

March 13, 1987

H.P. Sacks, Esq.  
Sacks, Montgomery, Pastore & Levine, P.C.  
437 Madison Avenue  
New York, N.Y. 10022

Dear Mr. Sacks:

Your letter of March 9, 1987, requests our explanation for recommending to the FAA Aircraft Registry that they not accept your proffered notice of lis pendens concerning a dispute between the registered aircraft owner, First Security Bank, N.A., as Owner Trustee, and the aircraft mortgagee, Westinghouse Credit Corporation, which has submitted its Certificate of Repossession on the aircraft involved.

You state that if the Certificate of Repossession has been made a matter of record, title searchers are also entitled to know that the repossession is in dispute and may have been wrongful, and that with full notice of the dispute, prospective purchasers and financiers, if any, will be appropriately advised of the circumstances before they take any action.

First, let me explain how the Registry treats Certificates of Repossession: If the Certificates are received without either a bill of sale, indicating a sale to third parties, or without an Application for Registration, indicating that the reposessor is retaining the aircraft in its own name (either proceeding being a "disposition" as that term is used in the UCC), then the Certificate is placed in the aircraft "Suspense" file on microfiche, but is not recorded. It is not recorded since in and of itself it is not a "conveyance" as that term is defined at 49 U.S.C. 1301(20), or used in 49 U.S.C. 1403(a); only when associated with a bill of sale or an Application does it become an integral part of a transaction we recognize as a conveyance.

The FAA Aircraft Registry maintains a "conveyance" recording system, not a "notice" system. Feldman v. Philadelphia National Bank, 408 FSupp 24. We are of the opinion that the Registry does not have authority under 49 U.S.C. 1403 to accept notices of interests in aircraft, rather than conveyances, for recording or otherwise. We are of the opinion that by definition, your lis pendens is a notice, and your letter refers to it as such. Accordingly, we are of the opinion that we do not have the authority to accept your notice of lis pendens for association with the aircraft records.

Please accept our assurances that our posture on notices of lis pendens is not a position on the merits of either the Certificate of Repossession or the controversy represented by your suit against the repossessor.

Sincerely,

Joseph R. Standell  
Aeronautical Center Counsel

Original Signed by  
B. BRUCE CARTER

By:

R. Bruce Carter  
Attorney Adviser

cc: Gaddis/AGC-7/AAC-250