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The Supreme Court Considers Conflict Preemption Case Concerning Federal Seatbelt Regulation

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INTRODUCTION

The Supreme Court heard oral argument yesterday in *Williamson v. Mazda Motor of America, Inc.*, No. 08-1314, in which the Court is expected to address whether a federal regulation addressing motor vehicle safety preempts state common law. Specifically at issue is whether a manufacturer's compliance with Federal Motor Vehicle Safety Standard No. 208 ("FMVSS 208"), which provides vehicle manufacturers a choice of what type of seatbelt to install on certain seats, preempts design defect claims under state law.

Williamson is the second preemption case heard by the Court so far this term. Yesterday's argument followed last month's argument in *Bruesewitz v. Wyeth*, No. 09-152, covered in an earlier *Report from Washington*. *Bruesewitz* concerns whether the National Childhood Vaccine Injury Act of 1986 expressly preempts certain design defect claims. The Court's decisions in these two cases may have profound implications for companies operating under federal regulatory schemes that set product standards.

BACKGROUND

Plaintiffs-Petitioners Delbert Williamson, his daughter Alexa Williamson, and the Estate of Delbert Williamson's wife, Thanh Williamson, claim that the Defendants-Respondents Mazda Motor of America, Inc. and certain related entities ("Mazda") committed various state-law torts by installing two-point seatbelts (also known as lap-belts or Type 1 seatbelts) in the aisle seats of its 1993 Mazda MPV Minivans. Plaintiffs argue that Mazda's failure to install three-point seatbelts (also known as lap/shoulder-belts or Type 2 seatbelts) caused the death of Mrs. Williamson when the 1993 Mazda MPV in which she was riding collided head-on with another vehicle.

After the collision, Plaintiffs filed suit in California state court alleging design defect and failure-to-warn claims, as well as claims for negligence, wrongful death and deceit. Upon a motion for judgment based on the pleadings, the trial court indicated that Plaintiffs' claims based on Mazda's decision to install a Type 1 belt were preempted and admonished Plaintiffs not to rely on that decision as the basis for liability. The court granted Plaintiffs leave to amend, but Plaintiffs continued to focus on the harm caused by the Type 1 seatbelt in their Third Amended Complaint. Mazda demurred to the complaint and, based on the court's prior order, moved to strike the portions of the complaint concerning Mazda's decision to install a Type 1 seatbelt and all references to Plaintiffs' failure-to-warn claims. Mazda argued that FMVSS 208 provides manufacturers a choice of whether to install either Type 1 or Type 2 seatbelts in middle and aisle seats and allowing Plaintiffs' claims to proceed under these circumstances

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would create a direct conflict between the National Highway Traffic Safety Administration's ("NHTSA") federal seatbelt regulation and state law. The trial court agreed, and held that Plaintiffs could not base an action solely on Mazda's decision to install Type 1 seatbelts in the aisle seat of the MPV.

A panel of the California Court of Appeal agreed with Mazda and affirmed the lower court's ruling. 167 Cal. App. 4th 905 (2008). The appellate court explained that this was not an express or implied preemption case. Rather, the question was one of conflict preemption, which occurs when either: (1) it is impossible to comply with both the federal and state law; or (2) state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 910.

The California Court of Appeal reasoned that in *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), the Supreme Court concluded that FMVSS 208's "passive restraints" (e.g., airbags) provisions preempt state common-law suits based on defective design because application of state law "would have presented an obstacle to the variety and mix of devices that the federal regulation sought." *Id.* at 914 (quoting *Geier*, 529 U.S. at 881-82). There, the Supreme Court found that, in promulgating FMVSS 208, the Department of Transportation ("DOT"), through the NHTSA, deliberately provided manufacturers a choice between different passive restraint systems to foster technological development and lower costs, promoting FMVSS 208's safety objectives. The Supreme Court in *Geier* reached its conclusion despite language in the National Traffic and Motor Vehicle Safety Act ("Safety Act")—which gave the DOT the authority to create the NHTSA and promulgate vehicle safety regulations—suggesting that federal safety standards would be minimum standards and that compliance with a standard does not exempt a person from liability under common law.

Acknowledging that *Geier* is factually distinguishable because that case dealt with passive restraints, not seatbelts, the California Court of Appeal noted that several other state and federal courts applying *Geier* have held that FMVSS 208 preempts lawsuits challenging manufacturers' installation of Type 1 seatbelts. It was persuaded by the rationale of those decisions and held that FMVSS 208 does not establish a regulatory "floor" above which state law may operate, but is instead a reflection of Congress' intent to create a comprehensive regulatory regime that leaves no room for state law design defect suits. The court also agreed with a Fifth Circuit decision finding that there were "particular policy reasons for [the NHTSA's] decision to allow manufacturers the option of selecting between two seat belt designs, and included this option as a part of a comprehensive regulatory scheme," distinguishing the instant case from one where an agency simply refuses to act. *Id.* at 917 (quoting *Carden v. General Motors Corp.*, 509 F.3d 227, 232 (5th Cir. 2007)). Finally, the court found that each of the remaining claims also were preempted because the plaintiffs' attorney had acknowledged at a hearing before the trial court that those claims depended on challenging Mazda's decision to install the allegedly defective Type 1 seatbelt.

Following the California Supreme Court's denial the Plaintiffs' petition for review, the United States Supreme Court granted certiorari with respect to the defective design claim only.

SUMMARY OF THE ARGUMENT

At oral argument before the Supreme Court yesterday, Plaintiffs argued that state common law “is perfectly consistent with and would not frustrate the objections of the operative 1989 version of [FVMSS 208] governing Type 2 seatbelts in rear seats.”

Justice Scalia asked: “[W]hy would the Federal Government . . . trust juries to supplement . . . [f]ederal rules . . . but not permit [s]tate agencies who – who studied the matter with experts, to supplement what the [f]ederal rules are?” Plaintiffs responded that common law has an important role to play in providing relief to injured parties and giving incentives to manufacturers to design safer vehicles.

Chief Justice Roberts then asked several times about the costs imposed by requiring manufacturers to install Type 2 seatbelts in middle and aisle seats. “[T]he relief you are seeking,” the Chief Justice explained, “directly imposes the costs that [the] NHTSA decided not to require.” Plaintiffs responded that the NHTSA was neutral as to whether Type 1 or Type 2 seatbelts should be installed, therefore the elimination of the Type 1 choice does not pose a conflict.

Justice Scalia pointedly asked: “Why is [this case] different from *Geier*? . . . [W]eren’t the manufacturers [in *Geier*] similarly left to . . . choose for themselves whether to have one type of constraint or another?” Justice Kennedy similarly noted that *Geier* construed the same statute at issue here, the Safety Act—which provides that the FMVSSs will be minimum standards and that common law remedies are saved—but nevertheless found that state common law was preempted. Plaintiffs responded that *Geier* presented a direct conflict because the NHTSA had explicitly chosen to promote a *variety* of passive safety devices. Here, Plaintiffs argued, the NHTSA actually preferred that manufacturers install Type 2 seatbelts, but chose not to mandate Type 2 belts because of cost and feasibility concerns.

Justice Ginsburg summarized Plaintiffs’ position as follows: “[T]he statute says ‘minimal standards’ and the agency says ‘no obstacle,’ and that’s it, that if there is a preemptive force to the . . . safety standards, that it is for the government to say that.” She also asked: “Why are we looking to *Geier* when you have a statute that says common law remedies are safe [from preemption]?”

The United States filed an *amicus* brief, signed by the Solicitor General, the DOT and the NHTSA, in which it argued that the court below, along with other state and federal courts, misinterpreted *Geier* by reading it too broadly. The Government contended that FMVSS 208 does not preempt state tort law and noted that the NHTSA has consistently disagreed with those courts’ characterization of its rulemaking.

Justice Alito questioned: “[W]hy didn’t the Federal Government come forward at any point during [the time lower courts were applying *Geier* to seatbelt cases] and say that this is [not] preempted?” The Government responded that the NHTSA does not participate in private party litigations under state common law but that, when asked, the Government’s position has been consistent with its position now, that the presence of options in a federal regulation does not preempt state law merely because they are options. The NHTSA would have been “perfectly happy” if every manufacturer installed Type 2 seatbelts.

“[T]he relief you are seeking it seems to me directly imposes the costs that [the] NHTSA decided not to require.”

CHIEF JUSTICE ROBERTS

Later, Justice Alito asked: "If we adopt your view, would *Geier* apply to any other regulation?" The Government responded that *Geier* is an exceptional circumstance where there was concern regarding the phase-in period for airbags, but that it could conceivably be applicable in another context where an agency is going to impose a new requirement, but affirmatively discourages hurried installation. The Government argued that *Geier* is not applicable here because the NHTSA encouraged early adoption of Type 2 seatbelts.

Mazda argued that the NHTSA "specifically determined that the statutory safety and practicability objectives would be best served by giving manufacturers the flexibility to install a lap-only or lap/shoulder seatbelt."

In responding to Mazda's argument that the NHTSA wanted to provide manufacturers with the option to install one type of seatbelt or the other, Justice Breyer stated: "Nothing in the agency [record] that I can find says that the agency really wanted a mix of options. . . . [T]he situation we have in *Geier* is filled with indications that they really wanted a mix because of the unusual circumstances present there."

Mazda also responded to Justice Sotomayor's question: "[W]hat's the inducement for a manufacturer to . . . [install a Type 2 seatbelt], when it can, without causing an added safety risk? If [state law is] preempted, there is no inducement." It was Mazda's position that here the NHTSA had specific concerns about the safety risks posed to children for Type 2 seatbelts, and that it concluded that manufacturers should have the flexibility to install either Type 1 or Type 2 seatbelts because of questions about feasibility and cost. Justice Ginsburg questioned Mazda's interpretation of the NHTSA rulemaking process, saying that "there is no such statement" about flexibility.

Noting that the Solicitor General argued that FMVSS 208 sets a minimum standard and the Safety Act itself says that common law is not displaced, Justice Ginsburg asked why the Court should not assume that the agency set a minimum standard "unless the agency tells us that it should be preemptive of tort suits?"

Justice Ginsburg asked: "[I]f the Court gives weight to what the agency says in *Geier*, shouldn't it equally give weight here when [the] NHTSA is telling us there is no conflict?" Justice Breyer observed that the NHTSA did not expressly indicate that it intended FMVSS 208 to preempt state common law during the rulemaking, but added that, as a practical matter, the agency is best positioned to know how to interpret the administrative record: "Who is most likely to know what 40,000 pages of agency record actually mean and say? People in the agency."

On rebuttal, Plaintiffs argued that nothing in the history of the FMVSS 208 rulemaking that allowed either Type 1 or Type 2 seatbelts in middle and aisle seats discusses child safety concerns. Plaintiffs also reiterated their argument that state tort law ensures that manufacturers must act reasonably, to which Chief Justice Roberts responded, "juries typically don't take into account the fleet costs of avoiding liability, which as I understand from the [Government's] brief in this case was the reason that Type 2 was not mandated." Plaintiffs argued that costs and feasibility are practical considerations that affect liability in any tort system.

Justice Kagan did not participate in this case due to the involvement of the Office of the Solicitor General as *amicus curiae*.

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JUSTICE SOTOMAYOR

"[I]f the Court gives weight to what the agency says in Geier, shouldn't it equally give weight here when [the] NHTSA is telling us there is no conflict?"

JUSTICE GINSBURG

IMPLICATIONS

The Supreme Court is set to weigh in on a line of “conflict preemption” cases interpreting *Geier* in which courts have found state common-law product liability suits preempted based on compliance with federal regulation governing seat-belt installation, even though there is no express preemption of common law remedies in the federal statute or regulations. If Mazda prevails on its argument, vehicle manufacturers can be confident in knowing that compliance with the seatbelt regulatory scheme established by FMVSS 208 will, absent additional factors, immunize them from design defect claims relating to their use of two-point rather than three-point seat belts. Such a holding might be extended to circumstances involving other regulatory regimes in which federal agencies establish a range of permissible options for manufacturers. On the other hand, if Plaintiffs prevail on their position, manufacturers will remain exposed to liability under state law even if their products are fully compliant with all applicable federal standards.

More generally, the Court's decision—coupled with its decision in *Bruesewitz*—may provide lower courts with additional guidance in determining when state law claims are preempted under a given federal statute or regulatory scheme.

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