

Client Alert

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Court Holds That the Federal Aviation Act of 1958 Preempts State Law Standards of Care

A recent decision from the U.S. District Court for the Western District of New York has held that federal standards of care preempt state law standards of care under the Federal Aviation Act of 1958 (the “1958 Act”)¹ in claims arising from a commercial air crash because they implicate the field of air safety. *See In re: Air Crash Disaster Near Clarence Ctr., N.Y., on Feb. 12, 2009*, No. 09-md-2085, 2011 WL 2848812 (W.D.N.Y. July 18, 2011) (“Flight 3407”).

Previously, circuit courts have held that the 1958 Act impliedly preempts the entire field of air safety and, therefore, requires plaintiffs to show a violation of a federal law or regulation (*e.g.*, federal aviation regulation) rather than a breach of a state law standard of care for claims relating to air safety.² However, none of these decisions involved claims arising from a commercial air crash but, instead, involved other aspects of air safety such as passenger injuries from turbulence,³ failure to warn of deep vein thrombosis,⁴ and training/certification of crew in the service of alcohol.⁵

The decision involved the February 12, 2009 crash of Continental Connection Flight 3407, operated by Colgan Air, while on final approach to the Buffalo Niagara International Airport, which killed all 49 people on board and one person on the ground. The Flight 3407 plaintiffs generally allege that the accident was caused by Colgan’s (and its co-defendant and parent, Pinnacle Airlines Corp.) negligent operation of the flight as well as negligent hiring, training, and supervising of the flight crew.

The decision adopted the binding Second Circuit holding in *Goodspeed Airport LLC v. East Haddam Inland, Wetlands & Watercourses*

Comm’n, 634 F.3d 206 (2d Cir. 2011), which held that the 1958 Act established Congress’ “intent to occupy the entire field of air safety, thereby preempting state regulation of that field.” Although the Second Circuit determined that field preemption applies to claims related to air safety, the *Goodspeed* Court determined that the removal of trees was not related to the field of air safety; thus, plaintiffs’ claims were not preempted.⁶

After finding that *Goodspeed* required preemption of state regulation of air safety under the 1958 Act, the only remaining question to be addressed in the Flight 3407 decision was whether the preempted field, *i.e.*, air safety, encompassed plaintiffs’ state law negligence claims. The court held that “[t]here is little question that these claims directly implicate air safety, and indeed, there is no argument from Plaintiffs that their claims fall outside the air safety field.”

The court explained that Congress’ purpose for federal preemption of the field of air safety was to provide a single, central authority – the Federal Aviation Administration – the power to develop regulations and standards governing air safety. Allowing 50 different state standards of care would interfere with federal air safety regulations and the central purpose of the 1958 Act.

The court found, consistent with several prior circuit court decisions, that federal field preemption of air safety extends only to state law standards of care; state law causes of action and state law remedies remain available under the 1958 Act’s savings clause, which provides that “a remedy under this part is in addition to any other remedies provided by law.”⁷ Therefore, if Plaintiffs show a violation of a federal law or regulation, they are entitled to recover state law remedies.⁸ The 1958 Act provides no independent mechanism for remedies aside from the savings clause.

This decision reiterates that liability for negligence claims arising from incidents relating to air safety incorporate a federal, not state, standard of care analysis. Most states, including New York, require the application of the reasonable person or reasonably-prudent person standard of care for negligence claims to determine whether a defendant breached its duty of care owed to a plaintiff. Under field preemption, plaintiffs must show a violation of a federal law or regulation before a defendant may be liable for damages. Plaintiffs' arguments that federal regulations provide merely minimum safety requirements that must be met appear no longer valid.



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¹ 49 U.S.C. § 40101, *et seq.*, and its associated regulations (e.g., 14 C.F.R. §§ 21-99, *et seq.*).

² The First, Second, Third, Sixth, Ninth and Tenth Circuits have held that the 1958 Act preempts state regulation of air safety.

³ *Abdullah v. American Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999).

⁴ *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007).

⁵ *U.S. Airways, Inc. v. O'Donnell*, 627 F.3d 1318 (10th Cir. 2010).

⁶ See Condon & Forsyth Client Alert, March 2011, *Second Circuit Declares Field Preemption Under the Federal Aviation Act of 1958*.

⁷ 49 U.S.C. § 40120(c).

⁸ See, e.g., *Aldana v. Air E. Airways, Inc.*, 477 F. Supp. 2d 489 (D. Conn. 2007).