

AIRCRAFT PRODUCTS LIABILITY REVISITED

**By C.H. Nason
Nason Associates, Inc.**

In 1983, I was invited to present an article to the *Avionics News*, in which I gave a summary of state-of-the-art Aircraft Products Liability conditions, in direct reference to the aircraft electronics industry. It is interesting to read something you wrote thirteen years before to see whether you were correct, or whether you had written an unfulfilled prophecy. To be honest, most of the predictions in the previous article have come to pass, and I believe it would be worthwhile for all of us in the avionics industry to review the developments as they existed in 1996.

Thirty-five years ago, the terms "avionics" and "avionics shop" were not used. These businesses were referred to as "radio shops," and were expected to have a high degree of skill. They were probably very similar to television or radio repair shops. I understand that there were some businesses that did repair television sets and install aviation radios. This is a very far cry from the aviation industry we know today.

Today, skilled businessmen in the avionics business, in addition to installing radios, install a multiplicity of complex instruments--HSI's, GPS's, Loran C's, EFIS's, radars, moving maps, auto-pilots--just to name few. In addition, they certify static systems, altimeters, and other equipment. The list is almost endless.

With this increased volume of business has come increased knowledge and better training. Most importantly, a great many things which were formerly done by the service department of a fixed-base operator are now done by independent avionics repair stations. This change has a significant impact on the possibilities of Aircraft Products Liability lawsuits.

Products Liability, of which Aircraft Products Liability is only a part, has gone through a revolution during the past sixty years. Sixty years ago the general Products Liability law of the United States was "let the buyer beware," and it was necessary for anyone injured by a product to prove that the particular product had caused the injury and that it was defective. There are a great many people in the United States who would like to see this particular description of a Products loss reinstated, but unfortunately, the law now defines a Products loss as an absolute liability situation. This means that, if someone is hurt by a product, then the manufacturer of that product is liable unless they can prove (an extremely difficult task) that their product did not cause the loss.

It would be fair to comment that there is one ray of hope: When Congress passed the Statute of Repose, limiting liability on certain aircraft and engine manufacturers to certain numbers of years, it certainly gave the aircraft industry a shot in the arm. However, it might very well come back to haunt the avionics shops, as they are now moving closer to being the first sued, given new limitations on suits against engine and airframe manufacturers.

For the businessmen involved in the avionics industry at this time, Products Liability has become a bigger and bigger area of concern. At one time in the aircraft products industry, a critical aircraft product was defined as any part, should it fail, which would cause the aircraft to crash. Now, a better definition would be any part which is readily identified by a plaintiff's attorney in an aircraft products suit.

For the past several years, there have been a number of lawsuits brought by plaintiff's attorneys in which every person who made an entry in an aircraft log book was brought into a products action in the event of a crash. A second type of loss which directly affects avionics repair shops has to do with improper installation and repair of autopilots. In one particular loss, a pilot was killed directly after takeoff because the aileron controls had been installed backwards. The avionics shop, which happened to be insured in the AEA program, had a \$1 million claim paid. Coming closer to home, an avionics repair shop in the Midwest had a rather substantial claim arising from an erroneous weight and balance calculation that was written into the operations manual of the aircraft after certain equipment was installed.

In this era of consumerism, the courts are bending over backwards to compensate any person who has a loss of any type. Quite obviously, given the principle of absolute liability, it is imperative that Products Liability be carried by the smallest to the largest business. Even though there are very few payments made under Products Liability, the cost of defense is in excess of \$10,000 per suit, and judgments which are rendered are usually in the high six-figure range. I strongly believe that Products Liability insurance is a must. The avionics segment of the aircraft industry is not immune from suits and judgments.