



PREFLIGHT

Chairman's Message

Flying a Japanese Bomber to Andrews Air Force Base

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I was nominated to fly the Japanese bomber to Andrews Air Force Base in May of this year. The flying time to Andrews would be over five hours, with one fuel stop *en route*. There were all kinds of bureaucratic matters to deal with. We had to get a PPR number from Andrews Air Force Base to land on a military facility. We had to have proof of insurance. We had to file a DVFR flight plan to penetrate the ADIZ that surrounds Washington, D.C. Finally, we had to coordinate with the Transportation Security Administration to get a waiver to fly over all kinds of restricted airspace. Luckily, Joe Broker, a retired Delta Airlines captain, assisted with some of the details.

We operate our Japanese bomber ("Kate") under VFR. The morning of our departure, the Atlanta area was socked in with clouds. Finally, by 11:30, the clouds had lifted sufficiently to enable the Kate to depart Falcon Field (FFC) in formation with the replica Japanese Zero of Captain Jack Van Ness. We motored along in formation below a cloud deck. At the request of the

control tower in Athens, we did a formation fly-by. We skirted the Class Bravo airspace near Charlotte and made our way to the Stanly County Airport (VUJ) near Albermarle, North Carolina. Refueling and grabbing a sandwich at the closest Blimpie's, we returned to the



airport and contacted both the FAA and the TSA to confirm all the paperwork was in order for us to penetrate the Washington Air Defense Zone and the restricted and prohibited air space in and surrounding Andrews Air Force Base.

Jack, in his Zero replica had led the first leg, so the second leg was mine. As we motored along on roughly a zero-five-zero heading towards Andrews, we obtained flight following. In short order, we were talking to Washington Center. Just before approaching the 30-mile ring of the Washington ADIZ, we got



handed off to Potomac Approach. When I asked Potomac Approach to verify we were cleared into the Washington ADIZ, we were given a "stand by." At this point, I commenced a left-turn holding pattern with the Zero on my right

wing while we waited for instructions to enter the Washington ADIZ. Finally, we got a

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From the Editor: Aerobatics!



**The Editor before Takeoff, Hoping
that the Airsick Bag is just for
Decoration**

Greetings everyone! As I ended up in Las Vegas for an expert deposition this month, I tried to figure out a way to spend a Sunday afternoon. Hmm . . . How about upside down in a Pitts S-2C? Sounds like a great idea!

I received aerobatic training from Lt. Col Craig "Brute" Teft, whose day job is flying an F-15E at Nellis Air Force Base. I figured that a fighter pilot would know a thing or two about aerobatics, but you never know. Those F-15s pretty much fly themselves these days. By the way, I want a call sign like "Brute". Maybe "Musk" or perhaps "Studmuffin"? I'll get back to you on that.

Craig did impress me with his emergency preparedness and professionalism. He walked me through the various emergency circumstances we could face and the appropriate response. Craig, being a bad-ass pilot, apparently only believes in using the parachute if the wing falls off or the plane catches fire. Everything else, well, we can land out in the desert. Craig then showed me how to use the parachute, how to disconnect from the numerous straps in the plane, and we did a few practice bailouts so I would be comfortable and could move quickly if needed.

We then discussed the proce-
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Pitts S-2C

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PARAMETERS OF THE PASSENGER-CARRIER RELATIONSHIP IN COMMERCIAL TRAVEL

By Nicole Wolfe Stout

It is well settled that a common carrier owes an extraordinary duty of care to its passengers. But, at what point does a person become a passenger of a commercial airline, and at what point does the carrier-passenger relationship terminate? Such are questions that permeate claims and lawsuits, which involve a passenger who is injured at a time other than during flight. Disputes arise concerning the applicable standard of care in such circumstances because the time in which a person's status converts from an invitee to a passenger and vice-versa is not clear-cut under Georgia law. O.C.G.A. § 46-9-132 provides: "A carrier of passengers must exercise extraordinary diligence to protect the lives and persons of his passengers but is not liable for injuries to them after having used such diligence." Extraordinary diligence is that extreme care and caution which very prudent and thoughtful persons exercise under the same or similar circumstances. See O.C.G.A. § 51-1-3. What the statutes do not tell us is who is considered to be a passenger of a carrier. The problem regarding which duty applies arises in cases in which the plaintiff was injured in a jetway, while walking

through a hallway to a board a bus to get to the aircraft, or while walking up or down steps in order to board or alight from smaller aircraft.



**John McClune of Michigan Discusses His Litigation
Against GARA at the Aviation Law Seminar**

Historical Perspective

The parameters of the carrier-passenger relationship began to develop in cases involving railcars or trains long before there were commercial airlines. Historically, the heightened standard



**Donald Anderson defends GARA at the
Aviation Law Seminar**

of care applicable to carriers began to be defined in cases where passengers were injured while boarding or alighting from the train. Back in the days when trains were

the most common form of common carriage, the station facilities and boarding platforms were not as uniform and standardized as the terminal facilities for commercial airlines today. There are numerous reported cases involving injuries to passengers who were instructed to alight from a train in an area that was dangerous or not suitable for walking. The Court of Appeals of Georgia held that railroad companies are bound to exercise extraordinary diligence toward a passenger

while the passenger was "in the act of alighting from the train." See *Metts v. Louisville & N.R. Co.*, 52 Ga.App. 115, 182 S.E.531, 532 (1935). Moreover, the court held that railroad companies were required to provide at their stations, "suitable, sufficient, and reasonably safe means to enable passengers to alight from cars without danger." *Id.* The duty of the carrier began "at the starting point," and did not end until the passenger was discharged. *Id.*

It is important to note that even under the extraordinary duty of care standard both historically and presently, a carrier does not have a duty to assist a passenger with boarding

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Passenger-Carrier Relationship (cont).

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unless the means afforded for boarding or alighting are inadequate or unsafe. See *Western & A.R. Co. v. Earwood*, 104 Ga. 127, 29 S.E. 913 (1898). For example, when a railroad conductor stops the train and yells “all out for Atlanta,” he may have a duty to assist the passengers when alighting when the ground is *three feet* below the train door! See *Metts v. Louisville & N.R. Co.* at 532.

Modern Commercial Air Travel

With the condition of airline travel being much improved in the way of comfort for passengers in the year 2005, the questions of whether a person qualifies as a passenger at the time he or she was injured and whether there was actually a breach of the applicable duty of care, are much more difficult to resolve. However, in the 1952 case, *Delta Air Lines, Inc. v. Millirons*, 87 Ga.App. 334, 73 S.E.2d 598 (1952), the Court of Appeals of Georgia articulated limits of the passenger-carrier relationship, and such standards still apply today. In that case, the plaintiff, Millirons, was a passenger on several connecting flights from Los Angeles to Atlanta. Delta Air Lines operated the last leg of the flight from Macon to Atlanta. It was raining upon arrival and Millirons got off the airplane with his infant grandchild in his arms. (There were no jetways available for this flight in 1947). Millirons met members of his family near a fence or barrier near where the airplane landed. One of the family members held an umbrella over Millirons and his grandchild as they walked toward a parked car, which was near Delta’s administration building at the edge of the landing field. As Millirons neared his car, he tripped and fell over a 10-inch high concrete wall, which served as a barrier to keep cars from driving onto the landing field. The parties disputed whether at the time of Millirons’ fall, Delta owed him a duty of extraordinary care.

Drawing from previous train cases, the court articulated for the first time

in Georgia the standard applicable to commercial carriers. The court noted that a carrier’s duty to exercise extraordinary diligence is dependent or “co-extensive with the relationship of passenger and carrier.” *Id.* a 341. In other words, there is a definitive at point at which a person’s status converts from merely an invitee in the station facilities to that of one of the carrier’s passengers. The court aptly noted:

“The rule of extraordinary diligence applies only to the receiving, keeping, carrying, and discharging of passengers. The carrier’s duty of exercising ordinary care to furnish safe station facilities for those to be received or for those who have been discharged as passengers is not to be confused with

ises by invitation.” *Id.* The second test articulated by the court, and derived from train cases, provides a much more useful analysis. The court held that the duty of extraordinary care continues until the passenger is in a place where “he has some *freedom of locomotion* and can in a measure look out for his own safety.” *Id.* When a passenger is confined to “a narrow and limited space of ground, *with no choice of freedom of movement*, he will not be deemed to have been discharged as a passenger until he has traversed such limited and restricted space.” The court added that until the passenger “has traversed such limited and restricted space, and so long as he is *confined and restricted in movements to such space as has been designated to him by the carrier as the only method of egress . . .*,” the carrier is under a duty to exercise extraordinary care for the passenger’s safety. *Id.* (quoting *Georgia R. & Banking Co. v. Brooks*, 30 Ga.App. 692(3), 119 S.E. 424, 425 (1923)).

Based on these principles, the court held that Millirons was not a passenger of Delta at the time that he was injured.

Because Millirons was free to go as he pleased and he was no longer restricted to a designated route, the relationship of passenger-carrier had ended extinguishing Delta’s duty of extraordinary care to him. See *Millirons v. Delta*, 87 Ga.App. at 342. In such circumstances, upon termination of the passenger-carrier relationship, the person becomes merely an invitee upon the premises of the carrier such that the carrier owes the person the duty of ordinary care. Under this standard, in the terminal or station facilities, a carrier owes no higher duty to its passengers than to passengers of other airlines, or other invitees on the premises. See *C.F. Hightower v. City Council of Augusta*, 124 Ga.App. 537, 538, 184

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Kip Loggins Discusses Professionalism

the carrier’s duty to use extraordinary care in receiving, transporting, and discharging its passengers.” *Id.*

The court discussed two tests in determining the boundaries of the passenger-carrier relationship. The first of two tests articulated by the court was a version of “who’s on first?” because it stated the result of the test rather than providing useful analysis. The first test was that the “relationship of carrier and passenger terminates when the passenger has been safely discharged and when the carrier is no longer bound to exercise extraordinary care for his safety, but is bound to use only the same degree of care for his safety as it would for the safety of any other member of the public upon its prem-

Aerobatics! (cont).

(Continued from page 2)

dures that he and I would do, which included wing-overs, aileron rolls, barrel rolls, and Cuban 8s. Since I was a pilot, Craig expected me to do these procedures myself after he demonstrated them in the air. He thoroughly briefed proper techniques and common mistakes.

I got strapped in and was ready to go. Being an instrument pilot, it was a little disconcerting not to have a DG, compass, GPS, VOR, or VSI on my control panel. I guess I would actually have to look outside the cockpit for this flight. This is going to be tougher than I thought—

Given that we had a healthy 15-20 knot crosswind and I had no taildragger time, Craig handled the takeoff. However, right after takeoff he gave me the plane so I could feel her out. I will say that the Pitts S-2C is a wonderful plane to fly. It goes right where you want her to go. Although it is obviously sensitive, it is not twitchy. I immediately took to the joystick and got comfortable by the time we got to the practice area.

The best part of the training was actually getting to do the maneuvers. Craig would discuss it, then demonstrate one, and then give the stick to me and let me give it a shot. Afterwards, he would discuss what I did wrong and we would try it again. I enjoyed the maneuvers immensely, but after a while I started getting the cold sweats and politely asked if we could head on back before my body rebelled in a more disastrous fashion.

I learned a neat trick for our landing. Apparently Pitts' pilots don't follow your standard landing pattern—or maybe "Brute" had a special dispensation from the North Las Vegas tower. Basically, we would fly directly over the active runway, and then do a steep right spiral down to the runway, with Craig skidding the tail until we lined up nicely right above the numbers. The landing was a little hard, but it was a gusty crosswind, so I didn't mind. Although we had only been up 30 minutes, it felt like I had been up there a month.

Aerobatics isn't for everybody, and my body did take a while to return to normal, but it sure was fun. Nothing quite like looking up towards the canopy during an aileron roll and watching the Nevada desert and mountains go by. Also, the wing-over is a per-



Apparently a Pitts S-2C is incapable of turning without at least 45 degrees of bank. To give some perspective, the arrow is pointing at the active runway. So much for the standard rate turn . . .

mitted maneuver in my Sierra, so I am looking forward to trying that out—but not with passengers! Should you be passing through Vegas and have some time to kill, I would highly recommend Craig and his company, Absolute Aerobatics, which also does a variety of upset, attitude awareness and spin training. More information can be found on his website here: www.absoluteaerobatics.com.

In other news, our esteemed chairman Alan Armstrong was the mystery airplane winner, as being the only person who could name all four mystery aircraft from the last issue. Given that the aircraft were all WWI vintage, and given Alan's "maturity", I guess—oh, never mind. The mystery aircraft were: (1) Bleriot XI monoplane; (2) Fokker D-VIII; (3) Vickers F.B. 5 Gunbus; and (4) Albatross D.Va fighter. Alan won lunch for two at the Downwind! Given the articles and numerous photographs from the recent Aviation Law Seminar, we will not have a mystery aircraft sweepstakes until the Fall 2005 issue.

Finally, I also wanted to welcome aboard Nicole Stout of Strawinski & Goldberg, LLP, for her contribution starting on page 3. Nicole is new to our team of writers, and I wanted to welcome her and say that I look forward to future articles from her that have the same clarity and depth of research found in our current issue! ✕

Passenger-Carrier Relationship (cont).

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S.E.2d 678 (1971); see also *Cronin v. Delta Air Lines, Inc.*, 19 Ill.App.3d 1073, 313 N.E.2d 245 (1974)(applying Georgia law).

The standard articulated in *Millirons* still applies to commercial air carriers, and other carriers to this day. Although there are few aviation cases applying *Millirons*, cases involving other carriers, especially buses, have continually reaffirmed the *Millirons* holding. For example, a person using a walkway in order to board a bus after purchasing his ticket is not a "passenger," *Columbus Transp. Co. v. Curry*, 122 Ga.App. 700, 122 S.E.2d 584 (1961), but a person who falls while stepping from a bus is entitled to an extraordinary duty of care.

In cases involving air carriers, some disputes regarding the applicable standard of care may be simple to resolve. If a person has passed through security, and is injured while walking through the terminal or while waiting at her gate, the carrier only owes her an ordinary duty of care. This is because the passenger-carrier relationship has not yet begun. Regardless of whether the person has a ticket to board an aircraft, in the terminal areas where she has freedom to move about, this *anticipated* passenger is no different than any other invitee in the station facilities. On the other end of the spectrum, if a person trips on the aircraft while walking to his seat or trips while alighting through the threshold of the aircraft, he is a passenger owed extraordinary diligence because undoubtedly the passenger-carrier relationship has begun. What if a person trips and falls while in the jetway en route to board the aircraft? Given that there is no Georgia case on this issue, the status of the person in this situation is not clear. The argument can be made that the person is merely an invitee because the person can turn around and walk off the jetway and have *freedom of locomotion*. He is not bound to board the aircraft, and there is no

prohibition against him walking back into the terminal area. The rationale in favor of this argument is that the jetway is part of the terminal, not the aircraft. One attempting to argue that the extraordinary duty of care applies may contend that once the person presents his boarding pass to the carrier's agent, the passenger-carrier relationship has begun

and will not be terminated until the person re-enters the station facilities of the carrier. The rationale for that side of the argument may be that the jetway itself restricts a person's movement in that it funnels passengers to the aircraft or from the aircraft after deboarding. Similarly, a gray area would be the situation where a person must walk down a corridor and

possible steps in order to board a small aircraft. Since there are numerous circumstances in which an air traveler's status is not clear, the argument over the appropriate standard of care is always debatable in these cases, and especially given that there is no Georgia case on point.

Currently, the rule of law established in *Millirons* lives on in cases in which negligence is alleged against any common carrier arising under Georgia law. Since the applicable standard of care owed by an airline often determines the ultimate outcome of the case, the lawyer (regardless of which side you are on) must be well versed in the doctrine of *Millirons* in order to advocate the client's position. ✕

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Peter Stathopoulos Takes a Question from the Audience during his Presentation Regarding Tax Aspects of Aircraft Ownership

Chairman's Message (cont.)

(Continued from page 1)

clearance to enter the Washington Class Bravo via direct to Andrews. As we flew towards Andrews Air Force Base, the City of Washington was visible off our left wing. We made a 360 overhead approach for Andrews and then landed only to be greeted by military police and bomb-sniffing dogs. Having satisfied the military authorities that our Japanese replica aircraft presented no threat to national



security, we taxied across the parallel runways and secured the Kate and Zero on the tarmac in reasonably close proximity to the Base Operations for the 89th Airlift Wing. The 89th Airlift Wing operates Boeing 767 aircraft for government officials such as the Secretary of State and American diplomats. It also operates Air Force One. During the course of our stay, we also saw Air Force One depart and land on the same day. A helicopter carrying President Bush arrived; and moments later Air Force One was airborne.

The air show at Andrews Air Force Base was called "The Joint Services Open House." It featured an extensive array of Air Force, Navy, and Marine aircraft in the current inventory. It also featured a number of World War Two aircraft operated by a variety of organizations and individuals. Photographs of some of the aircraft attending the air show accompany this article.

We returned to the Atlanta area on a Sunday afternoon. Again, the fuel stop was Stanly County. *En route*, we encountered a blimp, which requested a fly-by. We dutifully complied with this request so that passengers in the blimp could take pictures of the Japanese bomber. Arriving after sunset, I landed the Kate at Falcon Field, fatigued after a long day's flying.

I am very grateful to our Newsletter Editor, Mark Stuckey, who does a terrific job in the formulation and publication of

SKYNOTES

June 25—SE Mooney Pilot Fly In at the Rome Airport (RMG)

July 2—Pensacola Beach Air Show, featuring the Blue Angels and the CAF Dixie Wing (PNS)

July 4—Pickens County Airport Appreciation Day, with vintage flights and static displays (JZP)

July 6-10—LPBA Summer Meeting at Mackinac Island (MCD)
www.lpba.org

July 9—Gainesville EA 611 Annual Cracker Fly In (GVL)
www.eaa611.org

Sept 14-18—Reno National Championship Air Races (4SD)
www.airrace.org

October 8-9—Great Georgia Airshow at Falcon Field (FFC) with the CAF Dixie Wing
www.thegreatgeorgiaairshow.com

October 14-15—Boshears/Augusta Airshow (DNL)
www.boshears.com

this newsletter. The Aviation Section has an active and devoted membership, and I am privileged to serve as your Chairman.

Have a safe summer.

Happy landings,

Alan