



## **Non-Owned Aircraft Liability and Physical Damage Insurance**

Non-Owned Aircraft Liability and Physical Damage Insurance should be carried if your company or its employees ever charter aircraft.

If your company or its employees ever charter aircraft, you might be exposed to liability in the event of an accident or incident. Insurance coverage, known as non-owned aircraft liability insurance, is available to manage that risk. Non-owned aircraft liability insurance provides coverage in the event a corporation becomes legally liable for injuries and property damage to third parties as a result of a loss involving a corporation's or employee's use of a non-owned aircraft. Liability coverage would be provided to the corporation as long as the aircraft is not partly or wholly owned or registered in the name of the corporation. This is of particular concern if aircraft are chartered through an aircraft charter broker or travel agency with little knowledge of the actual operators through which they arrange those flights.

Several high profile losses have occurred recently which have either resulted in passengers flying on chartered aircraft that were not carrying the limits of liability that the charter customer thought, was evidenced, or where the charter customer was held partially liable for bodily injury and property damage after a loss.

It is important to understand that "Charter Brokers" (broker) are not the aircraft operator and likely do not carry aviation liability insurance for their aircraft charter brokerage activities. In as such, the broker may have little or no knowledge of the operators they use or have never even seen the operator or aircraft. Because most brokers are unable to obtain or afford insurance coverage for their business activities related to aircraft charter brokerage, the broker will also seek to be named as an additional insured for the flight thus diluting any coverage that is carried by the operator significantly to all parties.

Even with a certificate of insurance, there are situations where the limit shown on the certificate may not be the actual limit carried on the aircraft upon which the passengers are flying. This most typically occurs when a charter fleet carries different limits on individual aircraft or a charter broker is involved. Although a specific Gulfstream III carrying at \$300,000,000 limit of liability may be identified as the chartered aircraft on the certificate of insurance, another Gulfstream III on the same fleet can be carrying only \$50,000,000. Should one be substituted for the other for mechanical or other reason, the passengers may unknowingly be boarding the substitute aircraft carrying a \$50,000,000 limit. Most charter passengers do not confirm aircraft registration or serial numbers prior to boarding therefore it is not likely that this situation would become known prior to departure

*Keep in mind that additional insured coverage usually applies "only to operations of the Named Insured".*

Another situation where this can occur is when a charter broker books a flight with one operator who in turn subs out the business to another. Because aircraft are expensive and are in relatively limited supply, most charter operators cannot possibly operate all types of aircraft. It is not uncommon for a charter operator to book a flight for a Gulfstream V but because they do not operate that type of aircraft on their fleet, sub-contract the flight to another operator that does. In that case, the customer would receive a certificate of insurance originating from the operator who sub-contracted the flight but not from the operator actually flying the aircraft. Most often it is difficult or impossible for the charter customer to know when or how often this occurs. Adding to the concern is the fact the charter broker may not even be aware that this sub-contract has been arranged.

Other concerns involve breach of warranty situations that are nearly impossible for the charter customer to know or to confirm. A breach of warranty occurs when some activity of the operator falls outside the terms of their insurance policy. The most common example would be when a pilot or crew is used that does not meet the minimum requirements of the policy or is not approved by the insurance carrier. Because aviation charter operators commonly employ contract pilots or crews, management of those resources becomes cumbersome and difficult. Further complicating matters is the fact that most charter customers will not be aware or even understand what the pilot requirements are under the policy or if the crew meets those requirements. Another example would fall under the approved use and policy territory sections of the policy. Again, it is difficult or impossible for a charter customer to know whether the aircraft they are flying on is covered for that use or flying into an approved territory.

Breaching any of the above warranties under the policy could result in a complete denial of coverage to the operator and the charter customer regardless of certificates issued.

Notices of cancellation are typically required by charter customers. Unless requested specifically, the notice will not be forthcoming for material changes to the policy such as a reduction in limits carried or when a policy is cancelled for non-payment of premium. Standard notice of cancellation wording reads as follows: The Company will *endeavor* to provide a 30 day notice if the policy is cancelled *by the company*. Because a cancellation for non-payment of premium is considered to be at the request of the insured, the company would not be obligated to provide notice. Also when coverage limits are reduced or changed, no notice to certificate holders is required. In order to avoid exposure in the above situations; specific changes must be made to the policy to ensure that the charter customer is notified,

With proper procedures such as retaining an aviation loss control, risk management, or aviation audit firm to investigate each charter operator, broker, and certificate issued on the customers behalf, the above situations can be minimized or eliminated all together. Other situations cannot and **should be covered by the charter customer through the placement of their own Non-Owned Liability Policy.**

Each charter flight made on behalf of a corporation or its employees should ensure the following prior to boarding the aircraft:

Receive a certificate of insurance showing the following:

- Named Insured and Address
- Insurance Carrier Named
- Insurance Policy Number
- Effective Dates of Coverage
- Approved Uses
- Approved Territory
- Limits of Liability Carried Including War Risk
- Deductibles
- Identify ALL Aircraft Covered Under the Policy and Limit Carried on Each

The charter customer should obtain the following under the policy and evidenced in the certificate of insurance:

- Name each entity and include broad form wording to include "officers, directors, agents, employees, and related entities"
- Additional Insured ***For All Operations***
- Breach of Warranty
- Waiver of Subrogation 30 Day Notice of Cancellation or Material Change by *Any Party WILL be provided to the certificate holder.*