



2003

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### Recommended Citation

Zacarias, Carl (2003) "Recent Developments: *Sprietsma v. Mercury Marine*: Federal Boat Safety Act Does Not Preempt State Common Law Tort Claims," *University of Baltimore Law Forum*: Vol. 33 : No. 2 , Article 9.  
Available at: <http://scholarworks.law.ubalt.edu/lf/vol33/iss2/9>

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## *Sprietsma v. Mercury Marine:* Federal Boat Safety Act Does Not Preempt State Common Law Tort Claims

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By: Carl Zacarias

The United States Supreme Court held the Federal Boat Safety Act (FBSA) does not preempt state common-law tort claims. *Sprietsma v. Mercury Marine, Inc.*, 123 S.Ct. 518 (2002). Specifically, the Court held neither the express preemption clause of the FBSA, the Coast Guard's decision not to adopt a regulation, or any other implicit preemption within the FBSA preempted state common-law tort claims arising out of failure to install propeller guards on boat engines. *Id.* at 529. In so holding, the Court stated the most natural reading of the FBSA saving clause, read in conjunction with the preemption clause, indicates the Act was intended to preempt performance standards and equipment requirements imposed by positive state enactments. *Id.*

*Sprietsma* was killed in a boating accident when the propeller of an outboard motor struck her. In a common law tort action in Illinois state court, her estate claimed the Mercury motor that struck her was unreasonably dangerous because it had no propeller guard. The trial court found the action expressly preempted by the FBSA, and dismissed the complaint. The Illinois Supreme Court rejected the expressed preemption rationale, but

affirmed on implied preemption grounds. The United States Supreme Court granted certiorari on the issue of whether a state common-law tort action seeking damages from the manufacturer of an outboard motor is preempted by either the FBSA, or the decision of the Coast Guard not to promulgate a regulation requiring propeller guards on motor boats.

Before examining the theories of preemption asserted by Mercury, the Court reviewed the history of federal regulation of boat safety. *Sprietsma*, 123 S.Ct. at 524. The Court observed Congress enacted the FBSA to improve the safety of recreation boats. *Id.* at 524-25. The Congressional purpose behind the FBSA is "to improve boating safety," to authorize "the establishment of national construction and performance standards for boats and associated equipment" and to encourage greater "uniformity of boating laws and regulations as among the several States and the Federal Government." *Id.*

The Court next reviewed the authority of the Coast Guard to issue regulations establishing "minimum safety standards for recreational vessels and associated equipment," and requiring the installation or use of such equipment. *Sprietsma*, 123 S.Ct. at 525.

In particular, the Court pointed out the power of the Coast Guard to issue exemptions from its regulations if it determined that boating safety "will not be adversely affected." *Id.* (citing 49 C.F.R. § 4305 (1997)).

As a primer to its analysis, the Court set forth the preemption and savings clauses in question, and the facts behind the Coast Guard's consideration of propeller guard regulation. *Sprietsma*, 123 S.Ct. at 525-26. The preemption clause states that 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 that is not identical to a regulation prescribed under Section 4302 of this title." *Id.* (citing 46 U.S.C. § 4311(g).) The saving clause states that "[c]ompliance 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." *Id.*

As for the Coast Guard inaction, in 1990 the Coast Guard concluded, after extensive study, the available accident data did not support the adoption of a regulation

requiring propeller guards on motors. *Id.* However, the Coast Guard stated it would continue to review information “regarding development and testing of new propeller guard devices or other information on the state of the art.” *Id.* at 526.

The Court began its analysis by treating the issue of expressed preemption first. *Id.* at 526-27. The Court held the language of the preemption clause is the most naturally read as not encompassing common-law claims for two reasons. *Id.* First the Court observed the article ‘a’ before ‘law and regulation’ implies statutes, not common law. *Id.* Second, the terms “law” and “regulation” used together in the preemption clause indicate that Congress preempted only positive enactments by states. *Id.* The FBSA’s saving clause buttresses this conclusion because it “assumes that there are some significant number of common law liability cases to save and the language of the preemption provision permits a narrow reading that excludes common law actions.” *Id.*

The Court further stated that the contrast between its general reference to liability at common law and the more specific clause indicates it was drafted to preempt performance standards and equipment requirements imposed by statute or regulation. *Id.* The Court noted the rationale for Congress not to preempt common-law claims, which necessarily perform an important remedial role in compensating accident victims. *Id.*

On the issue of implied preemption, the Court began by stating the general rule on the issue. *Sprietsma*, 123 S.Ct. at 527-28. Implied preemption is found where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Id.* With that rule in mind, the Court rejected Mercury’s argument the Coast Guard’s decision not to adopt a regulation requiring propeller guards on motor boats is the functional equivalent of a regulation prohibiting all states and their political subdivisions from adopting such a regulation. *Id.*

The Court did recognize a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left unregulated. *Id.* at 528. The absence of federal regulation has as much preemptive force as a decision to regulate, but that was not the case here. *Id.* The Court found the stated reasons the Coast Guard gave for not issuing a regulation did not clearly indicate an intent or purpose to leave the area of propeller guards unregulated. *Id.*

Finally, the Court rejected the idea that the statutory scheme of the FBSA implicitly preempted state common-law tort action. *Sprietsma*, 123 S.Ct. at 529. The Court held the FBSA did not so completely occupy the field of safety regulation of recreational boats as to foreclose state common-law remedies. *Id.* The Court

compared this case with *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 98 S.Ct. 988 (1978), which held for field-preemption rules to apply there must be a “field reserved for federal regulation” and that “Congress had left no room for state regulation of these matters.” *Id.* The FBSA’s structure and framework do not convey a clear and manifest intent to preempt all state common law relating to boat manufacture. *Id.*

In conclusion, the Supreme Court’s holding in *Sprietsma* greatly affects many Maryland lawyers practicing in the areas of products liability and maritime law. Remedies in Maryland tort law are now available in boat safety cases. To the further advantage of plaintiff’s lawyers, the FBSA standards and regulations can be used to provide proof of negligence while still permitting large damage awards in state common law.