IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL MAYNOR,	:	CONSOLIDATED UNDER MDL 875
Plaintiff,	:	
	:	Transferred from the Southern District of Illinois
v.	:	(Case No. 05-04108)
ILLINOIS CENTRAL GULF RAILROAD CO.,	:	
	:	E.D. PA CIVIL ACTION NO. 2:08-89466
Defendant.	:	

O R D E R

AND NOW, this **8th** day of **February, 2011**, it is hereby **ORDERED** that the Motion for Summary Judgment of Defendant Illinois Central Gulf Railroad Co., filed on December 10, 2010 (doc. no. 15), is **DENIED.**[1]

[1]This case was transferred to the United States District Court for the Eastern District of Pennsylvania as part of MDL 875 on October 1, 2008. (Transfer Order, doc. no. 1.) Plaintiff filed a suit against Illinois Central pursuant to the Federal Employers Liability Act ("FELA"), 45 U.S.C. § 51, alleging that Mr. Maynor developed asbestos-related lung injuries as a result of occupational exposure to asbestos during his employment with Illinois Central. (Def.'s Mot. Summ. J., doc. no. 15 at 3.)

On June 11, 1993, Mr. Maynor signed a release with Illinois Central Railroad Co., which states, "[f]or and in sole consideration of ten thousand dollars. . . I, the undersigned, Daniel D. Maynor, do hereby fully and completely release, discharge, and acquit Illinois Central Gulf Railroad, Illinois Central Railroad Company, their predecessors, successors, employees, agents, insurers, officers and assigns. . . ." "This release specifically excludes any personal injury claim or lien

pending against Illinois Central Gulf Railroad, or Illinois Central Railroad Company, other than for occupational, disease-type illness, or illnesses, to wit, including but not limited to, asbestosis, lead, dust, sand, diesel fumes, paint, PCB, Dioxin, or other toxic or noxious chemical exposure, which claims are specifically released by this document." (Release Agreement, Def.'s Ex. A.)

Defendant argues that the release is enforceable under FELA and bars Plaintiff's claims. (Def.'s Mot. Summ. J. at 5.) Defendant argues that an undiagnosed condition relating to a risk, which is addressed in the release, may be released as part of a settlement of a FELA claim. (Id. at 7.) Plaintiff asserts that in 1993, Mr. Maynor did not know that he was at risk of developing a future injury as a result of asbestos exposure. (Pl.'s Reply Br., doc. no. 16 at 2.) Rather, Plaintiff asserts that in 1993, Mr. Maynor made a hearing loss claim against Defendant and that the release was made to settle that claim and not claims for future exposure to toxic substances. (Id. at 3.)

When evaluating a motion for summary judgment, Federal Rule of Civil Procedure 56 provides that the Court must grant judgment in favor of the moving party when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact . . . ." Fed. R. Civ. P. 56(c)(2). A fact is "material" if its existence or non-existence would affect the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is "genuine" when there is sufficient evidence from which a reasonable jury could find in favor of the non-moving party regarding the existence of that fact. Id. at 248-49. "In considering the evidence the court should draw all reasonable inferences against the moving party." El v. SEPTA, 479 F.3d 232, 238 (3d Cir. 2007).

"Although the initial burden is on the summary judgment movant to show the absence of a genuine issue of material fact, 'the burden on the moving party may be discharged by showing - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case' when the nonmoving party bears the ultimate burden of proof." Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 140 (3d Cir. 2004) (quoting Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 192 n.2 (3d Cir. 2001)). Once the moving party has discharged its burden, the nonmoving party "may not rely merely on allegations or denials in its own pleading; rather, its response must - by affidavits or as otherwise provided in [Rule

56] - set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2).

Federal jurisdiction in this case is based on diversity of citizenship under 28 U.S.C. § 1332. Federal and state courts have concurrent jurisdiction over FELA cases. Burnett v. New York Central R. Co., 380 U.S. 424, 434 (1965) (citing Great Northern R. Co. v. Alexander, 246 U.S. 276 (1918)). A case is not subject to removal merely because the plaintiff has asserted FELA claims. Id. Federal law governs substantive issues as to the validity of a release under FELA. Dice v. Akron C. &. Y.R., Co., 342 U.S. 359, 361 (1952). Given that this is an issue of federal law, the MDL transferee court applies the federal law of the circuit where it sits, which in this case is the law of the United States Court of Appeals for the Third Circuit. In re Asbestos Prods. Liability Litig. (No. VI), 673 F. Supp. 2d 358, 362 (E.D. Pa. 2009) (citing In re Diet Drugs Liability Litig., 294 F. Supp. 2d 667, 672 (E.D. Pa. 2003)).

Under FELA, 45 U.S.C. § 55, "[a]ny contract, rule, 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."

In Callen v. Pennsylvania R. Co., plaintiff brought claims under FELA, but had signed a release agreement stating that he was releasing "all claims and demands which I have or can or may have against the said Pennsylvania Railroad Co. for or by reason of personal injuries sustained by me." 332 U.S. 625, 626 (1948). Plaintiff argued that the release agreement violated 45 U.S.C. § 55, in that it allowed the Pennsylvania Railroad Co. to exempt itself from liability. Id. at 630-31. The Court held that the release was properly considered at trial noting "[i]t is obvious that a release is not a device to exempt from liability but is a means of compromising a claimed liability and to that extent recognizing its possibility. Where controversies exist as to whether there is liability, and if so for how much, Congress has not said that parties may not settle their claims without litigation." Id. at 631. The Court also noted that the party attacking the release has the burden of showing that it is invalid. Id. at 630.

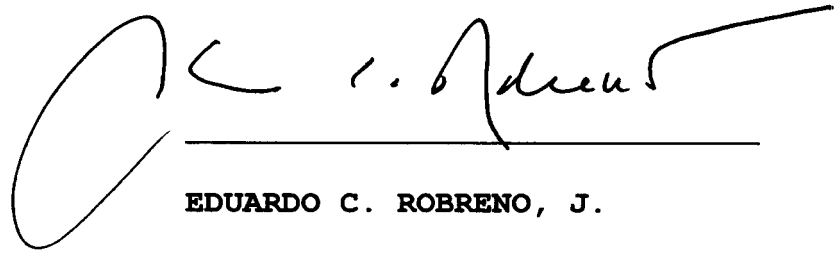
In Wicker v. Consolidated Rail Corp., the United States Court of Appeals for the Third Circuit interpreted "the scope of § 5 of FELA, and in particular, whether its bar of '[a]ny contract. . . the purpose of which shall be to enable [an employer] to exempt itself' from FELA includes a general release

of claims executed by an employee as part of a settlement." 142 F.3d 690, 695 (3d Cir. 1998). The court explained that, "[t]o be valid under FELA, a release must at least have been executed as part of a negotiation settling a dispute between the employee and the employer." Id. at 700. The court must evaluate the parties' intent at the time the agreement was made. Id. An employer may not require an employee to sign a release as a condition of employment in an attempt to evade liability. Id. The court held "that a release does not violate § 5 [45 U.S.C. § 55] provided it is executed for valid consideration as part of a settlement, and the scope of the release is limited to those risks which are known to the parties at the time the release is signed." Id. at 701.

The Wicker court further explained that a valid release agreement must inform the employee of the rights they are giving up by spelling out the "quantity, location, and duration of potential risks to which the employee has been exposed-for example topic exposure. . . ." Id. A release is strong, but not conclusive evidence, of the parties' intent. Id. The court was concerned that boiler plate agreements with extensive lists including all hazards known to railroad employees would be held valid if the validity of the release depended on the language of the written release alone. Id. "[W]here a release merely details a laundry list of diseases or hazards, the employee may attack that release as boiler plate, not reflecting his or her intent." Id. The court ultimately held that the plaintiffs' releases, which were standard forms and did not indicate that the parties had discussed the rights they were giving up, were invalid under FELA. Id.

In Wicker, the plaintiffs signed general releases which purported to exempt the defendant from liability for all future claims, whether known or unknown, at the time that the agreement was signed. While the release agreement in this case is not as extensive as the ones in the Wicker case, the release clearly purports to extinguish Defendant's liability for all of Mr. Maynor's future claims. Mr. Maynor signed the release pursuant to the parties' settlement for claims related to Mr. Maynor's hearing loss claims. There is no evidence that Mr. Maynor was aware that he was at risk for developing asbestosis or being exposed to lead or any of the other substances named in his release agreement. The release agreement does not detail the quantities, locations, or duration in which Mr. Maynor may have been exposed to asbestos. Rather, the release agreement seems to be just the kind of boiler plate agreement that the Wicker court was wary of. As there is no

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

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evidence that Mr. Maynor understood that he was at risk of developing an asbestos-related disease at the time he signed the release agreement, Defendant's Motion for Summary Judgment is denied.