

Client Alert.

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New York Court Holds That Federal Standards of Care Preempt State-Law Standards Governing Hiring, Training, and Retention of Pilots

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A New York state trial court recently added another voice to the chorus of cases finding that federal law preempts state-law standards of care in the field of aviation safety. In *In re: Air Crash Near Clarence Center, New York*, ___ N.Y.S.2d ___, 2012 WL 4324940 (N.Y. Sup. Ct. 2012), 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.

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 airplane, 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 ("FAAct") preserves both state remedies *and* state standards of care. They also argued that the FAAct 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 do not conflict with federal law with respect to their claims of negligent hiring, training, and retention. Finally, the plaintiffs argued that, if federal regulations preempt an ordinary negligence standard of care, their claims effectively would be barred because they would be restricted to examining whether the pilot took and passed various federally required flight tests.

Rejecting these arguments, the court ordered that federal standards of care governed the plaintiffs' claims. The court agreed with the "litany of Federal cases"¹ holding that the FAAct and the Federal Aviation Regulations ("FARs") "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 preemption 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

¹ *Goodspeed Airport, LLC. v. East Haddam Inland Wetlands & Watercourses Comm'n*, 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); *French v. PanAm Express, Inc.*, 869 F.2d 1 (1st Cir. 1989).

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preemption doctrine prevails nonetheless. In reaching this conclusion, the court leaned heavily on three federal circuit court cases—*Montalvo*, 508 F.3d 464, *Witty v. Delta Airlines, Inc.*, 366 F.3d 380 (5th Cir. 2004), and *Greene*, 409 F.3d 784—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 byproduct of that FAA regulation. But the New York court was also careful to note that it had not reached an opinion about the viability of the plaintiffs’ claims, reserving that issue for another day.

While this state trial court opinion is not binding authority in New York or any other jurisdiction, it does demonstrate how trial courts may be expected to apply the growing body of case law declaring that the FAA Act and the FARs “thoroughly occupy” the field of aviation safety and preempt 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 FARs upon which the court relied apply only in the air carrier context.

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