

Hazardous Materials Transportation Act/Common Law Action: Federal Court Addresses Private Right of Action/Preemption Issues

Arkansas Environmental, Energy, and Water Law Blog



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A United States District Court (Southern District California) in a March 1st decision addressed two issues in a common law damage action involving the federal Hazardous Materials Transportation Act (“HMTA”). See *Chavez vs. Federal Express Corporation et al.* 2017 WL 784218.

Plaintiffs Chavez and Thompson (collectively “Chavez”) filed an action against Federal Express Corporation and Federal Express Ground Package System, Inc. (collectively “Federal Express”) for injuries they allegedly suffered while unloading an interstate shipment containing hazardous materials that exploded during delivery.

One of the containers that exploded was alleged to have included hazardous materials such as:

. . . aerosols, silicon material, at least one fire extinguisher, powder, Mapp gas, rust treatment material, flammable mastic adhesive, and rust oleum flammable enamel.

One of the Federal Express defendants is stated to have delivered the shipment to the Naval Air Warfare Center Aircraft Division Lakehurst (San Diego, California) where it exploded while being unloaded by the plaintiffs.

An investigation is stated to have determined that none of the containers displayed the hazardous material warnings required by HMTA.

Plaintiff Chavez alleged Federal Express violated the HMTA and related federal regulations when they:

1. allowed an untrained and unregistered person to accept hazardous materials into interstate commerce;
2. failed to classify, require appropriate packaging, require appropriate shipping paperwork, require proper labeling marking and warning placards for the shipment; and
3. failed to inspect, examine, scan, or discover the hazardous materials in the containers.

One of the Federal Express defendants was also alleged to owe the plaintiffs a duty of care to implement reasonable safety and security mechanisms to discover hazardous materials in shipments so as to not expose others to an unreasonable risk of harm. In addition, they alleged that the company breached this duty when it:

1. failed to properly train, and maintain retraining of their employees on the subjects of hazardous material recognition, marking, labeling and shipping of hazardous material;
2. failed to ascertain whether the shipment contained hazardous materials;
3. failed to require the shipper to submit the appropriate paper work for the shipment of hazardous material;
4. failed to insure that the material offered by the shipper was properly labeled and packaged;
5. endeavored to ship “hazardous material” without the appropriate shipping papers, baling and markings warning that the packages contained hazardous material; and
6. failed to warn plaintiffs upon delivery of the hazardous material.

One of the Federal Express defendants moved to dismiss the HMTA claim arguing:

1. there is no private right of action under the HMTA,
2. the negligence claim is preempted by the Airline Deregulation Act (“ADA”).

The Court summarily concludes that the HMTA does not contain a private right of action. Therefore, the plaintiffs’ HMTA cause of action is dismissed.

As to the ADA preemption argument, the Court noted that the clause provides that a:

...State. . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier. . . .” *49 U.S.C.A. § 41613(b)(1)*.

One of the Federal Express defendants argued that Chavez’s negligence claim is preempted by the clause because it is “related” to the company’s “services.”

The Court undertakes a detailed analysis of the terms “service” in this context. After reviewing relevant case law, it notes:

Here, Chavez and Thompson’s negligence claims are based on FedEx Express’s alleged failure, among other things, to warn that the containers included hazardous materials. . . Under Charas, because the claims does not implicate things such as the frequency and scheduling of transportation, or the selection of markets, Chavez and Thompson’ negligence cause of action is not preempted.

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