

## Do Airline Training Schools Have a Duty of Care?

In this Aviation Law column, Steven Pounian and Kevin Mahoney write: Courts around the country are divided over the question of whether flight schools can be held liable for negligent pilot training that results in an air disaster.

By **Steven Pounian and Kevin Mahoney** | May 10, 2018



Courts around the

country are divided over the question of whether flight schools can be held liable for negligent pilot training that results in an air disaster. One group of courts have held

that claims against flight schools are barred under the “educational malpractice” doctrine that protects institutions of learning from judicial interference. Other courts have concluded that flight schools provide highly specialized safety instruction that imposes a duty of care and resulting liability when the breach of that duty leads to harm.

The question will likely become more important with the recent expansion of airline training programs. To bolster their depleted pilot ranks, air carriers are creating “ab initio” flight schools that transform individuals with no flight experience into first-officer candidates. For example, last month American Airlines announced the creation of its “Cadet Academy.” The program will give students 18 months of flight training, access to deferred student loans and, at the end of the program, a seat at the interview table with the airline’s regional carrier subsidiaries. Jet Blue and United Airlines have created similar schools.

The pilot shortage is a result of Federal Aviation Administration (FAA) regulations implemented after the 2009 crash of Colgan Air Flight 3407, which killed 50 people. In response to that pilot-error-induced accident, Congress passed the Airline Safety and Federal Aviation Administration Act of 2010. Airline Safety and Federal Aviation Administration Extension Act of 2010, Pub. L. No. 111-216, tit. II, 124 Stat. 2367, §216(a)(2)(B) (2010). The law gave the FAA until 2013 to require that new airline pilots hold an Airline Transport Certificate (ATP). Id. §217(c). To get an ATP, a pilot must acquire 1,500 hours total time as a pilot. Flight 3407’s first officer only had a commercial pilot certificate, which required only 250 hours. See [Press Release—FAA Boosts Aviation Safety with New Pilot Qualification Standards](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=14838) ([https://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=14838](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=14838)) (2013).

Airlines are scrambling to find a way around the 1,500-hour rule. See Michael Mroziak, [“Schumer: Recent Tragedies Show Why FAA Cannot Give In, Roll Back Air Safety Rules](http://news.wbfo.org/post/schumer-recent-tragedies-show-why-faa-cannot-give-roll-back-air-safety-rules) (<http://news.wbfo.org/post/schumer-recent-tragedies-show-why-faa-cannot-give-roll-back-air-safety-rules>),” WFBO Morning Edition (April 24, 2018). The rule upset regional air carriers’ business model, which relied heavily on recruiting

relatively inexperienced pilots to accept low wages in return for the opportunity to build flight time to qualify for an ATP and compete for a coveted legacy airline position. Now, seasoned pilots are in short supply and the increased salaries they can demand are affecting the airlines' bottom line. See Ginger Pinholster, "[Competition for Pilots Remains Fierce, but Higher Pay Helps](https://news.erau.edu/headlines/competition-for-pilots-remains-fierce-but-higher-pay-helps)," the Embry-Riddle Newsroom (March 7, 2018). Under one proposed exception, students trained by airlines would be able to obtain an ATP in just 500 hours. See Robert Silk, "[FAA Committee Recommends Accelerated Pilot Training](http://www.travelweekly.com/Travel-News/Airline-News/FAA-committee-recommends-accelerated-pilot-training)," Travel Weekly (Oct. 27, 2017).

The recent push to create airline sponsored classroom-to-cockpit pilot training programs may resurrect the very passenger safety risks that justified the 1,500-hour rule in the first place. After all, Marvin Renslow, the Captain of Flight 3407, participated in a similar first-officer training at a program affiliated with Gulfstream International Airlines. Despite his documented history of poor flight performance, Renslow was ultimately allowed to assume the controls of a passenger airliner.

Thus, while the airlines' strategy to combat the pilot shortage may reduce their payroll costs, it may also increase the scope of their liability in future air accident lawsuits. Several courts have concluded that flight-training schools owe a duty of care to their students' future passengers. After the Colgan crash, for example, a New York federal court permitted the plaintiffs to pursue state-law negligence claims against FlightSafety International, which plaintiffs alleged provided important training to the flight crew. See *In re Air Crash Near Clarence Ctr., New York*, on Feb. 12, 2009, No. 09-CV-1039S, 2010 WL 5185106, at \*6-7 (W.D.N.Y. Dec. 12, 2010). And, last year, the District of Arizona allowed claims against the Arizona flight school that trained Andreas Lubitz, who, in 2015, deliberately crashed Germanwings Flight 9525 in the French Alps, killing 150 people.

Five years before that crash, the Airline Training Center of Arizona (ATCA) trained Lubitz at its facility in Goodyear, Ariz. Family members of many of passengers on board brought suit against ATCA, arguing that it should have prevented Lubitz, who had a documented history of severe mental illness, from continuing through the commercial pilot training program. Although the case was ultimately dismissed on grounds of forum non conveniens, the court first concluded that plaintiffs adequately pled a negligence claim. The Arizona district court held it was reasonable “to conclude that ATCA had a duty to make an inquiry about Lubitz’s condition to determine if he was suitable to continue in the ATCA portion of the flight training program and beyond.” *Id.* at 1106. The court ordered ATCA to consent to jurisdiction in a German court.

Flight schools have routinely fought tort claims with mixed success, claiming that such cases are subject to the bar on “educational malpractice” causes of action. Educational malpractice suits allege that a school: (1) failed to provide a student with adequate skills; (2) failed to diagnose a learning disability; or (3) failed to adequately supervise the student’s training. *Glorvigen v. Cirrus Design*, 796 N.W.2d 541, 553 (Minn. Ct. App. 2011), *aff’d*, 816 N.W.2d 572 (Minn. 2012). Courts in New York and other jurisdictions prohibit such claims (see *Hoffman v. Bd. of Ed.*, 400 N.E.2d 317, 279 (N.Y. 1979); *Glorvigen*, 796 N.W.2d at 553-54), reasoning that holding educational institutions liable for their instruction would lead to a flood of litigation against schools and cause undue judicial interference with school curriculums. See *Dallas Airmotive v. Flightsafety Intern.*, 277 S.W.3d 696, 701 (Mo. Ct. App. 2008). These courts also note that, at least in the traditional education setting, the failure of a student to learn effectively could have several causes such that assigning blame to educators would be overly speculative. *Id.*

But, as the Colgan 3407 litigation shows, courts are split on whether the educational malpractice bar should apply to highly specialized private flight training schools. In *Newman v. Socata SAS*, 924 F. Supp. 2d 1322 (M.D. Fl. 2013), for example, a Florida district court held that plaintiff stated viable claims against an aviation training

company that failed to alert a deceased pilot of an aircraft's dangerous propensity to roll. The court noted the public policy justifications for the educational malpractice bar were simply not present in litigation against a private aviation flight school that failed to warn a pilot to follow a procedure required for the safe operation of an aircraft. See *Newman*, 924 F. Supp. 2d at 1329 ("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.").

In contrast, in *Glorvigen v. Cirrus Design*, 796 N.W.2d 541 (Minn. Ct. App. 2011), the Minnesota Court of Appeals held that claims against Cirrus Design Corporation scrutinizing its aircraft transition training were barred as educational malpractice claims. The court ruled that because plaintiffs' claims "challenge[d] the effectiveness of the training" concerns about the "lack of a satisfactory standard of care" and "uncertainties about causation" justified dismissal of the plaintiffs' claims as a matter of law. *Glorvigen*, 796 N.W.2d at 555.

Whether future claims against the new airline training programs will be barred as educational malpractice claims is an open question. In the passenger airline context, the enormity of the risk of harm by improper training and screening practices outweighs public policy concerns about judicial scrutiny of private flight school curricula. Additionally, unlike traditional flight schools, which train a whole gamut of recreational and commercial pilots, airline pilot training has a singular pedagogical objective: the safe transport of passengers on large airliners. Accordingly, there is a discrete foreseeable risk and an articulable standard of care. And airlines concerned about attenuated theories of causation can always rely on traditional negligence principles to argue that the plaintiffs' injuries were not proximately caused by their instruction.

But even if airlines successfully invoke the educational malpractice doctrine, Plaintiffs will still have legal theories in their arsenal that may subject airline flight schools to liability. In the Germanwings litigation, for example, the educational malpractice defense did not arise because the plaintiffs did not challenge the quality

of ATCA's flight instruction. Rather, they focused on the school's failure to warn about the severe risks posed by Lubitz. See *Oto*, 247 F. Supp. 3d at 1103. Plaintiffs' argument was not that ATCA did not teach Lubitz how to properly fly an airplane; it was that they should not have taught him at all.

Pilot training is evaluated and scrutinized in virtually every accident investigation and pilot error is very often ruled as a contributing cause. Consequently, airlines that institute their own pilot training programs will face the prospect of lawsuits alleging that they did not correctly train or screen their pilot candidates. The scope of the airline's duty in this regard remains a disputed issue but current case law shows that airlines should not take their training duties lightly. Not only could vigorous training procedures and pilot screening protect the airlines from future lawsuits, but such measures could save the lives of future passengers.

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