



Fall, 2000

State Bar of Georgia

AVIATION LAW SECTION NEWSLETTER

CHAIRMAN'S MESSAGE

Our luncheon meeting featuring Major General Frederick "Boots" Blesse as our speaker on August 23, 2000, was a complete success. Maj. Gen. Blesse was a very entertaining speaker, and he humorously described his combat experiences in Korea. For those of you who could not attend, on his very first combat mission, he wrecked an airplane while landing on a short runway in an unimproved airfield when the aircraft struck a vehicle crossing the active runway. Within a matter of minutes, after extricating himself from the wrecked aircraft, he was up and flying another mission in another aircraft.



On his last combat mission in an F-86 Saber Jet, he shot down his tenth and last enemy aircraft, but had to bail out over open water when his aircraft experienced fuel exhaustion. He was promptly rescued by a PBY Catalina and returned to his base shortly after he was rescued.

Maj. Gen. Blesse autographed copies of his book, Check Six, A Fighter Pilot Looks Back, which was on sale for \$20.00 each. Also, a videotape of Maj. Gen. Blesse's remarks is available

for purchase from George Pearl of Atlanta Legal Photo Services, 404/872-2577, for \$10.00 per tape.

Our Section adopted its Bylaws during the meeting of August 23, 2000, and these will be forwarded to the State Bar for approval by the Board of Governors.

As I briefly mentioned in a previous memorandum, for the second year running, the Aviation Section received an outstanding achievement award from the State Bar. My thanks go to all of you who have helped make this Section work over the last several years. The bar recognizes the vitality

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of our Section in bestowing this outstanding achievement award.

Eric Welch commented that he would like to see our website feature the upcoming events or activities sponsored or promoted by this Section. Currently, our website features copies of our old newsletters, but it does not describe upcoming events or activities. When members of our Section make suggestions about possible improvements or new functions or services our Section can perform, I generally respond by inviting the person making the suggestion to explore the possibility of making her or his idea a reality. In that regard, I have requested that Eric look into the idea of posting upcoming events on our website.

John Webb deserves recognition for a job well done in securing Maj. Gen. Blesse as our luncheon speaker. John had tentative or possible commitments from several speakers, but their commitments fell through. We had hoped

to have our luncheon program in July, but we had to push it back to give John time to scramble in his efforts to find a luncheon speaker. As usual, John came through with flying colors in securing Maj. Gen. Blesse as our speaker. Tentatively, we are discussing having a luncheon on July 18, 2001. When John firms up the date and content of the program, we will let all members of our Section know about it.

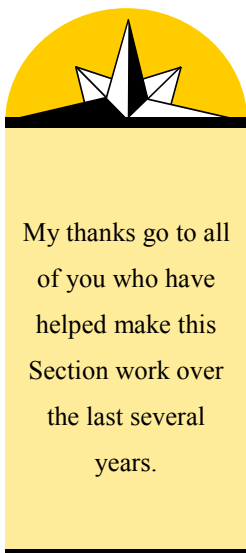
Life is filled with changes, and our Section is not immune from that reality. Richard Spivey has done a superb job as Editor of this Newsletter for the past two years. Alas, Richard will be leaving as our Editor. We all owe Richard a salute for a job well done.

My assistant and I have assembled this Newsletter. I believe it is the first section newsletter to feature color. I hope you enjoy both the content and appearance of this Newsletter. Now for the hard part. Who wants to succeed Richard Spivey

as our Newsletter Editor? Please send me an email or give me a call. If anyone has any ideas to improve or augment the Aviation Law Section, I urge you to express your ideas to Ed McCrimmon, our Vice-Chair; Steve Ashby, our Secretary; John Webb, our Program Director; or the Chair of this Section.

Good luck, and happy landings.

Alan Armstrong



THE PILOT RECORDS IMPROVEMENT ACT DOES NOT IMMUNIZE A FORMER EMPLOYER FOR MAKING INTENTIONALLY DEFAMATORY STATEMENTS ABOUT A FORMER PILOT EMPLOYEE

By Alan Armstrong

The Pilot Records Improvement Act was enacted in 1997. The purpose of the Act was to allow employers or former employers of pilots to freely share information about the pilot with a prospective employer without fear of being sued for defamation. The Pilot Records Improvement Act is found at 49 U.S.C. §44936(g). In a recent case, a pilot won an award of exemplary damages of \$5,000.00, and actual damages of \$1.00, against his former employer. The pilot claimed the former employer had defamed him in a series of telephone calls from his former employer to the aviation organization to whom the pilot had made application for employment.

The pilot had been employed by SkyFund, and SkyFund's president had been flying with the pilot when the airplane was struck by lightning. SkyFund terminated the pilot's employment and sued him for damages to the airplane. The pilot filed a counterclaim for defamation, claiming that Skyfund had made statements about him that were intentionally false and misleading and were disparaging of his ability as a pilot. The case was

tried before a judge without a jury. The judge found in favor of the pilot, awarding him \$1.00 in actual damages and \$5,000.00 in exemplary (punitive) damages to punish Skyfund. Skyfund appealed the decision of the trial court, claiming that the actions of Skyfund were protected by the Pilot Records Improvement Act. Although the Pilot Records Improvement does protect persons or entities who share information after the pilot has signed a release from liability, and the person providing the data complies with a request for information, the protections of the Act do not apply if the person providing information about the pilot provides information that is false and that is maintained in violation of a criminal statute of the United States.

The record in the case indicated that the president of Skyfund completed a request for information from the prospective employer. In response to the question of whether the pilot had been disciplined, the president of Skyfund said "Yes," and wrote in the remarks "Call me." When the prospective employer made the telephone call to the former employer, the president of the former employer said he had no

files, records or paperwork on the pilot, but did say the pilot was not a good pilot and that he was a threat to passengers. Despite the statements by the former employer, the pilot was hired by the new airline.

The Colorado Court of Appeals affirmed the decision of the trial court, reasoning that the actions of the president of Skyfund constituted slander *per se*, since it was an oral statement made by the defendant, published to a third party, that was defamatory of the victim's trade or business or profession and no extrinsic evidence was required to show that the statement defamed the victim in his trade or business. The Colorado Court of Appeals reasoned that any statement is defamatory if it tends to harm a person in his reputation by lowering her or his estimation in the community.

Although Colorado law recognizes a qualified privilege for communications to a third party with a legitimate interest in the data to be conveyed, the Colorado Court of Appeals reasoned that the privilege could not be abused. The trial court in this case had found that the statements were made with malice and that the



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SKYNOTES

The Aviation Section for the State Bar of Georgia will hold its Annual Meeting during the State Bar Mid-Year Meeting with a luncheon on Friday, January 12, 2001.

The Georgia Air Transportation Association will be meeting in Jekyll Island, Georgia on October 19-21, 2000. For further details, please contact mauvaree@bellsouth.net or 912/964-1557.

The 28th Annual Pacific Northwest Aviation Law and Insurance Seminar will be convened on October 6-8, 2000, at Campbell's Resort in Chelan, Washington. For further information, please contact Jeffrey Jones, 206/682-1505 or krutch@nwlink.com.

president of Skyfund had thereby lost the privilege. The Colorado Court of Appeals reasoned that the question of whether a statement is one of fact or opinion was a decision to be rendered by the trial court. The Court of Appeals also found that the trial court had concluded that the calls made by the former employer to the airline were not out of any concern about the pilot's skills, but were made in an attempt to preclude the pilot getting hired by the airline. In light of the foregoing, the Colorado Court of Appeals found that the award of actual damages of \$1.00 was supported by the evidence.

With regard to the award of \$5,000.00 in exemplary (punitive) damages, the Colorado Court of Appeals again affirmed the trial court, noting that exemplary damages had to be proven

beyond a reasonable doubt. The Court of Appeals noted that the record in the case indicated that the coordinator receiving telephone calls from the former employer received so many calls about this pilot that she "didn't want to deal with it any more." The trial court reasoned that this level of activity by the former employer's president was evidence of some malice.

The former employer, Skyfund, also claimed that the award of \$5,000.00 in exemplary damages was excessive, when the compensatory damages were only \$1.00. Again, the Colorado Court of Appeals affirmed the decision of the trial court, finding that the

\$5,000.00 exemplary damage award was proper.

The pilot was represented by Jerre W. Dixon, Esq. of Denver, Colorado, and we are indebted to Mr. Dixon for alerting us to this decision on the Pilot Records Improvement Act, issued by the Colorado Court of Appeals.

Skyfund No. 1, Inc., a Colorado Corporation, v. John Schuttloffel, Colorado Court of Appeals, Case No. 98CA1209 (March 16, 2000).

