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AVIATION

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AVIATION SAFETY REPORTING SYSTEM

On May 1, 1976, the Federal Aviation Administration (FAA) implemented an Aviation Safety Reporting Program (ASRP) to identify deficiencies and discrepancies in the National Air Transportation System. The FAA requested pilots, controllers and others in the aviation system to voluntarily submit information which would be used as a basis for developing design recommendations for an improved future system. Because of risks perceived in the voluntary submission of such information to the FAA, many aviation organizations opposed the methodology. Thus, on October 10, 1975, the National Aeronautics and Space Administration entered into an agreement with the FAA to act as a "third-party" for the purpose of receiving, processing and analyzing the reports that were submitted.¹

In March of this year, NASA released a fact sheet to outline the NASA design of the Aviation Safety Reporting System (ASRS), its relationship to the FAA's ESRP and how NASA will operate the ASRP, to facilitate the flow of safety information, while protecting the identities of those submitting safety reports.

NASA Aviation Safety Reporting System

1. Safety Reports

The ASRS is designed "to act as an early warning system." Through

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the centralized collection of reports and safety-related data, it will hopefully be able to determine trends which may serve to alert the aviation system to future problems.

The ASRS solicits reports from anyone in the national aviation system who witnesses or is involved in an occurrence which is believed to be a potential threat to flight safety. Prior to the implementation of ASRS, a circular describing the reporting system and containing a report form, will be sent by the FAA to airlines, fixed base operators and other concerned organizations.

Those submitting reports to NASA will be asked to fill out the forms as completely as possible. This will include an identification section (which will be returned to the sender) since NASA has found that experienced data analysts must be able to speak to the originators of reports to obtain the maximum benefit from the information.

2. Initial Processing of Reports

Upon initial receipt of a safety report, NASA is obligated to review the report to determine whether it relates to a criminal offense² or an aircraft accident.³ Screening of the report will be performed by a NASA employee who is a qualified attorney and pilot. If a report refers to a criminal offense, it will be forwarded, without further processing, through the NASA Chief Counsel to the Department of Justice. If a report contains information pertinent to an aircraft accident, it will be referred to the National Transportation and Safety Board with a copy sent to the FAA. In the case of a criminal offense or aircraft accident, the identity of the reporter will be forwarded together with the report. In all other circumstances, NASA will maintain the confidentiality of such individuals.

NASA will not screen safety reports for violations of the Federal Aviation Regulations (FAR) since it is NASA's belief that such review would seriously jeopardize the willingness of pilots and controllers to report the conditions of situations which pose a threat to air safety. If a violation of the FAR's is definitely uncovered during the report review process, NASA will not notify the FAA pursuant to a special exemption authority.

3. Report Analysis

NASA's objective is to have all safety reports screened, catalogued, clarified and then deidentified within 48 hours of receipt. If the analysis

of a particular report revealed that the situation was time-critical, the report is "flagged" and pertinent report information will be promptly forwarded to NASA.

Deidentified reports will also be prepared for entry into a computer. This process will be handled by the report analyst who will make judgments regarding the coding of information from the report. The coded data will be entered into two separate computer files: the 45-Day File and the General Data File.

4. The 45-Day File

The FAA ASRP waives enforcement action on many violations of the FARs upon timely submission of safety reports to the NASA ASRS. Since FAA may discover FAR violations through many additional channels, the NASA ASRS had to provide a means to evaluate specific incidents to determine whether a waiver is justified in an ASRS report. Two methods have been developed to indicate participation in ASRS. The first is the identity section of the report itself which is dated and stamped by NASA during the review process. This identity strip is subsequently returned to the originator of the report. The second system is the 45-Day File.

The 45-Day File will maintain a record of each report received by NASA and will contain only the date, time, location and occurrence of the incident described by the report. To be used by FAA, the FAA must determine through independent sources that an alleged violation of the FARs has occurred and that enforcement action might be warranted. The FAA must then approach NASA and request whether a safety report has been filed. If the incident has been reported, or if the FAA neglects to query NASA within 45 days after the incident occurs, FAA enforcement action will not be considered. An additional feature of the 45-Day File is that it offers protection to any individual associated with a reported action notwithstanding the fact that he was not the originator of the report.

5. The General Data File

The General Data File in the ASRS will allow sophisticated cross-referencing of data obtained from individual reports. The computer will search periodically and automatically for trends and hazards in the increased body of reports. The file is programed to protect the individuals who were the source of such data and a specific occurrence cannot be tracked back to a report originator.

*FAA Aviation Safety Reporting
Program Waiver Policy*

The FAA Program applied to that part of the National Air Transportation System involving the safety of aircraft operations. Any person who observes or is involved in any incident which poses a threat to aviation safety, should file with NASA, within five days, a complete written report. If the filing requirements are properly observed, an individual preserves the waiver of disciplinary action applicable to the particular occurrence. However, there are certain exceptions to the waiver policy. The exceptions pertain to incidents involving reckless operations, gross negligence, willful misconduct, criminal offenses and aircraft accidents.

To clarify the meaning of reckless operations, gross negligence and willful misconduct, the FAA has provided the following examples:

- (1) Intentional buzzing dangerously close to persons or property.
- (2) Intentional operation of an aircraft in instrument flight rule weather conditions without proper air traffic control clearances or authorization.
- (3) Knowingly performing aerobatic flight within a control zone or a federal airway.
- (4) Intentional unauthorized descent below published decision height or minimum descent altitudes while conducting an actual instrument approach.
- (5) Knowingly executing an unauthorized instrument approach in controlled air space.
- (6) Intentional operation of an aircraft that is substantially overweight.

ASRS Schedule and Review

ASRS is scheduled to begin receiving safety information and reports on April 15, 1976. Reports summarizing ASRS operations will be published at three-month intervals. In June, 1977, a comprehensive analysis and evaluation of ASRS will be performed by NASA in connection with an advisory subcommittee to determine needed changes to the ASRS design and operation. A second comprehensive review is planned for June, 1979.

CAB LIABILITY AND CLAIM RULES AND PRACTICES INVESTIGATION

On March 22, 1976, the Civil Aeronautics Board (Board) issued its decision in CAB Order 76-3-139 which represented the Board's first overall examination of air carrier rules and practices bearing upon freight liability for claims. The Board had, on previous occasions, reviewed specialized areas of carrier freight tariffs in other contexts, but the instant decision evinces an exhaustive study of this area.⁴

The investigation was instituted by CAB Order 70-7-121 (July 24, 1970) and was later broadened by CAB Orders 70-9-159 (September 3, 1970), 71-3-108 (March 18, 1971), 71-6-38 (June 7, 1971) and 71-7-116 (July 21, 1971). The examination encompassed the rules of all United States carriers. After extensive public hearings which incorporated participation by carriers, shippers, shipper organizations, local governmental bodies and federal agencies, the Administrative Law Judge (ALJ) found many carrier rules to be unlawful. The Board decided *sua sponte* to review the ALJ's Initial Decision based upon the importance of the issues raised in the proceeding.⁵

The Board made various findings in its decision. The threshold question regarding the Board's authority was answered in the affirmative and the Board found that it was authorized to examine carrier liability and claim rules and to prescribe lawful rules without making simultaneous findings with respect to rates where the rules have been found to be unlawful.⁶

In its decision, the Board found a standard, which absolves a carrier from liability except in case of negligence, to be unlawful. Prior to this proceeding, air carriers had adopted the standard of the rule recommended by the Board's Bureau of Economics. The rule, commonly referred to as the "due diligence" rule, essentially provided that carriers were liable for damages if the caused occurrence took place during the transportation covered by the airbill.⁷ In its discussion of the prior rule, the Board noted:

. . . while the due diligence rule requires the airline to establish that it exercised care, disputes as to the degree of care which it took or should have taken will still result. The vagueness of the term "all necessary measures" in itself suggests the difficulties of proof. And the alternative clause of the rule, permitting the carrier to show that it was "impossible" for it to take "all necessary" measures, raises additional and difficult questions (CAB Order 76-3-139 at p. 8).

Thus, the Board found that “. . . a lawful rule must impose a standard of strict liability.” This standard was adopted by the Board subject only to the following specified exceptions:

Rule 30

(A) Exclusions From Liability

- (1) The carrier shall not be liable for loss, damage, delay, or other result caused by:
 - (a) Acts of God, perils of the air, public enemies, public authorities acting with actual or apparent authority in the premises, authority of law, quarantine, riots, strikes, civil commotions, or hazards or dangers incident to a state of war.
 - (b) The act or default of the shipper or consignee.
 - (c) The nature of the shipment, or any defect, characteristic or inherent vice thereof.
 - (d) Violation by the shipper or consignee of any of the rules contained in the tariff or other applicable tariffs, including, but not confined to, improper or insufficient packing, securing, marking, or addressing, and failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions.
 - (e) Compliance with delivery instructions from the shipper or consignee or noncompliance with special instructions from the shipper or consignee not authorized by applicable tariffs.

In addition, the Board reviewed carriers tariffs which contained clauses exculpating carriers from liability for special or consequential damages. The general standards which had previously been in effect relieved the carrier of liability even where the carrier had prior knowledge that special or consequential damages might be incurred. The Board found this kind of rule to be unlawful and prescribed the following:

The carrier shall not be liable for special or consequential damages where total damages (*i.e.*, special or consequential damages combined with any other damages for which the carrier is

liable) would exceed the carrier's normally assumed monetary liability as set forth in Rule 32, unless a higher value is declared on the airbill and the additional transportation charge assessed by the carrier is paid. In no event shall the carrier's liability for special or consequential damages exceed such higher declared value.

The Board also ordered an increase in the per pound amount which United States air carriers must pay for loss, damage or delay when the shipper chooses not to pay for additional coverage. The Board maintained that the present amount, fifty cents per pound, was unreasonably low. A new minimum figure was established, \$9.07 per pound, and it is expected to cover a larger portion of amounts claimed by shippers.⁸ The "\$9.07 Rule" was described by the Board as an interim measure to remain in effect pending further study of its effectiveness.

ILLEGAL CAMPAIGN CONTRIBUTION CASE

On March 12, 1976, the Director of the Bureau of Enforcement (BOE) of the Civil Aeronautics Board docketed a petition for enforcement against Braniff Airways, Incorporated (Braniff) and certain individually named respondents (hereinafter "Braniff parties") in CAB Docket 26364. The petition was based upon the complaint of an Enforcement Attorney, and incorporated a previously filed third-party complaint of the Aviation Consumer Action Project.

The complaint against Braniff and Braniff parties alleged violations of Section 407 of the Federal Aviation Act of 1958, as amended (Act) and Part 241 of the Board's Regulations.⁹ Such violations were claimed to have arisen due to Braniff's failure to accurately set forth in its general books of account and subsequent failure to properly report to the Board, a \$40,000 corporate campaign contribution made to a political committee in 1972 supporting the re-election of the President Richard M. Nixon. The Bureau of Enforcement conducted an extensive investigation of this matter which resulted in charges of failure to report and properly account for the sale of approximately 3,625 Braniff airline tickets allegedly resulting in proceeds of between \$641,000 and \$927,000. BOE requested extraordinary relief in its complaint relying in part upon allegations that the Braniff parties attempted to conceal information related to the unaccounted for tickets by providing false and/or no information to PBO Special Agents during the Braniff investigation.¹⁰

On March 23, 1976 the Board entered an Order to Cease and Desist against Braniff and all Braniff parties in CAB Order 76-3-146. The Order incorporated a record civil penalty settlement of \$300,000 and the entry of a civil injunction (as soon as the matter might be heard) in the federal district court for the Northern District of Texas. The consent injunction will prohibit future violations of Section 403(b) of the Act (49 U.S.C. 1473(b)) through rebating and ticket discounting practices, whether engaged in directly or indirectly and whether through one or more of the following enumerated devices or otherwise:

- (1) accepting or receiving less compensation for tickets than the lawful tariff price printed thereon;
- (2) providing free tickets to ineligible persons;
- (3) selling or honoring tickets at special fares where conditions governing their use are not present;
- (4) permitting exchange or reissuance of tickets without requiring payment of additional amounts due;
- (5) providing valuable goods or services free in connection with the use of tickets; and
- (6) making payments to or for the benefit of a ticket agent where there is reason to know that such agent will use such payments for rebating purposes.

The Board's order provides further that neither the unlawful contributions nor the excessive payments to travel agents will be recognized in future fare cases so that these costs will not be passed on to the consumer in the form of higher ticket prices.

THE ADVANCED BOOKING CHARTER

On February 11, 1976, the Civil Aeronautics Board (Board) proposed yet another form of charter service to be entitled the "Advance Booking Charter" (ABC).¹¹ Similar to prior charter proposals, the ABC is designed to provide additional opportunities for the traveling public to obtain low-cost air transportation.

The proposed ABC charter concept has been adopted from the ABC charters which are presently available to most Europeans and Canadians. In contrast to the so-called "Affinity" charter concept, the ABC passenger

would not be required to be a member of any previously established group or organization, and would be able to purchase round-trip charter air transportation from an independent tour operator or travel agent in advance of the flight date so that such passenger could be listed as traveling thirty (or in certain cases sixty) days before the flight's departure. Unlike the Travel Group Charter (TGC) participant, the price for the air transportation would be fixed rather than adopting the variable pricing concept which fluctuates with the number of passengers actually aboard the flight. In addition, the proposed ABC does not contain requirements that a passenger purchase ground accommodations or "tour packages" and would not establish a minimum fare level.

The Board's proposal would authorize both regularly scheduled and supplemental United States air carriers and foreign air carriers to provide the new charter service. The Board has noted that it does not expect any undue diversion of passenger traffic from regularly scheduled service since such service will continue to be more attractive than the ABC for business and other travelers who need routing flexibility and scheduling in their travel arrangements.¹²

The following fact sheet regarding ABCs was circulated by the Board at the time of its proposal:

1. Purpose

The ABC regulation is designed to increase the availability of low-cost charter air travel by authorizing the operation of a new class of charters. The Board proposed that, in the interests of promoting charter travel to certain European countries,¹³ more restrictive provisions could be applied to ABC's to those European countries in an effort to achieve closer harmonization with existing European ABC rules.

2. The Charter Operator

ABC's will be arranged by and sold through independent charter tour operators.

3. ABC Costs

The Board has proposed no minimum price on the cost of an ABC participants round-trip seat.

4. No "Tour Package" Requirement

ABC participants would not be required to purchase any services or accommodations in addition to their round-trip air transporta-

tion. However, the marketing of an ABC as part of a tour package would not be forbidden either. Thus, ABC operators would be afforded the maximum flexibility in fashioning charter packages responsive to the demands of the traveling public.

5. Round-Trip Requirement

The proposed ABC incorporates a round-trip group travel requirement. However, the Board specifically solicited comments on allowing individual participants who depart with one ABC group to be "intermingled" on their return flight with another ABC group organized by the same operator.

6. Minimum Duration

The Board has proposed no minimum duration on ABC's, except with regard to certain European countries, designated in the proposed rule, for which the minimum duration proposed would be 7 days.

7. Advance Purchase

ABC participants would be required to purchase their charter tickets in advance. Charter operators and direct air carriers would be required to file a passenger list no later than thirty days prior to departure for most ABC's. For ABC's to certain European countries this advance sign-up period would be sixty days.

8. Substitution

With the exception of certain European ABC's, the Board proposed to allow operators to find substitutes for up to 15 percent of the participants any time prior to departure.

The Board has also requested comments on a variety of alternative substitution provisions, and on the possibility requiring ABC operators to offer passengers risk-of-cancellation insurance.

9. Termination

The proposed ABC regulation is experimental. It will terminate on March 31, 1981, unless extended by the Board.

Public comment has been invited on the proposed charter guidelines and all comments will be reviewed prior to the issuance of the final ABC rule.

Copies of the newly proposed Advance Booking Charter rules may be obtained by writing the Civil Aeronautics Board, 1825 Connecticut Avenue, N. W., Washington, D. C. 20428.

TIA-SATURN MERGER APPROVED

By unanimous decision on March 19, 1976, the Civil Aeronautics Board approved the acquisition and merger of Saturn Airways (Saturn) by Trans International Airlines (TIA) in CAB Orders 76-3-126 and 76-3-127.

Both TIA and Saturn are supplemental air carriers.¹⁴ The merger agreement provides for Saturn to be merged with TIA, a carrier owned by Transamerica Corporation. All outstanding shares of common stock of Saturn will be exchanged for shares of common stock of Transamerica Corporation.¹⁵

TIA is based in Oakland, California. It currently has operating authority to transport passengers in the Transatlantic market, and passengers and cargo domestically, in the Caribbean, Transpacific, Central and South America. TIA also holds worldwide military air transportation authority and is the largest supplemental air carrier by virtue of operating revenues and total business investment.

In reaching its decision, the Board reversed the initial decision of a CAB Administrative Law Judge (ALJ). The ALJ had placed controlling weight upon the form of license or type of carrier involved in the merger rather than upon the character and nature of the competitive market in which the supplemental air carriers operate. The Board disagreed with the ALJ's analysis, noting:

. . . [The ALJ] failed to give due consideration to the full scope of effective competition which, in fact, exists between and among the scheduled and supplemental carriers, both foreign and U. S. flag. Furthermore, implicit in [the ALJ's] decision is the notion that competition within the existing supplemental industry must remain static notwithstanding the Board's regulatory ability to enlarge or enhance competition within that industry as economic circumstances may require.

The Board found that the elimination of one corporate entity would not reduce the competitive environment since the direct competition between the two carriers was not substantial. Moreover, the Board indicated that the ranks of the U.S.-flag supplemental industry would not be irre-

mediably reduced by Board approval of the agreement. The Board viewed the expansion of authority of existing supplementals and/or authorization of new or more effective supplementals to be a vehicle to stimulate new competition and one of many means which the Federal Aviation Act places at the Board's disposal to deal with dislocations which might affect the availability of low-cost air transportation.

NATIONWIDE CONFLICT ALERT

The Administrator, Federal Aviation Administration (FAA) announced on January 12, 1976, that the FAA had completed the installation of a national conflict alert system which flashed warning signals on radar displays used by air route traffic controllers. The signals alert controllers when aircraft are projected to be in possible conflict in air transit.

The conflict alert system is a computer program that has been added to central computers at twenty Air Route Traffic Control Centers in the continental United States. The Control Centers provide service to aircraft flying under instrument flight rules (IFR) between airports. The system is capable of projecting what an aircraft's flight path will be in the upcoming two minutes. When flight paths are projected to be closer than the requisite horizontal and vertical minimums, the data tags identifying the aircraft start to blink and the words "conflict alert" appear beside a separate display of aircraft identities.¹⁶ This alerts the controller to the possibility of a conflict and allows sufficient time for radio contact with one of the affected pilots in order to provide new headings and/or altitudes to keep aircraft safely separated.

By January 12, 1976, all twenty Air Route Traffic Control Centers had completed the initial phase of the program which was to implement conflict alert in the high altitude sectors above 18,000 feet. In addition, half of the centers had installed an operational system above 12,500 feet.

SPACE SHUTTLE TESTS

The National Aeronautics and Space Administration (NASA) announced on March 25, 1976, that significant benefits to American civil aviation might result from its reusable Space Shuttle program. In the near future, the Space Shuttle will conduct operational tests of an advanced electronic flight control system for use in civil aircraft. In addition, Space Shuttle research is providing significant advances in structural materials technology for aerospace manufacturers.

The Shuttle's electronic flight control system, if successful, will replace present technology's heavy, mechanical backup control systems thus reducing the weight of the aircraft. The reduction in aircraft weight would ultimately reduce fuel consumption and the new electronic system would allow development of more flight-efficient aircraft designs.¹⁷

The Space Shuttle will also have an integrated electronic system with central data processing which can be linked to ground navigation and mission control. Such techniques are directly applicable to an integrated air traffic control system.

WIND SHEAR FORECASTING

Wind shear is a phenomenon in which the wind speed or direction varies significantly with changes in altitude. Such unexpected changes can be hazardous to aircraft operations at low altitudes on approach to and departure from airports. Thus, the Federal Aviation Administration of the U. S. Department of Transportation and the National Oceanic and Atmospheric Administration of the U. S. Department of Commerce jointly sponsored a meeting to discuss the possibilities of wind shear forecasting.

A major objective of the meeting was to discuss the future implementation of wind shear forecasting at certain selected East Coast airline terminals. Such forecasting would initially be instituted on an experimental basis until such time as the accuracy of the reporting could be verified.

Additional items on the agenda included a discussion of general characteristics of low-level wind shear, a review of the FAA Wind Shear Program Plan and the requisite research needs for improving wind shear forecasting. The meeting was attended by the FAA, National Weather Service, Wave Propagation Laboratory, National Aeronautics and Space Administration, U.S. Air Force, National Transportation Safety Board, Air Transport Association and various airline representatives. Further information about the meeting may be obtained from the Office of Aviation Affairs, Washington, D. C.

TIME LIMITS ON RULEMAKING PETITIONS

In response to petitions filed by public interest groups and recommendations contained in the December, 1975 Report of the Advisory

Committee on Procedural Reform, the Civil Aeronautics Board issued an amendment to Parts 302 and 399 of its Economic Regulations (14 C.F.R. 302, 399) which will establish a 30 day period for the filing of answers to petitions for rulemaking and a 120 day period thereafter for Board action. The Board announced its new policy on March 10, 1976, and noted that such a policy represented the initial step toward expediting CAB proceedings and providing the general public with a definite time framework for Board action. The Board emphasized the experimental nature of its decision, stating that some modification of its plan might become necessary in the future in light of actual experience. The effective date of the amendment was stayed by the Board for 60 days in order to clear an existing backlog of petitions which have yet to be acted upon or disposed of.

RECENT CASES

Rauch v. United Instruments, Inc., 13 Avi. 18,207, violations of the safety provisions of the Federal Aviation Act of 1958, imply a private right of action; *Walker v. Beech Aircraft Corp.*, 13 Avi. 18,223, cause of action for wrongful death accrues at the date of death and the two-year statute of limitations begins to run on that date, rather than from the time the person entitled to sue discovers the particular cause of death in Florida; *Tames v. Yugoslav Airlines*, 13 Avi. 18,228, Warsaw Convention, as supplemented by the Montreal Agreement, does not require that a passenger ticket give notice of the Convention's two-year statute of limitations; *Humphreys v. Tann*, 13 Avi. 18,229, a uniform federal rule of contribution and indemnity among joint tortfeasors should be applied in wrongful death actions arising from a midair collision rather than conflict of law principles to select and apply the proper law, and the apportionment between joint tortfeasors should be on a comparative negligence basis; *Junco v. Eastern Air Lines, Inc.*, 13 Avi. 18,243, law of New York where decedent had resided was applicable to a wrongful death action rather than the law of Florida where the accident had occurred; *State of New York v. Nuclear Regulatory Commission*, 13 Avi. 18,257, the Civil Aeronautics Board is not required to issue an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969 before permitting the air transportation of special nuclear materials (SNM). The board is merely enforcing the directives of other agencies; *Air Freight Haulage Co., Inc., v. Ryd-Air, Inc.*, 13 Avi. 18,351, agreement between an air carrier's subsidiary acting as agent in providing

terminal and cartage services was not an agreement between "air carriers" as defined by the Act so that contracting parties would be immunized by the Civil Aeronautics Board from an antitrust suit by a terminated freight handler; *Iberia Air Lines of Spain v. Nationwide Leisure, Corp.*, 13 *Avi.* 18,363, enforceability of a contract clause is a matter for judicial decision, rather than within CAB's primary jurisdiction, when the reasonableness of a rate or rule is not at issue.

CONCORDE OPERATIONS

On February 4, 1976, the U. S. Secretary of Transportation granted British Airways and Air France temporary landing rights to the Concorde at New York's John F. Kennedy International Airport and Dulles International Airport near Washington, D.C. The Secretary's decision allowed for a sixteen-month trial period beginning May 24, 1976 which would permit the Federal Aviation Administration to conduct noise studies to determine any detrimental repercussions. The Secretary's decision was based on a public hearing held in Washington, D.C. on January 5, 1976, an environmental impact statement prepared by the FAA, and written submissions of interested persons. If the service starts, the United States operation will follow in the footsteps of the Paris to Rio de Janeiro passenger service that went into effect on January 21, 1976.

However, the Concorde's troubles are far from over. In response to the Secretary's decision, the Port Authority of New York and New Jersey, which has jurisdiction over Kennedy Airport, voted on March 11, 1976 to ban the Concorde from the airport until a six month evaluation could be made of operations at Dulles and at airports in London and Paris. Both Air France and British Airways countered by filing suit in the Federal District Court in Manhattan. The airlines contend that the Port Authority action raises both constitutional and treaty problems, and also has a substantial adverse effect on foreign relations.

On March 5, 1976, a petition was filed by the State of New York (C.A.D.C. 76-1213) for direct review in the United States Court of Appeals of the decision by the Secretary of Transportation. 49 USC, Section 1486 establishes exclusive jurisdiction in the United States Court of Appeals to affirm, modify, or set aside any order issued by the Secretary of Transportation. A similar petition (C.A.D.C. 76-1105) was filed on February 4, 1976 by the Environmental Defense Fund in the United States Court of Appeals for the District of Columbia.

One legal hurdle to starting Concorde operations at Dulles was removed on March 12, 1976 in the case of *Board of Supervisors of Fairfax County, Virginia, et al v. John L. McLucas, et al.* 13 Avi. 18, 354. Judge Parker of the United States District Court for the District of Columbia dismissed a request for relief and denied a motion for preliminary injunction to land in the U.S. by holding that the Secretary of Transportation's decision on February 4, 1976 to permit the Concorde to operate commercially in the United States is an order that is reviewable exclusively in the United States Court of Appeals.

Despite efforts by representatives of the British and French Governments, New York Governor Carey signed a bill on March 5, 1976 that would prohibit the Port Authority of New York and New Jersey from admitting aircraft with noise levels above 108 decibels. This level would be unattainable by the Concorde as well as most other commercial aircraft. However, this legislation would exempt aircraft already permitted to land at Kennedy. The law will not take effect unless similar legislation is passed by New Jersey.

On December 18, 1975, the United States House of Representatives, backed by an active anti-Concorde lobby voted, 199-188, in favor of a six-month ban into all airports except Dulles. This ban would be an amendment to the Airport and Airways Development Act Amendments (HR 9771). However, the Senate on March 25, 1976 defeated three amendments seeking to stop the landing of the Concorde.

NOTES

¹See 7 *Law. Am.* 228-229 (1976).

²NASA defined a criminal offense as "a violation of the Federal Statutes, Title 18, U.S. Code." Hijacking, smuggling and sabotage were cited as examples.

³NASA defined aircraft accident as "an occurrence set forth in the Code of Federal Regulations, 49 C.F.R. 830." Midair collisions, flight control malfunctions or failures, and fatal or serious injuries were cited as examples.

⁴Liability and Claim Rules and Practices Investigation, CAB Dockets 19923, *et al.*

⁵CAB Order 73-8-33 (August 6, 1973).

⁶The Board predicated its authority on the language contained in Section 1002 of the Federal Aviation Act wherein the Board is given the power to prescribe rules and practices.

⁷The rule contained certain important exceptions as follows: the carrier was not liable if it could prove (1) it had taken all necessary measures to avoid the loss, or (2) it was impossible for the carrier to take such measures. (Refer to Rule 30(B), *Liability of Carriers*, App. B to I.D., p. 16, col. 2.)

⁸The rule will also permit shippers to select "released" coverage and declare value on different pieces in the same shipment, as an alternative to declaring value on the whole shipment.

⁹Section 407 of the Act (49 U.S.C. 1377) provides generally for the filing of reports, the disclosure of stock ownership, the disclosure of stock ownership by officers or directors, the form of accounts, and the inspection of accounts and property. Part 241 of the Board's Regulation (14 C.F.R. 241) sets forth a uniform system of accounting and reporting requirements for certificated air carriers.

¹⁰Upon final determination of enforcement allegations adverse to Braniff and one or more of the Braniff parties, the Bureau requested that the Board institute a route proceeding to review Braniff's authority, under present management, to operate generally or, in Latin America, specifically.

¹¹See 8 *Law. Am.* 218-222 (1976) for a review of recently enacted charter air transportation regulations including the One-Stop Inclusive Tour Charter and the Special Event Charter.

¹²See EDR-294, SPDR-42 and ODR-12.

¹³Austria, Belgium, Federal Republic of Germany, Finland, France, Ireland, the Netherlands, Switzerland, and the United Kingdom are included in this grouping. If any of these countries are prepared to accept the new provisions at the time the final rule on ABC's is issued they will not be included in this grouping.

¹⁴A Supplemental air carrier holds a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation (14 U.S.C. 1301 (35)). Supplemental air transportation involves the performance of charter air transportation, including inclusive tour charters (14 U.S.C. 1301 (36)).

¹⁵The value of Transamerica shares to be delivered in stock will approximate \$16,422,262.

¹⁶FAA standards require a minimum of five nautical miles horizontal separation or at least 1,000 feet vertical separation between aircraft flying under radar control in the continental United States.

¹⁷The advanced flight control system will be tied into a computer which will provide split-second reactions. This will result in a reduction of aerodynamic load building up on the aircraft's flight control surfaces. The reduced loads will allow smaller and lighter wings and control surfaces to be used on aircraft.