Sulfuric Acid Release/Hazardous Materials Transportation Act: Ohio Appellate Court Addresses Whether Certain State Law Claims Are Preempted

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The Court of Appeals of Ohio ("Appellate Court") addressed in a February 5th Opinion issues arising out of a judicial action for damages due to the release of sulfuric acid causing an injury. See *Einbecker v. Gates Corporation*, 2024, WL 416332.

The question addressed was whether certain state law claims were preempted by the federal Hazardous Materials Transportation Act ("HMTA").

Einbecker was injured when a transfer-hose assembly that was designed and manufactured by Gates Corporation ("Gates") failed and burst resulting in sulfuric acid injuring him. The event happened when Einbecker was pumping sulfuric acid from a tanker truck into a Pennsylvania holding tank.

Einbecker's injuries occurred during the course of employment with Roeder Cartage Company ("RCC") which is described as providing transportation services for the delivery of chemical commodities (including sulfuric acid). The transfer hose was sold to RCC by Hart Industries, Inc. ("Hart").

Einbecker filed a civil action against Gates and other defendants.

The Complaint alleged causes of action including:

- Ohio Products Liability Act ("OPLA")
- Negligence
- Breach of Warranty

Einbecker alleged that the transfer-hose assembly manufactured by Gates was:

. . . defective in design formulation and construct, and also that inadequate warnings and construction had been furnished.

Gates subsequently sought a judgment on the pleadings arguing that the federal HMTA preempted the OPLA state-law claims. The trial court granted Gates' motion and dismissed all of the "state-law based" claims against Gates.

The Appellate Court in addressing the preemption issue notes that the HMTA governs hazardous materials storage, handling, and transportation. It also observed that the purpose of the HMTA is to

protect against risk to life, property, and environment that are inherent in the transportation of hazardous material. Further, the Secretary of Transportation is empowered to prescribe regulations for the safe transportation, including security of hazardous material in intrastate, interstate, and foreign commerce.

The regulations promulgated by the Secretary are denominated the Hazardous Materials Regulations ("HMRs") and apply to the transport of hazardous materials in commerce.

The HMTA expressly preempts any state law, regulation, or order that is:

. . . not substantively the same as a regulation set forth under the HMTA that relates to the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing of a package or container that is used in transporting hazardous materials in commerce.

A nonfederal requirement is not substantively the same unless it conforms in every significant respect to the federal requirement.

The Appellate Court, in reviewing Einbecker's Amended Complaint as it relates to the OPLA violations, determines that it only involves the transfer-hose assembly. It is held to not involve the container used in transporting hazardous materials in commerce.

The Appellate Court reviews the trial court's citing of two cases dealing with HMTA preemption:

- *Roth v. Norfalco LLC* (Determined that the plaintiff's design claim would impose requirements on the shipper that were different than those contained in the HMR and the structure and purpose of the HMTA confirms that the statute preempts state-law claims that if successful would impose design requirements on a package or container qualified for use in transporting hazardous materials in commerce.)
- *Noffsinger v. Valspar Corp*.(Injuries sustained from a leak in a steel drum containing hazardous material inside the trailer that was being transported and claims against the shipper were brought under the theory that the shipper does not have to be the entity that actually designs, constructs, maintains, or fills the package, but the shipper is responsible for making sure those things are done in compliance with the HMR to assure the package is safe.)

The Appellate Court distinguishes Einbecker's claims from *Roth* and *Noffsinger*. The rationale for this conclusion is that only a hose is involved that ruptured while transferring sulfuric acid from the tanker truck into a holding tank. His claims differ because he does not present claims versus the shipper of the hazardous materials as in *Roth* and *Noffsinger*.

Instead, Einbecker's claims are presented against Gates, the manufacturer of the hose that ruptured. Manufacturing a hose that is used to drain the hazardous-material container is stated to differ from the HMTA requirements of packages or containers qualified for use in transporting hazardous materials in commerce.

The Appellate Court finds that the trial court erred in granting Gates' judgment on the pleadings on the basis of preemption.

A copy of the Opinion can be downloaded here.