

# **NBAA's Aviation Insurance & Financial Risk Management Seminar**

**January 22, 2004**

**New Orleans**

**Corporate Aircraft Insurance:  
Insuring Contractual Risks,  
Alternative Ownership  
and Operating Arrangements**

Paul V. Herbers  
Susan E. McKeon  
COOLING & HERBERS, P.C.  
2400 City Center Square  
1100 Main Street  
Kansas City, MO 64105  
816- 474-0777 (Telephone)  
816-472-0790 (Fax)  
[www.coolinglaw.com](http://www.coolinglaw.com)

# 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









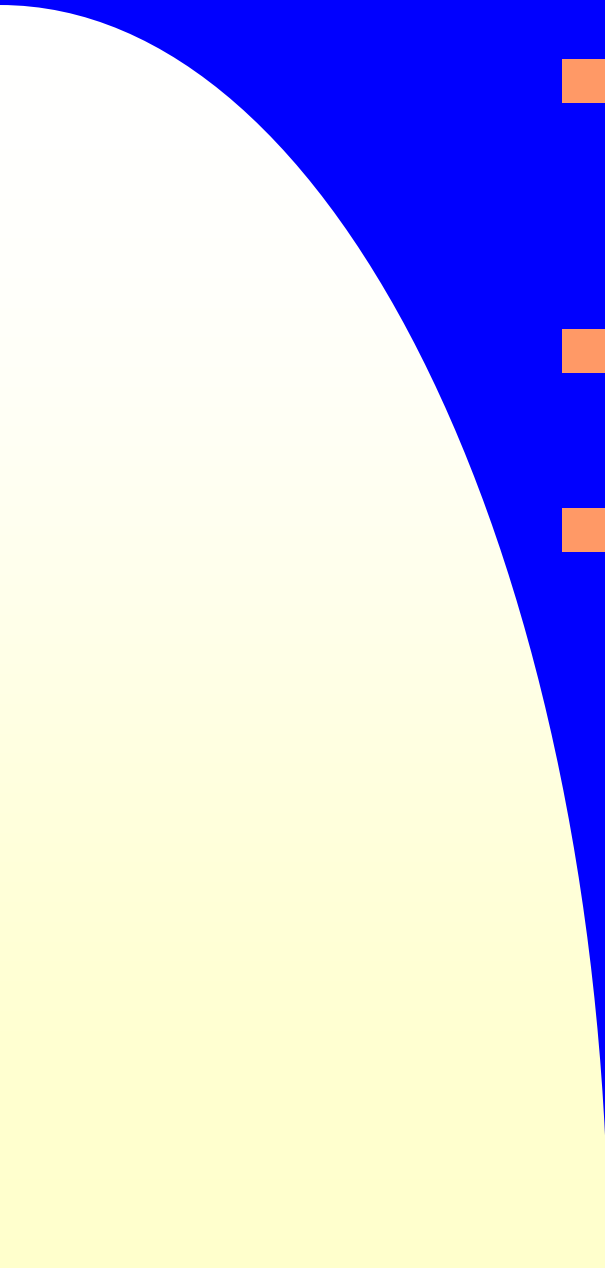


## B. CORPORATE AIRCRAFT INSURANCE COVERAGES

- 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.

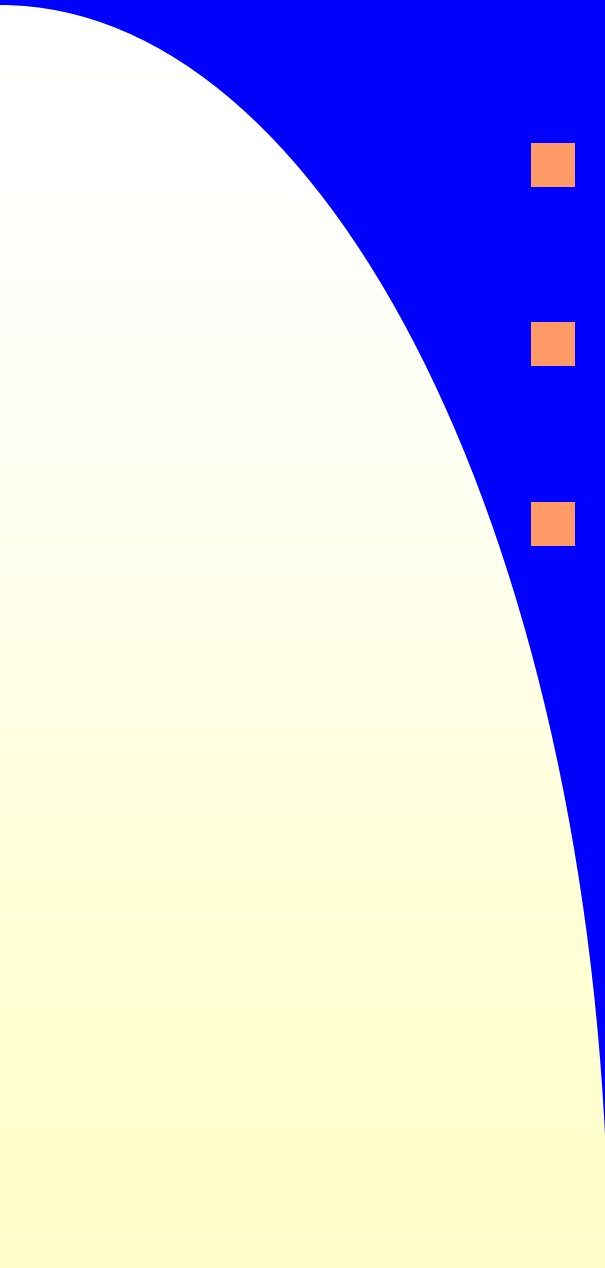
# 1. Liability Coverages



- 
- Bodily Injury/Property Damage Liability Including Passengers
  - War Risk and Allied Perils Liability
  - Voluntary Settlement



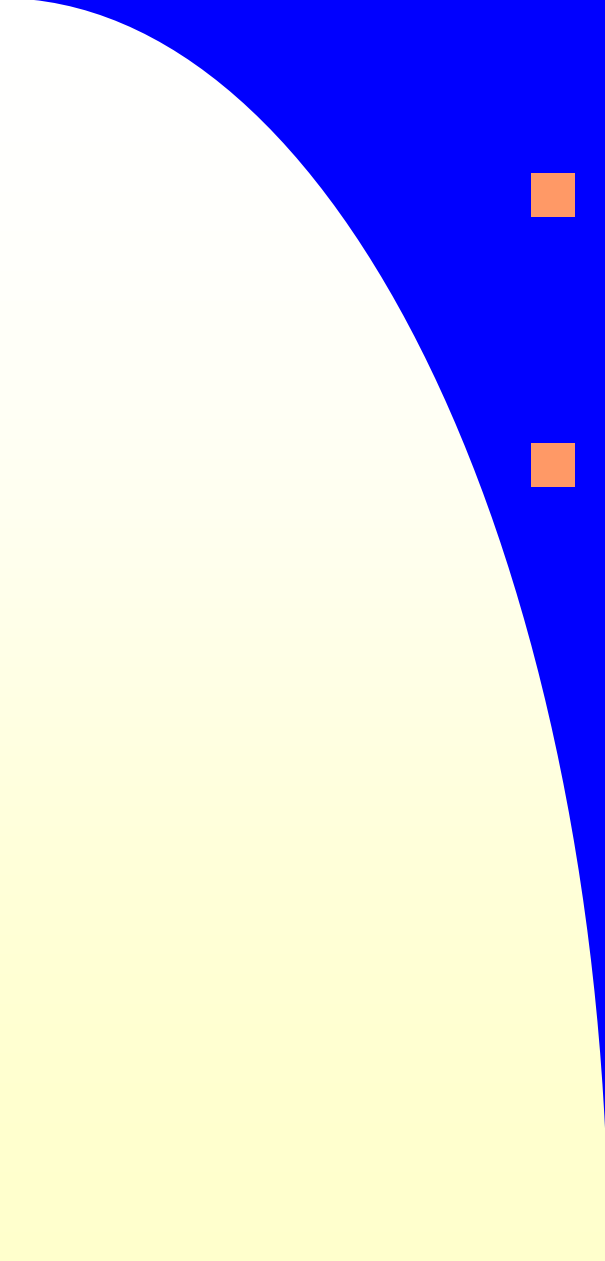


- 
- Temporary Substitute Aircraft Liability
  - Non-Owned Aircraft Liability
  - Non-Owned Aircraft Physical Damage

- 
- Hangarkeepers Legal Liability
  - Liability for Property Damage to Hangars
  - Premise Liability

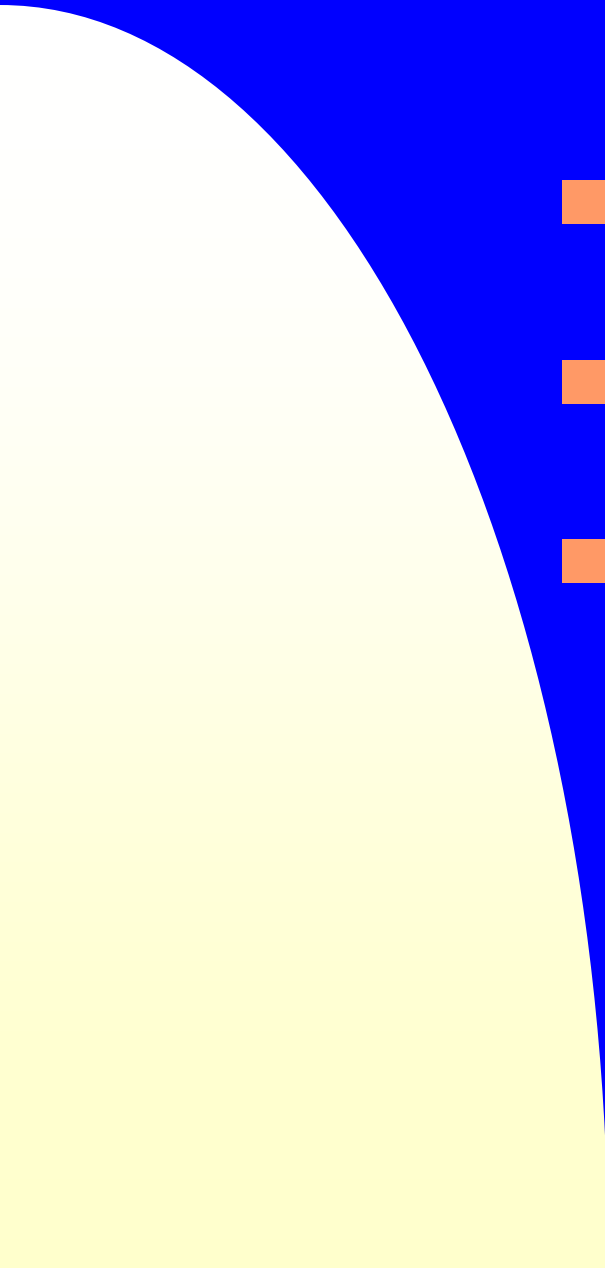
- 
- Sale of Aircraft, Aircraft Products and Services Liability
  - Contractual Liability



- 
- 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

Because the right 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) **can only be made by the 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.”

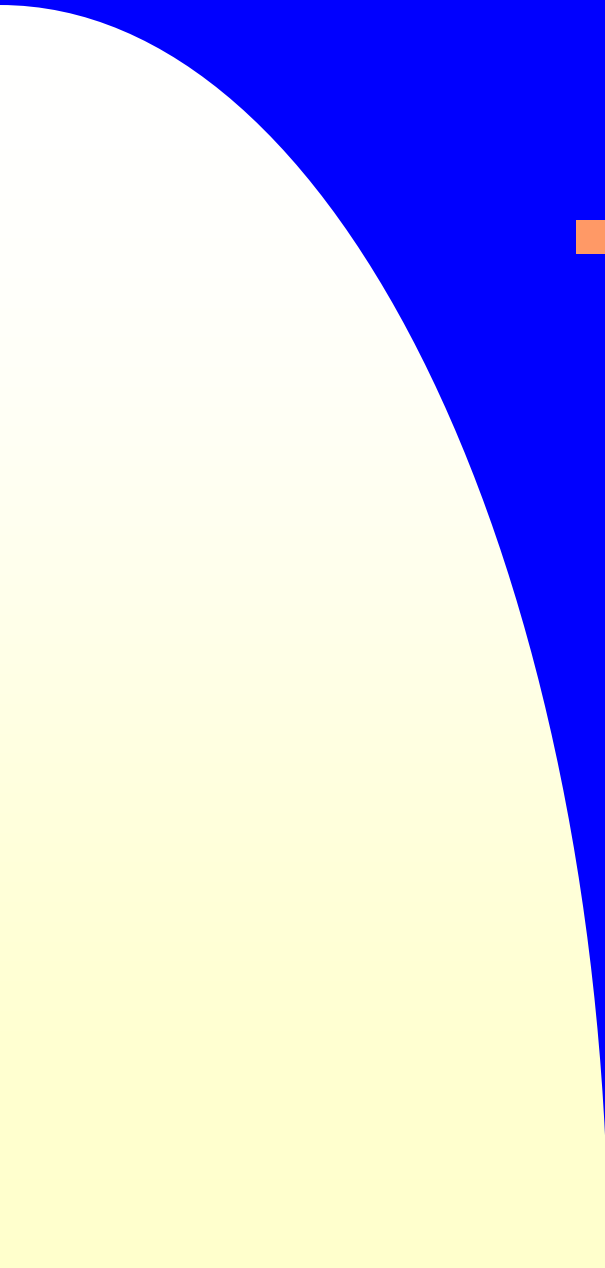
- “Release [the FBO] from any damages sustained to the customer’s aircraft or other personal property **as the result of high winds or other adverse weather conditions.**”

- **“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 **lessee** 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.



**Sardy Field**  
**Aspen/Pitkin County Airport**

0233 East Airport Road  
Aspen, Colorado 81611  
970/920-5384  
FAX 970/920-5378

**CRITERIA FOR AIRPORT DIRECTOR APPROVAL FOR TAKE-OFF ON RUNWAY 15**

1. The below signed individual does certify that the aircraft also listed below will perform take-off within a maximum of 4,000 feet of ground roll at gross take-off weight (runway has a 2% up-slope) at 8,000 feet pressure altitude and 20 degrees C (68 degrees F.) Take-off must include adequate distance for accelerate/stop or balance field length distance.
2. The aircraft flight manual must show that the aircraft will perform best angle of climb (V<sub>x</sub>) speeds; less than 100 kts. > 500 f.p.m. / 100 - 120 kts. > 800 f.p.m. / 120 or greater kts. > 1,000 f.p.m.
3. The entire length of the runway (7006 ft.) must be utilized, unless emergency situations dictate, (i.e. runway obstruction or construction) and aircraft performance charts must demonstrate that the aircraft can perform a safe take-off using the available runway length, including adequate accelerate/stop or balance field length distance.
4. By signature below, and in consideration for being permitted to take-off on Runway 15, undersigned, for him/herself, and his/her heirs, dependents, successors and assignees, acknowledges that he/she is fully advised of the requirements and hazards of such take-offs, agrees to abide by all ASE Noise Abatement Procedures, has determined as pilot-in-command in the exercise of professional judgment that such take-off can be conducted safely and does hereby waive and release Pitkin County (and its airport) from any liability for personal injury or property damage arising from the permitted take-off and does hereby indemnify Pitkin County (and its airport) from all claims (and defense thereof) and/or liability for personal injury or property damages to third parties caused by such take-off.

APPROVED AIRCRAFT TYPE: \_\_\_\_\_

APPROVED AIRCRAFT N-NUMBER: \_\_\_\_\_

**PILOT IN COMMAND**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Pilot In Command Signature Date

\_\_\_\_\_  
Director of Aviation/Representative Date

4. **By signature below**, and in consideration for being permitted to take-off on **Runway 15**, undersigned, for him/herself, and his/her heirs, dependents, successors and assignees, acknowledges that he/she is fully advised of the requirements and hazards of such take-offs, agrees to abide by all ASE Noise Abatement Procedures, has determined as pilot-in-command in the exercise of professional judgment that such take-off can be conducted safely and **does hereby waive and release Pitkin County (and its airport) from any liability for personal injury or property damage arising from the permitted take-off and does hereby indemnify Pitkin County (and its airport) from all claims (and defense thereof) and/or liability for personal injury or property damage to third parties caused by such take-off.** <sup>45</sup>







## E. 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.

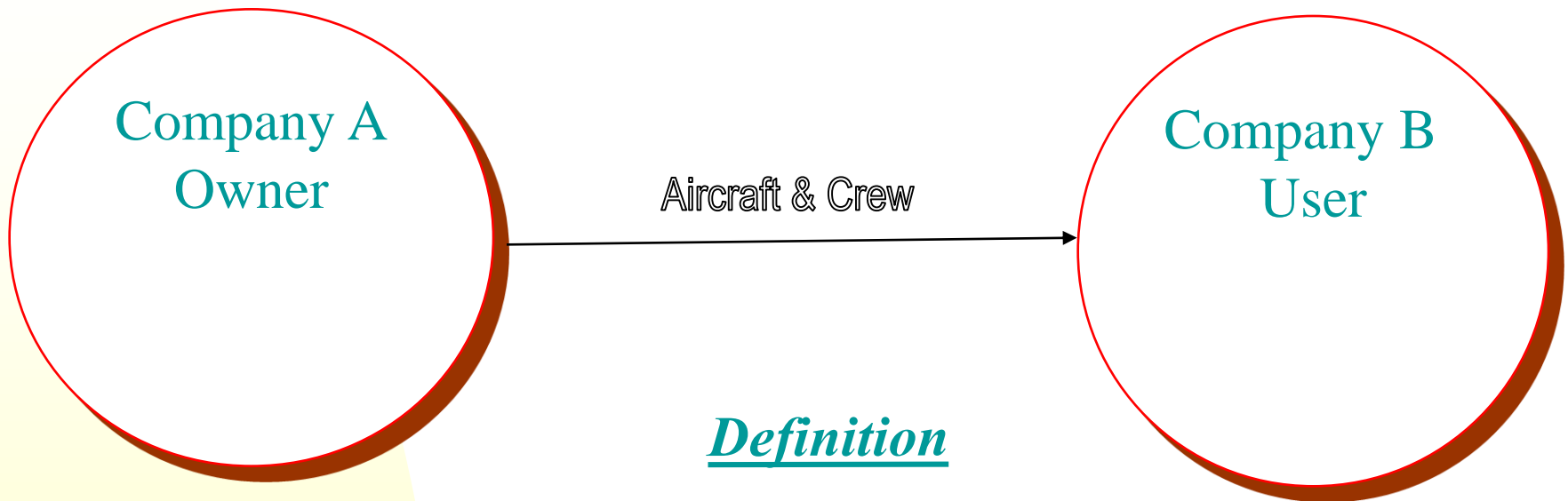


- Watch closely any indemnification language in written agreements because they may include broader obligations than the insurer is willing to cover (consider recommending that a copy of the proposed agreement be submitted for the insurance broker's review and comments before it is signed).

- 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.

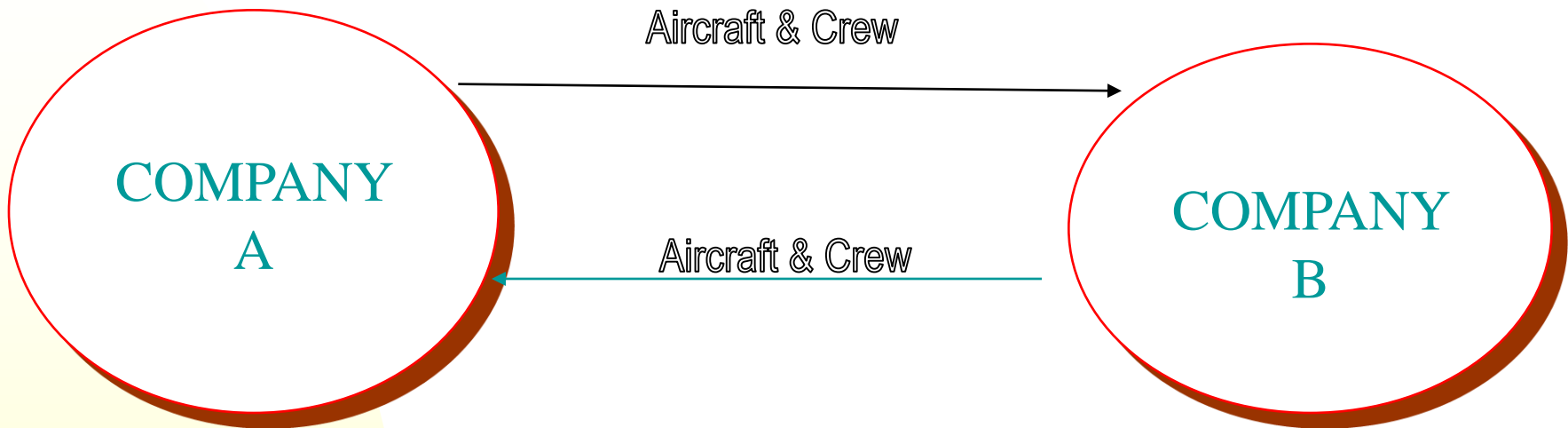
- If the corporation is covered under someone else's insurance policy (e.g., a management company's fleet policy), get a Certificate of Insurance and/or a copy of the full policy from the insurer to make sure that the corporation's interests are adequately covered.

## 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)*

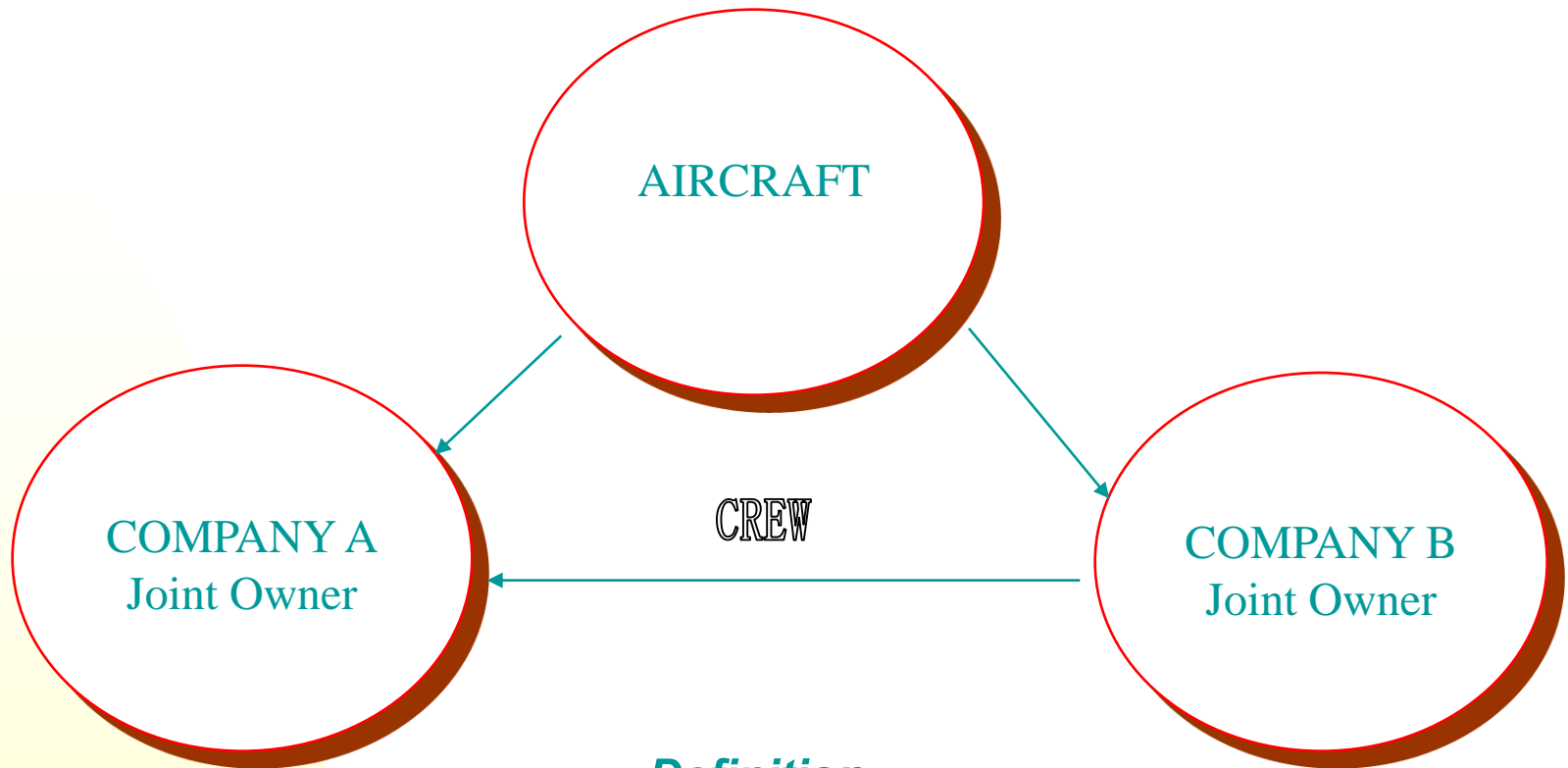
# INTERCHANGE AGREEMENT



## Definition

*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).*

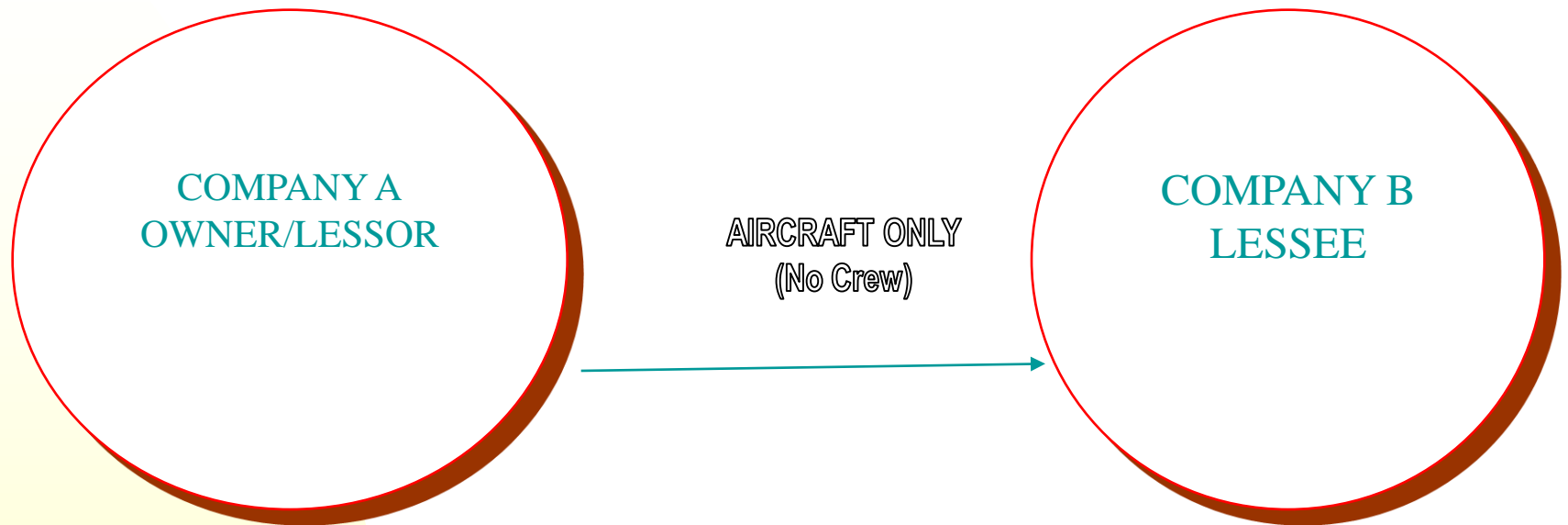
# JOINT OWNERSHIP AGREEMENT



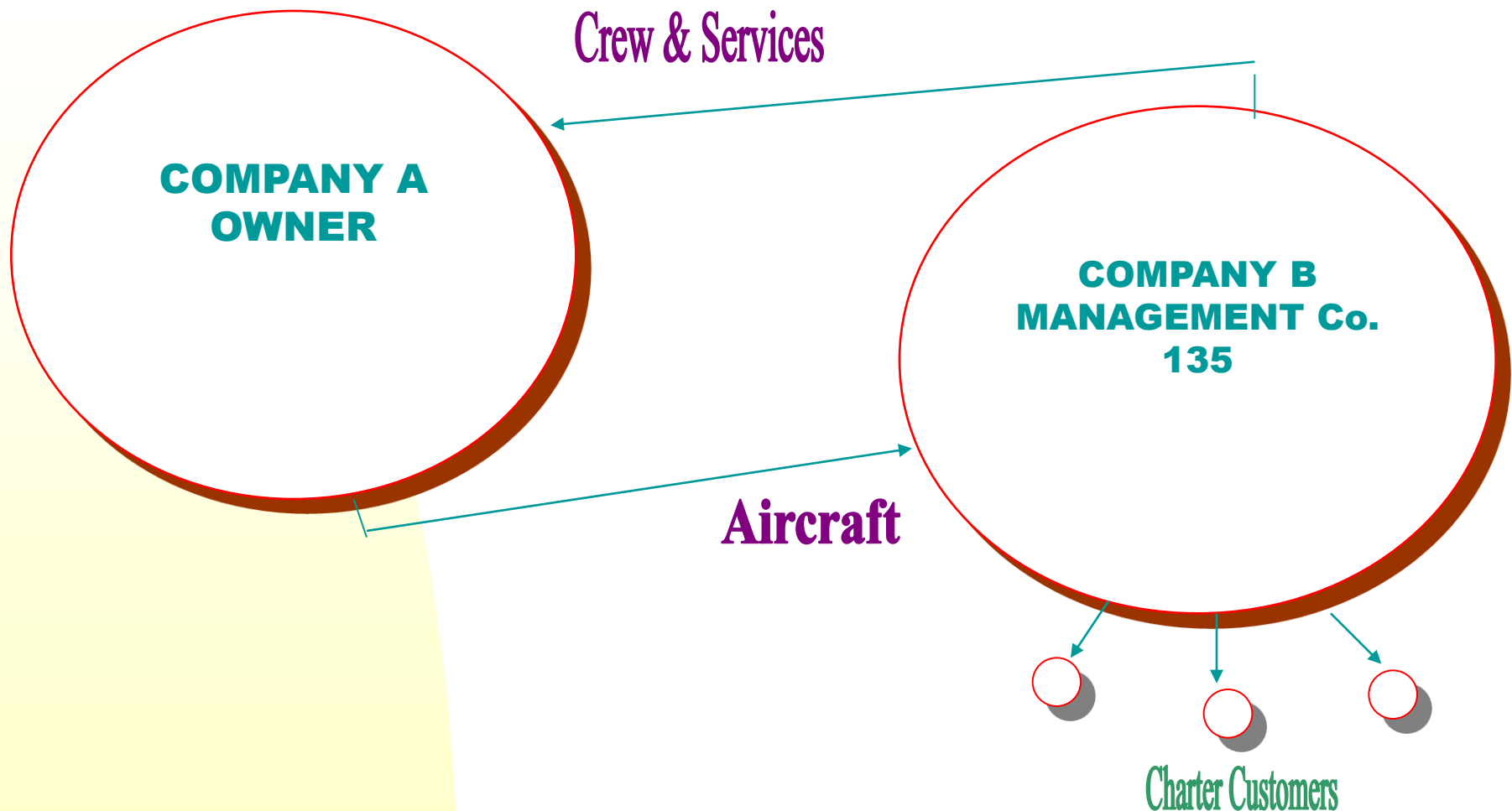
## Definition

*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

