

REMINDER MEMO

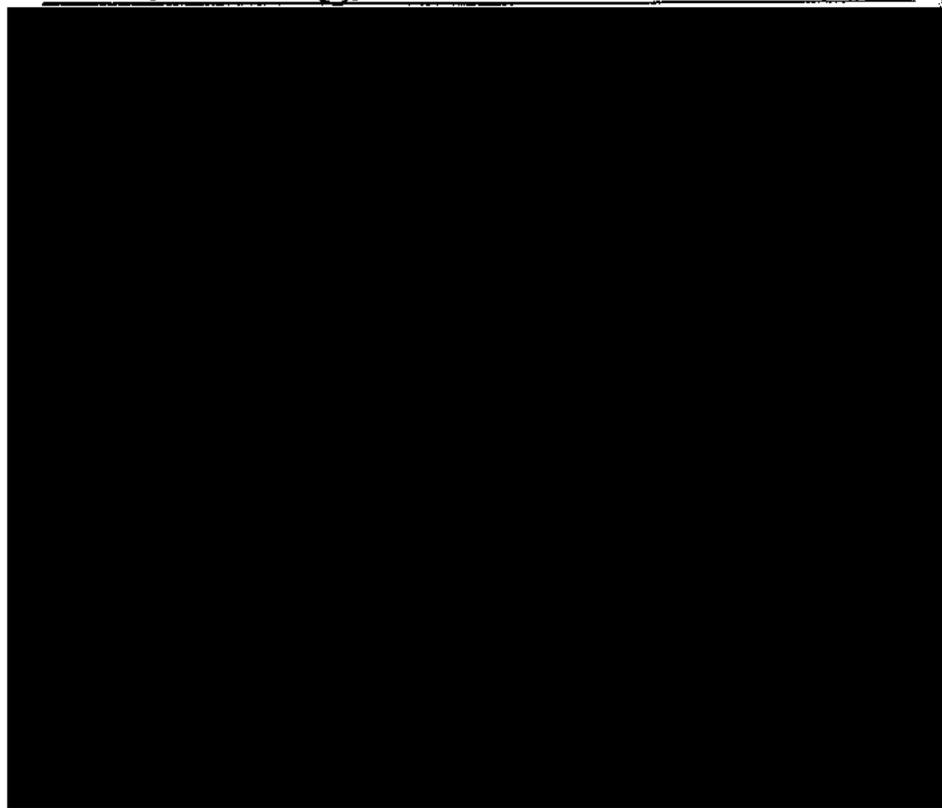
> AVOID ERRORS — PUT IT IN WRITING <

TO: Agnes Jones

SUBJECT: N 2810 M

DATE: 28 Aug 85
 WORK ORDER

ROUTING SYMBOL
AAE-250



SIGNATURE
Joe Standell

ROUTING SYMBOL
AAE-7

August 29, 1985

William T. Cotton, Esq.
Baily and Mason
Lawyers
1130 West Sixth Avenue, Suite 100
Anchorage, Alaska 99501

Re: N281QM - Claim of Lien Against Bernie Smith by Airguides
Maintenance & Larry and Stephan Gierke; Your File No. 5573

Dear Mr. Cotton:

As requested by your letter of July 8, 1985, I have taken steps to insure that the Claim of Invalidity of Lien dated July 8, 1985, is included on the suspense microfiche which contains registration and recordation information about civil aircraft N281QM.

Although your Claim of Invalidity of Lien is in the nature of a legal opinion and is not a recordable document, it will be actual notice of Mr. Smith's position to all who search the FAA record. However, as you know, it will not have the effect of recording afforded to recorded documents under 49 U.S.C. 1403(d).

I would respectfully disagree with your conclusion that the lien, as recorded by the Registry in 1984, is "invalid on its face." Incident thereto, you make three arguments in your Claim of Invalidity of Lien which I will address seriatim.

1. You say that the lien was never perfected by a suit brought by the lienholder within 6 months of filing as required by Alaska Statute 34.35.205(1).

Comment: The Alaska law discusses the continuing effect of a lien after filing and does not effect recordability under the Federal recording statute, 49 U.S.C. 1403.

2. You allege that the claimants never filed their lien with an Alaska recording office and therefore the lien is invalid.

Comment: AS 34.35.185 does require that a specific form of notice be filed with the recorder of the recording district where the chattel is situated and where the work is performed. The lien notice filed with FAA meets the form requirements of AS 34.35.185. The Federal recording statute, and rules implementing it, clearly preempt the filing requirements of Alaska law. In re Holiday Airlines Corp., 620 F.2d.731 (1980); McCormack v. Air Center, Inc., 571 P.2d 835 (1977)

3. You say that Bernie Smith does not waive his claim that the lien was invalid because either the aircraft repairs were not completed or were performed incompetently.

Comment: Obviously, any matters relating to contractual performance of work which is the subject of the lien, would not affect recordability.

Finally, let me say that notwithstanding my specific responses above, I do understand and sympathize with your client's situation. The Registry would record a certified copy of a court order dispositive of the lien. In any event Bernie Smith or subsequent sellers could specifically warrant title or agree to indemnify purchasers with respect to what you claim is an invalid lien.

Please feel free to call me at (405) 686-2296 if you want to discuss this matter further.

Sincerely,

Original signed by
Joseph R. Standell
Joseph R. Standell
Aeronautical Center Counsel

cc:
AAC-250 (A. Jones)

AAC-7:JRStandell:lml:2296:8-29-85

AIRGUIDES MAINTENANCE, LARRY)
 C. GIERKE, and STEPHAN W.)
 GIERKE,)
)
 Claimants,)
)
 vs.)
)
 BERNIE SMITH,)
)

CLAIM OF INVALIDITY
 OF LIEN

NOTICE IS HEREBY GIVEN that the owner of Aircraft No. N 2810 M, Bernie Smith, asserts that the lien filed against him on October 18, 1984 by Larry and Stephan Gierke of Airguides Maintenance is invalid for the following reasons.

The recording of instruments by the FAA is authorized by 49 U.S.C. §1403. 49 U.S.C. §1406 provides, however, that the validity of a recorded instrument depends upon state law. Thus, Alaska law governs the validity of the claimants' lien.

The Alaska statutes governing repairmen's liens are contained in AS 34.35.175 - AS 34.35.215. Alaska Statute 34.35.205(1) provides that:

A lien does not bind a property for more than six months after the lien is filed, unless suit is brought in the Superior Court to enforce the lien (1) within that time. . . .

The present lien was filed at the FAA on October 18, 1984, thus the six-month period ran on April 18, 1985. Since no suit has been filed by the claimants, their lien is now invalid.

Further, the claimants have never filed the lien in a recording office in Alaska, thus the lien is also invalid under Alaska law for this reason.

Bernie Smith does not waive his claim that the lien was also initially invalid because the claimants either did not complete any repairs on the aircraft or completed such repairs so defectively as to require a complete redoing of any

repairs. The purpose of this claim of invalidity of lien, however, is to give notice that the lien is invalid now without regard to its initial validity.

DATED at Anchorage, Alaska, this 8 day of July, 1985.

BAILY & MASON
Attorneys for Bernie Smith

By: William T. Cotton
William T. Cotton
Baily & Mason
1130 West 6th Avenue
Suite 100
Anchorage, Alaska 99501
(907) 276-4331