



Supreme Court Decision About Standard of Causation Affects Seaman Personal Injury & Death Cases

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A narrowly divided U.S. Supreme Court held today in the case of *CSX Transportation, Inc. v. McBride* that the Federal Employer's Liability Act ("FELA") makes railroads liable for employees' injuries or deaths that result from the negligence of the railroads or fellow employees, no matter how slight the negligence, or whether the negligence "cause in fact" is a proximate cause of the injury or death. Even though the case is based on a railroad incident, it could have a significant impact on maritime interests, including vessel operators, employees, and underwriters, because the "Jones Act" governing such maritime claims is based upon the FELA. Accordingly, the decision in the CSX case could mean that seamen who are injured as a result of alleged negligence by their employers or fellow seamen will only need to show that their injuries were caused, however remotely, by the alleged negligence, even if the injuries were not reasonably foreseeable.

The "but for" or "cause in fact" standard set by the Supreme Court is notably different from the usual standard of "proximate cause" applied in common law tort cases, including general maritime tort cases. The dissent, written by Chief Justice Roberts and joined by Justices Scalia, Alito, and Kennedy, argued that FELA has, up until now at least, been held to be based upon traditional common law tort principles. However, Justice Ginsburg, joined by Justices Kagan, Sotomayor, Breyer, and Thomas, disagreed, and were persuaded by the text of the statute, which makes the railroad employers liable for all injuries and deaths "resulting in whole or in part from [carrier] negligence." Notably, Justice Thomas, the apparent swing voter on the court, declined to join in one part of the decision, Section III-A, in which the Court complained of the challenges in providing jurors with a coherent statement of the meaning of "proximate cause."

Maritime Jones Act cases have long applied a "scintilla" rule under which the courts have found liability based on even minor acts of negligence, although a number of cases have also considered whether the ultimate harm was foreseeable. The CSX case will now remove that potential hurdle to recovery in seaman injury cases, placing even sharper focus on the central issue of whether the maritime employer or its crews are in fact negligent.

A copy of the Slip Opinion from the case can be found via the attached PDF.

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