

Products Liability Law Daily Wrap Up, TOP STORY—ASBESTOS—N.J. Super. App. Div.: Take-home asbestos exposure claims derailed by Locomotive Inspection Act, (Nov. 20, 2015)

By Pamela C. Maloney, J.D.

Product liability design defect and failure-to-warn claims brought against an urban rapid transit operation to recover for injuries arising out of take-home asbestos exposure were preempted by the Locomotive Inspection Act (LIA) under the doctrine of field preemption, the Superior Court of New Jersey, Appellate Division ruled. Failure-to-warn claims filed against various manufacturers and sellers of asbestos-containing automobile brakes were dismissed summarily because there was insufficient evidence of medical causation linking their products to second-hand exposure (*Brust v. ACF Industries, LLC*, November 19, 2015, Alvarez, C.).

Background. The daughter of a worker employed by the Port Authority Transit Corporation (PATCO) in New Jersey as a train operator, yard operator, and supervisor developed mesothelioma as a result of take-home exposure to asbestos on her father's work clothes. The worker's job duties included the repair and maintenance of asbestos-contaminated air brake systems on PATCO's multiple unit locomotives. The father filed product liability design defect and failure-to-warn claims against PATCO and various manufacturers of locomotives and locomotive brake shoes, alleging that his daughter's mesothelioma was a result of secondary exposure to friable asbestos fibers through direct contact with her father and while laundering his asbestos-laden work clothing. The father also sued various manufacturers and sellers of automobile brakes, claiming that his daughter's injuries could have been caused by her exposure to asbestos dust created when he replaced the brakes on cars he worked on after hours.

PATCO moved for summary judgment, arguing that federal legislation and court precedent preempted state tort claims related to locomotives. The automobile defendants also moved for summary judgment, contending that there was no evidence that the father's contacts with automotive brake dust were not sufficiently frequent, regularly and proximate to establish causation.

Field preemption. In addressing the issue of whether the LIA preempts state law claims arising from locomotive equipment even if the entity operating the equipment was not subject to federal regulations, the court opined that state law claims for defective design of locomotive equipment and for failure to warn about its risks fell within the field preempted by the LIA. Citing a number of decisions that had considered the scope of the LIA's preemptive effect, the court explained that because these claims were directed at the subject of locomotive equipment and would affect the design, construction and the material of locomotives, they were preempted under the broad scope of preemption outlined in those decisions. This sweeping field preemption reflected in these decisions and in Congress's intent to fully occupy this area was intended to ensure the uniformity of railroad equipment, an important safety and practical consideration given the national distribution of products manufactured for use in the industry. Focusing on the equipment, regardless of where or by which entity it was used, ensured that all equipment meets federal safety standards while creating an exception based on the classification of the operation at the time of the injury would conflict with the goal of uniformity, the court found.

Medical causation. Turning to the claims against the automotive defendants, the court clarified that, in addition to other proof requirements a plaintiff in an asbestos failure-to-warn case must prove medical causation under the frequency, regularity, and proximity test. In this case, the evidence showed that the father replaced brake shoes contaminated with asbestos on four occasions over a period of eight years. He could not recall the names of the manufacturers of the replaced brake shoes nor could he quantify the number of times he installed new brakes manufactured by the named defendants. Thus, it was clear that even if the father was exposed to one of each of the automotive defendants' products over the eight-year period in question, this exposure was so limited that it failed to meet the frequency, regularity, and proximity test.

The case is Docket No. A-3431-13T4.

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Companies: Delaware River Port Authority; Port Authority Transit Corp.; Honeywell International Inc.; Pep Boys – Manny Moe & Jack of Delaware, Inc.; Pneumo Abex, LLC; Railroad Friction Products Corp.

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