NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CONSOLIDATED RAIL CORPORATION *v.* GOTTSHALL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 92–1956. Argued February 28, 1994—Decided June 24, 1994[1]

In separate suits against petitioner Conrail, their former employer, respondents Gottshall and Carlisle each asserted a claim for negligent infliction of emotional distress under the Federal Employers' Liability Act (FELA). In *Gottshall,* the District Court granted summary judgment to Conrail. In reversing and remanding for trial, the Court of Appeals observed that most States limit recovery for negligent infliction of emotional distress through the application of one or more common-law tests. The court declared, however, that there is a fundamental tension between such restrictive tests and FELA's liberal recovery policy, and stated that the tests must be discarded when they bar recovery on ``meritorious'' FELA claims. The court held that the facts alleged in support of a FELA claim must provide a threshold assurance that there is a likelihood of genuine and serious emotional injury, and concluded that Gottshall had satisfied this threshold ``genuineness'' test and adequately alleged the usual FELA elements, including conduct unreasonable in the face of a foreseeable risk of harm. In *Carlisle,* the same court sustained a jury verdict against Conrail, ``uphold[ing] for the first time a claim under the FELA for negligent infliction of emotional distress arising from work-related stress.'' Although it restated its *Gottshall* holding, the court shifted its primary emphasis to the foreseeability of the alleged injury and held, *inter alia,* that Carlisle had produced sufficient evidence that his nervous breakdown had been foreseeable to

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[1]Together with *Consolidated Rail Corporation* v. *Carlisle,* also on certiorari to the same court.

Conrail.

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Held:

1. The proper standard for evaluating FELA claims for negligent infliction of emotional distress must be derived from FELA principles and relevant common-law doctrine. Pp. 7–16.

(a) This Court's FELA jurisprudence outlines the proper analysis for determining whether, and to what extent, a new category of claims should be cognizable under the statute. First, the language, purposes, and background of the statute, along with the construction given to the statute by this Court, must be examined. Second, because FELA jurisprudence gleans guidance from common-law developments, the common law's treatment of the asserted right of recovery must be considered. See, *e.g., Atchison, T. & S. F. R. Co.* v. *Buell,* 480 U. S. 557, 561–562, 568–570. Pp. 7–8.

(b) Through FELA, Congress sought to compensate employee ``injury'' resulting from employer ``negligence,'' 45 U. S. C. §51, by creating a remedy for the many deaths and maimings that were occurring on interstate railroads at the time the statute was enacted in 1908, see *Urie* v. *Thompson,* 337 U. S. 163, 181. Over the years, the Court has construed FELA liberally to further this remedial goal, see, *e.g., Rogers* v. *Missouri Pac. R. Co.,* 352 U. S. 500, 506. Nevertheless, the federal question of what constitutes negligence for purposes of FELA turns upon common-law principles, subject to such modifications as Congress has imported into those principles in the statute itself. See *Urie, supra,* at 182. Because FELA is silent on the issue of negligent infliction of emotional distress, common-law principles must play a significant role in the Court's decision. Pp. 8–10.

(c) Although nearly all States recognize a right to recover for negligently inflicted emotional distress—that is, mental or emotional harm (such as fright or anxiety) that is caused by another's negligence and that is not directly brought about by a physical injury, but that may manifest itself in physical symptoms—three major common-law ``tests'' have been developed to limit that right: (1) the ``physical impact test,'' which had been embraced by most of the major industrial States by 1908, but has since been abandoned in all but a few jurisdictions; (2) the ``zone of danger'' test, which had been adopted by several States by 1908 and currently is followed in 14 jurisdictions; and (3) the ``relative bystander'' test, which was first enunciated in 1968 and has since been adopted by nearly half the States. Pp. 10–16.

2. The Court of Appeals applied an erroneous standard for evaluating FELA claims for negligent infliction of emotional distress. Pp. 16–26.

(a) The lower court correctly held that such claims are cog-

nizable under the statute. As part of its duty to use reasonable care in furnishing employees a safe workplace, *Buell, supra,* at 558, a railroad has a FELA duty to avoid subjecting its workers to negligently inflicted emotional injury. A right to recover for such injury was widely recognized when FELA was enacted and is nearly universally recognized today. Moreover, given the broad remedial scope this Court has accorded FELA's ``injury'' term, cf. *Urie, supra,* at 181, there is no reason why that term should not encompass emotional injury. Pp. 16–17.

(b) However, the Court of Appeals' standard for delimiting this FELA duty is rejected. First, because the merit of this type of FELA claim cannot be ascertained without reference to the common law, the court erred in treating the common-law tests as mere arbitrary restrictions to be disregarded if they stand in the way of recovery on ``meritorious'' FELA claims. Second, the viability of the court's ``genuineness'' test is questionable on its own terms, since it cannot appreciably diminish the possibility of unlimited liability for *genuine* claims of emotional harm, and since it would force judges to make highly subjective determinations concerning the authenticity of particular claims. Third, the court's reliance on foreseeability as a meaningful limitation on liability is misplaced, since *all* consequences of a negligent act, no matter how far removed, may be foreseen. Finally, the common law does not support the court's unprecedented *Carlisle* holding, which would impose a duty to avoid creating a stressful work environment, and thereby dramatically expand employers' FELA liability to cover the stresses and strains of everyday employment. Pp. 17–21.

(c) Instead, this Court adopts the zone of danger test, which limits recovery for emotional injury to those plaintiffs who either sustain a physical impact as a result of the defendant's negligence or are placed in immediate risk of physical impact by that negligence. This is the only common-law test that exhibits both significant historical support and continuing vitality sufficient to inform the Court's determination of the federal question of what constitutes FELA ``negligence'' in this context. This test is consistent with FELA's broad remedial goals and with the statute's purpose of alleviating the physical dangers of railroading. Even if respondents are correct that the zone of danger test arbitrarily excludes some emotional injury claims, that test best reconciles the concerns motivating the common-law restrictions on recovery for negligently inflicted emotional distress—the potential for a flood of trivial suits, the possibility of fraudulent claims that are difficult to detect, and the specter of unlimited and unpredictable liability— with this Court's FELA jurisprudence. Pp. 21–25.

3. The question whether Gottshall satisfies the zone of

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danger test was not adequately briefed or argued before this Court, and should be considered by the Court of Appeals on remand. In *Carlisle,* however, judgment must be entered for Conrail on remand, because Carlisle's work-stress-related claim plainly does not fall within the common law's conception of the zone of danger. Pp. 25–26.

988 F. 2d 355 (first case) and 990 F. 2d 90 (second case), reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. SOUTER, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which BLACKMUN and STEVENS, JJ., joined.