

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: SEPTEMBER 14, 1990

FAA Order No. 90-25

In the Matter of:)
)
)

Docket No. CP89WP0287

LUCIOUS LAKEN GABBERT)
_____)

ORDER DENYING PETITION TO FILE AMICUS CURIAE BRIEF

In connection with Respondent's appeal from the law judge's initial decision in this case^{1/}, Respondent's attorney has submitted, along with Respondent's appeal brief, a Petition to File Amicus Curiae Brief of Norman de Witte. Though the record contains no indication of what, if any, interest Mr. de Witte has in the outcome of this matter, Respondent's attorney asserts in the Petition that Mr. de Witte "has testimony material to this case." He also asserts in the Petition that, "due to a very serious family crisis," Mr. de Witte was unable to appear at the hearing in this case, which was held on February 14, 1990 in Phoenix, Arizona. Respondent's counsel further asserts that "Complainant would not allow a postponement of the hearing to allow [Mr. de Witte] to testify," and requests permission to file an Amicus Curiae Brief on Mr. de Witte's behalf.

The record in this case contains a pre-hearing discovery document filed by Respondent on October 17, 1989, which

^{1/} The law judge found that Respondent violated 14 C.F.R. §43.15(a) when, in connection with his performance of an annual inspection of a Piper PA25 aircraft and his approval of its return to service, he failed to detect severe corrosion which rendered the aircraft unairworthy.

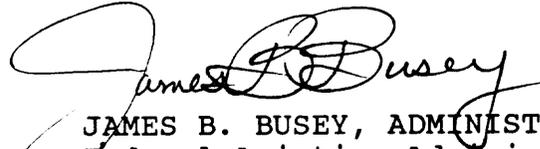
identifies "Norman DeWitt, Mechanic," of Peoria, Arizona, as one of Respondent's prospective witnesses. At the hearing, Respondent testified that the aircraft involved in this case, which was owned and operated by an agricultural spraying company, was regularly maintained by Mr. de Witte, who was employed as that company's full-time mechanic. Respondent also testified that Mr. de Witte was not present at the hearing because he "got called away." However, the hearing record contains no further mention of Mr. de Witte's relevance to this case, nor does it reflect any request by Respondent's counsel for a continuance of the hearing -- or for any other form of relief -- due to the unavailability of Mr. de Witte's testimony.

If Respondent's counsel believed that Mr. de Witte's testimony was necessary to a proper disposition of the case, he should have sought a continuance from the law judge on that basis, regardless of whether the agency attorney may have objected to such a continuance. Because he did not do so, the law judge was unaware that Respondent considered Mr. de Witte's testimony to be material and necessary to the case, and, accordingly, did not address himself to that issue.

The first indication in the record of Respondent's position regarding the materiality and necessity of Mr. de Witte's testimony is this Petition, which was filed on April 24, 1990, two months after the hearing. Respondent's silence on this issue until this late date severely detracts from his stated position that Mr. de Witte's testimony is material to the case.

While section 13.233(f) of the Rules of Practice (14 C.F.R. §13.233(f)) does provide that I may allow any person to submit an amicus curiae brief, on the record before me I cannot find that Mr. de Witte has a substantial interest that is not represented by the parties to this case, or that an amicus curiae brief from Mr. de Witte is otherwise necessary for a proper disposition of this case.^{2/}

THEREFORE, for the reasons stated above, the Petition of Norman de Witte to file an Amicus Curiae Brief is denied.



JAMES B. BUSEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 13th day of September, 1990.

^{2/} In any event, Mr. de Witte's filing of an amicus curiae brief would do little to aid Respondent's appeal in this case. Because information contained in a brief does not constitute evidence, but is only considered as argument, any new factual information that Mr. de Witte attempted to submit in an amicus brief would carry no weight.