

Hazardous Materials Transportation Act/Compressed Gas Tank Actuation: New York Court Addressed Preemption Issue



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10/07/2024

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The Appellate Division of the New York Supreme Court (“Court”) addressed in an August 29th opinion an issue arising out of an injury to Malerba caused by an improperly manufactured compressed fire suppression gas tank. See *Malerba v. New York City Transit Authority*, No. 2023-04665, 2024 WL 3373748 (N.Y. App. Div. Aug. 29, 2024).

The question considered was whether the federal Hazardous Materials Transportation Act (“HTMA”) preempted state law claims regarding alleged defective design of the tank’s cylinder and valve system and its associated failure to warn.

Malerba was an employee of Ameron Global, Inc., the company responsible for maintaining the gas tanks of the New York City Transit Authority and the Metropolitan Transit Authority’s (“Transit Authority”) fire suppression system.

Tyco Fire Products, LP (“Tyco”) designs and manufactures the Transit Authority’s gas tanks.

Malerba was severely injured while working on a compressed gas tank when it actuated.

Malerba filed an action in the New York Supreme Court alleging five causes of action:

- General and aggravated negligence;
- Breach of express warranties of safety for the proper use for the tanks;
- Breach of implied warrant of merchantability of the tanks;
- Strict liability due to defectiveness of the tanks; and
- Loss of consortium.

These causes of action were based on Tyco’s alleged negligence in the tank and its parts’ design and manufacture, failure to provide instructions and warnings for the tank, and then the sale of the tank without such warnings.

The Supreme Court of New York denied Tyco’s motion for summary judgment asserting that Malerba’s claims were preempted by the HTMA, which Tyco appealed.

The relevant provision of the HTMA states:

[A] law... of a State... about any of the following subjects that is not substantively the same as a provision [or regulation] under this chapter..., is preempted:...(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging components that is represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce.

The Court considered the “subject matter requirement” for federal preemption. The subject matter requirement states that the state law cannot be “about” one or more of the subjects enumerated in the HTMA. Based on this analysis, the Court determined that the scope of the HTMA provision encompassed Malerba’s claims.

First, Malerba’s claims about the design defects of the tank and its component parts were “about” the “designing and manufacturing” of the tank.

Second, Malerba’s claims concerning the lack of a warning label were “about” the “markings” on the tank.

Third, the Court held that the cylinder was a “package, container, or packaging component of the tank and could not function without valves.

Malerba’s complaints regarding the valve’s defects were therefore preempted because the valves could be considered part of the fully package container or separate “packaging components.”

The Court determined that the valve assembly was “represented, marked, certified, or sold as qualified for use in transporting hazardous materials.” Tyco represented or sold the valve as having the ability to be used in transporting hazardous materials. Therefore, Tyco met the requirement for preemption.

Because all of Malerba’s claims failed the “subject matter requirement,” they were preempted by the HTMA.

A copy of the Opinion can be downloaded [here](#).