

# Can Flight School Be Sued Over Former Student's Accident?

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Numerous cases have held flight schools liable for negligent oversight of a student training flight that ended in an accident. But is there a cause of action for a passenger's death or injury in a plane crash against the flight school that trained the plane's pilot months or even years earlier? A series of recent aviation cases from across the country have reached divergent opinions on this question.

The decisions address the reach of the educational malpractice doctrine, adopted in a vast majority of states, including New York, to bar claims against public and private schools for failing to properly teach their students. The rationale of the doctrine, as explained by the New York Court of Appeals, is that courts and juries should not "make judgments as to the validity of broad educational policies" or "sit in review of the day-to-day implementation of those policies."<sup>1</sup> Rather, deference is given to "the professional judgment of educators actually engaged in the complex and often delicate process of educating."<sup>2</sup>

## Recognizing Negligence

Last month, a Florida federal court in *Newman v. Socata SAS*<sup>3</sup> rejected arguments that the educational malpractice doctrine barred wrongful death claims against a flight school arising out of a plane crash. The plaintiffs in *Newman* alleged that the school failed to train the plane's pilot regarding the known propensity of the Socata aircraft to "torque roll" to the left upon an increase in engine power. The plane rolled and crashed shortly after the pilot increased power during a missed approach.

The *Newman* court found that "the public policy considerations that are relied upon to bar traditional educational malpractice claims do not carry over to the flight training setting, at least not on the facts of this case." The court concluded there was a negligence cause of action because the case involved "a for-profit commercial entity" that was "teaching a narrowly structured course on the operation of a specific type of aircraft" and the flight school allegedly "owed and breached a duty to warn and train regarding a known lethal propensity of the aircraft to torque roll." The court observed that applying the doctrine to bar the claim would "amount to a categorical grant of immunity to all entities engaged in instruction in the operation of dangerous equipment" and allow a flight school to "encourage its students to engage in conduct that would endanger the student and others."<sup>4</sup>

*Newman* cited the decision of a Buffalo federal court judge in *In re Air Crash Near Clarence Center*,<sup>5</sup> involving the crash of a commuter plane on approach to Buffalo Airport. *Clarence Center* rejected arguments (made in opposition to a motion for remand to state court) that a negligent instruction action against a flight school was necessarily barred by the educational malpractice doctrine. The court concluded that "a New York court could reasonably find that the specialized training at issue does not implicate the same policy considerations present in the traditional educational setting."<sup>6</sup>

In addition, a Kansas federal court in *In re Cessna 208 Series Aircraft Products Liability Litigation*,<sup>7</sup> allowed claims that a flight school negligently failed to instruct pilots of the unusual dangers of ice accumulation on the Cessna Caravan aircraft.

## Barring Claims

A series of court decisions have applied the educational malpractice doctrine to bar claims against flight schools and instructors. Last year in *Waugh v. Morgan Stanley*,<sup>8</sup> an Illinois state appellate court dismissed passenger death actions that named the flight school and instructors who taught the pilot of a Cessna plane

that crashed while attempting to land. *Waugh* concluded:

The nature of the appellants' claims that were dismissed by the trial court focuses on the reasonableness of defendants' conduct in providing training, that is, education, to [the pilot] Turek, and would require a jury at trial to analyze the quality and methods of the education provided to Turek, as well as an evaluation of the course of instruction and the soundness of the teaching methods. Because these claims clearly fit within the matrix for claims sounding in educational malpractice, we find no error in the trial court's determination that these claims sound in educational malpractice rather than ordinary negligence.

*Waugh*, unlike *Newman*, does not indicate that the plaintiffs made specific allegations that the flight training failed to alert the pilot to specific and unique dangers inherent in aircraft.

Such allegations were made in *Glorvigen v. Cirrus Design*,<sup>9</sup> which involved the death of a pilot and passenger in a Cirrus S22 crash. The pilot bought the plane one month before the crash, and included in the purchase price was a "transition training" course from the manufacturer. A jury found that the manufacturer was liable for its failure to include in that course adequate training on the need to make an autopilot-assisted recovery on the Cirrus S22 in the event that inclement weather conditions were encountered. The Minnesota appeals court overturned the verdict, holding that

a determination of whether the transition training was ineffective because the instructor failed to provide a flight lesson on this topic would involve an inquiry into the nuances of the educational process, which is exactly the type of determination that the educational-malpractice bar is meant to avoid.<sup>10</sup>

Similarly, *Dallas Airmotive v. FlightSafety International*<sup>11</sup> affirmed the dismissal of claims against a flight school under the educational malpractice doctrine. The plaintiff alleged that the school "failed to alert and warn the pilot of the known dangers of shutting down an engine in flight without the ability to properly feather the propeller" and used a flight simulator that did not accurately replicate the emergency conditions that would be encountered in flight.<sup>12</sup> The court concluded that the claims should be barred because they "encompass the traditional aspects of education," and thus attack the quality of instruction." The court found that "schools, and their regulating, accrediting, and certifying agencies, not courts, need to make curriculum decisions."<sup>13</sup>

An action against FlightSafety was also dismissed by a South Dakota federal court in *Sheesley v. Cessna Aircraft*,<sup>14</sup> which rejected claims that the flight school carelessly failed to teach a pilot regarding proper emergency procedures in the event of an exhaust system failure and used a flight simulator that failed to replicate real flight conditions. The court concluded that "plaintiffs are contesting the substance and manner of FlightSafety's training" and that "[s]chools, not courts, are in a better position to determine what should be taught." *Sheesley* suggested that any cause of action based on education would be unworkable:

In these cases, the courts and juries will face inherently uncertain causation issues: Did the school negligently train the student? Did the student pay attention? Was the student tired, ill, distracted? Too many factors contribute to the quality of a student's education, and recognizing educational malpractice invited speculation.<sup>15</sup>

## Conclusion

There is an ongoing legal tug-of-war over the liability of flight schools among numerous jurisdictions. Aviation training cases do not raise the same issues of protecting academic freedom, judgment and discretion that compelled courts to devise the absolute bar on lawsuits against traditional schools under the educational malpractice doctrine. Rather, there are genuine issues of public safety and, ultimately, due care that result from the failure of a flight school giving instruction on complex aviation equipment to provide advice and warning about known lethal dangers. Actions against flight schools may require that courts establish more stringent standards of proof, particularly on causation, but the courtroom door should not be automatically closed to all claims.

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### Endnotes:

1. *Donohue v. Copiague Union Free School District*, 47 N.Y.2d 440, 444-45 (1979).

2. *Hoffnan v. Board of Education of City of New York*, 49 N.Y.2d 121, 126 (1979).
  3. 2013 U.S. Dist. LEXIS 19417 (M.D.Fla. 2013).
  4. *Id.*
  5. 2010 U.S. Dist. LEXIS 130846 (W.D.N.Y. 2010).
  6. *Id.*
  7. 546 F.Supp.2d 1153 (D.Kan. 2008).
  8. 966 N.E.2d 540 (Ill. App. 2012).
  9. 796 N.W.2d 541 (Minn. App. 2011), *aff'd* on other grounds, 816 N.W.2d 572 (Minn. 2012).
  10. *Id.* at 553.
  11. 277 S.W.3d 696 (Mo. App. 2008)
  12. *Id.* at 699.
  13. *Id.* at 701.
  14. 2006 U.S. Dist. LEXIS 27133 (D.S.D. 2006).
  15. *Id.*
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