

U.S. Supreme Court to Consider Federal Preemption in Asbestos Suit

June 10, 2011

On June 6, the U.S. Supreme Court granted certiorari in *Kurns et al. v. Railroad Friction Products Corp., et al.*, No. 10-879, to consider whether the Locomotive Inspection Act (LIA) (formerly the Boiler Inspection Act) preempts state-law claims arising from workplace exposure to asbestos while working on railroad parts.

The case was brought by the widow and executor of the estate of a railway worker against Viad Corp. and Railroad Friction Products Corp. (RFPC) alleging that the decedent's work for various railroad employers installing brakes and valves on locomotives exposed him to asbestos, causing his mesothelioma.

The U.S. District Court for the Eastern District of Pennsylvania granted the defendants' motion for summary judgment. Relying on the U.S. Supreme Court's decision in *Napier v. Atlantic Coast Line Railroad Co.*, 272 U.S. 605 (1926), the district court held that the LIA regulates locomotives and locomotive parts used in interstate commerce—and, as a result, preempts the plaintiff's state-law claims.

On appeal, the Third Circuit affirmed. The court expressly disagreed with the Pennsylvania Supreme Court's decision in *Norfolk & Western Railway Co. v. Pennsylvania Utility Commission*, 413 A.2d 1037 (Pa. 1980), that the 1970 Federal Railroad Safety Act (FRSA) narrowed the scope of LIA preemption. The Pennsylvania Supreme Court's decision, the Third Circuit noted, is an outlier in comparison with the decisions of the highest courts of a number of states holding that the FRSA did not disturb the existing preemption framework established by the LIA.

In its holding, the Third Circuit further recognized that a plaintiff could still bring claims for asbestos injury arising out of an employer's negligence under the Federal Employers Liability Act (FELA). The FELA provides a federal cause of action for any railroad employee injured on the job due to employer negligence.

A decision is expected by June 2012.

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