PART 134 AND A HALF?

Insuring a Part 91 Equipment Lease

By Terry Miller

Part 91 equipment leases have always been a difficult prospect for insurers and are something that, in their view, warrants special scrutiny. While many Part 91 equipment leases are in fact clear cut and insurable, many are not.

Although the FAR's may allow for Part 91 equipment leases, insurers may view them as a commercial exposure extending coverage to a third party and are of particular concern when they are arranged after the policy has been bound.

Because they were not provided the opportunity to underwrite the Part 91 equipment lease exposure when they initially agreed to provide coverage, insurers could find themselves providing, or being asked to provide, coverage that they did not intend to provide. Without being presented with the information during the underwriting process prior to binding, the insurer has no reasonable way to determine what is, and what is not, a lease exposure that is acceptable and in their view insurable. When presented with a mid-term Part 91 equipment lease, the insurer will make a determination whether the lease represents an exposure that is acceptable. After making that determination, they will either agree or decline to extend coverage over the contract and may re-rate the policy based upon the change in exposure.

The vast majority of insurable Part 91 equipment leases are internal or agreements between very closely related entities. Most often, insurable Part 91 equipment leases are between individuals and/or entities that share common principal ownership and the lease is maintained to accommodate billing between entities that are owned and controlled by the same principal or related entity.

Other specific leases to outside or third parties may be considered insurable and approved insurers but will be considered on a case-by-case basis however if known or anticipated by the insured at the time of underwriting, must be disclosed to the insurer. Those insurable agreements commonly involve a non-commercially operated or managed aircraft and are between principals or entities that work closely together, are very limited in scope, and are known or anticipated and presented to the insurer during the underwriting process.

In other cases, the owner of an aircraft placed under management with a third party may even seek approval for a Part 91 lease to one, or multiple fourth parties thus blurring the line even further between what is and is not a lease that the insurer is willing to provide coverage over. When this type of agreement is presented to the carrier during the underwriting process, the carrier then has the opportunity to quantify the exposure, and if acceptable, rate and endorse the policy appropriately. It's when the exposure is presented after binding that the coverage can become an issue with the insurer.

When an aircraft is managed or on a commercial fleet, a lease or management agreement is executed transferring operational care, custody, and control from the owner to the manager who is also the named insured or identified as such in the policy. Typically aircraft managed by a third party or entity are underwritten as a commercial exposure regardless of the premium rating that is applied and must meet commercial underwriting standards. Because operational care, custody, and control has then been transferred from the owner to the manager already, introducing another third party as a lessee effectively transfers operational control of the aircraft a second time down line. The third party lessee then becomes the operator with care, custody, and control of the aircraft and may be considered an insured under the terms of the policy thus presenting an unknown or unacceptable exposure to the insurer. This situation is of particular concern to insurers because most commercial and industrial aid insurance policies include

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coverage for contractual liability or for assumed liability of others. That coverage essentially allows the insured to extend coverage under the policy to a third party without notifying the insurer. The insured is usually required to notify the insurer of any such agreement within 30 days of execution. Once notified, the insurer has the option to approve or disapprove the agreement going forward.

Since most insured's and third parties are aware of this requirement, it is not uncommon for a third party to require that a certificate of insurance be provided to them from the insurer verifying that they have coverage under the policy prior to entering into the agreement and it would be unusual for an underwriter not to require a copy of the agreement prior to providing that coverage and verification.

The Underwriting Process and Agreement to Provide Coverage

When an aviation insurer agrees to provide coverage, the agreement is based upon the understanding that operational control exercised by the named insured or other party that has been clearly identified to them. That is to say that the insurer intends to provide coverage to one operational entity and if a managed aircraft, include the owner as a non-operating additional insured or similar. When a Part 91 equipment lease is put into place, the owner, manager/lessee, and the Part 91 lessee may all or individually become party to the agreement and thus joint or severally obligate the insurer to provide coverage to a third party operator that they did not intend to insure. Because the insurance carrier may become obligated to insure multiple exposures that they were not aware existed, it becomes very difficult or impossible for them to determine the level of exposure assumed and therefore unacceptable.

Covering a Lessee Through Other Means

With respect to the question of whether a Part 91 lessee can obtain their own coverage for their exposure; not likely. No insurer or reputable broker will knowingly provide coverage on an aircraft that is also insured under another primary policy. All insurance policies do include wording in the "other insurance" section of the policy which limits the carrier's exposure in the event of claim where multiple policies exist and are discovered through the course of the claims handling or settlement. It is also the insured’s duty to advise the insurer of any other known coverage that exists at the time of loss.

Non-Owned Insurance

Non-owned coverage is available to companies that make use of, or hire non-owned aircraft however; non-owned insurance policies stipulate that in order for coverage to apply, the aircraft cannot be leased by, or under the control of, the policy holder. Clearly a Part 91 equipment lease is in conflict with that stipulation

The Insurable Part 91 Equipment Lease

The most clean cut and reliable means for executing a Part 91 lease with the approval of the insurer is as follows:

1.) The owner maintains the primary insurance policy and operational control of the aircraft.
2.) The lessee is a commonly owned entity of the principal or closely related entity.
3.) Crews are stable with regard to relationship, approved, professional, qualified, and trained.
4.) Lease is narrow in scope and limited to one or two entities.
5.) It must simply make sense.

The Insurance Policy

An insurance policy is an agreement by insurer to pay for covered losses on behalf of the insured in exchange for an agreed payment or premium. All aviation insurers desire and make strong efforts to fulfill that agreement and nearly always do.

While the aviation industry is very dynamic and requires a great deal of flexibility, most insurers are willing to provide a great deal more flexibility than nearly any non-aviation insurers. It's when exposures begin to multiply that insurers become concerned. Understanding the terms of the agreement on the part of the insured and operating within those terms ensures that any claim will be handled in the most expedient and efficient manner and prevent any operational interruptions in the future.

Knowing your insurer and they your operation is the key having the support that each will require in the event of a loss.