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Comparison of Amtrak Employee Injury Settlement
Costs Under the Federal Employers' Liability Act
and State Workers' Compensation Programs

Statement of
Neal P. Curtin, Deputy Director
Resources, Community, and Economic Development
Division

Before the
Subcommittee on Surface Transportation
Committee on Commerce, Science and Transportation
United States Senate



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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to discuss the findings of GAO's 1986 report comparing Amtrak's payments for employee injury claims under the Federal Employers' Liability Act (FELA) with the potential costs of operation under state workers' compensation programs.¹ Railroad employees who are injured on the job receive compensation under FELA. Almost all other workers come under the jurisdiction of the state workers' compensation laws. Because the federal government provides financial support to Amtrak, GAO was asked to (1) compare Amtrak's costs for employees' claims settled under FELA with the potential costs of operation under state workers' compensation systems and (2) estimate the amount of money Amtrak claimants have spent on attorneys' fees.

To make our comparisons, we selected a random, stratified sample of all Amtrak FELA employee injury claim cases closed in calendar year 1984 and asked Amtrak to complete a questionnaire providing selected data on each case for our review. We then identified the 11 states in which Amtrak's 1984 FELA payments were the highest--accounting for 82 percent of its total FELA costs in that year--and selected Connecticut and Indiana, whose benefits were the highest and lowest, respectively, among these states. For each of the 314 cases in our sample, we computed the benefits that

¹Amtrak: Comparison of Employee Injury Claims Under Federal and State Laws (GAO/RCED-86-202).

would have been paid if Connecticut's and Indiana's compensation system had been used.

In summary, our August 1986 report demonstrates that Amtrak's payments for employee injury claims closed in 1984 would have been lower under both Connecticut (\$3 million) and Indiana (\$17 million) rules than Amtrak's total payments (\$24 million) under the FELA system. We estimated that settlements for all 1984 FELA cases with representation by an attorney totaled \$21 million, for which the total attorneys' fees ranged from \$5-7 million.

Aside from costs, FELA and the state compensation programs also differ in treatment of liability, coverage, and approaches for determining and paying out benefits. Our testimony today provides a brief description of the key differences in the programs, an overview of our findings on costs, and some observations on other factors that should be taken into account in an overall comparative assessment of FELA and state workers' compensation programs.

BACKGROUND

FELA--which covers rail employees--was enacted in 1908, before any state workers' compensation laws were passed, and was last significantly amended in 1939. The FELA program differs from state compensation programs in several important respects.

Treatment of Liability and
Determination of Benefits

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. Unless the railroad violated certain federal safety statutes, damages are to be reduced by the percentage of the injured employee's own negligence. If a negotiated settlement cannot be reached, the claimant may proceed to litigation.

State workers' compensation systems 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. The employer's insurer pays those benefits to the disabled employee if there is no dispute over the facts in a specific case. 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. However, benefits would vary among different states.

Difference in Coverage

Both FELA and state workers' compensation programs provide coverage for the medical costs of employees' care and rehabilitation and for the loss of wages. FELA additionally covers losses due to pain and suffering related to the injury. Because both systems cover employees' medical costs, we did not include those costs in our analysis. Our analysis included payments covering loss of wages for both systems and, for FELA only, pain and suffering.

Approach to Payment of Benefits

Amtrak settlements under FELA are one-time, lump-sum payments. For FELA cases closed in 1984, the average amount of time that had elapsed between the date of injury and the date of settlement (payment) was 66 weeks. Settlements under a state system--at least for disability cases--typically result in a series of payments, often stretching over a number of years. We found that in the majority of cases, Connecticut and Indiana began providing benefits the same year an injury occurred.

COST FINDINGS

After considering the differences in the FELA and state systems, we estimated the cost of settlement payments under the systems and the attorneys' fees for FELA cases.

Estimate of Settlement Payments

We estimated that Amtrak paid a total of \$24 million under FELA for employee injury cases closed in 1984. This was the latest year for which data were available at the time of our review. In comparison, we estimated that Amtrak would have paid \$21 million, or \$3 million less, if Connecticut's rules had been applied to all cases. If Indiana's rules had been applied, Amtrak would have paid \$7 million, or \$17 million less. (See exhibit A.)

Our analysis was based on the estimated costs of benefits paid by both systems. We did not include payments for employees' medical care and rehabilitation, which are based on reimbursement of actual costs under both systems. In order to adjust for the differences between FELA and the state programs in settling cases and paying out benefits, all settlement amounts in our report are expressed in 1984 dollars, and the state program payments are assumed to begin in the year the injury occurred. Injuries in our sample of FELA cases closed in 1984 occurred between 1975 and 1984.

Accordingly, we calculated the 1984 value of both pre- and post-1984 payments and payment streams.

I want to emphasize that our analysis applies only to Amtrak cases closed in 1984. The data cannot be projected to Amtrak's experience in other years or to the experiences of other railroads.

We found that payments differed, not only between FELA and state systems, but between the two state systems. Under FELA, both liability and the amount of compensation are subject to negotiation. In the Connecticut and Indiana programs, payments to an employee or survivors are based upon established disability categories: temporary disability, permanent partial disability, permanent total disability, and fatality. For each category, exhibit A compares the 1984 Amtrak FELA payments with the potential payments under the respective rules in Connecticut and Indiana.

Under Connecticut's rules, we estimate that Amtrak would have paid \$12 million for permanent total disabilities--\$3 million more than the estimated cost of \$9 million under FELA. However, Amtrak's estimated FELA payments for all the other categories were \$6 million higher than our estimates for Connecticut. Across all categories, then, Amtrak's estimated costs under FELA were \$3 million higher than the costs we estimated for the same cases under Connecticut's rules. Our estimated costs for all categories under

the Indiana program indicated that Amtrak's payments for these cases under FELA were \$17 million higher.

Connecticut and Indiana represent the highest and lowest benefit programs among the 11 states where Amtrak made the highest payments--82 percent of its total payments in 1984. Consequently, our results do not necessarily reflect the higher and lower benefit extremes among all the state programs.

Estimate of Attorneys' Fees

Paid by Amtrak FELA Claimants

FELA is a negligence liability system under which claimants may be represented by an attorney during their negotiations with employers and may proceed to litigation if they do not negotiate a settlement. We were not able to collect data on the portions of Amtrak's FELA settlements that injured employees paid to their attorneys. It is difficult to precisely estimate attorneys' fees on a nationwide basis. However, we were able to develop broad estimates that we believe may be useful in considering this issue.

According to Amtrak officials, attorneys who represent FELA claimants generally receive between 25 and 33.3 percent of the final settlements 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 1984 cases using attorneys.

We estimated that 41 percent of Amtrak's cases closed (1,349) in 1984, when the settlement was greater than zero, were represented by an attorney. As shown in exhibit B, 75 to 87 percent of claimants with permanent disabilities or cases in which a fatality occurred were represented by an attorney, as were 23 percent with a temporary disability and 42 percent with no disability.

We estimated that settlements for all 1984 cases with representation by an attorney totaled \$21 million. Therefore, we estimated that total attorneys' fees would have ranged between \$5 million (25 percent) and \$7 million (33.3 percent).

We were unable to compare the attorneys' fees under FELA with those under the state systems. There were no readily available data on attorneys' fees paid by claimants under state systems. However, 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--i.e., 25-33 percent--of these awards would be allocated toward attorneys' fees.

OTHER FACTORS TO CONSIDER IN COMPARING
FELA WITH THE STATE COMPENSATION PROGRAMS

The data from our report on the costs of FELA and the state programs will be useful in considering changes to the current system. Any overall evaluation of FELA and state workers' compensation programs, however, will have to balance the issue of cost along with numerous other factors. In the course of our work in 1986 and in preparation for this hearing, we were made aware of a number of these issues, and I thought it would be useful to mention some of them to help put our report in perspective.

- What type of system, a negligence statute such as FELA or a state "no-fault" system, best protects workers?

- Should the railroad industry continue to operate under a workers' compensation system different than most other industries?

- Is variation in benefit payments from state to state under state systems better or worse than the variation caused by individual FELA benefit payment determinations?

- Are there significant differences in the administrative and legal burdens under FELA and state systems?

- What are the implications of treating Amtrak differently from other railroads by using a workers' compensation system?

These issues are difficult judgment calls that do not lend themselves to conclusive analysis. The fact that Amtrak paid more under FELA than it would have under the state systems is just one piece of a complicated puzzle.

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Mr Chairman, this concludes my prepared statement. I welcome the opportunity to answer any questions that you may have.

COMPARISON OF ESTIMATED 1984 AMTRAK FELA
PAYMENTS AND ESTIMATED PAYMENTS IN CONNECTICUT
AND INDIANA BY DISABILITY CLASSIFICATION (note a)

| <u>Disability classification</u> | Estimated Amtrak FELA payment | <u>Connecticut</u> | | <u>Indiana</u> | |
|--------------------------------------|--|------------------------------|-------------------------------|------------------------------|-------------------------------|
| | | <u>Estimated payment</u> | <u>Difference^b</u> | <u>Estimated payment</u> | <u>Difference^b</u> |
| | - - - - - (million) - - - - - | | | | |
| Temporary ^c | \$ 7.7 | \$ 2.9 | \$4.8 | \$1.4 | \$ 6.4 |
| Permanent partial ^d | 6.8 | 6.1 | 0.7 | 1.3 | 5.5 |
| Permanent total ^d | 8.5 | 11.7 | -3.2 | 3.6 | 4.9 |
| Fatality ^c | <u>0.8</u> | <u>0.4</u> | <u>0.4</u> | <u>0.3</u> | <u>0.6</u> |
| Total payments ^c | <u>\$23.9</u> | <u>\$21.2</u> | <u>\$2.7</u> | <u>\$6.5</u> | <u>\$17.4</u> |

^a Medical costs are not included, nor are Amtrak cases settled for amounts between \$1 and \$99 because of the small sample size.

^b The difference is calculated by subtracting the state's payment from Amtrak's payment. If the results is a negative (-) number, the state payment is larger; in all other cases, Amtrak's payment is larger.

^c Numbers may not total because of rounding.

^d Assumes that no nonfatality cases that Amtrak settled for less than \$10,000 would be classified as permanent partial or permanent total.

NOTE: Estimated payments are computed to a 95-percent confidence level. Sampling errors at this level are shown in appendixes II and III of GAO's report entitled Amtrak: Comparison of Employee Injury Claims Under Federal and State Laws (GAO/RCED-86-202).

EXHIBIT B

EXHIBIT B

PERCENTAGE OF 1984 AMTRAK CASES
REPRESENTED BY AN ATTORNEY,
BY DISABILITY CATEGORY

| <u>Disability category</u> | <u>Percentage with attorney</u> | <u>Percentage without attorney</u> |
|----------------------------|---------------------------------|------------------------------------|
| None | 41.8 | 58.2 |
| Temporary | 22.7 | 77.3 |
| Permanent partial | 80.7 | 19.3 |
| Permanent total | 87.0 | 13.0 |
| Fatality | 75.0 | 25.0 |

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