NEWSLETTER

Sikkelee: A Victory for Plaintiffs and its Implications for Aviation Product Liability Claims

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In July 2005, pilot David Sikkelee died when his Cessna 172N crashed in North Carolina. The year before the crash, the plane's engine had been overhauled and a new carburetor was installed pursuant to the manufacturer's certified design. Two years after the crash, suit was filed against seventeen defendants claiming that the crash resulted from alleged manufacturing and design defects in the Cessna's engine—specifically, a "malfunction or defect in the engine's carburetor."

In 2007 the legal odyssey began with the filing of a wrongful death and survival lawsuit in the Middle District of Pennsylvania, which ended with the Supreme Court denying certiorari on November 28, 2016. During this eleven-year struggle, the aviation product manufacturers hoped to establish, once and for all, that the Federal Aviation Act (the "Act") and Federal Aviation Administration ("FAA") regulations preempt aviation product liability claims. The Third Circuit in *Sikkelee v. Precision Airmotive Corp.,* held that preemption was not a defense to the action and determined that the courts and juries, not the Federal Aviation Administration, will continue to determine safety as it relates to aviation product manufacturing and design defect claims in *type certificated* aircraft.[1]

FAA Certification

While pursuing the preemption defense, the *Sikkelee* defendants relied heavily upon the three step process for type Certification under the Act. The argument advanced was that the extensive approval process would prohibit a jury from "second guessing" the FAA. The various defendants highlighted: first, aircraft manufacturers shall obtain from the FAA a type certificate, which certifies that a new design for an aircraft or component part performs properly and meets the regulatory safety standards;[2] second, a manufacturer must receive a production certificate, which certifies that a duplicate part produced for a particular aircraft will conform to the type-certificated design;[3] and third, before a first flight, the aircraft must be granted an airworthiness certificate, which certifies that the aircraft is safe for flight.[4] The defendants argued that, once the FAA issues a type certificate, the agency has determined that the product "is properly designed and manufactured, performs properly, and meets the regulations and minimum standards" prescribed under the applicable regulations.[5] A type certificate is effective unless surrendered, suspended, revoked, or the FAA establishes a termination date.[6]

Of paramount import to the *Sikkelee* plaintiffs in responding to preemption claims, and a very significant fact which the defendants played down, was that a manufacturer may make both "major" and "minor" changes to a type certificated design,[7] but must obtain the appropriate regulatory approval to do so. For a "major change" this approval necessitates an amended or supplemental FAA type certificate,[8] and for a "minor change," manufacturer compliance with a pertinent "method acceptable to the FAA" is required.[9]

The *Sikkelee* Court's Preemption Analysis

Preemption flows from the Supremacy Clause and is said to be necessary because the states and the federal government possess concurrent sovereignty, where federal law is "the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[10] As such, Congress is empowered to enact legislation that preempts state law.[11] As the Constitution limits the federal government to one of enumerated powers, all preemption inquiries "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."[12]

Preemption can be express, implied (field), or due to conflict between state and federal law. Congress may expressly preempt state law through statutory language, and it may also implicitly preempt in a particular field.[13] Implicit preemption applies when either "federal law leaves no room for state regulation" or "Congress had a clear and manifest intent to supersede state law" in that field.[14] Where congressional intent is for federal law to occupy an

entire field, state law cannot add to federal law or regulation in that field even if such state law is consistent with "federal standards."[15] The third form of preemption—conflict—occurs when either a state law conflicts with federal law such that compliance with both federal and state law is impossible,[16] or a contested state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law."[17] Preemption analysis "begins with a presumption that Congress does not preempt areas of law traditionally occupied by the state" absent a clear and manifest intent to do so.[18] Product liability claims traditionally arise as state causes of action.[19]

Here, the Act does not indicate "a clear and manifest congressional intent to preempt state law products liability claims."[20] The "Act itself neither states nor implies an intent to preempt state law products liability claims, and GARA [the General Aviation Revitalization Act of 1994][21] confirms that Congress understood and intended that Act to preserve such claims."[22] "[D]espite Appellees' exhortations, we cannot infer a clear and manifest congressional purpose to preempt these claims where the indicia of congressional intent, including in this case the assumptions underlying subsequent legislation, point overwhelmingly the other way," and the FAA certification process does not form a basis to preempt the entire field of aviation safety regarding product liability.[23]

Additionally, *Sikkelee* makes clear that the 3rd Circuit's earlier preemption decision in *Abdullah v. American Airlines, Inc.*,[24] and its progeny do not expand aviation safety field preemption to product liability causes of action. As the court holds, in-flight operational safety and product liability are two non-overlapping subsets within the field of aviation safety—*Abdullah* remains good law in the former, but it does not extend to the latter.[25] Specifically, "federal law preempts state law standards of care in the field of air safety" as applied to in-flight operations, but it preserves state law remedies and state law aviation-related product liability causes of action.[26]

Therefore, neither enacted statutory aviation law nor the Federal Aviation Administration's type certification process preempts "all aircraft design and manufacturing claims," and aircraft product liability cases "may proceed using a state standard of care."[27]

Implications for Aviation Product Liability Claims Moving Forward

First, the 3rd Circuit chose not to create a circuit split regarding the scope of aviation safety-related preemption, and concluded that product liability claims are "an area at the heart of state police powers." The Court declined "the invitation to create a circuit split" by broadening "the scope of *Abdullah's* field preemption to design

defects when the statute, the regulations, and relevant precedent mitigate against it."[28]

Next, *Sikkelee* provides persuasive authority beyond the 3rd Circuit. At the time of this writing, *Sikkelee* has been cited three times by district courts outside of the 3rd Circuit regarding aviation-related preemption. In the Fourth Circuit case of *Bhd. Mut. Ins. Co.*, the defendant had a "change of heart" and abandoned its position, choosing not to oppose remand after the Third Circuit's decision in *Sikkelee* was published.[29] The Fifth Circuit in *Davidson* found "the rationale of the well-considered opinion in *Sikkelee* . . . to be convincing," and the concurring opinion stated "that the federal statutory and regulatory scheme on aviation does not preempt the field of products liability, instead the FAA's type certification process effectuates 'baseline requirement[s]' that 'speak to a floor of regulatory compliance."[30] And the Ninth Circuit in *Escobar* considered but distinguished the facts from *Sikkelee*: "[i]n her Opposition to the Motion for Summary Judgment, Plaintiff argues that her causes of action are not subject to field preemption pursuant to *Sikkelee*;" however, "[f]ield preemption is not an issue in this case and *Sikkelee* does not apply."[31] [32] Additionally, in a lawsuit involving analogous facts to *Sikkelee*, the Washington Supreme Court decided to "follow the Third Circuit and find that the Federal Aviation Act does not preempt state law."[33] The *Becker* court held that "federal regulations are a floor for engine design standards, not a ceiling limiting state tort remedies."[34]

Lastly, *Sikkelee* does not control beyond the 3rd Circuit and has not been the substantive subject of a subsequent appellate decision in any other Circuit. To date, no circuit has held that aviation safety "field" preemption extends to state law aviation product liability claims, but this narrow issue would likely be one of first impression in the 2nd, 4th, 7th, and 8th Circuits. Notably, several circuits have opined on the scope of preemption in the field of aviation safety. [35]

In sum, *Sikkelee* affirms that Congress did not intend the FAA type-certification process or FAA regulations to either expressly preempt state aviation product liability claims or establish a federal standard of care for persons injured by defective airplanes. The *Sikkelee* court did not rule out the possibility that a specific type certification of an aircraft or aircraft component could be so rigorous as to conflict preempt a state law product liability action, but the court left this possibility as a mere hypothetical. Moving forward, district courts in other circuits have regarded, and most likely will continue to regard, *Sikkelee* as highly persuasive authority.

**Thank you to the attorneys who fought the battles through the trial and appellate levels, as well as the attorneys, organizations, and law professors who supported, and ultimately won this monumental victory.*

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[1] *Sikkelee v. Precision Airmotive Corp.,* 822 F.3d 680, 680 (3d Cir. 2016), cert. denied, 196 L. Ed. 2d 433, 433 (2016).

[2] 49 U.S.C. § 44704(a); 14 C.F.R. § 21.31.

[3] 49 U.S.C. § 44704(c); 14 C.F.R. § 21.137.

[4] 49 U.S.C. §§ 44704(d), 44711(a)(1).

[5] *Sikkelee*, 822 F.3d at 684.

[6] 14 C.F.R. § 21.51.

[7] 14 C.F.R. § 21.93.

[8] 49 U.S.C. § 44704(b); 14 C.F.R. § 21.97; FAA Order 8110.4C, change 1, Type Certification, ch. 4-1(a), 4-2 (2011).

[9] 14 C.F.R. § 21.95.

[10] U.S. Const. art. VI, cl. 2.

[11] *Arizona v. United States*, 132 S. Ct. 2492, 2500–01 (2012).

[12] *Wyeth v. Levine*, 129 S. Ct. 1187, 1187 (2009).

[13] *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015).

[14] *Elassaad v. Indep. Air, Inc.*, 613 F.3d 119, 127 (3d Cir. 2010).

[15] *Oneok*, 135 S. Ct. at 1595.

[16] *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567, 2577 (2011).

[17] *Williamson v. Mazda Motor of Am., Inc.*, 131 S. Ct. 1131, 1131 (2011).

[18] *Sikkelee*, 822 F.3d at 690.

[19] *Medtronic, Inc. v. Lohr*, 116 S. Ct. 2240, 2240 (1996).

[20] *Sikkelee*, 822 F.3d at 686.

[21] S. 1458 — 103rd Congress: General Aviation Revitalization Act of 1994.

[22] *Sikkelee*, 822 F.3d at 688.

[23] *Id.* at 688–89.

[24] *Abdullah v. American Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999).

[25] *Sikkelee*, 822 F.3d at 694–95.

[26] *Id.*

[27] *Id.* at 683.

[28] *Id.* at 708–9.

[29] *See Bhd. Mut. Ins. Co. v. Cent. W. Va. Reg'l Airport Auth.*, 2016 U.S. Dist. LEXIS 83483, at *1, *4 (S.D. W. Va. June 28, 2016) [4th Circuit].

[30] *Davidson v. Fairchild Controls Corp.*, 2016 U.S. Dist. LEXIS 134276, at *1, *21–*24 (S.D. Tex. Sep. 29, 2016) [5th Circuit] (*quoting Sikkelee*, 822 F.3d at 694).

[31] *Escobar v. Nev. Helicopter Leasing LLC*, 2016 U.S. Dist. LEXIS 95186, at *17 n.4 (D. Haw. July 21, 2016) [9th Cir.].

[32] The legal issue at bar in *Escobar* involved conflict preemption, specifically the preemptive effect of the limitations of liability provision in the Federal Aviation Act, 49 U.S.C.S. § 44112 (2016), as applied to a lessor who was not in possession or control of the mishap aircraft at the time of the crash. *Davidson*, 2016 U.S. Dist. LEXIS 134276, at *17–*37.

[33] *Estate of Becker v. Avco Corp.*, No. 92972-6, 2017 Wash. LEXIS 87, at *3 (Jan. 26, 2017) (en banc).

[34] *Id.* at *11.

[35] *See Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d. 1318, 1318 (2d Cir. 2011); *Witty v. Delta Airlines, Inc.*, 366 F.3d 380, 380 (5th Cir. 2004); *Greene v. B.F. Goodrich Avionics Sys., Inc.*, 409 F.3d 784, 784 (6th Cir. 2005); *Gilstrap v. United Air Lines, Inc.*, 709 F.3d 995, 995 (9th Cir. 2013); *Martin ex re. Heckman v. Midwest Express Holdings, Inc.*, 555 F.3d 806, 806 (9th Cir. 2009)*; Cleveland v. Piper Corp.*, 985 F.2d 1438, 1438 (10th Cir.1993); and *Pub. Health Trust v. Lake Aircraft, Inc.*, 992 F.2d 291, 291 (11th Cir.1993).

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