

Jul 14, 2016, 12:49 pm

RECEIVED ELECTRONICALLY

IN THE SUPREME COURT OF WASHINGTON

ESTATE OF VIRGIL VICTOR  
BECKER, JR., by its Personal  
Representative, Nancy A. Becker,

Appellant,

vs.

FORWARD TECHNOLOGY  
INDUSTRIES, INC.,

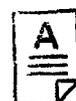
Respondent.

NO.: 92972-6

APPELLANT'S REPLY IN  
SUPPORT OF HER MOTION  
FOR LEAVE TO FILE  
SUPPLEMENT TO PETITION  
FOR REVIEW

FTI raises both procedural and substantive objections to Becker's motion for leave to file a supplement to her petition for review regarding the very recent Third Circuit opinion in *Sikkelee v. Precision Airmotive Corp.*, 2016 WL 1567236 (3d Cir. 2016).

First, FTI claims that Becker should be limited to providing this Court with a citation to *Sikkelee*, without argument. Second, FTI contends that *Sikkelee* somehow is not relevant, apparently because the Washington Court of Appeals cited the now discredited district court opinion in *Sikkelee* "only twice" in its opinion. Neither contention is meritorious.



ORIGINAL

This Court has discretion to file and consider Becker's proposed supplement to her petition for review. Additionally, the Third Circuit's opinion in *Sikkelee* is highly relevant to several of the primary reasons for granting review - does the petition for review raise a significant question of law or an issue of substantial public interest?

The Third Circuit's opinion in *Sikkelee* is a comprehensive exposition of existing law on the subject of implied field preemption under the FAA, and preemption in general. It resolves perceived circuit splits, analyzes legislative history, and clarifies earlier holdings, including various Ninth Circuit decisions, which *Sikkelee* now shows to have been misinterpreted by the Washington Court of Appeals. Nothing can be more pertinent to this Court's evaluation about the legal ramifications of this split in authority.

Whether or not this Court accepts the proposed supplement for filing, it should examine *Sikkelee* and draw its own conclusions regarding the answers to these questions.

**1. Becker's Motion for Leave to File a Supplement to Her Petition for Review is Procedurally Proper.**

On June 7, 2016, Becker brought the Third Circuit's decision in *Sikkelee* to this Court's attention by filing a copy of the opinion with this Court, without argument, in compliance with RAP 10.8. As a result, the

recent Third Circuit opinion in *Sikkelee* already is squarely before this Court pursuant to Becker's June 7 filing. A copy of this one-page document (without the *Sikkelee* case attached) is attached as Exhibit A.<sup>1</sup>

Contrary to FTI's contentions, Becker has not filed a supplement to her petition for review with this Court; Becker has only asked this Court for *permission* to do so, attaching the *proposed* supplement as an exhibit. As the commentators suggest, the proper practice for supplemental appellate briefing is by motion – exactly as Becker has done – that is, “submit the new authority to the court, along with a brief statement suggesting that the court invite counsel to submit supplemental briefs to address the new authority.” 3 KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE RAP 10.8, authors cmt. 1, at 116 (8th ed. 2014).

The Rules of Appellate Procedure grant this Court wide discretion to entertain supplemental briefing, either on the Court's own motion, or by motion of a party. RAP 10.1(h).

FTI's cited cases are inapplicable. They concern *uninvited* argument to this Court after an appeal has been fully briefed, or motions to strike supplemental briefs which have been filed without permission. *See*,

---

<sup>1</sup> FTI's opposition misleadingly refers to an earlier document, dated June 2, 2016, which is not part of the Court's file. On June 2, 2016, Becker attempted to file a 4-page letter brief regarding the *Sikkelee* decision, but the clerk's office rejected it for filing because it contained legal argument. Becker thereupon filed the June 7 document containing only the *Sikkelee* case citation.

*Rye v. Seattle Times Co.*, 37 Wn. App. 45, 55, 678 P.2d 1282, 1288 (1984); see also *Futurewise v. W. Washington Growth Mgmt. Hearings Bd.*, 164 Wn.2d 242, 248, 189 P.3d 161, 164 (2008).

Although this Court gave FTI the opportunity to explain why *Sikkelee* is not directly on point, FTI has chosen not to do so. Its silence bespeaks volumes. No further briefing on the subject is necessary at this preliminary stage.

**2. The Third Circuit’s Opinion in *Sikkelee* Is Directly Pertinent to the Issues Raised in Becker’s Petition for Review, and Shows Why Review Is Imperative to Address Issues of Law Under the State and Federal Constitutions and of Substantial Public Interest.**

The Third Circuit opinion in *Sikkelee* is the proverbial elephant in the room. *Sikkelee* issued on the same day (April 19, 2016) on which FTI filed its answer to Becker’s petition for review. In that document, FTI urged this Court to deny review because “The *Becker* decision does not raise a significant question of law under the State or Federal Constitution or involve an issue of substantial public interest.” (FTI’s Answer to Petition for Review at p. 5.)

The opinion in *Sikkelee* meticulously explains why a holding such as the one reached by the Court of Appeals in this case upsets the balance of federalism under which the states and federal government possess concurrent sovereignty. The byproduct of that imbalance is the removal of

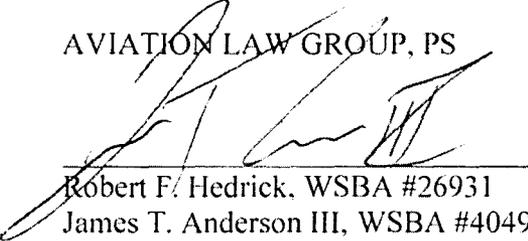
rights of relief for persons injured by defective aircraft parts. *See, Sikkelee*, 2016 WL 1567236, at pp. 12-13.

Once review has been granted, the parties will have ample opportunity to provide this Court with additional legal argument, including argument on the proper application and interpretation of *Sikkelee*.

Dated this 14<sup>th</sup> day of July, 2016,

Respectfully Submitted,

AVIATION LAW GROUP, PS



---

Robert F. Hedrick, WSBA #26931  
James T. Anderson III, WSBA #40494  
1420 5th Ave, Suite 3000  
Seattle, WA 98101  
(206) 464-1166  
Attorneys for Plaintiff/Appellant  
Estate of Virgil Victor Becker

**CERTIFICATE OF SERVICE**

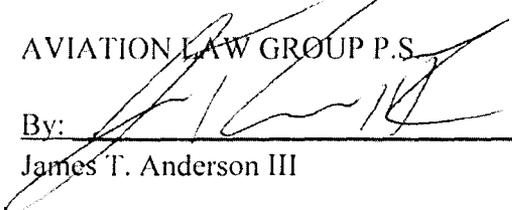
The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that the foregoing and following documents were served upon the interested parties, on the date signed, and in the manner indicated, below:

1. Reply to FTI's Answer
2. Exhibit A to Reply: Becker's Statement of Additional Authority

Francis S. Floyd Floyd, Pflueger & Ringer, P.S. 200 West Thomas Street, Suite 500 Seattle, Washington 98119 <i>Attorneys for Defendant Forward Technologies Industries, Inc.</i>	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via E-mail <input type="checkbox"/> Via E-Service
--	--

Signed this 14<sup>th</sup> day of July, 2016,

AVIATION LAW GROUP P.S.

By: 

James T. Anderson III

**Exhibit A**

Supreme Court No. 92972-6  
Court of Appeals No. 72416-9-I

IN THE SUPREME COURT OF  
WASHINGTON

---

ESTATE OF VIRGIL VICTOR BECKER, JR., by its Personal  
Representative, Nancy A. Becker,

Petitioner,

v.

FORWARD TECHNOLOGY INDUSTRIES, INC.,

Respondents.

---

**STATEMENT OF ADDITIONAL AUTHORITY**

---

Robert F. Hedrick, WSBA No. 26931  
James T. Anderson, WSBA No. 40494  
AVIATION LAW GROUP, P.S.  
1420 5th Avenue, Suite 3000  
Seattle, WA 98101  
Telephone: (206) 464-1166

*Attorneys for Appellant  
Estate of Virgil V. Becker, Jr.*

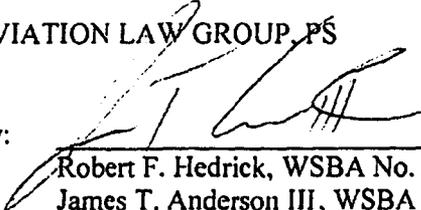
Pursuant to RAP 10.8. Petitioner Estate of Virgil V. Becker, Jr. (Becker) submits this Statement of Additional Authority which is being offered for the issue: whether implied field preemption applies to aircraft product liability actions.

The attached April 19, 2016 decision of the Third Circuit Court of Appeal, *Sikkelee v. Precision Airmotive Corp.* (3rd Cir., 2016 WL 1567236, April 19, 2016), addressing this issue is attached to this statement.

Respectfully submitted this 7th day of June, 2016.

AVIATION LAW GROUP, P.S.

By:

  
Robert F. Hedrick, WSBA No. 26931  
James T. Anderson III, WSBA No. 40494

Attorneys for Plaintiff/Appellant  
Estate of Virgil V. Becker, Jr.

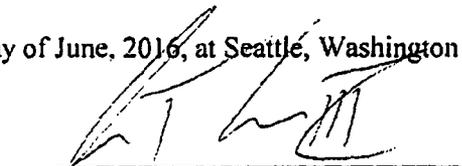
**CERTIFICATE OF SERVICE**

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that the foregoing and following documents were served upon the interested parties, on the date signed, and in the manner indicated, below, and were also filed with the Washington Supreme Court:

1. Statement of Additional Authorities with Appendix

Francis S. Floyd Floyd, Pflueger & Ringer, P.S. 200 West Thomas Street, Suite 500 Seattle, Washington 98119 <i>Attorneys for Defendant Forward Technologies Industries, Inc.</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via U.S. Mail, Postage Prepaid <input type="checkbox"/> Via E-mail <input type="checkbox"/> Via E-Service
--	---

Signed this 7th day of June, 2016, at Seattle, Washington

  
\_\_\_\_\_  
James T. Anderson III

## OFFICE RECEPTIONIST, CLERK

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Thursday, July 14, 2016 12:50 PM  
**To:** 'James Anderson'  
**Subject:** RE: Case No. 92972-6 // Estate of Virgil Victor Becker, Jr. v. Forward Technology Industries, Inc.

Received 7/14/2016.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:

[http://www.courts.wa.gov/appellate\\_trial\\_courts/supreme/clerks/](http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/)

Looking for the Rules of Appellate Procedure? Here's a link to them:

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=app&set=RAP](http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP)

Searching for information about a case? Case search options can be found here:

<http://dw.courts.wa.gov/>

**From:** James Anderson [mailto:[anderson@aviationlawgroup.com](mailto:anderson@aviationlawgroup.com)]  
**Sent:** Thursday, July 14, 2016 12:43 PM  
**To:** OFFICE RECEPTIONIST, CLERK <[SUPREME@COURTS.WA.GOV](mailto:SUPREME@COURTS.WA.GOV)>  
**Subject:** Case No. 92972-6 // Estate of Virgil Victor Becker, Jr. v. Forward Technology Industries, Inc.

Dear Clerk:

Please find attached Appellant Estate of Virgil V. Becker Jr.'s Reply in Support of her Motion for Leave to File Supplement to Petition for Review for filing with the Washington Supreme Court.

Case Name: ESTATE OF VIRGIL V. BECKER JR., by its Personal Representative Nancy A. Becker, Petitioner, v. FORWARD TECHNOLOGY INDUSTRIES, INC., Respondent.

Case Number: Supreme Court No. 92972-6, Court of Appeals No. 72416-9-I

Person Filing Document: James T. Anderson, (206) 464-1411, WSBA No. 40494, [anderson@aviationlawgroup.com](mailto:anderson@aviationlawgroup.com)

The appendix attached to the Reply does not exceed 50 pages.

Respectfully,

**James T. Anderson**

**AVIATION LAW GROUP, PS**

1420 Fifth Avenue, 30<sup>th</sup> Floor  
Seattle, Washington 98101  
Phone: (206) 464-1166 | Direct: (206) 464-1411

[www.aviationlawgroup.com](http://www.aviationlawgroup.com)

This e-mail may contain confidential information which is legally privileged. The information is solely for the use of the addressee named above. If you are not the intended recipient, any disclosure, copying, distribution or other use of the contents of this information is strictly prohibited. If you have received this e-mail in error, please notify us by return e-mail and delete this message. Thank you.