

# HILDEBRAND MCLEOD & NELSON LLP

*REPRESENTING INJURED RAILROAD WORKERS SINCE 1926*

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## OFF TRACK VEHICLE ACCIDENTS

THE F.E.L.A. IS A FAULT BASED COMPENSATION LAW.  
IF THERE IS **NO CARRIER FAULT**, THERE IS **NO FELA COVERAGE**.  
PLEASE FIND BELOW HILDEBRAND MCLEOD & NELSON'S RECOMMENDATIONS.

### Frequently Asked Questions:

#### **1. When I'm on duty and being transported in a company carry-all or contract van and we are struck by another vehicle through no fault of the railroad or the driver of our vehicle, and suffer an injury, where do I turn for compensations for my damages?**

- A. The at fault vehicle's insurance carrier.
- B. If the at fault vehicle is uninsured:
  - 1. The Uninsured Motorist provision (UM) of your private vehicle policy;
  - 2. The off track vehicle accident provision of your collective bargaining agreement (The Union Contract).
- C. If the at fault vehicle has inadequate insurance:
  - 1. The Underinsured Motorist provision of you private vehicle policy (UIM);
  - 2. The off track vehicle accident provision.

#### **2. What is UM and UIM coverage?**

If you have automobile liability coverage, chances are that you have UM and UIM coverage. UM and UIM coverage is not mandatory, but California state law states you can only decline it in writing. For example, as a general rule, if you have 25/50 liability coverage you have the same in UM and UIM. UM coverage applies to the extent of your stated limits, when the uninsured party is at fault. UIM coverage applies when the at fault party's coverage is insufficient to cover your actual damages, again to the extent of your coverage limits.

We unequivocally recommend that you buy the highest coverage you can afford for two reasons:

- A. To protect yourself in the situations that we described. Loss of income, medical bills, and permanent residual injury can quickly add up to a large figure.
- B. To protect your family and your assets if you or a family member causes an accident and are sued.

Remember the victim's damages can run up just as fast as yours and in this day and age you need adequate coverage to protect your home and assets.

The State of California only requires a 15/30 policy to meet licensing requirements.

#### **3. Why should I buy a lot of coverage? This probably won't happen to me.**

In 2009 our firm is and was involved in four such accidents involving UM and UIM coverage's involving 10 railroad employees.

#### **4. What is Off Track Vehicle Accident Compensation?**

As a part of every craft's collective bargaining agreement, there is an off track vehicle accident provision which provides certain money benefits to employees injured in accidents involving off track vehicles while on duty.

#### **A. The value of benefits:**

The employee is entitled to 80% of his wages with a set maximum that varies by union contract (for example, with a maximum of \$1,000 per week).

If the employee is also collecting RRB benefits, those will be deducted from the amount paid by the off track policy. Example: John Doe would get \$1,000 from the off track policy. John Doe gets \$350 a week in RRB. So he can only get \$650 per week in off track benefits.

The employee is also entitled to a lump sum benefit based on the severity of the injury (for example, death loss of limbs, loss of vision, etc.). Different unions may have negotiated different amounts.

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### **B. The disability requirements for the benefits:**

The employee must be disabled from the date of the accident for 30 days or more immediately and continuously. If he goes back to work for one day right after the accident and then is off 30 days or more he cannot get the benefits. If he goes back to work for one day to test himself during the first 30 days, he cannot get the benefits.

### **C. The duration of benefits:**

An injured employee can continue to receive off track benefits up to 156 weeks, so long as he remains disabled, even after RRB benefits have stopped. If RRB benefits stop, the off track benefits should be recalculated.

### **D. How to apply:**

The employee should make this claim through the carrier's claim agent, preferably in writing, with copies to the superintendent's office and the employee's union representative.

### **E. Third party case:**

If the employee has a third party case, UM or UIM claim and is able to collect on it, he must, by contract, pay back the carrier for the benefits received.

The carrier off track vehicle provisions are intended to cover accidents involving employees while they are riding in, boarding, alighting from off-track vehicles authorized by the carrier and are:

1. deadheading under orders or
2. being transported at carrier expense

### **5. What if I am driving a carrier vehicle or my own vehicle at the request of the carrier and get into an accident?**

- A. If you are at fault, you are the carrier's agent and you will be represented by the carrier and the carrier's assets. Your own Insurance Co. may be involved.
- B. If the other driver is at fault your remedies are the same as if you were being transported with the exception that comparative fault might apply.
- C. Everyday commuting is not covered. However, if you are requested to drive from your assigned terminal to an outside point and no company transportation is available, and are within the scope of the request and are involved in an accident, you are covered under (a), or (b) depending on fault.

**Remember** when you are being transported in an off-track vehicle and the accident is caused or partially caused by your driver or by a defect in the off track vehicle you probably have an F.E.L.A. claim. A contract vehicle, by law is an agent of the carrier. It is important to have an experienced legal team from the Union Designated Legal Counsel analyze the facts of your accident as each accident is unique. This is also true in the handling of a UM or UIM situation, as an attorney will be familiar with the statutes involved and can also analyze the facts to see if there is any concurrent fault such as highway design, improper signage, etc

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

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