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Seat Belts

State Law Seat Belt Claims Not Preempted, High Court Says, Focusing on Agency Goals

A National Highway Traffic Safety Administration seat belt standard that gave automakers a choice between two types of seat belts in certain seating positions does not preempt a state tort suit, a unanimous U.S. Supreme Court ruled Feb. 23 (*Williamson v. Mazda Motor of America Inc.*, U.S., No. 08-1314, 2/23/11).

A key factor in finding no preemption was the court's determination that there were no ''significant regulatory objectives'' behind the agency's decision to allow automakers the choice of what kind of seat belt to install.

The eight participating justices determined that the family of Thanh Williamson, who died from injuries she sustained in an accident while wearing a lap-only seat belt, could go forward with claims alleging that Mazda Motor America Inc. should have installed a lap-and-shoulder belt where she was sitting. The court reversed the decision of the California Court of Appeal, which found that Federal Motor Vehicle Safety Standard 208 impliedly preempted the Williamsons' suit.

Justice Stephen G. Breyer wrote the majority opinion, which six other justices joined. In it, the court distinguished the case from a widely cited precedent, *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000) (28 PSLR 464, 5/29/00), which involved claims that an auto manufacturer should have installed air bags. The regulation at issue was a portion of an earlier version of FMVSS 208. ''In *Geier*, . . . the regulation's history, the agency's contemporaneous explanation, and its consistently held interpretive views indicated that the regulation sought to maintain manufacturer choice in order to further significant regulatory objectives. Here, these same considerations indicate the contrary,'' Justice Stephen G. Breyer wrote for the court.

Consequently, he said, ''even though the state tort suit may restrict the manufacturer's choice,'' it does not present a conflict with federal law.

Breyer authored the majority opinion in *Geier*.

'Misreading' of *Geier* Corrected. Martin N. Buchanan, an attorney for the Williamsons, told BNA Feb. 23, ''The most significant thing about the case is it really corrects a widespread misreading of the *Geier* decision on air bags and . . . reaffirms the importance of state tort law in achieving greater vehicle safety than the federal minimum standards.''

Buchanan added that the decision ''is likely to have an impact in other areas of the law as well—certainly it will be significant for all types of vehicle-safety lawsuits, but also federally regulated consumer products.''

Matthew Wessler, an attorney with Public Justice PC, which submitted an amicus brief supporting the family, told BNA, ''Manufacturers had used *Geier* as a talisman: 'Oh, look, there are options here. . . . That lawsuit should be preempted.' This opinion puts that theory pretty much in the ground.''

Wessler said Breyer believes courts ''have to undertake a very careful, fact-bound analysis'' and laid out the framework for doing so.

Prof. Catherine M. Sharkey of the New York University School of Law told BNA, ''I'm not surprised by the result. . . . I *am* surprised that it's 8-0. . . . While I think it's a sensible outcome, I didn't think there was such a strong consensus on the court.''

She added, ''Another interesting feature of the case, just because it follows the day after *Bruesewitz* . . . is they're going to see express preemption very differently from implied preemption. I think it's a court that tends to read express preemption rather broadly, and implied obstacle preemption rather narrowly.''

In *Bruesewitz v. Wyeth*, a vaccine case, the court held that federal law expressly preempts state design defect claims. (See related story, this issue.)

Prof. Nicholas Wittner of Michigan State University's College of Law told BNA, ''The opinion itself breaks no

new ground.'' He called it ''a simple application of *Geier* with a different result.''

Mazda issued a statement saying, ''We are of course extremely disappointed in the Supreme Court's ruling today. However, it is important to understand that the Court did not determine that Mazda was liable to the plaintiff or that the subject vehicle was defective. Instead, the court's ruling simply means that the plaintiff[s] may continue with their lawsuit.'' The company added that it would vigorously defend the suit in the trial court.

Role of Standards at Issue. In their briefs filed with the Supreme Court, the parties focused on whether the safety standards at issue set a floor for motor vehicle safety, or a floor and a ceiling. In their merits brief, the Williamsons wrote that the authorizing statute, the National Traffic and Motor Vehicle Safety Act of 1966, ''defines a 'safety standard' as a 'minimum standard for motor vehicle or motor vehicle equipment performance.' ''

Mazda, meanwhile, in its brief, said, ''Most [Federal Motor Vehicle Safety Standards] establish 'performance standards,' . . . and typically merely establish a federal floor. . . . But some FMVSSs establish design standards that mandate the installation of particular safety features, establishing both a floor and a ceiling. . . . And occasionally, NHTSA finds that the Act's purposes are served best by leaving manufacturers free to choose among specified design options.''

Breyer's opinion focused on interpreting *Geier* and comparing the safety standard at issue in *Geier* with the one in the Williamsons' case. Breyer reiterated two parts of the majority's analysis in *Geier*. First, he said, the *Geier* court held that the Safety Act, despite an express preemption clause directed at state ''safety standards,'' did not preempt a state tort suit, ''primarily because the statute also contains a saving clause'' preserving common-law tort actions. Second, he said, the court held that the saving clause did not go further and ''foreclose or limit the operation of ordinary preemption principles,'' particularly the implied preemption of state standards that ''actually conflict'' with federal statutes or regulations.

The next step of the *Geier* court's analysis was to determine ''whether, in fact, the state tort action conflicts with the federal regulations,'' Breyer said.

Agency Focused on Cost-Effectiveness. ''At the heart of *Geier* lies our determination that giving auto manufacturers a choice among different kinds of passive restraint devices was a *significant objective* of the federal regulation,'' Breyer wrote. ''We reached this conclusion on the basis of our examination of the regulation, including its history, the promulgating agency's contemporaneous explanation of its objectives, and the agency's current views of the regulation's pre-emptive effect.''

But the choice presented to manufacturers in the 1989 seat belt standard, at issue in the Williamsons' case, was different, Breyer said. NHTSA's ''1989 reasons for retaining that choice differed considerably from its 1984 reasons for permitting manufacturers a choice in respect to airbags,'' he wrote. The agency's main concern with lap-and-shoulder belts in rear inner seats was cost-effectiveness, the court concluded.

''[T]o infer from the mere existence of such a cost-effectiveness judgment that the federal agency intends to bar States from imposing stricter standards would treat all such federal standards as if they were *maximum* standards, eliminating the possibility that the federal agency seeks only to set forth a *minimum* standard potentially supplemented through state tort law. We cannot reconcile this consequence with a statutory saving clause that foresees the likelihood of a continued meaningful role for state tort law,'' Breyer wrote.

Sotomayor, Thomas Concur Separately. Justice Sonia M. Sotomayor wrote a concurring opinion ''only to emphasize the Court's rejection of an overreading of *Geier* that has developed since that opinion was issued.''

Justice Clarence Thomas, who opposes the doctrine of implied preemption, concurred only in the judgment. His analysis focused on the ''saving clause.'' Whereas the majority in *Geier* ''interpreted the saving clause as simply cancelling out the statute's express pre-emption clause with respect to common-law tort actions,'' Thomas said, he read it more broadly. ''The saving clause simply means what it says: FMVSS 208 does not preempt state common-law actions,'' he wrote.

Justice Elena Kagan did not participate in the decision. As Solicitor General, she submitted a brief for the United States in support of the Williamsons—which Breyer cited in the court's opinion.

Gregory G. Garre, an attorney for Mazda, referred BNA to Mazda for comment.

Buchanan, of Niddrie, Fish & Buchanan in San Diego; David R. Lira of Girardi Keese in Los Angeles; David J. Bennion, who practices in San Jose, Calif.; and Allison M. Zieve, of the Public Citizen Litigation Group in Washington, D.C., represented the Williamsons.

Garre and others at Latham & Watkins LLP in Washington, D.C.; Shawn W. Murphy and Charles S. Kim of Mazda in Irvine, Calif.; Erika Z. Jones and Dan Himmelfarb of Mayer Brown LLP in Washington, D.C.; Mark V. Berry of Bowman and Brooke LLP in Gardena, Calif.; and Malcolm E. Wheeler of Wheeler Trigg O'Donnell LLP in Denver, Colo., represented Mazda.

BY MARTINA S. BARASH

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  PSLR ISSN 0092-7732