November 18, 1988

Mr. Richard A. Asper
Airline Solutions, Inc.
P.O. Box 70203
Fort Lauderdale, FL 33307

Dear Mr. Asper:

N7570L; Recording of Attorney Lien

By letter of June 28, 1988, you submitted to the Aircraft Registration Branch a lien asserted by the law firm of Walton, Lantaff, Schroeder & Carson for recordation. The lien was asserted under Florida Statutes 329.51 pursuant to F.S. 713.58, generally considered a lien for artisans.

In support of the recording of the lien, you suggest that the attorneys' work was performed constructively on the aircraft, since they represented the aircraft in an in rem criminal action. The lien also states that the work was performed in accordance with a contract with the owners of the aircraft, United Transport Associates, Inc. You state that the lien meets the recording requirements of Part 14 CFR Part 49, and that denial of recording would have the gravest of Sixth Amendment implications.

As we discussed by telephone, this office has strong reservations about the use of artisan lien statutes by attorneys, since it seems improbable that attorneys can perform professional work "upon" an aircraft, as that term is used in the statute. However, in order to get advice on Florida construction of the statute, we wrote to the Florida Attorney General, who advised us that he did not have the authority to issue a ruling on the subject, but referred us to several Florida cases which have dealt with the matter. (copy enclosed.)

We have no quarrel with your representation that the attorneys may have a valid lien upon the aircraft for the work performed. However, we are not persuaded that Florida attorneys may use the artisan lien statutes to give notice of that lien, or that the FAA Aircraft Registry has the authority to record it.

One of the cases referred to us by the Attorney General is that of St. Ana v. Wheeler (129 So.2d 184), which plainly states that -

"It has therefore been determined that this statute does not apply to or create an additional attorney's lien."

We agree that the attorneys probably do have a lien on the aircraft because of their work on its behalf, and we are persuaded that such lien is probably recognized under Florida law, but not that it is eligible for

recordation under this statute. Two suggestions come to mind: one that they should look to the owners for payment, with whom they have a contract; or two, they may wish to consider pursuing their lien in the procedures given by Florida law, rather than asking the agency to institute a new, and controversial procedural to record it.

The FAA Aircraft Registry has limited authority to record conveyances (49 U.S.C. 1403), and unilateral assertions of rights or claims are conditionally qualified to be so recorded. In accordance with our published opinion of December 17, 1981, (46 F.R. No. 242, p. 61528, enclosed), the right to record such must be given by statute. The District Court of Appeals for Florida, in the St. Ana case, says this statute does not create a right in attorneys. We are not persuaded that denial of the right of recording under the Federal Aviation Act is a violation of the Sixth Amendment.

By a copy of this letter, we are recommending to the FAA Aircraft Registry that the lien should be returned as not eligible for recording.

Sincerely,

Joseph R. Standeli
Assistant Chief Counsel
for the Aeronautical Center

Original Signed By
R. BRUCE CARTER
By: R. Bruce Carter
Attorney Adviser

OFFICIAL FILE -
AAC-7:RBCarter:nck:x2296:11/18/88 (wp:acftn75701.bc)