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**SERVED NOVEMBER 15, 2006**

U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, D.C.

2006 NOV 16 P 1:52

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IN THE MATTER OF

TRANS DESIGN, INC.

FAA DOCKET NO. CP06EA0007  
(Civil Penalty Action)

DMS NO. FAA-2006-24656 - 13

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**ADMINISTRATIVE LAW JUDGE'S ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR DECISION**

On October 26, 2006, the Complainant filed a motion for a decision on the pleadings. Since the Complainant submitted material dehors the pleadings in support of the motion, it comes to me as a motion for summary disposition. The Respondent did not file a timely answer to the motion.

The Respondent is a shipper of hazardous materials. It employs people to prepare shipments of hazardous materials and to document the contents of those shipments in the shipping papers that accompany them. As such, it is considered a "hazmat employer" for purposes of the Department's Hazardous Materials Regulations (HMR). One of the employees that the Respondent used for the purpose of preparing and documenting its shipments of hazardous materials was an individual named Ngu Tran.

Sections 172.702 and 172.704 of the HMR set forth certain requirements with respect to the training that employees such as Mr. Tran (who are called "hazmat employees") must have before they are allowed by their employees to deal with the shipment of hazardous materials. Among other things, hazmat employees must go through a course of training at least once every three years. The charges the FAA filed against the Respondent

alleged that while Mr. Tran had been trained in the past, he had not been re-trained during the three-year period ending on July 6, 2004, when he was used to endorse and otherwise deal with a shipment of hazardous materials that was tendered to Scandinavian Airlines for transportation from John F. Kennedy Airport in New York to Gdansk, Poland.

During the pre-hearing discovery phase of this case, the Complainant served requests for admission upon the Respondent. In response to the requests, the Respondent admitted that Mr. Tran had received a diploma on January 16, 2001, certifying that he had been trained with respect to the handling of dangerous goods. The Respondent also admitted that Mr. Tran did not complete his recurrent training until August 9, 2004; hence, he had not been re-trained in conformity with the HMR on July 6, 2004, when the incident in question took place.

These admissions are sufficient to establish the merits of the Complainant's substantive case. Since they constitute admissions of a violation of the HMR, the Complainant's contention that the Respondent is liable for a civil penalty on account of the violations is well-taken. The fact that the Respondent has not filed anything to indicate that it did not commit the violations charged also demonstrates that the Complainant is entitled to a judgment on the issue of liability. Consequently, I grant the Complainant's motion for judgment on that issue.

The issue of quantum cannot, however, be decided on the basis of the papers the Complainant has submitted. In its complaint, the Complainant has requested that a civil penalty of \$3,000 be assessed. The complaint says that the Respondent violated §§ 172.702 and 172.703 of the HMR in five respects. It is alleged that the Respondent violated the periodic training requirements in § 172.704(c)(2) as well as the record-keeping requirement of § 172.704(d). In essence, the Respondent is charged with failure to keep a record of training that Mr. Tran never received. The complaint also charges that the Respondent failed to ensure that Mr. Tran was tested on the subject-matter of his training. Here again, there may be room for argument about whether this requirement simply duplicates the charge that the employee was not timely trained, since testing is normally performed at the conclusion of, and as part of, a training course. Finally, the Respondent is charged with violating § 172.102(a) of the HMR; however, that provision merely requires an hazmat employer to comply with all the other provisions of the HMR

dealing with training of employees. In short, there appears to be a great deal of multiplicity in the charges.

In these circumstances, a hearing will be required to sort out the charges, to find the relevant facts and to arrive at an appropriate civil penalty amount.

The Complainant's motion is granted on the issue of liability. It is denied on the issue of quantum.

**IT IS SO ORDERED.**



Isaac D. Benkin  
Administrative Law Judge

**SERVICE LIST**

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Hearing Docket  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591  
Att: Hearing Docket Clerk, AGC-430  
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<sup>1</sup> Service was by U.S. Mail. For service in person or by expedited courier, use the following address: Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building – Room 2014, Washington, DC 20591, Att: Hearing Docket Clerk, AGC-430.