

**Case Name:** Kevin Slaughter v. National Railroad Passenger Corp. a/k/a Amtrak

**Date Decided:** March 4th, 2011

**Originally Filed in:** Pennsylvania (federal)

**Decided by:** Pennsylvania Eastern Bankruptcy Court (Federal)

**Court:** United States District Court for the Eastern District of Pennsylvania

**Judge:** Judge Sitarski

**Citation:** 2011 WL 780754

**Background:**

Kevin Slaughter ("Slaughter") filed suit against National [Railroad](#) Passenger Corp. ("Amtrak") pursuant to the Federal Employers' Liability Act ("[FELA](#)"), 42 U.S.C. Â§ 51 for [injuries](#) he sustained while working in an [engine terminal](#) located in [Pennsylvania](#). Amtrak investigated the incident and created an [Accident Investigation Report](#) ("Report"). Amtrak provided Slaughter with a copy of the Report, but omitted a section entitled "Conclusions and Recommended Remedial/Corrective Actions" ("the Conclusions Section"). Before the United States District Court for the Eastern District of Pennsylvania is Slaughter's Motion to Compel and Amtrak's Motion for Protective Order. Slaughter seeks to compel Amtrak to disclose a copy of the Conclusions Section. However, Amtrak contends that this information is privileged and should be excluded from discovery.

**Issue:**

Is the section of the Report entitled "Conclusions and Recommended Remedial/Corrective Actions" privileged information not subject to discovery?

**Overall Issues Discussed or Touched Upon in this Case:**

- *Procedural Issues - Federal*

**Held:**

No. Amtrak argues that the Conclusions Section of the Report should be excluded from discovery because it is protected by the "self-critical analysis" privilege. The self-critical analysis privilege is based on a public policy argument that it is beneficial to allow individuals and entities to confidentially evaluate their compliance with the law, and that these benefits outweigh the value of the information to a plaintiff attempting to prove his case. Amtrak contends that exclusion of the Conclusions Section will promote candor in accident investigation reports and better allow Amtrak to make improvements to employee and railroad safety. Here, the Court must determine whether to apply the self-critical analysis privilege in this case. The Court first concludes that Amtrak's analogies to state law interpretations of the privilege are unpersuasive. The Court reasoned that Rule 501 of the Federal Rule of Evidence provides that in federal question cases, privileges shall be governed by the principles of federal common law. Because negligence under FELA is a federal question, the Court held that

interpretations of the privilege would be based on federal, not state law. The Court then looked to binding authority of the Third Circuit. Of critical note was the Third Circuit's opinion in *Alaska Elec. Pension Fund v. Pharmacia Corp.* In that case, the Third Circuit stated that "the self-critical analysis privilege has never been recognized by this Court and we see no reason to recognize it now." The Court also noted the liberal scope of discovery provided under Rule 26 of the Federal Rules of Civil Procedure, which allows parties to discover matters relevant to any claim or defense, and disfavors evidentiary privileges which are inconsistent with the broad scope. For the forgoing reasons, the Court held that the self-critical analysis privilege would not apply to exclude the Conclusions Section from discovery. Motion to Compel GRANTED; Motion for Protective Order DENIED

**Comments:**