

**Case Name:** Michele Collins v National Railroad Passenger Corporation [AMTRAK]

**Date Decided:** August 27th, 2009

**Originally Filed in:** Maryland (State)

**Decided by:** Maryland 1st Appellate Judicial Circuit (State)

**Court:** Court of Special Appeals of Maryland

**Judge:** Judge Woodward

**Citation:** 2009 WL 2619548 (Md.App.)

**Background:**

Michele Collins, ("Collins") brought an action pursuant to the Federal Employers' Liability Act ("FELA") and the Locomotive Inspection Act ("LIA") following the death of her husband, Robert Collins, who worked for defendant National Railroad Corporation ("Amtrak"). Following a five-day trial the jury returned a verdict in favor of Amtrak.

**Issue:**

Did this court find that the trial court abused its discretion in failing to instruct the jury assumption of risk is not a defense claim arising under FELA, by granting summary judgment on Collins' LIA claim, and refusing to admit statements from a transcript of a conversation between Amtrak employees?

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

- *Safety Appliance Act*
- *Ruling on Summary Judgment*
- *Procedural Issues - State*

**Held:**

Did this court find that the trial court abused its discretion in failing to instruct the jury assumption of risk is not a defense claim arising under FELA, by granting summary judgment on Collins' LIA claim, and refusing to admit statements from a transcript of a conversation between Amtrak employees?

**Held:** Collins proposed a jury instruction to the trial court that stated that assumption of risk is not a proper defense in a FELA action and that it may not be considered in any way in reaching your (the jury) decision. Collins claimed that there was evidence which the jury could have, and most likely did, improperly draw the conclusion Collins should not recover because the decedent assumed the risk of the incident. Moreover, Collins argued that a jury instruction on assumption of risk was necessary because Amtrak relied heavily on the argument that the decedent could have declined to perform the work in question if he thought it was dangerous. This Court found, however, that the evidence did not show that the decedent impliedly consented to perform a task in the manner which Amtrak directed. Rather, the crew decided that it would be safe to proceed under an energized system. Also, Collins argued that the

court should have instructed the jury on assumption of risk because, absent the instruction, the jury may well have concluded that the sole cause of the incident was Collins' decision to proceed to the top of the Cat Car despite his knowledge of the danger. However, this Court found that the evidence presented supported the assertion the decedent acted unreasonably under the circumstances. Such evidence is consistent with contributory negligence not the assumption of risk. Collins also contended that whether the Cat Car constituted a "locomotive" under the LIA was a question for the jury and thus, summary judgment on Collins' LIA suit was improper. The Court, relying on precedent, stated that in order to be a "locomotive" under the LIA, (1) the vehicle must operate on the railroad tracks and (2) it must perform a locomotive function. The Court found while the Cat Car operated on the railroad track it did not meet the second test because there is no evidence to suggest it pushes or pulls railroad cars along the tracks. Finally, the Court held that the trial court did not err in refusing to admit statements, into evidence, from a transcript of a conversation held by employees.

**Comments:**

Assumption of Risk is an affirmative defense parties will raise if they are being sued for negligence. Under the Assumption of Risk doctrine, if an individual agrees to an act or activity he/she knows is dangerous and is injured, then they are to have "assumed the risk" by knowing of the dangerous condition prior to the injury. Contributory negligence, allowed to apportion monetary damages, arises when an individual acts unreasonably, and as a result, is injured. Under FELA a defendant may not raise the assumption of risk defense, which is a complete bar to recovery, but may be able to counter with contributory negligence which may reduce the amount of money they have to pay based upon the jury finding how much the plaintiff was at fault.

Steve Gordon