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Appendix A

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of February, two thousand twenty-six.

In Re: Frederick Pina,

Petitioner.

Frederick Pina,

Petitioner,

v.

State Farm Mutual Automobile Insurance Company,

Respondent.

ORDER

Docket No: 25-2206

Petitioner, Frederick Pina, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



Appendix B

E.D.N.Y. – Bklyn
25-cv-4716
Merle, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of December, two thousand twenty-five.

Present:

Joseph F. Bianco,
Michael H. Park,
Sarah A. L. Merriam,
Circuit Judges.

In Re: Frederick Piña,

25-2206

Petitioner.

Petitioner petitions for a writ of mandamus and moves for leave to proceed in forma pauperis, to file an oversized petition, for judicial notice of district court corruption and an evidentiary matrix of extrinsic fraud, to supplement the record with documents from another court, and for leave to supplement the record with appendices. Upon due consideration, it is hereby ORDERED that the motion for leave to proceed in forma pauperis is GRANTED for the purpose of filing the mandamus petition. Petitioner's motion to file an oversized petition and motion for leave to supplement the record with appendices, which we construe as a motion to consider his arguments on appeal, are also GRANTED. It is further ORDERED that Petitioner's motions for judicial notice and to supplement the record with documents from another court are DENIED. *See Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A., Inc.*, 146 F.3d 66, 70 (2d Cir. 1998).

Petitioner's mandamus petition is DENIED because Petitioner has not demonstrated that he lacks an adequate, alternative means of obtaining relief, that his right to the writ is clear and indisputable, and that granting the writ is appropriate under the circumstances. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


Appendix C

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of February, two thousand twenty-six.

Before: Sarah A. L. Merriam,
Circuit Judge.

ORDER

In Re: Frederick Pina,

Petitioner.

Docket No. 25-2206

Frederick Pina,

Petitioner,

v.

State Farm Mutual Automobile Insurance
Company,

Respondent.

Petitioner moves for my recusal and disqualification from this case.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court




Appendix D

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

-----X
: STATE FARM INSURANCE COMPANY : Civ. No. 3:16CV00474 (SALM)
: :
v. : :
: :
HEIDE ORGANEK and : January 30, 2018
JOHN ORGANEK : :
: :
-----X

MEMORANDUM OF DECISION

I. BACKGROUND

Plaintiff State Farm Insurance Company ("State Farm") brings this action seeking "[a] declaration that the claims made in the Complaint in the Underlying Action do not give rise to a duty on the part of State Farm Insurance Company to defend or indemnify M&A Pizza Restaurant, LLC, Jonathan Prue, or Jarrett C. Toth under Section II of the policy issued by State Farm Insurance Company[.]" Doc. #35 at 9. Defendants John Organek and Heidi Organek (the "Organeks") bring a counterclaim seeking "[a] declaration that the claims made in the Counterclaim and the Underlying Complaint give rise to a duty on the part of State Farm Insurance Company [to] indemnify the defendants, M&A Pizza Restaurant, LLC, Jonathan Prue, and/or Jarrett C. Toth, under the applicable provisions of the policy issued by the plaintiff[]" and "[a]n order that the plaintiff pay to the defendants, Heidi Organek and John Organek, those sums that its

insureds have become legally obligated to pay as a result of the motor vehicle collision of July 23, 2013." Doc. #42 at 5.

State Farm and the Organeks consented to the jurisdiction of a Magistrate Judge on September 12, 2017, see Doc. #51, and the case was reassigned to the undersigned on September 19, 2017, see Doc. #52.¹ The case was set down for a trial to the Court on January 10, 2018. In advance of the trial, State Farm and the Organeks each filed proposed findings of fact and conclusions of law, see Doc. ##61, 62, written arguments in support of their respective positions, see Doc. ##60, 63, and replies to the other party's arguments, see Doc. ##65, 66. State Farm filed objections to the Organeks' proposed findings of fact and conclusions of law. See Doc. #67. The parties also submitted a joint trial memorandum. See Doc. #59.

The trial to the Court was held on January 10, 2018. See Doc. #72. The parties did not call any witnesses, and the parties' three joint exhibits and nine Stipulations of Fact were entered into evidence by agreement of the parties.

Having considered all of the evidence presented at trial,

¹ The parties filed a stipulation of voluntary dismissal under Rule 41(a)(1)(A)(ii), on January 16, 2018, dismissing M&A Pizza Restaurant, LLC, Jonathan Prue, and Jarrett C. Toth from the case, and leaving the Organeks as the only defendants. See Doc. #75. A second consent to the jurisdiction of a United States Magistrate Judge form was filed on January 19, 2018, see Doc. #77, and approved by Judge Alvin W. Thompson on January 22, 2018, see Doc. #78.

the Court finds that State Farm has proven by a preponderance of the evidence that the claims made in the Complaint in the Superior Court action do not give rise to a duty on the part of State Farm to defend or indemnify M&A Pizza Restaurant, LLC ("M&A Pizza"); Jonathan Prue ("Prue"); and/or Jarrett C. Toth ("Toth").

II. FINDINGS OF FACT

1. Prue was employed as a delivery driver at a pizza restaurant called "DP Dough" prior to his employment with M&A Pizza. See Exh. 102a at 6-8. DP Dough was located a few doors down from M&A Pizza in Storrs, Connecticut. See id.

2. During the period of his employment with DP Dough, Prue became familiar with an owner/manager of M&A Pizza, whom he knew as Nick. See id. at 7, 12-13.

3. While working for DP Dough, Prue occasionally made deliveries for M&A Pizza. See id. at 8, 13

4. Prue was not happy with the amount of hours he was working at DP Dough. See id. at 7.

5. Prue approached M&A Pizza about working for them. See id. at 9-10, 14; Exh. 102b at 18.

6. Prue was hired by M&A Pizza as a delivery person. See Exh. 102a at 8-9. Prue's first week of work consisted of three days of six to eight hour shifts, and his second week was four days of six to eight hour shifts. See id. at 8.

7. Prue stopped working for DP Dough when he was hired by M&A Pizza. See id. at 9, 14.

8. Prue did not work at any other job while he worked for M&A Pizza. See id. at 13.

9. Prue did not make any deliveries on the side while working for M&A Pizza. See id. at 13-14.

10. Prue's relationship with M&A Pizza did not have a pre-established ending date. See id. at 11.

11. M&A Pizza paid Prue \$8.00 per hour, plus delivery fees and tips. See id. at 14; Exh. 102b at 19.

12. On July 23, 2013, Prue was delivering a pizza for M&A Pizza when he was involved in an automobile accident with the Organeks. See Doc. #59 at 2, Stipulations of Fact and Law² Nos. 3, 4.

13. At the time of the accident, Prue was operating a vehicle owned by Toth. See Joint Stip. No. 3. Toth was not associated with M&A Pizza. See Joint Stip. No. 5.

14. The accident occurred about two weeks after Prue stopped working for DP Dough, and began working exclusively for M&A Pizza. See Exh. 102a at 8, 13; Exh. 102b at 21.

² The parties entered into nine stipulations in their Joint Trial Memorandum. See Doc. #59 at 2-3. References to these stipulations will be cited herein as "Joint Stip."

15. The Organeks obtained a judgment against M&A Pizza in Connecticut Superior Court for personal injuries the Organeks sustained in the July 23, 2013, accident. See Joint Stip. No. 7.

16. Judgment entered in the Superior Court action on the underlying counts alleging vicarious liability as to M&A Pizza for the actions of its agent, servant and/or employee, Prue. See Joint Stip. No. 8.

17. At the time of the accident, M&A Pizza had a general liability policy ("Food Shop Policy") issued by State Farm. See Joint Stip. Nos. 1, 2. The Food Shop Policy had a policy number of 97-BF-L944-9 and effective dates of May 1, 2013, through May 1, 2014. See Joint Stip. No. 1.

18. The Food Shop Policy was in full force and effect on July 23, 2013. See Joint Stip. No. 2.

19. The Food Shop Policy includes Form CMP-4000 with endorsements CMP-4100 (Businessowners Coverage Form), CMP4207.1 (Amendatory Endorsement), CMP 4765 (Exclusion Empl. Non-Owned Auto Liab.), among other endorsement forms. See Exh. 101.

20. The policy contains the following insuring agreement:

When a Limit of Insurance is shown in the Declarations for Coverage L-Business Liability, we will pay those sums that the insured becomes legally obligated to pay because of "bodily injury", "property damage", or "personal and advertising injury" to which this insurance applies.

...

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section II -- Supplementary Payments.**

Exh. 101 at 000024.

21. "Section II-Exclusions" sets forth the following relevant exclusions to coverage otherwise provided by the insuring agreement:

Applicable to Coverage L-Business Liability, this insurance does not apply to:

...

8. Aircraft, Auto, Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. ...

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or water craft that is owned or operated by or rented or loaned to any insured.

Id. at 000025-27.

22. "Section II-Who Is An Insured" provides the following relevant definition of an insured:

b. Each of the following is also an insured:

(1) Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees"... but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. ...

Id. at 000032.

23. The policy provides the following relevant definitions:

"Employee" includes a "leased worker." "Employee" does not include a "temporary worker".

...

"Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

...

"Temporary worker" means a person who is furnished to:
a. You to substitute for a permanent "employee" on leave; or
b. Meet seasonal or short-term workload conditions.

Id. at 000035-38.

III. CONCLUSIONS OF LAW

A. The Food Shop Policy

The parties stipulate that State Farm issued M&A Pizza the Food Shop Policy, which was in full force and effect at the time of the accident. See Joint Stip. Nos. 1, 2. Under the policy, State Farm agreed to "pay those sums that the insured becomes legally obligated to pay because of bodily injury [or] property damage[.]" Exh. 101 at 000024 (internal quotation marks omitted). State Farm concedes that unless an exception to the Food Shop Policy applies, "State Farm would have to indemnify M&A Pizza Restaurant, LLC, for the underlying judgments obtained

by the Organeks." Doc. #66 at 2. Accordingly, the Court finds that M&A Pizza had insurance coverage through the Food Shop Policy at the time of the accident.

B. Burden of Proof

In an insurance coverage action such as this, the insured bears the initial burden of proving coverage. See Nationwide Mut. Ins. Co. v. Pasiak, 173 A.3d 888, 896 (Conn. 2017). Once coverage has been established, "the insurer bears the burden of proving that an exclusion to coverage applies." Id. The insurer must prove an exclusion applies by a preponderance of the evidence. See Conn. Car Rental, Inc. v. Patla, 677 A.2d 967, 971 (Conn. App. 1996) (affirming trial court's judgment that insurer established by a fair preponderance of the evidence that an exclusion applied); see also Franklin Credit Mgmt. Corp. v. Nicholas, 812 A.2d 51, 57 n.7 (Conn. App. 2002) ("The ordinary civil standard of proof is the fair preponderance of the evidence standard."). As noted above, the parties agree that there was insurance coverage. Therefore, the burden shifts to State Farm to prove by a preponderance of the evidence that Prue's accident was excluded from coverage under the Food Shop Policy.

C. The Food Shop Policy's Auto Exception

State Farm argues that Prue's accident was excluded from coverage by the Food Shop Policy's Auto Exception, which, in

relevant part, excludes "[b]odily injury' or 'property damage' arising out of the ownership, maintenance, use or entrustment to others of any aircraft, 'auto' or watercraft owned or operated by or rented or loaned to any insured." Exh. 101 at 000027. The Food Shop Policy defines an insured as including M&A Pizza's "'employees'... but only for acts within the scope of their employment by [M&A Pizza] or while performing duties related to the conduct of [M&A Pizza's] business." Id. at 000032. However, the policy also provides that an "'[e]mployee' does not include a 'temporary worker'." Id. at 000035. State Farm contends that the evidence demonstrates that Prue was not a temporary worker, and he was therefore an employee as defined by the Food Shop Policy.

D. The Food Shop Policy's Temporary Worker Provision

The Food Shop Policy defines temporary worker as "a person who is furnished to: a. You to substitute for a permanent 'employee' on leave; or b. Meet seasonal or short-term workload conditions." Exh. 101 at 000038. The parties disagree as to the meaning of this provision. State Farm argues that, under Connecticut law, such a provision requires the temporary worker to have been furnished by a third party. See Doc. #66 at 6. Conversely, the Organeks maintain that the provision must be construed against State Farm due to its ambiguity, and that the provision does not mandate third-party involvement even if it is

unambiguous. See Doc. #65 at 3-6.

1. Nationwide Mut. Ins. Co. v. Allen

At trial, both parties acknowledged that the Court must apply the Appellate Court of Connecticut's decision in Nationwide Mut. Ins. Co. v. Allen, 850 A.2d 1047 (Conn. App. 2004), to interpret the Food Shop Policy.³ The policy analyzed in Allen ("Allen Policy") and the Food Shop Policy contain identical definitions of "employee" and "leased worker" and nearly identical definitions of "temporary worker." See Allen, 850 A.2d at 1057; Exh. 1 at 000035-38. The Allen Policy provided: "'Temporary worker' means a person who is furnished to you to substitute for a permanent 'employee' on leave or to meet seasonal or short-term workload conditions." Allen, 850 A.2d at 1057. Here, The Food Shop Policy provides: "'Temporary worker' means a person who is furnished to: a. You to substitute for a permanent 'employee' on leave; or b. Meet seasonal or short-term

³ The parties have not raised any choice of law issues in their briefs or at trial, and both parties rely on Connecticut law. See Doc. ##60, 63, 65, 66. The Court is constrained to follow applicable decisions of Connecticut courts when interpreting Connecticut law. See Schneider v. Schneider, 198 F. Supp. 294, 296 (D. Conn. 1961) (noting that the court is constrained to follow a Connecticut Court of Common Pleas decision "notwithstanding it is by an intermediate court"); see also, Fid. Union Tr. Co. v. Field, 311 U.S. 169, 177 (1940) ("The highest state court is the final authority on state law, but it is still the duty of the federal courts, where the state law supplies the rule of decision, to ascertain and apply that law even though it has not been expounded by the highest court of the State." (citations omitted)).

workload conditions." Exh. 101 at 000038. The slight structural difference between the two temporary worker provisions is not substantive. Therefore, the Appellate Court of Connecticut's interpretation of the temporary worker provision in Allen applies to the Food Shop Policy.

2. Whether the Temporary Worker Provision Is Ambiguous

The Organeks argue that the Court must construe the temporary worker provision against State Farm because the failure to "explicitly require that a 'temporary worker' be provided by a staffing agency[]" makes the provision ambiguous. Doc. #65 at 3-5. State Farm asserts that the provision is unambiguous as a matter of Connecticut law. See Doc. #66 at 5.

While it is true that courts must interpret insurance policies against the insurer if "the plain language of an insurance policy is found to be ambiguous[,]" R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indem. Co., 156 A.3d 539, 555 (Conn. App. 2017), the Appellate Court of Connecticut has already determined that such a temporary worker provision is "clear and unambiguous" under Connecticut law, Allen 850 A.2d at 1057. The provision in Allen, like the one at issue here, did not explicitly require that a temporary worker be provided by a staffing agency. The Court still found it to be unambiguous. See id. The Court sees no basis on which to distinguish this case.

Therefore, the provision is unambiguous, and the Court does not construe the provision against State Farm.

3. Necessity of a Third Party

State Farm argues that the Food Shop Policy requires Prue to have been furnished to M&A Pizza by a third party to qualify as a "temporary worker." See Doc. #66 at 3-8. In response, the Organeks contend that the absence of the word "you" in subsection (b) of the temporary worker provision indicates that Prue was a temporary worker even if he "was not furnished to M&A by a third party[.]" Doc. #65 at 6 (emphasis omitted). At trial, the Organeks further argued that subsection (b) should be read to include a situation in which M&A Pizza "furnished" to itself a person, to meet seasonal or short-term workload conditions.

In Allen, the court concluded that the worker in question "was not a temporary worker as defined by the policy, because he was not 'furnished' to [the insured]." Allen, 850 A.2d at 1057. The court upheld the trial court's determination that the person was not "furnished" because the insured "did not go to an employment agency, manpower service provider or any similar service" and the worker "was not employed by anyone who lent or furnished him to [the insured] as an employee." Id. Accordingly, the Court finds that Connecticut law requires Prue to have been furnished by a third party, for him to be considered a "temporary worker" as defined by the Food Shop

Policy.

The Court further finds that a plain reading of the temporary worker provision requires that a temporary worker must have been furnished by a third party. Under Connecticut law, "provisions in insurance contracts must be construed as laymen would understand them and not according to the interpretation of sophisticated underwriters[.]" Vermont Mut. Ins. Co. v. Walukiewicz, 966 A.2d 672, 678 (Conn. 2009) (internal quotation marks and citation omitted). "[T]he policyholder's expectations should be protected as long as they are objectively reasonable from the layman's point of view." Id. In common parlance, one does not typically "furnish" something to oneself. The Merriam-Webster dictionary defines "furnish" as "to provide with what is needed" or "supply, give[.]" Furnish, Merriam-Webster's Collegiate Dictionary (10th ed. 1997). These definitions strongly suggest that one cannot "furnish" something to oneself. Likewise, the use of "furnish" in context provided by the Dictionary suggests the need for a third party to act. See id. ("furnished food and shelter for the refugees"). Therefore, the Court finds Prue must have been "furnished" to M&A Pizza by a third party in order for him to be a temporary worker as defined in the Food Shop Policy.

E. Prue's Employment with M&A Pizza

State Farm contends that Prue was an employee because the evidence demonstrates that Prue was not furnished to M&A Pizza by any third party. See Doc. #66 at 8. However, the Organeks argue that Prue was a temporary worker because he was furnished to M&A Pizza by his former employer, DP Dough, to meet a short-term need. See Doc. #65 at 7-9.

The evidence indicates that Prue worked at DP Dough before he began working exclusively for M&A Pizza. See Exh. 102a at 6-7. While Prue worked for DP Dough, he sometimes also made deliveries for M&A Pizza. See id. at 8, 13. During that time period, it would be reasonable to say that DP Dough "furnished" Prue to M&A Pizza. If that "furnishing" were "to substitute for a permanent 'employee' on leave" or to "[m]eet seasonal or short-term workload conditions[,] " Prue might well have been a "temporary worker" during that time. But the uncontroverted evidence establishes that at the time of the accident, Prue was no longer working for DP Dough; he worked only for M&A Pizza; and he had no plans to return to DP Dough.

Prue's uncontroverted testimony indicates that he began working exclusively for M&A Pizza about two weeks before the accident. See Exh. 102a at 8-9, 13-14. Prue testified that M&A Pizza hired him after he personally approached M&A Pizza about working there. Id. at 7-10, 14. Prue testified that DP Dough

"had no issue with [him] working" for M&A Pizza because Prue "would be able to obtain hours" there. Id. at 9. Prue testified that he did not have any other job while he worked for M&A Pizza, see id. at 13, and that he took "deliveries exclusively for [M&A Pizza] and not at all for D.P. Dough." Id. at 14. Therefore, there is no indication that DP Dough was involved in Prue's hiring or employment at M&A Pizza.

The "temporary worker" provision requires the involvement of a third party. The evidence establishes that DP Dough did not "furnish" Prue to M&A Pizza. Accordingly, State Farm has proven by a preponderance of the evidence that Prue was not "furnished" to M&A Pizza by a third party. Prue therefore was not a "temporary worker," and he was an "employee" as defined by the Food Shop Policy.

F. Coverage for the Accident

As noted above, the Food Shop Policy's Auto Exception excludes from coverage any bodily injury and property damage arising out of an insured's operation of an auto. See Exh. 101 at 000027. An employee is considered an insured while acting within the scope of his employment or performing duties related to the conduct of M&A Pizza's business. Id. at 000032. The Court finds that Prue was an "employee" of M&A Pizza at the time of the accident. The parties stipulated that Prue was delivering a pizza for M&A Pizza when the accident occurred. See Joint Stip.

No. 4. That delivery was within the scope of Prue's employment. Therefore, Prue was an insured, and liability arising out of the accident is excluded from coverage. Accordingly, the claims made in the Complaint in the Superior Court action do not give rise to a duty on the part of State Farm to defend or indemnify M&A Pizza, Prue, or Toth, and State Farm does not have a duty to pay the Organeks the judgment amount entered against M&A Pizza in the Superior Court action.

IV. CONCLUSION

As set forth above, the Court finds that plaintiff has proven by a preponderance of the evidence that the claims made in the Complaint in the Superior Court action do not give rise to a duty on the part of State Farm Insurance Company to defend or indemnify M&A Pizza, Prue, or Toth under Section II of the policy issued by State Farm Insurance Company. The Court further finds that defendants Heide Organek and John Organek have failed to prove that State Farm has a duty to pay the judgment entered against M&A Pizza in the Superior Court action.

Therefore, the Clerk shall enter judgment in favor of plaintiff as follows: The claims made in the Complaint in the underlying Connecticut Superior Court action, Organek v. M&A Pizza Restaurant LLC, Docket No. HHB-CV-14-6024308-S, do not give rise to a duty on the part of State Farm Insurance Company to defend or indemnify M&A Pizza Restaurant, LLC, Jonathan Prue,

or Jarrett C. Toth, under Section II of the policy issued by State Farm Insurance Company. The Clerk shall also enter judgment in favor of plaintiff on the Counterclaims filed by defendants Heidi Organek and John Organek.

This is not a Recommended Ruling. The parties consented to proceed before a United States Magistrate Judge on January 19, 2018 [Doc. #77], with any appeal to be made directly to the Court of Appeals. See Fed. R. Civ. P. 73(b)-(c).

SO ORDERED at New Haven, Connecticut, this 30th day of January, 2018.

/s/
HON. SARAH A. L. MERRIAM
UNITED STATES MAGISTRATE JUDGE

Appendix E

Subject: Activity in Case 1:25-cv-04716-NCM-LKE Pina v. State Farm Mutual Automobile Insurance Company Incorrect Case/Document/Entry Information.

From: ecf_bounces@nyed.uscourts.gov

Date: 9/3/2025, 9:04 AM

To: nobody@nyed.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mailbox is unattended.

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<https://pacer.uscourts.gov/announcements/2025/06/27/additional-security-enhancements-coming-soon>

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 9/3/2025 at 9:04 AM EDT and filed on 9/3/2025

Case Name: Pina v. State Farm Mutual Automobile Insurance Company

Case Number: 1:25-cv-04716-NCM-LKE

Filer:

Document Number: No document attached

Docket Text:

Incorrect Case/Document/Entry Information. NOTICE TO ATTORNEY MICHAEL TROISI. Docket Entry #12 is not a motion to dismiss and should not have been filed as such. Requests for a pre-motion conference addressed to Judge Merle must be filed using the *Pre Motion Conference* event found in the Motions section of the Motions and Related Filings section. No corrective action is required at this time. **Do not refile your document. (AG)**

1:25-cv-04716-NCM-LKE Notice has been electronically mailed to:

Michael A. Troisi Michael.Troisi@rivkin.com, patricia.kipnes@rivkin.com

Frederick Pina pina.frederick@gmail.com

1:25-cv-04716-NCM-LKE Notice will not be electronically mailed to:

Appendix F



Frederick Piña <pina.frederick@gmail.com>

Pina v State Farm

2 messages

Tod Castronovo <tmc@sc-law.co>
To: Frederick Piña <pina.frederick@gmail.com>
Cc: "Tina M. Bhatia" <tmb@sc-law.co>

Wed, Sep 25, 2024 at 11:27 AM

Mr. Pina:

On September 20, I advised you our firm would be representing State Farm in your lawsuit filed against State Farm last month in the Burbank branch of the Los Angeles County Superior Court. I requested that all communications be directed to our firm and that you not communicate directly with our client, State Farm, regarding the claims that are now in litigation. You responded the same day and from your response I believed you had agreed to my request regarding not communicating directly with State Farm.

Yesterday you again directly communicated with State Farm despite State Farm being represented by counsel regarding matters which are the subject of your lawsuit against it. I would again request you desist in communicating directly with State Farm regarding your claims. Please be advised that State Farm is considering seeking a restraining order against you ordering that you desist communicating directly with it regarding matters which are the subject of your lawsuit.

You served your most recent lawsuit on our firm on September 4. This is not valid service. Nevertheless, I have authority from State Farm to waive proper service of your lawsuit and respond to your lawsuit by October 25, 2024. If this proposal is not acceptable to you, we will have no alternative but to file a motion to quash service which will cause an otherwise unnecessary delay in the progress of your case. Thank you

Tod M. Castronovo

Shaver Castronovo LLP
16255 Ventura Boulevard, Suite 850
Encino, CA 91436
818.905.6001 x113
818.905.6004 / fax

Confidentiality Notice: This communication contains information that is privileged or confidential within the meaning of the Rules of Professional Conduct and related state rules of professional conduct pertaining to attorney-client communications. Do not disclose or distribute this communication to anyone other than the intended recipients. Please contact the above-signed if this message has been received in error.

Frederick Piña <pina.frederick@gmail.com>
To: Tod Castronovo <tmc@sc-law.co>
Cc: "Tina M. Bhatia" <tmb@sc-law.co>

Wed, Sep 25, 2024 at 11:48 AM



Frederick Piña <pina.frederick@gmail.com>

Pina v State Farm

Frederick Piña <pina.frederick@gmail.com>
To: Tod Castronovo <tmc@sc-law.co>
Cc: "Tina M. Bhatia" <tmb@sc-law.co>

Wed, Sep 25, 2024 at 11:48 AM

Mr. Castronovo,

Your firm was at all times counsel for State Farm. And you were properly serviced via electronic service. As obviously already know, you have only 30 days to respond to a Summons and Complaint.

I am not obligated to agree to waivers, but I comprehend you're seeking flexibility and time to prepare a defense.

I am a fair person that strives to live by the Golden Rule, so... In the spirit of personal amicability and professional courtesy, I will agree to your waiver option as exercised and grant you the new time extension for a response.

October 25, 2024 is marked on Calendar.

Take the necessary time to prepare a proper defense for your client!

Good luck to you!

-- Frederick Piña

[Quoted text hidden]

Appendix G

22-1921-cv

Kowalchuck v. Metropolitan Transportation Authority

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2023

(Argued: September 20, 2023 Decided: February 27, 2024)

Docket No. 22-1921-cv

JOHN KOWALCHUCK,
Plaintiff-Appellant,

- against -

METROPOLITAN TRANSPORTATION AUTHORITY,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Before:

WALKER, CHIN, and ROBINSON, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the
Eastern District of New York (Brown, J.), granting summary judgment in favor of
the defendant-appellee former employer in this personal injury action brought

under the Federal Employers' Liability Act, 45 U.S.C. § 51 *et seq.* Pursuant to the district court's individual rules, the employer requested a pre-motion conference to discuss its anticipated motion for summary judgment. The district court held a pre-motion conference and thereafter, deeming the motion to have been made, denied it, setting the matter down for trial. Two years later, and only four days before the scheduled start of trial, the district court *sua sponte* reconsidered and granted summary judgment to the employer, dismissing the complaint, without notice to the parties or an opportunity for the former employee to submit opposition.

VACATED AND REMANDED.

PHILIP DINHOFER, Philip J. Dinhofer LLC, Rockville
Centre, New York, *for Plaintiff-Appellant.*

HELENE HECHTKOPF, Hoguet Newman Regal & Kenney,
LLP, New York, New York (Jason D. Barnes,
Metropolitan Transportation Authority, New
York, New York, *on the brief*), *for Defendant-
Appellant.*

CHIN, *Circuit Judge:*

In this case, plaintiff-appellant John Kowalchuck sued his former employer, defendant-appellee Metropolitan Transportation Authority (the

"MTA"), under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, for injuries sustained while clearing snow at an MTA property. The MTA requested a pre-motion conference to discuss its anticipated motion for summary judgment. The district court granted the request. At the pre-motion conference, the district court deemed the MTA's motion as having been made and denied it. Two years later, and only four days before trial was set to begin and without notice to either party, the district court reconsidered its previous denial of the motion and granted summary judgment in favor of the MTA, dismissing the complaint. Kowalchuck was not given an opportunity to submit papers in opposition to the motion.

On appeal, Kowalchuck argues that the district court erred when it *sua sponte* reconsidered its denial of summary judgment and granted summary judgment to the MTA, without giving him notice or an opportunity to be heard. We agree. For the reasons set forth below, we VACATE and REMAND.

BACKGROUND

I. *The Facts*

As alleged in the complaint,¹ the facts may be summarized as follows: Kowalchuck was employed as a police officer by the MTA. On January 27, 2015, during a shift, Kowalchuck shoveled snow from an accessibility ramp at an MTA building. While pushing a shovel on the ramp to clear the snow, he hit a raised edge of a wooden plank. Kowalchuck felt a jolt, and sustained injuries to his shoulder, neck, and cervical spine. On August 26, 2016, Kowalchuck retired from the MTA.

II. *Procedural History*

On April 8, 2017, Kowalchuck filed the complaint below. He alleged that the MTA's negligence caused the injuries he sustained while shoveling snow, and he sought \$5 million in damages. Specifically, he maintained that the MTA was negligent by failing to provide a safe workplace and failing to inspect and maintain the accessibility ramp. The MTA answered the complaint on June 7, 2017.

¹ Although this is an appeal from the grant of summary judgment, as discussed below, the record is incomplete. Accordingly, we rely on the facts set forth in the complaint.

Following discovery, the MTA sought to move for summary judgment. In accordance with the district court's procedures, the MTA filed a letter requesting a conference to discuss its anticipated summary judgment motion. Appellant's App'x 27-28 (noting that the district court's individual rules require parties who wish to make a motion to first request a pre-motion conference). The MTA argued that Kowalchuck could not establish the elements of a negligence claim, as required by FELA, and that Kowalchuck's claim failed in any event because the MTA provided him with a reasonably safe workplace. The MTA also filed a proposed statement of facts, apparently incorporating Kowalchuck's responses and counterstatement of facts. The document is not signed by either side. While the document cites deposition transcripts and refers to photographs, none are attached as exhibits. *See* Docket No. 24-1. The next day, before receiving any response from Kowalchuck, the district court granted the MTA's request for a pre-motion conference and ordered the parties to "be prepared to address defendant's anticipated summary judgment motion." Appellant's App'x at 49. The district court did not require Kowalchuck to respond to the MTA's pre-motion letter.

On March 6, 2020, the district court held the pre-motion conference. As the transcript of the conference shows, the district court gave both sides the opportunity to address Kowalchuck's FELA claim orally. At the conclusion of the conference, the district court explained that it would deem the MTA's motion as having been made and was denying it. The district court subsequently entered a minute order to that effect, which read, in relevant part: "The Court deems the motion having been made and finds there are sufficient issues of fact to be determined by a jury. Jury selection and trial set for 6/1/2020 at 9:30 a.m. before Judge Brown." Appellant's App'x at 15; *see also id.* at 77. Because the district court did not require the MTA to move formally for summary judgment before entering its denial, there was no need for Kowalchuck to respond in writing to the MTA's anticipated motion for summary judgment, and he did not do so.

Two years went by. After delays due in part to the COVID-19 pandemic, the district court scheduled a bench trial for August 8, 2022.² On August 4, 2022 -- just four days before the bench trial was set to begin and with no notice to either party -- the district court reconsidered its previous denial of

² On January 21, 2022, the parties informed the district court that they had agreed to proceed with a bench, rather than a jury, trial. *See* Docket No. 49.

summary judgment and granted summary judgment in favor of the MTA in a memorandum of decision and order. *Kowalchuck v. Metro. Transp. Auth.*, No. 17-CV-2146 (GRB), 2022 WL 3099241, at *1 (E.D.N.Y. Aug. 4, 2022). The district court's memorandum decision stated, in part:

This action, brought pursuant to the Federal Employers' Liability Act, 45 U.S.C. § 51, *et seq.*, is set for a bench trial in several days. While the Court had earlier rejected a motion for summary judgment, in preparing for trial, matters have come to the Court's attention that reveal that that determination was in error, because based upon undisputed fact and recent appellate law, the plaintiff simply cannot prevail. While the Court could simply allow the matter to proceed to a short bench trial, such procedure would visit unjustified costs and encumbrances of travel and trial preparation upon the parties. In fact, in this case, there are specific burdens that would be worked upon plaintiff should trial proceed. *See* DE 29 (letter noting that plaintiff, who has to travel from North Carolina, has suffered a series of strokes, is a cardiac care patient, and faces enhanced COVID risks). Thus, while the Court regrets taking this action at the eleventh hour, the practical and evidentiary realities and common decency demand that the Court must reconsider its earlier determination and enter summary judgment in favor of defendant.

Id.

The district court made several factual findings in granting summary judgment to the MTA. *See id.* at *1-3. It found, for example, that the

defect in the accessibility ramp was, at its worst, "approximately equal[] to the thickness of a key fob, which measures 6/16" of an inch, and that the ramp was "fully functional for its intended use." *Id.* at *1. The district court included a photograph of the defect in its memorandum decision, as well as a blow-up of that photograph, and referenced other photographs "supplied in anticipation of trial." *See id.* at *1. Although the record is not clear, it appears that the MTA submitted these photographs to the district court in a July 22, 2022 letter as part of a set of pre-marked trial exhibits. *See* Appellant's App'x at 79. The MTA's letter, the photograph, and its blow-up are included in the Appellant's Appendix on appeal but were not docketed below. Appellant's App'x at 18 (showing no entry or documents containing pre-marked exhibits filed on or around July 22, 2022).

The MTA had not renewed its motion for summary judgment before the district court's August 4, 2022 decision, and the district court did not give notice to the parties that it was reconsidering its prior denial of summary judgment. Judgment was entered on August 5, 2022. This appeal followed.

DISCUSSION

Kowalchuck contends that the district court erred when it *sua sponte* reconsidered its earlier denial of the MTA's motion for summary judgment, and then granted the motion, without giving him notice or an opportunity to be heard. We agree.

I. *Standard of Review*

We review a district court's grant of summary judgment *de novo*. *Murphy v. Hughson*, 82 F.4th 177, 183 (2d Cir. 2023). We also review claims of procedural error in the grant of summary judgment *de novo*. See *Hisp. for Fair & Equitable Reapportionment (H-FERA) v. Griffin*, 958 F.2d 24, 26 (2d Cir. 1992) (*per curiam*) ("As *de novo* reviewers of the district court's order, we . . . hold that there was insufficient notice and opportunity to be heard in the instant case.").

II. *Applicable Law*

A. *The Requirement of a Pre-Motion Conference*

District courts have the "inherent authority to manage their dockets" to promote "the efficient and expedient resolution of cases." *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (citations omitted). To that end, it is a common practice in this Circuit for district courts to require parties to request a conference before filing a

motion and submit letters describing the grounds for the proposed motion. *See, e.g., Richardson Greenshields Sec., Inc. v. Lau*, 825 F.2d 647, 649 (2d Cir. 1987) (describing this practice). Pre-motion conferences may serve a useful purpose, as they enable district judges, for example, to weed out frivolous motions, narrow the issues, and set briefing schedules. *See id.* at 652 (noting that "[l]itigants and the courts profit" when pre-motion conferences "serve the useful purpose of narrowing and resolving conflicts between the parties and preventing the filing of unnecessary papers"); *Inside Connect, Inc. v. Fischer*, No. 13-cv-1138 (CS), 2014 WL 2933221, at *10 n.20 (S.D.N.Y. June 30, 2014) ("Pre-motion letters are a procedural tool . . . use[d] to manage the litigation process; they are not a strategic device to prevent the court from deciding cases on the merits.").

While pre-motion letters and conferences are useful tools, the inherent authority of district courts to conduct abbreviated proceedings has limits. "Absent extraordinary circumstances, such as a demonstrated history of frivolous and vexatious litigation . . . or a failure to comply with sanctions imposed for such conduct . . . a court has no power to prevent a party from filing pleadings, motions or appeals authorized by the Federal Rules of Civil Procedure." *Richardson Greenshields Sec.*, 825 F.2d at 652 (citations omitted). Put

simply, district courts' pre-motion requirements cannot operate to prevent parties from moving for -- or opposing -- summary judgment.

B. District Courts' Power to Grant Summary Judgment *Sua Sponte*

Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). While a district court typically considers summary judgment upon a motion by a party, a court may grant summary judgment without being asked by a party to do so. *See* Fed. R. Civ. P. 56(f)(3); *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). A district court may grant summary judgment *sua sponte*, however, only after providing the parties with notice and an opportunity to be heard. *See* Fed R. Civ. P. 56(f). Specifically, Federal Rule of Civil Procedure 56(f) requires a district court to: (1) give the parties "notice and a reasonable time to respond" and (2) identify "for the parties material facts that may not be genuinely in dispute." *Id.*; *see In re 650 Fifth Ave. & Related Props.*, 830 F.3d 66, 96 (2d Cir. 2016) (outlining the two-part test).

These requirements are not new.³ Rule 56 embodies procedural safeguards that the Supreme Court and this Court have long required for *sua sponte* grants of summary judgment. See *Celotex*, 477 U.S. at 326 ("[D]istrict courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence." (citations omitted)); *In re 650 Fifth Ave. & Related Props.*, 830 F.3d at 96-97 ("We have emphasized that 'care should be taken by the district court to determine that the party against whom summary judgment is rendered has had a full and fair opportunity to meet the proposition that there is no genuine issue of material fact to be tried.'" (quoting *Schwan-Stabilo Cosmetics GmbH v. Pacificlink Int'l Corp.*, 401 F.3d 28, 33 (2d Cir. 2005))); *Hisps. for Fair & Equitable Reapportionment (H-FERA)*, 958 F.2d at 25 ("We cannot in good conscience affirm a summary judgment if we are not satisfied that the appellant had been given an opportunity upon notice to oppose the grant below."). Where,

³ Since 2010, Rule 56 has "provide[d] express procedures governing the grant of summary judgment independent of a motion." *Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 756 F.3d 73, 80 n.2 (2d Cir. 2014). Subsection (f) reads in full: "After giving notice and a reasonable time to respond, the court may: (1) grant summary judgment for a nonmovant; (2) grant the motion on grounds not raised by a party; or (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute." Fed R. Civ. P. 56(f).

as here, a court decides to reconsider a prior denial of summary judgment, it must give notice and an opportunity to be heard. *See Warner Bros. Inc. v. Am. Broad. Cos.*, 720 F.2d 231, 245-46 (2d Cir. 1983).⁴

We vacate and remand for procedural error where a district court grants summary judgment before a party has notice or the opportunity to be heard and, as a result, the party is procedurally prejudiced. *See In re 650 Fifth Ave. & Related Props.*, 830 F.3d at 97 (vacating the district court's judgment where the losing party had no notice or opportunity to present evidence, and concluding that, because of an undeveloped record, the district court procedurally erred in granting summary judgment in favor of the government). A party is prejudiced by the district court's use of a truncated or expedited procedure if the party "is surprised by the district court's" *sua sponte* grant of summary judgment and "that surprise results in the party's failure to present evidence in support of its position." *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 139 (2d Cir. 2000) (citations omitted); *see ING Bank N.V. v. M/V TEMARA, IMO No. 9333929*, 892 F.3d 511, 525 (2d Cir. 2018) (vacating because "[b]y *sua sponte*

⁴ In *Warner Bros.*, although we noted that a trial court has discretion to reconsider an interlocutory ruling, we suggested that it would be an abuse of discretion to do so if the party opposing the motion had not been given "a full opportunity to oppose the motion when first made." *Id.*

entering summary judgment without affording ING the opportunity to present its relevant evidence, the District Court denied ING the procedures to which it was entitled under Rule 56").⁵

III. Application

We conclude that the district court committed procedural error in granting summary judgment to the MTA in the circumstances here.

First, the district court erred by failing to give Kowalchuck notice before reconsidering its denial of summary judgment and granting summary judgment in favor of the MTA. *See* Fed R. Civ. P. 56(f); *In re 650 Fifth Ave. & Related Props.*, 830 F.3d at 97 (concluding the district court procedurally erred by *sua sponte* granting summary judgment for the moving party based on a ground not raised by the moving party and without giving any notice to the non-moving party). As the MTA conceded at oral argument, Kowalchuck did not receive any notice that the district court was reconsidering its prior denial of summary judgment. *See* Oral Arg. Tr. at 13:12-13. And Kowalchuck had no reason to

⁵ In *Bridgeway*, while we affirmed the *sua sponte* grant of summary judgment against a moving party, we noted that we "have firmly discouraged the practice." 201 F.3d at 139. We concluded that the party against whom summary judgment was granted was not prejudiced because the issues in question had been fully briefed. *See id.* at 140.

expect such a decision, given that trial was set to begin in just four days. *See Celotex*, 447 U.S. at 326 (permitting *sua sponte* summary judgment only if "the losing party was on notice that she had to come forward with all of her evidence").

Second, the district court erred by not affording Kowalchuck the opportunity to respond before granting summary judgment. Kowalchuck had no opportunity, much less a "full and fair" one, to submit evidence to show the existence of genuine issues of fact to challenge the MTA's evidence or legal arguments. *Ramsey v. Coughlin*, 94 F.3d 71, 73-74 (2d Cir. 1996), *superseded in part by statute*, Fed R. Civ. P. 56(f).⁶ Kowalchuck was thus prejudiced by the truncated procedure adopted by the district court. *See Bridgeway*, 201 F.3d at 139.

Third, the district court erred by granting summary judgment without a proper summary judgment record. It relied on the MTA's *proposed* statement of facts and Kowalchuck's apparent responses to those facts and his proposed counterstatement of facts -- as well as photographs with unclear

⁶ "Although *Ramsey* was decided before Rule 56 was amended in 2010 to provide express procedures governing the grant of summary judgment independent of a motion, its statements regarding the care a district court must take before *sua sponte* granting summary judgment remain good law." *Swatch Grp.*, 756 F.3d at 80 n.2.

origins. *See generally Kowalchuck*, 2022 WL 3099241, at *1-3 (citing docket entry 24-1, the proposed facts, and including and citing to photographs). As noted above, the record suffered from several deficiencies: the statements of facts were only proposed statements and were unsigned, and the cited deposition transcripts or photographs were not provided. The district court relied on photographs that had not yet been received into evidence, without giving Kowalchuck an opportunity to object to or comment on them, and without considering any evidence that Kowalchuck might have wanted to offer.

While the MTA argues on appeal that any error was harmless because Kowalchuck failed to identify any evidence that could have defeated summary judgment, that argument misses the point. Kowalchuck did not have the opportunity to submit evidence before the district court granted summary judgment against him. We cannot determine if the error was harmless because we simply do not know what would be in a proper summary judgment record. *See Ramsey*, 94 F.3d at 74 (reversing a grant of summary judgment because "we have no way of knowing whether all pertinent materials obtained in discovery are before us"); *cf. Park S. Hotel Corp. v. N.Y. Hotel Trades Council & Hotel Ass'n of N.Y.C., Inc. Pension Fund*, 705 F.2d 27, 30 (2d Cir. 1983) (per curiam) (reversing a

grant of a stay of arbitration where the opposing party was "denied its day in court" and remanding for the district court to give that party "the opportunity . . . to offer relevant evidence and expand the record").

We have no quarrel with the district court's decision, at the conclusion of the March 6, 2020 conference, to deem the MTA's motion for summary judgment as having been made. We have "occasionally 'approved' the practice of construing pre-motion letters as the motions themselves under appropriate circumstances." *Int'l Code Council, Inc. v. UpCodes Inc.*, 43 F.4th 46, 54 (2d Cir. 2022) (alteration adopted) (quoting *Kapitalforeningen Lægernes Inv. v. United Techs. Corp.*, 779 F. App'x 69, 70 (2d Cir. 2019) (summary order)). We have approved this practice with respect to the resolution of non-dispositive motions and the *denial* of dispositive motions. See *Int'l Code Council*, 43 F.4th at 54 (collecting cases); *In re Best Payphones, Inc.*, 450 F. App'x 8, 15 (2d Cir. 2011) (summary order) (affirming the denial of a pre-motion letter for sanctions that the district court "construed . . . as the motion itself" because the letter and responses were lengthy and detailed, and showed the "clear lack of merit of the sanctions argument"). And while we have occasionally affirmed the granting of dispositive motions without full briefing, we have done so only when the issues

were predominantly legal and the complaint had "substantial deficiencies," while emphasizing our concerns with such an approach. *See Grossman v. GEICO Cas. Co.*, No. 21-2789, 2022 WL 1656593, at *4 (2d Cir. May 25, 2022) (summary order) (concluding that "any error in the district court's dismissal order is harmless" while noting that plaintiffs "raise[d] a valid concern" about the lack of full briefing and reiterating that the "procedure the district court used was perhaps improper").

Summary judgment, of course, is a dispositive motion, and often the issues raised are not predominantly legal. We have long expressed "[o]ur disapproval" of *grants* of dispositive motions based on pre-motion letters. *Int'l Code Council*, 43 F.4th at 54-55. We repeat ourselves more forcefully here: If a district court believes it should grant summary judgment (or other dispositive relief) based on pre-motion letters, it must give the party opposing the motion notice and an opportunity to be heard, including, with respect to a request for summary judgment, the opportunity to submit evidence.

While the district court's desire to streamline the proceedings and save Kowalchuck the time, trouble, and expense of going to trial in what it believed was a weak case is understandable, it could not do so at the expense of

Kowalchuck's right to notice and an opportunity to be heard. The abbreviated nature of the proceedings here is particularly troubling because Kowalchuck brings this case under FELA, a statute that seeks to provide broad protection for workers employed by railroads engaged in interstate commerce. Indeed, the Supreme Court has relaxed the standards for proving negligence in FELA cases. *See Rogers v. Mo. Pac. R.R. Co.*, 352 U.S. 500, 507 (1957) ("[T]he test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought."); *see also Sinclair v. Long Island R.R.*, 985 F.2d 74, 76 (2d Cir. 1993) ("[T]here is 'a considerably more relaxed standard of proof' for determining negligence in FELA cases" (citations omitted)); *Ulfik v. Metro-North Commuter R.R.*, 77 F.3d 54, 58 (2d Cir. 1996) ("[A]n employer may be held liable under FELA for risks that would otherwise be too remote to support liability at common law." (citations omitted)). Kowalchuck was deprived of a fair opportunity to show that he could meet the FELA standards. As a result, we remand the case to the district court to give Kowalchuck a fair opportunity to show whether he could meet these standards; we express no view as to whether he can. *See Hisps. For Fair & Equitable Reapportionment (H-FERA)*, 958 F.2d at 26

("We express no opinion as to whether they can make this showing. We simply hold that they should be given this opportunity.").

CONCLUSION

For the foregoing reasons, the judgment of the district court is VACATED and the case is REMANDED for further proceedings.