AOPA Asks Supreme Court to Review *Sikkelee* Decision; Urges FAA Preemption

In a notable *amicus curiae* brief, the Aircraft Owners and Pilots Association (AOPA) has asked the U.S. Supreme Court to reverse a decision from the U.S. Court of Appeals for the Third Circuit (Third Circuit), which allowed states to apply state standards of care to the field of aviation product liability. AOPA pressed the Supreme Court to hear the case, and conclude that the Federal Aviation Administration (FAA) — not states — has exclusive authority to regulate safety standards in aviation manufacturing and product liability. In doing so, AOPA aligned itself with aviation manufacturers. As an organization directed at pilot membership, the alignment is somewhat counterintuitive. The FAA and the General Aviation Manufacturers Association (GAMA) have already filed similar *amicus curiae* briefs. The odds of success, however, are low. The Supreme Court grants approximately 1 percent of all *certiorari* petitions, but AOPA's support for the manufacturers may increase the prospects for Supreme Court review.

In *Sikkelee v. Precision Airmotive Corp.*, the Third Circuit held that state design standards may be used to determine aviation product liability regardless of the FAA's approval and certification or the manufacturers' compliance with FAA regulations.

The underlying case arose from a Cessna 172N crash in 2005. Pilot David Sikkelee perished when the aircraft encountered an error shortly after take-off. At some point before the crash, the FAA had issued a type certificate to the Cessna manufacturer for a new engine design. In accordance with the FAA type certificate, the manufacturer overhauled the engines in 2004. The overhaul included a new carburetor. The plaintiff, the spouse of the deceased, filed suit in Pennsylvania state court against 17 defendants.

The plaintiff alleged that a "malfunction or defect" in the Lycoming O-320-D2C engine's carburetor resulted in the aircraft losing power, ultimately causing the fatality. The complaint included claims that incorporated state law standards of care, including strict liability, negligence, breach of warranty, and misrepresentation. No federal claims were alleged. The defendants removed the case to the U.S. District Court for the Middle District of Pennsylvania.

In 2010, the District Court dismissed the case, holding that the FAA preempted state law claims in the field of "air safety." The District Court relied on the seminal decision in *Abdullah v. American Airlines, Inc.*, which involved in-flight seatbelt use and warnings. The *Abdullah* court held that state law claims were preempted because the FAA and federal regulations "establish[ed] complete and thorough safety standards for interstate and international air transportation and these standards are not subject to supplementation by, or variation among, jurisdictions." The plaintiff then filed an amended complaint that incorporated federal standards of care along with state law claims. The federal standards of care derived from FAA regulations. In 2014, the District Court rejected the state law design claims, finding that the FAA-issued type certificate defined the standard of care. The District Court reasoned that there could be no design defect in the engine because it had been certified and approved by the FAA. The case was certified for immediate appeal.

In April 2016, the Third Circuit Court of Appeals reversed the District Court. It held that the FAA's federal regulatory role did not preempt state law standards of care in aviation products liability claims. The Court of Appeals also held that the type certificate for the engine did not preclude design defect claims.

The decision would result in an increase in claims and judgments against aviation manufacturers brought by pilots and passengers. Juries could also hold pilots to different standards of care in state law claims. Most problematically, those in the field of aviation manufacturing could be in the

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impossible position of complying with 50 different sets of state laws while simultaneously complying with the FAA. Though AOPA's interpretation of the law necessarily precludes these possibilities, AOPA argues that its position aligns with pilot interests as well as manufacturer interests. AOPA counsel wrote:

> As owners and pilots, AOPA members have a substantial interest in the duties imposed upon manufacturers to address unsafe conditions in FAA-approved designs. These duties significantly affect the safety of existing aircraft and future aircraft produced in accordance with that design. Additionally, the cumulative cost effect of aviation products liability actions on manufacturers is also passed onto aircraft owners. Thus, state-law duties defined in an aviation products liability action affect the cost of purchasing new and maintaining existing aircraft.

AOPA argued that Congress intended to create a uniform and exclusive system of federal regulation in the field of air safety in enacting the FAA. The Third Circuit decision, according to AOPA, would "result in the imposition of state-law duties which interfere and conflict with federal control of aviation products and continued operational safety." AOPA went on to argue that "[m]anufacturer compliance with these variable state-law duties is practically impossible because the federal regulatory scheme requires approval from the FAA to change an approved aircraft design."

According to AOPA Counsel Ken Mead, "It's vitally important that manufacturers have one set of standards, established by the FAA, to adhere to," said Mead. "Otherwise they can face the nearly impossible and very costly challenge of trying to follow a hodgepodge of potentially contradictory state standards. That's bad for safety, it's bad for manufacturers, and it's bad for aircraft owners who end up, quite literally, paying the price."

Supreme Court observers rarely predict with certainty when the Court will grant a petition. Still, given the circuit split, the potential widespread impact, the parties involved, and the *amicus curiae* briefs filed, the prospects for review of the *Sikkelee* case seems to have increased. The future of aviation product liability surely depends on what the Supreme Court will do next.

Please contact Rachael Wallace or Robert L. Bowman for more information regarding issues raised in this Alert.