

Shield or Sword? New Jersey Confirms Federal Law Still Supreme in State Products Liability Cases

The Appellate Division recently held that a state-law based products liability claim was preempted by federal law, even though the target defendants in the state case were not subject to federal regulation. In a suit, *Estate of Brust v. ACF Indus., LLC*, brought against a number of locomotive and automotive defendants for personal injuries based on a daughter's secondary exposure to asbestos, the New Jersey Court ruled that plaintiffs' state law claims were preempted by federal law, specifically, the Locomotive Inspection Act (LIA), 49 U.S.C.S. §§ 20701-20703.

Although the plaintiffs acknowledged that in enacting the LIA, Congress sought to regulate locomotive equipment in general, the plaintiffs argued that the LIA did not preempt state products liability claims in New Jersey (such as defective design and failure to warn). The Appellate Division said, "it does preempt." The Appellate Court noted that the U.S. Supreme Court previously held the LIA preempted state statutes that required locomotives to have a fire door and a cab curtain, because those statutes were directed at the "equipment of locomotives." See, *Napier v. Atl. C. L. R. Co.*, 272 U.S. 605, 612 (1926); and, in 2012 the U.S. Supreme Court re-affirmed *Napier*, when it held that state law claims against a manufacturer of locomotive brake shoes (for defective design and failure to warn) were pre-empted by the LIA, because they would impose state law requirements on a locomotive's physical makeup. See, *Kurns v. R.R. Friction Prods. Corp.*, 132 S.Ct. 1 261 (2012).

Applying the reasoning from those cases, the Appellate Division held that plaintiffs' state products liability claims were preempted by the LIA. The Court reasoned that plaintiffs' (negligence and) products liability claims would improperly affect "the design, the construction, and the material" of locomotives, including claims for failure-to-warn.

Comment: This ruling (*Estate of Brust*) is very important as it reaffirms the viability of the federal preemption defense, in New Jersey State products liability cases. When applied properly, federal preemption can be used as a shield, to limit the effect of a (potentially pro-plaintiff) state law claim for products liability; or as a sword, to eviscerate the claim in its entirety. Whether you are a company who manufactures consumer (or commercial) goods, or you are an insurer who insures such a company, it is important to be well-versed on the state and federal laws that not only govern the particular product, but also the applicable industry.

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