

AVIATION INSURANCE

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ABSTRACT

This paper is concerned with aviation insurance law. The introduction comprises a brief sketch of the historical background of aviation in general, followed by a history of aviation insurance. The major principles of insurance law as they are applied to aviation are dealt with, using the experience of aviation insurance in the United States of America to demonstrate the development in this area, with emphasis on the good faith nature of the contract and on subrogation.

The study continues with an analysis of the major legislative texts which have formed the basis of the obligation to insure, keeping in mind that in international transportation, sovereign States may forbid access or overflight of their territory to aircraft which are not covered for all possible types of damage. Furthermore, as a result of terrorist acts, new types of insurance have emerged in accordance with the tenor of the Conventions of Tokyo (1963) and The Hague (1970).

A review of the different types of insurance policies follows, together with an examination of the practical procedure for the assessment of damage claims and of the settlement of such claims.

In summary, this thesis is aimed at providing an insight into the overall process of settling aviation insurance claims.

RESUME

Cette thèse sur l'assurance aérienne débute par une présentation de l'histoire de l'aviation et un bref historique de l'assurance en la matière. Les grands principes du droit de l'assurance sont étudiés ici dans le cas précis de l'aviation aux Etats-Unis. Le caractère particulier du contrat ressort du rôle important de la bonne foi et de la subrogation.

L'étude continue avec une analyse des principaux textes de loi qui imposent l'obligation de s'assurer, en particulier dans le transport international où les Etats souverains peuvent interdire l'accès ou le survol de leur territoire quand les aéronefs ne sont pas couverts contre les risques qu'ils créent. Depuis quelques années, les actions de terrorisme ont entraîné la mise sur pied d'assurances nouvelles en fonction des conventions sur la sécurité.

Une revue de tous les types de police d'assurance est faite avant l'examen des procédures d'évaluation des dommages et de règlement des réclamations. Cette thèse donne un aperçu du règlement des domaines d'un point de vue pratique.

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INTRODUCTION

The subject of the following pages is aviation insurance. The author of this thesis is presently employed as an aviation claims specialist for the London market, adjusting claims in the United States; consequently, the scope of the thesis is concerned primarily with the London market and the operation of London-issued policies in the United States. United States law is emphasized in the discussions which follow, but an attempt has been made to compare the law of other countries, especially the United Kingdom, with the applicable law of the United States. Additionally, the international law of aviation insurance has not been disregarded.

Chapter One of this thesis contains a history of the evolution of flight and the consequent development of aviation insurance. Chapter Two is a discussion of the inner operations of the London underwriting market, with particular emphasis on the place of and subscription to aviation insurance risks. Chapter Three deals with general principles of law which have particular application to aviation insurance, while Chapter Four is a detailed discussion, highlighted by applicable case law, of the more important provisions of the standard Lloyd's aviation hull policy. Emphasis is accorded to the provisions of the policy currently in use in the United States.

Chapter Five contains a discussion of instruments of international law which either affect aircraft operators' liability to passengers, shippers, or third parties on the surface or regulate the actual insurance of certain aviation matters.

Chapter Six discusses claims adjusting and settlement, with emphasis being accorded to the procedures of the writer's present employer.

Chapter Seven is a brief discussion of the operations and legal principles of reinsurance, a common practice in aviation insurance.

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CHAPTER ONE: HISTORICAL CONSIDERATIONS

Like any human endeavor, aviation follows an historical period which illustrates man's inquisitive nature as well as the extensive failure process which ultimately leads to success. While the Nineteenth and Twentieth Centuries are unique in aviation history in that nearly all modern aeronautical development was achieved in these time periods, aviation activities have been an intimate part of man's existence since the beginning of human life. A discussion of the history of the activity which is the focus of aviation insurance is complementary to a true understanding and appreciation of the unique business of aviation and its insurance.

The desire to fly has been part of man's heritage since the days of prehistory, ever since man was capable of observing and envying birds. The earliest attempts at flight were based, logically enough, on what essentially amounted to bird imitations. None, save the mythical attempts of various Greek¹, Roman, and Chinese² figures were successful, and many individuals were killed during attempts to fly with homemade bird wings.³ While

¹ The myth of Icarus and Daedalus is well known. In an attempt to escape captivity, the two men fashioned wings of wood, feathers, and wax. Daedalus succeeded in flying to freedom, but Icarus, dazzled by flight, flew too high, causing the heat of the sun to melt the wax which secured the feathers to the frame.

² The emperors of China during the Han Dynasty period (206BC) were reputed to travel in flying chariots.

³ Not being satisfied with myths, some royalty participated directly in early flight experiments. King Bladud of Britain was killed when an attempt to fly with bird-like wings ended in disaster in a field on which is now located the city of London.

the concept of human flight based upon duplication of bird wings was not fundamentally unsound in that birds are the ultimate flying machine, the early failures stemmed in large part from man's inability to duplicate the supporting systems that are required of birds to sustain flight. ^{4,5}

Although Aristotle⁶ was the first scientist to record his thoughts on air and its reaction to the passage of objects through it, he, like virtually all other early aviation experimenters, failed to grasp the concept of air as a fluid and consequently in possession of dynamic tendencies. Failure to recognize this concept, which is so critically necessary to the modern science of aerodynamics, was more than likely the single largest cause of

⁴ Birds are equipped with many of the same aeronautical devices which are also found on modern aircraft, although in different forms. However, birds are also equipped with cardiovascular systems of tremendous endurance and capacity, plus an extremely high power-to-weight ratio which has only recently been duplicated mechanically in the form of turbine-powered helicopters.

⁵ Human flight only recently became a functional reality with the development of the Gossamer Condor and Albatross. The Albatross flew the English Channel in June, 1979; the most difficult barrier to the crossing was the development of pilot physical endurance.

⁶ Born 384 B.C. in Stagira, Macedonia. Died 322 B.C. in Chalcis, Greece. Aristotle was the son of the court physician to King Amyntes II of Macedonia. Aristotle's philosophical and scientific reflections on the nature of air and flight were conducted in Athens in 335 B.C.

of the slow development of aviation prior to the Nineteenth and Twentieth Centuries.

Leonardo Da Vinci⁷ appears to have been the first scientist to study the phenomenon of objects passing through the air and from such study develop a theory that resistance of the air to such objects might provide the basis for a flying machine. Da Vinci was not satisfied merely with the scientific and theoretical aspects of flight, but also designed and built several human-powered flying machines which were remarkably advanced for their day. However, scientific interest in Da Vinci's theories of aerodynamics died along with their discoverer.

In the ~~p~~^eriod following Da Vinci's death, little was accomplished which advanced the science of aeronautics.⁸ However, the thought of flight and man's desire for it were kept very much alive by the writers of the day who were easily able to achieve the miracle of flight through the written word and communicated idea. Writers

⁷Born 1452 Vinci, Italy, died 2 May 1519 Cloux, France. Da Vinci's aviation experiments were conducted during a phase of his life labelled the Florentine Period (1499-1506). His material is preserved in the Leicester Codex, Holkham Hall, Norfolk, England.

⁸One notable exception to this general premise was the lighter-than-air experimentation conducted by thirteenth century monk Roger Bacon. Bacon contended that hollow metal spheres, when filled with "ethereal air", would float in the atmosphere. His treatises, first published posthumously in 1542, failed to define ethereal air or suggest where it might be obtained.

such as Francis Godwin,⁹ Samuel Brant,¹⁰ and Cyrano de Bergerac¹¹ were not content with merely atmospheric flight but regularly transported literary characters to the moon and other planets. Restife de la Bretonne¹² sent explorers over the continent of Australia in a flying machine of his own imaginary design.¹³

For several hundred years following the death of Da Vinci, aviation experimenters were divided into two schools of thought, the advocates of lighter-than-air flight and those who persisted in heavier-than-air research, which was still primarily concerned with bird imitations. The invention of the mercurial barometer in 1643 established conclusively for the first time that air was a gas, a definite substance, and ultimately led to the development of the science of aerodynamics. However, the lighter-than-air supporters enjoyed much popularity during this time.

Many of the early lighter-than-air researchers were members of religious organizations, for Renaissance learning was centered around the Church and its various satellites. A Jesuit monk, Francesco de Lana-Terzi, proposed that flight would be possible

⁹ Born 1562, died 1633.

¹⁰ Born 1727.

¹¹ Born 1619, died 1655.

¹² Born 1734, died 1806.

¹³ The most prolific writer of early aviation science fiction was Jules Verne, whose depiction of a flight to the moon bore remarkable similarities to the systems actually used by Apollo 11 in 1969. See M. Collins, Carrying the Fire (1973).

in a balloon-shaped device from which all air had been removed, thus incorporating the newly-invented vacuum pump into the search for manned flight.¹⁴ However, Lana-Terzi's device was constructed of only thin copper sheeting, which would have collapsed under the vacuum required to produce any measurable lift.¹⁵ A British priest, John Wilkins,¹⁶ while not an active experimenter, devoted much time and thought to the subject of flight and theorized that man could achieve flight in one of four ways: (1) with the spirits of angels (2) with the help of birds (3) with wings fastened to his body (4) with a flying chariot. Wilkins limited his aeronautical activities to theories, and is not known to have constructed a purported flying machine.

The late Eighteenth Century saw a considerable amount of thought and activity regarding lighter-than-air craft, and eventually a balloon was successfully flown by two French paper

¹⁴ The air pump, which was capable of functioning to create either a vacuum or pressure, was invented in 1650 by Otto von Guericke.

¹⁵ Lana-Terzi was spared the mortification of seeing his flying machine fail. The device was produced, but never rendered operational, for by this time the inventor had abandoned the idea of flight as being irreverent.

¹⁶ Born 1614, died 1674.

manufacturers, Joseph and Etienne Montgolfier.¹⁷ The brothers were intrigued by the travels of pieces of charred paper from the family fireplace and later experimented with paper bags filled with smoke. Their first hot-air¹⁸ balloon was constructed of linen-backed paper and was launched 5 June 1783 from Annonay, France.¹⁹ The flight terminated at a point 1.5 miles from the launching area, and was alleged²⁰ to have reached an altitude of 5000 feet.

The Montgolfier brothers successfully achieved manned lighter-than-air flight on 21 November 1783 when a balloon carrying two men crossed Paris and landed in Gentilly, France after a flight of 10 miles at a maximum altitude of 5,000 feet. It was originally proposed that condemned criminals should be pressed into service as crewmembers, but a daring sort named

¹⁷ There is some slight authority that the Montgolfier brothers were not the first to successfully launch a small balloon. The archives of the University of Portugal contain an account of an experiment conducted before the King of Portugal by a Brazilian priest, Bartholomeu Lourenco de Gusmao, in which a small model balloon, propelled by hot air, flew through the palace Hall of Ambassadors. Like many early aviation activities, it ended in disaster, for the model contained a small fire which heated the air contained in the balloon. The craft collided with a set of curtains, to which it promptly set fire. The resulting blaze destroyed several palace rooms.

¹⁸ The Montgolfier brothers believed that burning wool and straw produced a special gas which was lighter than air, not realizing that heated air has less density than cool air. The "gas" was known colloquially as "Montgolfier gas."

¹⁹ Some authorities place the date of the flight as 15 August 1783.

²⁰ The balloon was christened the Globe Aerostatique, and carried a crew of three--a sheep, a rooster, and a duck. It was feared that humans might not survive the effects of air above the surface of the earth.

Jean Francois Pilatre de Rozier convinced the Montgolfiers that criminals were not worthy of the honor of flight. De Rozier consequently made the first flight accompanied by Francois Laurent, the Marquis of Arlandes. ²¹

Lighter-than-air flight during this early aeronautical age was not confined to hot air balloons, for the newly-discovered hydrogen gas was used by J.A.C. Charles to propel a balloon carrying himself and M.N. Robert from the Paris Tuileries in December, 1783.²² Shortly thereafter, many balloonists switched to hydrogen, as it was considered safer than hot air, which had to be maintained by an open fire of wool and straw. ²³

The activities of the Montgolfiers and Charles produced a

²¹ The Marquis was reportedly busy during the flight dousing small fires on the balloon surface caused by sparks from the heating fire.

²² The flight terminated in the village of Gonesse, whose residents, fearing the apparition from the sky to be a source of spirits, hacked the bag to pieces with pitchforks. Charles and Robert apparently escaped, and for sometime thereafter hydrogen-filled balloons were known as "Charlieres."

²³ Hydrogen, which is more bouyant than helium, is also highly flammable, and most airships of the Twentieth Century were filled with non-flammable helium. A notable exception to this were the German dirigibles, for helium was unavailable to the Germans due to political differences with the United States, the major world supplier. The explosion of the Hindenburg at Lakehurst, New Jersey in May, 1937 spelled the end of the rigid airship era, but perhaps only temporarily. New research indicates a potential future role for giant lighter-than-air craft.

veritable blizzard of balloon activity.²⁴ In the several years following 1783, over 800 balloon ascensions were made in England alone, often in balloons whose outer covering was the product of much artistic creation. Balloons continued to develop during the Nineteenth Century, although their uses were nearly exclusively military and recreational. There is no definite evidence to indicate significant commercial use of a balloon during this period.²⁵

The Eighteenth Century saw the additional of controllability to balloons, which heretofore had been at the mercy of the wind and atmospheric currents. Sir George Cayley,²⁶ an early English pioneer of flight and aeronautical research, designed a balloon which contained steam-driven control and propulsion units. Cayley's contributions to aviation research were in the form of designs only, for he never actually constructed a flying machine. In 1852, Henri Giffard designed and constructed an airship which was successfully flown from Paris to Trappes, France at a speed of six miles per hour. Lack of suitable powerplants delayed the development of powered flight for the remainder of the Eighteenth

²⁴ This rash of activity also produced the first recorded air law, a Paris police regulation governing balloon flights. The legislation was designed to protect property owners whose land was inevitably trampled by the thousands of spectators who gathered to watch balloons take off and land..

²⁵ Commercial development of balloons was hampered by the high cost of hydrogen gas, plus limited utility.

²⁶ Born 1773, died 1857.

²⁷ Giffard benefitted greatly from the work of Pierre Lullien, who in 1850 designed an airship called Le Precurseur; the ship was constructed, but never flown.

Century, until lightweight internal combustion engines became available. The development of the gasoline engine enabled a Brazilian engineer, Alberto Santos-Dumont, to circle the Eiffel Tower in 1901 in an airship propelled by a gasoline engine.²⁸

The Germans entered advanced lighter-than-air travel with the development of rigid dirigibles, which immediately found a civilian and later a military use during World War I.

Heavier-than-air research and experimentation continued during the period of development of lighter-than-air flight, with Sir George Cayley providing the vanguard of the new science of aeronautics. Prior to scientifically defining the problem of flight in 1809,²⁹ Cayley constructed various wooden models of flying machines and in so doing discovered many of the principles of aeronautics which are still applicable today.³⁰ A small glider capable of supporting the weight of an adolescent was successfully tested by Cayley in 1809, but lack of a suitable powerplant prevented testing of powered versions of flying machines

²⁸ Santos-Dumont's flight earned him a prize of 100,000 francs and followed an earlier attempt which succeeded in producing a spectacular mid-air explosion and resulting fire which burned several Paris buildings. Santos-Dumont miraculously escaped and survived to continue his aeronautical career.

²⁹ Cayley determined that successful flight must come to terms with the problem of a surface supporting a weight through the application of air resistance created by power. A. El Din, Aviation Insurance: Practice, Law, and Reinsurance (1973) at 1.

³⁰ By 1799, Cayley had produced a silver disc upon which were engraved diagrams illustrating the reaction of a wing with the three basic aerodynamic forces--lift, thrust, and drag. Among Cayley's other aeronautical discoveries were the importance of angle of attack, dihedral wing stability, and the greater amounts of lift produced by curved surfaces.

throughout Cayley's lifetime. However, his work with gliders continues to be the most significant aeronautical contribution of the Nineteenth Century, and has earned Cayley the title "The father of aeronautics." ³¹

Cayley's work was studied extensively by several of his followers, among them William Samuel Henson. Henson produced, in 1842, a mammoth aircraft design ³² based upon Cayley's aeronautical theories. Perhaps more of a businessman than an aeronautical engineer, Henson met with ridicule when he published drawings of the aircraft in flight over London and Paris, and his attempts to persuade the public and the English Parliament to finance a transportation company based on the aircraft were a source of public humor during the 1840's.

Henson's idea did not die entirely on the drawing board, for he and another disciple of Cayley, John Stringfellow, constructed and flew a twenty-foot span model of Henson's original design. ³³ The model was powered by a small steam engine, and was unable, due to weight considerations, to achieve more than continually descending flight.

³¹ First used by William Henson in 1846.

³² Henson's airplane sported a wing span of 150 feet, and six bladed propellers driven by a steam engine. It also contained an enclosed passenger cabin.

³³ The original model is preserved as part of the collection of the London science museum.

relatively large amounts of success with gliders, the landscape of both Europe and the United States was littered with the hulks of hundreds of flying machines which never had a chance of success. Built by resourceful men inspired by the race to be the first to achieve powered flight, many of these machines had one thing in common--the erroneous basis that flight could be obtained by forcing amounts of air downward. Although such a theory had been scientifically disproved years earlier, some chose to ignore the evidence and built aircraft with ridiculous propulsion systems such as flapping panels, pulsating wings, and others. Most of these aircraft generated little more than public ridicule for their designers.

Some researchers concentrated on the aerodynamic theories of Cayley, i.e., flight through the production of lift created by dynamic reaction of the air to an airfoil passing through it. In the United States, flight research during the Twentieth Century was conducted by many persons, among them Samuel Langley, a noted astronomer and secretary of the Smithsonian Institution, who built several successful models powered by steam. The War Department of the United States offered Langley a substantial sum of money if a full-size aircraft could be produced and flown, and Langley attempted to fly such a machine on 7 October 1903. The aircraft was launched from a houseboat in the Potomac River, but suffered the same fate as that which still occasionally befalls carrier-launched aircraft--it plunged immediately into the water.

A second attempt on 8 December 1903 resulted in the same misfortune, causing Langley to abandon his aviation experimentation.³⁷

Throughout the aviation hubbub of the first decade of the Twentieth Century, the Wright brothers of Dayton, Ohio were quietly working in the back room of their bicycle repair shop. A home-built wind tunnel, careful study of the work of Cayley, Lilienthal, and Octave Chanute, and a scientific, rather than haphazard approach resulted in the development of several gliders with wings capable of producing controlled flight. Like many other aviation researchers, the Wrights found themselves with a viable aircraft design but without a satisfactory powerplant.³⁸ The brothers solved the problem by casting an engine with an aluminum block, which reduced weight while providing the strength necessary for the required power output. Working without the publicity commanded by Langley and others in the United States, the Wright brothers successfully flew their homebuilt craft on 17 December 1903 off Kill Devil Hill, Kitty Hawk, North Carolina.³⁹ Subsequent designs of the aircraft produced sustained flight, but the Wrights were unable to interest the military authorities of the United States in their aircraft

³⁷ Langley's abortive flight was accompanied by a great deal of public fanfare and press coverage, not all of which was sympathetic to his problems. One sarcastic reporter wrote that the aircraft should have been launched upside down, in which case it would presumably gone upward instead of into the water.

³⁸ Developed for the automobile industry, gasoline engines in 1903 had extremely heavy blocks of cast iron.

³⁹ After the fourth flight, a gust of wind overturned the aircraft, breaking several wing struts.

due to skepticism of the achievements of aviation and the Wright Brothers in particular. The governments of Germany and France did not share this view, and made several offers to the Wrights in an attempt to purchase the plans and production rights of the aircraft. While the Wright brothers aircraft was rapidly outclassed by financially stronger developers who studied their designs,⁴⁰ they remain the first to achieve sustained, controlled, heavier-than-air flight.

With the first powered flight in 1903, the air age commended and aircraft development proceeded at a relatively rapid pace. As aircraft developed, so did the methods of utilization envisioned by aviation researchers. Glenn Curtiss engaged in seaplane operations on 26 January 1911, and from this successful experiment eventually developed the large Curtiss flying boats used by Pan American World Airways on their famous Clipper flights.

During the years prior to World War I, aviation was primarily a pursuit of adventurers and the more farsighted military of Europe, who suffered no delusions with regard to lasting peace among the nations. Commercial development was limited, and although some of the present world's major airlines were in their fledgling stage at this point,⁴¹ they were nearly exclusively limited to the carriage of freight and the occasional sensation-

⁴⁰E.g., Louis Bleriot, A.V. Roe, and Horatio Phillips

⁴¹E.g., Air France, KLM

seeking passenger.

World War I spurred the infant aircraft industry into production of vast numbers of wooden airplanes,⁴² and great advances were made in the area of powerplant design. By war's end, aviation engines capable of powering larger and heavier aircraft at higher altitudes were in production, thanks to the necessities of wartime. Conversion to civilian application rapidly followed the 1918 Armistice. The end result was that larger aircraft could be constructed and pressed into passenger and freight carrying service, and the airline industry was born.

Germany operated the first scheduled airline service in 1910,⁴³ and was one of the first post-war nations to offer passenger service in aircraft, using converted reconnaissance planes.⁴⁴ Other nations also used converted military aircraft until the aircraft industry worldwide could re-tool for the production of civilian aircraft. Until this time, passengers were forced to contend with indignities such as open-air cockpits and numerous mechanical failures. Once commenced, aircraft development proceeded rapidly, and passengers were soon experiencing the luxury of the DC-2, Boeing 247⁴⁵ and Supermarine S-6B.

⁴² The British aircraft industry produced 30,000 aircraft in 1918

⁴³ The Zeppelins offered passenger service in 1910.

⁴⁴ E.g., France, with converted Farman Goliaths.

⁴⁵ The Boeing 247 was the first twin-engine aircraft able to climb with a full load after sustaining a failure on one engine. Many modern aircraft cannot meet this performance standard.

Passenger service developed rapidly in the years immediately preceding World War II, and the situation was again true in the post-war era when large transport aircraft were produced in quantity by manufacturers formerly engaged in wartime production. Aircraft such as the Douglas DC-6, DC-7, Lockheed Constellation and the Boeing Stratocruiser stimulated the growth of the airline industry worldwide, but were soon replaced by the jet transports of the late 1950's and 60's. The 1980's, with its new generation of wide-body, fuel efficient, short range aircraft is evidence of the continuing development of aviation to suit the needs of human transportation.⁴⁶

Throughout the development of aviation, accidents and resulting personal injury and property damage played a large and often disturbing role. Concerns were not originally centered on the welfare of the pilot or his flying machine, but rather on the safety of persons on the ground whose life and property were largely subject to the whims of nature and the control of the pilot of early flying machines.

There is considerable dispute concerning the historical origins of aviation insurance, both as to the year in which aviation insurance became available and the types of risks for which aviation coverage was provided; there is no dispute that the need for aviation insurance began to appear as flying, and

⁴⁶ Flower and Jones, Lloyds of London: An Illustrated History, (1974).

accidents, increased in frequency during the formative years of flight. Flower and Jones contend that the first aviation insurance was written in the United Kingdom in 1910 at the Lloyd's syndicate to cover third party liability arising from airshows which were becoming increasingly popular among the European public.^{47,48} Margo, on the other hand, cites authority that aviation insurance in the United Kingdom commenced in 1908,⁴⁹ plus two other sources which place the starting date at 1911⁵⁰ and 1912.⁵¹ Conflicting information is presented by these authorities as to what type of protection was afforded by these early policies.⁵²

There is substantially more agreement as to the underwriting companies which were engaged in aviation insurance during the early years of flying. Jones and Flower indicate that Lloyd's was involved in underwriting of both third party and hull policies

⁴⁷ Flower and Jones, supra, at 138.

⁴⁸ There is a possibility, according to Flower and Jones, that the first aviation third party liability policy was taken out to insure the 1910 London-Manchester air race, which ultimately did involve several accidents.

⁴⁹ A Short History of Aviation Insurance in the United Kingdom, Report HR 10 of the Historic Records Committee of the Insurance Institute of London, 1966, in Margo, Aviation Insurance (1980) at 1.

⁵⁰ D.E.W. Gibb, Lloyd's of London, in Margo, supra, at 1.

⁵¹ H.B. Sweeney, The Nature and Development of Aviation Insurance, in Margo, supra, at 1.

⁵² Disagreement exists as to whether fire or third party liability was the first risk insured.

prior to the end of the second decade of the Twentieth Century, while Salah el Din contends that the White Cross Agency was also active in issuing aviation fire policies throughout 1910.^{53,54}

The first standard policy issued by Lloyd's came into existence in 1911, and was commonly known as the White Wings Policy.⁵⁵ The policy, like many other early aviation cover, afforded insurance only for third party liability claims, for aircraft hulls were still viewed by the London underwriting market as being unacceptable risks.⁵⁶ Substantial numbers of aircraft owners and operators enlisted coverage from Lloyd's and White Cross for third party liability, for mechanical shortcomings of the aircraft in use during this time period often necessitated forced landings in farm fields and resultant hordes of sightseers.

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Margo refers to the White Cross Agency as a pool while Adel makes no mention of this. See Adel Salah El Din, Aviation Insurance: Practice, Law, and Reinsurance (1973) at 8.

54 Photocopies of early aviation policies are included in the appendix.

55 The original White Wings Policy, plus a piece of fabric from the Wright Brothers' original aircraft are on display in the library at Lloyd's.

56 In the United States, aviation insurance during the early period was unavailable from American underwriting firms, as aircraft were considered to be unacceptable risks from both the hull and liability standpoint. Cover was available from London, and the first aviation insurance transaction recorded in the United States was third party liability insurance for the Belmont Park Air Race of October, 1910. It was insured through Lloyd's for 100,000 pounds, for which a premium of 500 pounds was charged.

A characteristic of the immediate post World War I era was the number of ex-military aviators who turned to the aviation insurance business. One of the more prolific of these individuals was an Englishman named Captain Lamplough, an ex-pilot who wrote aviation cover in the United Kingdom during the early post-war period.⁵⁷

Aviation underwriting suffered substantial losses in the early 1920's due to heavy claims against existing policies,⁵⁸ and for several years most London underwriters were reluctant to offer cover for aviation risks. However, Captain Lamplough was instrumental in reestablishing a new group of underwriters in the London market who were once more willing to provide insurance for aviation activities.⁵⁹ By this time, commercial aviation was developing throughout the world, and improved aircraft and safety standards, plus the 1929 Warsaw Convention with its provisions for limited liability, made aviation risks again attractive to insurance underwriters. The aviation market began to flourish, and companies entered the London marketplace at a rapid pace. Presently, so many firms and individuals are engaged in the market that many underwriters are faced with an artificially

⁵⁷ Lamplough's underwriters were the Union of Canton, C.E. Heath and Company, and the White Cross Agency.

⁵⁸ Caused by premium rate cuts which occurred when many underwriters entered the market. Adel Salah El Din, Supra, at 9.

⁵⁹ Specifically, new members of the Union of Canton and White Cross.

depressed market, with fierce competition forcing low premium rates while claim payouts remain relatively high.

In the United States, existing insurance underwriters refused to offer cover for aviation activities during the early years. Aircraft owners and operators found themselves forced to consult the London market for aircraft insurance, and consequently little aviation insurance business was transacted on the continental United States. The first substantial aviation underwriting firm in the U.S. was the United States Aircraft Insurance Group (USAIG) which opened for business 1 July 1928. USAIG was primarily the product of two individuals, Reed M. Chambers and David C. Beebe, both aviation pioneers of a sort who were incensed at the need for London insurance⁶⁰ of American aviation. USAIG was formed as a joint underwriting syndicate, with individual member companies and a centralized, but⁶¹ independent management. The organization has operated con-⁶²tinuously since its 1928 founding date.

In Scandinavia, aviation insurance commenced with the founding in 1919 of the Northern Pool of Aviation in Oslo, Norway, by several Scandinavian firms interested in beginning aviation insurance. In 1919 the pool was composed of 80 member companies,

⁶⁰ Chambers and Beebe had attempted, unsuccessfully, to obtain American coverage for Florida Airways.

⁶¹ United States Aviation Underwriters, Inc.

⁶² The first claim paid by USAIG occurred four months after the organization started business, and involved a Fairchild monoplane which crashed after encountering fog on a flight from Montreal to New Jersey. The claim totaled US\$ 1,606.37.

but by 1969 had expanded to 121 firms with an underwriting capacity of US\$ 5,400,000 per aircraft.

Civil aviation insurance in France did not get a firm start until after the political and economic aftershocks of World War II had ceased, but several underwriting pools were formed thereafter. Current leading French underwriting groups are La Reunion Aerienne, Avia France, and the Malatier Group.

While Germany enjoyed a thriving insurance industry prior to the start of World War II,⁶³ the Nazi domination during the 1930's and 1940's effectively destroyed all aviation insurance in Germany. After the war, however, when civil aviation restarted following the Allied occupation, the German pool again commenced business, and by 1969 comprised some 83 member underwriting companies.

While London is the center of international aviation insurance, countries other than the United Kingdom have not been excluded from the direct insurance or reinsurance of aviation risks, although the volume of business transacted in the London market remains the highest in the world. Presently, aviation underwriting is taking place in Egypt,⁶⁴ Iraq⁶⁵, Italy,⁶⁶

⁶³ E.g., Luftkonzern Pool and Deutcher Luftpool.

⁶⁴ The Egyptian Reinsurance Company, 28 Talaat Hare Street, Cairo, and the Misr Insurance Company, 7 Talaat Hare Street, Cairo.

⁶⁵ National Insurance Company, Khullani Square, Baghdad, and the Iraq Reinsurance Company, Box 297, Baghdad.

⁶⁶ Riunione Adriatica di Sicurtà, Corso Italia 23, Milano, Italy.

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Sweden,⁶⁷ Argentina,⁶⁸ Bulgaria,⁶⁹ Tunisia,⁷⁰ Switzerland,⁷¹
Turkey,⁷² and the Netherlands.⁷³

⁶⁷ Swedish Atlas Reinsurance Company, Ltd., Sveavagen 31, Stockholm.

⁶⁸ Instituto Nacional de Reaseguros, Avenida Julio A Roca 694, Buenos Aires.

⁶⁹ Bulstrad-Bulgarina Foreign Insurance and Reinsurance, Ltd., 5 Dunav Street, Sofia.

⁷⁰ Societe de Tunisienne d'Assurance et de Reassurances, Square Avenue de Paris, Tunis.

⁷¹ Swiss Pool for Aviation Insurance, 60 Mythenquai, Zurich.

⁷² The Turkish Aviation Pool, Seker Sigorta Hani, Salipazari 325, Istanbul.

⁷³ Verzekeringmaatschappij de Nederlandsche Luchtvaartpool N.V. Prinsengracht 697, Amsterdam.

CHAPTER TWO: THE LONDON INSURANCE MARKET

Despite recent growth by United States and Middle Eastern underwriting firms, London continues to be the center of international insurance, which includes aviation cover. Margo contends that London rose to prominence in the insurance industry because of a simple legal regulatory framework, flexibility in adjusting to the rapid growth of international aviation, vast underwriting capacity, and a host of insurance talent which traditionally has been drawn to London over the centuries.⁷⁴

The placement of aviation insurance in the London market⁷⁵ is a time-consuming and complicated process, with roots deep in British insurance traditions. The process commences when a potential assured contacts a local producing broker, who like as not has no particular expertise in aviation insurance.⁷⁶ The producing broker obtains preliminary information concerning the type of cover solicited, i.e., hull, liability, all risks, the facts concerning the amount of risk involved,⁷⁷ term, pilot experience, and others. The producing broker then contacts a London brokerage firm whose major function is to actually place the risk in the underwriting market.⁷⁸

⁷⁴ Margo, supra, at v.

⁷⁵ The term "market" is not merely an empty adjective. London is a true marketplace for insurance transactions.

⁷⁶ 1 Shawcross and Beaumont, Air Law para. 688 at 590 (4th ed. 1977).

⁷⁷ Risk items include pilot history, qualifications, hangaring, etc. See R. Miller, Underwriting Considerations, 1 American Bar Association Small Aircraft Accident Litigation Phase II (1974).

⁷⁸ When dealing with Lloyd's, only accredited Lloyd's brokers may place insurance. 1 Shawcross and Beaumont, supra at 590.

London insurance brokers are subject to a certain amount of regulatory control, designed primarily to regulate entry into the marketplace and ensure that professional and ethical standards of conduct are observed by those individuals acting as brokers.⁷⁹ The principal statutes affecting brokers are the 1976 Insurance Companies Intermediaries Regulations and the 1977 Registration Act, which contain legislation affecting professional standards for brokers as well as controlling entry into the brokering profession.⁸⁰

Equipped with certain critical information obtained from the producing broker, the London broker enters the marketplace in order to solicit underwriter subscription of the risk. This particular process of the insurance market generally commences when the broker approaches an underwriter⁸¹ who carries a certain amount of respect and prestige in the market, and whom the broker feels will subscribe for a relatively large portion of the risk. This individual is known as the leading underwriter, and discussions between the broker and he determine the premium rates and other conditions under which the risk will be accepted. When the broker and leading underwriter

⁷⁹ Margo contends that the entry of the U.K. into the Common Market had a "considerable and incalculable effect on the London market, generating a large amount of legislative regulatory controls on the insurance industry." Another decisive factor leading to increased regulation was the 1970 collapse of several large British insurance firms. Margo, supra, at 25-27.

⁸⁰ This act established the Insurance Broker's Registration Council, which has among its responsibilities the handling of disciplinary problems concerning brokers.

⁸¹ In the case of Lloyd's, an individual. Outside of Lloyd's, the leading underwriter will often be an insuring company.

are satisfied with the arrangements and premium, which will later be part of the terms contained in the policy, the leading underwriter will initial a "slip" which contains the pertinent information concerning the risk which has been agreed on. The leading underwriter then subscribes to a certain percentage of the risk, generally about 20%, which is also noted on the slip.

The slip and its contents⁸² are an important part of the aviation insurance market process, and as such merit discussion. Generally, the slip contains information (in abbreviated form) concerning the standard policy form to be employed,⁸² the type of insurance to be effected,⁸³ the limits of coverage, term, geographical area, uses, deductibles, pilot warranty requirements,⁸⁴ and the premium rate.

From the legal standpoint, the slip standing alone carries a substantial amount of significance. The majority view is that a fully subscribed slip creates a binding contract of insurance,⁸⁵ and, in the absence of contrary agreement, each underwriter, by initialling the slip, creates a separate contract

⁸²The Lloyd's Aviation Underwriters Association has drafted a standard policy form for nearly every aviation cover available. Known by their numbers, such as AVN-16, they form the building blocks for all aviation policies. For non-Lloyd's companies, the Aviation Insurance Offices Association provides essentially the same forms; both groups also serve to protect the political and economic interests of the industry. Copies of all major Lloyd's forms are included in the appendix.

⁸³I.e., hull, liability, cargo, hangarkeeper's liability, etc.

⁸⁴A copy of a subscribed slip is included in the appendix.

⁸⁵See Eagle Star Insurance Company v. Spratt, 2 Lloyd's Rep. 116 (1971).

with the assured.⁸⁶ The slip will also become important if later events reveal an inconsistency between the policy and the slip. In such case, the slip will control, although the policy will be the main source of reference concerning details⁸⁷ of the coverage.

When discussions and arrangements between the broker and the leading underwriter are complete, the broker again sets forth into the marketplace to obtain full subscription to the slip. Generally, except for very large risks, such as airline fleets, between fifteen to twenty underwriters are contacted by the broker, all of whom, if desired, subscribe to a certain, smaller percentage of the risk than the leading underwriter. When the slip has been fully subscribed for 100% of the risk, the broker will prepare a written policy incorporating the terms contained in the slip for the producing broker, who will in turn forward it to the assured. In the event the slip is oversubscribed, each underwriter will have a proportion of his risk removed, with the object to eventually achieve only 100% coverage of the risk.

One major problem confronting all persons involved in the insurance market concerns the ramifications of insolvency of brokers, underwriters, or assureds. Subsequent to the insolvency

⁸⁶ Id.

⁸⁷ American Airlines v. Hope, 1 Lloyd's Rep. 253 (1972)

of several underwriting companies during the early 1970's, the British Parliament enacted the Insurance Companies Act of 1974, which empowers the Insurance Branch of the Department of Trade, an arm of the Secretary of State, to control and regulate the insurance industry in the United Kingdom. Of crucial importance in the area of insolvency is the authority of the Insurance Branch to establish standards of solvency required for individuals and organizations conducting insurance underwriting.⁸⁸ Authorization to conduct insurance underwriting must also come from the Insurance Branch, and according to the Act will not be granted until the underwriter has demonstrated⁸⁹ a satisfactory financial position.

Solvency of underwriters for outstanding claims is regulated under another section of the Act which requires the establishment of reserves shortly after underwriters are notified of a claim. Generally, the adjusting firm assigned by the lead underwriter will recommend a sum of money to be set aside in a special account for the sole purpose of satisfying a particular claim. The custom among the London underwriters is to encourage reserve amounts that are approximately 10 to 20% higher than the actual expected cost of the claim. Underreserving, i. e. establishing a figure which later proves to be insufficient for discharging the claim, is regarded among the London market as a "heinous crime".⁹⁰

⁸⁸ Insurance Companies Act of 1974, sec. 4.

⁸⁹ Id., sec. 6.

⁹⁰ Statement of Robert E. Anson, President, Airclaims, Inc.

Although the lay public tends to often associate the London insurance market and Lloyd's as being equivalent, the truth is that Lloyd's is only a portion of the London market. Several independent underwriting firms, British and foreign, are separate from Lloyd's yet exert dynamic influences on the market.⁹¹

Nevertheless, Lloyd's continues to be an important part of the international aviation insurance scene. Its expertise over the years is nearly legendary, and its volume of business has resulted in the establishment of several specialty organizations created to serve the needs of the aviation insurance community at Lloyd's.⁹² Among these are the Lloyd's Aviation Underwriters Association, which acts as an official representative body for the aviation underwriters, plus the Lloyd's policy signing office, which has the responsibility of signing and checking all policies issued by Lloyd's underwriters. In addition, the policy signing office has established central accounting and payment facilities, and maintains a watchdog status to ensure that the interests of both underwriter and assured are protected.

The non-Lloyd's community has also established a number of specialty organizations to serve the needs of the market. The

⁹¹E.g., Aviation and General Insurance Company, Ltd., British Aviation Insurance Company, Ltd., and Orion Insurance Company, Ltd.

⁹²Lloyd's is actually not an underwriting company, but merely an association of individuals and syndicates engaging in insurance underwriting. From its beginning in the 17th Century in a coffeehouse near the waterfront of London, Lloyd's has continued to be a central gathering place for insurance underwriters, although currently it does much to serve the needs of the market as a whole.

Aviation Insurance Offices Association provides essentially the same service for non-Lloyd's companies as the Lloyd's Aviation Underwriters Association does for its members. The Institute of London Underwriters⁹³ provides policy signing and checking services, similar to those provided by the Lloyd's policy signing office.

The specialty organizations serving the aviation insurance market are not totally bifurcated along Lloyd's-nonLloyd's lines. The Joint Technical and Clauses Committee was formed by the Lloyd's Aviation Underwriters Association and the Aviation Insurance Offices Association to deal jointly with the technical concerns of aviation underwriters. Such an organization makes inherent sense, for many aviation policies contain both Lloyd's and non-Lloyd's underwriters as subscribers to the risk.

On the international scene, the International Union of Aviation Insurers⁹⁴ represents the interests of aviation underwriters on a world-wide scale, working with international aviation organizations, particularly ICAO, IATA, and IFALPA. The organization's major task lies in protecting and maintaining the interests of aviation insurers in the international forum.

Although the London insurance industry is a complex and highly significant portion of the British business establishment,⁹⁵

⁹³ Founded 1884

⁹⁴ Founded 1934

⁹⁵ Lloyd's has been labeled the "cornerstone of British financial institutions." Washington Post, 27 June 1980, sec. E (Business and Finance) at E1.

government regulation of it has been rather slow in developing. Early attempts, which proved largely ineffectual, were made through legislation such as the 1907 Life Assurances Companies Act and the 1909 Assurance Companies Act. Lloyd's enjoyed its own separate legislative control, with Lloyd's Acts being passed in 1888, 1911, 1925 and 1951

1967 saw the commencement of widesweeping changes in the legislative control of the insurance industry, with the specific goal of protecting assureds from insolvency of insurance underwriters. Current regulations⁹⁶ require that underwriters adhere to a statutory formula for maintaining a degree of solvency; in addition, underwriters are required to place assets in reserve when notified of claims.

While the underwriting activities at Lloyd's are not the exclusive insurance activity in London, its position within the international aviation insurance market is substantial enough to deserve additional comment.⁹⁷ While the strength of Lloyd's in financial terms continues to be immense, substantial problems have faced the aviation, marine, and other underwriters in the recent past.

To begin with, 1979 was a disastrous year for the insurers at Lloyd's. Nineteen major airline losses were insured by Lloyd's underwriters, including the Boeing 747 crashes at

⁹⁶ Insurance Companies Act of 1974; 1977 Insurance Company Regulations.

⁹⁷ As of 26 June, 1980 Lloyd's had 18,557 members organized into 436 underwriting syndicates.

Tenerife and the Chicago DC-10 disaster. The Chicago crash and the resulting grounding of the remaining aircraft alone cost Lloyd's US\$ 550,000,000.00 in claims.⁹⁸ Partial losses in 1979 and the first quarter of 1980 have resulted in claims of US\$ 90,000,000.00 for hull damages alone, while passenger liabilities from all air crashes (including the Mexico City and Antartica DC-10 disasters) are estimated in rough terms at approximately US \$300,000,000.00.⁹⁹

Lloyd's has suffered major losses in areas other than aviation during 1979 and 1980. While 1979 was viewed by most aviation underwriters as being the worst year ever,¹⁰⁰ 1980 is rapidly developing as the worst year for marine losses; the first months of 1980 have seen an average of three super-tanker losses every month.¹⁰¹ In addition, Lloyd's syndicates had insured the National Broadcasting Company against the contingency that United States athletes would not participate in the 1980 summer Olympic games. The claim payout is expected to be at least US\$50,000,000.00.

According to financial analysts and industry observes, Lloyd's problems have stemmed from a number of sources. One, of course, is pure bad luck--the large number of airline claims during 1979 was due to freakish accidents that were totally

⁹⁸ Aviation Digest, 20 June 1980 at 1.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Washington Post, supra, at E1

unforseen by the aviation insurance market, which plans on three wide-body aircraft losses per year. However, another source of Lloyd's problems comes from poor underwriting judgment, with a classic example being the decision of a Lloyd's syndicate to insure slum properties in the Bronx, New York against fire, without a through investigation of the property or a realistic appreciation of the risk. When the property burned, 44 of the syndicate's members refused to pay the claim, an unforeseen and serious breach of protocol.

A third source of Lloyd's problems is the rather archaic manner in which business is conducted. Lloyd's is steeped in traditions which go back several centuries and, as quaint and interesting as such customs might be, they are totally out of step with the age of computers and rapid communications used by other business establishments. Consequently, the productivity levels of the insurance working day are far below the rest of the international business world.

A fourth reason for the problems at Lloyd's is traceable to the basic lack of regulatory controls over the industry and its intermediaries. In spite of regulatory legislation discussed earlier in this paper, Lloyd's remains de facto regulated by its members and their elected ruling committee. Acts of Parliament which attempted to control the industry at Lloyd's are widely acknowledged to be antiquated.

In the face of these problems, Lloyd's launched in 1978 a two-year study of its internal practices and problems. The results of this study were released in June, 1980 by Mr. Peter Green, the current chairman at Lloyd's. Major changes in internal structure and discipline will be implemented in the remaining months of 1980, among them a mandate for replacement of the present ruling committee of 16 members by a new council of 25 members. The structure of the council will retain the original 16 members of the ruling committee,¹⁰³ supplemented by nine other members elected from different sources.¹⁰⁴ The new council will enjoy stronger powers than were possessed by the former ruling committee, particularly in the area of regulation of the activities of members, brokers, and syndicates.

Although industry observers predict that the international aviation insurance business will not again become profitable for several years, and that several major underwriting figures will abandon the aviation business by the end of 1980,¹⁰⁴ the current management of Lloyd's remains confident that the industry will continue to do relatively well in spite of increased

¹⁰³ The 16 members of the former ruling committee were elected by those members of Lloyd's who were actually engaged in underwriting. As active underwriters, they represent a minority of the total membership of Lloyd's. Most members, such as former Prime Minister Ted Heath, tennis star Virginia Wade, boxer Henry Cooper and cricketer Peter May are not active underwriters but merely sources of capital. The additional nine members of the new council will be comprised of six members elected by the total membership of Lloyd's, plus three others elected from sources outside the industry.

¹⁰⁴ Aviation Digest, supra.

competition from United States and Arab underwriters. New Acts of Parliament designed to improve overall regulation of the insurance industry in the United Kingdom, plus a vast foreign market,¹⁰⁵ are expected to successfully maintain the London market, with Lloyd's as its chief cornerstone, in a place of prominence in the international aviation insurance world.

Risk Rating

Successful underwriting depends to a large extent upon proper risk rating so that premiums collected will be sufficient to offset amounts paid out as claims.¹⁰⁶ While there are no precise mathematical formulas used in rating risks and therefore arriving at premiums, there do exist a number of standard approaches which underwriters employ in attempting to obtain an accurate assessment of the risk.¹⁰⁷

In aviation hull coverages, the underwriter is most concerned with the particular type of aircraft for which insurance is sought and the qualifications of the pilot who intends to fly it. In airline policies, this is generally not a substantial problem if the airline has a well-established record and high standards of crew training accompanied by equipment which has a proven

¹⁰⁵ Lloyd's premium receipts totalled US\$ 5 billion in 1979, with 75% of this amount coming from foreign clients. Washington Post, supra, at E2

¹⁰⁶ See Adel Salah El Din, supra, at 37-57.

¹⁰⁷ See generally Dann, Insuring the Risk, 41 J. Air L. & Com. 431(1974).

record of satisfactory performance and proper product support from the manufacturer. However, for the private or corporate aircraft owner and small, fledging airlines, the following factors must be reviewed by the underwriter¹⁰⁸ in order to accurately rate the risk and determine the premium:

Pilot Data

1. Type of pilot certificate possessed.
2. Ratings and/or limitations accompanying the certificate.
3. Medical certificate and medical history.
4. Pilot experience data, including hours flown and previous accident record.

Aircraft Data

1. Year, make and model of aircraft.
2. Maintenance record of the aircraft.
3. Factory support record, i.e., availability of spare parts.
4. Location of the aircraft base and facilities available at the home airport--hard surface runways, hangars, approach aids, fire-fighting equipment, etc.
5. Uses, i.e., aerial application, business and pleasure, air taxi, etc.
6. Geographical areas of intended use.

After a review of this and other information, which is supplied to the broker by the prospective assured, the lead underwriter and the broker generally determine the premium based on a certain percentage of the hull value of the aircraft. The precise percentage will, of course, depend upon the risk

¹⁰⁸ R. Miller, Underwriting Considerations, supra.

presented by the assured as well as the deductible applied to the coverage.

For passenger liability coverage, the risks are rated and the premiums determined on the basis of the number of revenue passenger miles flown during the past year, plus a projection of anticipated number of revenue passenger miles to be flown during the term of the insurance, in the case of an airline assured. The liability premium of the private owner is generally a factor of available passenger seats in the aircraft, plus the risk presented to the underwriter, based on the factors listed on page 36.^{109, 110}

Premium rates for third party property damage and personal injury liability are generally determined on the basis of risk presented, miles flown, and type and size of aircraft for which coverage is sought. As with other premium assessments, the function of the underwriter is to determine the amount of financial exposure presented by the assured. The premium is then established.

¹⁰⁹ Any change in risk which is not communicated to the underwriter will likely result in no coverage in the event of a claim. See Benningfield v. Avemco Insurance Company, 561 S.W. 2d 736 (Mo. App. 1978).

¹¹⁰ A standard proposal form, containing requests for information from the assured, is included in the appendix.

CHAPTER THREE: GENERAL PRINCIPLES OF INSURANCE LAW

Legally speaking, an insurance policy amounts to a contract between the assured and the underwriters,¹¹¹ and as such is subject to the general rules of law which govern the making and construction of contracts.¹¹² However, as will be discussed shortly, various corollaries of contract law have been developed for specific application to insurance policies, which in the eyes of the law represent a special type of contract, i.e., an agreement for the payment of money upon the occurrence of a given event.^{113,114}

As a branch of contract law, insurance policies are subject to the general rules of contracts dealing with offer, acceptance, consideration, breach, etc., which are a complex subject in themselves and far beyond the scope of this work. However, it is necessary to discuss several principles of contract law which have a significant meaning when applied to insurance policies, for the application of these principles can ultimately bear upon the determination of coverage in the event of an insurance claim. Consequently, the following areas of contract law are important to the study of international aviation insurance, although precise applications will vary according to the law of local jurisdictions.

¹¹¹ D.T.I. v. St. Christopher's Motorists Association, (Ch. 1974) 1 Lloyd's Rep. 17.

¹¹² Liverpool, London and Globe Insurance Company v. Kearney, 180 U.S. 132 (1901); Stevens Industries Inc. v. Maryland Casualty Company, 391 F.2d 411 (5th Cir. 1968); Georgia Code Annotated sec. 56-2419. See also Aviation Accident Insurance in the Context of Contract Law, 15 Trial 47 (1979).

¹¹³ D.T.I. v. St. Christopher's Motorists Association, (Ch.1974) 1 Lloyd's Rep. 17.

¹¹⁴ An insurance contract has also been defined as a contract for a benefit expressed in terms other than money or money's worth. Medical Defence Union Ltd. v. Department of Trade, (1979 Ch.) 2 All E.R. 421.

Rules of Construction and Interpretation

Judicial construction and interpretation of an insurance policy, like any contract, will occur only if the clear meaning of the contract is not evident from the language utilized in the drafting of the agreement. When a contract is clear and unambiguous on its face the court is prohibited from admitting extraneous evidence, whether parole or otherwise, to assist in interpretation;¹¹⁵ rather, the court is required to accord the language used in the policy its normally understood meaning.¹¹⁶ In accordance with the general contractual rule that the intent of the parties should be the controlling factor in construction and interpretation,¹¹⁷ the language of the policy, if unambiguous, is considered to be the best indication of the true intent of the parties at the time of contracting.

In the event that the policy or contract is not clear but rather contains ambiguities, special rules determine the ultimate construction and interpretation assigned to the language. Basing their decisions on contractual rules that a written agreement will always be construed against the party responsible for its drafting,¹¹⁸ the courts have developed the premise that contracts

¹¹⁵ Continental Casualty Company v. Wagner, 195 F.2d 936 (8th Cir 1952); Prenn v. Simmonds (1971) 3 All E.R. 237; Extraneous evidence is permitted if the contract is ambiguous, Utica Mutual v. Emmco Insurance Company, 243 N.W. 2d 134 (Minn. 1976).

¹¹⁶ Allison v. Imperial Casualty and Indemnity Company, 222 So 2d 254 (Fla. App. 1969); Valdes v. Prudence Mutual Casualty Company, 207 So. 2d 261 (Fla. App. 1973).

¹¹⁷ American Aviation and General Insurance Company v. Georgia Telco Credit Union, 223 F.2d 206 (5th Cir. 1955).

¹¹⁸ See generally 17 Am. Jur. 2d Contracts sec. 276 (1964).

of insurance will be liberally construed in favor of the assured and against the underwriter.¹¹⁹ This is particularly true when the ambiguity concerns a coverage exclusion incorporated into the policy,¹²⁰ for the main purpose of the rule is to provide for the liberal interpretation of policies in favor of providing insurance coverage to the assured.¹²¹

In the insurance industry the use of adhesion agreements is a standard method of operation, and the assured is most often presented with a policy on a take it or leave it basis. The policy is usually in a printed form,¹²² and the assured generally has no choice but to accept it as drafted. The situation may be different in cases where the prospective assured is possessed of a large amount of bargaining power, but for most the underwriter sets the terms, conditions, and exclusions as contained in the policy and the assured must accept or reject it as presented. Consequently, the party responsible for the drafting of the policy is not permitted to benefit from any ambiguities or discrepancies that

¹¹⁹ Allison v. National Insurance Underwriters, 487 S.W. 2d 257 (Mo. App. 1972); Stroehmann v. Mutual Life Insurance Company, 300 U.S. 435 (1937)

¹²⁰ MacArthur v. Massachusetts Hospital Service, Inc., 343 Mass. 670, 180 N.E. 2d 449 (1962); State Farm Mutual Auto Insurance Company v. Thompson, 373 F. 2d 256 (9th Cir. 1967)

¹²¹ Johnson v. Mutual Life Insurance Company, 115 S.E. 14 (Ga. 1922); Great Lakes Transit Corporation v. Interstate Steamship Company, 301 U.S. 646 (1937); Fidelity and Casualty Company v. Reese, 223 F. 2d 114 (10th Cir. 1955); Aetna Casualty and Surety Company v. Cartmel, 87 Fla. 495, 100 So. 802 (1924)

¹²² Printed policy forms have been held to be strictly construed against the drafter, Continental Casualty v. Warren, 254 S.W. 2d 762 (Tex. 1953).

are essentially of its own doing. The burden^{123,124} of clear and precise drafting is placed on the underwriter.

A leading United States case concerning the interpretation of aviation insurance policies is Wiesmuller v. Interstate Fire and Casualty Company, 568 F. 2d 40(7th Cir. 1978), which arose from the crash of a small aircraft in Wisconsin in August, 1967. The crash caused the death of the pilot and serious injuries to a teenage passenger. The question before the court was whether the insurance policy in effect at the time of the accident provided for liability coverage in the amount of \$100,000 per seat or \$300,000 per accident, the plaintiff contending the latter and the insurer¹²⁵ the former. In the course of its opinion, the court discussed the rules applicable to the interpretation of aviation insurance policies:

Contracts of insurance are controlled by the same principles of law that are applicable to other contracts. A policy of insurance, like any other contract, is to be construed so as to give effect to the intention of the parties. In the case of an insurance contract, the words are to be construed in accordance with the principle that the test is not what the insurer intended the words to mean but what a reasonable person in the position of an insured would have understood the words to mean. Whatever ambiguity exists in a contract of insurance must be resolved in favor of

¹²³ Cherokee Life Insurance Company v. Baker, 168 S.E. 2d 171 (Ga. 1969); Boston Insurance Company v. Baker, 352 F. 2d 368 (5th Cir. 1965)

¹²⁴ See generally E. Ivamy, General Principles of Insurance Law (4th ed. 1979).

¹²⁵ In the trial court action, the plaintiff had obtained judgment in the amount of \$350,000.

the insured. This is a restatement of the general rule that ambiguous contracts are to be construed most strongly against the maker or drafter. ¹²⁶

Policy exclusions, limitations, and exceptions are also subjected to narrow interpretations, under the theory that the underwriter, having contracted to provide insurance coverage, assumes a duty to delineate any limits on that coverage in clear and precise terms. ¹²⁷ This is not to say, however, that exclusions and limitations will always be construed against the underwriters. Such clauses serve a valid purpose in insurance by ensuring that the premium charged is commensurate with the risk assumed by the underwriter, ¹²⁸ for higher risks necessarily demand higher premiums. The law merely requires that any coverage exclusion must be clearly ¹²⁹ stated in the policy in unambiguous terms.

In the event that a policy exclusion is reasonably susceptible of interpretation in more than one way, some courts have taken the position that the assured should again be favored in this circumstance. ^{130, 131} This position is not universal, for other

¹²⁶ 568 F. 2d at 42.

¹²⁷ Roach v. Churchman, 431 F. 2d 849 (8th Cir. 1970); Aetna Casualty and Surety Company v. Stover, 327 F. 2d 288 (8th Cir. 1964); Insurance Company of North American v. General Aviation Supply Company, 283 F. 2d 590 (8th Cir. 1960); De Maurier Ltd. v. Bastion Insurance Company Ltd. and Coronet Insurance Company Ltd., (1967 Q.B.) 2 Lloyd's Rep. 550

¹²⁸ J. Ballard and T. Chero, An Analysis of Aviation Liability Coverage Exclusions; A Recent Case Survey, 13th Southern Methodist Air Law Symposium, 1979.

¹²⁹ Moula v. American Life Insurance Company, 111 U.S. 335 (1884)

¹³⁰ Aetna Casualty and Surety Company v. Stover, 327 F.2d 288 (8th Cir. 1964)

¹³¹ The question of whether a risk which caused an accident is within the policy coverage is for the trier of fact. Evans v. Century Casualty Company, 159 Colo. 596, 413 P.2d 457 (1966)

courts will attempt to ascertain the intent of the parties from parole or extraneous evidence and grant or deny coverage accordingly.¹³² However, the latter is the minority view.

Several justifications have been advanced for the position that the assured should be favored in the interpretation of an ambiguous insurance contract. The first, already stated, is that any contract should be construed against the party authoring the terms and conditions.¹³³ The second is that the presumed intention of the parties is for the existence of a valid contract of insurance, consequently this purpose should be upheld except where it is clearly impossible to do so.¹³⁴ Another reason which has been advanced is that free trade is benefited, although it is submitted that this is not a compelling reason for the adoption of the liberal construction rule.

In the event of litigation concerning the interpretation and construction of a policy exclusion, there is a difference of opinion as to the burden of proof of illustrating whether the loss was covered or excluded. Some jurisdictions have held that the

¹³² Landwehr v. Continental Life Insurance Company, 159 Md. 20, 150 A. 732 (1930).

¹³³ American Policyholders Insurance Company v. Michota, 156 Ohio St. 578, 103 N.E. 2d 817 (1952); Maddox v. Mutual Life Insurance Company, 193 Ky. 38, 234 S.W. 949 (1921); Beryllium Corp. v. American Mutual Liability Insurance Co., 223 F.2d 71 (3rd Cir. 1955).

¹³⁴ Woolfall and Rimmer Ltd. v. Moyle, (1941 C.A.) 3 All E.R. 304

burden of proving that the loss was within the policy exclusion falls on the underwriters,¹³⁵ while others have held that the assured must sustain the burden of showing that the exclusion did not operate.¹³⁶ Other courts have taken a compromise stand, holding that the assured has the burden of proving that his loss was caused by a risk insured under the policy. However, the assured may shift the burden of proof to the underwriter by establishing a prima facie case simply by showing the existence of the policy, the happening of a given event, and the issuance of notice of loss to the underwriter.¹³⁷

As mentioned earlier, an underwriter may properly exclude certain risks from coverage afforded by a particular policy, and no coverage will be afforded in the event that the loss occurs under circumstances clearly excluded by the terms of the policy.¹³⁸

¹³⁵ Milliken v. Fidelity and Casualty Company of New York, 338 F. 2d 35 (10th Cir. 1964); Mock v. Missouri Union Insurance Company, 328 S.W. 2d 61 (Mo. App. 1959); Hanover Fire Insurance Company of New York v. Scroggs, 92 Ga. App. 548, 88 S.E. 2d 703 (1955); In Re National Benefit Assurance Company, Ltd. (1931) 1 Ch 46.

¹³⁶ Greaves v. Drysdale, (1935) 53 Lloyd's L. Rep. 16; Mobil Oil Corporation v. Reliance Insurance Company, 332 N.Y.S. 2d 532, aff'd 333 N.Y.S. 2d 747 (1971).

¹³⁷ Fallins v. Durham Life Insurance Company, 247 N.C. 72, 100 S.E. 2d 214 (1957); Underwriters at Lloyd's, London v. Cherokee Laboratories, Inc., 288 F. 2d 95 (10th Cir. 1961); Tuohey v. National Insurance Underwriters, Inc. 369 S.W. 2d 421 (Mo. App. 1963); See generally 46 C.J.S. Insurance sec. 1316 (1965).

¹³⁸ Grigsby v. Houston Fire and Casualty Co., 113 Ga. App. 572, 148 S.E. 2d 925 (1966); Lineas Aereas Colombianas Expresas v. Travelers Insurance Company, 257 F. 2d 150 (5th Cir. 1958); Underwriters at Lloyd's, London v. Cordova Airlines, 283 F. 2d 659 (9th Cir. 1969); Powell Valley Electric Cooperative v. United States Aviation Underwriters, 179 F. Supp. 616 (1959); Globe Indemnity Company v. Hansen, 231 F. 2d 895 (8th Cir. 1956).

If the court determines that there is no coverage under the terms of the condition or exclusion, it is obligated, in some jurisdictions, to direct a verdict for the underwriter. Under British law, the underwriter is entitled to deny liability for a particular incident, but may¹⁴⁰ not consider the policy as a whole void as regards other losses.

Insurable Interest

The principle of insurable interest has been defined in various ways,¹⁴¹ but the concept generally speaking is one which requires the holder of an insurance policy to stand in such a position that a benefit is obtained from the thing insured and economic or other prejudice would occur upon its destruction

¹⁴⁰Hoods Trustees v. Southern Union General Insurance Company of Australasia, (C.A. 1928) Ch, 793.

¹⁴¹MacGillivray and Parkington, Insurance Law (6th ed. 1975): "When the assured is so situated that the happening of the event on which the insurance money is to become payable, would as a proximate result, involve the assured in the loss or diminution of any right recognized by law or in any legal liability, there is an insurable interest in the happening of that event of the possible loss or liability", in Adel Salah El Din, supra, at 27. Margo: "A person will have an insurable interest when he is so circumstanced in relation to the subject matter of the insurance that he will benefit from its continued existence and will suffer prejudice from its destruction", citing Lucena v. Craufurd (1806) 2 Bos and P.N.R. 269, at 61.

¹⁴² or damage. Lack of an insurable interest legally renders the policy nothing more than a wager contract, which is void as against public policy in all jurisdictions. ^{143,144}

In the context of aviation insurance law, a prospective assured must have an interest in the aircraft to be insured, be it legal, equitable, or otherwise. Generally, the courts have held it sufficient that the assured stand in a position whereby he derives benefit from the existence of the aircraft, and would suffer loss if it were destroyed, the exact legal definition of his position notwithstanding. Thus, the existence of insurable interest does not depend upon the assured having or gaining legal title, an equitable interest, a lien on or possession of the aircraft, although any of these interests would be sufficient to establish the presence of insurable interest. It is enough to satisfy the insurable interest requirement that the assured stands in a position which renders him likely to sustain some sort of loss in the event of the destruction of or damage to, the aircraft. ^{146,147}

¹⁴² Hooper v. Robinson, 98 U.S. 528 (1878); American Indemnity Company v. Southern Missionary College, 195 Tenn. 513, 260 S.W. 2d 269 (1953); Wainer v. Milford Mutual Fire Insurance Company, 153 Mass. 335, 26 N.E. 877 (1891); Nussbaum v. Northern Insurance Company, 37 F. 524 (5th Cir. 1889)

¹⁴³ Warnock v. Davis, 104 U.S. 775 (1881).

¹⁴⁴ Wager policies were valid in England during the early years of the formation of the common law. Most jurisdictions now have statutes which render wager policies illegal as against public policy

¹⁴⁵ A bailee has an insurable interest in an aircraft leased to him, Middlesex Mutual Insurance Company v. Johnson, 12 Avi. 17,583 (Cal. Ct of App. 1972)

¹⁴⁶ Smith v. Eagle Star Insurance Company, 370 S.W. 2d 448 (Tex. Civ. App. 1963).

¹⁴⁷ Section 138 of the New York Insurance Code permits the

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Although there is authority to the contrary,⁴⁸ the general rule among courts in the United States is that the assured's insurable interest must be established at the time of policy issue and occurrence of loss,¹⁴⁹ although the nature of the interest need not be precisely the same at both points in time.¹⁵⁰ The insurable interest is also permitted to lapse at any point between the issuance of the policy and the occurrence of a loss or claim,¹⁵¹ provided that it is present at both crucial times.

In the United Kingdom, marine insurance policies require the assured to possess an existing or future insurable interest at the time the contract is entered into.¹⁵² It is not necessary that the nature of the interest be disclosed to the underwriter,¹⁵³ although all standard printed policy forms have a space for so doing. For aviation policies in the United Kingdom, Shawcross and Beaumont state that the requirement for insurable

¹⁴⁸ Sun Insurance Offices v. Merz, 64 N.J.L. 301, 45 A. 785 (Super. Ct. App. Div. 1900)

¹⁴⁹ Clinton v. Norfolk Mutual Fire Insurance Company, 176 Mass. 486, 57 N.E. 998 (1900).

¹⁵⁰ Wriedt v. Bekenhauer, 183 Neb. 311, 159 N.W. 2d 822 (1968)

¹⁵¹ Worthington v. Bearse, 94 Mass. 382 (1873).

¹⁵² Shawcross and Beaumont, supra, at 589.

¹⁵³ McKenzie v. Whitworth, (L.R. 1875) 10 Exch. 142; Ogden v. Montreal Insurance Company, (1853) 3 C.P. 497; Both cases cited in Shawcross and Beaumont, supra, at 589.

interest is satisfied if the assured can demonstrate the presence¹⁵⁴ of an insurable interest at the date of the loss.

It has been held in the United States that lack of insurable interest generally may only be raised for the benefit¹⁵⁵ of the underwriter, who, if successful in showing lack of insurable interest, may void the insurance contract on grounds that it represents an illegal wager. However, actions or statements¹⁵⁶ on the part of the underwriter may serve to waive the defense of lack of insurable interest. However, this is not a universally adopted position among American courts, for some jurisdictions have held that a policy in which insurable interest is lacking is flatly void as against public policy or statute, and no act^{157, 158} of the underwriters will serve to validate it.

In the case of aviation hull insurance, insurable interest is readily established through the assured's connection with the physical item of property insured, i.e., the aircraft. Generally, the assured will be the owner, lessor, bailee, or

¹⁵⁴ Shawcross and Beaumont, supra.

¹⁵⁵ Keckley v. Coshocton Glass Company, 86 Ohio St. 213, 99 N.E. 299 (1912).

¹⁵⁶ Van Zandt v. Morris, 196 Miss. 374, 17 So. 2d 435 (1944).

¹⁵⁷ Calver v. Central States Fire Insurance Company, 130 Kan. 556, 287 P. 266 (1930); Hack v. Metz, 173 S.C. 413, 176 S.E. 314 (1934).

¹⁵⁸ See generally, Public Policy and Aviation Liability Insurance, 4 Pepperdine L. Rev. 447 (1977).

or user of the aircraft, in which case he stands to suffer loss or prejudice in the event of damage to the aircraft. The consequence is that insurable interest is readily ascertained from such a situation.

The interest is not as clear in the case of aircraft liability insurance, and, like other forms of insurance, insurable interest is generally required in order to prevent liability insurance policies from becoming wager contracts.^{159,160} In the case of a liability policy, insurable interest, where required, is determined from the interest of the assured in protecting himself from litigation and claims brought by persons who may be injured or have their property damaged as a result of his activities.¹⁶¹ It is also submitted that public policy requires such a determination of insurable interest, for it is in the public interest that persons injured as a result of activities conducted by an assured be compensated by that person rather than becoming dependents of the state due to a technical flaw in the insurance contract.

¹⁵⁹ Insurable interest was required to be present in a policy for liability coverage in Osborne v. Security Insurance Company, 155 Ca. App. 2d 201, 318 P. 2d 94 (1957).

¹⁶⁰ Insurable interest was not required for a liability policy in Western Casualty and Surety Company v. Herman, 209 F. Supp. 94 (D. Mo.), aff'd 318 F. 2d 50 (8th Cir. 1963).

¹⁶¹ Employees Liability Assurance Corporation v. Merrill, 155 Mass. 404, 29 N.E. 529 (1892).

According to Adel Salah El Din, in certain ~~circumstances~~¹⁶² international law has modified or restricted insurable interest in international civil aviation.¹⁶² Citing in particular the¹⁶³ Warsaw Convention,¹⁶³ the Hague Protocol,¹⁶⁴ the Montreal Agreement¹⁶⁵ and the Rome Convention,¹⁶⁶ El Din does not specifically state why these items of international air law have restricted insurable interest, but rather makes a blanket statement that they have done so, followed by a listing of the limits of liability contained in each instrument. It is submitted that this position is incorrect for the following reasons.

First, although the Warsaw System does establish a legal regime of limited liability in exchange for a presumption of liability for injury or damage on the part of the carrier, there currently exist many loopholes in the system which allow a breaking of the limits of liability contained in the various instruments which make up the Warsaw System. For example, a showing by the plaintiff of wilful misconduct on the part of the carrier or actual or constructive non-delivery of a ticket will result in the carrier becoming subject to unlimited liability.

¹⁶² Adel Salah El Din, supra, at 29-30.

¹⁶³ Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw, 1929, 49 Stat. 3000, T.S. No. 876, 137 U.N.T.S. 11.

¹⁶⁴ Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at the Hague, 1955, I.C.A.O. Doc. 7632.

¹⁶⁵ Agreement C.A.B. 18900 (1966).

¹⁶⁶ Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome, 1952, I.C.A.O. Doc. 7364.

Given the many cases in the United States which have liberally interpreted the provisions of the various Warsaw System instruments so as to afford the plaintiff unlimited recovery from the air carrier, it is submitted that such potential liability exposure is sufficient for a carrier to possess insurable interest for limits in excess of those established by the Warsaw System. In reality, all airlines in the free world carry liability insurance for limits far in excess of those established by the Warsaw System; the realities of judicial interpretation of the various instruments of the system make such protection necessary, and consequently it is submitted that the element of insurable interest is clearly established.

Second, El Din refers to the Rome Convention as also restricting or modifying insurable interest in international civil aviation. At present, only twenty-seven states have ratified the Rome Convention, which is a relatively small following of adherents considering the number of nations which are actively involved in international civil aviation. Consequently, the Convention is in force as to relatively few participants in aviation; the remainder of the world's aviating countries have established no liability limits for surface damage. Consequently, all air carriers should be insured against such liability for high limits, unless their total flight operations are conducted in countries which have ratified the Rome Convention.

The Rome Convention also provides that in certain events¹⁶⁷ the liability limits set by the convention will not apply. Similar to the previous discussion concerning the Warsaw System, the contingency that such events may occur, it is submitted, is sufficient to justify a finding of insurable interest in an air carrier which seeks to obtain added insurance coverage~~ee~~ for liability generated by ground damage.

Consequently, it is argued that El Din's statement that insurable interest has been restricted or modified by the above-discussed international laws is not entirely correct. Rather, it would be more appropriate to state that the conventions attempted to establish a system of limited liability; as applied, however, the provisions which result in unlimited liability are often invoked, therefore justifying an air carrier in seeking to obtain liability insurance in excess of the limits prescribed by international law as well as providing ample evidence to sustain a finding of the presence of insurable interest for added coverage. Certainly the provisions of the Warsaw System and the Rome

¹⁶⁷ Article 12 of the Rome Convention states: "If the person who suffers damage proves that it was caused by a deliberate act or omission of the operator, his servants or agents, done with intent to cause damage, the liability of the operator shall be unlimited; provided that in the case of such act or omission of such servant or agent, it is also proved that he was acting in the course of his employment and within the scope of his authority."

Convention will often apply to limit the liability of a carrier, and as such will have an effect in lowering premium rates for liability insurance. However, an air carrier must obtain insurance protection against the contingency of unlimited liability if it is to avoid possible financial catastrophe.

Subrogation

Virtually all aviation insurance policies contain a clause providing that upon payment of a claim, the underwriter will become subrogated to the rights of the assured. The doctrine of subrogation, by which the underwriter, through the policy contract, steps into the legal position of the assured, allows legal action to be pursued against a third party who is responsible for the loss which resulted in a claim being paid by the underwriter.¹⁶⁸ Subrogation may be pursued by the underwriter whether the right of the assured against the third party is based upon contract or tort,¹⁶⁹ and may arise by virtue of the express provision contained in the policy or by operation of law.¹⁷⁰¹⁷¹

¹⁶⁸ St. Louis, Iron Mountain and Southern Railway Company v. Commercial Union Insurance Company, 139 U.S. 223 (1890); Packham v. German Fire Insurance Company, 91 Md. 515, 46 A. 1066 (Md. App. 1900); Calvert Fire Insurance Company v. James, 236 S.C. 431, 114 S.E. 2d 832 (1960).

¹⁶⁹ H. Cousins and Company Ltd. v. D and C Carriers Ltd., (1970 C.A.) 2 Lloyd's Rep. 397.

¹⁷⁰ Ellis Canning Company v. International Harvester Company, 174 Kan. 357, 255 P. 2d 658 (1953)

¹⁷¹ The right of subrogation through operation of law is known as equitable subrogation. See Milwaukee Insurance Company v. McLean Trucking Company, 256 N.C. 721, 125 N.E. 2d 25 (1962).

The right of the underwriter to subrogate the claim against a wrongdoer is usually derived from the contract of insurance, and is no greater than those rights which the assured has against the tortfeasor. Therefore, the underwriter stands in the shoes of the assured, and any defense which the wrongdoer may assert against the assured is equally assertable against the underwriter.¹⁷² Additionally, some courts in the United States have held that any counterclaim which the wrongdoer may lodge against the assured may be brought against the underwriter in the event of a subrogation action;¹⁷³ however, the third party may not raise defenses or claims which have their basis on the question of the validity of the policy. The policy is strictly a contract between the underwriter and the assured, and a party out of privity may not raise defenses occasioned solely by the policy and its operation.¹⁷⁴

In keeping with the general principle that an insurance policy must be strictly construed against the underwriter, case law has held that a clear and precise subrogation clause must be contained in the policy if subrogation is to be permissible under the terms of the insurance contract.¹⁷⁵ Additionally, the

¹⁷² Royal Indemnity Company v. Federal Reserve Bank, 38 F. Supp. 621 (W.D. Ohio) aff'd 119 F. 2d 778 (6th Cir. 1941).

¹⁷³ Id.

¹⁷⁴ Maryland Casualty Company v. Cherryvale Gas, Light, and Power Company., 99 Kan. 563, 162 P. 313 (1917).

¹⁷⁵ Milwaukee Mechanics Insurance Company v. Ramsey, 149 P. 542 (1925); Eastern Restaurant Equipment v. Tecci, 196 N.E. 2d 869 (Mass. 1964).

claim of the assured against the underwriter must be fully discharged before the right of subrogation attaches to the latter. ¹⁷⁶

For example, no right of subrogation will attach where the assured is not satisfied with repairs paid for by the underwriter in accordance with the policy terms, for such does not constitute a complete discharge of the underwriter's contractual obligation under the policy. ^{177, 178}

Subrogation rights will attach even though the claim of the assured amounts to only a partial loss, although the underwriter gains no title to the property in any fashion. ¹⁷⁹ No subrogation rights will attach where the third party wrongdoer is an additional assured under the policy. ¹⁸⁰

The underwriter is not required to exercise its right of subrogation, and may often decide that subrogation of a claim

¹⁷⁶ Tyre v. Andrews, 48 Del. 390, 104 A. 2d 775 (1954).

¹⁷⁷ Scottish Union National Insurance Company v. Davis, (C.A. 1970) 1 Lloyd's Rep. 1.

¹⁷⁸ A mere expectation that the assured's claim will be discharged is not sufficient grounds for an underwriter to subrogate, Meredith v. The Ionian Trader, 279 F. 2d 471 (2nd Cir. 1969).

¹⁷⁹ Oriental Fire and General Insurance Company Ltd. v. American President Lines, et. al, (1968 India Supreme Ct.) 2 Lloyd's Rep. 372.

¹⁸⁰ Great American Insurance Company v. Curl, 18 Ohio Ops. 2d 481, 181 N.E. 2d 916 (Ct. App. 1961).

is simply not worth the effort and expense of litigation against a wrongdoer. The right of subrogation can also be the subject of a waiver, either contractually or by conduct.¹⁸¹ In the event that an assured litigates his own action against a tortfeasor, the underwriter is granted a reasonable time in which to investigate the situation and determine the judicial wisdom of participating in the suit as subrogee of the assured. However, once a reasonable time elapses without the underwriter joining, it will be held as constituting a waiver of the right of subrogation.

Actions of the assured may also serve to waive the underwriter's right of subrogation, specifically in any case where the third party tortfeasor is discharged from liability to the assured by means of a settlement, executed release, or otherwise.¹⁸² When such action by the assured prejudices the right of an underwriter to subrogate, the courts have determined that the insurer is released from his obligation to the assured to satisfy the claim arising under the policy of insurance.¹⁸³ For this rule¹⁸⁴

¹⁸¹ Powers v. Calvert Fire Insurance Company, 216 S.C. 309, 57 S.E. 2d 638 (1950).

¹⁸² Phoenix Insurance Company v. Erie and Western Transportation Company, 117 U.S. 312 (1885); Illinois Auto Insurance Company v. Braun, 280 Pa. 550, 124 A. 691 (1924);

¹⁸³ In the United Kingdom, a recovery by the assured after the claim is paid by underwriters is held in a constructive trust for the benefit of the underwriters, Commercial Union Assurance Company Ltd. v. Lister, (1874) 9 Ch. App. 483 in Shawcross and Beaumont, supra, at 599.

¹⁸⁴ Hilley v. Blue Ridge Insurance Company, 235 N.C. 544, 70 S.E. 2d 570 (1952); Libertin v. St. Paul Fire and Marine Insurance Company, 74 S.D. 436, 54 N.W. 2d 168 (1952).

to be applied, however, the underwriter's right to subrogate must be effectively prejudiced.

In the United Kingdom, a subrogation action must be presented to the court in the name of the assured unless an assignment of the chose in action is executed over to the underwriters.¹⁸⁵

In the United States, subrogation actions are generally litigated in the name of the underwriters, or through intervention under state or federal procedural rules.¹⁸⁶

Utmost Good Faith; Misrepresentations and Disclosures

The making of an insurance contract is generally different from that which surrounds other types of contracts. Rather than engaging in face to face negotiations and arms-length bargaining with the prospective assured, the underwriters often rely totally upon information supplied by the assured, said information being extremely critical in assessing the coverage which will be afforded and the premium to be charged. In the words of Adel Salah El Din:

Contracts of insurance are based on the premise that one party to the contract (the proposer) knows all about the risk proposed for insurance, whilst the other party (the insurer) depends greatly upon

¹⁸⁵ Compania Colombia de Seguros v. Pacific Steam Navigation Company, (1964 Q.B.) 1 All E.R. 216. Notice of the assignment must be given to defendant prior to the commencement of litigation. Shawcross and Beaumont, supra, at 599.

¹⁸⁶ E.g., Federal Rules of Civil Procedure 24 (a)(2).

the information supplied by the proposer in order to consider the risk.¹⁸⁷

Consequently, the common law of both England and the United States has developed a duty on the part of the prospective assured to exercise the utmost good faith in disclosing material information during the making of an insurance contract.¹⁸⁸

The definition of "material" has caused problems during the development of the common law of insurance. Generally, a material fact is one "which would influence the judgment of a reasonable or prudent insurer in deciding whether to assume the risk, and if so at what premiums, and on what terms and conditions."¹⁸⁹ Only material facts need be disclosed by the prospective assured;¹⁹⁰ non-material facts are considered irrelevant by the law and need not be communicated to the underwriters.

In the event that the assured fails to disclose material

¹⁸⁷ Adel Salah El Din, supra, at 30.

¹⁸⁸ Lee v. British Law Insurance Company Ltd., (C.A. 1972) 2 Lloyd's Rep. 49; Bryant v. Modern Woodmen, 86 Neb. 372, 125 N.W. 621 (1910); Woolcott v. Sun, Alliance and London Insurance Company Ltd., (Q.B. 1978) 1 All E.R. 1253.

¹⁸⁹ Margo, supra, at 50-51. See also Lambert v. Cooperative Insurance Society Ltd., (C.A. 1975) 2 Lloyd's Rep. 485.

¹⁹⁰ Didlake v. Standard Insurance Company, 195 F. 2d 247 (10th Cir. 1952); Mutual Fire Insurance Company v. Deal, 18 Md. 26 (1861); Sherri v. National Surety Company, 208 N.Y.S. 257 (1928). See generally 16A J. Appleman, Insurance Law and Practice sec. 255 (4th ed. 1966).

facts, such as a previous loss history,¹⁹¹ the fact that¹⁹²
 the aircraft is to be used for hazardous operations, etc.,¹⁹³
 the policy is voidable at the discretion of the underwriters.
 It is important to note that the policy does not automatically
 become void by operation of law, but rather is voidable at
 the option of the party aggrieved by non-disclosure, which will¹⁹⁴
 generally be the underwriters.

A corollary to the rule of utmost good faith in disclosures
 is that the assured must strictly avoid any misrepresentations
 of material fact during the process of procuring insurance coverage.
 Clearly, misrepresenting a fact which would affect a prudent
 underwriter's judgment as to the risk or premium would have an
 equally deleterious effect upon the conduct of an insurance
 matter as merely failing to disclose it at all. For this reason
 the law permits an underwriter, at his option, to void a policy
 which was issued as a result of misrepresentation of material
 fact by the assured.¹⁹⁵ The policy will not be voidable where the
 misrepresentation is not material, i.e., it does not affect the¹⁹⁶
 underwriters appraisal of the risk.

¹⁹¹ Arterial Caravans Ltd. v. Yorkshire Insurance Company, Ltd.,
 (Q.B. 1973) 1 Lloyd's Rep. 169.

¹⁹² Margo, supra, at 52.

¹⁹³ New York Life Insurance Company v. Strudel, 243 F.2d 90
 (5th Cir. 1957); Anglo Africa Merchants v. Bayley, (Q.B. 1969) 2 All
 E.R. 42.

¹⁹⁴ Kumar v. Life Insurance Corporation of India, (Q.B. 1974)
 1 Lloyd's Rep. 147.

¹⁹⁵ Avemco Insurance Co. v. Rollins, 500 F.2d 1182 (5th Cir. 1974)

¹⁹⁶ National Aviation Underwriters v. Fisher, 386 F. 2d 582
 (8th Cir. 1967); Insurance Company of North America v. Butte Aero
 Sales, 243 F. Supp. 276 (D. Mont. 1965).

Problems occasionally arise where material facts are disclosed to the producing broker, who then fails to communicate them to the underwriters for use in assessing the risk and premium. The leading case on this issue in the United States held under Georgia law that the underwriters were deemed to have constructive knowledge of all material facts known to the producing broker. Consequently, because the assured had informed the broker that he held only a student pilot certificate, the underwriters were deemed to have knowledge of this fact, even though the policy information forwarded by the broker contained an indication that the assured held a private pilot license.¹⁹⁷

In the United Kingdom, a misrepresentation made by a broker to the underwriters can result in the policy being rendered void at the underwriters' option.¹⁹⁸ In such a case, the assured would then have a cause of action against the broker.

¹⁹⁷Ranger Insurance Company v. Culberson, 454 F.2d 857 (5th Cir. 1971).

¹⁹⁸Everett v. Hogg Robinson and Gardner Mountain Insurance Company, Ltd. (Q.B. Com. Ct. 1973) 2 Lloyd's Rep. 217 (1973).

CHAPTER FOUR: POLICY PROVISIONS, CONDITIONS, AND EXCLUSIONS

Aviation insurance policies used in international and domestic aviation are generally constructed around the terms and clauses of Form 16 ¹⁹⁹ of the Lloyds Aviation Underwriters Association, with amendments, changes, and endorsements inserted where required by the particular demands of an individual assured. Aviation Form One is also used, particularly in the United Kingdom, but in actual practice Aviation 16 seems to be preferred. In many cases, the policy will be issued to the assured precisely in accordance with the format of Aviation 16, thus making a detailed discussion of the provisions of Aviation 16 worthwhile.

Aviation 16 provides for aircraft hull insurance. The policy is divided into five sections, namely insuring agreements, exclusions, conditions, definitions, and declarations. Aviation One, on the other hand, is comprised of three sections which detail the underwriters' obligations plus sections concerning general exclusions, warranties, general conditions, definitions, and an appended schedule.

The preamble of Aviation 16 commences with a statement which essentially sets forth that the policy is considered to be a contract between the underwriters and the assured, with a statement of consideration and that the policy is issued in reliance upon the statements of the assured. The preamble can thus assist in

¹⁹⁹ All policy forms of the Lloyd's Aviation Underwriters Association are assigned numbers, and will be hereinafter referred to by the term "Aviation" plus the designated number.

the establishment of contractual interpretation of the policy and the presence of reliance by the underwriters in the event of litigation based on material misrepresentations by the assured.

The preamble to Aviation 1 also contains a contractual statement of consideration and reliance upon statements of the assured, but in addition asserts that the assured warrants the truth of all statements and disclosures made to the underwriters. In addition, the preamble contains a statement as to the effective term of the policy and that both aircraft hull and liability insurance coverage is provided by the operation of the policy.²⁰⁰

The insuring agreements of Aviation 16 provide that the underwriters will pay for direct physical loss or damage to the aircraft which arises from flight, taxi, or ground accidents, or occurrences, subject to the applicable deductibles amounts set forth in the declarations section of the policy. The underwriters also agree to pay for disappearance (theft) of the aircraft, but only upon the contingency that the aircraft is unrecovered 60 days after the reported date of disappearance. In addition, underwriters confine their liability under all coverages of Aviation 16--disappearance, flight, taxi, and ground accidents--to the amount of each separate loss less the applicable deductible, with maximum limits established in the declarations section of the policy. Aviation 1 contains the same essential agreements,

²⁰⁰ Aviation 16 provides only aircraft hull insurance. Liability insurance coverage in the United States and other countries where Aviation 1 is not in use is provided by the terms of Aviation 20.

except that the insuring agreement for hull losses is actually part of the policy preamble.

Section 4 of the insuring agreements of Aviation 16 limits the coverage under the policy to losses which occur while the aircraft is physically located within the continental United States, Mexico, or Canada; operations in Alaska are specifically excluded.²¹⁰ Many assureds desiring additional geographical areas of aircraft operation solve the problem by adding an endorsement which permits world-wide or expanded use, although many London underwriters are reluctant or unwilling to insure aircraft operations occurring in communist-controlled countries. Aviation 1 contains a statement in the ~~general exclusions section~~ which excludes hull or liability coverage if the aircraft is used outside the geographical limits expressed in the schedule, a portion of the policy which serves much the same purpose as the declarations section of Aviation 16. Section 4 of the Aviation 16 insuring agreements also requires that the aircraft must be used, owned, and maintained in accordance with the purpose stated in the declarations section; the purpose so stated may be any such purpose agreed to between the underwriter and the assured. A similar condition is stated in clause 1 of the general exclusions section of Aviation 1.

²¹⁰ Peerless Insurance Company v. Sunline Helicopters, Inc., 180 So. 2d 364 (Fla. 1965).

The declarations section of Aviation 16 contains five items which are essential for establishing the various elements of the aviation risk insured and the consequent limitations and exclusions contained in the policy. In an unissued policy form, the declaration section contains many blank spaces; information to complete the form is obtained from the assured's producing broker, based on the particular insurance needs of the assured. Item 1 of the declarations page contains spaces for the insertion of the name and address of the assured, his business or occupation, a statement of his insurable interest in the aircraft, and a disclosure of any outstanding liens or encumbrances on the aircraft. In addition, a clause of item 1 lists the payees to whom settlement is to be directed in the event of a hull claim under the policy. The declarations section counterpart contained in Aviation 1 is the schedule, but it has no clause similar to clause one of Aviation 16; the name of the assured is inserted in the preamble of the policy form, and there is no required disclosure of the assured's insurable interest or of any encumbrances on the aircraft.

Item 2 of the declarations section of Aviation 16 contains a statement of the time limits of the policy (generally one year), the equivalent of which is contained in the preamble of Aviation 1.

Item 3 of the declarations section contains spaces for the listing of information concerning each aircraft which is to be insured, and specifically requires a disclosure of the national

Item 4 of the declarations section is very important, for it lists and defines the uses which are permitted to be made of the aircraft under the insurance coverage provided by a policy modeled after Aviation 16. Different aircraft uses are recognized in aviation underwriting because of the different and varying risks presented by the wide scope of aviation activities taking place in the modern world. To insure a high risk aviation activity, such as aerial application, the underwriters must obtain a higher premium. To use another example, an aircraft owner who uses his aircraft for personal transportation probably presents a better risk than the commercial operator who rents airplanes to third parties of unknown piloting skills; consequently, the private owner generally pays a smaller premium, but is not insured for losses which occur while the aircraft is being rented to third parties.

The four categories of aircraft uses which may be indicated on the declarations sheet in the form of a selection of desired coverage are: (a) business and pleasure, defined as "personal, pleasure, family, or business use, excluding any operation for hire or reward, or for instruction"²¹²; (b) industrial aid, defined as "all the uses stated in (a) also the transportation of employees, guests of the Insured, goods and merchandise, but excluding any operation for hire or reward, or for instruction"²¹³;

²¹²Aviation 16, declarations section.

²¹³Id.

registration number,²¹¹ aircraft category, type, year of manufacture, and serial number, as well as an indication of the maximum number of installed passenger seats. In addition, item 3 contains an indication of the amount of insurance provided by the policy, which may be expressed in terms of either agreed or insured value, the difference of which will be explained shortly. The schedule of Aviation 1 requires substantially the same information for each insured aircraft,

Applicable policy deductibles are listed in item 3 of the declarations section of Aviation 16, and different amounts are expressed for flight, taxiing, and ground (moored in the case of a seaplane or amphibian) operations. The precise amount of each deductible is a matter for negotiation between the assured and the underwriter or broker, for lower deductibles generally command higher premiums. For a substantial risk, the underwriter may refuse to subscribe to the policy unless a high deductible is incorporated. Section 1 of Aviation 1 contains a statement to the effect that the assured shall bear the first specified amount of a claim arising under coverages for flight, taxiing, and ground losses, respectively, which serves the same purpose as the Aviation 16 deductibles clause, albeit worded somewhat differently.

²¹¹ For material on international aircraft registry marks, see Annex 7 to the Convention on International Civil Aviation, Aircraft Nationality and Registration Marks.

(c) limited commercial, defined as "all the uses stated in (a) and (b) also the carriage of passengers and freight for hire or reward, but excluding any form of instruction or rental to others";²¹⁴ (d) commercial, defined as "the uses stated in (a) (b) and (c), also use for any other purpose as specifically declared."²¹⁵ Thus, commercial use may include any use the assured desires, such as aerial application, airshow demonstrations, slung cargo, etc., provided the use which is made is indicated on the declarations sheet. A simple indication "all uses incidental to the assured's operations" will suffice for the purpose of providing coverage, and the fact that a special use is listed on the declarations page is evidence that the underwriters have approved the use and charged the premium accordingly. Aviation 1 contains an area on the schedule for disclosure of the uses which will be made of the insured aircraft, but does not contain prefabricated descriptions of specific uses.

Item 5 of the Aviation 16 declarations section is commonly labeled the pilot warranty, and contains a list of pilots approved by the underwriters (in a completed policy form) for flying the aircraft. The actual method of listing the pilots approved may vary from an indication by name, a blanket statement of "all pilots approved by the Assured" (which will command a higher premium) or a designation of minimum requirements of license and experience which a

²¹⁴Id.

²¹⁵Id.

pilot must meet or exceed if coverage is to be provided for any loss which occurs while he is flying the aircraft.

Aviation 1 contains a similar space for the listing of pilots authorized by the underwriters to fly the aircraft.

The last section of the declarations page is item 6, which consists of a statement attested to by the assured that no other underwriter has failed to renew, or has declined or cancelled any previous insurance coverage, except as indicated in a special area of item 6. Aviation 1 does not contain a similar clause.

Exclusions

Exclusions contained in an aviation insurance policy are required to keep premiums and risks proportionate, and are a much litigated part of aviation policies, with court decisions varying widely in their conclusions. The basic legal operation of an exclusion is that losses arising from certain events or occurrences, even if accidental, are not covered by the policy and therefore do not obligate the underwriters to pay any amounts whatsoever. ²¹⁶ 217,218

The first coverage exclusion contained in Aviation 16, and which is echoed in section 1 of Aviation 1, is commonly labeled the mechanical breakdown exclusion. Under the terms of this exclusion, the underwriters are not required to pay for losses which

²¹⁶ Ballard and Chero, supra.

²¹⁷ Marzcoca v. Atlantic and British Commercial Insurance Company Ltd., (Q.B. 1973) 2 Lloyd's Rep. 169.

²¹⁸ See also Shawcross and Beaumont, supra, at 596.

from mechanical breakdown, wear and tear, depreciation, freezing, mechanical, structural, hydraulic, or pneumatic breakdown or failure.
 219, 220

The writer was recently involved in an aviation insurance claim which involved the operation of the mechanical breakdown clause, which is incorporated into virtually every policy of aviation insurance. While being ferried from the factory to a purchaser in South Africa, a new aircraft sustained an in-flight engine failure after an oil seal failed and allowed engine oil to escape into the outside air. The escaping oil splashed onto the aircraft turbocharger and ignited, setting the aircraft afire and leading to its ultimate destruction, although the pilot miraculously escaped uninjured. The aircraft was insured with underwriters in South Africa, although the policy contained a mechanical breakdown exclusion worded precisely the same as that contained in Aviation 16. When the exclusion was applied to the claim, the cost of the engine was excluded from the amount paid to the assured, as it originally sustained mechanical breakdown. The fact that the breakdown was sudden and catastrophic had no bearing on the operation of the exclusion. The aircraft,

²¹⁹ The exclusion reads " This policy does not apply to loss of use, depreciation, or deterioration; nor to any damage which is due and confined to wear and tear, freezing, mechanical, structural, electrical, hydraulic or pneumatic breakdown or failure. . . .

²²⁰ Nashua Corporation v. Federal Insurance Company, 13 Avi 17, 363 (N.H. Dist. Ct. 1972).

however, was covered, for any damage which is a consequence²²¹ of mechanical breakdown is not excluded from coverage.

The mechanical breakdown exclusion also eliminates from coverage losses or damage due to wear and tear, which causes problems when considering foreign object damage to jet turbine engines. A jet engine requires large amounts of intake air in order to function properly, and consequently a sizeable amount of foreign material usually enters the engine. Over a period of time, this material causes nicks and gouges to the compressor blades, eventually leading to poor and improper engine operation. This type of foreign object ingestion damage is not covered under Aviation 16, as it is considered to be caused by wear and tear and thus excluded from coverage. The custom of the London aviation insurance market is to provide insurance coverage for foreign object ingestion which takes the form of a single, identifiable incidents, necessitating removal of the engine for repair.

²²¹The mechanical breakdown exclusion of Aviation 16 provides that "this exclusion shall not apply to (1) other loss or damage covered by this policy resulting from such wear and tear, freezing, mechanical, structural, electrical, hydraulic or pneumatic breakdown (2) such loss or damage by wear and tear, freezing, mechanical, structural, electrical, hydraulic or pneumatic breakdown or failure which results directly from other loss covered by this policy."

Even though a mechanical breakdown is caused by negligence, it is excluded from coverage by virtue of the operation of the mechanical breakdown clause.²²² It is important to note that the operation of the mechanical breakdown exclusion covers not only the particular component which fails, but also the units of which that component is a part. An example of the scope of the exclusion, which has been established primarily through custom and usage, would be the failure of an engine piston; the entire engine, not simply the piston, would be excluded from coverage.²²³

The second exclusion of Aviation 16 is known as the war risk exclusion,²²⁴ and provides for no insurance coverage for hull losses arising from war, civil unrest, capture, seizure, arrest, restraint or the detention of the aircraft by governmental authorities, as well as revolutions, civil insurrection, strikes, riots, and civil commotions. The basic purpose for the inclusion of this clause in aviation hull insurance policies

²²² Little Judy Industries v. Federal Insurance Company, 280 So. 2d 14 (Fla. App. 1973)

²²³ Cobb v. Home and Auto Insurance Company, 15 Avi. 17,502 (Cal. App. 1978).

²²⁴ The war risk exclusion of Aviation 16 provides that "this policy does not apply to loss or damage due to (1) capture, seizure, arrest, restraint or detention or the consequences thereof or of any attempt thereat, or any taking of the property insured or damage to or destruction thereof by any Government or Governmental or Civil Authority or agent (whether secret or otherwise) or by any military, naval, or usurped power, whether any of the foregoing be done by way of requisition or otherwise and whether in time of peace or war and whether lawful or unlawful; (2) war, invasion, civil war, revolution, rebellion, insurrection or warlike operations, whether there be a declaration of war or not; (3) strikes, riots, or civil commotions."

is to avoid the risk involved in protecting an aircraft from the hazards outlined in the exclusion. Additional endorsements²²⁵ for war risk coverage are available for attachment to an Aviation 16 form policy, although again the extra risk involved in such an endorsement will command an additional premium.

Under the terms of the war risk exclusion, loss or damage arising from the listed events and calamities is not covered by the policy. It is submitted, however, that the listed events²²⁶ must be the direct cause of the loss; in the event that an aircraft is stolen, taken to a foreign country and later destroyed in a civil insurrection prior to its recovery by the underwriters, the war risk exclusion would not be applicable and the underwriters consequently obligated to pay for the aircraft in accordance with the policy provisions.

The leading case concerning the application and interpretation of the war risk exclusion in the United States is Pan American World Airways v. The Aetna Casualty and Surety Company, 368 F. Supp. 1097, aff'd 505 F.2d 989 (2nd. Cir. 1973). The litigation arose as a result of the hijacking of a Boeing 747 owned by the

²²⁵ Aviation 48B

²²⁶ Airlift International v. United States, 335 F. Supp. 442 (S.D. Fla. 1971).

plaintiff. The aircraft was subsequently totally destroyed after members of the Palestinian Liberation Organization detonated explosives which had been placed aboard the aircraft. In a lengthy opinion, the court determined that hijacking of an aircraft did not fall within one of the named events of the war risk exclusion, and that coverage should therefore be afforded by the hull underwriters.^{227,228}

Aviation 1 contains a war risk exclusion clause, and although it is worded slightly different and contains a different list of disasters and events which are excluded,²²⁹ the practical effect is similar to that of the war risk exclusion clause of Aviation 16.

A third exclusion contained in Aviation 16 precludes coverage for losses occasioned by wrongful conversion, embezzlement, or secretion by persons who are in lawful

²²⁷ Aviation 16 can be amended by Aviation 50, the aircraft hijacking endorsement of the Lloyd's Aviation Underwriters Association.

²²⁸ See generally, G. Thompkins, Aftermath of Hijacking: Passenger Claims and Insurance 39 J. Air L. and Com. (1973) and A. Evans, Aircraft Hijacking--Insurers' Liability for Destruction of Aircraft by Hijackers, 69 Am. J. Int'l L. 415 (1975).

²²⁹ The war risk exclusion clause of Aviation 1 provides that "the Underwriters shall not be liable to indemnify the assured under any section of this policy in respect of any loss or damage, bodily injury or liability howsoever caused--directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, martial law, strikes, riots, civil commotion, or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority."

possession of the aircraft under any sort of agreement or arrangement with the assured.²³⁰ The purpose of this exclusion is to prevent the assured from seeking a remedy from his hull underwriters that he instead should be pursuing under his arrangement with the wrongdoer, whether it be in tort, contract, or otherwise. Aviation 1 does not contain a similar exclusion.

A fourth exclusion of Aviation 16 precludes coverage in the event that loss or damage to the aircraft occurs while it does not have a valid airworthiness certificate,²³¹ and is in flight at the time of the loss. The justification for such a limitation is found in the added risk to underwriters when unauthorized repairs or airframe modifications are conducted to the aircraft, for untested and unauthorized alterations could well result in an unsafe aircraft. This exclusion has come under attack in recent years, but²³² to date has been upheld.

²³⁰The applicable clause of Aviation 16 reads "This policy shall not apply to loss or damage due to wrongful conversion, embezzlement or secretion of the aircraft by any person in lawful possession thereof under a license, lease, mortgage, conditional sale or other agreement, or under an agreement with the insured, whether written, oral, or implied."

²³¹The exclusion reads "This policy does not apply while the aircraft is in flight unless its Airworthiness Certificate is in full force and effect."

²³²Thompson v. Azzell, 379 P. 2d 983 (Wash. 1963); United States v. Eagle Star Insurance Company, Ltd., 196 F. 2d 317 (9th Cir. 1952).

Aviation 1 contains a different clause, listed in terms of a warranty.^{233,234} As such, the policy requires that the assured comply with all air navigation and airworthiness orders and take all reasonable steps to ensure that compliance is accomplished and that the aircraft is airworthy at the start of each flight.²³⁵ It is submitted that while the provision of Aviation 1 may ultimately serve the same purpose as the equivalent clause of Aviation 16, its wording is more ambiguous and thus subject ~~to~~ liberal judicial construction favoring the assured.

The fifth exclusion clause of Aviation 16 has generated more litigation than any other clause of the policy, and as a consequence the most confusion, for the court decisions are inconsistent in their interpretations of the exclusion.²³⁶

²³³ Margo defines warranty as "a term in a policy, the exact compliance with which the liability of the insurers depends." Supra, at 86.

²³⁴ See De Maurier Ltd. v. Bastion Insurance Company Ltd., (Q.B. 1967) 2 Lloyd's Rep. 550, for a discussion of policy warranties.

²³⁵ The pertinent clause of Aviation 1 states "warranted that the assured will comply with all air navigation and airworthiness orders and requirements issued by any competent authority and will take all reasonable steps to ensure that such orders and requirements are complied with by his/their agent(s) and employees and that the aircraft shall be airworthy at the commencement of each flight."

²³⁶ See generally Davis, Aviation Insurance Exclusions 47 J. Air L. and Com. 337 (1971).

The exclusion provides that insurance coverage under the policy will not be forthcoming for loss or damage occasioned by the following situations, each of which will be examined in detail in light of relevant case law:

1. While the aircraft is used for any unlawful purpose or is operated otherwise than in compliance with the terms of its Airworthiness Certificate and the approved operating limitations contained in its airplane flight manual or other documents associated with the Airworthiness Certificate.
2. While the aircraft is being operated by any person other than the pilot(s) stated in item 5 of the declarations (other than taxiing by certificated pilots or licensed mechanics.)
3. If the aircraft is operated by any person in violation of the terms and limitations of his pilots certificate or medical certificate, as issued by the appropriate authority.

Clause 1 of the exclusion is designed to eliminate coverage for losses occurring while the aircraft is being used for criminal enterprises, for such operations generally involve substantially greater risks to the underwriters, even though technically falling within the business and pleasure
²³⁷uses category. However, at least one reported case has

²³⁷For representative cases see Hedges Enterprises v. Firemans Fund Insurance Company, 225 N.Y.S. 2d 779 (Sup. Ct. 1962); American Home Assurance Company v. Roach, 431 F.2d 849 (8th Cir. 1970); Obalsk Chibougamac Mining Company v. Aero Insurance Company, 3 D.L.R. 25 (1932).

given the above clause a liberal reading, holding that damages caused to an aircraft during a renter pilot's attempt to avoid pursuing customs officers was a covered loss, in that the damage was not caused by the unlawful activity but rather by the actions of the pilot.²³⁸ It is submitted that this decision is incorrect, for regardless of the terms in which the court's holding is couched, the aircraft would not have been damaged but for the pilot's attempt to escape pursuing law enforcement officials. The aircraft was clearly being used in a criminal operation, and coverage should have been excluded.

Aside from the obvious application of this clause to criminal enterprises, attempts have been made in the past to apply its terms to situations where the aircraft was operated in violation of the Federal Aviation Regulations; some policies even contained specific regulation-violation exclusions, rather than relying upon the broad language of clause 1. Attempts to exclude coverage under the terms of clause 1 for flights which violate the Federal Aviation Regulations have generated much litigation.

A leading case involving the application of clause 1 to a regulation violation situation is Roach v. Churchman, 431 F.2d

²³⁸ Kalamazoo Aviation v. Royal Globe Insurance Company, 14 Avi. 17,477 (Mich. App. 1976).

849 (8th Cir. 1970).

Roach involved the crash of a single-engine aircraft being piloted by an individual who had not made the necessary night landings and takeoffs as required by the Federal Aviation Regulations as a legal condition precedent to lawfully carrying passengers at night.²³⁹ However, the aircraft crashed from causes which had no relationship to the assured's failure to meet night currency requirements.

The policy involved contained the standard clause of Aviation 16 concerning use for an unlawful purposes, and the underwriters relied upon this clause in their denial of hull and liability coverage, contending that the unlawful purpose exclusion was applicable to flights which violated regulations. The court disagreed:

Adoption of the insurers' contention that the unlawful purpose exclusion incorporates every violation of an F.A.A. regulation would lead to an absurdity. Violation of certain technical F.A.A. regulations concerning a flight would be

²³⁹ Federal Aviation Regulation 61.57 provides, inter alia: No person may act as pilot in command of an aircraft carrying passengers during the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, he has made at least three takeoffs and three landings to a full stop during that period in the category and class of aircraft to be used.

totally unrelated to the resulting damages. Yet, under the insurer's theory, it would not be liable. Moreover, the insurer could avoid coverage for all damages to person or property stemming from ordinary negligence, since careless flying constitutes flight in violation of F.A.A. regulations. So read, the insurance policy affords no real coverage for liability claims. We therefore decline to give this policy such a reading. ²⁴⁰

The rationale of Roach v. Churchman has been applied to afford coverage in other cases of flight operations which involved a violation of the Federal Aviation Regulations, such as engaging in crop dusting while not in possession of the necessary permits, ²⁴¹ or a student pilot carrying a passenger, ²⁴² and in some cases has resulted in the enactment of legislation which prohibits insurance underwriters from excluding or denying coverage because an aircraft is operated in violation of ^{243, 244} the Federal Aviation Regulations.

Clause 2 of the fifth exclusion of Aviation 16 concerns what is commonly termed the pilot warranty, although it is significant that Aviation 16 does not actually contain a

²⁴⁰ 431 F. 2d 849

²⁴¹ Hall's Aero Spraying v. Underwriters at Lloyd's, London, 274 F. 2d 527 (5th Cir. 1960).

²⁴² Ranger Insurance Company v. Culberson, 454 F.2d 857 (5th Cir. 1971).

²⁴³ See Ga. Code Ann. sec 56-2439.

²⁴⁴ See generally G. Petkoff, Statutory Restrictions on Exclusions Contained in Aviation Policies, 27 Fed. Ins. Counsel Q. 265 (1977).

policy section entitled "warranties", as is the case with Aviation 1.²⁴⁵ Clause 2 has also generated a substantial amount of legal controversy, as an assured's breach of the pilot warranty is grounds for the underwriters to deny any liability under the terms of the policy for hull or liability coverage.

The operation of clause 2 is such that if the aircraft suffers loss or damage, or is involved in an occurrence causing damage or injuries to third parties (under an aviation liability policy) while being flown by a person other than that which is indicated in the declarations section, no coverage will apply.²⁴⁶ Pilot skill, qualifications, and experience are extremely important in assessing the risk presented by the assured, and the underwriters will change the premium based in large degree on the capabilities of the pilot. A pilot warranty is

²⁴⁵ Aviation 16 contains a conditions section, and Shawcross and Beaumont distinguish between a condition and a warranty as follows: "The difference between a warranty and a condition, if one exists, is that a breach of warranty will entitle the insurer to deny liability whether or not such breach is related to the loss, but breach of a condition depends upon whether it is a condition precedent to liability or one which merely regulates the performance of the coverage. If it is a condition precedent to liability, then the condition must have been observed and fulfilled by the insured before underwriters are liable under the breach." Supra, at 595.

²⁴⁶ Di Santo v. Enstrom Helicopter Company, 15 Avi. 18, 194 (W.D. Pa. 1980); Middlesex Mutual Insurance Company v. Spalding, 13 Avi. 17, 811 (Cal. App. 1974).

often expressed in the declarations section in terms of allowing aircraft operation by any pilot meeting or exceeding certain limits of flying experience set forth in the section, and the courts have held that flying time in the company of another pilot may be used to arrive at the levels of experience required by the warranty.²⁴⁷

Aviation 1 contains a clause which excludes coverage for both hull and liability claims while the aircraft is being flown by any person other than as stated in the policy schedule. Application of the clause is limited to flight operations only; licensed aircraft engineers and other pilots may taxi the aircraft.²⁴⁸

Clause 3 of the fifth exclusion of Aviation 16 excludes coverage for any flight in which the pilot is operating the aircraft in violation of the terms and limitations imposed on either his pilot or medical certificates. As with clause 2, this particular exclusion has generated much litigation.

Generally, the courts have upheld the exclusion, which essentially requires that the pilot must be properly certificated

²⁴⁷ Republic Aero Inc. v. North American Underwriters Inc.
462 S.W. 2d 635 (Tex. Civ. App. 1971).

²⁴⁸ The applicable clause of Aviation 1 provides: "The underwriters shall not be liable to indemnify the assured under any section of the policy in respect of any loss or damage, bodily injury or liability however caused whilst the aircraft is being piloted by any person or persons other than those stated in the Schedule hereto, but this exclusion shall not be deemed to apply whilst the aircraft is being taxied and/or otherwise operated by competent licensed engineers other than for the purpose of flight."

and rated for both the flight and the particular aircraft
249,250

to be operated. However, there is a growing minority

of jurisdictions which have restrictively interpreted this
clause as applied to medical certificates, with the resulting

holdings that coverage may not be denied simply on the

grounds that the assured did not possess a valid medical
251,252

certificate. Other courts have adhered to the opposite

position, holding that possession of a valid medical certificate is
253

a condition precedent to coverage under the policy

Those courts which have held to the minority view often require

the underwriters to demonstrate the presence of a causal connection

249 Aetna Casualty and Surety Company v. Urner, 287 A. 2d 764
(Md. App. 1972); Baker v. Insurance Company of North America, 179
S.E. 2d 892 (N.C. 1971); Mang v. Travelers Insurance Company,
412 S.W. 2d 672 (Tex. Civ. App. 1961); Bequette v. National Insurance
Underwriters, 429 F. 2d 896 (9th Cir. 1970); See generally
G. Hagglund, Coverage Problems in Aviation Insurance Policies,
23 Fed. Ins. Counsel Q. 4 (1973).

250 For contra authority see Firemans Fund Insurance v.
McDaniel, 187 F. Supp. 614 (N.D. Miss. 1960) and Insurance Company
of North America v. Butte Aero Sales, 243 F. Supp. 276 (D. Mont.
1965) in which the court held that where the policy contains an
exclusion against coverage where the pilot is not properly rated,
but the pilot is actually named in the policy, there will be
coverage afforded regardless of the current status of the pilot's
ratings.

251 A medical certificate is required by Federal Aviation
Regulation 61.3.

252 Insurance Company of North America v. Maurer, 505 S.W. 2d
931 (Tex. Civ. App. 1974); Royal Indemnity Company v. Cawrse
Lumber Company, 245 F. Supp. 707 (D. Ore. 1965).

253 Ranger Insurance Company v. Columbus Muscogee Aviation,
204 S.E. 2d 474 (Ga. App. 1974); Omaha Sky Divers Parachute Club, Inc.
v. Ranger Insurance Company, 204 N.W. 2d 162 (Neb. 1973); Glades
Flying Club v. Americas Aviation and Marine Insurance Company,
235 So. 2d 18 (Fla. App. 1970).

between the accident and the assured's (or pilot's) failure to have a medical certificate or other rating required for the flight involved. In the absence of such a showing, the exclusion will be held non-operable.²⁵⁴ Other courts, however, have held the opposite, finding that there is no requirement that the underwriters demonstrate the presence of any causal connection between the cause of the accident and the violated exclusion; a simple showing that the exclusion was in fact violated is sufficient to void coverage for that particular loss.²⁵⁵ The cases are simply inconsistent on this particular aspect of aviation insurance law. Aviation 1 contains no clause which is similar to clause 3 of the exclusion of Aviation 16.

The sixth exclusion of Aviation 16, which is echoed in general exclusion 9 of Aviation 1, provides that insurance coverage will not apply in the event that the aircraft is

²⁵⁴ Hall's Aero Spraying v. Underwriters at Lloyd's, London, 274 F. 2d 527 (5th Cir. 1960); South Carolina Insurance Company v. Collins, 14 Avi 18,056 (S.C. 1977); Bailey v. United States Fidelity and Guaranty Company, 185 S.C. 169, 193 S.E. 638 (1937); Smith v. Sovereign Camp, W.O.W., 204 S.C. 193, 28 S.E. 2d 808 (1944); Young v. Life and Casualty Company of Tennessee, 204 S.C. 386, 29 S.E. 2d 482 (1944).

²⁵⁵ Baker v. Insurance Company of North America, 179 S.E. 2d 892 (N.C. App. 1971); Glades Flying Club v. Americas Aviation and Marine Insurance Company, 235 So. 2d 18 (Fla. App. 1970); Ohio Casualty Insurance Company v. Heaney, 229 F. Supp. 30 (D.C. Ill. 1964); Lineas Aerias Columbiana Expresas v. The Travelers Fire Insurance Company, 257 F. 2d 150 (5th Cir. 1958); Electron Machine Corporation v. Mercury Insurance Company, 297 F. 2d 212 (5th Cir. 1961).

carrying more than the number of passengers listed for the aircraft in the declarations portion of the policy.²⁵⁶ The reasons for this particular exclusion are twofold: In Aviation 1, liability coverage is incorporated into the policy, and the underwriters risk is consequently directly proportionate to the number of passengers being carried. Second, any aircraft which is operated with more persons on board than there are installed seats will have its weight and balance criteria seriously affected, with the result that aircraft performance becomes marginal and dangerous. The underwriters, of course, have an interest in preventing this type of additional risk exposure.

The next exclusion of Aviation 16 (lettered "g" in the policy form) prohibits operation of the aircraft with the knowledge of the assured in a manner which violates the Federal Aviation Regulations concerning aerobatic flight, instrument flight rules operations, repairs, maintenance, inspection, alteration, and night flying.²⁵⁷ The principal reason for

²⁵⁶Aviation 16 states "This policy does not apply if the total number of passengers carried in the aircraft at the time of the happening of any loss or damage exceeds the declared maximum number of passengers stated in item three of the declarations. Aviation 1 provides that the underwriters are not liable to indemnify the assured for any loss or liability "should the total number of passengers carried in the aircraft at the time of the happening of such bodily injury, loss or damage or liability exceed the declared passenger seating capacity stated in the schedule."

²⁵⁷Aviation 16 provides that "this policy shall not apply while with the knowledge and consent of the assured. . . the aircraft is operated in violation of the Civil Air Regulations applying to acrobatic flying, instrument flying, repairs, maintenance, inspection, alterations and night flying."

this exclusion, which is lacking from Aviation 1, is derived from the additional risks which the listed types of flying present to the insuring underwriters. However, as discussed earlier in connection with the unlawful purpose exclusion, a mere regulation violation may not be sufficient to avoid coverage for a particular loss in some jurisdictions, particularly where the violation is not related to the cause of the accident.²⁵⁸ The latter portions of the exclusion are designed to protect the underwriters from the added risk presented by unauthorized aircraft repairs and inspections.²⁵⁹

The seventh exclusion contained in Aviation 16 is exclusion "h", and because of its importance in aviation insurance has generated a considerable amount of controversy. The wording of the exclusions prohibits insurance coverage for any use of the aircraft which has not been designated on the declarations sheet of the policy.²⁶⁰ The rationale for the exclusion has been discussed earlier, and is simply that different uses of an aircraft present different risks to insuring underwriters; consequently, different premiums must be charged. The underwriters

²⁵⁸ Ranger Insurance Company v. Culberson, 454 F. 2d 857 (5th Cir. 1971); Roach v. Churchman, 431 F. 2d 849 (8th Cir. 1970).

²⁵⁹ With the exception of a few minor repair procedures, the Federal Aviation Regulations require that all aircraft repairs (both engine and airframe) be conducted by a licensed mechanic. All aircraft inspections must be carried out by a licensed Inspector of Aircraft.

²⁶⁰ Aviation 16 reads "This policy does not apply while the aircraft is used for any purpose other than as stated in the declarations."

cannot be expected to assume an aviation risk for which a premium has not been charged.

Litigation concerning the application of exclusion "h" has been frequent, and has involved cases where a charge was made by the assured for use of the aircraft by third parties in violation of a business and pleasure use policy. In interpreting the exclusion, the courts have held that payment of an amount which covered only the direct operating costs of the aircraft is not considered to be a charge for hire and thus a commercial or limited commercial use.²⁶¹ Based on case law, the indications are that a profit must be realized before the use of the aircraft will be considered to be for reward or hire.²⁶² Where such use is found, coverage will be denied unless the policy has been written for commercial or limited commercial use.²⁶³

In the absence of a specific exclusion, the aircraft conceivably could be used for any purpose, and case law has held that where a policy is issued without a use category being indicated, unlimited use of the aircraft, for any purpose, is permissible and coverage will be afforded.²⁶⁴ In the event that the producing broker fails to provide the assured with the coverage requested,

²⁶¹ Ranger Insurance v. Culberson, 454 F. 2d 857 (5th Cir. 1971)

²⁶² Cammack v. Avemco Insurance Company, 505 P.2d 348 (Ore. 1973)
Fidelity and Casualty Company of New York v. Marion L. Crist Assoc. Ind., 455 S.W. 2d 904 (Ark. 1970).

²⁶³ Pacific Indemnity Company v. Acel Delivery Service, 432 F. 2d 952 (5th Cir. 1973).

²⁶⁴ Campbell v. Johnston, 11 Avi. 18,275 (Cal. Sup. 1971).

an action in either tort or contract will be available to the assured in the event of a loss for which coverage had been requested but not forthcoming.²⁶⁵ However, failure of the assured to read the policy as issued may amount to contributory negligence²⁶⁶ and serve as an affirmative defense for the broker,²⁶⁷ although there is contrary authority.

The schedule of Aviation 1 contains spaces for the indication of the purpose to which the aircraft shall be put, and general exclusion 1 of the policy provides that the underwriters shall not be liable to indemnify the assured if the loss occurs while the aircraft is being used for either an illegal purpose or a purpose which has not been stated in the schedule.²⁶⁸ The standard uses which may be indicated on the schedule of Aviation 1 and thus incorporated into the policy when issued are business and pleasure, industrial aid, limited commercial, private pleasure, business, commercial, and rental. Utilizing the aircraft in a manner not listed in the schedule will void coverage, although the uses are

²⁶⁵ 16 Appleman, Insurance Law and Practice sec. 449 (8th ed. 1968); Stevens v. Wafer, 14 S.W. 2d 295 (Tex. Civ. App. 1929); Couch, Insurance Law 2d sec. 25.53; London Borough of Bramley v. Ellis A. Luft and Son, (C.A. 1971) 1 Lloyd's Rep. 97.

²⁶⁶ Continental Casualty Company v. Black, 340 S.W. 2d 527 (Tex. Civ. App. 1969).

²⁶⁷ Hall v. Charlton, 447 S.W. 2d 5 (Mo. App. 1969).

²⁶⁸ The applicable portion of Aviation 1 reads as follows: "The underwriters shall not be liable to indemnify the assured under any section of this policy in respect of any loss or damage, bodily injury, or liability howsoever caused whilst the aircraft is being used for any illegal purpose or purposes other than those stated in the schedule hereto. . . ."

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generally rather broadly construed.

Exclusion "j" of Aviation 16 lists a number of specific uses which are not covered under the provisions of the policy. The rationale for this exclusion is standard; the listed operations present the insuring underwriters with a greater risk, consequently a special premium must be charged if coverage is to be provided. The excluded uses are:

1. Use for or in connection with any race, speed, or endurance contest.
2. Use in any attempt at record breaking.
3. Acrobatic flying
4. Crop dusting, spraying, seeding, or fertilizing
5. Hunting, bird or fowl herding
6. Any use for which a waiver or permit is²⁷⁰ required from the Civil Aeronautics Authority.

The exclusion does state that the above uses are permitted if so stated in the declarations page, in which case an additional premium would have been charged by the underwriters. Litigation concerning the application and operation of exclusion "j" has generally resulted in the position that such suspensions of coverage are valid and will be upheld where clear and unambiguous²⁷¹ on their face and not contrary to public policy.

²⁶⁹ Moody Chemists Ltd. v. Iron Trades Mutual Insurance Company Ltd. (Q.B. 1971) 1 Lloyd's Rep. 386.

²⁷⁰ Such as a ferry flight to transport a partially disabled aircraft to a repair facility.

²⁷¹ Alumbaugh v. Underwriters at Lloyd's, London, 317 P. 2d 1064 (Wash. 1957); Federal Insurance Company v. McNichols, 77 So. 2d 454 (Fla. 1955).

A common exclusion which is occasionally appended to Aviation 16 by way of endorsement to the policy is a prohibition against operation of the aircraft by student pilots. Because of lack of flight experience, student pilots present a relatively high degree of risk to an underwriter, and insurance coverage for student pilots will only be offered at higher premiums than those normally charged for fully-rated pilots. The position of American courts with regard to these exclusions has been that where they are unambiguous, they will be accorded judicial enforcement.²⁷² In addition, no causal connection is generally required in order for the exclusion to be upheld.²⁷³

The companion clause of Aviation 1 is found in clause 5 of the general exclusions section. It provides, inter alia, that no coverage is to be paid for damage or loss due to or arising out of, or directly or indirectly connected with, the following events:

1. Racing
2. Record-setting attempts
3. Speed trials
4. Acrobatics
5. Aerial seeding or fertilization, dusting or spraying
6. Fish spotting
7. Any other form of flying involving abnormal hazards

²⁷² Ranger Insurance Company v. Harrell, 286 So. 2d 261 (Fla. App. 1973); Chapman v. Ranger Insurance Company, 485 P. 2d 147 (Ariz. App. 1971).

²⁷³ Macalco, Inc. v. Gulf Insurance Company, 550 S.W. 2d 883 (Mo. App. 1977).

It is submitted that item seven of this exclusion is ambiguous, and thus should be the subject of liberal judicial interpretation. Reported cases, however, have gone both ways.²⁷⁴

Exclusion "k" of Aviation 16, which is the tenth exclusion contained in the section, provides that insurance coverage will be excluded if the aircraft is modified or changed "into a type other than that stated in the Declarations." The type section of the declarations page of Aviation 16 indicates that the aircraft insured is either a landplane, seaplane, skiplane, amphibian, or rotorcraft. Accordingly, an assured's change of a landplane into a seaplane will render void any insurance coverage for hull losses or liability claims involving the altered aircraft. There is no similar clause in Aviation 1.

Definitions

Aviation 16 incorporates a definitions section, in which crucial terms are accorded the following definitions:

Aircraft: The word "aircraft" wherever used in this policy shall mean the aircraft described herein, and in addition to the airframe shall include powerplants, propellers, rotors and appliances forming part of the aircraft at the inception of coverage hereunder, including parts detached and not replaced by other

²⁷⁴ See Margo, supra, at 82, where the following cases are discussed: Burton Construction Pty. Ltd. v. Aviation Insurance Company, 1774 (4) S.A. 329 (W), which held that the exclusion was restrictively modified by the preceding parts of the clause. The liberal interpretation view is contained in MacClean v. MacClean, (1977) 15 S.A.S.R. 306 (Sup. Ct. of S. Australia) where the words were awarded their ordinary meaning.

similar parts.

In flight: The aircraft shall be deemed to be in flight from the time the aircraft moves forward in taking off or in attempting to take off for air transit, while in the air and until the aircraft comes to rest after landing or, the landing run having been safely completed, power is applied for taxiing. A rotorcraft shall be deemed to be in flight when the rotors are in motion. ²⁷⁵

Taxiing shall mean while the aircraft is moving under its own power or momentum generated thereby other than in flight as defined, but in the case of water-alighting aircraft taxiing shall be deemed to mean while the aircraft is afloat and is not in "flight" or "moored."

Moored shall mean while the aircraft is afloat and made fast to its moorings, or is being launched or hauled up.

The importance of precise definition in aviation insurance policies lies partially in the different deductible amounts which apply to various aircraft operations. In the case of airplanes, a different deductible will generally be applied to loss or damage occurring in flight than that which will apply to ground or taxi losses. In the case of a helicopter, the deductibles will be different for losses occurring while the rotors are in motion than for losses while the rotors are not in motion. The justification for different deductibles is found in the greater amounts of risk exposure to the underwriters while the aircraft

²⁷⁵ See Acme Flying Service v. Royal Insurance Company, 83 N.Y.S. 2d 740 (N.Y. Sup. Ct. 1948); Jackson v. Royal Indemnity Company, 172 F. Supp. 817 (D. Mass. 1959) for litigation involving policy definitions. In Great American Insurance Company v. Bass, 44 So. 2d 532 (Miss. 1959) it was held that an accident which occurred as the pilot was preparing to taxi off the runway after landing was a non-flight loss.

is in flight or has its rotors in motion.

Definitions contained in aviation insurance policies have generated litigation, generally in instances where policy wordings are different from those contained in Aviation 16 and do not precisely define the various operational terms. For example, problems have arisen where the policy does not accurately define the term "flight". In James v. Federal Insurance Company, 73 A. 2d 720 (N.J. 1950), the applicable insurance coverage was only for risks occurring while the aircraft was not in flight. The aircraft suffered a loss (destroyed by fire) shortly after the pilot made an emergency landing at an off-airport site. The resulting damage was held to be the result of an inflight loss, even though the aircraft was technically parked at the time it burst into flames.

Likewise, the term "taxi" as used in connection with the application of a deductible has created problems of definition²⁷⁶ which ultimately led to litigation.

With minor differences in phraseology, Aviation 1 contains essentially the same definitions as Aviation 16, with one significant exception. The term "aircraft" is defined in such a manner that any special equipment, such as on-board radar, flight directors, engine conversions, etc., is required to be specifically listed on the policy schedule if insurance coverage for such equipment is to attach.

²⁷⁶Pecos Valley Flying Service v. Brayley, 313 P. 2d 1062 (N.M. 1957); National Insurance Underwriters v. Walker, 245 P. 2d 737 (Okla. 1952).

Aviation 16 contains a section detailing policy conditions, which can be either conditions precedent to the underwriters' liability or regulations concerning performance of the contract. The more significant of these conditions are discussed below.

Condition 1 relates to the duties of the assured when a loss occurs. Clause "a" of condition 1 requires the assured to take all necessary and reasonable measures to protect the aircraft from further damage,²⁷⁷ which normally includes provisions for guard service to prevent theft and pilferage and recovery of the wreckage to prevent damage by the elements. Failure of the assured to protect the aircraft will result in additional loss or damage which has been proximately caused by such failure being excluded from coverage. All reasonable expenses incurred by the assured for the purpose of protection of the aircraft are for the account of the underwriters (in the event the loss is covered under the policy) for the assured is acting for their interests.

²⁷⁷ Clause "a" reads as follows: When loss occurs, the insured shall take all reasonable measures to protect the aircraft, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to do so shall not be recoverable under the policy; reasonable expense incurred in affording such protection, provided the loss is covered by this policy, shall be deemed incurred at the underwriters request.

Clause "b" of condition 1 requires the assured to give notice of loss to the underwriters "as soon as practicable." The precise time limit assigned to the giving of notice under this particular provision of Aviation 16 is subject to debate, but generally the courts have held that notice may be given at any time up until that point where delay in giving notice prejudices the underwriters.²⁷⁸ In addition, clause "b" requires the assured to give notice to the police in the event of theft, robbery, pilferage, or vandalism to the aircraft.

Clause "c" requires the assured to file with the underwriters within sixty days after the date of loss a document known as a proof of loss.²⁷⁹ This document essentially constitutes a declaration by the assured of his interest in the insured aircraft, any encumbrances thereon, disclosure of any other insurance coverage, the amount, place, cause of loss and the actual cash value of the property. The proof of loss may be taken under oath if the underwriters so require, and must be supported, upon underwriters' request, by documentation from the assured.

²⁷⁸ See, for example, Aetna Casualty and Surety Company v. Buker Airways, (N.H. Super. Ct 1971), and Edwards v. Ranger Insurance Company, 456 S.W. 2d 419 (Tex. Civ. App. 1970).

²⁷⁹ A standard proof of loss document is included in the appendix.

The question of submission of proof of loss has caused controversy among U.S. courts. Generally, the proof of loss is required to be submitted within the sixty-day period stated in the policy. However, the underwriters may often be deemed to have constructive knowledge of the material to be disclosed in the proof of loss, of their actions with regard to the claim may be construed as a waiver of this condition²⁸⁰ precedent.

Condition 2 of Aviation 16 requires the cooperation of the assured in matters relating to any loss or damage for which a claim is made under the policy.²⁸¹ Examples of cooperation which the underwriters or their claim investigators must obtain from the assured to efficiently process any claim are information concerning the pilot's airman and medical certificates, maintenance records of the aircraft, and disclosure of the circumstances surrounding the loss. Condition 2 also requires the assured to attend any legal or administrative hearings or trials upon the request of the underwriters, to assist in

²⁸⁰ See, for example, Danielson v. Insurance Company of North America, 309 F. Supp. 26 (D. Ga. 1969) where failure to furnish the assured with a proof of loss form was held to be a waiver of the requirement.

²⁸¹ The applicable provision of Aviation 16 reads "The insured shall co-operate with the underwriters and upon the underwriters' request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense."

obtaining the presence of witnesses, in effecting settlements and in securing and obtaining evidence.

Condition 3 of the standard hull policy Aviation 16 is an important clause, for it sets forth the manner in which the liability of the underwriters under the policy will be expressed in the form of payment to the assured.²⁸² The first clause of condition 3 provides that the liability of the underwriters with respect to any claim shall not exceed the amount of insurance set forth in the policy declarations or the cost of repairs to the aircraft with parts of like kind and quality or replacement of the aircraft itself with one of similar quality and equipment.²⁸³ Consequently, underwriters may, at their option, replace an aircraft which has been totally destroyed rather than making payment to the assured.

²⁸² Aviation 16 provides in condition 3 that "The liability of the underwriters for direct physical loss of or damage to the aircraft shall not exceed the amount of insurance set out in the declarations, less the applicable deductible, nor what it would cost to repair or replace the aircraft or parts thereof with other of like kind and quality, and without compensation for loss of use. The underwriters may pay for the loss in money or may repair or replace the aircraft or parts thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the aircraft at the agreed or appraised value, but there shall be no abandonment to the underwriters."

²⁸³ Items of repair which are actually safety inspections are not, at least in one jurisdiction, the responsibility of the underwriters. Busch v. Ranger Insurance Company, 15 Avi. 17, 318 (Ore. Cir. Ct. 1978).

Underwriters must, of course, replace the destroyed aircraft with one of equal or better quality. Repairs may be effected with used parts, so long as they are equal to or better than the damaged parts owned by the assured.

An important corollary of the statement "like kind and quality" (referring to repaired parts) is applicable when underwriters pay for the repair of an item of aircraft equipment which has a limited time life duration. Such items commonly include propeller hubs, engines, helicopter rotors, transmissions and rotor hubs, jet turbine power sections, and landing gears, all of which must undergo periodic overhauls and / or replacement after an indicated use duration. Under condition 3 of Aviation 16, the underwriters' liability is limited to replacement of a damaged part with one of equal quality; underwriters are not obligated to afford mechanical betterment to the policy holder. Consequently, when, for example, a propeller hub which has incurred 1,500 hours of use is damaged, the obligation of the insuring underwriters is to replace it with a propeller hub which also has 1,500 hours of use. However, due to logistical problems of finding repair parts with matching hours of use figures, a pro rata deduction method is utilized. This method deducts a segment of the price of a new part, based on the hours of use which the replaced part has accumulated. In this manner, the underwriters have paid for

a part which is of equal quality to that of the damaged part, while the assured bears the portion of the part cost represented by the installation of a new part in his aircraft. The pro rata deduction is expressed in terms of a mathematical formula:

$$\frac{\text{Time Since Overhaul (hours of elapsed use)}}{\text{Time Between Overhauls (lifetime of part)}} \times \text{Replacement Cost}$$

Pro rata deduction to be subtracted from new price

Clause 3 also limits underwriters' liability in the event of recovery of a stolen aircraft to return of the aircraft to the assured with payment for any resultant damages. The above pro rata deduction would apply to replacement of any time life parts damaged on a stolen aircraft.

In the event that the insured aircraft is totally destroyed, the underwriters will pay to the assured the current market value of the aircraft (unless the replacement settlement option is selected) regardless of the amount of insurance stated in the declarations. This settlement option is derived from the contractual obligation of the underwriters to replace the assured's aircraft with one of like quality. The obvious corollary is that monetary settlement may also be made, and this option is contained in clause 3.

A common endorsement to Aviation 16 is the agreed value endorsement, in which the settlement options of the underwriters

are restricted to repair of the aircraft (if not a total loss)²⁸⁴ or, in the event of a total loss, payment of an agreed sum of money. In return for a higher premium, the underwriters concede their option under Aviation 16 of replacing the aircraft or paying its current market value. Settlements of claims arising under an agreed value hull policy must be in the form of repair or payment of the agreed sum, which is listed on the declarations page.

Condition 3 also contains provisions that if a total loss is paid to the assured, whether on an agreed or insured value basis, any salvage remaining shall be for the benefit of the underwriters. Consequently, when the entire claim is fully paid, equitable title to the aircraft wreckage passes to the underwriters; upon the conclusion of its sale at salvage, legal title transfers directly from the assured to the salvage buyer. However, condition 3 also provides that there shall be no abandonment of the wreckage to the underwriters, the practical effect of which is to place the responsibility for removal of the wreck to a safe place on the assured.

In the event that the assured desires to conduct repairs to the aircraft himself, and is licensed to do so, the liability of the underwriters for payment of labor charges is controlled

²⁸⁴ Total loss has been judicially defined as when, after a crash, there remains no substantial remnant which a reasonably prudent owner, uninsured, desiring to restore the aircraft to its original condition, could utilize as a basis for such restoration. Ranger Insurance Company v. Kidd, 478 S.W. 2d 803 (Tex. Civ. App. 1972).

by the terms of condition 3.²⁸⁵ In such a case, the underwriters are obliged to pay for the cost of parts and materials (less applicable pro rata deductions) plus 150% of the actual cost of labor to the assured. Overtime and overhead charges are specifically excluded.

The allowable charges for labor by the assured is commonly termed the burden allowance overhead charge, and a mathematical formula is utilized for its calculation:

1. Labor rate(paid by assured to employees)
2. Labor rate x. time expended = T
3. $T \times 150\% = P$.
4. T plus P = labor charges which the assured may collect from the underwriters.

In the event that repairs are accomplished by a facility other than the assured, the underwriters are obligated to pay the actual cost of repairs as billed to the assured.

²⁸⁵ The applicable section of condition 3 states: "In the case of partial loss of or damage to the aircraft when repairs are effected by the insured the liability of the underwriters shall not exceed the actual cost of any parts or materials necessary to effect repairs or replacement plus 150% of the actual cost of labour to the insured without any further allowance for overhead or overtime; when the repairs are made by other than the insured, the actual costs as evidenced by bills rendered to the insured, less any discount granted to the insured, excluding cost of overtime and its related overhead, unless previously agreed to by the underwriters."

Condition 4 of Aviation 16 provides that time life parts of a damaged aircraft may be replaced by similar,²⁸⁶ but not identical, items. The purpose of this exclusion is to prevent an assured who owns an out-of-production aircraft or engine to claim a total loss on the basis that adequate replacement or repair cannot be effected.

Condition 9 of Aviation 16 provides for the subrogation of the underwriters to the rights of the assured against²⁸⁷ any third party wrongdoer. This clause requires the assured to execute and deliver all papers and instruments to the underwriters, and to refrain from actions after a loss which would prejudice the rights of the underwriters in pursuing a subrogation action.

Condition 14 of the policy form provides that as a condition precedent to suit against the underwriters, the assured must have complied with all terms of the policy and sixty days must have elapsed after the proof of loss was filed.

²⁸⁶ The condition reads "Powerplant and/or propellers and/or rotors and/or appliances of like make or type may be substituted. The value of any such installed substituted item shall not exceed the value of the item originally installed unless endorsed hereon and any additional premiums paid hereon."

²⁸⁷ Condition 9 reads "In the event of any payment under this policy, the underwriters shall be subrogated to all the insured's rights of recovery therefor against any persons or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights."

In addition, there is a 12-month statute of limitations incorporated into the policy for the commencement of suit against the underwriters. The statute begins to run when the loss occurs.

Section 17 of the conditions of Aviation 16 deals with fraud and misrepresentation on the part of the assured, and operates to void the policy in the event the assured has concealed or misrepresented material facts. The misrepresentation need not be confined to information supplied for the declarations page. Fraud perpetrated by the assured, whether before or after a loss, will also render the policy void.

Liability Coverage

While aircraft hull insurance is primarily for the benefit of the owner/operator of the aircraft, liability insurance is for the benefit of the non-flying public who work, travel, and live in constant danger of exposure to crashing aircraft, which generally have little controllability while falling from the sky. Consequently, many states have required aircraft owners

²⁸⁸ The condition provides "This policy shall be void if the insured has concealed or misrepresented any material fact or circumstance whether under the declarations or not concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss."

under applicable financial responsibility laws to provide proof of acquisition and maintenance of aircraft liability insurance.^{289,290} The more progressive states have even required aircraft lessors to provide liability insurance for rental aircraft prior to commencement of rental operations.²⁹¹ In the absence of a statute, the general rule of law is that the owner of an aircraft is not liable to third parties for injuries which occur as a result of negligence on the part of one to whom the aircraft has been loaned or rented.²⁹²

The standard Lloyd's policy for liability coverage is Aviation 20; in the United Kingdom, Aviation 1 is commonly used to provide liability coverage as well as aircraft hull insurance. Much of what has been previously discussed in the context of hull coverage is equally applicable to liability insurance. For example, the existence of liability coverage under Aviation 20 is dependent

²⁸⁹ Examples of state financial responsibility laws which are applicable to aviation are Connecticut General Revised Statutes sec. 15, 102, 120 (1975); Illinois Revised Statutes Ch. 15 $\frac{1}{2}$ sec. 22.42a-22.42o (1971); Massachusetts General Laws Ch. 90 sec 49b-49r (1975); Michigan Comprehensive Laws sec. 259.6710, 259.692 (1948). Generally, these laws require the deposit of a sum of money with the state or, in lieu, a certificate of insurance valid at the time of any loss.

²⁹⁰ In some states, financial responsibility laws are worded so that a violation of policy conditions may be no defense to the underwriters as far as third party liability claims are concerned. Trait v. Felder, 330 F. Supp. 560 (D. Alaska 1970).

²⁹¹ Maryland Code art 1(A) sec. 3-305 (1957).

²⁹² Cruse Crawford Manufacturing Company v. Rucker, 220 Ala. 101, 123 So. 897 (1929); Martin v. Mud Supply Company, 239 La. 616, 119 So. 2d 484 (1959); National Insurance Underwriters v. Carter, 551 P. 2d 362, 131 Cal. Rptr. 42 (Cal. Sup. 1976).

upon the assured's compliance with pilot warranty requirements, uses, etc., and the assured must avoid aviation activities not covered in the policy which increase the risk to the liability underwriters. As with hull insurance coverage, the liability underwriters will not be required to provide liability coverage in respect of a risk for which they did not receive a premium.

There are essentially six basic liability insuring agreements, any of which may be incorporated into a policy built upon the standard format of Aviation 20. When purchasing insurance, an assured may wish to include some coverage but exclude others, or maintain different liability limits for each selected item of coverage.

Coverage "A" of Aviation 20 provides that the liability underwriters will pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages due to bodily injury, sickness, or disease, including death at any time, caused by an occurrence and arising out of the ownership, maintenance, or use of any aircraft which is listed on the declarations page. Basically, coverage "A" provides liability insurance for all third party personal injuries, excluding passengers. The coverage includes punitive damages, up to the limits of liability assumed by the underwriters, for when awarded by a court such damages become a legal obligation of the assured. Coverage "A" will not provide indemnification for any amounts which are not legal obligations of the assured, such as gifts made in sympathy to an injured victim, although it is not necessary for a judgment to be entered

²⁹³National Insurance Underwriters v. Carter, 551 P. 2d 362, 131 Cal. Rptr. 42 (Cal. Sup. 1976).

against the assured for the underwriters to pay settlement.

A simple agreement between the claimant, the assured, and the underwriters is sufficient for settlement to be made.

Coverage "A" specifically excludes liability to passengers, and such an exclusion has been upheld where made in a clear and unambiguous manner.²⁹⁴ In addition, challenges to passenger liability exclusions have been made in the past on public policy grounds, but where there has been no legislative expression to the contrary,²⁹⁵ the exclusions have been sustained.

Coverage "B" provides the same liability cover as "A" , but in this case it is for property damage, including loss of use and consequential damages, to all third party property, real or personal.

Coverage "C" provides for liability insurance for claims for bodily injury, sickness, or disease, including death and loss of services claims, brought against the assured by a passenger and for which amounts the assured becomes legally obligated to pay.

Coverage "D" provides for indemnification in the form of a single liability limit per accident or occurrence for bodily injury and property damage liability to all third parties including passengers. The basic difference between coverage "D" and the coverages discussed above is that when coverage "D" is subscribed to, the indicated limit of liability is the absolute limit of the

²⁹⁴ Manny v. Avemco Insurance Company, 121 Ariz. 221, 589 P. 2d 464 (Ariz. App. 1978).

²⁹⁵ Grubb v. Ranger Insurance Company, 143 Cal. Rptr, 249 (Cal. App. 1977).

underwriters obligation for any one occurrence or accident. The actual payment may be split up in different ways, with portions of the whole assigned to bodily injury, property damage, etc., but the sum total of the underwriters' liability to indemnify the assured is limited to the amount set forth in the declarations. Coverage "E" is identical to coverage "D" with the important exception that liability claims from passengers are excluded.

Coverage "F" provides for the liability underwriters to make medical payments to all injured passengers, excluding crew members unless specifically indicated in the declarations. The coverage attaches for all passenger injuries occurring while in, entering, or alighting from the aircraft while it is being used by the assured or with his permission. There is a one year limit placed on the duration of all payments made under the terms of coverage "F".

Aviation 20 provides in section 2 of the insuring agreements that the underwriters will be liable for certain other obligations to the assured. Specifically, the underwriters agree to defend in the name of and on behalf of the assured all lawsuits which seek to recover damages from the assured as a result of an aircraft accident or occurrence. The underwriters, however, maintain the right to make such settlements and negotiations of such actions as they deem proper. However, if the underwriters assume defense of a liability suit against the assured, and then negligently reject

a settlement offer for an amount within the policy limits, the courts have held that the underwriters will then be responsible for any final judgment over and above the liability limits of the policy.²⁹⁶ Consequently, there is a duty on the underwriters to accept reasonable settlement offers which are within the policy limits. In addition, section 2 of Aviation 20 provides that underwriters agree to pay all legal costs incurred by the assured in defense of a suit, with the limitation that any proportion of legal costs attributable to judgment over the applicable limit of liability will be the responsibility of the assured. The underwriters also agree in section 2 to reimburse the assured for all expenses generated by securing immediate medical aid for injured parties at the time of the crash, as well as for other expenses incurred by the assured at the request of the underwriters, but specifically excluding lost earnings. The last clause of insuring agreement section 2 indicates that any sums payable under the provisions of section 2 shall be over and above the applicable policy limit of liability.

The duties of the assured under Aviation 20 are similar to those prescribed by Aviation 16, and are geared toward ensuring that the rights of the underwriters are not prejudiced by any act or neglect of the assured. The assured is thus required to give written notice of any accident or occurrence from which a

²⁹⁶ Globe Indemnity Company v. Gen Aero, Inc., 459 S.W. 2d 205 app. den. 469 S.W. 2d 164 (Tex. Civ. App. 1970).

liability claim is likely to arise. The notice must be given as soon as practicable and must contain information identifying the assured, the place of the accident, the circumstances, and the names and addresses of injured parties and any eyewitnesses.

In the event a suit is brought against the assured, he must, under condition 2 of Aviation 20, immediately forward to the underwriters all legal notices, summons, or other papers which are served on him. The purpose of this condition is to prevent the assured from "sleeping" on the rights of underwriters, thus prejudicing their ability to later generate defenses. Aviation 20 also contains a cooperation clause similar to that contained in Aviation 16.

Condition 12 of the policy provides that no action shall lie against the underwriters in respect of the policy until the assured has complied with all the terms of the policy, and the amount of the assured's legal obligation to others has been determined by judgment or by written agreement between the assured, the underwriters, and the claimant. Thus, it is not necessary for the assured to actually be a legal judgment debtor in order to the obligations of the underwriters under the policy to attach.

Apart from exclusions for claims which arise from operation of the aircraft in violation of the designated uses, by undesignated pilots, or for unlawful purposes, which were discussed earlier in connection with Aviation 16, Aviation 20 contains additional exclusions which are unique to aviation liability

insurance.

A significant exclusion contained in Aviation 20 operates to exclude claims which arise out of any liability assumed by the assured under agreement or contract with a third party unless such liability would have attached to the assured regardless of such agreement. Commonly known within the industry as the assumed liability exclusion, this clause has the basic purpose of limiting the risk of the underwriters to those risks which are the main purpose of aviation liability insurance, i.e., injury and property damage due to aircraft accidents. The general rule concerning the assumed liability exclusion is that it will not operate in circumstances where the liability assumed by contract is equivalent to the assured's liability arising from operation of law. Thus, the underwriters may not attempt to void coverage merely because the assured has entered into a contract assuming the same degree of liability to which he is already exposed to by the law.²⁹⁷

A second exclusion contained in Aviation 20 eliminates underwriters' liability to provide indemnification for injuries to employees of the assured which arise from the course of their

²⁹⁷ "A provision in a liability policy specifically excluding from coverage liability assumed by the insured under a contract not defined in the policy is inoperative. . . only in situations where the insured would not be liable to a third party except for the fact that he assumed liability under an express agreement with such party. It does not relieve the insurer from liability under an express contract with a third party where the liability under such contract is co-extensive with the insured's liability imposed on him by law." 63 A.L.R. 2d 1114, 1123 (1959) in Ballard and Chero, supra.

²⁹⁸
employment. The basic justification for this exclusion is that such injuries are normally the province of workmen's compensation insurance, and the risk thus presented is not covered by the premium paid for a standard aviation insurance policy. Any injury sustained by the named assured is also excluded from coverage.

Aviation 20 contains an additional exclusion which provides that the policy does not apply to property owned, rented, occupied, used, or in the care, custody, or control of the assured, or carried in or on the aircraft. By excluding coverage for such property, the underwriters basically confine their risk to that which was intended and assessed at the time of inception of the policy; thus, the assured may not later increase the risk through his own arrangements concerning third party property. Rented or borrowed aircraft are excluded from liability coverage ²⁹⁹ by this clause, for the risk presented by such aircraft is not susceptible to accurate assessment at the time the policy is effected. Aviation 20 does provide for coverage for newly-acquired aircraft, but such airplanes must be owned by the assured and notice given to the underwriters of their delivery to the assured.

²⁹⁸ Utica Mutual Insurance Company v. Emmco, 309 Minn. 21, 243 N.W. 2d 134 (1976).

²⁹⁹ Benningfield v. Avemco Insurance Company, 561 S.W. 2d 736 (Mo. App. 1978).

CHAPTER FIVE: INTERNATIONAL LAW

International law concerning aviation insurance has been concerned primarily with the regulation of liabilities to third parties and passengers injured by aircraft operations in international civil aviation. There are presently no international legal conventions regulating aircraft hull insurance matters, for such are usually deemed to be the exclusive province of the aircraft operator, or, perhaps, the state of registry. The plight of innocent third parties who are injured by aircraft is a concern of international law, and various conventions have been drafted and ratified in an attempt to develop a consistent international legal regime.

The various instruments of the Warsaw Convention System and the Rome Conventions of 1933 and 1952 are the subject of this chapter. Both concern the regulation of liability to third parties; in the case of the Warsaw System, liability to passengers and shippers, while the Rome Conventions are concerned with liability to injured third parties on the surface. While a detailed discussion of these items of international law is a fitting subject for lengthy treatises, a brief examination of the more important provisions is essential to any discussion of international aviation insurance.³⁰⁰

Warsaw System

The Warsaw System is a scheme of limited liability exposure

³⁰⁰ For background information concerning liability limitations in international air law, see A. Tobolewski, Against Limitation of Liability: A Radical Proposal, 3 Annals of Air and Space Law 261 (1978) and K. Bockstiegel, Coordinating Aviation Liability 2 Annals of Air and Space Law 15 (1977).

of air carriers involved in international civil aviation. The extent of liability will depend upon the various instruments of the system which have been ratified by and are in force among the nation-states involved in a specific case of air transport as countries of origin or destination of a flight which involves international air carriage. It is submitted that the existence of liability limits in the Warsaw Convention does not limit the insurable interest of an airline, for the Convention contains provisions which allow for unlimited liability of the carrier in the event of certain conditions. Therefore, all airlines must insure themselves against the possibility of the occurrence of such conditions and the ultimate consequence of unlimited liability.

1. The Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 1929 ³⁰¹

The Warsaw Convention was convened in order to accomplish two purposes--to unify conflicts of laws rules so that air carrier liability would be determined by a single set of rules applicable on an international scale, and to offer some degree of protection to the world's airlines, which in 1929 were in financially precarious positions and could not readily absorb the impact of high damage awards which resulted from accidents. ³⁰²

³⁰¹ ³⁰¹ 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11. Hereinafter cited as Warsaw Convention.

³⁰² In 1929, most aviation underwriters were reluctant to insure air carriers for large liability limits, for the safety records of the industry were not impressive.

The Convention accomplished its first goal through international ratification, and to date the Warsaw Convention enjoys the largest following of any international air law convention. The second goal was accomplished through adoption of a regime of limited liability of the carrier, accompanied by a presumption of liability on the part of the air carrier.

The Warsaw Convention applies to all international air transport, whether performed for hire or gratuitously.³⁰³ It is important to note that the Convention does not apply to domestic transportation, and international air transport is defined by the Convention itself.³⁰⁴ The contract entered into between the passenger and the air carrier controls the points of origin and destination and thus ultimately determines whether the transportation is international within the meaning of the Convention. The ticket issued to the passenger is evidence of the contract, and will be viewed as an entire trip, not as a series of separate journeys.³⁰⁵

³⁰³ Warsaw Convention, Art 1(1).

³⁰⁴ Article 1 (2) provides "For the purposes of the Convention the expression 'international transportation' shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or transshipment are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty . . . of another Power, even though that Power is not a party to this Convention."

³⁰⁵ Burdell v. Canadian Pacific Airlines, 11 Avi. 17,351 (Ill. Cir. 1969); Grein v. Imperial Airways, Ltd. (C.A. 1937) 1 K.B. 50; Grey v. American Airlines, 227 F. 2d (2d Cir. 1955); Stratton v. Trans Canada Airlines, 32 D.L.R. 2d 736 (B.C.C.A. 1962) Egan v. Kollsman Instrument Company, 21 N.Y. 2d 160, 287 N.Y.S. 2d 14, 234 N.E. 2d 199 (1967).

An important provision of the Warsaw Convention requires the air carrier to deliver to the passenger a ticket if it is to avail itself of the limitation of liability prescribed by the Convention.³⁰⁶ In addition, the Convention specifies the information which must be contained on the ticket, one item of which is a statement that the Warsaw Convention with its limits of liability may apply.

The requirement that a ticket must be delivered has generated a substantial amount of litigation, particularly in the United States where the provision has been interpreted in a broad manner favoring the passenger. Engaging in judicial interpretations of the Convention which critics have labeled judicial treaty-making, American courts have held that not only must the carrier deliver a ticket, it must do so in a manner which allows the passenger ample time to take additional measures to protect himself against the limits of liability contained in the Convention. Thus, the courts have held that the ticket delivery is unsuitable where it takes place after the passenger has boarded the aircraft,³⁰⁷ or where the ticket is handed to a passenger standing in line at the departure gate and preparing to board immediately.³⁰⁸ Likewise, delivery of a ticket which contains a statement that the Warsaw

³⁰⁶ Warsaw Convention Art. 3(1) and 3(2).

³⁰⁷ Mertens v. Flying Tiger Line, 341 F. 2d 851 (2nd Cir.) cert. den. 382 U.S. 816 (1965).

³⁰⁸ Warren v. Flying Tiger Line, 352 F. 2d 494 (9th Cir. 1965).

Convention may be applicable printed in an unreadable or unnoticeable manner has been held to constitute constructive non-delivery of a ticket, with the result that the carrier is subject to unlimited liability.³⁰⁹ Other courts have adhered to the position that only actual non-delivery of the ticket will result in the carrier being subject to unlimited liability for passenger injuries or death.³¹⁰

The Warsaw Convention provides that "the carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking."³¹¹ This clause has generated much controversy concerning its interpretation, particularly the phrase "embarking and disembarking." The courts are currently using a three-prong test to determine if a passenger is within the operations of embarking or disembarking, scrutinizing the elements of control of the passenger by the carrier, location and activity of the passenger at the time of injury. If the

³⁰⁹ Lisi v. Alitalia, 370 F. 2d 508 (2nd Cir.) aff'd 390 U.S. 455 (1966).

³¹⁰ Preston v. Hunting Air Transport Ltd., (Q.B. 1956) 1 All E.R. 443; Gray v. American Airlines, 227 F. 2d 282 (2nd Cir. 1966).

³¹¹ Warsaw Convention, Art. 17.

passenger is outside the embarking or disembarking process,³¹²
the provisions of the Warsaw Convention will not apply.

In the event that the carrier is found guilty of what the Convention terms wilful misconduct, the liability limitations contained in the Convention will not apply and the carrier will be subject to unlimited liability.³¹³

The Warsaw Convention established a regime of presumed liability of the air carrier in the event of death or injury to the passenger,³¹⁴ or loss, damage, or delay to baggage or air cargo.³¹⁵ The carrier is not strictly liable under the terms of the Convention, for there does exist a defense for the carrier if it can be established that the carrier took all necessary measures³¹⁶

³¹²MacDonald v. Air Canada, 439 F. 2d 1402 (1st Cir. 1971). For other cases involving this clause of the Convention see Hernandez v. Air France, 545 F. 2d 279 (1st Cir. 1976); Felismina v. T.W.A., 13 Avi. 17, 145 (S.D.N.Y. 1974); Richardson c. Koninklijke Luchtvaart MIJ, NV et NV Luchthaven Schipol (1975) 1 U.L.R. 365; Oberster Gerichtshof (1973) 2. U.L.R. 415; Maugnie v. Air France, 14 Avi. 17, 534 (9th Cir. 1977).

³¹³Warsaw Convention, Art. 25. For representative cases see American Airlines v. Ulen, 186 F. 2d 529 (2nd Cir. 1947); Perkelis v. Transcontinental and Western Air, Inc., 187 F. 2d 122 (2nd Cir. 1950); Koninklijke Luchtvaart Maatschappij N.V. v. Tuller, 292 F. 2d 775 (D.C. Cir. 1961); See also B. Cheng, Wilful Misconduct: From Warsaw to the Hague and from Brussels to Paris, 2 Annals of Air and Space Law 55 (1977).

³¹⁴Warsaw Convention, Art. 17.

³¹⁵Id., Art. 18.

³¹⁶Id., Art. 18 and 19. See also E. Mapelli, Air Carriers' Liability in Cases of Delay, 1 Annals of Air and Space Law 109 (1976).

to prevent the damage or injury or that it was impossible
 for such measures to be taken.³¹⁷ Error in piloting or
 navigation is also a defense in respect of the transportation by
 air of goods and baggage.³¹⁸

In the case of injury to or death of passengers, the Warsaw
 Convention places the upper limit of liability of the air carrier
 at 125,000 francs,³¹⁹ which is roughly equivalent to US\$ 8,300.00.
 The plaintiff must still plead and prove his damages, for there is
 no automatic award of the maximum liability figure. In the case
 of baggage or air cargo, the limits of liability are established
 at 250 francs per kilo,³²⁰ while property in the possession of
 a passenger has an upper limit of 5,000 francs per passenger.³²¹
 The standard of currency is defined in the Convention as a French
 franc consisting of 65½ milligrams of gold at a standard of fineness
 of nine hundred thousandths.³²²

2. Protocol to Amend the Convention for the Unification of Certain
 Rules Relating to International Carriage by Air, signed at
 Warsaw on 12 October 1929³²³

The Hague Protocol was opened for signature in 1955. The

³¹⁷Warsaw Convention, Art. 20(1).

³¹⁸ Id., Art. 20(2).

³¹⁹ Id., Art. 22(1).

³²⁰ Id., Art. 22(2).

³²¹ Id., Art. 22(3).

³²² Id., Art. 22(4).

³²³ I.C.A.O. Doc. 7632 (1955). Herein after cited as Hague Protocol.

movement to draft the Protocol arose as a result of discontent, primarily in the United States, with the relatively low limits of liability contained in the Warsaw Convention.

The Hague Protocol makes a few minor changes in phraseology and definitions of terms which originally appeared in the Warsaw Convention,³²⁴ but its major importance lies in three areas which represent substantial changes to the original Warsaw Convention.

While the Warsaw Convention requires the delivery of a ticket which contains several items of information,³²⁵ the Hague Protocol has reduced the number of items required to be included on the ticket.³²⁶ The Protocol basically requires the ticket to contain only an indication of the places of departure and destination, agreed stopping places, and a notice that the Warsaw Convention may apply to limit carrier liability. It is quite significant that the Warsaw Convention required only that the ticket contain a "statement" that the Warsaw Convention may be applicable. The Hague Protocol requires the ticket message to be a notice, a position which the U.S. courts have embraced when dealing with the ticket delivery requirements of the Warsaw System.

³²⁴ International air carriage is given a new definition in the Hague Protocol, (Art. I(a)) but the practical aspects remain the same.

³²⁵ Warsaw Convention Art. 3(1) a-d.

³²⁶ Hague Protocol Art. III(a). For representative cases see Montreal Trust Company v. C.P. Air, 14 Avi. 17,510 (S. Ct. Canada 1976) and C.P. Air v. Stampleman, 13 Avi 17,457 (Montreal App. 1974).

The amount of information required to be contained on the baggage check and airway³²⁷ bill has also been reduced by the provisions of the Hague Protocol, with the added condition that notice of the possible applicability of the liability limitations of the Warsaw Convention be included.

A second change generated by the terms of the Hague Protocol was accomplished in an effort to eliminate the confusion which had arisen from the lack of precise definition of the term "wilful misconduct" as used in the 1929 Warsaw Convention. The Hague Protocol defines wilful misconduct as "an act or omission of the carrier, his servants or agents, done with intent to cause damage³²⁸ or recklessly and with knowledge that damage would probably result".

In order to satisfy the demands of states that the liability limits of the Warsaw Convention be raised, the drafters of the Hague Protocol included a provision which raised the liability of air carriers to a limit of 250,000 francs, the equivalent of approximately 16,500 U.S. dollars.³²⁹ The Protocol also provides that court costs may be awarded in addition to the limit of liability,³³⁰ and permits the passenger and carrier to contractually agree to higher

³²⁷ Hague Protocol, Arts. IV and VI.

³²⁸ Id., Art. XIII.

³²⁹ Id., Art. XI (1).

³³⁰ Id., Art. XI (4).

limits of liability. The liability limits assigned by the Hague Protocol to baggage and air cargo remains at 250 francs per kilo.³³¹

Other instruments of the Warsaw System have less importance than the Hague Protocol and the Warsaw Convention, largely due to lack of support and ratification from the nations involved in international civil aviation. The Guatemala City Protocol was signed by twenty-one nations on March 8, 1971, but has not yet entered into force.³³² The Protocol's major changes are an increase in passenger injury and death liability limits and the imposition of a system of strict, rather than presumed, liability on the part of the air carrier.³³³

Drafted in 1961, the Guadalajara Convention³³⁴ has received only limited ratifications, and its provisions govern Warsaw Convention actions where several carriers have performed air transportation for the same passenger or shipper. The Convention³³⁵

³³¹ Hague Protocol, Art.XI (1).

³³² The official name of the Protocol is the Protocol to Amend the Warsaw Convention of 1929 as Amended by the Hague Protocol of 1955, signed at Guatemala City 8 March 1971. I.C.O.A. doc. 8932.

³³³ Ratification by the United States is essential for the Guatemala City Protocol to enter into force. Such action by the U.S. does not appear to be forthcoming, and the Guatemala City Protocol may be considered a dead letter for all practical applications.

³³⁴ The liability limits are increased to US\$ 120,000 per passenger.

³³⁵ The official name of the Convention is the Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, signed at Guadalajara 18 September 1961. I.C.A.O. doc. 8181.

allows suit to be brought against either the contracting carrier,
 the actual carrier,³³⁶ or both at the option of the plaintiff.³³⁷

Either defendant is entitled to compel other carriers under the same contract of transportation to be joined in the action as co-defendants.³³⁸ The Convention made no increase in the limits of liability.

An international air law conference held in Montreal in September, 1975, resulted in the drafting of four additional protocols to the Warsaw Convention.^{339, 340} The first three Protocols have the essential effect of changing the units of currency of the Warsaw System from francs to Special Drawing Rights, while the fourth establishes rules of liability governing the international carriage by air of postal items as well as the documentation required of air cargo shipments under the Warsaw Convention. None of the Protocols has entered into force.

While technically not an instrument of international law,³⁴¹ the Montreal Agreement is commonly considered as a portion of the

³³⁶ Both terms are defined in Art. I (a, b) of the Convention.

³³⁷ Guadalajara Convention, Art. VII.

³³⁸ Id.

³³⁹ I.C.A.O. docs. 9145, 9146, 9147, 9148 (1975).

³⁴⁰ See generally G. Fitzgerald, The Warsaw Convention as Amended by the Montreal Conference on International Air Law (1975), 1 Annals of Air and Space Law 49 (1976).

³⁴¹ Agreement C.A.B. 18900 (1966).

of the Warsaw System, at least as applied in the United States. The Agreement, which is essentially a contractual arrangement between air carriers and their passengers, arose from attempts to keep the United States from denouncing the Warsaw Convention as Amended by the Hague Protocol, due to wide dissatisfaction with the liability limits contained therein. A compromise in the form of the Montreal Agreement was reached largely through the efforts of the International Air Transport Association, and the Warsaw Convention as amended by the Hague Protocol, and as supplemented by the Montreal Agreement remains in effect in the United States.

The Montreal Agreement raised the applicable limits of liability for all carriers operating into, over, or out of the United States. Adherence to the Agreement is made a prerequisite³⁴² prior to the issuance of operating permits for all carriers. The limits are currently established at US\$ 58,000 exclusive of legal costs or US\$ 75,000 inclusive of legal costs. In addition, the Agreement established a system of strict liability on the part of the air carrier by eliminating the defense of all necessary measures contained in Article 20 of the Warsaw Convention. The defense of contributory negligence on the part of the plaintiff is still available to the carrier.

While the Warsaw System is concerned with liability of air

³⁴² Ultimate authority for the regulation of air carrier entry into any nation is derived from Article 1 of the Convention on International Civil Aviation, IC.A.O. doc. 7300/5 (5th ed. 1975).

carriers to passengers and shippers, the other major instruments of private international air law govern the liability of air carriers to third parties on the surface who suffer injury or damage as a result of aircraft operations.

The Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface, signed at Rome, 1933³⁴³ was the product of the Third International Conference on Private Air Law, and its object was to establish unification of national laws concerning injury and damage suffered by third parties on the surface as a result of aircraft operations. The intent was similar to that which generated the Warsaw Convention, with the exception that a different class of affected persons was the focus.

The Rome Convention (1933) established a system of strict liability on the part of the air carrier in exchange for limited liability to injured parties. Essentially, the Convention provided that liability on the part of the aircraft operator³⁴⁴ would be found if the plaintiff merely established that the damage complained of existed and was attributable to the aircraft.³⁴⁵ The only defense allowed the aircraft operator is a showing that the damage was caused or contributed to by the contributory negligence of the plaintiff.³⁴⁶ In order for the Convention to apply, the

³⁴³ Herein after cited as Rome Convention (1933).

³⁴⁴ This term is defined in Article 4 of the Rome Convention (1933)

³⁴⁵ Rome Convention (1933) Art. 24.

³⁴⁶ Id., Art. 3.

aircraft which caused the damage must be registered in a state
 other than that in which the damage was caused.³⁴⁷

Under the Rome Convention (1933) the liability exposure of the aircraft operator is a factor of aircraft weight, with upper limits of liability per occurrence established at 250 Poincare francs for each kilo of aircraft weight.³⁴⁸ This limit is further qualified by a provision which places the total liability limit at no less than 600,000 francs and no more than 2,000,000 francs.³⁴⁹ In the event of an accident or occurrence which results in both personal injury and property damage, the Convention required that one-third of the amount of maximum liability be appropriated for property damage claims, while the remaining two-thirds was to be set aside for the claims of injured persons.³⁵⁰ No single injured person was to receive more than 200,000 francs.³⁵¹

The Convention also provided for two instances where the aircraft operator could not avail himself of the liability limitations established by the Convention. One, similar to the Warsaw Convention, was where the plaintiff proved that the damage was the result of gross negligence or wilful misconduct on the part of the operator or his agents.³⁵² If the operator could establish by way of a

³⁴⁷ Rome Convention, Art. 20 (1).

³⁴⁸ Id., Art. 19.

³⁴⁹ Id.

³⁵⁰ Id., Art. 8.

³⁵¹ Id.

³⁵² Id., Art. 14.

defense that the damage was the result of negligence in navigation or pilotage, or that all "proper steps" had been taken to avoid the damage, the plaintiff could not break the liability limits.³⁵³ The second instance where the aircraft operator could be subjected to unlimited liability was in the event that there had been non-compliance with the insurance provisions of the Convention.³⁵⁴

The Rome Convention (1933) required that every aircraft operated in commercial international civil aviation be insured or guaranteed against liability for surface damage up to the limits stated in the Convention, according to the weight of the aircraft.³⁵⁵ The insurance was required to be placed with a state insurance institute or an underwriter authorized to do business in the state of aircraft registry.³⁵⁶ In lieu of insurance, a guarantee in the form of a deposit of money with a state insurance institute or a bank in the state of registry was satisfactory;³⁵⁷ the aircraft insured or guaranteed was to carry a certificate of insurance or documentation of deposit on board at all times.³⁵⁸

The Rome Convention (1933) has been ratified by only five states, and consequently is of little practical importance.

The second instrument within the system is the Protocol

³⁵³ Rome Convention (1933) Art. 14.

³⁵⁴ Id.

³⁵⁵ Id., Art. 12.

³⁵⁶ Id., Art. 13.

³⁵⁷ Id., Art. 12 (2).

³⁵⁸ Id., Art. 13.

Supplementing the Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface, Rome, 1933, Concluded at Brussels, September, 1939. 359

The Brussels Insurance Protocol was intended to supplement and clarify the insurance provisions of the Rome Convention (1933) by stipulating the defenses which could be invoked by insuring underwriters in defending claims which arose from the application of the 1933 Rome Convention. Three defenses are set forth in the Protocol:

1. The damage occurred after the term of the insurance had lapsed. 360
2. The damage occurred outside the geographical limits of the policy, unless flight outside the limits was necessitated by force majeure or justifiable diversion for the purpose of assistance, salvage, or to negligence in piloting. 361
3. The damage was a direct result of international armed conflict or civil disorder. 362

To date, the Brussels Insurance Protocol has been ratified only by Italy and Brazil, and consequently is a dead letter.

The Rome Convention (1933) was revised extensively by the first and seventh sessions of the I.C.A.O. legal committee with a draft prepared and considered at an international air law

359 Hereinafter cited as Brussels Insurance Protocol.

360 Brussels Insurance Protocol, Art. 1(1)(a).

361 Id., Art. 1(1)(b).

362 Id., Art 1(1)(c).

convened in Rome during the autumn of 1952. The result of the meeting was the ratification by 26 states of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Adopted at Rome, 1952.³⁶³

The Rome Convention (1952) maintains essentially the same regime of strict liability against the aircraft operator,³⁶⁴ but the applicable limits of liability are changed. Liability limits under the Rome Convention (1952) are expressed in terms of monetary amounts per kilo of takeoff weight of the aircraft. The actual limits per aircraft are determined in accordance with a mathematical scheme expressed in the Convention.³⁶⁵ A ceiling of 500,000 francs was placed on liability for loss of life or personal³⁶⁶ injury to any one person.

The limits of liability established by the Rome Convention (1952) may be exceeded if the plaintiff succeeds in proving that the damage sustained by him was caused by the deliberate act or omission of the aircraft operator or his agent, done with the intent to cause damage.³⁶ This Article was intended to replace Article 14 of the Rome Convention (1933) which spoke in terms of gross negligence and

³⁶³ Hereinafter cited as Rome Convention (1952).

³⁶⁴ Rome Convention,⁽¹⁹⁵²⁾ Art. 1(1).

³⁶⁵ Id., Art. 11(1a-e).

³⁶⁶ Id., Art. 11(2).

³⁶⁷ Id., Art. 12(1).

wilful misconduct of the aircraft operator.

The Rome Convention (1952) provides for a number of instances in which a claim for damages under the Convention will be excluded:

1. Where the damage is not a direct consequence of the incident giving rise thereto. ³⁶⁸
2. Where the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing traffic regulations. ³⁶⁹
3. Where damage is caused by military, customs, or police aircraft. ³⁷⁰
4. Where liability for surface damage is regulated by either a contract between the person who suffered such damage and the operator or person entitled to use the aircraft at the time the damage occurred, or by the law relating to workmens' compensation applicable to a contract of employment between such persons. ³⁷¹
5. Where the aircraft which causes the damages is not registered in the territory of another contracting state. ³⁷²
6. Where damage is caused to an aircraft in flight, or to persons or goods on board such an aircraft. ³⁷³

Although the Rome Convention (1952) has established a system of strict liability whereby the plaintiff need only demonstrate the fact

³⁶⁸ Rome Convention, Art. 1(1).

³⁶⁹ Id.

³⁷⁰ Id., Art. 26.

³⁷¹ Id., Art. 25.

³⁷² Id., Art. 23(1).

³⁷³ Id., Art. 24.

that the damage occurred and was due to an aircraft in flight,³⁷⁴
 the Convention does contain defenses of which the aircraft
 operator may avail himself to either partially or totally defeat
 the plaintiff's claim. If the operator establishes that the damage
 complained of was due solely to the contributory negligence of the
 plaintiff or his agents, such a showing constitutes a complete
 defense.³⁷⁵ If, however, the plaintiff's damage is only partially
 attributable to his own negligence or that of his agents or servants,
 the aircraft owner is liable for the damages not thusly caused.³⁷⁶

Although the Rome Convention(1933)contained a compulsory
 insurance scheme supplemented by the Brussels Insurance Protocol,
 the Rome Convention (1952) establishes no plan of mandatory insurance.
 In addition, the 1952 Convention supercedes the 1933 Convention
 in respect of any state which has ratified both instruments..³⁷⁷
 However, the Rome Convention (1955) does permit any contracting state
 to require as a condition precedent to overflight that the operator
 of an aircraft registered in another contracting state be insured
 up to the limit of potential liability contained in the Convention.³⁷⁸
 The Convention requires that insurance be accepted as satisfactory by
 contracting states if it conforms to standards set forth in the

³⁷⁴ Rome Convention (1952) Art. 1(1).

³⁷⁵ Id., Art. 6.

³⁷⁶ Id.

³⁷⁷ Id., Art. 29.

³⁷⁸ Id., Art 15 (1). Justification for an insurance require-
 ment could also be found in Article 1 of the Convention on International
 Civil Aviation.

Convention and is underwritten by an insurer authorized under the laws of the state of aircraft registry or the state where the underwriter has his principal place of business.³⁷⁹ A contracting state is permitted by the terms of the Convention to refuse to accept insurance which has been effected by an underwriter who is not authorized³⁸⁰ to do so in any contracting state.

In lieu of liability insurance, the Convention permits aircraft operators, where required by a contracting state, to provide evidence of financial responsibility in the form of various types of security,³⁸¹ provided that the security is equal to the amounts of potential liability faced under the Convention.³⁸² The following types of security are specifically permitted by the Rome Convention (1952):³⁸³

1. A cash deposit in a bank or other depository in or maintained by the contracting state to be overflown.
2. A guarantee issued by a bank authorized to do so by the contracting state of aircraft registry whose financial responsibility is verified by the contracting state.
3. A guarantee given by the contracting state where the aircraft is registered, if that state undertakes that it will not claim immunity from suit in respect of that guarantee.

³⁷⁹ Rome Convention (1952) Art. 15 (2)(a).

³⁸⁰ Id., Art. 15 (3).

³⁸¹ Id., Art. 15 (4).

³⁸² Id., Art. 17(2).

³⁸³ Id., Art. 15(4)(a-c).

In addition to the provision that an aircraft operator may be compelled to deposit security with an overflown contracting state, Article 15(5) of the Rome Convention (1952) permits the overflown state to require that the aircraft carry on board a certificate of insurance, including a verification by the state of registry of the financial responsibility of the insurer..

In the event that the aircraft operator has filed a form of security with the overflown state other than liability insurance, the Convention permits the latter to issue a certificate acknowledging the deposit; this certificate is then carried in the aircraft if so required by the overflown contracting state.³⁸⁴

In the event that the overflown state has reason to question the financial responsibility of the aircraft operator's insurance underwriters or bank which issued a guarantee under Article 15 (4) of the Convention, Article 15(7) allows the overflown state to request additional evidence of financial responsibility. The Convention provides for a mutually agreed arbitrator or the council of I.C.A.O. to mediate any dispute which arises concerning the adequacy of evidence of financial responsibility.³⁸⁵

In the event of a claim filed against an insurer or other person providing security under the Rome Convention (1952), the terms of the Convention limit the defenses of which the underwriter or

³⁸⁴ Rome Convention, (1952) Art. 15(5).

³⁸⁵ Id., Art. 15 (7a).

of guarantor may avail himself. In addition to any defense available to the aircraft operator, the following are the only defenses assertable on behalf of the insurer or guarantor: 386

1. The damage occurred after the term of the insurance or security.
2. The damage occurred outside the territorial limits provided for by the security, unless flight outside of such limits was caused by force majeure, assistance justified by the circumstances, or an error in piloting, operation, or navigation.
3. Forgery of the insurance policy or security.

In the event of a claim arising under the provisions of the Rome Convention (1952), the injured third party is required to bring his action for personal injury or property damage within two years from the date of the incident which caused the damage. 387 This period may be extended through application of local law of the court seized of the action which suspends or tolls the running of the limitations period, but in no event will the cause of action continue past three years from the date of incident. 388 If the plaintiff's claim is one of many occurring from the same accident, and the claimant fails to notify the aircraft operator or bring an action to enforce his claim within six months of the date of the accident, the claimant is entitled only to compensation out of the amount for which the operator remains liable after all claims made within the six-month period have been satisfied in full. 389

386 Rome Convention (1952) Art. 16 (1a-b).

387 Id., Art. 21 (1).

388 Id., Art. 21 (2)

389 Id., Art. 19.

Litigation under the Rome Convention (1952) is properly brought only before the courts of the contracting state where the damage occurred.³⁹⁰ However, jurisdiction and venue is proper³⁹¹ under the terms of the Convention in any other contracting state if agreement to do so is reached between any one plaintiff and the defendant. However, actions before the courts of the state where the damage occurred are not prejudiced by removal through agreement between the defendant and one plaintiff.

The Rome Convention (1952) is currently in force among 27 ratifying states. However, the United States and the United Kingdom have not ratified the Convention, and the foreseeable future holds no immediate prospect of ratification by these two international aviation powers, due to dissatisfaction with the present liability limits contained in the Convention.

For a time, there was reluctance within the international legal arena to attempt an amendment of the Rome Convention for fear that it would further reduce the limited ratification which the Convention enjoyed. However, this fear gradually diminished, and in September, 1978, a Protocol was adopted at Montreal for the purpose of amending the Rome Convention (1952).

The product of a draft by the I.C.A.O. legal committee, the

³⁹⁰ Rome Convention (1952) Art. 20(1).

³⁹¹ Id.

Montreal Protocol ³⁹² (1978) brought about several changes in the international law concerning liability of aircraft operators to third parties on the surface, one of which was to alter the unit of currency of the Rome Convention (1952) from gold francs to ³⁹³ Special Drawing Rights. In the event that a contracting state is not a member of the International Monetary Fund, the Protocol permits the state to transact claims arising under the Rome ³⁹⁴ Convention (1952) in monetary units based on gold.

A second major change accomplished by the Protocol was an increase in the applicable limits of liability from those levels established by the Rome Convention (1952). The liability limits established by the Protocol are calculated according to a formula based on authorized takeoff weight of the aircraft, with liability for death or personal injury not to exceed 125,000 Special Drawing ³⁹⁵ Rights per person.

³⁹² The official title of the Protocol is the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952, Hereinafter cited as Montreal Protocol (1978).

³⁹³ Montreal Protocol (1978) Art. III (4).

³⁹⁴ Id.

³⁹⁵ The liability limits established by the Protocol are as follows: (a) 300,000 Special Drawing Rights (SDRs) for aircraft weighing 2,000 kg or less (b) 300,000 SDRs plus 175 SDRs per kilo over 2,000 kg for aircraft weighing more than 2,000 kg but not exceeding 6,000 kg (c) 1,000,000 SDRs plus 62.5 SDRs per kg for aircraft weighing more than 6,000 kg but not exceeding 30,000 kg (d) 2,500,000 SDRs plus 65 SDRs per kg over 30,000 for aircraft weighing more than 30,000 kg. Weight of the aircraft is determined by the maximum takeoff weight as authorized in the certificate of airworthiness.

A third change promulgated by the Montreal Protocol (1978) concerns the provisions for the establishment of insurance or security by the aircraft operator. Instead of using the term "security", the Montreal Protocol (1978) has adopted in its stead the word "guarantee", and the Protocol provides simply that a contracting state to be overflown may require an aircraft operator to submit evidence of insurance coverage or to be guaranteed by other forms of security up to the limits of liability established by the Protocol.³⁹⁶ The list of acceptable forms of security contained in the Rome Convention (1952) has been deleted in the Protocol; the overflown state may still require proof of liability insurance or security at any time, however.³⁹⁷

The scope of application of the Rome Convention (1952) has been expanded by the Protocol. In addition to damage caused in the territory of a contracting state by an aircraft registered in another contracting state being subject to the Convention, the Protocol provides additionally that damage caused in the territory of a contracting state by an aircraft whose operator has his principal place of business or, if none, his residence in another

³⁹⁶ Montreal Protocol (1978) Art. VI.

³⁹⁷ Id.

contracting state is subject to the terms of the Convention as amended by the Protocol.³⁹⁸ In such a case, the state of registry of the aircraft is immaterial.³⁹⁹

The Montreal Protocol (1978) has not been ratified, and international aviation powers such as France, the United Kingdom and the United States are noticeably absent from the list of subscribing nations. The lack of ratification of the Protocol is merely one additional example of the difficulties presented in adopting an international legal regime with liability limits satisfactory to the wide range of economically-positioned nations which comprise international civil aviation.

³⁹⁸ Montreal Protocol (1978) Art. XII.

³⁹⁹ Id.

CHAPTER SIX: CLAIMS ADJUSTING

When an assured sustains a loss to an aircraft or suffers a mishap which may result in the lodging of liability claims by injured third parties, he normally initially notifies the producing broker of the loss. The producing broker, in turn, notifies the London broker who contacts the lead underwriter of the policy. The lead underwriter controls the claim and will appoint an adjuster to investigate the claim and make recommendations pertaining to its settlement.

In legal terms, the aviation insurance adjuster is the agent of the underwriters,⁴⁰⁰ and as such is charged with representing the interests of the underwriters in all matters concerning the claim. However, this is not to say that the function of the adjuster is to make certain that the underwriters pay as small an amount in settlement of the claim as possible; rather, the duties of the adjuster are to ensure fairness to both the underwriters and the assured according to the terms and conditions of the policy.

A basic duty of the adjuster is to investigate the loss and the circumstances which gave rise to it, with the purpose of determining if the loss was covered by the insurance in effect and to assist in arriving at an appropriate settlement. The fact that an investigation is conducted by the adjuster in no way compromises the rights of the underwriters.⁴⁰¹ It is, however,

⁴⁰⁰ Bond v. National Federal Insurance Company, 77 W. Va. 736, 88 S.E. 389 (1920).

⁴⁰¹ Travelers Indemnity Company v. Harris, 216 F. Supp. 420 (D.C. Mo. 1963).

standard practice within the aviation insurance industry to issue formal notice to the assured that the investigation of the loss is being conducted under a full reservation of rights in the event that preliminary evidence indicates a violation of the policy conditions or the applicability of an exclusion.

With headquarters in London, the Airclaims Group of Companies and its North American subsidiary, Airclaims, Inc. provides the world's largest network of aviation insurance claims investigation, adjustment, and related services for the international aviation insurance market. Investigation of claims is an integral portion of the function of Airclaims, and the company maintains a staff of adjusters who are experts in various fields of aviation, such as law, airframe and engine mechanics, turbine engine operations, general aviation, and air carrier operations.

Claim procedures conducted by Airclaims normally commence when telephone notice of a loss is received from the London broker, who previously has obtained authorization from the leading underwriter to assign Airclaims to the claim. Following receipt of assignment, the adjuster who possesses the technical and/or legal experience necessary to handle the claim generally travels to the scene of the accident to personally survey the damage on a first-hand basis. Arrangements are also usually made at the time of initial survey for removal, safeguarding, and storage of the wreckage in order to preserve salvage value and prevent injury to bystanders and sightseers.

After the initial survey, which is often made in cooperation with transportation safety officials of the country in which the accident occurred, a preliminary report of the circumstances is sent by the Airclaims adjuster over international telex to the London broker for distribution among the underwriters who have subscribed to the coverage. The telex contains a brief description of the circumstances surrounding the accident, as well as the date, time, place, and national registration marking of the aircraft. In addition, the preliminary telex report contains information concerning the presence of injured third parties or crew members, third party claims, salvage value of the wreckage, violations to the policy terms, and any possibilities which appear for the subrogation of the claim against a third-party wrongdoer. The preliminary report terminates with a recommendation for the specific amount of money to be placed by the underwriters in a required reserve, the assets to be drawn from when the claim is subsequently paid. A considerable amount of technical and legal expertise is required in establishing reserves, for the figure is based upon estimated repair costs of the aircraft hull (or the total loss value if applicable) and the amount of liability exposure from third party claims. The current practice of Airclaims is to set reserves high with a generous margin for later unforeseen expenses due to the London market's aversion to underreserving. The preliminary report is generally dispatched within 24 hours of the field adjuster's return from the initial damage appraisal.

In the event of an aircraft hull claim, an essential duty of the aviation adjuster is to arrange for repair of the aircraft if such course is economically feasible, or to process the claim as either a total or constructive total loss as the circumstances and damages warrant. In the event the aircraft is repairable, the adjuster will make arrangements, in cooperation with the assured, for the transportation of the aircraft from the accident scene to the selected repair facility. It is important that the repair facility be satisfactory to the assured, in order to forestall later complaints of unsatisfactory repairs, and also that the facility possess the necessary qualifications and expertise to competently effect needed repairs. In the event of a conflict between the adjuster and the assured as to the repair facility, the adjuster ultimately should have the authority to select the repair facility.

The aviation adjuster must maintain close surveillance on the progress of repairs, in order to ensure that repairs are proceeding properly and to prevent the assured from conducting routine maintenance items at the expense of underwriters. The occasional assured will periodically attempt to conduct postponed maintenance work while the aircraft is being repaired, and expect the underwriters to bear the cost of such non-accident related work. The adjuster must continually be aware of the possibility of such activity. In addition, the prudent adjuster will determine,

a total loss or repairable, in spite of judicial opinions⁴⁰³ defining the elements of an aviation insurance total loss.

The problem of whether to repair the aircraft or consider it a total loss may also arise after an assured has lost confidence in the aircraft or in aviation generally after an accident, and desires to dispose of the aircraft (even though repairable) in exchange for payment of the total loss value of the aircraft. In such a case, the adjuster may classify the aircraft as a constructive total loss and proceed with settlement of the claim accordingly.

Settlement through a constructive total loss may be applied to a claim where the salvage value of the aircraft is sufficient to render the total payout of the underwriters approximately equal to the cost of any potential repair scheme. For example, if an assured operates an aircraft which is insured for \$20,000, has an accident which requires repairs in the amount of \$13,000, clearly the least costly method of settlement for the underwriters would be on the basis of repair of the aircraft. The assured, however, after lying in the hospital for several weeks as a result of the accident, may not desire to keep the aircraft and demands it be declared a total loss instead. If the adjuster is able to locate a salvage buyer willing to pay \$7,000 for the wreckage, the

⁴⁰³Ranger Insurance Company v. Kidd., 478 S.W. 2d 803 (Tex. Civ. App. 1972) held that an aircraft was a total loss when, after a crash, there remained no substantial remnant which an uninsured, reasonably prudent owner could utilize as a basis for restoration of the aircraft.

constructive total loss approach will be most satisfactory to all parties concerned--the assured is paid \$20,000 and disposes of the airplane, and the net loss to underwriters remains at \$13,000 after the salvage funds are received. The constructive total loss settlement approach can be applied to insured as well as agreed value policies.

If the preliminary investigation reveals the existence of a potential policy violation or other grounds for denial of the claim, the adjuster must proceed with extreme caution to avoid any prejudice to the rights of the underwriters. Any action on the part of the adjuster which can be considered as negotiation with the assured for settlement purposes could result in a waiver of the underwriters rights to later deny the claim.⁴⁰⁴ When a possible ground of denial is uncovered, the practice of Airclaims is to immediately obtain the authorization of underwriters to notify the assured that the loss investigation is proceeding under a full reservation of rights; in this manner, the investigation may proceed without fear of accidental waiver.

When repairs to an aircraft are complete, the adjuster processing the claim must carefully review the work accomplished, eliminating from the total cost all repair items which the assured may not properly claim under the terms of the policy; e.g., routine maintenance procedures, cosmetic improvement, and replacement of undamaged parts.

⁴⁰⁴ Page v. Washington Mutual Life Association, 20 Cal. 2d 234, 125 P. 2d 20 (1942); Michigan Idaho Lumber Company v. Northern Fire and Marine Insurance Company, 35 N.D. 244, 160 N.W. 130 (1916).

A considerable amount of technical expertise is required of adjusters in determining excludable items, particularly where large transport aircraft and complex repair procedures are involved. When agreement is reached between the adjuster and the assured regarding repair costs, the deductible is applied and the final settlement recommendation forwarded to the underwriters for their approval.

Approval from the London market generally requires a period of three to five weeks as the report from the adjuster is literally hand-carried by messenger to all the underwriters who have subscribed to the policy risk. The lead underwriter is generally the first to view the report, and the remaining underwriters often follow his decision, although they are not required to do so. When approval of all the underwriters is received, the adjuster arranges⁴⁰⁵ for the assured to execute a formal release in favor of the underwriters in exchange for payment. The current practice among London aviation underwriters requires that funds for settlement of a claim will not be sent until until the underwriters have actual sight of a signed release.

Diligence on the part of the adjuster is again required when drafting the release form. Although standard printed form releases are utilized by most aviation adjusters, care must be

⁴⁰⁵The release contains an indication of the amount of settlement and a statement that the amount constitutes legal consideration for the release. A copy of the release form utilized by Airclaims is included in the appendix.

exercised that all parties with a legal interest in the proceeds must be represented on the release, particularly loss payees and lienholders who have purchased breach of warranty insurance. ⁴⁰⁶ The courts have held that a loss payee which is named on the policy for the purpose of securing an indebtedness (e.g., an aircraft mortgage) has a right to recover in its own name against the insuring underwriters. ⁴⁰⁷ Consequently, if a loss payee does not release the underwriters through its signature on the release form, it could later institute suit against the underwriters on a claim which has previously been paid to the assured and/or other parties.

When the properly-executed release is returned to the adjuster with the names of all interested parties subscribed, the documents are submitted to the London broker for distribution to the underwriters. A messenger again makes the rounds of all underwriters, collecting from each their proportion of the settlement after the release is reviewed. The settlement funds are then distributed by the broker to the assured and/or loss payees.

The work of the aviation adjuster is not finished when the hull claim is settled. Throughout the investigation process, the possibility of subrogation of the claim must be kept open, as the underwriters will require the adjuster to inform them

⁴⁰⁶ Breach of warranty insurance is available at an additional premium cost to the holder of an indebtedness secured by the insured aircraft. In the event that the assured breaches the pilot warranty or commits some other act which voids the coverage, the proceeds of the claim will be paid to the breach of warranty lienholder, but only after the lienholder has attempted, and failed, to pursue collection of the debt. See appendix, Aviation 28.

⁴⁰⁷ Allegheny Airlines v. General Motors Corporation, 11 Avi. 17.391 (N.Y. Sup. Ct. 1969).

of the existence of grounds for subrogation of the claim against a wrongdoer. To fulfill this function, the aviation claims adjuster must have a thorough working knowledge of the law of torts, products liability, and insurance.

At Airclaims the subrogation aspect of all claims is investigated thoroughly by the adjuster assigned to the claim, assisted by technical experts of both the company and outside agencies and laboratories. If it is determined that legal grounds for subrogation of the claim exist, a report containing the basis for such decision is forwarded to the underwriters with a recommendation that a demand letter be issued to the wrongdoer. Upon receipt of approval from the underwriters, the letter is sent to the tortfeasor with a demand for reimbursement of the settlement costs paid by the underwriters. If no response to the letter is received within a reasonable amount of time, trial counsel will be engaged to pursue the subrogation aspect.

In the event that salvage value is left in the aircraft wreckage, the adjuster has the responsibility of arranging for its sale, as the policy (Aviation 16 and Aviation 1) gives the underwriters the benefit of any salvage. It is essential that salvage not be sold until the claim has been settled and fully discharged, for such action will result in a waiver of later grounds for denial of the claim.

⁴⁰⁸Kahmann and McMurry v. Aetna Insurance Cooperative of Hartford, 242 F. 20 (2nd. Cir. 1917).

Although sales of aviation salvage may be conducted by various methods, Airclaims has found it most advantageous to conduct such sales through solicitation of sealed bids. Generally, an invitation to bid notice is sent to interested buyers, the number of such invitations determined by the type and size of aircraft and the market interest which is generated; a small general aviation aircraft will generate less interest within the salvage market than will a heavy jet transport. Photographs of the damaged aircraft are included with the solicitation letters, and the date for receipt of bids is generally established at approximately eight to ten weeks in the future. A requirement for a five percent deposit at the time of bid is included in the letter and strictly adhered to.

Bids are received by telex, mail, telegram, or in person, and are opened at the time specified in the solicitation letter. The amount of the highest bid is then communicated to the underwriters with Airclaims's recommendation of acceptance if the bid is adequate or of rejection if too low. The solicitation letter clearly states that the underwriters reserve the right to reject any or all bids for any reason, which clause is used to reject the highest bid if considered too low. When the underwriters signal their acceptance of the high bid, a bill of sale is issued to the salvage buyer. Generally, all costs of recovery, storage, guards, etc. are for the account of the salvage buyer.

Much of what has been discussed previously with regard to

aviation hull claims adjusting has equal application to a liability claim. The lead liability underwriter will assign an adjuster after receiving notification of the accident from the producing broker. If the claim bears the potential of involving large amounts of liability exposure, such as fatal airline accidents, the initial assignment will often be directed to a law firm rather than an aviation adjuster; smaller liability claims, especially those involving property damage, will generally be assigned directly to an adjuster.

In investigating and settling a liability claim, the adjuster must maintain careful surveillance over any needed repair process in order to ensure that the liability underwriters are not asked to produce compensation for repairs which were not required by the fault of the named assured under the liability policy. As is the case with hull claims, an individual with a liability claim will occasionally attempt to repair or replace damaged items of personal property which were not damaged by the fault of the assured and which are rightfully his responsibility. The liability adjuster must be aware of activity of this sort.

Aside from utilizing technical expertise to oversee any repair process, the adjuster in a liability claim must also possess the legal knowledge necessary to determine if the underwriters (through the assured) are actually liable on the claim, and this responsibility requires a sound knowledge of tort and aviation accident law. For example, if a claim is

brought against a hangarkeeper for damage to an aircraft stored in the facility, the adjuster for the liability underwriters must research the law of bailments in the particular jurisdiction and ultimately determine if the aircraft owner has a cause of action against the hangarkeeper. Generally speaking, aviation adjusting requires a much broader knowledge of law than do most other types of insurance adjusting, with the consequent result that many aviation claims personnel are lawyers or have a legal background complemented by technical expertise.

An adjuster's negotiation skills are usually called upon when settling a liability claim. Often dealing with representatives of the claimant, particularly attorneys, the adjuster must attempt to obtain a settlement of the claim which he believes is fair and equitable for both sides. Most of the time, such a settlement can be achieved, if only through difficult negotiations. Occasionally, however, a liability claimant will insist upon adhering to a demand which the adjuster feels is unreasonable and legally unjustified. In such a case, when negotiations are fruitless, the adjuster is under a duty to refuse settlement and advise the underwriters that litigation is the proper course of action. The named assured of a liability policy generally assumes no direct role in the settlement negotiations, although it is the practice of Airclaims to advise the assured of the settlement figure which is eventually reached.

Ethically speaking, the aviation insurance adjuster stands in a

delicate position, braced between the underwriters, the assured, and the producing broker, all of whom have different interests in a claim. The adjuster must always be aware that he is the representative and agent of the underwriters, and ultimately must endeavor to protect the interests of the underwriters in all matters.

The adjuster must also make certain that the assured or third party claimant receive a fair settlement of their claim, for it is in the best interests of the underwriters that such settlements are accomplished. An adjuster who negotiates settlements which are unfair will do nothing but damage the interests and reputations of the underwriters. Settlements must be kept fair to both parties involved in a claim, and it is the responsibility of the adjuster to make certain that such settlements are achieved in as equitable a manner as possible. The courts do not look kindly upon the vexatious refusal to settle a claim. ⁴⁰⁹

The adjuster is occasionally influenced by outside sources, and such influences, where improper, must be firmly resisted. The adjuster must always be mindful that outside interests have no responsibility for control or settlement of a claim. It is, of course, true that reasonable minds can differ greatly on what constitutes a fair settlement. When such occurs, the adjuster is bound to exercise his own best judgment, based on his legal and technical expertise.

⁴⁰⁹ Fohn v. Title Insurance Company of St. Louis, 529 S.W. 2d 1 (Mo. Banc. 1975); Housing Authority of the City of Clinton v. Baumann, 512 S.W. 2d 436 (Mo. App. 1974).

Proper and efficient aviation claims adjusting can be a strong right arm of the underwriters; sloppy, unfair, or inefficient adjusting can severely damage the underwriter and the London market as a whole. The underwriters generally never have contact with the assured; the benefits or harms which flow from a claim are all achieved through the adjuster.

CHAPTER SEVEN: REINSURANCE

The amounts of money involved in aviation insurance, particularly the large figures which settlement of a total loss of wide-body aircraft require, would effectively place the insurance of aircraft and aviation risks far beyond the financial capacity of most underwriters, syndicates, and pools. For example, the 1978 Tenerife crash is expected to result in hull loss settlements of over \$60,000,000 and liability claims in excess of \$100,000,000, sums which are clearly beyond the capability of most underwriters. Consequently, aviation risks, like marine risks and other insurance matters involving large monetary amounts, are often the basis of reinsurance policies. Reinsurance policies are insurance contracts for indemnification of the original insurer (the reinsured) by the reinsurer against loss or liability which the reinsured has sustained as a result of a separate contract of indemnification with an outside third party.⁴¹⁰

In aviation, reinsurance may be one of two basic types. Facultative reinsurance is conducted on a case-by-case, item-by-item basis, with an individual and separate decision being made as to each reinsurance contract. Full underwriting information is supplied for each risk, and premiums established on a per-risk basis. The process is time consuming, but allows for careful consideration of each risk presented for reinsurance.

⁴¹⁰ British Dominion General Insurance Company v. Duder, (1915) 2 K.B. 394; Friend Brothers v. Seaboard Surety Company, 316 Mass. 639, 56 N.E. 2d 6 (1944); Board of Insurance Commissioners v. Kansas City Title Company, 217 S.W. 2d 695 (Tex. Civ. App. 1949); Allemania Fire Insurance Company v. Firemans Fund Insurance Company, 209 U.S. 326 (1908).

Reinsurance can also be classified as treaty reinsurance, in which case reinsurance of risks presented by the reinsured are automatically accepted at a pre-arranged premium rate, by virtue of a contract for such arrangement entered into by the two parties at an earlier time. All terms, conditions, exclusions, etc., are incorporated into the contract (called a treaty) and the process consequently provides for rapid reinsurance at prearranged terms. The disadvantage to treaty reinsurance is that the reinsuring underwriter is unable to carefully scrutinize the risks presented; he is essentially required to reinsure any risk presented by the reinsured.

Treaty reinsurance can be further subdivided into three categories. Quota share reinsurance treaties require the reinsured to cede and the reinsurer to accept an agreed percentage of a certain class of insurance originally underwritten by the reinsured. Premiums are collected and claims disbursed on a pro-rata share basis, with the principal beneficiary of the quota share system being newly-started underwriters with limited capacity. A quota share reinsurance ~~treaty~~ allows subscription to greater amounts of insurance risks than their underwriting capacity alone will permit.

Surplus of share is an additional form of treaty reinsurance, and in such case the contract for reinsurance specifies a certain percentage of the risk to be retained by the reinsured, with the remainder being delegated to the reinsuring underwriters. There is usually an upper limit on the amount of risk to be accepted by the reinsurer, the precise amount often depending on the amount of insurance risk retained by the ceding company.

The third major type of treaty reinsurance commonly used by the aviation insurance market is referred to as excess of loss reinsurance. Under this system, the amount of insurance retained by the ceding company is expressed in terms of claims payouts; the reinsured will be responsible for any claim payout up to a certain dollar figure, after which the remainder of the settlement will be paid by the reinsurer. For example, the treaty may establish that the reinsurer is to pay all losses over \$30,000. The reinsured ceding underwriter or company would be required to cover all losses below or up to that amount. Premiums for excess of loss reinsurance treaties are based upon a percentage of total premiums received by the reinsured and the past claims record.

In all forms of reinsurance, the reinsuring underwriters maintain claims control, and consequently the lead reinsuring underwriter has the authority to select and appoint an adjuster in the event of a claim. Such an arrangement is logical, for the reinsurers stand to suffer the largest degree of economic loss in the event of a claim.

The law of reinsurance bears many similarities to that which regulates and controls standard insurance. While prohibited⁴¹¹ in the United Kingdom during early times, reinsurance has always been legal and accepted in the United States. No special authority is required for a regularly licensed insurance underwriter to engage in reinsurance under United States law as either a

⁴¹¹ MacKenzie v. Whitworth, (1875) LR 10 Exch. Div. 36

reinsuring underwriter or a reinsured.

Policies of reinsurance are dependent upon the absence of any fraud or misrepresentation on the part of the reinsured placing the risk with the reinsuring underwriters. Similar to the law regulating standard insurance policies, reinsurance law allows the reinsuring underwriters to void the policy or treaty in the event of misrepresentation ⁴¹² or non-disclosure of material fact on the part of the reinsured. The law of reinsurance is not as strict in its interpretation of what constitutes a misrepresentation or non-disclosure, in that the reinsured cannot be presumed to have as complete a knowledge of material information as the original assured. The law does provide, however, that any information likely to influence the judgment of the reinsuring underwriter and which ⁴¹³ is known to the reinsured must be communicated. This requirement holds true regardless of whether the nature of the reinsurance is facultative or treaty.

The liability of the reinsuring underwriter in a policy of reinsurance is contingent on the liability of the reinsured. The position of the original assured is not affected by any later reinsurance, but any defense which the original underwriter may have against the assured is equally assertable by the reinsuring underwriter against the reinsured. ⁴¹³ The amount of liability

⁴¹² Sun Mutual Insurance Company v. Ocean Insurance Company, 107 U.S. 485 (1882).

⁴¹³ Eagle Insurance Company v. Washington Insurance Company, 23 Pa. 250 (1873).

exposure faced by the reinsurer will never be for an amount larger⁴¹⁴ than the risk presented by the original policy of insurance.

The concept of privity is applicable to a reinsurance arrangement; the original assured has no rights under the policy against the reinsurer. The contract of reinsurance, and the rights and obligations pertaining thereto, are strictly between the⁴¹⁵ reinsuring underwriter and the reinsured.

⁴¹⁴ Eagle Insurance Company v. Lafayette Insurance Company, 9 Ind. 443 (1897).

⁴¹⁵ Globe National Fire Insurance Company v. American Bonding and Casualty Company, 205 Iowa 1085, 217 N.W. 268 (1928); Colonial Brick Corporation v. Federal Surety Company, 5 F. Supp. 247 (D. Md.) aff'd 72 F. 2d 964 (4th Cir.) cert. den. 294 U.S. 711 (1943); Vial v. Norwich Union Fire Insurance Company, 257 Ill. 355, 100 N.E. 929 (1913).

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Aug. 20/8/10

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From Mr. C. H. Thorpe
5 Caroline Place
Rainham Kent

Sir

I am writing to inform you that where Mr. Moisant's
Aeroplane rested on the 18th of August on the Allotments
as practically ruined all my Winter crops and Food
which I had provided for my home & I spoke to
Mr. Moisant this morning and he told me to send
my Bill to Mr. Wakelley and it would be alright
So I have visited my Garden this afternoon and I
find that the damage is great for a Working
man which he is relying on for the winter it
is not only the crops spoiled but the Labour I
have done right after right seems in vain and
Heart Breaking both for me and my wife for
which we all know could not be avoided as
accidents will happen Sir there is two allotments
very much damaged both together but one is
mine and I am writing for myself I have
20 Rod of ground which is rented with the house
I live in and 15 Rod is Practically ruined
the crops to Sir if you will kindly give this your
consideration I shall be very thankful for I don't
think I am asking for too more than my rights
claiming damage for my vegetable and Labour
which has been done and what has got to be done
to get in order again

Y. S. d

4. 15. 2

Your Truly

Received the sum of £3
(three pounds) C. H. Thorpe.

— by certified post — 22/10/10

C. H. Thorpe
5 Caroline Place
Rainham Kent

AVIATION POLICY.

Union Insurance Society of Canton, Limited.

ESTABLISHED 1888.

(INCORPORATED IN HONGKONG)

Policy No. A 22/323

Whereas

Messrs Daimler Hire Limited

of Knightsbridge W.

(hereinafter called "the Assured") have paid One thousand nine hundred and fifty pounds Premium or Consideration

to us, the UNION INSURANCE SOCIETY OF CANTON, LIMITED (hereinafter called "the Society") to insure the sums and risks specified in Sections

"A" "B" "C" "E" "F" & "H" for a period of twelve months commencing at midnight on the twenty second day of June 1923 and ending midnight on the twenty second day of June 1924 as per contract attached

against loss or damage, as hereinafter mentioned in respect of D.H. 34 G-EBBS other D.H. 34 machines to be covered as per contract attached

aircraft described in the Schedule hereto.

THIS INSURANCE IS SUBJECT TO THE CONTRACT ATTACHED.

Now know ye that we, the Society, do hereby bind ourselves to indemnify the Assured (subject to the conditions hereinafter mentioned) as follows:-

RISKS INSURED.

SECTION A.

RISK COVERED.
Against actual loss of or damage (not being malicious damage) to the aircraft described in the Schedule whilst in flight or taxiing on the aerodrome either by the elements (excluding fire) or by the aircraft being in collision with the earth or any other object moving or stationary or by impact with water.
AMOUNT INSURED AND LIMIT OF LIABILITY.
The Society shall not be liable for more than £ 6500 in all under this section nor in respect of any one aircraft for more than the amount set opposite such aircraft in column "A" of the Schedule but except in the case of total loss the Society shall only be liable to pay the excess of £ 150 in respect of any one claim on any one aircraft.

SECTION B.

RISK COVERED.
Against actual total loss only of the aircraft described in the Schedule whilst in flight or taxiing on the aerodrome either by the elements (excluding fire) or by the aircraft being in collision with the earth or any other object moving or stationary or by impact with water.
Actual damage amounting to 85 per cent. of the value of the aircraft shall constitute a total loss.
In ascertaining the actual damage for this purpose no account is to be taken of the cost of replacements in so far as they exceed the makers' value in the United Kingdom plus the cost of any necessary transport nor of the cost of labour in excess of 50 % of the makers' value in the United Kingdom of any damaged part which has to be replaced nor of salvage expenses.
AMOUNT INSURED AND LIMIT OF LIABILITY.
The Society shall not be liable for more than £ 6500 in all under this section nor in respect of any one aircraft for more than the amount set opposite such aircraft in column "B" of the Schedule.

SECTION C.

RISK COVERED.
Against constructive total loss of the aircraft described in the Schedule whilst in flight or taxiing on the aerodrome either by the elements (excluding fire) or by the aircraft being in collision with the earth or any other object moving or stationary or by impact with water.
Actual damage plus salvage expenses amounting to the aggregate to 85 per cent. of the value of the aircraft shall constitute a constructive total loss.
In ascertaining the actual damage for this purpose no account is to be taken of the cost of replacements in so far as they exceed the makers' value in the United Kingdom plus the cost of any necessary transport nor of the cost of labour in excess of 50 % of the makers' value in the United Kingdom of any damaged part which has to be replaced.
AMOUNT INSURED AND LIMIT OF LIABILITY.
The Society shall not be liable for more than £ 6500 in all under this section nor in respect of any one aircraft for more than the amount set opposite such aircraft in column "C" of the Schedule.

SECTION D.

RISK COVERED.
Against accidental or malicious damage (other than by the elements or by the Assured or his employees) to the aircraft described in the Schedule.
i. Whilst the aircraft is in the hangar.
ii. Whilst the aircraft is outside the hangar and on the ground provided that the aircraft is neither taxiing on the aerodrome nor in flight and provided further that the aircraft be not left outside the hangar during the night (unless as a necessary result of a forced landing or accident) and that when the aircraft is outside the hangar it is properly pegged down and secured whenever reasonably practicable.

SPECIAL EXCLUSIONS.

Damage caused:-
(a) During transit by road, rail or water whilst the aircraft is not under its own power.
(b) Whilst the engine is running in the hangar if set in motion by or under instructions from the Assured or his employees or authorised persons.
AMOUNT INSURED AND LIMIT OF LIABILITY.
The Society shall not be liable for more than £ 6500 in all under this section nor in respect of any one aircraft for more than the amount set opposite such aircraft in column "D" of the Schedule, but except in the case of total loss the Society shall only be liable to pay the excess of £ 150 in respect of any one claim on any one aircraft.

SECTION E.

RISK COVERED.
Against actual loss or damage to the aircraft described in the Schedule by the elements (excluding fire).
i. Whilst the aircraft is in the hangar.
ii. Whilst the aircraft is outside the hangar and on the ground provided that the aircraft is neither taxiing on the aerodrome nor in flight and provided further that the aircraft be not left outside the hangar during the night or during the prevalence of high wind (unless as a necessary result of a forced landing or accident) and that when the aircraft is outside the hangar it is properly pegged down and secured whenever reasonably practicable.
AMOUNT INSURED AND LIMIT OF LIABILITY.
The Society shall not be liable for more than £ 6500 in all under this section nor in respect of any one aircraft for more than the amount set opposite such aircraft in column "E" of the Schedule, but except in the case of total loss the Society shall only be liable to pay the excess of £ 150 in respect of any one claim on any one aircraft.

Fire, Lightning, Explosion and Self-ignition.

Burglary and Theft.

Third Party Damage.

Legal liability to passengers.

SECTION F.

RISK COVERED.
Against actual loss of or damage to the aircraft described in the Schedule by fire, lightning, explosion or self-ignition.
i. Whilst the aircraft is in the hangar provided that no petrol or other inflammable liquid is stored and that no naked light is exposed in the hangar and also that a notice prohibiting smoking is exhibited in the hangar.
ii. Whilst the aircraft is outside the hangar and on the ground and not in flight.
iii. Whilst the aircraft is in flight.

SPECIAL EXCLUSIONS.

Damage caused:-
(a) During transit by road, rail or water whilst the aircraft is not under its own power.
(b) Whilst the engine is running in the hangar if set in motion by or under instructions from the Assured or his employees or authorised persons.

AMOUNT INSURED AND LIMIT OF LIABILITY.

The Society shall not be liable for more than £ 6500 in all under this Section nor in respect of any one aircraft for more than the amount set opposite such aircraft in column "F" of the Schedule, but except in the case of total loss the Society shall only be liable to pay the excess of £ 150 in respect of any one claim on any one aircraft.

SECTION G.

RISK COVERED.
Against actual loss in excess of £5 in respect of any one occurrence by burglary or theft (including damage to the aircraft by any attempt thereof) of the aircraft described in the Schedule or any part thereof provided that the aircraft be not left outside the hangar during the night (unless as a necessary result of a forced landing or accident).

SPECIAL EXCLUSIONS.

(a) Loss or damage by burglary or theft or any attempt thereof by the Assured's employees.
(b) Loss or damage by theft occurring between the time of a forced landing and resumption of flight if the aircraft be left unattended unless from some unavoidable cause.

AMOUNT INSURED AND LIMIT OF LIABILITY.

The Society shall not be liable for more than £ 6500 in all under this Section nor in respect of any one aircraft for more than the amount set opposite such aircraft in column "G" of the Schedule.

SECTION H.

RISK COVERED.
Against all sums which the Assured shall become legally liable to pay to any other person or persons (excluding claims by or on behalf of or in respect of property belonging to or under the control of the Assured, the Assured's employees, authorised persons, members of the Assured's household, passengers and all persons being conveyed in or mounting into or dismounting from the aircraft) as compensation for accidental bodily injury or in respect of damage to property directly caused by the flying or driving of the aircraft including any legal expenses incurred with the Society's consent in writing.

SPECIAL EXCLUSIONS.

(a) Loss of or damage to property by spectators or by any concourse or assembly of persons.
(b) All liability direct or indirect under the Workmen's Compensation Acts or under any statutory liability whatsoever imposed by the Imperial Parliament of Great Britain or by the legislative authority in any part of the British Empire or in any foreign country.
(c) Damage caused whilst the engine is running in the hangar if set in motion by or under instructions from the Assured or his employees or authorised persons.

AMOUNT INSURED AND LIMIT OF LIABILITY.

The Society shall not be liable under this Section for more than £ 5000 in respect of claims in connection with any one aircraft nor for more than £2,500 in respect of claims in connection with any one aircraft in respect of any one accident, but the Society shall only be liable to pay the excess of £ 5 in respect of any one claim on any one aircraft.

SECTION I.

RISK COVERED.
Against all sums which the Assured shall become legally liable to pay in consequence of an accident to any passenger whilst being carried in the aircraft described in the Schedule or whilst mounting into or dismounting therefrom provided that all passengers shall be carried on the terms of tickets which shall have been issued upon them in a conspicuous manner a condition that no responsibility shall be accepted for any accident that may arise however caused and whether due to negligence or not.

AMOUNT INSURED AND LIMIT OF LIABILITY.

The Society shall not be liable under this Section for more than £ 5000 in respect of claims in connection with any one aircraft nor for more than £ 2,500 in respect of claims in connection with any one aircraft in respect of any one accident, but the Society shall only be liable to pay the excess of £ 5 in respect of any one claim on any one aircraft.

GENERAL EXCLUSIONS.

1. Loss or damage due to the following causes is expressly excluded from this insurance:—
 - A. War, seizure, capture, military or usurped power, insurrections, riots, strikes, civil commotions and earthquakes.
 - B. Wear and tear, depreciation, inherent defect and mechanical breakdown, but damage resulting from a mechanical breakdown is not excluded if otherwise covered by this Policy.
 - C. Willful or malicious damage (except under Section D) or loss or damage resulting from negligence of the Assured or his employees or of authorised persons whilst the aircraft is not in flight.
 - D. Consequential loss on the part of the Assured however arising.
2. Loss or damage occurring whilst the aircraft is engaged in any of the following acts is expressly excluded from this insurance:—
 - A. First flights, experimental flights, racing, pace-making, aerobatics and flying at night.
 - B. In the case of aircraft (other than airships, seaplanes, flying boats and amphibious aircraft) whilst flying over the sea beyond one mile from the coast line measured from high water mark unless due to *force majeure* and in the case of seaplanes and flying boats whilst flying over the land beyond one mile from the coast line measured as aforesaid unless due to *force majeure*.
 - C. Whilst carrying any load or number of persons in excess of the cargo capacity or seating capacity (as the case may be) *not appropriate to the aircraft.*
 - D. Whilst the aircraft is being used for any purpose or purposes other than those set forth in this Policy.

WARRANTIES.

- This insurance is effected on the basis of the following warranties:—
1. The aircraft shall be airworthy and in every way fit to fly at the commencement of each flight.
 2. The particulars contained in the Schedule are correct and no change shall be made in the aircraft or the engine (the aircraft and the engine for this purpose are confined to the identical aircraft and engine as marked and/or numbered in the Schedule) without the consent in writing of the Society.

DEFINITIONS.

- When used throughout this Policy the following expressions shall have the following meanings respectively assigned to them namely:—
- AEROBATICS** means "Looping the Loop," "upside down flying," "spinning," "rolling," "contour chasing," and any other form of trick flying.
- AERODROME** means the open ground adjoining the hangar on which flight is normally commenced and ended and in the United Kingdom shall be restricted to a licensed aerodrome, and where seaplanes, flying boats and amphibious aircraft are concerned means the water immediately adjoining the hangar and within a radius of half a mile thereof on which flight is normally commenced and ended.
- AIRCRAFT** means aeroplanes, seaplanes, flying boats, amphibious aircraft and dirigible airships and shall include the engine or engines and accessories thereof and such instruments as are permanently affixed to the fabric of the aircraft.
- AUTHORISED PERSONS** means any persons not in the employ of the Assured who may nevertheless be lawfully engaged in or about or in connection with the housing, cleaning, repairing or navigating of the aircraft or any other duties whatsoever in connection with the aircraft.
- DEPRECIATION** means the deterioration by use of the aircraft *which shall be the first to be borne by the Assured and shall be apportioned to the rate of depreciation of the value of the aircraft for every hour of flight.*
- ENGINE** includes the engine, the petrol, oil, water and ignition systems and any other part, whether it be mechanical or not, essential to the safety or running of the engine.
- EXPERIMENTAL FLIGHT** means a flight experimenting with or testing new parts (excluding replacement of standard parts) or new devices in connection with aviation.
- FIRE** means fire, lightning, explosion and self-ignition.
- FIRST FLIGHT** means all flights after construction or reconstruction until a complete circuit in the air and a successful landing (other than a forced landing) have been made.
- FLIGHT** shall except in the case of an airship be deemed to commence from the time the aircraft moves forward in taking off for the actual air transit and shall be deemed to end on the aircraft coming to rest after contact with the earth or water, and in the case of an airship shall be deemed to commence when as a step to an ascent all guy ropes have been cast off and/or the airship is moving from the ground and in either case is free of all contact with the ground and shall be deemed to end when the airship has descended and the guy ropes or other means of mooring have been made fast.
- FOG** means a fog or mist rendering the ground invisible from any height up to 500 feet.
- HANGAR** means a house, shed or other roofed-in structure for the housing of aircraft provided it is capable of withstanding normal weather and climatic conditions.
- HIGH WIND** means a wind exceeding a velocity of 40 miles per hour on the ground.
- MECHANICAL BREAKDOWN** means a breakdown of the engine or any other mechanical part whatsoever due to some cause other than a peril insured against.
- NIGHT** means the time between one hour after sunset and one hour before sunrise.
- PASSENGER** means a person carried in the aircraft in consideration of a fare.
- RECONSTRUCTION** means any material overhaul of the aircraft or alteration in the design of the aircraft or any part thereof or in the type of engine used therein.
- SALVAGE EXPENSES** means the cost of salvaging and of removing the aircraft to a place where it can be repaired and/or where the flight can be resumed.
- SCHEDULE (the)** means the Schedule attached hereto.
- TAXYING ON THE AERODROME.** An aircraft shall be deemed to be taxiing on the aerodrome when it is moving under its own power on the aerodrome outside a radius of fifteen feet from the hangar but not in flight.
- TIME.** Any reference to time means Greenwich mean time.
- VALUE OF THE AIRCRAFT** means the makers' current price at the date of the commencement of the risk assured by this policy for a new aircraft in all respects similar.

CONDITIONS.

- This insurance is effected subject to the following conditions, namely:—
1. This insurance only covers the aircraft (other than airships seaplanes and flying boats) whilst on or over the land of the United Kingdom or within one mile from the coast line thereof measured from high water mark and in the case of seaplanes and flying boats whilst on or over the sea within miles of the United Kingdom or on or over the land within one mile from the coast line thereof measured as aforesaid, and in the case of amphibious aircraft whilst on or over the land of the United Kingdom or on or over the sea within miles of the United Kingdom. Provided that the protection of this Policy shall not cease if the aforesaid distances be exceeded by reason of *force majeure*.
 2. No flight shall be commenced without the consent in writing of the Society:
 - (a) In the case of aircraft other than airships, seaplanes, flying boats and amphibious machines except from an aerodrome or from ground reasonably suitable for the purpose.
 - (b) In the case of seaplanes and flying boats except from the sea or from water reasonably suitable for the purpose.
 - (c) In the case of amphibious machines except from an aerodrome or the sea or from ground or water reasonably suitable for the purpose.
 3. No claim shall attach to this Policy for loss or damage occurring:—
 - (a) Whilst the aircraft is being flown or driven by any person other than the pilot or pilots named herein or navigated by any person other than the navigator or navigators named herein, and in the case of dual control aircraft when being flown or driven without both pilots named herein being on board the aircraft.
 - (b) Whilst the aircraft is left unattended in the open unless from some unavoidable cause.
 - (c) In respect of any flight commenced during the prevalence of high wind or fog.
 4. In the case of insurance from place to place no deviation shall be made from the ordinary route unless agreed by the Society and set out in this Policy. A deviation due to *force majeure* shall not be deemed a deviation.
 5. The Assured and his employees and authorised persons shall comply with the provisions of the Air Navigation Acts, 1911 to 1919 and any further statutory enactments and all statutory rules and orders made or to be made thereunder and whilst the aircraft is outside the United Kingdom the Assured and his employees and authorised persons shall comply with the rules and regulations for the time being in force with reference to aviation in any place or country in which the aircraft may be for the time being.
 6. In the case of loss or damage to the aircraft by a peril insured against the Assured or his servants or agents shall take such steps as are reasonably necessary in or about the protection, safeguard or temporary repair of the aircraft without prejudice to this insurance and all reasonable charges incurred in connection therewith shall form part of the claim and shall be paid by the Society.
 7. In the event of an accident likely to give rise to a claim under this Policy immediate notice shall be given where practicable by telegram or by telephone and shall be confirmed in writing to the Society within 24 hours of the accident and no dismantling or repairs (except dismantling so far as may be necessary to enable the damaged aircraft to be removed to a place of safety or repairs so far as they are temporary repairs) shall be commenced without the consent of the Society in writing or until they have had a reasonable opportunity of inspection. The Assured shall also give to the Society full and immediate information as to the circumstances of the accident and all claims made with the names and addresses of claimants and all witnesses of the accident so far as it is reasonably possible to ascertain them, and shall also call upon so to do to send to the Society's Agent the Pilot of the aircraft in order to give supplemental evidence.
 8. All claims shall be supported by evidence and all other information as required by Government Regulations. The Log Books shall when possible be certified correct each flying day by the Assured or his responsible Agent. The Assured shall produce as and when the Society may require all such estimates, vouchers, documents, proofs, explanations and information with respect to any loss or damage as may be reasonably demanded.
 9. In the event of damage to the aircraft the liability of the Society is limited to the actual cost of repairs incurred in connection therewith. "Cost of Repairs" shall not exceed the net cost price of the spare parts or materials from the makers plus reasonable expenses of forwarding such spare parts or materials and the actual cost of labour employed plus 50% on the cost of such labour to cover overhead and establishment charges.
 10. In the event of any claim for loss of the aircraft or any part thereof the Society shall only be liable for the sum which would but for this condition be recoverable hereunder less an allowance for depreciation (if any) as herein defined, and in the event of the Society electing to replace the aircraft or any part thereof, the Assured shall pay to the Society a sum equal to the said allowance for depreciation.
 11. This Insurance is subject to average and if in respect of any one risk on any one aircraft the amount insured is less than the value of the aircraft the Assured shall be deemed to be his own insurer to the extent of the difference between the amount insured and the value as aforesaid and shall bear a rateable proportion of each and every loss accordingly.
 12. The Assured shall not make any payment, settlement or admission of liability in respect of any accident or injury for which the Society may be liable under this Policy without the consent in writing of the Society.
 13. The Society shall be entitled to take the conduct and control of all negotiations or of all or any proceedings in respect of any claim for which the Society may be liable and the Society shall be entitled to use the name of the Assured to enforce for the benefit of the Society any right of action which may accrue to the Assured against a third party in respect of the accident damage or loss for which the Assured claims benefit from the Society or any order made for costs or otherwise or to make or defend any claim for indemnity or damages against any person or Company or for any other purpose connected with this Policy. The Society shall have full control and discretion in the settlement of any claim and in the conduct of any proceedings including the right to abandon the same at any time.
 14. The Society shall only be liable to pay any claim under this Policy if and so far as the same is not recoverable under any other insurance.
 15. If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall thereupon become void and all the Assured's rights hereunder shall be forfeited.
 16. The Society or their agents or workmen shall at all times have access to the premises whereon the property insured is situated for the purpose of inspection.
 17. The Society may cancel this Policy at any time by giving to the Assured seven days' notice in writing and at the expiration of such period the Policy shall become void and the Society shall return to the Assured the premium paid by the Assured in respect of the unexpired part of the term of the Policy.
 18. This Policy shall not be assigned to any third party unless with the consent in writing of the Society.
 19. No alteration or addition to this Policy shall be valid unless initiated by the Society.
 20. This Policy shall be construed and governed by the Laws of England notwithstanding that the Assured may be domiciled or resident or the accident or event in respect of which a claim arises may happen outside England.
 21. For the purpose of construing this Policy each special exclusion is to be deemed to apply to the particular section in which it is set out and to limit the risks thereby assured. All general exclusions are to be deemed to be included in each section so far as applicable and to limit the risks thereby assured. Words denoting the singular number only shall include the plural number and vice versa.
 22. The marginal notes are for the sake of convenience only and shall not affect the interpretation or construction of this Policy.
 23. The due observance of the conditions of this Policy shall be a condition precedent to the liability of the Society.
 24. If any difference or dispute of any kind whatsoever shall arise between the Assured and the Society as to the extent and meaning of this Policy, or in respect of any claim or of any matter or thing or liability arising or alleged to have arisen hereunder, or otherwise connected herewith directly or indirectly, the same shall, unless the Assured and the Society agree to the contrary, be referred to arbitration in London to two arbitrators one to be appointed by each party and in the event of the said arbitrators failing to agree then to an umpire to be appointed by the said arbitrators and every reference hereunder shall be subject in all respects to the provisions of the Arbitration Act 1889 and any statutory modification or re-enactment thereof, and an award given in favour of the Assured in such an arbitration shall be a condition precedent to any right of action against the Society in respect of such difference or dispute.

Witness whereof I, the Branch Manager of the UNION INSURANCE SOCIETY OF CANTON, LIMITED, on behalf of the said Society have subscribed my Name

Dated in London, the twenty third day of June One Thousand Nine Hundred and twenty two

For and on behalf of the UNION INSURANCE SOCIETY OF CANTON, LIMITED,

Examined [Signature]

[ALL RIGHTS OF COPYRIGHT RESERVED.]

Branch Manager.

THE SCHEDULE.

PARTICULARS.

AIRCRAFT (AS LICENSED BY C. C. B.)							VALUE, INCLUDING ENGINE.		ENGINE.		
Reference No.	Make and Type.	When Constructed.		Seating Capacity (including Pilot)	Cargo Capacity.		List Price, New.	Estimated Present Value.	H.P. Make and Registered Number.	When Constructed.	
		Year.	Month.		With Passengers.	Without Passengers.				Year.	Month.
D.H. 34	G-EBBS							£6500	450 Napier Lion		

LIMITS OF LIABILITY.

Reference No.	Accidental Damage to the Aircraft in flight or Taxying on the Aerodrome. "A"	Actual Total Loss. "B"	Constructive Total Loss. "C"	Accidental or Malicious Damage to the Aircraft on the Ground. "D"	Storm and Tempest. "E"	Fire. "F"	Burglary and Theft. "G"	THIRD PARTY. "H"		LEGAL LIABILITY TO PASSENGERS. "J"	
								In all.	One Accident.	In all.	One Accident.
	6500 ex 130	6500		6500 ex 130	6500 ex 130	6500 ex 130		5000	2000 1000 ex £5		

LIST OF PILOTS. NAMES.	LIST OF NAVIGATORS. NAMES.	PERIOD OF INSURANCE. DATE DECLARED.
as per contract attached		12 months 23/6/22

Union Insurance Society of Canton, Limited.

2. WHITE LION COURT.

AVIATION DEPARTMENT.

CORNHILL, E.C.3.

Telephone—CENTRAL 6218.

23rd June 1922

CONTRACT.

MESSRS DAIMLER HIRE LIMITED

TO COVER: Three D.H.34 aircraft fitted with Napier Lion Engines

Machines valued £4,100 each
Engines " £2,400 "

PERIOD: Twelve months at dates to be declared.

COVER: Accidental Damage Full value excess 2% each & every Claim
Accidental & Malicious Damage " " " " " " " " " " " "
Storm & Tempest " " " " " " " " " " " "
Fire " " " " " " " " " " " "
Third Party ^{£1000} ~~£1000~~ any one accident £5000 in all per machine
excess £5 each & every Claim.

ROUTES: The recognised regular Route between London and Paris including the the Channel crossing if the English ~~Channel~~ Coast and the French Coasts respectively are crossed seaward bound between Winchelsea and Dover and between Calais and Le Crotoy. Should the Company desire to transfer from the London to Paris route, to another, the new route shall be submitted to the Society for approval under the terms of this Policy and if the new route is not approved then the Company shall be at liberty to give the Society seven days notice of the cancellation of these policies and at the expiration of such period, the policy shall become void and the Society shall return to the Company a proportionate part of the premium corresponding to the unexpired term of the policy.

INSPECTION: The Insurers and/or the Surveyors shall be permitted to make at any reasonable time, any inspection, surveys and enquiries, which they may think fit during the currency of the policy. The Company agree to carry the Insurers and/or their Surveyors in their aircraft free of charge on journeys made in connection with these policies, provided always, that accommodation in the aircraft is available.

DEPRECIATION. No reduction in value of the aircraft under the damage section of this policy shall be admitted for the first six months from the date of delivery of each aircraft to the Company. At the expiration of the six months, each aircraft shall be surveyed at the expense of the Company, by the agreed surveyor who shall assess the depreciation and this new value for the aircraft shall represent the value under the damage clause for the next three months. At the expiration of the ninth month, the aircraft shall again be surveyed at the expense of the Company by the agreed Surveyor who shall again assess the depreciation and this new value shall represent the value of the aircraft under the damage section of this policy for the remaining three months of the period of this Policy, provided always, that at no time during the period of this policy shall the value of the aircraft be depreciated at a lower rate than 33. 1/3% per annum.

WARRANTIES: That the Company furnish a complete price list of spare parts of both engine and aircraft from the manufacturers and the Company shall indemnify the Society against any increase in such prices; should there be any fall in prices, the benefit shall be with the Society. The Society agree in this connection to make the terms of clause nine of the policy to provide that when repairs are carried out by Messrs

Union Insurance Society of Canton, Limited.

AVIATION DEPARTMENT.

Telephone—CENTRAL 8214.

2, WHITE LION COURT,

CORNHILL, E.C.3.

23rd June 1922

CONTRACT.

MESSRS DAIMLER HIRE LIMITED (CONTD)

De Havilland Aircraft Company or another approved aircraft manufacturing Company., the 50% on labour will be increased to 120% on labour. In the event of the repairs being carried out by the Company, 50% only on labour will be payable as provided for in clause nine. That the aircraft be stored in approved hangars, whilst not in use and that all regulations against fire whilst in such hangars shall be approved by the Society and strictly enforced.

That the Company agree to keep five spare engines in reserve in addition to the three installed in the aircraft.

That every pilot is limited to ~~seventy~~ ^{seventy} hours flying per month.

That the only surveyors to be employed by the Society or the Company in connection with this policy shall be one of the following:-

Colonel S. Heckstall Smith

Messrs Toplis & Harding

Colonel Mervyn O'Gorman.

For any official of the Society

PILOTS

That the following are the approved pilots: *im*

~~Capt. W. J. Hinchcliffe~~ *d. J. Robinson*

~~Capt. E. D. G. Herne~~ *Y. L. L. L.*

Mr. L. G. Robinson

Mr. H. S. Robertson

~~Mr. V. W. Dickinson.~~

and that all other pilots employed by the Company shall be submitted to the Society for approval before acceptance and at any time the Society shall have the right to withdraw their approval of any pilot.

That wireless telephone and navigation instruments together with means for efficiently lighting same as approved by the Society, shall be carried in the aircraft and that these shall be certified monthly as being in working order by a qualified ground engineer.

That any additional aircraft placed on the Service shall be immediately declared by the Company and accepted at pro rata rates subject to the Society's acceptance and approval.

That Underwriters agree to extend their policy to operate from one hour before sunrise until one half an hour after sunset during the months from ~~October~~ ^{March} to ~~March~~ ^{October} and during the time from two hours before sunrise to one and a quarter hours after sunset during the months from ~~March~~ ^{March} to ~~October~~ ^{October}.

That the Society approve of the Bessoneaux hangars at present being used by the Company at Croydon and the Society approve also of all the hangars in use at Le Bourget and all the ~~other~~ ^{other} approved aerodromes on the route.

AERODROMES:

That the Company shall be permitted to use any of the approved aerodromes as set out below for the purpose of picking up or setting down passengers goods or mails.

The aerodromes approved by the Society are as follows:-

Croydon, Biggin Hill, Lyapne, St Inglevert, Poix
Beauvais and Le Bourget.

The Society agree to enquire into and consider the use of
Berck aerodrome.

Union Insurance Society of Canton, Limited.

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AVIATION DEPARTMENT.

Telephone—CENTRAL 6216.

2, WHITE LION COURT,

CORNHILL, E.C. 3.

23rd June 192

CONTRACT.

MESSRS DAIMLER HIRE LIMITED (CONTD)

TAXYING:

The Society approve of all reasonable taxying by approved Ground Engineers employed by the Company, in addition to taxying by the approved pilots. The Company shall, of course, submit to the Society the ~~names~~ names of any ground engineers they desire a proved for taxying. That the Society approve of the following ground engineers for taxying of the aircraft:-

Mr A.P. Sargeant
Mr. J.W. Stirling
Mr. W.P. Calvert.

PREMIUM

£30 per cent (THIRTY POUNDS) per annum.

REPAIRS.

The Society agree that repairs to the extent of an amount not exceeding Two hundred Pounds (£200) may be proceeded with without the prior consent of the Society.

Condition 20a.

It is hereby agreed and declared that in the event of any Third Party Damage arising outside the jurisdiction of English Courts and as a result the Assured find themselves liable to compensate at a different rate, this policy will reimburse the Assured up to the limits described in Section H of the policy.

Endorsement attaching to policy No. 22/323.

Additional aerodromes approved under this policy:-

Amsterdam, Rotterdam, Alexandra Park, Manchester, Castle Bromwich, Stag Lane, Hendon *Motorax &* Cricklewood. *LA*
Ostend and Flushing are also approved, but the Society reserve themselves the right to withdraw such approval at any time during the currency of this policy.

UNION INSURANCE SOCIETY OF CANAL, L^d

ALTERATIONS IN POLICY.

It is hereby agreed and declared that the following alterations shall be treated as forming part of the Policy:-

GENERAL EXCLUSION 2 (A) to read:-

First flights, experimental flights, racing, competitions, record breaking, aerobatics and flying at night.

ADDITIONAL DEFINITIONS.

DEMONSTRATION FLIGHT means a flight made for the purpose of exhibiting to prospective purchasers or other persons the capabilities of an aircraft.

ANY ONE ACCIDENT means any one accident or series of accidents arising out of one event.

DEFINITION "FOG" to read:-

FOG means a fog or mist rendering the ground invisible from a height up to 500 feet or reducing the horizontal visibility in any direction to less than two miles.

CONDITION 3 (c) to read:-

In respect of any flight commenced during the prevalence of high wind, fog, mist or clouds.

Endorsement attaching to policy 22/323.

It is hereby agreed that each aircraft covered under this policy for the purpose of Depreciation shall be deemed to be valued at £6500 on commencing date of risk as set out in the policy and endorsements thereto, and shall be valued at this sum for the first six months on risk, thereafter the Depreciation clause as set out in the Contract to apply.

Endorsement attaching to Policy No. 22/323.

It is hereby agreed to cover all passengers carried by Messrs. Daimler Hire, Ltd. against Legal Liability to Passengers as per Section I of the attached policy, limited to £1000 any one passenger, excess £5 each & every claim, at a premium of 3/6 per passenger per flight, all passengers to be declared.

COMPANY LIMITED.

3-4, LIME STREET, LONDON, E.C.3.

SPECIMEN

AIRCRAFT INSURANCE

Policy No. : Date of Expiry : Premium :

Whereas

(hereinafter called the "Insured") has applied to The BRITISH AVIATION INSURANCE COMPANY LIMITED (hereinafter called "the Company"), for the Insurance hereinafter set forth relative to the AIRCRAFT described in the Schedule hereto (which or either or any of which is or are hereinafter called "the Aircraft") and/or has made or caused to be made a written proposal and declaration containing certain particulars and statements which together with any other statement made in writing by the Insured or anyone acting on behalf of the Insured for the purposes of this Policy shall be the basis of this Contract and incorporated therein.

Now this Policy Witnesses that subject to and in consideration of the payment to the Company of the above-mentioned Premium for the said Insurance from date hereof to date of expiry above stated both days inclusive and subject to the provisions, exclusions, restrictions, terms and conditions herein expressed and contained or hereon endorsed and to the limitations contained in the Schedule of Covers hereto the Company hereby undertakes as follows :

SECTION "A."—ACCIDENTAL DAMAGE.

(Excluding Fire & Theft.)

The Company will indemnify the Insured in respect of :—

1. ~~Flight and Towing Risks.~~

~~Accidental loss or damage to the Aircraft directly or indirectly caused by collision with an external object (excluding mechanical breakdowns and breakdowns but including such breakdowns resulting therefrom) whilst in flight or taxiing, unless such loss or damage is due to self-ignition or explosion or the loss or damage results from fire or explosion but covers~~

2. ~~Ground Risks. AND TAKING RISKS.~~

~~Accidental loss or damage to the Aircraft caused by the elements or due to accidental or malicious damage while on the ground, but excluding loss or damage due to or arising out of or directly or indirectly connected with the operations of flight or taxiing or as the result of Theft, Fire or Explosion now or hereafter occurring.~~

SECTION "B."—FIRE.

The Company will indemnify the Insured in respect of the loss of or damage to the Aircraft caused by Fire, Self-Ignition or Explosion :—

- (1) ~~While in flight or taxiing or directly caused by collision while in flight or taxiing ;~~
- (2) ~~While on the ground, unless the Fire, Self-Ignition or Explosion is due to or arises out of or is directly or indirectly connected with the operations of flight or taxiing.~~

~~Whereas it is the duty of the Insured to take all reasonable precautions against fire and in particular (a) that he will maintain an adequate and efficient supply of fire extinguishers in any hangar owned or leased by him in which his aircraft may be stored and (b) that he will not smoke or permit smoking or other likely causes of fire in the vicinity of the aircraft at such times as the tanks are being filled or in proximity to any place where petrol is stored.~~

SECTION "C."—THEFT.

The Company will indemnify the Insured in respect of the loss of or damage to the Aircraft or any part thereof by Theft, or Larceny, or any attempt thereof unless by any servant or agent or person under the control of the Insured.

SECTION "D."—THIRD PARTY.

The Company will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay (including legal expenses properly incurred with the Company's consent) as compensation to any person for accidental bodily injury or for accidental damage to property or animals directly caused by the ~~flying or landing or the running of the aircraft or the aircraft.~~

~~THROUGH OR IN CONNECTION WITH THE INSURED AIRCRAFT'S AIRLINES DROPPED THEREFROM.~~

EXCEPTIONS.

1. The liability of the Company shall not extend to indemnify the Insured under this Section in respect of injury, damage or loss caused to or sustained by

- (a) Any sub-contractor or member of the household or family of the Insured.
- (b) Any person in the service of ~~or acting on behalf of~~ the Insured ~~or of any sub-contractor or member.~~
- (c) Any person being conveyed whether as passenger or otherwise in or mounting into or dismounting from the Aircraft.

2. The indemnity hereunder shall not extend to any property belonging to ~~or in the custody or control of~~ the Insured ~~his servant, or agent.~~

AVIATION POLICY

THE BRITISH AVIATION
INSURANCE CO. LTD.
3-4, LIME STREET, LONDON, E.C.3.

SCHEDULE OF AIRCRAFT INSURED.

Make and type of Aircraft.	Registration Letters.	Year of Manufacture and hours flown.	Type and No. of Engine.	Year of manufacture of Engine and hours run.	Value of Aircraft as estimated by the Insured (including commission as defined herein).	Name of Pilot or Pilot.
Purpose for which the aircraft will be used.						
Radius within which the aircraft will be flown.						

SCHEDULE OF COVERS.

(1) Risks.	(2) Maximum amount payable under the Policy (see any sums payable by the Insured under Clause 1).	(3) Amount of each claim to be borne by the Insured.	(4) Premium.
"A" ACCIDENTAL DAMAGE. (1) Flight and Towing Risks. (2) Ground Risks.	(a) In respect of any one accident or series of accidents arising out of one event. (b) In all under the Policy.		
"B" FIRE. (1) Flight and Towing Risks. (2) Ground Risks.			
"C" THEFT.			
"D" THIRD PARTY.			
"E" LEGAL LIABILITY TO PASSENGERS.			

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The Company will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay (including proper legal expenses incurred with the consent of the Company) as compensation for bodily injury to any person being a passenger and whilst being carried in the Aircraft or whilst mounting into or dismounting therefrom or for damage to or loss of property belonging to a passenger while such property is being carried in or loaded into or unloaded from the Aircraft.

Provided always that the Insured shall take all available steps to protect himself against liability so far as may be permitted by law and that in the case of an aircraft plying for hire or reward passengers and their luggage shall be carried only upon the terms of tickets and/or baggage checks previously submitted to and approved by the Company and that such tickets and/or baggage checks shall be issued to every such passenger prior to the commencement of the flight.

1. The liability of the Company shall not extend to indemnify the insured under this Section in respect of injury, damage or loss caused to or sustained by

- (a) Any sub-contractor of or member of the household or family of the Insured.
- (b) Any person in the service of or acting on behalf of the Insured or of any such sub-contractor or member.

The Company shall not be liable to indemnify the Insured under any Section of this Policy in respect of any bodily injury loss or damage of any nature or kind whatsoever---

- (1) While the Aircraft is being used for any purpose or purposes or by any person or persons other than those stated and named in the Schedule hereto or for flying beyond the limits of the area named in such Schedule, *OTHER THAN*
- (2) Due to or arising out of or directly or indirectly connected with *AS A RESULT OF FORCE MAJEURE*

- (u) The first flight of the Aircraft in its entirety.
- (v) ~~Starting the Engine(s) of the Aircraft without the use of adequate safeguard against forward movement.~~
- (w) ~~Running the engine of the aircraft in a hangar.~~
- (x) ~~Common-sense," "trick or exhibition flying," "stunting," of any nature, experimental flying, racing, power or speed record, record breaking, or any other abnormal flying, unless otherwise provided by special endorsement herein.~~
- (y) Flying at night, unless otherwise provided by special endorsement herein.
- (z) ~~Any flight commenced during or with running of fog, high wind, or high seas as herein after defined.~~
- (aa) ~~landing on, or taking off from, other than authorized and licensed landing grounds (and/or nature in the case of landing and embarking) except as herein after provided.~~
- (ab) ~~Flights beyond gliding distance from the land (or from the water in the case of seaplanes).~~
- (ac) ~~leaving the aircraft unattended, unattended or unattended outside the hangar during the night or during the landing of high wind except in either case as the necessary and unavoidable result of an accident or forced landing.~~

(3) The liability for which is assumed by the Insured under any contract (unless such liability would have attached to the Insured even in the absence of such contract) or which arises out of or is due directly or indirectly, or traceable to war, invasion, act of foreign enemy, hostilities (whether war be declared or not, civil war, rebellion, insurrection, revolution, strike, riot, civil commotion, mutiny, or any like event), or any hostile action, or any restraints and detentions of all kinds, princes and people of what nation, condition or quality survive.

This Policy does not cover any consequential loss howsoever arising, wear and tear, depreciation or gradual deterioration of property, or any loss or damage caused by fire, lightning, explosion, theft, burglary, robbery, or any other cause, or any loss or damage caused by land, rail, sea or water (except when such transit is the necessary result of damage caused by a forced landing covered by this Policy), wilful or malicious damage or loss caused by the Insured or his agents or damage or loss due directly or indirectly to negligence on the part of the Insured or his agents or employees.

~~WARRANTY~~ SO FAR AS IS APPLICABLE, THE INSURED WILL COMPLY WITH ALL AIR NAVIGATION AND AIRWORTHINESS ORDERS AND REQUIREMENTS ISSUED BY ANY COMPETENT AUTHORITY AND WILL TAKE ALL REASONABLE STEPS TO ENSURE THAT SUCH ORDERS AND REQUIREMENTS ARE COMPLIED WITH BY HIS AGENTS AND EMPLOYEES AND THAT THE AIRCRAFT SHALL BE AIRWORTHY AT THE COMMENCEMENT OF EACH FLIGHT.

~~The terms of general exclusion 2 (c) of this Policy shall not apply in any case where the Insured shall prove to the satisfaction of the Director of the Insurance~~

- (b) in the case of damage caused during a landing or any attempt thereof that such landing or attempted landing was necessarily and entirely due to force majeure as—
- (c) in the case of damage caused during towing or taking off as following a take off after any such forced landing that the Pilot in charge of the aircraft had taken all reasonable precautions against accident and that the aircraft was suitable for the purpose having regard to all the circumstances.

PROVIDED ALWAYS that nothing in this clause contained shall be held to cancel or modify any of the terms, provisions, conditions or warranties of the policy other than Exclusion 2(g) aforesaid.

Unless otherwise provided by special endorsement between the value of the Aircraft for the purpose of setting claims under this Policy shall be the actual value at the time of the happening of the event which gives rise to a claim under this Policy, such value if it cannot be ascertained by reference to the market shall be calculated by deduction for wear and tear, depreciation and gradual deterioration at the rate of 1/1000 of the value stated in the Schedule hereto, for each hour of flight over the first 100 hours of flight.

In case any claim shall arise under Sections "A", "B", "C", "D", "E" or "G" of this Policy the Insured shall pay to the Company a pro-rata additional premium on the amount of such claim calculated as from the day of settlement of such claim until the expiry date of the Policy and the Policy shall be extended solely to cover the amount originally covered under such Sections respectively provided always that nothing herein shall be deemed to increase the limits insured hereunder.

1. The insured shall bear as much of every claim under this policy as is shown against each section in the Schedule of Covers herein and will as demand.

1. The Insured shall bear no part of any claims under this policy as to the Insured against such actions in the Schedule of Coverage and will not demand any payment from the Company any sum amount paid by the Company in the first instance.
2. The Company shall be entitled in the case of any accident or occurrence giving rise to a claim under any section or sections of this policy to pay to the Insured the maximum sum payable under such section or sections in respect thereof. But deducting therefrom in either case any sum or sums already paid or recoverable by or on behalf of the Insured in respect of such accident or occurrence. At the time of the accident or occurrence, except for the payment of costs and expenses for which it may be responsible incurred prior to such date of payment.
3. The Company shall not be liable for any charges in connection with the provision of manufacturers' plans or documents required in connection with any repairs to the

any accident or loss shall be given to the Company, irrespective of whether or not a claim has been or may be made in respect of it, identified the Aircraft and stated full particulars of damage. As

- [illegible]

¹¹ "Accessories." Unless otherwise expressly declared, Accessories shall be held to include only such articles as are permanent and standard fittings of the airplane or engine.

- [illegible]

Signed for and on behalf of the Company this _____

day of

16

Examined

Secretary.

Director.

Special definition of "flight"
Endorsements relating to contractual liability and air ministry

THE BRITISH AVIATION INSURANCE COMPANY LIMITED.

(Incorporated under the Companies Act, 1929).

Members of the International Union of Aviation Insurers.



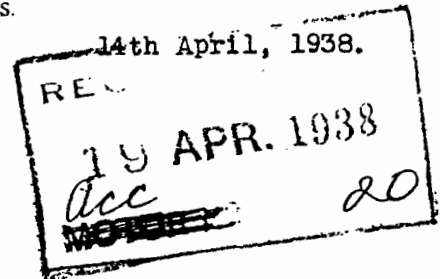
President :
The Rt. Hon. VISCOUNT WAKEFIELD OF HYTHE.

Directors:
Montague Evans. A. E. Morgan.
H. C. Gray. W. W. Otter-Barry.
Herbert Lewis. A. S. Rogers.
H. S. Milligan. J. D. Simpson.
R. Y. Sketch.

3-4, LIME STREET,
E.C. 3.

Underwriter & Principal Surveyor:
Capt. A. G. Lamplugh, F.R.Ae.S., M.I.Ae.E., F.R.G.S.

Messrs. Price Forbes & Co. Ltd.,
King William Street House,
Arthur Street,
E.C.4.



Dear Sirs,

re: AVIATION AIRCRAFT POLICY.

Kindly note that the following amendments are being made on the re-printing of this form :-

Section A. (1) Flight Risks:

The words "with an external object" have been added after the word "collision" in the first line.

Section A. (2) Ground Risks:

Theft is now excluded from this section, being already included as a separate risk under Section C.

Section B. Fire Risks:

The warranty has been amended to read :-

"Warranted that the Insured will take all reasonable precautions against fire, and in particular (a) that he will maintain an adequate and efficient supply of fire extinguishers in any hangar owned or leased by him in which such aircraft may be stored, and (b) that he will not smoke or permit smoking or other likely causes of fire in the vicinity of the aircraft at such times as the fuel tanks are being filled or emptied, or in proximity to any place where petrol is stored."

Section E. Passenger Liability:

The proviso has been amended to read :-

Continuation Sheet No. 2 To Messrs. Price Forbes & Co. Ltd.,

"Provided always that the Insured shall take all available steps to protect himself against liability so far as may be permitted by law and that in the case of an aircraft plying for hire or reward passengers and their luggage shall be carried only upon the terms of tickets and/or baggage checks previously submitted to and approved by the Company and that such tickets and/or baggage checks shall be issued to every such passenger prior to the commencement of the flight."

General Exclusion 2. (d) and 2 (e)
Aerobatics etc. and Night Flying:

The words "unless otherwise provided by special endorsement hereon" have been added at the end of each of these exclusions to indicate that the risk concerned may be covered in appropriate cases if desired.

General Exclusion 3.

The words "invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution" have been included.

Warranty as to compliance with regulations:

The existing absolute warranty in this respect has been amended to read :-

"Warranted that the Insured will comply with all Air Navigation and Airworthiness orders and requirements issued by any competent authority and will take all reasonable steps to ensure that such orders and requirements are complied with by his agents and employees and that the aircraft shall be airworthy at the commencement of each flight."

Value Clause:

The words "unless otherwise provided by special endorsement hereon" have been inserted at the commencement of this clause.

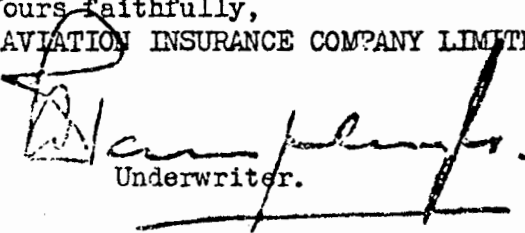
Basis of Repairs Clause:

This clause has been deleted.

Manufacturers' Drawings:

The printed special endorsement in this connection is now included in the standard special provisos (No. 6).

Yours faithfully,
For THE BRITISH AVIATION INSURANCE COMPANY LIMITED.


Underwriter.

APPLICATION FOR AIRCRAFT HULL AND LIABILITY INSURANCE THROUGH

ASSOCIATED AVIATION *Underwriters* 176

HOME OFFICE • 90 JOHN STREET • NEW YORK, NEW YORK 10038

(Check Which is Desired) ☐ A QUOTATION ☐ INSURANCE

Name of Applicant

Address No. Street Town or City County State Zip

Business of Applicant

Applicant is: ☐ Individual(s) ☐ Corporation ☐ Partnership ☐ Other

Insurance is requested from 19..... to Noon..... 19.....

LIABILITY COVERAGE	LIMITS OF LIABILITY DESIRED		(Co. use only)
	Each Person	Each Occurrence	
<input type="checkbox"/> A. BODILY INJURY LIABILITY Excluding Passengers	\$,000.	\$,000.	
<input type="checkbox"/> B. PASSENGER BODILY INJURY LIABILITY	\$,000.	\$,000.	
<input type="checkbox"/> C. PROPERTY DAMAGE LIABILITY	x x x x	\$,000.	
<input type="checkbox"/> D. SINGLE LIMIT BODILY INJURY AND PROPERTY DAMAGE LIABILITY: Passengers — <input type="checkbox"/> included, <input type="checkbox"/> excluded	x x x x	\$,000.	
<input type="checkbox"/> *E. MEDICAL PAYMENTS Pilot — <input type="checkbox"/> included, <input type="checkbox"/> excluded	\$ 00.	\$ 00.	
<input type="checkbox"/> OTHER LIABILITY	\$,000.	\$,000.	

*Available only to Pleasure, Business or Corporate — Executive Risks where Passenger Liability Coverage is purchased.

HULL COVERAGE	AMOUNT OF INSURANCE must be equal to purchase price or current market value.	DEDUCTIBLE	(Co. use only)
<input type="checkbox"/> F. ALL RISK BASIS	\$	In Motion <input type="checkbox"/> \$1000. <input type="checkbox"/> \$ 500. <input type="checkbox"/> \$ 250. <input type="checkbox"/> \$ (Any Other) ‡Not in Motion \$.....	F.
<input type="checkbox"/> G. ALL RISK BASIS NOT IN FLIGHT	\$		G.
<input type="checkbox"/> H. ALL RISK BASIS NOT IN MOTION	\$		H.

‡A flat \$50.00 will apply to each loss occurring while aircraft is not in motion, except fire or theft, unless otherwise indicated hereon.

AIRCRAFT: If Aircraft Certificate is other than Standard, please so indicate

Year, Make and Model	License Number	Seating Capacity		Land (L) Sea (S) Amp (A)	PURCHASED		Price Paid By Applicant (Incl. Extras)	Present Estimated Value (Incl. Extras)	Engine Hrs. since new, or since last major overhaul	No. of Hours Flown On Aircraft In Last 12 Mos.
		Crew	Pass.		New or Used	Date				
1.										
2.										

Aircraft usually based at ☐ Hangared; ☐ Tied-down
(Name of Home Airport. If Private Airport, give detailed location.)**PURPOSES OF USE** (Check all applicable uses) ARE ANY FLIGHTS CONTEMPLATED OUTSIDE CONTINENTAL U.S.?..... If "Yes",
where:.....

- ☐ Pleasure or ☐ Business, not flown by professional pilots employed for this purpose ☐ Instruction of (Name of Student)
☐ Corporate - Executive, flown by professional pilots employed for this purpose ☐ Flying Club ☐ Low Altitude Photography
☐ Patrol Flights ☐ Banner Towing ☐ Crop Dusting ☐ Air Ambulance ☐ Air Hearse
☐ Other Uses not indicated above (explain) or ☐ Use for which a charge is made (explain).....

PILOTS: This information is required for each pilot who will operate the aircraft during the policy term.

NAME		Age	Pilot Certificate and Ratings							Medical Certificate		First Pilot Hours — Logged				
			Stud.	Pvt.	Cm'l	ASEL	AMEL	Instru.	ATR	Other	Date of Last Physical	Class	Total	Last 90 Days	Retract. Gear	Multi-Engine
1.																
2.																
3.																
4.																

Name and address of pilots' employer if other than the applicant.

1. Do any pilots named above have any: (a) physical impairments?
(b) waivers, limitations, conditions attached to their medical certificates?
2. Has a FAA or Military Pilot Certificate held by any pilot named above ever been suspended or revoked?
If so, explain.
3. Has any pilot named above ever been cited for any violation of Federal Air Regulations?
If so, explain all violations.
4. Has any pilot named above ever been involved in any aircraft accident?
If so, explain all accidents.
5. Has any pilot named above ever been convicted of or pleaded guilty to a felony or for drunken driving?
If so, explain.

APPLICANT IS:

- ☐ Sole Owner ☐ Owner subject to mortgage or conditional sales contract.
☐ Other — explain.

If aircraft is encumbered, name and address of lienholder.

Amount of encumbrance (excluding interest and finance charges) \$ Number of payments Amount of each \$
Date of final installment Will Breach of Warranty Coverage be required by lienholder?
Name of last Aviation Insurance carrier (if none so state)
To the Insured's knowledge no damage has been sustained to, nor claims by others have arisen out of the operation of, any aircraft owned by or in the custody of the Insured except.

Has any Insurance Company or Underwriter at any time declined an application submitted by or cancelled or refused to renew a policy held by the applicant or any of the pilots named herein in regard to any type of insurance, whatsoever?
If so explain.

All particulars herein are true and complete to the best of my/our knowledge and no information has been withheld or suppressed and I/we agree that this Application and the terms and conditions of the policy in use by the Insurer shall be the basis of any contract between me/us and the Insurer. I hereby authorize this Company to investigate all or any qualifications or statements contained herein.

Date.

Applicant's Signature.

This Application does not commit the Company to any liability nor make the Applicant liable for any premium unless and until the Company agrees to effect this insurance.

THE FOLLOWING MUST BE COMPLETED BY AGENT OR BROKER BEFORE POLICY CAN BE ISSUED

Name of Agent or Broker.

Street Address.

City.

☐ Broker ☐ Agent

State.

☐ General Agent, if so, indicate name of Company.

Zip.

MEMBER COMPANIES

Checkbox signifies policy available. Please indicate clearly the Company of issue for this policy:

- ☐ ALLIANCE ASSURANCE COMPANY, LTD.
☐ AMERICAN AUTOMOBILE INSURANCE COMPANY
☐ THE AMERICAN INSURANCE COMPANY
☐ AMERICAN MOTORISTS INSURANCE COMPANY
☐ ASSOCIATED INDEMNITY CORPORATION
☐ THE BUCKEYE UNION INSURANCE COMPANY
☐ THE CAMDEN FIRE INSURANCE ASSOCIATION
☐ CENTENNIAL INSURANCE COMPANY
☐ THE CONTINENTAL INSURANCE COMPANY
☐ FEDERAL INSURANCE COMPANY
☐ THE FIDELITY AND CASUALTY COMPANY OF NEW YORK
☐ FIREMAN'S FUND INSURANCE COMPANY
☐ FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY
☐ GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORP., LTD.
☐ GENERAL INSURANCE COMPANY OF AMERICA

- ☐ GLENS FALLS INSURANCE COMPANY
☐ GREAT NORTHERN INSURANCE COMPANY
☐ THE HANOVER INSURANCE COMPANY
☐ KANSAS CITY FIRE AND MARINE INSURANCE COMPANY
☐ LONDON ASSURANCE
☐ LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.
☐ MASSACHUSETTS BAY INSURANCE COMPANY
☐ NATIONAL-BEN FRANKLIN INSURANCE COMPANY OF PITTSBURGH, PA.
☐ NATIONAL SURETY CORPORATION
☐ PACIFIC INDEMNITY COMPANY
☐ PHOENIX ASSURANCE COMPANY OF NEW YORK
☐ THE POTOMAC INSURANCE COMPANY
☐ SEA INSURANCE COMPANY, LTD.
☐ THE UNION MARINE AND GENERAL INSURANCE COMPANY, LTD.
☐ VIGILANT INSURANCE COMPANY

Are you licensed by the company of issue?

An application from a state serviced by one of the following Branch Offices should be sent directly to that office

National Bank of Georgia Building
Atlanta, Georgia 30303

150 N. Wacker Drive
Chicago, Illinois 60606

Mercantile Bank Building
Dallas, Texas 75201

718 Seventeenth Street
Denver, Colorado 80202

1546 Penobscot Building
Detroit, Michigan 48226

127 West Tenth Street
Kansas City, Missouri 64

3435 Wilshire Boulevard
Los Angeles, California 90005

90 John Street
New York, New York 10038

100 California Street
San Francisco, California 94111

Securities

Aviation and General Insurance Company Limited	22.51%
Prudential Assurance Company Limited	3.31%
Aviation and General Insurance Company Limited "Z" Account	1.66%
Royal Insurance Company Limited	9.93%
Phoenix Assurance Company Limited	7.28%
Cornhill Insurance Company Limited	1.66%
Sovereign Marine and General Insurance Company Limited	1.66%
Tokio Fire and Marine Insurance Company Limited	0.25%
Taisho Fire and Marine Insurance Company Limited	0.17%
Storebrand Insurance Company Limited	0.25%
Allianz International Insurance Company Limited	0.20%
Minster Insurance Company Limited	5.30%
Road Transport and General Insurance Company Limited	3.31%
Commercial Union Insurance Company Limited "G" Account	2.65%
Scottish Lion Insurance Company Limited	1.32%
Insurance Corporation of Ireland Company Limited	1.98%
Compagnie d'Assurances Maritimes, Aeriennes et Terrestres Per: Westminster Aviation Insurance Group	3.31%
Compagnie d'Assurances Maritimes, Aeriennes et Terrestres Per: Aero Francassur	4.97%

Nothing herein contained shall vary, alter, waive or extend any of the terms, provisions, representations, conditions or agreements of the policy other than as above stated.

Conditions:
Continued

All amendments not affecting Underwriters written
agreed L/Ur only.

Aviation Radioactive Contamination Exclusion Clause (General)
AV.38
and amount to be agreed

BOW (AV.28) Lienholder t.b.i. L/Ur amount t.b.a. or t.b.a. L/Ur.

Premium:

10% Ret. 10% NCBOR

BOW: 1.25%

Commission

Brokerage:

10%

Less 15% and 4% tax if applicable.

SCHEDULE OF AIRCRAFT

Type:

Identification

Agreed Value

Attachment

Hughes 300

\$30,000

Inception

AVIATION & GENERAL 3059/1/9

20 12 15 8 0 4

AVIATION & GENERAL 3059/1/1

10 12 15 8 0 4

AVIATION & GENERAL 3059/1/1

5 12 15 8 0 4

12.47

15%

FBU 3 577

2 3 5 6

DATE 25.5.78

DOMINION

AVO 2037

Rng 020911

8.31

EOW 3 312

038 78 1223V

SCHEDULE OF AIRCRAFT

TYPE

IDENTIFICATION

Hughes 300

T.B.I. L/U

PASS. SEATS

2

ATTACHMENT

Inception

AVIATION & GENERAL 3339/1/9

17 1/2 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

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AVIATION & GENERAL 3339/1/1

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AVIATION & GENERAL "Z" 3339-1/4

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1.22

AVIATION & GENERAL 3339-1/1

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9.09

SCOTTISH LION AV 3269/1/6

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AVIATION 3337/1/3

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English & American

CLOSE I.L.U. ONLY

243585

English & American

CLOSE I.L.U. ONLY

AVIATION NO2 A C

AVS 3337

000352

PHOENIX OF GREECE AV A/C

77 AV 5045

21 7 77

TRIDENT

7 6 3 0 0 8 0 9 A D

cas 100.00%

Form approved by Lloyd's Aviation Underwriters' Association.

No Policy or other Contract dated on or after 1st Jan., 1934, will be recognised by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guarantees lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.



LLOYD'S AIRCRAFT POLICY

(Subscribed only by Underwriting Members of Lloyd's all of whom have complied with the requirements of the Insurance Companies Act, 1938, as to security and otherwise.)

Whereas

of (hereinafter called "the Assured") has/have made or caused to be made to us a written Proposal dated (warranting the truth of the statements contained therein) which is the basis of this Contract and is deemed to be incorporated herein, and has/have paid to us (hereinafter called "the Underwriters") a premium of to insure the Aircraft as specifically described in the Schedule hereto against accidental Loss and/or Damage as hereinafter defined actually occurring during the period beginning and ending both days inclusive and in addition against all sums which the Assured shall become legally liable to pay as compensation as hereinafter set forth for accidental bodily injury or damage actually occurring during the said period.

The Underwriters, will indemnify the Assured as follows:—

SECTION I.—Loss of or Damage to Aircraft.

The Underwriters will at their option pay for replace or make good accidental loss of or damage to the Aircraft from whatsoever cause arising whilst the Aircraft is—

- (A) in FLIGHT;
- (B) TAXYING;
- (C) on the GROUND;
- (D) MOORED,

but the Underwriters shall not be liable for the cost of making good wear and tear, gradual deterioration, structural defect, electrical or mechanical breakage or breakdown, or for loss or damage arising from such electrical or mechanical breakage or breakdown other than loss or damage caused by fire, explosion, or impact of the Aircraft with an external object.

The cover under this Section shall not include loss of or damage to the Aircraft by burglary, theft, larceny, or malicious means if it be proved such loss or damage was caused by a servant or agent or person under the control of the Assured.

It is a condition of this Insurance that save in the event of the replacement or the total loss of the Aircraft the Assured shall bear in respect of each Aircraft described in the Schedule hereto:—

- | | |
|-----------|---------------------------------------|
| the first | of each and every claim under (A) and |
| the first | of each and every claim under (B) and |
| the first | of each and every claim under (C) and |
| the first | of each and every claim under (D) |

The liability of the Underwriters under this Section shall not—

Exceed in respect of any Aircraft the value stated in the Schedule against such Aircraft less any amount to be borne by the Assured.
Extend to indemnify the Assured in respect of salvage services (as defined) rendered to the Aircraft general average contributions or sue and labour charges.

SECTION II.—Third Party Liability.

The Underwriters will indemnify the Assured for all sums which the Assured shall become legally liable to pay, and shall pay, as compensation, including costs awarded, in respect of accidental bodily injury (fatal or non-fatal) or accidental damage to property provided such injury or damage is caused directly by the Aircraft or by objects falling therefrom.

The liability of the Underwriters under this Section shall not exceed in respect of any one accident or series of accidents arising out of one event, and further shall not exceed in respect of all claims hereunder during the currency of this Policy. The Underwriters will in addition defray any Law Costs incurred with their written consent in defending any action which may be brought against the Assured in respect of any claim arising under this Section, but should the amount paid to dispose of such claim exceed the sum insured hereunder then the liability of the Underwriters in respect of the said Law Costs shall be limited to that proportion of the Law Costs which the sum insured hereunder bears to the amount paid to dispose of the claim.

EXCEPTIONS.

1. The cover under this Section shall not extend to indemnify the Assured in respect of injury (fatal or non-fatal), damage or loss caused to or sustained by—
 - (a) Any sub-contractor or of member of the household or family of the Assured.
 - (b) Any person in the service of or acting on behalf of the Assured or of any such sub-contractor or member, whilst engaged in his duties as such.
 - (c) Any passenger whilst entering into, being carried in, or alighting from the Aircraft.
 - (d) Any pilot or member of the crew of the Aircraft or any person working in, on, or about the Aircraft.
2. The indemnity hereunder shall not extend to any property or animals belonging to or in the custody or control of the Assured, his servants or agents.

SECTION III.—Legal Liability to Passengers (Bodily Injury).

The Underwriters will indemnify the Assured for all sums which the Assured shall become legally liable to pay, and shall pay, as compensation including costs awarded, in respect of accidental bodily injury (fatal or non-fatal) to passengers whilst entering into, being carried in, or alighting from the Aircraft.

PROVIDED always that each passenger carried in any aircraft insured hereunder operating for hire or reward shall be carried subject to the terms of a ticket which shall be issued by the Assured to the passenger before the commencement of the flight and that such ticket shall have printed in a conspicuous manner a condition that the Assured will not be liable for any personal injury howsoever caused in so far as such condition is not contrary to law or to any international agreement.

The Cover under this Section shall not extend to indemnify the Assured in respect of injury (fatal or non-fatal), damage or loss caused to or sustained by—

- (a) any sub-contractor or of member of the household or family of the Assured.
- (b) Any person in the service of or acting on behalf of the Assured or of any such sub-contractor or member whilst engaged in his duties as such.
- (c) Any pilot or member of the crew of the Aircraft or any person working in, on/or about the Aircraft.

The liability of the Underwriters under this Section shall not exceed in respect of any one passenger, in respect of any one accident or series of accidents arising out of one event, and further shall not exceed in respect of all claims hereunder during the currency of this Policy. The Underwriters will in addition defray any Law Costs incurred with their written consent in defending any action which may be brought against the Assured in respect of any claim arising under this Section, but should the amount paid to dispose of such claim exceed the sum insured hereunder then the liability of the Underwriters in respect of the said Law Costs shall be limited to that proportion of the Law Costs which the sum insured hereunder bears to the amount paid to dispose of the claim.

GENERAL EXCLUSIONS.

The Underwriters shall not be liable to indemnify the Assured under any Section of this Policy in respect of any loss or damage, bodily injury (fatal or non-fatal), or liability howsoever caused—

1. Whilst the Aircraft is being used for any illegal purpose or for any purpose or purposes other than those stated in the Schedule hereto or whilst outside the geographical limits named therein unless due to *force majeure*. Nevertheless the Underwriters agree to hold covered the risks insured by this Policy in the event of the Aircraft rendering salvage services (as defined) provided immediate notice be given to the Underwriters and any additional premium required be paid.
2. Whilst the Aircraft is being piloted by any person or persons other than those stated in the Schedule hereto, but this exclusion shall not be deemed to apply whilst the Aircraft is being taxed and/or otherwise operated by competent licensed Engineers other than for the purpose of flight (as defined).
3. Whilst the Aircraft is being transported by any means of conveyance except as the result of an accident giving rise to a claim under Section 1 of this Policy.
4. Whilst the Aircraft is using unlicensed landing areas unless due to *force majeure* or covered by special endorsement hereon.
5. Due to or arising out of or directly or indirectly connected with—
 - (a) Racing, record attempts, speed trials, aerobatics, aerial seedling or fertilisation, dusting, spraying, fish spotting or any other form of flying involving abnormal hazards.
 - (b) Test flights after construction or reconstruction.
 - (c) Leaving the Aircraft unattended in the open without taking reasonable precautions for its safety.
6. Which, at the time of the event giving rise to such loss or damage, bodily injury, or liability is insured by or would, but for the existence of this Policy, be insured by any other Policy or Policies except in respect of any excess beyond the amount which would have been payable under such other Policy or Policies had this Insurance not been effected.
7. Arising from liability assumed or rights waived by the Assured by agreement unless such liability would have attached to the Assured in the absence of such agreement.
8. Directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law, strikes, riots, civil commotions, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
9. Should the total number of passengers carried in the Aircraft at the time of the happening of such bodily injury, loss or damage or liability exceed the Declared Passenger Seating Capacity stated in the Schedule.

WARRANTIES.

WARRANTED THAT—

1. The Assured will comply with all air navigation and airworthiness orders and requirements issued by any competent authority and will take all reasonable steps to ensure that such orders and requirements are complied with by his/their agent(s) and employees and that the Aircraft shall be airworthy at the commencement of each flight.
 2. No additional insurance on any interests on or in relation to any Aircraft described in the Schedule, save such as may be required to cover personal accident and legal liability, has been or shall be effected to operate during the currency of this Policy by or for account of the Assured, Owners, Managers, Mortgagees or hirers except:—
 - (a) Additional Insurance on terms and conditions identical with those contained in this Policy.
 - (b) Additional Insurance on Total Loss Only or any conditions other than those stated in (a) above, whether Policy Proof of Interest, Full Interest Admitted, or otherwise, but only to cover in respect of any one Aircraft an amount not exceeding 10 per cent. of the Total Value of that Aircraft as stated in the Schedule of this Policy.
- Provided always that a breach of this Warranty shall not afford Underwriters any defence to a claim by a Mortgagee who has accepted this Policy without knowledge of such breach.

GENERAL CONDITIONS.

1. All requisite log books and/or documents shall be kept fully completed up to date and shall be produced to the Underwriters or their Agents on request in support of all or any claim(s) hereon.
2. The Assured shall use due diligence and do and concur in doing everything reasonably practicable to avoid or diminish any loss hereon but shall not make any admission of liability or payment or offer or promise of payment without the written consent of the Underwriters.
3. In the event of the Aircraft sustaining damage whether covered by this Policy or not the Assured or his/their Agent(s) shall forthwith take steps as may be necessary to ensure the safety of the damaged Aircraft and its equipment and accessories. No dismantling or repairs shall be commenced without the written consent of the Underwriters excepting such as may be necessary in the interests of safety and to prevent further damage.
4. The Underwriters shall be entitled at any time and for so long as they desire to take absolute control of all negotiations and proceedings and in the name of the Assured to settle or defend or prosecute any claim.
5. Immediate notice of any event likely to give rise to a claim under this Policy shall be given to

to whom the Assured shall furnish full particulars in writing of such event and shall forward immediately notice of any claim by a Third Party or Passenger and any letters or documents relating thereto and shall give notice of any impending prosecution. In all cases the Assured shall render such further information and assistance as the Underwriters may reasonably require and shall not act in any way to the detriment or prejudice of the interests of the Underwriters.

6. In the event of the Underwriters exercising their option under Section I to replace the Aircraft the replacement shall be by an Aircraft of the same make and type and in reasonably like condition.
7. The Aircraft shall at all times remain the property of the Assured save that in the event of the replacement or the total loss of the Aircraft the Underwriters shall be entitled at their option to take over the remains of the Aircraft as salvage.
8. If the Assured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise this Policy shall become void and all claims thereunder shall be forfeited.
9. If any dispute or difference shall arise between the Assured and the Underwriters in connection with this Insurance such difference or dispute shall be submitted to Arbitration in London in accordance with the Statutory provision for Arbitration for the time being in force.
10. Should there be any change in the circumstances or nature of the risks which are the basis of this contract the Assured shall give immediate notice thereof to the Underwriters and no claim arising subsequent to such change shall be recoverable hereunder unless such change has been accepted by the Underwriters.
11. This Policy may be cancelled at any time by the Underwriters giving 10 days' notice in writing of such cancellation. In such event, the Underwriters will return in respect of the unexpired period, a *pro rata* portion of the premium. There will be no return of premium in respect of any aircraft on which a loss under this policy, adjustable on the basis of a total loss, has occurred.
12. This Policy shall not be assigned in whole or in part except with the consent of the Underwriters verified by endorsement hereon.
13. In the event of loss whether or not covered by this Policy the value of the Aircraft stated in the Schedule shall be reduced as at the time and date of loss by the amount of such loss and such reduced value shall continue until repairs are commenced. The value of the Aircraft shall then be increased by the value of the completed repairs until the value of the Aircraft is fully reinstated to that stated in the Schedule or until the Policy has expired.
14. The due observance and fulfilment of the terms, provisions, conditions and endorsements of this Policy shall be conditions precedent to any liability of the Underwriters to make any payment under this Policy.

How Know Ye That We the Underwriters, Members of the Syndicates whose definitive numbers in the after-mentioned List of Underwriting Members of Lloyd's are set out in the attached Table, hereby bind ourselves each for his own part and not one for another, our Heirs, Executors and Administrators, and in respect of his due proportion only, to pay for, replace or make good to the Assured or the Assured's Executors, Administrators or Assigns or to indemnify him or them against all such Loss, Damage or Liability as aforesaid subject always to the terms, conditions and limitations contained herein or endorsed hereon or attached hereto, and the due proportion for which each of us, the Underwriters, is liable shall be ascertained by reference to his share, as shown in the said List, of the Amount, Percentage or Proportion of the total sum assured hereunder which is in the Table set opposite the definitive number of the Syndicate of which such Underwriter is a Member AND FURTHER THAT the List of Underwriting Members of Lloyd's referred to above shows their respective Syndicates and Shares therein, is deemed to be incorporated in and to form part of this Policy, bears the number specified in the attached Table and is available for inspection at Lloyd's Policy Signing Office by the Assured or his or their representatives and a true copy of the material parts of the said List certified by the General Manager of Lloyd's Policy Signing Office will be furnished to the Assured on application.

In Witness whereof the General Manager of Lloyd's Policy Signing Office has subscribed his name on behalf of each of us,

LLOYD'S POLICY SIGNING OFFICE,

Dated in London, the

GENERAL MANAGER.

THE SCHEDULE.

AIRFRAME					ENGINE(S)	VALUES		
Make, Type and Series Number	Year of Construction	Licensed Passenger Seating Capacity	Declared Passenger Seating Capacity for the purpose of this Insurance	Identification Marks	Number and Type	Aircraft with Standard Instruments and equipment	Details of extra equipment and accessories	Total Value
							Value	

Pilot(s) _____

Purposes for which the Aircraft will be used _____

Geographical Limits _____

DEFINITIONS.

"FLIGHT" shall be deemed to mean from the time the Aircraft moves forward in taking off or attempting to take off for the actual air transit, whilst in the air, and until the Aircraft completes its landing run after contact with the earth and/or water.

"TAXYING" shall be deemed to mean when the Aircraft is moving along the ground whether under its own power or momentum or in process of being towed but not in flight as defined; but in the case of aircraft whilst afloat, "TAXYING" shall be deemed to mean when such Aircraft is not in flight or moored as defined.

"ON THE GROUND" (not applying to aircraft whilst afloat) shall be deemed to mean whilst the Aircraft is not in flight or taxiing as defined.

"MOORED" shall be deemed to mean whilst the Aircraft is afloat and safely secured and shall include the risks of launching and hauling up.

"AIRCRAFT" shall be deemed to mean the Aircraft specified in the Schedule hereto together with its engine(s) and standard instruments and equipment including any extra equipment or accessories specifically mentioned in the Schedule.

"SALVAGE SERVICES" shall be deemed to mean any services rendered by or in relation to the Aircraft in, on or over the sea or any tidal water or on or over the shores of the sea or any tidal water, in all cases in which they would have been salvage services, whether maritime or under contract, had they been rendered by or in relation to a vessel.

Form approved by Lloyd's
Aviation Underwriters'
Association

LLOYD'S AIRCRAFT POLICY

PROPOSAL FORM.

Proposer's Name (in full).....

Address.....

Business or Occupation.....

DETAILS OF AIRCRAFT TO BE INSURED.

AIRFRAME						ENGINE(S)
Make, Type & Series Number	Year of Construction	Date & No. of Current Licence or C. of A.	Licensed Passenger Seating Capacity	Declared Passenger Seating Capacity for the Purpose of Insurance	Identification Marks	Number and Type

Price of Aircraft & Date of Purchase (including Standard Equipment)	Present Value of Aircraft (Instruments and Equipment)	Details of Extra Equipment and Accessories, if any		Total Declared Value for the purpose of Insurance
			Value	

Please state fully:—

1. Purposes for which the Aircraft will be used.....

Will the Aircraft be flown at night?.....

2. Territorial limits for which insurance is required.....

3. By whom will the maintenance and running repairs be carried out ?
4. Where will the Aircraft usually be kept ?
- Is this a recognised Aerodrome ?
- Is the Aircraft normally kept in a hangar, if so, state construction of hangar ?
5. Will Aircraft be taxed by persons other than licensed pilot(s) or competent licensed engineers ?
6. Have you previously held an Aircraft Insurance Policy, if so, state name of Insurers.
7. Has any Insurance Company or Underwriter at any time:—
- (a) Declined your proposal ?
- (b) Cancelled or refused to renew your Policy ?
- (c) Required an increased premium or revised terms ?
8. Have you entered into any agreement with any other party whereby liability is assumed or denied in respect of the ownership or operation of the Aircraft ?

PLEASE STATE DETAILS OF ALL ACCIDENTS AND/OR LOSSES DURING THE LAST THREE YEARS.

YEAR	No. of Aircraft owned and/or operated by Proposer	DAMAGE TO AIRCRAFT		THIRD PARTY & PASSENGER LIABILITY		Circumstances of Loss
		No. of Accidents	Cost or Estimate	No. of Accidents	Cost or Estimate	
19.....						
19.....						
19.....						

ENTER BELOW FLYING RECORD OF PILOTS BY WHOM THE AIRCRAFT WILL BE FLOWN.

NAME	AGE	TYPES OF AIRCRAFT FLOWN AND DATE OF LAST FLIGHT	FLYING HOURS		LICENCE			NATURE AND CAUSE OF ACCIDENTS (IF ANY) DURING LAST THREE YEARS
			DAY	NIGHT	No.	DATE	CLASSIFICATION	

DETAILS OF INSURANCE REQUIRED.

(Delete where not applicable)

Section 1. ACCIDENTAL DAMAGE.

- | | |
|-------------------|---------------------------------|
| (a) Flight Risks. | (b) Taxying Risks. |
| (c) Ground Risks. | (d) Mooring Risks (Waterborne). |

Section 2. THIRD PARTY LEGAL LIABILITY.

Limit of Indemnity.....any one accident
and.....in all during currency of Policy

Section 3. *LEGAL LIABILITY TO PASSENGERS.

Limit of Indemnity any one PASSENGER.....

*N.B.—The limit of indemnity for any one ACCIDENT equals the indemnity per passenger multiplied by the declared seating capacity of the Aircraft.

Period for which insurance is required.....

I/WE warrant that the aforementioned Aircraft is/are my/our property and the statements and particulars given are true, and that no material information has been withheld or suppressed, and I/we agree that this proposal, signed by or caused to be signed by me/us shall be the basis of, and form part of the Contract between me/us and the Underwriters, and to accept a Policy subject to the terms, exclusions and conditions prescribed therein.

Date.....19 . Signature of Proposer.....

The completion of this Proposal Form in no way binds the Proposer to complete an insurance, but the answers given herein are to form the basis of any insurance contract which may be entered into between Underwriters and the Proposer.

Underwriters reserve to themselves the right to decline any proposal without assigning a reason.

LLOYD'S AIRCRAFT HULL POLICY (U.S.A.)

(Approved by Lloyd's Aviation Underwriters' Association)

WE, UNDERWRITERS AT LLOYD'S, London, agree with the Insured, named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Declarations and subject to the limits of liability, Exclusions, Conditions and other Terms of this Policy:—

INSURING AGREEMENTS

1. COVERAGE A—FLIGHT, TAXYING, ON THE GROUND OR MOORED.

To pay for direct physical loss of or damage to the aircraft including disappearance if the aircraft is unreported for sixty (60) days after the commencement of flight but only for the amount of each separate loss less the applicable deductible stated in Item 3 of the Declarations.

COVERAGE B—TAXYING, ON THE GROUND OR MOORED.

To pay for direct physical loss of or damage to the aircraft while not in flight but only for the amount of each separate loss less the applicable deductible stated in Item 3 of the Declarations.

3. COVERAGE C—ON THE GROUND OR MOORED.

To pay for direct physical loss of or damage to the aircraft while not in flight or taxiing but only for the amount of each separate loss less the applicable deductible stated in Item 3 of the Declarations.

4. POLICY PERIOD, TERRITORY, PURPOSES OF USE.

This Policy applies only to direct physical loss of or damage to the aircraft which is sustained during the Policy period while the aircraft is within the Continental limits of the United States of America (excluding Alaska), Canada, or the Republic of Mexico, or is being transported between ports thereof, and is owned, maintained and used for the purpose stated as applicable thereto in the Declarations.

5. TWO OR MORE AIRCRAFT.

When two or more aircraft are insured hereunder the terms of this Policy shall apply separately to each.

EXCLUSIONS

THIS POLICY DOES NOT APPLY:—

- (a) to loss of use, depreciation, or deterioration; nor to any damage which is due and confined to wear and tear, freezing, mechanical, structural, electrical, hydraulic or pneumatic breakdown or failure, but this exclusion shall not apply to (1) other loss or damage covered by this Policy resulting from such wear and tear, freezing, mechanical, structural, electrical, hydraulic or pneumatic breakdown, (2) such loss or damage by wear and tear, freezing, mechanical, structural, electrical, hydraulic or pneumatic breakdown or failure which results directly from other loss covered by this Policy.
- (b) to loss or damage due to (1) capture, seizure, arrest, restraint or detention or the consequences thereof or of any attempt thereat, or any taking of the property insured or damage to or destruction thereof by any Government or Governmental or Civil Authority or agent (whether secret or otherwise) or by any military, naval or usurped power, whether any of the foregoing be done by way of requisition or otherwise and whether in time of peace or war and whether lawful or unlawful; (2) war, invasion, civil war, revolution, rebellion, insurrection or warlike operations, whether there be a declaration of war or not; (3) strikes, riots or civil commotions.
- (c) to loss or damage due to wrongful conversion, embezzlement or secretion of the aircraft by any person in lawful possession thereof under a licence, lease, mortgage, conditional sale or other agreement, or under an agreement with the Insured, whether written, oral or implied.

- (d) while the aircraft is in flight unless its Airworthiness Certificate is in full force and effect.
- (e) while the aircraft is used for any unlawful purpose or is operated otherwise than in compliance with the terms of its Airworthiness Certificate and the approved operating limitations contained in its Airplane Flight Manual or other documents associated with the Airworthiness Certificate, or is being operated by any person other than the pilot(s) stated in Item 5 of the Declarations (other than taxiing by certificated pilots or licensed mechanics) or is operated by any such person in violation of the terms and limitations of his Pilot's Certificate or Medical Certificate, as issued by the appropriate authority.
- (f) if the total number of passengers carried in the Aircraft at the time of the happening of any loss or damage exceeds the Declared Maximum Number of Passengers stated in Item 3 of the Declarations.
- (g) while with the knowledge and consent of the Insured or of any executive officer or partner if the Insured be a corporation or partnership the aircraft is being operated in violation of the Civil Air Regulations applying to acrobatic flying, instrument flying, repairs, maintenance, inspection, alterations and night flying.
- (h) while the aircraft is used for any purpose other than as stated in the Declarations.
- (i) while the aircraft is being used for or in connection with any race, speed or endurance test, any attempt at record breaking, acrobatic flying, crop dusting, spraying, seeding, fertilisation, hunting, bird or fowl herding, unless such use is declared in (D) of Item 4 of the Declarations; or any use in respect to which a waiver or special authority issued by the Civil Aeronautics Authority or the appropriate Authority is required, whether granted or not.
- (k) while the aircraft is changed or converted into a type other than that stated in the Declarations.
- (l) following a transfer of the interest of the Insured in the aircraft without the written consent of the Underwriters; or whilst the aircraft is subject to any lien, mortgage or other encumbrance not specifically declared and described in this Policy.

DEFINITIONS.

- "AIRCRAFT." The word "Aircraft" wherever used in this Policy, shall mean the aircraft described herein, and in addition to the airframe shall include power plants, propellers, rotors and appliances forming part of the aircraft at the inception of coverage hereunder, including parts detached and not replaced by other similar parts.
- "IN FLIGHT." The aircraft shall be deemed to be in flight from the time the aircraft moves forward in taking off or in attempting to take off for air transit, while in the air and until the aircraft comes to rest after landing or, the landing run having been safely completed, power is applied for taxiing. A rotorcraft shall be deemed to be in flight when the rotors are in motion.
- "TAXIING" shall mean while the aircraft is moving under its own power or momentum generated thereby other than in flight as defined, but in the case of water alighting aircraft "Taxiing" shall be deemed to mean while the aircraft is afloat and is not "In Flight" or "Moored."
- "MOORED" shall mean while the aircraft is afloat and made fast to its moorings, or is being launched or hauled up.
- "CIVIL AERONAUTICS AUTHORITY" shall mean the duly constituted Authority of the government of the United States of America, or the authority of the recognized government of any other country in which this policy may apply, having jurisdiction over Civil Aviation.

CONDITIONS

1. INSURED'S DUTIES WHEN LOSS OCCURS.

When loss occurs, the Insured shall:

- (a) take all reasonable measures to protect the aircraft, whether or not the loss is covered by this Policy, and any further loss due to the Insured's failure to do so shall not be recoverable under this Policy; reasonable expense incurred in affording such protection, provided the loss is covered by this Policy, shall be deemed incurred at the Underwriters' request.
- (b) give notice thereof as soon as practicable to the Underwriters and also in the event of theft, larceny, robbery, pilferage or vandalism, to the Police. The Underwriters shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorised by the Underwriters or their representatives.
- (c) file proof of loss with the Underwriters' representatives within sixty (60) days after the occurrence of loss, unless such time is extended in writing by the Underwriters, in the form of a sworn statement of the Insured setting forth the interest of the Insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at the time of loss; the amount, place, time and cause of such loss, the amount of all insurance whether valid and collectible or not, covering said property; and the Insured as often as required shall submit to examination under oath by any person named by the Underwriters and subscribe the same; upon the request of the Underwriters the insured shall exhibit the damaged property to the Underwriters or their representatives, and as often as required shall produce for examination all logbooks, and all books of accounts, bills, invoices, and other vouchers, or certified copies thereof if the originals be lost, at such reasonable place as may be designated by the Underwriters or their representatives and shall permit extracts and copies thereof to be made.

2. ASSISTANCE AND CO-OPERATION OF THE INSURED.

The Insured shall co-operate with the Underwriters and, upon the Underwriters' request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

3. LIMIT OF LIABILITY; SETTLEMENT OPTIONS; NO ABANDONMENT.

The liability of the Underwriters for direct physical loss of or damage to the aircraft shall not exceed the amount of insurance set out in the Declarations, less the applicable deductible, nor what it would cost to repair or replace the aircraft or parts thereof with other of like kind and quality, and without compensation for loss of use. The Underwriters may pay for the loss in money or may repair or replace the aircraft or parts thereof; as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the aircraft at the agreed or appraised value, but there shall be no abandonment to the Underwriters.

In the case of partial physical loss of or damage to the aircraft when repairs are effected by the Insured the liability of the Underwriters shall not exceed the actual cost of any parts or materials necessary to effect repairs or replacement plus 150% of the actual cost of labour to the Insured without any further allowance for overhead or overtime; when the repairs are made by other than the Insured, the actual costs as evidenced by bills rendered to the Insured, less any discount granted to the Insured, excluding cost of overtime and its related overhead unless previously agreed to by the Underwriters. The amount of such loss shall include the cost of transporting new or damaged parts or of transporting the damaged aircraft to the place of repair and subsequent return to the airport nearest to the place of accident, or home airport, whichever be the nearer, but shall be limited to the least expensive method of reasonable transportation.

In no event shall the liability of the Underwriters for partial physical loss of or damage to the aircraft exceed the amount for which the Underwriters would be liable were the loss payable as a total loss.

4. SUBSTITUTIONS.

Power plant and/or propellers and/or rotors and/or appliances of like make or type may be substituted. The value of any such installed substituted item shall not exceed the value of the item originally installed unless endorsed hereon and any required additional premium paid hereon.

5. APPRAISAL.

If the Insured and the Underwriters fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the Underwriters, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then on request of the Insured or the Underwriters, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of the loss and the amount of loss in respect of each item, and failing to agree, shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Insured and the Underwriters shall each pay his or their chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The Underwriters shall not be held to have waived any of their rights by any act relating to appraisal.

6. OTHER INSURANCE.

If there be other insurance against loss or damage covered by this Policy, the Underwriters shall not be liable under this Policy for a greater proportion of such loss or damage than the amount of insurance stated in the Declarations bears to the total amount of valid and collectible insurance against such loss or damage.

7. NO BENEFIT TO BAILEE.

The insurance afforded by this Policy shall not enure directly or indirectly to the benefit of any carrier or bailee.

8. REINSTATEMENT.

In the event of loss whether or not covered by this Policy the amount of insurance in respect to any aircraft shall be reduced as of the time and date of loss by the amount of such loss and such reduced value shall continue until repairs are commenced. The insurance shall then be increased by the value of the completed repairs until the amount of insurance is fully reinstated or the Policy has expired.

9. SUBROGATION.

In the event of any payment under this Policy, the Underwriters shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

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10. CHANGES.

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under this Policy; nor shall any part of this Policy be waived or changed, except by endorsement signed by the Underwriters and issued to form part of this Policy.

11. ASSIGNMENT.

This Policy shall not be assigned in whole or in part except with the consent of the Underwriters verified by endorsement signed by the Underwriters and issued to form part of this Policy; if, however, the Insured shall die or be adjudged bankrupt or insolvent within the Policy period, this Policy, unless cancelled, shall, if written notice be given to the Underwriters within thirty days after the date of such death or adjudication, cover the Insured's legal representative as the Insured.

12. CANCELLATION.

This Policy may be cancelled by the Insured by surrender thereof or by mailing to the Underwriters written notice stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Underwriters by mailing to the Insured at the address shown in this Policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the Insured or by the Underwriters shall be equivalent to mailing.

If the Insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the Underwriters cancel, earned premiums shall be computed *pro rata*. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Underwriters' check or the check of their representative mailed or delivered as aforesaid shall be sufficient tender of any refund of premium due to the Insured.

No Return Premium shall be paid to the Insured as to any aircraft on which a loss under this Policy, adjustable on the basis of a total loss, has occurred.

13. TERMS OF POLICY CONFORMED TO STATUTE.

Terms of this Policy which are in conflict with the statutes of the state wherein this Policy has application are hereby amended to conform to such statutes.

14. ACTION AGAINST UNDERWRITERS.

No action shall lie against the Underwriters unless as a Condition precedent thereto the Insured shall have fully complied with all the terms of this Policy nor until sixty days after proof of loss shall have been filed and the amount of loss shall have been determined as provided in this Policy nor unless such action shall have been commenced within twelve months next after the happening of the loss.

15. SERVICE OF SUIT.

It is agreed that in the event of the failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters, at the request of the Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon

that in any suit instituted against any one of them upon this Policy, the Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorised and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the Insured to give a written undertaking to the Insured that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this Policy and hereby designate the above-named as the person to whom the said officer is authorised to mail such process or a true copy thereof.

16. SCHEDULE OF STATEMENTS.

By acceptance of this Policy the Insured agrees that the statements in the Declarations are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between himself and the Underwriters relating to this insurance.

17. MISREPRESENTATION AND FRAUD.

This Policy shall be void if the Insured has concealed or misrepresented any material fact or circumstance whether under the Declarations or not concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the Insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

DECLARATIONS.ITEM 1.

Name of Insured
 (hereinafter referred to as the Insured.)
 Address
 Business or Occupation of the Insured is
 The Insured's interest in the Aircraft is that of
 Amount of Mortgage or Encumbrance, if any, \$
 If the Aircraft is mortgaged or encumbered any loss covered hereunder is payable as interest may appear to the Insured and

ITEM 2.

The period of insurance hereunder begins on the
 and ends on the (both at 12.01 a.m.
 Standard Time at the Insured's address as stated.)

ITEM 3.

The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of Underwriters' liability against each such coverage shall be the amount of insurance as stated herein, (less the stated deductible each loss each aircraft) subject to all the terms of the Policy having reference thereto;

COVERAGES (As described in the Insuring Agreements)

(A) Flight, Taxying, On the Ground or Moored.

(B) Taxying, On the Ground or Moored.

(C) On the Ground or Moored.

DESCRIPTION OF AIRCRAFT AND AMOUNT OF INSURANCE

Identification Marks.	Category.	Year built, Make, Model, Serial No.	Type*

*Landplane, seaplane, skiplane, amphibian or rotorcraft.

Engine, H.P., Make, Model.	Amount of Insurance.	Declared Maximum Number of Passengers to be carried at any one time.	PREMIUM.		
			Coverage.		
			A	B	C
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$

DEDUCTIBLES

TOTAL PREMIUM \$

Flight \$
 Taxying \$
 Ground \$
 Moored \$

} Not applicable to Total Loss of the Aircraft.

} Not applicable to Total Loss of the Aircraft, or fire or theft.

In the case of rotorcraft the Flight Deductible shall apply while the rotors are in motion.

ITEM 4.

USE: The purposes for which the aircraft will be used are (Indicate those required.)

- (A) ☐ "BUSINESS AND PLEASURE."
 (B) ☐ "INDUSTRIAL AID."
 (C) ☐ "LIMITED COMMERCIAL."
 (D) ☐ "COMMERCIAL", including special uses (See (D) below)

- (A) "BUSINESS AND PLEASURE" shall mean personal, pleasure, family and business use, excluding any operation for hire or reward, or for instruction.
- (B) "INDUSTRIAL AID" shall mean all the uses stated in (A) also the transportation of executives, employees, guests of the Insured, goods and merchandise, but excluding any operation for hire or reward, or for instruction.
- (C) "LIMITED COMMERCIAL" shall mean all the uses stated in (A) and (B) also the carriage of passengers and freight for hire or reward, but excluding any form of instruction or rental to others.
- (D) "COMMERCIAL" shall mean the uses stated in (A), (B) and (C) also use for any other purpose as specifically declared above.

ITEM 5.

The Aircraft will be operated in flight only by the following pilot(s):

Name.	Certificate and Number.	Pilot and Aircraft Ratings.

ITEM 6.

No Insurer has ever cancelled or declined to issue or renew, any aircraft insurance to the Insured, except as follows:

Printed at Lloyd's, London, England.

LLOYD'S AIRCRAFT LIABILITY POLICY (U.S.A.)

(Approved by Lloyd's Aviation Underwriters' Association)

WE, UNDERWRITERS AT LLOYD'S, London, agree with the Insured, named in the Declarations made a part hereof, in consideration of the payment of the premium, and in reliance upon the statements in the Declarations and subject to the limits of liability, Exclusions, Conditions and other Terms of this Policy.

INSURING AGREEMENTS.

I. COVERAGE A—BODILY INJURY LIABILITY (EXCLUDING PASSENGERS).

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages, including damages for care and loss of services, because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, excluding any passenger, caused by an occurrence and arising out of the ownership, maintenance or use of the Aircraft.

COVERAGE B—PROPERTY DAMAGE LIABILITY.

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by an occurrence and arising out of the ownership, maintenance or use of the aircraft.

COVERAGE C—PASSENGER BODILY INJURY LIABILITY.

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages, including damages for care and loss of services, because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any passenger, caused by an occurrence and arising out of the ownership, maintenance or use of the aircraft.

COVERAGE D—SINGLE LIMIT—BODILY INJURY (INCLUDING PASSENGERS) AND PROPERTY DAMAGE LIABILITY.

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages, including damages for care and loss of services, because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, and for damages because of injury to or destruction of property, including loss of use thereof, caused by an occurrence and arising out of the ownership, maintenance or use of the aircraft.

COVERAGE E—SINGLE LIMIT—BODILY INJURY (EXCLUDING PASSENGERS) AND PROPERTY DAMAGE LIABILITY.

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages, including damages for care and loss of services, because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, excluding any passenger, and for damages because of injury to or destruction of property, including loss of use thereof, caused by an occurrence and arising out of the ownership, maintenance or use of the aircraft.

COVERAGE F—MEDICAL PAYMENTS.

To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, ambulance, hospital, professional nursing and funeral services, to or for each person except the pilot or crew unless specifically stated as "included" in the Declarations, who sustains bodily injury, sickness or disease, caused by accident, while in, entering or alighting from the Aircraft if the aircraft is being used by the named Insured or with his permission.

With respect to Insuring Agreements IV and V the insurance afforded by this coverage shall be excess insurance over any other valid and collectible medical payments insurance applicable thereto.

II. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS.

Coverages A, B, C, D and E.

As respects such insurance as is afforded by the other terms of this Policy the Underwriters shall:

- (a) defend in the name of and on behalf of the Insured any suit or other proceedings, even if groundless, false or fraudulent, brought against the Insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof; but the Underwriters shall have the right to make such investigation, negotiation and settlement of any claim or suit as they deem expedient;
- (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this Policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;
- (c) pay all costs taxed against the Insured in any such suit or proceedings and all interest accruing after entry of judgment until the Underwriters have paid, tendered or deposited in court, such part of such judgment as does not exceed the applicable limit of Underwriters' liability as stated herein; provided that in the event of the amount of such judgment exceeding the applicable limit of Underwriters' liability, the Underwriters shall only be liable to pay for that proportion of the said costs and interest which the applicable limit of Underwriters' liability bears to the amount of such judgment;
- (d) pay expenses incurred by the Insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident;
- (e) pay all expenses incurred by the Underwriters for investigation, adjustment and defense, and reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred at the Underwriters' request.

The amounts incurred under this Insuring Agreement, except settlements of claims and suits are payable by the Underwriters in addition to the applicable limit of liability of this Policy.

III. DEFINITION OF INSURED.

The term Named Insured shall mean only the Insured specified in Declaration 1.

The unqualified term Insured wherever used in this Policy with respect to Coverages A, B, C, D and E includes not only the Named Insured but also, within the scope of the Declarations, any person while using the aircraft on behalf of or with approval of the Named Insured, or any person or organization legally responsible for its use, provided the actual use is with the expressed permission of the Named Insured.

Notwithstanding the provisions of this Insuring Agreement the coverage provided by this Policy for persons or organisations other than the Named Insured does not apply:—

- (a) to any person or organization with respect to bodily injury, sickness, disease or death of any person who is a Named Insured;
- (b) to any employee or official of an Insured with respect to any action brought against said employee or official because of bodily injury, sickness, disease or death of another employee of the same Insured injured in the course of such employment in an occurrence arising out of the maintenance or use of the Aircraft in the business of such Insured;
- (c) to any person or organization, or to any agent or employee thereof (other than agents or employees of the Named Insured) engaged in the manufacture of aircraft, aircraft engines, or aircraft accessories, or operating an aircraft repair shop, airport, hangar, aircraft sales agency, flying club or flying school, with respect to any occurrence arising out of such manufacture or operation;
- (d) to any person receiving instruction, either dual or solo, nor to any renter pilot, unless such use is declared in (D) of Item 4 of the Declarations.
- (e) to any person or organization with respect to any loss against which he has other valid and collectible insurance.

IV. TEMPORARY USE OF SUBSTITUTE AIRCRAFT.

While an aircraft owned by the named Insured is withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction, such insurance as is afforded by this policy with respect to such aircraft applies also with respect to another aircraft of similar type, horse-power, and seating capacity, not so owned while temporarily used as the substitute for such aircraft. This Insuring Agreement does not cover as an Insured the owner of the substitute aircraft or any agent or employee of such owner.

V. AUTOMATIC INSURANCE OF NEWLY ACQUIRED AIRCRAFT.

(1) If the named Insured who is the owner of the aircraft the uses of which are declared under Item 4 of the Declarations acquires ownership of another aircraft of similar type, horse-power, and seating capacity, and so notifies the Underwriters within thirty days following the date of its delivery to him, such insurance as is afforded by this Policy applies also to such aircraft as of such delivery date:

- (a) if it replaces an aircraft described in this Policy, but only to the extent the insurance is applicable to the replaced aircraft, or
- (b) if it is an additional aircraft and if the Underwriters insure all aircraft owned by the named Insured at such delivery date, but only to the extent the insurance is applicable to all such previously owned aircraft. In no event, however, shall the Underwriters be liable under this provision for more than the highest limit applicable for each person or accident as stated in the Declarations of this Policy.

(2) This Insuring Agreement does not apply:

- (a) to any loss against which the named Insured has other valid and collectible insurance, or
- (b) except during the Policy period, but if such delivery date is prior to the effective date of this Policy, the insurance applies as of such effective date.

The named Insured shall pay the prescribed additional premium required because of the application of the insurance to such other aircraft.

The insurance terminates upon the replaced aircraft on such delivery date.

VI. POLICY PERIOD, TERRITORY, PURPOSES OF USE.

This Policy applies only in respect of accidents or occurrences happening during the Policy period while the aircraft is within the Continental limits of the United States of America (excluding Alaska), Canada, or the Republic of Mexico, and is owned, maintained and used for the purposes stated as applicable thereto in the Declarations.

VII. TWO OR MORE AIRCRAFT.

When two or more aircraft are insured hereunder the terms of this Policy shall apply separately to each.

EXCLUSIONS.

THIS POLICY DOES NOT APPLY:—

- (1) To liability assumed by the Insured under any contract or agreement unless such liability would have attached to the Insured even in the absence of such Agreement.
- (2) While the Aircraft is in flight unless its Airworthiness Certificate is in full force and effect.
- (3) While the Aircraft is used for any unlawful purpose or is operated otherwise than in compliance with the terms of its Airworthiness Certificate and the approved operating limitations contained in its Airplane Flight Manual or other documents associated with the Airworthiness Certificate or is being operated by any person other than the pilot(s) stated in Item 5 of the Declarations (other than taxiing by certificated pilots or licensed mechanics) or is operated by any such person in violation of the terms and limitations of his Pilot's Certificate or Medical Certificate, as issued by the appropriate authority.
- (4) If the total number of passengers carried in the Aircraft at the time of the happening of any loss or damage exceeds the Declared Maximum stated in Item 3 of the Declarations.
- (5) While with the knowledge and consent of the Insured or of any executive officer or partner if the Insured be a corporation or partnership the aircraft is being operated in violation of the Civil Air Regulations applying to acrobatic flying, instrument flying, repairs, maintenance, inspection, alterations and night flying.
- (6) While the Aircraft is used for any purpose other than as stated in the Declarations.
- (7) While the aircraft is being used for or in connection with any race, speed or endurance test, any attempt at record breaking, acrobatic flying, crop dusting, spraying, seeding, fertilisation, hunting, bird or fowl herding unless such use is declared in (D) of Item 4 of the Declarations; or any use in respect of which a waiver or special authority issued by the Civil Aeronautics Authority or the appropriate Authority is required, whether granted or not.

(8) To bodily injury to or sickness, disease or death of any employee of the Insured arising out of and in the course of his employment, or to any obligation for which the Insured or any company as his insurer may be held liable under any workmen's compensation law.

(9) To injury to or destruction of property owned, rented, occupied or used by or in the care, custody or control of the Insured or carried in or on the Aircraft.

(10) To loss or damage or any liability of the Insured directly or indirectly occasioned by, happening through or in consequence of military, naval or usurped power whether in time of peace or war and whether lawful or unlawful, war, invasion, civil war, revolution, rebellion, insurrection or warlike operations, whether there be a declaration of war or not.

DEFINITIONS.

"IN FLIGHT." The aircraft shall be deemed to be in flight from the time the aircraft moves forward in taking off or in attempting to take off for air transit, while in the air and until the aircraft comes to rest after landing or, the landing run having been safely completed, power is applied for taxiing. A rotorcraft shall be deemed to be in flight when the rotors are in motion.

"PASSENGER" shall mean any person while in, on or boarding the Aircraft for the purpose of riding or flying therein or alighting from the Aircraft following flight or attempted flight therein.

"CIVIL AERONAUTICS AUTHORITY" shall mean the duly constituted Authority of the government of the United States of America, or the Authority of the recognized government of any other country in which this policy may apply, having jurisdiction over Civil Aviation.

"OCCURRENCE" shall mean an accident, or a continued or repeated exposure to conditions occurring during the Policy period, which results in injury during the Policy period, provided the injury is accidentally caused. All damages arising out of such exposure to substantially the same general conditions shall be deemed to arise out of one occurrence.

CONDITIONS.

1. NOTICE OF ACCIDENT.

When an accident or an occurrence takes place which is liable to result in a claim under this Policy, written notice shall be given by or on behalf of the Insured to the Underwriters or any of their representatives as soon as practicable. Such notice shall contain particulars sufficient to identify the Insured and also reasonably obtainable information respecting the time, place and circumstances of the accident or occurrence, the names and addresses of the injured and of available witnesses.

2. NOTICE OF CLAIM OR SUIT.—EXCEPT IN RESPECT TO COVERAGE F.

If claim is made or suit is brought against the Insured the Insured shall immediately forward to the Underwriters or any of their representatives every demand, notice, summons or other process received by him or his representative.

3. MEDICAL REPORTS; PROOF AND PAYMENT OF CLAIM.—IN RESPECT TO COVERAGE F ONLY.

As soon as practicable, the injured person or someone on his behalf shall give to the Underwriters or any of their representatives written proof of claim, under oath if required, and shall, after each request from the Underwriters, execute authorization to enable the Underwriters to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Underwriters when and as often as the Underwriters may reasonably require. The Underwriters may pay the injured person or any person or organization on account of the services rendered and such payment shall reduce the amount payable hereunder to or for such injured person for such injury. Such payment shall not constitute admission of liability of the Insured or of the Underwriters under any other Coverage hereunder.

4. ASSISTANCE AND CO-OPERATION OF THE INSURED EXCEPT IN RESPECT OF COVERAGE F.

The Insured shall co-operate with the Underwriters and, upon the Underwriters' request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The Insured shall not, except at his own cost, voluntarily make any payment assume any obligation or incur any expense, other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

5. LIMITS OF LIABILITY.

(a) The limit of liability stated in the Declarations for Coverages A and C as applicable to "each person" is the limit of the Underwriters' liability for all damages arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person in any one occurrence; the limit of such liability stated as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the Underwriters' liability for all damages, arising out of bodily injury, sickness, or disease, including death at any time resulting therefrom, sustained by two or more persons in any one occurrence.

(b) The limit of liability stated in the Declarations for Coverage B is the limit of the Underwriters' liability for all damages arising out of any one occurrence.

(c) The limit of liability stated in the Declarations for Coverages D and E is the limit of the Underwriters' liability for all damages arising out of any one occurrence.

(d) The limit of liability stated in the Declarations for Coverage F as applicable to "each person" is the limit of the Underwriters' liability for all expenses incurred by or on behalf of each person who sustains bodily injury, sickness or disease, including death resulting therefrom, in any one accident; the limit of liability stated herein as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the Underwriters' liability for all expenses incurred by or on behalf of two or more persons who sustain bodily injury, sickness or disease, including death resulting therefrom in any one accident.

Notwithstanding the inclusion herein of more than one Insured whether by endorsement or otherwise, the total liability of the Underwriters under each Coverage in respect of any or all Insureds shall not exceed the limit(s) stated in the Declarations.

6. FINANCIAL RESPONSIBILITY LAWS.—COVERAGES A, B, C, D AND E.

Such insurance as is afforded by this Policy under coverages A, B, C, D and E shall comply with the provisions of any Financial Responsibility Law, or other Law applicable to aircraft with respect to financial responsibility or liability arising out of the ownership, maintenance or use of aircraft during the Policy period. However, the foregoing shall not apply to any type of coverage not afforded by this Policy nor shall it apply to any amount or amounts in excess of the limit or limits of liability provided in the Policy. The Insured agrees to reimburse the Underwriters for any payment made by the Underwriters which the Underwriters would not have been obligated to make under the terms of this Policy but for the agreement contained in this paragraph.

7. OTHER INSURANCE.

If the Insured has other insurance against a loss covered by this Policy, the Underwriters shall not be liable under this Policy for a greater proportion of such loss than the applicable limit of liability stated in the Declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance under Insuring Agreements IV and V shall be excess insurance over any other valid and collectible insurance available to the Insured, either as an Insured under a Policy applicable with respect to the aircraft or otherwise against a loss covered under either or both of said Insuring Agreements.

8. CHANGES.

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under this Policy; nor shall any part of this Policy be waived or changed, except by endorsement signed by the Underwriters and issued to form part of this Policy.

9. ASSIGNMENT.

This Policy shall not be assigned in whole or in part except with the consent of the Underwriters verified by endorsement signed by the Underwriters and issued to form part of this Policy; if however, the named Insured shall die or be adjudged bankrupt or insolvent within the Policy period, this Policy, unless cancelled, shall, if written notice be given to the Underwriters within thirty days after the date of such death or adjudication, cover (a) the named Insured's legal representative as the named Insured and (b) under Coverages A, B, C, D and E subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the aircraft, as an Insured, and under Coverage F while the Aircraft is used by such person, until the appointment and qualification of such legal representative but in no event for a period of more than thirty days after the date of such death or adjudication.

10. CANCELLATION.

This Policy may be cancelled by the named insured by surrender thereof or by mailing to the Underwriters written notice stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Underwriters by mailing to the named Insured at the address shown in this Policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the named Insured or by the Underwriters shall be equivalent to mailing.

If the Named Insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the Underwriters cancel, earned premiums shall be computed *pro rata*. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Underwriters' check or the check of their representative mailed or delivered as aforesaid shall be sufficient tender of any refund of premium due to the named Insured.

11. SERVICE OF SUIT.

It is agreed that in the event of the failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters, at the request of the named Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon

, and that in any suit instituted against any one of them upon this Policy, the Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the named Insured to give written undertaking to the named Insured that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the named Insured or any beneficiary hereunder arising out of this Policy and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

12. ACTION AGAINST UNDERWRITERS.—COVERAGES A, B, C, D AND E.

No action shall lie against the Underwriters unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the Claimant and the Underwriters. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the Underwriters as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Underwriters of any of their obligations hereunder.

13. ACTION AGAINST UNDERWRITERS IN RESPECT TO COVERAGE F.

No action shall lie against the Underwriters unless as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required statements of claim have been filed with the Underwriters.

14. SCHEDULE OF STATEMENTS.

By acceptance of this Policy the named Insured agrees that the statements in the Declarations are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between himself and the Underwriters relating to this insurance.

15. MISREPRESENTATION AND FRAUD.

This Policy shall be void if the named Insured has concealed or misrepresented any material fact or circumstance whether under the Declarations or not concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the Insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

DECLARATIONS.ITEM 1.

Name of Insured
(hereinafter referred to as the Insured)

Address

Business or Occupation of the Insured is

The Insured's interest in the Aircraft is that of

ITEM 2.

The period of insurance hereunder begins on the

and ends on the (both at 12.01 a.m. Standard Time at the Insured's address as stated).

ITEM 3.

The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of Underwriters' liability against each such coverage shall be as stated herein, subject to all the terms of the Policy having reference thereto.

COVERAGES (As described in the Insuring Agreements).

	<u>LIMITS OF LIABILITY.</u>	<u>PREMIUMS.</u>
A. BODILY INJURY LIABILITY (excluding passengers)	\$	each person
B. PROPERTY DAMAGE LIABILITY	\$	each occurrence
C. PASSENGER BODILY INJURY LIABILITY	\$	each person
D. SINGLE LIMIT BODILY INJURY (including passengers) and PROPERTY DAMAGE LIABILITY	\$	each occurrence
E. SINGLE LIMIT BODILY INJURY (excluding passengers) and PROPERTY DAMAGE LIABILITY	\$	each occurrence
F. MEDICAL PAYMENTS		
* Including/Excluding Pilot	\$	each person
* Including/Excluding Crew	\$	each accident
* Delete as required		
		Total Premium

DESCRIPTION OF AIRCRAFT

Identification Marks.	Category.	Year built, Make, Model Serial No.	Type*	Engine H.P., Make, Model.	Declared maximum number of passengers (excluding crew) to be carried at any one time.

* Landplane, seaplane, skiplane, amphibian or rotorcraft.

ITEM 4.

Use; The purposes for which the aircraft will be used are (Indicate those required.)

- (A) ☐ "BUSINESS AND PLEASURE,"
- (B) ☐ "INDUSTRIAL AID,"
- (C) ☐ "LIMITED COMMERCIAL,"
- (D) ☐ "COMMERCIAL," including special uses (See (D) below).

-
- (A) "BUSINESS AND PLEASURE" shall mean personal, pleasure, family and business use, excluding any operation for hire or reward, or for instruction.
- (B) "INDUSTRIAL AID" shall mean all the uses stated in (A) also the transportation of executives, employees, guests of the Insured, goods and merchandise, but excluding any operation for hire or reward, or for instruction.
- (C) "LIMITED COMMERCIAL" shall mean all the uses stated in (A) and (B) also the carriage of passengers and freight for hire or reward, but excluding any form of instruction or rental to others.
- (D) "COMMERCIAL" shall mean the uses stated in (A), (B) and (C) also use for any other purpose as specifically declared above.

ITEM 5.

The Aircraft will be operated in flight only by the following pilot(s):

Name	Certificate and Number	Pilot and Aircraft Ratings

ITEM 6.

No Insurer has ever cancelled or declined to issue or renew, any aircraft insurance to the named Insured, except as follows:

LLOYD'S HELICOPTER* POLICY

(*For all types of rotorcraft, herein referred to as "helicopter")

PROPOSAL FORM

(Approved by Lloyd's Aviation Underwriters' Association)

Proposer's Name (in full).....
Any other name under which Proposer has operated or been associated with the operation of Helicopters.....

Address.....

Business or Occupation.....

DETAILS OF HELICOPTER(S) TO BE INSURED.

AIRFRAME						ENGINE(S)
Make, Type and Series Number	Year of Construction	Date and No. of Current Licence or Airworthiness Cert.	Licensed Passenger Seating Capacity	Declared Passenger Seating Capacity for the Purpose of Insurance	Identification Marks	1. No. and Type 2. Make of Rotor Blades

Price of Helicopter & Date of Purchase (including Standard Equipment)	Present Value of Helicopter Instruments and Equipment	Details of Extra Equipment and Accessories, if any		Total Declared Value for the purpose of Insurance
			Value	

Please state fully:—

1. Precise purposes for which the Helicopter(s) will be used, in detail ("Commercial" or "Industrial Aid" is insufficient). Before completing, see list on page 3.

Will the Helicopter(s) be flown at night?.....If "Yes" give details of night flying equipment in Helicopter(s) and on Landing Site(s) (on separate sheets)

2. (a) Territorial limits for which insurance is required (in detail).....

(b) State if intended to operate over water more than 25 miles from land at any time.....

(c) Give physical description of area of operations.....
(e.g. Mountains—Desert—Jungle—Swamp)

3. By whom will the maintenance and running repairs be carried out?.....

4. Where will the Helicopter(s) usually be kept?.....

Is this a recognised Aerodrome?.....

Will the Helicopter(s) normally be kept in a hangar; if so, state construction of hangar?.....

5. Give full details of surface of Aeroport, Heliport or Landing ground from which operations will be conducted.

6. Will Rotors be set in motion by persons other than licensed helicopter pilots or licensed helicopter engineers?

7. Have you previously held a Helicopter Insurance Policy, if so, state name of Insurers?

8. Has any Insurance Company or Underwriter at any time:—

(a) Declined your proposal?.....

(b) Cancelled or refused to renew your Policy?.....

(c) Required an increased premium or revised terms?.....

9. Have you entered into any agreement or contract with any other party whereby liability is assumed or denied in respect of the purchase, lease, ownership or operation of the Helicopter(s)? If so, give relevant extract.

10. If the Helicopter(s) is/are being bought by Hire Purchase, or is/are the subject of a mortgage, state Lienholder or Mortgagee and amount of lien or mortgage.

11. Will the Helicopter(s) be operated with:

(a) Wheels..... (b) Skis..... (c) Pontoon Floats..... (d) Skids.....

PLEASE STATE DETAILS OF ALL ACCIDENTS AND/OR LOSSES DURING THE LAST THREE YEARS.

YEAR	No. of Helicopters owned and/or operated by Proposer	DAMAGE TO HELICOPTER		THIRD PARTY & PASSENGER LIABILITY		1. Circumstances of Loss 2. Give use at time of Accident by reference to list on Page 3
		No. of Accidents	Cost or Estimate	No. of Accidents	Cost or Estimate	
19.....						
19.....						
19.....						

ENTER BELOW FLYING RECORD OF PILOTS BY WHOM THE HELICOPTER WILL BE FLOWN.

NAME AND NATIONALITY	AGE	TYPES OF HELICOPTER FLOWN AND DATE OF LAST FLIGHT	FLYING HOURS			LICENCE			1. NATURE AND CAUSE OF ALL ACCIDENTS (IF ANY) DURING LAST THREE YEARS 2. GIVE USE AT TIME OF ACCIDENT BY REFERENCE TO LIST ON PAGE 3
			FIXED WING AIR-CRAFT	HELICOPTER		No.	DATE OF EXPIRY	WHERE ISSUED	CLASSIFICATION
				DAY	NIGHT				

(N.B. Insurance afforded by the Policy, if issued, will be void when the Helicopter is piloted by any pilot other than as named in the Policy.)

DETAILS OF INSURANCE REQUIRED.

(Delete where not applicable)

HULL	{	Accidental Damage	
		(a) Flight Risks	(c) Mooring Risks (Waterborne) including/excluding rotors in motion
{	(b) Ground Risks including/excluding rotors in motion	(d) Specified Perils Only	
	Third Party Legal Liability		
LIABILITIES (U.K.)	{	Limit of Indemnity	any one accident
		and.....in all during currency of Policy	
		*Legal Liability to Passengers	
		Limit of Indemnity any one PASSENGER	
LIABILITIES (U.S.A. and Canada)	{	*N.B.—The limit of indemnity for any one ACCIDENT equals the indemnity per passenger multiplied by the declared passenger seating capacity of the helicopter.	
		LIMITS OF INDEMNITY	
		A. BODILY INJURY LIABILITY (excluding passengers)	\$ each person
		B. PROPERTY DAMAGE LIABILITY	\$ each occurrence
		C. PASSENGER BODILY INJURY LIABILITY	\$ each person
			\$ each occurrence
		D. SINGLE LIMIT BODILY INJURY (including passengers) and PROPERTY DAMAGE LIABILITY	\$ each occurrence
		E. SINGLE LIMIT BODILY INJURY (excluding passengers) and PROPERTY DAMAGE LIABILITY	\$ each occurrence
		F. MEDICAL PAYMENTS	
		*Including/Excluding Pilot	\$ each person
		*Including/Excluding Crew	\$ each accident
		*Delete as required.	

Period for which the Insurance is required.....

I/WE warrant that the aforementioned Helicopter(s) is/are my/our property except as may be declared under para. 10 above, and the statements and particulars given are true, and that no material information has been withheld or suppressed, and I/WE agree that this proposal, signed by or caused to be signed by me/us shall be the basis of, and form part of the Contract between me/us and the underwriters, and to accept a Policy subject to the terms, exclusions and conditions prescribed therein.

Date.....19..... Signature of Proposer.....

The Completion of this proposal form in no way binds the Proposer to complete an insurance, but the answers given herein are to form the basis of any insurance contract which may be entered into between Underwriters and the Proposer.
Underwriters reserve to themselves the right to decline any proposal without assigning a reason.

LIST OF USES

- | | |
|--|--|
| 1. Advertising | 12. Industrial—Other Risks |
| 2. Aerial Crop Control (state type of crop, tree or shrub to be dusted, seeded or sprayed) | 13. Instructional |
| 3. Air Taxi | 14. Offshore Drilling |
| 4. Cargo (a) slung..... (b) loaded aboard..... | 15. Passengers—Non-Revenue |
| 5. Contract Charter | 16. Passengers—Revenue (schedule stops) |
| 6. Erection (haulage and crane uses) | 17. Personal and Pleasure |
| 7. Executive Transportation | 18. Power and/or Pipeline Patrol |
| 8. Exhibition—Demonstration | 19. Rental |
| 9. Ferry | 20. Rescue Operations (i.e. have you given any undertaking to a local authority or any other organisation to perform rescue operations if and when called upon?) |
| 10. Fire Patrol | 21. Testing—Experimental |
| 11. Geophysical Survey (including use of Scintillometer and/or Magnetometer and/or Electromagnetic Detector) | 22. Training Check |
| | 23. Any other use—to be specified |

No Policy or other Contract dated on or after 1st Jan., 1924, will be recognised by the Committee of Lloyd's as entitling the holder to the benefit of the Funds and/or Guarantees lodged by the Underwriters of the Policy or Contract as security for their liabilities unless it bears at foot the Seal of Lloyd's Policy Signing Office.

Form approved by Lloyd's
Aviation Underwriters'
Association.



LLOYD'S AIRCRAFT EXCESS LIABILITY POLICY

(DIRECT INSURANCE)

(Subscribed only by Underwriting Members of Lloyd's all of whom have complied with the requirements of the Insurance Companies Act, 1938, as to security and otherwise.)

Any person not an Underwriting Member of Lloyd's subscribing this Policy, or any person entering the same if so subscribed, will be liable to be proceeded against under Lloyd's Acts.

Printed at Lloyd's, London, England.

Whereas the Assured named in the Schedule herein which Schedule is incorporated in and forms part of this contract has paid to the Underwriting Members of Lloyd's who have hereunto subscribed their Names (hereinafter called "the Underwriters") the premium stated in the Schedule and has agreed to make such further payments of premium as may be prescribed herein,

Then the Underwriters hereby agree, to the extent and in the manner hereinafter provided, to pay on behalf of the Assured all sums which the Assured shall become legally obligated to pay, or by final judgment be adjudged to pay, to any person or persons as damages

- (a) for bodily injury, including death at any time resulting therefrom sustained by any person or persons other than passengers (hereinafter referred to as "Bodily Injury") or
- (b) for damage to or destruction of property of others, including the loss of use thereof (hereinafter referred to as "Property Damage") or
- (c) for bodily injury, including death at any time resulting therefrom sustained by any passenger or passengers (hereinafter referred to as "Passenger Bodily Injury")

caused by accident during the period mentioned in the Schedule and arising out of such hazards as are set forth in Item 7 of the Schedule and which are also covered by and defined in the policy/ies specified in the Schedule and issued by the "Primary Insurers" stated therein.

Provided always that:—

- (a) Liability attaches to the Underwriters only in respect of such aircraft and such hazards as are set forth in Item 7 of the Schedule and only for such coverages as are specified in Item 8 of the Schedule and against which an amount is inserted in Item 11(c) or Item 11(d) of the Schedule and then only after the Primary and Underlying Excess Insurers have paid or have been held liable to pay the full amount of their respective ultimate net loss liability as set forth in the Schedule in Items 11(a) or 11(b) and designated the "Primary and Underlying Excess Limit(s)" and then
 - (i) the limits of the Underwriters' liability shall be such amount of ultimate net loss as will provide the Assured with total limits under the policy/ies of the Primary and Underlying Excess Insurers and this Policy combined as set forth in Item 11(c) of the Schedule under the designation "Total Limit(s)" or
 - (ii) if it is not practicable to set forth in Item 11(c) of the Schedule the Total Limit(s) of liability under this Policy and all Underlying policies combined then the limits of the Underwriters' liability shall be those set forth in Item 11(d) under the designation "Excess Limit(s)".
- (b) Subject always to the limit of liability "Each Person" for Bodily Injury, stated in the Schedule, liability for Bodily Injury involving more than one person is limited as stated therein under "Each Accident".
- (c) Liability for Property Damage is subject to the limit "Each Accident" as stated in the Schedule.
- (d) Subject always to the limit of liability "Each Passenger" for Passenger Bodily Injury, stated in the Schedule, liability for Passenger Bodily Injury involving more than one passenger is limited as stated therein under "Each Accident".
- (e) When two or more aircraft are insured hereunder, the terms of this Policy shall apply separately to each.
- (f) Neither the inclusion of more than one entity in the name of the Assured nor the addition of any additional Assureds under this Policy shall in any way operate to increase the Underwriters' limits of liability in respect of any one person/passenger/accident beyond those provided for in Item 11 (Limits of Liability) of the Schedule.

EXCLUSIONS

THIS POLICY DOES NOT COVER

- 1. Any liability assumed by the Assured under any contract or agreement unless
 - (a) prior agreement has been given by the Underwriters and the premium hereon adjusted as may be required by them, or
 - (b) such liability would have attached to the Assured even in the absence of such contract or agreement.
- 2. Liability for Bodily Injury or Passenger Bodily Injury to employees of the Assured injured during the course of their employment.
- 3. Any obligation for which the Assured may be held liable under any Workmen's Compensation, Unemployment Compensation or Disability Benefits Law or any similar Law.
- 4. Liability for Property Damage to property owned, rented, occupied or used by or in the care, custody or control of the Assured or carried in, on or by the Aircraft.
- 5. Loss or damage or any liability of the Assured directly or indirectly occasioned by, happening through or in consequence of military, naval or usurped power whether in time of peace or war and whether lawful or unlawful, war, invasion, civil war, revolution, rebellion, insurrection or warlike operations, whether there be a declaration of war or not.

DEFINITIONS

- (a) ACCIDENT. The word "accident" shall be understood to mean an accident or series of accidents arising out of one event.
- (b) ULTIMATE NET LOSS. The words "ultimate net loss" shall be understood to mean the amount payable within the limits expressed in Item 11 (Limits of Liability) of the Schedule in settlement of the liability of the Assured after making deductions for all recoveries and for other valid and collectible insurances, excepting however the policy/ies of the Primary and Underlying Excess Insurers, and shall exclude all expenses and costs.
- (c) COSTS. The word "Costs" shall be understood to mean interest accruing after entry of judgment, investigation, adjustment and legal expenses (excluding, however, all office expenses of the Assured, all expenses for salaried employees of the Assured and general retainer fees for counsel normally paid by the Assured).

CONDITIONS

1. INCURRING OF COSTS

In the event of claim or claims arising which appear likely to exceed the Primary and Underlying Excess Limit(s), no Costs shall be incurred by the Assured without the written consent of the Underwriters.

2. APPORTIONMENT OF COSTS

Costs incurred by or on behalf of the Assured with the written consent of the Underwriters, and for which the Assured is not covered by the Primary and Underlying Excess Insurers, shall be apportioned as follows:—

- (a) Should any claim or claims become adjustable prior to the commencement of trial for not more than the Primary and Underlying Excess Limit(s), then no Costs shall be payable by the Underwriters.
- (b) Should, however, the amount for which the said claim or claims may be so adjustable exceed the Primary and Underlying Excess Limit(s), then the Underwriters, if they consent to the proceedings continuing, shall contribute to the Costs incurred by or on behalf of the Assured in the ratio that their proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss.
- (c) In the event that the Assured elects not to appeal a judgment in excess of the Primary and Underlying Excess Limit(s) the Underwriters may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Underwriters exceed their limit(s) of liability as provided for herein, plus the expenses of such appeal.

3. APPLICATION OF RECOVERIES

All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Assured and the Underwriters, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not payable until the Assured's ultimate net loss has been finally ascertained.

4. ATTACHMENT OF LIABILITY

Liability to pay under this Policy shall not attach unless and until the Primary and Underlying Excess Insurers shall have admitted liability for the Primary and Underlying Excess Limit(s) or unless and until the Assured has by final judgment been adjudged to pay an amount which exceeds Primary and Underlying Excess Limit(s) and then only after the Primary and Underlying Excess Insurers have paid or have been held liable to pay the full amount of the Primary and Underlying Excess Limit(s).

5. MAINTENANCE OF PRIMARY AND UNDERLYING EXCESS INSURANCES

In respect of the hazards and aircraft set forth in Item 7 of the Schedule this policy is subject to the same warranties, terms and conditions (except as regards the premium, the obligation to investigate and defend, the renewal agreement (if any), the amount and limits of liability other than the deductible or self-insurance provision where applicable, AND EXCEPT AS OTHERWISE PROVIDED HEREIN) as are contained in the policy/ies of the Primary Insurers at inception hereof. It is a condition of the policy that the policy/ies of the Primary and Underlying Excess Insurers shall be maintained in full effect during the currency of this policy, failing which coverage under this policy shall thereupon cease.

6. CHANGES

(a) In the event of any amendment to the warranties, terms and conditions of the policy/ies of the Primary Insurers subsequent to the inception of this policy, the Assured shall give notice of such amendment within thirty days of the effective date thereof and the Underwriters shall have the option of (i) accepting such amendment and amending the premium on this policy accordingly, or (ii) refusing such amendment in which case the policy shall cease to follow the policy/ies of the Primary Insurers as respects such amendment after the expiry of the above period of thirty days.

(b) Should any alteration be made in the premium for the policy/ies of the Primary Insurers (other than as the result of (a) (i) above) during the currency of this policy the Assured shall give immediate notice thereof to the Underwriters who shall have the right to amend the premium hereon accordingly.

(c) The Assured upon being aware of any material change in the circumstances or nature of the hazards covered by this policy (other than those giving rise to amendment or alteration in the policy/ies of the Primary Insurers as detailed in (a) and (b) above) shall give immediate notice thereof to the Underwriters who shall have the right to amend the premium hereon accordingly.

7. ADDITIONAL ASSURED

Should any manufacturer, repairer, supplier or servicing agent be included or added as an Assured under this Policy such inclusion or addition shall not prejudice Underwriters' rights of recourse against such Assured in the capacity of manufacturer, repairer, supplier or servicing agent where such right of recourse would have existed had they not been so included or added.

8. PREMIUM COMPUTATION AND ADJUSTMENT

The premium for this Insurance shall be computed on the basis set forth herein and the Assured agrees to pay and the Underwriters agree to return such additional or return premium as it becomes due.

9. CANCELLATION

This Policy may be cancelled at any time at the written request of the Assured or may be cancelled by or on behalf of the Underwriters provided not less than 10 days notice in writing be given.

The premium to be retained by the Underwriters in the event of cancellation by the Assured shall be calculated as follows:—

(a) If the premium is on an adjustable basis, the earned premium hereon for the period that this Policy has been in force or the Short Rate proportion of the Minimum Premium, whichever is the greater.

(b) If a flat premium has been charged, the Short Rate proportion thereof.

In the event of cancellation by the Underwriters the premium to be retained by the Underwriters shall be calculated as in (a) and (b) above except that pro rata proportion shall be substituted for Short Rate proportion. Notice of cancellation by the Underwriters shall be effective even though the Underwriters make no payment or tender of return premium.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction hereof, such notice shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

10. NOTIFICATION OF CLAIMS

The Assured upon knowledge of any event likely to give rise to a claim hereunder shall give immediate written advice thereof to the person(s) or firm named for the purpose in the Schedule.

11. SERVICE OF SUIT CLAUSE (U.S.A.)

It is agreed that in the event of the failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters at the request of the Assured will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon the person or persons specified for the purpose in the Schedule and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above mentioned person(s) is/are authorised and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Assured to give a written undertaking to the Assured that he/they will enter a general appearance upon Underwriters' behalf in the event such suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this contract of insurance and hereby designate the above mentioned person(s) as the person(s) to whom the said officer is authorised to mail such process or a true copy thereof.

12. FRAUDULENT CLAIMS

If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all claim hereunder shall be forfeited.

Now know Ye that We the Underwriters, Members of the Syndicates whose definitive numbers in the after-mentioned List of Underwriting Members of Lloyd's are set out in the attached Table, hereby bind ourselves each for his own part and not one for another, our Heirs, Executors and Administrators, and in respect of his due proportion only, to insure the Assured or the Assured's Executors or Administrators against Liability and Costs as specified herein (subject to the conditions herein expressed) and the due proportion for which each of us, the Underwriters, is liable shall be ascertained by reference to his share, as shown in the said List, of the Amount, Percentage or Proportion of the total liability under this Policy which is in the Table set opposite the definitive number of the Syndicate of which such Underwriter is a Member AND FURTHER THAT the List of Underwriting Members of Lloyd's referred to above shows their respective Syndicates and Shares therein, is deemed to be incorporated in and to form part of this Policy, bears the number specified in the attached Table and is available for inspection at Lloyd's Policy Signing Office by the Assured or his or their representatives and a true copy of the material parts of the said List certified by the General Manager of Lloyd's Policy Signing Office will be furnished to the Assured on application.

In Witness whereof the General Manager of Lloyd's Policy Signing Office has subscribed his name on behalf of each of us.

LLOYD'S POLICY SIGNING OFFICE,

GENERAL MANAGER.

Dated in London, the

SCHEDULE

Item				
1. <u>Policy No.</u>				
2. <u>Name of Assured</u>				
3. <u>Address of Assured</u>				
4. <u>Business or Occupation of Assured</u>				
5. <u>The Assured's interest in the Aircraft</u>				
6. <u>Period of Insurance</u> commencing day of 19 and ending day of 19 both days at Standard Time at the address of the Assured				
7. <u>Hazards—Aircraft Liability</u>				
<u>Description of Aircraft</u>	<u>Reg. No. or letters</u>	<u>Make & Model</u>	<u>Declared maximum number of passengers to be carried at any one time.</u>	
<u>Purposes for which the Aircraft will be used</u>				
8. <u>Coverages</u> (Delete any Section not applicable) Bodily Injury / Property Damage / Passenger Bodily Injury Bodily Injury, Property Damage, Passenger Bodily Injury (Combined)				
9. <u>Premium Calculation</u> (a) Non-adjustable basis (b) Adjustable basis i. Provisional or Deposit Premium ii. Minimum Premium iii. Basis of Adjustment				
10. (a) <u>Primary Insurer(s)</u> (Names) (b) <u>Underlying Excess Insurer(s)</u> (Names)				
11. <u>Limits of Liability (Ultimate Net Loss)</u>				
		Each Person	Each Accident	Each Passenger
(a) <u>Primary Limit(s)</u>	Bodily Injury			
	Property Damage			
	Passenger Bodily Injury			
	Bodily Injury, Property Damage and Passenger Bodily Injury (Combined)			
(b) <u>Combined Primary and Underlying Excess Limit(s)</u>	Bodily Injury			
	Property Damage			
	Passenger Bodily Injury			
	Bodily Injury, Property Damage and Passenger Bodily Injury (Combined)			
(c) <u>Total Limit(s)</u> (including indemnity provided by this policy)	Bodily Injury			
	Property Damage			
	Passenger Bodily Injury			
	Bodily Injury, Property Damage and Passenger Bodily Injury (Combined)			
(d) <u>Excess Limit(s)</u> (provided by this policy only).	Bodily Injury			
	Property Damage			
	Passenger Bodily Injury			
	Bodily Injury, Property Damage and Passenger Bodily Injury (Combined)			
12. <u>Notification of claims to</u>				
13. <u>The person or persons upon whom service of process may be made.</u>				

NOISE COVERAGE POLICY

WE, the Underwriters, agree with the Insured named in the Schedule hereto, in consideration of the payment of the premium, and in reliance upon the statements in the Schedule hereto:-

1. Subject to the terms, conditions, exclusions and limits hereof Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as compensation (including costs awarded against the Insured) in respect of accidental bodily injury (fatal or non-fatal) or accidental physical damage to or destruction of property (including animals) caused by the Noise of an identified Aircraft as specified in the Schedule hereto. COVERAGE

As used herein:

"Noise" includes vibration, sonic boom and any phenomena associated therewith.

- 2.(a) Underwriters shall not be required to defend claims made against the Insured but may at their own Option and expense (in addition to any amounts paid in accordance with Paragraph 1) investigate, defend, compromise and settle in the name of and on behalf of the Insured any claims covered by Paragraph 1 and, to the extent hereby provided, may also act as aforesaid in relation to any uninsured claims when combined with any claims covered by Paragraph 1. Notwithstanding any exercise of their Option as aforesaid, Underwriters shall only be responsible for that part of any sums paid as compensation which is in accordance with Paragraph 1. UNDERWRITERS
OPTION TO
DEFEND
- (b) As soon as practicable following the receipt of Notice from the Insured in accordance with Paragraph 7 Underwriters shall advise the Insured whether they wish to exercise their Option, and in any event not later than 60 days after Underwriters have received a copy of any Writ, Summons or Complaint or other document commencing legal proceedings against the Insured in respect of Aircraft Noise. If Underwriters advise the Insured that they do not wish to exercise their Option as aforesaid thereafter Underwriters may only exercise the said Option with the consent of the Insured.
3. If Underwriters do not exercise their Option, they shall contribute in the proportion specified below to the Insured's costs and expenses necessarily incurred for the purposes of investigation, defence, settlement, trial or appeal in relation to Aircraft Noise claims: CONTRIBUTION
TO INSURED'S
COSTS AND
EXPENSES

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Any contribution by Underwriters as aforesaid shall be in addition to any sums paid in accordance with Paragraph 1 subject to an aggregate annual limit as shown in Item 8 of the Schedule.

- INSURED'S
-
- CONTRIBUTION

EXCLUSIONS

- (a) to claims arising out of or in any way connected with nuisance and/or compensation for the taking, use of or acquisition of rights to property or airspace and/or any other direct or indirect consequences of Aircraft Noise except to the extent provided by Paragraph 1
- (b) to any liability which arises solely by reason of any contract or agreement entered into by or on behalf of the Insured even if such contract or agreement has been noted by Underwriters
- (c) to claims by or in respect of any person or property on board the Aircraft, or any property owned, rented, occupied or used by or in the care, custody or control of the Insured
- (d) while the Aircraft is being used for any unlawful purpose, or any purpose not specified in Item 4 of the Schedule hereto
- (e) while outside the geographical limits specified in Item 5 of the Schedule hereto unless due to force majeure
- (f) while the Aircraft is operated by anyone other than the Pilot(s) specified in Item 6 of the Schedule hereto

6. This Policy does not cover claims directly or indirectly occasioned by happening through or in consequence of:-

WAR,
HI-JACKING
AND OTHER
PERILS
EXCLUSION

- (a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labour disturbances.
- (d) Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- (e) Any malicious act or act of sabotage.
- (f) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil military or de facto) or public or local authority.
- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the aircraft acting without the consent of the Assured.
- (h) The aircraft being outside the control of the Assured by reason of a peril excluded by paragraphs (f) or (g).

7. (a) The Insured shall give immediate Notice to Underwriters (as specified in Item 9 of the Schedule hereto) of the following: CLAIMS
PROCEDURE

- (i) any claims covered by this Policy
- (ii) any events, documents or communications likely to give rise to such claims

and, without any admission of liability, shall forthwith take such steps as may be reasonable and necessary to investigate, mitigate and defend claims and, unless Underwriters exercise their Option, shall thereafter send to Underwriters regular reports of progress in the aforesaid matters.

- (b) The Insured shall not, without the consent of Underwriters, compromise or settle any claim covered by Paragraph 1 or any such claim when combined with any uninsured claim.
- (c) The Insured shall be responsible for
 - (i) The maintenance, and production for inspection by Underwriters, of comprehensive and accurate records and accounts of all matters relevant to this policy; in particular, if Underwriters do not exercise their Option, the Insured shall maintain and produce such records and accounts as will enable Underwriters to determine that part of any sums paid as compensation which is covered by Paragraph 1 and that proportion of the Insured's costs and expenses which is covered by Paragraph 3
 - (ii) Ensuring that employees, lawyers, adjusters and other agents of the Insured are given suitable instructions in relation to the maintenance and production of records and accounts as aforesaid.

8. WARRANTED that in relation to

WARRANTY

- (i) the control and minimisation of Noise and
- (ii) airworthiness, operation, maintenance and repair of aircraft

the Insured will take all reasonable steps to ensure that the Aircraft and all those engaged in its operation and maintenance will

- (a) comply with any applicable Laws and Regulations (including any rules and instructions of airport, Air Traffic Control and airworthiness authorities) and
- (b) follow any applicable instructions or recommendations of Aircraft, Engine and Operational Equipment designers and manufacturers.

9. (i) Underwriters liability shall not exceed the limits specified in Item 8 of the Schedule hereto.

GENERAL
CONDITIONS

- (ii) Notwithstanding the inclusion herein of more than one Insured whether by endorsement or otherwise, the total liability of Underwriters in respect of any or all Insureds shall not exceed the amounts specified in Item 8 of the Schedule hereto.
- (iii) If the risk covered herein is insured by, or would, but for the existence of this policy, be insured by any other policy or policies, then this policy shall only pay in excess of any amount which is or would have been payable under such other policy or policies.
- (iv) The due observance and fulfilment of the terms provisions, conditions and endorsements of this Policy shall be conditions precedent to any liability of the Underwriters to make any payment under this Policy.
- (v) If the Insured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise this policy shall become void and all claims thereunder shall be forfeited.
- (vi) Should there be any change in the circumstances or nature of the risks which are the basis of this contract the Insured shall give immediate notice thereof to the Underwriters and no claim arising subsequent to such change shall be recoverable hereunder unless such change has been accepted by the Underwriters.

- (vii) This Policy may be cancelled at any time by the Underwriters giving 10 days' notice in writing of such cancellation. In such event the Underwriters will return in respect of the unexpired period a pro rata portion of the premium.
- (viii) This Policy shall not be assigned in whole or in part except with the consent of the Underwriters verified by endorsement hereon.
- (ix) All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Underwriters. If the Underwriters shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder. Unless otherwise mutually agreed between the parties such arbitration shall take place in London.

THE SCHEDULE

PREMIUM

POLICY NO.

1. Name of Insured
2. Address
3. Period of Insurance
4. Purposes for which Aircraft may be used
5. Geographical Limits
6. Pilots
7. Aircraft Insured hereby:-
 - (a) Manufacturer
 - (b) Model designation
 - (c) Registration Marks

8. Limits of Underwriters' Liability

The Liability of Underwriters shall not exceed the following amounts:-

..... any one aircraft any one occurrence but not exceeding
 in the aggregate during any one Policy year

9. Notice to Underwriters

Notice to Underwriters in accordance with Paragraph 7 shall be given to:-

.....

AVIATION CANCELLATION SCALE
(applicable to Annual Policies)

(Approved by Lloyd's Aviation Underwriters' Association.)

1 month on risk	20% annual premium
2 months on risk	30% annual premium
3 months on risk	40% annual premium
4 months on risk	50% annual premium
5 months on risk	60% annual premium
6 months on risk	70% annual premium
7 months on risk	75% annual premium
8 months on risk	80% annual premium
9 months on risk	85% annual premium

Over 9 months equivalent to Annual.

U.S. SHORT RATE CANCELLATION TABLE

Days Policy in Force	Per cent. of One Year Premium	Days Policy in Force	Per cent. of One Year Premium
1	5	154-156	53
2	6	157-160	54
3-4	7	161-164	55
5-6	8	165-167	56
7-8	9	168-171	57
9-10	10	172-175	58
11-12	11	176-178	59
13-14	12	179-182 (6 months)	60
15-16	13	183-187	61
17-18	14	188-191	62
19-20	15	192-196	63
21-22	16	197-200	64
23-25	17	201-205	65
26-29	18	206-209	66
30-32 (1 month)	19	210-214 (7 months)	67
33-36	20	215-218	68
37-40	21	219-223	69
41-43	22	224-228	70
44-47	23	229-232	71
48-51	24	233-237	72
52-54	25	238-241	73
55-58	26	242-246 (8 months)	74
59-62 (2 months)	27	247-250	75
63-65	28	251-255	76
66-69	29	256-260	77
70-73	30	261-264	78
74-76	31	265-269	79
77-80	32	270-273 (9 months)	80
81-83	33	274-278	81
84-87	34	279-282	82
88-91 (3 months)	35	283-287	83
92-94	36	288-291	84
95-98	37	292-296	85
99-102	38	297-301	86
103-105	39	302-305 (10 months)	87
106-109	40	306-310	88
110-113	41	311-314	89
114-116	42	315-319	90
117-120	43	320-323	91
121-124 (4 months)	44	324-328	92
125-127	45	329-332	93
128-131	46	333-337 (11 months)	94
132-135	47	338-342	95
136-138	48	343-346	96
139-142	49	347-351	97
143-146	50	352-355	98
147-149	51	356-360	99
150-153 (5 months)	52	361-365 (12 months)	100

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CANADIAN SHORT RATE CANCELLATION TABLE
FOR INSURANCES WRITTEN FOR ONE YEAR

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1	2	55	29
2	4	60 or 2 months	30
3	5	65	33
4	6	70	36
5	7	75	37
6	8	80	38
7	9	85	39
8	9	90 or 3 months	40
9	10	105	45
10	10	120 or 4 months	50
11	11	135	55
12	12	150 or 5 months	60
13	13	165	65
14	13	180 or 6 months	70
15	14	195	73
16	14	210 or 7 months	75
17	15	225	78
18	15	240 or 8 months	80
19	16	255	83
20	16	270 or 9 months	85
25	17	285	88
30 or 1 month	19	300 or 10 months	90
35	20	315	93
40	23	330 or 11 months	95
45	26	360 or 12 months	100
50	27		
	28		

When a Policy is cancelled and the percentage for the exact period for which it has run is not shown in the above Table, the next highest percentage shall be used for the purpose of calculating the Earned Premium.

AIRCRAFT WRECK AND SALVAGE CLAUSE

(Approved by Lloyd's Aviation Underwriters' Association.)

It is hereby understood and agreed that in consideration of paid as an additional premium Section I of this Policy is extended to indemnify the Assured in respect of the Assured's liability for salvage services (as defined below) rendered to the insured Aircraft; but in the event of the Aircraft being under insured such indemnity shall be reduced in the proportion that the insured value of the Aircraft bears to its sound value at the time of the accident. Provided always that such salvage services shall have been rendered in respect of a risk covered by this Policy and that any amount payable under this Clause shall not increase the limit of Underwriters' liability beyond that stated in Section I.

In the event of the insured Aircraft rendering salvage services (as defined below) the Underwriters hereby agree to hold covered the risks insured by this Policy in respect of deviation beyond the geographical limits stated in the Schedule, provided immediate notice be given to the Underwriters and any additional premium required be paid.

In addition the Underwriters will indemnify the Assured in respect of all sums which the Assured may become legally liable to pay for the raising, removal, disposal or destruction of the wreck of the insured Aircraft from any harbour or tidal water under the jurisdiction of a harbour or conservancy authority; provided that Underwriters' liability for such indemnity shall not exceed 1% of the value stated in the Schedule against such Aircraft.

Notwithstanding anything contained herein to the contrary the Underwriters shall not be liable for sue and labour charges or for general average contributions, save in so far as they may be salvage services as defined in this Clause.

DEFINITION.

"Salvage services" shall be deemed to mean any services rendered by or in relation to the Insured Aircraft in, on or over the sea or any tidal water or on or over the shores of the sea or any tidal water, in all cases in which they would have been salvage services, whether maritime or under contract, had they been rendered by or in relation to a vessel.

12/6/51

Aviation 3

COMPONENT PARTS CLAUSE

(Approved by Lloyd's Aviation Underwriters' Association)

Aircraft

Insured Value of Aircraft

Notwithstanding anything contained herein to the contrary it is understood and agreed that in the event of loss of or damage to any Component Part of the above aircraft Underwriters' liability shall not exceed the percentage of the total insured value relating to that Component Part as shown on the Schedule attached. Such percentage shall be deemed to include the cost of labour, material, replacement part, transportation and other incidental charges incurred in reinstating such loss or damage.

The amount recoverable for transportation charges on any lost or damaged Component Part or Parts shall not exceed 15 per cent. of the percentage of the total insured value set against such Component Part or Parts.

The Underwriters will in addition pay the cost of such dismantling, opening up, inspecting, making good, re-assembling and transportation of undamaged parts as may be necessary and the test flying of the aircraft up to 5 per cent. of any admitted claim hereunder but not exceeding 2 per cent. of the insured value of the aircraft. Provided always that Underwriters' aggregate liability shall in no event exceed the insured value of the aircraft.

Average Clause applying to item of Schedule "Other Aircraft Parts or Equipment."

In the event of loss or damage to the unspecified aircraft parts or equipment the Assured shall only be entitled to recover such proportion of the said loss as the sum insured in respect of unspecified aircraft parts or equipment bears to the total value of such parts or equipment.

Subject otherwise to the general terms, conditions and limitations of this Policy.

25/10/50

Aviation 4

DEFERRED PREMIUMS A*(Approved by Lloyd's Aviation Underwriters' Association)*

Notwithstanding that this Policy is issued as a contract for a period of twelve months, it is hereby understood and agreed that the premium shall be payable in the following instalments:—

1st instalment due and payable at inception	£	or	%
2nd instalment due and payable on the	day of	£	or	%
3rd instalment due and payable on the	day of	£	or	%
4th instalment due and payable on the	day of	£	or	%
Etc.....

Nevertheless it is further understood and agreed that:—

In the event of any instalment not being paid prior to, or within ten days after, its due date the cover afforded by this Policy shall be deemed to have ceased at midnight of such due date.

In the event of a claim arising hereunder which exceeds the instalment premiums paid on this Policy the instalments of premium then outstanding shall become due and payable forthwith.

21/1/55
Aviation 5

FULL PREMIUM IF LOST*(Approved by Lloyd's Aviation Underwriters' Association)*

It is understood and agreed that in the event of a claim arising hereunder adjustable on the basis of a Total Loss the Full Annual Premium of , less the amount of premium already paid, shall become due and payable forthwith.

21/1/55
Aviation 8

**FULL PREMIUM
IN THE EVENT OF A CLAIM EXCEEDING PREMIUM PAID**

(Approved by Lloyd's Aviation Underwriters' Association)

It is understood and agreed that in the event of a claim arising hereunder which exceeds the premium paid the balance of the Full Annual Premium of shall become due and payable forthwith.

21/1/55
Aviation 9

**EXTENSION OF SECTION III OF LLOYD'S AIRCRAFT POLICY
LEGAL LIABILITY TO PASSENGERS
(BAGGAGE).**

(Approved by Lloyd's Aviation Underwriters' Association.)

It is hereby understood and agreed that in consideration of paid as an additional premium Section III of this Policy is extended to indemnify the Assured in respect of all sums which the Assured shall become legally liable to pay as compensation, including costs awarded, in respect of damage to or loss of personal baggage belonging to passengers whilst such personal baggage is being carried in or loaded into or unloaded from the Aircraft.

Provided always that such personal baggage carried in any Aircraft insured hereunder operating for hire or reward shall be carried subject to the terms of a ticket and/or baggage check which shall be issued by the Assured to the passenger before the commencement of the flight and that such ticket and/or baggage check shall have printed in a conspicuous manner a condition that the Assured will not be liable for any damage or loss howsoever caused in so far as such condition is not contrary to law or to any international agreement.

The liability of Underwriters shall not exceed \$ in respect of any one passenger, \$ in respect of any one accident or series of accidents arising out of one event, and further shall not exceed \$ in respect of all claims hereunder during the currency of this Policy.

Subject otherwise to the general terms, conditions and limitations of this Policy.

8/2/50
Aviation 10

15% TRANSPORTATION COSTS CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association)*

Notwithstanding anything contained herein to the contrary it is hereby understood and agreed that in the event of the Aircraft sustaining damage covered under Section I of this Policy the liability of the Underwriters for transportation costs shall not exceed 15% of the admitted cost of repairing such damage. Provided always that any amount payable under this Clause shall not increase the limit of the Underwriters' liability beyond that stated in Section I.

For the purpose of this Clause:—

- (a) "Transportation Costs" shall be deemed to mean the aggregate of the cost of (1) Removing the Aircraft to a repair site (2) Transporting such labour, replacement parts, material and equipment as may be required to make good damage covered by this policy (3) Returning the Aircraft from the repair site to the airport nearest to the place of accident or to its home airport, whichever may be the nearer to the repair site.

In all cases the liability of the Underwriters shall be limited to the cost of transportation by the least expensive means which in respect of the transportation of labour shall take into account wages and subsistence payable during transit.

- (b) The "Admitted Cost" of repairing the damage shall be deemed to mean the aggregate of the cost of (1) Labour (2) Replacement parts and material (ex the nearest place where such parts and material are normally stocked) to make good the damage covered by this Policy, including the cost of any necessary opening up and dismantling required for inspection and repairs (3) Re-assembly.

Subject otherwise to the general terms, conditions and limitations of this Policy.

20/10/55
AVIATION II.

WAR RISK ON AIRCRAFT HULLS.**HULL WAR RISKS TERMINATION CLAUSE.***(Approved by Lloyd's Aviation Underwriters' Association)*

In the event of the outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics and the United States of America) this insurance will ipso facto terminate 24 hours from Midnight G.M.T. of the day on which such outbreak of war occurs. Nevertheless, should the aircraft

- (1) Be in the air when such outbreak of war occurs
or
(2) Being at an airport depart therefrom as a measure of safety in respect of an insured peril within 24 hours of such outbreak of war

this insurance will be continued until Midnight G.M.T. of the day on which the aircraft lands wherever such landing may be regardless of whether or not any accidental damage has been sustained by the aircraft.

Notwithstanding any provisions in this policy or in any endorsements thereto to the contrary this insurance will ipso facto terminate in the event the insured aircraft is requisitioned, either for title or use.

In the event of the termination of this insurance by reason of the outbreak of such a war or by the requisition of the insured aircraft but not otherwise, pro rata net return of premium shall be payable to the Assured. Such return premium shall be paid on demand or as soon thereafter as practicable to do so.

All other terms and conditions remain unchanged.

18/11/49
Aviation 12

**LIMITATION OF LIABILITY CLAUSE
(JOINT ASSURED)***(Approved by Lloyd's Aviation Underwriters' Association)*

Notwithstanding the inclusion herein of more than one Assured, whether by endorsement or otherwise, the total liability of the Underwriters in respect of any or all Assureds shall not exceed the limit(s) of liability stated in this Policy.

10/4/58
Aviation 14

LIMITATION OF LIABILITY ENDORSEMENT**(ADDITIONAL ASSUREDS)***(Approved by Lloyd's Aviation Underwriters' Association)*

It is hereby understood and agreed that this Insurance is extended to cover the undermentioned as additional Assured(s), but only in respect of the coverage provided under this Policy.

It is further understood and agreed that notwithstanding the inclusion herein of more than one Assured, the total liability of the Underwriters in respect of any or all Assureds shall not exceed the limit(s) of liability stated in this Policy.

Subject otherwise to all the terms, conditions, exclusions and limitations of the Policy.

In consideration of the foregoing the sum of.....is paid hereon as an additional premium.

Additional Assured(s)

10/4/56
Aviation 15

ADDITIONS AND DELETIONS*(Approved by Lloyd's Aviation Underwriters' Association)**(Applicable to Policies covering Hulls or combined Hulls and Liabilities)*

1. The insurance afforded by this Policy is automatically extended to include at pro rata additional premium further Aircraft added during the currency of this Policy provided such Aircraft are owned or operated by the Assured and are of the same type and value as Aircraft already covered hereunder.

2. The inclusion of additional Aircraft of other types or different values shall be subject to special agreement and rating by Underwriters prior to attachment.

3. Aircraft which have been sold or disposed of shall be deleted from this Policy and the Assured shall be entitled to pro rata return of premium provided no claim has arisen and become payable under this Policy in respect of such Aircraft.

ALWAYS PROVIDED THAT—

- (i) Notwithstanding the foregoing provisions for additions and deletions the premium in respect of each separate period of Flight Risk Insurance on any Aircraft covered during the currency of this Policy shall in no case be less than fifteen days' pro rata premium.
- (ii) In the event of a Claim arising in respect of any Aircraft added hereto being settled on a total loss basis full twelve months' premium shall be paid hereunder in respect of such Aircraft.
- (iii) Notice of the addition or deletion of any Aircraft under the provisions of Paragraphs 1 and 3 respectively shall be given to the Underwriters or their representatives within fifteen days of attachment or deletion.

12/3/57
Aviation 17

ADDITIONS AND DELETIONS*(Approved by Lloyd's Aviation Underwriters' Association)**(Applicable to Policies covering Liabilities only)*

1. The insurance afforded by this Policy is automatically extended to include at pro rata additional premium further Aircraft added during the currency of this Policy provided such Aircraft are owned or operated by the Assured and are of the same type as Aircraft already covered hereunder and of no greater seating capacity.

2. The inclusion of additional Aircraft of other types or greater seating capacities shall be subject to special agreement and rating by Underwriters prior to attachment.

3. Aircraft which have been sold or disposed of shall be deleted from this Policy and the Assured shall be entitled to pro rata return of Premium.

4. Notice of the addition or deletion of any Aircraft under the provisions of Paragraphs 1 and 3 respectively shall be given to the Underwriters or their representatives within fifteen days of attachment or deletion.

12/3/57
Aviation 18

**EARLY WARNING LINES—EXCLUSION CLAUSE
(NORTH AMERICA)***(Approved by Lloyd's Aviation Underwriters' Association)*

Notwithstanding anything contained herein to the contrary this Policy does not cover operations directly or indirectly connected with the Continental Radar Defence System.

7/5/57
Aviation 19

CLAIMS CO-OPERATION CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association)*

Notwithstanding anything herein contained to the contrary, it is a condition precedent to any liability under this policy that

- (a) the Reassured shall upon knowledge of any loss or losses which may give rise to a claim under this policy advise the Underwriters thereof within seven days,
- (b) the Reassured shall furnish the Underwriters with all information available respecting such loss or losses and shall co-operate with the Underwriters in the adjustment and settlement thereof.

6/5/58
Aviation 21

DEFICIT CLAUSE (THREE YEARS)*(Approved by Lloyd's Aviation Underwriters' Association)*

It is agreed that in the event of this contract showing a loss on the result of any one year, the total amount of such loss shall be debited to the Profit Account for the ensuing year or years, but no Profit Commission shall be considered as earned on any ensuing year or years until the previous loss has been balanced and a credit balance again restored. It being further understood and agreed that any such loss referred to above shall not be carried forward for more than three consecutive years.

6/5/58
Aviation 22

UNLICENSED LANDING GROUND SUITABILITY CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association)*

In consideration of an additional premium of _____ it is hereby understood and agreed that notwithstanding anything contained herein to the contrary, the landing and taking off of the insured aircraft by day on Landing Grounds other than duly licensed airfields is covered under the policy subject however to each such landing ground having been previously surveyed from the ground by the Insured and by the pilot using the landing ground, and from the air by the same pilot immediately prior to landing, and subject to previous permission having been obtained from the owner and/or tenant of the land.

In the event of a claim being made under the policy in respect of an accident occurring during the use of any such landing ground the onus of proving its suitability as such and that it had been surveyed from the ground and from the air, as provided above, shall rest entirely on the Insured.

6/5/58
Aviation 23

BURNING COSTS CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association)*

The Premium to be paid to Underwriters hereon shall be calculated at a provisional Rate of _____ % per annum on the insured value of the Aircraft. As soon as practicable after the total claims (including claims expenses less salvages and/or refunds and/or recoveries) payable under this Policy are ascertained, the above mentioned Rate of _____ % shall be adjusted so that the total gross Premium under this Policy is equal to _____ % of the total claims (including claims expenses less salvages and/or refunds and/or recoveries) subject however to a minimum annual rate of _____ % and a maximum annual Rate of _____ %.

6/5/58
Aviation 24

CLAIMS CONTROL CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association)*

Notwithstanding anything herein contained to the contrary, it is a condition precedent to any liability under this policy that

- (a) the Reassured shall, upon knowledge of any loss or losses which may give rise to a claim under this policy, advise the Underwriters thereof by cable within 72 hours;
- (b) the Reassured shall furnish the Underwriters with all information available respecting such loss or losses, and the Underwriters shall have the right to appoint adjusters, assessors and/or surveyors and to control all negotiations, adjustments and settlements in connection with such loss or losses.

3/6/58
Aviation 25

AIRCRAFT LAYING-UP RETURNS CLAUSE.

(Approved by Lloyd's Aviation Underwriters' Association.)

IN THE EVENT of the aircraft hereby insured being laid up, the Flight and Taxying cover under all sections of this insurance will be suspended during the period of lay-up and credit therefor will be adjusted on expiry of this insurance subject to the following conditions:—

1. Notice must be given to the Underwriters by the Assured prior to the date of inception and also upon termination of lay-up.
2. No return of premium shall be made:—
 - (a) in respect of the period of the annual renewal of the Certificate of Airworthiness including any work necessitated thereby
 - (b) unless the period of lay-up is of at least 30 consecutive days, but should the period defined in (a) occur during lay-up then the Assured shall be entitled to add the lay-up days prior to and subsequent to the period defined in (a) in computing the period of 30 days or more for which a return may be made
 - (c) if a claim in respect of the aircraft concerned has been made on this insurance.

Subject always to the foregoing conditions the return shall be 75 per cent. of *pro rata* of the difference between the annual hull risk premium and the annual ground risk premium (as agreed by the Underwriters) for the actual period of lay-up as defined above.

In the event of the aircraft being laid up for a period of 30 consecutive days or more, a part only of which attaches to this insurance and part to the annual renewal insurance, then this insurance shall return premium for such proportion of the total period of lay-up as the number of days attaching hereto bears to such total period.

5/4/80

Aviation 26

ADDITIONAL INSURANCE CLAUSE

(Approved by Lloyd's Aviation Underwriters' Association)

Warranted that no additional insurance on any interests on or in relation to any Aircraft described in the Schedule, save such as may be required to cover personal accident and legal liability, has been or shall be effected to operate during the currency of this Policy by or for account of the Assured, Owners, Managers, Mortgagees or Hirers except:—

1. Additional insurance on terms and conditions identical with those contained in this Policy.
2. Additional insurance on Total Loss Only or any conditions other than those stated in (1) above, whether Policy Proof of Interest, Full Interest Admitted, or otherwise, but only to cover in respect of any one Aircraft an amount not exceeding 10 per cent. of the Total Value of that Aircraft as stated in the Schedule of this Policy.

Aviation 27

BREACH OF WARRANTY ENDORSEMENT

(Approved by Lloyd's Aviation Underwriters' Association)

Attaching to and forming part of Policy No. _____ on aircraft C.A.A.
 Identification Mark _____ which is encumbered by a lien in the amount of
 \$ _____ payable in _____ instalments of \$ _____ each,
 the last instalment being due _____ The said lien is held
 by _____
 (hereinafter called the Lienholder)

In consideration of an additional premium of \$ _____
 UNDERSTOOD AND AGREED THAT:

IT IS

1. The insurance afforded by the Policy shall not be invalidated as regards the interest of the Lienholder by any act or neglect of the Insured except that any change in title or ownership of the aircraft, conversion, embezzlement or secretion by the Insured in possession of the aircraft are not covered hereunder; PROVIDED HOWEVER THAT:

- A. If the Insured fails, on demand of the Underwriters to pay any premium due under this policy, the Lienholder shall pay such premium; and
- B. The Lienholder shall notify the Underwriters of any increase of hazard which comes to the Lienholder's attention and if not permitted by the policy, it shall be endorsed thereon, the Lienholder agreeing to pay any additional required premium if the Insured shall fail to do so on demand of the Underwriters.

It is, however, further understood and agreed by the parties concerned that the protection afforded to the Lienholder by the terms of this endorsement is limited to the perils covered under the policy and for which a specific premium charge has been made.

2. If the Insured fails to render proof of loss within the time granted in the policy conditions, the Lienholder shall do so within 60 days thereafter, in form and manner as provided by the policy and further shall be subject to the provisions of the policy relating to appraisal and time of payment and of bringing suit.

3. Whenever the Underwriters shall be liable to the Lienholder for any sum for loss or damage under this policy and shall claim that as to the Insured, no liability therefor existed, their liability under the terms of this endorsement shall not in any event exceed the amount of the lien set forth above, less the amount of all matured instalments and less unearned interest or carrying charges and unearned financed insurance premium, if any.

4. The Underwriters reserve the right to cancel this policy at any time as provided by its terms but in such case notification shall be given the Lienholder when not less than 10 days thereafter such cancellation shall be effective as to the interest of said Lienholder therein and the Underwriters shall have the right, on like notice, to cancel this endorsement.

5. Upon payment of any sum to the Lienholder as provided hereunder, the Underwriters shall to the extent of such payment be thereupon legally subrogated to all the rights of the Lienholder under all securities held as collateral to the debt and the Lienholder shall assign and transfer to the Underwriters all instruments of security pertaining to the aircraft; but no subrogation shall impair the right of the Lienholder to recover the full amount of his claim.

13/1/59
 Aviation 28

MANUFACTURER AS ADDITIONAL ASSURED

(Approved by Lloyd's Aviation Underwriters' Association)

Agreed to include _____ as an Additional Assured but only in so far as their interests arise as owners (in whole or in part) of the insured aircraft.

This agreement shall not operate to prejudice Underwriters rights of recourse against

_____ as manufacturers, repairers, suppliers or servicing agents where such right of recourse would have existed had this endorsement not been effected under this Policy.

3/3/59
 Aviation 29

PRIOR ADVICE CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association)*

In the event that any alteration of this contract is held covered subject to 'prior advice' to Underwriters, it is hereby understood and agreed that 'prior advice' shall be deemed to have been given only if the Insured shall have notified the Underwriters or their representatives by cable or telegram date and time stamped by postal authorities before the effective time of such alteration. Proof of the despatch of such date and time stamped cable or telegram shall be the only evidence of 'prior advice' acceptable to the Underwriters and shall be a condition precedent to any liability arising from such alteration.

7/4/59

Aviation 31

GLIDERS (LAUNCHING SITES) CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association.)*

It is hereby understood and agreed that this Policy shall not apply whilst the insured glider is being prepared for launching or actually being launched on or from a site other than a recognised aerodrome or a suitable site habitually used for the purpose of launching gliders and recognised and/or authorised for this purpose by the appropriate authorities.

3/5/60

Aviation 32

PASSENGER VOLUNTARY SETTLEMENT ENDORSEMENT*(FOR ATTACHMENT TO LLOYD'S AIRCRAFT LIABILITY POLICY (U.S.A.))**(Approved by Lloyd's Aviation Underwriters' Association)*

1. In consideration of an additional premium of \$, it is agreed that the Underwriters will at the request of and regardless of legal liability of the Named Insured offer settlement on the basis of the benefits hereinafter set forth in respect of bodily injury accidentally sustained by any passenger provided that at the time of any accident causing such bodily injury Coverage "C" (Passenger Bodily Injury Liability) of the policy is effective in respect of such accident.

2. LIMITS OF SETTLEMENT

For death or for total loss of two limbs or total loss of sight of two eyes or total loss of one limb and total loss of sight of one eye the amount offered shall not exceed the amount expressed as the limit of settlement for "each passenger" in the schedule of this Endorsement; or
For total loss of one limb or total loss of sight of one eye the amount offered shall not exceed one half of the amount expressed as the limit of settlement for "each passenger" in the schedule of this Endorsement.

For permanent total disablement other than by loss of limbs or sight the amount offered shall not exceed the amount expressed as the limit of settlement for "each passenger" in the schedule of this Endorsement.

Subject to the limit for "each passenger" the total of the amounts which the Underwriters shall offer on account of death or other loss sustained by two or more passengers in any one accident shall not exceed the amount expressed as the limit of settlement for "each accident" in the schedule of this Endorsement.

3. DEFINITIONS

"LOSS OF A LIMB" means loss by physical separation of a hand at or above the wrist or of a foot at or above the ankle.

"TOTAL LOSS OF SIGHT" means loss of sight which is certified as being entire and irrecoverable by a licensed physician specialising in ophthalmology.

"PERMANENT TOTAL DISABLEMENT" means disablement which has for twelve months from the date of the accident necessarily and continuously disabled the passenger from attending to business or occupation of any and every kind or if he has no business or occupation confined him immediately and continuously to the house and prevented him from attending to any of his usual duties (if any) and at the expiry of that twelve months period being beyond hope of improvement.

4. ADDITIONAL EXCLUSIONS

This Endorsement does not cover death of or bodily injury to any passenger caused by

- (a) his suicide or attempted suicide or intentional self-injury or own criminal or felonious act or by his own act whilst in a state of insanity or intoxication.
- (b) disease or natural causes, or medical or surgical treatment (except where such treatment is rendered necessary by bodily injury caused by accident within the scope of this Endorsement).

5. ADDITIONAL CONDITIONS

- (a) The Insured shall furnish, as soon as practicable after each request from the Underwriters, reasonably obtainable information pertaining to injuries sustained by passengers. In the event of death immediate notice must be sent to the Underwriters.
- (b) In consideration of any settlement under the provisions of this Endorsement and as a condition precedent thereto, the injured passenger and any person having a cause of action for such injuries, or in the event of death the person or persons having a cause of action for the death, shall in the manner required by the Underwriters, execute a full legal release of all claims for damages against the Insured and/or the crew of the aircraft and/or any employee of the Insured and/or any person whom the Insured has agreed to indemnify or hold harmless except claims for which the Insured or any Company as his Insurer may be held liable under any Workmen's Compensation Law. If the injured passenger or any person claiming by, through or under him shall fail to accept in writing within thirty (30) days from the date of offering the voluntary settlement under the provisions of this Endorsement or to execute the necessary release then the Underwriters may withdraw the offered voluntary settlement, without notice, in which circumstances the Underwriters will no longer be bound by the undertakings expressed in the preceding paragraphs. If subsequent to an offer of voluntary settlement being made in respect of any passenger any claim suit or demand is made or prosecuted against the Insured for damages on account of such bodily injuries or death, such claim suit or demand shall be considered as refusal to accept such voluntary settlement and the obligations of the Underwriters as expressed in Coverage "C" (Passenger Bodily Injury Liability) of the policy to which this Endorsement is attached, shall be available as fully and completely as if this Endorsement had not been issued.
- (c) It is agreed that as respects the provisions of this Endorsement Exclusion (8) of the Policy is deleted. The Underwriters shall not be liable under the terms of this Endorsement for any payment which may be used to satisfy that obligation for which the Insured or his Insurer may be held liable under a Workmen's Compensation Law neither shall this Endorsement apply to loss suffered by passengers carried for hire or reward or by pilots or other members of the crew of the aircraft.
- (d) This Endorsement also covers (subject otherwise to its terms, conditions and exclusions) death from drowning or death or disablement from exposure as the direct result of misfortune to the aircraft in connection with a flight covered hereunder.
- (e) It is agreed that if a passenger disappears and his body is not found within a reasonable period of time, or a maximum period of one year, and the Underwriters, having examined all available evidence, shall have no reason other than to presume his death in circumstances rendering them liable for the payment of the death benefit under this Endorsement they shall at the request of the Insured forthwith pay such benefit, but if the passenger is subsequently found to be living the Insured shall take all reasonable steps to recover on behalf of the Underwriters any sums so paid.
- (f) Except as provided by Conditions (d) and (e) above accidental death shall not be presumed by reason of the disappearance of any passenger.

The ScheduleDescription of Aircraft

F.A.A. Reg. No.	Make, Model and Type *	Declared Maximum number of Passengers to be carried at any one time.

* Landplane, Seaplane, Skiplane, Amphibian or Rotorcraft

Limits of Settlement

Each Passenger

Each Accident

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Endorsement is subject to the terms, exclusions, conditions and limitations of the policy to which it is attached.

5/12/61

Aviation 34

SPREADER CLAUSE "A"

(FOR ATTACHMENT TO PASSENGER VOLUNTARY SETTLEMENT ENDORSEMENT)

(Approved by Lloyd's Aviation Underwriters' Association)

Notwithstanding anything contained herein to the contrary, it is understood and agreed that if in any accident resulting in a claim under this insurance the number of passengers in the aircraft exceeds the number stated in either the Schedule forming part of the Passenger Voluntary Settlement Endorsement or the Declarations in the main policy, then provided there is no violation of the limitations imposed by the Civil Aeronautics Authority and/or the Airworthiness Certificate as to seating capacity or maximum allowable gross weight, this insurance shall nevertheless remain effective, but the Limit of Settlement to be offered under the said Endorsement for death or loss of two limbs or loss of sight of two eyes or loss of one limb and loss of sight of one eye or permanent total disablement in respect of any passenger shall be calculated by dividing the "each accident" limit stated in the said Endorsement by the total number of passengers in the aircraft. The Limit of Settlement to be offered for loss of one limb or loss of sight of one eye shall also be reduced pro rata.

It is further understood and agreed that except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the policy to which it is attached.

5/12/61

Aviation 35

SPREADER CLAUSE "B"

(FOR ATTACHMENT TO PASSENGER VOLUNTARY SETTLEMENT ENDORSEMENT)

(Approved by Lloyd's Aviation Underwriters' Association)

Notwithstanding anything contained herein to the contrary, it is understood and agreed that if in any accident resulting in a claim under this insurance the number of passengers in the aircraft exceeds the number stated in the Schedule forming part of the Passenger Voluntary Settlement Endorsement, then provided there is no violation of the limitations imposed by the Civil Aeronautics Authority and/or the Airworthiness Certificate as to seating capacity or maximum allowable gross weight, this insurance shall nevertheless remain effective, but the Limit of Settlement to be offered under the said Endorsement for death or loss of two limbs or loss of sight of two eyes or loss of one limb and loss of sight of one eye or permanent total disablement in respect of any passenger shall be calculated by dividing the "each accident" limit stated in the said Endorsement by the total number of passengers in the aircraft. The Limit of Settlement to be offered for loss of one limb or loss of sight of one eye shall also be reduced pro rata. Nevertheless this insurance shall be null and void in the event that the number of passengers carried in the aircraft at the time of the accident exceeds that declared in the Policy.

It is further understood and agreed that except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the policy to which it is attached.

5/12/61

Aviation 36

AVIATION RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE (GENERAL)

(Approved by Lloyd's Aviation Underwriters' Association)

- (1) This policy does not cover
- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom
 - (b) any legal liability of whatsoever nature.
- directly or indirectly caused or contributed to by or arising from ionising radiations or contamination by radioactivity from any source whatsoever.
- (2) Loss, destruction, damage, expense or legal liability which, but for the provisions of paragraph (1) of this Clause, would be covered by this policy, and is directly or indirectly caused or contributed to by or arises from ionising radiations or contamination by radioactivity from any radioactive materials in course of carriage as cargo under International Air Transport Association regulations, shall (subject to all the other provisions of this policy) be covered, provided that:
- (a) it shall be a condition precedent to the liability of the Underwriters that the carriage of any radioactive materials shall in all respects comply with the current regulations issued by the International Air Transport Association relating to the carriage of restricted articles by air;
 - (b) the loss, destruction, damage, expense or legal liability shall have occurred or arisen during the period of this policy, and any claim by the Assured against the Underwriters or by any claimant against the Assured shall have been made within three years after the date of the occurrence giving rise to the claim;
 - (c) in the case of any claim by virtue of this paragraph (2) under the Hull section of this policy, the level of contamination shall have exceeded the maximum permissible level set out in the following scale :-

<u>Emitter</u>	<u>Maximum permissible level of non-fixed radioactive surface contamination (Averaged over 300 cm²)</u>
Alpha emitters in Group 1 of the IAEA list of radioisotopes (IAEA Health and Safety Series No. 6)	Not exceeding 10 ⁻⁵ microcuries per cm ²
All other substances	Not exceeding 10 ⁻⁴ microcuries per cm ²

- (d) the cover afforded by this paragraph (2) may be cancelled at any time by the Underwriters giving seven days' notice of cancellation.

4/5/64
Aviation 38

AVIATION RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE (ENGINES)

(Approved by Lloyd's Aviation Underwriters' Association.)

- (1) This policy does not cover
- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom
 - (b) any legal liability of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiations or contamination by radioactivity from any source whatsoever.
- (2) Loss, destruction, damage, expense or legal liability which, but for the provisions of paragraph (1) of this Clause, would be covered by this policy, shall (subject to all the other provisions of this policy) be covered, provided that:—
- (a) the cover afforded by this paragraph (2) shall not extend to
 - (i) loss or destruction of or damage to any aircraft engine or any part thereof or any loss or expense whatsoever resulting or arising therefrom
 - (ii) any legal liability of whatsoever nature directly or indirectly caused or contributed to by or arising from contamination of any aircraft engine or any part thereof by ionising radiations or radioactivity from any source whatsoever;
 - (b) it shall be a condition precedent to the liability of the Underwriters that the carriage of any radioactive materials shall in all respects comply with the current regulations issued by the International Air Transport Association relating to the carriage of restricted articles by air;
 - (c) the loss, destruction, damage, expense or legal liability shall have occurred or arisen during the period of this policy, and any claim by the Assured against the Underwriters or by any claimant against the Assured shall have been made within three years after the date of the occurrence giving rise to the claim;
 - (d) in the case of any claim by virtue of this paragraph (2) under the Hull section of this policy, the level of contamination shall have exceeded the maximum permissible level set out in the following scale:—

<u>Emitter</u>	<u>Maximum permissible level of non-fixed radioactive surface contamination (Averaged over 300 cm²)</u>
Alpha emitters in Group 1 of the IAEA list of radioisotopes (IAEA Health and Safety Series No. 6)	Not exceeding 10 ⁻⁵ microcuries per cm ²
All other substances	Not exceeding 10 ⁻⁴ microcuries per cm ²

- (e) the cover afforded by this paragraph (2) may be cancelled at any time by the Underwriters giving seven days' notice of cancellation.

4/5/64

Aviation 39

MUTUAL CANCELLATION CLAUSE (WARSAW CONVENTION)

(Approved by Lloyd's Aviation Underwriters' Association)

If at any time during the currency of this policy the Insured's legal liability may be affected by any one or any combination of the following events:

Any ratification or denunciation of, or accession or adherence to, the 1929 Warsaw Convention or the Hague Protocol thereto, or if the said Convention or Protocol ceases to apply in respect of any State or Territory where it was previously in force

THEN notwithstanding any other provisions of the policy relating to cancellation, the cover hereunder may be cancelled either by the Insured or by Underwriters by the giving of not less than 60 days' notice in writing

PROVIDED that in contemplation of any of the above events the parties hereto may at any time agree upon revised terms and conditions which shall, unless otherwise agreed, become operative immediately such events become effective.

Any Notice of Cancellation hereunder shall cease to have effect if any agreement on revised terms and conditions is reached as aforesaid.

25/6/62

Aviation 40

225

REINSURANCE UNDERWRITING & CLAIMS CONTROL CLAUSE*(Approved by Lloyd's Aviation Underwriters' Association.)*

1. Being a Reinsurance of the Company and, except as provided by paragraph 2 hereof, warranted the same gross rate, terms and conditions as the said Company as agreed at inception, and that the said Company retains during the currency of

this Policy at least on the identical subject matter and risk and in identically the same proportion on each separate part thereof, but in the event of the retained line being less than as above, Underwriters' lines to be proportionately reduced.

2. Subject to the foregoing, it is a condition precedent to any liability under this Reinsurance that:

- (a) no amendment to the terms or conditions or additions to or deletions from the original policy shall be binding upon Underwriters hereon unless prior agreement has been obtained from the said Underwriters;
- (b) the Reassured shall upon knowledge of any loss or losses which may give rise to a claim under this policy, advise the Underwriters by cable within 72 hours;
- (c) the Reassured shall furnish the Underwriters with all information available respecting such loss or losses, and the Underwriters shall have the sole right to appoint adjusters, assessors, surveyors and/or lawyers and to control all negotiations, adjustments and settlements in connection with such loss or losses.

9/6/65
Aviation 41

DOCUMENTS OF CARRIAGE CLAUSE

1. It is a condition of this Policy that the Insured will take all reasonable steps to ensure that

- (a) before a passenger boards the Aircraft, or when the Insured takes charge of registered/checked baggage and/or cargo, the appropriate Document of Carriage (correctly completed so as to identify the contract of carriage and to exclude or limit the Insured's legal liability) is delivered to the passenger or consignor/shipper as the case may be
- (b) suitable evidence of compliance with the foregoing is preserved and made available to Underwriters upon request

2. In the event of failure by the Insured to comply with the foregoing condition, the amount of Underwriters' liability shall not exceed the sum for which the Insured would have been legally liable if the aforesaid failure had not occurred, subject always to the Policy limits.

3. As used herein:

"Document of Carriage" means a passenger ticket, baggage ticket/check or an air consignment note/air waybill (whichever is relevant to liability covered by this Policy) of which the form, the Conditions of Contract (including any applicable Tariff or Conditions of Carriage) and the usage thereof are either

- (i) in accordance with current and relevant Resolutions adopted by members of the International Air Transport Association
- or (ii) approved in writing by Underwriters in any other case.

10/11/65
Aviation 42

MUTUAL REVISION CLAUSE (AVIATION LIABILITY)

1. As used herein "Warsaw Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, October 12th 1929 or any amendment or supplement to that Convention whether by means of Protocol, additional, new or supplemental Convention or otherwise.

2. If at any time during the currency of this policy the Insured's legal liability may be affected by any one or any combination of the following events:

(a) Any ratification or denunciation of, or accession or adherence to, the Warsaw Convention or if the Warsaw Convention ceases to apply in respect of any State or Territory where it was previously in force.

(b) Any alteration of liability in conformity with any Government or other official requirement or commercial agreement or by means of a Special Contract or Tariff provision in accordance with the Warsaw Convention THEN notwithstanding any other provisions of the policy, and in contemplation of any of the above events, either the Insured or the Underwriters shall have the right to request a revision of terms and conditions. Revised terms and conditions agreed by the parties hereto shall, unless otherwise agreed, become operative if and when the events (or event) relevant to the aforesaid revision become(s) effective.

3. If no agreement is reached on revised terms and conditions on the expiry of 60 days from the date of a written request for the aforesaid revision, then either party shall have the right to give 30 days notice of cancellation of the Policy.

17/3/66
Aviation 44

PASSENGER LIABILITY (MUTUAL REVISION & SPECIAL CONTRACTS) CLAUSE

1. As used herein "Warsaw Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, October 12th, 1929, or any amendment or supplement to that Convention whether by means of Protocol, additional, new or supplemental Convention or otherwise.

2. **MUTUAL REVISION.** If at any time during the currency of this policy the Insured's legal liability may be affected by any one or any combination of the following events:

(a) Any ratification or denunciation of, or accession or adherence to, the Warsaw Convention or if the Warsaw Convention ceases to apply in respect of any State or Territory where it was previously in force.

(b) Any alteration of liability by national legislation or in conformity with any Government or other official requirement

THEN notwithstanding any other provisions of the policy, and in contemplation of any of the above events, either the Insured or the Underwriters shall have the right to request a revision of terms and conditions. Revised terms and conditions agreed by the parties hereto shall, unless otherwise agreed, become operative if and when the events (or event) relevant to the aforesaid revision become(s) effective.

If no agreement is reached on revised terms and conditions on the expiry of 60 days from the date of a written request for the aforesaid revision, then either party shall have the right to give 30 days' notice of cancellation of the Policy.

3. **SPECIAL CONTRACTS.** Subject to the prior approval of Underwriters and in consideration of additional premium this policy may be extended to cover the Insured's legal liability in respect of Special Contracts. As used herein "Special Contract" means

- (i) an agreement between the Insured and a passenger for a higher limit of liability in accordance with Article 22(1) of the Warsaw Convention, or
- (ii) any other agreement between the Insured and a passenger whereby the Insured assumes increased legal liability in respect of the passenger's death or injury

Special Contracts which have been approved as aforesaid are identified by the documents annexed hereto being either Specimen Tickets, Tariff(s), Conditions of Contract or of Carriage, and Notices to Passengers, or alternatively Copies of Agreements between carriers requiring the parties thereto to enter into Special Contracts.

4. Nothing herein shall be deemed to alter the limits of Underwriters liability as specified in the Policy. Any condition of the Policy relating to contractual agreements is varied only as may be necessary to the extent herein provided.

12/4/67
Aviation 44A

NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE

1. This Policy does not cover claims directly or indirectly occasioned by, happening through or in consequence of:—

- (a) noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith,
 - (b) pollution and contamination of any kind whatsoever,
 - (c) electrical and electromagnetic interference,
 - (d) interference with the use of property;
- unless caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation.

2. With respect to any provision in the Policy concerning any duty of Underwriters to investigate or defend claims, such provision shall not apply and Underwriters shall not be required to defend

- (a) claims excluded by Paragraph 1 or
- (b) a claim or claims covered by the Policy when combined with any claims excluded by Paragraph 1 (referred to below as "Combined Claims").

3. In respect of any Combined Claims, Underwriters shall (subject to proof of loss and the limits of the Policy) reimburse the Insured for that portion of the following items which may be allocated to the claim or claims covered by the Policy:

- (i) damages awarded against the Insured and
- (ii) defence fees and expenses incurred by the Insured.

4. Nothing herein shall override any radioactive contamination or other exclusion clause attached to or forming part of this Policy.

AVN. 46B
(12.1.72.)

WAR, HI-JACKING AND OTHER PERILS EXCLUSION CLAUSE (AVIATION)

This Policy does not cover claims caused by

- (a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labour disturbances.
- (d) Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- (e) Any malicious act or act of sabotage.
- (f) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil military or de facto) or public or local authority.
- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured.

Furthermore this Policy does not cover claims arising whilst the Aircraft is outside the control of the Insured by reason of any of the above perils. The Aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the Aircraft to the Insured at an airfield not excluded by the geographical limits of this Policy, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress).

(26.8.71.)
AVN. 48B

HI-JACKING ENDORSEMENT
For use with an Aircraft Hull Policy (War Risks)

IT IS AGREED THAT NOTWITHSTANDING General Exclusion (d) and in consideration of additional premium

Hi-jacking

1. (a) Section 1 is extended to include loss of or damage to the Aircraft arising out of Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Assured.
- (b) This Policy is extended to cover any loss of or damage to the Aircraft occurring subsequent to the unlawful seizure or wrongful exercise of control which would have been recoverable under the Assured's "All Risks" Policy No..... but for the intervention of such seizure or wrongful exercise of control: subject to such deductibles as may appear in that Policy. If the Aircraft lands under duress of such unlawful seizure or wrongful exercise of control, the coverage provided by this Policy and Endorsement is hereby continued, until terminated according to Clause 2 below.

NOTWITHSTANDING this extension the maximum payable under this Policy shall be the sum specified in column 4, Section VI.

**Limitation of
period after
Hi-jacking**

2. All coverage under this Policy and Endorsement in respect of an Aircraft that lands under duress of such unlawful seizure or wrongful exercise of control, is terminated
 - (i) at midnight (local time) on the fifteenth day after the first such landing above, unless the prior agreement of Underwriters has been obtained to continue the cover at an additional premium to be agreed. In the event of the unlawful seizure or wrongful exercise of control occurring within fifteen days of the natural expiry of the Policy, coverage under this Endorsement will automatically extend to the end of the fifteen days without additional premium
 - (ii) when any notice of cancellation (but see 3 below) or automatic termination of this Policy becomes effective
 - (iii) on the safe return of the Aircraft to the Assured at an airfield not excluded by the geographical limits of this Policy and the All Risks Policy for the Aircraft concerned, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress) whichever first occurs.
3. In the event of an Aircraft insured hereunder being hi-jacked or unlawfully seized, Underwriters hereon agree to waive their rights under Section IV 1 (a) and (b) of this Policy in respect of such an Aircraft: such waiver shall also apply in the case of any notice given but not effective prior to the commencement of such seizure, and shall cease on the termination of the coverage as provided by Clause 2 above.
4. In the event of the safe return of the Aircraft (as defined in 2(iii) above) following termination of coverage under 2(i) or 2(iii), the Aircraft shall re-attach to this Policy and Endorsement at a premium to be agreed.
5. Excluding any claim for landing dues, refuelling costs or similar charges, or arising from non-payment thereof.
6. Excluding any claim for wear, tear, gradual deterioration, or any servicing to any part of the Aircraft made necessary by the passage of time.
7. The attachment of this Endorsement shall have the effect of overriding Section IV 3(b) of this Policy.
8. Subject otherwise to all terms, conditions and limits of this Policy.

EXTENDED COVERAGE ENDORSEMENT (AIRCRAFT HULLS)

Notwithstanding the contents of the War, Hi-jacking and Other Perils Exclusion Clause forming part of this Policy, IT IS HEREBY UNDERSTOOD AND AGREED that this Policy is extended to cover claims caused by the following risks:—

- (i) Strikes, riots, civil commotions or labour disturbances;
- (ii) Any malicious act or act of sabotage;
- (iii) Hi-jacking or any unlawful seizure or wrongful exercise of control of the aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the aircraft acting without the consent of the Insured

PROVIDED ALWAYS THAT

1. The above extension shall only apply to the extent that the loss or damage is not otherwise excluded by (a), (b), (d) and (f) of the War, Hi-jacking and Other Perils Exclusion Clause
2. the limits of Underwriters' liability in respect of any or all of the risks covered under this endorsement shall not exceed the sum of (in the aggregate during the policy period)
3. the Insured has paid or has agreed to pay the additional premium of required by the Underwriters in respect of this extension
4. the insurance provided by this endorsement may be cancelled by the Underwriters giving notice effective on the expiry of seven days from midnight G.M.T. on the day on which notice is issued.

AVN 51
(26.8.71.)

EXTENDED COVERAGE ENDORSEMENT (AIRCRAFT LIABILITIES)

*delete as
appropriate

1. In consideration of an Additional Premium of subject to *monthly/quarterly review, it is hereby understood and agreed that with effect from paragraphs of the War, Hi-jacking and Other Perils Exclusion Clause forming part of this Policy, are deleted.
2. Nevertheless, the coverage provided by this Endorsement shall **TERMINATE AUTOMATICALLY**
 - (a) upon the outbreak of war (whether there be a declaration of war or not) between any of the following States, namely, the United Kingdom, United States of America, France, the Union of Soviet Socialist Republics, the People's Republic of China PROVIDED THAT if the Aircraft is in the air when such outbreak of war occurs, then the coverage provided by this Endorsement (subject to its terms and conditions and provided not otherwise cancelled, terminated or suspended) will be continued in respect of such Aircraft until the said Aircraft has completed its first landing thereafter.
 - (b) upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the insured Aircraft may be involved.
3. Notwithstanding, in the event the insured Aircraft is requisitioned for either title or use the coverage provided by this Endorsement will terminate in respect of such Aircraft.
4. The coverage provided by this Endorsement may be cancelled by either the Underwriters or the Insured giving notice effective on the expiry of seven days from Midnight G.M.T. on the day on which notice is issued.

(26.8.71.)
AVN 52

ADDITIONAL INSURED ENDORSEMENT (LIABILITIES)

It is hereby understood and agreed that

.....
are added as an Additional Insured but only insofar as their interests arise as owners (in whole or in part) of the insured aircraft and only with respect to the operation of the aircraft by the Named Insured.

This Endorsement does not provide coverage for the Additional Insured with respect to claims arising out of their legal liability as manufacturers, repairers, suppliers or servicing agents and shall not operate to prejudice Underwriters' rights of recourse against the Additional Insured as manufacturers, repairers, suppliers or servicing agents where such rights of recourse would have existed had this Endorsement not been effected under this Policy.

This Endorsement attaches to and forms part of Policy No.

and is effective from the day of 19

(13.10.71)
AVN. 53

NON-OWNED AIRCRAFT ENDORSEMENT

In consideration of an additional premium of it is understood and agreed that in addition to the Aircraft declared hereunder, cover granted under this policy applies to Aircraft used by the Named Insured but not so declared, ALWAYS PROVIDED the Named Insured :

1. has no interest in the Aircraft as owner in whole or in part
2. exercises no part in the servicing or maintenance of the Aircraft
3. exercises no part in the appointment or provision of personnel for the operation of the Aircraft.

THIS ENDORSEMENT does not apply :

- (a) to liability arising out of any product manufactured, sold, handled or distributed by the Named Insured
- (b) to any Aircraft having a seating capacity, including crew, in excess of
- (c) to liability for loss of or damage to the Aircraft or any consequential loss arising therefrom
- (d) when the Aircraft is used by the Named Insured for hire and reward.

All other terms and conditions of the policy remain unchanged.

AVN 54.
(12.1.72)

AIRCRAFT ALL RISKS EXTENSION CLAUSE

(For use with Aircraft Hull Policy (War Risks))

This Policy is extended to cover any loss of or damage to the Aircraft insured hereunder which would have been recoverable under the Assured's All Risks Policy No..... but for the intervention of a peril insured under paragraphs (a) (b) (c) or (d) of Section I of the Policy to which this Clause is attached.

NOTWITHSTANDING this extension the maximum payable under this Policy shall be the sum specified in column 4, Section VI.

Coverage under this extension shall terminate

- (i) at midnight (local time) on the fifteenth day following the day on which this extension of coverage first became effective unless the prior agreement of Underwriters has been obtained to continue the cover; should the natural expiry date of this policy occur during the above period, the extension shall nevertheless remain in force until the above mentioned fifteenth day
- (ii) on cancellation or automatic termination of the Policy to which this Clause is attached
- (iii) on the safe return of the Aircraft to the Assured at an airfield not excluded by the geographical limits of this Policy and the All Risks Policy for the Aircraft concerned, and entirely suitable for operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress)

whichever first occurs.

Subject otherwise to all terms, conditions and limits of this Policy.

AVN. 55
(14.3.73.)



910 SEVENTEENTH STREET, N.W., WASHINGTON, D.C. 20006
W. U. TELEX: 89-2392 • ITT TELEX: AIRCLAIMS 44-0141



PROOF OF LOSS to the UNDERWRITERS

1. NAME OF INSURED: _____
2. ADDRESS: _____ TEL. _____
3. NAME OF OPERATOR: _____
4. ADDRESS: _____ TEL. _____
5. By Insurance Policy/Certificate/Cover Note No. _____ Issued by _____
_____ on _____, 197____, which expires on _____, 197____,

you insured against loss of or damage to the following described aircraft from the risks described in the said insuring document:

Manufacturer	Model	Serial No.	Regn. No.

6. The said aircraft was manufactured in 19____, and was purchased by the undersigned from _____
on _____, 19____, for the sum of \$_____.

7. (A) On the _____ day of _____, 19____, about the hour of _____ at or near _____
the said aircraft was involved in an accident which occurred as follows: (brief account)

- (B) The damage to the aircraft as a result of this accident consisted of: (brief description)

- (C) Injuries to Crew: Yes ☐ No ☐ Injuries to Passengers: Yes ☐ No ☐ Damage to Cargo: Yes ☐ No ☐

(Attach list with names, addresses, type injury (ies)—Fatal, Serious, Minor, etc.) (List Crew separately from passengers).

- (D) Did "Third Party Property Damages" result from the accident? Yes ☐ No ☐

(If so, give brief description, extent of damages, name and address of property owner and estimated cost of repair.)

- (E) Did "Third Party Bodily Injuries" result from the accident? (Other than crew or passengers.) Yes ☐ No ☐

(If so, list names, addresses, type of injuries)

8. At the time of the loss, the aircraft was being used for _____
and was being operated by _____

9. (A) At the time of the loss, the aircraft described belonged to the undersigned insured(s) and no other person or persons had any interest therein, except:

- 1) List all outstanding mortgages or liens against the aircraft _____

- 2) Show the payment terms _____

- 3) Date of last payment _____

- 4) Balance due on the date of loss _____

- (B) No assignment or transfer of said aircraft has been made and no change in title, use or possession of said aircraft has occurred since the issuance of said document, except:

- 1) List any change in ownership or lease or rental of the aircraft. _____

- 2) Any claims against the insurance proceeds by other than the named insured(s) _____

10. On the date of said loss, there was no other insurance on the above-described aircraft except as follows: _____

11. (A) Actual cash value of the aircraft at the time of the loss was: \$.....
(B) Cost to repair the aircraft (if repairable) is estimated at: \$.....
(C) Cost of a similar replacement aircraft (if total loss claimed) is estimated at \$.....
12. Present location of aircraft
13. What precautions were taken to prevent further damage to the aircraft? Describe. (Guarded and/or protected against weather, theft, etc.)
14. CREW NAMES & ADDRESSES:
(A) Pilot Tel:.....
(B) Co-Pilot Tel:.....
(C) Flight Engineer Tel:.....
15. Was any crew member (or employee aboard the aircraft) an executive officer of the insured? Yes ☐ No ☐ (If Yes, give name, title and capacity as crew member at time of occurrence.)
16. Are logs (Airframe, engine(s), propellers or rotors and crew) available for review by AIRCLAIMS? Yes ☐ No ☐ (If Yes, where?)
17. Date of last annual inspection Performed by whom
If inspection accomplished by outside maintenance facility or mechanic, give name and address:
Tel:
18. The said loss was not caused by any act, design or procurement on the part of the insured, nor on the part of any one having any interest in the property insured, nor in said Policy/Certificate of Insurance, and nothing has been done by or with the privity or consent of the insured to violate the conditions of this insurance and no attempt has been made to deceive the said insurers in the procurement of the insurance, nor as to the extent of this loss or otherwise.
19. It is expressly understood and agreed that the furnishing of this Proof of Loss to the assured, or assistance in making of the Proof of Loss by the Adjuster or any other person, is an act of courtesy and is not a waiver of any rights or admission of liability of said Underwriters, and any other information and other documents required by the said Underwriters shall be furnished on request.
(This Proof of Loss is to be signed by all Insureds.)
The foregoing claim and statements are true in every particular, and I/we make this solemn declaration, conscientiously believing it to be true.

INSURED(S):

By: Title:

INSURED(S):

By: Title:

INSURED(S):

By: Title:

NOTE: Each Individual Signature of each insured must be individually acknowledged before a Notary Public.

ACKNOWLEDGEMENT

Notary Public



7315 WISCONSIN AVE., WASHINGTON, D.C. 20014
W. U. TELEX: 89-8448 • ITT TELEX: 44-0141



RELEASE

In consideration of the payment to the undersigned of the sum of _____ \$
which sum is to follow receipt of this Release, the undersigned do, for themselves, their heirs, legal representatives and
assigns, hereby release, acquit and forever discharge those certain Underwriters and companies (hereinafter called Under-
writers) subscribing to insurance Policy/Certificate/Cover Note No. _____ issued by _____

and all other persons, firms or corporations from any and all rights, claims, liabilities, demands and suits, including subrogated
or assigned rights, which the undersigned now have or may have against the persons, firms or corporations hereby released

arising out of or resulting from an accident to an aircraft, _____/

Manufacturer

Model

Serial No.

Registration No.

on

(date)

at or near _____

In the event that any claim is hereafter made against Underwriters by reason of the said loss by any persons other than
the undersigned, the insureds named in the said insurance document agree to reimburse Underwriters for all costs and
expenses resulting therefrom, including, but not limited to, counsel fees, court costs, and/or judgments which Underwriters
may be required to pay in satisfaction of such claim.

In consideration of the payment to be made hereunder, the undersigned hereby assign, set over, transfer and subrogate
to the Underwriters all the rights, claims, interest, choses, or things in action to the extent of the amount above claimed,
which they may have against any party, person, corporation or governmental agency who may be liable for the loss and hereby
authorize the Underwriters to sue, compromise or settle in their names or otherwise, and the Underwriters are hereby fully
substituted in their place and subrogated to the rights which they have to the amount so paid. It is hereby warranted that
no settlement has been made by the undersigned with the wrongdoer.

The undersigned do hereby further agree to notify AIRCLAIMS, Inc. (or Underwriters) immediately in case of the
recovery of any of the property or sums for which payment is being made hereunder, and to turn over to said AIRCLAIMS,
Inc. for account of the Underwriters, any such recovery which may be made, or reimburse said AIRCLAIMS, Inc. to the extent
of the payment for such property which may be recovered.

The undersigned represent and declare that they have executed this release solely in reliance on their own judgment and
and not in reliance on any representations or promises of any parties hereto or their attorneys or representatives. It is
expressly understood and agreed that the payment referred to above is the sole consideration for this release; that this re-
lease is made only in consideration of the said payment which is to follow this release; and that this release contains the en-
tire agreement between the parties hereto, and that its terms are contractual and not a mere recital.

The undersigned further warrant and represent that they have carefully read the foregoing release and understand the
contents thereof, and that they sign the same as their own free and voluntary act.

You are hereby requested, authorized and empowered to pay the proceeds from the above insurance in full satisfaction
and settlement of the loss and/or damages claimed and the payment check(s) or draft(s) is (are) to be made payable and
delivered as follows:

NOTE: In the event that a total loss is claimed, this Release must be accompanied by an executed bill of sale for the aircraft from the registered owners
of the said aircraft with name of transferee left blank.

(To be signed by all insureds, mortgagees, lienholders and all others having an interest in the proceeds of the said
insurance, and each individual signature to be individually acknowledged by a Notary Public.)

By: _____ Title: _____ By: _____ Title: _____

By: _____ Title: _____ By: _____ Title: _____

By: _____ Title: _____ By: _____ Title: _____

ACKNOWLEDGEMENT

Notary Public

APPROVAL RECOMMENDED:



INC. 7315 WISCONSIN AVE., WASHINGTON, D.C. 20014
W. U. TELEX: 89-8448 • ITT TELEX: 44-0141



RELEASE (Liability)

For and in consideration of the payment of _____
(\$ _____), which sum is to follow receipt of this release, the undersigned does for himself/
herself/itself, and for his/her/its heirs, executors, administrators and assigns hereby release, acquit and forever discharge

its agents, officers, employees, successors, heirs, assigns, executors and administrators and insurers, and all other persons,
governmental entities, municipalities, firms and corporations, associations or partnerships whatsoever and wherever located
from any and all claims, demands, liabilities, rights, causes of action and suits whatsoever, including subrogated or assigned
rights, which the undersigned now has or may have against the persons, firms, entities, or corporations hereby released, arising
out of or resulting from all known and unknown, foreseen and unforeseen injuries and property loss or damage sustained
by the undersigned in an accident to a _____
aircraft, registration _____, that occurred on or about _____ at or near _____

The undersigned does hereby agree that this release is in full satisfaction of all claims and damages whatsoever, both
pecuniary, actual or compensatory, and punitive or exemplary, both known and unknown to the undersigned, resulting or to
result from the said accident, including, but not limited to claims for personal injury, pain and suffering, death, property loss
or damage, loss of support, loss of services, expenses, costs and hospital, doctor or other medical expenses.

The undersigned hereby declare(s) and represent(s) that the injuries sustained are or may be permanent and progres-
sive and that recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the
undersigned rely(ies) wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration
of said injuries and liability therefore and is made without reliance upon any statement or representation of the party or
parties hereby released or their representatives or by any physician or surgeon by them employed.

The undersigned does hereby agree to forever refrain from instituting or in any way aiding any claims, demands, actions
or suits brought against any persons, governmental entities, municipalities, firms or corporations whatsoever to recover for
injuries or loss to the undersigned arising out of said accident and in the event any such claims, demands, actions or suits are
instituted by, or in any way aided by the undersigned, and result in any claims, cross-claims, third-party claims or counter-
claims being made against _____
its agents, officers, employees, successors, assigns and insurers, then the undersigned further warrants and agrees to defend
all said persons, firms or corporations against all such claims, cross-claims, third-party claims or counterclaims, and agrees
to indemnify and hold harmless all said persons, firms or corporations from all costs, judgments, and settlements result-
ing therefrom.

It is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that
the payment of said sum is not to be construed as an admission of liability of the persons, firms or corporations hereby released,
by whom liability is expressly denied.

The undersigned further agrees that no promise, inducement or agreement not herein expressed has been made to the
undersigned and that this release contains the entire agreement between the parties hereto, and that its terms are contractual
and not a mere recital.

The undersigned has carefully read the foregoing release and fully understands the contents thereof.

The undersigned further agrees and authorizes that the check or draft in payment of this claim shall be made payable to _____

and be delivered to _____

Executed by the undersigned this _____ day of _____, 19____.

CAUTION: READ BEFORE SIGNING

_____	X _____
Witness	
_____	X _____
Witness	
_____	X _____
Witness	

NOTARIZATION

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 19____, before me personally appeared _____
known to me to be the person who executed the foregoing
Release, and acknowledged that _____ has read, understood, and has voluntarily executed the same as
his/her/their free act and deed.

My term expires _____
Notary Public

Approval Recommended: