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Contacts

Richmond Office
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

[D. Alan Rudlin](#)
(804) 788-8459
arudlin@hunton.com

[George P. Sibley, III](#)
(804) 788-8262
gsibley@hunton.com

Federal Preemption Under Clean Air Act is Basis for Products Liability Win in Southern District of New York

On February 16, 2011, federal District Judge Paul A. Crotty held that the Clean Air Act (“CAA”) preempted state common law product liability claims. The litigation, *In re Jackson, et al., v. General Motors Corporation, et al.*, involved scores of current and former New York Metropolitan Transportation Authority workers’ alleged wrongful death and personal injury claims from exposure to diesel particulates and fumes. The defendants included both manufacturers of buses as well as diesel engines. Hunton & Williams served as counsel for one of the defendants, Northrop Grumman Corporation. The plaintiffs asserted claims for negligence, strict products liability and failure to warn of latent dangers of diesel exhaust. Defendants moved for judgment on the pleadings on all counts on the ground that the CAA preempted plaintiffs’ state law claims.

In a decision that will have significant ramifications on future product liability claims, Judge Crotty granted the defense’s motion in its entirety, including the failure to warn claims.

The motion centered on the issue of federal preemption under the CAA. Defendants argued that the comprehensive federal regulation of air

pollution preempts any state statutory and common law that would effectively impose competing emissions standards. While the plaintiffs alleged that the CAA emissions standards were inadequate, the CAA stipulates that it is not up to the state of New York, or any other state, to establish its own set of emissions standards. Section 209(a) states:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines

Congress thus ensured that the state would not promulgate competing emissions standards — potentially leading to the chaos and uncertainty of fifty different emissions standards for one vehicle. Therefore, the law clearly bars states from promulgating their own such emissions standards.

Whether Section 209(a) also preempts state common law tort actions was not as clear-cut.

In analyzing a key phrase from Section 209(a) — “No State ... shall adopt or attempt to enforce” — Judge Crotty held that state law tort actions qualify as

attempts to adopt or enforce emissions standards, because state common law is ultimately intended to enforce duties. So a tort claim on these grounds is no different from a statute that prescribes actual emissions standards for purposes of the preemption analysis.

Regarding the plaintiffs' claim that the defendants failed to warn of the dangers associated with diesel exhaust, Judge Crotty again ruled in

favor of the defense. He found that the claims are preempted by CAA's Section 209(a) stating that "vehicle manufacturers not be subject to fifty sets of requirements relating to emissions controls," which would include warning label requirements.

This win was especially significant in light of the broader trend against federal preemption, best exemplified by *Wyeth v. Levine*, in which the U.S.

Supreme Court held that state law failure to warn claims were not preempted by federal drug labeling regulations.

If you have any questions about this decision or other products liability litigation matters, please contact **D. Alan Rudlin** at (804) 788-8459 or arudlin@hunton.com or your Hunton & Williams LLP contact.

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