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William B. Ingram, Editor

Carrie F. Suenaga, Editorial Assistant

(844) 825-5501

e-mail: wbi@triplelpublications.com

P.O. Box 308

Selma, AL 36702-0308

General Aviation

One FAA Inspector Killed, One Severely Injured in Crash of R-44 at Hawkins Field — Additional Information $3.9 Million Gross Verdict. This case was first reported in Issue 331. The plaintiffs' decedents, FAA inspectors ages 59 and 58, were practicing touch and go maneuvers in this aircraft when a substantial vibration began. The pilot in command (the older man) suffered blurred vision and lost control. The helicopter crashed into a stand of trees. The younger inspector perished. The older man was severely injured. Plaintiffs claimed that the severe vibration (called "chugging") caused the loss of control. At trial plaintiffs presented evidence of similar accidents. The defense denied any defect and argued that the pilot failed to maintain adequate RPM for the rotor, which led to a stall. The defense also argued that low RPM caused the vibration.

At the conclusion of an eleven day trial, the jury allocated fault 70% to the manufacturer 15% to the FAA and 15% to the pilot. The passenger was awarded $700,000. The surviving pilot was awarded $2,814,074. The owner of the helicopter was awarded $384,000 for property damages. A confidential settlement was reached before the punitive damages portion of trial was to begin.

Additional expert witness information is now available.

Defendant's Additional Experts: Douglas Tomkins, helicopter piloting (in-house), Torrance, CA; Kenneth Oroloff, aerospace engineering, Groveland, CA..

Larry Wells, et al v. Robinson Helicopter, U.S. District Court S.D. Mississippi No. 3:12-564. Douglas Desjardins, Michael L. Pangia, Washington, DC; Joseph Anderson, Winston-Salem, NC; Louis H. Watson,Jr., R. Nicholas Norris, Jackson, MS for plaintiffs. David L. Ayers, H. Ruston Comley, Jackson, MS; Tim A. Goetz, Torrance, CA for defendant.

ALW No. GA.34511

Crash of R-44 Kills Two Oil Concern Co-Workers — California Jury Finds for Defense on Design Defect Claim. Plaintiff's decedents, a twenty-six year-old oil field production and sales manager, and a twenty-nine year-old safety and human resources manager were passengers in a Robinson R 44 on a business-related flight from Fredricksburg, Texas to Sequin, Texas, on October 11, 2012. Unfortunately, control was lost and the helicopter impacted hilly terrain near Blanco, Texas. All three aboard perished. According to track data recovered from a handheld GPS receiver found in the wreckage, the heli-

copter was on the final leg of a cross-country flight that had originated earlier in the day. According to fueling documentation, the helicopter was refueled, and the flight departed and proceeded on a southeast course toward the intended destination. According to the plotted GPS data, while enroute, about 600 feet above ground level (agl), the helicopter entered a descending left turn to an east-northeast course. About 30 seconds later, after descending about 100 feet, the helicopter entered a climb while on a northeast heading. During the climb, the helicopter's groundspeed decreased from 73 knots to 27 knots. The final GPS data point, recorded about 1 minute after the initial turn from the intended course, showed the helicopter about 800 feet agl at 27 knots groundspeed and about 0.2 mile north-northwest of the accident site. The helicopter wreckage was located in a sparsely populated area with hilly terrain. The debris path was orientated on a south-southeast heading, and the length and distribution of the debris path were consistent with the helicopter impacting rising terrain at cruise speed. Post-accident examination of the helicopter revealed no evidence of a preimpact failure or malfunction that would have precluded normal operation.

A post-accident review of meteorological data established that marginal visual flight rules conditions likely existed in the vicinity of the accident site at the time of the accident. The weather data supported increasing low-level cloud development and scattered light rain showers. No strong outflow winds or severe storm signatures were associated with the observed rain showers. The accident flight was conducted in dark nighttime conditions with minimal illumination from ground light sources. The helicopter's flight path during the last minute of GPS data was consistent with the pilot becoming spatially disoriented due to the lack of a discernible horizon that he could use to maintain control of the helicopter. Although the helicopter was equipped with basic attitude instrumentation and avionics, it was not certified for flight under instrument flight rules (IFR). Additionally, although the pilot held an instrument rating for helicopters, his IFR currency could not be verified from available logbook data. According to FAA correspondence, about 5 months before the accident, the FAA had notified the pilot that he was ineligible to hold any class of medical certificate because of his multiple alcohol-related offenses. Although he had been advised multiple times of his ineligibility to hold a medical certificate, flight documentation established that the pilot continued to exercise the privileges of his commercial and flight instructor certificates. Toxicological test results for the pilot were negative for carbon monoxide, cyanide, ethanol, and all drugs and medications.

The helicopter operator, Veracity Aviation, LLC, reported that the accident occurred during an instructional flight; however, a review of available evidence did not support that the front-seat passenger was receiving flight instruction on the accident flight. According to FAA records, the front-seat passenger had never applied for a student pilot certificate or an aviation medical certificate. Additionally, a pilot logbook was not recovered during the investigation for the front-seat passenger. According to a business associate of both passengers, the front-seat passenger had coordinated the flight to attend a business appointment. According to photographs recovered from the front-seat passenger's mobile phone, on earlier flight legs, he had been seated in the left front seat. According to the helicopter manufacturer, the flying pilot typically would be seated in the right front seat, especially during initial flight instruction. Additionally, a review of the front-seat passenger's mobile phone established that he had been exchanging text messages with a business colleague in the minutes preceding the accident. Specifically, the final outgoing text message was sent about 26 seconds before the helicopter deviated from the direct course toward the intended destination.

Plaintiffs' suit charged that the R-44's drive system was defectively designed so that a mechanical failure led to a loss of power in the main rotor blades. Plaintiffs asserted that the pilot attempted a last ditch autorotation which failed due to design defect and a lack of warnings regarding emergency procedures. The defense denied any defect and claimed that the incident was the result of pilot error.

The jury returned a defense verdict after deliberating almost three hours after a four week trial.

Plaintiffs' Experts: William Lawrence, pilot performance, Richland Hills, TX; Colin A. Sommer, P.E., engineering, Broomfield, CO; Elizabeth J. Austin, Ph.D., meterology/climatology, Incline Village, NV.

Defendant's Experts: Kenneth L. Orloff, Ph.D., engineering, Groveland, CA; Timothy C. Tucker, pilot performance, Los Alamitos, CA; Peter E. Hildebrand, Ph.D., meteorology, Washington, DC; John R. Moalli, Sc.D., polymers, Menlo Park, CA.

Ray Aaron, et al v. Robinson Helicopter Company, et al, Los Angeles Co. (CA) Superior Court No. BC556859. William O. Angelley, Robert R. Varner, Jr., Braden, Varner & Angelley, Dallas, TX; Matthew W. Meyer. Alan Powers, Michael A. Simpson, Simpson, Boyd, Powers & Williamson, Decatur, TX;

Douglas C. Griffith, Pasadena, CA for plaintiffs. Stephen E. Ronk, Anthony J. Ballone, Erika L. Shao, Gordon & Rees, Los Angeles, CA; Tim A. Goetz, Catherine A. Tauscher, (in-house Robinson Helicopter), Torrance, CA for defendant.

ALW No. GA34512

FAA Rebate Program for General Aviation Aircraft Owners Who Equip with Automatic Dependent Surveillance-Broadcast (ADS-B) in Effect. On September 13 Federal Aviation Administration (FAA) Administrator Michael Huerta announced tat the FAA is delivering on its commitment to incentivize general aviation aircraft owners to equip their aircraft with required NextGen avionics technology before the January 1, 2020 deadline. On September 19, 2016, the FAA's Automatic Dependent Surveillance-Broadcast (ADS-B) rebate website went live, and general aviation aircraft owners now the opportunity to apply for a $500 rebate to help offset the cost to equip eligible aircraft in a timely manner, rather than waiting to meet the mandatory equipage date. "NextGen has played and will continue to play an important role in ensuring that our airspace is safe and efficient for the American people, and we are focused on achieving its full potential," said U.S. Transportation Secretary Anthony Foxx. "This incentive program is an innovative solution that addresses stakeholder concerns about meeting the 2020 deadline, and will make a huge difference in helping the general aviation community equip."

ADS-B is a foundational NextGen technology that transforms aircraft surveillance using satellite-based positioning. ADS-B Out, which is required by January 1, 2020, transmits information about a plane's altitude, speed, and location to air traffic control and other nearby aircraft. ADS-B In allows aircraft to receive traffic and weather information from ground stations and to see nearby aircraft that are broadcasting their positions through ADS-B Out. Owners can choose to install only ADS-B Out equipment to meet the 2020 requirement, or they can purchase an integrated system that also includes ADS-B In.

On June 6, 2016, Secretary Foxx and FAA Administrator Michael Huerta announced that the rebates would be available starting this fall, and that only installations performed after the program launched would be eligible for the rebate. Previously equipped aircraft will not be eligible. The $500 rebate will help offset the cost of purchasing required avionics equipment, which is available for prices as low as $2,000.

Beginning in September 2016, the FAA will issue 20,000 rebates on a first-come, first-served basis for one year or until all 20,000 rebates are claimed – whichever comes first. The rebate is available only to owners of U.S.-registered, fixed-wing, single-engine piston aircraft that were first registered before January 1, 2016. The FAA will not provide rebates for software upgrades on already equipped aircraft, or for aircraft for which the FAA has paid or committed to upgrade. The FAA estimates that 160,000 aircraft need to be equipped by the deadline.

Aircraft owners who have a standard airworthiness aircraft may have a repair station or an appropriately-licensed A&P mechanic install the ADS-B equipment. Owners of aircraft certificated as experimental or light sport must adhere to applicable regulations and established standards when installing ADS-B equipment. Owners are only eligible for the rebate if they install the avionics after September 19, 2016 and within 90 days of the rebate reservation date. Aircraft owners will have 60 days after the scheduled installation date to validate their equipage by flying their aircraft, and will then be able to claim the rebate. The reservation system will require an N number, installation date, and the planned ADS-B equipment being installed.

The FAA published a final rule in May 2010 mandating that aircraft flying in certain controlled airspace be equipped with ADS-B Out by January 1, 2020. That airspace is generally the same busy airspace where transponders are required today. Aircraft that fly only in uncontrolled airspace where no transponders are required, and aircraft without electrical systems, such as balloons and gliders, are exempt from the mandate.

ALW No. GA34506

NTSB Says Gemeral Aviation Accidents Continue to Decline. According to the latest aviation accident statistics released by the National Transportation Safety Board on Thursday, September 22, Part 91 general-aviation accidents and fatalities continued their downward trend in 2015. While general aviation flight hours were up in 2015, the total number of accidents were down, from 1,223 in 2014 to 1,209, as was the rate of accidents per 100,000 flight hours. Just as in 2014, there were no fatalities for U.S. airlines.

"Even though the fatality rate in 2015 was the lowest it has been in many years, 376 people still lost their lives," said NTSB Chairman Christopher A. Hart, "which is why improving general aviation safety is on the NTSB's Most Wanted List of transportation safety improvements. While lower, these numbers are still too high'' said Hart.

The accident rate for non-scheduled air carrier flights, or on-demand Part 135 operations was up, but only slightly.

ALW No. GA34502

Air Carriers

NTSB Says Excessive Reverse Thrust Led to Runway Excursion of Delta Flight 1086. On September 13, the National Transportation Safety Board concluded that the application of excessive reverse thrust during the landing of Delta flight 1086 at LaGuardia Airport, New York, March, 5, 2015, led to a loss of directional control and the passenger jet's departure from the snow covered runway. Flight 1086 landed on LaGuardia Airport's runway 13, veered to the left and departed the side of the runway, contacted the airport perimeter fence and came to rest with the airplane's nose on an embankment next to Flushing Bay.

The NTSB investigation found that the probable cause of the accident – in which 29 of 127 passengers suffered minor injuries – was the captain's inability to maintain directional control of the Boeing MD -88 due to his application of excessive reverse thrust, which degraded the effectiveness of the rudder in controlling the airplane heading. The aircraft was substantially damaged.

"The passengers and crew of Delta flight 1086 were fortunate to have survived this crash with no loss of life or serious injuries," said NTSB Chairman Christopher Hart. "Proper use, in real time, of precise, accurate, and timely information about the condition of the runway can help make winter operations safer, as well as the study and use of large quantities of data to inform best practices. If today's recommendations are acted upon, future landings on contaminated runways will be safer because of actions to enable the timely communication and use of information to eliminate potentially life-threatening unknowns."

The NTSB investigation also revealed that, during the accident sequence, damage to the aircraft resulted in the loss of the interphone and public address system as methods of communication after the accident. As a result, the announcement to evacuate the aircraft was delayed and more than 17 minutes passed before all passengers were off the aircraft.

The NTSB made 10 recommendations to the Federal Aviation Administration, two to Boeing, one to the U.S. operators of MD-80 series airplanes, and one to the Port Authority of New York and New Jersey. The Safety Board recommended that the FAA:

- Collaborate with Boeing and US operators of MD-80 series airplanes to (1) conduct a study to examine reverse thrust engine pressure ratio (EPR)-related operational data, procedures, and training and (2) identify industry-wide best practices that have been shown to be effective in reliably preventing EPR exceedances to mitigate the risks associated with rudder blanking.
- Encourage US operators of MD-80 series airplanes to (1) implement the best practices identified in Safety Recommendation [1] and (2) participate in an industry-wide monitoring program to verify the continued effectiveness of those solutions over time.
- Require operators of MD-80 series airplanes to revise operational procedures to include a callout when reverse thrust power exceeds 1.3 engine pressure ratio during landings on a contaminated runway.
- Continue to work with industry to develop the technology to outfit transport-category airplanes with equipment and procedures to routinely calculate, record, and convey the airplane braking ability required and/or available to slow or stop the airplane during the landing roll.
- If the systems described in Safety Recommendation [4] are shown to be technically and operationally feasible, work with operators and the system manufacturers to develop procedures that ensure that airplane-based braking ability results can be readily conveyed to, and easily interpreted by, arriving flight crews, airport operators, air traffic control personnel, and others with a safety need for this information.
- Require 14 *Code of Federal Regulations* Part 121 operators to provide (1) guidance that instructs flight attendants to remain at their assigned exits and actively monitor exit availability in all non-normal situations in case an evacuation is necessary and (2) flight attendant training programs that include scenarios requiring crew coordination regarding active monitoring of exit availability and evacuating after a significant event that involves a loss of communications.
- Develop best practices related to evacuation communication, coordination, and decision-making during emergencies through the establishment of an industry working group and then issue guidance for 14 *Code of Federal Regulations* Part 121 air carriers to use to improve flight and cabin crew performance during evacuations.
- Clarify guidance to all 14 *Code of Federal Regulations* Part 121 air carriers to reinforce the importance of (1) having precise information about the number of passengers aboard an airplane, including lap-held children, and (2) making this information immediately available to emergency responders after an accident to facilitate timely search and rescue operations.

● For airports certificated under 14 *Code of Federal Regulations* Part 139, direct airport certification safety inspectors to ensure, before or during the airports' next scheduled annual inspection, that policies and procedures for friction measurement during winter operations are accurately and adequately described in the airports' *Airport Certification Manual* and Snow and Ice Control Plan.

● Revise Advisory Circular 150/5200-30D, Airport Field Condition Assessments and Winter Operations Safety, to provide more precise guidance regarding (1) the need to issue notices to airmen (NOTAM) in a timely manner and (2) the specific changes to runway surface conditions that would prompt the issuance of updated NOTAMs.

The Safety Board recommended that Boeing:

● Collaborate with the Federal Aviation Administration and US operators of MD-80 series airplanes to (1) conduct a study to examine reverse thrust engine pressure ratio (EPR)-related operational data, procedures, and training and (2) identify industry-wide best practices that have been shown to be effective in reliably preventing EPR exceedances to mitigate the risks associated with rudder blanking,

● Explore the possibility of incorporating an alert in MD-80 series airplanes to aid pilots in preventing engine pressure ratio exceedances.

The Board recommended that US operators of MD-80 series airplanes:

● Collaborate with the Federal Aviation Administration and Boeing to (1) conduct a study to examine reverse thrust engine pressure ratio (EPR)-related operational data, procedures, and training and (2) identify industry-wide best practices that have been shown to be effective in reliably preventing EPR exceedances to mitigate the risks associated with rudder blanking.

Finally, the Board recommended that the Port Authority of New York and New Jersey:

● After consultation with the Federal Aviation Administration, clarify your policies regarding continuous friction measuring equipment use during winter operations and ensure that this information is included in the *Airport Certification Manual* and Snow and Ice Control Plan for each airport operated by the Port Authority.

ALW No. AC34505

Flight Paramedic Blames Firing on Reporting Violations of Various Regulations — Eighth U.S. Circuit Court of Appeals Affirms Dismissal on Grounds of ADA Preemption. From July 2013 until May 2014, the plaintiff worked as a flight paramedic for Air Methods Corporation, which operates flights and provides in-flight medical care for patients who require emergency air transportation to hospitals via a fleet of some 450 aircraft. According to plaintiff, during his employment with Air Methods, he observed numerous violations of federal airline safety regulations. Those included a pilot making cellphone videos during flight, members of a medical crew text messaging during critical phases of flight, a pilot attempting to take off in unsafe conditions, and another pilot making unnecessary "run-on landings." Plaintiff reported the alleged violations to Air Methods' corporate office. He was later suspended and ultimately terminated.

In August 2014, plaintiff sued Air Methods in Missouri state court for the common-law tort of wrongful discharge in violation of public policy. Under Missouri common law, an employer may not terminate an employee "(1) for refusing to violate the law or any well-established and clear mandate of public policy . . . or (2) for reporting wrongdoing or violations of law to superiors or public authorities," [see, *Fleshner v. Pepose Vision Inst., P.C.*, 304 S.W.3d 81, 92 (Mo. 2010)]. Air Methods removed the case to federal court, invoking diversity jurisdiction under 28 U.S.C. § 1332, and then moved to dismiss the complaint based on Botz v. Omno Air International, 286 F.3d 488 (8th Cir. 2002). The district court granted the motion, concluding that the Airline Deregulation Act, as interpreted in *Botz*, pre-empted the wrongful discharge claim.

A panel of the Eighth U.S. Circuit Court of Appeals conducted a de novo review and affirmed the action of the district court on August 24. It pointed out that *Botz* construed the effect of the ADA pre-emption clause on state whistleblower-protection laws. There, a flight attendant refused to work both legs of an Alaska-to-Japan round trip because she believed the assignment violated a federal regulation concerning cabin crewmembers' working hours. She also reported to the airline her belief that the refused assignment, and a comparable assignment six months earlier, violated 14 C.F.R. 121.647 (2001). After the airline fired the flight attendant for insubordination and refusing to accept an assignment, she sued under the Minnesota whistleblower-protection statute. The Minnesota statute prohibits an employer from firing an employee who reports in good faith a suspected violation of federal or state law or "refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law.," [Minn. Stat. § 181.932, subds. 1(1), (3)].

The *Botz* court then focused first on the potentially disruptive effect of even a single crewmember refusing a work assignment in that federal airline regulations set

minimum staffing requirements for all commercial flights, so a crewmember's refusal to fly usually would force an airline either to find a last-minute replacement or to cancel the flight. The court observed that: "[r]eplacing a flight attendant even with a few days notice might prove problematic or even impossible . . . for a small air carrier with relatively few flight attendants. For any size carrier, a significant likelihood exists that the carrier will have to cancel the flight in order to comply with the [federal] flight-attendant staffing regulations." Consequently, the court concluded that the "authorization to refuse assignments, and the protection that the whistleblower statute provides, have a forbidden connection with an air carrier's service under any reasonable interpretation of Congress's use of the word 'service.'"

The *Botz* panel then explained that its analysis of the ADA's pre-emptive effect was 'bolstered by' the Whistleblower Protection Program of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (WPP), 49 U.S.C. § 42121. Enacted in 2000, the WPP amended the ADA to create what the court described as a "single, uniform scheme for responding to air-carrier employees' reports of air-safety violations." The *Botz* court thought the WPP's protections "illustrate the types of claims Congress intended the ADA to pre-empt."

Although the WPP does not contain a pre-emption provision, *Botz* concluded that the enactment informed the scope of pre-emption under the ADA. The court reasoned that Congress, presumably aware of the broad pre-emptive scope of § 41713(b)(1), would have "directed language in the WPP to the issue of federal pre-emption only if it had been Congress's intent that the WPP not exert any pre-emptive effect upon state whistleblower provisions." "In fashioning a single, uniform standard for dealing with employee complaints of air-safety violations," the court said, "Congress furthered its goal of ensuring that the price, availability, and efficiency of air transportation rely primarily upon market forces and competition rather than allowing them to be determined by fragmented and inconsistent state regulation." The court thus concluded that the WPP was "powerful evidence of Congress's clear and manifest intent to pre-empt state-law whistleblower claims related to air safety." In the end, Botz determined that the plain language of the ADA's pre-emption provision encompassed the plaintiff's claims, but that the WPP dispelled "whatever doubt might possibly linger after a plain-language analysis of the ADA's pre-emption provision."

With respect to plaintiff's argument that *Botz* could be distinguished on a ground suggested by three circuits that declined to follow *Botz* in situations where an employee asserted only that he was fired for making a *post hoc* safety report which could not have affected the carrier's ability to conduct a flight [*Branche v. Airtran Airways, Inc*., 342 F.3d 1248 (11th Cir. 2003), *Gary v. Air Group, Inc*., 397 F.3d 183 (3d Cir. 2005), and *Ventress v. Japan Airlines*, 603 F.3d 676 (9th Cir. 2010)] the court found that it was "constrained by circuit precedent to rule that [plaintiff's] claim is pre-empted" as it noted that the *Botz* plaintiff brought two whistleblower-retaliation claims: one based on refusing to accept an assignment and one based on reporting a perceived violation of federal safety regulations and that the dismissal of both claims was affirmed. Plaintiff's proffered distinction, the court found, could explain dismissal of the former claim but not the latter. Because *Botz* ruled that the plain language of § 41713(b)(1), bolstered by enactment of the WPP, pre-empted a whistleblower-retaliation claim based on reporting an alleged safety violation to an employer, the court concluded that plaintiff's claim could not be distinguished from the second claim dismissed in *Botz*. **John A. Watson v. Air Methods Corporation**, U.S. Court of Appeals for te Eighth Circuit No. 15-1900.

ALW No. AC34513

FAA Suspends Western Air Express' Certificate. On September 21, the Federal Aviation Administration issued an emergency order suspending the air carrier certificate of Western Air Express, based in Midland, Texas. Western Air Express operates one twin-engine Beechcraft Queen Air model BE-70-70 certificated for passenger operations. An FAA inspection on April 28, 2016, revealed that Western Air Express had not complied with engine or propeller overhaul requirements. The aircraft's right engine had been operating since November 2006 and the left engine had been operating since December 1994 without the required overhauls. In addition, the aircraft propellers required a maintenance overhaul in February 2015. By failing to comply with these overhaul requirements, Western Air Express is in violation of Federal Aviation Regulations and the carrier's operation poses an unacceptable risk to aviation safety.

Western Air Express was ordered to immediately surrender its air carrier certificate to the FAA. Failure to comply could result in further legal enforcement action, including a civil penalty of up to $11,000 for each day the certificate is not returned. The period of suspension will be in effect until Western Air Express demonstrates to the satisfaction of the FAA that all engines and propellers on the aircraft meet the requirements of the manufacturer's maintenance program.

ALW No. AC34503

Safety Board Releases Initial Findings Regarding Uncontained Engine Failure of Southwest Flight 3742. On September 12 the National Transportation Safety Board released an investigative update regarding the uncontained engine failure happened on Southwest Flight 3742, a Boeing 737-700 en route from New Orleans, Louisiana, to Orlando, Florida. The airplane was diverted to Pensacola International Airport, Pensacola, Florida, and safely landed without further incident.

Initial findings from the examination of the airplane include:

The left engine inlet separated from the engine during the flight. Debris from the engine inlet damaged the airplane fuselage, wing and empennage;

A 5-inch by 16-inch hole was found in the left fuselage just above the left wing;

No fan blade or inlet material was found in the hole and the passenger interior compartment was not penetrated; and.

During the accident sequence, the airplane experienced a cabin depressurization.

The aircraft maintenance records are being reviewed.

Initial findings from the engine examination include:

One fan blade separated from the fan disk during the accident flight; and.

The root of the separated fan blade remained in the fan hub; however, the remainder of the blade was not recovered.

Initial findings from the metallurgical examination conducted in the NTSB Materials Laboratory include:

The fracture surface of the missing blade showed curving crack arrest lines consistent with fatigue crack growth. The fatigue crack region was 1.14-inches long and 0.217-inch deep;

The center of the fatigue origin area was about 2.1 inches aft of the forward face of the blade root. No surface or material anomalies were noted during an examination of the fatigue crack origin using scanning electron microscopy and energy-dispersive x-ray spectroscopy, and;

The blades are manufactured of a titanium alloy and the root contact face is coated with a copper-nickel-indium alloy.

NTSB Senior Aviation Investigator Tim LeBaron, the Investigator-in-Charge, is leading a team with expertise in the areas of airworthiness, powerplants, and metallurgy. The flight data recorder and the cockpit voice recorder were shipped to the NTSB Recorder Laboratory and the data from each were downloaded. Parties to the investigation include the Federal Aviation Administration, Southwest Airlines the Southwest Airlines Pilots Association, and CFM International. The French Bureau d Enqutes et d'Analyses pour la sécurite de laviation civile has appointed an accredited representative who is supported by a technical advisor from Safran Aircraft Engines. CFM International is a joint venture between GE Aviation [US] and Safran Aircraft Engines [France].

ALW No. AC34507

Automatic Shutoff Concerns for Center and Auxiliary Fuel Tank Boost Pumps on Boeing 737-100, -200, -200C, -300, -400, and -500 Series Airplanes Leads to New AD. On September 26 the FAA gave notice that it is adopting a new airworthiness directive for all The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. [81 Fed.Reg. 65864] This AD was prompted by fuel system reviews conducted by the manufacturer and requires installing an automatic shutoff system for the center and auxiliary tank fuel boost pumps, as applicable; installing a placard in the airplane flight deck if necessary; replacing the P5-2 fuel system module assembly; installing the "uncommanded ON" (UCO) protection system for the fuel boost pumps; revising the airplane flight manual (AFM) to advise the flight crew of certain operating restrictions for airplanes equipped with an automatic shutoff system; and revising the maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. The purpose of the AD is to prevent operation of the center and auxiliary tank fuel boost pumps with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet that could create a potential ignition source inside the center and auxiliary fuel tanks. These conditions, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

The agency estimates that there are 499 affected aircraft in the U.S. registry.

ALW No. AC34508

Engine Fan Cowl Door Concerns on Airbus Aircraft Equipped with DFM56 Engines Results in Proposed AD. On September 26 the FAA announced that it proposes to adopt a new airworthiness directive (AD) for all Airbus Model A318-111 and -112 airplanes, Model A319-111, -112, -113, -114, and -115 airplanes, Model A320-211, -212, and -214 airplanes, and Model A321-111, -112, -211, -212, and -213 airplanes. [81 Fed.Reg. 65980] This proposed AD was prompted by reports of engine fan cowl door (FCD) losses on airplanes

equipped with CFM56 engines due to operator failure to close the FCD during ground operations and would require modification and re-identification of certain FCDs or replacement of certain FCDs. The proposed AD would also require installation of a placard. The purpose of the AD is to prevent in-flight loss of an engine FCD and possible consequent damage to the airplane.

The agency estimates that there are 400 affected aircraft in the U.S. registry.

ALW No. AC34509

Fixed Base Operators

FAA Adheres to Removal of Requirement That Repair Station Operators with Airframe Rating Provide Suitable Permanent Housing to Enclose the Largest Type and Model Aircraft Listed on Operations Specifications. Readers will recall that the FAA issued an interim final rule on July 15, 2016 [81 Fed.Reg. 49158] to revise its repair station rules to remove the one-size-fits-all requirement of §145.103(b) and provide an additional limited rating category to cover work not addressed by the existing twelve categories. According to the FAA, the actions will assist the repair station industry by eliminating the costly housing requirement that is not necessary in many cases.

Following publication of the interim final rule, the FAA received two comments from the Aeronautical Repair Station Association (ARSA) and Airbus. ARSA stated that it fully supported the agency's actions as the regulations were unclear and needed to be updated. ARSA noted that although the changed rule still does not distinguish between repair stations working on completed aircraft and those working on airframe components, the removal of specified housing for airframe ratings will certainly allow for performance-based compliance. ARSA also requested the FAA consider removing §?145.61(b) in its entirety. ARSA asserted that it seemed that the language in §?145.61(a) alone would be sufficient to ensure appropriate ratings and limitations could be determined without the list in §?145.61(b). ARSA stated the reinstitution of paragraph (b)(13) is merely a specific acknowledgement of the general language in §?145.61(a). ARSA also specifically requested that the agency not deem its observation as opposition to the interim final rule, rather, a suggestion for consideration.

In response, the FAA expressed agreement with ARSA's comment that the removal of specified airframe rated housing requirements will allow for performance-based compliance. The FAA noted ARSA's suggestion to remove §145.61(b) in its entirety and may consider it in a future rulemaking effort.

In its comment Airbus requested clarification on the correct title for §?145.205, Maintenance, preventive maintenance, and alterations performed for certificate holders under parts 121, 125, and 135, and for foreign persons operating a U.S.-registered aircraft in common carriage under part 129. Airbus noted the word "performed" is spelled "per-formed" in the interim final rule and spelled "performed" in the electronic Code of Regulations (eCFR). Airbus asked which format was correct.

After consideration of the comments submitted in response to the interim final rule, the FAA has determined that no further rulemaking action is necessary. Therefore, amendment No. 145-31 remains in effect.

ALW No. FB34510

$892,500 Penalty Proposed for Air Methods Corp. On September 15 the Federal Aviation Administration proposed an $892,500 civil penalty against Part 135 certificate holder Air Methods Corp. of Englewood, Colorado., for allegedly operating an Airbus EC-135 helicopter on passenger-carrying flights when it was not airworthy. The FAA alleges that during a Nov. 4, 2014 inspection in Tampa, Fla., an FAA inspector discovered that the helicopter's pitot tubes were severely corroded. Pitot tubes are components in a system that measures an aircraft's airspeed. The FAA immediately notified Air Methods about the corrosion. However, Air Methods continued to operate the helicopter on 51 passenger-carrying revenue flights between Nov. 4 and Nov. 11, 2014 without repairing or replacing the pitot tubes, according to the FAA.

The FAA alleges that because of the corroded pitot tubes, Air Methods operated the helicopter when it was unairworthy; in violation of its operations specifications; after it failed to correct a known defect in the aircraft; and in a careless or reckless manner that endangered lives and property. "Operators are expected to respond appropriately when FAA inspectors alert them to airworthiness concerns," said FAA Administrator Michael Huerta. "It is imperative that all operators address those concerns before operating their aircraft."

Air Methods has 30 days from receiving the FAA's enforcement letter to respond to the agency.

ALW No. FB34504

Airports

Battle for Access to Love Field Still Rages — District of Columbia Circuit Court of Appeals Says Part 16 Proceeding Will Settle Gate Access Rights — Southwest Airlines' Petition for Review of DOT Letter on Subject Dismissed. As readers know, Southwest Airlines, Love Field, and the City of Dallas have a long and somewhat complicated history: Love Field served as Dallas's municipal airport starting in the 1920s. The City of Fort Worth (located some thirty miles away) operated its own municipal airports. In 1964, federal regulators required the two cities to designate a single airport to service the Dallas-Fort Worth metropolitan area. That resulted in construction of the Dallas/Fort Worth International Airport (DFW). In order to ensure that all commercial air traffic would be routed through DFW instead of the municipal airports, all interstate commercial carriers agreed to transfer their service to DFW. Southwest, however, refused to move and in 1973, a federal court ruled that Southwest must be allowed to operate from Love Field as an intrastate commuter airline [*City of Dallas v. Southwest Airlines Co.*, 371 F. Supp. 1015 (N.D. Tex. 1973), aff'd, 494 F.2d 773 (5th Cir. 1974)]. A few years later, federal regulators allowed Southwest to begin interstate service to New Orleans from Love Field. Some Members of Congress raised concerns "that if Southwest were to operate on an unrestricted basis from Love Field (closer to Dallas than DFW) many travelers to and from Dallas would choose that option rather than using DFW, thus undermining the economic viability of DFW." In response, Congress enacted the Wright Amendment which confined interstate commercial air traffic from Love Field to Texas's four border states: Louisiana, Arkansas, Oklahoma, and New Mexico. Pub. L. No. 96-192 § 29, 94 Stat. 35, 48-49 (1980). [Congress later added Kansas, Alabama, and Mississippi to that list. Pub. L. No. 105-66 § 337(b), 111 Stat. 1425, 1447 (1997).]

In July 2006, the Cities of Dallas and Fort Worth, the DFW Airport Board, American Airlines, and Southwest agreed to seek the repeal of the Wright Amendment in order to allow interstate service from Love Field to the rest of the country. The contract embodying their agreement became known as the "Five-Party Agreement." Later that year, Congress enacted the Wright Amendment Reform Act of 2006 (WARA), codifying many provisions of the Five-Party Agreement [Pub. L. No. 109-352, 120 Stat. 2011 (2006)]. The WARA ended all geographic limitations on flights from Love Field as of October 13, 2014. It also limited the number of gates at Love Field to twenty [Id. §§ 2, 5(a)]. Southwest leases sixteen of those twenty gates and also subleases two of the remaining gates.

In 2014, Delta Airlines sought voluntary accommodation to fly five daily flights out of Love Field. Having no luck with the tenant airlines, it sought assistance from the City, invoking the City's obligations to accommodate non-tenant airlines under the grant assurances and the City's competition plan for Love Field. Delta, the tenant airlines, and the City then exchanged a flurry of letters and emails debating whether, and on what terms, one of the tenant airlines should be forced to accommodate Delta. On December 1, 2014, the City notified the tenant airlines that it was invoking the process for forced accommodation set out in the airlines' leases. Shortly thereafter, the City sought guidance from DOT about the City's legal obligations under the grant assurances and competition plan. On December 17, 2014, DOT responded with a letter [the one giving rise to this litigation] providing "guidance" to the City. In the letter, DOT made the following statement discussing its understanding of the City's obligations to force accommodation of a non-tenant airline: "Our competition plan policy requires airport proprietors to assist requesting carriers seeking access, and we expect that, if a requesting carrier is unable to arrange a voluntary accommodation with a signatory carrier, the City will accommodate the requesting carrier to the extent possible given the current gate usage, without impacting current or already-announced, for-sale services by the signatory carriers." The letter also said, "With respect to the length of the accommodation, for the accommodation to be meaningful at [Love Field], it is our position that, once accommodated, the accommodated carrier is entitled to an ongoing similar pattern of service as long as the carrier continues to operate the accommodated flights. Importantly, the accommodated carrier should not be pushed out by incumbent carriers at a later date. It is the City's responsibility to continue the accommodation and ensure that space is available so that the requesting carrier is able to maintain its pattern of service on an ongoing basis, based on the available space on the snapshot date of the original accommodation request, even after the expiration or termination of any agreement between the accommodated carrier and signatory carriers."

Not quite two months later, on February 13, 2015, Southwest filed a petition for review of the letter with the U.S. Court of Appeals for the District of Columbia Circuit. Southwest disputed the substance of DOT's letter on two fronts: (i) DOT's position that the City should determine a tenant airline's "current gate usage" on a "snapshot date"; and (ii) DOT's position that forced accommodation would continue at least "as long as the [accommodated] carrier

continues to operate the accommodated flights." Southwest's concerns grew out of its plans to increase its service at some point after the "snapshot date" referenced in DOT's letter. Southwest contended that forced accommodation of Delta based on the snapshot date, for as long as Delta operates accommodated flights, would impair its ability to increase its schedule as it desires. In Southwest's view, its right to increase its service should supersede any accommodation claim Delta might have.

A panel of the appeals court dismissed Southwest's petition for review on August 9 as it concluded that the DOT letter did not constitute a final agency action. According to the panel, te letter did not reflect the consummation of DOT decisionmaking on the issues discussed. In fact, the panel pointed out, DOT had commenced an administrative proceeding to address and resolve the precise issues and policies broached in the December 17, 2014 letter. Specifically, the court noted that on August 7, 2015, the FAA initiated a Part 16 proceeding to assess the City's compliance with its grant obligations [*Notice of Investigation, In re Compliance with Federal Obligations by the City of Dallas,* FAA Docket No. 16-15-10 (Aug. 7, 2015)]. In the notice initiating the proceeding, the court continued, the FAA explicitly stated that the December 17 letter was not its final word on the accommodation issue. Although the City was the only respondent in that proceeding, the FAA invited Southwest, Delta, and other interested airlines to participate in the proceeding by filing briefs "containing any information or argument that it believes the FAA should consider."

The panel found that under *Bennett v. Spear*. 520 U.S. 154 (1997), there is a two part test for determining whether an agency action qualifies as final so as to be subject to judicial review: "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." The December 17 letter, the panel ruled, failed at the first prong in light of the subsequent initiation of a Part 16 proceeding. **Southwest Airlines Co. v. Unites States Department of Transportation**, U.S. Court of Appeals for the District of Columbia Circuit No. 15-1036. M. Roy Goldberg, Robert W. Kneisley for Southwest. Jeffrey M. Harris, Paul D.Clement, Edmund G. LaCour, Jr., Kenneth P. Quinn, Jennifer Trock, for Delta. Benjamin W. Shult, Department of Justice, for DOT.

ALW No. AP34514

New Tucson Control Tower Dedicated. On September 23 FAA Administrator Michael Huerta joined federal and local officials in dedicating the new, environmentally friendly air traffic control tower at Tucson International Airport. The new tower is 252 feet tall – about double the height of the old tower, which served the airport for 58 years. It provides air traffic controllers with better airfield views and makes it easier for them to determine the positions of aircraft on the ground and in the skies around the airport. The project came in under budget and ahead of schedule.

The new tower sits atop a 13,000 square-foot base building that houses computer equipment, administrative offices, and a backup power system that is designed to automatically activate in case of a commercial power outage. Numerous environmental features minimize the facility's energy and water uses. A 1,600-panel solar farm adjacent to the base building is expected to generate enough power to support all of the facility's electrical needs for several hours a day on sunny days. At other times, the power it produces will supplement the facility's commercial power supply. The facility also uses the solar farm to produce ice, which is stored in large containers and is used at night to cool the building when the solar panels are not producing electricity. Other environmental benefits include a light-colored roof that reflects the sun's heat away from the building, insulated windows that reduce the amount of energy needed to keep the controller work area cool, motion detectors for the low-energy, indoor lights, and native desert plants that do not need watering.

The total project cost, including computer equipment, electronics, fire suppression systems, and heating and air conditioning, was about $40 million. Tucson had approximately 143,000 aircraft operations in 2015. It is served by six airlines and is home to the largest F-16 Air National Guard Base in the U.S.

ALW No. AP34501