Transportation Law Update

Washington Supreme Court Rejects Implied Federal Field Preemption of Aviation Product Liability Claim

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In a unanimous decision, the Washington Supreme Court held that implied field preemption under federal law does not bar state-law product liability claims. The decision in *Estate of Becker v. Avco Corporation* (Jan. 26, 2017), follows the more recent trend of restricting application of federal law over state law based on the doctrine of "implied field preemption" to circumstances where an aviation defendant can show that regulations promulgated under the Federal Aviation Act for a given aviation field are not merely "minimum standards," but rather are so pervasive and comprehensive as to demonstrate an intent to preempt any state law. Despite reversing a defendant's preemption victory, *Becker* confirms the framework to be used for future preemption challenges in aviation cases, and leaves implied conflict preemption as a viable defense in the correct case.

Federal Aviation Preemption

It is well settled that the Supremacy Clause empowers Congress to override state-by-state regulation with uniform national rules. State laws that interfere with federal law are preempted, either expressly or implicitly. The Federal Aviation Act does not include an express preemption provision, but courts have long held that some areas of aviation regulation impliedly preempt state law. Implied preemption arises either (1) via field preemption when federal law so thoroughly occupies a legislative field as to create a reasonable inference that Congress left no room for states to supplement it, or (2) via conflict preemption where a state law actually conflicts with federal law or stands as an obstacle to the accomplishment of the full federal purposes and objectives. *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007).

Preemption applies with special force in aviation due to the unique federal interests and the need for uniformity across state lines. Congress enacted the Federal Aviation Act with the general intent of creating a uniform aviation system and to consolidate regulatory authority with the Federal Aviation Administration (FAA). As part of this system, the FAA has promulgated thousands of regulations governing aviation safety,

operations, design standards and other topics. The Federal Aviation Act did not, however, expressly preempt state law and in fact contains language suggesting an intent to preserve state law in many instances.

The U.S. Supreme Court has not yet weighed in on the scope of federal preemption in the field of aviation and the lower court decisions over the last two decades have been mixed. In the Ninth Circuit, the leading decisions of *Montalvo* and *Martin v. Midwest Express Holdings, Inc.*, 555 F.3d 806 (9th Cir. 2009), control the scope of field preemption. *Montalvo* found that field preemption barred failure-to-warn claims by airline passengers who developed deep vein thrombosis because detailed FAA regulations comprehensively governed passenger safety briefings. *Martin*, by contrast, found no preemption of a passenger's design defect claim that an airstair door should have had two handrails rather than one because the regulations addressing airstair door design were sparse and general.

Becker **and Implied Field Preemption**

The *Becker* case arose out of a fatal airplane crash allegedly caused by a defective carburetor float. The plaintiff asserted product liability claims against the company that had assembled the float. In raising a field preemption defense, the defendant argued that federal aviation regulations pervasively regulate an airplane engine's fuel system. The trial court agreed and dismissed the claims. The Washington Court of Appeals affirmed in a broad preemption ruling, holding that field preemption extended to all "areas" governed by pervasive regulations, even if no regulation specifically addressed the relevant product or design. The appellate court further observed that while state remedies might survive preemption if there were a parallel federal standard of care, the plaintiff could not identify any such parallel standard and, thus, the entire claim was dismissed.

The Washington Supreme Court unanimously reversed. Relying heavily on the *Montalvo-Martin* framework and the Third Circuit's recent decision in *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680 (3d Cir. 2016), the *Becker* court characterized the FAA's engine performance and safety regulations as a "set of baseline requirements for certified manufacturers," emphasizing that they "do not attempt to regulate aircraft manufacture or design in and of itself." In support of this result, the court cited to legislative history about the Federal Aviation Act reflecting Congress's intent to limit federal preemption, and noted that in the Act Congress had directed the FAA to create "minimum standards" for aviation safety. The court interpreted this reference to "minimum standards" to indicate "that federal regulations are a floor for engine design standards, not a ceiling limiting state tort remedies."

Accordingly, the court concluded the regulations were not comprehensive or pervasive enough to show an intent to preempt state law claims of defective carburetor float design and manufacture, and reinstated the state-law product liability claims against the manufacturer.

Aviation Litigation After *Becker* in Washington

Becker may have been a "loss" for the aviation industry, but it establishes a framework for preemption defenses in future cases. Significantly, *Becker* confirms the viability of the *Montalvo-Martin* field preemption test for challenging other types of state-law claims. In this way, *Becker* may actually increase an aviation defendant's chances of applying federal law in areas with more detailed regulations than engine component design. Indeed, *Becker* did not grapple with the importance of uniform aviation standards or the problems faced by manufacturers and operators trying to comply with 50 different state standards — leaving open the possibility that this factor could be influential in subsequent cases. *Becker* also involved the unusual and unhelpful fact for the defendant that one of the subject carburetor floats was found after the accident to be full of fuel.

Finally, *Becker* is narrowly confined to field preemption and does not touch on conflict preemption at all. Notably, the Washington Supreme Court's decision to follow *Sikkelee* on field preemption suggests that it may also be inclined to follow *Sikkelee* on conflict preemption. In *Sikkelee*, the Third Circuit underscored that state law product liability claims remain invalid if they directly conflict with a specific federal requirement, and noted that this situation would exist if a manufacturer's compliance with both federal design regulations and state product liability law would be impossible. *Becker*, therefore, does not change the aviation industry's strong conflict preemption defense in product liability lawsuits where a specific conflict can be identified.

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