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Does the Future of Product Liability Actions Change after *Hawkins v. Leslie's Pool Mart, Inc.*?

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DOES THE FUTURE OF PRODUCT LIABILITY ACTIONS CHANGE AFTER *HAWKINS V. LESLIE'S POOL MART, INC.?*

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I. INTRODUCTION

In 1947, Congress enacted the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).[1] The purpose of FIFRA is to "centraliz[e] the pesticide registration process and insur[e] the accurate labeling of pesticides."[2] Many courts have questioned whether this federal Act preempts product liability claims in light of the Supremacy Clause of the United States Constitution.[3]

This Comment analyzes the Third Circuit's treatment of the issue of preemption in pesticide labeling and packaging claims presented in *Hawkins v. Leslie's Pool Mart, Inc.*[4] In *Hawkins*, the Third Circuit held that the plaintiff's failure to warn claim and failure to provide adequate directions claim were preempted by FIFRA.[5] However, the plaintiff's packaging claim was not preempted since the Environmental Protection Agency (EPA) had not regulated this area.[6]

Section II of this Comment describes the legal background of FIFRA and the Supremacy Clause of the United States Constitution. Section III discusses the history and procedural posture of this case. Section IV describes Hawkins' claims, the Third Circuit's analysis, and its holding. Section V focuses on the impact of the Third Circuit's decision in relation to other circuits' holdings concerning this issue.

II. LEGAL BACKGROUND

A. The Supremacy Clause

Article VI, Clause 2 of the United States Constitution states, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land;

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[1]Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 (1999) [hereinafter FIFRA].

[2]Daniel B. Nelson, *No Cause for Relief: FIFRA's Preemptive Scope After Cipollone v. Liggett Group, Inc.*, 1995 ANN. SURV. AM. L. 565, 566 (1996).

[3]U.S. CONST. art. VI, cl. 2.

[4]Hawkins v. Leslie's Pool Mart, Inc., 184 F.3d 244, 244 (3d Cir. 1999).

[5]*Id.*

[6]*Id.*

and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[7] The Supremacy Clause gives Congress the authority to preempt state law with federal legislation.[8]

There are three types of preemption: express, implied, and conflict.[9] FIFRA is an expressed preemption statute since the preemptive component is contained in the language of the statute.[10] The expressed language contained in FIFRA ordinarily means that the court does not need to go beyond the language of the statute.[11]

B. The Federal Insecticide, Fungicide and Rodenticide Act

The preemption component of FIFRA is located in United States Code Section 136v. This section states:

> [a] State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter. *Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.*[12]

In 1972, the increasing concern over environmental consequences of pesticide usage prompted Congress to amend FIFRA.[13] The legislative history of FIFRA demonstrates Congressional intent to preempt state regulation of pesticide labeling and packaging. The House Committee Report on the 1972 amendments to FIFRA notes that, "[i]n dividing the responsibility between the states and the Federal government for the management of an effective pesticide program, the Committee has adopted language which is intended to completely preempt State authority in regard to labeling and packaging."[14]

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[7]U.S. CONST. art. VI, cl. 2.
[8]*See* Gibbons v. Ogden, 22 U.S. 1, 210-11 (1824).
[9]*Hawkins*, 184 F.3d at 247.
[10]7 U.S.C. § 136v (1999).
[11]*See Hawkins*, 184 F.3d at 248.
[12]7 U.S.C. § 136v (emphasis added).
[13]*Id.*
[14]H.R. Rep. No. 92-511, at 16 (1971), *quoted in Hawkins*, 184 F.3d at 248.

In the 1970s, Congress also created the EPA.[15] The EPA administers and enforces FIFRA.[16] The EPA determines the circumstances under which a pesticide should be registered for sale in the United States.[17]

III. CASE HISTORY

Dawn-Marie Hawkins opened a container of Leslie's Chlorinator Tablets 1 and suffered a burning sensation in her throat and lungs as well as breathing difficulty.[18] James and Dawn-Marie Hawkins (Hawkins) filed a diversity action in New Jersey Federal District Court against Leslie's Pool Mart (Leslie's), the manufacturer, alleging negligence, strict liability, breach of warranty, and loss of consortium.[19] Hawkins asserted three claims. First, they claimed that Leslie's failed to warn of the hazards associated with the product.[20] Second, they claimed that Leslie's was negligent in failing to provide adequate directions or precautions regarding the opening, closing and/or storage of the package.[21] Third, they claimed Leslie's failed to package the product in a manner adequate to prevent excessive chemical decomposition, contamination, combustion, or generation of fumes and gases.[22]

The District Court, in granting Leslie's summary judgment, held that FIFRA preempted Hawkins' claims of failure to warn, failure to provide adequate directions, and failure to adequately package the product.[23] The District Court reasoned that imposing liability would require the manufacturer to alter the labeling and packaging approved by the EPA.[24] The Third Circuit, as discussed below, affirmed in part and reversed in part.

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[15]Nelson, *supra* note 2, at 566.

[16]*Id.*

[17]*Id.*

[18]*Hawkins*, 184 F.3d at 247.

[19]*Id.*

[20]*Id.*

[21]*Id.*

[22]*Id.*

[23]Hawkins v. Leslie's Pool Mart, 965 F. Supp. 566 (D.N.J. 1997), *rev'd*, 184 F.3d 244 (3d Cir. 1999).

[24]*Id.* at 572.

IV. THE THIRD CIRCUIT'S ANALYSIS

A. Holding

The Third Circuit Court of Appeals found that FIFRA preempted two of Hawkins' claims: failure to warn and failure to provide adequate directions for opening. However, in regard to the third claim, the court held FIFRA did not preempt negligence in packaging.

The court made this decision in light of the history of FIFRA. The court held, "FIFRA expressly preempts state imposed requirements in the areas of labeling and packaging that are 'in addition to or different from those required'[25] by the EPA."[26] Since the EPA has not regulated the area of packaging, apart from child-resistant packaging, the requirements cannot be in addition to or different from those required and thus are not preempted.[27]

FIFRA specifically mentions the term "requirements."[28] Some courts have discussed the issue of whether a tort claim qualifies as requirements.[29] The Third Circuit held the term "requirements" in Section 136v of FIFRA included "not only state statutory law but also state common-law damage claims."[30] Other courts have also followed this reasoning.[31] The Third Circuit, however, had reservations on whether this term would preclude all state damage claims. "If Congress's true intention was to preclude all common law causes of action, it could have stated that all remedies, rather than requirements, under state law pertaining to pesticides, fungicides, and rodenticides are precluded."[32]

B. Hawkins' Labeling Claims

FIFRA Section 136(p)(2) defines labeling as "all labels and all other written, printed, or graphic matter . . . accompanying the pesticide or device at any time."[33] Hawkins asserted two labeling claims.

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[25]U.S.C. § 136v (1999).

[26]*Hawkins*, 184 F.3d at 249.

[27]*Id.* at 253-54.

[28]7 U.S.C. § 136v ("Such State shall not impose or continue in effect any requirements ...").

[29]*See* Medtronic, Inc. v. Lohr, 518 U.S. 470, 487-88 (1996); San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 247 (1959).

[30]*Hawkins*, 184 F.3d at 249.

[31]*See Medtronic, Inc.*, 518 U.S. at 487-88; *San Diego Bldg. Trades Council*, 359 U.S. at 247.

[32]*Hawkins*, 184 F.3d at 249.

[33]7 U.S.C. § 136(p)(2) (1999).

1. Failure to Warn Claim

The Third Circuit held that FIFRA preempted Hawkins' first claim that Leslie's failed to warn of sudden decomposition and sudden reactivity of the pesticide.[34] This claim was preempted by the specific labeling requirements created by the EPA.[35]

When analyzing Hawkins' labeling claims, the Third Circuit looked to other statutes that involve preemption for guidance. For example, the preemption component of the Public Health Cigarette Smoking Act of 1969,[36] the statute at issue in *Cipollone v. Liggett Group, Inc.*,[37] is very similar to the preemptive language of FIFRA.[38] Therefore, many circuits have used *Cipollone* in holding that FIFRA preempts state law failure to warn claims, as well.

Despite this authority, Hawkins claimed that the Supreme Court case, *Medtronic, Inc. v. Lohr*,[39] applied to this issue, not *Cipollone*. Hawkins claimed that the decision in *Medtronic* "effectively overturns all of the cases which made the facile leap from the Cipollone plurality's opinion to a conclusion that common law claims were requirements different from or in addition to federal regulations."[40]

Medtronic held that the Medical Device Amendments did not preempt state or local requirements that are the same as or substantially similar to the requirements imposed under federal law.[41] The Medical Device Amendments, enacted in 1976, provide for the safety of medical devices intended for human use.[42] The Supreme Court, in looking at the Congressional intent of the statute, ruled that the claims were not preempted. The Court said that if these claims were preempted, then consumers would be precluded from bringing any cause of action against the manufacturers.[43] Therefore, there would be "the perverse effect of granting complete immunity from design defect liability to an entire industry . . . ."[44]

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[34] *Hawkins*, 184 F.3d at 249.

[35] *Id.*

[36] 15 U.S.C. §§ 1331-1340 (2000).

[37] Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992). *See* Taylor AG Indus. v. Pure-Gro, 54 F.3d 555 (9th Cir. 1995); Welchert v. American Cyanamid, Inc., 59 F.3d 69 (8th Cir. 1995); Lowe v. Sporicidin Int'l., 47 F.3d 124 (4th Cir. 1995).

[38] 7 U.S.C. § 136 (1999).

[39] 518 U.S. 470 (1996).

[40] Pls.' Opp'n Br. at 16-17, *quoted in* Hawkins v. Leslie's Pool Mart, 965 F. Supp. 566, 570 (D.N.J. 1997), *rev'd*, 184 F.3d 244 (3d Cir. 1999).

[41] *Medtronic*, 518 U.S. at 470.

[42] *Id.* at 474.

[43] *Id.* at 487.

[44] *Id.*

Hawkins contended that FIFRA and the Medical Device Amendments are "virtually identical,"[45] and therefore FIFRA should not preempt their claims. The Third Circuit rejected this argument, as well. The Third Circuit stated that it did not read *Medtronic* as "standing for the overreaching premise that tort claims fall outside 'preemptive requirements.'"[46] The court distinguished *Medtronic*, asserting that the Food and Drug Administration (FDA) approved the device without performing an extensive evaluation.[47] By comparison to *Leslie's Pool Mart*, the EPA withheld approval of the chlorinator tablets and labels until Leslie's used specific labeling language that it mandated.[48] The record was clear that the EPA scrutinized the labels proposed by Leslie's and withheld approval until the required language was incorporated.[49]

The EPA has absolute control of the labeling of pesticides.[50] "This absolute control of labeling regulation indicates that the Hawkins' claim that labeling different from that approved by the EPA should have been included on the container is preempted."[51] An overwhelming majority of both state and federal courts have reached the same conclusion in light of *Medtronic*.[52]

2. Failure to Provide Adequate Directions Claim

Hawkins argued the second claim, failure to provide adequate directions for opening and closing the container, did not impose requirements that are different from or in addition to federal requirements; therefore, they are not preempted.[53] The Third Circuit clearly disagreed.

Hawkins also contended the claim was based on instructions placed on the lid of the container, not the label.[54] Rejecting this argument, the Third Circuit interpreted the literal reading of the statute

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[45]*Hawkins*, 184 F.3d at 250.

[46]*Id.*

[47]*Id.* (citing *Medtronic*, 518 U.S. at 480).

[48]*Id.*

[49]*Id.* at 252.

[50]40 C.F.R. § 156.10 (1999).

[51]*Hawkins*, 184 F.3d at 251.

[52]*See, e.g.*, Grenier v. Vermont Log Bldgs., Inc., 96 F.3d 559 (1st Cir. 1996); Taylor AG Indus. v. Pure-Gro, 54 F.3d 555, 561 (9th Cir. 1995); Welchert v. American Cyanamid, Inc., 59 F.3d 69, 73 (8th Cir. 1995); Lowe v. Sporicidin Int'l., 47 F.3d 124, 129 (4th Cir. 1995); MacDonald v. Monsanto Co., 27 F.3d 1021, 1025 (5th Cir. 1994); Papas v. Upjohn Co., 985 F.2d 516, 518 (11th Cir. 1993).

[53]*Hawkins*, 184 F.3d at 249.

[54]*Id.*

to mean that "labeling" included all printed matter that comes with the pesticide.[55]

The dissent disagreed with the majority's characterization of this claim. Dissenting Circuit Judge Mansmann believed that the majority had misconstrued Hawkins' argument and rejected it on factual instead of legal grounds.[56] Judge Mansmann emphasized that Hawkins contended that the claims escape preemption "not because of the instructions' location but because they were never reviewed and approved by the EPA."[57] The dissent stated there was no demonstration in the record that the EPA reviewed and approved the package instructions at issue.[58] The dissent believed that with the absence of agency review and approval, there was no federal "requirement" to which a state law duty as to claims may be different or additional.[59] Therefore, according to the dissent, there was no preemption under FIFRA.[60] The dissenting opinion emphasized that the majority and Leslie's conceded that the inclusion of unapproved labeling material was itself a violation of FIFRA.[61] The dissent believed Hawkins should be permitted to pursue the claim based on the opening instructions if they were not reviewed and approved by the EPA.[62]

Hawkins asserted another argument related to areas not considered by FIFRA or the EPA. Hawkins asserted, "[n]owhere do the regulations address the appropriate directions for opening a package in any given condition."[63] The Third Circuit viewed this argument as one without merit. "The EPA mandated and approved language on the labels specifically instructed the user on protective actions to take when opening the container and using the pesticide."[64] The federal requirements do specify directions for the disposal and proper storage of the pesticide.[65] "These instructions necessarily implicate 'opening instructions.'"[66] The instructions tell the consumer to avoid breathing

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[55] *Id.*

[56] *Id.* at 256 (Mansmann, J., dissenting).

[57] *Id.*

[58] *Hawkins*, 184 F.3d at 256.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 257. *See also* Brief for Appellee at 11, Hawkins v. Leslie's Pool Mart, 184 F.3d 244 (3d. Cir. 1999) (No. 98-5229) (citing 7 U.S.C. § 136j(a)(2)(A) and observing that "[t]hus, no one in the chain of commerce is free to add additional warnings, information or instructions on its own after a particular label has been approved by the EPA."); *Hawkins*, 184 F.3d at 250 ("FIFRA disallows any changes to any EPA-approved label unless the EPA approves the change.").

[62] *Hawkins*, 184 F.3d at 257.

[63] *Id.* at 252.

[64] *Id.*

[65] *Id.*

[66] *Id.*

the harmful fumes and to wear protective clothing and eyewear.[67] The Third Circuit ruled that the "comprehensiveness" of these instructions preempted Hawkins' claims.[68] Holding otherwise would impose labeling requirements additional to those specified by the EPA.[69]

C. Hawkins' Defective Packaging Claims

In their third claim, Hawkins alleged that Leslie's "negligent[ly] fail[ed] to package the product in a manner adequate to prevent excessive chemical decomposition, contamination, combustion, or generation of fumes and gases."[70] The District Court had previously ruled that this claim was also preempted.[71] Hawkins, on appeal, argued that the only area the EPA has regulated in the area of packaging is that of child-resistant packaging. Therefore, their claims would not be preempted since they would not impose a requirement different from or additional to the packaging requirements already in place.[72] Leslie's countered that FIFRA explicitly mentioned "state imposed labeling and packaging requirements;" therefore, these areas were the "exclusive domain" of the government and any other requirement was preempted.[73]

In addressing the parties' arguments, the Third Circuit identified the domain preempted, the legislative intent of FIFRA, and the EPA regulations.[74] First, the Third Circuit acknowledged that the text of FIFRA made it clear that the EPA had authority[75] to regulate all areas of packaging.[76] Second, the court looked to the legislative intent of FIFRA. The legislative history indicated that "Subsection (b) preempts any State labeling or packaging requirements differing from such requirements under the Act."[77] The court noted, however, one can infer that state and federal labeling and packaging requirements could

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[67] *Hawkins*, 184 F.3d at 252.

[68] *Id.*

[69] *Id. See also* Welchert v. American Cyanamid, Inc., 59 F.3d 69, 73 (8th Cir. 1995).

[70] *Hawkins*, 184 F.3d at 252.

[71] Hawkins v. Leslie's Pool Mart, 965 F.Supp. 566, 572 (D.N.J. 1997), *rev'd*, 184 F.3d 244 (3d Cir. 1999).

[72] *Hawkins*, 184 F.3d at 252.

[73] *Id.*

[74] *Id.* at 253.

[75] 7 U.S.C.A. § 136q(e) (2000) (Administrator of EPA "shall . . . promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides"); *Id.* § 136w(c)(3) (Administrator authorized "to establish standards . . . with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this subchapter . . .").

[76] *Hawkins*, 184 F.3d at 253.

[77] *Id.* (citing SEN. REP. NO. 92-838 (1972)).

coexist.[78] The legislative history indicated that the language of the statute prohibited local governments from imposing requirements that differed from those imposed by Federal and State authorities.[79]

Third, the Third Circuit considered the EPA regulations. Only one EPA regulation governed pesticide labeling.[80] United States Code Section 136w(a)(1) established the requirements of this regulation. This section provided that the administrator was authorized to "establish standards with respect to the package, container or wrapping in which a pesticide or device is enclosed in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated under the Act."[81]

In ruling that Hawkins' packaging claim was not preempted, the Third Circuit noted that the EPA had only exercised its power in the area of child-resistant packaging.[82] The court held:

> where . . . a preemption provision is dependent on government regulations, we cannot extend the reach of that provision to areas not actively regulated by the federal government . . . the EPA's failure to promulgate packaging regulations outside the area of child-resistant packaging is fatal to Leslie's Pool Mart's preemption argument. When no federal packaging requirements have been established, logic dictates that a state law packaging requirement cannot be different from or in addition to the absent federal requirement.[83]

Hawkins will be able to have the packaging claims evaluated on the facts since the Third Circuit ruled that they were not preempted. The fact-finder will determine whether Leslie's is to be held liable in negligently packaging the product. The claims as to labeling are preempted; thus, they are precluded from being presented to the fact-finder.

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[78] *Hawkins*, 184 F.3d at 253.

[79] *Id.*

[80] *See* 40 C.F.R. § 157.20 (2001) (this subpart "prescribes requirements for child-resistant packaging of pesticide products and devices").

[81] *Hawkins*, 184 F.3d at 253 (citing 7 U.S.C. § 136w(a)(1), (c)(3) (1989)).

[82] *Id.*

[83] *Id.* at 253-54.

V. IMPACT OF FIFRA ON STATE ACTIONS

Circuit courts across the nation have consistently ruled FIFRA preempts state product liability claims as to labeling. "[N]umerous courts[84] have held that common law failure to warn claims, and claims that otherwise challenge the adequacy of information provided on the product label, are preempted by FIFRA."[85]

The preemption defense has even been relied upon beyond just adequacy of the label. The Fifth Circuit, in *Andrus v. Agrevo USA Company*,[86] held that FIFRA preempted state law claims asserting that the herbicide in issue did not perform as advertised on the label, even to the extent the plaintiffs relied on advice from the manufacturer's field representative.[87] In *Andrus*, the plaintiffs made a state law claim for breach of implied warranty of fitness for a particular purpose.[88] The court held that this cause of action was preempted by FIFRA since it constituted a state law requirement that depended on the inadequacies in labeling and packaging.[89]

However, a few courts have held that these types of state actions are not preempted. For example, the Southern District of New York, in *Wilson v. Chevron Chemical Co.*,[90] held that a claim brought by a widow against the manufacturer of an herbicide that allegedly caused the death of her husband was not preempted. The court rejected the manufacturer's claim that FIFRA preempted the action.[91] The Eastern District of Pennsylvania has also ruled that the significant role that the manufacturer played in the regulatory scheme of FIFRA indicated that Congress did not intend to preempt the entire field of pesticide labeling; therefore, the inadequate warnings claims were not preempted.[92]

These courts, however, are in the minority. As discussed above, the majority of both state and federal courts have held that FIFRA preempts state common law damage claims.[93] The case law that

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[84] *See, e.g.*, King v. E.I. DuPont de Nemours & Co., 996 F.2d 1346 (1st Cir. 1993.), *cert. dismissed*, 510 U.S. 985, 114 S.Ct. 490, 126 L.Ed.2d 440 (1993); Grenier v. Vermont Log Bldgs., Inc., 96 F.3d 559, 563-65 (1st Cir. 1996); MacDonald v. Monsanto Co., 27 F.3d 1021 (5th Cir. 1994); Worm v. American Cyanamid Co., 5 F.3d 744 (4th Cir. 1993).

[85] Anne E. Cohen, et al., *Developments in Preemption of Products Liability Cases*, SC57 ALI-ABA 243, 267 (1998).

[86] 178 F.3d 395 (5th Cir. 1999).

[87] *Id.* at 399-400.

[88] *Id.* at 395.

[89] *Id.* at 399. *See also* Taylor AG Indus v. Pure-Gro, 54 F.3d 555, 563 (9th Cir. 1995).

[90] 1988 WL 52779 (S.D.N.Y. 1988).

[91] *Id.*

[92] Cox v. Velsicol Chemical Corp., 704 F.Supp. 85 (E.D. Pa. 1989).

[93] *See supra* note 76.

governs this area strongly indicates that Congressional intent was to preempt the field of pesticide regulation.

However, it is important to note that preemption does not protect manufacturers from liability if they negligently manufacture the product. Consumers can still bring suit against the manufacturer if they are injured due to a faulty product.[94] The manufacturers can also be liable if they fail to disclose all relevant information to the EPA.[95] Since the EPA must approve the label before the product can be sold, it is very important that the EPA has all relevant information regarding the pesticide.

Distinguishing between the failure to warn and negligent manufacturing can be difficult. However, it is critical in ruling on these types of claims. "[N]early all claims for negligent or defective design can be recharacterized as failure to warn claims."[96] The Fourth Circuit has developed a test to make this distinction. "[T]he claim is for inadequate warning, and not design, if a reasonable manufacturer's response to liability would be to alter the label, and not the design."[97] Making this distinction is important to both manufacturers and consumers. For manufacturers, it determines whether they will face liability. For consumers, it determines whether they will recover damages for their injuries.

VI. CONCLUSION

The Third Circuit in *Hawkins v. Leslie's Pool Mart, Inc.*[98] did not reach different conclusions than the majority of previous courts that had examined this issue. The vast majority of cases have held that FIFRA preempts state causes of actions. This line of case law is a huge victory to manufacturers of pesticides across the nation. As long as they comply with EPA-approved guidelines and fully inform the EPA with regard to their product, manufacturers are protected from liability in the area of labeling.

However, the preemption presents the disadvantage to consumers of the lack of remedies available to those affected by these products. As stated above, consumers can still bring a defective

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[94]*See* Higgens v. Monsanto Co., 862 F. Supp. 751 (N.D.N.Y. 1994) (claims for negligent testing, manufacturing, and formulating are not preempted).

[95]*Id.*

[96]Anthony Vale, *Recent Developments in Toxic Tort Law*, 34 TORT & INS. L.J. 707 (1999).

[97]*Id.* (citing Worm v. American Cyanamid Co., 5 F.3d 744, 747-48 (4th Cir. 1993)). *See also* Lyall v. Leslie's Pool Mart, 984 F.Supp. 587, 596 (E.D. Mich. 1997).

[98]184 F.3d 244 (3d Cir. 1999).

manufacturing cause of action. However, they are preempted from recovering in any claim based upon the labeling of a product that complies with EPA guidelines. Consumers ultimately bear the risk and responsibility to make sure that they properly handle these types of products.

The area of packaging still, however, presents problems. Since the EPA has only regulated in the area of child-resistant packaging, manufacturers are not immune from suit. Until the EPA acts in this area, courts can impose liability against the manufacturers of pesticides and consumers are eligible to recover damages for negligent packaging.