



Workshop 21

From Scenario to Solution: A Case-Based Workshop with ASA's
Legal Team

Tuesday, June 16

10:30 – 12:00



Plan for the Workshop

- Our purpose today is to look at some legal cases whose decisions may illustrate the law as it applies to aircraft parts transactions
- We will present fact patterns and ask you to consider them and identify what you think is “the answer” to each fact pattern
- Please do not rely on what you learn in this course as a full statement of the law - the actual facts of a case can lead to differing results



Scenario One: Warranties



Scenario One

- On Jan. 24, Valley Girl Inc (VGI) bought an ADIRU from Joe's Garage for \$45,000. Joe's emailed Quote offered the ADIRU with a 30 day warranty in lieu of all other warranties (there is an explicit disclaimer), and required warranty claims to be communicated during the warranty period. The VGI purchase order accepted the quote and was silent as to warranty. VGI picked up the goods on Jan. 24.
- VGI sold the ADIRU to Zappa Airways with a 30-day warranty on Jan. 27.
- On February 26, Zappa Airways notified VGI of their warranty claim because the ADIRU was not working properly, and VGI took the ADIRU back from Zappa's
- Can VGI make a warranty claim to Joe's? How does VGI accomplish this?





The Warranty Claim

- “A breach of warranty occurs when tender of delivery is made, except that where a warranty *explicitly* extends to future performance of the goods *and* discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.” U.C.C. 2-725
- Joe’s Garage tendered the ADIRU EXW on Jan 24 with a 30 day warranty.
 - Ex works means it was tendered at Joe’s Garage
 - The warranty offer did not explicitly extend to future performance
 - The warranty accrues on January 24 and extends for 30 days
 - The warranty claim needed to be communicated during the warranty period, but was not known to VGI until January 27.



Practice Tips – Get a Warranty that Protects Your Interests

- Make sure you are getting the warranty you want
 - Look at the timing – if your customer asserts a warranty claim to you then can you still assert a timely related claim to the seller?
 - Consider whether you need to shorten your own warranty period
 - Look at the scope – does the warranty cover the claims that are most likely to be made? Does the warranty *explicitly* extend to future performance of the goods?
 - Look at the process – what do you need to do to be able to make a timely warranty claim? When does notice need to be made?
 - Does the seller’s warranty extend to your customer? [*privity issue*]
- By clarifying the warranty you are getting, you increase the chances that you will be able to recover for a claim



Practice Tips – Control Your Own Warranty

- Think about what warranty you really want to offer (and what warranty you are offering to your customers)
 - Are you warranting that the goods will conform to a standard?
 - Are you warranting a particular level of functionality?
 - Are you warranting the condition at the time of purchase?
 - Are you warranting that the article will continue to function for a period?
 - Are you warranting that the trace paperwork meets a standard (e.g. the documentation matrix of AC 00-56B appendix)?
- By clarifying what you are warranting, you reduce the chances that you will be held liable for an unanticipated claim



Implied Warranties

- Merchantability
 - The goods will be function for their *ordinary* intended use
 - Implied unless explicitly disclaimed
- Fitness for a particular purpose
 - IF you (1) intend to use the goods for a particular purpose, and (2) communicate your purpose so the seller has knowledge, and (3) rely on the seller's expertise to choose the right good
 - THEN



Warranty is Not Your Only Potential Claim

- If you are outside of the warranty, then you may have other causes of action, for example:
 - If there are other promises in the contract that are breached, then these may be independent contract causes of action
 - Tort claims
 - If the part does not meet the terms of the paperwork (e.g. condition) then you may have a cause of action for fraud or misrepresentation
 - If the part caused injury to a third party because of the seller's act or omissions and the seller had a related duty, then you may have a cause of action for negligence
 - But beware of the economic loss doctrine, which forbids you from substituting a tort cause of action in place of a contract breach – typically you need injury, fraud, or an independent duty (like under state law) for tort recovery related to a contract breach
 - You may have specific state law causes of actions
 - “Independent duty doctrine”



Scenario Two: Criminal vs Civil Liability



Scenario Two

- Defense Contractor (“DC”) holds a series of government contracts to manufacture a flight-critical structural component — wing pins — for military fighter aircraft to exact design specifications.
- The contracts specified the grade of steel to be used and mandated a defined third-party safety inspection process.
- DC manufactures and ships units to the Department of Defense, submitting certification forms with each delivery attesting that all design specifications were met in full.
- Some units were manufactured using the wrong grade of steel, and some were never subjected to the required safety testing.
- **Does DC have any criminal liability here? Or is it merely civil?**



Applicable Laws

- 18 U.S.C. § 38 — Fraud involving aircraft parts; criminalises knowingly making false representations concerning the manufacture, production, or testing of aircraft parts (including civil and military)
- 18 U.S.C. § 1519 — Obstruction of federal investigation; criminalises knowingly falsifying, concealing, or creating a document to impede a federal investigation — here, the forged third-party testing record
- Defense Federal Acquisition Regulation Supplement (DFARS) — Requires contractors manufacturing parts to government design specifications to comply with all stated material and testing requirements; certification forms submitted with deliveries are contractual representations to the government
- 10 U.S.C. § 2409 / DCIS jurisdiction — Defense Criminal Investigative Service has statutory authority to investigate fraud against the Department of Defense in the procurement of equipment and parts



U.S. v. Markson

- Between 2009 and 2012, Markson obtained a series of contracts on behalf of Action Machine to manufacture wing pins for the Department of Defense. Wing pins are critical safety parts that are used to secure the wings of F-15 fighter aircraft. The contracts contained detailed design specifications that required Action Machine to use a particular type of hardened steel when manufacturing the wing pins and to subject the wing pins to a particular safety inspection process. Based on these contracts, Markson manufactured and shipped a total of 212 wing pins to the Department of Defense and supplied certification forms verifying that the wing pins met all of the design specifications. In fact, these certifications were false - some of the wing pins were made with the wrong type of steel and some had not been subjected to the required safety testing.
- In 2013, the Department of Defense discovered that the wing pins supplied by Action Machine might be defective. (This discovery occurred before any accidents or injuries occurred.) Based on this discovery, auditors were dispatched to Phoenix to interview Markson and inspect Action Machine's books and records. During this process, Markson supplied auditors with a document that appeared to show that a third-party testing company had conducted all of the necessary safety testing on the wing pins. In fact, this document was a forgery created by Markson.
- Charged with 2 counts: 1) in and affecting interstate commerce, knowingly and with the intent to defraud falsified and concealed a material fact concerning an aircraft part and made a materially fraudulent representation concerning an aircraft part; 2) knowingly falsified a document, to wit: a dye penetrant certification, with the intent to impede, obstruct, and influence an investigation
- False act: Certification forms submitted with each delivery falsely attested to material compliance and testing completion; the forged third-party testing record created a separate and aggravated criminal exposure for obstruction



Lessons Learned

- A supplier or manufacturer who ships a part knowing it does not meet the contracted specification has committed the fraud at the point of certification — not when the deficiency is later discovered. Maintaining manufacturing records that accurately reflect what was actually produced, and what testing was actually performed, is the reliable protection against this exposure
- Third-party testing records in your supplier's documentation deserve the same scrutiny as the parts themselves
- When procuring parts that arrive with third-party inspection or testing certificates, verify that the testing entity named holds the relevant accreditation and that the certificate number and date are traceable



Lessons Learned

- A government audit is not the time to reconstruct your records. When auditors arrive, the documents you produce are themselves evidence. Markson's obstruction charge arose from the forged record he created in response to the investigation. Any attempt to remedy a documentation gap after an audit has been announced — rather than through the normal quality system — exposes you to a separate and more serious criminal charge than the underlying non-compliance
- Material substitution may be invisible. Accepting a part on visual inspection alone when the contract requires a specific material is an assumption of risk that the supplier's paperwork may not ultimately support.



Scenario Three: Writing



Scenario Three

- Jerry from GD Aviation calls Dark Star Aviation on the telephone to buy a TCAS unit for his AOG customer; on the phone Dark Star Aviation's Mickey tells Jerry that the overhauled unit will cost \$160,000
- Jerry agrees on the phone and Dark Star sends the TCAS unit to GD Aviation immediately
- GD Aviation is on 30 day terms; 30 days come and go but no payment arrives; when Dark Star emails GD Aviation, Phil from GD Aviation Accounting responds by sending an email explaining that the unit is available from a competitor for \$80,000 and Phil demands that Dark Star send a new invoice for \$80,000
- Can Dark Star Aviation sue for the entire \$160,000? Is Phil right and is GD Aviation entitled to a price reduction?



Applicable Law

- Statute of Frauds
 - Certain contracts must be in a signed writing
 - Signed by the person against who the contract is to be enforced
 - Modern trend is to be more expansive on “signature”
 - Some states include an email signature
 - Letterhead can be construed as signature in some states
 - “symbols adopted by the parties to authenticate the writing”
 - This includes sales of goods priced at \$500 or more
- Exceptions (when courts may enforce an oral agreement)
 - Partial or full performance
 - Admission
 - Promissory estoppel
 - Representation, Reasonable Reliance and Loss

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Complete performance of the oral agreement eliminates the Statute of Frauds as a defense

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Was Phil’s email an admission of the original price? Does it serve as evidence of the original purchase price?



Best Practices

- Have a signed writing that reflects the transaction agreement for transactions in goods worth \$500+
- For example, when buying:
 - Send a purchase order that accepts the referenced quote OR
 - Ask the seller to sign the PO and return it OR
 - Ask the seller to send an acknowledgement on their letterhead, especially if there will be a delay in fulfilment



Scenario Four: Export Control



Scenario Four

Two individuals (“A” and “B”) reside in Miami and operate a parts procurement business. Beginning in May 2022, following the imposition of US export sanctions on Russia, A and B receive orders from Russian commercial airlines for aircraft parts and components.

Rather than obtaining the required Department of Commerce export licences, A and B source the parts from US suppliers by providing false information about the intended destination of the goods — telling suppliers the parts are going to non-sanctioned countries. They used straw buyer companies located overseas to receive funds from Russian airlines and route those payments through other foreign bank accounts to wire into US bank accounts before disbursing them to acquire the parts.

On September 8, 2022, A and B travel in person to an Arizona supplier to negotiate the purchase of a controlled aircraft part, representing orally and in signed export compliance forms that the parts are destined for Turkey. The funds for this transaction arrive from a Russian airline via a Turkish bank account. Multiple shipments are seized by US authorities before export.

Did “A” and “B” violate the law?



Laws

- Export Control Reform Act (ECRA) — 50 U.S.C. § 4819 — Makes it a federal crime to export, reexport, or transfer items subject to the Export Administration Regulations (EAR) without the required licence from the Department of Commerce; punishable by up to 20 years in prison per count
- Export Administration Regulations (EAR) — 15 C.F.R. Parts 730–774 — Carbon disc brake systems used on Boeing 737 aircraft are controlled items under the EAR; following Russia’s February 2022 invasion of Ukraine, the Commerce Department’s Bureau of Industry and Security (BIS) imposed a near-comprehensive licence requirement on exports to Russia, with very limited exceptions
- Conspiracy to Commit International Money Laundering — 18 U.S.C. § 1956(h) — Criminalises conspiracies to transport funds derived from unlawful activity across international borders to promote or conceal the unlawful activity; here, routing Russian airline payments through Turkish bank accounts into US accounts constituted the laundering layer
- False Statements on Export Compliance Forms — Signing an end-user certificate or export compliance form falsely certifying the destination of controlled goods is a separate criminal act under 18 U.S.C. § 1001 and compounds the ECRA violation



United States v. Patsulya & Besedin (Russia Boeing 737 Brakes)

- Beginning in or about May 2022, Patsulya and Besedin conspired with each other and several others to obtain orders for various aircraft parts and components from Russian buyers — primarily commercial airline companies — and then fulfill those requests by acquiring the parts from US suppliers and unlawfully exporting the parts to Russia. The defendants admitted to knowing the items were controlled and required a licence from the Department of Commerce to export.
- The two conspired to export multiple shipments of a carbon disc brake system used on Boeing 737 aircraft. When contacting various US suppliers, they provided false information that the parts were intended for countries other than Russia. The United States was able to detain, prior to export, multiple shipments made by the defendants containing units of the brake assembly technology
- On September 8, 2022, Besedin and Patsulya travelled to Arizona to close a deal with a US company, in which they sought to purchase units of the brake assembly technology. During their discussions, the defendants misrepresented that the aircraft parts were going to be exported to both orally and in signed export compliance forms. In connection with this transaction, the defendants received money from a Russian airline company, transferred to Patsulya's American bank account from a Turkish bank account that had previously received the money from Russia
- U.S. bank accounts associated with Patsulya's company, received at least \$4,582,288.51 sent from Russian airline companies through Turkish bank accounts to purchase aircraft parts and components intended for unlawful export. Patsulya was required to forfeit assets in the amount of \$4,582,288.51
- Sentences: Patsulya sentenced to 70 months in prison, with weight given to Patsulya's leadership role in planning and carrying out the scheme. Besedin was sentenced to two years in prison.



Lessons

- The identity of the paying party — not just the stated shipping destination — is a required due diligence check. If funds arrive through a Turkish or UAE bank account for a customer with Russian connections, that financial routing is a red flag regardless of the export form.
- The seizure of multiple shipments before they left the country demonstrates that BIS and CBP monitor controlled aviation parts at the point of export. Your logistics and shipping records — including freight forwarder instructions, airway bills, and electronic export information filings — are reviewed by federal agencies in real time for exports of controlled items. Any discrepancy between the stated destination and the financial trail is detectable and may be investigated. Consider: are your compliance procedures are rigorous enough to ensure you are not unknowingly facilitating a transaction that is being monitored?
- Verbal assurances from a customer about end use carry no legal protection for the seller. Both defendants made false statements orally and in writing. For US parts suppliers, the presence of a signed end-user certificate from a customer does not extinguish your duty to investigate red flags. If you have reason to know that the stated end use is false — unusual routing of funds, a customer with known Russian connections, prior hesitation about the transaction — proceeding on the strength of a signed form alone may not protect you from regulatory or criminal exposure if you ignore other red flags.



Scenario Five: Non-Delivery



Scenario Five

- Air carrier asks you to deliver a vapor cycle air conditioning system
- VCAC system is for an unanticipated aircraft and requires an STC
- You contracted with a manufacturer to obtain the STC and produce the VCAC system in Spring of 2023
 - You fully paid the manufacturer for the VCAC System in 2023
 - Manufacturer tells you that STC process will be time-consuming
 - The contract said the VCAC would be delivered in a reasonable time
 - In Spring 2026 the VCAC was still undelivered so you cancelled the order
 - You never received the modified VCAC
- Can you sue the manufacturer? On what grounds?



- This is a contract action that may turn on whether the delay/fulfillment period was reasonable
- Failure to deliver would be a breach if the timing was unreasonable
- In the real case, the plaintiff asserted claims for
 - breach of contract
 - rescission based on mutual mistake
 - [*tort claims were rejected under the economic loss doctrine*]



The Real Case

- In the real case, the customer failed to provide a substantial explanation as to why a delivery period almost three years past the finalization of the contract was unreasonable
- The manufacturer showed the court that “uncertainty is the norm in the FAA approval process.”
 - Argued that the project timeline is dependent on an uncertain FAA timeline
- Testimony showed that the FAA approval process could take anywhere from six months to five years, depending on the project

Israel Aerospace Industries, Ltd., v. Airweld, Inc., Case No. CIV. 2:11-CV-00887 (October 10, 2012)



Lessons Learned

- Be specific in your agreements:
 - What is being delivered?
 - What are the payment terms?
 - *When is it being delivered?*
 - How is it being delivered?
 - Where is it being delivered?
 - What happens if something goes wrong?
- *This specificity can be accomplished in most day-to-day agreements by reliance on standard terms and conditions*



Thank You

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