Third Circuit Limits Scope on Federal Preemption in Aviation Cases

Steven R. Pounian and Justin T. Green
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The Third Circuit's 1999 decision in *Abdullah v. American Airlines*,[1] dropped a bombshell with its sweeping declaration that the Federal Aviation Act (FAAct)[2] and its regulations preempt the "entire field" of air safety. While state law historically provided the foundation for nearly all aviation injury and death suits, *Abdullah* dramatically shifted the landscape, sparking motions to dismiss state law claims and forcing plaintiffs to undertake the often futile task of delineating a federal law basis for their actions. Last week, however, in *Sikkelee v. Precision Airmotive Corp.*,[3] the U.S. Court of Appeals for the Third Circuit sharply limited the scope of *Abdullah's* field preemption ruling, holding that it does not extend to state products liability claims.

Sikkelee concluded that *Abdullah* "does not govern product liability claims" and that such claims "may proceed using a state standard of care."[4] The Third Circuit observed that the field preemption declared by *Abdullah* was limited to "in-air" operations.[5]

'Abdullah'

Abdullah involved rather unremarkable facts. The plaintiffs, passengers on an American Airlines flight from New York to Puerto Rico, were not wearing their seat belts and suffered injuries when the plane suddenly encountered severe turbulence. They asserted a common law negligence claim that the flight crew had failed to warn them via the loudspeaker that the plane was entering an area of dangerous weather.The pilot, however, had turned on the fasten seat belt sign, and a federal air regulation (FAR) provided that passengers must remain seated with their seat belts fastened when that sign was illuminated. In addition, another FAR defined a basic negligence standard of care for aviation operations.[6]

Abdullah held that the applicable tort law was preempted by federal law. The Third Circuit chose not to apply basic conflict preemption principles but ruled that there was "implied field preemption" and broadly held that "the [FAAct and FARs] establish

complete and thorough safety standards for interstate and international air transportation that are not subject to supplementation."[7]

Other circuit and district courts around the country followed *Abdullah,* but the extent to which state law was actually preempted has remained highly uncertain. For instance, the U.S. Court of Appeals for the Second Circuit broadly stated, "we join our sister circuits" and "hold that Congress has indicated its intent to occupy the entire field of aviation safety," but then declined to find in *Goodspeed Airport v. East Haddam Inland Wetlands & Watercourses Com'n*, a 2011 case, that a Connecticut law was preempted.[8]

Sikkelee Case

The plaintiff in *Sikkelee* was the widow of a pilot killed in a plane crash caused by an allegedly defective carburetor. Pursuant to the FARs, the manufacturer had obtained a "type certificate" from the Federal Aviation Administration (FAA), confirming that the carburetor met certain safety standards.

The Pennsylvania district court found that *Abdullah* mandated the preemption of state product liability law and held that the FAA type certificate satisfied the federal standard of care as a matter of law.[9] The Third Circuit recognized that had this decision been affirmed, "we would be holding, in effect, that the mere issuance of a type certificate exempts designers and manufacturers of defective airplanes from the bulk of liability for both individual and large-scale air catastrophes."[10] The FAA joined the fray on the appeal, arguing that all state tort suits must be governed by "federal standards of care" defined in the FAAct and its regulations.[11]

But the Third Circuit disagreed and reversed, finding that there were "fundamental differences" between the FARs addressing flight operations and aircraft design.[12]

Sikkelee held that a type certificate merely establishes a "baseline" requirement for product safety.[13] Indeed, the court found that the standards for obtaining the certificate were not comprehensive and did not impose a general standard of care on manufacturers akin to the "catch-all standard of care that motivated our field preemption decision in *Abdullah*."[14] Moreover, the regulations governing manufacturers are "highly technical and part specific" and "exceedingly difficult to translate into a standard of care that could be applied to a tort claim."[15]

The Third Circuit observed that its decision was supported by the terms of the FAAct, which "contains no express preemption provision and says only that the FAA may establish 'minimum standards' for aviation safety ."[16]*Sikkelee* found "no evidence" in the FAAct or its regulations "to suggest that Congress intended that the type certification process would preempt state products liability laws."[17] Moreover, the General Aviation Revitalization Act passed in 1994, which imposed a statute of repose on state law tort claims, "necessarily implies" that such claims were permitted and not preempted.[18] Finally, because of the long history of state regulation through tort lawsuits, there was a fundamental presumption against federal preemption.[19]

The court noted that field preemption "would have 'the perverse effect of granting complete immunity from design defect liability to an entire industry that, in the judgment of Congress needed more stringent regulation.'"[20]

Conflict Preemption

While *Sikkelee* held there is no field preemption over product liability laws, plaintiffs still face a lingering threat: The Third Circuit found that federal aviation law may override state law under ordinary conflict preemption, and left that issue to be decided on remand. *Sikkelee* noted that such a conflict could be raised by FARs that mandate FAA preapproval of any major changes to the aircraft design as specified in the type certificate. The court stated that

a manufacturer may well find it impossible to simultaneously comply with both a type certificate's specifications and a separate and perhaps more stringent state law duty or, even if an alternative design aspect would improve safety the mere 'possibility' that the FAA would approve a hypothetical application for an alteration does not make it possible to comply with both federal and state requirements.[21]

To the extent that a case is based on a flawed design standard spelled out in the type certificate, *Sikkelee* would suggest that ordinary conflict preemption may still apply because the manufacturer is bound by federal law to follow the terms of that certificate.

It is uncertain at this point whether *Sikkelee* "buried the lead" of its decision in its discussion of conflict preemption. Many of the arguments adopted by *Sikkelee* to reject field preemption apply with equal force to conflict preemption. The manufacturer is responsible for the design set forth in the type certificate, while the FAA has finite resources and does no more than "spot check" certain aspects of the manufacturer's design.[22] Barring a tort suit based on a type certificate could yield the same "perverse effect" of shielding a manufacturer from liability decried by *Sikkelee* as contrary to the basic purpose of the FAAct to promote stringent regulation and aviation safety.

Conclusion

Abdullah violated the "cardinal principle of judicial restraint" that "if it is not necessary to decide more, it is necessary not to decide more."[23]*Abdullah* should have limited its decision to the facts before the court: the simple conflict between a federal seat belt warning regulation and ordinary tort law. Instead, *Abdullah's* overreaching declaration of field preemption has generated years of arguments, motions and needless delays to numerous litigants. *Sikkelee* now takes a helpful step back but raises new issues regarding conflict preemption. At some point the Supreme Court must settle the aviation preemption issue once and for all.

Endnotes:

1. 181 F.3d 363 (3d Cir. 1999).

2. Pub.L. No. 85-726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101 49105).

3. Slip opinion, No. 14-4193 (3d Cir. April 19, 2016).

4. Slip op. at 5, 18.

5. Id. at 18.

6. FAR 91.13 provides that "[n]o person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

7. 181 F.3d at 367.

8. *Goodspeed Airport v. East Haddam Inland Wetlands & Watercourses Com'n*, 634 F.3d 206, 211-12 (2d Cir. 2011) .

9. *Abdullah v. American Airlines*, 969 F.Supp. 337 (D.V.I. 1997).

10. Slip op. at 31.

11. Id. at 26-27.

12. Id. at 28.

13. Id.

14. Id. at 18.

15. Id. at 30.

16. Id. at 24.

17. Id. at 25-26.

18. Id. at 33.

19. Id. at 22-23. *Sikkelee* expressly disagreed with the Tenth Circuit's finding in *US Airways v. O'Donnell*, 627 F.3d 1318, 1325 (10th Cir. 2010) that the presumption against preemption did not apply in aviation.

20. Id. at 31, quoting *Medtronic v. Lohr*, 518 U.S. 470, 487 (1996).

21. Id. at 49-50.

22. *U.S. v. S.A. Empresa de Viacao Aerea Rio Grandense*, 467 U.S. 797 (1984) (Court rules that suits against FAA for certification of aircraft are barred under the discretionary function exception of the Federal Tort Claims Act, because the FAA merely conducts a "spot check" review of the manufacturer's submissions).

23. *PDK Labs. v. Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in judgment).