



## **Managed Aircraft Ownership : Insurance Considerations**

### **Introduction**

Occasionally some questions arise regarding stand-alone aircraft insurance policies placed by the aircraft owner versus a commercial aircraft fleet policy placed by the "aircraft manager". It has been our experience that aircraft managers have historically taken some issue with stand alone placements and have relied upon their management agreement to support their position. Many aircraft fleet managers insure only a fraction of the total number of aircraft that they actually manage and some fleet policies insure a few as 50% of the total number of aircraft operated by the manager under an operational management agreement. There may be good reason for that.

All aviation and aircraft insurance policies are unique and carry coverage specific to the aircraft and owners insured under the policy and only the broker that placed the policy can comment to specifics that may be included under the policy or actual coverage extended to aircraft owners. We can however outline general concerns and the reasons why many aircraft owners choose to place coverage on a stand-alone policy rather than a manager's commercial fleet policy or vice versa.

Perhaps the simplest and most compelling reason for a stand-alone placement is that any aviation insurance broker that places a fleet policy does not work directly for the large number of individual aircraft owners covered under the fleet policy and have very little, if any, knowledge regarding the complex and widely varied exposures and specific risk management needs of the individual owners covered under the fleet policy.

Because a broker's duty is to the First Named Insured under the policy, they work closely together with the First Named Insured and on the First Named Insured's behalf to ensure that coverage is appropriately placed and is placed with the best interest of the First Named Insured and its principals without considering other conflicting interests or duties owed to other third parties.

### **Overview**

Aircraft management is one of the most significant developments in the world of aviation over the last twenty years and aircraft managers have been responsible for introducing a new group of individuals and companies to general aviation and aircraft ownership. Perhaps even more than fractional shares, professional management now represents the primary "bridge" between aircraft charter and aircraft ownership.

The advent of aircraft management posed a unique challenge to the aviation insurance industry. Prior to the mid 1980's, aviation insurers offered coverage to two different groups: 1) individual or corporate aircraft owners or 2) corporations who did not own aircraft but utilized aircraft charter companies. Policies offered to aircraft owners generally were very specific in terms of identifying the aircraft insured, the pilots allowed to operate the aircraft, and the permissible uses of the aircraft. On the other hand, coverage provided to corporations who did not own aircraft (non-owned coverage) by necessity was quite

broad in that there was usually no defined aircraft, pilots, or aircraft use. The broad nature of non-owned coverage recognized the fact that a corporation that chartered aircraft from a third party usually had no control over the aircraft or pilots utilized by the charter company.

From an insurance standpoint, an aircraft management organization combines elements of aircraft ownership and non-ownership. While the managed aircraft owner has an actual ownership interest in an aircraft, they rarely exercise any real control over the operation and maintenance of the aircraft, as would a typical aircraft owner who operates their own flight department. This article addresses how aviation insurers have responded to this situation, and also discusses insurance concerns important to anyone considering managed aircraft ownership.

### **Aircraft Operators vs. Aircraft Owners - Common and Conflicting Interests**

Aircraft management companies are generally defined by aviation insurers as “aircraft operators”; an acknowledgement that these organizations have control over the day to day operation of a managed aircraft that they do not own. Managed aircraft owners generally enter into written agreements with the aircraft operator whereby the operator is responsible for the hiring and training of crew members and scheduled aircraft maintenance and repair. Another area of responsibility usually ceded to the operator is the procurement of liability and aircraft (hull) insurance.

From a liability standpoint, operators and owners share a common interest in obtaining sufficient liability coverage to protect them from claims brought by third parties. This is due to vicarious liability laws in most states that make the aircraft owner legally responsible for the fault of anyone operating the aircraft with their permission. Therefore, if a claim were brought on behalf of a passenger who is neither an employee of the aircraft owner or operator, likely defendants would be the operator (as employer of the pilot) and the aircraft owner, based upon their vicarious or strict liability for the fault of the pilot or operator. In such a situation, the aircraft owner and operator would have a common interest to establish that the pilot or operators were not at fault in a particular accident.

However, there are many real life scenarios that would place the interests of the aircraft owner and operator in direct conflict. For example, if a loss occurred due to improper maintenance, the aircraft owner would usually seek recovery from the party responsible for maintaining the aircraft, which in the case of a managed aircraft situation, could be the aircraft operator. Moreover, if an employee of a managed aircraft owner were killed, the employee's heirs would typically bring suit against the pilot (or the pilot's employer) which, in the case of the aircraft manager, is again also the aircraft operator. Since most managed aircraft operators assume the responsibility to procure liability and hull insurance, the managed aircraft owner is placed in a somewhat difficult position as they attempt to protect their own interests versus those of the aircraft operator.

A more practical example of the conflicting interests of the owner and operator is the level of liability protection that is obtained from the insurer. While the aircraft operator certainly has an interest to obtain adequate liability protection, they cannot be expected to be aware of whatever unique liability protection each aircraft owner might require. Moreover, the aircraft operator has an interest in keeping the costs of aircraft operation as low as possible. Since the price of liability insurance is primarily based upon the liability limit, a potential conflict might exist between the aircraft owner, whose business interests might require a high liability limit, and the aircraft operator, who would not wish to incur the cost of high limits that are only needed for one or two customers or charter brokers.

Another area of potential conflict relates to the potential that the aircraft operator could invalidate the terms of the insurance policy through their conduct or neglect. The failure of the operator's pilots to attend annual training, or to maintain an aircraft Standard Airworthiness Certificate, may negate coverage. While this scenario is unlikely when dealing with reputable operators, it is also unlikely that the owner of the aircraft would be aware of this situation before an uninsured loss occurred.



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Although the fleet policy may provide the absolute minimum requirements of any aircraft owner and aircraft operator risk management program, the only certain means for an aircraft owner to control their risk management program is through policy placement and ownership of the insurance policy. Many aircraft operators discourage owners from obtaining their own insurance placement for specifically the same reasons outlined above and because it is in their best interest to do so.

Fortunately aviation insurers understand this concern as do reputable aircraft operators and will work with their insured owners to accommodate the relationship by providing cooperation and assistance should the owner decide that owning their insurance policy is in their own best interest.

## **Documents that Convey Coverage to the Aircraft Owner Under a Fleet Policy**

Aside from the specific considerations outlined below, perhaps the most important question that can be asked of any aircraft manager that is also providing insurance coverage under their own policy to an aircraft Owner, is whether *all* coverage provided under the policy is also extended to the benefit of the Owner whether those insured aviation activities are conducted by the Policy Holder (Manager) or by the Owner without the knowledge or conduct of the Policy Holder. In other words, do coverage(s) such as non-owned aircraft hull and liability, premises liability and product liability follow the owner as they do under a stand alone policy placed on behalf of the Owner?

Some specific questions are outlined below however without re-printing the policy, the following questions and considerations cannot be considered complete and all encompassing.

Each aircraft Owner should be provided with at least two documents which specifically outline the coverage(s) extended to the Owner under the Manager's policy including the breadth of that coverage and the limitations of that coverage. Those two documents will be the Owner/Lessor Endorsement and a Certificate of Insurance. The Certificate of Insurance will typically contain a disclaimer of coverage therefore if it does, it should be considered to have little or no value without the actual policy Endorsement extending coverage.

It is also important to understand that in order to be an Insured under the policy, the Owner must also have a clear description of the policy warranties, duties, conditions, limits and definitions contained in the policy therefore a complete copy of the policy should be provided in addition to the two documents described above. This is particularly important if the Owner has operational control of the aircraft under Part 91 operations.

## **General Policy Provisions to Consider**

### **Surrender of the owner's control**

A fleet policy means that the aircraft management company, not the aircraft owner, controls the insurance placement. The manager selects the agent, negotiates terms and chooses the limits of coverage. The owner must trust the manager to responsibly protect his assets from loss and liability.

### **Surrender of rights against third parties from both the Owner and the Manager**

If a loss occurs due to improper maintenance, the aircraft owner would usually seek recovery from the party responsible for maintaining the aircraft, which in the case of a managed aircraft situation, would likely be the aircraft Manager. The owner would lose most options to recover since they would be viewed as first party under the policy including consequential losses such as diminution in value or having waived those rights.



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## **Dilution of limits**

The aircraft owner and the aircraft management company share liability protection under a fleet policy. While the policy treats the owner and manager separately with respect to legal defense costs and will pay sums awarded due to the negligence of either party, the most that is paid out is the liability limit stated under the policy for that aircraft. That limit is the maximum available to *all* insureds under the policy. This dilution of limits holds true whether the manager is an additional insured under a policy on which the owner is the named insured, or vice versa.

## **Loss administration**

Again, this is a surrender-of-control issue. Most policies state that losses will be adjusted with the named insured -- the management company -- and are payable to those with a financial interest in the airplane. Aircraft owners must trust managers to negotiate settlements on their behalf.

## **Benefits of a Managed Fleet Policy**

Like all complex risk management programs, there may be benefits to placing an aircraft on a third party managed fleet insurance program. It is difficult to outline every aspect of each type of program that should be considered but following are some of the primary benefits of placing an aircraft on a managed fleet policy and that should be considered when determining the most suitable structure of an aviation risk management program.

- The coverage provided under a fleet policy is typically much broader than that provided under a standard stand alone placement and some of that fleet coverage extends to the aircraft owner. The level or breadth of coverage that is extended to the owner is typically predicated in large part upon the management agreement and the cooperation of the fleet policy owner and their willingness to do so.
- If a loss occurs to the aircraft under a managed fleet policy, the loss follows the manager and the impact is to the manager's loss ratio and future rating rather than to the individual owner.
- Because the owner must also be the named insured and operator under a stand-alone policy, the exposure associated with aircraft operations is then that of the owner and therefore any claims must be made against the owner/named insured in order to trigger coverage. Avoiding or transferring that exposure to the manager and a fleet policy can be a very effective risk management strategy.
- All requests for coverage, certificates, and servicing would be required to go through the first named insured (Owner), to their broker, then to the carrier, and back around thus creating potential for flight delay, gaps in coverage or miscommunication.
- Stand-alone coverage would only apply to the owner for their operations of the aircraft and would not automatically extend to a manager if they are operating the aircraft on behalf of the owner therefore the owner's policy would require specific approval and coverage extensions for those types of operations.
- All claims handling would be required to be conducted by and through the authority of the first named insured. Because managers operate the aircraft and have care, custody and control, most claims would be presented to or against the manager and therefore claims should be controlled by the manager thereby limiting the time required by the owner to handle the claim. .



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## Specific Policy Provisions to Review and How Does the Owner/Lessor Endorsement Read

1.) Common wording on an aircraft Owner/Lessor Endorsement reads as follows:

The "**Who's covered**" section of your policy, under "**Your Liability Coverage**," shall include each Owner/Lessor, but only for claims of bodily injury, mental anguish or property damage and specifically excluding claims for personal injury while the insured aircraft is being operated by, for, or with the permission of the "Policy Holder."

Regardless of how the actual endorsement is worded, following are very important questions to ask:

When operating under Part 91 of the Federal Aviation Regulations is the Owner in Operational Control or is Manager?

If it is the Owner that is in Operational Control, then coverage may not extend under the policy since coverage may be limited only to operations of the policy holder; Manager..

When operated by the Policy Holder (Manager), the above wording would not only exclude coverage for Personal Injury but would limit coverage only to those sections named.

If the Owner is determined to have Operational Control for Part 91 flights, is the Owner provided with pilot approval authority under the policy and is the Owner responsible to hire the crews?

If the Owner is responsible for hiring the crews, is it under a crew services agreement where workman's compensation is provided or does that liability exposure fall to the Owner?

Is employer legal liability coverage extended to the Owner under the policy?

Is the Owner included as an additional insured with a Waiver of Subrogation under Manager's Workman's Compensation policy?

2.) Is any recourse available to the Owner for uncovered losses resulting from Manager's actions such as hot starts, or other work performed? Is the Owner required to waive rights against Manager for their actions outside of the management agreement that result in loss to the Owner?

3.) Loss, if any, under "**Your Aircraft Physical Damage Coverage**" shall be adjusted with the Policy Holder (Manager) and made payable to Policy Holder (Manager) and any Owner Lessor, as their respective interest may appear, and any lien holder as their legal interest may appear.

The above wording would eliminate the Owner's ability to control any claim and would require that any payments made for damage to the aircraft be made payable to the Policy Holder (Manager) in addition to the owner. The Owner would have to have a signature from the Policy Holder (Manager) before any claim check/draft could be negotiated.

4.) Is product liability coverage for the sale of the aircraft extended to the Owner under the policy? If so, does the owner have to share that limit with Manager? Is the Owner covered for product liability resulting from Manager's acts or omissions?

5.) If damage is found to the aircraft either while owned or during the sale of the aircraft, are product defects or damage resulting from parts or work performed or authorized by Manager covered? Is that coverage extended to the Owner?



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6.) Does the Owner or the Owner's officers, directors, agents or employees or contractors use, or arrange the use of non-owned and/or charter aircraft?

If so, is non-owned aircraft liability extended to the benefit of the Owner et al. if the use of those non-owned aircraft is arranged without going through Manager or is the Owner et al. required to arrange all use of non-owned aircraft through Manager?

7.) If Manager causes damage to the aircraft outside the scope of the management agreement, is coverage provided or available to provide for consequential damages such as loss of use, diminution of value or lost opportunity?

8.) Is On-Airport Auto Liability extended to the Owner for those times when they operate automobiles or arrange for automobiles to operate on the airport premises?

9.) Does the policy contain profit commission provisions payable to the Policy Holder?

10.) Does the policy allow for monthly or quarterly payment options?

11.) Are the insurance premiums charged to the Owner transparent and equal to those charged to the Policy Holder ?

## **Conclusion**

Managed aircraft ownership is an excellent method of lowering the cost of ownership and eliminate the time and expense associated with a private flight department. Managed aircraft ownership also poses unique insurance concerns; these issues can be largely addressed through careful review of the existing insurance program options to address the unique needs of the managed aircraft owner and manager.

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