



U.S. Department
of Transportation
**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

August 16, 1991

Preston G. Gaddis, Esq.
Crowe and Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102

Dear Mr. Gaddis:

You have requested our opinion on the recordability of a Consignment Agreement submitted for our review.

Section 503(a)(3) of the Federal Aviation Act (49 U.S.C. 1403(a)(3)) permits recording of instruments "executed for security purposes, which . . . affects the title to, or any interest in, any specifically identified aircraft engine, . . . or spare parts maintained by or on behalf of . . . an air carrier." The referenced consignment does specifically identify the affected spare parts. The parties are the supplier, Airbus Service Company, Inc., and Northwest Airlines, Inc., a certificated air carrier.

Although there is a clear reservation of title by the consignor until full payment by the consignee, we are concerned that the element, standing alone, is not sufficient to permit recording. Not only does the Federal Aviation Act require that it be executed for security, but the following language appears in Section 1-201(37) of the Uniform Commercial Code: "Unless a lease or consignment is intended as security, reservation of title thereunder is not a 'security interest,' but a consignment is in any event subject to the provisions on consignment sales (Section 2-236)." The Section (UCC 2-236(3)(c)) requires compliance with the filing provisions of the Article on Secured Transactions, Article 9, Section 9-102(2) states that the Article 9 applies to ". . . other lien or title retention contract and lease or consignment intended as security." Then Section 9-408 states, in part: ". . . The provisions of this Part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing."

All this is repeated to confirm that to be eligible for recording under Section 503(a)(3), as well as under the UCC, the consignment

must be one intended for security. The submitted instrument is not clear to us that it is intended for security. You will recall that its first version specifically stated that it was not intended for security (later changed to delete that clause). After several careful readings of the Agreement, however, we cannot state with legal certainty that the instrument is one intended for security, and accordingly must affirm the Registry's declination to record it, even as amended.

The Consignment Agreement is returned.

Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center

By:


Bruce Carter
General Attorney

Enclosure