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CIRCUIT NOTES: SUPREME COURT

Supreme Court Declines to Preempt Tort Suit in Williamson

Williamson v. Mazda Motor of America, Inc., 131 S. Ct. 1131, 562 U.S. ___ (Feb. 23, 2011)

Under the 1989 version of Federal Motor Vehicle Safety Standard 208 promulgated under the National Traffic and Motor Vehicle Safety Act of 1966, auto manufacturers must equip seats adjacent to a vehicle's door or frame with a lap-and-shoulder seatbelt but may choose between lap-only belts and lap-and-shoulder belts for rear-inner seats (i.e., middle seats or aisle-adjacent seats in a minivan). In *Williamson v. Mazda Motor of America, Inc.*, 562 U.S. ___, 131 S. Ct. 1131 (Feb. 23, 2011), the U.S. Supreme Court held that the choice provided by Standard 208 does not preempt state tort suits based on a manufacturer's decision to install lap-only belts. In doing so, the Court made a distinction from its earlier ruling in *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), which held that an older provision of Standard 208 that gave manufacturers a choice whether or not to install airbags preempted state-law suits seeking to impose tort liability for opting against airbag installation.

In *Williamson*, the Williamson family's 1993 Mazda minivan was struck head on by another vehicle, killing the passenger in the van's rear inner seat who was wearing a lap-only seatbelt. The Williamsons brought a tort suit in a California state court, claiming that "Mazda should have installed lap-and-shoulder belts" and that the passenger died "because Mazda equipped her seat with a lap belt instead." 131 S. Ct. at 1134. Applying *Geier*, a California appeals court found the suit preempted by Standard 208, noting that "[t]he post-*Geier* cases considering [Standard 208]'s pre-emptive effect on an automobile manufacturer's choice of passenger restraint systems . . . have almost uniformly found [Standard 208] pre-empts common law actions alleging a manufacturer chose the wrong seatbelt option." *See Williamson v. Mazda Motor of America, Inc.*, 84 Cal. Rptr. 3d 545, 556 (Cal. App. 4th Dist. 2008); *see also id.* at 552 (citing *Griffith v. General Motors Corp.*, 303 F.3d 1276 (11th Cir. 2002); *Carden v. General Motors Corp.*, 509 F.3d 227 (5th Cir. 2007); *Roland v. General Motors Corp.*, 881 N.E.2d 722 (Ind. Ct. App. 2008); *Heinricher v. Volvo Car Corp.*, 809 N.E.2d 1094 (Mass Ct. App. 2004)). The California Supreme Court denied review.

The U.S. Supreme Court reversed. In doing so, it applied the three-part preemption analysis set out in *Geier*,adopting *Geier*'s holding for the first two parts of its analysis, but diverging from *Geier* on the third.

First, the Court adopted *Geier's* holding that the Safety Act's express preemption of inconsistent state safety standards did not also preempt state tort suits. This was because of the Safety's Act's

"saving clause," which provided that "'[c]ompliance with' a federal safety standard 'does not exempt any person from any liability under common law.'" *Williamson*, 131 S. Ct. at 1135 (quoting 15 U.S.C. § 1392(k) (1988 ed.), recodified without substantive change at 49 U.S.C. § 30103(e)).

Second, the Court asked whether ordinary preemption principles could still bar such suits, even though the express preemption provision did not do so. *Id. Williamson* adopted *Geier*'s conclusion that state tort suits *could* still be preempted by federal safety standards if the tort suit stood as "an obstacle to the accomplishment and objectives" of the federal law under ordinary preemption principles.

Finally, the Court turned to the third part of the *Geier* analysis: whether, under ordinary preemption principles, the state tort suit was an obstacle to the objectives of the federal regulation before the Court and thus preempted. *Williamson* diverged from *Geier* on this question. In *Geier*, the Court concluded that the airbag choice was part of a regulatory objective to promote "a gradually developing mix of alternative passive restraint devices for safety-related reasons." *Geier*, 529 U.S. at 886. Because a tort suit limiting manufacturers to airbags only "stood as an obstacle to the accomplishment of that objective," it was preempted. In *Williamson*, however, the Court concluded that the choice between lap-only belts and lap-and-shoulder belts did not serve a sufficient regulatory objective. *Williamson*, 131 S. Ct. at 1136, 1139–40. Instead, the option for lap-only belts was given to manufacturers because the agency believed that requiring lap-and-shoulder belts would not be cost-effective. The Court ruled that cost-effectiveness, without more, was not a "significant" regulatory objective with which a tort standard could conflict.

In reaching these differing conclusions about the respective objectives of the seatbelt and airbag regulations, the Court relied in *Geier* and *Williamson* on a detailed "examination of the regulation, including its history, the promulgating agency's contemporaneous explanation of its objectives, and the agency's current views of the regulation's pre-emptive effect." *Id.* at 1136. The Court's review included the relevant portions of the Federal Register, pertinent statutory changes, and statements of the Solicitor General in briefing before the Court. In *Geier*, these sources evidenced the agency's expectation that manufacturer choice "would lead to better information about the devices' comparative effectiveness and to the eventual development of 'alternative, cheaper, and safer passive restraint systems.'" *Id.* at 1137 (quoting *Geier*, 529 U.S. at 879). In *Williamson*, by contrast, they indicated primarily the agency's recognition that it "would be significantly more expensive for manufacturers to install lap-and-shoulder belts in rear middle and aisle seats than in seats next to the car doors." The distinction in regulatory objectives—found in the background regulatory source material—was fundamental to the divergent conclusions in *Geier* and *Williamson* about whether tort suits were preempted.

One important outcome of *Williamson* is to limit *Geier*. Before *Williamson*, some courts had read *Geier* as announcing a general rule that "when a Federal Motor Vehicle Safety Standard leaves a manufacturer with a choice of safety device options, a state suit that depends on foreclosing one or more of those options is pre-empted." *Hurley v. Motor Coach Industries, Inc.*, 222 F.3d 377,

383 (7th Cir. 2000); *Carden*, 509 F.3d at 231 (7th Cir. 2000). In *Williamson*, the Court implicitly rejected any such general rule; indeed, Justice Sotomayor explicitly recognized this in her concurrence. *See* 131 S. Ct. at 1140 ("*Geier* does not stand . . . for the proposition that any time an agency gives manufacturers a choice between two or more options, a tort suit that imposes liability on the basis of one of the options is an obstacle to the achievement of a federal regulatory objective and may be pre-empted."). After *Williamson*, a manufacturer's compliance with a safety option provided by federal regulation will not always mean that the manufacturer can avoid compliance with a more stringent state tort standard. Thus, *Williamson* recognizes the "meaningful role" of state law in supplementing federal safety standards.

What seems less clear, however, is how a manufacturer should determine the preemption status of a state tort suit that seeks to impose liability for choosing a safety option provided by federal regulation. The distinction between *Geier* and *Williamson* depended principally on the Court's thorough parsing of the regulatory history and agency statements relating to the regulatory provisions in each case. Thus, rather than merely looking at the existence of a regulatory choice to determine whether a state suit is preempted, manufacturers will need to analyze the available regulatory history and agency statements to determine the agency's purpose in promulgating particular safety choices. If the agency's purpose in giving the choice was to encourage safety, as in *Geier*, preemption may be found; if the choice was based merely on cost considerations, as in *Williamson*, it may not be. Where a particular regulatory choice fits in this mix, however, does not appear clear from *Williamson* itself. Complicating matters, *Williamson* did not rule out that "an agency could base a decision to pre-empt on its cost-effectiveness judgment." Thus, an agency intention to preempt state law based on cost-effectiveness may be sufficient under *Williamson* to preempt tort suits if stated more explicitly than in *Williamson*. Without such an agency statement, however, a careful review of regulatory history and available regulatory statements by manufacturers seems advisable.

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