

**GAO**

United States General Accounting Office

Report to the Honorable James T. Broyhill  
United States Senate

August 1986

# AMTRAK

## Comparison of Employee Injury Claims Under Federal and State Laws



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GAO/RCED-86-202

536565 / 130994





United States  
General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

B-223551

August 11, 1986

The Honorable James T. Broyhill  
United States Senate

Dear Senator Broyhill:

This report responds to your October 9, 1984, letter and subsequent agreements with your office regarding the National Railroad Passenger Corporation's (Amtrak's) experience with employee injury claims under the Federal Employers' Liability Act (FELA). FELA is the federal law that establishes a system for railroad employees to recover damages for on-the-job injuries. You asked us to compare Amtrak's costs for claims settled under FELA with Amtrak's costs for claims if state workers' compensation systems were used instead of FELA. You also asked us to estimate the amount of money Amtrak's claimants have spent on attorneys' fees.

For this comparison, we selected 2 states from the 11 where Amtrak made 82 percent of its payments for employee injury claims in calendar year 1984. To provide a range of information, we chose the state in this group with the highest workers' compensation benefits, Connecticut, and the one with the lowest benefits, Indiana. Because both Amtrak and the state systems cover employees' medical costs, these costs are not included in our analysis. The types of payments included cover loss of wages and, for Amtrak's actual payments, pain and suffering.

We examined a stratified random sample of all of Amtrak's employee injury claims that were settled in 1984. We obtained information about these cases through a questionnaire that was completed by Amtrak claims personnel. We then applied the rules and regulations of the state workers' compensation laws in Connecticut and Indiana to each of these cases and compared the amount of Amtrak's actual payment to the injured employee with our estimate of the payments Amtrak would have made if it were covered by the two state systems. Since the application of state workers' compensation rules often resulted in a series of payments over many years, our estimates of payments under Connecticut's and Indiana's rules are expressed in 1984 present value terms. A more detailed discussion of our objectives, scope, and methodology is included in appendix I.

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## Background

Section 301 of the Rail Passenger Service Act of 1970 (45 U.S.C. 541 et seq.) authorized the establishment of Amtrak to develop and operate an

intercity rail passenger service. Amtrak was incorporated in 1971 as a for-profit corporation owned by the federal government and various railroads. As of September 30, 1984, Amtrak had 21,634 employees

In 1984, Amtrak settled or closed 5,058 employee injury cases. Approximately three-fourths of these cases did not involve any payment to the employee beyond medical benefits.<sup>1</sup> The settlement in 38 percent of the remaining 1,346 cases was less than \$1,000. In the 59 cases where the settlement was \$100,000 or more (about 1 percent of all cases and 4 percent of the cases with a payment greater than zero), we estimated that Amtrak paid about \$13.2 million, which was 55 percent of the estimated total Amtrak paid for all cases closed in 1984.

## Summary Results of Analysis

We estimate that if Amtrak operated under state workers' compensation rules, its payments for all cases closed in 1984 would have been \$2.7 million lower under Connecticut's rules and \$17.4 million lower under Indiana's rules. Our estimate of Amtrak's total payment for its employee injury cases closed in 1984 is \$23.9 million.<sup>2</sup> We estimate that Amtrak's average payment per case was \$5 4 thousand and that the average payment would have been \$0 6 thousand lower under Connecticut's rules and \$3.9 thousand lower under Indiana's (See app II for related information )

Under Connecticut's rules, Amtrak would have paid more for permanent total disabilities than it actually did. Amtrak's payments were greater under FELA than they would have been under Connecticut's rules for all other disability categories and under Indiana's rules for all categories.

The results of this analysis are qualified by several factors. For example, because FELA systems and state workers' compensation systems operate differently, Amtrak's administrative costs could change if Amtrak were governed by state compensation laws. These qualifications are discussed in further detail below

<sup>1</sup>In most of these cases, Amtrak established a case file following an accident, but the employee either did not lose any time from work or did not file a claim for compensation beyond medical expenses

<sup>2</sup>Amtrak's actual payment was \$23,812,855. In the text we have used the figure estimated on the basis of our sample results to be consistent with the presentation of other data derived from our sample. The estimated payment is less than 1 percent larger than the actual payment.

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## Differences Between FELA and State Compensation Systems

The payments made under the FELA system potentially provide broader coverage than state systems do. Both systems pay for employees' medical and rehabilitation costs. Beyond these, state benefits compensate injured employees only for loss of wages. Under FELA, employees may receive compensation for wages and other losses, such as pain and suffering.

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## Federal Employers' Liability Act

FELA (45 U.S.C. 51 *et seq.*) makes railroads liable for their employees' on-the-job injuries, including occupational disease and illness. It was enacted in 1908, before any state workers' compensation laws were passed, and was last significantly amended in 1939. Union officials believe that one reason FELA was enacted was that railroading is a hazardous occupation. The FELA system differs from state systems in several important respects.

FELA is a negligence statute; the employing railroad is liable for damages that result from the negligence of its officers, agents, and employees, and from deficiencies in equipment or facilities. The amount of damages is determined through negotiation or litigation for each individual case. In addition to lost wages, the settlement<sup>3</sup> may compensate the employee for factors such as pain and suffering. Unless the railroad violated certain federal safety statutes, damages are to be reduced by the percentage of the injured employee's own negligence.

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## State Workers' Compensation Systems

State workers' compensation systems, which govern most non-railroad employees, operate on a "no-fault" basis. No determination of negligence is made, and the cause of the accident or illness does not affect the amount of compensation. Each state establishes a fixed schedule of benefits based on the specific injury and duration of disability.

If there is no dispute over the facts in a specific case, the employer's insurer pays those benefits to the disabled employee. If there is disagreement over a factor that affects the amount of compensation, such as whether the employee has a permanent impairment, the employee may request a hearing before the state's workers' compensation agency and may appeal that decision to the state court. Theoretically, employees in the same state with identical injuries, salaries, and loss of time from work would receive identical benefits.

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<sup>3</sup>As used in this report, the term "settlement" means the amount of damages paid, whether through negotiation or litigation.

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## Comparison of Amtrak's FELA Payment With Potential Payment Under Connecticut and Indiana Compensation Systems

We estimated that Amtrak paid a total of \$23.9 million for employee injury cases closed in 1984. Payments for medical expenses are not included in these figures because both Amtrak and the state systems cover them. We estimated that under Connecticut's rules, Amtrak (or its insurance company if it were not self-insured) would have paid \$21.2 million for these cases, a difference of \$2.7 million. Under Indiana's rules, Amtrak's payments would have totaled \$6.5 million, a difference of \$17.4 million.

The average settlement Amtrak paid in 1984 was \$5.4 thousand. Under Connecticut's rules, Amtrak would have paid an average of \$4.8 thousand for these cases, or an average of \$0.6 thousand less per case. Under Indiana's rules, the average settlement would have been \$1.5 thousand, or an average of \$3.9 thousand less per case.

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## Injury Payments Differ

One of the key factors controlling the amount of compensation an injured employee or his/her survivor receives in Connecticut and Indiana is the classification of the disability, *i.e.*, temporary disability, permanent partial disability, permanent total disability, fatality, and none. Amtrak personnel who completed our questionnaire identified which disability category applied to each case in our sample. Complete definitions of these categories are located in appendix VI.

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## Temporary Disabilities

A temporary disability is defined as one that causes the employee to lose more than 1 day from work but does not result in any permanent loss of function in any body part, such as a hand. The estimated total payment Amtrak made in its temporary cases was \$7.7 million. We estimated that under Connecticut's rules, Amtrak would have paid \$2.9 million. Under Indiana's rules, the estimated total payment would have been \$1.4 million.

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## Permanent Partial Disabilities

An employee with a permanent partial disability sustains some loss of function that will not totally disappear over time. However, the employee is able to return to his or her previous job or another job. For these cases, Amtrak's settlements totaled \$6.8 million. Our estimate of the total payment it would have made under Connecticut's rules is \$6.1 million, and under Indiana's rules, \$1.3 million.

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## Permanent Total Disabilities

A permanent total disability is so serious that the employee cannot perform any job and this loss of function will not disappear. The estimated total Amtrak payment for such cases was \$8.5 million. The estimated total payment under Connecticut's rules would have been \$11.7 million, under Indiana's rules it would have been \$3.6 million.

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## Fatalities

Eight of the cases Amtrak closed in 1984 were fatalities, but two were not job related and the survivors did not file a compensation claim. On the basis of the information provided by Connecticut and Indiana officials, we believe that these cases would not have been compensated under the two state systems either. For the remaining six fatality cases, Amtrak's settlements totaled about \$800,000. We estimated it would have paid a total of about \$400,000 under Connecticut's rules and about \$300,000 under Indiana's. Appendix III contains additional information on the results of our analysis by disability classification.

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## Attorneys' Fees

Claimants who are governed by FELA may be represented by an attorney during their negotiations with their employer and may proceed to litigation if they do not negotiate a settlement. Amtrak officials told us that claimants' cases are handled on a contingency fee basis.

We were not able to collect data on the portions of Amtrak's FELA settlements that injured employees paid to their attorneys. However, Amtrak was able to inform us whether or not a claimant was represented by an attorney. Attorneys participated in 41 percent of Amtrak's cases closed in 1984 when the settlement was greater than zero.

According to Amtrak officials, attorneys who represent FELA claimants generally receive between 25 and 33.3 percent of the final settlement as their fee, and if a case proceeds to trial, the fee may be 40 to 50 percent of the award. Labor union officials informed us that attorneys to whom unions refer members usually charge a 25-percent contingency fee. To estimate the amounts that claimants paid for attorneys' fees, we calculated 25 and 33.3 percent of the settlement amounts in the cases using attorneys.

The average settlement Amtrak paid in cases with representation by an attorney was \$47.8 thousand, the estimated attorney's fee per case averaged between \$12.0 thousand (25%) and \$16.0 thousand (33.3%). We estimated that settlements for all such 1984 cases totaled \$21.2 million, estimated total attorneys' fees would have ranged between \$5.3 million.

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(25%) and \$7.1 million (33.3%). For additional information related to attorneys' fees, see appendix IV.

Connecticut and Indiana officials told us that in some cases, claimants in state workers' compensation systems also are represented by legal counsel. Employees who appear before state hearing officers or who appeal their cases to the state court are almost always represented by attorneys. In fiscal year 1985, approximately 4 percent of Connecticut's claims received formal hearings. The Executive Secretary of the Indiana Industrial Board estimated that 5 to 6 percent of Indiana's annual cases receive hearings. State officials said that these are also contingency fee cases, so a comparable portion of these awards would be allocated toward attorneys' fees.

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## Limitations on Our Analysis

Several qualifications must be considered when evaluating the results of this review. This analysis applies only to Amtrak cases closed in 1984. The data cannot be projected to Amtrak's experience in other years or to the experience of other railroads.

It may be possible that some Amtrak employees who would file disability claims under a state system choose not to file under Amtrak's current system. Such cases cannot be identified using claims data from the current system. Representatives of Amtrak employee unions told us they believe that some injured employees who do not file claims with Amtrak might file a claim under a state system. The reasons for not filing would be employees' concerns that they would be penalized for causing an accident or, in the case of a small claim, a belief that filing a claim would not be worth the trouble. Also, if Amtrak's negligence did not cause any part of the injury, an employee is not entitled to recover under FELA, whereas the employee would recover under a state workers' compensation system. If employees would file and receive compensation for additional claims under state systems, our estimates overstate the likely decrease in costs to Amtrak under state rules.

Our estimates of Amtrak's potential payments under Connecticut's and Indiana's rules are based on routine application of the states' rules. It is possible that any of these claimants could request a hearing before state officials or appeal a ruling to the state court. The hearing officer or judge could interpret the facts of the case in a way that would produce an award different from our estimate.

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FELA systems do not operate in the same way that state systems do. If Amtrak were governed by state workers' compensation systems, its settlement payments would not be its only costs to change. For example, states usually require employers to contribute to "second injury" funds. These funds compensate workers who are permanently disabled as the result of separate injuries that have a severe cumulative effect. For example, if an employee loses sight in one eye while working for one employer, then loses sight in the other eye while employed elsewhere, the state's second injury fund, rather than the second employer, would compensate the worker for the total disability.

Amtrak's administrative costs could also differ under a state workers' compensation scheme. For example, Amtrak would have fewer expenses related to litigation. However, it might incur additional legal costs because of the need to work within a large number of state compensation systems. Currently, Amtrak makes a lump-sum payment for its FELA settlements, enabling it to close a case after it transmits the payment. Because state compensation programs often result in a series of payments over a period of years, operating under state laws could affect Amtrak's overhead costs.

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## Conclusion

According to our estimates, Amtrak's payments for employee injury claims closed in 1984 would have been lower under both Connecticut and Indiana rules than they were under the FELA system. One reason for this difference is that state systems provide compensation only for medical costs and wage loss, while FELA allows compensation for other factors as well.

We believe that the use of Connecticut as the high-benefit state in our comparison enables us to demonstrate that, nationwide, Amtrak would have paid less for employee injury claims closed in 1984 under state systems than it did under FELA. Amtrak could have paid more under a state system in any individual case. However, on the basis of our analysis, we believe that Amtrak's total payments would have been smaller under state workers' compensation systems.

As requested, we did not obtain official comments on this report. However, we discussed the information in the report with officials from Amtrak, the Department of Transportation's Federal Railroad Administration (FRA), and labor unions representing Amtrak employees, and incorporated their comments where appropriate. As arranged with your

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office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the President of Amtrak, and the Administrator, FRA. We will also make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "J. Dexter Peach". The signature is written in black ink and is positioned above the printed name and title.

J. Dexter Peach  
Assistant Comptroller General



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**Abbreviations**

FELA	Federal Employers' Liability Act
FRA	Federal Railroad Administration
GAO	General Accounting Office

# Objectives, Scope, and Methodology

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The objective of our review was to compare Amtrak's payments for employee injury claims under FELA with its potential costs if it operated under state workers' compensation systems. We examined a sample of all Amtrak FELA cases closed in calendar year 1984

Every state has its own laws and regulations governing its workers' compensation system. The state systems calculate benefits differently, provide varying maximum and minimum weekly benefits, and apply a variety of rules and restrictions governing payments. In order to provide a range of Amtrak's potential payments under state compensation systems, we selected two states for our comparison, one with a relatively high level of benefits (Connecticut) and one with a relatively low level (Indiana)

To decide which states to select, we used Amtrak data showing the amount Amtrak paid for employee injury claims in each state in 1984 (based on the state where the accident occurred). We then examined the 11 states where Amtrak had the highest payments: California, Connecticut, the District of Columbia, Delaware, Illinois, Indiana, Massachusetts, Maryland, New Jersey, New York, and Pennsylvania. These states accounted for 82 percent of Amtrak's payments for cases closed in 1984

We looked at several pieces of data for each of the 11 states in order to choose a state with high benefits and one with low benefits. These included the percentage of wages received during the disability period, maximum weekly payment, minimum weekly payment, and amount of payments for selected injuries with scheduled benefits. Our analysis indicated that Connecticut had the highest benefits and Indiana the lowest.

We performed additional calculations to verify the validity of the selection process. For example, we identified a state with medium-level benefits, New Jersey, and compared its benefits with the median benefits for all 46 states where Amtrak had made payments. They were almost identical. In addition, we asked officials of Amtrak employee unions for their comments. None had any information suggesting that either Connecticut or Indiana would not be a good choice for this review.

In order to compare Amtrak's costs under FELA with its possible costs under state workers' compensation systems, we selected a sample of 329 claims from all Amtrak claims closed in 1984. We selected all eight fatalities that occurred in 1984. The remaining sample (321) was a random sample stratified into six groups according to the amount of the claim.

settlement. Because we used a stratified sample, all data have been weighted to represent the projected universe. We sent a questionnaire to Amtrak for each claim. Amtrak returned 314 questionnaires that were used in our analysis. Table I 1 shows our universe, sample sizes, and number of useable responses from each of the six groups.

**Table I 1: Questionnaire Sampling Plan and Responses**

Stratum	Number in universe	Number sampled	Number of useable returns	Percentage of useable returns	Number in universe represented by useable returns
Fatality	8	8	8	100.0	8
Nonfatality					
\$ 0	3,709	50	46	92.0	3,412
1 - 99	144	6	1	16.7	24
100 - 999	364	12	9	75.0	273
1,000 - 9,999	480	31	30	96.8	465
10,000 - 99,999	297	166	164	98.8	293
100,000 and over	56	56	56	100.0	56
<b>Total</b>	<b>5,058</b>	<b>329</b>	<b>314</b>	<b>95.4</b>	<b>4,531</b>

Of our sample of six cases that Amtrak settled for between \$1 and \$99, only one case was an employee injury case. Because of this group's extremely small sample size, the group was excluded from our estimates. In our opinion, this exclusion would not have a major impact on our results, although it could lead to an overstatement of the difference between Amtrak's payments and payments under state systems. However, in our opinion, this overstatement would be small due to the relatively small number of Amtrak injury cases and the related small settlement amounts in the \$1 to \$99 stratum, as shown in Table I 1.

We designed our questionnaire to elicit the information needed to apply Connecticut's and Indiana's workers' compensation rules to each case in our sample. Officials from Amtrak and the two states reviewed the questionnaire to ensure that it was complete and that the requested data would usually be available. Appendix VI contains a copy of the questionnaire.

Because Amtrak personnel were most familiar with the case files, they completed the questionnaires. The questionnaires were assigned to the field offices where the specific claims were filed, and when possible, the Amtrak claims agent with the most knowledge of the case completed the

form. Our staff reviewed each completed questionnaire and obtained follow-up information as necessary to clarify or verify a response.

We identified the rules governing the amount of compensation provided for each injury category in each state. Officials from Connecticut and Indiana workers' compensation offices reviewed our compilation for accuracy and completeness.

Data needed to apply state rules to the Amtrak cases were not always available. For example, some Amtrak files did not contain information about the ages of an employee's dependents or about the degree of permanent disability to a particular body part. In those cases we estimated missing data to apply state rules as accurately as possible.

When a worker has a permanent partial injury, he or she receives compensation for time lost from work plus a scheduled, or fixed, benefit for the permanent impairment. This benefit is calculated by multiplying a compensation rate related to the employee's average weekly wage by the number of additional weeks of compensation the state has assigned for the partial or entire loss of use of that particular body part or the body as a whole. When one of the cases in our sample involved a permanent injury to a body part for which one of the states based its compensation on the body as a whole, we used the American Medical Association's Guides to the Evaluation of Permanent Impairment to estimate the amount of impairment to the body as a whole. We also used a formula in the Guides to calculate the amount of impairment for cases involving multiple injuries.

When calculating an employee's average weekly wage, we used a work week of 41.8 hours. This was based on personnel data provided by Amtrak. We used the hourly wage provided by the questionnaire and did not use overtime pay scales.

All settlement amounts in this report are expressed in 1984 dollars. The Amtrak settlements are actual lump-sum payments made in 1984; the average amount of time that had elapsed between the date of injury and the date of settlement was 66 weeks. Settlements simulated under a state system typically resulted in a series of payments, often stretching over a number of years. Because in the majority of cases Connecticut and Indiana begin providing benefits the same year an injury occurs, the payments in our simulation always begin in the year the injury occurred. The injuries in our sample occurred between 1975 and 1984.

Therefore, we had to calculate the present value, as of 1984, of both pre- and post-1984 payment streams.

To perform present value analysis, we used interest rates approximating the cost of borrowing for the federal government over the time period in which the payments will be made. The interest rates are an average of yields on U.S. Treasury securities.

We selected different interest rates to match the specific payment period that applied to each case. Under the state systems, payment streams would have occurred over many different periods of time. This is because the injuries in our sample occurred in different years and, under Connecticut and Indiana rules, would generate payment streams that end in different years. Additional information on the present value analysis is in appendix V.

In Connecticut, workers' compensation benefits for injuries resulting in total incapacity or fatality include annual cost-of-living allowances. Each year, the Connecticut Labor Commissioner calculates an average weekly production wage in Connecticut. This average production wage is used as the basis for calculating the statutory maximum weekly compensation rate for the fiscal year beginning on October 1. This statutory maximum rate is compared with the previous year's statutory maximum rate, and the difference becomes the cost-of-living allowance added to eligible compensation payments. By using Chase Econometrics forecasts of wages and employment in Connecticut, we projected the average production wage for years beyond 1985 to determine future compensation payments for claims eligible for cost-of-living adjustments.

Using generally accepted actuarial principles, we identified probabilities of disabled employees' survival and family characteristics, including incidence of marriage and children and ages of spouses and dependent children. To estimate future benefits, we applied probabilities of death and remarriage to surviving spouses and children where appropriate. We estimated dependent information, such as a spouse's age, when it was missing. We extracted survival rates for disabled employees and dependents, remarriage rates for surviving spouses, and family characteristics such as age from the U.S. Railroad Retirement Board's Sixteenth Actuarial Valuation and Technical Supplement, published in September 1985.

During our review we contacted officials from Amtrak, the Department of Transportation's Federal Railroad Administration, U.S. Department

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**Appendix I**  
**Objectives, Scope, and Methodology**

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of Labor, Connecticut Workers' Compensation Commission, Indiana Industrial Board, American Bar Association, Association of Trial Lawyers of America, Brotherhood of Locomotive Engineers, Brotherhood of Maintenance of Way Employees, Railway Labor Executives Association, and National Council on Compensation Insurance

# Comparison of Estimated 1984 Amtrak FELA Payments and Estimated Payments in Connecticut and Indiana

	Estimated Amtrak FELA payment	Estimated payment in Connecticut	Estimated payment in Indiana
Total payment <sup>a, b</sup> (millions)	\$23.9	\$21.2	\$6.5
(millions)	(± 0.7)	(± 1.9)	(± 0.6)
Difference between Amtrak and state payments <sup>c</sup> (millions)	N/A	2.7	17.4
(millions)		(± 1.8)	(± 0.8)
Average settlement (thousands)	5.4	4.8	1.5
(thousands)	(± 0.2)	(± 0.4)	(± 0.1)
Average difference per case (thousands)	N/A	0.6	3.9
(thousands)		(± 0.4)	(± 0.2)

<sup>a</sup>Medical costs are not included.

<sup>b</sup>As discussed in appendix I, Amtrak cases settled for amounts between \$1 and \$99 were excluded from our estimates because of the small sample size.

<sup>c</sup>The difference is calculated by subtracting the state's payment from Amtrak's payment.

Note: Sampling error at the 95 percent confidence level is given in parentheses under each estimate.  
N/A = Not applicable.

# Comparison of Estimated 1984 Amtrak FELA Payments and Estimated Payments in Conn. and Ind. by Disability Classification

Dollars in millions

	Estimated Amtrak FELA payment <sup>a</sup>	Connecticut		Indiana	
		Estimated payment	Difference <sup>b</sup>	Estimated payment	Difference
<b>Total payments:<sup>c,d</sup></b>					
Temporary <sup>e</sup>	\$7.7 (±0.6)	\$2.9 (±0.5)	\$4.8 (±0.6)	\$1.4 (±0.3)	\$6.4 (±0.5)
Permanent partial <sup>e,f</sup>	6.8 (±0.4)	6.1 (±0.6)	0.7 (±0.6)	1.3 (±0.2)	5.5 (±0.4)
Permanent total <sup>e,f</sup>	8.5 (±0.2)	11.7 (±0.3)	-3.2 (±0.3)	3.6 (±0.1)	4.9 (±0.2)
Fatality	0.8 (±0.0)	0.4 (±0.0)	0.4 (±0.0)	0.3 (±0.0)	0.6 (±0.0)

<sup>a</sup>Numbers may not total because of rounding.

<sup>b</sup>The difference is calculated by subtracting the state's payment from Amtrak's payment. If the result is a negative ( ) number, the state payment is larger. In all other cases, Amtrak's payment is larger.

<sup>c</sup>Medical costs are not included.

<sup>d</sup>As discussed in appendix I, Amtrak cases settled for amounts between \$1 and \$99 were excluded from our estimates because of the small sample size.

<sup>e</sup>For definitions of disability classifications, see questionnaire, appendix VI.

<sup>f</sup>Assumes that no nonfatality cases that Amtrak settled for less than \$10,000 would be classified as permanent partial or permanent total.

Note: Sampling error at the 95 percent confidence level is given in parentheses under each estimate. N/A = Not applicable.

# Sampling Error of Estimates for Cases With Representation by Attorney<sup>a</sup>

Description of estimate	Estimate	Sampling error estimated at 95-percent confidence level
Percentage of cases with representation by attorney	41 percent	±9 percent
Average value of settlements in cases with representation by attorney (thousands)	\$47.8	±\$1.4
Total value of settlements in cases with representation by attorney (millions)	\$21.2	±\$0.6

<sup>a</sup>Cases with settlement amounts above zero

# Methodology Used for Present Value Analysis

Year of compensation payments <sup>a</sup>	U.S. Treasury Securities	
	Yield	Maturity
1975	7.99	10-year
1976	7.42	7-year
1977	7.23	7-year
1978	8.32	5-year
1979	9.52	5-year
1980	11.48	5-year
1981	14.44	3-year
1982	12.80	2-year
1983	9.57	1-year
1984	.	.
1985	10.89	1-year
1986	11.65	2-year
1987	11.89	3-year
1988	12.24	5-year
1989	12.24	5-year
1990	12.24	5-year
1991	12.40	7-year
1992	12.40	7-year
1993	12.44	10-year
1994	12.44	10-year

<sup>a</sup>To determine the 1984 present value of payments that would have been made under state rules, we expressed in 1984 dollars payments that would have been made both before and after 1984. To do this, we selected appropriate interest rates based on government borrowing costs. Specifically, for each case we calculated an average interest rate for the years in which payments would have been made. However, when payments would have been made both before and after 1984, we calculated separate average rates for the two periods. For the pre-1984 period, we used interest rates in the year of payment for Treasury securities with maturities approximating the number of years between the year of payment and 1984. For the post-1984 period, we used 1984 interest rates for Treasury securities with maturities approximating the number of years between 1984 and the year of payment. In each compensation case in each period, we averaged the yields for all years during which compensation payments would occur. For those cases with payments beyond 1994, the interest rate we used was 12.20 percent.

For example, the interest rate used for payments estimated to occur in 1981 and 1982 was 13.62 percent, which was the average of the yield on a 3-year security in 1981 (14.44 percent) and the yield on a 2-year security in 1982 (12.80 percent). For another example, the interest rate used for payments estimated to occur in 1985 and 1986 was 11.27 percent, which was the average of 1984 yields on a 1-year security (10.89 percent) and a 2-year security (11.65 percent).

# GAO Questionnaire



## U.S. GENERAL ACCOUNTING OFFICE

### SURVEY OF CLOSED FELA CLAIMS AND LAWSUITS

#### GENERAL INSTRUCTIONS

The U.S. General Accounting Office is studying the cost of Amtrak's FELA claims and lawsuits. As part of this study, we are collecting information, with the assistance of Amtrak, from a sample of 325 Amtrak cases that were closed in 1984. This information will be used to estimate how much could have been paid out under alternative workers' compensation systems. It is important that the information be as complete and accurate as possible.

Most questions can be answered by simply checking a box or writing in several numbers or letters. When a date is asked for, please enter the month, day, and year. For example, July 8, 1984 should be coded 07-08-84. When dollar amounts are asked for, please round to the nearest dollar.

Several questions refer to code lists A, B, C, or D. These special lists are at the end of the questionnaire and should be used in answering questions 11, 12, 15, 16, 18, and 32.

Most of the following questions ask for information as of the date of the injury. If the claim is for a work-related illness or if the information is unknown as of the date of the injury, please provide information as of the date the claim was filed.

In the event that the format for any question does not fit the situation of a particular claim, we would appreciate any additional comments required to properly describe the situation. We have provided room at the end of the questionnaire for additional comments or explanations.

GAO Note: Responses to open-ended questions and questions requiring the use of code lists are not reported because of limited space. For multiple choice questions, we have reported the percentage responding. For the remaining questions, we have reported averages.

If you have any questions about any specific items on this form, please contact Helene Toiv on (202) 426-2125. Please complete the questionnaires and return them in the enclosed envelopes. Rather than waiting until all the questionnaires for your office are completed, we would like you to mail us batches of completed forms every 3-4 days, which will enable us to begin analyzing the information as quickly as possible. That is why extra envelopes are enclosed. In the event that the return envelopes are misplaced, please return your completed questionnaires to:

Mr. James M. Blume  
U.S. General Accounting Office  
441 B Street, N.W.  
Room 4476  
Washington, D.C. 20548

Please return all the completed questionnaires within 3 weeks of receipt if possible.

Thank you for your cooperation in making our analysis as complete and accurate as possible.

1. Please fill in the name, title, and phone number of the person who completed all (or most) of this form:

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone number: \_\_\_\_\_

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GAO Questionnaire

**PART I CLAIM IDENTIFICATION INFORMATION**

2. Antrak's case number  
\_\_\_\_\_ (1-6)
3. Antrak's sub-case number  
\_\_\_\_\_ (7-9)
4. Date case settled (ENTER MONTH-DAY-YEAR )  
\_\_ - \_\_ - \_\_ (10-15)
5. Is this case a claim or lawsuit?  
(CHECK ONE ) (16)
- 1  Claim (SKIP TO QUESTION 7 )
- 2  Lawsuit (CONTINUE WITH QUESTION 6 )
6. What was the disposition of the lawsuit?  
(CHECK ONE )
1.  Verdict for plaintiff (17)
2.  Verdict for defense
3.  Dismissal
4.  Settled prior to verdict  
(before or during trial)
5.  Other (Specify) \_\_\_\_\_
7. Was the employee represented by an attorney in this claim or lawsuit? (CHECK ONE )
1.  Yes (18)
2.  No
3.  Do not know
8. Total amount of gross settlement or judgment in this case (ROUND TO THE NEAREST DOLLAR.)
- (NOTE: If this case was one of several included in one settlement, include only the portion of the settlement applicable to this case )
- \$ 5,342 (19-24)  
(average)

**PART II EMPLOYEE INFORMATION**

9. Sex of employee (CHECK ONE )
1.  Male (25)
2.  Female
10. Employee's age at the date of the injury (or at the date the claim was filed for work-related illness) (ROUND TO THE NEAREST YEAR )
- 34 years old (26-27)  
(average)
11. Employee's state of residence at the date of injury (or at the date claim was filed for a work-related illness) (ENTER CODE FROM LIST A IN INSTRUCTIONS )
- \_\_\_\_\_ (28-29)
12. Employee's occupation at the date of injury (or at the date claim was filed) (ENTER CODE FROM LIST B IN INSTRUCTIONS )
- \_\_\_\_\_ (30-31)
13. What was the employee's salary on the date of injury (or on the day the claim was filed for a work-related illness)? (ENTER HOURLY WAGE )
- \$ 10.78 (32-35)  
(average)

**PART III INFORMATION ON INJURY (OR WORK-RELATED ILLNESS)**

14. Date of injury (or date claim filed for work-related illness). (ENTER MONTH-DAY-YEAR )
- \_\_ - \_\_ - \_\_ (36-41)
15. State in which injury (or work-related illness) occurred (ENTER CODE FROM LIST A IN INSTRUCTIONS )
- \_\_\_\_\_ (42-43)

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16 Identify the injury(ies) or work-related illness(es) sustained by the employee in this case. For each injury or illness, identify the type of injury/illness, extent of injury, and body part using code lists C-1, C-2, and C-3. (ENTER EACH INJURY OR ILLNESS ON A SEPARATE LINE.)

(NOTE: Space is provided for up to three injuries or illnesses. If there are more than three, select the three most serious; if there are fewer than three, leave unused boxes blank.)

C-1 C-2 C-3

- a. Injury/illness #1: \_\_\_-\_\_\_-\_\_\_ (44-48)
- b. Injury/illness #2: \_\_\_-\_\_\_-\_\_\_ (49-53)
- c. Injury/illness #3: \_\_\_-\_\_\_-\_\_\_ (54-58)

17. Did the employee die as a result of the injury(ies) or illness(es) in question 16? (CHECK ONE)

- 1.  Yes (SKIP TO QUESTION 26) (59)
- 2.  No (CONTINUE WITH QUESTION 18)

18. Classification of employee disability for which the case was settled or judgment rendered (CHECK ONE)

(NOTE: Use definitions in list D for completing this question)

- 1.  None (60)
- 2.  Temporary
- 3.  Permanent partial
- 4.  Permanent total
- 5.  Other (EXPLAIN): Fatalities  
Less than 1%

PART IV. INFORMATION ON SETTLEMENT OF MOST RECENT CLAIM

19. As of the date the case was closed, how many days did the employee lose due to the injury (or illness)? (ENTER NUMBER OF DAYS.)

31 days (average) (61-63)

20. In reporting days lost in question 19, indicate whether you are reporting calendar days or work days (CHECK ONE)

- 1.  Calendar days (64)
- 2.  Work days

21. As of the date this case was closed, what is Amtrak's estimate of the amount of gross earnings the employee lost due to this injury or illness? (ROUND TO THE NEAREST DOLLAR)

\$ 2,604 Loss in gross earnings (average) (65-69)

22. What was the employee's job status on the date the employee returned to work? (CHECK ONE.)

- 1.  Returned to work at Amtrak at same pay (70)
- 2.  Returned to work at Amtrak at lower pay
- 3.  Returned to work at Amtrak at higher pay
- 4.  Did not return to work at Amtrak
- 5.  Do not know
- 6.  Other (Specify) \_\_\_\_\_

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GAO Questionnaire

SPECIAL INSTRUCTIONS

The last three parts of this form are to be completed only if certain events have taken place in the FECA closed claim

-If the employee suffered a permanent total disability as a result of the injury (or illness), Part V must be completed

-If the employee died as a result of the injury (or illness) Part VI must be completed

-If the employee suffered a permanent partial disability as a result of the injury (or illness), please complete Part VII

If the closed case involves none of the above events, you have finished this form. If the case involves any of the above events, go directly to the relevant parts and complete them

PART V INFORMATION ON DISABILITY-RELATED PAYOUT

(NOTE This part is to be completed only if the employee suffered permanent total disability as a result of the injury or work-related illness )

23. Date that employee's permanent total disability began (ENTER MONTH, DAY, AND YEAR )

\_\_ - \_\_ - \_\_ (71-76)

24. Total number of employee's dependents (excluding employee) as of the above date (ENTER NUMBER OF DEPENDENTS AND CONTINUE WITH QUESTION 25 IF NONE, WRITE "0", IF INFORMATION IS NOT AVAILABLE, WRITE "99", IN EITHER OF THESE CASES SKIP QUESTION 25 )

18 Dependents (77-78)  
(average) 1 (80)  
Dup (1-9)

25 List the relationships (for example spouse, child) and ages of all the dependents included in question 24

Relationship to employee	Dependent's age as of disability date
_____	_____ (10-13)
_____	_____ (14-17)
_____	_____ (18-21)
_____	_____ (22-25)
_____	_____ (26-29)
_____	_____ (30-33)

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**PART VI. INFORMATION ON DEATH-RELATED PAYOUT**

(NOTE This part is to be completed only if the employee died as a result of the injury or work-related illness )

26. Date of employee's death  
(ENTER MONTH, DAY, AND YEAR )

\_\_ - \_\_ - \_\_ (34-39)

27. How many days was the employee off work from the day of injury until his or her death? (ENTER NUMBER OF CALENDAR DAYS )

274 days (40-42)  
(average)

28. Total number of employee's dependents (excluding employee) as of the day the employee died (ENTER NUMBER OF DEPENDENTS AND CONTINUE WITH QUESTION 29 IF NONE, WRITE "0", IF INFORMATION IS NOT AVAILABLE, WRITE "999", IN EITHER OF THESE CASES SKIP QUESTION 29 )

11 Dependents (43-44)  
(average)

29. List the relationships (for example spouse, child) and ages of all the dependents included in question 28

Relationship to employee	Dependent's age as of date employee died
_____	_____ (43-48)
_____	_____ (49-52)
_____	_____ (53-56)
_____	_____ (57-60)
_____	_____ (61-64)
_____	_____ (65-68)

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**PART VII. INFORMATION ON PAYOUTS FOR PERMANENT PARTIAL DISABILITIES**

(NOTE: This part is to be completed only if the employee suffered a permanent partial disability as a result of the injury or work-related illness.)

30. On what date did the employee's permanent partial disability begin? (ENTER MONTH, DAY, AND YEAR)

\_\_\_ - \_\_\_ - \_\_\_ (69-74)

31. What was the employee's salary on the date that he or she returned to work after the permanent partial disability occurred? (ENTER HOURLY WAGE)

\$10.81 (75-77)  
(average) 2 (80)  
Dup (1-9)

32. For each injured body part listed in question 16, please indicate the percent of impairment (such as percent loss of function for the body part or percent loss of motion). Use code list C-3 to identify the body part. Write in the appropriate code and the percent impairment.

(NOTE: Space is provided below for up to three body parts; leave unneeded spaces blank. If an estimate is not available, write '999' in the space for percent impairment.)

Body part	Estimate of percent impairment
-----------	--------------------------------

a \_\_\_\_\_ x (10-14)

b \_\_\_\_\_ x (15-19)

c \_\_\_\_\_ x (20-24)

33. What percent of the total body was disabled? (ENTER PERCENTAGE IF NO INFORMATION IS AVAILABLE, ENTER '999'.)

\_\_\_\_\_ x (25-27)

34. If you have additional comments on any items in the questionnaire or need extra space to explain special circumstances of this case, please use the space below

3 (80)

THANK YOU FOR YOUR COOPERATION

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GAO Questionnaire

<u>LIST A STATE CODES</u>		<u>CODE LISTS</u>	
<u>State Code</u>	<u>State</u>	<u>State Code</u>	<u>State</u>
AL	Alabama	MT	Montana
AK	Alaska	NE	Nebraska
AZ	Arizona	NV	Nevada
AR	Arkansas	NH	New Hampshire
CA	California	NJ	New Jersey
CO	Colorado	NM	New Mexico
CT	Connecticut	NY	New York
DE	Delaware	NC	North Carolina
DC	District of Columbia	ND	North Dakota
FL	Florida	OH	Ohio
GA	Georgia	OK	Oklahoma
ID	Idaho	OR	Oregon
IL	Illinois	PA	Pennsylvania
IN	Indiana	RI	Rhode Island
IA	Iowa	SC	South Carolina
KS	Kansas	SD	South Dakota
KY	Kentucky	TN	Tennessee
LA	Louisiana	TX	Texas
ME	Maine	UT	Utah
MD	Maryland	VT	Vermont
MA	Massachusetts	VA	Virginia
MI	Michigan	WA	Washington
MN	Minnesota	WV	West Virginia
MS	Mississippi	WI	Wisconsin
MO	Missouri	WY	Wyoming

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LIST B JOB CODES

<u>Code</u>	<u>Category</u>	<u>Code</u>	<u>Category</u>
1	Baggage handler	29	Material handler
2	Block operator	30	Maintenance of way helper
3	Boiler maker	31	Maintenance of way repair person
4	Brakeman/Flagman	32	Mechanic
5	Car inspector	33	On board food service attendant
6	Carpenter	34	On board train service attendant
7	Car repair person	35	Painter
8	Clerical	36	Pipefitter
9	Coach cleaner	37	Plumber
10	Commissary worker	38	Professional
11	Conductor	39	Red cap
12	Crane operator	40	Reservation and info clerk
13	Driver	41	Security officer
14	Electrician	42	Sheet metal worker
15	Engineer of work equipment	43	Signal person
16	Engineman/Motorman	44	Storage attendant
17	Fireman	45	Supervisor
18	Foreman	46	Switchman
19	Hostler	47	Ticket clerk
20	Ironworker	48	Ticket collector
21	Janitor	49	Timekeeper
22	Laborer	50	Trackman
23	Lineman	51	Upholsterer
24	Machinist	52	Usher/Gateman
25	Machine operator	53	Welder
26	Maintainer of C&S	54	Yardmaster
27	Manager	55	Other
28	Mason		

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LIST C INJURY AND ILLNESS CODES

For each injury to a body part (or for each illness), select the appropriate five-character code from the following lists and write that code in the boxes for the applicable questions. Each five-character code selected must be made up of two numeric characters from code list C-1, one alphabetic character from code list C-2, and two numeric characters from code list C-3. For example:

-- To code a loss of hearing in both ears, select:

49 T 40

-- To code a lower back strain, select

60 N 17

-- To code the amputation of the right leg below the knee, select

14 R 50

-- To code a heart attack, select

40 N 41

-- To code black lung disease, select

20 N 54

-- To code the loss of two phalanges on one finger of the dominant hand, select

14 I 30

-- To code the amputation of three fingers on the non-dominant hand, select

13 M 36

-- To code post-accident stress, select

50 N 99

NOTE: These injury categories are not the same as Amtrak's list of injuries. Therefore, please familiarize yourself with all three lists before answering question 56.

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Code List C-1: Type of Injury or Illness

(Select only one code for each injury or illness)

Code	Category	Code	Category
10	Abscess	41	Fracture or compression
11	Alcoholism	42	Heart disease
12	Allergy	43	Heat exhaustion
13	Amputation-Complete	44	Hernia or rupture
14	Amputation-Partial	45	Hypertension
15	Arteriosclerosis	46	Hysteria
16	Arthritis or Rheumatism	47	Infection
17	Asbestosis	48	Inflammation
18	Asphyxiation	49	Loss or removal
19	Asthma	50	Neurosis, emotional distress, or post-traumatic stress
20	Black Lung	51	Pain (cause unknown)
21	Bronchitis	52	Paralysis
22	Bruise or contusion	53	Paraplegia
23	Burn	54	Particle in eye
24	Bursitis	55	Pneumonia
25	Cancer	56	Poisoning
26	Chondromalacia	57	Protrusion
27	Concussion	58	Quadraplegia
28	Coronary disease	59	Shock (except electrical)
29	Crushing	60	Sprain, strain, spasm, pull, tear, or twist
30	Cut, laceration, abrasion or puncture	61	Stiffness
31	Degeneration	62	Stroke
32	Dermatitis	63	Tuberculosis
33	Diabetes	64	Vision impairment
34	Disfigurement or scar	65	Whiplash
35	Dislocation	66	Other (Write '66' in space provided and print a brief description of the injury or illness on the comments space in question 34.)
36	Dizziness or vertigo		
37	Edema or swelling		
38	Electrical shock		
39	Emphysema		
40	Failure or attack		

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Code List C-2: Extent of Injury

(Select only one for each injury. If not applicable, select "N".)

Code	Category
R	Right
L	Left
T	Both
U	Double
A	One
B	Two
C	Three
D	Four
E	Five
F	One-fourth
G	One-third
H	One-half
I	Two-thirds
J	Three-fourths
K	2 fingers on 1 hand
M	3 fingers on 1 hand
O	4 fingers on 1 hand
P	2 toes on 1 foot
Q	3 toes on 1 foot
S	4 toes on 1 foot
V	5 toes on 1 foot
W	1st degree burn
X	2nd degree burn
Y	3rd degree burn
Z	4th degree burn
N	Not applicable

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GAO Questionnaire

Code List C-3: Injured Body Part or Function

(Select only one for each injury. If not applicable, select '99' )

<u>Code</u>	<u>Category</u>	<u>Code</u>	<u>Category</u>
99	Not applicable	46	Knee, cartilage or meniscus
10	Abdomen	47	Knee, ligament
11	Ankle	48	Knee, general
12	Appendix	49	Leg, upper
13	Arm, upper	50	Leg, lower
14	Arm, lower	51	Leg, general
15	Arm, entire	52	Ligament (other than knee)
16	Back, upper (other than spine)	53	Liver
17	Back, lower (other than spine)	54	Lung
18	Back, general (other than spine)	55	Muscle or tendon
19	Buttock	56	Neck
20	Chest	57	Nose
21	Clavicle	58	Pelvis
22	Coccyx	59	Phalange
23	Disc, cervical	60	Rib
24	Disc, dorsal	61	Shoulder
25	Disc, lumbar or lumbosacral	62	Smell
26	Ear	63	Spinal cord
27	Elbow	64	Spine, cervical
28	Eye	65	Spine, dorsal
29	Eyesight or vision	66	Spine, lumbar or lumbosacral
30	Finger, dominant hand	67	Spleen
31	Finger, non-dominant hand	68	Sternum
32	Foot	69	Taste
33	Gall bladder	70	Throat
34	Groin	71	Thumb, dominant hand
35	Hand, dominant	72	Thumb, non-dominant hand
36	Hand, non-dominant	73	Toe, great
37	Head, brain	74	Toe, lesser
38	Head, face	75	Tooth, front
39	Head, skull	76	Tooth, other
40	Hearing	77	Vertebra
41	Heart	78	Wrist
42	Heel	79	Other (Write '79' in space provided and briefly describe the injured body part or function in the comments space in question 34 )
43	Hip		
44	Joint		
45	Kidney		

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LIST D. DEFINITIONS OF DISABILITY CATEGORIES

<u>CATEGORY</u>	<u>DEFINITION</u>
None	The employee lost no more than one day of work as a result of the injury (or illness) and did not sustain any permanent loss of function in any body part
Temporary	The employee sustained some loss of function which caused him or her to lose more than one day of work but this loss of function disappeared over time and the employee's ability to perform his or her job was restored to its pre-injury level
Permanent Partial	The employee sustained some loss of function (usually of a body part) and this loss of function will not disappear totally with time. Nevertheless, the employee was able to return to the job that he or she held prior to the injury (or illness) or some other job
Permanent Total	The employee sustained a loss of function so serious that the individual cannot perform either his or her Amtrak job or any other job and this loss of function will not disappear over time



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