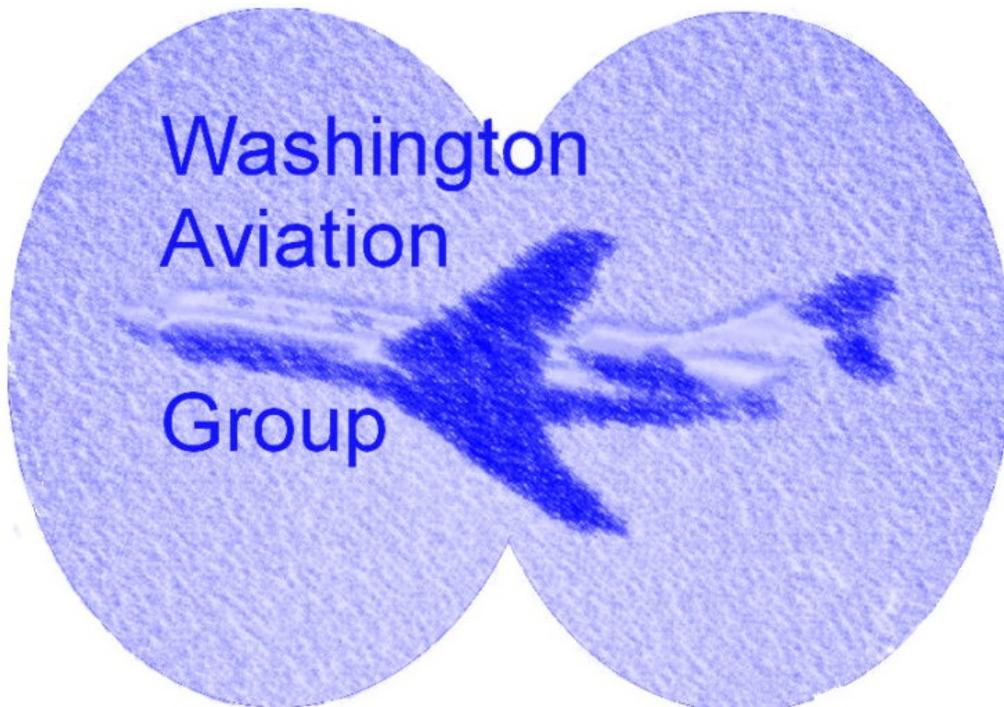


Five Case Studies

Workshop N

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CASE STUDY NUMBER ONE

ABC Manufacturer is an FAA-approved manufacturer of deicing articles. ABC Manufacturer produces in competition with DEF Manufacturer, who is also an FAA-approved manufacturer of deicing articles.

GHI is a distributor of aircraft parts.

ABC and GHI entered into a Distributor Agreement for GHI to become a worldwide distributor of the ABC de-ice product line on June 3, 2013. The agreement explains that in the event of a material breach that is not cured within sixty days of giving notice, the non-breaching party may terminate the Distributor Agreement.

During negotiations, ABC misrepresented its intentions to acquire FAA certification, thus leaving GHI with a limited number of products to sell. GHI realized this fact during 2014. In the Fall of 2014, GHI reduced its efforts to promote actively and sell ABC products. By February 2015, GHI had entered into an agreement with DEF to distribute the DEF de-ice product line, in addition to the ABC line.

Pursuant to the Distributor Agreement, ABC provided GHI with aircraft parts from June 3, 2013 through February 1, 2015. On April 18, 2015, ABC informed GHI that GHI was in material breach of the Distributor Agreement, for failure to pay for parts, and ABC made a demand for payment.

In May 2015, GHI terminated the Distributor Agreement.

ABC's claims

GHI paid for the products that it received between June 3, 2013 and November 1, 2014, but failed to pay for the products it received from November 8, 2014 through February 1, 2015.

GHI's defenses and counterclaim:

GHI claims that ABC induced GHI to enter the contract through fraudulent description of its intent to get FAA approval for the deicing line. ABC never obtained the FAA approvals that it claimed it would get.

GHI also alleges that ABC (1) failed to collaborate with GHI in developing an annual marketing plan and forecast for the territory and markets covered by the Distributor Agreement; (2) never provided GHI with sales literature, product specific literature, training material and other information; (3) never provided GHI with technical support and training to deal with customers; (4) refused to schedule dates for delivery of the products; (5) failed to provide a certificate of insurance for product and general liability insurance; (6) failed to obtain FAA approval for the number, type, and kind of de-icing products to be used on specific aircraft (thereby limiting the number of aircraft for which GHI could sell de-icing replacement products); and (7) competed with the GHI sales force by selling direct to the marketplace.

CASE STUDY NUMBER TWO

In November of 2015, Aggergaard Airlines entered into a contract with Surplus Sam for the sale of certain aircraft materials, specifically aircraft landing gear and structural components. The total purchase price on the contract was \$4,000,000. Upon delivery of the landing gear components, Surplus Sam was to make an initial cash payment of \$1,700,000 to Aggergaard Airlines, with the balance to be paid one year after the delivery.

The contract specified a time period for Surplus Sam to inspect the goods. The contract provided: "All Components are subject to Surplus Sam's final inspection and acceptance at destination. Such inspection shall be made within a reasonable time not to exceed ten (10) business days from delivery at a Surplus Sam facility." The contract further disclaimed all express and implied warranties of the materials, but provided that Aggergaard Airlines would provide Surplus Sam with FAA Form 8130-3 certification for all components.

Aggergaard Airlines delivered, and Surplus Sam accepted, the landing gear components, and Surplus Sam paid Aggergaard Airlines \$1,700,000 pursuant to the terms of the contract.

Aggergaard Airlines also delivered the structural components in two shipments, one delivered January 7, 2016, and one delivered January 12, 2016. In a letter or e-mail dated January 28, 2016, Surplus Sam informed Aggergaard Airlines of "discrepancies" regarding the FAA 8130-3 Forms. Specifically, Surplus Sam claimed:

- the 8130-3 forms were signed in the right-hand signature block but the parts were new and should have been recorded in the left-hand block
- several of the 8130-3 forms had typographical errors
- the 8130-3 forms were not accompanied by either manufacturer's original packing slips nor any other traceability documents

After several months and several other communications, Surplus Sam sent another missive to Aggergaard Airlines on April 14, 2016, indicating that foreign clients were unwilling to purchase the components without the original packing slips or traceability documents, that Surplus Sam must reject the components without that documentation.

On April 27, 2016, Aggergaard Airlines responded that it had, indeed, signed the forms in the appropriate block, that it was willing to correct any typographical errors, and that no other documentation was available.

Surplus Sam refused to pay any additional monies on the contract (missing the January balance payment date). Aggergaard Airlines refused to accept the components for return. Aggergaard Airlines commenced this litigation for breach of contract for non-payment. Surplus Sam counterclaims that Aggergaard Airlines breached the contract by failing to provide adequate documentation.

CASE STUDY NUMBER THREE

Johnathan Comelately is an employee in the shipping department of Shoulder Shrug Suppliers, a distributor of aircraft parts and avionics. Comelately has worked in the shipping department for 8 years.

Comelately is asked to ship one life vest and one aircraft survival kit for transportation by air. Both items are subject to IATA Packing Instruction 955 (below). How should he package these items?

PACKING INSTRUCTION 955

OPERATOR VARIATIONS: AM-09, OU-15

This instruction applies to UN 2990, Life-saving appliances, self-inflating and UN 3072, Life-saving appliances, not self-inflating on passenger aircraft and Cargo Aircraft Only.

The term "life-saving appliances" applies to articles such as life rafts, life vests, aircraft survival kits or aircraft evacuation slides.

The description "Life-saving appliances, self-inflating" (UN 2990) is intended to apply to life-saving appliances that present a hazard if the self-inflating device is activated accidentally.

Life-saving appliances, may only contain the dangerous goods listed below:

- (a) Division 2.2 gases, must be contained in cylinders which conform to the requirements of the appropriate national authority of the country in which they are approved and filled. Such cylinders may be connected to the life-saving appliance. These cylinders may include installed actuating cartridges (cartridges, power device of Division 1.4C and 1.4S) provided the aggregate quantity of deflagrating (propellant) explosives does not exceed 3.2 g per unit. When the cylinders are shipped separately, they must be classified as appropriate for the Division 2.2 gas contained and need not be marked, labelled or described as explosive articles;
- (b) signal devices (Class 1), which may include smoke and illumination signal flares; signal devices must be packed in plastic or fibreboard inner packagings;
- (c) small quantities of flammable substances, corrosive solids and organic peroxides (Classes 3 and 8, Divisions 4.1 and 5.2), which may include a repair kit and not more than 30 strike-anywhere matches. The organic peroxide may only be a component of a repair kit and the kit must be packed in strong inner packaging. The strike-anywhere matches must be packed in a cylindrical metal or composition packaging with a screw-type closure and be cushioned to prevent movement;

PACKING INSTRUCTION 955 (continued)

- (d) electric storage batteries (Class 8) which must be disconnected or electrically isolated and protected against short circuits;
- (e) lithium batteries (Class 9):
 1. must meet the applicable requirements of 3.9.2.6;
 2. must be disconnected or electrically isolated and protected against short circuits; and
 3. must be secured against movement within the appliance.
- (f) first aid kits which may include flammable, corrosive and toxic articles or substances.

The appliances must be packed so that they cannot be accidentally activated, in strong outer packagings and except for life-vests, the dangerous goods must be in inner packagings packed so as to prevent movement. The dangerous goods must be an integral part of the appliance without which it would not be operational and in quantities which do not exceed those appropriate for the actual appliance when in use.

Life-saving appliances packed in strong rigid outer packagings with a total maximum gross weight of 40 kg, containing no dangerous goods other than Division 2.2 compressed or liquefied gases with no subsidiary risk in receptacles with a capacity not exceeding 120 mL, installed solely for the purpose of the activation of the appliance, are not subject to these Regulations when carried as cargo.

UN number	Quantity per package Passenger aircraft	Quantity per package Cargo Aircraft Only
UN 2990, Life-saving appliances, self-inflating, or UN 3072, Life-saving appliances, not self-inflating	No limit	No limit

Life-saving appliances may also include articles and substances, not subject to these Regulations, which are an integral part of the appliance.

CASE STUDY NUMBER FOUR

Weekly Wings is a commercial air carrier that operates several aircraft types. Awesome Aero furnishes parts for those aircraft pursuant to a long-term agreement, which provides for net-30 day payment on all invoices.

During the relationship, Weekly's payment of invoices was inconsistent. Weekly routinely paid invoices to Awesome outside the net-30 day terms of the Agreement and often paid multiple invoices with one check.

In January 2014, Weekly began having financial difficulties. In March 2014, Weekly notified Awesome by phone that it would no longer be purchasing parts. Later that month Weekly sent a letter to Awesome and other suppliers notifying them of its plan to rework its supply and maintenance agreements in an effort to increase profitability. The letter also stated that Weekly intended to pay suppliers up front for new parts and to pay off old accounts within 60 days of receiving new financing. Weekly indicated it expected new financing to come through later in 2014.

In late March 2014, Awesome sent a letter to Weekly addressing Weekly's "continuing failure to maintain its accounts receivable" and Weekly's plans to revise its supplier agreements. Awesome stated that in order to supply Weekly in the future it would require the payment by Weekly of all outstanding invoices and accounts receivable. Weekly made ten payments to Awesome totaling \$1.4 million in satisfaction of over 200 outstanding invoices.

In November 2014 Weekly filed a petition for Chapter 11 Bankruptcy. In the 90 days preceding its bankruptcy filing, Weekly made nine payments to Awesome totaling \$782,000. During that same 90 days, Awesome provided \$165,000 in additional parts to Weekly.

The bankruptcy trustee sent letters to each company that had received payment from Weekly in the preceding 90 days requesting a return of those payments totaling \$782,000.

The bankruptcy trustee has threatened to file a complaint against Awesome seeking to avoid the nine payments (and ultimately require Awesome to return the money to the Weekly bankruptcy estate) if the payments are not returned to the bankruptcy estate, now.

CASE STUDY NUMBER FIVE

Snazzy Q. McStuffins is the owner of Smith's Parts. Smith's distributes a variety of lifesaving equipment for use in general aviation aircraft.

Smith's distributes the FireSquelcher line of fire extinguishers. The FireSquelcher extinguishers are manufactured in Europe, and imported into the United States. The FireSquelcher extinguishers are aerosol-type hand fire extinguishers containing a halon blend. The FireSquelcher extinguishers are marked with the UL symbol.

Smith's has a contract to be the exclusive distributor of FireSquelcher fire extinguishers in the United States. The contract is a twenty year contract and we are in year twelve of the contract. The contract does not inhibit Smith's from representing other brands, but Smith's has invested substantially in promoting the FireSquelcher brand, and has built up a substantial demand for the FireSquelcher brand in the United States.

Hand fire extinguishers are required (*inter alia*) under 14 CFR 91.513(c). The FAA has a TSO for water-resolution fire extinguishers (TSO-C19) but not for halon. The FAA approves halon fire extinguishers using the 14 C.F.R. 21.8(d) authority, which permits the FAA to approve articles using any manner approved by the FAA. E.g. AC 20-42D. The FAA relies on industry standards as the basis for such approval, including UL Standard 711.

Smith's tracks return and warranty metrics. After years of distributing FireSquelcher extinguishers, Smith's notices a dramatic uptick in warranty returns for the FireSquelcher extinguishers. The returns are for underweight and/or empty extinguishers. The extinguishers are underweight because they do not have enough halon in them – they are either being expended or they are leaking. This dramatic uptick is orders of magnitude higher than any other fire extinguisher product.

Smith's takes apart a fire extinguisher and finds what they believe to be a manufacturing flaw, which they think could contribute to a slow leak. They notify FireSquelcher but FireSquelcher management responds that (1) this not a manufacturing flaw, (2) fire extinguishers leak over time, and (3) any warranty returns should be immediately returned to FireSquelcher.

Smith's continues to see substantial warranty returns for underweight and/or empty extinguishers. They also are contacted by a private pilot who had a fire in the cockpit and whose fire extinguisher was empty when he tried to use it. He was able to land safely, but the fire caused substantial damage to the interior of the plane.