

Litigation - USA

Court holds that federal standards of care pre-empt state law standards

Contributed by [Morrison & Foerster LLP](#)

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A New York state trial court recently added another voice to the chorus of cases finding that federal law pre-empts state law standards of care in the field of aviation safety. In *In re: Air Crash Near Clarence Center, New York*,⁽¹⁾ decided on September 21 2012, the Erie County Court held that federal standards of care applied to the plaintiffs' claims of negligent pilot hiring, training and retention.

Facts

The case arises out of the February 12 2009 crash of Continental Connection Flight 3407. The plaintiffs alleged that in addition to the pilot's negligence in operating the aircraft, defendants Colgan Air, Inc and Pinnacle Airlines Corp negligently hired, trained and retained the pilot, who allegedly had a history of failed flight tests and unsafe flying tendencies.

Colgan and Pinnacle moved for an order stating that federal standards of care governed the plaintiffs' claims. In response, the plaintiffs first argued that the savings clause in the Federal Aviation Act of 1958 preserves both state remedies and state standards of care. They also argued that the act empowers the Federal Aviation Administration (FAA) to prescribe "minimum safety standards" for commercial airline operators, which indicates Congress's intent merely to create a floor and to leave room for the application of state tort law. Furthermore, the plaintiffs argued that state standards did not conflict with federal law with respect to their claims of negligent hiring, training and retention. Finally, they argued that if federal regulations pre-empt an ordinary negligence standard of care, their claims would effectively be barred because they would be restricted to examining whether the pilot took and passed various federally required flight tests.

Decision

Rejecting the above arguments, the court ordered that federal standards of care governed the plaintiffs' claims. The court agreed with the "litany of Federal cases",⁽²⁾ holding that the Federal Aviation Act and the Federal Aviation Regulations:

"thoroughly occupy' the field of aviation safety by establishing 'complete and thorough safety standards for interstate and international air transportation that are not subject to supplementation by, or variation among, jurisdictions'."

The court then concluded that pre-emption applied because the plaintiffs' allegations "fall squarely within the broad field of air safety". Furthermore, "[w]ith respect to pilot training, certification and hiring, the regulations appear to be exhaustive".

The court also had little sympathy for the argument that applying federal standards of care would effectively bar the plaintiffs' claims. As the court stated: "Admittedly, the application of the doctrine of implied preemption to thwart state standards of care may sometimes affect the ultimate outcome of a case, possibly resulting in dismissal of a claim." The pre-emption doctrine prevails nonetheless. In reaching this conclusion, the court relied heavily on three federal circuit court cases,⁽³⁾ in which "plaintiffs were thwarted in their pursuit of a remedy which, under different circumstances, would have been available to them under state common law". The New York court appeared to agree with the reasoning in *Montalvo*, where the Ninth Circuit explained that the presence of extensive federal regulations regarding in-flight warnings demonstrated that the FAA had exercised its "authority to regulate aviation safety to the exclusion of the states". The loss of certain claims is an inevitable by-product of that FAA regulation. However, the New York court was also careful to note that it had not reached an opinion

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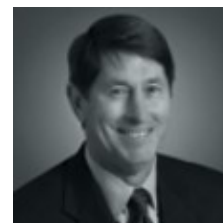
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about the viability of the plaintiffs' claims, reserving that issue for another day.

Comment

While this state trial court opinion is not binding authority in New York or any other jurisdiction, it demonstrates how trial courts may be expected to apply the growing body of case law declaring that the Federal Aviation Act and Federal Aviation Regulations "thoroughly occupy" the field of aviation safety and pre-empt state standards of care. In cases involving claims of negligent hiring, training and retention of pilots, aviation defendants may point to this case as illustrative of the proper application of the now-large body of federal cases supporting the exclusive application of federal standards of care. Defendants should be careful, however, when relying on this case in matters not involving air carriers, as some of the Federal Aviation Regulations upon which the court relied apply only in the air carrier context.

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Endnotes

(1) NYS 2d, 2012 WL 4324940 (NY Sup Ct 2012).

(2) *Goodspeed Airport, LLC v East Haddam Inland Wetlands*, 634 F 3d 206 (2d Cir 2011); *US Airways, Inc v O'Donnell*, 627 F 3d 1318 (10th Cir 2010); *Montalvo v Spirit Airlines*, 508 F 3d 464 (9th Cir 2007); *Greene v Goodrich Avionics Sys, Inc*, 409 F 3d 784 (6th Cir 2005); *Abdullah v American Airlines, Inc*, 181 F 3d 363 (3d Cir 1999); and *French v PanAm Express, Inc*, 869 F 2d 1 (1st Cir 1989).

(3) *Montalvo*, 508 F 3d 464; *Witty v Delta Airlines, Inc*, 366 F 3d 380 (5th Cir 2004); and *Greene*, 409 F 3d 784.

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