

[Products Liability Law Daily Wrap Up, TOP STORY—AIRCRAFT AND WATERCRAFT—3d. Cir.: Federal aviation law and regulations don't preempt state-law products liability claims, \(Apr. 20, 2016\)](#)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

Neither the Federal Aviation Act nor the issuance of an aircraft engine type certificate (i.e., design approval) under federal aviation regulations *per se* preempts all state-law aircraft design and manufacturing claims, a federal appellate panel instructed in a case arising from the death of a man in the crash of a single-engine aircraft he had been piloting. Subject to traditional principles of conflict preemption—including those in connection with the specifications expressly set forth in a given Federal Aviation Administration type certificate—aircraft products liability cases may proceed using a state standard of care, the panel instructed, reversing a Pennsylvania federal trial court's grant of partial summary judgment favoring the engine and engine parts manufacturers on the basis of federal preemption ([Sikkelee v. Precision Airmotive Corp.](#), April 19, 2016, Krause, C.).

Background. After her spouse died in the crash of a single-engine airplane he was piloting at the time, a widow sued the engine's original maker and the manufacturers of two successive carburetors that subsequently had been installed on the plane during its operational lifetime, alleging that the manufacturers were liable for defects in the engine, carburetor, and fuel delivery system. A Pennsylvania federal court granted the manufacturers' motion for judgment on the pleadings, holding that the widow's state-law claims of strict liability, breach of warranty, negligence, misrepresentation, and concert of action fell within the federally preempted "field of air safety" described in applicable case precedent.

Thereafter, the widow filed an amended complaint that continued to assert state-law claims but now incorporated federal standards of care by alleging violations of numerous Federal Aviation Administration regulations. Following certain settlements and motion practice, she narrowed her claims against the manufacturers to defective design (under theories of both negligence and strict liability) and failure to warn. The manufacturers again moved for summary judgment and this time the trial court [granted the motion in part](#), ruling that the applicable federal standard of care had been established in the FAA type certificate itself. Reasoning that the agency issues a design approval based on its determination that the manufacturer has complied with the pertinent regulations, the trial court held that the FAA's issuance of a type certificate for the engine meant that the federal standard of care had been satisfied as a matter of law.

However, the trial court denied summary judgment favoring the manufacturers on the widow's failure to warn claims, which were premised on the engine manufacturer's alleged violation of a federal aviation regulation for failure to "report any failure, malfunction, or defect in any product, part, process, or article" that the company manufactured. Recognizing that its grant of partial summary judgment raised novel and complex questions concerning the reach of the case precedent and the scope of federal preemption in the airline industry, the trial certified its order for immediate appeal and was granted interlocutory review.

Preemptive effect of federal aviation law. Although prior case law within the appellate circuit has stated in broad terms that the Federal Aviation Act preempts the "field of aviation safety," the regulations and decisions discussed in the earlier case all related to in-air operations. By drawing a line between what happens during flight and what happens upon disembarking, the case made clear that the field of aviation safety described therein was limited only to in-air operations; therefore, the above-mentioned precedent did not govern products liability claims like those at issue in the case at bar.

In general, products liability claims are exemplars of traditional state-law causes of action. And, consistent with the uniform treatment of aviation products liability cases as state law torts, the presumption against preemption applies in the aviation context. With that presumption in mind, the federal statutes governing aviation law had to be examined in order to determine whether Congress had expressed its clear and manifest intent to preempt aviation products liability claims.

In that regard, the Federal Aviation Act—which is the foundation of federal aviation law today—contains no express preemption provision and does not signal an intent to preempt state-law products liability claims. In fact, the statute says only that the FAA may establish "minimum standards" for aviation safety; statutory language that the U.S. Supreme Court has held in other contexts to be insufficient on its own to support a finding of clear and manifest congressional intent of preemption. Further, the Act contains a "savings clause" which provides that, "[a] remedy under this part is in addition to any other remedies provided by law." And while the inclusion of the savings clause is not inconsistent with a requirement that courts apply federal standards of care when adjudicating state law claims, it belied the manufacturers' argument that Congress demonstrated a clear and manifest intent for the Federal Aviation Act to preempt state law products liability claims altogether.

That conclusion was bolstered by the General Aviation Revitalization Act of 1994, which contains a statute of repose that generally bars suit against an aircraft manufacturer arising from a general aviation accident brought more than 18 years after the aircraft was delivered or a new part was installed. By barring products liability suits against manufacturers of these older aircraft parts, GARA necessarily implies that such suits were and are otherwise permitted. Indeed, GARA's 18-year statute of repose would be superfluous if all aviation products liability claims are preempted from day one. Thus, GARA reinforces the conclusion that federal law does not preempt state design defect claims. Rather, Congress left state law remedies in place when it enacted GARA in 1994, just as it did when it enacted the Civil Aeronautics Act in 1938 and the Federal Aviation Act in 1958.

Thus, despite the manufacturers' exhortations, a clear and manifest congressional purpose to preempt these claims could not be inferred where the indicia of congressional intent—including in this case the assumptions underlying subsequent legislation—point overwhelmingly the other way. Moreover, the U.S. Supreme Court's preemption cases in the transportation context support the conclusion that aircraft design and manufacture claims are not field preempted but, rather, remain subject to the principles of conflict preemption.

Preemptive effect of federal aviation regulations. Likewise, federal aviation design regulations are devoid of evidence of congressional intent to preempt state-law products liability claims. In that regard, the trial court correctly determined that neither the Federal Aviation Act nor its associated FAA regulations ever were intended to create federal standards of care for manufacturing and design defect claims.

However, the trial court proceeded from that accurate premise to a faulty conclusion (the one urged by the manufacturers): i.e., that because there is no federal standard of care for such claims in the statute or regulations, the issuance of an FAA type certificate must both establish and satisfy that standard. That conclusion was erroneous. In light of the presumption against preemption and absent clear evidence that Congress intended the mere issuance of a type certificate to foreclose all design defect claims, state tort suits using state standards of care may proceed subject only to traditional conflict preemption principles.

Type certification. The manufacturers also asserted that because type certificates represent the FAA's determination that a design meets federal safety standards, allowing juries to impose tort liability notwithstanding the presence of a type certificate would infringe upon the field of aviation safety and would fatally undermine uniformity in the federal regulatory regime. Although there is no express preemption clause here, the manufacturers posited that FAA's type certification process should be accorded a similar field preemptive effect.

However, consistent with the agency's own view, type certification does not itself establish or satisfy the relevant standard of care for tort actions, nor does it evince congressional intent to preempt the field of products liability. Rather, because the type certification process results in the FAA's preapproval of particular specifications from which a manufacturer may not normally deviate without violating federal law, the type certificate bears on ordinary conflict preemption principles. Consequently, the mere issuance of a type certificate does not conclusively establish a defendant's compliance with the relevant standard of care.

In sum, the trial court erred in granting summary judgment favoring the manufacturers on the widow's design defect claims on the basis of field preemption. The field of aviation safety identified as preempted in prior case law does not include product manufacture and design, which continues to be governed by state tort law, subject to traditional conflict preemption principles. Accordingly, the trial court's grant of partial summary judgment favoring the manufacturers was vacated and remanded.

The case is No. [14-4193](#).

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Companies: Precision Airmotive Corp.; Precision Airmotive LLC; Burns International Services Corp.; Avco Corp.

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