

Train Derailment/Residential Evacuation: Federal Court Considers Applicability of Hazardous Materials Act Preemption Provision to Class Action



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The United States District Court for the Western District of Pennsylvania (“Court”) addressed in an October 1st opinion whether the Hazardous Materials Transportation Act (“HMTA” or “Act”) preempted state tort law claims in relation to a train derailment that resulted in the mass evacuation of residents near the derailment site. See *Diehl v. CSX Transportation, Inc.*, 2018 WL 4705781 (W.D. Penn. 2018).

A train operated by CSX Transportation, Inc (“Defendant”) derailed on August 2, 2017, near the town of Hyndman, Pennsylvania.

Some of the derailed train cars contained substances classified as hazardous material under the HMTA. The substances included propane and molten sulfur.

The spillage of those materials resulted in a fire that burned for more than two days. Further, it caused the evacuation of approximately 1,000 people. The length of evacuations ranged from two days to multiple weeks. Defendant’s cleanup of the derailment site lasted three months.

Denora Diehl (“Plaintiff”), as one among those evacuated, brought a class action on behalf all of the evacuated residents. She alleged claims of negligence and private nuisance.

Actual and punitive damages in an amount the Court deemed to exceed \$5,000,000 were sought. The Court asserted jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

Defendant moved to dismiss the complaint in its entirety. The railroad argued, among other things, that the Plaintiff’s allegations were preempted by the HMTA to the extent that the allegations could be read as raising claims based on the transport of hazardous materials.

The purpose of the HMTA was described as protecting “against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.” 49 U.S.C. § 5101.

The Court noted that the HMTA authorizes the Secretary of Transportation to designate certain material as hazardous and to regulate the transportation of those materials. It outlines the Act’s extensive preemption provisions. See § 5125(a)-(b).

Finding that the Defendant had not pursued any argument under § 5125(a), the Court rearticulated the United States Court of Appeals for the Third Circuit's test for analyzing preemption claims under § 5125(b)(1):

Our threshold concern, then, is to identify the contours of the non-federal law, regulation, order, or requirement at issue in the case. Once we have done so, we must ascertain (1) whether § 5125(b)(1) applies to the non-federal law, regulation, order, or requirement we have identified, and (2) whether the non-federal requirement is 'substantively the same as' the conditions imposed by federal hazardous material law.

Roth v. Norfalco LLC, 651 F.3d 367, 376 (3d Cir. 2011).

In applying the Third Circuit test, the Court found that, because the Plaintiff's allegations did not "deal[] with classifying and packaging hazardous materials. . ." nor "designing containers for the transportation of those materials," but, rather, with the Defendant's response to the derailment, the HMTA did not preempt the Plaintiff's claims. Therefore, the Court declined to dismiss the Plaintiff's claims based on HMTA preemption.

A copy of the opinion can be found [here](#).