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## COURT BARS TORT ACTIONS AGAINST RAILROAD LOCOMOTIVE MANUFACTURERS

*(Kurns v. Railroad Friction Products Corp., No. 10-879)*

The U.S. Supreme Court today upheld an 85-year-old precedent that protects railroad locomotive manufacturers from product liability suits. The Court ruled that Congress intended to “occupy the field” on the issue of locomotive safety, and that tort suits under state law against locomotive manufacturers are therefore preempted.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in *Kurns v. Railroad Friction Products Corp.*, urging affirmance. WLF noted that the decision does not leave injured railroad workers without recourse: the Federal Employer Liability Act (FELA) permits them to seek compensation by suing their employer.

“The Supreme Court decided this preemption issue in 1926 in its *Napier* decision. Congress has had numerous opportunities to modify the preemption rule over the last 85 years, but it has consistently declined to do so,” said WLF Chief Counsel Richard Samp in response to the Court’s decision. “Under those circumstances, the principle of *stare decisis* requires that the Court abide by its earlier decision, even if the Justices might have decided the question differently had they been writing on a clean slate. If the law in this area is to be changed, the change must come from Congress – not the courts,” Samp said.

The case involves the tort claims of George Corson, who was employed from 1947 to 1974 by the Chicago, Milwaukee, St. Paul & Pacific Railroad (the “Soo Line”). He spent much of his time repairing locomotives. Following his retirement, he developed malignant mesothelioma, a disease associated with exposure to asbestos. He alleged that he contracted the disease as a result of his locomotive repair work. He filed suit against the Soo Line under FELA. He also sued several of the manufacturers of locomotives purchased by the Soo Line, claiming both a design defect in the locomotive boilers (which contained asbestos) and failure to provide adequate warnings regarding the dangers of asbestos.

The trial court dismissed the claims against RFC and Viad (the two locomotive manufacturers) on the basis of the Supreme Court’s *Napier* decision, and the U.S.

Court of Appeals for the Third Circuit affirmed. The Supreme Court agreed to review the case because the Third Circuit's decision conflicted with the decision of the Pennsylvania Supreme Court, which held that *Napier* was no longer good law.

In affirming the Third Circuit, the Supreme Court agreed with WLF that *stare decisis* required that the Court abide by the *Napier* decision in light of substantial evidence that Congress repeatedly passed up opportunities to overturn *Napier*. The Court also noted that there was substantial evidence that Congress in the early 20th century was dissatisfied with the manner in which state courts were handling tort claims by injured railroad workers – and that it adopted FELA in order to ensure that all such claims would be handled in federal court.

WLF's also argued that permitting all 50 States to establish their own rules regarding locomotive safety could lead to chaos in locomotive design. WLF noted that locomotives regularly travel from State to State, and thus that manufacturers might be required to comply with 50 different sets of design rules if they were subject to common law suits alleging defective design and failure to provide adequate safety warnings. WLF also noted that the federal government, through the Locomotive Inspection Act and the Federal Railroad Safety Act, imposes stringent safety standards on all locomotives. Moreover, as the Supreme Court observed, the availability of tort remedies under FELA means that railroad workers such as Mr. Corson are not left without a remedy.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared in numerous federal and state courts in cases addressing tort reform issues.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).