

**Case Name:** George DeRienzo v. Metropolitan Transportation Authority and Metro-North Commuter Railroad

**Date Decided:** March 9th, 2010

**Originally Filed in:** New York (Federal)

**Decided by:** New York Southern Bankruptcy Court (Federal)

**Court:** U.S.D.C. Southern District of New York

**Judge:** Judge Leisure

**Citation:** 2010 WL 815224 (S.D. N.Y.)

### **Background:**

Plaintiff, George DiRienzo, brought this action against Metropolitan Transportation Authority, and Metro-North Commuter Railroad pursuant to [FELA](#), Federal Employer's Liability Act alleging personal injuries were sustained as a result of a hazardous condition in defendants' workplace. DeRienzo alleged, specifically, that while working as a MTA police officer, he slipped on debris that had collected at the top of a staircase and subsequently [fell](#) down a flight of stairs. DeRienzo was hired by defendant, Metro-North, as a police officer. Following the accident, after surgery on his back, DeRienzo developed headaches and had difficulty moving his eye. Subsequent CT and MRI scans revealed that DeRienzo had a large tumor which had become apoplectic (hemorrhaged), and DeRienzo underwent emergency surgery. DeRienzo claimed his surgery, following his back injury, caused his tumor to hemorrhage which caused a number of serious injuries. DeRienzo sought to hold MTA and Metro-North accountable for injuries sustained as a result of his hemorrhaging tumor. Originally, this Court granted defendants' motion for summary judgment, holding that DeRienzo's injury was not foreseeable within the meaning of FELA and that his injuries, resulting from the tumor, were caused by the fall. The Second Circuit held that there were questions of material fact as to the issue of foreseeability and also held that on remand, this Court should consider whether Summary Judgment is appropriate on the issue of causation.

### **Issue:**

Did this Court find genuine issues of material fact of whether DeRienzo's injuries caused by a tumor hemorrhage, resulting from surgery, was foreseeable and caused by his fall?

### **Overall Issues Discussed or Touched Upon in this Case:**

- *Expert Witness- Daubert Issues*
- *Ruling on Summary Judgment*
- *Applicability of FELA at Issue*
- *Insufficient Evidence of Negligence*

### **Held:**

According to DeRienzo, there are three reasons why pituitary tumors hemorrhage, all events

occurring during surgery. Although DeRienzo conceded his Dr. could not say which of the three different mechanisms caused his hemorrhage, his expert witness was able to conclude within a reasonable degree of medical certainty that one of the three, almost *certainly led to the hemorrhage* within DeRienzo's pituitary gland. Defendants, however, contended that the opinions offered by DeRienzo's experts are not an acceptable diagnosis because they did not "rule in" nor did they "rule out" that his back surgery led to the hemorrhage. This Court recognized that there is a relaxed standard of proof for determining negligence in FELA cases, than in other negligence cases (2d Cir.). However, it did not alter the requirement of expert testimony to establish causation if the injury has multiple potential causes. The Court examined whether the opinions asserted by his experts was admissible under evidentiary standards dealing with expert testimony. The Court then examined whether Dr. Pikus's, DeRienzo's expert witness, testimony was admissible. Dr. Pikus stated that the "back surgery was probably what caused plaintiff's hemorrhage". However, Dr. Pikus only offered up three general causes of the hemorrhage. Dr. Pikus further did not connect any of the three general reasons to DeRienzo's injury. This Court ultimately found that Dr. Pikus' testimony was not reliable. DeRienzo failed to explain what kind of specific methodology Dr. Pikus used to "rule in" his surgery as the cause of the hemorrhage. Accordingly, without the necessary testimony, there is no genuine issue of material fact as to causation and summary judgment was upheld.

**Comments:**

**Expert medical opinion evidence is usually required to show the cause of an injury or disease when the medical effect of the infliction upon the injured person is not within the sphere of common knowledge of the lay person. However, expert testimony is not needed to establish causation when there is a generally understood casual connection between the physical phenomena (accident) and the alleged injury that would be obvious to laymen. (*Barnes v. Anderson*, 202 F.3d 150 (2d. Cir. 1999)). Steve Gordon**