

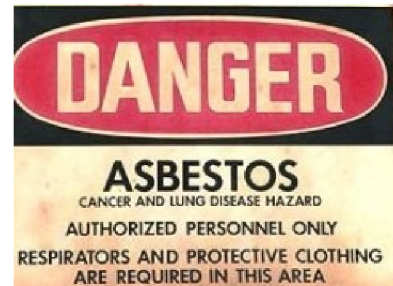
PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

August 24, 2011

The corporate attack on access to justice before the U.S. Supreme Court continues -- and Public Justice keeps fighting. Now, in *Kurns v. Railroad Friction Products Corp.*, the rights of railroad workers killed or injured by asbestos are at stake.

For much of his life, George Corson was a railroad machinist. After Mr. Corson died of malignant mesothelioma -- the only known cause of which is exposure to asbestos, thought to be present in the locomotive boilers and brake shoes he worked with -- his widow brought a lawsuit. But the manufacturers of those products are urging the Supreme Court to rule that they cannot be sued because the federal government regulates railroad safety.



Public Justice has just filed an *amicus* brief explaining that the tort system plays a crucial role in compensating victims like Mr. Corson and his family -- and that Congress never intended federal regulation to preempt and eliminate injury victims' rights under state tort law.

The boilers and brake shoe manufacturers are relying on a Supreme Court case from 1926 holding that federal law preempted state *legislation*, not state tort claims. Since 1926, courts have routinely allowed plaintiffs to bring state tort claims against railroads and railroad part manufacturers. But corporate defendants are asking the Supreme Court to immunize them from these claims, too.

Our *amicus* brief shows that, even when federal regulation of a field preempts state *legislation*, the Court has consistently held that Congress often intends to allow state tort claims to proceed. These claims don't dictate what a company can and cannot do; they simply provide that if the company harms someone, that person will be compensated. As a result, the Court has required a much stronger showing of congressional intent to preempt these claims -- and there is no such intent in the federal railroad safety laws. Quite the opposite: the overall federal railroad scheme expressly allows states to adopt more stringent rules where those rules increase railroad safety and don't conflict with federal law.

To read our *amicus* brief in *Kurns v. Railroad Friction Products Corp.*, [click here](#).

Thanks to Brent Rosenthal of [Rosenthal Pennington LLP](#), in Dallas, for writing our brief, with assistance from Public Justice's Senior Attorney Leslie Brueckner and Brayton-Thornton Attorney Melanie Hirsch.

Thanks to you for helping make this important work possible. We must keep fighting to preserve access to justice for all.

Arthur Bryant

Executive Director

Public Justice and the
Public Justice Foundation