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McBride v. CSX: Supreme Court's Decision a Blow to Railroads or Mixed Bag?

Product Liability Advisory

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"*Caelum terminus est*—the sky's the limit." In *McBride v. CSX Transportation*, Inc., 564 U.S. ___ (June 23, 2011). Chief Justice John Roberts concludes his dissent to the majority's rejection of proximate cause in the Federal Employers Liability Act (railroad worker) lawsuits with those dire words. FELA lawyers will now watch with interest to see whether the causation required for FELA liability is in practice as boundless as suggested by the top figure in our justice system.

The crux of *McBride* is proximate cause, which the Court defines as a philosophical concept requiring some foreseeability between the injurious conduct and the injury. The majority rejected proximate cause because the language of the FELA is broad and imposes liability whenever a plaintiff's injury "result[s] in whole or in part from the [carrier's] negligence." The majority deemed this result consistent with an unbroken line of U.S. Court of Appeals holdings since the early-1900s enactment of the FELA.

But the *McBride* majority stopped short of rejecting "but for causation," and specifically invoked the importance of "common sense" to juries' causation determinations. The majority also acknowledged that foreseeability does have a place in FELA liability calculus, just that it lies in the realm of duty rather than causation. Though these may appear to be minor and not necessarily controversial points, their emphasis in *McBride* will yield significant value in jury instruction battles and, consequently, jury argument. Further, since duty is generally a question of law, trial judges should heed *McBride* as a reminder of their obligation to gate-keep and prevent juries from deciding cases where foreseeability is lacking.

The *McBride* decision is disappointing to FELA defense attorneys because the case seemed to represent the best opportunity there could ever be for clarifying FELA causation standards. But FELA plaintiff attorneys should resist the temptation to gloat over having preserved a slanted status quo. It is clear that, while rejecting proximate cause, the majority nonetheless conceptualizes FELA liability in a manner that revitalizes limits certain courts have not always been careful to recognize. With all due respect to Chief Justice Roberts, FELA liability post-*McBride* should be on *terra firma* if the elements of causation and foreseeability are read as robustly as the majority seems to intend.

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