EXHIBIT A

American Arbitration Association
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

1054 PC-12 LLC, hereinafter referred to as "CLAIMANT"

And

SkyTech, Inc., , hereinafter referred to as "RESPONDENT"

Case Number 77 181 00254 09 JMLE

AWARD OF ARBITRATOR

REASONED OPINION AND AWARD OF ARBITRATOR

CASE PRECIS

This is a contract dispute concerning a purchase and sales agreement on an aircraft.

SUMMARY OF CLAIMS

Claimant seeks the return of its deposit on the grounds that Respondent breached the contract by not delivering the aircraft with the correct carpet. Respondent contends that the aircraft and carpet meet the contract specifications, and that Claimant breached the contract by wrongly failing to go forward with the transaction. Claimant denies that it was properly notified of the aircraft delivery date with the due formality. Respondent alleges that Claimant used fraud to induce it to

enter into the contract, and it claims consequential damages beyond the liquidated damages allowed under the contract.

FINDINGS

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the parties dated January 7, 2008, and having been duly sworn and having duly heard the proofs and allegation of the parties hereby, FIND, as follows:

1. In an earlier transaction, Mr. Charles Kuhn, through an LLC, attempted to purchase an aircraft from Respondent, but that transaction failed.
2. The reason the first transaction failed was due to Mr. Kuhn's failure to meet decision deadlines on the aircraft construction schedule.
3. In that first transaction, Respondent declared Mr. Kuhn's LLC in default, terminated the contract, retained Mr. Kuhn's deposit as liquidated damages, "closed the books" on the matter, and made a corporate business decision to not have any further dealings with Mr. Kuhn.
4. After Mr. Kuhn's first attempt to purchase the aircraft failed, Mr. Lockshin, a friend of Mr. Kuhn,

and a well-respected frequent customer of Respondent, intervened to revive the contract.

5. Mr. Lockshin made false representations to Respondent to induce Respondent to restore the contract. The fraudulent representations created the understanding on the part of Respondent that Mr. Lockshin was to be a part owner of the aircraft. His assertion that he had a "big stake in that airplane" and "this would be his 5th purchase of an airplane" from Respondent gave Respondent the clear understanding that Mr. Lockshin had the authority to make needful decisions concerning the interior, the paint scheme, the avionics suite and some of the other pre-delivery issues which still remained unresolved in the aircraft transaction.
6. Respondent wanted to keep Mr. Lockshin as a valued customer. Mr. Lockshin had an excellent transactional record with Respondent from prior aircraft purchases, and Respondent wanted to maintain that good relationship with him.
7. In meetings with Respondent's President, Mr. Lockshin offered to take charge of the remainder of the acquisition process and he assured Respondent that if Respondent would revive the contract, he would be able

to remedy the delays, indecisiveness and acrimony which Respondent had experienced while dealing with Mr. Kuhn.

8. In actuality, Mr. Lockshin had no ownership interest in the aircraft.

9. Respondent relied on the false statements of Mr. Lockshin. It restructured the transaction by novation, set aside the default, restored the previously retained deposit funds, and it allowed the transaction to go forward, but only on certain conditions set forth more fully below.

10. Respondent's attorney required the assurance that Mr. Kuhn would no longer be a factor in the transaction, so Mr. Kuhn set up another LLC, designated Mr. Lockshin as the Manager, executed a mutual release and assignment of rights between the LLCs and then, once distanced from Mr. Kuhn, the Claimant entered into a Novation with the Respondent which renewed the contract with Mr. Lockshin as their decision maker in the acquisition process.

11. Respondent would not have revived the contract and exposed itself to the present loss had it doubted Mr. Lockshin's representations about having an

ownership interest, and his ability to shepherd the contract to fruition without further difficulties.

12. As the "second effort" towards completing the contract progressed, it became clear to Respondent that Mr. Lockshin was not so much an independent manager authorized to make aircraft construction decisions as he was a convenient cut-out-man and message-bearer between Respondent and the ostracized Mr. Kuhn.

13. The deal fell through again, only this time, instead of Respondent ending up holding Mr. Kuhn's deposit, Respondent was left holding an unsold, customized, completed aircraft worth about $4 million dollars, which required extensive re-work to be marketable to any other buyer, all of which would cost a significant amount.

14. Respondent properly retained the deposit upon the second declaration of default and termination of the contract.

15. Beyond the amount retained as liquidated damages, Respondent suffered consequential damages amounting to $255,596, exclusive of legal costs and attorney fees, as a result of the Claimant's fraud-in-the-inducement.

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16. Pursuant the terms of Section 10.5 of the purchase agreement, the governing laws of this case are the laws of the State of Colorado, which includes the Uniform Commercial Code, UCC.

17. Pursuant to the terms of Section 10.6 of the purchase agreement, the methodology for resolution of disputes is by binding arbitration through the American Arbitration Association.

18. Pursuant to the terms of Section 10.6 of the purchase agreement, the decision of the arbitrator shall be final and shall not be subject to judicial review.

19. Pursuant to the terms of Section 10.6 of the purchase agreement, the parties shall be responsible for their own costs and legal fees, if any; provided, however, that the arbitrator shall be empowered to award to a prevailing party its reasonable costs, expenses and legal fees.

20. Pursuant to the terms of Section 10.6 of the purchase agreement, the arbitrator shall have jurisdiction to determine, "*any* claim, controversy or dispute relating to or arising out of or *in connection with* this agreement.

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21. Respondent's counter-claim for fraud-in-the-inducement is a *claim controversy or dispute relating to or arising out or in connection with this agreement.*

22. Claimant entered into an aircraft purchase agreement with Respondent.

23. There is a visible difference in the quality and appearance of the carpet provided by Respondent versus the carpet desired by Claimant.

24. The contract did not require Respondent to use the specific carpet desired by Claimant, but only to secure and install a "custom match" for that carpet.

25. Respondent did secure and install a "custom match" for the desired carpet.

26. The "custom match" carpet, while not up to the same quality, was nonetheless adequate and satisfactory to a commercially acceptable standard.

27. The obligation when outfitting an aircraft with carpet is to use materials acceptable to the FAA of which are at least satisfactory to a commercially acceptable standard.

28. The installation of the "custom match" carpet by Respondent did not breach the terms of the contract.

29. Respondent's installation of a "custom match" of the specific carpet did not excuse Claimant's further performance on the contract.

30. Claimant failed to perform his duties under the contract, by failing to timely take delivery and pay for the aircraft after having been given notice that the aircraft was "ready-for-delivery."

31. Claimant's failure to go forward with the transaction based on its claimed dissatisfaction of the choice of carpet was a breach of the contract.

32. Claimant's breach of contract entitled Respondent to terminate the contract and to retain the deposit sums as the agreed amount of liquidated damages.

33. Respondent gave Claimant notice of "ready-for-delivery" on October 24, 2008.

34. The October 24, 2008 notice satisfied the formal notice requirements set forth in Section 9 of the contract.

35. Only one "ready-for-delivery" notice is required under the contract, according to industry standards made applicable to this transaction by the UCC.

36. Subsequent slippage of the actual delivery date due to the discovery and correction of defects or

discrepancies does not require the issuance of a new and different, formal "ready-for-delivery" notice.

37. Claimant was given the required "*not less than 1five business days*" notice prior to the "ready-for-delivery" date.

38. Respondent notified Claimant of the slippage in the "ready-for-delivery" date.

39. Claimant had actual knowledge of the changed "ready-for-delivery" date.

40. Claimant failed to perform its remaining duties to pay the price and take delivery within the five business days of the revised "ready-for-delivery" date provided under Section 7 of the contract.

41. The mechanism for providing notice is set forth in Section 9 of the purchase agreement. The time constraint for the giving of notice concerning the "ready-for-delivery" date is set forth in Section 5 of the purchase agreement. The obligation for purchaser to take action within five business days of the delivery date is set forth in Section 7 of the purchase agreement.

42. The contract required Respondent to notify Claimant *at least* 15 days prior to the "ready-for-delivery" date.

43. Respondent complied with the requirement to notify Claimant at least 15 days prior to the "ready-for-delivery" date.

44. Subsequent notice to Claimant of the changed "ready-for-delivery" dates was accomplished by Respondent as problems were discovered and resolved, and it became necessary to change the original "ready-for-delivery" date.

45. Once Claimant received the initial "ready-for-delivery" date with observance of the due and appropriate formalities as provided under Section 9, the subsequent changes in the actual delivery date were satisfied by actual notice to Claimant.

46. Such notice was adequate and effective, both under the contract, and under the UCC which authorizes the consideration of the "normal custom and practice in the industry" as the appropriate standard.

47. The "normal custom and practice in the industry" is to give only a single formal "ready-for-delivery" date notice, and if any subsequent changes are

necessary, "actual notice" by any reasonable means is sufficient to advise the purchaser of the revised date.

48. The purchaser has five business days to perform the "take delivery" and "pay" obligations under Section 7 of the aircraft purchase agreement.

49. Claimant failed to perform under Section 7 of the purchase agreement when notified that the aircraft was finally "ready-for-delivery".

50. As a consequence of the failure of Claimant to purchase the aircraft, Respondent was contractually obligated to purchase the aircraft from the factory, and to try to find a buyer to purchase it after it had been customized to the personal choices of Claimant. This resulted in lost profits from the sale of the aircraft in the amount of $200,000. During the time the aircraft was hangared, Respondent had to pay interest and insurance costs amounting to $120,437. When a buyer was found, it was necessary to have the aircraft hull stripped and repainted to remove the custom color scheme chosen by Mr. Kuhn. The cost of having to repaint the aircraft to satisfy the next buyer was $49,123. During the time the aircraft was

1 held for sale, it had to be maintained in flight-ready
2 condition so it could be taken up for demonstration
3 flights. The maintenance necessary to keep the
4 aircraft in fly-away condition was $36,000. In
5 addition, the Respondent had to pay attorneys and
6 legal costs associated with this failed transaction.

7 **COLORADO'S *ECONOMIC LOSS RULE* CONSIDERED**

8 Claimant argues that Respondent cannot bring a claim for a
9 tort in connection with a contract case. Citing Colorado's
10 *Economic Loss Rule*. With respect the Respondent's counter-claim
11 in fraud, it is well settled that under Colorado's *Economic Loss*
12 *rule*, the tort of fraud may not be maintained in a contracts
13 case, but an exception arises when the fraud takes the nature of
14 fraud-in-the-inducement.

15 **FRAUD-IN-THE-INDUCEMENT EXCEPTION TO COLORADO *ECONOMIC LOSS RULE***

16 Because fraud-in-the-inducement necessarily takes place
17 before the contract is formed, it is not prohibited under the
18 Colorado *Economic Loss Rule*. The elements of a prima facie case
19 of fraud in Colorado are enumerated in Morrison v. Goodspeed,
20 100 Colo. 470, 68 P.2d 458 (1937). They are:

21 1. A false representation of a material existing fact, or
22 a representation as to a material existing fact made
23 with a reckless disregard of its truth or falsity; or

a concealment of a material existing fact, that in equity and good conscience should be disclosed.

2. Knowledge on the part of the one making the representation that it is false; or utter indifference to its truth or falsity; or knowledge that he is concealing a material fact that in equity and good conscience he should disclose.
3. Ignorance on the part of the one to whom representations are made or from whom such fact is concealed, of the falsity of the representation or of the existence of the fact concealed.
4. The representation or concealment made or practiced with the intention that it shall be acted upon.
5. Action on the representation or concealment resulting in damage

SPECIFIC FINDINGS RELATING TO THE CLAIM OF FRAUD-IN-THE-INDUCEMENT

In this matter on consideration of the claim of fraud-in-the-inducement, the arbitrator makes specific findings as follows:

1. Mr. Lockshin misrepresented to Respondent that he had a significant ownership interest in the aircraft.

2. While the pre-delivery title to the aircraft remained with the Manufacturer, Respondent certainly knew that Mr. Lockshin could not possibly have had an existing ownership interest in the aircraft.
3. Notwithstanding the fact that the title had not departed the manufacturer it was possible that Mr. Lockshin's representations concerning having an ownership interest in the aircraft were legitimate, but prospective in nature.
4. From Respondent's point of view, if Mr. Lockshin believed that he was an owner, or was about to become an owner, or was about to become a partial owner, then it would seem reasonable for Respondent to believe that Mr. Lockshin had a strong enough interest in the aircraft to want to make the deal go through without further problems. That fact, together with his past history of successful aircraft purchases from Respondent could well have been a factor in inducing Respondent to resume the halted transaction.
5. The law does impose liability for misrepresentation of events or facts which have yet to occur, such as "our team will beat your team next Friday night!" With rare exception, events which have yet to take place

are speculative. Typically, they are not reasonably the subject of detrimental reliance. Nonetheless, the law does impose liability for misrepresentation of events or facts which have yet to transpire in certain kinds of cases, particularly in cases involving "insider trading" or as in the classic "stock-tip" from an "inside source" line of cases.

When someone who has a particular inside connection with the matter tells someone else that something is "about" to happen, or that it "will" happen, then his representations are not as readily dismissible as mere speculation. They are often given great credence. They are given great credence because of who the person is, what he knows, and how he acts, and because he has access to information which is not generally available.

In this case, Mr. Lockshin had an outstanding track record with Respondent. His word was accepted on face value.

6. Mr. Lockshin e-mailed Respondent as follows:

"Can you call my cell (number redacted)? I just got back in cell range after being on my boat for three weeks and understand things with PC12 have fallen

apart. I'm not sure what happened, but we need to get things back on track. *This is my airplane*, too, so *this affects me in a big way*. I have been a good customer of yours and *this would be my fifth airplane purchase*. This can and should get straightened out."

7. His statement that this *IS* his airplane suggests that he has a present, not a future interest in the aircraft.
8. His statement that this *AFFECTS* him [present tense, not future conditional tense] in a big way, suggests that the affect is in the present, not *in futuro*.
9. His statement that this would be his fifth airplane purchase, when in fact he has only made four prior purchases from Respondent suggests that *HE* is making this purchase, *personally*.
10. For these reasons, apart from his oral representations when conversing with Respondent, the arbitrator concludes that Mr. Lockshin *claimed* a PRESENT ownership interest in the aircraft. Whatever that may have meant to him may be open to discussion, but to Respondent it meant that Respondent could rely that if Mr. Lockshin got involved in the project, the

prior problems would go away. This was approximately a $4 million transaction, and Respondent wanted those problems to go away.

11. Mr. Lockshin's representations that he was an owner, that he had a big stake in the airplane and that he would involve himself to save the transaction were material facts in Respondent's decision on whether or not re-open the closed case involving Mr. Kuhn.

12. The fraud was not that Mr. Kuhn was still distantly involved in the transaction. It was well known to Respondent that Mr. Kuhn was the ultimate intended end-user of the aircraft. The fraud existed in the false claim that Mr. Lockshin had an ownership interest [even if only an expected future interest] in the aircraft, because if Mr. Lockshin were truly an owner, he could be expected to behave as an owner. He had already shown himself to be a decisive, timely and reasonable aircraft purchaser. If he had a strong personal involvement in this transaction, Respondent's concerns could be assuaged and the project could be put back on track.

13. Mr. Lockshin overstated his involvement. He knew that he did not have an actual ownership interest in the aircraft. His expectation was that at some point Mr. Kuhn would let him fly the aircraft under some kind of barter-for-time-swapping arrangement.

14. Respondent was ignorant of the true status of Mr. Lockshin's interest in the aircraft, and Respondent relied on Mr. Lockshin's misleading and ambiguous ownership claims.

15. Mr. Lockshin made misrepresentations of his ownership interest in the aircraft with the intention that Respondent should act upon them so as to make Respondent reopen the closed transaction and permit the sale to go forward.

16. Respondent did take action on the representations by reopening the closed transaction. By doing so, it exposed itself to a prospective financial loss as the sale progressed towards a second default. That loss ultimately amounted to a figure exceeding $405,560.

17. Mr. Lockshin's conduct amounted to a fraud-in-the-inducement in that it was calculated to make Respondent re-entangle itself in bad business

transaction from which it had already successfully extricated itself.

18. The fraud-in-the-inducement committed by Mr. Lockshin took place after the contract with Mr. Kuhn was terminated and before the contract with Claimant was entered into. In other words, it happened in the time gap between the two contracts. For that reason, is properly characterized as a fraud-in-the-inducement. The inducement being for the purpose of getting Respondent to revisit a closed contract.

19. At the time of the perpetration of the fraud-in-the-inducement, Section 7 was not operative as a limitation constraining damages to liquidated damages.

20. Beyond liquidated damages, Respondent suffered consequential damages set forth elsewhere in this award.

21. In addition, Respondent incurred legal costs and the costs of arbitration set forth elsewhere in this award.

LIMITATION UNDER SECTION 7 OF THE CONTRACT REGARDING LIQUIDATED DAMAGES BEING THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO RESPONDENT

Section 7 of the purchase agreement contains language to the effect that in the event of a failure by the purchaser to perform, seller shall: "have the right, *as its sole and exclusive remedy against Purchaser,* to terminate this agreement and retain as liquidated damages all deposits (including progress payments) and other amounts previously paid by or on behalf of Purchaser."

The issue of whether the language in Section 7 acts as a bar to any recovery under a fraud-in-the-inducement case was not raised during the arbitration, so by implication, was waived as an issue. Nonetheless, because the arbitrator is concerned that the award not be set aside on grounds that the award exceeded the scope of the contract, it is addressed hereunder.

Section 7 specifies that liquidated damages are the sole and exclusive remedy for a breach of contract resulting in a default by purchaser, but it is not applicable to a claim arising before the contract is formed. By definition, the tort of fraud-in-the-inducement takes place antecedent to the formation of the contract.

It is the arbitrator's determination that Section 7's language about liquidated damages being the sole and exclusive remedy of Purchaser in the case of a default is not a limitation of Seller's claim for consequential damages for a claim of

fraud-in-the-inducement antecedent to the formation of the contract.

APPLICABLLITY OF THE ARBITRATION CLAUSE TO AN ACT ARISING BEFORE THE FORMATION OF THE CONRACT

The parties have conferred upon the arbitrator, by virtue of Section 10.6 of the purchase agreement, authority to determine "*any claim, controversy or dispute relating to or arising out of or in connection with this agreement.*"

A claim, controversy or dispute has arisen between the parties about whether the Respondent was fraudulently induced to enter into the purchase agreement with Claimant. While the act of inducement necessarily takes place outside the contract period, it is within the arbitrator's authority to consider because it is a claim, controversy or dispute which relates to, arises from or is in connection with this agreement.

IMPLLIED COVENANT OF GOOD FAITH AND FAIR DEALING, FRAUD-IN-THE-INDUCEMENT, CONTINUING ACTS OF MISREPRESENTATION, LIABILITY OF LLC FOR SUBSEQUENT ACTS OF RATIFICATION AND AFFIRMATION

Claimant, an LLC, was not in existence at the time the false representations were first made by Mr. Lockshin. Mr. Lockshin was not an officer nor was he the Manager of the LLC at the time he first made those statements. The formation of the LLC had not yet even been formed in the mind of the Respondent's

attorney. Claimant can not be held accountable for the fraudulent inducement perpetrated by Mr. Lockshin, absent some act in adoption ratification or affirmation of his fraudulent representations after Claimant came into legal existence. In this case those elements exist.

The evidence adduced at the arbitration hearing was that Mr. Lockshin, after assuming his position as Manager of the LLC continued to affirm his claimed ownership interest in the aircraft. He continued to affirm that he was able to shepherd the project to a successful completion, was empowered to make decisions, execute the duties of a Manager, and bring the project to fruition. By his conduct and by his claims after taking a management role in Claimant, he ratified and affirmed the fraudulent claims he made to Respondent before Claimant came into existence, and by so doing, he made the LLC a party to the fraudulent inducement when it otherwise would not have been a party.

Mr. Lockshin had a duty to the LLC to take no action which might expose it to the risk of legal action. To faithfully perform his duty to the LLC, he should have distanced the LLC from his earlier fraudulent claims by explaining to Respondent that his earlier claims were not the position of the LLC, that they were in fact false, and that they were the product of his

own falsification. Instead, he continued the ruse and exposed the LLC to liability by making it party to the falsehoods.

Apart from his duty to the LLC, as Manager of Claimant, Mr. Lockshin, and by extension the Claimant, had a duty under the implied covenant of good faith and fair dealing, to not allow Respondent to rely on false representations created by Mr. Lockshin before and during the contract period. Again, instead, Claimant continued the ruse and exposed the LLC to liability by making it party to the falsehoods.

It was not until the depositions which followed the collapse of the transaction that Mr. Lockshin fully admitted that he had no right, title or interest in the aircraft. Had he made that clear at the onset, Respondent would not have been induced to resuscitate the contract the first time it was terminated.

MR. KUHN'S REASONS FOR NOT ACCEPTING DELIVERY

Only when the aircraft was fully "ready-for-delivery", Mr. Kuhn indicated that the carpet was not to his liking. Previously, he and his wife had inspected the aircraft in an unauthorized, uninvited and spontaneously announced drop-in visit to Respondent's facility, and at that time they were heard to approve of the carpet selection. Only when it came time to pay for the aircraft, was the carpet not to his satisfaction.

In fact, Respondent had fully complied with the terms and specifications in the contract with respect to the carpet.

Even though Respondent had fully complied with the terms of the contract, and owed Claimant nothing, it was reluctant to let an approximately $4 million dollar airplane deal go bad for the price of an $18,000 carpet, so Respondent offered to credit Claimant with a cash offset of $20,000 if it would accept the aircraft with the "as built" carpet. Mr. Kuhn, now disregarding the corporate formalities of the LLC, dealt directly with Respondent. He refused Respondent's offer. He accused Respondent of breaching the contract and sought the return of his deposit.

There were technical, legal and contractual reasons why Respondent could not install the carpet Mr. Kuhn wanted, but none them prevented the installation of the desired carpet once the title to the aircraft changed and became Mr. Kuhn's. Respondent then offered to procure *the very* carpet Mr. Kuhn wanted *at Respondent's expense, and to install it without charge* after the deal closed. This installation was to take place when the aircraft was next returned for scheduled upgrades. Those upgrades were already part of the sales package, and they included upgrades which could not be installed before the delivery date because they were awaiting FAA approval. The

installation of those upgrades would already require removal of the existing carpet to gain access to the Avionics Bay, so the carpet switch would not entail any additional wear or tear on the aircraft to change out during the maintenance period. Again, Mr. Kuhn refused.

Mr. Kuhn eventually told Respondent that he was having trouble selling his current aircraft, and that he could not afford to have two airplanes at the same time. He told Respondent that as long as he still owned his other airplane he would not accept the new plane *regardless of which* carpet was installed.

The apparent truth of the matter is: Mr. Kuhn's refusal to pay for the aircraft was based the state of the economy, not the state of the carpet. Mr. Kuhn now proposed that Respondent buy his old plane. Only then, he said, would he go forward with the transaction. Respondent thoughtfully considered the matter, explored the market and determined the likely going price for Mr. Kuhn's trade-in aircraft. Respondent told him that the Respondent could only buy the old aircraft for its current (depressed) value, but if they were fortunate enough to find a buyer willing to pay more than the current value, they would share the profits with him. Mr. Kuhn refused, holding out for a higher amount. Again, the sale could not be revived.

The aircraft met every specification on the purchase agreement, and even though there were discernable differences between the carpet he wanted and the carpet he got, the carpet was permitted under the contract. The contract allowed for a "custom match," and that is what Respondent delivered, a "custom match."

A reasonable buyer would have taken the aircraft, especially in light of Respondent's willingness to "cure" any perceived defects or deficiencies. Respondent's offers to satisfy Mr. Kuhn by replacing the carpet at their own expense, or in the alternative to given him a cash offset to take the carpet "as is," were both rejected.

Mr. Kuhn's offer to go forward with the deal on the condition that Respondent purchase his aircraft at an inflated price was unreasonable.

When it became clear that the deal had collapsed, the parties decided that it would be in the best interest of all parties if Respondent sought a different buyer to take over the completed aircraft.

Mr. Kuhn wanted the aircraft to be moved away from Respondent's site, and he wanted to prevent the use of the aircraft for demonstration flights unless his personal pilot was present. Neither of these requirements was reasonable in light

of the logistics of arranging demonstration flights in another part of the country and the difficulty of coordinating those flights with a pilot who is rarely available. Moreover, at this point, Mr. Kuhn had no right, title or interest in the aircraft. He was in default, his contract had been terminated and his deposit had been retained as liquidated damages. At this point in the transaction, his views had no traction.

During this time period, Mr. Kuhn wrote at least one very unkind expression of what he wanted to happen to one of Respondent's employees. While the arbitrator may characterize that statement as coarse locker room talk, once it surfaced during the discovery process, it takes on relevance to shed light on his mindset at the time. Charitably put, it might be said that Mr. Kuhn was more intent on causing harm to Respondent than trying to work out a solution to their dilemma.

Mr. Kuhn effectively thwarted the sale, unreasonably vetoed Respondent's good faith efforts to "cure" the perceived deficiencies and objected to the Respondent's efforts to mitigate its losses. His e-mailed communiqué expressing the hope that one of Respondent's personnel would come to a slow and painful end [arbitrator's sanitized characterization] shows an unflattering aspect of his approach to business. The arbitrator is unable to find that his conduct in this case was imbued with

the requisite measure of "good faith and fair dealing" which is to be implied in every contract.

While Mr. Kuhn is not a named party in this case, he is a real party in interest, and the Claimant is his alter ego. In the end, when the transaction broke down, he dropped all pretence of distanced dealing and resumed direct contacts with Respondent.

The pretense of the Claimant, as an LLC seems to have been dispensed with when he undertook direct negotiations with Respondent concerning the sale of his old airplane. Because Mr. Kuhn and Claimant are, for all intents and purposes, the same, his intentions may be imputed to Claimant, and the issue of Claimant's bad faith dealing with Respondent becomes clear.

THE MEASURE OF DAMAGES

While Respondent was once was $150,000 in the plus column when this transaction began, after the fraudulent inducement, and subsequent fallout, Respondent is now $105,596 in the minus column. The difference in Respondent's before and after position is $255,596.

Lost Profits from Sale of Aircraft	$200,000
Interest and Insurance Costs	$120,000
Repainting the Aircraft	$ 49,123
Maintenance	$ 36,000

Total	$405,596
Less Current Deposit	-$300,000
Difference equals New Loss	$105,596
The old deposit	+$150,000
Total Loss old and new	$255,596

AWARD

For the foregoing reasons, I award as follows:

As liquidated damages, Judgment is for Respondent, against Claimant in the amount of $300,000 with credit given to Claimant for $300,000 already paid as deposit for funds already retained by Respondent. This amount is already in Respondent's hands and need not further addressed by Claimant.

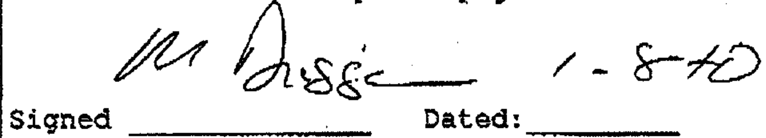
As consequential damages, Judgment is for Respondent and against Claimant in the amount of $255,596.

Respondent is declared to be the prevailing party. Claimant is to pay Respondent's legal fees and costs in the amount of: $147,590.02.

The administrative fees of the American Arbitration Association (the Association) totaling $12,900.00 and the compensation for the arbitrator totaling $1,550.46 shall be borne by Claimant. Therefore Claimant shall reimburse Respondent the sum of $9,475.23 (nine-thousand, four-hundred seventy three dollars and twenty-three cents) representing the portion of said fees in excess of the apportioned costs previously incurred by Respondent

The above sums are to be paid on or before thirty (30) days from the date of this Award. Post-judgment interest of 8% shall begin to accrue if payment is not made from the final date of this Award.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims and counterclaims not expressly granted herein are hereby denied.



Signed ______________ Dated: ________

Received Time Jan. 8. 2:45PM