

Re-Attack on FELA
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Although it is inconceivable, it is nevertheless true, that the Federal Employers' Liability Act (FELA) is again undergoing another study by our Government. This time the study was mandated by Representative Susan Molinari (R-NY).

The new study is being conducted despite the fact that under President Bush the workings of FELA were reviewed in the early 1990's and a conclusion was reached that the system worked just fine! The paradox of the situation is that our Republican Congress should love it because it is not administered by the Federal Government, and the Act contains no provision for punitive damages.

Regardless, rumor has it, that the powers that be want FELA to become government administered and operate somewhat like the Longshoreman and Harbor Workers Compensation Act, which utilizes the bureaucracy. In order to re-study FELA, Representative Molinari caused the GAO, the investigative arm of Congress, to begin the new FELA study late last year. The GAO held hearings in October. At these hearings testimony was adduced which revealed FELA has served management and labor well for over 3/4 of a century. This is so because, aside from no punitive damages, the carrier and workmen are liable for their proportionate share of the fault.

Query: Isn't this where tort reform is trying to go?

Still, the study proceeded, and congressional committee hearings may begin in late spring.

What does this say about the desires of the Republican majority to shrink big government? There must be an answer to this question. Unfortunately, the ostensible answer escapes logic so it must be strictly political.

The politics of the situation is a fear by those who have vowed to protect the FELA that this equitable Federal Law, which was actually ahead of its time, will be dismantled for purely political reasons.

Another question which also comes to mind at this point is: It is not the mood of the Republican Majority that it's "every man for himself" and let everyone "take responsibility for their own actions"?

This is exactly what FELA accomplishes. A railroader hurt because they are found totally at fault recovers nothing! If it's the company's fault, the employing carrier only pays for its percentage of fault.

At the initial GAO hearings ATLA's Railroad Law Section was contacted and asked to participate.

In turn, ATLA got together with ARLA (American Rail Labor Attorneys) and their staffs, along with a contingent of railroad practitioners consisting of Ben Saunders as the former Chairman of ATLA's Railroad Law Section and Ed Brennan, the current President of ARLA, together with a host of other railroad practitioners. They met with the GAO for several hours and explained the intricacies of this sort of law practice from the plaintiff's prospective.

A major surprise at the hearing was the fact that almost all railroad lawyers handling FELA cases charge only 25% instead of the traditional 33 1/3 percent often seen in automobile cases and a far cry from the even larger fees sometimes necessitated by complex business and products liability litigation. The GAO appeared to be amazed by this revelation.

As soon as other developments arise, we will get the information to you.