

[Products Liability Law Daily Wrap Up, TOP STORY—AIRCRAFT AND WATERCRAFT—M.D. Pa.: Aircraft engine maker not liable for plane crash allegedly caused by defective aftermarket carburetor, \(Aug. 4, 2017\)](#)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

The manufacturer of an aircraft engine that had been distributed more than 30 years before a problem with the engine's carburetor resulted in a single-engine plane crash that killed the pilot was not liable for the carburetor's alleged defects, a Pennsylvania federal court determined. Following a federal appellate panel's rejection of the original rationale underpinning a grant of summary judgment favoring the engine maker, the trial court reached the same result on remand, but on two alternative bases: (1) the widow's state-law tort claims were conflict preempted because federal regulations rendered it impossible for the engine maker to unilaterally implement the design changes allegedly required of it by the state law at issue; and (2) the company could not reasonably have foreseen the introduction of the allegedly defective carburetor, and supply chain liability is not indefinite ([Sikkelee v. AVCO Corp.](#), August 3, 2017, Brann, M.).

After the pilot of a single-engine airplane died in a crash that allegedly occurred after the aircraft lost power when the screws that held the engine's carburetor together came loose, the decedent's widow filed suit against the engine's original manufacturer, AVCO Corporation's Lycoming Engine division (Lycoming), as well as the manufacturer of a carburetor that subsequently had been installed on the plane during its operational lifetime.

Lycoming moved for summary judgment and the trial court initially found that the widow's state-law tort claims were field preempted by Federal Aviation Administration regulations (see *Products Liability Daily's* September 12, 2014 [analysis](#)). The ruling was vacated and remanded on interlocutory appeal, however (see *Products Liability Daily's* April 20, 2016 [analysis](#)). In its decision, the federal appellate panel found that FAA regulations do not result in implied field preemption of state aviation products liability law, but left open the possibility that the federal regulations still might override state tort law under the alternative theory of implied conflict preemption.

On remand, the engine maker filed two new summary judgment motions: one challenging the extent of the company's liability for third-party modifications and another asserting jurisprudential arguments related to conflict preemption.

Conflict preemption. The widow's state tort claims failed because they were conflict preempted and lacked proximate cause, the trial court determined on remand, adding that there was no genuine dispute of material fact as to the existence of conflict preemption because FAA's regulations rendered it impossible for Lycoming to unilaterally implement the design changes allegedly required of the company by the state law at issue.

According to the trial court, the widow's counterarguments failed for two broad reasons. First, FAA regulations forbid independent implementation of those changes, and the facts in the instant case plainly supported that conclusion. Second, even assuming that Lycoming were to have implemented the suggested design changes, it was unclear whether the subject tort duty would have been met, inasmuch as the engine maker's action could not guarantee future design decisions by aftermarket parts manufacturers like the company that had overhauled the engine's original carburetor and had replaced the carburetor with an aftermarket conglomerate of parts.

Additionally, there was no genuine dispute of material fact that Lycoming could not independently comply with the FAA regulations and Pennsylvania state tort law. Thus, the widow's tort claims were conflict preempted, the court held, granting summary judgment favoring the engine maker.

Strict liability—manufacturing defect. Furthermore, although the widow contended that Lycoming was liable on strict liability grounds, that claim failed to survive summary judgment. Under relevant case precedent,

a manufacturer is not liable if a safe product is made unsafe by subsequent changes, unless it "could have reasonably expected or foreseen such an alteration. This rule was particularly true when the defect arose from the manner in which the component is utilized by the assembler of the final product. Ergo, if subsequent alterations are not reasonably foreseeable when the product entered the stream of commerce, then the manufacturer is entitled to summary judgment as a matter of law.

In the case at bar, the at-issue engine was not defective when it originally left Lycoming's facility in 1969. From that point and until 1998, the engine was not installed or used in flight, and no one knew where it was during that time period or in what type/quality of storage it had been maintained. Upon its removal from long-term storage, the engine flew for only 12 hours before maintenance was required, after which the engine accumulated 1,200 hours of problem-free flight until the aircraft was struck by lightning in 2004. Following the lightning strike, the carburetor was completely overhauled and replaced with conglomerate aftermarket parts. Less than one year and 400 flight hours later, the crash occurred. For all those reasons, it could not be concluded that the engine maker reasonably could have foreseen the introduction of the allegedly defective carburetor.

Negligence. Also unsupported was the widow's assertion that Lycoming was liable on negligence grounds. The above-elucidated analysis as to the time that elapsed since the engine left the manufacturer's hands and the extent of the modification was just as applicable to proximate-cause analysis in the negligence context as it was to strict liability. However, negligence is a more difficult cause of action than strict liability on which to succeed because the former requires something that the latter does not, i.e., breach of a duty of reasonable care.

In that regard, the decedent's widow did not articulate the precise duty Lycoming allegedly breached and what remedial measures the company could have taken that would have altered the eventual outcome. That the engine maker should have stopped selling carburetors altogether or should have had omniscient foresight in 1969 were impermissible suggestions incongruous with the concept of reasonableness. Lastly, manufacturers are not insurers, and the concept of supply chain liability does not stretch into space and time *ad infinitum*. For those reasons, the summary judgment favoring Lycoming also was warranted on the widow's tort liability-based claims.

The case is No. [4:07-CV-00886](#).

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