TENDERED

SUPREME COURT OF KENTUCKY
NO. 2008-SC-000643-D

CSX TRANSPORTATION, INC., APPELLANT,

v.

JOHN X. BEGLEY, APPELLEE.

APPEAL FROM COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2007-CA-001380-MR
AND
PERRY CIRCUIT COURT, CIVIL ACTION NO. 03-CI-00184

BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS AMICUS CURIAE IN SUPPORT OF THE APPELLANT

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CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of April, 2009, copies of this Amicus Curiae Brief on behalf of Appellant were served via U.S. mail on: Evan M. Tager, MAYER BROWN LLP, 1909 K St., Washington, D.C., 20006, Co-counsel for Appellant; James W. Turner, HUDDELSTON BOLEN LLP, 1422 Winchester Ave., P.O. Box 770, Ashland, KY 41105, Co-counsel for Appellant; Alva A. Hollon, Sams & Hollon, P.A., 9424 Baymeadows Rd., Suite 160, Jacksonville, FL 32256, Co-counsel for Appellee; Thomas I. Eckert, P.O. Box 7272, Hazard, KY 41702, Co-counsel for Appellee; and Sam Givens, Clerk, Kentucky Court of Appeals, 360 Democrat Dr., Frankfort, KY 40601.

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I. STATEMENT OF POINTS AND AUTHORITIES

II. STATEMENT OF THE CASE

Association of American Railroads ("AAR") adopts the Statement of the Case of Appellant, CSX Transportation, Inc. ("CSXT").

III. ARGUMENT

This case raises an issue that is of fundamental importance in virtually all FELA cases. FELA is a federal negligence statute that provides a remedy to railroad employees who are injured in the course of their employment. *See* 45 U.S.C. § 51. As in all negligence cases, in order to recover, a FELA plaintiff must prove the traditional elements of a negligence case: duty, breach, foreseeability and causation. *Adams v. CSX Transp., Inc.*, 899 F.2d 536, 539 (6th Cir. 1990); *Fulk v. Illinois Cent. R.R.*, 22 F.3d 120, 124 (7th Cir. 1994). When a FELA case goes to the jury, the trial court has an obligation to give instructions that "properly and intelligibly state the law," *Howard v. Commonwealth*, 618 S.W.2d 177, 178 (Ky. 1981), in order to guide their deliberation and assist in reaching a proper verdict. *Ballback's Adm'r v. Boland-Maloney Lumber Co.*, 306 Ky. 647, 652, 208 S.W.2d 940, 943 (Ky. 1948). In this case, on the issue of causation, the trial court failed to do so.

Instead of giving the instruction sought by defendant CSXT that properly stated the law on causation, the trial court gave an instruction that misstated the law. Rather than instruct the jury that it could find CSXT liable only if its negligence "contributed proximately, in whole or in part, to plaintiff's injury," the court told the jury that if defendant CSXT had breached its duty of care it could find CSXT liable if that breach "was a factor, no matter how slight, in contributing in whole or in part," to the plaintiff's injury. The Court of Appeals affirmed that decision. On the basis of an earlier decision,

Hamilton v. CSX Transp., Inc., 208 S.W.3d 272 (Ky. App. 2006), the Court found that FELA does not require a plaintiff to prove common law proximate cause. The *Hamilton* Court based its holding on its reading of the U.S. Supreme Court's decision in *Rogers v. Missouri Pac. R.R.*, 352 U.S. 500 (1957). To the extent the Court of Appeals relied on *Rogers* for the proposition that FELA abolished proximate cause, it misreads *Rogers*.[1] In doing so, it expands FELA liability by moving FELA toward concepts of no-fault compensation, a result never intended by Congress when it enacted FELA a century ago.

A. Congress Did Not Abrogate the Concept of Proximate Cause When it Enacted FELA

In 1908, before the concept of no-fault workers' compensation had gained a foothold in the United States, Congress enacted FELA as a tort-based remedy for railroad employees injured on the job, who, at that time, had little legal recourse. This was an era when working in the railroad industry was undoubtedly hazardous, and resulted in a great human toll.[2] Moreover, the common law of negligence had erected a number of often insurmountable barriers to recovery by workers sustaining job-related injuries.[3]

Against this backdrop, and with the goal of providing a progressive and meaningful remedy, Congress enacted FELA, initially in 1906, and, after addressing constitutional flaws in the original statute, again in 1908. *See Howard v. Illinois Cent. R.R.*, 207 U.S. 463 (1908); *Second Employers' Liability Cases*, 223 U.S. 1 (1912). The

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[1]CSXT's proffered instruction included the "in whole or in part" language used in the Supreme Court's decision in *Missouri Pac. R.R. v. Rogers*, but properly linked it to the concept of proximate cause.

[2]In the year ending June 30, 1907, 4,534 rail workers were killed on the job and 87, 644 were injured. Interstate Commerce Commission, Statistics of Railways in the United States 1908, 41, 99 (1909).

[3]Any contributory negligence by the plaintiff usually barred recovery. *See, e.g., Farwell v. Boston & Maine R.R.*, 4 Metc. 49, 1842 WL 4002 (Mass. 1842). Recovery also was denied if the worker knew the inherent dangers of a job and assumed those risks by accepting employment. *See, e.g., Clark v. St. Paul & Sioux City R.R..*, 28 Minn. 128 (1881); *Gibson v. Erie Ry. Co.*, 63 N.Y. 449 (1875).

policy embodied in FELA was that railroads were to be liable in damages for injuries sustained by their employees in the course of their railroad employment when such injuries were caused by the negligence of the railroad. To ameliorate the harsh results which often were a consequence of prevailing legal doctrines, Congress modified some aspects of the existing common law. For example, in an effort to promote recovery, the defenses of assumption of the risk and the fellow servant doctrine were eliminated. *See* 45 U.S.C. § 54; *See also Chesapeake & Ohio Ry. Co. v. De Atley*, 241 U.S. 310, 313 (1916).[4]

Additionally, in what, for the time, was a significant innovation in tort law, FELA incorporated the doctrine of comparative fault. The prevailing rule in the United States in the nineteenth century was that contributory negligence by the plaintiff completely barred recovery, even if the defendant also was at fault. *See, e.g., Louisville, Nashville & Great Southern R.R. v. Fleming*, 82 Tenn. 128, 1884 WL 3325, *2 (Tenn. 1884) ("In England and a majority of the States of the Union, the negligence of the plaintiff which contributes to the injury is held to be an absolute bar to the action."). Under FELA, rather than completely barring recovery, if the employee's negligence contributed to the injury damages are reduced in proportion to the employee's negligence. 45 U.S.C. § 53.[5] This opened the opportunity for recovery in many instances where it previously would have been denied.

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[4] Initially, the assumption of the risk doctrine was eliminated only in cases where the employer violated a safety statute. In 1939, it was eliminated in all cases. *Tiller v. Atlantic Coast Line R.R.*, 318 U.S. 54, 58 (1943); *See infra* at p. 7-8.

[5] If an injury is caused by the railroad's violation of a safety statute, there is no reduction of damages for the employee's contributory negligence. *Id.*

Though FELA modified or eliminated some of the prevailing common law defenses, there is no evidence that Congress believed it was modifying the core concept of negligence that underlies FELA. Contemporaneously with the statute's enactment, the Senate reported that FELA "revises the law as now administered in the courts in the United States in four important particulars." S. Rep. No. 460, at 1 (1908). Specifically, the Senate Report described these revisions to the common law as addressing the fellow servant doctrine, assumption of the risk and contributory negligence, and prohibiting contracts that relieve the employer of liability. *Id.* at 1-3. There was no suggestion whatsoever that the standard of causation was being modified. The House of Representatives offered an identical list when it described the how FELA "change[d] the common-law liability of employers." H.R Rep. No. 1386, at 1 (1908), noting, in addition, that the FELA "makes each party responsible for his own negligence and requires each to bear the burden thereof." *Id.*

Had Congress intended to take the extraordinary step of eliminating the concept of proximate cause, surely it would have indicated such an intent. In fact, Congress believed it struck a proper balance by eliminating common law doctrines that barred recovery, while at the same time retaining the common law concepts of negligence, calling on both employer and employee to exercise due care. "By the responsibilities imposed, both parties will be induced to the exercise of greater diligence and as a result the public will travel and property will be transported in greater safety." *Id.* at 6

In attempting to ameliorate the harsh realities of railroad employment at the turn of the twentieth century, it is indisputable that Congress envisioned that the remedy available under FELA would be consistent with the common law concept of negligence, a

point that has consistently been recognized by the Supreme Court. *See e.g., Southern Ry. v. Gray*, 241 U.S. 333, 339 (1916) (the rights and obligations under FELA "depend upon applicable principles of common law ... Negligence by the railroad is essential to a recovery."); *Urie v. Thompson*, 337 U.S. 163, 182 (1949) (FELA "is founded on common-law concepts of negligence and injury."). Consistent with that approach, in the years following FELA's enactment, the U.S. Supreme Court issued numerous decisions confirming that proximate cause is the applicable causation standard under FELA. (*See* Appellant's Br. 15, n. 5).

In its decisions, the Supreme Court clearly distinguished between the concept of proximate cause and a looser "but for" standard of causation, holding that the former applies in FELA cases. In *Davis v. Wolfe*, 263 U.S. 239 (1923), the Court explained that, on the one hand, an employee cannot recover if the employer's negligence or failure to comply with a safety statute

> is not a proximate cause of the accident which results in his injury, but merely creates an incidental condition or situation in which the accident, otherwise caused, results in such injury; and, on the other hand, he can recover if the failure to comply with the requirements of the Act is a proximate cause of the accident, resulting in injury to him . . .

263 U.S. at 243.[6] The proximate cause rule enunciated in *Davis* has never been overruled or questioned by the Supreme Court, and thus remains sound precedent in all FELA cases.

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[6]*Davis* involved the alleged violation of a railroad safety statute, which imposes liability without an independent showing of negligence. *Urie v. Thompson*, 337 U.S. 163, 189 (1949). However, FELA liability based on a safety statute violation attaches only if there is a causal connection between the violation and the complained of injury. *Carter v. Atlanta & St. Andrews Bay Ry.*, 338 U.S. 430, 434-35 (1949).

Twenty years after *Davis* was decided, again describing the causation standard applicable in FELA cases, the Supreme Court employed the language of traditional negligence, explaining that "in order to warrant a finding that negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury it must appear that the injury was the natural and probable consequence of the negligent or wrongful act, and that it ought to have been foreseen in light of the attending circumstances." *Brady v. Southern Ry. Co.*, 320 U.S. 476, 483 (1943) (quoting *Milwuakee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 475 (1876)). Tellingly, the *Brady* Court's citation to a pre-FELA case suggests that the Court saw nothing inappropriate in looking to traditional common law when addressing the issue of causation under FELA. Thereafter, the Supreme Court continued to adhere to a proximate cause standard. For example, in *Tennant v. Peoria & Pakin Union Ry. Co.*, 321 U.S. 29 (1944), the Court held that "it was incumbent upon petitioner to prove that respondent was negligent and that such negligence was the proximate cause in whole or in part of the fatal accident." *Id.* at 32.

As Appellant explains, notwithstanding the judicial gloss given *Rogers* by many lower courts, including the court below, a careful reading of that decision reveals that it was not a departure from past precedent, intended to usher in a new era of FELA litigation in which all notions of proximate cause are to be disregarded. (*See* Appellant's Br. 17-21). *Rogers* certainly did not purport to overrule the numerous earlier decisions holding that a showing of proximate cause was necessary to sustain a finding of liability. In fact, it relied on several of those cases to support its holding.[7]

[7]In the years following *Rogers*, many courts properly understood that decision to mean simply that if evidence is presented that might reasonably lead to differing conclusions as to the cause of any injury, or to the conclusion that multiple causes contributed to the injury, one among them railroad negligence, the case must go to the jury. *See, e.g., Ely v. Reading Co.*, 424 F.2d 758 (3rd Cir. 1970); *Funseth v. Great Northern*

Indeed, it would have been astonishing if the *Rogers* Court had purported to reverse decades of its prior holdings interpreting FELA, as the relevant statutory language had remained unchanged since FELA's enactment; certainly, there was no intervening act of Congress that would have supported such a radical step. FELA was amended in 1939, and some courts have suggested those amendments called for reexamination of the causation standard.[8] Perhaps these courts were in search of a justification for their reading of the statute; however, examination of the 1939 amendments finds no support for such a proposition. The *Rogers* opinion does reference the 1939 amendments, 352 U.S. at 509-10, but never suggests that they called for a reexamination of the causation standard under FELA, for the simple reason that the1939 amendments did not address, let alone modify, the standard of causation. Rather, the 1939 amendments were primarily intended to ease the path toward recovery by FELA plaintiffs by modifying aspects of the statute that served to prevent injured employees from recovering, either because they could not meet the strict test of interstate commerce[9]

Ry. Co., 399 F.2d 918 (9th Cir. 1968). In *Ely*, the court interpreted *Rogers* to mean "that it is not a requisite that the employer's negligence be the entire cause of the accident." 424 F.2d at 762. Instead, the "jury must be instructed to consider that if the negligence of the defendant was one of the proximate causes of the accident, then liability exists." *Id.* In *Funseth,* the court explained that *Rogers* did not purport "to define causality other than to point out that, according to the plain and direct language of the statute, the negligence of the railroad need not be either the sole or the whole cause of the employee's injury" to support a finding of liability. 399 F.2d at 922; *see also Strobel v. Chicago, Rock Island and P. R.R.*, 255 Minn. 201, 206 (Minn. 1959) ("It is elementary that the negligence of each of two or more actors may be the proximate cause of an injury and that no actor's negligence ceases to be the proximate cause merely because it does not exceed the negligence of other actors.").

[8] *See Richards v. Consolidated Rail Corp.*, 330 F.3d 428, 434 (6th Cir. 2003) ("The *Rogers* Court adopted this relaxed standard in order to effectuate Congress' intent when it amended FELA in 1939."); *see also Morrison v. N.Y. Cent. R.R.*,361 F.2d 319 (6th Cir. 1966).

[9] In order to recover, "the employee, at the time of the injury," had to be "engaged in interstate transportation, or in work so closely related to it as to be practically a part of it." *Shanks v. Delaware, Lackwanna & Western R.R.*, 239 U.S. 556, 559 (1916).

or because the employer successfully argued that the employee had assumed the risks inherent in the employment.

The 1939 amendments expanded the scope of FELA's coverage so that workers would no longer have to prove they were engaged directly in interstate commerce at the time they were injured in order to come within the scope of FELA's coverage. Act of Aug. 11, 1939, c. 685, §1, 53 Stat. 1404; *see also* S. Rep. No. 661, at 2-3 (1939); *Southern Pac. Co. v. Gileo*, 351 U.S. 493 (1956); *Reed v. Penn. R.R.*, 351 U.S. 502 (1956).[10] In addition, the defense of assumption of the risk was eliminated in all cases. *Id.* The 1939 amendments also increased the statute of limitations under FELA from two to three years, *id.* at §2, and prohibited railroads from establishing and enforcing rules which penalized employees for giving information concerning an accident to the injured person or his representative. *Id.* at §3.

Tellingly, contemporaneous comments of a railroad employee representative affirm that rail labor did not believe that Congress had eliminated the need for employees to prove proximate cause when it enacted FELA in 1908; nor did rail labor urge Congress to do so in 1939. In testimony before the House of Representatives, the General Counsel of the Brotherhood of Railroad Trainmen stated that it was unnecessary to add the word "proximately" to a provision of the act, explaining that such language would be "pure surplusage, because unless the negligence proximately caused the injury there can be no

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[10] This amendment added the following language to section 1 of FELA:

> Any employee of a carrier, any part of whose duties as such employee shall be in furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

recovery."[11] Thus, there is no basis for concluding that Congress replaced the proximate cause standard either when it enacted FELA in 1908, or when it amended FELA in 1939.

B. The Trial Court's Refusal to Instruct on Proximate Cause Amounted to an Unjustified Policy Decision to Alter the Balance Congress Struck When it Enacted FELA

By refusing to require FELA plaintiffs to prove proximate cause, the Court below, in effect, made a policy choice to interpret FELA more like a compensation statute than like a negligence law; however, this is not the choice Congress made. Shortly after FELA was enacted, individual states began to adopt no-fault workers compensation laws as the means of compensating workplace injuries. Most states enacted workers' compensation laws of general application between 1910 and 1920; by 1930 all but four states had enacted a workers' compensation law.[12] Had Congress undertaken to craft railroad employee compensation legislation a decade later than it did, Congress may well have turned to a no-fault compensation law.[13] Regardless, however, Congress has chosen to maintain a tort-based remedy for rail workers injured on the job, which, except where expressly modified, is based on the common law principles that prevailed at the time it was enacted[14] – even as that approach has been rejected in virtually all other areas of

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[11] *Hearings on H.R. 4988 and H.R. 4989 Before the Senate Comm. on the Judiciary*, 76th Cong., 1st Sess. (1939) (statement of Tom J. McGrath, General Counsel, Brotherhood of Railroad Trainmen).

[12] Price V. Fishback and Shawn Everett Kantor, *The Adoption of Workers' Compensation in the United States*, 41 J.L & ECON. 305, 319-20 (1998). In 1948, Mississippi became the last state to adopt a workers' compensation law. *Id.*

[13] In 1916, Congress enacted a no-fault compensation system for employees of the federal government, 5 U.S.C. § 8101 *et seq.*, and in 1927, it enacted a no-fault statute to cover longshore and harbor workers. 33 U.S.C. § 901 *et seq.*

[14] *Norfolk Southern Ry. Co. v. Sorrell*, 549 U.S. 158, 168-69 (2007) ("Departing from the common law practice of applying a single standard of causation for negligence and contributory negligence would have been a peculiar approach for Congress to take in FELA.")

employment.[15] One can debate whether that was, or remains, a wise policy choice. It is not debatable that courts have no authority to alter that choice.

Workers' compensation laws, which now cover virtually all American workers other than rail employees, take a wholly different approach to compensation than does FELA. Under workers' compensation, employees injured on the job are entitled to compensation regardless of who was at fault. A. LARSON & K. LARSON, LARSON'S WORKERS' COMPENSATION LAW §1.03[1] (2004). However, the amount of compensation typically is capped, and generally tied to the degree of disability suffered. *Id.* at §1.03[5]. In contrast, damages under FELA are not so limited. *Schneider v. National R.R. Passenger Corp.*, 987 F.2d 132, 137 (2d Cir. 1993) (a verdict will be deemed excessive only if it "shock[s the] judicial conscience."). On the other hand, Congress did not intend to guarantee that all injured rail workers would be compensated, as rail employees can recover only if they can prove the elements of a negligence case, including fault and causation. "[B]ecause FELA is not a strict liability statute, plaintiffs still must prove the traditional elements of negligence, including foreseeability, duty, breach and causation." *Fulk, supra*, 22 F.3d at 124.

Tort law and compensation law approach questions of liability from fundamentally different perspectives. Under workers' compensation, "unlike tort, the right to benefits, and amount of benefits, are largely based on a social theory of providing support and preventing destitution, rather than settling accounts between the individuals according to their personal deserts or blame." LARSON, *supra*, at §1.02. The right to compensation is conditioned only on whether there was a work-connected injury.

[15] Other than seamen, who are covered by FELA by virtue of the Jones Act, 46 U.S.C. § 30104, virtually all American workers are covered by a state or federal no-fault workers' compensation law.

Negligence, and for the most part, fault, are not in issue and cannot affect the result. *Id.* at §1.03[1]. Moreover, under workers' compensation, "unlike in tort, the only injuries compensated are those which actually or presumptively produce disability and thereby presumably affect earning power." *Id.* at §1.03[4].

Workers' compensation embodies a significant tradeoff: the right of the employee to seek a full recovery is removed in exchange for the certainty of more limited benefits regardless of fault. *See* PETER M. LENCSIS, WORKERS' COMPENSATION: A REFERENCE AND GUIDE 9 (1998). This is one of the "fundamental points of cleavage between compensation and tort." LARSON, at 1.03[4]. Under workers' compensation, "[t]he amount of compensation for disability depends on the worker's previous earning level, for most acts award a percentage of average wage, somewhere between a half and two-thirds. But practically all acts also set a maximum in terms of dollars per week." *Id.* at §1.03[5]. One reason workers' compensation systems establish limits on wage loss benefits is the widely accepted view that if compensation matches, exceeds, or even approaches, the employee's entire wage loss there will be little incentive to seek rehabilitation and to return to work promptly. "It was never intended that compensation payments [under workers' compensation] should equal actual loss, if for no other reason than that such a scale would encourage malingering." *Id.*

FELA involves tradeoffs too: a wider range of damages is available, but only if the employee can show the employer's negligence caused the injury. When a trial court declines to apply a proximate cause standard in a FELA case, it alters that balance by countenancing liability based on a far more tenuous causal connection between employer negligence and employee injury than would be the case under common law. This

unjustified lessening of the plaintiff's burden serves to implement a policy determination to broaden liability and move FELA closer to a compensation law. At the same time it leaves intact the employee's right to seek uncapped damages. In this case, though relieved of his obligation to prove his injury was proximately caused by CSXT's negligence, the plaintiff was able to ask for a half million dollars in damages, despite alleging no lost wages or medical expenses.

Eschewing proximate cause is not merely a matter of semantics. A stark illustration of how the causation standard applied by the court can affect the outcome of a case is *Armstrong v. Kansas City Southern Ry. Co.*, 752 F.2d 1110 (5th Cir. 1985), a case involving two distinct causes of action. The railroad had hired a local cab company to transport the plaintiff from the point where he disembarked from a train late at night to the railroad's yard offices. En route, the driver stopped the cab on the road without turning on the emergency flashers. The cab was hit from the rear by another motorist, injuring the plaintiff. The employee brought an FELA action against the railroad alleging his injury was caused by the negligence of the railroad's agent (the cab driver). Noting that in FELA cases the "common-law proximate cause standard is modified and the employee has a less demanding burden of proving causal relationship," *id* at 1113, the Court affirmed the jury's verdict finding the railroad liable, approving of the wide berth given the jury to make inferences supporting its verdict.

Armstrong also involved a state law indemnity action by the railroad against the cab company.[16] Under the very same set of facts, the Court of Appeals affirmed the

[16] In *Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135 (2003), the Supreme Court held that while joint and several liability applies to FELA, railroads have the right to bring indemnity and contribution actions against third parties under applicable state or federal law. *Id.* at 162.

denial of the railroad's claim, upholding the lower court's finding that the cab driver was not liable. The different outcome can be attributed to the different causation standards applied. In contrast to the "less demanding" causation standard applied in the FELA action, the Court explained that to prevail in the indemnity action the railroad had to prove that the cab company's negligence was the "proximate cause" of the employee's injury. The Court held that "even though the jury found that [defendant] was liable to Armstrong [in the FELA action] because of the negligent conduct of its agent, the district court was neither constrained nor required to find the negligence of [the cab company] proximately caused Armstrong's injury." *Id.* at 1115. The Court explained that the railroad's "argument ignores the different causation standards of the two actions ... The standards of liability for negligence under §1 of [FELA] are significantly broader than in ordinary common-law negligence actions." *Id.* Like the court below, the Fifth Circuit misinterpreted the causation standard in FELA. As a result, the identical conduct that gave rise to liability in the FELA action, did not support liability in the indemnity action, an outcome directly attributable to the Court's ruling that a different, "significantly broader" standard of causation applies under FELA.

Some fifty years ago, Justice Harlan, in a dissent joined by Justice Frankfurter, decried, as judicial "freewheeling," what he saw as an unjustified effort to transform FELA into a "workmen's compensation statute." *Sinkler v. Missouri Pac R.R.*, 356 U.S. 326, 333 (1958). Earlier, in *Bailey v. Cent. Vermont Ry.*, 319 U.S. 350, 358 (1943), the first Justice Roberts felt compelled to remind his colleagues that it is not "within the judicial function to write the policy which underlies compensation laws into acts of

Congress when Congress has not chosen that policy but, instead, has adopted the common law of negligence."

As is evident by the ruling below, judicial freewheeling in FELA cases continues. Justice Robert's sound advice calls for reversal of that ruling.

IV. CONCLUSION

The judgment of the Court of Appeals should be reversed and the case remanded for a new trial before a properly instructed jury.

Respectfully submitted,

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Dated: April 28, 2009