



# The Update Report

The Airline Suppliers Association

Volume 9, Issue 1

January 2001

## YOUR ASSOCIATION IN ACTION

### ASA Files Life Limited Parts Comments

The Airline Suppliers Association [ASA] filed comment in response to the FAA's Life Limited Parts proposal.

The Association has been heavily involved in the development of these rules, and felt that the proposal had gotten 'off-track' when the FAA proposed to place the entire new rule in the maintenance rules portion of the aviation regulations (Part 43). ASA's comments to the regulatory docket explained that the FAA's placement of rules meant to support safe treatment of life-limited parts could be improved.

The comments were offered in response to an FAA proposal that would have had a significant negative effect on the industry with little additional safety benefit.

The FAA issued the NPRM in response to a Congressional mandate, but the effect of the NPRM was far broader than the Congressional requirement. The NPRM could have precluded ASA members from engaging in certain common (and safe) business transactions – the FAA's accompanying descriptions of the proposal makes it clear that this was not the FAA's intent. In essence, the FAA proposal missed the mark established by Congress.

The ASA recommendation meets the

intent of Congress without imposing an undue burden on industry. It does this by codifying the safe practices currently used by the industry. This approach would reward the vast majority of repair stations and other aviation companies that have historically supported safety, while requiring other companies to begin implementing the common industry practice of transferring current life status records with transferred life-limited parts.

ASA developed this comments with input from members, other sectors of the industry and the government. ASA met with FAA representatives, who explained the FAA's needs and desires with respect to the new rule. ASA met with a wide spectrum of industry representatives to assure that the proposal would meet the needs of our industry business partners. ASA member emails and phone calls were also quite important to the development process.

The proposal would codify some of the industry's best practices concerning life-limited parts. It would provide options for the safe disposition of life-limited parts and it makes it clear that the owner/operator (including an owner who is a distributor) may choose the safe disposition option that works best for that party.

The proposal would improve aviation

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*This list is continued with names of reaccreditees on Page 2 of this issue.*



## A Message from ASA's President

For the past year ASA has been fortunate to have Deborah Romine as our full-time auditor for Airline Suppliers Association Accreditation Program (ASAAP). Deborah notified me that she would be pursuing other career options and we wish her the best. In 2000, Deborah conducted 90 + audits for ASA.

ASA has always been committed to having the best auditors audit under ASAAP. In line with this tradition, ASA has hired Richard (Dick) Smith as our full-time auditor. Dick has over 30 years of experience in aviation. Prior to becoming ASA's full-time auditor Dick conducted audits for ASA on a contractual basis.

Dick holds an A&P License, a private pilots license and also had CASE level III 1A & 3A authorization. Prior to his work with ASA, Dick worked for 12 years with America West Airlines. He began as a Quality Control Inspector and at the time he left America West he held the position of QA/Regulatory Compliance Auditor. Dick has also worked for States West Airlines, Standard Aero Incorporated, Connect Air Airlines, Republic Airlines and TWA.

ASA's relationship with Dick developed through the years, as he was a regular at our training workshops in the Arizona area and our annual conferences. For those of you who list as your hobby building experimental aircraft, you share the same interest as Dick.

At present, ASA has 2 qualified and respected auditors, Dick Smith and Kelly Lyon. Kelly is located in South Florida and will continue to conduct audits on a contractual basis for ASA.

As part of our auditor training, British Airways is graciously allowing Dick and Kelly to attend their auditor

training program. The program is for 13 days and is based on the International Register of Certified Auditors (IRCA). Kelly and Dick will finish the training in February.

If you are interested in running for the Board of Directors, the deadline for nominations is February 28, 2001.

Best regards,

Michele Schweitzer

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**Mike Molli** 847-836-3100  
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### The Update Report

is a monthly newsletter of the Airline Suppliers Association. Questions/ comments should be addressed to:

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### The Update Report

provides timely information to help Association members and readers keep abreast of the changes within the aviation supply industry.

### The Update Report

is just one of the many benefits that the Airline Suppliers Association offers members. For information on ASA-100, the ASA Accreditation Program, Conferences, Workshops, FAA guidance like Advisory Circulars, Industry Memos, or services and benefits, contact the Association.

### The Update Report

For information on special package rates for advertising, contact the Association at (202) 730-0270.

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## Consignments and Bankruptcy

This is part three of a four-part series on business bankruptcy. This installment begins examining some of the special issues that arise when one of the parties in a consignment sales arrangement files for bankruptcy.

The first two installments of this series discussed some of the basics of bankruptcy law, such as the particular terminology used in bankruptcy proceedings, and the differences between the two main bankruptcy options for an insolvent business – Chapter 7 liquidation or Chapter 11 reorganization. The past installments also discussed the steps that a creditor should take when a business partner that owes money files for bankruptcy, as well as how to become a “secured” creditor entitled to higher priority when the bankrupt company’s assets are distributed to repay its debts.

This month’s article begins by describing consignments generally. It explains some of the rights and duties of the parties involved, and discusses

who has title to the goods while they are on consignment. Next, the article examines what happens when a business that placed goods on consignment with someone else files for bankruptcy. In particular, it examines the different treatment of bankruptcies depending on the chapter under which the bankruptcy is filed. As with all advice in the Update Report, this article should not take the place of com-

petent legal advice based on the particular facts of your situation.

The conclusion to this series in next month’s issue will examine the other side of consignment bankruptcy, where a company holding goods on consignment declares bankruptcy. It analyzes the owner/consignor’s rights and the options for protecting the con-

*(Continued on page 4)*

### The Glueckler Award Call for Nominations

The Edward J. Glueckler Award is presented annually in recognition of outstanding commitment, dedication and contribution to the Airline Suppliers Association and to the aviation industry.

ASA is currently seeking nominations for this year’s recipient. Complete information is available on the internet at:

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*(Continued from page 3)*

signor's goods that are placed on consignment from the claims of the consignor's creditors.

### *What is a Consignment?*

Consignments raise some special questions because the legal character of a consignment arrangement may vary, depending upon the understandings of the parties involved and the manner in which they drafted the contract governing the relationship. In some cases, particularly when the party holding the consigned goods files for bankruptcy, the courts will consider the consignment itself to be a sale of the goods involved, regardless of the intent of the parties or the wording of their consignment contract, with the result that the consigned goods are subject to the claims of the creditors of the party in possession of the goods (next month's installment discusses what an ASA member can do to protect its rights in such situations).

Consignments, while familiar enough to most business people, have sometimes been the focus of some contention in the courts because of their resemblance to some other forms of commercial relationships, such as a sale on credit or a "sale or return" (discussed below).

### *Basic Consignment Terms*

In a true consignment, one party, the "consignor," turns some goods over to another party, the "consignee," with the understanding that the consignee will sell the goods on the consignor's behalf. The consignee will generally keep a designated portion of the proceeds as a commission on the sale. Under general commercial law, the consignor and consignee have what is known as a "principal-agent" relationship, that is, the consignee acts as an agent of the consignor in selling the goods. Unless otherwise specified in the consignment agreement, the consignee may sell the goods in his or her own name at his or her own place of business.

### *Who Retains Title to the Goods?*

An important characteristic of a consignment is that title to the consigned goods remains with the consignor until such time as the goods are sold. At the time of sale, title passes directly from the consignor to the buyer of the goods. At no time does the consignee have title, although the consignee does have a duty to account for the goods and any proceeds from their sale. One consequence of this is that unless the parties have expressly agreed otherwise, the consignor bears the risk of loss of the goods, such as loss through fire or theft, while the goods are in the consignee's possession. The question of title to the goods also determines, to a large extent, how those goods are treated once either the consignor or the consignee file for bankruptcy.

*(Continued on page 5)*

## When a Consignment Becomes Part of a Bankruptcy...

(Continued from page 4)  
Fact Pattern One

Suppose your company has entered into an agreement with Company XYZ [XYZ] under which your company agrees to sell XYZ's inventory of engine parts on consignment for a fifty percent sales commission. Your company and XYZ execute a consignment agreement that specifies, among other things, that the parts will be shipped to your company's warehouse and sold through your company's regular catalog. The contract also makes it clear that XYZ retains title to the parts until they are sold, and that your company will make monthly remittances of the proceeds of any sales, minus commissions. Your company retains the option to return any unsold parts to XYZ after two years. Sales are steady and your com-

pany sends XYZ a list of the items sold and an accounting of proceeds and commissions every month. After six months, however, you receive notification from the local bankruptcy court that XYZ has filed for bankruptcy. What happens now? Can you continue selling XYZ's parts? If not, what are your responsibilities?

### *The Bankruptcy Estate*

The provisions of the Federal Bankruptcy Code are triggered as soon as XYZ files a properly composed bankruptcy petition with the local bankruptcy court. Under the Bankruptcy Code, the commencement of a bankruptcy case creates a "bankruptcy estate" consisting of all of the debtor's assets as of the date of filing. The estate is defined very broadly, taking in "all legal or equitable interests of

the debtor in property," no matter where they are located or who holds them. Legal title is an "interest in property"; accordingly, since XYZ retained title to the engine parts on consignment with your company, the parts would be considered part of XYZ's bankruptcy estate. Once the bankruptcy estate is created, the debtor retains no interest in the property making up the estate. Rather, the estate is controlled by the trustee in the case of a Chapter 7 liquidation, or by the "debtor in possession," the company management acting in the capacity of a trustee, in a Chapter 11 reorganization.

The duties of a consignee of the debtor will vary depending on whether the debtor opted for a Chapter 7 or Chapter 11 proceeding.

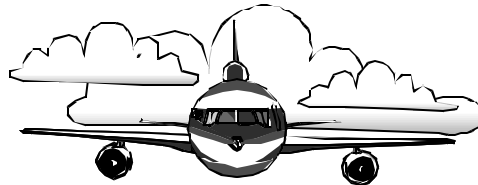
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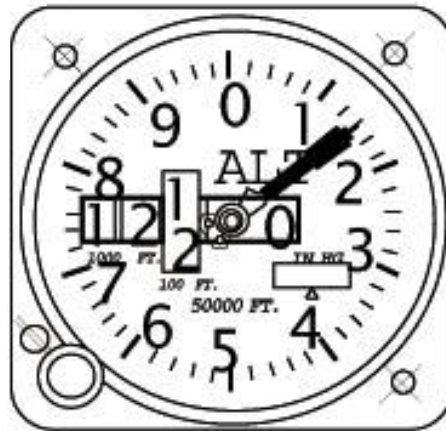
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## Protecting Your Company in a Consignor's Bankruptcy

(Continued from page 5)

### Chapter 7: Surrender of Property to the Trustee

In a Chapter 7 liquidation, the trustee is required to gather all of the assets of the bankruptcy estate together and sell them for cash to satisfy the creditors. This means that any goods in the possession of a consignee must be surrendered to the trustee as soon as the consignee is notified that the bankruptcy case has commenced. Ordinarily, the trustee is responsible for sending out the required notification, based on information provided by the debtor. Once the notification arrives, sales of the debtor's consigned goods must stop, because the consignee has a statutory *duty* to deliver the goods to the trustee, even if there has been no formal request from the trustee or court order.

How must the goods be delivered? The definition of what constitutes "delivery" under these circumstances is a question of state law, and therefore will vary depending on the circumstances. In some cases it is possible that the consignee could merely tender possession of the goods to the trustee where they are, leaving the cost of removal and transport to the bankruptcy estate. Depending on the circumstances, the estate may be interested in paying storage costs rather than moving the inventory immediately. This is a matter to be discussed with the bankruptcy trustee and your own attorney.

Parties in possession of inventory belonging to the bankruptcy estate have a statutory duty to "account for" the property to the trustee. This means that the consignee no longer has the right to sell the inventory. The duty to account for property of the estate also means that any amounts owed to

the debtor/consignor for sales that have already taken place must be remitted to the trustee.

If, for some reason, the consignee knowingly continues to sell consigned goods belonging to the debtor's estate after notification of the commencement of the bankruptcy case, the consignee will be liable to the estate for the full value of the items sold, with no commissions retained. If the parts are sold below market value, then it is possible for the bankruptcy trustee to sue the consignee for the market value of the sold inventory, rather than the actual sales price, so the consignee could actually lose money on the sales!

***A chapter 7 bankruptcy trustee may be able to continue the consignment agreement, but will only do so if the agreement is 'executory' and the consignment benefits the bankruptcy estate.***

Does this mean that purchasers must undertake extraordinary measures to assure that the parts do not come from a bankrupt company's consignment? No. If the consignee sells the parts, then purchasers may be protected if the purchaser:

- 1) bought the items in question in the ordinary course of business; and,
- 2) bought the items without knowledge that the consignor had filed for bankruptcy.

If the purchaser meets each of these two elements, then the purchaser should be protected and shall hold

title to the goods free and clear of any claims by the trustee.

### Continuing the Consignment Agreement

The obligation to halt sales and turn over the goods to the trustee may represent a significant inconvenience to the consignee, who may have relied upon the commission revenue gained from the consignment sales. Further, where the trustee steps in to take possession of consigned goods and sell them off for cash, this would clearly conflict with any exclusive distribution agreements concluded between the consignee and the consignor. What becomes of such agreements?

Under the Bankruptcy Code, the trustee has the authority, subject to approval by the court, to assume or reject any executory contracts to which the debtor is a party in order to relieve the estate of burdensome obligations. The Bankruptcy Code does not define "executory contract," leaving the question once again to state law. The most common definition holds that an executory contract is one in which substantial obligations still remain on both sides. The question of whether an exclusive sales agreement would constitute an executory contract for these purposes depends upon a number of factors, such as whether this sales agreement is part of the consignment agreement itself or was concluded as a separate agreement.

In most cases, executory contracts are deemed rejected as a matter of law in a Chapter 7 liquidation unless the trustee expressly assumes or rejects it within 60 days of the commencement of the bankruptcy case. A consignment agreement may be in the best interests of both the estate and the consignee, as consignee sales may

(Continued on page 8)

## Protecting Your Rights In Someone Else's Bankruptcy

(Continued from page 7)

return a much higher value than the trustee's estate sale would return. For this reason, it is important to contact the bankruptcy trustee as early as possible to begin discussions about the merits of assumption of the consignment agreement.

Where the bankruptcy trustee decides not to assume the consignment agreement, it is unlikely that a court would force the assumption, or reimbursement of costs. Even if the consignee could assert a claim against the bankruptcy estate under state law for losses he or she incurs from losing the right to sell the goods as previously agreed, the claim would be treated as "unsecured," and hence enjoy a low likelihood of ever resulting in any substantial compensation.

### Chapter 11: Reorganization

When the consignor files for Chapter 11 reorganization, the effect on the consignee is much less dramatic. Under Chapter 11, the management of the debtor company assumes the role of "debtor in possession" and continues to run the day-to-day business of the company while working together with committees comprised of its creditors to devise a reorganized, or more extended, payment plan, usually spanning five years. The debtor in

possession generally has the powers and duties of a trustee in overseeing the bankruptcy estate, but, given the different purpose of a Chapter 11 proceeding, is not obligated to gather up and sell off the assets of the estate like in a Chapter 7 liquidation. Instead, subject to the approval of the creditors and the court, existing arrangements such as consignment agreements will usually continue as part of the reorganization plan.

***In the case of reorganization, the consignment may be 'business as usual,' but beware: the debtor-in-possession may be able to void the consignment agreement.***

### Fact Pattern Two

Company XYZ [XYZ] has filed for Chapter 11 protection. XYZ has an ongoing consignment agreement with the Company ABC [ABC]. Through that agreement, XYZ has placed inventory at ABC's facility, which ABC is selling.

In this fact pattern, the consignment agreement would probably continue

to be in effect, particularly if it was working out well and generating steady sales. The key determination on the part of the debtor in possession (the new management at XYZ) and their creditors is whether, in their business judgment, continuing to sell the inventory through ABC on consignment would help XYZ reach its goal of returning to profitability.

Bear in mind that the debtor in possession and the creditors could decide, subject to the approval of the court, to reject the contract as part of the reorganization plan if they found the agreement was not in the best interests of XYZ. Were that to occur, the burden would be on XYZ to retrieve its goods from ABC's possession. As in the case of the rejection of a contract by the trustee under a Chapter 7 liquidation, ABC's likelihood of recovering any damages would be slim.

Next month's issue of the Update Report will feature the conclusion to this series on bankruptcy. It will focus on the consignor's rights where the consigned inventory is placed with a company that subsequently enters bankruptcy proceedings. It will also address strategies for protecting against this possibility when you place your inventory on a consignment.

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## ASA 2001 Board Elections

At least five positions on the ASA Board of Directors will be open for election in 2001.

Each of these five Board members must either stand for re-election or step down from office. The five individuals are:

- Karen Borgnes  
**Pacific Aero Tech**
- John Butler  
**Time Aviation Services, A Unit of Ameron Global**
- Amy Cochis  
**Pratt & Whitney**
- Fred Gaunt  
**Pacific Air Industries**
- Mike Molli  
**Scandinavian Airlines System**

The two ASA board Members elected last year, Bill Cote and Paula Sparks, will continue to hold their positions for the coming year.

All seven of the current Directors have served with distinction. This Board has presided over some very important decisions about the future of the Association, like significant changes (both implemented and planned) to improve the ASA-100 Accreditation Program, introduction of significant hazardous materials training courses and resources, and substantial government affairs initiatives.

ASA Directors must be employees, officers or owners of an ASA member company. Board members who end their relationship with the ASA-member company are required to forfeit their seat on the ASA Board.

ASA Board members are expected to attend four Board meetings per year as well as participate on telephone conferences to help guide the Association. Each Board member is responsible for his or her own expenses;

they are not compensated for their efforts nor are they reimbursed for their expenses by the Association. Board members remain in frequent contact with the ASA President, and they are often instrumental in developing new programs and membership benefits.

Being a member of the ASA Board is a great responsibility, and ASA has been lucky to have some of the best people in the industry sit on its Board. ASA is looking forward to continuing its tradition of excellent Boards of Directors through this coming election.

ASA Members interested in running for these positions should submit nominations to ASA. Nominations should include the name, company name, and contact information for the nominee.

Nominations are due no later than 5:00 pm Eastern Time on Wednesday, February 28, 2001. Ballots for the election will be distributed to the ASA membership on or about March 2, 2001.



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## Gov't at a Glance

In recent meetings on and off Capitol Hill, it has become clear that the number one issue before Congressional transportation committees is air traffic control [ATC].

While this may not appear important to distributors at first glance, it is important because it means that Capitol Hill will be looking at our industry under a microscope, and this may provide an opportunity to have Congress address some other issues that plague the industry.

Norman Mineta, the former Chair of both the Transportation Committee and the Aviation Subcommittee, has left the Congress but his stay in the private sector was short-lived. After six months as Clinton's Commerce Secretary, Mineta has agreed to stay on with the Bush Administration as Transportation Secretary. He has confirmed that ATC reform is his number one issue.

There are a variety of solutions to the aviation congestion issues facing the nation. The long term solutions of building infrastructure (runways) will take many years to complete, so short-term solutions must *also* be adopted. Short-term solutions include government interaction in the flight scheduling process, and technology solutions like advanced avionics that make it possible to reduce the separation between aircraft.

All of this means that a larger than normal percentage of the FAA's regulatory resources will probably be devoted to ATC issues. This could delay non-ATC priorities from receiving the attention they deserve. In the coming year, it will therefore be especially important for ASA members to communicate their problems to ASA, and to support ASA's efforts to achieve solutions.

## LLP Comments

*(Continued from page 1)*

safety by assuring implementation of good record-keeping practices designed to prevent any possibility of unsafe conditions. Under the proposal, owners and possessors of life-limited parts would be required to transfer current status records with the parts when sold or otherwise transferred, and installers would be required to make reference to these records to assure that a life-limited part was not installed inappropriately.

ASA filed its comments jointly with five other industry trade associations in support of this proposal: Aeronautical Repair Station Association, Aircraft Electronics Association, Helicopter Association International, National Air Carrier Association and Professional Aviation Maintenance Association. Each of these organizations contributed input to the final comments.

In addition to these joint comments, ASA filed separate comments addressing some of the particular concerns of the distribution industry. These separate comments ended with the same conclusion as the joint comments: the issuance of a supplemental notice to the public using language similar to that recommended by ASA.

The next step in the process is for the FAA to review the comments received from all commenters. The FAA has not made any promises to ASA, so there is no guarantee that the joint proposal will be accepted by the government; nonetheless, the joint proposal makes sense and it allocates the regulatory risks and responsibilities the way that these risks and responsibilities are already allocated by those engaged in 'best practices' throughout the industry.

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Back issues of the Update Report are now on-line! Missing a prior issue? Issues of the Update Report are being added to the ASA web site about one month after they are published. Complete sets of volumes six through eight (except this issue) are now on-line!

## UPCOMING EVENTS

\* = *Schweitzer, Lewis or Dickstein will be speaking there*

- Feb. 11-13**     **Heli-Expo 2001**, Anaheim, CA. See <http://www.heliexpo.com> for details.
- Feb. 26-27**     \* **ASA Hazmat Training**, Miami, FL, Doubletree Miami Airport. See Page 3 for details.
- Feb. 28- Mar. 1**   \* **ASA Hazmat Training**, Ft. Lauderdale, FL, The Riverside Hotel. See Page 3 for details.
- Feb. 28-Mar. 2**   **Regional Airline Valuation Conference**, Tyson's Corner, VA. Call Carroll Everest at (44) 1892 515364.
- Mar. 25-28**     **Conference on Quality in Commercial Aviation**, Dallas, TX. Send email to [info@asdnet.org](mailto:info@asdnet.org) for details.
- Mar. 26-28**     **Commercial Aviation Indus. Suppliers Conference**, Los Angeles, CA. Call (310) 203-9603 for details.
- Mar. 26-28**     \* **PMA's & Spare Parts**, Atlanta, GA, Atlanta Airport Marriott. Call (207) 892-5445 for more details.
- Mar. 29-30**     \* **ASA Hazmat Training**, Dallas, TX. See Page 3 for details.
- Apr. 3-5**        **MRO**, Dallas, TX. Contact Ryan Leeds for details at (212) 904-3892.
- Apr. 22-24**     **Air Cargo Industry Conference**, New Orleans, LA. Call Carroll Everest at (44) 1892 515364.
- Apr. 25-27**     **NY School of Int'l Aviation Finance**, NY, NY. Call Euromoney at (44) 0 20 7779 8999.
- Apr. 25-28**     \* **Aircraft Electronics Ass'n Convention & Trade Show**, Dallas, TX. Call (816) 373-6565 for info.
- Apr. 27-30**     **Aeronautical Repair Station Ass'n Symposium**, Arlington, VA. Call (703) 739-9543 for details.
- Apr. 29-30**     \* **HazMat Training for the Aviation Community**, Long Beach, CA. Call (202) 730-0260 for details.
- May 1-3**        \* **Aviation Services and Suppliers Supershow**, Long Beach, CA. Call (202) 730-0260 for details.
- July 8-10**      \* **Airline Suppliers Association Annual Conference**, The Breakers, Palm Beach, FL.  
Call ASA at (202) 730-0270 for more information, or send email to [conference@airlinesuppliers.com](mailto:conference@airlinesuppliers.com)

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