

October 29, 2008

## Fourth Annual GWBAA Golf Outing a Success

### Herndon (Virginia) Centennial Course Repeats as Host



It dawned very cold on Monday, October 20, but the sun came out and warmed the course and shined on all the golfers. The outside temperature gauge read 31 degrees (F) on the drive to Herndon at 7am, so the forecast 67 degrees was a long way off. This led to a 1hr 45 min frost delay, but everyone relaxed, enjoyed the great breakfast, had a few extra coffees, and began the mingling and contacting in earnest. We didn't plan it, but the delay actually brought the group closer together, which was a big plus. A wonderful day for everyone.

There were sixty-one golfers, up from fifty last year. We thank all our sponsors, once again, who made the golf outing possible especially our major sponsors Gulfstream, Bombardier, Welsch Aviation, Signature Flight Support, Air Routing, and Embraer. And, we pay special tribute to Paige Kroner of Chantilly Air, who brought all the pieces together.

### GWBAA Annual Holiday Party December 5th

GWBAA's annual party (and official annual meeting) will be held on Friday, Dec. 5 at Signature Flight Support's facility at Dulles (IAD) – note the changed location from previous years! All members are welcome. **Please RSVP** to Kyle Herbig at [kyle.herbig@signatureflight.com](mailto:kyle.herbig@signatureflight.com). We hope to see you for refreshment, prizes, and relaxation from 5-7pm.

### TSA Announces Large Aircraft Security Program

The Transportation Security Administration has proposed new security rules for aircraft, which would apply to all aircraft with a maximum certified takeoff weight (MTOW) above 12,500

pounds, and all general aviation airports that serve these larger aircraft. Known as the "Large Aircraft Security Program" (LASP), the TSA program includes security training for flight crews, periodic security audits for operators, and requirements for GA and other airports that service large aircraft. The NBAA is in the process of reviewing the proposal and scheduling meetings to solicit input (see <http://web.nbaa.org/public/news/pr/2008/20081009-053.php>); the requirements are scheduled to take effect on December 29, 2008. The new rules can be downloaded from <http://www.regulations.gov/fdmspublic/ContentViewer?objectId=090000648078071b&disposition=attachment&contentType=pdf>.

## New FBO at Leesburg Executive Airport

RZF Aviation opened a new FBO at Leesburg Executive Airport on October 1, 2008. According to RZF, the new facility was specifically designed to support corporate operators using turbine equipment. The new 25,000 square foot facility includes a lobby, offices and galley and can accept most large corporate aircraft. For information, contact Andrew Fenton, (540) 687-3555.

## Regional News Round-Up

The Washington County Commissioners continue to discuss options for the Brumbaugh-Kendle-Grove farmstead near **Hagerstown Regional Airport**. The farmstead is registered as a historic place with the county and Maryland Historic Trust, but airport officials and the FAA have said the vacant buildings pose a security risk and will hamper development at the airport.



In other Hagerstown news, plans have been announced for the construction of a new hangar. The facility, to be built by a company that has not yet been publicly identified, will include space for offices, training areas and a testing center, according to Timothy R. Troxell, executive director of the Hagerstown-Washington County Economic Development Commission.

The Air Taxi Association (ATXA) has launched a website, <http://www.VirginiaAirTaxi.com>, which allows travelers to book on-demand flights from air taxi and air charter operators in Virginia, as well as includes information on the air taxi industry and a directory of public-use airports in Virginia. "Virginia has always been at the forefront of accelerating next-generation aviation," said Keith McCrea, executive director of Virginia SATSLab, Inc., a public-private partnership which has partnered with ATXA to create the website. "This Web site will help foster community airport utilization across the 64 local airports throughout the Commonwealth."

**Carroll County Regional Airport** has announced that its new FBO, SkyTech, Inc., has commenced operations.

**Manassas Regional Airport** has announced that crack sealing, seal coating, and painting of tie-down spots on the West Apron started in late September.

On October 21, the Stafford County Board of Supervisors rejected, 4-3, a proposal to reduce Stafford County's personal property tax on aircraft. The measure would have lowered the aircraft tax rate from \$3 per \$100 of assessed. **Stafford Regional Airport** officials had argued that reducing the tax rate was necessary to compete with the airports in Manassas and Leesburg, both of which have a 1-cent rate. Supervisors who voted against the tax cut cited noise concerns, the county's budget struggles, and worries that the low rate would give the break to individual aircraft owners as well as the businesses they want.



In other tax-related news, the Loudoun County Board of Supervisors is also exploring new revenue options – including raising the tax rate on aircraft. A decision is expected to be made early in the first quarter of 2009. Such a move would affect aircraft based at both **Leesburg Executive Airport** and **Washington Dulles International Airport**. Both GWBAA and NBAA members should prepare to engage the County Board with their concerns on this matter in the coming months; GWBAA will provide updates in future newsletters.

## **GUEST VIEWPOINT: Selling a Used Aircraft Abroad: A Closer Look at the Unusual Business Issues**

*GWBAA is pleased to present the following discussion of tax issues by Keith G. Swirsky, a partner and tax specialist concentrating in the areas of corporate aircraft transactions and aviation taxation at the law firm of Galland, Kharasch, Greenberg, Fellman and Swirsky, P.C. ([kswirsky@gkqlaw.com](mailto:kswirsky@gkqlaw.com)), (202) 342-5251):*

The early years of the 21<sup>st</sup> century have seen exceptional growth in business aviation outside the United States, particularly in parts of Asia, Europe, Russia and the Middle-East. This trend is expected to continue for many years. One of the consequences is that a seller of a U.S.-registered aircraft is far more likely today than ever before to sell his or her aircraft to a foreign buyer. In many cases, foreign buyers will engage foreign counsel, brokers and advisors who are accustomed to putting together transactions according to the customary business practices and conventions in their own nations, and who may or may not be familiar with customary business practices in the United States' used aircraft marketplace.

This article will address some unusual business issues that may arise in negotiating a transaction for the sale of a used aircraft by a U.S. seller to a foreign buyer. GKG Law has been involved in numerous international transactions wherein one or more of these unusual business issues have arisen, and it has learned from experience that finding a way to resolve such issues to everyone's satisfaction is critical to moving a transaction from an offer to a closed sale.

### **Sacred Understanding?**

The U.S. used aircraft marketplace holds as sacred the understanding that the buyer must conduct its own inspection of the aircraft to determine that the aircraft is in an airworthy condition, as determined by a

mutually agreed upon inspection facility; is otherwise satisfactory to the buyer; and that following correction of any airworthiness discrepancies, the aircraft is sold "as is" without any representations or warranties from the seller concerning the condition of the aircraft. It has been a fundamental principle of U.S. transactions that once title transfers at closing, the new owner accepts all responsibility for the condition of the aircraft and its equipment, including discrepancies that the inspection facility may have failed to identify during the conduct of a pre-purchase inspection.

In contrast, our firm has been involved in many transactions with foreign buyers, wherein foreign counsel has attempted, initially at least, to require the survival of various representations and warranties post-closing. These representations and warranties often relate to the condition of the aircraft, and not just the status of clear title, assignment of existing manufacturer or avionics warranties, and payment of applicable taxes and other charges against the aircraft. As an example, we have repeatedly seen requests for survival of representations regarding the equipment list specified in any spec-sheet prepared in connection with the marketing of the aircraft, or survival of representations that the aircraft has no damage history and/or was in a fully airworthy condition at the time of closing.

Another significant issue that arises during the course of negotiations is a request for the seller to de-register the aircraft from the FAA Civil Aircraft Registry and obtain an Export Certificate of Airworthiness ("Export C of A"). We have also seen foreign lenders require the deregistration request, and the Export C of A, together with a re-registration request to be submitted to their local registry for approval as to form and substance of the paperwork prior to authorizing the release of their funds at closing.

Specifically, the lending institution will require that the foreign local registry have issued its acknowledgment and acceptance of the U.S. de-registration and local re-registration paperwork before it will allow the release of the purchase proceeds to the seller. There is tremendous risk in this procedural process, as once the U.S. seller files the de-registration request and/or delivers a bill of sale, it is no longer the owner of the aircraft, yet the closing will not have occurred and the seller will not be paid until such time as confirmation from the foreign local registry is issued. Given time differences between the U.S. and other parts of the world, the de-registration request, and the acknowledgment of the acceptability of the re-registration documentation by the foreign local registry may occur on different business days.

There exists a risk that the buyer may default on the contract after the de-registration and Export C of A have been accomplished, yet the seller will not have been paid. From a U.S. seller's perspective, the only thing that the U.S. seller should do is agree to file the deregistration request or bill of sale concurrent with being paid.

### **Extensive and Expensive**

As a related matter, in order to obtain an Export C of A, the aircraft must undergo an inspection that is more extensive (and hence more expensive) than a typical pre-purchase inspection. Of course, a more extensive inspection typically results in a more extensive list of discrepancies and larger bill for repair and remediation costs. Consequently, sellers who agree to provide an Export C of A should expect to pay higher repair and remediation costs than they would pay in connection with a sale to a U.S. buyer. Therefore, the agreement to provide an Export C of A is not only an issue of risk related to the occurrence of a closing, but should also be considered an out-of-pocket expense item.

Additionally, the importing country may require the installation of certain additional equipment on the aircraft, and other costly matters associated with obtaining a new C of A and re-registration of the aircraft in the foreign country. There may be further delays and costs associated with obtaining a new C of A and re-registration of the aircraft in the foreign country. Again, the parties will be at odds as to whether such work should occur prior to the closing, or occur subsequent to the closing.

As a further related matter, many foreign buyers will request that the aircraft be delivered outside of the United States. Once again, this is a risk assessment issue, whereby the U.S. seller takes on significant monetary risk and logistical complications by agreeing to deliver an aircraft outside the United States.

### **Currency Matters**

On a purely business matter, it is customary for aircraft transactions to be priced in U.S. Dollars. When a seller accepts a purchase price denominated in U.S. Dollars from a buyer who usually holds his or her funds in another currency, and there is a reasonable lag time between the agreement on price and the closing, currency fluctuations can move either in favor or against either party. For some time, we have seen a continued decline in the U.S. Dollar against the Euro and other foreign currencies. However, exchange rates can fluctuate (we hope!) in favor of the U.S. Dollar.

If, during the period between the acceptance of a purchase offer for an aircraft and the closing of the transaction, the value of the U.S. Dollar rises as compared to the currency in which the buyer's funds are commonly held, the cost of a transaction to the foreign buyer will increase, and may become such that the buyer chooses to default and forfeit his or her deposit, rather than follow through on a transaction that is more costly than initially

anticipated. The risk of an intentional default due to currency fluctuations can be minimized by increasing deposit amounts. In fact, foreign buyers are accustomed to placing deposits up to ten percent in escrow, whereas it is standard in U.S. transactions for deposits to range from three to five percent.

### **Choice of Law Provision**

As a legal matter, it is always necessary to negotiate a choice of law provision in the event the parties have a dispute prior to, or subsequent to, the closing. It is rare that a foreign buyer would agree to use U.S. law, but to the extent that a foreign buyer can be persuaded to use U.S. law, the buyer is generally going to be unwilling to use the law of a state other than California or New York. Further, foreign buyers are not generally willing to submit to litigation in the courts of the United States and will generally prefer to use an international forum.

In order to participate in transactions with foreign buyers, U.S. lawyers, brokers and consultants must become familiar with, and anticipate, the commercial terms, that a foreign buyer may demand, and address these issues with the aircraft owner at an early stage in the process, rather than after significant effort has been expended in working on the transaction. Creativity to bridge the gap between a buyer's and seller's expectations is paramount in order to ensure that the transaction closes. A renewed assessment of acceptable risks outside the norm is needed in order for these deals to close. The lawyers at GKG Law are prepared to assist in these matters.

As the worldwide market matures, we will also begin to see an escalation of used aircraft being imported into the U.S. Our next article will focus on unique issues associated with used aircraft import transactions.

## Upcoming Aviation Events

- **November 2:** Air Traffic Control Association 53rd annual conference at the Marriott Wardman Park Washington, DC. For more information, please visit [http://www.atca.org/activities/event\\_items.asp?month=11&year=2008&item\\_id=1088](http://www.atca.org/activities/event_items.asp?month=11&year=2008&item_id=1088).
  - **November 7:** Committee for Dulles 2008 Annual Anniversary Gala featuring Robert A. Sturgell, Acting Administrator of FAA, at the Landsdowne Resort. For more information, please visit <http://www.committeefordulles.org>.
  - **November 12:** The FAA Safety Team will sponsor a seminar on "Mastering Takeoffs and Landings" at the Hilton Gaithersburg at 7pm. For more information, visit [http://www.faasafety.gov/SPANS/event\\_details.aspx?eid=21417](http://www.faasafety.gov/SPANS/event_details.aspx?eid=21417).
  - **November 19:** International Aviation Club luncheon featuring Gina Marie Lindsey, CEO of Los Angeles World Airports. For more information, visit <http://www.iacwashington.org>.
  - **November 24:** Aero Club of Washington luncheon featuring Bobby Sturgell, Acting FAA Administrator. For more information, visit <http://www.aeroclub.org/luncheons.htm>.
  - **December 1-3:** FAA 5th annual international aviation safety forum at the Omni Shoreham Hotel in Washington, DC. For more information, visit [http://www.faa.gov/news/conferences\\_events/2008safetyforum/](http://www.faa.gov/news/conferences_events/2008safetyforum/).
  - **December 2:** The FAA Safety Team will sponsor a seminar on "Mastering Takeoffs and Landings" at the Holiday Inn Towson at 7pm. For more information, visit [http://www.faasafety.gov/SPANS/event\\_details.aspx?eid=21418](http://www.faasafety.gov/SPANS/event_details.aspx?eid=21418).
  - **December 4:** Airports Council International-North America International Aviation Issues Seminar at the Westin Embassy Row. For more information, please visit <http://www.aci-na.org/conferences/detail?eventId=118>.
- |   |
|---|
| • <b>December 5:</b> GWBAA's annual Holiday Party at Dulles – see above for more details! |
|---|
- **December 12:** Aero Club of Washington annual Wright Memorial Dinner. For more information, visit <http://www.aeroclub.org/Luncheons/08%20WMD%20flyer.htm>.
  - **January 14:** Aero Club of Washington luncheon featuring Mary Peters, Secretary of Transportation. For more information, visit <http://www.aeroclub.org/luncheons.htm>.
  - **February 21-22:** Adventures in Travel Expo at the Washington Convention Center. For more information, please visit <http://www.adventureexpo.com>.
  - **February 24-25:** Air Charter Safety Foundation Symposium, at the NTSB Training Center in Ashburn, Virginia. For more information, please visit <http://www.acsf.aero>.



## **GWBAA Offers Online Benefits**

We continue to add member information for GWBAA's electronic membership directory – <http://www.gwbaa.com/directory.html>. This service is available to GWBAA members at no cost. Please contact Bob Blouin ([bob\\_blouin@hawkerbeechcraft.com](mailto:bob_blouin@hawkerbeechcraft.com)) if you want to post your company's information.

## **GWBAA Contacts**

GWBAA President Bob Blouin ([bob\\_blouin@hawkerbeechcraft.com](mailto:bob_blouin@hawkerbeechcraft.com)) and GWBAA Secretary Jol Silversmith of Zuckert, Scoutt & Rasenberger, LLP ([jasilversmith@zsrlaw.com](mailto:jasilversmith@zsrlaw.com)) write and edit GWBAA News. GWBAA's success and ability to make a difference depends on the breadth of its support and your participation – so please send any ideas or comments for future newsletters, or for GWBAA, in general, to Bob or Jol, or any of the following people:

Mary Miller, Treasurer: [mary.miller@signatureflight.com](mailto:mary.miller@signatureflight.com)

Bob Rockwood, Membership Chair: [racersblue@earthlink.net](mailto:racersblue@earthlink.net)

Jim Lumley, Operations, Safety and Security Chair: [jpilot3@aol.com](mailto:jpilot3@aol.com)

Under the terms of the Federal CAN-SPAM Act, this e-mail may be considered to be an "advertisement" or "solicitation." If you do not wish to receive any further emails from GWBAA, please send an email to: [info@gwbaa.com](mailto:info@gwbaa.com), with the words "OPT-OUT" in the subject line. The postal address for GWBAA is c/o Sky Group Associates, Inc., Ronald Reagan Washington National Airport, Hangar 7, Washington, DC 20001.