

BKREVIEW.395/BOOK REVIEWS/**EDITOR'S NAME**

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Reconstruction and

FELA & Railroad

Litigation

@text: James R. Loumiet and William Jungbauer

Lawyers & Judges Publishing Co., P.O. Box 30040, Tuscon, AZ 85751-0040.  
672 pp., \$99.00

Reviewed by William P. Gavin

We have all been there. The railroad worker being interviewed throws out terms like "frog," "big hole," or "hot box," thinking they are universally understood. Do we admit ignorance or pretend we understand? For both novice and experienced railroad attorneys *Train Accident Reconstruction and FELA & Railroad Litigation* should help end the quandary.

Written to educate those interested in train accident investigation and railroad litigation, this book covers a lot of territory. Part I, by James Loumiet, a mechanical engineer, deals with railroad equipment, railroad operations, and investigation of railroad accidents. Part II, by William Jungbauer, an attorney, discusses the Federal Employers Liability Act (FELA) and other personal injury litigation against railroads.

Part I contains extensive information on the mechanical and technical aspects of trains and their operation. The author's dissection of locomotives and railroad cars exposes readers to the workings of braking systems, lighting requirements, and railroad car stenciling practices. The discussions and analysis of brake functions is thorough-all that most attorneys could want or need.

Chapters 6 & 7 of Part I contain complicated mathematical formulas for calculating train speed, time, and distance. A reader who is involved in litigation in which these calculations are relevant may find them to be useful in accident reconstruction or the examination of expert witnesses. Chapter 16 of Part I concerns accident investigation. It is chock-ful of good sources and tips on information and documents important to train accident litigation.

The rest of Part I covers causes of train derailments, crossing accidents, and pedestrian/train collisions. There are excellent discussions of crossing protection devices and accident prevention methods. A trial attorney involved in trial accident litigation will certainly find something useful in this part of the book.

Part 2 discusses the development of the FELA and its associated acts, The Safety Appliance Act and the Locomotive Boiler Inspection Act. It contains an excellent discussion on how the FELA is both intertwined with and distinct from common law negligence concepts.

A railroad employer's duties, FELA damages, and limitations are the bread and butter of FELA litigation. Both veterans and novices in FELA litigation will find the book's treatment of these issues useful. The discussion of why the FELA statute of limitations may not always preclude an action even though the limitations period has expired is enlightening. The book also thoroughly explains the limitations "discovery rule" which is so important to FELA occupational disease claims.

The biggest shortcoming of Part II is its failure to discuss occupational disease claims under the FELA. The 1980's and 1990's brought an explosion of these claims alleging injuries from asbestos, noise, silica, and, most recently, diesel exhaust, welding fumes, and repetitive trauma. Practitioners looking for help in handling these claims will not find it here.

Part II does, however, address two other recent developments important to FELA injury

claims. First, it contains a discussion on the Americans with Disabilities Act (ADA) which provides valuable protection to injured railroad workers whose injuries prevent them from returning to their normal duties. Second, Part II contains a good discussion on the interaction of the FELA and the Railway Labor Act which is designed to provide an administrative framework for resolving labor disputes in the railroad industry. Unfortunately, the discussion does not contain reference to recent decisions by the United States Supreme Court as to whether claims for emotional stress may be stated under the FELA.

Part II devotes an entire chapter to the law concerning and arising from the harassment of claimants and witnesses by railroads in FELA litigation. This chapter contains valuable information on how to protect clients and witnesses from the increasingly predatory claims practices of American railroads. It does not, however, contain a complete treatment of the issue of whether an attorney representing an injured employee may contact the employee's co-workers on an *ex parte* basis without violating ethical rules prohibiting *ex parte* communications with a party known to be represented by counsel.

The second edition of this book (reviewed here) is a big improvement on the first, especially in Part II. The second edition contains more material and has cured the sloppy spelling and punctuation found in Part II of the first edition.