

Diagnosis of a Claim

By Chris Turnbull

In this article we will discuss some of the frustrations you could feel if your aircraft is damaged at the hands of some other negligent party. We will discuss the relationship and responsibilities of your hull insurance policy versus that of the negligent party who damages your aircraft. We will set up imaginary claims, describe some of the difficulties that might occur and how you might minimize the problem by utilizing your own aircraft hull policy. These are just fictitious situations but each could be very real. These fictitious claims will give us a vivid opportunity to explain certain coverages that might apply. References to policies or certain coverages are general in nature and are used as examples only. Your actual policy should be used to determine your specific case.

Let's assume you have insured your aircraft on a broad policy form covering both hull and liability. As a part of this policy, you carry "all risk" hull coverage, and have included an expansion endorsement, which provides a small amount of Extra Expense for Substitute Aircraft coverage ("extra expense").

The term "all risk" is an insurance industry misnomer. It does not mean that everything is covered. It means that everything is covered except those perils specifically excluded in your policy. We might say "all risk" subject to the policy terms, conditions, and exclusions.

Extra expense coverage provides some reimbursement of expense in providing replacement transportation when your aircraft is disabled as a result of a covered hull claim. Coverages offered under extra expense pay only a portion of the cost of replacement transportation and are limited in amount per day and in the term of coverage. A typical coverage might be for a maximum of \$2,500 per day and not longer than 60 days. Usually such coverage will have a "deductible" in the form of time. There would be no payment for the first few days (usually five to seven days) unless the lay-up period exceeds the "deductible" period. The amount of payment is the difference between what it would have cost to operate your own aircraft and the cost of using another, subject to the maximum. Only the broadest policies provide this coverage. Your underwriter may not offer extra expense coverage or may offer it only to the most preferred accounts.

Case One:

Now that the stage is set, do you ever wonder who is responsible if something happens to your aircraft while it is at the FBO? Does your insurance policy pay or does the FBO's policy pay? What responsibilities must the FBO bear for the safekeeping of your aircraft? What constitutes safekeeping? Maybe a better question would be; do I have coverage under my policy no matter who is responsible?

You have purchased aircraft hull coverage and the FBO has purchased (maybe!) an airport general liability policy including products liability, completed operations, and hangarkeepers legal liability. How do they relate? Do they conflict or compliment?

During a cross-country trip, you stop at a fixed base operation for fuel. During the process, the lineman runs the fuel truck into your aircraft doing substantial damage. There is no question of responsibility and the FBO admits his negligence and turns his claim into his insurance company. What are your damages?

First, you are entitled to complete repairs to your aircraft. Timed parts should be prorated and should either be replaced with used parts with similar time, or replaced with new parts charging you for the prorated used portion. The idea is to make you financially whole, not to make you better than you were before the loss. The question then becomes, who should do the repairs? Let's assume for the sake of argument, that the FBO does not enjoy a great reputation for his maintenance facility but both the FBO and his insurance company insist that he do the work. After all, it is less expensive for the FBO to do the repair because the insurance company avoids the cost of repositioning the aircraft. The FBO needs the work and it looks as though there is no reasonable way out.

What do you do? The first thing that comes to mind is to retain an attorney and let the courts sort out the problem. But, this takes time and you need the use of your aircraft. A long court process certainly isn't the answer if you have any other solution. You have an insurance policy, why not let your insurance company sort it out? Turn the claim into your insurance company. Although you will suffer a small deductible, this is a "not-in-motion" loss and "not-in-motion" deductibles are usually very small. By assigning the claim to your insurance company, you will have an adjuster that will be on your side and certainly wants your aircraft repaired quickly and properly if his company is insuring it. In addition, your insurance company will have every expectation of recovering all costs from the negligent party. Even though the loss will be a claim under your policy, a loss due to someone else's negligence would not generally be considered adversely in future evaluations of your risk, especially if your company's recovery efforts are successful.

At the direction of your adjuster, your aircraft is relocated to a reputable repair facility and repaired. The repair bills are paid by your insurance company. They will in turn pursue the FBO and its insurance company for reimbursement. If court action is required you may be asked to testify. Your insurance company assumed your rights of recovery when they paid the repair charges. This is called subrogation.

The story doesn't end here. The damages to your aircraft were extensive. With airframe damage of this nature we would expect the value of your aircraft to be diminished by as much as 10%. This, of course, depends upon the overall condition of your aircraft, the aircraft make and model, etc. Will your insurance company address this loss as well? No. There is no coverage under an all risk hull insurance policy for diminution of value. Since there is no coverage under your policy, your company cannot reimburse the expense and, as a result, would have no right to subrogate against the FBO. So, you may not have escaped the courts completely.

The story goes on. As if a damaged aircraft and a diminished hull value weren't enough, you have lost the use of your aircraft. Assuming the FBO's insurance company doesn't

step forth, will your company reimburse you and subrogate as it did with your aircraft's repair bills? The answer is maybe. As discussed above, some very broad aircraft policies include a coverage called "extra expense". This is designed to reimburse you for some of the expenses incurred while your aircraft is being repaired. This coverage is very limited in scope and is usually effective for only a short time. In our fictitious claim, you sustained significant damage requiring a lengthy lay-up period for repairs. The lay-up period far exceeded the time limitation for your extra expense coverage.

What can you expect? Certainly, you will be reimbursed for that portion of your loss of use expenses that would be covered under your extra expense provision of your policy. That amount will be added to the subrogation claim your company has against the FBO and his insurance company. Those costs not covered by your company will fall to you to collect in your action against the FBO along with the loss of value of your hull.

A long and sticky mess? Yes, but with the intervention of your insurance company, at least your aircraft is repaired properly and returned to service as quickly as possible. Fortunately, most FBOs and most insurance companies try to honor their commitments and responsibilities.

The problems occur when the fixed base operator doesn't believe that his personnel are responsible for damage to a customer's aircraft. In our example claim, this was not the case. In less serious situations, however, damage may go undetected for some time. Usually, the FBO at hand is the one that gets the blame. This may not be fair but it is the case and occurs frequently. Fixed base operators everywhere are alert to such claims and usually contest any settlement.

The best advice to aircraft owners everywhere, is to conduct a walk around inspection with the lineman before leaving your aircraft in his care. This establishes the aircraft's condition and is in the best interest of both the owner and the FBO. (A well-managed FBO should conduct such an inspection before accepting an aircraft.) Special attention should be given to any dents or dings, and the condition of the nose gear and its tow limits.

Be Careful In Waiving Your Rights of Recovery:

In our above example claim, your insurance company stepped in and assumed responsibility for the repair of your aircraft. This was the major portion of the claim. Be cautioned, however, that your policy requires that you do nothing to diminish your insurance company's right of recovery through subrogation (UNLESS YOUR UNDERWRITER APPROVES SUCH A WAIVER).

In today's insurance climate, premiums are escalating and liability limits are diminishing. We have seen this trend creeping over the aviation industry for over a year. Although it is a normal insurance cycle, its impact on the bottom line of all FBOs and other aviation service organizations is significant. Many FBOs have responded by requiring their base customers to sign a hangar agreement waiving any rights of recovery against the FBO for

damages the FBO causes to your aircraft. This decreases their exposure under the hangarkeepers liability coverage and reduces the amount of insurance they must purchase. Such an agreement states that in the event your aircraft is damaged due to the negligence of the FBO, you will hold the FBO harmless and waive all rights of recovery against him. (Obviously, the larger, more crowded operations are more successful forcing such an agreement than the small, sparsely populated airports.)

Keeping in mind that your policy requires that you do nothing to affect your company's rights of recovery, you can see how such an agreement could void your hull coverage. If presented a hangar contract, read it carefully and forward a copy to your insurance agent with instructions to obtain an underwriter approval prior to signing.

Case Two:

You have left your aircraft in the care of an FBO. Upon your return to the airport you find, much to your horror, that it has been stolen. (The aircraft, not the FBO.) Is the FBO negligent? Usually not, if the operator was prudent in his security procedure. Theft is viewed in much the same way as an act of God. Your hull insurance will pay, but you cannot expect to recover any reimbursement for "loss of use" unless you have "extra expense" coverage included in your policy.

And then what happens? The insurance company usually will delay payment of the claim for 30 days allowing time to recover the aircraft. If the aircraft is not recovered at the end of thirty days, you will receive a proof of loss form to sign and your aircraft will be treated as a total loss. Since your policy is on an "agreed value" basis, the check will be issued for the amount agreed to by you and the underwriter on the declaration page of the policy, less any applicable deductible. We have had clients who under-insured their aircraft. In these cases, they are unhappy with a check for the insured amount. You should insure your aircraft to its full retail value or be prepared to be disappointed when time comes to replace it. Your insurance policy only requires the company to repair, replace or pay the insured value of the aircraft. This is at the discretion of the insurance company not the insured.

What if your aircraft is recovered before the claim is paid? Further, your aircraft has been damaged. There are hours on the aircraft that cannot be accounted for and as a result, the value of your aircraft is diminished. In such cases the damage usually is not significant enough to cause the company to declare a total loss. Repairs will be made putting the aircraft back in good condition at the insurance company's expense.

If you have extra expense included on your policy, you might expect some reimbursement for loss of use. However, the diminution of value due to incomplete logbooks will not be reimbursed and, any loss of value due to the hull damage will not be reimbursed. No aircraft hull policy in the industry today provides this coverage. Let's say, this is just one of those uninsurable business risks that you must assume if you own an aircraft.

Case Three:

You are in the market for an aircraft. You find what appears to be a great buy, but in the interest of due diligence you ask a local maintenance facility to perform a pre-purchase inspection. With a glowing report from the mechanics, you become the proud owner of an aircraft. This is a proud day indeed. In due course, you take your aircraft in for a subsequent inspection only to find that your engine has severe problems. To make matters worse, your mechanic states that such problems should have been discovered during the pre-purchase inspection. Who pays?

You call your insurance agent and are told that there is no coverage under your aircraft hull policy. Why? First, the engine damage is the result of wear and tear that is specifically excluded under all aircraft hull policies. Second, there is no occurrence, no crash, no accident, and no resulting damage. And third, any damage would have been before you purchased the aircraft and before your policy was issued.

Therefore, it must be the responsibility of the maintenance operation that performed the pre-purchase inspection. After all, he carries products liability and completed operations coverage. It may well be due to the negligence of the maintenance facility that you are in this mess, but it is unlikely that his insurance will cover the loss. There was no occurrence and no resulting damage. Not to be confusing with industry jargon, this would be a professional liability or errors and omission coverage that is not traditionally available to aviation service organizations. Your only recourse is against the maintenance facility but neither your policy nor the facility's policy can be expected to respond.

Having an idea of what to expect if you have a loss, and knowing some steps to take to reduce the chances of having one, can be of real benefit to you and your insurance company through the loss adjustment process.