UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 10:00 a.m.
November 1, 1983

STATEMENT OF MILTON J. SOCOLAR
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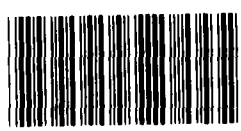
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE, FINANCE
AND SECURITY ECONOMICS,
JOINT ECONOMIC COMMITTEE

ON THE
FINANCIAL RESPONSIBILITY FOR THE
C-5A WING MODIFICATION



Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our opinion of September 27, 1983, to Senator Proxmire, as to whether the Department of the Air Force was correct in concluding that the Lockheed-Georgia Company was not legally responsible for correcting a design defect in the wing of the C-5A aircraft. I would like to submit the full opinion for the record and briefly summarize it here this morning.

In 1965, the Air Force entered into a contract with Lockheed for the design, development, testing and production of 120 C-5A aircraft. At the time, the estimated cost for the program was $3.4 billion, or $28.4 million per aircraft. In 1969, a static test failure on the C-5A wing gave the Air Force its first significant indication that serious deficiencies might exist in the wing.

In 1971, because of cost overruns, numerous technical problems, and a dispute concerning the number of aircraft the Air Force was required to order, the Air Force and Lockheed executed a supplemental agreement to the contract. The agreement fundamentally restructured the original contract, converting it from a fixed-price incentive contract to a cost-reimbursement contract with a fixed loss of $200 million.

The earlier indicated wing problem was confirmed in September 1971 when fatigue test failures indicated that

corrective action at cost without fee for defects manifested under test conditions prior to a simulated life of half the contract goal. The wing failure occurred well within the critical time period.

Second, although the supplemental agreement does contain a general release and waiver clause as the Air Force points out, the agreement expressly reserves and excepts the wing design defect from operation of the clause.

Finally, based on information available to us, it does not appear, at the time the Air Force determined how to approach repair of the defect, that notice requirements would have precluded all repair at no fee. A contractual time limitation on the correction of defects would have limited Lockheed's responsibility to the repair of the test specimen and between 15 and 59 aircraft, with an eventual fee attributable to this effort of between $38.5 million and $120 million.

In our view, the Air Force could have called upon Lockheed to continue its efforts to correct the wing problem under the supplemental agreement, at least with respect to a significant portion of the defective aircraft. Because the new contracts altered the rights and obligations of the parties, however, we see no legal basis upon which the fee may now be avoided.

Mr. Chairman, this concludes my prepared statement. I will be happy to respond to any questions you or other committee members might have.

the wing would not meet the contractually specified useful life goal of 30,000 service hours. After considerable study of the problem, Air Force officials determined that the appropriate fix would be an essentially new wing for all the C-5A aircraft. While some parts of the old wing could be used, the inner, center, and outer wing boxes, which make up most of the wing, were to be rebuilt.

The Air Force concluded that Lockheed was not legally obligated to correct the wing problem without fee under the 1971 supplemental agreement and it awarded Lockheed new contracts, which included fees of $150 million, to fix the wings.

The Air Force position was premised on the original contract not having contained a firm requirement for any stated aircraft service life; on the conclusion that the waiver and release clause contained in the 1971 supplemental agreement eliminated any rights or claims relating to the wing defect; and on the fact that notice requirements set out in the 1971 supplemental agreement had not been satisfied.

We disagree with the Air Force. First, the C-5A contract clearly sets forth firm requirements relating to fatigue testing and service life. While it is true that service life was stated as an overall goal rather than as a firm requirement, the contract specifically required