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CSPA BULL-A-TON

Inside this issue:

What say the Reeds at Runnymede?
Poem by John Donne

(Runnymede was where the Magna Carta was sealed)

...At Runnymede, at Runnymede,
Oh, hear the reeds at Runnymede:
'You musn't sell, delay, deny,
A freeman's right or liberty.
It wakes the stubborn Englishry,
We saw 'em roused at Runnymede!

When through our ranks the Barons came,
With little thought of praise or blame,
But resolute to play the game,
They lumbered up to Runnymede;
And there they launched in solid line
The first attack on Right Divine,
The curt uncompromising "Sign!'
They settled John at Runnymede.

At Runnymede, at Runnymede,
Your rights were won at Runnymede!
No freeman shall be fined or bound,
Or dispossessed of freehold ground,
Except by lawful judgment found
And passed upon him by his peers.
Forget not, after all these years,
The Charter signed at Runnymede

Bull-a-Ton Newsletter Editor:
Mary Chlopek

Navigable Waters Forever Free

President's Message: August 1, 2011

The year 1215 was a great year for seaplanes. Prior to that, a King had the sovereign right to do whatsoever he pleased, with the forests, waters, fish and wild animals of his lands. He owned them. In that year the Magna Carta was adopted, requiring the King to renounce some of those regal rights, and to respect legal procedures, and to accept that he was now bound to laws of other men. Thus it was that Clause 33 in the Magna Carta, as amended, required the King to remove all of his private fish weirs from the rivers.

After the Magna Carta – with the removal of the weirs – the rivers could become highways for travel, by all common peoples. River access laws that we use in the United States, in many ways, rely on this great document as a foundation.

When the U.S. Forest Service and Oregon's then-Governor Kulongoski wished to turn Waldo Lake, Oregon's largest, into a private waterway for paddling canoeists, I wondered if we were not returning to that pre-1215 era of Kings and Queens. Apparently a group of elite environmental Princes thought the lake should be just for them, at the exclusion of everyone else. Your seaplane community fought the U.S. Forest Service in court and won the right to continue to use the waters of Waldo Lake as part of our "highway" for travel. The Court even instructed the U.S. Forest Service to reimburse our legal costs.

However, when the feds failed, our then-Governor Kulongoski, on his own horse, took up the charge. The Marine Board Chair told the other Board members that the Governor had made it abundantly clear that his vision of Waldo Lake is as a "pristine, non-motorized sanctuary." So it was no surprise that the Marine Board did what they knew they were supposed to do.

Queen Marie Antoinette, wife of French King Louis the XVI, is famously known for creating, in the middle of the Royal Grounds of Versailles, a Disney-like miniature primitive village with a folie mill, a windmill, a marble dairy-house, and 12 small grass roofed cottages. Royalty is not always able to judge the real needs of the common people. During a period of famine, she is alleged to have said: "Let them eat cake." In 1973 I had the good fortune to visit Versailles, and 9 of the cottages were still there, along with the mill. Hired hands are still paid to populate the village, and make it seem almost real.

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Navigable Waters Forever Free

President's Message: August 1, 2011 (continuation)

It is puzzling that the Marine Board rule did not prohibit metal and fiberglass boats as well, and prescribe log and bark canoes only. That would have more consistently worked toward an authentic pristine view of the lake, for the RV visitors along the shore.

I am a fierce environmentalist, trained by a father who was a college student of pioneering ecologist Aldo Leopold. The interconnectedness of all life and beings is a sacred concept to me. With my father and brothers, I have paddled hundreds of miles by canoe, through truly remote areas of Manitoba and the Northwest Territories. With no roads, or trains, or airports around, only canoes, seaplanes, and hikers can physically visit those locations. In spite of that difficulty of travel, it was evident that people did live there. We found recently decorated native grave sites and other direct evidence that human beings were an interconnected part of "wild" landscape. My soul thrives on the occasional visit to a true wilderness like those I saw, but I seriously question the wisdom of the artificial creation of a folie wilderness, where outboard motors are banned, but radios, generators, and RV's are not.

1491, a book by Charles Mann with the subtitle "New Revelations of the Americas before Columbus," debunks the romantic American modern view that prior to Columbus the Americas were a human-less wilderness. Mann writes:

> *"Much of the environmental movement is animated, consciously or not, by what geographer Willliam Denevan calls "the pristine myth" – the belief that the Americas in 1491 were an almost untouched, even Edenic land, "untrammeled by man," in the words of the Wilderness Act of 1964 … Yet if the new view is correct and the work of humankind was pervasive where does that leave efforts to restore nature?" (page 5).*

When Oregon was admitted to the Union by Act of Congress on Valentine's Day, February 14, 1859 the need for rivers and waterways as fundamental transportation routes was not questioned. To maintain an equal footing with the other states, Oregon was given ownership of the beds and banks of all of its rivers and lakes. The federal government gave up all ownership of these, but with conditions.

Section 2 of the Oregon Admission Act states:

> *"… and all the navigable waters of said State, shall be common highways and forever free, as well as to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll therefor."*

One hears an echo of the Magna Carta in those words. In fact, seaplanes do navigate the waters of Waldo Lake with purpose of travel. To prohibit seaplanes from Waldo Lake should require a legal finding that there is a problem. However, there is no record of pollution to the lake, hazard to other users, or anything else. The Prince's fishing weirs should not be allowed to close those waters. Waldo Lake is for everyone.

Your Columbia Seaplane Pilots Association continues to protest the closing of Waldo Lake to seaplanes – arguing that the Marine Board rule: a) did not follow appropriate legal procedures, b) for seaplanes should have been a rule by the Aviation Board which is the agency that actually governs seaplanes, and c) requires an act of Legislature (not the Marine Board) in any case. Given the Magna Carta, the Oregon Admissions Acts, and the rule of law that all of us have to follow, we believe we will prevail.

Aron Faegre

Aron Faegre, President
Columbia Seaplane Pilots Association

A couple of interesting and informative articles in a recent AOPA Aviation eBrief edition. See free subscription information following this article...*

Pilot Counsel:
Electronic Flight Displays and the Courts

By John S. Yodice

Some say that it was inevitable that a manufacturer of electronic flight displays would get sued over the in-flight distraction that a display might cause. We now have such a case. As a result of a fatal midair collision, Garmin was sued, alleging that Garmin failed to warn of the risks associated with the use of such a unit by non-instrument-rated pilots operating in good visual flight conditions. A summary review of this case offers some valuable insights into the law of torts, and specifically the subclassification of product liability, as it applies to our flying.

A Lancair 235 and a Cessna 172, both operating VFR in good weather, collided over Ohio, killing all four occupants of the two aircraft. Neither aircraft was, or was required to be, in contact with any air traffic control facility. The collision killed the Lancair owner and his very experienced professional-pilot passenger, and it killed the flight instructor and his instrument trainee in the 172. The Lancair pilot-owner took more than 10 years to build the single-engine, low-wing aircraft. His efforts earned the aircraft a prestigious EAA workmanship award.

The Lancair owner installed a Garmin GNS 430 navigation unit about a year prior to the crash. The unit, of course, is capable of displaying a moving map that charts the progress of the airplane in flight (represented by a white airplane icon) relative to a desired course being flown (represented by a magenta line), which are key facts in this case.

The National Transportation Safety Board investigated the accident. The NTSB report includes the radar track showing the path taken by the two airplanes. The faster Lancair overtook the Cessna, hitting the side of the Cessna at a crossing angle of approximately 61 degrees, at an altitude of between 2,300 and 2,500 feet. The NTSB report concludes that the Cessna should have been visible to the pilots of the Lancair for 40 seconds leading up to the collision. A witness who saw the airplanes just prior to the crash observed them both in straight-and-level flight. The witness noted that neither airplane made any apparent effort to avoid the collision.

The plaintiffs hired four aviation experts to advance their case. Reviewing this radar track, plaintiff's experts describe the Lancair's path as a straight line, which they contend could only be produced by navigating using the GNS 430. According to these experts, the straight character of the Lancair's track rules out the possibility that the pilots employed any of the other three acknowledged methods of flying—dead reckoning, pilotage, and VOR. Thus, the plaintiffs' experts conclude, the Lancair pilots must have been flying the airplane by maintaining eye contact with the GNS 430 and manipulating the controls to keep the white airplane icon on the magenta line. "Close tracking," they called it. In doing so, the pilots abrogated their duty to look through the windscreen for other traffic. They thus failed to see and avoid the Cessna in the final 40 or so seconds of the flight during which it should have been in plain view.

Originally, the suit alleged that,

1. Garmin defectively or negligently designed the GNS 430;
2. That it failed to properly train or instruct customers in the appropriate use of the device; and,
3. Garmin failed to warn of the risk inherent in its use by non-instrument-rated pilots. But, as the case developed and because of the specifics of Ohio law, the case ultimately was reduced to the "failure to warn" allegation.

It was acknowledged that the GNS 430 is widely available—counting its companion model, the GNS 530, Garmin had sold more than 100,000 units at the time of the suit. The packaging of the sale includes a "Pilot's Guide and Reference Manual," an Addendum, and a CD-ROM. None of these materials contained any warning or instruction concerning the risk at issue in the case.

On Garmin's motion for summary judgment, the court dismissed the case, obviating the necessity for a trial. The court granted judgment on three grounds:

For one, the plaintiffs failed to present any evidence that Garmin knew or should have known of the alleged risks, a necessary element of a "failure to warn" case. The court said: "The mere *possibility* that the device could be used in a dangerous fashion if a pilot disregarded his acknowledged duty to scan for other traffic—a duty specifically put in place to ensure safe flight practices—does not suffice to establish Garmin's knowledge of the risk that it would, in fact, be used that way."

For another, that the purported "risks" were "open and obvious." Under Ohio law, failure to warn or instruct "about open and obvious risks or a risk that is a matter of common knowledge" does not render a product defective.

And for the third, the GNS was not the proximate cause of the accident. "The court finds that the Lancair pilots' inattention to their duty to maintain a visual scan severed any causal connection between Garmin's alleged failure to warn and plaintiffs' injury as a matter of law."

We don't know yet whether this judgment will be appealed.
Aside from the legal aspects that are the subject of this particular column, it is also a reminder of our duty to see and avoid other traffic, particularly when operating behind our wonderful electronic flight displays.

*Subscribe to Aviation eBrief at http://www.aopa.org/ebrief

AOPA lands seat on the FAA's avgas transition committee

The Aircraft Owners and Pilots Association has been granted a seat on the Federal Aviation Administration's unleaded avgas transition aviation rule-making committee. "The chartering of the rule-making committee and naming of its members is clear evidence that the FAA is stepping into a leadership role on the issue -- a role that is vital if we're going to succeed in finding an unleaded alternative," said Rob Hackman, AOPA's vice president of regulatory affairs and liaison to the GA Avgas Coalition.

I have always wished that my computer would be as easy to use as my telephone. My wish has come true. I no longer know how to use my telephone." **--Bjarne Stroustrup, Danish computer scientist**

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Rich Wass is looking for amphibious ultralights for purchase. If you know of some looking for a good home, please contact him at 541-316-0341, or by e-mail: mav86@hotmail.com

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