

SERVED: October 21, 2009

NTSB Order No. EA-5485

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 19<sup>th</sup> day of October, 2009

<hr/>		)	
J. RANDOLPH BABBITT,		)	
Administrator,		)	
Federal Aviation Administration,		)	
		)	
Complainant,		)	
		)	Docket SE-18512
v.		)	
		)	
ROBERT BRIAN MCGHEE,		)	
		)	
Respondent.		)	
		)	
<hr/>		)	

**OPINION AND ORDER**

Respondent has appealed from the oral initial decision and order of Administrative Law Judge William R. Mullins, issued on June 3, 2009, following an evidentiary hearing.<sup>1</sup> The law judge denied respondent's appeal and found that respondent had

<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

operated a flight without authority under 14 C.F.R. part 135, rather than in compliance with part 91, as claimed, and therefore violated the regulations, as charged.<sup>2</sup> The law judge reduced the sanction of a suspension of respondent's airman certificates from 90 days to 30 days.<sup>3</sup> We deny respondent's appeal.

The Administrator issued an order suspending any airman certificate respondent holds, including his airline transport pilot (ATP) certificate, on February 2, 2009. The Administrator's order alleged that respondent served as a crewmember on a flight from Oklahoma City to Shreveport, Louisiana, and on a flight back, on May 18, 2007, in a Cessna Citation (hereinafter, "N113SH"). The order stated that Southwest Orthopedic and Sports Medicine Clinic owned N113SH and

---

<sup>2</sup> The Administrator charged respondent with violating 14 C.F.R. § 135.343, which provides as follows:

No certificate holder may use a person, nor may any person serve, as a crewmember in operations under this part unless that crewmember has completed the appropriate initial or recurrent training phase of the training program appropriate to the type of operation in which the crewmember is to serve since the beginning of the 12th calendar month before that service.

The Administrator also charged respondent with violating 14 C.F.R. § 91.13(a), which states that no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup> The Administrator initially appealed the law judge's reduction in sanction, but subsequently withdrew the appeal. As such, this opinion only addresses respondent's appeal.

did not hold any air carrier operating certificate for the aircraft. The order asserted that respondent carried passengers on the May 18 flight on behalf of Interstate Helicopters, Inc., which holds an air carrier certificate authorizing Interstate to conduct on-demand helicopter operations. The order stated that N113SH did not appear on Interstate's operations specifications, nor on any other air carrier certificate under 14 C.F.R. part 135. As such, the order alleged that respondent, on behalf of Interstate, operated N113SH as a direct air carrier when Interstate did not have authority to operate the flight, and that respondent violated §§ 135.343 and 91.13(a), because he had not fulfilled the training requirements of part 135. The order suspended respondent's airman certificates for 90 days.

In his answer to the Administrator's order, which became the Administrator's complaint under the Board's Rules of Practice, respondent asserted the affirmative defense that the May 18, 2007 flight was a demonstration flight under 14 C.F.R. § 91.501,<sup>4</sup> and that the Administrator's complaint was stale under the Board's stale complaint rule. The law judge rejected respondent's stale complaint argument and ordered an evidentiary

---

<sup>4</sup> Section 91.501(b) states, in pertinent part, that, "[o]perations that may be conducted under the rules in [Part 91, Subpart F] instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include ... (3) Flights for the demonstration of an airplane to prospective customers when no charge is made."

hearing.

At the hearing, the Administrator called Bill Moore, the president and chief executive officer (CEO) of United Engines Holding Company, LLC. Mr. Moore testified that he became president and CEO of United Engines after Garth Bates and Frank Pool, who were previously the president and CEO and vice president of United Engines, respectively, were killed in a March 4, 2008 accident in N113SH; Mr. Moore stated that he saw Messrs. Bates and Pool frequently before they were killed, on both a social and professional basis. Mr. Moore testified that, after United Engines sold its aircraft in 2000, the company would either book commercial flights or charter aircraft from various providers for business travel. Mr. Moore stated that United Engines expected to receive charter flights when the company used Interstate Helicopters for travel. Tr. at 21-22. Mr. Moore testified that he knew that United Engines was not interested in purchasing an aircraft, because the venture capital firm that owns a majority interest in United Engines "has no interest in owning an aircraft." Tr. at 22. Mr. Moore also stated that owning an aircraft was not a possibility at that time for either United Engines or Mr. Bates, personally, and that Mr. Moore had never discussed purchasing an aircraft with Mr. Pool. Mr. Moore testified that all executives at United Engines, including Messrs. Bates and Pool, and himself,

assumed they were receiving transportation under 14 C.F.R. part 135 when they utilized a charter aircraft. Mr. Moore, however, clarified on cross-examination that he was not present on the flight at issue.

The Administrator also called Ms. Kimberly Selby, the accounts payable manager at United Engines, to testify. Ms. Selby stated that the process for approving invoices involved either Mr. Bates, Mr. Pool, or their executive assistant allowing payment for each invoice. Ms. Selby identified an invoice from Interstate Helicopters to United Engines for the May 18, 2007 flight in the amount of \$4,518.15, which states that it "[i]ncludes aircraft fees, fuel, pilot fees, and meal." Tr. at 41-42; Exh. A-9. Ms. Selby also identified a copy of a check from United Engines for payment of the invoice. Exh. A-10.

The Administrator also called Don Riley, the aviation safety inspector with the special emphasis investigation team from the FAA Southwest Region who led the team that investigated the March 4, 2008 accident. Inspector Riley opined that respondent operated N113SH on behalf of Interstate Helicopters in a manner contrary to Interstate's operations specifications, because Interstate was only authorized to operate flights in rotorcraft. Tr. at 48-49. Inspector Riley testified that he investigated Interstate's operations and determined that

respondent was "basically the aircraft manager" for N113SH, in that he oversaw the maintenance for N113SH and was the point of contact when Interstate needed to use N113SH. Tr. at 50.

Inspector Riley also determined that respondent had known the owner of the aircraft, Dr. Anthony Cruse, for quite a while, and that Interstate paid Dr. Cruse \$800 per hour for use of his aircraft. During his testimony, Inspector Riley identified copies of checks, including one from Interstate to respondent in the amount of \$400 for the May 18, 2007 flight (Exh. A-11); one from Interstate to Southwest Orthopedic Sports Medicine in the amount of \$1,600 for the May 18, 2007 flight (Exh. A-26); and one from Interstate to AVCARD in the amount of \$675.32 for fuel in Shreveport (Exh. A-27). Inspector Riley opined that the roundtrip between Oklahoma City and Shreveport did not consist of demonstration flights under § 91.501.

The Administrator also called Steve Nielsen, an aviation safety inspector from the FAA Special Emphasis Investigation Team at Fort Worth, to testify as an expert on aircraft operations. Inspector Nielsen stated that he had determined that the flights at issue were charter flights under 14 C.F.R. part 135. Tr. at 87. Inspector Nielsen testified that the invoice from Interstate to United Engines was the principal basis for his opinion that the flights were charter flights; moreover, Inspector Nielsen stated that the owner was paid

\$1,600 for the trip, and both crew were paid, and that such payments led Inspector Nielsen to believe that the flights were not demonstration flights under § 91.501. Inspector Nielsen opined that a 90-day suspension of respondent's certificates was appropriate under the circumstances at issue, and stated that pilots have a duty to inquire into the type of flight they are conducting.

In response to the Administrator's case, respondent called Alfred Neal Brown III, who was pilot-in-command on the May 18, 2007 flight. Mr. Brown stated that he "was under the impression that it was a demo flight," but that he did not recall who told him that the flights would be for demonstration purposes. Tr. at 118. Mr. Brown testified that he knew that Dr. Cruse had listed N113SH as for sale for "at least a year," and that respondent and Dr. Cruse were friends. Tr. at 118-19.

Mr. Brown stated that he received \$450 for the May 18, 2007 flights, and that he did not inquire as to the type of flight, but that he had no reason to believe that the flights were not for demonstration purposes. Mr. Brown described the May 18, 2007 trip, and stated that the passengers on board were gone from the aircraft in Shreveport for approximately 3 to 4 hours.

Respondent also testified on his own behalf at the hearing, and stated that he believed the flights on May 18, 2007, were demonstration flights under § 91.501. Tr. at 140. Respondent

stated that he had listed N113SH as for sale from January 26, 2005, until the aircraft was in the accident on March 4, 2008, because Dr. Cruse sought to sell it. Respondent stated that, when he arrived for the May 18, 2007 flight to Shreveport, he saw Mr. Bates, who asked respondent to tell him about the aircraft and told respondent that he was interested in purchasing a fractional share of N113SH. Respondent testified that Interstate had contacted him and asked him to perform a demonstration flight in N113SH. Tr. at 150. Respondent stated that he did not speak to any of the passengers during the flight or during the stop in Shreveport, and recalled that he stayed in Shreveport for approximately 2 to 3 hours while waiting for the passengers to return. Respondent testified that he never saw the invoice from Interstate to United for the trip, and that he would never knowingly fly an illegal charter flight. Tr. at 152.

In rebuttal, the Administrator called Dr. Anthony Cruse, who testified he never arranged or performed a demonstration flight in N113SH, and that, as the owner of the aircraft, he would expect to be notified if a demonstration flight was to occur in N113SH. Dr. Cruse stated that respondent was the only pilot that he regularly used and who served as his point of contact for the sale of N113SH, and that Dr. Cruse had no relationship with and had never spoken to anyone from Interstate



Helicopters, although he received a payment from Interstate for the lease of N113SH.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he concluded that the Administrator proved that respondent violated §§ 135.343 and 91.13(a). The law judge stated that the circumstances of the May 18, 2007 trip indicated that the flights were not demonstration flights, because the passengers traveled all the way to Shreveport and stayed for a lengthy period of time, which did not seem consistent with a trip conducted for demonstration purposes. Initial Decision at 198–99. The law judge opined that the circumstances made the case difficult, because both respondent and Mr. Brown testified that they believed the flights were for demonstration purposes. The law judge, however, determined that the Administrator fulfilled the burden of proof and reduced the sanction to a 30-day suspension, because respondent only operated N113SH once for Interstate Helicopters.

On appeal, respondent argues that the law judge erred in finding that the flights were not demonstration flights, because the law judge incorrectly based his conclusion on the monetary cost of the flights and the duration of the flights and layover. Respondent contends that the law judge impermissibly relied on his own opinions concerning these determinations, rather than

evidence in the record. In particular, respondent asserts that 14 C.F.R. § 91.501(d) allows charges for fuel and other expenses associated with a demonstration flight,<sup>5</sup> and that, because the invoice of \$4,518.15 was not itemized and no receipts for the charges were in the record, the law judge had no basis for his finding that the flights were not demonstration flights. With regard to the law judge's comments on the duration of the flights and layover, respondent contends that the law judge's comments were unsupported, because neither the Board nor the Administrator has set destination or duration limitations for demonstration flights. The Administrator opposes respondent's arguments, and urges us to uphold the law judge's decision.

We have previously held, and courts of appeal have affirmed, that where a passenger has an expectation of being charged for a flight, this expectation indicates that the flight did not occur under the provisions of 14 C.F.R. part 91. Wagner v. NTSB, 86 F.3d 928, 931 (9<sup>th</sup> Cir. 1996); see also Administrator v. Wallace and Global Air Charter, NTSB Order No. EA-5461 at 17 n.9 (2009). In Administrator v. Wagner, NTSB Order No. EA-4081 (1994), aff'd, Wagner v. NTSB, supra, we relied on the fact that Sun World, which received a flight from the respondent, believed

---

<sup>5</sup> Section 91.501(d) allows charges for fuel, crew expenses, hangar costs, insurance, and the like, as well as an "additional charge equal to 100 percent" of the charges for "[f]uel, oil, lubricants, and other additives."

that the flight was a charter flight governed by the safety standards of 14 C.F.R. part 135. Id. at 6. We clarified that, “[a]ny forfeiture by Sun World of the protection provided by Part 135 must be made *knowingly*.” Id. at 6–7 (emphasis added).

Based on this standard, we do not find respondent’s arguments persuasive. First, respondent’s contention that the Administrator introduced no evidence to show the individual expenses of the flight is not accurate, as Exhibits A-11, A-26 and A-27 contain copies of checks from Interstate showing the costs of fuel and other expenses, such as the payments to respondent and Mr. Neal for the “pilot meal.” In addition, the checks show that United Engines, and not the individual passengers, paid Interstate for the flights. Finally, and perhaps most importantly, Mr. Moore testified that United Engines considered the May 18, 2007 flights to be charter flights under part 135. Although Mr. Moore was not on the flights, his testimony indicated that United Engines used charter flights for many trips, and that neither United Engines nor Messrs. Bates and Pool were considering purchasing an aircraft. Similarly, the owner of N113SH, Dr. Cruse, stated that he did not believe that respondent had conducted any demonstration flights in N113SH.

Respondent did not provide any evidence, other than his own testimony and that of Mr. Brown, to indicate that the flights

were demonstration flights. If respondent completed the flights for demonstration purposes, he ostensibly would be able to explain why he chose Shreveport as the destination for the demonstration flight, and why the passengers disembarked and stayed in Shreveport for several hours. Moreover, had respondent conducted the flights for demonstration purposes, respondent would have likely spoken with the passengers about the aircraft during the stop at Shreveport; however, respondent testified that he did not speak with the passengers during the stop. Respondent also testified that Interstate contacted him and asked him to conduct the flights, not a party ostensibly interested in purchasing the aircraft. Tr. at 150.

Furthermore, respondent testified that he served as "aircraft manager" for N113SH, but respondent did not clearly explain why he could not have arranged to conduct the flights without Interstate's involvement, and why he had no direct contact with United Engines. Overall, we find that respondent has not met his burden of proof on the issue of whether the flights were conducted for demonstration purposes.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's decision, including the reduction in sanction from 90 to 30 days, is affirmed; and

3. The 30-day suspension of respondent's ATP certificate, and any other airman certificate that respondent holds, shall begin 30 days after the service date indicated on this opinion and order.<sup>6</sup>

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above opinion and order.

---

<sup>6</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*

In the matter of: \*

LYNNE A. OSMUS, \*  
ACTING ADMINISTRATOR, \*  
Federal Aviation Administration, \*

Complainant, \*

v. \*

Docket No.: SE-18512  
JUDGE MULLINS

ROBERT BRIAN MCGHEE, \*

Respondent. \*

\* \* \* \* \*

U.S. Tax Court  
Federal Building and Courthouse  
200 N.W. 4th Street, Fourth Floor  
Oklahoma City, Oklahoma 73102

Wednesday,  
June 3, 2009

The above-entitled matter came on for hearing, pursuant  
to Notice, at 9:00 a.m.

BEFORE: WILLIAM R. MULLINS  
Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

ROBERT SPITZER, ESQ.  
BRENDAN A. KELLY, ESQ.  
Federal Aviation Administration  
One Aviation Plaza  
Jamaica, New York 11434  
(718) 553-3278  
(718) 553-3269

On behalf of the Respondent:

BRET A. GLENN, ESQ.  
414 Northwest 4th Street  
Suite 200  
Oklahoma City, Oklahoma 73102

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ORAL INITIAL DECISION

ADMINISTRATIVE LAW JUDGE MULLINS: This has been a proceeding before the National Transportation Safety Board held under the provision of Section 44709 of the Federal Aviation Act of 1958, as amended, on the appeal of Robert Brian McGhee from an order of suspension that seeks to suspend his airman certificate for a period of 90 days. The order of suspension was filed on behalf of the Administrator of the Federal Aviation Administration, and filed through the Assistant Chief Counsel's Office of Washington, D.C.

The matter has been heard before me, William R. Mullins. I'm the Administrative Law Judge for the National Transportation Safety Board and, as is provided by the Board's rules, I will issue a bench decision at this time.

The matter came on for hearing, pursuant to notice that was given to the parties and was called for trial this 3rd day of June of 2009, here in Oklahoma City. The Administrator was present throughout the proceedings, and was represented by Mr. Rob Spitzer, Esquire, of the Eastern Region, and also Mr. Brendan Kelly, Esquire, of the Eastern Region, Jamaica, New York. Respondent was present throughout these proceedings and represented by his counsel, Mr. Bret Glenn, Esquire, of Oklahoma City.

The parties were afforded a full opportunity to offer



1 evidence, to call and examine and cross-examine witness. And, in  
2 addition, the parties were afforded an opportunity to make  
3 argument in the support of their respective positions.

#### 4 DISCUSSION

5 This order of suspension issued herein against  
6 Mr. McGhee alleges regulatory violation of FAR 91.343, which  
7 requires training for 135 flights and recurrent training, and also  
8 regulatory violation of FAR 91.13(a). And I would say, just at  
9 the offset, that the FAR 91.13(a) is directly related to and would  
10 be residual to the lack of training alleged violation under 91.343.  
11 This involved a flight on which the Respondent was the co-pilot on  
12 May 18th, 2007, in a Cessna Citation November 113 Sierra Hotel  
13 that belonged to Southwest Orthopedic and Sports Medicine Clinic,  
14 PC, here in Oklahoma City. On that flight was a Mr. Bates, who was  
15 at that time president and CEO of United Engines, and the flight  
16 was from Oklahoma City to Shreveport and back.

17 This matter came to the attention of the Administrator  
18 of Federal Aviation Administration almost a year after the date of  
19 the flight. And the reason it came to the attention of the  
20 Administrator is that that same aircraft was being operated for  
21 United Engines out of Wiley Post airport on March 4th of 2008 and  
22 sustained an accident. The aircraft crashed. Mr. Poole was the  
23 executive vice president of United Engines; Mr. Bates was the  
24 president of United Engines, and the pilots and others, I think  
25 there were four fatalities in the flight.

1           In any event, as a result of that accident, the  
2 Administrator dispatched members of their special emphasis  
3 investigation team, I think. And Mr. Riley testified that he came  
4 with six other people and did an extensive investigation into the  
5 activities of Interstate Helicopters, which was operating the  
6 flight in question on the date of the accident.

7           And, as a result of that Mr. Riley testified that there  
8 were over 20 interviews taken and over 8500 pages of documents;  
9 the operating certificate of Interstate Helicopters was revoked on  
10 an emergency basis. And then, also as a result of that, there  
11 apparently were several orders of suspension issued, at least  
12 three that I'm aware of. One I heard yesterday, one I heard today,  
13 and another one involving another gentleman, who was involved in  
14 relationship to the one, yesterday.

15           The flight in question, the Respondent has taken the  
16 position it was a demonstration flight. And I'll talk about that,  
17 as I go through the witnesses. The first witness called was  
18 Mr. Moore, who was, at the time of the fatal accident, president  
19 of a subsidiary company of United Engine and he's now president  
20 and CEO. And he said in all the dealings since 2001, United  
21 Engines has not owned an aircraft and that there've been two  
22 owners of them over that span of years, from 2001 to present, have  
23 negated the ownership of an aircraft and would not have authorized  
24 ownership of an aircraft, and that all of the flights, as he  
25 testified yesterday in that hearing and here today, he believed

1 were charter flights under the provisions of FAR Part 135.

2 He did say on cross-examination that they had a dream of  
3 owning an airplane at United Engines and that Mr. Bates, who was  
4 the CEO at the time of the fatal accident, always wanted one or  
5 had wanted one and that could have been his interest.

6 The second witness called was Kimberly Selby, and she's  
7 the accounts payable manager for United Engines. She identified  
8 Exhibit A-9, which was the invoice for the flight on 18 May 2007,  
9 and also the Exhibit A-10, which was the check that they paid  
10 Interstate Helicopters for this flight.

11 The third witness called by the Administrator was  
12 Mr. Don Riley, and I mentioned his name previously. He was a team  
13 leader for this special emphasis investigation team that came up  
14 from Ft. Worth. The number of witnesses they interviewed and all  
15 the documents, he identified Exhibit A-1, which is captioned  
16 "Registry Detail," which shows ownership of the Cessna Citation to  
17 Southwest Orthopedic and Sports Medicine Clinic.

18 He identified Exhibit A-11, which was a check from  
19 Interstate Helicopters to Respondent for his participation in the  
20 flight, a check, Exhibit A-26, which was a check to Southwest  
21 Orthopedic and Sports Medicine for \$1,600, and a check to, I think  
22 it was, AVCARD for fuel. The exhibit was just totally unreadable  
23 to me; whatever it says it says. But the testimony was that that  
24 was for the fuel. And then, also, he identified what was Exhibit  
25 R-1, which was admitted, which was the written statement prepared

1 by Ms. Pena, who is an investigator for the FAA, by Mr. McGhee,  
2 which was unsigned. And then there was also a statement from  
3 James Paul Johnson, who I assume is the Jimmy Johnson, who's been  
4 referred to here as the owner of or president of Interstate  
5 Helicopters.

6 I will just make a comment in passing. It just seemed  
7 incredible how much money United Engines paid for that flight  
8 given that the owner of the aircraft and the pilots and the fuel  
9 involved was about half of the amount that was billed to United  
10 Engines. And I would make a note in passing that all of the  
11 invoices I saw yesterday had a lot more detail in them as to the  
12 breakdown of the costs. And, as I thought about that, I wondered  
13 if United Engines didn't raise some issues with Interstate  
14 Helicopters about the way they were being billed.

15 But there was a huge amount of money, and I assume it  
16 went to Interstate Helicopters on this particular flight, above  
17 and beyond what the cost of the airplane was to Interstate  
18 Helicopters and the cost of the pilots.

19 Fourth witness called was Mr. Steve Nielson, who is an  
20 aviation safety inspector. Mr. Riley's background with the FAA is  
21 as dispatcher. Mr. Nielson is an air-transport-pilot-rated  
22 individual, and he was qualified as an expert, and he talked about  
23 the requirement for these sorts of flights to be covered under the  
24 135 regulation, which requires training and recurrent training,  
25 and this was not. The Administrator rested.

1           Mr. Neal Brown was called and he was the pilot-in-  
2 command on this particular flight on the date in question, 18 May  
3 2007. He believed it was a demonstration flight. He didn't know  
4 any of the people onboard. He said he went and got directly on  
5 the airplane. He saw Respondent, Mr. McGhee, talking to someone  
6 who later was one of the passengers, and he assumed that was part  
7 of the demonstration flight. And Mr. Brown has received a letter  
8 of investigation, some sort of certified letter, that he wasn't  
9 able to pick up, his testimony was, because he was out of town.

10           But, other than that, he has not received any  
11 certificate action. And I would suspect, Mr. Brown, that it's  
12 forthcoming, based on what I've heard here today.

13           The second witness called by the Respondent was the  
14 Respondent himself, and he testified that he holds an airline  
15 transport pilot rating, as does Mr. Brown, who testified that he  
16 is flying for U.S. Air, at this time. He was on an Air Bus, I  
17 think 320, and now he's flying a regional jet, Embraer 190, I  
18 believe it was.

19           And he testified that he believed it was a demonstration  
20 flight. He did testify that he had received this check. In  
21 Respondent's Exhibit 1, there was a comment that he made, or at  
22 least was recorded by Ms. Pena, that there were no demo flights in  
23 this aircraft. His explanation of that here today was his  
24 recollection was he was telling her that the flight on the day of  
25 the fatal accident was not a demo flight. That was his testimony;

1 although, Ms. Pena wrote it down as plural, demo flights, more  
2 than one.

3           Then the Administrator called Dr. Cruse, who was the  
4 owner of the airplane. And Dr. Cruse didn't know who his pilots  
5 were and he didn't know anything about this flight on that date  
6 and he didn't know anything about any demonstration flights. He  
7 did know that the aircraft had been for sale for a period of time,  
8 but he didn't even know for sure how long it had been for sale.  
9 He said ten months, but I showed him the letter, which is marked  
10 R-5, which would indicate it had been on the market for probably  
11 three years or two and a half years or so before the flight. And  
12 he said, "Well, it is whatever it says."

13           And so that was the witnesses that I received. Those  
14 are the exhibits. Let me talk in general for just a little bit.  
15 Counsel for the Administrator argued that the witnesses, Mr. Moore,  
16 Ms. Selby, and Dr. Cruse, negated whether this was a demo ride.  
17 Well, first of all, let me talk about Mr. Moore. Mr. Moore didn't  
18 and wouldn't know what Mr. Bates was thinking or doing out there  
19 that day. He knows what the attitude of the capital investment  
20 groups that own 80 percent of United Engines is, but it wasn't  
21 clear to me whether he knows that now or he knew it back then, but  
22 he felt like he would have been party to any discussion about  
23 purchase of an aircraft.

24           But, like I said, he still doesn't know, as the  
25 testimony of Respondent would indicate, that it wasn't clear

1 whether Mr. Bates was looking at the airplane for personal  
2 investment or whether he was looking at it on behalf of United  
3 Engines. Although it's quite clear that United Engines not only  
4 paid for that flight to Shreveport that day, they paid through the  
5 nose for that flight to Shreveport, \$4,500 and some dollars, when  
6 the aircraft owner was only reimbursed \$1,600 and the pilots only  
7 \$800 or something like that.

8           So I'm not sure that Mr. Moore was that good a witness.  
9 Of course, Ms. Selby, all she can testify is what the invoice is  
10 they received from Interstate Helicopters, what they paid  
11 Interstate Helicopters. She doesn't know anything about any  
12 conversation that went on between her boss, if any, and the  
13 Respondent, or what her boss' intentions were. And then, like I  
14 said, Dr. Cruse, hopefully, he's a very good doctor and knows his  
15 business as a doctor, but he doesn't know anything about the  
16 aviation business, obviously, and doesn't seem to be at all  
17 curious about it. For his purposes here today, you know, he just  
18 didn't know much about what was going on with his airplane. And,  
19 interestingly, the evidence is that he had and depended upon  
20 Respondent, Mr. Davis [sic], but Mr. Davis apparently wasn't  
21 getting any money to do this. So what a deal that was for the  
22 doctor. I mean, I think I saw in a statement here that was taken  
23 by Ms. Pena that Mr. McGhee wasn't drawing any monies at all for  
24 this oversight that he was doing for this doctor's airplane.

25           I have Respondent's Exhibit 1, and the critical

1 statement in there was that there were no demo flights, plural. I  
2 have Respondent's testimony; his statement was that he didn't sign  
3 it and the reason he didn't sign it was because it didn't  
4 accurately reflect what he said. But his testimony here today was  
5 that he was telling Ms. Pena on that date in question that the  
6 flight on March 4th of 2008, the fatal flight, was not a demo  
7 flight.

8 I also noted in there, and it's interesting and I marvel  
9 at how some businesses operate and some people operate with their  
10 aircraft, but the doctor said he depended on Mr. McGhee to oversee  
11 his aircraft. Mr. McGhee stated in his statement to Ms. Pena that  
12 he couldn't believe how many flights this aircraft was going out  
13 for Interstate Helicopters and he didn't know anything about it.  
14 And, obviously, the doctor didn't know anything about it. And I  
15 guess the doctor, when he would get a check from Interstate  
16 Helicopters maybe he didn't even see that, maybe it just went into  
17 his account. He didn't know. But there was all kinds of stuff  
18 going on out there, at least under the evidence that I've received  
19 today and yesterday, would have to be laid totally at the feet of  
20 Interstate Helicopters, not these pilots who were suffering these  
21 orders that I've seen yesterday and today.

22 But, the bottom line for me, and it may be that I don't  
23 go out and buy jets all the time, but a demonstration flight, to  
24 be a demonstration flight would have to be a demonstration. It's  
25 not a flight that goes several hundred miles, stops, and the



1 passengers get out for, according to Mr. Brown, four or five hours;  
2 according to Mr. McGhee, two to three hours. I mean, that's too  
3 long for one of those lunches that you talk about when you go  
4 somewhere in an airplane. And I think there's a responsibility on  
5 the pilots to appreciate whether that was a demonstration flight  
6 or not.

7           Now, on behalf of Mr. McGhee, this was the only one of  
8 those flights that he took. And his testimony was and Mr. Brown's  
9 testimony was, and it's un-rebutted, that Mr. Brown's conversation  
10 with somebody, and he couldn't even remember who it was, said it  
11 was a demo flight. Mr. McGhee said that he talked to Mr. Bates  
12 and somebody else told him it was a demonstration flight.

13           I suspect, seeing the way Interstate Helicopters was  
14 operated, that it was probably somebody from Interstate  
15 Helicopters was trying to get these gentlemen to make that flight  
16 so they could bill this big bill and pay them just the minimum.  
17 Now, I think it was correctly pointed out by counsel that just  
18 because the Respondent here received a check for that flight  
19 doesn't necessarily take it out of the provisions of the  
20 demonstration flight. The owner would be obligated to that and,  
21 apparently, at least his testimony was from the Respondent that he  
22 didn't know about any agreement between the owner and Interstate  
23 Helicopters.

24           This is a difficult case. It's a difficult case to make  
25 a decision in because I think the facts of the case would dictate

1 that it was a 135 flight, that it wasn't a demonstration flight.  
2 But the testimony of both Mr. Brown and Mr. McGhee would indicate  
3 that they believed it was. And that was un-rebutted that they  
4 believed it was a demonstration flight. I think the bottom line  
5 for me is that there was a regulatory violation, as alleged, with  
6 that residual violation.

7 But under the facts of this case, I believe that an  
8 appropriate sanction would be one of a 30-day suspension of  
9 Mr. McGhee's pilot certificate.

10 Let me address the request for civil penalty. Yesterday,  
11 we didn't have any written guidance from the Administrator, which  
12 the Board requires, before we owe deference to a sanction. Here,  
13 there was written guidance. Written guidance showed that the  
14 range of penalty under a violation of not being current or not  
15 having the required training under 135 is 30 to 90 days.

16 The Administrator is seeking the maximum, which this  
17 case just doesn't lend itself to. Given all of the other things  
18 that Interstate Helicopters was doing and all of these other  
19 pilots were doing, and this was just a one-time incident with this  
20 pilot who believed, I believe, that it was a demonstration flight.

21 ORDER

22 IT IS THEREFORE ORDERED THAT safety in air commerce and  
23 safety in air transportation requires an affirmation of the  
24 regulatory allegations as issued.

25 AND, SPECIFICALLY, I FIND THAT the Administrator has

1 established regulatory violation of FAR 91.343 and the residual  
2 violation of FAR 91.13(a). However, under the circumstances of  
3 this case and under the testimony of the two pilots involved, I  
4 believe that the appropriate sanction would be one of a 30-day  
5 suspension, and it will be so ordered.

6

7

8

9

10 EDITED ON

\_\_\_\_\_  
William R. Mullins

11 JUNE 29, 2009

Administrative Law Judge