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Dr. David Bowling
Regional Chief
NTSB, Office of Aviation Safety

VIA Email: [REDACTED]

Re: NTSB Case No.: CEN13FA143
Date of Accident: January 24, 2013
Location of Accident: Richmond, Louisiana
Aircraft: Beech A35, N980SS

Dear Dr. Bowling:

I am writing on behalf of Central Flying Service, Inc. ("Central Flying"). What follows is Central Flying's Petition for the Reconsideration and Modification of the National Transportation Safety Board's Findings and Determination of Probable Cause for the Crash of N980SS on January 24, 2013.

Central Flying hereby requests Reconsideration and Modification of the National Transportation Safety Board's ("NTSB") Findings and Determination of the Probable Cause for the Crash of N980SS on January 24, 2013. This petition is based upon facts that refute the NTSB's findings that "the flight . . . should have been governed under the provisions of 14 CFR Part 135 – Commuter and On Demand Operations" and that "the flight was illegal." This petition is also based on facts that show the original determination of probable cause is erroneous. Finally, this petition is submitted in accordance with NTSB Reg. §845.41(a).

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NTSB Reg. §845.41(a) states:

Petitions for reconsideration or modification of the Board's findings and determination of probable cause . . . will be entertained only if based on the discovery of new evidence or on a showing that the Board's findings are erroneous.

Erroneous Findings:

Under the "Additional Information" section of the NTSB's detailed narrative accident report related to the flight, the NTSB states that for a pilot "to act as a pilot-in-command exercising the use of his commercial rating, a class 2 medical was required. At the time of the accident, the pilot's medical had lapsed to a class 3." The NTSB then concludes, "[t]he company failed to verify the pilot was qualified to perform the flight by not verifying the privileges of his medical certificate." Later, referring to statements made by an unidentified FAA inspector, the report states the flight "should have been governed under the provisions of 14 CFR Part 135 – Commuter and On Demand Operations" and "the pilot was being compensated by the company to fly passengers . . . [a]nd because FAR Part 61.23 states that the pilot must at a minimum have a medical certificate that reflects class 2 privileges to conduct a commercial flight, and the pilot did not have that at the time of the flight, the flight was illegal." (*Emphasis added*) These findings of fact (the flight was governed under the provisions of 14 CFR Par 135, a class 2 medical was required, and the flight was illegal) should be stricken from the accident report because they are erroneous and because they are unnecessary to fulfill the NTSB's regulatory mandate.

When the owner of an aircraft obtains a pilot to fly the owner on his own aircraft, the flight is governed by 14 CFR Part 91, not Part 135. RPI, Air, Inc. was a part owner of the aircraft. RPI, Air, Inc. requested a pilot to fly the aircraft on a trip clearly incidental to the owner's business in which none of the passengers paid for a ride on the aircraft. The flight was governed by 14 CFR Part 91, not Part 135. Therefore, the finding that the flight was governed by Part 135 is clearly erroneous.

The finding that a class 2 medical certificate was required is also erroneous. A class 2 medical certificate is necessary only if the pilot receives compensation to make the flight. The law and interpretations are very clear - to act as a pilot in command of a flight for compensation requires a commercial pilot certificate and a class 2 medical certificate. 14 CFR § 61.133(a) & 14 CFR § 61.23; *see also*, Letter from FAA Office of the Chief Counsel to Randy Howell, dated September 13, 2013.

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While the term “compensation” is interpreted broadly, there is nothing in the factual report to lead to a conclusion that the pilot was to be compensated. There are also no facts in the report indicating cash payment or any other form of compensation paid to the pilot or his estate. Therefore, there are no facts to support the conclusion that a class 2 medical certificate was required for the flight.

Given that the flight was governed by Part 91, not Part 135, and the finding that a class 2 medical certificate was required is not supported by the evidence in the report, there is nothing to support the conclusion that the flight was “illegal.”

Further, Central Flying also requests that the “additional information” included in the report should be stricken because it is unnecessary to fulfill the NTSB’s mandate. The NTSB’s purpose is to determine probable cause. 49 C.F.R. § 831.2. The NTSB conducts its investigations “to determine the facts, conditions, and circumstances relating to an accident . . . and the probable cause(s) thereof.” 49 CFR § 831.4. The purpose of these findings is to ascertain measures that would best tend to prevent similar accidents . . . in the future.” 49 CFR § 831.4.

Nothing in the record, or in the NTSB’s determination of probable cause, suggests that the governing regulation for the flight or the pilot’s medical certificate had any influence on the cause of the crash. More importantly, nothing suggest that those issues give rise to any facts or measures “that would best tend to prevent similar accidents . . . in the future.” Therefore, the petitioner believes that those erroneous and incendiary facts should be removed from the report.

Erroneous Determination of Probable Cause

The NTSB determined that probable cause of the accident was “the pilot’s failure to maintain control of the airplane during a missed approach in instrument meteorological conditions.” The NTSB, itself, has repeatedly stated, that any cause identified by the NTSB must be submitted by facts and evidence. Mere suspicion, inference, and conjecture must not suffice. To be listed as a “probable cause” the theory must be supported by “conclusive” and “decisive” evidence to support to conclusion.

Other cases of pilot error have reported specific facts such as “failure to deploy flaps,” “premature deployment of flaps,” or “excessive speed.” There are no similar factual findings in this case. The report in this instance fails to contain any evidence that pilot error resulted in the accident, other than the fact that the plane crashed. This type of *post hoc ergo propter hoc* reasoning is not supported by

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conclusive or decisive evidence, but instead is based on mere suspicion, inference, and conjecture.

Recommendations:

Central Flying recommends that the "Additional Information" section of the narrative report be deleted in its entirety. Central Flying also recommends that the probable cause of the accident be changed to unknown. At a minimum, the probable cause statement should contain the sentence, "The underlying reasons for the pilot's failure to maintain control of the airplane are unknown."

Sincerely,

WRIGHT, LINDSEY & JENNINGS LLP




Kyle R. Wilson

cc: Mr. Richard Holbert