



INNERMARKER

Newsletter of the Aviation Law Section

State Bar of Michigan
Donald C. Frank, Editor

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I. FROM THE CHAIR

By: Barry R. Smith

The duty to write a short column for the group's periodic publication automatically falls on the shoulders of the Chair of each Bar Association we join. Each month, busy lawyers sit down to write something that will be worthy of the reading time of other busy lawyers. It is now my turn. I am pleased to Chair the Aviation Section of the Bar and dutifully accept my responsibility to write a few words as part of that job.

I have saved a complete set of the President's Columns written by my friend Jon Muth during his extended term as Michigan Bar President as examples of how this sort of writing can be done well. Each of those articles was thoughtful, literate and provocative. Having just reread them, I commit to you that I will not attempt to duplicate his effort. If you have time for more interesting reading, pull out one of Jon's old columns. I will limit myself here to simple news and notes of the Section's activities. I trust you will thank me for this decision.

As my first note, I want to thank J.D. Ledbetter for his year of distinguished service as Chair of our Section. J.D. has always given his effort and ability to advance the Section. He took charge of the *Innermarker*, transforming it from a simple newsletter into a maturing

professional publication. He has done the same thing as leader of our Section. His great challenge was to continue moving the organization forward as it evolved toward becoming a mature and steadily functioning Section. That is no small task when dealing with a group as small and diverse as ours. He performed that task well. We have sustained and are increasing our membership. Our council works effectively and efficiently. Our effort to provide service to both the Bar and the public continues unabated. We are better and stronger than we were before. My challenge now is to continue to sustain this quiet growth.

I am pleased to report that your council has already committed to an aggressive agenda for the following year. There are many interesting activities planned. We invite each and every one of you to find ways to become actively involved in many of them. It is our hope that many more of our members will actively participate in the social and professional activities of our Section during the coming year.

We are actively planning two public seminars in the Spring of 1998. The general topic of these programs will be aircraft transactions: everything you wanted to know about buying, selling, leasing, renting, insuring, and storing your own airplane. The seminar will be given in one out-state and one metro Detroit location. These free public events have proven to be very successful and well-attended in the past. We hope you all attend at least one of them in the Spring.

We are also hoping to promote or produce a professional symposium in the late Summer of 1998. We expect our Forum's sub-committee to make a final decision on the date and topic by early 1998. Your Section had great success with its airport issues symposium in 1996, and we hope to build on that next year.

Of greater interest to many in the Section are the opportunities for social networking and interaction in aviation-related activities. We are currently working to

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OFFICERS/COUNCIL

Chairperson	Barry R. Smith Kalamazoo • (616) 388-7600
Chairperson Emeritus	J.D. Ledbetter Southfield • (810) 766-4025
Chairperson Elect	Susan L. Hofer Bloomfield Hills • (248) 642-5770
Secretary	Myron F. Poe Royal Oak • (248) 544-4200
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Council Member	Leonard E. Nagi Detroit • (313) 964-2040
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Council Member	Dennis J. Veara Troy • (248) 643-4848

OPERATING COMMITTEES

Publications	Donald C. Frank (517) 349-0000
Annual Meetings, Programs and Public Awareness	Susan Hofer (248) 642-5770
Charitable Activities	Gary S. Gondek (248) 666-2200

SUBSTANTIVE COMMITTEES

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Labor Law	Barry R. Smith (616) 388-7600
Relations with Aviation Entities	Myron F. Poe (248) 544-4200
Aviation Legislation and Regulations	Steven M. Chait (248) 666-1100
Airport Operations and Land Use	Karl W. Randall (248) 666-3900
Military Aviation Law	Dennis J. Veara (248) 643-4848

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Innermarker Editor .....

|                                   |
|-----------------------------------|
| Donald C. Frank<br>(517) 349-0000 |
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## VIEW FROM THE CHAIR –

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promote several such events. The Section will again encourage our members to fly with "Operation Good Cheer" in December carrying gifts for needy children. Please contact Gary Gondek for more information about this event. We are currently planning fly-in gatherings at both a military base and a civilian museum or air show activity. These have proven to be very successful in the past. This is the time to join with colleagues and meet new friends in the Section along with your family and friends. For most of us, aviation is as much a hobby as it is a part of our practice. It is the Section's goal to continue to promote activities which recognize that many of our Section members are more interested in flying than in the daily practice of Aviation Law. My hope for this next year is that we will see far more of you attending these social gatherings and fly-ins. Please contact any member of the Section Council with suggestions and questions. Feel free to attend any council meeting. We always have a pleasant time and you are welcome to attend. *Fly safe!*

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## II. AVIATION LAW SECTION ACTIVITIES

*By: Steve Chait*

Chait, Grant & Schwartz  
Oakland County International Airport

### A. 1997 Operation Good Cheer *Saturday, December 6, 1997*

Each December, our Section has been participating in **Operation Good Cheer**, a charitable program sponsored by Child and Family Services of Michigan. **This year's Spirit of Good Cheer Flight will take place on Saturday morning, December 6, 1997.** Last year, our Section had its finest turnout of Lawyer/Pilots (and other enthusiastic Section members) who came out on a very cold morning (and got a very warm feeling) to fly holiday gifts to needy children in foster homes in 17 Michigan cities.

Each December, Operation Good Cheer touches the lives of thousands of foster care children and youth throughout Michigan. For many of the children, the new and sometimes extravagant presents they receive are the first presents they ever received that are not "hand me downs."

Thousands of volunteers from more than fifty businesses, corporations and schools purchase and wrap gifts from a "Wish List." The gifts are delivered by

volunteer companies who donate their fuel, trucks, and drivers. These gifts are then delivered to IFL East at Oakland County International Airport. The following day, volunteer pilots deliver these gifts to city and county airports across the state.

**On Saturday, December 6, 1997, the first flights will depart from the main terminal ramp below the Control Tower at Oakland County International Airport** at approximately 9:00am. The second wave of departures will be at 10:30am, and the final shift will depart at 12:00 noon. Holiday gifts will be flown to 17 destination airports this year, and 2,639 foster care children will be the recipients.

**Pilots who wish to participate should contact Lynn O'Shaughnessy at (517) 546-8303 and leave a message.** Please indicate (1) IFR or VFR, (2) type of aircraft, and (3) name and phone number. Please also indicate that you are with the Aviation Law Section of the State Bar of Michigan!

Members who do not have access to an aircraft, but would like to participate, please call either **Charitable Activities Chairperson, Gary S. Gondek (248) 666-2200**, or **Section Member (and private citizen) Steve Chait (248) 666-1100**, and we will fix you up with another member who has extra seats. The presents are usually pretty light, and there is plenty of room for Copilots and Flight Crew who wish to play Santa!

**Also, since the law offices of Section Members Steve Chait, Mark Grant, Mark Schwartz, and Gary Gondek are immediately across the street from the Terminal, we will be providing Coffee, Hot Chocolate and Donuts to all Section Members who wish to stop by, beginning at 8:30am until noon.** Our offices are located at 6515 Highland Road (M-59), Suite 100, immediately across from the airport main entrance. If you can't find us, call us at (248) 666-1100. If you can find us, stop in any time!

This is truly a superb outing, you meet a lot of very nice people, and it is really worthwhile. Hope to see you there!

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## **B. Aviation Law Section Reception Sponsors**

At the conclusion of our Section's Annual Meeting, held at the Annual Meeting of the State Bar of Michigan in Detroit on September 19, 1997, the members were treated to a cocktail and hors d'oeuvres reception, provided compliments of our very generous sponsors.

We have been extremely fortunate to have the continued annual support of our much appreciated sponsors, most of whom have been contributing to our (expensive) receptions for the past five consecutive years.

Our generous sponsors of the September 19, 1997 reception were the following:

### **Steve Johns**

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We again wish to thank our sponsors, and we would ask that all of our members give our sponsors serious consideration when in the market for aviation products and services.

\* \* \* \* \*

## **III. THE BUSINESS OF BUSINESS AVIATION**

*By: Clifford G. Maine*  
(616) 831-1728  
mainec@mjsc.com

Air travel is a fact of business life, and it should be a convenience, not an annoyance. The key to success – and convenience – is, as always, knowing your options. Two that deserve your consideration are aircraft ownership and fractional ownership.

When deciding how to manage your air travel, you need to weigh security, convenience, and time savings against cost.

If you're not quite ready to purchase your own airplane, you should explore a niche of the business aviation market known as fractional ownership. A fractional jet ownership program enables a company to purchase an undivided interest in a business jet.

For example, the owner of a quarter share in a jet aircraft is usually entitled to approximately 200 occupied flight-hours per year. The aircraft's availability is guaranteed, with usually only four to six hours advance notice required. As a fractional owner, you enjoy all the

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## BUSINESS AVIATION –

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usual benefits of capital equipment purchase. Many programs also guarantee liquidity value for the aircraft at the end of the fractional ownership term, which usually lasts five years.

You will enter into an aircraft owners agreement with the other fractional owners and a management agreement with the program managers. The management agreement provides for pilots and other related aviation services to operate and maintain the jet.

You will also enter into an interchange agreement that allows you to use the management group's other aircraft. That means you'll be able to use two aircraft on the same day as long as you still have hours available.

Most fractional aircraft owners will depreciate their interest over six years. The monthly management fee is usually deductible as accrued. Likewise, the hourly rate should be immediately deductible. Of course, you should review all tax matters with your tax advisors.

Be aware that fractional aircraft ownership is not for everyone. If you are generally chartering fewer than 70 or more than 200 hours per year, you are outside the parameters for which most fractional aircraft ownership programs are structured.

For some companies, the answer is owning an airplane. A recent study concluded that public companies that operate aircraft have better sales growth, earnings per share, long-term return to investors, and productivity than those that don't. When charter and commercial airline fees are going through the roof, it may be time to purchase an aircraft. The first thing to do is analyze your company's needs and your typical flight portfolio; you'll also need to consult a knowledgeable aviation consultant to find the aircraft that will best suit your purposes.

Some businesses may prefer not to have an aircraft on their balance sheet. An experienced aviation attorney can help set up a program where the aircraft is owned separately and leased to the business. There will be decisions to make about how to structure the arrangement under the Federal Aviation Regulations.

Tax planning for the purchase and operation of an aircraft is very important. The state of Michigan imposes a six percent Sales Tax on the purchase of an aircraft. Under Michigan law, *any* aircraft that comes into the state during a 90-day period from the date of purchase is deemed subject to Michigan Sales or Use tax. It is up to the owner of the aircraft to show an exception from the law to avoid having to pay the tax.

Sales or Use tax can be staggering on an aircraft. A new Cessna Citation jet costs approximately \$3.2 million. That equals \$192,000 in Sales or Use tax.

An option available to Michigan aircraft purchasers is to obtain their Michigan Sales and Use Tax ID number before the date of purchase. If the aircraft is to be leased, you may elect to pay Use Tax of 6 percent on the lease payments. Based on the time value of money and the anticipated period of ownership, that may be greatly to your advantage.

In many states, aircraft are subject to personal property tax in the county where they are based. That's not so in Michigan; you register the aircraft with the state and pay the much smaller registration fee for your Michigan Aircraft Registration.

Buying all or part of an aircraft has all the complexities of a large capital acquisition. Careful and accurate strategic planning will be necessary to incorporate the aircraft into your business effectively. The best business and tax advice you can get will be indispensable in this major decision.

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## IV. AVIATION PURCHASE CONSIDERATIONS

*By: Donald C. Frank*

Buying a general aviation aircraft raises a number of concerns for the purchaser ranging from the practical to the legal. Many practical concerns are common to all aircraft purchases while other concerns vary in importance depending on the size and type of operation of the purchaser and the size and anticipated uses of the aircraft.

In all circumstances, an aircraft buyer is concerned about the condition of the aircraft. In most cases, a purchaser wants and intends to purchase an aircraft that is at least in "airworthy" condition. Buyers generally expect an airworthy aircraft to at least meet the minimum legal requirements for flight at the time of sale. These requirements will vary depending on which federal aviation regulation, typically, either 14 CFR 91, *et seq.* or 14 CFR 135, *et seq.*, the buyer expects to govern operations. However, the aircraft should at least meet its current F.A.A. inspection requirements and/or be capable of passing current inspection requirements and be in compliance with all airworthiness directives ("ADs"). Some people may also expect an "airworthy" aircraft to be in compliance with all manufacturer service bulletins ("SBs") and service letters ("SLs").

In order to determine the mechanical condition of the aircraft, the prospective buyer and the buyer's mechanic should thoroughly inspect the aircraft and the aircraft and engine log books. This review should include determining whether all ADs, SBs and SLs have been complied with. In addition, the ADs, SBs, and SLs should be reviewed for any future or repetitive compliance requirements which could substantially impair the utility of the aircraft or necessitate a substantial expense. In the same vane, the prospective buyer and the buyer's mechanic must be familiar with periodic servicing and maintenance recommendations relative to the age and operating hours for the aircraft. For example, an overhaul for the engine(s) and propeller(s) is typically recommended after a specific number of operating hours and a helicopter may have many limited life components. The time remaining before these overhauls and replacements is critical to evaluating the price of an aircraft and anticipated future expenses.

FAA 337 forms should also be checked and compared against the condition of the aircraft by the buyer's mechanic. 337 forms must be filed with the FAA for any major repairs or alterations and can be obtained from the FAA. Any work or repairs evident on the aircraft which are not properly reflected in the aircraft log books and/or 337 forms or, conversely, any work or repairs reflected in the log books or 337 forms which are not evident on the aircraft itself should be considered a warning sign requiring further careful investigation.

Before inspecting the aircraft, consideration should also be given to contacting any prior owner(s) regarding the prior history of the aircraft. The identity of prior owners can be determined by the title search discussed below. In some cases, such an inquiry with a prior owner may discover previously undisclosed substantial damage to the aircraft. An aircraft could even have been "totalled" and sold for salvage by an insurer without the insurer appearing in the title history because the insurer may take a blank bill of sale from its insured and merely fill in the name of its salvage buyer as the purchaser. I have had former owners graphically describe accidents totalling or substantially damaging aircraft which someone else subsequently rebuilt and sold as having no damage history. ("What? Somebody actually managed to rebuild that wreckage?")

Other general sources of information about a particular make and model of aircraft include service difficulty reports, *Aviation Consumer* articles, and AOPA Air Safety Foundation Reports.

In addition to the mechanical and log book inspections, a prospective buyer should also carefully inspect the interior and exterior appearance of the aircraft and flight check the aircraft to make sure it has no unacceptable handling characteristics. Of course, a pro-

spective buyer and test pilot should make sure that he/she is adequately insured for any damage to the aircraft or other liability that could arise during the flight check.

Prospective buyers should also consider whether the characteristics and performance capabilities of the aircraft under consideration are acceptable. These considerations include the number of passengers which will be carried, the type of weather capabilities needed (e.g. are radar or anti-icing/de-icing essential), range requirements, altitude and pressurization requirements (will it be operating at high elevation airports or over mountain ranges?), and airport requirements (e.g. acceptable runway length requirements).

For some prospective buyers, the availability of aircraft management and crewing services, availability of a satisfactory hangar, and the availability of satisfactory maintenance facilities may also be major concerns. Finally, the suitability of financing, whether cash, conventional financing, or a lease must be considered. Some operators may prefer an appropriate lease arrangement to keep the aircraft off the company's books.

The legal concerns are obviously the main area of involvement for attorneys. Legal concerns often begin with a purchase contract. In drafting or reviewing the purchase agreement, the buyer's counsel should at least make sure that the aircraft, its equipment, and engine(s) are adequately identified by registration number, serial number, and description and that the contract specifies the date and location of closing, the date and location of delivery of possession, who will cover the expense of delivery of the aircraft if the aircraft is to be delivered, when, where, by whom, and at whose expense any prepurchase inspections may be performed, whether the purchase is conditioned on the satisfactory inspection and flight check and/or whether the seller will be obligated to pay for remedying to purchaser's satisfaction any problems discovered during the mechanical or flight check of the aircraft. The purchase agreement should also deal with any tax issues such as payment of any required sales or use taxes, specify the amount of any deposit and the circumstances under which the deposit will be refundable, and specify when the risk of loss passes to the purchaser. In addition, it should specify any other contingencies such as satisfactory financing, et cetera, as well as specifying a date by which any such conditions must be satisfied or be waived. Finally, the purchase agreement should provide that the seller will convey good title to the purchaser free and clear of all liens and encumbrances, specify the condition of the aircraft at the time of closing the sale, and set forth as many warranties and represen-

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## PURCHASE CONSIDERATIONS –

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tations as can be obtained from the seller regarding the damage history of the aircraft, the accuracy and completeness of the log books, and the condition of the aircraft, and provide that those warranties and representations will survive the closing.

In addition to the more obvious considerations, it should be kept in mind when specifying the location of closing that 49 USC 44108(c) provides that the “validity” of an instrument that may be recorded under 49 USC 44107 is subject to the laws of the place where the instrument is delivered, regardless of where the subject of the instrument is located or delivered and that if the instrument specifies a place of delivery, it is presumed that the instrument was delivered at the specified place.

At the closing, it is obviously essential to obtain clear title to the aircraft. The FAA's standard bill of sale form is typically used but not required. In order to ensure that clear title is obtained, a title search must be made before the closing. A title search can be obtained from a number of private companies located in Oklahoma City, Oklahoma where the FAA title registry is located. Those title search companies check the FAA's aircraft registry in Oklahoma City and provide a written report to the prospective buyer. “Although state law determines priorities, all interests must be federally recorded before they can obtain whatever priority to which they are entitled under state law.” A failure to record invalidates the conveyance as to innocent third persons. **Philko Aviation Inc. v Shackel**, 462 US 406, 413 (1982); 49 USC 44108.

Although an FAA title search is essential, it is not sufficient to ensure that the aircraft will be free of federal tax liens. 26 USC 6323(f)(1)(A) requires a notice of federal tax liens on personal property to be filed “in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated. . . or (B) . . . In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or (C). . . In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.” 26 USC 6323(f)(2)(B) also specifies that personal property for purposes of tax notices shall be deemed to be situated “at the residence of the tax payer at the time the notice of lien is filed.” Therefore, in order to ensure that the aircraft is not subject to federal tax liens, in addition to

obtaining a title search of the FAA's aircraft registry records, a check should also be made for notices of federal tax liens at the place determined in accord with 26 USC 6323(f). This check is generally not included in a “title search” of the FAA title records and federal tax liens are commonly excluded from title insurance policies.

It is critical for the buyer (and the buyer's lender, if any) to have the bill of sale or other conveyance recorded immediately because, until it is filed for recording, an instrument is only valid against the person making the instrument, that person's heirs and devisees, and any persons having actual notice of the instrument. 49 USC 44108(a), **Philko Aviation Inc. v Shackel**, *supra*. In addition, although state law determines priorities between competing interests, the applicable state law may refer back to the date of filing with the FAA for recordation to resolve competing priorities. The safest way to ensure that the recording is accomplished immediately upon the closing is to use an escrow closing agent in Oklahoma City.

In addition to ensuring that instruments are immediately recorded, the buyer may consider purchasing title insurance. However, if title insurance is to be acquired, counsel should be careful regarding exclusions from coverage such as exclusions for federal tax liens and any exclusions for defects that may arise if there is a gap between the date and time of the title insurance commitment and the date and time of the actual recording of the conveyance or other instrument.

As to the bill of sale itself, care should be taken that the name of the seller on the bill of sale is exactly the same as the name of the owner of record with the FAA. Any differences in the names, including differences in middle names or middle initials, can cause a substantial delay and difficulty with recording the instrument. The exact name of the owner according to the FAA registry can be obtained from the title search and is generally also accurately reflected on the registration certificate because 49 USC 44103(a)(1) requires the certificate of registration to be issued to the aircraft's owner. Other statutory provisions dealing with aircraft registration and aircraft recordation can be found in 49 USC 44101 through 49 USC 44111. In addition, 14 CFR 47, *et seq.* and 14 CFR 49, *et seq.* contain the regulations pertaining to aircraft registration and aircraft recordation, respectively.

Once the aircraft is purchased, it must be registered with the FAA before it can be legally operated. 49 USC 44101. Registration is normally accomplished simultaneously with recordation of the conveyance and most purchasers are aware that they can operate the aircraft temporarily with the applicant's copy of the registration application form. However, it should be kept

in mind that under 49 USC 44101(b) such operations must be limited to the United States until the aircraft registration is completed.

Finally, any aircraft tied down, moored, hangared, or based within Michigan must be registered annually with the Michigan Aeronautics Commission and a state registration fee paid. The Michigan state registration also requires a valid and effective registration certificate issued by the FAA. MCL 259.76(1). The Michigan state registration fee is in lieu of all property taxes on the aircraft, both general and local, MCL 259.77(4).

Of course, many other legal concerns may be raised in any particular transaction and additional concerns are likely to arise following the purchase. For example, an aircraft owner would often be well advised to have legal counsel review aircraft insurance policies, and any proposed aircraft leases, hangar leases, waivers of subrogation, management agreements, et cetera. Although aircraft purchase transactions and aircraft ownership may seem deceptively simple to the uninitiated, there is clearly an important role and service to be provided by legal counsel.

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## V. DEVELOPMENTS IN AVIATION LAW

### A. Michigan Update

By: *David R. Baxter*

#### Case Law

Several recent opinions have been authored by the Michigan Court of Appeals over the last year which may be interesting to both lawyer and pilot alike.

In **LACROSS v CONSUMERS POWER COMPANY, Mich App Docket #190833, January 17, 1997 (Unpublished)**, the Michigan Court of Appeals affirmed the Midland Circuit Court's granting of Summary Judgment in favor of Consumers Power Company when Plaintiffs' Decedent was killed when their non amphibious Cessna aircraft struck power lines extending at a height of 40 feet across Sanford Lake in Midland County. Noting the various FAR violations of the pilot in command, the Court had no trouble declining to find Defendant had a duty to mark the power lines when not in any designated approach area or usual landing pattern.

The Court cited as precedent **Gunn v Edison Sault Electric Company, 24 Mich App 43 (1970)** as authority for their conclusion that no duty existed. In **Gunn**, an

amphibious equipped aircraft was attempting to land on a stretch of river not normally utilized for landing or approaches and the Court held no duty to mark powerlines.

The **LaCross** Court also noted Plaintiffs' attempt to utilize a prior incident 20 years earlier at the same location to establish foreseeability on Defendant that their power lines were dangerous or hazardous. The Court stated that even a prior similar incident, subject to similar FAR violations, would not put Defendant on notice that subsequent pilots would act in a similar fashion.

In **FEICHTINGER V DETROIT EDISON COMPANY, Mich App Docket #19102, July 1, 1997, Unpublished**, the Michigan Court of Appeals affirmed the Washtenaw Circuit Court's granting of Summary Judgment for the private airport property owners when Plaintiffs' Decedent died after his plane crashed into power lines while attempting a landing on a private airstrip. Plaintiff's theory against the property owners were that they were negligent for not warning of the power lines nor marking their landing strip as unusable.

The property owner established that they never acquiesced in the customary use of the private landing strip by the public and introduced evidence of a letter to the Michigan Bureau of Aeronautics indicating their runway was intended for their private use only or for anyone else with express permission. The Court noted the property owners never granted Plaintiff's Decedent permission to land his aircraft at their landing strip, and further noted no stranger had ever attempted to land an aircraft on the runway.

The Court of Appeals found the private property owners owed no duty to the Decedent as the Decedent was a trespasser.

The Court of Appeals noted that after Plaintiff filed her Appeal, Detroit Edison settled with the Plaintiff for an undisclosed sum and was dismissed from the Appeal by stipulation.

In **GENERAL AVIATION, INC. v CAPITAL REGION AIRPORT AUTHORITY, \_\_\_ Mich App \_\_\_, 1997, docket #19008 (released 07/25/97)** the Michigan Court of Appeals, in response to a Remand Order from the Supreme Court, 450 Mich 991 (1996) affirmed partial Summary Disposition for Defendant Airport authority. In **General Aviation, supra**, Plaintiff leased space at Defendant's airport pursuant to a lease agreement. Plaintiff alleged that Defendant was offering better lease terms to other tenants and failed to enforce its rules and fees uniformly. Plaintiff asserted several different theories of liability including tort,

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## DEVELOPMENTS IN AVIATION LAW –

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breach of contract, and violation of the Michigan Aeronautics Code, MCL 259.1 et seq.

Affirming the trial court's dismissal of Plaintiff's tort claims, the Court agreed that Plaintiff's tort claims were barred by governmental immunity and reaffirmed that the operation of an airport by a governmental entity is not a proprietary function, citing **Codd v Wayne County, 210 Mich App 133 (1995)**.

Affirming the trial court's dismissal of Plaintiff's breach of contract claim, the court disagreed with Plaintiff's argument that the parties lease created a duty, notwithstanding that Defendant owed a pre-existing obligation under the Michigan Aeronautics Code. Citing **Alar v Mercy Memorial Hospital, 208 Mich App 518 (1995)**, the Court held a pledge (lease language) to undertake a pre-existing statutory duty is not supported by adequate consideration and the Plaintiff's breach of contract claim was properly dismissed.

Finally, the Court agreed with the trial court's conclusion that the Michigan Aeronautics Code does not expressly provide a private cause of action for enforcement of its provisions. Rather, the Court determined the Aeronautics Code provides stated remedies and therefore concluded that there is no private cause of action for enforcement of aeronautics code violations.

Another case recently dealt with the scope of the General Aviation Revitalization Act of 1994, pub. L. 103-298, August 17, 1994, 108 Stat. 1552. In **Cartman v Textron, et al, (ED Mich 94 CV 72582-DT)** Judge Woods issued an Opinion addressing the applicability of the General Aviation Revitalization Act (GARA) to a products liability case filed prior to the date of enactment but where a subsequently added defendant had available the Statute of Repose Defense provided by GARA.

In **Cartman**, Judge Woods granted summary judgment to Defendant Rogers Corporation on GARA's 18 year Statute of Repose, finding Defendant manufactured a carburetor float installed in the accident airplane in 1966, more than 18 years prior to the aircraft crash in 1992.

Although the original Complaint was filed in June, 1994, Defendant Rogers was not added until 1995, after the enactment date of the statute. Holding the Act applied, even though Plaintiff initiated his lawsuit against other parties prior to the Act's effective date, the Court rejected Plaintiff's argument that the new party added by Plaintiff's Amended Complaint related back to the

date of the original Complaint filed prior to enactment of the statute. On a substantive basis, the Court found Plaintiff failed to satisfy the Acts "knowing misrepresentation or concealment" exception to the limitations, and found Plaintiff's suggestions of evidence lacking in supplying the type of proof necessary to overcome the requirement that "Defendant misrepresented or concealed information to the FAA with respect to a type or airworthiness certificate."

### Michigan Incident/Accident Aviation Activity Report

A survey of Aviation Activity in Michigan from January - September 14, 1997, disclosed 31 incidents/accidents reported to the Federal Aviation Administration. The Michigan Aeronautics Commission has compiled and correlated the preliminary reports, and joins our disclaimer that neither they, nor the *Innermarker*, attest to the accuracy of these reports and their sole purpose is for information, only. We attach a list of accident/incident summaries and gratefully acknowledge the assistance of the Michigan Aeronautics Commission in compiling same.

01/10/97; St. Ignace Mackinaw Co. Airport  
M20; pleasure flight  
Aircraft damage: Minor  
Accident report: During landing, aircraft struck snow bank

01/10/97; Gaylord, Otsego County Airport  
C182; training flight  
Aircraft damage: Minor  
Accident report: During landing on RWY 27, aircraft drifted off runway centerline and impacted snow bank

01/21/97; Mancelona, Mancelona Municipal Airport  
PA28; pleasure flight  
Aircraft damage: Substantial  
Accident report: After departing Boyne Falls Airport, aircraft started to pick up severe icing. Pilot had to divert to Mancelona, landed long, impacted snow bank.

01/21/97; Gaylord, Otsego County Airport  
C182; training flight  
Aircraft damage: Minor  
Accident report: Due to cross winds, aircraft was blown into snow bank during landing, hitting a landing light and tipping over onto its nose.

02/01/97; Dowagiac, Dowagiac Municipal Airport  
C150; training flight  
Aircraft damage: Substantial  
Accident report: During touch and go, aircraft brushed snow bank and flipped over.

02/08/97; Marshall Brooks Field  
C182; pleasure flight  
Aircraft damage: Substantial  
Accident report: Aircraft landed on nose gear causing it to collapse.

02/22/97; Alma, Gratiot Community Airport  
C550; business flight  
Aircraft damage: Minor  
Accident report: Aircraft slid off icy runway and damaged right wing and gear

02/26/97; Sturgis, Kirsch Municipal Airport  
C310; business flight  
Aircraft damage: Unknown  
Accident report: During landing, aircraft ran off end of runway.

03/11/97; Manistique, between ISQ & IMT near Rice Lake Rd.  
C172; training flight  
Aircraft damage: Minor  
Accident report: Flying solo flight between ISQ and IMT when engine seized. Pilot made emergency landing between trees.

03/16/97; Ann Arbor, Ann Arbor Municipal Airport  
C140; pleasure flight  
Aircraft damage: Unknown  
Accident Report: While taxiing to T hangars, aircraft nosed over making a panic stop to miss another aircraft coming off runway.

03/18/97; Iron Mountain, off airport along Hwy. 2  
C172; pleasure flight  
Aircraft damage: None  
Accident report: Aircraft engine lost power and pilot made an emergency landing on US Hwy. 2.

04/04/97; Jack Barstow Airport  
M20; pleasure flight  
Aircraft damage: Minor  
Accident report: Aircraft landed gear up.

04/21/97; Muskegon, Muskegon County Airport  
BE55; unknown flight  
Aircraft damage: Unknown  
Accident report: Aircraft was at 10,000 ft NW bound when it made a garbled transmission and was observed descending through 9,600 ft.

05/18/97; Flushing, Dalton Airport  
PA28; pleasure flight  
Aircraft damage: Destroyed  
Accident report: Aircraft attempted a go around, lost power and then hit trees.

05/20/97; Dalton Airport  
C172; pleasure flight  
Aircraft damage: Substantial  
Accident report: Aircraft took off and then could not gain altitude. Attempted to land but attempted to circle airport because of traffic.

05/25/97; Hancock-Houghton County Memorial  
PA28; pleasure flight  
Aircraft damage: Substantial  
Accident report: Aircraft got away from pilot attempting to hand start. Hit another aircraft that was tied down damaging both aircraft.

06/07/97; Charlotte, Fitch H. Beach Municipal  
C172; pleasure flight  
Aircraft damage: Minor  
Accident report: Aircraft was being hand prop when it started across ramp and hit another aircraft.

06/19/97; Ypsilanti, Willow Run Airport  
C152; pleasure flight  
Aircraft damage: Substantial  
Accident report: Engine quit on 1 mile final and aircraft landed in a GM Plant parking lot. During landing, aircraft wing hit some signs.

06/26/97; Plymouth, Canton-Plymouth-Mettetal Airport  
C172; pleasure flight  
Aircraft damage: Substantial  
Accident report: Aircraft banked left on short final during a go around and crashed into a field next to the runway.

06/28/97; Fowlerville, Maple Grove Airport  
C170; pleasure flight  
Aircraft Damage: Substantial  
Accident Report: Aircraft landing long and ran off end of turf runway into crop field.

07/05/97; Hubbard Lake, Private Field  
C170; pleasure flight  
Aircraft damage: Destroyed  
Accident report: Aircraft apparently suffered engine problems and crashed into wooded area while maneuvering at low altitude.

07/22/97; Kalamazoo/Battle Creek Int'l  
C182; unknown flight  
Aircraft damage: Minor  
Accident report: Aircraft experienced loss of all electrical power and had a rough engine while IFR so made an emergency landing in the grass.

*Continued on page 10*

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## DEVELOPMENTS IN AVIATION LAW –

*Continued from page 9*

07/27/97; Northport, Woodsey Memorial Airport  
BE55; pleasure flight  
Aircraft damage: Minor  
Accident report: After landing, during rollout, landing gear collapsed.

07/30/97; Battle Creek, W.K. Kellogg Airport  
BE35; unknown flight  
Aircraft damage: Minor  
Accident report: Aircraft landed gear up.

08/14/97; Muskegon County Airport  
Experimental; pleasure flight  
Aircraft damage: Minor  
Accident report: Aircraft had engine failure and accomplished a forced landing in a field.

08/21/97; Belleville  
BE35; pleasure flight  
Aircraft damage: Substantial  
Accident report: Pilot was attempting to hand prop when the unmanned aircraft started to roll across the highway, gained enough airspeed to become airborne, flipped over and crashed.

08/22/97; Rudyard  
PA28; pleasure flight  
Aircraft damage: Minor  
Accident report: Aircraft was practicing touch and go landings when the left wheel came off on landing.

08/23/97; Coopersville  
Aerial application  
Aircraft damage: Substantial  
Accident report: MIELEC M-18A aircraft was involved in aerial application when the engine lost fuel pressure and crashed into a field.

08/26/97; South Haven  
Cessna AGWAGON 188 aerial application  
Aircraft damage: Substantial  
Accident report: Aircraft engine failed during aerial application, other circumstances are unknown.

09/06/97; Near Monroe  
N. American P-51; pleasure flight  
Aircraft damage: Substantial  
Accident report: Witnesses stated engine made sputtering sound and aircraft crashed.

09/14/97; Drummond Island  
PA28; pleasure flight  
Aircraft damage: Unknown  
Accident report: Aircraft departed Drummond Island VFR for Howell (OZW) and never arrived.

## B. Congress Proposes Making DOHSA Inapplicable to Aircrash at Sea

*(Reprinted with permission  
from the LPBA Journal)*

Spurred by constituents who had lost non-wage-earning loved ones aboard TWA 800, Congress moved with unusual speed this summer to pass legislation amending the Federal Aviation Act so as to make the Death on the High Seas Act, 46 U.S.C. 761 *et. seq.*, inapplicable to aviation disasters at sea. The bill was introduced in both houses by a 40-member bipartisan coalition on June 20, 1997, and HR 2005 passed the House on July 28; action in the Senate is expected by the time you read this.

DOHSA, a 1920 shipping statute which provides a wrongful death remedy on the high seas but limited recoveries to pecuniary losses, has been held by the Supreme Court (in *Zicherman v Korean Airlines*, among others) to apply to deaths occurring beyond the traditional marine league – three miles – from shore, whether aboard a vessel or an aircraft. House speeches noted the fact that both TWA 800 and the ValueJet DC-9 crashed approximately the same distance from their respective points of departure, yet in the TWA cases, DOHSA would sharply limit recoveries due to its elimination of nonpecuniary losses, especially in the cases such as the 13 Montoursville, PA high school French Club members. Accordingly, HR 2005 applies by its terms to all cases “commenced after the date of enactment of this Act and to civil actions that are adjudicated by a court of original jurisdiction or settled on or before such date of enactment.” (emphasis added). IATA supported the legislation, but objected to this retroactivity.

TWA had a pending motion to apply DOHSA to the multidistrict litigation on file when the House passed the bill. At press time, no action had been taken thereon.

[*Innermarker* Editor's Note: 46 USC 767 already provides in part that DOHSA does not apply to the Great Lakes or to any waters within the territorial limits of any state.]

## C. Aviation Bills Pending Before the 1997-1998 Legislative Session

*By: Steve Chait*  
Chait, Grant & Schwartz  
Oakland County International Airport

As a service to the members of the Aviation Law Section, the following is a partial list of Aviation related Bills which were pending before the Michigan Legislature in 1997:

### HOUSE BILL NUMBERS

**H.B. 4338** – International Tradeport Development Authority – To provide for the right of referendum before approval on an airport development plan.

*Sponsor: Representative Deborah Whyman*

**H.B. 4536** – Airport Authority – Provides for a university, community college, Indian tribes, and the Michigan Aeronautics Commission eligible entities for airport authority formation.

*Sponsor: Representative Kirk Profit*

**H.B. 4611** – Environmental Landfill Protection – Proposed landfills located within 20,000 feet of an airport runway; require review by the Michigan Aeronautics Commission.

*Sponsor: Representative Michael Nye*

**H.B. 4632** – Governmental Liability for Negligence – Provides for a governmental agency to be responsible for negligent operation for injuries to persons or damage to property whenever an employee of the governmental agency operates any type of vehicle on land, under water, or in the air.

*Sponsor: Representative Allen Lowe*

**H.B. 4652** – International Tradeport Development Authority – Repeal of Public Act 325 of 1994 that assists and encourages certain authorities to renovate and develop international tradeport authorities.

*Sponsor: Representative Gerald Law*

**H.B. 4672** – Aeronautics Code – Expand the fuel tax rebate provision to include air cargo carriers.

*Sponsor: Representative Kirk Profit*

### HOUSE JOINT RESOLUTION

**H.J.R. T** – Provides for an amendment to the State Constitution of 1963, to earmark not less than 90% of the sales and use taxes on motor vehicle and aircraft fuels for transportation purposes.

*Sponsors: Representatives Allen Lowe, John Llewellyn, Deborah Whyman, Alan Cropsey, Jack Horton, David Jaye, Michael Nye, Greg Kaza, Beverly Bodem, Ken Sikkema, Barbara Dobb, William Byl, and Charles Perricone*

### HOUSE RESOLUTION

**H.R. 36** – Detroit City Airport – Urges the Michigan Aeronautics Commission to oppose a proposal to expand the Detroit City Airport.

*Sponsor: Representative Paul Wojno*

### HOUSE CONCURRENT RESOLUTION

**H.C.R. 36** – Detroit City Airport – Urges the Michigan Aeronautics Commission to oppose a proposal to expand the Detroit City Airport.

*Sponsor: Representative Paul Wojno*

### SENATE BILL NUMBERS

**S.B. 48** – Use Tax Act – Provide for an individual to sell his/her aircraft to a new dealer, used or second-hand dealer, or private person and receive a use tax break when used as part payment in a taxable sale at the retail purchase of another aircraft within 90 days of the date on the certificate.

*Sponsor: Senator Dale Shugar*

**S.B. 49** – General Sales Tax Act – Provide for an individual to sell his/her aircraft to a new dealer, used or secondhand dealer, or private person and receive a sales tax break when used as part payment in a taxable sale at the retail purchase of another aircraft within 90 days of the date on the certificate.

*Sponsor: Senator Dale Shugar*

**S.B. 197** – Use Tax Act – Creates a provision within the use tax act to exempt tax levied after December 31, 1996, for an aircraft that has a maximum certified takeoff weight of at least 6,000 pounds carrying cargo, passengers, or a combination of both.

*Sponsor: Senator Walter North*

**S.B. 198** – General Sales Tax Act – Creates a provision within the sales tax act to exempt a domestic air carrier from the sales tax on an aircraft, or parts and materials weighing over 6,000 pounds, carrying cargo, passengers, or a combination of both.

*Sponsor: Senator Walter North*

*See photos from the*  
*Aviation Law Section*  
*Annual Meeting*  
*on pages 13 – 15.*

## VI. COUNCIL NEWS

### A. Meet the New Council Members

New Section officers and three new Council members were elected to the Section Council at the Annual Meeting in Detroit on September 19, 1997. These new officers and board members have joined Chairperson Barry R. Smith, Chairperson Emeritus J.D. Ledbetter, and Council member Leonard E. Nagi on the Section Council's governing board.

#### *The officers are:*

**SUSAN L. HOFER**, Bloomfield Hills, Chairperson Elect. Ms. Hofer has been a member of the Aviation Law Section since 1992 and has actively participated in and attended Annual Meetings, Section Meetings and events of the Section. Ms. Hofer has served as the Chairperson of the Annual Meetings, Programs, and Public Awareness Committee and has coordinated and served as a moderator for our Annual Meetings. She has also served the Aviation Law Section for one year as Treasurer and one year as Secretary. In addition, she has been instrumental in planning and organizing a number of Section activities including the Section's tour of the Selfridge Air National Guard Base, the 1996 Selfridge Air Show, and the tour of the Detroit Metropolitan Airport Tower. Ms. Hofer is an active member of the Lawyer-Pilots Bar Association, and she is an active pilot, flight instructor (CFII), and aircraft owner. She has also served as an attorney for the Federal Aviation Administration.

**MYRON F. POE**, Royal Oak, Secretary. Mr. Poe is a founding member of the Aviation Law Section and has served as a Section Council board member since 1993. He has been active at Section board meetings and many Aviation Law Section functions. Mr. Poe has served as Chairperson of the Sections' Relations with Aviation Entities Committee. He is also a member of the Lawyer-Pilots Bar Association, Aircraft Owner's and Pilots Association Legal Services Panel, and Seaplane Pilots Association, and he has represented pilots, operators, and corporations engaged in aviation sales, service, education, and flight training. Mr. Poe is a very active pilot and aircraft owner.

**MARK K. SCHWARTZ**, Waterford, Treasurer. Mr. Schwartz was reelected to the position of Treasurer after filling that position for the previous year. He has served on various committees, including the Publications Committee and Relations with Aviation Entities Committee where he was responsible for an outreach program designed to inform other aviation groups of the Section's existence. Mr. Schwartz has participated in the planning and preparation of several of the FAA Enforcement Seminars, as well as the Aviation Liability

Seminar. He is a commercial pilot and certified flight instructor (CFII and MEI) and holds a separate seaplane rating. Mr. Schwartz is an AOPA Legal Services Plan attorney and a member of the Lawyer-Pilots Bar Association and the AOPA.

#### *The new Section Council board members are:*

**DONALD C. FRANK**, Okemos. Mr. Frank was instrumental in the creation of the Aviation Law Section and served as its organizational Chairperson and the first Section Council Chairperson. Subsequently he served for two years as a Section Council board member and assumed the responsibility of Editor of the *Innermarker* this year. Mr. Frank is an active pilot and a flight instructor with over 5,000 hours of flight time, and a former FBO owner and operator. He is an adjunct professor of aviation law at Thomas M. Cooley Law School and a member of the Lawyer-Pilots Bar Association, NTSB Bar Association, and AOPA Legal Services Panel. His private practice of law includes many facets involving aviation.

**ERIC S. RICHARDS**, Grand Rapids. Mr. Richards was a founding member of the Aviation Law Section and was instrumental in its formation. He served as the Section's first Secretary and was the principal drafter of the Sections' Bylaws. Mr. Richards has served as a Federal Judicial Law Clerk on both the United States Court of Appeals for the 6th Circuit and, most recently, on the United States Bankruptcy Court for the Western District of Michigan. He also practiced law in both the District of Columbia and in Michigan where he specialized in the areas of commercial litigation, securities, arbitration, and aviation law. Mr. Richards has recently left his Federal Judicial Law Clerk position with the United States Bankruptcy Court to return to private practice with Mika, Meyers, Beckett and Jones, P.L.C. Mr. Richards is also a member of the Lawyer-Pilots Bar Association, and he is an active instrument rated pilot.

**DENNIS J. VEARA**, Troy. Mr. Veara is Assistant Vice-President and Claims Manager with Associated Aviation Underwriters. He is a graduate of the US Air Force Academy and, upon graduation, was a pilot with the Air Force. He has been active with the Aviation Law Section, serving as Chair of the Military Law Committee and he has regularly attended Aviation Law Section functions, including Annual Meetings, and social activities. He is an active member of the Michigan Air National Guard and has recently been promoted to the rank of Lieutenant Colonel.

The Section welcomes the new officers and board members and extends its grateful appreciation for all the work and service given to the Section by outgoing Chairperson Emeritus STEVEN M. CHAIT and outgoing board members M. DALE MCKAY and PETER R. TOLLEY.

## B. Section Council Meetings

All members are always welcome to attend the meetings of our Section Council. The Section Council meetings have been scheduled as follows:

|      | <u>DATE</u> | <u>LOCATION</u>                          |
|------|-------------|------------------------------------------|
| Wed. | 01/14/98    | Airport Inn<br>Pontiac, MI               |
| Wed. | 02/11/98    | Location to be determined                |
| Wed. | 03/11/98    | Bravo Restaurant<br>Kalamazoo, MI        |
| Wed. | 04/08/98    | Airport Inn, Pontiac, MI                 |
| Wed. | 05/13/98    | Spinnaker Restaurant<br>Grand Rapids, MI |

Section Council Members usually meet for dinner at the meeting restaurant at 5:30 p.m. with the Section Council meeting beginning immediately after dinner at approximately 6:30 p.m. Members are welcome to join the Section Council members for dinner (at each individual's expense) and/or to join the Section Council for its meeting immediately after dinner. Because meetings are subject to cancellation, relocation, and rescheduling, members should verify the meeting by calling Chairperson Barry R. Smith's office (616) 388-7600 shortly before the meeting.

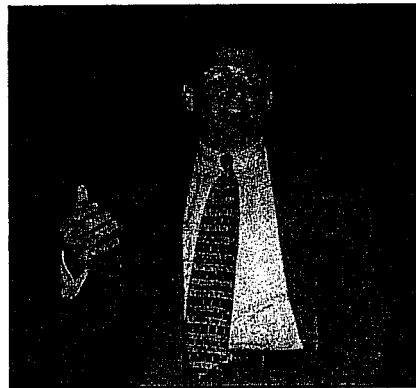
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## C. Section Directory

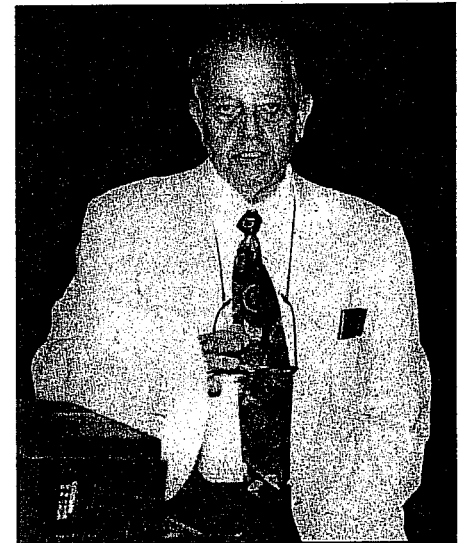
All Section members should have received a copy of the July, 1997 Membership Directory. A new issue of the Directory is planned for January or February, 1998. All members with dues paid by January 1, 1998 will be included in the directory.

Please take a moment to check your listing in the July, 1997 directory. If any corrections are necessary, or if you want to add a practice description (up to five lines, 28 characters per line) please mail or fax your changes and additions to the Editor, Donald C. Frank, fax (517) 349-2941 no later than January 15, 1998.

## Scenes from the Aviation Law Section's Annual Meeting



Louis C. Seno  
of Boeing  
Capital Corp.  
speaking  
to members  
at the 1997  
Annual Meeting.



Retired  
Senior NTSB  
Investigator  
George H.  
Seidlein  
addressing  
members at  
the annual  
meeting.



New Chairperson Barry R. Smith receiving gavel  
from outgoing Chairperson (new Chairperson  
Emeritus) J.D. Ledbetter.

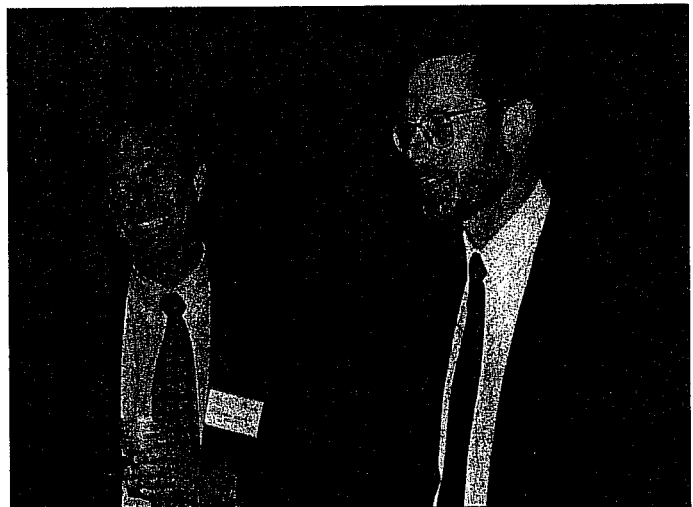
## More Scenes from the Aviation Law Section's Annual Meeting



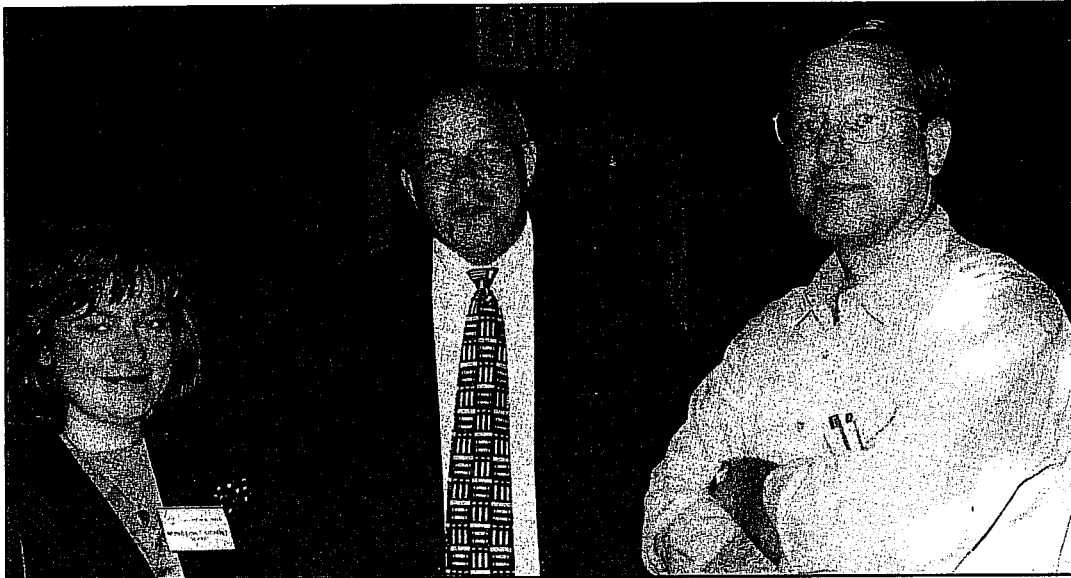
Louis C. Seno, Mark K. Schwartz, Myron F. Poe and Leonard E. Nagi  
at Section reception following the 1997 annual meeting.



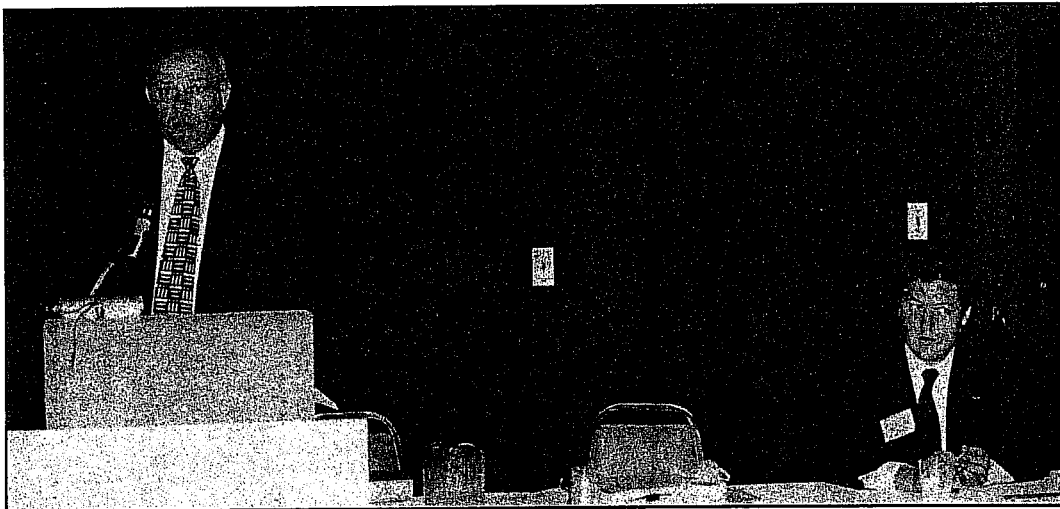
*Left:*  
Chairperson-Elect Susan L. Hofer  
and Mark A. Fullmer at reception  
after September 1997 annual meeting.



*Right:*  
David R. Baxter  
and Gary Smith  
at annual meeting  
reception.



**Mona-Lisa T. Cichosz, Chairperson Emeritus J.D. Ledbetter, and new Section Council member Dennis J. Veara at reception following September 1997 annual meeting.**



**Chairperson Emeritus J.D. Ledbetter and Treasurer Mark K. Schwartz at 1997 annual meeting.**

## AVIATION LAW CALENDAR

Any members aware of any upcoming aviation or aviation law events which may be of interest to our membership are encouraged to pass it on by a letter or call to our editor, Don Frank (517) 349-0000; Fax (517) 349-2941, so we can let our members know about it in the *Innermarker*.

- 12/6/97            Operation Good Cheer. Fun, charitable, holiday flight.  
                         Contact: Gary Gondek (248) 666-2200 or Steve Chait (248) 666-1100
- 1/22/98            ABA Forum Committee on Air and Space Law, Update Conference, Washington D.C.  
                         Contact: David Tabak (312) 988-5794
- 1/22-23/98        Embry-Riddle Aeronautical University Aviation Law/Insurance Symposium  
Daytona Beach, FL  
                         Contact: (904) 226-6186
- 1/28/98 to  
2/01/98            Lawyer Pilot Bar Association Winter Meeting, Tucson, AZ  
                         Contact: Karen Griggs (301) 972-7700
- 2/13/98            AOPA FAA Enforcement Seminar, Denver, CO  
                         Contact: Robert Bornarth (301) 695-2257
- 2/26/98            Southern Methodist University Aviation Law Symposium, Dallas, TX  
                         Contact: Erin Bunch (214) 768-2570
- 6/26/98            AOPA FAA Enforcement Seminar, Chicago, IL  
                         Contact: Robert Bornarth (301) 695-2257
- 7/22-26/98        Lawyer Pilot Bar Association Summer Meeting, Sonoma County, Santa Rosa, CA  
                         Contact: Karen Griggs (301) 972-7700
- 10/22/98          AOPA FAA Enforcement Seminar, Palm Springs, CA  
                         Contact: Robert Bornarth (301) 695-2257

The Aviation Law Section also has various activities in the planning stages for the upcoming year, but no dates have yet been set. Those activities are described in the article by our Chairperson, Barry R. Smith, elsewhere in this issue of the *Innermarker*.



### Aviation Law Section

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Michael Franck Building  
306 Townsend Street  
Lansing, Michigan 48933-2089

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