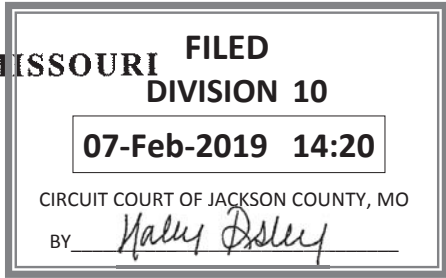


IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY



RONALD JAMES SACKUVICH)
Plaintiff,)
)
)
v.)
)
UNION PACIFIC RAILROAD COMPANY)
Defendant.)

Case No. 1716-CV14252
Division 10

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

On this 7th day of February, 2019, the Court considers Defendant Union Pacific Railroad Company's Motion for Summary Judgment and finds as follows:

The Court's judgment in this matter is based upon the following facts to which there exists no genuine dispute:

Ronald Sackuvich began his career for Union Pacific in January of 1973, when he was 18 years old.

On August 21, 2003, Sackuvich claimed to have sustained injuries to his shoulder and neck during the course of his employment. He was diagnosed with cervical and thoracic lumbar sprains.

Sackuvich filed a FELA claim for these injuries, and on December 1, 2006, reached a settlement of his claim with Union Pacific for \$12,500.00.

Before the settlement documents could be executed, however, Sackuvich backed out of the agreement because he had been diagnosed with a partial tear to his rotator cuff.

On April 2, 2007, Sackuvich underwent arthroscopic surgery for a right torn rotator cuff.

On or around April 26, 2007, Sackuvich, through his counsel, began discussions with Union Pacific's claims representatives to re-negotiate the settlement for Sackuvich's shoulder injury.

Shortly thereafter, in May 2007, Sackuvich went to see his primary care doctor complaining of persistent vomiting, nausea, weight loss, headaches, and tremors.

On May 18, 2007, Sackuvich underwent an MRI and was diagnosed with a brain tumor.

On May 25, 2007, the brain tumor was surgically removed.

On May 4, 2007, Union Pacific filed a motion to enforce the \$12,500.00 shoulder settlement.

After the trial court denied Union Pacific's motion, the parties renegotiated the settlement.

In early May 2008, a year after Sackuvich's first tumor was diagnosed, Union Pacific claims representative Dennis Gubbels corresponded with Sackuvich's counsel about obtaining a global release as part of the settlement.

Union Pacific claims representative, Gary Schneider, created a separate claim number (No. 628776) for Sackuvich's brain tumor.

On May 30, 2008, Sackuvich accepted a total settlement amount of \$82,300.00. Of this, Union Pacific attributed \$30,000.00 to Sackuvich's brain tumor.

As part of the settlement, Sackuvich executed and signed a "General Release" for claim ID Nos. 555715 & 628776 ("2008 Release"). the General Release provided in part as follows:

FOR AND IN CONSIDERATION of the sum of Eighty-Two Thousand, Three Hundred Dollars (\$82,300.00), less \$7,359.00, which represents sickness benefits received under the terms of the Railroad Unemployment Insurance Act, and less \$7,225.14 received in the form of supplemental sickness benefits, receipt and sufficiency of which is hereby acknowledged by me, I, Ronald Sackuvich, Employee ID No. 0108679, do hereby release and forever discharge Union Pacific Railroad Company . . . from any and all claims and liability of every kind or nature, INCLUDING CLAIMS FOR INJURIES, IF ANY, WHICH ARE UNKNOWN TO ME AT THE PRESENT TIME, arising out of my employment at Union Pacific Railroad Company from 1973 to the present and including but not limited to any and all injuries to person and damage to property in consequence of, or in any way connected with, injuries sustained during the course of my employment with Union Pacific Railroad Company and an incident which occurred on August 21, 2003 at or near Kansas City, Kansas, which are alleged in an action filed in the Circuit Court of the City of St. Louis styled Ron Sackuvich v Union Pacific Railroad Company and having Cause No. 052-7888 filed on or about August 9, 2005, alleging injuries to my neck, cervical spine, low back, lumbar spine, shoulders, and adjacent areas, which injuries I claim have totally and permanently disabled me from ever performing the duties of my employment. Further the settlement of \$82,300 00 also represents payment for lost wages in the past, pain and suffering in the past, future pain and suffering, future lost wages and loss of earning capacity.

It is also understood that this Release covers any and all personal injuries or damages which in any manner arise out of my employment with Union Pacific Railroad Company from any time in the past, including but not limited to the aforementioned conditions, toxic torts, hearing loss, tinnitus, heart problems, cumulative trauma, asbestosis, diesel fumes, respiratory diseases, carpal tunnel syndrome, labor dispute, or claims. It is understood that this release includes any and all claims associated with cancer. . .

In October 2013, Sackuvich began to experience symptoms consistent with the symptoms he experienced with his first brain tumor, including vomiting, progressive unsteadiness in his balance, difficulty swallowing, hoarseness in his voice, and rapid weight loss.

At an October 15, 2013, doctor appointment, Sackuvich told his doctor he was worried about a brain tumor.

On May 19, 2014, Sackuvich had an MRI, which confirmed the recurrence of his brain tumor.

On May 27, 2014 Sackuvich's medical record noted his recurrent brain tumor.

On May 29, 2014, another MRI confirmed that Sackuvich had a cystic and solid nodule in his medulla.

Sackuvich underwent surgery to remove the recurrent tumor on June 23, 2014.

Sackuvich stated he first learned his lung conditions could be work-related after he was discharged from the hospital in April 2016 from his doctor.

Sackuvich filed this FELA action on June 20, 2017, alleging Union Pacific breached its duty of care as required under FELA to provide Sackuvich with a reasonably safe place to work.

The first issue presented by Union Pacific's motion for summary judgment is whether Plaintiff released Union Pacific from liability for his brain tumor claim and COPD claim by executing the 2008 Release. "FELA is not offended where there is a compromise of a claim of liability that settles a specific injury sustained by an employee." *Babbitt v. Norfolk & Western railway Co.*, 104 F.3d 89, 93 (6th Cir. 1997). In *Babbitt*, the Court of Appeals held that for a release to be valid, it "must reflect a bargained-for-exchange of a known claim for a specific injury, as contrasted with an attempt to extinguish potential future claim[s]." *Id.* In this case,

Sackuvich never made a claim for brain tumor or COPD. The claim for brain tumor was created by Union Pacific, not raised by Sackuvich. As Plaintiff never exerted claims for brain tumor or COPD, there exists no evidence that these were claims known to him. Given that Sackuvich made no claims for brain tumor or COPD, he should not now be said to have bargained away those claims. The facts fail to support a conclusion that the 2008 Release is a bargained –for–exchange of known claims for Sackovich’s brain tumor and COPD. Rather, Union Pacific’s inclusion of all potential “cancer” and “respiratory diseases” claims Sackuvich could make in the future is precisely an attempt to “extinguish potential future claims” prohibited by Babbitt. Union Pacific’s motion for summary judgment based upon the 2008 Release is denied.

Union Pacific also argues the claims for brain tumor and COPD are barred by the three year statute of limitations set forth in 45 U.S.C. § 56. On June 20, 2017, Sackuvich filed this FELA action. The question becomes whether on or before June 19, 2014, three years prior to filing suit, a reasonable person would have known or in the exercise of reasonable diligence should have known of both the injury and its governing cause. The facts are straightforward. In May 2007, Sackuvich had a brain tumor removed. He would eventually receive a permanent disability annuity from the Railroad Retirement Board effective October 1, 2007, as a result of his brain tumor. In October 2013, he began to experience symptoms he experienced with his earlier brain tumor. In October 2013, he reports to his doctor that he is worried about brain tumor. On May 19, 2014, an MRI confirms he has another brain tumor. On June 23, 2014, Sackuvich again undergoes surgery to remove a brain tumor. In April 2015, his left lung collapsed and doctors subsequently diagnosed him with COPD.

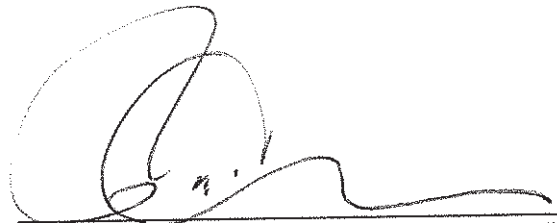
Given these facts, this court must determine whether, as a matter of law, as of June 19, 2014, a reasonable person would have known or in the exercise of reasonable diligence should have known they had a brain tumor and the tumor was caused by exposures he encountered

during his railroad employment. Certainly the undisputed facts support the conclusion that as of June 19, 2014, a reasonable person would know they had a brain tumor. The tumor was disclosed in an MRI on May 19, 2014. Months of symptoms had come before this confirmation. If the first brain tumor in 2008 did not prompt a reasonable person to exercise due diligence in determining the tumor was indeed caused by exposures he encountered during his railroad employment, the second or recurring tumor in 2014 surely would have prompted such exercise of due diligence. The Court can reach no other conclusion than, as a matter of law, by June 19, 2014, Plaintiff knew, or by the exercise of due diligence should have known, he had a brain tumor and it was caused by exposures he encountered during his railroad employment. As such, his petition filed June 20, 2017, is beyond the three year statute of limitations. Defendant's motion for summary judgment regarding Plaintiff's claim related to brain tumor is granted.

However, the evidence does not support a similar conclusion with regards to Plaintiff's COPD claims. Plaintiff was not diagnosed he suffered COPD until his left lung collapsed in April 2015. There is no other evidence to support a conclusion that prior to June 19, 2014, Plaintiff knew or by exercise of reasonable diligence should have known, he suffered COPD. Plaintiff's claim was filed within the three year statute of limitations period following the April 2015, diagnosis. Defendant's motion for summary judgment regarding Plaintiff's COPD claims is denied.

IT IS SO ORDERED.

2-7-2019
Date



HONORABLE PATRICK WILLIAM CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing were mailed/emailed/faxed on this 24th day of January, 2019 to:

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Law Clerk of JAA, Division 10