

[Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—AIRCRAFT AND WATERCRAFT—M.D. Pa.: Under regulatory standard of care, only failure-to-report claim could proceed in airplane crash, \(Sept. 12, 2014\)](#)

Products Liability Law Daily Wrap Up

[Click to open document in a browser](#)

By Leah S. Poniatowski, J.D.

Federal aviation regulations provided the standard of care in a products liability and negligence lawsuit against the manufacturer of an aircraft engine and carburetor, a federal district court in Pennsylvania ruled. Additionally, the court concluded that the surviving spouse's allegation that the manufacturer violated the regulation governing a duty to report defects was supported by evidence and, thus, was the only claim to survive the manufacturer's motion for summary judgment (*Sikkelee v. Precision Airmotive Corporation*, September 10, 2014, Brann, M.).

Background. In 2005, Jill Sikkelee's husband, David, died when an aircraft he was piloting crashed. Sikkelee alleged that Lycoming, the original manufacturer of the engine, was liable for defects in the engine, carburetor, and fuel delivery system. Lycoming applied for and was issued a type certificate from the Federal Aviation Administration in 1966 for the engine. The engine in the subject aircraft was manufactured in 1969, model O-320-DC2, and was installed in the subject aircraft in 1998. The carburetor installed in the engine was not the original. An overhauled carburetor manufactured by Marvel-Schebler/Precision Airmotive Corp. was installed according to the engine's type-certificated design. A year before the accident, a repair station certified by the FAA, Kelly Aerospace, Inc., overhauled another carburetor and installed it in the subject aircraft in accordance with Lycoming's type-certificated design. Kelly Aerospace complied with the federal regulation mandating "use the methods, techniques and practices prescribed in [Lycoming's] maintenance manual or Instructions for Continued Airworthiness." Sikkelee specifically asserted that the crash was caused by Lycoming's violation of various federal regulations that govern type certification and breaches of the duties of type certificate and production certificate holders. Lycoming filed a motion for summary judgment.

Federal preemption. The court upheld application of *Abdullah v. Am. Airlines* to the case at bar to conclude that the federal aviation regulations do not imply that there is a general standard of care for aircraft engine designers. The court stated that it was faced with an "uncomfortable choice" between reading an overall concept of careful conduct into the regulations, or applying only the standards articulated in the relevant regulations. The court chose the latter, remarking that to apply a catch-all standard of care would be the functional equivalent of filling in the gaps left by the federal regulations with state common law, which contravened federal preemption of the field of aviation safety. Therefore, the court measured Lycoming's allegedly tortious conduct against the specific federal regulations that Sikkelee asserted were applicable.

Type certificate regulations. The court determined that the FAA-type certificate for the subject engine was conclusive of the engine's compliance with the design and construction regulations and, thus, entitled the manufacturer to summary judgment on the claims arising from those regulations. According to the court, Sikkelee's argument that four regulations—C.A.R. §§13.100, 13,101, 13,104, and 13.110 (1964)—comprised a federal standard of care for aircraft engine design and were violated by Lycoming conflicted with the fact that the FAA issued a type certificate for the subject engine, which reflected that the FAA Administrator found that the engine met all the applicable requirements of the regulations. In light of the natural interpretation of the regulatory scheme and the circumstances of the case at bar, Sikkelee was precluded from proving that Lycoming violated these regulations as a matter of law. Additionally, the court remarked that subjecting manufacturers to state common law duties as determined by a jury would put the jurors in charge of deciding permissible safety levels

and engine designs—issues left to the FAA Administrator—and would upend the “one, consistent means of regulating aviation safety” that Congress intended. Accordingly, Lycoming’s motion for summary judgment on the claims predicated on the violation of these four regulations was granted.

Moreover, the court found that Sikkelee did not provide evidence that the carburetor did not conform to the “approved design” as required by 14 C.F.R. §21.165, or offer evidence that the crash was caused by Lycoming’s alleged failure to determine that the carburetor was in a “condition of safe operation.” The court clarified that Lycoming’s duty existed in 1978, when the replacement carburetor had just been manufactured and submitted for airworthiness certification. Even if Lycoming’s duty extended to include Kelly Aerospace’s submission of the replacement carburetor for airworthiness certification, the court found that Sikkelee did not offer evidence that it was not in a “condition of safe operation.” Therefore, Lycoming was entitled to summary judgment on the claims arising from 14 C.F.R. §21.165.

Similarly, Sikkelee’s claim based on C.A.R. §13.21 (1964), the requirement for the manufacturer to provide “Instructions for Continued Airworthiness,” failed because the regulation did not impose a reasonable care standard upon Lycoming, Sikkelee did not offer evidence that Lycoming did not comply with this regulation, and she did not allege that the carburetor failed to conform to the type design or was the cause of the crash. Consequently, Lycoming was granted summary judgment on the claims relating to C.A.R. §13.21.

Defect reporting regulations. The court found that 14 C.F.R. §21.99 did not create a duty on Lycoming to submit design changes if it, as the type-certificate holder, found that changes to the type design would “contribute to the safety of the product” because the language of the regulation was permissive and, thus, the regulation could not form the basis of a claim. However, Sikkelee offered evidence to support her liability theory premised on subsections (a) and (b) of 14 C.F.R. §21.3, which required manufacturers to report “any failure, malfunction, or defect in any product, part, process, or article” if the certificate holder determined that the item “[had] resulted in any of [various] occurrences,” including “engine failure.” The court rejected all of Lycoming’s defenses, finding that the identity of the manufacturer of the carburetor was irrelevant for purposes of Sikkelee’s theory of liability, Sikkelee offered sufficient evidence to create genuine issues of fact as to whether Lycoming determined that a defect in the carburetor created safety risks and whether Lycoming had a duty to report, and case law supported the conclusion that Sikkelee could make a case for causation. Therefore, Lycoming’s motion for summary judgment on 14 C.F.R. § 21.3 was denied.

The case number is [4:07-cv-00886](#).

Attorneys: Clifford A. Rieders (Rieders Travis Humphrey Harris Waters & Waffenschmidt) for Jill Sikkelee. John M. Devaney (Perkins Coie LLP), and William J. Conroy (Campbell Campbell Edwards & Conroy, PC) for Precision Airmotive Corp., Precision Airmotive LLC, and Burns International Services Corp. Catherine B. Slavin (Cozen O’Conner), and Sara A. Frey (Gordon & Rees LLP) for Textron Lycoming Reciprocating Engine Division, and Avco Corp. John E. Salmon (Salmon, Ricchezza, Singer & Turchi, LLP) for Kelly Aerospace, Inc.

Companies: Precision Airmotive Corp.; Precision Airmotive LLC; Burns International Services Corp.; Textron Lycoming Reciprocating Engine Division; Avco Corp.; Kelly Aerospace, Inc.

Cases: CourtDecisions DesignManufacturingNews PreemptionNews AircraftWatercraftNews PennsylvaniaNews