NBAA's Aviation Insurance & Financial Risk Management Seminar

January 22, 2004 New Orleans Corporate Aircraft Insurance: Insuring Contractual Risks, Alternative Ownership and Operating Arrangements

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A. Various Risks to the Owner/Operator Resulting from a Loss

- 1. Introduction.
- 2. Direct Physical Damage.
- 3. Loss of Use - Consequential Damage
- 4. Diminution in Value
- **5. Incidental Damages**









B. CORPORATE AIRCRAFT INSURANCE COVERAGES

- Typically, an aircraft insurance policy will contain a specific "Purpose of Use" or "Approved Use" clause.
- Coverage could be denied if any charges were being made for the use of the aircraft, whether it was being used under FAR 91.501 or FAR Part 135.
- Also, being an approved pilot and being an "Insured" are two distinct concepts.

1. Liability Coverages

Bodily Injury/Property Damage Liability Including Passengers

War Risk and Allied Perils Liability

Voluntary Settlement





Temporary Substitute Aircraft Liability
 Non-Owned Aircraft Liability
 Non-Owned Aircraft Physical

Non-Owned Aircraft Physica Damage Hangarkeepers Legal Liability

Liability for Property Damage to Hangars

Premise Liability

Sale of Aircraft, Aircraft Products and Services Liability

Contractual Liability

Personal Effects and Baggage Liability

Cargo Liability





Personal Injury Liability

Host Liquor Liability

Operation of Mobile Equipment



2. Medical Payment Coverages

 Medical Expenses Payments for Passengers/Crew

Premises Medical Payments

3. Physical Damage Coverages

 All risks Physical Damage Hull with Not in Motion and In Motion Deductibles

War Risks and Allied Perils

Spare Engine and Parts

4. Miscellaneous Coverages

 Rental Expense for Temporary/Substitute Aircraft

Trip Interruption

Lay-up Credit for Scheduled Aircraft

C. WAIVER OF SUBROGATION

The **right of subrogation** is a legal right which allows the insurance company to recover its loss from a third party who is at fault for the loss. If the loss is the fault of one of the insured persons under the policy, the insurance company does **not** have the right to recover from one of its owned insureds by way of subrogation.

It is common for aircraft hull coverage to contain a provision forbidding the insured to waive its rights of recovery against a wrongdoer, and thus the insurer's ability to recover its loss. Example: "This insurance is for your benefit alone and not for any other person or organization. . . [Y]ou promise not to do anything that will take away our right to collect for damages caused by others."

2. How the Issue Arises in Negotiations

right Because the Of subrogation belongs to the insurance company, a true waiver of that right (i.e. an agreement in advance not to pursue a claim if a loss occurs) only be made by the can insurance company, and will be contained in the policy.

A second type is a contractual agreement by the owner or operator to waive any future claim.

Such a waiver may violate the terms of the insurance policy itself.

In contract negotiations, the two primary considerations are:

(i) one of the parties will be asking for a waiver of subrogation, and

(ii) additional premium to be borne by one of the parties or shared between them.

D. GROUND HANDLING LOSSES AND HOLD HARMLESS AGREEMENTS



1. Introduction

- Flight crews are faced with a dilemma.
- They may not have the authority to sign.
- Signing them could present an insurance problem.
- Refusal to sign them could result in higher parking and handling fees or a denial of service by the FBO.

2. Examples

"Any damage incurred or consequential loss involved to the aircraft occurring during snow removal on or around the aircraft or deicing the aircraft." "Consequential loss, diminution of value, loss of use or other incidental loss but not actual physical damage to the aircraft, for other services offered by the FBO, including but not limited to towing or cleaning of the aircraft, lavatory services provided and fueling of the aircraft."

"Release [the FBO] from any damages sustained to the customer's aircraft or other personal property as the result of high winds or other adverse weather conditions." "Under no circumstances shall [the FBO] be liable to the customer for indirect, incidental, consequential, special or exemplary damages, whether in contract or in tort (including strict liability and negligence), such as, but not limited to, loss of revenue, loss of use or anticipated profits, diminution or loss of value, or costs associated with substitution or replacement aircraft."

3. Problems

Some hold harmless agreements also require that the customer: "currently maintains policies of aircraft and commercial general liability insurance with respect to the aircraft, operations and maintenance, as well as 'all risk' type hull insurance on its aircraft and engines" and stating that, "In the event any third party claim is made against [the FBO], Customer's insurance coverage shall provide primary coverage."

This agreement also requires that the customer agree to "indemnify, save and hold harmless" the FBO and the airport "from and against any and all claims, suits damages, fines and penalties including all expenses, reasonable attorneys' fees and costs incidental to the defense of any claims arising out of [the FBO's] acts or omissions . . . except to the extent such claims arise from the negligence or willful misconduct of [the FBO]."

The pilot may be an independent contractor with no such authority whatsoever.

If the customer is the essee of the aircraft and is obligated under the lease agreement to reimburse the lessor for damage to or diminution in value of the aircraft, the lessee may waive its right to recover such losses from the FBO.

The use of these agreements by an FBO may constitute a violation of the airport owner's "grant assurances" to the federal government.



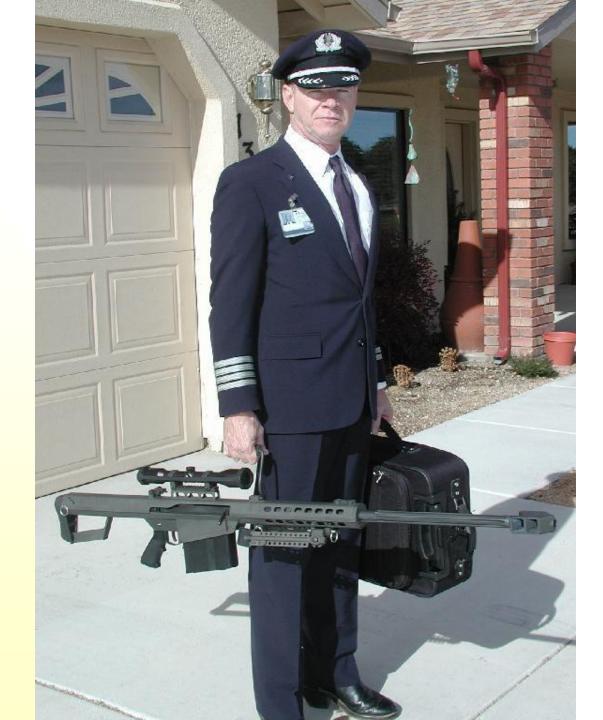
4. **RECOMMENDATIONS**

- refuse to sign them altogether.
- cross out and initial any provisions considered to be unacceptable.
- [very helpful for the flight crews]: have a clear direction in advance of the flight.

 review the agreement's specific terms with attorney and aviation insurance professional.

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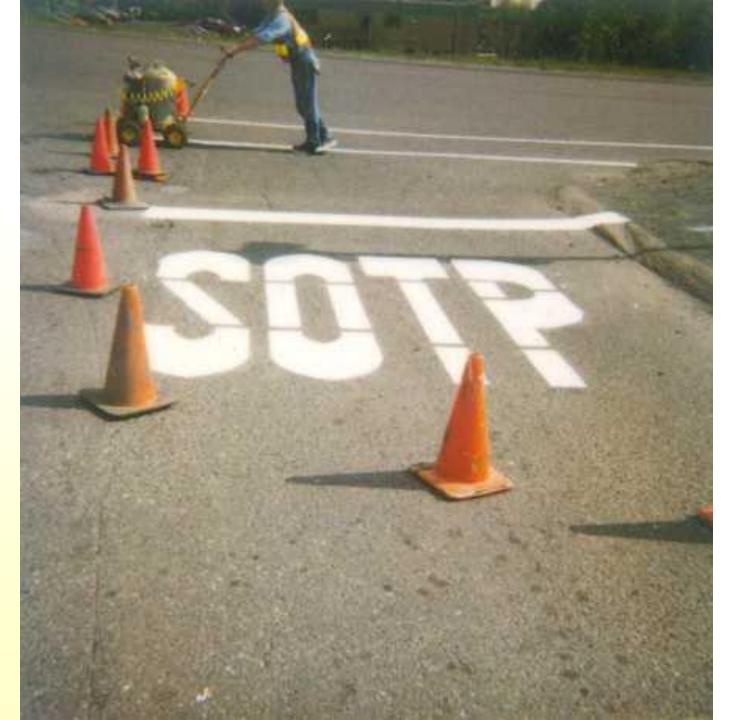
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INDEMNIFICATION AGREEMENTS

"Lessee shall indemnify and save harmless Lessor, its successors, and assigns, from and against any and all loss." "Loss" = claims, demands, costs and expenses of every nature, including reasonable attorneys' fees

The insurer may disclaim any responsibility under this clause unless it has been expressly approved in advance.

Obtain the insurer's recognition of the agreement itself or make an appropriate endorsement to the policy



F. ALTERNATIVE OWNERSHIP/OPERATING ARRANGEMENTS

The 1996 crash of a G-IV on take off from Palwaukee Airport.

Use: Does the "Purpose of Use" or "Approved Use" clause in the policy allow for all uses to which the aircraft may be put? Non-Operating Owner: are all of its interests (both with respect to liability and physical damage) sufficiently protected by the operator's policy?

Dilution of Limits: Is the policy limit enough if other parties are insured under the same liability coverage?

Non-Owned Aircraft: Liability coverage for its own use of non-owned aircraft?

Indemnification: Are indemnification provisions covered under the policy?

Cancellation: Will the aircraft owner receive adequate notice if insurance coverage is deleted, cancelled or materially altered?

Independent Contractor: Does the independent contractor who is flying the aircraft have its own liability coverage?

CONCLUSION

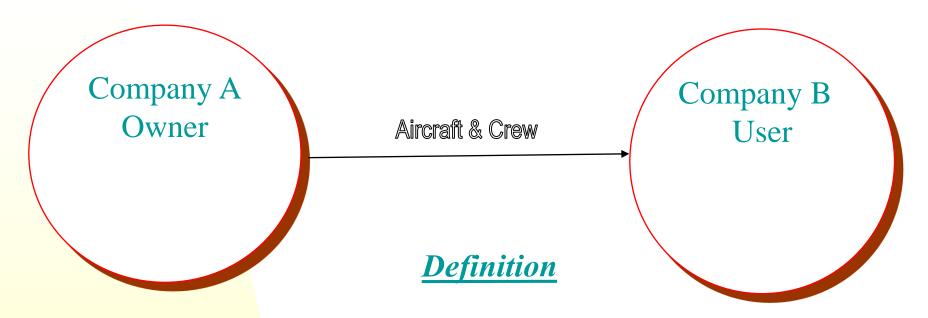
Choose an experienced aviation insurance broker who has specialized knowledge of both aviation insurance coverages and alternative ownership/operating arrangements.

 Put all alternative ownership/operating arrangements in writing. Watch closely any indemnification language in written agreements because they may include broader obligations than the insurer is willing to cover (consider recommending that a copy of the proposed agreement be submitted for the insurance broker's review and comments before it is signed).

- Provide the insurance broker with complete information regarding the corporation's operation, including a complete and accurate application and pilot history forms and a copy of any written alternative ownership/operating agreement.
- Make sure that all of the corporation's operations, whether alternative or not, are recognized under and covered by the insurance policy.

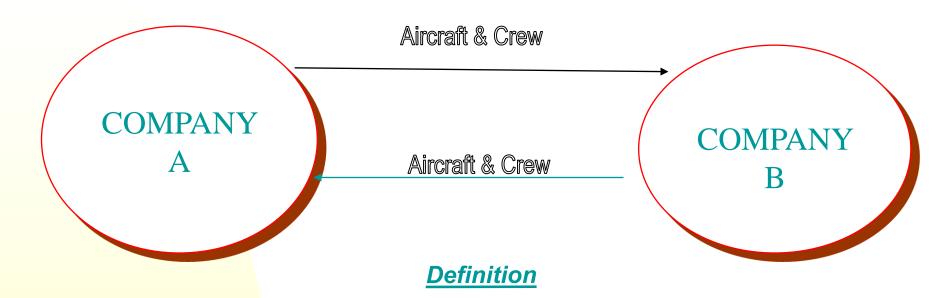
If the corporation is covered under someone else's insurance policy (e.g., a management company's fleet policy), get a Certificate of Insurance and/or a copy of the full policy from the insurer to make sure that the corporation's interests are adequately covered.

TIME-SHARING AGREEMENT

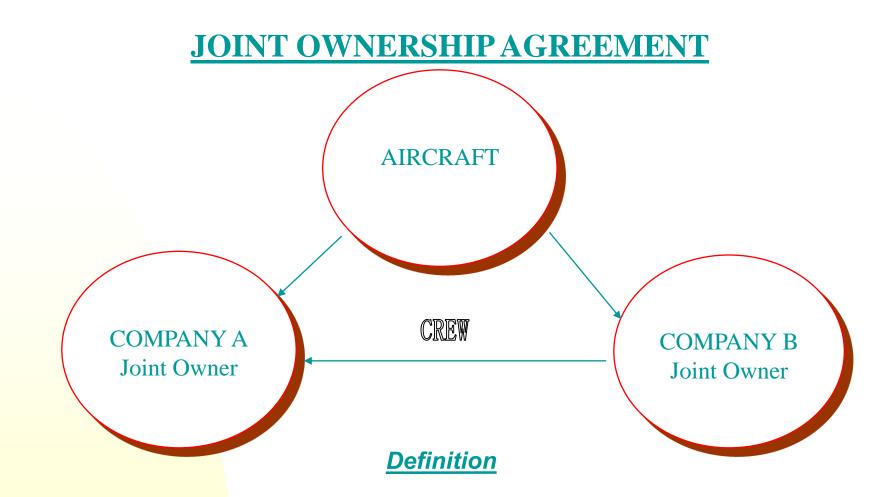


An arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of Section 91.501. FAR Part 91.501(c)(1)

INTERCHANGE AGREEMENT

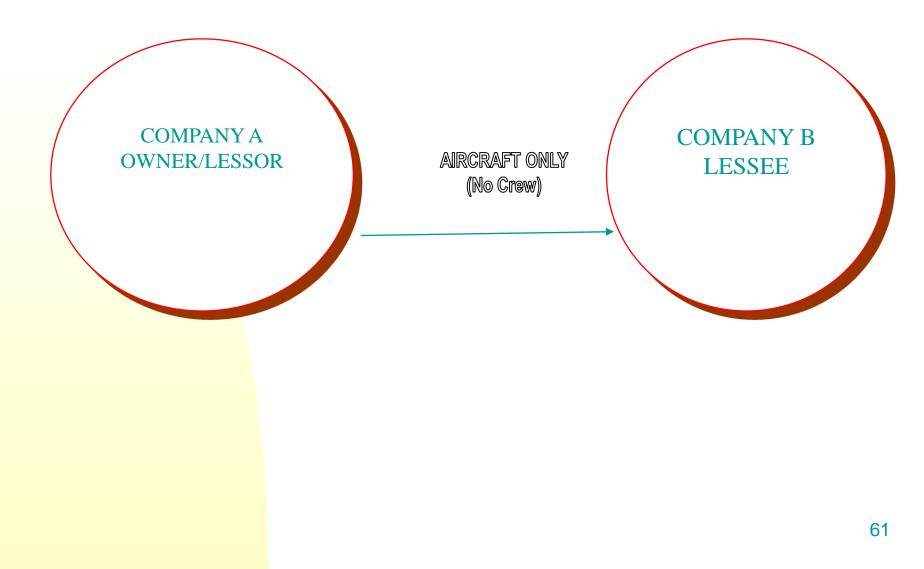


An arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes. FAR Part 91.501(c)(2).

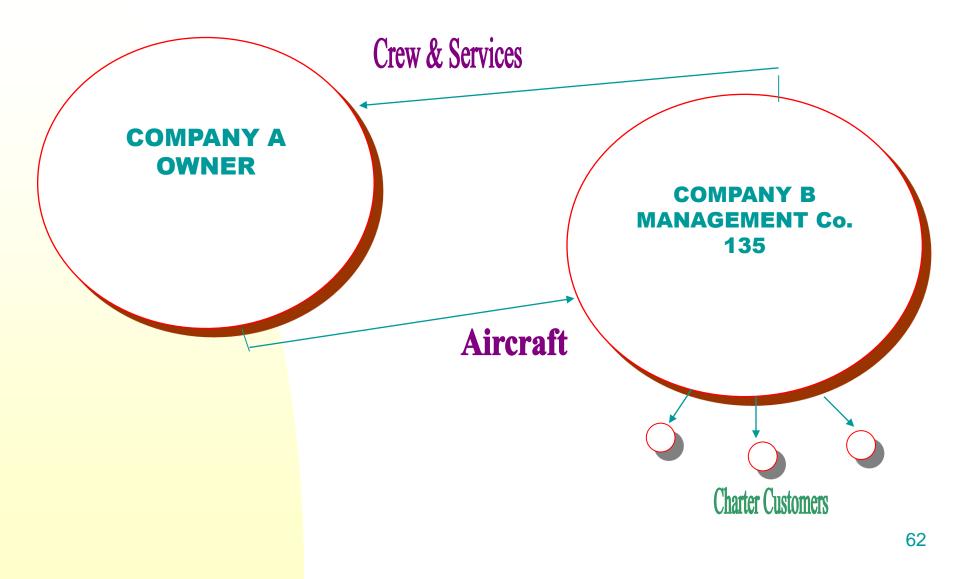


An arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement. FAR Part 91.501(c)(3).

EXCLUSIVE DRY LEASE AGREEMENT



MANAGEMENT COMPANY WITH CHARTER TO THIRD PARTIES



FRACTIONAL OWNERSHIP PROGRAM

