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Sprietsma v. Mercury Marine: **Allowing State Regulation of Boat Engine Manufacturers Through Products Liability Lawsuits**

Richard Cutshall*

I. Introduction

In 2000, nearly 13 million boats and watercraft were owned and operated within the United States.¹ In the same year, there were nearly 8000 accidents, injuring more than 4300 people—701 fatally.² Of those fatal incidents, 25 involved contact with the boat’s propeller at some point in the chain of events.³ In 2000, a total of 88 incidents involved propeller strikes.⁴ That is, 28% of the propeller strikes reported in 2000 were fatal. Only two other types of boating accidents—capsizing and falls overboard—killed people more consistently.⁵ Despite these numbers, the United States Coast Guard, which regulates boat safety under the Federal Boat Safety Act (“FBSA”), has decided not to require propeller guards or other technology that could help prevent propeller strikes.⁶

Many products liability lawsuits have been filed against boat

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¹ U. S. COAST GUARD, BOATING STATISTICS 2000, 6 (Oct. 1, 2000), http://www.uscgoating.org/statistics/Boating_Statistics_2000.pdf.

² *Id.* at 9.

³ *Id.* at 21.

⁴ *Id.* at 27.

⁵ Capsizing was fatal in 205 of 502 accidents, a rate of 40.8%, and falls overboard were fatal in 213 of 610 accidents, a rate of 35%. *Id.* at 27.

⁶ *See Sprietsma v. Mercury Marine*, 123 S. Ct. 518, 525 (2002) [hereinafter *Sprietsma III*].

engine manufacturers for failure to install propeller guards. Some of these cases were successful, but most were dismissed on the ground that they were preempted by the FBSA and the Coast Guard's decision not to require propeller guards.⁷ Because of the disagreement among the lower courts, the United States Supreme Court decided to hear the issue in *Sprietsma v. Mercury Marine*.⁸ In reversing the Illinois Supreme Court's dismissal of the case on preemption grounds, the Court held that the FBSA neither expressly nor impliedly preempts state tort claims for failure to install propeller guards, regardless of the Coast Guard's decision not to require them.⁹

This note will review the key doctrines and decisions involved in *Sprietsma*. Part II will discuss the doctrine of federal preemption, the FBSA, the Coast Guard's decision not to require propeller guards, and the cases leading up to the Court's hearing of *Sprietsma*. Part III will discuss the decisions of the Illinois courts and the United States Supreme Court in *Sprietsma*. Part IV analyzes the Court's decision, and Part V assesses its potential impact.

II. Background

A. The Doctrine of Federal Preemption

The doctrine of federal preemption originates from the Supremacy Clause of the United States Constitution.¹⁰ Preemption can be explicit, where a statute explicitly states that it preempts state

⁷ Compare *Lady v. Neal Glaser Marine, Inc.*, 228 F.3d 598, 602 (5th Cir. 2000), *Cartensen v. Brunswick Corp.*, 49 F.3d 430, 433 (8th Cir. 1995), *Moss v. Outboard Marine Corp.*, 915 F. Supp. 183, 187 (E.D. Cal. 1996), *Davis v. Brunswick Corp.*, 854 F. Supp. 1574, 1586 (N.D. Ga. 1994), *Shield v. Bayliner Marine Corp.*, 822 F. Supp. 81, 84 (D. Conn. 1993), *Shields v. Outboard Marine Corp.*, 776 F. Supp. 1579, 1583 (N.D. Ohio 1991), *Ryan v. Brunswick Corp.*, 557 N.W.2d 541, 551 (Mich. 1997), *Sprietsma v. Mercury Marine*, 757 N.E.2d 75, 77 (Ill. 2001) [hereinafter *Sprietsma II*], and *Farner v. Brunswick Corp.*, 607 N.E.2d 562, 567 (Ill. App. Ct. 1993) (dismissing common law claims against boat engine manufacturers as preempted either expressly by the FBSA or impliedly by the FBSA and the Coast Guard's decision), with *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 252 (Tex. 1994), and *Ard v. Jensen*, 996 S.W.2d 594, 601 (Mo. Ct. App. 1999) (holding that common law claims were not preempted by the FBSA or the Coast Guard's decision).

⁸ See *Sprietsma III*, 123 S. Ct. at 522.

⁹ *Id.* at 529–30.

¹⁰ See *Ray v. Atl. Richfield Co.*, 435 U.S. 151, 157 (1978).

law, or implied.¹¹ There are two types of implied preemption: field preemption and conflict preemption.¹² A state law is invalid under the doctrine of field preemption when Congress intends to occupy an entire field and the state law falls into that field.¹³ Even when Congress does not intend to occupy an entire field, conflict preemption establishes that a state law is invalid if it obstructs the purposes and objectives of Congress or creates a situation where it is impossible to comply with both the state and federal law.¹⁴ The Supreme Court has stated that such a situation may go by the name of “conflicting,” “contrary to,” “repugnance,” “difference,” “irreconcilability,” “inconsistency,” “violation,” “curtailment,” “interference,” or anything of the like.¹⁵

In applying the preemption doctrine to state law, the first step is to determine the intent of Congress.¹⁶ The first place to look for congressional intent is the plain wording of any preemption clause.¹⁷ There is a common assumption that the historic police powers of the states are not to be superseded by federal law unless that is the clear and manifest intent of Congress.¹⁸ It is important to note, however, that the two forms of implied preemption are not barred simply because a federal law lacks express preemption by either lacking a preemption clause or containing a savings clause.¹⁹ Also, the relative importance to the state of its own law is immaterial when applying the preemption doctrine, because the framers of the U.S. Constitution provided that federal law must prevail.²⁰

¹¹ *See id.*

¹² *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 873 (2000) (internal quotation marks omitted).

¹⁶ *Ray*, 435 U.S. at 157.

¹⁷ *Sprietsma III*, 123 S.Ct. at 526.

¹⁸ *Ray*, 435 U.S. at 157.

¹⁹ *Geier*, 529 U.S. at 869.

²⁰ *Free v. Bland*, 369 U.S. 663, 666 (1962) (citing U.S. CONST. art. VI, cl. 2).

B. The Federal Boat Safety Act

The Federal Boat Safety Act (“FBSA”) was passed by Congress in 1971 in an attempt to regulate boating safety.²¹ The FBSA applies to recreational vessels and equipment on any waters that are subject to the jurisdiction of the United States and to any vessel owned in the United States.²² The FBSA’s stated purpose is to coordinate a national boating safety program to improve safety by requiring safer boats and boating equipment from manufacturers.²³ Eventually, through the Coast Guard’s efforts, boating safety would be improved by implementing uniform regulations throughout the country.²⁴ The FBSA grants the authority to promulgate regulations to the secretary of whichever department operates the Coast Guard, currently the Secretary of Transportation.²⁵ The authority to issue regulations for minimum safety standards was delegated to the Coast Guard by the Secretary of Transportation in 1972.²⁶

The FBSA contains two clauses of key importance with respect to federal preemption of state tort claims: the preemption clause and the savings clause.²⁷ The preemption clause provides that no state or subdivision thereof may establish or continue any regulation that establishes an equipment or performance standard that is not “identical to a regulation prescribed under” the FBSA, unless specifically exempted by the Secretary.²⁸ The savings clause states that compliance with the FBSA does not remove a person from common law or state law liability.²⁹

²¹ Federal Boat Safety Act of 1971, Pub. L. No. 92-75, 85 Stat. 213-14 (codified as amended at 46 U.S.C. §§ 4301–11 (2002)).

²² 46 U.S.C. § 4301(a) (2002).

²³ *See id.* § 4302(a)(1).

²⁴ *See id.*

²⁵ *Id.* § 4302.

²⁶ *See Sprietsma III*, 123 S. Ct. at 523–24 (citing 49 C.F.R. § 1.46(n)(1) (2002)).

²⁷ *Id.* at 524.

²⁸ 46 U.S.C. § 4306.

²⁹ *Id.* § 4311.

C. The Coast Guard's 1988 Propeller Guard Decision

In response to the number of injuries and fatalities caused by boat propeller accidents, the Coast Guard, pursuant to its authority under the FBSA, decided in 1988 that a special inquiry should be made into a potential propeller guard regulation.³⁰ Acting on authority from the Coast Guard, the National Boating Safety Advisory Committee appointed a special Propeller Guard Subcommittee to review the data on the prevention of propeller strike accidents and to study the available methods of shrouding propellers to prevent such accidents.³¹ The Subcommittee ended its 18-month study by recommending that no regulatory action be taken.³² The Subcommittee cited many factors, including the fact that propeller guards would harm boat performance, and although propeller guards would decrease penetrating injuries, they would increase blunt trauma.³³ The subcommittee also found that a regulation requiring propeller guards would be prohibitively expensive because there is no universal design that could be used to retrofit existing boats.³⁴

The Advisory Committee and, in turn, the Coast Guard, endorsed the Subcommittee's findings and decision.³⁵ The Coast Guard decided not to issue any regulations at that time, finding that the data did not support adopting them at that time.³⁶ The Coast Guard did, however, pledge that it would review available information on propeller guard regulation and stay abreast of state-of-the-art technology.³⁷ In 2001, the Coast Guard invited public comment on the possibility of a propeller guard regulation.³⁸ The Coast Guard has not yet adopted any of the proposed regulations.³⁹

³⁰ *Sprietsma III*, 123 S. Ct. at 525.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Sprietsma III*, 123 S. Ct. at 525.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Coast Guard Federal Requirements for Propeller Injury Avoidance Measures, 66 Fed. Reg. 63645 (2001) (to be codified at 33 C.F.R. pt. 175).

³⁹ See 33 C.F.R. pt. 175 (2003).

D. Cases Preceding the Court's decision in *Sprietsma*

Although many cases prior to *Sprietsma* considered the FBSA and its preemptive effect on state tort law claims, they reached no uniform conclusion.⁴⁰ The courts found explicit preemption in six cases and implied preemption in seven.⁴¹ Only two courts found no preemption.⁴² Of these cases, eight were decided in federal courts—all finding either explicit or implied preemption—and five were decided in state courts—three finding explicit preemption and two finding no preemption.⁴³

The courts that found express federal preemption⁴⁴ relied on the preemption clause of the FBSA.⁴⁵ These courts held that the question regarding express preemption under the FBSA was not whether Congress had preemptive intent, but rather, how much did Congress intend to preempt by the FBSA's express provision.⁴⁶ The preemption clause itself basically provides that any state law that is

⁴⁰ *Lady v. Neal Glaser Marine, Inc.*, 228 F.3d 598, 601 (5th Cir. 2000).

⁴¹ Express preemption was found in the following cases: *Cartensen v. Brunswick Corp.*, 49 F.3d 430, 432 (8th Cir. 1995); *Davis v. Brunswick Corp.*, 854 F. Supp. 1574, 1580 (N.D. Ga. 1994); *Shield v. Bayliner Marine Corp.*, 822 F. Supp. 81, 84 (D. Conn. 1993); *Mowery v. Mercury Marine*, 773 F. Supp. 1012, 1017 (N.D. Ohio 1991); *Ryan v. Brunswick Corp.*, 557 N.W.2d 541, 551 (Mich. 1997); *Farner v. Brunswick Corp.*, 607 N.E.2d 562, 567 (Ill. App. Ct. 1993). Implied preemption was found in the following cases: *Sprietsma v. Mercury Marine*, 757 N.E.2d 75, 86 (Ill. 2001); *Lady v. Neal Glaser Marine, Inc.*, 228 F.3d 598, 615 (5th Cir. 2000); *Moss v. Outboard Marine Corp.*, 915 F. Supp. 183, 187 (E.D. Cal. 1996); *Davis*, 854 F. Supp. at 1581; *Shield*, 822 F. Supp. at 84; *Shields v. Outboard Marine Corp.*, 775 F. Supp. 1579, 1581 (N.D. Ohio 1991); *Lewis v. Brunswick Corp.*, 107 F.3d 1494, 1504 (11th Cir. 1997).

⁴² *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 252 (Tex. 1994); *Ard v. Jensen*, 996 S.W.2d 594, 601 (Mo. Ct. App. 1999).

⁴³ The Federal cases are as follows: *Lady*, 228 F.3d at 615; *Cartensen*, 49 F.3d at 432; *Moss*, 915 F. Supp. at 187; *Davis*, 854 F. Supp. at 1580–81; *Shield*, 822 F. Supp. at 84; *Shields*, 776 F. Supp. at 1581; *Lewis*, 107 F.3d at 1504; *Mowery*, 773 F. Supp. at 1017. The State cases are as follows: *Sprietsma II*, 757 N.E.2d at 86; *Ryan*, 557 N.W.2d at 551; *Farner*, 607 N.E.2d at 567; *Moore*, 889 S.W.2d at 252; *Ard*, 996 S.W.2d at 601.

⁴⁴ See *Moss*, 915 F. Supp. at 185; *Cartensen*, 49 F.3d at 431; *Davis*, 854 F. Supp. at 1580; *Shield*, 822 F. Supp. at 84; *Mowery*, 773 F. Supp. at 1014; *Ryan*, 557 N.W.2d at 545; *Sprietsma v. Mercury Marine*, 729 N.E.2d 45, 48 (Ill. App. Ct. 2000) [hereinafter *Sprietsma I*]; *Farner*, 607 N.E.2d at 567.

⁴⁵ 46 U.S.C. § 4306.

⁴⁶ See, e.g., *Lewis*, 107 F.3d at 1500.

not identical to the regulations promulgated by the Coast Guard is preempted.⁴⁷ These courts also found that the decision not to regulate has all the preemptive force of a regulation.⁴⁸ Therefore, the courts essentially concluded that any state law requiring guards is preempted because it would not be identical to the Coast Guard's position.⁴⁹

Also, jury damage awards can impose a state regulation just as if it was enacted by state statute.⁵⁰ Therefore, the courts that found express preemption reasoned that a common law tort action in which damages are awarded would be tantamount to a state regulation requiring the use of propeller guards, and therefore, would stand in direct opposition to the regulation that there is no mandate for the use of propeller guards.⁵¹

The plaintiff in *Cartensen v. Brunswick Corporation* argued that the savings clause⁵² in the FBSA alters the preemption analysis.⁵³ The Eighth Circuit Court of Appeals rejected that argument, however, holding that a savings clause cannot save common law rights, “the continued existence of which would be absolutely inconsistent with the provisions of the act.”⁵⁴ The court went on to hold that a general remedies savings clause “cannot be allowed to supersede the specific substantive pre-emption provision,” but the interpretation of the savings clause “must be guided by the goals and policies of the Act.”⁵⁵

Seven cases prior to the U.S. Supreme Court's decision in *Sprietsma* found implied preemption of state law claims by the FBSA.⁵⁶ Two of these courts also found express preemption under

⁴⁷ *See id.* at 1500–01.

⁴⁸ *Cartensen*, 49 F.3d at 431.

⁴⁹ *See id.*

⁵⁰ *Id.* at 432.

⁵¹ *Id.*

⁵² The savings clause reads, “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.” 46 U.S.C. § 4311(g) (2002).

⁵³ *Cartensen*, 49 F.3d at 432.

⁵⁴ *Id.* (quoting *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907)).

⁵⁵ *Id.* (citations omitted).

⁵⁶ *See supra* note 41 (listing the seven cases finding implied preemption).

the analysis described above, while five of them found only implied preemption.⁵⁷ The courts that found implied federal preemption began by analyzing the Coast Guard's decision not to regulate propeller guards, and found that that decision was tantamount to a federal regulation.⁵⁸ They then held that a jury award of damages in a tort or products liability case is tantamount to a state law or regulation requiring manufacturers to outfit their products with propeller guards.⁵⁹ These courts concluded that a state regulation—even if created by a jury award—would both stand as an obstacle to and frustrate the purposes of the FBSA, because the Coast Guard decided that the area is best left unregulated.⁶⁰

Of the thirteen cases that have ruled on the preemptive effect of the FBSA on state tort actions, only two have found that there is no preemptive effect.⁶¹ Both of these cases began with the presumption that preemption does not apply because of the states' interest in health and safety.⁶² Both cases also found it important that the FBSA contains a savings clause.⁶³ In *Ard v. Jensen*, for example, the Missouri Court of Appeals for the Western District held that, by using a savings clause, Congress intended that manufacturers should not be shielded from liability simply because they complied with the FBSA.⁶⁴ That court went on to hold that, although Congress wanted to spare manufacturers from state laws that differed from state to

⁵⁷ Compare *Davis*, 854 F. Supp. at 1580, and *Shield*, 822 F. Supp. at 84 (finding express preemption in addition to implied preemption), with *Sprietsma II*, 757 N.E.2d at 86, *Lady*, 228 F.3d at 615, *Moss*, 915 F. Supp. at 187, *Shields*, 776 F. Supp. at 1581, and *Lewis*, 107 F.3d at 1504 (finding only implied preemption).

⁵⁸ See *Lady*, 228 F.3d at 614; *Lewis* 107 F.3d at 1505; *Davis*, 854 F. Supp. at 1580; *Shields*, 776 F. Supp. at 1581; *Moss*, 915 F. Supp. at 186; *Shield*, 822 F. Supp. at 84; *Sprietsma II*, 757 N.E.2d at 86.

⁵⁹ See *Lady*, 228 F.3d at 614; *Lewis* 107 F.3d at 1505; *Davis*, 854 F. Supp. at 1580; *Shields*, 776 F. Supp. at 1581; *Moss*, 915 F. Supp. at 186; *Shield*, 822 F. Supp. at 84; *Sprietsma II*, 757 N.E.2d at 86.

⁶⁰ See *Lady*, 228 F.3d at 614; *Lewis* 107 F.3d at 1505; *Davis*, 854 F. Supp. at 1580; *Shields*, 776 F. Supp. at 1581; *Moss*, 915 F. Supp. at 186; *Shield*, 822 F. Supp. at 84; *Sprietsma II*, 757 N.E.2d at 86.

⁶¹ See *Ard v. Jensen*, 996 S.W.2d 594 (Mo. Ct. App. 1999); *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246 (Tex. 1994).

⁶² *Ard*, 996 S.W.2d at 599; *Moore*, 889 S.W.2d at 249–50.

⁶³ *Ard*, 996 S.W.2d at 599; *Moore*, 889 S.W.2d at 250 (discussing 46 U.S.C. § 4311).

⁶⁴ *Ard*, 996 S.W.2d at 599.

state, it would be improper to allow the manufacturers to design boats that they should reasonably foresee as causing injury.⁶⁵

Similarly, the Texas Supreme Court in *Moore v. Brunswick Bowling & Billiards Corp.* recognized that, although a jury verdict in a state tort action may be similar to a regulation, that verdict does not have the same regulatory effect as a positive enactment and is not enough to trigger preemption.⁶⁶ The court reasoned that the phrase “laws or regulations” in the preemption clause⁶⁷ did not include the common law, because Congress evidenced the fact that it would use the term “common law” when it meant to include the common law in a provision’s scope, as it did in the savings clause.⁶⁸ In holding that the preemption clause did not include the common law, the court also refused to accept the position that the grounds of a state tort action must be predicated on laws that are identical to those promulgated by the Coast Guard under the FBSA.⁶⁹

In 1997, these varying applications of the FBSA to state tort actions led the U.S. Supreme Court to grant certiorari in *Lewis v. Brunswick Corporation*.⁷⁰ The Court never decided the case, however, because the parties settled.⁷¹ But later, in *Sprietsma*, the Court finally ruled on the question of whether the FBSA preempts state tort actions.⁷²

III. *Sprietsma v. Mercury Marine*

A. Lower Court Decisions

On July 10, 1995, Jeanne Sprietsma was riding on an 18-foot boat powered by a 115-horsepower outboard motor on a lake spanning the Tennessee-Kentucky border.⁷³ The motor was

⁶⁵ *See id.*

⁶⁶ *See Moore*, 889 S.W.2d at 249–50.

⁶⁷ 46 U.S.C. § 4306 (2002).

⁶⁸ *Moore*, 889 S.W.2d at 250.

⁶⁹ *See id.*

⁷⁰ *See id.*

⁷¹ *See id.*

⁷² *Sprietsma III*, 123 S. Ct. at 530.

⁷³ *Id.* at 522.

manufactured by Mercury Marine, a division of the Brunswick Corporation.⁷⁴ The motor was not equipped with any sort of propeller guard.⁷⁵ As the driver of the boat made a right turn, Sprietsma was thrown from the boat and came into contact with the propeller, killing her.⁷⁶

Sprietsma's husband filed suit against Mercury Marine, among others, for wrongful death.⁷⁷ He sought to recover for his wife's pain and suffering, as well as the loss of consortium and pecuniary loss suffered by himself and his son.⁷⁸ The complaint in the case had nine counts, all of which sought recovery under state law.⁷⁹ The complaint stated in each count that the defendant's failure to equip the engine with a propeller guard created an unreasonably dangerous product.⁸⁰ The defendants filed a motion to dismiss, arguing that the FBSA both expressly and impliedly preempted the state tort claims.⁸¹ The trial court granted the motion, holding that, although the claims were not expressly preempted, they were impliedly preempted.⁸²

The trial court decision was affirmed by the Illinois Court of Appeals for the First District on April 6, 2000.⁸³ The appellate court began by reviewing the statutory language of both the preemption and savings clauses, as well as the Coast Guard's 1988 decision not to regulate propeller guards.⁸⁴ The court recognized that a reviewing court should be reluctant to find preemption when the state law is in an area traditionally reserved for the states, and that preemption should only be found where it is the clear and manifest purpose of Congress.⁸⁵ The court then noted that Illinois courts, other than the

⁷⁴ *Sprietsma III*, 123 S. Ct. at 530.

⁷⁵ *Sprietsma II*, 757 N.E.2d at 77.

⁷⁶ *Sprietsma I*, 729 N.E.2d at 46.

⁷⁷ *Sprietsma II*, 757 N.E.2d at 77.

⁷⁸ *Id.*

⁷⁹ *Sprietsma III*, 123 S. Ct. at 522.

⁸⁰ *Id.*

⁸¹ *Sprietsma II*, 757 N.E.2d at 77.

⁸² *Id.*

⁸³ *See Sprietsma I*, 729 N.E.2d at 45.

⁸⁴ *See id.* at 47.

⁸⁵ *Id.* at 48.

Illinois Supreme Court, are bound by the decisions of federal courts interpreting federal acts when there is a split of federal authority and the United States Supreme Court has not yet ruled.⁸⁶ The appellate court followed the reasoning of the Eighth Circuit in *Cartensen v. Brunswick Corporation*⁸⁷ and held that the plaintiffs' claims were expressly preempted by the FBSA.⁸⁸ The appellate court did not address the subject of implied preemption.⁸⁹

The Illinois Supreme Court reviewed the decision of the court of appeals on August 16, 2001.⁹⁰ The court began by examining the legislative history of the FBSA in order to determine the congressional purpose.⁹¹ Next, the court examined the Coast Guard's 1988 decision not to regulate propeller guards.⁹² The first step the court took in its preemption analysis was to determine whether there was a presumption against preemption.⁹³ The court held that, in light of U.S. Supreme Court precedent, there was no presumption against preemption because maritime law is an area traditionally reserved for federal regulation.⁹⁴ The Illinois Supreme Court stated that, although it would give some deference to the federal court decisions interpreting the FBSA in an effort to establish uniformity, that

⁸⁶ *Id.* at 48–49.

⁸⁷ *See id.* at 49–51. The Eighth Circuit held that for purposes of preemption there is no distinction between an enactment and common law and that the preemption clause preempts any state law that is not identical to the Federal regulations. *Cartensen*, 49 F.3d at 431–32. It further held that the savings clause is merely in place to allow liability for defectively designed products. *Id.* The court concluded that a plaintiff may not bring suit for failing to install a propeller guard if such as guard is not required by Federal regulation, but if a manufacturer did decide to install a propeller guard, and did so negligently, that manufacturer could not raise its compliance with the act as a *per se* defense. *Id.*

⁸⁸ *See Sprietsma I*, 729 N.E.2d at 51.

⁸⁹ *See id.*

⁹⁰ *See Sprietsma II*, 757 N.E.2d at 75.

⁹¹ *Id.* at 78. The court found that the purpose was to provide safer boats and boating equipment through the use of safety standards in a coordinated national safety program, as promulgated by the Coast Guard. *Sprietsma II*, 757 N.E.2d at 78.

⁹² *See id.* at 78–79.

⁹³ *See id.* at 79.

⁹⁴ *See id.* at 80 (citing *Foremost Insurance Co. v. Richardson*, 457 U.S. 668, 674 (1982) (holding that the collision of two pleasure boats fell within maritime jurisdiction, an area traditionally reserved for federal jurisdiction)).

deference was not unlimited and would be given only if the federal court's rationale makes sense.⁹⁵

Against that background, the court first considered the issue of express preemption.⁹⁶ The court began with the language of the clause and held that the statute intended to include common law claims by using the term "laws and regulations."⁹⁷ The court noted, however, that the preemption clause must be read in combination with the savings clause, and that the existence of a savings clause forbids a broad interpretation of a preemption clause.⁹⁸ Therefore, the court held, the FBSA did not expressly preempt the plaintiffs' claims.⁹⁹

Next, the court considered the issue of implied preemption.¹⁰⁰ The court relied on U.S. Supreme Court precedent to establish that implied preemption is found either 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."¹⁰¹ The court noted that it would be possible for a manufacturer to comply with a state common law rule requiring propeller guards and the Coast Guard's decision not to regulate them.¹⁰² As such, the court held that the first rule of implied preemption did not apply.¹⁰³ Therefore, the court only concerned itself with the second consideration—whether "a state common law tort claim based on failure to install the propeller guards stands as an obstacle to the accomplishment of the purposes and objectives Congress sought to achieve in enacting the FBSA."¹⁰⁴ The court then relied on the

⁹⁵ See *Sprietsma II*, 757 N.E.2d at 80.

⁹⁶ *Id.*

⁹⁷ See *id.* at 81.

⁹⁸ See *id.*

⁹⁹ See *id.* at 82.

¹⁰⁰ See *id.*

¹⁰¹ *Sprietsma II*, 757 N.E.2d at 82. For the first proposition, the court cited *English v. Gen. Elec. Co.*, 496 U.S. 72, 74 (1990). For the second state proposition, the court cited *Hines v. Davidowitz* 312 U.S. 52, 67–68 (1941).

¹⁰² *Id.*

¹⁰³ See *id.*

¹⁰⁴ See *id.*

Supreme Court's ruling in *Ray v. Atlantic Richfield Co.*,¹⁰⁵ and decided that the Coast Guard's affirmative decision not to regulate meant that the Coast Guard believed that the area of propeller guards was best left unregulated.¹⁰⁶ The court then ruled that allowing common law verdicts would, in effect, require manufacturers to use propeller guards.¹⁰⁷ The court concluded that the plaintiffs' claims were impliedly preempted because such a requirement would frustrate the objectives of Congress in promulgating the FBSA.¹⁰⁸ Thus, the Illinois Supreme Court affirmed the appellate court's decision, albeit on different grounds.¹⁰⁹

B. The United States Supreme Court's Decision

The Supreme Court granted certiorari to Joanne Sprietsma's husband on January 22, 2002.¹¹⁰ The Court found that, although it had no reason to decide the merits of the claim under Illinois law,¹¹¹ three theories could support the preemption defense: (1) that the FBSA expressly preempts common law claims; (2) that the Coast Guard's decision not to regulate propeller guards impliedly preempts common law claims; and (3) that the potential conflict between diverse state rules and the federal interest in a uniform system of regulation impliedly preempts such claims.¹¹²

1. Express Preemption

Regarding express preemption, the Supreme Court first focused on the plain wording of the statute as the best indicator of

¹⁰⁵ 435 U.S. 151 (1978). In *Ray*, the Supreme Court held that enforcement of a state size requirement for oil tankers, an area unregulated by the federal government, would at the least frustrate the purpose of the Vehicle Safety Act, which was to establish a uniform federal regime covering tankers. *Ray*, 435 U.S. at 165–68.

¹⁰⁶ See *Sprietsma II*, 757 N.E.2d at 85.

¹⁰⁷ *Id.*

¹⁰⁸ See *id.*

¹⁰⁹ See *id.* at 86.

¹¹⁰ *Sprietsma v. Mercury Marine*, 534 U.S. 1112 (2002).

¹¹¹ This was because the preemption defense raised a threshold issue, and therefore the Court did not need to decide the merits or viability of the claim under Illinois law. *Sprietsma III*, 123 S. Ct. at 522.

¹¹² See *id.* at 522–23.

congressional intent.¹¹³ The Court chose to focus on the phrase “a [state or local] law or regulation” in the preemption clause of the FBSA.¹¹⁴ The Court concluded that Congress did not intend to preempt common law claims for two reasons.¹¹⁵ First, the Court reasoned that there is a discreteness implied by the use of the article “a” before “law or regulation” in statutes and regulations that is not present in the common law.¹¹⁶ Second, the Court relied on the principle that “a word is known by the company it keeps,” and that by using “law” and “regulation,” Congress intended that only positive enactments be preempted.¹¹⁷ The Court reasoned that if “law” was read broadly enough to include the common law, then it would also include regulations.¹¹⁸ Such a reading would render the preemption clause’s use of the word “regulations” superfluous, which would violate the principle that every word in a statute has meaning.¹¹⁹

The Court then relied on the savings clause to support its decision that the common law is not included in the preemption clause.¹²⁰ The Court again cited two reasons. First, the Court held that, because the FBSA contains a savings clause, there must be a significant number of common law claims to save, and that means that the preemption clause should be read narrowly.¹²¹ Second, the Court held that, although the use of “common-law” in the savings clause is broad, the preemption clause is fairly specific, and should therefore be narrowly interpreted.¹²² For these reasons, the Court held that the FBSA does not expressly preempt state tort actions.¹²³

¹¹³ *Sprietsma III*, 123 S. Ct. at 526.

¹¹⁴ *Id.* at 526 (alteration in original).

¹¹⁵ *See id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Sprietsma III*, 123 S. Ct. at 526.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *See id.* at 526–27.

¹²³ *See Sprietsma III*, 123 S. Ct. at 526–27.

2. Implied Preemption Based on the Decision Not to Regulate

The Court began its analysis of the Coast Guard's decision not to regulate in the area of propeller guards by concluding that that decision was not equivalent to a decision to regulate.¹²⁴ The Court reasoned that the decision left the area exactly as it was before the Coast Guard began its investigation into whether to regulate the area.¹²⁵ The Court held that the Coast Guard's earlier decisions under the FBSA supported this reasoning.¹²⁶ Just after the enactment of the FBSA, the Secretary of Transportation exempted all then-existing state legislation regarding boat safety, and even after the Coast Guard began to promulgate regulations, all areas of state legislation that were left unregulated by the federal government were allowed to maintain their exemption status.¹²⁷ The Court also discussed the rationale behind the Coast Guard's decision not to regulate propeller guards.¹²⁸ According to the Court, the Coast Guard did not decide that the area was best left unregulated, but rather that the proposed regulations simply did not live up to the stringent standards that must be met in order to pass a regulation.¹²⁹ The Court concluded that a jury verdict stating that a manufacturer should have installed a guard would not go against the main concern of the Coast Guard: the lack of universally acceptable designs.¹³⁰

¹²⁴ *See id.* at 527.

¹²⁵ *See id.*

¹²⁶ *See id.* at 527–28.

¹²⁷ *Sprietsma III*, 123 S. Ct. at 524.

¹²⁸ *See id.* at 528 (holding that the Coast Guard decided not to regulate because there could be technical problems with boat operation if all boats had propeller guards, the cost of retro-fitting all existing boats would be cumbersome and expensive, there were no universally acceptable designs for all boats, and the regulatory process is very structured and stringent).

¹²⁹ *See id.*

¹³⁰ *See id.*

The Court then distinguished *Sprietsma* from other cases where it held that a decision not to regulate was tantamount to an affirmative regulation.¹³¹ Most important, the Court distinguished *Geier v. American Honda Motor Co.*,¹³² because that decision left it to the manufacturers to determine what kind of passive restraint system should be used, while in *Sprietsma*, the decision not to regulate was not based on any such consideration.¹³³

3. Implied Preemption Based on Congressional Intent to Reserve Boat Safety Regulation to the Federal Government

Finally, the Court discussed the issue of field preemption under the FBSA.¹³⁴ The Court relied on *Ray v. Atlantic Richfield Co.*¹³⁵ and *United States v. Locke*¹³⁶ for the proposition that the states may not regulate in any area where Congress has reserved the entire field for federal legislation.¹³⁷ In applying that rule in *Sprietsma*, the Court distinguished the FBSA from *Ray* and *Locke* because the statutes considered in those cases required the Secretary to promulgate regulations.¹³⁸ Under the FBSA, however, the Coast Guard is not required to regulate every aspect of recreational boating.¹³⁹ The Court also distinguished those cases because they

¹³¹ See *Sprietsma III*, 123 S. Ct. at 528.

¹³² *Geier v. American Honda Motor Co.*, 529 U.S. 861, 881 (2000). *Geier* involved a regulation promulgated under the Federal Motor Vehicle Safety Act that required not airbags, but a different passive restraint system. See *id.* at 881.

¹³³ See *Sprietsma III*, 123 S. Ct. at 528–29.

¹³⁴ See *id.* at 529.

¹³⁵ *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 165 (1978). *Ray* involved a federal statute regarding the gross tonnage of oil tankers, which the State of Washington attempted to modify for tankers on the Puget Sound by its own statute. See *id.* at 165.

¹³⁶ *United States v. Locke*, 529 U.S. 89, 111 (2000). *Locke* involved a challenge by the International Association of Independent Tanker Owners (“Intertanko”) of a Washington statute that related to oil tankers and the preventative methods the state tried to employ to avoid oil spills. See *id.* at 111.

¹³⁷ See *Sprietsma III*, 123 S. Ct. at 529.

¹³⁸ See *id.*

¹³⁹ See *id.*

involved statutes and did not purport to preempt state tort actions.¹⁴⁰ The Court then pointed out its conclusion that the savings clause expressly preserved those claims.¹⁴¹

The Court went on to concede that the FBSA could be interpreted as expressly occupying the field of state positive laws and regulations.¹⁴² The Court then stated its conclusion that the FBSA lacks a “clear and manifest” intent to implicitly preempt all state common law relating to boat manufacture.¹⁴³ Rather, in the Court’s opinion, the FBSA has the opposite intent, so as to allow state common law relating to boat manufacture.¹⁴⁴

Finally, the Court considered Mercury Marine’s argument that allowing state tort claims would go against one of the stated goals of the FBSA, namely, uniformity in manufacturing regulations.¹⁴⁵ The Court recognized that the preemption clause was meant to “assur[e] that manufacture for the domestic trade will not involve compliance with widely varying local requirements.”¹⁴⁶ The Court, however, rejected this argument, ruling that the interest in uniformity is not unyielding.¹⁴⁷ The Court then ruled that state common law remedies that compensate accident victims and serve the promotion of boat safety should not be displaced by the argument for uniformity.¹⁴⁸

IV. Analysis

This analysis will answer three questions: (1) whether the FBSA expressly preempts state tort claims; (2) whether the Coast Guard’s decision not to regulate propeller guards implicitly preempts state tort claims; and (3) whether the FBSA, regardless of actions taken by the Coast Guard, impliedly preempts state tort claims. This note concludes that, although the FBSA does not expressly preempt

¹⁴⁰ *See id.* at 529-30.

¹⁴¹ *See id.*

¹⁴² *Id.* at 530.

¹⁴³ *Sprietsma III*, 123 S. Ct. at 530.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Sprietsma III*, 123 S. Ct. at 530.

all state tort claims,¹⁴⁹ the Coast Guard's decision not to regulate, when considered in conjunction with the plain language and the legislative history of the FBSA, impliedly preempts the ability of parties to file state tort claims for failure to exceed the safety regulations promulgated by the Coast Guard.

A. The Failure of the Express Preemption Defense

As the U.S. Supreme Court stated, express preemption depends on congressional intent, and the best evidence of congressional intent is the plain language of the FBSA's preemption clause.¹⁵⁰ The preemption clause reads as follows:

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 . . . that is not identical to a regulation prescribed under section 4302 of this title.¹⁵¹

Although the Court gave two reasons that this clause does not preempt state law claims, its second reason is more compelling. The Court ruled that a "word is known by the company it keeps" and applied that principle to the placement of the words "law" and "regulation" in the same clause.¹⁵² The Court made a compelling argument that if the word "law" were read broadly enough to include both the common law and the acts of legislatures, then it would include regulations as well.¹⁵³ Because that reading would make the word "regulation" superfluous, the Court was correct in concluding that the word "law" in the preemption clause of the FBSA does not include the common law.¹⁵⁴

The Court also correctly interpreted the savings clause of the

¹⁴⁹ For example, the FBSA does not expressly preempt state tort claims for defectively designed products that are actually installed. *Cartensen*, 49 F.3d at 432.

¹⁵⁰ See *Sprietsma III*, 123 S. Ct. at 526.

¹⁵¹ 46 U.S.C. § 4306 (2002).

¹⁵² *Sprietsma III*, 123 S. Ct. at 526.

¹⁵³ See *id.*

¹⁵⁴ See *id.*

FBSA.¹⁵⁵ The savings clause reads, in part: “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.”¹⁵⁶ The courts that have considered this issue have interpreted this clause as affecting the preemption clause in three ways.

First, the Supreme Court held that the savings clause does not support the express preemption argument because the use of the broad term “common law” in the savings clause emphasizes the narrow scope of the preemption clause.¹⁵⁷ Second, the Illinois Supreme Court stated that by using the terms “law or regulation” in the preemption clause, Congress intended to preempt some state law claims.¹⁵⁸ The court then ruled that the existence of the savings clause prevented a broad reading of this preemption clause.¹⁵⁹ Because of this limitation, the Illinois Supreme Court found no express preemption.¹⁶⁰ That court did hold, however, that there was implied preemption for any claim based on a failure to install propeller guards.¹⁶¹ This decision was based on the Illinois Supreme Court’s finding that a jury verdict against propeller manufacturers would present an obstacle to the accomplishment and execution of the FBSA.¹⁶² Third, the Eighth Circuit, in *Cartensen v. Brunswick Corp.*, relied on the historical notes accompanying the FBSA to determine that, although the savings clause was intended to keep manufacturers from asserting compliance with the FBSA as a defense in products liability suits, it was not intended to allow tort claims when compliance was unnecessary.¹⁶³ The Illinois Court of Appeals for the First District followed this view when it heard *Sprietsma* and held that, although a manufacturer is not liable for failing to install a propeller guard, once a manufacturer does so install, it can be held

¹⁵⁵ *See id.*

¹⁵⁶ 46 U.S.C. § 4311(g).

¹⁵⁷ *See Sprietsma III*, 123 S. Ct. at 526.

¹⁵⁸ *Sprietsma II*, 757 N.E.2d at 81.

¹⁵⁹ *Id.*

¹⁶⁰ *See id.* at 82.

¹⁶¹ *Id.* at 86.

¹⁶² *Id.* at 85.

¹⁶³ *See Cartensen*, 49 F.3d at 432.

liable if the installation was performed negligently.¹⁶⁴ The Illinois Court of Appeals also held that if a company installed a device mandated by regulation, but did so negligently, compliance with the FBSA could not be used as a defense.¹⁶⁵

As the Supreme Court held in *Sprietsma*, for a preemption clause to explicitly preempt state law, Congress must evidence a “clear and manifest” intent to do so.¹⁶⁶ However, as demonstrated by the four cases cited in the preceding paragraph, and the split of authority in the other eleven cases that have considered the issue, there are several possible ways to interpret the meaning and intent of the preemption clause in the FBSA.¹⁶⁷ In light of such a split of authority, it would be difficult to say that Congress showed a “clear and manifest” intention to preempt all state tort claims.

B. The Coast Guard’s Decision Not to Regulate, Considered in Conjunction with the Purpose and Intent of the FBSA, Impliedly Preempts State Law Actions

A lack of express preemption does not bar a finding of implied preemption.¹⁶⁸ In its analysis of the Coast Guard’s decision not to regulate the subject of propeller guards, the Supreme Court concluded in a matter-of-fact way that that decision did not carry the weight of a regulation.¹⁶⁹ The Court reasoned that, by not regulating the area, the Coast Guard expressed no opinion and merely left the regulatory scheme the way it was.¹⁷⁰ But that reasoning cannot be reconciled with the Court’s holding in *Geier* that a decision not to

¹⁶⁴ See *Sprietsma I*, 729 N.E.2d at 49.

¹⁶⁵ See *id.*

¹⁶⁶ *Sprietsma III*, 123 S. Ct. at 530.

¹⁶⁷ Compare *Sprietsma I*, 729 N.E.2d at 52, *Cartensen*, 49 F.3d at 432, *Davis* 854 F. Supp. at 1580, *Shield*, 822 F. Supp. at 84, *Mowery*, 773 F. Supp. at 1017, *Ryan*, 557 N.W.2d at 551, *Farner*, 607 N.E.2d at 567 (all finding express preemption based on the preemption clause), with *Sprietsma II*, 757 N.E.2d at 86, *Lady*, 228 F.3d at 615, *Moss*, 915 F. Supp. at 187, *Shields*, 776 F. Supp. at 1581, *Lewis*, 107 F.3d at 1504 (all holding no express preemption, but that the preemption clause implicitly preempts state action), and with *Sprietsma III*, 123 S. Ct. at 530, *Moore*, 889 S.W.2d at 252, *Ard*, 996 S.W.2d at 601 (holding that the preemption clause neither expressly nor implicitly preempts a state action).

¹⁶⁸ *Sprietsma II*, 757 N.E.2d at 82 (citing *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341 (2001)).

¹⁶⁹ *Sprietsma III*, 123 S. Ct. at 527.

¹⁷⁰ See *id.*

regulate can be the equivalent of a decision that an area is best left unregulated, so that alternative safety methods may be used by manufacturers.¹⁷¹

That is exactly what happened in *Sprietsma*. When the Coast Guard decided not to require manufacturers to install propeller guards, it cited the lack of a universally acceptable design for the guards and the technical problems they might create.¹⁷² It also cited the prohibitive cost of retro-fitting all existing boats.¹⁷³ Although the statute considered by the *Geier* Court is different from the FBSA in that it required manufacturers to take some action, the FBSA and the Coast Guard's decision not to regulate is more similar than the Supreme Court concluded. In both cases, the regulating agencies decided that the best course of action was to leave manufacturers responsible for deciding what safety measures should be taken.¹⁷⁴ But, in *Sprietsma*, the Court ignored this similarity and held that the real reason for the Coast Guard's decision was the stringent regulation process involved.¹⁷⁵ That may have been one of the Coast Guard's reasons, but the other reasons are very similar to the reasons given in *Geier*.¹⁷⁶

As in *Geier*, the action here depends on the plaintiff's claim that the manufacturers had a duty—contrary to the federal law at the

¹⁷¹ *Geier* 529 U.S. at 881.

¹⁷² *Sprietsma III*, 123 S. Ct. at 528.

¹⁷³ *Id.*

¹⁷⁴ *See id.* Since there is no universally accepted propeller guard design and they are not feasible on all types of boats, the Coast Guard decided that the area of propeller guards should remain unregulated, and therefore, within the discretion of boat manufacturers to determine what to implement. This is further buttressed by the Coast Guard's regulation in 2001 that certain types of boats should install some sort of injury avoidance device, but left the type of device to the discretion of the boat owner or manufacturer. *See* 66 Fed. Reg. 63645, 63647 (cited in *Sprietsma III*, 123 S. Ct. at 525–26).

¹⁷⁵ *See Sprietsma III*, 123 S. Ct. at 528. In *Sprietsma*, the Court focused on the first clause of the Coast Guard's decision not to regulate, which did cite the stringent process as a reason. *Id.* However, the Court did not mention the fact that the data did not support the imposition of a regulation, or that there was a lack of universally acceptable propeller guard designs, and that propeller guards may not even be feasible on some types of boats. *Id.* The Court also did not seem to give much weight to the Coast Guard's decision that propeller guards could lead to more blunt trauma injuries, a statement the Court cited as coming from App. 36–38. *Id.*

¹⁷⁶ *See id.*

time—to install a particular safety device.¹⁷⁷ Since the two cases involve very similar issues,¹⁷⁸ the analysis of *Sprietsma* should have followed the analysis in *Geier*. As in *Geier*, nothing in the language of the savings clause in this case suggests an intent to save state tort actions that conflict with federal regulations.¹⁷⁹ The savings clause in *Sprietsma* only provides that compliance with the FBSA and Coast Guard regulations does not absolve liability from state law.¹⁸⁰ Since the issue and savings clause in *Sprietsma* were so similar to those in *Geier*, the Court should have held that a “no propeller” action actually conflicts with the Coast Guard’s decision not to require propellers, and is therefore preempted by the FBSA.¹⁸¹

The *Sprietsma* Court also held that a jury’s decision that a manufacturer should have installed a propeller guard would not conflict with the Coast Guard’s decision not to require propeller guards.¹⁸² But a jury verdict would conflict with that decision. As the Court noted, the Coast Guard based its decision on the lack of universally acceptable propeller guards, and the subsequent difficulty manufacturers would have in meeting a propeller guard requirement.¹⁸³ The Court previously held that a jury verdict, and the subsequent payment of damages, carries the same weight as a decision of the state to regulate a given area.¹⁸⁴ The Court has also

¹⁷⁷ See *Sprietsma II*, 757 N.E.2d at 83.

¹⁷⁸ In *Geier*, the issue was whether a tort lawsuit for failure to install an airbag conflicted with the Federal Motor Vehicle Safety Standard promulgated by the Department of Transportation, FMVSS 208, which did not require the installation of airbags, and thereby conflicted with the National Traffic and Motor Vehicle Safety Act. See 529 U.S. at 865. In *Sprietsma*, the issue was whether a tort lawsuit for failure to install a propeller guard conflicted with the Coast Guard’s decision to not require the installation of propeller guards. 123 S. Ct. at 523.

¹⁷⁹ *Geier*, 529 U.S. at 869.

¹⁸⁰ 46 U.S.C. § 4311 (g) (2002). See also *Geier*, 529 U.S. at 869 (holding that the words “[c]ompliance” and “does not exempt” simply bar a special kind of defense, that compliance with a federal standard automatically exempts a defendant from state law, whether the Federal Government meant that standard to be an absolute requirement or only a minimum one) (alterations in original).

¹⁸¹ Paralleling the holding in *Geier* that a common law “no airbag” action conflicted with the applicable Federal Motor Vehicle Safety Standard. *Geier*, 529 U.S. at 874.

¹⁸² *Sprietsma III*, 123 S. Ct. at 528.

¹⁸³ See *id.*

¹⁸⁴ See *San Diego Bldg. Trades Council, Millmen’s Union, Local 2020 v.*

held that even a state's effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.¹⁸⁵ With respect to boating safety requirements, and specifically propeller guards, a jury verdict would impose a need to install propeller guards on all boats sold or owned by manufacturers and boat owners who wish to avoid or reduce the risk of potential liability. The Coast Guard decided that any such requirement would be too difficult to accomplish, and implied that it should be left unregulated by the state and federal governments.

The savings clause of the FBSA also leads to the conclusion that state tort claims are preempted by the FBSA. In *Geier*, the Court interpreted a nearly identical clause, which read, "compliance with federal safety standards does not exempt any person from liability under common law."¹⁸⁶ The *Geier* Court ruled that "nothing in the language of the saving clause suggests an intent to save state-law tort actions that conflict with federal regulations."¹⁸⁷ The Court also ruled that the use of the words "compliance" and "does not exempt" simply bar a "special kind of defense, namely, a defense that compliance with a federal standard automatically exempts a defendant from state law, whether the [f]ederal [g]overnment meant that standard to be an absolute requirement or only a minimum one."¹⁸⁸

The savings clause of the FBSA contains nearly identical language, stating, "compliance with this chapter . . . does not relieve a person from liability at common law"¹⁸⁹ It is difficult to understand why the phrase "compliance . . . does not relieve" allows liability for all state tort claims, while the phrase "compliance . . . does not exempt" allows liability for only some state tort claims. The only difference between the two clauses is the use of the word "relieve" in the FBSA and "exempt" in the statute interpreted in *Geier*.¹⁹⁰ These two words, as found in *Merriam-Webster's*

Garmon, 359 U.S. 236, 247 (1959) ("[R]egulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.").

¹⁸⁵ *Garmon*, 359 U.S. at 247.

¹⁸⁶ *Geier*, 529 U.S. at 868 (internal quotation marks omitted).

¹⁸⁷ *Id.* at 869.

¹⁸⁸ *Id.*

¹⁸⁹ 46 U.S.C. § 4311(g) (2002).

¹⁹⁰ *Geier*, 529 U.S. at 868 (quoting 15 U.S.C. § 1397(k) (1988)).

Thesaurus, are synonymous with each other, both meaning “to free from an obligation.”¹⁹¹ As such, the two clauses should be interpreted to mean the same thing, since words in statutory interpretation should be given their most natural reading.¹⁹² Under either phrase, the defendant is still, in theory, subject to some liability, and it makes no sense that the extent of that liability would change drastically due to the use of the word “relieve” instead of “exempt.”

Finally, the purposes and objectives of the FBSA lead to the conclusion that the FBSA preempts state law actions. The FBSA was designed to form a coordinated national boating safety program and improve boating safety by requiring manufacturers to provide safer boats and boating equipment through national construction and performance standards for boats.¹⁹³ A part of this goal is to create a uniform system of boat safety regulations throughout the country.¹⁹⁴ Nowhere in the statement of purpose did Congress state that it intended to compensate victims of boating accidents.¹⁹⁵ Yet, the *Sprietsma* Court decided that the purposes carefully outlined by Congress were superceded by that goal.¹⁹⁶ That decision frustrates the congressional intent.

The Court’s decision in *Sprietsma* also overlooks the FBSA’s goal of uniformity. The Senate reaffirmed that goal when it stated that the FBSA was intended to ensure that manufacturers in domestic trade would not have to comply with varying local requirements.¹⁹⁷ This goal will be frustrated as courts make decisions in state tort actions that will have the equivalent effect of regulating propeller guards. The doctrine of implied conflict preemption is designed to prevent such a result.¹⁹⁸

When considered together, these factors lead to the

¹⁹¹ MERRIAM-WEBSTER’S COLLEGIATE THESAURUS (11th ed. 2003), available at <http://www.m-w.com>.

¹⁹² See *Sprietsma III*, 123 S. Ct. at 526.

¹⁹³ See 46 U.S.C. §§ 4301–02 (2002) (explaining that the Coast Guard regulations and the FBSA apply to all boats in United States waters and owned in the United States, and that the regulations may regulate vessels, equipment, and tests to establish conformity with the regulations).

¹⁹⁴ *Sprietsma III*, 123 S. Ct. at 526.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 530.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 527.

conclusion that, although it is not expressly stated in the FBSA, Congress intended that the FBSA and the acts of the Coast Guard would preempt state tort actions. The savings clause, read in light of *Geier*, merely saves claims for product liability and negligent compliance with the FBSA and Coast Guard regulations. It also removes compliance with the FBSA as a defense. What the savings clause does not do, however, is allow state tort claims alleging that boat manufacturers should have implemented safety equipment when that equipment is not required by the FBSA or Coast Guard regulations. Such claims will frustrate the overriding purpose of the FBSA, which is to establish uniformity.

V. Impact of *Sprietsma*

In 2000, 25 fatalities and 88 cases of other injuries occurred from propeller strike.¹⁹⁹ In fact, this number may be even greater because only the first cause of injury or fatality is reported, although there is typically a series of events that contribute.²⁰⁰ Although *Sprietsma* dealt with a claim for wrongful death, its holding will probably be extended to non-fatal propeller injuries, because it establishes that common law actions are not preempted by the FBSA, provided that they do not conflict with existing regulations.²⁰¹ Assuming that the year 2000 statistics continue to hold true, the number of claims against boat engine manufacturers across the United States will probably rise dramatically. In 2000, propeller injuries occurred in 33 states.²⁰² Juries in each of those states may soon begin awarding plaintiffs large judgments against boat engine manufacturers.

If these verdicts are large enough, they will function just like state laws requiring propeller guards.²⁰³ But, they will also vary from

¹⁹⁹ *Id.* at 21, 27.

²⁰⁰ *Id.* at 27.

²⁰¹ See *Sprietsma III*, 123 S. Ct. at 518.

²⁰² See United States Coast Guard, Boating Statistics – 2000, at 30 (Oct. 1, 2001) http://www.uscgboating.org/statistics/Boating_Statistics_2000.pdf.

²⁰³ See *Lady*, 228 F.3d at 614 (citing *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959)).

state to state in terms of what types of boats were involved,²⁰⁴ and the sanctions imposed by the courts, such as fines payable to the state or requirements of retrofitting boats. The resulting system of common law requirements will vary all over the country, in complete contradiction to the goal of uniformity embodied in the FBSA.²⁰⁵ Manufacturers will be subject to changing requirements for acceptable propeller guards from jurisdiction to jurisdiction. They will also be subject to suits from plaintiffs injured by blunt-object trauma from coming into contact with the guards—an outcome the Coast Guard tried to prevent in 1988.²⁰⁶

Also, current boat owners will be forced to decide whether to install propeller guards on their watercraft. Some courts might create judicial exemptions for people who owned boats prior to the time the common law causes of action are created. These exemptions could create problems in cases like *Sprietsma*, where the accident took place on a border between states,²⁰⁷ because of the varying requirements and exemptions in different jurisdictions.

In all, *Sprietsma* will create varying laws throughout the country. It will also lead to an increase in the number of claims, creating costs for all parties to a litigation, and the system as a whole. Boat manufacturers will spend more time and money on litigation and will need to monitor the minute changes in every jurisdiction in which they sell their products. Individual boat owners will also have to follow the changing laws in deciding whether to update their watercraft to avoid liability.

There are only a few ways to avoid these results. First, the Supreme Court could overrule *Sprietsma*—an unlikely proposition. Second, the Coast Guard could promulgate a propeller guard regulation, either setting up requirements, or prohibiting state regulation or lawsuits involving propeller guards. Finally, Congress could amend the FBSA by clarifying congressional intent to preempt common law tort claims, and specifying the types of claims that survive under the savings clause.

²⁰⁴ See, e.g., United States Coast Guard, Boating Statistics – 2000, at 25 (Oct. 1, 2001) http://www.uscgboating.org/statistics/Boating_Statistics_2000.pdf, for an example of the various types of boat classifications (there are others, including length, etc.).

²⁰⁵ See *Sprietsma III*, 123 S. Ct. at 527, 530.

²⁰⁶ See *Lady*, 228 F.3d at 605.

²⁰⁷ See *Sprietsma III*, 123 S. Ct. at 522.

VI. Conclusion

In sum, the U.S. Supreme Court's decision that the FBSA does not expressly preempt state tort actions against boat engine manufacturers for failure to install propeller guards in *Sprietsma* was correct. But, the Court should have found that the purpose and intent of the FBSA and the Coast Guard's decision not to regulate in the area of propeller guards, when considered together, impliedly preempt those claims. The Court's holding to the contrary will probably result in a series of jury verdicts and appellate court decisions that will, in effect, regulate propeller guards and their use. These doctrines will evolve differently in each state, making compliance very difficult for boat owners and manufacturers.
