FLETCHER & SIPPEL LLC

LEGAL SERVICES FOR THE TRANSPORTATION INDUSTRY

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FRA ISSUES PROPOSED RULE TO REGULATE CREW SIZE

FRA mandates two-person crews with exceptions based primarily on speed of the train. Rules include procedures for approval of current one-person operations and new start-ups.

COMMENTS DUE MAY 16, 2016

The much awaited proposed rule on crew size is out! Despite the FRA's admission that it does not have data to prove a direct correlation between higher rates of safety and multiple person crews, the FRA has determined that most rail operations require a two-person crew and the presumption is that both crewmembers will primarily be performing their duties in the controlling cab of a moving locomotive.

The FRA has made sweeping assumptions that two-person crews are inherently safer than a one-person crew, that the general public will feel more comfortable knowing that two people are operating the train and that, since it promulgated many of its regulations based on the assumption of a two-person crew or more, anything less frustrates the FRA's ability to enforce the regulations now in place. Additionally, the FRA expressed concern that railroads currently using one-person crews may be doing so without proper safety guidance from the FRA or that, as technology improvements are instituted on trains, railroads might reduce crew size with no oversight or approval of the FRA.

The FRA has proposed exceptions to the two-person mandate. The FRA has also proposed grandfathering operations in existence prior to January 15, 2015 but those operations must be reviewed by the FRA. They will be approved provided the operations do not involve certain hazmat commodities, do not pose unacceptable safety risks, and the railroad agrees to implement off-setting requirements imposed by the FRA. In short, the FRA has concluded it is more competent to determine when a passenger or freight train can safely operate with a one-person crew than rail operators and must, therefore, promulgate regulations to formalize its role in train operations. *CONTINUED ON PAGE 2*

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5 General Exceptions:

(1) helper service; (2) tourist or similar trains not part of the general railroad system; (3) lite locomotive(s) (excluding diesel or electric multiple unit (DMU/EMU) operations); (4) work trains (non-revenue train of 4,000 trailing tons or less) and (5) remote control operations meeting certain requirements (15 mph or less; train size of 50 cars or less; the locomotive consist does not exceed 6,000 working hp and uses no more than 12 powering axels; train lengths do not exceed 3,000 feet; trailing tonnage is 4,000 tons or less and the train contains no more than 20 multilevel cars.)

Specific Exceptions for Freight Trains (not applicable to trains hauling certain hazmat):

(1) Class III (assuming the train is operated over their own track and by their own employee) where speeds are 25 mph or less and at locations where the grades are not equal to or more than 1% over 3 continuous miles or 2% over 2 continuous miles; (2) trains operating at 25 mph or less where a second crewmember is intermittently assigned to assist the moving train, so long as the assigned person has direct communication with the locomotive operator (e.g., second crewmember is trailing the train in a motor vehicle) and (3) mine-loading or plant dumping operations operated at 10 mph or less.

Specific Exceptions for Passenger Trains:

(1) empty trains moved for purposes other than picking up or dropping off passengers; (2) trains with single self-propelled or married-pair DMU/EMU units where the operator has direct access to passengers and any required emergency plan has been approved by FRA; and (3) rapid transit or light rail operations in urban areas that operate on the general rail system provided the operations are separated from conventional rail operations and comply with applicable DOT/FTA regulations.

Two Proposed Options for Continuing One-Person Crew Operations in Place Prior to January 15, 2016:

OPTION ONE: The operations may continue provided the train is not carrying specified hazmat commodities, the FRA reviews the operation and does not find it poses unacceptable safety risks (determined on a case-by-case basis) and the railroad agrees to comply with any requirements the FRA may impose on the operations. The approval application to the FRA must address 11 items: (1) location; (2) class of track; (3) grades over 1 and 2%; (4)maximum speed; (5) number of miles and hours of operation for a single person; (6) limitations imposed on the operations; (7) maximum number of cars and tonnage; (8) hazmat hauled (other than that which prohibits the use on one person); (9) description of other trains on the same or adjacent track; (10) protections the railroad has added due to the lack of a second person; and (11) a safety analysis of one person crews, including the safety history of the specific operations for which approval is requested.

Option One also includes a petition process for a railroad wanting to commence a start-up operation without two crewmembers that does not otherwise meet the conditions of the proposed regulations. The petition to FRA must include a detailed analysis of the operations and a copy must be served on any applicable labor unions. The petition will be published in the Federal Register and the FRA anticipates the approval process will take no more than 90 days.

OPTION TWO: Option Two is basically the same as Option One, except Option Two provides a process for railroads to continue one-person operations conducted prior to January 1, 2015 by providing a detailed description to the FRA and agreeing to adhere to any restrictions or conditions imposed by the FRA. There is also a special approval procedure for start-ups requiring review by the FRA but not a formal petition process.

For further information, please contact Janet Gilbert at jgilbert@fletcher-sippel.com or at (312) 252-1500.

Summary of the two-person crew mandate being proposed by the FRA:

Unless subject to one of the FRA's proposed exceptions, each train must have at least two crewmembers, as follows.

- When a train is hauling certain quantities and types of hazardous materials, regardless of whether an exception may apply.
- Trains hauling even one loaded PIH car or is a key trains (trains hauling 20 or more cars loaded cars).
- The locomotive engineer is presumed to always be in the locomotive cab when the train is moving.
- It is assumed the best location for the second crewmember is the cab of the controlling locomotive when the train is moving; but, the FRA has proposed exceptions to this general assumption:
  - To perform duties which cannot be performed without temporarily disembarking from the train (e.g., throw a switch). The second crewmember cannot be on the ground for the majority of the time the train is moving (e.g., in a yard tower).
  - When off the train the second crewmember must be able to directly communicate with the crewmember in the controlling locomotive when the train is moving.
  - When off the train when the train is moving, the second crewmember must be able to perform all the duties assigned to the position and in such a manner that the crewmember is not in violation of any federal law, regulation or order.

U.S. Supreme Court Adopts New Rules Relating to Preservation of Electronically Stored Information in Litigation

The 2015 Amendments to the Federal Rules of Civil Procedure went into effect on December 1. Chief among the new rules is the amendment to Rule 37(e), which addresses a litigant's responsibility to preserve electronically stored information.

Technological advances have increased the volume of information generated and stored in electronic mediums. Federal courts have seen a corresponding increase in the loss of potentially relevant electronic records due a party's failure to preserve such information. As a result, the U.S. Supreme Court implemented the amended Rule 37(e) to set guidelines for federal courts tasked with imposing curative measures or sanctions for the failure to preserve.

The federal rules require a party to preserve potentially relevant information when litigation is reasonably foreseeable. Prior to December 1, federal courts could not sanction a party that lost information due to the routine, good-faith operation of an electronic information system. Rather, "exceptional circumstances" were required for sanctions to be imposed. With the new amendments, a party is now subject to curative measures or sanctions if electronic records are lost due to failure to take reasonable steps to preserve. The new rule represents a lower threshold for the imposition of curative measures or sanctions.

Preservation efforts should include:

- Issuing a litigation hold letter.
- Identifying and understanding all electronic information systems and storage mediums (such as e-mail servers, shared drives, cloud sites, social media sites, physical documents storage, text messages, portable data assistants).
- Identifying all custodians of electronic information systems and communicating preservation obligations with those individuals.
- Searching and collecting the information in a manner consistent with your understanding of electronic information systems.
- If necessary, bringing in an outside company to extract electronic information.
- Preserving the information collected

Courts have broad discretion to impose curative measures where a party negligently fails to take reasonable steps to preserve electronic evidence resulting in prejudice to the other party. While the measures must be proportional to the prejudice caused, courts may preclude a party who failed to preserve information from putting on certain evidence at trial, permit the parties to present evidence and argument on the loss of information, and give jury instructions on how to evaluate such evidence. Prejudice is not required for sanctions where a party intentionally fails to preserve evidence to deprive access to another party. In such instances, a court may presume the lost information was adverse to a party, offer an adverse inference instruction to the jury, dismiss the action, or enter a default judgment.

As a consequence, parties must now be increasingly proactive in the preservation of electronic information when the prospect of litigation becomes foreseeable. In order to comply with the duty to take reasonable steps to preserve, a party (and its attorneys) must identify all potential e-discovery and implement the appropriate preservation procedures.

For further information, please feel free to contact Tom Paschalis at tpaschalis@fletcher-sippel.com or at (312) 252-1500.

Why Bankruptcy Matters in Personal Injury Litigation

The investigation of every personal injury claim should include a check to see if the plaintiff in your case has filed for bankruptcy. If so, the next step is to do a thorough review of the bankruptcy docket and the petition filed by plaintiff. Why do this? Because plaintiff's filing of a bankruptcy petition can either trigger the end of the lawsuit or be an effective tool for a more reasonable settlement.

Under the bankruptcy code, all of the petitioner's "property" typically becomes property of the bankruptcy estate. "Property" includes all legal and equitable interests the petitioner (your plaintiff) may have at the time of filing — including personal injury claims and lawsuits. Plaintiff has an affirmative obligation to disclose such "property" at the time of the initial filing and during the pendency of the bankruptcy proceeding.

This duty to disclose is broad. It includes actual claims as well as claims that are merely possible. And of particular note — the duty cannot be satisfied by simply discussing the existence of a claim or cause of action with counsel, the bankruptcy trustee or the even the bankruptcy court. The duty requires that the claim be formally scheduled on appropriate forms used in bankruptcy proceedings and, where the claim arises after the petition has been filed, the schedule must be formally amended to add the claim. Thus, if a railroad employee is injured on the job and has an FELA claim against the railroad, if plaintiff has filed for bankruptcy before the injury or files after the injury, the claim must be disclosed. The purpose behind the disclosure requirement is to put creditors on notice so they may benefit from any recovery from the debtor (the plaintiff) on such claims and also so they can properly assess a debtor's finances and ability to pay off debts.

So what does this have to do with the lawsuit filed against the railroad — or any other party for that matter? Where you find the plaintiff failed to disclose his or her claim as part of the bankruptcy proceedings, you, the defendant, may have a very good argument that plaintiff's personal injury action should be dismissed for either lack of standing or under the doctrine of judicial estoppel.

Standing is a jurisdictional requirement that every personal injury litigant must meet. "Standing" means that the litigant bringing the lawsuit is actually the person or entity entitled to have the court decide the merits of the dispute. If the plaintiff does not have standing, he or she is not the proper party to file the lawsuit. In the bankruptcy setting, a failure to disclose a claim during the pendency of a bankruptcy petition can strip the plaintiff of standing to pursue a personal injury claim.

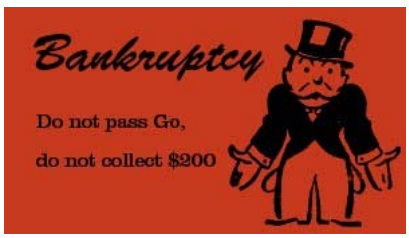
Judicial estoppel is a related legal doctrine that prevents a litigant from prevailing on legal grounds in one case and then turning around and taking an inconsistent position in a different case. In the context of bankruptcy, judicial estoppel prohibits a debtor, who failed to disclose a potential cause of action or claim in the bankruptcy filings, from recovering on that claim after the debts have been discharged. Even if the bankruptcy matter has been closed, the bankruptcy court can reopen the matter to resolve the issue and assure that the creditors' interests have been protected.

One or both of these defenses, when properly presented, can lead to a dismissal of the personal injury action. If not a full dismissal, the court hearing the personal injury action will want to assure itself that the plaintiff did not attempt to hide "property" from creditors in the bankruptcy proceeding or the court may elect to dismiss the case against the plaintiff, send the plaintiff back to bankruptcy court to get permission to bring the suit, or allow the bankruptcy trustee to be substituted as the party with standing to bring the claim on behalf of the creditors.

Because the personal injury claim is really the "property" of the estate, the bankruptcy trustee takes control over it. The trustee's primary interest is to see that the bankruptcy creditors are made as whole as possible and benefit from the resolution of the value of the undisclosed "property." If the trustee does not substitute itself as plaintiff in the claim, the trustee may allow plaintiff to pursue the claim but will likely require prior approval of plaintiff's choice of counsel, require assurances that the creditor's interests are primary and mandate that the trustee must be involved in and approve any settlement. The trustee's sole concern will be the value of any debt not repaid to the creditors rather than whether the injured employee is reimbursed over and above the debt. As such, the goal in cases such as this is to keep the trustee involved and interested.

In short, the trustee is likely to view the case much more realistically than the plaintiff. This will most likely result in a willingness to accept a lower amount than plaintiff or his or her attorney would otherwise take. So, bottom line — an injured employee's failure to disclose can also be a powerful tool for a quick and reasonable settlement.

For further information,, please contact Peter McLeod at pmcleod@fletcher-sippel.com or at (312) 252-1500.



RAILROADS AND ICCTA PREEMPTION:
Pick Up After Yourself!!!

As a general rule, preemption under ICCTA (the ICC Termination Act of 1995) immunizes railroads from state law claims brought by a railroad's neighbors where the alleged injury stems from railroad track maintenance and upkeep. Track and right of way maintenance is federally-protected "transportation" under 49 U.S.C. § 10102(9), and state law causes of action directed at such maintenance and upkeep is an impermissible incursion into the Surface Transportation Board's ("STB") exclusive jurisdiction. *See Tubbs—Pet. for Declaratory Order* ("*Tubbs*"), FD 35792 (STB served Oct. 31, 2014), *aff'd* 2015 WL 9465907 (8th Cir. Dec. 28, 2015). But ICCTA preemption does not guarantee immunity from a neighbor's lawsuit where the railroad has been accused of failing to pick up after itself. ***In short, sloppiness is not protected "transportation" under ICCTA***.

The STB recently disposed of two ICCTA preemption cases where the railroads involved were accused of what might be viewed as sloppy right of way maintenance which, allegedly, led to injury to an adjacent land user – *CSX Transportation, Inc. – Petition for Declaratory Order*, Docket No. FD 35832 (STB served July 31, 2015) (reconsideration denied, STB served Feb. 29, 2016) ("*CSXT – Dec. Order*"); and *Norfolk Southern Railway Company – Petition for Declaratory Order*, Docket No. FD 35950 (STB served Feb. 29, 2016) ("*NS – Dec. Order*"). In both cases, the STB left the door open for the plaintiffs to pursue their state law claims, rather than rule that those claims be dismissed.

In *CSXT – Dec. Order*, a neighboring mobile home park owner accused CSXT of failing to maintain a drainage culvert along a railroad embankment, which CSXT allegedly had "allowed" to become filled with sediment, rocks, and debris. The plaintiff sued CSXT alleging that, had CSXT's culvert been clear, rainfall from a tropical storm would not have accumulated upstream of the railroad embankment, and would not have resulted in extensive flooding to the mobile home park.

In *NS – Dec. Order*, a neighboring owner of an office building and a dentists' office located in that building sued NS after the office building flooded. NS recently had cut vegetation along the rail line located next to the office building. Plaintiffs contended in state court that NS had negligently discarded the debris, allowing logs, tree limbs, and other materials to clog the drainage infrastructure extending to and under the office building, impeding proper drainage and causing flooding.

CSXT and NS responded in similar fashion to the lawsuits. Each sought dismissal of the complaint, citing ICCTA preemption and *Tubbs*. The railroads persuaded the respective state courts to allow them to refer the preemption issue to the STB under a so-called "declaratory order" proceeding. (State courts often allow ICCTA preemption questions to be referred to the STB, although they are not obligated to do so.)

In both cases, the STB declined to rule that the state law claims were preempted under ICCTA. The STB remarked that the ICCTA preemption arguments presented had already been addressed by the STB and the courts, making a formal STB "declaration" unnecessary. The STB concluded the state courts were up to the task of addressing the preemption issues on their own and further noted that, in each case, the court would benefit from a fully-developed factual record bearing on the ICCTA preemption issues. In *CSXT – Dec. Order*, for example, the STB explained that if, after a the presentation of evidence, the court were to find that plaintiff's state law claims are based on harms resulting directly from the design, construction, and maintenance of an active rail line (including the associated drainage structures), the claims would be preempted.

In the *NS – Dec. Order* case, the plaintiff's factual allegations against NS were more precise, which influenced the STB's legal "guidance" to the state court. Perhaps as a way of hinting at its own opinion about poor trackside housekeeping, the STB stated as follows: "[If the plaintiffs'] claims involve the cutting and clearing of vegetation, [then such actions would] be rail line maintenance facilitating the safe operation of trains, [and the plaintiffs' claims] would likely be preempted. However, if [the plaintiffs'] claims against [NS] involve actions that would generally not be considered part of rail line maintenance (e.g., the discarding of vegetation debris . . .), *they would not likely be considered part of rail transportation, and thus would not likely be preempted.*" (emphasis added).

The alleged facts in the *NS – Dec. Order* case prompted STB Vice Chairman Miller to add to the decision the following remark, contained in a separate expression:

> *If [NS improperly disposed of debris], it would be another instance in, what to me, is the frustrating trend of railroads showing a disregard for how their actions affect those that live adjacent to their lines and in the communities that they serve. Even . . . where a railroad's actions are indisputably protected by Federal preemption, in my mind that does not excuse the carriers from exercising a higher degree of care where it is reasonable. It also troubles me when railroads are quick to use preemption as an excuse not to even listen to communities that have concerns about rail activities. I find it particularly frustrating when disputes result in litigation that might have been avoided had the carrier taken steps to minimize damage or engage the community, even if not legally bound to do so.*

Railroads would be well-advised to consider the Vice Chairman's remarks.

For further information, please contact Rob Wimbish at rwimbish@fletcher-sippel.com or at (312) 252-1500.

Transactional Tips

Using Your Tracks to Store Railcars

In the wake of the slowdown in rail traffic, many railroads are increasing their ancillary businesses, including railcar storage. The following tips relate to the storage of railcars in general. In every instance, however, and especially when handling hazardous materials, or the residue thereof, as well as crude oil, contracts governing such storage should be carefully evaluated before taking on any storage responsibilities.

Operational Considerations

- Certain commodities (hazardous materials for example) need to be stored on leased, dedicated track for one particular customer's use only. Check with legal counsel to ensure you are properly handling the commodities you are storing.
- When storing crude oil or hazardous materials, notify your local emergency responders as to the commodity you are storing and its location within your facility.
- Check with your insurance carrier to ensure your current policy covers the storage of railcars, as well as the commodities handled. The level of liability you contractually take on should also be approved by your carrier.

Your Contract

- Clearly set forth the services that the railroad is providing and is not providing with respect to the storage of railcars and include specific disclaimers as to the storage facility itself. Contracts should specifically state the railroad is not acting as a common carrier with respect to the storage of railcars.
- Tariffs should be updated and re-published to include language found in storage contracts, especially in regards to indemnification obligations and railroad disclaimers, to cover situations where railcars are delivered for storage prior to execution of the storage contract.
- Carefully negotiate indemnification language addressing liability for events over which the railroad has no control, including, for example, the contents of the railcars, the state of the railcars and compliance issues, or intervening third-party actions.

For further information contact Audrey Brodrick at 312-252-1500 or abrodrick@fletcher-sippel.com.

EEOC Federal Equal Pay Update

The U.S. Equal Employment Opportunity Commission ("EEOC") at the end of January of 2016 proposed a revision to the Employer Information Report, commonly known as the EEO-1. This revision is aimed at capturing information for the purposes of combatting pay discrimination. It will require employers with more than 100 employees to collect and disclose pay data.

The new reporting requirements include the disclosure of aggregate data on pay ranges and hours worked. Employers have long been required to collect and disclose specific diversity statistics in their EEO-1s, but now employers are being asked to disclose information related to pay. The information is to be aggregated for the purposes of protecting privacy.

In announcing these revisions, EEOC Chairwomen, Jenny R. Yang, stated that "[m]ore than 50 years after pay discrimination became illegal it remains a persistent problem for too many Americans." Her hope is that "[t]his information will assist employers in evaluating their pay practices to prevent pay discrimination and strengthen enforcement of our federal anti-discrimination laws."

In response, employers have commented that this will create an administrative nightmare for them, while others pointed out that this information is already collected, but merely is not reported so there should be no major burden.

The new reporting requirements are scheduled to take effect in September of 2017. In the meantime, employers should be proactive. Do an internal assessment now to ensure there are no pay disparities that would trigger EEOC concerns. If disparities are identified, remedy the situation to assure employees are being compensated in compliance with federal equal pay laws. You can assume the EEOC will use the guidelines to bring new waves of enforcement actions. Changing an employee's salary, even if for the better, should be addressed delicately and should be dealt with sooner rather than later to avoid EEOC involvement.

For further information contact Chloé Pedersen at 312-252-1510 or cpedersen@fletcher-sippel.com.

OSHA UPDATE

When is a Claim Not So "Discreet"

In January of 2016, the Northern District of Illinois considered an issue of first impression involving when an OSHA complaint is timely filed and ruled in the railroad's favor.

Ronald Sweatt , an employee of Union Pacific Railroad, claimed UP violated the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20106 et seq., by refusing his request to pay for surgery to treat his bilateral carpal tunnel syndrome he allegedly developed in the course of his employment. UP moved for summary judgment claiming Sweatt failed to timely file an administrative complaint. Sweatt, on the other hand, argued the FRSA's limitations period should not be measured from the day UP first denied his initial request for surgery but should instead be measured from the day UP denied a subsequent request for the same surgery.

The story begins in January 2012 when Sweatt's doctor prescribed bilateral carpal tunnel release surgery. Sweatt asked UP to pay for the surgery. Sometime in the summer of 2012, UP denied this request. Thereafter, Sweatt filed an FELA claim that was subsequently dismissed for unrelated reasons. As part of the FELA claim, in November of 2013, Sweatt's doctor sat for a deposition. Following the deposition, Sweatt's lawyer sent UP's lawyer a letter again requesting that UP approve the surgery. UP did not formally reply to this request, but the parties all agree that UP consistently maintained its refusal to authorize payment for the proposed surgery.

The FRSA creates a private cause of action for "an employee who alleges discharge, discipline, or other discrimination in violation of subsection (a), (b) or (c) of this section." 49 U.S.C. § 20109(d)(1). Sweatt alleged in his complaint that UP's refusal to pay for his carpal surgery "is a form of discrimination and retaliation in response to [his] good faith notification to defendant of his injury, of defendant's unsafe practices and procedures, and [his] efforts to follow a medical treatment plan." He contended UP violated subsection (c), Prompt Medical Attention, of the FRSA.

In defense to this claim, UP filed a motion for summary judgment raising one issue — that Sweatt's administrative complaint was untimely filed. UP did not argue whether or not its refusal of the request for surgery could constitute a violation of the FRSA.

§ 20109 claims are subject to an administrative exhaustion requirement. See 49 U.S.C. § 20109(d)(2)(A) (importing procedures of § 42121(b)); *see Lee v. Norfolk S. Ry. Co.*, 802 F.3d 626, 630 (4th Cir. 2015) (acknowledging exhaustion requirement); *Kuduk v. BNSF Ry. Co.*, 768 F.3d 786, 788 (8th Cir. 2014) (same). An administrative complaint must be filed with the Secretary of Labor, 49 U.S.C. § 20109(d)(2)(A), "not later than 180 days after the date on which the alleged violation of subsection (a), (b) or (c) of this section occurs," § 20109(d)(2)(A)(ii). Then, "if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee," the employee may file "in the appropriate U.S. district court which shall have jurisdiction over such an action without regard to the amount in controversy." § 20109(d)(3).

In this case, Sweatt filed his complaint with OSHA on January 31, 2014, and the agency did not issue a final decision within 210 days. To be timely, Sweatt's complaint needed to be filed "not later than 180 days after the date on which the alleged violation" occurred, 49 U.S.C. § 20109(d)(2)(A)(ii). UP argued Sweatt 's January 2014 filing was far too late for a claim based on UP's denial of Sweatt's surgery request in the summer 2012.

Sweatt responded relying on the "discreet act" of discrimination principals outlined in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002), claiming that the violation alleged is based on UP's denial of his subsequent request for surgery in November 2013 — not the denial in 2012. When measured from the later denial, his January 2014 complaint fell well within the limitations period.

The court was not persuaded finding that UP's 2012 denial in this case triggered the 180-day limitations period. The request in November of 2013 was for the same surgery to treat the same injury and, thus, did not restart the limitations period. The 2013 denial of his second request for the same surgery cannot be viewed as a "discrete act" within the meaning of *Morgan*. The court explained that "unlike individual paychecks or the other acts discussed in *Morgan*, the denial of Sweatt's second request for the same surgery did not injure him afresh. Rather, the second denial changed nothing, and although Sweatt may be worse off the longer he went without treatment, a 'lingering effect of an unlawful act is not itself an unlawful act ... so it does not revive an already time-barred illegality.'" *Dasgupta v. Univ. of Wisconsin Bd. of Regents*, 121 F.3d 1138, 1140 (7th Cir. 1997).

Ultimately, the court reasoned that accepting Sweatt's position would render the limitations period of 49 U.S.C. § 20109 (d)(2)(A)(ii) a nullity because Sweatt would be able to restart the period as many times as he wanted simply by making subsequent requests.

While this issue is one of first impression for the court in the FRSA context, the court looked to Title VII for guidance and found that similar attempts to get around the Title VII limitations period have been soundly rejected.

For further information contact Chloé Pedersen at cpedersen@fletcher-sippel.com or at (312) 252-1500.

More to life than law.....

Continuing our effort to introduce our readers to the "other side" of the Fletcher & Sippel Team, in this issue we feature Michael J. Barron, Jr. Many of you may recognize Michael's name. His dad, Michael J. Barron, Sr., who passed away in 2014, was a railroad man all his life, an avid family man and a great contributor to the short line rail industry!

Michael is the second oldest of a family of five. Both his older sister (along with her husband and three daughters) and his mother live in Sylvania, Ohio. His 3 younger brothers live in Sarasota, FL, Stoughton, MA, and Sierra Vista, AZ. Michael spends a good deal of time on the weekends catching up with his family. He especially enjoys catching up with them on his cellphone while biking the Illinois Prairie Path — coincidentally an old rail line.

AN AVID READER. Michael loves to read and every Christmas gets piles of books. Currently he's reading David McCollough's, The Great Bridge, about the building of the Brooklyn Bridge. His favorite reading topics include the Civil War, World War I and II, Middle East history, biographies of political figures from all over the world and, of course, anything about the history of Chicago and its urban transit system.

A SPORTS TRIVIA AFICINADO. Michael is a consummate sports fan with a special love of college football, particularly for his undergraduate alma mater, The University of Notre Dame. As a Detroit native, he also roots for the Red Wings and Tigers. If he could have another job, it would be as a radio sportscaster, as his head is full of sports trivia. So when you're stuck on a sports trivia question — call Michael!

A FIGHTING IRISHMAN. Michael graduated from Notre Dame in 1987 and absolutely loved it. For several weekends every fall, Michael, his wife Dina and the kids head to South Bend, IN, to watch football games and catch up with college friends from Michael's old dorm, Stanford Hall.

A DAD. It's hard to talk about Michael and not talk about his kids. So much of his life rotates around them. Michael's oldest, Michael J. Barron III, 20, is a sophomore at — of course — Notre Dame! Monica, almost 18, will graduate from Oak Park-River Forest High School this spring. She plans to major in vocal performance and French. Tom, 15, is a sophomore. In addition to being on OPRF's lacrosse team, Tom plays intramural soccer and enjoys Scouts. Maria, 12, is in 7th grade. She plays bass clarinet and is auditioning for the school play. Peter, 10, is a major sports fan, plays basketball and soccer and is a math whiz. He enjoys taking his dad "one-on-one" in sports trivia. And last, but by no means least, is Isaac, the 7 year old dynamo. He swims, does gymnastics and plays soccer. He is also a rail fan and loves going to the Museum of Science and Industry with his dad to see the model trains.

A CONSUMMATE RAIL FAN. Does this come as any surprise? Born into a rail family, Michael is all about trains. ***But here's a little known fact …*** Michael doesn't just play on trains at the Science Museum. He is a trained locomotive engineer — just needs to be recertified! He may be a lawyer but hidden inside is a wanna-be Casey Jones...a steamin' and a rollin'.

Chuck Garrett, CN Risk Mitigation Manager, Begins A New Chapter in His Life

A Colleague – a Client – a Friend Bids Adieu!

If you tried to email Chuck lately you will learn he has moved, as he says, to the State of Retirement. Chuck has been a railroader for 40 years and has managed IC's, and later other sister companies', occupational disease claims for over 30 years. I met Chuck in 2002 and learned to respect him as a highly skilled and motivated risk mitigation manager, a great client, but, most importantly, a friend.

The outside counsel team he worked with for so many of those years sent him off in a new golf cart – Kentucky Blue but yet to be named!

We at Fletcher & Sippel will miss him and wish him the best but, for myself, I know I am not saying good-bye….just good luck because I've put Chuck in my "friend for life" file!

Upcoming Events

April 3-6, 2016:	**ASLRRA Annual Meeting**, National Harbor, MD. https://www.aslrra.org/aslrra2016connections
May 3-5, 2016:	**IRPT 2016 Annual Conference:** Natchez, MS http://www.irpt.net/features/2016-annual-conference/
May 5-6, 2016:	**2016 Midwest Claim Conference** Bloomingdale, IL. http://www.eventbrite.com/e/midwest-claims-conference-tickets-21492246889
May 24-26, 2016:	**NARS 2016 Meeting** Arlington, VA. https://www.railshippers.com/upcoming_meetings.asp
June 19-21, 2016:	**ATLP Annual Meeting** New Orleans, LA http://www.atlp.org
July 11-12, 2016:	**MARS 2016 Summer Meeting** Lake Geneva, WI. https://www.mwrailshippers.com/upcoming_meetings.asp
July 17-19, 2016:	**MRRA Midwest Annual Conference** Brainerd, MN. http://www.mnrailroads.com/news/conference/
July 19-21, 2016:	**23rd Annual Railroad Claims and Liability Seminar** Des Moines, IA. https://iaisrr.com/contact/contact-us/rr-liability-seminar

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