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Third Circuit Again Reverses District Court's Preemption Ruling, This Time As to Conflict Preemption

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Aviation products manufacturers have long kept an eye on *Sikkelee v. Precision Airmotive Corp*. Sikkelee involves state law product liability claims against a small aircraft engine manufacturer in a fatal aircraft accident case where the plaintiff claims that the aircraft lost power due to a defect in the design of the engine's carburetor. The district court has twice held that those claims are preempted by federal law, first due to field preemption, and later based on conflict preemption. The Third Circuit reversed and remanded the district court's field preemption ruling in 2016 and very recently issued a divided opinion reversing the trial court again and holding that Sikkelee's claims were not conflict preempted either.

Sikkelee I: Field Preemption

In *Sikkelee I*, the Third Circuit reversed the trial court's determination that plaintiff's state law product-based claims were field preempted by the Federal Aviation Administration's comprehensive regulatory scheme governing aircraft and engine design. 822 F.3d 680 (2016). The Third Circuit determined that field preemption did not apply because: (1)

Congress did not intend the relevant statutes and regulations promulgated thereunder to preempt aircraft products liability claims "in a categorical way"; (2) Congress has not created a federal standard of care for persons injured by defective airplanes; and (3) "the type certification process cannot as a categorical matter displace the need for compliance in this context with state standards of care." *Sikkelee I* has proved to be influential—it has been widely cited across the country, and the Washington State Supreme Court relied on it heavily in *Becker v. ACVO Corp*. in holding that plaintiff's design defect claims were not field preempted under the similar facts presented in that case. Importantly, however, the Third Circuit expressly left open the possibility that the district court could still dismiss the claims. The court indicated that aircraft state law products liability claims were still "subject to traditional principles of conflict preemption, including in connection with the specifications expressly set forth in a given type certificate." Thus, when the district court on remand held that the FAA's issuance of a type certificate for the engine meant that the federal standard of care had been satisfied, and so any higher state standard of care was conflict preempted, practitioners were eagerly awaiting the Third Circuit's review of that ruling.

Sikkelee II: Conflict Preemption

In *Sikkelee II*, the court—in a divided opinion—determined that the district court erred again in ruling that plaintiff's claims were conflict preempted. Interpreting recent U.S. Supreme Court conflict-preemption jurisprudence to require a showing that the FAA would not have approved the alternative design the plaintiffs point to, the majority held that there was no such evidence. Thus, the majority held that conflict pre-emption did not apply. In so holding, the majority relied on evidence that the manufacturer has made "numerous changes" to the type certificate of the engine model in question, which the FAA approved "in short order." This showed that the manufacturer "was not stuck with the design initially adopted and approved in the type certificate," and suggested the possibility that the FAA may have approved the exact carburetor design changes the plaintiff claimed was required. This, the majority found,

meant that it was at least theoretically possible for the manufacturer to meet both the federal and state standards of care.

Judge Roth wrote a lengthy dissent criticizing the majority for misapplying U.S. Supreme Court conflict preemption precedent and for "misframing" the regulatory regime. As to the first point, Judge Roth reasoned that reading the U.S. Supreme Court's conflict-preemption jurisprudence in total provides the following standard: "when federal regulations prevent the manufacturer from altering its product without prior agency approval, design defect claims are preempted; when federal regulations allow a manufacturer to independently alter its product without such prior approval, design defect claims ordinarily are not preempted." Applying that standard here, Judge Roth reasoned that because FAA approval is required to make any changes to a type certificated product, regardless of whether the change is deemed "major" or "minor" under the regulations, state law claims challenging the design are conflict preempted.

The End of the Story?

The manufacturer has indicated that it will be filing a petition for rehearing *en banc*. In our view, the divided opinion's fundamental disagreement as to what is required for state law claims to be conflict preempted is exactly the type of case that warrants *en banc* review or even eventual U.S. Supreme Court review. Practitioners and aviation products manufacturers should therefore continue to monitor *Sikkelee* for new developments.