RECENT COURT DECISIONS

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Federal cigarette Labeling Requirements

Dewey v. R.J. Reynolds Tobacco CO., 1990 N.J. Lexis 98 (N.J. Sup. Ct. 1990).

In a significant departure from several federal appellate decisions, the New Jersey Supreme Court concluded that a federal law concerning cigarette labeling did not preempt state common law actions for failure to warn, fraud, and misrepresentation. Dewey began smoking in 1942 but started smoking Brown and Williamson cigarettes in 1977, thirteen years after the Surgeon General's report announcing the dangers of smoking and eleven years after the adoption of the federal labeling requirements. He died of lung cancer in 1980. His wife sued several cigarette manufacturers for wrongful death on theories of design defect, failure to warn, fraud, and misrepresentation in advertising. Brown and Williamson moved the trail court for dismissal of claims against it on the ground that the federal labeling laws preempted all state common law claims. Relying on decisions of federal court of appeals, the trial court agreed as to the claims based on warnings and dismissed those claims. The state supreme court reversed.

Under the Supremacy Clause of the Constitution, Congress may preempt state common law remedies. In making a determination whether preemption has occured, the court must determine Congress' intent. The intent to preempt may be express or implied. Because the federal cigarette labeling statute did not expressly preempt state common law actions, the court attempted to discern if Congress impliedly preempted them. The court noted that implied preemption can be demonstrated if the statutory scheme adopted by Congress pervasively regulates the area, if compliance with both the federal and state schemes is impossible, or if compliance with state law would frustrate the congressional purposes. The court agreed with other decisions that Congress did not establish a pervasive regulatory scheme and compliance with common law remedies would not conflict with the federal requirements. It disagreed with other courts, however, in finding that state common law actions would be inconsistent with congressional goals.

Congress stated two goals in adopting the labeling law. First, the law was designed to provide consumers adequate information concerning cigarettes. Second, Congress desired to protect commerce from the effects of inconsistent requirements adopted by states. The second goal, however, was not inconsistent with the first or dominate to it. Moreover, it did not state that Congress' intent was to restrict the rights of injured consumers. Thus, the court found that the congressional purpose was not directly frustrated by allowing the common law claims based on inadequate warnings.

The court also rejected the argument that allowing the claims would indirectly frustrate the congressional purpose. The companies argued that their only reasonable response to civil liability would be to change their warning, a result that was not permitted under federal law. The supreme court, however, determined that Congress may be willing to accept incidental regulation of an action through common claims even when it prohibits direct regulation concerning warnings. It further noted the manufacturers had the alternative of providing other warnings such as package inserts.

Finally, the court stated that New Jersey had an important interest in compensating injured parties that should not be preempted by federal statue unless that result was clearly articulated. In that regard, the court stated manufacturers could comply with the federal requirements and still bear the risk of injuries that could have been prevented had they convinced the regulators a more comprehensive warning was needed.

Excess Liability Coverage Provisions Interpreted

Home Ins. Co. V. American Hospital Products Co.,902 F. 2d 1111 (2d Cir. 1990).

In this case, the court held that an excess liability policy did not cover punitive damages, post-judgment interest, or defense costs. Home insurance was the second level excess coverage provider for American Home Products. American Home Products suffered a judgment award of $9.2 million in compensatory damages and $13 million in punitive damages. It also incurred substantial defense costs and post-judgement interest as it appealed the decision. It filed a declaratory judgment action for a determination of the extent of coverage by Home under the excess liability policy. The Home policy was silent as to punitive damages but excluded post-judgment interest and defense costs. The trial court found that the coverage of punitive damages did not violate public policy but interest and defense costs were excluded by the policy.

On appeal, the Second Circuit Court of Appeals cerified the question of state public policy regarding insurance coverage of punitive damages to the New York Court of Appeals. The New York court found that pulic policy did not permit recovery. (See F. Darr, *Recent Court Decisions*, 57 J. Risk & Ins. 345, 349 (1990), for a discussion of the opinion.) Based on that opinion, the circuit court reversed the trial court and concluded that Home was not liable for punitive damages that exceeded any primary or first level excess coverage.