



THE WIRE

2017

Aviation and ITIC

Professional Indemnity (PI) Insurance provides cover for aviation professionals for claims which are brought against them for losses suffered by their customers as a result of their negligence, error or omission. ITIC, as a specialist, not-for-profit provider of professional indemnity insurance, is a natural choice for those requiring protection from claims who work in the aviation sector.

Any party who acts as a professional, providing advice, information, designs, consultancy and asset management services, owes a duty of care to their clients. Examples in the aviation sector include Continuing Airworthiness Management Organisations (CAMO), aircraft managers, aircraft charter and lease brokers and aerospace designers. The standard of duty of care is the provision of "reasonable skill and care".

In the event that the services provided by a professional fall below this standard and cause their clients a loss, the client can seek to recover these losses. For this reason it is now commonplace for contracts used in many sectors to hold a specific requirement for PI Insurance.

However, a PI policy is also there to protect the policy holder. The world is becoming more and more litigious and not all claims have merit. Escalating legal costs mean that the cost of innocence has never been higher, and in the event of an unfounded allegation of negligence, a PI policy will pay for the valuable defence of the Assured's interests. ITIC has funded the defence of spurious claims against Assureds in a variety of worldwide jurisdictions, including the USA and Canada. Our team of specialists will also manage the claim on behalf of the Assured, saving them both time and money.

Put simply, any company providing advice, training, design, consultancy or asset management services, aircraft and airport operators and leasing companies should be covered for PI insurance. Whilst many professionals struggle to imagine a claim being made against them, ITIC's experience confirms that mistakes frequently occur. As a specialist insurer of aviation professional risks, ITIC provides cover for a range of companies, some of whom may not immediately recognise that they could have an exposure to a PI claim. However, should their error or omission cause a loss to their client, or to a third party, then they could be held responsible. They could even be sued simply because they act as an agent for somebody else.

[Continued overleaf >](#)



What does ITIC look for in an aviation risk?

A well-presented, completed proposal form and an up to date CV.

As an insurer of liabilities arising out of the mistakes made by an individual or a company, as part of our underwriting considerations we will naturally form a view as to your professionalism. First impressions count, and these are often based on a completed proposal form. A neat and well-presented proposal form with complete answers is often a strong indicator of the standards set by you.

Furthermore, tell us about your background. If we can see that you are now consulting on a particular aspect of aviation in which you have already spent some 20 years working, we will look on your application far more favourably than someone with little or no experience!

A detailed description of your professional activities.

ITIC will be covering you for claims which will arise following your provision of professional services. A PI insurer who doesn't understand what their assured does, doesn't understand the business or what they are insuring. If you are an aircraft manager, CAMO, surveyor or charter broker, we can send you an additional form which will tell us everything we need to know. For everybody else, a short paragraph with a description of your activities is helpful. We can let you know if we need to ask further questions.

Confirmation as to whether you hold an AOC.

If you are holding an AOC, we know that you are also the policyholder of an aviation hull and liability policy. It tells us that we may be able to exclude death, bodily injury or property damage claims from the professional indemnity policy, which will avoid double insurance and help to keep the premium down.



Meet the Aviation Team



Melanie Daghish
Senior Account Executive

Melanie Daghish is ITIC's Senior Aviation Underwriter. Melanie joined ITIM in January 2011 after having worked as a Senior PI Broker for 4 years for a national broker in the North West. Melanie is responsible for the development of our worldwide aviation portfolio and is ITIC's aviation specialist. Prior to working as a PI broker, Melanie worked for a major airline.



Mark Brattman
Director/ Legal Advisor

Mark is ITIM's Legal Advisor. He is a qualified solicitor and joined ITIM in 2004. Mark qualified at Shaw and Croft (now part of Gately LLP) in 2000 and then worked for Beaumont and Son (now part of Clyde & Co LLP). Mark specialised in aviation claims, insurance & reinsurance disputes and general commercial litigation. Mark was admitted to the roll in 2000.

We thank Mark McCloy of McLarens Aviation for this article.



The importance of the Asset Manager in aircraft recovery and issues that may arise

In order to protect their asset, it can sometimes become necessary for an aircraft owner to initiate a recovery plan to get their aircraft back safely into their own custody. Mark McCloy of aviation specialist adjusting company McLarens Aviation discusses some of the items to be considered when putting a recovery plan together.

Many people would have seen the American TV programme about aircraft repossessions where a larger than life character flies into an airport, leaps out of his private jet, cigar in mouth, corrals his target aircraft, and flies off into the sunset, job done. Great for a TV audience, but it bears little relation to the realities of recovery of commercial aircraft where either there has been a default on payments or the Airline has ceased trading.

Asset managers will maintain oversight of their client's assets and will be vigilant in not only ensuring that the lease conditions are being met, but that the lessee remains a viable business. Decline in record keeping, reduced aircraft use and loss of key personnel can be indicators that all things are not well. Ultimately, default or loss of an Air Operators Certificate will result in a lessor's need to recover their asset.

To enable the asset to remain of value, the aircraft and engine records are of utmost importance. Hostile recoveries can result in records being salted away to be used in negotiations, or removed by dissatisfied staff as retribution. Location and recovery can be extremely difficult. Fortunately being met by armed individuals with an interest in retaining the documents is rare, but it has happened.

Aircraft are leased as a unit of airframe plus engines. Purchase finances may result in the airframe and engines being

owned by different entities. Usually engines that were delivered on lease have to be refitted on redelivery. It is not unusual during repossessions to find the airframe has no engines fitted or that the originals are in a workshop or fitted to another aircraft at a different location.

Another consideration is that repair agencies will be understandably reluctant to part with a serviceable engine if their bills have not been paid. The logistics of engine recovery and refit can be a challenge.

Struggling operators will endeavour to maintain a serviceable aircraft whilst attempting to minimise maintenance costs. Using equipment from parked aircraft reduces the amount spent on spare parts. It also renders the robbed aircraft (an aviation phrase for taking parts from one aircraft to service another) a 'Christmas tree'; covered in coloured labels, very pretty, but ultimately unflyable.

Airports, ground handlers and other stakeholders will all seek to recover monies owed and liens placed on assets can seriously hamper recovery efforts. Whilst breaking into an airport to access the aircraft or record store would work for the A Team, it is more likely that asset managers attempting the same would not be looked on kindly by the local constabulary. That's not to say that such actions have not been successfully undertaken on occasions.

Assessment of the condition of the aircraft, its records and location will enable an evaluation of the cost of recovery in terms of returning the aircraft to a flyable condition, with all documented assets installed. Asset Managers need to consider the cost to return the aircraft to a condition to be able to place it back on lease if they are to fully advise their client of the options available to them.

Should the economics be favourable, a recovery plan needs to be drawn up by the Asset Manager and then reviewed, revised, revisited, re-drawn and reviewed again. Lessors must allow their Asset Managers enough time to prepare and execute the plans.

The Asset Manager will identify the key stakeholders with whom to negotiate, and with whose cooperation the chances of recovery can be greatly enhanced. Talks can be protracted and subject to the peculiarities of culture and politics. Ultimately the aircraft owners need to be prepared to spend some large sums of money to recover their asset.

Finally there is the matter of aircraft extraction using qualified and approved crew, engineers, flight plans and a fuel supply. Ideally the records leave with the aircraft, if they do not, some reconstruction of documents and history can be required. That, however is another subject in its own right.



Angry birds

A safety auditor was engaged by an oil & gas exploration company to conduct a routine operational safety audit of an air charter operator. His client was particularly interested in the safety performance of the operator's two turbo-prop aircraft. On arrival at the operator's base, the auditor was advised that one turbo-prop was undergoing routine maintenance at a maintenance repair and overhaul (MRO) facility in Canada.

The auditor conducted his safety audit on the remaining aircraft as per his standard procedure, examining the operations manuals and the pilot training, currency and aircraft maintenance records. He also conducted two spot checks on the aircraft to confirm that specific airworthiness directives had been complied with. No anomalies were found.

During the audit, the operator offered the auditor the opportunity to fly in the cockpit jump-seat so that he could observe the operational aspects of the aircraft. However, the auditor was unsure whether his insurance covered him to do that, and whether he could secure the necessary visas. He therefore declined the offer.

After two days on site the auditor returned to his office and later sent a report to the client stating that on the

basis of what he had seen, the operator would be capable of providing a safe charter service to his client.

The oil & gas exploration company engaged the operator for twice-weekly round trip flights in the turbo-prop aircraft. However, several months later the turbo-prop which the auditor had not seen crashed, causing significant bodily injury and damage to the aircraft. The investigation into the accident determined that unknown to the operator, the pilots sometimes departed from the flight plan. On this occasion they had flown low over a lake to get a good view of birds which were nesting on its banks. The aircraft suffered a large bird strike which shattered the windscreens and destroyed one of the 2 engines.

Claims were brought against the operator by those passengers who

had suffered bodily injury in the crash. They alleged that the same had occurred as a result of the operator's negligent operation of the aircraft. However, the operator contested liability and brought the auditor into the action on the grounds that had the auditor accepted the offer of a flight during his audit it was likely that he would have learned of the pilots' willingness to depart from their flight plans for non-operational reasons.

ITIC funded the auditor's defence against the claim. His decision to decline the offer of a flight in the jump seat was reasonable in the circumstances, and even if he had taken up the operator's offer of a flight, it was unlikely that the Pilots would have flown recklessly at a low altitude with a safety auditor on board. Further, his report had clearly stated that he had not had the opportunity to inspect the aircraft that had crashed. The claim was successfully defended and the Assured's defence costs were covered under the terms of his insurance policy with ITIC.

See more online at itic-insure.com

Call our team on +44 (0)20 7338 0150

or follow us at: @ITICLondon

Bermuda | Hong Kong | The Isle of Man | London | Newcastle | New Jersey | Piraeus | San Francisco | Shanghai | Singapore | Sydney

ITIC
IS MANAGED
BY **THOMAS
MILLER**

For further information on any of the products, services or cover provided by ITIC contact Charlotte Kirk at:
International Transport Intermediaries Club Ltd, 90 Fenchurch Street, London EC3M 4ST.
tel + 44 (0)20 7338 0150 fax + 44 (0)20 7338 0151 e-mail ITIC@thomasmiller.com web www.itic-insure.com
© 2017 International Transport Intermediaries Club Ltd