No. _____

In The
Supreme Court of the United States

JOSEPH BRENT MATTINGLY,

Petitioner,

versus

R.J. CORMAN RAILROAD GROUP, LLC;
R.J. CORMAN RAILROAD SERVICES, LLC; and
R.J. CORMAN RAILROAD COMPANY/MEMPHIS LINE
aka R.J. Corman Railroad Company/Memphis Line, Inc.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case filed under 42 U.S.C. §§51, *et seq*. (the Federal Employers Liability Act, or "FELA"), presents three questions, to wit:

1. Whether, and to what extent, the "veil-piercing" provisions of 42 U.S.C. §§51, 55 and 57 compel disregard of state corporate charter laws which frustrate and circumvent the federal public policy and purpose of FELA.

2. In light of the clear conflict among the Federal Circuit Courts of Appeals, what is the test under FELA for determining when a parent railroading company which has segregated its railroading operations into purportedly "common carrier" and "non-common carrier" subsidiary companies is itself deemed a "common carrier," and it and its subsidiaries thus subject to liability under FELA, for the injuries to its employees nominally employed by a purportedly non-common carrier but railroad-related subsidiary?

3. Whether, and to what extent, the requirements of F.R.Civ.P. 56(d) to file an Affidavit to show what a non-movant cannot present facts essential to justify opposition to a motion for summary judgment can serve as the basis for granting summary judgment to a party who has not moved for summary judgment where the trial court has provided no notice of its intent to grant summary judgment to the non-moving party, as required by F.R.Civ.P. 56(f).

LIST OF PARTIES

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Sixth Circuit whose interest and position may be affected by further review of this case.

RELATED CASES

Joseph Brent Mattingly v. R.J. Corman Railroad Group, LLC, and R.J. Corman Railroad Services, LLC, No. 19-cv-170, United States District Court for the Eastern District of Kentucky. Judgment entered August 12, 2022.

Joseph Brent Mattingly v. R.J. Corman Railroad Group, LLC; R.J. Corman Railroad Services, LLC; R.J. Corman Railroad Company/Memphis Line aka R.J. Corman Railroad Company/Memphis Line, Inc., No. 22-5794, United States Court of Appeals for the Sixth Circuit. Opinion Affirming entered January 3, 2024.

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PETITION FOR WRIT OF CERTIORARI

Joseph Brent Mattingly petitions this Court for a writ of certiorari to review the Judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on January 3, 2024.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, whose judgment is herein sought to be reviewed, is reported at *Joseph Brent Mattingly v. R.J. Corman Railroad Group, LLC; R.J. Corman Railroad Services, LLC; R.J. Corman Railroad Company/Memphis Line aka R.J. Corman Railroad Company/Memphis Line, Inc.*, No. 22-5794, 90 F.4th 478 (6th Cir. 2024), and is reprinted in the appendix hereto, at Pet.App. 1-Pet.App. 31. The Sixth Circuit affirmed the Order of the United States District Court for the Eastern District of Kentucky which granted summary judgment to the Respondents. A copy of that Order is reprinted in the appendix hereto at Pet.App. 32. The Memorandum Opinion of the United States District Court for the Eastern District of Kentucky relevant to the issues raised herein is reported at *Joseph Brent Mattingly v. R.J. Corman Railroad Group, LLC, and R.J. Corman Railroad Services, LLC*, No. 19-cv-170, 621 F.Supp.3d 775 (E.D.Ky. 2022), and is also reprinted in the appendix hereto at Pet.App. 34-Pet.App. 77. Other opinions and orders from the district court relevant to the issues presented herein are reported at

Joseph Brent Mattingly v. R.J. Corman Railroad Group, LLC, and R.J. Corman Railroad Services, LLC, No. 19-cv-170, 2021 WL 7081113 (E.D.Ky. 10/06/2021), reprinted in the appendix hereto, at Pet.App. 78-Pet.App. 95; *Joseph Brent Mattingly v. R.J. Corman Railroad Group, LLC, and R.J. Corman Railroad Services*, No. 19-cv-170, unreported order entered by the United States District Court for the Eastern District of Kentucky on April 13, 2021, reprinted in the appendix hereto, at Pet.App. 111-Pet.App. 115; and *Joseph Brent Mattingly v. R.J. Corman Railroad Group, LLC, and R.J. Corman Railroad Services*, No. 19-cv-170, 570 F.Supp.3d 484 (E.D.Ky. 2021), reprinted in the appendix hereto, at Pet.App. 96-Pet.App. 110.

JURISDICTION

An order of the United States Court of Appeals for the Sixth Circuit was entered on January 3, 2024, affirming the order of the United States District Court for the Eastern District of Kentucky which granted the Respondents' Motion for Summary Judgment. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES, REGULATIONS AND RULES INVOLVED

The relevant statutory provisions are 45 U.S.C. §51 (reproduced at Pet.App. 116); 45 U.S.C. §55

(reproduced at Pet.App. 117); 45 U.S.C. §57 (reproduced at Pet.App. 117); and F.R.Civ.P. 57(f) (reproduced at Pet.App. 117).

INTRODUCTION

In response to the rapid expansion of the United States railroad industry in the late 19th and early 20th centuries, and the concomitant increase in hazards to railroad workers, Congress enacted the Federal Employers Liability Act, 45 U.S.C. §51, *et seq.* ("FELA") to provide injured railroad workers a unique, liberal compensation remedy. Leading to its passage, President Benjamin Harrison argued to Congress that, "It is a reproach to our civilization that any class of American workmen, should in the pursuit of a necessary and useful vocation, be subjected to a peril of life and limb as great as that of a soldier in time of war." In *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 543 (1994), this Court confirmed the purpose and required liberal construction of FELA, as follows:

> [W]hen Congress enacted FELA in 1908, its attention was focused primarily upon injuries and death resulting from accidents on interstate railroads. Cognizant of the physical dangers of railroading that resulted in the death or maiming of thousands of workers every year, Congress crafted a federal remedy that shifted part of the "human overhead" of doing business from employees to their employers. FELA was designed to put on the railroad

> industry some of the cost for the legs, eyes, arms, and lives which it consumed in its operations. . . . We have liberally construed FELA to further Congress' remedial goal. (internal quotation marks and citations omitted).

Despite railroad safety innovations over the century since FELA's enactment, railroading continues to be among the most hazardous of vocations. The Federal Railway Administration estimates that from 2012-2022, 39,818 on-duty railroad employees were injured and 122 were killed.

Consistent with its liberal application and broad coverage, FELA contains unique provisions clearly designed to prevent corporate circumvention of its application. FELA benefits are extended to any employee of a "common carrier by railroad . . . any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce, or shall, in any way directly or closely and substantially, affect such commerce . . . " and liability is imposed even where the injury to a worker is caused by the "agents" of a common carrier. 45 U.S.C. §51. FELA's expansive scope extends not only to common carriers directly employing injured workers, but also to "the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier." 45 U.S.C. §57. Additionally, FELA voids any "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 [FELA]." 45 U.S.C. §55.

Predictably, the expansive scope intended by FELA finds friction with state corporate charter laws whose keystones are limited shareholder liability, with no eye toward promotion of any particular federal statutory policy. Unfortunately, federal courts' efforts to reconcile this friction have been *ad hoc* and often frustrate federal policy promoting protection of railroad workers by relying heavily toward blind deference to the creatures of state law designed to protect business investors.

This case presents that friction directly in the competing goals of state corporate charter laws and federal statutory policy for injured railroad workers. Here, a young railroad track and bridge worker – exactly the type of railroad worker that FELA was adopted to protect – suffered life-altering injuries and is denied recovery under FELA simply because the large railroading organization which employs him segregated its operations under state charters into purportedly non-common carrier and common carrier functions.

By granting certiorari in this case, this Court can reconcile the conflicts among the federal circuits in their struggles with this friction between state and federal interests and establish clear guidelines for FELA's application. This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

Mattingly filed this action on February 18, 2019, invoking the jurisdiction of the United States District Court for the Eastern District of Kentucky under 45 U.S.C. §56. Mattingly alleged coverage and compensation under FELA for injuries he suffered while nominally employed by R.J. Corman Railroad Services, LLC (hereinafter "Corman Services"), during repair of the Red River Bridge near Clarksville, Tennessee. The bridge and rail lines were owned and operated by R.J. Corman Railroad Company/Memphis Line (hereinafter "Memphis Line"). Mattingly was injured when, consistent with his training, he climbed into a "man basket" to be lowered from the upper deck of the railroad trestle to the base of the trestle by a winch attached to a boom truck. Unbeknownst to Mattingly, the winch was marked with a warning to the boom truck operator: "**Do Not Use This Winch To Lift, Support, Or Transport Personnel."** The winch failed and the man basket crashed to the ground, causing 37-year-old Mattingly to suffer a left leg amputation and right ankle and left elbow fractures, among other injuries.

Initially, only R.J. Corman Railroad Group, LLC (hereinafter "Corman Group") and Corman Services were named Defendants. Mattingly asserted FELA coverage because Corman Group owns, manages and controls substantial common carrier subsidiaries in conjunction with purportedly non-common carrier subsidiaries, including Corman Services, as an organized, unitary railroad system. Thus, FELA requires disregard of the Corman Group corporate structure.

Additionally, Mattingly asserted that, although nominally employed by Corman Services, he acted under the direction, supervision, management and control of Memphis Line, a Corman Group common carrier subsidiary, and thus was a sub-servant of a company that in turn was a servant of the common carrier subsidiary.

FELA liability was denied by Corman Group which claimed it is merely a "holding company" and that its subsidiary operations are segregated by separate state charters such that subsidiaries operating as common carriers, and thus subject to FELA, are separate from railroad construction and repair subsidiaries, like Corman Services. Corman Group and Corman Services contended that since Mattingly was not directly employed by a common carrier subsidiary, he was not entitled to FELA remedies.

1. Corman Group's Corporate Structure.

Corman Group is a limited liability company whose sole Member and Manager is the Richard J. Corman Living Trust. Corman Group is the holding company for, and sole Member and Manager of, at least 14 separate railroad-related entities which it contends are not common carriers, including Corman Services, and is the sole shareholder of R.J. Corman Railroad Company, Inc. In turn, R.J. Corman Railroad Company, Inc., is the holding company, sole Member and Manager or shareholder of at least six separate common

carrier railroad companies, including Memphis Line, where Mattingly was injured.

The President of Corman Group is Ed Quinn. The corporate officers and personnel and the entire organizational structure of R.J. Corman Railroad Company, Inc., are the same for every one of the subsidiary common carrier entities.

None of the Corman Group subsidiaries file federal tax returns because they are intentionally organized as "disregarded entities" for federal tax purposes. Rather, the income and expenses of the entire Corman Group family of companies is aggregated and reported on a single Corman Group tax return. Likewise, the annual outside audit of the Corman Group family of companies and their purportedly individual operations is of the aggregate companies, not the companies individually.

Corman Group provides significant administrative services for all of its subsidiary entities, whether common carriers or not, including payroll, accounting and finance, legal, human resources, information technology, public affairs, aircraft pilot services, risk management, insurance, advertising, purchasing and procurement and commercial development services.

President Quinn must approve the annual budgets of every Corman Group subsidiary. No chief operating officer of any Corman Group subsidiary company has the power to authorize a purchase over $100,000. President Quinn approves purchases by Corman Group subsidiaries exceeding $500,000 and purchases

proposed by any Corman Group subsidiary exceeding $100,000 require approval by other Corman Group officers. President Quinn also has the power to cancel any capital project of any subsidiary and to reject any proposal by any subsidiary to add employees.

Corman Group developed its own Safety Manual to which all employees of every subsidiary must adhere, and conducts mandatory annual safety training where employees of all subsidiaries attend as a group.

Corman Group, as the "named insured," procures one worker's compensation policy for its subsidiary companies, and pays a single premium to the workers' compensation insurance carrier. It provides a single retirement plan for all employees of the Corman Group family of companies, regardless of whether employed by a common carrier or non-common carrier subsidiary, with no difference in participation eligibility.

Corman Group purchases single general and automobile liability insurance policies to cover itself and all subsidiaries. Corman Group makes group life and health insurance benefits available to all employees of all subsidiaries under single group policies.

Heads of each Corman Group service department as well as the Presidents or heads of each subsidiary company are considered "senior staff" and report directly to President Quinn. Corman Group has comprehensive, sequentially numbered policies directed to its senior staff ("SSPs") which note specifically their effective and revision dates.

For example, in January, 2012, Corman Group adopted SSP-002, and revised the policy February 26, 2013, requiring final approval from President Quinn for actions of Corman Group subsidiaries involving, a) adding additional headcount, b) recruiting and hiring high level managers, c) purchases over $100,000 or over authority limit, d) contract negotiations over $100,000, d) change in compensation, benefits, work rules or any allowances outside of schedules currently in place.

Twenty-three separate policies were adopted, and many were updated from year-to-year through late in 2015 and require, among other things, that Corman Group officers, and President Quinn in most cases, approve inter-company transfer of employees, promotion of employees and employee bonuses. SSP-020 requires adoption of a 5-year plan for rehabilitation and maintenance of all short-line railroads, with specific coordination between Corman Group, Corman Railroad and Corman Services. (Pet.App. 119-Pet.App. 121). The policy requires detailed involvement of Corman Services officers in annually evaluating Corman Railroad tracks and bridges to develop a plan for ongoing maintenance.

The policies detail, from a high level, how President Quinn can authorize use of Corman Group aircraft and to as low a level as the process for sending flowers to funerals and the manner in which Senior Staff must maintain workplace cleanliness.

Despite Corman Group's efforts to minimize the significance of these comprehensive polices by referring to them as "legacy documents," no Corman Group executive officer could explain why "legacy documents" were periodically revised or point to any evidence that these adopted and revised policies were ever rescinded.

Further evidence of the integration of all of the Corman Group subsidiaries, and the subordination of those subsidiaries to unitary control by Corman Group, is the Corman Group "storm team." When a severe storm damages rail lines, Corman Group employees, no matter whether from a common carrier or non-common carrier subsidiary, are placed on "Red Alert" and subject to ***mandatory*** direction to "drop everything" for assignment to the storm team. Similarly, it is common for employees of one Corman Group subsidiary to be assigned to "fill in" at a separate Corman Group subsidiary, or be shared among entities.

Also evidencing "top-down" control, from time to time following significant accidents involving any Corman Group subsidiary, "stand down" orders were issued for the entire Corman Group family of companies, both common carriers and non-common carriers, directing that the entire operation of all Corman Group subsidiaries shut down. A "stand down" order was issued after Mattingly's accident.

It is also clear that officers of Corman Group common carrier subsidiaries, like Edward Quillian and Jason Topolski, both Memphis Line employees, knew and understood that Corman Group and President Quinn

were in control. For example, shortly after Mattingly's accident, the Corman Services bridge crew was dissolved and Corman Services' bridge repair equipment was transferred to Corman Railroad. Quillian and Topolski acknowledged that this transfer of an entire function of a non-common carrier subsidiary to a common carrier subsidiary was possible only upon approval by President Quinn.

With President Quinn's approval, the bridge crew was transferred to a Corman "common carrier" subsidiary. Employees previously working on the Corman Services bridge crew were transferred to the new "common carrier" bridge crew. Quillian helped pick which Corman Services employees were transferred. The work of the new bridge crew under the Corman "common carrier" subsidiary was the same as had previously been performed by the Corman Services bridge crew and the "transferred" bridge crew members are now covered by FELA.

Tellingly, the workings of Corman Group and its subsidiaries are so intertwined that employees cannot distinguish between the various subsidiary companies. When asked to distinguish between functions normally provided by Corman Group, as opposed to Corman Services, former Corman Services supervisor Paul Childress testified he had difficulty discerning a difference. "To me, it's just all one big beast." Likewise evidencing a lack of recognition of the distinction among separate Corman Group subsidiaries, Memphis Line bridge supervisor Jason Topolski could not even recall

which of the Corman common carrier subsidiaries actually issued his pay checks.

Mattingly's own employment experience with the Corman Group family of companies further evidences the internal disregard of the separate corporate structures of the common carrier and non-common carrier subsidiaries. It was simply normal course that all of Mattingly's pay raises and promotions within any Corman Group subsidiary required "sign-off" by Corman Group officers.

Similarly, when President Quinn felt it necessary to recruit or retain mid-level personnel for a subsidiary, he readily did so. When Jason Topolski announced that he was leaving Corman Railroad in 2017, President Quinn approached him to discuss "what it would take" for him to reconsider and stay. Compensation level was one factor and Topolski was told by his supervisor, Ed Quillian, that President Quinn was the person who could approve the pay increase.

In point of fact, the operation of Corman Services was more an appendage of the Corman Railroads than a stand-alone company. Corman Railroad short line companies own hundreds of miles of track and hundreds of bridges. However, during his tenure as bridge inspector and supervisor for Corman Railroad, Topolski recalls only one company, other than Corman Services, occasionally performing bridge repair work on Corman Railroad bridges. Likewise, former Corman Services Operations Manager Dickie Dillon testified that in his 30 years, although Corman Railroad usually

solicited bids for bridge work on its lines from outside companies, Corman Services knew it would get the bid. Corman Railroad chief engineer Ed Quillian candidly admitted that when the railroad needed track work, even though it may look outside the Corman family in cases of urgency, availability, capability and price, the railroad first checked with Corman Services for the work. Mattingly estimates that 80-90 percent of the bridge repair work in which he was involved for Corman Services was on Corman railroads.

Most indicative of Corman Services as just an appendage of Corman Railroad, an inter-company policy dictated that Corman Services could only charge the actual cost of its labor and equipment, not market rates, to Corman's common carrier subsidiaries. This relationship begs the question of Corman Services' independence when Corman Services was prohibited from profiting on work for its largest "customer." Clearly, in the unified system operated by Corman Group, profit for one subsidiary suffered for the benefit of the profitability of the entire Corman Group family of companies.

2. Corman Group's Representations To Courts And Governmental Agencies.

Further evidencing "top level" control over all subsidiaries is found in Corman Group's representations to courts and governmental agencies that the Corman family of companies is a unitary entity over which Corman Group had authority to manage. As an example,

under 49 U.S.C. §11323, an entity seeking to acquire "control" over another railroad must receive approval from the Surface Transportation Board ("STB"). Exemptions to the required approval process are available, but require notice of the claimed exemption to the STB. In 2018, as was the case in previous similar transactions, Corman Group and Corman Railroad ***jointly*** filed a Notice of Exemption with the STB in relation to Corman Railroad's contemplated acquisition of two Tennessee railroads. President Quinn's is the only signature on the joint Notice of Exemption. Corman Group's joinder in the Notice of Exemption is evidence that it is not simply a holding company, content to hold, but rather that upon acquisition it would "control" the two Tennessee railroads.

As another example, in order for a lender to perfect a security interest in railroad cars, locomotives or other rolling stock intended for use in interstate commerce, 49 C.F.R. §11301 requires the security agreement to be filed with the federal STB. On June 20, 2018, all of the Corman Group family of companies filed a joint security agreement, listing all of the companies as borrowers, pledging essentially every asset of every subsidiary entity for financing. The security agreement was executed on behalf of all of the Corman Group family of companies, whether common or non-common carrier subsidiaries, by the Chairperson of the Richard J. Corman Living Trust, rather than any officer of any specific operating entity.

Yet another example is Corman Group's representation of its unitary operations to the Kentucky

Transportation Cabinet for public grant funding to rehabilitate its own railroad tracks and crossings. Correspondence and cover sheets accompanying those applications are on Corman Group letterhead and are signed by President Quinn who is identified as the point person, rather than an officer of any of the subsidiaries which would directly benefit from the funding. In those applications, Corman Group insists on using its own labor rather than bidding the work on the proposed projects by touting the long history of railroad construction services available from Corman Services.

Additionally, on June 13, 2017, Corman Group was sued by a worker nominally employed by Corman Services alleging that Corman Group and its subsidiaries were a "single employer," which failed to pay overtime in violation of Section 7(a) of the Fair Labor Standards Act. Corman Group claimed it was not a "single employer" and that each of its subsidiaries were separately organized, operated and managed. Corman Group contended, similar to its claim here, that it had no liability because some of the employees who claimed overtime compensation were employed by Corman Services, not Corman Group. Ultimately Corman Group settled the litigation by paying $1,012,716.90, with President Quinn alone signing the Settlement Agreement to released ***all of the Corman Group family of companies*** upon Corman Group's payment to workers, many of whom were nominally employed by Corman Services and who Corman Group initially claimed were not its employees.

3. Corman Group's Public Representations.

The very heart of Corman Group's public marketing is its "Sou**1**rce" logo and its "One Source" self-promotion. The "Sou**1**rce" marketing campaign was developed for use by all Corman Group family subsidiaries, whether common carriers or non-common carriers, "to try and cross sell one another to clients and customers throughout the railroad industry." Under the single "R.J. Corman Group" umbrella, Corman Group promotes itself to the public as follows:

> R.J. Corman is the One Source service provider for all facets of railroading. Although we are made up of several entities, our individual companies come together to form a custom package to respond to our customer's unique needs. All companies and service groups are unified under one R.J. Corman banner and adhere to the same set of core values in order to provide consistent, high quality solutions for our customers.

This strategy of marketing the Corman Group family of companies as a single, unitary operation is furthered by public announcements that uniformly note that high level officers of the Corman Group subsidiaries, "continue to report to R.J. Corman President and CEO, Ed Quinn." In fact, just weeks prior to Mattingly's accident, Corman Group publicly announced a new Corman Services President who would "continue to report" to President Quinn.

4. Evidence That Mattingly Worked Under The Direction, Supervision, Management And Control Of Memphis Line, A Common Carrier Subsidiary.

Although Ed Quillian was a Corman Railroad engineer and Jason Topolski was a Corman Railroad bridge supervisor, both on Memphis Line payroll, Corman Services employees understood that they were required to follow Quillian's and Topolski's instructions. As one example, the Memphis Line project where Mattingly was injured involved two bridges. Although Corman Services planned that the second bridge repair would start after the first was finished, Corman Railroad supervisors disagreed, overruled Corman Services, and directed that the Corman Services crew split so that half the crew could work simultaneously on the second bridge.

Throughout the bridge repair project, Topolski directed Corman Services employees from day-to-day if he determined that some particular detail of a job should be performed on a specific date. Topolski's direction was on site, through frequent electronic mail messages to Corman Services employees and by providing detailed "work lists." Topolski dictated the times when Corman Services employees could work in relation to when Corman trains needed to pass across the bridges, referring to one such train as the "money train." Day-to-day, Topolski directed Mattingly and the Corman Services workers as to the manner in which they should adjust the scope and timeline of their work to accommodate the "money train."

Corman Railroad supervisors were also intimately involved in the details of Corman Services' work on Corman railroads, like the Memphis Line. They typically reviewed the scope of work with Corman Services employees. They directed Corman Services employees which specific bridge posts to mark and cut on the Memphis Line and worked alongside them on the trestle, frequently under Topolski's instruction. They also trained Corman Services employees on use of equipment, used hand tools alongside Corman Services employees and operated heavy equipment to assist Corman Services upon the project. Quillian confirmed that because of Topolski's penchant for detail, Topolski participated in day-to-day operations of Corman Services work, depending on how engaged the railroad needed to get.

Corman Railroad supplied and delivered all of the materials and heavy equipment used on the Memphis Line job. Topolski, typical of his control over the project, directed Mattingly and Corman Services employees, to "account for every bolt on this project."

PROCEDURAL COURSE

The issue of whether FELA applies to Mattingly's accident and injuries was severed by the district court from other substantive issues and those other issues were held in abeyance. However, throughout discovery, Mattingly's efforts to obtain important information about the relationship between Corman Group,

Corman Services and Memphis Line was stymied as Corman Group and Corman Services objected that the requested discovery relating to Memphis Line involved a "non-party," and thus was not subject to discovery. The Magistrate Judge agreed and limited or denied discovery as it applied directly to Memphis Line. (Pet.App. 96-Pet.App. 115).

On September 9, 2020, Mattingly moved to formally join Memphis Line as a Defendant. Inexplicably, no ruling on the motion to join Memphis Line was issued by the district court until October 6, 2021, after discovery on the issue of FELA application had already closed on April 30, 2021, and dispositive motions in relation to FELA application were already filed and briefed pursuant to the district's court's scheduling order. (Pet.App. 78-Pet.App. 95).

Mattingly argued to the district court that FELA liability could be imposed under two separate theories. First, Mattingly asserted FELA coverage was extended because the unitary ownership, management and control of its various railroad subsidiaries subjects Corman Group to FELA liability when at least a portion of its owned, managed and controlled operations are as a common carrier because FELA's statutory framework compels disregard of Corman Group's state chartered corporate structure. Essentially, Mattingly contended that, consistent with FELA §§51, 55 and 57, as well as this Court's prior jurisprudence, the Corman Group's "corporate veil" should be pierced. Mattingly argued that he should be granted summary judgment under this theory.

Additionally, Mattingly argued that FELA *could* apply because, although nominally employed by Corman Services, he acted under the direction, supervision, management and control of Memphis Line, and thus was a sub-servant of a company that in turn was a servant of the common carrier subsidiary. This relationship could entitle Mattingly to FELA remedies against Memphis Line, as outlined in *Kelley v. S. Pac. Co.*, 419 U.S. 318 (1974). However, Mattingly noted that summary judgment was inappropriate for any party on the sub-servant theory since issues of material fact existed which clearly precluded summary judgment, and Memphis Line was not even a party at that time.

On August 12, 2022, the district court issued its Memorandum Opinion and Order and Judgment, dismissing Mattingly's claims by summary judgment. (Pet.App. 34-Pet.App. 77). In addition to dismissing all claims against Corman Group and Corman Services, the district court dismissed the claims only recently permitted against Memphis Line, even though no specific discovery had been permitted with respect to Memphis Line and Memphis Line had not even moved for summary judgment. Without providing notice that it intended to consider summary judgment in favor of Memphis Line, the district court simply commented that its "findings clearly apply to Memphis Line and preclude the applicability of FELA."

The Sixth Circuit affirmed, narrowly interpreting FELA and this Court's prior guidance by focusing on the physical links between related railroading subsidiaries and their parent, and viewing physical link as

the sole manner in which FELA can extend to separately incorporated but related entities which are purportedly non-common carriers. The Sixth Circuit, expressly deferring to state corporate charter law, declined to permit "piercing" of the state-law created "corporate veil," even while acknowledging that FELA contemplated circumstances where corporate structure should be disregarded. The Sixth Circuit also affirmed the district court's grant of summary judgment to Memphis Line, reasoning that F.R.Civ.P. 56(d) required Mattingly to file an Affidavit to alert the district court that the case against Memphis Line was not ripe for summary judgment consideration and that without such Affidavit, Mattingly waived any complaint. The Sixth Circuit failed to reconcile the district court's summary judgment with F.R.Civ.P. 56(f) which required the district court to provide notice to Mattingly if it planned to consider summary judgment in favor of a non-moving party – Memphis Line.

REASONS FOR GRANTING THE PETITION

Despite the remedial purpose of FELA, requiring an expansive scope and liberal interpretation, federal courts have struggled with FELA's application when faced with corporate structures created under state laws which segregate a railroading company's purportedly "non-common carrier" but railroad-related functions from other functions which are clearly that of a "common carrier."

Federal Courts of Appeals have developed conflicting tests as to when to apply FELA under these circumstances and often resort to state law corporate veil piercing concepts which, in most cases, frustrate FELA's statutory policy.

This case directly presents that conflict and, by accepting this case for review, the Court can resolve the confusion surrounding application of FELA to a parent railroad holding company and bring interpretation of FELA's corporate veil piercing standards in line with this Court's choice of law rules and the specific "veil-piercing" provisions of FELA.

This case also presents an opportunity to interpret F.R.Civ.P. 56(f) and the circumstances when a trial court may grant summary judgment to a non-moving party without providing notice of its intent to do so.

I. The Circuits Are Divided Over How To Apply The Definition Of "Common Carrier" Under FELA Where A Railroading Company Has Segregated Its Railroad Related Functions By Separate State Law Corporate Charters.

The breadth of the definition of "common carrier" has been the subject of interpretation by federal courts from as early as Congress' passage of the Interstate Commerce Act of 1887 as its first effort to regulate railroad "common carriers." *See Texas & P. Ry. Co. v. Interstate Commerce Commission*, 162 U.S. 197, 246 (1896). Congress followed by passing the Federal Safety

Appliance Act (Act of March 2, 1893, c. 196, 27 Stat. 531) and the Hours of Service Act (Act March 4, 1907, c. 2939, 34 Stat. 1415 [Comp. St. §§8677, 8678]), also applying both to "common carriers."

Having had over a decade of jurisprudence to define what entities are "common carriers" by railroad, subject to federal regulation in other contexts, it cannot be mere coincidence that when Congress passed FELA in 1908, FELA likewise applied to "common carriers."

The conflict between Congress' federal regulation of railroads and state corporate charter laws was evident from the beginning. However, this Court made it clear that courts were required to look well beyond the mere corporate structure of an entity to determine if it was subject to federal railroad regulation as a common carrier and to examine the "system" operated by the entity, as a whole. In *Southern Pacific Terminal Co. v. Interstate Commerce Comm.*, 219 U.S. 498 (1911), the jurisdiction of the Interstate Commerce Commission ("ICC") was challenged by the Southern Pacific Company. There, as does Corman Group here, the Southern Pacific Company claimed to act only as a holding company for numerous subsidiary corporations, for each of which it owned 99 percent of the stock. Many of the subsidiary corporations operated railroads but others did not. Among the subsidiary corporations which did not operate a railroad was the Southern Pacific Terminal Company, which carried on a wharfage business in Galveston, Texas, and owned no railroad cars or locomotives. The ICC ordered the terminal company to

cease and desist a practice of conferring favorable wharfage charges upon a particular customer. The Southern Pacific Company and its subsidiary terminal company argued that the ICC had no jurisdiction over the subsidiary terminal company because it was separately incorporated, was not itself a common carrier and it was owned by a holding company, not a railroad company. This Court rejected Southern Pacific's argument that by separately chartering the terminal company with non-common carrier functions, the subsidiary terminal company could escape federal regulation, explaining:

> Another and important fact is the control of the properties by the Southern Pacific Company through stock ownership. There is a separation of the companies if we regard only their charters; there is a union of them if we regard their control and operation through the Southern Pacific Company. This control and operation are the important facts to shippers. It is of no consequence that by mere charter declaration the terminal company is a wharfage company, or the Southern Pacific a holding company. Verbal declarations cannot alter the facts. The control and operation of the Southern Pacific Company of the railroads and the terminal company have united them into a system of which all are necessary parts, the terminal company as well as the railroad companies.

Southern Pacific Terminal Co. v. Interstate Commerce Comm., 219 U.S. at 522. Resorting to federal statutory

interpretation, not state corporate veil-piercing rules, this Court looked to the entire operation of the holding company and its common carrier and non-common carrier subsidiaries and, in determining that the subsidiary terminal company was deemed a "common carrier" and thus subject to federal regulation, noted the significance where a holding company was not "content to hold."

> The record does not present a case of stock ownership merely, or of a holding company which was content to hold. It presents a case, as we have already said, of one actively managing and uniting the railroads and the terminal company into an organized system. And it is with the system that the law must deal, not with its elements. Such elements may, indeed, be regarded from some standpoints as legal entities; may have, in a sense, separate corporate operation; but they are directed by the same paramount and combining power and made single by it.

Southern Pacific Terminal Co. v. Interstate Commerce Comm., 219 U.S. at 523-524.

One year later, in *United States v. Union Stock Yard & Transit Co. of Chicago*, 226 U.S. 286, 306, (1922), this Court again made it clear that an entity cannot avoid characterization as a "common carrier" and avoid federal regulation by operating as a holding company with nearly wholly owned subsidiaries whose functions are segregated between those of a common carrier and those which are not. There, the Union

Stock Yard & Transit Company of Chicago constructed and operated a large stock yard and railroad business in Chicago. Later, two separate corporations were formed. All of the railroad business was transferred to one corporation and the other became a holding company which owned 90 percent of the remaining stock yard corporation and all of the newly formed railroad corporation. When an action was brought against the stock yard corporation and its holding company for violation of the Interstate Commerce Act, the corporations argued that they were not common carriers and thus were not subject to the jurisdiction of the ICC. As it had done in *Southern Pacific*, this Court disregarded the corporate structure of the three companies, explaining, "We think that these companies, because of the character of the service rendered by them, their joint operation and division of profits, and their common ownership by a holding company, are to be deemed a railroad. . . ." *United States v. Union Stock Yard & Transit Co.*, 226 U.S. at 306.

Consistent with the expansive scope of these two rulings, this Court also broadly interpreted when an unrelated, non-common carrier independent contractor is deemed the "agent" of a common carrier, thus subjecting the purportedly "non-common carrier" to federal regulation. In *United States v. Brooklyn Eastern Dist. Terminal*, 249 U.S. 296, 305 (1919), this Court found that a terminal company was a "common carrier" under the Hours of Service Act, reasoning that, "The answer to the question [of whether an entity is a common carrier] does not depend upon whether its charter

declares it to be a common carrier, nor upon whether the state of incorporation considers it such; but upon what it does." This Court held that the services provided by the Terminal Company were, "of the kind ordinarily provided by a common carrier" and that the "evils" sought to be remedied by the federal regulation existed equally, "whether the terminal operations are conducted by the railroad companies themselves or the Terminal as their agent. . . ." In sum, this Court held that railroads may delegate components of their essential operations to others, but they cannot necessarily subvert the applicability of remedial legislation in so doing.

Similarly, in *Sinkler v. Missouri Pacific Railroad Co.*, 365 U.S. 326 (1958), this Court interpreted §51 of FELA so as to extend FELA remedies to a railroad worker who was injured by an employee of an independent contractor because the independent contractor was deemed an "agent" of the common carrier for purposes of FELA. There, this Court instructed that where the independent contractor was performing some of the common carrier's operational activities, "an accommodating scope must be given to the word 'agents' to give vitality to the standard governing the liability of carriers to their workers injured on the job." *Id.* at 331-332. This Court reasoned that the employees of the independent contractor who caused the injury, "were, for purposes of the FELA, as much a part of the respondent's total enterprise as was the [injured railroad worker] while engaged in his regular work on the [railroad's] cars." *Id.* at 331.

It would certainly be inexplicable if a worker employed by an independent contractor can be so much a part of the railroad entity's total enterprise as to trigger FELA applicability but an injured railroad worker employed by a railroading organization to perform tasks directly related to railroading cannot avail himself of FELA remedies simply because of state corporate charter laws.

Despite §§55 and 57 of FELA, which uniquely contemplate disregard of a railroad organization's corporate status; the body of law having developed the broad scope of the definition of "common carrier" for application of federal regulation to railroad holding companies and their subsidiaries; and this Court's repeated instruction that FELA must be liberally construed, U.S. Courts of Appeals have struggled to be consistent with their interpretation of the term "common carrier" and their determination of which injured workers are employed by a "common carrier" under FELA.

This struggle has resulted in a direct conflict among the Circuit Courts of Appeals.

In *Lone Star Steel Co. v. McGee*, 380 F.2d 640, 647 (5th Cir. 1967), the Fifth Circuit developed a four-part test to determine whether a particular parent company owning a railroad subsidiary is a "common carrier by railroad," explaining:

> First – actual performance of rail services, second – the service being performed is part of the total rail service contracted for by a member of the public, third – the entity is

> performing as part of a system of interstate rail transportation by virtue of common ownership between itself and a railroad or by contractual relationship with a railroad, and hence such entity is deemed to be holding itself out to the public, and fourth – remuneration for the services performed is received in some manner, such as a fixed charge from a railroad or by a percent of the profits from a railroad.

There, the Fifth Circuit noted the corporate charter separation of the parent and its subsidiary railroad company but disregarded the separate corporate charters and held that the parent company was directly liable under FELA.

In a contrasting decision, in *Kieronski v. Wyandotte Terminal Railroad, Co.*, 806 F.2d 107 (6th Cir. 1986), the Sixth Circuit was presented with the case of an injured worker who sought FELA coverage where his direct employer was a subsidiary of a larger company which owned common carrier subsidiaries. The Sixth Circuit noted but declined to adopt the *Lone Star* "test," but recognized the four *Lone Star* elements as "considerations" for the Court to "keep in mind." There, the Sixth Circuit found it more helpful to focus on a non-exclusive list of categories of railroad entities to determine whether a particular railroad subsidiary is a "common carrier" for FELA application. Unlike the Fifth Circuit, no consideration was given by the Sixth Circuit to the corporate relationship between the parent company and the subsidiary directly employing the injured worker.

Instead, the Sixth Circuit, in rejecting the injured worker's FELA claim, described "in-plant facilities" and "private carriers" that are not considered to be common carriers and "linking carriers" as "invariably labelled a 'common carrier' " The Sixth Circuit also described what it referred to as "mixed-function" carriers, like the carrier in *Lone Star*, which appear outwardly to perform only non-common carrier operations but also perform functions of a common carrier and, "became, in effect, part of the common carrier by virtue of [its] ownership of the common carrier, combined with [its] performance of the common carrier's duties." *Kieronski v. Wyandotte Terminal Railroad, Co.*, 806 F.2d at 109.

The Tenth Circuit considered a FELA claim made by an injured worker where his direct employer also owned subsidiary railroads in *Smith v. Rail Link, Inc.*, 697 F.3d 1304, 1308 (10th Cir. 2012). In rejecting the injured worker's plea that the separate corporate charters of the parent and subsidiary railroads be ignored for FELA purposes, the Tenth Circuit minimized the degree that the parent controlled its railroading subsidiaries. It also considered and rejected the Fifth Circuit's *Lone Star* test and the Sixth Circuit's *Kieronski* categorization analysis, and instead adopted what it characterized as, "a more fundamental inquiry: Does the defendant 'operate [ ] a going railroad that carries for the public'?" *Id.* at 1308; *see also Sullivan v. Scoular Grain Co.*, 930 F.2d 798, 800 (10th Cir. 1991).

More recently, the Second Circuit analyzed FELA applicability under circumstances of parent and

subsidiary railroading entities in *Greene v. Long Island R. Co.*, 280 F.3d 224 (2nd Cir. 2002). There, the Second Circuit disregarded corporate formalities in holding FELA applicable when an employee of the purportedly non-common carrier parent company was injured while involved in tasks which "furthered" or "substantially affected" railroad transportation. The Second Circuit attempted to evaluate the principles articulated in many of this Court's prior opinions, as well as the Fifth Circuit's *Lone Star* opinion, and placed controlling emphasis on §57 of FELA and the management and operational characteristics of the parent-subsidiary relationship, rather than defining a specific test. Applying a broader approach than its sister circuits by reference specifically to FELA's statutory terms, the Second Circuit explained that while the subsidiary common carrier was responsible for "running the trains and collecting the fares, there is more to 'the management and operation of the business' . . . of a railroad than operation of the transportation facilities themselves." *Id.* at 239.

This conflict among the Circuit Courts of Appeals is clearly grounded in the challenge of applying the veil-piercing provisions of FELA contained in §§55 and 57 thereof, which are somewhat unique in federal statutory schemes. Without guidance from this Court, the lower courts will continue to struggle with interpretation of FELA applicability and will continue to produce inconsistent interpretations.

II. This Case Squarely Presents The Conflict.

Here, the Sixth Circuit recognized that this case clearly poses the question of when courts should disregard a railroading company's corporate structure in applying FELA. *Mattingly v. R.J. Corman Railroad Group, LLC*, 90 F.4th 478, 484 (6th Cir. 2024). It tacitly acknowledged that its *Kieronski* entity characterization analysis is inadequate where railroading entities move more and more toward compartmentalizing traditional railroading functions under separate state charters. While citing *Kieronski* as establishing its definition of a "common carrier" under FELA, the Sixth Circuit analyzed this Court's prior cases which authorized disregard of a railroading company's corporate structure in the context of FELA, rather than strictly applying its *Kieronski* entity characterization analysis. In doing so, the Sixth Circuit strained to find a distinguishing thread between this Court's prior *Southern Pacific Terminal* and *Union Stock Yard* decisions and this case that also fosters deference to state corporate charter laws.

The Sixth Circuit noted that in both *Southern Pacific Terminal* and *Union Stock Yard*, the subsidiary or related railroading entity involved provided a "necessary physical link" in the larger organization's chain of interstate commerce, while reasoning that bridge and track repair and services like that provided by Mattingly here did not. *Mattingly v. R.J. Corman Railroad Group, LLC*, 90 F.4th at 485-486. The Sixth Circuit's emphasis on the presence of a physical link appears

to be in direct conflict with this Court's decision in *Southern Pacific Co. v. Gileo*, 351 U.S. 493, 500 (1956) (emphasis added), where this Court instructed that the focus was instead on whether, "the *operation itself* is a vital link in the chain of petitioner's function as an interstate rail carrier."

The Sixth Circuit's opinion in this case further creates an internal conflict with its own prior decision in *Erie R. Co. v. Margue*, 23 F.2d 664 (6th Cir. 1928). There, the Sixth Circuit determined that the provisions of FELA, including §55, were expansive enough that where a common carrier railroad contracted with an unrelated non-common carrier entity to perform track work and an employee was injured while performing that track work, FELA was applicable. There, the Sixth Circuit explained: "The maintenance of [the common carrier's] railroad tracks was essential to the exercise of its franchise rights. It undertook to delegate that duty to a construction company, which was largely organized and controlled by its former employees." *Id.* at 665. While the Sixth Circuit, in *Margue*, had no trouble holding that a common carrier could not avoid FELA liability by delegating its essential functions to an independent contractor, in this case it minimized the role of bridge and track workers like Mattingly and refused to extend FELA liability even where the "independent contractor" was a wholly-owned subsidiary.

Further, even though the Sixth Circuit in this case recognized that FELA contemplates disregard of

corporate structures, it bolstered its refusal to disregard Corman Group's corporate structure and apply FELA by deference to "age-old" principles of state corporate charter laws shielding parent corporations from liability for the actions of their subsidiaries, without any consideration of whether that deference frustrated FELA's federal statutory policy.

FELA's veil-piercing provisions obviously result in friction between the federal statutory policies underpinning FELA and those reflected by state corporate charter laws designed to protect shareholders. In this circumstance, the state corporate charter laws, and their state-based veil-piercing rules, are inconsistent with FELA's federal interests and must yield. *See Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173, 174 (1942). The appropriate analytic framework should be based on this Court's three-part test articulated in *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726-728 (1979), which compels consideration of whether there is a need for national uniformity; the extent to which application of the federal rule would disrupt commercial relationships predicated on state law, and whether application of state law would frustrate specific objectives of the federal interest involved.

This conflict in an important area of the law is directly presented in this case.

III. The Decision Below Reflects Widespread Uncertainty Over The Proper Application Of FELA To Railroading Entities Which Have Chosen To Segregate Traditional Railroading Functions Under Separate Corporate Charters, And Is Of Great Practical Importance Because It Has The Potential To Completely Undermine FELA.

Under the Sixth Circuit's rationale, a railroad entity like Corman Group can separately incorporate entities which provide all manner of railroading services that are traditionally covered by FELA, with the result of excluding all of those services from FELA coverage. Corman Group could separately incorporate its locomotive firers, or its rail yard engineers, or dinkey and hostler operations, nominally offer those services occasionally under contract to other railroad entities, and completely exclude its workforce from FELA application.

None of those railroading functions, under the Sixth Circuit's analysis, separately or in combination, can be said to provide "a physical link in [Corman Group's] chain of transportation" or "play an exclusive role in the chain." However, without doubt, track and bridge repair services are "essential" to a railroad entity's chain of transportation. Service and maintenance of railroad tracks, crossings, trestles and bridges, like that provided by Mattingly and Corman Services in this case, have long been part-and-parcel to the operation of a railroad and railroad workers providing those precise services have routinely availed themselves of

the benefits of FELA, without objection as to its application to them. *See*, *e.g.*, *Fonseca v. Consolidated Rail Corp.*, 246 F.3d 585 (6th Cir. 2001); *Aparicio v. Norfolk & Western Ry. Co.*, 84 F.3d 803 (6th Cir. 1996) (*abrogated* on unrelated grounds); *Chesapeake & O. Ry. Co. v. Richardson*, 116 F.2d 860 (6th Cir. 1941). Justices Douglas and Brennan, noted that, "We have held in . . . FELA cases, that Congress' use of the phrase 'engaged in commerce' is sufficiently broad as to reach employees engaged in repairing highways or in carrying bolts to be used for bridge repairs. . . ." *Gulf Oil Corp. v. Copp Paving Co., Inc.*, 419 U.S. 186 (1974) (*dissenting*).

In fact, no other reported case is found where an injured track, trestle or bridge railroad worker is denied FELA coverage because nominally employed by a non-common carrier.

Further, reliance by the lower courts on varied, divergent state-law "veil-piercing" jurisprudence invariably produces conflicting results based on the fortuity of the jurisdiction where a railroad worker is injured or the arbitrary selection by the railroad conglomerate of the jurisdiction where it chooses to charter its separate common carrier and non-common carrier subsidiaries.

The analysis of the Sixth Circuit in this case, as well as that utilized by its sister circuits, which defers to state corporate charter laws simply cannot be squared with this Court's guidance in *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173, 174 (1942), which suggests that FELA's remedial purpose and express

provisions for disregard of corporate structure require specialized and specific federal veil-piercing rules. The "veil-piercing" provisions of FELA "speak directly" to the question of the friction between federal policy and state corporate charter laws and thus require Courts to disregard state common-law rules. *Mobile Oil Corp. v. Higginbothan*, 436 U.S. 618, 625 (1978) (*overruled on other grounds by Miles v. Apex Marine Crop.*, 498 U.S. 19 (1990)).

This case presents the opportunity for this Court to embark on a revised analysis of the role of corporate fictions in the context of FELA. Only acceptance of certiorari and resolution by this Court can lay to rest the clear confusion surrounding FELA's application in this circumstance.

IV. The Sixth Circuit Mis-Interprets The Application Of F.R.Civ.P. 56(d) By Granting Summary Judgment To A Non-Moving Party Without Notice, As Required By F.R.Civ.P. 56(f).

F.R.Civ.P. 56(f) provides that "[a]fter giving notice and a reasonable time to respond, the court may . . . grant summary judgment for a nonmovant." Here, the district court granted summary judgment to Memphis Line, even though Memphis Line had not moved for summary judgment and even though Memphis Line was not even a party at the time the issue of applicability of FELA was fully briefed and submitted for

decision, surmising that its findings also applied to Memphis Line.

In affirming, the Sixth Circuit completely ignored F.R.Civ.P. 56(f) and held the district court's summary judgment in favor of Memphis Line was justified because Mattingly had not filed an Affidavit pursuant to F.R.Civ.P. 56(d).

As pointed out previously, in light of the numerous disputed, material facts surrounding the conduct and relationships among Mattingly, Corman Services and Memphis Line, summary judgment was inappropriate for any party. However, the Sixth Circuit's reliance upon F.R.Civ.P. 56(d) as a permissible exception to the district court's notice requirements under F.R.Civ.P. 56(f), completely undermines the protections afforded a non-moving party. The precedent set by the Sixth Circuit in its reported opinion in this case will cause confusion and chaos for lower court's in reconciling those procedural rules. Given the importance of a correct interpretation of these procedural rules, this Court should grant certiorari to provide guidance to the bench and bar.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be granted to consider those issues identified herein.

Respectfully submitted on
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