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General Aviation

NTSB to Meet Regarding 2019 Midair Collision in Alaska. The National Transportation Safety Board has announced its intent to hold a public board meeting April 20, 2021, 9:30 a.m. Eastern time, to determine the probable cause of a fatal midair collision involving two air tour operators in Alaska. On May 13, 2019, a float-equipped de Havilland DHC-2 Beaver and a float-equipped de Havilland DHC-3 Turbine Otter collided in flight about eight miles northeast of Ketchikan, Alaska. The DHC-2 pilot and four passengers suffered fatal injuries; the DHC-3 pilot suffered minor injuries, nine passengers were seriously injured, and one passenger suffered fatal injuries. The NTSB will vote on the findings, probable cause and recommendations as well as any changes to the draft final report.

In keeping with established federal and local social distancing guidelines to prevent the spread of the coronavirus, while also ensuring the NTSB's compliance with the Government in the Sunshine Act, the board meeting for this event will be webcast to the public, with the board members and investigative staff meeting virtually. There will be no physical gathering to facilitate the board meeting.

ALW No. GA39711

USAIG Eschews Opportunity to Settle Death in Crash of Mooney M20J for $100,000 — Kansas Appeals Court Affirms $11 Million Judgment Against It in Garnishment Action. On April 7, 2013 a Mooney M20J crashed into the backyard of a vacant house just west of downtown Collinsville, Oklahoma, at about 6 p.m. The crash killed the pilot, seventy-one year-old Ron Marshall, and his passenger, Chris Gruber, forty. Marshall was a retired doctor who specialized in obstetrics and gynecology. Gruber was Director of Development for Kansas State University's College of Veterinary Medicine. The two had flown to Tulsa from Manhattan, Kansas earlier in the day and had taken off from Tulsa International Airport for the flight back just minutes before the crash happened.

The next day Robert Houck, a claims handler for USAIG (which insured Marshall), went to the crash site, took photographs, and talked to the National Transportation Safety Board investigator. He learned that the plane's take off from the Tulsa airport was normal. It reached an altitude of 4,000 feet or above and it was cleared to climb to 6,000 feet. It was on its intended course, the weather was good, there were no reported problems or issues, but then the plane began a very steep descent and crashed.

The belly pan had separated from the aircraft and was a mile and a half from the crash site. A day later, April 9, 2013, USAIG set up a reserve of $175,000 for a liability claim by the Gruber Estate to cover the policy limit of $100,000 and legal expenses. On April 11, 2013, Houck contacted Rhen Marshall, the pilot's son. Between April 10-16, 2013, Kai Gruber, surviving spouse of Chris, hired attorneys Bill Bahr and Doug Bradley to help with possible claims. On April 16, 2013, the NTSB published its preliminary report. The report stated that communications with the tower were normal, the plane was cleared to climb to 6,000 feet, there were no emergency or distress calls from the plane, and the plane reached 4,100 feet before a descending, right turn was observed on the radar. During the period of April 24-30, 2013, Houck spoke with Bill Bahr, who then followed up the conversation with an e-mail to Houck asking for coverage information and sent a copy of the e-mail to Kai and attorney Lynn Johnson. Houck e-mailed Bahr explaining that a $5,000 medical coverage benefit was available to pay Gruber's funeral expenses and they could discuss the liability limit once the Letters Testamentary had been processed.

About the same time, Judy Marshall met with a friend who was an attorney—Jim Morrison. Morrison saw the name Lynn Johnson copied on an e-mail about the crash and told Judy that she needed to have her "ducks in a row" because Johnson's law firm handled litigation for cases like this. Judy relayed the conversation to Rhen and Rhen told Houck. Rhen expressed concern to Houck that Kai had hired a well-known plaintiff's attorney and a claim would be made against the Marshall Estate in excess of the policy limit. Houck assured Rhen that he would hire an attorney for them if they needed one. Houck told Rhen he would have a defense for them if they were sued. Houck told Rhen not to worry, that USAIG would protect his interest. During this period, Houck spoke with Rhen several times about the insurance coverage.

Also, during April-May 2013, Houck decided that Marshall was well qualified to fly his plane. Marshall held a commercial pilot certificate and was a member of the Mooney Aircraft Pilots Association. He went to training seminars every year. He had been flying almost 30 years and had reported nearly 4,000 total flight hours and 150 hours in the preceding six months. Along with general liability coverage, Marshall had a "voluntary settlement coverage" rider as a part of a preferred pilot coverage expansion under which USAIG could, upon request of the insured, have to pay a passenger's estate the policy limit of $100,000, regardless of fault, in exchange for a release of liability. USAIG offered preferred pilot coverage expansion to select pilots who were actively keeping up with their training. The coverage was intended to provide a way for an insured to dispose of a liability claim without an uncomfortable discussion of fault, especially when a deceased passenger was a friend or a relative.

Sometime between April-May 2013, Houck determined that the Gruber Estate could make a claim in excess of $100,000 based on Gruber's young age, family, and employment. If the policy limit had been $1,000,000, Houck would have recommended a reserve of $1,000,000 for the claim. Houck also determined that Marshall had substantial assets and decided that he needed "to try to settle this claim at the first reasonable opportunity." At that point, Houck had authority to pay the $100,000 policy limit. On May 23, 2013, Doug Bradley, an attorney representing Kai, sent Houck a letter requesting preservation of the aircraft wreckage "in anticipation of litigation." The letter did not assert that Marshall was at fault for the crash. The next day Houck e-mailed Kai's attorney a copy of Marshall's insurance policy. Kai's attorney e-mailed Gruber's funeral bill to Houck and stated that he would "be in touch at a later date to discuss the liability coverage."

In June 2013, USAIG paid $5,000 to the funeral home. The two homeowners whose houses were damaged made claims for insurance proceeds and USAIG paid those claims.

On June 18, 2013, Kerry Porter, Houck's supervisor, attended a wreckage inspection on behalf of USAIG. Bradley attended on behalf of the Gruber Estate. Bradley recalled discussing Marshall's liability for the crash with Porter at the inspection site According to Bradley, he told Porter that in general, some of the fault is apportioned to a pilot for a plane crash, and $100,000 was inadequate to cover a death. [Gruber earned some $95,000 per year when he died.] Bradley alleged he also told Porter that his law firm was considering other potential parties who may have contributed to the fault, but the pilot "was going to get fault in this case." Bradley recalled that Porter agreed that $100,000 was inadequate and the two of them discussed the insurance industry and liability limits in general. Bradley felt that Porter understood the Gruber Estate was pursuing a claim against the Marshall Estate.

For his part, Porter recalled that he talked to Bradley about the limits found in aviation insurance

policies in general. But according to Porter, Bradley did not mention the possibility of a claim against the Marshall Estate. Later, Porter reported to Houck that the Gruber Estate attorneys were looking at a repair facility as potentially responsible for the crash. The plane had a "gear-up landing" in 2010 and underwent repair work. On June 24, 2013, Houck prepared an internal report: "Depending on the theory B[r]adley produces, we may intervene in his lawsuit."

On September 4, 2013, Judy, Rhen, and Houck spoke. Judy and Rhen were concerned about a lawsuit from Kai. Rhen later stated that he would have requested payment of the voluntary settlement during this conversation if he had known he had that right. In January 2014, USAIG paid Rhen $130,000 for the loss of the aircraft.

On April 30, 2014, Bradley called Houck to request repair records. They discussed the voluntary settlement coverage. Bradley followed up with an e-mail to Houck requesting documents and photographs relating to the gear-up landing that led to repairs to the aircraft by Deason Aircraft Services in 2011. Then, on May 2, 2014, Houck asked Bradley if they wanted USAIG to offer the voluntary settlement. Once it was offered, they had 90 days to accept it. Bradley confirmed that "the $100,000 policy is available to us when we request it to be offered." On May 8, 2014, Houck e-mailed his superior, Clark Howard, asking if he should share the documents Bradley requested relating to the gear-up landing: "Attorney wants a copy of . . . hull file from 2011 gear-up/failure (?) where Deason Aircraft Services (not insured with us) repaired the damage. The aircraft had 289 +/- hours and an annual elsewhere since Deason repaired it under the previous hull file. NTSB is talking wing/spar failure but part of the one-piece belly pan departed the aircraft prior to flight. [Attorney] is searching for theories as we only have . . . $100K per pa[ssenger]."

In June 2014, USAIG hired attorney William Yocum to represent the interests of the Marshall Estate. Houck told Yocum he anticipated settlement. Before June 2014, the Marshall Estate was not represented by counsel.

On July 23, 2014, the NTSB issued its final report. The report concluded the probable cause of the crash was the "pilot's loss of control of the airplane for reasons that could not be determined because an examination of the airplane did not find an abnormality that would have precluded normal operations." The report stated that because of the location of the airplane's belly panel 1.4 miles from the crash site, it likely separated during the high-speed descent. Just over a week later, on July 31, 2014, Bradley e-mailed Yocum explaining that he was "investigating whether there was a mechanical failure in one of the flight instruments (attitude indicator and vacuum pump that runs the gyro)" and requested maintenance records for the aircraft.

On December 29, 2014, the Gruber Estate filed a wrongful death lawsuit against the Marshall Estate and two aircraft repair companies—Deason and Western Skyways, Inc. The complaint alleged that Marshall was negligent when he lost control of the airplane resulting in the crash. The complaint also alleged that Deason and Western Skyways were negligent by failing to replace the vacuum pump engine component on the aircraft in 2011 after the gear-up landing.

In March 2015, the Marshall Estate decided it had a breach of contract claim against USAIG for negligent and bad-faith failure to timely offer the policy limit under its voluntary settlement coverage. On May 29, 2015, after learning of this potential claim, USAIG formally offered the $100,000 to the Gruber Estate. Yocum had already spoken to Rhen about the offer, and Rhen agreed. On June 29, 2015, Lynn Johnson responded on behalf of the Gruber Estate that the offer had come "too late." On November 10, 2015, Deason, in an answer to interrogatories, stated it had replaced the vacuum pump on the aircraft in June 2011, thus undercutting the premise of the lawsuit against Deason. On November 25, 2015, the Gruber Estate proposed a *"Glenn v. Fleming* agreement" to the Marshall Estate—an assignment agreement and covenant not to execute. On December 2015, Yocum advised USAIG of the proposed assignment agreement. USAIG directed Yocum to continue to represent the Marshall Estate.

In January 2016, Clark Howard assumed responsibility over the matter for USAIG. USAIG then hired Joe McDonough to represent its interests. McDonough asked Yocum to update him with "new events." During February 2016, Yocum provided McDonough copies of its file, but specifically excluded documents relating to the assignment agreement because of the "potentially adverse relationship" between the Marshall Estate and USAIG on that matter. In April 2016, Deason and the Gruber Estate settled. The two aircraft repair companies were dismissed from the suit, leaving the Marshall Estate as the sole defendant.

Later in April 2016, the Gruber and Marshall Estates entered into an assignment agreement. The Marshall Estate agreed to assign the Gruber Estate its claim against USAIG and to "confess judgment" on the issues of fault and causation in Gruber's wrongful death action. In return, the Gruber Estate agreed not to collect from the Marshall Estate any judgment entered against the Marshall Estate. Under the agreement, damages would be de-

termined by the trial court after hearing evidence. The court approved the assignment agreement. In their trial stipulations, the Estates agreed that despite the Marshall Estate's admittance to fault and causation, the trial court should determine the issues of negligence, fault, and causation based on the evidence presented at trial. On May 27, 2016, Yocum sent a copy of the assignment agreement to USAIG.

On July 20, 2016, the Gruber Estate presented its case to the trial court that Marshall was solely at fault for the crash and asserted damages of $11,588,548.89. Colin Sommer, an accident investigator and reconstructionist, testified that he ruled out all other possible ways the aircraft could have crashed and concluded that Marshall was negligent in that he "lost control of the airplane due to spatial disorientation." A forensic economist testified about the economic loss suffered by Kai and her children. The Marshall Estate did not cross-examine any witnesses, challenge any evidence presented, present any evidence of its own, or make any arguments. The trial court found for the Gruber Estate and entered judgment against the Marshall Estate for the amount sought. The court found that, based on the evidence presented at trial, Marshall was negligent; his negligence was a direct cause of the crash; and he was 100 percent at fault. USAIG was not a party to that action and was not given notice of the trial.

On August 2016, the Gruber Estate filed a garnishment action against USAIG seeking to recover the $11 million judgment from USAIG. The trial court ruled that the insurance contract imposed an affirmative duty on USAIG to timely offer the $100,000 voluntary settlement coverage to the Gruber Estate upon the Marshall Estate's request. The court also ruled that USAIG had an obligation to ensure that its insureds had a reasonable understanding of the voluntary settlement coverage. The court held that USAIG failed to timely satisfy either obligation. It ruled that USAIG both negligently and in bad faith breached its insurance contract with the Marshall Estate over the voluntary settlement coverage. The court found that this breach of contract caused the entry of an excess judgment against the Marshall Estate and therefore USAIG was liable for the entire $11 million judgment.

USAIG appealed, attacking the judgment on three fronts: (1) it claimed the court's finding that it negligently and in bad faith breached the voluntary settlement provision of the insurance contract was not supported by substantial competent evidence; (2) the court erred when it held that USAIG's claimed breach of the insurance contract caused the excess judgment against Marshall's Estate; (3) the court erred when it held that Gruber's Estate had met its burden of showing the assignment agreement between the two Estates was entered into in good faith and the judgment was reasonable. In a cross-appeal, the Gruber Estate, in a cross-appeal, asserted the district court erred by failing to award prejudgment interest on its claim and when it failed to award attorney fees as allowed by law.

In a January 22 opinion an intermediate appeals court affirmed the judgment against USAIG and reversed the denial of interest and attorney fees to the Gruber Estate. The court noted that the law imposes several duties upon insurers. In defending and settling claims against its insured, an insurer of a liability policy owes to the insured the duty to act in good faith and without negligence. A failure to do so will lead to the insurer being held liable for the full amount of the insured's resulting loss, even if that amount exceeds policy limits [citing *Bollinger v. Nuss*, 202 Kan. 326, 449 P.2d 502 (1969) under which the question of liability of the insurer for negligence or bad faith ultimately depends on the circumstances of the case and must be determined by considering various factors:

- the strength of the claimant's case on the issues of liability and damages;
- attempts by the insurer to induce the insured to contribute to a settlement;
- failure of the insurer to properly investigate;
- the insurer's rejection of the advice of its own attorney or agent;
- failure of the insurer to inform the insured of a compromise offer;
- the amount of financial risk which each party is exposed;
- the fault of the insured in inducing the insurer's rejection of a compromise offer by misleading it on the facts; and
- any other factors tending to establish or negate bad faith.

The court then rejected the defense contention that it did not breach the insurance contract because none of the three conditions precedent to the voluntary settlement coverage were met. It noted that the trial court found that Rhen made such a request by September 2013, and there wa substantial competent evidence to support that finding. Houck's testimony that he ultimately had authority from Rhen to offer the voluntary settlement but Rhen did not 'request' the voluntary settlement, was confusing, contradictory, and ultimately unavailing. Houck said he was waiting for Rhen to request the voluntary settlement—he needed Rhen's consent. But Houck also said he offered the settlement in late April 2014, based on the authority Rhen gave him in 2013. Houck testified he talked to Rhen about authorizing the voluntary settlement and he knew Rhen

would authorize the voluntary settlement. Houck knew Rhen was concerned about a lawsuit in excess of policy limits. Houck testified that Rhen "agreed that if we could pay the voluntary settlement . . . he would request us to ask for it." Houck also testified that Rhen "said that he would authorize it if that was available or if that became something to do." As the trial court stated, "There is no distinction between an insured expressing desire and authority to resolve a claim and an insured saying magic words such as 'I request' or 'I direct' payment." The appeals court concluded, "The voluntary settlement coverage was available and USAIG could have paid it. USAIG acted negligently and in bad faith because it failed to offer the voluntary settlement as required by its policy, not because of a general duty to settle."

The court next rejected the USAIG contention that as much as it had a duty to begin settlement discussions, it satisfied that duty because it made an offer 13 months after the plane crash when the Gruber Estate was still investigating. At that point, the Gruber Estate had made no claim against the Marshall Estate, nor were there any allegations of pilot error. And the Gruber Estate had not suggested that it was willing to settle. Further, the NTSB was still investigating, and any liability remained unclear. Those arguments, the court ruled do not undercut the reason why the district found USAIG negligent and in bad faith:

• USAIG knew within a few months of the crash that the potential liability of the Marshall Estate far exceeded the policy limits of its insurance policy;

• USAIG knew the Marshall Estate had substantial assets to protect;

• USAIG knew Marshall could likely be apportioned some amount of fault under comparative fault principles;

• even though the fault could be minimal, the exposure could be large;

• Gruber was not at fault;

• USAIG knew it needed to offer a settlement at the first reasonable opportunity;

• USAIG knew the Marshalls would authorize a settlement within the policy limits;

• USAIG knew that the Marshalls were concerned about a lawsuit in excess of the policy limits;

• USAIG did not hire counsel for the Marshalls for more than a year; and

• waiting 13 months to begin settlement discussions was unreasonable.

Moreover, the appeals court continued, under the theory that the voluntary settlement coverage imposed a duty on USAIG over and above that of general liability coverage:

• USAIG had to offer the voluntary settlement upon request by the Marshalls;

• USAIG knew by September 2013 that the Marshalls wanted the voluntary settlement to be offered and the authority given by the Marshalls to offer the voluntary settlement amounted to a request;

• or, if there was no request, it was only because USAIG misled the Marshalls into believing that USAIG needed to request authorization from them; Rhen would have requested the settlement if not misled;

• the voluntary settlement coverage was part of a preferred pilot coverage expansion given to some select pilots;

• the voluntary settlement coverage was not premised on any proof of liability; and

• USAIG unreasonably delayed offering the voluntary settlement until late April 2014.

Under this latter theory (adopted by the trial court), the delay was unreasonable because USAIG had an express obligation under its policy to offer the voluntary settlement upon the policyholder's request. The policy says, "We will offer on your behalf and at the request of the 'Policyholder" the $100,000 voluntary settlement." The appeals court concluded that the record supported the district court's findings of negligence and bad faith. It shows that USAIG waited to offer the voluntary settlement until after its expiration point, even though Rhen had authorized its offer in September 2013.

The court then turned to the question of whether Kai's arbitrary change of mind and the Gruber Estate's refusal to accept the voluntary settlement in late April 2014 the legal cause of the excess judgment? The court answered that question in the negative. The bad-faith claim was not manufactured. It depended on the voluntary settlement coverage, which is unique to this case. The Gruber Estate did not make an early settlement offer with an arbitrary expiration date while withholding information from USAIG. The e-mail communications show that the parties were cooperating and sharing information. There was no testimony suggesting that the spring 2014 settlement offer was rejected to set up a bad-faith claim. Kai testified that she changed her mind because of a conversation with her mother. The insured also was not of "meager means"; the Grubers could have recovered against the personal assets of the Marshalls rather than create a bad-faith claim.

According to the court, the trial court properly determined that the judgment was not a consent judgment because the parties did not stipulate to a judgment amount

inasmuch as the assignment agreement provided that the court would determine damages based on the evidence presented. "We recognize that the damages claimed by the Gruber Estate were uncontested by the Marshall Estate and the district court adopted the damage amount exactly as asserted. But even though the damages were uncontested, the court decided that no showing of reasonableness and good faith under Glenn was needed here. It was the court that determined the damages, not the parties." **Kai Gruber, Personal Representative of the Estate of Christopher S. Gruber, on Behalf of the Next-of-Kin of Christopher S. Gruber, Deceased, Appellee/Cross-appellant, v. The Estate of Ronald Marshall, Appellee, and United States Aircraft Insurance Group, et al**, Court of Appeals of Kansas No. 120,513. City, Missouri, Michael W. Blanton, of Blanton Law Firm, of Evergreen, CO, and William J. Bahr, of Arthur-Green, of Manhattan, KS for plaintiff. Lynn W. Hursh, of Armstrong Teasdale, Kansas City, MO for defendants.

ALW No. GA39716

NTSB Addresses Passenger-Carrying Operations Under Part 91. The National Transportation Safety Board held a public board meeting on March 23, 2021, to consider a draft report on recommendations for the implementation of stricter regulatory requirements for some types of revenue passenger-carrying general aviation operations. Those operations carry thousands of passengers for compensation or hire each year but are not held to the same maintenance, airworthiness, and operational standards as air carrier, commuter and on-demand, and air tour operations conducted under 14 *CFR* Parts 121, 135, and 136, respectively. As readers are well aware, some commercial operations that carry passengers for compensation or hire are excepted from 14 *CFR* Part 119, Certification: Air Carriers and Commercial Operators, which provides the requirements that an operator must meet to obtain and hold a certificate authorizing operations under Parts 121 or 135. As indicated in section 119.1(e), these excepted operations include certain nonstop commercial air tour flights, sightseeing flights conducted in hot air balloons, and nonstop intentional parachute jump flights.

Operators providing living history flight experience sightseeing flights can be exempted from other Part 119 regulations and certain Part 91 regulations. These revenue passenger-carrying flights are conducted aboard historically significant aircraft that were formerly operated in US military service.

Glider sightseeing flights are conducted under Part 91 because they are omitted from Parts 121 and 135 and are not covered by Part 136 commercial air tour rules. According to the Federal Aviation Administration (FAA), although glider sightseeing operations are not explicitly excepted from Part 119, "such operations would not need to be conducted under the authority of a part 119 certificate."

In addition, some Part 91 revenue passenger-carrying operators have exploited specific 14 *CFR* 119.1(e) exceptions by carrying revenue passengers for purposes other than the exceptions intended, allowing them to avoid more stringent regulatory requirements. For example, some

carry passengers under the premise of student instruction or training flights, which are excepted from the requirements of section 119.1(e). Although these operators might provide some flight training, most of their operations involve flights with another intended purpose, such as air combat/extreme aerobatic experience flights and tour flights.

Members of the public who pay to participate in Part 91 revenue passenger-carrying activities are likely unaware that these operations have less stringent requirements than other commercial aviation operations. Although the types of Part 91 revenue passenger-carrying operations are diverse, the need for greater safety requirements and more comprehensive oversight applies to all of these operations.

The safety issues associated with Part 91 revenue passenger-carrying operations were based on the findings from eight fatal NTSB accident investigations between 2010 and 2019, including two recently concluded investigations—Mokuleia, Hawaii, and Windsor Locks, Connecticut.

Based on those investigations the Board identified the following concerns:

● **Need for an appropriate framework for Part 91 revenue passenger-carrying operations.** The operating rules for Part 91 general aviation, which includes revenue passenger-carrying operations, do not require operating certificates, operations specifications, and FAA-approved training and maintenance programs, all of which are required for Part 135 operations. In January 2020, the NTSB recommended that all air tour operations with powered airplanes and rotorcraft be covered by Part 135 regulations so that those commercial air tour operations currently conducted under Part 91 would be subject to the same safety requirements as Part 135 commercial air tour operations. The NTSB recognizes that Part 135 regulatory requirements might not be practical or feasible for other types of revenue passenger-carrying operations currently conducted under Part 91, but a more robust regulatory

framework is needed for these operations to increase the level of public safety. The NTSB's investigations of multiple accidents presented in this report found that, under the current regulatory framework for revenue passenger-carrying operations, a lack of structured pilot training, deficiencies in pilot skills and decision-making, and inadequate aircraft maintenance were occurring.

- **Need to identify regulatory loopholes and omissions and address them in the new framework**. Two of the accidents presented in this report involved revenue passenger-carrying flights that were operating under the premise of student instruction; however, the investigations of those accidents found that the revenue passengers aboard those flights were carried for other purposes (a tour flight and an air combat/extreme aerobatic experience flight). Also, both investigations determined that, although the FAA was aware of operators that were conducting flights under the guise of flight instruction, the FAA's local inspectors did not have the means for providing the necessary oversight for these operations because of limitations in the regulatory framework for such operations. As a result, these operators were able to avoid oversight and circumvent certain regulatory requirements. Another example of an operator circumventing certain regulatory requirements is the accident discussed in this report involving a nonstop commercial air tour flight operating as an aerial photography flight. One of the accidents presented in this report involves a commercial glider sightseeing flight. Such flights have been omitted from specific FAA regulations. As a result, these flights have essentially been operating with almost no oversight.

- **Need for increased FAA oversight**. Part 91 revenue passenger-carrying operators are not subject to the same level of FAA oversight and surveillance as Part 135 operators. The findings from most of the accidents presented in this report demonstrated that the level of FAA oversight for Part 91 revenue passenger-carrying operations is insufficient to identify and correct safety deficiencies that could expose passengers to unacceptable safety risks. For two of the accident investigations, the NTSB found that the FAA needed to provide its inspectors with sufficient guidance to pursue more comprehensive oversight of Part 91 revenue passenger-carrying operators. Such guidance and oversight could help ensure that these operators are properly maintaining their aircraft and safely conducting operations.

The FAA currently maintains a database with basic information about each Part 91 air tour operator.4 It is important for the FAA to also have this information for other Part 91 revenue passenger-carrying operators. A national database of these operators could allow the FAA to track each operator and ensure the safety of the passengers who pay for the services that the operator offers.

- **Need for safety management systems.** The NTSB's investigations of two of the accidents presented in this report found that organizational safety management failures played a role in those accidents. An effective means for managing and mitigating risks in an aviation operation is through the use of an SMS, which the FAA has described as a "formal, top down business-like approach to managing safety risk." Only Part 121 air carriers are currently required to incorporate SMS, but the FAA has encouraged the voluntary implementation of SMS beyond Part 121 operations.5 In January 2020, the NTSB recommended that the FAA require all commercial air tour operators, regardless of their operating rule, to implement an SMS. Other Part 91 revenue passenger-carrying operators could also benefit from an SMS to ensure that operational risks are sufficiently mitigated . SMS was designed to be scalable so that operators could integrate safety management practices tailored to their specific operation.

The Board considered the following recommendations to the Federal Aviation Administration:

1. Develop national safety standards, or equivalent regulations, for revenue passenger-carrying operations that are currently conducted under Title 14 *Code of Federal Regulations* Part 91, including, but not limited to, sightseeing flights conducted in a hot air balloon, intentional parachute jump flights, and living history flight experience and other vintage aircraft flights. These standards, or equivalent regulations, should include, at a minimum for each operation type, requirements for initial and recurrent training and maintenance and management policies and procedures.

2. Identify shortcomings in Title 14 *Code of Federal Regulations* 119.1(e) that would allow revenue passenger-carrying operators to avoid stricter regulations and oversight in operations that include, but are not limited to, air combat/extreme aerobatic experience flights and tour flights operating as student instruction, nonstop commercial air tour flights operating as aerial photography flights, and glider sightseeing flights; after these shortcomings are identified, use that information to add other types of flight operations to the national safety standards, or equivalent regulations, requested in Safety Recommendation [1].

3. Revise Order 8900.1, Flight Standards Information Management System, to include guidance for inspectors who oversee operations conducted under any of the living history flight experience exemptions to identify potential hazards and ensure that operators are appropriately managing the associated risks.

4. Develop and continuously update a database that includes all of the revenue passenger-carrying operators addressed in Safety Recommendations [1] and [2] to facilitate oversight of these operations.

5. Require safety management systems for the revenue passenger-carrying operations addressed in Safety Recommendations [1] and [2].

6. For the revenue passenger-carrying operations addressed in Safety Recommendations [1] and [2], provide ongoing oversight of each operator's safety management system once established.

ALW No. GA39712

Air Carriers

FAA Proposes Penalties Against Two Passengers for Facemask Non-Compliance. On March 17 the Federal Aviation Administration proposed civil penalties of $20,000 and $12,250 against two passengers for allegedly interfering with, and in one case assaulting, flight attendants who instructed them to wear facemasks and obey various federal regulations. According to the agency, the cases are as follows:

• $20,000 against a passenger on a Dec. 27, 2020, jetBlue Airlines flight from Boston to Puerto Rico. The FAA alleges the passenger failed multiple times to comply with flight attendants' instructions to wear her facemask and remain seated with her seatbelt fastened. The passenger shoved a flight attendant multiple times in her chest/shoulder area, shouted obscenities at the flight attendant, and threatened to have her fired. As a result of the passenger's behavior, the captain diverted the flight back to Boston.

• $12,250 against a passenger on a Dec. 31, 2020, jetBlue Airlines flight from New York to the Dominican Republic. The FAA alleges the passenger failed multiple times to comply with flight attendants' instructions to wear his facemask, stop drinking from his personal bottle of alcohol, which is prohibited by FAA regulations, and hand over the bottle. After flight attendants issued the passenger a "Notice to Cease Objectionable Behavior" card, he shouted profanities at them, slammed overhead bins and became more and more uncooperative and agitated. During the landing phase of flight, including when the plane was taxiing to the gate, the passenger stood up while the "fasten seatbelt" sign was illuminated, threw his bottle of alcohol behind a seat, and went to the lavatory. As a result of the passenger's behavior, the flight crew requested that law enforcement meet the aircraft at the gate.

The passengers have 30 days after receiving the FAA's enforcement letter to respond to the agency. The FAA does not identify individuals against whom it proposes civil penalties.

ALW No. AC39713

Facemask Compliance, Alcohol Consumption Lead to Proposed Penalty Against JetBlue Passenger. On March 12 the Federal Aviation Administration proposed a $14,500 civil penalty against an airline passenger for allegedly interfering with flight attendants who instructed him to wear a face mask and stop consuming alcohol he had brought on board the aircraft. According to the agency on a December 23, 2020 jetBlue Airlines flight from JFK International to the Dominican Republic, the passenger crowded the traveler sitting next to him, spoke loudly, and refused to wear his face mask. Flight attendants moved the other passenger to a different seat after they complained about the man's behavior. A flight attendant warned the man that jetBlue's policies required him to wear a face mask, and twice warned him that FAA regulations prohibit passengers from drinking alcohol they bring on board an aircraft. Despite those warnings, the passenger continued to remove his face mask and drink his own alcohol, the FAA alleges. A flight attendant issued the passenger a "Notice to Cease Illegal and Objectionable Behavior," and the cabin crew notified the captain about his actions two separate times. As a result of the passenger's actions, the captain declared an emergency and returned to JFK, where the plane landed 4,000 pounds overweight due to the amount of fuel on board.

The passenger has 30 days after receiving the FAA's enforcement letter to respond to the Agency.

ALW No. AC39714

Fall While Climbing Stairs to Board Alaska Air Flight to Seattle — Undisclosed Oregon Settlement. On March 21, 2017 the plaintiff was at the Jackson County Airport, in Medford, Oregon, in order to board Alaska Air flight 2481for Seattle. As plaintiff climbed up the wet stairs to board the plane she fell onto her right knee and was unable to get up. The defendant failed to assist the plaintiff with first aid, medical care, or proper assistance. The fall and lack of medical assistance by the defendant caused permanent injury for the plaintiff.

This case was settled for an undisclosed amount.

Carol Lynn Cox v. Horizon Air Industries, INC., a wholly owned subsidiary of Alaska Air Group, Inc., a corporation of Delaware, and Does 1 through 10,

U.S. District Court D. Oregon No 1:19-cv-00542-AA. Tara Millan, Law Firm of Tara Millan for the plaintiff.

ALW No. AC39701

Turbulence Throws Delta Passenger into Overhead Compartment — Undisclosed Settlement in Florida Case. On July 23, 2018 the plaintiffs were traveling on Delta flight 1488 from Minneapolis to Miami. While the seatbelt light was off, the plaintiff used the lavatory. While returning to her seat and attempting to put her seatbelt on, the aircraft experienced turbulence causing the plaintiff to be thrown into the overhead compartment. The seatbelt light was not illuminated prior to the aircraft experiencing turbulence. The plaintiff suffered serious and permanent injuries causing the flight to make an emergency landing. Upon landing the plaintiff was taken to an emergency room. The plaintiffs injuries include bodily injury, disability, disfigurement, mental anguish, loss of income, and emotional stress.

This case was settled for an undisclosed amount.

Maria Baldeon Garrido and Carlos Edgar Bolanos Pineda vs. Delta Airlines, INC., a Delaware Corporation. U.S. District Court S.D. Florida Np. 19:23510-Civ-COOKE/GOODMAN. Ricardo M. Martinez-CID, Podhurst Orseck,, Miami, FL for the plaintiff.

ALW No. AC39702

Other Passenger Removes Suitcase From Overhead Bin and Strikes Plaintiff's Head — Undisclosed Settlement in California Case. On or about December 7, 2017 the plaintiff was traveling on Flight AA934 from Ministro Pistarini International Airport to Miami International Airport. She was seated in an aisle seat. During the flight a passenger removed his suitcase from the overhead bin violently striking the plaintiff. The plaintiff immediately experienced severe pain lasting the remainder of the flight. Once deplaned the plaintiff sough medical treatment. The plaintiff suffered severe and serious injuries as a direct result of the inaction of the defendants.

This case was settled for an undisclosed amount.

Vicki Jane Luckenbach v. American Airlines, Inc., et al, U.S. District Court C.D. California No. 2:19-cv-10037-CMB(MRWX). Nicole Christiane Andersen, Nelsen and Fraenkel, for the plaintiff.

MPLDR No. AC39793

Flight Service Trays Strike Eva Airways Passenger —Undisclosed California Settlement. On or about October 23, 2016 the plaintiff was traveling aboard Flight BR0018/230CT from Taiwan Taoyuan International Airport to San Francisco International Airport aboard the defendant's aircraft. During the flight, two service trays that were not properly stored by the defendant, fell onto the plaintiff causing immediate pain and discomfort lasting the rest of the flight. After the flight landed, the plaintiff sought medical treatment for his injuries which includes, physical, mental, and emotional anguish as well as loss of present and future wages.

This case was settled for an undisclosed amount.

Marietta Deleon, an individual, v. Eva Airways Corp. d/b/a Eva Air and Does 1-10 inclusive. NO: 4:18-cv-05710-JST. United States District Court Northern District Of California. Stuart R. Fraenkel, Esq., Nelson & Fraenkel, LLP, Lost Angeles, CA and John V. DiAna, Diana Law Group, Walnut Creek, CA for the plaintiff.

ALW No. AC39704

JetBlue Passenger Assaulted on Santo Domingo to New York Flight — New Jersey Case Settles for Undisclosed Sum. On July 4, 2017 the plaintiff was traveling on Flight 10 from Las America International Airport in Santo Domingo, Dominican Republic to John F. Kennedy International Airport in New York, NY. The defendant was also a passenger on the same flight. While in flight, the defendant physically contacted the plaintiff causing the plaintiff to become injured and permanently disfigured. The plaintiff suffered physical and mental injuries, and financial hardships.

This case settled for an undisclosed sum.'

Mariel Burgos v. Jetblue Airways Corporation, et al, U.S. District Court D. New Jersey No. 2:18-cv-13861-WJM-MF.

ALW No. AC39705

United Passenger Trips on Luggage Left in Aisle — Undisclosed Settlement in Arizona Case. On January 8, 2016 the plaintiff was traveling on United Flight UA6451 from Phoenix to Los Angeles International Airport. While deplaning, the plaintiff tripped on some luggage that had been placed in the aisle by one of the defendants employees. The plaintiff suffered injuries including pain and suffering, lost wages, and physical damages.

This case settled for an undisclosed sum.

Mireyea Villamar v. Skywest Airline, Inc., a Utah corporation United Airlines, Inc., a Delaware corporation, U.S. District Court D. Arizona No. 2:18-cv-01185-PHX-RM. Leonard J. Mark, Tiffany & Bosco, Phoenix, AZ for the plaintiff.

ALW No. AC39706

SF International to JFK Passenger Falls During Flight — Undisclosed New York Settlement. On February 17, 2016 the plaintiff was a passenger on American Airline flight 20 from San Francisco International Airport to New York John F Kennedy International Airport. During the flight, the plaintiff was caused to fall due to negligence by the defendants. The plaintiff suffered severe and significant injuries, emotional shock and trauma, and loss of wages. The injuries sustained by the plaintiff were a direct result of the defendants negligence.

This case settled for an undisclosed sum.

Jan Weinstein v. American Airlines, Inc., U.S. District Court E.D. New York. Lawrence B. Saftler, New York, NY for the plaintiff.

ALW No. AC39709

Service Cart Injures Spirit Airlines Passenger's Knee — Undisclosed Texas Settlement. On or about December 20, 2017 the plaintiffs were passengers on Spirit Airlines Flight 657. While the plaintiff was sleeping in his seat, the defendants pushed/ pulled a service cart along the aisle of the aircraft. The plaintiffs knee was protruded slightly into the aisle. The defendants rammed the service cart into the plaintiffs knee. As a result of the impact, the plaintiff suffered serious injuries.

This case settled for an undisclosed sum.

Anthony Q. Samuel and Cherie Samuel, v. Spirit Airlines, Inc., John Does and Jane Doe, U.S. District Court S.D. Texas Division. Muhammad S. Aziz, Abraham, Watkins, Nichols, Sorrels, Agosto & Aziz. Houston, TX for the plaintiff.

ALW No. AC39710

Fixed Base Operators

NTSB Says Pilot's Poor Decision Making, Spatial Disorientation, Led to Sikorsky S-76B Crash That Killed Kobe Bryant. On February 9 the National Transportation Safety Board determined that a pilot's decision to continue flight under visual flight rules into instrument meteorological conditions, which resulted in the pilot's spatial disorientation and loss of control, led to the fatal, January 26, 2020, crash of a Sikorsky S-76B helicopter in Calabasas, California. The pilot and eight passengers (including basketball legend Kobe Bryant) died when the helicopter, operated by Island Express Helicopters, Inc., entered a rapidly descending left turn and crashed into terrain. The flight departed from John Wayne Airport-Orange County, Santa Ana, California, and was bound for Camarillo, California. About two minutes before the crash, while at an altitude of about 450 feet above ground level, the pilot transmitted to an air traffic control facility that he was initiating a climb to get the helicopter "above the [cloud] layers." The helicopter climbed at a rate of about 1,500 feet per minute and began a gradual left turn. The helicopter reached an altitude of about 2,400 feet above sea level (1,600 feet above ground level) and began to descend rapidly in a left turn to the ground. While the helicopter was descending the air traffic controller asked the pilot to "say intentions," and the pilot replied that the flight was climbing to 4,000 feet msl (about 3,200 feet above ground level). A witness first heard the helicopter and then saw it emerge from the bottom of the cloud layer in a left-banked descent about one or two seconds before impact.

The Board also said that contributing to the accident was the pilot's likely self-induced pressure and plan continuation bias, which adversely affected his decision making. The NTSB also determined Island Express Helicopters Inc.'s inadequate review and oversight of its safety management process contributed to the crash. "Unfortunately, we continue to see these same issues influence poor decision making among otherwise experienced pilots in aviation crashes," said NTSB Chairman Robert Sumwalt. "Had this pilot not succumbed to the pressures he placed on himself to continue the flight into adverse weather, it is likely this accident would not have happened. A robust safety management system can help operators like Island Express provide the support their pilots need to help them resist such very real pressures."

The report discussed during the Board meeting highlighted Island Express Helicopters Inc.'s inadequate review and oversight of its safety management processes. Island Express Helicopters Inc.'s lack of a documented policy and safety assurance evaluations to ensure its pilots were consistently and correctly completing the flight risk analysis forms, hindered the effectiveness of the form as a risk management tool. The NTSB concluded a fully implemented, mandatory safety management system could enhance Island Express Helicopter Inc.'s ability to manage risks.

Based upon its investigation the NTSB issued a total of four safety recommendations to the Federal Aviation Administration and to IslandExpress Helicopters Inc. The recommendations addressed safety issues including preflight weather and flight risk planning, spatial disorientation, inflight decision-making, the benefits of a manda-

tory safety management system, and the benefits of a flight data monitoring program.

ALW No. FB39715

Airports

Luggage Cart Causes Fall at LaGuardia — Undisclosed Settlement in New York. On or about November 21, 2016 the plaintiff was at Delta Air Lines, LaGuardia Airport Ramp, 94-00 Ditmars Blvd., Queens, NY when she tripped and fell over a dangerous condition caused by a luggage cart that was negligently placed by the defendant. Plaintiff suffered severe and permanent injuries including physical, mental, and emotional injuries.

This case settled for an undisclosed sum.

Yoandix Villanueva v. Delta Air Lines, Inc. U.S. District Court E.D. New York. John A. Blyth, Hach & Rose, New York, New York for the plaintiff.

ALW No. AP39708

Air Italy Passenger Falls on Moveable Stairs — Undisclosed New York Settlement. On or before November 28, 2016 the defendant repaired, inspected, and maintained the movable stairs exiting Flight AZ717 located at Leonardo da Vinci-Fiumicino Airport, Via dell' Aeroporto di Fiumicino, 320, 00054 Fiumicino RM, Italy. The plaintiff, while exiting the flight, slipped and fell because of the dangerous and unsafe conditions of the stairs. The plaintiff suffered severe personal injuries, and physical and mental anguish.

This case settled for an undisclosed sum.

Maria Politis against Delta Air Lines, INC. and ALITALIA-COMPAGNIA AEREA ITALIANA, S.P.A. Queens Co. (NY) Supreme Court No. ____. Tonino Sacco, Esq., Sacco & Fillas, Astoria, NY for the plaintiff.

TTT No. AP39707