



PRODUCT SAFETY & LIABILITY



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Motor Vehicles

South Carolina High Court Told to Reexamine Ruling on Preemption of Auto Glass Claims

The U.S. Supreme Court Feb. 28 in a one-paragraph order vacated a decision of the South Carolina Supreme Court in a vehicle window-glazing case that said state law claims were preempted. The U.S. Supreme Court instructed the state court to reconsider its conclusion in light of *Williamson v. Mazda Motor of America Inc.*, decided Feb. 23 (*Priester v. Ford Motor Co.*, U.S., No. 10-668, 2/28/11).

In *Williamson*, the U.S. Supreme Court found that a federal seat belt standard does not preempt a state-law tort suit related to seat belts (39 PSLR 210, 2/28/11).

The Supreme Court's latest order dealt with an August 2010 unanimous ruling from the South Carolina Supreme Court holding that a federal motor-vehicle regulation giving automakers a choice of materials for use in windows preempts a state tort suit arising from an ejection death in a rollover.

What's It Mean? Professor Nicholas Wittner, of Michigan State University's College of Law, told BNA that the court's action "can be interpreted two ways." One reading, he told BNA in an e-mail, is "that the Court frowned on the lower court decision and believes that the South Carolina Supreme Court should reverse." The other interpretation is "that the South Carolina Supreme Court needs to take a deeper look at the regulatory history to make sure that its conclusion is consistent with the prescription in *Williamson* for determining if the lower court properly assessed the reasons for the choice [given to manufacturers]. Under the latter view, it would mean that the U.S. Supreme Court has not decided the merits."

Wittner said he believes that "the second view may carry the greater weight but that of course will be a contentious debate."

Wittner teaches product liability law and had responsibility for two significant airbag preemption cases while in the general counsel's office at General Motors.

Kristen Kinley, a spokeswoman for Ford, said in a statement, "We expect the Supreme Court's Feb. 23 decision in the *Mazda/Williamson* case to have a limited impact on auto industry litigation because it was narrow and confined to the facts of that specific case. Rather than breaking new ground, it reaffirms the Court's 2000 opinion holding that Federal Motor Vehicle Safety Standards can preempt state law claims in appropriate circumstances. . . . The *Priester* case is vastly different from the *Mazda* case because it involves a different Federal Motor Vehicle Safety Standard with a different regulatory record."

Matthew Wessler of Public Justice PC, an attorney for Mary Priester, whose son died in the rollover, told BNA, "[T]he standard at issue in *Priester*—FMVSS 205—is, for purposes of preemption, virtually identical to the standard at issue in *Williamson* (FMVSS 208). . . . [N]one of the policy considerations that *Geier* (and now *Williamson*) identified as capable of exerting preemptive force are present in Standard 205 (for example, nothing in . . . Standard 205 suggests that NHTSA deliberately intended to foster multiple safety options for side window glazing). The fact that the U.S. Supreme Court GVR'd the case"—that is, granted a writ of certiorari, vacated, and remanded—"instead of just granting cert.) almost certainly means that they view *Williamson* as rejecting the lower court's holding and compelling a finding that Mary Priester's state law claims are not preempted by Standard 205."

Wessler also submitted an amicus brief supporting the plaintiffs in *Williamson*.

Immediately following the *Williamson* decision, experts expressed different views about how glazing claims would be affected (39 PSLR 211, 2/28/11). Wittner told BNA Feb. 24 that "some tension" remained in the laminated-glass claims.

But Martin N. Buchanan, who represented the Williamson family in their case against Mazda Motor of

America, told BNA Feb. 23 that in the glazing cases, “the same conclusion would hold true.”

Divergence Among Courts. Courts have split on the preemption issue in window-glazing cases. The South Carolina Supreme Court’s decision echoed opinions on the preemptive effect of Federal Motor Vehicle Safety Standard 205 by the West Virginia Supreme Court in *Morgan v. Ford Motor Co.* (37 PSLR 708, 6/29/09) and the Tennessee Court of Appeals in *Lake v. The Memphis Landsmen LLC* (38 PSLR 298, 3/29/10). It differed from a decision by the U.S. Court of Appeals for the Fifth Circuit in *O’Hara v. General Motors Corp.* (35 PSLR 1138, 12/10/07), which found no preemption. At least two federal district courts have followed the Fifth Circuit (36 PSLR 163, 2/18/08), (38 PSLR 93, 2/1/10), and the Texas Supreme Court said FMVSS 205 does not have preemptive effect in *MCI Sales and Service Inc. v. Hinton* (39 PSLR 4, 1/3/11).

Wittner, indeed, said he felt the preemption issue was more ready for high-court review in the glazing context than in the seat belt context, where the lower courts had all found preemption.

The lawsuit generating the South Carolina preemption ruling arose when James Lloyd Priester and Pre-

ston Cromer, both under 21 years old, went to a strip club the night of Aug. 16, 2002, where they were served alcohol, according to the court. Both became intoxicated. After leaving the strip club, the young men got into a 1997 Ford F-150 pickup truck. Priester was in the rear seat, not buckled into his seat belt. Cromer, driving at excessive speed, left the roadway. The truck rolled several times. Priester was ejected and suffered fatal injuries.

Mary Priester sued Cromer, the owners of the strip club, and Ford in South Carolina state court. She alleged that Ford “breached [its] warranty by using inappropriate glazing materials,” saying Ford should have used laminated glass rather than tempered glass. The trial court granted summary judgment in Ford’s favor, based on federal preemption, and the state supreme court affirmed, “[p]ending resolution from the United States Supreme Court.”

Mary Priester petitioned the U.S. Supreme Court for review in November 2010.

Wessler and Leslie Brueckner of Public Justice PC in Oakland, Calif., represented Priester.

Gregory Garre of Latham & Watkins LLP in Washington, D.C., represented Ford.

BY MARTINA S. BARASH