

*State of New York*  
*Office of the State Comptroller*  
*Division of Management Audit*

**METROPOLITAN TRANSPORTATION  
AUTHORITY  
METRO-NORTH RAILROAD**

**ADMINISTRATION OF EMPLOYEE  
CLAIMS FOR WORK-RELATED  
INJURIES**

**REPORT 95-S-55**



*H. Carl McCall*  
*Comptroller*



# State of New York Office of the State Comptroller

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## Division of Management Audit

### Report 95-S-55

Mr. Donald Nelson  
President  
Metro-North Railroad  
347 Madison Avenue  
New York, NY 10017

Dear Mr. Nelson:

The following is our audit report on the Metro-North Railroad's administration of claims initiated by employees for work-related injuries.

This audit was performed pursuant to the State Comptroller's Authority as set forth in Article X, Section 5 of the State Constitution. Major contributors to the report are listed in Appendix A.

*Office of the State Comptroller  
Division of Management Audit*

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# Executive Summary

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## Metropolitan Transportation Authority Metro-North Railroad Administration of Employee Claims for Work-Related Injuries

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### Scope of Audit

The Metro-North Railroad (Metro-North or the Railroad), a wholly-owned subsidiary of the Metropolitan Transportation Authority (MTA), has a staff of 6,039 employees. The Railroad places a high priority on maintaining a safe and healthy work environment that will enhance employee productivity and minimize employee work-related injuries.

During the period January 1, 1992, to December 31, 1994, Metro-North settled almost 1,300 claims and lawsuits initiated by their employees as the result of reported work-related injuries. These settlements resulted in paying \$38 million to employees.

Our audit addressed the following questions regarding Metro-North's Administration of Employee Claims for Work-Related Injuries for the period January 1, 1992 through March 31, 1995.

- ! Does Metro-North have an effective program to prevent or minimize the number of employee work-related injuries?
- ! Are employee claims investigated adequately to ensure that only valid claims are paid?
- ! Are claim settlement amounts justified and adequately supported in employee claim files?

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### Audit Observations and Conclusions

Our audit found that Metro-North officials need to improve their management of work-related injuries consistent with maintaining a safe and healthy work environment and ensuring only valid employee claims are settled. Without management improvements, Metro-North will continue to be exposed to claim-settlement costs that might otherwise be avoided or reduced significantly.

For example, Metro-North's safety program requires counseling on safe work practices for employees involved in a work-related injury caused by a safety violation. We selected a sample of 21 Metro-North employees who should have received counseling and found that just one employee had received it. (See pp. 3-4)

Metro-North employees involved in a work-related injury are also required to report the circumstances surrounding the injury to an appropriate supervisor

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before the end of their scheduled work shift. The employee's supervisor is then required to submit a report describing the incident in detail to Metro-North's Safety Department, which is responsible for coordinating Metro-North's safety program. Our review of 44 claim files found that in two cases, neither of the required reports had been prepared. In ten other cases, we found that the required reports had not been submitted to the Safety Department within the required time frame. (See pp. 4-5)

Metro-North employees reporting work-related injuries are also required to seek immediate medical attention. Such immediate attention can inform Metro-North officials of the gravity of the potential claim, and alert the employee to the need for treatment and/or follow-up action that might prevent further physical injury. In our sample of 44 claims, 7 employees (16%) did not seek immediate medical attention after reportedly being injured. (See pp. 5-6)

Promptly correcting unsafe conditions at work sites is another important Metro-North procedure intended to help prevent employee injuries and reduce the number of claims. At 7 of the 20 sites where unsafe conditions had reportedly caused accidents, we found that the unsafe conditions had not been corrected and that supervisors had taken no preventive precautions - sometimes, months after the related injuries were reported. (See pp. 6-7)

According to Metro-North's Investigations Manual, investigation procedures include: making field visits to the accident site and taking photographs, making sketches, or writing descriptions of the site; securing statements from the injured employee and any available witnesses; reviewing employee medical records; and, where necessary, doing surveillance of employees who reportedly cannot do their job duties because of their injuries. Our review of the 44 sampled case files found that Metro-North claim agents did not use the Manual guidelines in most of the cases. (See pp. 7-10)

Lastly, in our opinion, 22 of the 35 claims settled without a lawsuit resulted in inadequately supported settlements. The respective case files do not contain logical justification nor documentation for the amounts paid to employees. (See pp. 10-11)

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## **Comments of Metro-North Officials**

Metro-North officials indicate, since our audit period ended in 1995, there have been significant and substantial changes in management, procedures, corporate safety initiatives, coordination and overall corporate focus on safety and claims administration. They indicate that Metro-North places a very high priority on safety; that 1995 total injuries were down and this trend is carrying forward into 1996.

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<b>Appendix A</b>	Major Contributors to This Report
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<b>Appendix B</b>	Comments of Metro-North Officials
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The comments of Agency Officials are not available in an electronic format. Please contact our Office if you would like us to mail you a copy of the report that contains their comments.

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# Introduction

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## Background

The Metro-North Railroad (Metro-North or the Railroad) is a wholly-owned subsidiary of the Metropolitan Transportation Authority (MTA). It was created in September of 1982 pursuant to the New York State Public Authorities Law.

Metro-North provides commuter transportation between New York City and Westchester, Dutchess, Putnam, Orange and Rockland counties in New York State, and New Haven and Fairfield counties in Connecticut. In 1994, Metro-North received \$281 million in operating revenues and incurred \$575 million in operating expenses, resulting in an operating deficit of \$294 million for the year. Metro-North's annual deficits are financed by Federal, State, and MTA Bridge and Tunnel subsidies, as well as Metro-North bond issues.

Metro-North has a staff of 6,039 employees, including conductors and engineers, track maintenance workers, and office personnel. Because the staff's work is varied and complex, the Railroad places a high priority on maintaining a safe and healthy work environment that will enhance employee productivity and minimize employee work-related injuries. In addition, Metro-North officials must promptly investigate employee reports of on-the-job injuries, following up thoroughly to help ensure that potentially hazardous conditions at work sites are corrected as soon as possible and that Metro-North pays only valid employee claims.

During the period January 1, 1992, to December 31, 1994, Metro-North settled almost 1,300 claims and lawsuits initiated by their employees as the result of reported work-related injuries. These settlements resulted in paying \$38 million to employees for their pain and suffering and lost wages. (Each injured employee had missed an average of 35 days of work.) Our audit focused on 44 of these claims, 9 of which led to lawsuits. These 44 accounted for \$1.5 million of this amount.

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## Audit Scope Objectives and Methodology

We audited Metro-North's administration of employee claims for work-related injuries, for the period January 1, 1992, through March 31, 1995. Our objectives were to determine whether Metro-North officials have taken adequate steps to minimize employee claims by maintaining a safe and healthy working environment by investigating reported on-the-job injuries promptly and thoroughly, and by ensuring that Metro-North pays only valid claims. To accomplish these objectives, we selected a sample of employee claims and reviewed relevant case files to trace all significant events from the initial accident report to the final resolution. This effort encompassed interviews with relevant officials and staff, and reviews of accident reports as well as accident investigation and claim files. We also visited selected reported accident sites.

We conducted our audit according to generally accepted government auditing standards. Such standards require that we plan and perform our audit to

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adequately assess those operations of Metro-North which we include in our audit scope. Further, these standards require that we understand Metro-North's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, we devote little audit effort to reviewing operations that may be relatively efficient and effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

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## **Response of Metro-North Officials**

Draft copies of the matters contained in this report were provided to Metro-North officials for their review and comment. Their comments have been considered in preparing this report and are included in Appendix B.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the President of Metro-North Railroad shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where they did not implement recommendations, the reasons therefor.

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## Administration of Claims

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Metro-North employees who sustain work-related injuries may file a formal claim against the Railroad for the reimbursement of medical expenses and lost wages that they incurred as the result of the injury. The workers are covered by the Federal Employers Liability Act (FELA), which Congress enacted in 1908 and applies to all interstate railroads. Unlike Workers' Compensation, FELA also allows employees to claim awards for pain and suffering.

Injured employees are responsible for promptly reporting the circumstances surrounding their injuries to their respective supervisors. They are also responsible for seeking prompt medical attention. In turn, Metro-North is responsible for doing a prompt and thorough investigation of these reported accidents for the dual purposes of improving employee safety and limiting the Railroad's financial liability. After the investigation is completed, Metro-North officials are in a position to assess the Railroad's liability and to begin settlement negotiations with the employee. If employees are not satisfied with the settlement offer proposed by Metro-North, they can sue.

Our audit found that during the audit period, Metro-North officials were not exercising their responsibilities concerning work-related injuries consistent with maintaining a safe and healthy work environment and with ensuring that they settle only valid employee claims. They were not inspecting or reporting the conditions surrounding employee injuries in a timely manner; nor were they ensuring that injured employees received safety counseling. These deficiencies exposed Metro-North to continued claim-settlement costs that they might have otherwise been avoided or reduced significantly. Similar concerns were identified in a 1986 report issued by the MTA Office of the Inspector General. Thus, nine years later, no significant improvements had been made in Metro-North's administration of employee claims for work-related injuries.

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## Injury Prevention

Metro-North's current Strategic Business Plan includes a strategy to improve employee safety. The objective of the strategy is to reduce the incidence of work-related injuries and the corresponding claim costs. We found that the practices employed by Metro-North during the audit period did not appear to support this strategy.

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## **Safety and Counseling**

New employees assigned to operate specialized equipment or handle hazardous materials must be trained to do their responsibilities safely.

In addition, Metro-North's safety program requires counseling on safe work practices for employees involved in a work-related injury that was caused by a safety violation. Employees who are required to take time off from work because of the injury must also receive counseling. Such counseling sessions usually address the correct methods of operating specialized equipment and/or ways to avoid potentially dangerous apparatus (e.g., third rail). To help prevent subsequent work-related injuries, the sessions also include a discussion of basic safety precautions that employees should follow, such as wearing protective gloves, boots and/or helmets.

Based on these safety criteria, we selected a judgmental sample of 21 Metro-North employees who should have received counseling because of injuries they sustained during calendar year 1994. We found that just one employee had received such counseling. There is no evidence that any of the other 20 employees had participated in any safety-related discussions or training.

According to Metro-North officials, they had not developed procedures before our audit, for ensuring that all employees who should receive safety counseling actually received it. Furthermore, no one had been assigned responsibility for monitoring compliance with this program goal. However, officials told us they have since developed a system to correct these deficiencies.

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## **Prompt Reporting of Injuries**

Metro-North employees involved in a work-related injury are also required to report the circumstances surrounding the injury to an appropriate supervisor before the end of their scheduled work shift if they are physically able to do so. Metro-North management then requires that the employee's supervisor submit an "Accident Injury Report" describing the incident in detail to Metro-North's Safety Department, which is responsible for coordinating Metro-North's safety program. The injured employee's supervisor is also responsible for assembling a three-person team that will assess the cause of the accident and determine the corrective action needed to prevent similar employee injuries in the future.

This team, which consists of the injured employee's supervisor and two representatives from Metro-North's Transportation, Maintenance of Way or Engineering Departments, submits a "Summary of Personal Injury Report" to the Safety Department to accompany the Supervisor's Accident Injury Report. Both reports must be prepared and submitted within 48 hours of the reported incident, and submitted to the Department by the third day after the accident.

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The purpose of these reports is to communicate the details of the accident to the Safety Department so that management can take prompt corrective action to prevent further injuries, and to help Metro-North prepare for possible litigation.

Our review of 44 claim files found that in two cases, which resulted in claim settlements totaling \$14,500, neither of the required reports had been prepared. It appears that Metro-North officials negotiated these claim settlements without the benefit of first-hand information.

In ten other cases, we found that the required reports had not been submitted to the Safety Department by the third day after the accident. In fact, in two of these cases, the report was submitted approximately 100 days after the accident occurred. Although most of these reports were submitted shortly after the date of the accident, the brief delay might have led to additional accidents.

According to Metro-North officials, the Safety Department now monitors staff compliance with all accident reporting and follow-up responsibilities.

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## **Seeking Prompt Medical Attention**

In another Metro-North procedure designed to prevent further employee injury and help screen out invalid employee claims, employees reporting work-related injuries are required to seek immediate medical attention. Immediate medical attention can inform Metro-North officials of the gravity of the potential claim, and alert the employee to the need for treatment and/or follow-up action that might prevent further physical injury.

In our sample of 44 claims, 7 employees did not seek immediate medical attention after reportedly being injured. The time span between the injury and the related medical checkup for six of these employees ranged from two to seven days; the seventh did not seek medical attention. Our review of the claim settlement case files for these seven employees found that the issue of employees' not seeking immediate medical attention did not surface when their respective settlement amounts, which ranged from \$8,500 to \$35,000 each, were negotiated.

Furthermore, Metro-North officials have not established any mechanisms for penalizing or disciplining employees who do not comply with the Railroad's procedures in this regard. Failure to seek immediate attention in these cases may have resulted in aggravating the employees' injuries.

Metro-North officials explained that their employees can not be forced to visit a physician. However, they believe that their current accident reporting system, which includes a newly appointed Manager of Attendance and Restrictive Duty, adequately encourages injured employees to seek immediate medical attention.

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## **Prompt Correction of Unsafe Conditions**

The prompt correction of unsafe conditions at work sites is another important Metro-North procedure intended to help prevent employee injuries and reduce the number of claims. According to the Metro-North accident prevention manual, supervisors should either correct unsafe conditions or arrange for precautions such as warning signs and barriers, which should be erected as soon as possible after supervisors identify these areas.

We visited 20 sites where unsafe conditions had reportedly caused accidents, to determine whether the conditions had been corrected or whether supervisors had taken preventive precautions to warn employees of impending hazards. At seven of the sites, we found that the unsafe conditions had not been corrected and that supervisors had taken no preventive precautions - sometimes, months after employees reported the related injuries. For example, a maintenance employee had reportedly tripped while inspecting an overhead wire. Falling on a 10 to 12 inch drop at the end of a concrete walkway, he bruised the left side of his body. When we visited the site 68 days after the accident, we found that the drop condition still had not been corrected and supervisors had not posted warning signs. The general foreman told us that the condition had existed for more than a year.

In another case, an employee alleged that she tripped on a wire lying on the ground while walking toward the yard office, and landed on both knees and her right hand. The wire was still on the ground at the time of our site-visit, which occurred several months after the accident.

When informed of our findings in this area, Metro-North officials moved to correct the seven unsafe conditions we noted. However, it is apparent that Safety Department staff, who are responsible for ensuring that prompt corrective action occurs at injury sites, had not been exercising their responsibilities adequately. In response to our preliminary findings, Metro-North officials informed us that in the future, all unsafe conditions reported to them will be corrected promptly where feasible. Where correcting the condition is not feasible, they said they would post the area as unsafe.

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## **Recommendations**

1. Ensure that all employees receive adequate training to help prevent work-related injuries.
2. Ensure that all required Accident Injury and Summary of Personal Injury reports are submitted to the Safety Department within the required time frame for all employee work-related injuries. These reports should serve as the basis for follow-up investigations and as reference for claim-settlement negotiations.
3. Develop a plan of action that will encourage injured employees to seek immediate medical attention following a work-related accident. Consider including this issue in future collective bargaining negotiations.
4. Ensure that work-related injury sites are corrected soon after they are identified. Where prompt correction of the site is not feasible, such a determination should be documented and necessary warning signs and/or barriers should be posted at the site.

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## Investigations of Employee Claims

Instead of using the services of an independent contractor or risk management unit, Metro-North employs a staff of 20 risk management agents (agents) to investigate the circumstances surrounding work-related accidents. Metro-North officials told us that the agents have adopted the American Association of Railroads' Investigations Manual (Manual) as their guide for doing investigations.

According to the Manual, investigations should be "systematic, minute and thorough." Suggested investigation procedures include: making field visits to the accident site and taking photographs, making sketches, or writing descriptions of the site; securing statements from the injured employee and any available witnesses; reviewing employee medical records; and, where necessary, performing surveillance of employees who reportedly cannot do their job duties because of their injuries. The investigation should culminate with the completion of a report assessing the validity and value of the claim within 30 days after the reported accident.

The purpose of these investigatory procedures, besides identifying work-sites in need of correction, is to assess the validity of the employee claim, the degree of employee/Metro-North negligence and the extent of the reported injury. This detailed information is to be used by claim agents in the claim-settlement process. Therefore, it is imperative that the information obtained via investigation is prompt, specific, accurate and thorough.

Our review of the 44 sampled case files found that Metro-North claim agents did not use the Manual guidelines in the majority of cases. For example, it appeared that, judging by the number of photographs and/or sketches in the files, just 17 accident sites had been visited by agents or other independent supervisory personnel. There was no evidence that any other site-visits had been made. Moreover, of the 17 site-visits documented, 4 of the respective case files did not contain sketches or written narratives of the accident site. In addition, 6 of the 17 site-visits took place approximately 100 days after the reported incident; while 3 other site-visits took place after 20 days. In at least two of these cases, the work sites had been corrected, or at least changed, between the accident date and the date of the investigator's site-visit, making it impossible for the investigator to obtain a first-hand look at conditions that reportedly caused the injury. For example, one claimant slipped and fell

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because someone had spilled a clear liquid on the floor where the claimant was working. By the time the agent's site-visit was made, the liquid had been cleaned up. In the second case, the claimant slipped on a sheet of ice in the yard where he was working. By the time the site-visit was made, the ice had melted. In all, it appears that just 20 of the 44 investigations were completed within the 30-day time frame.

We also found that in 19 of the 44 claim cases in which witnesses were reportedly present, witness statements were not obtained in 7 cases. As a result, claim agents had insufficient information to negotiate claim settlements effectively. In fact, Metro-North officials told us that agents prefer settling claims via negotiation, rather than continuing to a lawsuit, because they want to avoid legal costs. This places agents at a distinct disadvantage as they enter negotiations without adequate information.

Metro-North officials offered various explanations in response to our preliminary observations. They claimed that work load demands made it physically impossible to do prompt site-visits to all reported accident locations. In certain circumstances, they said, they may deem a site-visit unnecessary because of the nature and cause of the injury (e.g., the employee was injured lifting a heavy box that has since been delivered, discarded or otherwise disposed of). They also claimed that they do not take photographs and sketches of accident sites if the claims agent believes such documentation would be detrimental to Metro-North's negotiating position. However, in response to our draft report, Metro-North officials indicate that they have implemented our recommendations in this area.

Another valuable investigative technique is the use of surveillance to confirm the reported inability of an injured employee to do his or her normal job duties because of the work-related injury. Surveillance entails observing the off-job activities of injured employees to learn whether they are doing activities they should not be able to do, considering their reported injury. Identifying such activity can be very useful in negotiating a claim settlement or defending Metro-North against a lawsuit, and for gaining insight into employee integrity. However, Metro-North officials told us that they did not have formal procedures or guidelines to refer to for determining when they should use surveillance.

Metro-North paid detective agencies \$1.4 million to conduct surveillance of selected employees during the audit period. We found that Metro-North's use of surveillance appears to have been successful sometimes. From a sample of 62 claims settled during 1992 through 1994, we found that the 27 cases in which surveillance was employed, the average settlement was just 62 percent of the original claim amount, as opposed to an average settlement of 85 percent of the original claim amount in cases where they did not use surveillance. For example, Metro-North ultimately settled one employee's

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claim, originally estimated at \$212,000 for an alleged back injury, for \$90,000 when he was found digging and lifting bags of cement in his backyard. However, in 22 of the 27 cases we reviewed in which surveillance was used, we found no evidence that the surveillance results had been considered during claim settlement negotiations. We do not know whether the results affected the negotiation outcome or settlement amounts.

Metro-North officials concur with our findings in this area and indicate they have formalized and implemented detailed surveillance procedures.

### **Recommendations**

5. Ensure that prompt, thorough and accurate investigations of reported work-related injuries are performed. A checklist denoting all necessary steps should be maintained as a guide.
6. Ensure that all necessary investigative steps are performed by directing supervisors to review investigation claim files. If certain investigatory steps are deemed unnecessary, the reasons(s) for such a decision should be documented in the files.
7. Establish formal procedures delineating when and how surveillance should be employed.

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## **Claim Settlement Documentation**

As previously noted, because of time and cost considerations, claim agents prefer to settle employee claims through negotiation rather than lawsuits. From Metro-North's perspective, successful negotiations require agents to present sufficient documentation that will reduce original claim amounts to as low a award as possible. Clear justification for the final settlement amount should also be documented in the files.

In our opinion, 22 of the 35 claims settled without a lawsuit resulted in inadequately-supported settlements. For example: In one case, Metro-North awarded an employee \$24,500 (of which \$14,280 represented lost wages) for a hernia reportedly sustained while lifting a 40-pound box. There were no reported witnesses, and the employee's medical files showed he had previously been treated for hernias. The claim agent concluded that "although the liability is tenuous, we (Metro-North) are exposed by the mere fact that the man had been a devoted/loyal employee for the past 48 years." As such, they awarded the employee \$10,220 for pain and suffering. We also note that there is no evidence that risk management agents consulted with Metro-North legal staff before settling these questionable claims.

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Metro-North officials told us they will make every effort to clearly document the justification for all future settlements. However, we believe that such assurance will be difficult to achieve without a comprehensive supervisory review process. We also believe the apparent lack of independence between claim agents and other Metro-North employees can pose a conflict of interest that could result in higher settlement amounts than warranted. In fact, we found that at least two claims agents were related to the employees cited in two of our sampled case files. Although those employee claims were ultimately referred to the Long Island Rail Road's Risk Management Unit, the initial claims had been received, reviewed and approved by their relatives, Metro-North claims agents.

In response to our draft report, officials stated that the two claims were handled by LIRR's Risk Management staff. Further, relatives at Metro-North were not involved whatsoever in the settlement process for these employees. We agree that the actual claim settlement process for these employees was handled by Long Island Rail Road's risk management staff. However, the employees' relatives on Metro-North's risk management staff did in fact receive the initial complaints, compile necessary background information, and in one case, establish a claim reserve prior to referring these cases for settlement. Metro-North officials also state that their risk management and legal staff work closely together in the claim settlement process. However, we saw no documentation of this effort in the case files we reviewed.

Metro-North officials also believe that employee claims administration is best accomplished in-house, due to their detailed knowledge of the rail road environment and their ability to coordinate the entire claims process up to and including the employee's return to duty. However, removing the actual claim settlement process from Metro-North would not restrict its ability to oversee the entire process including the rehabilitation and return to duty of claimants. This would provide Metro-North staff more time to devote to activities, such as injury prevention and employee training, while maintaining an independent and objective claim settlement process.

### **Recommendations**

8. Require claim agents to document their justification for negotiated claim settlement amounts. All justification should be reviewed and approved by an independent supervisor.
9. Direct agents to consult with legal staff when a claim is questionable.
10. Study the benefits of assigning employee claims administration to independent contractors or another agency's risk management unit, thus avoiding possible conflicts of interest.

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## Major Contributors to This Report

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