

**Case Name:** Aurand v. Norfolk Southern Railway Co.

**Date Decided:** May 14th, 2010

**Originally Filed in:** Indiana (Federal)

**Decided by:** Indiana Northern District Court (Federal)

**Court:** U.S.D.C. N.D. Indiana

**Judge:** Judge Simon

**Citation:** Aurand v. Norfolk Southern Railway Co. 2010 WL 1972786 (N.D. IN. 2010)

**Background:**

Dennis Aurand began working as a yard conductor at a railroad yard in Elkhart, Indiana in 1974. He brings a claims under the Federal Employers' Liability Act ("FELA"), alleging that he developed multiple myeloma from exposure to chemicals at Elkhart yard. After this case was filed, Mr. Aurand died from complications relating to the myeloma. Aurand had an additional suit against Norfolk alleging exposure to asbestos which was settled out of court for \$7,500. As part of the agreement Aurand signed a release. Norfolk contends that the circumstances surrounding the release indicate that Aurand knew and understood the terms of the release. Norfolk first argues that the release is a valid affirmative defense because Aurand had assistance from an attorney when he signed the release. But Aurand's deposition testimony disputes this. Aurand claims that his attorney never explained the release language and legal consequences of it. Specifically, Aurand testified that his attorney, Tom Joyce, did not review the release language with him. Instead, he merely received the release in the mail from Mr. Joyce. Norfolk further alleges facts that suggest that Aurand was aware that he had multiple myeloma when he signed the release and that he knew he was releasing claims related to those risks. In response, Aurand stated that when he signed the release, he didn't know that his multiple myeloma was caused by exposures at the Elkhart yard.

**Issue:**

Did the release in the Asbestos claim release Norfolk from liability to Aurand's myeloma suit?

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

- *Summary Judgment - Defendant Legal Denied*
- *Summary Judgment - Defendant Factual Denied*
- *Ruling on Summary Judgment*

**Held:**

Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P 56(c). The party seeking summary judgment carries the initial burden of demonstrating an absence of evidence to support the position of the non-moving party. A genuine dispute about a material fact exists

only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Under FELA, any contract where the purpose is to "exempt" an employer from "any liability" under FELA is void. 45 U.S.C. Â§ 55. The Supreme Court has held that a release signed by an employee to compromise a claim is not considered a device to "exempt" an employer from "liability." *Callen v. Pennsylvania R. Co.*, 332 U.S. 625, 631, 68 S.Ct. 296, 298, 92 L.Ed. 242 (1948). To determine a release's validity, courts evaluate the parties' intent at the time the agreement was made because the release itself is "strong, but not conclusive evidence of the parties' intent." *Wicker v. Consolidated Rail Corp.*, 142 F.3d 690, 700 (3d Cir.1998) Therefore the analysis of a release as an affirmative defense under FELA is a fact-bound issue, and so any factual dispute should usually be decided by a jury. There is a split in the circuits in regards on how to determine whether a release is valid. The Sixth Circuit requires the release to "reflect a bargained-for settlement of a known claim for a specific injury, as contrasted with an attempt to extinguish potential future claims the employee might have arising from injuries known or unknown to him." *Babbitt v. Norfolk Western Railway Co.*, 104 F.3d 89, 93 (6th Cir.1997). On the other hand, the Third Circuit requires that the "scope of the release is limited to those risks which are known to the parties at the time the release is signed." *Wicker v. Consolidated Rail Corp.*, 142 F.3d 690, 701 (3d Cir.1998). The court did not determine which approach should be applied because under either approach Aurand would defeat summary judgment under both. The court dismissed Norfolk's arguments because they consisted solely of pointing to boilerplate language of the release. Which Aurand ultimately contests. Thus the court found a genuine dispute of fact as to Aurand's intent and the validity of the release, matters left to a jury.

**Comments:**

**Comment:** FELA release analysis is fact-intensive, emphasizing the parties' intent at the time the release is signed.