IN THE SUPREME COURT OF THE STATE OF OREGON

CHRISTOPHER S. BARRETT,	)	
Plaintiff-Adverse Party	)	**Supreme Court Case No: S063914**
v.	)	**Multnomah County Circuit Court Case No: 15CV27317**
UNION PACIFIC RAILROAD COMPANY, a Delaware corporation	)	
	)	
Defendant-Relator	)	

BRIEF OF *AMICUS CURIAE* ACADEMY OF RAIL LABOR ATTORNEYS IN SUPPORT OF PLAINTIFF-ADVERSE PARTY

I. INTERESTS OF *AMICUS* ACADEMY OF RAIL LABOR ATTORNEYS

The Academy of Rail Labor Attorneys ("ARLA") is a professional association of attorneys founded in 1990 whose practices includes the representation of injured railroad workers in cases filed under the Federal Employers' Liability Act("FELA"), 454 U.S.C. §51, *et. seq.,* and the federal whistleblower law, 49 U.S.C. §20109, covering railroad employees.

ARLA's primary purposes are to promote rail safety for the traveling public, to promote safe working conditions and standards for railroad employees, to promote public safety with respect to rail transportation at grade crossings and in connection with rail passenger and commuter service,

to promote the rendering of whatever aid, comfort or assistance may be required by an injured railroad employee or his or her family, to provide continuing legal education for ARLA's members through seminars and other educational programs, and to promote and maintain high standards of professional ethics, competency and demeanor in the bench and bar.

II. THE APPLICABLE STATUTE IS CLEAR AS TO THE COURT'S JURISDICTION.

Congress, in establishing the the statutory jurisdiction over railroads in FELA cases, recognized the uniqueness of railroad operations, and the unfairness of requiring injured railroad employees to bring lawsuits only where the railroad is incorporated or at its principal place of business.

The applicable jurisdictional statute is set forth at 45 U.S.C. §56, which states:

> Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the several states.

Obviously, a statute cannot violate due process standards. However, in the present case, the statute encompasses due process because of the fairness imposed therein. Plaintiff-Adverse Party has asserted that the Defendant-Relator is, and was, continuously and systematically doing business within this jurisdiction at the time of commencing this action. Defendant-Relator does not dispute this fact.

Moreover, the railroad receives substantial benefits from the state, and its burden of litigating within the state is small. We refer the court to the legislative history of this section of the code, which emphasizes the congressional intent to protect the injured employee from the undue burden of forcing him/her to seek recovery in a court many miles away from the plaintiff's home. Fairness is reflected throughout the congressional consideration of 45 U.S.C. §56, and meets the due process requirements.

III. THE LEGISLATIVE HISTORY OF 45 U.S.C. §56 MAKES IT CLEAR THAT THE COURT IS VESTED WITH PROPER VENUE IN THE PENDING CASE.

In 1910, both the House and Senate proposed amendments to the FELA which would allow plaintiffs to bring actions where the railroad defendant's contacts within a state were continuous and systematic. The amendment proposed by the House Committee on the Judiciary contained a little different language than the Senate version. It provided that the lawsuit could be brought in the district of the residence of either the plaintiff or the defendant, or in which the cause of action arose, "or in which the defendant shall be found at the time of commencement of the action." H.R. Rep. No. 513, 61st Cong., 2d Sess. 2-3(1910). The Committee said "So important a statute should be made so certain in its terms that the intent of Congress may be made manifest and clear." *Id.* at 6. As to the amendment, it stated that the amendment is necessary "in order to avoid great inconvenience to suiters and to

make it unnecessary for an injured plaintiff to proceed only in the jurisdiction in which the defendant corporation is an 'inhabitant'." *Id.* Further, it pointed out that "...to permit it to be a practical barrier to the maintenance of an action for death or personal injuries of employees who may be presumed to be unable to meet the expense of presenting their case in a jurisdiction far from their homes would be an injustice too grave and serious to be longer permitted to exist." *Id.* at 7. (Underlining added).

On the present issue before the court, the Senate Committee on the Judiciary proposed a minor change to the House version. That change was adopted by Congress in 45 U.S.C. §56. It allows the lawsuit to be brought where the defendant railroad is "doing business", instead of the House version which permitted a lawsuit where the defendant is "found". S. Rep. No. 432, 61st Cong., 2d. Sess.1(1910). Also, the Committee said that the issues have been so thoroughly covered and fully treated that it quoted and adopted fully the discussion in the House committee report. *Id.* at 3-4.

In the Senate floor deliberations, Senator William Borah, Chairman of the Senate Judiciary Committee, further explained the congressional intent:

> Mr. President, I wish to discuss very briefly the bill. The bill as it is now pending provides for three amendments to the employers' liability law which is now upon the statute books. The first has reference to the venue.* * * The objection which has been made to the existing law, and this objection arises by reason of the decision of some of the

> courts, is that the plaintiff may sometimes be compelled to go a great distance in order to have his cause of action against the defendant by reason of the fact that now the action must be brought in certain instances in the district in which the defendant is an inhabitant. In other words, the corporation being an inhabitant of the State which creates it, it might follow that the plaintiff would have to travel a long distance in order, under certain conditions, to bring his action against the defendant and come within the terms of the law. So, if this bill should be passed the law will be remedied in that respect, in enabling the plaintiff to bring his action where the cause of action arose or where the defendant may be doing business. The bill enables the plaintiff to find the corporation at any point or place or State where it is actually carrying on business, and there lodge his action, if he chooses to do so.

45 Cong. Rec. 4034 (1910).

While the statute itself does not specifically mention due process, the discussion reflects Congress' concern with due process. Congress granted jurisdiction to any court "in which the defendant shall be doing business at the time of commencing[an action under 45 U.S.C.§51]" because it understood the impediments to accessing the courts faced by FELA plaintiffs in view of the unique interstate nature of railroad employees work. In summary, the point of the congressional deliberations is that an employee should not be forced to bring a FELA case many miles away from his/her home.

IV. THE U.S. SUPREME COURT HAS APPROVED THE JURISDICTION PURSUANT TO 45 U.S.C. § 56 , AND *DAIMLER v. BAUMAN* DOES NOT NEGATE THOSE DECISIONS

The U.S. Supreme Court has previously rejected the railroads' constitutional jurisdictional arguments under 45 U.S.C. §56.[1] In *Baltimore & Ohio R.R. Co. v. Kepner,* 314 U.S. 44(1941), the Court held that a railroad employee who was injured in Ohio could bring his FELA case in New York. It stated that 45 U.S.C. §56 was "deliberately chosen to enable the plaintiff,...to find the corporation at any point or place or State where it is actually carrying on business, and there lodge his action...." *Id.,*at 50. In *Miles v. Illinois Central R.R. Co,* 315 U.S. 698, 702(1942), the Court pointed out that a FELA lawsuit could be maintained where the railroad is actually carrying on railroading by operating trains and maintaining traffic offices within the territory of the court's jurisdiction. In *Pope v. Atlantic Coast Line R.R. Co.,* 345 U.S. 379, 383(1953), the Court held that a Georgia resident injured in Georgia could maintain an action in Alabama. It emphasized that a plaintiff could bring an action wherever the railroad is doing business. The Court said that "Congress has deliberately chosen to give petitioner a transitory cause of action."[2] *See also, Walden v. Fiore,* __U.S.__, 134 S.C.t. 1115(2014). In

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[1] These decisions decided whether the forum chosen by the plaintiff created an undue burden on interstate commerce. The Court discussed the unfairness of requiring the plaintiffs to travel many miles to file a case.

[2] As noted in *Pope*, *Id.* at 386-387, attempts by the railroads to amend Sec. 56 were rejected by Congress, and Congress has repeatedly rebuffed other attempts by the railroads to either amend or repeal the FELA.

the *Walden* case, the Court addressed the "minimum contacts" that a defendant must have with the forum state to create specific jurisdiction. The Court stated that there needs to be a substantial connection with the forum state that arises out of the contacts the defendant creates with the forum state. *Id.* at 1122. Clearly, the Union Pacific Railroad has "continuing and wide-ranging contacts" within the state of Oregon. *See, e.g., Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 479-480(1985).

A lower court decision is also relevant. In *Fraley v. Chesapeake & Ohio Ry. Co.,* 294 F. Supp. 1193, 1203(W.D. Pa. 1969), the court discussed the congressional intent in a FELA case of allowing venue where the defendant is doing business. It quoted from the *Kepner* and *Miles* cases in finding that the legislative history indicates that Congress meant to enable suits to be brought wherever the railroad was operating. The court said that the railroad was not merely soliciting business but actually carrying on railroading by operating trains and maintaining traffic offices within the territory of the court's jurisdiction, and Congress felt that a plaintiff should be able to sue in any place served by the railroad. Further, the *Fraley* court said that railroads are often multistate corporations operating lengthy rail lines(as is Union Pacific Railroad in the present case), and this was deemed an undue hardship upon a plaintiff. The court

concluded that the plaintiff should be allowed to bring suit wherever rail operations were being conducted.

The Union Pacific primarily relies upon *Daimler AG v. Bauman,*__ US __, 134 S. Ct. 746, 187 L. Ed. 624 (2014) to challenge the trial court's jurisdiction in the present case. The Plaintiff-Adverse Party has fully addressed and distinguished that case in his briefs, and we adopt and incorporate by reference those arguments. Congress specifically legislated the jurisdiction and venue in FELA litigation, and as discussed *supra* at 5-6, the U.S. Supreme Court has approved the validity of 45 U.S.C. §56. *Daimler* did not write a new chapter in judicial history, nor did it modify the historic authority of allowing injured railroad employees to enforce their federal FELA rights in courts other than where the railroad is incorporated or has its principal place of business. *See, The Supreme Court, 2013 Term — Leading Cases*, 128 Harv. L. Rev. 311, 316(Nov. 10, 2014).The underlying premise of *Daimler* and constitutional due process is fairness. Certainly, fairness in the present case, dictates that the Multnomah County Circuit Court retains jurisdiction.

Throughout the years, the U.S. Supreme Court has consistently recognized the importance that Congress attributed to balancing the inequality of the railroads over the employees. In *Lilly v. Grand Trunk Western RR,* 317 U.S. 481, 486, it stated that the Act: "...is to be liberally construed in the light of its prime purpose, the protection of employees and others." In *Urie v. Thompson,* 337 U.S. 163, 181-

182(1949), it pointed out FELA's "...remedial and humanitarian purpose, and the constant and established course of liberal construction of the Act followed by this Court." In *Consolidated Rail Corporation v. Gottshall,* 512 U.S. 532, 542(1994), it cited the congressional effort in the FELA to "...shift part of the human overhead of doing business from employees to their employers." Also, the Court once again recognized Congress' "humanitarian" and "remedial" goals. *Id.* 542-543, cited more recently with approval in *CSX Transportation, Inc. v. McBride,* 564 U.S. 685, 689(2011).

CONCLUSION

In conclusion, this court should allow the lawsuit to proceed. The FELA, its legislative history, and the decisions of the U.S. Supreme Court and lower courts, demonstrate Congress' intent to allow FELA plaintiff's access to the courts in states other than the state where the plaintiff was injured, or where the railroad is headquartered. Even absent the statutory authority for the court's jurisdiction, the railroad meets the general jurisdiction requirements of the court because of its continuous and systematic affiliations with the state. For more than 100 years there has been no evidence that railroads, including the Union Pacific Railroad, have been burdened by Congress' jurisdictional statute in defending in the home state of its injured employees. Fairness dictates that the Multnomah Circuit Court exercises its jurisdiction in this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2016, a copy of this brief was delivered by electronic mail to Wendy M. Margolis,wmargolis@cosgravelaw.com, and Julie A. Smith, jsmith@cosgravelaw.com, 888 SW Fifth Avenue, Suite 500, Portland, OR 97204, attorneys for Defendant-Relator, and to James K. Vucinovich, jvucinovich@revflegal.com, Rossi Vucinovich PC, 1000 Second Avenue, Suite 1610, Seattle , WA 98104, and Paul Bovarnick, pbovarnich@rsblaw.net, Rose Senders & Bovarnick LLC, 1205 NW 25th Avenue, Portland, OR 97210, attorneys for Plaintiff-Adverse Party.

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CERTIFICATION

I hereby certify that no funds from the Plaintiff-Adverse Party were contributed toward the preparation of this brief.

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