

# PREFLIGHT

## Chairman's Message

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Chris Madrid of the Commemorative Air Force ("CAF") gave an interesting talk during our luncheon meeting on January 14, 2005. He discussed the mission of the CAF to preserve aviation history in terms of the Second World War. Unique insights into the activities and workings of that organization were explained during his presentation. Now, with spring just around the corner, we have time to consider the aviation law seminar we will present on April 15, 2005 at the Marriott Century Center Hotel. The speakers and topics during that seminar will consist of the following:



**Challenging the Constitutionality of the General Aviation Revitalization Act**, John McClune, Esq., Schaden, Katzman, Lampert & McClune, Troy, Michigan;

**Defending the Constitutionality of the General Aviation Revitalization Act**, Donald R. Andersen, Esq., Stites & Harbison, PLLC, Atlanta, Georgia;

**Some Thoughts on Professionalism**, Sewell K. "Kip" Loggins, Esq., Mozley, Finalyson & Loggins, LLP,

Atlanta, Georgia;

**Flying in Airshows and for the Film Industry**, C. Keith Wood, Esq., Attorney at Law, Jonesboro, Georgia;

**Tax Aspects of Aircraft Ownership and Operations**, Peter G. Stathopoulos, Esq., Morris, Manning, & Martin, LLP, Atlanta, Georgia;

**Local Government Considerations in Aircraft and Airport Operations**, David A. Basil, Esq., Attorney at Law, Carroll County Government, Carrollton, Georgia; and

**Legal Ethics and the Practice of Law**, Robert E. McCormick,

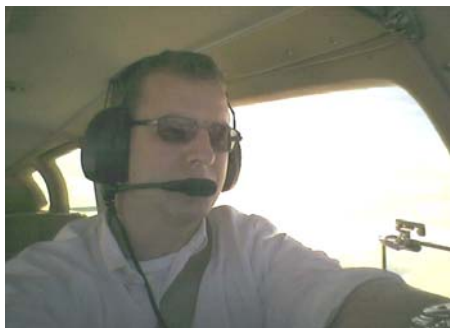
III, Esq., Office of the General Counsel, State Bar of Georgia, Atlanta, Georgia.

Mystery Plane #1

John McClune presently has two cases challenging the Constitutionality of the General Aviation Revitalization Act. Don Andersen has indicated that he is prepared to counter the arguments advanced by John McClune. Kip Loggins' long standing at the Bar bodes well for his presentation on professionalism. The presentation of Peter Stathopoulos on the tax aspects of aircraft ownership and operation

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## From the Editor: Mystery Aircraft Winner!



Greetings to everyone! Keith Wood successfully named all four mystery aircraft, which were: (1) A1 Skyraider; (2) B57 Canberra; (3) F100 Super Sabre; and (4) A26 Invader. Keith also named the bonus aircraft, which was an AC47 gunship (aka Puff the Magic Dragon). Keith won a lunch for two at the Downwind!

Another four aircraft are enclosed, so please contact me as soon as possible with your answers. The prize is lunch for two at the Downwind at PDK (or a similar restaurant, for those of you outside Atlanta), so good luck! Please email or call in your responses to my office address. For an extra challenge, I have included all WWI-era aircraft, so be sure to put your thinking caps on for this one—especially #3! I think that the gunner on that plane earned his hazardous duty pay

on takeoff!

I want everyone to be sure to attend our seminar next month. The section leadership has attracted speakers from several areas so as to appeal to as many of our members as possible. We hope you can make it!

Also, air show season is now upon us, and I would appreciate photos and stories from any of the shows that you attend this year, in Georgia or elsewhere. Our section has over 140 members with many different backgrounds in aviation, and I would very much like to hear from you in the coming months, whether it be regarding an air show or some area of aviation law that you think should be addressed. I look forward to seeing you next month! ✧



**Mystery Plane #2**

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# AVIATION LAW UPDATE

**By Chuck Young**

Everybody's discussing the Boeing/Airbus trade battle, the commercial airfare restructuring led by Delta, and the widely reported incidents of laser pointers aimed at cockpits. Thankfully, that relieves the Update from having to do so. Instead, this Update will take you to space, bring you right back to earth with tax law changes affecting business aviation, and discuss some interesting court decisions on aviation matters.

## **Commercial Space Flight Regulation**

If your dreams of becoming an astronaut yielded only a deep knowledge of Tom Wolfe's The Right Stuff, you may still imagine visiting space as a passenger on a ship like those flown successfully in the recent X Prize competition. Space tourism, albeit limited to the hyper-wealthy, has already happened in our lifetime, and one goal of the X Prize was to hasten development of reusable space-worthy craft. It's possible, if not probable, that broadly accessible trips to space will become available in the next 20 years.

Where dreams go, the law eventually follows. For now, the Federal Aviation Administration is trying to foster visions of widespread space flight with a largely hands-off approach under a newly revised statute. The Commercial Space Launch Amendments Act of 2004, which amended 49 U.S.C. §§ 70101-21 (the

"Act"), was passed last December. The Act expressly prohibits FAA regulation, for eight years, of spacecraft design features or operating practices unless those features or practices cause death, serious injury, or what amounts to a dangerously close call. Id. § 70105(c). In other words, each new accident would open the door for FAA regulation of features or practices that caused it. The Act does, however, empower the FAA more broadly to license and regulate commercial space launches and launch sites.

FAA Administrator Marion Blakely has stated in media reports that commercial passengers on space flights are analogous to climbers on Mount Everest and should accept a higher degree of informed risk. Blakely has also said that the Act's primary concern is protecting the public from rocket launches gone awry. But a new bill, H.R. 656, has been introduced in the current Congressional session that would require the FAA to include minimum standards to protect the health and safety of space flight crews and passengers in each license it issues. The bill would, however, still require the FAA to take into account the "inherently risky nature of human space flight."

On a parallel track, a proposed federation open to all U.S. nonprofit and commercial entities developing suborbital commercial passenger travel intends to develop industry consensus standards, as called for in the Act. All dreamers of space flight should watch the developments in this area.

## **Business Aviation Tax Changes**

Caveat: Your correspondent is not a tax attorney, and

some or all of the terminology below may be off the mark. But what I do know is that the American Jobs Creation Act of 2004 (the "Jobs Act"), a massive tax package signed into law last October, has excited the business aviation community with two changes to existing law that constitute good news and bad news. If you or your clients use private aircraft for business purposes, you will want to consult with a genuine tax attorney to get a full understanding of these changes and how they could affect your bottom line.

First, the good news. The Jobs Act extended the 50-percent accelerated depreciation tax benefit to business aircraft purchased by the end of 2004 to those aircraft placed into service by the end of 2005. The original law had made the benefit available only to aircraft both purchased and placed into service by the end of 2004. That small adjustment gave business jet manufacturers another year to deliver aircraft ordered in 2004, and trade associations hoped the extension would help flight departments convince their boards of directors to purchase aircraft by the end of 2004.

Now for the bad news. The Jobs Act also overturned a 2001 appeals court ruling that set the parameters for deducting business aircraft that are also used for entertainment or recreational travel. At a minimum, the new law will create more paperwork for some business aircraft operators. At worst, it could undo a depreciation benefit by adding to some companies' tax burden. Or, it could force companies to reconsider how they compensate senior executives. As of now, aviation trade groups have asked the Treasury Department to clarify three big picture issues: whether the measure

*(Continued on page 4)*

## Aviation Law Update (cont).

(Continued from page 3)

expands the scope of deduction limitations for personal travel, how mixed use will be viewed, and how companies must calculate entertainment versus non-entertainment use. More specific questions and answers are sure to follow, and the best advice I can offer is that you track this law's development with qualified tax professionals.

### **Recent Court Decisions**

The last Update discussed the Supreme Court's decision in Olympic Airways v. Husain, 540 U.S. 644 (2004), which held that an airline's refusal to assist an asthmatic patient seated near the smoking section of an international flight constituted an "accident" under the Warsaw Convention. Since that ruling issued, three of the closely watched "economy class syndrome" cases have percolated to the appellate level. Many wondered, given Husain's plaintiff-friendly aspects, whether courts would hold that developing blood clots on long flights is or could be a compensable "accident." But since all three cases yielded defense rulings, the hope Husain gave plaintiffs has been diminished.

In the most recent case, Rodriguez v. Ansett Australia Ltd., 383 F.3d 914 (2004), the Ninth Circuit affirmed summary judgment for the defense, holding that neither a plaintiff's development of deep vein thrombosis ("DVT") on a flight from Los Angeles to Auckland, nor the airline's failure to warn plaintiff of the risks of developing it during air travel, constituted an "accident." The court reasoned, among other things, that DVT "clearly is the type of internal reaction to the normal operation of the aircraft, with no unusual external event, that is not an accident." The court did, however, appear to leave open the possibility that failure to warn passengers of the risks of thrombosis could constitute an accident, depending on how the science around DVT develops, but it would

not find the failure to warn an accident on the facts presented. See also Blansett v. Continental Airlines, Inc., 379 F.3d 177 (holding that airline's failure to warn of DVT was not an "unusual or unexpected event" and not an "accident" under the Warsaw Convention and reversing trial court's denial of airline's motion to dismiss), cert. denied, 125 S. Ct. 672; 160 L. Ed. 2d 498 (2004); Witty v. Delta Air Lines, Inc., 366 F.3d 380 (5th Cir. 2004) (dismissing passenger's state law claim that airline failed to warn about the risks of DVT because federal requirements for passenger safety warnings were exclusive and no such requirement to warn existed). These cases will surely not be the last word on the DVT issue. Other cases of interest are noted briefly below.



**Mystery Plane #3**

Conyers v. Merit Sys. Protection Bd., 388 F.3d 1380 (Fed. Cir. 2004). This case holds that the Merit System Protection Board has no jurisdiction to hear appeals alleging violations of employment laws brought by applicants for security screener jobs with the new Transportation Security Administration. If nothing else, this is a reminder that the regulatory landscape around the Department of Homeland Security is constantly evolving.

Ehrlich v. American Airlines, Inc., 360 F.3d 366 (2d Cir. 2004). In this case, a landing plane overshot a runway at New York's JFK airport, and only an arrestor bed stopped it from plunging into the nearby water. Pas-

sengers were evacuated, and the plaintiffs in this case alleged that they suffered both physical and mental injuries because of the abnormal landing. The court held that passengers cannot hold carriers liable under the Warsaw Convention for mental injuries that accompany, but are not caused by, bodily injuries. The opinion also contains a useful discussion of the treaty commonly known as the Montreal Convention, which now modifies the Warsaw Convention in critical respects, and the negotiations that preceded it.

Hansen v. Delta Airlines, Inc., No. 02 C 7651, 2004 U.S. Dist. LEXIS 4150, 2004 WL 524686 (N.D. Ill. Mar. 17, 2004). Plaintiff was denied permission to board an international flight — allegedly after having used the word "bomb" — and was subsequently arrested. When she sued for false imprisonment and other torts, the airline argued that the claims were preempted under the Warsaw Convention and barred by the air carrier immunity provisions of the Federal Aviation Act and the Aviation and Transportation Security Act, 49 U.S.C. §§ 44902(b) and 44941. The district court rejected the argument, holding among other things that whether the plaintiff was in the course of embarking was a question of fact for trial.✖

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**Mystery Plane #4**

### **Chairman's Message (cont.)**

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should provide insight into interesting nuances in aircraft operations. David Basil's talk on local government issues as relates to aircraft operations should give us an appreciation for the issues confronted by local governments which operate airports. We can all benefit from Bob McCormick's talk on legal ethics. Finally, our luncheon speaker, Keith Wood, should entertain us with his talk on flying in air shows and for the film industry.

I urge you all to attend our aviation law seminar on April 15, 2005.

Happy landings,

Alan Armstrong



**Our esteemed chairman (aka Lucky SOB) in front of the restored P-38 Glacier Girl that traveled to PDK for General Tibbets' recent 90th birthday celebration.**

### **SKYNOTES**

March 19-20—Thunder in the Valley Air Show at Columbus (CSG) [www.thunderinthevalleyairshow.com](http://www.thunderinthevalleyairshow.com)

March 25-26—Cherry Blossom Air Show at Macon (MAC) [www.cherryblossom.com](http://www.cherryblossom.com)

April 9-10—Team Moody Air Fest at Valdosta (VAD) [www.moody.af.mil/airshow/airshow.asp](http://www.moody.af.mil/airshow/airshow.asp)

April 9—CAF Dixie Wing Swing Dinner Dance at Falcon Field (FFC) [www.dixiewing.org](http://www.dixiewing.org)

April 12-18—Fun N Sun at Lakeland, Florida (LAL) [www.sun-n-fun.org](http://www.sun-n-fun.org)

**April 15 - Aviation Section Seminar - Marriott Century Center, Atlanta**  
[www.iclega.org](http://www.iclega.org)

April 23-24—Vidalia Onion Air Show with the Blue Angels [www.vidaliaonionfestival.com](http://www.vidaliaonionfestival.com)

May 7—CAF Dixie Wing WWII Day at Falcon Field (FFC) [www.dixiewing.org](http://www.dixiewing.org)

June 4—AOPA Fly In at Frederick, Maryland (FDK)