



AIR CHARTER BROKER INSURANCE

Any aviation professional will face day-to-day exposure to risk, but will be able to rely on ITIC to help reduce any potential hazards. To demonstrate potential liabilities in this sector, the following claims scenarios may be helpful.

Turbo technical trouble

Whether you arrange the charter of small jets, fix flag carriers or are involved in the fixing of aircraft under ACMI, wet, dry or damp leases, ITIC covers your professional indemnity needs. To demonstrate potential liabilities in this sector, the following claims examples may be helpful.

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.



For more information, please speak to your insurance broker.

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Professional Indemnity (PI) insurance covers professionals against claims by their customers for losses they allege they suffered as a result of the negligence, error or omission of the insured.

Own goal

An air charter broker entered into a chartering contract with the operator of an Airbus for the transportation of 500 football fans from Spain to Italy. The air charter broker signed the contract as agent for their Principal, which was a Spanish travel agency.

The chartering contract stated that the football fans were to be flown from Madrid to Milan, over a series of two flights. The return flights were scheduled for a day or two later. The total cost of the flights was US\$475,000.

As the aircraft was being prepared for the empty leg to Spain, it was grounded by the UK Civil Aviation Authority (as it was located in the UK) for failing a safety inspection. The failure was due to a number of safety defects coming to light which were not in compliance with international aviation standards. The following day, which was the scheduled date of the first flight, the chartering contract was terminated due to the serious nature of the safety problems, and the timescales for repair not being known.

The air charter broker then entered into a second chartering contract, (again acting as agent for their travel agent Principal) with an operator of a Boeing 737-800. This contract was to carry out three flights (as the aircraft was slightly smaller) from Spain to Italy between 24th and 28th May, and a return flight on 29th May. The return flight was stated as being "subject to availability". The total cost of the new flights was US\$917,000; US\$442,000 more expensive than the first flights – and not all the passengers would fit on the single flight home.

However, on 28th May, the return flight, (which had always been known by the travel agency to be "subject to availability") was cancelled by the second operator – as it was not available. The air charter broker notified the travel agency and reimbursed them US\$200,000, which was the cost of the return flight.

The travel agency still had 500 football fans to return home. As a result, they entered into a third chartering contract for two return flights with a new aircraft operator, which was arranged without the intervention of the air charter broker. These return

flights were US\$172,000 more expensive than the previously cancelled flight.

The travel agency sent a letter of claim to the air charter broker alleging firstly that they breached their duty of care to their Principal, and secondly that they had failed to perform their contractual duties. This second claim was brought not under the terms of the chartering contract, but under the terms of a separate contract which was in place between the air charter broker and the travel agency. Indemnity was sought for all additional costs incurred by the travel agent in relation to the alternative flights operated, as well as reputation damage, communication and PR expenses, loss of earnings, various additional expenses incurred by the travel agent's client and defence costs. The total quantum for both documented and undocumented losses came to just under EUR3.3m.

The air charter broker's general terms and conditions limited their liability, and stated that they could not be held liable for direct or indirect losses resulting from the operation or absence of operation of any flights on behalf of their Principal, its Employees, Agents or Passengers and also excluded consequential damages. The travel agent disputed that they were bound by these general terms and conditions as they did not sign them. The action was brought in Germany as German law governed the contract.

ITIC assisted in the defence of the air charter broker. Ultimately the defence was successful. It was held that they had not been negligent and were not to blame for the failures of the operators of the aircraft, over which they had no control. Despite successfully defending the claim, the air charter broker incurred legal costs of over EUR280,000. These costs were reimbursed by ITIC. The cost of innocence can be high.

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