FIVE CASE STUDIES REGARDING BUSINESS LEGAL ISSUES

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Workshop H

CASE STUDY NUMBER ONE

Mega Engine Corp. was in the business of designing, testing, and manufacturing aircraft engines for numerous different purposes. To support its design and manufacturing needs, it relied on a global supply chain. During the test phase of the development of a certain engine, Mega Engine imported a number of experimental aircraft engine parts into the United States over the course of several years. Under an agreement with the United States Customs Service Mega Engines maintained a properly executed "Blanket Certification for Civil Aircraft Parts" on file, which allowed for Mega Engine to certify that the imported parts were subject to duty free entry under special provision (C) relating to the Agreement on Trade in Civil Aircraft.

The parts were intended for use in test engines, which were to be fired and run in test cells on the ground. They were classified under the Harmonized Tariff Schedule of the United States subheading 8411.91.9080 (no longer active), as parts of aircraft turbines, dutiable at 3.7 percent ad valorem and 3 percent ad valorem for the years in question. Customs levied the listed duties, but Mega Engine contended that the parts should have received duty-free treatment pursuant to the General Note 6 of the HTSUS entitled "Articles for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft."

General Note 6 accords duty-free status to imported articles for "use in civil aircraft." The note explains that when an article is imported under special provision (C) the importer is “deemed to certify that the imported article is a civil aircraft, or has been imported for use in a civil aircraft and will be so used.” Mega Engine believes that the note serves only to distinguish civil aircraft from military aircraft and requires that the articles *could* be installed on civil aircraft, not that they ultimately *must* be installed on civil aircraft.

Mega Engine filed several protests with Customs and requested review with Customs Headquarters arguing that the experimental parts for use in test cells for development of civil aircraft engines should be considered “use in civil aircraft.” Customs contended that the parts did not qualify under Note 6 because they were to be used in ground test cells and were not imported for actual "use in civil aircraft" and that the duties were properly levied.

CASE STUDY NUMBER TWO (two pages)

A small plane carrying a pilot and three passengers experienced a mid-flight failure of the aircraft engine over open water 200 miles off the coast resulting in an emergency water landing. The four occupants were safely rescued from their life raft, but the aircraft sank to the bottom of the sea and was never recovered.

The plane was a Wildwings Aerospace aircraft designed and manufactured in Germany and was fitted with an engine designed and manufactured by Buffalo Engines in Canada. Through a series of transactions both abroad and in the U.S., the aircraft was purchased by Ducats Holdings, resold to Moneybags Holdings, and then leased to Globetrotter Aviation. At the time of the accident, Globetrotter was operating the aircraft as an around-the-world charter flight. The aircraft was insured by Aircraft Underwriters, Inc., and after the crash Globetrotter filed insurance claims with Aircraft Underwriters arising out of the loss of the airplane and the owner's personal property, which was on board at the time the airplane went down. The claims were paid and Globetrotter assigned its rights to Aircraft Underwriters.

Aircraft Underwriters commenced a products liability action against Buffalo Engines and its affiliates, as well as Wildwings Aerospace and its subsidiary entities involved in the manufacture, installation, repair, modification, and sale of the airplane and its engine. Aircraft Underwriters asserted claims for strict liability under the State Product Liability Act and for negligence, seeking "to recover for, or on account of, personal injury or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of [the engine and aircraft]." Because Globetrotter suffered no injury or loss other than the manufactured products themselves, which were under warranty, the Defendants claimed that Aircraft Underwriters' tort claims were barred as a matter of law.

The Defendants claim that the tort claims are barred under the state economic loss doctrine, which provides that a party suffering only economic loss from the breach of an express or implied contractual duty may not assert a tort claim for such a breach absent an independent duty of care in tort. Specifically, the manufacturers of the aircraft and engine argued that the only duties they owed Globetrotter arose from the sale of the aircraft and engine as set forth in the express warranties regarding defects and workmanship. Because they owed no tort duty to Plaintiffs independent of the reasonable care promised under the warranty, they argued that the tort claims are barred where the only loss suffered was economic.

The warranty for both engine and aircraft contained substantially similar warranties that provided coverage for "5000 operating hours or 5 years from the date of delivery and warrants that at the time of delivery to the original operator, the product will be free from defects in material and/or manufacturing workmanship and will conform to the applicable specifications." The warranty further provides that the manufacturer will "repair or replace any engine parts found to be defective, including resultant damage to the product, during the coverage period," and "will pay reasonable removal and reinstallation labor."

The warranty expressly excluded coverage for "any product accessory or item of equipment which has been subject to misuse, negligence, unauthorized alteration or accident."

Each warranty also included broad disclaimers of tort liability, including negligence, based on the sale, use, or manufacture of the products.

CASE STUDY NUMBER THREE

Sooner Airlines was a certificated airline that maintained and operated aircraft in Oklahoma.

In August, 2003, as an inducement to Sooner to establish scheduled airline passenger service at a St. Louis Airport, Lender Lou agreed to make two contemporaneous loans to Sooner in the aggregate original principal sum of $750,000 for the purpose of acquiring two aircraft and sufficient spare parts to maintain such aircraft. Sooner executed two separate promissory notes each dated August 26, 2003, in favor of Lender Lou in the original principal amounts of $500,000 and $250,000, respectively. Sooner executed a Security Agreement, dated August 26, 2003, in which Sooner granted Lender Lou a security interest in the following collateral to secure the Loan:

All of the goods, equipment, machinery, inventory, parts and such other parts, all replacements and accessions thereto for use primarily but not exclusively in the repair, maintenance, operation and servicing of two Dornier DO328-100 Aircraft to be more specifically identified on a Spare Parts Inventory List to be provided by Debtor to Secured Party immediately upon identification or receipt of such Collateral.

The CEO of Sooner stated that the Collateral consisted of airplane "parts inventory" that "were maintained and used by Sooner, a certificated airline, for use in the operations of Sooner's aircraft."

Lender Lou filed a UCC financing statement with the Secretary of State of Missouri, the Clerk of Oklahoma County, Oklahoma, and the Secretary of State of Illinois. Lender Lou did not file any lien or notice of lien or any other instrument regarding the Collateral with the FAA.

Sooner quickly defaulted on its loan obligations to Lender Lou. On January 23, 2004, Sooner voluntarily commenced a Chapter 11 bankruptcy case. On March 11, 2005, the case was converted to a Chapter 7 bankruptcy case. At the time Sooner commenced bankruptcy proceedings, Sooner and the Collateral were located in Oklahoma.

On March 10, 2006, the Trustee filed an Amended Complaint seeking to avoid Lender Lou's security interest in the Collateral pursuant to 11 U.S.C. § 544.

On June 26, 2006, the Court entered an Order authorizing the sale of the Collateral free and clear of liens, claims and encumbrances pursuant to 11 U.S.C. § 363 for the sum of $285,000.

CASE STUDY NUMBER FOUR

Mr. Big was a long-time fan of, and very knowledgeable about, single-engine aircraft. He entered a business relationship with Bad Aviation, an engine overhaul shop. At Bad Aviation two technicians, Mr. Nogood and Mr. Scoundrel, held A&P certificates from the FAA. Mr. Nogood's son, Junior, also worked in the shop. Junior did not have A&P certificate, but he did work on overhauling airplane engines, ostensibly under the supervision of either his father or Mr. Scoundrel. Mr. Big engaged Bad Aviation to overhaul engines which he would sell to third parties, typically by advertising the engines in trade journals.

Over the course of about three years Bad Aviation overhauled approximately 17 engines for Mr. Big. These engines were mostly small piston engines which are typically installed in small, home-built aircraft.

Junior did the bulk of the engine work for Mr. Big. Each overhauled engine had a logbook describing the overhaul. Because Junior did not have an A&P certificate, either Nogood or Scoundrel would sign off on his work in the engine logbooks. Mr. Big frequently visited Bad Aviation. He personally delivered many parts for the engine overhauls, and observed and directed the work on several engines.

As part of the overhaul process, Mr. Big was solely responsible for engraving data plates for the engines. Bad Aviation supplied the data plates and Mr. Big engraved them and installed them on the engines prior to sale.

Mr. Big told his customers that the engines had been properly overhauled. The engines sold by Mr. Big included a new logbook that represented the overhaul work done to the engine. A few logbooks even stated that the engine "was in a condition for safe operation." The exterior of the engines had the appearance of being properly overhauled.

In reality the engines were so inadequate that not a single engine was safe for flight and each of the engines suffered from cracks or rusted parts, missing or wrong parts, and other serious problems, but the discrepancies could only be identified by tear down. Two engines caused in-flight failures and placed the pilots at substantial risk. Not a single engine was airworthy and many were never installed in aircraft. Mr. Big frequently sold the engines with an accompanying propeller. In every instance, the propellers were likewise found to be deficient because of cracks or other problems, rendering the propellers useless.

Fortunately, no one was killed.

CASE STUDY NUMBER FIVE (two pages)

ABC is in the business of manufacturing, distributing, marketing, and selling aircraft parts, including pneumatic products, propeller products, pneumatic de-icers and components, and other aircraft parts. GHI is a distributor of aircraft parts.

ABC received approval from the FAA to manufacture de-icing products for different types of aircraft. Until ABC received this approval, Ice-Co was the only manufacturer of de-icing products in the general aviation market. Distributor GHI was interested in entering the de-ice market and had attempted to become a distributor for Ice-Co. Failing to have done so, ABC and GHI began negotiations to allow GHI to become a worldwide distributor of the ABC de-ice product line. These negotiations led to a Distributor Agreement between ABC and GHI.

Under the Distributor Agreement, ABC appointed GHI as the distributor for its ice shield pneumatic de-icers and components, and ice shield propeller de-icers and components. The parties negotiated and agreed to the following performance figures.

A. Distributor GHI will be required to maintain inventory and sell products during the term of the agreement as follows:

Effective Date	Min. Inventory Level at Distribution Cost	Annual Sales Attainment
Year 1	125,000.00	n/a
Year 2	250,000.00	1,000,000.00
Year 3	500,000.00	4,000,000.00

According to the Distributor Agreement, ABC and GHI agreed that all invoices would be paid within thirty days and any invoices not timely paid would be subject to a late payment of one and one half percent per month. Additionally, GHI agreed to collaborate with ABC to develop an annual market plan and forecast for products under the Distributor Agreement.

Pursuant to the Distributor Agreement, ABC provided GHI with aircraft parts from for the first two years of the Agreement. GHI paid for the products that it received until November 1 of year two, but failed to pay for the products it received from November of year two until February of year three. ABC contends that the balance owing, excluding interest and attorney's fees is $ 77,295.00. In April of year three, ABC informed GHI that GHI was in material breach of the Distributor Agreement, and ABC made a demand for payment.

According to ABC, in the Fall of year two, GHI allegedly reduced its efforts to promote actively and sell ABC products. By February of year three, GHI had entered into an agreement with Ice-Co to distribute Ice-Co's de-ice product line.

ABC brought breach of contract claims against GHI and GHI counterclaimed. GHI alleged that before executing the Distributor Agreement, GHI and ABC made mutual mistakes concerning the scope and depth of the market for replacement de-icing and propeller products and their ability to capture a market share in the short period of time provided for in the agreement GHI also alleges that ABC failed (1) to collaborate with GHI in developing an annual marketing plan and forecast for the territory and markets covered by the Distributor Agreement; (2) to provide GHI with sales literature, product specific literature, training material and other information; (3) to provide GHI with technical support and training to deal with customers; (4) to schedule dates for delivery of the products; (5) to provide a certificate of insurance for product and general liability insurance; (6) to achieve FAA certification 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) to refrain from direct competition with the GHI sales force. As a result, in May of year three, GHI terminated the Distributor Agreement GHI seeks $ 500,000.00 in damages against ABC for lost sales and profits, lost marketing costs, lost inventory carrying costs, consequential "and/or" incidental damages.