Washington Legal Foundation

On the Merits:

DELBERT WILLIAMSON, ET AL.,

Petitioners,

v.

MAZDA MOTOR OF AMERICA, INC., ET AL.,

Respondents.

U.S. Sup. Ct. No. 08-1314

On Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Three

Oral Argument: November 3, 2010

Question Presented: Whether a car accident victim can sue a car manufacturer in common-law tort for failing to install a lap/shoulder safety belt in a car when federal safety regulations require the manufacturer to install only a lap safety belt.

Summary of the Case: The National Highway Traffic Safety Administration ("NHTSA") enacted the Federal Motor Vehicle Safety Standard (FMVSS) 208, 49 C.F.R. § 571.208, pursuant to the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 30101 *et seq.* ("the Safety Act"). As of 1993, FMVSS 208 gave car manufacturers the choice to install either lap belts or lap/shoulder belts in rear center or rear aisle seats. After reviewing dozens of comments contributed over years of rulemaking proceedings, NHTSA determined that giving manufacturers a choice between the two safety options best served the purposes of the Act and explicitly rejected a lap/shoulder belt-only rule.

Following a car accident in which Thanh Williamson was killed, Petitioners brought this suit in a California state court alleging that Mazda defectively designed a minivan in 1993 by installing a lap belt rather than a lap/shoulder belt in the rear aisle seat position where Mrs. Williamson was sitting when the vehicle crashed. Petitioners contend that NHTSA permitted lap-only seatbelts as a *minimum* requirement, thereby leaving the states free to impose greater safety standards. *E.g.*, Pet. Br. at 28.

The state trial court entered judgment for respondents on the ground that Petitioners' state common-law tort suit is preempted by a federal regulation. The Court of Appeal of California affirmed, and the Supreme Court of California denied discretionary review.

On the Merits:
Judgment for Respondents
By Lisa Blatt
Arnold & Porter LLP

Contrary to Petitioners' suggestion that a "*strong* presumption against pre-emption" exists, *e.g.*, Pet. Br. 21, 23 (emphasis added), the U.S. Supreme Court has already declined to create such an unusual presumption. Instead, it relies on "ordinary pre-emption principles, grounded in long-standing precedent." *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 872-74 (2000). Moreover, in *Geier* the Court acknowledged that "Congress or an agency ordinarily would not intend to permit a significant conflict." *Geier*, 529 U.S. at 885.

In *Geier*, the Court held that a provision of the FMVSS designed to require manufacturers to choose among specified "*alternative* protection systems"—there the choice was one regarding whether to install airbags—preempted state common law tort suits that impose liability on manufacturers for choosing one of the agency's listed options. 529 U.S. at 881 (emphasis in original). In *Geier*, the installation of airbags was not a minimum requirement because the agency had policy reasons for not wanting to force that particular choice, but instead made a deliberate decision to leave manufacturers free to choose among different passive restraints. *Id.*

Geier controls this case. At the time respondent installed the lap-only seat belt in its Mazda center aisle seat, the FMVSS 208 explicitly provided automobile manufacturers with two options for rear center/aisle seats, and consciously rejected a lap/shoulder seatbelt rule based on a number of policy considerations. 53 Fed. Reg. 47982, 47992-47993 (Nov. 29, 1988). When looking at the full extent of the agency's fact-findings from that time period, it is evident that the agency recognized distinct safety concerns associated with a lap/shoulder seatbelt requirement for children—the primary occupants of these seats, *See, e.g.*, *id.* at 47,989 (recognizing that a lap/shoulder seatbelt "could pass over [a child's] neck or face."). The agency also recognized specific safety concerns with installing lap/shoulder seatbelts in the rear aisle seating position, where Ms. Williamson was sitting in this case, due to obstructing passenger access to and from the back row. While it is true that NHTSA generally stated that lap/shoulder seatbelts would be marginally more effective for *adults*, the agency also recognized that lap/shoulder seatbelts presented unique safety risks for children, and that installation of lap/shoulder seatbelts in rear center and aisle seats presented unique safety problems.

NHTSA also had cost-related and other practical considerations for permitting manufacturers to install lap seatbelts in rear center and aisle seats. *See, e.g.*, 52 Fed. Reg. 22820 (June 16, 1987). Those latter objectives follow from the directives of the Safety Act, and cannot be said to be inherently less important than the safety concerns motivating Petitioners' action at common law. *See* 49 U.S.C. § 30111(b)(1). Moreover, the two policies are inextricably linked. As NHTSA has long recognized, "requiring significant industry and agency resources to be spent for relatively little safety gain can result in a lost opportunity to better improve vehicle safety through other means." 52 Fed. Reg. at 22819.

The conclusion that NHTSA intended to provide automobile manufacturers with two alternatives for rear center/aisle seatbelts—rather than a "minimum" requirement and a preferred alternative—is therefore inescapable. If (as Petitioners contend) NHTSA had intended simply to adopt a lap-only "minimum" for federal law, it could have easily said so, as the agency has done in countless other safety standards. Instead, NHTSA expressly gave manufacturers the option to use a lap seatbelt *or* a lap/shoulder seatbelt for the seats at issue. A state-law lap/shoulder seatbelt requirement would eliminate that option, and therefore directly conflicts with the federal regulation. Presumably one would be surprised to learn that although the law expressly permitted him to do "A *or* B," he could be severely penalized for doing A but not B. Yet that is the regime Petitioners urge in this case.

The fact that NHTSA "encouraged" manufacturers to develop *safe and effective* ways of installing lap/shoulder seatbelts in the seats at issue does not mean that the agency would have embraced a state law requirement immediately mandating installation of lap/shoulder belts in those seats. NHTSA twice refused to impose that requirement because of safety and technical feasibility concerns. Moreover, NHTSA had taken even more direct steps to "encourage" manufacturers to install airbags. But that did not eliminate the conflict in *Geier*. Furthermore, in 1994 the agency's own general counsel publicly stated that manufacturers—as opposed to lay juries—were in the "best position" to decide when installing a lap/shoulder seatbelt in a rear aisle seat was safe and effective.

Sprietsma v. Mercury Marine, 537 U.S. 51 (2002), is inapposite. There, the Court refused to give preemptive effect to the *complete* absence of federal regulation, recognizing that such circumstances presented a "sharp contrast" to the situation (as in *Geier*) where an agency has expressly authorized "*alternative* protection systems," which the Secretary has done here. *Id.* at 528-29 (emphasis in original). This case, like *Geier*, arises against the backdrop of extensive federal regulation. Moreover, here the federal agency did not simply decline to adopt a rule imposing the equipment requirement at issue; it specifically chose to retain an existing federal rule that gave manufacturers the option to install one of two different equipment types. Accordingly, the lawsuit at issue in this case is not preempted by the *absence* of federal regulation; it is preempted by the very rule that NHTSA promulgated on seatbelt design.

Petitioners argue that "[o]pting among multiple choices given by a regulation is no more or less deserving of protection from liability than opting for the bare minimum rather than exceeding it." Pet. Br. at 28. Petitioners' approach,

however, ultimately would subordinate federal regulations to state common law. While Petitioners today claim that the installation of a lap seatbelt is actionable, a plaintiff tomorrow might bring a similar claim with respect to a lap/shoulder seatbelt based on different safety concerns. If Petitioners' claims were not preempted, FMVSS 208 would provide no basis for distinguishing the lap/shoulder seatbelt action. Thus, the only two options permitted by federal law could conceivably *both* be precluded by state law. Such a result would clearly frustrate the purpose of FMVSS 208.

This conclusion is not altered by the post hoc interpretation of the United States that FMVSS 208 lacks preemptive force. After all, the position of the United States was not dispositive in *Geier*. 529 U.S. at 886 ("Regardless, the language of FMVSS 208 and the contemporaneous 1984 DOT explanation is clear enough-even without giving DOT's own view special weight."). And while the lower courts that have considered the issue have consistently and uniformly held that the FMVSS 208 optional standard preempted state law tort suits, the United States sat silent. *See, e.g.*, *Carden v. Gen. Motors Corp.*, 509 F.3d 227, 230-31 (5th Cir. 2007); *Griffith v. Gen. Motors Corp.*, 303 F.3d 1276, 1282 (11th Cir. 2002); *Moser v. Ford Motor Co.*, 28 Fed. Appx. 168, 171 (4th Cir. 2001). Little basis exists now to defer to the government's Johnny-come-lately views.

Dissenting View:
By Matthew Wessler
Public Justice

The question in this case is whether a state tort lawsuit seeking to hold a car manufacturer liable for failing to make a passenger vehicle safer than the minimum required by federal law is preempted because, to use the words of *Geier v. American Honda Motor Co.*, 529 U.S. 861, 869 (2000), the lawsuit "actually conflict[s]" with some federal purpose underlying the Safety Act. No such conflict exists here because the Petitioners' claims are, in fact, entirely consistent with both the letter and spirit of FMVSS 208 and the Safety Act itself.

Petitioners seek to hold Mazda liable for failing to install a lap/shoulder belt in the rear seat adjacent to the aisle of a minivan. When Petitioners' vehicle was manufactured, the governing version of Standard 208 required manufacturers to install lap/shoulder belts in all rear outboard seats but gave them the option of installing *either* lap/shoulder belts or merely lap belts in all rear non-outboard seats (including the seating position at issue here). Despite this regulatory option, the NHTSA made clear that lap/shoulder belts are "even more effective" in reducing the risk of death than lap belts alone. 54 Fed. Reg. at 25,276, 46,257-46,258. According to NHTSA, increased availability of lap/shoulder belts for rear-seat occupants would yield "progressively greater safety benefits." *Id.* In light of these statements, it is impossible to conclude that Petitioners' claims here, which seek to hold Mazda liable for failing to install the safer form of technology, would "directly"—or even remotely—conflict with federal regulatory purposes.

Of course, NHTSA decided not to *require* universal installation of lap/shoulder belts in rear non-outboard seats in the 1989 rule, but none of the agency's reasons for doing so would be undermined by permitting this lawsuit to proceed. The agency never found that the installation of lap/shoulder belts would be unsafe or undesirable. To the contrary, the sole reason why NHTSA declined to require manufacturers to install lap/shoulder belts in rear non-outboard seats was its calculation that the costs of doing so would outweigh the benefits. In particular, rear center seats had a "low[] . . . occupancy rate," which led the agency to conclude that requiring installation of lap/shoulder belts in all rear center seats would yield only a "small safety benefit" in exchange for "substantially greater costs." 54 Fed. Reg. at 46,258. NHTSA further noted that, for some vehicles, installing lap/shoulder belts in rear non-outboard seating positions would pose technical difficulties, thereby further increasing the potential costs associated with a universal requirement. *Id.* Nevertheless, while NHTSA declined to require lap/shoulder belts for all non-outboard seats, the agency emphasized that manufacturers were free to immediately install lap/shoulder belts in *all* seating positions. And, significantly, although lap/shoulder belts were not required for the rear non-outboard seating position at issue in this case, NHTSA affirmatively "encourage[d] manufacturers" to install them. *Id.*

The U.S. Supreme Court has made clear that the type of cost-benefit consideration underlying NHTSA's 1989 rulemaking cannot form the basis of a finding of implied conflict preemption. In *Sprietsma v. Mercury Marine Corp.*, 537 U.S. 51, 65 (2002), a unanimous Court held that an agency's decision not to require the universal installation of a specific safety feature could not preempt a common-law claim. There, the U.S. Coast Guard had declined to require propeller guards on all recreational motor boat engines based on its conclusion that the benefits of such a requirement would not exceed the costs, and because there was no universal "one-size-fits-all" guard suitable for use on all boats. *Id.* In this case,

NHTSA's decision not to require lap/shoulder belts in rear non-outboard seats was based on the agency's conclusion that the benefits associated with universal installation did not outweigh the costs, both because fewer occupants occupied those seats and because in some vehicles it would be technically difficult to install lap/shoulder belts. Under *Sprietsma*, such concerns exert *no* preemptive force.

It is equally clear that the mere existence of a regulatory "option" is insufficient to support a finding of implied conflict preemption. This is the lesson of *Geier* itself, which found federal preemption of "no-airbag" claims based on the unique history of the airbag rulemaking and on NHTSA's call for "a gradual phase-in of a mix of passive restraints in order to spur technological development and win consumer acceptance," *Wyeth v. Levine*, 129 S.Ct. 1187, 1203 (2009), *not* because the governing regulation gave car makers the option of installing either airbags or some other form of passive restraints. No similar concerns are implicated here: to the contrary, as far as NHTSA was concerned, "installing more Type 2 [lap/shoulder] seatbelts, and installing them sooner, would be better." U.S. Amicus Br. at 14.

Respondents' reliance on isolated statements by NHTSA expressing concerns about alleged incompatibility between lap/shoulder belts and certain child seats is unavailing. Not only are these concerns absent from the 1989 rulemaking record, but Respondents' arguments are definitively rebutted by the fact that, since 1989, NHTSA has required lap/shoulder belts in all front and rear outboard positions (and, of course, permitted their use in rear non-outboard seats). If in fact, as Respondents assert, lap/shoulder belts posed a "distinct . . . safety risk" to children, it would seem odd indeed that NHTSA affirmatively encouraged the installation of these seatbelts in all seating positions.

At bottom, this lawsuit provides a perfect example of those actions that can and should be expressly preserved by the Safety Act's savings clause. In *Geier*, the Court held that where a federal regulation is "intended to provide a floor," the savings clause "preserves those actions that seek to establish greater safety than the minimum achieved by [the] federal regulation." 529 U.S. at 868. By requiring only lap belts for rear non-outboard seats but allowing manufacturers to install lap/shoulder belts in that seating position, NHTSA simply left in place a minimum standard while still encouraging manufacturers to establish greater safety by installing additional protections.

Petitioners here seek to hold Mazda liable for failing to do more than the minimum required by federal law—*i.e.,*for failing to install a lap/shoulder belt in addition to the minimum safety feature required by Standard 208. It is exactly this type of lawsuit that, under *Geier* and the plain language of the Safety Act, should be permitted to proceed.

Lisa Blatt heads the Appellate and Supreme Court practice group of the law firm Arnold & Porter LLP. She previously served as Assistant to the Solicitor General in the United States Department of Justice from 1996 to 2009. **Matthew Wessler** is the Budd-Kazan Fellow at Public Justice; he authored an *amicus* brief on the merits in support of Petitioners.

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