

IN THE SUPREME COURT OF TEXAS

No. 95-0969

HYUNDAI MOTOR COMPANY, HYUNDAI MOTOR AMERICA, INC., AND PORT CITY
HYUNDAI, INC., PETITIONERS

v.

MARIO ALVARADO, ET AL., RESPONDENTS

ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

Argued on September 3, 1996

JUSTICE SPECTOR delivered the opinion of the Court, in which JUSTICE GONZALEZ, JUSTICE BAKER, JUSTICE ABBOTT, and JUSTICE HANKINSON join.

JUSTICE OWEN filed a dissenting opinion, in which CHIEF JUSTICE PHILLIPS, JUSTICE HECHT, and JUSTICE ENOCH joined.

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 “to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents.” 15 U.S.C. § 1381¹ (recodified at 49 U.S.C. § 30101). The issue before us is whether the Act and its implementing regulations preempt common-law claims asserting that a vehicle’s passenger restraint system was defectively designed because the manufacturer failed to install lap belts. The court of appeals concluded that these claims were not preempted. 908 S.W.2d 243. We hold that the claims were neither expressly nor impliedly preempted, and affirm the judgment of the court of appeals.

I. Background

Eighteen-year-old Mario Alvarado and his younger brother, Fidel, were passengers in a

¹ Although the Safety Act was initially codified in chapter 15 of the United States Code, the federal statutes regarding transportation, including the Safety Act, were reorganized and moved to chapter 49 in 1994. *See* Pub. L. No. 103-272, 108 Stat. 745 (1994). The 1994 Act states that this reorganization was made “without substantive change,” *id.* at 745, and indeed those portions of the Safety Act relevant to this case were substantively unchanged. Because the court of appeals and the parties refer to the pre-1994 statutes, in the interest of consistency we will do likewise.

Hyundai Excel driven by Mario's classmate, Vince Reyes. The Excel's front seats were equipped with a two-point passive restraint system. A shoulder belt automatically moved into place across the passenger's chest when the vehicle's door closed, and there was a ramp seat and knee bolster to help prevent passengers from submarining under the dash in the event of a collision. This two-point assembly did not include a lap belt.

Mario was in the front passenger seat, and his brother was riding in the rear of the car. It was raining, and as Reyes attempted to pass another vehicle, the Excel skidded off the road and rolled over. Mario was wearing his seatbelt, but was ejected through the sunroof. As a result, he is paralyzed from the chest down. Fidel and Reyes incurred lesser injuries.

Mario and his parents sued Hyundai Motor Company, Hyundai Motor America, Inc., and Port City Hyundai, Inc. (Hyundai).² They alleged that the Excel was defectively designed because it was not equipped with lap belts, that Hyundai failed to provide adequate warnings of the increased danger resulting from the lack of lap belts, and that Hyundai failed to give adequate instructions for the use of the vehicle's restraint system. They also alleged that Hyundai was negligent and grossly negligent based upon the same acts or omissions.

Hyundai moved for partial summary judgment, asserting that the Alvarados' claims based upon the lack of a lap belt were preempted by the Safety Act and its implementing regulations. The trial court granted the motion. The Alvarados then filed a notice of nonsuit and later refiled their case in a different county. In response, Hyundai requested that the first trial court modify its nonsuit order to provide that it was with prejudice to the claims adjudicated by the partial summary judgment, and the trial court did so.

The Alvarados appealed both the dismissal with prejudice and the merits of the partial summary judgment. *Alvarado v. Hyundai Motor Co.*, 885 S.W.2d 167 (Tex. App.—San Antonio

² Fidel Alvarado, Jr. and Alicia Alvarado, Mario's parents, sued in their individual capacities and as the younger Fidel's next friends.

1994), *rev'd*, 892 S.W.2d 853 (Tex. 1995). The court of appeals concluded that the dismissal should not have been with prejudice and did not reach the preemption issues. Hyundai then sought review here. We held that a nonsuit sought after a trial court grants a partial summary judgment results in a dismissal with prejudice on the issues disposed of by the summary judgment, thus converting the partial summary judgment into a final, appealable judgment. *Hyundai Motor Co. v. Alvarado*, 892 S.W.2d at 855. We remanded the case to the court of appeals to allow it to consider the Alvarados' contention that their "no lap belt" claim was not preempted. *Id.* On remand, the court of appeals held that there was no express or implied preemption of claims and reversed the trial court's judgment. 908 S.W.2d at 253. We granted Hyundai's application for writ of error challenging these holdings.

II. Statutory overview

Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966 in response to the accelerating spiral of deaths and injuries resulting from unsafely designed vehicles. *See* S. REP. NO. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. 2709, 2709-10; H.R. REP. NO. 89-1776, at 10-11 (1966); John F. McCauley, Note, Cipollone & Myrick: *Deflating the Airbag Preemption Defense*, 30 IND. L. REV. 827, 829 (1997). The Act's explicit purpose is "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." 15 U.S.C. § 1381 (recodified at 49 U.S.C. § 30101). To accomplish that purpose, Congress empowered the Secretary of Transportation to adopt motor vehicle safety standards. *Id.* § 1392(a) (recodified at 49 U.S.C. § 30111(a)). While the standards must be "reasonable, practicable and appropriate," *id.* § 1392(f)(3) (recodified at 49 U.S.C. § 30111(b)(3)), Congress intended that "*safety shall be the overriding consideration* in the issuance of standards." S. REP. NO. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2714 (emphasis added); *see* 15 U.S.C. § 1392(a) (recodified at 49 U.S.C. § 30111(a)) ("The Secretary shall establish by order appropriate Federal motor vehicle safety standards . . . [that are] practicable, *shall meet the need for motor vehicle safety*, and shall be stated in objective terms.") (emphasis added).

The Safety Act has an express preemption clause that provides:

Whenever a Federal motor vehicle safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed as preventing any State from enforcing any safety standard which is identical to a Federal safety standard.

15 U.S.C. § 1392(d) (recodified at 49 U.S.C. § 30103(b)). It also has a savings clause providing that “[c]ompliance with any Federal motor vehicle safety standard issued under this title does not exempt any person from any liability under common law.” 15 U.S.C. § 1397(k) (recodified at 49 U.S.C. § 30103(e)).

The standards the Secretary adopts under the Safety Act are, fundamentally, performance requirements, not design requirements. *See id.* § 1392(a) (recodified at 49 U.S.C. § 30111(a)) (requiring that standards shall “be stated in objective terms”); *Perry v. Mercedes Benz of N. Am., Inc.*, 957 F.2d 1257, 1260 (5th Cir. 1992); *Hernandez-Gomez v. Leonardo*, 917 P.2d 238, 244 (Ariz. 1996). The legislative history of the Safety Act makes that fact clear:

[T]he new and revised standards are expected to be performance standards, specifying the required minimum safe performance of vehicles but not the manner in which the manufacturer is to achieve the specified performance.

....

The Secretary would thus be concerned with the measurable performance of a braking system, but not its design details.

S. REP. NO. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2714.

The Secretary has adopted Safety Standard 208, which establishes crash protection performance requirements, expressed in terms of forces exerted on anthropomorphic test dummies,

for passenger restraint systems. *See* 49 C.F.R. § 571.208 (1988).³ For cars built between September 1, 1987 and September 1, 1988,⁴ Standard 208 provides several options for compliance. Three of those options specifically condition the applicable performance standard upon the particular type of restraint system that is used. *See* 49 C.F.R. § 571.208, S4.1.2.1, S4.1.2.2, S4.1.2.3.

Hyundai elected to comply with what is, in effect, a fourth option, S4.5.3. S4.5.3 allows a manufacturer to use an automatic seatbelt “to meet the crash protection requirements of any option under S4. and in place of any seat belt assembly otherwise required by that option.” 49 C.F.R. § 571.208, S4.5.3. Hyundai claims that it complied with the crash protection requirements of S4.1.2.2. This option establishes criteria for frontal crashes, but not for rollovers, the type of accident that injured the Alvarados. *Id.* § 571.208, S4.1.2.2. The question we must resolve is whether the Safety Act and the regulations under it preempt common-law damage claims if the manufacturer chooses an option permitted by the federal regulations.⁵

III. Preemption

Under the Supremacy Clause of the United States Constitution, the laws of the United States are “the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. CONST. art. VI, cl. 2. A state law is preempted and “without effect” if it conflicts with federal law. *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). A federal law may expressly preempt state law. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Additionally, preemption may be implied if the scope of the statute indicates that Congress intended

³ A number of cases describe the complex history of Standard 208. *See, e.g., Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 34-38 (1983); *Taylor v. General Motors Corp.*, 875 F.2d 816, 823 (11th Cir. 1989).

⁴ The Hyundai in which the Alvarados were injured was manufactured on July 12, 1988.

⁵ We note that the Alvarados contend here that the trial court erred in rendering summary judgment because Hyundai did not prove that it complied with any of the performance standards established under Standard 208. In light of our disposition of this appeal, however, we do not decide whether Hyundai proved compliance.

federal law to occupy the field exclusively or when state law actually conflicts with federal law. *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (citing *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990)); see also *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 247-48 (Tex. 1994). A state law presents an actual conflict with federal law when “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.’” *Myrick*, 514 U.S. at 287 (quoting, respectively, *English*, 496 U.S. at 78-79, and *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

Historically, the states have exercised primary authority in matters concerning the public health and safety of their citizens. *Medtronic, Inc. v. Lohr*, 116 S. Ct. 2240, 2245 (1996) (citing *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985), and *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985)). Thus,

[i]n all pre-emption cases, and particularly in those in which Congress has “legislated . . . in a field which the States have traditionally occupied,” . . . [preemption analysis] “start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the *clear and manifest purpose* of Congress.”

Medtronic, 116 S. Ct. at 2250 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)) (emphasis added) (citation omitted). This analytical framework is crucial in our federal system, “[f]or if in close or uncertain cases a court proceeds to preempt state laws where that result was not clearly the product of Congress’s considered judgment, the court has eroded the dual system of government that ensures our liberties, representation, diversity, and effective governance.” KENNETH STARR *ET AL.*, THE LAW OF PREEMPTION: A REPORT OF THE APPELLATE JUDGES CONFERENCE, AMERICAN BAR ASSOCIATION 40 (1991); see also *Hernandez-Gomez v. Leonardo*, 884 P.2d 183, 190 (Ariz. 1994) (noting that a rule requiring explicit indication of preemptive intent “transfers the decision about preemption and its reach from the post-hoc speculation of lawyers to the forum where it should be argued: the legislature, where the competing interests may be

reconciled before the statute is passed”), *vacated*, 514 U.S. 1094 (1995). Accordingly, we must consider the Act’s language, the context of its enactment, and our “reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law” in order to discern whether Congress manifested a clear intent in the Safety Act to preempt common-law claims. *Worthy v. Collagen Corp.*, ___ S.W.2d ___, ___ (Tex. 1998) (quoting *Medtronic*, 116 S. Ct. at 2250-51).

The United State Supreme Court considered the preemptive effect of the Safety Act in *Myrick*. It concluded in that case that the common-law claims at issue were not preempted. 514 U.S. at 286, 289-90. *Myrick* does not answer the question before us, however, because in that case, no safety standard was in effect. *Id.* at 286. Consequently, the Court did not reach the argument that section 1392(d) does not preempt common law or address the impact of the Safety Act’s savings clause. *Id.* at 287 n.3.

A number of other courts, both federal and state, have confronted the issue before us.⁶ Some have concluded that the Safety Act preempts claims similar to the Alvarados’, and some have held that it does not.⁷ While the results are not uniform, in the wake of *Cipollone* and *Myrick*, we note

⁶ Claims of preemption most often arise in cases in which a litigant seeks to hold a manufacturer or vendor liable based upon the failure to include airbags, although many involve challenges almost identical to the Alvarados’. We see no important distinction between no-airbag claims and no-lap belt claims for purposes of our analysis.

⁷ Cases holding that there is express preemption include *Harris v. Ford Motor Co.*, 110 F.3d 1410 (9th Cir. 1997) (airbag); *Zimmerman v. Volkswagen of Am., Inc.*, 920 P.2d 67 (Idaho 1996) (lap belt); *Martinez v. Ford Motor Co.*, 568 N.W.2d 396 (Mich. Ct. App. 1997) (airbag); *Wickstrom v. Maplewood Toyota, Inc.*, 416 N.W.2d 838 (Minn. Ct. App. 1987) (airbag); *Panarites v. Williams*, 629 N.Y.S.2d 359 (App. Div. 1995) (airbag); *Gardner v. Honda Motor Co., Ltd.*, 536 N.Y.S.2d 303 (App. Div. 1988) (airbag); *Miranda v. Fridman*, 647 A.2d 167 (N.J. Super. Ct. App. Div. 1994) (lap belt); *Dykema v. Volkswagenwerk AG*, 525 N.W.2d 754 (Wis. Ct. App. 1994) (lap belt); *Boyle v. Chrysler Corp.*, 501 N.W.2d 865 (Wis. Ct. App. 1993) (airbag).

For cases holding there is implied preemption, see *Montag v. Honda Motor Co., Ltd.*, 75 F.3d 1414 (10th Cir. 1996) (airbag); *Pokorny v. Ford Motor Co.*, 902 F.2d 1116 (3rd Cir. 1990) (airbag); *Taylor*, 875 F.2d 816 (airbag) (*but see* *Doyle v. Volkswagenwerk Aktiengesellschaft*, 114 F.3d 1134 (11th Cir. 1997)); *Kitts v. General Motors Corp.*, 875 F.2d 787 (10th Cir. 1989) (airbag); *Wood v. General Motors Corp.*, 865 F.2d 395 (1st Cir. 1988) (airbag); *Martinez*, 568 N.W.2d 396 (airbag); *Cooper v. General Motors Corp.*, 702 So. 2d 428 (Miss. 1997) (airbag); *Cellucci v. General Motors Corp.*, 706 A.2d 806 (Pa. 1998) (airbag).

Cases holding there is no preemption include *Doyle*, 114 F.3d 1134 (lap belt); *Munroe v. Galati*, 938 P.2d 1114 (Ariz. 1997) (airbag); *Hernandez-Gomez*, 917 P.2d 238 (lap belt); *Ketchum v. Hyundai Motor Co.*, 57 Cal. Rptr. 2d 595

that the trend appears to be toward finding no preemption, at least in the state courts. Because the United States Supreme Court has not addressed the particular issue before us, we must independently analyze Hyundai's contention that the Alvarados' claims are preempted based upon the lessons we draw from relevant Supreme Court authority.

A. Express preemption

Section 1392(d) bars states from imposing "any safety standard applicable to the same aspect of performance of such vehicle . . . which is not identical to the Federal standard." 15 U.S.C. § 1392(d) (recodified at 49 U.S.C. § 30103(b)). It does not explicitly embrace common-law actions. Nevertheless, in some instances, a federal preemption statute may apply to common-law claims, even if the preemption provision does not use that specific term. *See, e.g., Cipollone*, 505 U.S. at 521-22.

In *Cipollone*, the Supreme Court considered two express preemption clauses; one precluded states from mandating any "statement" on cigarette labels, while a later amendment of that statute precluded any "requirement or prohibition." *Cipollone*, 505 U.S. at 514-15. A majority of the Court agreed that the former did not preempt state common-law claims, while a plurality concluded that the latter language did indicate Congress's preemptive intent.⁸ *Id.* at 519-21, 523. *Cipollone* thus teaches us that determining whether Congress demonstrated a "clear and manifest purpose" to preempt common-law actions involves a very statute-specific inquiry. In determining whether Congress evinced a clear intent in the Safety Act to preempt common-law actions such as the Alvarados', we look first to the preemption clause's language, as well as to its statutory context. *See*

(Ct. App. 1996) (lap belt); *Hyundai Motor Co. v. Phillip*, 639 So. 2d 1064 (Fla. Dist. Ct. App. 1994); *Wilson v. Pleasant*, 660 N.E.2d 327 (Ind. 1995) (airbag); *Loulos v. Dick Smith Ford, Inc.*, 882 S.W.2d 149 (Mo. Ct. App. 1994) (airbag); *Tebbetts v. Ford Motor Co.*, 665 A.2d 345 (N.H. 1995) (airbag); *Drattel v. Toyota Motor Corp.*, 662 N.Y.S.2d 535 (App. Div. 1997) (airbag); *Minton v. Honda of Am. Mfg., Inc.*, 684 N.E.2d 648 (Ohio 1997) (airbag); *Nelson v. Ford Motor Co.*, 670 N.E.2d 307 (Ohio Ct. App. 1995) (airbag). *See also Shipp v. General Motors Corp.*, 750 F.2d 418 (5th Cir. 1985) (holding that compliance with federal safety standard did not exempt manufacturer from liability).

⁸ Justices Blackmun, Kennedy, and Souter would have held that the "requirement or prohibition" language did not preempt common-law actions. *See Cipollone*, 505 U.S. at 531-44 (Blackmun, J., concurring and dissenting).

id. at 517-19; *Medtronic*, 116 S. Ct. at 2250.

The Supreme Court’s application of these principles in *Medtronic* is instructive. *Medtronic* involved the preemption provision of the Medical Device Amendments of 1976, 21 U.S.C. § 360k(a) (“MDA”), which prohibits states from establishing any “requirement” for a medical device that differs from requirements imposed by the MDA.⁹ A plurality of the Supreme Court looked to Congress’s repeated use of the term “requirements” throughout the MDA in a manner suggesting that Congress used the word to refer to specific enactments of positive law by legislative or judicial bodies. *Medtronic*, 116 S. Ct. at 2252. In doing so, the plurality assumed, in accordance with controlling canons of statutory construction, that the term had a consistent meaning throughout the MDA. *Cf. Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 568 (1995).

In this case, Congress’s use of the term “standards” elsewhere in the Safety Act also suggests that Congress intended to preclude the imposition of positive legislative or administrative enactments, rather than general common-law tort duties. As one scholar has noted,

Under the Traffic Safety Act, federal “motor vehicle safety standards” refers only to regulations promulgated by the Secretary of Transportation. Nowhere does the act mention state law tort claims or other civil damages actions, except in the context of the savings provision of § [1397(k)]. That the Traffic Safety Act would use the term “standard” narrowly with respect to federal action and broadly with respect to state action seems highly unlikely.

Robert B. Leflar & Robert S. Adler, *The Preemption Pentad: Federal Preemption of Products Liability Claims After Medtronic*, 64 TENN. L. REV. 691, 734 n.215 (1997).

The Safety Act’s language, in light of its history and context, bears out that conclusion. First, Congress defined the term “motor vehicle safety standard” in the Safety Act. 15 U.S.C. § 1391(2) (recodified at 49 U.S.C. § 30102(a)(9)). A safety standard is “a minimum standard for motor vehicle performance . . . which is practicable, which meets the need for motor vehicle safety and which

⁹ Notably, the MDA contains no savings clause. Nevertheless, the Court held that the claims in *Medtronic* were not preempted.

provides objective criteria.” *Id.* This definition is far removed from a court’s or jury’s determination that a manufacturer breached a duty of reasonable care or sold a defectively designed product. These determinations may involve some element of practicability. *See Turner v. General Motors Corp.*, 584 S.W.2d 844, 847 (Tex. 1979); WILLIAM POWERS, JR., TEXAS PRODUCTS LIABILITY LAW § 5.0233 (2d ed. 1994) (noting that products liability claims under both strict liability and negligence standards “evaluate the reasonableness of a risk by weighing its costs against its benefits”). But a tort judgment establishes no “objective criteria”; it simply establishes that a manufacturer or product failed to conform to a generalized standard of care or quality in a specific case. *Cf. Cipollone*, 505 U.S. at 522 (“Whereas the common law would not normally require a vendor to use any specific statement on its packages or in its advertisements, it is the essence of the common law to enforce duties that are either affirmative requirements or negative prohibitions.”).

Other portions of the Safety Act suggest that the express preemption clause does not address the Alvarados’ common-law claims. Immediately after the language proscribing the imposition of inconsistent state standards, section 1392(d) goes on to provide that “the United States Government, a State, or a political subdivision of a State may prescribe a *standard* for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.” 15 U.S.C. § 1392(d) (recodified at 49 U.S.C. 30103(b)(1)) (emphasis added). This sentence strongly implies that the nonidentical “standards” section 1392(d) prohibits are the kinds of specific, measurable criteria that governmental entities must often adhere to in purchasing goods or services — positive enactments of legislative or administrative bodies — not the duty to use reasonable care or to refrain from selling an unreasonably dangerous product.

Moreover, the national regulatory context in which Congress passed the Safety Act also suggests that Congress did not intend to preempt common-law claims. At the time the Safety Act was passed, a number of states had enacted laws attempting to impose safety requirements on

vehicles sold within their borders — specific enactments of positive law. Ralph Nader & Joseph A. Page, *Automobile-Design Liability & Compliance with Federal Standards*, 64 GEO. WASH. L. REV. 415, 423 (1996). Although there had been little enforcement activity under these requirements, *id.*, it seems likely that these are the standards that Congress intended to preempt. *See Cipollone*, 505 U.S. at 519 (construing preemption provision in light of Act’s statement of purpose “[r]ead against the backdrop of regulatory activity undertaken by state legislatures and federal agencies”).

This analysis is consistent with the Supreme Court’s holding in *Cipollone* that the 1965 Federal Cigarette Labeling and Advertisement Act, barring states from requiring “statements” in cigarette advertising, did not preclude failure-to-warn common-law damage actions. *Cipollone*, 505 U.S. at 518-19. In reaching that holding, the Court emphasized that the preemption provision, in using the term “statement,” clearly referred to the warning statement “required by section 4” of the 1965 act. *Id.* at 518. In other words, the Court looked to the type of federal action authorized elsewhere in the statute, and reasoned that Congress had intended to bar only that particular type of activity by the states — positive enactments by legislatures or administrative agencies mandating particular warning labels. *Id.* at 518-19.

The strongest indication that Congress did not clearly intend to preempt common-law claims such as the Alvarados’ is, of course, the Safety Act’s savings clause. 15 U.S.C. § 1397(k) (recodified at 49 U.S.C. § 30103(e)). The savings clause is broadly worded — “[c]ompliance with *any* Federal motor vehicle safety standard . . . does not exempt *any* person from *any liability* under common law.” *Id.* In our view, the savings clause would be rendered virtually meaningless if it did not preserve claims such as the Alvarados’. If claims such as the Alvarados’ are expressly preempted under section 1392(d) because the Secretary has adopted a standard, then the savings clause preserves only claims that would not be preempted in the first place. *See Pokorny v. Ford Motor Co.*, 902 F.2d 1116, 1120 (3rd Cir. 1990); *Taylor v. General Motors Corp.*, 875 F.2d 816, 824 (11th Cir. 1989). That result is contrary to our duty, in construing a statute, to give effect to every clause

and word. *See American Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490, 513 (1981); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955).¹⁰

The Act’s legislative history strongly supports the conclusion that the express preemption clause does not extinguish the Alvarados’ claims. The House report on the proposed Safety Act stated unequivocally,

It is intended, and this subsection specifically establishes, that compliance with safety standards is not to be a defense or otherwise to affect the rights of parties under common law particularly those relating to warranty, contract, and tort liability.

H. REP. NO. 89-1776, at 24. Similarly, the Senate report provides,

[T]he Federal minimum safety standards need not be interpreted as restricting State common law standards of care. Compliance with such standards would thus not necessarily shield any person from product liability at common law.

S. REP. NO. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2720.

In addition to the House and Senate committee reports, numerous statements in the Safety Act’s legislative history leave little doubt that Congress intended to preserve all common-law claims. For example, Senator Magnuson, one of the Safety Act’s congressional sponsors, remarked that “[c]ompliance with Federal standards would not necessarily shield any person from broad liability at the common law. The common law on product liability still remains as it was.” 112 CONG. REC. 14,230 (daily ed. June 24, 1966) (statement of Sen. Magnuson). In the House, the representative from Michigan, Representative Dingell, said,

[W]e have preserved every single common-law remedy that exists against a manufacturer for the benefit of a motor vehicle purchaser. This means that all of the warranties and all of the other devices of common law which are afforded to the purchaser, remain in the buyer, and they can be exercised against the manufacturer.

112 CONG. REC. 19,663 (daily ed. Aug. 17, 1966) (statement of Rep. Dingell) (emphasis added).

¹⁰ Some courts have concluded that the savings clause is intended to demonstrate that Congress has not occupied the entire field of motor vehicle safety. *See, e.g., Montag v. Honda Motor Co., Ltd.*, 856 F. Supp. 574, 577 (D. Colo. 1994), *aff’d on other grounds*, 75 F.3d 1414 (10th Cir. 1996); *Cooper*, 702 So. 2d at 437. But the Safety Act’s express preemption clause itself shows that Congress has not occupied the field; it leaves states free to impose their own standards when no standard is in place. *See Myrick*, 514 U.S. at 286.

In light of the language of the Safety Act’s express preemption clause, the savings clause, and the statute’s legislative history, we do not perceive a “clear and manifest” intent on Congress’s part to preempt the Alvarados’ claims. *See CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) (quoting *Rice*, 331 U.S. at 230). Accordingly, we hold that the Alvarados’ claims are not expressly preempted.

B. Implied preemption

In *Cipollone*, the Supreme Court noted that

[w]hen Congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue, and when that provision provides a “reliable indicium of congressional intent with respect to state authority,” “there is no need to infer congressional intent to pre-empt state laws from the substantive provisions” of the legislation. Such reasoning is a variant of the familiar principle of expression unius est exclusio alterius: Congress’ enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.

505 U.S. at 517 (citations omitted) (quoting, respectively, *Malone v. White Motor Corp.*, 435 U.S. 497, 505 (1978), and *California Fed. Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 282 (1987)). This language led a number of courts to conclude that, under *Cipollone*, an express preemption clause forecloses implied preemption. *See, e.g., Myrick v. Freuhauf Corp.*, 13 F.3d 1516, 1521 (11th Cir. 1994), *aff’d sub nom. Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995); *Loulos v. Dick Smith Ford, Inc.*, 882 S.W.2d 149, 151 (Mo. Ct. App. 1994); *Hernandez-Gomez*, 884 P.2d at 190. But in *Myrick*, the Court explained that *Cipollone* announced no absolute rule. *Myrick*, 514 U.S. at 288-89. Instead, “[a]t best, *Cipollone* supports an inference that an express pre-emption clause forecloses implied pre-emption.” *Id.* at 289.

After *Myrick*, some courts have concluded that the Act’s express preemption clause, read in conjunction with the Act’s savings clause, reliably indicates that Congress did not intend to foreclose common-law claims based upon the lack of a lap belt or airbag. *See, e.g., Hernandez-Gomez*, 917

P.2d at 243 (noting that it is possible the Act’s savings clause categorically precludes preemption, but proceeding with implied preemption analysis because the Supreme Court had not addressed the issue); *Wilson v. Pleasant*, 660 N.E.2d 327, 336 (Ind. 1996) (holding that Act’s savings clause “entirely forecloses any possibility of implied pre-emption,” but proceeding with implied preemption analysis as the safer course). Like the Arizona and Indiana courts, we believe that it is likely that the Act’s savings clause forecloses the possibility of implied preemption in this case. Nevertheless, like those courts, we “take the jurisprudentially safer course and proceed with an implied preemption analysis.” *Hernandez-Gomez*, 917 P.2d at 243 (citing *Wilson*, 660 N.E.2d at 336-37).

As we have observed, federal law may impliedly preempt state law when the scope of a statute indicates that Congress intended to occupy a field exclusively (field preemption), or when state law actually conflicts with federal law (obstacle preemption), either because it is “impossible for a private party to comply with both state and federal requirements,” or because “state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Myrick*, 514 U.S. at 287 (quoting *English*, 496 U.S. at 78-79, and *Hines*, 312 U.S. at 67). We examine each of these potential preemptive avenues in turn.

1. Field preemption

Field preemption may occur when “[t]he scheme of federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.” *Rice*, 331 U.S. at 230 (citing *Pennsylvania R.R. Co. v. Public Serv. Comm’n*, 250 U.S. 566, 569 (1919)). It may also occur when “the Act of Congress . . . touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.” *Id.* (citing *Hines*, 312 U.S. at 61).

We are aware of no court that has concluded that Congress intended to occupy the entire field of vehicle safety. Vehicle safety significantly differs from the areas that have been found to involve peculiarly federal interests, such as the liability of federal officials, *Johnson v. Maryland*, 254 U.S.

51 (1920), or international relations, *see Hines*, 312 U.S. 52. And the scope of the statute persuades us that Congress has not pervasively regulated the field. By limiting the Act’s express preemption clause to instances in which the Secretary has adopted a safety standard, Congress implicitly left the states free to enforce their own standards in the interstices. *See* 15 U.S.C. § 1392(d) (recodified at 49 U.S.C. § 30103(b)).

Moreover, the standard adopted by the Secretary under which Hyundai proceeded is not comprehensive. It did not mandate a particular design and provided no performance standard for rollover accidents. *See* 49 C.F.R. § 571.208, S4.1.2.2, S4.5.3. Thus, to the extent Standard 208 defines the preemptive reach of the Safety Act, it “is not a comprehensive regulation that occupies the entire field. Rather, it covers only crash worthiness standards applicable to particular aspects of vehicle or vehicle equipment performance.” *Hernandez-Gomez*, 917 P.2d at 245.

Certain language in *Myrick* reinforces our conclusion that the Safety Act does not occupy the entire field of vehicle safety. The Court distinguished a case that had held that the failure of federal officials to affirmatively exercise their authority amounted to a determination that no regulation was warranted. *Myrick*, 514 U.S. at 286 (distinguishing *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978)). “*Unlike this case*, however, we found in *Ray* that Congress intended to centralize all authority over the regulated area in one decision-maker.” *Id.* (emphasis added). We cannot conclude that Congress has pervasively regulated this area. Accordingly, we hold that the Safety Act does not preempt the entire field of vehicle safety.

2. Obstacle preemption

A state law may be preempted when it is impossible to comply with both the federal and state requirement. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963). There is no such impossibility here. It is not impossible for Hyundai to comply both with federal law and with a state common-law duty to include lap belts. The regulations promulgated under the Safety Act did not preclude Hyundai from installing lap belts. The safety standards themselves specify that

lap belts combined with shoulder belts may be used to meet applicable crash protection requirements. 49 C.F.R. § 571.208, S4.1.2.3.

Nor is it impossible for Hyundai to comply with federal law and at the same time to respond in damages for breach of common-law duties. *See Perry*, 957 F.2d at 1264 (“If a manufacturer is held liable in tort for not designing its system to provide protection greater than that required by the federal standard, the manufacturer can still comply with both the federal standard and the state tort standard by designing its system to meet the latter.”). As the Arizona Supreme Court observed in *Hernandez-Gomez*, “[m]anufacturers may weigh the risks and benefits and choose to live with the occasional lawsuit rather than change their behavior.” 917 P.2d at 248; *cf. Cipollone*, 505 U.S. at 518 (“[T]here is no general, inherent conflict between federal pre-emption of state warning requirements and the continued vitality of state common-law damages actions.”). Common-law damage claims can be distinguished from a state statute or regulation that would prohibit Hyundai from taking action that federal law expressly permits. *Cf. Florida Lime & Avocado Growers*, 373 U.S. at 141-42; *Hernandez-Gomez*, 917 P.2d at 247.

A federal law may also preempt state law when the state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Myrick*, 514 U.S. at 287 (quoting *Hines*, 312 U.S. at 67). Thus, we must identify Congress’s purposes and objectives in enacting the Act.

It is indisputable that Congress’s overriding purpose in passing the Safety Act was to reduce traffic deaths and injuries caused by traffic accidents. The Safety Act expressly and unequivocally states that purpose:

Congress hereby declares that the purpose of [the Act] is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents. Therefore, Congress determines that it is necessary to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development; and to expand the national driver register.

15 U.S.C. § 1381 (recodified at 49 U.S.C. § 30101). Likewise, the purpose of Standard 208 is “to reduce the number of deaths of vehicle occupants, and the severity of injuries.” 49 C.F.R. § 571.208, S2. Allowing the Alvarados’ claims to proceed is entirely consistent with that purpose.

The Act’s legislative history abundantly demonstrates the dominance of that purpose. *See, e.g.,* S. REP. NO. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2714; H. REP. NO. 89-1776, at 10-11. The statement of Senator Magnuson, one of the Act’s sponsors, is typical of the views expressed by various members of Congress:

It should not be necessary to call again the grim roll of Americans lost and maimed on the Nation’s highways. Yet the compelling need for the strong automobile safety legislation which the Commerce Committee is today reporting lies embodied in those statistics: 1.6 million dead since the coming of the automobile; over 50,000 to die this year. And, unless the accelerating spiral of death is arrested, 100,000 Americans will die as a result of their cars in 1975.

112 CONG. REC. 14,221 (daily ed. June 24, 1966) (statement of Sen. Magnuson).

The Act’s savings clause and its history show that another of Congress’s purposes was to preserve common-law claims in accomplishing its primary objective. As we have noted, the savings clause is broad, providing that compliance with federal safety standards “does not exempt any person from any liability under common law.” 15 U.S.C. § 1397(k) (recodified at 49 U.S.C. § 30103(e)). House Report 89-1776, quoted above, demonstrates Congress’s strong intent not “to affect the rights of parties under common law.” H. REP. NO. 89-1776, at 24. As the Fifth Circuit has noted, “Congress sought to meet its goal of minimizing the number of deaths and injuries caused by auto accidents by setting forth minimum standards *and* leaving common law liability in place.” *Perry*, 957 F.2d at 1265-66 (emphasis added).

Another of Congress’s purposes was to foster innovation and competition in vehicle safety. The Senate committee report remarked, “[T]his legislation reflects the faith that the restrained and responsible exercise of Federal authority can channel the creative energies and vast technology of the automobile industry into a vigorous and competitive effort to improve the safety of vehicles.”

S. REP. NO. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2709. Accordingly, Congress characterized the standards to be adopted by the Secretary as “minimum[s].” 15 U.S.C. § 1391(2) (“Motor vehicle safety standards’ means a *minimum* standard for motor vehicle performance, or motor vehicle equipment performance.”) (recodified at 49 U.S.C. § 30102(a)(9)). Consistent with Congress’s intent to kindle innovation, manufacturers are free to do more than the standards require. *See Perry*, 957 F.2d at 1265-66. Allowing the imposition of tort liability is not inconsistent with Congress’s desire to encourage innovation.

Some courts have concluded that allowing state tort claims would frustrate a congressional purpose of uniformity, or deprive a manufacturer of a choice that Congress intended it to have. *See, e.g., Wood v. General Motors Corp.*, 865 F.2d 395, 412 (1st Cir. 1988); *Pokorny*, 902 F.2d at 1123. The Fifth Circuit, quoting the Third Circuit, declined to elevate what it described as a “secondary goal” of uniformity over the Safety Act’s “primary goal” of reducing deaths and injuries:

[U]niformity was not Congress’s primary goal in enacting the Safety Act. In 15 U.S.C.A. § 1381, Congress declared that the Safety Act’s purpose was “to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents.” Congress evidently thought that preserving common law liability would further the goal of motor vehicle safety, since § 1397(k) was included as part of the Act. In the face of this clear declaration of congressional purpose, we are unwilling to accept an overly broad notion of preemption based on uniformity that could have the effect of undercutting Congress’s concern for safety.

[*Pokorny*,] 902 F.2d at 1122. We agree with the Third Circuit, and refuse to reject the Savings Clause in favor of Congress’ secondary goal of uniformity. We thus find that *Perry*’s state law claim for defective design of an air bag system does not create an actual conflict with the Safety Act and its underlying regulatory scheme.

Perry, 957 F.2d at 1266 (citations omitted).

We also decline to elevate a “secondary purpose” so as to frustrate Congress’s primary purpose. Similarly, we do not believe that the secondary goal of providing manufacturers with a choice outweighs the primary goal of reducing deaths and injuries. As we have observed, the imposition of common-law liability does not impose any particular safety standard upon a

manufacturer; the manufacturer may choose to comply with the minimum federal standards and bear tort liability as a cost of doing business. *See Perry*, 957 F.2d at 1265 (“We recognize that the manufacturer who chooses to meet only the bare minimum performance requirements will be burdened with the potential for tort liability, but this is the exact burden that Congress preserved in the Savings Clause.”); *cf. Florida Lime & Avocado Growers*, 373 U.S. at 147-48 (emphasizing statute’s reference to “minimum standards” in concluding that statute did not “reveal a design that federal marketing orders should displace all state regulations”).

Finally, Hyundai argues that certain actions by Congress indicate that the Safety Act preempts common-law claims. In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act, a massive highway funding bill. *See* Pub. L. No. 102-240, 105 Stat. 1914 (codified as amended in scattered sections of 49 U.S.C.). Part B of the bill amended the Safety Act; among other things, it commanded the Secretary to amend Standard 208 to require automakers to install airbags. *Id.* § 2508, 105 Stat. at 2084. Section 2508(d) of that legislation provides:

Nothing in this section shall be construed by the Secretary or any other person, including any court, as altering or affecting any other provision of law administered by the Secretary and applicable to such passenger cars or trucks, buses, or multipurpose passenger vehicles or as establishing any precedent regarding the development and promulgation of any Federal Motor Vehicle Safety Standard. Nothing in this section or in the amendments made under this section to Federal Motor Vehicle Safety Standard 208 shall be construed by any person or court as indicating an intention by Congress to affect, change, or modify in any way the liability, if any, of a motor vehicle manufacturer under applicable law relative to vehicles with or without inflatable restraints.

Id., 105 Stat. at 2085-86. According to Hyundai, this provision reflects Congress’s intent to endorse the cases that had held that the Safety Act preempts common-law claims. From this, Hyundai asserts, we should infer that the 1966 Safety Act preempts the Alvarados’ claims.

For two reasons, we cannot make that leap. First, the section’s plain language and its legislative history suggest that Congress’s intent was to ensure that the 1991 amendments did not in any way affect automakers’ liability. The House Report on the bill specifically states that “[t]his

section is not intended to be a ‘sword’ or a ‘shield’ in litigation or otherwise.” H. REP. NO. 102-171(I), *reprinted in* 1991 U.S.C.C.A.N. 1526, 1783. Nevertheless, Hyundai invites us to rely upon section 2508(d) to shield it from liability here.

If Congress intended section 2508(d) to make any statement about preemption, it chose a singularly obscure means of doing so. Congress could simply have amended the Safety Act’s express preemption clause to forthrightly state that the preempted “standards” include common-law liability findings, but it did not. The only clear meaning that we can infer from section 2508(d) is that Congress intended not to change the law, whatever the law might have been. Although the majority of cases addressing the preemptive effect of the Safety Act at that time had found preemption, that view was not unanimous. *See, e.g., Garrett v. Ford Motor Co.*, 684 F. Supp. 407 (D. Md. 1987) (no preemption); *Murphy v. Nissan Motor Corp.*, 650 F. Supp. 922 (E.D.N.Y. 1987) (same); *Gingold v. Audi-NSU-Auto Union, A.G.*, 567 A.2d 312 (Pa. Super. Ct. 1989) (same). In addition, a number of other cases had reached conclusions similar to that of the Eighth Circuit in the premiere crash worthiness case, *Larsen v. General Motors Corp.*, 391 F.2d 495, 506 (8th Cir. 1968): “It is apparent that the National Traffic Safety Act is intended to be supplementary of and in addition to the common law of negligence and product liability. . . . The Act is . . . not an exemption from common law liability.” *See also Shipp v. General Motors Corp.*, 750 F.2d 418, 421 (5th Cir. 1985); *Sours v. General Motors Corp.*, 717 F.2d 1511, 1517 (6th Cir. 1983); *Ellis v. K-Lan Co., Inc.*, 695 F.2d 157, 161 (5th Cir. 1983). Clearly, the state of the law regarding the effect of the Safety Act on common-law liability was not uniform as of 1991.

More importantly, even if Congress’s intent in section 2508(d) were clear, we cannot impute that intent to the Congress of 1966. “[I]t is well settled that ‘the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.’ ” *Russello v. United States*, 464 U.S. 16, 26 (1983) (quoting *Jefferson County Pharmaceutical Ass’n v. Abbott Labs.*, 460 U.S. 150, 165 n.27 (1983) (quoting *United States v. Price*, 361 U.S. 304, 313 (1960))). *See also United States*

v. *Clark*, 445 U.S. 23, 33 n.9 (1980).

The Supreme Court has mandated that courts “are not to conclude that Congress legislated the ouster of [state law] . . . in the absence of an *unambiguous* congressional mandate to that effect.” *Florida Lime & Avocado Growers*, 373 U.S. at 146-47 (emphasis added). The Safety Act’s language, context, and legislative history reveal no such unequivocal precept. Accordingly, we hold that the Alvarados’ no-lap belt claims are not impliedly preempted.

In summary, we hold that the Alvarados’ claims based upon the manufacturer’s failure to install lap belts are neither expressly nor impliedly preempted. Accordingly, we affirm the judgment of the court of appeals and remand the case to the trial court for further proceedings.

Rose Spector
Justice

OPINION DELIVERED: June 5, 1998