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Bridgeford Flying Services: A Vintage Napa Valley FBO

You've Been Served! Responding to a Subpoena

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- How to Lose More Money And Other Things We Can Learn from the Airlines
- 2008 NATA Air Charter Summit
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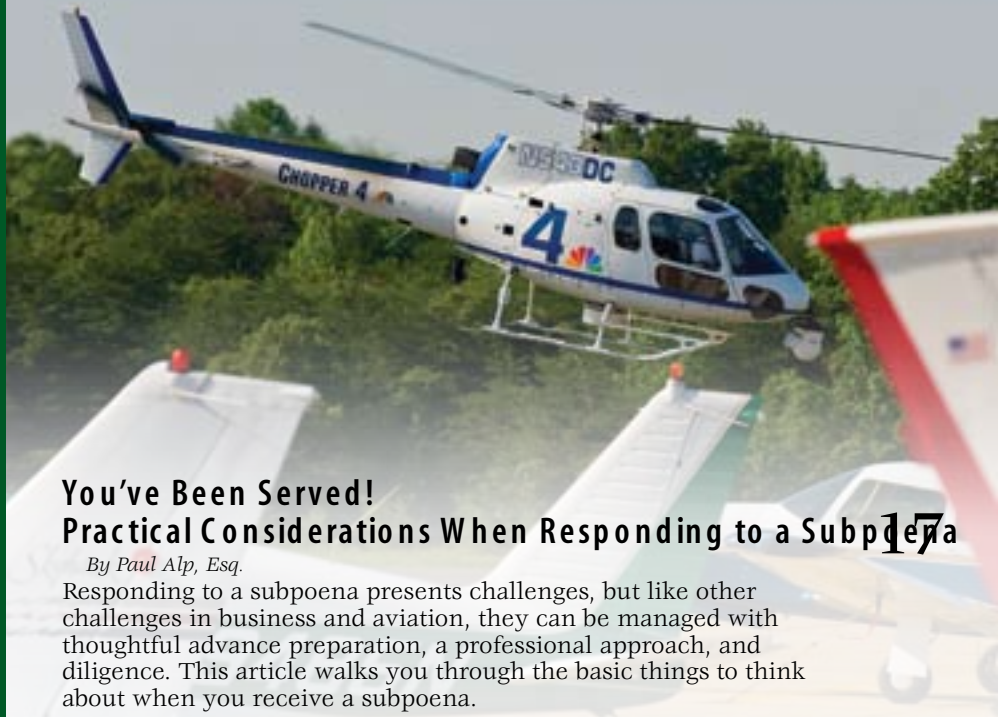


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You've Been Served! Practical Considerations When Responding to a Subpoena

By Paul Alp, Esq.

Responding to a subpoena presents challenges, but like other challenges in business and aviation, they can be managed with thoughtful advance preparation, a professional approach, and diligence. This article walks you through the basic things to think about when you receive a subpoena.

Bridgeford Flying Services: A Vintage Napa Valley FBO

By Paul Seidenman and David J. Spanovich

For private and corporate aircraft pilots and passengers, the gateway to Northern California's scenic Napa Valley is the Napa County Airport and Bridgeford Flying Services, a full-service FBO. Established in 1946 by four World War II pilots, Bridgeford once competed with four other FBOs on the airport but has long outlived them. To survive, it has grown, along with the airport to meet the changing needs of general aviation operators.

Lessons Learned: Insurance Traps to Avoid

By David W. Almy

Sure to raise the hackles of some insurance brokers, Jim Strang approaches the insurance game from a unique perspective. He's an insurance consultant, but as such he plays the role of a buyer's agent for aviation insurance and is perhaps the only one doing so full time. *Aviation Business Journal* thought it might be interesting to catalog the lessons learned from Strang's 45-plus years in the insurance and risk management fields for the benefit of NATA members.

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How to Lose More Money

And Other Things We Can Learn from the Airlines

By James K. Coyne

The first quarter earnings reports from America's major airlines were simply staggering. Delta, Northwest, American, United, and Continental had a combined loss of \$11.5 billion—or more than \$1,400 per second! Since then, oil prices climbed another 20 percent, the economy headed toward recession, the FAA grounded hundreds of planes, and Congress held hearings to condemn airline safety violations. The airlines are in an unprecedented financial tailspin, and Wall Street expects very few survivors.

Of course, NATA members provide fuel, ground handling, and other services to Part 121 carriers, so their difficulties pose strategic challenges to our own businesses, and none of us look forward to another round of airline bankruptcies. An airline financial meltdown also means that hundreds of airports will be “sharing their pain,” and they will surely try to pass the pain to other airport tenants, namely us, in the form of higher rates and charges. But as airlines try to restructure, merge, or scale back operations to stay alive, there will also be new opportunities for many of us, either because the airlines need new suppliers and decide to outsource more functions or because, as airlines eliminate service to smaller cities, nimble charter operators can find new markets to serve.

Surveying the Wreckage

But beyond considering all the obvious implications of the financial collapse of the airline industry, it may be worth considering how they got in this mess and the lessons we can learn from their mistakes. Obviously, they serve different markets, have a different mix of costs, and face demands from a different set of stakeholders, but in the sky and on the tarmac, they operate in a world very similar to ours. And if they can fail so spectacularly even as the nation depends so much on air transportation, then surely we must study the wreckage of the



airline industry for clues to our own survival and success.

I see five important “lessons from the airlines” that each of us can study and adapt to our own circumstances. First, is our relationship with our customers, in terms of price and performance, optimized for growth or designed merely for survival? Second, is capacity matched to markets that offer suitable margins? Third, is our relationship with Washington, D.C., realistic and proactive or bombastic and reactionary? Fourth, do we share the skies with allies or enemies? And finally, are we properly controlling our most important costs (fuel and labor), or are they controlling us?

Each airline, of course, is different. Southwest, for example, offers a very different customer experience compared with the legacy carriers, enters new markets carefully, tries to build a positive presence in Washington, plays well with others, and shows proper respect for both its workforce and the Jet A futures market. Maybe that's why it makes money when almost everyone else is in the red.

None of us have the same problems and challenges that Southwest and the other carriers currently confront, but someday we will have our own “perfect storm” when unforeseen events conspire to raise costs, shrink markets, and confound relationships with our own stakeholders all at the same time. When it happens, which lessons will we have learned?

Keeping customers means being on the right side of the price/performance line, but it also means being sure that prices aren't so low that you're just digging yourself into a deeper hole each time you

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President's Message

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make a sale. Aircraft charter prices, for example, in some markets are so obviously below costs that it reminds me of those 70 percent-off plane ticket fire sales that appear just before every airline bankruptcy announcement. In addition, airlines are notoriously slow in reducing surplus capacity, in part because the bankruptcy laws allow weak airlines to survive long after they've failed in the marketplace. Weak minimum standards affect our industry the same way. We need to make sure that airports aren't urging too many FBOs to put out a shingle when the local market isn't big enough to support them all.

Perhaps the airlines' most obvious waste of time and money has been their User Fee campaign in Washington. Millions of dollars were spent on inane TV ads, while high-priced airline lobbyists wasted valuable face time with top politicians on an issue that, in retrospect, was the least of their worries. And as the User Fee battle raged over the past four years, the airlines lost allies left and right, from ATC controllers to big corporations (with flight departments) that bought millions of airline tick-

ets but also wanted to fly private aircraft without airline-dictated new user fees.

But as we watch airlines struggling to survive, the central question (for them and us) is how to control costs in a crisis. For the airlines, that means primarily fuel and labor. Labor costs, including salaries, benefits, and pensions, were unfettered for decades as airline executives and complicit accounting standards allowed the real price tag of union contracts to be hidden in footnotes on income statements, inflating airline profits (as well as the stock price-linked option packages) and disguising what would eventually prove to be fatal liabilities. Bankruptcy let airlines nullify labor agreements, but their workers blamed only management and ever since the "friendly" labor skies have disappeared. Both sides, perhaps, should blame the accountants—or the regulations that permitted such chicanery.

The Challenge of Fuel Pricing

Fuel costs, for the airlines and for everyone else, are far more problematic. The challenge here, other than reducing fuel use, waste, and cost, is to raise prices in step with rising costs without losing customers. Every NATA member faces the same challenge, and some will surely repeat the mistakes of the airlines. The winners will learn to stay ahead of the pack, investing in the latest price data, using it wisely, and adjusting prices and margins to optimize net revenue. There is, for every product or service, a price point that produces optimum revenue. Like trying to find the perfect mixture of air and gas for peak power in an airplane, it takes a wise and experienced pilot (or a good computer) to pick the right number. The airlines, individually I suspect, know how to raise prices to offset fuel costs. But as an industry, they have failed to keep themselves profitable. In the long run, that can only be fatal.

Keeping your company healthy in this dynamic aviation economy means learning these five airline lessons and more. So, the next time you're stuck in ORD or DFW waiting for your flight to arrive or fuming in a crowded plane stranded on the tarmac because there isn't an open gate, take a moment to consider the joys of running an airline and then thank them for all that they've taught us. They may have lost billions of dollars, but what you and I can learn from them—that's priceless!

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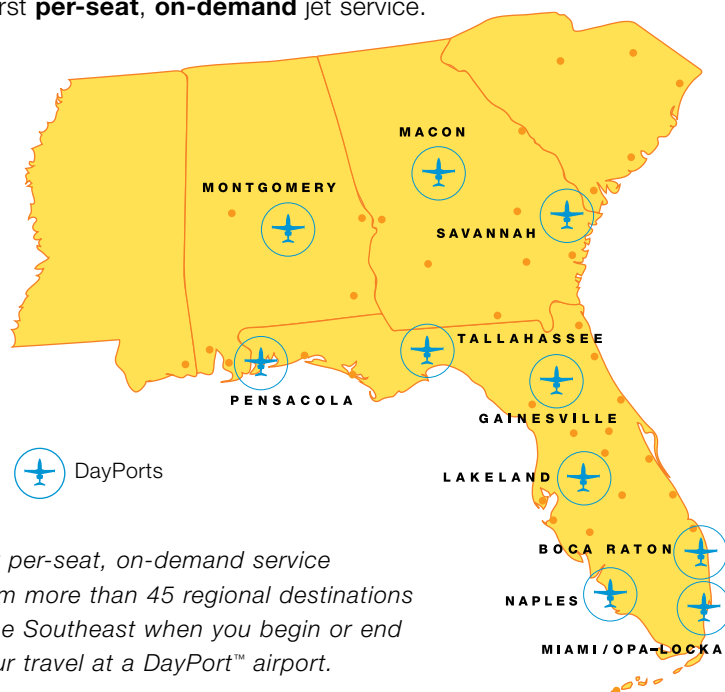


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Feds' Interest in Part 135 Is Good and Bad

By Eric R. Byer

For more than 40 years, the Part 135 on-demand air charter industry has been little more to the FAA than one of those regulated segments of the aviation industry that the agency has been responsible for but has essentially ignored. Some would dispute this claim, but until recently not much changed in the Part 135 world. Then AMI lost its certificate last fall because of operational control and foreign ownership issues, and suddenly the Part 135 industry became a hot topic among policy makers at the FAA and Department of Transportation (DOT). The question is, "Is the Part 135 industry's new fame good or bad?" Well, it depends.

For years, the FAA simply did not have the resources and manpower to dedicate to Part 135. There wasn't even a dedicated office for overseeing Part 135. The "old" FAA had one or two knowledgeable staff members on charter issues who were scattered within the Flight Standards Service abyss at FAA headquarters in Washington, D.C.

With the growth of charter, NATA pushed the FAA to dedicate more manpower and resources to Part 135 issues. Flight Standards Service Director Jim Ballough agreed and opened up a Part 135 branch within his office. Then the Challenger accident occurred at Teterboro Airport in 2005, and "operational control" became buzzwords that have yet to be shelved. There are now many self-proclaimed experts on Part 135 on-demand air charter issues at the FAA, especially in the Chief Counsel's office and in the various FAA Regional Counsels.

This is, in my opinion, bad. There are some attorneys who know what they are talking about, but unfortunately they are few and far between, and many of those lead attorneys who claim to understand Part 135 simply do not. And the folks who do know Part 135 issues, those on the regulatory side, are simply being overlooked—or more bluntly, ignored—on key Part 135 policy decision-making. Sadly, the very day a rank-and-file FAA employee demonstrates an accurate understanding of Part 135 is the same day he or she is slapped with the "too friendly" or "in bed with the industry" label. We've seen it happen before.

This is all very, very bad. Even nine months after AMI lost its certificate and TAG was fined a ludicrous \$10 million (bear in mind, Southwest was

fined \$10.2 million for flying unairworthy aircraft, an allegation never leveled against an AMI aircraft), our industry continues to wage an uphill battle to ensure that objective and fair actions are taken when it comes to Part 135 operational activity. NATA continues to see the FAA stepping outside of its regulatory authority on foreign ownership, an issue that the DOT clearly has purview over when it comes to all economic authority matters, and NATA continues to wage efforts to set the record straight on this subject with those in the agency and on Capitol Hill.



Aviation's Shining Star

But, this all being said, there could be an upside to all this new attention. Our industry's efforts to ensure that the FAA does not regulate via guidance, coupled with our exemplary safety record and resiliency in a struggling economy, makes the Part 135 industry a shining star in the aviation arena. Granted, it does not hurt that Part 121 bankruptcies seem to occur daily, but if there is one segment of the industry that continues to thrive, it is the small business charter industry. The Part 135 industry's new fame has not only put it on the map in terms of recognition by regulatory leaders at the FAA, DOT, Department of Homeland Security, and Transportation Security Administration, we are also seeing increasing support from congressional leaders. For example, Rep. Lynn Westmoreland (R-Ga.) recently condemned the FAA and Drug Enforcement Administration for their handling of an operator in his district when they grounded the operator's aircraft during a Charter Quest investigation. Many other members of Congress whom NATA visited with recently have taken a keen interest in assisting their constituents on a number of fronts, including FAA standardization.

With fame and notoriety come positives and negatives. If we remain vigilant and beat back the "135 legal experts" at the FAA, I think the Part 135 industry's newfound fame will produce dividends. ■



2008 NATA Air Charter Summit

By Eric R. Byer

NATA held its second Air Charter Summit June 9-11 in Chantilly, Va. With more than 235 attendees, the summit once again provided the on-demand air charter industry with current legislative and regulatory updates, unparalleled access to government leaders, and opportunities to reconnect and network with business contacts.

NATA Air Charter Summit attendees participated in exclusive sessions, including briefings and presentations from representatives of the Department of Transportation, Federal Aviation Administration, and Transportation Security Administration as well as a number of well-respected industry leaders.

"The great turnout for this event is a strong indicator of the desire within our community to meet on an annual basis," NATA President James K. Coyne stated.

Speakers addressed a number of critical issues confronting the on-demand air charter industry, including operational control, charter brokering, standardization, ETOPS, and a number of other Part 135 compliance and business matters.

Summit highlights included presentations from FAA Aviation Safety Associate Administrator

Nicholas Sabatini and FAA Flight Standards Service Director James Ballough and a call from Bill Brown, the Drug Enforcement Agency's Special Agent in Charge, Aviation Division, requesting operator support in working with the agency on long-haul missions.

A few eyebrows were raised during the summit's legal panel discussion on June 10 when FAA attorneys expressed concerns about current regulatory compliance and business arrangements in the Part 135 industry between operators, aircraft management companies, and aircraft owners.

All attendees can review the presentations from the summit by contacting me at ebyer@nata.aero.

New for this year's summit were expanded sponsorship opportunities, including tabletops for organizations to present their services. "We were quite pleased with the new exhibitor sponsorship opportunities that were very well received by sponsors and attendees," Coyne said.

"As the national representative of the air charter industry, we believe that we have created a niche event for Part 135 operators to convene to learn about the latest business and regulatory issues affecting their companies," he added.

Planning is now underway for the 2009 NATA Air Charter Summit, once again slated for early June at the Westfields Marriott in Chantilly.





NATA's 2008 Air Charter Summit attendees (top, opposite page) benefitted from presentations featuring several prominent industry experts, among them (opposite page, left side) FAA attorney Joseph Conte, operations law manager, Regulations Division and (opposite page, right side) Jim Christiansen, vice chairman of the Air Charter Safety Foundation and president of NetJets Aviation. Additional speakers included summit keynoter (above) Nicholas Sabatini, FAA associate administrator for aviation safety and (below, left to right) Eileen Gleimer, aviation law partner with the Washington firm of Crowell & Moring, LLP; Jens Hennig, vice president, operations with the General Aviation Manufacturers Association; and Dr. Bruce Holmes, chief strategist, NextGen Systems, DayJet Corporation. The full summit agenda with a list of all speakers is at www.nata.aero/acs.

Top right photo, from left: James J. Ballough, director, flight standards service, FAA; Nicholas Sabatini, associate administrator, aviation safety, FAA, Susan Parson, special assistant to the FAA, General Aviation and Commercial Division, and James K. Coyne, NATA president. Parson received the NATA Excellence in Pilot Training Award at the summit for her lead role in managing the initial writing or rewriting of several flight training reference books published by the FAA, including the *TAA Flying Handbook*, *Aviation Instructor's Handbook*, and *Instrument Flying Handbook*. Parson is an active flight instructor in Northern Virginia. In the lower photo, Ballough, Sabatini, and Coyne presented Brigadier General Anthony L. Liguori (Retired), manager of the FAA's Portland, Maine Flight Standards District Office, with the NATA FAA Customer Service Excellence Award based on the high degree of customer service demonstrated by its inspectors, supervisors, and manager in their interactions with Part 135 on-demand air carriers. "The FAA personnel assigned to this office offer regulatory compliance and application guidance that is a model for the rest of the agency," Coyne said.





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SMS: We Get Questions

We at Safety 1st get asked many questions about safety management systems (SMS), such as, “What exactly is a safety management system?” and “What are the differences between an SMS and other safety programs that have evolved over the years?” We thought it would be useful to pause and answer some of the common questions and explain the benefits a robust SMS program can bring to small operations.

What is a safety management system?

An SMS is a set of work practices and procedures put into place to improve the safety of all aspects of your operation. These procedures are established because smart companies realize that the potential for error is always present. Work practices provide the best defense against errors that could ultimately result in incidents or accidents.

Research has shown that most accidents and incidents can be traced to human error. We still address these errors out on the ramp, in the cockpit, and in maintenance. But we have grown smarter over the years and traced some of these errors back to management, thus the term safety management system. Believe it or not, most factors that lead to accidents are under the control of the organization, rather than individuals. Because the greatest threats to aviation safety are embedded within organizations, preventing accidents requires organizational action.

A comprehensive SMS is a systematic, comprehensive process

for managing risk. A successful management system provides for goal setting, planning, documentation, and measuring your performance. Having a good SMS can be seen in the way people work on a day-to-day basis. This is as an organization's culture, and ideally, it is woven into the fabric of your operation and is exhibited by everyone in the company every minute of every day.

To be successful, your operation's SMS must contain four key pillars of safety management: safety policy, safety risk management, safety assurance, and safety promotion. Don't be intimidated by these terms; it's not as hard as you think, and you may be doing many of these tasks already. Your SMS will ensure that you do them, document them, and encourage everyone at your operation to understand and participate.

But we're a small operation, do we really need an SMS?

Size does not exempt an operation from having accidents or incidents, and it should certainly not determine whether you have an SMS or not. Being a small operation could work to your advantage, as smaller operations often find it easier to implement an SMS.

As a smaller operation, implementation should go more quickly because there are fewer people that require communication and coordination to get the SMS underway. And communication is one of the key components to the success of your SMS.

One of the biggest issues we hear at Safety 1st is that it's way too difficult for a small organization to implement an SMS. Some companies use this excuse for not

even considering an SMS. But not having an SMS puts an operation at undue risk in the long run. And implementing it may be much easier than a larger company's experience. Everything is relative. After all, it's a small company and coordinating safety among a couple of people is not as intricate as it is with dozens or hundreds of co-workers.

Can you provide us with a “completed” SMS manual?

The aviation industry constantly tells the FAA that “one size does not fit all” when it waves the regulatory wand across all of aviation. When it comes to SMS, one size does not fit all operations either. Being handed a completed manual doesn't make it yours. SMS takes a bit of sweat equity, but the bottom line is if you develop your safety program, it will indeed reflect safety at your operation. Don't misconstrue this to mean there isn't help available. There's a lot of guidance on SMS from Safety 1st to help you with your safety manual. (Keep reading, and we'll get there.)

Will an SMS cost a lot?

Your SMS doesn't need to cost an arm and a leg. It does, however, require time, attention, and resources. And again, if you're a small operation, you may be able to implement your SMS without adding new personnel, whereas some larger operations may need to hire a full-time safety manager.

Costs may also include guidance and the purchase of safety-related reference materials. You may even want to attend formal safety training to help develop vari-

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Safety Watch

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ous portions of your SMS during implementation. Take advantage of all the resources available! Whatever the costs, keep in mind they will be minimal compared to an accident or incident. You'll be able to manage safety issues proactively before they lead to an incident or accident. An SMS can reduce losses and directly impact your bottom line. Safety 1st is here to help.

Having an SMS will help you manage risk at your operation. NATA is committed to assisting with this process. We have developed SMS for both ground and air operators. Investigate for yourself at www.natasafety1st.org, or call (800) 808-6282 and ask for Amy Koranda (SMS Ground Operations) or Russ Lawton (SMS Air Operations). We are here to help every step of the way.



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You've Been Served!

Practical Considerations When Responding to a Subpoena

By Paul Alp, Esq.

The owner of the airport stopped me on the way to the airplane. A frown creased his usually cheerful face. "I don't know what to do," he said.

"Someone just handed me this thing. Can you take a look at it?"

The "thing" was a subpoena for a deposition and production of documents in a high-profile civil case. Arriving like a bolt out of the blue, it was an official document with a court caption that required him, in 30 days, to testify under oath and turn over his business records to attorneys. The airport owner was shocked. He had never brushed up against a serious litigation before, and like most "civilians" dragged into one, he was surprised and a little apprehensive.

If you are a party to an existing lawsuit or FAA action, you likely already have counsel and can anticipate working with your lawyer

to develop a plan for responding to the various requests for information you receive. If, however, you are a non-party that receives a subpoena without warning, you might be at a loss for what to do next. It can be a very stressful experience. My friend owns and manages a small airport with a busy flight school and maintenance shop. He does not regularly deal with lawsuits, consult litigators, manage document requests, or institute so-called "litigation holds." But our society is litigious, and subpoenas to non-parties are common. Moreover, being in the aviation business means you may find yourself brought into an administrative investigation that you had no idea was underway. Last year, for example, some of our clients received subpoenas from the FAA in connection with its investigation of an operator. Though they were bystanders to

the investigation, they still had to respond. It is, therefore, important to have a basic understanding of what a subpoena is before the day one drops into your lap.

We stood outside under the sun beside the wing of a battle-scarred Cessna 152, and I walked my friend through the basic things to think about when you receive a subpoena. Consider yourself an eavesdropper on that conversation. To many people, dealing with lawyers is on a short list of things to avoid, but if you take the time to read on, I will try to make this as painless and informative as possible.

What Is a Subpoena?

Ominously, the term "subpoena" is Latin for "under penalty." It is a legal document that commands someone to appear at a specified

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You've Been Served!

Continued from page 17

time and place, typically to provide deposition testimony and/or produce documents and records. A subpoena may also request the recipient's attendance to testify at a hearing or trial.

Subpoenas are commonly served as part of a civil lawsuit between two or more adversaries in the course of investigating the facts of their case through a process called "discovery." Parties often serve subpoenas on non-parties during discovery to obtain information, documents, or testimony relevant to the dispute.

Depending on the jurisdiction (state or federal), the authority issuing the subpoena may be a clerk of the court, a notary public, or even an attorney for one of the parties to a lawsuit. A subpoena typically contains a caption setting forth the name of the case (which identifies the litigants) and the court through which it was issued. Most jurisdictions have requirements governing how a subpoena must be served. Generally, a subpoena may be served by any adult who is not a party to the litigation.

If the subpoena is properly served and meets other formalities, it requires compliance. Refusing to comply with a valid subpoena can subject you to sanctions, including being found in contempt of court or being responsible for the issuing party's attorney fees, neither a particularly pleasant outcome.

Subpoenas Requesting Documents and Records

A special type of subpoena, known as a *subpoena duces tecum* from the Latin "bring it with you," requires the recipient to bring records, reports, documents, or other evidence to a deposition or court. Sometimes the subpoena or accompanying letter indicates

that a person need not appear in person to testify so long as documents are produced within a specified period. Sometimes a party seeking documents will direct a subpoena to a person who has possession of the documents rather than the person who owns the documents. An example of this could be a subpoena to your bank directing it to produce your financial records.

As a general rule, when a formal request for documents has been made, the documents may not be altered or destroyed while the request is pending. To destroy records under such circumstances is referred to as "spoliation." Upon receipt of a subpoena for documents, an effort must be made to determine the specific documents that are within the scope of the request and then ensure that they are maintained and not disposed of until you and your attorney determine the particular form of response to be made.

Subpoenas from the FAA and Other Legal Orders

The FAA may subpoena witnesses and records in connection with an investigation. The FAA subpoena power is broad, and an FAA subpoena is valid and enforceable so long as the FAA is acting in its authority and the information sought is "reasonably relevant" to the inquiry.

A subpoena for testimony or documents of the sort discussed in this article is not the same as a letter of investigation from the FAA. A letter of investigation is a formal document that notifies an alleged violator of a regulation of the activity being investigated. It specifies the time for reply and may include a request of documents to be retained or made available for inspection and copying.

A subpoena is also different from

other legal instruments that compel disclosure, testimony, or document production, such as a search warrant, national security letter (which the FBI and some other federal agencies can order in connection with international terrorism and counter intelligence investigations), or a court order. A discussion of the letter-of-investigation process, search warrants, national security letters, and the like is outside the scope of this article, and the recipient of any such instrument should not delay in seeking legal advice.

Somebody Just Served Me; What Do I Do Next?

As a subpoena recipient, your objectives include protecting your legitimate business and privacy interests, fulfilling your obligations to comply with a valid legal order, and avoiding undue time, burden, and expense, including sanctions for failure to comply as required. Accomplishing each of these goals at the same time can present a challenge, which is why enlisting the help of a qualified attorney is important.

One of the first things to consider is what your interest is in the case or investigation that prompted the subpoena. If it was issued in a commercial dispute among two private litigants, you may have no interest in the matter but merely be in possession of some information or documents relevant to the dispute. On the other hand, you could be the target of a potential lawsuit yourself. Similar considerations apply if you receive an investigative subpoena from the FAA. You could be a bystander or a potential investigation target.

It is critical that you do not delay taking action when you receive a subpoena. Don't "file" it

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where you consign other chores you wish to avoid. Often, a response or objection must be made within a certain time frame or else you could face sanctions or waive some of your rights. If the subpoena seeks documents, you will have to take steps to notify employees who have access to the documents sought and to find, identify, and preserve the documents.

What Are My Options?

As a general rule (specific options available vary by jurisdiction), upon receiving a subpoena in a civil case you may respond by objecting to it, respond without objections (i.e., comply in all respects), or file a formal request called a "motion" with the issuing court asking it to modify the subpoena or rule that it is unenforceable (to "quash" the subpoena in lawyer-speak). Another possibility is to not respond and then face the potential penalties. You should talk over all of your options with your lawyer and jointly decide upon the best way to proceed.

If you make a timely written objection, the party serving the subpoena is generally not entitled to enforce it without obtaining an order from the issuing court. If the recipient chooses to file a motion, the motion typically must be filed before the time set for compliance with the subpoena. If such a motion is filed, the witness generally may refuse to comply until a court rules on the motion.

At some point, the attorney seeking your testimony or documents may contact you to touch base. Sometimes the deadline set forth in the subpoena is merely a "placeholder," and the issuing attorney will work with you to establish a deadline that is compatible with your schedule. If you do not hear from the attorney

identified on the subpoena, it may be a good idea for your attorney to contact the requesting attorney to find out what he or she is really after and discuss a time frame for responding. You will often be able to negotiate a deal in which you produce a subset of the range of documents requested and/or reach an agreement that deposition testimony is not required if certain materials are produced. Always memorialize such agreements in writing.

Potential Objections

When you receive a subpoena, you should discuss with your lawyer possible objections, including the following.

Procedural defects. A subpoena is not legally enforceable against the recipient unless the issuing court or agency has jurisdiction over it. Typically the means of service of a subpoena determines whether the court has jurisdiction. Various requirements exist as to what must be contained or included with the subpoena and how it must be served. Grounds for objection include defects in service and procedural mistakes, as well as if the subpoena fails to provide a reasonable time to respond or requires a person to travel an unreasonable distance to provide testimony.

Relevance. In civil litigation parties may obtain discovery regarding any matter that is non-privileged and relevant to any party's claim or defense. Therefore, if a subpoena seeks information or documents that are not relevant to a claim or defense, the request is objectionable.

Undue burden and expense. You may object to a subpoena if responding to it will cause undue burden and expense. Courts are often willing to alleviate burdens of producing information on non-

parties. If the subpoena is unclear or its scope cannot be worked out through negotiation, going to court to obtain an order defining your obligations may be a wise move. A court may impose sanctions on a party that served an oppressive subpoena by ordering it to reimburse the respondent for lost earnings and attorney fees.

Documents not in your possession, custody, or control. If you do not have a document, you cannot be called upon to produce it. You may, however, have control over a document you do not physically possess if, for example, it is in the hands of a third party under your control or acting as your agent. If a third party acting as your agent has a responsive document, you may be required to instruct them to produce it.

Confidentiality and privilege. A subpoena may also be objectionable because it seeks information that is confidential, a trade secret, or subject to various privileges. A company typically does not want its trade secrets and other sensitive information to be disclosed in court where its competitors or the general public may have access to it. In instances where such information is of great importance to a lawsuit, a court may ultimately order disclosure but issue an order requiring documents or deposition transcripts to be protected from the prying eyes of the public.

Various legal privileges that protect against compulsory disclosure of information and documents exist, and you and your attorney should carefully think through whether any of them apply. The attorney-client privilege governs communications between attorney and client in connection with legal advice. Such exchanges are usually inviolable. In this way, an attorney can be like a spiritual advisor you confess to, with the

obvious difference being that they never took a vow of poverty.

A related concept, the work product doctrine, protects from disclosure an attorney's thoughts, mental impressions, and notes. Other privileges include the accountant-client privilege, the Fifth Amendment privilege against self-incrimination, the critical analysis privilege, which protects against the disclosure of documents reflecting potentially damaging self-criticism, and the patient-physician and spousal communication privileges. The results of an internal investigation of fraud or other activity conducted in accordance with the Sarbanes-Oxley Act or otherwise may also be protected.

In addition, federal and state laws govern the disclosure of personnel records. Although such statutes do not generally protect such records from disclosure in response to a compulsory legal request, they may impose notice or other procedural requirements.

Responding to an FAA Investigative Subpoena

Options available on receiving an FAA investigative subpoena vary somewhat compared to subpoenas in civil cases discussed above. For example, a person receiving an FAA investigative subpoena may not file a motion in court to stop its enforcement. Instead, if the person chooses not to comply, then the FAA must go to court to enforce the subpoena on a petition for an order directing the respondent to "show cause" why the subpoena should not be obeyed. When the FAA brings such a motion, the receiving person bears a high burden of showing that the subpoena is unreasonable, was issued for an improper purpose, or that compliance would be unnecessarily burdensome. A reviewing

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A Subpoena Checklist

There seems to be a checklist for almost everything in aviation. For example, the checklist for turning on the coffeemaker in a Boeing 737 can contain more than 50 items. Here is a shorter list of things to consider in consultation with your attorney when you receive a subpoena.

- 1. What is the deadline?**
- 2. Does the subpoena command testimony, the production of documents, or both?**
- 3. What is my connection with the dispute or investigation underlying the subpoena?**
- 4. Is this a matter that I should inform my insurance company about?**
- 5. Who will the company designate as a witness, if one is called for?**
- 6. Where are all the responsive documents?**
- 7. Where are the rest of the responsive documents?**
- 8. Who is responsible for keeping them?**
- 9. What electronic records, of any kind, do I have that are responsive to the requests?**
- 10. What steps do I have to go through to gather all responsive documents?**
- 11. Are any objections available on grounds such as:**
 - a. Procedural defects with the subpoena or service,**
 - b. Relevance,**
 - c. Undue burden or expense, or**
 - d. It seeks confidential or privileged documents, communications, or information?**
- 12. If I'm going to respond with written objections or file a motion, what are the deadlines for doing so?**
- 13. If I'm going to produce documents or appear for a deposition, will I need an extension of time?**

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court must defer to the FAA's determination that the information sought by the subpoena is relevant unless the determination is "obviously wrong." In this context, it should come as a profound relief that, unlike every other government agency, the FAA is never "obviously wrong" about anything, right?

Deposition Testimony

A deposition involves questioning in which a witness testifies under oath, and everything he or she says is transcribed by a court reporter. A subpoena in a civil case to an organization like a corporation may be accompanied by a notice advising the organization of its duty to designate someone to testify for it at a deposition about specific topics. Because an organization cannot physically testify, it will be obliged to provide a spokesperson who can. Failure to designate a spokesperson may cause the organization to be punished for contempt of court. If you receive such a request, you should consult with your lawyer about who the lucky testifying "designee" will be.

A deposition is serious business. You must budget sufficient time to prepare and then prepare some more. Planning to appear at a deposition and bark, "I object!" in response to every question may sound like a good idea now, but wait until you have to explain yourself to a judge. A complete discussion of depositions is beyond the scope of this article. However, always bear in mind that, like your mother always told you, honesty is the only policy when testifying under oath.

Gathering Responsive Documents

Before you ever receive a subpoena, it is generally a good

practice to designate a person with responsibility for managing your documents and records and coordinating responses to requests for information. Establishing a specific document management protocol will, as a general matter, help your business run smoothly and give you a head start when and if you receive a subpoena for documents.

The following are things to consider when you receive a subpoena for documents:

Identify each specific entity from which the subpoena seeks information. The subpoena may be directed at some members of your corporate family and not others. You want to make sure that the correct entity responds.

Determine the location and format of responsive information and who may keep it. Responsive documents can be kept both as hard copies and as electronic data. Responsive information can be anywhere: at the bottom of an old filing cabinet in a warehouse, on a hard drive in a computer that used to belong to a manager but now resides in the maintenance shop, etc. If a company does not have a systematic procedure for storing, indexing, and retrieving documents, finding what you need can present a challenge. Early on in the process, it is important to clearly define, in specific terms, the universe of places where responsive information may be kept.

Establish which person at the company is going to direct document gathering. Ideally, this would be the person your company already charges with responsibility for managing documents. A point person who can deal directly with staff at all levels in the company as well as with outside counsel is an asset that will drive the process forward as efficiently as possible.

Determine the extent to which the company requires the assistance of outside counsel. {For purposes of full disclosure, in my experience as an attorney...} It usually is best for outside counsel to become involved in the document-gathering process at the earliest possible stage. Clients typically "forget" about the existence of places where potentially responsive documents may be kept. In addition to offering legal advice about substantive issues, a lawyer experienced in document production can ask specific, often annoyingly persistent questions to ensure that your search is complete.

Issue a hold on the destruction of documents as appropriate. You do not want to be accused of purposely or inadvertently destroying evidence. Make a plan in consultation with your attorney to find and preserve every conceivable responsive document, including electronically stored data. The need to preserve must be communicated to people at all levels and all locations of the organization who are likely to possess relevant material.

Carefully consider all potential privileges against disclosure that may apply. Communications with attorneys obviously fall within this category, but do not forget that you may have confidential or proprietary data as well as personnel records subject to various disclosure rules.

Determine the most sensible way to capture responsive documents and data. Options include copying documents yourself, calling in a vendor to make copies, and scanning all hard copies to create an image database. This latter approach is often more cost effective than old-fashioned photocopying because once a document is imaged, it can be printed

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out again cheaply. In contrast, photocopying involves paying to both scan and print the document every time you want a copy.

Once the documents are gathered, conduct a review for responsiveness and privilege. Depending on the size of your document collection, this could take some time. On the other hand, do you really want to cut corners and risk mistakenly producing a privileged document? Doing so could result in waiver of your privilege in all communications relating to the subject matter of the document.

Prepare written responses and objections as appropriate. These could take the form of a letter to counsel or a pleading. A records custodian may also have to sign a declaration attesting to his or her search for responsive material.

Electronically Stored Information

ESI is a popular buzzword in the law right now, not the title of a TV series. Information stored in electronic formats is kept in all sorts of places, including personal computers, servers running scheduling programs, camera-phones, PDAs, voicemail, and video surveillance tapes. Under the federal civil procedure rules, a person responding to a subpoena need not provide electronically stored information from sources that are not "reasonably accessible" because of "undo burden." For example, some electronically stored data may exist on systems so old that it cannot easily be converted into readable or usable form. However, a number of companies these days specialize in retrieving electronic data from media that has been corrupted or even "deleted" on purpose. Therefore, what a court will consider to be "reasonably accessible" ESI is a

question that will depend on the facts of your specific case.


The first important point to remember is to not take electronically stored information lightly. If you do not preserve discoverable electronic documents and data after receiving a subpoena, you may be found in contempt of court or liable for spoliation of evidence. Therefore, the second important point to remember is to develop a good data housekeeping plan before you receive a subpoena. Know what you have and where you have it. Designate someone who can provide information about where records are maintained, when they are destroyed, how they can be preserved, the formats used, past and present operating systems and software used, file-naming conventions, voicemail system usage, etc.

Here is an example of the type of situation where specialized knowledge about ESI can help you comply with a court order. You realize that some documents responsive to a subpoena include old emails that you sent or received from your home computer back in the heyday of AOL mail. You cannot find the emails, but a computer whiz may be able to retrieve copies of them. So far, so good. In reading through the retrieved messages you see references to email attachments like documents created in a word processor. Of course, the attachments are not "attached" anymore and, as luck would have it, constitute the very documents that the person who issued the subpoena is seeking. Could the attachments some day be found? Perhaps. Will they be readily accessible, or will retrieving them constitute an undue burden? The answers depend on the specifics involved. Will a court sanction you if you don't produce them? I'll have to plead the Fifth on this without additional infor-

mation!

For a profession that seems to be all about bright-line rules and precise language, lawyers can sound awfully mushy, right? Maybe.

Postscript

As we spoke, the airport owner seemed to relax a bit as it became obvious that subpoenas are not so daunting and mysterious after all. Responding to one presents challenges, but like other challenges in business and aviation, they can be managed with thoughtful advance preparation, a professional approach, and diligence. Hopefully the day will never come when you are served with a subpoena. If it does, don't panic. Contact a professional, work out the problem, and then move on. 

Disclaimer: This article is intended to help you understand the nature of a subpoena and how to respond to one. It is a general reference guide only and does not constitute legal advice. Because applicable law varies among jurisdictions and every case is unique, it is important to consult with an attorney knowledgeable about litigation who can help you protect your rights.

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Bridgeford Flying Services: A Vintage Napa Valley FBO

By Paul Seidenman and David J. Spanovich

Northern California's Napa Valley evokes images of lush, sprawling vineyards producing some of the world's finest wines. With its posh resorts and picturesque scenery, Napa Valley is now considered California's number-two tourist attraction, just behind Disneyland, as well as a major destination for business travelers. For private and corporate aircraft pilots and passengers, the gateway to this beautiful region is the Napa County Airport (APC) and Bridgeford Flying Services, a full-service FBO.

Established in 1946 by four World War II pilots (Dick Bridgeford, Caesar Bertagna, Clyde Barnett, and Jack Bergin), Bridgeford Flying Services once competed with four other FBOs on the airport but has long outlived them. To survive, it has grown, along with the airport to meet the changing needs of general aviation operators.

Once almost exclusively a propeller aircraft facility, the Napa County Airport has hosted a growing number of business jets since the early 1990s. The 820-acre general aviation airport has three runways: 18R/36L (5,932-foot long), 6/24 (5,008-foot), and 18L/36R (2,500-foot). The two longer runways are each 150-foot wide, more than ample for even the

largest corporate jets.

"At one time, it was very unusual to see a jet on our ramp," said Harold Morrison, Bridgeford Flying Services' senior team member and a 6,000-hour Learjet-rated pilot. "Today, jet traffic here is routine, although seasonal and tied to the wine industry and tourism. In fact, in 2007, Jet A accounted for some 80 percent of our total fuel sales, with about 20 percent, 100 low lead avgas." The company's fuel is sold under the Air BP brand.

Mark Willey, Bridgeford Flying Services' chief executive officer and managing partner since late 2000, joined the company after 17 years at Atlantic Aviation, where he rose to vice president and general manager under the former DuPont family ownership. Willey is chairman of NATA's Business Management Committee and one of 20 members of the FBO 1 Group, an organization of industry leaders that meets three times a year to examine ways to improve business operations. Based on his years of FBO experience, Willey believes that Bridgeford's success has been tied to the ability of its owners to "stay a step ahead" since it first opened its doors as little more than a flight school.

"I think that the founders, even then, realized

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Bridgeford Flying Services

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that flight training was not going to be a sustainable business model for the long term. This is why they almost immediately became a Cessna dealer," Willey said. "Today, we are in the top ten in the world and the oldest Cessna Sales Team Authorized Representative dealer in the western U.S., covering northern California and northern Nevada. Thanks to an economic stimulus package reauthorized by Congress at the end of last year, that business has continued to do well."

Willey said that Bridgeford still operates a flight school that has trained more than 7,000 pilots to date, employs six instructors, and operates ten single-engine Cessnas, which are also available for rental. The flight school and dealership were the mainstays of Bridgeford's business until the early 1990s, when Napa County, then the exclusive fuel provider on the airport, decided to exit the aircraft fueling business.

"As the airport authority saw more jet traffic coming in, I think they realized that it would be better to let a private operator with a focus on general aviation handle fueling, allowing the authority to spend all of its time on the airport management," said Morrison, who along with other partners bought Bridgeford in 1989 but remained with the company since the sale to its current owners ten years ago. "As part of the agreement with Napa County to provide retail fuel, it was a requirement that we make a commitment to the airport authority to become a full-service FBO, offering all of the amenities that a business aviation type of clientele and our recreational pilots would expect."

To do that, Bridgeford, expanded in 1997 from a single building that housed a few offices and a well-known restaurant (Jonesy's Famous Steak House) to a new 6,000-square-foot, stand-alone executive terminal and office complex. In addition to a sleek passenger waiting area, the terminal provides conference rooms, pilot lounge, kitchen, crew rest area, and flight planning and weather briefing facilities. Other amenities include crew cars, car rentals, concierge services, wireless internet access, catering, and aircraft rentals. Bridgeford's ramp can accommodate as many as 80 transient aircraft, as it does once a year to accommodate those flying in for NASCAR races at nearby Infineon Raceway, but that number can be expanded by using an adjacent taxiway.

Fuel, aircraft management, charter, and maintenance are Bridgeford's primary profit centers. Willey reported that the company leases and manages the Napa County Airport's fuel farm, which includes two above-ground, 12,000-gallon Jet A tanks

and one 12,000-gallon tank for avgas. The company also maintains a self-service island for avgas customers to pump their own fuel in exchange for a "substantial" discount. "We are trying to keep our avgas prices as low as possible to encourage that segment to continue flying," he said.

Willey said Bridgeford owns all of its ground service equipment, including three fueling trucks for Jet A and two for avgas, three tugs, various GPUs (ground power units), and lavatory and oxygen serving equipment. "When we have a once-a-year type event, like the NASCAR races or the Napa Valley Wine Auction, our fuel provider, Air BP, steps up and loans us another jet fuel truck to ensure we can accommodate all of the customers with no fueling delays," he said.

Fuel and Economy Pose Challenges

As with most FBOs, escalating fuel prices have created challenges for Bridgeford, and Willey said the company is doing everything it can to meet those challenges.

"We had budgeted a 3 percent growth in fuel sales, tied to our goal of landing a few more based customers, along with the current six, and an increase in traffic. But with the present economy and price of fuel, we now expect a slight drop in gallons—maybe up to 10 percent—in 2008 compared to last year. And even though we are the only FBO on the field and could charge more for our fuel and services, we don't because we realize that most owners and crews appreciate our efforts and understand that fuel purchases are what allow us to provide a high level of service. We check fuel prices at nearby airports, come up with an average, and price below that."

Fuel prices and the economy have also impacted the company's flight school, which has seen a 25 percent drop-off in business since 2007. However, Bridgeford's aircraft management and charter services continue to grow despite the economy, registering a 24 percent growth over last year. When asked why, Willey quickly responded: "The answer is simple. Have you flown the airlines lately?"

The company's managed fleet, which operates under Bridgeford's FAR 135 certificate, includes a Cessna 182, Cessna 414, King Air 200, Cessna Citation III, CJ2, CJ3, and Bombardier Learjet 45. An Astra is also available for charter but is actually operated by Actus Aviation, which Bridgeford acquired along with the 135 certificate under which the midsize jet was chartered by its former owner. "The Astra's charter operation is Actus Aviation's

sole business," Willey explained, adding that both the Actus and Bridgeford charter operations have ARG/US and J.D. Power approval.

Willey said Bridgeford has enhanced its charter operation's safety and reliability by being one of "a very few" Part 135 operators with an FAA-certified dispatcher on staff: Cheli Morrison-Tarvid, who also functions as the company's charter and aircraft management specialist. "It is required for Part 121, but most 135 operations only use schedulers," Willey said. "We believe it is just a matter of time before 135 operators will be required to have licensed dispatchers. It's another example of staying a step ahead."

Bridgeford continues to field calls from potential jet aircraft owners who want to learn more about the company's management/charter opportunities. Those calls have translated into new business. "We will be expanding the managed fleet by adding a new Cessna Caravan later this year and are in discussions with potential owners to add another CJ2, CJ3, and an Embraer Phenom 300," Willey said. "We would also like to bring in a few more twin pistons and turboprops, including another King Air or a Pilatus PC-12 and a few more mid-size and large cabin jets to round out the fleet." In that regard, he said that Bridgeford will offer to assist its management customers in aircraft procurement, although it does not function as an aircraft broker.

Going forward with aircraft management, Willey said the Napa Valley wine industry presents a potential opportunity for growth, especially since Bridgeford's owners and board members are involved in the business. As the management activity expands, Willey said that turbine-powered aircraft will be the primary focus.

Bridgeford also functions as a charter broker and provides on-request lift to three leading fractional ownership plans (Cita-

tion Shares, Flight Options, and Avantair) and for Sentient Jet Membership, a leading jet card program. "Adding a secure facility to house the aircraft, along with Bridgeford's FAR Part 145 repair station, the company's focus on safety, and high customer service reputation of our FBO were the major draws for the fractional operators when they selected us

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Bridgeford Flying Services

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to provide support," Morrison said.

The company's core maintenance facility is a 30,000-square-foot hangar, which is sized to accommodate up to three business jets in the Gulfstream or Global Express range. The hangar, which opened in 1999, also houses the dispatcher's, operations, and chief pilot's office, along with a separate passenger waiting area that is dedicated to aircraft owners and their guests from the managed fleet. All charter customers go out of the FBO's main executive terminal.

In addition to the main hangar, Bridgeford leases from the airport authority a 10,000-square-foot hangar that also supports maintenance activities, a 5,000-square-foot hangar, two 2,000-square-foot hangars, and a T hangar.

"We have the capability to perform A-level inspections for jets up to the size of a Falcon 50," Willey said. "In fact, we have completed "A" checks on the Astra, but most of the jet inspections we perform are for our managed fleet customers. We are also authorized to perform all major inspections on the Cessna piston aircraft family and all phase checks on the King Air series."

He said the company also offers AOG services on all aircraft types. "If we can't do the work, we will coordinate with the owner to bring in qualified technicians who can," he said.

A Practical Eye on the Future

Bridgeford plans to add 30,000- and 28,000-square-foot hangars if the business is there to justify the additions. The hangars would be located on an undeveloped lot behind the main FBO terminal on the east side of the airport. Given the hangars' size, they would be oriented to based and transient turbine-powered aircraft.

"We have completed the preliminary drawings, but any decisions for new hangar construction will depend on the market for new tenant or based aircraft. We are aiming for a decision to be made by 2010," Willey said. "If we decide to go ahead, the first one should be up and running by 2011. Long-term, we will also look to add a new, unique FBO building, capturing the flavor of the Napa Valley with all the amenities that pilots and aircraft owners would expect."

Bridgeford employs a staff of 55, some of whom have been with the company for more than 20 years. "Our pay and benefits are typically as good, and in many cases slightly better, than the other area FBOs and industry average," Willey said. "But I think there are two other reasons why we have

been able to retain good people: we encourage a family-type working environment where we all work as a cohesive team and we are very service oriented. We do all that is necessary to attend to our customers' needs."

Willey said that a primary concern is always safety. "Our pilots attend simulator training twice a year and by policy are dedicated to one aircraft. For our line mechanics, training is carried out through the NATA Safety 1st program, and our focus on customer service is further evidenced by ongoing service training through programs such as the Disney Institute."

To support its flight training and aircraft management, Bridgeford's staff includes 25 pilots. "Line pilots at the company typically begin as certified flight instructors and then work their way into the charter department if we find that they have the customer service and safety focus we demand," Willey said. "Because of airline industry layoffs, we are starting to receive more and more inquiries from those pilots about charter flying opportunities."

Nonetheless, he said that with student pilot starts down everywhere, recruiting new pilots is going to become a critical challenge, especially as charter grows and more very light jets enter service.

Retaining and attracting qualified technicians will be just as critical. Bridgeford employs five A&P mechanics, of whom two are FAA authorized inspectors. As Willey explained, Bridgeford has worked with a local aviation vocational school to find new talent. In fact, two of the company's five mechanics were recruited directly from that school. Technicians who are hired as maintenance trainees, are "buddied" with an experienced mechanic.

"Finding good aviation technicians is getting harder because so many of them have dropped out of the industry and gone into other fields," Willey said. "At the same time, we are located in the San Francisco Bay area, which is one of the more expensive places in the country to live."

Willey and Morrison have continued to maintain Bridgeford's long, productive relationship with the Airport Division of the Napa County Department of Public Works. "As both the airport and the FBO grew, the need for continued evolution of that relationship was, and is, necessary to ensure safe airport operations. We work together with Airport Manager Martin Pehl and his staff on numerous initiatives. For instance, we are members of a joint airport security and runway action safety team," Willey says.

Morrison stressed that the company always tries to balance security and safety with good customer


service. "About a year ago, we added security cameras, which went along with the airport's decision to add security fencing," he said. "We have controlled access to the ramp, but we do allow limousines and private cars to come to the airplanes to pick up passengers, once the drivers are pre-screened at the gate."

Bridgeford's management busily promotes Napa County Airport through participation in community affairs and locally based organizations. "We are very supportive of the Napa Pilots Association, and we have helped to promote the local wine industry," Willey said. "We have also worked very hard to bring in aircraft OEMs and fractional operators to display aircraft during airport promotional events. In this way, we are promoting Napa County Airport as a destination facility and not one that is simply for local fliers."

Willey also noted that Bridgeford makes a point of promoting the airport specifically to local business and political decision makers by hosting "Fly a Leader" programs six times each year. Under the program, Bridgeford invites area civic and business leaders in for a tour of the airport and explanation of its operation and benefits. "The tour of the airport, which includes IASCO, the Japan Air Lines U.S.-based training center located here, is followed by a flight in our school planes, and ends with lunch at Jonsey's, the airport restaurant."

The Commitment to Service and Growth

While Bridgeford's management is considering an expansion beyond Napa County as part of its long-term business plan, Willey said the company is committed to providing the level of service expected by customers who visit the FBO or have based their aircraft with Bridgeford. "Bridgeford Flying Services' owners do not take any profits from the company, because profits are used for equipment needs or new benefits to help the company obtain the goal of exceeding our customers' needs," he said. "The owners have remained committed to growing the services at Napa, and that is exhibited by their investment to build a large hangar to encourage based tenants."

Along that line, Willey cited the value of NATA membership and used the charter business as a case in point. "Last August, a surprise FAA operational control task force did thorough interviews of many of our employees and a detailed audit of our operations," he said. "This included reviews of our aircraft management contracts, payroll records, and various operational records. We believe our openness and efforts with this FAA team, as well as our constant contact and positive working relationship with our FSDO [flight standards district office], is what the FAA expects from us. NATA helped us to accomplish this because it alerts and educates its members to stay on top of regulatory changes." 





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Insurance Traps to Avoid

Sure to raise the hackles of some insurance brokers, Jim Strang approaches the insurance game from a unique perspective.

Jim Strang is a rare bird of a sort. He's an insurance consultant ("Run, run for your life!"), but as such he plays the role of a buyer's agent for aviation insurance and is perhaps the only one doing so full time.

While buyer's agents in the real estate industry are not uncommon, Strang said that, in the aviation industry at least, he's about it. He audits the insurance portfolios of aviation companies with an eye to reducing costs or improving coverages or both. He claims to reduce premiums 80 - 90 percent of the time and to improve coverages almost all of the time. He pulls those rabbits out of his hat via 40+ years of experience in the insurance and risk management fields, and Aviation Business Journal thought it might be interesting to share some of the lessons learned from that experience for the benefit of NATA members.

ABJ: Isn't the broker supposed to look out for the interest of the insured?

"Well, they say they do. But, it wasn't too long ago that brokers in New York were fined, one up to \$850 million for not putting the interests of their clients first. All had to sign a declaration stating that going forward any transaction would be transparent to the client and disclose any brokerage and fees. Clients have to review and sign that declaration in advance. "

ABJ: Who then truly plays the role of the advocate for the insured?

"Nobody, most of the time. All large corporations have risk management staffs. Smaller to midsize companies just can't afford it, so they rely on the brokers. There are a lot of things they do very well, but the position of the brokers needs to be put into perspective. They're paid by the insurance underwriters. They don't make any money unless they sell insurance.

Somebody who performs risk management is paid by the client. They are there to find ways to protect the owner or the client and not necessarily spend money. And depending on the size of the FBO, management company, or charter operator, they might be able to negotiate a fee for the broker's services."

ABJ: For a small or midsize company, though, draw a distinction between a risk manager and an insurance broker. Are they different people; are they the same people?

"At small or midsized companies, it could vary all over the lot, from somebody in accounting who looks after insurance—who pays the bills but really doesn't understand insurance—to somebody who has a sophisticated background and is truly able to bring about change and help the organization.

"Risk managers work with the clients from the inside out. They learn the whole operation, review

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Insurance Traps to Avoid

Continued from page 35

their contracts, find out what the exposures are, and make sure that the insurance policy matches those exposures. A broker's expertise is taking the information the client provides, going to the market, and finding the best coverage."

ABJ: Is there an analogous situation here? When you're buying a house you can hire an agent who represents you rather than a real estate agent who's arguably representing the seller.

There are some similarities. Brokers rarely dive into the internal workings of an organization, because they rarely understand it. They're considered outsiders and most companies don't want to give their financial and other sensitive information to strangers. So most of the time, the brokers call and the client sends as little information as possible."

ABJ: What's the sophistication level of the clients with regard to insurance and risk management?

"I'd say in aviation, particularly in general aviation, on a scale of 1 to 100, somewhere between 10 and 20 percent. So, very low."

ABJ: What's the downside of this if you don't have the right coverage?

"As an example, we just settled a claim for about \$600,000; half of it was for the costs of chartering another plane. The company would have lost about \$300,000 had we not helped with the claim and pointed out some of the limits. If you don't have the right coverage and you have restrictions in there, it really makes a big difference.

"We had a client who decided they wanted to have their own insurance and not be on the man-

agement company's. The broker told them he gave them exactly the same coverage, but for loss-of-use they had a five-day waiting period. If you need to charter aircraft during the waiting period, the extra expense incurred isn't reimbursable if the aircraft is back in service during those five days. Well, what good is that? You can spend a lot of money chartering airplanes in a short period of time. Until there's a loss, an insurance policy is only a piece of paper. Whether it is written well or poorly, nobody knows until it gets tested with a loss."

ABJ: So, if you're the general manager, CEO, or owner of a midsize charter company or a midsize FBO and you have to buy insurance, what process should you follow to not screw up?

"Ideally, you should hire someone with insurance experience to help you. Lacking that, find a broker who is knowledgeable about aviation. A lot of times companies have brokers because they were high school friends or they played ball together. Sometimes they are knowledgeable, and sometimes they aren't."

ABJ: Is there a clearinghouse of insurance consultants out there?

"The Society of Risk Management Consultants has maybe 120 members who all adhere to the same standards, but there are consultants who are not SRMC members out there consulting. There might be hundreds of thousands of insurance brokers and only a very few who specialize in aviation. Consultants have to be totally independent and be paid by our clients, never by insurance companies."

ABJ: If somebody makes a decision to use a risk management consultant, they do so on the basis of some tangible, concrete benefit—that it saves them money, right?

"To a large extent that's the motivation and result, but there can be surprises.

"I always start with a risk review. From that review, I can give them a report card and show them where they're exposed, what they have, and what they need to correct. Most times that saves them a lot of money, but sometimes the findings are that their coverage is so poor that it costs them money to correct the situation.

"We just went through this process with a management company/charter operator. They manage 30 airplanes, and their

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Insurance Traps to Avoid

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review results were such that we improved their limits of liability considerably. They had some airplanes insured against liability at \$10 million and some at \$50 million. Everybody got \$100 million [in coverage], we saved about 30 percent in premiums, and most coverages and many limits were dramatically improved. The review also revealed the company was unaware their aviation policy already contained lay-up credit provisions for the lower exposure when an airplane is out of use. They had never collected on that before—there were missed savings annually.”

ABJ: So, what does it cost to use you? What’s a typical fee?

“We have options to meet the client needs. We look at a fee from about \$125 to \$250 per hour according to the work and who’s working on the project. Sometimes, we charge a flat fee.”

ABJ: Does that always include a site visit?

“Yes, probably more than one. It just depends on what needs to be done. But the benefit the client gets from this is not simply rate reductions, it may also result in better coverage.”

ABJ: Do you ever save people money directly, just because they’re paying too much for whatever reason?

“Oh yes, many times.”

ABJ: What percent of the time?

“Oh, we either save money, improve coverage or both a large percentage of the time.”

ABJ: Really? And almost always the coverage profile changes?

“Right. My theory of insurance is that it’s a piece of paper that’s a promise. The most important thing is the coverage, and you look at the premium second because if you suffer a large loss and it’s not insured, everything you saved in premium is wasted, the policy is useless. I’ve never had a client complain about premium when they have a loss and they collect. They’re thrilled.”

ABJ: On aircraft lien and lease agreements, what’s negotiable and what might not be covered by insurance?

“There was a lender who made a loan on a \$14 million Hawker. In the contract, if the aircraft was damaged and repairs exceeded \$1 million, the lender had a right to rescind the loan. That may not have been the lender’s intent, but that language is part of the executed document.

“Well, if you touch the wingtip of an aircraft you can do more than \$1 million in damage. So, they were just looking for an out. That wasn’t fair to my client at all. Other times we’ll see that the lender has a right to adjust the claim and that the settlement checks must be made payable only to them.

“We’ve seen times when they want you to sign

all your rights over to them and you have no say in what happens. And yet, you’re the one flying the airplane. Sometimes, a lender will purchase the airplane, and similar to a loan, they will lease it to the owner or the purchaser. And sometimes they’ll put terms and conditions in there that you can’t match through insurance so the owner is self-insured.”

ABJ: In the big bucket of insurance, you review all the insurance for the company?

“Exactly. Not just the aviation, but worker’s comp, crime, and directors and officers, etc. One coverage that can be missed is valuable papers and records coverage for reconstruction of aircraft records.

ABJ: What should operators look out for with war risk sub-limits and European Union (EU) insurance requirements?

“If you fly over or to the EU there are certain insurance requirements that you have to meet. It used to be \$50 million, but then it changed.

“Before the events of 9/11, each aviation liability policy provided war risk coverage for passengers and third parties. Since 9/11, the entire insurance market offers only \$50 million on an aggregate basis for third parties. That means that if you own 10 airplanes you only get one \$50 million limit for this war risk sub-limit.

“If you fly an airplane to Europe, you need to have a higher minimum third-party liability limit depending on the weight of the aircraft. For aircraft weighing between 26,000 pounds and 110,000 pounds, the required limit in special drawing rights is \$80 million to \$150 million. This converts into standard limits of \$150 million to \$300 million. A lot of times a charter operator doesn’t pay for the extra insurance until he needs it. If he gets a charter request on a Friday night, he may have to turn the trip down.”

ABJ: How do you prove that you’ve got the coverage?

“Oh, you actually get specifically worded certificates for EU, Germany, Italy, and the UK.”

ABJ: So I have a little certificate in my wallet—is that the idea?

“No. What happens is you go to a handler. Say you’re going to Germany and they help you file your flight plan. Depending on whether the flight will be Part 91 or Part 135, they may have to file a certificate of insurance that spells out that you have this limit of liability and it’s on an occurrence basis. We’ve had crew tell us they fly to the EU all the time and have never been asked for insurance documents. We believe that it depends on where you land and who the individual checking the paperwork is. We’ve had to deal with a rejected certificate in the middle of the night because the

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Insurance Traps to Avoid

Continued from page 38

standard certificate language was rejected by a foreign country. In order to get the charter out of that country, we had to get the certificate revised. Luckily, we got it resolved within about 45 minutes.”

ABJ: Is war risk insurance still an issue?

“The prices have come down since 2001, and if you know how to go about it, you can negotiate a higher limit. But we still see outrageous costs for a trip to Europe. We might see a charge of \$5,000 or \$10,000 to go to Europe. If it's done right, in advance, it should be for much less, maybe \$1,500 or something like that. The cost for unlimited travel is higher.”

ABJ: It's just because of ignorance that it's \$5,000 to \$10,000?

“Correct. Without prior planning, operators get into a panic. They have to go now; but, they did no planning so they have to go out in the market to buy it and the market really slams them.”

ABJ: What should an operator consider when determining an insured hull value?

“That's a very good question. Aviation insurance is unique. If you purchase an airplane for \$25 million and a new one coming off the line is \$27 million, you can insure your current aircraft for \$27 million (because you'd want to replace it with a new one.

“Also, you can replace it for what you paid for it, or you can depreciate it over time. If it's now on your books for \$20 million, you could insure it for \$20 million.

“So, I advise the client to review their limits very carefully each year before the renewal. We advise them to look at the book value and what the replacement cost might be. Sometimes used planes go up in value, and sometimes they go down. If the hangar burned down and all you see is ashes, what would you do? Would you want a different type of airplane or the same airplane? Are there a lot of them available on the market or none available? The best bet is to try to look at that value and think it through. And the cost of hull insurance currently is very cheap.”

ABJ: Why so?

“There's a lot of competition in the marketplace. Using business jets as an example, some rates are as low as 10 cents and some as high as 40 cents, so let's just say the cost to insure is 20 cents per \$100 of value. You're probably going to pay more than that for your homeowners. And your house is sitting in one place.”

ABJ: You can't replace a broker, can you?

“No. You have to have some kind of a broker. I think clients need to develop partnerships with their

broker and their underwriter and have long-term relationships. But each party has to pull their own weight and everybody has to work together. That's how the client gets the best result.”

ABJ: What's the right liability limit?

“I think it depends on the net worth of the owner and passengers, and a lot on the type and the size of the airplane. It also depends on where they fly. You could fly from two small towns between plants, have a turboprop, and maybe you're an individual who owns it, and maybe \$5 or \$10 million dollars liability might be okay.

“If you're a corporation, you probably wouldn't want less than \$50 million; and if your aircraft is a jet and it's got the capability of 500- to 1,000-mile range, I look at \$100 million up to \$500 million. If you have a GV and you're flying executives and clients all over the world, \$500 million is probably the minimum you want.

“So, it's something that you develop working with the client, finding their comfort level. Maybe \$300 million is enough, but the client may feel it's really inexpensive to go to \$500 million and they want that extra comfort level and their board and the shareholders to know that the corporation is properly protected.”

ABJ: What should a charter operator consider from the passenger's or client's perspective?

“You want to make sure they're fully covered given the passengers they're carrying.

ABJ: What reimbursement can you expect for claim-related substitute aircraft expenses?

“Let's say that your GIV is damaged and you charter a GIV. Maybe you have to pay \$5,000 an hour to charter that airplane. You get \$5,000 an hour minus what it would have cost you for the trip in your own airplane.”

ABJ: Where is aircraft-related equipment covered? What is a “spare part”? What is “moveable equipment”?

“Aircraft-related equipment comprise spare parts specifically designed for installation on an aircraft, such as extra altimeters, generators, passenger seats, and APUs. These should be covered under the hull section of the aviation policy. There is also maintenance and other equipment where the aircraft is based that are not aircraft-specific such as any parts not designed for installation on that specific aircraft, for example, hydraulic power units. Examples of moveable equipment are power washers, jacks, tugs, and stairs not attached to the aircraft. These need to be covered under a property policy with inland marine coverage because most

property policies have a boundary defining the premises area, say up to 1,000 feet from the building. Equipment that can be moved further away needs inland marine coverage. It could be a stairway or shared equipment in a hangar. That's what seems to fall through the cracks. It could amount to \$100,000 to \$500,000. That's a lot of money.

"So, it's not just the airplane. It's everything that works around and attaches to it.

"For example, if you had \$10,000 worth of china and crystal and for whatever reason you needed to ground the plane, that china and crystal would still be part of the airplane. An APU would be part of the airplane and a spare part. Spare parts would be-- spare engines, spare parts sitting in the hangar, and a lot of other things like mechanics tools, stairways, and tugs. Things like that need to be covered."


ABJ: In your world, what's the prevailing attitude toward the act of filing a claim? I think some people view an insurance claim as an act of last resort.

"Fortunately for aviation, claims adjusters generally are excellent and very fair. You do have to

present the claim properly, and there's a lot to how it's presented. If there were no claims, there'd be no reason to have insurance. You're going to have somebody tow an airplane into a hangar or into another airplane. Things happen. And you're not looked upon poorly at all. Certainly, if your loss ratio was below 50 percent, you would be very good. Most of the charter operators probably run a 20 to 30 percent loss ratio. You have years when you're going to go over that, as things do happen."

ABJ: For the lay among us, a 20 to 30 percent loss ratio means what?

"Say you pay a \$1,000 premium annually for insurance and you have \$300 in claims; that would be a 30 percent loss ratio.

"Most businesses today file claims as an ordinary course of business, and if their loss ratio is lower than 30 percent that's still profitable for the insurance company. Maybe even up to 50 percent, depending on the line of insurance and the circumstances." 

Part 2 of "Lessons Learned" will appear in the next edition of Aviation Business Journal.



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The PLST Buzz

By Colin Bane

Over the last decade, NATA's Safety 1st Professional Line Service Training (PLST) has become the industry standard for training and recurrently training line service professionals. NATA recently gave PLST a distinctly 21st century overhaul, updating the renowned video training program into a highly interactive online training course to address the education needs of all line service specialists at FBOs large and small.

As the first round of professionals completes the new online PLST, the response has been strong.

"In a larger FBO they split the duties up and can afford to have specialists, but here on a smaller FBO with less people and everybody on the ground doing multiple things, the level of education and all-around training has to be much higher," said Gary Davis, line service manager at Don Davis Aviation in Henderson, Ky. "Everybody has to know how to do pretty much everything, and we're finding that the Safety 1st training is indispensable."

Davis was one of the first to complete the new training and is recommending it to everyone on his ground team and to colleagues throughout the industry.

"I thought the training was wonderful, and I actually learned quite a bit more from it than I might have expected as somebody with a lot of experience in the industry," Davis said. "I think it is going to be very helpful for anybody in line service. No matter what you're doing, you want to always be thinking about the safest and most efficient way to do it. I believe it is absolutely worth it to raise the safety awareness of all your employees, and I can't think of a more effective way than to send people through the Safety 1st training."

At some FBOs, like Georgia's Midcoast Regional Airport at Wright Army Airfield, line service supervisors are already requiring the Safety 1st PLST for everybody on the line.

"I'm a professional line service technician with 13 years of training and experience in the Air Force and now also on the ground here at Mid-

coast Regional Airport, and I'm pleased to report that the Safety 1st training was worth every minute," said Barry Aston. "In our job, safety has to be priority number one. Even if you've been doing the job for a while, it's always good to have a refresher and to refocus on safety and staying up to date. I know I needed the refresher, and it's comforting to know that everybody I work with will have the same base of knowledge when we're out there operating as a team."

PLST Online includes detailed training on all topics required of line service specialists and is broken into eight separate training modules: Introduction and Ground Servicing, Safety, General Fuel Servicing, General Towing Procedures, Fuel Farm Management, Customer Service, Fire Safety, and Aviation Security.

Each training module consists of an introduction, topical and interactive training materials, and practical exams. The training is self-paced; trainees can move on only once they have proven mastery of the training materials in each module.

"One of the challenges we had was to appeal not only to those who are new in the industry or

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SAFETY 1ST PLST CONCEPT MENU GLOSSARY HELP

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Consider these scenarios:

- A pilot angrily approaches you waving a fuel bill. He is upset with the charges.**
- A passenger vents his anger when he finds that his requested ground transportation is not there.**
- The flight crew vents frustration over not being met on the ramp by a line service specialist.**

The PLST Buzz

Continued from page 43

new in a particular line service position, but also to those out there working who have tremendous knowledge and experience," said Amy Koranda, director of safety management at NATA's Safety 1st division. "I think we've been successful in finding that sweet spot. This program enables everybody to learn something no matter how long they've been in the industry, and so far the response has been tremendous."

Simon Wade, training and safety manager, Universal Aviation in London, appreciates these aspects of the training. "I must say that this online format is very good in terms of pace," he said. "If you didn't quite get something, you could play the section again. Also, as a trainer, asking questions throughout is a very good touch. All in all, I look forward to going through the remainder of the program."

Tim Nestler, facilities manager at South Florida Jet Center, a subsidiary of Hop-A-Jet Worldwide Jet Charter, said the Safety 1st PLST is an asset to any FBO or any aviation company.

"Even for someone like myself with 21 years in the aviation industry, I would say it's definitely worthwhile," he said. "You're going to learn a huge

array of new things no matter what kind of experience you have going in. The information covers everything from A to Z, and when you complete it you're going to have a much more comprehensive understanding about everything on the line."


Nestler said the importance of training and re-training employees cannot be underestimated.

"No FBO can afford to have people getting complacent in their jobs," he said. "There's a real danger in complacency, especially in a smaller airport where security and safety are really everybody's responsibility. I have ten line service employees, and they're all taking the PLST on the job."

"The line service specialists are really the lifeblood of any FBO, and in many instances they make the first and last impression that anybody coming to or leaving from an airport in an aircraft will see," Koranda said. "Many of our businesses realize that those impressions are critical, and they understand the absolutely crucial role that these folks on the ramp play. You want your customers to leave thinking, 'Wow, that's a great FBO. I want to go back there because they know what they're doing, they take care of my aircraft, they take care of my passengers' needs, and they put safety first in everything they do.'"

"I think the strength of the new training is that it takes highly technical information and breaks it down, making it a little bit easier to assimilate," said Koranda, who worked with some of the industry's top line service trainers and aviation consultants to update the PLST and develop the new online training modules.

The need for standardized training for line service professionals could not be clearer: FBOs simply cannot afford to have safety or security incidents on the ground or in the air, and the line service specialists are the front line of defense to ensure that all runs smoothly.

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All the Answers on PLST Online

The NATA Safety 1st team has been busy implementing the updated Professional Line Service Training Program (PLST Online) since the middle of April. During this beta testing phase, members who entered the drawings for free training and submitted vouchers at NATA's FBO Leadership Conference have been the first to experience the new and exciting online training.

Once beta testing was completed in May, we began rolling out the program. Many NATA members have expressed interest and asked questions that our readers may find of interest below.

What's new about the online version of PLST?

PLST Online is now available anytime and anywhere. It is up-to-date with the latest best practices and industry standards and includes interactive lessons, electronic reporting of student progress, and additional checklists and reference materials.

Why online training?

Online training introduces flexibility, automated student tracking, increased learning retention, dynamic content, and randomized testing into traditional line service training programs, ultimately improving line service efficiency and productivity. Future updates to the online training are instantaneous for all participating companies.

Why does the PLST Online have eight modules?

PLST Online took the video program and integrated the refueling modules into module three. The safety and servicing aspects of refueling are also included in modules one and two. Although the online program contains eight modules, the training time has increased to an average of nine hours from the original six and a half hours.

We will begin phase two of the PLST Online, which will cover towing and refueling for specific makes and models of general aviation aircraft. Aircraft-specific information will be presented in a reference library so that PLST Online participants can learn about aircraft specific to their operation. This information will be available on a rolling basis as general aviation aircraft towing and refueling information is completed.

What other online training resources accompany the PLST?

An online training resource page has been developed for participating companies. All ancillary training references and guides are included for downloading and printing to both students and ad-

ministrators/trainers. This page contains the 2008 Aircraft Ground Service Guide, Aircraft Towing Guide, Trainer's Guide, and all PLST Online PDF references and checklists.

Will the video program of PLST still be recognized for certification of our line service specialists?

We have communicated to our current PLST participants over the past six months that the new PLST Online will supersede the video program. These companies were asked not to begin new employees with the old program and to complete/submit paperwork for certification by the time we began live training or by April 2008. We understand there may be extenuating circumstances with training and encourage active participants to call and discuss these with us at (703) 575-2045. We appreciate everyone's patience and understanding during this transition.

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Safety 1st News

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What version of browser works best?

The program will support Internet Explorer and FireFox for PC and Safari for Mac.

Are any special programs needed other than the browser?

The only software requirement will be plug-ins for Macromedia flash and shockwave. The software will detect if the plug-in is installed and provide a link if not.

Are there any common PC applications, such as Adobe, that are needed?

Yes, all the additional best practices and procedures are in PDF format and will require printing using Adobe Reader. We provide all of these documents on the online training resources page for the administrator/trainer to print for everyone's use at your company.

What kind of bandwidth is needed to run the software effectively?

It runs best on a high-speed connection. DSL, T1, or cable all work fine.

We appreciate your interest in PLST Online and will continue to share frequently asked questions in this column. Please keep your questions and com-

ments coming to Safety1st@nata.aero.

NATA Produces Flight Crew Briefing for Teterboro

NATA Safety 1st, under a Federal Aviation Administration grant, has produced the first-of-its-kind online flight crew briefing for the Teterboro Airport. The briefing is intended to prepare flight crews with the local knowledge required for safe operations at Teterboro Airport.

Teterboro ranks among the top 20 busiest general aviation airports in the country, providing access to northern New Jersey and the New York metropolitan area. The complex airspace surrounding Teterboro and the high volume of traffic during peak hours demand that flight crews be thoroughly familiar with the air traffic procedures for the area and the airport layout before arriving and departing.



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There have been 40 runway incursions over a five-year period at Teterboro Airport. Most of these incursions resulted from pilot deviations, where the pilot or flight crew did not follow ATC instructions. One section in the briefing highlights the airport "hot spots" where the incursions have occurred, points out the visual cues in these areas, and reviews some of the common errors made during taxi operations. Consequently, the Teterboro information provides one of the best starting places for flight crew briefing and familiarity training.

The Teterboro Airport Flight Crew Briefing takes approximately 20 minutes to complete, depending on the pilot's familiarity with the airport. The training includes four main topic areas: safety, security, noise abatement, and Air Traffic Control (ATC) procedures specific to Teterboro. The safety briefing consists of an airport safety overview, runway incursion hot spot review, surface area movement problems, and recommended practices for Teterboro. The security section includes a security pro-

gram overview, identification requirements, escort procedures/vehicle access procedures, and overnight securing of aircraft requirements. The noise abatement briefing covers the Teterboro rules and regulations, noise abatement procedures, runway 19 noise abatement procedures, and airport updates. The ATC segment covers an overview of ATC procedures, the Teterboro Five/Dalton departures, the VOR/DME-A approach procedure, and VFR operations applicable to Teterboro.

The Teterboro Airport Flight Crew Briefing can be viewed free of charge at www.airportflight-crewbriefing.com/Teterboro/. NATA Safety 1st will continue to develop more airport specific briefings throughout the year and will include available briefings in this column. We encourage your thoughts and comments on this vital safety initiative and informational training by email at Safety1st@nata.aero.



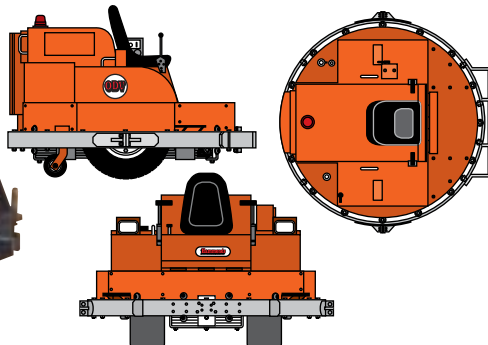
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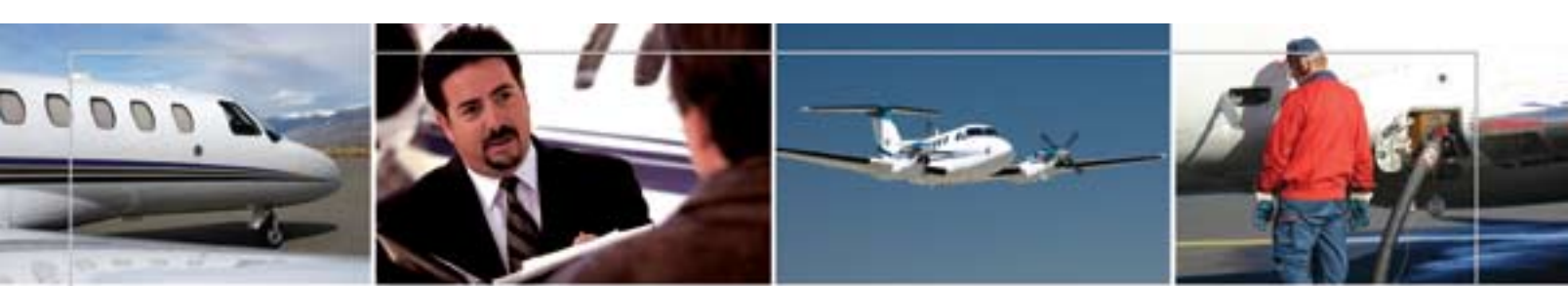


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