



## National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

Date: July 21, 2016

To: Timothy Monville, NTSB Investigator-in-Charge

From: Edward A. Kendall, Jr., Attorney [REDACTED]

Subject: Legal Opinion as to Operator of Accident Flight;  
National Transportation Safety Board (NTSB) Accident No. ERA15LA140

Question:

During the current NTSB investigation, a party member asked whether the owner (Six Hundred NP, LLC, hereafter "Six Hundred NP") or lessee (Coleman Jet, LLC) was in operational control when the accident occurred.

Short Answer:

Based upon a review of relevant regulations and lease documents, it is our opinion that the accident flight's operator was Six Hundred NP, and that at all relevant times Six Hundred NP was in operational control of the accident flight.

Background:

Six Hundred NP entered into a lease agreement with Coleman Jet, LLC ("Coleman") whereby Coleman had the authority to use the airplane at issue for charter flights when Six Hundred NP was not using it. During an operation that is undisputed by the parties to be under Part 91, the aircraft suffered a hull loss in Marco Island, Florida. The accident took place while the aircraft was being used by the owner for his personal use. Six Hundred NP through a related maintenance company questioned why it is listed as the "operator" in the NTSB Preliminary Report issued on March 25, 2015. NTSB Investigator-in-Charge (IIC) Timothy Monville has asked for an NTSB OGC opinion as to what entity was in "operational control" when the accident occurred.

The term "operational control" as it relates to aviation is defined by the Federal Aviation Administration Regulations in 14 CFR § 1 as "the exercise of authority over initiating, conducting or terminating a flight."

*Key Facts:*

- Aircraft was owned by Six Hundred NP.
- Flight was operated on behalf of an individual who ultimately owned the aircraft, and the flight took place during the aircraft owner's personal use of the aircraft for a presentation.
- The aircraft's owner was on board the aircraft at the time of the crash.
- There were no paying passengers on the aircraft at the time of the crash.
- The call sign utilized related to Six Hundred NP.
- Six Hundred NP's related company, Sage-Popovich, Inc., employed a Director of Maintenance. That employee participated in the investigation as a party member. The individual first indicated to NTSB that the flight was operated under Part 91 by Six Hundred NP, but later claimed that the flight was operated by Coleman.
- Six Hundred NP's retention of a maintenance staff and other employees outside of those contracted from Coleman, the Part 135 operator, weighs heavily in favor of concluding that the flight was operated independently from the Coleman lease agreement.
- The lease agreement specifically states that Coleman will maintain operational control over only those flights conducted under Part 135, limiting their involvement in any Part 91 activities.
- The indemnity section of the lease agreement specifically distinguishes flights operated by the "client" under Part 91 from those operated by the "operator"—Coleman—under Part 135.

Discussion:

The term "operational control" as it relates to aviation is defined by the Federal Aviation Administration Regulations in 14 CFR § 1 as "the exercise of authority over initiating, conducting or terminating a flight." In reviewing industry practice, the National Business Aviation Association practice states that when the owner is flying his own aircraft under Part 91, despite its presence on a company's Part 135 operations specifications and the existence of a lease agreement, the owner retains operational control. This is a standard industry practice despite there being a maintenance contract with the Part 135 operator.

Additionally, the aircraft's owner in this case had the ability to pull the aircraft from service at any time for maintenance (routine or unscheduled), which, according to the Department of Transportation Office of the Secretary of Transportation, weighs heavily against concluding that the flight in question operational control rested with Coleman.

Finally, the owner paid directly for all flight crewmembers and maintenance personnel for both Part 91 and Part 135 operations when operated at the request of the owner. These individuals were not directly employed by Coleman but were instead agents of Coleman. The contractually required agency agreement between the pilots used for the accident flight and Coleman indicated that at all times the pilots were acting as agents of Coleman, and not of NP, only when operating on behalf of Coleman. We are unable to ascertain the intent behind this clause of the lease or the wording of the agency agreement.

Based on the totality of the available facts and terms of the lease agreement the evidence leads to a determination that Six Hundred NP was in operational control at the time of the accident at issue. Therefore, for purposes of the NTSB investigation, Six Hundred NP should be listed as the operator.