No. 23-1056

IN THE
Supreme Court of the United States

JOSEPH BRENT MATTINGLY,
Petitioner,
v.
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 a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Brief *Amici Curiae* by the Sheet Metal, Air, Rail Transportation Workers-Transportation Division, the Brotherhood of Locomotive Engineers and Trainmen, and the Academy of Rail Labor Attorneys in Support of Petition for a Writ of Certiorari

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BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. INTERESTS OF *AMICI CURIAE* [1]

The Sheet Metal, Air, Rail Transportation Workers ("SMART-TD") is the duly recognized collective bargaining representative under the Railway Labor Act ("RLA") for the crafts or classes of locomotive engineers, conductors, brakemen, firemen, switchmen, hostlers, and other train service employees employed by freight, passenger and commuter rail carriers operating in the United States. SMART-TD represents more than 120,000 employees.

The Brotherhood of Locomotive Engineers and Trainmen ("BLET") is the duly recognized collective bargaining representative under the RLA for the crafts or classes of locomotive engineers, conductors, brakemen, firemen, switchmen, hostlers, and other train service employees employed by freight, passenger and commuter rail carriers operating in the United States. BLET represents more than 51,500 employees in the railroad industry.

The crafts or classes of employees represented by SMART-TD and BLET comprise the crews who operate trains in the United States and are among those persons who are affected by this matter.

The Academy of Rail Labor Attorneys ("ARLA") is a professional association with members nationwide

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[1] Pursuant to this Court's Rule 37.6, amicus curiae states that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than amicus curiae and its counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, each of the parties received notice of our intention to file this brief.

who represent railroad employees and their families in personal injury and wrongful death cases under the Federal Employers' Liability Act ("FELA"). 45 U.S.C. §§ 51-60. The members of ARLA represent an overwhelming majority of employees seeking recovery under the FELA, and the Federal railroad whistleblower law. (49 U.S.C. § 20109). A primary purpose of ARLA is the promotion of rail safety for railroad employees and the general public.

The potential for common carriers to be held liable under the FELA for failing to provide a safe workplace and pay damages to injured employees is an important factor in keeping the industry safe. The vast majority of railroad employees impacted by this case, who would be subjected to more dangerous conditions resulting from elimination of FELA coverage for employees performing duties necessary for railroad operations, are represented by the *amici*. The interests common to the *amici* in this matter include the preservation of rights under the FELA for all employees of common carriers, as well as coverage under other laws and regulations intended to provide for safety in the railroad industry.

II. SUMMARY OF ARGUMENT

The Petition should be granted because if the lower court decision is not overturned, common carriers could exclude workers from coverage under the FELA, and other laws and regulations implemented for railroad safety, by assigning duties necessary for the operation of a common carrier to employees of subsidiary companies through clever corporate structuring. The definition of the term "common carrier" adopted by the lower court was unduly narrow. Common carriers covered by the FELA include not only railroads that operate trains as a means of carrying for the pub-

lic, but also companies that perform vital functions of railroad operations on behalf of a common carrier, particularly when there is common ownership or a contractual relationship between the company and the common carrier. Applying this standard in the instant case, Corman Services[2] is covered by the FELA because it shared a common parent company with Memphis Line, a common carrier, and Corman Services provided vital services necessary for Memphis Line's railroad operations carried on for the public—the maintenance and repair of Memphis Line bridge over which the railroad operated.

If the test set forth by the Sixth Circuit below is permitted to stand, it opens the door for companies such as Corman Services to be excluded from coverage from other railroad safety regulations, which generally apply to "railroads" and "railroad carriers." Such regulations provide detailed safety standards for railroad bridge worker safety, as well as numerous other aspects of railroad operations. See 49 C.F.R. Part 214, Subpart B and 49 C.F.R. Part 237. If Corman Services is not considered a "railroad carrier," it is further excluded from coverage from the whistleblower provisions of the Federal Railroad Safety Act ("FRSA"). 49 U.S.C. § 20109. This provision in the FRSA prohibits a railroad carrier from retaliating against its employees for reporting hazardous safety conditions in the

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[2] The corporate structure and intimate relationship of Respondents is fully set forth in Petitioner's request for certiorari and will not be fully repeated. For purposes of the arguments herein, "Corman Services" refers to Respondent R.J. Corman Services, LLC, who was Petitioner's employer, and "Memphis Line" refers to Respondent R.J. Corman Railroad Company/Memphis Line aka R.J. Corman Railroad Company/Memphis Line, Inc., a common carrier on whose bridge and tracks Petitioner was working at the time of his injury.

workplace or other protected activity. *Id.* The narrow definition of carrier in the holding below could remove whistleblower protections from Corman Services employees and would have a detrimental impact on the safety of not only Corman employees, but railroad workers who may interchange with the Memphis Line, and the public.

The decision of the court below frustrates the purpose and intent of the FELA by enabling common carriers to exclude workers from coverage by isolating crafts of workers into separate business entities. This Court has previously rejected attempts by railroads to avoid liability under the FELA by assigning portions of its operations to other carriers (*Shenker v. Baltimore & Ohio Railroad Co.*, 374 U.S. 1 (1963)) or independent contractors (*Sinkler v. Missouri Pac. R. Co.*, 356 U.S. 326 (1958)). The same result should apply when subsidiary companies are used for this purpose. The threat of FELA liability is a motivating force for common carriers to invest in the safety of their employees. If the decision below is permitted to stand, and FELA coverage is limited, the impact on safety in the railroad industry will be extensive.

III. ARGUMENT

A. Corman Services is a "Common Carrier" Subject to the Federal Employers' Liability Act

Congress has made clear what it expects of railroad safety. The Federal Railroad Safety Act contains the congressional intent at issue in this case, namely "to promote safety in all areas of railroad operations and to reduce railroad-related accidents, and reduce deaths and injuries to persons . . ." Sec. 101, Pub. L. 91-458, codified at 49 U.S.C. § 20101. Additionally, 49

U.S.C. § 103(c) mandates that the Federal Railroad Administration "shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in railroad transportation." Coupled with the above requirements, all railroad safety laws are to be construed in order to accomplish the remedial purpose of railroad safety. *Brady v. Terminal Railroad Association*, 303 U.S. 10, 13-14 (1938). As noted in *McBride v. CSX Transportation, Inc.*, 564 U.S. 685, 686 (2011), ". . . Congress' 'humanitarian' and 'remedial' goal[s]' in enacting the statute, FELA's causation standard is 'relaxed' compared to that applicable in common-law tort litigation, *Consolidated Rail Corporation v. Gottshall*, 512 U.S. 532, 542-543."

Section 1 of the FELA provides in part:

> Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier . . .

45 U.S.C. § 51. "Thus, there are three basic prerequisites to FELA liability. The defendant must, at the time of the plaintiff's injury, be (1) a common carrier, (2) employing the plaintiff, (3) in furtherance of interstate commerce." *Smith v. Rail Link, Inc.*, 697 F.3d 1304, 1307 (10th Cir. 2012). The term "common carrier" as used in the FELA has generally been defined as "one who operates a railroad as a means of carrying for the public—that is to say, a railroad company acting as a common carrier. This view not only is in accord with the ordinary acceptation of the words, but is enforced

by the mention of cars, engines, track, roadbed and other property pertaining to a going railroad." *Wells Fargo and Company v. Taylor*, 254 U.S. 175, 187-188 (1920). The FELA defines the term "common carrier" to "include 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.

The Petitioner sets forth in detail the conflicting approaches of the Circuit Courts in defining who is a common carrier under the FELA. Using any of the differing tests, Corman Services is a common carrier and should be covered by the FELA. For example, considering the factors enumerated in *Lone Star Steel Co. v. McGee*, 380 F.2d 640, 647 (5th Cir. 1967), Corman Services performs part of the total rail service needed by Memphis Line to perform under its contract with the public, which involves moving freight from one point to another. Corman Services maintains and repairs the bridges over which Memphis Line runs its trains. This service is indispensable for Memphis Line's railroad operations. "Whether a transportation agency is a common carrier depends not upon its corporate character or declared purposes, but upon what it does." *Id.* at 648, citing *United States v. State of California*, 297 U.S. 175 (1936). Under the *Lone Star* test, there is both common ownership (Corman Group) and a contractual relationship between Corman Services and the common carrier. And finally, Memphis Line provides remuneration to Corman Services for the services it performs in furtherance of the rail operations of the common carrier. If the Sixth Circuit had properly applied this test, it would have found that Corman Services is a common carrier.

In *Kieronski v. Wyandotte Terminal Railroad Co.*, 806 F.2d 107 (6th Cir. 1986), the court determined that

carriers could be placed into several categories and that determining whether a particular case involved a common carrier under the FELA is dependent upon which category the facts were most analogous. The fourth category discussed by the court is comparable to *Lone Star* and included a company that "performed some of the functions of the common carrier, functions that the common carrier's customer had contracted to have the common carrier perform." *Id.* at 109. Such an entity was a common carrier by virtue of a common ownership combined with the entity's performance of part of the common carrier's duties. Corman Services fits directly into this category. It shares common ownership with and provides bridge maintenance and repair to Memphis Line, services that are a necessary part of the movement of freight.

The court below then examined *Edwards v. Pacific Fruit Express Company*, 390 U.S. 538 (1968), which held that a company providing refrigerated rail cars to a railroad was not itself a common carrier. The Court in *Edwards* reasoned that "there exist a number of activities and facilities which, while used in conjunction with railroads and closely related to railroading, are yet not railroading itself." *Id.* at 540. Clearly, maintaining the tracks and bridges over which Memphis Line trains operate in service of the public is distinguishable from providing rail cars that can transport perishable goods. Memphis Line can service the public as a common carrier without refrigerated cars; it cannot, however, without railroad tracks and bridges. The Sixth Circuit below seemed to acknowledge this difference and stated, "[g]ranted, the maintenance and repair of railroad track and bridges is surely integral to the operation of railroads." *Mattingly v. R.J. Corman R.R. Group, LLC*, 90 F.4th 478, __ (6th Cir. 2024).

The court did not, however, properly consider this distinction in its holding, nor did it apply the tests set forth by the Circuit Courts for determining whether Corman Services is a common carrier. Instead, the court created its own overly restrictive requirement that a company must be "an active participant in the chain of commerce itself." *Id.* at ___. The error was compounded by suggesting that to participate in the chain of commerce, an entity is required to be a physical link in moving people or freight. This holding must be overturned. Applying such a narrow definition to the term "common carrier" would allow railroads to exclude from FELA coverage employees that are essential to rail operations such as signalman, dispatchers, trackman, car inspectors, maintenance of way personnel, and others. None of these crafts actively participate in physically moving people or freight, however they all are a vital part of railroad operations.

Instead of engaging in a proper analysis of whether Corman Services is a common carrier, the Sixth Circuit focused much of its analysis on corporate common law principles that examine the derivative liability of Memphis Line or the parent holding company. Such an analysis is unnecessary in this case because Petitioner's own employer, Corman Services, is a common carrier and therefore can be held directly liable under the FELA. As stated above, the FELA definition of common carrier includes "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. Corman Services was charged with the duty of the operation of a portion of the business of Memphis Line—to maintain its tracks and bridges. "The purpose of § 57 is to prevent railroads from escaping FELA liability by just assigning

their railroading operations to subsidiaries." *Dagon v. BNSF Railway Co.*, 19-CV-00417 (S.D. Ill., July 21, 2020), citing *N.C.R.R. Co. v. Zachary*, 232 U.S. 248, 257-258 (1914).

The Sixth Circuit standard would encourage all common carriers to do just that—isolate such crafts into subsidiary companies to eliminate the need to provide a reasonably safe place to work for those employees under the FELA. The FELA's broad remedial purpose demands that all employees engaged in the essential operations of a common carrier be covered by the provisions of the Act. A worker's recovery under the FELA is premised not on the corporate structure of his/her employer, but on the notion that "justice demands that one who gives his labor to the furtherance of the enterprise should be assured that all combining their exertions with him in the common pursuit will conduct themselves in all respects with sufficient care that his safety while doing his part will not be endangered." *Sinkler v. Missouri Pac. R. Co.*, 356 U.S. 326, 330 (1958).

B. Other Federal Railroad Safety Regulations are Implicated by the Decision Below

If the lower court decision is permitted to stand, and courts use a more restrictive definition of common carrier, there is a risk that companies could use clever corporate structures to avoid compliance with other federal railroad safety regulations as well. The Federal Railroad Safety Act, 49 U.S.C. § 20101 et seq., was passed to "promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. § 20101. Regulations are implemented pursuant to the FRSA by the Federal Railroad Administration. See 49 C.F.R. Parts 200-299. The reg-

ulations involve "railroads" and "railroad carriers," as defined in 49 U.S.C. § 20102(1), (2), and (3).

Included within the railroad safety regulations are detailed provisions for Bridge Safety Standards. 49 C.F.R. Part 237. The regulations outline provisions for bridge safety management programs with the purpose:

> to prevent the deterioration of railroad bridges by preserving their capability to safely carry the traffic to be operated over them, and reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure . . .

49 C.F.R. § 237.31. Part 237 additionally provides for inspections, engineering safeguards, and repair and modification requirements.[3] Similar provisions exist for railroad signal systems (Part 236), freight car standards (Part 215), locomotive safety standards (Part 229), and track safety standards (Part 213).

Narrowly defining common carrier, as suggested by the decision below, to entities that are "an active participant in the chain of commerce itself," including having a physical link to that chain, opens the door for arguments that the above-stated safety regulations are inapplicable to companies because they are not "railroads" or "railroad carriers." Railroads that isolate workers to avoid FELA liability can similarly at-

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[3] The extent to which the work performed by Petitioner at the time of his workplace accident is covered by federal railroad safety regulations suggests that his work was a vital function in railroad operations and supports the conclusion that Corman Services is common carrier. Although coverage under these regulations is not determinative, it is a factor that courts should consider in the analysis of whether a company is a common carrier.

tempt to structure their operations to allow noncompliance with other safety regulations. In both instances, there is a detrimental impact on the safety of both workers and the public.

For example, the FRSA includes a whistleblower provision that prohibits a "railroad carrier" from discharging, demoting, suspending, reprimanding, or otherwise discriminating against an employee if that employee engages in protected activity, including good faith reporting of a hazardous safety or security condition. 49 U.S.C. § 20109(b)(1)(A). Adopting the restrictive standard of the Sixth Circuit in the decision below excludes a company like Corman Services from the coverage of the whistleblower act because it would argue that it is not a "railroad carrier." If a Corman Services employee made a good faith complaint about the unsafe manner in which work on a bridge was performed (such as what led to Petitioner's injuries in this case), that employee would risk retaliation without any recourse. There is a long history of such harassment and retaliation in the railroad industry. See *Consolidated Rail Corp. v. United Transportation Union*, 947 F.Supp. 168, 171 (E.D. Pa. 1996), citing *Federal Rail Safety Authorization Act of 1980*, Pub.L.No. 96-423, reprinted in 1980 U.S.C.C.A.N. 3830, 3832.

Given that history, and the dangerous nature of the work involved in railroad operations, Congress intended the FELA and other federal safety regulations to be liberally construed and broadly applied. The decision of the court below frustrates that purpose. Corman Services employs workers who perform duties that are critical to the operations of the railroad and are heavily regulated because of the safety-sensitive nature of the work. Under these circumstances, combined with the corporate relationship between Cor-

man Services and Memphis Line, Corman Services should be subject to coverage of the FELA and other railroad safety legislation. The Sixth Circuit decision below improperly excludes that coverage. Workers such as Petitioner, his co-workers, other railroad employees, and the public would all be at risk if companies like Corman Services were not subject to the FELA and other regulatory provisions covering the railroad industry.

CONCLUSION

For the reasons stated herein, the *Amici Curiae* respectfully request that the Petition for Writ of Certiorari be granted.

Respectfully Submitted,

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