No. 92972-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ESTATE OF VIRGIL VICTOR BECKER, JR.,
by its Personal Representative, Jennifer L. White,

Petitioner,

FORWARD TECHNOLOGY INDUSTRIES, INC.

Respondent.

On Petition for Discretionary Review from the
Washington Court of Appeals, Division I, No. 72416-9-I

BRIEF OF AMICUS CURIAE THE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

IDENTITY AND INTEREST OF AMICUS 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. The Presumption Against Preemption of State Tort Law Is Even Stronger When Defendant Asserts Federal Preemption of an Entire Field of Law That Has Been Historically the Responsibility of the States with the Result of Depriving Wrongfully Injured People of Their State Law Causes of Action. 3

  A. Implied field preemption requires a showing that Congress clearly intended to exclude states from any regulation of the preempted field. 3

  B. The presumption against preemption is stronger in the case of field preemption which results in greater intrusion into areas traditionally handled by the states. 5

  C. The presumption against preemption is even stronger where field preemption would leave wrongfully injured persons without remedy. 8

II. Extensive FAA Regulation Does Not Itself Establish Congressional Intent to Displace State Standards Where There Are Other Indications of Congressional Intent to the Contrary. 10

  A. The lower court relied entirely on the extent of federal regulation as a “clear and manifest” indication that Congress intended to preempt state product liability standards for aircraft components. 10

B. Congress expressed its intent to preserve state product liability causes of action. 12

III. Federal Preemption of State Product Liability Standards of Care Has No Application in This Case, Which Asserts a Claim Based on Manufacturing Defect.. 15

A. Plaintiff's claim against FTI is based on manufacturing defect. 15

B. A claim of manufacturing defect does not impose a state standard of care on a manufacturer........................... 17

CONCLUSION.. 20

CERTIFICATE OF SERVICE 21

TABLE OF AUTHORITIES

Cases

Abdullah v. American Airlines, Inc., 181 F.3d 363 (3d Cir. 1999) 14

Altria Group, Inc. v. Good, 555 U.S. 70 (2008) 10

American Airlines, Inc. v. Wolens, 513 U.S. 219 (1995) 13, 19

Arizona v. United States, 132 S. Ct. 2492 (2012) 4

Bates v. Dow Agrosciences LLC, 544 U.S. 431 (2005) 8, 19

Bennett v. Southwest Airlines Co., 484 F.3d 907 (7th Cir. 2007) 15

Bruesewitz v. Wyeth, Inc., 561 F.3d 233 (3d Cir. 2009) 9

Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564 (1997) 9

Christopher v. Harbury, 536 U.S. 403 (2002) 8

Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992) 19

Cleveland v. Piper Aircraft Corp., 985 F.2d 1438 (10th Cir. 1993) 14

CSX Transportation, Inc. v. Easterwood, 507 U.S. 658 (1993) 6

English v. General Electric Co., 496 U.S. 72 (1990) 5, 10

Estate of Becker v. Forward Technology Industries, Inc., 192 Wash. App. 65, 365 P.3d 1273 (2015) .... *passim*

Fidelity Federal Savings & Loan Association v. de la Cuesta, 458 U.S. 141 (1982) 4

Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1963) 12

Freightliner Corp. v. Myrick, 514 U.S. 280 (1995) 4

Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) 6

Geier v. American Honda Motor Co., 529 U.S. 861 (2000).............. 12, 13

Gregory v. Ashcroft, 501 U.S. 452 (1991).. 7

Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. 707 (1985).. 7

Jones v. The Rath Packing Co., 430 U.S. 519 (1977)................................ 5

Martin ex rel. Heckman v. Midwest Express Holdings, Inc., 555 F.3d 806 (9th Cir. 2009).. 14

McLennan v. American Eurocopter Corp., 245 F.3d 403 (5th Cir. 2001) 15

Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996) .... *passim*

Missouri Pacific Railway Co. v. Humes, 115 U.S. 512 (1885) 7

Montalvo v. Spirit Airlines, 508 F.3d 464 (9th Cir. 2007)........ 4, 11, 12, 14

Myrlak v. Port Authority of New York & New Jersey, 723 A.2d 45 (N.J. 1999) 17

New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co., 514 U.S. 645 (1995) 6

O'Melveny & Myers v. FDIC, 512 U.S. 79 (1994).................................. 10

Oneok, Inc. v. Learjet, Inc., 135 S. Ct. 1591 (2015)............................ 4, 11

Prentis v. Yale Manufacturing Co., 365 N.W.2d 176 (Mich. 1984)......... 17

Public Health Trust of Dade County, Florida v. Lake Aircraft, Inc., 992 F.2d 291 (11th Cir. 1993) 14

R.J. Reynolds Tobacco Co. v. Durham County, North Carolina, 479 U.S. 130 (1986).. 5, 11

Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947).............................. 4

Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984) 11

Sikkelee v. Precision Airmotive Corp., 822 F.3d 680 (3d Cir. 2016)1, 9, 11, 14

Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984) 20

United States v. Lopez, 514 U.S. 549 (1995) 7

Washington State Physicians Insurance Exchange & Association v. Fisons Corp., 122 Wash. 2d 299, 858 P.2d 1054 (1993) 6

Wisconsin Public Intervenor v. Mortier, 501 U.S. 597 (1991) 4, 11

Wyeth v. Levine, 555 U.S. 555 (2009) 5, 6, 10

Statutes

49 U.S.C. § 40101, Note § 2(a)(1) (1994) 13

49 U.S.C. § 40120(c) 13

49 U.S.C. § 44701(a) 12

49 U.S.C. App. § 1506 13

7 U.S.C. § 136 *et seq* 11

Pub. L. 95-504, 92 Stat. 1705 13

Pub. L. No. 103-298, 108 Stat. 1552 13

Pub. L. No. 85-726, 72 Stat. 731 12

Wash. Rev. Code Ann. § 7.72.030(2) 18

Other Authorities

American L. Prod. Liab. 3d § 31:3 17

IDENTITY AND INTEREST OF AMICUS

The American Association for Justice ("AAJ") is a voluntary national bar association with members in every state, including the State of Washington. AAJ members primarily represent plaintiffs in personal injury cases, civil rights and employment rights suits, and small business litigation. Members of AAJ's Aviation Law Section frequently represent plaintiffs who have suffered harm in commercial airline and general aviation accidents, including plaintiffs in the State of Washington.

AAJ has participated as amicus curiae in cases across the country that affect the rights of the victims of aviation accidents. These include, most recently, *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 687 (3d Cir. 2016), in which the court addressed the same question presented to this Court and held that plaintiff's product liability cause of action was not field preempted and was subject to state standards of care.

STATEMENT OF THE CASE

This case presents this Court with an important question of whether the Federal Aviation Act preempts the field of aviation safety and whether that field encompasses state product liability standards of care. The facts relevant to AAJ's discussion of this issue are set out in the lower court's opinion and the Brief of Appellant, which are cited at relevant points in this amicus brief.

SUMMARY OF ARGUMENT

This case presents an important question of whether the Federal Aviation Act impliedly preempts the field of aviation safety and whether that field encompasses state product liability standards of care. Implied field preemption occurs where the scheme of federal regulation is so pervasive that Congress left no room for the States to supplement it.

One cornerstone of the Supreme Court's preemption jurisprudence is that where the preempted field encompasses areas that have been traditionally occupied by the States, such as compensation for harm caused by unreasonably dangerous products, congressional intent to supersede state laws must be clear and manifest. This presumption serves the vital interests of federalism by avoiding unintended encroachment on the authority of the States and the rights of their citizens. The lower court here failed to identify any basis for overcoming this strong presumption against federal preemption of Washington product liability law.

The other preemption cornerstone is that the intent of Congress is the ultimate touchstone. Here, the lower court found no evidence that Congress intended to preclude state product liability causes of action apart from extensive agency regulations. There is no authority that regulation alone proves preemptive intent of Congress where there are indications to the contrary. Here, Congress expressly directed the agency to promulgate

"minimum" regulations, included an express savings clause preserving state law remedies, and imposed an 18-year statute of repose, clearly indicating its intent that state product liability causes of action would remain available.

Finally, the lower court erred in holding that plaintiff impermissibly sought to impose a state standard of care in this case. Plaintiff's cause of action was based on a manufacturing defect: the floats were not hermetically sealed as called for in the contract and design agreed to by FTI. Thus, the state cause of action did not seek to impose a state standard of care. It merely sought to hold FTI to the standard of care FTI voluntarily assumed for itself. To hold this action preempted would have the perverse effect of granting immunity to aviation component manufacturers based on a statute designed to ensure greater aviation safety.

ARGUMENT

I. The Presumption Against Preemption of State Tort Law Is Even Stronger When Defendant Asserts Federal Preemption of an Entire Field of Law That Has Been Historically the Responsibility of the States with the Result of Depriving Wrongfully Injured People of Their State Law Causes of Action.

A. Implied field preemption requires a showing that Congress clearly intended to exclude states from any regulation of the preempted field.

In this case, as the lower court pointed out, "The FAA has no express preemption clause, and FTI does not assert any implied conflict preemption. Therefore, only implied field preemption is at issue." *Estate of Becker v.*

Forward Tech. Indus., Inc., 192 Wash. App. 65, 74, 365 P.3d 1273, 1277 (2015). *See Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015) ("Since the parties have argued this case almost exclusively in terms of field pre-emption, we consider only the field pre-emption question.").

Implied field preemption occurs where the scheme of federal regulation is "'so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,'" *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). The Court may determine that Congress has occupied the field where Congress has indicated its intent "to foreclose any state regulation in the area," regardless of any conflict with federal standards. *Arizona v. United States*, 132 S. Ct. 2492, 2502 (2012); *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995); *Montalvo v. Spirit Airlines*, 508 F.3d 464, 470 (9th Cir. 2007).

In the absence of express preemption of a field of state law, the Court may infer such intent where Congress legislates in a manner "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Wis. Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991); *Rice*, 331 U.S. at 230. Where that field encompasses areas that have "been traditionally occupied by the States," congressional intent to supersede state laws must be "'clear and manifest.'" *English v. Gen. Elec.*

Co., 496 U.S. 72, 79 (1990) (quoting *Jones v. The Rath Packing Co*., 430 U.S. 519, 525 (1977)). *See also R.J. Reynolds Tobacco Co. v. Durham Cty., N.C.*, 479 U.S. 130, 140 (1986) ("federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained").

B. The presumption against preemption is stronger in the case of field preemption which results in greater intrusion into areas traditionally handled by the states.

The Supreme Court of the United States has instructed that courts addressing claims of federal preemption of state law

> [M]ust be guided by two cornerstones of our pre-emption jurisprudence. First, the purpose of Congress is the ultimate touchstone in every pre-emption case. Second, in all pre-emption cases, and particularly in those in which Congress has legislated . . . in a field which the States have traditionally occupied, . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the *clear and manifest* purpose of Congress.

Wyeth v. Levine, 555 U.S. 555, 565 (2009) (emphasis added, ellipses in original, internal quotations and citations omitted).

The lower court correctly stated, "We must assume that 'Congress does not intend to supplant state law.'" *Estate of Becker*, 192 Wash. App. at 74, 365 P.3d at 1277 (quoting *N.Y. State Conference of Blue Cross &*

Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 654 (1995)), and that "State laws are not superseded by federal law unless that is the clear and manifest purpose of Congress." *Id*. (quoting *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash. 2d 299, 327, 858 P.2d 1054, 1069 (1993)). Yet the lower court failed to provide any basis for overcoming this strong presumption against federal preemption of Washington product liability law.

This presumption is not merely a matter of statutory construction. It serves the vital interests of federalism and is based on "respect for the states as 'independent sovereigns in our federal system.'" *Levine*, 555 U.S. at 565 n.3 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). As Justice White wrote for the Court, the presumption serves the purpose of "avoiding unintended encroachment on the authority of the States." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663-64 (1993).

The Supreme Court in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), held that the fundamental protection of the role of the states in our system of federalism does not lie in the textual guarantee of the Tenth Amendment, but in the "structural protections of the Constitution" whereby the states can guard against overreaching by the national government by acting through elected representatives in Congress. *Id*. at 551-52.

The corollary to this principle, as Justice O'Connor pointedly observed, is that:

> [A]s this Court in *Garcia* has left primarily to the political process the protection of the States against intrusive exercises of Congress' Commerce Clause powers, we must be absolutely certain that Congress intended such an exercise.

Gregory v. Ashcroft, 501 U.S. 452, 464 (1991). *Cf. United States v. Lopez*, 514 U.S. 549, 552 (1995) (citing *Gregory* as setting forth the "first principles" of federalism).

The constitutional structural protection of the states and of the individual's rights under state law, are subverted if courts freely preempt state remedies in the absence of congressional consideration and clear expression of congressional intent to deprive the states and their citizens of those rights.

Providing a right of action for compensation to those who have been harmed by unreasonably dangerous products is, of course, an area traditionally occupied by state law. *Lohr*, 518 U.S. at 475 (quoting *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985)). Indeed, it is the "the duty of every state to provide, in the administration of justice, for the redress of private wrongs" under the Due Process Clause of the Fourteenth Amendment. *Mo. Pac. Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885). More recently, the Supreme Court recognized

that "a separate and distinct right to seek judicial relief for some wrong" is a fundamental right grounded in multiple provisions of the Constitution of the United States. *Christopher v. Harbury*, 536 U.S. 403, 415 & n.12 (2002).

C. The presumption against preemption is even stronger where field preemption would leave wrongfully injured persons without remedy.

Given these fundamental precepts, the Supreme Court has declined to infer that Congress intended, without a word of explanation, to effectively deprive injured persons of their day in court to seek legal redress. This is particularly true with respect to state law products liability suits. As Justice Stevens wrote for the Court,

> The long history of tort litigation against manufacturers . . . adds force to the basic presumption against pre-emption. If Congress had intended to deprive injured parties of a long available form of compensation, it surely would have expressed that intent more clearly.

Bates v. Dow Agrosciences LLC, 544 U.S. 431, 449 (2005).

Indeed, the notion of implied field preemption where Congress has been silent is difficult to reconcile with the cornerstone principle that state law is displaced only where congressional intent to do so is "clear and manifest." As Justice Thomas has recognized, "field pre-emption is itself suspect, at least as applied in the absence of a congressional command that a particular field be pre-empted. . . . [O]ur recent cases have frequently

rejected field pre-emption in the absence of statutory language expressly requiring it." *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 616-17 (1997) (Thomas, J., dissenting).

For example, in *Medtronic, Inc. v. Lohr*, the Court rejected field preemption of product liability claims against medical device makers, finding nothing in the legislation or legislative history suggesting that Congress intended a "sweeping pre-emption of traditional common-law remedies. . . If Congress intended such a result, its failure even to hint at it is spectacularly odd." 518 U.S. at 491.

The Third Circuit, recently facing much the same contention presented to this Court, pointed out that the strict presumption against preemption means that, "[w]hen faced with two equally plausible readings of statutory text, [courts] have a duty to accept the reading that disfavors preemption." *Sikkelee*, 822 F.3d at 687 (quoting *Bruesewitz v. Wyeth, Inc.*, 561 F.3d 233, 240 (3d Cir. 2009)). In this case, as amicus demonstrates in the next section, the evidence shows that Congress clearly intended to preserve state product liability causes of action, including state standards of care.

II. Extensive FAA Regulation Does Not Itself Establish Congressional Intent to Displace State Standards Where There Are Other Indications of Congressional Intent to the Contrary.

A. The lower court relied entirely on the extent of federal regulation as a "clear and manifest" indication that Congress intended to preempt state product liability standards for aircraft components.

The other cornerstone of the Supreme Court's preemption jurisprudence is that "[t]he purpose of Congress is the ultimate touchstone in every pre-emption case." *Levine*, 555 U.S. at 565. *See also*, *e.g.*, *Altria Group, Inc. v. Good*, 555 U.S. 70, 76 (2008) (quoting *Lohr*, 518 U.S. at 485).

The lower court's finding that Congress intended to preclude state causes of action was based entirely on the court's determination that "federal regulations pervasively regulate an airplane engine's fuel system." *Becker*, 192 Wash. App. at 79, 365 P.3d at 1280.

The U.S. Supreme Court has not held that extensive agency regulation alone can demonstrate the intent of Congress to supersede state regulation in a field traditionally relegated to state law. To the contrary, the Court has stated that in the face of "federal statutory regulation that is comprehensive and detailed; matters left unaddressed in such a scheme are presumably left subject to the disposition provided by state law." *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 85 (1994). *See also English v. Gen. Electric Co.*, 496 U.S. 72, 87 (1990) ("[T]he mere existence of a

federal regulatory or enforcement scheme . . . does not by itself imply pre-emption."). In *R.J. Reynolds Tobacco Co.*, 479 U.S. 130, the Court observed, "Pre-emption should not be inferred, however, simply because the agency's regulations are comprehensive." *Id.* at 149 (internal citations omitted). Similarly, although Congress has made the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, into "a comprehensive regulatory statute," *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991 (1984), the Court held that "field pre-emption cannot be inferred" from the regulations. "Mere silence, in this context, cannot suffice to establish a 'clear and manifest purpose' to pre-empt local authority." *Mortier*, 501 U.S. at 607. *See also Oneok, Inc.*, 135 S. Ct. at 1603 ("[T]he detailed federal regulations here do not offset the other considerations that weigh against a finding of pre-emption.").

Nor does the FAA itself view its regulations as preempting the field. Rather the FAA has stated that type certification may supersede state laws under "ordinary conflict preemption principles." *Sikkelee*, 822 F.3d at 701-02 (quoting FAA's Letter Brief).

The court below relied upon *Montalvo*, 508 F.3d at 470-71, for the proposition that comprehensive regulations can establish congressional intent. *Becker*, 192 Wash. App. at 74-75, 365 P.3d at 1277-78. But the Ninth Circuit specifically stated:

> [W]hen an agency administrator promulgates pervasive regulations pursuant to his Congressional authority, we may infer a preemptive intent *unless it appears from the underlying statute or its legislative history that Congress would not have sanctioned the preemption.*

Montalvo, 508 F.3d at 470-71. In this case, Congress *did* indicate its intent not to preempt state law causes of action.

B. Congress expressed its intent to preserve state product liability causes of action.

Not only did Congress in the FAA give no clear and manifest showing of its intent to preempt the field of state product liability claims, Congress gave clear indication of its intent to preserve such causes of action.

First, the statute directs the FAA to "promote safe flight of civil aircraft in air commerce by prescribing *minimum standards*" for the design and construction of aircraft. 49 U.S.C. § 44701(a) (emphasis added). A "minimum safety standard," the Supreme Court has observed, creates "only a floor," leaving "adequate room for state tort law to operate." *Geier v. American Honda Motor Co.*, 529 U.S. 861, 868 (2000). A statute that "purports only to establish minimum standards" "cannot be said, without more, to reveal a design that federal . . . orders should displace all state regulations*." Fla. Lime & Avocado Growers v. Paul*, 373 U.S. 132, 147-48 (1963).

Secondly, when Congress enacted the Federal Aviation Act in 1958, Pub. L. No. 85-726, 72 Stat. 731, Congress expressly provided a savings

clause preserving "remedies now existing at common law or by statute." *See American Airlines, Inc. v. Wolens*, 513 U.S. 219, 222 (1995) (quoting 49 U.S.C. App. § 1506). When Congress amended the FAA in 1978 by enacting the Airline Deregulation Act, Pub. L. 95-504, 92 Stat. 1705, it kept the savings clause in slightly altered form: "A remedy under this part is in addition to any other remedies provided by law." 49 U.S.C. § 40120(c). Such a savings clause "reflects a congressional determination" to preserve "a system in which juries . . . enforce, safety standards, while simultaneously providing necessary compensation to victims." *Geier*, 529 U.S. at 871. Significantly, the Supreme Court has equated "remedies" in savings clauses with common law causes of action, including standards of care. *See Lohr*, 518 U.S. at 487.

Thirdly, when Congress again amended the Federal Aviation Act in 1994 by enacting the General Aviation Revitalization Act, Pub. L. No. 103-298, 108 Stat. 1552, it added an 18-year statute of repose for product liability actions. 49 U.S.C. § 40101, Note § 2(a)(1) (1994). The statute's plain text indicates that Congress intended that state product liability causes of action would continue to be available.

Upon consideration of the two cornerstones of the Supreme Court's preemption jurisprudence, the U.S. circuit courts of appeals have uniformly held that the FAA does not preempt the field of state product liability causes

of action. This is true as well for those courts that have found FAA preemption of other areas of state regulation of air safety.

Thus in *Sikkelee*, 822 F.3d at 689-90, the Third Circuit, which had previously held in *Abdullah v. American Airlines, Inc*., 181 F.3d 363 (3d Cir. 1999), that the FAA preempted state regulation relating to in-flight safety, held that product liability claims were not field preempted. *See* 822 F.3d at 695 ("state tort suits using state standards of care may proceed subject only to traditional conflict preemption principles").

The Ninth Circuit in *Martin ex rel. Heckman v. Midwest Express Holdings, Inc*., 555 F.3d 806 (9th Cir. 2009), revisited its holding in *Montalvo*, 508 F.3d 464, which the lower court in this case relied upon. Chief Judge Kozinski wrote for the Court that the design and manufacture of aircraft and components were not so "pervasively" regulated as to field preempt product liability claims. In such cases, "the state standard of care remains applicable." 555 F.3d at 808-11.

In *Cleveland v. Piper Aircraft Corp.*, 985 F.2d 1438, 1444 (10th Cir. 1993), the Tenth Circuit concluded that "Congress has not indicated a 'clear and manifest' intent to occupy the field of airplane safety to the exclusion of state common law." Similarly, in *Public Health Trust of Dade Cnty., Fla. v. Lake Aircraft, Inc.*, 992 F.2d 291, 295 (11th Cir. 1993), the Eleventh Circuit held that the FAA did not preempt plaintiff's state product liability

claim. *Cf. Bennett v. Sw. Airlines Co.*, 484 F.3d 907, 908 (7th Cir. 2007) (noting that defendants had abandoned their contention that plaintiffs' product liability claims were field preempted and stating that those claims would be decided under Illinois law); *McLennan v. American Eurocopter Corp.*, 245 F.3d 403, 426 (5th Cir. 2001) (applying Texas law to aviation product liability claim, without discussing preemption).

III. Federal Preemption of State Product Liability Standards of Care Has No Application in This Case, Which Asserts a Claim Based on Manufacturing Defect.

A. Plaintiff's claim against FTI is based on manufacturing defect.

This court's analysis could well stop with its conclusion that the lower court erred in holding that state product liability claims are impliedly field preempted by the regulatory regime prescribed by the Federal Aviation Act. AAJ further submits, however, that the lower court erred in undertaking field preemption analysis at all. The lower court reasoned that, "Because federal regulations pervasively regulate an airplane engine's fuel system, including its carburetor and component parts, implied field preemption precludes applying a state law standard of care to Becker's claims." *Becker*, 192 Wash. App. at 79, 365 P.3d at 1280. In this case, however plaintiff did not seek to apply a state standard of care to FTI. The applicable standard of care was defined by FTI itself.

As the lower court explained, the FAA issued a "type certificate" to Avco Corp., indicating FAA approval of the design of the airplane's engine, including the carburetor. Precision Airmotive Corp., builder of the carburetor, obtained a "parts manufacturer approval" production certificate ("PMA") authorizing Precision to manufacture carburetors conforming to the approved design. Precision developed the plastic carburetor float which helps maintain the correct fuel level in the carburetor, and the Federal Aviation Administration approved it. Precision contracted with FTI to assemble and weld the float's plastic component parts. FTI was not required to obtain an FAA certificate for this work. *Id.* at 70-72, 365 P.3d at 1275-76.

Thus, FTI played a small. but crucial role in the construction of the airplane's engine by welding together two components to make a hollow float. As plaintiff explained, the float was designed to rise as fuel entered the bowl, shutting off a needle valve when it reached a prescribed height. When it fell, it reopened the valve. Appellant's Br. 4.

As Plaintiff has argued, FTI's contract with Precision required FTI to supply floats that were "heremetically sealed." *Id.* at 7. Further, FTI certified to Precision that every float supplied to Precision complied with product specifications. *Id.* at 5-6. Plaintiff did not allege that the float was defectively designed. Rather, plaintiff contended that the float "contained a

manufacturing defect in the weld seam" causing it to leak and fall to the bottom of the bowl, flooding the engine. *Id*. at 15-16.

B. A claim of manufacturing defect does not impose a state standard of care on a manufacturer.

Even if the lower court were correct that the FAA preempts state standards of care, such a determination was not grounds for upholding summary judgment for FTI in this case. This is not a case in which a plaintiff sought to hold a manufacturer to a design standard or warning requirement different from or in addition to that applicable under the FAA. A manufacturing defect occurs when the manufacturer violates its own standard. *See*, *e.g.*, *Myrlak v. Port Auth. of N.Y. & N.J.*, 723 A.2d 45, 52 (N.J. 1999) ("[A] manufacturing defect . . . occurs when the product comes off the production line in a substandard condition based on the manufacturer's *own standards*.") (emphasis added); *Prentis v. Yale Mfg. Co.*, 365 N.W.2d 176, 182 (Mich. 1984) ("In the case of a 'manufacturing defect,' the product may be evaluated against the manufacturer's own production standards."). *See also* American L. Prod. Liab. 3d § 31:3 (3d ed. 1987) (The test for manufacturing defect "is whether the particular product as produced conformed to the manufacturer's specifications, or whether the

product came off the production line in a substandard condition *based on the manufacturer's own standards*." (emphasis added)).[1]

To hold FTI liable for failure to make its weld seam hermetically sealed does not impose a state law standard; it holds FTI to the standard it voluntarily assumed in its contract and its certification to Precision.[2] It is therefore not subject to field preemption of state standards of care.

The U.S. Supreme Court has addressed this issue squarely:

> We do not read the [Airline Deregulation Act] preemption clause, however, to shelter airlines from suits alleging no violation of state-imposed obligations, but seeking recovery solely for the airline's alleged breach of its own, self-imposed undertakings. [Liability does] not amount to a State's 'enact[ment] or enforce[ment] [of] any law, rule, regulation, [or] *standard*. . . . A remedy confined to a contract's terms simply holds parties to their agreements.

---

[1] Likewise, Washington's product liability statute does not impose a standard of care upon manufacturers with respect to design defects or express warranty claims, but simply holds a manufacturer to the standards it has voluntarily assumed:

> A product manufacturer is subject to strict liability to a claimant if . . .
>
> > (a) the product deviated in some material way from the design specifications or performance standards of the manufacturer, or . . .
> >
> > (b) does not conform to the express warranty of the manufacturer.

Wash. Rev. Code Ann. § 7.72.030(2).

[2] FTI may argue that its contractual obligation to Precision may be enforced only by Precision. To rely on lack of privity of contract as a defense concedes the applicability of state law. In any event, Plaintiff does not seek to enforce the contract. The sole issue is the standard of care applicable to FTI.

Wolens, 513 U.S. at 228-29 (emphasis added). Similarly, the Court has held:

> [A] common-law remedy for a contractual commitment voluntarily undertaken should not be regarded as a 'requirement . . . *imposed under State law*' within the meaning of [the Federal Cigarette Labeling and Advertising Act].

Cipollone v. Liggett Group, Inc., 505 U.S. 504, 526 (1992) (plurality).

Likewise, liability for breach of warranty does not rest upon a standard of care imposed by state law; it is a standard voluntarily assumed by the manufacturer itself. *Bates*, 544 U.S. at 444-45. As the Court made clear in *Cipollone*, "the 'requirement[s]' imposed by an express warranty claim are not 'imposed under State law,' but rather imposed *by the warrantor*." 505 U.S. at 525 (emphasis in original). FTI's certification that the floats were hermetically sealed was a standard imposed by FTI itself.

FTI seeks to avoid any accountability for its defective manufacture of this crucial airplane component. It is not accountable to the FAA because it holds no FAA certificate, yet it seeks to evade accountability under state law on grounds that the certification regulations preempt state tort causes of action. Such an outcome would have the "perverse effect of granting complete immunity" to companies such as FTI based on a statute Congress intended to ensure greater aviation safety. *See Lohr*, 518 U.S. at 487. Certainly, it is not at all credible "that Congress would, without comment,

remove all means of judicial recourse for those injured by illegal conduct," *Id*. (quoting *Silkwood v. Kerr-McGee Corp*., 464 U.S. 238, 251 (1984)).

CONCLUSION

For the foregoing reasons, the American Association for Justice urges this Court to reverse the judgment below.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY under penalty of perjury under the laws of the State of Washington, that on this 23rd day of September, 2016, I caused the document to which this certificate is attached to be delivered by email to the following counsel of record:

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