Circuit Court for Baltimore City
Case No. 24-C-15-000022

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 897

September Term, 2016

JAMES L. HARRISON

v.

CSX TRANSPORTATION, INC.

Woodward, C.J.,
Shaw Geter,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, C.J.

Filed: August 29, 2018

In the Circuit Court for Baltimore City, James Harrison, appellant, filed suit against his employer, CSX Transportation, Inc. ("CSX"), appellee, under the Federal Employers' Liability Act (the "FELA"). Harrison alleged that he sustained an injury to his left knee after slipping in mud and falling on that knee while at work. CSX filed two motions for summary judgment, arguing that 1) Harrison's claim was barred by a release that he executed in settlement of a prior FELA claim that he brought against CSX, and 2) CSX was not negligent. After a hearing on the motions, the court granted summary judgment in favor of CSX, finding that Harrison's claim was barred by the release.

Harrison appeals, presenting one question for our review, which we have rephrased: Did the circuit court err by granting summary judgment in favor of CSX?[1]

For the following reasons, we reverse the judgment of the circuit court and remand for further proceedings.

BACKGROUND

Prior Lawsuit and Release

Harrison began working as a conductor and brakeman for CSX in 1978. Throughout his employment, he performed various trackside operations that involved squatting, climbing, and walking on top of ballast (the rock beds on which railroad tracks are laid). As early as 1997, he began experiencing pain in his left knee. The pain gradually worsened and, in 2003, Harrison met with Dr. Kenneth Williams, who told him that he likely had

[1] Harrison presents his question as: "Did the circuit court err in granting summary judgment to CSX, where Mr. Harrison presented substantial evidence that he sustained a new acute traumatic injury on May 16, 2014 that was not subject to the Release he signed in 2009?"

osteoarthritis in his knee.

In 2005, Harrison retained counsel to explore a cause of action for his left knee condition.[2] His counsel referred him to Dr. Constantine Misoul. Dr. Misoul diagnosed Harrison with patellofemoral chondrosis and mild to moderate arthritis. A MRI also revealed that Harrison had a "radial or bucket handle tear of his [left] medial meniscus." Dr. Misoul opined that Harrison's knee injury resulted from his work on the railroad.

In January 2008, Dr. Misoul reexamined Harrison's knee and concluded that his injury had become more severe. Two months later, Dr. Misoul performed arthroscopic surgery on the knee. He explained that the surgery would not cure the knee, but that it would temporarily "eliminate some of the mechanical component[s] of [Harrison's] [ ] knee pain." Dr. Misoul also informed Harrison that "he [would] require further medical treatment in the future in the form of visco supplementation injections, possible repeat arthoscopy and then possible knee replacement surgery." Dr. Misoul felt that Harrison's job activities for CSX would "accelerate his knee condition."

In March 2008, Harrison filed suit against CSX pursuant to Section 1 of the FELA, which provides a statutory cause of action for railroad employees who are injured at work due to an employer's negligence. He sought damages for the injury to his left knee.

On February 20, 2009, Harrison and CSX settled the FELA claim for $110,000. As part of the settlement, Harrison executed a written release (the "Release") for the benefit of CSX. The Release provided, in relevant part,

[2] Harrison is represented by the same counsel in the present litigation.

[Harrison] hereby releases and forever discharges [CSX] of and from any and all liability for all claims, actions or controversies described herein.

The claims in the identified action allege that [Harrison] was exposed to excessive and harmful repetitive motion and stress, exposure to force, awkward postures, lateral motion, vertical motion, horizontal motion, whole body vibration, temperature extremes, strain, vibration of any type or intensity, and cumulative trauma ("repetitive stress and cumulative trauma") due to the equipment and methods with which he/she performed his/her work for [CSX], and that said repetitive stress and cumulative trauma allegedly caused [Harrison] to suffer knee injuries and other injuries, disorder, or diseases of the lower extremities.

With this Release, [Harrison] intends to release and forever discharge [CSX] of and from all liability for all claims asserted and/or which could have been asserted in [Harrison's FELA claim], which action [Harrison] agrees shall be dismissed with prejudice. The claims in the identified action allege that [Harrison] was exposed to repetitive stress and cumulative trauma, which is alleged to have caused [Harrison] to suffer from various injuries, disorders and/or diseases.

The parties agree that a portion of the consideration paid for this SETTLEMENT AND FINAL RELEASE is for risk, fear, and/or further manifestation of the claimed injuries, disorders or disease covered by this SETTLEMENT AND FINAL RELEASE and for any aggravation and/or exacerbation of these claimed injuries, disorders, or diseases, that may arise in the future as a result of any past or future repetitive stress or cumulative trauma. In addition, a substantial portion of the consideration paid for this SETTLEMENT AND FINAL RELEASE is for the possibility of future wage loss, including shortening of work life and/or impairment of earning capacity as a result of the current claimed injury or disease and/or its aggravation or exacerbation, or in the development of any new or additional repetitive stress or cumulative trauma injury either presently existing or that may arise in the future to the lower extremities or other body parts. **It is the express intent of both [Harrison] and [CSX] to "buy the peace for all time" between them regarding any repetitive stress and/or cumulative trauma injury either presently existing or that may arise in the future to the lower extremities or other body parts.**

This SETTLEMENT AND FINAL RELEASE releases any and all claims and potential claims against [CSX] for all injuries, disorders and diseases sustained by [Harrison], which did or might form the basis of any action under the FELA . . . . It is the express intent of the both [sic] [Harrison]

> and [CSX] to also "buy the peace for all time" between them regarding any injuries, disorders or diseases that exist at the time of this SETTLEMENT AND FINAL RELEASE. . . .
>
> By entering into this SETTLEMENT AND FINAL RELEASE, [Harrison] acknowledges that his[] injuries released by this SETTLEMENT AND FINAL RELEASE may be permanent and/or may naturally progress and/or may become permanently disabling in the future, that recovery is uncertain, and that future medical treatment, including surgery, may be necessary. . . . [Harrison] acknowledges that he[] knows and understands the potential risks of any and all future injuries associated with the alleged exposure identified herein; and that the risks and possible future effects of [Harrison]'s injuries are specifically bargained for, included, and released by this SETTLEMENT AND FINAL RELEASE.

(Emphasis added). Harrison consulted with his attorney before signing the Release.

Progression of Knee Injury and Present Lawsuit

Harrison continued working as a conductor for CSX after his 2008 arthroscopic surgery. In early 2014, he contacted the Railroad Retirement Board to determine what his retirement annuity would be on August 1, 2014. Harrison wanted to know "what [he] would get if [he] had to get the knee replacement." On February 10, 2014, the retirement board responded, providing him with an estimate of what his disability service annuity would be.

On February 28, 2014, Harrison went to MedStar Harbor Hospital after work complaining of swelling and pain in his left knee. Four days later, he met with his primary care physician, who referred him to Anne Arundel Orthopedic Surgeons ("AAOS"). On March 7, 2014, Harrison had a consultation with healthcare providers at AAOS. He reported that the pain in his knee was "a 10 on a scale of 1 to 10" and that it was "constant[,] sharp, throbbing, aching, [and] burning . . . ." He also complained of swelling and

weakness in his knee. During his consultation, an x-ray was taken of Harrison's knee. The x-ray showed "severe varus osteoarthritis and secondary patellofemoral change[,]" which was the "natural progression" of his knee condition. Harrison's healthcare provider noted that he would need a knee replacement, but that Harrison wanted to delay it for "as long as possible."

On the morning of May 16, 2014, Harrison reported to work at the Curtis Bay yard. He worked there for about five hours "in the pouring down rain." After finishing at the Curtis Bay yard, Harrison went to work at the W.R. Grace yard. The rain had stopped by that point. Harrison was working for "[p]robably an hour" connecting and disconnecting cars before he was stopped by the trainmaster, Jarred Rahn. Rahn informed Harrison that he had violated safety rules by releasing a brake with his hands rather than by using a brake stick and relieved him for the day.[3] Harrison walked towards the back of the train on which he was working and collected his gear from the engine. On his way back to the front of the train, Harrison walked on a path that had "been there for 30 years." It was a "well-worn" grass path with muddy areas. Harrison watched where he was going but lost his footing on a slippery, muddy area, "stumbled forward," and landed on his left knee and right elbow. He felt a lot of pain in his kneecap and his leg locked in a bent position for "probably six or seven minutes . . . ."

Rahn, who did not see Harrison fall, walked over to the side of train where Harrison was and saw him lying there. Harrison asked him to call an ambulance. Harrison was

[3] Harrison insisted that he used the brake stick when releasing the brakes.

taken to MedStar Harbor Hospital. His knee was swollen and an x-ray was taken. The X-ray did not reveal a "fracture or dislocation" or "any [other] changes that [we]re different from prior X[-]ray findings[.]" Harrison was diagnosed with a contusion (although Harrison later stated that there were no bruises on his knee) and was discharged.

On May 20, 2014, Harrison visited Dr. Misoul. Dr. Misoul performed a patellofemoral compression test, which was an examination method used to determine the presence of abnormal patellar movement and the amount of pain a patient feels in the knee. The findings from the test were "markedly positive." Dr. Misoul diagnosed Harrison with "acute patellofemoral chondrosis" in his left knee "with symptomatic worsening of [his] osteoarthritis . . . ." He explained that he reached his conclusions

> based on the information that I [Dr. Misoul] had at that point[.] [Harrison] had an acute injury by falling onto his knee, directly [o]nto his kneecap. And, obviously, . . he's got an arthritic knee to begin with.
>
> So, his arthritic symptoms are now more pronounced to him than they were before the fall.

Despite the "more pronounced" symptoms, there were no physiological changes to Harrison's knee.

Harrison did not return to work after he fell on May 16, 2014. That July, he applied for disability retirement from the Railroad Retirement Board.

On October 17, 2014, Harrison had surgery to replace his left knee because he could no longer tolerate the pain. Dr. Misoul explained that knee replacement surgeries are performed for purposes of pain relief:

> A knee replacement is not a life saving operation or procedure. It's done for pain relief.

> So, the timing of it is when the patient's pain is bad enough that nothing is relieving it, they're tired of the amount of pain that they're having, they're tired with how it's affecting their activities of daily living and function, and enjoyment of their lives, to the point where they say, "Okay. I can't take this anymore. I'm ready for a knee replacement."

Harrison acknowledged that he would have had a knee replacement eventually but that he had the operation sooner than he otherwise would have because of his fall on May 16, 2014.

After having a total left knee replacement on October 17, 2014, Harrison reported that he had "no more pain in [his] knee" as of January 2015, and that, other than not being able to bend it the whole way back, his left knee was fine.

On January 6, 2015, Harrison filed a complaint against CSX pursuant to the FELA. He contended that CSX failed to provide him with a reasonably safe place to work and that he sustained an injury to his left knee when "he slipped and fell on uneven and slick terrain."[4]

CSX filed two motions for summary judgment. In the first motion, CSX argued that Harrison's claim was barred by the Release that he executed back in 2009. In the second motion, CSX argued that (1) it was not negligent because it provided its employees with a reasonably safe work place, (2) it did not have actual or constructive notice of the muddy conditions where Harrison fell, and (3) Harrison was contributorily negligent. Harrison opposed both motions.

[4] Harrison also alleged that he injured his back and right elbow, but eventually withdrew those claims.

The circuit court held a motions hearing on May 9, 2016. The court acknowledged that CSX had filed two summary judgement motions, but the arguments at the hearing only involved whether summary judgment was proper based on the Release. CSX contended that the Release, which protected CSX from being held liable for any progression of Harrison's left knee injury, barred him from recovering damages related to his left knee injury in the present action. It asserted that, when Harrison signed the Release, he was aware that his knee condition was permanent and that it would worsen. CSX also maintained that Harrison did not sustain a new knee injury when he fell, that—at best—he bruised his knee, but that bruise did not cause him to need a knee replacement because, as he acknowledged, he already knew he needed to have his knee replaced.

Harrison countered that the Release was irrelevant because it only protected CSX from liability for his pre-existing injuries. He asserted that there was a genuine dispute of material fact as to whether he sustained a "new acute injury" when he fell because he had a contusion on his knee and his pain became more severe. He also stated that the new injury caused to him to leave work earlier than he otherwise would have.

After considering the parties' arguments, the court ruled,

> I agree with the argument put forth by [CSX's counsel] that the release in this case bars the claim for [ ] Harrison. I believe that . . . if you take all of the inferences, even in a light most favorable to [ ] Harrison at this point, that [ ] Harrison has failed to set forth any material facts that would permit a reasonable fact finder to infer that there is a distinct injury here that would . . . take this event outside of what would be considered progression of the prior injury. That . . . there are no facts in controversy here that would permit the fact finder to find that there is any damage as a result of the contusion that would not -- that would not be anything other than just the normal progression of his prior injury.

On May 16, 2016, the court entered an order granting summary judgment in favor of CSX. Harrison timely noted the instant appeal.

STANDARD OF REVIEW

Maryland Rule 2-501(f) provides that a circuit court may enter summary judgment in favor of or against a moving party when "there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." We review a circuit court's decision to grant a motion for summary judgment *de novo*. *Shutter v. CSX Transp., Inc.*, 226 Md. App. 623, 634 (2016).

> As such, . . . we review independently the record to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law. We review the record in the light most favorable to the non-moving party and construe any reasonable inference that may be drawn from the well-plead facts against the moving party.

Hamilton v. Kirson, 439 Md. 501, 522 (2014) (citations omitted).

Additionally, we note that this case was brought under the FELA, a federal law. Pursuant to Section 6 of the FELA, plaintiffs may bring FELA actions in either state or federal courts. "FELA actions brought in state court, although subject to state procedural rules, are governed by federal substantive law." *Blackwell v. CSX Transp., Inc.*, 220 Md. App. 113, 120 (2014).

DISCUSSION

I.

Harrison contends that the trial court erred by granting summary judgment against him based on the Release. According to him, the Release is inapplicable if he sustained a

new injury. He asserts that sufficient evidence existed to create a genuine dispute of material fact, namely whether he sustained a new knee injury when he fell on May 16, 2014. Harrison acknowledges that the Release would bar recovery if he sought damages for any progression of his knee condition that existed when he signed the Release in 2009, but he distinguishes his pre-existing knee condition from his 2014 knee injury by characterizing the latter as an "acute" injury resulting from his fall.

CSX responds that the trial court correctly determined that the Release barred Harrison from recovering the damages that he seeks in the present action. It argues that the Release

> covers not only claims based on the arthritic condition of Harrison's left knee at the time the [R]elease was signed, but claims based on any future exacerbation or progression of that condition. As the circuit court correctly concluded, Harrison's claim here arises out of the progression of his preexisting knee problems.

CSX maintains further that there is no evidence demonstrating that Harrison sustained a new injury after he fell because there was no physiological change to his knee and there was no dispute that he required knee replacement surgery regardless of the fall.

In some circumstances, releases are valid under the FELA. Section 5 of the FELA provides, in pertinent part, that "[a]ny contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void . . . ." 45 U.S.C. § 55. Despite its broad language, the Supreme Court has recognized that this statute does not invalidate all releases executed in settlement of FELA claims. *Callen v. Pennsylvania R.R. Co.*, 332 U.S. 625, 631 (1948). The Court explained:

> It is obvious that a release is not a device to exempt from liability but is a means of compromising a claimed liability and to that extent recognizing its possibility. Where controversies exist as to whether there is liability, and if so for how much, Congress has not said that parties may not settle their claims without litigation.

Id. Thus a release is permissible under the FELA if it "is a means of compromising a claimed liability . . . [w]here controversies exists . . . ." *Id.*

As we explained in *Blackwell v. CSX Transportation, Inc.*, the Supreme Court has "not expressly addressed when a litigation release acts as a . . . compromise of a claimed liability." 220 Md. App. 113, 123 (2014), cert. denied, 442 Md. 194 (2015). Thus we turned to other federal authority and adopted an "approach developed by the Third Circuit in *Wicker v. Consolidated Rail Corp.*, [142 F.3d 690 (3d Cir. 1998)], to determine whether a litigation release precludes all future claims." *Id.* at 123, 126.

In *Wicker*, multiple plaintiffs executed releases after being injured in the course of their employment. 142 F.3d at 692. The releases were general and "appeared to settle all claims for all injuries past and future." *Id.* After executing the releases, the plaintiffs sustained new injuries after being exposed to toxic chemicals on the job and sued their employer under the FELA. *See id.* at 694. The employer, relying on the releases, filed motions for summary judgment, which the district court granted. *Id.*

The Third Circuit reversed. *Id.* at 702. The Court reasoned that the plaintiffs could not release their employer from liability for toxic exposure before they knew about the toxic exposure. *See id.* at 701. In other words, that controversy did not exist at the time they executed their releases. *See id.* Thus the *Wicker* Court announced the following rule for determining when a release is valid under the FELA:

> [A] release does not violate § 5 provided it is executed for valid consideration as part of a settlement, and **the scope of the release is limited to those risks which are known to the parties at the time the release is signed. Claims relating to unknown risks do not constitute controversies, and may not be waived under § 5 of FELA.** For this reason, a release that spells out the quantity, location and duration of potential risks to which the employee has been exposed—for example toxic exposure—allowing the employee to make a reasoned decision whether to release the employer from liability for future injuries of specifically known risks does not violate § 5 of FELA.

Id. (emphasis added) (internal quotation marks and citation omitted). Although the Court held that an employee could not release his or her employer from an unknown risk, an employee could execute a release involving a potential injury that could arise from a known risk. *Id.* at 700-02 ("[I]t is entirely conceivable that both employee and employer could fully comprehend future risks and potential liabilities and, for different reasons, want an immediate and permanent settlement. . . . [T]he parties may want to settle controversies about potential liability and damages related to known risks even if there is no present manifestation of injury.") The Court explained that, when determining whether the parties intended to release an employer from liability for potential risks, language from the release "may be strong, but not conclusive, evidence of the parties' intent." *Id.* at 701. "To the extent that a release chronicles the scope and duration of the known risks, it would supply strong evidence in support of the release defense." *Id.*

As stated above, we adopted the "known risk" test from *Wicker* in *Blackwell*. *Blackwell*, 220 Md. App. at 123, 126. In *Blackwell*, a railroad employee sued his employer under the FELA for knee injuries that he sustained due to prolonged walking on ballast. *Id.* at 117. The parties settled and the employee executed a litigation release providing that he "'intend[ed] to release and forever discharge'" his employer from liability for injuries

to his knees and lower extremities caused by "'repetitive stress and cumulative trauma[,]'" including "'the development of any new or additional repetitive stress or cumulative trauma injury either presently existing or that may arise in the future to the lower extremities or other body parts.'" *Id.* (some alterations in original). Four years after executing the release, the employee developed "bilateral plantar fasciitis[,]" a foot injury, caused by the repetitive stress of walking on ballast. *Id.* at 118. He sued his employer. *Id.* The employer moved for summary judgment, arguing that the release barred recovery for his foot injury. *Id.* The circuit court, agreeing, granted the employer's motion. *Id.*

We affirmed the circuit court's decision. *Id.* at 132. Relying on *Wicker*, we explained that the employee understood that he was releasing his employer from present and future injuries "related to his occupational exposure to repetitive stress and cumulative trauma from walking on uneven ballast." *Id.* at 127-28. That release was valid because the employee knew about the risk of repetitive stress and cumulative trauma when he executed it. *Id.* at 128. It did not matter that the injuries for which he sought to recover were new because the release covered injuries that may arise in the future to lower extremities. *See id.* ("Critically, the language of the 2009 Release clearly indicates that both [parties] understood that the purpose of the agreement was to foreclose any present or future claims that Blackwell might have against CSX as a result of Blackwell's occupational exposure to repetitive stress and cumulative trauma on his lower extremities.").

We return to the case at hand. The Release stated that Harrison claimed that he suffered injuries to his knee and lower extremities caused by repetitive stress and

cumulative trauma related to his work activities. He expressly released CSX "from all liability for all claims asserted and/or which could have been asserted in" his 2008 FELA action. In addition, the Release provided:

> The parties agree that a portion of the consideration paid for this SETTLEMENT AND FINAL RELEASE is for risk, fear, and/or further manifestation of the claimed injuries, disorders or diseases covered by this SETTLEMENT AND FINAL RELEASE and for any aggravation and/or exacerbation of these claimed injuries, disorders, or diseases, that may arise in the future as a result of any past or future repetitive stress or cumulative trauma. . . . It is the express intent of both [Harrison] and [CSX] to "buy the peace for all time" between them regarding any repetitive stress and/or cumulative trauma injury either presently existing or that may arise in the future to the lower extremities or other body parts."[5]

It is clear, considering the above language of the Release, that the parties intended that CSX be released from any liability for Harrison's left knee condition, and any "aggravation and/or exacerbation" of that condition and/or development of a new injury caused by "any past or future repetitive stress and cumulative trauma." The Release was valid for that purpose. *See Blackwell*, 220 Md. App. at 128 (considering a release similar to the one in the case). Injuries caused by repetitive stress and cumulative trauma were known risks at the time Harrison executed the Release. The Release, however, does not

[5] Another clause in the Release, more broadly states, "This SETTLEMENT AND FINAL RELEASE releases any and all claims and potential claims against [CSX] for all injuries, disorders and diseases sustained by [Harrison], which did or might form the basis of any action under the FELA . . . ." The aforementioned clause, if interpreted literally, would act as a general liability release that would bar Harrison from recovering against CSX for any type of injury caused by any type of risk, including unknown risks. Under the "known risk" test, such a release would be invalid in a FELA action. *See Wicker*, 142 F.3d at 701. Thus we shall not consider the general clause when determining the actual scope of the release. Instead, we look to the language of the Release that "spells out the quantity, location and duration of potential risks to which [Harrison] has been exposed." *Id*.

bar Harrison from recovering for the "aggravation and/or exacerbation" of injuries to his left knee that are *not* "a result [of] any past or future repetitive stress and cumulative trauma."

Therefore, the issue raised in the instant case is whether the condition of Harrison's left knee after the slip-and-fall in 2014 was solely a progression of his 2008 knee condition, or whether the fall aggravated the pre-existing condition of the knee. If it is the former, then the Release bars Harrison entirely from recovery in this action. If it is the latter, then the Release would only bar recovery to the extent that the current condition of the left knee was caused by a progression of the 2008 knee condition resulting from repetitive stress and cumulative trauma. The Release could not bar recovery of further damages caused by an aggravation of the knee condition resulting from a slip-and-fall; apportionment of damages would be proper under the FELA. *See CSX Transp., Inc. v. Bickerstaff*, 187 Md. App. 187, 250 (2009) ("'[I]n FELA cases, if sufficient evidence exists to indicate that an injury may have resulted from the aggravation of a preexisting condition, the jury should be instructed that if it finds for the plaintiff on the issue of liability, it should award damages only for the aggravation of the plaintiff's preexisting condition.'" (alteration in original) (quoting *Schultz v. Ne. Illinois Reg'l Commuter R.R. Corp.*, 201 Ill.2d 260, 266 (2002))), *abrogated on other grounds by CSX Transp., Inc. v. Pitts*, 430 Md. 431 (2013).

The threshold for proving causation in FELA cases is low. Compared to traditional tort actions, which require a plaintiff to prove that a negligent act is substantial factor in bringing about an injury when multiple factors contributed to that injury, a plaintiff in a FELA action need only prove that an employer's negligence "'played any part, *even the*

slightest, in producing the injury[.]'" *Page v. Nat'l R.R. Passenger Corp.*, 200 Md. App. 463, 467 (2011) (emphasis added) (quoting *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692 (2011)).[6]

Given the reduced standard of causation between an employer's negligence and an employee's injury in FELA cases, we hold that there was enough evidence to create a genuine dispute of material fact as to whether Harrison aggravated his pre-existing knee condition when he fell in 2014. Harrison stated that, when he fell, he was "in a lot of pain" and asked the trainmaster to call an ambulance. His leg locked in a bent position for "six to seven minutes[,]" which had never happened to him before. Medical records from Harrison's trip to the hospital indicate that he had a contusion on his left knee. Although there did not appear to be any noteworthy physiological changes to Harrison's knee, Dr. Misoul stated that knee replacement surgery is undertaken when a patient's pain becomes unbearable. Dr. Misoul testified during his deposition that Harrison told him that he was in pain before the fall, but that he was still able to work. After the fall, however, Harrison told Dr. Misoul that he could no longer tolerate the pain. Dr. Misoul explained that, in his opinion, the fall caused Harrison to need knee replacement surgery sooner:

> He has this acute injury now on top of everything. **This was the straw that broke the camel's back to the point where his symptoms are now intolerable to him. His symptoms are now bad enough where he has now made up his mind, "I can't take this anymore. I'm ready for a knee replacement."**

[6] Courts also need not engage in a legal causation analysis under the FELA. *See Page*, 200 Md. App. at 487 ("[T]he doctrine of proximate causation plays no role in determining whether a railroad is liable for an employee's injuries.").

(Emphasis added).

To be clear, any aggravation caused by the fall, for which Harrison could recover, would relate to damages incurred by having to undergo knee replacement surgery sooner than he allegedly otherwise would have, *e.g.*, lost wages. Harrison cannot recover the costs of knee replacement surgery because, as he himself acknowledges, he needed to have his knee replaced before the slip-and-fall due to the progression of his knee condition. In short, Harrison may attempt to recover any damages associated with the *acceleration* of his knee replacement surgery caused by the slip-and-fall. *See Bickerstaff*, 187 Md. App. at 250.

CSX argues, however, that pursuant to our decision in *Shutter*, Harrison may not recover for an acceleration of his knee condition. In that case, a railroad employee suffered from pain in her lower back, ankles, and hand, and "underwent surgery to fuse her vertebrae at the L4-L5 and L5-S1 levels of her lumbar spine." *Shutter v. CSX Transp., Inc.*, 226 Md. App. 623, 627 (2016). She and her employer entered into a settlement regarding her injuries and, as part of that settlement, the employee executed a release. *Id.* at 627-28. The release provided that the employee sustained her injuries after being "exposed to 'excessive and harmful repetitive motion, strain, vibration of any type or intensity and/or cumulative trauma due to the equipment and methods with which [ ]she performed [ ]her work[.]" *Id.* at 628 (some alterations in original). It also stated that the employee released her employer from

> "claims, causes of actions, . . . and demands for monetary compensation of any nature, which [the employee] has or claims to be entitled **by reason of [her] alleged Repetitive Strain Injury, its progression and/or consequences,** any future damages, general or special, that [the employee] may incur in an attempt to alleviate or cure [her] alleged Repetitive Strain

> Injury, including surgery or surgeries, **as well as correction of any conditions relating to [her] Repetitive Strain Injury, and any increased risk of contracting any physical disorder related thereto.**"

Id.

The employee returned to work more than a year after her back surgery. *Id.* at 629. Nearly seven years after that, she began experiencing "radiating leg pain and numbness in her lower extremities" and was diagnosed with "a herniated disc at the L3-L4 level of her lumbar spine, directly above the level of her fusion, and significant spinal stenosis[.]" *Id.* at 629-30. She underwent surgery to remove the hardware from her original surgery, and had her spine fused "at the L3-L4, L4-L5, and L5-S1 levels." *Id.* at 630. Thereafter, she sued her employer under the FELA, alleging that it assigned her "'physically demanding work performed often times on a repetitive basis, with irregular motions and unnatural postures of the body . . . .'" *Id.* Her employer moved for summary judgment on the grounds that the employee's action was barred by the release. *Id.* at 631. The employee opposed, arguing that she sustained a new injury to a different area of her spine caused by excessive and repetitive lifting. *Id.* at 633. The circuit court granted summary judgment in favor of the employer, reasoning that release covered the alleged injury. *Id.* at 633-34.

We affirmed, explaining that the release did not merely cover injuries at the L4-L5 and L5-S1 levels of the employee's spine, but also any "'injury resulting therefrom or related thereto.'" *Id.* at 636. Thus the employee's injury at the L3-L4 level of her spine fell within the scope of the release. *Id.* Expert testimony demonstrated that the etiology of the injury "was adjacent disc disease, that is, degeneration of a disc adjacent to fused vertebrae." *Id.* We acknowledged that, even if the employee's subsequent work

accelerated the progression of her injury, the L3-L4 injury nevertheless remained a progression of the original injury and, therefore, recovery was barred by the release. *Id.*

In our view, *Shutter* does not prohibit Harrison from recovering for an acceleration in this case. Every FELA case involving a release must be decided on its own facts and the language of the release at issue. *See Wicker*, 142 F.3d at 701. In *Shutter*, the release covered any injuries related to or progressing from the original injury. 226 Md. App. at 636. The Release here, in addition to covering Harrison's left knee condition, covers "any aggravation and/or exacerbation . . . that may arise in the future *as a result of any past or future repetitive stress or cumulative trauma*." (Emphasis added). As we explained, a genuine dispute of material fact exists as to whether the condition of Harrison's left knee after the slip-and-fall in 2014 was solely a progression of knee condition caused by repetitive stress,[7] or whether the fall aggravated the pre-existing condition of the knee. Because a genuine dispute of material fact exists, summary judgment was improper.

II.

Finally, CSX contends that, even if the Release does not bar recovery in this action, the circuit court could have granted summary judgment in its favor on other grounds, namely, that it was not negligent because it was not aware of the dangerous condition on its worksite and that "temporary weather condition[s] . . . cannot serve as the basis for a claim that the railroad breached its duty . . . ." CSX argues that we can hold that summary judgment was proper on grounds not decided by the circuit court because "[t]here has

[7] A fact finder could, for example, conclude that Harrison's allegation that his knee injury worsened after the fall was pretextual.

already been thorough discovery on these issues, along with plenary briefing, both in the trial court and in this Court."

"Ordinarily, an appellate court should review a grant of summary judgment only on the grounds relied upon by the trial court." *Blades v. Woods*, 338 Md. 475, 478 (1995) (citations omitted). We are not persuaded to depart from that general rule in this case. As the Court of Appeals has explained,

> a trial judge possesses broad discretion to deny a summary judgment even though the technical requirements for entry of such a judgment have been met. The effect of our ruling on [an] issue . . . not considered by the trial judge, would be to deprive the trial judge of discretion to deny or to defer until trial on the merits the entry of judgment on such [an] issue[].

Henley v. Prince George's Cty., 305 Md. 320, 333 (1986).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.