



U.S. SUPREME COURT TO RE-EXAMINE CAUSATION STANDARD UNDER FELA

On November 29, 2010, the Supreme Court of the United States granted *certiorari* in *CSX Transportation, Inc. v. McBride*, in order to review and ultimately decide whether the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60, requires plaintiffs to prove proximate causation in a FELA personal injury suit. This case will provide the Supreme Court with an opportunity to address the important proximate causation issue which was previously raised, but not decided, in *Norfolk Southern Railway Co. v. Sorrell*, 549 U.S. 158 (2007).¹ Given the fact the FELA causation standard is also used in maritime personal injury plaintiffs' claims under the Jones Act, once issued the Supreme Court's decision is anticipated to have a widespread impact on maritime personal injury cases.

The Seventh Circuit's Opinion to Be Reviewed by the Supreme Court Held that *Sorrell* Does Not Require FELA Plaintiffs to Prove Common-Law Proximate Cause²

Robert McBride brought a personal injury action against CSX for injuries he sustained to his hand while operating a train's breaking system. The district court instructed the jury in accordance with the Seventh Circuit's Pattern Jury Instructions which required a finding that "Defendant's negligence played a part—no matter how small—in bringing about [Plaintiff's] injury" but did not include a proximate causation instruction. Contending that this instruction, which was based on *Rogers v. Missouri Pacific Railroad Co.*, 352 U.S. 500 (1957), was no longer valid after *Sorrell*, CSX sought an additional instruction on common-law proximate cause.³ The district court declined to instruct the jury on proximate cause, and the jury returned a verdict in favor of Mr. McBride.

¹ In *Sorrell*, the Supreme Court determined that the plaintiff's contributory negligence, under 45 U.S.C. § 53, was to be evaluated under the same standard as railroad negligence, under 45 U.S.C. § 51. The issue of what causation standard should be applied in FELA cases, however, was left wide open.

² *McBride v. CSX Transp., Inc.*, 598 F.3d 388, 406 (7th Cir. 2009).

³ Noting the considerable differences of opinion regarding the proper legal definition of "proximate cause," the Seventh Circuit limited its evaluation to whether CSX's instruction should have gone to the jury. CSX defined proximate cause as a "direct relation between the injury asserted and the injurious conduct alleged."



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On appeal, CSX argued that the district court's failure to instruct the jury on proximate causation was error because Congress never expressly indicated its intention to abrogate the common-law principles of proximate causation, like it had with several defensive doctrines such as contributory negligence and assumption of the risk. This jurisprudentially sound principle, that courts should afford great weight to common-law principles which were not expressly rejected in the text of the FELA, was confirmed both before and after the *Rogers* Opinion. CSX then bolstered its argument by citing to Justice Souter's concurrence in *Sorrell*, which was joined by Justices Alito and Scalia, who opined that "*Rogers* did not address, much less alter, existing law governing the degree of causation necessary for redressing negligence as the cause of negligently inflicted harm"

The Seventh Circuit, however, affirmed the district court, implicitly suggesting that a "relaxed standard of causation" still applies in FELA cases. Recognizing the appeal of CSX's arguments, the Seventh Circuit rested its opinion on the fact that the Supreme Court expressly avoided ruling on the issue of what causation standard applies to FELA cases in *Sorrell*. Moreover, the Seventh Circuit noted that it was not the Seventh Circuit's place to anticipate how the Supreme Court would have ruled, if the petitioner in *Sorrell* presented the precise question of whether instructions on proximate cause should go to the jury. The Seventh Circuit also supported its position by citing numerous cases which express the FELA's remedial nature and noting that every other Circuit has taken the view that, under *Rogers*, a "feather-light" causation standard applies in FELA cases. Finally, the Seventh Circuit noted that congressional inaction in the fifty-plus years since *Rogers* should be construed as tacit approval of the judicial gloss courts have applied to the FELA.

Without weighing in on whether the Seventh Circuit's judicial restraint was laudable or not, the Supreme Court's decision to hear *McBride* is significant because railroads and employers of Jones Act seamen will finally learn whether the causation standard applicable to these personal injury suits is truly "feather-light" or whether it incorporates common-law concepts of proximate cause. Based on Justices Alito's and Scalia's approval of now-retired Justice Souter's concurrence in *Sorrell*, it appears that, at a minimum, two Justices support requiring FELA plaintiffs to establish proximate causation.



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We will be monitoring the progress of this case and report on the highly-anticipated Supreme Court's ruling in due course.

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