

SERVED: December 17, 2010

NTSB Order No. EA-5561

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 15th day of December, 2010

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J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18345
v.)	
)	
ROBERT CREIGHTON,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

Respondent appeals the oral initial decision of
Administrative Law Judge William A. Pope, II, issued April 28,
2010.¹ By that decision, the law judge denied respondent's

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

appeal of the Administrator's emergency order of revocation of respondent's mechanic certificate with airframe and powerplant (A&P) ratings,² based on alleged violations of 14 C.F.R.

§§ 43.5(b),³ 43.12(a)(1),⁴ 43.13(a) and (b),⁵ 43.15(a)(1) and

² Respondent subsequently waived the expedited procedures normally applicable to emergency proceedings.

³ Section 43.5(b) provides that, "[n]o person may approve for return to service any aircraft, airframe, aircraft engine, propeller, or appliance, that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless ... [t]he repair or alteration form authorized by or furnished by the Administrator has been executed in a manner prescribed by the Administrator."

⁴ Section 43.12(a)(1) states that, "[n]o person may make or cause to be made ... [a]ny fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part."

⁵ Section 43.13(a) and (b) provides as follows:

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition

(2),⁶ and 43.16.⁷ We deny respondent's appeal to the extent that he argues the Administrator did not prove the alleged charges concerning severe corrosion.

The Administrator's order, issued August 14, 2008, and amended at the hearing June 7, 2009, set forth multiple allegations concerning respondent's approval of an Embraer 120 (hereinafter, "N267AS") as airworthy; the complaint contained 37 substantive factual paragraphs, and several sub-paragraphs. In essence, the Administrator contended that respondent returned

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(with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

⁶ Section 43.15(a) provides as follows:

General. Each person performing an inspection required by part 91, 125, or 135 of this chapter, shall—

- (1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements; and
- (2) If the inspection is one provided for in part 125, 135, or § 91.409(e) of this chapter, perform the inspection in accordance with the instructions and procedures set forth in the inspection program for the aircraft being inspected.

⁷ Section 43.16 provides as follows:

Each person performing an inspection or other maintenance specified in an Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall perform the inspection or other maintenance in accordance with that section, or in accordance with operations specifications approved by the Administrator under part 121 or 135, or an inspection program approved under § 91.409(e).

N267AS to service despite the existence of severe corrosion in several places, an inoperable terrain avoidance warning system (TAWS) and enhanced ground proximity warning system (EGPWS), and multiple paperwork violations with regard to the maintenance performed on the aircraft. Respondent submitted an answer to the Administrator's complaint, in which he denied the majority of the allegations, set forth the affirmative defense of reasonable reliance,⁸ and stated that he was not present for 90 percent of the "C" check that N267AS underwent at his facility.⁹

Respondent's arguments on appeal are similar to those he articulated in his answer. Respondent contends that the airworthiness release he signed does not render him responsible for the work performed by other mechanics. Respondent also argues the Administrator did not present evidence to prove that

⁸ With regard to the doctrine of reasonable reliance, in Administrator v. Fay & Takacs, NTSB Order No. EA-3501 at 9 (1992), we stated, "[i]f ... a particular task is the responsibility of another, if the [pilot-in-command] has no independent obligation (e.g., based on the operating procedures or manuals) or ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found." (emphasis in original). In the case at hand, respondent argues that, in signing the airworthiness release for N267AS, he relied upon several mechanics' completion of task cards indicating that they performed certain work on the aircraft.

⁹ We adopt the law judge's definition of "C" check, which includes "an A-1 400- and 800-hour check, C-2 check, 4-year corrosion prevention check, daily service check, and 75-hour line check." Initial Decision at 3078.

the aircraft was corroded at the time he signed the airworthiness release, nor did the Administrator provide evidence showing the TAWS was inoperative at the time of respondent's inspection. Lastly, respondent asserts that he was denied a fair hearing, because some of the aircraft's parts that are the subject of the complaint—particularly with regard to the allegations of corrosion—were destroyed and unavailable for inspection at the hearing. The Administrator disputes each of respondent's arguments, and urges us to affirm the law judge's decision.

The case proceeded to a hearing that lasted a total of 19 days over the course of nearly a year, with numerous continuances between hearing sessions. The law judge's oral initial decision, attached hereto, contains a detailed summary of the testimony and evidence presented at the hearing. As we find no basis to challenge the law judge's findings of fact, this opinion and order only includes a summary of the evidence as necessary to resolve the appeal before us. To provide a basic background, we note that N267AS, property of Lakeland Air Transport (hereinafter, "Lakeland"), a part 135 operator, was due for a "C" check and installation of a TAWS/EGPWS. Lakeland contracted with respondent for use of his hanger and equipment in Martinsburg, West Virginia. Lakeland's director of maintenance (DOM), Frank Albritton, originally supervised the

progress of the work on the check in March–April 2005. After experiencing funding and manpower shortages, Mr. Albritton resigned and respondent subsequently agreed to supervise completion of the check. Respondent returned N267AS to service on June 3, 2005, by signing a release indicating the aircraft was airworthy. Exh. A-3. After being returned to service, N267AS operated for 58 days under 14 C.F.R. part 135 in and around Puerto Rico. Following its operation around the Caribbean, the Administrator received a complaint about N267AS from a mechanic who worked on the aircraft during the aforementioned inspections and subsequently raised the matter with Lakeland. As a result of that complaint, Lakeland executives grounded the aircraft after determining that it was unairworthy. The FAA began a lengthy investigation into the maintenance on the aircraft, which ultimately led the Administrator to take this action against respondent's A&P certificate.

Reasonable Reliance

We do not find respondent's assertion that he reasonably relied upon the mechanics who completed work at his facility, and therefore is not responsible for his signature on the airworthiness release form, to be persuasive. The evidence established that respondent undertook the duties of DOM at Lakeland following Mr. Albritton's resignation, which, according

to Mr. Albritton, occurred after Lakeland did not provide Mr. Albritton with the resources to complete the "C" check of the aircraft. As a contractor who was functioning as the new DOM, respondent's duty was to ensure that N267AS was in an airworthy condition before signing the airworthiness release. See Exh. A-3 (signature on airworthiness release block, dated June 3, 2005). The airworthiness release includes a citation to 14 C.F.R. § 135.443, which provides that no certificate holder may operate an aircraft that does not have a signed airworthiness release after undergoing maintenance, and that the airworthiness release must be prepared in accordance with the certificate holder's manual.

At the hearing, the Administrator's attorney called two inspectors who testified that, ultimately, respondent was responsible for the work performed by the mechanics on N267AS because respondent, as DOM for Lakeland, certified the aircraft as airworthy. In particular, Inspector Frank Lipinski testified that Lakeland's General Maintenance Manual (GMM) required that: the maintenance records include a reference to a particular airworthiness directive; the TAWS/EGPWS installation fulfill the requirements within the applicable supplemental type certificate

(STC); and the task cards include certain entries, which respondent failed to include.¹⁰ Tr. at 1951.

In addition to relying on the inspectors' testimony that any authorized person who signs an airworthiness release form does so at his peril, and is responsible for having overseen the maintenance on an aircraft to the extent that he is satisfied the aircraft is in an airworthy condition, we also reject respondent's reasonable reliance argument, based on our prior cases. First, as indicated above in our reference to Fay & Takacs, our doctrine of reasonable reliance is a narrow one. In applying this doctrine to cases involving maintenance on an aircraft, we have held that anyone who approves an aircraft for return to service "may not simply assume that others have done what needs to be done."¹¹

Respondent cites Administrator v. Hansen, NTSB Order No. EA-3903 (1993), in support of his reasonable reliance

¹⁰ Respondent stipulated to the following paragraphs of the complaint involving paperwork discrepancies: ¶¶ 9 (recorded entry on Form M-17 indicating that antennas were all in acceptable condition and required no action); 10 (recorded entry on Form M-17 indicating that forward fuselage lower antenna condition complied with task card instructions); 17 (approved for return to service a TAWS/EGPWS on Form M-17, indicating that the TAWS/EGPWS complied with a particular STC); 36(b) (inserted no entry in "Remarks" section of a task card concerning whether a post-flight taxi had occurred); 36(e) (failure to include page number on Form M-17); 36(f)(1) (failure to include Hobbs meter readings on airworthiness release); and 36(f)(2) (failure to include tire pressure entries on 75 Hour Line Check form).

¹¹ Administrator v. Svensson, NTSB Order No. EA-4810 at 4 (1999).

argument. We find Hansen inapplicable to the case at hand. In Hansen, we stated that the Administrator charged the respondent with a violation of 14 C.F.R. § 43.13(a), which was inapplicable to the respondent's airworthiness release. We did not address the respondent's argument that his sign-off of the airworthiness release for the L-1011 at issue was appropriate because he relied upon the fact that the aircraft's logbook listed no open discrepancies.¹²

We agree with the law judge's assessment concerning respondent's culpability for the airworthiness release. In this regard, the law judge stated as follows:

[Respondent] accepted the responsibility for completing the "C" check as a contractor and with that goes the responsibility for failing to complete the "C" check satisfactorily and returning the aircraft to service in an unairworthy condition, which it clearly was ... The maintenance system under which the Federal Aviation Regulations operate, operates on trust and faith that maintenance is properly done in a timely ... and correct manner as recorded. The [r]espondent accepted full responsibility for the proper completion of the entire inspection when he took on the job of supervising the inspection and signed the airworthiness release.

¹² Moreover, since Hansen, we have specifically clarified that "maintenance" on an aircraft includes the act of performing an inspection on the aircraft. See, e.g., Administrator v. Raab, NTSB Order No. EA-5300 at 10-11 (2007) (stating that the FAR defines "maintenance" to include "inspections" at 14 C.F.R. § 1.1, and that inspections are subject to the requirements of 14 C.F.R. §§ 43.13 and 43.15), pet. for review denied, 370 Fed. Appx. 303, 307-09 (3d Cir. 2010) (stating that, by the plain meaning of the FAR's definition of "maintenance," § 43.13 applies to inspections of aircraft).

Initial Decision at 3160–61. For the reasons articulated below, we agree with the law judge's conclusion.

The airworthiness release that respondent signed incorporated by reference 14 C.F.R. § 135.443, which requires a statement that no known discrepancies exist, and that the aircraft is airworthy, in accordance with the applicable maintenance manual. Exh. A-3. The two FAA inspectors who testified at the hearing, Inspectors William Littleton and Lipinski, both interpreted § 135.443 as requiring an authorized individual to sign the airworthiness release, and that respondent, as DOM for Lakeland, maintained such authority. Tr. at 69–71, 80, 1615–16. We have long recognized that Congress has directed the Board to defer to the Administrator's interpretation of FAA regulations, unless the interpretation is "arbitrary, capricious, or otherwise not according to law."¹³ We do not believe the Administrator's interpretation of § 135.443, and reference to that regulation in this case, is unreasonable. As such, we do not agree with respondent's argument that his reliance upon various mechanics' work on the aircraft was reasonable under the circumstances, or that it excuses his culpability in returning the aircraft to service.

¹³ 49 U.S.C. § 44709(d)(3); see also Garvey v. NTSB, 190 F.3d 571, 576–79 (D.C. Cir. 1999).

Corrosion

We also disagree, in part, with respondent's contention that the Administrator failed to fulfill the burden of proof concerning the charges in the complaint that alleged corrosion. We first note that respondent's principal argument is that the Administrator failed to prove the corrosion existed at the time respondent returned the aircraft to service because the time lapse between respondent's signing of the airworthiness release form, the grounding, and FAA inspection of the aircraft was approximately 4 months. The evidence established that N267AS underwent several short flights in warm, humid, salty air during the 4-month period, and that, once the aircraft arrived at Starport Aviation (hereinafter, "Starport") in Florida, its lavatory was leaking blue water. In addition, the Administrator's evidence concerning corrosion included poor quality photographs, as well as the testimony of Robert Roswell, who, as a mechanic at Starport, acquired a ferry permit to fly the aircraft from San Juan, Puerto Rico, to Florida.¹⁴ Mr. Roswell was confident that the corrosion he observed rendered the aircraft unairworthy (Tr. at 1120-21), and would

¹⁴ Mr. Roswell testified that he worked with the FAA, owners of the aircraft, and staff at Starport to sample 15 percent of the maintenance records, including the task cards, associated with the aircraft, and that the group involved in this sampling determined that they must open the aircraft and inspect it thoroughly, after reviewing entries on the sample of maintenance records that they reviewed. Tr. at 580.

have taken years to develop (Tr. at 1070); similarly, Inspector Littleton also testified at length concerning the alleged corrosion, and opined that the severe, intergranular corrosion that he observed once N267AS arrived at Starport could not occur in only 4 months, but instead would take years to develop. Tr. at 2883.

The Administrator's complaint included allegations of both severe and surface corrosion. Given the lapse of time between respondent's sign-off of the airworthiness release and the examination of the aircraft at Starport, combined with the fact that both Mr. Roswell and Inspector Littleton testified that the *surface* corrosion could have occurred in several months time, we do not believe the Administrator adequately proved that *surface* corrosion existed at the time of respondent's release of N267AS. Therefore, with regard to corrosion, we find the Administrator only unequivocally proved ¶¶ 32(k), 33(a),¹⁵ 33(k) and 36(d) of

¹⁵ We are aware that, at the hearing, the law judge dismissed paragraph 33(a) of the complaint, which alleged that Starport "[r]eplaced corroded left cockpit floorboard 18L stringer." The law judge's dismissal was based on the fact that the Administrator's proof at the hearing referred to stringer 17L. In the initial decision, the law judge reversed his dismissal of this paragraph, finding that the Administrator's reference to the incorrect stringer was not a "fatal variance," as the complaint functioned to put respondent on notice that a stringer in that area was corroded. Initial Decision at 3096. We agree with the law judge's assessment, and conclude that the Administrator's evidence established that the stringer was severely corroded. See Exh. A-21 at 19; Tr. at 728-35. We further note that, even if the law judge's decision in this

the complaint, as the allegations in those paragraphs referred to corrosion that was severe.

In support of this finding concerning intergranular, or severe, corrosion, we first note that the law judge found Inspector Littleton's testimony on this issue to be persuasive and credible. The law judge stated as follows concerning Inspector Littleton's testimony:

The evidence concerning the corrosion under the floorboards in the cockpit comes from the testimony of retired ASI Littleton, and to a lesser extent other testimony, and is supported by photographs and documentary evidence. From [my observation of Inspector Littleton at the hearing], I find that he is a very knowledgeable maintenance inspector whose testimony is credible in all respects, and, in fact, is much more credible on this particular point than the [r]espondent, himself. Inspector Littleton's testimony was consistent throughout the hearing.

Initial Decision at 3163. We have long deferred to the credibility findings of law judges in the absence of a showing that such findings are arbitrary, capricious, or contrary to the weight of the evidence.¹⁶ We believe that the law judge's determination concerning the testimony of Inspector Littleton

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regard was erroneous, such error was harmless, as the Administrator proved the remaining charged intergranular corrosion, which warrants revocation.

¹⁶ Administrator v. Nickl, NTSB Order No. EA-5287 at 6 (2007) (citing Administrator v. Kocsis, 4 NTSB 461, 465 n.23 (1982); see also Administrator v. Smith, 5 NTSB 1560, 1563 (1986); Administrator v. Sanders, 4 NTSB 1062 (1983)).

was reasonable, and respondent has not impugned the persuasiveness of Inspector Littleton's testimony.

We agree with the law judge that the evidence establishes that the intergranular corrosion, particularly beneath the floorboards in the cockpit, was present when respondent signed the airworthiness release. First, as the law judge stated, respondent's testimony concerning whether he saw the area beneath the floorboards in the cockpit during the "C" check was inconsistent. Respondent first claimed, when he became the DOM for Lakeland and agreed to oversee the completion of the "C" check, the aircraft was mostly closed up with the floorboards in place, and the vast majority of the maintenance on N267AS was complete when respondent took over the "C" check. Tr. at 2230, 2234, 2236, 2398, 2408-2409. Later in the hearing, however, after respondent's witness concerning the installation of the TAWS/EGPWS system testified that respondent helped him with the installation, which occurred beneath the floorboards in the cockpit (Tr. at 2628-29), respondent indicated that he did observe the area beneath the floorboards and did not see any corrosion. Tr. at 2711.¹⁷

¹⁷ See also Initial Decision at 3164 (describing portions of Exh. A-31, which respondent signed concerning correction of certain discrepancies, that indicate that respondent had access to the area in question beneath the cockpit floorboards), and Tr. at 2726 (respondent's testimony concerning Exh. A-54(a), which was a task card that respondent signed indicating he had

In addition, the area beneath the cockpit floorboards, which contained the most extensive amount of severe corrosion, included a hole in gusset straps that resulted from the decomposition of the metal. Inspector Littleton provided detailed testimony in which he opined the hole was the result of severe corrosion, which only develops after years of accumulation. Tr. at 2885, 2895, 2900. Contrary to Inspector Littleton's testimony, respondent provided the testimony of Kenneth Leighton, who opined that a mechanic probably created the hole by ripping out a nut plate on the gusset strap. Tr. at 3055. Like the law judge, we find Inspector Littleton's testimony much more persuasive on this point. The photographs the Administrator provided show that the hole is surrounded by white powder, which is how severe corrosion appears as it manifests, and the edges are neither vertical nor significantly frayed, which Inspector Littleton testified would have been the case had the hole resulted from the tearing Mr. Leighton described. Tr. at 3068-69.

Overall, we find the evidence establishes the Administrator's charges concerning severe corrosion on the aircraft, and this severe corrosion was present when respondent

(..continued)
inspected certain components beneath the cockpit floorboards); accord Tr. at 2913 (Inspector Lipinski's testimony concerning Exh. A-54(a)).

approved the aircraft as airworthy. We also agree with the law judge's conclusion that the evidence shows respondent knew of this severe corrosion when he signed the airworthiness release. As such, we believe the Administrator has fulfilled the burden of proof on the falsification issue.

TAWS/EGPWS

Unlike our finding concerning the corrosion allegations, we do not agree that the Administrator fulfilled the burden of proof concerning the allegation that the TAWS/EGPWS was improperly installed, and that respondent knew the alleged improper installation was faulty. At the hearing, the Administrator's case concerning the TAWS/EGPWS allegations was, to put it mildly, confusing, disorganized, and ill-prepared. We do not believe the record establishes that respondent's mechanic who installed the TAWS/EGPWS erred in referencing two STCs. On this issue, the Administrator failed to counter respondent's defense that the use of two STCs did not render the aircraft unairworthy.¹⁸

Respondent called the avionics technician who installed the system, Michael Chura, to testify at the hearing. Mr. Chura

¹⁸ We note that Inspector Lipinski confirmed that one version of the STC that the Administrator sought to use for the case applied only to *initial* installations of TAWS/EGPWS systems; the Administrator did not clarify how this STC applied to respondent's installation of the TAWS/EGPWS at issue, since it was not an initial installation. Tr. at 1814.

provided detailed testimony concerning his installation of the TAWS/EGPWS in N267AS, which he stated he completed in accordance with the provisions of the applicable STC. Tr. at 2668. To refute Mr. Chura's testimony, the Administrator called Edduyn Pita,¹⁹ who opined that the TAWS/EGPWS could not have been installed properly, because the system did not have the necessary wires.²⁰ However, Mr. Pita was not present when Mr. Chura installed the system, and the Administrator provided no evidence to dispute respondent's speculation that the system was stolen before Mr. Roswell ferried the aircraft back to Florida. In fact, testimony at the hearing by the Administrator's own witnesses indicated that the owner of N267AS filed a police report because someone had stolen the computer from the TAWS/EGPWS system.

We recognize that the law judge determined that Mr. Pita's testimony was credible; however, we do not believe Mr. Pita's testimony disposed of the relevant issues, as noted above. In particular, the Administrator failed to present evidence

¹⁹ Mr. Pita was the engineer who supervised the subsequent installation of the TAWS/EGPWS at Starport.

²⁰ We note that the transcript of the hearing testimony indicates that, despite the sequestration order, Messrs. Chura and Pita conversed in the hallway after one of the hearing sessions, and that Mr. Pita allegedly recanted some of his testimony concerning his opinion that the appearance of the wires indicated that Mr. Chura could not have installed the TAWS/EGPWS correctly.

discussing which STC was controlling, and why, and whether Mr. Pita or Mr. Chura used the incorrect STC in installing the TAWS/EGPWS. Exhibit A-55, which is a copy of an excerpt of one of the STCs, states, "[t]his modification is for aircraft with existing MKII or MKVI Ground Proximity Warning Systems ... previously installed." On the next page, the STC states, "[f]or installations utilizing a MKVI EGPWC with internal GPS card, the antenna installation is in accordance with ... STCST01898AT and all limitations associated with that installation apply." Exh. A-55 at 2. Therefore, consistent with Mr. Chura's testimony, the language of the STC appears to indicate that the person installing the TAWS/EGPWS should reference both STCs. The Administrator did not effectively impeach this reasoning.

The Administrator's complaint also alleges that respondent violated the FAR by failing to submit a Form 337 to the Administrator concerning the installation of the TAWS/EGPWS. In general, a person performing maintenance on an aircraft must file a Form 337 when an aircraft undergoes a major alteration or repair. Respondent stated that he did not submit a Form 337 because one was not required; according to respondent, fulfilling the requirements of the STC obviates the need for a Form 337, because the TAWS/EGPWS became part of the original design of the aircraft and its specifications, pursuant to the

STC. The Administrator did not provide evidence or cite any authority to dispute this viewpoint.

In addition, the complaint alleges that respondent failed to ensure a requisite test flight occurred after installation of the TAWS/EGPWS. The testimony on this issue is also inconsistent and confusing. The Administrator did not disprove respondent's testimony that Tommy Barraza, the former director of operations and chief pilot for Lakeland, flew the aircraft to Florida following respondent's maintenance, and told respondent that the test flight was fine. Tr. at 2447, see also Exh. A-3. Although Matias Guillen, a pilot who accompanied Mr. Barraza on the flight back to Florida, testified that a test flight in which the aircraft left the ground did not occur (Tr. at 285), the evidence did not establish that Mr. Guillen informed respondent of this lack of a test flight. Furthermore, despite the law judge finding Mr. Guillen credible, Mr. Guillen's testimony on this issue seemed focused on the fact that he and Mr. Barraza only performed a high-speed taxi, rather than a test flight, in West Virginia. The Lakeland GMM, however, permits a pilot "to depart one airport, perform a test flight, and then continue on to another airport without returning to the original airport. Examples of reasons for use of this procedure are: Direct repositioning of an aircraft after a successful test flight." Exh. A-46 at 2. Therefore, we cannot conclude that

the Administrator has met the elements of intentional falsification with regard to the occurrence of a test flight.

Based on Mr. Chura's testimony, as well as the records Mr. Chura drafted indicating that he completed the installation,²¹ we do not believe the Administrator fulfilled the burden of the allegations in the complaint concerning the TAWS/EGPWS. We note the Administrator's evidence on this issue was disorganized and tangential, as much of the testimony of the Administrator's witnesses focused on general flight management systems and their interaction with TAWS/EGPWS systems. Moreover, the disordered nature in which the Administrator's counsel attempted to prove the STC allegations further indicated that the Administrator's evidence on this issue was weak. In addition, we find it telling that, during the dozens of flights the aircraft underwent after respondent's airworthiness release, no one mentioned or logged a discrepancy related to the TAWS/EGPWS until July 30, 2005.²² Overall, we grant respondent's

²¹ See Exh. R-14 (letter from Mr. Chura regarding his findings and completion of the installation, stating that the TAWS/EGPWS was installed in accordance with the STC).

²² Exhibit R-3, which respondent introduced at the hearing, consists of logbook pages documenting the flights that N267AS underwent after respondent's maintenance. The exhibit includes a notation made by a pilot in San Juan, Puerto Rico, which states, "EGPWS INCP" within the "mechanical discrepancies" block. An accompanying notation from an unnamed mechanic within the "action taken block," also states, "Removed EGPWS unit for [trouble-shooting]." These notations are dated July 30, 2005.

appeal to the extent that he argues the Administrator did not prove the allegations in the complaint concerning the TAWS/EGPWS system and the corresponding falsification charges.

Due Process

Lastly, respondent contends that the Administrator did not provide him with the opportunity to inspect the parts of N267AS that, according to the Administrator, rendered the aircraft unairworthy. Respondent argues that mechanics at Starport altered or destroyed the aircraft's parts that the Administrator alleged were significantly corroded. Respondent's appeal brief, however, does not specifically identify which parts are the subject of this argument. In addition, respondent does not attempt to dispute Mr. Roswell's or Inspector Littleton's testimony concerning the condition of the parts, and the extent of corrosion they observed, when they evaluated the parts at Starport. As discussed above, this testimony proved that the gusset strap beneath the cockpit floorboards was significantly corroded.

(..continued)

The Administrator did not produce any evidence to indicate how this apparent trouble-shooting did not function as an intervening event, since it occurred after the time that Mr. Chura installed the system and respondent signed the airworthiness release, but before the aircraft's owners, FAA inspectors, and mechanics at Starport noticed that the TAWS was missing.

Respondent does not deny that, at the hearing, the law judge ordered the Administrator's counsel to allow for respondent's evaluation of any remaining parts. Tr. at 784-86. The record does not indicate that respondent's counsel took advantage of this opportunity. Tr. at 803-804. Respondent's counsel informed the law judge that, during the discovery phase of the case, respondent and his counsel were able to inspect some parts, but that the Administrator's counsel prevented respondent from inspecting parts that were in better condition. Tr. at 783. Given that we have not affirmed the Administrator's allegations concerning surface corrosion, such an argument is now moot, as respondent's counsel was able to view the severely corroded gusset strap at the hearing. Exh. A-29(f)(1), (g)(1), and (h)(1); Tr. at 897-911, 922.

Respondent cites the Federal Rules of Evidence for his argument concerning the alleged spoliation of evidence. However, we have previously held, and respondent acknowledges, that the Federal Rules of Evidence are not binding in Board proceedings. While we do not condone the disorganized manner in which the Administrator's counsel handled discovery,²³ we

²³ See Tr. at 1476-87 (Administrator's counsel, in response to the allegation that she did not provide logbook records for respondent's inspection in a timely manner, replied that respondent did not suffer prejudice as a result of the late disclosure).

nevertheless do not find that the Administrator violated respondent's right to a fair hearing under the due process clause. We have previously held that, where a respondent has had the opportunity to present and cross-examine witnesses at the administrative hearing, the respondent has been afforded due process.²⁴ Overall, we do not find respondent's argument concerning the alleged due process violation to be persuasive.

Conclusion

We deny respondent's appeal concerning the falsification charge, to the extent that this charge is based upon the severe corrosion that the Administrator established existed on N267AS at the time respondent verified the aircraft was in an airworthy condition.²⁵ We grant respondent's appeal concerning the falsification charge as it related to the alleged improper installation of the TAWS/EGPWS system. Given our long-held

²⁴ The due process clause provides that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. See also, e.g., Administrator v. Nadal, NTSB Order No. EA-5308 at 7 n.6 (2007) (citing Administrator v. Nowak, 4 NTSB 1716 (1984); Administrator v. Logan, 3 NTSB 765, 768 (1977); Administrator v. Smith, 2 NTSB 2527, 2528 (1976), for proposition that, where a respondent has had the opportunity to present and cross-examine witnesses at an administrative hearing, neither the law judge nor the Administrator has denied the respondent due process of law).

²⁵ Although not the subject of his appeal, we affirm paragraphs 9, 10, 15, 36(b), 36(e), 36(f)(1), and 36(f)(2) of the complaint, based upon respondent's stipulations at the hearing. See note 10, supra.

position that revocation is the appropriate sanction when the Administrator has shown a respondent intentionally falsified a document,²⁶ we affirm the law judge's conclusion that revocation of respondent's A&P certificate was appropriate.²⁷

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied to the extent that he argues the Administrator did not prove the alleged charges concerning severe corrosion;

2. The law judge's decision is affirmed, in part; and

3. The Administrator's emergency revocation of respondent's mechanic certificate with A&P ratings is affirmed.

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

²⁶ See, e.g., Administrator v. Borregard, NTSB Order No. EA-3863 at 9-10 (1993) (citing Administrator v. Garrelts, NTSB Order EA-3136 (1990), and affirming revocation for violation of 14 C.F.R. § 43.12(a)(3)).

²⁷ Initial Decision at 3172-73.

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

* * * * *

In the matter of: *

J. RANDOLPH BABBITT *
ADMINISTRATOR, *
Federal Aviation Administration, *

Complainant, *

v. * Docket No.: SE-18345

JUDGE POPE

ROBERT CREIGHTON *

Respondent. *

* * * * *

Office of Law Judges
490 L'Enfant Plaza East, SW
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Washington, D.C. 20594

Wednesday,
April 28, 2010

The above-entitled matter came on for a telephonic hearing, pursuant to Notice, at 10:00 a.m.

BEFORE: WILLIAM A. POPE, II
Administrative Law Judge

APPEARANCES:

On Behalf of the Administrator:

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Federal Aviation Administration
Office of the Regional Counsel
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On behalf of the Respondent:

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1 16, 17, 18, 19, 20, 28, 29, 30, 31, 36, 37, 38, 39, 40, 41, 42,
2 43, and 44. The Respondent stated in his answer that he did not
3 have sufficient information to admit or deny paragraphs 2 through
4 6, 13, 14, 21 through 27, and 32 through 36. These paragraphs of
5 the complaint are deemed denied. Thus, except for paragraphs 1,
6 8, and 10 of the complaint, which are admitted, all other
7 allegations in the complaint are denied or deemed denied.

8 Respondent raises reasonable reliance on his mechanics and his
9 absence for 90 percent of the "C" check as affirmative defenses.

10 Respondent waived proceedings under the Board's Rules
11 pertaining to emergency proceedings.

12 By amendment to the complaint, allowed by Order, dated
13 June 7, 2009, the Administrator dismissed paragraphs 37(a), (b),
14 (c), (d), (e), (f) and (h). At the hearing, the Administrator
15 withdrew paragraph 32(w) of the complaint, and dismissed
16 paragraphs 33(a), and 32(m).

17 At the conclusion of the Administrator's case-in-chief,
18 the following paragraphs of the complaint were dismissed because
19 the Administrator did not present a prima facie case that the
20 discrepancies alleged by them existed at the time the Respondent
21 returned the aircraft to service after the "C" check was completed
22 at Martinsburg, West Virginia: Paragraphs 32(b), 32(d), 32(e),
23 32(j), 32(n), 32(r), 32(s), 32(t), 33(f), 33(g), 33(h), 33(i), and
24 33(j). Also dismissed during the hearing for failure by the
25 Administrator to provide timely requested discovery were the

1 allegations in paragraphs 26(a), (b), and (c), and 27(a) through
2 (i).

3 In all, approximately 35 subparagraphs of the complaint
4 were withdrawn, dismissed by the Administrator, or dismissed at
5 the end of the Administrator's case-in-chief.

6 I. Synopsis of Testimony

7 Aviation Safety Inspector (ASI) Frank Lipinski, Lakeland
8 Air Transport's PMI, testified that the Respondent was approved as
9 director of maintenance of Air Solutions in 2004. He was extended
10 as director of maintenance until March 29, 2005, to complete the
11 "C" and other checks on N267AS. He signed a release in N267AS'
12 maintenance log on June 3, 2005. He certified that the following
13 inspections were due and completed: an A-1 400- and 800-hour
14 check, C-2 check, 4-year corrosion prevention check, daily service
15 check, and 75-hour line check, which I will refer to collectively
16 as the "C" check.

17 The Respondent did not sign that he had performed the
18 checks and maintenance, but he signed as the responsible party.
19 For inspections, two sets of eyes are required. He signed off and
20 ensured that all inspections had been done in accordance with
21 company approved and accepted programs, and the manufacturer's
22 maintenance program. The absence of the TAWS system was not
23 discovered until later when N267AS was in Puerto Rico in mid-July.
24 Its absence was reported to PMI Littleton by the mechanic who
25 inspected the aircraft for a ferry permit. The Respondent had

1 completed a maintenance entry that the TAWS was installed. N267AS
2 was reinspected at StarPort, where it was taken for maintenance
3 after it was grounded. No sign of vandalism was observed. There
4 was evidence of lavatory water near the restroom.

5 Chris D. Mock, the holder of an A&P and an IA
6 certificate contracted with Lakeland Air Transport to assist in
7 the maintenance in March 2005. He assisted Frank Albritton as the
8 latter's helper. He testified that most of the time, he removed
9 several hundred screws with stripped out heads, some of which were
10 rusty. Exhibit A-4 is a list of items he sent to the FAA. He
11 said that none of the corrosion treatment was in stock or on hand,
12 so the interior was not treated completely. Mr. Mock was not
13 present when A267AS was released after maintenance was performed.

14 Mark Gendron, a lead mechanic who holds an A&P
15 certificate, knew the Respondent through Atlantic Coast Airlines
16 and did some part-time contract work for the Respondent. He
17 worked about 30 hours a week on the Embraer during the "C" check.
18 He was paid by the Respondent and worked under Frank Albritton's
19 supervision until the day after Albritton left. Gendron left when
20 the Respondent or Hank Pawelczyk said that work was ceasing on the
21 Embraer. When Gendron left, the N267AS was still mostly torn
22 down. Most of the interior was out, the leading edges were open,
23 and most panels were removed. A week or so later, he told
24 Pawelczyk that he had signed the task card and when he left, work
25 on the "C" check was progressing. He said that 6 to 10 mechanics

1 worked on the aircraft while he was there and most were new
2 mechanics. He did not see the Respondent working much on N267AS.
3 He said he assisted in opening panels and did some visual
4 inspection and wrote task cards. He said he probably did 19 task
5 cards, some "A" checks on the engine, and "C" checks on the wings.
6 He found no corrosion in the wing areas. He said the mechanics
7 who did the work would sign the task card. The Respondent would
8 do the buy back as the second set of eyes, meaning he made sure
9 the work was done before the inspection place was closed up. He
10 did not see the Respondent's signature on some task cards he later
11 saw. He said Frank Albritton looked at fuel panels he installed.
12 He recalled that significant corrosion had been brought up to
13 Frank Albritton's attention, but did not know if it had been
14 repaired. He said there was corrosion on the upper fuselage
15 around the ELT mount. He thought that Frank Albritton had the
16 final authority. Hank Pawelczyk's participation was very limited.
17 When he left, the floor boards, crew seats, lavatory, and other
18 interior items were out.

19 Laura Hawley, an investor and shareholder in Lakeland
20 Air Transport, testified she was familiar with the business
21 dealings between Lakeland Air Transport and Air Solutions. N267AS
22 was purchased by Lakeland Air Transport and was taken in April or
23 May 2005 to West Virginia for a C-2 inspection under a joint
24 venture with Tommy Barraza and Air Solutions, another Part 135
25 operator with which Barraza was associated. Tommy Barraza hired

1 the Respondent to do the "C" check and Lakeland Air Transport
2 agreed to it. Lakeland's director of maintenance went to the
3 Respondent's facility in West Virginia for the "C" check. She saw
4 N267AS when it was completely torn apart inside and saw corrosion
5 in the cockpit and the rails on the bottom. There was corrosion
6 on the floors, the seats, and avionics were out.

7 Ms. Hawley said that Tommy Barraza was president of
8 Charter Connections, which ran the operations of Lakeland Air
9 Transport and Air Solutions. He did not hold a corporate position
10 in Lakeland Air Transport. Lakeland Air Transport ended its
11 relationship with Barraza, Air Solutions, and the Respondent in
12 August or September 2005.

13 She saw N267AS after the "C" check, when Lakeland Air
14 Transport voluntarily grounded it and sent it to StarPort in
15 September 2005 for reinspection. She said the FAA insisted on a
16 new "C" check. N267AS was flown in service after the "C" check by
17 the Respondent.

18 She said that the Respondent complained that he was not
19 being paid by Barraza for the inspection work. She said she
20 provided \$12,000 to pay to the Respondent.

21 She said she did not know what happened to the TAWS
22 system that was supposed to be installed in N267AS. She said that
23 Lakeland Air Transport filed a police report because it was not on
24 the aircraft, and she did not know if it was ever installed or
25 what happened to it. She said she paid for the TAWS system from

1 her personal funds because Lakeland did not have the money at the
2 time. In fact, she paid for three TAWS systems, two of which were
3 installed on Air Solutions' aircraft. She was finally reimbursed
4 from a loan taken out by Charter Connections.

5 Matias Guillen, a commercial pilot with instrument and
6 multi-engine ratings, worked for Lakeland Air Transport for 6 to 7
7 months in 2005. On June 1, 2005, he flew to Martinsburg, West
8 Virginia, with Barraza as captain, in an Air Solutions aircraft to
9 bring back N267AS. He saw N267AS in the Respondent's hangar. The
10 interior was not installed. The cockpit was open and the seats
11 removed. There was no toilet installed. Multiple inspection
12 ports were open. The cowlings were open.

13 He was sent away and returned on June 3, 2005, and he
14 and Barraza helped reassemble N267AS. He said he helped put in
15 the luggage bins in the seating area, put cushions on the pilot
16 and co-pilot seats, closed some inspection ports by installing
17 screws. He does not hold an A&P certificate. On the return
18 flight to Orlando, Florida, the lavatory was not operational and
19 Barraza told the crew not to use it. The cockpit bulletproof door
20 was in the cargo area and was not installed. The TAWS did not
21 work on the way back; only the GPS was working.

22 He said that the Respondent was reviewing and signing
23 maintenance logs and did not recall that the Respondent did any
24 work reassembling the aircraft. Barraza did not perform a test
25 flight. The return flight was a repositioning flight. A mechanic

1 took N267AS at high speed down the runway and then returned to the
2 facility.

3 Guillen recalled a man doing work on the TAWS. A TAWS
4 had not been installed on N267AS prior to the "C" check. During
5 the week after he returned to Orlando, he flew in N267AS in Puerto
6 Rico. The system was not working and he believed Barraza deferred
7 it.

8 ASI Roy E. Miller was the POI for Lakeland Air Transport
9 in 2005. In May 2005, he visited the Respondent's facility in
10 Martinsburg, West Virginia Airport, looked at N267AS, which he
11 knew was undergoing a "C" check and was supposedly nearly done.
12 Respondent, who was the director of maintenance for Air Solutions,
13 took him through N267AS. The seats and a lot of interior parts
14 were out; the panels were open, and he saw bags of parts. He saw
15 corrosion around the antennas on the lower bottom side of the
16 aircraft. He thought the corrosion would have been removed by
17 that time.

18 The Respondent told him there were problems with Frank
19 Albritton, the Lakeland director of maintenance who was originally
20 in charge, who had left and taken the records with him because he
21 was frustrated at not being paid. The records had gotten back
22 somehow and the Respondent was now in charge. The Respondent did
23 not say at what stage of completion the "C" check was, but he did
24 say he wanted it completed because he needed the hangar space.
25 The Respondent said he was going to expedite the "C" check and was

1 waiting for screws so the leading edges of the wings could be put
2 back on.

3 As of June 3, 2005, the Respondent was no longer the
4 director of maintenance of Air Solutions, but he was a person
5 authorized to sign an airworthiness release. The Respondent had
6 resigned as director of maintenance of Air Solutions on April 5,
7 2005, but had rescinded his resignation, he said, to complete the
8 work on the TAWS. N267AS had arrived at Respondent's facility on
9 March 28, 2005.

10 Frank Albritton holds a commercial pilot certificate
11 with instrument rating, and an A&P and an IA. He had been
12 director of maintenance for Lakeland for two years in March 2005.
13 As director of maintenance, he was supposed to coordinate with the
14 chief inspector and maintenance to locate a facility to perform
15 maintenance on N267AS. Included was installation of the TAWS.
16 The Respondent was selected because he had the tools and
17 experience. N267AS was to be brought current with inspections and
18 ADs. A "C" check was due and other checks were coming due
19 shortly, including an "A" check, and a TAWS was to be installed.

20 Albritton said he went to Respondent's facility about a
21 month before he resigned as director of maintenance of Lakeland.
22 He said all the mechanics were hired by the Respondent and all
23 were part-time, except Hank. He said he went to West Virginia to
24 supervise the maintenance on his aircraft and stayed for a month
25 or so. He said he oversaw anyone who touched the aircraft, and

1 followed the approved maintenance program and signed off on
2 required records. He said he provided task cards, sign-off
3 sheets, discrepancy sheets and anything else required. He made
4 sure the mechanics understood the manuals and procedures. The
5 Respondent was to provide the facility, tooling and manpower to
6 accomplish the work.

7 Albritton said he was unable to have daily contact with
8 the Respondent when he needed him. He needed to know what was
9 going on with the aircraft and his personnel, and the Respondent
10 was to provide tooling and parts.

11 Albritton said that the "C" check required opening up
12 the aircraft, removing inspection panels, interiors, under the
13 floor, leading edges and interiors, and engine cowlings. Some of
14 the opening up would accommodate installation of the TAWS. He
15 said the "C" check was begun, but had not been completed when he
16 left. The corrosion program was started, but was not completed
17 while he was there. Only a small percentage was completed by the
18 time he left. He signed off on everything that involved him.

19 He said he resigned on May 7, 2005, when he concluded he
20 could not complete the inspections because he did not have parts
21 or the manpower. He said he was told parts were on order, but he
22 never saw them. He said Daryl Hicks told him it was his
23 responsibility to oversee the inspection and the Respondent would
24 provide the manpower, facilities, tools and inventory of parts.
25 He said he asked the Respondent many times for parts and the

1 Respondent told him he would get the parts or help Albritton track
2 them down. Albritton said that the Respondent did not provide the
3 things he needed, including a computer for access to the Internet,
4 and that frustrated him because the Respondent did not do what he
5 had promised. Albritton said he sent some parts from his own
6 inventory in preparation for the inspection. He said he had
7 problems with the part-time mechanics the Respondent hired because
8 he could not count on them being there. He said he left West
9 Virginia on May 16, 2005.

10 Albritton said he kept tally sheets showing task cards
11 that were distributed and returned. There is a block on the tally
12 sheet to initial "audited by," which meant all signatures were in
13 place, documentation was filed, and the paperwork was completed.
14 This form is required by Lakeland's General Maintenance Manual.
15 The parties agreed that Albritton audited 155 task cards and
16 Respondent did 61. Albritton said he would look at the paperwork
17 to make sure the task was accomplished and properly recorded, and
18 look at the areas worked on by the mechanics, then he would allow
19 close up. The paperwork shows he took responsibility, not what he
20 did. He did not feel that just looking at the paperwork was
21 enough to sign the airworthiness release. He said when he
22 resigned, he took all the paperwork with him and kept it for a
23 week, during which he checked the records and signed everything
24 that needed his signature. He then returned the paperwork to
25 Daryl Hicks. He said that the Respondent was still responsible

1 for signing the airworthiness release. It was up to him to review
2 Albritton's and the mechanics' work if he signed the airworthiness
3 release. There was a lot left to do when he left Martinsburg and
4 he does not know what condition the aircraft was in when he left
5 it in Martinsburg. Albritton said he had no personal knowledge of
6 what happened to the TAWS system.

7 Daryl Hicks testified that he started Lakeland Air
8 Transport in 1995 to 1997. At the times relevant to this case, he
9 was president and director Of operations. At the recommendation
10 of Tommy Barraza, he appointed the Respondent to be director of
11 maintenance in 2005. He said that Lakeland contracted
12 Respondent's company, Aviation Experts International, to have a
13 "C" check done on N267AS at Respondent's hangar in Martinsburg,
14 West Virginia in May or June 2005, again through Tommy Barraza.
15 Frank Albritton, Lakeland's director of maintenance, went with
16 N267AS to Martinsburg to oversee the work and was responsible for
17 it, as required by the company's maintenance manual, but returned
18 before the "C" check was completed.

19 Hicks asked Albritton why, after he was called by Tommy
20 Barraza, Albritton came to his office with the logbooks, which
21 Hicks gave to Tommy Barraza. Barraza gave Hicks the Respondent's
22 resume, and Hicks submitted the Respondent's name as director of
23 maintenance. He was approved by ASI King, and after he was
24 approved, the Respondent started working again on N267AS two weeks
25 after Albritton had returned from West Virginia. Under the

1 company's manual, the DOM is responsible for overseeing
2 maintenance on the aircraft. Until the Respondent was approved as
3 the DOM, work on N267AS was at a standstill.

4 Hicks said he had no contact with Respondent, did not go
5 to West Virginia while the aircraft was being worked on. He had
6 no knowledge of the condition of the aircraft when it left the
7 Respondent's facility in West Virginia. All contact with the
8 Respondent was through Tommy Barraza.

9 After a meeting with ASI Lipinski on July 20, 2005, the
10 company voluntarily grounded N267AS where it was in Puerto Rico.
11 They hired Rob Russell to obtain a ferry permit and bring N267AS
12 back. He next saw the aircraft at StarPort, when it was on jacks
13 and partly disassembled for inspection. The company hired Russell
14 as its DOM in September 2005.

15 The parties agreed that the computer part of the TAWS
16 system was found to be missing when the aircraft was taken to
17 StarPort. Hicks said he did not know what became of it. He said
18 that he heard that Tommy Barraza had taken it, but that was
19 hearsay. Hicks said he filed a police report.

20 It appears that there may be some truth to the
21 allegation that Tommy Barraza wound up in possession of two parts
22 of the TAWS system installed on N267AS. Exhibit R-2 purports to
23 be a facsimile transmittal from one Buck Williams on October 6,
24 2005, to one Al Hillman, stating that a mechanic in Puerto Rico
25 told Tom Littleton (FAA Flight Standards District Office, Orlando)

1 that he removed both units and shipped them to Tommy Barraza at
2 Barraza's direction.

3 Hicks said Charter Connections was a company that Tommy
4 Barraza put together to manage the operations of Lakeland Air
5 Transport and Air Solutions. Hicks said he founded Lakeland in
6 1995 to 1997, and remained its president until it was sold after
7 this and became Charter Air Transport.

8 Hicks said he received a telephone call from Albritton,
9 saying he was having trouble getting parts and personnel to help
10 with the "C" check. Hicks said he talked to Barraza about the
11 situation and Barraza assured him that it was being taken care of.
12 Hicks said he felt he had no control over the aircraft and was
13 frustrated about not being able to get things done.

14 Edwin Pita is satellite manager for StarPort. He holds
15 an avionics repairman certificate. He testified that he has
16 designed and installed terrain awareness systems and enhanced
17 proximity awareness systems and flight management systems on
18 various types of aircraft, but this was the first Embraer he had
19 worked on. The TAWS installed on N267AS was a Class A system,
20 which must be installed under an STC.

21 The TAWS consists of a main computer receiving signals
22 from other instruments on the aircraft, the GPS, radar and
23 altimeter, flight management system, and enunciators on the
24 cockpit panel.

25 He was accepted as an expert on the installation of the

1 TAWS on N267AS. Exhibit A-23 is a list of discrepancies he found
2 at StarPort. The TAWS did not pass a ground test. He obtained
3 approved data to conform to the STC from Roswell, the DOM of
4 Lakeland. He created a drawing of the wiring he found installed
5 on N267AS. Exhibit A-24. He found the computer and configuration
6 or main memory were missing. The coupling or wiring between the
7 computer and the flight management system, which show graphical
8 display, outside air temperature probe and its wiring, were not
9 installed; the enunciators were wired incorrectly; the labels on
10 the circuit breakers did not match the STC, but the recordkeeping
11 form showed completed installation. There was no interface to the
12 number 3 air data system, which proved altitude and airspeed data
13 to the computer. He said that the system, as installed, would not
14 function. The unit was installed, but the wiring to the computer
15 was not there. Twelve feet of wiring was not there. There no
16 ping, a correcting device. The wires to connect the configuration
17 module were not there. The unit is a sealed unit that has five
18 wires to connect with pins. One-half of the back shelf to mount
19 it should have been there. The TAWS would not have worked even
20 with the computer installed because there was no connection
21 between the computer and the air data system. There was no
22 temperature probe in the location called for by the STC, and the
23 enunciators were not wired correctly. The STC required ground and
24 flight check procedures, which would tell if the wire connections
25 were there and if the computer was working.

1 On cross-examination, he said there was evidence someone
2 had tried to install the TAWS, but there was no evidence the
3 wiring had ever been there. That would have required undoing of
4 wiring bundles and there was no evidence of that. There was no
5 coupling wiring. There was a separate GPS for navigation, but the
6 internal GPS in the TAWS could not be used for navigation.

7 There were required forms to be signed off showing
8 ground and flight checks, as required by the STC. He said they
9 were supposed to be kept with the maintenance records, but he did
10 not look for them, so he does not know if they were there.

11 Chris Pontoni, the StarPort supervisor for avionics
12 installation, who was experienced in installing avionics of every
13 kind, including a ground proximity system in corporate jets,
14 worked on the installation of the EGPWS on A267AS at StarPort. He
15 made corrections where needed and installed wiring to make the
16 ground proximity warning computer and module operable. The wiring
17 is under the floorboards, so the floorboards have to be removed to
18 get to the wiring. He said that Pita was from the engineering
19 department, but he did the installation. He said he did not know
20 what had happened after the installation was initially done at the
21 Respondent's facility.

22 Robert Roswell, the DOM for Lakeland Air Transport, who
23 replaced the Respondent, had been a lead technician at StarPort.
24 He was hired by Lakeland to go to Puerto Rico to bring N267AS
25 back. He obtained a ferry permit, Exhibit A-26. He identified

1 A-27 as an STC referred to in A-24, which he obtained from
2 Chippewa Air and gave to Pita at StarPort.

3 The parties stipulated that the EGPWS did not work on
4 the ferry flight back to Sanford, Florida.

5 Roswell said that at StarPort in Sanford, Florida, he
6 re-did 15 percent of the task cards from the "C" check and
7 determined that N267AS was not airworthy, so it was decided to do
8 the entire "C" check over.

9 Exhibits A-28, -29, and -30 are records of discrepancies
10 found by StarPort. As a repair station, StarPort is allowed under
11 its GMM to document discrepancies on a computer. The Respondent
12 used task cards for that purpose. Task cards come from the
13 manufacturer.

14 Roswell said he was present and oversaw the reinspection
15 at StarPort. He observed the discrepancies that were found and
16 approved them. He reviewed each discrepancy found at StarPort
17 before any action was taken.

18 Exhibit A-21 is an exhibit containing pictures of
19 various parts with corrosion taken at StarPort.

20 He said that he saw that the fuel filters are listed in
21 Discrepancy 1, Exhibit A-28, which is an invoice from StarPort
22 (See paragraph 32(a) of the complaint), which shows removal at
23 StarPort of the number 1 and number 2 engines' low pressure fuel
24 filters and that new filters were installed. He saw that the
25 spinner (paragraph 32(b) of the complaint) was missing nut plates,

1 Discrepancy 48; and authorized replacement. The 12 nuts hold the
2 nose cone in place over the propeller assembly. If the cone came
3 off, the propeller assembly would be damaged.

4 Roswell said that the right and left yoke attachments
5 were corroded. Discrepancy 56, Exhibit A-28; paragraph 32(f) of
6 the complaint. The action taken by StarPort was to install, as
7 needed, new left and right control yokes and attach hardware.

8 Roswell said he verified that there was corrosion on the
9 shank of a bolt on the spring pulley of the captain's yoke.
10 Discrepancy 60, Exhibit A-28; paragraph 32(h) of the complaint. A
11 new bolt was installed by StarPort. Corrosion could cause the
12 bolt to shear. The assembly controls the ailerons and the
13 elevators.

14 Roswell said he saw exposed wiring in the left wing
15 navigation light, and the right lens was warped and cracked. The
16 crack went to the edge of the part and could not be stop-drilled.
17 Discrepancies 73 and 74, paragraph 32(k) of the complaint. A new
18 lens was installed by StarPort and the wiring in the left wing
19 navigation light was spliced.

20 He said he saw corrosion out of limits on all of the
21 cabin seat tracks, and if the parts broke, the seats would come
22 free. See Discrepancy 76, Exhibit A-28.

23 He said he saw that the DME antenna was broken and
24 approved replacement. The distance measuring device, or the DME,
25 would not work with a broken antenna. Discrepancy 90, Exhibit A-

1 28; paragraph 32(m) of the complaint.

2 He said he saw delamination on the right ACM lower
3 access panel and approved repair. The door leads to the air cycle
4 machine for heating, cooling and pressurization. The door could
5 come off in flight. Discrepancy 92, Exhibit A-28; paragraph 32(n)
6 of the complaint.

7 He said that the lower radar altimeter antenna had
8 surface corrosion, which could affect the integrity of the
9 antenna, but he did not know if it exceeded the manufacturer's
10 limits. Discrepancy 93, Exhibit A-28; paragraph 32(o) of the
11 Complaint. He authorized replacement. The corrosion was moderate
12 and the antenna had to be removed to be seen. Inspection was
13 required in two- and four-year inspections required by the
14 manufacturer's manual. The Respondent had signed off for the two-
15 year inspection and the four-year corrosion control program.

16 He said that he examined the VHF antenna and saw
17 corrosion. Discrepancy 104, Exhibit A-28; paragraph 32(p) of the
18 complaint.

19 He said he found corrosion outside limits at the base of
20 marker beacon antenna where the co-axial cable connects. He
21 approved replacement. Removal of all lower antennas for
22 structural integrity and corrosion were required in a "C" check.
23 Discrepancy 105, Exhibit A-28; paragraph 32(q) of the complaint.

24 He said he saw a gouge or deep scratch on the outside of
25 the lavatory window and approved replacement. The scratch could

1 result in the failure of the window and loss of pressurization.
2 He could not determine when the scratch occurred. Discrepancy
3 108, Exhibit A-28; paragraph 32(r) of the complaint.

4 He saw a hole in the aircraft skin from normal corrosion
5 and it was repaired with fiberglass. He could not determine when
6 the hole occurred. Discrepancy 115, Exhibit A-28; paragraph 32(s)
7 of the complaint.

8 He said that the dust seal on the co-pilot's rudder
9 control pedal was torn. The purpose of the seal is keep foreign
10 objects from going into the bell cranks, which could jam a flight
11 control. Discrepancy 131, Exhibit A-28; paragraph 32(t) of the
12 complaint.

13 He said that the back-up batteries for the Flight Data
14 Acquisition had expired and authorized their replacement.
15 Discrepancy 134, Exhibit A-28; paragraph 32(u) of the complaint.

16 He said he saw corrosion on the pilot-side rudder bell
17 crank. Discrepancy 135, Exhibit A-28; paragraph 32(v) of the
18 complaint.

19 He said Discrepancy 146, Exhibit A-28; paragraph 32(w)
20 of the complaint was a part broken by StarPort. Paragraph 32(w)
21 was withdrawn by the Administrator.

22 Exhibits A-28(e) and (f), paragraph 32(a) of the
23 complaint are photographs of the low pressure fuel filters on
24 N267AS. They were clogged and were not the proper part numbers
25 for the Pratt & Whitney engines. The fuel filters had to be

1 replaced when they are dirty.

2 The left floorboard structure had severe stringer
3 corrosion. It is part of the primary structure of the airplane.
4 The corroded stringer could fail. The aircraft skin is attached
5 to the stringer. Exhibit A-29(a), paragraph 33(a) of the
6 complaint, is a piece of stringer on which he found corrosion. It
7 came from left side fuselage below the cockpit door. He said it
8 would take three to five years for such corrosion to occur.
9 However, the complaint charges the stringer was 18L, rather than
10 17L, which was the only stringer that was removed.

11 Paragraph 33(a) of the complaint was dismissed for a
12 fatal variance in the proof at the hearing; however, I now
13 conclude and find that the variance was not fatal because the
14 Respondent was put on notice as to the general location of the
15 stringer, which is all that is necessary in notice pleading.
16 Dismissal of paragraph 33(a) is reversed.

17 He said that the left and right upper inboard trailing
18 edge panel bracket nut plates were corroded, which could lead to
19 the trailing edge panels coming off. The screws also had
20 corrosion, but he could not identify the specific screws from a
21 bag of screws. Discrepancy 2, Exhibit A-29; paragraph 32(b) of
22 the complaint.

23 He saw that the ELT, emergency locator transmitter,
24 mount was corroded through and there was evidence of corrosion on
25 top of the fuselage. He said the corrosion could cause the ELT to

1 come loose. Discrepancy 7, Exhibit A-29; paragraph 33(c) of the
2 complaint. The photograph shows the aircraft skin beneath the ELT
3 mount. Photos 44, 45, and 46 show the same area. Exhibit A-29(c)
4 is a section of skin under the ELT mount that was removed.
5 Exhibit A-29(b) is the mounting base of the ELT that was removed
6 and replaced. Photo 48 is a photograph of the ELT mounting base.
7 Exhibit A-28(a) shows that the mounting for the antenna was
8 broken, but he did not see it removed and acknowledged it could
9 have been broken at StarPort.

10 He said the serviceable antennas were put back. Those
11 that were not serviceable were replaced.

12 Roswell said he authorized StarPort to install a hi-
13 lock, a mechanical fastener for use in hard to reach places, such
14 as to hold the stabilizer to the aircraft skin or to replace a
15 fastener that was missing. He said its absence jeopardized the
16 structural integrity, but there was no way to tell when it became
17 missing. Discrepancy 12, Exhibit A-29; paragraph 33(f) of the
18 complaint.

19 Roswell said that the shims between the trailing edge
20 fairing and braces on the right side of the aircraft were
21 corroded. He said they support the cove panels on the flap on the
22 wing and their purpose is making sure that there is clearance
23 between the cove panels and flaps. He said the corrosion had been
24 there for a long time and he had to remove all seven shims, clean
25 them, and treat them with anti-corrosion and replace them. The

1 braces were cleaned and treated as well. Discrepancy 14, Exhibit
2 A-29; paragraph 33(g) of the complaint.

3 He said that he did not now recall, three years later,
4 what he observed about corrosion on the left flap inboard upper
5 trailing edge panel bracket, except that he approved StarPort
6 removing the corrosion. Discrepancy 15, Exhibit A-29; paragraph
7 33(h) of the complaint.

8 He said he observed surface corrosion, pitting on the
9 shanks and tips of bolts, on the left and right yoke attachment
10 hardware, and authorized replacement by StarPort of the hardware.
11 The hardware ties flight controls into the yoke. These are
12 primary control surfaces. He could not estimate how long the
13 corrosion had existed prior to June 2005, but it could have been
14 two to five years. Discrepancy 16, Exhibit A-29; paragraph 33(i)
15 of the complaint.

16 He said that he authorized StarPort to repair worn skin
17 on the left center section of the fuselage. Daryl Hicks had
18 pointed out this item to him. A gouge from a bleed air valve had
19 rubbed on the skin. It was not part of the corrosion prevention
20 program. Discrepancy 17, Exhibit A-29; paragraph 33(j) of the
21 complaint.

22 He said he observed intergranular corrosion, in which
23 the metal splits apart and looks like a sponge, on the right and
24 left seat tracks in the cabin. He said that would take at least
25 five years. He said he asked StarPort to check for limitations on

1 repairs and replace the seat tracks if required. Discrepancy 20,
2 Exhibit A-29; paragraph 33(k) of the complaint.

3 He also saw corrosion under the left seat track, and the
4 gusset straps were replaced because they were too thin after
5 removal of corrosion. The butt straps are below the seat tracks
6 and are fastened to the omega beam, and below them are gusset
7 straps. All of this corrosion was linked to corrosion on the seat
8 tracks. To see this corrosion, the seat tracks would have to be
9 taken off and the floor boards removed. Screws, washers, and nuts
10 fasten the seat tracks to the omega beams. Discrepancy 21,
11 Exhibit A-29; paragraph 33(k) of the complaint.

12 Discrepancies 20 and 21, Exhibit A-29, refer to seat
13 tracks in the cabin, not the cockpit. Paragraph 33(k) of the
14 complaint. Photographic Exhibits A-29(f) and (g) and (h) are butt
15 straps on the right side with areas of corrosion circled. Pitting
16 on Exhibit A-29(h) is also circled. The pitting shown remains
17 after an attempt to remove corrosion by mechanical means, with
18 more than a 10 percent loss of material, using a small air-driven
19 grinder with a Scotch-Brite wheel per the manufacturer's
20 Structural Repair Manual MRB HI 200. The seat tracks that were
21 replaced were not in the courtroom. Counsel for the Administrator
22 stated that no request to retain them had been made.

23 The Administrator's motion to amend paragraph 33(k) of
24 the complaint to read, "removed and replaced seat and gusset
25 tracks and steps," was not granted.

1 Roswell identified Exhibit A-31 as a record of the "C"
2 check performed by the Respondent. He said that they are part of
3 a group of records that Hicks gave to him in Barraza's office in
4 Orlando and said they were aircraft records of N267AS. Exhibit
5 A-31 contains records of the last "C" check performed on the
6 aircraft. He said they show that Respondent did the "C-2"
7 inspection and two- and four-year corrosion inspections.

8 Exhibit A-3 is a Lakeland logbook page recording the
9 sign off by the Respondent on the "C" check on June 3, 2005. The
10 flight hours are the same as shown on Exhibit A-31. He said that
11 Exhibit A-3 is the generating form for the inspection and Exhibit
12 A-31 is a compilation of Maintenance Non-Routine Forms-17.

13 Respondent acknowledged that is his signature on entry
14 13, page 5 of Exhibit A-31, non-routine discrepancies. He says a
15 number of antennas, including the Com 1 antenna behind the nose
16 landing gear, needed sealant. Corrective action taken by the
17 Respondent was "inspected all antennas for service, acceptable for
18 service -- found to be acceptable for continued service, no action
19 required."

20 Roswell identified Exhibit A-35 as a VHF antenna that he
21 authorized StarPort to remove for corrosion at the leading edge
22 mating surface. It was removed from the lower forward fuselage.
23 Paragraph 32(p) of the complaint. It is listed in Exhibit A-31,
24 page 5, Discrepancy 13, as Com 1 antenna. Antennas are attached
25 to the skin in zones 100 and 200. Zone 100 is the belly of the

1 aircraft near the passenger door.

2 Exhibit A-31, Discrepancy 57 is for the forward fuselage
3 lower antenna in zone 100. It had been removed for inspection and
4 the Respondent had signed for corrective action in accordance with
5 paragraph 20-11-01 of the maintenance manual. Roswell could not
6 identify Exhibit A-28 as the antenna listed in Discrepancy 57,
7 Exhibit A-31.

8 Roswell identified Exhibit A-32 as the FAA Form 337 that
9 he had submitted for installation of the enhanced ground proximity
10 warning system at StarPort. He prepared the form as the agent of
11 the carrier for installation of a Honeywell Mark VII Enhanced
12 Ground Proximity System done at StarPort during the re-inspection,
13 and approved it for return to service. Paragraph 27(a) of the
14 complaint. He said he did not know if a Form 337 had been
15 prepared for installation of a ground proximity warning system
16 performed earlier during the first "C" check at the Respondent's
17 facility. Exhibit A-32 was not admitted in evidence because it
18 was signed after the first "C" inspection at the Respondents
19 facility.

20 However, the Respondent admitted that no Form 337 had
21 been submitted for that installation, but denied that one was
22 required as alleged in paragraph 29 of the complaint, which states
23 that the Respondent approved N267AS for return to service
24 following installation of the TAWS/EGPWS, a major repair or major
25 alteration, and failed to execute a FAA Form 337.

1 Exhibit A-33 is page 1304 from N267AS' maintenance log,
2 and was signed by Roswell on August 8, 2005. He authorized
3 StarPort to go back through the inspection cards completed during
4 the "C" and redo them. This relates to paragraphs 19 and 20 of
5 the complaint. Paragraph 19 alleges that the Respondent performed
6 a C-2 inspection, a four-year Corrosion Prevention Control Program
7 (CPCP) inspection, and an A-1 inspection, a 400-hour inspection,
8 an 800-hour inspection, and a service check. Paragraph 20 alleges
9 that on June 3, 2005, the Respondent approved N267AS for return to
10 service by signing the airworthiness release, certifying that
11 N267AS was "Airworthy for flight in accordance with FAR 135.443
12 and the LAT GMM." Exhibit A-33 was admitted to the fact re-
13 inspection was authorized, but not for the fact that an inspection
14 was not done during the first "C" inspection performed at the
15 Respondent's facility.

16 Upon reconsideration, Roswell was accepted as an expert
17 in the duties and functions of a director of maintenance of a
18 small to medium size Part 135 carrier.

19 Exhibit A-28(g) is a photograph of part of the LH rudder
20 pedal adjustment assembly. Roswell saw corrosion at the bolt hole
21 when it was installed and authorized StarPort to examine it to see
22 if it was within acceptable limits after removal of the corrosion.
23 Exhibit A-28(g)(1) contains photographs showing the condition of
24 the part when it was removed from the aircraft. Removal of the
25 corrosion exceeded the 10 percent allowable removal of metal and

1 the part was unserviceable.

2 Exhibit A-28(h), paragraph 32(f) of the complaint, is a
3 stringer in the left hand cockpit below the floor area that ties
4 longerons with ribs. The control yokes are not attached to it.

5 Exhibit A-34, paragraph 31 of the complaint, is a Form
6 M-16, Lakeland Test Flight Report, initialed by Roswell on October
7 18, 2005. Exhibit A-34 was rejected as irrelevant.

8 Roswell said that he searched Lakeland's records and
9 found that Tommy Barraza had signed off on a test flight but did
10 not sign off that it was in accordance with Chippewa Aero Space
11 STC Table 1 for the enhanced ground proximity warning system
12 installed at the Respondent's facility. A-3 was signed off by the
13 Respondent after a purported test flight by Barraza.

14 Exhibit A-36, Discrepancy 12, paragraph 36(a) of the
15 complaint, is Lakeland Form M-17, required to be kept as a
16 permanent maintenance record of SB 120-76-0018, flight idle stop
17 solenoid modification. It appears to bear the Respondent's
18 signature in the return to service dated June 3, 2005. It does
19 not show compliance with AD 20031503, per Exhibit A-37, task card
20 manual supplied by the manufacturer showing steps to comply with
21 the AD. The Administrator alleged in paragraph 36(a) of the
22 complaint that the Respondent had failed to report compliance with
23 the AD. Roswell said that there should be verbiage on the M-17
24 that the AD 20031503 was complied with, but that verbiage is
25 missing.

1 Exhibit A-38 is a printout from Lakeland's computerized
2 maintenance tracking program. Roswell said he saw the entry for
3 terminated action for EMB 20 SB 120760018, at page 7. The AD
4 requires record of terminating action in accordance with the SB.
5 Roswell said he saw the entry for the AD and verified compliance
6 on 11/2/2005. He said he made the entry because the Respondent
7 did not make an entry. He described this as a paperwork
8 discrepancy.

9 On cross-examination, he said that Exhibit A-28(a) was
10 not broken when he was in San Juan, Puerto Rico and inspected the
11 aircraft while preparing the ferry permit. He said he saw
12 corrosion around the base.

13 The Administrator dismissed paragraph 32(m) of the
14 complaint.

15 Roswell said the agreement with StarPort was that no
16 maintenance would be performed until he approved it. If corrosion
17 was found, he would have to agree to it being repaired and he
18 would have to figure how much time would be required to correct
19 the discrepancy.

20 With regard to Exhibit A-28(g), StarPort took the rudder
21 pedal adjust assembly off by taking out the cotter pin and pinning
22 controls, and Roswell verified that it needed to be replaced.
23 Paragraph 32(l) of the complaint. He said he randomly selected 15
24 percent of the task cards to be redone in that fashion, including
25 the fuel filter and the ELT.

1 With regard to paragraph 32(a) of the complaint, Roswell
2 said he cannot say they are clogged now. He said with regard to
3 Exhibits A-28(e) and 28(f), he said that when they were removed,
4 he deemed them unairworthy because of debris in the filters. He
5 said they were also the wrong part numbers. He said the
6 illustrated Parts Catalog had one approved filter and he had
7 ordered it. He said he did not know how long N267AS sat in Puerto
8 Rico, but he did not see an entry in the logbooks for changing the
9 filers while the aircraft was in Puerto Rico.

10 Roswell said there were no entries in the logbook
11 concerning the removal of the TAWS while the aircraft was in
12 Puerto Rico. He said the computer for the TAWS system was not
13 there when the aircraft got to StarPort. A maintenance entry
14 would be required for removal of the computer.

15 He said the missing nut plate described in paragraph
16 32(b) of the complaint, Discrepancy 48, Exhibit A-28, could have
17 been lost at StarPort.

18 He said he does not know what paragraph 32(d) of the
19 complaint refers to.

20 With regard to paragraph 32(e) of the complaint, he said
21 there was no evidence of moldy seat belts. He thought that could
22 have come from improper storage of the aircraft in Puerto Rico and
23 would have been noticed if it had been there before.

24 He said that when the aircraft was at the Respondent's
25 facility in West Virginia, the tachometer reading was 31863.5

1 hours. When he went to Puerto Rico, the reading was 31953.6
2 hours, a little over 100 hours of use.

3 The parties agreed that the aircraft was operated for 58
4 days after Respondent signed off on the "C" check until it was
5 grounded, and it sat in Puerto Rico for 27 days after it was
6 grounded. It was operated 93 hours before grounded with 143
7 cycles.

8 Roswell said he did not see any indication that blue
9 water seeped from the toilet in Puerto Rico. He said that at
10 StarPort, evidence of blue water was found below the floorboards.
11 Blue water is corrosive and the corrosion was cleanable and
12 treatable. Antennas can also be affected by blue water. Exhibit
13 A-21, page 9, is a picture of Exhibit A-28(b) or (c) showing blue
14 water stains where bonding gaskets go. That stain was removed by
15 cleaning at StarPort. Exhibit A-21, page 55, shows blue water
16 stains on the skin from blue water that seeped outside. Roswell
17 said that there was a proper amount of blue water in the aircraft
18 in Puerto Rico, but it had been serviced, but not before it left
19 Martinsburg.

20 Roswell said that Discrepancy 65, paragraph 32(j) of the
21 complaint could have occurred after N267AS left Martinsburg. He
22 did not see the lens on the table in the court.

23 He said the corroded seat tracks in paragraph 32(k) of
24 the complaint, Discrepancy 76, were not in the court. He said
25 that paragraph 32(n) of the complaint, delamination of the panel

1 giving access to the air cycle machine, could have happened after
2 the aircraft left Martinsburg.

3 The antennas in paragraphs 32(o), (p) and (q) had
4 corrosion, some from blue water, but the corrosion was light.

5 The discrepancies in paragraphs 32(r), (s) and (t) of
6 the complaint could also have happened after the aircraft left
7 Martinsburg.

8 Roswell said that the batteries in paragraph 32(u) of
9 the complaint had expired, but he did not know when replacement
10 had come due.

11 Roswell said he saw corrosion on the pilot rudder bell
12 crank, which he deemed unacceptable because of the extent and
13 depth of the corrosion. Paragraph 32(v) of the complaint,
14 discrepancy 135, Exhibit A-28. He authorized replacement because
15 the corrosion was outside the allowable limit to repair.

16 He said he did not see any record of the three service
17 checks required by the Lakeland General Maintenance Manual while
18 the aircraft was in service in the Caribbean. That is a function
19 that must be performed by an A&P mechanic. He also did not find
20 any record of performance of a required 75-hour check to re-torque
21 the propellers.

22 He said that the nuts in paragraph 33(b) of the
23 complaint were corroded and were replaced by StarPort, but he did
24 not know what became of them afterwards.

25 He said the corrosion on the ELT mount caused by a

1 battery leak taking place over quite some time was repaired at
2 StarPort. Paragraph 33(c) of the complaint. Exhibit A-29(b) is a
3 photo of the ELT mount. Task Card 25-28 is for replacement of the
4 ELT battery. Exhibit R-1 shows it was replaced on April 2, 2005.
5 It had to be replaced by July 2005.

6 He said a missing hi-lock assembly, paragraph 33(f) of
7 the complaint, was replaced at StarPort, but he did not know when
8 it became missing. It could have come from the factory that way.
9 He said it would be unusual for a fastener to shear or fail.

10 Roswell said the shims and braces alleged to have been
11 cleaned and treated for corrosion were not in court and he offered
12 no testimony as to their condition. Paragraph 33(g) of the
13 complaint.

14 Roswell said he did not recall the level of corrosion on
15 the left flap inboard trailing edge panel bracket, alleged in
16 paragraph 33(h) of the complaint.

17 He did not see the yoke attachment hardware, paragraph
18 33(i) of the complaint, and offered no testimony concerning
19 corrosion on them.

20 Roswell said a structural repair was made at StarPort
21 where the bleed air relief valve had chafed against the aircraft
22 skin. Paragraph 33(j) of the complaint.

23 He said the right and left seat tracks/gusset straps
24 were not in court and he offered no testimony concerning the
25 extent of corrosion on them. Paragraph 33(k) of the complaint.

1 Roswell said that as alleged in paragraph 9 of the
2 complaint, the Respondent signed a certification on March 29,
3 2005, on Form M-17, item number 13, page 6, regarding the antenna
4 discrepancy, stating: "Inspected all antennas for serviceability
5 per 20-11-01. Found to be acceptable for continued service. No
6 action required." Exhibit A-31, page 5.

7 He said a test flight was required by STC Table 1 to
8 validate the TAWS system work after being installed at
9 Respondent's West Virginia facility. Tommy Barraza had made a
10 test flight. If the system did not work, Barraza should have
11 reported that to the Respondent.

12 On re-direct examination, Roswell said the source of the
13 lavatory leak was from the discharge hose that was not connected
14 properly. He did not know if the condition of the lavatory had
15 been deferred. He said he did not believe he removed any
16 floorboards in Puerto Rico and that is where the blue water would
17 have been seen.

18 I ruled that the Administrator may substitute
19 photographs for Exhibits A-28(a), (b), (c), (d), (e) and (f);
20 A-29(c), (f), (g) and (h); and A-35(a), but the exhibits
21 themselves must be retained by the Administrator.

22 The Administrator called retired Aviation Inspector
23 William T. Littleton, who holds a mechanic certificate with
24 airframe and power plant ratings, and a radio telephone license.
25 He was employed by the FAA as an aviation safety inspector

1 maintenance and a PMI for Part 121 cargo carrier for 16 years. He
2 was accepted as an expert in general aviation and air carrier
3 maintenance and corrosion prevention programs. The Respondent
4 accepted ASI Littleton as an expert, upon counsel for the
5 Administrator's agreement not to object to Mr. Leighton, the
6 Respondent's expert witness.

7 By stipulation, therefore, Littleton and Leighton were
8 accepted as experts in test flights and STC requirement, and
9 Advisory Circular AC-43-4(a), airworthiness release
10 responsibilities and overall responsibility for release of
11 aircraft, and acceptability of various endorsements.

12 Retired ASI Littleton conducted an investigation based
13 on a complaint received by the Orlando Flight Standards District
14 Office from Chris Mock, a technician who had worked on N267AS, an
15 aircraft on the certificate of Lakeland Air Transport, which was
16 in the process of upgrading its certificate to Part 121 status.
17 His assignment was to verify the charge in Mock's complaint that
18 the aircraft had not been completely inspected and repaired during
19 a "C" check.

20 He asked the owner to allow a visual inspection of
21 N267AS, but he was told that it was out of service in Puerto Rico.
22 He and Inspector Lipinski met with the owner, Daryl Hicks, and a
23 woman named Laura. He focused on a recent inspection and the
24 records associated with the inspection, including task cards,
25 discrepancies, and correction sheets. The purpose was to verify

1 whether inspections required by the task cards were done and any
2 discrepancies corrected. He and Inspector Lipinski advised
3 removing the aircraft from service until determinations could be
4 made. Hicks took their advice and grounded the aircraft in Puerto
5 Rico.

6 Hicks needed assistance from the FAA to relocate N267AS
7 from Puerto Rico to a place where a reinspection could be done to
8 determine if the recent "2C" inspection had been done properly on
9 June 3, 2005.

10 Inspector Littleton said he coordinated the issuance of
11 a ferry flight permit and was notified when the aircraft was back
12 in Florida. He asked the owner to start the validation process by
13 having a partial reexamination of the previous "C" check by
14 opening the aircraft and performing random or sampling inspections
15 to determine if it had been properly returned to service. The re-
16 inspection was to be performed at StarPort, which was to notify
17 the FAA if they found work unperformed; then the FAA would
18 determine whether to re-inspect the aircraft. StarPort found so
19 many discrepancies that the FAA determined that the inspection
20 should be re-done. Hicks agreed. The "2C" inspection is
21 essentially a four-year inspection.

22 Inspector Littleton looked at N267AS after it was opened
23 up at StarPort and was alarmed by what he saw. He testified that
24 it did not look like all of the inspections had been done. He
25 said that the owner of the aircraft was concerned about the length

1 of time the aircraft was out of service.

2 Inspector Littleton said he did not inspect the entire
3 aircraft while it was at StarPort. He said that that was
4 StarPort's responsibility. He said he inspected bits and pieces
5 and saw most of the components in the subfloor beneath the main
6 cabin floor after it was removed.

7 He identified Exhibit A-21, page 1, as a photograph of
8 the support structure beneath the cockpit floor. He identified
9 and circled widespread corrosion on parts by the white texture.
10 He identified an exfoliated corrosion hole in the heat-treated
11 aluminum floor beam. Its surface had been coated with pure
12 aluminum, which is sacrificed if there is corrosion, then through
13 galvanic action the underlying aluminum structure is eaten away.
14 He said this is charged in paragraph 38 of the complaint.

15 Inspector Littleton said that he issued the Exhibit A-1,
16 operation specifications, to Lakeland Air Transport, and page 4
17 lists CAMP documents. Exhibit A-20 contains the scheduled
18 maintenance requirements incorporated into the aircraft approved
19 inspection program. Further questions by the FAA on Exhibit A-20
20 were deferred until the Administrator shows what operation
21 specifications (Exhibit A-1) were in effect when the Respondent
22 did the "C" check at issue in this case.

23 Inspector Littleton said that Lakeland used its flight
24 log as the maintenance log to account for maintenance and
25 inspections. Exhibit A-3. This is one of the documents he relied

1 on when he sent a letter of investigation to the Respondent.
2 Exhibit A-19.

3 Regarding item 1, Exhibit A-3, mechanical discrepancies,
4 the signoff in block 1 signified that four- and eight-year
5 corrective action inspection for corrosion were performed as
6 required.

7 Inspector Littleton said that when he looked into the
8 cabin of N267AS while standing just inside the entry door while it
9 was at StarPort, he saw that the floor coverings had been removed,
10 so he could see the underlying support structure and, looking
11 forward, saw evidence of corrosion in the form of widespread white
12 powder on the covering or gusset on the omega beam. Exhibit A-
13 29(f). He said the area should have been cleaned and reinspected
14 for metal removal beyond the manufacturer's specification. The
15 manufacturer provides a chart for measuring corrosion every four
16 years. If corrosion is found, it must be treated and reported to
17 the manufacturer. The corrosion he saw takes years and was
18 present when the aircraft was inspected in June 2005. He said
19 that as a result of what he saw, he concluded that further
20 inspection was required by StarPort. He said on subsequent visits
21 to StarPort, he looked at the areas he had seen previously and at
22 new areas of the aircraft. He said he was involved in validating
23 findings by StarPort.

24 He saw wing leading edge hardware and tail horizontal
25 surfaces that had fastener corrosion underneath.

1 The charge related to paragraph 33(a) of the complaint,
2 Exhibit A-28(h), support bracket on the cockpit floor stringer,
3 was dismissed.

4 Photographs were substituted for parts in evidence:
5 A-28(a)(1), 1 through 4; A-28(b), 1 through 3; A-28(c)(1) pages 4
6 through 11; A-28(d)(1), 4 pages; A-28(e)(1), 3 pages; A-28(f)(1),
7 pages 4 to 7; A-28(g)(1), 9 pages; A-29(e)(1), 5 pages; A-
8 29(c)(1), 4 pages; A-29(f)(1), 1 page; A-29(g)(1), 2 pages; A-
9 29(h)(1), pages 3 to 11; and A-35(a)(1), 2 pages.

10 Exhibit A-39, a chapter excerpted for the Lakeland GMM,
11 pages 1 to 3, states that contractors must comply with the duties,
12 responsibilities, standards, procedures and policies contained in
13 the manual.

14 Exhibit A-40, an excerpt from Chapter 5 of the Lakeland
15 GMM, has not been revised since September 16, 2003.

16 On cross-examination, Inspector Littleton said he did
17 not disassemble anything on the aircraft at StarPort and did not
18 see parts being taken off or cleaned. StarPort had contracted to
19 perform the inspection and parts it removed were placed on a
20 workbench as they were removed. StarPort determined the condition
21 of the aircraft based on the inspection it performed. He said
22 that StarPort is a certificated repair station authorized to
23 conduct inspections.

24 He said he did not see any attempt to clean the parts
25 admitted as Exhibit A-28(g) and would need to see the task card

1 and condition reporting sheet to determine what was done.

2 He said that a record of 75-hour inspections should be
3 in the aircraft's logbook, but he did not recall seeing any such
4 record. He did not recall seeing any record concerning fuel
5 filters, Exhibit A-28(e), either.

6 Littleton said that the manufacturer gives a four-year
7 period to look at corrosion, so the manufacturer is not concerned
8 with the possibility of corrosion occurring in 30 days. Littleton
9 concluded the corrosion observed on N267AS probably existed at the
10 time of the inspection in Martinsburg.

11 Inspector Littleton was dismissed as a witness. The
12 parties agreed that Albritton audited 155 task cards; the
13 Respondent audited 61.

14 Paragraph 5 of the complaint was dismissed because the
15 Administrator acknowledged that Revision 22 was not applicable.

16 Inspector Littleton was recalled as a witness. He said
17 that page 8 of Exhibit A-21 shows cockpit floor structures with
18 floor panels out at StarPort. He saw Level 2 corrosion, which
19 requires blending out or grinding. There was no evidence the area
20 had been treated for corrosion during the "C" inspection conducted
21 by the Respondent in West Virginia. The condition of the metal he
22 saw in StarPort could not have materialized in the four to five
23 months since the last "C" check. He said that in his experience
24 the corrosion he saw at StarPort would have taken a couple of
25 years. He said that he found the area did not have the level of

1 maintenance that Respondent signed off on in the maintenance
2 release. The area had not been cleaned as indicated by the
3 maintenance release.

4 Page 18 of Exhibit A-21 shows the floor structure under
5 the cockpit, with the gusset strap on the inboard omega beam. The
6 pilot seat would be in the upper portion on top of the floor. It
7 supports the floor and the cockpit seat. He observed extensive
8 exfoliated intergranular corrosion and decomposing of the metal
9 from inside out to the point that it left a hole in the solid
10 piece of metal. He said this advanced corrosion would have taken
11 a couple of years. He saw no evidence of previous treatment of
12 the area for corrosion.

13 Exhibit A-31, page 22, dated 4/2/05, Form M-17, is used
14 to document maintenance inspections and flight operations and is
15 carried on board the aircraft. He reviewed it. Respondent
16 initialed item 65, meaning that he had reviewed the previous 64
17 items and the action taken. He inspected items 66 on, the
18 corrective action taken. From item 65 on, the Respondent was
19 responsible for anything he signed or audited. In Inspector
20 Littleton's opinion, he was also responsible for everything
21 Albritton did or signed as a mechanic or audited.

22 Item 68, Exhibit A-31, covers reinstallation of the
23 cabin floor panel. Respondent signed it, and is deemed to buy off
24 what is under the floor. He is deemed to have verified that
25 everything under the floor had been taken care of.

1 Item 73, Exhibit A-31, shows correction of discrepancy
2 on June 3, 2005, and reinstallation of flight deck floor panels in
3 the cockpit. The corrosion later discovered at StarPort in this
4 area would have been there then.

5 Item 43, Exhibit A-31, dated June 3, 2005, signed by the
6 Respondent, says page numbers had been corrected and a due
7 diligence inspection was performed to assure airworthiness
8 concerns.

9 After Item 65, Exhibit A-31, there are no entries for
10 corrosion discrepancies. That means the Respondent took
11 responsibilities for items 64 and earlier.

12 There would be no non-routine cards if the mechanics
13 found no corrosion, and no corrosion is mentioned in items 1
14 through 65.

15 Inspector Littleton said that the Respondent signed off
16 on N267AS, Exhibit A-3, is not consistent with the corrosion he
17 saw at StarPort. The statement is, therefore, false.

18 On further cross-examination, Inspector Littleton said
19 that the signature on A-3 was after the inspections had been done.
20 The Respondent was not required to reopen the aircraft and look
21 for corrosion himself. If the paperwork was complete and
22 everything was buttoned up, the signature would be proper. He
23 said he was not in Martinsburg when the aircraft was taken apart
24 or put back together.

25 Inspector Littleton said he initially had collected the

1 task cards and had looked at them. He said the purpose of the
2 task cards was to direct action. He said he understood that
3 Albritton had created a package containing the task cards. The
4 mechanic assigned to a task card would note any defects found on a
5 non-routine form, such as Exhibit A-31. He said he assumed that
6 the Respondent's participation started at item 65. He said a
7 conscientious mechanic would not close an area if he saw
8 corrosion.

9 Inspector Littleton said that corrosion to the extent
10 indicated on Exhibit A-21, pages 8 and 18, would take more than
11 four months to occur, and anyone assigned to look for corrosion in
12 that area during the "C" check in Martinsburg should have seen it.

13 Inspector Littleton said that Exhibit A-7 is a letter
14 sent to him by Frank Albritton stating that the aircraft was open
15 and "gutted like a fish" when he left.

16 He said that the Respondent was director of maintenance
17 when N267AS was returned to service and, therefore, under the
18 Lakeland GMM, he was responsible for the actions of the prior
19 director of maintenance. Albritton had been approved as director
20 of maintenance by the FAA.

21 He said that there was conflict at Martinsburg and a
22 wise man would not have taken anything on faith. The Respondent
23 had a moral responsibility to satisfy himself as to the condition
24 of the aircraft when the inspection was abandoned by the first
25 team headed by Albritton.

1 He defined Level 2 corrosion as requiring treatment, and
2 in some cases, replacement of parts. MRB Level 2 is corrosion
3 that exceeds acceptable limits. Catastrophic corrosion is
4 destruction of the parent material. Factors affecting corrosion
5 include heat, humidity, pollutants, corrosive blue water from the
6 toilet system.

7 AC-43-4(a), page 1, subsection 2, agrees that
8 catastrophic conditions corrosion can occur in a short period of
9 time. Where the aircraft manufacturer has published a recommended
10 corrosion inspection program, that takes precedence.

11 Exhibit R-6 is a letter from Mechanic Reuschel stating
12 that he worked under the supervision of Frank Albritton when he
13 inspected the areas under the floors in the cabin and cargo area.

14 Inspector Littleton was excused subject to recall in
15 rebuttal.

16 The parties stipulated that the Lakeland GMM, Exhibit R-
17 6, provided to the Respondent is admissible.

18 Inspector Frank Lipinski was recalled as a witness by
19 the Administrator. He identified Exhibit A-41 as a task card for
20 replacement of the low-pressure filter.

21 The amendment of paragraph 15 requested by the
22 Administrator was accepted. The amendment of paragraph 16 of the
23 complaint was not. I ruled that the Administrator must show that
24 the Respondent did not replace any fuel filters with correct or
25 incorrect part numbers. Exhibit A-41 in the remarks, says "R&R

1 filters with PMA filter LH and RH, consumable used was 3035728."
2 The correct part number was 3035729.

3 He said that he thinks that documentation shows that the
4 filters found at StarPort that came from the aircraft, Exhibits A-
5 28(e)(1) and (f)(1) were Puroflow 14818 FAA-PMA Part No. 11-
6 11102, which is the correct part number.

7 He said he looked at the task card referred to in
8 paragraphs 36(b) and (c) of the complaint, Exhibit A-42, signed by
9 the Respondent. Paragraph 36(b) of the complaint alleges that
10 Task Card #32-61, dated June 3, 2005, for the 400-hour inspection
11 contained no entry in the remarks section when it was received by
12 the FAA on July 15, 2005. Paragraph 36(c) of the complaint
13 alleges that when the task card was received by the FAA on
14 September 16, 2005, it showed in the remarks section, "C/W a post-
15 flight taxi." There is no entry to when or if a check of the nose
16 wheel was carried out.

17 Paragraphs 36(b) and (c) of the complaint were then
18 admitted by the Respondent, and Exhibit A-42 was admitted.

19 The Respondent stipulated that Exhibit A-43, the
20 Lakeland GMM, was in effect. It was admitted without objection.

21 The installation of the Enhanced Ground Proximity
22 Warning System (EGPWS) was signed off by the Respondent, but there
23 is no Form 377, which is required for a major alteration. Exhibit
24 A-44, Lakeland Non-Routine Form, dated 6/3/05, covering the
25 installation was admitted without objection.

1 Item 12, Exhibit A-44, corrective action block states
2 "complied with STC and installed EGPWS." Paragraphs 29 and 30 of
3 the complaint charge that the existing TAWS system was modified to
4 meet the requirements for the EGPWS.

5 Item 13, Exhibit A-44, states "complied with STC for
6 certification of EGPWS/TAWS, OK for return to service, no action
7 taken." Installation of the EGPWS was a required inspection item
8 in Exhibit A-45, chapter 4, subsection 2, of the Lakeland GMM.
9 The GMM provides that the person who did the work cannot perform
10 the inspection. There is no entry in the inspection block, but
11 the Respondent's name and A&P number appear immediately above it.

12 Exhibit A-46, GMM Chapter 5, contains "Test Flight
13 Requirements and Procedures." It provides that a test flight is
14 required when an aircraft is altered so as to appreciably change
15 flight characteristics. Exhibit R-7, a page from the STC,
16 however, says no test flight is required for subsequent
17 installations.

18 Inspector Lipinski said that task cards assign work,
19 then the mechanic creates a non-routine entry if he finds a
20 problem. If not, he initials the task card and indicates no
21 action taken, and then the card is audited and initialed.

22 Inspector Lipinski stated that the deadline for
23 installation of the EGPWS was effective March 31, 2005. After
24 that date, N267AS had to be equipped with the EGPWS. There was an
25 existing TAWS system on the aircraft at the time of the "C" check

1 performed by the Respondent, but that was the initial installation
2 of the EGPWS to which the STC applied, and a test flight was
3 required.

4 The parties stipulated that the test flight was ordered
5 by the Respondent and that Barraza said that the test flight was
6 performed and the results were okay. Exhibit A-3. The Respondent
7 was not then the director of maintenance of Lakeland, but he
8 ordered the test flight. He took over the responsibilities of
9 director of maintenance no earlier than June 15, 2005.

10 Inspector Lipinski was recalled as a witness. He
11 identified Exhibit A-46, item 3, as a M-16 form that must be
12 completed if a test flight is required. It was stipulated that
13 the GMM, chapter 5, states that if a test flight was dispatched as
14 a "test and go" flight, maintenance is not required to sign the
15 form. The M-16 form must be affixed to logbook by the director of
16 maintenance and the form must be given to the captain with
17 instructions for the test flight. No such form is attached to the
18 logbook to evidence a test flight. It was stipulated that would
19 be a recordkeeping violation. The STC does not say anything about
20 a "test and go" flight, or a "go and no-go" testing procedure on
21 the ground. It does use the words pass, fail, acceptable, non-
22 acceptable. No validation is required in the STC for pass/fail.

23 The Respondent stipulated that no APU Hobbs meter
24 reading was entered where it says record Hobbs meter reading, as
25 charged in paragraph 36(f)(1) of the complaint. There is a Hobbs

1 reading on Exhibit A-3, the airworthiness release. Respondent
2 audited the task card.

3 Page 4 of Exhibit A-47, items 4 and 8, require a visual
4 check for wear, damage, and recording of tire pressure no sooner
5 than four hours after landing. There is no entry of tire
6 pressure.

7 Paragraph 12 of the complaint was dismissed for lack of
8 proof.

9 Discrepancy 57, Exhibit A-31, a non-routine form, dated
10 4/2/05, and does not show the part number or serial number of the
11 antenna that was installed. The entry is incomplete.

12 The Administrator agreed that paragraph 13 of the
13 complaint is a recordkeeping violation.

14 Exhibits A-48, A-49, and A-50, A-51 and A-52 were
15 admitted by stipulation.

16 Inspector Littleton said that a new task card should
17 have been used for the discrepancy card with no details provided
18 for the "revised FLT stop system." Paragraph 36(f)(3) of the
19 complaint, Exhibit A-49, is the same as Exhibit A-37 and was
20 withdrawn. The Respondent is the mechanic entered on the card.
21 On 6/2/05, he would have issued the card to himself. Task card
22 76-07. It was stipulated that the Respondent signed the task card
23 admitted as Exhibit A-53. He is responsible for anything he
24 signed. The task card does not say that the required procedures
25 were completed, but that is a requirement. Exhibit A-38 shows

1 that the effective date of the AD was 9/4/2003. The task card
2 does not refer to the AD as required on pages 4 and 5 are the
3 required procedures. However, the task card does say that the
4 required procedures were complied with.

5 (Off the record.)

6 (On the record.)

7 Exhibits A-49 and A-37 are the same document. A
8 functional test is required to establish that the propellers could
9 not be placed in reverse position and neither lever could travel
10 below "Flight Idle." Paragraph 36 of the complaint. There is no
11 record of a functional test being performed. There is just an
12 entry saying "revised flight idle stop." There should be an entry
13 "flight idle check/verification of compliance with AD, no defects
14 noted." There should be a record of AD compliance in the
15 company's documentation.

16 Exhibit A-50, the GMM, sets out requirements for
17 issuance of an airworthiness release. The airworthiness release
18 signed by the Respondent did not comply with page 5-5 with respect
19 to the AD. The EGPWS also did not meet requirements for an
20 airworthiness release, because there was no showing compliance
21 with the STC. It was stipulated that the inspector would testify
22 that everything in the complaint did not meet the requirements for
23 an airworthiness release.

24 Exhibit A-52 is a Task Accountability Sheet, which
25 requires information on who audited tasks.

1 Exhibit A-54, line item 13, page 17, is an entry for
2 fuselage forward section internal elements below floor, which is a
3 required inspection zone. The task card is for a basic "C" and
4 "D" check. To inspect, it is necessary to open up the area by
5 taking up the floor to see below the floor. The task card return
6 date was March 22, 2005. Exhibit A-52, item 69, and Exhibit A-54
7 are the same card, requiring removal of the floor in the Forward
8 Section II to inspect internal elements for corrosion. The card
9 was audited by the Respondent. The parties stipulated that the
10 Respondent audited the card, on which the mechanic noted that no
11 defects were found. Item #73 refers to reinstalling the forward
12 floor deck panels. It was signed by Henry Pawelczyk.

13 Exhibit A-51 is an excerpt from the Administrator's
14 Sanction Guidance Table, page 14, in which the recommended
15 sanction for improper performance of inspections is suspension for
16 30-120 days; failure to accomplish inspection, 30-60 days;
17 improper return to service, moderate to 60 days; falsification of
18 inspection records, revocation. Page 8, applicable to personnel
19 of air carriers: failure to properly perform inspection, 30 to
20 120 days; making improper inspection, 30 to 120 days; improperly
21 releasing to service, 30 to 60 days; falsification of records or
22 reports, revocation; recordkeeping violation standing alone, 30 to
23 120 days; failure to record Hobbs readings, 30 to 60 days standing
24 alone.

25 Exhibit A-53 is a Task Accountability Tally Sheet for a

1 1-A Inspection. Task cards 41 and 42 were issued by the
2 Respondent and returned on June 2, 2005. The cards were audited
3 by the Respondent. Paragraph 36(a) of the complaint, Exhibit A-
4 37, Flight Idle Stop, references these cards. In the Remarks
5 section it is stated that, "revised ELT idle stop installed per SB
6 76-120-76." There is no indication a functional test was
7 performed.

8 On cross-examination, Inspector Lipinski said that if a
9 mechanic finds corrosion, he is required to generate a discrepancy
10 on a non-routine Form M-17. Otherwise, he would put no defects or
11 faults found in the Remarks section of the task card and sign it.

12 While a task card might not specifically say to open the
13 aircraft, the mechanic would have to open the aircraft if that is
14 necessary to conduct the required inspection.

15 Exhibit A-53, which was admitted without objection, is a
16 task card that the parties stipulated was signed by the
17 Respondent.

18 Exhibit A-46, GMM, chapter 5, requires a test flight of
19 the aircraft when its flight characteristics are appreciably
20 changed.

21 Exhibit A-52, item #73, refers to task card 531/121
22 returned by Mechanic Spalding on 5/22/05, meaning he found no
23 defect. It was audited by the Respondent. It does not say when
24 it was audited, but if it was audited after the floorboard was
25 reinstalled, that would indicate no corrosion was found. If the

1 Respondent approved the task card, he did so at his peril. If he
2 accepted the work unseen, he is still responsible.

3 Exhibit A-54, page 1, is a task card requiring replacing
4 the ELT battery. Respondent is charged with corrosion around the
5 ELT mount. Witness Gendron said this was brought to Albritton's
6 attention. Paragraph 33(c) of the complaint.

7 Exhibit A-42 relates to paragraphs 36(b) and (c) of the
8 complaint. There is no write-up in the N267AS' logbook or request
9 to perform a post-flight taxi.

10 Exhibit A-43, page 5-29. A Form 337 is required for
11 installation of an EGPWS. The chief inspector or designee is
12 required to fill it out. Respondent failed to fill it out.
13 Respondent was not the chief inspector for Lakeland, but was the
14 responsible person.

15 Robert Creighton testified in his own defense. He is a
16 civilian and military pilot. He has held a mechanic certificate
17 with airframe and powerplant ratings since the 1986. In 1986 to
18 1987 he became an Army aviator. He was a line supervisor as a
19 mechanic for an airline and had responsibility for inspections and
20 returning aircraft to service. He was the manager for a BA-146
21 fleet and went to every "C" check performed on the airline's
22 aircraft. When the airline went out of business in 1989, he
23 became the general manager of a repair station employing over 175
24 people. He held that position for two years, then was employed by
25 Ryan International Airlines and wrote the corrosion control

1 program for their B-727 aircraft and taught other personnel about
2 heavy maintenance. He worked for British Aerospace and inspected
3 aircraft to ensure that they were maintained in airworthy
4 condition. In 2002, he started his own business, Aviation Experts
5 International, as a consultant. He holds a commercial pilot
6 certificate with rotorcraft, instrument, single-engine and land
7 ratings. In the Army, he flew helicopters and fixed wing
8 aircraft. It appears he is now on active duty in the U.S. Army as
9 a military helicopter pilot.

10 He worked as a consultant for an airline called Air
11 Solutions and ultimately became it's director of maintenance in
12 2004. Tommy Barraza was one of the principals and was the
13 director of operations. He assisted in obtaining a Part 135
14 certificate for the airline. He acted as a consultant in handling
15 the sale of an Embraer aircraft to Air Solutions. The aircraft
16 had been in storage for a long time and when taken out of storage
17 had to be gutted. Air Solutions acquired the Embraer and two
18 Jetstream aircraft.

19 He became familiar with Lakeland through taking training
20 on the Embraer they had. It was the aircraft involved in this
21 case. When Air Solutions got its Part 135 certificate in 2004, it
22 was initially a competitor of Lakeland. Barraza, who owed him a
23 lot of money, entered into a business relationship with Lakeland.
24 The Respondent said he spoke with John Palmer of Lakeland about
25 maintenance due on Lakeland's Embraer, about a TAWS system that

1 had to be installed. Palmer said that a "C" check had been due in
2 2005 and they had asked Embraer to extend the time to March 2005.
3 He said he did not know where they were going to have the "C"
4 check done.

5 The Respondent said that Air Solutions had a maintenance
6 base in Martinsburg, West Virginia. He owned the equipment and
7 had the lease to the hangar through his own business, Aviation
8 Experts International, from which he conducted an aircraft storage
9 business. He had one permanent employee named Hank Pawelczyk.
10 The Respondent said he was never at the Martinsburg facility, but
11 instead was occupied in conducting his consulting business.

12 He said he told Barraza about the "C" check needed for
13 the Embraer. Barraza was managing Lakeland. He and Hicks, one of
14 the principals of Lakeland, asked if they could use the
15 Respondent's hangar in Martinsburg, West Virginia for the "C"
16 check. The Respondent said he agreed to supply mechanics, and he
17 would subsidize the cost of the hangar and the employees, for
18 which he would bill Barraza. The work was to be supervised by
19 Lakeland's director of maintenance, Frank Albritton. The
20 Respondent said that he would not supervise the mechanics. He
21 said he wound up billing Barraza, Air Solutions, and Lakeland
22 \$72,000, which included a small profit margin. Barraza; Hicks and
23 Holly, two of Lakeland's principals, said they had a bridge loan
24 from SunTrust Bank to cover the cost.

25 The Respondent said that before the Embraer showed up in

1 Martinsburg, he did not have a business relationship with its
2 owner, Lakeland. He said he did have a business relationship with
3 Barraza and Air Solutions and was employed by Barraza as Air
4 Solutions' director of maintenance. He said when N267AS arrived,
5 he was still being compensated by Air Solutions as its director of
6 maintenance. He said he was paid a flat rate to maintain Air
7 Solutions' aircraft and would charge Air Solutions for the work of
8 doing maintenance. His company, Aviation Experts, was paid for
9 the hours worked by the mechanics he furnished.

10 He said the same arrangement continued with regard to
11 Lakeland's aircraft even after Albritton, its director of
12 maintenance, left. He said he became director of maintenance for
13 Lakeland, at Barraza's direction, on June 15, 2005, after the
14 Embraer had left Martinsburg. He was not paid by Barraza and
15 tried to get money from Ms. Holly, one of Lakeland's principals.

16 The Respondent said he found out that Albritton had left
17 about a week after Albritton's departure. The Respondent said up
18 until then, he was seldom at his Martinsburg facility. When he
19 found out that Albritton had gone, he stopped work on the Embraer
20 and sent the mechanics home. He got a call from Barraza and Hicks
21 and told them there was no paperwork for N267AS and that Albritton
22 was gone. He told them that if they could use Air Solutions'
23 certificate, work on the aircraft could resume.

24 He said a day or so later, he was faxed authority to
25 sign the airworthiness release so that he could complete the work

1 on N267AS, but he did not know at that time how much work was left
2 to do. When he got the paperwork back, he analyzed it and found
3 about 10 percent remained to be done.

4 Albritton had already started closing the aircraft and
5 the "A" check remained to be done. He said that when he looked at
6 N267AS, it was not "gutted like a fish." The interior panels were
7 in and the floorboards, including the cockpit floorboards, were
8 down. He said that they were waiting for parts and some
9 indication from Barraza that he wanted the work to continue and
10 that he had his employee, Pawelczyk, check the condition of the
11 aircraft and estimate how long it would take to finish the job.
12 He said he told Barraza that there were about 200 hours of work
13 left.

14 The Respondent said he reviewed and accounted for all of
15 the task cards and found that there were a few that were unsigned
16 or were not on the tally. He said he looked at N267AS for open
17 items because he would be taking responsibility. He said that
18 there was no corrosion noted on the cards that he looked at.

19 The Respondent said he was the director of maintenance
20 for Air Solutions when the Embraer arrived at his facility in West
21 Virginia, but after that he was out of the country in connection
22 with his consulting business. He said that Barraza wanted to fly
23 N267AS back to Florida without the TAWS installed, so he sent an
24 e-mail to Memcik and Barraza saying that he resigned. He was
25 asked by Laurent Coudray, a part owner of Air Solutions and its

1 chief pilot, to stay on; and he agreed he would stay through the
2 TAWS installation in late April or early May and at that time he
3 was not director of maintenance for either Air Solutions or at
4 Lakeland. His authority to sign general airworthiness release
5 came from Will Gilam, Lakeland's chief pilot.

6 The Respondent said he expected to be compensated for
7 man-hours worked on Lakeland's aircraft, but he did not submit a
8 bill for his personal hours. He said he would release the
9 aircraft if he was paid for the man-hours and the use of the
10 hangar. He submitted a bill for \$41,000 to Barraza and Holly, but
11 was paid only \$12,000 for man-hours. He said that Charter
12 Connection gave him a note for \$125,000 for this and other
13 services, but that has not been paid.

14 Concerning the corrosion in the cockpit, which Inspector
15 Littleton testified, he said he found that area on the task card
16 which should have revealed the corrosion. Exhibit A-54, pages 11
17 to 12. He said a mechanic named Dave Spalding performed the
18 maintenance and in the card's Remarks section noted that no
19 defects were found. The floor panels and seat had to be removed
20 before the inspection and put back in place after the inspection
21 was complete. He said the mechanic signed the card on May 24,
22 2005.

23 He said he took over at item 65 on Exhibit A-31, but no
24 date was required or entered. Item 68 says forward cabin floor
25 panels (lavatory and gallery area) were reinstalled, but the date

1 of June 2, 2005, is not necessarily the date that was done. He
2 said he was never in the area when the floorboards were removed.
3 He said that he went there on June 2, 2005, and inspected the zone
4 for general security, attachment, and specific defects. He said
5 he did a zonal inspection. He said that Pawelczyk did the
6 inspections to make sure the work was done. He looked at the
7 aircraft if he was not satisfied from the paperwork.

8 The Respondent changed his answer to the complaint to
9 admit paragraph 9, which alleges that on March 29, 2005, he made
10 an entry on LAT Form M-17, item number 13, that he had inspected
11 antennas for serviceability and found them to be acceptable for
12 continued service. He said that paragraph refers to Exhibit A-31,
13 item 12, page 19. He said he looked and saw that one of the
14 antennas was the same as in paragraph 10 of the complaint, and saw
15 that it was installed and sealed adequately.

16 Paragraph 13 of the complaint was dismissed. He said he
17 did not remove or replace any of the antennas in paragraphs 13 and
18 14 of the complaint, so he could not have seen corrosion. He
19 verified they were installed and properly sealed and saw no
20 corrosion on them.

21 Concerning paragraphs 15 and 16 of the complaint, which
22 allege use of incorrect fuel filters installed for the left-hand
23 and right-hand engine fuel heater fuel filters, the Respondent
24 said that the correct filter was installed, but it had a different
25 part number.

1 He said that it is his understanding that a general
2 airworthiness release is different for Part 135 and Part 121. It
3 is impossible to inspect everything. It is necessary to do what
4 the manual requires, which is to make sure the documents are
5 complete, and once he reviews the documents and is satisfied, then
6 the airworthiness release can be signed. Where he was not
7 satisfied from the write-ups, he checked himself. The task card
8 and M-17 had to be complete and regular. If they were regular on
9 their faces, he checked no further.

10 Regarding paragraph 36(a) of the complaint, which
11 alleges that the Respondent failed to record compliance on task
12 card 32-61, dated June 2, 2005, with AD 2003-15-05, which requires
13 a functional check of the backup flight idle stop system for the
14 number 1 and 3 engines, the Respondent said he recorded the
15 functional test on task card 76-07, Exhibit A-37, which states,
16 "Revised flight idle stop installed per Service Bulletin 120-76-
17 0019." He said that when he signed the task card, that meant he
18 had checked the flight idle stop system as required in the
19 description section of the task card.

20 I ruled that the task described in the GMM Embraer task
21 card to check the nose wheel steering is a required task, which is
22 recommended to be done during taxiing. It is noted in the Remarks
23 section of the task card that it was done by taxiing, but not that
24 the check was done. The charge was left in the complaint, but I
25 ruled it was not a falsification.

1 The photographs in Exhibit A-21 were admitted subject to
2 being connected up to alleged specific discrepancies.

3 Counsel for the Respondent moved to strike ASI
4 Littleton's testimony concerning photograph 1 of Exhibit A-21
5 because he did not connect it to a specific discrepancy and the
6 Administrator had not produced the part. Counsel for the
7 Administrator agreed the part had not been produced. ASI
8 Littleton referred to paragraphs 18, 20 and 38 of the complaint.

9 Concerning paragraph 36(b) of the complaint, which
10 alleges that task card number 32-61, dated June 3, 2005, for the
11 400-hour inspection, shows no entry in the Remarks section, the
12 Respondent said that he had admitted paragraph 36(b) of the
13 complaint, but said there is no requirement for such an entry and,
14 in any event, he said that there had been a high-speed taxi with a
15 mechanic on board, but that he had not noted that on the task card
16 in the Remarks. He said that the FAA had reviewed copies of the
17 task cards on July 26, 2009, and they had not complained about
18 anything in the Remarks. He said he supplemented the card to
19 reflect that Barraza and Gilam had conducted a high speed taxi
20 before they left. He said he was director of maintenance at that
21 time, but resigned soon after that.

22 Concerning paragraph 36(d) of the complaint, which
23 alleges that the LAT Non-Routine Form M-17 shows that on April 2,
24 2005, the Respondent failed to enter any discrepancies in the
25 maintenance record regarding corrosion, the Respondent said he did

1 not record anything about corrosion because he saw no corrosion
2 and when he reviewed the task card, no corrosion was noted by the
3 mechanic. He said the only time he went in the cockpit area, it
4 was covered by floorboards. Spalding, the mechanic, was an IA and
5 if the mechanic says there was no discrepancy, he did not look
6 further unless he had some other concern. He said he did not
7 suspect that there was any reason to tear apart the aircraft after
8 it was put back together.

9 He said he studied the photograph of the hole in the
10 structure and thought it was a screw or bolt hole, not a corrosion
11 hole. He said signed off on a zonal inspection and the
12 floorboards had to be in place.

13 The Respondent said that Albritton left a note saying do
14 not close anything related to the "A" check, but there is nothing
15 in an "A" check about corrosion.

16 The Respondent agreed that there were no page numbers,
17 but said that the GMM does not require them. Exhibit A-31 has six
18 pages, dated June 3, 2005, none of which are numbered. He said
19 that is not required. Exhibit A-48, page 5-30, procedures for
20 filling out non-routine cards, does require page numbers. It was
21 stipulated that the Respondent forgot to put in page numbers.

22 Concerning paragraph 36(f)(1) of the complaint, which
23 alleges that the Respondent signed off for a 75-hour line check
24 and a flight test, but that the LAT EMB-120 service check, dated
25 June 3, shows omission of APU Hobbs meter reading on an

1 airworthiness release. It was stipulated that there was no Hobbs
2 meter reading. The Respondent said he misunderstood the
3 requirement, but did not record it in the logbook.

4 Regarding paragraph 36(f)(2) of the complaint, which
5 alleges that the LAT EMB-120 75-hour line check, dated June 5,
6 2005, shows inspection of nose gear and main landing gear with no
7 required entry for a required entry of tire pressure, the
8 Respondent said there was no place to enter a tire pressure
9 reading.

10 Regarding paragraph 36(f)(3) of the complaint, which
11 alleges that the Respondent used an outdated A-1 check task card
12 number 76-07, the Respondent said that Albritton put the package
13 together and he used Albritton's cards.

14 The Respondent stipulated to paragraph 17 of the
15 complaint, which alleges that on June 3, 2005, he made a record
16 entry on LAT Form M-17, item number 13, affixed his signature and
17 A&P certificate number in the mechanic block, and approved for
18 return to service installation of the Terrain Avoidance Warning
19 System/Enhanced Ground Proximity Warning System (TAWS/EGPWS).

20 The Respondent said that his involvement was helping out
21 Lakeland and Barraza and Air Solutions with installation of the
22 TAWS/EGPWS. He said that Barraza was supposed to contact the STC
23 holder, Chippewa, and have them come to Martinsburg, but instead
24 hired two individuals to come to Martinsburg to do the work. One
25 of the individuals was Tom Philback, who said in a note that the

1 Respondent found after Albritton left that the TAWS was installed,
2 except for few things remaining to be done. Therefore, it was an
3 open item and he hired Michael Chura, who was an avionics
4 technician who had worked for him before, to finish the job.

5 He said he gave Chura the prints and the STC, identified
6 what had to be done, and told Chura to report back to him. Chura
7 made a list of his findings and what he had fixed. The Respondent
8 said that Chura made all of the necessary connections and Barraza
9 provided the computer for the system. The Respondent said they
10 were able to do a function check.

11 The Respondent identified Exhibit A-14 as a letter from
12 Chura regarding his findings and completion of the installation.
13 Chura verified that the corrections had been made, that he had
14 waited for the part to come from Barraza, ground-tested the unit
15 and it worked fine. He signed off on the installation saying the
16 TAWS/EGPWS was installed in accordance with the STC.

17 The Respondent said that no Form 337 was required
18 because the unit was covered by a supplemental type certificate
19 and, therefore, it became part of the original design of the
20 aircraft and its specifications.

21 He further said that the installation of the TAWS was
22 not a required inspection item, as alleged in paragraph 30 of the
23 complaint, which charges he approved the system for return to
24 service without the required sign off by a qualified inspector.
25 He said that the Lakeland GMM did not specify the installation as

1 a required inspection item.

2 Paragraph 31 of the complaint alleges that the
3 Respondent approved N267AS for return to service following
4 installation and STC incorporation of the TAWS/EGPWS system, and
5 failed to sign off a validation test flight or to complete LAT
6 Form M-16, Record of Test Flight. The Respondent testified that
7 they did a ground test and he knew Barraza would do a flight
8 check. He said that no validation flight was required for the
9 installation because there was a previous installation, and the
10 STC flight test requirement does not apply to subsequent
11 installations. He said he chose to have Barraza do an in-flight
12 check anyway to be sure. Barraza would have written that in the
13 logbook which he signed in Orlando. The Respondent said he would
14 have fixed any problems with the system if Barraza had reported
15 one. Barraza reported no problems.

16 The Respondent said that the EGPWS was not coupled to
17 the GNS/XL or to the number 3 ADS (Air Data Sensor) as alleged in
18 paragraph 26(b) of the complaint. He said nothing was incorrectly
19 wired. He said StarPort used a different STC.

20 The Respondent referred to Exhibit R-7, page 3, which he
21 said provides for supplemental type certificate and requires a
22 flight test, but after the STC is issued and approved, no further
23 test flight is required for subsequent installations. He said the
24 most important STC was STC 2515AT, which is the one he used.

25 Exhibit R-15 is a letter from Chippewa, dated March 24,

1 2005, which says that the ADS installed will not affect the
2 display of the TAWS on the GNS/XLS; in order to install both STCs
3 in your aircraft with the ADS being modified to a MOD 4 status and
4 the symbol generator, we will need your FSDO to accept the
5 installation without being certified as an IFR system to meet the
6 March 29th mandate for a TAWS. The Respondent said he did not
7 install both STCs; however, Exhibit A-44 says he has complied with
8 both STCs.

9 I entered a ruling dismissing paragraph 5 of the
10 complaint, which refers to revision 22 of a CAMP document, and
11 denied the Administrator's motion to amend paragraph 5 to read
12 Revision 21, instead of Revision 22, as charged.

13 Exhibit A-1 was admitted, but Exhibit A-1(a) was
14 rejected. Exhibits R-1 and R-15 were admitted. Exhibits A-20 and
15 A-20(a) were rejected.

16 I reserved ruling on dismissal of paragraphs 36(d),
17 37(g) and 37(i) of the complaint to my decision. The
18 Administrator dismissed paragraphs 37(j) through (m) of the
19 complaint.

20 I reserved ruling on Exhibit A-44, which showed the
21 Respondent signed off on the system as okay, and that there were
22 two STCs installed, STC 02515AT for the TAWS, and STC 1898AT for
23 Honeywell FMS.

24 The Respondent called Michael Chura as a witness. He
25 detailed extensive experience working on aviation in the military

1 and civilian employment. He said he met the Respondent and agreed
2 to finish the TAWS installation. Nothing was said about the FMS,
3 which gives way points; the TAWS shows ground proximity. He found
4 the work partially done, but improperly done. Nothing was hooked
5 up for the FMS, which gets information from the ADC. The FMS
6 display system gets information from another data system, the GPS,
7 and the TAWS is used to display that. He did all of the
8 operations' checks and the system worked. He said he went on a
9 high-speed ground check and checked for electronic interference.
10 He said one of the switches was wrong for the FMS, but not for the
11 TAWS.

12 Mr. Chura was not accepted as an expert on TAWS, but had
13 sufficient training and experience to allow him to give opinion
14 testimony concerning the installation of the TAWS system he worked
15 on. He said that the Administrator's witness, Pita, found
16 discrepancies, but the probe was a cold weather option, and one of
17 the switches would be wired into the FMS, if it was installed. He
18 said he was there while the work set out in Exhibit A-44 was done,
19 and he signed it. He said he installed the display unit. The
20 computer was supplied by Air Solutions. Exhibit A-44, which the
21 Respondent signed in Block 13 meant that the STC system for TAWS
22 was up and working.

23 Chura said he was there for a week installing the TAWS
24 system. The FMS never came up. The STC of the TAWS references a
25 second STC for installation of the antenna.

1 He said he had been trained in corrosion. He said that
2 while he was installing the TAWS in the forward cabin, the
3 floorboards had been taken up, but he never observed any corrosion
4 in the area where he was working.

5 On cross-examination, he said that only the TAWS part of
6 the display was installed. The display was not hooked to the FMS.
7 He just looked at the portion of the STC that related to the FMS.
8 He said he complied with the STC concerning installation of the
9 antenna. The wires he hooked up were for display of the TAWS
10 information only. He installed four enunciators, one to inhibit
11 the oral warning, and one for the GPS for the TAWS. He said that
12 only the TAWS display was required. He said he seldom saw the
13 Respondent, except on the last day when he was finishing
14 installing panels taken off for the inspection.

15 Chura said the floorboards were installed again on the
16 last day. When he was installing the enunciators, he had to put
17 down temporary floorboards so he could work in the area.

18 Pita, the Administrator's witness was recalled. He
19 identified Exhibit A-24 as drawings he did of the TAWS
20 installation. He said he had heard Witness Chura's testimony.
21 Pita said that the FMS is used as the range control for the TAWS.
22 The crew sees the terrain on a display and uses the FMS to change
23 the range on the TAWS. He said the four wires going from the FMS
24 to the computer were not there when he looked at N267AS. They go
25 from behind the co-pilot seat, where the TAWS is located, to the

1 center console, where the FMS is. He said that the ground check
2 is a complex procedure set out in the TAWS STC and has to be done
3 before the aircraft is released from service, but there is no way
4 a ground check could have been done on N267AS. Pita said that he
5 installed power and ground wires, the configuration module, a
6 storage device for the computer needs to do calculations, and that
7 several enunciators that interface between the FMS and the TAWS
8 computer were not there. They are switches that if pulled up show
9 flashing red if a collision is immanent. He said that seven
10 enunciators were needed, but only two were there.

11 Pita said that the FMS is a self-contained unit with its
12 own GPS, and other data computers and sensors for the TAWS display
13 and control. He said that a Class A TAWS must be installed under
14 an STC and must have a way to display terrain; in the case of
15 N267AS, using the FMS display. He said he used data from the TAWS
16 STC to install wiring.

17 On cross-examination, Pita said that the TAWS uses the
18 FMS for display and control. That is the option selection and
19 signed for on N267AS. He said the only configuration possible on
20 this aircraft with the equipment installed was with the FMS. He
21 said it is his view that the missing wires were never installed.
22 He said the STC calls for the FMS to be used to display terrain.

23 The Respondent recalled witness Chura, who said he
24 properly installed the TAWS range function. He said that the FMS
25 receives data from internal GPS and data system number 1, and

1 sends that information to the TAWS through two wires from the FMS
2 display. He said the wires could be removed without a trace with
3 an insertion tool. He said he installed the display part of the
4 FMS according to the STC for use as a display for the TAWS system,
5 but did not connect the rest of the inputs for the FMS system to
6 provide data onscreen, such as fuel, speed, and distance.

7 Exhibit A-55, excerpts from STC 02515AT for the TAWS,
8 pages 3 and 4, was admitted.

9 Two task cards were admitted as Exhibit A-54(a).

10 The Respondent's counsel said the photographs in Exhibit
11 A-21 were provided in 2006. Ruling on an objection to A-21(a) and
12 (b), parts catalog, was deferred.

13 The Respondent was recalled as a witness in his own
14 behalf. He said he took over supervision and inspection of N267AS
15 in May 2005. He said that the aircraft was still opened up to
16 some extent. He looked at the aircraft informally and did some of
17 the inspection himself. He said he had seen corrosion on a B-727,
18 a Boeing 727, but had never repaired it. He said he had
19 supervised repair of corrosion.

20 He said that the cockpit was opened up to some extent
21 while Chura worked on the TAWS installation. He said some
22 floorboards were still there, but he saw no corrosion and no one
23 told him of any corrosion. He said his employee, Spalding, did
24 not tell him there was any corrosion there. He said he had a list
25 of 20 to 25 people who were working on N267AS while it was "guttled

1 like a fish," but none of them ever said anything about corrosion.

2 The Respondent said he hired Chura to install the TAWS
3 system, but not any FMS system. The people who had been hired to
4 install the FMS had left. He said he left the job up to Chura and
5 he got it done. The Respondent said he got parts for Chura when
6 he needed them. Barraza furnished the computer. He said he told
7 Chura to follow the STC. In the endorsement on Exhibit A-44, the
8 Respondent said they had complied with the STC and portions of
9 another to install the antenna. He referenced STCs for that
10 purpose only.

11 On cross-examination, the Respondent said the TAWS
12 installation had to be complete by March 29, 2005. He said it did
13 pass a ground check while it was in West Virginia.

14 The Respondent said he signed the task card admitted as
15 Exhibit 54(a), page 3. He said it did require taking up the
16 floorboards in the cockpit, and the components underneath are
17 listed on page 4. He said he inspected the components and he made
18 the entries for paragraphs 37(g) and 37(i) of the complaint.

19 He said he did not inspect the area depicted in Exhibit
20 A-21(15). He said that the task card, Exhibit 54(a), did not
21 require an inspection there. He said used the maintenance manual
22 listed on the card and followed the instructions, but observed no
23 corrosion.

24 He said he resigned the position of director of
25 maintenance of Air Solutions, but there was no overlap as director

1 of maintenance for Lakeland.

2 The Respondent said he was not primarily responsible for
3 ordering parts. Exhibit A-14. He said that he communicated his
4 need for parts for the TAWS to Tommy Barraza, who supplied the
5 money, and the parts showed up.

6 Retired Inspector Leighton was called by the Respondent.
7 It was stipulated that he is an expert on corrosion. He said that
8 he saw N267AS in the 1990s, but has not seen it since. He has no
9 firsthand knowledge of the condition of the aircraft when the
10 Respondent worked on it or when it was disassembled at StarPort.
11 He said in Puerto Rico and the environments where the aircraft was
12 operated, corrosion could have occurred in 15 to 30 days, even if
13 there was a corrosion prevention and control program. He could
14 not tell the type of corrosion from the poor quality photographs
15 he looked at.

16 II. Authorities

17 The Respondent is charged with, among other violations,
18 making an intentionally false entry by signing the general
19 airworthiness release, in violation of FAR Section 43.12(a)(1).
20 The elements of the charge of intentional falsification are a
21 false statement made in reference to a material fact with
22 knowledge of the falsity of the fact. Hart v. McLucas, 535 F.2d
23 516, 519 (9th Cir. 1976). Proof of fraud requires proof of two
24 additional elements, an intent to deceive and an action taken in
25 reliance upon the representation. Twomey v. NTSB, 821 F.2d 63, 66

1 (1st Cir. 1987). In order for a statement to be material, it need
2 only be capable of influencing the decision of the agency. Twomey
3 v. NTSB, supra at 66; Administrator v. Cassis, NTSB Order No. EA-
4 1831 (1982); Administrator v. Anderson, NTSB Order No. EA-4564
5 (1997); Administrator v. Richards, NTSB Order No. EA-4813 (2000);
6 Administrator v. McGonegal, NTSB Order No. EA-5334 at 4 (2006);
7 Administrator v. Reynolds, NTSB Order No. EA-5135 at 7 (2005);
8 Janker v. Department of Transportation, 925 F.2d 1147, 1150 (9th
9 Cir. 1991).

10 Recent Board precedent uniformly holds that making an
11 intentional false statement of a material fact shows lack of
12 qualification to hold a certificate and that the appropriate
13 sanction is revocation. Administrator v. Hodges, NTSB Order No.
14 EA-5303 (2007), and cases cited therein. In that case, the
15 respondent falsified an application for renewal of her flight
16 instructor certificate and caused another individual to make a
17 false statement. At pages 9 to 10, the Board quoted language from
18 Administrator v. Coughlan, NTSB Order No. EA-5197 (2005), citing
19 Coughlan v. NTSB, 470 F.3d 1300, 1306 (11th Cir. 2006), stating
20 that few violations more directly call into question a pilot's
21 nontechnical qualifications than do those involving
22 falsifications, and few falsifications more clearly threaten air
23 safety than those involving an airman's entitlement to an advanced
24 certificates or rating.

25 In Administrator v. Aviance International Inc., et al.,

1 NTSB Order No. EA-3805 (1993), the Board said that the issue in
2 falsification cases is usually whether the individual who made the
3 false statement did so intentionally, and almost invariably that
4 is established circumstantially since direct evidence of intention
5 is rarely available. Where, as in the Aviance case, the issue is
6 not whether there was an intentional falsification but whether
7 there was a falsification at all, the Administrator's proof must
8 be more compelling. The Board found in the Aviance case that
9 there was no direct evidence of falsification and held that the
10 circumstantial evidence was insufficient to prove the
11 falsification charge and reversed the falsification finding.

12 In the recent case of Administrator v. Partington, NTSB
13 Order No. EA-5453 (2009), at page 9, a case also involving alleged
14 violations of 14 C.F.R. 43.12(a)(1) and 43.13(a), the Board said
15 that, "Overall records related to maintenance work performed on
16 aircraft must be scrupulously accurate, and work cards are not an
17 exception to this rule." Concerning the sanction of revocation in
18 that case, the Board said, at page 11:

19 "Finally, with regard to sanction, the law judge did not
20 err when he affirmed the Administrator's revocation order. We
21 have long held that intentional falsification is a serious
22 violation that warrants revocation of certificates. Respondent's
23 opinion that the Board should analyze each intentional
24 falsification case on its facts and determine whether revocation
25 is appropriate ignores the Board's obligation to defer, in

1 general, to the Administrator's choice of sanction, absent an
2 indication that the Administrator's sanction is arbitrary or
3 capricious. As such, we reject respondent's arguments concerning
4 the sanction applied to his conduct." (Citations omitted.)

5 In another recent case, Administrator v. Poland, NTSB
6 Order No. EA-5449, (2009), the Board considered and rejected the
7 argument that reduction in the sanction of revocation ordered by
8 the Administrator was warranted because the Administrator did not
9 prove all of the charges in the complaint. The Board noted that
10 "in general, such a failure may result in reduction in sanction,
11 as our deference to the Administrator's choice of sanction is
12 neither unlimited nor appropriate in every circumstance." But the
13 Board further noted that the Administrator had established that
14 the respondent had committed two instances of prior violations for
15 similar conduct. The Board concluded, at page 10, that:

16 "In Administrator v. Frost, NTSB Order No. EA-3856 at 8
17 to 9 (1993), we stated that whether the Administrator has
18 demonstrated that an airman lacks the qualifications to hold a
19 certificate is an extremely fact-bound inquiry, and that the facts
20 establishing that a respondent had repeatedly operated an aircraft
21 at low altitude showed that the respondent lacked the level of
22 care and judgment expected from an airman.

23 More recently, in Administrator v. Giannola, NTSB Order
24 No. EA-5426 (2008), we recognize that the Administrator may
25 establish that a respondent lacks the qualifications to hold a

1 certificate by establishing that the respondent engaged in a
2 continuing pattern of conduct showing disregard for the
3 regulations, or that the respondent's conduct in one instance was
4 particularly egregious. Id. at 8, citing Frost supra; and
5 Administrator v. Wingo, 4 NTSB 1304, 1305-1306 (1984). The facts
6 here indicate that the respondent acted in a deliberate manner,
7 once again committing violations similar to those in the not-too-
8 distant past. We conclude that revocation is the appropriate
9 sanction, because the respondent demonstrated unwillingness to
10 comply with the Federal Aviation Regulations, which, based on our
11 precedent, indicate that he lacks the qualifications to hold an
12 airman certificate."

13 There are numerous other cases in which the Board has
14 affirmed revocation as the appropriate sanction for violation of
15 FAR 43.12(a)(1), for example, Administrator v. Sturges, NTSB Order
16 No. EA-5025 (2003); Administrator v. Nanney, NTSB Order No. EA-
17 4996 (2002); and Administrator v. Anderson, NTSB Order No. EA-4564
18 (1997).

19 The Board's decision in Administrator v. Nanney, supra,
20 is particularly pertinent to the issues presented in the instant
21 case. In the Nanney Case, the Board affirmed revocation of the
22 respondent's mechanic certificate for violating FAR Section
23 43.12(a)(1) by falsifying an aircraft maintenance log. The
24 respondent in that case was a mechanic supervisor who cleared a
25 subsequently logged discrepancy found in a "C" check without doing

1 any type of investigation of the maintenance crew who did the "C"
2 check work or the mechanic who logged the discrepancy to determine
3 whether the discrepancy existed notwithstanding the previously
4 performed maintenance. Instead, the respondent and a quality
5 control supervisor reviewed the "C" check paperwork, and based on
6 it, apparently decided that the problem could not still exist in
7 light of the earlier engine work. Instead of logging information
8 reflecting such a judgment, the respondent wrote in the corrective
9 action block of the log: "Trim accomplished per T/C [task card]
10 38771000 ops check good."

11 The respondent in the Nanney case contended that "work"
12 as used in the maintenance manual was not restricted to actual
13 hands-on maintenance, but can include review of paperwork and
14 sign-off for tasks actually done by others. The Board said it
15 agreed with the law judge that a judgment as to whether the
16 respondent knowingly falsified the log is no way dependent on such
17 issues as the circumstances in which the supervisor can sign off
18 on work done by others, among other things.

19 The Board said that "The simple question is whether the
20 respondent, who admittedly did not perform an engine trim or
21 operational check, could reasonably believe that a log entry that
22 on its face advised that he had done so would be understood by
23 anyone reading it to mean that he actually reviewed the
24 maintenance paperwork of those who had trimmed and checked the
25 engine before the discrepancies he was seeking to resolve had been

1 astonishingly and appallingly slipshod. The issue here is the
2 extent to which the Respondent should be held responsible for the
3 long list of discrepancies found in the much more thorough and
4 comprehensive, not to mention competent, re-inspection
5 subsequently performed by StarPort, a certificated repair station,
6 after N267AS was grounded in Puerto Rico and flown back to the
7 United States under a ferry permit for re-inspection.

8 I find that the evidence of record establishes by a
9 preponderance that the long list of discrepancies uncovered by
10 StarPort in its re-inspection of N267AS, with the exception of
11 those included in the paragraphs of the complaint dismissed by the
12 Administrator or dismissed during the hearing or related to
13 discrepancies which were not shown to have existed at the time the
14 aircraft was inspected by the Respondent, including the numerous
15 instances of corrosion existed at the time N267AS was returned to
16 service by the Respondent. I have considered the lengthy
17 testimony by various witnesses on the issue of whether the
18 corrosion could have taken place after the aircraft was returned
19 to service by the Respondent following the "C" check at his
20 facility; for example, while N267AS was stored idle in Puerto
21 Rico. I find no credible evidence to support such a theory, other
22 than with respect to the paragraphs in the complaint that I just
23 mentioned.

24 I find the more credible and persuasive testimony of the
25 Administrator's witnesses establishes that the corrosion was of

1 long duration, not recently occurring, and extended back in time
2 to before the "C" check was accomplished under the Respondent's
3 supervision, and existed at the time that N267AS was inspected at
4 his Martinsburg facility, and he returned N267AS to service as
5 airworthy.

6 The evidence in this case shows that Lakeland Air
7 Transport, a Part 135 certificated carrier and the owner of
8 N267AS, an Embraer commercial passenger turbojet aircraft that was
9 on Lakeland Air Transport's operations specifications at the times
10 relevant to this case, had entered into a joint venture business
11 arrangement with Air Solutions, also a Part 135 carrier, and its
12 then-president, Tommy Barraza (present whereabouts unknown), under
13 which, among other things, Barraza had full operational control of
14 Lakeland Air Transport's aircraft and was a captain who flew
15 Lakeland Air Transport's aircraft in Part 135 operations.

16 Lakeland Air Transport also entered into a business
17 arrangement in March 2005 with Tommy Barraza and Air Solutions to
18 have a "C" check and installation of a TAWS system performed on
19 N267AS. Tommy Barraza retained the Respondent, who was then
20 director of maintenance of Air Solutions, to provide hangar space
21 and tools, parts, and temporary or part-time A&P mechanics to do
22 the "C" check and associated checks in the Respondent's hangar in
23 Martinsburg, West Virginia, from which the Respondent otherwise
24 conducted an aircraft storage business. The Respondent by all
25 accounts was not in the aircraft maintenance and repair business

1 at his facility in Martinsburg.

2 N267AS was flown to the Martinsburg, West Virginia
3 Airport in March 2005, put in the Respondent's hangar for the "C"
4 check and other inspections. Frank Albritton, who was then the
5 Lakeland director of maintenance, traveled to Martinsburg, West
6 Virginia, with N267AS in March 2005, and remained there to oversee
7 the inspections and maintenance being performed at the
8 Respondent's hangar until he resigned his position as Lakeland Air
9 Transport's director of maintenance and left Martinsburg, West
10 Virginia, on May 16, 2005. He concluded that he could not
11 complete the inspections, installation of parts and equipment, and
12 other maintenance because of lack of funding, parts and manpower
13 needed to accomplish the work on N267AS that he was there to
14 supervise. He felt the Respondent was seldom available to help
15 with supervising the work being performed by the part-time
16 mechanics that the Respondent had hired or by providing needed
17 parts on a timely basis. He left Martinsburg with the "C" check
18 incomplete and resigned his position as director of maintenance
19 for Lakeland.

20 After Albritton's departure, work on the "C" check came
21 to a standstill until Barraza arranged for Lakeland to hire the
22 Respondent as an outside contractor to complete the "C" check. In
23 May 2005, Respondent assumed responsibility for overseeing the
24 completion of the "C" check and other associated inspections at
25 his hangar in Martinsburg using mechanics provided as before. The

1 "C" check resumed and was completed under his supervision, and he
2 eventually signed the airworthiness release returning the aircraft
3 to service.

4 Work on the "C" check was accomplished through task
5 cards provided by the manufacturer and issued to the mechanics by
6 Albritton and, subsequently, utilized by the Respondent. After
7 the work called for by a task card was completed by the mechanics,
8 task cards were turned in by the mechanics and were approved or
9 audited by either Albritton, or after he left, by the Respondent.
10 It was stipulated that Albritton completed 155 task cards while
11 the Respondent completed 61.

12 Over all, the evidence of record unequivocally shows
13 that accomplishment of the inspections and maintenance performed
14 at the Respondent's Martinsburg, West Virginia facility was
15 severely handicapped by lack of funds, lack of adequate reliable
16 manpower, inadequate supervision by the Respondent and, perhaps by
17 Albritton before him, and lack of parts. After Albritton's
18 departure, the Respondent appears to have made little or no effort
19 to personally oversee or otherwise ensure that required
20 inspections and installation of parts and other maintenance were
21 properly done by the largely temporary and part-time mechanics he
22 hired for the job. The evidence of record makes it clear that
23 after Albritton's departure, the Respondent, for the most part,
24 simply signed off as auditor on the work done by the mechanics he
25 hired and did not personally inspect their work. It is apparent

1 from the evidence of record that the project was not profitable to
2 him and, except for discrepancies that the mechanics had not
3 resolved which he performed, his main, and probably only goal, was
4 to get the aircraft put back together and returned to service as
5 soon as possible with the least additional expense possible.

6 For example, on June 1, 2005, Tommy Barraza and Mathias
7 Guillen, who were to be the pilot-in-command and second-in-
8 command, respectively, flew to Martinsburg, West Virginia, to
9 return N267AS to Lakeland Air Transport for resumption of Part 135
10 flights. When they arrived, N267AS was in a state of substantial
11 disassembly. On June 3, 2005, Barraza and Guillen were pressed
12 into service reassembling parts of the aircraft, even though
13 Guillen did not hold an A&P certificate, while the Respondent
14 appears to have spent his time signing task cards and finishing
15 certificate paperwork, rather than doing any supervision or
16 inspection of work on the aircraft himself.

17 There is no credible evidence that Barraza, in fact,
18 performed a test flight of N267AS after departing from Martinsburg
19 to check the operability of the TAWS/EGPWS system. In fact, the
20 weight of the evidence is to the contrary. According to Guillen,
21 the co-pilot accompanying Barraza on the return flight to Orlando
22 after the "C" check and on subsequent revenue flights, the
23 TAWS/EGPWS system was not functional at any time, except for the
24 GPS portion of the installation. I find Guillen to be a credible
25 witness, while Barraza, for whatever reason, did not testify at

1 the hearing.

2 The Lakeland airworthiness release from N267AS
3 maintenance log, Exhibit A-3, indicates that the inspections
4 required by the Lakeland General Maintenance Manual and FAR
5 Section 135.443 were performed and there were no known
6 deficiencies and the aircraft was returned to service. The
7 Respondent's signature appears on the release. He signed off that
8 all inspections had been done. Exhibit A-3 contains the following
9 certification signed by the Respondent on 6/3/05:

10 "I certify that a preflight inspection of this aircraft
11 has been conducted and I have determined the required
12 airworthiness inspections have been accomplished, reported
13 mechanical irregularities have been corrected or deferred, and
14 this aircraft has been approved for return to service by properly
15 certified maintenance personnel. Additionally, I have complied
16 with FAR 135.299(c)."

17 At the outset, the evidence of record unequivocally
18 establishes that N267AS was replete with discrepancies, ranging
19 from minor to major, when the Respondent signed the airworthiness
20 release and returned it to service. It was, in fact, as
21 unequivocally established by testimony and re-inspection
22 accomplished by StarPort, that N267AS was anything but airworthy
23 when it left Martinsburg. Obviously, and I so find, the
24 airworthiness release signed by the Respondent was not true and
25 that many discrepancies uncovered by StarPort upon re-inspection,

1 with the exceptions I have noted, existed at the time the aircraft
2 left Martinsburg.

3 The question immediately arises as to the extent to
4 which the Respondent can be held responsible for the multitude of
5 violations of the Federal Aviation Regulations stemming from the
6 many discrepancies found in N267AS re-inspected by StarPort after
7 several months of service in the Caribbean area. The
8 Administrator takes the position that the Respondent is
9 responsible for them all, including those discrepancies related to
10 task cards which were audited and approved by Albritton while he
11 was exercising personal supervision of the "C" check and other
12 inspections, as well as those that are related to task cards that
13 the Respondent performed himself, or audited and approved after
14 Albritton left and the Respondent took over as the contractor
15 hired to complete the checks and inspections. The Respondent
16 takes the opposite position, taking the position that he is not
17 responsible because he justifiably relied on the maintenance
18 records prepared by others.

19 As noted already, Tommy Barraza did not appear at the
20 hearing to testify, and his present whereabouts appear to be
21 unknown. It is a fair assumption from the record that Barraza
22 involved himself in the "C" check in the first place anticipating
23 making a personal profit. It is not clear just how he expected to
24 do that, but that appears to be the most likely reason. The same
25 can be said for the Respondent. The evidence of record, however,

1 is clear that Barraza used his position as director of operations
2 of Lakeland to steer the contract for completion of the "C" check
3 after Albritton's departure to the Respondent, with whom he had
4 substantial business ties. The "C" check was being performed at
5 the latter's facility in Martinsburg, West Virginia,
6 notwithstanding that he was singularly ill-equipped to conduct a
7 "C" check because of lack of personnel, lack of parts, lack of
8 funding, and apparently was not even present at the Martinsburg
9 facility on a full-time basis, including after Albritton's
10 departure. The result was that he could not and did not supervise
11 and oversee the work supposedly performed by the part-time or
12 temporary mechanics he hired. With few exceptions, he relied on
13 task cards and other records, which he did nothing to verify, as
14 the basis for returning the aircraft to service as airworthy.

15 I find that the evidence of record shows that the
16 Respondent was fully complicit in this arrangement, even though he
17 may not have initiated it. Whether or not he ultimately profited
18 financially from the arrangement or, as he testified, suffered a
19 financial loss and was not fully paid for the expenses he
20 incurred, is not the question. He accepted the responsibility for
21 completing the "C" check as a contractor and with that goes the
22 responsibility for failing to complete the "C" check
23 satisfactorily and returning the aircraft to service in an
24 unairworthy condition, which it clearly was.

25 I find that the Administrator's position is correct.

1 The Respondent undertook to supervise the completion of the "C"
2 check after Albritton's departure and signed the airworthiness
3 release returning the aircraft to service with many uncorrected
4 discrepancies affecting its airworthiness. Someone has to bear
5 responsibility for the botched inspection, otherwise, we would be
6 faced with the anomalous situation in which no one can be held
7 responsible unless it is proven that person saw for himself the
8 uncorrected discrepancies before N267AS was returned to service.
9 That is obviously unacceptable. The maintenance system under
10 which the Federal Aviation Regulations operate, operates on trust
11 and faith that maintenance is properly done in a timely done and
12 correct manner as recorded. The Respondent accepted full
13 responsibility for the proper completion of the entire inspection
14 when he took on the job of supervising the inspection and signed
15 the airworthiness release. To quote the statement attributed to
16 President Harry Truman, "The buck stops here." In the
17 Respondent's case, the "here" is with the Respondent.

18 The Respondent cannot escape responsibility by, in
19 effect, turning a "blind eye" to what took place during the
20 inspection and accepting everything put down by the mechanics on
21 task cards or Form M-17 at face value without himself checking to
22 make sure the inspections were done properly, including the
23 inspections performed while Albritton was in charge. It was the
24 Respondent's responsibility not to return the aircraft to service
25 until and unless he was personally and reasonably certain it was

1 airworthy. That is what he certified. How the Respondent
2 undertook to satisfy himself that the numerous required
3 inspections, including those performed while Albritton was in
4 charge, were performed properly is a matter he had to decide for
5 himself. He had the ultimate responsibility for the proper
6 performance of the entire inspection process and he elected not to
7 personally check to make sure that the required inspections were
8 properly done. In that situation, the fault and risk is his and
9 he must accept the consequences.

10 The standard applicable here is that the person in
11 charge of the installation must take all reasonable steps to
12 assure himself that the work was done correctly before signing the
13 general airworthiness release. Administrator v. Nanney, supra.
14 The FARs do not specify exactly what steps the person with
15 responsibility for an inspection and responsibility for signing
16 the airworthiness release must take to meet his responsibilities.
17 That is up to the holder of the A&P certificate. If he chooses to
18 exercise that responsibility in a slipshod, haphazard, or careless
19 manner, he must bear the consequences. Simply signing off on the
20 mechanics' work without taking any effective steps to ascertain if
21 they did the work assigned to them completely and satisfactorily
22 is not responsible supervision and performance of his
23 responsibilities. Neither is accepting blindly without checking
24 himself someone else's sign off on the audit of a task card, such
25 as by Albritton. Unfortunately, that characterizes how the

1 Respondent, by and large, exercised his overall responsibility and
2 control for the "C" check when he signed the airworthiness
3 release.

4 The most serious alleged violations of the FARs involve
5 the issue of whether the Respondent violated the FARs by making
6 intentionally false statements and, in particular, with regards to
7 improperly installed and inoperable TAWS/EGPWS system and the
8 corrosion under the floorboards in the cockpit of the aircraft.
9 The Board has made it repeatedly and abundantly clear that
10 revocation is the appropriate sanction in such cases.

11 The evidence concerning the corrosion under the
12 floorboards in the cockpit comes from the testimony of retired ASI
13 Littleton, and to a lesser extent other testimony, and is
14 supported by photographs and documentary evidence. I observed
15 Inspector Littleton and others while testifying and considered his
16 testimony in relation to the testimony of other witnesses,
17 including the Respondent and supporting photographs and
18 documentary exhibits. From this, I find that he is a very
19 knowledgeable maintenance inspector whose testimony is credible in
20 all respects, and, in fact, is much more credible on this
21 particular point than the Respondent, himself. Inspector
22 Littleton's testimony was consistent throughout the hearing.

23 In contrast, I do not find that the Respondent, whose
24 testimony I also heard and evaluated, to be a credible witness
25 concerning his lack of knowledge of corrosion beneath the cockpit

1 floorboards. He gave inconsistent testimony, ranging from
2 testimony that he did not see the structures under the floorboards
3 because the floorboards had already been reinstalled by the time
4 he was in the cockpit, to acknowledging that he was in the cockpit
5 area when the floorboards were not in place during the
6 installation of the TAWS/EGPWS components and he saw no corrosion
7 at that time.

8 His testimony that he had no access to the cockpit area
9 until after the floorboards were reinstalled is further belied by
10 the Work Request Discrepancy No. 65, LAT Form M-17, Maintenance
11 Non-Routine, Exhibit A-31, which he signed with his A&P number,
12 and contains the following entry: "A thorough review of these
13 documents in comparison to the physical state of the aircraft was
14 performed and the results are recorded hereafter." One of the
15 "hereafter" entries is Work Request Discrepancy No. 73, LAT Form
16 M-17, Exhibit A-31, which states: "Reinstall forward flight deck
17 floor panels in accordance with Embraer 120 AMM 53-01-01," and is
18 signed by another mechanic. It is evident from this statement
19 that the Respondent intended to convey that he had knowledge of
20 the physical state of the aircraft before and after the work was
21 done, otherwise there would be no basis upon which to draw the
22 comparison to which he referred.

23 Inspector Littleton, whose testimony I fully credit,
24 observed extensive corrosion involving decomposition of metal that
25 left a hole in the gusset straps that support the cockpit floor

1 and seats. Exhibit A-29(f)(1), (g)(1), and A-21(a). It is
2 apparent, and I so find, even a casual glance could not miss that
3 level of uncorrected corrosion, and the Respondent had ample
4 opportunity to see it, at least when he admitted being in the
5 cockpit while the floorboards were removed while the TAWS/EGPWS
6 components were being installed.

7 What a person saw is, of course, subjective and can be
8 proved only by circumstantial evidence. Here, the circumstantial
9 evidence of the Respondent being present in the cockpit when the
10 floorboards were removed, combined with the obvious and readily
11 visible nature and extent of the corrosion, is more than enough to
12 prove by a preponderance of the evidence that he had both the
13 opportunity and actually did see the corrosion which was so
14 extensive that it rendered the aircraft unairworthy. I simply
15 find that the Respondent's self-serving testimony that he did not
16 see the corrosion is incredible. The record establishes that the
17 corrosion was there for him to see. He had the opportunity to see
18 it and I do not believe his testimony that he did not see it. It
19 was simply too extensive for him to miss.

20 As I have already noted, the elements of the charge of
21 intentional falsification are a false statement made in reference
22 to a material fact with the knowledge of the falsity of the fact.
23 Hart v. McLucas. The Respondent's certification that N267AS was
24 airworthy is patently false; that it was material is not subject
25 to rational dispute. I find that Inspector Littleton's testimony

1 that the corrosion was so extensive that it would have required
2 years to take place is entirely credible and is not subject to any
3 reasonable doubt. And as I have noted, I further find that the
4 Respondent had knowledge of the fact of the corrosion.

5 I find, therefore, that the Administrator has met his
6 burden of proof of actual knowledge of falsity by strong
7 circumstantial evidence demonstrating that the Respondent, in
8 fact, did have actual knowledge of the corrosion in this area of
9 the aircraft -- see Administrator v. Aviance International, Inc.,
10 supra; Administrator v. Nanney -- and knew that the aircraft was
11 unairworthy when he signed Exhibit A-3, certifying it was
12 airworthy.

13 Why the Respondent chose to ignore the obvious corrosion
14 is a matter that can be proved only by circumstantial evidence.
15 Quite possibly and most likely explanation is because the
16 corrosion was located in an area that is visible only when the
17 cockpit floorboards are removed, which was something that would
18 not be likely to happen again for a long period of time after the
19 aircraft was reassembled following completion of the "C" check.
20 In any event, why the Respondent chose to ignore it is not a
21 determinative issue because the evidence shows that he did ignore
22 it.

23 I find that the Respondent's denial of actual knowledge
24 is not credible. It is further noteworthy that the Respondent did
25 more than just sign off an audit of task cards, he certified the

1 aircraft was airworthy, which implies actual knowledge from his
2 statement that "a preflight inspection of this aircraft has
3 concluded and I have determined the required airworthiness
4 inspections have been accomplished," and that the aircraft was
5 airworthy.

6 Accordingly, I find that in this regard, the
7 Administrator has proven by a preponderance of the evidence that
8 the Respondent made an intentionally false statement in this
9 respect in violation of FAR Section 43.12(a)(1).

10 I further find that the Respondent made a similar
11 intentionally false statement with respect to the installation of
12 the TAWS/EGPWS system. I find that the testimony of the
13 Administrator's witness, Mr. Pita, to be entirely credible, much
14 more so than the testimony of the Respondent's witness, Mr. Chura.
15 Mr. Pita testified that the system, as installed by witness Chura,
16 was inoperable from the start because it was incomplete. The
17 necessary wiring was not there when Mr. Pita examined N267AS at
18 StarPort after it was brought back from Puerto Rico. I find that
19 Mr. Pita's credentials and experience qualified him as an expert
20 in the installation of such systems and his testimony is far more
21 credible than that of Mr. Chura, who is not qualified as an expert
22 in the field. While he may have had some experience in the area,
23 it is evident that during the week or so it took him to do it, he
24 was basically just trying with limited success to follow the
25 installation directions in the STCs. Even Mr. Chura acknowledged

1 that he did not fully install the connection between the TAWS and
2 the FMS, or the flight management system.

3 Further, there is no convincing evidence that Mr. Chura
4 conducted a full operational check of the system before N267AS
5 left the Respondent's West Virginia facility after completion of
6 the "C" check under the command of Captain Barraza. I find much
7 more credible the testimony of Mr. Pita that the system was
8 incomplete as installed by Mr. Chura, and even lacked the
9 necessary wiring connection; therefore, there could not have been
10 a successful full operational check of the systems by Mr. Chura,
11 who completed a maintenance entry that he installed the components
12 of the TAWS/EGPWS in accordance with the applicable STCs. See the
13 Lakeland Form M-17, Non-Routine Entry number 12; Exhibit A-44.

14 The Respondent makes much of the fact that there is a
15 maintenance record entry that a mechanic in Puerto Rico removed
16 the TAWS/EGPWS for servicing and, therefore, Pita's conclusion
17 that some of the necessary wiring was missing when he examined the
18 Aircraft later in Puerto Rico is unreliable. There is no direct
19 evidence of what the mechanic did, however, it is unreasonable to
20 conclude that in removing components for servicing because the
21 system was inoperable, that the mechanics would have gone to the
22 trouble of removing the wiring without leaving a trace, even
23 assuming that that was possible, which on its face appears to be
24 highly unlikely.

25 Further, there is no credible evidence that Captain

1 Barraza conducted a successful, or even attempted to conduct, an
2 in-flight operational test of the TAWS/EGPWS on N267AS after he
3 departed for Orlando from the Respondent's facility in West
4 Virginia. In fact, the credible evidence from his first officer
5 is to the contrary. I find Guillen's testimony to be credible,
6 that he accompanied Barraza as the latter's first officer during
7 the flight to Orlando and on subsequent revenue flights, and that
8 the TAWS/EGPWS was never operable following the departure from the
9 Respondent's facility in West Virginia. Based on his credible
10 testimony and that of Mr. Pita, who persuasively testified that
11 the system was not properly and fully installed and, therefore,
12 could not have been operable once N267AS left the Respondent's
13 facility in West Virginia, I find that the TAWS/EGPWS installed by
14 Mr. Chura was never operable and was never flight-tested.

15 The Respondent's certification that the aircraft was
16 airworthy, Exhibit A-3, is also an intentionally false statement,
17 because despite his certification, he had no idea whether the
18 TAWS/EGPWS was operable when the aircraft left his facility in
19 West Virginia after the "C" check he supervised. He relied on
20 Chura and Barraza to have done their jobs properly, but he took no
21 reasonable steps to assure himself that the TAWS was fully
22 operable before N267AS left his facility. That would involve
23 nothing more complex than watching Chura conduct the necessary
24 operational checks required by the STC, as testified to by Pita.
25 While the Respondent was not on the aircraft on the return flight

1 to Orlando, or afterwards, he chose to accept Barraza's sign-off
2 that an operational check had been done without making any effort
3 to determine the truth of such an assertion. He was not provided
4 with nor did he seek any details concerning what operational
5 checks Barraza may have performed.

6 Instead, he defends his lack of personal knowledge on
7 the basis that he hired someone to install the system and check
8 it, and he told Barraza to do the in-flight check and heard
9 nothing further from him about the system being inoperable.
10 However, he prepared and signed Lakeland Non-Routine Maintenance
11 Form M-17, number 13, Exhibit A-44, which states "Requirements of
12 STC 02515AT & STC 1898AT C/W via instruction in the STC for
13 certification of a EGPWS/TAWS and ops check good; okay for return
14 to service." In the same non-routine entry, the Respondent stated
15 "C/W as written. No action required." It is hard to visualize a
16 more inaccurate maintenance entry since the overwhelming evidence
17 is the system was never operational. He signed his name and A&P
18 number to the non-routine maintenance entry saying the operational
19 checks were good, when it is apparent, and I so find, that this
20 statement is not based on any actual knowledge on his part. It is
21 no more than hearsay, which he made no attempt to verify and in
22 point of actual fact was not true.

23 His reliance on others that the system was operable,
24 without any attempt at verification on his part, was not a
25 reasonable basis for him to certify that the aircraft was

1 airworthy. By certifying the aircraft was airworthy, as he did in
2 Exhibit A-3, without any personal knowledge of whether the
3 TAWS/EGPWS was in fact operable, it is obvious that he intended
4 that anyone reading the entry would take that to mean that he had
5 checked and found the system to be operable and, therefore, had
6 actual knowledge that the system was operable. The plain truth,
7 established by the Administrator's evidence and the documentary
8 evidence of record, is that that he had no reasonable basis for
9 believing that everything that should be done to install the
10 system properly had been done or that the system was ever
11 operable. That is sufficient proof of intention to falsify.
12 Administrator v. Nanney, supra.

13 This is a particularly egregious violation in view of
14 the fact that N267AS was required under the Federal Aviation
15 Regulations to have an operable TAWS/EGPWS installed in order
16 continue Part 135 operations. Accordingly, I find that the
17 Respondent's certification that N267AS was airworthy, insofar as
18 the operability of the TAWS/EGPWS system and the airworthiness of
19 the aircraft in that respect is concerned, violated FAR Section
20 43.12(a)(1).

21 The Respondent is also charged by the complaint with
22 violating FAR Sections 43.5(b), 43.13(a), 43.13(b), 43.15(a)(1),
23 43.15(a)(2), and 43.16. In view of my findings that the
24 Respondent made intentionally false statements in violation of FAR
25 Section 43.12(a)(1) by certifying that the aircraft was airworthy

1 with the improperly installed and inoperable TAWS/EGPWS, and the
2 severe corrosion of structural parts under the floorboards in
3 the cockpit of N267AS, I find it unnecessary to consider
4 individually and in further detail the other maintenance
5 violations with which the Respondent is charged.

6 I have weighed the extensive evidence summarized in this
7 decision called Synopsis of Testimony, above, and I find there is
8 sufficient credible evidence to sustain findings that the
9 Administrator has proven by a preponderance of the evidence that
10 the Respondent also violated FAR Sections 43.5(b), 43.13(a),
11 43.13(b), 43.15(a)(1), 43.15(a)(2), and 43.16, as alleged in the
12 complaint.

13 In this regard, I find to be credible and convincing the
14 testimony of the following witnesses and the associated exhibits
15 admitted into evidence: ASI Lipinski, Chris D. Mock, Mark D.
16 Gendron, Laura Hawley, Matias Guillen, ASI Miller, Frank
17 Albritton, Daryl Hicks, Edwin Pita, Chris Pontoni, Robert Roswell,
18 and ASI Littleton. Their testimony and the associated exhibits
19 admitted into evidence are sufficient to establish each of the
20 alleged violations of FAR Sections 43.5(b), 43.13(a), 43.13(b),
21 43.15(a)(1), 43.15(a)(2), and 43.16.

22 I find that it is unnecessary to reach each of these
23 violations individually and in detail because Board precedent,
24 noted above, makes it clear that the appropriate sanction for
25 making an intentionally false statement with reference to a

