great. The railroad advances money to minimize their liability and also allow evidence to be lost and witnesses' memories to fade. You and your families will need that evidence and those witnesses to protect your rights. Do not, for any reason, give a statement, either taped, oral or written, about the accident to the claims agent. Furthermore, never discuss family matters or problems with the railroad. If the claims agent approaches you about these subjects, contact an attorney.

**I know I am entitled to a certain amount from the company in the event of death. If they pay, can I still sue?**

The monies to which you are entitled are the result of insurance policies, the collective bargaining agreement or the Railroad Retirement Board. These monies are earned through employment and do not come from the railroad. This means that you may still collect those monies and sue the railroad. However, if you accept money directly from the railroad and you sign a release, it will prevent you from suing. It is important to understand the difference

**I have signed a release with the claims agent while under stress. Can I get out of this release?**

The answer to this question depends on the facts involved in your signing the release. If it can be shown that you did not understand the circumstances surrounding the injury or death, did not understand the significance of the injuries (if there is no death), or signed because of false or concealed statements by the claims agents or doctors, a good attorney should be able to get you out of the release. This, however, is very difficult. Of course, the best procedure is to not sign in the first place until you have fully recovered your emotional and mental faculties and had an opportunity to consult with a lawyer.

**My husband was in accident while away from home. I have to travel out of state to be with him at the hospital. Will the railroad pay for the cost of my going to the accident scene to be near my husband?**

The railroad is not obligated to pay these costs. Sometimes the claims agent will offer to "put you up" and, in so doing, will try to control you and your claim. Again, this is a ploy to prevent early investigation of the accident scene and to procure necessary witness statements. The money which you are out of pocket can eventually become an element of damage in your lawsuit and can be recovered through trial. If you need money in the event your husband is involved in an accident away from home, first look to family and friends for support. If there are problems, contact an attorney.

**What am I entitled to?**

This is a difficult question and cannot be answered at the time of a catastrophe. Any claims agent or attorney who tells you what your case is worth or what he can get for you immediately after the time of the catastrophe is not giving you a straight answer. A case may only be fully evaluated after all of the facts and circumstances surrounding the event have been discovered, medical records have been evaluated, and the present value of future losses is ascertained.

Under the Federal Employers Liability Act, negligence must be proven. This means that there must be facts sufficient to support a claim that the railroad or one of its agents or employees did something wrong, or failed to do something that should have been done. Included in this area are unsafe tools, equipment and property as well as the failure to institute and oversee proper safety procedures. Then it must be shown that the act or omission played any part, even the smallest, in bringing about the injuries or death. Also, the actions of the injured or deceased railroad worker have to be evaluated to determine whether he or she was responsible in any way for the injury or death.

**What do I do now?**

Only after the questions are answered can a thorough evaluation of the value of the case be made.

There are special laws which apply if your spouse was injured or killed as a result of a defect of an engine or a defect in the train's safety appliances. These laws the Locomotive Inspection Act and Safety Appliance Act must be thoroughly evaluated. There are some things which you must know in order to make good decisions. As soon as possible, find out the answers to the questions listed below:

1. Where did the accident happen?
2. What time did the accident happen?
3. Who was with my husband at the time the accident happened?
4. Did anyone else see the accident?
5. What happened?

These are important questions and finding the answers to them as soon as possible will be of great benefit to you and your children in protecting your rights.

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**UNDERSTANDING YOUR RIGHTS UNDER FELA IS THE FIRST STEP IN PROTECTING YOUR RIGHTS.**

**CONSULT WITH HILDEBRAND, MCLEOD & NELSON LLP**

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