

Florida Supreme Court Erodes Aircraft Lessor's Liability Protection

In an opinion issued on July 8, 2011 in *Vreeland v. Ferrer*, the Florida Supreme Court ruled that federal law does not protect aircraft lessors from liability for property damage and/or personal injury to, or wrongful death of, aircraft passengers and crew. In making its decision, Florida joined the ranks of Michigan, Illinois, and Indiana, in which courts have held that their respective state law allows vicarious negligence claims against aircraft lessors.

Federal law often trumps, or preempts, state law where there is a conflict between them. It is widely believed that 49 U.S.C. §44112 shields an aircraft lessor from liability for personal injury, death and property loss arising from its lessee's negligence where: (a) the lease is for a period of thirty (30) days or more, (b) the aircraft is not in the actual possession or control of the lessor at the time of the incident, and (c) the personal injury, death or property damage occurs on land or water because of (i) the aircraft, engine, or propeller, or (ii) the flight of, or an object falling from, the aircraft, engine, or propeller.

The federal law, which was enacted in the 1940s and incorporated into the Federal Aviation Act of 1958, was intended by federal legislators to encourage aviation lending. In that context, the law makes perfect sense.

Florida's Dangerous Instrumentality Doctrine holds the owner of a dangerous instrumentality (including cars, boats and aircraft) liable for personal injury, death or property damage arising from the negligence of anyone to whom the owner gave the dangerous instrumentality. Generally speaking, if I lend you my car, I am liable to everyone injured as the result of your negligence.

At the state level, Florida's Dangerous Instrumentality Doctrine is intended to make the owners of cars¹, boats and aircraft (as well as other dangerous instrumentalities) think before the lend their car, boat or airplane to someone, and to consider whether the vehicle will be safely and properly operated. In this context, Dangerous Instrumentality Doctrine makes perfect sense.

At first blush, it seems that Florida's Dangerous Instrumentality Doctrine conflicts with 49 U.S.C. §44112. Thus, because of the conflict, one would think that federal law should preempt state law and shield the lessor from liability where, as in the *Vreeland* case, the lessor leased an aircraft pursuant to a lease that had a term of more than thirty (30) days and, when the aircraft crashed

(killing the 2 people aboard), it was NOT in the actual possession or control of the lessor.

But you would be wrong . . . because the claimants were aboard the aircraft.

The Florida Supreme Court carefully considered the issue of federal preemption, and thoroughly reviewed the legislative intent behind 49 U.S.C. §44112. At the end of the day, however, the court decided that 49 U.S.C. §44112 does NOT preempt Florida's Dangerous Instrumentality Doctrine when considering the claims of passengers or crew who were aboard an aircraft when it crashed. Therefore, the lessor in *Vreeland* will have to stand trial and will be held vicariously liable for the negligence, if any, of the lessee.

There is a silver lining, however. Had the claimants been on land or water and been hit by the *Vreeland* plane (or its engine or propeller), the lessor would have been shielded from liability for the negligence of its lessee due to preemption of Florida's Dangerous Instrumentality Doctrine by 49 U.S.C. §44112. Don't get sidetracked by the fact that the *Vreeland* claimant's death occurred "on land", and not in the aircraft prior to contact with land – that's just the way it is.

If you are an aircraft lessor, you cannot take refuge in the protections offered by 49 U.S.C. §44112. Rather, you must be comfortable with the quality of your lessee's insurance underwriter, as well as the limits of liability. Also, make certain that you are a named or additional insured, and that the insurance coverage does not lapse during the term of the lease.

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¹ Like the federal legislature, the Florida Legislature recognized the commercial benefit of shielding lessors from vicarious liability for the negligence of their lessees. Thus, they enacted a law that shields automobile lessors from vicarious liability for the negligence of their lessee where the lease agreement requires that the lessee carry a certain level of liability insurance coverage.