

1-1-1999

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Publication Information

Ralph Anzivino, Does an Auto Manufacturer's Compliance With National Traffic and Motor Vehicle Safety Standards Pre-empt Suits for Defective Design?, 1999-2000 Term Preview U.S. Sup. Ct. Cas. 165 (1999). © 1999 American Bar Association. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

Repository Citation

Anzivino, Ralph C., "Does an Auto Manufacturer's Compliance With National Traffic and Motor Vehicle Safety Standards Pre-empt Suits for Defective Design?" (1999). *Faculty Publications*. Paper 388.

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Does an Auto Manufacturer's Compliance With National Traffic and Motor Vehicle Safety Standards Pre-empt Suits for Defective Design?

by Ralph Anzivino

PREVIEW of United States Supreme Court Cases, pages 165-169. © 1999 American Bar Association.

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Editor's Note: The respondent's brief in this case was not scheduled to be filed until after PREVIEW went to press.

ISSUE

Does an auto manufacturer's compliance with Standard 208 of the National Traffic and Safety Motor Vehicle Act pre-empt a defective design lawsuit under state law?

FACTS

Alexis Geier, a minor at the time of the accident, was driving her parents' 1987 Honda Accord when she crashed into a tree and suffered injuries. The Honda did not have a driver's side air bag. For cars manufactured between Sept. 1, 1986, and Sept. 1, 1987, the inclusion of a driver's side air bag was one of several passive restraint "options" from which car manufacturers could choose in order to comply with safety standards promulgated under the National Traffic and Motor Vehicle Safety Act (hereafter "the Safety Act"). Specifically, at the time of the Geier accident, Standard 208 approved two types of passive

restraint systems—automatic seat belts or air bags. Since the Geiers' 1987 Honda did not have a driver's side air bag, they filed suit against the American Honda Motor Company in U.S. District Court for the District of Columbia alleging product liability based on the car's defective design.

Two provisions of the Safety Act are relevant in ascertaining the effect of Standard 208 on state law. The first provision is 15 USC § 1392(d) [now codified at 49 USC § 30103(b)(1)], which provides "whenever a federal motor vehicle safety standard ... is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the federal standards."

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GEIER V. AMERICAN HONDA
MOTOR CO.
DOCKET NO. 98-1811

ARGUMENT DATE:
DECEMBER 7, 1999
FROM: THE CIRCUIT COURT FOR
THE DISTRICT OF COLUMBIA

Case at a Glance

In 1987, a driver's side air bag was one of several passive restraint options from which auto manufacturers could choose in order to comply with Safety Standard 208 of the National Traffic and Motor Vehicle Safety Act. When an auto manufacturer selects one of the safety "options" for installation under Standard 208, does that compliance pre-empt an injured motorist from pursuing a subsequent lawsuit for a claimed design defect? The Supreme Court will decide.

The second provision is 15 USC § 1397(k) [now codified at 49 USC § 30103(e)], a so-called savings clause, which provides that “compliance with any federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law.”

Honda moved for summary judgment in the district court. The basis of the motion was that the lawsuit was pre-empted by the Safety Act and Safety Standard 208, which governs the passive safety restraint that automobile manufacturers are required to install. The district court granted summary judgment in favor of Honda. In the district court’s view, states lack the authority to require air bags. In the court’s opinion, Section 1392(d) and Standard 208 expressly pre-empt such a requirement for car manufacturers. The district court reasoned that to permit Geier to recover under a common-law tort theory claim might establish a safety standard that was not identical to Standard 208, and therefore violative of Section 1392(d).

The Geiers appealed to the U.S. Court of Appeals for the District of Columbia. On appeal, the Geiers contended that the district court erred in granting summary judgment because Section 1397(k) expressly preserved all common-law claims against pre-emption. The Geiers also asserted that the term *standards* in Section 1392(d) applies only to state legislation or regulation and not to state product-liability actions. Honda, on the other hand, maintained that the summary judgment was appropriate because the Safety Act either expressly or impliedly pre-empted the Geiers’ lawsuit. Honda argued that a verdict in favor of the Geiers would conflict with the Safety Standard 208 requirement, which

gave auto manufacturers a choice. The court of appeals affirmed the district court’s decision. 166 F.3d 1236 (D.C. Cir. 1999).

The court of appeals found no express pre-emption by Section 1392(d) for two reasons. First, the broad language of Section 1397(k) indicated to the court that Congress did not wish to deprive plaintiffs of all their remedies at common law. Second, because of the apparent conflict between Sections 1392(d) and 1397(k), it was difficult for the court to discern from the Safety Act a clear and manifest purpose of Congress to pre-empt this lawsuit.

Notwithstanding its conclusion on the issue of express pre-emption, however, the court of appeals concluded that the Safety Act impliedly pre-empted the Geiers’ lawsuit. The court explained that implied pre-emption occurs when it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The court reasoned that a state jury verdict that held an auto manufacturer liable for not installing air bags would create a conflict with Safety Standard 208. A successful “no air-bag” lawsuit would mean that an automobile without a driver’s side air bag was defectively designed. Congress, however, had delegated the authority to prescribe specific motor vehicle safety standards to the secretary of transportation. The secretary of transportation explicitly rejected requiring air bags in all cars on the ground that a more flexible approach (providing options) would better serve public policy. Therefore, the Geiers’ lawsuit claiming a defective design was impliedly pre-empted because potential common-law liability would interfere with the regulatory methods

chosen by the federal government to achieve the Safety Act’s stated goals.

Currently, six circuit courts of appeal (including the *Geier* decision) have analyzed the issue of pre-emption under the Safety Act when plaintiffs have brought defective-design claims based on the absence of air bags. In each case, Safety Standard 208 did not require air bags for the model years in question but rather presented them as one of several options from which the manufacturers could choose. Five of the six circuit courts have held that the state-law defective design claims were impliedly pre-empted. The Ninth Circuit has held that the claims are expressly pre-empted. *See Harris v. Ford Motor Company*, 110 F.3d 1410 (9th Cir. 1997); *Geier v. American Honda Motor Company*, 166 F.3d 1236 (D.C. Cir. 1999); *Wood v. General Motors Corporation*, 865 F.2d 395 (1st Cir. 1988); *Montag v. Honda Motor Company*, 75 F.3d 1414 (10th Cir. 1996); *Pokorny v. Ford Motor Company*, 902 F.2d 1116 (3rd Cir. 1990); *Taylor v. General Motors Corporation*, 875 F.2d 816 (11th Cir. 1989).

Contemporaneously, however, a number of state supreme courts have reached the opposite result on the same pre-emption question. In *Drattel v. Toyota Motor Corporation*, 699 N.E.2d 376 (N.Y. 1998), the New York Court of Appeals concluded that the Safety Act does not expressly pre-empt state-law defective design lawsuits. The court reasoned that there is no implied pre-emption because it is not impossible for an auto manufacturer to comply with both federal and state law. In *Monroe v. Gallatti*, 938 P.2d 1114 (Ariz. 1997), the Arizona Supreme Court concluded that by virtue of the savings clause contained in Section 1397(k), Congress intended

to forbid regulatory standards in conflict with federal law but did not intend to preclude claims of common-law liability based on a manufacturer's failure to exceed the federal minimum standards. Finally, in *Tebbetts v. Ford Motor Company*, 665 A.2d 345 (NH. 1995), the New Hampshire Supreme Court found no pre-emption under the Safety Act or Safety Standard 208 to preclude a common-law product liability action for defective design. The court reasoned that compliance with a legislative enactment or an administration regulation does not prevent a finding of negligence where a reasonable person would take additional precautions.

CASE ANALYSIS

In 1966, Congress passed the National Traffic and Motor Vehicle Safety Act in an effort to establish regulations for vehicle performance that would provide basic and minimum safety for vehicles sold in the United States. The Safety Act contained both a pre-emption provision (15 USC § 1392(d)) and a savings clause (15 USC § 1397(k)).

Simultaneously, with the passage of the Safety Act, Congress authorized the establishment of a government agency to develop and promulgate safety regulations, which became known as the National Highway Traffic Safety Administration (NHTSA). Safety Standard 208 was one of the regulations promulgated by the NHTSA. Under Safety Standard 208, the installation of a driver's side air bag was one of the options available to auto manufacturers to satisfy the safety requirement of a passive restraint system. Rather than a driver's side air bag, the Geiers' automobile contained a manual 3-point lap belt and shoulder harness. The issue in this case is whether Honda's compliance with Safety Standard 208 pre-empts a defective design lawsuit under state common law.

Under the supremacy clause of the Constitution, the laws of the United States shall be the supreme law of the land. U.S. Constitution Article VI, Clause 2. In applying this clause, courts have identified three ways in which a federal statute or regulation can pre-empt state law: first, by express pre-emption; second, by "field" pre-emption, in which Congress regulates the field so extensively that it clearly intends the subject area to be controlled by federal law; and third, by implied pre-emption, which applies when a state law conflicts with a federal statute or regulation. *Cipollone v. Liggett Group*, 505 U.S. 504 (1992). In addition, the Supreme Court has identified two presumptions that the courts must consider when invoking the doctrine of pre-emption. First, courts must start with a presumption against pre-emption in areas where states have traditionally exercised their historic police power. *Medtronic v. Lohr*, 518 U.S. 470 (1996). Second, in every pre-emption case, the purpose of Congress is the ultimate touchstone. *Id.*

The Geiers assert that in determining whether federal law pre-empts a state cause of action, the court's sole task is to ascertain the intent of Congress. In this regard, the determination should be made in light of a strong presumption against pre-emption that should only be overcome by a clear manifestation of congressional intent to the contrary. In this light, petitioners assert that it is clear that Congress did not intend to pre-empt common-law tort claims under the Safety Act. Indeed, the two provisions of the Safety Act that relate to Congress's intent with respect to pre-emption—the Pre-emption Provision (Section 1392(d)) and the Savings Clause (Section 1397(k))—reveal that the state common-law claims are expressly preserved, not pre-empted.

The Geiers assert that the language of Section 1392(d) indicates that Congress intended to pre-empt only state *legislative* or *administrative* safety standards that are not identical to the federal safety standards governing the same aspects of motor vehicle performance. Therefore, the Safety Act's express pre-emption provision does not encompass or anticipate common-law tort claims. Any doubt on this point should be dispelled by Section 1397(k), which provides in sweeping and unambiguous terms that "compliance with any ... safety standard ... does not exempt any person from liability under common law." In light of the presumptions against pre-emption and the plain language of the Safety Act, the Geiers conclude that their state common-law claim is not expressly pre-empted by the Safety Act.

Despite the fact that five circuits have held otherwise, petitioners also assert that their defective-design claim is not impliedly pre-empted by the Safety Act and Safety Standard 208. Petitioners assert that where Congress has spoken directly and clearly on the issue of pre-emption, as it has in the Safety Act, there can be no finding of implied pre-emption. Petitioners believe that because the Safety Act contains both an express pre-emption provision and an express savings provision, any inquiry into implied pre-emption is precluded.

Assuming *arguendo* that the Court could reach the issue of implied pre-emption, the Geiers assert that there is no implied pre-emption because their common-law tort claim does not conflict with the Safety Act or Standard 208. Implied pre-emption applies only when it is impossible for a private party to comply with both state and federal requirements, or when state law would frustrate the full purpose and

(Continued on Page 168)

objective of Congress. Impossibility is not an issue in this case, since Standard 208 would permit the installation of a driver's side air bag in the Geiers' 1987 Honda. Similarly, the petitioner's claims do not frustrate any congressional purpose. The purpose of the Safety Act and Standard 208 is to create safer vehicles. The Geiers assert that the preservation of state common-law claims aids the accomplishment and execution of the congressional purpose. In fact, petitioners assert that a finding of implied pre-emption would frustrate the congressional purpose of creating safer vehicles.

The Geiers assert that their common-law tort claim is also consistent with the goals underlying Safety Standard 208. They argue that the NHTSA promulgated Safety Standard 208 as a *minimum* standard and left the common law undisturbed. The Geiers note that according to the NHTSA, the most effective system was an air bag *plus* a lap belt and shoulder harness. The Geiers also note that the NHTSA explicitly relied on incentives to encourage the use of air bags, including the threat of potential liability for a deficient system. The Geiers assert that their attempt to hold Honda liable for failing to install an air bag is in perfect harmony with Congress' approach.

Finally, the Geiers assert that their common-law state tort claim is consistent with NHTSA's goal of permitting auto manufacturers to experiment with designs to develop safer systems. The Geiers assert that the common-law tort system actually encourages manufacturers to experiment with safer product designs. Therefore, the petitioner's common-law claim is entirely consistent with, and actually advances, the goals underlying Safety Standard 208.

Honda believes that the Geiers' common-law tort claim is expressly pre-empted by Section 1392(d). It argues that the coverage of Section 1392(d) is very broad. First of all, Honda asserts that at a minimum, the language of Section 1392(d) restricts a state's authority to enact legislation or regulations that affirmatively require car manufacturers to adopt standards not identical to Safety Standard 208. In other words, a state could not require, by statute or regulation, that car manufacturers install air bags in automobiles when Standard 208 makes them only an option. Further, Honda asserts that the term *standard* in Section 1392(d) also applies to the requirements imposed by common-law tort verdicts.

Honda argues that the Supreme Court has observed that state regulation can be effectively asserted through a damage award. In other words, the term *standard* is broad enough to include duties established by state tort law. Common-law liability could therefore be viewed as constituting a "standard" that conflicts with Safety Standard 208. In Honda's view, because Standard 208 allows car manufacturers the option of choosing an air bag, a jury verdict in favor of the Geiers on a claimed design defect would require car manufacturers to comply with a different standard. Section 1392(d) expressly prohibits such a requirement and therefore expressly pre-empts the Geiers' lawsuit.

Honda further asserts that the Safety Act impliedly pre-empts the Geiers' lawsuit. Safety Standard 208 governs the use of air bags in 1987 model year cars. Although the Standard does not mandate or forbid the use of air bags, it presents them as one of several options from which manufacturers may choose. Honda argues that a successful "no air bag" claim would mean that an

automobile without an air bag was defectively designed. Congress, however, delegated authority to prescribe specific motor vehicle safety standards to the secretary of transportation. When the secretary promulgated Safety Standard 208, she rejected an "all air bag" rule out of concern that, notwithstanding the safety benefits of air bags, the public might respond negatively to the unfamiliar technology if it was required in all cars. In the secretary's view, gradually phasing in air bags would potentially address "unfounded" fears among members of the public that air bags were unsafe.

At the same time, the secretary was concerned that not affording manufacturers discretion to install an automatic occupant-restraint system ran the risk of impeding the development of more effective protective systems. Thus, a performance standard making air bags one of several options car manufacturers could choose from in order to comply with the passive restraint requirements of Standard 208, rather than mandating specific use of one safety device, would advance public safety in two respects—first, by allowing consumers to adjust to the new technology, and second, by permitting experimentation with designs for even safer systems. Honda concludes that allowing design-defect claims based on the absence of air bags would frustrate the department's policy of encouraging public acceptance of air bag technology and manufacturers' experimentation with better passive-restraint systems. Therefore, the Geiers' lawsuit must be implicitly pre-empted because potential common-law liability claims could interfere with the regulatory method chosen by the government to achieve the Safety Act's stated goals.

SIGNIFICANCE

Generally, a citizen injured by a manufacturer's product is entitled to her "day in court." However, where Congress has legislated in a particular area, a state and its citizens may be precluded from acting in that area by the federal pre-emption doctrine. The federal pre-emption doctrine provides that federal law can pre-empt state law either expressly or impliedly. Congress "expressly" pre-empts state law by a clause in the legislation that attempts to define the extent to which a particular federal law will pre-empt state law. Congress "impliedly" pre-empts state law through federal legislation that occupies a field or conflicts with state law. Traditionally, if the federal law at issue contained an express pre-emption provision, the Supreme Court analyzed the language of the pre-emption clause and did not purport to consider implied pre-emption theories. Recent state supreme court decisions have followed the U.S. Supreme Court's traditional approach. Recent federal cases have suggested a shift away from the traditional approach and have found implied pre-emption despite the presence of an express pre-emption clause. This case will provide the Supreme Court with an opportunity to further clarify its position on the federal pre-emption doctrine.

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