

1 Robert W. Mills (SBN 62154)  
Harry Shulman (SBN 209908)  
2 **THE MILLS LAW FIRM**  
3 145 Marina Boulevard  
San Rafael, CA 94901  
4 Tel: (415) 455-1326

5 Michael F. Ram (SBN 104805)  
Erica L. Craven (SBN 199918)  
6 **LEVY, RAM & OLSON, LLP**  
7 639 Front St., 4<sup>th</sup> Floor  
San Francisco, CA 94111  
8 Tel: (415) 433-4949

9 Attorneys for Plaintiff, Class Members,  
and all others similarly situated  
10

11  
12 UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA  
14

15 RICHARD A. BRISTOW, for himself and a  
16 class of others similarly situated,

**Case No.:**

17 Plaintiff,

**CLASS ACTION COMPLAINT**

18 v.

19 LYCOMING ENGINES, a Division of  
Avco Corporation; AVCO  
20 CORPORATION; TEXTRON, INC.,

Jury Trial Demanded

21 \_\_\_\_\_ Defendants. /

22  
23 Plaintiff RICHARD A. BRISTOW, on behalf of himself and all others in California,  
24 similarly situated, upon knowledge to himself and on information and belief and investigation of  
25 counsel, alleges as follows:

26 **NATURE OF THE ACTION**

27 2. Plaintiff brings this action against Lycoming Engines (“Lycoming”), a division of  
28 Avco Corporation (“Avco”), a wholly owned subsidiary of Textron, Inc. (“Textron”), and Avco

1 and Textron (collectively “Defendants”), on behalf of himself and all others in California  
2 similarly situated who own or lease airplanes with piston aircraft engines manufactured by  
3 Lycoming and subject to Lycoming’s “Mandatory Early Retirement” Service Bulletin (“SB”)  
4 Nos. 569 and 569A.

5 3. The “early retirement” program announced by Lycoming in February 2006,  
6 impacts over 5000 planes and is a direct result of Lycoming’s defective design, manufacture, and  
7 testing of its engines - problems that Defendants have known about for years and which can lead  
8 to premature failure of the engine crankshafts causing power loss, engine failure, damage to the  
9 airplane and possible loss of life. By issuing an “early retirement” program that forces owners to  
10 pay for the replacement of the defective and unsafe Lycoming crankshafts (“Lycoming  
11 Crankshafts”), instead of issuing a recall where Lycoming would bear the costs, Defendants have  
12 engaged in deceptive, unlawful and unfair conduct described more fully below.

13 **Lycoming Issues SB569; Forcing Mandatory “Early Retirement” of 5000 Crankshafts**

14 4. The Lycoming engines covered by SB569 and 569A are typically installed in  
15 small, fixed-wing planes such as Piper and Cessna aircraft. These engines are subject to periodic  
16 inspections at overhaul intervals of the earlier of 2000 hours or twelve years of operation.  
17 Indeed, Lycoming regularly publishes and updates Service Instruction 1009, a chart listing the  
18 average number of operating hours each particular Lycoming piston aircraft engine is expected to  
19 achieve before overhaul (otherwise known as “time before overhaul” or “TBO”). The current  
20 version of Service Instruction 1009 provides – consistent since 1997 – that engines with  
21 Lycoming Crankshafts are expected to be able to operate for at least 2,000 hours or twelve years  
22 (whichever is first) between major overhauls without the need for inspection. Importantly, a  
23 normal crankshaft is reasonably expected to last substantially longer than these engine overhaul  
24 intervals.

25 5. However, on February 21, 2006 Lycoming issued Service Bulletin 569, and a  
26 revised Service Bulletin 569A on April 11, 2006 (hereafter “SB 569A”) announcing mandatory  
27 “early retirement” for approximately 5000 Lycoming Crankshafts that were manufactured,  
28 marketed and sold nationwide by Lycoming between 1997 and 2002. SB569A requires owners

1 and operators of aircraft with these engines (“operators”) to replace the crankshafts at the first  
2 possible opportunity, either at overhaul or when the crankcase is opened, but in no case later than  
3 February 21, 2009.

4 **Lycoming’s Prior Recalls of Crankshafts and Knowledge of Safety Issues**

5 6. This was not the first time that Lycoming had issued Service Bulletins reducing  
6 the expected life span of its crankshafts. Plaintiff is informed and believes that the Lycoming  
7 Crankshafts covered by SB569A suffer from fundamental design defects caused by a series of  
8 cost cutting measures introduced by Lycoming in the mid-to-late 1990s. These cost-cutting  
9 measures altered the design of the engines and led to crankshaft failures and a series of prior  
10 recalls mandated by the Federal Aviation Administration (“FAA”) and paid for by Lycoming.

11 7. Plaintiff is informed and believes that engineers from Lycoming’s and Avco  
12 Corporation’s parent company, Textron, Inc., proposed various design changes to counteract the  
13 problems with the crankshaft redesign caused by the mid-to-late 1990s measures, but,  
14 Lycoming’s engineers refused to admit that their design was flawed and refused to change it in  
15 ways that would have avoided the present problems.

16 8. Plaintiff is also informed and believes that when Lycoming testing showed that the  
17 redesigned crankshafts were defective, Lycoming hid not only the results of the tests but also  
18 tried to hide the fact that it had even conducted the tests themselves.

19 9. When the first of the redesigned crankshafts began to fail in flight and cause  
20 crashes in 2001, the FAA contacted Lycoming and demanded answers. A joint investigation by  
21 Lycoming and the FAA was begun. The joint investigation revealed, among other findings, that  
22 the safety testing conducted by Lycoming on its crankshaft manufacturing process was  
23 inadequate and that Lycoming failed to follow the procedures required of its FAA issued type-  
24 certificate. As a result, the FAA revoked the type-certificate and forced Lycoming to submit its  
25 entire crankshaft manufacturing process to a rigorous re-certification in 2002.

26 10. Because Lycoming’s safety testing was so inadequate, it could not demonstrate  
27 that any of the crankshafts made after 1997 were safe. As a result, and because of numerous  
28 crankshaft failures, Plaintiffs are informed and believe that Lycoming was forced to agree to

1 recalls, including ones in 2002 and 2005 that covered approximately 2000 engines. In connection  
2 with these earlier, smaller recalls Lycoming paid the operators the total costs of replacement,  
3 including parts and labor. Plaintiff is informed and believes that in connection with at least one  
4 of the prior recalls Lycoming also gave a substantial credit to operators for aircraft down time  
5 and paid airline tickets for alternate transportation. These payments ran into the tens of millions  
6 of dollars.

7 11. Plaintiff understands that the FAA report's conclusions regarding the defective  
8 safety testing and review procedures in place at Lycoming from 1997 through 2002 cover the  
9 crankshafts identified in SB569A. Yet, Lycoming is maintaining that there is nothing wrong with  
10 their crankshafts, that there have been no failures in engines covered by SB569A, and that the  
11 "early retirement" is based solely on the "collective wisdom of Lycoming and the FAA given the  
12 prior history of hammer forged-crankshafts."

13 12. There are twice as many crankshafts involved in SB 569A as were involved in all  
14 of the prior crankshaft recalls combined. This time Defendants are taking a totally different and  
15 very hard line approach. Due to the "early retirement," Lycoming has agreed to provide  
16 operators a crankshaft kit for \$2000 and throw in a basket of parts, but has offered no  
17 compensation for labor or down time. The Aircraft Owners and Pilots Association estimates that  
18 the cost of complying with SB 569A for all aircraft operators, for parts and labor only, at about  
19 \$32,000,000.

20 13. Forcing "early retirement" of these Lycoming Crankshafts by February 2009  
21 substantially diminishes the reasonably expected life of the engine for most aircraft operators.  
22 The Bulletin has also hurt resale value of the planes. Plaintiff believes that it will cost California  
23 operators – for parts, labor, and other damages – well over \$10 million to comply with SB 569A.

24 **THE PARTIES**

25 14. Plaintiff RICHARD A. BRISTOW is a resident of Carmichael, California. He is  
26 the owner of a Mooney M20J 201 fixed-wing single engine plane that contains a Lycoming  
27 Crankshaft subject to the "early retirement" Service Bulletin 569A. He purchased his plane in  
28 2001, and installed a new Lycoming engine and crankshaft in March 2002.



1 formerly owned a plane with a Lycoming Crankshaft subject to Service Bulletin 569 or  
2 569A and sold the plane on or after February 21, 2006.

3 **Consumer Subclass**

4 All persons and entities in California who — primarily for personal, family or household  
5 purposes — currently own or lease a plane with a Lycoming Crankshaft subject to Service  
6 Bulletin 569 or 569A; who formerly owned or leased a plane with a Lycoming Crankshaft  
7 subject to Service Bulletin 569 or 569A when the Lycoming Crankshaft was replaced  
8 pursuant to Service Bulletin 569 or 569A; or who formerly owned a plane with a  
9 Lycoming Crankshaft subject to Service Bulletin 569 or 569A and sold the plane on or  
10 after February 21, 2006.

11 21. The members of the Classes are so numerous that joinder of all members would be  
12 impracticable. Plaintiff estimates that there are several hundred owners and lessees of the aircraft  
13 with these Lycoming Crankshafts in California.

14 22. Plaintiff's claims are typical of the claims of the Classes. Plaintiff has no interests  
15 antagonistic to those of the Classes, and Defendants have no defenses unique to Plaintiff.  
16 Specifically, Plaintiff, like all California Class members, owns or leases an aircraft containing a  
17 Lycoming Crankshaft.

18 23. Plaintiff, like all California Class members, has been damaged by Defendants'  
19 uniform misconduct in that he has or will incur the cost of replacing the Lycoming Crankshaft  
20 and repairing/replacing other parts damaged in the replacement of the Crankshaft.

21 24. Plaintiff, like all California Class members, has also suffered diminished value of  
22 the aircraft, including without limitation, diminished resale value, as a result of the Lycoming  
23 Crankshaft.

24 25. Furthermore, the factual bases of Defendants' misconduct are common to all  
25 California Class members and represent a common thread of misconduct resulting in injury to all  
26 members of the California Classes.

27 26. The claims of Plaintiff and those in the Classes also raise common questions of  
28 law and fact that predominate over any questions affecting only individual Class members,  
including:

A. Whether the Lycoming Crankshafts are unsafe;

- 1           B.     Whether the Lycoming Crankshafts are unsafe in that they are substantially certain  
2 to fail under ordinary use well in advance of their expected and reasonable life;
- 3           C.     When Defendants knew of the unsafe nature of the Lycoming Crankshafts;
- 4           D.     Whether Defendants omitted and/or failed to disclose to Plaintiff and the Class  
5 material facts concerning the unsafe nature of the Lycoming Crankshafts;
- 6           E.     Whether Defendants knew of the substandard safety testing and review procedures  
7 for the Lycoming Crankshafts;
- 8           F.     Whether Defendants omitted and/or failed to disclose to Plaintiff and the Class  
9 material facts concerning the substandard safety testing and review procedures for the Lycoming  
10 Crankshafts;
- 11          G.     Whether Defendants had a duty to Plaintiff and the Class to disclose the unsafe  
12 nature of the Lycoming Crankshafts;
- 13          H.     Whether the facts Defendants omitted and/or failed to disclose were material;
- 14          I.     Whether as a result of Defendants' omission of and/or failure to disclose material  
15 facts, Plaintiff and the Class were injured in purchasing or leasing planes containing the unsafe  
16 Lycoming Crankshafts;
- 17          J.     Whether Defendants knew that the Lycoming Crankshafts are unsafe, would  
18 prematurely fail, and thus that the planes containing them are not suitable for use, and otherwise  
19 are not as represented by Defendants;
- 20          K.     Whether Defendants engaged in unfair competition and/or unfair, fraudulent or  
21 deceptive acts and practices;
- 22          L.     Whether Defendants should be ordered to pay compensatory, consequential and  
23 punitive damages to Plaintiff and the Class;
- 24          M.     Whether Defendants should be ordered to provide restitution to Plaintiff and the  
25 Class;
- 26          N.     Whether Plaintiff and the Class are entitled to injunctive relief.
- 27
- 28





1 fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising” as  
2 that term is used in Business and Professions Code section 17500.

3 33. Defendants committed an unfair act in violation of the UCL when Defendants  
4 omitted and/or failed to disclose material facts regarding the unsafe nature of the Lycoming  
5 Crankshafts.

6 34. Defendants committed an unfair act in violation of the UCL when they  
7 represented through Lycoming Service Bulletins, Service Instructions and advertising and  
8 marketing materials that the Lycoming engines subject to SB569A had an established and  
9 expected TBO of 2000 hours.

10 35. Defendants committed and is committing an unfair act in violation of the UCL, by  
11 continuing to conceal the unsafe nature of the Lycoming Crankshafts, failing to disclose their full  
12 knowledge of the unsafe nature of the Lycoming Crankshafts, failing to disclose their knowledge  
13 of the substandard safety testing and review procedures, and failing to issue a mandatory recall at  
14 their own cost, while introducing a forced “early retirement” of the Lycoming Crankshafts.

15 36. As a direct and proximate cause of Defendants’ unfair practices, Defendants have  
16 been unjustly enriched and should be required to make restitution of Plaintiff and the Classes or  
17 disgorge their ill-gotten profits pursuant to section 17203 of the Business & Professions Code.

18 37. Plaintiff, on behalf of himself and the Classes, also demands judgment against  
19 Defendants for injunctive relief pursuant to section 17203 of the Business & Professions Code in  
20 the form of an order requiring Defendants to cease omitting material information regarding the  
21 crankshafts covered by SB569A, to replace the Lycoming Crankshafts, repair any additional  
22 damage to parts caused by that replacement, and pay for all costs including parts, labor and other  
23 consequential costs.

24 **SECOND CAUSE OF ACTION**

25 **(Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200;**  
26 **Fraudulent Business Practice)**

27 38. Plaintiff hereby incorporates by reference the allegations contained in the  
28 preceding paragraphs of this Complaint.

1           39. Defendants committed a fraudulent act in violation of the UCL when Defendants  
2 omitted and/or failed to disclose material facts regarding the unsafe nature of the Lycoming  
3 Crankshafts.

4           40. Defendants knew that the Lycoming Crankshafts created a safety problem.  
5 Defendants' failure to disclose the safety problem and/or defective nature of the Lycoming  
6 Crankshafts constitutes fraud by omission.

7           41. Defendants also knew – no later than during the FAA Recertification Review  
8 starting in 2001 – that Lycoming's safety testing was inadequate, yet failed to disclose this  
9 material fact and/or take appropriate corrective steps.

10          42. Defendants' failure to disclose the substandard safety testing, and to take  
11 appropriate corrective steps, constitutes fraud by omission. The facts concealed and omitted are  
12 material facts in that a reasonable consumer would have considered them important in deciding  
13 whether or not to purchase or lease their aircraft.

14          43. Defendants omitted and intentionally failed to disclose these problems to Plaintiff,  
15 the Class and all others in the chain of distribution.

16          44. As a direct and proximate cause of Defendants' misconduct, Plaintiff and the  
17 Class have aircraft with unsafe crankshafts that require replacement, or as Lycoming calls it  
18 "early retirement."

19          45. Defendants also committed a fraudulent act in violation of the UCL when they  
20 represented, through Lycoming Service Bulletins, Service Instructions and advertising and  
21 marketing materials that the Lycoming engine subject to SB569A had an established and  
22 expected TBO of 2000 hours.

23          46. Defendants committed and are committing a fraudulent act in violation of the  
24 UCL, by continuing to conceal the unsafe nature of the Lycoming Crankshafts, failing to disclose  
25 their full knowledge of the nature of the Lycoming Crankshafts, failing to disclose their  
26 knowledge of the substandard safety testing and review procedures, and failing to issue a  
27 mandatory recall at their own cost, while introducing a forced "early retirement" of the Lycoming  
28 Crankshafts.



1 53. As a direct and proximate cause of Defendants' illegal practices, Defendants  
2 should be required to make restitution of Plaintiff and the Classes or disgorge their ill-gotten  
3 profits pursuant to section 17203 of the Business & Professions Code.

4 54. Plaintiff, on behalf of himself and the Classes, also demands judgment against  
5 Defendants for injunctive relief pursuant to section 17203 of the Business & Professions Code in  
6 the form of an order requiring Defendants to cease omitting material information regarding the  
7 crankshafts covered by SB569A, to replace the Lycoming Crankshafts, repair any additional  
8 damage to parts caused by that replacement, and pay for all costs including parts, labor, and other  
9 consequential costs.

10 **FOURTH CAUSE OF ACTION**

11 **(Violation of California Consumers Legal Remedies Act ("CLRA"),**  
12 **Cal. Civ. Code § 1750; Consumer Subclass )**

13 55. Plaintiff hereby incorporates by reference the allegations contained in the  
14 preceding paragraphs of this Complaint and brings this fourth cause of action on behalf of the  
15 Consumer Subclass.

16 56. Defendants are "persons" as defined by California Civil Code § 1761(c).

17 57. Plaintiff and the Consumer Class members are "consumers" within the meaning of  
18 California Civil Code § 1761(d).

19 58. Venue is proper pursuant to California Civil Code § 1780(c) because Defendants  
20 conduct business in Sacramento County and other Counties within the Eastern District of  
21 California, where this action is filed. Plaintiff's declaration pursuant to Civil Code § 1780(c) is  
22 attached hereto as Exhibit A.

23 59. Defendants violated the CLRA (Cal. Civ. Code § 1770(a)(5) and § 1770(a)(7))  
24 when they failed to disclose and concealed material facts about the Lycoming Crankshafts, *i.e.*,  
25 that they are defective and unsafe. Plaintiff and the Class suffered damages as a result.

26 60. Defendants violated the CLRA (Cal. Civ. Code § 1770(a)(5) and § 1770(a)(7))  
27 when they represented, through Lycoming Service Bulletins, Service Instructions and advertising  
28

1 and marketing materials, that the Lycoming engine had uses or characteristics that they did not  
2 actually have and were of a particular standard or quality when they were not.

3 61. To this day, Defendants continues to engage in unlawful practices in violation of  
4 California's CLRA. Plaintiff is informed and believes that Defendants continue to conceal the  
5 unsafe and defective nature of the crankshafts by failing to issue a mandatory recall and/or offer  
6 Plaintiff and Members of the Class the same compensation provided to aircraft operators in the  
7 prior Crankshaft recalls.

8 62. Plaintiff and the Class suffered actual damages as a direct result of Defendants'  
9 concealment and/or omissions in violation of the CLRA. Had they known of the true character  
10 and quality of the Lycoming Crankshafts, Plaintiff and Class Members would not have purchased  
11 or leased (or would have paid less) for their aircraft.

12 63. Plaintiff, on behalf of himself and the Class, demand judgment against Defendants  
13 for injunctive relief under the CLRA in the form of an order to require Defendants to cease  
14 omitting material information regarding the crankshafts covered by SB569A, replace the  
15 Lycoming Crankshafts, repair any additional damage to parts caused by that replacement, and  
16 pay for all costs including parts, labor, and other consequential costs.

17 64. Plaintiff delivered to Lycoming, Avco and Textron a notice of their violations of  
18 the Consumers Legal Remedies Act, sent by certified mail return receipt requested, on August  
19 23, 2006. This letter is attached as Exhibit B to the Complaint. If Plaintiff has not received a  
20 response from Defendants within thirty (30) days of the date Defendants received the notification  
21 letter, and if Defendants fail to provide Plaintiff's requested relief for its violation of the CLRA,  
22 Plaintiff will amend this Complaint to seek monetary and punitive damages, in addition to  
23 equitable and injunctive relief under the CLRA.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself, the general public, and all others similarly  
26 situated, prays that the Court enter judgment against Defendants, and in favor of Plaintiff and the  
27 Class and Consumer Subclass, and to award the following relief:

- 28 1. Certification of the proposed Class and Consumer Subclass;

1           2.     Injunctive relief requiring the Defendants cease omitting material information  
2 regarding the Lycoming Crankshafts covered by SB569A, replace the Lycoming Crankshafts,  
3 repair any additional damage to parts caused by that replacement, and pay for all costs including  
4 parts, labor, and other consequential costs.

5           3.     A declaration that Defendants must provide full restitution;

6           4.     An order temporarily and permanently enjoining Defendants from continuing the  
7 unfair business practices alleged in this Complaint;

8           5.     An award of costs and attorneys' fees; and

9           6.     Such other or further relief as may be appropriate.

10

11

**JURY TRIAL DEMAND**

12

Plaintiff hereby demands a jury trial for all individual and Class claims so triable.

13

14

Dated: August 30, 2006

LEVY, RAM & OLSON LLP

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\_\_\_\_\_/s/ Erica L. Craven\_\_\_\_\_  
Michael F. Ram  
Erica L. Craven

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THE MILLS LAW FIRM

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Robert W. Mills  
Harry Shulman

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Attorneys for the Plaintiff and Proposed Classes

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