



FLIGHT-WATCH



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PART 16 COMPLAINTS AND RELATED FEDERAL COURT LITIGATION MAY INVOLVE BIG DOLLARS

Public airports throughout the nation are typically owned and operated either by counties, or by cities, or public authorities. These airport owners or sponsors ordinarily receive 90% of the money required for capital outlay projects for acquiring, establishing, and improving air navigation facilities on an airport from the FAA, while the remaining 10% comes from the airport owner. The funds are typically provided to the airport owner by way of

The Airport Development Program (“ADAP”). When airport owners receive Federal funds, they are required to assume certain obligations pertaining to the operation, use and maintenance of the airport. These obligations are embodied in the application for federal assistance as grant assurances and become a part of the grant offer, and bind the grant recipient upon acceptance. These grant assurances declare, among other things, that the airport will be operated for the use and benefit of the public and that it will be available to all types, kinds and classes of aeronautical activities on fair and reasonable terms without unjust discrimination. Where the airport owner

grants a person the right to provide an aeronautical service, the provider of these aeronautical services must promise to furnish the services on a reasonable and not unjustly discriminatory basis to all users and to charge reasonable and not unjustly discriminatory prices, provided that reasonable and non-discriminatory discounts may be given to volume purchasers.



If a person or facility providing aeronautical services on an airport believes it has been the subject of economic discrimination, or if persons aspiring to provide such services are denied access to the airport to provide those services, it is possible to file a complaint under Part 16 of the Federal Aviation Regulations with the FAA in Washington. This is frequently called a “Part 16 complaint.” If the airport owner or operator is found guilty of violating its grant assurances, it is possible for the FAA to terminate Federal funds and even recover funds previously provided to the airport operator. But what happens if a small airport, which is owned by a city or county, the airport is a small airport and the city or county which owns the airport provides the only services on the airport? While the FAA has typically found that exclusive rights agreements violate grant assurances, it is possible for the city or county which owns the airport to provide the aeronautical services on the airport, such as selling fuel, providing tie-down space, etc. A second exception is recognized by the FAA where small and rural airports may

not generate the volume of business sufficient to attract more than one fixed-base operator (“FBO”). In this situation, the FAA recognizes the single activity exception. As long as the airport provides the opportunity to engage in aeronautical activities to persons meeting relevant and reasonable qualifications to that service, a single service provider on an airport may not be considered an exclusive right. Whether the second exception applies is determined on a case-by-case basis.

There has been substantial litigation surrounding the operation of the airport in Naples, Florida. The litigation relates to the provision of exclusive rights involves allegations of that Jet 1 has been selling fuel on the airport without authorization where when the City of Naples Airport Authority (the “Authority”) possessed that exclusive right. According to reports, legal battles surrounding litigation between the Authority and Jet 1 have cost the Authority more than \$2.5 million. The Authority contends that Jet 1



owes it approximately \$5 million for fuel sales. In December of 2003, Judge Hugh D. Hayes granted the Authority's request for a permanent injunction prohibiting Jet 1 Center from fueling aircraft on the airport. More recently, in Part 16 litigation, the FAA Associate Administrator on July 15, 2005, affirmed an FAA preliminary decision issued in January of this year, declaring that the City of Naples was, and remains, to be the sole provider of aircraft fuel on the airport. See *Jet 1 Center, Inc., v. Naples Airport Authority*, FAA Docket No. 16-04-03. [Note: this is a citation to the Part 16 Case, only].

RESULTS OF THE EMERGENCY AIRWORTHINESS DIRECTIVE ISSUED AGAINST THE AT-6 AND SNJ SERIES AIRCRAFT

On May 9, 2005, an SNJ-6 (AT-6F) crashed, resulting in two fatalities. The investigation revealed a large fatigue crack in the failed right-hand lower inboard wing attach angle. The NTSB determined that the crack growth occurred over a long period of time. The wing attach angle on the accident aircraft did not appear to be corroded. Shortly after this crash, the FAA issued Emergency AD 2005-12-51. The AD effectively and immediately grounded the AT-6/SNJ Texan fleet until compliance with an inspection of the attach angles and wing bolts was accomplished. Texan owners were required to accomplish this



AD immediately before further flight of the aircraft, and the AD is repetitive and must be accomplished every 200 flight hours.

By July 12, 2005, about three hundred owners and operators (about one-half of the fleet) had submitted reports regarding their inspection of their attach angles. There were twelve reports of cracks, corrosion, or damage. There were two reports of cracks similar to those found in the accident aircraft. While the initial inspections of the attach angles and wing bolts have been accomplished via fluorescent penetrant inspections, in the future it may be possible to accomplish this inspection via eddy current inspection procedures.

A sample list of some of the ADs that apply to the AT-6 and SNJ series aircraft are set forth below:

AD Number	AD Subject
2005-12-51	Upper and lower wing at tach angles
50-38-01	Fuselage structure corrosion
50-09-01	Stabilizer spar fittings and shims
49-07-02	Fuel system placard
46-46-02	Elevator stop
46-17-01	Flap control universal joint pins
46-11-01	Landing gear retracting strut
2005-12-51	Upper and lower wing at tach angles
81-14-10	Vertical and horizontal stabilizers

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- 46-17-01 Flap control universal joint
- 46-11-01 Landing gear retracting strut
- 2005-12-51 Upper and lower wing attachment angles
- 81-14-10 Vertical and horizontal

**NOTE OF APPRECIATION
AND RECOGNITION**

David Basil, Esq., who practices in Carrollton, Georgia, made valuable suggestions with respect to the content of this month's Flightwatch. Mr. Basil can be reached at 770-830-5804, or via email: dbasil@carrollcountyga.com.



stabilizers

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