

EMPLOYER LAW BLOG

# Inflammatory Closing Argument Guts Multi-Million Dollar Verdict Against Railroad Co. in Illinois

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The case involved a former employee who sued his former employer, Union Pacific, and his former supervisor for violation of the Federal Employers' Liability Act ("FELA") and negligence.

The former employee alleged the defendants physically assaulted him following a motor vehicle accident by grabbing his head and neck, which allegedly worsened or could have worsened his injury from the accident.

After the jury returned a verdict in favor of the plaintiff, the defendants moved for a new trial on the basis that plaintiff's attorney's closing argument was prejudicial. During closing argument, the trial court had sustained many objections, based on its prior motion *in limine* rulings that prohibited plaintiff's attorney from encouraging jurors to act or view themselves as "safety advocates" or otherwise encouraging jurors to "send a message to the corporate defendant." However, the trial court denied the motion.

However, the appellate court reversed course: "the plaintiff's blatant disregard of both the sustained objections and order which granted Union Pacific's motion *in limine*, cannot be ignored." It continued: "[d]espite the trial court's order granting this motion, the plaintiff repeatedly and unabashedly—even after the objections had been sustained—continued to use language that was consistent with making the jury 'safety advocates' for their community and 'sending a message' to Union Pacific."

The appellate court found the closing argument not only violated the trial court's prior evidentiary rulings, but also caused the defendants prejudice sufficient to warrant reversal of the entire verdict.

This case serves as a cautionary tale for litigants that pre-trial evidentiary rulings, when paired with appropriate objections at trial, can upend adverse jury verdicts on appeal, even if securing such rulings and raising such objections are not successful at the trial court level. It also reminds litigants that such motion *in limine* rulings can apply broadly to *themes* used in closing argument, not just specific words or phrases.

For now, the case is remanded for a new trial, so we'll have to wait and see what happens the second time around.