To commence the statutory period for appeals as of right under CPLR § 5513[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------X

SCOTT FABIA,

Plaintiff

Index No. 64091/2019
DECISION AND ORDER
Motion Sequence #1

-against-

POWER AUTHORITY OF THE STATE OF NEW YORK a/k/a NEW YORK POWER AUTHORITY, NORTHLINE UTILITIES, LLC and NORTHLINE VENTURES, INC.,

Defendants.

_____X

MALONE, J.

This lawsuit arises from a fatal helicopter accident that occurred on October 30, 2018, when the helicopter owned by non-party Catalyst Aviation, LLC (Catalyst), and operated by pilot, Robert Hoban, Jr., tragically collided with power lines, resulting in fatalities and injuries.

Before the Court is the motion filed on May 24, 2021, by Defendant Power Authority of the State of New York a/k/a New York Power Authority ("Power Authority") and Defendants Northline Utilities, LLC and Northline Ventures, Inc. (together, "Northline") (collectively, "Defendants"), seeking an order dismissing the Complaint for failure to state a cause of action [CPLR 3211 (a) (7)]. The motion is opposed by Plaintiff.

On a motion to dismiss pursuant to CPLR 3211(a)(7), "the pleading must be afforded a liberal construction and the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Klostermeier v. City of Port Jervis*, 200 A.D.3d 866, 867 (2d Dep't. 2021) (internal citations omitted). "However, factual allegations that do not

state a viable cause of action, [or] that consist of bare legal conclusions are not entitled to such consideration." *Doe v. Bloomberg, L.P.*, 178 A.D.3d 44, 47 (1st Dep't. 2019); *see Dubon v. Drexel*, 195 A.D.3d 991, 993 (2d Dep't. 2021).

Defendants argue that Plaintiff's claims in the Complaint are preempted by "Congressional Field Preemption" because the workplace at issue here was the helicopter (NYSCEF Doc. No. 26, pg. 3).

Under the Supremacy Clause of the United States Constitution "the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *USCS Const. Art. VI, Cl 2*. As explained by the Court of Appeals of New York in *Lee v. Astoria Generating Co., L.P.*, 13 N.Y.3d 382, 391-392 (2009):

> "It is well recognized that the Supremacy Clause (US Const, art VI, cl 2) may entail pre-emption of state law either by express provision, by implication, or by a conflict between federal and state law" (*Balbuena v. IDR Realty LLC*, 6 N.Y.3d 338, 356 [2006], quoting *New York State Conference of Blue Cross & Blue Shield Plans v Travelers Ins. Co.*, 514 U.S. 645, 654 [1995]). Congress' intent to preempt "may be explicitly stated in the statute's language or implicitly contained in its structure and purpose. In the absence of an express congressional command, state law is pre-empted if that law actually conflicts with federal law" (*Cipollone v Liggett Group, Inc.*, 505 US 504, 516 [1992]). State law will not "be superseded by a Federal Act unless that was the clear and manifest purpose of Congress" (*New York State Conference of Blue Cross & Blue Shield Plans*, 514 U.S. at 655).

One of the areas Congress preempts is air safety or "'safety while a plane is in the air, flying between its origin and destination.'" *Matter of Air Crash Near Clarence Ctr., NY on Feb. 12, 2009*, 38 Misc. 3d 308, 311 [Sup Ct., Erie County 2012] quoting *Elassaad v. Independence Air, Inc.* 613 F.3d 119, 127 (3d Cir. 2010).

The Federal Aviation Act of 1958 ("FAACT") is among the chief federal aviation regulations ("FARs") that have been enacted by Congress. *See,* 49 USC § 40101 *et seq.* The statute was enacted primarily because "Congress intended to have a single, uniform system for regulating aviation safety," and "the FAA[CT] was drafted in response to a series of fatal air crashes between civil and military aircraft operating under separate flight rules." *Montalvo v. Spirit Airlines,* 508 F.3d 464, 471 (9th Cir. 2007). The FAACT "was passed by Congress for the purpose of centralizing in a single authority -- indeed, in one administrator -- the power to frame rules for the safe and efficient use of the nation's airspace." *Air Transp. Ass'n of Am. v. Cuomo,* 520 F.3d 218, 224 (2d Cir. 2008). "Pursuant to general statutory authority, the Administrator of the FAA[CT] has issued extensive rules, regulations and minimum standards designed to enhance the safety of civil aeronautics." *Federal Aviation Admin. v. Landy,* 705 F.2d 624, 628 (2d Cir. 1983), citing 14 C.F.R. Parts 1-199. "These regulations go to such varied matters as qualifications and training of maintenance and flight personnel, equipment required in the aircraft and on the ground, and preparation of detailed manuals governing inspection, maintenance and operation of the aircraft." *Federal Aviation Admin. v. Landy,* 705 F.2d at 629. "Other regulations cover areas such as 'recent experience' (14 CFR 121.439), 'line checks' (14 CFR 121.440) and 'proficiency checks' (14 CFR 121.441)." *Matter of Air Crash Near Clarence Ctr., N.Y. on Feb. 12, 2009,* 38 Misc. 3d 308, 313 (Sup Ct., Erie Cty. 2012). "Training is extensively covered in subpart N, part 121 of title 14 . . . Qualifications of check airmen and flight instructors are similarly exhaustive." *Matter of Air Crash Near Clarence Ctr., N.Y.*, 38 Misc.3d at 313, citing 14 CFR 121.411-121.414.

[INTENTIONALLY LEFT BLANK]

The Complaint before the Court alleges that on or prior to October 30, 2018, Defendants owned two 115 Kilovolt power lines and associated power line structures, poles, equipment and appurtenances located on the east side of Burke Road across from 131 Burke Road, in Beekmantown, New York, and that the Power Authority hired Northline and Catalyst to provide "certain work, labor, services and/or material with respect to certain work, repairs, alterations, construction and /or renovations to [] Power Lines/Equipment." On the date of the helicopter accident, Plaintiff, a licensed pilot, was employed by Catalyst, a New Jersey based aircraft operator, and occupied the front left seat of the helicopter when the helicopter was caught in the power lines, causing Plaintiff to jump from the helicopter before it crashed in Beekmantown, New York. Plaintiff claims that the injuries he sustained were due solely to the negligence of Defendants in the ownership, operation, maintenance, control supervision, etc., of the power lines or equipment and violations of New York Labor Law. NYSCEF Doc. No. 20. On October 11, 2019, Defendants respectively furnished Answers in which they, *inter alia*, denied the material allegations of the Complaint and set forth various affirmative defenses. NYSCEF Doc. Nos. 21 and 22.

Although the Complaint does not allege that Defendants are aviation companies, like Catalyst, or that any of their operations qualify as air safety or are governed by the Federal Aviation Act or any of its regulations, Plaintiff's Verified Supplemental Bill of Particulars states that Defendants "were careless, reckless, negligent and [in] violation of statutes, etc. . . . [i]n failing to safely and adequately secure . . . operate . . . manage . . . maintain the helicopter in which Plaintiff was working . . . [i]n permitting, allowing, authorizing and directing the use of a safety device, to wit, a helicopter, that was too large to properly and safely use for the work that the plaintiff was engaged in at the time of his accident . . . particularly in the wind conditions . . . [i]n permitting,

allowing, authorizing and directing the use of a safety device, to wit a helicopter, whose weight was not evenly distributed due to the equipment it was carrying which adversely affected its center of gravity, dangerously diminishing the pilot's ability to control the helicopter . . . " NYSCEF Doc. No. 17. *Moore v. Johnson,* 147 A.D.2d 621 (2d Dep't. 1989) ("Charges amplified in a bill of particulars are to be taken into account in considering the sufficiency of the challenged causes of action. Testimony at examinations before trial may also be considered.").

As the FARs unambiguously provide that "[t]he pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft" [14 CFR § 91.3(a)], the helicopter workplace here falls under federal law.

Once Congress's intent to dominate an area is established, the court must look to the scope of the preemption to determine whether ". . .the state regulation sufficiently interferes with federal regulation [such] that it should be deemed preempted. . . " *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 107 (1992); *see, e.g., Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Commn.,* 634 F.3d 206, 210-211 [2d Cir. 2011] ("[T]he inquiry is twofold; we must determine not only Congressional intent to preempt, but also the scope of that preemption."). Even where an entire field is preempted, if the state laws at issue do not interfere with federal laws and regulations, the state laws are not preempted.

Here, Plaintiff's first cause of action is for negligence. "The New York state standard of care for negligence impinges on the federal standard of care set out in FAR 91.13 in that New York state has a 'reasonable person' standard, and the FARs set the standard as carelessness or recklessness." *Crout v. Haverfield Int'l, Inc.,* 269 F. Supp. 3d 90, 97 (W.D.N.Y. 2017), citing *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 20, 210 (2d Cir. 2011). "This presents a conflict between the federal and state standards. As such, the

federal standard of care preempts the application of the New York state standard." *Crout*, 269 F. Supp. 3d at 97 [emphasis added], citing *In re Air Crash Near Clarence Ctr., N.Y., on Feb. 12, 2009,* 798 F. Supp. 2d 481, 486 (W.D.N.Y. 2011) (stating that the FAA "and its accompanying federal regulations preempt state regulation of the air safety field, including state standards of care" and noting that "[a]pplying state law standards of care would interfere with these regulations and potentially subject airlines and related entities to 50 different standards.") *See also Aldana v. Air E. Airways, Inc.*, 477 F. Supp. 2d 489, 493 (D. Conn. 2007) (applying the federal standard of care to state negligence claims arising out of an airplane crash); *Shupert v. Cont'l Airlines, Inc.*, 2004 U.S. Dist. LEXIS 6214, *6 (S.D.N.Y. Apr. 12, 2004) (applying the federal standard of care to state law claims involving air safety). Accordingly, because the standard of care for the first cause of action for negligence is in direct conflict with the FARs, such cause of action is preempted by federal law. See *Crout*, 269 F. Supp. 3d at 97; *In re Air Crash Near Clarence Ctr., N.Y., on Feb. 12, 2009*, 798 F. Supp. 2d at 486.

Plaintiff's second, third and fourth causes of action allege violations of New York Labor Law §§§ 200, 240(1), and 241(6), which are inconsistent with, and therefore preempted by, the FAACT and the FARs because unlike a situation contemplated by the Labor Law in which a contractor or owner is controlling the workplace and providing for its safety, no one has authority over the pilot during flight operations.

Labor Law § 200 is a codification of the common law duty imposed upon an owner or general contractor to provide construction site workers with a safe work environment.[1] As such,

[1] Labor Law § 200 regarding the "General duty to protect health and safety of employees" provides in relevant part that "[a]ll places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons."

liability under both Labor Law §§ 200 and 240(1)[2] require that the party charged with this responsibility has the authority to control the activity bringing about the injury. *See, e.g., Jock v. Fien*, 80 N.Y.2d 965, 967 (1992) (noting that Labor Law § 200 requires the "reasonable and adequate protection to the lives, health and safety of employees"); *see also Blake v. Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 N.Y.3d 280, 286 (2003) (stating regarding Labor Law § 240 that "[t]he Legislature looked to employers (and later, contractors and owners) as the entities best able to control the workplace and provide for its safety"). More importantly is that the FARs unambiguously provide that "[t]he pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." *See* 14 CFR § 91.3(a). As such, the Court credits Defendants' argument that, unlike a situation contemplated by the Labor Law in which a contractor or owner is controlling the workplace and providing for its safety, no one has authority over the pilot during flight operations, therefore, such statutes are inconsistent with, and therefore preempted by, the FAACT and the FARs.

Defendants are also correct in submitting that Labor Law § 200 imposes a negligence/reasonable person standard of care, whereas 14 CFR § 91.13(a) requires proof of "careless" or "reckless" conduct as a liability threshold. Thus, the Labor Law § 200 claim is in direct conflict with the FARs and is therefore preempted by federal law. *See Matter of Air Crash Near Clarence Ctr., N.Y. on Feb. 12, 2009*, 38 Misc. 3d at 313-314 (holding in a lawsuit involving a fatal airplane crash that the "pervasiveness and completeness of the federal regulatory scheme

[2] Labor Law § 240(1) states: "All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

leaves no room for state standards of care" and that defendants have established that plaintiffs' claims are preempted by federal law).

Plaintiff's cause of action alleging violation of Labor Law § 240(1) is similarly in direct conflict with the FARs. Regarding Labor Law §§ 240 and 241, the Appellate Division in *Perchinsky v. State*, 232 A.D.2d 34, 37-38 (3d Dep't. 1997) held in no uncertain terms: "[b]ecause these statutes impose absolute liability without regard to a worker's culpability, their language should not be strained to encompass accidents which the Legislature did not intend to include." As suggested by the Court in *Perchinsky*, a plain reading of Labor Law § 240(1) makes clear that it is a strict liability statute that imposes liability without fault if certain enumerated safety devices are not provided, or if such safety devices fail. This is directly in conflict with the higher standard of care set forth in 14 CFR § 91.13(a), which states that "[n]o person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another." (emphasis added).

Moreover, and similarly, the portion of Plaintiff's fourth cause of action that is premised upon alleged violations of Labor Law § 241(6) [3] is also preempted by federal law. This statute allows for liability without fault, and any liability under Labor Law § 241(6) is premised upon an underlying breach of New York State industrial regulations. Therefore, liability under Labor Law § 241(6) is directly in conflict with 14 C.F.R. § 91.13(a)'s higher burden of proving that the defendants' actions were careless or reckless as a threshold for liability, and such direct conflict renders a claim under Labor Law § 241(6) preempted by the FARs. See *Sutton 58 Assoc. LLC*, 36

[3] Labor Law § 241 (6) states: All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

N.Y.3d at 305 (noting that preemption is proper where there is "the existence of an irreconcilable conflict between federal and state law."); *see also Doomes,* 17 N.Y.3d at 601.

Plaintiff's contention that an analysis of maritime law - which has no bearing upon aviation law - requires that Defendants' motion be denied, is not credited. NYSCEF Doc. No. 35. In stark contrast, the exercise of admiralty jurisdiction "does not result in automatic displacement of state law" (*Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 206 [1996]); and "extensive regulatory authority is left to the States" with respect to maritime torts (*see, e.g., In re Air Crash at Belle Harbor,* 2006 U.S. Dist. LEXIS 27387, 39-40 [S.D.N.Y. May 9, 2006]). Given that maritime law often encompasses state law, there is simply no valid basis for analogizing maritime law and aviation law in the context of federal preemption as related to this lawsuit. *See Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469, 477 (1922) (stating that "as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter might be modified or supplemented by state statutes"); *Cammon v. City of N.Y.*, 95 NY2d 583, 588 (2000) (citing the "maritime but local" rule as an instance of the overlap between maritime and state law).

Although it is not controlling upon this Court, a recent decision from the United States District Court for the Northern District of New York is consistent with the Court's disposition herein. In the two consolidated lawsuits captioned *McAllister et al. v. Catalyst Aviation, LLC* (8:19-CV-642 and 8:19-CV-647) (the "Federal Action"), two construction workers who were Northline employees and were passengers in the helicopter operated by the decedent at the time of the October 5, 2020, accident sought to amend their pleadings to assert causes of action that are substantially similar to those asserted herein. Exhibit E, NYSCEF Doc. No. 24. Indeed, the plaintiffs in the Federal Action sought to include proposed causes of action for, *inter alia,* negligence and violations of Labor Law §§ 200, 240, and 241(6). Id. In denying the plaintiffs'

motion for leave to amend, Magistrate Judge Daniel J. Stewart issued a Memorandum-Decision and Order dated December 22, 2020, which held that because the Labor Law claims were based upon aviation safety related to the regulation and operation of a helicopter, as opposed to involving construction safety, the claims fell within the field of aviation safety and were therefore preempted by federal law. NYSCEF Doc. No. 19. In relevant part, Judge Stewart stated as follows:

> The state Labor Law provisions at issue here are generally applicable workplace safety statutes that do not specifically reference air safety. While Plaintiffs seek to frame the events underlying these cases as workplace accidents, which could form a basis for Labor Law claims, the facts and the proposed pleadings themselves highlight the inescapable connection to air safety. The workplace at issue here was a helicopter in flight . . . The gravamen of the proposed Labor Law causes of action is that Defendant failed to provide proper safety equipment to Plaintiffs while they were passengers in and working from the helicopter . . . Here, there can equally be little doubt that the alleged failure of an aviation company to provide appropriate safety restraints or similar safety equipment to those in flight similarly implicates air safety . . . The facts of this case as pled center around air safety. As a result, preemption clearly applies. (Exhibit E , at NYSCEF Doc. No. 24 [emphases added and internal citations omitted]).

Here, in considering that Plaintiff's causes of action "center around" and have an "inescapable connection" to air safety, such causes of action are preempted by federal law (NYSCEF Doc. No. 24). Accordingly, it is hereby

ORDERED, that the motion by Defendants Power Authority of the State of New York a/k/a New York Power Authority, Northline Utilities, LLC and Northline Ventures, Inc. to dismiss the Complaint for failure to state a cause of action is GRANTED; the Complaint is dismissed.

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In deciding this motion, the Court considered papers filed with New York State Courts Electronic Filing Document Numbers 17, 19-26, 35-42, and 45.

To the extent relief requested is not addressed herein, the relief is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
March 24, 2022

ENTER:

Janet C. Malone.

HON. JANET C. MALONE
Justice of the Supreme Court

To: *Counsel of Record via NYSCEF*