

**ORDER: 84-10-105**  
**ISSUED OCT. 24, 1984**

**(TOTALLY OF CIRCUMSTANCES: FOREIGN  
LEASED AIRCRAFT**

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Order 84-10-105

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.



Adopted by the Civil Aeronautics Board  
at its office in Washington, D.C.,  
on the 24th day of October, 1984

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AERO WEST FITNESS INVESTIGATION : Docket 40662  
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ORDER ON REVIEW

This proceeding was instituted by Order 82-8-28, August 5, 1982, to determine whether Aero West Airlines, Inc. is fit, willing, and able to perform scheduled interstate and overseas air transportation and to comply with the Act and our rules, regulations and requirements. In his first Initial Decision, served September 2, 1983, Administrative Law Judge Ronnie A. Yoder concluded that while the applicant met our fitness standards for certification, it had failed to demonstrate that it was a U.S. citizen. Specifically, he found that T.C. Hwoo, a foreign national, would be able to exercise control of Aero West through an associate, William Barton. <sup>1/</sup>

The proceeding was remanded to the Administrative Law Judge when the applicant submitted evidence of a new financial plan which it asserted would resolve the Judge's citizenship concerns.<sup>2/</sup> The new plan indicated that startup capital would be obtained from new investors -- Thomas Bunting and Peter Futro--acting through their investment company, American Resource Capital Corporation (ARCC). In addition, Mr. Barton would relinquish his management role and negotiations would be undertaken to liquidate the Barton investment in Aero West. We directed the Judge to reexamine the applicant's citizenship and fitness in light of these managerial and financial plan changes and to consider any newly created section 408 and 409 issues. <sup>3/</sup>

<sup>1/</sup> Mr. Barton was to be Chairman of the Board and an Executive Vice President for Aero West. The Judge's reasons for concluding that Mr. Barton was Mr. Hwoo's nominee are set forth in footnote 10, *supra*.

<sup>2/</sup> Order 83-12-61, December 12, 1983.

<sup>3/</sup> *Ibid*.

Judge Yoder held additional hearings in February 1984, and issued a Supplemental Initial Decision (SID) on June 8, 1984. In his SID, Judge Yoder found that Aero West had a reasonable operating proposal and financial plan, but that it had failed to show that it had a fit management and a satisfactory compliance disposition. He was particularly concerned with the conduct of Aero West's new President and Chief Operating Officer, David P. Cimo. He concluded that Mr. Cimo had made false, deceptive and/or misleading submissions to the Board that precluded a finding on managerial competence or compliance disposition. On the citizenship issue, Judge Yoder found that Aero West had not sufficiently divested itself of potential control by the Hwoo/Barton interests to meet our citizenship requirement. He indicated that Messrs. Hwoo and Barton might be able to assert control because of certain outstanding claims they had against Aero West.<sup>4/</sup>

Aero West and our Bureau of Domestic Aviation (BDA) filed exceptions to the SID. Aero West believes that it should be found to meet our fitness standards and the citizenship requirement on the record before the ALJ. However, with its brief, Aero West submitted a motion for leave to file new evidence. These exhibits indicate that the applicant responded to the issues raised in the SID. Among other things, they show that Mr. Cimo has resigned as Chairman of the Board, Chief Executive Officer and Chief Operating Officer and has been assigned other duties. Lee B. Hartstein has become the company's Chairman of the Board and Chief Executive Officer. Operational responsibility will be assumed by Donald Harrell, Aero West's Director of Operations. In addition, agreements settling Messrs. Barton's and Hwoo's claims against Aero West have been executed. Aero West argues that this evidence resolves any lingering questions about its fitness and citizenship and asks that it be certificated immediately without additional hearings. BDA has indicated that it supports the Aero West motion and recommends that, on the basis of the new evidence, Aero West be found fit and a U.S. citizen.

We have decided to grant Aero West's motion for leave to file new exhibits and to consider their contents without further hearings. Our review of those exhibits and the entire record in this proceeding lead us to conclude that, as currently restructured, Aero West's management is competent and can be relied upon to comply with the Act and our rules, regulations and requirements. In addition, the settlement agreements remove any remaining cloud over the citizenship of persons controlling the applicant. We also find the applicant's financial plan to be reasonable and that the control and interlocking relationships created by the investment of ARCC in Aero West should be approved. Consequently, we will, subject to certain conditions discussed below, issue a certificate of public convenience and necessity to the applicant in an appropriate form. Unless otherwise noted, we affirm the Judge's disposition of issues in this proceeding. His first and Supplemental Initial Decisions are attached as appendices to this order.

<sup>4/</sup> Judge Yoder also found that if certificated, the control and interlocking relationships between Aero West and its affiliates should be approved under section 408 and 409 of the Act.

Applicant's motion for leave to file new evidence

At the outset, we must rule on the applicant's motion for leave to file new exhibits. As already noted, Judge Yoder's conclusion that the applicant should not be certificated is based upon two key findings: first, that Mr. Cimo cannot be relied upon to manage Aero West competently and in compliance with governing laws and regulations, and second, that a favorable citizenship determination cannot be made until the outstanding Hwoo and Barton claims against Aero West are settled. Aero West's new exhibits set out the applicant's efforts to resolve these concerns. While it maintains, and BDA agrees, that the applicant should be found fit on the record before the ALJ, it believes that the new information puts to rest any remaining questions about the applicant.

We will accept Aero West's post-decision exhibits, although we do so reluctantly. Allowing parties to change their sworn evidence on basic issues and substitute new evidence to satisfy perceived objections frequently leads to delay and misuse of the administrative process.<sup>5/</sup> In this case, however, the Judge's determination that the applicant was unfit is based upon very specific, narrow grounds. The proffered exhibits are directly responsive to those concerns. It is not, then, a case where, after a hearing, the applicant has attempted to overcome wide-ranging fitness concerns with cosmetic adjustments to its operations or management. Nor is this a case where there appears to be any effort to abuse the administrative process. Rather, as the Judge appeared to recognize, this is a very close case and it may be facilitated by taking very specific action.

We would also, in the normal case, remand the proceeding to the Administrative Law Judge if we decided to accept post initial decision exhibits. Generally, fitness considerations are sufficiently interrelated that the consequences of specific actions cannot be assessed in isolation. However, Judge Yoder's SID makes further procedures unnecessary in this case. In his view, Aero West's management team is competent and has satisfactory compliance disposition, with one exception -- Mr. Cimo. He expressly found that the Board could find Aero West fit "if [Mr. Cimo] were not to continue as the chief executive and chief operating officer of the company."<sup>6/</sup> Similarly, with regard to the citizenship issue he found that "the citizenship of Aero West cannot be favorably determined until all claims by Messrs. Barton and Hwoo have been resolved and Barton's stock interest had been liquidated."<sup>7/</sup> He apparently contemplated that, if action were taken to correct these two problems, the application should be approved. Consequently, if we are satisfied that Aero West's submissions meet the Judge's concerns, there would be no cause to remand the

<sup>5/</sup> See Michigan Peninsula Airways Fitness Investigation, Order 84-6-91, June 28, 1984.  
SID at 12.  
SID at 37.

proceeding. For the reasons set out below, we are satisfied with Aero West's new evidence.

Managerial competence and compliance disposition

Judge Yoder reviewed the qualifications of each member of Aero West's management team and concluded that there is no basis to question the managerial competence or compliance disposition of any of them, except Mr. Cimo.<sup>8/</sup>

Mr. Cimo, however, caused the Judge substantial concern. Judge Yoder concluded, on the basis of Mr. Cimo's handling of a number of matters, that it was not possible to find that Mr. Cimo "is competent to run the applicant without substantial risks to the public." The Judge also found that Mr. Cimo "has shown himself unwilling and/or unable to assure compliance with the Act and the Board's rules."<sup>9/</sup> At the core of the Judge's findings is an implication that Mr. Cimo's conduct was willful or deliberate. The Judge suggests that there was a pattern of inaccurate and incomplete representations in his evidentiary submissions and testimony. Having reached that conclusion, his finding that Mr. Cimo was an unfit manager naturally followed.

BDA and the applicant interpret the facts differently. In their view, the record does not support a conclusion that there was an intent to evade or mislead. Rather, they believe that, for the most part, the evidence relied upon by the Judge indicates that Mr. Cimo exercised poor judgment in handling some matters and should not be faulted on others. Aero West asks us to reverse and set aside the SID to clear Mr. Cimo's reputation. BDA would merely have us approve the application because Mr. Cimo has resigned from positions affording him executive and operational control of the company.

With respect to at least one matter, Judge Yoder's analysis is clearly correct. We conclude that Mr. Cimo bears substantial responsibility for the filing of misleading post-hearing exhibits.

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<sup>8/</sup> The management team of Aero West that Judge Yoder approved in his first initial decision changed somewhat before the second hearing. The principal change was the resignation of Joseph Sanguiano as President and Chief Executive Officer. His duties were to be assumed by David Cimo. Mr. Cimo was also to continue to act as the Chief Operating Officer and as Chairman of the Board of Aero West. In addition, Robert Resling resigned as Director of Operations and his duties were assigned to Donald Harrell, in addition to his duties as Chief Pilot. Lee Hartstein was appointed to the position of Acting Vice President, Finance. The other two members of the management team, Emil Crontea, Director of Marketing, and Fred Johnson, Director of Maintenance, were not changed. SID at 9-10.

<sup>9/</sup> SID at 14.

During the initial hearing, the probable control of Aero West by a foreign national--Mr. Hwoo--through Mr. Barton became apparent.<sup>10/</sup> Aero West then filed post-hearing exhibits which purported to show that Aero West's agreement with Mr. Barton had been amended to substantially dilute his power in the company and his power to control its operations.<sup>11/</sup> While these exhibits were subsequently withdrawn, they misrepresented the facts set forth in them. Mr. Cimo, during the course of his testimony, admitted that the purported agreement amendment was invalid, since it had not been approved by the company's stockholders and was inconsistent with the company's articles of incorporation and by-laws. Furthermore, he acknowledged that it had been filed merely in order to "test the waters . . . to see if this is the type of insulation from foreign control that the Board was really looking for us to do."<sup>12/</sup>

While acknowledging that Mr. Cimo bore some responsibility for the misleading exhibits, Aero West maintains that its then-general counsel is primarily responsible for their submission.<sup>13/</sup> Aero West notes that they were not prepared by Mr. Cimo, but by a lawyer (and a CPA) on whose advice he was entitled to rely.<sup>14/</sup> At most, it maintains, Mr. Cimo ought to have questioned his lawyers more closely. In any event, Mr. Cimo acknowledged that the documents were confusing and inconsistent, and he apologized for their submission. Moreover, they were withdrawn at his direction after the first initial decision was issued.

Our difficulty with Aero West's analysis is that it implies that corporate decisions are made, not by persons legally responsible for them, but by their advisers. While the corporation's former general counsel may bear some responsibility, the final responsibility for the filing of the exhibits must rest with Mr. Cimo who has acknowledged that he reviewed the exhibits prior to their submission, knew they were to be filed with the

<sup>10/</sup> While Mr. Hwoo owned no Aero West stock, Aero West's initial financing plan called for him to guarantee a letter of credit for Aero West to obtain startup funds from Citibank. Mr. Hwoo was to approve all draws under the letter of credit. A close associate of Mr. Hwoo -- William Barton -- was to obtain 15 million shares of Aero West stock upon the issuance of the letter of credit. These shares were in addition to the one million shares he already held in return for his payment of \$75,000 to Aero West for precertification expenses. Finally, the aircraft Aero West was to use in its operation were also to be leased from Mr. Hwoo. From these and other facts disclosed at the hearing, it was clear that Mr. Barton's role with Aero West was to protect the Hwoo interests. See I.D. at 21-24.

<sup>11/</sup> The agreement amendment provided, inter alia, that 15 million shares of Mr. Barton's stock would be denominated as Class B non-voting common shares.

<sup>12/</sup> SID at 16-17.

<sup>13/</sup> He has since left the company.

<sup>14/</sup> Aero West cites CAB Rules that recognize that a party's counsel has the principal responsibility to ensure that exhibits do not mislead. Citing 14 C.F.R. §300.6(b).

Board, knew they were incorrect, and did not undertake to correct them.<sup>15/</sup> At least on this matter, Mr. Cimo's conduct must be found to have been willful.

Nor can we find that Mr. Cimo's conduct with respect to other matters cited by the ALJ do not show willful deception, although the record is less clear. The second incident on which Judge Yoder relied involved Mr. Cimo's testimony surrounding a \$75,000 advance Mr. Barton made to Aero West to cover precertification costs. Mr. Barton first testified that the \$75,000 was a loan to Aero West. Subsequently, Mr. Barton met with Mr. Cimo and it was agreed that it would not be in the best interests of the company to treat the sum as a loan. Aero West then argued, in its initial brief to the Board, that the \$75,000 constituted an equity investment in the company and not a loan. In the SID Judge Yoder concluded that, because Aero West's representation that the \$75,000 was equity was inconsistent with Mr. Barton's original intentions, it was misleading and deceptive.

Judge Yoder also found that Mr. Cimo should have but did not disclose important information bearing on Mr. Hwoo's relationship to Aero West. Specifically, when the relationship of Mr. Hwoo to Aero West was the single controversy in this proceeding, Mr. Cimo knew that Aero West had made three draws, totalling \$66,000, on a new line of credit Mr. Hwoo had established for Aero West with Citibank and Mr. Cimo made no effort to disclose them. Disclosure of Aero West's use of the Hwoo guaranteed line of credit did not occur until shortly before the second hearing when Aero West filed revised exhibits. Moreover, it was only disclosed during the hearing itself that the \$66,000 had been drawn from a second line of credit guaranteed by Mr. Hwoo, and that Mr. Hwoo was required to approve all draws under the latter credit. The Judge concluded that these facts constituted further evidence that Mr. Cimo could not be relied upon to disclose material facts and accurately represent the status of Aero West to the Board.<sup>16/</sup>

Aero West maintains that there is no basis to criticize Mr. Cimo for submitting a misleading argument on Mr. Barton's \$75,000 advance to Aero West. In its view, the importance of the Barton-Hwoo interests to the certification decision only became apparent with the issuance of the first initial decision. Mr. Cimo cannot be faulted for the arguments made in the applicant's first brief because he did not review it until after its submission. When he became aware of the importance of the matter, he directed that the brief be withdrawn. Aero West also states that the brief accurately reflected the facts at the time of its submission -- *i.e.*, Mr. Barton had agreed that the contribution was to be an equity investment.

Aero West makes similar arguments with respect to Mr. Cimo's handling of the draws on the Hwoo guaranteed lines of credit. The Judge's criticism, in its view, is based on his belief that Aero West should have

<sup>15/</sup> 2 Tr. 192-93.

<sup>16/</sup> See SID at 31.

advised the Board of each draw on the line of credit,<sup>17/</sup> Aero West believes that, as the existence of the line of credit was known, its use was not a material change in circumstances sufficient to require additional filings. In any event, there is no indication in the record of any intention to evade or mislead.

Aero West, and to some extent BDA, really ask us to excuse Mr. Cimo's handling of these matters because the standard of care the Judge set for applicants is too high. While he would require that the applicant's management fastidiously review all documents submitted to the Board for errors and omissions and immediately bring all pertinent information to our attention, the applicant would make allowances for changing events and a lack of familiarity with Board procedures.

It has been our policy in this area to approach each case individually and to apply a rule of reason. On the one hand, we need accurate, up-to-date information in order to reach sound administrative decisions. We can only rely on the applicant, particularly its Chief Executive Officer, for such information and we have every right to expect them to be forthcoming. On the other hand, some allowances must be made for fluid situations and applicants who are unfamiliar with our procedures.

Based on the record in this case, we find that Mr. Cimo was at least negligent in his handling of these matters. As the Chairman and Chief Executive Officer of a company seeking certification, we would expect him to pay far more attention to the process than he did. His failure to do so demonstrates a lack of managerial competence. On the issue of compliance disposition, he has also clearly crossed the line. The deliberate filing of false and misleading information cannot, under any circumstances, be tolerated. Consequently, we will not excuse Mr. Cimo. Instead, we will affirm the Administrative Law Judge's finding that Aero West cannot be found to have fit management or proper compliance disposition so long as he is its Chairman, Chief Executive or Chief Operating Officer.

However, as noted above, the Judge believed that Aero West could nevertheless be found fit if Mr. Cimo relinquished his positions as Chairman of the Board, Chief Executive Officer and Chief Operating Officer. Aero West's most recent exhibits demonstrate that this has in fact occurred. He has resigned those positions. The roles of Chairman of the Board and Chief Executive Officer have been assumed by Lee Hartstein.

A review of Mr. Hartstein's 20 year professional career demonstrates that he can be relied upon to head Aero West. In succession, he operated a public accounting firm for eight years, worked as a corporate controller for Abrams Enterprises, served as a senior auditor for the public accounting firm of Schwartz, Frumm & Co., and headed a Denver-based

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<sup>17/</sup> Aero West disclosed its use of the second line of credit in exhibits submitted prior to the second hearing.



financial consulting firm and managed operations for Quest Energy Corporation. A certified public accountant, Mr. Hartstein is currently a director and the Chief Financial Officer of U.S. Jet Corporation. While he does not have extensive aviation experience, his managerial and business experience is such that he can be relied upon to attend to the details of Aero West's activities.

Operational responsibility for the company will be assumed by Mr. Harrell, the Company's Director of Operations and Chief Pilot. The Judge found that Mr. Harrell is qualified to act in these capacities. In addition to substantial pilot experience,<sup>18/</sup> Mr. Harrell's career has included management responsibilities. He has spent the last seven years with Hawaiian Airlines and held the positions of Chief Pilot and Manager of Training. Mr. Harrell did management consulting work for the By-Air Corporation from 1968 to 1976 and, prior to that, had some management responsibility for a sheet metal fabrication firm.<sup>19/</sup>

Under Aero West's management reorganization, Mr. Cimo will continue to have a role in Aero West's operations, primarily in the marketing area but also, in some measure, in the operations area. However, he will not have the final say on either executive or operations matters. He will not, therefore, be in a position to make the type of decisions that are the source of our concern about Aero West's managerial competence and compliance disposition.

Moreover, Mr. Cimo will not be able to exercise de facto control over Aero West. While he played a large role in the formation of Aero West and is, at present, its largest shareholder,<sup>20/</sup> after the implementation of the new financing plan, American Resources Capital Corporation through a newly formed subsidiary -- Aero West Holdings, Inc. -- will control Aero West.<sup>21/</sup> Mr. Hartstein, one of ARCC's four owners, will be Chairman of the

<sup>18/</sup> In 17 years in the aviation industry, Mr. Harrell has served as a pilot-in-command, flight instructor and chief pilot on DC-9, L-188, B-707 and B-737 aircraft. He has over 8900 flight hours on larger jet aircraft, including 1104 hours on the B-737.

<sup>19/</sup> SID at 11.

<sup>20/</sup> He holds 1,600,000 shares of Aero West's stock.

<sup>21/</sup> ARCC provided Aero West approximately \$47,500 for pre-certification expenses up to the time of the second hearing. The full financing plan provides that ARCC is to provide Aero West with \$1,300,000 in debt or equity funding to finance the company's startup. In return, ARCC is to receive 42 million or approximately 55% of Aero West stock. AW-109. The money will be raised in two stages -- first a \$500,000 private placement, and second, a \$3,000,000 public underwriting of Holding stock. AW-128. After the stock sales, ARCC's share of Holdings will be between 25 and 30 percent which its owners believe is sufficient for them to maintain control of Holding.

Board <sup>22/</sup> of Aero West. As a result, ARCC interests will determine the direction of the company.

Nevertheless, we conclude that we must preclude Mr. Cimo from re-assuming either the Chairman, Chief Executive or Chief Operating Officer positions at Aero West. While his role has been substantially curtailed, he will still have a voice in Aero West's affairs. Moreover, nothing in the applicant's recent exhibits suggests that he is precluded from taking a larger role at some time in the future. Our intention that Mr. Cimo be removed from positions where he has primary responsibility for Aero West's affairs could, then, be largely undermined. Consequently, we are imposing a condition on Aero West's certificate that precludes Mr. Cimo from assuming the positions of Chairman of the Board, Chief Executive Officer and Chief Operating Officer.

While our intent is that Mr. Cimo be foreclosed from these positions for the immediate future, we believe that absolutely prohibiting Mr. Cimo from ever assuming a higher position at Aero West would be an unduly harsh remedy. Time may demonstrate that the carrier's and Mr. Cimo's behavior can be relied upon to be exemplary. Consequently, at some time in future it may be appropriate to eliminate the condition we have imposed. Setting a minimum time, after which we would be willing to entertain such a request, is necessarily an arbitrary task. Considering all the facts and circumstances in this case, we have concluded that a period of at least three years should transpire before such a petition is submitted.

#### Citizenship

The citizenship issue has been resolved by Aero West. The Hwoo/Barton claims with which the Judge was concerned have been settled. Those claims were based upon Aero West's termination of the lease of aircraft from Mr. Hwoo, the letters of credit Mr. Hwoo guaranteed and the draws of line of credit by Aero West, <sup>23/</sup> and Mr. Barton's advance of \$75,000 to Aero West for precertification expenses. The Judge found that, while the amount of these claims may not be great, they were sufficient to enable Barton and Hwoo to control the company prior to certification. In addition, because Mr. Hwoo had fully performed his obligation to obtain a letter of credit from Citibank, a question remained as to whether Mr. Barton was entitled to issuance of 15 million shares of Aero West stock. He also suggested, however, that a favorable citizenship

<sup>22/</sup> In addition, Peter Futro, who, along with Thomas Bunting, owns a controlling interest in ARCC, was to become a director of Aero West. AW-110. By a letter dated September 13, 1984, Aero West informed us that Mr. Futro no longer presently intends to become a member of the company's Board. We assume, however, that he will continue as President of Aero West Holdings, Inc. and perform his obligations to raise debt and equity capital for Aero West. See AW-120.

<sup>23/</sup> Citibank terminated the letter of credit after the second hearing. However, the debt to Citibank of \$77,000 was paid by Mr. Hwoo.

determination might be warranted upon a showing that these outstanding claims had been settled.<sup>24/</sup>

Aero West's new exhibits indicate that Mr. Hwoo has agreed to settle all his claims against Aero West for \$77,424.64, plus interest. He has accepted a promissory note for that amount from Aero West, with payment to occur in two equal principal installments.<sup>25/</sup> Mr. Barton has agreed to settle all his claims for the sum of \$75,000, plus interest. He too has accepted a promissory note that provides for equal principal installments.<sup>26/</sup> As a part of his settlement, Mr. Barton has returned all his stock to Aero West and both he and Mr. Hwoo have renounced all their claims against Aero West.<sup>27/</sup>

So long as Aero West makes payment on these notes when payment is due, Aero West will unquestionably meet the statutory definition of citizenship and in fact be controlled by U.S. citizens.<sup>28/</sup> Accordingly, we will condition Aero West's certificate on the payment, when payment is due, of the Hwoo/Barton claims and require that Aero West notify us that payment has occurred.

ACCORDINGLY:

1. We find that Aero West Airlines, Inc. is fit, willing, and able to engage in schedule interstate and overseas air transportation and to conform to the provisions of the Act and the rules, regulations and requirements thereunder;

2. We issue to Aero West a certificate of public convenience and necessity for Route 450 for interstate and overseas air transportation in the form attached;

3. The authority granted here shall become effective five days after the Board has received from the FAA a copy of the applicant's Air Carrier

24/ See SID at 37.

25/ The first payment is due 60 days after issuance of a certificate to Aero West and the second 90 days thereafter.

26/ The first payment is due 60 days following the issuance of a certificate of public convenience and necessity to Aero West, and the second 45 days after that.

27/ AW-202. In addition, the only other foreign national in an executive position with the company has resigned her position as secretary and director of Aero West. She continues, however, to own 10.63% of Aero West's stock. AW-201.

28/ There is no reason, therefore, for us to decide whether Aero West would have met the citizenship requirement had the Hwoo/Barton claims not been settled as Aero West and BDA maintain.

Operating Certificate and Operations Specifications <sup>29/</sup>; Provided, however, that the Board may stay the effectiveness of this authority prior to that date;

4. The authority granted here shall cease to be effective if Aero West fails to present evidence that it has made final payment on promissory notes to T.C. Hwoo and William F. Barton within 30 days of the dates that final payment is due or Aero West otherwise defaults on the payment of its promissory notes to William F. Barton and/or T.C. Hwoo;<sup>30/</sup>

5. The authority granted here shall cease to be effective if David P. Cimo assumes any of the following positions with Aero West:

- A. Chairman of the Board,
- B. Chief Executive Officer, and
- C. Chief Operating Officer;

6. We grant Aero West's motion for leave to file new evidence without further evidentiary procedures and receive those exhibits into the record; and

7. Except to the extent granted, we deny all other pending motions, petitions, applications and requests in Docket 40662.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR  
Secretary

(SEAL)

All Members concurred.

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<sup>29/</sup> Generally speaking, an acceptable FAA safety report consists of (a) a letter to the Board from the FAA stating that it has issued an Air Carrier Operating Certificate and Operations Specifications to the carrier and (b) copies of the carrier's Air Carrier Operating Certificate and Operations Specifications. When the certificate has become effective, the Board's Secretary will issue a notice to that effect, with a copy of the certificate, including its effective date, attached.

<sup>30/</sup> Such evidence shall be filed in this docket and a copy provided to the Associate General Counsel, Pricing and Entry, or his successor at the Department of Transportation.

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

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CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

for Route 450  
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AERO WEST AIRLINES, INC.

is authorized, subject to the following provisions, the provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the orders, rules and regulations issued under it, to engage in interstate and overseas air transportation of persons.

The holder is also authorized to engage in interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions.

This authority is subject to the following terms, conditions, and limitations:

(1) The holder shall not engage in air transportation of property or mail in all-cargo service between points wholly within the States of Alaska or Hawaii.

(2) Subject to compliance with the provisions of sections 401(j) and 419 of the Act, and all orders and regulations issued by the Board under those sections, the holder may reduce or terminate service at any point or between any two points.

(3) The holder shall not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, and one or more points outside Texas except that:

(a) The holder may provide charter air transportation not to exceed ten flights per month;

(b) The holder may provide schedule passenger air transportation between Love Field and one or more points within the States of Louisiana, Arkansas, Oklahoma, New Mexico and Texas, if in connection with this service:

(i) the holder does not offer or provide any through service or ticketing with another air carrier or foreign air carrier; and

(ii) the holder does not offer for sales transportation to or from, and the flight or aircraft does not serve, any point which is outside Texas or the four contiguous states.

The exercise of the privileges granted by this certificate shall be subject to the conditions imposed by Order 84- 10-105 and other reasonable terms, conditions and limitations required by the public interest as may from time to time to prescribed by the Board.

This certificate shall become effective on

The Civil Aeronautics Board has directed its Secretary to execute this certificate and to affix the Board's seal on October 24, 1984.

PHYLLIS T. KAYLOR  
Secretary

(SEAL)