

**Case Name:** Robert W. Kennedy v. Illinois Central Railroad Company

**Date Decided:** January 7th, 2010

**Originally Filed in:** ()

**Decided by:** (State)

**Court:** Supreme Court of Mississippi

**Judge:** Judge Carlson

**Citation:** 2010 WL 27851 (Miss.)

**Background:**

Robert Kennedy filed this action against employer, Illinois Central Railroad Company, under FELA (Federal Employers' Liability Act) for damages he incurred as a result of alleged exposure to asbestos. Kennedy was an employee of Illinois Central from 1948 to 1992. Kennedy developed asbestosis and filed suit in August 31, 2006 claiming exposure to asbestos, while performing his duties, was the cause of his asbestosis. Kennedy asserted Illinois Central negligence for failing to provide him with a safe place to work because of the asbestos exposure. After a trial by jury, Judge Taylor, directed a verdict in favor of Illinois Central stating there was no evidence presented that warranted the recovery of economic and noneconomic damages. The trial court entered its Judgment on Motion for directed verdict and Kennedy appealed.

**Issue:**

Did the circuit court err in directing a verdict for Illinois Central on the issue of damages?

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

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**Held:**

Kennedy argued that a significantly lower burden of proof is imposed upon the plaintiff under FELA. However, Illinois Central countered, arguing that only the causation prong of a common-law negligence analysis is modified by FELA. This Court recognized that unless the evidence is so speculative that no reasonable juror could find more than nominal damages the trial court may not direct a verdict against the plaintiff. Moreover, damages must be shown with reasonable certainty and not left to mere speculation and conjecture. Kennedy presented issues for jury determination through the testimony of his medical experts. One expert, testified that Kennedy's lungs revealed linear scars which means it could have been from asbestos exposure or another lung disease. Also, this Court found that there was evidence provided that could lead a reasonable juror to find noneconomic damages. This also created issues of fact with respect to pain, suffering, inconvenience, physical impairment, and loss of enjoyment of life. Accordingly, this Court found that the trial judge erred in entering a directed verdict in favor of Illinois Central and remanded the case back to the circuit court.

**Comments:**

This case illustrated the difference between establishing a breach of a duty and causation. FELA uses common-law negligence principals, in order to recover, the plaintiff must show that (1) A duty existed (2) the employer breached the duty (3) the breach was the proximate cause of the injury. If a plaintiff is able to show breach of duty, (that the employer did not act reasonably under the circumstances) FELA modifies the causation requirement to require plaintiff to show that the breach played a part however slight in causing plaintiff's injury. Steve Gordon