



INNERMARKER

Newsletter of the Aviation Law Section

State Bar of Michigan
Donald C. Frank, Editor

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I. PRESIDENT'S LETTER

By: Susan L. Hofer

Welcome to all those new members who have joined the section this year. I hope we will have the opportunity to meet soon. To those who are with us again this year, welcome back.

I also want to take this opportunity to congratulate Barry Smith on a very successful year as Chair of the Aviation Law Section. Barry energized the Section by guiding the development and presentation of programs throughout the year which educated the public, as well as provided attorneys with information about the practice of Aviation Law. He has moved the Section forward using his organizational skills and imagination to create activities which showcased the Aviation Law Section. Much thanks and appreciation to Barry. I look forward to his contributions and assistance as Chairperson Emeritus.

The upcoming year for the Aviation Law Section will be exciting as we have the opportunity to build on our past successes and also take on new challenges.

As you may recall, past educational events in which the Section has been active include the Section's yearly pilot seminars, providing Michigan pilots with helpful legal information on pilot enforcement as well as aircraft transactions. The Section also participated last year in the MTLA winter outing, providing speakers on various aviation law topics, while members also skied and joined in the après ski fun. In past holiday seasons Section members have also joined with others to assist in Operation Good Cheer to fly Christmas gifts to needy children. We also have had some great times at Section social gatherings such as at air shows, the tour of the Detroit Metro Airport control tower, the Rock and Roll Hall of Fame, the tour of Selfridge Air Base and also the Kalamazoo Air Museum, to name a few.

As we look toward the next year, ideas are forming for future Section events. I believe it is important to continue with the Sections educational efforts which could be expanded by creating Section presentations for schools or to other groups. I know our membership has many resources and ideas for programs that educate, provide a public service or further humanitarian efforts. We also want to continue to get together socially to enjoy our common interest of aviation and to network with other members around the state.

The Aviation Law Section will participate again this year in the MTLA seminars and ski weekend in February 1999 (see the announcement by Mark Schwartz in this issue). We will also put on our very popular pilot seminar in April 1999. Plans for next summer are shaping up to probably include a social get together at the Kalamazoo Air Museum. Stay tuned for more details as we get closer to these events.

I hope you will let me know any ideas you may have for the upcoming year or what would be of interest to you. I also encourage you to attend a council meeting (see schedule elsewhere in this Innermarker). Or if you just want to do some hangar flying give me a call. ■

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## II. SECTION CONQUERS THE WILD BLUE YONDER

*By: Susan L. Hofer  
Monaghan, LoPrete, McDonald,  
Yakima & Grenke  
Bloomfield Hills, Michigan*

On October 28, 1998, eleven brave and hearty members of the Aviation Law Section put on their helmets, strapped on their oxygen masks, gave the thumbs up sign and ascended to experience life at 25,000 feet. Some were braver and heartier, some were silly, some had problems counting, some developed a distinct blue tinge to their fingernails, but all will remember the experience.

For some time I had wanted to attend the seminar put on by the FAA which teaches aviation physiology, but also allows each person to see how they react to hypoxia under a controlled environment. When I asked if anyone else in the Aviation Law Section was also interested, I received a resounding yes. Arrangements were made and the excited and eager participants convened at Wright Patterson Air Force Base to learn and enjoy the experience.

The first part of the day involved class room sessions on such topics as physics of the atmosphere, respiration and circulation, hypoxia, trapped gas, and altitude induced decompression sickness. The group was guided through these topics by energetic Air Force instructors. At lunch time, sections members were escorted to the officer's club by Lt. Colonel Pirog of the JAG's office, who had learned from section member Dennis Veara (our JAG connection) that we would be attending the session that day. Some members carefully selected their lunch in light of cautions about the upcoming afternoon altitude chamber flight.

Upon return to the classroom we spent a half hour in total darkness, during which time we were shown vision limitations prior to and after dark adaptation. Each person could see for themselves the limitations and learned how to compensate or avoid them. When the lights came back on we knew it was almost time for the much anticipated altitude chamber flight.

A film showing what had happened to others while undergoing an altitude chamber flight was shown. The film having been made some time ago, I think that some in the group were probably hoping we would not succumb so quickly when our time came. That we would be stronger and more enduring . . . or at least remain conscious.

Then it was our turn. We first were briefed for the altitude chamber flight. Since the Air Force primarily conducts training at these facilities for "jet jockeys", the oxygen systems reviewed were perhaps not

familiar to most. A brief explanation of the various types of oxygen equipment and particularly the on/off switches we were to use and we were off to the equipment room to be issued our helmets and oxygen masks. The initial portion of the time in the chamber involved saturating our bodies with oxygen for 30 minutes to avoid altitude decompression sickness (the bends). During this time we were shown another great movie, this one on survival (what had we gotten ourselves into), then the real fun began.

First, a short flight to 6,000 feet and back down to check for any problems with trapped gas, such as with ears or sinuses or other gastrointestinal problems which we were admonished not to be shy about for our own good. Everyone checked out fine and it was onward and upward. A simulated rapid decompression up to 18,000 feet was followed by a further climb to 25,000. At this point masks were removed so that each person could experience their own personal symptoms of hypoxia. At 25,000 feet, it does not take long. Each participant had their own clipboard with pen to circle their symptoms and which also had questions for answering so that the effects of oxygen deprivation could be seen.

What happened next should probably remain confidential between those who were present, but that would be no fun. What turned out to be probably more interesting than observing my own personal symptoms of hypoxia was seeing the effects on others. Much concentration went into focusing on the clipboards and answering or attempting to answer the questions. Some displayed a more scientific bent with studied looks on their faces as they apparently noted their developing symptoms and tried to precisely circle the corresponding descriptions on the clipboards. A certain fascination with fingernail beds developed and the Air Force personnel, who had remained on oxygen, passed up and down the aisles offering their fingernail beds as comparison.

We had been instructed that once we recognized several symptoms that we should take recovery action by donning our masks, and at varying points each person made their decision to recover and go back on oxygen. For those who waited longer, the Air Force instructor would test the person's capabilities (and provide inflight entertainment) by making requests of them such as to count backwards by threes. The longer they were off oxygen, the simpler the requests became, until the final request was to see if they could put their mask back on by themselves. After a point, even this was not possible. I do not believe anyone actually passed out. At least I do not remember seeing any rescue attempts.

All in all I found the entire day worthwhile and the altitude chamber flight itself invaluable. I think others felt the same as I heard a lot of positive comments. I would encourage any pilot to take advantage of this course. It seems that the altitude chamber at Wright Patterson will be shut down after next May. There will

still be other chambers, but none so close. So, if you have been thinking about going just call Larry "Bo" Boshers at 405-954-7767 at the FAA and he can schedule you. It is well worth it. ■

### III. FAA AIRCRAFT REGISTRY TAX TRAP

*By: Stephen M. Weller*

*Pittsburgh, Kansas*

*Mr. Weller was a student in his 9th term at Thomas M. Cooley Law School when he submitted this article.*

When Congress enacted the Civil Aeronautics Act of 1938, the Act included a provision that created a national recording system for all instruments affecting title to or interests in U.S. civil aircraft. Section 503 of the Federal Aviation Act of 1958 adopted this central recording system. In originally creating this national recording system (the FAA Aircraft Registry), it was Congress' intention that a person would only have to consult the central file to determine if there were any encumbrances on an aircraft title. US Code Cong & Admin News 1964, p 2320.

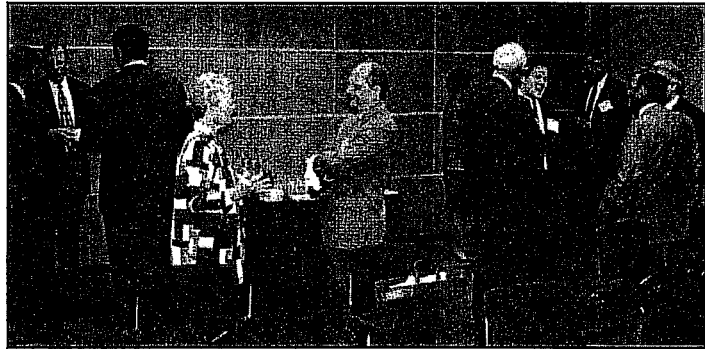
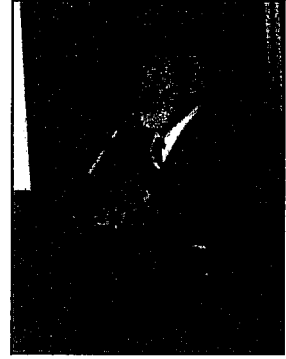
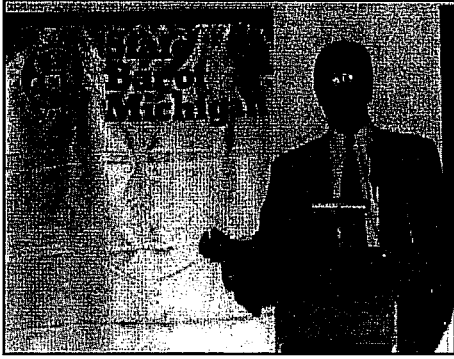
Today, this central filing system continues. 49 USC section 44107 (1998). However, Congress' goal of providing a single location at which one could conduct a search of all encumbrances on an aircraft title has not been met. The Regulations state that a notice of Federal tax lien is not recordable under the Federal recording statutes. 14 CFR 49.17(a). Instead, the Internal Revenue Code provides that Federal tax liens will be recorded in one office within the State (or county, or other governmental subdivision), as designated by the laws of such State in which the property subject to the lien is situated, or 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 one office requirement. 26 USC 6321, 6323(a), (f).

This conflict in Congress' goal of a "one stop" central filing system and the Treasury Department's insistence on filing Federal tax liens locally raises several important questions for the Aviation law practitioner. First, why does this bizarre situation exist in the first place? Why doesn't the IRS just file their Federal tax liens at the FAA Aircraft Registry in Oklahoma City, Oklahoma?

In 1964, Congress was contemplating requiring the IRS to file its Federal tax liens at the FAA Aircraft Registry. The General Counsel of the Treasury wrote to

*continued on page 5*

## IV. AVIATION LAW SECTION ACTIVITIES



*Scenes from the Aviation Section's 1998 Annual Meeting and Public Seminars on Buying, Selling, Owning and Protecting an Aircraft*



## AIRCRAFT REGISTRY TAX TRAP –

*Continued from page 3*

the Chairman, Committee on Commerce, U.S. Senate, expressing his objections to the proposal. He noted that a Federal tax lien is a general lien on all property and rights to property belonging to the taxpayer and the notice of the lien is not required to describe the property to which it attaches, nor is it required that the notice be filed in specific offices to cover individual pieces of a taxpayer's property. The General Counsel contended that a law that required the notice of a tax lien to enumerate the specific property to which it attaches would create confusion. Because a Federal tax lien is a general charge on all real and personal property and does not describe specific property, the IRS would have no practical way of ascertaining which delinquent taxpayer owned an aircraft. He further argued that the IRS would either have to file every tax lien with the FAA or make an unnecessary and time-consuming search of the FAA's aircraft registration records. Furthermore, he contended since a lien is a charge on after-acquired property, all new applications for aircraft registration certificates would have to be checked against the current list of tax delinquencies so that existing liens could be recorded against the new aircraft. He was also concerned that creating an exception for aircraft would raise questions about the sufficiency of local notices of tax liens against other forms of property. U S Code Cong & Admin News 1964, pp 2325, 2326.

My research for this article revealed one particularly interesting case addressing the filing of Federal tax liens and a State's attempt to circumvent 6323(f) and honor Congress' intention of a central registry. In this case, a State had a State statute requiring that Federal tax liens be recorded in accordance with former 49 USC Appx section 1403. Former section 1403 required that all liens be filed at the FAA Aircraft Registry. The IRS did not file its tax lien in accordance with section 1403. Rather, the IRS recorded the lien with the Clerk of the County Circuit Court. The court held the IRS tax lien was invalidly recorded and unperfected since 26 USC section 6323(f) required that such liens be recorded in accordance with filing requirements of State law. **In re: Air Florida v United States**, 50 Bankr 653; 1985 Bankr Lexis 5825; 12 Collier Bankr Cas 2d (MB) 1438.

Following **In re: Air Florida**, Congress enacted the Technical and Miscellaneous Revenue Act of 1988. As a result, the Internal Revenue Code has been amended to provide that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing. 26 UCS 6323 (f)(1)(A)(ii), (f)(5).

In Michigan, the IRS records Federal tax liens on aircraft (personal property) at the Office of the county of the register of deeds of the owner/tax debtor's county of residence if the owner/tax debtor is an individual. If the owner/tax debtor is a Corporation or partnership then the IRS records the Federal tax lien at the Secretary of State's Office. MCL 211.663 (1990).

What does this mean for the Michigan Aviation law practitioner? It means to completely insure your client has clear title to his anticipated purchase, it would be necessary for you to conduct a search for possible Federal tax liens against every owner of the aircraft for the past ten years (the Federal tax lien lasts for ten years and can be refilled for another ten years). 26 USC 6323 (g)(3). This could become a very cumbersome process because for each owner of the aircraft during the previous ten years you would need to know at least the following: (1) The full legal name of all the owners; (2) Whether any of the owners have been involved with any joint ventures or partnerships; (3) Every county and State in which each aircraft owner has lived; (4) Whether any of the owners have extended the statute of limitations [under IRC 6501(c)(4) or 6501(e)(1)(A)] for assessment or collection with the IRS; (5) Verify the location of the aircraft.

Unfortunately, there is another problem. Each State has its own statute(s) that specify where Federal tax liens are to be recorded in the State. There is a great deal of variation between States. Therefore, before you can complete the aforementioned five step process you must determine all of the States where you need to check and determine where each State requires Federal tax liens to be recorded. Of course, such an extensive search could consume considerable billable hours.

Even if there was only one previous owner of the aircraft during the preceding ten years, one cannot assume that the seller of the aircraft has always lived in the same county or same State of residence during the past ten years. Even a one previous owner search could involve substantial expense. For example, suppose your client wishes to purchase an aircraft from an individual who has owned the aircraft the last ten years. The seller intends to sell your client the aircraft on December 8, 1998. In 1994 the seller moved from Houston, Texas to Lansing, Michigan. Then the seller moved in 1996 from Lansing, Michigan to Detroit, Michigan. The IRS filed a Federal tax lien against the seller in Harris County, Texas in 1993. If you only check the Federal tax lien records in Detroit (the seller's present residence), no evidence of the Federal tax lien notice would be found and the buyer's (your client's) right to the property will be subordinate to the Federal tax lien. IRC 6323(g)(1).

This situation begs the question whether it would be legal malpractice for an attorney handling an aircraft purchase to fail to conduct a Federal tax lien search. I believe it probably would not be legal malpractice. The standard for legal malpractice is stated in SJ12d 30.01, Professional Negligence and/or Malpractice. The instruction provides:

When I use the words "professional" or "malpractice" with respect to the defendant's conduct, I mean the failure to do something which a [lawyer] of ordinary learning, judgment or skill in this community or a similar one would do, or the doing of something which a [lawyer] of ordinary learning, judgment or skill would not do, under the same or similar circumstances you find to exist in this case. It is for you to decide, based upon the evidence, what the ordinary [lawyer] of ordinary learning, judgment or skill would do or would not do under the same or similar circumstances.

Based on the discussion in this article, it's my impression that most Michigan Aviation law practitioners probably are not conducting Federal tax lien searches when they handle an aircraft purchase. Since Michigan uses a community standard in legal malpractice cases, I doubt that failure to conduct such a search would be legal malpractice. However, rather than accept this hypothesis, it would probably behoove the cautious practitioner to advise his or her client in writing that a title search at the FAA Aircraft Registry will not reveal any Federal tax liens and let him or her decide whether or not to expend the funds for the Federal tax lien search. ■

## V. PRIA CONSENTS & RELEASES

*By: Donald C. Frank  
Pratt & Frank, P.C.  
Okemos, Michigan*

The Pilot Record Improvement Act of 1996 (PRIA), which is codified as 49 USC 44936(f-h), requires air carriers to request and receive certain information before allowing an individual to begin service as a pilot. The "air carriers" that are subject to this requirement include not only large carriers, but also small charter operators, and the prospective air carrier employer is required not only to obtain information from other air carrier employers but also from any "... other person that has employed the individual as a pilot ... during the five year period preceding the date of the employment application of the individual ..."

The PRIA requires an air carrier making a records request to obtain a written consent to the release by the pilot job applicant (49 USC 44936(f)(2)(A)). Further, the PRIA prohibits furnishing any record in response to an air carrier records request unless a copy of the consent is obtained first. 49 USC 44936(f)(5). In order to facilitate this records exchange, the PRIA directs the FAA to develop a standard form to obtain this written consent from pilot job applicants. 49 USC 44936(f)(8). In response to this legislation, the FAA published advisory circular 120-68 which contains "standard" forms and which may be accessed on the internet at <http://www.mmac.jccbi.gov/afs/afs700/afs760.html>. (Care must be taken when referring to AC120-68 because it includes a reprint of parts of 49 USC 44936(f) which were subsequently amended.) This advisory circular notes that "... the PRIA states that air carriers may use standard forms to obtain the pilot's written consent, ..." and it contains suggested standard forms which the advisory circular states are "Used by the air carrier to obtain written consent to the release of records ...". Although large air carriers undoubtedly have the expertise to fully understand this statute, it is the writer's impression that smaller charter operators, flight training operators, and non-aviation businesses employing pilots in a flight department, may misunderstand the PRIA's provisions regarding applicant consents and releases. In fact, this misunderstanding has probably been increased by the statutorily mandated standard forms and the FAA advisory circular. Many small operators may obtain a copy of the FAA's advisory circular and believe they are protected from liability by using the FAA's standard consent form. However, relying exclusively on the FAA's standard consent form does not entitle either the operator requesting the information or the operator providing the information to the limitation on liability provided for in the PRIA.

In addition to **requiring** a consent to the release of records, the PRIA also **allows** an air carrier making a records request to require the job applicant to execute a release from liability for any claim arising from the furnishing of such records or the use of such records (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute.) 49 USC 44936(f)(2)(B). While the PRIA requires an air carrier making a records request to obtain a consent, it merely enables the requesting air carrier to also require a release. Also, the PRIA only directs the FAA to promulgate consent forms and does not require the FAA to promulgate any release forms. As a result, advisory circular 120-68 only refers to consents and makes no reference at all to obtaining or developing a form for release from liability. This distinction appears to be crucial because 49 USC 44936(g) provides in part that "No action or proceeding may be brought by or on behalf of an individual who has

applied for or is seeking a position with an air carrier as a pilot and who has signed a **release from liability**, as provided for under paragraph (2), against – (A) the air carrier requesting the records . . . ; (B) a person who has complied with such request; (C) a person who has entered information contained in the individual's records; or (D) an agent or employee of a person described in subparagraph (A) or (B); in the nature of an action for defamation, invasion of privacy, negligence, . . .” (emphasis added). Additional subparts of 49 USC 44936(g) provide for preemption of state law and provide an exception to immunity for a person who furnishes information that the person knows is false and was maintained in violation of a criminal statute of the United States.

Because the PRIA expressly provides statutory immunity only when a pilot applicant signs a release and does not grant any immunity when a pilot applicant has merely signed a consent, it is crucial for counsel representing charter operators and other air carriers to ensure that they are obtaining both a consent and a release before making the required records requests under the PRIA. It is also crucial for counsel representing employers furnishing records to make sure that the employer obtains a copy of a release in addition to making sure it has a written consent before providing information in response to a PRIA records request. As already noted, the PRIA only permits the requesting air carrier to require an applicant to sign a release. The PRIA requires a person receiving a records request with a written consent to provide record copies within thirty (30) days (49 USC 44936(f)(5)) and does not provide for the recipient of a records request to demand a release before complying with the records request. However, because 49 USC 44936(g)(1) expressly extends statutory immunity to both the records requestor and the recipient of the request once a release is signed, the recipient of a records request should be able to explain the importance of the release to the air carrier making the request so that it can obtain a release for both of their protection. Conversely, if counsel is presented with a potential claim on behalf of a pilot client, counsel should not assume that the persons providing and receiving the records are entitled to immunity, but should determine whether the pilot merely signed a consent or also signed a release.

Although the significance of the distinction between the consent and release is probably most likely to be presented to counsel after the fact when representing individual pilots, this situation is clearly best handled proactively by counsel representing FBOs, charter operators, et cetera. Allowing our FBO and air carrier clients to carry on their personnel operations in blissful ignorance in reliance on the FAA's guidance may result in later unnecessary expense and liability exposure for those clients. ■

## VI. MEET THE NEW SECTION COUNCIL

The Section's Annual Meeting was held in September, 1998 in conjunction with the State Bar of Michigan's Annual Meeting in Lansing, Michigan. In addition to the programs offered at the Annual Meeting, the Officers and Board Members were elected to the Section Council for the following year. As a result of the elections and one appointment to fill a vacancy, the following members now compose our Section Council:

**Susan L. Hofer** of Bloomfield Hills, Michigan, was elected last year as the Section's Chairperson-Elect and automatically assumed the position of Chairperson of the Section. Ms. Hofer has been a member and active participant in the Section since 1992. She has previously served as both the Section's Secretary and Treasurer and as Chairperson of the Annual Meeting's Programs and Public Awareness Committee. Ms. Hofer is an active pilot and flight instructor and owns a Mooney aircraft.

**Myron F. Poe** of Royal Oak, Michigan, was elected Chairperson Elect. As Chairperson Elect, Mr. Poe will automatically become the Section's Chairperson at the Annual Meeting in late 1999 when Susan Hofer's term as Chairperson expires. Mr. Poe has actively served on the Aviation Law Section Council for years. He graduated cum laude from Wayne State Law School. His general practice includes representation of members of the aviation community in contract, leasing, FAA enforcement actions, acquisitions, and other aviation related matters. He has been a private pilot for almost twenty-five years with single, multi, and seaplane ratings and owns and flies a Piper Cherokee 6. Among other organizations, he is a member of the Lawyer Pilot's Bar Association and the Seaplane Pilots Association.

**Eric S. Richards**, of Grand Rapids, Michigan, was elected to the position of the Section's Secretary. Mr. Richards was active in the formation of the Section and drafted the Section's Bylaws as well as acting as its original Secretary. Mr. Richards graduated magna cum laude from Wayne State Law School. He has served as a judicial clerk in both the United States Court of Appeals for the 6th Circuit and the United States Bankruptcy Court for the Western District of Michigan. His practice includes the areas of commercial litigation, securities law, and aviation law. He has published articles and served as adjunct professor at several schools, including the Thomas M. Cooley Law School and Western Michigan University. He is a pilot and lives in a fly-in community, with a hangar awaiting an airplane.

**Mark K. Schwartz** of Waterford, Michigan was re-elected as the Section's Treasurer. Mr. Schwartz graduated cum laude from Detroit College of Law at Michigan State University. He is a commercial pilot and certified flight instructor (CFII-MEI). His practice consists of primarily personal injury and wrongful death cases, many of which are aviation related. His offices are located adjacent to the Oakland County International Airport at Waterford.

**Barry R. Smith** of Kalamazoo, Michigan, automatically became Chairperson Emeritus for the following year upon turning over the Chair to Susan L. Hofer. Mr. Smith was a founding member of the Section and has been involved in a number of the Section's projects, including serving as a moderator and a speaker at Section seminars. In addition to serving as the Section's chairperson, Mr. Smith has served as the Section's Secretary. He is an active pilot (flying the Ford Tri-motor, among other aircraft) and an aircraft owner.

**Elmer L. Roller** of Bloomfield Hills, Michigan, was elected to the Section Council Board. Mr. Roller graduated from Wayne State University Law School. He has been actively involved in aviation litigation in both state and federal courts for approximately ten years, representing defendant component manufacturers or principal passenger carriers, including Northwest Airlines, Eastern, and Continental, involved in crashes. His practice also involves extensive litigation in the areas of business torts, commercial conflicts, employment, and negligence actions, as well as negotiation of collective bargaining contracts. He has received numerous awards for his writings, and he has also been active in teaching.

**Donald C. Frank** of Okemos, Michigan, was re-elected to a two-year term on the Section Council. Mr. Frank was the Chairperson of Section's Organizational Committee and served as the first Chairperson of the Section. He also serves as the Editor of the Section's newsletter, the *Innermarker*. Mr. Frank's law practice includes representation of pilots, aircraft owners, and FBOs. In addition, he teaches a course on aviation law at Thomas M. Cooley Law School. He is an active pilot and in 1998 he celebrated his 30th year since receiving his commercial and certified flight instructor licenses.

**Leonard E. Nagi** of Detroit, Michigan was reappointed to the Section Council to serve the one-year balance of a vacated Board position. Mr. Nagi has been active with the Section ever since serving on its formation committee. He has previously served the Section as Chairperson and as a Council Member. Mr. Nagi's practice is principally the defense of aviation related law suits.

**Dennis J. Veara** of Troy, Michigan, continues for the second year of his two-year term on the Section Council Board. 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 holds the rank of Lieutenant Colonel.

## 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>
Feb. 16, 1999	Airport Restaurant Jackson
Mar. 16, 1999	Bravo Restaurant Kalamazoo
Apr. 20, 1999	Restaurant to be determined Ann Arbor
May 18, 1999	Spinnacker Restaurant Grand Rapids

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 Susan L. Hofer's office, (248) 642-5770, shortly before the meeting. ■

### THANKS TO L.L. JOHNS & ASSOCIATES, INC.

Thanks to Steve Johns and his insurance agency, L.L. Johns & Associates, Inc., (800-662-4401) in Waterford, Michigan, which concentrates on aviation insurance, Section Members and guests enjoyed a continental breakfast at our Annual Meeting without depleting our Section's budget. The Section appreciates the generous donation.

# MICHIGAN TRIAL LAWYERS WINTER CONFERENCE

## Annual Seminar in the Snow

### WITH PARTICIPATION BY THE AVIATION LAW SECTION

Join your fellow members of the plaintiffs'  
and defense bars for this informative,  
family-oriented fun-filled seminar

**FEBRUARY 19 & 20, 1999**

**Treetops Sylvan Resort  
Gaylord, Michigan**

Aviation Section members may attend at  
special MTLA member prices of:  
\$250 – Seminar & Reception  
\$170 – Seminar Only

**CALL MTLA AT: (517) 321-3073  
for more information and to register.**

## VII. MTLA ANNUAL SEMINAR IN THE SNOW – AGENDA

The Aviation Law Section is participating on Saturday morning with presentations by Steven M. Chait, Donald C. Frank, Susan L. Hofer, and Barry M. Smith. The Agenda for the MTLA Seminar in the Snow is:

### Friday, February 19, 1999

- 8:30 a.m. Registration
- 9:00 a.m. Assessment of Psychic Injury, Including TBI, CHI, and Resultant Function and/or Organic Disability – C.H. Dudley, *M.D., Board of Certified, Forensic Psychiatry, Southfield*
- 9:45 a.m. Workers' Compensation – Winning Psychic and Emotional Disability Cases – Deborah A. Deprez, *Sinas, Dramis, Brake, Boughton & McIntyre, P.C., Lansing*
- 10:15 a.m. No-Fault Update on the New Threshold: Cases and Motions – David Mittleman, *Church, Kritselis & Wyble, P.C., Lansing*

BREAK

- 11:00 a.m. Premises Liability – Privileges and Immunities You Must Know Before Filing – Bryan Waldman, *Sinas, Dramis, Brake, Boughton & McIntyre, P.C., Lansing*
- 11:30 a.m. Employment Law – Sexual Harassment/Discrimination & Wrongful Termination Update – Mary Katherine Norton, *Sachs, Waldman, O'Hare, Helveston, Bogas & McIntosh, P.C., Detroit*
- 12:00 p.m. Grab Your Ankles – New Legislation From Our Republican Legislature – Alan Helmkamp, *Helmkamps, Ellis, Abraham & Demopoulos, P.C., Livonia*

### Saturday, February 20, 1999

- 8:30 a.m. Registration
- 9:00 a.m. Air Crash Litigation: Introductions – Aviation Law Section Chairperson Susan L. Hofer
- Multi-district Litigation in Aviation Mass Tort Cases – Steven M. Chait, *Chait & Schwartz, P.L.C., Waterford*
- The Aviation Disaster Family Assistance Act – Barry M. Smith, *Lewis & Allen, P.C., Kalamazoo*
- Air Carrier and Airport Personal Injury Litigation – Donald C. Frank, *Pratt & Frank, P.C., Okemos*
- 9:45 a.m. Medical Malpractice: Overview and Update – Brian J. McKeen, *McKeen & Associates, Detroit*
- 10:15 a.m. Social Security: Effective Representation and Cross-Examination of the Vocational Expert – Timothy A. O'Rourke, *Hay & O'Rourke, P.C., Lansing*
- BREAK
- 11:00 a.m. Attorney Discipline Board – Practice & Procedures – Nancy A. Wonch, *Anderson & Wonch, P.C., Lansing*
- 11:30 a.m. Uninsured/Underinsured Motorist Arbitration: How to Handle the "Escape Clause" – Mark A. Schreier, *Schreier & Weiss, P.C., Royal Oak*
- 12:00 p.m. Effective Use of Arbitration, Mediation and Facilitation – Jules B. Olsman, *Olsman, Ganos & Mueller, P.C., Farmington Hills*

**FREE SKIING ON THURSDAY EVENING  
AND ALL DAY FRIDAY  
IF STAYING THURSDAY NIGHT!**

# VIII. MICHIGAN LAW LEGISLATIVE UPDATE

By: **Steven M. Chait**  
**Chait & Schwartz, P.L.C.**  
**Oakland County International**  
**Airport Office**

The following is a summary of key aviation bills pending as of December 1, 1998, before the Michigan Legislature, both House and Senate.

**HB 4338** – Local government; authorities; airport development right of referendum; provide for. Amends sec. 10 of 1994 PA 325 (MCL 125.2530).

**HB 4536** – Aeronautics; airport authority; formation of airport authority; include a university, community college, an Indian tribe, and the Michigan aeronautics commission as eligible entities. Amends title & secs. 1, 3, 4, 7, 8 & 11 of 1957 PA 206 (MCL 259.621 et seq.).

**HB 4611** – Environmental protection; landfills; proposed landfills located within 20,000 feet of an airport runway; require review by the Michigan aeronautics commission. Amends sec. 11510 of 1994 PA 451 (MCL 324.11510).

**HB 4632** – Torts; immunity; governmental immunity; include all types of vehicles in exception. Amends sec. 5 of 1964 PA 170 (MCL 691.1405).

**HB 4652** – Economic and industrial development; other; international tradeport development authority act; repeal. Repeals 1994 PA 325 (MCL 125.2521 – 125.2546).

**HB 4672** – Aeronautics; other; fuel tax rebate; expand provision to include air cargo carriers. Amends sec. 203 of 1945 PA 327 (MCL 259.203).

**HB 4970** – Use tax; exemptions; property and materials used in constructing a heavy maintenance facility for aircraft; provide for. Amends 1937 PA 94 (MCL 205.91 – 205.111) by adding sec. 4m.

**HB 4971** – Sales tax; exemptions; property and materials used in constructing a heavy maintenance facility for aircraft; provide for. Amends 1933 PA 167 (MCL 205.51 – 205.78) by adding sec. 4p.

**HB 5043** – Aeronautics; airport authority; number of appointments made to an airport authority; revise. Amends sec. 2 of 1970 PA 73 (MCL 259.802).

**HB 5107** – Use tax; exemptions; tangible personal property used in the construction of an airport facility; provide for. Amends 1937 PA 94 (MCL 205.91 – 205.111) by adding sec. 4m.

**HB 5108** – Sales tax; exemptions; tangible personal property used in the construction of an airport facility; provide for. Amends 1933 PA 167 (MCL 205.51 – 205.78) by adding sec. 4p.

**HB 5112** – Use tax; exemptions; aircraft and aircraft parts purchased for use in a trade free zone; exempt. Amends 1937 PA 94 (MCL 205.91 – 205.111) by adding sec. 4o.

**HB 5113** – Sales tax; exemptions; aircraft and aircraft parts purchased for use in a trade free zone; exempt. Amends 1933 PA 167 (MCL 205.51 – 205.78) by adding sec. 4p.

**HB 5181** – Elections; petitions; certain petitions circulated regarding community airport authorities; require to conform with Michigan election law and apply certain penalties. Amends title of 1957 PA 206 (MCL 259.621 – 259.631) & adds sec. 8a.  
TIE BAR With: **House Bill 5138**.

**HB 5204** – Aeronautics; funds; sales tax imposed directly or indirectly on fuel sold to propel aircraft and sale of new or used aircraft; require to earmark for aeronautics fund. Amends sec. 25 of 1933 PA 167 (MCL 205.75).

**HB 5583** – Aeronautics; other; prohibit general discrimination based on race, religion, national origin, gender, ancestry, or familial relationship, and provide for certain definitions. Amends secs. 20c & 24a of 1945 PA 327 (MCL 259.20c & 259.24a) & adds ch. IA & sec. 20d.

TIE BAR With: **House Bill 5584**.

**HB 5584** – Aeronautics; other; hospital heliports and helistops; regulate and clarify provisions relating to certain landing areas. Amends secs. 86a & 89 of 1945 PA 327 (MCL 259.86a & 259.89).  
TIE BAR With: **House Bill 5583**.

**HB 5650** – Use tax; exemptions; aircraft weighing over 6,000 pounds carrying cargo, passengers, or a combination of cargo and passengers; exempt. Amends secs. 4 & 4k of 1937 PA 94 (MCL 205.94 & 205.94k).

**HB 5651** – Sales tax; exemptions; aircraft weighing over 6,000 pounds carrying cargo, passengers, or a combination of cargo and passengers; exempt. Amends 1933 PA 167 (MCL 205.51 – 205.78) by adding sec. 4p.

**HB 5888** – Aeronautics; other; general discrimination based on race, religion, national origin, gender, ancestry, lineage, descent, or heredity; prohibit, and provide for certain definitions. Amends secs. 20c & 24a of 1945 PA 327 (MCL 259.20c & 259.24a); adds ch. IA & sec. 20d & repeals enacting section 1 of 1998 PA 81.  
TIE BAR With: **House Bill 5889**.

**HB 5889** – Aeronautics; other; hospital heliports and helistops; regulate and clarify provisions relating to certain landing areas. Amends secs. 86a & 89 of 1945 PA 327 (MCL 259.86a & 259.89).  
TIE BAR With: **House Bill 5888**.

**HB 5912** – Land use; zoning and growth management; township zoning in the vicinity of airports; provide for coordination with airport zoning and plans. Amends secs. 3, 9, 11a & 40 of 1943 PA 184 (MCL 125.273 et seq.).  
TIE BAR

**HB 5913** – Land use; zoning and growth management; county zoning in the vicinity of airports; provide for coordination with airport zoning and plans. Amends secs. 3, 9, 11a & 40 of 1943 PA 183 (MCL 125.203 et seq.).  
TIE BAR

**SB 0197** – Use tax; exemptions; aircraft weighing over 6,000 pounds carrying cargo, passengers, or cargo and passengers; exempt. Amends secs. 4 & 4k of 1937 PA 94 (MCL 205.94 & 205.94k).

**SB 0198** – Sales tax; exemptions; aircraft weighing over 6,000 pounds carrying cargo, passengers, or a combination of cargo and passengers; exempt. Amends 1933 PA 167 (MCL 205.51 – 205.78) by adding sec. 4p.

**SB 0463** – Land use; zoning and growth management; variances in airport zoning; authorize condemning agency to seek. Amends sec. 24 of 1950 (Ex Sess) PA 23 (MCL 259.454).

**SB 0548** – Economic and industrial development; other; location of tradeports; prohibit within 15 miles of certain airports. Amends 1994 PA 325 (MCL 125.2521 – 125.2546) by adding sec. 8a.

**SB 0832** – Transportation; funds; allocation of airport parking tax; revise and provide for administration. Amends title & secs. 2, 5, 6, 7 & 11 of 1987 PA 248 (MCL 207.372 et seq.) & adds secs. 6a & 6b.

**SB 1198** – Land use; zoning and growth management; filing of airport plans with local units; require of airport managers. Amends secs. 9 & 151 of 1945 PA 327 (MCL 259.9 & 259.151).  
TIE BAR With: **Senate Bill 1199**.

**SB 1199** – Land use; zoning and growth management; city and village zoning in the vicinity of airports; provide for coordination with airport zoning and plans. Amends secs. 1, 4 & 20 of 1921 PA 207 (MCL 125.581 et seq.).  
TIE BAR With: **Senate Bill 1198**.

## IX. MISCELLANEOUS

### A. 1999 DIRECTORY

A new directory of all Section Members will be published in February, 1999. In addition to being provided to each of our members, a copy of the directory is mailed to each fixed base operator throughout the state of Michigan and additional copies are distributed to individual pilots and mechanics at public seminars. All dues paid members will be included in the directory.

In the past, we have had problems keeping the area code correct in the section directory. The area code provided to us by the State Bar is whatever area code a member used upon renewal of their State Bar of Michigan membership the previous October or November. The last couple of years, that area code has often been outdated by the time our directory is published in January or February. If you want a new area code used in your listing or want to add or change your practice description, please send the updated information to your editor, Don Frank, at facsimile number (517) 349-2941 before February 15, 1999. ■

### B. ARE YOU AN AUTHOR?

The *Innermarker* offers a great opportunity for members to prepare and publish articles on topics of interest to our members. The *Innermarker* is not only sent to each of our members, but also to all fixed base operators in the state of Michigan and to selected law libraries and governmental offices. Suggestions for topics, help with an article, and even coordination with co-authors can be provided by the *Innermarker's* Editor, Donald C. Frank, if desired. Of course, articles drafted completely by individual members on topics of interest of their own choosing are also welcome.

In addition to specific articles, assistance is needed, from time to time, on preparing our regular articles on current Michigan legislation and recent case developments. If you are interested in helping with those features or writing an article, please contact the *Innermarker's* Editor, Donald C. Frank, at (517) 349-0000. ■

### C. NTSB ON LINE

Did you know that NTSB accident tables, administrative decisions, and more are now available on line? Accident synopses of more than 41,000 aviation

accidents with data base search capability available and aviation accident statistics can be obtained on line. The accident synopses cannot be searched by pilot name, but can be searched by date, location, et cetera. In addition to obtaining the accident synopses on line, links are provided to order the complete NTSB report.

The final decisions, opinions and orders of the NTSB on airman and mechanic appeals are also available on line with a searchable index. At this time, only decisions issued since 1996 are available.

The NTSB's internet site can be accessed at <http://www.ntsbt.gov/aviation/aviation.htm>. ■

### D. DOG DAYS

If you have been feeling a little "doggy" lately, check out these ASRS reports summarized in NASA's *Call Back*.

At ABC, a dog kennel was loaded in the forward cargo bin. Upon arrival at XYZ, ramp personnel discovered that the dog had escaped inflight. The dog was put back in the kennel and shipped on to ZZZ. ZZZ Operations offload message was "dog [in forward bin] escaped kennel, caution when opening forward bin door."

The dog had escaped again enroute to ZZZ. During the flight, the dog clawed its way through the forward cargo bin ceiling panel. Primary and secondary flight control cables run immediately above this ceiling panel. It was fairly obvious that the dog had made contact with these cables by the dust and dirt that had been disturbed. No damage was noted and no delay was incurred. Had this flight been of longer duration, however, the dog could have jammed these cables, causing possible loss of flight control by the pilot.

In the next report, the dog apparently left some explosive leftovers on board.

Center called to say that a canine handler-in-training had left a package of explosive material on board the aircraft, in the [passenger seat] magazine holder. We found the package, and, on arrival, I handed it over to the Captain of Security.

*At the conclusion of the training session, the canine team had been called away to another mission and had forgotten to take their "training material" with them. The Captain was able to determine that the explosive material was not a hazard (fortunately!) unless it had a detonator. ■*

## X. AVIATION LAW CALENDAR

*Any members aware of any upcoming aviation or aviation law related 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**.*

- 02/08-09/99 Strategic Research Institute 6th Annual FAA Aircraft Registration Lien and Security Interest Seminar; New York City Helmsley, New York, New York (\$1,395.00). Contact: (800) 599-4950 ext. 230.
- 02/10-14/99 Lawyer Pilot Bar Association Winter Meeting, LeMeridian Hotel, New Orleans, Louisiana, (\$225.00). Contact: Karen Griggs (301) 972-7700.
- 02/19-20/99 MTLA Winter Conference with Michigan Aviation Law Section participation (\$250/\$170). Contact MTLA (517) 321-3073.
- 02/25-26/99 Southern Methodist University Aviation Law Symposium, Dallas, TX, Hotel Intercontinental. Contact: Erin Bunch (214) 768-2570.
- 03/12/99 AOPA Enforcement Seminar, Salt Lake City, Utah (\$85.00). Contact: (301) 695-2257.
- 05/13/99 ABA Section of Litigation 5th Annual Aviation Litigation Seminar; Plaza Hotel, New York, New York. Contact: Dawn Holiday (312) 988-6256.
- 07/14-17/99 Lawyer Pilot Bar Association Summer Meeting, Ritz Carlton Hotel, Montreal, Canada. Contact: Karen Griggs (301)-972-7700.



### Aviation Law Section

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