

## Ohio Appellate Court Holds Hazardous Material Transportation Act Does Not Preempt Ohio Products Liability Act

By John Huffman

On February 5, 2024, an Ohio appellate court issued a decision that will permit plaintiffs in products liability actions to bring state law claims for injuries caused by defective products used in the transfer and storage of hazardous materials. *Einbecker v. Gates Corp.*, 3rd Dist. Allen No. 1-22-62, 2024-Ohio-385. The holding appears to be limited to the facts of that case. However, if courts extend *Einbecker*, manufacturers and sellers of goods used in the storage or transportation of hazardous materials should prepare for plaintiffs seeking recovery through state law remedies in this area traditionally governed by federal law.

The Ohio Products Liability Act (“OPLA”) is the sole avenue for a plaintiff seeking recovery for injuries sustained due to a defective product. The OPLA is “intended to abrogate all common law product liability claims or causes of action” in Ohio. R.C. 2307.71(B). The Hazardous Materials Transportation Act (“HMTA”) is a federal regulation governing the storage, handling and transportation of hazardous materials. The HMTA contains a preemption provision stating that the statute preempts state laws that are substantively similar to “the packing, repacking, handling, marking, and placarding of hazardous material” or “the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in the transporting hazardous material in commerce.” 49 U.S.C. § 5125(b)(1)(B) & (E).

In *Einbecker*, the plaintiff was pumping sulfuric acid from a tanker truck into a holding tank, using a hose manufactured by Gates Corporation. The hose burst, spraying sulfuric acid on the plaintiff. The plaintiff asserted OPLA products liability claims against Gates Corporation. Gates Corporation argued in a motion for judgment on the pleadings that the HMTA preempted the plaintiff’s product liability claims. Finding the claims were preempted by the HMTA, the trial court granted the motion.

The Third District Court of Appeals reversed, holding the HMTA did not preempt the plaintiff’s product liability claims. The court first explained how Gates Corporation is the manufacturer of the hose, not a shipper of hazardous material. The court reasoned that the HMTA did not preempt the OPLA claims because “[m]anufacturing a hose that is used to drain the hazardous-material container differs markedly from the HMTA requirements of packages or containers qualified for use in transporting hazardous materials in commerce.” The court also noted that the only hose-related regulation in the HMTA related to the inspection of hoses, rather than the manufacture and design of hoses. With this distinction in mind, the court concluded the OPLA claims did not implicate regulations relating to the handling of hazardous materials under the HMTA and so the HMTA did not preempt the plaintiff’s OPLA claims.

Roetzel attorneys will continue to monitor the state of the law on this subject and are prepared to assist their clients with defense of products liability and toxic tort lawsuits. For any questions, please contact any of the listed attorneys.

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