No. 20-807

IN THE

Supreme Court of the United States

BRADLEY LEDURE,

Petitioner,

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENT

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INTERESTS OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Most American businesses and consumers rely directly or indirectly on the nation's railroads to carry goods and people throughout the United States. Reliable, efficient, and cost-effective rail transportation is thus important to the nation's business community. In turn, the Chamber's members have an interest in the scope and application of laws that affect the cost and efficiency of rail operations, like the Federal Employers Liability Act (FELA), 45 U.S.C. §§ 51–60, and the Locomotive Inspection Act (LIA), 49 U.S.C. §§ 20701–03.

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[1] Counsel of record for all parties have been notified of *amicus curiae*'s intent to file this brief and have consented to its filing. Under Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

In particular, this case concerns the Chamber because expansive interpretations of strict-liability statutes can lead to over-deterrence and inefficiency. That is true both in general and specifically in the rail industry. Given the railroads' key role in our over-stressed supply chain, courts should take care before imposing rules that would reduce the efficiency of rail operations and increase costs for shippers and consumers without increasing safety. The Chamber and its members therefore have a substantial interest in the proper disposition of this case.

SUMMARY OF ARGUMENT

The Court should reject the overbroad interpretation of "in use" under the LIA that petitioner LeDure offers and the United States echoes. As Union Pacific explains, the LIA's text, structure, and history show that a locomotive is "in use" only when a railroad engages it in active service as a locomotive. And LeDure's much broader interpretation would unjustifiably expand railroads' strict liability for LIA violations with no meaningful safety benefit.

Since its dramatic expansion during the mid-twentieth century, strict liability has been criticized for often producing inefficient and unfair results. By ignoring the plaintiff's degree of care, strict liability creates no economic incentive for a plaintiff to take precautions to avoid an accident. Likewise, strict liability can over-deter defendants from engaging in economically valuable activity by imposing greater liability exposure. And strict liability conflicts with our moral intuitions by punishing even a person who acted as carefully as possible.

LeDure's and the government's interpretation of the LIA raises all these problems. Their view would

spur responses that impair railroad efficiency without improving safety. For example, under their interpretation of what the LIA requires, railroads could minimize liability exposure only by moving locomotives to (often distant) designated repair or storage points whenever they are not in active service, even if there were no other reason to do so—wasting fuel and crew time and adding traffic to the national rail network. A railroad would also have to conduct daily inspections of each locomotive parked on a siding somewhere, even if it was not planning to move the locomotive for days. Imposing such needless burdens would impair the industry's efforts to streamline operations and improve the national supply chain.

These problems are especially acute because an LIA violation does not merely create negligence *per se* in a FELA suit by an injured rail worker, as LeDure claims here. Every LIA violation also creates strict civil-penalty liability, even if no one is hurt, enforceable by the Federal Railway Administration (FRA). These significant civil penalties only amplify the perverse incentives that LeDure's and the government's position creates. And their interpretation would expose railroads to punishment no matter how careful they were. Indeed, on their view, liability would be unavoidable—a railroad would face civil penalties the moment any defect appeared on any locomotive outside a repair shop. That is not fair, and it is not necessary to ensure rail-worker safety. As Union Pacific explains, the Safety Appliance Act will often apply in these situations, and a worker injured by actual negligence can always recover under FELA. Nor is there any reason to think that Congress meant to leave the rail industry at the regulator's mercy in this way.

Because of strict liability's downsides, this Court has often taken care when construing the scope of strict liability statutes and claims. It has done so in various contexts—from securities laws to maritime law to international treaties. These cases make clear that a strict liability provision should be interpreted narrowly, absent a clear statement of intent to impose sweeping liability from Congress. The same reasoning applies here. LeDure's and the government's interpretation would dramatically expand the scope of strict liability under the LIA and FELA and would impose liability in situations that the railroads cannot avoid. These practical consequences provide even more reason to reject their interpretation of the LIA.

ARGUMENT

I. Strict liability should be applied with care because it can produce perverse incentives and unfair results.

Although strict liability plays an important role in modern legal doctrine, it also carries significant downsides that militate against applying it broadly.

In the nineteenth century, "strict liability" referred to a narrow "absolute liability" that applied to "specific factual circumstances" involving "egregiously abnormal behavior," like "injuries caused by wild animals" or "by explosives." George L. Priest, *The Modern Expansion of Tort Liability: Its Sources, Its Effects, and Its Reform*, J. Econ. Persps., Fall 1991, at 31, 33. But in the mid-twentieth century, the concept expanded significantly, especially with the adoption of workers' compensation laws and products liability. See *id.* at 33–37. This expansion was driven in part by a desire to incentivize greater care by potential

tortfeasors and ensure compensation for injured parties. See *id.* at 37. But strict liability also brings disadvantages. It can create perverse incentives, and it can produce unfairness by punishing regardless of fault.

1. Choosing a liability rule means choosing an incentive structure. Tort law deals with this question in addressing how to respond to accidents, which are an inevitable part of life. The answer focuses on efficiency—maximizing society's overall welfare—which is, in turn, a function of the sum of the costs of accidents and the costs of preventing them. See, *e.g.*, Guido Calabresi, *The Cost of Accidents: A Legal and Economic Analysis* 26 (1970); Richard A. Posner, *A Theory of Negligence*, 1 J. Legal Stud. 29, 33 (1972). The law maximizes welfare by imposing liability rules to encourage the least costly behaviors. Those behaviors consist of *how* parties engage in their activities (the caution they exercise) and *how often* they engage in them (their activity levels). On both fronts, strict liability rules often create the wrong incentives.

With an efficient standard of care—the one that minimizes the sum of accident and prevention costs—negligence rules in general incentivize both parties to take precautions that maximize welfare. See David Haddock & Christopher Curran, *An Economic Theory of Comparative Negligence*, 14 J. Legal Stud. 49, 59–63 (1985); Robert Cooter & Thomas Ulen, *Law & Economics* 204, 208–09 (6th ed. 2011). Faced with liability risk, the defendant takes all—and only those—precautions whose costs are lower than the expected cost of an accident, which is the extent of the harm weighted by its probability. See Cooter & Ulen, *supra*, at 204–07. This is Judge Hand's famous "BPL" formula that first-year torts students learn:

The ideal degree of care reflects the probability of an injury, the potential harm, and the burden of adequate precautions. See *United States* v. *Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947). And when the defendant takes such precautions, the plaintiff bears the cost of an accident, so the plaintiff is incentivized to take precautions as well. See Cooter & Ulen, *supra*, at 204, 207.

Negligence rules thus encourage both parties to take precautions that minimize total costs. Strict liability, however, distorts these incentives. A defendant is liable regardless of precautions. See *id.* at 202–03. And because avoiding a loss and receiving compensation for it are economically identical, a plaintiff has no economic incentive to reduce the probability or severity of accidents. See *id.* at 202–05; Posner, *supra*, at 33, 40. This is true even if it is inexpensive—indeed, even if it is the least expensive course—for the plaintiff to take a given precaution. Thus, strict liability often fails to encourage actions that maximize overall welfare. But when applied narrowly, and particularly when paired with a contributory or comparative negligence defense, strict liability can appropriately encourage both parties to take care.

2. Strict liability can also incentivize parties to engage in certain activities to a greater or lesser degree than is socially beneficial. "[C]ourts often take into account the benefits and costs of a particular activity," and thus may "reject liability for injury-causing activities" in cases where "deterrence is undesirable." Dan B. Dobbs et al., *The Law of Torts* § 14 (2d ed. June 2021 update).

Under any liability rule, "someone must bear the cost of accidental harm." Cooter & Ulen, *supra*, at

212. With a negligence rule, the defendant avoids liability merely by taking cost-efficient precautions, so it has no incentive to consider how its activity levels affect the probability of accidents and thus their expected costs. See Steven Shavell, *Strict Liability Versus Negligence*, 9 J. Legal Stud. 1, 2–9 (1980); Cooter & Ulen, *supra*, at 212. The plaintiff, as the residual bearer of accident costs, has incentives to decrease the activity level. See Shavell, *supra*, at 2–9; Cooter & Ulen, *supra*, at 212. The opposite is true under strict liability. The defendant must bear the costs of every accident, so it benefits from decreasing its liability exposure by reducing its activity level, while the plaintiff has no comparable incentive. See Shavell, *supra*, at 2–9; Cooter & Ulen, *supra*, at 212.

In turn, choosing a liability rule for a given situation depends on whether relatively higher levels of the plaintiff's activity and lower levels of the defendant's activity maximize welfare, or vice versa. See David Gilo & Ehud Guttel, *Negligence and Insufficient Activity: The Missing Paradigm in Torts*, 108 Mich. L. Rev. 277, 290–91, 315–17 (2009). That means that strict liability can create perverse incentives by discouraging a valuable activity—here, railroad transportation.

3. Finally, strict liability sits uncomfortably with basic principles of fairness. As Justice Holmes long ago observed, without fault—without conduct that the law marks for condemnation—"[t]he general principle . . . is that loss from accident must lie where it falls." O. W. Holmes, Jr., *The Common Law* 94 (1881); cf. Dobbs et al., *supra*, § 12 ("Whatever is to be said of strict liability theories of justice, the great majority of tort cases turn on some kind of perception that the defendant is at fault in a significant way.").

Strict liability departs from that principle by imposing liability regardless of fault—indeed, it imposes liability even if the defendant could do nothing to prevent the harm.

Although the LIA also implicates civil penalties, as discussed below, a FELA suit like this one is essentially a tort claim. See generally *Metro-N. Commuter R.R.* v. *Buckley*, 521 U.S. 424, 438–44 (1997). Tort claims are a form of private law—they concern "justice between individuals, or what Aristotle called 'what is just in men's dealings with one another.'" Curtis Bridgeman, *Reconciling Strict Liability with Corrective Justice in Contract Law*, 75 Fordham L. Rev. 3013, 3013 (2007) (citation omitted). Our legal system addresses such person-to-person dealings in light of the principle that each party has "equal moral status" and thus "self-determining agency." Ernest J. Weinrib, Essay, *The Gains and Losses of Corrective Justice*, 44 Duke L.J. 277, 292 (1994).

Strict liability violates this principle, as it focuses "on only one of the parties": the plaintiff. Ernest J. Weinrib, *The Idea of Private Law* 177 (2012). The plaintiff receives a complete "immunity from the effects of the actions of others," while the defendant is "liable for any penetration of the plaintiff's space." *Id.* Thus, strict liability transforms a defendant's duty into a mere "reflex" of the plaintiff's right to be free from harm, without considering the moral justification of the defendant's conduct or position. *Id.* at 124. Indeed, strict liability provides no "intelligible" duty to which a defendant can conform its conduct. *Id.* at 179. "Only retrospectively through the fortuity of harm does it then turn out that the defendant's act was a wrong"—"wrong" in the sense that the defendant is liable, irrespective of fault. *Id.* "Thus[,] the in-

terests of the plaintiff unilaterally determine the contours of what is supposed to be a bilateral relationship of equals." *Id.* at 177.

This result conflicts with basic moral precepts. "It is at least on the face of it difficult to accept that someone can have a duty to do something that is beyond him or, in other words, that he can be liable on the basis of his wrongdoing when he was not at fault." Peter Jaffey, *Duties and Liabilities in Private Law*, 12 Legal Theory 137, 153 (2006).

II. The Court has taken care to avoid broadly construing strict liability statutes or claims.

Courts recognize strict liability's downsides. Indeed, this Court has often heeded these considerations to narrowly interpret statutes and claims imposing strict liability, absent clear contrary guidance from Congress.

Pinter v. *Dahl* epitomizes this approach. The Court held there that an "*in pari delicto* defense is available in a private action brought under § 12(1) of the Securities Act of 1933 for the rescission of the sale of unregistered securities." 486 U.S. 622, 624–25, 633 (1988) (citation omitted). After noting that the "statute creates a strict liability offense," the Court stressed that *in pari delicto*, which bars recovery if the plaintiff engages in "wrongful conduct," furthers "the statutory goal of deterring illegal conduct." *Id.* at 632, 634. This deterrence rationale for the Court's decision reflects strict liability's first economic downside. Construing § 12(1) to provide a defense where plaintiffs fall short of a level of care encourages them to meet that standard, lest they lose the right to compensation for their losses. *In pari delicto* thus serves

essentially as a contributory-negligence defense, mitigating strict liability's inefficiencies. Cf. Cooter & Ulen, *supra*, at 209.

Pinter also invoked the second economic downside of strict liability—over-deterrence of socially desirable activities—in interpreting narrowly who is a "seller" subject to § 12(1). The Court rejected the argument that § 12(1) applies to anyone "whose participation in the buy-sell transaction is a substantial factor in causing the transaction," like accountants and lawyers. 486 U.S. at 648–51 (citation omitted). The Court reasoned that ruling otherwise "risks over-deterring activities related to lawful securities sales." *Id.* at 654 n.29. "Because strict liability is involved, once a person became involved in the" sale of a security, "even peripherally, it would be impossible to avoid the risk of liability." *Id.* Thus, "[i]mposing a strict liability rescission remedy on those who are only tangentially involved with the sale might result in less and poorer information to investors, rather than more and better information." *Id.* This concern about over-deterrence similarly reflects the Court's effort to avoid interpretations that would expand the application—and thus the disadvantages—of strict liability.

The Court has also emphasized the importance of limiting strict liability's reach in narrowly interpreting § 16(b) of the Securities and Exchange Act of 1934. In ruling on statutory standing to sue for insider trading, *Gollust* v. *Mendell* noted § 16(b)'s strict-liability standard as a persuasive reason to cabin the scope of "beneficial owner[s]" subject to suit. See 501 U.S. 115, 122 (1991) (alteration in original). "Because the statute imposes 'liability without fault within its narrowly drawn limits,'" the Court has

"been reluctant to exceed a literal, 'mechanical' application of the statutory text in determining who may be subject to liability, even though in some cases a broader view of statutory liability could work to eliminate an 'evil that Congress sought to correct . . . .'" *Id.* (citations omitted); see also *Credit Suisse Sec. (USA) LLC* v. *Simmonds*, 566 U.S. 221, 227–28 (2012) (equitable tolling under § 16(b) was "especially at odds with a provision that imposes strict liability").

In federal common law, too, this Court has noted that strict liability is a reason to cabin a claim's scope. Thus, it concluded in *Dutra Group* v. *Batteron* that a plaintiff suing for unseaworthiness under general maritime law—a strict-liability claim—cannot recover punitive damages. See 139 S. Ct. 2275, 2278, 2281 (2019). In so ruling, the Court cited the unavailability of punitive damages in negligence suits under the Jones Act, which "adopts the remedial provisions of FELA," *id.* at 2284—under which LeDure sued here. The Court was "particularly loath to impose more expansive liabilities on a claim governed by strict liability than Congress has imposed for comparable claims based in negligence." *Id.* at 2286; see also *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 32–33 (1990) (rejecting recovery for loss of society in unseaworthiness claims, which would "sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of death resulting from negligence").

And the Court has applied similar reasoning to reject broad applications of international treaties. *Eastern Airlines, Inc.* v. *Floyd* interpreted a treaty provision, Article 17 of the Warsaw Convention, which "sets forth conditions under which an interna-

tional air carrier can be held liable for injuries to passengers." 499 U.S. 530, 532–33 (1991). The Court held that Article 17 does not "allow[] recovery for mental or psychic injuries unaccompanied by physical injury or physical manifestation of injury." *Id.* at 533. In explaining why this construction better furthers "uniformity of rules" across signatory countries, the Court invoked the specter of strict liability. *Id.* at 552. A related international agreement "subjects international carriers to strict liability for Article 17 injuries sustained on flights connected with the United States." *Id.* And the Court "ha[d] no doubt that subjecting international air carriers to *strict* liability for purely mental distress would be controversial for most signatory countries." *Id.*

Thus, in various contexts, the Court has considered the fact that a claim leads to strict liability to carefully cabin that claim's reach. Sometimes, the Court explicitly invokes one or more of strict liability's disadvantages. Other times, the Court simply notes that strict liability calls for strict construction. Either way, the Court has made clear that expansively applying strict liability is not favored.

III. The consequences of expanding strict liability under the LIA militate against LeDure's and the government's interpretation.

By treating a locomotive as "in use" whenever it is not in "a designated place of maintenance or repair," LeDure's and the government's interpretation would greatly expand the LIA's reach. Pet'r Br. 24; see also U.S. Br. 8 (arguing that "a locomotive is in 'use' when it is in the 'employment' of a railroad carrier, and it is out of 'use' when it has been withdrawn from the carrier's service for repair, storage, or retirement" (cita-

tion omitted)). In turn, their position would significantly increase the number of FELA claims governed by a strict-liability standard instead of a negligence standard. It would also expose railroads to strict-liability civil penalties in countless ordinary situations, some of which are unavoidable—and where imposing strict liability would not advance Congress's goal of "protecti[ng] . . . railroad employees." See *Urie* v. *Thompson*, 337 U.S. 163, 191 (1949). Their position would thus maximize the negative consequences of strict liability discussed above, impeding the nation's rail transportation network without improving safety. These consequences confirm what the ordinary tools of statutory interpretation show: The broader interpretation cannot be right.

FELA generally allows rail workers to sue for on-the-job injuries caused by negligence. See 45 U.S.C. § 51. FELA is not "a workers' compensation statute" and "does not make the employer the insurer of the safety of his employees." *Consol. Rail Corp.* v. *Gottshall*, 512 U.S. 532, 543 (1994). But as this Court has interpreted it, FELA allows a claim of negligence *per se*—creating strict liability—if the railroad violates a rail-worker safety law like the LIA. See *Urie*, 337 U.S. at 188–89. And while a comparative-negligence defense could mitigate strict liability's distorted incentives, see Cooter & Ulen, *supra*, at 209, a FELA defendant cannot raise such a defense to a negligence *per se* claim, 45 U.S.C. § 53; *Grand Trunk W. Ry.* v. *Lindsay*, 233 U.S. 42, 49–50 (1914). So in every FELA case where the plaintiff can claim negligence *per se*, a pure strict-liability rule governs.

Nor is FELA the only avenue for liability under the LIA. An LIA violation also exposes a railroad to substantial civil penalties by the Federal Railroad Ad-

ministration (FRA). See 49 U.S.C. § 21302(a)(1). Liability for these penalties is strict as well: The violation need not be willful, negligent, or repeated, and no injury is required. See 49 C.F.R. § 229.7(b). The FRA can assess a separate penalty for each day that a violation exists, and each penalty can exceed $30,000. See *id.*

LeDure's and the government's position would thus dramatically expand railroads' strict-liability exposure under the LIA. And by doing so, it would encourage inefficient behaviors that would impede the smooth flow of interstate commerce over the nation's rails.

For example, the LIA prohibits a railroad from using or allowing the use of a locomotive that is not "in proper condition." 49 U.S.C. § 20701(1). A railroad must thus "repair[ ] every defect that is disclosed by an inspection before a defective locomotive . . . is used again." *Id.* § 20702(a)(3). If every locomotive not in a designated place of repair or storage is "in use," as LeDure and the government claim, then a railroad violates the LIA—and is exposed to strict-liability penalties—the moment a defect appears. But the railroad equally violates the LIA by moving a noncompliant locomotive to a repair shop after it discovers the defect, even if the locomotive is towed "dead," since the LIA has no safe-harbor for such movements. See Resp. Br. 22.

Thus, a railroad can minimize its strict-liability exposure only by preemptively moving otherwise-idle locomotives to designated repair or storage locations, wasting fuel and crew time in the process. And doing so could even *introduce* safety risks by moving heavy equipment that would otherwise sit still. These are

precisely the kinds of perverse incentives that over-broad applications of strict-liability can create.

What is more, since a railroad cannot constantly shuttle every single locomotive to repair or storage, LeDure's and the government's interpretation would produce *unavoidable* LIA violations—with accompanying strict-liability exposure—whenever a defect appeared. That would be true even if the locomotive were (as here) being prepared for use rather than in active use. Indeed, as Union Pacific points out, LeDure's and the government's reading of "in use," combined with LeDure's view that even exterior walkways must be kept "free from . . . water," 49 C.F.R. § 229.119(c), would mean that a railroad violates the LIA whenever rainwater pools on an exterior walkway. Resp. Br. 47. This result is neither efficient nor fair.

Imposing strict liability in this kind of situation also goes well beyond the LIA's purpose. Like its predecessor, the Boiler Inspection Act, the LIA seeks to make locomotives "safe to operate . . . in moving traffic without unnecessary peril to life or limb." *Balt. & Ohio R.R.* v. *Groeger*, 266 U.S. 521, 523 (1925). But a stationary, unpowered locomotive is no more dangerous than any other kind of rail vehicle—or than many other work sites where an employee could potentially slip and fall, whether indoors or outdoors.[2] The Safety Appliance Act would not make a railroad strictly liable for a spot of liquid on a boxcar, *e.g.*, *Collins* v. *S. Pac. Co.*, 286 F.2d 813, 814–16 (9th Cir. 1961), and

[2] See *Traumatic Occupational Injuries*, Ctrs. for Disease Control & Prevention, https://bit.ly/3IIsJDN (last updated Aug. 31, 2021) (noting that slips, trips, and falls caused 27% of all nonfatal workplace injuries resulting in days away from work in 2019).

employers in other industries are not strictly liable for such workplace hazards. Expanding strict liability this way thus exceeds the LIA's proper scope and sits uncomfortably with the SAA's adjacent liability regime. Cf. *Dutra Grp.*, 139 S. Ct. at 2286 (declining to impose "more expansive" strict liability "than Congress has imposed for comparable claims").

To be sure, the LIA violations that would inevitably result from LeDure's and the government's interpretation should rarely cause an injury that could lead to a FELA suit. And the FRA could forbear imposing penalties. But the Court should not assume that the early-twentieth-century Congress that enacted the LIA intended either to leave the industry at the regulator's mercy or to impose unavoidable liability. The "risk of an unavoidable liability that might be crushing gives the courts pause," and properly so. *Shadday* v. *Omni Hotels Mgmt. Corp.*, 477 F.3d 511, 518 (7th Cir. 2007). Indeed, in another railroad case, the Court found it "not conceivable" that Congress meant to make rail carriers "liable for unavoidable loss or damage [to cargo] . . . due to uncontrollable forces." *Adams Express Co.* v. *Croninger*, 226 U.S. 491, 506 (1913); see also *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539, 569 (1960) (Frankfurter, J., dissenting) ("[T]he unreasonableness of imposing liability on the vessel for injuries occasioned by the unavoidable consequences of its proper operation need not therefore be ignored."). Likewise here, the Court should decline to adopt an interpretation that imposes strict liability that will *inevitably* attach to ordinary and safe rail operations.

LeDure's position would also create other pointless burdens. Under FRA's rules, "each locomotive in use shall be inspected at least once during each calendar

day." 49 C.F.R. § 229.21(a). Under LeDure's view of "in use," a railroad must thus inspect almost every locomotive every day—even if the locomotive would otherwise sit unused on a siding or in a yard for days on end, as is common. A failure to do so would expose the railroad to daily civil penalties. This is not an efficient result. There is no reason a railroad should inspect a locomotive on Monday, Tuesday, Wednesday, and Thursday, if it would otherwise sit inert and untouched on a side track until Friday. And the only way to avoid this burden (or the risk of penalties for non-compliance) would again be to shuttle otherwise-idle locomotives to designated repair or storage locations, even for short periods. That is equally wasteful, and less safe.

These negative effects of broadly interpreting the LIA would be particularly harmful because these kinds of wasteful measures—like moving locomotives to distant repair points instead of keeping them close at hand—conflict with the industry's move toward precision-scheduled railroading, or PSR. PSR is a model of rail service that seeks to make the national supply chain more efficient. In essence, instead of waiting to build fewer, longer trains, PSR keeps rail cars moving. See Paul Ziobro, *A Revolution Sweeping Railroads Upends How America Moves Its Stuff*, Wall St. J. (Apr. 3, 2019, 10:43 AM ET), https://on.wsj.com/3Mhj5de. This approach yields many benefits. It "consolidate[s] networks, abandon[s] less-efficient services and lines, and shift[s] traffic" to "run[] directly from origin to destination." Keith Barrow, *Precision Scheduled Railroading—Evolution or Revolution?*, Int'l Ry. J. (Sept. 17, 2019), https://bit.ly/35mzlZZ. When supply chains are already stressed, it makes no sense to adopt liability rules that will

further burden those systems and disrupt interstate commerce for businesses and consumers.

In short, adopting LeDure's and the government's interpretation of the LIA would significantly expand strict-liability tort suits and civil penalties. That expansion would encourage inefficient responses that do not improve safety. Their interpretation would also lead regularly to unavoidable liability, which is neither efficient nor fair. And it would conflict with the industry's efforts to improve efficiency, flexibility, and resilience at a time when the nation's supply chains are already heavily stressed. For these reasons—and those that Union Pacific explains—the Court should reject LeDure's and the government's position.

CONCLUSION

The Court should affirm the judgment below.

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