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Top Legal Research Service, Westlaw, Highlights Case Faulting Unmarked Towers

Sometimes, it takes the most tragic of incidents to create positive change. As you may remember, agricultural aviator Steve Allen was killed on Jan. 10, 2011 when his agricultural aircraft struck a meteorological evaluation tower (MET) in Northern California. Now, the popular legal journal "Westlaw" has taken note of this heartbreaking case and recognized that MET developers and landowners must take proper precautions to keep agricultural aviators safe. Westlaw is one of the primary online legal research services for lawyers and legal professionals in the United States. Publication of this case in Westlaw's library is noteworthy in that it informs legal and insurance professionals about the liability risks of unmarked METs.

The article, written by the Allen family's lawyer, Roger Dreyer, recalls that Steve Allen "knew his trade, prepared for his runs, and was diligent in planning his method of application. He had flown more than 26,000 accident free hours." But even meticulous planning can't account for nearly invisible, unmarked towers.

The MET tower that killed Steve Allen was 197 feet tall and lacked markings to make it visible to aviators. This is just a few feet short of the 200 foot mark where FAA regulations would have required markings of orange and white aviation paint and a warning light device. Dreyer discovered, however, that a lightning rod attached to the tower put its total height at just over 200 feet tall, and subsequently argued that it should have been marked. Without any markings, counsel for the Allens showed that an unmarked MET tower like the one that Allen struck is imperceptible to pilots until it's too late to make evasive maneuvers.

The Allens filed suit against the farmer who hired Steve Allen, the property owner, the MET's manufacturer, and the companies that erected the MET. After years of legal battles, the Allens eventually settled for \$6.7 million, but not before great heartache and loss. Thankfully, the case has, as the Westlaw article notes "...[put] the entities that are engaged in the wind and MET industries on notice that they will be responsible for failing to take the necessary steps to protect agricultural aviators."

But Steve Allen's widow, Karen Allen, has taken her campaign to protect aviators one step further by fighting to require tower markings through state law. As mentioned in Dreyer's article, Mrs. Allen "...attempted to get legislation passed in different states across the country to protect other 'crop dusters' from being subjected to the dangers caused by METs..." In particular, Mrs. Allen was a vital part of the successful effort to enact California Assembly Bill 511, which requires METs over 50 feet tall and less than 200 feet to be marked with orange and white paint, visibility balls, and orange bands. Mrs. Allen also pushed for a similarly successful effort in Colorado, which became law in 2014. Because of her extraordinary efforts to protect agricultural aviators, NAAA awarded Karen Allen its outstanding service award that same year.

Following Mrs. Allen's lead, NAAA has been working with FAA on a long-awaited FAA advisory circular (AC) update, AC 70/7460-1L, titled "Obstruction Marking and Lighting." The update, published on Dec. 4, 2015, includes FAA guidance on marking METs under 200 feet and includes recommendations to paint METs with orange and white bands, place sleeves on any outer guy wires, and place orange spherical markers or cable balls to the guy wires.

While not strict legal requirements, the recommendations in the AC serve as an established standard. Those who choose not to follow the AC will likely be found negligent and liable for damages should an accident occur. The AC thereby provides added incentive for MET and wind energy companies to mark their towers in a manner that protects aviators.

To further ensure aviator safety, NAAA will continue to fight for federal requirements, backed by fines, to mark towers below 200 feet. With an FAA reauthorization bill likely to be enacted into law this spring, the Association is working with Congress to include in that bill a provision that requires marking towers under 200 feet and tower registration in a federal database. The FAA, also announced at the NAAA Convention that it has heard the message and eluded to a proposed regulation that should be forthcoming in 2016 requiring the marking of towers under 200 feet. Hopefully, these provisions will help to save lives in the future.

Steve Allen's untimely death highlights the importance of tower markings, whether the tower is 197 feet tall, just over 200 feet, or at any height where agricultural aviators may fly. Thankfully, Westlaw and others are starting to notice the danger posed by unmarked towers, and there's good reason to believe an increasing number of towers will be marked even when they're under 200 feet. Nonetheless, NAAA will continue to work toward required markings for towers, and safer skies for agricultural aviators, to prevent future losses to families like the Allens. We're happy to see a Westlaw journal article recognize the importance of this endeavor.