

Case Name: Jane Doe as Personal Representative of the Estate of John Doe v. Norfolk Southern Railway Company, et al.

Date Decided: November 18th, 2009

Originally Filed in: Alabama (federal)

Decided by: Tennessee Eastern District Court (Federal)

Court: U.S.D.C. Eastern District of Tennessee

Judge: Judge Phillips

Citation: 2009 WL 4017131 (E.D.Tenn.)

Background:

This action involved an action filed by decedent, John Doe against his employer, defendant Norfolk Southern Railway Company (NSRC), under the Federal Employers' Liability Act (FELA). Jane doe contended that her husband developed silicosis as a result of exposure to sand while working for NS. Defendant's moved for summary judgment. John Doe worked for NS nearly 30 years mostly as a locomotive engineer. John Doe filed an action alleging that NS negligently caused John Doe to develop lung disease while working for NS. Norfolk Southern's first Motion for Summary Judgment was denied by the U.S.D.C. for the Northern District of Alabama. John Doe died shortly after the first Motion was denied and Jane Doe, John Doe's wife was substituted as the Party-Plaintiff.

The action was later transferred to the Eastern District of Tennessee. NS renewed its Motion for Summary Judgment arguing that new evidence had been developed after the death of Mr. Doe now establishing that there were no genuine issues of material fact and NS was entitled to judgment as a matter of law.

The new evidence included autopsy findings and an accompanying affidavit purportedly showing John Doe had idiopathic pulmonary fibrosis and interstitial lung disease with no known cause and it was, therefore, not related to his former employment with NS. Essentially, NS argued, that the autopsy revealed no link between Doe's death and his employment.

Issue:

Did this Court, in light of the purported newly discovered evidence, properly grant Norfolk Southern's Motion for Summary Judgment?

Overall Issues Discussed or Touched Upon in this Case:

- *Cumulative Trauma Case*
- *Summary Judgment - Defendant Factual Granted*
- *Ruling on Summary Judgment*
- *Procedural Issues - Federal*

Held:

The complaint alleged that Norfolk Southern violated FELA by (1) failing to provide John Doe a safe place to work, (2) failing to provide him with proper safety equipment, and (3) failing to warn him of the dangers of silica exposure.

NS contended that there was no dispute that Doe's disease had any relation to his employment. The autopsy report noted that there were "no changes of specific occupational-related lung disease". Further, the Court noted that Jane Doe failed to submit evidence disputing this new finding. Accordingly, the new trial judge granted NS's Motion for Summary Judgment.

Comments:

Norfolk Southern was able to re-file their Motion for Summary Judgment based upon findings of an autopsy showing that the cause of his death was not linked to his employment. As such, the Court was able to hold, as a matter of law, that there were no genuine issues of material fact on causation. Once the court made this finding, it was not necessary to examine the allegations of negligence against NS.

Even if there was not "new evidence", Norfolk Southern may have re-worded and re-urged its previous Motion for Summary Judgment anyway just due to the transfer of venue. Railroad's defense counsel are notorious for filing MSJs on many different points just to see if one argument "sticks".

This commentor does not know the particular trial judge in either venue but it is clear that some judges are more defense minded than others and NS might have felt that their position was "improved" by the transfer and simply tried to have their Motion heard by a new judge. Steve Gordon