

INNERMARKER

***NEWSLETTER OF THE
AVIATION LAW SECTION***

STATE BAR OF MICHIGAN

September 1994

Vol. 2

No. 2

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I. FROM THE CHAIR

This has been a very enjoyable year for me, serving as your Chairperson.

I am an aviation addict, but this probably can be said equally of other members of our Section.

Emphasis in my term has been placed upon awareness of public benefits of aviation, and especially awareness by the public that aviation law is a matter best handled by those conversant with the field.

We have attempted by rudimentary outreach programs, which I hope will increase, to demonstrate this and that aviation lawyers are firm supporters, not destroyers, of aviation that some publicity attempts to make us out as.

There are certainly no people more actively giving their time in the promotion of aviation than the ones I have worked with in this Section.

There is a major body of aviation law that is not generally considered by many. This includes buying and selling of aircraft, zoning, labor law, contracts, enforcement and a myriad of other matters. If airplanes are involved, then the matter concerns aviation law.

*** * ***

I have observed that in their eagerness to perform a public service and also self-promotion, many attorneys will handle matters for vastly reduced fees or practically pro bono (it is hard to imagine someone involved in aviation matters who would qualify for pro bono representation).

I have been very active through my years as an attorney in the economics of the practice of law. In the 1960's an excellent series of programs were put on by the Institute of Continuing Legal Education using the impeccable analyses of Daniel Cantor and Associates. In that era, he was able to demonstrate that a \$25.00 hourly fee, after paying proper overhead, would produce an income in the middle teens. This was a low income, even in that era. Secretarial wages and book prices are in excess of 10 times higher now. Many aviation attorneys and other attorneys reduce or do not adequately charge to the point that their income and quality of facilities dramatically suffer. In other words, carrying the torch of aviation law forward does not require carrying it into a pauper's grave.

*** * ***

Our programs this year have been energetic, interesting and of a high level. There are many, many other subjects which our Section will undoubtedly address in the future.

We have an excellent and dedicated cadre and I believe the Aviation Law Section will become one of the most important Sections of our Bar Association.

It is my plan to continue to be active and I look forward to working with all of you in the future. Thank you for making this a fine year.

**Signed,
Gerald M. Stevens,
Chairperson**

II. EDITOR'S NOTES

A. LOGO FOR AVIATION SECTION?

With the last issue of the Innermarker, we sought comments and input from all members of the Section with regard to a possible Logo for future issues of the Innermarker and Membership Directory. While we have received a few responses, your continuing input and suggestions would be greatly appreciated.

B. WANTED - - - YOUR INPUT FOR FUTURE NEWS LETTERS

The Aviation Law Section publishes its Newsletter on a semi-annual basis [March and September]. We solicit your input for future publication in the "INNERMARKER". We, of course, would accept short articles on aviation related topics, but are also interested in anecdotes, short stories and members in the news. Please provide your input at least one month before publication.

C. MEMBERSHIP DIRECTORY - ARE YOU SATISFIED WITH YOUR LISTING ??

We publish and update the Aviation Section Membership Directory on an annual basis [September]. We attempt to list all current members by name, P number, address, telephone number and FAX number. In addition, we will provide approximately three (3) additional lines describing your practice, achievements and/or areas of expertise, if desired. Please forward all additions, deletions or modifications directly to the Publication Chairperson, J. D. Ledbetter.

D. THANKS TO OUTGOING CHAIRMAN, GERALD M. STEVENS

On behalf of all of the members of the Aviation Law Section, we want to thank Gerald M. Stevens, our outgoing chairman for his efforts as the second chairperson of the Aviation Law Section of the Michigan State Bar. We want to recognize and express our appreciation for his efforts, including the leadership, direction and vision that he provided to the Aviation Law Section. We expect that this leadership and direction will continue under incoming chairperson, Leonard E. Nagi. Thanks Gerry, for a job well done.

III. MEMBERS IN THE NEWS

A. NEW MEMBERS

We want to welcome the following persons as new members of the Aviation Law Section:

Christopher C. Cinnamon
Richard J. Durden

Timothy J. Jordan
George A. Golder
Don M. Schmidt

B. MEMBERS IN THE NEWS

Congratulations to member Sandra A. Hazlett who has been appointed to a three (3) year term on the Ann Arbor Airport Advisory Committee. Ms. Hazlett was nominated for this appointment by Mayor Ingrid Sheldon and approved by the City Council.

Please submit to Publications Chairman, J. D. Ledbetter, short comments of your personal achievements or those of which you are aware pertaining to other members of the Aviation Section. We will publish these items semi-annually [March and September].

IV. AVIATION LAW SECTION ACTIVITIES

A. AVIATION LAW SECTION PUBLIC SEMINAR

The Aviation Law Section presented its second annual Aviation Liability Seminars to pilots, aircraft mechanics and other interested persons. The seminars were co-sponsored by the Michigan Bureau of Aeronautics and the Michigan Aviation Association. They were held on April 27, 1994 in Dearborn and April 28, 1994 in Lansing. A panel of four (4) experienced aviation attorneys discussed the subject of aviation liability, including risks associated with aircraft operations, exposure to liability when renting or leasing aircraft, potential pitfalls when buying or selling aircraft, and methods of best protecting themselves from liability (minimizing risks). The programs were organized by council member Steven M. Chait who chairs the meeting and program committee. Other panelists included Section members David I. Katzman, J. D. Ledbetter and Peter R. Tolley. In addition, CPA/Attorney Mark A. Letvin, was a speaker regarding corporation and tax liability. The programs were extremely successful, attracting nearly 300 guests. The Section plans to sponsor additional public seminars in the future.

Included with the presentations were some handouts that members may find interesting:

MICHIGAN DEPARTMENT OF TRANSPORTATION
BUREAU OF AERONAUTICS
Aviation Safety Program

OPTIONS FOR AIRCRAFT OWNERSHIP
 by Marc A. Letvin, J.D., C.P.A.

Ownership Entity	Protection to Owner	Taxable to
Sole Proprietor	None	Owner
General Partnership	None	Owners
Corporation	Other than for Acts of Owner	Corporation, if 'C' Corporation; Owner, if 'S' Corporation
Limited Liability Company	Other than for Acts of Owner, with some exceptions	Owner

Marc A. Letvin, Esq.
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**10 TIPS FOR AVOIDING
LEGAL SUCKER PUNCHES FOR PILOTS
BY: STEVE CHAIT J.D.**

1. Purchase at least as much insurance as you feel comfortable with.
2. Make certain that your insurance policy has no provisions such as \$100,000 per seat limits, or other restrictions which would leave you without adequate protection.
3. Make certain that you are completely candid with your insurance company - do not try to keep your insurance premium low by hiding information - they may deny coverage.
4. Own your aircraft through a corporation.
5. If you own the aircraft/car in your own name, do not include your spouse's name on the title.
6. If you own the aircraft through a partnership, choose your partners as carefully as you would choose a spouse - you will be personally liable for their acts of negligence.
7. Only utilize the services of aircraft mechanics who carry sufficient professional liability insurance, or you may be totally unable to be compensated for your personal injuries even if you have plenty of liability insurance.
8. If you rent aircraft, read your FBO's liability policy to determine whether you will be covered, and whether the FBO's insurance company can come back after you for the cost of repairing any damage you may cause. (subrogation)
9. Find out if the rental aircraft is owned by the FBO, or whether it is a lease back aircraft owned by another owner the hidden owner can materialize after the accident and sue you for loss of business use, etc.
10. Be extremely careful who you allow to operate your aircraft - you will be personally liable for their acts of negligence.

- Michigan Owner Liability Statute

B. LEGISLATIVE AVIATION DAY AT THE MICHIGAN BUREAU OF AERONAUTICS ON JUNE 8, 1994

The Aviation Law Section was provided the opportunity to participate in Aviation Day Activities at the Headquarters of the Michigan Bureau of Aeronautics in Lansing, Michigan on June 8, 1994. This activity provided an opportunity for Legislators and their Aides to review displays and meet and discuss Aviation issues with various groups and individuals. Section Members participating included Gerald M. Stevens, Steven M. Chait, J. D. Ledbetter and Donald C. Frank.

C. VISIT BY SECTION TO YANKEE AIR MUSEUM, WILLOW RUN AIRPORT

The Section's Second Annual Summer Meeting was held on Memorial Day, 1994 at the Yankee Air Museum located at Willow Run Airport, Ypsilanti, Michigan. This event consisted of a fly-in/drive-in brunch at the Air Museum, which is devoted to World War II Aircraft and most particularly, the B24 Liberator Bomber, some 8,600 of which were built by Ford Motor Company at the Willow Run Bomber Plant during World War II. The Ypsilanti High School Orchestra provided World War II period music and there were many individuals in attendance who wore World War II era outfits, hairstyles, etc. Many World War II Bombers and fire aircraft made numerous fly-byes in formation and the aircraft were then parked on the museum ramp where members were invited to board the aircraft and sit in the cockpit etc. This meeting was both educational and enjoyable.

D. FLY-IN/DRIVE-IN MEETING AT THE AIR FORCE MUSEUM AND WRIGHT PATTERSON AIR FORCE BASE IN DAYTON, OHIO ON AUGUST 27, 1994.

Thanks to the efforts of members Steven M. Chait and Col. John Hoff, the Aviation Law Section was treated to a special visit to Wright Patterson Air Force Base and the Air Force Museum located in Dayton, Ohio. The meeting was co-sponsored by the Air Force Institute of Technology and member Col. John S. Hoff served as coordinator and escort for tours of the museum, museum annex and the Air Force Base. Attending were the following members and their families:

Bassam and Linda Lee Massoud; Joe Gaipa, Tim Gaipa; J. Mike Kinney, who arrived in his Piper Twin Comanche; Bob Plante; Walter F. Noeske; George B. Adastik; Bill Schlecte, Adam Schlecte; Brian Funston; J. D. and Linda Ledbetter and family; John S. Hoff; Don Frank; Steve Chait, Dianne Chait, Michael Chait, all of whom arrived in Steve's Beechcraft Debonair; Leonard Nagi; Myron F. Poe, who arrived in his Cherokee Six; Carolyn Arnel; Gerald and Margaret Stevens; George Golder; Frank Aragona; Glenda R. Warner

The entire group took time to pose for a photograph in the vicinity of the F4 Static displays at Wright Patterson Air Force Base.



Photograph by Connie Miller

If you have not previously visited the Air Force Museum in Dayton, Ohio, it is highly recommended. It is informative and detailed and presents one of the largest, if not the largest, collection of aircraft starting from the time of Orville and Wilbur Wright, all the way through present and highly advanced aircraft. The museum is highly recommended for individual, as well as family entertainment. It offers fabulous aircraft displays and memorabilia, as well as omni vision movies, unique gift shops and cafeteria facilities.

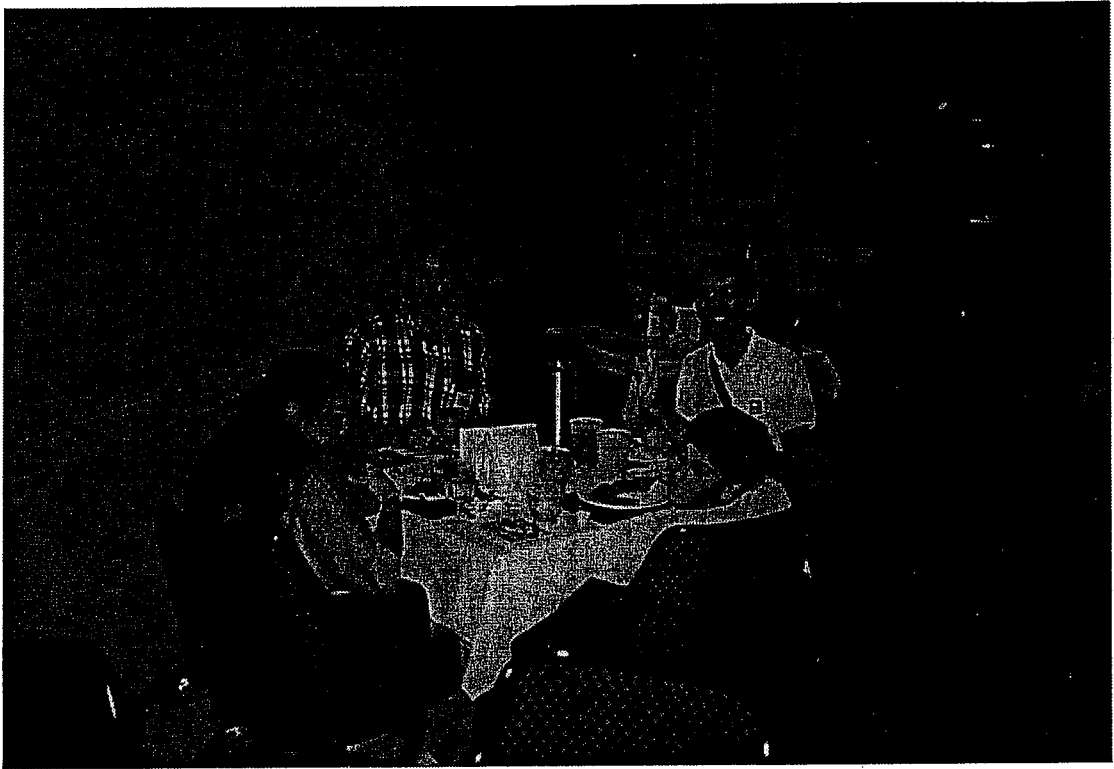
Also, nearby, is the Wright Brothers historical walking trail which was the actual site of the Hoffman Prairie Flying Field where the Wrights labored to perfect a workable and practical flying aircraft. There is a walking trail with ten sites of major interest. We learned that the Wrights' first aircraft was built in 1903 at their bicycle shop on West Third Street in Dayton, Ohio, and flown at Kitty Hawk, North Carolina on December 17, 1903. Apparently, the first flights were made at Kitty Hawk because of the long flat beach

and constant winds and because the Wrights felt it was the safest place to attempt flight without causing injury to themselves. Once they had successfully performed the first flight, they could then be more selective in site choice. They, of course, wanted a place closer to home. The Hoffman Prairie site was offered to them at no cost in early 1904. They began to prepare for multiple flights in the Dayton area by constructing a new flyer based upon the 1903 aircraft flown at Kitty Hawk. The Wrights mastered the art of flying on Hoffman Prairie in 1904 - 1905 and returned to the site in 1910 where they established the Wright Company School of Aviation which operated until 1916. Among the historical markers on the walking tour were a replica of the Wright Brothers 1904 Hanger, the larger and more expansive 1910 Hanger and the Wright memorial overlooking Wright Patterson Air Force Base. The memorial is open to the public during daylight hours and is listed on the National Register of Historical places because of the presence of several Adena Indian Mounds at the site. Interestingly the walking path is a recreation of the 1904 - 1905 flight path which was drawn by Orville Wright. In 1904 the Wrights logged 105 starts and a total flying time of about 50 minutes. In 1905 they logged 50 flights with a total flying time of 3 hours and 40 minutes.

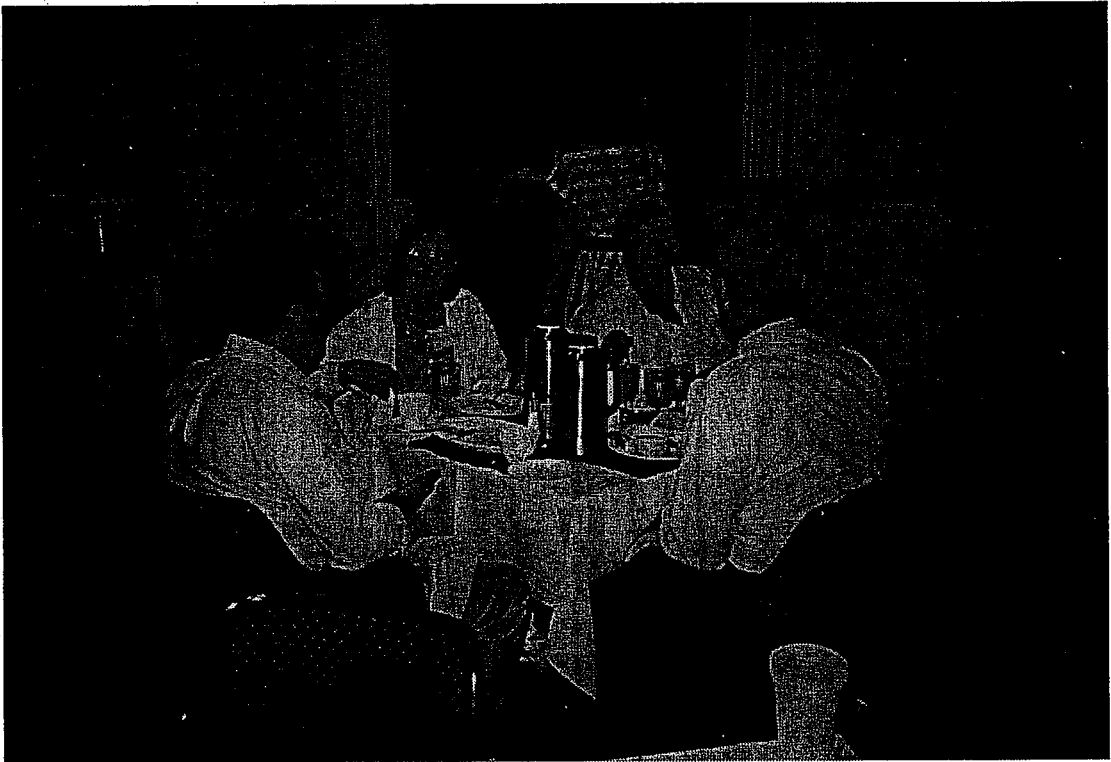
Included on the agenda activities was lunch for attendees at the Wright Patterson Air Force Base NCO Club. Of course, the pesky editor found many photo opportunities:



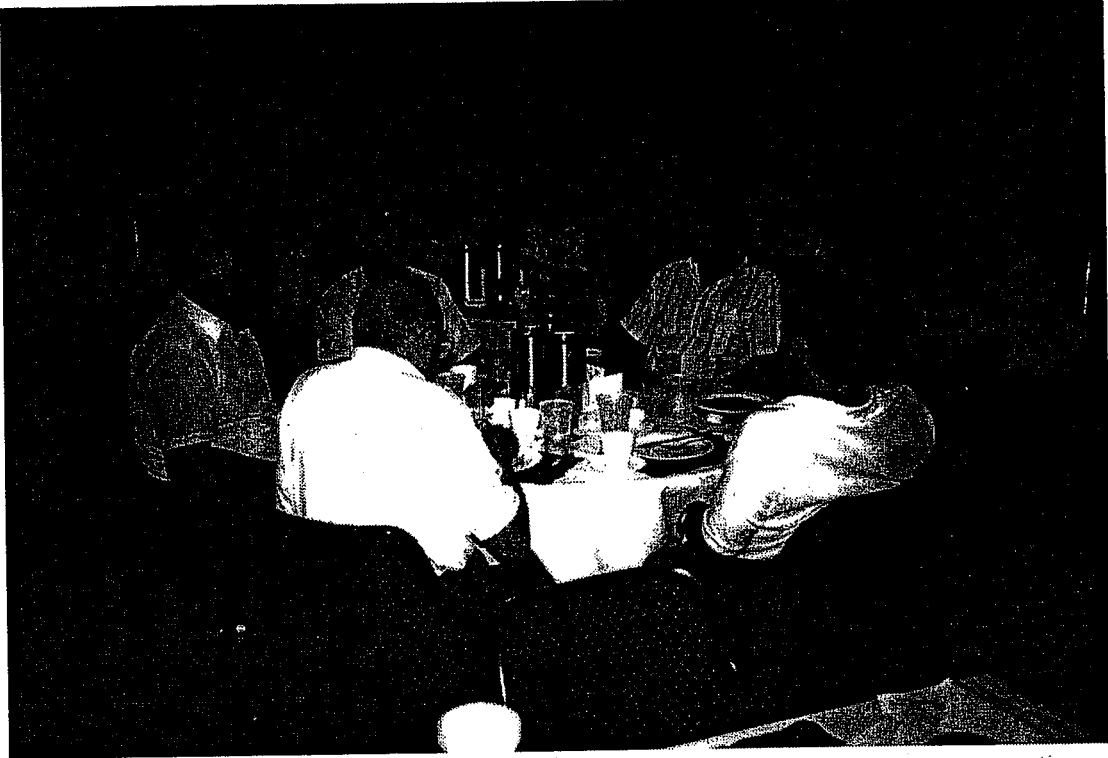
Pictured left to right - Gerald Stevens, Margaret Stevens, Carolyn Arnel, Myron Poe, Leonard Nagi and Andrea Ledbetter.



Pictured left to right - Dianne Chait, Don Frank, Steve Chait and Michael Chait.



Pictured left to right - Bassam Massoud, Linda Lee Massoud, Connie Miller, Col John Hoff



Pictured left to right - George Adastik, Joe Gaipa, Tim Gaipa, J. Mike Kinney and Bob Plante



Taking a moment to pose in front of the MIG 21 displayed at Wright Patterson Air Force Base were - L to R - Michael Chait, Steve Chait and Don Frank



Inside the museum posing in front of the D-Day 50th Anniversary display was L to R - Steve Chait, Michael Chait, Andrea Ledbetter and J. D. Ledbetter. [Photograph by Dianne Chait.]

V. COMING EVENTS

A. 1994 - Annual Meeting of the Michigan State Bar, Aviation Law Section. As you know, the Michigan State Bar is holding its annual meeting at the Cobo Conference/Exhibition Center on September 21 through September 23, 1994. The Aviation Law Section will hold its annual meeting on Friday, September 23, 1993 from 2:00 - 7:30 p.m. at the Cobo Conference and Exhibition Center and specifically Room W2-70 on the second level. Planned agenda

2:00 p.m. - 2:30 p.m. Business meeting and election of officers/council.

Nomination for officers and council are as follows:

Chairperson - Leonard E. Nagi [Chairman elect not currently up for reelection]

Chairperson elect - Steven M. Chait. Mr. Chait is a founding member of the Section; has served on the Council since its inception and has been one of the most active members of the Section. As Chairperson of various committees, he has contributed heavily toward the seminars and publications of the Section. He has worked as an aviation attorney for many years, involved in litigation and representation of pilots and certificate actions and is a CFI and Aircraft owner.

Secretary - Barry Smith - Mr. Smith is a founding member of the Section and has been active in attending functions of the Section, assisting in developing the successful meeting at the Kalamazoo Air Museum and has supported the Section and has offered to assist in promoting the Section. His practice includes Employment and Labor Law. He is an active pilot.

Treasurer - Clifford G. Maine - Mr. Maine is a founding member of the Section and has served as a Treasurer since its inception. As Treasurer, he successfully guided us through the requirements and pitfalls of establishing the Section. His practice includes business and tax aspects of Aviation Law. He is an active pilot and aircraft owner.

Two positions, those of Council Members Thomas Power and Steven M. Chait have expired. For those positions, the committee nominated:

Ronald J. Parker - Mr. Parker is a founding member of the Section, has been active as a speaker at our first annual meeting. His practice includes representation of the Jackson Airport Board, as well as advising pilots and owners of aircraft with respect to ownership and tax aspects. He is an aircraft owner and pilot.

Don Frank - Mr. Frank is the founding member of the Section and outgoing Chairperson Emeritus. His efforts and work for the Section are known to all. He has expressed a desire and willingness to continue on as an active participant in the Section. His practice includes representation of pilots, aircraft owners and FBO's. In addition, he teaches a course on aviation at Thomas M. Cooley Law School. He is an active pilot.

Council members with one year, Council Eligibility remaining:

**Edward T. Noonan
Myron F. Poe**

Chairman Emeritus - Gerald M. Stevens

It is important to note that although a nomination slate has been submitted by the nominating committee, nominations can still be made from the floor at the annual meeting. The qualifications of all nominees shall be presented to the members of the Section at the annual meeting. All elections shall be by voice vote or show of hands at the annual meeting of the Section, unless otherwise ordered by resolution.

2:30 p.m. through 5:00 p.m. program.

Presentations to include

Kent County Airport Airline Fee Case decided by the U. S. Supreme (Landmark Case) Mark Allard - Varnum, Riddering, Schmidt and Howlett; of counsel for the Kent County Board of Aeronautics.

Michigan Aviation Caucus background and expected future action. Honorable Thomas G. Power - 13th Judicial Circuit; Aviation Law Section Council member (members of Aviation Caucus are expected to join Judge Power in his presentation).

**State of Michigan Aviation by Alice J. Gustafson - Vice
Chairperson of the Michigan Aeronautics Commission.**

5:00 - 7:30 p.m. - Reception - Cocktails and Hors d'oeuvre

Note: There was to be a presentation by Sonny Elliott, Detroit Area Media Personality and pilot, but a conflict has arisen so Mr. Elliott will be unable to appear.

We encourage all members of the Aviation Law Section to attend the annual meeting. We look forward to seeing you there.

B. Fly-in/Drive-in Selfridge Air National Guard Base.

We are planning a fly-in/drive-in visit to the Selfridge Air National Guard Base and museum which will include a tour of the base and lunch at the Officers' Club. We will provide details and final arrangements once they have been made.

C. Possible Fly-in/Sail-in PUT-IN-BAY

We are studying the possibility of a fly-in/sail-in to Put-In-Bay. We solicit your interest and comments on such a visit. As you know, Pub-In-Bay is a unique island setting and is a favorite destination of many pilots and boaters.

D. Michigan Resorts?

We are also considering another seasonal resort activity in the resort areas of Michigan. This could be a combination business meeting and golf package, or a combination business meeting and ski package. Again, we solicit your comments, input and preferences.

VI. DEVELOPMENTS IN AVIATION LAW

A. THE GENERAL AVIATION REVITALIZATION ACT (PL103-298)

By Steve Chait

As many of you already know, the General Aviation Revitalization Act was signed into law by President Clinton on August 17, 1994. A copy of the Act, which has commonly been referred to by attorneys as the "Aviation Statute of Repose" is attached in its entirety.

The legislation sets an 18 year Statute of Repose on General Aviation Aircraft and component parts. It prohibits product liability suits, with 3 exceptions, against manufacturers if the aircraft involved is more than 18 years old when an accident occurs. For parts and components, the 18 year period begins when the part is installed into the aircraft.

It appears that the three instances in which suits may be brought on older aircraft, are accidents involving injury to persons on the ground, medical emergency flights, or if the manufacturer can be shown to have willfully and knowingly concealed a defect. It appears that the Bill was effective on August 17, 1994 when it was signed by President Clinton. However, Legislation does not apply with respect to civil actions commenced before the date of enactment.

The Bill went through three revisions and passed the House and Senate twice this session before getting final approval. The original language of the Bill was for a lesser number of years, but the final Bill raised the cut-off to an 18 year Statute of Repose.

A General Aviation Aircraft is defined in the Act and basically is any aircraft which has a maximum seating capacity fewer than 20 passengers and which was not, at the time of the accident, engaged in scheduled passenger carrying operations.

The Law expressly supersedes any State Law to the extent that such Law permits a covered civil action to be brought after the applicable limitation period of 18 years.

Cessna has promised to resume production of its Cessna 172, 182 and 206 models within two years after the passage of this Bill, and billed up to 2,000 new single engine aircraft the first year construction begins.

103 P.L. 298 printed in FULL format.

**UNITED STATES CODE SERVICE
ADVANCE LEGISLATIVE SERVICE
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PUBLIC LAW 103-298

103rd Congress -- 2nd Session

S. 1458

**103 P.L. 298; 108 Stat. 1552
1994 Enacted S. 1458; 103 Enacted S. 1458**

**BILL TRACKING REPORT: <=1> 103 Bill Tracking S. 1458
FULL TEXT VERSION(S) OF BILL: <=2> 103 S. 1458**

AUG. 17, 1994 -- PUBLIC LAW 103-298

An Act

To amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. SHORT TITLE.

This Act may be cited as the "General Aviation Revitalization Act of 1994".

[*2] SEC. 2. TIME LIMITATIONS ON CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS.

(a) In General. -- Except as provided in subsection (b), no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred--

(1) after the applicable limitation period beginning on--

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or

(2) with respect to any new component, system, subassembly, or other part which replaced another component, system, subassembly, or other part originally in, or which was added to, the aircraft, and which is alleged to have caused such death, injury, or damage, after the applicable limitation period beginning on the date of completion of the replacement or addition.

(b) Exceptions. -- Subsection (a) does not apply --

(1) if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type certificate or airworthiness certificate for, or obligations with respect to continuing airworthiness of, an aircraft or a component, system, subassembly, or other part of an aircraft knowingly misrepresented to the Federal Aviation Administration, or concealed or withheld from the Federal Aviation Administration, required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered;

(2) if the person for whose injury or death the claim is being made is a passenger for purposes of receiving treatment for a medical or other emergency;

(3) if the person for whose injury or death the claim is being made was not aboard the aircraft at the time of the accident; or

(4) to an action brought under a written warranty enforceable under law but for the operation of this Act.

(c) General Aviation Aircraft Defined. -- For the purposes of this Act, the term "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator of the Federal Aviation Administration, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which was not, at the time of the accident, engaged in scheduled passenger-carrying operations as defined under regulations in effect under the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.) at the time of the accident.

(d) Relationship to Other Laws. -- This section supersedes any State law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable limitation period for such civil action established by subsection (a).

[*3] SEC. 3. OTHER DEFINITIONS.

For purposes of this Act--

(1) the term "aircraft" has the meaning given such term in section 101(5) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(5));

(2) the term "airworthiness certificate" means an airworthiness certificate issued under section 603(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1423(c)) or under any predecessor Federal statute;

(3) the term "limitation period" means 18 years with respect to general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft; and

(4) the term "type certificate" means a type certificate issued under section 603(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1423(a)) or under any predecessor Federal statute.

[*4] SEC. 4. EFFECTIVE DATE; APPLICATION OF ACT.

(a) Effective Date. -- Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) Application of Act. -- This Act shall not apply with respect to civil actions commenced before the date of the enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

B. RECENT OPINIONS

1. Dean, et al -v- Sikorski Aircraft, et al 6th Cir numbers 92-6417, 93-5020.
Government contractor defense.

The wives and children of U. S. Army personnel killed in a March 1988 collision of two Sikorski UH-60A Black Hawk Helicopters, filed five complaints which were consolidated in the Middle District of Tennessee. The Plaintiffs claimed that the incident occurred from because of defective internal and external lighting in the aircraft and defectively and negligently designed ITT Night Vision Goggles worn by the pilots.

The District Court granted Summary Judgment to Sikorski, applying the three prong test set forth by the U. S. Supreme Court in Boyle -v- United Technologies Corporation. The Court found that Sikorski met the first element by providing a reasonably precise specifications as required for the construction of a helicopter. The Court found the Government considered the specifications and approved them.

There was no factual dispute regarding whether Sikorski had fully complied with the second Boyle element as the company had manufactured the helicopter in conformance with the design.

The third element was satisfied since Sikorski alerted the Government to any design defects in the cockpit or such defect was independently known to the Government.

The Court referred ITT's Motion for Dismissal to a Magistrate Judge who found all Boyle elements satisfied, but recommended that the Motion be denied. The Court adopted the Magistrate's findings, but also found that the Plaintiffs did not plead a cause of action for failure to warn and thus, granted ITT's Motion. The Sixth Circuit Panel found no error warranting reversal after conducting a denovel review of the record and issues presented at oral argument.

2. Woznick -v- Federal Aviation Administration, 6th Cir, number 92-4351.
Pilot Medical Certificate - Medical Records subject to production.

The 6th Cir. Panel held that the request of the Federal Aviation Administration to review an airman's records was

reasonable because of concern over the "unknown" organic origin of Woznick dysfunction.

Woznick received a first class medical certificate from a designated FAA Airman Medical Examiner in September, 1990. The application included affirmative answers to questions about hospital admissions for a penile implant and arrests for drunken driving in 1986 and 1989.

In November, 1990, the FAA requested documentation from Woznick to supplement his application, including medical, hospital, driving and Court records. When Woznick failed to respond, the FAA requested voluntary relinquishment of the Certificate. Woznick then submitted a brief physicians letter, which the FAA found insufficient.

The agency issued an emergency suspension order which was upheld by the National Transportation Safety Board Administrative Law Judge and the full NTSB. The Board found the FAA demand for records was appropriate in light of Woznick's criminal history.

The 6th Circuit rejected the FAA's contention that the case had been mooted by the Certificate's expiration, but affirmed the suspension. The Panel held that the FAA Aeromedical Certificate Division had authority to review the application and suspend the Certificate for Woznick's refusal to comply with reasonable request for Medical Records.

The Appeals Court found substantial evidence to support the FAA's action, noting that if Woznick's dysfunction were organic, the source could impair his ability to safely perform the duties of a pilot. The Panel found the requested medical information could help identify or rule out disqualifying conditions.

3. Engebretsen, et al -v- Fairchild Aircraft Corporation, 6th Cir number 93-5059-6th Cir affirms verdict for Fairchild in emergency landing case.

This case arose from emergency landing in a Metro 3 commuter plane at Cincinnati International Airport. Plaintiff David Engebretsen, a Captain with Com Air, claimed to have suffered a back injury in the incident. He alleged that the stall avoidance system (SAS) on the Metro 3 was defective and

caused a hard landing under crash alert conditions at 155 knots, twice the recommended speed. The plane landed safely, but Engebretsen subsequently filed suit in the Eastern District of Kentucky.

In a jury trial, the jury found for Fairchild. In appealing the jury verdict, Engebretsen contended that undisputed eyewitness testimony established that the plane malfunctioned because of the faulty operation of the SAS, that the pilot took all reasonable steps to disconnect the system and that the SAS continued to exert strong nose down pressure despite the pilot's actions.

Fairchild conceded that the SAS had been unintentionally activated by exposure to moisture, and argued that the amount of water in the belly of the plane was unforeseeable and/or undetectable by proper maintenance inspection. Fairchild also claimed that the continued increase in yoke pressure resulted from water shifting in the belly and the pilot's misapplication of the trim switch. Fairchild also claimed there was ample evidence to support the jury's findings that the SAS had been deactivated when the pilot switched it off.

The Appeals Court found that the evidence supported Fairchild's position and rejected Engebretsen's arguments on the exclusion and admission of certain testimony and documents.

C. ARTICLES

NEW STATUTE AFFECTS AIRCRAFT LEASES - By Donald C. Frank, JD

A new Michigan Statute which will take effect ninety (90) days after the end of the current session of the Legislature will affect many aircraft lease transactions. The Statute is 1994 PA 140 which is codified as MCL 750.417(a).

This Statute contains two new prohibitions. First, if an aircraft is subject to a conditional sales contract or a security agreement, the Statute makes it illegal for "a person other than the buyer" to "assist, cause, arrange, or induce the buyer of a . . . aircraft . . . to lease or sublease the . . . aircraft to another person without first obtaining written consent to the lease or sublease from the holder of the security agreement."

Secondly, if an aircraft is subject to a lease contract, the Statute also makes it illegal for "a person other than a party to the lease" to "assist, cause, arrange, or induce the lessee . . . to sublease the . . . aircraft to another person without first obtaining written consent to the sublease from the lessor under the lease contract."

This new Statute will obviously have to be kept in mind when arranging, drafting, or structuring an aircraft sales/leases back and other aircraft lease transactions. This Statute also applies to "vehicles" and "watercraft".

Violation of the Statute is a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than \$10,000, or both, and the Statute also provides for injunctive relief to enjoin a person from violations.

