Tank Explosion/Hazardous Materials Transportation Act: Federal Court Considers Whether Alleged Failure to Warn Claim is Preempted

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03/16/2022

The United States District Court for the Southern District of New York ("Court") addressed in a March 11th Opinion whether the federal Hazardous Materials Transportation Act ("HMTA") preempted certain state tort law claims in relation to an explosion of a tank that caused a serious injury. See *Buono v. Poseidon Air Systems, et al.*, 2022 WL 744050.

Claims for relief addressed included products liability and negligence based on a failure to warn.

Franklin Buono ("Plaintiff") is stated to have been severely injured when a tank filled with compressed air exploded. He brought suit against Tyco Fire Products LP ("Defendant"). Defendant filed a third party complaint against Plaintiff's employer Oprandy's Fire & Safety, Inc.

The Court directed the parties to address the following questions in regards to the two claims:

1. The question of preemption under the HMTA
2. Duty to Warn

The HMTA's purpose includes protection against risk to life, property and the environment that are inherent in the transportation of hazardous material. See 49 U.S.C. § 5101, *et seq*.

The HMTA also contains an expressed preemption provision which states in pertinent part:

[e]xcept as provided in subsection (c) of this section and unless authorized by another law of the United States, *a law, regulation, order, or other requirement of a State*, political subdivision of a State, or Indian tribe *about any of the following* subjects, *that is not substantively the same* as a provision of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security, *is preempted*:

...

(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. (Emphasis added)

Plaintiff argued that the tank at issue was outside the HMTA's reach. His three arguments included:

1. the tank was neither manufactured nor intended to be used to transport hazardous materials (the Court rejects the argument that the tank was not governed by the HMTA because it was neither intended nor used to transport hazardous materials, stating that the tank need only be represented, marked, certified or sold as qualified for use in transporting hazardous material and commerce for the preemption clause to apply);
2. Plaintiff argues that his claims concern labels as opposed to markings and therefore cannot be preempted (HMTA bars any common law duty that is not substantively the same as that imposed by federal law and adopting the argument would violate that prohibition and create a carveout under § 5125(b)(1)(E) for reusable containers); and
3. The tank meets the definition of an exempted "empty packaging" under the HMTA Hazardous Materials Regulations. (No evidence cited suggesting the tank ever had labels concerning hazardous material that was removed/regulations counsels against Plaintiff's argument because Subchapter C [as opposed to Subpart B] where this regulations is located is entitled "Preparation of Hazardous Materials for Transportation"/relevant regulation states that the tank would not be subject to any other requirements of this Subchapter)

The Court concludes that Plaintiff's claims for relief against the Defendant are preempted by the HMTA.

A copy of the Opinion can be downloaded here.