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Continuing battle over federal preemption of aircraft lessor liability

Aircraft owners and lessors may face liability for accidents, even if they do not have actual possession or control of an aircraft.



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The issue of whether aircraft owners, secured parties and lessors, which do not have actual possession or control of civil aircraft, should be held liable for aircraft accidents under state law has generated a divergence of opinions in the courts. This split stems from differing interpretations of Section 44112 of the US Transportation Code.

The courts' conflicting analyses of the statute's language and scope have resulted in opinions ruling both in favour of and against federal preemption of state law by Section 44112.

In a recent and problematic decision, *Vreeland v Ferrer*, the Florida Supreme Court ruled that Congress did not intend to preempt state law liability with regard to injuries to passengers or aircraft crew, and therefore Section 44112 preempted only state law claims for damages and injuries that occurred "on the surface of the earth (whether on land or water)", and not those that occurred inside the aircraft.

The statute and legislative history

- Section 44112 states the following:
 - "lessor" means a person leasing for at least 30 days a civil aircraft, aircraft engine, or propeller;
 - "owner" means a person that owns a civil aircraft, aircraft engine or propeller; and
 - "secured party" means a person having a security interest in, or security title to, a civil aircraft, aircraft engine or propeller under a conditional sales contract, equipment trust contract, chattel or corporate mortgage, or similar instrument.

Liability – *A lessor, owner or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine or propeller is in the actual possession or control of the lessor, owner or secured party, and the personal injury, death or property*

loss or damage occurs because of:

- the aircraft, engine or propeller; or
- the flight of, or an object falling from, the aircraft, engine or propeller (emphasis added).

Section 44112 replaced Section 1404 of the Federal Aviation Act of 1958 (Act).¹ Enacted in 1994, Section 44112 was part of a broad recodification of the Act, intended to "restate" the laws "without substantive change".

The House Report accompanying Section 44112's predecessor affirmed the law's objective, stating that, "[t]he relief thus provided from potential unjust and discriminatory liability is necessary to encourage such persons to participate in the financing of aircraft purchases".

A split in the cases – holding passive owners, secured parties and lessors liable

In *Retzler v Pratt and Whitney Co*, the Appellate Court of Illinois held that an aircraft lessor could be held liable for the plaintiff's injuries sustained during the aircraft's

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emergency landing because Section 44112 did not preempt the plaintiff's state law claims.

To support its decision, the court relied in part on *Abdullah v American Airlines, Inc.* However, the *Abdullah* defendants were not aircraft owners or lessors, nor did *Abdullah* discuss the language of Section 44112 or former Section 1404. Instead, the Third Circuit Court of Appeals in *Abdullah* held that Puerto Rican common law standards of care for airline employee defendants were preempted by the Act, but such preemption did not apply to territorial damage remedies.

In the unreported *Scollard v Duncan Aviation* decision, a Nebraska state court determined that an owner or lessor's potential control of an aircraft was sufficient to hold them liable under Section 44112. In this case, the potential control was the defendant lessor's power to inspect, provided for in the lease, which he had never exercised. Despite the plain language of Section 44112, which states that the aircraft must be in the owner or lessor's "actual" possession or control, *Scollard* held that Section 44112 did not preempt the plaintiff's state law claims.

The Superior Court of Rhode Island also ruled against federal preemption in *Coleman v Windham Aviation Inc.* Despite the language

of former Section 1404, which shields from liability a "...person... by reason of his interest as lessor or owner", the court held that Section 44112 shields from state law liability only owners holding a security interest in the aircraft and not those, like the defendant, who owned the aircraft outright.

The Mangini court asserted that the Coleman reasoning "defie[d] common sense and render[ed] the explicit words of Congress nugatory."

Ruling in favour of federal preemption

An Indiana district court, in *In re Lawrence W Inlow Accident Litigation*, held that "[t]he plain language of [Section] 44112 establishe[d] that it preempt[ed] state common law claims against covered lessors". To prove that a state common law claim was not preempted by Section 44112, the court required evidence "that would permit a reasonable jury to find that [the lessor] was in 'actual possession or control' of the aircraft at the time of the accident".

In *Mangini v Cessna Aircraft Co*, the Superior Court of Connecticut rejected the plaintiff's argument that Section 1404 was limited to persons having only a security interest in the aircraft. In doing so, the *Mangini* court asserted that the *Coleman* reasoning "defie[d] common sense and render[ed] the explicit words of Congress nugatory". The court stated that Section 1404 "was always designed to include the owners that [Section] 44112 so clearly and definitely describes".

Importantly, *Mangini* cited to *Abdullah* to support its position that "most federal courts considering this question have found that these federal exemptions from liability statutes bar state claims". Thus, *Mangini* not only rejected *Retzler*, but undermined its foundation, showing that the *Retzler* court misinterpreted the relevant precedent of Section 44112.

***Vreeland v Ferrer* – facts and procedural history**

In *Vreeland*, the surviving beneficiary of a passenger killed in an aircraft accident brought suit against *Aerolease of America Inc*, the aircraft lessor. *Aerolease* had leased the aircraft to a third-party lessee, which was in control of the aircraft at the time of the accident. At the trial court level *Aerolease* successfully obtained summary judgment against the plaintiff. While the plaintiff agreed that *Aerolease* did not have actual possession or control of the aircraft at the time of the accident, on appeal, the plaintiff challenged the summary judgment on two counts.

First, the plaintiff argued that *Aerolease* was vicariously liable for the pilot's negligent operation of the aircraft under Florida's dangerous instrumentality law because Section 44112 did not preempt liability under state law.

Second, the plaintiff argued that *Aerolease* negligently maintained and inspected the



aircraft before leasing it, and this negligence contributed to the accident.

To address the vicarious liability claim and to determine whether Florida's dangerous instrumentality law applied to this case, the District Court of Appeal of Florida analyzed the legislative history of Section 44112 and the split in federal and state case law in other jurisdictions. The district court ruled that the statutory language was unambiguous and held that Section 44112 preempted the state law claim, "insofar as that law would hold the owner or lessor of a civil aircraft liable for another's negligence committed when the owner or lessor was not in actual possession or control of the aircraft".

As to the plaintiff's second cause of action, concerning negligent maintenance and inspection by Aerolease, the district court held that a negligence claim against the lessor regarding its conduct when the aircraft was in its possession or control "would in no way hinder the fulfillment of [Section 44112's] purpose" and was not preempted.

Florida Supreme Court's decision

On appeal, the Florida Supreme Court considered whether the vicarious liability claim against Aerolease was indeed preempted by Section 44112. The court reversed the district court of appeals' decision, holding that Section 44112 preempted liability under Florida's dangerous instrumentality laws only "[t]o the extent that the [laws] applic[ed] to injuries, damages or deaths that occur[ed] on the surface of the earth". However, "because the death of [the passenger] occurred while he was a passenger in a plane that crashed – not on the ground beneath the plane – the wrongful death action" was not preempted by Section 44112.

In its lengthy opinion, the Florida Supreme Court quotes the text of Section 44112 just once, instead focusing on the legislative history behind Section 1404, the predecessor statute to Section 44112. It determined that "every version of the owner/lessor liability statute since its enactment in 1948 ha[d] referenced injury, death or property damage that occurred *on land or water or on the surface of the earth*". The court argued that because there existed a separate statute addressing injuries to aircraft crew and passengers who were in the aircraft at the time of the incident, Congress specifically

intended Section 1404 to preempt state law with regard only to "injuries that occur[ed] *on the surface of the earth*".

In its analysis of Section 1404's legislative history, however, the court does not discuss the purpose behind the statute or its predecessor, which was to encourage the financing of aircraft purchases by protecting owners and lessors from liability when not in actual possession or control of the aircraft.

The Vreeland court then analyzed judicial interpretations of Section 44112 and former Section 1404 from jurisdictions outside of Florida. It also reviewed various canons of statutory interpretation, finding that because Section 44112 was susceptible to more than one possible interpretation, the court should apply the interpretation that disfavoured preemption.

After reviewing the law on preemption and three cases regarding aircraft lessor liability, the court concluded that the Michigan Court of Appeal's interpretation of Section 44112's legislative history in *Storie v Southfield Leasing* was correct, and was consistent with "the well-established presumption against federal preemption of state tort remedies".

The Florida Supreme Court therefore held that Florida's dangerous instrumentality laws were preempted by Section 44112 to the extent that they applied to injuries, damages and deaths that occurred "on the surface of the earth". However, vicarious liability could be imposed on aircraft owners, lessors and secured parties for injuries, damages and deaths that occurred in the aircraft, "even where the aircraft [was] not within their immediate control or possession at the time of the loss". The case was remanded for further proceedings consistent with this ruling.

The dissent

The dissent in Vreeland claimed that the majority's opinion "defie[d] reality". Citing the lower court's opinion, the dissent noted that the majority's "reasoning [did] not 'explain why an airplane crash does not cause an injury on the surface of the earth regardless of whether the injured person was in the airplane or standing on the ground'". According to the majority, the passenger "was not 'on land or water' at the time of the crash", even though the passenger "was in the aircraft when it hit land... [and]

his death occurred 'on land', not in the aircraft prior to contact with the land".

The dissent also criticized the majority's interpretation of the meaning of Section 44112, arguing that the text of the statute was unambiguous. It cited to various Supreme Court decisions which held that if a statute's text is unambiguous, the court must apply the statute according to its ordinary and plain meaning. The dissent argued that "[t]he majority's view [was] inconsistent with the plain meaning of the statute, specifically the plain meaning of 'on land'". As the dissent contended, it "defies reality" to say that a passenger whose death occurred when the aircraft made contact with the ground was "not on land" at the time of the crash.

Conclusion

The Florida Supreme Court's recent decision in Vreeland renders Section 44112 useless in Florida against state law liability for losses that do not occur "on the surface of the earth". It opens the door to increased litigation while discouraging the financing of aircraft purchases.

Owners, lessors and secured parties may now face liability under state law for any loss that occurs to a passenger onboard an aircraft, regardless of whether they have actual possession or control of that aircraft. As other courts have asserted, this result seems contrary to Congress's intent and the purpose behind Section 44112.

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¹ 49 USC 1404 (1958). Section 1404 states: "No person having a security interest in, or security title to, any civil aircraft under a contract of conditional sale, equipment trust, chattel or corporate mortgage, or other instrument of similar nature, and no lessor of any such aircraft under a bona fide lease of 30 days or more, shall be liable by reason of such interest or title, or by reason of his interest as lessor or owner of the aircraft so leased, for any injury to or death of persons, or damage to or loss of property, on the surface of the earth (whether on land or water) caused by such aircraft or by the ascent, descent or flight of such aircraft or by the dropping or falling of any object therefrom, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss" (emphasis added).

