Passenger Rail Labor Bargaining Coalition

421 North Seventh Street
Suite 299
Philadelphia, PA 19123

November 30, 2015

via overnight mail

National Railroad Passenger Corporation
Windels Marx Lane Mittendorf, LLP
Anthony Coscia, Chairman of the Board
120 Albany Street Plaza
New Brunswick, NJ 08901

Dear Amtrak Board Chairman Coscia,

On November 9, 2015, we wrote to you regarding the current bargaining emergency and Amtrak's lawless conduct at the bargaining table. We asked that the Board intervene to ensure that Amtrak engage in good faith bargaining for the prompt resolution of the current contract dispute. Instead of assuming responsibility for the illegal and bad faith actions of the company for which you are responsible, you asked the management team responsible for the illegal acts to respond to us. Amtrak Senior Vice President Total Rewards, David Roberts, responded to us in a letter dated November 9, 2015, that continues to make up excuses to justify Amtrak's bad faith at the bargaining table.

We responded on November 27, 2015, to this letter detailing the problems with the November 9, 2015, letter. That letter is attached. At the same time, Senior Director of Labor Relations, Sharon Jindall, also sought to falsify the record with an email to our chief spokesman Richard Edelman dated November 16, 2015, attempting to shift the blame for Amtrak's disregard of its obligations under the Railway Labor Act to the Unions. These false assertions have been corrected in Richard Edelman's November 25, 2015, response. This email string

is also attached.

Also attached is a November 25, 2015, letter from Richard Edelman to Thomas Bloom, Senior Associate General Counsel Law Department regarding the spurious HIPAA argument to justify Amtrak's bad faith bargaining.

Finally, Total Rewards Vice President, David Roberts, suggests that the Unions indemnify Amtrak for any of Amtrak's actions regarding the disclosure of reasonable data required to analyze Amtrak's demands to gut our health benefit agreements. This is of course ridiculous on its face, but to suggest that we should be liable for the actions of a management team whose actions are demonstrably illegal is just more indication of Amtrak's bad faith. This is particularly true since Amtrak has the dubious honor of being in the top ten companies in the United States with 119 employee whistle blower complaints filed against them by its own employees when Amtrak violated their rights under law. Attached is an article dated October 21, 2015, written by Stuart Silverstein and Brian Joseph regarding Amtrak's top ten violator status.

Again, we urge you to get involved directly in these negotiations and stop the lawlessness, bad faith and obstructionism that has characterized these discussions. You are the director of the corporation and responsible for this wrong doing. We are ready to meet with you to discuss the current state of the bargaining emergency. Please do not ignore this request again. Please contact us to start these discussions immediately.

Yours truly,

Jed Dodd, General Chairman
Pennsylvania Federation
Brotherhood of Maintenance of Way Employees
Division - International Brotherhood of
Teamsters

Dave Ingersoll, General Chairman
Brotherhood of Railroad Signalmen

cc Charles Woodcock, Vice President Labor Relations Amtrak

Sharon Jindall, Senior Director Labor Relations Amtrak

Joeseph Boardman, President Amtrak

Christopher Beall, Amtrak Board of Director

Yvonne Braithwaite Burke, Amtrak Board of Director

Thomas Carper, Amtrak Board of Director

Albert DiClemente, Amtrak Board of Director

Jeffrey Moreland, Amtrak Board of Director

Anthony Fox, Secretary of Transportation

Federal Railroad Administrator

Fred Simpson, President BMWED

Dan Picket, President BRS

Passenger Rail Labor Bargaining Coalition

421 North Seventh Street
Philadelphia, PA 19123

November 25, 2015

David Roberts
Senior Vice President, Total Rewards
National Railroad Passenger Corp.
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Dear Mr. Roberts:

Your November 9, 2015 letter (received on November 18, 2015) adds nothing new to Amtrak's position that it will not provide the information PRLBC and its benefits consultant, Cheiron, need to evaluate and respond to Amtrak's proposal for dramatic changes to the health benefits for Maintenance of Way employees and Signalmen while continuing to insist on those substantial concessions; and it is no more persuasive than Amtrak's prior communications on this issue. The main point repeatedly made in your letter is that Amtrak's consultant, Aon Hewitt, did not use all of the information requested by Cheiron. Regardless of how Aon Hewitt derived its financial results and selected data sources for that purpose, Aon Hewitt has full access to the detailed claims information and can use it at any time during the bargaining process. Cheiron has identified the detailed claims information as a requirement to conduct its independent actuarial analysis of Amtrak's proposals especially in light of the substantial changes sought by Amtrak. If Aon Hewitt did not take advantage of all the information available to them to derive explicit and realistic estimates for our members for such significant benefit and program changes, or if the Aon Hewitt employees who did the analysis and projections were not given access to that information, that merely confirms our belief that Aon Hewitt's analysis and projections are inaccurate, inadequate and not a valid basis for bargaining major concessions on health benefits.

We also reject your description of the discussions about the requests for information and Amtrak's response to those requests and your effort to shift blame to the Unions. To the contrary, Cheiron made an initial request in June, but made a more extensive request on July 28th that was acknowledged by Amtrak and Aon Hewitt, and then confirmed in a July 30th email that contained a list of follow-up items including requests for the data dictionaries from Aetna and Caremark that included the Aetna universal record layout with it various fields. At that point Amtrak demanded a non-

disclosure agreement which Cheiron representatives signed. That NDA started that it was for disclosure of Protected Health Information, and recognized Cheiron as a Business Associate. At that point Cheiron had every reason to assume that the requested data would be provided; at that time Amtrak raised no other HIPAA concerns. Amtrak did not provide information to Cheiron until the end of September and then, neither Amtrak nor Aon Hewitt raised a HIPAA concern or said that the information disclosure had been redacted, much less heavily redacted as it had been. It was only when Cheiron tried to work with the data that it was apparent that Amtrak had not provided anything like the data that had been requested. You are also wrong in asserting that Cheiron indicated that it could do an acceptable analysis that would be useful to the PRLBC utilizing the limited data Amtrak is willing to provide, but that the PRLBC was not willing to pay for creation of a new model to accommodate the heavily redacted information. Cheiron has consistently maintained that it needs the information requested for a valid analysis and projection, and that it routinely receives the requested information. Cheiron only made reference to the costs to the PRLBC by saying that the Unions should not have to pay for creation of a new model when a valid one already exists, an alternative would not produce actuarially valid and useful results. Cheiron then followed-up with its July 30th email which sought a comprehensive data production.

Finally, we repeat that as the proponent of dramatic health care concessions by its employees, Amtrak is obliged to show that its proposals are based on a valid analysis and justified. To comply with its duty to bargain in good faith under the RLA Amtrak can provide the information that PRLBC and its consultants at Cheiron need to evaluate Amtrak's proposal, or Amtrak can withdraw its proposal. But, by continuing to advance its proposals for major changes in health benefits while withholding the information sought by the Unions' consultant, Amtrak is not complying with its duties under the RLA.

Yours truly,

Jed Dodd, General Chairman
Pennsylvania Federation
Brotherhood of Maintenance of Way Employees
Division - International Brotherhood of
Teamsters

Dave Ingersoll, General Chairman
Brotherhood of Railroad Signalmen

NATIONAL RAILROAD PASSENGER CORPORATION
60 Massachusetts Avenue, NE, Washington, DC 20002

November 9, 2015

Mr. Jed Dodd
Mr. Dave Ingersoll
Passenger Rail Labor Bargaining Coalition
421 North Seventh Street
Philadelphia, PA 19123

Re: PRLBC Request for AmPlan Participant Data

Dear Mr. Dodd and Mr. Ingersoll,

I write in response to your October 23, 2015, letter addressed to Amtrak Board Chairman Anthony Coscia. Mr. Coscia has asked Amtrak management to respond as we have first-hand knowledge of the issues and events raised in your letter. We have also received your November 9, 2015, letter and may further respond to your inquiries in that letter as warranted.

It is imperative that Amtrak, in the administration of the AmPlan and on behalf of the AmPlan participants, adhere to the requirements of HIPAA and the protections of all participants' Personal Health Information as set forth in 45 C.F.R. 164.502 and 164.514. Amtrak's benefits director, Jan Kelly, first raised these HIPAA issues with Michele Domash of PRLBC's consultant, Cheiron, in July 2015. As stated multiple times throughout this process, we are willing to provide (and believe we have provided) all needed information that would enable Cheiron to evaluate the proposals at hand, and we are willing to provide additional information requested so long as it can be done in compliance with HIPAA.

Contrary to the assertions in your letter, PRLBC's consultant Cheiron has received all of the AmPlan data that Amtrak and Aon Hewitt relied upon in preparing Amtrak's benefits proposal. The data set described in your letter – "the complete Aetna Data Dictionary, which has 178 fields" – was ***not*** used or even accessible by Aon Hewitt or Amtrak when we prepared Amtrak's benefits proposal. In preparing the proposal, Amtrak and Aon Hewitt used only aggregate claims data, which is consistent with standard industry practices. The aggregate data relied upon by Aon Hewitt was provided to PRLBC's consultant Cheiron in July 2015.

On June 22, 2015, Cheiron also asked for "A ***de-identified*** claims file and the associated data dictionary for claims paid beginning 1/1/2013 to 4/30/2015." When Cheiron clarified that this request sought participant-by-participant data, Amtrak asked Cheiron to sign an NDA. Once the NDA was signed, Cheiron received the de-identified claims file that it had requested. None of

this detailed participant data was relied upon or accessible to Amtrak or Aon Hewitt when we prepared Amtrak's benefits proposals, but it was nonetheless provided to Cheiron as requested.[1]

It was only recently, in an October 6, 2015 email, that Cheiron stated for the first time that they wanted ***all 178*** data fields included within the Aetna standard data file layout. Amtrak responded via email that same day, stating that while it would be challenging to provide all 178 fields due to HIPAA requirements – because many of these fields contain highly sensitive and personally identifiable health information of individual participants – we would be happy to discuss and provide additional elements to the extent we could support the provision of this data under HIPAA's "minimum necessary" standard and de-identification requirements. ***Again, this data was not relied upon or even accessible to Amtrak or Aon Hewitt when we prepared Amtrak's benefits proposal.***

On October 7, 2015, Amtrak, Aon Hewitt and Cheiron had a conference call to discuss Cheiron's data request and, specifically, the HIPAA challenges it presented under the "minimum necessary" and de-identification requirements. Cheiron made no attempt during this call to explain why its request for the 178 data fields was the minimally necessary information for them to evaluate Amtrak's benefits proposal. Rather, Cheiron's stated reason for requesting this data was simply because its in-house model incorporates certain pre-set data elements. Cheiron said it could adjust its model to exclude these elements, but its client PRLBC refused to incur the expense of making those adjustments. Without more, this rationale does not justify disclosure of personal health information under the "minimum necessary" standard.

Moreover, Amtrak also suggested a HIPAA-compliant solution to Cheiron's purported model compatibility problem: Instead of providing the participant data in a format where the unnecessary fields are deleted or redacted, Amtrak could authorize Cheiron to receive all 178 fields, but with the unnecessary fields "masked." Masked fields are essentially dummy fields – they would not contain the substantive data, but they would allow Cheiron's model to run without getting tripped up by deletions or redactions. Cheiron said they would consider this suggestion and get back to us, but they have yet to do so.

At the conclusion of the October 7 conference call, Cheiron offered to provide a list of the specific additional data elements it sought, along with an explanation of why these elements were minimally necessary to conduct its analysis of Amtrak's benefits proposal. Amtrak made clear we would be happy to review Cheiron's list of fields and corresponding HIPAA justifications, and would authorize disclosure of the requested data to the greatest extent

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[1] In fact, the only reason these participant data fields were just recently provided to certain Aon Hewitt employees was to enable Aon Hewitt (on Amtrak's behalf) to provide the data to Cheiron in a usable format – e.g., by creating the needed links between prescription and medical claims data; links between dependents with the respective employee and their respective claims data so that data could be de-identified (as required by HIPAA and as stated in Cheiron's request for "de-identified" data). In other words, had Cheiron not requested this detailed participant by participant claims information, no one at Aon Hewitt ever would have had any access to this data. Aon Hewitt certainly did not have access to it when they worked on Amtrak's benefits proposals, and to this day, no one at Aon Hewitt – including their actuaries who worked on Amtrak's proposals – have had access to this individual claims data for any purpose other than to prepare and pass this data on to Cheiron.

permitted by HIPAA. To date Cheiron has not provided the list of required data elements and the explanations for why they are minimally necessary.

Rather than attempting to justify its requests under HIPAA's minimum necessary standard, Cheiron sent subsequent emails on October 12 and 13 re-iterating that Cheiron had designed its actuarial model around "the standard carrier layout"; stating that Cheiron was merely seeking the same data Amtrak and Aon Hewitt had used in preparing Amtrak's proposal (which, as explained above, is not true – Cheiron is seeking data that Aon Hewitt did not use or have access to); and listing other vague and speculative reasons for requesting all 178 data elements (e.g., to avoid the need to make successive requests in the event a need for additional information arises in the future; to enable Cheiron to perform unspecified alternative analyses in the event Cheiron at some future point determines that it wishes to do so, etc.). Cheiron also further expanded its request to include certain dates, including complete dates of birth, which is clearly prohibited under the HIPAA de-identification requirements. 45 C.F.R. 164.514(b)(2)(i)(C).

More recently, at the conclusion of our negotiation meeting on October 14 and in your October 23 letter to Chairman Coscia, PRLBC and Cheiron offered a new rationale for Cheiron's request for all 178 data fields, including protected personal health information: that such disclosures are "standard" in the industry. Your letter specifically states that this is "a standard information request" and goes on to assert that "all of [these 178 fields] are usually provided to Cheiron by Aetna" and by the freight railroads. We have looked into those assertions and believe they are incorrect. If you or Cheiron can provide a written verification from Aetna that it has provided Cheiron with all 178 fields (without masking or deletions) for the freight railroads, including Aetna's rationale for why that disclosure was HIPAA-compliant, we will certainly review such information.

Your statement that Amtrak or the Plan can sidestep HIPAA's privacy rules by entering into a Business Associate Agreement (BAA) with Cheiron is incorrect. Under the applicable regulations, a "business associate" is a person or entity that performs services on behalf of the Plan. Cheiron does not perform services on behalf of AmPlan and therefore it cannot enter into a valid BAA with AmPlan. Moreover, business associates are similarly subject to and bound by HIPAA requirements including the de-identification and minimum necessary standards.

Finally, if BMWE and BRS are confident that the additional requested data can be provided to Cheiron without risk of violating HIPAA, then please advise whether BMWED, BRS and Cheiron (individually and collectively) will agree to indemnify and defend Amtrak, Aetna, CVS/Caremark, Tufts and Aon Hewitt against any claims arising from such disclosure.

Sincerely,

David Roberts
Senior Vice President, Total Rewards

Cc: Anthony R. Coscia, Chairman of the Board
Joseph H. Boardman, President & CEO
Charlie Woodcock, VP Labor Relations
Sharon Jindal, Sr. Director Labor Relations
Jan Kelly, Director Benefits
Fred Simpson, President BMWE
Dan Picket, President BRS
Rich Edelman, Esq.

From: Richard Edelman
Sent: Wednesday, November 25, 2015 2:39 PM
To: 'Jindal, Sharon'
Subject: RE: PRLBC November 24, 2015 Bargaining Session

Sharon- This will acknowledge receipt of your email in response to our cancellation of the bargaining session on health benefits that had been set for November 24th. However, the PRLBC rejects Amtrak's attempt to blame the PRLBC for the problems that necessitated the cancellation. Without repeating detailed correspondence on this issue, Amtrak has not been forthcoming with information as it had represented it would be, it was slow in providing information and then produced heavily redacted data without telling us that the information had been redacted. And Amtrak's alternative narrative of discussions on disclosure of information and when and how HIPAA issues were raised is incorrect. Since Amtrak is the party seeking to make dramatic changes in the health benefits for its employees, Amtrak is obliged to show that its proposals are based on a valid analysis and are indeed necessary. To comply with its duty to bargain in good faith under the RLA Amtrak can provide the information that PRLBC and its consultants at Cheiron need to evaluate Amtrak's proposal, or Amtrak can withdraw its proposal. Please also see the attached copy of a letter that was sent to Tom Bloom today. Rich

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From: Jindal, Sharon [mailto:Sharon.Jindal@amtrak.com]
Sent: Monday, November 16, 2015 2:46 PM
To: Richard Edelman
Subject: FW: PRLBC November 24, 2015 Bargaining Session

Rich,
I corrected a typo below.
Sharon

From: Jindal, Sharon
Sent: Monday, November 16, 2015 12:26 PM
To: Richard Edelman <REdelman@mooneygreen.com>
Cc: Woodcock, Charles <CharlieW@amtrak.com>
Subject: PRLBC November 24, 2015 Bargaining Session

Rich,

I received your November 6, 2015 letter canceling our November 24th bargaining session, which you say is due to your consultant, Cheiron, having received insufficient health plan data to analyze Amtrak's benefits proposals. However, despite Amtrak benefits director Jan Kelly's repeated requests over several months, Cheiron still has not identified the specific data fields it needs and the reason those fields are minimally necessary for Cheiron to do its work, as is required by HIPAA.

Your cancelation of our upcoming November 24th negotiation session is unfortunate and could have been avoided if Cheiron had taken the steps necessary to ensure HIPAA compliance. But Amtrak hereby accepts your cancelation of the meeting.

I look forward to continuing our work rules bargaining on December 3rd.

Sharon

MOONEY, GREEN, SAINDON, MURPHY & WELCH, P.C.

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November 25, 2015

Thomas S. Bloom
Senior Associate General Counsel
Law Department
National Railroad Passenger Corp.
30th Street Station, 2nd Floor
Philadelphia, PA 19104

Dear Tom,

As promised in my letter of November 6, attached is a letter from Cheiron to the PRLBC that provides additional explanation of the necessity for Cheiron to receive the data it has requested (without redactions) in order for Cheiron to independently assess and verify the analysis and projections of Amtrak's health benefits consultant, Aon Hewitt; and to advise PRLBC for its response to Amtrak's proposal to dramatically reduce the quality of benefits that Amtrak provides to its Maintenance of Way and Signal workers under its agreements with BMWED and BRS.

Cheiron's letter explains the need for the requested information in general terms, but also includes an attachment that provides a justification for each of the 178 fields regarding the Aetna Plan, and each of the 104 fields regarding the CVS/Caremark Plan. You will also note that, on further review, Cheiron determined that information for several fields for each plan is not needed. Cheiron's letter also supplements the presentation of Michele Domash on October 14 that provided an initial explanation of the inadequacies and inaccuracies of the Aon Hewitt analysis, and the problems with relying on its projections that are based on insufficient information and unverifiable assumptions. In addition to the explanation for the information requested for each field, Cheiron also indicated that the freight railroads had provided the requested information for almost all of the fields; and it again explained that it receives this information in consulting work outside the railroad industry.

After consideration of Cheiron's letter, as well as the letter of David Roberts (dated November 9 but received on November 18), PRLBC maintains its position that the information requested by Cheiron is necessary for its analysis of Amtrak's proposal and for it to advise the Unions regarding that proposal. The Unions also maintain that pursuant to 45 C.F.R. 164.512(a), the information can be produced in compliance with HIPAA, including the "minimum necessary" standard as described in my November 6 letter. I also note that we believe that disclosure of PHI within the scope of the Cheiron information request is proper under 45 C.F.R

164.506(c)(1) -- Uses and disclosures to carry out treatment, payment, or health care operations--which includes underwriting and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits. We are also baffled by Amtrak's rejection of Cheiron's use of a Business Associate Agreement because the Cheiron-Amtrak Confidentiality Agreement under which the information was produced to Cheiron recognizes Cheiron's status as a Business Associate of the Plan as defined by HIPAA.

Amtrak has made much of its assertion that Aon Hewitt did not use the data requested by Cheiron when Aon Hewitt did its analysis and projections and helped formulate Amtrak's proposals for substantial concessions in employee benefits. If that is so, it is further reason for the Unions to be very skeptical about Amtrak's proposal– a proposal that is based on insufficient information, assumptions and unverifiable projections is a very flawed proposal.

It remains the view of the PRLBC that it is bad faith to propose major changes in benefits and then refuse to supply the information necessary to verify and evaluate the proposals. But more than that, Amtrak is the moving party here; it is the one seeking dramatic concessions from its Signalmen and Maintenance of Way employees; if Amtrak wants the PRLBC to agree to something at all like the changes it has proposed, the Unions insist that their consultant be provided the information it needs to make an independent assessment of the proposals and their impact on the members of the Unions, verify the Aon Hewitt analysis and projections, and advise the PRLBC. If Amtrak reconsiders its position and will provide the data requested by Cheiron so it can do its job, the PRLBC remains willing to continue to engage with the proposals. If Amtrak is not willing to provide the data, it should withdraw its proposals.

Sincerely,

Richard S. Edelman

cc: Charlie Woodcock
Sharon Jindal

Via Electronic Mail

November 25, 2015

Mr. Jed Dodd
General Chairman
Pennsylvania Federation BMWED-IBT
421 North 7th Street, Suite 299
Philadelphia, PA 19123

Mr. David Ingersoll
General Chairman
Brotherhood of Railroad Signalmen
917 Shenandoah Shores Road
Front Royal, VA 22630

Re: Detailed Explanation for Requesting Detailed Health Data

Dear Mr. Dodd and Mr. Ingesoll:

This letter provides information supporting the reasons for the data requests we sent to Amtrak and why the heavily redacted information provided to us by Amtrak in response is insufficient to accurately and effectively complete the following:

- Make an independent assessment of the data,
- Verify the Aon Hewitt analysis and projections, and
- Advise the PRLBC on the Amtrak proposals so that PRLBC can respond to those proposals.

Please note that the October 23, 2015 letter of the PRLBC, regarding the redactions, provided some of the reasons why we need the information we have requested and noted a number of the obstacles created by the heavy redactions in the data transmitted to us. That letter also cited five specific examples of how not having those components will impede our ability to consult on the evaluation of any proposed plan modifications.

In this letter, we provide further explanation as to why it is necessary to obtain each field in Aetna's and CVS Caremark's standard extract data dictionaries that are specifically designed for use by consultants. Next, we provide specific examples of industry norms for collecting individual eligibility and claims data. Finally, we explain our concerns with the current Aon Hewitt analysis for these important computations.

Justification for Each Data Field

Using the complete set of detailed claims and census records supports a strong and accurate actuarial assessment of program costs, particularly when considering such material plan changes as proposed by the company. Relying upon aggregate data and/or using a subset of the complete data will generate incomplete, inconsistent, and costly analysis. In order to develop the required analysis, we are specifically requesting the following:

- The participant de-identified identification number on the eligibility databases must be consistent with the patient de-identified number on all of the claims databases, so that we can link all the medical and pharmacy files together. While Aetna, Tufts, and CVS Caremark all seem to use the same coding for the employee ID, they all use a different ID for the member/dependent ID, and the pharmacy claims file does not even have a field for the member ID. Without being able to link the data, we cannot calculate the maximum out-of-pocket limit as required by the Affordable Care Act, which requires that the accumulation of all medical and pharmacy out-of-pocket costs paid by individuals does not exceed $6,850 for an individual and $13,700 for a family for calendar year 2016, nor can we calculate any other out-of-pocket maximum provision that includes both medical and pharmacy. In addition, we cannot calculate any benefit design with a deductible that covers both medical and pharmacy costs, such as those found in HSA-eligible plans. We also cannot properly adjust results for large claimants, which if not adjusted will materially impact the results.

- For the eligibility database, we need the date of birth (in the format of mm/yyyy or mm/dd/yyyy) to be added back to all four data files (eligibility, Aetna, Tufts, and CVS Caremark). The date of birth had been removed, and a static age was computed and added to the file in place of dates of birth. Without the date of birth, we cannot split the membership or claims experience between Medicare and non-Medicare claims, nor can we project when children will age out of coverage. All of our analysis is done using monthly projections to allow for the proper projected calculation of incurred claims, which are then assigned back to paid claims using reverse calculations for completion factors. This is the most accurate way to project claims forward.

- For the medical claims files, we need 148 out of the 177 fields that were eliminated from Aetna's standard claims file to be put back into the data. Attachment 1 provides the reason we need each such field in Aetna's Universal Claims Record File. Tufts' medical claims should include similar fields.

- For the prescription drug claims file, we have provided a list in Attachment 2 of missing fields and why we would need them. Please send us the files exactly as they were provided by CVS Caremark.

Industry Norms for Collecting and Using Individual Data Fields

We (Cheiron actuaries) have been working with individual eligibility and claims data for over 30 years, as part of our regular actuarial evaluation and analysis provided to plan sponsors and unions to evaluate the effect of proposed changes on plan design. Using such transactional data is part of the professional work product we generate and part of our professional standards to deliver quality actuarial and consulting results.

Typically, we sign a Business Associate's Agreement (BAA) with our clients prior to receiving any detailed data. In addition, often the client's business partners require us to sign a Non-Disclosure Agreement (NDA). On occasion, the client does not have us sign a BAA, and the

business partner does not have us sign an NDA. While we prefer de-identified data, we often are provided identifiable claims, recognizing that the use of such data is governed by the BAA and NDAs. We meet all safe harbor standards to protect our clients' data set forth by the HITech Act passed in 2010. We regularly train and re-train our staff to make sure all of our clients' data is protected, even those that are not subject to a BAA or NDA.

We have received eligibility and individual claims databases from health and welfare plans sponsored by private sector employers, non-profit employers, quasi-government employers, public sector employers, coalitions, and multiemployer funds. Even when we received individual claims from the Department of Defense, the government left the full date of birth on the individual claim records.

We are fully aware that other consulting firms collect individual claims and eligibility data from employer sponsored plans. We know this on two levels. First Milliman, Towers Watson, and OptumInsight all sell pricing tools based on individual claims and eligibility records. Mercer and Segal refer to their propriety pricing tools, which are based on individual claims. Second, we have hired health consultants from Aon, Buck, and OptumInsight all whom have told us they had used individual claims records in completing analyses.

We also have seen time and again that when there are changes to a health and welfare program (especially modifications that appear significant) that using the client's actual experience data will yield vastly different results than any external model or estimator pricing tool. Deriving explicit assumptions on the change in utilization and modeling together with actual past utilization transactions (i.e., repricing as though the revised plan had been in place) yields realistic and reliable results. Also, developing a communication plan, which explains how many people will likely be impacted, can be very helpful at gaining acceptance. This is particularly important for elected leaders, such as union representatives, appointed leaders and staff in the public sector, who must make plan design decisions and communicate any changes to participants.

Concerns about the Existing Aon Hewitt Analysis

At the October 14, 2015 meeting held in Amtrak's offices in Philadelphia, it was noted by Cheiron and recognized by Amtrak that the data needed to be updated to be aligned with actual experience. Starting cost figures for 2014 were overstated by some $20 million. In the context of the $50 million projected by Aon Hewitt in plan savings, this is a material variation. Furthermore, as noted in the materials distributed in the October 14, 2015 meeting, many inconsistencies exist in the current Aon Hewitt analysis in both census and claims information. Finally, as explained by AonHewitt, they applied general benchmarks (often from management and non-union experience) and general assumptions to this group when developing its pricing estimates. Using the detailed facts (drawn from the requested detailed claims and eligibility files) in place of general assumptions and general benchmarks provides more accurate actuarial result by using facts instead of impressions.

To date, no updated information has been provided by Aon Hewitt to address the use of outdated information. Conducting an analysis from overstated or understated experience is not worthwhile, as any proposed amendments and their associated value would be distorted without a solid baseline. Furthermore, extrapolating from industry average data can be inaccurate for any group, which is part of the reason why underwriters assign credibility factors far below what statistical analysis would suggest is credible.

For Amtrak there are two additional items that would cause us great concern about using industry averages, i.e., pricing tools, to develop the financial impact. Those two unique items are:

1) Passenger transportation employees do not have average morbidity, i.e., typically thought to be 10% higher than the U.S. Insured average morbidity. Without knowing where the extra morbidity is coming from, we could not even accurately price a deductible change. For example, if the extra morbidity is from the top 1% of the claimants having especially high costs versus all covered lives an extra 10% morbidity, this would significantly impact the value of increasing a deductible limit.

2) This Plan applies a uniform employee contribution rate, with the same monthly premium rate required to be paid by the employee to enroll in the plan regardless of whether the coverage is for the employee, employee plus children or the full family. This type of plan does not compare well with many plans in the industry having a multi-tier contribution rate. This greatly impacts the amount of claims for which a plan pays secondary to another plan, i.e. coordination of benefits (COB). The industry average COB, i.e., spouses with other insurance, is typically less than 1% of the claims. However, for plans with one contribution rate, the amount of claims with COB is typically between 5 and 10%. Amtrak has proposed to switch from a single tier to a multi-tier contribution rate. This is an enormous change in philosophy and will lead to a very large reduction in COB claims. To estimate the change accurately, we have to know how much COB exists in this plan.

Given that we know about these biases, in order to comply with Actuarial Standard of Practice No. 13, we are required to employ the detailed data we have requested or else document that we were not able to account for these differences and explain why. Please see below an excerpt from ASOP 13 for reference.

> *3.2 Historical Insurance and Non-Insurance Data—**The actuary should select data appropriate for the trends being analyzed.** The data can consist of historical insurance or non-insurance information. When selecting data, the actuary should consider the following: a. the credibility assigned to the data by the actuary; b. the time period for which the data is available; c. the relationship to the items being trended; and **d. the effect of known biases or distortions on the data relied upon** (for example, the impact of catastrophic influences, seasonality, coverage changes, nonrecurring events, claim practices, and distributional changes in deductibles, types of risks, and policy limits).*

The lack of individual data to understand the impact on their memberships when the data is so readily available, prevents the BMWED and BRS leaders from meeting their obligation to make informed decisions about changes to plan design and impedes their ability to negotiate based on a valid and verifiable analysis of the Plan and projections about its future.

Required Disclosure and Uses

This letter was prepared for BMWED, BRS, and their professionals for the purpose of collecting eligibility and claims files. This letter is not intended to benefit any third party, and Cheiron assumes no duty or liability to any such party.

In preparing this letter, we relied on information (some oral and some written) supplied by Aon, Amtrak, Aetna, BMWED, and BRS. This information includes, but is not limited to, the plan provisions, employee data, and financial information. We performed an informal examination of the obvious characteristics of the data for reasonableness and consistency in accordance with Actuarial Standard of Practice No. 23.

To the best of our knowledge, this letter and its contents have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this report. This letter does not address any contractual or legal issues. We are not attorneys, and our firm does not provide any legal services or advice.

We hope the combination of our two letters helps explain why supplying the needed detailed information stated above is so critical to this bargaining process, particularly when such data is readily available and transferable for analysis.

Sincerely,
Cheiron

Karen Mallett, FSA, MAAA
Principal Consulting Actuary

Michele Domash, FSA, MAAA
Principal Consulting Actuary

Attachments

Attachment 1 - Amtrak Negotiations with BMWED and BRS

Detailed Explanation of Why Cheiron Needs the Data Fields Listed Below

Source of Fields: aetna

Universal Medical / Dental File 1480-Byte Record Layout

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For National Freight Network Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
1	Hierarchy Level 1 (Most Summarized)	Yes	Yes	No	Used to ensure received claims are for the correct group
2	Hierarchy Level 2	Yes	Yes	No	Same as the reason listed in Field 1
3	Hierarchy Level 3	Yes	Yes	No	Same as the reason listed in Field 1
4	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
5	Hierarchy Level 5	Yes	Yes	No	Same as the reason listed in Field 1
6	Hierarchy Level 6 (Most Granular)	Yes	Yes	No	Same as the reason listed in Field 1
7	Source System Platform	Yes	Yes	No	Used to ensure the correct data dictionary is used
8	Adjustment Code	Yes	Yes	No	Critical in making sure we are handling reversed and adjusted claims correctly
9	Preferred vs Non-Preferred Benefit Level	Yes	Yes	Yes	Used to differentiate claims from different networks. The field is critical for pricing proposed benefit changes and evaluating different benefit options.
10	General Category of Health Plan	Yes	Yes	No	Critical for considering network options
11	Line of Business	Yes	Yes	No	Critical to know what network option the claim was priced under
12	Classification Code	Yes	Yes	No	Critical for network comparisons
13	Benefit Identification Code (BIC)	Yes	Yes	No	Used for evaluating benefit-specific copays (such as urgent care, emergency room, etc.) and other changes in benefit design
14	Plan Code or Extension of Hierarchy	Yes	Yes	Yes	Critical for considering network options
15	Benefit Tier	Yes	Yes	Yes	Used to understand value of gatekeeper and use of gatekeeper
16	Funding Arrangement	Yes	Yes	No	Confirmation of correct self-funding
17	Employee SSN *	Yes	Yes	Yes (de-identified)	We need a de-identified employee ID to identify claims from the same household for tracking claims at family level. The code needs to be the same as on the eligibility and Rx files. It could be placed here or field 49 or field 114.
18	Employee Last Name *	No	No	No	Not needed
19	Employee First Name or Initial *	No	No	No	Not needed
20	Employee Gender	Yes	Yes	Yes	Used to understand population characteristics, to evaluate underlying demographic risks for any cost analyses, and to project changes in demographics.
21	Employee Date of Birth **	Yes	Yes	No	Used to understand population characteristics, to evaluate underlying demographic risks for any cost analyses, and to project changes in demographics. Also used to split Medicare and non-Medicare claims, project when children will age out of coverage, and as a secondary source to validate the person code or for the few claims that may be missing a person code. Need MM/YYYY at a minimum.
22	Employee Zip Code *	Yes	Yes	No	Used to develop baseline for pricing benefit changes. For example if all healthier covered lives live in one place then need to reflect that in pricing impact of benefit choices as lower cost covered lives tend to select worse benefit coverage. This can be limited to 3 digit.
23	Employee State	Yes	Yes	Yes	Used to validate Field 22
24	Coverage/Enrollment Tier	Yes	Yes	No	Simplifies having to program from eligibility data base.
25	Member SSN *	Yes	Yes	No	Not needed

Source of Fields: aetna

Universal Medical / Dental File 1480-Byte Record Layout

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For National Freight Network Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
26	Member ID (Assigned in Data Warehouse)	Yes	Yes	Yes (must tie to Rx and elig.	Used to accumulate the medical and pharmacy out-of-pocket cost by individuals
27	Member Number *	Yes	Yes	No	Used to validate Field 31 and fill-in if Field 31 is blank for any individual.
28	Member Last Name *	No	No	No	Not needed
29	Member First Name *	No	No	No	Not needed
30	Member Gender	Yes	Yes	Yes	Same as the reason listed in Field 20
31	Member Relationship to Employee	Yes	Yes	Yes	Used to calculate teiring factors and conduct benefit analysis at family level. We also need if we are not given Field 26 and have to reverse engineer in order to get the individual level data.
32	Member Date of Birth **	Yes	Yes	No	Same as the reason listed in Field 21
33	Source-Specific Transaction ID Number	Yes	Yes	No	Used to identify claims from the same episode. Critical for re-pricing of claims contracted on a global basis such as maternity.
34	ACAS Generation/Segment Number	Yes	Yes	No	Same as the reason listed in Field 33
35	ACAS Pointer Back to Previous Gen/Seg	Yes	Yes	No	Same as the reason listed in Field 33
36	Traditional Claim ID	Yes	Yes	No	Same as the reason listed in Field 33
37	Expense/Pay Line Number	Yes	Yes	No	Same as the reason listed in Field 33
38	Claim Line ID (Assigned in Data Warehouse)	Yes	Yes	No	Same as the reason listed in Field 33
39	Employee Network ID	Yes	Yes	No	Used if employees are placed in different networks - may not be applicable to AmPlan
40	Servicing Provider Network ID	Yes	Yes	No	Allow for identifying claims by network.
41	Referral Type	Yes	Yes	No	Need that to identify Specialty service with referrals - may not be applicable to AmPlan
42	PCP's IRS Tax Id Number (TIN) Format Code	Yes	Yes	No	This would allow us to understand the value and disruption of having a PCP gatekeeper
43	PCP's IRS Tax Identification Number (TIN)	Yes	Yes	No	Same as the reason listed in Field 42
44	PCP's Name (Last or Full)	Yes	Yes	No	Same as the reason listed in Field 42 - Allows to identify multiple PCPs with same TIN
45	Servicing Provider Tax ID Number (TIN) Format Code	Yes	Yes	No	Used for network analysis. Needed if different options are using different networks
46	Servicing Provider Tax ID Number (TIN)	Yes	Yes	No	Same as the reason listed in Field 45
47	Servicing Provider PIN	Yes	Yes	No	Same as the reason listed in Field 45
48	Servicing Provider Name (Last or Full)	Yes	Yes	No	Same as the reason listed in Field 45 - Allows to identify multiple PCPs with same TIN
49	Servicing Provider Street Address 1	Yes	Yes	No	Same as the reason listed in Field 45
50	Servicing Provider Street Address 2	Yes	Yes	No	Same as the reason listed in Field 45
51	Servicing Provider City	Yes	Yes	No	Same as the reason listed in Field 45
52	Servicing Provider State	Yes	Yes	No	Same as the reason listed in Field 45
53	Servicing Provider Zip Code	Yes	Yes	No	Same as the reason listed in Field 45. Also needed to compare use of providers close to home vs. away from home which is important for designing benefits for this group.
54	Servicing Provider Type	Yes	Yes	No	Needed for claims re-pricing to determine applicable copay especially urgent care benefits
55	Servicing Provider Specialty Code	Yes	Yes	No	Same as the reason listed in Field 54
56	Assignment of Benefits to Provider Code	Yes	Yes	No	Same as the reason listed in Field 54
57	Participating Provider Code	Yes	Yes	No	Needed for claims re-pricing to determine if in or out of network benefits apply

Source of Fields: aetna

Universal Medical / Dental File 1480-Byte Record Layout

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For National Freight Network Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
58	Date Claim Submission Received	Yes	Yes	No	Needed to convert incurred claims to paid claims for cash flow purposes and to evaluate outstanding incurred but not paid claims
59	Date Processed (Non-HMO Only)	Yes	Yes	Yes	Same as the reason listed in Field 58
60	Date Service Started **	Yes	Yes	No	Critical to determine incurred date to project cost accurately and to calculate number of visits
61	Date Service Stopped **	Yes	Yes	No	Critical for evaluating per day copays for hospitals and for evaluating severity of conditions and monitoring length of stay.
62	Date Processed (All)	Yes	Yes	No	Same as the reason listed in Field 58
63	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
64	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
65	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
66	Major Diagnostic Category (MDC)	Yes	Yes	Yes	Used to categorize claims by diagnostic group and to understand population characteristics and underlying risks for determining if benefit designs are appropriate to align incentives to use most cost effective health provider services
67	Diagnosis Related Group (DRG)	Yes	Yes	Yes	Same as the reason listed in Field 66
68	Line-Level Procedure Code (CPT, HCPCS, ADA, CDT)	Yes	Yes	No	Used to identify type of the procedures occurred during the episode, and needed it for specific benefit pricing
69	Line-Level Procedure Code Modifier	Yes	Yes	No	Used to identify type of the procedures occurred during the episode, and needed it for specific benefit pricing
70	Line-Level Procedure Code Type	Yes	Yes	No	Used to identify type of the procedures occurred during the episode, and needed it for specific benefit pricing
71	Filler Space Reserved for Future Use	Yes	Yes	No	For data format only
72	Filler Space Reserved for Future Use	Yes	Yes	No	For data format only
73	Filler Space Reserved for Future Use	Yes	Yes	No	For data format only
74	Type of Service	Yes	Yes	Yes	Same as the reason listed in Field 54
75	Service Benefit Code	Yes	Yes	No	Used for evaluating certain plan designs and other changes in benefits
76	Tooth Number	No	No	No	Same as the reason listed in Field 54
77	Place of Service	Yes	Yes	No	Same as the reason listed in Field 54
78	UB92 Patient/Discharge Status	Yes	Yes	No	Same as the reason listed in Field 54
79	UB92 Revenue Center	Yes	Yes	No	Same as the reason listed in Field 54
80	UB92 Bill Type	Yes	Yes	No	Same as the reason listed in Field 54
81	Number/Units of Service	Yes	Yes	No	Same as the reason listed in Field 54
82	Source Number/Units of Service	Yes	Yes	No	Same as the reason listed in Field 54
83	Gross Submitted Expense ***	No	No	No	Not needed
84	Net Submitted Expense ***	No	Yes	No	Needed if comparing networks, UCR schedules, or covering currently non-covered benefits
85	Not Covered Amount 1	Yes	No	No	Same as the reason listed in Field 84
86	Not Covered Amount 2	Yes	No	No	Same as the reason listed in Field 84
87	Not Covered Amount 3	Yes	No	No	Same as the reason listed in Field 84
88	Action or Reason Code 1	Yes	No	No	Same as the reason listed in Field 84
89	Action or Reason Code 2	Yes	No	No	Same as the reason listed in Field 84
90	Action or Reason Code 3	Yes	No	No	Same as the reason listed in Field 84
91	Covered Expense	Yes	No	Yes	Need to project the cost of the proposed benefit changes and baseline projected costs

Source of Fields: aetna

Universal Medical / Dental File 1480-Byte Record Layout

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For National Freight Network Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
92	Allowed Amount	Yes	No	Yes	Same as the reason listed in Field 91
93	Filler Space Reserved for Future Use	Yes	No	No	Not needed
94	Copayment Amount	Yes	No	Yes	Same as the reason listed in Field 91
95	Source Copayment Amount	Yes	No	Yes	Same as the reason listed in Field 91
96	Deductible Amount	Yes	No	Yes	Same as the reason listed in Field 91
97	Coinsurance	Yes	No	Yes	Same as the reason listed in Field 91
98	Source Coinsurance Amount	Yes	No	Yes	Same as the reason listed in Field 91
99	Benefit Payable	Yes	No	Yes	Same as the reason listed in Field 91
100	Paid Amount	Yes	No	Yes	Same as the reason listed in Field 91
101	COB Paid Amount	Yes	No	No	Same as the reason listed in Field 91
102	Aetna Health Fund - Before Fund Deductible	No	No	No	Same as the reason listed in Field 91 if populated
103	Aetna Health Fund - Payable Amount	No	No	No	Same as the reason listed in Field 91 if populated
104	Savings - Negotiated Fee ***	No	No	No	Same as the reason listed in Field 91. Also helps show if coinsurance is applying before or after copays.
105	Savings - R&C	Yes	No	No	Same as the reason listed in Field 104
106	Savings - COB	Yes	No	No	Same as the reason listed in Field 104
107	Savings - Source COB	Yes	Yes	No	Same as the reason listed in Field 104
108	Medicare Code	Yes	Yes	Yes	Same as the reason listed in Field 91
109	Type of Expense - COB	Yes	Yes	No	Same as the reason listed in Field 91
110	COB Code	Yes	Yes	No	Same as the reason listed in Field 91
111	National Drug Code	Yes	Yes	No	Same as the reason listed in Field 91
112	Member 'CUMBID' *	No	No	No	Same as the reason listed in Field 91. Also helps show if coinsurance is applying before or after copays.
113	Status of Claim	Yes	Yes	No	Used to understand the status of claims (paid vs denied)
114	Non-SSN Employee ID *	No	No	No	Could be used in place of Field 17
115	Reversal Code	Yes	Yes	No	Critical to insure using data bases correctly.
116	Admit Counter	Yes	Yes	No	Serves as a check to validate that we have counted inpatient cost correctly
117	Administrative Savings Amount	Yes	No	No	We don't think that this applies for this group, but to be safe providing a blank field should not cause any problems
118	Aexcel Provider Designation Code	Yes	Yes	No	Could be very helpful in determining network options and alternatives
119	Aexcel Plan Design Code	Yes	Yes	No	Same as the reason listed in Field 118
120	Aexcel Benefit Tier Code	Yes	Yes	No	Same as the reason listed in Field 118
121	Aexcel Designated Provider Specialty	Yes	Yes	No	Same as the reason listed in Field 118
122	Product Distinction Code	Yes	Yes	No	Same as the reason listed in Field 118
123	Billed Eligible Amount (masked - do not use this field)	No	No	No	Not needed
124	Servicing Provider Class Code	Yes	Yes	No	Same as the reason listed in Field 91
125	Present on Admission Code (1)	Yes	Yes	No	Allows for understanding the impact on the membership and needed to develop medical management programs since this is a diagnosis code
126	Present on Admission Code (2)	Yes	Yes	No	Same as the reason listed in Field 125
127	Present on Admission Code (3)	Yes	Yes	No	Same as the reason listed in Field 125
128	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
129	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed

Source of Fields: aetna

Universal Medical / Dental File 1480-Byte Record Layout

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For National Freight Network Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
130	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
131	Pricing Method Code	Yes	Yes	No	Used in repricing claims to evaluate benefit changes.
132	Servicing Provider Type Class Code	Yes	Yes	No	Same as the reason listed in Field 91
133	Servicing Provider Specialty Category Code	Yes	Yes	No	Same as the reason listed in Field 91
134	Servicing Provider NPI	Yes	Yes	No	Same as the reason listed in Field 45
135	Total Deductible Met Indicator	No	No	No	Same as the reason listed in Field 91
136	Total Interest Amount	Yes	No	No	If populate it would be critical because we would use different trends in our projections
137	Total Surcharge Amount	Yes	No	No	If populate it would be critical because we would use different trends in our projections
138	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
139	HCFA Place of Service Code	Yes	Yes	No	Same as the reason listed in Field 91
140	HCFA Admit Source Code	No	No	No	Same as the reason listed in Field 91
141	HCFA Admit Type Code	Yes	Yes	No	Same as the reason listed in Field 91
142	Admission Date	Yes	Yes	No	Same as the reason listed in Field 60
143	Discharge Date	Yes	Yes	No	Same as the reason listed in Field 60
144	Line-Level Procedure Code Modifier (2)	Yes	Yes	No	Used for pricing of benefit changes such as modifying exclusions
145	Line-Level Procedure Code Modifier (3)	Yes	Yes	No	Same as the reason listed in Field 144
146	Present on Admission Code (4)	Yes	Yes	No	Same as the reason listed in Field 125
147	Present on Admission Code (5)	Yes	Yes	No	Same as the reason listed in Field 125
148	Present on Admission Code (6)	Yes	Yes	No	Same as the reason listed in Field 125
149	Present on Admission Code (7)	Yes	Yes	No	Same as the reason listed in Field 125
150	Present on Admission Code (8)	Yes	Yes	No	Same as the reason listed in Field 125
151	Present on Admission Code (9)	Yes	Yes	No	Same as the reason listed in Field 125
152	Present on Admission Code (10)	Yes	Yes	No	Same as the reason listed in Field 125
153	Diagnosis Code 1	Yes	Yes	Yes	Same as the reason listed in Field 125
154	Diagnosis Code 2	Yes	Yes	No	Same as the reason listed in Field 125
155	Diagnosis Code 3	Yes	Yes	No	Same as the reason listed in Field 125
156	Diagnosis Code 4	Yes	Yes	No	Same as the reason listed in Field 125
157	Diagnosis Code 5	Yes	Yes	No	Same as the reason listed in Field 125
158	Diagnosis Code 6	Yes	Yes	No	Same as the reason listed in Field 125
159	Diagnosis Code 7	Yes	Yes	No	Same as the reason listed in Field 125
160	Diagnosis Code 8	Yes	Yes	No	Same as the reason listed in Field 125
161	Diagnosis Code 9	Yes	Yes	No	Same as the reason listed in Field 125
162	Diagnosis Code 10	Yes	Yes	No	Same as the reason listed in Field 125
163	ICD Procedure Code 1	Yes	Yes	Yes	Same as the reason listed in Field 125
164	ICD Procedure Code 2	Yes	Yes	No	Same as the reason listed in Field 125
165	ICD Procedure Code 3	Yes	Yes	No	Same as the reason listed in Field 125
166	ICD Procedure Code 4	Yes	Yes	No	Same as the reason listed in Field 125
167	ICD Procedure Code 5	Yes	Yes	No	Same as the reason listed in Field 125
168	ICD Procedure Code 6	Yes	Yes	No	Same as the reason listed in Field 125
169	Aetna Health Fund Determination Order Code	No	No	No	Same as the reason listed in Field 91

Source of Fields: aetna

Universal Medical / Dental File 1480-Byte Record Layout

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For National Freight Network Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
170	Aetna Health Fund Member Share of Coin Amount	No	No	No	Same as the reason listed in Field 91
171	Aetna Health Fund Member Copay Amount	No	No	No	Same as the reason listed in Field 91
172	Aetna Health Fund Member Deductible Amount	No	No	No	Same as the reason listed in Field 91
173	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
174	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
175	ICD-10 Indicator	Yes	Yes	No	Same as the reason listed in Field 125
176	Exchange ID	Yes	Yes	No	Not needed
177	Filler Space Reserved for Future Use	Yes	Yes	No	Not needed
178	End of Record Marker	Yes	Yes	No	Not needed

*** For Full Risk or Split Funded records, this field will be masked (blank).**
**** For Full Risk or Split Funded records or when masked, this field will only show the year.**
***** This field will be masked on all files (unless an exception request has been made via the account management team). Financial/numeric fields that are masked will contain 3 zeros and will be right justified; text fields that are masked will be blank.**

This file is tab delimited, fixed length, and does not contain a header (see "Header" tab for header record on this spreadsheet).

Attachment 2 - Amtrak Negotiations with BMWED and BRS

Detailed Explanation of Why Cheiron Needs the Data Fields Listed Below

Source of Data: CVS CAREMARK

Standard CET FILE LAYOUT

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
1	RECORD IDENTIFIER	No	Yes	Used to ensure received claims are for the correct group/cohort
2	CARRIER ID	Yes	Yes	Same as the reason listed in Field 1
3	ACCOUNT ID/GROUP EXTENSION CODE	Yes	No	Same as the reason listed in Field 1
4	GROUP ID	Yes	Yes	Same as the reason listed in Field 1
5	CARDHOLDER/MEMBER ID	Yes	Yes	Used to accumulate the medical and pharmacy out-of-pocket cost by individuals and families. Must be able to tie to medical ID
6	ALTERNATE ID	No	No	Not needed
7	CARE FACILITY ID	No	No	Used to calculate cost by care facility where patient received pharmacy services.
8	PERSON CODE	Yes	Yes	Used to calculate deductible and out-of-pocket max at individual level
9	CARDHOLDER LAST NAME	No	No	Not needed
10	CARDHOLDER FIRST NAME	No	No	Not needed
11	CARDHOLDER MIDDLE INITIAL	No	No	Not needed
12	PATIENT LAST NAME	No	No	Not needed
13	PATIENT FIRST NAME OR INITIAL	No	No	Not needed
14	PATIENT BIRTHDATE	Yes	No	Used to understand population characteristics, to evaluate underlying demographic risks for any cost analyses, and to project changes in demographics. Also used to split Medicare and non-Medicare claims, project when children will age out of coverage, and as a secondary source to validate the person code or for the few claims that may be missing a person code. Need MM/YYYY at a minimum.
15	PATIENT SEX	Yes	Yes	Used to understand population characteristics, to evaluate underlying demographic risks for any cost analyses, and to project changes in demographics.

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
16	RELATIONSHIP CODE	Yes	Yes	Used to calculate teiring factors and conduct benefit analysis at family level. We also need if we are not given the person code and have to reverse engineer in order to get the individual level data.
17	FILLER	No	No	Not needed
18	PROVIDER ID	Yes	No	Used for network analysis and if we need to re-price claims for pharmacy management, narrow networks, or some medical management.
19	PROVIDER ID QUALIFIER	Yes	No	Same as the reason listed in Field 18
20	PROVIDER NAME	Yes	No	Only needed to validate that Field 18 has been populated correctly.
21	NETWORK ID	Yes	Yes	Same as the reason listed in Field 18
22	RX NUMBER	No	No	Not needed as per CVS Data Dictionary this is not a valid field
23	RX NUMBER QUALIFIER	No	No	Not needed as per CVS Data Dictionary this is not a valid field
24	DATE FILLED	Yes	No	Used to identify when the claims received/processed and needed projecting ALL costs whether a baseline or modification.
25	DATE PRESCRIPTION WRITTEN	Yes	No	Same as the reason listed in Field 24 plus can be used to validate Field 24
26	RX CLAIM DATE PROCESSED	Yes	Yes	Needed to convert incurred claims to paid claims for cash flow purposes and to evaluate outstanding incurred but not paid claims.
27	TRANSACTION ID	Yes	No	Used to identify procedures made under the same claim and needed for many claim analysis such as changes in copay amounts.
28	CLAIM STATUS FLAG	Yes	No	Used to ensure reversed and adjusted claims are handled properly
29	CLAIM ORIGINATION FLAG	Yes	No	Used to identify whether the script is electronic or written in paper to determine the admin fees. Also impacts the value of any pharmacy management program
30	REIMBURSEMENT TYPE	No	No	Only needed to validate the Field 29 has been populated correctly.
31	NEW/REFILL NUMBER	Yes	No	Used to understand whether the drug is new or refilled drug. This would be critical in valuing the impact of the proposed high deductible plans could have on a gaps in care, i.e., people not taking their medication.
32	NUMBER OF REFILLS AUTHORIZED	Yes	No	Same as the reason listed in Field 31
33	PRICE SOURCE INDICATOR	Yes	Yes	Used to understand the source of the drug cost. Need to evaluate the costs in other fields and whether pricing of the drug is consistent with the market.
34	PRODUCT ID	Yes	Yes	Used in detailed pricing of pharmacy management programs.

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
35	PRODUCT ID QUALIFIER	Yes	Yes	Same as the reason listed in Field 34
36	DRUG NAME	Yes	No	Used to understand impact on certain drugs of proposals including number of people taking a certain drug and/or to validate the category placement for copay purposes of certain prescriptions
37	DRUG ADMINISTRATION ROUTE CODE	No	No	Not needed
38	GPI CODE	No	No	Same as the reason listed in Filed 36
39	MED B/ MED D INDICATOR	No	No	Used to understand if the drug is covered under Medicare Part B or Part D, and critical in determining the impact of switching from a 1 tier employee/retiree contribution to 4 tier employee/retiree contribution
40	FILLER	No	No	Not needed
41	GENERIC CLASS	Yes	No	Critical in evaluating high deductible plans and changes in copays because the utilization between the generic vs. formulary brand vs. non-formulary brand.
42	GENERIC NAME	Yes	No	Same as the reason listed in Field 41
43	GENERIC BRAND INDICATOR	Yes	Yes	Same as the reason listed in Field 41
44	THERAPEUTIC CLASS/AHFS CODE	Yes	Yes	Same as the reason listed in Field 41 and in evaluating both pharmacy and medical management programs
45	MULTI/SINGLE SOURCE INDICATOR	Yes	No	Same as the reason listed in Field 41
46	DRUG DOSAGE FORM	Yes	No	Same as the reason listed in Field 34
47	DRUG STRENGTH	Yes	No	Same as the reason listed in Field 34
48	DEA CLASS	Yes	No	Same as the reason listed in Field 34
49	COMPOUND INDICATOR	Yes	Yes	Critical in all pricing analysis to appropriately price the drugs and to reflect the significant changes in compound drug use and price in the market
50	PRODUCT SELECTION CODE (DAW)	Yes	No	Used to understand whether drug is dispensed as subscribed and could be used for pharmacy management analysis especially genetic incentive programs
51	OTHER COVERAGE	Yes	No	Used to understand whether coverage is available. This is critical to evaluate changes in covered lives that would result from switching from a 1 to 4 tier employee/retiree contribution or in projecting the selection that would occur from offering a multi-choice program.
52	PAYABLE QUANTITY	Yes	Yes	This is critical to determine if pharmacy management programs that limit dose and quantity are being effective or are simply transferring the cost to the members.

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
53	PHARMACY AMOUNT SUBMITTED (U&C)	Yes	No	Used for evaluating PBM or in doing detail analysis on causes for paper claims
54	DAYS SUPPLY	Yes	Yes	Used in pricing proposed changes such as mandatory mail options
55	SUBMITTED INGREDIENT COST	Yes	No	Same as the reason listed in Field 53
56	INGREDIENT COST PAYABLE	Yes	Yes	Needed for re-pricing claims for benefit changes. Examples are deductibles applicable to Rx benefits and changing copays.
57	SUBMITTED DISPENSING FEE	No	No	Same as the reason listed in Field 53
58	DISPENSING FEE PAYABLE	Yes	No	Same as the reason listed in Field 56
59	SUBMITTED SALES TAX	No	No	Same as the reason listed in Field 53
60	SALES TAX PAYABLE	Yes	No	Same as the reason listed in Field 56
61	SUBMITTED GROSS AMOUNT DUE	Yes	No	Same as the reason listed in Field 53
62	AMOUNT BILLED	Yes	Yes	Same as the reason listed in Field 56
63	SUBMITTED PATIENT PAY AMOUNT	Yes	No	Same as the reason listed in Field 56
64	PATIENT PAY AMOUNT	Yes	Yes	Same as the reason listed in Field 56
65	FLAT COPAY AMOUNT PAID	Yes	No	Same as the reason listed in Field 56
66	PERCENT COPAY AMOUNT PAID	Yes	No	Same as the reason listed in Field 56
67	ADMIN FEE	Yes	No	Same as the reason listed in Field 56
68	MAINTENANCE DRUG INDICATOR	Yes	No	Same as the reason listed in Field 56
69	FINAL PLAN CODE	Yes	No	We are not sure if this is needed
70	PLAN CODE EXTENSION	No	No	Same as the reason listed in Field 69
71	FILLER	No	No	Not needed
72	CARDHOLDER COPAY DIFFERENTIAL	Yes	Yes	This is critical to determine if generic incentive pharmacy management programs are being effective or are simply transferring the cost to the members. Also helpful in determining the impact of eliminating mandatory generics on certain therapeutic classes such as seizure medications.

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
73	FRONT-END DEDUCTIBLE AMOUNT	Yes	No	Used for deductible analysis and all benefit pricing analyses
74	AFTER-MAX AMOUNT	Yes	No	Used to calculate changes in Maximum Out-of-Pocket Amounts
75	TOTAL COPAY AMOUNT	Yes	No	Same as the reason listed in Field 74
76	PATIENT ACCUMULATED DEDUCTIBLE AMOUNT	Yes	No	Same as the reason listed in Field 74
77	DISPENSER TYPE	Yes	Yes	Used to understand how the drugs are dispensed and needed for behavior analysis
78	AWP	Yes	Yes	Used to evaluate the impact of different networks
79	AWP TYPE INDICATOR	Yes	Yes	Same as the reason listed in Field 78
80	BILLING REPORTING CODE	No	No	Likely not needed assuming it is blank
81	FORMULARY INDICATOR/FORMULARY STATUS	Yes	Yes	Same as the reason listed in Field 41
82	REJECT CODE 1	Yes	No	Used to understand the reason for rejected claims and could be used for pricing analysis
83	PRIOR AUTHORIZATION NUMBER	Yes	No	Used to understand current vs. proposed pharmacy management analysis
84	PRIOR AUTHORIZATION REASON CODES	Yes	No	Same as the reason listed in Field 83
85	PA/MC/SC CODE AND NUMBER	Yes	No	Same as the reason listed in Field 83
86	BASIS OF COST DETERMINATION	Yes	No	Same as the reason listed in Field 78
87	PRESCRIBER NUMBER	Yes	No	Used to identify prescriber and needed for network analysis or evaluating special physician incentive programs
88	PRESCRIBER ID QUALIFER	Yes	No	Same as the reason listed in Field 88
89	PERFORMANCE RX PHARMACY FEE PAID	No	No	Likely not needed assuming it is blank
90	PERFORMANCE RX FEE PAID	No	No	Likely not needed assuming it is blank
91	D.0 RX NUMBER	No	No	Not needed
92	RX NUMBER QUALIFIER	No	No	Not needed

Field #	Field Name (Business)	Received For National Freight Benefit Analysis	Received For Amtrak Benefit Analysis	How we use each field in analysis that we may complete during bargaining:
93	ADJUSTMENT REASON CODE	Yes	No	Used to understand the reason of payment adjustment and to understand impact of changes in pharmacy administration
94	ADJUSTMENT ISSUE ID	No	No	Not needed
95	Rebill Incentive	No	No	Not needed
96	Vaccine Claim Indicator.	No	No	Used for pricing analysis on vaccines especially preventive care in evaluating proposals
97	Care Network	No	No	Likely not needed assuming it is blank
98	Care Qualifier	No	No	Likely not needed assuming it is blank
99	COB Primary Payer Amount Paid	Yes	No	Used to calculate the cost share with other payers and needed for analysis of switching from 1 to 4 Tier Contributions
100	Applied HRA Amount	No	No	Not needed because there is currently no HRA
101	BILLING CYCLE END DATE	No	No	Likely not needed assuming it is blank
102	MAINTENANCE CHOICE INDICATOR	Yes	No	Used to understand maintenance drug utilization and needed for behavior analysis if this field is populated
103	OPAR Amount	Yes	No	Same as the reason listed in Field 99
104	FILLER	No	No	Not needed

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For Big Railroads, a Carload of Whistleblower Complaints

Posted By Stuart Silverstein and Brian Joseph On October 21, 2015 @ 12:01 am In FairWarning Investigates,Whistleblowers,Workplace,Workplace Safety and Health | 1 Comment

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As both a veteran railroad worker and union official responsible for safety, Mike Elliott became alarmed when he learned of trouble-plagued train signals in his home state of Washington.

Mike Elliott, a former BNSF employee who sued the railroad for retaliation. (Photo by Michael Dwass)

Signals, he said, at times would inexplicably switch from red to yellow to green – potentially creating confusion that could lead to a crash. Elliott raised that and other signal issues repeatedly with his managers at BNSF Railway Co. But eventually, Elliott concluded that "these guys are running me around in circles."

So Elliott, 57, of Tacoma, Wash., pressed his concerns with the Federal Railroad Administration, summarizing the matter in a January 2011 letter. The FRA investigated, and discovered 357 safety violations, including 112 signal system defects.

Speaking up for safety, though, only made matters worse for Elliott at BNSF, where he already had clashed with managers. Within weeks the company fired Elliott from his job as a locomotive engineer – an act that a federal jury this summer ruled was illegal retaliation by BNSF against a whistleblower.

The June 30 decision by the Tacoma jury, which awarded Elliott $1.25 million but is being appealed, spotlights the unjust punishment that critics say sometimes is meted out to railroad workers who report injuries or safety problems. These critics, including plaintiff lawyers and union officials, along with others who have examined railroad practices, say the harsh treatment reflects old, hard-line management tactics that persist in corners of the industry.

Under the 22 federal whistleblower laws administered by the Occupational Safety and Health

Administration, American workers who disclose hazards or engage in other "protected activity" are shielded against retaliation by their employers. The protected activities vary by industry, but include reporting injuries, disclosing the misuse of public funds and refusing to perform dangerous tasks that would violate safety rules. OSHA protection covers, among many others, truck drivers, public transit employees, nuclear plant operators and, since 2007, railroad workers. Yet despite the broad safeguards for railroaders – or perhaps partly because of them – complaints of illegal retaliation abound in the industry.

This story also published by:

The Dallas Morning News
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InvestigateWest
Investigative Reporting Workshop

From October 2007 through June 2015, OSHA figures show, railroad workers filed more than 2,000 retaliation complaints, although the pace has slowed lately. Among the top 10 targets of complaints over the nearly eight-year period, seven were railroads, led by the two largest U.S. railroads, BNSF (409 complaints) and Union Pacific (360).

OSHA investigators and Labor Department administrative law judges repeatedly have upheld complaints against the railroads, more than half of which involve illegal retaliation against workers who report personal injuries.

In one such case an administrative law judge in 2013 ruled against Union Pacific, declaring: "The actions by Union Pacific have been so egregious in this case, and Union Pacific has been so openly blatant in ignoring the provisions of [federal law], that I find punitive damages are necessary to ensure that this reprehensible conduct is not repeated."

Top Targets of Retaliation Complaints

Federal laws bar employers from retaliating against workers who reveal safety hazards or engage in other "protected activity," such as reporting injuries or disclosing the misuse of public funds. Workers can file retaliation complaints with the Occupational Safety and Health Administration. Below are the 10 leading targets of retaliation complaints in recent years. Railroad companies, shaded in green, are seven of the top 10. The figures cover the nearly eight-year period from Oct. 1, 2007 through June 30 of this year.

Company	Total
United States Postal Service	578
BNSF	409
Union Pacific	360
CSX	267
Norfolk Southern	247
Canadian National	151
United Parcel Service	139
Amtrak	119
AT&T	103
Metro-North	102

Source: Occupational Safety and Health Administration
Credit: Michelle Ziomek & Stuart Silverstein / FairWarning

In January of that year, BNSF, without admitting wrongdoing, signed an unprecedented accord with OSHA after the federal agency alleged that several of the company's policies discriminated against injured employees. Among other things, the accord eliminated giving demerit points to workers who report injuries.

At the time, OSHA's chief, David Michaels, said in a statement that the accord "sets the tone for other railroad employers throughout the U.S. to take steps to ensure that their workers are not harassed, intimidated or terminated, in whole or part, for reporting workplace injuries."

Safety "a top priority"

Officials of the Association of American Railroads, the leading industry group, declined to be interviewed for this story. Instead, the AAR issued a brief statement saying, "The safety of employees and communities along the nation's 140,000-mile rail network remains a top priority for the entire industry and is taken very seriously."

Union Pacific also refused interview requests. So did BNSF, which was created by the 1995 merger of Burlington Northern Inc. and Santa Fe Pacific Corp., and is now a unit of investor Warren Buffett's Berkshire Hathaway Inc. However, in a prepared statement after the jury decision in the Elliott case, BNSF said it "is proud of its safety culture and retaliation against safety complaints is contrary to how we operate and the training our people receive." The company added that Elliott "was dismissed for unrelated rules violations."

(On Oct. 1, the federal judge who heard Elliott's case, Ronald B. Leighton, a Republican appointed by George W. Bush, rejected BNSF's motion for a new trial. He ruled that the

disciplinary proceedings against the former employee were "seriously flawed" and that BNSF executives "displayed personal animosity against Mr. Elliott.")

The alleged violations defy a key intent of federal whistleblower laws: to encourage employees who discover possible hazards to come forward before an accident happens. The potential value of such an early warning system is underscored by the deadly passenger rail accidents and oil train wrecks in recent years.

Railroad workers face pressure "to ignore safety protocols and to just get the damn train out of town."
– Joseph C. Szabo, former head of the Federal Railroad Administration.

Joseph C. Szabo, who headed the FRA from 2009 until this January, said industry supervisors often are under "immense pressure" to curb costs by moving trains quickly out of rail yards. That, in turn, translates into pressure on rank-and-file workers "to ignore safety protocols and to just get the damn train out of town." That's why, Szabo said, it's "critically important" that railroad workers are "very comfortable in doing the right thing without any fear of retribution."

Award is canceled

Likewise, safety advocates say, the ability of workers to report injuries without jeopardizing their livelihoods is crucial in a field with many hazardous jobs. Railroads have relatively high rates of on-the-job fatalities – although the toll has fallen dramatically over the last three decades. What's more, injury totals may be substantially higher than reported. In 2012, amid widespread suspicion that railroads were undercounting injuries, in part by pressuring workers not to report them, the industry dropped its 99-year-old annual Harriman safety award, which was largely based on employee injury reports.

Norfolk Southern, which had won Harriman safety "gold award" 23 years in a row before the honor was scrapped, was the target of 247 whistleblower complaints during the nearly eight-year period tracked. That was the fifth-highest total among all U.S. employers.

Railroad whistleblowers under federal law must first file complaints with OSHA; they can pursue their cases through conclusion with the agency or, if their issues haven't been resolved, after 120 days they can opt out and take their cases to court.

"I don't know why they're so hard on their employees ... I just don't get the railroads at all."
– Mike Koziara, who won a lawsuit claiming that BNSF illegally fired him for reporting an on-the-job injury.

In fact, both OSHA and federal juries over the past year have issued a string of big decisions against railroads in cases brought by whistleblowers, although the companies have appealed many of the rulings. Those whistleblowers include:

–Mike Koziara, 55, who in March won an award of $425,725 after a federal jury found that BNSF illegally fired him for reporting an on-the-job injury.

In September 2010, Koziara, a 32-year veteran of the company, was a section foreman, a job that put him in charge of track maintenance for a 40-mile stretch of rail along the Mississippi River in Wisconsin. The day he was hurt, Koziara was leading a group of employees tasked with removing large, wooden planks from a road crossing in East Winona, Wis., when he was struck in the left ankle by a 1,200-pound plank.

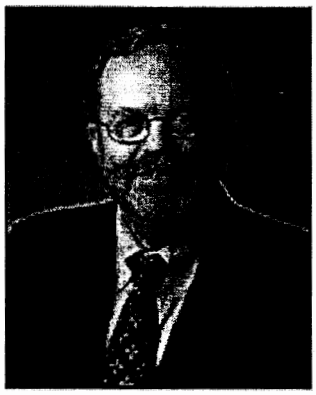
"It hurt," Koziara said, but he didn't think it was serious.

Three days later, after the 72-hour period allowed for reporting injuries was over, he went to see his doctor for a physical. There, she took one look at his leg and sent him for an X-ray. The results showed Koziara had a cracked tibia, or shinbone.

"I just don't get the railroads"

He reported the injury to BNSF the next day. A few days later, the company charged him with failing to be "alert and attentive." As punishment, he was given a 30-day suspension and a one-year probation. But it didn't stop there.

While the railroad investigated Koziara's injury, it learned that he recently had given about 20 used rail ties to a local farmer. Koziara maintains he had gotten permission to take some ties – and that it otherwise would have cost the railroad money to dispose of used ties – but BNSF charged him with theft. He was fired on Nov. 9, exactly two months after he was injured.



"In many cases, the [employee's] argument is simply, 'Well, the railroad managers didn't like the fact that I reported my injury so they were looking for an excuse to get me."
– James Whitehead, a management lawyer who has represented railroads.

"I don't know why they're so hard on their employees," said Koziara, who is now retired. "They'll get more out of us if they were just better to us. I just don't get the railroads at all."

–Steven Annucci, a coach cleaner for Metro-North Commuter Railroad. Last December OSHA found that he should receive $250,000 in punitive damages, the maximum permitted in a railroad retaliation case.

Annucci hurt his knee in November 2011, when he tripped on a wooden board sticking up about six inches above a paved walkway in a train yard in Stamford, Conn. General Foreman Prena Beliveau drove Annucci to the hospital. On the way there, Annucci secretly recorded their conversation.

According to OSHA, Beliveau told Annucci that if you have an injury on your record at Metro-North you're not going to move up — you're going to be a car cleaner for the rest of your career. Beliveau also said everybody at Metro-North who gets hurt is written up for safety.

Animus is clear

Annucci reported the injury anyway. A couple weeks later, Metro-North formally reprimanded him for safety violations, although he kept his job. A year later Annucci was charged with failing to properly clean vomit from a train car, and was reprimanded again. In its December ruling, OSHA found that "animus is clear in this case" and ordered Metro-North to pay Annucci attorney's fees and $10,000 in compensatory damages, along with the punitive damages.

–Union Pacific apprentice machinist Brian Petersen, 31, who was fired after a co-worker drove over his feet in the parking lot of a train yard in North Platte, Neb.. In a pair of rulings last November and February, the railroad was ordered to pay Petersen more than $400,000 in back pay, attorney fees and damages. In the spring, the two sides reached a confidential settlement.

The case stemmed from a 2009 accident. Petersen claimed he was leaning against his car, checking his cell phone for messages, when a colleague roared into the space next to him.

Union Pacific concluded that Petersen was inattentive and careless, then fired him a few days later when he was seen standing on some motors to write down their serial numbers when he should have been using a ladder.

Key Laws Protecting Railroad Workers

Rail Safety Improvement Act of 2008

Bars railroads from denying or delaying medical treatment of injures employees.

2007 Amendment to Railroad Safety Act

Protects workers from retaliation for reporting injuries and safety or security problems. Transferred oversight of whistleblower complaints from the Federal Railroad Administration to the Occupational Safety and Health Administration.

Federal Railroad Safety Act of 1970

Permits Secretary of Transportation, through the Federal Railroad Administration, to write safety regulations for the industry.

Department of Transportation Act of 1966

Created the Federal Railroad Administration to oversee train safety.

Railway Labor Act of 1926

Guarantees workers the right to organize and join unions.

Federal Employers' Liablity Act

1908 statute allows railroad employees to sue for compensation for on-the-job injuries. Unlike "no fault" workers' compensation, the law requires claimants to prove that employer negligence caused their injuries.

Brian Joseph and Michelle Ziomek / FairWarning

The administrative law judge who considered the case in 2013 – the one who condemned Union Pacific for "egregious" actions – said the rules the company charged Petersen with breaking "are written in such a manner that anyone who is injured and reports it will have violated at least a part of one or more of them."

Experts often trace railroad managers' behavior to the way the industry emerged in the mid-19th century. Back then, many railroad officials came from the officer ranks of the Civil War armies. "It was traditionally an industry in which the boss is the absolute boss ... all the way up the hierarchy. You don't question the boss' authority," said historian Maury Klein, the author of a half-dozen books on railroads.

Paramilitary structure

Szabo, the former FRA chief, said railroads have embraced more enlightened practices over the past decade or so, but management still has elements of "a paramilitary structure, very much command and control."

To this day, railroads remain discipline-minded. Operating and safety manuals run hundreds of pages. Suspected violators, including workers who get hurt, face internal investigations.

Critics still echo Congressional investigators who in 2007 found that railroad companies, along

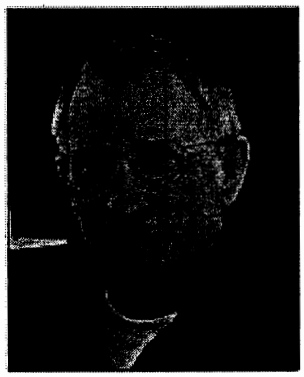
with federal regulators, are "more oriented toward assigning blame to a single individual, without a thorough examination of the underlying causes that led that single individual to commit an error."

In part, the hard-nosed culture reflects an effort to cope with the inherent dangers of rail transportation. "Small screw-ups can sometimes lead to somebody getting killed," said Mark Aldrich, author of the 2006 book, "Death Rode the Rails."

Safety has improved substantially in recent decades, Aldrich and other experts say, but the pressure on middle-managers to move as quickly as possible while also holding injuries to a minimum still creates incentives to ignore or conceal mishaps. "I don't think this is a problem that's going to go away," Aldrich said.

Defenders of the industry say the volume of whistleblower cases isn't a good barometer of actual wrongdoing because the discipline in dispute often stems from violations by the employees that are completely unrelated to their injuries.

"In many cases, the [employee's] argument is simply, 'Well, the railroad managers didn't like the fact that I reported my injury so they were looking for an excuse to get me," said James Whitehead, a management lawyer who has represented railroads and who teaches employment law at the University of Chicago.



"It was traditionally an industry in which the boss is the absolute boss ... all the way up the hierarchy. You don't question the boss' authority."
—Maury Klein, a historian who has written about railroads.

Experts say much of the worker litigiousness stems from a 1908 law that excluded railroad employees from state workers compensation systems. Instead, it required them to go to court if they wanted to seek compensation for on-the-job injuries. That created a strong market for personal injury attorneys who specialize in railroad litigation. And those lawyers were quick to file whistleblower complaints after Congress in 2007 and 2008 modified the Federal Railroad Safety Act, adding anti-retaliation measures for rail workers.

As a result of those measures, railroad employees often have a lighter burden of proof when they pursue retaliation claims than do workers in other fields. Likewise, railroad employees often have rights other workers lack, such as the ability to file complaints over alleged retaliation due to reporting personal injuries. They also can take claims to federal court if their cases aren't resolved within 210 days – a prospect that railroads often dread. "There can be a lot of emotion in these cases, and they can be challenging cases to defend" when they go before a jury, Whitehead said.

Tensions smolder

Mike Elliott's case reflects the workplace tensions that sometimes smolder in the railroad industry. The beginning of the end for Elliott at BNSF came in March 2011, when he was chairman of the Washington legislative board of his union, the Brotherhood of Locomotive Engineers and Trainmen.

Elliott, an ex-Marine, got into a parking lot scuffle with Dennis Kautzmann, a supervisor who Elliott claimed harassed him for several years due to his safety advocacy. The parking lot incident, Elliott's lawyers argued in their successful federal lawsuit, was instigated as part of a scheme by BNSF managers to get Elliott fired because he triggered the federal safety investigation. They said Kautzmann had no other reason, after Elliott had clocked out for the day, for pursuing him from a BNSF building into the parking lot. (In his Oct. 1 ruling rejecting a new trial, Judge Leighton agreed that Kautzmann "staged" the conflict.)

Kautzmann, in a memo describing the March 2011 confrontation, said he followed Elliott into the parking lot simply to make sure Elliott understood the details about an upcoming engineer recertification evaluation. He said he brought along another BNSF employee "to assist me in having Mr. Elliott stop." Kautzmann said he then stepped in front of Elliott's car, but Elliot didn't stop and ran into him, throwing Kautzmann onto the car's hood. After that, Kautzmann said, Elliott angrily got out of the car and punched him in the mouth.

Kautzmann pressed charges after the parking lot incident, and Elliott was criminally prosecuted, but a jury acquitted him. Yet BNSF conducted two internal investigations, and issued decisions both times calling for Elliott's firing. A federal arbitration board upheld the findings.

At the federal trial challenging the firing, BNSF argued that Elliott's firing couldn't have been retaliation for reporting safety problems because it had little knowledge of Elliott's recent contacts with federal regulators.

But Elliott's lawyers presented evidence that BNSF was well aware that their client was in touch with regulators in the months before his firing. For instance, the lawyers pointed to an email about train signal problems that Elliott sent to a government official, and "cc-d" to company officials, in September 2010, several months before the federal inspections.

Despite winning the federal suit, Elliott expects a drawn-out appeals process, and he has decided against seeking reinstatement to his job at BNSF. Instead, he is working these days as a lobbyist and spokesman for the union. The role is crucial, he says, because his former co-workers at BNSF need someone to speak out about safety issues.

"The culture and the workplace fear of reporting injuries or safety problems hasn't changed," Elliott said. "Our members are still afraid."