ITIC
SPECIALIST PROFESSIONAL INDEMNITY INSURANCE

Aviation

Claims Review

The claims examples featured in this publication are all case studies which have either been paid by ITIC or where assistance has been provided. These examples should be invaluable in helping you to identify potential claims exposure within your business. ITIC recommends that you review your procedures continuously in order that you avoid these types of situations occurring to you and your business.

In this issue:

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IS MANAGED
BY **THOMAS MILLER**

CAMO or AMO?

A Continuing Airworthiness Management Organisation ("CAMO") insured by ITIC was appointed by the owner of 3 business jet aircraft to provide a complete continuing airworthiness management service.

The aircraft were operated on a non-commercial basis and the aircraft type was within the scope of the CAMO's approval from the European Aviation Safety Agency ("EASA").

EASA issued an airworthiness directive ("AD") for the aircraft type which required the replacement of a small part of the undercarriage retraction mechanism. The replacement was to be completed by a specific date. The maintenance programmes called for all 3 aircraft to undergo scheduled maintenance at the operator's designated Approved Maintenance Organisation ("AMO") prior to this date, therefore the CAMO notified the AMO of the requirement to comply with the directive during the maintenance.

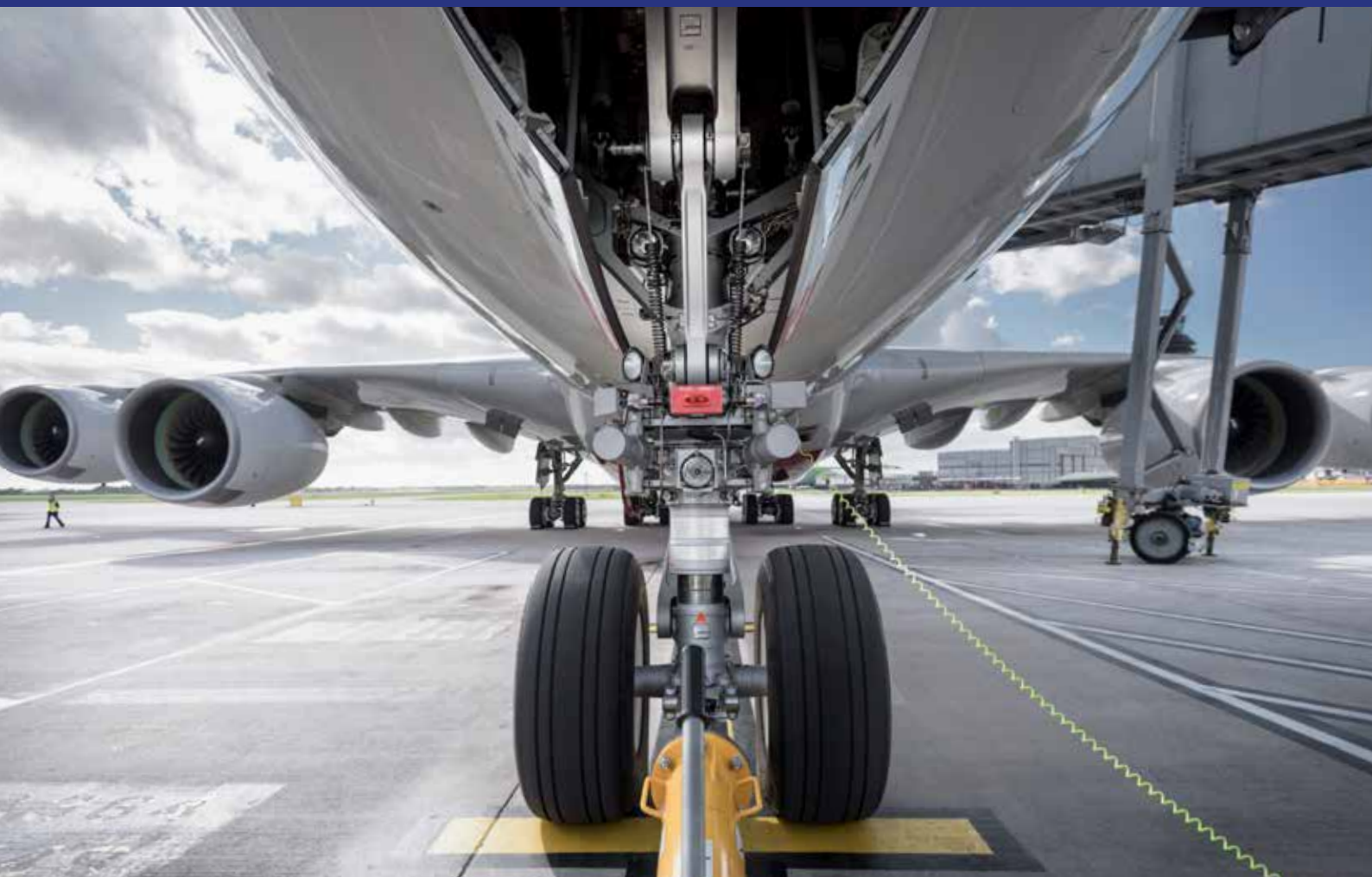
On two of the aircraft the AMO correctly fulfilled the requirements of the directive. However, on the third aircraft, after the old part was removed a mechanic inadvertently reinstalled it instead of the new part. The aircraft technical records were amended to indicate that the AD had been incorporated into all three aircraft and the CAMO released the aircraft back to the owner for continued operation.

A month later during a turnaround at an airfield a sharp-eyed mechanic spotted the old part in the undercarriage mechanism. This was brought to the attention of the crew, who informed the aircraft owner. As the aircraft was now in breach of the airworthiness requirements the owner grounded it until the situation was resolved.

The Owner accused the CAMO of negligence and claimed for losses alleged to have been incurred as a result of loss of use of the aircraft whilst the aircraft was restored to full airworthiness. The owner alleged that the CAMO breached their duty of care in failing to arrange for all applicable ADs to be applied. Further, the owner claimed that, as his contract with the CAMO contained a clause which stated that in the case of breach of contract by either party the contract would automatically become null and void, he was in effect left with no approved CAMO for all 3 aircraft. He repudiated the contract.

ITIC disputed the owner's claim on the grounds that under EU Regulation a CAMO is required only to organise the maintenance, not to check it. The AMO, who had been designated by the owner, had been informed by the CAMO of EASA's AD requirements over the phone. This was followed up in writing, and evidence of these instructions was provided. Further, as there was no breach, the repudiation of the contact was unjustified.

ITIC's defence of the CAMO was successful with the owner finally agreeing to re-direct his claim to the AMO. ITIC covered the fees of the solicitor appointed to defend the CAMO.



Turbo technical trouble

An air charter broker received a request to act for a principal who was seeking to charter an aeroplane for a flight two days later from Scotland to Morocco.

The broker reviewed the available options for the principal and recommended the use of a small business jet which would offer a short flight time and enhanced comfort. However, the principal wanted a cheaper alternative and the broker instead looked to source a small turbo-prop for the flight.

The broker was unable to identify a suitable aircraft from his normal network. However, a colleague advised of a small operator who they had used before at short notice. This operator did have an aircraft available and the lease agreement was quickly drawn up. As part of his usual due diligence processes, the broker checked the air operator's certificate (AOC) and details of the aircraft registration on the CAA website. He also obtained verbal assurances from the operator that the aircraft met all continuing airworthiness requirements.

Shortly after the planned departure time the broker received another call from his principal saying that the aircraft had diverted into East Midlands Airport with a technical defect. The broker eventually made contact with the operator and learnt that the aircraft technical problem was related to a known defect that had been deferred for some time under the provisions of the minimum equipment list. The aircraft was consequently not airworthy for several days while the defect was rectified.

The principal accused the broker of negligence. He claimed that the broker had failed to exercise reasonable care when sourcing the aircraft, and held the broker liable for the costs of leasing an alternative aircraft. ITIC defended the broker's position as it was felt that the broker had acted with all due skill and care, and had taken all the steps that a reasonable broker would have done in such a limited time frame.

A settlement was eventually reached, but the legal costs incurred were substantial. Both claim and costs were covered by ITIC.

Manufacturing problems always end up on the designer's desk

A designer of light aircraft was asked by an aircraft builder to design a single turbo prop aircraft, which was to be used for an air ambulance service between small islands off a coastal area. The aircraft was designed and then built by aircraft manufacturers.

Following delivery, the end user discovered small cracks in the hull of the aircraft. The aircraft was repeatedly returned to the builder for repairs, but the cracks continued to reappear on the hull. Eventually, the end user decided to claim against the manufacturer for supplying a defective product.

In turn, the manufacturer claimed that there was nothing wrong with the build quality of the aircraft, but rather that it had been designed badly. The designer was therefore brought into the proceedings as a third party defendant (along with various other parties including the propeller manufacturers and the hull manufacturers). Upon investigation, it became apparent that the cracks were caused by excessive vibrations in the hull.

Various theories for the vibrations were considered, but the most likely explanation was that the propeller was at fault due to unforeseen frequency resonations. This was something that the designers had considered and tested for, and they provided their calculations. However, as the hull was a completely new design, it did not resonate as had been predicted. Therefore, it was clear that the designer had not been negligent in the provision of his service to the manufacturer. Furthermore, there were certain reservations concerning both the weld quality of the hull by the manufacturer and the actual build quality of the hull material itself.

ITIC defended the designer successfully.

Audit gets lost in translation

An aviation safety auditor was hired by a Russian specialist air charter operator to perform a comprehensive safety audit of its flight operations activities.

Their fleet consisted of heavy lift helicopters and jet aircraft. The auditor was advised that the findings of his audit could be used to support the operator's bid for a lucrative contract.

The auditor completed the audit over a period of 5 days on site, which included an observation ride on a short training flight in one of the helicopters. During the training flight a heavy under-slung load was transported for a short distance. The load developed a dangerous swing and the training pilot became agitated and vociferous with the trainee. He took control and stabilised the load beneath the aircraft.

In his subsequent report the auditor gave a clean bill of safety 'health' to the fixed-wing jet operation, but raised a significant concern with regard to the safety of the helicopter operations due to the swinging load event. The operator was unhappy with the audit report, but as there was insufficient time to commission another audit, the report was submitted to support the bid. The bid was unsuccessful.

In line with his standard invoicing procedures, the auditor had insisted on payment of 50% of the audit fee in advance. However, the operator refused to pay the outstanding 50% of the audit fee on completion. The auditor referred the matter to ITIC. ITIC's advice was that it would be prudent to write the outstanding 50% off, as pursuing this fee could give way to larger a counter-claim.

However, despite the auditor's agreement to write-off the outstanding fees, the operator still initiated legal proceedings. They alleged that the auditor's lack of rotary-wing heavy lift experience, as well as his inability to understand the language of the pilots, led to undue concern and an inaccurate audit report. They further alleged that it would have been reasonable to expect him to attempt to resolve his concerns directly with the training pilot at the time instead of committing them directly to the report without prior discussion. Undocumented damages were said to be in the region of US$2.5M.

Although the auditor did not feel that the operator's allegations had any merit, it was recognised that a successful defence in litigation could not be guaranteed. ITIC advised that an offer of a small ex-gratia payment could be sufficient to resolve the operator's complaint and bring the matter to a close. Accordingly, it was proposed that the operator be reimbursed for the proportion of the audit fee already paid, plus legal costs incurred, in full and final settlement of their claim. Settlement was offered without an admission of liability.

The offer was accepted by the operator and the matter was successfully closed before it had the opportunity to escalate.

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