

**Case Name:** Meyers v. National Railroad Passenger Corporation

**Date Decided:** August 30th, 2010

**Originally Filed in:** Illinois (federal)

**Decided by:** U.S. Court of Appeals, Seventh Circuit (Federal)

**Court:** 7th Cir.

**Judge:** Kanne

**Citation:** 619 F.3d 729 (7th Cir. 2010)

**Background:**

Plaintiff, a railroad worker (a Pipe Fitter), brought this action against his employer, Amtrak, pursuant to the Federal Employer's Liability Act (FELA), 45 U.S.C. Â§ 51 *et seq.* to recover damages allegedly caused by cumulative trauma in his work environment. Plaintiff alleged that his job requirements forced him to work in awkward positions, tight spaces, which in combination with inadequate equipment and repetitive motions, caused him to suffer injuries that manifested into carpal tunnel syndrome and back pain. Plaintiff alleged that his injuries were the result of Amtrak's failure to use ordinary care and caution toward him. Amtrak filed a motion for summary judgment, alleging that Plaintiff failed to disclose his expert witness reports as required under federal rule of civil procedure 26(a)(2). Amtrak opined that this procedural defect was fatal to the Plaintiff's case in chief because Plaintiff otherwise had no evidence to prove that his injuries were caused by the purported negligence. The district court granted summary judgment. Plaintiff brought this appeal, arguing that his experts were exempt from complying with rule 26(a)(2) because his experts were the Plaintiff's original-treating physicians.

**Issue:**

Whether a treating physician who provides an expert opinion as to causation is required to file a formal report under Rule 26(a)(2)(B) when the subject of such opinion was not determined at the time of treatment?

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

- *Procedural Issues - Federal*
- *Ruling on Summary Judgment*
- *Summary Judgment - Defendant Factual Granted*
- *Daubert Ruling*

**Held:**

Yes, the court affirmed the district court's grant of summary judgment in favor of the defendant, Amtrak. The court held that a treating physician who is offered to provide expert testimony as to the cause of the plaintiff's injury, but who did not make that determination in the course of providing treatment, should be deemed to be one "retained or specially employed to

provide expert testimony in the case," and thus is required to submit an expert report in accordance with Rule 26(a)(2). In this case, the consequence of non-compliance with Rule 26(a)(2)(B) is exclusion of an expert's testimony unless the failure was substantially justified or is harmless.

**Comments:**

A treating physician who is offered to provide expert testimony as to the cause of the plaintiff's injury, but who did not make that determination in the course of providing treatment, should be deemed to be one "retained or specially employed to provide expert testimony in the case," and thus is required to submit an expert report in accordance with Rule 26(a)(2).