

And Your Guest Was Carrying Drugs

By Thomas H. Chappell

Do you fly outside of the United States? Do you carry passengers or guests on your aircraft? If so, could there be a chance that, without your knowledge, one of your passengers could be carrying drugs?

You see the setup. You are ramp checked, and the authorities discover contraband and seize your aircraft. The big question: Does your insurance policy provide protection? Remember the phrase “without your knowledge.”

A Bit of History

The Israelis raided the airport in Beirut, Lebanon, in 1968 destroying 13 commercial aircraft. This was a “wake-up call” to the aviation underwriting industry. Outbreaks of war and terrorist attacks were a real possibility. Future attacks were and are a probability. Civilian interests, property, and human life are at stake. In response, Lloyd’s of London and the London insurance community added the War and Hijacking exclusion AVN 48B to all aviation insurance policies, whether issued out of Lloyd’s or reinsured by Lloyd’s. This exclusion removed coverage for 28 perils associated with acts of War, Terrorism, and a myriad of other perils. The idea was to enable the underwriter to charge an appropriate amount of premium for the risk associated with each geographic region of the world.

Today, the AVN 48 exclusions have become standard in most aviation hull and liability insurance policy forms. Among the “Other Perils” excluded by AVN 48 are coverage for “confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or use by or under order of any Government (whether civil, military, or de facto) or public or local authority.” In fact, this is the exact wording taken from paragraph (f) of the Lloyd’s War and Hijacking exclusionary form. Many of us in the insurance business have shortened this to say “War Risk coverage.” I believe our abbreviated jargon leads to a misunderstanding of the broad scope of this exclusion.

The Write-back

Although the Beirut attack occurred in 1968, the War Risk exclusions continue to be present in almost all aviation hull and liability policies. But wait, to provide coverage we are able to purchase or “buy-back” most of the War, Hijacking, and Other Perils that are lost in standard policy forms. This coverage, whether for liability or for hull, is available from most underwriters for an additional premium charge. The buy-back endorsements,

AVN 51 and AVN 52 replace all coverages removed by the initial exclusionary wording except exclusion (b.) “nuclear.”

We endeavor to offer the opportunity to purchase the “War” coverages to all clients insured by my insurance agency. Some see the title “War Risk” and instantly make their decision not to accept the coverage. Some don’t want to hear an explanation of coverage nor do they want to discuss it. Don’t confuse them with the facts. Others become intrigued when you start citing examples of the benefits of the War Risk “write-back endorsement.” When you get to the “confiscation and seizure” part, especially for those operating aircraft outside the United States, we have their attention.

Back to the Question

So, could there be a chance that one of your passengers could be carrying drugs resulting in the seizure of your aircraft? Of course, this could happen. And if it did, would you have coverage?

Some aircraft owners operate aircraft (such as airline equipment) that, due to the cost, use, size, or manufacture of the aircraft, must be insured on a “vertical” placement basis. This means that more than one insurance company will participate in covering the risk. When this is the case, we often purchase ancillary coverages such as War and Hijacking under a separate (stand-alone) policy written by a war underwriter. I have been unable to find any exclusion in this policy form that would exclude coverage, even if contraband was found. In addition, since it is a stand-alone policy, the provisions, of the aircraft hull and liability policy, have no bearing on the “War Risk” policy.

In most cases, however, general aviation aircraft are written on a policy underwritten by only one underwriting company. If “war” coverages are needed, they will be purchased as an endorsement to the aircraft hull and liability policy. War Risk Hull (AVN 51) coverage and/or War Risk Liability (AVN 52E) can be added to your policy. In either case, the war coverages will be added to the Aircraft hull and liability policy as an endorsement, becoming a part of the policy, and will be subject to all general exclusions of the policy.

We must look at each respective policy for the answer to our question. Most companies use the Lloyd’s standard, accepted wording to endorse the War coverages. Once the endorsement is added to a policy, the policy’s terms, conditions, and exclusions govern. Policies may vary greatly in wording, coverage, conditions, and exclusions. It is very important that your policy be read closely.

No Exclusionary Wording

In doing my research for this article, I reviewed a policy (Phoenix AC500) that contained no exclusionary wording for illegal acts.

Exclusionary Only With the Knowledge of the Insured

Another policy (Starr Elite) that I reviewed stated, “The insurance provided by the Policy shall not apply to illegal, criminal or dishonest acts or activities, alleged or otherwise, committed by or at the direction of or with the knowledge and consent of directors or officers of the insured and with the knowledge at the time that such act was illegal or criminal, but with respect to the named insured this exclusion shall apply only if such activities or acts are with the knowledge and consent of an officer or director of the named insured.” This wording is typical of the wording found in most general aviation hull and liability policies.

Exclusionary Regardless of Knowledge

North American Specialty Insurance Company’s (London Aviation Underwriters) policy form NAS-LAU (1/03) excludes coverage for aircraft involved in any unlawful purpose with or without the insured’s knowledge. The exact wording is as follows: “This policy does not apply under any coverage: (c) when the aircraft is being used with or without the knowledge or consent of the insured for any unlawful purpose; or for any purpose other than set out in the Declarations, or subsequent endorsement.”

The first policy has no exclusion for illegal acts regardless of awareness. Therefore, confiscation of the aircraft should be covered provided War Risk Hull coverage is endorsed.

The second has no exclusion for illegal acts unless it is with the knowledge of the named insured. If the drugs were on the aircraft with the knowledge of the named insured, no coverage would be in force whether the war risk coverages were endorsed onto the policy or not. All policy exclusions apply to the War, Terrorism, and Allied Perils endorsement, including the confiscation and seizure coverage.

You guessed it. The third example taken from the LAU policy excludes coverage if the insured aircraft is used for illegal acts regardless of the knowledge of the insured.

As you can see, there is no policy standard and a quick read through your policy’s exclusion may be beneficial. One conclusion is sure. If you do not purchase the War, Terrorism, and Allied Perils hull coverage, you will have no protection for a confiscation and seizure loss. Ask your agent to give you a quote. It may be less expensive than you expect. ➔