

PERSONAL JURISDICTION

The *authority* of the court to hear claims against a person or corporation and enter a judgement



LIMITATIONS OVER OUT OF STATE DEFENDANTS

- Due Process clause of the 14th Amendment
- "Minimum Contacts"
- Exercise of jurisdiction cannot offend "traditional notions of fair play and substantial justice."

SPECIFIC JURISDICTION

- "Continuous and systematic" in state activities of the corporation which give rise to the litigation
- A relationship between the defendant, the forum and the litigation

GENERAL JURISDICTION

- "All purpose" jurisdiction
- Defendant's contact with the forum are unrelated to the litigation
- Where is a corporation "at home"?
 - Place of incorporation
 - Principal place of business

WHY DOES THIS MATTER TO US?

- "Permit out-of-state defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."
- Motions to Dismiss
- Options & Strategic Considerations

FEDERAL PREEMPTION



WHAT IS PREEMPTION?

- The U.S. Constitution allows federal laws enacted by Congress to preempt state law
- A Federal law can explicitly state that it preempts state law claims or it can be done by implication
 - Express Preemption example:
 - **Federal Cigarette Labeling and Advertising Act**
No requirement or prohibition based on smoking and health **shall be imposed under State law** with respect to the advertising or promotion of any cigarettes . . .

WHAT IS PREEMPTION?

- To be “implied” Congress must show an intent to **fully occupy the field** at issue **or** the federal law **must conflict with state law** such that it is impossible to comply with both
 - By its very nature, implied preemption means a spirited argument on its application is guaranteed
 - We are still seeing preemption cases being argued in the Food and Drug Administration context, as well as Aviation

PREEMPTION IN AVIATION

- The Federal Aviation Act governs activity in the field of aviation – it provides regulation for the operation, design, manufacture and maintenance of aircraft
- The Act does not explicitly preempt state law
- For preemption to exist in Aviation, it must be implied

THE ENTIRE FIELD OF AVIATION SAFETY IS PREEMPTED

- In 1999, the Third Circuit Court of Appeals ruled that the entire field of aviation safety is preempted

Abdullah v. American Airlines: passengers injured as a result of turbulence in flight. Crew never alerted passengers to turbulence and did not change course. The Court determined that the history of the Act and the comprehensive nature of the Federal Aviation Regulations indicated Congress' intent to preempt the entire field of aviation safety .

DOES THIS APPLY IN PRODUCTS LIABILITY CASES?

There is an argument that it does because:

- the field of “aviation safety” necessarily includes the design and manufacture of aircraft and components
- the regulations governing design and manufacture are extensive demonstrating congressional intent to fully occupy the field of aviation

ARE STATE LAW CLAIMS PREEMPTED BY THE FEDERAL AVIATION ACT?

Sikkelee v. Precision Airmotive: Pilot fatally injured when the carburetor in his Cessna 172 allegedly malfunctioned causing the airplane to crash. Plaintiff's claims were ultimately narrowed to design defect and failure to warn. District Court held that design defect claims were preempted but failure to warn claims were not.

Sikkelee v. Precision Airmotive, 2016, Third Circuit Court of Appeals held that state law products liability claims for design and manufacturing defects are not preempted. Thus, the Third Circuit says "No".

THE REASONS THE THIRD CIRCUIT REJECTED PREEMPTION IN PRODUCTS LIABILITY CASES

- *Abdullah* does not govern these types of cases
 - *Abdullah* was limited to the operation of aircraft
 - 14 CFR 91.13 proscribes **operating** aircraft in a careless or reckless manner so as to endanger the life or property of another
- Congress did not signal any intent to fully occupy the field of design or manufacture of aircraft or its components
 - The design standards are not comprehensive
 - Requirements for a type certificate are merely baseline minimum standards and are insufficient to manifest an intent to preempt
 - The history of GARA confirms that Congress meant to allow state law products liability claims.

DID THE THIRD CIRCUIT LEAVE OPEN ANY POSSIBILITY FOR PREEMPTION IN PRODUCTS LIABILITY CASES?

- The Court acknowledged that these claims may be subject to conflict preemption – there may be circumstances in which it is impossible for a manufacturer to comply with both federal and state law
 - Manufacturers cannot make major changes to the design of their products without FAA approval

UNMANNED AIRCRAFT UPDATE

**ABC
2016**

**Ritz-Carlton
Naples,
Florida**



DISCUSSION TOPICS

- Part 107 – new drone rules
- State Legislation
- Number of aircraft and accidents

PART 107 - AIRCRAFT

- Small UAS (less than 55 lbs/25 kg)
- Non-recreational use

UAS Type	Authority
Commercial UAS	Part 107
Recreational UAS “model aircraft”	AC 91 – 57 & FMRA § 336
Other Civil UAS	Special Airworthiness Cert./Experimental FMRA §333
Public UAS	Certificate of Authorizations

Used for business = UAS



Used for fun = model aircraft

PART 107 – FAA REGISTRATION

- 0.55 lbs (250 grams) or greater



PART 107 – REMOTE PILOT AIRMEN

- Aeronautical knowledge:
 - FAA knowledge test (non-pilot)
 - Small UAS online training (pilot)
- TSA security check
- 16 years old

PART 107 - AIRSPACE

- Class G (uncontrolled) airspace
 - Even at or near airports!
- Class B, C, D, and E - prior ATC permission
- Class A - never

PART 107 - OPERATIONS

- Daylight, visual line-of-sight flying only
- 3 miles visibility
- 400 feet AGL, or 400 feet from a structure
- Max speed of 100 mph/87 knots
- Must yield to manned aircraft
- Cannot operate over people
- Report accidents

PART 107 - PENALTIES

- Civil penalties up to \$27,500
- Criminal penalties up to \$250,000 and/or imprisonment for up to three years
- Can apply for waiver of any rule

STATE LEGISLATION

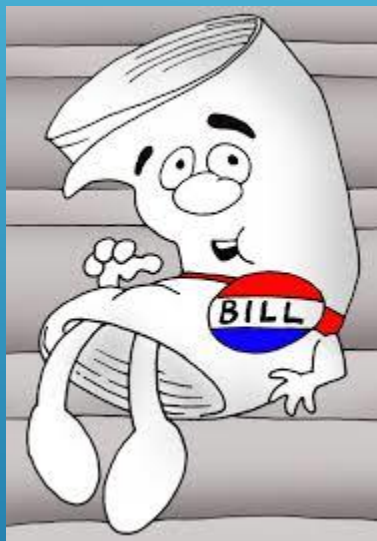
- Part 107 does not address preemption
- California AB 856 prohibits entering the airspace of a person in order to capture an image of that person
 - Response to the use of UAS by paparazzi



STATE LEGISLATION

- Idaho SB 1213 prohibits the use of UAS for hunting
- Utah HB 126 - misdemeanor to operate a UAS near wildfire
- Louisiana SB 73 prohibits intentionally crossing a police cordon using a drone
- Virginia HB 412 prohibits the regulation of UAS by localities
- Rhode Island HB 7511/SB 3099 gives exclusive regulatory authority over UAS to the state

FEDERAL LEGISLATION



- FAA Reauthorization Act of 2016
- Would preempt state and local authority to regulate such systems

*** UAS law is very much in flux – operators must stay aware of changes**

UAS NUMBERS

- **600,000** - FAA estimate of UAS used commercially in the first year of Part 107
- **700,000** - sales in 2015
- Sales grew 224% from 2015 to 2016
- The 2015 holiday season drone sales increased 445% from 2014

ACCIDENTS AND INJURIES

- Eyeball sliced open
- Crash during concert
- Model hit photo shoot
- Drone narrowly misses skier during slalom race



A flock of six drones is flying in a V-formation against a cloudy sky. The drones are silhouetted against the light background of the clouds. The word "Questions?" is written in white, sans-serif font in the upper right quadrant of the image. The image is framed by a blue gradient border on the left and right sides.

Questions?