

New York Law Journal

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Aviation Law

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12-27-2006

It was long an accepted principle that the Federal Aviation Regulations (FARs) did not supplant state law tort claims.

The general logic was that the FARs set only "minimum standards" and that state laws could supplement and did not conflict with federal law.

For instance, in litigation involving the 1975 crash of an Eastern Airlines flight at Kennedy Airport, the airline stipulated to the application of New York law and the U.S. Court of Appeals for the Second Circuit affirmed the district court's jury charge that included elements of both a state aeronautical statute and the FARs.¹

Likewise, in 1993, the U.S. Court of Appeals for the Tenth Circuit in *Cleveland v. Piper Aircraft Corp.*,² held that the FARs did not preclude state product liability claims that a Piper Cub aircraft had insufficient visibility and inadequate safety belts. The court reasoned that the "[m]inimum standards [of the FARs] . . . are not conclusive of Congress's pre-emptive intent" and that the FARs did not mandate how a manufacturer should comply with the safety matters at issue in the case. Following *Cleveland*, the U.S. Court of Appeals for the Eleventh Circuit also held that state law claims that an aircraft seat was defectively designed were not barred by federal law.³

Local Law in Conflict With Federal Regs

In 1999, however, the U.S. Court of Appeals for the Third Circuit addressed a case where a local law standard directly conflicted with the FARs. In *Abdullah v. American Airlines*,⁴ a passenger from the Virgin Islands sought damages for injuries suffered during a turbulence incident on a commercial flight from New York to Puerto Rico. The FARs and the local law of the Virgin Islands both proscribed careless operation of an aircraft. But while Virgin Islands law imposed no duty on a passenger to wear a seat belt, the FARs required that a seat belt be worn when the seat belt sign was illuminated (as was the case during the turbulence incident). At trial, the jury was charged based on the local law and awarded the plaintiff a \$2 million verdict. The trial court, however, belatedly granted the defendant airline's motion for a new trial on the basis that the local law was pre-empted by the FARs. That legal issue was certified for an immediate appeal.

While the Third Circuit could simply have held that the particular local law at issue was pre-empted by the conflicting section of the FARs (or that the law of the Virgin Islands clearly did not extend to liability issues for a turbulence incident over the high seas), *Abdullah* reached the broad finding that there was "implied federal pre-emption of the entire field of aviation safety."⁵

By adopting "field pre-emption," the Third Circuit wiped the slate clean of numerous state statutory and common liability standards applicable in aviation cases. In so doing, the Third Circuit expressly registered its disagreement with the opinions of the Second, Tenth and Eleventh circuits. *Abdullah* further held, however, that local damage law remedies were not pre-empted by federal law.

Over the past seven years, aircraft operators and manufacturers have frequently cited *Abdullah* as the basis for motions to dismiss various state law tort claims under the federal pre-emption doctrine. In some of these cases, however, unlike *Abdullah*, the FARs established no relevant liability standard for the issue at bar. As a result, the pre-emption of state law would effectively leave plaintiff with no viable cause of action and result in an outright dismissal.

That was the outcome before the U.S. Court of Appeals for the Sixth Circuit last year in *Greene v. B.F. Goodrich Avionics Systems, Inc.*⁶ *Greene* held that the widow of a helicopter pilot could not bring a state law failure to warn death action against the manufacturer of an airplane gyroscope. With little analysis, *Greene* adopted *Abdullah's* holding that the entire field of aviation safety was pre-empted by federal law and then dismissed the claim because the FARs established no duty to warn.

A dissent in *Greene* pointed out that *Abdullah* was "readily distinguishable" because "in this case, there are no federal regulations which lay out the exact standard of care." The dissent further questioned why the "more stringent duty of care" under state law "could not supplement rather than frustrate" the FARs.⁷

Recent Movement Towards Clarity?

A recent U.S. Court of Appeals for the Fifth Circuit opinion and a subsequent decision from a district court in the Fifth Circuit demonstrate a possible movement towards clarity in the pre-emption rule in aviation cases. In *Witty v. Delta Airlines*,⁸ the plaintiff passenger brought various state law claims against an airline for damages suffered from deep vein thrombosis (DVT). These claims included that the airline failed to warn passengers about the risk of DVT; failed to provide adequate leg room to prevent DVT; and, failed to instruct passengers to walk around the cabin during a flight.

Unlike *Abdullah*, the Fifth Circuit decided the case by "narrowly by addressing the precise issues" and refused to decide "whether a state law claim . . . is entirely pre-empted." *Witty* dismissed the state law claims because they necessarily conflicted not only with a

federal statute that barred states from imposing laws related to airline prices and services but the FARs, which specified the warnings that an airline must provide to passengers and required that passengers remain seated with their seat belts fastened during a flight.⁹

Following *Witty*, earlier this year a U.S. District Court for the Eastern District of Texas denied a manufacturer's motion that the FARs pre-empted the plaintiff's state law product liability claims. In *Monroe v. Cessna Aircraft Co.*,¹⁰ a small Cessna aircraft piloted by an instructor and student hit a bird during a training flight. The bird strike caused significant damage to the plane's wing, altering its stall speed and flight characteristics. While attempting an emergency landing, the student and instructor were killed when the aircraft stalled at a much higher speed than set forth in the plane's manual.

Plaintiffs claimed that the plane was defective and negligently designed because the manufacturer failed to include emergency procedures for responding to in-flight structural damage in the aircraft's manual.

The manufacturer moved for summary judgment, urging the court that *Abdullah* and *Witty* supported dismissal. The court found, however, that the *Cleveland* decision was better reasoned than *Abdullah*, and that *Witty* was narrowly limited in scope and did not apply to a situation where there was no specific requirement in the FARs in conflict with plaintiff's state law claims. *Monroe* found that the FARs regarding the content of aircraft flight manuals were drafted very broadly and left a great deal of discretion to the manufacturer. This demonstrated the "lack of [a] pervasive and precise regulatory scheme."¹¹

Monroe also cited the General Aviation Revitalization Act (GARA)¹² as a basis for denying pre-emption. In 1994, GARA established an 18-year federal statute of repose governing all state law claims against small aircraft manufacturers. The court found that GARA was an acknowledgment by Congress of the continuing viability of state law tort claims against manufacturers for aircraft and parts in service for less than 18 years. *Monroe* cited language from the House Report on the GARA that "demonstrates that Congress did not intend to pre-empt the entire field of aviation," and which offers "strong support of Congress' intent not to pre-empt."¹³

Conclusion

The conflict over pre-emption of state law claims is still brewing and may ultimately need to be resolved by the Supreme Court. Had *Abdullah* simply addressed the limited conflict between the FARs and local law in that case, instead of issuing a broad edict on field pre-emption, the legal tumult that ensued may have been avoided. As demonstrated by the recent decisions in the Fifth Circuit, it is possible that the conflict may be resolved without Supreme Court intervention. But that waits to be seen.

In the context of the debate over federal pre-emption of state law claims, a separate but related development is worth noting. Several states have enacted "tort reform" measures to provide manufacturers with a legal benefit for compliance with minimum federal or state safety standards. These include state statutes that establish a rebuttable presumption that manufacturers and sellers are not liable if at the time of sale or delivery the product complied with applicable federal or state regulations.¹⁴

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Endnotes:

1. *In re Air Crash Disaster at John F. Kennedy Int'l Airport*, 635 F2d 67 (2d. Cir. 1980).
2. 985 F2d 1438 (10th Cir. 1993).
3. *Public Health Trust of Dade Co. v. Lake Airways*, 992 F2d 291 (11th Cir. 1993).
4. 181 F3d 363 (3d Cir. 1999)
5. *Id.* at 365.
6. 409 F3d 784 (6th Cir. 2005), cert. denied, 126 S Ct 1465 (2006).
7. 409 F3d at 798 (dissent).
8. 366 F3d 380 (5th Cir. 2004).
9. *Id.* at 385
10. 417 FSupp2d 824, 835 (E.D. Tex. 2006).
11. *Id.* at 833.
12. Pub. L. No. 103-298, 108 Stat. 1552 (1994), amended by Act of Pub. L. No. 105-102, §3(e), 111 Stat. 2204, 2216 (1997).
13. *Id.* at 832.
14. See, e.g., Ind. Code 34-20-5-1; Mich. Comp. Laws 600.2946.