

RENDERED: JUNE 2, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001882-MR

TOBY WOOD KNOTH

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 02-CI-01009

ILLINOIS CENTRAL RAILROAD COMPANY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: DYCHE AND VANMETER, JUDGES; BUCKINGHAM, SENIOR JUDGE.¹

DYCHE, JUDGE: Toby Knoth was employed by the Illinois Central Railroad Company ("ICRR") as a trackman from 1965 to 1982. In 1989, Knoth made a claim against ICRR for work related hearing loss. Knoth received \$10,000 as settlement for his claim and signed a general release that purported to release ICRR from

¹ Senior Judge David C. Buckingham, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

liability for all known and unknown injuries suffered as a result of exposure to a laundry list of harmful substances including asbestos.

Knoth was diagnosed with an asbestos-related disease after an asbestos screening in July 2002. On September 13, 2002, Knoth filed a complaint under the Federal Employer's Liability Act ("FELA") in McCracken Circuit Court. In his complaint, Knoth alleged that he contracted the disease as a result of exposure to asbestos products during the course of his employment. On the basis of the general release signed in 1989, the trial court granted summary judgment to ICRR. This appeal follows.

The primary issue in this case is whether the general release Knoth signed is valid under 45 U.S.C. § 55. 45 U.S.C. § 55 provides in pertinent part that "[a]ny contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act . . ., shall to that extent be void."

Releases are not per se impermissible under this rule where controversies exist as to a claimed liability. Callen v. Pennsylvania R. Co., 332 U.S. 625, 631 (1948). The validity of a release under FELA is governed by federal law. Maynard v. Durham S. Ry. Co., 365 U.S. 160, 161 (1961).

We are persuaded by the reasoning of the 6th Circuit Court of Appeals in Babbitt v. Norfolk & Western Ry. Co., 104 F.3d 89 (6th Cir. 1997). In that case, the court held that a release "must reflect a bargained-for settlement of a known claim for a specific injury," to be valid under FELA. Id. at 93. The court went on to contrast the valid release of known claims for specific injuries to releases that "attempt to extinguish potential future claims the employees might have arising from injuries known or unknown by him." Id.

Knoth had no known claim for asbestos-related lung disease until it was diagnosed in 2002. Therefore, summary judgment was inappropriate under the standard set forth in Babbitt.

We decline to address ICRR's argument regarding the tender back of consideration for the original settlement because this was not properly preserved for review.

In conclusion, the judgment of the McCracken Circuit Court is reversed and remanded.

ALL CONCUR.

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