

Office file

LAW OFFICES

GRIESER, SCHAFER, BLUMENSTIEL & SLANE Co., L.P.A.

261 WEST JOHNSTOWN ROAD

COLUMBUS, OHIO 43230

614/475-9511

C. RICHARD GRIESER
DALE C. SCHAFER
JAMES B. BLUMENSTIEL
DANIEL M. SLANE
RICHARD M. HUHNS
THOMAS C. WOOD, JR.

WILLIAM A. RICHARDS (1922-1975)
ROBERT C. TYLER (1909-1970)

OF COUNSEL
ROY L. STRUBLE
1160 KANE CONCOURSE
MIAMI BEACH, FLORIDA 33154
305/865-2364

MARK A. ADAMS
NORMAN J. ULLOM-MORSE

October 18, 1982

The Honorable G. Wix Unthank
Judge, United States District Court
Eastern District of Kentucky
Federal Building
Pikeville, Kentucky 41501

Dear Judge Unthank:

Re: Link Sammons v. Chesapeake & Ohio Ry. Co.
Civil Action No. 81-98

This is to confirm my telephone conversation with your bailiff wherein I advised that the above referened case currently set for trial on October 27, 1982 has been settled.

Very truly yours,



MARK A. ADAMS

MAA:bln

cc: Clerk of Courts
Mr. Francis Dale Burke

LAW OFFICES

GRIESER, SCHAFFER, BLUMENSTIEL & SLANE CO., L.P.A.

261 WEST JOHNSTOWN ROAD

COLUMBUS, OHIO 43230

614/475-9511

C. RICHARD GRIESER
DALE C. SCHAFFER
JAMES B. BLUMENSTIEL
DANIEL M. SLANE
RICHARD M. HUHN

WILLIAM A. RICHARDS (1922-1975)
ROBERT C. TYLER (1909-1970)

OF COUNSEL
ROY L. STRUBLE
1160 KANE CONCOURSE
MIAMI BEACH, FLORIDA 33154
305/865-2364

THOMAS C. WOOD, JR.
MARK A. ADAMS
NORMAN J. ULLOM-MORSE

August 24, 1982

Clerk
United States District Court
Eastern District of Kentucky
Federal Building
Pikeville, Kentucky 41501

Dear Sir:

Re: Link Sammons v. Chesapeake & Ohio Ry. Co.
Civil Action No. 81-98, Judge Unthank

We enclose original and copy of Motion for Leave to Take Depositions and Memorandum in Support which we ask you to file in the above styled action and make available to Judge Unthank for his consideration.

As evidenced by the Certificate of Service, a copy of same has been mailed to counsel for defendant.

Very truly yours,



MARK A. ADAMS

MAA:bln
Enclosures

cc: The Honorable G. Wix Unthank
Mr. Francis Dale Burke
Mr. Paul C. Hobbs
Mr. Donald Combs

What says Hobbs & Burke?

ASSIGNED FOR PRELIMINARY CONFERENCE AT PIKEVILLE, KY.

ON DECEMBER-17--1981 AT -2:30-P--M-

FEBRUARY 5, 1982 10:30 A.M.

PIKEVILLE CIVIL NO. 81-98

LINK SAMMONS

Mark A. Adams
Francis D. Burke

vs:

CHESAPEAKE & OHIO RAILWAY COMPANY

Paul C. Hobbs
Donald Combs

6/9/81 COMPLAINT FILED.

7/9/81 ANSWER of deft

INTERROGATORIES propounded by both parties
ANSWERS TO INTERROGATORIES by both parties

12/2/81 PRELIMINARY CONFERENCE MEMORANDUM of deft

12/4/81 PRELIMINARY CONFERENCE MEMORANDUM of plff

JURISDICTION: FELA 45 U.S.C. §51

TYPE OF ACTION: action brought under Federal Employers' Liability Act for personal injury to railway employee.

FACTS: plaintiff alleges injuries as result of 1) picking up track jack by himself--Says it was defendant's fault for not providing reasonably safe work place, adequate assistance, etc., and 2) lifting and carrying 14' switch ties with only one other person; alleges same as in 1). Defendant denies knowledge of this second incident.

- ISSUES: 1) Whether defendant furnished a reasonably safe place for its employees in which to work
- 2) Whether the injury resulted in whole or part from the negligence of the defendant
- ~~3) Whether employee's negligence was the only neg~~
- 3) Whether the doctrine of discovered peril and last clear chance applies.

COMMENTS: Judge, it appears the parties are not too sure of the interrelationship of assumption of risk, comparative negligence, last clear chance and contributory negligence. I'm not too sure either. I am sure that comparative negligence is the issue under F.E.L.A. How the doctrine of assumption of risk and/or discovered peril applies is a more difficult question. It appears however, that the doctrine of discovered peril applies, whereas the doctrine of assumption of risk does not.

Also, the plaintiff is concerned with federal taxes and instructions thereon. I don't think this is in issue right now. Maybe when the measure of damages is discussed we can deal with this amoeba.

JURISDICTION: FELA 45 U.S.C. §51

TYPE OF ACTION: action brought under Federal Employers' Liability Act for personal injury to railway employee.

FACTS: plaintiff alleges injuries as result of 1) picking up track jack by himself--Says it was defendant's fault for not providing reasonably safe work place, adequate assistance, etc., and 2) lifting and carrying 14' switch ties with only one other person; alleges same as in 1). Defendant denies knowledge of this second incident.

- ISSUES:
- 1) Whether defendant furnished a reasonably safe place for its employees in which to work
 - 2) Whether the injury resulted in whole or part from the negligence of the defendant
 - ~~3) Whether employee's negligence was the only neg~~
 - 3) Whether the doctrine of discovered peril and last clear chance applies.

COMMENTS: Judge, it appears the parties are not too sure of the interrelationship of assumption of risk, comparative negligence, last clear chance and contributory negligence. I'm not too sure either. I am sure that comparative negligence is the issue under F.E.L.A. How the doctrine of assumption of risk and/or discovered peril applies is a more difficult question. It appears however, that the doctrine of discovered peril applies, whereas the doctrine of assumption of risk does not.

Also, the plaintiff is concerned with federal taxes and instructions thereon. I don't think this is in issue right now. Maybe when the measure of damages is discussed we can deal with this amoeba.