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AVIATION ALERT

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Florida Supreme Court Deepens Split of Authority on Meaning of Federal Limitation of Liability for Aircraft Owners and Lessors

By Robert J. Williams and Bruce P. Merenstein

In a recent dissenting opinion, Supreme Court Justice Antonin Scalia criticized Congress for writing "fuzzy, leave-the-details-to-be-sorted-out-by-the-courts legislation." Although Justice Scalia was referring to the federal Armed Career Criminal Act, he could easily have been talking about the "Limitation of Liability" provision in the federal aviation statute, 49 U.S.C. § 44112.

Section 44112 provides that an aircraft owner or lessor is liable "for personal injury, death, or property loss or damage on land or water" only when the aircraft that caused the injury "is in the actual possession or control" of the owner or lessor. In *Vreeland v. Ferrer*, No. SC10-694 (Fla. July 8, 2011), the Florida Supreme Court interpreted the scope of the limitation of liability and held that it only encompasses injuries, death, or property damages occurring *on land or water*. Disagreeing with the intermediate appellate court in the same case and with prior decisions of other courts, the court in *Vreeland* held that Section 44112 does not provide immunity for an injury or death occurring *in the air*, as opposed to on the ground. The court thus deepened a split of authority on one of many "fuzzy" aspects of the federal limitation of liability for aircraft owners and lessors.

In the Florida case, John Vreeland, as administrator of the estate of Jose Martinez, brought suit against, among others, Aerolease of America, Inc., the owner of an aircraft in which Martinez was a passenger when it crashed, killing Martinez and the pilot. Vreeland asserted a number of claims against Aerolease, including that it was vicariously liable for the alleged negligence of the pilot in the operation of the aircraft, under Florida's "dangerous instrumentality" doctrine. Aerolease sought summary judgment, arguing that Section 44112 preempted Florida law and precluded a Florida court from imposing liability on Aerolease for harm occurring when it was not in actual possession or control of the aircraft. The trial court agreed and entered summary judgment for Aerolease. On appeal, the intermediate appellate court affirmed. The Florida Supreme Court then granted Vreeland's petition for review and reversed.

In its opinion, the Florida Supreme Court noted that it had initially adopted the dangerous instrumentality doctrine in a 1920 case involving automobiles. Fifty years later, the court held in *Orefice v. Albert*, 237 So. 2d 142 (Fla. 1970), that the owner of an aircraft could be held vicariously liable for injuries caused by the negligent conduct of the aircraft's pilot, even when the owner was not in control of the aircraft at the time of the crash that caused the injuries. The court in *Vreeland* acknowledged, however, that state law could be preempted by federal law on the same subject. As the *Vreeland* court explained, federal law could either expressly or impliedly preempt state law. The court held that Congress did not expressly preempt state law imposing vicarious liability on aircraft owners but that, in some circumstances, Section 44112 impliedly preempted such state law.

In order to determine the scope of Congress's intended preemption, the court looked to the legislative history behind Section 44112. The court traced the current statutory provision back to a 1948 federal statute, which precluded liability for persons with a security interest in an aircraft or long-term lessors of an air-

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craft for an injury occurring "on the surface of the earth (whether on land or water)," unless the secured party or lessor was in actual possession or control of the aircraft at the time of the injury. A House report accompanying the legislation explained that it was aimed at protecting mere security holders and other financiers of aircraft from the imposition of liability under the Uniform Aeronautics Act, then in force in at least 11 jurisdictions. Under the Uniform Act, the owner of an aircraft operated over the lands or waters of a jurisdiction was "absolutely liable" for injuries caused by the aircraft to persons or property "on the land or water beneath" the aircraft.

In 1958, the limitation of liability provision was incorporated into the new Federal Aviation Act, and in 1994, the 1958 provision was reworded and recodified in the present Section 44112. Although the language of the provision was changed in the 1994 recodification, the *Vreeland* court held that Congress's intent remained the same as in the original 1948 enactment, largely on the basis of a statement in a House Report that the purpose of the 1994 law was "to revise, codify, and enact without substantive change certain general and permanent laws related to transportation." In ascertaining Congress's intent (and thus, the scope of preemption), the court also noted that "every version of the owner/lessor liability federal statute since its enactment in 1948 has referenced injury, death, or property damage that has occurred *on land or water, or on the surface of the earth.*"

Thus, the court concluded, Congress, in both the original 1948 statute and the current Section 44112, "did not intend to preempt state law with regard to injuries to passengers or aircraft crew," but only intended to preempt state law imposing vicarious liability on owners or lessors for injuries occurring on land or water. In construing the limitation of liability in Section 44112 so narrowly, the *Vreeland* court acknowledged that its conclusion was contrary to one reached by the United States Court of Appeals for the Seventh Circuit in a 1994 decision, *Matei v. Cessna Aircraft Co.*, 35 F.3d 1142 (7th Cir. 1994). In *Matei*, the Seventh Circuit held that Section 44112's predecessor provision precluded liability against an aircraft owner for the death of the aircraft's pilot in an in-flight accident — that is, a death that did *not* occur on land or water.

As noted above, whether Section 44112 covers all injuries (as the *Matei* court concluded) or just those occurring on water or land (as the *Vreeland* court held) is just one of a number of disputed issues involving the scope of Section 44112. Another such issue is whether Section 44112 covers outright owners of aircraft, as opposed to just those owners with a security interest, an issue arising from the plainly more limited scope and intent of the original 1948 statute. Yet another disputed issue is the scope of the "actual possession or control" exception to the limitation of liability.

Lessors of aircraft and aircraft components traditionally have attempted to address these issues through various lease terms. Liability generally may be limited by disclaimers of warranties, indemnification provisions and covenants that lessee will comply strictly with all applicable laws, regulations, and customs in its operation of the aircraft and aircraft components. Other common lease terms are written specifically to invoke the protection of Section 44112, such as covenants of quiet enjoyment, which preclude the lessor's access to the aircraft and its components as long as the lessee is in compliance with the lease, thereby disavowing lessor's "actual possession or control." In a jurisdiction that follows *Vreeland*, however, the benefit of many of those traditional lease protections may be substantially eroded or eliminated. All that may remain to protect the lessor from a lessee's conduct is an indemnity obligation, the ultimate efficacy of which, in turn, will be determined by matters such as lessee's solvency, insurance coverage, and policy limits.

The Florida Supreme Court's decision in *Vreeland v. Ferrer* thus highlights just one of many open issues that Congress left unaddressed when it recodified the limitation of liability in Section 44112 seventeen years ago. Although not technically binding authority in other states or federal courts, *Vreeland* is certain to attract the attention of those seeking compensation for damage or injury in aviation accidents. Accordingly, aircraft and component lessors who are sued in Florida state courts or other state courts that have

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elected to apply Florida law to the claims should give timely and thoughtful consideration to removing the action to federal court, where a more expansive construction of Section 44112 remains viable. Regardless of forum or venue, aircraft owners and lessors will likely be litigating these issues in many cases to come, unless Congress amends (and clarifies) the statute or the United States Supreme Court accepts review of a petition for a writ of *certiorari* raising one or more of these issues and settles the interpretation of this "fuzzy" federal statute. ◆

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.

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