No. 124454

IN THE SUPREME COURT OF ILLINOIS

MELVIN AMMONS,

Plaintiff/Counter-Defendant/Appellee,

vs.

WISCONSIN CENTRAL, LTD.,

Defendant/Counter-Plaintiff/Appellant,

and

CANADIAN NATIONAL RAILWAY COMPANY, LTD.,

Defendant.

On appeal from the Appellate Court of Illinois, First Judicial District

Nos. 1-17-2648 and 1-17-3205 (cons)

There heard on appeal from the Circuit Court of Cook County, Illinois, Law Division

No. 15 L 1324, No. 16 L 4680 (cons)
The Honorable John H. Ehrlich

DAREN RILEY,

Plaintiff/Counter-Defendant/Appellee,

vs.

WISCONSIN CENTRAL, LTD.,

Defendant/Counter-Plaintiff/Appellant,

ACADEMY OF
Amicus Curiae BRIEF BY THE ~~AMERICAN~~ RAIL LABOR ATTORNEYS'
(ARLA)

Appearances are on the inside cover

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Points and Authorities

Statement of Interest of the *Amicus Curiae*

The Academy of Rail Labor Attorneys (ARLA) is a professional association founded in 1990 with members nationwide who specialize in representing railroad employees pursuing whistle blower cases under the Federal Railway Safety Act (FRSA), 49 U.S.C. § 20109; representing railroad employees and their families pursuing personal injury and wrongful death cases under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60; and representing the general public pursuing personal injury and wrongful death cases against railroad carriers under state-common law.

ARLA's primary purpose is to promote rail safety for railroad employees and the general public. Specific to promoting rail safety for railroad employees, ARLA has a substantial interest in maintaining the fair administration of justice that is consistent with the underlying policies of the FELA to provide injured railroad employees and their families with a just remedy to recover damages for job-related injuries and deaths.

ARLA recognizes and is respectful of the fact that it is a privilege, not a right, to appear as an *amicus curiae* and respectfully requests permission to appear in this case. ARLA also respectfully submits that the experience of its members in representing railroad employees and their

families in FELA cases will provide valuable insight as this Court considers the important issue presented.

Summary of Argument

The Appellate Court's decision below barring Appellant Wisconsin Central, LTD's (WCL) counterclaims for property damage and contribution against Appellees Melvin Ammons and Daren Riley under Sections 5 and 10 of the FELA, 45 U.S.C. §§ 55, 60, is consistent with the broad application that the U.S. Supreme Court has applied to the FELA for more than 100 years.

WCL argues in the pending appeal that the court erred and this Court should allow it to assert counterclaims that have the grave possibility of a jury awarding damages to WCL under its claims and against Ammons and Riley that is greater than their FELA damages, which in effect shields it from liability under the Act. Determining whether WCL may pursue its counterclaims presents an important question that has far reaching ramifications not only in Illinois, a state with extensive railroad operations employing many of its citizens, but also nationwide.

U.S. Supreme Court decisions over the past 100 years have repeatedly instructed courts to apply the FELA in a broad manner. To allow WCL to assert counterclaims here ignores these decisions. The

broad application is required in order to achieve the congressional goal to ensure that railroad employees and their families receive a just remedy. The broad application includes construing Sections 5 and 10 of the FELA in a manner that bars WCL's counterclaims since the effect of allowing the claims to go forward would eviscerate Ammons and Riley's FELA claims. The Appellate Court below correctly reflects the U.S. Supreme Court's directives.

Argument

I. The Appellate Court's decision barring WCL's counterclaims is consistent with the broad application the FELA must be given to provide liberal recovery for railroad employees' injuries and deaths.

Allowing WCL to bring state-based counterclaims for property damages and contribution[1] against Ammons and Riley undermines U.S.

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[1] The Appellate Court below mentioned that WCL's counterclaims against Ammons and Riley included a claim "for contribution in tort from the plaintiffs for one another's injuries." *Ammons v. Canadian Nat'l Ry. Co.*, 2018 IL App (1st) 172648, ¶5, __ N.E.3d __. The court did not consider the contribution claim. This brief's focus is likewise on the property damage counterclaim. But even if the contribution counterclaim is considered, the claim is barred since it resurrects the fellow-servant doctrine, a doctrine that is prohibited under the FELA. *See Chesapeake & Ohio Ry. Co. v. De Atley*, 241 U.S. 310, 313 (1916) (noting that "[t]he act of Congress, by making the carrier liable for an employee's injury 'resulting in whole or in part from the negligence of any of the officers, agents, or employees' of the carrier, abrogate the common-law rule known as the fellow-servant by placing the negligence of a co-employee upon the same basis as the negligence of the employer").

Supreme Courts nearly 100 opinions spanning 100 years. By bringing the counterclaims, WCL attempts to shield itself from liability under the FELA, a statute that must be broadly applied in order to effectuate a just remedy for injured railroad workers. *See Urie v. Thompson*, 337 U.S. 163, 180-81 (1949) (reasoning that silicosis was an injury under the FELA was consistent with "the Act's humanitarian purposes," and the "liberal construction" the Act must be given).

The incident in this case involves a collision between a train whose crew included Ammons (a conductor) and Riley (an engineer), the plaintiffs in the underlying case, and a second train. *Ammons v. Canadian Nat'l Ry. Co.*, 2018 IL App (1st) 172648, ¶ 4, __ N.E.3d __.

WCL's counterclaims for property damage and contribution have the potential to expose Ammons and Riley to substantial monetary damages that surpass their FELA claims. These counterclaims are barred because there are "rule[s], regulation[s], or device[s]" that exempts WCL from liability and intimidates employees from providing information to injured co-workers. Section 5 of the FELA prohibits railroads from escaping their legal responsibility by using "[a]ny contract, rule, regulation, or device *whatsoever*, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by

this chapter . . . ." 45 U.S.C. §55 (emphasis added). Section 10 of the FELA prohibits railroads from preventing their employees from "furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee . . . by threat, intimidation, order, rule, contract, regulation, or device . . .." 45 U.S.C. § 60. Allowing WCL to assert counterclaims in this case thwarts FELA's objective to provide a just remedy, which in turn promotes railroad safety.

A. The FELA was enacted to eliminate barriers preventing employees from recovering damages from their employers for job-related injuries and death.

In enacting the FELA in 1908, the Senate Report noted the loss to families arising from incidents causing injuries or deaths to railroad employees:

> Everybody understands that our railway workmen do their work in the constant presence of danger, where a single misstep is often fatal. They are, almost without exception, intelligent and capable men. They are, as a rule, the heads of families, and there is nothing extreme or revolutionary in the opinion that the whole community should share with them and their families the loss which arises from an accident which befalls them.

Sen. Rep. No. 460, 60th Cong., 1st Sess. 3 (April 2, 1908).

The Report states, also, that many of the nation's railroads "no longer think it right or fair to stand on their technical rights in dealing with unfortunate employees" *Id.* Thus, railroad carriers recognized long ago the

inequities faced by employees under the then existing law, but this recognition is defied by WCL's present-day use of counterclaims against its employees.

The Supreme Court has not directly addressed the pending issue. But the Court has decided nearly 100 FELA cases since its passage, and throughout the history of construing the Act, it has consistently recognized that the FELA must be broadly applied to achieve the congressional intent to provide liberal and just recovery for injured workers. *See Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 561-62 (1987) (noting that "[t]he coverage of the statute is defined in broad language, which has been construed even more broadly") (quoting *Urie*, 337 U.S. at 180).

Indeed, *Urie* makes clear that the language of the Act is as broad as could be framed:

> To read into this all-inclusive wording a restriction as to the kinds of employees covered, the degree of negligence required, or the particular sorts of harms inflicted, would be contradictory to the wording, the remedial and humanitarian purpose, and the constant and established course of liberal construction of the Act followed by this Court.

337 U.S. at 181-182.

The Supreme Court made these comments while considering several issues including when the FELA's three-year statute of limitations accrued in a case where the worker was exposed to a substance causing silicosis.

Id. at 168-69. In rejecting the railroad's argument narrowly applying the Act, the Supreme Court noted that to accept the argument "it would be clear that the federal legislation afforded Urie only a delusive remedy." *Id.* at 168. Thus, the FELA must be construed in a manner that affords Ammons and Riley with a just remedy rather than "a delusive remedy."

Further credence that the FELA must be applied broadly in order to further congressional intent of providing a just remedy is reflected in the Supreme Court holding that the Act provides a remedy for injuries caused by intentional torts, even though the statutory language only mentions negligence. *Buell*, 480 U.S. at 562 n. 8. And that a railroad may not reduce its liability and exposure by "apportionment of damages between railroad and nonrailroad causes . . . when the negligence of a third party also contributed in part to the injury-in-suit." *Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 160 (2003). And a relaxed evidentiary standard creating jury questions related to fault. *See Rogers v. Missouri Pac. R.R. Co.*, 352 U.S. 500, 507 (1957) (holding that "[j]udicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that negligence of the employer played any part at all in the injury or death").

The broad coverage the FELA must provide to workers is further

evident based on the "primary purpose of the Act was to eliminate a number of traditional defenses to tort liability and to facilitate recovery in meritorious cases." *Buell*, 480 U.S. at 561. The defenses eliminated under the Act include abolishing the fellow-servant rule, assumption of the risk, and replacing contributory negligence with pure comparative fault.[2] *Consol. Rail Corp. v. Gottshall,* 512 U.S. 532, 542 (1994) (citation omitted).

The importance of the congressional objective to provide a just remedy to railroad employees has been a continuing theme running through Supreme Court decisions as indicated in the court's 1994 decision, *Consol. Rail Corp. v. Gottshall*, stating: "Congress crafted a federal remedy that shifted part of the human overhead of doing business from employees to their employers." 512 U.S. at 542 (quoting *Tiller v. Atl. Coast Line R.R. Co.* 318 U.S. 54, 63 (1943)) (additional citation omitted, internal quotation marks omitted). Again, allowing WCL to assert counterclaims against its employees ignores the Supreme Court's repeated clear directives.

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[2] By replacing contributory defense with comparative fault, a worker's negligence does not bar recover; and instead, damages are reduced by the percentage of the worker's fault. *Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 166 (2007) (citing 45 U.S.C. § 53).

B. Section 5 must be construed in a manner consistent with the purpose of the FELA.

Importantly, another primary purpose of passing the FELA was to "expressly prohibit[] covered carriers from adopting any regulation . . . to limit their FELA liability." *Buell*, 480 U.S. at 562 (citing to 45 U.S.C. § 55 in footnote 6).

The importance of Section 5 recognized by the Supreme Court in *Buell* in 1994 is long standing. Soon after the enactment of FELA, the Supreme Court noted "it has been well understood that the protection of interstate commerce and the safety of those employed therein have direct relation to the public interests which Congress by [the FELA] intended to promote." *Philadelphia, Baltimore & Washington R.R. Co. v. Schubert,* 224 U.S. 603, 614 (1912). The Court went on to discuss Section 5 by recognizing that "[t]he evident purpose of Congress was to enlarge the scope of the section and to *make it more comprehensive by a generic, rather than a specific, description*." *Id.* at 611 (emphasis added). The Court's embracing a broad application of Section 5 by specifically referencing "generic [] rather than specific" necessarily includes all instruments whose effect is to eliminate a railroad's liability. In the pending case, WCL's counterclaims for property damages and contribution are "rule, regulations, or devices" that eliminates WCL's liability by acting as an offset to damages awarded by a

jury under the FELA. In other words, the WCL's counterclaims eviscerates its employees FELA claims.

Schubert goes on to apply Section 5 broadly in rejecting the railroad's argument that the section did not apply because it was enacted after the instrument (the contract in question) was formed. *Id.* at 613. The Court focused on the statutory language "purpose or intent" and determined their meaning "is to be found in their necessary operation and effect in defeating the liability which the statute was designed to enforce." *Id.* In defining their meaning, the Court reasoned that "[o]nly by such general application could the statute accomplish the object which it is plain that Congress had in view." *Id.*

The application of Section 5 was considered again in *Duncan v. Thompson*, 315 U.S. 1 (1942). There, the issue considered was whether a contract formed after the plaintiff's injury was a prohibited instrument. *Id.* at 2-3. The plaintiff accepted $600 from the railroad for living expenses while unable to work under an instrument that required repayment before a FELA lawsuit could be started. *Id.* at 3. The plaintiff brought a FELA lawsuit without paying the money back. *Id.* In considering whether the instrument was an impermissible device under Section 5, the Court focused on "whether 'the purpose or intent' of the instrument was to

enable the respondent 'to exempt' itself from any liability created by (the) Act (chapter)." *Id.* at 7. The Court next reasoned the device was void because the plaintiff's "straitened circumstances" made the probability of paying back the amount "negligible," and bringing a FELA claim "would be taken away from him" under the device. *Id.*

The lessons to be learned from *Schubert* and *Duncan* are two-fold. First, the statutory language "[a]ny contract, rule, regulation, or device" must be broadly applied by defining the terms in a comprehensive and generic manner rather than a specific manner. Second, the statutory language "purpose or intent" must also be broadly applied by looking at whether the effect of the device foils an employee's FELA claim.

Applying *Schubert* and *Duncan's* lessons to the pending case, WCL's counterclaims fall squarely within the parameters of an impermissible "rule, regulation, or device" that is barred under Section 5. Allowing a railroad to assert a counterclaim against an employee in a FELA cases eliminates a railroad's exposure under the Act.

The cases WCL primarily rely on ignore *Schubert*, *Duncan* and other Supreme Court precedent applying the FELA broadly. For instance, in *Cavanaugh v. W. Maryland Ry. Co.*, 729 F.2d 289 (4th Cir. 1984), the Fourth Circuit held the railroad's property damage counterclaim was not a device

because it did not strictly prohibit the plaintiff from bringing a FELA claim. *Id.* at 292. But the holding ignores the chilling effect the property counterclaim had on the plaintiff's FELA claim where the plaintiff's claim sought to recover $1,500,000 in damages while the railroad's property damage claim sought to recover $1,700,000. *Id.* at 290. Just like in *Duncan*, the railroad's counterclaim in *Cavanaugh* created a situation that placed the plaintiff in an economic position that left him without a remedy under the FELA. Thus, the railroad's property damage claim eviscerated the plaintiff's FELA claim, which left him with no remedy. More to the point, *Cavanaugh* is contrary to *Urie* and the Supreme Court's requirement that the FELA must not be applied in a manner that provides an injured employee with "only a delusive remedy." 337 U.S. at 168.

WCL's other cases, *Sprague v. Boston & Maine Corp.*, 769 F.2d 26 (1st Cir. 1985); *Nordgren v. Burlington N. R.R. Co.*, 101 F.3d 1246 (8th Cir. 1996); and *Withhart v. Otto Candies, L.L.C.*, 431 F.3d 840 (5th Cir. 2005), adopt *Cavanaugh* as recognized by the Appellate Court below, and provide little since "[t]he cases do not really build on *Cavanaugh* with any significant original reasoning . . . ." *Ammons*, 2018 IL App (1st) 172648, ¶ 16.

There are two federal appellate court cases who held similar counterclaims as asserted by WCL that are void under Section 5, and their

holdings are consistent with Supreme Court precedent: *California Home Brands, Inc. v. Ferreira,* 871 F.2d 830, 833 (9th Cir. 1989) (interpreting the Jones Act, which contains the same language as the FELA); and *Deering v. National Maintenance & Repair, Inc.,*627 F.3d 1039 (7th Cir. 2010).

In *Deering*, the Seventh Circuit considered *Cavanaugh, Sprague* and *Nordgren* and commented: "we doubt that *Cavanaugh* and the cases following it . . . were decided correctly . . . ." 627 F.3d at 1046. In support of this remark, the court applied reasoning consistent with *Schubert* and *Duncan* that a defendant's counterclaim for property damage acted as a setoff whose effect was to exempt itself from liability where the damages awarded under a counterclaim exceeds the damages awarded or available to the injured employee. *Id.* at 1044-45.

The court further explained that the setoff proviso in Section 5 supports the conclusion that the word "device" embraces all setoffs with the exceptions specified within the section. *Id.* at 1043. He explained further that when the FELA was enacted, a railroad's right to recover damages from an employee on account of property damage was limited to setoffs against claims by employees for unpaid wages. *Id.,* citing W. P. Murphy, *Sidetracking the FELA: The Railroads' Property Damage Claims,* 69

Minn. L. Rev. 349, 367-372 (1985).[3] Given the state of the law at the time the FELA was enacted:

> This suggests that the setoff proviso in section 5 may indeed have been based on an understanding that the courts would deem any property claim by a railroad that had the effect of a setoff against any employee's personal injury claim to be a forbidden 'device.' Hence, the need to carve out from the prohibition of setoffs in section 5 those that Congress wanted to permit.

Id. at 1043-44

Further, the court reasoned:

> The fact that the statute tacks "whatsoever" on to "any device" is a clue that "device" is a catch-all…in recognition of the incentive of employers to get around the FELA's generous provisions….The fact that Congress didn't think to say that a counterclaim for property damage was a forbidden device for extinguishing the employer's liability for injuries to his employees confirms Congress's wisdom in including a catch-all in the statute.

Id. at 1045

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[3] The law review article spelled out the reason for the catch-all language in the FELA. In examining the issue of why Congress wasn't specific about disallowing counterclaims, rather than leaving the courts to interpret the language of "any device whatsoever", the article explained the reality of the day. The article points out in 1906 and 1908, Congress was not expected to anticipate "setoffs sounding in assumpsit could be raised against injured workers suing in trespass on the case. Moreover, the prevalence of the contributory negligence bar in pre-FELA common law also explains Congress' failure to enact an express prohibition of employers' property damage counterclaims in FELA suits." 69 Minn. L. Rev. at 371.

Read as a whole, *Deering* reflects the teachings in *Schubert* and *Duncan*, and is consistent with Supreme Court jurisprudence requiring a broad construction and application of the FELA.

In addition, there are other decisions supporting Ammons and Riley's position, including two decisions from the U.S. District Court in the South District of Illinois: *Blanchard v. Union Pac. R.R. Co.,* 2016 WL 411019 (S.D. Ill. Feb. 1, 2016) and *In re Nat'l Maint. &Repair,* 2010 WL 456758 (S.D. Ill. Feb. 3, 2010).

In *Blanchard* the court stated:

> [T]he counterclaims are retaliatory devices calculated to intimidate and exert economic pressure on injured employees, curtail their rights when asserting injury claims and supplying information, and, ultimately, exempt the railways from liability under the FELA.

2016 WL 411019, at *3. The court's reasoning is consistent with *Schubert* and *Duncan* where the effect of the device is the determinative factor as to whether a railroad is exempt from liability under the FELA.

Further support that WCL's counterclaims are void as devices under Section 5 is found in the dissenting opinions in *Cavanaugh* and *Nordgren*. In *Cavanaugh*, the dissent's focus was correctly centered on the effect of allowing a counterclaim is "to intimidate and exert economic pressure upon Cavanugh, to curtail and chill his rights, and ultimately to exempt

the railroads from liability under the FELA." 729 F.2d at 296. Likewise, the dissent in *Nordgren* focused in part on whether the "railroads' property damage claims would frustrate the remedial purpose of the FELA by *examining the effect of such claims* on the FELA comparative negligence section, 45 U.S.C. § 53." 101 F.3d at 1254. The dissent then gives an example where a plaintiff's FELA recovery is completely offset by not only the proportion of his or her comparative fault but is then further reduced by a property damage award to a railroad. *Id.* at 1254-55 (quoting *Sidetracking*, 69 Minn. L. Rev. 373-75).

As discussed, there is a split of authority on the issue before this Court. The question to be answered is which body of law is consistent with U.S. Supreme Court cases spanning a century. The Supreme Court has time and again emphasized the requirement to apply the FELA broadly as summarized in *Kernan v. American Dredging Co.*:

> But it is clear that the general congressional intent was to provide liberal recovery for injured workers, and it is also clear that Congress intended the creation of no static remedy, but one which would be developed and *enlarged to meet changing conditions and changing concepts of industry's duty toward its workers.*

355 U.S. 426, 432 (1958) (citation omitted).

ARLA respectfully submits that authority finding a property damage counterclaim is an instrument that is void under Sections 5 and 10

is consistent with the broad application FELA must be given in order to provide railroad employees and their families a just remedy.

II. WCL's counterclaims against its employees are preempted since the state-based claims conflicts with the FELA.

Even if WCL's counterclaims are not instruments under Sections 5 and 10, the counterclaims are preempted by the FELA. The FELA is a comprehensive federal act that provides Ammons and Riley with their sole remedy to recover damages for on-the-job injuries. *See New York Cent. R.R. Co. v. Winfield*, 244 U.S. 147, 151-52 (1917) (holding that injured railroad employee could not pursue a state workers' compensation claim and his exclusive remedy was under the FELA).

As discussed above, over the past 100 years the Supreme Court made clear that the FELA must be construed in a broad manner providing railroad employees and their families with a just remedy. *See Urie*, 337 U.S. 169 (cautioning that the FELA may not be applied in a manner that provides an injured employee with "only a delusive remedy").

As also discussed above, allowing WCL to assert property damage counterclaims in Ammons and Riley's FELA lawsuits eviscerates their remedy under the Act. Thus, WCL's counterclaims are preempted because the "state law 'stands as an obstacle to the accomplishment and execution of [Congress'] full purposes and objectives.'" *Freightliner Corp. v. Myrick*,

514 U.S. 280, 287 (1995) (citation omitted, bracketed language in the original); *see also CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663 (1993) (stating "[w]here a statute conflicts with, or frustrates, federal law, the former must give way").

WCL's state-law counterclaims for property damage brought against Ammons and Riley who have concurrently suffered injuries in the course of their railroad employment interferes extensively with FELA's purposes. *See* W. P. Murphy, *Sidetracking the FELA: The Railroads' Property Damage Claims,* 69 Minn. L. Rev. at 373-79, 386-90; *Cavanaugh*, 729 F.2d at 295-97 (dissenting); *Nordgren*, 101 F.3d at 1253-58 (dissenting).

Beyond those instances where the state-claims interfere with the FELA as discussed above, the state-base claims interfere with the FELA as it relates to allowing for an offset against a comparatively negligent employee's FELA recovery where the railroad violated a safety statute under 45 U.S.C. § 53;[4] the preclusive effect occurring through application of the principles of *res judicata* and collateral estoppel in FELA suits

[4] 45 U.S.C. § 53 prohibits consideration of an employee's comparative negligence in a FELA action where the railroad violated a statute or regulation enacted for the safety of the employees. This prohibition would most likely not apply in a state-law property damage claim. *See Crane v. Cedar Rapids & Iowa City Ry. Co.*, 395 U.S. 164, 167 (1969) (holding that whether FELA's comparative fault applied to a state-based claim is "left to state law") (citations omitted).

prosecuted after disposition of first filed state-law property damage claims;[5] and the chilling effect that assertion of such claims would have on employees voluntarily furnishing information to an injured employee, or his representative, with respect to the facts incident to an injury under 45 U.S.C. § 60.[6]

Last, although discussed several times before it is worth repeating, there is the likely outcome where a railroad's property damage claim dwarfs an employee's FELA claim, which frustrates the Act's remedial purpose. The FELA must be liberally construed to further its humanitarian goal of holding railroads responsible for the physical dangers to which their employees are exposed. *Gottshall*, 512 U.S. at 543.

WCL's state-based counterclaims and Ammons and Riley's FELA claims undeniably conflict and cannot be reconciled since allowing such claims would pervert the letter and spirt of the FELA, destroy FELA as a viable remedy, and eviscerate Congress's goal to provide a financial incentive for railroads to improve industry safety.

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[5] *See* W.P. Murphy, *Sidetracking the FELA: The Railroads' Property Damage Claims,* 69 Minn. L. Rev. at 375-76, ns. 112, 113.

[6] *See Stack v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 94 Wash.2d 155, 159, 615 P.2d 457, 460 (1980); *Cavanaugh*, 729 F.2d at 296 (dissenting); W.P. Murphy, *Sidetracking the FELA: The Railroads' Property Damage Claims,* 69 Minn. L. Rev. at 386-90.

Conclusion

Amicus Curiae Academy of Rail Labor Attorneys respectfully requests that this Court rule in favor of Appellees Melvin Ammons and Darrin Riley by affirming the Appellant Court's decision that is consistent with U.S. Supreme Court's construction and application of the FELA over the past 100 years.

Respectfully submitted,

By: /s/ Robert E. Harrington, III
One of the attorneys for *Amicus Curiae*, Academy of Rail Labor Attorneys

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Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief is 4,031 words, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance and the certificate of service.

/s/ Robert E. Harrington, III

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Notice of Filing

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PLEASE TAKE NOTICE that on July 12, 2019 I electronically submitted the *Amicus Curiae* Brief by the American Rail Labor Attorneys with the Clerk of the Supreme Court. A copy of this Brief is attached to this Notice and served on you.

/s/ Robert E. Harrington, III

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Certificate of Service

Robert E. Harrington, III, an attorney, certifies that on July 12, 2019, he electronically filed the foregoing Notice, Motion and Draft Amicus Brief with the Clerk of the Illinois Supreme Court by using the Odyssey eFileIL system. I further certify that on July 12, 2019, I electronically served Keinv M. Forde and Catherine Basque Weiller through Odyssey. Leslie J. Rosen, Scott C. Sands and George Brugess, council for the other parties were served by email.

/s/ Robert E. Harrington, III

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

/s/ Robert E. Harrington, III