

SUPREME COURT OF NEBRASKA

Anderson v. Union Pacific Railroad Company

Anderson v. Union Pacific RR. Co., 295 Neb. 785 (2017) · No. No. S-15-1224 · Decided February 10, 2017

SUMMARY

The Nebraska Supreme Court reviewed a Federal Employers’ Liability Act personal-injury action arising from the collapse of a railroad employee’s chair. The court held that the district court improperly instructed the jury on res ipsa loquitur because the plaintiff alleged and presented evidence of specific negligence and the instructions permitted inconsistent findings. The court vacated the verdict and judgment, reversed the order denying a new trial, and remanded for a new trial.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nebraska                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Kelch, J.; Heavican, C.J.; Wright, J.; Cassel, J.; Stacy, J.; Funke, J.                                                                                                                                                                                                                                  |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                 |
| DECIDED               | February 10, 2017                                                                                                                                                                                                                                                                                        |
| DOCKET                | No. S-15-1224                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Union Pacific appealed from a judgment entered after a jury verdict for Anderson in his Federal Employers’ Liability Act personal-injury action. Union Pacific challenged, among other things, the jury instructions on res ipsa loquitur and the district court’s denial of its motion for a new trial. |
| STANDARD OF REVIEW    | The correctness of jury instructions is a question of law reviewed independently. An erroneous instruction requires a new trial when it is prejudicial or adversely affects a substantial right.                                                                                                         |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court decision and binding precedent in Nebraska.                                                                                                                                                                                                                             |
| PARTIES               | Union Pacific Railroad Company v. Dan Anderson                                                                                                                                                                                                                                                           |

TOPICS

- jury instructions
- negligence
- evidence
- standard of review
- appellate procedure

## PRACTICE AREAS

Federal Employers' Liability Act

personal injury

negligence

civil appellate procedure

## QUESTIONS PRESENTED

1. Whether the district court erred by instructing the jury on *res ipsa loquitur* when Anderson alleged specific negligent acts and presented direct evidence of the precise cause of the chair's collapse.
2. Whether the internally inconsistent *res ipsa loquitur* instructions and special verdict form were prejudicial and required a new trial.
3. Whether the Nebraska procedural law governing *res ipsa loquitur* applied to the FELA claim.

## HOLDINGS

1. A Nebraska state court may apply state procedural rules to a FELA claim unless FELA provides otherwise, while substantive issues are governed by FELA and federal decisions interpreting it. *Res ipsa loquitur* is procedural, so Nebraska law governed the instruction.
2. *Res ipsa loquitur* is unavailable when the plaintiff alleges specific acts of negligence or presents direct evidence of the precise cause of the accident. It applies only when the plaintiff cannot allege or prove the particular negligent act that caused the injury.
3. A jury instruction that misstates the issues and tends to confuse the jury is erroneous. The internally inconsistent instruction permitting the jury to find both that specific negligence was proved and that specific negligence could not be proved was prejudicial and required a new trial.

## KEY QUOTATIONS

*“Res ipsa loquitur is a procedural tool that, if applicable, allows an inference of a defendant’s negligence to be submitted to the fact finder, where it may be accepted or rejected.” (792)*

*“Accordingly, the doctrine of res ipsa did not apply to this case.” (793)*

*“This is clearly a contradiction, and we cannot find that this did not cause confusion for the jury.” (793)*

*“We conclude that the district court committed reversible error in instructing the jury on res ipsa loquitur.” (794)*

## FACTUAL BACKGROUND

On October 2, 2007, Dan Anderson fell when a chair collapsed while he was working as a control operator for Union Pacific. The collapse was immediately attributable to a failed bolt, and the parties presented competing expert opinions about whether the failure resulted from use beyond the chair's load limit or manufacturer overtightening. Anderson's complaint alleged specific negligent acts, including failure to provide, inspect, maintain, and replace safe equipment, and he later added a *res ipsa loquitur* claim. The jury found both specific negligence and *res ipsa loquitur* and awarded Anderson damages.

## PROCEDURAL HISTORY

Anderson sued Union Pacific under FELA after a chair collapsed while he was working, causing him injury. A jury found for Anderson under both ordinary negligence and *res ipsa loquitur* and awarded \$920,007 in damages. The district court denied Union Pacific's motions for judgment notwithstanding the verdict and a new trial, but granted a medical-expense setoff. The Nebraska Supreme Court held that the *res ipsa loquitur* instruction was erroneous and prejudicial, vacated the verdict and judgment, reversed the order denying a new trial, and remanded for a new trial.

#### DISPOSITION

reversed\_and\_remanded

#### REMAND INSTRUCTIONS

The district court must conduct a new trial consistent with the Nebraska Supreme Court's opinion, without submitting negligence based on *res ipsa loquitur* under the circumstances presented.

#### CASES CITED

- *Kuhnel v. BNSF Railway Co.*, 287 Neb. 541, 844 N.W.2d 251 (2014)
- *Swierczek v. Lynch*, 237 Neb. 469, 466 N.W.2d 512 (1991)
- *McCall v. St. Joseph's Hospital*, 184 Neb. 1, 165 N.W.2d 85 (1969)
- *McLaughlin Freight Lines v. Gentrup*, 281 Neb. 725, 798 N.W.2d 386 (2011)
- *Ramsouer v. Midland Valley R. Co.*, 135 F.2d 101, 106 (8th Cir. 1943)
- *Weigand v. Pennsylvania Railroad Company*, 267 F.2d 281 (3d Cir. 1959)
- *United Gen. Title Ins. Co. v. Malone*, 289 Neb. 1006, 858 N.W.2d 196 (2015)
- *Stahlecker v. Ford Motor Co.*, 266 Neb. 601, 667 N.W.2d 244 (2003)
- *Bargmann v. Soll Oil Co.*, 253 Neb. 1018, 574 N.W.2d 478 (1998)
- *Finley v. Brickman*, 186 Neb. 747, 186 N.W.2d 111 (1971)
- *Long v. Hacker*, 246 Neb. 547, 520 N.W.2d 195 (1994)
- *Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist.*, 291 Neb. 642, 868 N.W.2d 67 (2015)
- *Gray v. Kenney*, 290 Neb. 888, 863 N.W.2d 127 (2015)

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