

**JOHN COOPER, JIM HURLEY, BILL O'MARA,  
GRIFFIN O'HANLON & JOHN BAKER**

***YOUR RIGHTS***  
**WHEN YOU ARE  
INJURED ON THE  
RAILROAD**

**COOPER HURLEY INJURY LAWYERS**

125 St Pauls Blvd, Ste 510 | Norfolk, VA 23510

**757-333-3333 | Toll Free: 866-455-6657**

**[cooperhurley.com](http://cooperhurley.com)**



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***YOUR INJURY, OUR FIGHT!***

*This book is intended to provide information about your rights if you are hurt working for the railroad. This book does not constitute formal legal advice or create any type of attorney-client relationship.*

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# FELA

Congress passed the Federal Employers' Liability Act (FELA) in 1908.

The law required railroads to provide a safe work place for employees and gave rail workers the right to compensation when they are hurt on the job.

Under FELA, railroaders injured at work can seek compensation for:

- Past and future lost wages and benefits,
- Medical expenses and treatment,
- Partial or permanent disability, and
- Pain and suffering

When a railroad employee is killed on the job, surviving family members may recover wrongful death damages under FELA.

# My Rights Under FELA

If you are injured working on the railroad, FELA law entitles you to claim full and fair compensation from the railroad. The FELA protects your right to:

- Report the injury,
- Make your claim,
- Hire an attorney, and
- Testify against the railroad in a FELA case

If the railroad tries to punish you for these actions, then you may have additional claims under the whistle-blower law.



# What Should I Do if I Am Injured on the Job?

## **Get proper medical care.**

Seek needed medical attention from the outset. First, your health is the most important thing. Also, if you don't get immediate medical attention, it could cause you problems later because the company will claim that your injury happened some other way unless you tell a doctor how it happened at work from the start.

## **Report all injuries.**

The responsibility to report injuries is the employee's. Make a report to your supervisor. Think carefully about what caused the injury and how it could have been prevented. Report relevant accident facts

including what caused the accident and how it could have been averted. Mention any unsafe conditions or defective equipment. If you do not know exactly what the railroad did wrong then at least write “unknown,” in the box titled “Was employee provided a safe place to work?” Supply names of co-workers and witnesses who can confirm what happened.

### **Obtain copies of accident reports.**

Railroad companies must document reportable injuries for the Federal Railroad Administration (FRA). Make sure you ask for copies of all of their reports and other forms and documentation relating to the accident. These forms contain information that can support your case. You have an absolute right to a copy of any statement you gave or form you filled out.

## **The Railroad Protects Its Own Interests**

The railroads have an effective process to deal with FELA claims for their benefit. Be aware the company is not on your side when you are hurt on the job. To fight claims, the rail carriers have hired and trained a group of skilled claims agents to investigate injury claims and prepare the railroad's defense to your claim.

The claims department will take statements and photographs and gather other evidence they think is favorable to the company. The claim agent's role is to keep down the cost of compensation payable to you.

The railroad's claims agent will try to interfere in your medical treatment by saying they'll pay the

bills, but only if they are allowed to send their nurse consultant/spy into the doctor's office with you while you're being treated. You do not have to agree to this invasion of your privacy. The railroad claims agent reports back to the railroad's law department to help them manage your case in a way to pay you as little money as possible.

If you or a loved one has been hurt on the job, you need to hire an experienced FELA attorney as soon as possible to balance the power. The claims agent is not your friend. They are hired to do a job which includes trying to keep you from hiring an attorney. Make sure you know who is looking out for your best interest and who isn't.

## **Do I Have to Be Treated by the Doctor Chosen by the Railroad?**

No. You have a right to see a doctor of YOUR choice. If you use the company doctor, there's a danger you won't get a fair and unbiased medical opinion.

A railroad company's doctor reports to the railroad's own lawyers and claims department. It means the railroad could be making the call on the seriousness of your injuries and when you should go back to work.

The railroad may require you to be examined by their doctor, but it can't force you to accept medical treatment from their doctor. It's certainly not in your best interests to sign a medical

authorization that will allow the railroad to obtain your medical records.

If you do so, they may go and get every doctor's note since you were a child and try to use whatever they find against you.

## **What Should I Discuss With the Doctor?**

Most physicians have no idea how the railroad or FELA works. Describe how you were injured and under what circumstances. Point out how unsafe conditions at work caused your injury. By outlining the physical demands of your job, your doctor will be able to tell you more accurately when you can safely return to work. The lifting requirements and work around moving equipment are key to the health care provider understanding the railroad work environment. Make sure the doctor knows that there is no "light duty" on the railroad.

## **Do I Have to Give a Statement to the Claims Agent?**

Claims agents spend their time protecting the financial interests of the railroad. They are skilled at identifying how they can minimize the degree of liability, ensuring you receive less compensation.

The railroad agent will want you to indicate you caused the accident or that the company was blameless.

It is in your best interest NOT to give a written or even an oral statement to a claims agent or any other representative of the company without speaking to an attorney first. If you give a statement that differs from the original accident report, it could reduce your eventual recovery. When the claims agent calls you after the injury, just tell him politely that you were told not to talk to him by your lawyers at Cooper Hurley Injury Lawyers. Give them our phone number if they want to discuss the case.

## Hiring a Railroad Lawyer

You have an absolute right to hire a lawyer. Railroad workers hurt on the job have long recognized the need for experienced and specialized legal counsel to assist in the handling of FELA cases. Our law firm regularly represents injured railroad workers. We have decades of experience helping injured railroaders.

It will not cost you anything to talk to us about a potential claim. The initial confidential consultation is free and with no obligation to hire us. When you hire our firm for a FELA case, you pay nothing up front, as we only get paid at the end of the case as a percentage of the recovery. If you do not get paid, then we do not either.



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## **Can the Railroad Fire Me if I Hire a Lawyer?**

No. FELA protects employees against any threats of retaliation by the railroad companies. Under FELA law it is your right to seek out a lawyer and anyone who threatens or intimidates a person for making an injury claim through an attorney may be punished by imprisonment or fined.

The railroad and its agents realize that you are more likely to get full compensation if you have an experienced FELA attorney, so they try hard to talk you out of seeking a lawyer. Not only do we expect to pay for ourselves by getting you more money than they will pay you, but you also have the comfort of having an advisor to deal with the legalities while you focus on healing from the injury.

## **How Long Do I Have After an Injury to File a Lawsuit Against the Railroad?**

You are given three years from the date of an accident to file a FELA lawsuit in court. The period is the same for a personal injury case or a wrongful death case brought by your family if you are killed in a railroad accident.

But in cases of occupational illness or disease, you may not know the exact date of the injury. In cases involving exposure to chemicals and/or cumulative disorders, you have three years from when you knew or should have known your condition was caused by your work on the railroad. For example, if you got lung cancer or mesothelioma from asbestos exposure from railroad work, you have only three years from

when you should have known that your work caused the lung disease. Some employees make the mistake of believing the statute of limitations began when they first saw their doctor, but it can be an earlier date. For this reason, we recommend that families call us as soon as possible if they even think they may have a mesothelioma case.

Always consult an experienced railroad injury lawyer to find out if you have a claim. Don't forget the railroad will immediately begin its own investigation and start building its defense once they know you are hurt. It's important to meet with an injury lawyer immediately to protect your rights and to meet all deadlines. Once you hire us, we get going to preserve evidence needed to win your case.

## **Must I Prove That the Railroad Was At Fault to Win a FELA Case?**

Although FELA provides a means for injured employees to obtain fair compensation, it does not guarantee payment.

FELA is not like workers' compensation programs in which fault is not at issue. The railroad is not required to pay damages merely because an employee is injured at work. FELA provides for liability based on negligence, meaning the railroad must be shown to have been at fault or in violation of a safety statute such as the Locomotive Inspection Act and at least partially the cause of the injury.

The employee must prove the lack of ordinary care by the railroad or its employees to win damages. The neglect could be a lapse in maintenance, defective parts of a locomotive or railcar, an unsafe method of doing a job, like providing insufficient help, or exposure to a hazardous substance like diesel or asbestos after the railroad knew it should correct the problem. One reason to hire an experienced FELA lawyer is that we know how to prove the fault of the railroad.

# How Much Can I Recover or How Much Is My Family Entitled to After a Fatal Accident?

The amount you are entitled to in a FELA injury claim will depend on:

1. How serious the injury is;
2. Whether the injury was the result of negligence or a violation of a safety statute;
3. The long term effect of your injury such as disfigurement or disability;
4. Whether your injury worsened a preexisting condition;
5. The pain and suffering associated with your injury and any future pain and suffering;
6. Lost earnings and lost benefits in the past and/or the future;

7. The cost of future medical care and the extent of past medical treatment needed; and
8. The effect on your quality of life.

If you are killed in a railroad accident, your family is entitled to:

1. Damages for pain and suffering you experienced before death;
2. Medical care and funeral expenses; and
3. Future financial losses as a result of your death like the loss of wages and benefits to your spouse or dependent children.

## Summary

As a railroad employee, the FELA provides you with a greater degree of protection if you are hurt on the job than almost all other kinds of employees in the United States.

You need to know your rights under FELA to be ready when a work injury happens. It is not in the interests of the railroad company to inform you about what they might owe you. If you are badly injured, you only get one chance to receive the compensation you and your family deserve.

That's why you should contact the experienced railroad injury lawyers of Cooper Hurley Injury Lawyers with any questions about a workplace accident with injuries.

## About Cooper Hurley Injury Lawyers



Attorneys John Cooper, Jim Hurley, Bill O'Mara, Griff O'Hanlon, and John Baker have more than 80 years' combined experience as personal injury lawyers. Cooper Hurley Injury Lawyers is specialized in only handling accident and injury cases for individuals harmed by others. We do not ever represent railroad companies.

## John M. Cooper



John M. Cooper has represented injured people for over 30 years and specializes in FELA law, helping railroad workers hurt on the job. He is licensed to represent injured railroad workers in Virginia, North Carolina and West Virginia and in all states by special permission. Mr. Cooper regularly represents rail workers against CSX, Norfolk Southern, and Amtrak.

John has chaired the FELA Litigation Group and the Railroad Law Section of the American Association for Justice (the largest Plaintiffs' attorney organization in the US). He is FELA union-designated counsel for the TCIU (Transportation Communications International

Union) and a member of ARLA (Academy of Rail Labor Attorneys). John holds a top “AV” rating from

Martindale Hubbell, a national lawyer assessment service, and is listed among VA “Super Lawyers” for injury law. In 2019, Virginia Lawyers Weekly honored John by including him as a “Leader in the Law.”

John has assisted injured railroaders in every craft including conductors, engineers, carmen, and maintenance of way workers.

## Jim Hurley



Jim Hurley has represented personal injury clients since 1993 including many injured railroad workers. He has tried approximately 100 jury trials and been involved in thousands of litigation matters. Jim Hurley

is licensed in Virginia and Florida. He holds a top “AV” rating from Martindale Hubbell, reflecting a reputation among judges and lawyers for the highest level of skill and ethics in his field of accident and injury law.

## Bill O'Mara



Bill O'Mara started his legal career in 2008, moving back to his home town of Chesapeake, VA. He has practiced in the field of plaintiffs' personal injury and other litigation. He has extensive courtroom and trial experience, including contested trials before judges and juries across Hampton Roads, Virginia. In 2014, Mr. O'Mara joined Cooper Hurley Injury Lawyers as an associate attorney. He became a partner in 2017. He now dedicates his entire practice to helping injured people.

## Griff O'Hanlon



Griffin O'Hanlon joined Cooper Hurley Injury Lawyers as an attorney in the fall of 2015. After attending Virginia Tech, Griff obtained his J.D. from the Saint Louis University School of Law with a concentration in civil litigation.

After law school, Griff returned to Hampton Roads and now lives in Virginia Beach. He practiced criminal law at the Norfolk Public Defender's Office and a local private firm before joining Cooper Hurley and has extensive in-court litigation experience. In January 2020, Griff became the fourth partner of the firm.

## John Baker



John Baker joined Cooper Hurley Injury Lawyers in early 2018. John attended the University of Mississippi School of Law and worked for a local insurance defense firm for seven years after passing the bar exam in 2010. He appeared in courts all over the Commonwealth of Virginia and represented a number of insurance companies during this time.

John has been selected as a Rising Star by Virginia Super Lawyers since 2015 and was honored by his peers as a 2022 Top Lawyer by Coastal Virginia Magazine and CoVaBIZ. He is a former member of the James Kent American Inn of Court. John and his partners at Cooper Hurley Injury Lawyers regularly teach continuing legal education (CLE) courses on civil litigation and personal injury practice.

# Robert Pless

## *FELA Investigator*



Robert grew up in the small town of Norris, Tennessee. Robert attended Roane State Community College and The University of Tennessee. He began working at the Southern

Railroad as a carman and later became a journeyman machinist. In 1986, he left the railroad to work with FELA attorneys as an investigator.

Robert is very experienced in helping injured railroaders. He has attended well over a thousand union functions.

# Carl Keen

## *FELA Investigator*



Carl Keen was raised and currently resides in the small town of Hilliard, Florida. Carl went to work for SCL Railroad in 1979 as a laborer. He worked in the maintenance of way department and eventually moved to the car department where he served the remainder of his 22-year railroad career. During his time at the railroad, Carl helped several union positions: Local Chairman, Financial Secretary, and Trustee. After 22 years of railroad service, Carl's railroad career ended when he suffered a work injury that forced him to retire. Carl now devotes lots of time to helping others hurt by the negligence of railroad companies.

## Important Contacts & Phone Numbers:

John Cooper, Esq. (757)-333-3333

Robert Pless, Firm Railroad Investigator (865) 382-3826

Cooper Hurley Injury Lawyers (Toll Free) (866)-455-6657

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