



U.S. Department
of Transportation

**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

December 1, 1997

Mr. Ed Hersh
Progressive Air Corporation
3511 Silverside Road, Suite 105
Wilmington, DE 19810-4902

Dear Mr. Hersh:

Claim of Lien - Doc. No. 11007821
Aircraft N414SD

This responds to your letter of November 16, 1997, in which you asked what you can do to have the subject lien removed.

You stated that you do not believe the subject lien is a valid lien because liens in New Jersey are filed and handled at the county level. You also stated that at an appearance in a Hunterdon County Court, in an effort to have the lien removed, the judge ruled that he had no authority over federal liens.

As you may know, conveyances affecting an interest in an aircraft are recorded by the Federal Aviation Administration (FAA) under the authority of 49 U.S.C. Section 44107(a)(1). The Administrator has determined that a claim of lien under the laws of a State is a conveyance as defined in 49 U.S.C. § 40102(a)(19). However, such liens are not federal liens since their validity is determined by the applicable laws of the State (49 U.S.C. § 44108(c)). Because such liens may affect an interest in an aircraft and their validity, prior to recording with FAA, is limited by 49 U.S.C. § 44108(a), FAA will accept and record a claim of lien against an aircraft if the state law provides for filing.

We have previously reviewed New Jersey Statutes Annotated, Article 1, Section 2A:44-2, which, in our opinion, provides for filing of liens. Therefore, it is our opinion that Federal law regarding the place of recording preempts the local filing and such a claim of lien is eligible for recording with FAA. If you do not agree, please contact us so that we can discuss your position.

You should note that we do not believe that filing with FAA precludes filing at the statutorily specified local level but may relieve the claimant from that requirement. We recommend that you consult an attorney on that issue.

Accordingly, in our opinion, recording at FAA does not deprive a local court of competent jurisdiction of the authority to determine the validity or enforceability of a claim of lien. If such a court issues an order determining the validity or enforceability, FAA will record that order so that all may determine its effect upon the claim of lien.

Any order issued by a court of competent jurisdiction should adequately identify the claim of lien and the aircraft which it appears to affect so that FAA can properly associate it with the aircraft's record.

If you have questions or comments, you may contact the undersigned at (405) 954-3296.

Sincerely,

Joseph R. Standell,
Aeronautical Center Counsel

By:


Michael R. Burton
General Attorney