

SERVED: April 21, 2015

NTSB Order No. EA-5745

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 20th day of April, 2015

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket SE-19488
	)	
DENNIS LAUTERBACH,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

The Administrator appeals the written order of Administrative Law Judge William R. Mullins, served in this proceeding on September 16, 2014.<sup>1</sup> In the order, the law judge granted respondent’s motion for summary judgment, and granted the Administrator’s cross-motion for summary judgment against Quality Aircraft, Inc. (Docket Number SE-19487).<sup>2</sup> The

<sup>1</sup> A copy of the law judge’s order is attached.

<sup>2</sup> These rulings functioned to vacate the Administrator’s order revoking Respondent

Administrator's order alleged a violation of 49 U.S.C. § 44726(b)(1)(A),<sup>3</sup> based on the allegation Respondent Lauterbach (hereinafter, "respondent") was convicted in 2011 of knowingly, and with the intent to defraud both the FAA and others, making and using materially false records concerning aircraft parts to conceal maintenance problems with two helicopter main rotor blades respondent owned. The Administrator appeals the order with regard to Docket Number SE-19488.<sup>4</sup> We grant the Administrator's appeal.

a. *Facts*

In an emergency order of revocation dated February 14, 2006,<sup>5</sup> the Administrator revoked respondent's airman and mechanic certificates based on respondent's violation of 49 U.S.C.

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(continued..)

Lauterbach's mechanic and commercial pilot certificates, and affirm the Administrator's order revoking Respondent Quality Aircraft's air carrier certificate.

<sup>3</sup> Section 44726(b)(1)(A) states as follows:

(b) Revocation of certificate.--

(1) In general.--Except as provided in subsections (f) and (g), the Administrator shall issue an order revoking a certificate issued under this chapter if the Administrator finds that the holder of the certificate or an individual who has a controlling or ownership interest in the holder--

(A) was convicted in a court of law of a violation of a law of the United States relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material.

<sup>4</sup> Respondent Quality Aircraft (Docket No. SE-19487) also appealed but subsequently withdrew its appeal. The case was dismissed under delegated order. See Administrator v. Quality Aircraft, NTSB Order No. EA-5737 (2015).

<sup>5</sup> The 2006 order, as well as the 2013 order at issue in the case *sub judice*, proceeded pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709(e) and 46105(c). In both actions, respondent waived the applicability of expedited procedures normally applicable to emergency cases.

§ 44726(b)(1)(B).<sup>6</sup> The parties subsequently settled the case; as a result, the law judge issued an order terminating the appeal on October 26, 2006.

On May 19, 2011, in the United States District Court for the Northern District of Texas, a jury convicted respondent of violating 18 U.S.C. § 38(a)(1)(C), which prohibits the making or use of “any materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning any aircraft or space vehicle part.” Four months later, the court imposed a sentence of probation with specified terms and conditions for a term of five years, ordered respondent to pay restitution in the amount of \$5,651.50 to the victims identified during the trial and perform 200 hours of community service. The court also suspended respondent’s mechanic certificate for one year, but did not take action against respondent’s commercial pilot certificate. Following the expiration of the one-year suspension, the FAA returned the mechanic’s certificate to respondent.

On May 9, 2013, the Administrator issued an emergency order revoking respondent’s commercial pilot and mechanic certificates, in light of respondent’s conviction in 2011. The order quoted 49 U.S.C. § 44726(b)(1)(A) as the basis for the emergency order of revocation. The Administrator’s order references a 2006 violation of 14 C.F.R. §§ 43.12(a)(3) and 43.13(a), which prohibit falsification of maintenance records and require compliance with maintenance techniques acceptable to the Administrator.

b. *Law Judge’s Order*

Respondent filed a motion for summary judgment challenging the Administrator’s 2013 emergency order of revocation, on the grounds of collateral estoppel, *res judicata*, and

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<sup>6</sup> Paragraph (B) of § 44726(b)(1) states the Administrator shall revoke a certificate if the certificate holder “knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under a law described in paragraph (1)(A).”

double jeopardy. In the motion, respondent argued the Administrator's 2006 enforcement action against this certificate precluded the Administrator from bringing an action in 2013, because both actions were based on the same instances of fraudulent conduct that resulted in respondent's criminal conviction. The law judge granted respondent's motion by determining both the 2006 and 2013 actions "relied on the 'same nucleus of fact' namely [respondent's] actions described in the original 2006 Emergency Order of Revocation."<sup>7</sup> The law judge concluded the doctrine of *res judicata* applied and the Administrator was precluded from attempting to relitigate a matter that had already been settled in regard to respondent's commercial and mechanic certificates."<sup>8</sup>

*c. Issue on Appeal*

The Administrator appeals the law judge's order, on the basis the law judge should not have concluded the doctrines of *res judicata* and collateral estoppel precluded the Administrator from issuing an order of revocation in 2013 based on respondent's 2011 conviction. In response to the appeal, as in his motion for summary judgment, respondent argues collateral estoppel and *res judicata* preclude the Administrator's 2013 order of revocation.

**2. Decision**

On appeal, we review the law judge's order *de novo*, as our precedent requires.<sup>9</sup>

Moreover, the effect of a decision based on *res judicata* is a question of law, which courts review *de novo*.<sup>10</sup>

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<sup>7</sup> Order Granting Respondent Lauterbach's Motion for Summary Judgment in Docket Number SE-19488 (hereinafter "Order") at 5.

<sup>8</sup> Id. at 6.

<sup>9</sup> Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013), Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991).

<sup>10</sup> Davis v. Dallas Area Rapid Transit, 383 F.3d 309, 312-14 (5<sup>th</sup> Cir. 2004); Administrator v.

A. *Res Judicata and Collateral Estoppel*

1. *Res Judicata* and Claim Preclusion

The doctrine of *res judicata*, or claim preclusion, prevents parties relitigating the same cause of action after it has been decided by a judge or jury. The term *res judicata* literally means “that which has been decided.” In general, *res judicata* refers to an issue that has been definitively settled by judicial decision.<sup>11</sup> The doctrine stands for the proposition “that ‘a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.’”<sup>12</sup>

In determining whether *res judicata* barred a subsequent action in Drake v. Federal Aviation Administration, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stated the inquiry “turns on whether [the two cases] share the same ‘nucleus of facts.’”<sup>13</sup> Other courts have stated the test to determine whether claim preclusion applies depends upon whether the same key facts are at issue in both actions.<sup>14</sup> In this regard, courts will consider whether the facts contained in each complaint arise from the same nucleus of operative facts.<sup>15</sup> Claim preclusion is a term almost synonymous with *res judicata*; the Supreme Court has clarified claim preclusion occurs when a final judgment in a case forecloses successive litigation of very same

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(continued..)

Gellert, NTSB Order No. EA-5695 (2014).

<sup>11</sup> Black’s Law Dictionary at 1425 (9<sup>th</sup> ed. 2009).

<sup>12</sup> Drake v. Fed. Aviation Admin., 291 F.3d 59, 66 (D.C. Cir. 2002) (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n. 5 (1979)).

<sup>13</sup> Id. (quoting Page v. United States, 729 F.2d 818, 820 (D.C. Cir. 1984)).

<sup>14</sup> New York Life Ins. Co. v. Gillespie, 203 F.3d 384, 387 (5<sup>th</sup> Cir. 2000).

<sup>15</sup> Davis, *supra* note 10, at 313.

claim, regardless of whether relitigation of the claim raised the same issues as an earlier suit.<sup>16</sup> Overall, a party alleging claim preclusion must establish both actions involved the same claim or cause of action, based on the same nucleus of facts.<sup>17</sup> In Drake, the D.C. Circuit stated determining whether claims are identical is not simply resolving whether the barred claim was part of the same claim or cause of action as the claim in the prior proceeding, but also whether the barred claim *could have been raised* in the prior proceeding.<sup>18</sup>

## 2. Collateral Estoppel and Issue Preclusion

The Supreme Court has described collateral estoppel as having “the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation.”<sup>19</sup> When parties who previously litigated an issue for which they received a judgment or disposal later bring a second suit upon a different cause of action, the previous judgment operates as an estoppel only as to questions “actually litigated and determined in the original action, not what might have been thus litigated and determined.”<sup>20</sup> The doctrine of collateral estoppel acts to preclude re-litigation of identical issues; hence, scholars and courts may refer to the doctrine as “issue preclusion.”

### B. *Distinctive Claims and Issues*

A careful review of the complaint in the instant case establishes the Administrator’s 2013 action and 2006 action were based upon distinctive claims and disparate issues. The 2013

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<sup>16</sup> New Hampshire v. Maine, 532 U.S. 742, 748 (2001).

<sup>17</sup> Capitol Hill Group v. Pillsbury, Winthrop, Shaw, Pittman, LLC, 569 F.3d 485, 490 (D.C. Cir. 2009).

<sup>18</sup> Supra note 13, at 66 (emphasis in original).

<sup>19</sup> Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326 (1979) (citing Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 328-29 (1971)).

<sup>20</sup> Cromwell v. County of Sac, 94 U.S. 351 (1876).

action is based on respondent's 2011 *conviction*. The Administrator did not pursue revocation of respondent's certificate based on 49 U.S.C. § 44726(b)(1)(B), which only prohibits "knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under a law... ."

Unlike paragraph (b)(1)(B), paragraph (b)(1)(A) requires a conviction. At the time of the Administrator's action against respondent's certificate in 2006, and the parties' subsequent settlement of that complaint, respondent had not been convicted. Five years later, respondent was convicted under 18 U.S.C. § 38(a)(1)(C), and sentenced accordingly. The two statutory paragraphs contain different elements the Administrator must prove. The claims are distinct because they do not arise out of the same facts: the 2013 action is based on paragraph (b)(1)(A) and results from respondent's 2011 conviction, whereas the 2006 action resulted only from the Administrator's allegation of an intentional intent to defraud. The Administrator could not have brought an action in 2006 based on a conviction, because one had not yet occurred. As a result, collateral estoppel does not bar the Administrator may proceed now with revoking respondent's certificate based on paragraph (b)(1)(A); the issue as to a violation of this paragraph was not litigated in 2006, and therefore is not now precluded.

Furthermore, the complaints in both actions allege distinct facts, and contain no duplicative language. In the 2006 complaint, the Administrator alleged respondent, in 2004 and 2005, made fraudulent entries and alterations of historical service records for two rotor blades respondent sold. In contrast, in the 2013 complaint, the Administrator only alleged respondent was indicted in 2010 and convicted in 2011 in United States District Court in the Northern District of Texas. The complaint states this conviction was for respondent's violation of 18 U.S.C. § 38(a)(1)(C). The 2013 complaint does not allege the factual predicate for the conviction, but only states respondent had been convicted and his certificates were therefore

subject to revocation under 49 U.S.C. § 44726(b)(1)(A).

*C. Disposition via Summary Judgment*

Under the Board's Rules of Practice, a party may file a motion for summary judgment on the basis that the pleadings and other supporting documents establish no genuine issue of material fact exists, and the moving party is therefore entitled to judgment as a matter of law.<sup>21</sup>

In order to defeat a motion for summary judgment, the non-moving party must provide more than a general denial of the allegations.<sup>22</sup> Moreover, the law judge must view the evidence in the motion for summary judgment in the light most favorable to the non-moving party.<sup>23</sup>

The case *sub judice* is appropriate for disposition by way of summary judgment. The Administrator's order, which became the complaint, included eight paragraphs of allegations. Respondent admitted to five of the eight paragraphs in his answer; these paragraphs included the allegation that a jury found respondent guilty in the United States District Court for the Northern District of Texas pursuant to an indictment filed on April 14, 2010 and that respondent was sentenced on September 14, 2011. Respondent did not deny the remaining allegations in the complaint, but stated in his answer that the indictment and the text of 18 U.S.C. § 38, which the Administrator referenced in the complaint, speak for themselves.

Based on these admissions, respondent does not present a genuine issue of material fact.

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<sup>21</sup> 49 C.F.R. § 821.17(d); Administrator v. Wilkie, NTSB Order No. EA-5565 at 5 (2011); Administrator v. Doll, 7 NTSB 1294, 1296 n.14 (1991) (citing Fed. R. Civ. P. 56(e)); Administrator v. Giannola, NTSB Order No. EA-5426 (2009); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986) (a *genuine* issue exists if the evidence is sufficient for a reasonable fact-finder to return a verdict for the non-moving party); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255-56 (1986) (an issue is *material* when it is relevant or necessary to the ultimate conclusion of the case).

<sup>22</sup> Administrator v. Hendrix, NTSB Order No. EA-5363 at 5-6 n.8 (2008) (citing Doll, *supra* note 20, at 1296).

<sup>23</sup> United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 994 (1962).

As a result, no reason exists to remand this case to the law judge for completion of a factual record or for resolution of factual disputes. A *de novo* review of the record establishes summary judgment is the appropriate mechanism by which to dispose of this appeal.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted;
2. The law judge's order is reversed; and
3. The Administrator's motion for summary judgment concerning Respondent

Lauterbach is granted.

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT and WEENER, Members of the Board, concurred in the above opinion and order.

SERVED: September 16, 2014

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

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MICHAEL P. HUERTA  
ADMINISTRATOR  
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

QUALITY AIRCRAFT, INC.  
And DENNIS LAUTERBACH,

Respondents.

Dockets SE-19488  
SE-19487

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**ORDER GRANTING RESPONDENTS LAUTERBACH'S MOTION FOR SUMMARY  
JUDGMENT IN DOCKET NUMBER SE-19488**

**AND**

**ORDER GRANTING ADMINISTRATOR'S CROSS-MOTION  
FOR SUMMARY JUDGMENT AGAINST RESPONDENT QUALITY AIRCRAFT, INC.,  
IN DOCKET NUMBER SE-19487**

On March, 24 2014, Respondents filed a "Memorandum of Law in Support of the Respondents' Motion for Summary Judgment". On May 22, 2014, the Administrator filed "Administrator's Reply to Respondents' Motion for Summary Judgment and Cross-Motion for Summary Judgment. On July 21, 2014, Respondents filed "Respondents' Reply to

Administrator's Cross-Motion for Summary Judgment and Opposition to Respondent's Motion for Summary Judgment".

Respondents assert in the Motion for Summary Judgment that the Administrator is precluded from seeking a revocation under 49 U.S.C. § 44726(b)(1)(a) because the Administrator had previously alleged a violation under § 44726 in 2006, and then entered into a settlement agreement with Respondent Lauterbach, and based on that settlement agreement, withdrew the § 44726 allegation and revoked Respondent's Mechanic Certificate under 49 U.S.C. § 44709. Respondent argues that the Administrator may not take a "second bite at the apple", and that the current action which is based on the same facts is barred by res judicata and collateral estoppel.<sup>1</sup> The Administrator asserts in his reply and cross-motion that res judicata and collateral estoppel do not apply, because the claims under 49 U.S.C. § 44726(b)(1)(a) and (b)(1)(b) are different, and that there was no final judgment on the merits in the original proceeding, so no preclusion can apply. The Administrator's cross-motion for summary judgment relies on his claim that there is no dispute over the Respondent Lauterbach's 2011 conviction under 18 U.S.C. § 38, which entitles him to revocation under 49 U.S.C § 44726(b)(1)(a) as a matter of law.

A motion for summary judgment shall be granted if there exists no genuine dispute of material facts, and the moving party is entitled to judgment as a matter of law.<sup>2</sup> In resolving whether genuine disputes exist, the evidence of the non-moving party will assumed as true, all doubts will be resolved against the moving party, and all evidence will be construed in the light most favorable to the non-moving party, as will all reasonable inferences.<sup>3</sup>

This proceeding arises from actions that occurred in 2005. Respondent Lauterbach was issued an Amended Notice of Proposed Certificate Action in November of 2005, alleging that the Respondent violated 49 U.S.C. § 44726(b)(1)(b).<sup>4</sup> This was followed by a Consolidated

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<sup>1</sup> Mem. of Law in Supp. of Resp'ts Mot. for Summ. J. 10-12.

<sup>2</sup> 49 C.F.R. § 821.17(d); *See also Administrator v. Lee*, NTSB Order No. EA-5219 (2006).

<sup>3</sup> Baiker-Mckee *et al.*, Federal Civil Rules Handbook 1098-99 (West 2011).

<sup>4</sup> 49 C.F.R. § 44726(b) provides:

(b) Revocation of Certificate.-

(1) In general-Except as provided in subsections (f) and (g), the Administrator shall issue an order revoking a

Immediately Effective Order of Revocation and Emergency Order of Revocation in February of 2006, through which the Administrator sought to revoke the Respondent Lauterbach's mechanic and pilot certificates. A revocation under § 44726(b)(1)(b) would have resulted in a life-time ban, and no new certificates could have been issued to the Respondent.<sup>5</sup> At this time, no action was taken against the air carrier certificate held by Respondent Quality Aircraft, Inc.

The Administrator and Respondent Lauterbach held negotiations while preparing for a hearing on the matter, ultimately arriving at a settlement agreement in October of 2006. The Office of Administrative Law Judges was notified by Respondent Lauterbach's counsel of the settlement agreement, the Respondent withdrew his appeal, and an Order Terminating the case and cancelling the hearing was issued on October 26th, 2006. The Administrator then issued an Amended Order, revoking only the Respondent's mechanic certificate under 49 U.S.C. § 44709. Respondent Lauterbach's certificate was revoked, and after one year, the Respondent retested and was reissued an airframe and powerplant mechanic certificate.

Respondent Lauterbach was then indicted in April of 2010 in U.S. District Court, in the Northern District of Texas, for a violation of 18 U.S.C. § 38(a)(1)(c) based upon the same actions alleged in the Administrator's original emergency order of revocation.<sup>6</sup> Respondent Lauterbach was found guilty in May of 2011, was sentenced to probation, restitution, and a one

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certificate issued under this chapter if the Administrator finds that the holder of the certificate or an individual who has a controlling or ownership interest in the holder-

- (A) was convicted in a court of law of a violation of a law of the United States relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material; or
- (B) knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under a law described in paragraph (1)(A).

<sup>5</sup> 49 U.S.C. § 44726(a) provides:

(a) Denial of Certificate.-

(1) In general - Except as provided in paragraph (2) of this subsection and subsection (e)(2), the Administrator of the Federal Aviation Administration may not issue a certificate under this chapter to any person-

- (A) convicted in a court of law of a violation of a law of the United States relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material;
- (B) whose certificate is revoked under subsection (b); or
- (C) subject to a controlling or ownership interest of an individual described in subparagraph (A) or (B).

<sup>6</sup> 18 U.S.C. § 18(a)(1)(c) provides:

(a) Offenses. - Whoever, in or affecting interstate or foreign commerce, knowingly and with the intent to defraud-  
(1)...

- (c) makes or uses any materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning any aircraft or space vehicle part;

year suspension of his mechanic certificate. After one year, the Respondent's mechanic certificate was returned.

The current proceeding was initiated by a Notice of Proposed Certificate Action issued in July of 2012, seeking to revoke the Respondent Lauterbach's mechanic and commercial pilot certificates, and Respondent Quality Aircraft's air carrier certificates under 49 U.S.C. § 44726(b)(1)(b). Immediately Effective Orders of Revocation were issued against the Respondents in May of 2013.

The doctrine of *res judicata* precludes parties from relitigating issues that were or could have been raised in a previous action that was settled by a final judgment on the merits.<sup>7</sup> For the doctrine to apply there must be identity of the parties and of the cause of action.<sup>8</sup> It is undisputed that there is identity of parties between the Administrator and Respondent Lauterbach in this current proceeding. However, there is no identity of parties between Respondent Quality Air and the Administrator. The original proceeding only concerned Respondent Lauterbach's mechanic and commercial pilot certificates. While Respondent Lauterbach is the owner of Quality Air, Board precedent has held that actions against the personal certificates of an individual should have no preclusive effect on separate actions against an air carrier owned by that individual.<sup>9</sup> For this reason, any preclusive effect the previous action would have on the current proceeding against Respondent Lauterbach's mechanic and commercial pilot certificates would not apply to Respondent Quality Air's air carrier certificate.

It is also undisputed that the parties have already litigated a matter concerning actions Respondent Lauterbach is alleged to have taken in 2005. The Administrator originally issued an Amended Notice of Proposed Certificate Action, proposing to revoke the Respondent Lauterbach's pilot and mechanic certificates under §44726(b)(1)(b), in November of 2005, followed by an Immediately Effective Order of Revocation and Emergency Order in February

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<sup>7</sup> *Administrator v. Naypaver*, NTSB Order No. EA-4127 (Apr. 13, 1994).

<sup>8</sup> *Id.*

<sup>9</sup> *See Administrator v. Denham*, NTSB Order No. EA-2475 (Feb. 25 1987) (refusing to apply *res judicata* in a certificate action against the Respondent pilot, even though a previous action, regarding the exact same set of facts, had been previously decided against an operator that the Respondent co-owned); *see also Administrator v. Mikesell*, NTSB Order No. EA-2497 (Mar. 26 1987).

of 2006. Respondent Lauterbach appealed the Order of Revocation and the matter was set for hearing. The Administrator and Respondent Lauterbach eventually came to a settlement agreement, in which the Respondent withdrew his appeal and the Administrator agreed to issue an amended order. On October 26, 2006, an order terminating the case was issued, as a final disposition on the merits. The matter was ultimately settled by the Administrator revoking the Respondent's mechanic certificate, for the period of one year, under 49 U.S.C. § 44709. From this it is clear that this matter, involving the very same actions, has already been litigated.

The final question then is whether there is an identity of the cause of action, and looking at the two claims brought by the Administrator, it is so found. The claims arise under two separate subsections of the same regulation. While the elements necessary to prove a violation of either section of 49 U.S.C. § 44726(b)(1) may be different, they amount to the same claim; namely that the Respondent's actions involve the sale/production/installation of counterfeit or fraudulently-represented aircraft parts. The two differing subsections just provide the Administrator with two separate ways to prove that a violation occurred, either by showing a conviction under a federal law, or by showing that the individual's actions conform to the elements of, and would be punishable, under federal law. While the Administrator asserts that the two differing subsections, § 44726(b)(1)(a) and (b)(1)(b), amount to two separate claims, that claim is not valid. Both subsections rely on proving that an individual is responsible for the sale of counterfeit or fraudulently-represented aircraft parts. Furthermore, it is undisputed that the only difference between the original certificate action and the present one is Respondent's conviction in federal court. Both certificate actions have relied on the "same nucleus of fact"<sup>10</sup> namely the Respondent's actions described in the original 2006 Emergency Order of Revocation. Here there is identity of cause of action.

Additionally, the Administrator had the opportunity to wait for a conviction if he had wished to proceed under § 44726(b)(1)(a). Instead the Administrator made the decision to proceed under § 44726(b)(1)(b), and its separate requirements for proving that the Respondent Lauterbach's actions were in violation of Federal law. The Administrator had the opportunity to proceed under either section, and cannot now attempt to procure the revocation under § 44726(b)(1)(a) that he elected to settle under § 44726(b)(1)(b) in 2006 with a reduced charge.

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<sup>10</sup> *Id.* at \*6.

Therefore, the doctrine of res judicata applies and the Administrator is precluded from attempting to relitigate a matter that has already been settled in regard to Respondent Lauterbach's commercial and mechanic certificates.

While the Administrator has been precluded from taking certificate action against Respondent Lauterbach's mechanic and commercial pilot certificates, this preclusion does not apply to the action against Respondent Quality Air's air carrier certificate, and therefore it is necessary to address the Administrator's Cross-Motion for Summary Judgment as to this certificate. The pleadings establish that Respondent Lauterbach was convicted in a federal court under 18 U.S.C. § 38(a)(1)(c), and that Respondent Lauterbach is the owner of Respondent Quality Aircraft, Inc. 18 U.S.C. § 38(a)(1)(c) is an applicable statute in regard to a revocation under 49 U.S.C. § 44726(b)(1)(a).<sup>11</sup> The language of § 44726(b)(1)(a) shows that the provisions apply to an air carrier certificate when an individual, who has a controlling or ownership interest in the holder of the certificate, is convicted under a relevant statute such as 18 U.S.C. § 38. For these reasons, the Administrator is entitled to summary judgment as a matter of law, and the revocation of Respondent Quality Aircraft's air carrier certificate will be affirmed.

Therefore, Respondents Lauterbach's Motion for Summary Judgment in Docket Number SE-19488 is **GRANTED**, and the Administrator's Order revoking his mechanic and commercial pilot certificate is **VACATED**.

The Administrator's Cross-Motion for Summary Judgment against Quality Aircraft, Inc., air carrier certificate, Docket Number SE-19487, is **GRANTED**, and the Order revoking that certificate is **AFFIRMED**.

And it is SO ORDERED.

ENTERED this 16th day of September, at Washington, D.C.

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WILLIAM R. MULLINS  
JUDGE

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<sup>11</sup> *Application of Therol Wayne Law, Order Denying Recon.*, NTSB Order No. 5534 (Jul. 21, 2010) (discussing the application of 49 U.S.C. § 44726 without a prior conviction under 18 U.S.C. § 38).

## **APPEAL (DISPOSITIONAL ORDER)**

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board

Office of Administrative Law Judges

490 L'Enfant Plaza East, S.W.

Washington D.C. 20594

Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this order. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board

Office of General Counsel

Room 6401

490 L'Enfant Plaza East, S.W.

Washington, D.C. 20594

Telephone: (202) 314-6080

FAX: (202) 314-6090

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days

after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

**NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.**

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

**ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.**