

by Stewart H. Lapayowker | December 2019

We Would Have Told Elvis That He Had a Problem.

Top officers at large companies and ultra high net worth individuals, like celebrities, are often surrounded by trusted managers, advisers and others. Although the aircraft is a business asset, it also is typically a purchase in which the principal has personal and intimate involvement.



This can result in direct participation by the principal in the minutiae of the acquisition instead of remaining in his or her normal role of providing a broad objective to his or her advisers and letting them, and experienced aviation counsel and other aviation professionals, work through the detail. Objectivity of the lead adviser can be compromised in favor of keeping the principal happy, being “respectful” or even patronizing. This is especially difficult when the principal imports his business experience from an unrelated area into a corporate aircraft transaction, where what is “customary” or “market” is completely unrelated to his or her substantive business experience.

When the aviation professionals give advice and the lead adviser says “we appreciate your advice but the [principal] would like you to include that provision in the offer anyway despite the risks you have described”, the expertise and years of experience of the aviation professionals have

little value. They become nothing more than scribes. As transaction attorneys, our responsibility is to describe the risks to the client and then, if the client’s direction is merely one of business risk and his decision is an informed one, to implement the client’s instruction. Some are content to proceed in that manner in an effort to keep up the pretense that the principal is “all knowing”, but shouldn’t Elvis have been told that he had a problem at some point before the 70’s? That he was hurting himself? That you will protect him by telling him what you think instead of what he wants to hear? Remember, it was a child that said that the emperor wasn’t wearing clothes.