

December 11, 1987

William C. Boston and Associates  
Counselors at Law  
1601 NW. Expressway  
Oklahoma City, OK 73118

Dear Mr. Boston:

Servair, Inc. v. Compania Dominicana de Aviacion C. por A.

This will respond to your letter dated November 9, 1987, in which you request our opinion as to the recordability of certain court related documents pertaining to Pratt and Whitney JT8D-3B aircraft engines, serial numbers P668076 BAB, P668324 BAB, P645100 BAB, and P668733 BAB.

By way of background, the critical documents show that on May 13, 1987, in Case No. 87-3289 CA 29, Servair, Inc., a Delaware corporation, as plaintiff, and Compania Dominicana Aviacion C. por A., as defendant, stipulated for final judgment in the amount of \$2,205,192.08. The Florida Circuit Judge ordered the defendant to pay that amount on June 4, 1987. (See Stipulation for Final Judgment and Final Judgment.)

Thereafter, in the same action (Case No. 87-3289 CA 29) a blanket Execution was issued to levy on the property of the defendant (Execution dated June 15, 1987). In furtherance thereof, on September 3, 1987 Instruction for Levy was issued to the Dade County Sheriff, which described the property to be levied as "Boeing 707 Aircraft of defendant Dominicana having tail number H1-442." (Note: The original typed number ("412") was struck by pen and a new number ("442") was written adjacent thereto and initialed by the attorney for the plaintiff.)

Also on September 3, 1987, a Return of Service indicated that the Dade County Sheriff "Levied on AC." (Note: The Case Number on the Return of Service is identified as 87-3289-CA-01.)

An Affidavit dated October 16, 1987, by Ross Elmore (as attached to a Court document entitled Report Re Identity of Aircraft Engines) reflects that Mr. Elmore is the custodian of Boeing 707 Aircraft, Dominican registration number H1-442 which is under the direction and control of the Dade County Sheriff. Mr. Elmore says that the aircraft is a Boeing 707-399C, serial number 19767 with aircraft engines identified as follows:

"Engine #1	P668076 BAB
Engine #2	P668324 BAB
Engine #3	P645100 BAB
Engine #4	P668733 BAB"

The other documents which you submitted are in the nature of custodian certificates attesting that the abovementioned court related documents are true and correct copies.

**Discussion:** This office has consistently advised that notwithstanding the broad tone of 49 U.S.C. 1403(a)(2), Congress did not intend the FAA Aircraft Registry to be a registry of convenience for aircraft engines and propellers. We do record conveyances pertaining to aircraft engines when there is a significant U.S. connection. Relevant thereto, you correctly point out that the engines are in the United States and subject to a Judgment by a State court in favor of a U.S. citizen. Therefore it does not appear that the FAA Aircraft Registry would be used merely for convenience or choice.

49 U.S.C. 1403(a)(3) limits recordation to instruments executed for security purposes. In that regard it does not appear that the engines were ever specified as collateral in any security agreement involving the litigants. Nevertheless the court's directed execution and levy are for the purpose of assuring that the aircraft and aircraft engines will secure payment of the final judgment.

Based on your letter and the documents submitted, it appears that you are properly concerned as to whether the engines subject to the levy are sufficiently identified to permit recordation. It is quite clear that but for Mr. Elmore's Affidavit there is no evidence that any engines levied by the Dade County Sheriff are in fact the engines about which you inquire as to recordability. With Mr. Elmore's Affidavit there can be little doubt about the identity of the aircraft engines.

Frankly, I am somewhat troubled by the nature of the evidence of the engine identification in Case No. 87-3289 CA 29. The plaintiff's attorney has merely filed with the court the "Report Re Identity of Aircraft and Engines" which attaches Mr. Elmore's critical Affidavit.

On the one hand, the Report is an ex parte submission which is totally self-serving. On the other hand, it appears (and I assume you represent) that it is an unchallenged court record which should be afforded deference. I shall do so.

**Conclusion:** Perhaps the most critical document in terms of being an operative instrument and therefore recordable, is the Sheriff's Return of Service which shows that the aircraft was levied upon. It is unfortunate that the Return is not more specific. In any event, it will be acceptable for recording if it contains the ink signature of the Sheriff and if the Case Number (on the top left corner) is properly identified.

All the other documents submitted with your letter are relevant, court-related, properly attested, and in proper form.

All documents submitted with your letter may be recorded assuming your attention to my comments about the Return of Service.

Sincerely,

**Original signed by:  
Joseph R. Standell**

Joseph R. Standell  
Aeronautical Center Counsel