Sprietsma Opinion & Federal Pre-emption of Ryan's Law 22 April 2019

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Excerpts of the U.S. Supreme Court opinion in Sprietsma v. Mercury Marine related to possible federal preemption of Ryan's Law are identified and discussed in this document.

As noted in the related post on our website, I am not an attorney. However, I have closely followed issues surrounding recreational boat propeller guards for over 20 years.

Rex Sprietsma's wife Jean was fatally struck by an outboard motor propeller in 1995. Rex Sprietsma sued Mercury Marine in Illinois State Court claiming the boat motor was unreasonably dangerous because it did not have a propeller guard. Mercury Marine claimed federal pre-emption. Mercury Marine said Mr. Sprietsma's ability to sue to them was federally preempted by the 1971 Federal Boating Safety Act AND by the U.S. Coast Guard's 1990 decision not to require boat propeller guards. Mercury prevailed in Illinois Appellate Court but Mercury Marine's federal pre-emption defense was struck down by the U.S. Supreme Court.

The Sprietsma decision was announced 3 December 2002.

Comments in italics are those of Gary Polson of PropellerSafety.com .

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether a state common-law tort action seeking damages from the manufacturer of an outboard motor is pre-empted either by the enactment of the Federal Boat Safety Act of 1971, 46 U. S. C. §§ 4301–4311 (FBSA, 1971 Act, or Act), or by the decision of the Coast Guard in 1990 not to promulgate a regulation requiring propeller guards on motorboats.

The Court said there were two questions:

1. ***Is state common-law tort action pre-empted by the Federal Boat Safety Act of 1971?***
2. ***Is state common-law tort action pre-empted by the Coast Guard's 1990 decision not to require propeller guards on boats?***

State common-law tort action as used here refers to general laws states have concerning the ability of individuals to legally recover (sue the manufacturer) when they are injured by allegedly unreasonably dangerous equipment no matter what kind of equipment or device it is. These laws do not just apply to boats. They apply to all types of equipment and devices.

Pages 58-59 excerpt is below

Section 10 of the Act, as codified in 46 U. S. C. § 4306, sets forth the Act's pre-emption clause and thus provides the basis for respondent's express pre-emption argument. It states in full:

> "Unless permitted by the Secretary under section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title."

Section 40, 46 U. S. C. § 4311, sets forth the penalties that may be assessed against persons who violate the Act. At the end of that section, Congress included the following saving clause:

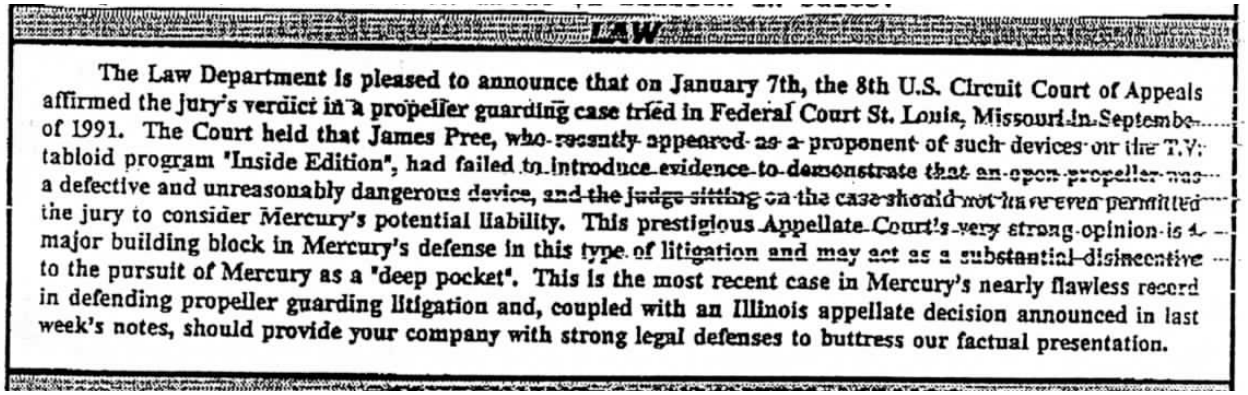
> "Compliance with this chapter or standards, regulations, or orders prescribed under this chapter does not relieve a person from liability at common law or under State law." § 4311(g).

The section above is known as the preemption clause of the Act. With regards to Ryan's Law, it says states or political divisions of states can not establish, continue, or enforce a law or regulation establishing a recreational vessel or or other safety standard or impose a requirement for associated equipment that is not identical to a regulation prescribed under section 4302 of this regulation.

This was seen by Mercury Marine and Brunswick as their primary defense. If states could not require the use of guards in any situation, common-law lawsuits would be rejected based on preemption in state courts. Similarly since the federal regulations did not specifically require the use of propeller guards, lawsuits would be rejected based on preemption in Federal Courts.

Their preemption defense worked great for over a decade.

Mercury Marine wrote about establishing their preemption defense in their January 11, 1993 internal weekly newsletter as seen below. It mentions winning on appeal in the Pree case and in an Illinois appellate court.



LAW

The Law Department is pleased to announce that on January 7th, the 8th U.S. Circuit Court of Appeals affirmed the jury's verdict in a propeller guarding case tried in Federal Court St. Louis, Missouri in Septembe of 1991. The Court held that James Pree, who recently appeared as a proponent of such devices on the T.V. tabloid program "Inside Edition", had failed to introduce evidence to demonstrate that an open propeller was a defective and unreasonably dangerous device, and the Judge sitting on the case should not have even permitted the jury to consider Mercury's potential liability. This prestigious Appellate Court's very strong opinion is a major building block in Mercury's defense in this type of litigation and may act as a substantial disincentive to the pursuit of Mercury as a "deep pocket". This is the most recent case in Mercury's nearly flawless record in defending propeller guarding litigation and, coupled with an Illinois appellate decision announced in last week's notes, should provide your company with strong legal defenses to buttress our factual presentation.

In term of the ability of a state or county's ability to establish a law requiring propeller guards, some read the preemption part of the Act as saying all such laws were preempted. Others read the regulation as saying it only preempts state and county laws in areas where there is already a Coast Guard standard / regulation. For example if the Coast Guard has no federal regulations on propeller guards, states and/or counties could establish one if they so desired. This exact discussion was had between Leslie Brueckner on behalf of Spriestma during her oral argument before the Supreme Court 15 October 2002, page 5.

Page 65 excerpt

> We first consider, and reject, respondent's reliance on the Coast Guard's decision not to adopt a regulation requiring propeller guards on motorboats. It is quite wrong to view that decision as the functional equivalent of a regulation prohibiting all States and their political subdivisions from adopting such a regulation. The decision in 1990 to accept the subcommittee's recommendation to "take no regulatory action," App. 80, left the law applicable to propeller guards exactly the same as it had been before the subcommittee began its investigation. Of course, if a state common-law claim directly conflicted with a federal regulation promulgated under the Act, or if it were impossible to comply with any such regulation without incurring liability under state common law, pre-emption would occur. This, however, is not such a case.

"Respondent" above refers to Mercury Marine.
The excerpt above clearly states USCG's decision not to require propeller guards does not prohibit any state or their political subdivisions from adopting such a regulation.

Pages 65-66 excerpt

> Indeed, history teaches us that a Coast Guard decision not to regulate a particular aspect of boating safety is fully consistent with an intent to preserve state regulatory authority pending the adoption of specific federal standards. That was the course the Coast Guard followed in 1971 immediately after the Act was passed, and again when it imposed its first regulations in 1972 and 1973. The Coast Guard has never taken the position that the litigation of state common-law claims relating to an area not yet subject to federal regulation would conflict with "the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941).

The excerpt above clearly says the Coast Guard decision not to regulate a specific area of boating safety is consistent with an intent to preserve state regulatory authority pending adoption of specific federal standards.

Pages 66-67 excerpt

policy of the statute"). In this instance, however, the Illinois Supreme Court's conclusion does not accurately reflect the Coast Guard's entire explanation for its decision:

> "The regulatory process is very structured and stringent regarding justification. Available propeller guard accident data do not support imposition of a regulation requiring propeller guards on motorboats. Regulatory action is also limited by the many questions about whether a universally acceptable propeller guard is available or technically feasible in all modes of boat operation. Additionally, the question of retrofitting millions of boats would certainly be a major economic consideration." App. 80.

This statement reveals only a judgment that the available data did not meet the FBSA's "stringent" criteria for federal regulation. The Coast Guard did not take the further step of deciding that, as a matter of policy, the States and their political subdivisions should not impose some version of propeller guard regulation, and it most definitely did not reject propeller guards as unsafe.[11] The Coast Guard's apparent focus was on the lack of any "universally acceptable" propeller guard for "all modes of boat operation." But nothing in its official explanation would be inconsistent with a tort verdict premised on a jury's finding that some type of propeller guard should have been installed on this particular kind of boat equipped with respondent's particular type of motor.

[11] Indeed, in response to the Propeller Guard Subcommittee's recommendation in favor of "educational and awareness campaigns," the Coast Guard indicated that it would publish a series of articles "aimed at avoiding boat/propeller strike accidents," which could include the topic of "available propeller guards." App. 82–83.

The excerpt above, along with its footnote need little explanation. The Coast Guard did not decide states and their political divisions should not impose propeller guard regulations. Plus the Coast Guard did not reject propeller guards as unsafe.

Page 68 excerpt

likely impact of state requirements." *Id.*, at 883. In the case before us today, the Solicitor General, joined by counsel for the Coast Guard, has informed us that the agency does not view the 1990 refusal to regulate or any subsequent regulatory actions by the Coast Guard as having any preemptive effect. Our reasoning in *Geier* therefore provides strong support for petitioner's submission.

The U.S. Solicitor General (the person appointed to represent the U.S. Government in front of the Supreme Court per Wikipedia) and ***counsel for the Coast Guard do not view the Coast Guard's 1990 decision not to require propeller guards as having any preemptive effect.*** *The Solicitor General's Brief supporting petitioner (supporting Rex Sprietsma) was joined by G. Alex Wellner, Attorney, United States Coast Guard, Department of Transportation, Washington D.C. 20590.*

Page 70 excerpt

gation. Absent a contrary decision by the Coast Guard, the concern with uniformity does not justify the displacement of state common-law remedies that compensate accident victims and their families and that serve the Act's more prominent objective, emphasized by its title, of promoting boating safety.

The U.S. Supreme Court says absent some future decision by the Coast Guard, the concern for uniformity (meaning the broad preemptive requirements) do not displace state common law remedies.

The Decision

The two questions defined by the Supreme Court on page 1 of this document were:

1. *Is state common-law tort action pre-empted by the Federal Boat Safety Act of 1971?*
2. *Is state common-law tort action pre-empted by the Coast Guard's 1990 decision not to require propeller guards on boats?*

The U.S. Supreme Court unanimously found neither question above preempted Mr. Sprietsma's right to sue to outboard motor manufacturer for not having a propeller guard on their motor. Thus the Sprietsma case was remanded back to the State of Illinois. The Sprietsma case later vanished indicating it was likely settled.

What About the Right of States to Require Propeller Guards?

If we take the Sprietsma case one step further and ask:

1A. Is a state regulation / law (or regulation / law by their political subdivision) requiring the use of propeller guards on certain boats pre-empted by the Federal Boat Safety Act of 1971?

2A. Is a state regulation / law (or regulation / law by their political subdivision) requiring the use of propeller guards on certain boats pre-empted by the Coast Guard's 1990 decision not to require propeller guards on boats?

In my view, the Sprietsma opinion says no to both questions (1A and 2A).

As to question 1A, the U.S. Supreme Court read the Coast Guard's regulations on pre-emption (excerpt on Page 58-59) as preventing States and their political subdivisions from creating laws/ regulations in conflict with existing USCG regulations. However the Court said States and their political subdivisions have the right to create laws / regulations such as requiring certain boats to have propeller guards because that area is not covered by existing Coast Guard regulations.

References for Question 1A: red marked section on excerpt from Pages 65-66, red marked section on excerpt from Pages 66-67.

References for Question 2A: red marked section on Page 65 excerpt, red marked section of Page 68 excerpt.

Conclusion

Based on the U.S. Supreme Court's written opinion in Sprietsma v. Mercury Marine, PropellerSafety.com refutes comments by the U.S. Coast Guard National Boating Safety Advisory Council (NBSAC) regarding federal preemption of Ryan's Law made at NBSAC's 100th meeting.

In short, the Federal Boating Safety Act of 1971 does not pre-empt Ryan's Law.

The End