

Case Name: Thomas F. Atwell, Jr. (executor of the Estate of Thomas F. Artwell, deceased) v. John Crane Inc.

Date Decided: December 17th, 2009

Originally Filed in: Pennsylvania (State)

Decided by: Pennsylvania Superior Court (State)

Court: Superior Court of Pennsylvania

Judge: Judge Freedberg, Judge Cleland and Judge Kelly

Citation: 2009 WL 4844374 (Pa.Super.)

Background:

From 1951 to 2004, the deceased was exposed to asbestos-containing products manufactured by John Crane Inc. The deceased was exposed to the asbestos while performing his duties as a pipe fitter repairing locomotives for Southern Railway and Norfolk Southern Railway. The plaintiff ultimately received a \$150,000 judgment in the strict liability action. Now, Crane appealed the verdict claiming that the state tort claims were preempted by federal law occupying the field of railroad safety. More specifically, Crane claims that the Boiler Inspection Act, with the Safety Appliance Act, and in Federal Employers' Liability Act (FELA) all preempt the state tort claim.

Issue:

Are the plaintiff's claims preempted by FELA and other railway safety federal statutes?

Overall Issues Discussed or Touched Upon in this Case:

- *Safety Appliance Act*
- *Boiler Inspection Act*
- *Cumulative Trauma Case*
- *Applicability of FELA at Issue*
- *Procedural Issues - State*

Held:

The critical question in any preemption analysis is whether Congress intended the federal enactment to supersede state law. Crane relies upon the BIA, SAA, and FELA in its claim that Congress intended to occupy totally the field of regulation regarding locomotives, both their parts and equipment. Crane argues that Atwell's claims are preempted by the Boiler Inspection Act because Congress intended permanent and complete preemption of the field of locomotive safety and that the three federal statutes, FELA, SAA, BIA, taken together, constitute a broad and comprehensive system of federal regulation of the railroads, the purpose of which is the safety of the railroads and its employees. However, the locomotives which the deceased worked on were not in motion furthermore, the asbestos containing products he used for the repairs were not appurtenances because they were either removed or not installed. Perhaps more importantly, the Federal Railroad Safety Act, when enacted,

stopped the Boiler Inspection Act to be interpreted as preempting the entire field of railroad safety. Specifically, FRSA Â§205 allows a state to adopt or continue any law, regulation, etc. that is equal to or more stringent than the ones imposed under the FRSA. Accordingly, this Court affirmed the judgment.

Comments:

Whether a Federal Statute preempts state law in a specific area depends upon the Congressional intent while enacting the law. If the federal law, expansively covers the same area in state law, and provides no exception within its provisions, it may preempt state law claims. Steve Gordon