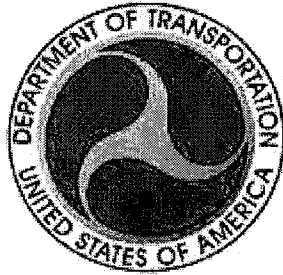


# CSX Transportation Harassment and Intimidation Investigation



**March 2008**

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## **Executive Summary**

This report reflects current knowledge and interim conclusions in a continuing sequence of investigations and enforcement actions, so some conclusions may change as additional evidence is developed and the enforcement process is brought to a conclusion.

On August 4, 2006, the Brotherhood of Locomotive Engineers and Trainmen (BLET) President and United Transportation Union (UTU) President wrote to CSX Transportation, Inc.'s (CSXT) Chief Executive Officer (CEO) concerning their "outrage that CSXT was engaged in targeted selective stalking, and harassment and intimidation (H/I) of its train and engine service employees who had reported on-duty injuries." They further stated they had a copy of a CSXT Southern Region 2006 Safety Action Plan that orders CSXT supervisors to identify "bad actors" at each on-duty location.

On August 9, 2006, CSXT's CEO replied via letter to the presidents of BLET and UTU denying the allegations. In response, BLET and UTU sent a followup letter to CSXT on August 15, 2006, further describing the allegations of inappropriate conduct.

In August 2006, UTU and BLET made allegations to the Federal Railroad Administration's (FRA) Associate Administrator for Safety that CSXT officers were allegedly trying to manage the injury reporting numbers, instead of managing safety, by discouraging injured CSXT employees from reporting on-duty injuries or receiving the proper medical treatment, and/or retaliating against employees who reported injuries. UTU and BLET provided to FRA copies of CSXT employee member complaints supporting these allegations. UTU and BLET also provided this information to CSXT.

Subsequently, FRA initiated an extensive 1-year, systemwide, three-phase investigation to determine the validity of these allegations against CSXT. The FRA investigation involved more than 70 formal complaints against CSXT provided to FRA by BLET and UTU. Of these 70 complaints, approximately 36 alleged H/I of CSXT employees by company officials. The remainder of the complaints addressed issues that did not meet the criteria for Title 49 Code of Federal Regulations (CFR) Section 225.33. Therefore, we did not conduct formal interviews with the employee or carrier officers for the remaining 34 complaints. In conducting its investigation, FRA interviewed 34 CSXT employees and 36 CSXT officers at more than nine railroad division locations across the CSXT system. As a result of the failure to comply with the regulations and policies for reporting injuries, CSXT has initiated personnel actions ranging from coaching and counseling to termination of company officers.

During the course of its investigation, FRA found several instances where, although CSXT properly reported an employee injury, the injured employees alleged that CSXT officers had initially urged the employee not to seek medical treatment. Employees stated that if they did seek medical care, carrier officers discouraged them from accepting any treatment, including prescription medication, that would cause the injury to become FRA-reportable under FRA's accident/incident reporting requirements at 49 CFR Part 225. Moreover, rail labor representatives and CSXT employees alleged that employees

who reported injuries were subject to retaliation by CSXT officers. For example, FRA received allegations that many such employees were placed under increased scrutiny and were subject to repeated observations and/or efficiency testing sessions. Because such practices increase the chances that CSXT will detect a rule violation by the employee, many employees who reported an injury allegedly ended up being charged with rule infractions and were subsequently dismissed from railroad employment. These employees believe that the real reason they were dismissed from CSXT was because of their injuries, and if they had not been injured, they would not have lost their jobs. Employees also alleged that they were wrongfully subjected to Federal “reasonable cause” drug testing only after their injuries became FRA-reportable, not based on whether a reasonable cause actually existed.

### **Phase 1**

Phase 1 of the investigation involved allegations of H/I of CSXT Southern Region employees by means of excessive operational and efficiency testing after the injuries had been reported. During this phase, FRA reviewed all FRA-reportable and nonreportable employee injuries for the CSXT Southern Region from October 2005 through July 31, 2006, and compared this information with the operational testing data reported and recorded for the same period of time. In doing so, FRA requested CSXT’s employee injury reports on 363 selected Southern Region CSXT employees to determine their current status and to determine whether employees who reported injuries were subject to increased testing as alleged. Based on documentation reviewed, FRA did not find evidence sufficient to support allegations that CSXT Southern Region employees who reported injuries were subject to increased testing by CSXT officials.

### **Phase 2**

Phase 2 included a comprehensive audit of CSXT’s accident/incident records to evaluate CSXT’s compliance with FRA’s reporting requirements in 49 CFR Part 225. The audit included concentration on the proper reporting of highway-rail grade crossing accidents, of rail equipment accidents, and of injuries to all types of persons. Cross-referencing of injuries with CSXT Claim and Medical Department records was also accomplished. FRA also inspected CSXT’s Internal Control Plan (ICP) to determine compliance with its various components. The audit found a number of probable violations of 49 CFR Part 225, some for failure to report employee injury cases, some for failure to properly report employee injury cases, and others for compliance issues that were not pertinent to this report.

Since its previous audit of CSXT in January 2005, FRA found CSXT had significantly improved in gaining compliance with the reporting of all highway-rail grade crossing accidents, and in other areas of accident/incident recordkeeping and reporting. However, going into this audit, FRA found it concerning that the subject of H/I had reemerged since FRA last addressed this issue with CSXT in 2003. Because of the recent H/I complaints, this audit was also designed to include an indepth inspection of sections of CSXT’s ICP Policy Statement and Complaint Procedure that relate to intimidation and harassment. As a result of this indepth inspection, the FRA Part 225 audit team found three separate areas of noncompliance by CSXT for which FRA recommended civil penalties be assessed, as indicated below:

1. FRA found that the railroad had not expeditiously resolved complaints that several of their employees had made through CSXT's Complaint Procedure relating to H/I at 49 CFR 225.33(a)(1).
2. FRA found one especially egregious H/I case that CSXT had received through their Complaint Procedure and that CSXT had investigated and found that a violation of their Policy Statement had occurred. However, CSXT had not taken disciplinary action against the supervisor involved in this case.
3. FRA found that CSXT was not in compliance with their ICP requirement relating to the completion of personal injury reports by their employees.

### **Phase 3**

Phase 3 of the investigation involved interviews with CSXT employees and officers. During this phase, FRA conducted about 70 face-to-face interviews with CSXT employees who had experienced on-duty injuries, as well as with the CSXT officers who were involved in the employee injury cases to determine the validity of the H/I allegations. CSXT's Vice President of Safety and outside counsel hired by CSXT were present during FRA's interviews with the CSXT officers. These interviews were held across the CSXT system at several locations on CSXT railroad divisions.

Overall, FRA's interviews of the employees and the officers recorded similar findings at various locations on the CSXT system. One similarity was that both CSXT employees and the officers confirmed that CSXT field officers often discuss FRA accident/incident reportability with the injured employee en route to the treatment facility or at the treatment facility, and remind the employee of FRA reportability criteria. The interviews also confirmed that CSXT officers will sometimes "remind" an injured employee that a reportable injury would be a mark on his or her personal record and may have an adverse effect on his or her career. This behavior violates the law.

A second similarity was that both CSXT officers and employees confirmed that CSXT officers often transport an injured employee to CSXT offices following medical treatment for "fact-finding interviews," and to complete carrier reports to determine how the employee was injured. While this practice is not a violation of the rule because the employee has already reported the injury and received medical treatment, the testimony of many employees makes clear that this practice serves to deter that employee and others from reporting future injuries. If an employee is injured seriously enough to be unable to return to duty, it would appear that the railroad's legitimate need to determine how the injury occurred could be adequately served after the employee has had some time to recuperate commensurate with the severity of the injury.

A third similarity was that under CSXT's current alcohol and drug testing policy, reasonable cause tests are conducted only if an employee has a reportable accident or commits a significant operating rule violation, but some employees believe that CSXT is using the possibility of reasonable cause testing to discourage reporting of on-duty accidents. FRA will conduct a joint accident reporting/alcohol and drug testing investigation of this issue.

A final similarity was that both CSXT officers and employees confirmed that when an injured employee requests to be “marked-off” from performing service, the employee is often instructed by a CSXT officer to mark off sick or suspended. When this happens and lost days are improperly recorded to FRA, the accident/incident reporting regulation is violated. Sometimes employees mark off sick or suspended and the railroad nevertheless correctly reports to FRA the days lost due to injury.

The consensus of the investigative team was that certain CSXT officers had created an atmosphere or culture that tends to have a chilling effect on employee injury/illness reporting and that ultimately sends a message to employees that if they report an on-duty injury, they will be subject to adverse consequences.

The investigation by FRA’s Office of Safety into UTU and BLET’s allegations concerning H/I has resulted in the recommendation to the Office of Chief Counsel of the assessment of 30 civil penalty violations against CSXT and 1 individual liability (IL) action with a civil penalty against a CSXT officer. FRA’s Office of Safety is in the process of issuing 20 regional warning letters to individual CSXT officers and FRA’s Office of Chief Counsel will be issuing 2 Chief Counsel warning letters. Please note in each case contained in this report where civil penalty assessments are recommended, it is standard practice, if the Chief Counsel’s Office accepts the recommendations and initiates enforcement action, that the railroad or individual cited will have the opportunity to present mitigating information or information refuting the alleged violations before further action is taken. Because neither the railroad nor the individuals have yet been charged or had the opportunity to defend themselves, these cases cannot be treated as proven.

FRA has learned that CSXT senior managers have made numerous managerial changes at problem locations. CSXT has also modified its ICP and reinforced its requirement that managers attend ethics training four times a year and management training twice a year. The management training workshops are designed for managers to improve their communication skills. Also, rail labor members are required to attend training once a year. Additionally, FRA learned that CSXT has taken disciplinary actions ranging from coaching and counseling to dismissing carrier officers. Indeed, in a letter dated October 4, 2007, CSXT’s Executive Vice President and Chief Operating Officer described a number of disciplinary actions taken against more than 10 CSXT officers for engaging in H/I (Appendix A). The actions taken included coaching and counseling, demotion, and withholding of management incentive bonuses. In addition, CSXT’s Executive Vice President stated that “at least three managers have been terminated since 2005 at least in part for covering up an injury or for mishandling an injury report,” and “Earlier this year the company adopted enhanced guidelines with time frames for conducting injury reporting intimidation/harassment investigations and determining corrective action where appropriate.”

In a letter dated November 12, 2007, CSXT’s Vice President of Safety furnished additional information in response to a draft of this report (Appendix B). The additional information, including details of additional training for managers, is included in this final report.

## **I. Phase 1: Alleged Harassment and Intimidation of CSXT Southern Region Employees by CSXT Officials Who Performed Excess Operational Testing**

FRA identified 211 CSXT Southern Region employees who had reported injuries to CSXT between October 2005 and July 31, 2006. FRA requested from CSXT the operational testing records for these employees for the period covering January 1, 2005, to July 31, 2006. FRA reviewed and cross-referenced these records to determine the number and frequency of operational tests performed on the employees prior to and after they reported injuries to CSXT. FRA also investigated the status of 363 CSXT Southern Region employees because of an operational test review concern in which a group of employees were identified with no or limited operational tests recorded. FRA's investigation did not reveal evidence sufficient to support allegations that employees who reported injuries were subjected to excess operational testing.

## **II. Phase 2: Comprehensive Accident/Incident Reporting and Recordkeeping Audit**

During November 2006, FRA conducted a comprehensive audit of CSXT's accident/incident recordkeeping and reporting program. FRA provided the final audit report to the House Committee on Transportation and Infrastructure.

As was stated in the entrance meeting held with CSXT representatives on October 30, 2006, FRA representatives mentioned that FRA was concerned about the most recent allegations of H/I and those that had been made in past years. FRA made efforts to address this issue with CSXT senior management in 2003 when several complaints to FRA revealed that supervisors had entered the treatment rooms of injured employees without being invited. At that time, CSXT produced a video that was designed to educate field supervisors on what not to do, in an effort to avoid even the perception that they were engaged in H/I with respect to FRA's accident reporting rule.

FRA understands that there is another series of supervisor seminars being held to address these more recent allegations of H/I. CSXT stated "that this training is significant, as it addresses a number of the concerns expressed in this report." CSXT also stated that the training makes clear that managers should not discuss FRA reportability criteria with an injured employee or with treating hospital personnel. Likewise, it makes it clear that managers should not enter treatment rooms unless invited by an employee and they are not to discuss discipline or rules violations when arranging treatment for an injured employee. The emphasis is on ensuring that proper medical treatment is provided, and that the incident is properly documented and reported. FRA will monitor the effectiveness of this training in eliminating H/I.

During this audit, FRA did not attempt to investigate the several specific alleged cases of H/I that had been brought to FRA's attention by the UTU and the BLET. Investigation of those complaints involves considerable time and interviews with the parties involved in the allegations, and were handled by the

separate audit team assigned to the FRA H/I investigation.

The Part 225 audit team did look at CSXT's Policy Statement and Complaint Procedure as a part of this audit. The audit team requested all files from CSXT's Ethics Department concerning their handling of employee complaints relating to the provision within 49 CFR 225.33 that prohibits H/I with regard to the reporting of personal injuries and discouraging or preventing medical treatment of injured employees. Per FRA's request, CSXT provided FRA representatives with 13 files for review.

Because of the confidentiality associated with FRA's investigations, FRA will not disclose names of the complainants in this discussion. FRA representatives read the contents of all 13 files, and found that in one of those cases, the employee had not been injured. His complaint dealt with unsafe conditions, so his complaint was therefore not within the scope of 49 CFR 225.33. The other 12 cases all involved employee injuries, and the alleged H/I was within the scope of 49 CFR 225.33.

FRA found that the CSXT Ethics Department completed an investigation in approximately half of the cases, and the other half were still open. One case was initiated by an anonymous writer and, therefore, could not be satisfactorily closed.

CSXT's Ethics Department found H/I had occurred in four cases. For these cases, CSXT's Ethics Department communicated their findings and recommendations to other departments within CSXT (e.g., Law, Human Resources, etc.) for a decision to be made about what level of disciplinary action should be taken against the CSXT supervisor. In none of these cases had CSXT taken any disciplinary action. In one of the cases, the CSXT supervisor resigned prior to the Ethics Department's investigation being completed.

FRA's review revealed that an extended amount of time passed from when an employee would file his or her complaint with CSXT's Ethics Department to when the investigation was completed. Several of these injuries occurred in early 2006, and the investigation had still not been completed. FRA found that CSXT was not abiding by the intent of the Policy Statement and Complaint Provision as contained in 49 CFR 225.33(a)(1) and (a)(2).

FRA believed that CSXT's complaint procedure is rendered largely ineffective because complaints are not being addressed promptly. It should not take several months, or almost 1 year to resolve issues of this type. It would appear that in most cases, 1 month should allow for a thorough investigation and finding; and in some difficult cases, 2 months would be a more realistic maximum time frame. Consequently, FRA recommended that civil penalties be assessed against CSXT for failure to comply with 49 CFR 225.33(a)(1) and (a)(2), specifically because CSXT had not promptly investigated the above six indicated H/I complaints submitted by employees in connection with their injuries. Because several months had transpired from the date that the complaint was made in each of these cases, there had been no discipline administered to any supervisor(s) involved in any of these six cases. FRA understands that CSXT has subsequently implemented a more timely procedure.



In addition to minimizing the length of time from the date of notification to the date of final resolution as sought by the above enforcement action, FRA also suggested that CSXT reword its complaint procedure to be compatible with the wording contained in Appendix I-3, "Model Statement of Policy Against Harassment and Intimidation: Model Complaint Procedures," as contained in the FRA Guide for Preparing Accident/Incident Reports. CSXT has implemented this suggestion.

Additionally, FRA advised CSXT that it is in noncompliance with the requirement to disseminate the Policy Statement and Complaint Procedure. Because all employees are not computer literate, CSXT cannot depend upon having the Policy Statement and Complaint Procedure available solely on their internal Web site. FRA suggested that the best manner to ensure that the Policy Statement and Complaint Procedure is disseminated is to have it posted in a conspicuous location where employees can reasonably be expected to see it. CSXT has implemented this suggestion.

FRA's review of these files revealed one case in particular that disclosed a very serious violation of FRA's antiharassment provision of its accident reporting rule. CSXT's internal investigation found that a supervisor violated the CSXT's Policy Statement and FRA's prohibition of discouraging or preventing an employee from reporting a personal injury. CSXT was notified of this complaint on May 22, 2006, and completed its internal investigation on October 24, 2006, finding that a violation had occurred. CSXT stated that it was expecting a decision by CSXT management by November 23, 2006, concerning the disciplinary action that may have been taken against the supervisor involved. While FRA applauds CSXT for this finding, FRA could not simply look the other way and not take action of its own when a serious and willful violation of Federal safety regulations of this type occurs. Therefore, FRA recommended that civil penalties be assessed against CSXT for failure to comply with 49 CFR 225.33 and the Policy Statement of CSXT's ICP. This resulted in one violation because not complying with the ICP is, in fact, the violation of 225.33 that prohibits actions designed to discourage or prevent employees from reporting their personal injuries. FRA viewed the above issues relating to 49 CFR 225.33(a)(1) and (a)(2) as a major concern found during this audit and informed CSXT of these findings at the close of the audit on November 17, 2006. After being furnished with a draft of this report, CSXT notified FRA that disciplinary action had been taken with respect to this specific case.

FRA also took issue with Component Number 3 of CSXT's ICP, "Copies of internal forms and/or a description of the internal computer reporting system used for the collection and internal recording of accident and incident information," as required by 49 CFR 225.33(a)(3). FRA found that in some cases where an employee sustained an injury and sought medical attention, a completed CSXT Form PI-1A was not in CSXT's file for the injury. When an inquiry was made, FRA was informed that the railroad cannot force the employee to complete a PI-1A following an injury. FRA found this situation unusual because traditionally, railroads have had rules in place that require employees to report any injury to the proper authority on the prescribed forms. FRA's investigation of this issue found that conflicting instructions exist at CSXT concerning the reporting of employee injuries and occupational illnesses. Instructions in CSXT's ICP are not compatible with the instructions found in Rule 5 of CSXT's "Safe Way" publication. Section III, "Copies of Internal Forms," in CSXT's ICP provides a table labeled, "Accident Reporting Forms Summary." That table lists Form PI-1A, "Employee's Report of Personal Injury or Occupational Illness," with an instruction that it is to be "completed by the

injured employee and, given to the supervisor.” However, Safety Rule 5, “Reporting of Injuries or Incidents” (last revised on September 27, 2006), requires employees to report their injuries to a supervisor at the time of the occurrence or prior to leaving the property on the day of the occurrence. Safety Rule 5 is silent concerning whether this report of injury is to be made verbally or in writing. However, the “Instructions for Form PI-1A,” as shown at the top of Form PI-1A, are not compatible with the instructions contained in the ICP.

FRA advised that CSXT’s instructions for completing Form PI-1A should be the same in CSXT’s Safety Rule 5, in CSXT’s ICP, and on Form PI-1A. FRA further believes that employees must be required to fill out a CSXT Form PI-1A whenever they seek medical attention for an on-duty injury that would meet FRA’s requirements for an accountable or reportable injury. Only in this manner can proper accountability be placed to allow the railroad to be in compliance with FRA requirements and discharge its regulated recordkeeping and reporting responsibilities to FRA. One violation was taken for three incidents in which the employee sought medical treatment but did not fill out a CSXT Form PI-1A. It should be noted that CSXT subsequently addressed this issue and it has been corrected.

### **III. Phase 3: Listing of CSXT Alleged H/I Cases Under 49 CFR 225.33**

#### **A. Overview**

This phase of the investigation involved face-to-face interviews with injured employees and with carrier officers. The interviews were to determine the validity of the H/I allegations and whether an injured employee had been harassed and intimidated as defined under 49 CFR 225.33. These interviews were conducted at various CSXT locations.

Overall, FRA interviews of the employees and officers recorded similar findings across the CSXT system. Some of the similarities included a systemwide practice in which CSXT field officers would discuss FRA reportability of the injury in detail with the injured employee en route to the treatment facility or at the treatment facility, reminding the employee of FRA reportability criteria. In some cases, the carrier officer would remind the employee that if it was determined that the injury was reportable, it would be a mark on his or her personal record and have an adverse effect on his or her career. Employees were reminded that if the injury was reportable to FRA, CSXT would likely require the employee to submit to an alcohol and/or drug test, but if it was not reportable to FRA, no test was conducted. Based on our interviews, it appears that not having to undergo testing was used as an incentive for an employee to refrain from reporting the details that made the injury reportable to FRA.

Following treatment, CSXT managers often transported the injured employee to the CSXT office to conduct “fact-finding interviews” to determine how the employee was injured. This often included three or more carrier officers in a room with the injured employee. In two specific cases, four officers were in the room. In one case, the employee was carried from the hospital emergency room by carrier officers, put into a car and driven to the yard office, removed from the car by carrier officers, and subsequently rolled into the yard office in an office chair.

## **B. Summary of CSXT Interviews**

### ***Conductor/Yard Foreman A, Strain Lower Right Leg, April 29, 2006, Russell, Kentucky.***

As a result of escaping from derailling cars, Conductor/Yard Foreman A's right foot was caught up in debris, resulting in the employee falling and injuring his right lower leg and foot. The employee was transported to a hospital for treatment. While awaiting treatment in the emergency waiting room (ER), CSXT officials discussed in detail with Conductor/Yard Foreman A the FRA requirements resulting in reportability of an injury. As a result of this conversation, Conductor/Yard Foreman A discouraged the doctor from prescribing prescription drugs and crutches for his injury. While departing the ER in a wheelchair, the carrier officer asked the conductor for his discharge papers and assisted Conductor/Yard Foreman A from the ER to Conductor/Yard Foreman A's personal vehicle. The carrier officer instructed Conductor/Yard Foreman A's wife to drive him to the CSXT office, even though she objected and wanted to take him home. Upon arrival, he was lifted from the car into an office chair by the carrier officers and rolled into the CSXT office, where he was interviewed by four carrier officers and required to submit to reasonable cause drug testing.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing CSXT officers to commit H/I of Conductor/Yard Foreman A by means of a calculated act to discourage or prevent Conductor/Yard Foreman A from receiving proper medical treatment. The investigation team also recommends that regional warning letters be issued against a trainmaster and a manager of coal operations directly involved in Conductor/Yard Foreman A's case. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

### ***Conductor Trainee B, Neck and Back, October 26, 2005, Cincinnati, Ohio.***

Conductor Trainee B was in a stopped crew van, which was struck in the rear by another vehicle. As a result of the accident, Conductor Trainee B was transported by ambulance to a hospital, treated for neck and back pain, prescribed 10 mg of Percocet, and advised to take a week off from work by the attending physician in the ER. While departing the ER, Conductor Trainee B was met by three carrier officers. The carrier officers began a discussion with Conductor Trainee B about FRA reportability and the fact that he accepted the prescription would make him a high-profile employee and affect his future employment with CSXT. The carrier officer's conversation with Conductor Trainee B caused him to go back to the ER doctor and ask him to change the paperwork to eliminate the prescription and recommend something over-the-counter; however, the doctor refused. When Conductor Trainee B returned, the carrier officers had another discussion and asked him to try one more time, but when Conductor Trainee B went back, the doctor had left for the day. After Conductor Trainee B returned, it was decided by the carrier officers that everyone should go home and they would meet the next morning to drive Conductor Trainee B to the ER to enable him to ask the doctor again. Upon arrival at the ER, Conductor Trainee B proceeded to the ER and again asked the doctor, who was surprised to see Conductor Trainee B, to change his paperwork. Reluctantly, the doctor changed the paperwork

and told Conductor Trainee B to keep the prescription because he would probably need it.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing CSXT officers to commit H/I of Conductor Trainee B by means of a calculated act to discourage or prevent Conductor Trainee B from receiving proper medical treatment. Additionally, the investigation team recommends a violation for the carrier's late reporting of the injury. The investigation team also recommends a regional warning letter be issued against two carrier officials, a trainmaster and the manager of coal operations, directly involved in Conductor Trainee B's case. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Signalman C, Right Side of Face, January 19, 2005, Birmingham, Alabama.***

After reporting for duty with a signal gang, Signalman C was ordered to operate the gang backhoe to dig in track wires. While clearing the backhoe from fouling the main line, Signalman C traversed over a pile of soda cans on the highway-rail grade crossing and turned the backhoe over on its side. Immediately after the incident, Signalman C was asked by the foreman and signal supervisor if he needed medical attention, and his response was yes. The foreman transported Signalman C to the hospital's ER. He was waiting for treatment in the waiting room when the signal supervisor arrived and stated he was taking Signalman C to his private physician, approximately 10 to 15 minutes away. After arriving at the facility and signing the reception book, a nurse informed the signal supervisor and Signalman C that they had arrived too late. They left the treatment facility and proceeded to a another facility where Signalman C was treated by a physician. When Signalman C was instructed by the nurse to go to the treatment room, the signal supervisor asked Signalman C if he could accompany him to the treatment room. Signalman C agreed. In the treatment room, the physician removed glass from Signalman C's ear and recommended a prescription for his neck and back pain. The signal supervisor interrupted and asked the physician if he could hold off writing a prescription and use an over-the-counter medication, such as Tylenol, instead. Signalman C left the hospital without the prescription and headed to the signal shop where he discussed his injury with another signal supervisor who told him to take the next day off to rest and with pay.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT supervisor to commit H/I of Signalman C by means of a calculated act to discourage or prevent Signalman C from receiving proper medical treatment, and delaying treatment. The investigation team additionally recommends a violation against CSXT for failure to report the injury. The investigation team also recommends that a regional warning letter be issued against the railroad official directly involved in Signalman C's case. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates an enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor D, Right Side and Right Elbow, August 16, 2006, Winchester, Kentucky.***

Conductor D was riding the side of a tank car and was dismounting the car when his foot slipped out of the stirrup on his last dismount step, causing him to fall into the side of the platform on the tank car, injuring his right side and elbow. After injuring himself, he continued to work until the train departed. Upon arrival at his destination, he reported his injury to the acting trainmaster, who notified the division superintendent and Conductor D's trainmaster. The division superintendent asked Conductor D to talk to him in the hallway about his injury, and informed Conductor D that if he reported a personal injury, he would get charged. Further conversations occurred between the division superintendent and the division manager, and Conductor D was informed that if he worked with the officials that they would not issue a charge letter against him.

After communications between Conductor D and the officials ended concerning the injury, they called a taxi to take the Conductor D to the hospital. Conductor D informed the division manager that he would go to the hospital, but that he would also still go to his personal doctor. The division manager agreed and stated that instead of going to the hospital, he would transport Conductor D to his personal doctor. Conductor D contacted his doctor en route and when he arrived, his trainmaster was in the doctor's waiting room. Conductor D proceeded to the treatment room, and after the doctor's examination returned to the waiting room where the trainmaster was sitting. A conversation began concerning the prescription and recommended lost time, and the trainmaster encouraged Conductor D to return to the nurse practitioner to have the prescription changed to keep the injury from being FRA-reportable. Conductor D agreed and was released.

On August 24, 2006, Conductor D was called for a work train and worked a total of 15 hours and 20 minutes before marking off at Corbin, Kentucky. The next day, Conductor D was in pain and contacted his personal doctor. He instructed him to go to the ER, where the attending physician prescribed Hydrocodone/APAP tab 5-500 for pain, and diagnosed Conductor D with a very deep bruise and contusion on his right side.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing CSXT officers to harass and intimidate Conductor D by means of a calculated act to discourage or prevent Conductor D from receiving proper medical treatment. The investigation team also recommends that regional warning letters be issued against the Division Superintendent and the trainmaster. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

The Part 225 audit team recommended a violation against CSXT for failure to report this case in accordance with 49 CFR 225.11 during the comprehensive audit at Jacksonville, Florida in November 2006.

***Conductor E, Right Wrist, October 5, 2005, Atlanta, Georgia.***

After receiving orders and conducting a job briefing, Conductor E departed Union City, Georgia, en route to Tilford Yard in Atlanta. The engineer stopped the train at the south end of Tilford Yard, where Conductor E dismounted the lead locomotive and lined the train into the yard. Once the rear of the train reached Conductor E, he felt a pain in his right wrist after removing the end-of-train device (EOT). Conductor E made a comment to the engineer and the crew van driver, who took him to the head of the train, that the EOT was hard to remove and that he hurt his wrist. The train departed Tilford Yard and upon their arrival to their original on-duty point, Conductor E called his Trainmaster F and left a message reporting a possible injury. He also sent Trainmaster F an e-mail with the same message after arriving at his residence at approximately 12:30 a.m.

Trainmaster F responded to Conductor E via telephone the next morning at approximately 7:30 a.m. and scheduled a face-to-face meeting at a hotel to fill out the PI-1A form and discuss his injury. Conductor E told Trainmaster F that he had been taking aspirin and that his wrist was sore. Trainmaster F instructed Conductor E to take the day off as a "safety day," and to continue to take aspirin. Additionally, based on written statements from Conductor E, Trainmaster F stated, "The way he earns his pay is not to have any reportable injuries and he went on to say a new guy from the Norfolk Southern is here to stop personal injuries on the CSX." The next morning, Conductor E contacted Trainmaster F again and informed him that he needed to see a doctor. Trainmaster F instructed Conductor E to meet him at the Fairburn office, which he did, accompanied by Conductor E's brother. After arriving, Conductor E followed Trainmaster F to an occupational medicine facility. As Trainmaster F and Conductor E entered the building, Conductor E was informed by Trainmaster F that an investigation would be held and that there was no telling what the outcome would be. Trainmaster F signed Conductor E into the facility and they completed a PI-1A form while he waited for treatment. Conductor E was diagnosed with a sprained wrist and was prescribed 200 mg Ibuprofen, DermaRub, and an ice pack for pain, and told he could return to work. As they left the facility, Trainmaster F asked Conductor E if he wanted him to mark him back up for duty, and Conductor E responded no, that he was going to his personal doctor. Conductor E proceeded to his personal doctor, who referred him to an orthopedic specialist. The orthopedic specialist diagnosed the injury as a sprained wrist, and immobilized his wrist in a brace with a light-duty restriction not to lift more than 15 lbs.

On October 13, 2005, Conductor E met with two trainmasters and gave them paperwork from his personal doctor. They informed Conductor E that there was no light-duty work for him and presented him with a charge letter to attend a formal investigation for failure to pay attention, use good judgement, and take the safest course while removing an EOT from his train. The investigation was held on December 15, 2005, and Conductor E was dismissed January 10, 2006.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing CSXT officers to H/I Conductor E by means of a calculated act to discourage or prevent Conductor E from receiving proper medical treatment. The investigation team also recommends that a regional warning letter be issued

against the trainmaster. As is standard practice, if the Chief Counsel's Office accepts the recommendation and sends a Notice of Probable Violation, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

The Part 225 audit team recommended a violation against CSXT for failure to report this case in accordance with 49 CFR 225.11 during the comprehensive audit at Jacksonville, Florida in November 2006.

***Locomotive Engineer G, H/I Issue, Nashville Division During the Period Between May 8, 2001, until October 20, 2005, when Engineer G Was Terminated for Improper Use of Dynamic Brake.***

Engineer G did not complete CSXT Form PI-1A indicating he had sustained a personal injury at any time during the period of May 8, 2001, until October 20, 2005, when he was terminated for improper use of a dynamic brake. He sought medical attention from his family physician for fatigue and psychological assistance for mental anguish. Engineer G contacted the CSXT Hot Line Assistance and spoke to an Equal Employment Opportunity (EEO) Representative and an EEO Replacement Officer, and provided them with information concerning his perceived constant harassment situation. They referred his case to an EEO Officer. During Engineer G's 26-year career, he had never been disciplined before 2001. He used the Family Medical Leave Act numerous times because of his perceived harassment by the Nashville Division Transportation Department officers. Engineer G is currently taking nine prescription medications for his medical and psychological trauma. Examination of operational tests performed on Engineer G did not disclose a pattern of excessive operational testing being done on Engineer G. Based on the employee's witness statement, no on-duty injury occurred that needed to be reported to CSXT during this period of time.

***Office of Safety Recommendation:*** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***Locomotive Engineer H, Fractured Right Ankle.***

Engineer H went on duty January 6, 2005, as engineer on CSXT Train Q269-06. He completed CSXT Form PI-1A, indicating he had stepped on an unseen fusee that was lying on the deck level obscured by the bottom step. This caused Engineer H's right ankle to roll, resulting in a fall, fracturing his right ankle. Engineer H indicated the injury occurred while he was working. He was taken in Road Foreman I's automobile to the ER where he was provided with crutches, an ankle brace, and a prescription for medication.

The following day, an orthopedic surgeon diagnosed a fractured ankle and issued a prescription for Lortab at 5 mg. Engineer H was placed on light duty until February 9, 2005, the date of his next office visit. The following CSXT officers met Engineer H at the yard office after his return from the ER: Superintendent J, Roadmaster K, Trainmaster L, and Road Foreman I. Four officers questioned Engineer H concerning his alleged personal injury prior to the injury and then he was FRA drug and alcohol tested. He was tested 8 hours and 30 minutes after reporting for duty.

**Office of Safety Recommendation:** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***Locomotive Engineer M, Stress Reaction, May 25, 2006, Ozark, Alabama, CSXT A/I No. 000022837.***

Engineer M went on duty at 2:45 p.m. on May 25, 2006. He completed CSXT Form PI-1A, indicating he got behind his seat prior to Train Q658-25 striking the two rear cars of CSXT Train Q545-25. Engineer M indicated this injury occurred at 10:00 p.m. on May 25, 2006, while he was working with and monitoring a student engineer who was operating the control of the locomotive. The three crew members on Q658-25 were taken to a hospital by private automobile. Engineer M stated Q658-25 received block authority to Tennille Block. Train Q545-25 was not clear of Tennille Block. The lead locomotive struck the rear two cars of Q545-25, fouling the main line. CSXT reported this case to FRA as a Class A Employee on Duty case. Engineer M had a stress reaction, no treatment was provided in the emergency room, and his doctor released him to return to work. Engineer M was told to check his blood pressure every 2-3 days.

**Office of Safety Recommendation:** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***Conductor N, Pinched Small Finger Between Cut Lever Handle and Front End of Locomotive, June 10, 2006, Avon, Indiana, CSXT A/I No. 000023235.***

Conductor N went on duty at 6:30 a.m. on June 10, 2006. He completed CSXT Form PI-1A, indicating he was coupling Engine CSXTT 6103 to Engine CSXTT 6287 when he opened the knuckle on 6287 to make the joint, and pushed the cut lever, catching his finger between the cut lever and engine body. Conductor N was taken to a hospital where he was examined, treated, and released. There were no restrictions and no prescriptions. Conductor N was not initially available for contact because his telephone was disconnected. Conductor N was finally contacted and stated he was currently working and he took no exceptions to CSXT medical treatment provided.

**Office of Safety Recommendation:** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***Maintenance of Way (MOW) Equipment Operator O, Pop and Burning Sensation in Right Shoulder, June 8, 2006, Evansville, Indiana, CSXT Case No. 000023510.***

MOW Equipment Operator O went on duty at 7:30 a.m. on June 8, 2006. He declined to fill out a CSXT Form PI-1A and allegedly did not request medical attention. MOW Equipment Operator O stated that while attempting to remove a hydraulic hose on a production tamper, he injured his right shoulder. MOW Equipment Operator O is assigned to a production tamper. FRA attempted to contact the employee by leaving telephone messages that were not returned.

**Office of Safety Recommendation:** FRA's investigation did not reveal any violation of 49 CFR 225.33.



***Locomotive Engineer P, Strained Left Shoulder, May 30, 2006, Evansville, Indiana, CSXT A/T Case No. 000023481.***

Engineer P went on duty at 12:30 a.m. on May 30, 2006. Engineer P, according to CSXT Form PI-1, stated he refused to fill out required PI-1A form on the incident. The PI-1 form states the engineer strained his left shoulder while applying the hand brake on locomotive. Engineer P did not request medical attention. FRA contacted the employee, who stated on October 31, 2006, that “currently there is a culture that exists on CSXT,” and “I am afraid of losing my job, and do not want to talk with you about this injury. I am currently working and do not want to lose my job.”

***Office of Safety Recommendation:*** FRA’s investigation did not reveal any violation of 49 CFR 225.33.

***Conductor Trainee Q, Air Hose Struck Jaw, Left Side, May 25, 2006, Willard, Ohio, CSXT A/T Case No. 000023011.***

Conductor Trainee Q went on duty at New Castle, Pennsylvania, at 11:00 p.m. on May 25, 2006. Conductor Trainee Q refused to fill out the required CSXT PI-1A Form. The supervisor failed to fill out required CSXT Form PI-1. A fax message about Conductor Trainee Q states, “when opening angle cock on cut and air hose, struck left side of jaw. Examined in ER. No restrictions, no RX and will continue to work. Employee given over-the-counter ibuprofen. Detail of injury pain in lower jaw and teeth. Penciled in 0 reportable days absent from work.” FRA contacted the employee on the telephone on October 31, 2006. Conductor Trainee Q stated CSXT handled the employee properly, “I will make no comments other than that.” The Conductor Trainee Q was currently working.

***Office of Safety Recommendation:*** FRA’s investigation did not reveal evidence sufficient to support an enforcement action under 49 CFR 225.33. The Part 225 audit team recommended a violation against CSXT for failure to report this case in accordance with 49 CFR 225.11 during the comprehensive audit at Jacksonville, Florida in November 2006.

***Trainman/Switchman R, Sulfuric Acid Splashed on Employee from Tank Car with Ruptured Seal, May 22, 2006, Evansville, Indiana, CSXT Case No. 000022766.***

Trainman/Switchman R went on duty at 3:55 p.m. on May 22, 2006. Trainman/Switchman R filled out required PI-1A Form indicating they were standing next to rail car, switching, when movement began. Some product from the top of car rained down and struck Trainman/Switchman R’s neck and arms. Trainman/Switchman R immediately showered and was taken to a hospital, was administered first aid, an antibacterial ointment cream, and released. Since Trainman/Switchman R had immediately taken a shower and washed, this was the only treatment required. FRA contacted Trainman/Switchman R on October 13, 2006, who stated they had no problems with the treatment CSXT provided to them before and after this injury.

***Office of Safety Recommendation:*** FRA’s investigation did not reveal any violation of 49 CFR 225.33.

***Conductor S, Automobile Accident while Driving to Work Assignment, May 26, 2006, Casey, Illinois, CSXT Case No. 000023490.***

Conductor S went on duty at Terre Haute, Indiana, at 6:00 a.m. on May 26, 2006. Conductor S filled out the required PI-1A form indicating he was driving from an on-duty point to a flagging position on a highway when the employee was struck in the rear of his vehicle by a Greyhound bus, totaling his automobile. Conductor S was taken by ambulance to a hospital. He was examined at a hospital, treated, and released. Employee stated he had a doctor's appointment for an x-ray on May 30, 2006. Conductor S stated he "worked 12-hour days and had to mark off in order to make the appointment. I was able to work but had to have my shoulder x-rayed" by his own doctor. FRA tried to contact Conductor S on October 13 and October 31, 2006, but was unsuccessful in its attempts.

***Office of Safety Recommendation:*** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***High-Profile Employee, Conductor T, Russell, Kentucky.***

No personal injuries reported in time line investigated by FRA.

***Office of Safety Recommendation:*** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***Conductor U, Mobile, Alabama, Investigated by FRA.***

Charged and terminated for minor rules violations. Tried to contact employee on several occasions with no calls returned. No personal injuries reported during time line examined.

***Office of Safety Recommendation:*** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***Electrician V, Strain Lower Back and Knee, June 6, 2006, Atlanta, Georgia, CSXT A/I Case N. 000023080.***

While jump-starting locomotive, positive cable came out of clamp, causing Electrician V to jump back to keep live wire from striking him, which resulted in lower back strain. The electrician was transported to a hospital. After receiving a shot and pain pills at the ER, Electrician V was awakened by a CSXT carrier officer who questioned him about the incident and requested Electrician V to fill out required paperwork. After filling out the required paperwork, the CSXT officer approached the ER doctor's desk and asked him several questions concerning the Electrician V's prescription medication and how long the electrician would be off from work.

***Office of Safety Recommendation:*** FRA's investigation did not reveal any violation of 49 CFR 225.33.

***Manager of Field Investigation W, Back Strain, Closed Head Injury and Shoulder Contusion, May, 06, 2006, Corinth, Kentucky, CSXT A/I No. 000024482.***

While traveling home, Manager of Field Investigation W received a call from CSXT Police Command Center to investigate a highway-rail grade crossing accident. Having his 3-year-old child with him, he was required to change his plans and accommodate this job assignment and take his child to the babysitter, which was on the way to the Winchester accident site. While turning into the babysitter's driveway, a vehicle traveling in the same direction struck Manager of Field Investigation W's automobile, injuring him. Shortly after the automobile accident, his wife took him to the ER, where he received prescription pain medication. Manager of Field Investigation W's accident was not properly reported to FRA as required. Manager of Field Investigation W was told by his supervisor this was not an FRA-reportable incident, and that he would not permit or allow Manager of Field Investigation W to fill out the required CSXT PI-1A form. Manager of Field Investigation W was also informed by his supervisor that although his treating physician had prescribed for him to be off work, he was to "suck it up" and continue working because the department was short-handed. Manager of Field Investigation W's supervisor also told him if he reported his injury to CSXT, he would be disciplined or dismissed from service. CSXT also instructed Manager of Field Investigation W to turn in his medical bills to CSXT, and not the health insurance provider, for payment.

***Office of Safety Recommendation:*** The investigation team has recommended the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., to follow the policy statement of its ICP by permitting or allowing a CSXT supervisor to commit H/I of the Manager of Field Investigation W by means of a calculated act to discourage or prevent Manager of Field Investigation W from receiving proper medical treatment or from reporting such accident/incident, injury, or illness to the proper authorities. The ICP was also violated by the calculated act of not allowing or permitting Manager of Field Investigation W to submit the required PI-1A forms for reporting an on-duty accident/incident in a calculated act to discourage or prevent Manager of Field Investigation W from receiving proper medical treatment after it was determined that Manager of Field Investigation W was having critical health problems. The investigation team also recommended a violation be submitted to CSXT for not properly reporting a reportable accident/incident to FRA as required. The investigation team recommends that a regional warning letter be issued against the railroad official directly involved in Manager of Field Investigation W's case. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor X, L-5, S-1 Herniated/Rupture Disc, Lower Back Strain, Injury Required Surgery, January 31, 2006, LaGrange, Georgia.***

While checking a CSXT train at approximately 8:30 a.m. on January 31, 2006, at LaGrange, Georgia, Conductor X injured his back while releasing a defective hand brake on an unidentified railroad car in the train consist. Conductor X did not report this incident immediately because he was concerned about losing his job. This concern was because of a safety class held by Trainmaster F just prior to this incident, where Trainmaster F stated "that 99.9 percent of the people that get injured out here will be fired for a rules violation." Conductor X did not report his personal injury incident until February 2,

2006, at 8:37 p.m. arrival time on his return trip to the home terminal. Trainmaster Y immediately took him to the ER at a hospital. Trainmaster Y discussed with the employee what would make an FRA-reportable case on their trip to the ER. Trainmaster Y asked if he could go back with Conductor X into the treatment room, to which Conductor X stated he did not care. Trainmaster Y received a telephone call, at which time he stated to the employee he would wait in the waiting room for his return. The ER doctor examined Conductor X and prescribed Vicodin and Flexiril, instructing Conductor X not to work for 3 days and to follow up with a personal doctor. When Trainmaster Y was informed of the prescription and lost work days, he asked to visit with the ER doctor to see if he could get him to change the prescription medication and time off-duty. Trainmaster Y could not change the doctor's directions for treatment. Conductor X was drug tested and filled out the required CSXT PI-1A forms on the incident. Carrier officers properly filled out the required PI-A forms for Conductor X on February 3, 2006, after being notified of accident/incident by Conductor X.

**Office of Safety Recommendation:** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT railroad official to commit H/I of Conductor X by means of discussing treatment reporting procedures, offering safety days to the injured employee, and requesting to enter the ER in a calculated act to discourage or prevent Conductor X from receiving proper medical treatment. The investigation team also recommends further investigation be conducted in Conductor X's case. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor Z, Stiffness in Lower Back and Neck, Fell on Right Side, Sore Right Elbow and Shoulder, March 9, 2006, Pascagoula, Mississippi, CSXT A/I No. 000021173.***

While checking a CSXT train at approximately 10:45 p.m. on March 9, 2006, Conductor Z injured his right elbow and shoulder. Conductor Z was injured while walking to the head end of the train. After lacing air hoses, he tripped on a nylon strap hanging from a boxcar that had looped around his left foot. Conductor Z reported this incident immediately upon arrival at the CSXT facility. Conductor Z did not request and did not receive any medical attention. Conductor Z filled out the required CSXT PI-1A forms on this incident on March 10, 2006, at approximately 5:15 a.m. Carrier officers properly filled out required PI-1A forms for Conductor Z on March 10, 2006, after being notified of the accident/incident by Conductor Z.

**Office of Safety Recommendation:** FRA's investigation did not reveal evidence sufficient to support an enforcement action.

***Engineer AA, Soreness in Right Ankle, May 16, 2006, Martin, Kentucky, CSXT A/I No. 000022867.***

While walking in the cab of a locomotive, Engineer AA's right foot broke through the flooring of the CSXT locomotive cab. The locomotive personal injury incident was not properly reported. No examination of CSXT Locomotive 205 was performed as required. Engineer AA did not fill out the

required CSXT Form PI-1A as required. The CSXT Trainmaster BB allegedly filled out CSXT-required PI-1A Form on May 16, 2006, at 11:10 a.m., as required.

In a telephone interview with Engineer AA on October 12, 2006, Engineer AA stated, “no officer has threatened me concerning this incident. However, I have been operational tested 98 times with no failures since this reported incident by CSXT officers. I have been banner tested on five or six different occasions since I notified CSXT of this incident. I did not fill out a PI-1A Form because I was afraid of losing my job. Since I reported this incident, I have been harassed and monitored because I verbally reported an incident that was not FRA-reportable. I do not want to fill out a witness statement because I do not want to lose my job. The local officers are also scared of losing their positions because of FRA-reportable incidents.”

**Office of Safety Recommendation:** FRA’s investigation did not reveal evidence sufficient to support an enforcement action.

***Conductor CC, Injury to Right Knee, Which Required Surgery to Repair, July 23, 2006, Woffard Siding.***

During the interview, Conductor CC stated the following: “While walking to position myself to inspect a passing train in compliance with Outstanding System Bulletin Instructions, I caught my right boot on a piece of crosstie sticking up out of the ballast, falling on my right knee. I notified my CSXT trainmaster on my cell phone after I had fallen and injured my right knee. He asked me if I could make it to Knoxville to which I stated I could. I was immediately relieved by the Knoxville Trainmaster DD and transported to the yard office. Prior to leaving the yard office I filled out a CSXT PI-1A required form and was told by Trainmaster EE he would hold this Form until the true extent of my injury was known. I overheard the district superintendent on a telephone conference call speaker phone telling the Knoxville Trainmaster DD and Trainmaster EE ‘if that injury becomes a reportable put his [expletive] on the street.’ Trainmaster EE arranged for me to attend a 2-day safety class, after which, I returned to work and worked for approximately 2 weeks until the pain in my right knee became unbearable. I informed Trainmaster EE, who then told me I should avoid having the doctor write a prescription, because it would make it reportable and to call him after my doctor’s appointment. I was examined by my physician who referred me to an orthopedic surgeon who issued me prescription Hydrocodone 750 mg for pain and gave instructions for no work prior to surgery. I informed Trainmaster EE of these instructions. On August 22, 2006, I had surgery for removal of torn cartilage on my right knee. CSXT initially covered the expenses of the injury and treatment. I am now having some of the expenses go to a collection agency. My CSXT claim agent has not contacted me due to my relationship with my legal representation.”

**Office of Safety Recommendation:** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT supervisor to commit H/I of Conductor CC by means of a calculated act to discourage or prevent Conductor CC from receiving proper medical treatment or from reporting such accident/incident, injury, or illness to the proper authorities; also by the calculated act of not allowing or permitting Conductor CC to submit the

required PI-1A Forms for reporting an on-duty accident/incident; and the calculated act to discourage or prevent Conductor CC from receiving proper medical treatment after it was determined that Conductor CC was having critical health problems. The investigation team also recommends a violation be submitted to CSXT for not properly reporting a reportable accident/incident to FRA as required. Additionally, the investigation team recommends that further investigation be conducted with all the carrier officers directly involved in Conductor CC's case. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates an enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before a final action is taken.

***Conductor FF, Injury to Left Leg, Lower Back, L-4 Disc Ruptured and L-5 Disc Bulging after Falling Through Ice Covering a Shallow Pond in Attempt to Reach Train, December 24, 2004, Milepost N33.0, Crow Siding.***

During the interview, Conductor FF stated the following: "While crossing a field to go through a wooded area to get to CSXT train positioned about 200 yards from the road, which was as close as we could get because of a winter ice and snow storm, the engineer and I both fell through a layer of ice that was covered by snow into water, which came up to my chest. Floundering and struggling to get out of the water, we made it to the top of the ice and to the train. This was at approximately 0200 hours with a 22-degree outside temperature. Removing my clothing, I noticed a bad scrape on my left knee. I experienced some pain and discomfort but was numb from being cold. I was more concerned with getting dry and warm. We reported this incident to the Radnor Yardmaster GG. I called the Road Foreman of Engines HH and told him what happened. I did not report a personal injury to him at this time. I was called and performed work the following day at Willows Creek on CSXT train, completing this assignment. I called Road Foreman of Engines I, reporting this incident. He stated, by calling him and turning in this injury I was becoming a marked man. He said I would be fired and that I had a target painted on my back because of turning in a personal injury report. I had not turned in a PI-1A report at this time. At approximately 0200 hours December 27, 2004, my wife took me to the ER at a hospital for examination. The ER doctor told me to take Tylenol and call my family physician in the morning. My personal physician gave me a steroid shot for inflammation, a prescription for Hydrocodone 7.5 mg for pain, and a no-work slip for a week. Returning home I called the Trainmaster L reporting this. I immediately received a telephone call from Road Foreman of Engines HH telling me to come to Nashville to complete the injury report. Later that day, General Manager II of the Nashville Division called me. He instructed me to come to Nashville immediately and complete the injury report. He also stated I cannot seek any medical attention without being accompanied by a CSXT officer. He asked me several questions on how I got hurt and advised me he would set up an investigation and I would be required to answer questions at this time. The investigation was held on March 29, 2005, at about the same time of my first surgery, in my absence and dismissed me. I continue to have problems with the payment of medical expenses and insurance coverage has been canceled. My union representatives are pursuing an appeal of my wrongful dismissal."

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT supervisor to

commit H/I of Conductor FF by means of a calculated act to discourage or prevent Conductor FF from receiving proper medical treatment or from reporting such accident/incident, injury, or illness to the proper authorities; also by the calculated act of not allowing or permitting Conductor FF to submit the required PI-1A forms for reporting an on-duty accident/incident; and in a calculated act to discourage or prevent Conductor FF from receiving proper medical treatment after it was determined that Conductor FF was having critical health problems. The investigation team also recommends a violation be submitted to CSXT for not properly reporting a reportable accident/incident to FRA, as required. Additionally, the investigation team recommends that further investigation be conducted with regional warning letters issued against two railroad officials directly involved in Conductor FF's case. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates an enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor JJ, Contusion of Left Knee and Possible Deep Bone Bruise, Prescription Medication Issued, Physical Therapy, Lost Work and Arthroscopy Surgery, February 18, 2006, Nashville, Tennessee, Milepost OBA 194.1.***

During the interview, Conductor JJ stated the following: "While returning to the locomotives after securing the 14 hand brakes on the train, I tripped over a rock that was covered by snow, landing heavily on my left knee. Arriving at the yard office, I notified the yardmaster I needed to report an accident. He called Superintendent J, who arrived and questioned me concerning my condition. During the course of this questioning, he made the statement that "if I was one of his guys he would tell me that 'you're a young guy and you got a long career ahead of you and you don't want personal injuries on your record so you need to work with us.' " After about 6 or 7 minutes, Trainmaster KK arrived. He told me we could handle the situation by filing this report, but if we did everyone would see it and then I would be placed in a category where he would be required by Federal law to subject me to special scrutiny and extra testing. He indicated to me that his boss would review his paperwork every month for tests performed on people who turned in accident reports to determine how often these people were being tested. He indicated to me that making and submitting this report would put me in the spotlight, and he also stated that making this report would open everybody's eyes up and they would be looking at me. I asked him if it would be possible to just hold the report for a day or two to see if my knee got better.

At this time, he offered me the option of attending a day of POD training on rules and a safety seminar and that way I would get paid. He scheduled me for a safety skills seminar for Monday; Tuesday he scheduled a rules seminar class and test; and Wednesday he scheduled a POD training session. I attended the first two classes. On Wednesday I called the Trainmaster KK and advised him the pain was not getting any better and that I was going to get medical attention. I was examined and treated by Doctor LL at a bone and joint clinic. He diagnosed a contusion of the left knee and possible deep bone bruise. Doctor LL set up a physical therapy schedule and prescribed pain medication, Hydrocodone/APAP for 5 mg and 500 mg, respectively. I was given a cortisone shot to the left knee. I was referred to Doctor MM at a specialty medical facility. On April 14, 2006, the surgery was performed with the following results: 'the medial compartment showed partial detachment of the medial meniscus medial, with a small chondral fracture measuring approximately 5 x 9 mm on the medial tibial

plateau.’ I received a citation to an investigation dated February 23, 2006. After I received this charge letter, I cancelled the meeting with the CSXT Claim Department and made the decision to retain legal representation. I have not worked since February 18, 2006. From the first day I notified my supervisors concerning the accident and my injuries, I felt intimidated and threatened regarding the reporting of this accident.”

**Office of Safety Recommendation:** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT supervisor to commit H/I of Conductor JJ by means of a calculated act to discourage or prevent Conductor JJ from receiving proper medical treatment or from reporting such accident/incident, injury, or illness to the proper authorities; also by the calculated act of not allowing or permitting Conductor JJ to submit the required PI-1A forms for reporting an on-duty accident/incident at the time of the incident. The investigation team also recommends that regional warning letters be issued against two railroad officials directly involved in Conductor JJ’s case. As is standard practice, if the Chief Counsel’s Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Engineer NN, Fractured Bone in the Right Ankle, a Torn Meniscus and a Torn ACL in the Right Knee, Which Was Surgically Repaired on July 18 2006. Incident Occurred on May 21, 2006, at Martin, Kentucky. Called to operate CSXT Train N946-20 to Russell, Kentucky.***

During the interview, Engineer NN stated the following: “While handling one of the grips to the conductor, I turned my ankle on what I later discovered was a piece of crosstie. As I was stumbling, my right toe caught on the inside of the right rail in the direction of travel, and I fell face forward into the ballast. I mounted the locomotive and we proceeded with our trip. At a milepost, I stood up to get out of my seat to get a sandwich and stumbled because my right knee buckled. I began experiencing a throbbing pain in the knee and when I looked at the knee it was severely swollen. We arrived at Russell, Kentucky, I notified the yardmaster at 0335 hours that I needed to report an injury. At 0345, Trainmaster OO boarded the locomotive and questioned me concerning the events and circumstances surrounding my injury. Road Foreman of Engines PP arrived and I repeated the events surrounding this injury. Both officers helped me dismount the locomotive and took me to the hospital emergency room for treatment. At this time, and in the presence of Road Foreman of Engineers PP, I advised the emergency room receptionist taking my vital statistics that I did not want anyone other than family members or my union representatives to be allowed into the examination area. After x-rays, the emergency room physician asked me concerning pain and feeling and I responded that the pain was becoming unbearable. The physician ordered the administration of demerol for pain and Phenergan for nausea. After a period of time, Trainmaster QQ arrived with a drug and alcohol sample collection technician. I had dozed off due to the effects of the pain medication. Trainmaster QQ woke me and started questioning me concerning my condition. The technician presented some forms for me to sign and she and Trainmaster QQ read from the forms and then told me that I had to submit to the testing. They could not get me to the restroom, so they brought a male nurse who assisted me in each attempt. I finally produced a sample at 0903 hours. I was discharged with the following instructions: no driving, no weight bearing, prescriptions for Percocet, 650 mg. I have been charged with failing to ‘place your



foot on a surface in a defensive manner, resulting in a personal injury and you failed to report the unsafe conditions to the proper authority.’ ”

**Office of Safety Recommendation:** FRA Region 3 recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations for seven violations of 49 CFR Parts 219 and 228 that included violations for failure to report excess service and failure to comply with the Federal Reasonable Cause drug testing guidelines in 49 CFR 219.301. As is standard practice, if the Chief Counsel’s Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor RR, Sprained Knee, June 10, 2003, Philadelphia, Pennsylvania.***

While shifting the produce center on the Industrial Track at south Philadelphia, Conductor RR fell and sprained his knee. The engineer on the job called the yardmaster and asked for assistance. The trainmaster met the crew at 11th Street and came up on the locomotive. He instructed the crew to take the train across town to Eastside Yard, a distance of about 5 miles. They were also instructed to secure their train in the yard. When they arrived, the trainmaster, along with the manager of operating practices were waiting. Conductor RR was taken to the trainmaster’s office, where he remained for approximately 90 minutes. Conductor RR was next taken to a company doctor at a hospital, which was not the closest hospital available. At the hospital, he was questioned by two company officers. They also instructed Conductor RR as to the difference between a nonreportable and a reportable injury. He was further instructed to tell the doctor that he was to only prescribe over-the-counter medication, and not any prescriptions. The two company officials were present at the time of the examination, but spoke privately afterwards. Following the examination, Conductor RR was given the option to take “training days” or “safety days” to see how he felt before making this a lost-time injury. This incident was witnessed by the engineer, who has signed an FRA Statement of Witness concerning the events.

**Office of Safety Recommendation:** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT trainmaster to commit H/I of Conductor RR by means of a calculated act to discourage or prevent Conductor RR from receiving proper medical treatment. The investigation team also recommends that IL action be issued against all the carrier officers directly involved in Conductor RR’s case. Also the investigation team recommends a violations for failure to report the injury. The investigation team recommends regional warning letters be issued against three railroad officials that were involved in five cases in the Philadelphia terminal area. As is standard practice, if the Chief Counsel’s Office accepts the recommendation and initiates enforcement action, the railroad or individual will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Engineer SS, Injury to Left Shoulder, July 29, 2006, Philadelphia, Pennsylvania, CSXT A/I # 00025026.***

On July 29, 2006, while operating a CSXT train from 58th Street, Engineer SS assisted the conductor in trying to operate a mainline power-operated switch. Engineer SS injured his back and left shoulder. At the time of the occurrence, he did not request medical attention. He did continue to work throughout his shift. During his tour of duty, the engineer reported the incident and filled out all the necessary paperwork, including a statement concerning the event. The following day, July 30, 2006, the engineer received a phone call at his home from the terminal manager inquiring about his shoulder.

On Monday, July 31, 2006, Engineer SS called a trainmaster and spoke of his injury. He explained to the trainmaster that his shoulder was giving him trouble, and he requested that a magnetic resonance imaging (MRI) be performed to find out the extent of the injury. This started a barrage of phone calls from different railroad officials. First, the terminal manager called and questioned the engineer. Next, the trainmaster that initially took the injury report called and continued to question the engineer. During the interrogation session, Engineer SS repeatedly insisted that he wanted to go to his doctor for medical attention. This intimidation continued through a series of phone calls until the trainmaster succeeded in getting the engineer to postpone any medical attention and agree to meet with another trainmaster on August 1, 2006.

On August 1, 2006, the engineer met with the third transportation officer. He was then taken to a hospital to be examined. While speaking to the medical staff about his injuries, none of them knew anything about the injury. Engineer SS inquired about having an MRI performed. It was explained to him by the medical staff that the hospital he was in didn't perform MRIs. The engineer was examined by a doctor and had x-rays taken of his shoulder and back. He was diagnosed with a sprained shoulder and back. As a course of treatment, he was given a prescription for 800 mg of ibuprofen. He was also given a Lidoderm Patch, which made this a reportable injury.

On the return trip, the trainmaster made a phone call to crew management, instructing them to mark Engineer SS off. When he handed the phone to Engineer SS, Engineer SS stated that he was injured. The trainmaster took the phone from the engineer, then instructed crew management to mark Engineer SS off sick.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT trainmaster and terminal manager to commit H/I of Engineer SS by means of a calculated act to discourage or prevent him from receiving proper medical treatment. The investigation team recommends regional warning letters be issued against three railroad officials that were involved in five cases in the Philadelphia terminal area. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor TT, Injury to Left Knee on August 8, 2006, Langhorne, Pennsylvania, CSXT A/I # 24748.***

On August 8, 2006, Conductor TT was working with the engineer to switch out locomotives. They had set out Locomotive NS 3439 on a yard track at Morrisville Yard. After getting on Locomotive NS 5238, Conductor TT realized that Locomotive NS 3439 was rolling toward the locomotive he was on. He dismounted the moving equipment to avoid the impact. In the process, the conductor sustained an injury to the left knee.

The next morning, August 9, 2006, the conductor awoke with pain and stiffness in the left knee. He was due to report for duty at 5:00 p.m. During a job briefing, discussed on a telephone call, Conductor TT informed the trainmaster of the discomfort in his knee. Conductor TT was instructed to call the terminal manager. Conductor TT contacted the terminal manager and informed him of the incident and that he had pain and stiffness in his left knee. The terminal manager responded to Conductor TT by asking, "Do you know what path you're headed for?" The manager also asked the conductor, "What did your local chairman tell you to do?" This type of adversarial conversation continued until Conductor TT went to work.

After his tour of duty, the trainmaster arrived and summoned the engineer to his office. When the engineer came out from the trainmaster's office, he stated that he was asked questions about the conductor. The trainmaster then summoned the conductor to his office and repeatedly questioned him for about 45 minutes concerning the injury. According to Conductor TT, the conversation became adversarial and he felt intimidated throughout the whole thing. At several points of this interrogation, the conductor was considering retracting the injury report. Conductor TT stated that the trainmaster repeatedly said that he asked Conductor TT if he was injured the night before. The trainmaster would follow up his statements by telling Conductor TT, "I'm on your side," or "I'm here to protect you." This course of H/I continued for at least an hour, according to Conductor TT. Meanwhile, Conductor TT stated his supervisor was accusing Conductor TT of not telling him the day before about the incident. According to Conductor TT, intimidation continued from the trainmaster with statements like, "I've seen you guys try to hit the CSX lottery," and "You're going from Vegas lights to Times Square." At this point, the conductor was confused as to why he wasn't completing an injury report and going home. He caved in to the interrogation conducted by the trainmaster, and asked if they were straight on the matter. The trainmaster nodded and the meeting ended with the trainmaster repeating, "There is no hidden agenda."

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT trainmaster and a terminal manager to commit H/I of Conductor TT by means of a calculated act to discourage or prevent Conductor TT from receiving proper medical treatment. The investigation team recommends regional warning letters be issued against three railroad officials that were involved in five cases in the Philadelphia terminal area. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates an enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor UU, Sprained Right Thumb, October 8, 2005, at Philadelphia, Pennsylvania, CSXT A/I # 15836.***

Conductor UU was working on assignment during a rainstorm. The dual control switches were flooded. The train dispatcher asked the crew to put the power switches on “hand throw” and line the movement through the interlocking. While working in water that was shin deep, he tripped and fell, spraining his right thumb. He immediately informed the trainmaster of the incident. The pain became increasingly worse and he requested medical treatment. The trainmaster met Conductor UU on the train and offered to take him to the doctor the next morning. Conductor UU replied that he needed immediate medical attention. The trainmaster transported him to the hospital for treatment.

Along the way, the trainmaster explained the differences between a reportable and a nonreportable injury. During the treatment, the doctor prescribed 800 mg of ibuprofen. The trainmaster then asked to speak to the doctor, trying to talk him out of prescribing pain medication. The trainmaster asked Conductor UU to pay for the ER costs out-of-pocket. They returned to the yard office and were met by the terminal manager. The manager asked to see the prescriptions. He then made a phone call to someone inquiring how to handle the situation. When the terminal manager ended the call, he told Conductor UU that he had two options: (1) tear up the prescription and take a few safety days until the pain subsides, or (2) have the prescription filled, report the injury, and the company will charge him with rule violations and take him out of service. Conductor UU took the safety day, then 3 rest days, and let the pain subside. This incident was also witnessed by a local union representative, who also signed an FRA Statement of Witness as to the validity of Conductor UU’s statement.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT trainmaster and a terminal manager to commit H/I of Conductor UU by means of a calculated act to discourage or prevent Conductor UU from receiving proper medical treatment. The investigation team recommends regional warning letters be issued against three railroad officials that were involved in five cases in the Philadelphia terminal area. As is standard practice, if the Chief Counsel’s Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor VV, Injured Right Knee on October 16, 2004, at Philadelphia, Pennsylvania, CSXT A/I # 007447.***

A ballast rolled under Conductor VV’s right foot while he was walking on it, causing him to twist his right leg and injure his right knee. He was switching cars on East Side Yard track, located in Philadelphia, Pennsylvania. Conductor VV was taken to a hospital where he was examined by a company physician. He was marked off with an injury. He eventually had surgery on his right knee. Conductor VV returned to work on February 2, 2005. After returning to work, he consistently complained about the recurring pain. This continued until he went to his personal physician and had it examined. His doctor recommended that an MRI be performed on the knee. The results indicated that a second surgery was needed to correct the injury. He informed the railroad of this condition on

December 5, 2005. Conductor VV contacted the railroad and informed them that he had complications with a preexisting injury that occurred on October 16, 2004. He also stated that his doctor recommended that surgery was needed. He told CSXT superiors that he was scheduled for a second surgery on February 22, 2006. He remained off duty until June 8, 2006. The day before the surgery occurred, Conductor VV again notified CSXT superiors as to his preexisting condition and scheduled surgery. The CSXT managers conducted no followup on the incident, but rather chose to ignore it. They had Conductor VV marked off from duty and listed as "sick." The Claims Department asserts that there is no record of a lost-time injury due to a preexisting injury. Conductor VV contends that his injury was ignored by the trainmaster in order to prevent the lost-time days being asserted against the terminal's safety record. Conductor VV was off, listed as sick, for a period of almost 4 months.

**Office of Safety Recommendation:** The investigation team recommends a violation for failure of CSXT to update the days away from work for the October 16, 2004, reportable injury. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates an enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor WW, Burn to Left Lower Arm, Russell, Kentucky, June 1, 2007.***

Conductor WW reported for duty at Russell, Kentucky, at 11:00 p.m. on May 31, 2007, to work as the Conductor on a yard train. At approximately 6:45 a.m., he felt a burning sensation on his left forearm, which was visibly red and irritated. Conductor WW went into the shanty and washed off his arm with water and resumed working switching cars. Approximately 1 hour and 45 minutes later, Conductor WW stated the burning on his arm had intensified and he proceeded to the trainmaster's office and told the trainmaster he wanted to go to the hospital to have his arm treated because he didn't know what was causing the irritation. Conductor WW was concerned that his arm needed to be treated as soon as possible because of the possibility of absorbing chemical into his skin and into the bloodstream. According to Conductor WW, the trainmaster responded with "have a seat," and left the room to look for the terminal manager. After approximately 5 minutes, he came back into the room and said the terminal manager was not in, and he would make a phone call and be right back. He came back into room and said he would call the division manager. Conductor WW states that he said, "okay call him," but that Conductor WW was going to the hospital nonetheless and walked downstairs where he saw a UTU local chairman and told him he was going to the hospital. Conductor WW states when he walked through the tunnel to go to his car to leave the yard, the trainmaster yelled from behind him saying, "Wait, wait!" and he turned his back and began talking on his cell phone again. Conductor WW started walking to the parking lot and received a call from the UTU president. Conductor WW states he got into his vehicle and drove to the hospital, approximately 10 miles away. According to statements by Conductor WW, he arrived at the hospital at approximately 10:30 a.m. Therefore, he waited on the trainmaster to transport him approximately 1 hour and 15 minutes.

After Conductor WW arrived at the hospital ER, he told the medical staff that he had some unknown chemical on his arm and advised the medical personnel that he did not want anyone informed of his condition or to see him other than his girlfriend and his UTU representative. The hospital rinsed his arm

and applied a topical solution, and wrapped his left forearm in gauze bandage. He was released and given a topical solution to apply to his arm. The hospital advised him to see his family physician if the irritated condition continued. Conductor WW stated his rest days were the following 2 days (Friday and Saturday), and then he was displaced on Sunday, the third day after the incident. On Monday, he went to his family physician and he provided him with a prescription for some more topical cream. He also gave him a letter to stay off work for the next 3 days. The cause of the rash was never actually determined, but it appeared to be consistent with some type of chemical burn. The railroad called during his time off and wanted him to attend a safety skills workshop on the Monday after his incident. Conductor WW stated he went to the coal hump and gave his off-work excuse from his doctor to the terminal superintendent, who advised Conductor WW that his injury was an FRA-reportable incident.

Conductor WW stated he was off work for a total of 12 days, and after returning to work was advised that an efficiency test had been conducted on him and a failure was submitted for improper attire, resulting in a 5-day suspension for wearing a shirt that was not in compliance with CSXT Safety Rules for proper work attire. In closing, Conductor WW stated all he wanted from the railroad was prompt medical treatment for a condition that he had no idea how serious it could be. The railroad was more concerned about repercussions for reporting purposes, and did not make any real effort to provide him with medical treatment.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT carrier officer to commit H/I to Conductor WW by means of a calculated act to discourage or prevent Conductor WW from receiving proper medical treatment. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Conductor XX, Inhaled Chemicals from Leaking Tank Car, Russell, Kentucky, April 30, 2007.***

Conductor XX reported for duty on April 30, 2007, on the second shift for yard job Y-200. He was part of a three-person crew that included an engineer and a conductor. Toward the end of the second shift, Conductor XX and his crew were kicking a cut of cars into different yard tracks and had about five or six cars remaining to switch. Conductor XX stated he threw the switch and "proceeded back toward the cut of cars to pull the cut lever when I was overtaken by a smell like paint thinner. Initially the smell was faint and I did not pay too much attention to the odor." However, as the engineer was shoving, Conductor XX stated he had to hold his breath because the odor got stronger. He told the engineer to stop the shove and immediately walked at a 90-degree angle away from the cars to the track. Conductor XX stated he called the conductor on the radio and instructed him to get away from the car because it was leaking. The conductor was positioned down in the yard and started walking toward Conductor XX to check on his condition. When the conductor arrived, Conductor XX complained of feeling nauseous, light-headed, and had a metallic taste in his mouth. The conductor immediately contacted the yardmaster and told him the car was leaking and gave him the car number, and was further instructed by the yardmaster to proceed with the rest of his crew to the shanty.

Conductor XX states he walked into the cab supply area of the shanty and was planning to get a bottle of water, however, no water was available, so he purchased a soda and proceeded outside to sit at a table. Conductor XX stated that about 25 minutes elapsed after speaking with the first trainmaster. After the second trainmaster arrived, Conductor XX asked three times in the span of 15 minutes to be taken to the doctor. Conductor XX had further conversations with the yardmaster, who told him the chemical in the car was methyldichlorosilane, however, it was later determined not to be the chemical he was exposed to.

The first trainmaster that arrived at the shanty asked Conductor XX if he was okay, what had transpired so far, and about the location of the car. Conductor XX stated he told the first trainmaster that he wanted to go to the doctor, however, the trainmaster walked away and was talking on his cell phone to the terminal superintendent and never responded to Conductor XX. The second trainmaster arrived while Conductor XX was on the phone with his union's local president. The second trainmaster asked Conductor XX if he was alright, and Conductor XX responded he felt nauseous, light-headed, and had a metallic taste in his mouth and would like to go to the hospital. Conductor XX stated he asked the trainmaster three times in a 15-minute period to take him to the ER. After the third time, the trainmaster got up and walked to the back of the shanty. After arriving at the hospital, Conductor XX proceeded to the treatment area, where the doctor examined him and released him to his family physician for followup. The conductor drove Conductor XX back to the West End Shanty to clock out and get Conductor XX's car, when they were directed by a third trainmaster to write a statement. Conductor XX stated it was after 7:00 a.m. when he got home, and later that evening between 9:00 and 9:30 p.m., he stated he was called back to give another statement and meet with the terminal superintendent and the third trainmaster. Conductor XX states he went to his family doctor the next day because his eyes were swollen and red. The doctor took blood samples and gave him a shot of cortisone and a prescription. Conductor XX states that the conductor and he were compensated for 2 days as safety days. The next day, they had to rewrite their statements and then edit the rewritten statement. The BLET local chairman was present and advised Conductor XX to do as the carrier officer directed and not to be insubordinate, because if he was, the officer may have filed charges.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing a CSXT trainmaster to commit H/I of Conductor XX, by means of a calculated act to discourage or prevent Conductor XX from receiving proper medical treatment. Hours of service violations should be filed for directing the conductor to fill out railroad documents after exceeding his statutory limit of duty. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

***Carman YY, Injured Knee at Selkirk Yard, Selkirk, New York.***

Carman YY reported for duty at 3:00 p.m. on April 27, 2006, and began inspecting his first train at approximately 5:00 p.m. Carman YY was operating a four-wheeler in a westward direction between tracks 7 and 8 in the construction yard when he ran over an object, possibly a brake shoe, which

resulted in the object striking the underside of the four-wheeler, making a loud banging noise startling Carman YY. After the noise, Carman YY swerved and struck the rail and the four-wheeler went up onto the rail. Carman YY stated he thought it felt like the four-wheeler was going to fall over and his immediate reaction was to put his foot out to stop it from turning over, thus hyperextending his knee, which was later diagnosed as a torn anterior cruciate ligament (ACL). When the other carman working the same train got to the rear of the train, Carman YY was found on the ground holding his leg. Carman YY was instructed to go to the shanty and others would finish the train without him. After Carman YY arrived at the shanty, he explained what had happened to those who asked him if he needed medical attention. According to Carman YY, he initially responded no, and told his supervisor that he wanted to determine if it would feel better if he kept his weight off the knee. Another employee immediately informed his supervisor, who contacted the chief mechanical officer car in Jacksonville, Florida, of the injury. The CSXT supervisors had Carman YY fill out the PI-1A form and approximately 2 hours later, Carman YY complained of his knee throbbing and stated he wanted to go home. The supervisors responded that if he went home, it would be FRA-reportable. They asked Carman YY if he would stay if they purchased a heating pad, aspirin, and ace bandage, and Carman YY agreed. Carman YY sat in the shanty the rest of his shift with his leg elevated. Carman YY had the next 2 days off (Saturday and Sunday), however, on Saturday, his leg had swollen more. Carman YY called his supervisor and informed him his knee was not any better, and that he was going to an urgent care facility near his residence to have it examined. The physician diagnosed the injury as a possible ACL tear and referred him to an orthopedic specialist who concurred with the diagnosis, supported by results found in an MRI. After Carman YY contacted his supervisor and informed him of the diagnosis and the fact that it was FRA-reportable, he later was contacted by his local chairman who told him that he would be receiving a charge letter to attend a formal investigation.

**Note:** FRA found Carman YY's case to be one of four cases in which the CSXT's Ethics Department found that H/I had occurred. For this case, the CSXT Ethics Department communicated their findings and recommendations to other the departments in CSXT (e.g., Law, Human Resources, etc.) for a decision to be made about what level of disciplinary action should be taken against the CSXT supervisor who violated CSXT's Policy Statement and FRA's antiharassment provision of its accident reporting rule. At the time of the FRA audit noted in Phase 2 of this report, CSXT senior management had not taken any disciplinary action against the carrier officers involved in this case.

**Office of Safety Recommendation:** FRA has already filed a violation against the railroad for H/I in violation of 49 CFR Section 225.33. FRA's Office of Safety is also recommending the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations and an Individual Liability action with civil penalty against the Chief Mechanical Officer-Car. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before the final action is taken.

***Conductor ZZ, Sprained Right Ankle, February 16, 2005, Vauce, Ohio.***

Conductor ZZ stated that on February 16, 2005, he was making a pickup to add railcars to his train from an industrial yard while working on a train. He had separated the locomotives from the rest of the



train and had proceeded beyond the switch providing access to the stored railcars. He was riding the rear locomotive on the south side, which was on the same side as the engineer. During this time, he experienced a loud popping sensation in the upper part of his spine and experienced an immediate numbness in both arms and hands. The first thing Conductor ZZ thought was that there was something seriously wrong and he must dismount the equipment safely. Conductor ZZ stated he was really concerned that he was losing his grip and that he needed to get off of the equipment without getting hurt.

While dismounting, he lost his grip and landed in an awkward position, which resulted in an injury to his right ankle. Conductor ZZ stood there for a few seconds trying to determine what was developing with his neck. After a short time, he determined that even though his neck was stiff, the numbness had become better and he could feel sensation in his fingers. His ankle was swelling, and he could feel it doing so inside his boot.

Conductor ZZ said he was sitting on the ground when Trainmaster QQ arrived in an effort to get the weight off his ankle. The trainmaster told him that he had observed him dismounting the moving equipment. Conductor ZZ informed the trainmaster of his situation and told him that he did not dismount the equipment, but that he fell off. Conductor ZZ also advised him of the situation with his neck and arms. Conductor ZZ also told Trainmaster QQ about the situation with his ankle. The trainmaster said that it appeared to him that Conductor ZZ just got off of the moving equipment. Conductor ZZ told the trainmaster that he was glad he had seen the incident as he was now a witness to his injury. Trainmaster QQ then asked Conductor ZZ if he needed to go to the hospital or if he needed an ambulance. Conductor ZZ advised him that he was going to try to finish this pickup, which was the last industrial work he had to do, and complete the trip into Russell, Kentucky. Conductor ZZ then told the trainmaster he would reevaluate his condition and proceed from there.

They received permission from the dispatcher to depart, and they proceeded east. Because of the amount of tonnage now on the train and the fact that they had only one good locomotive, the engineer advised the dispatcher that it was possible that the train could stall on Greg Hill or Apex Hill on the way to Russell. The train did stall on a hill. They notified the dispatcher of their situation. He told them to secure the train and Conductor ZZ advised him that he couldn't because of his injured ankle and that the trainmaster was aware of the situation. The dispatcher asked Conductor ZZ if he needed an ambulance or if he could wait. Conductor ZZ responded that he could wait, because Conductor ZZ thought that the relief crew would be coming. His plan was to get to Russell and go to Belfonte Hospital for examination. They waited for another 2 hours and 50 minutes from the time the van with crew arrived until the officers arrived, allowing him to go to the hospital. Conductor ZZ stated he wanted to go to a hospital close to home, but the officers instructed him to go to another hospital because they said it was closer and wanted him to go to the closest medical facility, so he could be treated as quickly as possible. Three officers arrived in two separate vehicles. After they arrived, instead of one of the officers transporting him to the hospital, they made him wait in the van while they downloaded the locomotive tapes and tied hand brakes. They apparently seemed to have forgotten that he had been waiting for 1 hour and 10 minutes. Then, they pursued their investigation for an additional 1 hour and 40 minutes before they allowed Conductor ZZ to go to the hospital, following

behind them.

Conductor ZZ was examined by the ER physician, who diagnosed a sprained ankle and recommended further MRI examination for the back and neck because of inflammation. Conductor ZZ stated they could not get a good x-ray of the injured ankle because of plates in his ankle from a previous injury at home in 2000. The doctor issued a prescription for pain medication. Conductor ZZ made an appointment with his personal physician for further examination. An MRI was performed on February 25, 2005. Subsequently, Conductor ZZ's orthopedic surgeon diagnosed a C5-6 and C6-7 disc herniation with increasing symptoms of a radicular nature. Conductor ZZ had been taking Mobic and Lotrel, and his surgeon gave him a prescription for Robaxin at 750 mg, and started physical therapy. After completing the treatment, Conductor ZZ was cleared to return to duty on April 21, 2005, by the CSXT Medical Department. He was allowed to return to duty on April 25, 2005. He was off for 63 days as a result of this injury.

***Office of Safety Recommendation:*** The investigation team recommends the assessment of a civil penalty against CSXT for noncompliance with Federal railroad safety regulations, i.e., for failure of the railroad to follow the policy statement of its ICP by permitting or allowing the CSXT carrier officers to commit H/I of Conductor ZZ means of a calculated act to discourage, or prevent Conductor ZZ from receiving proper medical treatment by delaying transportation to a medical facility. As is standard practice, if the Chief Counsel's Office accepts the recommendation and initiates an enforcement action, the railroad or individual cited will have the opportunity to present mitigating information refuting the alleged violations before final action is taken.

## Acronyms

ACL	anterior cruciate ligament
BLET	Brotherhood of Locomotive Engineers and Trainmen
BST	Behavioral Science Technology, Inc.
CEO	chief executive officer
CFR	Code of Federal Regulations
CSXT	CSX Transportation
DOT	Department of Transportation
EEO	Equal Employment Opportunity
EMS	emergency medical services
EOT	end-of-train device
ER	emergency room
FRA	Federal Railroad Administration
FRA Guide	FRA Guide for Preparing Accident/Incident Reports
H/I	harassment and intimidation
HIPAA	Health Insurance Portability and Accountability Act of 1996
ICP	Internal Control Plan
IL	individual liability
MOW	Maintenance of Way
MRI	magnetic resonance imaging
OIG	Office of Inspector General
PWC	PricewaterhouseCoopers
S&TC	signal and train control
UTU	United Transportation Union



Tony L. Ingram  
Executive Vice President &  
Chief Operating Officer

500 Water Street J120  
Jacksonville, FL 32202  
904-359-1007

October 4, 2007

Ms. Jo Strang  
Associate Administrator – Office of Safety  
Federal Railroad Administration  
Mail Stop 25 Room 6014  
1120 Vermont Ave. NW  
Washington, DC 20590

Dear Ms. Strang:

This is in response to your letter dated September 28, 2007 regarding FRA's investigation into allegations of intimidation and harassment (as those terms are used in 49 CFR Part 225) on CSXT.

As you are aware, CSXT has fully cooperated with FRA in conducting this investigation. This has included arranging for interviews of management employees, and involvement of our Vice President Safety and an outside counsel in many of the management interviews. CSXT is fully committed to identifying and correcting any impermissible actions that have been taken by CSXT managers, and preventing any future occurrences.

CSXT has already taken a number of remedial actions both to address specific instances of impermissible conduct and more generally to prevent such conduct from occurring. These actions have been taken both in connection with incidents that are involved in FRA's current investigation, and in other cases that have separately been brought to our attention. As requested, we describe these actions in more detail below.

As a result of the cases involving Mr. Biernacki and Mr. Barnes, we reduced the 2006 management incentive bonus (payable in February 2007) for three managers (one senior manager in the Biernacki case and two managers in the Barnes case). One manager was laterally transferred and had his salary and 2006 bonus reduced, and another manager was demoted and had his salary reduced, for performance issues which included mishandling of injury reporting in the Garvey case. Two other individuals involved in incidents being investigated by FRA are no longer CSXT managers and hence remedial action is not available even if it would be appropriate. One of these individuals was dismissed for other reasons, and one chose to exercise seniority.

As you are aware, CSXT is not privy to all of the information gathered by FRA in the course of its investigation at the time of this letter. Additional actions are under active consideration and will be finalized once the report is received and reviewed.

CSXT has also taken a number of personnel actions in other cases which involved intimidation and harassment or failure to report an injury. For example, in a case involving three employees in Selkirk, New York, we reduced the 2006 management incentive bonus for one senior manager. In connection with other cases, four other managers will receive a reduction of their 2007 bonus (payable in February 2008) and a senior manager will receive a letter of reprimand. Another field manager was brought to Jacksonville for coaching and counseling. In addition, at least three managers have been terminated since 2005 at least in part for covering up an injury or for mishandling an injury report.

In the fourth quarter of 2006, CSXT included in its operating rules and compliance training for transportation officers information on the proper handling of on-duty injuries. Leadership training, which is provided on an ongoing basis, provides our managers with communication skills and teaches managers to use these skills on a daily basis to lead, coach and safely run our operations with integrity and sound ethics.

In 2007, CSXT continued to enhance the breadth and quality of our Leadership program and management training on proper handling of on-duty injuries. The Vice President Safety will provide on-duty injury training to all division managers which includes CSXT's policy not to discuss FRA reportability criteria with an injured employee or with treating hospital personnel.

You also requested information regarding investigations of intimidation and harassment complaints concerning accident/incident reporting conducted by our Internal Audit department. From January 2006 through October 2, 2007, CSX Internal Audit received 36 complaints or referrals of alleged intimidation or harassment in connection with accident/incident reporting. In 7 of the cases Internal Audit found a violation of our Internal Control Plan; in 23 cases no violation was found; and 6 cases remain open. Remedial actions primarily consisting of bonus reductions have been determined in 6 of the 7 cases in which violations were found. Earlier this year the company adopted enhanced guidelines with time frames for conducting injury reporting intimidation/harassment investigations and determining corrective action where appropriate.

I trust the information we have included is helpful and responsive. Should you have any further questions regarding these matters, as always, please let me know.

Sincerely,



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James M. Marks  
Vice President - Safety

500 Water Street J120  
Jacksonville, FL 32202  
904-359-1530

November 12, 2007

Ms. Jo Strang  
Associate Administrator – Office of Safety  
Federal Railroad Administration  
Mail Stop 25 Room 6014  
1120 Vermont Ave. NW  
Washington, DC 20590

Dear Ms. Strang:

This letter is in response to the draft Harassment and Intimidation Investigation report that you provided to CSX Transportation, Inc. on October 18, 2007. We appreciate the efforts and insights of the Federal Railroad Administration in this regard. CSXT shares the FRA's commitment to identifying and correcting any harassment and intimidation in connection with injury reporting and to preventing any future occurrences.

To that end, we have cooperated fully with the FRA's investigation and implemented recommended corrective measures. In addition, we have taken important additional steps to improve the environment for safety. For example, this year, managers received new training in ways to improve communication and coaching styles. In addition, CSXT has implemented an employee wellness program that helps reinforce CSXT's concern for individual health and safety.

Those steps will continue to improve CSXT's culture and outcomes so that mistakes become even more rare. We owe that to the tens of thousands of employees and managers, who do effective and ethical work in the area of safety every day, in every condition. We will continue to improve so that their success is not marred by mistakes that do not reflect CSXT's culture or their work. CSXT's position is that one instance of intimidation is too many.

Again, we appreciate the insights of the report and the opportunity they afford us. Here are a few points with respect to the report.

#### Factual Corrections

The discussion of alcohol and drug testing contains an error. The report at pp. 3-4 and 8-9 indicates that when CSXT started FRA reasonable cause testing, it gave up its ability to conduct reasonable cause tests for nonreportable accidents. This is not correct.

CSXT's bargaining agreements with UTU and BLET, like the FRA regulations, authorize reasonable cause testing after a reportable injury or accident but not after a non-reportable injury or accident. CSXT implemented FRA reasonable cause testing in part because the FRA regulations also authorize testing after specified operating rules violations, which was not provided for by the collective bargaining agreements.

In addition, the last sentence in the fifth paragraph of the Executive Summary indicates that as a result of this investigation CSXT has dismissed implicated company officers. This is not correct. As noted in Mr. Ingram's October 4, 2007 letter, independent of this investigation, officers have been terminated for covering up an injury or for mishandling an injury report.

#### Phase 2: FRA's November, 2006 Audit

As you know, the discussion of Phase 2 of FRA's investigation repeats findings that were provided to CSXT at the conclusion of the accident/incident reporting audit in November of 2006. CSXT has already addressed these findings.

#### Timeframe for Investigations

CSXT has already adopted enhanced guidelines with a 30-60 day time frame for conducting intimidation/harassment investigations and an additional 30 days to assess discipline where appropriate. Disciplinary action was taken early this year with respect to the specific case referred to by FRA at pp. 3 and 7 of the draft report.

#### Communications

We have been working on revisions to company communications that will include the company's Internal Control Plan Policy Statement. These revised posters including the Policy Statement will be posted at major railroad locations throughout the system by 2008. We have reworded our Policy Statement in accordance with FRA's suggestion at the top of p. 7 of the draft report.

#### Notification to Complaining Party

The enhanced guidelines adopted by CSXT also provide for notification to the complaining party whether a violation was found. We understood this to be in compliance with FRA's recommendation as set forth at p. 58 of the November 16, 2006 report. FRA's statement at p. 6 of the current draft report that it encouraged CSXT to state to the complainant the form of discipline that will be imposed for a violation is not an accurate reflection of the language in the November 16 report.

We appreciate that the draft report at p. 9 already reflects that CSXT has addressed FRA's concern regarding completion of the PI-1A, and request that the report be similarly revised to reflect the other actions discussed above that CSXT has taken to address FRA's H/I concerns from the November 2006 audit.

#### Phase 3: Complaint Investigation

As noted above, CSXT appreciates the insights offered by FRA in its analysis of the incidents investigated in Phase 3 of the investigation. The draft report already notes a number of actions that we have taken, including the reference at p. 5 to the additional training we are providing for managers. This training is significant, as it addresses a number of the concerns expressed in the draft report. For example, the training makes clear that managers should not discuss FRA reportability criteria with an injured employee or with treating hospital personnel. Likewise, it makes clear that managers should not enter treatment rooms unless invited by the employee, should not try to change doctor's treatment recommendations, and should not discuss discipline or rules violations when arranging treatment for an injured employee. The emphasis is on ensuring proper medical treatment is provided, and that the incident is properly documented and reported.

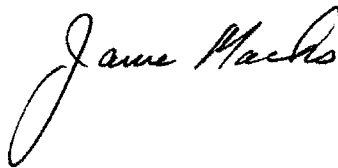
Because we believe these actions are significant, we would request FRA consider expanding the discussion of our additional training and including it in the executive summary of the report.

We are of course carefully reviewing the report to identify any additional corrective actions that may be appropriate, both from a policy or training standpoint and with respect to FRA's findings in individual cases at pp. 9 to 32 of the draft report. We appreciate that the draft report at p. 4 references a number of the disciplinary actions CSXT has already taken against company officers found to have engaged in harassment or intimidation. Based upon our review of the individual cases, we expect to take additional disciplinary actions in the near future. However, we would appreciate the opportunity for further discussion to understand the basis for your determinations. As you know, CSXT participated in the interviews of its managers and in some instances we have not reached the same conclusions.

Once again, I would like to express our appreciation to FRA for its efforts and insights in this investigation, and for providing us with the opportunity to comment on the draft report. CSXT is committed to continuously improving our safety record and processes, and welcomes all input that helps us to achieve those goals.

Should you have any further questions or require any clarification regarding our comments, as always, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "James Mack". The signature is written in a cursive style with a large, looping initial "J".