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FLYING SCHOOLS AND STATE LEGISLATION

T. LEE, JR.*

"Learn to fly" is a slogan which has been ringing in the ears of young Americans ever since Lindbergh flew to Paris. Unquestionably the urge to get into the air and to be a commercial pilot or to fly for recreation is today the ambition of a great number of young men and women.

However, a note of warning should be sounded. The demand in the commercial field today is not for more pilots but better pilots, and those who fly for pleasure should know the "why" of flying as well as the "how" of it. Consequently, those vitally interested in the sound development of aviation should be in thorough accord with the recent action of the Department of Commerce in tightening up the regulations governing flying schools. Gone are the days when flyers were self-taught or when, with a few hours of instruction in good or indifferent equipment, they took to the air to learn flying by the trial and error method.

The importance of proper regulation of flying schools is emphasized by Department of Commerce figures on accidents. For example, out of 153 fatal accidents, 31 (or 20 per cent) occurred during student instruction. Analysis of 390 airplane accidents produced the following enlightening information:

76	involved	pilots	with	less	than	50	hours' time
21	"	"	"	"	between	50-100	hours
17	"	"	"	"	"	100-150	"
20	"	"	"	"	"	150-200	"
13	"	"	"	"	"	200-250	"

Further examination revealed that approximately twelve per cent of the accidents were due to pilot's error in judgment, 29 per cent to poor technic, traceable to inadequate training, a total of 55 per cent of all accidents were chargeable to some class of pilot's error.

The above figures were for 1928, which was before the Department of Commerce promulgated certain corrective measures, following an investigation which showed: First, lack of experienced instructors; Second, unairworthy training planes, and, Third, economic pressure by unscrupulous competition on the meritorious schools. Under this last heading came schools which adjusted their

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cost to the ability of the student to pay rather than establishing an adequate standard of instruction and charging a fair price for it.

Thereupon, the Department of Commerce, which has played such a prominent and helpful part in development of commercial aviation, interested itself in corrective legislation. Congress passed an amendment to the air commerce bill of 1926 authorizing the Secretary of Commerce to provide for the examination and rating of civilian schools giving instruction in flying, as to the adequacy of the course of instruction, as to the suitability and airworthiness of the equipment, and as to the competency of the instructors.

Regulations were promulgated and put into effect as rapidly as possible making possible the rating and approval or disapproval of flying schools as to: (a) Suitability of equipment; (b) Adequacy of the course of instruction; (c) Competency of the instructors.

Clarence M. Young, Director of Aeronautics, Department of Commerce, who has demonstrated that it is the federal policy to improve flying schools and flight training, expects these regulations to result in accomplishment of the following:

1. Better and more uniform flight instruction.
2. Greater safety in the operation of aircraft and fewer accidents, due to pilots having had more instruction and a more varied experience before entering the industry.
3. Increased stabilization of the industry by providing a definite, satisfactory source of pilots.
4. Stabilization of the schools themselves by encouraging them to give a more complete course under the privileges granted to approved schools.
5. Assurance to the public of satisfactory approved facilities for obtaining flight training.

The federal regulations of flying schools set a standard for suitability of equipment, minimum size of field for safe flying instruction and facilities to maintain airplanes in an airworthy condition. The regulations stipulate the number of students that can be enrolled for each plane available for flying purposes. They deal with ground school instruction and provision is made for time limits of the course to assure a regularity of procedure of instruction. The minimum curricula requirements are set up for both flying school and ground school courses.

Schools must maintain individual records of each student, showing the progress, and schools must submit an outline of all courses to the Department of Commerce for its approval. Schools are required to maintain a standard of instruction sufficiently high to insure that nine out of ten graduates who apply for license satisfac-

torily pass the Department's tests. The federal regulations make provision for the licensing of flying and ground instructors.

The Department of Commerce policy is toward a standard which will insure approved schools with competent instructors, proper and adequate equipment and proper flying and ground school courses.

The above subject matter has been gone into in detail to show definitely that the regulation of flying schools is now in intelligent, forceful hands and that it is to the interests of aviation as well as the states themselves not to complicate federal supervision with duplicating state supervisory bodies and legislation.

At the time the States Rights Doctrine was formulated not a single statesman could have conceived of the airplane, nor of the many ramifications of the industry which have accrued from this newborn aid to commercial and social intercourse.

The airplane is a highly mobile unit. In the northeastern section, for instance, an airplane can cross the boundaries of eight states in six hours. The Department of Commerce has fixed definite requirements for transportation companies as to equipment which can be used and established flying rules. Thus effective regulation for intra-state commercial airplanes can be applied if different states merely make state legislation conform to the federal act if and when such state legislation is needed. Certain states which have progressed farthest in aeronautics have recognized the value of adopting the Department of Commerce regulations in toto.

In view of the effectiveness of federal supervision of transport activities, it is natural to draw a parallel between regulation of commercial flying and the supervision of flying schools. The omission of civilian flying schools from federal regulation was corrected by Congressional Act in 1929, thus relieving the states of the necessity of passing regulatory legislation to overcome lack of this particular legislation in the original air commerce act. For the states to duplicate the work of the federal supervisory units or to set up a separate system of inspection and supervision would require additional taxation, additional commissions or boards, and additional employees.

It must be conceded that the Department of Commerce has secured excellent personnel for school inspectors. The states, even by levying additional taxes to pay for a duplicating supervision of flying schools, would not get a better type of inspectors. Consequently, the industry or the public could not expect an improvement

in educational standards or in efficiency accruing from additional state supervision.

Definite, uniform standards insuring adequate flight training and protection of the public, under such regulations, can be obtained by adhering to the standards of the Department of Commerce as laid down in its Air Commerce regulations. (Applause.)

CHAIRMAN ZOLLMANN: That finishes the lectures for this morning.

I want to announce now that for this afternoon there will be only one paper delivered, namely, the paper of Mr. Lloyd, on "Legal and Other Problems Confronting Aviation Insurance Underwriters." The great bulk of the afternoon, therefore, will be devoted to the discussion of the resolutions, the formal resolutions which are to be passed by this assemblage.

I think the best thing now is to throw the subject of the three papers open to a general discussion, and I hope there will be a vigorous one.

LIEUT. KNOTT: If I may be forgiven for doing this immediately after reading that paper, there has been one problem troubling me directly in connection with aeronautics. Chicago, in this vicinity, seems to be beset with a certain type of air school, some where no school exists, some where they set up the machinery and simply operate a confidence game, although you could not make a charge stick in court on that, and in view of Mr. Lee's paper and in view of the references to the Department of Commerce, I am wondering if Mr. Kintz feels the policy of the Department is that it would like any state help on the question of the regulation of flying schools. I am not trying to impose on you in asking that question, Mr. Kintz.

MR. E. KINTZ (Department of Commerce): The school situation at the present time is more or less critical. We have found by the imposition of more or less strict and stringent regulations that we to some extent handicapped the approved schools. The approved schools found the so-called "gyp" operators were opening up alongside of them and were getting the money from prospective students that should go to the approved schools.

I think the situation has been corrected to a great extent at the present time so that the approved schools now are beginning to capitalize on the fact of being approved. I think the states should be a little reluctant at this time to enact any legislation affecting schools; I think the situation can be handled by contact with the Better Business Bureaus of the particular cities involved, or, if they are advertising interstate, and you will send in the evidence to us, or newspaper clippings of their so-called propaganda, we have found the Federal Trade Commission will be glad to take action on that kind of advertising. I think it can be handled at the present time through your Better Business Bureaus or your local Chamber of Commerce, rather than by legislation. I would recommend that no legislation be enacted in the immediate future affecting schools.

LIEUT. KNOTT: Mr. Kintz, I put one more question to you, and this concerns a specific example. I flew in here the other day in a Fokker Super-Universal on the Universal Lines. We had already lost most of our flying speed, and were about to come on the runway. A training plane

setting there began to turn over very rapidly. The man beside it grabbed one wing and held it down; it made wider and wider circles on the ground, and by skill which I do not understand, having been a pilot, the man got our transport plane enough out of the way so the circling, moving plane on the ground did not hit us.

I made an investigation, and found it was a plane sold under the scheme of selling Great Lakes training. I understood the instruction they were giving was excellent; I understood the pilot was all right. It happened to be his first solo and he lost his stick in landing. He had gone out to crank it up by himself, his throttle was opened in some way, and he did a stout job in holding the thing down at all.

Are your regulations such that you could keep good schools, competent schools that meet your requirements, off of airports in which interstate operations occur like that?

MR. KINTZ: I think the regulations provide, Mr. Knotts, that the airport must be adequate for the instruction, and also provide a minimum size of field, and I have forgotten off-hand whether they provide not more than so many planes shall be used in so many acres.

MR. J. D. SULLIVAN (New York): One plane for every ten acres.

MR. KINTZ: So it does cover that situation, and I do not think any schools have been approved where the flying field has been operated in conjunction with interstate operations. I am not sure about that, but I do not think it is the policy to approve a school itself when the field for instruction is operated in conjunction with interstate operations.

We have not any authority to prevent the operations of a school on an interstate-operated field, but we have the authority to withhold the approval of that school.

LIEUT. KNOTTS: That is what I had in mind. They do seriously interfere with commerce.

MR. KINTZ: That is more or less of an inspection problem, but I think it is the policy of the Department not to approve a school where the field is operated jointly, so there is danger of interference by students.

MAJOR REED LANDIS (Illinois): In connection with the school operation at the Municipal Airport, Mr. Knotts, there is one hangar on that airport which was built several years ago and whose lease does not contain a provision which is in all of the later leases, making it impossible for the operator in that hangar to run a school. We are having some difficulties in enforcing our lease provisions, because the instruction work is given around a corner, in an individual sort of way, but there are no regular schools operating from the Chicago Municipal Airport today.

Being a municipal airport, it is difficult to keep student and private pilots, and limited commercial pilots, and even young transport pilots, all of whom have far more time than I have, from flying on and off it. We are hopeful that sooner or later we will be able to devise an airport system in Cook County which will provide facilities for everybody.

If I might ask a question of Mr. Cuthell—Mr. Cuthell, on the question of states encouraging airport construction, we have had several papers which have brought that up, and there has been a suggestion made that the states should work out a plan similar to the federal aid used in road building.

I wonder what the attitude of the industry is toward that sort of thing, an industry with millions of dollars in private capital invested in airways, with which the public airports will be directly in competition. That may be embarrassing.

MR. CHESTER W. CUTHELL: Yes, it would bother us a lot to have the cities move in and put up a good airport alongside of ours, our private airports. That does not make any difference, though. All of these tracts of land are right next to the big cities. We think we will get the business anyway if we put our money into a big airport near a big city, because we can charge admission fees, parking fees and everything else that the municipal airport can not charge, but there may be now only a few dozen large airports privately owned, or possibly a few hundred. I am looking forward to another twenty-five years when there will be thousands of airports. Because we have bought some of them to begin with does not interfere with the general problem. It is a state job, and it ought not go back to Washington.

That is the whole trouble with our state legislatures and all of our Chambers of Commerce; they all have the idea there is a group of very wise people in Washington who can do things better than they can be done at home. Here you have a fine example of it, with this school business I will tell you, Mr. Knotts, that the federal government can not do anything about that fellow running around the field. The school approval certificate is purely permissive. What is there of interstate commerce in the conduct of a school? You might say the man is in danger of running into a plane engaged in interstate commerce, but that is pretty far-fetched.

Of course, when Senator Bingham urged the passage of the regulations relating to schools, he knew what he was doing. It is a fine thing to have the particular group indicate the proper qualifications of a school, and this paper you have heard indicates that, but when it comes to stopping the fellow who will not comply, there is not any direct power to do it, because it is an intrastate operation.

Now I do think the states can reach that type of man if they provide that no one can fly without either the state or federal license, and let the state go after that man. I do not think the federal government can do it.

You have the same thing exactly with all the regulations enacted under the airport rating by the Department. An airport does not have to go to Washington; it is purely permissive. We hope they will go, but very few do. That is valuable, but you can not lean on the Department of Commerce and say they are at fault if they do not provide the proper regulations for local airports and if they do not stop the improper school. They just have not the power to do it at the present time.

Again, you can not let George do all of these things. The job of stopping that type of dangerous work is right on the state and on the municipality, and they ought to move in on that part of the job right away.

MAJOR LANDIS: One more question, sir. The construction of airports, enforcement of these regulations and the rest of the work which seems to be agreed is logically state work will require money. The problem of getting money these days, after the leadership we have had in economy in Wash-

ington, is rather difficult, even in a wealthy state like Illinois, and I am wondering what the industry's attitude is toward taxation on the industry, some such as a gasoline tax, for instance, the return from which would be spent exclusively in connection with airports.

MR. CUTHELL: All the gas tax you could get would not pay for more than a few acres of land near a big city. So far as putting through a federal aid scheme is concerned, as the automobile men did with the Good Roads Movement, where they get a subsidy of \$75,000,000 a year from the United States government, I entertain no hope whatever of getting such legislation as that through.

I think the states and cities that want airports have to go out and raise their own money and put their own airports there. I do not think it is right for Chicago or St. Louis, for instance, to come to Washington and say, "Here, you are regulating it all; suppose you pay us half the bill for the new airport out here." That is ridiculous. We would be having airports built all over the deserts and everywhere else, and that is an unsound thing.

I will go further than that. I think it is unsound to lean on the federal government for the construction of fifty per cent of the roads. If I am wrong in that, I may be wrong in the other. I think any city that really has some vision behind its administration will find the way to get the money to buy the necessary vacant lots in the neighborhood, or there is always some swamp land that is wasted or a slum that needs to be wiped out, or a slaughter house district that can be taken over and improved. That can be done, and it can be done locally.

MR. T. H. KENNEDY (California): There is a question raised in my mind by Mr. Wikoff in his paper on tickets this morning. I noticed some time ago that the Boeing System has introduced a system of dual tickets. I do not know whether that is still in effect or not, charging one rate for one assumed liability and another rate for another class of liability. We are fortunate in having Mr. Allen, one of the attorneys for the Boeing System, with us, and I should like to ask him whether that system is still in effect, and what the theory underlying it is.

MR. W. ALLEN (Washington): That system is now being employed, Mr. Kennedy, by the Boeing System. As Mr. Wikoff told you this morning, he did not feel he was accomplishing anything by the provision in the ticket that the passenger assumed the ordinary risks of flying. We do feel that there is a chance that the court will uphold that limitation.

The system we follow is this: We provide that there are two classes of tickets, a Class A and a Class B ticket. One class provided that the liability of the air transportation company is limited to \$25,000. We carry insurance to that amount. The other ticket, for which we charge a higher fee, has no limitation at all.

Now I believe such a limitation has been upheld in the State of New York as applied to another type of carrier, and has also been upheld in England. Mr. Edmunds (I think I can give you that part of the article), John K. Edmunds, wrote an article on that subject in *Journal of Air Law*, 321, in which he cited the provision that we use, and he thought there was a chance of the courts' upholding it. We feel it is a reasonable limitation.

We have not adopted the ticket that Mr. Wikoff has recommended because we felt the provision he uses adds nothing to the common law as it now stands. We feel there is a chance of the courts' upholding the limitation we have adopted, and we are taking a chance on it.

MR. GEORGE B. LOGAN (Missouri): Is it not true that the New York decision was based on the New York statute which permits a railroad company to exempt itself from liability by reason of defective equipment, defects inherent in their nature, roadbeds, rails, engines, couplings and things of that sort, and that is the only state in which you will find a decision of that type?

MR. ALLEN: I think so. On the other hand, I believe you come from a state which imposes an even higher standard of care upon a carrier than any of the other states. The state of Missouri looks at a carrier in a very bad light.

Our attitude upon the subject is simply that here we have a new industry. It is facing a very hard problem, carrying, for instance, fifteen passengers in a transport plane, and when a passenger is killed our experience has been we never face a suit for less than \$100,000. When you have a problem like that it seems to me, at least from a practical standpoint, that a reasonable limitation upon the amount of liability would be looked upon with favor by a court. I do not say you could limit your liability to \$10,000 or \$15,000, but when you do as we have done, place the limitation at \$25,000 upon your liability which we cover by insurance, in view of the state of the industry as it now is, I think a court would look with favor upon it; probably reasoning by analogy from the old rules on common carriers, particularly as applied to railroad transportation, it would not be upheld, but I think it is worth taking a chance on.

MR. HOWARD WIKOFF: At the time the committee had that point up there were several tickets that were submitted—Colonial submitted some tickets; I have them in the folder, which have A, B, and C coupons. On ticket A you pay the regular fare, and the maximum liability, we will say, is \$15,000. B is double fare another ticket, with a maximum liability of \$25,000. C is another, with, we will say, triple fare, and the maximum liability is \$30,000.

There were no tickets submitted at that time like Mr. Allen says they are using at the present time. The matter was not only discussed in the committee, but with all of the Traffic Managers, and at that time it was their opinion that it would be a detriment to the sale of air transportation, and it was not put in from a legal standpoint, but because of the Traffic Managers' saying, "We want to sell the tickets with the least sales resistance possible."

It was my opinion at that time, that after collecting the triple fare and putting a maximum liability on that, your contract would not hold water, but if you will use it as the Boeing Company are doing, I do not doubt, and it is my opinion, that their ticket is perfectly legal, if they make no maximum on the top. I think that is perfectly logical, but where you charge triple fare and then put a maximum liability there, I do not think any court will sustain it, because you might prove damages or personal injuries that would run over \$100,000; but the main reason we did not do

it was on account of the Traffic Managers' saying, "Don't give us sales resistance."

MR. KINTZ: I should like to bring to the attention of the conference a statement in connection with Mr. Cuthell's statement on schools.

Mr. Cuthell is correct in stating the Department can not compel the rating of a flying school, but there has been a decided advantage, both to the schools and to the public at large, from being able to advertise that they were an approved school of the Department of Commerce. It has been a decided advantage to the public, because before the passage of the Bingham amendment, boys and parents wrote in to us requesting information on a particular school.

Due to the fact that we had no authority to investigate schools we were unable to advise what school to attend at all, or whether a school was fit to attend. Under the rating regulations we have been able to establish uniform school instruction; consequently when a prospective applicant for flying instruction writes in to the Department we are able to state whether the school has been approved, and the applicant is assured of competent, uniform instruction, and students will be able to get their money's worth.

The Federal Trade Commission has taken action against certain flying schools because of their improper advertising, and I think has been able to prosecute some of them under these provisions, so it has been a decided advantage both to the school and the public at large.

MR. CUTHELL: I applaud everything the Department of Commerce has done. I think it is a fine job. So long as you have live men like MacCracken, Young and Mr. Kintz there, everything is going to be perfectly lovely, but you have to assume bad administration, too. Uniformity is fine, so long as it is good and sound. Uniformity bad and oppressive is very bad indeed, and it takes many years to get over the effects of it.

Of course, the business generally, as we look forward to it, does not take the school matter very seriously, because we think we are improving the product so rapidly at the present time that before long there will be no more schools, and the training will all be done by the manufacturers.

It is a fine thing to have a place where you can get the consensus of opinion of what is a proper flying course at the present time, and that is the job that has been done splendidly by the Department of Commerce. I would not have them cease and desist for anything in the world, Mr. Kintz, but I point out the fact that they can not stop, at the present time, these cut-rate things. There is nothing illegal about doing a job in a cheaper way than the people who think they know all about it, and many times the best pilots have come out of the so-called "jitney" schools. You never can tell.

I never had the pleasure of meeting Mr. Allen before, but I see he is advising the Boeing line, one of the finest in the world, and I see he has the same doubt about whether we have to get aboard the common carrier idea as I have, and I think the thing he has put in his tickets is a very sensible one, a limitation with different grades of rates. It is something we are all terrified about. It is not a question of not being willing to play the game, but when you see actions coming at you at the rate of

\$500,000 to \$1,000,000 for a single accident, we will not be in business unless we can cover it all by insurance.

We are taking the gamble. We are not common carriers at the present time. We are not going to submit to regulation of our rates, and I hope no state tries to do that. Let us get into existence first, before you try to regulate rates. We want to charge what the traffic will bear. We want to establish the services that are actually demanded.

Now, of course, at the Air Transport Association, with the Traffic Managers present, they are the salesmen. The Sales Department of any industry or business wants the price reduced, because it simplifies their problem. They do not want to annoy anybody by having them sign things; of course not, but it is absolutely necessary, in my judgment, at the present stage of development of air transportation. The passengers must be made to understand they are not getting the same degree of financial protection when they get aboard an aeroplane that they get when they get aboard a railroad train. The two things are different.

A passenger knows, he must know, the state of the law with respect to air transportation companies' liability is not yet settled, and there is only one way to do it, and that is to tell him so, and have him sign the ticket.

MR. RUSSELL WILCOX (Wisconsin): Do you think that binds his personal representatives in case of death?

MR. CUTHELL: So far as we have been able to find out it does.

MR. WILCOX: Do you not think in all this discussion we are rather stepping beside the point and making it difficult to find out what the law is, by some saying we are not common carriers and some saying we are but we do not want to be? Last year at the Mid-West States Conference Mr. Logan and Mrs. Willebrandt had quite an interesting discussion on the common-carrier subject. If we could decide whether the carriers are common carriers it would be quite simple to decide what the liability is.

MR. CUTHELL: I do not know how to decide it. I think we have to have the thing drawn up in an interested court, with a fine, clean mind, and have that law developed. I do not think we can go into it by stating we are or are not in a statute. I think the statute should follow the considerations by the court rather than try to lead it. I do not think we can organize this business at the present time and conduct it if we have a great liability imposed by the statute that we are common carriers, and that we are liable as railroads are.

MR. WILCOX: Are you going to induce the public to feel they are safe in traveling if the transportation companies insist on stepping aside and saying, "We are not common carriers"?

MR. CUTHELL: I think that is the fact; Mr. Allen has covered it well. The passenger knows when he signs the ticket that that is the liability of the particular company. In many states we have limitations of liability for death on a very moderate basis, say, \$10,000, and no matter how you are killed, it is \$10,000. You have that now, so you can not get uniformity even on that proposition.

MR. JOHN VORYS (Ohio): On this question that has just been discussed, to all of us who go around chanting a regular gospel of safety and the reliability of modern air transportation it comes as a distinct damper every time we see a ticket with all of these ominous disclaimers of liability

and reliability, not only as to accidents, but as to ever getting one anywhere. In so far as the ticket is declaratory of what the general situation is, the ticket adds nothing to the legal situation, but certainly detracts from the sales situation and from the development of the entire industry, not, possibly, as a legal matter, not as a matter for an aeronaut or not as a matter for an Air Law Conference, but as a matter of public confidence, which surely, if the industry does not decide for itself, will be decided for it by legislation.

Would it not be possible to give the kind of ticket that carries out in some way the selling talk that has accompanied the passenger up to the time he receives this ominous document and reads it over, and, if he has any sense and any fear, decides that he is going to travel some other way?

I have wondered whether the development that we have had of Workmen's Compensation, a development that we have discussed in most places and have not adopted, of liability in automobile cases, could not be applied from the outset in this industry, taking the angle and attitude of attempting to solve the problem instead of the traditional attitude of any carrier, of fighting to the last ditch in every possible way any attempt to hang any liability on him.

For instance, as a matter of law, without any statutory enactment, whether it would not be possible to have a ticket which would give your passenger an alternative. You would, on the one hand, insure him; the company would assume liability within certain limits for any accident. You could then go to the public and say, "You are not only safe, but we insure your safety. If you have an accident occur to you, you do not have a lawsuit as to whose fault it was, or how it happened. If you are hurt you are paid (within certain limits)", which would be possible to be carried by insurance, since your insurance coverage is based on limits already. I do not think that would change the rates substantially.

On the other hand, the passenger would have the alternative, under that ticket, of not accepting the contract, but of suing under a common-law liability, as set forth in the ticket, for unlimited damages in case he recovered, but he would have the duty of recovering.

I feel confident that would be a proper legal sort of document, to give him such alternative, and would be perfectly simple. The reservations on the ticket would have to do with the safety of the thing and the reliability and liability of the company, instead of the ominous series of disclaimers, and as a practical matter, would that not be accepted by those who are injured, that is, the sure money, although in smaller amounts, rather than a gamble on the larger amount?

If that can not be done merely by contract, would not the solution Missouri has taken, going along the lines of Workmen's Compensation, in which you would charge the industry, possibly from the beginning, and possibly with the cooperation of the industry in working the problem out, and therefore making the best bargain possible, with an absolute carrier, but with a limitation in there as to amounts, some sort of scale limitation as to amount, so you do not have always present the catastrophe element which can wipe out the largest companies, and could wipe out most of the insurance companies if catastrophes happened as are perfectly possible to happen with high-priced people getting themselves killed, be a sound solu-

tion? I wonder whether it is helpful to have the leaders in the industry taking the traditional attitude of the now common carriers, or whether it is not certainly better from the sales standpoint, and the sales standpoint is determining the life of this industry, to meet this problem, to have a legal liability that will be somewhat in accord with the sales talks, and to have a little liability, I think, that would be limited so that a catastrophe could not wipe out the company, as would be possible at the present time.

MR. CUTHELL: The first suggestion was that we include in the fare automatic insurance for the passenger, that is, when he bought his ticket he knew he was going to get something. We tried that, and were stopped by the Insurance Commissions of various states. They said we were in the insurance business. We had a \$5,000 policy for everybody included in the fare, and we did not require, when we paid the \$5,000, a release of any other legal liability.

Specifically, in the Mount Taylor accident, all the people killed there accepted that \$5,000 and we did not ask them for a general release, but that ended the situation. That was an unusual group of people. We have had to stop that. We are not permitted by the insurance departments to do that. Now we have, all of us, I think, insurance against what we call the public liability. We all carry that, and that generally runs \$20,000 per passenger, with a limit of \$200,000 in any one plane-load of people. That is all carried now, but then we come right back to our difficulty—what is the legal liability? We do not know, and until we do know, we can not assume what the salesman would like to have us assume, that this is a wide-open liability for any amount the juries might seek to impose.

The difficulty is on proof. An accident happens over a desert country. There are no eye-witnesses, as frequently happens, or some farm hand sees a plane come down. Nobody knows what has happened. It might have been negligence, even with the finest plane and the finest pilot, on the part of the pilot or a defect in the plane. Who is liable?

I have tried to get the question of *res ipsa* to determine it, but we have not had it determined. We are going into session this afternoon once again on the matter of compulsory insurance, but we have to watch it carefully. That will be construed as a scheme to eliminate the small companies, because they will not be able to put up the large bonds required. There are political sides to this thing also. We are not assuming the attitude that we are not going to compensate within the limits of our financial powers anybody hurt due to our fault. In an ordinary negligence accident, the burden is on the plaintiff all the time. We do not want to have the burden shifted to us, with no witnesses at all that we were entirely free of negligence.

It is a very difficult question. We are struggling with that, and we have some hope of getting a real settlement. Our difficulties are increased because of the insurance business in our country. We have an insurance business in our country, but when we come to a suit we find we are dealing with twenty-four different British companies. The American company, I think, has one-twenty-fifth interest in the outcome of the case. All of this insurance is reinsured in the world market, which is largely the English market, so we can not deal only with the American insurance companies to work it out.

It may be, as the business grows, that there will be, will have to be, a state or federal insurance fund, I do not know, whereby the transport companies will have to give adequate assurance to the state or federal officials of financial responsibilities to discharge a definite obligation in respect to the life of every single passenger we take on.

We are not up to that point yet, and I say with that degree of lack of general understanding, lack of meeting of minds of the decent and the best people in the business and everybody else, that we will be very foolish indeed to urge in any group a uniform state legislation. We would be jumping far ahead of the present development as to how to conduct these operations. We have in all of these companies the uniform desire to see to it that whenever an accident happens, where there is any suggestion of negligence on our part, a quick settlement (disregarding the insurance companies, and recovering from them if we can), is made.

The shipping people went through all of this before. It is nothing new. Shipping without insurance is a gamble, and with insurance it is a regular business, and we shall find the same thing with air transportation.

CHAIRMAN ZOLLMANN: The time is drawing short. There are two more members of the assembly who have asked to be recognized, and we shall have to be content to hear them and then adjourn the meeting.

MR. GEORGE B. LOGAN (Missouri): At the risk of the bad taste involved in disagreeing with my boss, the Chairman of the American Bar Association Committee, I agree with Mr. Vorys that it is a bad thing for the aviation business to have the advertising department and the sales department bring a passenger in, a prospective passenger, and have him confronted with the document prepared by the legal department, which, if he reads it, scares him out of the plane, and which, if he does not read it, raises a brand new question. It is a contract, prepared by the company, which he has to sign willy-nilly, and if the company is a common carrier the chances of that contract being introduced in evidence are remote, and the chances of it being upheld are more remote.

Out of some experience in trying damage cases and in trying insurance cases, I have this comment to make on Mr. Allen's arrangement. Your insurance rates are at present based on guesswork, and the guess is on the highest liability, the highest degree of care. Eventually the insurance rate is going to be on actual percentages of what the losses cost the company.

Putting in a limitation of \$25,000 and that contract being introduced in evidence in a case where the verdict ought to be from \$5,000 to \$7,500 is inviting the jury to bring in a verdict of \$25,000, and where that contract is attempted to be introduced in a case where the injuries probably justify a greater verdict, you will not get it in, and it would not be upheld, and from the standpoint of policy I believe the effort of the company to limit their liability, irrespective of consideration, whether for an extra fare or whether in lieu of life insurance (and, by the way, I think that is purely a contract also), in fact the aviation industry is working toward its own detriment. (Applause.)

MR. JOHN EDMUNDS (Illinois): At the expense of encroaching for just a minute on our lunch time, I feel maybe I ought to say something, since I am responsible for the article Mr. Allen referred to. The ticket of the Boeing Company, I think, beyond any question would be legal in England,