Are State Design Defect Claims Based on the Lack of Shoulder Belts in Automobile Rear Interior Seats Preempted by Federal Regulations that Only Require a Lap Belt?

CASE AT A GLANCE

The National Highway Traffic Safety Administration (NHTSA) extensively regulates automotive occupant restraint systems. NHTSA twice considered and declined to require rear seat belts in middle seats be augmented by shoulder belts. Previously, the Supreme Court narrowly found state product liability claims with regard to air bags, which the NHTSA had also not mandated, to be preempted. This case will determine the preemptive effect, if any, of NHTSA determinations not to impose enhanced design requirements, or options, for existing equipment. *Williamson* also provides an opportunity for the Court to reevaluate its prior air bag preemption decision.

Williamson v. Mazda Motor of America, Inc.
Docket No. 08-1314

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In *Geier v. American Honda Motor Co.,* 529 U.S. 861 (2000), the Supreme Court considered whether the Federal Motor Vehicle Safety Standards (FMVSS) regulating vehicular occupant restraint systems, FMVSS 208, having declared passive air bag restraint systems to be optional, preempted a product liability claim that an automobile without air bags was defective and unreasonably dangerous. By a 5-4 vote, *Geier* held that claim was impliedly preempted because it effectively made air bags mandatory, which conflicted with the intent of FMVSS 208, as illuminated by an extensive administrative record.

Most FMVSS do not provide options but mandate either (1) minimum performance standards with no specified means of compliance or (2) yes/no requirements to include specified items. *Williamson* will determine whether *Geier*'s implied preemption rationale includes "conflicts" allegedly arising from product liability claims involving automotive equipment that NHTSA has considered but declined to require. Reversal might confine *Geier* to its facts or perhaps even outrightly overrule *Geier*.

ISSUE

Does the applicable version of FMVSS 208 conflict with, and therefore impliedly preempt, a state law product liability claim that a manufacturer should have installed a lap-shoulder seat belt combination, rather than a lap belt that complied with the regulation, to protect interior middle seat automobile passengers?

FACTS

In 1966, Congress enacted the automotive safety legislation that created the National Highway Traffic Safety Administration (NHTSA). That act included both an express provision preempting all state standards not "identical" to FMVSS (49 U.S.C. § 30103(b)(1)) and a "savings" clause that "[c]ompliance does not exempt a person from liability at common law." 49 U.S.C. § 30103(e). Promulgation of FMVSS is delegated to NHTSA. 49 C.F.R. § 1.50(a).

FMVSS 208 regulates occupant restraint systems. At the relevant time, FMVSS 208 mandated lap/shoulder combination ("Type 2") seat belts for all front and rear "outboard" (adjacent to the doors) seats. NHTSA twice (in 1984 and 1989) evaluated whether to amend FMVSS 208 to require the lap/shoulder combination for interior rear seats as well. NHTSA declined such a mandate and instead required only the installation of simple lap ("Type 1") seat belts. It did so because (1) child car seats were more difficult to install using Type 2 seat belts; (2) Type 2 seat belts in general were more difficult to use safely, particularly by women and children; and (3) hanging shoulder belts tended to obstruct movement into and especially out of rear seats. NHTSA decided that a redesign incorporating Type 2 seat belts would be too difficult and costly in comparison to projected safety benefits.

Williamson concerns a fatal Utah accident involving a 1993 Mazda minivan. On August 14, 2002, Thanh Williamson was killed in a head-on collision with a large recreational vehicle. At the time of the accident, she was seated in a rear interior seat solely equipped with a Type 1 lap belt, which she wore. During the accident she allegedly jackknifed around the lap belt and suffered fatal internal injuries.

Thanh's family, the plaintiffs-petitioners, sued claiming that defendant Mazda's installation of a lap belt for the seat in question subjected it to liability based on California tort law, under theories of negligence and strict products liability. Their major claim was that the defendant should have installed a Type 2 lap/shoulder combination

seat belt to restrain a passenger's upper torso in a frontal collision. The defendant sought judgment on the pleadings and a demurrer on preemption grounds. The trial court granted the demurrer, finding the claims at issue preempted by FMVSS 208.

Plaintiffs dropped their other claims and appealed to the California Court of Appeal, Fourth District, which affirmed, holding that FMVSS 208 impliedly preempted the Type 2 seat belt defect claim, given the standard's regulatory background. The California Supreme Court denied review, and plaintiffs petitioned for certiorari in the United States Supreme Court. On May 24, 2010, the Court granted the petition. Justice Kagan has recused herself.

CASE ANALYSIS

Plaintiffs contend that when Congress enacted the act in 1966, it declared FMVSS to be minimum safety standards that operated concurrently with state law. In light of the savings clause, they argue that this act is a particularly poor candidate for implied conflict preemption. Relying upon the recent *Wyeth v. Levine,* 129 S. Ct. 1187 (2009), decision, plaintiffs claim that there is a "strong" presumption against preemption and that "clear evidence" of an irreconcilable conflict is required.

Plaintiffs review the regulatory record and argue that the requisite "clear" evidence does not exist. In their view, there is no evidence of a conflict between the relevant (1989) version of FMVSS 208 and their common-law claims asserting a duty to make their minivan reasonably safe by providing a Type 2 lap/shoulder belt for every interior rear seating location.

Contending that their theories of liability were misconstrued by the lower courts, plaintiffs seek to limit the preemption analysis of *Geier v. American Honda Motor Co*. The plaintiffs claim *Geier* did not preempt all tort claims where the requirements of an FMVSS are framed in terms of options. They argue that *Geier* does not support the absolutist position they claim that the lower courts adopted—if an FMVSS offers manufacturers more than one complying design option, then common-law claims challenging manufacturer choices are preempted. That view, which plaintiffs view as contrary to NHTSA's amicus curiae position in *Geier,* upon which the Court relied, effectively converts NHTSA FMVSS from minimum standards under the act into ceilings for liability. This result is contrary to the scheme of "cooperative federalism" that plaintiffs assert Congress pursued in enacting the act.

The implied preemption holding in *Geier,* plaintiffs contend, was grounded in the singular regulatory history of the air bag issue. The administrative policy objectives that NHTSA pursued in the 1984 air bag amendments to FMVSS 208 generated a regulation that specified several vehicular restraint options, any one of which constituted compliance. At the same time NHTSA provided that air bag requirements would be phased in gradually.

Plaintiffs present *Williamson* as being different from *Geier*. The 1989 amendments at issue here did not involve the balancing of similar safety objectives. The 1989 regulation did not consider Type 1 lap belts and Type 2 lap/shoulder combination belts as equal options, but instead viewed Type 1 seat belts as a floor for compliance that could also be met with safer Type 2 belts. No phase-in period for different options was promulgated in 1989. NHTSA's regulatory history explicitly looked to the future development of safer and more convenient seat belt designs.

Thus, plaintiffs argue that their claim that Mazda should have installed a Type 2 belt providing greater abdominal protection even though the FVMSS 208 required only a Type 1 belt is fully consistent with NHTSA's overall safety objectives, particularly since the agency intended to encourage manufacturers to improve the quality of their existing seat belt designs. Liability would contribute to the goals of the 1989 rule by providing additional incentive for automobile manufacturers to invent new designs that would facilitate the installation of safer Type 2 seat belts in seating locations where they have not been mandated. Such safer designs would not involve anchoring interior seat shoulder belts to the walls of a vehicle and would not obstruct aisles through which passengers enter and exit.

Plaintiffs point to their expert evidence that, by 1993, when the Mazda vehicle subject to suit was manufactured, such technological improvement had occurred. There were new feasible ways of installing Type 2 lap/shoulder combination seat belts in minivan interior rear seats. Thus, they argue, to impose liability on Mazda for not incorporating these feasible alternative designs would further NHTSA's objective of encouraging safer seat belt designs that provided the additional protection of Type 2 seat belts.

In addition to technological advancement, plaintiffs rely upon a second aspect of regulatory history to support reversal of the lower courts' preemption rulings. They contend that, if NHTSA had intended the 1989 rear seat belt rule to have the significant preemptive effect found by the lower courts, the agency would have been required to state so at the time. Instead, NHTSA did not prepare a Federalism Assessment pursuant to Executive Order No. 12612. That Executive Order obligated all administrative agencies to describe the anticipated preemptive effect of any regulations that would result in significant displacement of state law.

Plaintiffs also direct the Court to NHTSA's position. The lack of a Federalism Assessment, claim the plaintiffs, reflects the agency's contemporaneous interpretation of Executive Order No. 12612. Plaintiffs argue this bolsters NHTSA's current position, reflected in an amicus curiae brief filed in *Williamson,* that the 1989 rear seat belt rule was not intended to preempt more stringent common-law standards. NHTSA never believed that product liability claims would frustrate any objective that it sought to achieve in the 1989 revisions to FMVSS 208. Plaintiffs argue that special weight should be accorded to NHTSA's position that this lawsuit does not interfere with the agency's policy objectives.

Finally, plaintiffs attack a number of other aspects of the lower courts' rationale for finding implied preemption by virtue of interference with federal objectives. They assert that child safety was not a significant factor in bringing about NHTSA's 1989 decision declining to mandate Type 2 lap/shoulder combination seat belts for all rear seating positions. They argue that the overall comprehensiveness of FMVSS 208 was not a determinative factor in *Geier*. The 1989 version of FMVSS 208 did not reflect NHTSA's belief that encouraging a mix of available seat belt types would increase rear seat belt use. Nor would plaintiffs' common-law liability theories raise any obstacle to the types of technological innovation that NHTSA sought to encourage.

Defendant-respondent Mazda responds, first, that the California Court of Appeal correctly determined that plaintiffs' state law claims were impliedly preempted by FMVSS 208. Relying on *Geier,* defendant contends that the act incorporates the "ordinary principles of preemption." Under those principles, it argues that the plaintiffs' state law tort claims were an "obstacle to the accomplishment and execution" of the federal objectives embodied in FMVSS 208 and are thus impliedly preempted for the same basic reasons as in *Geier*. As was the case in *Geier,* ordinary preemption principles require that an FMVSS leaving manufacturers free to choose among a number of options to achieve the act's policy objectives must preempt state law tort claims that have the effect of narrowing choices between those options.

Turning to the regulatory record of FMVSS 208, defendant argues that plaintiffs' state law product liability claims fail because NHTSA intended that manufacturers be free to choose Type 1 or Type 2 seat belts for the particular seating position implicated in the lawsuit. NHTSA acted largely to serve the same federal objectives that were furthered by the prior amendment to FMVSS 208 considered in *Geier*. The 1989 rear seat belt rule was grounded in safety concerns arising from children being the most likely passengers in rear seats. A child's small physical size presents unique safety and technological impediments to the installation of Type 2 combination seat belts for interior rear seats. NHTSA believed that installation of Type 2 seat belts for those seats would be extremely costly while offering at best marginal safety benefits to adult passengers.

Given NHTSA's technological concerns, defendant claims that a state law rule requiring Type 2 combination seat belts in all rear seats would present an obstacle to the accomplishment of the agency's federal objectives. These obstacles include increasing accident-related dangers for many children, premature installation of Type 2 seat belts before manufacturers could economically redesign vehicles to avoid access-related safety problems, and possible public backlash from administrative imposition of overly costly safety measures.

Defendant highlights plaintiffs' tacit admission that their claims would be preempted had they been brought before 1989, when NHTSA refused to require Type 2 lap/shoulder combination seat belts in any rear seat positions, largely due to safety concerns. Defendant takes issue with divesting preemption after 1993, supposedly because of advances in the feasibility of Type 2 combination seat belts technology for more seating positions. Such an argument—that preemption comes and goes with alleged technological advances or setbacks—is novel, and has never been adopted by, the Court.

Nor is the technological argument administratively accurate, contends the defendant. The regulations under the act afforded manufacturers, not juries, the discretion to decide when these sorts of technical barriers had been overcome. Defendant references statements by NHTSA's chief counsel in 1994, after production of the vehicle at suit—that manufacturers occupy the "best position" for determining the safety and feasibility of Type 2 combination seat belts in interior rear seats. That agency pronouncement demonstrates that ad hoc state jury mandates for Type 2 belts could not be consistent with federal objectives. The plaintiffs' argument against preemption is erroneous because it ignores large parts of the administrative record and artificially limits consideration of agency action following the 1989 rulemaking process.

Defendant again analogizes to *Geier,* arguing that preemption must be based on the entire history of FMVSS 208, not one snapshot from a lengthy regulatory process. It asserts that the agency consistently recognized that the cost of mandating Type 2 combination seat belts for all rear seats would substantially exceed the safety benefits. The Court, it contends, has viewed cost-benefit issues worthy and legitimate in cases involving other statutes that less explicitly incorporate cost-benefit analysis than this act. No legitimate basis exists for ignoring cost-benefit analysis in determining preemption under the current statutory scheme.

Defendant cautions against according any deference to NHTSA's current position. The regulatory record in *Williamson* mirrors the record in *Geier* as being quite "clear enough" to avoid any need to consider a position the government formulated more than twenty years after the fact. The government's position is inherently suspect, defendant claims, because the agency stood by while numerous appellate courts found implied preemption of such claims in high-profile litigation. The government raised no objection to preemption for more than a decade following *Geier*. The government's deliberate silence is tacit acknowledgment of the correctness of those prior decisions, claims defendant. Defendant contends that NHTSA's current legal position is a recent change of heart brought about by "shifting political tides." Politically motivated U-turns by regulatory agencies are not entitled to any weight.

The defendant views the practical effect of plaintiffs' claims as putting manufacturers in an untenable position. It argues that manufacturers undertake vehicle redesigns and incur considerable expense in reliance on NHTSA's resolution of contentious safety issues. These agency decisions must mean what they say, as they involve the balancing of difficult and often contradictory cost-benefit trade-offs. NHTSA decides when federal objectives are furthered by granting manufacturers the option to choose between different equipment types.

Defendant closes with the consequences of allowing such suits to proceed. They would expose manufacturers to contradictory attacks upon Type 2 combination seat belts where back row passengers are obstructed by webs of shoulder belts from exiting vehicles after crashes. To suggest, as plaintiffs do, that liability turns on the after-the-fact assessment of when particular design options become sufficiently feasible, without regard to in-force regulatory determinations, runs the risk of imposing massive retroactive liability for design decisions taken in reliance on those actions. Defendant posits that Congress could not possibly have intended to subject the nation's automobile industry to that sort of arbitrary and penal liability.

SIGNIFICANCE

The Court's recent (2009) decision in *Levine,* rejecting implied preemption arguments in the context of food and drugs, has led some to question the continuing vitality of the preemption analysis in *Geier*—since *Geier* did not acknowledge any presumption against preemption. Commentators have pointed out that the analysis of *Geier* in *Levine* more closely resembled the position of the four *Geier* dissenting justices than it did the holdings of the *Geier* majority. Thus, some plaintiff-side amici in *Williamson*—but not the government—urge

the Court to overrule *Geier* outright. If that were to happen, the availability of any form of implied preemption in state law personal injury litigation would be called into doubt.

Conversely, the *Levine* decision was notably vague concerning what kinds of administrative activity would constitute the "clear evidence" that the Court held necessary to support a finding of implied conflict preemption. Affirmance of the implied preemption ruling in *Williamson* would provide defendants in various types of tort litigation with, if not a template, then at least an analogy upon which to base preemption arguments. The notably lax administrative record in *Levine*—with unexplained multiyear gaps where no regulatory activity occurred—could prove to be the exception rather than the rule.

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PREVIEW of United States Supreme Court Cases, pages 56–59.

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