

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRIENDS OF THE EAST HAMPTON AIRPORT, INC.,
ANALAR CORPORATION, ASSOCIATED AIRCRAFT
GROUP, INC., ELEVENTH STREET AVIATION LLC,
HELICOPTER ASSOCIATION INTERNATIONAL, INC.,
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,
INC., SOUND AIRCRAFT SERVICES, INC., and
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

No. 15 Civ. 2246 (JS) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

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SUPPLEMENTAL DECLARATION OF KURT CARLSON

I, Kurt Carlson, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Chief Executive Officer of HeliFlite Shares LLC (“HeliFlite”), one of the Plaintiffs in this action. I make this supplemental declaration, based upon personal knowledge, to respond to certain inaccurate assertions in the Town of East Hampton’s memorandum and declarations opposing Plaintiffs’ motion for a temporary restraining order.

2. First, it is flatly wrong for the Town to claim that the East Hampton Airport (“HTO”) offers no commercial service. HeliFlite is a commercial service provider and we have been offering our services at the Airport for over 15 years. Other commercial service providers also service HTO.

HeliFlite’s Damages are Tangible and Already Occurring

3. It is incorrect for the Town to suggest that HeliFlite will not be harmed by the Restrictions because HeliFlite can simply replace its fleet with aircraft not subject to the Town’s

“Noisy Aircraft” definition. That suggestion shows a serious lack of understanding of how a charter business operates.

4. It would be impossible for HeliFlite to sell four of the seven helicopters it operates because those aircraft are owned by our clients as part of HeliFlite’s fractional ownership program and managed fleet operations. Moreover, even if HeliFlite could sell the remaining three helicopters that it does own, those sales could not take place before the end of the summer season, as sales typically take a long time due to the need to locate a suitable buyer, to have the buyer inspect the aircraft, and to negotiate the sale.

5. Replacing aircraft for a Part 135 operator is not like trading in a car at a local car dealership for a newer model; it is an expensive and time-consuming process. It could take months to obtain a different helicopter that is not deemed to be a “Noisy Aircraft” under the Town’s arbitrary definition. Helicopters cost as much as \$15 million and considerable lead time is typically required in purchasing a helicopter from a manufacturer. Even if HeliFlite could quickly purchase an aircraft that was compliant with the Restrictions, it would take between 6 months and one year to satisfy federal regulatory requirements before HeliFlite could use that aircraft for charter services. Among other requirements: (i) HeliFlite would have to register the helicopter with the FAA under HeliFlite’s licenses; (ii) all of HeliFlite’s pilots would have to be trained and certified to operate the helicopter; and (iii) all of HeliFlite’s mechanics would need to be trained to service the aircraft. It would be impossible to accomplish all of the foregoing before the end of the 2015 summer season. The Restrictions contain no grace period or lead time that would allow us to accomplish these steps before the Restrictions take effect and begin to cause us serious harm.

6. Even if HeliFlite could liquidate its fleet and replace it with a fleet of compliant helicopters, there is no guarantee that the Town will not again amend the Local Laws to ban helicopters. The initial restrictions proposed by the Town in February 2015 included a total ban on helicopters for five months of each year (May through September). It is my understanding that this proposed total ban has been temporarily tabled, and that the Town expects to revisit that potential restriction, perhaps as soon as September 2015. *See* Declaration of Larry Cantwell ¶ 24. In this uncertain climate, HeliFlite cannot reasonably be expected to make multi-million dollar investments in different helicopters.

7. As I previously advised the Court, HeliFlite's damages from the Restrictions will be severe and are not speculative. I and other HeliFlite personnel have carefully examined HeliFlite's operational and business records. Based on that review we have determined that the One-Trip Limit alone will prohibit most of HeliFlite's operations, resulting in an estimated 80–90% decrease in operations to and from HTO. HeliFlite will lose significant revenue and market share as a result of the Restrictions. We do not yet know if the Restrictions will put us completely out of business, but that is a real possibility, along with forced restructuring, downsizing, employee layoffs and loss of equipment.

8. HeliFlite is already being damaged by the Restrictions. Already, we are seeing competitors try to capitalize on the Restrictions. Operators of sea planes and single-engine helicopters – aircraft that are arbitrarily deemed exempt from the “Noisy Aircraft” standard simply because they have no published EPNdB noise level, regardless of the actual noise those aircraft generate – are vying for our market share.

9. Bookings for the Memorial Day weekend are almost non-existent at this time. That four-day period is usually one of the busiest of the year and is vital to the cash flow and sustainability of the company.

10. Because of the threat of the Restrictions, we also have deferred hiring necessary, seasonal personnel, thus harming our ability to deliver the services that we are contractually obligated to provide to our clients. We have been unable to sell summer trip packages this spring – vital to our sustainability – due to the uncertainty caused by the Restrictions. We will also be required to refund significant funds to certain clients if the Restrictions take effect.

11. HeliFlite is suffering real, irreparable harm already, and the Restrictions have not even taken effect.

Safety Issues

12. The Restrictions will further severely harm HeliFlite because our business model caters to individuals who want to or are required to travel in twin-engine helicopters with two pilots – the safest helicopters available. For example, a Fortune 100 company that HeliFlite serves requires that its employees be transported in twin-engine helicopters for safety reasons. All of HeliFlite’s aircraft are twin-engine helicopters with two pilots, and are equipped with enhanced safety features that are only available in twin-engine helicopters. To my knowledge, the Restrictions classify all twin-engine helicopters as “Noisy Aircraft,” with the limited exception of a few aircraft models that are either unavailable or unsuitable for passenger transport. The only helicopter model that could realistically be used for passenger transport that would not be subject to the “Noisy Aircraft” standard is the Bell 407, a single-engine helicopter.

13. Accordingly, even if HeliFlite could acquire a fleet of Bell 407 single-engine helicopters that are exempt from the “Noisy Aircraft” standard, it is entirely unclear that our clients would travel in them. HeliFlite’s entire business model is threatened by the Restrictions.

14. It is very concerning that the Restrictions bar the helicopters considered by HeliFlite, its customers, and many in the industry to be the safest, while exempting from the “Noisy Aircraft” definition certain single-engine helicopters that are considered to be less safe. In my view, the Town drew this dividing line between single-engine and twin-engine helicopters without considering public safety and without ever attempting to measure the actual noise impact of either single or twin engine helicopters.

15. Moreover, twin-engine helicopters have greater passenger capacity than single-engine helicopters, so in order to service the same number of clients in single-engine “compliant” helicopters, operations to and from HTO would greatly increase (casting doubt on whether the Restrictions will reduce noise even if implemented).

The Immediate Harm to HeliFlite in May and June of This Year

16. The Town claims that if the Court declines to issue a TRO, the operators will not be irreparably harmed because there were only 346 operations at HTO in May 2014, which was “1%” of annual operations at the Airport. (Town Br. at 24–25). This is misleading and inaccurate. Twelve percent of HeliFlite’s summer landings at HTO in 2014 occurred in May and were highly concentrated during the Memorial Day weekend. The “1%” figure cited by the Town includes all aircraft, including all recreational aircraft. It is not an accurate indicator of the harm the Restrictions will cause to HeliFlite.

17. If the Court were to deny Plaintiffs’ TRO motion on May 14, HeliFlite will be immediately harmed during the month of May, and all months going forward. Memorial Day

Weekend is May 23rd and 24th, and many of our customers would ordinarily fly to HTO for that holiday weekend beginning on May 21st – just seven days after the TRO hearing. If the TRO motion is denied on May 14, HeliFlite will be tangibly and immediately harmed throughout May. Clients will immediately cancel bookings and find alternative transportation primarily with competitors, which will lead to severe revenue and market share losses. In 2014, 43% of our flight revenues for the month of May were generated in the last seven days of the month which included Memorial Day weekend.

18. Similarly, June travel will be curtailed severely.

19. Last year, 30% of our annual HTO landings occurred in May and June. With the disruption caused by a denial of our TRO request, chaos will ensue amongst our client and employee base as service opportunities and revenues evaporate, seasonal hiring efforts are abandoned, and existing employee headcount is necessarily reduced.

20. May is typically the month in which HeliFlite acquires new customers for the upcoming season. However, the uncertainty caused by the Restrictions has led to a near halt in the acquisition of new customers. The financial impact from this harm cannot be measured because HeliFlite does not know how active these customers could have been.

21. Accordingly, if this Court were to deny the TRO on May 14, even if this Court were to schedule a preliminary injunction hearing for late May or early June, HeliFlite will have been seriously harmed in the interim.

22. Based on last year's records, HeliFlite estimates that the Restrictions will bar HeliFlite from conducting 140 operations to or from HTO between May 21 (the Thursday before Memorial Day weekend) through June 30, with a corresponding loss of revenue to HeliFlite of at least \$1 million. The anticipated impact of the Restrictions in May alone would affect 50 flight

operations, causing lost revenue of \$350,000 – all concentrated around the Memorial Day weekend, which begins seven days after the TRO hearing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: May 12, 2015
Newark, New Jersey


Kurt Carlson