

VICARIOUS LIABILITY FOR THE UNINVOLVED: HOW SOME STATES PUNISH AIRCRAFT OWNERS FOR THE SINS OF OTHERS

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INTRODUCTION

On the evening of January 29, 2025, American Airlines Flight 5342 was cleared for the Mount Vernon Visual Runway 01 approach at Ronald Regan Washington National Airport.¹ Operated by PSA Airlines, the pilots were asked by air traffic control (ATC) if they could circle and land on Runway 33, a common maneuver.² Tragically, the airliner collided with a military transport helicopter transiting south along the Potomac river.³ Sixty-seven people perished, with no survivors.⁴

When an aircraft accident occurs, the first question on many people's mind is why? Why did this happen? At the forefront of those investigating the cause is a specialized agency of the Federal Government, the National Transportation Safety Board (NTSB).⁵ It is tasked, by statute and regulation, with the investigation of civil aircraft accidents.⁶ After completing an investigation, the NTSB will issue a report that includes the agency's determination of the probable cause for the accident.⁷ From the origin of commercially viable air travel—and because aircraft are so mobile and easily traverse state lines—the federal government has been the major entity involved in the regulation of air commerce, and by extension, air transportation.⁸ But the federal government is not the only entity that wishes to know why an accident happened.

When a person is hurt or killed in an aviation accident, state law may be implicated.⁹ For plaintiffs, state tort claims may be available under various theories of negligence.¹⁰ In some jurisdictions, one significant form of

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1. NAT'L TRANSP. SAFETY BD., ACCIDENT NO. DCA25MA108, AVIATION INVESTIGATION PRELIMINARY REPORT 1, 4 (2025), <https://www.nts.gov/investigations/Documents/DCA25MA108%20Prelim.pdf> [<https://perma.cc/P4LB-QEJ6>].

2. *Id.* The author of this Note has flown this approach many times in his career. Additionally, he has complied with ATC requests to circle to Runway 33 multiple times in his career.

3. *Id.* at 1.

4. *Id.*

5. NTSB: NAT'L TRANSP. SAFETY BD., <https://www.nts.gov/Pages/home.aspx> [<https://perma.cc/VX3U-ATJH>] (last visited Feb. 7, 2026).

6. 49 U.S.C. § 1132; 49 C.F.R. § 830.1 (2026). Civil aircraft are all aircraft other than military. *See* 49 U.S.C. § 1132.

7. 49 C.F.R. § 845.30(a) (2026).

8. *See* Air Commerce Act of 1926, ch. 344, 44 Stat. 568 (1926).

9. *See generally* 8A AM. JUR. 2D *Aviation* § 98, Westlaw (database updated Jan. 2026) (discussing state law implications in aviation accidents).

10. *See, e.g.,* IND. CODE § 8-21-4-6 (2025) (Indiana's aircraft liability statute); *Cleveland v. Piper Aircraft Corp.*, 985 F.2d 1438, 1442 (10th Cir. 1993) (providing that federal aviation law does not preempt state tort claim). But note that NTSB reports are not permitted to be used as evidence in civil litigation. 49 U.S.C. § 1154(b).

negligence that owners face is vicarious liability for damages caused by their aircraft, even if they were not the one in operational control.¹¹ This is despite a federal statute that, on first blush, prohibits vicarious liability for aircraft owners.¹² But some state courts, as discussed below, have determined that 49 U.S.C. § 44112 does not preempt state vicarious liability law.¹³

Indiana charts a different course. Indiana Code section 8-21-4-6 provides that an owner who is not the pilot may not be held vicariously liable for damages, with certain exceptions.¹⁴ This is a new development in the statutory treatment of aviation tort claims, explicitly aligning the management of aircraft with that of automobiles.¹⁵ Similar to how most states treat the owner of an automobile, if the owner of an aircraft is not in control of its operation or acting negligently, it is inappropriate to hold them liable for the actions of others.

This Note argues that Congress should amend § 44112 to follow Indiana's practice limiting aircraft owner liability and make the statute explicitly preempt state law. Additionally, if Congress fails to act, this Note argues that other states should follow Indiana's lead in placing statutory limits of vicarious liability for aircraft owners. Part I reviews federal preemption in aviation law and discusses the legal theory of vicarious liability generally, including how it is applied in the aviation context. Part II considers the federal statute regarding aircraft owner vicarious liability and federal courts' interpretation of the statute, examining and reviewing how selected state and federal statutes have been interpreted. Part II will also explain how some state courts hold the federal statute non-preemptory. Part III examines Indiana's unique statutory approach in detail. Finally, Part IV discusses how Congress should amend § 44112 to explicitly preempt state law and follow Indiana's lead on vicarious liability. Failing Congressional action, Part IV concludes by advocating that other states should follow Indiana's lead and exempt aircraft owners from vicarious liability, with certain specific exceptions.

11. See, e.g., *Coleman v. Windham Aviation Inc.*, No. Civ.A. K.C.2004-0985, 2005 WL 1793907, at *1 (R.I. Super. Ct. July 18, 2005) (unpublished opinion) (holding aircraft owner vicariously liable); *Vreeland v. Ferrer*, 71 So.3d 70, 84 (Fla. 2011) (providing that dangerous instrumentality doctrine imposes vicarious liability on aircraft owners). For state statutory treatment, see, e.g., N.Y. GEN. BUS. LAW § 251 (Consol. 2025); CAL. PUB. UTIL. CODE § 21404 (2025). But see 49 U.S.C. § 44112 (federal vicarious liability shield); IND. CODE § 8-21-4-6 (state vicarious liability shield).

12. 49 U.S.C. § 44112.

13. *Id.*; see *infra* Part II.C for state court's determinations that 49 U.S.C. § 44112 does not preempt state vicarious liability law.

14. § 8-21-4-6.

15. For Indiana's treatment of vicarious liability of automobile owners, see, e.g., *Kahn v. Cundiff*, 543 N.E.2d 627, 629 (Ind. 1989) (implying that agency relationship required to show vicarious liability); *Barnd v. Borst*, 431 N.E.2d 161, 165 (Ind. Ct. App. 1982) (stating that family relationship not enough to establish vicarious liability).

I. OVERVIEW OF FEDERAL PREEMPTION IN AVIATION

A. History of Federal Aviation Law

The federal government has been extensively involved in the regulation of aviation since its inception.¹⁶ For example, one of the first federal legislative actions regulating aviation was the Air Commerce Act of 1926 (“1926 ACA”).¹⁷ Prior to the enactment of the 1926 ACA, ownership of airspace was governed by common law.¹⁸ By common law, an owner of real property had unlimited rights to the airspace above their land.¹⁹ However, by enacting the 1926 ACA, Congress appropriated for national use all “airspace above the minimum safe altitude[s] of flight.”²⁰ This assumption of authority was necessitated by the extreme mobility of aircraft. From the air, property lines, and borders—even international borders—often have no physical demarcation.²¹ Recognizing this tremendous mobility, Congress understood that only the federal government was able to effectively exercise dominion over air commerce.²² To this day, the Federal Aviation Administration (FAA) considers the 1926 ACA to be landmark legislation that laid the foundation for the modern aviation regime.²³

Two major acts of Congress continued to expand federal power in aviation law, eventually leading to the establishment of the FAA. First was the Civil Aeronautics Act of 1938 (“1938 CAA”).²⁴ This Act established the Civil Aeronautics Authority (CAA), a predecessor to today’s FAA.²⁵ Spurred on by the death of a prominent senator in an airliner crash,²⁶ this Act was passed due to the perceived need for a comprehensive statutory regime to govern the field.²⁷ This Act greatly expanded the federal scope of the regulation of air transportation, providing a statutory framework for a wide-ranging regulatory scheme.²⁸

16. See, e.g., Air Commerce Act of 1926, ch. 344, 44 Stat. 568 (1926).

17. *Id.*

18. *United States v. Causby*, 328 U.S. 256, 260–61 (1946); also, for a detailed treatment of the problems discussed in this paragraph, see generally STUART BANNER, *WHO OWNS THE SKY?* (2008).

19. *Causby*, 328 U.S. at 260–61.

20. § 10, 44 Stat. at 574.

21. See *Causby*, 328 U.S. at 260–61.

22. See *id.*

23. See *A Brief History of the FAA*, FED. AVIATION ADMIN. (Nov. 15, 2021), https://www.faa.gov/about/history/brief_history [<https://perma.cc/3QQQ-QTUQ>].

24. Civil Aeronautics Act of 1938, ch. 601, 52 Stat. 973 (1938).

25. *Id.*

26. CHARLES F. KRAUSE & KENT C. KRAUSE, *AVIATION TORT AND REGULATORY LAW* § 26:2 (2d ed. 2023).

27. Notes and Legislation, *Civil Aeronautics Act of 1938*, 52 HARV. L. REV. 137, 137–38 (1938).

28. *Id.*

The second act passed was the Federal Aviation Act of 1958.²⁹ Although the 1938 Act established the federal government as the clear authority in aviation, the regulation of airspace and air traffic control had not kept up with the continual advancements in the size and speed of aircraft.³⁰ In 1956, two airliners flying in uncongested airspace collided over the Grand Canyon, killing all on board both aircraft.³¹ This disaster prompted Congress to enact the 1958 Act.³² The Act created the Federal Aviation Agency, the immediate predecessor to the modern Federal Aviation Administration.³³ The statutory authority for the FAA has been recodified since the Federal Aviation Act of 1958 but has remained substantially unchanged.³⁴ At that point, the federal government was generally understood to have established implied field preemption over the regulation of air transport and air commerce, especially with matters related to aviation safety.³⁵

B. Federal Preemption in Personal Injury Tort Claims

Although Congress pursued an aggressively preemptory path with regard to aviation safety, Congress did not want to generally preempt state tort claims for damages related to aviation incidents.³⁶ For example, Congress has never expressly provided for the removal of aviation safety claims to federal court.³⁷ Courts have held that “the [Federal Aviation Act] provides for no private civil remedies, either express or implied.”³⁸ In addition, the Federal Aviation Act of 1958 contained a preemption saving clause allowing the pursuit of damages.³⁹ This clause, in a much-truncated form, continues today, stating that “[a] remedy under this part is in addition to any other remedies provided by law.”⁴⁰

29. Federal Aviation Act of 1958 (FAA), Pub. L. No. 85-726, 72 Stat. 731 (1958) (current version at 49 U.S.C. §§ 40101–50105).

30. KRAUSE & KRAUSE, *supra* note 26, § 26:2.

31. *Id.*

32. *See generally* Federal Aviation Act of 1958 (FAA), 72 Stat. 731 (explaining that the overall state of aviation safety prompted Congress to enact the 1958 act).

33. *Id.* The Agency became the modern Administration when the Department of Transportation was created on April 1, 1966. FED. AVIATION ADMIN., *supra* note 23. For convenience, this Note uses the acronym “FAA” interchangeably for both the Federal Aviation Agency and Federal Aviation Administration.

34. Act of July 5, 1994, Pub. L. No. 103-272, § 44112, 108 Stat. 745, 1167.

35. *See, e.g.,* Elassaad v. Indep. Air, Inc., 613 F.3d 119, 126 (3d Cir. 2010) (quoting Abdullah v. Am. Airlines, Inc., 181 F.3d 363, 365 (3d Cir. 1999)) (noting that implied preemption covers “the entire field of aviation safety”).

36. *See* Federal Aviation Act of 1958 (FAA), 72 Stat. at 798 (current version at 49 U.S.C. § 40120(c)).

37. *See* 28 U.S.C. § 1441. *But cf.* 28 U.S.C. § 1369 (federal courts have original jurisdiction over mass casualty events, including aviation disasters).

38. O.S. *ex rel.* Sakar v. Hageland Aviation Servs., Inc., 609 F. Supp. 2d 889, 894 (D. Alaska 2008).

39. *See* Federal Aviation Act of 1958 (FAA), 72 Stat. at 798 (current version at 49 U.S.C. § 40120(c)).

40. 49 U.S.C. § 40120(c).

Therefore, when appropriate, Congress allows state courts to adjudicate aviation damage claims.

But Congress has crafted a limited exception to the saving clause.⁴¹ 49 U.S.C. § 44112 prevents aircraft owners or lessors from being held vicariously liable for damages caused by their aircraft if they did not have control when the incident occurred.⁴² Section 44112 stipulates that non-piloting owners are not liable for damages caused by their aircraft in most instances.⁴³ This provision creates tension with the preemption saving clause noted above, and some states' vicarious liability laws conflict with § 44112.⁴⁴ These divergences have led state courts to different interpretations of how 'preemptory' § 44112 actually is.⁴⁵

C. Statutory History of 49 U.S.C. § 44112

Before proceeding further, a review of the statutory history of current 49 U.S.C. § 44112 is necessary. This is because some courts, especially those who have held § 44112 to not preempt state law, have held that the original language should control interpretation.⁴⁶ Section 44112 was initially enacted as section 304 of the Civil Aeronautics Act of 1938.⁴⁷ In 1948, following World War II, Congress passed section 304 with the intention of furthering the domestic aircraft industry.⁴⁸ Section 304 was recodified and incorporated into the Federal Aviation Act of 1958.⁴⁹ Finally, in 1994, Congress recodified the Federal Aviation Act into its current form.⁵⁰ Section 1404, the predecessor to § 44112, was included in the recodification.⁵¹ Of note, prior to the 1994 recodification, § 1404 covered persons "having a security interest in, or security title to, any civil

41. 49 U.S.C. § 44112.

42. *See id.*

43. 49 U.S.C. § 44112(b) (providing that aircraft lessors, owners, or secured parties are liable only when they are in "actual possession or operational control" of the aircraft when the damage occurs).

44. Compare 49 U.S.C. § 44112 (federal vicarious liability shield), with N.Y. GEN. BUS. LAW § 251(1) (Consol. 2025) (state vicarious liability statute).

45. See generally Jol A. Silversmith, "It, Being Dead, Yet Speaketh": *The Recodification of the Federal Aviation Act of 1958*, 29 AIR & SPACE L. 8 (2016) (explaining that recodification has produced different judicial interpretations, including state decisions interpreting 49 U.S.C. § 44112 differently).

46. See, e.g., *Coleman v. Windham Aviation Inc.*, No. Civ.A. K.C.2004-0985, 2005 WL 1793907, at *5-*6 (R.I. Super. Ct. July 18, 2005) (unpublished opinion).

47. Civil Aeronautics Act of 1938, ch. 601, 52 Stat. 973 (current version at 49 U.S.C. § 44112); Civil Aircraft—Liability of Owner, Pub. L. No. 80-656, 62 Stat. 470 (1948) (current version at 49 U.S.C. § 44112).

48. H.R. REP. NO. 80-2091, at 1-3 (1948), as reprinted in 1948 U.S.C.C.A.N. 1836, 1836-37.

49. Federal Aviation Act of 1958 (FAA), Pub. L. No. 85-726, 72 Stat. 731, 774 (current version at 49 U.S.C. § 44112).

50. Act of July 5, 1994, Pub. L. No. 103-272, § 44112, 108 Stat. 745, 1167.

51. *Id.*

aircraft,” but was ambiguous regarding owners.⁵² After the recodification, the current statute explicitly covers “lessors,” “owners,” and “secured parties.”⁵³ The most recent modification of the statutory language occurred in 2018.⁵⁴ Following the *Vreeland v. Ferrer* decision discussed below in Part II,⁵⁵ Congress amended § 44112. The law now specifies that control must be “operational,” and the requirement that injury be suffered “on land or water” was removed.⁵⁶

*D. A Definition of Vicarious Liability and Its Application to
Automobiles by Way of Analogy to Aircraft*

As this Note discusses vicarious liability in the specific context of non-owner-operated aircraft, it may be helpful to first examine the doctrine more generally. Vicarious liability has been defined as “liability that is imposed on the defendant based solely on the tortious act of another.”⁵⁷ Vicarious liability allows a plaintiff to attempt to sue the owner of an instrument that caused a particular harm if it is shown that the tortfeasor is in some way the agent of the defendant.⁵⁸ One way a person may become an agent of the defendant is to operate a vehicle that the defendant owns.⁵⁹ Typically, this vehicle will be an automobile, but aircraft owners have also been found vicariously liable.⁶⁰

States approach vicarious liability for automobiles in different ways. For example, Minnesota statutorily holds the driver of an automobile to be the agent of the owner.⁶¹ In Florida, the owner of a car who allows another person to drive it is liable up to statutory limits.⁶² But other states take the opposite approach, often allowing the owner to escape liability.⁶³ Indiana common law is a good

52. 49 U.S.C. app. § 1404 (1990) (current version at 49 U.S.C. § 44112).

53. 49 U.S.C. § 44112(a).

54. FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 514, 132 Stat. 3186, 3358.

55. *Vreeland v. Ferrer*, 71 So.3d 70 (Fla. 2011).

56. § 514, 132 Stat. at 3358.

57. RESTATEMENT (THIRD) OF TORTS: MISCELLANEOUS PROVISIONS § 1 (A.L.I., Tentative Draft No. 2, 2023).

58. *Id.* § 1 cmt. c.

59. *See, e.g.*, *Lambert v. Emerson*, 304 So.3d 364, 366 (Fla. Dist. Ct. App. 2020) (holding an owner of an automobile vicariously liable for son’s accident). *But see, e.g.*, *Barnd v. Borst*, 431 N.E.2d 161, 165 (Ind. Ct. App. 1982) (holding that a family relationship is not enough to establish vicarious liability).

60. *See, e.g.*, *Coleman v. Windham Aviation Inc.*, No. Civ.A. K.C.2004-0985, 2005 WL 1793907 (R.I. Super. Ct. July 18, 2005) (unpublished opinion) (holding an aircraft owner vicariously liable); *Vreeland*, 71 So.3d at 84 (holding that the dangerous instrumentality doctrine imposes vicarious liability on aircraft owners). *But see* 49 U.S.C. § 44112; IND. CODE § 8-21-4-6 (2025). For state statutory treatment establishing vicarious liability, *see, e.g.*, N.Y. GEN. BUS. LAW § 251 (Consol. 2025); CAL. PUB. UTIL. CODE § 21404 (2025).

61. MINN. STAT. § 169.09(5)(a) (2025).

62. FLA. STAT. § 324.021(9)(b)(3) (2025).

63. *E.g.*, *Kahn v. Cundiff*, 533 N.E.2d 164, 168 (Ind. Ct. App. 1989); *Carter v. U-Haul Int’l*, No. 09AP-310, 2009 WL 3221468, at *5 (Ohio Ct. App. Oct. 8, 2009).

illustration. It does not impose vicarious liability unless there is an established agency relationship between the driver and the owner.⁶⁴ For example, in *Kahn v. Cundiff*, the Indiana Court of Appeals held that a plaintiff must establish “some type of a principal/agent or master/servant relationship.”⁶⁵ Also, *Barnd v. Borst* demonstrated how reluctant Indiana is to hold an automobile owner vicariously liable when the court rejected a vicarious liability attempt where there was only a family relationship between the driver and the owner.⁶⁶ Ohio likewise rejects the family purpose doctrine, requiring a principal/agent relationship between the driver and the owner.⁶⁷

This diversity in how states handle automobile vicarious liability is also found in various states’ aviation law. Plaintiffs may desire to use vicarious liability in a similar manner to that of an automobile case to attach liability to the aircraft owner.⁶⁸ For example, some states have statutes that impose liability on aircraft owners.⁶⁹ Both California and New York statutorily hold aircraft owners liable for damages caused by their aircraft.⁷⁰ In contrast, Indiana statutorily shields owners from vicarious liability unless an agency relationship exists between the owner and pilot.⁷¹ In a similar manner, some state courts have found owners vicariously liable when other persons fly their aircraft.⁷² On the other hand, most federal courts and many state courts have found that § 44112 preempts state law, and owners should not be held liable.⁷³ This deviation from the norm of federal uniformity in aviation law may lead to inequitable forum shopping, with claimants seeking to file cases in jurisdictions that do not recognize federal preemption in this area.⁷⁴

64. *Kahn*, 533 N.E.2d at 168.

65. *Id.*

66. *Barnd v. Borst*, 431 N.E.2d 161, 165 (Ind. Ct. App. 1982).

67. *See, e.g.*, *M.M. v. M.F.*, No. 108957, 2020 WL 6342653, at *6 (Ohio Ct. App. Oct. 29, 2020) (rejecting the family purpose doctrine); *Carter*, 2009 WL 3221468, at *5 (Ohio Ct. App. Oct. 8, 2009) (holding that an operator of vehicle must be owner’s agent for vicarious liability to attach).

68. *See, e.g.*, *Coleman v. Windham Aviation Inc.*, No. Civ.A. K.C.2004–0985, 2005 WL 1793907 (R.I. Super. Ct. July 18, 2005) (unpublished opinion); *Vreeland v. Ferrer*, 71 So.3d 70, 84 (Fla. 2011).

69. *E.g.*, CAL. PUB. UTIL. CODE § 21404 (2025); N.Y. GEN. BUS. LAW § 251(1) (Consol. 2025).

70. PUB. UTIL. § 21404; GEN. BUS. § 251(1).

71. IND. CODE § 8-21-4-6 (2025).

72. *See, e.g.*, *Coleman*, 2005 WL 1793907 (aircraft owner vicariously liable); *Vreeland*, 71 So.3d at 84 (holding that the dangerous instrumentality doctrine imposes vicarious liability on aircraft owners).

73. *E.g.*, *J.A.G.P. v. Aerolineas Damojh, S.A. de C.V.*, 585 F. Supp. 3d 1092, 1096 (N.D. Ill. 2022); *Mangini v. Cessna Aircraft Co.*, Nos. X07CV044001467S, X07CV044003418S, 2005 WL 3624483, at *6 (Conn. Super. Ct. Dec. 7, 2005).

74. *See generally* Roger W. Clark & Thomas M. Richardson, *Is Lessor More?*, 75 J. AIR. L. & COM. 69 (2010) (describing how plaintiffs’ use of lessors as a “jurisdictional hook” and cases regarding the § 44112 preemption split has led to forum shopping).

II. ANALYSIS OF FEDERAL AND STATE VICARIOUS LIABILITY LAW

A. Federal Statutes

As discussed above, federal law is generally held to be preemptive over state law when dealing with aviation-related matters.⁷⁵ An exception is 49 U.S.C. § 40120(c), a preemption savings clause for state tort actions.⁷⁶ The current version of the statute reads “[a] remedy under this part is in addition to any other remedies provided by law.”⁷⁷ As a result, Congress has established field preemption regarding aviation safety but has allowed state tort law to govern the adjudication of disputes resulting from the violation of those standards.⁷⁸

But as is often seen, the exception to the general rule has an exception. 49 U.S.C. § 44112 limits the liability of certain persons in relation to incidents involving civil aircraft, aircraft engines, or propellers.⁷⁹ Section 44112 begins by defining the three types of persons that the exception applies to: lessors, owners, and secured parties.⁸⁰ To qualify as a lessor, the person must be leasing the item for at least thirty days; to be a secured party, one must have a security interest in the aircraft, aircraft engine, or propeller.⁸¹

Section 44112(b) then provides the meat of the statute. It reads:

(b) Liability.—A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage only when a civil aircraft, aircraft engine, or propeller is in the actual possession or operational control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of—

- (1) the aircraft, engine, or propeller; or
- (2) the flight of, or an object falling from, the aircraft, engine, or propeller.⁸²

At first blush, this appears to severely limit when the owner (or lessor or secured party) may be held liable for damage caused by their aircraft.⁸³ They must be in “actual possession or [in] operational control” of the aircraft.⁸⁴ “Operational control” is defined in the federal aviation regulations (FARs) as “the exercise of

75. See, e.g., *Elassaad v. Indep. Air, Inc.*, 613 F.3d 119, 126 (3d Cir. 2010) (quoting *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 365 (3d Cir. 1999)) (noting that implied preemption covers “the entire field of aviation safety”).

76. 49 U.S.C. § 40120(c).

77. *Id.*

78. See 8A AM. JUR. 2D *Aviation* § 98, Westlaw (database updated Jan. 2026).

79. 49 U.S.C. § 44112(b).

80. § 44112(a).

81. *Id.*

82. § 44112(b).

83. *Id.*

84. *Id.*

authority over initiating, conducting, or terminating a flight.”⁸⁵ Therefore, an owner lending an aircraft to a qualified pilot is no longer in “operational control” of the airplane. Rather, the person who is flying the aircraft is now in operational control. As a result, if the nonowner pilot then had an accident, § 44112 would exclude the owner from liability.⁸⁶

B. Federal Courts’ Interpretations of Federal Law

Federal courts generally agree with the above interpretation, holding that § 44112 preempts state law and owners are not liable if they were not in operational control of the aircraft.⁸⁷ For example, in *J.A.G.P. v. Aerolineas Damojh S.A. de C.V.*, the heirs and personal representatives of persons who died in an aircraft accident in Cuba sued Wells Fargo Trust, the former owners of the plane.⁸⁸ The plaintiffs alleged that Wells Fargo placed a dangerous aircraft into the stream of commerce and thus was vicariously liable for the crash.⁸⁹ Wells Fargo moved to dismiss, arguing that federal law preempted state law.⁹⁰ The court agreed, holding that even though the text of § 44112 does not explicitly preempt state law, it nevertheless is preemptory, because the “law’s text, context, and structure clearly imply that the section has preemptive force.”⁹¹

Murphy v. Airway Air Charter, Inc. is another example of the federal courts applying § 44112 as preemptory.⁹² Here, the wife of a person injured in an airplane accident sued the aircraft owner for loss of consortium.⁹³ The man injured was the sole passenger of an aircraft that ran out of fuel during a flight to the Bahamas.⁹⁴ The plaintiff sued the owner in a Florida state court, seeking to hold the owner vicariously liable.⁹⁵ Because the crash occurred in international waters, the case was removed to federal court.⁹⁶ The aircraft owner pointed to § 44112(b), stating that they were not in possession or control of the aircraft at the time it crashed and were therefore shielded from liability.⁹⁷ The court agreed, and found that § 44112(b) precluded any claim against the

85. 14 C.F.R. § 1.1 (2026).

86. § 44112(b).

87. *E.g.*, *J.A.G.P. v. Aerolineas Damojh, S.A. de C.V.*, 585 F. Supp. 3d 1092, 1096 (N.D. Ill. 2022).

88. *Id.* at 1094.

89. *Id.*

90. *Id.*

91. *Id.* at 1096.

92. No. 23-cv-23654, 2024 WL 3183239 (S.D. Fla. June 26, 2024), *aff’d per curiam*, 2026 WL 125793 (11th Cir. Jan. 16, 2026).

93. *Id.* at *1.

94. *Id.*

95. Fourth Amended Complaint at ¶¶ 36–39, *Murphy*, No. 23-cv-23654, 2024 WL 3183239 (S.D. Fla. Dec. 18, 2023), Dkt. No. 35.

96. Notice of Removal at ¶¶ 12–15, *Murphy*, No. 23-cv-23654, 2024 WL 3183239 (S.D. Fla. Sep. 25, 2023), Dkt. No. 1.

97. *Murphy*, 2024 WL 3183239, at *2.

owner.⁹⁸

In re Lawrence W. Inlow Accident Litigation is another instance of federal courts interpreting § 44112. In 1997, the general counsel of Conseco, Inc. was killed as he exited the company helicopter by stepping into the aircraft's rotor.⁹⁹ His widow sued, alleging that the helicopter was operated in a negligent manner and that the aircraft lessor had negligently failed to warn of a dangerously defective product.¹⁰⁰ Moving for summary judgment, and arguing in the alternative, Conseco contended that § 44112 prevented it from being held liable because they were the lessor of the aircraft, and that it was not in Conseco's possession or operational control at the time of the accident.¹⁰¹ The court found that "[t]he plain language of § 44112 establishes that it preempts state common law claims against covered lessors," and that "federal common law generally does not provide a remedy for those injured in aircraft accidents."¹⁰² The court referenced § 44112(b), which states that, "[a] lessor . . . is liable . . . *only* when [an] aircraft . . . is in the actual possession or operational control of the . . . lessor."¹⁰³ It noted that "[t]he word 'only' could have effect only if the statute preempts claims against lessors arising under state law."¹⁰⁴

As can be seen from the above, federal courts apply § 44112 as written.¹⁰⁵ In all three cases, motions for summary judgment were granted because § 44112 shielded aircraft owners from liability when they were not in possession of the aircraft.¹⁰⁶ But state courts may or may not view § 44112 as preemptory.

C. A Comparison of the Various State Approaches to Aircraft Owner Vicarious Liability

Despite the existence of § 44112, and perhaps following the invitation of § 40120(c),¹⁰⁷ some states statutorily address vicarious liability for aircraft owners. Several states have statutes that will subject an aircraft owner to vicarious liability. For instance, New York statutorily holds owners of aircraft

98. *Id.*

99. *In re Lawrence W. Inlow Accident Litig.*, No. IP 99-0830, 2001 WL 331625, at *1 (S.D. Ind. Feb. 7, 2001). Mr. Inlow is the namesake of Inlow Hall, where the Indiana University Robert H. McKinney School of Law is located. Gerald L. Bepko, *Chancellor's Newsletter* 2 (July 1998) <https://archives.indianapolis.iu.edu/server/api/core/bitstreams/4cdfb70d-e5c9-43cb-b61a-00ec3aca1e77/content> [<https://perma.cc/Z6WX-AJ4D>] (last visited February 22, 2026).

100. *In re Inlow*, 2001 WL 331625, at *1.

101. *Id.* at *14.

102. *Id.*

103. *Id.*; 49 U.S.C. § 44112(b) (emphasis added).

104. *In re Inlow*, 2001 WL 331625, at *14.

105. *J.A.G.P. v. Aerolineas Damojh, S.A. de C.V.*, 585 F. Supp. 3d 1092, 1094 (N.D. Ill. 2022); *Murphy v. Airway Air Charter, Inc.*, No. 23-cv-23654, 2024 WL 3183239 (S.D. Fla. June 26, 2024); *In re Inlow*, 2001 WL 331625.

106. *J.A.G.P.*, 585 F. Supp. 3d at 1094; *Murphy*, 2024 WL 3183239; *In re Inlow*, 2001 WL 331625.

107. *See supra* Part I.B.

liable for “death occasioned or injuries to person or property sustained, within or above this state . . . [from] the operation of [an] aircraft.”¹⁰⁸ Similarly, California also holds aircraft owners liable “for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the aircraft, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner.”¹⁰⁹ Tennessee law similarly holds owners of aircraft liable for injuries or damage caused by an aircraft.¹¹⁰ In addition, both Connecticut and Rhode Island also have laws that hold non-operating owners liable.¹¹¹ In contrast, Indiana prohibits vicarious liability for an aircraft owner unless there is an agency relationship between the owner and pilot.¹¹²

But before a state may hold an aircraft owner vicariously liable, it must contend with the presumably preemptory 49 U.S.C. § 44112. In contrast to federal courts, state courts vary widely on how they interpret § 44112. In fact, many state courts are quite reluctant to allow § 44112 to preempt state tort law.

For example, in Illinois courts have held that § 44112 does not preempt personal injury actions against lessors.¹¹³ In *Retzler v. Pratt & Whitney Co.*, a flight attendant was injured when an engine malfunctioned, and she sued the owner of the aircraft for negligence.¹¹⁴ The trial court granted the owner’s motion for summary judgment on the grounds that § 44112 preempted state tort law.¹¹⁵ On appeal, the Appellate Court of Illinois reversed summary judgment and remanded.¹¹⁶ In its reasoning, the Appellate Court cited two federal cases, *Matei v. Cessna Aircraft Co.*¹¹⁷ and *Abdullah v. American Airlines, Inc.*¹¹⁸ In *Matei*, the court determined that § 1404 (the predecessor to § 44112 prior to the recodification of 1994) was preemptory but then went on to discuss Illinois bailment law.¹¹⁹ The *Retzler* court reasoned that if § 1404 was truly preemptory, the Seventh Circuit would never have reached the question of Illinois law.¹²⁰ Ergo, § 1404 was not preemptory.¹²¹ When analyzing *Abdullah*, the court noted that the Third Circuit held that federal preemption in aviation safety standards can coexist with state tort remedies.¹²² As a result, the court held “that section 44112 does not preempt a personal injury action under state law against . . . the

108. N.Y. GEN. BUS. LAW § 251(1) (Consol. 2025).

109. CAL. PUB. UTIL. CODE § 21404 (2025).

110. TENN. CODE ANN. § 42-1-105 (2025).

111. 1 R.I. GEN. LAWS § 1-4-3 (2025); CONN. GEN. STAT. §§ 15-34(20), 15-72 (2025).

112. IND. CODE § 8-21-4-6 (2025); *see infra* Parts III and IV.

113. *Retzler v. Pratt & Whitney Co.*, 723 N.E.2d 345 (Ill. App. Ct. 1999).

114. *Id.* at 349.

115. *Id.* at 350.

116. *Id.* at 358.

117. *Id.* at 352 (citing *Matei v. Cessna Aircraft Co.*, 35 F.3d 1142 (7th Cir. 1994)).

118. *Id.* (citing *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999)).

119. *Matei*, 35 F.3d at 1144.

120. *Retzler*, 723 N.E.2d at 352.

121. *Id.*

122. *Id.* (citing *Abdullah*, 181 F.3d at 375).

aircraft lessors in the instant case.”¹²³ This precedent led a Cook County trial court to rule in a separate case that § 44112 did not preempt a suit brought against the lessor of an aircraft that crashed in the Philippines.¹²⁴ This led to a large settlement of \$165 million.¹²⁵

In 2005, a fatal accident in Rhode Island led to a vicarious liability lawsuit.¹²⁶ Two light aircraft collided, and the occupants of one were killed; the family of one of the deceased sued the owner of the other aircraft.¹²⁷ The court conceded that a “cursory review” of § 44112 appeared to limit an owner’s liability to when the aircraft is in the actual possession or control of the owner.¹²⁸ But the court went on to analyze the recodification of § 1404 into § 44112 and determined that the text of § 1404 should control.¹²⁹ The court began by applying the precedent of *Cass v. United States*.¹³⁰ In *Cass*, the Supreme Court held that when a law is recodified, and Congress states that no substantive change is intended, the text of the predecessor statute controls.¹³¹ The court held that § 1404 was ambiguous as to whether it applied to aircraft owners in addition to lessors and secured parties.¹³² On the other hand, the recodified § 44112 explicitly exempts owners from liability.¹³³ As a result, the court determined that the recodification impermissibly widened the scope of § 44112 beyond the bounds of § 1404.¹³⁴ As a result, the court chose to apply § 1404 rather than § 44112, holding that § 44112 does not apply to aircraft owners.¹³⁵ Consequently, partial summary judgment was granted for the plaintiff, and the non-operating owner was held liable for the accident.¹³⁶

The state courts in Louisiana took a slightly different approach. In *Cosey ex rel. Hilliard v. Flight Academy of New Orleans LLC*, a Cessna 172 crashed into Lake Pontchartrain.¹³⁷ The pilot and a passenger perished in the accident, with the deceased passenger’s surviving family suing the aircraft owner, among

123. *Id.* at 353.

124. *Layug v. AAR Parts Trading, Inc.*, No. 00 L 9599, 2003 WL 25744436, at *1 (Ill. Cir. Ct. May 16, 2003).

125. *Clark & Richardson, supra* note 74, at 71. It should be noted that other procedural reforms have reduced the possibility that large air disaster litigations will be forced to remain in state courts. *Id.* at 74.

126. *Coleman v. Windham Aviation Inc.*, No. Civ.A. K.C.2004–0985, 2005 WL 1793907, at *1–2 (R.I. Super. Ct. July 18, 2005) (unpublished opinion).

127. *Id.* at *1.

128. *Id.* at *3.

129. *Id.* at *6.

130. *Id.* at *4 (citing *Cass v. United States*, 417 U.S. 72 (1974)).

131. *Coleman*, 2005 WL 1793907, at *4 (citing *Cass*, 417 U.S. at 82–84).

132. *See* 49 U.S.C. app. § 1404 (1990) (current version at 49 U.S.C. § 44112).

133. § 44112(b).

134. *Coleman*, 2005 WL 1793907, at *6.

135. *Id.*

136. *Id.* at *7.

137. *Cosey ex rel. Hilliard v. Flight Acad. of New Orleans, LLC*, 365 So.3d 76, 79 (La. Ct. App. 2020).

others.¹³⁸ The owner moved for summary judgment, arguing that § 44112 preempted state law.¹³⁹ The court did not reach the preemption argument, instead reasoning that under *federal* law, a “lessor of an airplane cannot be held liable unless it has possession or control of the airplane.”¹⁴⁰ It then went on to reason that because “[f]ederal preemption of the standards of care can coexist with state and territorial tort remedies,” it was necessary for the court to address Louisiana’s vicarious liability doctrine.¹⁴¹ The court then analyzed state law regarding the theories of liability argued by the plaintiff, and it found that the owner was not vicariously liable.¹⁴² It appears the court determined that § 44112 was not preemptory of state tort remedies and only spoke to a federal cause of action.¹⁴³ Had Louisiana law been different, the *Cosey* court may have well found in favor of the plaintiff.

Finally, in *Vreeland v. Ferrer*, the Florida Supreme Court held that § 44112 did not apply to a state tort claim if the plaintiffs (or their representatives) were passengers in an aircraft when they were injured or killed.¹⁴⁴ The court interpreted the statute to only apply to damages caused by an aircraft to persons or property “on land or water,” and therefore it did not apply to crew or passengers *inside* an aircraft.¹⁴⁵ The court looked to the legislative history of § 44112 and its predecessors, observing that when the statute was enacted, the Uniform Aeronautics Act treated damage to passengers and crew much differently than damage to persons or property on the ground.¹⁴⁶ The court reasoned that torts regarding occupants should be handled by state law, whereas damage to persons or property on the ground should be shielded from liability.¹⁴⁷ The court held that when Congress “adopt[ed] a federal law that specifically referenced damages or injuries that occur *on the surface of the earth*, the 1948 Congress did not intend to preempt state law with regard to injuries to passengers or aircraft crew.”¹⁴⁸ And after a thorough discussion of various judicial decisions regarding its preemptory effect, the Florida Supreme Court decided that § 44112 does not preempt state tort claims for damages to passengers and crew because they were not “on land or water” but, rather, were in the air.¹⁴⁹ The court then applied Florida’s dangerous instrumentality doctrine to the facts of the case and reversed the lower court decision that had determined

138. *Id.* at 80–81.

139. *Id.* at 85.

140. *Id.*

141. *Id.* (quoting *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 375 (3d Cir. 1999)).

142. *Id.* at 90.

143. *Id.* at 85.

144. 71 So.3d 70, 84 (Fla. 2011).

145. *Id.* at 82.

146. *Id.* at 81.

147. *Id.* at 80–81.

148. *Id.* at 81.

149. *Id.* at 84.

that preemption existed.¹⁵⁰

On the other hand, a Connecticut court found that § 44112 was preemptory.¹⁵¹ In *Mangini v. Cessna Aircraft Co.*, an aircraft suffered and fuel leak or engine fire in flight and crashed, killing the plaintiffs' decedents.¹⁵² The court examined *Coleman v. Windham Aviation Inc.*, and disagreed with the Rhode Island court's analysis of the effect of § 1404's recodification into § 44112.¹⁵³ The *Mangini* court felt that the recodification clarified the ambiguous use of "owner" in § 1404 and that, therefore, the new text should control.¹⁵⁴ The court nevertheless acknowledged that there is a "strong presumption against federal preemption" unless the federal government had shown a "clear and manifest" purpose to supersede state [law]," but, even so, it found that federal law preempted in this area.¹⁵⁵ The court cited *In re Inlow Accident Litigation* for noting that, as of the time of that decision, no federal court had held that § 44112 or § 1404 did not preempt state law.¹⁵⁶ Finally, the court discussed the House and Senate Reports concerning the passage of § 1404, mentioning that the intent of congress was to shield owners from liability.¹⁵⁷

As may be seen, states have taken various approaches to non-operating owner vicarious liability of aircraft. Apart from Indiana, if the state statutorily addresses the matter, it will hold such an owner vicariously liable.¹⁵⁸ And state courts have often been reluctant to allow § 44112 to preempt state vicarious liability doctrines.¹⁵⁹ While Congress intended that state tort remedies survive the total federal preemption of aviation safety,¹⁶⁰ it also envisioned that non-operating aircraft owners should not face vicarious liability for the negligence of the operator.¹⁶¹ The tension between federal and state law in this area is currently unresolved.

150. *Id.* at 85. Concededly, the *Vreeland* court could not use the same reasoning today, as § 44112 was amended in 2018, removing the "on land or water" provision from the code. FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 514, 132 Stat. 3186, 3358.

151. *Mangini v. Cessna Aircraft Co.*, Nos. X07CV044001467S, X07CV044003418S, 2005 WL 3624483, at *6 (Conn. Super. Ct. Dec. 7, 2005).

152. *Id.* at *1.

153. *Id.* at *4–*5.

154. *Id.*

155. *Id.* at *5 (quoting *Dowling v. Slotnik*, 712 A.2d 396, 404 (1998)).

156. *Id.* at *6 (citing *In re Inlow Accident Litig.*, No. IP 99–0830, 2002 WL 970403 (S.D. Ind. Apr. 16, 2002)).

157. *Id.*

158. *Compare* IND. CODE § 8-21-4-6 (non-operating aircraft owner not liable with certain enumerated exceptions; *see infra* Parts III and IV), *with, e.g.*, N.Y. GEN. BUS. LAW § 251(1) (Consol. 2025) (owners of aircraft liable for death or injuries caused by an aircraft).

159. *E.g.*, *Coleman v. Windham Aviation Inc.*, No. Civ.A. K.C.2004–0985, 2005 WL 1793907 (R.I. Super. Ct. July 18, 2005) (unpublished opinion).

160. 49 U.S.C. § 40120(c).

161. 49 U.S.C. § 44112.

III. INDIANA'S POSITION

A. While Allowing State Tort Claims to Proceed, Indiana Possesses a Unique Statute Regarding Aircraft Owner Vicarious Liability

Having discussed federal and state statutes regarding aircraft owner vicarious liability and court decisions interpreting them, this Note now turns to Indiana. The Indiana Supreme Court acknowledges that federal law—as a rule—does not impact state tort claims in aviation.¹⁶² The court addressed federal preemption of state law in *Atlantic Coast Airlines v. Cook*.¹⁶³ The claim against the airline was for negligent infliction of emotional distress.¹⁶⁴ Five months after September 11, 2001, an erratically behaving passenger was allowed to board a flight; when his behavior became sufficiently threatening, the flight diverted and the passenger was arrested.¹⁶⁵ In determining whether federal law was preemptory, as Atlantic Coast argued, the court affirmed the appellate court's holding that the preemption savings clause in 49 U.S.C. § 40120(c) allows for state tort actions.¹⁶⁶ Therefore, even though the federal government may have occupied the field of aviation safety, states nevertheless have the ability to regulate some tortious actions in their courts.¹⁶⁷

But Indiana has a unique statute addressing vicarious liability for aircraft owners or lessors.¹⁶⁸ This statute is codified as Indiana Code section 8-21-4-6: Liability; vicarious liability.¹⁶⁹ It is divided into three subsections: (a), (b), and (c).¹⁷⁰ Subsection (a) follows standard aviation law, specifying that the Indiana law applies to “offenses, torts, and other wrongs committed by or against” aircraft crew or passengers, and that damages caused by or to an aircraft in flight over Indiana will be governed by Indiana law.¹⁷¹ Subsection (c) stipulates that the statute does not modify Indiana law with respect to bailments or bailor liability.¹⁷² However, for purposes of this Note, subsection (b) is of specific interest. It reads:

(b) This article does not impose vicarious liability for damages on an owner of an aircraft who is not the pilot unless:

(1) the owner engages in negligent, reckless, knowing, intentional,

162. *Atl. Coast Airlines v. Cook*, 857 N.E.2d 989, 994 (Ind. 2006), *aff'g*, *Delta Airlines v. Cook*, 816 N.E.2d 448, 458 (Ind. Ct. App. 2004); *see* 49 U.S.C. § 40120(c).

163. *Id.*

164. *Id.* at 991.

165. *Id.* at 991–92.

166. *Id.* at 994.

167. *See id.*

168. IND. CODE § 8-21-4-6 (2025).

169. *Id.*

170. *Id.*

171. § 8-21-4-6(a).

172. § 8-21-4-6(c). For Indiana bailment law, *see* generally YVONNE LEWIS McDONALD, 4 IND. L. ENCYC. BAILMENT (2026).

or unlawful conduct that is the proximate cause of the damages;
(2) an agency relationship exists between the owner and the person who proximately caused the damages; or
(3) the owner's liability is based on the doctrine of respondeat superior.¹⁷³

This law strikes a balance between the interests of aircraft owners and the interests of persons injured by the operation of an aircraft. An aircraft owner who is not the pilot will not be held vicariously liable unless they (1) acted in "negligent, reckless, knowing, intentional, or unlawful conduct" that led to the injury, had an agency relationship with the tortfeasor, or would be liable through the doctrine of respondeat superior.¹⁷⁴ In other words, if an aircraft owner's only connection to the damages caused by the tortfeasor is through ownership of the instrument that caused the harm, the owner will not be held vicariously liable.¹⁷⁵ This protects the interests of owners by limiting their liability to bad behavior where they either could reasonably foresee an injury resulting from their conduct or they are in some way responsible for the actions of the tortfeasor, either through agency or respondeat superior.¹⁷⁶ The statute protects both those damaged by an aircraft (by including the bad behavior and agency exceptions) and non-operating owners (by exempting them from liability, subject to the same exceptions).¹⁷⁷ This is more generous to victims of accidents than the federal statute, which does not include these exceptions.¹⁷⁸ Indiana law in this area balances the desires of aircraft owners, who want protection from claims that only have a tenuous connection to them, with the needs of plaintiffs, who are permitted to pursue persons who *are* directly connected to the harm they have suffered.

IV. INDIANA'S APPROACH IS A MODEL FOR THE NATION

A. Aircraft Are Not Dangerous Instrumentalities

Whether or not aircraft owners should be held vicariously liable when they were not piloting or in operational control at the time of an accident is a policy question. One way to answer this is to determine if an aircraft is a dangerous instrumentality. If airplanes are in fact dangerous instrumentalities, it would be reasonable for vicarious liability to attach, as this doctrine "may serve as the basis for strict liability."¹⁷⁹ On the other hand, if aircraft—even small private aircraft—are commonly used implements of modern life with a quantifiably low

173. § 8-21-4-6(b).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Compare id.*, with 49 U.S.C. § 44112(b).

179. *Dangerous Instrumentality*, BLACK'S LAW DICTIONARY (12th ed. 2024).

level of hazard, perhaps it would be unreasonable to declare them to be a dangerous instrumentality.¹⁸⁰ Dangerous instrumentality has been defined as “[a]n instrument, substance, or condition so inherently dangerous that it may cause serious bodily injury or death without human use or interference.”¹⁸¹ In spite of the fact that airplanes cannot cause harm “without human use or interference,”¹⁸² some courts have nevertheless held that an aircraft is a dangerous instrumentality, and therefore owners should be held vicariously liable.¹⁸³ For example, when the Florida Supreme Court decided *Vreeland v. Ferrer*, it relied on an earlier decision in *Orefice v. Albert* that aircraft were dangerous instrumentalities.¹⁸⁴ But other courts reject the implication that an aircraft “may cause serious bodily injury or death without human use or interference.”¹⁸⁵ For instance, the court in *Cosey ex rel. Hilliard v. Flight Academy of New Orleans LLC*, found that aircraft are not dangerous instrumentalities, nor is aviation an ultrahazardous activity.¹⁸⁶

While flying a light aircraft is not an activity to be undertaken lightly, it would be inaccurate to describe it as ultrahazardous.¹⁸⁷ Aircraft are safely flown for many hundreds of thousands of hours each year for a multitude of reasons, ranging from business to pleasure.¹⁸⁸ Further, aircraft flown by commercial operators have a significantly lower accident rate than other general aviation (GA) operations.¹⁸⁹ Congress agrees. By enacting § 44112, Congress has implicitly declared that aircraft are not dangerous instrumentalities.¹⁹⁰ If flying aircraft was an abnormally dangerous activity, the federal government would not relieve aircraft owners and lessors from liability when they are not operating the aircraft.¹⁹¹ In addition, common sense dictates that it is unreasonable to hold a person liable for an act that they did not commit. In tort law, it is axiomatic

180. For the level of risk involved in general aviation (GA), see generally *The Richard G. McSpadden Report*, AIRCRAFT OWNERS & PILOTS ASS’N (2024), <https://www.aopa.org/training-and-safety/air-safety-institute/accident-analysis/richard-g-mcspadden-report/mcspadden-report-figure-view/?category=all&year=2024&condition=all&report=true> [https://perma.cc/Z5H4-ZJJ5]. GA is defined as all non-military, non-airline aviation. AIRCRAFT OWNERS & PILOTS ASS’N, *General Aviation Explained*, <https://download.aopa.org/Media/General-Aviation-Explained-r5.pdf> [https://perma.cc/QT7K-FYQM].

181. *Dangerous Instrumentality*, *supra* note 179.

182. *Id.*

183. *E.g.*, *Orefice v. Albert*, 237 So.2d 142, 146 (Fla. 1970).

184. *Vreeland v. Ferrer*, 71 So.3d 70, 75 (Fla. 2011) (citing *Orefice*, 237 So.2d at 145).

185. *Dangerous Instrumentality*, *supra* note 179.

186. 365 So.3d 76, 87 (La. Ct. App. 2020).

187. *The Richard G. McSpadden Report*, *supra* note 180, General Aviation Accident Rates 2015–2024, 2024 Overall Summary.

188. *See generally id.*

189. *Id.*

190. 49 U.S.C. § 44112.

191. *See* 49 U.S.C. § 44112. For an example of whether an activity is “abnormally dangerous,” see Judge Posner’s analysis in *Ind. Harbor Belt R.R. Co v. Am. Cyanamid Co.*, 916 F.2d 1174, 1176–1181 (7th Cir. 1990) (discussing whether transportation of chemicals by a railroad was abnormally dangerous).

that for there to be a breach, a person must have a duty to another.¹⁹² But it is difficult to point to a duty that, analogously, an automobile owner has to another motorist when they allow a duly licensed child or friend to drive their vehicle.¹⁹³ A person who allows another licensed driver to operate their car has an expectation that the other person will behave reasonably.¹⁹⁴ Similarly, a person who allows a properly trained and rated pilot to operate their aircraft has a reasonable expectation that they will do so in a safe manner in compliance with all applicable rules and regulations.¹⁹⁵ Safe and compliant operation of an aircraft, like an automobile, almost always leads to a safe and predictable outcome.¹⁹⁶ Consequently, it is unreasonable to hold an innocent owner accountable when the unthinkable happens. On the other hand, under Indiana's statutory regime, if the owner *knows* that the aircraft will be operated in an unsafe or negligent manner, they may still be held liable.¹⁹⁷ For example, if the owner knows or has reason to know that the person to whom they are lending the aircraft does not hold the proper pilot certificate or rating for the type of aircraft or operation to be flown,¹⁹⁸ the owner would almost certainly be acting in a negligent or reckless manner.¹⁹⁹ Therefore, should the pilot flying injure another's person or property, Indiana's liability shield would not apply, and the injured party would be free to sue the owner for damages.²⁰⁰

B. Indiana's Statute Is an Example for the Nation

Indiana's vicarious liability shield is efficient, clear, and just, and Congress should expressly adopt this standard for the entire nation. One of the largest problems with the question of liability is the aircraft's mobility, as "the place of the wrong, if it can even be ascertained, is most often fortuitous."²⁰¹ In one state an owner will not be vicariously liable, but take off and cross the border just a few miles away, and a completely different rule applies.²⁰² Thus, because of their tremendous speed, aircraft are subject to multiple state tort regimes in a

192. RESTATEMENT (SECOND) OF TORTS § 4 (A.L.I. 1965).

193. *See* *Barnd v. Borst*, 431 N.E.2d 161, 165 (Ind. Ct. App. 1982).

194. *See* RESTATEMENT (THIRD) OF TORTS § 3 (A.L.I. 2010).

195. *See, e.g.*, 14 C.F.R. § 91.13(a) (2026) ("No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.").

196. *See The Richard G. McSpadden Report, supra* note 180.

197. IND. CODE § 8-21-4-6(b) (2025).

198. 14 C.F.R. §§ 61.2–61.3 (2026).

199. § 8-21-4-6(b).

200. *Id.*

201. *Anderson v. SAM Airlines*, 939 F. Supp. 167, 173 (E.D.N.Y. 1996) (quoting *Cousins v. Instrument Flyers, Inc.*, 376 N.E.2d 914, 915 (N.Y. 1978)).

202. *Compare Mangini v. Cessna Aircraft Co.*, Nos. X07CV044001467S, X07CV04400 3418S, 2005 WL 3624483 (Conn. Super. Ct. Dec. 7, 2005) (holding that 49 U.S.C. § 44112 is preemptory), *with Coleman v. Windham Aviation Inc.*, No. Civ.A. K.C.2004–0985, 2005 WL 1793907 (R.I. Super. Ct. July 18, 2005) (unpublished opinion) (holding that 49 U.S.C. § 44112 is not preemptory).

manner like no other instruments.

Adopting Indiana's rule would promote efficiency because aircraft owners would have a clear understanding of when they would be held vicariously liable for damage caused by their aircraft.²⁰³ The Indiana statute is clear because it addresses the core issue that § 44112 attempts to address: vicarious liability.²⁰⁴ But most importantly, the statute is just. An aircraft owner will not be held vicariously liable for an accident that they did not cause.²⁰⁵ But on the other hand, if there is wrongdoing, negligence, respondeat superior, or an agency relationship with the pilot of the accident aircraft, then an owner will still be liable.²⁰⁶ The liability shield will satisfy owners' desire to be protected from unreasonable liability if another actor commits a tort while operating their aircraft.²⁰⁷ This shield promotes certainty in aircraft operations, and permits owners to reasonably allow another pilot to operate the owner's aircraft when convenient.

The exceptions contained within Indiana's law are also reasonable and serve the interest of those damaged by aircraft. To reiterate, the first exception is for an "owner [who] engages in negligent, reckless, knowing, intentional, or unlawful conduct that is the proximate cause of the damages."²⁰⁸ If an owner behaves in such a manner, they are the legal cause for the injury and should be held liable.²⁰⁹ The second exception is if an agency relationship exists between the owner and the pilot, or if the owner's responsibility is based on the doctrine of respondeat superior.²¹⁰ This exception captures those who are acting on behalf of an owner. Because the persons have an agency or principal-agent relationship, the owner is put on notice that any unreasonable or negligent actions taken by their agent would redound on them. If a person is harmed by a non-owner operated aircraft, they will be able to pursue those who should be held accountable.²¹¹ But, if Indiana's rule is adopted, the injured party will be prohibited from suing someone who did not cause their injury.²¹²

To settle this area of aviation law in a just and fair manner, Congress should adopt Indiana's vicarious liability law and explicitly preempt any state laws to the contrary. Indiana's law is both clearer and more just than current federal law. Currently, § 44112 shields owners when they are not piloting or in operational

203. See § 8-21-4-6(b).

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. § 8-21-4-6(b)(1).

209. See RESTATEMENT (SECOND) OF TORTS § 431 (A.L.I. 1965) ("The actor's negligent conduct is a legal cause of harm to another if . . . [their] conduct is a substantial factor in bringing about the harm.").

210. See § 8-21-4-6(b)(2)–(3). See generally 1 AM. L. OF TORTS § 4:3, *Respondeat Superior* (2024) (discussing vicarious liability for employers); 1 AM. L. OF TORTS § 4:16, *Generally; principals* (2024) (discussing agency law).

211. § 8-21-4-6(b).

212. *Id.*

control of the aircraft. In the next FAA reauthorization bill, Congress should explicitly adopt Indiana's language into 49 U.S.C. § 44112. This is because Indiana's statute is fairer to all parties. To those injured by an airplane, Indiana's statute allows recovery if the owner is a bad actor or has a principal-agent relationship with the pilot.²¹³ This expansion of plaintiffs' rights is just because a negligent aircraft owner should be held responsible for their carelessness²¹⁴ or for the negligence of their agents.²¹⁵ On the other hand, it is fairer to non-operating owners because—should they fall outside the exceptions—they are shielded from vicarious liability caused by the actions of others.²¹⁶

C. The Easiest Way Forward Is Via Federal Preemption

Federal preemption by the adoption of Indiana's scheme would resolve this issue cleanly and decisively. As seen by comparing *Coleman v. Windham Aviation Inc.*²¹⁷ with *Mangini v. Cessna Aircraft Co.*,²¹⁸ crossing the border from Connecticut to Rhode Island can have a significant legal impact. In *Coleman*, the Rhode Island court refused to hold that § 44112 is preemptory in July 2005, but a mere five months later, a Connecticut court decided the same issue in favor of preemption.²¹⁹ Courts in two adjacent states stood in opposition.²²⁰ Should an accident occur—and two accidents *did* occur—the liability of the non-operating aircraft owner would depend on which side of the Connecticut-Rhode Island border the incident was adjudicated. This is unmistakably contrary to Congress' intention when it enacted the forerunner to the current § 44112.²²¹ To encourage aircraft ownership, Congress instructed that aircraft owners not be held liable for accidents that they did not cause.²²² But as can be seen in *Coleman* and other cases, state courts are reluctant to allow for federal preemption of state tort law.²²³ Therefore, to foreclose the issue of whether the aircraft accident occurs in a *Coleman* or *Mangini* jurisdiction, Congress should adopt Indiana's statutory example into § 44112 and make it

213. 49 U.S.C. § 44112; *id.*

214. *Cf.* RESTATEMENT (SECOND) OF TORTS § 281 (A.L.I. 1965) (listing the elements of negligence).

215. *See generally* 1 AM. L. OF TORTS § 4:16, *Generally; principals* (2024).

216. § 8-21-4-6(b).

217. No. Civ.A. K.C.2004-0985, 2005 WL 1793907 (R.I. Super. Ct. July 18, 2005) (unpublished opinion).

218. Nos. X07CV044001467S, X07CV044003418S, 2005 WL 3624483 (Conn. Super. Ct. Dec. 7, 2005).

219. *Compare Coleman*, 2005 WL 1793907 (federal law did not preempt state law), at *6, with *Mangini*, 2005 WL 3624483, at *6 (federal law did preempt state law).

220. *Mangini*, 2005 WL 3624483, at *5 (finding the *Coleman* court's holding unpersuasive).

221. *See* H.R. REP. NO. 80-2091, at 1-3 (1948), as reprinted in 1948 U.S.C.C.A.N. 1836, 1836-37.

222. *See id.*

223. *See, e.g., Coleman*, 2005 WL 1793907.

explicitly preemptory.²²⁴ This would satisfy both owners' desire for a liability shield and allow victims to pursue bad actors.²²⁵

But if Congress is unwilling to rewrite § 44112 based on Indiana's model, then a simple expedient would be to add an express preemption clause upon the next FAA Reauthorization Act. While Indiana Code section 8-21-4-6(b) may be a superior vehicle for addressing vicarious liability for aircraft owners, by expressly preempting state law, § 44112 would adequately shield innocent aircraft owners.²²⁶ However, Congress risks shielding owners who are not-so-innocent. If Congress fails to make any meaningful legislative revisions, other states should defend owners from unreasonable vicarious liability by adopting Indiana's plan as their own. To reiterate, this would be an evenhanded policy for non-operating owners by shielding them from unjust vicarious liability, while at the same time preserving victims' rights to pursue bad actors.²²⁷

CONCLUSION

When people are hurt or killed by an aircraft, the victims and their families deserve to be made whole. But thankfully, modern air travel is safe, and there are few major air disasters.²²⁸ But when a major accident such as Flight 5342 occurs, the law will naturally want to hold tortfeasors responsible.²²⁹ However, holding persons liable for torts that they did not commit is an injustice.²³⁰ When an aircraft owner allows a pilot to operate his aircraft, it is reasonable to assume that the pilot entrusted with the plane is competent.²³¹ Every certificated pilot has gone through an extensive training program, has passed written and oral tests, and has passed a practical test administered by the FAA or one of its designees.²³² Even though pilots may be generally skilled and highly trained, they are still human, and unfortunately pilots make mistakes.²³³ When mistakes are made in aviation, the results can often be severe and lead to legal action.²³⁴ However, if the owner did not "engage[] in negligent, reckless, knowing,

224. *See supra* Part IV.B.

225. *See* IND. CODE § 8-21-4-6(b) (2025).

226. *Id.*; 49 U.S.C. § 44112.

227. *See* § 8-21-4-6(b).

228. *See Survivability of Accidents Involving Part 121 US Air Carrier Operations: 2020 Update*, NAT'L TRANSP. SAFETY BD. (Mar. 23, 2020), <https://www.nts.gov/safety/data/Pages/Part121AccidentSurvivability.aspx>, [https://perma.cc/2PXD-8694] (last visited February 22, 2026).

229. *Cf.* RESTATEMENT (SECOND) OF TORTS § 6 (A.L.I. 1965) (tortious conduct is that which "is of such a character as to subject the actor to liability" under torts law).

230. *Cf. In re Duckworth*, Nos. 10–83603, ADV 11–8092, 2013 WL 1397456, at *5 (Bankr. C.D. Ill. April 5, 2013) (stating that holding an innocent party liable would result in an injustice).

231. *See* 49 U.S.C. § 44709 (allowing the FAA to reexamine any pilot if their competency comes into question).

232. *Become a Pilot*, FED. AVIATION ADMIN. (July 9, 2024), <https://www.faa.gov/pilots/become> [https://perma.cc/NMQ7-XY4A].

233. *See The Richard G. McSpadden Report*, *supra* note 180.

234. *See* 8A AM. JUR. 2D *Aviation* § 98, Westlaw (database updated Jan. 2026).

intentional, or unlawful conduct” that proximately caused the accident, the legal system will be committing an injustice if it holds an aircraft owner liable for actions they did not commit.²³⁵

Because the federal government has, with limited exceptions, exercised field preemption in aviation, it may have reasonably believed that its statutory scheme to protect owners was adequate.²³⁶ Since 1948, Congress has clearly indicated that it intends to shield aircraft owners from liability if they are not in operational control of the aircraft.²³⁷ Despite this, some states persist in allowing tort recovery from persons who have no direct involvement in any alleged negligence.²³⁸ Following Indiana’s lead would create a statute that is fair to both owners and those injured by aircraft.²³⁹ By adding an express preemption clause to § 44112, Congress can create a uniform system of aircraft owner liability across the entire nation. Failing that, other states should strongly consider adopting Indiana’s forward-thinking statute. By exempting blameless owners from liability but allowing plaintiffs to sue negligent or otherwise responsible owners, Indiana Code section 8-21-4-6 strikes an accurate balance between protecting innocent owners and those who may be injured.²⁴⁰

235. IND. CODE § 8-21-4-6(b)(1) (2025).

236. *See, e.g.,* Abdullah v. Am. Airlines, Inc., 181 F.3d 363, 367 (3d Cir. 1999) (discussing field preemption).

237. *See supra* Part I.C. for the legislative history of § 44112.

238. *E.g.,* Vreeland v. Ferrer, 71 So.3d 70, 84–85 (Fla. 2011).

239. § 8-21-4-6.

240. *Id.*