

**AVIATION INSURANCE:  
A NEW YORK PERSPECTIVE**

by

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## RÉSUMÉ

La présente thèse a pour objet la législation générale des assurances aviation à New York et la structure, teneur et interprétation de polices aviation types. Les dispositions statutaires de la législation new-yorkaise sur les assurances (la "New York Insurance Law") qui se rapportent directement au domaine de l'aviation ou qui le régissent explicitement y sont examinées, de même que les décisions jurisprudentielles pertinentes. Les précédents établis par d'autres juridictions ont été repris dans les cas où aucune autorité new-yorkaise n'aurait statué sur une question particulière. Les polices souscrites pour d'autres types d'assurances contenant souvent des dispositions similaires ou analogues à celles observées dans les polices aviation, ces dispositions et la législation régissant leur application sont envisagées, suivant leur opportunité.

## **ABSTRACT**

This thesis examines the law of aviation insurance in New York generally and the structure, content and interpretation of typical aviation insurance policies. The statutory provisions of New York Insurance Law which explicitly govern or directly pertain to aviation insurance are addressed as well as relevant case law. Precedents from other jurisdictions have been noted where no New York authority exists on a particular issue. Because policies written for other types of insurance frequently contain provisions similar or analogous to those found in aviation insurance policies, these provisions, and the law governing their application, are considered where appropriate.

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I would like to dedicate this  
thesis to my wife Donna.

## AVIATION INSURANCE: A NEW YORK PERSPECTIVE

### CHAPTER I - INTRODUCTION

This thesis examines the law of aviation insurance in New York in general and the structure and content of typical aviation insurance policies in particular.<sup>1</sup>

Precedents from other jurisdictions have been noted where no New York authority exists on a particular issue. Moreover, because policies written for other types of insurance frequently contain provisions similar or analogous to those found in aviation insurance policies, these provisions, and the law governing their application, are considered where appropriate.<sup>2</sup>

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<sup>1</sup> For a survey of all aspects of aviation insurance see Rod D. Margo, Aviation Insurance, (2d ed. Butterworths 1989); see also P. Martin, J. McClean, E. Martin & R. Margo, Shawcross & Beaumont Air Law, Ch. 34 (4th ed. Butterworths 1988).

<sup>2</sup> The wording of many current aviation insurance policy forms and provisions evolved from marine and automobile insurance policies. See Hutzel v. United States Aviation Underwriters, Inc., 132 A.D.2d 45, 522 N.Y.S.2d 301 (3d Dept. 1987), where the appellate court, in holding that the decedent's representatives seeking to recover under an aviation insurance policy could avail themselves of the rule of strict construction against an insurer, relied on the law of automobile insurance, noting that aircraft insurance has many similarities to automobile policies; Otsego Aviation Serv. v. Glens Falls Ins. Co., 277 A.D. 612, 102 N.Y.2d 344 (3d Dept. 1951), where the court noted that aircraft hull insurance "roughly corresponds to motor vehicle collision  
(footnote continued)

## CHAPTER II - AVIATION INSURANCE MARKETS

### A. In General

As commercial aviation began to expand after World War I, the need for aviation insurance increased commensurately. It soon became apparent that a special expert service was required to underwrite risks and handle claims associated with the unique nature of aviation. The limited volume of aviation business at that time, however, did not justify substantial investment in this field by any one individual insurer. In the United States, this situation led to the combining or "pooling" by individual companies to underwrite aviation risks and thus enable insurers to spread the risk and share the expense of this specialized but

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insurance"; Pan Am. World Airways v. Aetna Casualty & Sur. Co., 505 F.2d 989, 994 & n.2 (2d Cir. 1974), noting that the "capture and seizure" and war-risk exclusionary clauses in an aviation all-risk policy were similar to such clauses contained in modern marine insurance policies; Id. at 1015, stating that the terms used in an aviation all-risk policy to describe war and similar perils originated, for the most part, in English maritime insurance practice. See also Shawcross & Beaumont Air Law, ch. 34, at VIII/80 n.8 (4th ed. Butterworths 1988) (noting that clauses in aviation indemnity policies providing that the existence of the policy itself constituted proof of the insured's interest originally appeared in marine hull policies).

limited volume of business. Even today, few insurance companies in the United States independently underwrite aviation insurance.<sup>3</sup>

#### **B. Insurance Pools**

The most common method of underwriting aviation insurance is through an insurance pool or joint underwriting organization.<sup>4</sup> In an aviation insurance pool, a number of independent insurance companies combine to write aviation insurance through a single firm which acts as a "managing general agent"<sup>5</sup> or "pool manager" for the group. In this

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<sup>3</sup> The Insurance Company of North America, a member of the CIGNA group, is one of the few independent insurers which has facilities for aviation insurance in addition to its multi-line facilities. AVEMCO Insurance Company, originally incorporated as "Aviation Employees Insurance Company," also specializes in aviation insurance and writes aviation risks on a direct basis.

<sup>4</sup> See Margo, Aviation Insurance, at 47 (2d ed. Butterworths 1989). Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance is subject to regulation pursuant to the provisions of Article 23 of the New York Insurance Law relating to rates and rating organizations. N.Y. Ins. Law § 2317 (McKinney 1985). See infra. at p. 23.

<sup>5</sup> A managing general agent is any person, firm, association or corporation that manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office) and acts as an insurance agent, as defined in the N.Y. Comp. Codes R. & Regs. tit. 11, § 33.2(c) (1987) (Regulation 120).

manner, a number of insurers may share the underwriting risks and draw upon the expertise of an organization which specializes in the management of aviation insurance.

In the United States, the largest share of the domestic aviation insurance market is written by two such pools, the United States Aircraft Insurance Group (USAIG) and Associated Aviation Underwriters (AAU). USAIG is a group of independent insurance companies organized in 1928 specifically to underwrite aviation risks. The actual underwriting of risks is done by United States Aviation Underwriters, Inc., acting as Managing General Agent for USAIG. AAU was founded in 1929 by Chubb and Son, Inc. and Marine Office-Appleton & Cox Corp., to be the aviation department of the fire, marine and casualty companies for which they were agents or managers.<sup>6</sup>

Insurance pools manage and underwrite the aviation business of their member companies. The manager of the pool has authority to accept or decline business, specify rates, bind risks, issue policies and settle claims on behalf of the members of the pool. The pool manager, however, does not write any aviation accounts on a direct basis. All business

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<sup>6</sup> Margo, Aviation Insurance, at 47 n. 253 (2d ed. Butterworths 1989). A third pool of aviation insurers is the Aviation Office of America which was organized in 1962 and manages the aviation business of a number of independent insurers.

must be submitted through a licensed broker or through an agent of the member companies.<sup>7</sup> All policies and endorsements are issued by the pool in the name of one or more of the companies in the group. The participating member insurance companies share the risk of each aviation policy on a proportionate basis as set forth in the pool agreement among them.<sup>8</sup>

The facilities of the pool are available to every agent of a member company. No special agency appointment or license is required for agents of a member company. Agents or brokers not representing any of the member companies may have the facilities available to them upon being licensed by a member company.

### **C. The London Market**

A brief overview of the London insurance market is appropriate because the majority of aviation insurance ultimately is reinsured, at least in part, in the London market or placed directly in that market on a surplus-lines basis.<sup>9</sup>

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<sup>7</sup> Id. at 47. Binding authority generally is not given to the agents, but in certain instances some agents or brokers may have binding authority for some risks, especially those agents or brokers who produce large quantities of aviation business.

<sup>8</sup> Id.

<sup>9</sup> Surplus-line insurance, referred to as excess-line  
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The aviation insurance market in London is composed of insurance companies operating through the Institute of London Underwriters<sup>10</sup> and individual investors represented by the Underwriters at Lloyd's of London.<sup>11</sup> Lloyd's is not an insurance company and does not underwrite risks.<sup>12</sup> Rather,

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insurance in New York, is insurance written by an insurer not authorized to transact business in New York. See N.Y. Ins. L. § 2105(a) (McKinney 1985); infra. at p. 19.

<sup>10</sup> These companies are British and foreign insurance companies that are permitted to underwrite aviation risks in the London insurance market. Cf. Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405, 408 (S.D.N.Y. 1984). This case involved the placement of marine insurance, which is very similar to aviation insurance. See supra. at p. 1, n.2.

<sup>11</sup> See Edinburgh Assurance Co. v. R. L. Burns Corp., 479 F. Supp. 138, 140 (C.D. Cal. 1979), aff'd except as to pre-judgment interest, 669 F.2d 1259 (9th Cir. 1982); Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405 (S.D.N.Y. 1984); cf. N.Y. Ins. L. § 107(a)(29) (McKinney 1985) (defining "Lloyds underwriters"). In Thebes Shipping, the insured sought to obtain a lead underwriter at Lloyd's because of the inducement value to less sophisticated insurers of having a Lloyd's underwriter as "lead." Thebes Shipping, 599 F. Supp. at 417. For a discussion of the role of the "lead" underwriter, see infra. at pp. 9-13.

<sup>12</sup> See Edinburgh Assurance Co. v. R. L. Burns Corp., 479 F. Supp. 138, 146 (C.D. Cal. 1979), aff'd except as to pre-judgment interest, 669 F.2d 1259 (9th Cir. 1982); Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405, 408 (S.D.N.Y. 1984). The placement of insurance at Lloyd's has been explained in the following decisions: Syndicate 420 at Lloyd's London v. Early Am. Ins. Co., 796 F.2d 821 (5th Cir. 1986); Travelers Indem. Co. v. Booker, 657 F. Supp. 280 (D.D.C. 1987); Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405 (S.D.N.Y. 1984); Edinburgh Assurance Co. v. R.L. Burns Corp., 479 F. Supp. 138 (C.D. Cal. 1979), aff'd except as to pre-judgment interest,  
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it is an exchange organization that provides its members, who are individual<sup>13</sup> investors-underwriters, with a marketplace (that is, an underwriting floor and office facilities) in which to sell insurance.<sup>14</sup>

The individual members of Lloyd's are grouped into syndicates comprising from a few to several hundred members, or "names".<sup>15</sup> The syndicates, and often in conjunction with the companies, subscribe to limited shares of the total risk. Each syndicate is represented, either alone or as part of a group of syndicates, by an underwriting agency that maintains a desk or "box", staffed by an agency representative, or "underwriter", on the floor of Lloyd's.<sup>16</sup> Each individual member of the syndicate remains jointly and severally liable

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669 F.2d 1259 (9th Cir. 1982). For a detailed discussion of insurance placement at Lloyd's, see Margo, Aviation Insurance, ch. 6 (2d ed. Butterworths 1989).

<sup>13</sup> Cf. N.Y. Ins. L. § 107(a)(29) (McKinney 1985) ("Lloyds underwriters" means any aggregation of individuals, who under a common name engage in the business of insurance for profit); Appendix "A".

<sup>14</sup> See Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405 (S.D.N.Y. 1984).

<sup>15</sup> Id.

<sup>16</sup> See Syndicate 420 at Lloyd's London v. Early American Ins. Co., 796 F.2d 821 (5th Cir. 1986); Travelers Indem. Co. v. Booker, 657 F. Supp. 280 (D.D.C. 1987); Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405 (S.D.N.Y. 1984). For a detailed discussion, see Margo, Aviation Insurance, ch. 6 (2d ed. Butterworths 1989).

for the total of the risk subscribed.

The process of placing insurance in London begins when an applicant seeking insurance contacts a local or "producing" broker.<sup>17</sup> The producing broker, typically a surplus lines broker, will then contact a London brokerage firm,<sup>18</sup> or "placing broker", which actually will place the risk to be covered in the aviation insurance market. The placing broker is the agent of the applicant (the prospective insured) for most purposes, including initial placement of the risk.<sup>19</sup>

At Lloyd's, the London broker will present a "placing slip,"<sup>20</sup> which contains all the pertinent information regarding the risk, to a Lloyd's underwriter or company whom the broker believes will subscribe for a relatively large portion of the risk. The broker negotiates the insurance terms and premium rates with the underwriter. If an agreement is reached, the underwriter will subscribe,

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<sup>17</sup> Travelers Indem. Co. v. Booker, 657 F. Supp. 280, 283 (D.D.C. 1987).

<sup>18</sup> Id. Only accredited Lloyd's brokers may place risks with Lloyd's underwriters.

<sup>19</sup> Id. at 282.

<sup>20</sup> The placing slip contains information in abbreviated form relating to the standard policy to be used, the type of insurance to be effected, the limits of coverage, period of coverage, geographic scope, exclusions, uses, deductibles, pilot warranty requirements, and the premium rate.

on behalf of his syndicate(s), to cover all or a portion of the risk.<sup>21</sup> This underwriter generally will be the "lead" underwriter who determines the premium rate and the conditions under which the risk will be accepted.<sup>22</sup> The leader initials the placing slip accepting a certain percentage of the risk and the broker then will proceed from underwriter to underwriter until full subscription is obtained. If subsequent subscribing underwriters require a modification of the terms, the underwriters who have already subscribed are informed and any necessary changes are made.<sup>23</sup>

<sup>21</sup> See Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405, 408 (S.D.N.Y. 1984). The brokering of risks and the formation of insurance contracts at Lloyd's proceeds rapidly. It affords the underwriter little opportunity to investigate the contours of the risk being placed. Thus, to minimize possible loss, an underwriter will usually refuse to insure the entire risk. Instead, a number of syndicates will subscribe, each assuming a specified percentage of the entire risk. See Syndicate 420 at Lloyd's London v. Early Am. Ins. Co., 796 F.2d 821, 824 (5th Cir. 1986); see also Sumitomo Marine & Fire Ins. Co. v. Cologne Reinsurance Co. of America, 75 N.Y.2d 295, 552 N.Y.S.2d 891, 552 N.E.2d 139 (1990) (reinsurance).

The underwriter indicates his agreement by signing his initials and indicating the percentage of the risk accepted on the slip. See id.; Traveler Indem. Co. v. Booker, 657 F. Supp. 280, 288 (D.D.C. 1987). The signature, or "scratch", of the underwriter on the slip is the last act necessary for the formation of an insurance contract at Lloyd's. Syndicate 420 at Lloyd's London v. Early Am. Ins. Co., 796 F.2d 821, 824 (5th Cir. 1986).

<sup>22</sup> Travelers Indem. Co. v. Booker, 657 F. Supp. 280, 283 (D.D.C. 1987).

<sup>23</sup> Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 (footnote continued)

When the placing slip has been fully subscribed for 100 percent of the risk, the London broker will prepare a "cover note" summarizing the subscribed coverage for the producing broker who will forward it to the insured as notification that coverage has been effected.<sup>24</sup> In the event a risk is over subscribed, i.e., subscribed by Underwriters for more than 100 percent, each underwriter normally will have a proportion of his risk or "line" reduced until there is no more than 100 percent participation.<sup>25</sup> It is important to distinguish the placing slip from the cover note, because the cover note is drafted by the broker for its own convenience and may not contradict the placing slip or the final policy wording which are controlling with respect to the issue of coverage. Any liability for incorrect information on the cover note rests with the broker as agent for the insured and not the underwriters.<sup>26</sup>

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F. Supp. 405, 409 (S.D.N.Y. 1984).

24     Id.

25     Margo, Aviation Insurance, at 68 (2d ed. Butterworths 1989).

26     As a general rule, an insurance broker is initially considered an agent of the insured rather than the insurer. Howard Fuel v. Lloyd's Underwriters, 588 F. Supp. 1103, 1108 (S.D.N.Y. 1984); see also Puritan Ins. Co. v. Industrial Petrolic Corp., No. 89-2560 (E.D. Pa. Feb. 21, 1990) (1990 WL 18676). However, in Transamerica Interway v. Commercial  
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After a risk has been fully subscribed and the cover note has been prepared, the lead underwriter (or the London broker with approval by the lead underwriter of the final policy wording) will prepare the actual insurance policy wording pursuant to the information contained in the

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Union Assurance Co. of South Africa, 97 F.R.D. 419, 421 (S.D.N.Y. 1983), the court stated:

The question whether an insurance broker represents the insurer, the insured, or both depends, however, on the circumstances of each case, including the conduct of and communications among parties. 29 N.Y.Jur. § 425; 3 Couch on Insurance 2d, § 25:93. A broker may be an agent for the insured as to some aspects of a policy and an agent for the insurer as to different aspects of the same policy. 29 N.Y.Jur. § 423; 3 Couch on Insurance 2d § 25:93. Thus, for example, while an insurance broker may act for the insured in applying for and processing a policy, the broker generally acts for the insurer in delivering the policy and in collecting and remitting the premiums.

Transamerica Interway, 97 F.R.D. at 421.

See also P. Martin, J. McClean, E. Martin & R. Margo, Shawcross & Beaumont Air Law, ch. 34 § 68 (4th ed. Butterworths 1988); Travelers Indem. Co. v. Booker, 657 F. Supp. 280 (D.D.C. 1987) (it is recognized custom and usage of London insurance market that broker is agent of insured for most purposes); Thebes Shipping Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405 (S.D.N.Y. 1984) (insurance broker agent for insured).

placing slip.<sup>27</sup> The completed policy and placing slip, if the policy is a Lloyd's policy, are then forwarded to the Lloyd's Policy Signing Office, which will ensure that the policy reflects the terms and conditions on the placing slip.<sup>28</sup>

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<sup>27</sup> In many instances, the formal insurance policy is not issued for several months after coverage is effected or even after expiration of the policy period. See Jett Setting Service Corp. v. Toomey, 91 A.D.2d 431, 459 N.Y.S.2d 751 (1983); see also Edinburgh Assurance Co. v. R. L. Burns Corp., 479 F. Supp. 138, 146 (C.D. Cal. 1979) ("[m]arine insurance policies [purchased through Lloyd's] are generally issued with a significant time lag after the signing of the slip"), aff'd except as to pre-judgment interest, 669 F.2d 1259 (9th Cir. 1982); see also Sumitomo Marine & Fire Ins. Co. v. Cologne Reinsurance Co. of America, 75 N.Y.2d 295, 552 N.Y.S.2d 891, 552 N.E.2d 139 (1990) (issuance of reinsurance agreement). Because of this delay, the insured may have to rely on the slip and cover note in enforcing the insurance contract. See Edinburgh Assurance Co. v. R. L. Burns Corp., 479 F. Supp. 138, 146 (C.D. Cal. 1979), aff'd except as to pre-judgment interest, 669 F.2d 1259 (9th Cir. 1982). Cf. N.Y. Comp. Codes R. & Regs. tit. 11, § 27.8 (1987) requires a policy of insurance placed with a nonlicensed insurer to be delivered promptly to the insured. The "placing slip" and "cover note," therefore, are important documents in any insurance related litigation.

<sup>28</sup> See Edinburgh Assurance Co. v. R. L. Burns Corp., 479 F. Supp. 138, 145 (C.D. Cal. 1979), aff'd except as to prejudgment interest, 669 F.2d 1259 (9th Cir. 1982). If insurance companies which are members of the Institute of London Underwriters are involved, the placing slip and policy are forwarded to the Institute's Policy Department for review. See id. If both Lloyd's Underwriters' and companies participate in the same risk multiple policies may be issued although there may be only one placing slip. See Margo, Aviation Insurance, ch.6 (2d ed. Butterworths 1989).

If litigation is commenced against the insurers generally naming "Lloyd's of London" as a defendant, the leading Lloyd's syndicate, usually the syndicate subscribing to the highest percentage of the risk, will provide a representative "name" to be designated as a defendant instead of the generic term "Lloyd's".<sup>29</sup> Accordingly, it is proper to designate the representative name provided by the leading syndicate as a party to litigation rather than referring generically to "Lloyd's of London".<sup>30</sup>

#### **D. Reinsurance**

Reinsurance enables an insurance company or underwriter to limit the risk of loss on a given insurance policy by passing part of the potential liability to another

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<sup>29</sup> The representative name is used as a matter of custom because it is unnecessary to name all the subscribing members to a particular policy. The additional subscribers to the policy (sometimes referred to as "the following market") will accept a judgment against the leader as binding on them all. However, any member syndicate subscribing to the policy may decline to be so bound by notifying the broker and in such a situation it must be named individually as a defendant. Cf. N.Y. Ins. L. § 1212 (McKinney 1985) (service of process upon Lloyds underwriters authorized to do business in New York may be effected by service upon the Superintendent of Insurance).

<sup>30</sup> E.g., "John Doe, an Underwriter at Lloyd's, London, on behalf of himself and as representative for all other Underwriters at Lloyd's, each for himself and not for the other, subscribing to Policy No. 0000." See also Underwriters at Lloyd's, London v. Strickland, 99 Ga. App. 89, 107 S.E.2d 860 (1959) ("underwriters at Lloyd's, London" not an entity capable of suing or being sued).



insurer. In New York, an authorized insurer may reinsure, by itself or together with other insurance companies or pools, any risk referred to in N.Y. Ins. Law § 1113(a)<sup>31</sup> arising from, related to, or incident to the manufacture, ownership or operation of aircraft.<sup>32</sup>

In general there are two types of reinsurance: (1) treaty reinsurance and (2) facultative reinsurance.<sup>33</sup> Treaty reinsurance refers to an agreement between the insurance company (sometimes called the "ceding company" or "reinsured") and the reinsurance company which is applicable to the insurance company's entire portfolio of business; it involves an ongoing process whereby the reinsurer agrees to accept all or a specified amount of certain insurance to be written by the reinsured.<sup>34</sup> Facultative reinsurance is an

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<sup>31</sup> N.Y. Ins. L. § 1113(a) (McKinney 1985) defines the classes of insurance in New York; Appendix "A" hereto.

<sup>32</sup> N.Y. Ins. Law § 1114(d) (McKinney 1985); see N.Y. Comp. Codes R. & Regs., pt. 93 (1987) (extending aviation reinsurance authorization to life insurance); Appendix "A".

<sup>33</sup> See Sumimoto Marine & Fire Ins. Co. v. Cologne Reinsurance Co. of America, 75 N.Y.2d 295, 552 N.Y.S.2d 891, 552 N.E.2d 139 (1990); Margo, Aviation Insurance, at 339-340 (2d ed. Butterworths 1989). There are two methods used in reinsurance, "pro-rata" reinsurance and "excess of loss" reinsurance. See Overview of Reinsurance, Insurance, Excess, and Reinsurance Coverage Disputes 1986, 299 n.309 (Practicing Law Inst. 1986).

<sup>34</sup> See Sumimoto Marine & Fire Ins. Co. v. Cologne Reinsurance Co. of America, 75 N.Y.2d 295, 552 N.Y.S.2d 891, 552 N.E.2d 139 (1990); Fortress Re, Inc. v. Jefferson Ins.  
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agreement between the reinsured and the reinsurer which applies only to an individual risk of the reinsured.<sup>35</sup> In a facultative reinsurance agreement each reinsurance risk is treated separately rather than as the general obligations involved in treaty reinsurance. Facultative reinsurance is commonly used by pools to write difficult, unusual or hazardous risks.<sup>36</sup>

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Co., 465 F. Supp. 333, 336 (E.D.N.C. 1978). In this case, the court defined treaty reinsurance as "a bilateral contract containing mutual covenants which codify the ongoing process of one company's transfer of risk to another."

<sup>35</sup> See Sumimoto Marine & Fire Ins. Co. v. Cologne Reinsurance Co. of America, 75 N.Y.2d 295, 552 N.Y.S.2d 891, 552 N.E.2d 139 (1990); Fortress Re, Inc. v. Jefferson Ins. Co., 465 F. Supp. 333, 336 (E.D.N.C. 1978). The Fortress Re case involved facultative, not treaty, reinsurance; the court described the policy in question as one under which "the parties merely executed a reinsurance contract which reinsured a layer of liability as to a specific automobile liability policy," rather than "a contract to cede all or part of [the reinsured's] risks" to the reinsurer. Id. Many courts do not use the term "facultative" reinsurance in distinguishing facultative reinsurance from treaty reinsurance. Rather, courts describe facultative reinsurance as "contracts of reinsurance" or "reinsurance policies," see Pioneer Life Ins. Co. v. Alliance Life Ins. Co., 374 Ill. 576, 587, 30 N.E.2d 66, 72 (1940), as opposed to treaty reinsurance, which is referred to as "contracts for reinsurance." (emphasis added). See also Maurer v. International Re-Insurance Corp., 31 Del. Ch. 352, 74 A.2d 822, 828 (1950) (applying the distinction and citing Pioneer Life).

<sup>36</sup> Margo, Aviation Insurance, at 339 (2d ed. Butterworths 1989).

There are two methods generally used in both treaty and facultative reinsurance: "pro-rata" reinsurance and "excess-of-loss" reinsurance.<sup>37</sup> Pro-rata reinsurance is where the ceding insurance company shares with the reinsurance company all of the premiums, as well as the losses, pursuant to a predetermined percentage.<sup>38</sup> Excess-of-loss reinsurance refers to reinsurance where the reinsurer agrees to reimburse the ceding insurance company for all losses in excess of a certain amount (referred to as the ceding insurance company's "retention").<sup>39</sup> Pro-rata reinsurance may be combined with excess-of-loss reinsurance.<sup>40</sup>

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<sup>37</sup> See Overview of Reinsurance, Insurance, Excess, and Reinsurance Coverage Disputes 1986, 299 n.309 (Practicing Law Inst. 1986).

<sup>38</sup> See Central Nat'l Ins. Co. v. Devonshire Coverage Corp., 426 F. Supp. 7, 21 (D. Neb. 1976). In this case, the court defined pro-rata insurance as "a type of reinsurance where the reinsurer assumes a proportionate share of any loss sustained of the insured property from the first dollar of loss."

<sup>39</sup> See Miller, The Working Excess of Loss Treaty in Property Insurance in Reinsurance, 161 n.82 (Strain, College of Insurance 1980)

<sup>40</sup> Cf. Central Nat'l Ins. Co. v. Devonshire Coverage Corp., 426 F. Supp. 7, 10 (D. Neb. 1976). Central Nat'l involved a disputed agency contract between an insurer and an insurance agent, which provided that "[s]hould the amount of the total sum on any one risk exceed \$500,000 then the excess over the above-mentioned \$500,000 limitation must be reinsured on a pro-rata basis, not on an excess of loss basis."

### CHAPTER III - NEW YORK STATUTORY REGULATION

#### A. In General

Unlike most other domestic industries in the United States, the insurance industry is largely exempt from federal regulation such as antitrust laws. Pursuant to the McCarran-Ferguson Act, 15 U.S.C.A. §§ 1011-1014 (West 1976), the regulation of the insurance industry, including antitrust supervision, is primarily carried out by the states. The McCarran-Ferguson Act was enacted in 1945 in response to, and as a way to circumvent the potential affects of, the 1944 Supreme Court decision in United States v. South-Eastern Underwriters Association, 322 U.S. 533 (1944), which held that the business of insurance was interstate commerce and, therefore, subject to federal antitrust laws. As a consequence of the South-Eastern decision, Congress moved to enact legislation which would allow the states to regulate those activities in the insurance industry which would otherwise be subject to federal regulation such as under the antitrust laws. The McCarran-Ferguson Act reaffirmed the states' authority to regulate the insurance industry and conferred a partial exemption from the federal antitrust laws on certain activities of insurance companies.

The effect of the McCarran-Ferguson Act is to make "federal statutes inapplicable to the business of insurance" thereby granting to the states plenary regulatory power over insurers, subject to certain enumerated exceptions.<sup>41</sup> As a result of McCarran-Ferguson, each state has adopted its own statutes and regulations with respect to the activities of insurers relating to premium rates, forms, coverage and exclusions.<sup>42</sup>

The provisions of the N.Y. Insurance Law<sup>43</sup> generally apply to all policies of insurance, including aviation insurance, unless expressly provided otherwise. Although it is beyond the scope of this thesis to discuss all of the provisions in the N.Y. Insurance Law which may apply to an aviation insurance policy, the statutory provisions in the N.Y. Insurance Law which explicitly govern or directly pertain to aviation insurance will be considered.<sup>44</sup>

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<sup>41</sup> See Spirt v. Teachers Ins. & Annuity Ass'n, 475 F. Supp. 1298 (S.D.N.Y. 1979), rev'd in part on other grounds, 691 F.2d 1054 (2d Cir. 1982).

<sup>42</sup> See, e.g., Cal. Ins. Code, § 680 et seq. (Deering 1976); Fla. Stat. Ann., § 624.401 et seq. (West 1984); Ill. Ann. Stat., ch. 23, para. 480 (Smith-Hurd 1965 & Supp. 1989); N.Y. Ins. Law, § 1102 (McKinney 1985).

<sup>43</sup> N.Y. Ins. Law § 101 et seq. (McKinney 1985 & Supp. 1990).

<sup>44</sup> The following sections of the N.Y. Insurance Law relate to aviation: N.Y. Ins. Law §§ 1113, 1114, 2117, 2302, 2324, 3105, 3107, 3203, 3215, 3216, 3404, 3420, 4101, 4102, 4237, 5401, 6605, 6610 and 9108 (McKinney 1985 & Supp. 1990). The  
(footnote continued)

## **B. Licensing of Insurers, Agents and Brokers**

The licensing of insurers, agents and brokers is addressed herein merely to the extent that licensing is relevant to aviation insurance. In New York, no person, firm, association, corporation or joint company may engage in the business of insurance or act as an insurance agent, broker or reinsurance intermediary unless authorized to do so pursuant to a license or exemption.<sup>45</sup>

Insurers licensed to transact insurance business in New York are referred to as "authorized" or "admitted" insurers.<sup>46</sup> Insurance companies not authorized to do business in New York generally are referred to as "non-admitted" or "excess/surplus line" insurers. The distinction is important because an insurance agent generally is not permitted to place insurance with a company not authorized to do business in New York.<sup>47</sup>

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(footnote continued from previous page)  
primary statutory sections are included in Appendix "A"  
hereto.

<sup>45</sup> N.Y. Ins. Law §§ 1102, 2101 (McKinney 1985 & Supp. 1990); Appendix "A".

<sup>46</sup> N.Y. Ins. Law § 107(a)(10) (McKinney 1985); Appendix "A".

<sup>47</sup> N.Y. Ins. Law § 2117(a) & (b) (McKinney 1985); Appendix "A".

# 1. Excess-Line Broker

Because certain types of aviation risks often are difficult to place and "authorized" or "admitted" insurers are not always available to assume all or part of a particular risk, the N.Y. Insurance Law provides for the licensing of "excess line brokers."<sup>48</sup> An excess-line broker who is domiciled or maintains an office in New York is authorized, subject to certain restrictions, to obtain most types of aviation coverage from insurers not authorized to transact business in New York.<sup>49</sup>

An excess-line broker is required to use due care in selecting the "unauthorized" insurer and must submit an affidavit to the Superintendent of Insurance of the State of New York that he was unable, after diligent effort, to procure in whole or in part, the full amount of insurance required to protect the interest of the insured from an "authorized" insurer.<sup>50</sup> Excess-line insurance may be placed

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<sup>48</sup> N.Y. Ins. Law § 2105 (McKinney 1985); Appendix "A". See also New York B & R Excess Corp. v. Thacher, 37 Misc. 2d 307, 234 N.Y.S.2d 486, aff'd, 18 A.D.2d 1137, 239 N.Y.S.2d 531 (1962) (an excess line broker is a person or firm authorized to procure specified types of insurance, subject to certain restrictions, from unauthorized insurance companies). Excess-line insurance is synonymous with surplus-line insurance.

<sup>49</sup> N.Y. Ins. Law § 2105(a) (McKinney 1985).

<sup>50</sup> N.Y. Ins. Law § 2118(a) & (b)(1) (McKinney Supp. 1990); N.Y. Comp. Codes R. & Regs. tit. 11, § 27 (1987).

only through a licensed excess-line broker.<sup>51</sup>

## **2. Brokers for Unlicensed or Unauthorized Insurers**

Although no person, firm, association or corporation may act as an agent for any unlicensed or unauthorized insurer in effecting insurance in New York, a licensed insurance broker may place insurance with an unauthorized insurance company with respect to: (1) a contract of reinsurance on risks produced by such broker; (2) insurance against loss of or damage to property having a permanent situs outside of the state; and (3) certain classes of marine insurance.<sup>52</sup>

Section 2117(c) of the N.Y. Insurance Law specifically authorizes the placement with an unauthorized insurer of insurance against legal liability arising out of: (1) the ownership, operation or maintenance of any aircraft which is neither principally hangared nor principally used in New York; (2) activity carried on wholly outside New York; or (3) the ownership, operation or maintenance of any property having a permanent situs outside New York provided that placement is with an insurer authorized to do business in

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<sup>51</sup> Compare N.Y. Ins. L. § 2117(a) & (b) (insurance agent generally required to place insurance with authorized insurer) with N.Y. Ins. L. § 2105(a) (providing for licensing of excess-line brokers, who may place insurance with unauthorized insurers); Appendix "A".

<sup>52</sup> N.Y. Ins. Law § 2117(a) & (b) (McKinney 1985).



that state or with an insurer with which a licensed broker of such state may lawfully place such insurance.<sup>53</sup> In contrast with excess-line insurance, which can be placed only by a licensed excess line broker, risks meeting the criteria outlined in N.Y. Ins. Law § 2117 may be placed by any licensed broker.<sup>54</sup>

### C. Classification of Aviation Insurance

Aviation insurance is not classified specifically under any one particular type of insurance in the N.Y. Insurance Law.<sup>55</sup> In New York, aviation insurance coverage may be categorized within several classes of insurance defined in the Insurance Law, including: "personal injury liability insurance;"<sup>56</sup> "property damage liability insurance;"<sup>57</sup> "motor vehicle and aircraft physical damage insurance;"<sup>58</sup> and "marine and inland marine insurance."<sup>59</sup>

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<sup>53</sup> N.Y. Ins. Law § 2117(c) (McKinney 1985); Appendix "A".

<sup>54</sup> Id.

<sup>55</sup> N.Y. Ins. Law § 1113(a) (McKinney 1985); Appendix "A".

<sup>56</sup> N.Y. Ins. Law § 1113(a)(13) (McKinney 1985).

<sup>57</sup> N.Y. Ins. Law § 1113(a)(14) (McKinney Supp. 1990).

<sup>58</sup> N.Y. Ins. Law § 1113(a)(19) (McKinney Supp. 1990).

<sup>59</sup> N.Y. Ins. Law § 1113(a)(20) (McKinney 1985).

Prior to the recodification of the N.Y. Insurance Law in 1984, aircraft liability and hull insurance was classified as "motor vehicle and aircraft insurance."<sup>60</sup>

#### D. Regulation of Rates

Insurance rates are regulated by the State of New York to promote the public welfare, assure non-excessive and responsive rates, price competition and competitive behavior.<sup>61</sup> As of July 1, 1988, all authorized insurers and rating organizations must file with the New York Superintendent of Insurance for prior approval of rates, rating plans, rating rules and rate manuals, except with respect to inland marine risks, which by general custom of business are not written according to manual, rates or rating plan.<sup>62</sup> Upon written application, however, an authorized

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<sup>60</sup> N.Y. Ins. Law § 46(19) (current version at N.Y. Ins. Law § 1113(a)(19) (McKinney Supp. 1990)). See also In re Gilly, 66 Misc. 2d 894, 322 N.Y.S.2d 742 (Surr. Ct. 1971) (policy entitled "aircraft hull and liability policy" was considered to be within § 46(19) "motor vehicle and aircraft insurance"). Section 46(20) (current version at N.Y. Ins. Law § 1113(a)(20) (McKinney 1985)), almost identical to § 1113(a)(20) of the current law, also included a provision regarding loss or damage to aircraft and to persons or property in connection with marine, inland marine, transit or transportation insurance. See N.Y. Ins. Law § 46(20) (1939).

<sup>61</sup> N.Y. Ins. Law § 2301 (McKinney 1985). See also New York Public Interest Research Group, Inc. v. N.Y. Dept. of Ins., 66 N.Y.2d 444, 497 N.Y.S.2d 645, 488 N.E.2d 466 (1985).

<sup>62</sup> N.Y. Ins. Law § 2305(f) (McKinney Supp. 1990) and § 2305(g) (McKinney 1985). See also, N.Y. Ins. Law § 2310(b).

insurer may obtain a special license entitling it to exemption from the rate filing requirements.<sup>63</sup> The exemption may be obtained if the business is underwritten and transacted from an office within New York and the risk produces a minimum annual premium in excess of \$100,000 or such higher amount as the Superintendent may prescribe by regulation, or the coverage is for a risk of an unusual nature, a high loss hazard or difficult to place as set forth by the Superintendent on a classification list.<sup>64</sup>

Article 23 of the Insurance Law<sup>65</sup> applies to all types of insurance written on risks or operations in New York by an insurer authorized to do business in New York except: (1) reinsurance; (2) accident and health insurance; (3) annuities and life insurance; (4) marine insurance other than inland marine and insurance upon airplanes, seaplanes and other aircraft; (5) marine protection and indemnity insurance; and (6) insurance issued by an assessment cooperative fire insurance company.<sup>66</sup> Thus, aviation insurance written on risks or operations in New York is subject to rate regulation under Article 23.

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<sup>63</sup> N.Y. Ins. Law § 6301 (McKinney 1985) and N.Y. Comp. Codes R. & Regs. tit. 11, § 16 (1984).

<sup>64</sup> See N.Y. Comp. Codes R. & Regs. tit. 11, § 16 (1984).

<sup>65</sup> N.Y. Ins. L. §§ 2301 - 2344 (McKinney 1985 & Supp. 1990).

<sup>66</sup> N.Y. Ins. Law § 2302(a) (McKinney 1985); Appendix "A".

## E. Policy Forms

### 1. In General

Although each company or joint underwriting organization uses its own forms for aviation policies, certain phrases and terminology are common to all policies. In London, there are standard policies used by aviation insurers which are approved by Lloyd's Aviation Underwriters' Association and Aviation Insurance Offices Association.<sup>67</sup> The various policy forms, each containing different provisions relating to a specific aviation risk, are assigned identification numbers. Among the most common are "AVN 16" which provides aircraft hull insurance and "AVN 20" which provides liability coverage.<sup>68</sup> There also are standard clauses and endorsements which are inserted in the policy as required for each individual insurance contract.<sup>69</sup>

Under the N.Y. Insurance Law, certain insurance policies made, issued or delivered in New York, on a risk located in New York, must be readable and understandable and must be filed for prior approval with the Superintendent of

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<sup>67</sup> A manual of standard policy forms, clauses and endorsements is published by Lloyd's Aviation Underwriters' Association.

<sup>68</sup> Various Lloyd's and non-Lloyd's aviation policy forms, clauses and endorsements are included in Appendix "B" hereto.

<sup>69</sup> Id.

Insurance.<sup>70</sup> The N.Y. Insurance Law does not specifically state that aviation insurance policies are subject to the readability requirements or that they must receive prior approval from the Superintendent. The policies enumerated in N.Y. Ins. Law § 3102 and § 3201, however, are not the types under which aviation insurance generally is classified.<sup>71</sup> Apparently, aviation insurance policies are not subject to the specific readability provisions of N.Y. Ins. Law § 3102 and are not required to receive the prior approval of the Superintendent of Insurance.<sup>72</sup>

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<sup>70</sup> N.Y. Ins. Law § § 3102 & 3201 (McKinney 1985); Appendix "A".

<sup>71</sup> Id. These sections, which enumerate the types of insurance policies required to be filed with the Superintendent of Insurance for prior approval, do not include the types of insurance under which aviation insurance generally is classified, i.e., insurance for "Personal injury liability insurance", "Property damage liability insurance", "Motor vehicle and aircraft physical damage insurance" and "Marine and inland marine insurance". See N.Y. Ins. Law § 1113(a) (McKinney 1985). Rather, the readability standards and prior approval requirements of Sections 3102 and 3201 apply primarily to those types of insurance frequently purchased by individual consumers, such as life insurance, annuities, accident and health insurance,, hospital service contracts, homeowner's insurance and automobile insurance. See id. §§ 1113(a); 3102(a); 3201(a); 3219 & 4308. One of the few categories of the aviation-related insurance where the readability standards and prior approval requirements may apply would be travel insurance policies covering death or personal injury, which are also of interest to individual consumers. See id. §§ 1113(a)(1); 3201(a) & 3201(a); Appendix "A".

<sup>72</sup> Article 31 of the N.Y. Insurance Law applies to all types of insurance, including aviation insurance. While not  
(footnote continued)

## 2. Statutory Provisions as to Content of Aviation Insurance Policies

Several provisions of the N.Y. Insurance Law directly address the content of aviation policies. In the case of aircraft liability insurance, the N.Y. Insurance Law requires each policy to contain an omnibus insuring clause.<sup>73</sup> N.Y. Ins. Law § 3420(e) provides that each policy of personal injury or property damage insurance covering liability arising from the ownership, maintenance or operation of an aircraft issued or delivered in New York must provide coverage to the insured against liability for death or injury sustained or loss or damage occasioned as a result of the negligent operation or use of the aircraft by any person operating or using the aircraft with permission of the owner.<sup>74</sup>

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expressly subject to the specific requirements of N.Y. Ins. Law § 3102, aviation insurance policies must comply with the other general provisions of the N.Y. Insurance Law, e.g., N.Y. Ins. Law § 3420(e) (McKinney 1985).

<sup>73</sup> N.Y. Ins. Law § 3420(e) (McKinney 1985); Appendix "A".

<sup>74</sup> Cf. N.Y. Gen. Bus. Law § 251 (McKinney 1988), which establishes the general liability of property arising out of the use or operation of the aircraft by any person using or operating the aircraft with the express or implied permission of the owner in any case where the operator himself, or his estate, would be liable for such death or injury. See Guillen v. Williams, 27 Misc. 2d 575, 212 N.Y.S.2d 556 (Sup. Ct. 1961).

The N.Y. Insurance Law further provides a standard printed form for fire insurance policies and requires that any fire policy issued on property in New York must conform to its provisions.<sup>75</sup> Policies covering aircraft physical damage, however, which insure solely against fire or fire in combination with other perils, either for a divisible or indivisible premium, need not comply with the standard fire insurance policy form.<sup>76</sup>

### 3. Life Insurance

Generally, life insurance policies delivered or issued for delivery in New York may not contain any provision restricting or excluding liability in the event of death.<sup>77</sup> Life and accident policies, however, sometimes contain a provision limiting or excluding coverage for injury or death as a result of an aviation related incident. The N.Y. Insurance Law specifically permits life insurance policies to contain provisions excluding or restricting liability in the event of death caused as a result of aviation related

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<sup>75</sup> N.Y. Ins. Law § 3404(a) and (e) (McKinney 1985); Appendix "A".

<sup>76</sup> N.Y. Ins. Law § 3404(f)(2) (McKinney 1985).

<sup>77</sup> N.Y. Ins. Law § 3203(b)(1) (McKinney 1985).

activity.<sup>78</sup> Such limitations must be express and unambiguous, however, and will be strictly construed against the insurer.<sup>79</sup>

Airline trip insurance policies sold through vending machines are governed by N.Y. Ins. Law § 3107. Such insurance policies specifically insure against injuries to or death of a passenger resulting from travel on an aircraft.<sup>80</sup> The N.Y. Insurance Law permits a licensed agent to solicit and issue policies of accident or baggage insurance by vending machines placed at airports.<sup>81</sup> No policy issued through a vending machine, however, may be for a period of time longer than 10 days or the duration of a one-way or round trip, as applicable.<sup>82</sup>

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<sup>78</sup> N.Y. Ins. Law § 3203(b)(1)(C) (McKinney 1985). See also N.Y. Ins. Law § 3215(b)(2) (McKinney 1985) (permitting life insurance policies which provide disability benefits to contain an aviation exclusion).

<sup>79</sup> See, e.g., Lee v. Guardian Life Ins. Co., 187 Misc. 221, 46 N.Y.S.2d 241, aff'd, 267 A.D. 985, 48 N.Y.S.2d 800 (1944); see also Vargas v. Insurance Company of North America, 651 F.2d 838 (2d Cir. 1981) (applying New York law).

<sup>80</sup> See N.Y. Ins. Law § 3107(c); cf. N.Y. Ins. Law § 4237(a) (McKinney 1985 and Supp. 1990) which allows an airline to insure its passengers against death or bodily injury under a blanket health and accident insurance policy.

<sup>81</sup> N.Y. Ins. Law § 3107(c) (McKinney 1985); Appendix "A".

<sup>82</sup> N.Y. Ins. Law § 3107(e) (McKinney 1985); Appendix "A".



## CHAPTER IV - THE AVIATION INSURANCE POLICY

### A. In General

Although each aviation insurance company or insurance pool employs different policy forms, an aviation insurance policy usually contains the following sections: (1) Insuring Agreements; (2) Definitions; (3) Exclusions; (4) Conditions; and (5) Declarations.<sup>83</sup> Each aviation policy also will contain different provisions depending on the risk to be insured, e.g., aircraft hull, passenger liability or third party liability. While separate policies may be issued covering specific aviation risks, several risks commonly are covered in a single policy. For example, AVN 1A is a standard combination aviation policy used in the London market which includes hull, third party and passenger liability coverage.<sup>84</sup>

### B. Insuring Agreements

The "Insuring Agreements" section is the standard part of an aviation insurance policy which describes the risk being undertaken.<sup>85</sup> Different insuring agreements apply to

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<sup>83</sup> See Appendix "B".

<sup>84</sup> See Appendix "B"; see also Margo, Aviation Insurance, at 113 (2d ed. Butterworths 1989).

<sup>85</sup> If the "Insuring Agreement" is clear and unambiguous, the insured generally has the burden of proof to establish that a  
(footnote continued)

each type of risk covered.<sup>86</sup> In a combination aviation policy, separate insuring agreements within the policy may provide for aircraft hull, third party liability, passenger liability and medical expense coverage. For example, a typical insuring agreement for bodily injury and property damage liability may provide as follows:

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, sustained by any person, and for damages because of property damage caused by an occurrence and arising out of the ownership, maintenance or use of the aircraft.

The Insuring Agreements section also may identify the insured and set forth the insurer's undertaking to defend and/or indemnify the insured.<sup>87</sup>

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claim comes within the coverage of the policy. See Mobil Oil Corp. v. Reliance Ins. Co., 69 Misc. 2d 876, 332 N.Y.S.2d 532 (Sup. Ct. 1971), aff'd, 39 A.D.2d 839, 333 N.Y.S.2d 747 (1972); Lapierre, Litchfield & Panthers v. Continental Casualty Co., 59 Misc. 2d 20, 297 N.Y.S.2d 976 (Sup. Ct.), modified on other grounds, 32 A.D.2d 353, 302 N.Y.S.2d 370 (1969). See also Pan Am. World Airways, Inc. v. Aetna Casualty & Sur. Co., 505 F.2d 989, 999 (2d Cir. 1974) (under all risks policy insured has burden to establish a prima facie case for recovery); Great Northern Ins. Co. v. Dayco Corp., 637 F. Supp. 765 (S.D.N.Y. 1986).

<sup>86</sup> See infra. Chapter V which outlines the various types of aviation coverage.

<sup>87</sup> Coverage may be limited or defined further by the "Exclusions", "Definitions" or "Conditions" sections of the policy. See generally Margo, Aviation Insurance, Chapter 10 (2d ed. Butterworths 1989) and text infra. at pp. 35-74.

## 1. Duty to Defend

The duty to defend the insured, usually expressed in the Insuring Agreements section,<sup>88</sup> is an important provision of the policy. A typical defense provision in an aviation policy will provide that the insurers have a duty to defend any claim or legal action against the insured seeking damages for personal injury or property damage, even if the claim is groundless, false or fraudulent.<sup>89</sup> The insurers usually agree to pay all appropriate fees and expenses incurred in the defense of the claim or litigation, costs taxed against the insured in any action defended by the insurer, interest on the entire amount of any judgment, premiums on bonds and expenses incurred by the insured in cooperating with the requests of the insurer in the defense of the claim or litigation.

The following basic rules with respect to defense obligations under standard defense clauses are applicable in the context of all insurance policies, including aviation

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<sup>88</sup> The duty to defend provision also can be included in the "Conditions" section of the policy or set forth as a separate provision.

<sup>89</sup> See, e.g., Lebow Assocs. v. Avemco Ins. Co., 439 F. Supp. 1288 (E.D. Mich. 1977) (Insuring Agreements clause provided that insurer would defend "any suit against the insured alleging . . . injury, sickness, disease, or destruction [arising out of operation of aircraft] and seeking damages on account thereof, even if such suit is groundless, false or fraudulent"); Appendix "B".

insurance policies. The duty to defend is broader than the duty to indemnify.<sup>90</sup> The existence of a duty to defend is determined, in the first instance, by the allegations in the complaint. The insurer must defend if the complaint states a cause of action or facts which, if the action against the insured is successful, would require an insurer to pay.<sup>91</sup>

Insurers may not refuse to defend on the ground that they are in possession of extrinsic information establishing that the allegations in the complaint are not true.<sup>92</sup>

There is no duty to defend where the allegations of the complaint, even if true, are outside the scope of the policy.<sup>93</sup> If, however, a complaint states any allegations

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<sup>90</sup> See Federal Ins. Co. v. Cablevision Systems Development Co., 637 F. Supp. 1563 (E.D.N.Y. 1986); Spodek v. Liberty Mut. Ins. Co., 155 A.D.2d 439, 547 N.Y.S.2d 100 (1st Dept. 1989).

<sup>91</sup> See, e.g., A. Meyers & Sons Corp. v. Zurich American Ins., 74 N.Y.2d 298, 546 N.Y.S.2d 818, 545 N.E.2d 1206 (1989); see also American Home Products Corp. v. Liberty Mut. Ins., 748 F.2d 760, 764 n.2 (2d Cir. 1984).

<sup>92</sup> See, e.g., A. Meyers & Sons Corp. v. Zurich American Ins., 74 N.Y.2d 298, 546 N.Y.S.2d 818, 545 N.E.2d 1206 (1989); Collum v. State Farm Fire & Cas. Co., 155 A.D.2d 581, 547 N.Y.S.2d 423 (2d Dept. 1989).

<sup>93</sup> See A. Meyers & Sons Corp. v. Zurich American Ins., 74 N.Y.2d 298, 546 N.Y.S.2d 818, 545 N.E.2d 1206 (1989); see also American Home Products v. Liberty Mut. Ins., 565 F. Supp. 1485 (S.D.N.Y. 1983), aff'd as modified, 748 F.2d 760 (2d Cir. 1984).

that fall potentially within the coverage provided, the insurer must defend until it can confine the possibility of recovery to claims outside the coverage of the policy.<sup>94</sup>

The New York Court of Appeals in A. Meyers & Sons Corp. v. Zurich American Ins., 74 N.Y.2d 289, 546 N.Y.S.2d 818, 545 N.E.2d 1206 (1989), recently restated the law of New York with respect to the duty of a liability insurer to defend an action brought against its insured, as follows:

The duty of a liability insurer to defend an action brought against an insured is determined by the allegations in the complaint (see, Servidone Constr. Corp. v. Security Ins. Co., 64 N.Y.2d 419, 424). If the facts alleged raise a reasonable possibility that the insured may be held liable for some act or omission covered by the policy, then the insurer must defend (see, Ruder & Finn v. Seaboard Sur. Co., 52 N.Y.2d 663, 669-670). If no such possibility is raised, no duty to defend is owed under the policy. Accordingly, upon a motion such as this the court's duty is to compare the allegations of the complaint to the terms of the policy to determine whether a duty to defend exists (see, Technicon Elecs. Corp. v. American Home Assur. Co., 74 NY2d 66, 73). In construing the policy the court must examine "the entire contract to determine its purpose and effect and the apparent intent

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<sup>94</sup> See A. Meyers & Sons Corp. v. Zurich American Ins., 74 N.Y.2d 298, 546 N.Y.S.2d 818, 545 N.E.2d 1206 (1989); see also American Home Products v. Liberty Mut. Ins. Co., 585 F. Supp. 1485 (S.D.N.Y. 1983), aff'd as modified, 748 F.2d 760 (2d Cir. 1984).

of the parties" (see, Murray Oil Prods. v. Royal Exch. Assur. Co., 21 NY2d 440, 445).

A. Meyers, 74 N.Y.2d at 302-303.

Any doubt as to the existence of a duty to defend will be resolved in favor of the insured.<sup>95</sup>

Thus, even if the allegations in the complaint are ambiguous or unclear but may be interpreted reasonably to include coverage, there is a duty to defend.<sup>96</sup> If an insurer is obligated to defend any aspect of a suit, it is obligated to defend every aspect of the suit.<sup>97</sup>

#### C. Definitions

Aviation insurance policies usually contain a separate section defining certain terms used in the policy in order to further delineate the scope of coverage and ensure that both the insurer and insured have a common understanding of their meaning. Certain terms must be defined clearly because different premiums and deductible amounts may apply

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<sup>95</sup> See Chartering Inc. v. Travelers Indem. Co., 706 F. Supp. 214 (S.D.N.Y. 1989); Seaboard Sur. Co. v. Gillette Co., 64 N.Y.2d 304, 486 N.Y.S.2d 873, 476 N.E.2d 272 (1984); Spodek v. Liberty Mut. Ins. Co., 155 A.D.2d 439, 547 N.Y.S.2d 100 (1st Dept. 1989).

<sup>96</sup> Id.

<sup>97</sup> Id.

to various aircraft operations depending on whether the loss or damage suffered occurred "in flight", "in motion" or while "taxiing".<sup>98</sup>

Aviation insurance policies generally define the following terms: "aircraft", "in flight", "in motion", "taxiing", "passenger", "crew", "insured/named insured", "occurrence", "personal injury", "bodily injury" and "property damage."<sup>99</sup>

The definition of a term in the policy is controlling unless it is ambiguous.<sup>100</sup> If a term used in an

<sup>98</sup> Margo, Aviation Insurance, at 154-156 (2d ed. Butterworths 1989).

<sup>99</sup> The various terms used in aviation policies have been defined in the following cases: Compass Ins. Co. v. Vanguard Ins. Co., 649 F.2d 331 (5th Cir. 1981) ("taxiing"); Uniroyal, Inc. v. Home Ins. Co., 707 F. Supp. 1368, 1379 n.90 (E.D.N.Y. 1988) ("occurrence" and "injury"); Pan American Fire & Casualty Co. v. Edwards Aircraft Inc., 377 F. Supp. 205 (N.D. Ala. 1974) ("pilot", "crew", "passenger"); Atlantic Cement Co., Inc. v. Fidelity & Casualty Co. of New York, 63 N.Y.2d 798, 481 N.Y.S.2d 329, 471 N.E.2d 142 (1984) ("intentional harm"); Oriheula v. Prudential Ins. Co. of America, 124 N.Y.S.2d 470 (Sup. Ct. 1953), aff'd, 197 N.Y.S.2d 669 (1955) ("crew"); Buffalo Air Park, Inc. v. National General Ins. Co., 15 Av. Cas. (CCH) 18,432 (N.Y. Sup. Ct. 1980) ("one occurrence"); Acme Flying Service v. Royal Ins. Co., 83 N.Y.S.2d 740 (Sup. Ct. 1948), aff'd, 88 N.Y.S.2d 904 (1949) ("ground risks" and "flight risks"); Bressee v. Auto. Ins. Co., 1932 U.S. Av. Rep. 51 (N.D.N.Y. 1932) ("in flight").

<sup>100</sup> See Champion International Corp. v. Continental Casualty Co., 546 F.2d 502 (2d Cir. 1976). In this case, involving recovery under products liability insurance policies covering paneling installed in houseboats, motor homes and campers, the Second Circuit construed the word "occurrence" as used in the basic and umbrella excess policies. The basic policy,  
(footnote continued)

insurance policy is not defined by the policy, its definition is determined from the common sense viewpoint of the average person and any ambiguity is resolved against the insurer.<sup>101</sup>

For example, in Uniroyal, Inc. v. Home Ins. Co., 707 F. Supp. 1368, 1377-78 (E.D.N.Y. 1988) (applying New York law), the court, in construing the policy terms "occurrence" and "injury", reviewed existing New York case law governing interpretation of ambiguous terms in insurance policies and concluded that "[t]he best and most recent explanation is

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which covered property damage "caused by an occurrence," provided that all property damage "arising out of continuous or repeated exposure to substantially the same general conditions...shall be considered as arising out of one occurrence." The basic policy also imposed a deductible of \$5,000 "per occurrence." The excess policy indemnified the insured paneling manufacturer for property damage caused by or arising out of "each occurrence." Under an endorsement of the excess policy, the terms of the basic policy controlled those of the excess policy. When the insured sought to recover under the policies for losses caused by 1400 individual installations of paneling that all contained the same defect, the insurers asserted that each installation constituted an "occurrence" the damages from which were each less than the \$5,000 deductible per occurrence. The court disagreed, holding that the word "occurrence" unambiguously referred to the losses resulting from the entire series of installations of defective paneling. The court stated that the language was controlling "unless it is ambiguous (and we find no ambiguity here)."

<sup>101</sup> See Hutzel v. United States Aviation Underwriters, Inc., 132 A.D. 2d 45, 522 N.Y.S.2d 301 (1987) (court interpreted "commercial aviation" as referring to the popular perception of the phrase noting the absence of a definition of it in the policy); see also State Farm Mut. Auto. Ins. Co. v. Bush, 46 A.D.2d 958, 362 N.Y.S.2d 220 (1974).



that the policy should be viewed as if by a reasonably intelligent business person who is familiar with the agreement and with the industry in question."

In Sturges Mfg. Co. v. Utica Mut. Ins. Co., 37 N.Y.2d 69, 74, 371 N.Y.S.2d 444, 448, 332 N.E.2d 319, 323 (1975), a manufacturer of ski straps that proved to be defective sued for a declaratory judgment that its insurer be required to defend the manufacturer against claims by a customer. The insurer declined to defend, relying in part on a clause that excluded from coverage bodily injury or property damage resulting from the failure of the insured's products to perform the function or serve the purpose intended by the insured, if such failure was due to a mistake or deficiency in any design or specifications prepared by the insured, but that expressly included within coverage any bodily injury or property damage "resulting from the active malfunctioning of such products." The Court of Appeals, noting that neither it nor the average insured could reasonably determine the meaning of "active malfunctioning," stated that "exclusionary clauses, when doubtful of meaning, are construed in favor of the insured."<sup>102</sup>

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<sup>102</sup> In Thomas J. Lipton Inc. v. Liberty Mut. Ins. Co., 34 N.Y.2d 356, 357 N.Y.S.2d 705, 314 N.E.2d 37 (1974), on which the Sturges court based its holding, the insured sought a declaratory judgment regarding indemnification and defense under a special multi-peril products liability policy and an  
(footnote continued)

Where the insurance policy is written in "plain English," a court may shift its point of reference for purposes of interpretation from the "ordinary business man" to the "popular perception."<sup>103</sup>

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umbrella excess products liability policy. The insurer disclaimed all responsibility to indemnify or defend the insured on the ground that provisions in each policy excluded from coverage damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the insured's products if the products were withdrawn from the market because of "any known or suspected defect therein." The issue before the Court of Appeals was whether the exclusions related to losses due to the withdrawal and recall of defective products incurred directly and only by the named insured, the manufacturer, or whether the exclusions extended as well to losses (and claims therefor against the insured) sustained by the third-party claimant, the manufacturer's customer, in withdrawal and recall of merchandise containing the manufacturer's products. The court was persuaded that the obvious intent of the named insured and the insurer was to afford the named insured substantial protection from exposure to claims of third-parties against the named insured in consequence of defects in the named insured's products. To exclude losses flowing from third-party claims against the insured, the court stated, "would render the coverage nearly illusory." Noting that ambiguities in an insurance policy must be construed against the insurer, especially as to ambiguities in an exclusionary clause, the court stated it did not believe, under the circumstances in which the policies were written, that "an ordinary business man in applying for insurance and reading the language of these policies when submitted, would not have thought himself covered against precisely the damage claims" asserted by the third-party claimant.

<sup>103</sup> See Hutzel v. United States Aviation Underwriters, 132 A.D.2d 45, 522 N.Y.S.2d 301 (3d Dept. 1987), discussed infra. at p. 45; State Farm Mut. Auto. Ins. Co. v. Bush, 46 A.D.2d 958, 362 N.Y.S.2d 220 (3d Dept. 1974).

## D. Exclusions

### 1. In General

One of the most important sections in an aviation insurance policy is the "Exclusions" section which restricts the coverage under the policy and may vitiate an insurer's duty to defend and/or indemnify the insured for losses arising from certain events. An exclusion precludes coverage for persons or events which otherwise might be included within the defined scope of the coverage.<sup>104</sup> Under New York law, an insurance policy may contain an exclusion clause limiting the insurer's liability to cover only the persons, events, premises or things it desires to insure, provided the exclusion is clear and unambiguous.<sup>105</sup>

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<sup>104</sup> In Federal Ins. Co. v. Bahri Aviation, 18 Av. Cas. (CCH) 17,141, 17,143 (S.D.N.Y. 1983) (applying New York law), the court held that a provision stating that the policy would not apply while the aircraft was in flight unless the crew consisted of a co-pilot who had "successfully completed the manufacturers [sic] recommended or approved ground school for Gates Lear Jet 335 model aircraft" unmistakably indicated "an agreement between the parties to limit coverage and not a mere representation by the insured." Thus, the court concluded, the provision was an exclusion under New York law. See also Mobil Oil Corp. v. Reliance Ins. Co., 69 Misc. 2d 876, 879, 332 N.Y.S.2d 532, 535 (Sup. Ct. N.Y. County 1971) ("An exclusion, in insurance parlance, serves the purpose of taking out persons or events otherwise included within the defined scope of coverage."), aff'd mem., 39 A.D.2d 839, 333 N.Y.S.2d 747 (1st Dept. 1972).

<sup>105</sup> In Federal Ins. Co. v. Bahri Aviation, 18 Av. Cas. (CCH) 17,141, 17,143 (S.D.N.Y. 1983) (applying New York Law), the court also defined the role of an exclusion clause under New  
(footnote continued)

An "exclusion" should be distinguished from a "warranty" and a "condition". A warranty is an undertaking by the insured that some particular thing be or not be done, or the insured's assertion of the existence of some particular state of facts.<sup>106</sup> For example, in Federal Ins. Co. v. Bahri Aviation Incorp., 18 Av. Cas. (CCH) 17,141 (S.D.N.Y. 1983), the court held that a provision stating that the policy would not apply while the aircraft was in flight unless the crew consisted of a co-pilot who had "successfully

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York law, stating that an exclusion clause limiting the insurer's liability so as to cover only the persons, events, premises, or things to be insured must be clear and unambiguous. In Mobil Oil Corp. v. Reliance Ins. Co., 69 Misc. 2d 876, 332 N.Y.S.2d 532 (Sup. Ct. N.Y. County 1971), aff'd mem., 39 A.D.2d 839, 333 N.Y.S.2d 747 (1st Dept. 1972), the exclusion clause stated that the policy's coverage would not apply to the insured aircraft while in flight unless the aircraft were operated by a pilot "who has piloted aircraft ... fifty hours in the same make and model of aircraft." When the aircraft in question crashed, the pilot operating it had only 32.2 hours flying time in that make and model. The court ruled that the language was clear and unambiguous and that the insured, having failed to establish that the pilot had the requisite experience, could not recover under the policy.

<sup>106</sup> See Federal Ins. Co. v. Bahri Aviation Incorp., 18 Av. Cas. (CCH) 17,141 (S.D.N.Y. 1983); cf. definition of "warranty" in N.Y. Ins. §3106 (McKinney 1985), which provides that "[i]n this section 'warranty' means any provision of an insurance contract which has the effect of requiring, as a condition precedent of the insurer's liability thereunder, the existence of a fact which tends to diminish, or the non-existence of a fact which tends to increase, the risk of the occurrence of any loss, damage, or injury within the coverage of the contract." Appendix "A". Exclusions are used to keep premiums and risk proportionate. See infra. at p. 63 for a discussion of Conditions.

completed the manufacturers [sic] recommended or approved ground school for Gates Lear Jet 35 model aircraft" was an exclusion, not a warranty by the insured.<sup>107</sup>

Because an insurer may avoid its duty to defend or indemnify by virtue of a policy exclusion, coverage disputes often involve the applicability or scope of an exclusion. Courts have consistently held that where an insurer relies solely upon an exclusion in a policy to deny coverage, the burden is upon the insurer to prove that the occurrence comes within that specific exclusion and that the insurer's interpretation of the exclusion is the only fair one.<sup>108</sup>

In Pan Am. World Airways v. Aetna Casualty & Sur. Co., 505 F.2d 989 (2d Cir. 1974) (applying New York law), the insured sought to recover under an all-risk policy for an

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<sup>107</sup> Cf. N.Y. Ins. L. § 3106 (McKinney 1985), which provides that "[i]n this section 'warranty' means any provision of an insurance contract which has the effect of requiring, as a condition precedent of the taking of effect of such contract or as a condition precedent of the insurer's liability thereunder, the existence of a fact which tends to diminish, or the non-existence of a fact which tends to increase, the risk of the occurrence of any loss, damage, or injury within the coverage of the contract." Appendix "A".

<sup>108</sup> See Vargas v. Ins. Co. of North America, 651 F.2d 838 (2d Cir. 1981); Pan Am. World Airways, Inc. v. Aetna Casualty & Sur. Co., 505 F.2d 989 (2d Cir. 1974); Great Northern Ins. Co. v. Dayco Corp., 637 F. Supp. 765 (S.D.N.Y. 1986); Thomas J. Lipton Inc. v. Liberty Mut. Ins. Co., 34 N.Y.2d 356, 357 N.Y.S.2d 705, 314 N.E.2d 37 (1974); Hutzel v. United States Aviation Underwriters, Inc., 132 A.D.2d 45, 522 N.Y.S.2d 301 (1987); Mobil Oil Corp. v. Reliance Ins. Co., 69 Misc. 2d 876, 332 N.Y.S.2d 532 (Sup. Ct. 1971), aff'd, 39 A.D.2d 839, 333 N.Y.S.2d 747 (1972).

aircraft destroyed by hijackers. The insurers claimed that the destruction fell within the scope of an exclusion providing, inter alia, that loss or damage resulting from "war", "warlike operation", the acts of a "military or usurped power", "riot" or "civil commotion" would not be covered. The Second Circuit compared the language in question with language from other policies, noting that the other policies contained exclusions using words such as "hijacking," "act for political or terrorist purposes," "irregular warfare" and "forceful diversion." The Court found that because the insurers failed to use in their exclusion clauses an apt word to exclude the then already-known risk of hijacking, no one interpretation of any of the exclusion clauses could serve as the "only reasonable" one. Because of this ambiguity, the Court held that the exclusions for war and similar events could not be construed to include hijacking.

The Pan Am court also analyzed the exclusions from another perspective, that of proximate cause. It observed that the all-risk policies excluded "loss or damage to or resulting from" the enumerated perils, a phrase that "clearly refers to the proximate cause of the loss." Relying upon Standard Oil Co. v. United States, 340 U.S. 54 (1950), and Queen Ins. Co. v. Globe & Rutgers Fire Ins. Co., 263 U.S. 487

(1924), the Court held that the words "due to or resulting from" limit the causation inquiry to the "facts immediately surrounding the loss." The Court also noted that "New York courts give especially limited scope to the causation inquiry."<sup>109</sup>

Any ambiguities<sup>110</sup> in an exclusion will be construed strictly against the insurer.<sup>111</sup> For example, in

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<sup>109</sup> See Sturges Mfg. Co. v. Utica Mut. Ins. Co., 37 N.Y. 2d 69, 371 N.Y.S.2d 444, 332 N.E.2d 319 (1975), discussed supra. at p. 38.

See also Thomas J. Lipton Inc. v. Liberty Mut. Ins. Co., 34 N.Y.2d 356, 357 N.Y.S.2d 705, 314 N.E.2d 37 (1974), discussed supra. n. 102; Hutzel v. United States Aviation Underwriters, 132 A.D.2d 45, 522 N.Y.S.2d 301 (3d Dept. 1987); M.H. Lipner & Son, Inc. v. Hanover Ins. Co., 869 F.2d 689 (2d Cir. 1989); Great N. Ins. Co. Ins. Co. v. Dayco Corp., 637 F. Supp. 765 (S.D.N.Y. 1986).

<sup>110</sup> In a case pertaining to the construction of exclusionary language in a homeowner's policy, the New York Court of Appeals held that an ambiguity does not exist if "the words in the paragraphs of the policy under examination have a definite and precise meaning, unattended by danger of misconception in the purpose of the policy itself, and concerning which there is not reasonable basis for a difference of opinion." Breed v. Insurance Co. of N. Am., 46 N.Y.2d 351, 355, 413 N.Y.S.2d 352, 355, 385 N.E.2d 1280, 1283 (1978).

<sup>111</sup> See supra. n.105 and accompanying text. Cf. Danzig v. Dikman, 53 N.Y.2d 926, 440 N.Y.S.2d 925, 423 N.E.2d 402 (1981), where the court, faced with the issue of determining when the liability of the insurer attaches under group medical insurance policies, stated that the failure of the insurer to make "unmistakably explicit provision" in the policies with regard to this question created an ambiguity that "under familiar principles of construction is to be resolved against the insurer"; Guyer v. United States Fire Ins. Co., 97 A.D.2d 964, 468 N.Y.S.2d 818 (4th Dept. 1983),  
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Hutzel v. United States Aviation Underwriters, 132 A.D.2d 45, 522 N.Y.S.2d 301 (3d Dept. 1987), the insured aircraft crashed while being piloted by an independent contractor of the insured corporation. The policy in question, written in "clear, easy-to-understand language," excluded from coverage "any person engaged in commercial aviation." The insurer claimed that "commercial aviation" included any operation of the aircraft for which the pilot was deriving compensation. The Appellate Division, noting that ambiguous language, especially in the exclusionary clause of a policy, is to be construed against the insurer, held that since the policy did not define "commercial aviation" and considering the plain language style of the insurance contract, it was not unreasonable to interpret "commercial aviation" as referring to "the popular perception of regularly scheduled airplane

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where the court held that although the insured may have misrepresented his medical condition in obtaining a medical certificate from the FAA (so that the medical certificate may have therefore been invalid), the policy requirement that the aircraft be operated only by pilots holding "valid and effective ... medical certificates" was "at least arguably ambiguous and thus must be construed strictly against the insurer" because the insurance policy did not specifically indicate that any misrepresentation made in the insured's application for a medical certificate would void the policy; Kronfeld v. Fidelity & Casualty Co., 53 A.D.2d 190, 385 N.Y.S.2d 552 (1st Dept. 1976).



service complete with tickets, schedules and attendants, something that [the pilot] clearly was not involved with while flying for" the insured.<sup>112</sup>

Although an aviation insurance policy may contain a number of specific exclusions, certain exclusions are common in all aviation policies. An aviation policy typically will exclude coverage:

(1) for any aircraft which does not have a valid airworthiness certificate;

(2) for an aircraft used for any unlawful purpose or operated in a manner not consistent with its airworthiness certificate;

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<sup>112</sup> See M.H. Lipiner & Son, Inc. v. Hanover Ins. Co., 869 F.2d 685 (2d Cir. 1989), where, in a case involving an all-risk jeweler's block policy, the court stated that "[e]xclusionary clauses are given the interpretation most beneficial to the insured."; Airmanship, Inc. v. United States Aviation Underwriters, Inc., 559 So.2d 89 (Fla. Dist. Ct. App. 1990).

Cf. Great N. Ins. Co. v. Dayco Corp., 637 F. Supp. 765 (S.D.N.Y. 1986) (applying New York law). In this case, the insurer sought a declaratory judgment that it was not liable under an all-risk property policy to indemnify the insured for loss of goods taken through fraud on the part of an agent and employees of the insured. The insurer relied in part upon an employee infidelity exclusion in the policy, which provided that the policy did not cover "physical damage caused by or resulting from . . . infidelity by an employee of the insured." Noting that the phrase "caused by or resulting from" in reference to an excluded peril required that the insurer prove that the excluded peril was the proximate cause of the loss, the court held that under the narrow scope of proximate cause as applied to insurance policies by New York courts, the fact that the employees were at most a contributing cause to the loss did not constitute proximate cause sufficient to permit invocation of the employee infidelity exclusion.

(3) for an aircraft used for any purpose other than that stated in the "Declarations" section of the policy;

(4) for an aircraft operated by any person other than the pilot(s) identified in the "Declarations" or by a pilot in violation of the terms or limitations of his pilot's license or medical certificate;

(5) for liability assumed by the insured under any separate agreement;

(6) for injury caused intentionally;

(7) for injury to property owned, occupied, rented, used, or transported by or in the care of the insured;

(8) if the total number of passengers carried in the aircraft at the time of the loss or damage exceeds the declared maximum stated in the "Declarations" section; and

(9) for injury to employees of the insured or any obligations arising under worker's compensation or employer's liability statutes.<sup>113</sup>

Aircraft hull insurance providing coverage for physical damage to an aircraft may contain the following additional exclusions: 1) mechanical breakdown;<sup>114</sup> 2) war

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<sup>113</sup> Other exclusions can preclude coverage where the aircraft is: 1) operated in violation of certain Federal Aviation Regulations; 2) used for aerobatics or crop dusting; or 3) operated by students. See Appendix "B"; Margo, Aviation Insurance, at 117-131 (2d ed. Butterworths 1989); Annot., Risks and Causes of Loss Covered or Excluded by Aviation Liability Policy, 86 A.L.R. 3d 118 (1978). An insured may obtain special endorsements providing coverage for many policy exclusions in exchange for an additional premium.

<sup>114</sup> See infra. Chapter V.

risks;<sup>115</sup> and 3) lease, bailment or wrongful conversion, i.e., undisclosed financial interests.<sup>116</sup> The exclusion for undisclosed financial interest in an aircraft usually provides:

This policy does not apply if the aircraft is subject to bailment, lease, conditional sale, mortgage or other encumbrance not specifically stated in the declarations.

This provision also may include an exclusion for wrongful conversion or embezzlement.<sup>117</sup> The purpose of this exclusion is to prevent both the insured and a third-party who has an undisclosed lien or mortgage from seeking a remedy from the hull insurers because the failure to disclose such an interest violates the exclusion.<sup>118</sup>

Further exclusions applicable to both hull and liability policies relate to noise and pollution,<sup>119</sup> hi-

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<sup>115</sup> See discussion of war risks exclusion, infra. Chapter V.

<sup>116</sup> Margo, Aviation Insurance, ch.11 (2d ed. Butterworths 1989).

<sup>117</sup> See, e.g., AVN 16, Appendix "B" hereto.

<sup>118</sup> See Otsego Aviation Service Inc. v. Glen Falls Ins. Co., 277 A.D. 612, 102 N.Y.S.2d 344 (1951); Hedges Enterprise Inc. v. Fireman's Fund Insurance Co., 34 Misc. 2d 249, 225 N.Y.S.2d 779 (Sup. Ct. 1962).

<sup>119</sup> For example AVN 46B, the "Noise and Pollution and Other Perils" clause excludes claims directly or indirectly occasioned by, happening through or in consequence of:

(a) noise vibration, sonic boom and any phenomena associated therewith,

(footnote continued)

jacking,<sup>120</sup> and radioactive contamination and nuclear war.

## 2. Assumed Liability Exclusions

A special note is required with respect to assumed liability exclusions. Assumed liability exclusions generally preclude coverage for liability assumed by the insured under any contract or agreement,<sup>121</sup> and are a valid means by which

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- (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.

120 See infra. Chapter V.

121 See, e.g., Lebow Assocs. v. Avemco Ins. Co., 439 F. Supp. 1288 (E.D. Mich. 1977) (applying Michigan law). Here, a single aircraft insurance policy covered both the lessor and the lessee of an airplane that crashed, killing the pilot and a passenger. Under the aircraft lease, the lessee agreed to indemnify and hold harmless the lessor of and from any and all losses or damages arising from the use of operation of the aircraft. The insurance policy excluded from coverage "liability assumed by an insured under any contract or agreement." The insured and the insurer stipulated in this case that the assumed liability exclusion would not apply only if the insured lessee would not be liable to its indemnitee (the insured lessor) but for the contractual assumption of liability; conversely, the assumed liability exclusion would not apply if the liability assumed by the insured lessee was coextensive with the liability imposed upon the insured by operation of law, i.e., the common law of negligence. The court noted that the major rationale underlying this principle is that the insured's contractual assumption of liability does not increase the risk to the insurer foreseen under the insurance contract if the law would impose the same liability upon the insured anyway. In  
(footnote continued)

insurers limit the risks to those which are the main purpose of the policy.<sup>122</sup> The exclusion, however, will not operate in circumstances where the liability assumed by contract is equivalent to the insured's liability arising from the operation of law, i.e., independent of the contractual assumption.<sup>123</sup>

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addition, because the lessor/indemnatee was covered by the same policy, the fact that any liability incurred by the insured lessor would be shifted to the insured lessee did not expand the insurer's risk under the policy. Because the lessee's contractual assumption of liability did not expand the lessee's liability beyond that imposed by the law of torts, and because the losses that would have been incurred by one insured simply transferred to another insured under the same policy, the court held the assumed liability exclusion to be inoperative.

<sup>122</sup> See Union Paving Co. v. Thomas, 186 F.2d 172 (3d Cir. 1951) (applying Pennsylvania law); cf. N.Y. Comp. Codes R. & Regs. tit. 11, 60.2(b) & (e) (1987), permitting insurers to exclude liability assumed by the insured under any contract or agreement and any obligation for which the insured may be held liable under any worker's compensation, unemployment compensation, disability benefit or other similar law.

<sup>123</sup> See United States v. Government Employees Ins. Co., 612 F.2d 705 (2d Cir. 1980); Lebow Associates, Inc. v. Avemco Ins. Co., 939 F.Supp. 1288 (E.D. Mich. 1977).

### 3. Exclusions Relating to Violation of Statutes or Regulations

Whether a particular exclusion in an aviation policy which is based upon the violation of a statute or regulation is valid will depend on the policy language and the circumstances of the case.<sup>124</sup> However, a few general observations about the exclusion can be made.

Many aviation insurance policies exclude coverage when the aircraft is operated without a valid airworthiness certificate or in violation of regulations applying to aerobatic flying, instrument flying, repairs, maintenance, inspection, alterations and night flying or when an aircraft is operated by a pilot without valid pilot and medical

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<sup>124</sup> See, e.g., Hedges Enters. v. Fireman's Fund Ins. Co., 34 Misc. 2d 249, 225 N.Y.S.2d 779 (Sup. Ct. Monroe County 1962) (student pilot and aircraft registration). See also Potter v. Ranger Ins. Co., 732 F.2d 742 (9th Cir. 1984) (airworthiness certificate); Northwestern Flyers, Inc. v. Olson Bros. Mfg. Co., 679 F.2d 1264 (9th Cir. 1982) (FAA ratings and certificates); Edmonds v. United States, 642 F.2d 877 (1st Cir. 1981) (biennial flight review); Ideal Mut. Ins. Co. v. C.D.I. Constr., 640 F.2d 654 (5th Cir. 1981) (type ratings); Monarch Ins. Co. v. Polytech Indus., 655 F. Supp. 1058 (M.D. Ga.), aff'd, 833 F.2d 1020 (11th Cir. 1987) (airworthiness certificate and flight review); Threlkeld v. Ranger Ins. Co. 156 Cal. App. 3d 1, 202 Cal. Rptr. 529 (1984) (airworthiness certificate); Coren v. Puritan Ins. Co., 184 Ga. 667, 362 S.E.2d 380 (1987) (airworthiness certificate); National Union Fire Ins. Co. v. Zuver, 110 Wash. 207, 750 P.2d 1247 (1988) (properly rated and certified). See generally Annot., Risks and Causes of Loss Covered or Excluded by Aviation Liability Policy, 86 A.L.R.3d 118 (1978).

certificates.<sup>125</sup> Because almost all aircraft accidents involve some violation of a state or federal air regulation, exclusions based on such violations often are not enforced by the courts for public policy reasons unless they are specific and unambiguous. For example, a provision which would deny coverage when an accident occurs while the aircraft was in violation of any FAA regulation may violate public policy.<sup>126</sup>

<sup>125</sup> See infra. at p. 54 for discussion of pilot and medical certificate. Cf. N.Y. Gen. Bus. Law §§ 241, 242 and 243 (McKinney 1988) (imposing requirements that pilots have a license and a medical certificate and that aircraft be registered). See also Potter v. Ranger Ins. Co., 732 F.2d 742 (9th Cir. 1984) (airworthiness certificate); Northwestern Flyers, Inc. v. Olson Bros. Mfg. Co., 679 F.2d 1264 (9th Cir. 1982) (FAA ratings and certificates); Edmonds v. U.S., 642 F.2d 877 (1st Cir. 1981) (biennial flight review); Ideal Mut. Ins. Co. v. C.D.I. Construction, Inc., 640 F.2d 654 (5th Cir. 1981) (type ratings); Monarch Ins. Co. of Ohio v. Polytech Industries, Inc., 655 F. Supp. 1058 (M.D. Ga.), aff'd, 833 F.2d 1020 (11th Cir. 1987) (airworthiness certificate and flight review); Threlkeld v. Ranger Ins. Co., 156 Cal. App. 3d 1, 202 Cal. Rptr. 529 (1984) (airworthiness certificate); Coren v. Puritan Ins. Co., 184 Ga. 667, 362 S.E.2d 380 (1987) (airworthiness certificate); Hedges Enterprises, Inc. v. Fireman's Fund Ins. Co., 34 Misc. 2d 249, 225 N.Y.S.2d 779 (Sup. Ct. 1962) (student pilot and aircraft registration); National Union Fire Ins. Company of Pittsburgh, PA v. Zuver, 110 Wash. 207, 750 P.2d 1247 (1988) (properly rated and certified). See generally Annot., Risks and Causes of Loss Covered or Excluded by Aviation Liability Policy, 86 A.L.R.3d 118 (1978).

<sup>126</sup> See O'Connor v. Proprietors Ins. Co., 696 P.2d 282 (Colo. 1985); Woods v. Ins. Co. of North Americas, 38 Cal. App. 3d 144, 113 Cal. Rptr. 82 (1974). Several states prohibit "violation of statute" exclusions. See, e.g., Cal. Ins. Code §11584 (West Supp. 1990) and Ga. Code Ann. §33-24-30 (1982). Moreover, 14 C.F.R. Part 205 (1989), which requires certain air carriers to maintain minimum insurance coverage, provides that no warranty, exclusions, endorsement  
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The court in Ranger Ins. Co. v. Phillips, 25 Ariz. App. 426, 544 P.2d 250 (1976), set forth the rationale for the rule as follows:

Almost all airplane accidents involve some violation of the Federal Aviation Regulations. Even "careless flying", or simple negligence, is a violation. . . . "Applying this analysis, the insuring agreements become illusory in effect since few accidents occur without the aircraft's owner or pilot violating one or more of the very detailed regulations promulgated by the Federal Aviation Administration". [Inserting such a provision] would be to hoodwink most insurance purchasers, for it would make a nullity of most coverage. . . . If an insurance company has an intent to deny coverage in a specific set of circumstances, then it should so delineate.

Ranger Ins., 544 P.2d at 256-257.<sup>127</sup>

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or amendment to the policy, or any violation of the policy by the air carrier removes the liability coverage required by 14 C.F.R. Part 205, "except as specifically approved" by the DOT. Thus, many of the standard exclusions found in aircraft liability policies, such as failure to follow applicable safety regulations, operations of an aircraft for illegal purposes, violation of geographic restrictions, unauthorized or unqualified pilots, which normally would preclude coverage, are not effective to remove the coverage required by Part 205. See also Appendix "B" and infra. at pp. 92-93.

<sup>127</sup> See also National Ins. Underwriters v. Mark, 704 F. Supp. 1033 (D. Colo. 1989).



#### 4. Exclusions Relating to Pilot Qualifications

##### a. In General

All aviation policies contain some type of pilot qualification clause providing coverage only to aircraft operated by a pilot meeting the minimum standards specified in the policy.<sup>128</sup> The policy may require a minimum number of flight hours in a particular type of aircraft, certain flight ratings (e.g. IFR, VFR, commercial, multi-engine), medical and pilot certificates, or simply may require the pilot to have a proper FAA pilot certificate.<sup>129</sup>

In New York, pilot qualification clauses have been held to be an exclusion and not merely a warranty.<sup>130</sup> The distinction is important because in contrast to the case of

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<sup>128</sup> Coverage also may be limited to pilots specifically named in the Declarations or Endorsement sections or merely may provide for pilots "as approved by the insured".

<sup>129</sup> The requirements may be set forth in an exclusion and/or in the Declarations section. See National Ins. Underwriters v. Mark, 704 F. Supp. 1033 (D. Colo. 1989).

<sup>130</sup> See Federal Ins. Co. v. Bahri Aviation Inc., 18 Av. Cas. (CCH) 17,141 (S.D.N.Y. 1983) (applying New York law), where the Court held that a provision stating that the policy would not apply while the aircraft was in flight unless the crew consisted of a co-pilot who had "successfully completed the manufacturers [sic] recommended or approved ground school for Gates Lear Jet 35 model aircraft" was an exclusion, not a warranty by the insured; Mobil Oil Corp. v. Reliance Ins. Co., 69 Misc. 2d 876, 332 N.Y.S.2d 532 (Sup. Ct. 1971); Des Marais v. Thomas, 147 N.Y.S.2d 223 (Sup. Ct. 1955), aff'd, 1 A.D.2d 1002, 153 N.Y.S.2d 532 (1956). See also U.S. Fire Ins. Co. v. West Monroe Charter Service, Inc., 504 So.2d 93 (La. App. 1987) (medical certificate clause is exclusion not warranty).

an exclusion, which is enforceable without regard to whether the matter sought to be excluded materially increases the risk of loss, an insurer only may avoid its policy obligations for a claim under the policy on the basis of a breach of warranty if the breach materially increases the risk of loss, damage or injury.<sup>131</sup>

**b. Minimum Flight Hours Requirement**

New York courts have held that an insurer is not obligated to defend or indemnify an insured for a loss when a pilot did not meet the pilot qualifications relating to minimum flight hours specified in the policy.<sup>132</sup> These decisions note that the pilot qualification clauses were clear and unambiguous exclusions.<sup>133</sup>

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<sup>131</sup> N.Y. Ins. Law §3106 (McKinney 1985); Federal Insurance Co. v. Bahri Aviation Inc., 18 Av. Cas. (CCH) 17,141 (S.D.N.Y. 1983).

<sup>132</sup> Federal Ins. Co. v. Bahri Aviation, Inc., 18 Av. Cas. (CCH) 17,141 (S.D.N.Y. 1983); Mobil Oil Corp. v. Reliance Ins. Co., 69 Misc. 2d 876, 332 N.Y.S.2d 532 (Sup. Ct. 1971); see also United States Fire Ins. Co. v. Producciones Padosa, Inc., 835 F.2d 950 (1st Cir. 1987) (minimum logged pilot hours requirement is a condition precedent and failure to satisfy is a ground for denying coverage); URSA Air Ltd. v. Federal Ins. Co., 20 Av. Cas. (CCH) 18,281 (E.D.N.Y. 1987).

<sup>133</sup> Generally, the flying hours requirements refers to "total time" and not to "logged time" unless the policy specifies otherwise. See, e.g., Ideal Mutual Ins. Co. v. Last Days Evangelical Ass'n, Inc., 783 F.2d 1234 (5th Cir. 1986).

For example, in Mobil Oil Corp. v. Reliance Ins. Co., 69 Misc. 2d 876, 332 N.Y.S.2d 532 (Sup. Ct. N.Y. County 1971), aff'd mem., 39 A.D.2d 839, 333 N.Y.S.2d 747 (1st Dept. 1972), the exclusion clause in the policy stated that coverage would not apply to the insured aircraft while in flight unless the aircraft was operated by a pilot "who has piloted aircraft ... fifty hours in the same make and model of aircraft." When the aircraft crashed, the pilot operating it had only 32.2 hours flying time in that make and model. The court ruled that the language was clear and unambiguous and that the insured, having failed to establish that the pilot had the requisite experience, could not recover under the policy.

Similarly, in URSA Air Ltd. v. Federal Ins. Co., 20 Av. Cas. (CCH) 18,281 (E.D.N.Y. 1987), the policy provided that coverage would not apply while the insured aircraft was operated in flight by other than an "approved pilot." The court held that the policy did not cover loss due to a crash while being operated by someone not an approved pilot who was either using the plane for the owner's business purposes or who had converted it to his own use.<sup>134</sup>

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<sup>134</sup> See also United States Fire Ins. Co. v. Producciones Padosa, Inc., 835 F.2d 950 (1st Cir. 1987) (minimum logged pilot hours requirement is a condition precedent and a failure to satisfy is a ground for denying coverage).

Although the burden of proving the applicability of an exclusion is generally on the insurer, the burden is on the insured to prove that the loss is within the coverage. Accordingly, in New York the insured has the burden of establishing compliance with a minimum flight hours requirement.

**c. Medical Certificate**

Aviation insurance policies often require that pilots have a valid "medical certificate".<sup>135</sup> The specific language used in aviation policies varies and may have a significant effect on whether the court will find that the failure to have a valid medical certificate amounts to a policy violation. For example, aviation policies have included language providing that a pilot must possess "a proper pilot certificate"; the aircraft must be "flown by a licensed pilot"; a pilot must be "properly certified and rated for the flight"; and a pilot must possess a "valid and effective pilot and medical certificate".

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<sup>135</sup> The Federal Aviation Regulations require that each pilot have a current Pilot Certificate. 14 C.F.R. §61.3(a) (1989). A Pilot Certificate, however, cannot be issued unless a pilot has a Medical Certificate. 14 C.F.R. §61.3(c) (1989). Although a Pilot Certificate is generally issued without an expiration date, a Medical Certificate is valid only for a limited period (from 6-24 months). 14 C.F.R. §61.23 (1989).

Insurers have argued that even though a "medical certificate" requirement may not be mentioned specifically in the policy, these examples of policy language require a pilot to have a valid medical certificate because a pilot certificate is valid only when accompanied by a current medical certificate.<sup>136</sup>

Generally, policy language which does not specifically require a medical certificate (but, for example, only requires a valid pilot certificate) should not be construed to include the requirement of a current medical certificate.<sup>137</sup> The courts have held that such language is ambiguous at best and have construed it strictly against the

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<sup>136</sup> See, e.g., Royal Indem. Co. v. John F. Cawrse Lumber Co., 245 F. Supp. 707 (D. Or. 1965); Woods v. Insurance Co. of North America, 38 Cal. App. 3d 144, 113 Cal. Rptr. 82 (1974).

<sup>137</sup> Berlanti v. Underwriters at Lloyd's, London, 9 Av. Cas. (CCH) 17,420 (N.Y. Sup. Ct. 1964) ("flown by licensed pilot" does not require a medical certificate in addition to a license and pilot certificate not automatically revoked upon expiration of medical certificate); see also Ranger Ins. Co. v. Culberson, 454 F.2d 857 (5th Cir. 1971) ("properly certified and rated" relates to pilot's skills and does not include possession of medical certificate); Royal Indem. Co. v. John F. Cawrse Lumber Co., 245 F. Supp. 707 (D. Or. 1965) ("valid pilot certificate" cannot be construed to include requirement of current medical certificate); Woods v. Ins. Co. of North America, 38 Cal. App. 3d 144, 113 Cal. Rptr. 82 (1974) ("properly certified and rated" does not include medical certificate). Contra Ins. Co. of North America v. Butte Aero Sales & Service, 243 F. Supp. 276 (D. Mont. 1965); Baker v. Insurance Co. of North America, 10 N.C. App. 605, 179 S.E.2d 892 (1971).

insurer.<sup>138</sup> If the policy specifically requires a medical certificate, however, the pilot's failure to have a current medical certificate is a policy violation and excludes coverage.<sup>139</sup>

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<sup>138</sup> See, e.g., Berlanti v. Underwriters at Lloyd's, London, 9 Av. Cas. (CCH) 17,420 (N.Y. Sup. Ct. 1964); see also Royal Indem. Co. v. John F. Cawrse Lumber, Co., 245 F. Supp. 707 (D. Or. 1965); National Indem. Co. v. Demanes, 86 Cal. App. 3d 155, 150 Cal. Rptr. 117 (1978) (policy language ambiguous and lack of medical certificate therefore did not invalidate coverage even though policy required medical certificate). Similarly, the courts have rejected arguments by the insurers that medical certificates obtained by pilots' misrepresentations to the FAA are void. Guyer v. U.S. Fire Ins. Co., 97 A.D.2d 964, 468 N.Y.S.2d 818 (1983); Insurance Co. of the State of Pa. v. Mather, 20 Av. Cas. (CCH) 17,182 (Pa. Comm. Pleas 1985). Cf. Ohio Casualty Ins. Co. v. Heaney, 229 F. Supp. 30 (N.D. Ill. 1964) (date of actual medical examination controlled, not date set forth in certificate).

<sup>139</sup> Security Ins. Co. of Hartford v. Andersen, 158 Ariz. 426, 763 P.2d 246 (1988) (medical certificate specifically required); National Union Fire Ins. Co. of Pittsburg v. Meyer, 192 Cal. App. 3d 866, 237 Cal. Rptr. 632 (1987); Boone v. Ranger Ins. Co., 152 Ga. App. 891, 264 S.E.2d 325 (1980) (no coverage where medical certificate expired); Goddard v. Avemco Ins. Co., 43 Or. App. 39, 602 P.2d 291 (1979) (insurer not estopped to deny coverage where policy required medical certificate, even though policy renewed after pilot's medical certificate expired); Ranger Ins. Co. v. Bowie, 574 S.W.2d 540 (Tex. 1978) (policy required medical certificate). See also Baker v. Insurance Co. of North America, 10 N.C. App. 605, 179 S.E.2d 892 (1971) ("properly certificated and rated" requires medical certificate).

## 5. Policy Violation as Ground for Exclusion

An issue that frequently arises in aviation insurance law is whether a policy violation must be a proximate cause of the loss in order to exclude coverage for that loss under the policy.<sup>140</sup> The majority view, followed in New York, is that an aviation insurer can avoid liability due to a policy violation, even when the violation did not cause the accident, as long as the policy language is clear and unambiguous.<sup>141</sup> New York courts do not require a causal

<sup>140</sup> The cases generally concern exclusions based on airworthiness certificates, pilot qualifications and aircraft use.

<sup>141</sup> In Hedges Enterprises, Inc. v. Fireman's Fund Ins. Co., 34 Misc. 2d 249, 225 N.Y.S.2d 779 (Sup. Ct. 1962), where policy condition was violated because pilot was operating a plane not registered with the FAA, and thus was doing so in an unlawful manner, the court held that "[i]t is not incumbent upon the insurer to show causal connection between the loss and noncompliance with the terms of the exclusion clause in order to preclude recovery". See also Des Marais v. Thomas, 147 N.Y.S.2d 223 (Sup. Ct. 1955), aff'd, 1 A.D.2d 1002, 153 N.Y.S.2d 532 (1956) (it is not required to show any causal connection between the accident and non-compliance with the condition stated in the exclusion clause); Travelers Protection Association of America v. Prinsen, 291 U.S. 576, 54 S. Ct. 502, 78 L. Ed. 998 (1934); National Ins. Underwriters v. Mark, 704 F. Supp. 1033 (D.Colo. 1989); Middlesex Mutual Ins. Co. v. Bright, 106 Cal. App. 3d 282, 165 Cal. Rptr. 45 (1980); O'Connor v. Proprietors Ins. Co., 696 P.2d 282 (Colo. 1985); Ochs v. Avemco Ins. Co., 54 Or. App. 768, 636 P.2d 421 (1981); U.S. Fire Ins. Co. v. West Monroe Charter Service, Inc., 504 So.2d 93 (La. App. 1987). Annot., Aviation Insurance: Causal Link Between Breach of Policy Provisions and Accident as Requisite to Avoid Insurer's Liability, 48 A.L.R. 4th 778 (1986).

In Des Marais v. Thomas, 147 N.Y.S.2d 223 (Sup. Ct. N.Y.  
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connection between the loss and the policy violation in order to preclude coverage. The rule is based on the view that the exclusions are contractual in nature and the violation of a policy provision will preclude coverage.<sup>142</sup>

In Hedges Enters. v. Fireman's Fund Ins., 34 Misc. 2d 249, 225 N.Y.S.2d 779 (Sup. Ct. Monroe County 1962), discussed, supra, n.141, the court based its holding on the policy language, noting:

By the very wording of the exclusion clause, the policy does not cover loss or damage occurring while the aircraft is being used for an unlawful purpose. The operation of the exclusion clause is not limited to loss or damage caused by use of the plane for an unlawful purpose.

Hedges, 34 Misc. 2d at 254 (emphasis in original).

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County 1955), aff'd mem., 1 A.D.2d 1002, 153 N.Y.S.2d 532 (1st Dept. 1956), the court held that the insurer is not required to show any causal connection between the accident and non-compliance with the condition stated in the exclusion clause.

<sup>142</sup> See Middlesex Mutual Ins. Co. v. Bright, 106 Cal. App.3d 282, 165 Cal. Rptr. 45 (1980); Hedges Enterprises, Inc. v. Fireman's Fund Ins. Co., 34 Misc. 2d 249, 225 N.Y.S.2d 779 (Sup. Ct. 1962). Cf. Security Mut. Ins. Co. v. Acker-Fitzimons Corp., 31 N.Y.2d 436, 340 N.Y.S.2d 902, 293 N.E.2d 76 (1972), where, in construing a premises liability policy, the court held that if the insured fails to comply with a notice provision, absent a valid excuse on the part of the insured, the breach vitiates the policy and the insurer need not show prejudice before it can assert the defense of noncompliance.



In Middlesex Mut. Ins. Co. v. Bright, 106 Cal. App. 3d 282, 165 Cal. Rptr. 45 (1980), the insurer sought to avoid liability on the basis of an exclusionary clause stating that the policy would not apply "to any Insured ... who operates or permits the aircraft to be operated for any unlawful purpose." The insured aircraft had crashed while transporting marijuana. The insured argued, inter alia, that the insurer had not shown that the unlawful purpose was the proximate cause of the accident. The court held that the insured need not show a causal connection between the conduct forbidden by the policy and the loss since "the rights of the insured flow from the contract and not from a claim arising in tort."

As with any exclusion, the burden is on the insurer to prove that the exclusion applies and that the wording of the exclusion is unambiguous.<sup>143</sup> The minority view, however, requires a causal connection between the violation and the loss in order for coverage to be avoided.<sup>144</sup>

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<sup>143</sup> See supra. at p. 42.

<sup>144</sup> See, e.g., Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204 (D. Mont. 1981); Avemco Ins. Co. v. Chung, 388 F. Supp. 142 (D. Hawaii 1975); Pickett v. Woods, 404 So.2d 1152 (Fla. Dist. Ct. App. 1985); Global Aviation Ins. Managers v. Lees; 368 N.W.2d 209 (Iowa App. 1985); South Carolina Ins. Guarantee Ass'n v. Breach, 291 S.C. 349, 353 S.E.2d 450 (1987); Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936 (Tex. 1984); Annot., Aviation Insurance: Causal Link (footnote continued)

## E. Conditions

Coverage may be limited in an aviation policy by the "Definitions", "Exclusions" or "Conditions" sections. The "Conditions" section usually addresses the conduct and duties of the parties to the policy. Generally, most conditions in a policy are "conditions precedent" which must be fulfilled by the insured before the insurer is obligated to defend and/or indemnify. The policy can be repudiated if the insured: (1) failed to comply with a condition precedent and (2) is unable to show that the failure to comply occurred despite the insured's exercise of reasonable care and diligence.<sup>145</sup>

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Between Breach of Policy Provisions and Accident as Requisite to Avoid Insurer's Liability, 48 A.L.R.4th 778 (1986). Several states have adopted statutes which require a causal connection. See, e.g., Fla. Stat. Ann. §627.409 (West 1984); Iowa Code Ann. §515.101 (West 1988); Neb. Rev. Stat. §44-358 (1984). Several authorities have stated that the requirement of causation is the modern trend. See Avemco Ins. Co. v. Chung, 388 F. Supp. 142 (D. Hawaii 1975); 6A Appleman, Insurance Law and Practice, §4146 (1972).

<sup>145</sup> Generally, the insured must comply with all conditions unless, the insured can offer a "good faith" excuse for noncompliance. See, e.g., Security Mut. Ins. Co. of New York v. Acker-Fitzsimons Corp., 31 N.Y.2d 436, 340 N.Y.S.2d 902, 293 N.E.2d 76 (1972) (insured's unreasonable delay of 19 months in giving notice of accident not excused because insured failed to exercise reasonable care and diligence in ascertaining facts of accident or their potential liability); Eveready Ins. Co. v. Levine, 536 N.Y.S.2d 87 (N.Y.A.D. 1988) (noncompliance with condition precedent vitiates the insurance policy without necessity of proving prejudice); Greater New York Mut. Ins. Co. v. Farrauto, 136 A.D.2d 598, (footnote continued)

The primary duties of the insured under a typical aviation policy are to give timely notice of an accident, occurrence, claim or suit to the insurer<sup>146</sup> and to assist and cooperate with the insurer in investigating, settling or defending any claim or action.<sup>147</sup>

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523 N.Y.S.2d 853 (1988) (insured's failure to provide timely notice of loss vitiates policy regardless of whether the policy contains a provision expressly warning the insured that failure to abide by the condition may result in a forfeiture of coverage); Phillips v. Transamerica Ins. Co., 107 Misc. 2d 162, 433 N.Y.S.2d 555 (Sup. Ct. 1980) (undue delay in giving notice not excused because not premised upon insured's good faith belief of nonliability). The insured has the burden of proving excusable non-compliance with a Condition. Id.

<sup>146</sup> See Todd v. Bankers Life & Casualty Co., 135 A.D.2d 1066, 523 N.Y.S.2d 206 (1987) (compliance with notice requirements is a condition precedent to insurer's obligation to cover insured's loss); In re Allstate Ins. Co., 130 A.D.2d 744, 516 N.Y.S.2d 43 (1987) (absent valid excuse, failure to satisfy notice requirement vitiates coverage); Power Authority of the State of New York v. Westinghouse Electric Corp., 117 A.D.2d 336, 502 N.Y.S.2d 420 (1986) (insurer need not show prejudice due to late notice to disclaim coverage); Steinback v. Aetna Casualty & Sur. Co., 15 Av. Cas. (CCH) 18,096 (N.Y. Sup. Ct. 1980) (discussion of notice of accident under New York and New Hampshire law). See also infra. at pp. 67-72.

<sup>147</sup> See Thrasher v. United States Liability Ins. Co., 19 N.Y.2d 159, 278 N.Y.S.2d 793, 225 N.E.2d 503 (1967) (burden of proving lack of cooperation is on the insurer); In Re Statewide Ins. Co., 125 A.D.2d 573, 509 N.Y.S.2d 642 (1986) (three part test for insurer to disclaim liability on ground of lack of cooperation). See infra. at pp. 67-72 for a discussion of the notice conditions.

The "Conditions" section of the policy also may address the addition or deletion of certain enumerated aircraft to the policy and the claims procedure established for submitting a proof of loss.<sup>148</sup> All insurance policies contain a provision requiring the insured to give notice and proof of a loss or an accident within a specified period of time or "as soon as practicable."<sup>149</sup> The notice and proof of loss provisions are intended to permit the insurer to investigate the claim, establish a sufficient reserve and determine its rights and liabilities under the policy in order to protect its interests.<sup>150</sup> However, N.Y. Ins. Law §

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<sup>148</sup> See AVN 1A, Appendix "B" hereto.

<sup>149</sup> See Eveready Ins. Co. v. Levine, 536 N.Y.S.2d 87 (N.Y.A.D. 1988); cf. Greater New York Mut. Ins. Co. v. Farrauto, 136 A.D.2d 598, 523 N.Y.S.2d 853 (1988) (insured's failure to provide timely notice of loss vitates policy regardless of whether the policy contains a provision expressly warning the insured that failure to abide by the condition may result in a forfeiture of coverage).

<sup>150</sup> Utica Mut. Ins. Co. v. Fireman's Fund Ins. Co., 748 F.2d 118 (2d Cir. 1984) (applying New York law to facts involving a requirement that the insurer be notified of a loss as a condition precedent to coverage under a fidelity bond); Security Mut. Ins. Co. v. Acker-Fitzsimons Corp., 31 N.Y.2d 436, 340 N.Y.S.2d 902, 293 N.E.2d 76 (1972) (notice of accident as condition precedent to automobile liability coverage); P.S. Auctions, Inc. v. Exchange Mut. Ins. Co., 105 A.D.2d 473, 480 N.Y.S.2d 610 (3d Dept. 1984), where an insurer claimed that the insured failed to submit a proof of loss in proper form, thus violating a condition precedent under a motor vehicle collision policy. The Appellate Division held that "no particular form of proof of loss is required as long as the proof submitted is sufficient to

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3407 specifically provides that an insured's failure to file a proof of loss does not invalidate a claim unless the insurer, after the occurrence, gives the insured written notice that it requires such a proof of loss.<sup>151</sup> The insured's duty to protect a damaged aircraft from further damage usually is defined in the "Conditions" section of the policy<sup>152</sup> and appraisal procedures may be set forth in the event the insured and insurers are unable to agree on the value of the loss.<sup>153</sup>

The "Conditions" section usually prohibits the assignment of the policy without the consent of the insurers and prohibits changes to the policy except by endorsement.<sup>154</sup> Subrogation rights and provisions relating to the applicability of the policy where other insurance covers the same

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enable the insurer to consider its rights and liabilities." Aviation policies also generally contain a "Notice of Claim or Suit" clause requiring the insured to forward to the insurer "every demand notice, summons or other process" received by the insured. See infra. at p. 67.

<sup>151</sup> See Michael Delivery of Buffalo, Inc. v. Fireman's Fund Ins. Co., 115 Misc. 2d 834, 454 N.Y.S.2d 790 (Sup. Ct. 1982) (construing former N.Y. Ins. Law § 172 which is now § 3407).

<sup>152</sup> This condition is usually entitled "Protection of Salvage" and is imposed to protect any interest the insurer may have in the salvage value of the aircraft. See Appendix "B"; Margo, Aviation Insurance, (2d ed. Butterworths 1989).

<sup>153</sup> See AVN 16, Appendix "B" hereto.

<sup>154</sup> See AVN 1A, AVN 16, and AVN 20, Appendix "B" hereto.

risk usually are defined in this section of the policy.<sup>155</sup>  
The "Conditions" section also may contain a "no action" clause and a "service of suit" clause.<sup>156</sup>

#### 1. Notice of Occurrence, Claim or Suit

Aviation insurance policies generally contain notice provisions in the Conditions section which require the insured to provide written notice to the insurer "as soon as practicable" or "immediately" when "occurrence" takes place and to forward all demands, notices, summons or other process to the insurer "as soon as practicable" or "immediately". Typical notice provisions provide:

##### 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

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<sup>155</sup> Id.

<sup>156</sup> A "no action" clause prohibits the insured from maintaining an action against the insurer until a final judgment has been rendered against the insured. See Abbate v. Medbrod, 109 A.D.2d 768, 486 N.Y.S.2d 282 (1985) (New York law does not permit direct suits against insurers prior to notice of entry of an unsatisfied judgment against an insured). A "service of suit" clause designates the agent of the insurer who will accept service of process. Cf. N.Y. Ins. Law §1212 (McKinney 1985). The "Conditions" section also may set forth provisions relating to premiums, limits of liability, cancellations, the duty to defend and misrepresentation or fraud.

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.

#### NOTICE OF CLAIM OR SUIT

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.

See Aviation 20, Appendix "B" hereto.

Provisions which require notice to be given "as soon as practicable" or "immediately" generally are interpreted to mean within a reasonable time in view the facts and circumstances.<sup>157</sup> What is a reasonable time in the absence of a specific time provision in the policy is usually a question of fact, but where a delay by reason of its duration and lack of excusing circumstances is clearly unreasonable, it is a question of law for the court to decide.<sup>158</sup> Accordingly, in absence of any mitigating factors relatively short periods have been held to be unreasonable as

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<sup>157</sup> New York v. Amro Realty Corp., 697 F. Supp. 99, 104 (N.D.N.Y. 1988).

<sup>158</sup> Id.

a matter of law.<sup>159</sup>

Generally, the failure of the insured to comply with the timely notice provisions in an insurance policy will release the insurer from the defense and indemnity obligations imposed by the policy unless there has been an excuse, waiver or estoppel as to such requirement.<sup>160</sup> The burden is on the insured to show compliance with the notice requirement.<sup>161</sup>

The purpose of the timely notice provision is to give the insurer an opportunity to make a timely and adequate investigation of all circumstances surrounding the occurrence, to prepare an adequate defense, to prevent fraud and to mitigate damages.<sup>162</sup>

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<sup>159</sup> See, e.g., Power Authority v. Westinghouse Electric Corp., 117 A.D.2d 336 (N.Y.A.D. 1986) (53 day delay unreasonable).

<sup>160</sup> See Commercial Union Ins. Co. v. International Flavors & Fragrances, Inc., 822 F.2d 267, 271 (2d Cir. 1987); Security Mut. Inc. Co. v. Acker-Fitzimmons Corp., 31 N.Y.2d 436, 340 N.Y.S. 902, 293 N.E.2d 76 (1972).

<sup>161</sup> See Home Mutual Ins. Co. v. Presutti, 78 A.D.2d 968 (N.Y.A.D. 1980).

<sup>162</sup> See Utica Mut. Ins. Co. v. Fireman's Fund Ins. Co., 748 F.2d 118, 121 (2d Cir. 1986).



The traditional view, followed in New York, is that an insurer will be relieved of its duties under a policy where the insured has failed to provide timely notice to the insurer regardless of whether the insurer is prejudiced by such failure.<sup>163</sup>

In determining whether a notice of "occurrence" provision has been triggered, courts apply an objective standard of whether the circumstances known to the insured at the time would have suggested to a reasonable person the possibility of a claim.<sup>164</sup>

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<sup>163</sup> See Security Mut. Ins. Co. v. Acker-Fitzsimons Corp., 31 N.Y.2d 436, 340 N.Y.S.2d 902, 293 N.E.2d 76 (1976); Utica Mut. Ins. Co. v. Fireman's Fund Ins. Co., 748 F.2d 118 (2d Cir. 1986) (no prejudice required under New York Law). The recent trend outside New York, however, has been to reject the traditional approach and either consider prejudice as a factor in determining the reasonableness of the delay of notice or require the insurer to show material prejudice by virtue of the late notification in order for the insurer to be relieved of its policy obligations. See Trustees of the Univ. of Pennsylvania v. Lexington Ins. Co., 815 F.2d 890 (3d Cir. 1987) (prejudice required under Pennsylvania law); Casualty Indem. Exchange v. City of Chicago, 651 F. Supp. 467 (N.D. Ill. 1985) (prejudice is factor only where the insured has good excuse for late notice); Fidelity Savings & Loan Assn'n v. Aetna Life & Casualty Co., 647 F.2d 933 (9th Cir. 1981) (California law requires prejudice); Yarbrough v. State Farm Ins. Co., 730 F. Supp. 1061 (D.N.M. 1990) (prejudice required under New Mexico law); Great American Ins. Co. v. C.G. Tate Contr. Co., 279 S.E.2d 769 (N.C.1981) (adopting prejudice requirement).

<sup>164</sup> See Commercial Union Ins. Co. v. International Flavors & Fragrances, Inc., 822 F.2d 267, 272 (2d Cir. 1987); Ogden Corp. v. Travelers Indem. Co., 731 F. Supp. 143, 145 (S.D.N.Y. 1990).

For example, in Security Mut. Ins. Co. v. Acker-Fitzsimons Corp., 31 N.Y.2d 436, 340 N.Y.S.2d 902, 293 N.E.2d 76 (1976), an insurer brought a declaratory judgment action regarding its obligation to defend a building owner/manager under a premises liability policy. The issue before the Court of Appeals was whether the insured complied with a provision requiring notice to the insurer "as soon as practicable" after the occurrence of an event insured against. The insured notified its insurer of a loss more than a year and a half after the date of the loss. The Court of Appeals acknowledged that "there may be circumstances, such as lack of knowledge that an accident has occurred, that will explain or excuse delay and show it to be reasonable." However, "the insured has the burden of proof thereon."

Moreover, a good-faith belief of nonliability may excuse or explain a seeming failure to give timely notice but, in such a case, the belief "must be reasonable under all the circumstances, and it may be relevant on the issue of reasonableness, whether and to what extent, the insured has inquired into the circumstances of the accident or occurrence." A provision that notice be given "as soon as practicable" merely requires that notice be given within a reasonable time under all the circumstances. The court held that the insured failed to exercise reasonable care and

diligence in investigating the facts surrounding the injuries and evaluating its potential liability, particularly in light of the violations and the alleged injuries.

In Eveready Ins. Co. v. Levine, 145 A.D.2d 526, 536 N.Y.S.2d 87 (2d Dept. 1988), an automobile liability insurance policy contained an "as soon as reasonably practical" notice provision. In Eveready, the issue was whether the insured had complied with the notice requirement. The court held that because the insured had not complied with the notice provisions of the policy, a condition precedent to coverage, the policy was vitiated even if the insurer did not show any prejudice caused by the delay in notification.<sup>165</sup>

## **2. Cooperation of the Insured**

All aviation insurance policies contain a condition which requires the insured to assist and cooperate with the insurer in the investigation and defense of an action. An assistance and cooperation clause generally provides:

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<sup>165</sup> In Greater New York Mut. Ins. Co. v. Farrauto, 136 A.D.2d 598, 523 N.Y.S.2d 853 (2d Dept. 1988), the insurer failed to include in a premises liability policy an express warning that coverage would be forfeited if the notice provision were not complied with. The lower court had held that this failure created an exception to the general rule that nonobservance of the notice requirement will vitiate coverage unless the insured can provide an adequate excuse. In reversing, the Appellate Division stated that the absence of an express warning in the policy would not alter application of the general rule nullifying coverage.

See also Phillips v. Transamerica Ins. Co., Inc., 107 Misc. 2d 162, 433 N.Y.S.2d 555 (Sup. Ct. Suffolk County 1980) (undue delay in giving notice not excused because not premised upon insured's good faith belief of nonliability).

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, other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

See Aviation 20, Appendix "B" hereto.

An insurer may disclaim coverage should the insured fail to assist or cooperate with the insurer. However, the burden is on the insurer to establish the breach of the condition and minor breaches are not sufficient.

In Statewide Ins. Co. v. Ray, 125 A.D.2d 573, 509 N.Y.S.2d 642 (1986), the insurer disclaimed liability to the insured on the ground of lack of cooperation. The Court set forth the following three-part test in order for the insurer to avoid liability on the basis of the insured's failure to cooperate: (1) the insurer must have acted diligently in seeking to bring about the insured's cooperation; (2) the efforts employed by the insurer were reasonably calculated to obtain the insured's cooperation; and (3) the attitude of the insured, after his cooperation was sought, was one of willful and avowed obstruction. The court, finding that the insurer failed to meet any part of the three-part test, noted that

"the nonaction of the insured, which is the only factual basis in this case, cannot in this instance be escalated into a finding of "wilful and avowed obstruction."<sup>166</sup>

## **F. Declarations**

### **1. In General**

The "Declarations" section summarizes the pertinent facts and characteristics of the risk insured and the scope of the coverage provided in the policy. The "Declarations" section normally identifies the insured (and any additional insureds), including the name, address, business or occupation of the insured and the interests which the insured has in the aircraft, defines the purpose for which the aircraft may be used (e.g., commercial, business or private) and establishes the policy period and geographic scope of coverage.

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<sup>166</sup> The Statewide Ins. court relied principally on Thrasher v. United States Liab. Ins. Co., 19 N.Y.2d 159, 278 N.Y.S.2d 793, 225 N.E.2d 503 (1967), where the Court of Appeals held that the insurer failed to act diligently in seeking the insured's cooperation and failed to use reasonable efforts in locating the insured. The Court reasoned that since "the defense of lack of cooperation penalizes the [injured person] for the action of the insured over whom he has no control, and since the defense [of lack of cooperation] frustrates the policy of this State that innocent victims of motor vehicle accidents be recompensed for the injuries inflicted upon them, the courts have consistently held that the burden of proving the lack of cooperation is a heavy one indeed." See also Lisi v. Nepola, 84 A.D.2d 560, 443 N.Y.S.2d 271 (1981), aff'd, 56 N.Y.2d 708, 451 N.Y.S.2d 733, 436 N.E.2d 1355 (1982).

As a general rule in construing insurance contracts, all policy provisions are to be given effect and the whole of the contract considered with each clause being used to interpret the other. Accordingly, the Declarations section will be considered by the court in determining the scope of coverage<sup>167</sup> and, in most jurisdictions, the courts have looked to the Declarations section of a policy to extend coverage rather than to restrict it.<sup>168</sup>

The coverage provided and the limits of liability also are recited in the Declarations section.<sup>169</sup> The limits of liability may state the single limit for any one occurrence or the aggregate limits. A single limit policy provides only one limit which represents the insurer's maximum liability for one coverage or any combination of

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<sup>167</sup> Some courts have given greater weight to the policy declarations page as compared to the printed provisions in a policy based on the presumption that: (1) the declarations page is usually not a pre-printed form; (2) the insured is more likely to see, read and understand it; and; (3) the coverage set forth in the policy declarations are normally what the parties actually bargain for and discuss. See, e.g., Newman v. Mass. Binding & Ins. Co., 364 Pa. 587, 65 A.2d 417 (1949) (typewritten provisions must be given effect to the exclusion of printed portions); Standard Venitian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 469 A.2d 563 (1983) (an insurance carrier should not be permitted to take a bargain plainly promised in the declarations and remove it by artfully drafted and obscured provisions buried in the text).

<sup>168</sup> See Indiana Ins. Co. v. Granite State Ins., 689 F. Supp. 1549 (S.D. Ind. 1988); cf. Imperial Cas. & Indem. v. High Concrete Structures, 858 F.2d 128 (3d Cir. 1988).

<sup>169</sup> See Annot., Risks and Causes of Loss Covered or Excluded by Aviation Liability Policy, 86 A.L.R.3d 118 (1978).

coverages which may be involved when an occurrence takes place. For example, in Champion Int'l Corp. v. Continental Casualty Co., 546 F.2d 502 (2d Cir. 1976), an action involving recovery under products liability insurance policies covering paneling installed in houseboats, motor homes and campers, the Second Circuit construed the word "occurrence" as used in the basic and umbrella excess policies. The basic policy covered property damage in the amount of \$100,000 for each "occurrence" (\$200,000 aggregate), subject to a deductible of \$5,000 "per occurrence," but provided that all property damage "arising out of continuous or repeated exposure to substantially the same general conditions ... shall be considered as arising out of one occurrence." The excess policy indemnified the insured paneling manufacturer for property damage caused by or arising out of "each occurrence." Under an endorsement of the excess policy, the terms of the basic policy controlled those of the excess policy. When the insured sought to recover under the policies for losses caused by 1400 individual installations of paneling that all contained the same defect, the insurers asserted that each installation constituted an "occurrence" the damages from which were each less than the \$4,000 deductible per occurrence. The court disagreed, holding that the word "occurrence" unambiguously referred to the losses resulting from the entire series of installations of defective paneling. The court stated that

the language was controlling "unless it is ambiguous (and we find no ambiguity here)."<sup>170</sup> The aggregate limit is the total amount the insurer will indemnify the insured for any one or several occurrences during the entire policy period.

The "Declarations" section often provides that the aircraft will be operated in flight only by pilots specifically named in the policy or by pilots certified and qualified to fly the aircraft.<sup>171</sup> The covered uses of the aircraft also are defined, e.g., commercial cargo, commercial passenger or as required by the insured in the case of commercial airlines and private, business, pleasure flying, instruction or rental in general aviation.<sup>172</sup> Finally, the

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<sup>170</sup> See also Allied Grand Doll Manufacturing Co. v. Globe Indem. Co., 15 A.D.2d 901, 225 N.Y.S.2d 595 (1962).

<sup>171</sup> See Annot., Risks and Causes of Loss Covered or Excluded by Aviation Liability Policy, 86 A.L.R.3d 118 (1978).

<sup>172</sup> "Private Pleasure" means for private and pleasure purposes but not use for any business or profession nor for hire or reward.

"Business" means the uses stated in Private Pleasure and use for the purpose of the Insured's business or profession but not use for hire or reward.

"Commercial" means the uses stated in Private Pleasure and Business and use for the carriage by the insured of passengers, baggage accompanying passengers and cargo for hire or reward.

"Rental" means rental, lease, charter or hire by the Insured to any person, company or organization for Private Pleasure and Business uses only, where the operation of the aircraft is not under the control of the insured.

"Instructional" means uses of the aircraft for student pilot training.



Declarations should recite the premium and identify the particular aircraft insured.<sup>173</sup>

## 2. Territorial Limitations

All aircraft policies include a provision, usually in the Declarations section, which establishes the geographic scope of coverage. It is common to find that aircraft policies written in the United States only apply to accidents or losses "which occur while the aircraft is within the continental United States, Canada or Mexico". Commercial air carriers normally obtain worldwide coverage.

Some policies also extend coverage to include the possessions and territories of the United States. Coverage for Mexico or Canada may be limited to within 100 miles of the border and many policies specifically exclude Alaska. A territorial extension may be obtained by a special endorsement for an additional premium but a special problem arises with flights to Mexico. Mexican law requires that liability insurance be provided through an authorized Mexican insurer and, therefore, even though Mexico may be within the geographic scope of coverage the policy does not satisfy the law in Mexico.<sup>174</sup> In the event of an accident the failure to

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<sup>173</sup> The aircraft are identified on a "Schedule of Aircraft" by make, model, registration number and number of passenger seats.

<sup>174</sup> See Ley de Vias Generales de Comunicacion, art. 342 et seq. (Mex.).

have such Mexican insurance in effect may result in imprisonment and confiscation of the aircraft.

Coverage also is available for occurrences that take place while the aircraft is en route between specifically designated points. Problems may arise, however, when an aircraft makes a stop in an uninsured location en route to an insured location. Several courts have held that as long as the aircraft is on a reasonably direct course from and to geographic areas covered by the policy, the aircraft is within the policy coverage. For example in Vargas v. Insurance Co. of North America, 651 F.2d 838 (2d Cir. 1981) (applying New York law), even though the policy stated that it would cover only occurrences happening within the United States, its territories and possessions, Canada and Mexico, and during flights to and from the Bahama Islands, the fact that the insured stopped in Haiti for refueling on a flight from New York to Puerto Rico did not preclude coverage because the territorial limitations could be read to describe the outside boundaries of an area within which flights, on reasonable routes, were covered, and because the limitations themselves were ambiguous, requiring construction that favored coverage rather than exclusion.<sup>175</sup>

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<sup>175</sup> See also Peerless Ins. Co. v. Sun Line Helicopters, Inc., 180 So.2d 364 (Fla. Dist. Ct. App. 1965) (crash in Bahamas during flight between insured locations covered).

## CHAPTER V - TYPES OF AVIATION COVERAGE

### A. In General

Aviation insurance may be classified either as hull insurance or liability insurance. Numerous categories of coverage can exist within each type of policy depending upon the specific aviation coverage required. Although separate policies may be issued covering hull and third-party liability risks, it is common to find a combination aviation policy providing both hull and third-party liability coverage.<sup>176</sup>

### B. Aviation Hull Insurance

Aviation hull insurance provides coverage for physical loss or damage to the aircraft listed on the policy schedule and frequently is combined with other coverage in a comprehensive or combination aviation policy. Hull insurance also protects the secured creditor holding a lien on the aircraft by indemnifying the owner for physical damage to the aircraft. The hull policy may be written on a "specified" or "named" peril basis<sup>177</sup> or on an "all risks" basis. In recent

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<sup>176</sup> Passenger liability coverage is not generally included in third party liability coverage but constitutes a separate coverage. See infra. at pp. 94-96.

<sup>177</sup> A "named peril" policy protects against only the perils specified in the policy, e.g., fire, explosion, lightning, theft, windstorm, collision while not in flight, etc.

years, "all risks" hull policies have become more common.<sup>178</sup>

### 1. All Risks Hull Insurance

There are three general categories of "all risks" hull coverage: (1) "All risks - not in motion" (2) "All risks - not in flight" and (3) "All risks - ground and flight".<sup>179</sup> "All risks - not in motion" coverage provides insurance for physical damage while the aircraft is on the ground and not moving under its own power, while "all risks - not in flight" insurance covers the aircraft while stationary or while taxiing.<sup>180</sup> "All risks - ground and flight" provides full coverage for the aircraft while on the ground or while in flight.<sup>181</sup> The hull policy usually contains a deductible

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<sup>178</sup> See Pan Am. World Airways, Inc. v. Aetna Casualty & Sur. Co., 505 F.2d 989 (2d Cir. 1974); Great Northern Ins. Co. v. Dayco Corp., 637 F. Supp. 765 (S.D.N.Y. 1986).

<sup>179</sup> For helicopter insurance the distinction is made for rotors in motion and rotors not in motion. See Compass Ins. Co. v. Vanguard Ins. Co., 649 F.2d 331, 333 (5th Cir. 1981) (the insurance policy in questions contained a clause providing that "[a] rotorcraft shall be deemed to be 'in flight' when the rotors are in motion as a result of engine power, the momentum generated therefrom or autorotation").

<sup>180</sup> "Taxiing" is usually defined in the policy as aircraft while in motion but not in flight. See Compass Ins. Co. v. Vanguard Ins. Co., 649 F.2d 331 (5th Cir. 1981); Pecos Valley Flying Service, Inc. v. Brayley, 63 N.M. 96, 313 P.2d 1062 (1957); National Ins. Underwriters v. Walker, 206 Okl. 629, 245 P.2d 737 (1952).

<sup>181</sup> "In flight" is defined as the period from the start of the actual takeoff run, while in the air and until completion of the landing run. See Acme Flying Service v. Royal Ins. Co., 83 N.Y.S.2d 740, aff'd, 88 N.Y.S.2d 904 (1948); Bressee v. Auto. Ins. Co., 1932 U.S. Av. Rep. 53 (N.D.N.Y. 1932).

(footnote continued)

amount which will vary depending on whether the aircraft was damaged while in flight, taxiing or on the ground. The deductible also may be subject to the conditions and exclusions previously discussed supra. at pp. 40-74.<sup>182</sup>

Under an "all-risks" policy, the insured need only prove the existence of the all-risks policy and loss of the covered property.<sup>183</sup> If the insured makes its prima facie case, the insurer can prevail only by proving that the proximate cause of the loss was included within one of the terms of exclusion.<sup>184</sup> In Pan Am. World Airways v. Aetna Casualty & Sur. Co., 505 F.2d 989 (2d Cir. 1974), the insured sought to recover under an all-risks policy for an aircraft

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See also Cotton Belt Ins. Co. v. Hauck, 424 F.Supp. 570 (D.Mo. 1976), aff'd, 553 F.2d 102 (8th Cir. 1977).

<sup>182</sup> Damage or loss to the aircraft may be settled on an insured value, agreed value, replacement value or actual cash value basis as provided by the policy. See Trimble-Waterman Assoc. v. Certain Underwriters at Lloyd's, 52 A.D.2d 516, 381 N.Y.S.2d 863 (1976), aff'd, 41 N.Y.2d 934, 394 N.Y.S.2d 628, 363 N.E.2d 352 (1977), where the insurer had written a "valued policy" in which the value of an aircraft with a market value of perhaps \$180,000 had a "stated" or agreed, value of \$300,000. Cf. MacAnarney v. Newart Fine Co., 247 N.Y.176, 159 N.E. 902 (1926); see also Jamaica Time Petroleum, Inc. v. Federal Ins. Co., 1967 Av. Rep. 1022 (10th Cir. 1967); Pennsylvania-Central Airlines Corp., 4 C.A.B. Rep. 31 (1942).

<sup>183</sup> See Pan Am. World Airways v. Aetna Casualty & Sur. Co., 505 F.2d 989, 999 (2d Cir. 1974) (all-risk policy held not to exclude the destruction of an aircraft by hijackers); Great N. Ins. Co. v. Dayco Corp., 637 F. Supp. 766, 777 (S.D.N.Y. 1986).

<sup>184</sup> See Pan Am. World Airways v. Aetna Casualty & Sur. Co., 505 F.2d 989, 999 (2d Cir. 1974).

destroyed by hijackers. The court observed that the all-risks policy excluded "loss or damage to or resulting from" the enumerated perils, a phrase that clearly refers to the proximate cause of the loss." Relying upon Standard Oil Co. v. United States, 340 U.S. 54 (1950) and Queen Ins. Co. v. Globe & Rutgers Fire Ins. Co., 263 U.S. 487 (1924), the court held that the words "due to or resulting from" limit the causation inquiry to the "facts immediately surrounding the loss" and that none of the exclusions could be reasonably interpreted to describe the proximate cause of loss. The court also noted that "New York courts give especially limited scope to the causation inquiry."

Although "all risks" hull policies may be more comprehensive than "named peril" policies, "all risks" hull policies are subject to a number of exclusions and conditions. Aircraft hull policies typically exclude coverage for consequential loss or damage (*i.e.*, loss of use) caused by general wear, tear and mechanical breakdown.<sup>185</sup> However, actual damage to the aircraft resulting from such

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<sup>185</sup> The majority of jurisdictions, including New York, hold that the mechanical breakdown exclusion applies only where the damage is caused solely by inherent mechanical defects and not by any external factors. See Caccioppo v. United Servs. Auto. Ass'n, 125 Misc. 2d 698, 479 N.Y.S.2d 688 (N.Y. Civ. Ct. 1984); see also Caldwell v. Transportation Ins. Co., 364 S.E.2d 1 (Va. 1988); Sandoval v. Hartford Cas. Ins. Co., 653 S.W.2d 604 (Tex. Ct. App. 1983); contra Industries, Inc. v. Federal Ins. Co., 280 So.2d 14 (Fla. Dist. Ct. App.), cert. denied, 284 So.2d 220 (Fla. 1973).

wear, tear and mechanical breakdown usually is covered.<sup>186</sup>

## 2. Breach-of-Warranty Insurance

If an aircraft owner or purchaser intends to obtain financing with the aircraft pledged as security, most lenders will require the pledgor to purchase a breach-of-warranty endorsement to the aircraft policy as an additional safeguard to the lienholder's interest in the aircraft. The insured usually must obtain this type of endorsement in order to secure financing for an aircraft. The breach-of-warranty endorsement has been characterized by the courts as a second contract directly with the insurer.<sup>187</sup> The typical breach-of-warranty endorsement provides:

The insurance afforded by the policy shall not be invalidated as regards the interest of the Lienholder by an act or neglect of the Insured except that any change in title or ownership of the aircraft,

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<sup>186</sup> See, e.g., Caccioppi v. United Servs. Auto Ass'n, 125 Misc. 2d 698, 479 N.Y.S.2d 688 (N.Y. Civ. Ct. 1973); Bush v. Ranger Ins. Co., 46 Or. App. 17, 610 P.2d 304 (1980); Cobb v. Home & Auto Ins. Co., 86 Cal. App. 3d 673, 150 Cal. Rptr. 370 (1978); Little Judy Industries, Inc. v. Federal Ins. Co., 280 So.2d 14 (Fla. App. 1973).

<sup>187</sup> See Grady v. Utica Mut. Ins. Co., 69 A.D. 2d 668, 419 N.Y.S.2d 565 (1979); Underwriters at Lloyd's London v. United Bank Alaska, 636 P.2d 615 (Alaska 1981). Compare Aero International Inc. v. United States Fire Ins. Co., 713 F.2d 1106 (5th Cir. 1983). The breach of warranty endorsement is similar to the "standard" or "union" mortgage clause used in New York fire insurance policies. See, e.g., Grady v. Utica Mut. Ins. Co., 69 A.D.2d 668, 419 N.Y.S.2d 565 (1979).

conversion or secretion by the  
Insured in possession of the  
aircraft are not covered hereunder.<sup>188</sup>

In Underwriters at Lloyd's London v. United Bank Alaska, 636 P.2d 615 (Alaska 1981), which involved the total destruction of an aircraft leased by the owner to a third party named as the insured under a hull policy covering the aircraft, the lease terminated three days prior to the crash and the named insured cancelled the hull coverage for the subject aircraft by deleting the aircraft from the reporting form listing the planes owned or leased by the insured. However, the hull policy listed the owner's bank as lienholder in the breach-of-warranty endorsement, which provided that the acts or neglect of the insured could not invalidate the bank's lien hold interest, that the bank was obligated to pay any premiums not paid by the insured and that the bank was entitled to thirty days' notice before coverage of the bank's lienholder interest could be cancelled. The court held that the breach-of-warranty endorsement constituted a separate contract between the bank and the hull insurer and that because the endorsement specifically protected the bank against the acts of the named insured, including unilateral cancellation by deletion of the subject aircraft from the policy without effective notice to

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<sup>188</sup> See AVN 28, Appendix "B" hereto. See also Avemco Ins. Co. v. Jefferson Bank & Trust Co., 16 Av. Cas. (CCH) 17,1424 (Mo. Ct. App. 1980).



the bank, the fact that the insured terminated hull coverage of the plane did not impair the bank's right to recover from the hull insurer.<sup>189</sup>

The wording of a breach-of-warranty endorsement, is similar to the "standard," or "union," mortgagee clause often contained in New York fire insurance articles. For example, in Grady v. Utica Mut. Ins. Co., 69 A.D.2d 668, 419 N.Y.S.2d 565 (1979), the assignee of a mortgage in the original principal amount of \$26,500 obtained a judgment of foreclosure upon the mortgagor's default, but the property was destroyed by fire before a foreclosure sale could take place. The property had been insured for \$40,000 under a homeowner's policy in which the mortgagee was named as beneficiary "as interest may appear" in the New York standard clause, which provided "that the coverage, as to the interest of the mortgagee... only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property." The assignee sought to recover from the insurer the full amount of the foreclosure judgment, \$34,036.48, which included taxes and assessments paid by the

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<sup>189</sup> Compare Aero Int'l Inc. v. United States Fire Ins. Co., 713 F.2d 1106 (5th Cir. 1983), where the lienholder's endorsement stated in part that "the protection afforded to the Lienholder by the terms of this Endorsement is limited to the perils covered under this Policy for which a specific premium charge has been made" The Fifth Circuit held that this language did no more than extend to the lienholder whatever coverage was afforded by the main policy, and that "[t]he endorsement did not by its terms create a separate contract insuring different risks; it simply added a party to the original insurance contract."

mortgage lien. The insurer claimed that it was liable only for \$22,657.18, i.e., the original principal sum less the amount of principal amortized by the mortgagors. The Appellate Division noted that the "standard" mortgagee clause differs from the "loss-payable" clause in that under the former, the mortgagee's interest in the proceeds cannot be invalidated by any act or neglect of the mortgagor or owner, thus creating "a separate and independent insurance of the mortgagee's interest, free from the conditions imposed upon the mortgagor or owner." Consequently, under the standard clause, the insurer was bound to pay first the actual value of the loss, not exceeding the policy limit, to the mortgagee (or his assignee) to the extent of his interest as it existed on the date of the fire, including not only unpaid principal and interest, but also any payments made by the mortgagee to protect his security (taxes and assessments) as well as the costs, fees and disbursements incurred in the foreclosure action, which were included in the mortgage lien.

Thus, under a breach-of-warranty endorsement the lienholder is not a mere "loss payee" subject to any policy defenses the insurer may have against the insured.<sup>190</sup>

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<sup>190</sup> Cf. Grady v. Utica Mut. Ins. Co., 69 A.D.2d 668, 419 N.Y.S.2d 565 (1979), where the Second Department noted that if the breach-of-warranty endorsement reserves the right of subrogation and the insurer pays to a lienholder on a loss that the insurer would not be required to pay to the insured, the insurer will acquire a right of subrogation against the insured if the insured has breached a condition of the policy.

### 3. Loss-of-Use Insurance

"Loss-of-use" insurance provides protection to an aircraft owner/operator for loss of the earning power of an aircraft when it is out of service ("laid up") for repairs following an accident.<sup>191</sup> An amount, agreed upon by the parties at the inception of the policy, is paid each day the aircraft is out of service for repairs based upon calculations of the average daily earnings of the operator.<sup>192</sup>

### 4. War Risks and Associated Perils Exclusions

Since the late 1960's, aircraft hull and liability policies issued in the London market<sup>193</sup> have incorporated a

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<sup>191</sup> Hull policies sometimes contain a "lay-up" premium refund provision which provides that in the event an insured aircraft is laid up for more than a specified period of time (e.g., 5-15 consecutive days) the insurer will allow a "lay-up" refund computed pro-rata from a certain percentage of the applicable policy rate for the period the aircraft was laid up. An aircraft owner/operator also may obtain loss of profit insurance to insure against loss of profits following an accident.

<sup>192</sup> See Margo, Aviation Insurance (2d ed. Butterworths 1989).

<sup>193</sup> The London market is the primary private source of aviation war risk insurance because American underwriters generally do not write war risk coverage. See Pan Am. World Airways, Inc. v. Aetna Casualty & Sur. Co., 505 F.2d 989 (2d Cir. 1974). Therefore, to the extent that a policy obtained in the London market excludes or limits war risks, an air carrier must seek war-risk coverage from the Secretary of Transportation, who is authorized by Title III of the Federal Aviation Act of 1958, as amended (codified at 49 U.S.C. §§ 1531-1542) to issue war-risk insurance. See 49 U.S.C. §§ 1531-1533. In the Pan Am case, the insured could purchase on  
(footnote continued)

"war risks" exclusion that excludes coverage for losses resulting from (1) war, civil war, insurrection; (2) hostile detonation of nuclear weapons; (3) strikes, riots, civil commotions; (4) political or terrorist action; (5) malicious acts or sabotage; (6) confiscation, seizure, nationalization by any government; and (7) hijacking and unlawful seizure.<sup>194</sup> Separate "Hull War Risks" coverage, however, may be purchased to cover losses arising from such events.

In 1958, the United States Government instituted an aviation war risk insurance program providing war risk insurance to American air carriers.<sup>195</sup> The aviation insurance program was amended in 1977 to expand the program to include non-war risks and provide insurance and reinsurance to American air carriers against loss or damage arising out of any risk from operation of an aircraft when insurance cannot be obtained on reasonable terms and conditions from commercial sources.<sup>196</sup> The program is discretionary, however, and no air carrier has a right to the issuance of a policy.<sup>197</sup>

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the London market only \$14,226,290.47 of war-risk insurance even though the agreed upon value of the aircraft was \$24,288,759.

<sup>194</sup> This exclusion is denominated as form AVN 48B. See Appendix "B".

<sup>195</sup> See 49 U.S.C.A. § 1531 et seq. (West 1976).

<sup>196</sup> 49 U.S.C.A. App. § 1531 et seq. (West Supp. 1990).

<sup>197</sup> See H.R. Rep. No. 301, 95th Cong., 1st Sess. at 2 (1977).

Occasionally, it cannot readily be determined whether the loss is covered by the "all risks" policy or the "war risks" policy, and a dispute may then arise as to which policy provides coverage.<sup>198</sup> Coverage for "all risks" and hull "war risks" in a single policy avoids this potential problem but the combined all risks/war risk policy often is reinsured by separate reinsurers.<sup>199</sup> To avoid disputes, insurers frequently include a "50/50 Provisional Claims Settlement Clause" which provides that where there is reasonable doubt as to whether the hull "all risks" or hull "war risks" policy applies, the insurers will agree provisionally to fund the claim on the basis of a 50/50 formula or as otherwise agreed between the respective leading Underwriters.<sup>200</sup>

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<sup>198</sup> See, e.g., Pan Am. World Airways, Inc. v. Aetna Casualty & Sur. Co., 505 F.2d 989 (2d Cir. 1974) (all-risks policies and not war risks policies covered loss sustained when aircraft was hijacked and destroyed by terrorists).

<sup>199</sup> This situation arose in the 1985 loss of an Air India B-747 which exploded off the coast of Ireland. The cause of the crash was not known (although a bomb was suspected) and consequently the loss could have been covered either by the "all risks" or "war risks" policy which were reinsured with different underwriters. See Boden v. Hussey, [1988] 1 Lloyd's Rep. 423 (50/50 Provisional Settlement Clause required 50/50 provisional funding of claim made by primary insurer under combined all risk/war risk policy not only by leading underwriters but by all underwriters who initialled leader's slip).

<sup>200</sup> The "50/50 Provisional Settlement Clause" is AVS 103. See Appendix "B".

See the following decisions for a discussion of the "War Risk and Associated Perils" exclusion: Pan Am. World Airways,  
(footnote continued)

## C. Aviation Liability Coverage

### 1. In General

In contrast to aviation hull insurance which is written primarily for the benefit of the aircraft owner and/or operator and, in many cases, for the holder of a secured interest in the aircraft as well,<sup>201</sup> aviation liability insurance is issued for the benefit of third parties, usually passengers and individuals on the ground. Such policies are similar to a standard automobile liability policy,<sup>202</sup> with the exception that passenger liability coverage generally is not included in an aviation liability policy but constitutes a separate and distinct coverage.<sup>203</sup>

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Inc. v. Aetna Casualty & Sur. Co., 505 F.2d 989 (2d Cir. 1974); Bergman v. American Liberty Ins. Co., 11 Misc. 2d 482, 172 N.Y.S.2d 622 (Sup. Ct. 1958); see also Blain Richards & Co. v. Marine Indem. Ins. Co., 635 F.2d 1051 (2d Cir. 1980); Holiday Inns Inc. v. Aetna Ins. Co., 571 F. Supp. 1460 (S.D.N.Y. 1983).

<sup>201</sup> Many of the principles previously discussed (e.g., conditions, exclusions and uses) in the context of hull coverage apply equally to liability coverage.

<sup>202</sup> See Hutzel v. United States Aviation Underwriters, Inc., 132 A.D.2d 45, 522 N.Y.S.2d 301 (1987); Ostego Aviation Service v. Glen Falls Ins. Co., 277 A.D. 612, 102 N.Y.S.2d 344 (1951). Accordingly, the legal principles applicable to the interpretation of property casualty forms used in liability insurance generally apply to aviation liability policies. Cf. supra. at n.2.

<sup>203</sup> See, e.g., Gulf Ins. Co. v. Grisham, 126 Az. 123, 613 P.2d 283 (1980), (where the description of the aviation liability and hull insurance offered by the insurer to cover a private aircraft specifically excluded coverage of passengers); Grubb v. Ranger, Ins. Co., 77 Cal. App. 3d 526, 143 Cal. Rptr. 558 (1978), (policy insuring a private aircraft included coverage for bodily injury liability, but  
(footnote continued)

## 2. Financial Responsibility Acts

Several states, but not New York, have adopted aircraft financial responsibility acts which require aircraft owners or operators to acquire and maintain minimum liability insurance coverage for third-parties (non-passengers) injured or killed as a result of an aviation accident. Such acts frequently require proof of a valid certificate of insurance, security deposits or other proof of financial responsibility following the occurrence of aircraft accidents.<sup>204</sup> In addition, federal regulations require certain commercial air carriers<sup>205</sup> and air taxi operators<sup>206</sup> to file a Certificate of Insurance with the DOT confirming that minimum insurance requirements have been met and coverage is in effect.<sup>207</sup> Part 205 of the Federal Aviation Regulations requires those air carriers operating pursuant to authority granted by the DOT to have minimum insurance coverage, either through

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excluded bodily injury liability to passengers). Aviation liability insurance for bodily injury is divided into two separate insuring agreements: (1) Bodily Injury-Excluding Passenger Liability and (2) Bodily Injury-Passenger Liability.

<sup>204</sup> See, e.g., Cal. Pub. Util. Code §§ 5500-5512 (West 1975 & Supp. 1990); Conn. Gen. Stat. Ann. §§ 15-102 - 15-120 (West 1988); Ill. Ann. Stat. ch. 15 1/2, para. 22.42a et seq. (Smith-Hurd 1963 & Supp. 1989); Mass. Gen. Laws Ann. ch. 90, §§ 49B-49T (West 1989). New York has not adopted any similar statutory requirements.

<sup>205</sup> See 14 C.F.R. Part 205 (1989).

<sup>206</sup> See 14 C.F.R. § 298.21(c)(2) (1989).

<sup>207</sup> See 14 C.F.R. Parts 205 and 298 (1989).

policies or self-insurance plans as set forth in Part 205, to meet liability claims arising from an aircraft accident for which the air carrier is found to be liable.<sup>208</sup>

### 3. Types of Aviation Liability Coverage

#### a. In General

The type and extent of aviation liability insurance may vary depending on the use of the aircraft<sup>209</sup> and the coverage purchased. The liability policy usually provides that the insurer will undertake "to pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages arising out of the ownership, maintenance or use of the aircraft".<sup>210</sup> An aircraft liability policy may include the following types of insuring agreements: (1) bodily injury, excluding passenger liability; (2) passenger liability; (3) property damage liability; and (4) medical payments.

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<sup>208</sup> See supra. at n. 126.

<sup>209</sup> The types of uses of aircraft in a "general aviation" liability policy (see definition of "general aviation" infra. n. 211) may be classified into five types:

1. Private Business & Pleasure
2. Industrial Aid
3. Commercial-Excluding Flying by Students or Renter Pilots
4. Commercial - Including Flying By Students or Renter Pilots
5. Special Uses

<sup>210</sup> See Rausch v. Beech Aircraft Corp., 277 N.W.2d 645 (Minn. 1979) ("arising out of"); see also Aetna Casualty & Sur. Co. v. Liberty Mut. Ins. Co., 91 A.D.2d 317, 459 N.Y.S.2d 158 (1983) ("arising out of" broader than "caused by").



#### **b. Bodily Injury, Excluding Passenger Liability**

It is customary for an aircraft liability policy to exclude liability to passengers, especially in the context of "general aviation" insurance.<sup>211</sup> A typical insuring provision obligates the insurer to pay on behalf of the insured all sums which the insured is legally obligated to pay as damages because of "bodily injury, sickness, disease, mental anguish or death, suffered by any person or persons, other than passengers, due to an occurrence arising out of the ownership, maintenance or use of any insured aircraft". (emphasis added). This wording basically provides liability coverage for all third party (except passenger) personal injury claims. The exclusion of passengers from third party liability coverage is generally valid and will be upheld if the wording of the exclusion is clear and unambiguous.<sup>212</sup>

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<sup>211</sup> "General aviation" is defined as operation of civil aircraft (usually smaller or light aircraft) except those used by large commercial airlines. See, e.g., Indianapolis Airport Authority v. American Airlines, Inc., 733 F.2d 1262 (7th Cir. 1984). General aviation activities typically include business flying, air taxi, rental operations, commuter operations, personal transportation, special purpose flying (e.g., crop dusting) and instructional flying. See Kennelly, Aviation Tort Claims Against the United States of America from the Standpoint of Claimants, 33 Trial Law. Guide 133, 134 (1989); see also Airmanship, Inc. v. United States Aviation Underwriters, Inc., 559 So.2d 89 (Fla. Dist. Ct. App. 1990) (phrase "commercial aviation" in exclusion not applicable to pilot services as a safety pilot or instructor); Appendix "B".

<sup>212</sup> See Powell v. Haskett Flying Service, 16 Av. Cas. (CCH) 17,631 (W.D. Tex. 1981); Manny v. Avemco Ins. Co., 121 Ariz. 221, 589 P.2d 464 (1978); Grubb v. Ranger Ins. Co., 77 Cal. App. 3d 526, 143 Cal. Rptr. 558 (1978).

### c. Passenger Liability

As noted earlier, passenger liability usually constitutes a separate and distinct coverage. Passenger liability coverage insures against the legal liability of the insured for bodily injury, sickness, disease, mental anguish or death suffered by any person due to any occurrence arising out of the ownership, maintenance or use of any insured aircraft. The term "passenger" often is defined in the policy as "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".<sup>213</sup> In commercial aircraft liability policies, one insuring clause may provide coverage for both third party and

<sup>213</sup> See Appendix "B". See, e.g., National Aviation Underwriters v. Caldwell, 689 F. Supp. 639 (N.D. Miss. 1988); Pan Am. Fire & Casualty Co. v. Edwards Aircraft Inc., 377 F. Supp. 205 (N.D. Ala. 1974); Torres v. Southeastern Aviation, Inc., 472 So.2d 541 (Fla. Dist. Ct. App. 1985); Gustafson v. National Ins. Underwriter, 517 S.W.2d 414 (Tex. App. 1974). Most aviation liability policies, however, exclude claims by the pilot/crew even if passenger liability coverage is provided. See Crawford v. Ranger Ins. Co., 653 F.2d 1248 (9th Cir. 1981); Pan Am. Fire & Casualty Co. v. Edwards Aircraft, Inc., 377 F. Supp. 205 (N.D. Ala. 1974); Foremost Ins. Co. v. Shepard, 610 F.2d 551 (8th Cir. 1978); see also Hedges Enterprises, Inc. v. Fireman's Fund Ins. Co., 34 Misc.2d 249, 225 N.Y.S.2d 779 (Sup. Ct. 1962); Continental Casualty Co. v. Warren, 152 Tex. 164, 254 S.W.2d 762 (1953) (pilot is passenger); Ohio Casualty Ins. Co. v. Gantt, 256 Ala. 262, 54 So.2d 595 (1951) (student pilot not passenger). Cf. definition of "passenger" in automobile liability policies. Certain Underwriters at Lloyds of London v. Evans, 20 Av. Cas. (CCH) 18,592 (N.D. Okla. 1987). But see National Aviation Underwriters v. Caldwell, 689 F. Supp. 639 (N.D. Miss. 1988) (including crew member within the definition of "passenger").

passenger legal liability.<sup>214</sup>

#### d. Property Damage Liability

Many aircraft liability policies provide a separate insuring agreement for property damage liability. This type of coverage insures against the legal liability of the insured for damages resulting from the injury to or destruction of property, including loss of use thereof, due to an "occurrence" arising out of the ownership, maintenance or use of any insured aircraft.<sup>215</sup>

Most aircraft liability policies exclude coverage for legal liability resulting from damage to property being transported by the insured or while in the care, custody or control of the insured.<sup>216</sup> Accordingly, property damage coverage normally does not provide liability coverage for baggage or cargo. Such coverage, however, may be purchased separately and in the case of commercial carriers usually is combined with passenger and third party legal liability.

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<sup>214</sup> If the insured collects a charge for the transportation of passengers, the policy must be rated and designated for commercial use.

<sup>215</sup> Separate coverage may be purchased for damage caused by aircraft noise. Similarly, damage caused by chemicals being emitted by aerial applicators (i.e., crop dusters) may be purchased as separate coverage (such insurance is mandatory in some states, e.g., Alabama, Arizona, Florida and Oregon). Cf. AVN 46B, Appendix "B" hereto, which excludes coverage for damage caused by noise and pollution.

<sup>216</sup> See supra. at pp. 40-62.

#### **e. Medical Payments**

An additional insuring clause which may be included in an aircraft liability policy is a Medical Payments clause. The Medical Payments provision provides for payment of medical, surgical, ambulance, hospital, professional nursing service and, in the event of death, reasonable funeral expenses as a result of bodily injury caused by an accident. This coverage may either include or exclude the pilot/crew members.<sup>217</sup>

#### **4. Liability Limits**

An aviation liability policy may be written to provide coverage for Bodily Injury (excluding passengers), Passenger Liability and Property Damage Liability under a single limit (known as a "combined single limit"),<sup>218</sup> without a per person limitation or under a split limit where one limit applies per person and another limit applies per occurrence for the aggregate amount of the separate limits of

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<sup>217</sup> Generally, this type of coverage is only available if passenger liability coverage is purchased.

<sup>218</sup> A "combined single limit" liability policy provides an annual aggregate limit which represents the insurer's maximum liability for one coverage or any combination of coverages in the event of an "occurrence" as defined in the policy. See Weismueller v. Interstate Fire & Casualty Co., 14 Av. Cas. (CCH) 18,455 (7th Cir. 1978). Although passenger liability coverage is optional, bodily injury and property damage coverage are mandatory in "combined single limit" policies.

per person Bodily Injury coverage. Generally, however, it is more common to find coverage provided on a high "combined single limit" basis.

#### 5. Guest Voluntary Settlement

Guest Voluntary Settlement coverage, also known as "admitted liability" coverage, provides that the insurer will voluntarily<sup>219</sup> pay an amount not exceeding the admitted liability limits provided in the policy in settlement of claims for personal injury or death of passengers. This coverage often is written for general aviation corporate aircraft on a per person limit basis.<sup>220</sup> The insurer will pay the pre-arranged limits to the settling passenger regardless of legal liability in return for a release of liability in favor of the insured.<sup>221</sup> If the injured passenger refuses to settle for the limits of the Admitted Liability coverage, no payment is made voluntarily under the

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<sup>219</sup> The payment is made by the insurer pursuant to the policy at the request of the insured.

<sup>220</sup> The pilot/crew may be included or excluded in such coverage.

<sup>221</sup> See In re Gilly, 66 Misc. 2d 894, 322 N.Y.S.2d 742 (Surr. Ct. 1971), where the endorsement entitled "Liability-Guest Voluntary Settlement" provided for payment of a certain amount at the request of the named insured to the passenger or to those having a cause of action for such passenger's death regardless of the legal liability of the insured. See also Insurance Co. of North America v. Davis, 398 F.2d 418 (5th Cir. 1968); GRP, Ltd. v. United States Aviation Underwriters, Inc., 70 Mich. App. 671, 247 N.W.2d 583 (1976), aff'd, 402 Mich. 107, 261 N.W.2d 707 (1978).

Admitted Liability coverage and the insured's legal liability to the passenger will be indemnified under the passenger legal liability portion of the policy.<sup>222</sup>

#### 6. Lloyd's Aviation Liability Policies

AVN 20 is the standard Lloyd's policy for aviation liability coverage. Several different insuring agreements may be incorporated into an AVN 20 liability policy depending on the coverage required. These agreements include: (1) "Coverage A" - liability insurance for all third party bodily injuries, excluding passengers; (2) "Coverage B" - property damage coverage; (3) "Coverage C" - passenger liability; (4) "Coverage D" - single limit liability for bodily injury, including passengers, and property damage; (5) "Coverage E" - identical to "Coverage D" but excludes passenger liability; and (6) "Coverage F" - Medical Payment Coverage.<sup>223</sup>

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<sup>222</sup> Cf. Gregory v. Garrett Corp., 589 F.Supp. 296 (S.D.N.Y. 1984) (applying New York law) (where the estates of passengers and crew members killed in an aircraft rescinded releases obtained by the owner of the aircraft through misrepresentation, the court may order restoration of the release consideration to the releasee), aff'd in part and vacated in part sub nom., Woodling v. Garrett Corp., 813 F.2d 543 (2d Cir. 1987).

<sup>223</sup> See Appendix "B".

## **D. Airport Owners and Operators Liability Insurance**

### **1. In General**

An Airport Owners and Operators Liability Policy is a general liability policy providing coverage for injury or damage to third parties sustained on the airport premises or as a result of airport operations.<sup>224</sup> There are three basic types of coverage: (1) Airport Premises - Operations; (2) Hangar Keepers' Liability; and (3) Products Liability.<sup>225</sup>

### **2. Airport Premises Liability**

Airport owners and operators may be exposed to a variety of claims for which coverage may be provided.<sup>226</sup> An

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<sup>224</sup> A commercial airport operator is known as a "fixed base operator" (FBO). An FBO provides services at an airport similar to those that a service station provides for those people who operate automobiles. Guthrie v. Genesee County, 494 F. Supp. 950, 952 n.1 (W.D.N.Y. 1980). Such services may include aircraft sales, service, rental, flight instruction, charter business, aircraft storage and sale of fuel. Broadview Leasing Co. v. Cape Central Airways, Inc., 539 S.W.2d 553 (Mo. App. 1976).

<sup>225</sup> See Appendix "B".

<sup>226</sup> Liability may extend to a variety of premises operations, including automobile parking lots, elevators and escalators, vehicles and common areas. For example, an airport owner or operator has a responsibility to keep the runway free from unmarked obstructions and make the airport safe for invitees. See, e.g., Gillman v. Liberty Airport Authority, 32 A.D.2d 296, 302 N.Y.S.2d 203 (1969); see also Eastern Airlines, Inc. v. Town of Islip, 229 N.Y.S.2d 117 (Sup. Ct. 1962). Cf. Reyes-Lopez v. Misener Marine Construction Co., 854 F.2d 529 (1st Cir. 1988) (comprehensive general liability policy issued for premises, excluding bodily injury arising out of aircraft rented or loaned to the insured, did not have to contribute to settlement to airport liability insurer).

airport premises liability insurance policy typically provides coverage for the insured's legal liability for bodily injury and property damage arising out of the ownership, maintenance or use of the airport and all operations on or away from the airport which are necessary or incidental to airport activities.<sup>227</sup> This type of policy usually covers all ordinary premise hazards, including those caused by aircraft, but excluding, (1) aircraft owned by, hired by or loaned to the insured, (2) aircraft in flight by or for the account of the insured,<sup>228</sup> and (3) air shows,

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<sup>227</sup> See DeForte v. Allstate Ins. Co., 81 A.D.2d 465, 442 N.Y.S.2d 307 (1981); Bellefonte Underwriters Ins. Co. v. Alfa Aviation, Inc., 310 N.C. 471, 312 S.E.2d 426 (1984). See also Pan Am. World Airways v. Port Authority of New York and New Jersey, 21 Av. Cas. (CCH) 17,830 (E.D.N.Y. 1988) (premise liability policy did not extend to taxiways and runways); State of Alaska v. Underwriters at Lloyds, London, 755 P.2d 396 (Alaska 1988) (in an anomalous decision the court held that an air carrier's premises liability policy extended to taxiing aircraft); Transport Indemnity Co. v. Sky-Kraft, Inc., 48 Wash. App. 471, 740 P.2d 319 (1987) ("in or about the premises"). Because many airports are owned and operated by a governmental entity, the doctrine of sovereign immunity may be applicable. See Port Authority Trans-Hudson Corp. v. Feeney, 110 S. Ct. 1868 (1990) (holding that sovereign immunity did not shield the Port Authority of New York and New Jersey from liability arising from personal injuries suffered by employees of a railroad -- the PATH system -- wholly owned by the Port Authority, since the states of New York and New Jersey had each explicitly and unmistakably waived its defense of sovereign immunity in actions against the Port Authority and its subsidiaries).

<sup>228</sup> A special endorsement may be obtained to cover flight operations for aircraft owned or leased by the insured. This type of coverage is similar to the hull and liability coverage discussed supra. at pp. 80-99.



contests and exhibitions.<sup>229</sup>

Airport premises liability insurance may be written on a schedule or on a comprehensive basis. Schedule coverage is similar to an Owners, Tenants and Landlords' Schedule Liability Policy<sup>230</sup> and comprehensive coverage is analogous to a Comprehensive General Liability Policy. Both types of policies, however, are written and tailored to apply to aviation risks.

### 3. Hangar-Keepers' Liability

Hangar-keepers' liability coverage is similar to garage-keepers' legal liability insurance. This type of coverage is purchased by an airport owner or operator who may have aircraft, owned by others, in their "care, custody or control", i.e., bailed aircraft.<sup>231</sup> Hangar-keeper's coverage, therefore, is a form of bailee insurance and provides coverage against legal liability for direct loss or damage to aircraft, owned by others, in the custody of the insured for hangaring, safekeeping, storage or repairs.<sup>232</sup>

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<sup>229</sup> Air show liability insurance, however, is available to protect the insured against legal liability arising in connection with such special events.

<sup>230</sup> This is often referred to as an "OTL" policy.

<sup>231</sup> Most premises liability policies generally exclude from coverage property in the "care, custody or control" of the insured.

<sup>232</sup> The premium and limits of liability for such coverage depend on the estimate of the highest valued aircraft which  
(footnote continued)

The coverage usually does not extend to aircraft while in-flight or to aircraft not on the described premises.<sup>233</sup>

#### 4. Product Liability

Products liability coverage is available to airport owners and operators as well as to suppliers and manufacturers of aircraft or aircraft components. Products liability insurance affords third-party liability coverage for damages arising out of the "products hazards" defined in the policy with respect to the manufacture, sale and distribution of aircraft products/components and in connection with the performance of services involving aircraft products, e.g., maintenance and repairs.

The products coverage purchased by an airport owner or operator usually provides coverage against bodily injury or property damage arising out of the possession, use, consumption or handling of goods or products manufactured, serviced, repaired, sold or otherwise processed by the insured after such goods have ceased to be in the possession

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the insured may be responsible for during the policy period and the total value of all aircraft in his care at any one time. Two limits of liability normally are provided. A lower limit for any one aircraft and a higher limit for any one loss. See Buffalo Air Park, Inc. v. National General Ins. Co., 15 Av. Cas. (CCH) 18,432 (N.Y. Sup. Ct. 1980).

<sup>233</sup> In-flight coverage may be purchased for instances where a maintenance test flight is performed or where a FBO provides "pilot services", i.e., supplies professional pilots to a customer. See Compass Ins. Co. v. Vanguard Ins. Co., 649 F.2d 331 (5th Cir. 1981).

or under the control of the insured. "Products hazards" often are excluded in premises and hangar keepers' liability policies, and must be purchased as a separate coverage.

Generally, products liability coverage is provided to aircraft product manufacturers in the United States through a scheme known as the Aircraft Builder's Counsel, Inc. (ABC). The ABC scheme was created in 1955 in order to provide a stable and specialized market to provide insurance for aircraft and aircraft component parts manufacturers. The ABC has adopted a standard policy (ABC Policy), which provides third-party and grounding coverage for damages arising out of "products hazard" which is defined to include the handling or use of or existence of any condition in an aircraft product. "Aircraft product" includes aircraft and any article furnished by the manufacturer/insured installed in or used in connection with aircraft or for spare parts.

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## APPENDIX A

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**§ 107. Definitions of terms of general use in this chapter**

(a) In this chapter, unless the context otherwise requires:

(1) "Accident and health insurance company", means any corporation having power to do the kinds of insurance business specified in item (i) of paragraph three of subsection (a) of section one thousand one hundred thirteen of this chapter or items (i) and (ii) of such paragraph, provided such company does not have power to do any other kind or kinds of insurance business.

\* (2) "Accredited reinsurer" means an assuming insurer not authorized to do an insurance business in this state but which (i) presents satisfactory evidence to the superintendent that it meets the applicable standards of solvency required in this state, (ii) is in compliance with the conditions prescribed by regulation under which a ceding insurer may be allowed credit for reinsurance recoverable from an insurer not authorized in this state, and (iii) has received a certificate of recognition as an accredited reinsurer issued by the superintendent pursuant to such regulation; provided that no insurer shall be an accredited reinsurer with respect to any kind of insurance not provided for in such certificate.

(3) "Admitted assets" means assets of an insurer which conform to the requirements of section one thousand three hundred one of this chapter.

(4) "Affiliate" means a corporation a majority of whose shares is owned or controlled by shareholders, directors or officers of another corporation, who own or control a majority of the shares of the other corporation.

(5) "Alien insurer" means any insurer incorporated or organized under the laws of any foreign nation, or of any province or territory not included under the definition of foreign insurer.

(6) "American institution" means an institution created or existing under the laws of the United States of America or of any state, district or territory thereof.

(7) "Articles of association", when used in reference to an unincorporated association, means the basic instrument prescribing the powers, purposes and organization of the association.

(8) "Assuming insurer" means an insurer which, under a contract of reinsurance, incurs to another insurer, called the ceding insurer, an obligation the performance of which is contingent upon the ceding insurer's incurring liability or loss under its contract or contracts of insurance, guaranty or suretyship made with third persons.

(9) "At last year-end" means the end of the next preceding calendar year.

(10) "Authorized insurer" means an insurer authorized as such to do an insurance business in this state in compliance with this chapter, by reason of a license so to do issued and in force pursuant to the laws of this state or of a corporate charter granted and in force pursuant to the laws of this state, but not including any insurer herein exempted from compliance with the requirement that it obtain a license to do business.

(11) "Board of directors" means the body having power and responsibility for management and control of a corporation and the advisory committee or similar body having such power in reference to a reciprocal insurer or Lloyds underwriters.

(12) "Capital", when used in reference to a stock insurance company, means the aggregate par value of all classes of shares of capital stock issued and outstanding.

(13) "Ceding insurer" means the insurer to which an assuming insurer is obligated.

(14) "Charter" means the basic instrument, by whatever name called, prescribing the powers, purposes and organization of a corporation.

(15) "Company" means a corporation.

(16) "Control". Except for the purposes of article fifteen of this chapter, "control", including the terms "controlling", "controlled by" and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an institution, whether through the ownership of voting securities, by contract or otherwise.

(17) "Department" means the insurance department of this state.

(18) "Deputy" means a deputy superintendent of insurance of this state.

(19) "Domestic insurer" means any authorized insurer incorporated or organized under any law of this state.

(20) "Firm" means a partnership, limited or unlimited, general or special.

(21) "Foreign insurer" means any insurer incorporated or organized under the laws of any state, as herein defined, other than this state.

(22) "Fraternal benefit society" has the meaning ascribed to it by subsection (a) of section four thousand five hundred one of this chapter.



## GENERAL PROVISIONS

§ 107

### Art. 1

(23) "Independent insurance agent" has the meaning ascribed to it by section two thousand one hundred one of this chapter.

(24) "Institution". Except for the purposes of section one thousand four hundred four of this chapter, "institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture or any similar entity.

(25) "Insurance agent" has the meaning ascribed to it by section two thousand one hundred one of this chapter.

(26) "Insurance broker" has the meaning ascribed to it by section two thousand one hundred one of this chapter.

(27) "Insurance contract" has the meaning ascribed to it by section one thousand one hundred one of this chapter.

(28) "Life insurance company" means any corporation having power to do either one or both of the kinds of insurance business specified in paragraphs one and two of subsection (a) of section one thousand one hundred thirteen of this chapter.

(29) "Lloyds underwriters" means any aggregation of individuals, who under a common name engage in the business of insurance for profit through an attorney-in-fact having authority to obligate the underwriters severally, within such limits as may be lawfully specified in the power of attorney, on contracts of insurance made or issued by such attorney-in-fact, in the name of such aggregation of individuals, to and with any person or persons insured.

(30) "Minimum surplus" means the minimum amount by which the admitted assets of an insurer without capital stock must exceed its liabilities in order to be permitted to do business in this state.

(31) "Minor" or "infant" means a person who has not attained the age of eighteen years.

(32) "Mortgage" includes a deed of trust.

(33) "Obligation". Except for the purposes of section one thousand four hundred four of this chapter, "obligations" includes bonds, debentures, notes and other evidences of indebtedness (whether or not liability for payment extends beyond the security therefor) as well as participation interests in any of the foregoing.

(34) "Officer" means any person charged with active management and control, in an executive capacity, of the affairs of a corporation, including the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, general counsel, actuary, comptroller and any other person appointed or elected by the board of directors to exercise similar powers, and including the

manager, attorney-in-fact, or other person appointed or elected by the board of directors to exercise similar powers, of a United States branch of an alien insurer, and the attorney-in-fact of a reciprocal insurer or Lloyds underwriters, and in case such manager or attorney-in-fact is a corporation, including the officers of such corporation.

(35) "Parent corporation" has the meaning assigned to it in the definition of subsidiary.

(36) "Property/casualty insurance company" means any company having power to write any one or more of the basic kinds of insurance specified in subsection (a) of section four thousand one hundred one of this chapter.

(37) "Reciprocal insurer" means any aggregation of persons, firms or corporations, called "subscribers" in article sixty-one of this chapter, who or which under a common name engage in the business of inter-insurance or exchanging contracts of insurance on the reciprocal plan through an attorney-in-fact having authority to obligate the subscribers severally, within such limits as may lawfully be specified in the subscriber's agreement, on contracts of insurance made with any subscriber as a policyholder through such attorney-in-fact acting on behalf of all other subscribers. Such term includes any reciprocal or inter-insurance exchange, by whatever name known, and any reference thereto as an insurer shall be deemed to mean any such aggregation of inter-insurers operating through an attorney-in-fact individually and collectively as an insurance organization for the benefit of its policyholders.

(38) "Renewal license" means a license which becomes effective immediately following the expiration of a license previously issued and in force, and which differs from such previous license only as to the date of expiration.

(39) "State" means any state of the United States, the commonwealth of Puerto Rico and the District of Columbia.

(40) "Subsidiary" means an institution controlled, directly or indirectly, by another institution or by a retirement system. "Parent corporation" means an institution or a retirement system that, directly or indirectly, controls another institution. For the purposes of the definitions in this subsection:

(A) an institution is conclusively presumed to be controlled by an institution or retirement system that, directly or indirectly, with power to vote, owns, controls or holds a majority of the outstanding voting securities of such institution;

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(B) no presumption, either of control or of absence of control, arises if such ownership, control or holding of voting securities is less than a majority but more than five percent;

(C) absence of control is presumed if such ownership, control or holding of voting securities is five percent or less; and

(D) in determining control, voting securities held in separate accounts of an institution or retirement system shall be deemed to be owned by the institution or retirement system, but voting securities in an investment advisory account that are not owned by an institution but are held in an account as to which the institution is an investment adviser shall not be deemed to be controlled or held by such institution.

(41) "Superintendent" means the superintendent of insurance of this state.

(42) "Surplus to policyholders" means the excess of total admitted assets over the liabilities of an insurer, which is the sum of all capital and surplus accounts minus any impairment thereof.

(43) "United States". Except for the purposes of article fourteen of this chapter, when used to signify place, means only the states of the United States, the commonwealth of Puerto Rico and the District of Columbia.

(44) "United States branch" means, as the context may require, the business unit through which business is transacted within the United States by an alien insurer, or the assets and liabilities of such insurer within the United States pertaining to such business or the management powers pertaining to such business and to such assets and liabilities or any combination of these three.

(45) "Voting securities" means securities of any class or any ownership interest having voting power for the election of directors, trustees or management of an institution, other than securities having such power only by reason of the happening of a contingency.

(b) Whenever the terms "include", "including" or terms of similar import appear in this chapter, unless the context requires otherwise, such terms shall not be construed to imply the exclusion of any person, class or thing not specifically included.

(c) A reference in this chapter to any other law or statute of this state, or of any other jurisdiction, means such law or statute as

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amended to the effective date of this chapter and, unless the context otherwise requires, as amended thereafter.

\* This term does not appear in the Insurance Law being recodified herein, but through custom and usage has been generally accepted. No substantive change is intended.

**SUPPLEMENT TO  
1984 CODIFICATION NOTES**

*by Jule E. Stocker, John P. Gemma and Mendes Hershman*

See the Supplementary Notes in the pocket part preceding Article 1. Supplementary Note (A) therein discusses L.1985, c. 453 adding to the Insurance Law a new § 103, "Explanation of Order of Provisions", setting forth the names and numbers of section components. Supplementary Note (B) discussed L.1985, c. 534, completing the integration into the Insurance Law of L.1984, c. 585, and making miscellaneous minor corrections.

**§ 107. Definitions of terms of general use in this chapter**

(a) In this chapter, unless the context otherwise requires:

*[See main volume for text of (1) to (36)]*

(37) "Reciprocal insurer" means any aggregation of persons, firms or corporations or, in the alternative, New York counties, towns, cities, villages, district corporations (as defined in paragraph three of section 2.00 of the local finance law), or school districts and boards of cooperative educational services, called "subscribers" in article sixty-one of this chapter, who or which under a common name engage in the business of inter-insurance or exchanging contracts of insurance on the reciprocal plan through an attorney-in-fact having authority to obligate the subscribers severally, within such limits as may lawfully be specified in the subscriber's agreement, on contracts of insurance made with any subscriber as a policyholder through such attorney-in-fact acting on behalf of all other subscribers. Such term includes any reciprocal or inter-insurance exchange, by whatever name known, and any reference thereto as an insurer shall be deemed to mean any such aggregation of inter-insurers operating through an attorney-in-fact individually and collectively as an insurance organization for the benefit of its policyholders.

*[See main volume for text of (38) to (45)]*

(46) "Doing an insurance business" has the meaning ascribed to it by section one thousand one hundred one of this chapter.

(47) "Commercial risk insurance" means insurance not subject to section three thousand four hundred twenty-five of this chapter issued or issued for delivery in this state, on a risk located in this state, insuring any of the following contingencies:

- (A) loss of or damage to real property;
- (B) loss of or damage to personal property;
- (C) losses or liabilities arising out of the ownership, operation or use of a motor vehicle;
- (D) liabilities of persons acting as officers or directors; or
- (E) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(48) "Product liability" means liability of the insured for damages for personal injury, death or property damage, where liability is based upon negligence, implied warranty or strict liability, arising out of a design,

inspection, testing or manufacturing defect, or any other defect in a product, or is based upon any failure to warn, or to properly instruct in the use of a product or for any liability for any damage arising out of the handling or use of any product manufactured, sold, handled or distributed by the insured or work completed by or on behalf of the insured.

(49) "Professional liability insurance" means insurance covering liability arising out of the practice of any profession for which a license is required by a governmental authority of this state or, with respect to treatment of patients, arising out of the operation of a duly certified hospital.

(50) "Public entity insurance" means commercial risk insurance issued to a public entity.

(51) "Public entity" means:

(A) the state of New York;

(B) a county, city, town, village or any other political subdivision or civil department or division of the state;

(C) a school district, board of cooperative educational services or any other governmental entity or combination or association of governmental entities operating a public school, college, community college or university;

(D) a fire district, fire company, volunteer fire department, or any other entity that contracts with a municipality or other political subdivision to provide fire protection;

(E) a public library, as defined in section two hundred fifty-three of the education law, authorized to operate in this state;

(F) a public corporation, including a municipal corporation, district corporation or public benefit corporation;

(G) an improvement district, special district or other district authorized by the village law, town law, county law or any other law;

(H) a public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law; or

(I) any other governmental instrumentality or unit in the state of New York.

*[See main volume for text of (b) and (c)]*

**§ 1102. Insurer's license required; issuance**

(a) No person, firm, association, corporation or joint-stock company shall do an insurance business in this state unless authorized by a license in force pursuant to the provisions of this chapter, or exempted by the provisions of this chapter from such requirement. Any person, firm, association, corporation or joint-stock company which transacts any insurance business in this state while not authorized to do so by a license issued and in force pursuant to this chapter, or exempted by this chapter from the requirement of having such license, shall, in addition to any other penalty provided by law, forfeit to the people of this state the sum of one thousand dollars for the first violation and two thousand five hundred dollars for each subsequent violation.

(b) No corporation organized under any law of this state shall do an insurance business outside this state unless so authorized pursuant to the provisions of this chapter or exempted by the provisions of this chapter from such requirement.

(c) Every insurer organized prior to the first day of October, eighteen hundred ninety-two, as an insurer under any general or special law of this state which was doing an insurance business in this state immediately prior to the first day of January, nineteen hundred forty in compliance with the insurance law then in force and not as an organization exempted therefrom, shall be deemed licensed to do an insurance business in this state, subject to this chapter.

(d) Except as otherwise provided in subsection (h) hereof, the superintendent may issue a license to any insurer to do in this state the kinds of insurance business for which such insurer is qualified under the provisions of this chapter and under its charter. Every such license shall contain the name of the licensee, its home office address, the state or country under whose laws it was organized, the kinds of insurance business, as defined in this chapter, which it is authorized to do in this state, and the term of such license. The superintendent may refuse to issue or renew any such license if in his judgment such refusal will best promote the interests of the people of this state.

(e)(1) Before licensing any such corporation organized under section one thousand two hundred one of this chapter, to do any insurance business, the superintendent shall:

(A) If such corporation be a stock corporation, cause an examination to be made into its affairs in accordance with the provisions of this chapter; and if it appears from the report upon such examination that the amount of capital and surplus required by law has been paid in and is possessed by the corporation in cash or in investments permitted by this chapter as minimum capital or sur-

plus investments under section one thousand four hundred two of this chapter, the superintendent shall file such report in his office and notify the corporation thereof;

(B) If such corporation be a mutual corporation, require proof (by statements of at least three incorporators subscribed and affirmed by such incorporators as true under the penalties of perjury, and by such investigation or examination of the affairs of such corporation as he may deem it expedient to make pursuant to the provisions of this chapter) that:

(i) the corporation has fully complied with the applicable provisions of this chapter,

(ii) it has the required initial surplus in cash or investments as prescribed in this chapter,

(iii) it has the required number and amount of bona fide applications for insurance as prescribed in this chapter,

(iv) the membership list is genuine, and

(v) every member has paid in cash the required premium on the insurance applied for and will take the policies as agreed within sixty days after a license has been issued to such corporation.

If the superintendent finds such proof of the foregoing facts to be sufficient, he shall file it in his office and notify the corporation thereof;

(C) Upon payment of the appropriate fees by such corporation, cause a copy of its declaration and charter, certified by him, to be filed and recorded in the office of the clerk of the county in which such corporation has its principal office.

(2) The superintendent may refuse a license to any such corporation if he finds, after notice and hearing, that any proposed incorporator or director of a stock corporation, or any director of a mutual corporation, has been convicted of any crime involving fraud, dishonesty, or like moral turpitude, or is an untrustworthy person.

(3) The corporation, on receiving notice from the superintendent that it has complied with this subsection, shall thereupon deposit with the superintendent such monies or securities as may be required by law.

(4) Upon compliance with this section and any other lawful prerequisites for the issuance of an insurer's license, the superintendent may, pursuant to this section, issue a license to such corporation to do the kind or kinds of business specified in its charter; provided that this subsection shall not apply to co-operative fire insurance



companies, fraternal benefit societies, or corporations organized under article forty-three of this chapter.

(f) Except as may be otherwise provided in this chapter, every license to do an insurance business shall be issued to a single licensee, who shall be either an individual or corporation.

(g)(1) No license to do an insurance business, or to act as an insurance agent, agency or broker, shall be granted to any person, firm, association, corporation, or joint-stock company proposing to do business under a name identical with, or so similar to as to be likely to deceive or mislead the public, the name of any insurer then licensed or authorized to do any kind of insurance business within this state, or of any proposed domestic insurance corporation whose name has been approved pursuant to section one thousand two hundred one of this chapter within six months preceding the application for such license, or of any domestic corporation, organized but not yet licensed, which has not forfeited its charter because of non-use; provided, the superintendent may, in his discretion, upon satisfactory proof of an appropriate resolution of any insurance corporation's board of directors, grant a license to do any different kind of insurance business to another person, firm, association, joint-stock company, insurance agent, agency or broker, or insurance corporation, having a similar, but not identical, name. Notwithstanding any other provision of this article, the superintendent may refuse to grant a license to do an insurance business, or to act as an insurance agent, agency or broker, to any person, firm, association, corporation or joint-stock company proposing to do business under a name which is likely to deceive or mislead the public in this state.

(2) The provisions of this subsection shall not apply to a license renewal for a foreign or alien insurer, or to any corporation formed as part of a plan, approved by the superintendent and by the court, for rehabilitation of a domestic insurance corporation pursuant to article seventy-four of this chapter. A domestic corporation, formed by reincorporation, reorganization or consolidation of other corporations, or upon the sale of the property or franchises of another corporation, or a corporation acquiring or becoming possessed of all of the estate, property, rights, privileges and franchises of any other corporation or corporations by merger, may have a name identical with, or similar to, that of any corporation to whose franchises it has succeeded, if such other corporation was then licensed to do the business of insurance in this state.

(h) No license to transact any kind of insurance business in this state shall be issued or renewed to any foreign or alien insurer or issued or continued in effect to any domestic insurer which is owned, or financially controlled, in whole or in part, by another state of the United States or by a foreign government or by any political subdivision of either, or which is an agency of any such state, government or subdivision, unless such insurer was so owned, controlled or constituted, and was authorized to do business in this state, on or prior to January first, nineteen hundred fifty-six.

**§ 1113. Kinds of insurance authorized**

(a) The kinds of insurance which may be authorized in this state, subject to other provisions of this chapter, and their scope, are set forth in the following paragraphs. The power to do any kind of insurance against loss of or damage to property shall include the power to insure all lawful interests in such property and to insure against loss of use and occupancy, rents and profits resulting therefrom. No kind of insurance shall include life insurance, title insurance or insurance against legal liability for personal injury or death unless specified in this section. In addition to any power specifically conferred by this chapter to engage in any other kind of business than an insurance business, any insurer authorized to do business in this state may engage in other kinds of business to the extent necessarily or properly incidental to the kinds of insurance business it is authorized to do in this state.

(1) "Life insurance," means every insurance upon the lives of human beings, and every insurance appertaining thereto, including the granting of endowment benefits, additional benefits in the event of death by accident, additional benefits to safeguard the contract from lapse, or provide a special surrender value, upon total and permanent disability of the insured, and optional modes of settlement of proceeds. Amounts paid the insurer for life insurance and proceeds applied under optional modes of settlement or under dividend options may be allocated by the insurer to one or more separate accounts pursuant to section four thousand two hundred forty of this chapter.

(2) "Annuities," means all agreements to make periodical payments where the making or continuance of all or some of a series of such payments, or the amount of any such payment, depends upon the continuance of human life, except payments made under the

authority of paragraph one hereof. Amounts paid the insurer to provide annuities and proceeds applied under optional modes of settlement or under dividend options may be allocated by the insurer to one or more separate accounts pursuant to section four thousand two hundred forty of this chapter.

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(3) "Accident and health insurance," means (i) insurance against death or personal injury by accident or by any specified kind or kinds of accident and insurance against sickness, ailment or bodily injury, including insurance providing disability benefits pursuant to article nine of the workers' compensation law, except as specified in item (ii) hereof; and (ii) non-cancellable disability insurance, meaning insurance against disability resulting from sickness, ailment or bodily injury (but excluding insurance solely against accidental injury) under any contract which does not give the insurer the option to cancel or otherwise terminate the contract at or after one year from its effective date or renewal date.

(4) "Fire insurance," means insurance against loss of or damage to any property resulting from fire, including loss or damage incident to the extinguishment of a fire or to the salvaging of property in connection therewith.

(5) "Miscellaneous property insurance," means loss of or damage to property resulting from:

(A) lightning, smoke or smudge, windstorm, tornado, cyclone, earthquake, volcanic eruption, rain, hail, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries;

(B) insects, or blights, or disease of such property except animals;

(C) electrical disturbance causing or concomitant with a fire or an explosion in public service or public utility property;

(D) bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, collapse from any cause, or explosion; but excluding any kind of insurance specified in paragraph nine hereof, except insurance against loss of or damage to property resulting from:

(i) explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four families,

(ii) explosion of any kind originating outside of the insured building or outside of the building containing the property insured.

(iii) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets, or

(iv) electrical disturbance causing or concomitant with an explosion in public service or public utility property; or

(E) lateral or verticle <sup>1</sup> subsidence of the earth caused by past or present mining operations.

(6) "Water damage insurance," means insurance against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires or of water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings or by seepage through building walls, but excluding loss or damage resulting from flood or the rising of the waters of the ocean or its tributaries; and including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers.

(7) "Burglary and theft insurance," means:

(A) Insurance against loss of or damage to any property resulting from burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment by any person, or from any attempt thereof;

(B) Insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail; and

(C) Insurance of individuals by means of an all-risk type of policy commonly known as the "Personal Property Floater" against any kind and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise.

(8) "Glass insurance," means insurance against loss of or damage to glass and its appurtenances resulting from any cause.

(9) "Boiler and machinery insurance," means insurance against loss of or damage to any property of the insured, resulting from explosion of or injury to:

(A) any boiler, heater or other fired pressure vessel;

(B) any unfired pressure vessel;

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(C) pipes or containers connected with any such boilers or vessels;

(D) any engine, turbine, compressor, pump or wheel;

(E) any apparatus generating, transmitting or using electricity:  
or

(F) any other machinery or apparatus connected with or operated by any such boilers, vessels or machines; and including the incidental power to make inspections of, and issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise.

(10) "Elevator insurance," means insurance against loss of or damage to any property of the insured, resulting from ownership, maintenance or use of elevators, except loss or damage by fire.

(11) "Animal insurance," means insurance against loss of or damage to any domesticated or wild animal resulting from any cause.

(12) "Collision insurance," means insurance against loss of or damage to any property of the insured resulting from collision of any other object with such property, but excluding collision to or by elevators, or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation.

(13) "Personal injury liability insurance," means insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability (including the insurer's obligation to pay medical, hospital, surgical and disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries or personal representatives of persons who are killed, irrespective of legal liability of the insured), arising out of death or injury of any person, or arising out of injury to the economic interests of any person, as the result of negligence in rendering expert, fiduciary or professional service, but excluding any kind of insurance specified in paragraph fifteen except insurance to protect an insured against liability for indemnification or contribution to a third party held responsible for injury to the insured's employee arising out of and in the course of employment when such insurance is written pursuant to this paragraph and not written pursuant to paragraph fifteen of this subsection hereof.

(14) "Property damage liability insurance," means insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, arising out of the loss or destruction of, or damage to, the property of any other person,

but not including any kind of insurance specified in paragraph thirteen or fifteen hereof.

(15) "Workers' compensation and employers' liability insurance," means insurance against the legal liability, under common law or statute or assumed by contract, of any employer for the death or disablement of, or injury to, his employee, including volunteer firemen's benefit insurance provided pursuant to the volunteer firemen's benefit law.

(16) "Fidelity and surety insurance," means:

(A) Guaranteeing the fidelity of persons holding positions of public or private trust;

(B) Becoming surety on, or guaranteeing performance of, any lawful contract, except (i) mortgage guaranty insurance, which may only be written by an insurer authorized to write such insurance pursuant to article sixty-five of this chapter, or (ii) any insurance contract except as authorized pursuant to section one thousand one hundred fourteen of this article;

(C) Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts; and

(D) Indemnifying banks, bankers, brokers, financial or monied corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, including any loss while being transported in armored motor vehicles, or by messenger, but excluding any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

(17) "Credit insurance," means indemnifying merchants or other persons extending credit against loss or damage resulting from non-payment of debts owed to them, including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to such insurer or to any person so insured by him; or indemnifying any person for expenses disbursed or to be disbursed under a contract in connection with the cancellation of a catered

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affair; or indemnifying any person for tuition expenses disbursed or to be disbursed under a contract in connection with his dismissal or withdrawal from an educational institution; or indemnifying elementary or secondary schools, whether public, private, profit or non-profit, providing education in consideration of a tuition charge or fee against loss or damage in the event of non-payment of the tuition charges or fees of a student or pupil dismissed, withdrawn or leaving before the end of the school year for which the insurance is written. An educational institution may not require any person responsible for the payment of a student's or pupil's tuition charge or fee to pay for tuition refund insurance.

(18) "Title insurance," means insuring owners of, and other persons lawfully interested in, real property and chattels real against loss by reason of defective titles and encumbrances and insuring the correctness of searches for all instruments, liens or charges affecting the title to such property, including power to procure and furnish information relative thereto, and such other incidental powers as are specifically granted in this chapter.

(19) "Motor vehicle and aircraft physical damage insurance," means insurance against loss of or damage to motor vehicles or aircraft and their equipment resulting from any cause.

(20) "Marine and inland ~~marine~~ insurance," means insurance against any and all kinds of loss of or damage to:

(A) Vessels, hulls, craft, aircraft, cars, automobiles, trailers and vehicles of every kind, and all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks;

(B) Person or property in connection with or appertaining to marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of

bodily injury to the person arising out of ownership, maintenance or use of automobiles);

(C) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise; and

(D) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their improvements and betterments, furniture and furnishings, fixed contents and supplies held in storage), including auxiliary facilities and equipment attendant thereto; piers, wharves, docks and slips; other aids to navigation and transportation, including dry docks and marine railways.

In this chapter "inland marine" insurance shall not include insurance of vessels, crafts, their cargoes, marine builders' risks, or other similar risks, commonly insured only under ocean marine insurance policies.

(21) "Marine protection and indemnity insurance," means insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(22) "Residual value insurance" meaning insurance issued in connection with a lease or contract which sets forth a specific termination value at the end of the term of the lease or contract for the property covered by such lease or contract, and which insures against loss of economic value of tangible personal property or real property or improvements thereto except loss due to physical damage to property.

(23) "Mortgage guaranty insurance," means the kind of insurance specified in section six thousand five hundred one of this chapter.

(24) "Substantially similar kind of insurance," means such insurance which in the opinion of the superintendent is determined to be substantially similar to one of the foregoing kinds of insurance and thereupon for the purposes of this chapter shall be deemed to be included in that kind of insurance.

(b) Nothing herein contained shall require any insurer to insure every kind of risk which it is authorized to insure.

<sup>1</sup> So in original.



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*[See main volume for text of (a)(1)]*

(2) "Annuities," means all agreements to make periodical payments for a period certain or where the making or continuance of all or some of a series of such payments, or the amount of any such payment, depends upon the continuance of human life, except payments made under the authority of paragraph one hereof. Amounts paid the insurer to provide annuities and proceeds applied under optional modes of settlement or under dividend options may be allocated by the insurer to one or more separate accounts pursuant to section four thousand two hundred forty of this chapter.

*[See main volume for text of (3) and (4)]*

(5) "Miscellaneous property insurance," means loss of or damage to property resulting from:

*[See main volume for text of (A) to (D)]*

(E) lateral or vertical subsidence of the earth caused by past or present mining operations.

*[See main volume for text of (6) to (12)]*

(13) "Personal injury liability insurance," means insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability (including the insurer's obligation to pay medical, hospital, surgical and disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries or personal representatives of persons who are killed, irrespective of legal liability of the insured), arising out of death or injury of any person, or arising out of injury to the economic interests of any person, as the result of negligence in rendering expert, fiduciary or professional service, but excluding any kind of insurance specified in paragraph fifteen except insurance to protect an insured against liability for indemnification or contribution to a third party held responsible for injury to the insured's employee arising out of and in the course of employment when such insurance is written pursuant to this paragraph and not written pursuant to paragraph fifteen of this subsection.

*[See main volume for text of (14)]*

(15) "Workers' compensation and employers' liability insurance," means insurance against the legal liability, under common law or statute or assumed by contract, of any employer for the death or disablement of, or injury to, his employee, including volunteer firefighters' benefit insurance provided pursuant to the volunteer firefighters' benefit law and including volunteer ambulance workers' benefit insurance provided pursuant to the volunteer ambulance workers' benefit law.

(16) "Fidelity and surety insurance," means:

(A) Guaranteeing the fidelity of persons holding positions of public or private trust; and indemnifying banks, thrifts, brokers and other financial institutions against loss of money, securities, negotiable instruments, other specified valuable papers and tangible items of personal property caused by larceny, misplacement, destruction or other stated perils including loss while being transported in an armored motor vehicle or by messenger; and insurance for loss caused by the forgery of signatures on, or alteration of, specified documents and valuable papers;

(B) Insurance against losses that financial institutions become legally obligated to pay by reason of loss of customers' property from safe deposit boxes;

(C) Any contract bond; including a bid, payment or maintenance bond or a performance bond where the bond is guaranteeing the execution of any contract other than a contract of indebtedness or other monetary obligation;

(D) An indemnity bond for the benefit of a public body, railroad or charitable organization; a lost security or utility payment bond;

(E) Becoming surety on, or guaranteeing the performance of, any lawful contract, not specifically provided for in this paragraph, except (i) mortgage guaranty insurance, which may only be written by an insurer authorized to write such insurance pursuant to article sixty-five of this chapter, (ii) contract that falls within the definition of financial guaranty insurance

set forth in paragraph one of subsection (a) of section six thousand nine hundred one of this chapter, or (iii) any insurance contract unless such guaranty is authorized pursuant to subsection (c) of section one thousand one hundred fourteen of this article; and

(F) Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts.

In this chapter "fidelity" insurance shall have the meaning set forth in subparagraphs (A) and (B) of this paragraph.

(17) "Credit insurance," means:

(A) Indemnifying merchants or other persons extending credit against loss or damage resulting from non-payment of debts owed to them, for goods and services provided in the normal course of their business, including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to such insurer or to the insured, but no insurance may be written as credit insurance if it falls within the definition of financial guaranty insurance as set forth in paragraph one of subsection (a) of section six thousand nine hundred one of this chapter;

(B) Indemnifying any person for expenses disbursed or to be disbursed under a contract in connection with the cancellation of a catered affair; or

(C) Indemnifying any person for tuition expenses disbursed or to be disbursed under a contract in connection with his dismissal or withdrawal from an educational institution; or indemnifying elementary or secondary schools, whether public, private, profit or non-profit, providing education in consideration of a tuition charge or fee against loss or damage in the event of non-payment of the tuition charges or fees of a student or pupil dismissed, withdrawn or leaving before the end of the school year for which the insurance is written. An educational institution may not require any person responsible for the payment of a student's or pupil's tuition charge or fee to pay for tuition refund insurance.

*[See main volume for text of (18)]*

(19) "Motor vehicle and aircraft physical damage insurance," means insurance against loss of or damage to motor vehicles or aircraft and their equipment resulting from any cause; and insurance reimbursing a driver for costs including replacement car rental, commercial transportation and accommodations resulting from an automobile accident or mechanical breakdown occurring fifty miles or more from the driver's principal place of residence or garaging.

*[See main volume for text of (20) and (21)]*

(22) "Residual value insurance" means insurance issued in connection with a lease or contract which sets forth a specific termination value at the end of the term of the lease or contract for the property covered by such lease or contract, and which insures against loss of economic value of tangible personal property or real property or improvements thereto except loss due to physical damage to property, excluding any lease or contract that falls within the definition of financial guaranty insurance as set forth in paragraph one of subsection (a) of section six thousand nine hundred one of this chapter.

*[See main volume for text of (23)]*

(24) "Credit unemployment insurance" means insurance on a debtor in connection with a specified loan or other credit transaction within the state to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed.

(25)<sup>1</sup> "Financial guaranty insurance," means the kind of insurance defined in paragraph one of subsection (a) of section six thousand nine hundred one of this chapter.

(30) "Substantially similar kind of insurance," means such insurance which in the opinion of the superintendent is determined to be substantially similar to one of the foregoing kinds of insurance and thereupon for the purposes of this chapter shall be deemed to be included in that kind of insurance.

*[See main volume for text of (b)]*

§ 1114. Reinsurance business

(a) Any domestic stock or mutual insurance corporation or reciprocal insurer may reinsure only the kinds of insurance business which it is licensed to do in this state or which it is otherwise authorized to reinsure by the terms of its license. Any such corporation may confine its business to reinsurance.

(b) Any foreign or alien stock or mutual insurance corporation or reciprocal insurer may engage in this state in reinsurance of the kinds of insurance which it is licensed to do in this state. Any such corporation may confine its business to reinsurance.

(c) An insurer authorized by any provision of this chapter to engage in fidelity and surety insurance or reinsurance business may also guarantee performance of a contract insuring against physical damage to property in favor of mortgagees or other loss payees named in such contract, provided:

(1) It is authorized to engage in the kinds of insurance included in such contract;

(2) It has assumed reinsurance on the guaranteed contract in whole or in part;

(3) It is charged with such amount as part of its unearned premium reserve as may be prescribed by regulation of the superintendent not exceeding the amount it would be required to maintain in accordance with the provisions of this chapter if it were the direct insurer of the guaranteed risks; and

(4) If the property is located in this state, the ceding insurer is licensed to engage in the kinds of insurance included in such contracts.

(d) An insurer authorized by any provision of this chapter to do business of the kinds referred to in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this article may also reinsure, by itself, or together with other insurance companies subject to any regulations of the superintendent, any

risk referred to in such subsection arising from, related to, or incident to the manufacture, ownership or operation of aircraft.

**§ 2102. Acting without a license**

(a)(1) No person, firm, association or corporation shall act as an insurance agent, insurance broker, reinsurance intermediary or insurance adjuster in this state without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter.

(2) Any person, firm, association or corporation who or which acts as a reinsurance intermediary in violation of paragraph one hereof shall, in addition to other penalties prescribed by law, be subject to a penalty not to exceed five thousand dollars for each transaction.

(b)(1) Unless licensed as an insurance agent, insurance broker or insurance consultant, no person, firm, association or corporation shall in this state identify or hold himself or itself out to be an insurance advisor, insurance consultant or insurance counselor.

(2) No person, firm, association or corporation shall use any other designation or title which is likely to mislead the public or shall hold himself or itself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified.

(3) Unless licensed as an insurance agent, insurance broker or insurance consultant with respect to the relevant kinds of insurance, no person, firm, association or corporation shall receive any money, fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, annuity or pension contract, plan or program or shall make recommendations or give advice with regard to any of the above.

(4) This subsection shall not apply to:

(A) licensed attorneys at law of this state acting in their professional capacity as such;

(B) actuaries or certified public accountants who provide information, recommendations, advice or services in their professional capacity, if neither they nor their employer receive any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from such information, recommendation, advice or services; or

(C) regular salaried officers or employees of an insurer who devote substantially all of their services to activities other than the rendering of consulting services to the insuring public while acting in their capacity as such in discharging the duties of their employment.

(c) Unless licensed as a reinsurance intermediary, no person, firm, association or corporation shall in this state act as a reinsurance intermediary or use any other designation or title which is likely to mislead the public or hold himself or itself out in any manner as a reinsurance intermediary.

(d) Notwithstanding the foregoing, any membership corporation or voluntary association organized and operating in this state prior

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to January first, nineteen hundred thirty-nine may, as part of its operations, continue as theretofore to obtain for its members, from a property/casualty insurance company licensed to do business in this state and having a certificate of qualification from the superintendent, the surety bonds or insurance policies required to be filed by such members pursuant to section three hundred seventy of the vehicle and traffic law and may, without being licensed as an insurance broker, receive compensation from such members or from such insurer for such services.

**§ 2103. Insurance agents; licensing**

(a) [Eff. until July 1, 1985.] The superintendent may issue a license to any person, firm or corporation who or which has complied with the requirements of this chapter, authorizing such licensee to act as an insurance agent with respect to life insurance, including for this purpose annuity contracts and supplemental contracts of non-cancellable disability insurance, or with respect to accident and health insurance, or with respect to both, as specified in such license, on behalf of any insurer or fraternal benefit society, named in such license, which is authorized to do such kind or kinds of insurance business in this state.

(a) [Eff. July 1, 1985.] The superintendent may issue a license to any person, firm or corporation who or which has complied with the requirements of this chapter, authorizing such licensee to act as an insurance agent with respect to life insurance, including for this purpose annuity contracts and supplemental contracts of non-cancellable disability insurance, or with respect to accident and health insurance, or with respect to both, as specified in such license, on behalf of any insurer or fraternal benefit society, which is authorized to do such kind or kinds of insurance business in this state.

(b) [Eff. until July 1, 1985.] The superintendent may issue a license to any person, firm, association or corporation who or which has complied with the requirements of this chapter, authorizing the licensee to act as agent of any authorized insurer, named in such license, other than an insurer specified in subsection (b) of section two thousand one hundred fifteen of this article, with reference to

any kind or kinds of insurance business, as specified in the application for such license, which such insurer is authorized to do in this state.

(b) [Eff. July 1, 1985.] The superintendent may issue a license to any person, firm, association or corporation who or which has complied with the requirements of this chapter, authorizing the licensee to act as agent of any authorized insurer, other than an insurer specified in subsection (b) of section two thousand one hundred fifteen of this article, with reference to any kind or kinds of insurance business, as specified in the application for such license, which such insurer is authorized to do in this state.

(c) Any such license issued to a firm or association shall authorize only the members thereof, named in such license as sub-licensees, to act individually as agents thereunder, and any such license issued to a corporation shall authorize only the officers and directors thereof, named in such license as sub-licensees, to act individually as agents thereunder. Every sub-licensee, acting as insurance agent pursuant to such a license shall be authorized so to act only in the name of the licensee.

(d) Every individual applicant for a license under this section and every proposed sub-licensee shall be eighteen years of age or over at the time of the issuance of such license.

(e) [Eff. until July 1, 1985.] Before any insurance agent's license shall be issued there shall be on file in the office of the superintendent the following documents:

(1) a written application by the prospective licensee in such form or forms and supplements, and containing information the superintendent prescribes; and

(2) a certificate by the insurer or fraternal benefit society which is to be named in such license, stating that it has satisfied itself that the named applicant, and each sub-licensee to be named in such license, is trustworthy and competent to act as such an insurance agent and that the insurer or society will appoint such applicant to act as its agent in reference to the doing of such kind or kinds of insurance business as is specified in the written application, if the license applied for is issued by the superintendent. Such certificate shall be subscribed by an officer or managing agent of such insurer or society and affirmed by him as true under the penalties of perjury.

(e) [Eff. July 1, 1985.] Before any original insurance agent's license is issued there shall be on file in the office of the superintendent the following documents:

(1) a written application by the prospective licensee in such form or forms and supplements, and containing information the superintendent prescribes; and

(2) a certificate of appointment by the insurer or fraternal benefit society stating that it has satisfied itself that the named applicant, and each sub-licensee, is trustworthy and competent to act as such an insurance agent and that the insurer or society will appoint such applicant to act as its agent in reference to the doing of such kind or kinds of insurance business as is specified in the written application, if the license applied for is issued by the superintendent. Such certificate shall be subscribed by an officer or managing agent of such insurer or society and affirmed by him as true under the penalties of perjury.

(f)(1) The superintendent shall, in order to determine the competency of every individual applicant and of every proposed sub-licensee to have the kind of license applied for, require such individual to submit to a personal written examination and to pass the same to the satisfaction of the superintendent. Such examination shall be held at such times and places as the superintendent shall from time to time determine. Every individual applying to take any written examination shall, at the time of applying therefor, pay to the superintendent, or, at the discretion of the superintendent, directly to any organization that is under contract to provide examination services, an examination fee of an amount which is the actual documented administrative cost of conducting said qualifying examination as certified by the superintendent from time to time. An examination fee represents an administrative expense and is not refundable. The superintendent may accept, in lieu of any such examination, the result of any previous written examination, given by the superintendent, which in his judgment is equivalent to the examination for which it is substituted.

(2) The superintendent may from time to time make reasonable classifications of the kinds of insurance and may prescribe the following types of examinations:

(A) For individuals seeking to qualify to obtain a license under subsection (a) hereof, one examination adapted to test the qualifications for a life insurance agent's license, and the other adapted to test the qualifications for an accident and health insurance agent's license. Each such individual shall be required to pass the type or

types of examination prescribed by the superintendent for the kind or kinds of insurance, as specified in subsection (a) hereof, for which the license is sought. No individual shall be deemed qualified to take the examination or examinations unless he shall have successfully completed a course or courses, approved as to method and content by the superintendent, covering the principal branches and contracts of life insurance, annuity contracts, disability insurance, accident and health insurance and related insurance and requiring not less than forty hours of classroom work or the equivalent in correspondence work or similar instruction, provided, however, that, at the discretion of the superintendent, insurance subject material may be eliminated from course content, with a corresponding reduction in course hours, if an insurer is not authorized to transact such kind or kinds of insurance in this state. Such course or courses either shall have been given by a degree conferring college or university which has, when such course is taken by such individual, a curriculum or curricula registered with the state education department, whether such course be given as part of any such curricula or separately, or by any other institution or life or accident and health insurer which maintains equivalent standards of instruction, and which shall have been approved for such purpose by the superintendent.



(B) For individuals seeking to qualify to obtain a license under subsection (b) hereof, not more than five types of examinations, each adapted to test the qualifications of an individual with respect to the kinds of insurance business specified in such classification. Every such individual shall be required to pass the type or types of examination prescribed by the superintendent for the kind or kinds of insurance for which the license is sought. No individual shall be deemed qualified to take the examination unless he shall have successfully completed a course or courses, approved as to method and content by the superintendent, covering the principal branches of the insurance business and requiring not less than ninety hours of classroom work, in institutions of learning meeting the standards prescribed by paragraph one of subsection (a) of section two thousand one hundred four of this article.

(g) No such written examination shall be required:

(1) as a prerequisite to the issuance of a baggage or accident and health insurance agent's license to any ticket selling agent or representative of a railroad company, steamship company, carrier by air, or public bus carrier, who shall act thereunder as insurance agent only in reference to the issuance of baggage or accident

insurance tickets primarily for the purpose of covering risk of travel;

(2) in the discretion of the superintendent, of any individual whose license has been revoked or suspended;

(3) of any individual seeking to be named as a licensee or sub-licensee, under subsection (a) hereof, to represent a fraternal benefit society as its agent;

(4) [Eff. until July 1, 1985.] in connection with any application for an additional license to represent additional insurers, as specified in subsection (1) hereof, if no additional kind of insurance is to be included in the additional license;

(4) [Eff. July 1, 1985.] in connection with any certificate of appointment for an additional insurer, provided the certificate of appointment does not include any additional kind of insurance;

(5) in the discretion of the superintendent, of any individual seeking to be named as a licensee or sub-licensee who is a non-resident insurance agent;

(6) of any individual seeking to be named as a licensee to represent an advance premium co-operative fire insurance company which confines its direct insurance business to one county in this state;

(7) of any person, who, for a period of at least one year, has been a director of or has been regularly employed as an agent of an assessment corporation, subject to the provisions of article sixty-six of this chapter and, upon conversion of such corporation into a mutual fire insurance company, who applies, within six months after conversion, for a license to continue acting as an agent for such converted company;

(8) of any applicant who has passed the written examination given by the superintendent for an insurance agent's license and was licensed as such or of an applicant who was licensed as an insurance agent but did not pass such an examination, provided the applicant applies within two years following the date of termination of his license;

(9) of any person who was appointed prior to the first day of July, nineteen hundred fifty-seven, to represent any domestic assessment cooperative fire insurance corporation which shall be licensed to do the business permitted under subsection (d) of section six thousand six hundred five of this chapter, provided such person within three months after that date files with the superintendent an application for a license in such form as the superintendent shall prescribe; or

(10) in the discretion of the superintendent, as to all or any part of the written examination or the prerequisite minimum forty hour course specified in subparagraph (A) of paragraph two of subsection (f) of this section, of any individual seeking to be named a licensee or sub-licensee, upon whom has been conferred the Chartered Life Underwriter (C.L.U.) or Chartered Life Underwriter Associate designation by The American College.

(11) in the discretion of the superintendent, as to all or any part of the written examination or the prerequisite minimum ninety hour course specified in subparagraph (B) of paragraph two of subsection (f) of this section, of any individual seeking to be named a licensee or sublicensee, upon whom has been conferred the Chartered Property Casualty Underwriter (C.P.C.U.) designation by the American Institute for Property and Liability Underwriters.

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(h) The superintendent may refuse to issue any insurance agent's license if, in his judgment, the proposed licensee or any sub-licensee is not trustworthy and competent to act as such agent, or has given cause for the revocation or suspension of such a license, or has failed to comply with any prerequisite for the issuance of such license.

(i)(1) The superintendent may require from every applicant and from every proposed sub-licensee, before or after issuing any such license, a statement subscribed and affirmed as true by the applicant under the penalties of perjury as to the ownership of any interest in an applicant firm, association or corporation and as to facts indicating whether any applicant has been by reason of an existing license, if any, or will be by reason of the license applied for, receiving any benefit or advantage in violation of section two thousand three hundred twenty-four of this chapter, and also as to such facts as he may deem pertinent to the requirements of this subsection. The superintendent may refuse to issue, suspend or revoke a license, as the case may be, to or of any applicant if he finds that such applicant has been or will be, as aforesaid, receiving any benefit or advantage in violation of section two thousand three hundred twenty-four of this chapter, or if he finds that more than ten percent of the aggregate net commissions, received during the twelve month period immediately preceding, if any, or to be received during the ensuing twelve months, by the applicant, resulted or will result from insurance on the property and risks:

(A) of the spouse of an individual applicant; and of any corporation of which such individual applicant or his or her spouse or both own more than fifty percent of the shares; and of any affiliated or subsidiary corporations of such corporation; and of the members of any firm or association and their spouses, of which firm or association the individual applicant or his or her spouse is a member;

(B) of the members of an applicant firm or association and their respective spouses, and of the owners of any interest in such firm or association and their respective spouses, and of any corporation of which such firm or association or the members or owners and their respective spouses, either individually or in the aggregate, own more than fifty percent of the shares, and of any affiliated or subsidiary corporations of such corporation, and of any other firm and the members thereof and their respective spouses, of which other firm a member or members of the applicant firm or association and their respective spouses are members or owners; and

(C) of the shareholders of an applicant corporation and their respective spouses, and of any affiliated and subsidiary corporations of such applicant corporation, and of any subsidiary and affiliated corporations of a corporation owning any interest in such applicant corporation, and of any firm or association and the members thereof and their respective spouses which either individually or collectively own more than fifty percent of the shares of the applicant corporation, and of any corporation of which such firm or association and its members and their respective spouses, either individually or in the aggregate, own more than fifty percent of the shares, and of any affiliated or subsidiary corporation of such corporation.

(2) Nothing herein disqualifies any applicant by reason of acts done or facts existing at a time when the same did not, under the law then in force, constitute or contribute to constituting such a disqualification.

(3) The word "applicant" in this subsection, includes a licensee or sub-licensee.

(j) [Eff. until July 1, 1985.] Any license issued to an insurance agent shall remain in effect during the time for which the insurer or fraternal benefit society appointing such agent is licensed to do an insurance business in this state, unless sooner terminated by the insurer or fraternal benefit society pursuant to the provisions of section two thousand one hundred twelve of this article or sooner revoked or suspended by the superintendent pursuant to the provisions of section two thousand one hundred ten of this article.

(j) [Eff. July 1, 1985.] (1) Any license currently in force issued to an insurance agent of any insurer or fraternal benefit society pursuant to this article shall be deemed terminated as of June thirtieth, nineteen hundred eighty-five. Any license currently in force issued to an insurance agent of any insurer pursuant to this article without an expiration date shall be deemed terminated as of June thirtieth, nineteen hundred eighty-six.

(2) On and after July first, nineteen hundred eighty-five all licenses issued pursuant to this article shall be for a term of two years expiring on June thirtieth of odd numbered years. On and after July first, nineteen hundred eighty-six, all licenses issued pursuant to this article shall be for a term of two years expiring on June thirtieth of even numbered years.

(3) Such licenses may be issued for all of such two year terms, or, upon application made during any such term, for the balance thereof.

(4) Any license shall be considered in good standing within the license term unless:

(A) revoked or suspended by the superintendent pursuant to this article.

(B) all certificates of appointment have been terminated by the insurers, at which time the license becomes inactive.

(C) if at the expiration date of the license term, provided the license was in good standing during the term, the licensee fails to file a renewal application.

(5) Before the renewal of any insurance agent's license shall be issued, the following requirements shall have been met:

(A) The licensee shall have filed a completed renewal application in such form or forms and supplements thereto and containing such information as the superintendent may prescribe.

(B) The licensee shall have paid such fees as are prescribed in this section.

(6) If the agent's license is deemed to be in an inactive status at the time of renewal, a renewal application may be completed and filed with the superintendent for the ensuing term of a license; however, if a certificate of appointment is not filed on the agent's behalf within the term of the renewal, the license will expire and will not be renewed at the end of the license term. During the term of the license for which no certificate of appointment was on file, it shall be deemed to be inactive.

(7) If an application for a renewal license shall have been filed with the superintendent before July first of the year of expiration, the license sought to be renewed shall continue in full force and effect either until the issuance by the superintendent of the renewal license applied for or until five days after the superintendent shall have refused to issue such renewal license and shall have given notice of such refusal to the applicant and to each proposed sub-licensee. Before refusing to renew any such license, except on the ground of failure to pass a written examination, the superintendent shall notify the applicant of his intention to do so and shall give such applicant a hearing.

(8) The superintendent may in issuing a renewal license dispense with the requirements of a verified application by any individual licensee or sub-licensee who, by reason of being engaged in any war service for the United States, is unable to make personal application for such renewal license, upon the filing of an application on behalf of such individual, in such form as the superintendent shall prescribe, by some person or persons who in his judgment have knowledge of the facts and who make affidavit showing such war service and the inability of such insurance agent to make personal application.

(9) In addition to any examination fee required by subsection (f) of this section, there shall be paid to the superintendent for each individual license applicant and each proposed sub-licensee the sum of twenty dollars for each year or fraction of a year in which a license shall be valid. If, however, the license applicant or a proposed sub-licensee should withdraw the application or the superintendent should deny the application before the license applied for is issued, the superintendent may refund the fee paid by the applicant for the license applied for with the exception of any examination fees required pursuant to subsection (f) of this section.

(10) An application for the renewal of a license filed with the superintendent after May first of the year in which the license expires shall be subject to a further fee for late filing of five dollars.

(11) No license fee shall be required of any person who served as a member of the armed forces of the United States at any time and who shall have been discharged therefrom, under conditions other than dishonorable, in a current licensing period, for the duration of such period.

(12) Except where a corporation, association or firm licensed as an insurance agent is applying to add a sub-licensee, or the date of the expiration of the license is changed, there shall be no fee required for the issuance of an amended license.

(k) [Eff. until July 1, 1985.] If the superintendent deems it necessary he may require any licensed insurance agent of any insurer or fraternal benefit society to submit a new application at any time.

(k) [Eff. July 1, 1985.] If the superintendent deems it necessary he may require any licensed agent of any insurer or fraternal benefit society to submit a new application at any time.

(l) Any licensee may at any time while such license is in force apply to the superintendent for an additional license authorizing such licensee, and the sub-licensees named in such existing license, to act as insurance agents for additional insurers. The superintendent may, after the requirements of this chapter have been complied with, issue such additional license.

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(m) [Eff. until July 1, 1985.] An agent licensed for an insurer authorized to transact business in this state may transact business for any subsidiaries or affiliates of said insurer that are licensed in this state for the same line or lines of insurance without securing additional licenses, provided a certified copy of a resolution adopted by the board of directors of each of the insurers requesting such authority is filed with the superintendent by each of the insurers and renewed and refiled whenever deemed necessary by the superintendent. The resolution shall also designate the primary insurer for which all of the company's agents must be licensed pursuant to subsection (a) or (b) of this section, and said license must be in full force and effect in order to transact business for any of the affiliated or subsidiary insurers.

(m) [Eff. July 1, 1985.] An agent appointed for an insurer authorized to transact business in this state may transact business for any subsidiaries or affiliates of said insurer that are licensed in this state for the same line or lines of insurance without such insurers submitting additional appointments, provided a certified copy of a resolution adopted by the board of directors of each of the insurers requesting such authority is filed with the superintendent by each of the insurers and renewed and refiled whenever deemed necessary by the superintendent. The resolution shall also designate the primary insurer for which all of the company's agents must be appointed pursuant to subsection (a) or (b) of this section, and said appointment must be in full force and effect in order to transact business for any of the affiliated or subsidiary insurers.

(n) Any insurance agent licensed pursuant to subsection (b) of this section is hereby authorized while so licensed, to act in the solicitation of, negotiation for or procurement or making of an insurance contract providing solely for disability benefits written to meet minimum requirements of article nine of the workers' compensation law.

## § 2103. Insurance agents; licensing

*[See main volume for text of (a) to (f)]*

(g) No such written examination shall be required:

*[See main volume for text of (1) to (5)]*

(6) of any person who received a license effective the first day of July, nineteen hundred eighty-seven to represent any assessment corporation which was limited on that date to the kinds of insurance specified in subsection (a) of section six thousand six hundred five of this chapter, and whose license is limited to those kinds of insurance, in connection with any certificate of appointment to represent another such assessment corporation, provided the certificate of appointment does not include any additional kind of insurance.

(7) of any applicant who has passed the written examination given by the superintendent for an insurance agent's license and was licensed as such or of an applicant who was licensed as an insurance agent but did not pass such an examination, provided the applicant applies within two years following the date of termination of his license;

(8) of any person who was appointed prior to the first day of July, nineteen hundred fifty-seven, to represent any domestic assessment co-operative property/casualty insurance company which shall be licensed to do the business permitted under subsection (b) of section six thousand six hundred five of this chapter, provided such person within three months after that date files with the superintendent an application for a license in such form as the superintendent shall prescribe; or

(9) in the discretion of the superintendent, as to all or any part of the written examination or the prerequisite minimum forty hour course specified in subparagraph (A) of paragraph two of subsection (f) of this section, of any individual seeking to be named a licensee or sub-licensee, upon whom has been conferred the Chartered Life Underwriter (C.L.U.) or Chartered Life Underwriter Associate designation by The American College.

(10) in the discretion of the superintendent, as to all or any part of the written examination or the prerequisite minimum ninety hour course specified in subparagraph (B) of paragraph two of subsection (f) of this section, of any individual seeking to be named a licensee or sublicensee, upon whom has been conferred the Chartered Property Casualty Underwriter (C.P.C.U.) designation by the American Institute for Property and Liability Underwriters.

*[(11) Renumbered (10).]*

*[See main volume for text of (h) and (i)]*

(j)(1) Any license currently in force issued to an insurance agent of any insurer or fraternal benefit society pursuant to subsection (a) of section two thousand one hundred three shall be deemed terminated as of June thirtieth, nineteen hundred eighty-five. Any license currently in force issued to an insurance agent of any insurer pursuant to subsection (b) of section two thousand one hundred three without an expiration date shall be deemed terminated as of June thirtieth, nineteen hundred eighty-six.

(2) On and after July first, nineteen hundred eighty-five all licenses issued pursuant to subsection (a) of section two thousand one hundred three shall be for a term of two years expiring on June thirtieth of odd numbered years. On and after July first, nineteen hundred eighty-six, all licenses issued pursuant to subsection (b) of section two thousand one hundred three shall be for a term of two years expiring on June thirtieth of even numbered years.

*[See main volume for text of (3) to (12); (k) to (n)]*



**§ 2104. Insurance brokers; licensing**

(a)(1) The superintendent may issue an insurance broker's license to any individual, firm, association or corporation, hereinafter designated as "licensee," who or which is deemed by him trustworthy and competent to act as a broker in such manner as to safeguard the interests of the insured, and who or which is otherwise qualified as herein required, and who or which has complied with the prerequisites herein prescribed.

(2) The purpose of this section is to protect the public by requiring and maintaining professional standards of conduct on the part of all insurance brokers acting as such within this state.

(b)(1) Such license shall confer upon the licensee authority to act in this state as insurance broker, and upon every natural person named as sub-licensee in such license authority to act in this state as insurance broker in the name of and on behalf of such licensee, with respect to any and every kind of insurance, except life insurance and annuities.

(2) A license issued to a corporation may name as sub-licensees only the officers and directors of such corporation, and a license issued to a firm or association may name as sub-licensees only the individual members of such firm or association. Each sub-licensee named in such license must be qualified to obtain a license as an

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insurance broker, and for each such sub-licensee a fee must be paid at the times and at the rates hereinafter specified.

(c)(1) Every individual applicant for such license and every proposed sub-licensee shall be of the age of twenty-one years or over at the time of the issuance of such license. No individual shall be deemed qualified to obtain such license or to be named as sub-licensee therein unless he shall comply with the requirements of subparagraph (A), (B) or (C) following:

(A) He shall have successfully completed a course or courses, approved as to method and content by the superintendent, covering the principal branches of the insurance business and requiring not less than ninety hours of classroom work or the equivalent thereof in correspondence work. Such course or courses either were given by a degree conferring college or university which has, when such course is taken by such individual, a curriculum or curricula registered with the state education department, whether such course be given as a part of any such curriculum or separately, or were given by the The<sup>1</sup> College of Insurance, or by any other institution which maintains equivalent standards of instruction, which has been continuously in existence for not less than five years prior to the taking of such course by such individual, and which shall have been approved for such purpose by the superintendent.

(B) He shall have been regularly employed by an insurance company or an insurance agent or an insurance broker, for a period or periods aggregating not less than one year during the three years next preceding the date of application, in responsible insurance duties relating to the underwriting or adjusting of losses in any one or more of the following branches of insurance: fire, marine, liability and workers' compensation, and fidelity and surety; and he shall submit with his application a statement subscribed and affirmed as true under the penalties of perjury by such employer or employers stating facts which show compliance with this requirement.

(C) He shall have been regularly employed by an insurance company or an insurance agent or an insurance broker, for a period or periods aggregating not less than one year, during the three years next preceding the date of entrance into the service of the armed forces of the United States or immediately following his discharge therefrom, in responsible insurance duties relating to the underwriting or adjusting of losses in any one or more of the following branches of insurance: fire, marine, liability and workers' compensation, and fidelity and surety; provided the application for

such license is filed within one year from the date of discharge; and he shall submit with his application a statement subscribed and affirmed as true under the penalties of perjury by such employer or employers stating facts which show compliance with this requirement.

(2) The requirements of subparagraphs (A), (B) and (C) of paragraph one hereof shall not apply to any non-resident insurance broker.

(d)(1) Before any such license shall be issued by the superintendent and before each renewal, there shall be filed in his office a written application therefor by the proposed licensee and by each proposed sub-licensee. Such application shall be in the form or forms and supplements prescribed by the superintendent and contain such information as he shall require. In connection with any such application the superintendent shall have power to examine under oath any person who has or appears to have relevant information, and to make an examination of the books, records and affairs of any such applicant.

(2) The superintendent may require from every applicant and from every proposed sub-licensee, before issuing any such license or renewal license, a statement subscribed and affirmed by the applicant and proposed sub-licensee as true under the penalties of perjury as to the ownership of any interest in an applicant firm, association or corporation and as to facts indicating whether any applicant has been by reason of an existing license, if any, or will be by reason of the license applied for, receiving any benefit or advantage in violation of section two thousand three hundred twenty-four of this chapter, and also as to such facts as he may deem pertinent to the requirements of this subsection.

(3) The superintendent may refuse to issue a license or renewal license, as the case may be, to any applicant if he finds that such applicant has been or will be, as aforesaid, receiving any benefit or advantage in violation of section two thousand three hundred twenty-four of this chapter, or if he finds that more than ten percent of the aggregate net commissions, received during the term of the existing license, if any, or to be received during the term of the license applied for, by the applicant, resulted or will result from insurance on the property and risks set forth in subparagraphs (A), (B) and (C) of paragraph one of subsection (i) of section two thousand one hundred three of this article.

(4) Nothing herein shall be deemed to disqualify any applicant by reason of acts done or facts existing at a time when the same did

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not, under the law then in force, constitute or contribute to constituting such a disqualification.

(e)(1) The superintendent shall, in order to determine the competency of each applicant for an insurance broker's license, other than a renewal license, and of each proposed sub-licensee, to act as insurance broker, require every such person to submit to, and pass to the satisfaction of the superintendent, a personal written examination on the principal branches of the insurance business. Such examination shall be held at such times and places as the superintendent shall from time to time determine.

(2) Every individual applying to take any written examination shall, at the time of applying therefor, pay to the superintendent, or, at the discretion of the superintendent, directly to any organization that is under contract to provide examination services, an examination fee of an amount which is the actual documented administrative cost of conducting said qualifying examination as certified by the superintendent from time to time. An examination fee represents an administrative expense and is not refundable. The superintendent may, whenever in his judgment it appears advisable in order to determine the competency of any applicant for a renewal license, or of any proposed sub-licensee to be named therein, require such person to pass to the satisfaction of the superintendent, a similar written examination.

(3) The superintendent may issue a license to any person seeking to be named as licensee or sub-licensee who:

(A) has since July first, nineteen hundred twenty-eight, passed the examination given by the superintendent for an insurance broker's license and was licensed as such;

(B) within three years from the date of the receipt of his application was a licensed insurance broker;

(C) within ten years from the date of the receipt of his application was a licensed insurance broker and during the period of three years next preceding the receipt of his application was licensed as a property/casualty insurance agent;

(D) has regularly and continuously acted as a licensed resident property/casualty and accident and health insurance agent for a period of at least five years immediately preceding the date of receipt of his application;

(E) is a non-resident insurance broker; or

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(F) served as a member of the armed forces of the United States at any time, and shall have been discharged under conditions other than dishonorable and who within three years prior to his entry into the armed forces held a license as insurance broker, provided his application for such license is filed before one year from the date of final discharge.

(f)(1) At the time of application for every such license, and for every biennial renewal thereof, there shall be paid to the superintendent for each individual applicant and for each proposed sub-licensee the sum of forty dollars. If, however, the applicant or a proposed sub-licensee should withdraw his or its application or the superintendent should deny his or its application before the license applied for is issued, the superintendent may refund the fee paid by the applicant for the license applied for, excepting any examination fees required pursuant to subsection (e) hereof.

(2) No license fee shall be required of any person who served as a member of the armed forces of the United States at any time, and who shall have been discharged, under conditions other than dishonorable, in a current licensing period, for the duration of such period.

(g)(1) Every insurance broker's license issued pursuant to this section shall be for a term expiring on the thirty-first day of October next following the date of its issuance, and may be renewed for the ensuing period of twenty-four months upon the filing of an application in conformity with subsection (d) hereof.

(2) An application for a renewal license shall be filed with the superintendent before September first of the year in which the license expires or the applicant shall be required to pay, in addition to the fee required in subsection (f) hereof, a further fee for late filing of five dollars.

(3) If an application for a renewal license shall have been filed with the superintendent before November first of the year of expiration, the license sought to be renewed shall continue in full force and effect either until the issuance by the superintendent of the renewal license applied for or until five days after the superintendent shall have refused to issue such renewal license and given notice of such refusal to the applicant and to each proposed sub-licensee.

(4) Before refusing to renew any such license, except on the ground of failure to pass a written examination required pursuant to subsection (e) hereof, the superintendent shall notify the appli-

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cant of his intention so to do and shall give such applicant a hearing.

(5) The superintendent may in issuing a renewal license dispense with the requirement of a verified application by any individual licensee or sub-licensee who, by reason of being engaged in any war service for the United States, is unable to make personal application for such renewal license, upon the filing of an application on behalf of such individual, in such form as the superintendent shall prescribe, by some person or persons who in his judgment have knowledge of the facts and who make affidavit showing such war service and the inability of such insurance broker to make personal application.

(h) Any corporation, association or firm licensed as an insurance broker under this section may at any time make an application to the superintendent for the issuance of a supplemental license authorizing additional officers or directors of such corporation, or additional members of such firm or association, as the case may be, to act as sub-licensees, and, if the requirements of this section are fully complied with as to each of such proposed sub-licensees, the superintendent may issue to such licensee a supplemental license naming such additional person or persons as sub-licensees.

(i) If an application for a license under this section be rejected, or if such a license be suspended or revoked by the superintendent, he shall forthwith give notice thereof to the applicant, or to the licensee.

<sup>1</sup> So in original.

**§ 2105. Excess line brokers; licensing**

(a) The superintendent may issue an excess line broker's license to any person, firm, association or corporation who or which is domiciled or maintains an office in this state and is licensed as an insurance broker under section two thousand one hundred four of this article, authorizing such person, firm, association or corporation to procure, subject to the restrictions herein provided, policies of insurance from insurers which are not authorized to transact business in this state of the kind or kinds of insurance specified in paragraphs four through fourteen, sixteen, seventeen, nineteen, twenty and twenty-two of subsection (a) of section one thousand one hundred thirteen of this chapter, provided, however, that the provisions of this section and section twenty-one hundred eighteen of this article shall not apply to ocean marine insurance and other contracts of insurance enumerated in subsections (b) and (c) of section two thousand one hundred seventeen of this article. Such license may be suspended or revoked by the superintendent whenever in his judgment such suspension or revocation will best promote the interests of the people of this state.

(b) Before the superintendent issues any such license or renewal, there shall be filed in his office a written application by the person, firm, association or corporation desiring such license, in such form or forms, and supplements thereto, and containing information the superintendent prescribes.

(c)(1) At the time of application for every such license, and for every renewal, each applicant shall pay the superintendent the following fees:

(A) Two hundred dollars, if the applicant maintains an office in, or acts as an excess line broker in placing insurance on risks located in, any county in this state having a population of one hundred thousand or more inhabitants.

(B) Twenty-five dollars in all other cases.

(2) The population of any county shall be determined by the most recent official census, whether by the United States or by this state.

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(d) Every license issued pursuant to this section shall be for a term expiring on the thirty-first day of October next following the date of its issuance and may be renewed for the ensuing period of twelve months upon the filing of an application in conformity with subsection (b) hereof and paying the fee prescribed by subsection (c) hereof.

(e) Any such license issued to a firm, association or corporation shall authorize as sub-licensee only the sub-licensees named in its license as insurance broker, and each such sub-licensee may act thereunder only in the name of and on behalf of the licensee.

(f)(1) No such license and no renewal thereof shall be granted unless the applicant shall have filed with the superintendent a bond to the people of the state in the penal sum of fifteen thousand dollars, approved by the attorney general as to form and by the superintendent as to sufficiency of the security thereof, or, in lieu of such bond, shall have deposited with the superintendent equivalent security.

(2) Such bond shall be conditioned that the licensee will faithfully comply with all the requirements of this section and section twenty-one hundred eighteen of this article.

(As amended L.1984, c. 368, § 1.)



**§ 2117. Acting for or aiding unlicensed or unauthorized insurers**

(a) No person, firm, association or corporation shall in this state act as agent for any insurer which is not licensed or authorized to do an insurance business in this state, in the doing of any business of insurance in this state or in soliciting, negotiating or effectuating any insurance or annuity contract or shall in this state act as insurance broker in soliciting, negotiating or in any way effectuating any insurance or annuity contract of, or in placing risks with, any such insurer, or shall in this state in any way or manner aid any such insurer in effecting any insurance or annuity contract.

(b) Notwithstanding the provisions of subsection (a) hereof, any licensed insurance broker may negotiate a contract of insurance, or

place insurance, in an insurer not authorized to do business in this state, as follows:

(1) a contract of reinsurance on risks produced by such broker;

(2) insurance against loss of or damage to property having a permanent situs outside of this state; and

(3) marine insurance of the following kind or kinds, where it is reasonable so to do with due regard to the interests of all concerned and whether or not, at the time of such negotiation, the subject matter of such insurance is within or without this state:

(A) insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests, goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks and marine builders' risks; and

(B) insurance in connection with ocean going vessels against any of the risks specified in paragraph twenty-one of subsection (a) of section one thousand one hundred thirteen of this chapter.

(c) Notwithstanding the provisions of subsection (a) hereof, any licensed insurance broker may negotiate a contract of insurance or place insurance in an unauthorized insurer as follows:

(1) insurance against legal liability arising out of the ownership, operation or maintenance of any motor vehicle or aircraft which is neither principally garaged nor principally used in this state, arising out of any activity carried on wholly outside of this state or arising out of the ownership, operation or maintenance of any property having a permanent situs outside of this state, but in case such property or risk is located in any other state, then only in an insurer authorized to do such business in such state or in an insurer in which a licensed insurance broker of such state may lawfully place such insurance; and

(2) fidelity bonds guaranteeing the fidelity of persons holding or exercising positions of public or private trust wholly outside of this state, and surety bonds guaranteeing or assuming the performance of any contract or other obligation of the kind included under subparagraphs (B) and (C) of paragraph sixteen of subsection (a) of section one thousand one hundred thirteen of this chapter, to be performed wholly outside of this state; but if such positions are held or exercised in another state or if such contract or other obligation is to be performed wholly or partly in another state, then

only if such insurance is placed in an insurer authorized to do such business in such state, or in which a licensed broker of such state may lawfully place such insurance.

(d) Notwithstanding the provisions of subsection (a) hereof, any licensed reinsurance intermediary may negotiate a contract of reinsurance, or place reinsurance, in an insurer not authorized to do business in this state.

(e) This section shall not authorize any person, firm, association or corporation to guarantee or otherwise validate or secure the performance or legality of any agreement, instrument or policy of insurance or annuity contract of any insurer not authorized to do business in this state, or to bind risks, validate, effect by counter-signature, endorsement or otherwise, any binder, memorandum, cover note, slip, certificate, policy or other instrument of insurance of any insurer not authorized or licensed to do business in this state, or to make binding declarations of risks thereunder, or permit any unauthorized insurer to do any insurance business by its agent acting within this state; but licensed insurance brokers acting pursuant to subsections (b) and (c) hereof may issue to their clients, the insureds, confirmation of insurance so lawfully placed.

(f) This chapter shall not prohibit or prevent an attorney and counsellor at law from representing an unauthorized insurer in litigation or settlement of claims in this state.

(g) Any person, firm, association or corporation violating any provision of this section shall, in addition to any other penalty provided by law, forfeit to the people of the state the sum of five hundred dollars for the first offense, and an additional sum of five hundred dollars for each month during which any such person, firm, association or corporation shall continue to act in violation of this section.

(h) This section shall not apply to any person, firm, association or corporation acting pursuant to the authority conferred by section two thousand one hundred five of this article.

§ 2118. Excess line brokers; duties:

(a)(1) Every licensee licensed pursuant to section two thousand one hundred five of this article shall be required to use due care in selecting the unauthorized insurer from whom policies are procured under his license.

(2) No policy of insurance may be procured by a licensee from any foreign or alien insurer which is owned, or financially controlled, by a foreign government or by a political subdivision thereof, or which is an agency of any such government or subdivision.

(b) (1) Within forty-five days after a policy is procured, a licensee shall submit the declarations page or cover note of every policy procured under his or her license to the excess line association established pursuant to section two thousand one hundred thirty of this article for recording and stamping. In the event that no declarations page or cover note is available to the licensee, within forty-five days after the policy is procured, the licensee shall submit a binder to the excess line association in lieu of such declarations page or cover note. In the event that a binder is submitted to the excess line association, the licensee shall submit the declarations page or cover note to the excess line association promptly upon receipt. Every insurance document submitted to the excess line association pursuant to this subsection shall set forth:

(A) the name and address of the insured;

(B) the gross premium charged;

(C) the name of the unauthorized insurer, and

(D) the kind of insurance procured.

(2) Subsequent endorsements which do not affect the premium charged are exempted from stamping.

(3) The submission of insurance documents to the excess line association shall be accompanied by statements subscribed and affirmed by the licensee or sublicensee and the insured as true under the penalties of perjury that, after diligent effort the full amount of insurance required could not be procured, from authorized insurers, each authorized to write coverages of the kind requested, and further showing that the amount of insurance procured from an unauthorized insurer is only the excess over the amount procurable from an authorized insurer. The licensee, however, shall be excused from affirming that a diligent effort, as defined above, was made to procure the coverage from authorized insurers if the licensee's affidavit is accompanied by the affidavit of another broker involved in the placement affirming as true under the penalties of perjury that, after diligent effort by the affirming broker, the required insurance could not be procured from an authorized insurer.

(4) The number of declinations constituting diligent effort in regard to placement of coverage with authorized insurers for purposes of paragraph three of this subsection shall be three, unless the superintendent after a hearing, on a record, upon findings and conclusions, determines that another number of such declinations is appropriate in regard to particular coverages. In making such determinations, the superintendent shall consider relevant market conditions, including unavailability of particular coverages from authorized insurers, and may conduct market surveys. Any such determination shall be reviewed at least annually by the superintendent.

(5) Before placing business with an unauthorized insurer, each licensee shall ascertain and verify the fact that such insurer is authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured from it by the licensee. No unauthorized insurer shall be deemed unacceptable for placement of business solely on the ground that it has been so authorized to write such business in its domiciliary jurisdiction for a period of less than three years preceding the placement of such risk by the licensee. In determining whether business may be placed with such unauthorized insurer, the superintendent shall consider such factors as: the interests of the public and policyholders, the length of time such insurer has been authorized in its domiciliary jurisdiction and elsewhere, its financial condition, and unavailability of particular coverages from authorized insurers.

(6) It shall be unlawful for a licensee as defined in section two thousand one hundred one of this article and pursuant to sections two thousand one hundred four and two thousand one hundred five of this article to deliver in this state any declarations page of an insurance policy or cover note evidencing insurance unless such insurance document is stamped by the excess line association or is exempt from such requirements; provided, however, that a licensee's failure to comply with the requirements of this subsection shall not affect the validity of the coverage.

(c) (1) The licensee shall keep a complete and separate record of all policies procured from unauthorized insurers under such license. The licensee shall also maintain files supporting declinations by authorized insurers. An authorized insurer need not maintain underwriting submissions or other records with respect to any declination, unless the superintendent, after a hearing on a record, finds substantial abuses of the provisions of this section and determines that recordkeeping or reporting requirements in regard to authorized insurers are necessary to redress or eliminate such abuses.

(2) Such records shall be open to examination by the excess line association as provided for in section two thousand one hundred thirty of this article and by the superintendent, as provided in section three hundred ten of this chapter, at all reasonable times and shall show:

(A) the exact amount of each kind of insurance permitted under this section which has been procured for each insured;

(B) the gross premiums charged by the insurers for each kind of insurance permitted under this section;

(C) the amount of each kind of premiums of insurance permitted by this section which were returned to each insured;

(D) the name of the insurer or insurers which issued each of said policies;

(E) the effective dates of such policies;

(F) the terms for which they were issued; and

(G) the cities and villages within this state in which the insured risks, respectively, are located.

(d)(1) Every person, firm, association or corporation licensed pursuant to the provisions of section two thousand one hundred five of this article shall pay to the superintendent a sum equal to three and six-tenths percent of the gross premiums charged the insureds by the insurers for insurance procured by such licensee pursuant to such license, less the amount of such premiums returned to such insureds.

(2) The amount of such payments which represents a sum equal to three percent of fire insurance premiums shall be distributed by the superintendent as prescribed in section nine thousand one hundred five of this chapter, and the balance thereof shall be paid over by the superintendent to the state treasurer.

(3) Such licensee shall be required to make such payments to the superintendent on the fifteenth day of March of each year for the taxes on all policies procured by such licensee, pursuant to such license, during the next preceding calendar year, and on such date such licensee shall also file with the superintendent a return in the form prescribed by the superintendent, showing such information as may be necessary for the proper distribution of such payments.

(As amended L.1986, c. 220, § 38; L.1988, c. 639, § 3.)

**PROPERTY AND CASUALTY RATES**

**§ 2302**

**Art. 23**

**§ 2302. Applicability**

(a) This article shall apply to all kinds of insurance written on risks or operations in this state by an insurer authorized to do business in this state except:

(1) reinsurance (other than joint reinsurance to the extent stated in section two thousand three hundred seventeen of this article);

(2) accident and health insurance;

(3) annuities, life insurance, including provisions for non-cancellable disability benefits in conjunction therewith;

(4) marine insurance (other than inland marine insurance and insurance upon automobiles, airplanes, seaplanes, dirigibles or other aircraft);

(5) marine protection and indemnity insurance; and

(6) insurance issued by an assessment cooperative fire insurance company.

(b) The superintendent may from time to time make investigations with respect to classes of risks of the kinds of insurance exempted in paragraph one hereof and may call upon all authorized insurers and rate service organizations making rates for such risks to furnish information relative thereto.

**§ 3105. Representations by the insured**

(a) A representation is a statement as to past or present fact, made to the insurer by, or by the authority of, the applicant for insurance or the prospective insured, at or before the making of the insurance contract as an inducement to the making thereof. A misrepresentation is a false representation, and the facts misrepresented are those facts which make the representation false.

(b) No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless such misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract.

(c) In determining the question of materiality, evidence of the practice of the insurer which made such contract with respect to the acceptance or rejection of similar risks shall be admissible.

(d) A misrepresentation that an applicant for life or accident and health insurance has not had previous medical treatment, consultation or observation, or has not had previous treatment or care in a hospital or other like institution, shall be deemed, for the purpose of determining its materiality, a misrepresentation that the applicant has not had the disease, ailment or other medical impairment for which such treatment or care was given or which was discovered by any licensed medical practitioner as a result of such consultation or observation. If in any action to rescind any such contract or to recover thereon, any such misrepresentation is proved by the insurer, and the insured or any other person having or claiming a right under such contract shall prevent full disclosure and proof of the nature of such medical impairment, such misrepresentation shall be presumed to have been material.

**§ 3106. Warranty defined; effect of breach**

(a) In this section "warranty" means any provision of an insurance contract which has the effect of requiring, as a condition precedent of the taking effect of such contract or as a condition precedent of the insurer's liability thereunder, the existence of a fact which tends to diminish, or the non-existence of a fact which tends to increase, the risk of the occurrence of any loss, damage, or injury within the coverage of the contract. The term "occurrence of loss, damage, or injury" includes the occurrence of death, disability, injury, or any other contingency insured against, and the term "risk" includes both physical and moral hazards.

(b) A breach of warranty shall not avoid an insurance contract or defeat recovery thereunder unless such breach materially increases the risk of loss, damage or injury within the coverage of the contract. If the insurance contract specified two or more distinct

kinds of loss, damage or injury which are within its coverage, a breach of warranty shall not avoid such contract or defeat recovery thereunder with respect to any kind or kinds of loss, damage or injury other than the kind or kinds to which such warranty relates and the risk of which is materially increased by the breach of such warranty.

(c) This section shall not affect the express or implied warranties under a contract of marine insurance in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on, over or under any seas or inland waters, nor shall it affect any provision in an insurance contract requiring notice, proof or other conduct of the insured after the occurrence of loss, damage or injury.

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The *Policy* is either Commission staff or, after 1st Jan. 1994, will be presented by the Committee of Experts to consider the merits of the proposal. The Committee is headed by the Chairperson of the Policy Committee and includes the other members of the Policy Committee. It is also possible that the Committee will be asked to consider the merits of the proposal.



# 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, 1958, as to security and solvency.)

**Multiplier**

2. (b) (5) DPP. The letter called "the Award") therefore made or caused to be made to us a written Proposal dated

[illegible]

Printed at University, London, England.

to insure the Aircraft as specifically described in the Schedule hereto against accidental Loss and/or Damage to hereto after default actually occurring during the period **beginning** and ending

both days involved and in addition against all cases which the Assured shall become legally liable to pay as compensation to his wife, her and her child for accidental bodily injury or damage actually occurring during the said period.

**THE THE UNDERSIGNERS, will indemnify the Assured as follows:—**

**SECTION L—Loss of or Damage to Aircraft.**

The Underwriters will at their option pay for repairs or make good substantial loss of or damage to the Aircraft from fire, theft or any other cause, including but not limited to, the following:

- (A) in flight;  
(B) taking;  
(C) on the ground;  
(D) none.

but the Underwriters shall not be liable for the cost of making good any and all such physical deterioration, structural damage, structural or non-structural breakage or breakdown, or for loss or damage arising from such structural or non-structural breakage or breakdown other than loss or damage caused by fire, explosion, or impact of the Aircraft's own external object.

The owner under this Section shall not include loss of or damage to the Aircraft by burglary, theft, piracy, or malicious mischief if it is covered by a separate policy of insurance. The amount payable under such policy shall not exceed the actual cash value of the Aircraft.

It is a condition of this insurance that none in the event of the replacement or the total loss of the Aircraft the Assured shall have in respect of such Aircraft described in the Schedule hereto —

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**The liability of the undersigners under this Section shall not —**

[illegible]

## 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, or compromise, (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 Assured or by objects falling therefrom.

**The liability of the Underwriters under this Section shall not exceed**

about or series of accidents arising out of one wreck, and further shall not cover

the fact that the Government has been unable to secure the necessary funds to carry out its policy of non-interference in the internal affairs of the country. The Government has been unable to secure the necessary funds to carry out its policy of non-interference in the internal affairs of the country.

## EXCITATIONS

1. The owner under this Section shall not attempt to indemnify the Assured in respect of injury (bodily or non-bodily), damage or loss caused to or sustained by—

- (a) Any sub-contractor or member of the household or family of the Alameda.
- (b) Any person in the service of or acting on behalf of the Alameda or of any such sub-contractor or member, whilst engaged in his duties or work.
- (c) Any passenger whilst entering into, being carried in, or alighting from the Alameda.
- (d) Any pilot or member of the crew of the Alameda or any person working in, on, or about the Alameda.

1. The following knowledge shall not extend to any property or vehicle belonging to or in the custody or control of the Assured, his estate 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, the insurable costs incurred, in respect of accidental bodily injury (fatal or non-fatal) to passengers whilst entering, being carried in, or alighting from the Aircraft.

**PROVIDED** that such passengers carried in my aircraft limited bylaws operating for hire or reward shall be treated subject to the terms of a ticket which shall be issued by the Airline to the passenger before the commencement of the flight and that such ticket shall be produced in a complete manner a condition that the Airline will not be liable for any personal injury, loss or damage sustained in so far as such condition is not contrary to law or to any international agreement.

**The Owner under this Section shall not extend its indemnity to indemnify the Assured in respect of injury (fatal or non-fatal), damage or loss caused to or sustained by—**

- [illegible]

**The Liability of the Undertakers under the Section shall not extend in respect of any one passenger, in respect of any one accident or series**

of children living out of one school, and further shall not consent to all claims brought during the currency of this Policy. The Transferee will in addition indemnify 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 assured fail to disprove the claim shall remain liable for the same. In the event of the Transferee's consent to the said Law Costs shall 5440 be limited to their proportion of the Law Costs which the same insured hereunder have to the assured paid to the extent 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 (death or non-death), or liability hereunder except—

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 stated therein unless due to force majeure. Notwithstanding the Underwriters agree to hold covered the risks insured by this Policy in the event of the Aircraft rendering aid/age services (as defined) provided immediately 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 Englishmen 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 being unloaded landing areas unless due to force majeure or covered by special endorsement hereto.
5. Due to or arising out of or directly or indirectly connected with—
  - (a) Loading, unloading, stowage, packing, unloading, sorting, unloading, sorting, packing, stowage, or any other form of flying handling aircraft hereto.
  - (b) Test flights other construction or reconstruction.
  - (c) Landing the Aircraft unaided in the open without taking reasonable precautions for its safety.
6. Whilst, at the time of the event giving rise to such loss or damage, bodily injury, or liability is incurred 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 the 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 terrorist power, martial law, civil strife, civil commotions, or combinations or subversions or requisition or destruction of or damage to property by or under the order of any governmental 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 Capacity stated in the Schedule.

## WARRANTIES.

### WARRANTED TALK—

1. The Assured will comply with all its obligations and arrangements under and requirements issued by any competent authority and will take all reasonable steps to ensure that such orders and requirements are complied with by its/their agent(s) and employees and that the Aircraft shall be strictly at the commandment of such flight.
  2. No additional insurance on any interests on or in relation to any Aircraft described in the Schedule, any such as may be required to cover personal accident and legal liability, loss of or shall be effected to operate during the currency of this Policy by or for account of the Assured, Owners, Managers, Mortgagees or others except—
    - (a) Additional Insurance on terms and conditions identical with those contained in this Policy.
    - (b) Additional Insurance on Third Loss Only or any conditions other than those stated in (a) above, whether Policy Proof of Interest, Third Interest Assignment, or otherwise, but only in respect of any one Aircraft on account not exceeding 10 per cent. of the Total Value of the Aircraft as stated in the Schedule of this Policy.
- Provided always that a benefit of the Warranty shall not affect Underwriters any claims to a claim by a Mortgagee who has accepted the Policy without knowledge of such benefit.

## GENERAL CONDITIONS.

1. All receipts for 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) hereunder.
2. The Assured shall use due diligence and do and cause to be done everything reasonably practicable to avoid or diminish any loss herein but shall not make any declaration of liability or payment or offer of payment or payment without the written consent of the Underwriters.
3. In the event of the Aircraft sustaining damage whether caused by the Policy or not the Assured or its/their Agent(s) shall forthwith take steps as may be necessary to ensure the safety of the damaged Aircraft and the equipment and accessories. No dismantling or repair 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 specifications 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 losses or damages resulting therefrom and shall give notice of any impending prosecution. In all cases the Assured shall render such further information and assistance to 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 1 to replace the Aircraft the replacement shall be by an Aircraft of the same make and type and in reasonably like condition.

7. The Assured 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 having the same to be taken or threatened to require covered 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 and all differences or disputes shall be referred to Arbitration in London in accordance with the Machinery provision for Arbitration for the then 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 amount on which a loss under this policy is payable on the basis of a total loss, but interest.

12. This Policy shall not be subject to a condition that the Assured shall be insured by endorsement hereto.

13. In the event of loss whether or not covered by this Policy the value of the Aircraft shall be the Schedule value to be reduced in as the then state and date of loss by the amount of such loss and such reduced value shall constitute total payment on account. 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 a condition precedent to any liability of the Underwriters to make any payment under this Policy.

**LOYD'S POLICY AGENTING OFFICE,**

## GENERAL MANAGER

10724

### Geographical Limits

"JULIEN" said he desired to move from the time the Agent came forward in telling of or attempting to take off her the school he himself, while in the US, and until the Agent's completion in looking for other contacts with the work under water.

B-3



# Lloyd's Aircraft Policy

**Whereas** the Insured named in the attached Schedule has paid the premium specified in the Schedule to the Underwriting Members of Lloyd's who have heretofore subscribed their Names (hereinafter called "the Underwriters"),

**Now** ~~the~~ **the** Underwriters hereby agree to insure against loss, damage or liability arising from an Accident occurring during the Period of Insurance to the extent and in the manner hereinafter provided.

**It is hereby agreed** 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 or make good to the Insured or to the Insured's Executors or Administrators or to indemnify him or them against all such loss, damage or liability as herein provided, after such loss, damage or liability is proved 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 insured 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 Insured 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 Insured on application.

**It is** ~~agreed~~ **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

FOR ENDORSEMENT BY • LLOYD'S POLICY SIGNING OFFICE

AVR 14 1917  
Printed at Lloyd's Office, 10, Abchurch Lane, London, E.C. 4, by Messrs. J. & W. Smith, Stationers.

## SECTION I LOSS OF OR DAMAGE TO AIRCRAFT

### Coverage

1. (a) The Underwriters will at their option pay for, replace or repair, accidental loss of or damage to the Aircraft described in the Schedule arising from the risks covered, including disappearance if the aircraft is unreported for sixty days after the commencement of flight, but not exceeding the amount insured as shown therein and subject to the amounts to be deducted shown below.
- (b) If the Aircraft is insured hereby for the risks of Flight, the Underwriters will, in addition, pay reasonable emergency expenses necessarily incurred by the Insured for the immediate safety of the Aircraft consequent upon damage or forced landing, up to 10 per cent. of the amount specified in Part 2(5) of the Schedule.

### Exclusions applicable to this Section only

2. The Underwriters shall not be liable for
    - (a) wear and tear, deterioration, breakdown, defect or failure however caused in any Unit (hereinafter defined) of the Aircraft and the consequences thereof within such Unit.
    - (b) damage to any Unit by anything which has a progressive or cumulative effect but damage attributable to a single recorded incident is covered under paragraph 1 (a) above.
- HOWEVER accidental loss of or damage to the Aircraft consequent upon 2 (a) or (b) above is covered under paragraph 1 (a) hereof.

### Conditions applicable to this Section only

3. (i) If the Aircraft is damaged
  - (a) no dismantling or repairs shall be commenced without the consent of the Underwriters except whatever is necessary in the interests of safety, or to prevent further damage, or to comply with orders issued by the appropriate authority.
  - (b) The Underwriters will pay only for repairs and transport of labour and materials by the most economical method unless the Underwriters agree otherwise with the Insured.
- (ii) If the Underwriters exercise their option to pay for or replace the Aircraft
  - (a) The Underwriters may take the Aircraft (together with all documents of record, registration and title thereto) as salvage
  - (b) the cover afforded by this Section is terminated in respect of the Aircraft even if the Aircraft is retained by the Insured for valuable consideration or otherwise
  - (c) the replacement aircraft shall be of the same make and type and in reasonably like condition unless otherwise agreed with the Insured.
- (iii) Except where the Underwriters exercise their option to pay for or replace the aircraft, there shall be deducted from the claim under paragraph 1 (a) of this Section:—
  - (a) the amount specified in Part 6 (B) of the Schedule and
  - (b) such proportion of the Overhaul Cost (hereinafter defined) of any Unit repaired or replaced as the used time bears to the Overhaul Life (hereinafter defined) of the Unit
  - (iv) Unless the Underwriters elect to take the Aircraft as salvage the Aircraft shall at all times remain the property of the Insured who shall have no right of abandonment to the Underwriters.
  - (v) No claim shall be payable under this Section if other insurance which is payable in consequence of loss or damage covered under this Section has been or shall be effected by or on behalf of the Insured without the knowledge or consent of the Underwriters.

See also Section IV

## SECTION II LEGAL LIABILITY TO THIRD PARTIES (OTHER THAN PASSENGERS)

### Coverage

1. The Underwriters will indemnify the Insured for all sums which the Insured shall become legally liable to pay, and shall pay, as compensatory damages (including costs awarded against the Insured) in respect of accidental bodily injury (fatal or otherwise)

*Headings and marginal captions are inserted for the purpose of convenient reference only and are not to be deemed part of this insurance.*

and accidental damage to property caused by the Aircraft or by any person or object falling therefrom.

**Exclusions applicable to this Section only**

Employees and others

**2. The Underwriters shall not be liable for claims arising from**

- (i) injury (fatal or otherwise) or loss sustained by any director or employee of the Insured or partner in the Insured's business whilst acting in the course of his employment with or duties for the Insured.
- (ii) injury (fatal or otherwise) or loss sustained by any member of the flight, cabin or other crew whilst engaged in the operation of the Aircraft.
- (iii) injury (fatal or otherwise) or loss sustained by any passenger whilst entering, on board, or alighting from the Aircraft.
- (iv) loss of or damage to any property belonging to or in the care, custody or control of the Insured.

Operational Crew  
Passengers

Property

Noise and Pollution and Other Perils

**3. The Underwriters shall not be liable for 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 electromagnetic interference,
  - (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.
- Nothing in this paragraph shall override exclusion 9 of Section IV (A).

**Limits of indemnity applicable to this Section**

- 4. The liability of the Underwriters under this Section shall not exceed the amounts stated in Part 6 II (C) of the Schedule, less any amounts under Part 6 II (B). The Underwriters will defray in addition any legal costs and expenses incurred with their written consent in defending any action which may be brought against the Insured in respect of any claim for compensatory damages covered by this Section, but should the amount paid or awarded in settlement of such claim exceed the limit of indemnity then the liability of the Underwriters in respect of such legal costs and expenses shall be limited to such proportion of the said legal costs and expenses as the limit of indemnity bears to the amount paid for compensatory damages.

See also Section IV

### SECTION III LEGAL LIABILITY TO PASSENGERS

**Coverage**

- 1. The Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay, and shall pay, as compensatory damages (including costs awarded against the Insured) in respect of:
  - (a) accidental bodily injury (fatal or otherwise) to passengers whilst entering, on board, or alighting from the Aircraft and
  - (b) loss of or damage to baggage and personal articles of passengers arising out of an accident to the Aircraft.

**Provided Always that**

- (i) before a passenger boards the Aircraft the Insured shall take such measures as are necessary to exclude or limit liability for claims under (a) and (b) above to the extent permitted by law
- (ii) If the measures referred to in proviso (i) above include the issue of a Passenger Ticket/Baggage Check, the same shall be delivered correctly completed to the passenger a reasonable time before the passenger boards the aircraft.

In the event of failure to comply with proviso (i) or (ii) the limit of indemnity by the Underwriters under this section shall not exceed the amount of the legal liability, if any, that would have existed had the proviso been complied with.

Extent of Non-Compliance

**Exclusions applicable to this Section only**

- 2. The Underwriters shall not be liable for injury or loss sustained by any:
  - (i) director or employee of the Insured or partner in the Insured's business whilst acting in the course of his employment with or duties for the Insured.

Employees and others

Operational  
Crew

(ii) member of the flight, cabin, or other crew whilst engaged in the operation of the Aircraft.

**Limits of indemnity applicable to this Section**

3. The liability of the Underwriters under this Section shall not exceed the amount stated in Part 6 III (C) of the Schedule, less any amounts under Part 6 III (B). The Underwriters will defray in addition any legal costs and expenses incurred with their written consent in defending any action which may be brought against the Insured in respect of any claim for compensatory damages covered by this Section, but should the amount paid or awarded in settlement of such claim exceed the limit of indemnity then the liability of the Underwriters in respect of such legal costs and expenses shall be limited to such proportion of the said legal costs and expenses as the limit of indemnity bears to the amount paid for compensatory damages.

See also Section IV

**SECTION IV (A) GENERAL EXCLUSIONS APPLICABLE  
TO ALL SECTIONS**

This policy does not apply:—

Illegal Uses

1. Whilst the Aircraft is being used for any illegal purpose or for any purpose other than those stated in the Schedule and as defined in the Definitions.

Geographical  
Limits

2. Whilst the Aircraft is outside the geographical limits stated in the Schedule unless due to force majeure.

Pilots

3. Whilst the Aircraft is being piloted by any person other than as stated in the Schedule except that the Aircraft may be operated on the ground by any person competent for that purpose.

Transportation  
by other  
Conveyance

4. 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 I of this Policy.

Landing and  
Take-off Areas

5. Whilst the Aircraft is landing on or taking off or attempting to do so from a place which does not comply with the recommendations laid down by the manufacturer of the Aircraft except as a result of force majeure.

Contractual  
Liability

6. To liability assumed or rights waived by the Insured under any agreement (other than passenger ticket/baggage check issued under Section III hereof) except to the extent that such liability would have attached to the Insured in the absence of such agreement.

Number of  
Passengers

7. Whilst the total number of passengers being carried in the Aircraft exceeds the declared maximum number of passengers stated in the Schedule.

Non-  
Contribution

8. To claims which are payable under 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.

Radioactivity

9. To loss, damage or liability directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity.

War, Hijacking  
and Other  
Perils

10. To 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, nationalization, 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.

(c) Hijacking 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 while 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).

#### (B) GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS

##### Due Diligence Compliance with Air Navigation Orders, etc.

1. The due observance and fulfillment of the terms conditions and endorsements of this policy shall be a condition precedent to any liability of the Underwriters to make any payment under this policy.
2. The Insured shall at all times use due diligence and do and concur in doing everything reasonably practicable to avoid or diminish any loss hereon.
3. The Insured shall comply with all air navigation and airworthiness orders and requirements issued by any competent authority affecting the safe operation of the Aircraft and shall ensure that:
  - (a) the aircraft is airworthy at the commencement of each flight
  - (b) all Log Books and other records in connection with the Aircraft which are required by any official regulations in force from time to time shall be kept up to date and shall be produced to the Underwriters or their Agents on request
  - (c) the employees and agents of the Insured comply with such orders and requirements.

##### Claims Procedure

4. Immediate notice of any event likely to give rise to a claim under this Policy shall be given as stated in Part 8 of the Schedule. In all cases the Insured shall:
  - (a) furnish full particulars in writing of such event and forward immediately notice of any claim (by a Third Party or Passenger) with any letters or documents relating thereto
  - (b) give notice of any impending prosecution
  - (c) render such further information and assistance as the Underwriters may reasonably require
  - (d) not act in any way to the detriment or prejudice of the interest of the Underwriters.

The Insured shall not make any admission of liability or payment or offer or promise of payment without the written consent of the Underwriters.

##### Subrogation Variation in Rate Cancellation

5. The Underwriters shall be entitled (if they so elect) 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 Insured to settle, defend or pursue any claim.
6. Upon an indemnity being given or a payment being made by the Underwriters under this Policy, they shall be subrogated to the rights and remedies of the Insured who shall co-operate with and do all things necessary to assist the Underwriters to exercise such rights and remedies.
7. 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.
8. This Policy may be cancelled by either the Underwriters or the Insured giving 10 days notice in writing of such cancellation. If cancelled by the Underwriters, they will return a pro rata portion of the premium in respect of the unexpired period of the Policy. If cancelled by the Insured a return of premium shall be at the discretion of the Underwriters. There will be no return of premium in respect of any Aircraft on which a loss is paid or is payable under this Policy.



Adjustment
Net Marine Insurance
Arbitration
Two or More Aircraft
Limits of Indemnity
Fake and Fraudulent Claims

9. This Policy shall not be assigned in whole or in part except with the consent of the Underwriters verified by endorsement hereon.
10. This Policy is not and the parties hereto expressly agree that it shall not be construed as a Policy of marine insurance.
11. This Policy shall be construed in accordance with English Law and any dispute or difference between the Insured and the Underwriters shall be submitted to arbitration in London in accordance with the Statutory provision for arbitration for the time being in force.
12. When two or more aircraft are insured hereunder the terms of this policy apply separately to each.
13. Notwithstanding the inclusion herein of more than one Insured, whether by endorsement or otherwise, the total liability of the Underwriters in respect of any or all Insureds shall not exceed the limit(s) of indemnity stated in this Policy.
14. 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 hereunder shall be forfeited.

### (C) DEFINITIONS

- (a) "ACCIDENT" means any one accident or series of accidents arising out of one event.
- (b) "UNIT" means a part or an assembly of parts (including any sub-assemblies) of the Aircraft which has been assigned an Overhaul Life as a part or an assembly. Nevertheless, an engine complete with all parts normally attached when removed for the purpose of overhaul or replacement, shall together constitute a single Unit.
- (c) "OVERHAUL LIFE" means the amount of use, or operational and/or calendar time which, according to the Airworthiness Authority, determines when overhaul or replacement of a Unit is required.
- (d) "OVERHAUL COST" means the costs of labour and materials which are or would be incurred in overhaul or replacement (whichever is necessary) at the end of the Overhaul Life of the damaged or a similar Unit.
- (e) "PRIVATE PLEASURE" means use for private and pleasure purposes but NOT use for any business or profession nor for hire or reward.
- (f) "BUSINESS" means the use stated in Private Pleasure and use for the purpose of the Insured's business or profession but NOT use for hire or reward.
- (g) "COMMERCIAL" means the use stated in Private Pleasure and Business and use for the carriage by the Insured of passengers, baggage accompanying passengers and cargo for hire or reward.
- (h) "RENTAL" means rental, lease, charter or hire by the Insured to any person, company or organisation for Private Pleasure and Business use only, where the operation of the Aircraft is not under the control of the Insured. Rental for any other purpose is NOT insured under this Policy unless specifically declared to Underwriters under SPECIAL RENTAL USES in the Schedule.
- Definitions (a), (f), (g) and (h) constitute Standard Uses and do not include Instruction, Aerobatics, Hunting, Patrol, Fire-fighting, the intentional dropping, spraying or release of anything, any form of experimental or competitive flying, and any other use involving abnormal hazard, but where cover is provided details of such use(s) are stated in the Schedule under SPECIAL USES.
- (i) "FLIGHT" means from the time the Aircraft moves forward in taking off or attempting to take off, whilst in the air, and until the aircraft completes its landing run.
- (k) "TAXYING" means movement of the aircraft under its own power other than in flight as defined. Taxying shall not be deemed to cease merely by reason of a temporary halting of the aircraft.
- (l) "MOORED" means, in the case of aircraft designed to land on water, whilst the aircraft is afloat and is not in flight or taxiing as defined, and includes the risks of launching and hauling up.
- (m) "GROUND" means while the aircraft is not in flight or taxiing or moored as defined.

# SCHEDULE

**PART  
1**

Policy No.		Proposal dated
Name of Insured		
Address		
Period of Insurance		
From	To	both days inclusive

**PART  
2**

Particulars of Aircraft (1) Make & Type (Insert "Land", "Sea" or "Amphibian" as applicable)	(2) Year of Manu- facture	(3) Registration Marks	(4) Declared Max. No. of Passen- gers at any one time	(5) Amount Insured	(6) Risks covered (Insert "Flight", "Taxying", "Moored", "Ground" as applicable)

**PART  
3**

Purposes of Use <i>Standard Uses</i> (Insert "Private Pleasure", "Business", "Commercial", "Rental for Private Pleasure and Business only" as applicable)	<i>Special Uses</i>	<i>Special Rental Uses</i>

**PART  
4**

Pilots

**PART  
5**

Geographical Limits

AVN 1A

**SCHEDULE—continued**

**PART  
6**

<b>Limits and Deductibles</b>		
<b>(A) Policy Section &amp; Risk</b>	<b>(B) Amounts to be deducted</b>	<b>(C) Limit of Indemnity from which must be deducted the amount in column (B)</b>
<b>I Loss of or damage to aircraft listed in Part 2 above</b>	each accident	See Part 2 Column (5)
<b>II Liability to Third Parties</b>	<b>Bodily Injury</b> NIL	<b>Bodily Injury</b> each person each accident
	<b>Property Damage</b> each accident	<b>Property Damage</b> each accident
<b>III Liability to Passengers their baggage and personal articles</b>	<b>Bodily Injury</b> NIL	<b>Bodily Injury</b> each person each Aircraft
	<b>Baggage and Personal Articles</b> each person	<b>Baggage and Personal Articles</b> each person each Aircraft

**PART  
7**

<b>Premium</b>	<b>Section I</b>
	<b>Section II</b>
	<b>Section III</b>
	<b>TOTAL</b> _____

**PART  
8**

<b>Immediate notice of any claim pursuant to General Condition 4 to be given to:</b>
--

**Dated in London, the**

# LLOYD'S AIRCRAFT HULL POLICY (U.S.A.)

(Approved by Lloyd's Aviation Underwriters' Association)

WE, UNDERSIGNED 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, Deductions, Conditions and other Terms of this Policy:—

## INSURING AGREEMENTS

### 1. COVERAGE A—FLIGHT, TAKING, 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—TAKING, 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 taking 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 (including Alaska), Canada, or the Republic of Mexico, or is being transported between ports thereof, and is covered, maintained and used for the purpose stated in 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.

## THIS POLICY DOES NOT APPLY:—

### EXCLUSIONS

(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 breakdowns 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 breakdowns, (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 therein, or any taking of the property insured or damage to or destruction thereof by any Government or Governmental or Civil Authority or agent (whether direct or otherwise) or by any military, naval or unarmed force; whether any of the foregoing be done by way of regulation 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) civil war, strike or civil commotion.

(c) 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.

- (d) while the aircraft is in flight unless the 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 Declaration (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 Declaration.
- (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 aerobatic flying, instrument flying, repair, maintenance, inspection, alterations and night flying.
- (h) while the aircraft is used for any purpose other than as stated in the Declaration.
- (i) while the aircraft is being used for or in connection with any race, speed or endurance test, any attempt at record breaking, aerobatic flying, dog dating, spraying, seeding, fertilization, hunting, bird or foot herding, unless such use is declared in (D) of Item 4 of the Declaration; 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.
- (j) while the aircraft is changed or converted into a type other than that stated in the Declaration.
- (k) following a transfer of the interest of the Insured in the aircraft without the written consent of the Underwriters; or while the aircraft is subject to any lien, mortgage or other encumbrance not specifically declared and described in this Policy.

#### DEFINITIONS.

- "AIRCRAFT." The word "Aircraft" whenever 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 travel, 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 motorcraft 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 skiplighting 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 landed or hoisted 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 authorized 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 insurances 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 books, 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 as 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 repair or replacement plus 150% of the actual cost of labour for the Insured without any further allowance for overhead or erection; 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 substituted substituted item shall not exceed the value of the item originally installed unless ordered herein and any required additional premium paid herein.

**5. APPEALS.**

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 such items, 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 BAITER.**

The insurance afforded by this Policy shall not ensure directly or indirectly to the benefit of any carrier or bailee.

**8. REPRESENTMENT.**

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 unexpired 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.

**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 entitle 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 in 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 in 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 for 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 \_\_\_\_\_ 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 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 therefore, 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 associate in office, at 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 authorized 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.

# **DECLARATION**

## **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 ..... (both at 12:01 a.m. and ends on the ..... 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 coverage as are indicated by specific premium charge or charges. The limits of Underwriters' liability against each such coverage shall be the amount of insurance as stated herein, (use the rated deductible each loss each aircraft) subject to all the terms of the Policy having reference thereto;

**COVERAGES (As described in the Insuring Agreement)**

(A) Flight, Taking, On the Ground or Moored.

(B) Taking, On the Ground or Moored.

(C) On the Ground or Moored.

## **DESCRIPTION OF AIRCRAFT AND AMOUNT OF INSURANCE**

Identification Mark.	Category.	Year built, Make, Model, Serial No.	Type*

\*Landplane, seaplane, biplane, 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**

Flight \$

Taking \$

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 rotor are in motion.

## **ITEM 4.**

USE: The purpose for which the aircraft will be used are (Indicate those required.)

(A) ☐ "BUSINESS AND PLEASURE."

(B) ☐ "INDUSTRIAL AND."

(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.

### 1. 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, excluding any passenger, and for damages because of 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 sustain 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 thereon.

## 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 accommodations 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 bond;
- (c) pay all costs and expenses 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 the Insuring Agreements, except settlement of claims and suits are payable by the Underwriters in addition to the applicable limit of liability of this Policy.

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#### II. DEFINITION OF INSURED.

The term **Named Insured** shall mean only the Insured specified in Declaration 1.

The unqualified term **Insured** whenever 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 Declaration, 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 organizations 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, not to any rental pilot, unless such use is declared in (D) of Item 4 of the Declaration;
- (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, service, 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, horsepower, 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 use of which are declared under Item 4 of the Declaration acquires ownership of another aircraft of similar type, horsepower, and seating capacity, and so declares 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 (including Alaska), Canada, or the Republic of Mexico, and is owned, maintained and used for the purpose stated as applicable thereto in the Declaration.

#### 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 **Altimeterian 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 **Altimeterian Certificate** and the approved operating limitations contained in its **Altimeter Flight Manual** or other documents associated with the **Altimeterian Certificate** or is being operated by any person other than the pilot(s) named in Item 5 of the Declaration (other than varying by certified pilot or licensed mechanic) or is operated by any such person in violation of the terms and limitations of his **Pilot's Certificate** or **Medical Certificate**, as imposed 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 Declaration.
- (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 aerobatic flying, hawkeye flying, roping, stunts, inspection, inspection, stunts and sight flying.
- (6) While the Aircraft is used for any purpose other than as stated in the Declaration.
- (7) While the aircraft is being used for or in connection with any race, speed or endurance test, any attempt at record breaking, aerobatic flying, crop dusting, spraying, seeding, fertilizing, hunting, bird or forest burning unless such use is declared in (D) of Item 4 of the Declaration or any use in respect of which a written 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 in his interest may be held liable under any workman'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 unarmaged power whether in time of peace or war and whether levied or unlevied, 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 not 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 each injured person for such injury. Such payment shall not constitute satisfaction 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 is in respect of any or all Insureds shall not exceed the liability 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 amount 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 affect a waiver or a change in any part of this Policy or stop 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 liquidation, 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 liquidation.

**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 Underwriter's 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

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-stated 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 successor 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-stated 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. Badfaith or lack of loyalty 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 be against the Underwriters within 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.

**ITEM 1.**

**DECLARATIONS.**

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 ..... (both at 12:01 a.m. Standard Time at and ends on the ..... 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 Underwriter's 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 Agreement).

	<u>LIMITS OF LIABILITY.</u>	<u>PREMIUM.</u>
A. <b>BODY INJURY LIABILITY</b> (including passengers)	\$	each person each occurrence
B. <b>PROPERTY DAMAGE LIABILITY</b>	\$	each occurrence
C. <b>PASSENGER BODILY INJURY LIABILITY</b>	\$	each person each occurrence
D. <b>SINGLE LIMIT BODILY INJURY (including passengers) and PROPERTY DAMAGE LIABILITY</b>	\$	each occurrence
E. <b>SINGLE LIMIT BODILY INJURY (including passengers) and PROPERTY DAMAGE LIABILITY</b>	\$	each occurrence
F. <b>MEDICAL PAYMENTS</b> * Including/Excluding First * Including/Excluding Care * Deduct as required	\$	each person each accident each occurrence
<b>Total Premium</b>		

**DESCRIPTION OF AIRCRAFT**

Manufacturer Model	Category	Year built, Make, Model Serial No.	Type*	Engine H.P., Make, Model	Declared maximum number of passengers (including crew) to be carried at any one time.

\* Including, excluding, including, excluding or otherwise.

**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:

.....

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## **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



#### **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.

5/4/66

Aviation 28

### 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 \$ \_\_\_\_\_ IT IS  
UNDERSTOOD AND AGREED THAT:

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

**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 Schedule

##### Description 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

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#### **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 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. 48 B

**HI-JACKING ENDORSEMENT**  
**For use with an Aircraft Hull Policy (War Risk)**

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 parted 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 herein 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, refueling 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(d) of this Policy.
8. Subject otherwise to all terms, conditions and limits of this Policy.

AVN 30  
(1.9.71)

**D.O.T. REGULATIONS 14 CFR PART 205**

**(HEREINAFTER CALLED "PART 205" AIRCRAFT ACCIDENT LIABILITY INSURANCE**

Attaching to and forming part of Policy No.

Issued in the name of

**IT IS UNDERSTOOD AND AGREED THAT:—**

1. The policy to which this endorsement is attached is hereby amended to provide coverage in compliance with the provisions of Part 205.
2. Such coverage shall be within the limits of liability in the policy and not in addition to or in excess thereof.
3. Such coverage shall continue until cancelled by Insurers or their authorised representative giving the appropriate notice.
4. Unless the policy otherwise provides the following exclusions not prohibited by the provisions of Part 205 shall apply:—
  - (i) War Exclusions Clause AVN48B paragraphs (a) and (b) or equivalent clause(s).
  - (ii) Noise and Pollution and Other Perils Clause AVN46B or equivalent clause(s).
  - (iii) Aviation Radioactive Contamination Exclusion Clause AVN38 or equivalent clause(s).
  - (iv) Bodily injury to or sickness disease or death of any employee arising out of and in the course of his/her employment.
  - (v) Injury to or destruction of property owned rented leased or loaned to or occupied or used by the Insured.
5. If Insurers are called upon to provide coverage to the Insured in compliance with Part 205 including the defence and legal costs associated therewith and if by reason of the terms conditions limitations and exclusions of the policy such coverage would not have been provided except for this endorsement then the Insured will reimburse Insurers for such payments made in providing coverage under Part 205.
6. The terms conditions limitations and exclusions of the policy shall apply to claims made under the policy which (a) are in excess of the limits specified in Part 205 or (b) are not governed by the provisions of Part 205.

**AVN57 (USA)  
13.5.83.**



**D.o.T. 14 CFR PART 205**

The insurance being subject to D.o.T. 14 CFR Part 205, it is agreed between the Broker and Insurers hereon that:

1. The Intermediary is hereby authorised to issue the appropriate certificate on behalf of the Insurers hereon.
2. The Broker and or the Intermediary accept responsibility for ensuring that a Certificate is issued with each new policy or renewal which shall cancel and replace all previously issued Certificates and that a copy of this Certificate, together with any amendmen(s) or cancellation, be lodged with the leading Company and the leading Lloyd's Insurer.
3. When any one of the two leading Lloyd's or two leading Company Insurers gives notice of cancellation to the Broker within 30 days prior to expiry of the policy, then such notice shall apply for all Insurers hereon and the Broker accepts responsibility for giving prompt notice to the D.o.T. and the Insured in respect of such cancellation. Nevertheless any Insurer for his own participation may give notice withint he terms and conditions of the policy at any time.
4. In the event of the leading Insurer not giving notice of cancellation, the Broker shall give notice to the Insured and to the D.o.T., such notice to be effective 10 days after receipt by the D.o.T. but in no case later than 30 days from teh date of expiry of the policy.

AVS. 102 (U.S.A.)  
22.7.83.

**D.o.T. Regulations 14 CFR Part 205**

**REINSURANCE**

It is noted and agreed that the Reinsured hereon has endorsed the original policy with AVN 57 (or such other clauses as may be agreed) falling under D.o.T. Regulations 14 CFR Part 205.

All Reinsurers hereon agree to follow except that their Liability will cease on (\*) unless otherwise specifically agreed by all reinsurers hereon.

\* Hereon insert expiry date of policy.

AVN. 58 (R)  
5.2.1982

#### **50/50 PROVISIONAL CLAIMS SETTLEMENT CLAUSE**

WHEREAS the Insured has in full force and effect

- A) a "Hull All Risks" policy which inter alia contains the War Hijacking and Other Perils Exclusion Clause (AVN. 48B)/the Common North American Airline War Exclusion Clause, and
- B) a "Hull War Risks" policy which inter alia covers certain of the risks excluded by AVN. 48B/ the Common North American Airline war Exclusion Clause in A) above

NOW IT IS HEREBY UNDERSTOOD AND AGREED THAT

in the event of loss of or damage to an aircraft identified on the schedule of aircraft forming part of this policy and where agreement is reached between the "Hull All Risks" Insurers and the "Hull War Risks" Insurers that the Insured has a valid claim under one or other policy where nevertheless it cannot be resolved within 21 days from the date of occurrence as to which policy is liable, each of the aforementioned groups of insurers agree, WITHOUT PREJUDICE to their liability, to advance to the Insured 50% of such amount as may be mutually agreed between them until such time as a final settlement of the claim is agreed

PROVIDED ALWAYS THAT

- (i) the "Hull All Risks" and "Hull War Risks" placing slips are identically endorsed with this provisional claims settlement clause
- (ii) within 12 months of the advance being made all Insurers specified in (i) above agree to refer the matter to arbitration in London in accordance with the Statutory provision for arbitration for the time being in force
- (iii) once the arbitration decision has been conveyed to the parties concerned, the "Hull All Risks" Insurers or the "Hull War Risks" Insurers as the case may be shall repay the amount advanced by the other group of Insurers together with interest for the period concerned which is to be calculated using the London Clearing Banks' Base Rate
- (iv) if the "Hull All Risks" and "Hull War Risks" policies contain differing amounts payable, the advance will not exceed the lesser of the amount involved. In the event of Co-insurance or risks involving uninsured proportion(s), the appropriate adjustment will be made.

AVS. 103  
(12.10.83)

360 AIRCRAFT

SAMPLE

USA

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## Your All-Clear Aircraft Policy

Because people use aircraft for a wide variety of purposes—business, recreational or a combination of both—your All-Clear Aircraft Policy has been designed to allow you to tailor your coverage to meet your individual flying needs. Your All-Clear Aircraft Policy can provide you with Liability Coverage, Medical Coverage and Aircraft Physical Damage Coverage. The coverage you currently have is indicated on the Coverage Summary page.

We want you to understand your coverage. So, we've written this policy in clear, easy-to-understand language.

Throughout this policy the words *you* and *your* refer to the person or organization named on the Coverage Summary page. *We*, *our* and *us* mean the insurance companies listed on the front page of your policy who are individually and together responsible under this policy. *Aviation Managers* means United States Aviation Underwriters, Inc.

**Policy period.** This policy will begin and end at the time and on the dates shown on the Coverage Summary page.

**When and where you are covered.** You are covered for occurrences that take place during the policy period while your aircraft described on the Coverage Summary page is in the United States and its territories and possessions, Canada, Mexico, the Bahama Islands, or while enroute between these places.

**Policy Limits.** The limits of your coverage are shown on the Coverage Summary page. These limits are the most we'll pay for: (1) Damage or loss of your aircraft; (2) bodily injury caused by your aircraft, including sickness, disease, mental anguish or death; (3) property damage caused by your aircraft, including the loss of use of the property. If two or more aircraft are protected under this policy, the limits of coverage apply separately to each aircraft.

**What is an aircraft?** Your aircraft includes your airplane or rotorcraft and any operating, navigating or radio equipment that's usually attached to the aircraft. Parts of your aircraft that are temporarily removed are also included as long as they're not replaced by other parts. Any tools and repair equipment standard for your type of aircraft are also included.

**If you have a loss.** If an occurrence happens, you should notify the Aviation Managers in writing as soon as reasonably possible. Include the time and place of the occurrence and the names and addresses of any injured people and witnesses. By an occurrence we mean any accident or continuous or repeated exposure to conditions which you don't expect to happen resulting in bodily injury or property damage. All injury or damage resulting from generally the same conditions will be considered one occurrence.

You agree to notify the police if your aircraft or any of its parts is stolen. You will also send us copies of all legal documents if you're sued or someone files a claim against you.

You agree to help us in obtaining and giving evidence, attending hearings and trials, and getting witnesses to testify. And you won't make any statements without our permission, except to government officials.

What's more, you agree not to voluntarily make any payments or take on any other legal responsibility without our permission. If you do, we may not reimburse you even if the loss or expense may have been covered by this policy. Of course, we will reimburse you for money spent for emergency first aid to others at the time of an accident.

**Assignment-transfer.** Neither you nor any other person or organization covered under this policy can transfer your

interest under the policy without the written consent of the Aviation Managers.

If you die during the policy period, your legal representatives are covered while settling your estate provided the Aviation Managers are notified within 60 days of your death.

**Changing this policy.** You can change your coverage by having the Aviation Managers add an endorsement to this policy. Notice to your agent will not change the terms of this policy nor stop us or the Aviation Managers from enforcing any of our rights under it.

**Cancelling this policy.** You can cancel this policy at any time. We or the Aviation Managers have the same right.

You can cancel this policy by telling us in writing when in the future you want your coverage to end. We will compute the premium we've earned using the customary short rate table and procedure. Any premium we have not yet earned will be returned to you.

We or the Aviation Managers can cancel this policy by mailing or delivering notice to you at the address shown on the Coverage Summary page at least 30 days before the cancellation date. If, however, this policy is being cancelled because you didn't pay a premium, only 10 days notice will be provided. The mailing or delivery of the notice will be sufficient proof that you were notified.

We will compute the premium we've earned based on the percentage of the policy period that has been used at the time of cancellation. Any premium we have not yet earned will be returned to you.

**Legal actions.** Each of us named on the front cover of this policy, or the Aviation Managers, can bring a suit against you if you fail to pay a premium when it's due, or fail to live up to the terms of this policy in any other way. Any judgment involving one of us or the Aviation Managers will be binding on all.

**State laws.** If any terms of this policy conflict with state law, we'll comply with that law.

**Limitations on use.** To be covered under this policy the aircraft must be owned, maintained or used only for the purpose described on the Coverage Summary page and flown only by a pilot or pilots described there. The aircraft must also be registered under a "Standard" Category Airworthiness Certificate issued by the Federal Aviation Administration (FAA), or its foreign equivalent.

**If you have other insurance.** If you have other insurance covering a loss that's also covered by this policy, we'll pay only our share of any claim. We will figure what percentage the applicable limit of coverage for this policy is of the total amount of all valid and collectible insurance covering the loss. We will pay this percentage. For example, if you have a \$5,000 limit under your Coverage for Property Damage and the total amount of all insurance against the loss is \$10,000, we'll pay 50% of the loss.

This section does not apply to any insurance purchased as excess insurance. Excess insurance is insurance which becomes effective only when all other valid and collectible insurance covering the loss has been exhausted.

Similarly, coverage for Other Aircraft, Substitute Aircraft or for Newly Acquired Aircraft will be considered excess insurance and won't be affected by this section.

However, if any other insurance covering the loss was written through the Aviation Managers, the limit of coverage that applies under this policy will be reduced by the limit of coverage under the other insurance.

**Our right of recovery.** If we pay a claim under this policy, we will take over your right to recover that amount from any other person or organization. You agree not to do anything that will interfere with our chances of recovery and agree to cooperate with us.

## Your Liability Coverage

Following is a description of your coverage under this policy for liability claims made against you. Check your Coverage Summary page to see which coverage you have.

**Combined coverage for bodily injury and property damage.** If you have this coverage we'll pay claims for bodily injury, mental anguish and damage to someone else's property resulting from the ownership, maintenance or use of the aircraft.

We will also pay claims for bodily injury, mental anguish, and damage to someone else's property resulting from your use or maintenance of a parking or storage area where you keep your aircraft, provided the parking or storage area isn't owned by you or leased to you for more than 30 days. But we won't pay more for all injury and damage in any one occurrence than the limit of coverage shown on the Coverage Summary page.

**Combined coverage for bodily injury (except to passengers) and property damage.** If you have this coverage we'll pay claims for bodily injury and mental anguish and damage to someone else's property resulting from the ownership, maintenance or use of the aircraft, except bodily injury and mental anguish claims by a passenger in your aircraft. A passenger is anyone who enters your aircraft to ride in or operate it.

We will also pay claims for bodily injury, mental anguish, and damage to someone else's property resulting from your use or maintenance of a parking or storage area where you keep your aircraft, provided the parking or storage area isn't owned by you or leased to you for more than 30 days. But we won't pay more for all injury and damage in any one occurrence than the limit of coverage shown on the Coverage Summary page.

**Coverage for bodily injury to anyone but passengers.** If you have this coverage, we'll pay claims for bodily injury and mental anguish to anyone—except a passenger—who is injured resulting from the ownership, maintenance or use of your aircraft. A passenger is anyone who enters your aircraft to ride in or operate it.

We will also pay for claims for bodily injury and mental anguish resulting from your use or maintenance of a parking and storage area where you keep your aircraft, provided you don't own or lease the parking or storage area for more than 30 days.

Two limits apply to this coverage. The "each person" limit, which is the most we'll pay for injury to any one person resulting from any one occurrence including damages for care and loss of services. And the "each occurrence" limit, which is the most we'll pay in any one occurrence no matter how many people or organizations are involved.

**Coverage for bodily injury to passengers only.** If you have this coverage we'll pay claims for bodily injury and mental anguish to any passenger in your aircraft who is injured resulting from the ownership, maintenance or use of the aircraft. A passenger is anyone who enters your aircraft to ride in or operate it.

Two limits apply to this coverage. The "each person" limit, which is the most we'll pay for injury to any one passenger resulting from any one occurrence including damages for care and loss of services. And the "each occurrence" limit, which is the most we'll pay in any one occurrence no matter how many people are involved.

**Coverage for property damage.** If you have this coverage we'll pay claims for damage to someone else's property resulting from the ownership, maintenance or use of the aircraft.

We will also pay claims for damage to someone else's property resulting from your use or maintenance of a parking or storage area where you keep your aircraft, provided you don't own or lease the parking or storage area for more than 30 days. But we won't pay more for damage in any one occurrence than the limit of coverage shown on the Coverage Summary page.

#### **Who's covered**

Besides you, certain other people and organizations are also covered under Your Liability Coverage. The words *you* and *your*, throughout this section, also include these other people and organizations.

They are:

- Anyone who is using or riding in your aircraft with your permission.
- Any person or organization that is legally responsible for the aircraft that you are using or that is being used with your permission.

Each person or organization is covered separately. But we won't pay more for all injury and damage in any one occurrence than the limit of coverage shown on the Coverage Summary page.

#### **Who's not covered**

Although the person or organization named on the Coverage Summary page is covered, we won't cover any liability claim against:

- Any other person or organization or their agents or employees that manufacture or sell aircraft, aircraft engines or aircraft accessories. Nor will we cover people or organizations that operate an aircraft repair shop, aircraft sales agency, aircraft rental service, commercial flying service or flying school or any person engaged in commercial aviation. Your employees, however, are covered against claims while performing any of these duties as part of their work for you.
- Any employee who, while working within the scope of his or her job duties, injures someone who works for the same employer.

#### **Additional liability coverage**

All payments described in this section are in addition to the applicable limit of liability coverage shown on the Coverage Summary page.

**Defending suits.** We will defend any liability suit brought against you for bodily injury or damage to property, even if the suit is groundless. We will also pay all costs of your defense, including investigation and court costs. We may investigate, negotiate and settle any claim or suit if we decide this is appropriate.

**Bonds.** We will pay premiums for appeal bonds and bonds to release any property and personal belongings that are being held as security. Any bail bond you may require because you violated a law or regulation during this policy period will also be paid for—up to \$250 for each bond. However, we are not under any obligation to apply for or furnish these bonds.

**Interest.** We will also pay any interest on any part of a judgment we are paying.

**Expenses.** We will also reimburse you for all reasonable expenses you incur while helping us at our request. We won't, however, pay for the loss of earnings or salaries of you or your employees.

And we'll pay all medical and surgical expenses you incur while providing immediate medical treatment at the time of an accident or occurrence.

#### **Suits for liability payment**

No suit or other legal action to recover payment under this policy can be brought unless you have complied with all of its terms and a court has entered a judgment against you.

#### **Liability claims we won't cover**

Although your All-Clear Aircraft Policy provides you with broad liability coverage there are a few claims it will not cover.

• **Aircraft.** We won't cover claims for damage to your aircraft covered under Your Liability Coverage section of this policy.

• **Assumed liability.** We won't cover any liability you assume under a contract or agreement other than an airport contract you sign with a governmental body so you may use an airport.

• **Intentional injury.** We won't cover claims for intentional injury or property damage caused by you or at your direction, except to prevent a hijacking or other dangerous interference with the operation of an aircraft.

• **Workers' compensation.** We won't cover any liability claim that's covered under a workers' compensation, unemployment compensation, disability benefits law or similar law. Nor will we cover claims for injury to your employees while they're actually doing work for you, except for liability you assume under a contract or agreement you sign with a governmental body so you may use an airport. But we will cover claims brought by those domestics that you are not required to cover under workers' compensation.

• **Property damage.** We won't cover damage to any property you own, rent, control or transport. But we will cover the personal effects and baggage of each passenger in any one occurrence for up to \$500. We will also pay up to \$10,000 during the policy period for damage to hangars and their contents you don't own.

#### **Financial Responsibility Laws**

If this policy is certified as proof of insurance under any aircraft financial responsibility law, we will pay up to the limits of liability required by such law. But we won't pay more than the limit of coverage that would apply under this policy. You agree to reimburse us for any amount we are required to pay under the law that is in excess of what we would otherwise have paid under this policy.

#### **Please note:**

Attach Coverage Summary Page and any endorsements.

This policy is not valid or complete unless a Coverage Summary page, approved by the Aviation Managers and countersigned by an Authorized Representative, is attached.

#### **Notice of Annual Meeting**

As a policyholder you are automatically a member of the Liberty Mutual Insurance Company.

This means you will receive dividends if they are declared by their board of directors.

You may vote in person or by proxy at any meeting of this company.

The Company's Annual Meeting is at 10:00 a.m. on the Third Wednesday of each April at the home office in Boston, Massachusetts.

## Your Aircraft Physical Damage Coverage

You may also be protected against physical damage to your aircraft. If you have this coverage, we'll cover you against risk of physical loss or damage to your aircraft both while it's on the ground and while it's in flight. A fixed wing aircraft is in flight from the time it moves forward for takeoff and until it completes its landing run. A rotorcraft is in flight while its rotors are in motion as a result of engine power or autorotation.

We will consider an aircraft to be lost in flight if it disappears after take-off and isn't located or its whereabouts reported within 60 days.

### **What we'll pay**

**Total loss.** If your aircraft is a total loss we'll pay you the amount shown on the Coverage Summary page for your Aircraft Physical Damage Limit, less any deductible that applies.

We will also return any unearned Aircraft Physical Damage premium to you. We will compute what we've earned based on the percentage of the policy period that has expired at the time the aircraft became a total loss. All your Aircraft Physical Damage coverage will end as soon as we make the payment, unless another aircraft is also insured for physical damage under this policy.

**Partial loss—you make repairs.** If the aircraft is only partially damaged and you make repairs, we'll reimburse you for the following items less any deductible that applies:

1. The cost of necessary material and parts of a similar kind and quality.
2. Wages paid at the current straight-time rate at the place of repair plus 150% of this amount to cover supervision and overhead.
3. The cost of transporting by the least expensive reasonable means: (A) The cost of transporting damaged parts from the site of the loss to the most practical place where they can be repaired; (B) the cost of transporting replacement parts from the place nearest the site of the loss; or (C) cost of transporting the aircraft to the most practical place where it can be repaired and then back to the place of the loss or your home airport, whichever is closer.

**Partial loss—someone else makes repairs.** If your aircraft is damaged and the repairs are made by someone else, we'll pay you the following, less any deductible that applies:

1. The net cost to you of repairing your aircraft with material and parts of a similar kind and quality. But we won't pay any overtime charges.
2. The cost of transporting by the least expensive reasonable means: (A) The cost of transporting damaged parts from the site of the loss to the most practical place where they can be repaired; (B) the cost of transporting replacement parts from the place nearest the site of the loss; or (C) the cost of transporting the aircraft to the most practical place where it can be repaired and then back to the place of the loss or your home airport, whichever is closer.

**Your In-motion deductible.** The In-motion deductible shown on the Coverage Summary page will apply to any loss to your aircraft while it is moving. This means you'll first pay an amount equal to the In-motion deductible. We will then pay the remainder of your loss up to the limit of your Aircraft Physical Damage coverage. An aircraft is in motion whenever it is moving on the ground or in flight as a result of engine power or autorotation.

No deductible, however, will apply to losses to your aircraft caused by an accident with another aircraft that we insure but which is owned by someone else.

**Your Not in-motion deductible.** The Not in-motion deductible shown on the Coverage Summary page will apply to each loss to your aircraft while it's not in-motion.

No deductible will apply, however, to any loss to your aircraft caused by: (1) fire, explosion, lightning, theft, robbery, vandalism; (2) an accident involving an aircraft we insure that's owned by someone else; (3) accidental damage to your aircraft while it's being transported after being dismantled. For example, while being transported on a flatbed truck.

**What you must do.** You agree to give us a sworn Proof of Loss Statement within 90 days of the loss. You also agree to allow us or anyone we designate to question you under oath and to show us the damaged property and any records you have to prove the loss.

**When we'll pay.** We will pay for a loss to your aircraft within 30 days from the time the agreement is reached on the amount of the loss. But you must have complied with the requirements of this policy. And we'll deduct any premiums you owe and any other debts you have with us.

**Suits for aircraft physical damage payments.** No suit or other legal action to recover payment can be brought under this policy unless you have complied with all of its terms and the action is brought within one year after the occurrence which led to the loss or damage.

**Rights against third parties.** This insurance is for your benefit alone and not for any other person or organization. Except for what you agree to do under an Airport Contract, you promise not to do anything that will take away our right to collect for damages caused by others.

**Automatic reinstatement.** If an aircraft is damaged we'll reduce the amount of insurance you have on the aircraft by the amount of damage. Once repairs are begun, we'll increase your insurance by the value of the completed repairs, until the original amount of coverage on the aircraft is restored or this policy expires.

**Arbitration of disputes.** If we can't agree with you on the amount of loss to your aircraft the following procedure will be used to settle the dispute:

1. You can request in writing that the dispute be submitted for arbitration. We can do the same.
2. Each will then select an appraiser and will inform the other of that choice within 20 days of the initial notification.
3. The appraisers will select a competent and impartial umpire. If the appraisers can't agree on an umpire within 15 days, a judge of the state in which the property is located can appoint an impartial umpire if asked to do so by you or us.
4. Each appraiser will appraise the loss for each item. If they don't agree, they'll submit their differences to the umpire. Agreement by two of the three will decide the amount of the loss.

You will then pay your appraiser and we'll pay ours. Any other costs of the appraisal and the umpire will be divided equally.

**Salvage.** If an aircraft covered under Aircraft Physical Damage Coverage is damaged you must do all you can to protect it from further loss. If you don't, we won't be responsible for further loss to the aircraft.

We will pay all reasonable expenses you incur in protecting your aircraft from further loss.

If your aircraft is destroyed and we pay for the total loss, we can elect to take over the salvage as our property. You cannot, however, merely abandon the damaged property to us. If we decide to take the salvage, we can sell it or do whatever else we want with it.



### **Aircraft damage we won't cover.**

Although your All-Clear Aircraft Policy provides you with coverage against risk of damage or loss to your aircraft, there are a few things it will not cover.

**Tires.** We won't cover loss or damage to the tires of your aircraft unless caused by theft, vandalism or malicious mischief; or directly by other physical damage covered by this policy.

**Wear-tear.** We won't cover loss or damage to your aircraft caused by and confined to wear and tear, deterioration, freezing, mechanical or electrical breakdown or failure unless the loss is the direct result of other physical damage covered under this policy.

For example, if the windshield of your aircraft cracked by freezing, we won't pay for the windshield. However, if the cracked windshield is responsible for you having an accident, we'll pay for the resulting damage to your aircraft.

**Embezzlement.** We won't cover loss or damage to your aircraft caused when someone with a legal right to possess the aircraft embezzles or converts it under a lease, rental agreement, conditional sale, mortgage or other legal agreement governing the use, sale or lease of property.

**War-confiscation.** We won't cover loss or damage to your aircraft caused by declared or undeclared war, invasion, rebellion or by the seizure or detention of the aircraft by any government. Nor will we cover damage to your aircraft done by or at the direction of any government.

**Ownership.** We won't cover loss or damage to your aircraft if your position of ownership changes from that stated on the Coverage Summary page. For example, if you sell or mortgage your aircraft.

## **Your Medical Coverage**

We will pay all reasonable medical expenses that passengers, pilots and crew members, including you, incur within one year from the date of an accident. But the aircraft must have been used by you or with your permission when the accident occurred. Reasonable medical expenses include the necessary cost of medical, surgical, dental, ambulance, hospital, professional nursing and funeral services.

**What we'll pay.** The amount shown on the Coverage Summary page for "each person" is the most we'll pay for all medical expenses for one person in any one accident. We won't, however, provide medical services to anyone or their employees until any medical benefits covered under workers' compensation have been deducted.

**Whom we'll pay.** We can pay each injured person directly or we can pay the hospital or any other organization that provided service. Any payment we make will be applied against the limits of your medical coverage and won't be an admission of legal responsibility by us.

**Proof of loss.** As soon as reasonably possible after the accident an injured person or someone representing him or her must give us written proof of the claim. An injured person must also submit to physical examination by any doctor we select whenever we reasonably ask. You will also help us obtain medical reports and copies of records.

**Suits for medical payment.** No suit or other legal action to recover payment can be brought under this policy unless you have complied with all its terms and at least 30 days have elapsed since the required proof of claim has been given to the Aviation Managers.

## **Your Coverage For Other Aircraft**

**Other aircraft.** If you own the aircraft described on the Coverage Summary page alone or as a co-owner with your spouse, your Liability or Medical Coverage under this policy will also cover you and the following people while you or they are lawfully using another aircraft with your permission:

- Your spouse living in the same household.
- If you are a corporation, any of your executive officers, while they are using another aircraft on your behalf for business purposes.

We won't, however, cover the use of the other aircraft if the Coverage Summary page allows you to charge people for using your own aircraft. We also won't cover any aircraft that is owned or used on a regular or frequent basis by any of the people listed above or their employers, or members of their household or by an executive officer if you are a corporation. Nor will we cover you if you are leasing the aircraft described on the Coverage Summary page to someone else.

**Substitute aircraft.** If you are temporarily using another aircraft because your own has broken down, is damaged or needs servicing or repair, we'll continue to provide you with the same Liability and Medical Coverage as you have under this policy. But we won't cover the legal responsibility of anyone insured under this policy who owns the substitute aircraft. Nor will we cover the legal responsibility of any agent or employee of the owner of the aircraft.

**Newly acquired aircraft.** If you become the owner of another aircraft during the policy period, we'll cover it under this policy provided you notify the Aviation Managers within 30 days after you get it, pay an additional premium, and:

1. The aircraft replaces an aircraft described on the Coverage Summary page.
2. Or it is an additional aircraft and we insure all the aircraft you own at the time you buy it.

Unless you and the Aviation Managers agree differently in writing, new aircraft are covered up to the following amounts:

### **Liability & Medical Coverage:**

**Replacement Aircraft.** Same Coverage and Limits of Coverage as on replaced aircraft.

**Additional Aircraft.** Same Coverage and Limits of Coverage as on your aircraft having the most similar passenger capacity, not counting the crew.

### **Aircraft Physical Damage Coverage:**

**Replacement Aircraft.** Same Coverage and deductibles as on replaced aircraft. We'll pay the actual amount you paid for the aircraft.

**Additional Aircraft.** Same Coverage and deductibles as on aircraft having the most similar Limit of Coverage. We'll pay the actual amount you paid for the aircraft.

United States Aviation Underwriters, Incorporated  
Aviation Managers

**SAMPLE**  
*John V. Brennan*  
John V. Brennan  
President



# Commercial General Liability Policy For Airports

OCCURRENCE FORM

## SPECIMEN

**USAIG**

UNITED STATES AIRCRAFT INSURANCE GROUP

USAIG is managed by United States Aviation Underwriters, Inc.  
Home Office: One Seaport Plaza, 190 Water Street, New York, NY 10038

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### Nuclear Energy Exclusion Endorsement (Enclosed)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Companies named on the face of this policy, which are collectively called the Company, and who do jointly and severally provide this insurance. "Aviation Managers" means United States Aviation Underwriters, Inc.

The word "Insured" means any person or organization qualifying as such under Section II: Who is an Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V: Definitions.

## Section I: Coverages

### Coverage A: Bodily Injury and Property Damage Liability

#### 1. Insuring Agreement.

- We will pay those sums that the Insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments: Coverages A and B. This insurance applies only to "bodily injury" and "property damage" which occurs during

the policy period. The "bodily injury" or "property damage" must be caused by an "occurrence." The "occurrence" must take place in the "coverage territory." We will have the right and duty to defend any "suit" seeking those damages. But:

- The amount we will pay for damages is limited as described in Section III: Limits of Insurance;
  - We may investigate and settle any claim or "suit" at our discretion; and
  - Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.
- Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."
  - "Property damage" that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the "occurrence" that caused it.

#### 2. Exclusions.

This insurance does not apply to:

- "Bodily injury" or "property damage" expected or intended from the standpoint of the Insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- "Bodily injury" or "property damage" for which the Insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
  - Assumed in a contract or agreement that is an "insured contract;" or
  - That the Insured would have in the absence of the contract or agreement.
- "Bodily injury" or "property damage" for which any Insured may be held liable by reason of:
  - Causing or contributing to the intoxication of any person;
  - The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
  - Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

- Any obligation of the Insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.
  - "Bodily injury" to:
    - An employee of the Insured arising out of and in the course of employment by the Insured; or
    - The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.
- This exclusion applies:
- Whether the Insured may be liable as an employer or in any other capacity; and
  - To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- This exclusion does not apply to liability assumed by the Insured under an "insured contract."

- "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
  - At or from premises you own, rent or occupy;
  - At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste;
  - Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for you or any person or organization for whom you may be legally responsible; or
  - At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations:
    - if the pollutants are brought on or to the site or location in connection with such operations; or
    - if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

- (2) Any loss, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- (3) "Bodily injury" or "property damage" arising out of an "environmental disturbance" or for sums or awards claimed as damages to the extent that such sums or awards represent payment or compensation for the taking of or exercise of rights with respect to the property of others.

"Environmental disturbance" means:

- (a) noise (whether audible to the human ear or not) or vibration, including sonic boom and similar phenomena associated with trans-sonic and super-sonic movement, generated by the operation of aircraft or any of its parts;
- (b) interference with the quiet enjoyment of property by overflight or other operation of aircraft.

But, "environmental disturbance" does not include noise, vibration, pollutants or interference resulting from crash or collision of a vehicle or aircraft operated in an emergency situation.

- g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any Insured. Use includes operation, including aircraft "in flight" and "loading or unloading."

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
- (a) Less than 26 feet long; and
- (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the Insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (Section V.10).

- h. "Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any Insured; or
- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

- i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

- j. "Property damage" to:

- (1) Property you own, rent, or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in your care, custody or control;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (4) of this exclusion does not apply to "property damage" to aircraft when your control is solely for the purpose of fueling or traffic control of an aircraft.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "Products/Completed Operations hazard."

- k. "Property damage" to "your product" arising out of it or any part of it.

- l. "Property damage" to "your work" arising out of it or any part of it and included in the "Products/Completed Operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

- m. "Property damage" to "impaired property" or property that has not been physically injured arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

- n. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

- o. "Property damage" arising out of the appropriation or taking of property or property rights by governmental power.

- p. "Bodily injury" or "property damage" arising out of any contest, exhibition, airmeet, air race, air show, parachute jumping or sky diving, permitted, sponsored by or participated in by you or any Insured.

Exclusions c. through n. do not apply to damage by fire to premises rented to you. A separate limit of insurance applies to this coverage as described in Section III: Limits of Insurance.

## Coverage B: Personal and Advertising Injury Liability

### 1. Insuring Agreement.

- a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments: Coverages A and B. We will have the right and duty to defend any "suit" seeking those damages. But:

- (1) The amount we will pay for damages is limited as described in Section III: Limits of Insurance;
- (2) We may investigate and settle any claim or "suit" at our discretion; and
- (3) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

- b. This insurance applies to "personal injury" only if caused by an offense:

- (1) Committed in the "coverage territory" during the policy period; and
- (2) Arising out of the conduct of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you.

- c. This insurance applies to "advertising injury" only if caused by an offense committed:

- (1) In the "coverage territory" during the policy period; and
- (2) In the course of advertising your goods, products or services.

### 2. Exclusions.

This insurance does not apply to:

- a. "Personal injury" or "advertising injury;"

- (1) Arising out of oral or written publication of material, if done by or at the direction of the Insured with knowledge of its falsity;
  - (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
  - (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the Insured; or
  - (4) For which the Insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the Insured would have in the absence of the contract or agreement.
- b. "Advertising injury" arising out of:
- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
  - (2) The failure of goods, products or services to conform with advertised quality or performance;
  - (3) The wrong description of the price of goods, products or services; or
  - (4) An offense committed by an Insured whose business is advertising, broadcasting, publishing or telecasting.

### Coverage C: Medical Payments

1. **Insuring Agreement.**
  - a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
    - (1) On premises you own or rent;
    - (2) On ways next to premises you own or rent; or
    - (3) Because of your operations;
 provided that:
    - (1) The accident takes place in the "coverage territory" and during the policy period;
    - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
    - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
  - b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
    - (1) First aid at the time of an accident;
    - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
    - (3) Necessary ambulance, hospital, professional nursing and funeral services.
2. **Exclusions.**

We will not pay expenses for "bodily injury:"

  - a. To any Insured.
  - b. To a person hired to do work for or on behalf of any Insured or a tenant of any Insured.
  - c. To a person injured on that part of premises you own or rent that the person normally occupies.
  - d. To a person, whether or not an employee of any Insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law.
  - e. To a person injured while taking part in athletics.
  - f. Included within the "Products/Completed Operations hazard."
  - g. Excluded under Coverage A.
  - h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

### Supplementary Payments: Coverages A and B

We will pay, with respect to any claim or "suit" we defend:

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond

amounts within the applicable limit of insurance. We do not have to furnish these bonds.

4. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the Insured in the "suit."
6. Pre-judgment interest awarded against the Insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

### Section II: Who is an Insured

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are Insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an Insured. Your members, your partners, and their spouses are also Insureds, but only with respect to the conduct of your business.
  - c. An organization other than a partnership or joint venture, you are an Insured. Your executive officers and directors are Insureds but only with respect to their duties as your officers or directors. Your stockholders are also Insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an Insured:
  - a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, none of these employees is an Insured for:
    - (1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment; or
    - (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or
    - (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
  - b. Any person (other than your employee), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage.
  - e. Any airport manager of yours while acting within the scope of duties as your airport manager.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an Insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an Insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an Insured with respect to:
  - a. "Bodily injury" to a co-employee of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an Insured under this provision.
4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or, the end of the policy period, whichever is earlier;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.
5. If you are a public government, political or municipal corporation or agency thereof, board, commission or authority created by a public government:
- a. Any elected public official;
  - b. Any elected or appointed executive;
  - c. Any board, commission or authority member.

No person or organization is an Insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

### Section III: Limits of Insurance

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits."
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C; and
  - b. Damages under Coverage A and Coverage B, except damages because of injury and damage included in the "Products/Completed Operations hazard."
3. The Products/Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of injury and damage included in the "products/ completed operations hazard."
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence."
6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The limits of this Coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### Section IV: Commercial General Liability Conditions

1. **Bankruptcy.**  
Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve us of our obligations under this Coverage.
2. **Duties in the event of occurrence, claim or suit.**
  - a. You must see to it that we or the Aviation Managers are notified promptly of an "occurrence" which may result in a claim. Notice should include:
    - (1) How, when and where the "occurrence" took place; and
    - (2) The names and addresses of any injured persons and witnesses.
  - b. If a claim is made or "suit" is brought against any Insured, you must see to it that we or the Aviation Managers receive prompt written notice of the claim or "suit."
  - c. You and any other involved Insured must:
    - (1) Immediately send us or the Aviation Managers copies of any demands, notices, summonses or legal papers received in connection with the claim or a "suit";

- (2) Authorize us or the Aviation Managers to obtain records and other information;
- (3) Cooperate with us or the Aviation Managers in the investigation, settlement or defense of the claim or "suit"; and
- (4) Assist us or the Aviation Managers upon our or the Aviation Managers' request, in the enforcement of any right against any person or organization which may be liable to the Insured because of injury or damage to which this insurance may also apply.

- d. No Insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our or the Aviation Managers' consent.

#### 3. Legal action against Us.

No person or organization has a right under this Coverage:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an Insured; or
- b. To sue us on this Coverage unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an Insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the Insured and the claimant or the claimant's legal representative.

#### 4. Other Insurance.

If other valid and collectible insurance is available to the Insured for a loss we cover under Coverages A or B of this Coverage, our obligations are limited as follows:

##### a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

##### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the Insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage.

##### c. Method of sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 5. Premium Audit.

- a. We will compute all premiums for this Coverage in accordance with our rules and rates.
- b. Premium shown in this Coverage as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit

premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.

- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.
- 6. **Representations.**  
By accepting this policy, you agree:
  - a. The statements in the Declarations are accurate and complete;
  - b. Those statements are based upon representations you made to us; and
  - c. We have issued this policy in reliance upon your representations.
- 7. **Separation of Insureds.**  
Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage to the first Named Insured, this insurance applies:
  - a. As if each Named Insured were the only Named Insured; and
  - b. Separately to each Insured against whom claim is made or "suit" is brought.

8. **Transfer of rights of recovery against others to Us.**

If the Insured has rights to recover all or part of any payment we have made under this Coverage, those rights are transferred to us. The Insured must do nothing after loss to impair them. At our request, the Insured will bring "suit" or transfer those rights to us and help us enforce them.

## Section V: Definitions

- 1. "Advertising injury" means injury arising out of one or more of the following offenses:
  - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral or written publication of material that violates a person's right to privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of copyright, title or slogan.
- 2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."
- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or
      - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
    - (2) The Insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
- 5. "Impaired property" means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by:
    - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
    - b. Your fulfilling the terms of the contract or agreement.
- 6. "In flight" means:
  - a. When a fixed wing aircraft is "in flight" from the time it moves forward for takeoff and until it completes its landing run.
  - b. A rotorcraft is "in flight" while its rotors are in motion as a result

of engine power or autorotation.

- 7. "In motion" means:
    - a. When a fixed wing aircraft is moving under its own power or momentum generated by its engine.
    - b. A rotorcraft is "in motion" when its rotors are "in motion" as a result of engine power.
  - 8. "Insured contract" means:
    - a. A lease of premises;
    - b. A sidetrack agreement;
    - c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
    - d. Any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
    - e. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
    - f. An elevator maintenance agreement; or
    - g. That part of any other contract or agreement pertaining to your business under which you assume that tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage." Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- An "insured contract" does not include that part of any contract or agreement:
- a. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
    - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
  - b. Under which the Insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the Insured's rendering or failing to render professional services, including those listed in a. above and supervisory, inspection or engineering services; or
  - c. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.
9. "Loading or unloading" means the handling of property:
  - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto."
10. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing;
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
11. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
12. "Personal injury" means injury, other than "bodily injury," arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;
  - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
  - e. Oral or written publication of material that violates a person's right of privacy.
13. a. "Products/Completed Operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned.b. "Your work" will be deemed completed at the earliest of the following times:
  - (1) When all of the work called for in your contract has been completed.
  - (2) When all the work to be done at the site has been completed if your contract calls for work at more than one site.
  - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- c. This hazard does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
  - (3) Products or operations for which the classification in this Coverage or in our manual of rules includes products or completed operations.
14. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property; or
  - b. Loss of use of tangible property that is not physically injured.
15. "Suit" means a civil proceeding in which damages because of "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes an arbitration proceeding alleging such damages to which you must submit or submit with our consent.
16. "Your product" means:
  - a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (1) You;
    - (2) Others trading under your name; or
    - (3) A person or organization whose business or assets you have acquired; and
  - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products."Your product" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. and b. above.  
"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

17. "Your work" means:
  - a. Work or operations performed by you or on your behalf and
  - b. Materials, parts or equipment furnished in connection with such work or operations."Your work" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. or b. above.





