

On March 8, 2015, locomotive 8516 (UP 8516) arrived at Union Pacific Railroad's Global I yard in Chicago after travelling from North Platte, Nebraska. UP 8516 and the train were detached, and the locomotive was parked on a track for eventual routine maintenance. Also on March 8, a second locomotive, 7269 (UP 7269), was parked in Union Pacific's yard.

The next day, March 9, 2015, neither UP 8516 nor UP 7269 underwent an inspection; consequently, neither provided rail service that day. On the night of March 9, 2015, UP 7269 moved to the yard's maintenance pit area. Either before or after the move, UP 7269 was coupled with a second engine to form a "two pack."

At the Global I yard, the maintenance pit is located below a line of track specifically designated for maintenance work. The pit is five feet below-grade and permits maintenance machinists to work beneath the elevated locomotives. Photographs in the record depict the maintenance pit with engines located on the track above.

On March 10, 2015, Kenneth Tripp was working as a Union Pacific conductor at the Global I yard. Tripp typically began his shift by moving locomotives in and out of the maintenance pit area so that they would be ready for the railroad machinists, who begin work at 7:00 a.m. At approximately 2:30 a.m., and as directed by Union Pacific, Tripp served as the conductor and Jeff Mapp served as the engineer in moving UP 8516 onto the yard's maintenance pit track. UP 8516 had already been coupled with two other engines to form a "three pack." Tripp had been instructed to couple UP 8516 – the three pack's lead engine – to UP 7269 – the two pack's lead engine – and then push all five locomotives to the end of the maintenance pit area. Once there, UP 8516 was to receive routine maintenance while UP 7269 was to be lubricated.

A locomotive may receive maintenance only after a turnover procedure is completed. This procedure begins with the transportation crew getting off the locomotive. At that point, the maintenance crew secures the derail, locks the switch at the end of the track, and raises the blue flag, indicating that the engine is "in service."

Locomotives are linked together through coupling devices located at the end of the locomotive. A coupling device consists of a knuckle joined at the end of a drawbar that is attached to a

housing mechanism on the railcar. The knuckle is a clamp that interlocks with a knuckle on another railcar to join the two together. Railcars cannot be joined if both knuckles are closed; consequently, railroad workers must open at least one knuckle before coupling railcars together.

Tripp and Mapp succeeded in coupling UP 8516 and UP 7269 over the maintenance pit. Tripp then left the engine to connect the air hoses between the two engines (so that their brakes could be set and released), but the gladhand failed to hold the hoses together. Tripp and Mapp then decided to lift both couplers' pin lifts and decouple the engines. This procedure was necessary so that Mapp could back up the UP 7269 two pack more than 100 feet – a so-called "stretch." It was hoped that with the extra distance between the engines, Tripp could determine why the hoses would not stay connected.

After Mapp backed up UP 7269, both he and Tripp returned to UP 8516 to recouple the locomotives. As the UP 8516 three pack crawled toward the UP 7269 two pack, Tripp stood on the front, left corner of locomotive UP 8516 calling out distances over the radio to Mapp, who was controlling the engine in the last of the three pack's locomotives. As the engines approached, Tripp noticed that both knuckles on the lead locomotives had closed, and he knew that at least one knuckle had to be open for the engines to couple. To open the knuckle on UP 8516, Tripp took a step down on the engine's ladder where he was standing so that he could pull up the pin lift with both hands. At that point, Tripp's foot came off the ladder step. Tripp fell off the ladder and landed approximately eight feet down into the maintenance pit. Tripp was injured as a result of the fall.

Tripp eventually left the maintenance pit after his fall. At that point, the machinists implemented the turnover procedure and serviced UP 8516 and UP 7296. The record indicates that there were no defects in the coupler on UP 8516 either before or after Tripp's injury, and he acknowledged the same.

On February 19, 2016, Tripp filed a three-count complaint against Union Pacific. He amended that pleading over time, resulting in a third amended complaint filed in November 2018. Count one raises a claim under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60, and alleges that Union Pacific breached its duty of ordinary care by failing to furnish Tripp with a reasonably safe place to work. Tripp claims that Union Pacific failed to: abide by its four-foot fall-protection rule; provide adequate lighting; develop adequate work procedures; prevent an engineer from moving an engine without a signal; provide for radio communications that did not overlap and become confusing; provide adequate fall protection; have a rule relating to working over a maintenance pit; and have adequate rules and pre-plans to prevent all of the above. Count two is brought pursuant to the Safety Appliance Act (SAA), 49 U.S.C. § 20302. In this count, Tripp alleges that Union Pacific breached its duty to ensure that all railcars had couplers that, after being opened, would remain open and would automatically close on impact with another coupler. Tripp claimed that Union Pacific breached its duty by allowing an engine to remain in use, although Union Pacific knew or should have known that the coupler did not function properly or was defective. Count three is brought pursuant to the Locomotive Inspection Act (LIA), 49 U.S.C. § 20701, *et seq.* Tripp alleges that this statute imposed on Union Pacific an absolute duty to, among other things, maintain its engines in safe and proper working condition and comply with Federal Railroad Administration regulations. He claims that Union Pacific breached its duties because the defective gladhand caused Tripp's injuries.

The parties filed cross motions for summary judgment. *See* 735 ILCS 5/2-1005. Union Pacific seeks summary judgment on counts two and three pursuant to 5/2-1005(b), arguing that UP 8516 on which Tripp was riding was not in use at the time of his injury and, even if it had been, Union Pacific did not violate the SSA or the LIA since neither the coupler nor the gladhand were defective. In contrast, Tripp seeks a summary determination pursuant to 5/2-1005(d) that, as a matter of law, UP 8516 – the engine on which he was riding – was in use.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005. Summary judgment is not meant to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Ed. of the City of Chicago*, 202 Ill.2d 414, 421, 432 (2002).

To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen’l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

While Illinois’ procedural law guides this court as to the applicable standards for summary judgment, cases raising claims under FELA and its related statutes are governed by federal substantive law. *See Schultz v. Northeast Ill. Reg’l Commuter R.R.*, 201 Ill. 2d 260, 274 (2002) (citing *St. Louis S.W. Ry. v. Dickerson*, 470 U.S. 409, 411 (1985)). To present a *prima facie* case under FELA, a plaintiff must prove that: (1) the injury occurred within the scope of employment; (2) the employment furthered the employer’s interstate transportation business; (3) the employer was negligent; and (4) the employer’s negligence

played some part in causing the injury for which the employee seeks compensation. See 45 U.S.C. § 51; *Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135, 165-66 (2006). FELA relaxes a plaintiff's burden of proof regarding causation, see *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 500, 506 (1957), such that a plaintiff need only show that the injury resulted in whole or in part from the employer's negligence. See 45 U.S.C. § 51; *Gallick v. Baltimore & Ohio R.R.*, 372 U.S. 108, 116 (1963). The burden of proof as to the remaining elements is, however, not lessened. See *Van Gorder v. Grand Trunk W. R.R.*, 509 F.3d 265, 269 (6th Cir. 2007). In other words, proximate cause remains an essential element in FELA suits. See *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 703-04 (2011); *Norfolk Southern R. Co. v. Sorrell*, 549 U.S. 158, 172-77 (2007) (J. Souter concurring).

Neither the SAA nor the LIA establishes an independent statutory right to sue. See *Coffey v. Northeast Ill. Reg'l Commuter R.R.*, 479 F.3d 472, 477 (7th Cir. 2007); *Lisek v. Norfolk & W. Ry.*, 30 F.3d 823, 825 (7th Cir. 1994). Yet each statute sets safety standards that, if violated, constitute *per se* violations of FELA and constitute a sufficient legal basis for a lawsuit. See *Urie v. Thompson*, 337 U.S. 163, 188-89 & n. 30 (1949). To recover for a violation of the SAA or the LIA, a plaintiff need only show that: (1) the employer violated the statute; and (2) the employee suffered injuries "resulting in whole or in part" from the defective equipment. See *Coray v. Southern Pac. Co.*, 335 U.S. 520, 524 (1949); *Coffey v. Northeast Ill. Reg'l Commuter R.R.*, 479 F.3d 472, 477 (7th Cir. 2007). In other words, the employee must still prove a causal relationship between the statutory violation and the injury, but is permitted to benefit from FELA's "in whole or in part" language. See *Crane v. Cedar Rapids & Iowa City Ry.*, 395 U.S. 164, 166 (1969).

1. The "In Use" Requirement

Crucial to any decision involving interpretation of the SAA and the LIA is acknowledgement that their requirements apply only to railcars that are actually "in use." See *Brady v. Terminal*

R.R. Ass'n, 303 U.S. 10, 13 (1938) & *Wright v. Ark. & Mo. R.R.*, 574 F.3d 612, 620 (8th Cir. 2009).¹ Courts have written that the in-use limitation gives railroads “an opportunity to remedy hazardous conditions before strict liability attaches to claims made by injured workers.” See *Wright*, 574 F.3d at 620. From the employee’s point of view, it is equally plain that the in-use limitation gives railroads a loophole to escape strict liability altogether for injured machinists as opposed to injured transportation crewmembers. Regardless, the focus of the parties’ dispute and this court’s analysis centers on whether any railcars were in use at the time of Tripp’s injury.

In *Balough v. Northeast Ill. Reg’l Commuter R.R.*, the Illinois Appellate Court summarized a substantial number of federal appellate court opinions in SAA and LIA cases. See 409 Ill. App. 3d 750, 761-64 (1st Dist. 2011). The *Balough* court concluded that, except for the Fifth Circuit’s bright-line test, all other federal appellate courts utilized a multi-factor approach to determine whether a particular railcar in a particular case was in use within the meaning of the statutes. *Id.* at 764. According to *Balough*, the factors include: “where the train was located at the time of the accident; the activity of the injured party; whether it is on a track in the rail yard prepared for departure or in the roundhouse for repair; whether it is being moved to a repair location or to a track for departure; and whether servicing and maintenance work have already been performed.” *Id.*

Given these factors, the record presented in this case indicates that: (1) UP 8516 and UP 7269 were on the track over the maintenance pit at the time of Tripp’s injury; (2) Tripp was attempting to open the knuckle on UP 8516 when he fell off the ladder; (3) both UP 8516 and UP 7269 were in Union Pacific’s maintenance yard for routine maintenance; (4) UP 8516 was being

¹ Since the “in use” language in the LIA (previously the Boiler Inspection Act) is identical to the “in use” language in the SAA, courts refer to each statutes’ case law interchangeably. See *Phillips v. CSX Transp., Inc.*, 190 F.3d 285, 288 & n.2 (4th Cir. 1999).

moved to the track above the maintenance pit while UP 7269 was already at that location; and (5) machinists had not begun their work on either locomotive. The inexorable conclusion is that UP 7269 was *not* in use but that UP 8516 *was* in use at the time of Tripp's injury. Although it is doubtful that UP 8516 was in interstate commerce at the time of the injury, Union Pacific was plainly using the engine to fulfill a purpose as envisioned by the statutes. Indeed, the record indicates that Union Pacific had ordered Tripp to couple the UP 8516 three pack to the UP 7269 two pack and then push all five locomotives to the end of the maintenance pit track. There is no alternative explanation as to how Union Pacific intended to move the locomotives to that location other than by using the force supplied by the UP 8516 three pack.

This court's conclusion is reinforced by the record that makes plain that neither UP 8516 nor UP 7269 was in service at the time of Tripp's injury. UP 8516 had not yet coupled with UP 7269 at the time Tripp fell into the maintenance pit. Tripp and Mapp were still on their respective locomotives and the machinists had not yet secured the derail, locked the switch at the end of the track, or raised the blue flags. Further, it is uncontested that the machinists conducted their work only after Tripp had left the maintenance pit following his injury.

Union Pacific relies heavily on *Wilson v. Union Pac. R.R.*, in support of its argument that the locomotives were not in use at the time of Tripp's injury. See 509 S.W. 3d 862 (Mo. Ct. App. 2017). *Wilson* is in many respects factually similar to this one. In *Wilson*, the injured worker, Johnson,² worked as a brakeman on an engine moving inside a Union Pacific train yard. See *id.* at 867. Johnson's engine entered a service track on which two other locomotives – UP 9484 and UPY 106 – sat stationary and unattended. See *id.* The coupler on Johnson's engine hit the coupler on UP 9484, but they did not couple because, according to Johnson, the two were misaligned. See *id.* After that failure,

² The plaintiff Wilson was an appointed Chapter 7 bankruptcy trustee.

Johnson jumped down from the engine and ran towards UP 9484 to set its handbrake since the locomotive had started to roll as a result of the force exerted from the non-coupling. *See id.* While running, Johnson fell and injured his neck and back. *See id.* Based on these facts, the Missouri appellate court upheld the lower court's grant of summary judgment to Union Pacific on Johnson's LIA count. *See id.* at 874. The court concluded that UP 9484 was not in use at the time of Johnson's injury and to allow his recovery would defeat the LIA's purpose. *See id.*

These facts do bear a strong similarity to those in this case, yet the decision in *Wilson* appears to have turned on other facts unique to that case. There, the locomotive foreman had instructed Johnson to move his two pack engine to one of four tracks at the south end of the yard, *see id.* at 867, but had not authorized him to couple his engine with UP 9484, a fact that Johnson admitted. *See id.* at 872. It was also undisputed that Johnson had violated work rules by failing to set the handbrake on UP 9484 or check the couplers' alignment. *See id.* Given those facts, the court found that "the activity of Johnson in attempting to couple with an engine sitting dead on the tracks in a service area, in violation of work rules, and without proper authorization weighs strongly in favor of finding the UP 9484 was not 'in use' at the time of the accident." *Id.* at 872. "If we allow Johnson's unauthorized coupling with this engine to bring an otherwise out-of-service engine into use and impose strict liability on the railroad, this would defeat the clear purpose of the LIA." *Id.* at 874.

Apart from the factual differences between *Wilson* and this case, the Missouri decision did not address, and did not need to address, the legal issues that are at play here. The *Wilson* court focused on Johnson's bootstrapping argument that UP 9484 was in use despite his unauthorized activities. The court did not, however, address the fact that Johnson was riding and working on a moving two pack engine. There could be two reasons for this omission. First, the court may have believed that an engine authorized solely to relocate to a maintenance track was not in use under the LIA. Second, the court may have determined that since

Johnson's injuries occurred on the ground after he left the moving engine, he was not injured by any defective equipment on the locomotive, an essential element of an LIA claim.

In contrast to *Wilson* is *Angell v. Chesapeake & Ohio Ry.*, 618 F.2d 260 (4th Cir. 1980). In *Angell*, an engine had been moved to a maintenance facility for the purpose of taking on sand and fuel and receiving a routine inspection. *See id.* at 261. The transport crew left the engine, and the mechanical crew put the engine in service after having secured the derail, closed the locks at the end of the track, and raised the blue flags. *See id.* After the maintenance crew completed its work, Angell got on the engine to move it to another location in preparation for pulling a train later in the day. *See id.* While uncoupling two engines, a blast of high-pressure air escaped from a defective air brake valve and damaged Angell's right ear. *See id.*

The court found that the facts led to the conclusion that the engine was in use for purposes of Angell's Boiler Inspection Act claim because "all servicing, maintenance and inspection work had already been performed and the engine was being moved to its place [with other engines]." *Id.* Critical to the court's analysis was that:

Congressional intent and the case law construing the statute clearly exclude those injuries directly resulting from the inspection, repair, or servicing of railroad equipment located at a maintenance facility. The present case involves an injury occurring *after* these excluded activities have been performed and during the uncoupling of a "readied" engine in preparation for moving it to a nearby track to pull a train a few hours later.

Id. at 262 (emphasis added). The court explicitly rejected the railroad's argument that an engine is not in use until the transportation crew is called for the train to which the engine is assigned. "The railway's view of this system would restrict the

application of the Act by excluding from its coverage those activities occurring between servicing and preparing the engine up until the time the engineer takes the controls.” *Id.* As the court reasoned:

such [an] interpretation contravenes the legislative purpose behind the Act and that activities such as in the instant case fall within its ambit. Although the engine may not actually be engaged in moving interstate commerce, the intent of the statute is to exclude from its coverage *only such functions as are necessary to detect and correct those defective conditions for which absolute liability will be imposed*. Clearly, the uncoupling of an engine after it has been made ready is not such an exception under the Act. The fact that Angell was helping to move the engine to another track at the direction of railway officials to later pull a train also indicates that the engine was not in need of further repair or servicing and, in reality, had been “okayed” by railway officials for service as contemplated by the Act.

Id. (emphasis added).

Angell is helpful because it delineates the in-use-in-service-in-use continuum. There, the engine was no longer in service because the maintenance crew had completed its work; consequently, the engine was in use because it was being prepared to drive a train. The facts in this case are at the other end of the time spectrum. Here, UP 8516 was not in service because: (1) Union Pacific had instructed Tripp and Mapp, as members of the transportation crew, to use UP 8516 to push other locomotives to the far end of the maintenance pit area; and (2) the maintenance crew had not started the turnover procedure. Those functions are plainly unrelated to inspecting, detecting, and correcting defective conditions within the meaning of the LIA as understood in *Angell*. In sum, locomotive 8516 was unquestionably in use at the time of Tripp’s injury.

Apart from the overarching “in use” issue, Union Pacific presents two additional arguments for this court’s consideration. First, the railroad claims that it did not violate the SAA because the couplers were not defective as a matter of fact and law and, therefore, count two must be dismissed. Second, Union Pacific argues that the allegedly malfunctioning air hose gladhand did not proximately cause Tripp’s injury and, therefore, count three is defeated as a matter of law. This court will address each argument in turn.

2. The Allegedly Defective Coupler

As to the SAA claim in count two, the United States Supreme Court has directly addressed the issue of whether a railroad employee may bring a claim for an injury arising from an unsuccessful coupling not resulting from a defective coupler. In *Norfolk & W. Ry. v. Hiles*, the court overturned an Illinois appellate court decision upholding the “longstanding authority permitting a plaintiff . . . to recover under the Safety Appliance Act for injuries sustained while attempting to align a misaligned drawbar.” 516 U.S. 400, 402-403 (1996), (quoting 268 Ill. App. 3d 561, 565 (5th Dist. 1994)). The court agreed with Hiles that a coupler’s failure to perform as required by the SAA is an actionable wrong, “but the absolute duty to which we have referred on numerous occasions is not breached as a matter of law when a drawbar becomes misaligned during the ordinary course of railroad operations.” *Id.* at 409. The court relied on past precedent finding that “if ‘the failure of these two cars to couple on impact was because the coupler on the Pennsylvania car had not been properly opened,’ the railroad had a good defense.” *Id.* at 409-10 (quoting *New York, C. & St. L. R. v. Affolder*, 175 F.2d 486, 488 (8th Cir. 1949), *rev’d on appeal*, 339 U.S. 96, 97 (1950)). The court recognized that, to accept Hiles’ argument “would require us to hold that a misaligned drawbar, by itself, is a violation of the SAA,” *id.* at 412, meaning, “that almost every railroad car in service for nearly a century has been in violation of the SAA.” *Id.* That result would be akin to someone complaining “that an

otherwise working electrical appliance failed to perform if [the owner] had neglected to plug in the power cord.” *Id.* at 410.

The uncontested facts presented here include Tripp’s deposition testimony that the locomotives’ couplers worked properly the first time and that they worked properly after his injury. He further acknowledged that Union Pacific’s inspection performed after his injury revealed no defects in the couplers. Tripp admitted that his job included making sure that at least one knuckle was open to permit engine coupling and that he recognized the two engines would be unable to couple the second time unless one of knuckles were opened.

Tripp’s correct assessment of the situation as the engines approached is what motivated his attempt to pull up the pin lift and open the knuckle on UP 5186. It is a fair reading of the facts that had Tripp believed the coupler was defective, he would not have attempted to lift the pin. Further, it is a fair reading that Tripp would have succeeded but for his foot slipping off the ladder and him falling into the maintenance pit. In sum, count two is unsubstantiated as a matter of fact and unsupported as a matter of law; consequently, it must be dismissed.

3. The Allegedly Defective Gladhand

Union Pacific’s argument as to Tripp’s LIA claim in count three focuses on a lack of proximate causation. It is no exaggeration to state that the role proximate cause plays in FELA and FELA-related litigation has not always been clear. It is, however, unassailable that, although FELA does not incorporate the concept of common law proximate causation, reasonable foreseeability of harm – legal cause, in Illinois – is still an essential ingredient of FELA negligence. *See CSX Transp., Inc. v. McBride*, 564 U.S. 685, 702-03 (2011). The reason is that a jury is still expected to determine legal cause in order to eliminate “far out ‘but for’ scenarios.” *Id.* at 704. The reason is that “[i]njuries have countless causes, and not all should give rise to legal liability.” *Id.* at 692. Federal appellate courts have applied the

CSX proximate causation clarification in a variety of settings and found proximate cause lacking. *See, e.g., Garza v. Norfolk S. Ry.*, 536 Fed. Appx. 517, 521 (6th Cir. 2013) (different engine cab configuration would not have altered conductor's inability to avoid striking dump truck that had disregarded stop sign and crossed tracks immediately in front of train); *Sapp v. CSX Transp., Inc.*, 478 Fed. Appx. 961, 971 (6th Cir. 2012) (high trackside vegetation did not cause plaintiff's fall since he failed to identify any defect down track's center where he walked); *Huffman v. Union Pac. R.R.*, 675 F.3d 412, 426 (5th Cir. 2012) (evidence that plaintiff's work increased risk of musculoskeletal disorders if not performed properly failed to identify plaintiff's knee osteoarthritis as a possible disorder).

Based on this reading of CSX, it is arguable that the allegedly defective air hose gladhand had nothing to do with Tripp's fall off UP 8516. Tripp testified that he and Mapp chose to uncouple and then attempt to recouple UP 8516 and UP 7269 despite the nonfunctioning gladhand, and there is nothing in the record to suggest that the gladhand had to work and the air hoses connected for the second coupling to be successful. That is plainly not the case because the engines had successfully coupled minutes earlier. Finally, Tripp's deposition makes evident that he was not attempting to fix the gladhand when his foot came off the ladder, but that he was attempting to pull up the coupler's pin lift.

Despite this possible reading of the facts, it must be remembered that FELA's proximate cause requirement is straightforward: railroads are liable for an employee's "injury or death resulting in whole or in part from [carrier] negligence." 45 U.S.C. § 51. Under FELA, injury "is proximately caused" by the railroad's negligence if that negligence "played any part . . . in . . . causing the injury." *McBride*, 564 U.S. at 700. In other words, only if a railroad "has no reasonable ground to anticipate that a particular condition . . . would or might result in a mishap and injury . . . is [the railroad] not required to do anything to correct [the] condition." *Id.* at 703 (quotation and citation omitted). Thus, regardless of how insignificant the railroad's negligence

may have been in producing the injury, “the manner in which [the injury] occurred” need not be foreseeable. *Id.* at 703-04.

This bedrock principle underlying FELA puts the facts in this case in a different light. While it is true that the air hoses did not need to be connected for the knuckles to work, the fact that the gladhand failed to hold the hoses together was the genesis for everything that subsequently occurred. In other words, because of that alleged air hose defect, Mapp and Tripp decided to uncouple UP 8516 from UP 7269 so that Mapp could move the latter locomotive further back and stretch the line. Such a setback may or may not have been reasonably foreseeable. At the same time, the defect did not alter their instruction to couple the engines over the maintenance pit. Thus, only when Tripp and Mapp attempted to overcome the problem created by the allegedly defective air hose gladhand did they decide to recouple the engines – the process that led to Tripp falling from the engine and suffering his injuries.

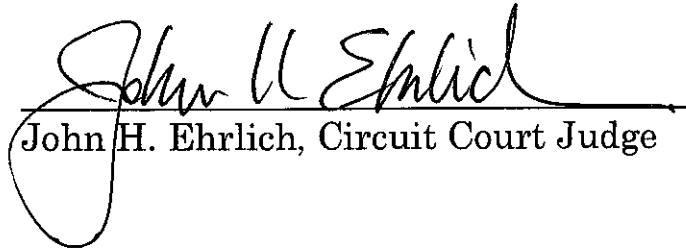
It is not this court’s place to weigh the evidence that, in this case, could potentially lead a jury to find or eliminate proximate causation based on the allegedly defective air hose gladhand. Suffice it to say that this is a close call that should be given to a jury to decide. As a result, Union Pacific’s summary judgment motion directed to count three must be denied.

Conclusion

For the reasons presented above, it is ordered that:

1. the plaintiff’s motion for a summary determination of a major issue is granted in that the locomotive on which Tripp was riding and working at the time of his injury was “in use,” as that phrase is used in the SAA, the LIA, and the cases interpreting those statutes;
2. the defendant’s motion for summary judgment on count two is granted, and that cause of action is dismissed with prejudice;

3. the defendant's motion for summary judgment on count three is denied; and
4. this memorandum opinion and order is entered *nunc pro tunc* to January 2, 2019.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 18 2019

Circuit Court 2075