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5 Breyer Opinions In Auto, Trucking Preemption Battles

By **Linda Chiem**

Law360 (January 27, 2022, 8:57 PM EST) -- After more than 27 years on the bench, U.S. Supreme Court Justice Stephen Breyer has left an indelible mark in areas including consumer protection and product liability, penning decisions clarifying the scope of federal preemption with important implications for the transportation industry.

With Justice Breyer's expected retirement at the end of the current term, Law360 highlights a few of his notable rulings impacting the automotive and trucking sectors.

Rowe v. New Hampshire Motor Transport Association

Motor carriers scored a win in 2008 when the justices unanimously held in Rowe v. New Hampshire Motor Transport Association that federal law preempted two provisions in a Maine statute that restricted shipping and delivery of tobacco products as part of the state's efforts to end tobacco sales to minors.

One section of the Maine law barred anyone other than a Maine-licensed tobacco retailer from accepting an order for delivery of tobacco and another section prohibited anyone from knowingly transporting a "tobacco product" to "a person" in Maine unless either the sender or the recipient had a Maine license.

The Federal Aviation Administration Authorization Act of 1994 bars states from enacting or enforcing laws "related to a price, route or service of any motor carrier."

Trucking associations sued, claiming Maine's law sought to regulate motor carriers' pickups and deliveries by saddling the truckers with onerous "recipient-verification" procedures and civil penalties if they did not thoroughly inspect every single package to determine whether it came from licensed or unlicensed tobacco retailers.

The justices agreed that the law was precisely the kind of state-mandated regulation that is preempted by the FAAAA.

"The state statutes aim directly at the carriage of goods, a commercial field where carriage by commercial motor vehicles plays a major role," Justice Breyer wrote. "The state statutes require motor-carrier operators to perform certain services, thereby limiting their ability to provide incompatible alternative services; and they do so simply because the state seeks to enlist the motor-carrier operators as allies in its enforcement efforts."

Beth S. Brinkmann, co-chair of Covington & Burling LLP's appellate and Supreme Court litigation group, argued the case on behalf of the motor-carrier groups while she was a partner at Morrison & Foerster LLP. She described it as a critical 9-0 win for the motor carrier industry.

"Justice Breyer relied on the real-world workings of competitive market forces. He also relied on the body of legislation Congress enacted to preclude a patchwork of different state regulations," Brinkmann told Law360. "His opinion adhered to that congressional action to deregulate the industry in favor of market forces and to preempt state regulation."

Brinkmann, who has argued 25 cases before the nation's high court and is a former deputy assistant attorney general in the U.S. Department of Justice's Civil Division, where she oversaw the appellate division, said Justice Breyer's questioning during her arguments "always focused on the core legal issue that he saw would determine the case."

"He was frank about what was bothering him," she said. "As an advocate, I greatly appreciated that. He provided me the opportunity to address his concerns directly, in a dialogue with the court. That included both his practical questions about how the particular law worked in the real world and also his intellectually rigorous questions about legal doctrine."

"Of course, his questions were known to be long," she added. "But his candor was very helpful to me as an advocate in the oral argument dynamic at the court."

Geier v. American Honda Motor Co.

The high court in 2000 took up the case of injured plaintiff Alexis Geier, who sought to hold American Honda Motor Co. liable for negligence over an accident involving a 1987 Honda Accord that wasn't equipped with a driver's side air bag. The Honda Accord in question complied with Federal Motor Vehicle Safety Standards, or FMVSS, that were in effect at the time, but Geier alleged Honda nonetheless should have equipped the car with a driver's side air bag.

In a 5-4 ruling, Justice Breyer wrote for the majority that the National Traffic and Motor Vehicle Safety Act of 1966, together with U.S. Department of Transportation regulations, preempted Geier's state tort suit. Under the specific regulation at issue, FMVSS 208, auto manufacturers could choose among several different passive restraint systems, including air bags and automatic seat belts, according to the ruling.

The decision was a landmark because it resolved an unsettled area of the law that was important to the automotive sector, according to Mayer Brown LLP partner Erika Jones, a former chief counsel with the U.S. DOT's National Highway Traffic Safety Administration.

"It has proven to be a durable framework for analyzing preemption by regulation since that time and remains a significant contribution to preemption jurisprudence," Jones said.

Justice Breyer determined that Geier's "no air bag" suit conflicted with federal law because it sought to impose a duty on automakers that "would have presented an obstacle to the variety and mix of devices that the federal regulation sought."

"It would have required all manufacturers to have installed airbags in respect to the entire District of Columbia-related portion of their 1987 new car fleet, even though FMVSS 208 at that time required only that

10% of a manufacturer's nationwide fleet be equipped with any passive restraint device at all," Justice Breyer wrote.

"It thereby also would have stood as an obstacle to the gradual passive restraint phase-in that the federal regulation deliberately imposed. In addition, it could have made less likely the adoption of a state mandatory buckle-up law," Justice Breyer continued. "Because the rule of law for which petitioners contend would have stood 'as an obstacle to the accomplishment and execution of' the important means-related federal objectives that we have just discussed, it is preempted."

In other words, long-standing principles of conflict preemption could be applied because in Geier, a significant objective of FMVSS 208 was to give manufacturers a choice of passive restraint devices to use, according to Rebecca Baden Chaney, co-chair of Crowell & Moring LLP's transportation practice.

"A manufacturer's choice not to install air bags was therefore not actionable," she said. "As a result, for more than 10 years, courts largely applied Geier to find that compliance with an FMVSS precludes common law tort claims alleging that compliant safety measures are inadequate."

Williamson v. Mazda Motor of America Inc.

Eleven years after Geier, the high court again took up the issue in a case against Mazda Motor of America Inc. brought by the family of Thanh Williamson, who was wearing a lap-only seat belt in 2002 when the 1993 Mazda minivan she was riding in collided with another vehicle, killing her.

When the minivan was made, federal law allowed vehicles to have lap-only seat belts, but the family sued Mazda under California state law, alleging the vehicle should have had a lap-and-shoulder seat belt and that Mazda failed to warn consumers of the risk of lap-only belts.

The Mazda case concerned FMVSS 208, the same regulation at issue in Geier. Legal experts said at the time that the justices agreed to take up the Mazda case in order to further clarify their Geier holding, given that courts had been interpreting Geier as protecting car companies from state law claims as long as they complied with federal regulations.

Under the 1989 version of FMVSS 208, automakers were required to install seat belts in the rear seats of passenger vehicles. They were required to install lap-and-shoulder belts on seats next to a vehicle's doors or frames, but they could choose what type of belt to install on rear inner seats, such as middle seats or those next to a minivan's aisle. Automakers could choose to install either simple lap belts or lap-and-shoulder belts.

But unlike in Geier, the Supreme Court unanimously held in 2011's Williamson v. Mazda Motor of America Inc. that federal law did not preempt the Williamsons' state tort suit. Justice Breyer wrote that providing manufacturers with the choice of seat belt was not a significant regulatory objective. The DOT's 1989 reasons for retaining that choice differed considerably from its 1984 reasons for permitting manufacturers a choice in respect to air bags, according to the ruling.

"DOT here was not concerned about consumer acceptance; it was convinced that lap-and-shoulder belts would increase safety; it did not fear additional safety risks arising from use of those belts; it had no interest in assuring a mix of devices; and, though it was concerned about additional costs, that concern was diminishing," Justice Breyer wrote.

"Justice Breyer seemingly narrowed the scope of FMVSS preemption to the circumstances in Geier — i.e.,

where setting out options for compliance is a significant objective of the applicable FMVSS — at least, again, under the circumstances of that case," Crowell & Moring's Chaney said.

American Trucking Associations Inc. et al. v. Michigan Public Service Commission et al.; and Mid-Con Freight Systems Inc. et al., Petitioners v. Michigan Public Service Commission et al.

Justice Breyer authored a pair of June 2005 opinions in two trucking industry challenges to a flat $100 annual fee that Michigan imposed on trucks engaged in intrastate commercial hauling.

Mid-Con Freight Systems Inc. claimed Michigan's fee flouted federal law establishing the Single State Registration System, or SSRS. The system allows a trucking company to fill out one set of forms in one state and, by doing so, the company registers its federal permit in every participating state through which its trucks travel.

The company argued the SSRS statute specifies a state may not impose any additional "registration requirement" or further obligations that constitute "an unreasonable burden." But in a 6-3 ruling, Justice Breyer and the majority said preemption did not apply here.

"We conclude, as we have said, that the term 'state registration requirement,' as used in the second sentence of the SSRS statute, covers only those state registration requirements that concern the subject matter of that statutory provision, namely the registration of a federal permit, proof of insurance and the name of an agent for service of process," Justice Breyer wrote. "It neither explicitly nor implicitly reaches unrelated matters."

Scopelitis Garvin Light Hanson & Feary PC partner Jim Hanson, who argued the case on behalf of Mid-Con Freight Systems, told Law360 he found the outcome disappointing.

"The thing in our case that we were troubled about is that the court relied on a different reason than what had been articulated at the lower court level, on the appellate level and what had been argued by the state of Michigan," Hanson said. "And the court went an entirely different way and said, 'Yes, it's a registration fee, but it's not a registration fee that is precluded by the Single State Registration System.' That was something that the state had never argued."

"Can the Supreme Court make a decision like that? Yes, they can. They can make an interpretation to say they're going a different direction than what the lower courts have done. It just surprised us," he said.

The American Trucking Associations and trucking company USF Holland Inc. also challenged the Michigan flat fee, but they raised a different argument. They alleged Michigan's fee violated the dormant commerce clause by imposing an unconstitutional burden on interstate trade. But the court disagreed.

"We find nothing in [the Michigan law] that offends the Commerce Clause," Justice Breyer wrote for the unanimous court. "The statute applies evenhandedly to all carriers that make domestic journeys. It does not reflect an effort to tax activity that takes place, in whole or in part, outside the state. Nothing in our case law suggests that such a neutral, locally focused fee or tax is inconsistent with the dormant Commerce Clause."

--Editing by Philip Shea and Jill Coffey.
