O/a 6-3-86

IN THE SUPREME COURT OF FLORIDA

Case No. 67,761

CHRYSLER CORPORATION, a foreign corporation, Petitioner, vs. JACK E. WOLMER, Personal Representative of the Estate of MARY WOLMER and JACK E. WOLMER, Individually, Respondent.	On Petition for Discretionary Review of the District Court of Appeal, Fourth District, State of Florida

BRIEF OF AMICUS CURIAE THE ACADEMY OF FLORIDA TRIAL LAWYERS SUPPORTING POSITION OF RESPONDENT

THE ACADEMY OF FLORIDA TRIAL LAWYERS
AMICUS CURIAE

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PREFACE

Amicus curiae, the Academy of Florida Trial Lawyers ("AFTL"), is a large, state-wide association of trial lawyers specializing in many areas, including negligence and products liability litigation. The AFTL believes that this case presents a very important issue to this Court: Whether an award of punitive damages in a negligence and products liability action governed by Florida law is pre-empted by federal law which establishes minimum safety standards for the product in question. This issue is one of great public importance with broad ramifications for many parties in Florida. Moreover, the issue is sure to recur frequently in the courts of Florida.

The AFTL urges the Court to affirm the decision of the Fourth District Court of Appeal.

STATEMENT OF THE CASE AND FACTS

The facts of this case are well set out in the district court's opinion, Wolmer v. Chrysler Corp., 474 So.2d 834 (Fla.4th DCA 1985). For purposes of this brief, the relevant facts are that the jury found for the plaintiff on his negligence count, which alleged negligent design of the fuel tank of Chrysler's Volare automobile, and awarded compensatory damages. The jury also found that Chrysler had acted "with wantonness, wilfullness, or reckless indifference to the rights of others," and awarded punitive damages of $3 million. The trial court later entered an order granting Chrysler's renewed motion for directed verdict on the issue of punitive damages. The Fourth District reversed and reinstated the jury's punitive damages award. Id. at 839. Although the Fourth District's decision to reinstate the punitive damages award raises many issues which are on appeal to this Court, this brief will address only the district court's holding that the mere existence of federal auto safety regulations does not preempt an award of punitive damages in a negligence action under Florida law against an automobile manufacturer and that, therefore, the "jury's decision to award punitive damages does not constitute an impermissible state regulation." Id.*

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* This brief does not address the related question of whether evidence of compliance with federal safety regulations negates [footnote continued on following page]

SUMMARY OF ARGUMENT

The mere existence of federal auto safety regulations does not in and of itself preempt an award of punitive damages in a state law tort action based on negligent automobile design. Federal preemption only invalidates a state law which "interferes with" or is "contrary to" the federal law, or when Congress "expressly supplants" the state law. Additionally, federal preemption is the exception rather than the rule, and the party seeking to rely on the doctrine of preemption carries a heavy burden to show its applicability. Here, there is no evidence that Congress, in passing the National Traffic and Motor Vehicle Safety Act, 15 U.S.C.§ 1381, et seq. (hereinafter "the Act"), intended to alter the availability of state tort remedies based on negligent automobile design. In fact, there is strong evidence in the Act itself that Congress intended that traditional state tort remedies would remain available.

Neither is there any valid argument that state law claims based on negligent automobile design interfere with the purposes of the Act. Indeed, courts in other states have recognized that state tort remedies can complement a federal statutory safety scheme.

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* [Footnote continued from preceding page] recklessness as a matter of state law, thereby precluding an award of punitive damages. This issue is discussed in detail in respondent's brief.

Because punitive damages are recognized as one part of traditional state law tort remedies and because Congress has clearly indicated that it intended for all common law remedies to remain available notwithstanding its passage of federal auto safety regulations, the Fourth District's holding that the preemption doctrine does not bar a punitive damages award in this case is correct.

ARGUMENT

The Mere Existence of Federal Auto Safety Regulations Does Not Preempt an Award of Punitive Damages in a State Law Tort Action Based on Negligent Automobile Design.

Federal preemption is grounded upon the "well established principle that the Supremacy Clause, U. S. Constitution, Article VI, clause 2, invalidates state laws that 'interfere with, or are contrary to' federal law," Hillsborough County v. Automated Medical Laboratories, ____ U.S.____, 105 S.Ct.2371 (1985) [quoting Gibbons v. Ogden, 9 Wheat.1, 211 (1824)].* In making the argument that the

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* As stated by the United States Supreme Court in Silkwood v. Kerr-McGee Corp., ____ U.S.____, 104 S.Ct.615, 621 (1984):

> "[S]tate law can be preempted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted. . . . If Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law . . . or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress . . . ." (Citations omitted.)

federal automobile safety regulations preempt a state law punitive damages award, the burden is upon Chrysler to show that Congress intended to preempt such awards. Silkwood v. Kerr-McGee Corp., ____ U.S.____, 104 S.Ct.615, 625 (1984). See Louisville & Nashville R.R. v. Hickman, 445 So.2d 1023 (Fla.1st DCA 1983), review denied, 447 So.2d 887 (Fla.1984) ("[p]reemption does not automatically apply merely because Congress has acted in such a way as to affect a given industry . . . . Preemption will not be presumed, and even where it is clear that preemption applies, state law is invalid only to the extent that it is preempted"); Ellsworth v. Beech Aircraft Corp., 691 P.2d 630, 634 (Cal.1984), cert.denied, ____ U.S.____, 105 S.Ct. 2345 (1985) ("[c]ourts are reluctant to infer preemption, and it is the burden of the party claiming that Congress intended to preempt state law to prove it" [citing cases]).

Here, the district court recognized that pursuant to the Act, 15 U.S.C.§ 1392(a), the Secretary of Transportation has promulgated a series of federal motor safety vehicle standards which constitute a mandatory scheme of regulation aimed at improving motor vehicle safety in the United States. In particular, standard 301 establishes the criteria for motor vehicle fuel systems. Chrysler argued in the district court that to allow a punitive damages award based on negligent design of an automobile would require a manufacturer to meet a higher standard

than that specified by the federal government and, therefore, such an award constituted the establishment of a regulation which conflicts with the applicable federal standard. 474 So.2d at 838.

The district court rejected this argument, however, finding that "[i]n the field of motor vehicle safety regulation, Congress has expressed its intent to allow the application of traditional tort remedies." Id. at 839. The district court cited the "savings clause" in the Act, 15 U.S.C.§ 1397(c), which provides that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law" (emphasis in original). The district court concluded that Congress "anticipated and approved" joint federal and state regulation of auto safety and that "the jury's decision to award punitive damages does not constitute an impermissible state regulation." Id.

The district court was correct. In Silkwood v. Kerr-McGee Corp., ____ U.S.____, 104 S.Ct.615, 617 (1984), the United States Supreme Court considered a question almost identical to that posed here: "[W]hether a state-authorized award of punitive damages arising out of the escape of plutonium from a federally-licensed nuclear facility is preempted . . . ." The Supreme Court first

recognized that "[T]he federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states." Id. at 622 [quoting Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n, ____ U.S.____, 103 S.Ct.1713, 1726 (1983)]. The Supreme Court then stated:

> "If there were nothing more, this concern over the states' inability to formulate effective standards and the foreclosure of the states from conditioning the operation of nuclear plants on compliance with state-imposed safety standards arguably would disallow resort to state-law remedies by those suffering injuries from radiation in a nuclear plant. There is, however, ample evidence that Congress had no intention of forbidding the states from providing such remedies." Id. at 623 (emphasis added).

Having concluded that state tort remedies for injuries from nuclear radiation had not been preempted, the Supreme Court specifically addressed the issue of punitive damages:

> "Kerr-McGee focuses on the differences between compensatory and punitive damages awards and asserts that, at most, Congress intended to allow the former. This argument, however, is misdirected because our inquiry is not whether Congress expressly allowed punitive damages awards. Punitive damages have long been a part of traditional state tort law. . . . Congress assumed that traditional principles of state tort law would apply with full force unless they were expressly supplanted." Id. at 625 (emphasis added).

As found by the district court, there is no express congressional intention that punitive damages awards based on state law negligence and product liability claims against auto manufacturers should be prohibited. Indeed, the Act specifically provides that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 15 U.S.C.§ 1397(c). Thus, Congress, far from "expressly supplant[ing]" state tort law principles which allow the award of punitive damages in negligent automobile design cases, has statutorily recognized that "traditional principles of state tort law," including the award of punitive damages, would apply "with full force." Chrysler, therefore, is wholly unable to carry its "burden to show that Congress intended to preclude such awards." 104 S.Ct. at 625. See also Tectonics, Inc. of Florida v. Castle Construction Co., 753 F.2d 957 (11th Cir.1985) (following Silkwood, Eleventh Circuit holds that Congress' enactment of Small Business Act did not preempt a state cause of action for fraud).

Chrysler's attempts to distinguish Silkwood are far-fetched. Chrysler first argues that because the federal law involved in Silkwood contained no express preemption provision, unlike the Act at issue here, Silkwood's reasoning does not apply to this case. However, this argument ignores the "savings clause" in the Act here which provides that the Act is not intended to derogate a

party's rights under common law in any way. See page 6, supra. Thus, Silkwood's reasoning applies even more forcefully to this case, where there is express congressional intent in the Act to allow state law tort claims.

Moreover, Chrysler's contention that the circumstances of Silkwood -- the release of nuclear radiation -- are "localized" and therefore have "no impact on the broader national concerns" is frivolous. Recent events testify that regulation of nuclear power plants is of national and even global import. Chrysler's advancement of this bankrupt contention best demonstrates the futility of its attempt to distinguish Silkwood.

Both Florida's courts and a federal court applying Florida law have found that preemption does not bar a punitive damages award in situations very similar to this case. In Louisville & Nashville R.R. v. Hickman, 445 So.2d 1023 (Fla.1st DCA 1983), review denied, 447 So.2d 887 (Fla.1984), the plaintiff was injured when a railroad tank car containing hazardous chemicals derailed and he was exposed to poisonous gases released from the ruptured tank car. He brought a negligence action, resulting in a $7 million punitive damages award against the defendant railroad. In affirming the punitive damages award, the First District rejected the argument that "punitive damages are not available to a private individual in a negligence suit because Congress has preempted state regulation

of railway safety," and held that "[p]reemption does not automatically apply merely because Congress has acted in such a way as to affect a given industry." Id. at 1028 (emphasis added).*

In the recent case of Rubin v. Brutus Corp., 11 F.L.W.903, 904 (Fla.1st DCA Apr.15, 1986), the First District, in a products liability case involving the crashworthiness of a pleasure boat, rejected a preemption argument almost identical to Chrysler's in this case:

> "[Defendant] contends that by reason of the enactment of the Federal Boat Safety Act of 1971 . . . Congress has preempted the field of regulating boat safety requirements for manufacturers and therefore precluded the application of state law crashworthiness standards. In effect, [defendant] argues that this act is the exclusive basis for a boat manufacturer's liability and that the record shows that the seat installation did not violate any regulations promulgated under the act. . . . As we read this section . . . its purpose is to standardize regulations applicable to the manufacture of boats by precluding states from adopting requirements that conflict with federal standards. We are equally sure, however, that compliance

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* Notably, the defendants in Hickman had relied upon the Tenth Circuit's decision in Silkwood v. Kerr-McGee Corp., 667 F.2d 908 (10th Cir.1981), to support their preemption argument. The First District distinguished the Tenth Circuit's decision in finding that the preemption doctrine did not preclude an award of punitive damages against the railroad. With the United States Supreme Court's recent reversal of the Tenth Circuit's decision, Silkwood v. Kerr-McGee Corp., ____ U.S.____, 104 S.Ct.615 (1984), the First District's preemption analysis gains further credence and vitality.

> with federal standards promulgated under this act was not intended to 'relieve any person from liability at common law or under State law.' " (Emphasis added.)

Importantly for this case, the First District in Rubin noted the similarity between the Act at issue here and the Federal Boat Safety Act, noting that the Act "contains a provision that compliance with the act does not exempt persons from liability under the common law . . . 15 U.S.C., § 1397(c)," and that the Act "has been construed to mean that compliance with regulations governing manufacturing does not necessarily relieve the manufacturer of liability under general tort law." Id. at 904 (citing Dorsey v. Honda Motor Co., 655 F.2d 650 (5th Cir. 1981) (emphasis added).

Finally, Dorsey v. Honda Motor Co., 655 F.2d 650 (5th Cir.1981), cert.denied, 459 U.S.880 (1982) (applying Florida law), cited by the district court in this case and by the First District in Rubin, rejects a preemption argument by Honda Motor Company in a case involving the negligent design of an automobile, stating that "15 U.S.C. § 1397(c) provides that compliance with the federal regulations 'does not exempt any person from any liability under common law.' Honda cites no support for its contention that liability under common law does not mean liability for punitive damages under common law." Id. at 656 (emphasis added).

In varying contexts, some very close to that presented here, other federal and state courts have held that federal preemption does not bar a state law punitive damages award. See Bailey v. Container Corp. of America, 594 F.Supp.629, 633 (S.D.Ohio 1984) (in age discrimination case, state law claim which permitted recovery of compensatory and punitive damages was not preempted by the federal age discrimination act because "there is no clear statement of Congressional intent to preempt"); Burma-Bibus, Inc. v. Excelled Leather Coat Corp., 584 F.Supp. 1214, 1217 (S.D.N.Y.1984) (federal copyright law "does not preclude [plaintiff] from seeking punitive damages based upon its state law unfair competition cause of action"); Hepler v. CBS, Inc., 696 P.2d 596, 602 (Wash.Ct.App.1985) (federal ERISA Act does not preempt Pennsylvania state law claim for punitive damages in an employee's breach of contract action); Mathews v. Twin City Construction Co., 357 N.W.2d 500, 509 (S.D.1984) (federal labor law does not preempt state law punitive damages claim by worker terminated in violation of state's right to work law: "Since the substantive state law in this case is not preempted, the punitive damages award is valid"); Gryc v. Dayton-Hudson Corp., 297 N.W.2d 727, 738 (Minn.1980) (in products liability action against manufacturer of pajamas, federal Flammable Fabrics Act did not preempt a punitive damages award: "Since there is no clear congressional intent to preempt the private state remedy of punitive damages, we

find that such preemption cannot be implied"). See also Malquist v. Foley, 714 P.2d 995, 997 (Mont.1986) (plaintiff's state law claim not preempted by federal labor laws); Ellsworth v. Beech Aircraft Corp., 691 P.2d 630, 634-37 (Cal.1984) (cited in the district court's opinion) (preemption did not preclude jury from finding manufacturer liable for negligence in design of plane on the basis of its violation of Federal Aviation Administration safety regulations); Wheeler v. Caterpillar Tractor Co., 485 N.E.2d 372, 376 (Ill.1985) (state law retaliatory discharge claim not preempted by federal Energy Reorganization Act).

In a last gasp, Chrysler argues that the "savings clause" of the Act, 15 U.S.C.§ 1397(c), must be reconciled with the "supremacy clause" of the Act, 15 U.S.C. § 1392(d), which provides that whenever the federal scheme is applicable the state may not promulgate automobile safety standards which are not "identical to the Federal standard." From this, Chrysler argues that the only "reasonable accommodation" of the savings clause and the preemption clause is to construe the Act to permit state common law remedies only in areas not regulated at all by the federal scheme.

However, Chrysler fails to demonstrate, either in argument or by its citation of many inapplicable cases, that the allowance of state law negligence and products

liability actions involving automobiles conflicts in any way with the purposes of the Act. Indeed, the better argument is that the state tort law, through jury regulation in negligent automobile design cases, complements the federal safety regulations. See, e.g., Ellsworth v. Beech Aircraft Corp., 691 P.2d 630, 636-37 (Cal.1984). See also Gryc v. Dayton-Hudson Corp., 297 N.W.2d 727, 736 (Minn. 1980):

> "It is clear that the imposition of punitive damages on a manufacturer who has complied with the [federal Act] is not inconsistent with that Act in the sense that it would be impossible for a textile manufacturer to comply with the state-established duty and at the same time comply with the federal Act. The punitive damages remedy merely serves to impose a higher duty on that manufacturer." (Emphasis added.)

See generally Rubin v. Brutus Corp., 11 F.L.W.903, 903 (Fla.1st DCA Apr.15, 1986) ("the savings clause in [the federal Boat Safety Act] permits plaintiff to bring her action in state court"). In any event, it is Chrysler's burden to show the irreconcilable conflict between the award of punitive damages in this case and the Act, and Chrysler has utterly failed to carry this burden. See, e.g., Ellsworth, 691 P.2d at 637.

The clear import of the district court's decision and the other authorities cited above is that:

(1) Federal preemption is the exception, not the rule, and the party seeking to rely on the doctrine

of preemption carries a heavy burden to show its applicability.

(2) Unless Congress expressly supplants state tort remedies when it enacts a federal statutory scheme, preemption will not preclude such remedies. Here, there is no indication that Congress intended to abolish state tort claims in the auto safety area and, in fact, the savings clause of the Act shows that Congress' intent was that the availability of state tort remedies would remain unchanged.*

(3) Punitive damages are one part of traditional state law tort remedies and their availability is not affected by the Act.

If Chrysler's argument concerning preemption of state law punitive damages awards is sustained, the next logical step is the abolition of all state law tort claims against auto manufacturers because, as specifically found by the United States Supreme Court in Silkwood, punitive damages are merely "part of traditional state tort law." 104

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* Surely, if Congress had intended to abolish state tort claims in the auto safety area, it would have provided for a federal cause of action to replace the state law claims. That the Act establishes only safety regulations and does not deal in remedies for parties injured by violations of the Act is yet further evidence that Congress meant what it said when it decided that the Act does not "exempt any person from any liability under common law," 15 U.S.C. § 1397(c). See Handy v. General Motors Corp., 518 F.2d 786, 788 (9th Cir.1975) (in passing the Act, "Congress did not intend to create private rights of action in favor of individual purchasers of motor vehicles").

S.Ct. at 625. Thus, if this Court finds the award of punitive damages to be preempted by the Act, it would be merely a small step to next find that the Act precludes any state law tort claims against auto manufacturers arising out of design defects. And, this would create the situation decried by the Supreme Court in Silkwood of "remov[ing] all means of judicial recourse for those injured by illegal conduct." Id. at 623.

CONCLUSION

For the reasons stated, amicus curiae, The Academy of Florida Trial Lawyers, urges this Court to approve the decision of the Fourth District Court of Appeal.

THE ACADEMY OF FLORIDA TRIAL LAWYERS
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing has been furnished to Gilbert A. Haddad, Esquire, Post Office Box 345118, Coral Gables, Florida 33114; Joel S. Perwin, Esquire, 1201 City National Bank Building, 25 West Flagler Street, Miami, Florida 33130-1780; Sheila L. Birnbaum, Esquire, 919 Third Avenue, New York, New York 10022-9931; and to Michael B. Davis, Esquire, Post Office Box 3797, West Palm Beach, Florida 33402, by United States Mail, this 9th day of May, 1986.

Timothy J. Conigan
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