Case No. SC15-1639

IN THE SUPREME COURT OF FLORIDA

CRYSTAL SELLS, as
Personal Representative of the Estate of LARRY SELLS, deceased,

Petitioner,

v.

CSX TRANSPORTATION, INC.,

Respondent.

Appeal from the District Court of Appeal First District,
State of Florida
Case No. 1D13-4775

AMICUS CURIAE BRIEF OF THE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE

The American Association for Justice is a national bar association whose members practice in all fifty states, including Florida. American Association for Justice members represent plaintiffs in personal injury cases, including injured railroad employees bringing claims under the Federal Employers Liability Act ("FELA").

The American Association for Justice addresses this Court with respect to a crucial issue in this FELA case: The action by the court below in setting aside the jury's factual findings regarding both negligence and causation with respect to the death of Larry Sells. In the American Association for Justice's view, this is precisely the type of judicial invasion of the jury function that Congress intended to curb when it enacted the FELA and which the Supreme Court of the United States has consistently condemned. The American Association for Justice further believes that the historical background of the FELA and the Supreme Court's instructions regarding the role of the jury support reversal of the decision by the First District Court of Appeal in this case.

SUMMARY OF ARGUMENT

1. The history of the FELA is rooted in the failure of common law courts to allow injured railroad workers to put their case to the jury to determine whether their employer met its obligation to furnish a reasonably safe workplace.

Railroads were key to America's industrial development, but the carnage imposed on railroad workers was a national scandal. Common law courts, to shield American industries from burdensome liabilities, devised legal doctrines that removed issues of negligence and causation from juries. Congress responded by enacting the Federal Employers Liability Act, which guaranteed injured railroad workers the right of trial by jury as part of their remedy.

2. When courts proved reluctant to entrust decisions regarding negligence and causation to juries, Congress amended and strengthened the FELA in 1939. Since that time, the U.S. Supreme Court has enforced a strict rule requiring deference to the decisions by juries regarding a railroad's failure to provide a reasonably safe workplace and the causal connection between such failure and the employee's injuries. One guiding principle that the Supreme Court has consistently upheld is that an appellate court may not substitute its own judgment for that of the jury regarding what is necessary for a reasonably safe workplace.

3. In this case, the district court of appeal erroneously held that the question of whether CSX should have equipped its locomotive operating in a remote location with an Automated External Defibrillator ("AED") was a question of duty, to be decided by the court. The railroad's duty—to provide a reasonably safe workplace—was not in dispute. The dispute was, instead, whether CSX breached

that duty by failing to equip its engine with an AED or providing CPR training, a determination reserved for the jury under all the circumstances of the case.

The authorities the court below relied upon do not support the proposition that a railroad employer has no duty to anticipate foreseeable medical emergencies and provide reasonably appropriate first aid equipment, such as an AED.

ARGUMENT

I. The History of the FELA Mandates Deference to the Jury's Finding that the Railroad Breached Its Duty to Provide a Reasonably Safe Workplace.

A. The FELA is rooted in the failure of common law courts to protect injured workers' right to present their case to the jury.

Railroads were key to America's growth into an industrial power. They served as the primary form of transport across the nation in the second half of the 19th Century, bringing raw materials to manufacturers and finished goods to consumers. They were the country's largest employer. *See generally* William L. Withuhn, *How the Railroads Built America*, *Railway Age* (Sept. 2006); Melvin L. Griffith, *The Vindication of a National Public Policy Under the Federal Employers' Liability Act*, 18 Law & Contemp. Probs. 160, 161-62 (1953).

However, the dark underside of this progress was the appalling carnage inflicted upon railroad workers. "In the second half of the nineteenth century, the United States experienced an accident crisis like none the world had ever seen and like none any Western nation has witnessed since." John Fabian Witt, *Toward a New*

History of American Accident Law: Classical Tort Law and the Cooperative Firstparty Insurance Movement, 114 Harv. L. Rev. 690, 694 (2001). The rates of death and serious injury to railroad employees in particular were "astronomical." *Id.* at 695. *See also* Walter Licht, *Working for the Railroad: The Organization of Work in the Nineteenth Century* 124-29 (1983). In 1890, one railroad worker in every three hundred died on the job; one in every one hundred freight railroad brakemen died in work accidents *each year*. Witt, *supra*, at 694-95; Michael L. Rustad & Thomas H. Koenig, *Taming the Tort Monster: The American Civil Justice System as a Battleground of Social Theory*, 68 Brook. L. Rev. 1, 27 & n.167 (2002). As the U.S. Supreme Court pointedly observed, there were "281,645 casualties in the year 1908 alone." *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 691 (2011).

The common law broadly failed to provide redress for those workers and their families. To be sure, injured workers could bring suit in negligence against their employers. By one estimate, they prevailed in about 71 percent of cases that reached the jury. Peter Karsten, *Heart Versus Head: Judge-Made Law in Nineteenth-Century America* 99 (1997). Judges, however, acting out of perceived need to shield America's fledgling industries from the burden of liability, devised ways to take cases away from juries. Judges "limited liability derived from a public policy, designed to give maximum freedom to infant industrial enterprises, [by insulating them] as much as possible from bearing the 'human overhead' . . . of the doing of

industrialized business." *Kernan v. Am. Dredging Co.*, 355 U.S. 426, 431 (1958) (quoting *Tiller v. Atlantic Coast Line R.R. Co.*, 318 U.S. 54, 59 (1943)). *See also* Lawrence M. Friedman, *A History of American Law* 409-11 (1973); Stuart Speiser, *Lawsuit* 120, 122, & 124-26 (1980).

Jury evasions included the often-insurmountable defenses of contributory negligence, assumption of the risk, and the fellow servant doctrine—Dean Prosser's "three wicked sisters of the common law." William Prosser & Page Keeton, *The Law of Torts* § 80, at 573 (5th ed. 1984). As the California Supreme Court similarly recognized, those defenses, along with "'concepts of duty and proximate cause, [provided judges with] a convenient instrument of control over the jury, by which the liabilities of rapidly growing industry were curbed and kept within bounds.'" *Am. Motorcycle Ass'n v. Superior Court*, 578 P.2d 899, 904-05 (Cal. 1978) (quoting William Prosser, *Comparative Negligence*, 41 Cal. L. Rev. 1, 4 (1953)). *See also* Wex S. Malone, *The Formative Era of Contributory Negligence*, 41 U. Ill. L. Rev. 151 (1946) (discussing the use of such doctrines to control outcomes in jury trial cases).

By the end of the Nineteenth Century railroad employee accident cases were "marked by a robust directed verdict practice." Ann Woolhandler & Michael G. Collins, *The Article III Jury*, 87 Va. L. Rev. 587, 674 (2001), despite the fact that by this time, American industry had "became sufficiently strong to bear the burden" of

the costs of accidents and "an evolving public policy, came to favor compensation of employees and their dependents for the losses occasioned by the inevitable deaths and injuries of industrial employment." *Kernan*, 355 U.S. at 431. The Virginia Supreme Court has noted that "employees lost approximately eighty percent of their cases" because of such narrow common-law theories by which judges took factfinding decisions away from juries. *Simms v. Ruby Tuesday, Inc*., 704 S.E.2d 359, 361 (Va. 2011) (quoting Samuel B. Horovitz, *Assaults and Horseplay Under Workmen's Compensation Laws*, 41 Ill. L. Rev. 311, 311 (1946)).

B. Congress enacted the Federal Employers Liability Act to guarantee injured railroad workers the right to have a jury decide issues of negligence and causation.

Congress responded to the failure of common law courts with passage of the Federal Employers Liability Act of 1908, creating a federal cause of action for damages due to "injury or death resulting in whole or in part from the negligence" of the employer railroad. 45 U.S.C. § 51. The "congressional intent was to provide liberal recovery for injured workers," *Kernan,* 355 U.S. at 432, and to shift the cost of injuries to the railroads "who . . . ought to share the burden." *Sinkler v. Mo. Pac. R.R. Co.*, 356 U.S. 326, 330 (1958) (quoting S. Rep. No. 460, 60th Cong., 1st Sess. 3 (1908)).

Congress's ultimate purpose was not simply to provide compensation to those injured in dangerous railroading jobs. It was to provide railroads with financial

incentive to minimize that danger in the first place. In the view of Congress, "The only manner in which [railroads] can be persuaded to take reasonable care of their employees is by holding them responsible in damages for the absence of such care." 40 Cong. Rec. 4605 (1906).

Congress's intent was expansively stated in a Senate Committee on the Judiciary report accompanying an amendment to the FELA in 1910:

> [To] place[] such stringent liability upon the railroads for injuries to their employees as to compel the highest safeguarding of the lives and limbs of the men in this dangerous employment.

Sen. Comm. on the Judiciary, S. Rep. No. 432, 61st Cong. 2nd sess., 45 Cong. Rec. 4041 (1910). *See* Griffith, *supra*, at 167-68.

Congress's chosen agent to hold railroads accountable was the jury. Congress removed judicial jury-evasion rules. The FELA "abolished the fellow servant rule, rejected contributory negligence in favor of comparative negligence, prohibited employers from contracting around the Act, and abolished the assumption of risk defense." *Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 168 (2007). Moreover, to overcome judicial bias in favor of the railroads, Congress made the right to trial by jury "part and parcel" of the FELA remedy. *Dice v. Akron, Canton & Youngstown R.R.*, 342 U.S. 359, 363 (1952). Specifically with respect to whether a railroad has provided its employee with a reasonably safe place to work, "the jury has been chosen as the appropriate tribunal to apply those standards to the facts of these

personal injuries. [This] is the system which Congress has provided." *Bailey v. Cent. Vt. Ry.*, 319 U.S. 350, 354 (1943).

II. The United States Supreme Court Has Consistently Safeguarded the Role of the Jury in FELA Cases Against Judicial Incursion.

A. Initial judicial hostility to the role of juries.

Congress's purpose in clearing a path for railroad workers to present their case to the jury "was not given a friendly reception in the courts. . . . [D]oubtful questions of fact were taken from the jury and resolved by the courts in favor of the employer. This Court led the way in overturning jury verdicts rendered for employees. And so it was that a goodly portion of the relief which Congress had provided employees was withheld from them." *Wilkerson v. McCarthy*, 336 U.S. 53, 69 (1949) (Douglas, J., concurring) (citations omitted). *See also* William H. DeParcq, *A Decade of Progress Under the Federal Employers' Liability Act*, 18 Law & Contemp. Probs. 257, 260-61 (1953) (discussing Supreme Court decisions of the 1920s and 1930s adverse to railroad workers).

Congress responded by amending the FELA in 1939 to expand the scope of FELA coverage, lengthen its statute of limitations period and definitively remove assumption of risk as a defense. 76 Cong. Ch. 685, 53 Stat. 1404 (1939) (codified as amended 45 U.S.C. §§ 53-55). *See Tiller*, 318 U.S. at 58. The 1939 amendments "removed the fetters which hobbled the full play of the basic congressional intention to leave to the fact-finding function of the jury" the decision "whether employer fault

played any part in the employee's mishap. *Rogers v. Mo. Pac. R.R. Co.*, 352 U.S. 500, 508-09 (1957).

B. Deference to juries following the 1939 FELA amendments.

After 1939, the Supreme Court dramatically altered course. The Court "disproportionately granted certiorari in FELA cases, primarily to the benefit of employees who claimed that verdicts should not have been directed against them by state courts." Woolhandler & Collins, *supra*, at 676-77. *See also* Note, *Supreme Court Certiorari Policy in Cases Arising Under the FELA*, 69 Harv. L. Rev. 1441, 1445-46 (1956). The Court specifically granted certiorari to reverse decisions by "lower federal and state courts [that] persistently deprive litigants of their right to a jury determination." *Rogers*, 352 U.S. at 510.

The decade and a half following the 1939 legislation saw

> [A]n almost unbroken series of decisions by the United States Supreme Court consistently enlarging the role of the jury, in actions under the FELA, in deciding fact issues, particularly relating to negligence and causation. The scope of jury decision has been so expanded as to make the occasion for a directed verdict rare and exceptional.

DeParcq, *supra*, at 257. The result was to relegate previous judicial "usurpations of the jury function" to "a museum of legal curiosities." *Id*. at 261.

Rogers provides, perhaps, the Court's most definitive statement regarding the primacy of the jury as the arbiter of issues of causation and reasonableness. Plaintiff was burning vegetation on the railroad right-of-way when he became enveloped in

smoke and flames fanned by a passing train and fell from a culvert. He alleged that the railroad had failed to provide a reasonably safe place to work. Br. of Pet'r., at 13, *Rogers v. Mo. Pac. R.R. Co.*, 352 U.S. 500 (1957), 1956 WL 89025. The Missouri Supreme Court had overturned a jury's verdict in favor of Rogers, but the U.S. Supreme Court reversed. The jury could have found based on the surrounding circumstances that the railroad was "aware of conditions which created a likelihood that petitioner, in performing the duties required of him, would suffer just such an injury as he did." 352 U.S. at 503. Even if the jury could have reached the opposite conclusion, "the decision was exclusively for the jury to make." *Id*. at 504.

> Under [the FELA] the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought. It does not matter that, from the evidence, the jury may also with reason, on grounds of probability, attribute the result to other causes, including the employee's contributory negligence. Judicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that negligence of the employer played any part at all in the injury or death. Judges are to fix their sights primarily to make that appraisal and, if that test is met, are bound to find that a case for the jury is made out whether or not the evidence allows the jury a choice of other probabilities.

Id. at 506-07.

The Court noted the fact that the failure of courts in FELA cases to give proper deference to the jury "has required this Court to review a number of cases [where]

that lower courts have not given proper scope to this integral part of the congressional scheme." *Id.* at 510. The Court added that "decisions of this Court after the 1939 amendments teach that the Congress vested the power of decision in these actions exclusively in the jury in all but the infrequent cases where fair-minded jurors cannot honestly differ whether fault of the employer played any part in the employee's injury." *Id.*

C. The Supreme Court has consistently instructed that appellate courts may not substitute their views of a reasonably safe workplace or causation for those of the jury.

During the next half-century, the Supreme Court has not found it necessary to review FELA cases so often. Nevertheless, the Court has consistently maintained the basic principles of judicial review declared in *Rogers*: That the FELA is to be liberally applied to favor jury determinations of negligence and causation and that the appellate court may not substitute its findings for those of the jury.

For example, in *Gallick v. Baltimore & Ohio Railroad Co.*, 372 U.S. 108 (1963), an unsafe workplace case where a worker suffered an infected insect bite, traceable to a fetid pool the railroad had allowed to remain near its right-of-way, the Court reversed the appellate court's reversal of the jury's findings for the plaintiff, citing the relaxed causation standard announced in *Rogers. Id*. at 116-17, 120-21. *See also Crane v. Cedar Rapids & Iowa City Ry. Co.*, 395 U.S. 164, 166-67 (1969) (contrasting the relaxed evidentiary standard under *Rogers* for a railroad employee,

who "is not required to prove common-law proximate causation," with suit by nonemployees, where the "definition of causation [is] left to state law").

In *Atchison, Topeka & Santa Fe Railway Co. v. Buell*, 480 U.S. 557 (1987), the Court reiterated that FELA recovery "is defined in broad language, which has been construed even more broadly," along with the deference to be accorded to jury determinations, as mandated by *Rogers*. The Court reserved the question whether a cause of action for breach of the duty to provide a reasonably safe place to work would lie for emotional harm due to harassment by coworkers. *Id*. at 561-62 & n.8.

The Court in *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532 (1994), emphasizing the broad scope intended by Congress for the statutory term "injury" and the broad statutory construction mandated by *Rogers*, found no reason why the term should not encompass "severe emotional injuries [that] can be just as debilitating as physical injuries." *Id*. at 550. The Court therefore held that a worker might recover for the emotional stress of witnessing physical injury to a co-worker, as a violation of the duty to provide a reasonably safe workplace if the plaintiff were in the same "zone of danger" as the co-worker. *Id*. at 554. *But cf. Metro-North Commuter R.R. Co. v. Buckley*, 521 U.S. 424 (1997) (no FELA cause of action for emotional distress or medical monitoring for railroad workers who were exposed to asbestos dust but have not experienced any symptoms of injury).

The Court revisited this issue in *Norfolk & Western Railway Co. v. Ayers*, 538 U.S. 135 (2003), where it held that a railroad worker who was exposed to asbestos and diagnosed with asbestosis (chronic lung inflammation) could recover for negligent infliction of emotional distress and fear of developing cancer. The Court further rejected the railroad's contention that its liability should be reduced by the percentage negligence of other parties. *Id*. at 161 (citing *Rogers*, 352 U.S. 500).

Finally in *CSX Transportation, Inc. v. McBride*, 564 U.S. 685 (2011), the Supreme Court reaffirmed its holding in *Rogers* that courts in FELA cases must uphold liability if a jury has determined that the railroad's negligence was a cause, however slight, of the worker's injury. The Court observed that to reinsert common-law formulations of causation would "deprive litigants of their right to a jury determination" guaranteed by FELA. *Id.* at 695 (quoting *Rogers*, 352 U.S. at 509-10).

The *McBride* Court reiterated that "reasonable foreseeability of harm" is an essential ingredient of FELA negligence, and it is for the jury to decide whether the railroad had "reasonable ground to anticipate that a particular condition . . . would or might result in a mishap and injury." 564 U.S. at 703 (internal quotation omitted).

The American Association for Justice submits that the jury in this case likewise could have found that CSX should have anticipated that conductor Larry Sells, working a strenuous job in a remote area, might suffer sudden cardiac arrest

which an AED is designed to treat. The jury could also have found that CSX's failure to equip its locomotive with an AED, or provide CPR training was a cause, however slight, of Sells' death. The fact that the court believed that its view of the evidence was more plausible, as the Supreme Court has repeatedly instructed, is not a lawful ground to overturn a jury's verdict for the plaintiff.

III. Whether CSX Should Have Equipped Its Locomotive with an AED or Provided CPR Training Was Not a Question of Duty for the Court, but Rather a Question of Breach of Duty to Provide a Reasonably Safe Workplace, Which Was a Question for the Jury.

A. Whether CSX breached its duty to provide a reasonably safe workplace by failing to provide relatively inexpensive and potentially lifesaving equipment on its locomotive operating in a remote location was a question for the jury.

CSX's duty in this case is not disputed: the railroad was obligated to provide a reasonably safe workplace. *Bailey*, 319 U.S. 350. Whether CSX ought to have equipped its locomotive with an AED was not a question of duty, but a question of whether CSX breached its duty to provide a safe workplace. That question is for the jury, not the court, based on all the surrounding circumstances.

> The nature of the task which Bailey undertook, the hazards which it entailed, the effort which it required, the kind of footing he had, the space in which he could stand, the absence of a guard rail, the height of the bridge above the ground, the fact that the car could have been opened or unloaded near the bridge on level ground—all these were facts and circumstances for the jury to weigh and appraise in determining whether respondent in furnishing Bailey with that particular place in which to perform the task was negligent. The debatable quality of that issue, the fact that

> fair-minded men might reach different conclusions, emphasize the appropriateness of leaving the question to the jury. The jury is the tribunal under our legal system to decide that type of issue.

Id. at 353.

Unless a jury's finding that working conditions were not reasonably safe is based on "'mere speculation,' . . . [n]o court is then justified in substituting its conclusions for those of the twelve jurors." *Tennant v. Peoria & Pekin Union Ry. Co.*, 321 U.S. 29, 32-33 (1944) (internal citation omitted). "It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury. . . . It is the jury, not the court, which is the fact-finding body." *Id*. at 35.

Similarly, causation is also for the jury. Where the jury has determined that the employee's death was due to the railroad's lack of due care, the railroad was

> [N]ot free to relitigate the factual dispute in a reviewing court. Under these circumstances it would be an undue invasion of the jury's historic function for an appellate court to weigh the conflicting evidence, judge the credibility of witnesses and arrive at a conclusion opposite from the one reached by the jury.

Lavender v. Kurn, 327 U.S. 645, 652-53 (1946).

The American Association for Justice submits that this is a close approximation of the action by the district court of appeal in this case in setting aside the jury's verdict.

B. The authorities relied upon by the District Court of Appeals do not support its holding that, as a matter of law, CSX owed no duty to anticipate a medical emergency that might require an AED.

The district court of appeals sought support for its ruling in three authorities in particular. However, none of these authorities supports the proposition that whether CSX should have provided an AED or personnel trained in CPR was a question of duty, to be decided by the court as a matter of law, rather than the jury.

In *Fulk v. Illinois Central Railroad Co.*, 22 F.3d 120 (7th Cir. 1994), decedent, a switchman, had been examined by a company doctor and diagnosed with hypertension a year prior to his death due to congestive heart failure. Plaintiff did not allege breach of the railroad's duty to provide a reasonably safe workplace, but rather beach of a separate duty to conduct more frequent or more detailed physical exams of its workers. The court declined to recognize such a duty. *Id*. at 126. The decision thus does not address the issue before this Court.

The court below also erroneously relied on *Wilke v. Chicago Great Western Railway Co.*, 251 N.W. 11 (Minn. 1933), where a worker collapsed and died. The Minnesota court rejected:

> [Plaintiff's] proposition that defendant, employing some 40 or 50 men in this gravel pit on a very hot day, was charged with the duty of anticipating that some one of the men would be overcome by heat, and, hence, it was negligence not to have a doctor or means at hand to care for and treat one so overcome.

Id. at 13.

This decision does not bear the weight the lower court placed on it. First, the statement was dicta: the basis of the court's decision was that the employer was unaware of the worker's plight, not the absence of a doctor. *Id*. Second, although the defendant was a railway company, this was not an FELA case, but a state law employment negligence case. Third, any persuasiveness of the decision is negated by the fact that it predates the 1939 FELA amendments and the Supreme Court's subsequent emphasis on recognition of the primacy of the jury in making determinations of fact and reasonableness.[1]

Finally, the court below erroneously relied on *Restatement (Second) of Torts* § 314A (1965) for the proposition that "a common carrier's duty to aid its passengers, including employees," does not arise "until he knows or has reason to know that the plaintiff is endangered, or is ill or injured." *Sells v. CSX Transp., Inc.*,

[1] Two of the FELA cases cited by the lower court actually support our position that whether CSX provided a reasonably safe workplace was for the jury. The Court in *Ellis v. Union Pac. R.R. Co.*, 329 U.S. 649 (1947), held that the decision as to how the accident occurred was for the jury. "[I]t would be an invasion of the jury's function for an appellate court to draw contrary inferences or to conclude that a different conclusion would be more reasonable." *Id*. at 653. *Szabo v. Penn. R.R. Co.*, 40 A.2d 562, 564 (1945), held that whether a foreman should have provided emergency medical assistance to a worker overcome by heat was for the jury, and the appellate court erred in reversing the verdict for plaintiff. *Id*. at 564. Neither case stands for the proposition suggested by the lower court, that the railroad employer has no duty to anticipate such a medical emergency by, for example, having a first aid kit at hand at the work site. *See* 170 So. 3d at 33.

170 So. 3d 27, 37-38 (Fla. Dist. Ct. App. 2015) (quoting *Restatement (Second) of Torts* § 314A, cmt. f).

To the contrary, the comments expressly state that the duty on the part of an *employer* (as opposed to the duty of a common carrier to passengers) is addressed in *Restatement (Second) of Torts* § 314B. That section "duplicates § 512 of the Restatement of Agency, Second." *Id*. at cmt. *a*.

Section 512 explicitly states that an employer might breach its duty to an employee by failing to take measures in anticipation of harm to its employee:

> *c*. *Anticipatory measures.* Not only does a master have a duty of care to aid a servant who is in imminent danger or who has become helpless, but he may also have a duty to provide means of relief or rescue *before the risk of harm becomes imminent*. . . . [I]f the employer conducts an activity in an isolated place, where medical and surgical treatment cannot be obtained, due care upon his part *may require that he either make provision for having medical or surgical treatment* or at least make provision for taking an employee who is hurt to a place where this may be obtained.

Restatement (Second) of Agency § 512, cmt. c (1958) (emphases added).

The *Restatement* thus contradicts the lower court's ruling and supports plaintiff's position by recognizing a duty to anticipate the need for medical care, particularly where the employer is conducting operations in a remote or isolated location. Whether CSX breached that duty by failing to equip its locomotive with an AED and whether that breach was a cause, however slight, of Sells' death was a

question reserved to the jury, which found for the plaintiff based on its view of the evidence. The district court of appeal erred in substituting its own view.

CONCLUSION

For the foregoing reasons, the American Association for Justice urges this Court to reverse the decision by the district court of appeals and to reinstate the jury's verdict.

Date: June 16, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June, 2016, a true and correct copy of the foregoing Amicus Curiae Brief of the American Association for Justice in Support of Petitioner was filed with the E-Filing Portal and served on all counsel of record.

/s/ Jeffrey R. White
Jeffrey R. White

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation set forth in Florida Rule of Appellate Procedure 9.210(a)(2) & (5). This brief was produced using Times New Roman 14-point font and does not exceed 20 pages.

/s/ Jeffrey R. White
Jeffrey R. White

Attorney for Amicus Curiae