No. 06-763

IN THE
Supreme Court of the United States

ILLINOIS CENTRAL RAILROAD COMPANY,
Petitioner,

v.

MILTON MCDANIEL,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Mississippi

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court below correctly held that, under section 5 of the Federal Employers' Liability Act (FELA), 45 U.S.C. § 55, a broad general release contained in an agreement settling a specific injury claim does not bar a later FELA claim based on an injury unknown at the time the release was signed and unrelated to the settled claim.

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Decrying a "morass of competing standards" for assessing the validity of an agreement purporting to release claims under the Federal Employers' Liability Act (FELA), Pet. 7, petitioner Illinois Central Railroad Company (ICRR) urges this Court's review of a decision allowing respondent Milton McDaniel to collect compensation from ICRR for his asbestos injury. The morass, however, exists only in ICRR's imagination. In reality, the circuit courts have stated only two standards, and the two significantly overlap. Moreover, the outcome of this case would be the same under either standard, as the court below expressly found.

ICRR also claims that the decision below is inconsistent with *Callen v. Pennsylvania Railway Co.*, 332 U.S. 625 (1948). Although the facts of the two cases are different, their holdings are fully compatible. And no circuit court decision supports ICRR's view that *Callen* allows FELA employers to obtain comprehensive relief from all potential liability through a "laundry list" release executed in the course of settling one specific injury claim.

STATEMENT OF THE CASE

In 1998, while working for ICRR, Milton McDaniel suffered a severe back injury due to a defective hand brake. Mr. McDaniel sent a demand to ICRR, and he and ICRR subsequently settled his claim.

As part of the settlement, Mr. McDaniel signed an agreement that included broad language releasing ICRR from liability for a variety of matters unrelated to his back injury, including injury from exposure to asbestos. At the time the back-injury settlement was signed, Mr. McDaniel was unaware that he had any other work-related injury. He had attended an asbestos screening the month before signing the release, but the x-ray was not read until several months afterward. Mr. McDaniel testified in deposition in this case that he was told that the release would have no bearing on asbestos claims that

might later accrue. He was not represented by counsel with respect to his back-injury claim and settlement.

Mr. McDaniel later learned that he had suffered an asbestos-related injury. He then submitted a claim for compensation pursuant to a settlement of asbestos claims in a case entitled *Allen v. ICRR*. ICRR disputed his claim, arguing that the release in the back-injury settlement precluded his recovery for asbestos injury. The trial court disagreed with ICRR, granted Mr. McDaniel's motion to enforce the *Allen* settlement, and ordered ICRR to pay Mr. McDaniel the amount previously agreed to in *Allen*.

ICRR appealed, raising several issues involving several claimants. With respect to the only issue presented in ICRR's petition for certiorari, the state supreme court considered whether the release in the back-injury settlement agreement precluded a subsequent claim based on asbestos-related injury or whether, under FELA section 5, the release was invalid as to Mr. McDaniel's asbestos injury. Section 5 states, in relevant part: "Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from liability created by this chapter, shall to that extent be void . . . ." 45 U.S.C. § 55.

To analyze this question, the court considered the language and circumstances of the release, the decision in *Callen*, and two federal court of appeals decisions that bear on the issue. *See Wicker v. Consolidated Rail Corp.*, 142 F.3d 690 (3d Cir. 1998); *Babbitt v. Norfolk & Western Ry. Co.*, 104 F.3d 89 (6th Cir. 1997). The court held that the release in the back-injury settlement did not release the asbestos claim under the holdings of any of the three cases.

REASONS FOR DENYING THE WRIT

I. NO CONFLICT IN THE CIRCUITS AFFECTS THE OUTCOME OF THIS CASE.

ICRR argues that three circuit courts have "splintered" in three ways. However, the outcome of this case would be the same under the law of each of those circuits, as the court below expressly found. Moreover, the cases ICRR cites are largely in agreement. And they all support the proposition that a broad general release, such as the release at issue in this case, is inadequate to bar unknown claims unrelated to the specific claim addressed in a settlement.

A. The Circuit Court Tests.

ICRR bases its argument that the lower courts are in conflict on three cases: *Babbitt*, *Wicker*, and *Sea-Land Service, Inc. v. Sellan*, 231 F.3d 848 (11th Cir. 2000).

In *Babbitt*, several retired former employees brought FELA claims for hearing loss. The company argued that the claims had been released through a broad general release incorporated into a retirement agreement that the company had offered to the employees. In discussing the validity of the release, the court recognized that a release of FELA claims can have the same effect as a release of other claims, "in that it may constitute a settlement or compromise, rather than an attempt to escape liability." 104 F.3d at 92 (citing *Callen*, 332 U.S. 625). However, where the release is not a compromise of a claim of liability, but an "attempt to extinguish potential future claims the employee might have arising from injuries known or unknown by him," section 5 bars the release. *Id.* at 93; *see also Philadelphia, Balt., & Wash. R.R. Co. v. Schubert*, 224 U.S. 603, 612-13 (1912) (agreement conditioning acceptance of benefits on release of claims invalid under FELA). The court

thus remanded the case to the district court for a determination whether the release was executed as part of a settlement of injury claims. *Id.*

In *Wicker*, the Third Circuit was presented with an entirely different set of facts. Rather than a release presented as a "take-it-or-leave-it option offered to all employees," 142 F.3d at 699 (describing *Babbitt*), *Wicker* concerned broad releases in five individual agreements settling particular back-injury claims and asbestos claims. In each case, the individual later brought claims related to injury caused by on-the-job exposure to toxic chemicals. In this context, the court held that a release does not violate section 5 if it is executed for valid consideration as part of a settlement and the scope of the release is limited to those risks that are known to the parties. The court emphasized the fact-bound nature of the inquiry, noting that the release itself provides strong but not conclusive evidence of the parties' intent. For example, "when 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.* at 701. In contrast, where "a release chronicles the scope and duration of the known risks, it would supply strong evidence in support of the release defense." *Id.*

Finally, *Sea-Land* concerned a release contained in a 1995 agreement negotiated to settle a back-injury claim by an employee whose physician said that the injury would prevent the employee from returning to work. The agreement provided that, if the employee ever in the future worked aboard a ship owned by Sea-Land, he would do so at his own risk, and the company would bear no responsibility for any injuries he suffered aboard the ship. Two years later, the employee nonetheless was cleared for work by a union doctor and was dispatched from the union hiring hall to work aboard a Sea-Land vessel. Three weeks later, the employee re-injured his

back at work. In response to the employee's claim for compensation, Sea-Land argued that he had released any claims in the 1995 agreement. The court agreed. Citing both *Babbitt* and *Wicker*, the court held that the release was valid to bar a subsequent back-injury claim. 231 F.3d at 852. "The Agreement was intended to prevent the very risk at issue here." *Id.*

Although ICRR argues that *Sea-Land* states a different test than *Wicker*, the cases are actually in complete agreement. In fact, when ICRR (at 16) purports to quote *Sea-Land*'s holding, it is actually quoting *Sea-Land*'s own quotation of *Wicker*'s holding. *Sea-Land*, 231 F.3d at 852 ("Contrary to Sellan's argument, enforcement of the Agreement is consistent with the *Wicker* holding that . . . ."). And while ICRR describes the *Wicker* test as more "fact-intensive," *Sea-Land* expressly agrees that, "[a]s noted in *Wicker*, cases involving the validity of releases under FELA are fact-driven." *Id.* (citation omitted). Accordingly, the court's analysis in *Sea-Land* is based heavily on consideration of the facts surrounding the 1995 agreement and the subsequent claim.

B. The Decision Below Is Consistent With Both *Babbitt* And *Wicker*, As The Opinion Expressly Explains.

The circuit court cases present no conflict affecting this case. Rather, the outcome here is the same under both *Babbitt* and *Wicker*, as the court below held. *See* Pet. App. 16a. Because the circuit court disagreement described by ICRR is of no consequence here, this case is a poor vehicle for evaluating the scope of FELA section 5.

"[T]he only known injury at the time that McDaniel signed the release was the severe back injury he suffered as a result of a defective hand brake." Pet. App. 13a. Therefore, the

court below held that, under *Babbitt*, which holds that a release of unknown FELA claims is invalid, the release signed by Mr. McDaniel in connection with settlement of his back-injury claim did not bar him from participating in the asbestos settlement. *Id.*[1]

In addition, the release signed by Mr. McDaniel "covered a vast and extensive spectrum of potential injuries which could potentially arise in McDaniel's future." *Id.* 15a. (Notably, the release at issue here is strikingly similar to the release signed by Mr. Wicker. *Compare id.* 43a-44a, *with Wicker*, 142 F.3d at 693.) The court below found that the release "is clearly an overbroad list of generic hazards, rather than the specific risks of asbestos McDaniel faced." Pet App. 15a. Accordingly, the court held that, under *Wicker*, the release "would not pass muster under § 5 of FELA." *Id.*

Highlighting that this case does not turn on any difference between *Babbitt* and *Wicker*, the court below noted that the release here was denominated a "general release," which "further evinces that the release at issue was in fact the dreaded 'laundry list' general release, disfavored by both *Babbitt* and *Wicker*." *Id.*[2]

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[1]ICRR (at 14) seems to disagree with the court's finding, *see* Pet. App. 13a, that there was no evidence that Mr. McDaniel was aware that he had a potential asbestos-related injury. ICRR has not sought review of that factual finding, which in any event would not be an appropriate subject for this Court's review. *See* S. Ct. R. 10.

[2]ICRR (at 20) characterizes the releases allowed in *Sea-Land* and *Callen*, discussed *infra* Part II, as more general than

(continued...)

Because the outcome here is the same under both *Babbitt* and *Wicker*, the Court's review is unwarranted in this case.

C. The Disagreement Between The Sixth And Third Circuits Affects Few Cases.

ICRR also overstates the differences among the circuits. As discussed above, *Sea-Land* distinguishes *Babbitt* and expressly relies on the holding in *Wicker*. Its holding is consistent with both cases and establishes no new approach. Thus, to the extent that there is any disagreement among the circuits, it is limited to the Sixth and the Third.

Nonetheless, the Third and the Sixth Circuit decisions agree in many ways. *Babbitt* and *Wicker* agree that a valid release of FELA claims must be negotiated as part of a settlement of an existing claim. *Babbitt*, 104 F.3d at 93; *Wicker*, 142 F.3d at 690, 700. Both agree that the release can

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[2](...continued)
the release in this case. As to *Callen*, this characterization is plainly wrong. *See* 332 U.S. at 626-27 (release included "all claims or 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' *at the time and place involved in the suit*. It also released claims for loss of time and expense.") (quoting release) (emphasis added). And the injury at issue in *Callen* was the specific injury in dispute when the parties settled. *Id.* at 627. Likewise, in *Sea-Land*, although the release purported to include additional claims, the court found that the claim at issue in the case was the precise claim that the settlement agreement was intended to resolve. 231 F.3d at 852 ("The Agreement was intended to prevent the very risk at issue here.").

extend to known claims. 104 F.3d at 93; 142 F.3d at 700. Both agree that the release cannot extend to unknown risks. 104 F.3d at 93; 142 F.3d at 700-01. And both disfavor broad releases cataloguing a laundry list of potential but unknown claims. 104 F.3d at 93; 142 F.3d at 701.

The difference between the cases is that *Babbitt* would not allow releases of *unknown claims*, whereas *Wicker* would allow releases of unknown claims *if* they are based on known risks and the parties clearly intended to release the unknown claims. *See Wicker*, 142 F.3d at 700-01 (making this distinction). The release in *Babbitt* apparently was not executed as part of the settlement of any claim but was instead a general release offered to numerous retiring employees. As a result, one cannot say how the Sixth Circuit would rule in a case where an agreement settling a claim for a specific injury also released claims for known risks and where, as outlined in *Wicker*, the release was not a "laundry list" but manifested both parties' intent to release claims related to the specified risks. In fact, such releases appear to be unusual, or at least unlitigated, because ICRR has cited no case in which the release fits this description. *See* Pet. 15-17. Rather, each of the cited cases would be resolved similarly under the holding of either the Sixth or the Third Circuit.[3] Indeed, the validity of the releases

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[3]All but one of the five state intermediate court cases cited by ICRR (at 15-16, 17) involved a broad general release, disfavored by both the Sixth and Third Circuits. The case that did not involve a "laundry list" release concerned a release specifically limited to the accident that was subject of the settlement. *See Stephens v. Alabama State Docks Terminal Ry.*, 723 So. 2d 83, 86 (Ala. Civ. App. 1998).

at issue in *Babbitt* and *Wicker* themselves would be resolved the same in either Circuit.

Moreover, this Court denied the petition for certiorari in *Wicker* and in a subsequent case from the court of appeals of Ohio that raised the same issue presented here. *See Consolidated Rail Corp. v. Wicker*, 525 U.S. 1012 (1998); *Norfolk & Western Ry. Co. v. Anderson*, 543 U.S. 926 (2004). The only circuit court since *Wicker* to have addressed the question presented here is the Eleventh Circuit in *Sea-Land*, which, as discussed above, is consistent with both the Sixth Circuit's and the Third Circuit's approach. *See supra* p. 5. Accordingly, this case is no more worthy of review than were *Wicker* and *Anderson*. Just as the Court denied those petitions, so too should it deny this one.

II. THE DECISION BELOW IS CONSISTENT WITH *CALLEN*.

ICRR also contends that the decision below is inconsistent with this Court's decision in *Callen v. Pennsylvania Railroad Co.*, 322 U.S. 625 (1948). As the court below explained, ICRR is incorrect.

In *Callen*, the plaintiff suffered a back injury during the course of his work and brought a FELA action against the employer railroad. The railroad argued that the employee had previously settled the back-injury claim and released all claims "'for or by personal injuries sustained by [him]' at the time and place involved in the suit." *Id.* at 626-27 (quoting release). The plaintiff argued that he understood the release when he signed the settlement agreement and "intended to waive any further claim," *id.* at 627, but that, at that time, he had not realized the extent of his back injury. He also argued that the release violated FELA section 5.

This Court disagreed that the release violated section 5. The Court briefly explained that section 5 bars a release that attempts to exempt the employer from liability, but does not bar a release used to compromise a claimed liability. *Id.* at 630-31. Therefore, "[w]here controversies exist as to whether there is liability, and if so for how much, . . . parties may settle their claims without litigation." *Id.* at 631. Releases in such cases "stand on the same basis as the releases of others." *Id.* at 630. *See also Boyd v. Grand Trunk W.R. Co.*, 338 U.S. 263, 266 (1949) (*Callen* "distinguished a full compromise enabling the parties to settle their dispute without litigation, which we held did not contravene the Act, from a device which obstructs the right of the Liability Act plaintiff to secure the maximum recovery if he should elect judicial trial of his cause.").

Thus, here, the release signed by Mr. McDaniel is valid as to his back-injury claim. That claim was in actual controversy at the time and was the only FELA claim that Mr. McDaniel had raised. As in *Callen*, if Mr. McDaniel later learns that his back injury is more serious than he had realized, the release will preclude him from filing a new back-injury claim. However, in contrast to the release at issue in *Callen*, "the broad verbiage of the release [at issue here] creates an anticipatory laundry list of possible injuries effectively throwing in everything but the kitchen sink." Pet. App. 16a. *Callen* did not address this situation, but its holding is consistent with the holding below. *Callen* recognizes the validity of a release to settle a claim in "controversy," but no asbestos claim was in controversy at the time of the back-injury settlement.

ICRR's assertion (at 12) that the decision below "directly conflicts" with *Callen* is simply incorrect. Notably, no circuit court decision supports ICRR's reading of *Callen*.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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[4]ICRR has filed a petition for certiorari in *ICRR v. Acuff*, No. 06-971 (docketed Jan. 16, 2007), in which it presents the same questions presented in this case. Although in the *Acuff* petition ICRR urges the Court to consider the two petitions together, ICRR's largely *verbatim* repetition in *Acuff* of the same reasons for granting the writ as are argued in this case adds nothing to the cert-worthiness of this case and offers no useful reason to delay consideration of this petition.