No. 16-1074

IN THE
Supreme Court of the United States

GIOVANNA SETTIMI CARAFFA, as personal representative of the Estate of BENEDETTO EMANUELLE CARAFFA,

Petitioner,

v.

CARNIVAL CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal for the Third District, State of Florida

BRIEF IN OPPOSITION

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QUESTION PRESENTED

A Florida trial court held that Petitioner failed to make the necessary showing of causation to support her personal-injury claim under the Jones Act's "featherweight" evidentiary burden. Should this Court grant review of an intermediate appellate court's one-paragraph affirmance of that determination?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Carnival Corporation states that it does not have a parent corporation, and no publicly held company owns ten percent or more of its stock.

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INTRODUCTION

The petition presents a hypothetical question that has not been raised by the decisions below.

Petitioner seeks review from this Court "in order to clarify the applicable causation standard in a Jones Act negligence case involving alleged asbestos exposure." Pet. 7. But the trial court actually applied the standard Petitioner advocates—the Jones Act's more relaxed or "featherweight" burden, Pet. App. 9a—and held that even applying that burden, Petitioner failed to make the necessary evidentiary showing.

Florida's intermediate appellate court affirmed that holding in just two sentences.

That is the sole decision underlying this petition for certiorari. Although one might be forgiven for thinking otherwise after reading the petition, this case involves only the Florida intermediate appellate court's unremarkable decision to affirm the trial court's evidentiary determination that Petitioner did not satisfy the causation element even under the Jones Act's more lenient burden.

The petition should be denied.

STATEMENT

A. Background

The Jones Act allows the personal representative of a "seaman" who has died from an injury incurred in the course of employment "to bring a civil action at law, with the right of trial by jury, against the employer." 46 U.S.C. § 30104.[1] Applying the Court's precedents interpreting the Federal Employers' Liability Act, courts have held that a plaintiff bringing a Jones Act claim must prove the common-law elements of negligence, though she bears a "relaxed" burden of proving the causation element—what Petitioner refers to as the "featherweight" standard.

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[1] The Jones Act incorporates the "Laws of the United States regulating recovery for personal injury to, or death of, a railway employee," found in the Federal Employers' Liability Act (FELA). 46 U.S.C. § 30104. For this reason, the Court has "f[ound] no difficulty in applying the[] principles, developed under the FELA, to [an] action under the Jones Act, for the latter Act expressly provides for seamen the cause of action—and consequently the entire judicially developed doctrine of liability—granted to railroad workers by the FELA." *Kernan* v. *Am. Dredging Co.*, 355 U.S. 426, 439 (1958).

Consol. Rail Corp. v. *Gottshall*, 512 U.S. 532, 543 (1994); *see, e.g.*, Pet. i-ii, 4, 8-10. But even the "relaxed" Jones Act causation standard still requires an evidentiary showing of more than mere speculation that a causal relationship might or could exist. *See, e.g.*, *Carlton* v. *M/G Transp. Servs., Inc.*, 698 F.2d 846, 848 (6th Cir. 1983) (per curiam) (affirming directed verdict in Jones Act case where plaintiff presented no "evidence, as opposed to pure speculation, to meet the requirement of causation"); *Caldwell* v. *Manhattan Tankers Corp.*, 618 F.2d 361, 363 (5th Cir. 1980) (affirming directed verdict in Jones Act case because plaintiff failed to "show a causal connection between his injury and some omission or commission by the shipowner").

In contrast, a "higher standard of causation" applies to a cause of action in a products-liability case under maritime law. *Miller* v. *Am. President Lines, Ltd.*, 989 F.2d 1450, 1463 (6th Cir. 1993); *see Stark* v. *Armstrong World Indus., Inc.*, 21 F. App'x 371, 375 (6th Cir. 2001). Under that standard, the plaintiff is required to prove that a "product was a substantial factor in causing the injury * * * suffered." *Lindstrom* v. *A-C Prod. Liab. Tr.*, 424 F.3d 488, 492 (6th Cir. 2005).

B. Proceedings Below

In 2006, Petitioner sued Carnival Corporation, alleging that Benedetto Caraffa, who is now deceased, was injured as a result of asbestos exposure while working on Carnival's ships. Pet. 6.

Carnival responded that Petitioner failed to present any evidence that Caraffa was *ever* exposed to asbestos in a form capable of causing him injury while working on a Carnival ship. *Id.* What the

evidence did show, instead, was that Caraffa had worked on other ships for over twenty-six years before he was hired by Carnival, that Caraffa smoked a pack of cigarettes a day, and that his official cause of death was a type of cancer almost always caused by smoking. Carnival Corp.'s Answer Br. on Main Appeal at 2-3, *Caraffa* v. *Carnival Corp.*, No. 3D15-356 (Fla. Dist. Ct. App. Apr. 11, 2016).

The case went to a jury, which returned a verdict for Petitioner. But the trial court granted Carnival's renewed motion for a directed verdict after the close of trial. Pet. App. 9a. The court held that Petitioner had failed to establish evidence "sufficient to demonstrate that on Carnival Cruise Line ships, the decedent was exposed at all to friable asbestos" that could have caused an asbestos-related illness. *Id*. The court explained that "[t]here was evidence that he could have been" or "might have been" exposed to asbestos—but that "such evidence is not sufficient" "*even under a Jones Act case*." *Id.* (emphasis added).

Because Petitioner had failed to put forward any non-speculative evidence of causation, the court set aside the jury's verdict and directed a verdict in Carnival's favor. *Id.*

The Florida Third District Court of Appeal affirmed the trial court's decision in two sentences after "[f]inding no merit" in Petitioner's appeal. *Id.* at 7a. Petitioner's motion for rehearing en banc was denied. *Id.* at 1a. She did not seek the Florida Supreme Court's review. Instead, this petition followed.

ARGUMENT

THE PETITION PRESENTS A QUESTION THAT IS NOT RAISED BY THE DECISIONS BELOW.

The petition strives to portray the trial court as having applied the "substantial factor" rather than the "featherweight" burden in violation of this Court's precedents. *See* Pet. i, 4, 6-8, 17. According to Petitioner, the trial court "improperly" applied a "heightened products liability causation standard" to Petitioner's claim. Pet. 17. That is wrong. The trial court concluded that "even under a Jones Act case," the "evidence [wa]s not sufficient" to demonstrate that the decedent was exposed at all to asbestos that could have caused an asbestos-related illness on a Carnival ship. Pet. App. 9a.

The only question the appellate court answered, in turn, was whether the trial court correctly found that Petitioner had failed to show a sufficient connection between Caraffa's injury and his purported exposure, even under the featherweight standard. The Florida Third District Court of Appeal affirmed the trial court's holding in a two-sentence order, finding "no merit" to Petitioner's arguments. *Id.* at 7a.

Now Petitioner seeks this Court's review. But the only issue that was actually pressed and passed upon below is an unremarkable one: whether the appellate court correctly affirmed the trial court's holding that Petitioner failed to establish causation even under the Jones Act's featherweight burden. That is a simple sufficiency-of-the-evidence ruling, and it is decidedly not the stuff of certiorari review—as even Petitioner apparently recognizes. *See* Sup. Ct. R. 10. The question the petition instead *purports* to pre-

sent—whether the featherweight or the substantial factor causation test should apply to a claim such as Petitioner's—is a purely "hypothetical" one, unfit for the Court's review. *Ticor Title Ins. Co.* v. *Brown*, 511 U.S. 117, 118 (1994) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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