

Case Name: Michael Hudson v. CSX Transportation, Inc.
Date Decided: December 4th, 2009
Originally Filed in: ()
Decided by: (State)
Court: Court of Appeals of Kentucky
Judge: Judge Caperton, Judge Dixon, Senior Judge Henry
Citation: 2009 WL 4406069

Background:

Plaintiff, Michael Hudson, ("Hudson") appealed from a jury verdict and judgment in favor of defendant, CSX Transportation Inc. ("CSX"), in an action brought under the Federal Employers' Liability Act ("FELA") alleging he had permanent brain injuries as a result of exposure to various industrial solvents and cleaners while working within the scope of employment. Hudson's job duties included cleaning locomotives and their parts. To clean the equipment, Hudson used a solvent referred to as "Dowclean". Hudson testified when using Dowclean he became dizzy and lightheaded and get headaches, causing him to stay in an area where Dowclean was being used no longer than necessary and went outside to get fresh air and clear his head often. Hudson testified that he began to have memory problems, sleep issues, and more chronic headaches. He also had trouble focusing on a single task, and was diagnosed, years after leaving CSX, with "chronic toxic encephalopathy" a controversial diagnosis that is characterized as a form of permanent, irreversible brain injury characterized by short-term memory loss, depression, anxiety and diminished mental function. Hudson filed suit against CSX seeking relief under the FELA claiming that during the course of employment with CSX he was regularly overexposed to toxic solvents. He claimed that this overexposure resulted in the chronic toxic encephalopathy. Following a trial, a jury voted 9-3 in favor of CSX concluding that the company had not been negligent. Hudson, on appeal argued that the trial court erred by excluding expert opinion testimony, relating his exposure to his brain condition. The trial court had ultimately precluded any testimony relating to solvents or chemicals used in the ship unless it was shown, through Hudson's experts, those items contributed to his brain injuries. This ultimately prevented Hudson from presenting evidence relating to his exposure and injury.

Issue:

Did the trial court err in restricting testimony to only be able to show how the chemicals caused Hudson's brain injury?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

Hudson argued that the record supported his position that he was exposed to dangerous chemicals during his employment with CSX. Many CSX employees, in fact, had testified that they believed the specific chemical, trichloroethylene (the dangerous one) had been used at the shops in which Hudson worked at. This Court found that the fact Hudson did not mention this solvent by name should not have necessarily precluded introducing evidence of his exposure to it. Moreover, this Court noted that Hudson's alleged exposure to the chemical was only relevant if sufficient evidence is produced to identify it as a cause to his claimed injuries. This court further noted that the evidence of causation must be in terms of probability not mere impossibility. This Court found that none of Hudson's experts linked the chemical exposure to his brain injury. In fact one expert only alluded to a possibility. Ultimately, although there was sufficient evidence that Hudson was exposed to the chemical while employed at CSX to justify putting evidence relating to that chemical before the jury, the link to the chemical and Hudson's injury was tenuous at best and this Court affirmed the judgment in favor of CSX.

Comments:

Central to this case was the probability not impossibility standard of causation. Evidence of causation must be introduced and in terms of probability, that is the plaintiff must introduce evidence to show that the negligence probably caused his/her injury. Contrary to the "mere impossibility" standard which would only require the plaintiff to show that it wasn't impossible that the negligence caused the injury. Steve Gordon