

Does Your Insurance Policy Comply With the Contracts You Have Signed?

By Thomas H. Chappell

As aircraft and helicopter owners, we are asked to enter into various types of contracts. Hangaring or airport lease contracts, maintenance contracts, management contracts, rental engine contracts, pilot training agreements, bank loan agreements, and a multitude of other agreements are thrust upon us because of aircraft ownership.

For example, many fixed base operators (FBOs) require lease contracts or hangar contracts that call for minimum limits of liability for general (premises) liability as well as aircraft liability. Some contracts require that you carry workers' compensation insurance and automobile liability. Contracts may even require that you purchase coverage on your own hangar contents.

Frequently, aircraft owners will actually sign a contract with the FBO and agree to certain limits of liability before checking with their agent or reading their insurance policy. This can be a critical misstep. A thorough policy check is necessary to assure that the policy contains the required limits of liability and complies with the contract that you are signing.

Your Contract Could Make Your Insurance Inadequate.

You have insurance. You believe your coverage and limits are adequate for your exposures. You have signed a contract either for hangaring, maintenance, or the management and operation of your aircraft. After it is too late to negotiate, you find that your insurance coverage is inadequate by the terms of the agreement into which you have entered.

If the insurance coverage that you have purchased falls short of the contract requirements, you may need to buy additional limits of liability. Then comes the "what if" game. What if additional coverage or limits are not available? What if the additional limits you need are expensive? You have entered into an agreement and you may find it difficult if not impossible to comply with it.

Many light aircraft or pleasure helicopter owners and operators do not have adequate flying experience to qualify for the minimum liability limits required by certain contracts. In some cases, insurance may be available but may be too costly.

Playing Ostrich:

What if your underwriter will not accept the contract that you signed? You can still get a certificate of insurance issued, even if your insurance coverage does not meet the

requirements of the contract, but the certificate will be only for those coverages included in your policy.

In some cases, contract requirements can actually void certain insurance policy coverages.

Our underwriter has issued a certificate, even though there is a gap between coverage and contract requirements. Maybe the landlord won't notice that our certificate doesn't comply with the lease agreement. What he doesn't know won't hurt him or me. Right?

Wrong. You still have a problem. You have signed an indemnification agreement, assumed liability, and have no insurance to back you up. This is not self-insurance; it is no insurance.

How Can a Landlord Be So Presumptuous as to Tell a Tenant What Insurance to Buy?

Most aircraft management contracts or hangar rental agreements require the aircraft owner to name the manager or lessor as an additional insured. Some contracts require that you (and your underwriter) waive all rights of subrogation against the landlord for any damage to your aircraft "even if the landlord's negligence is the cause of the loss."

That starts the "what if" game again. What if your underwriter refuses to allow a waiver of subrogation? After all, if the FBO damages your aircraft, why shouldn't he be responsible for the repairs?

The Trap:

You have already signed the contract. It is too late to renegotiate, OR you must sign the contract because there is no other hangar available in your area and the FBO will not negotiate. It is a take it or leave it situation.

The underwriter will not agree to hold the FBO harmless for its negligence, and the FBO will not accept the lease without being held harmless for its liability.

To solve the problem, you could try to find a different insurance company, but almost all underwriters resist giving an FBO a waiver of subrogation holding it harmless for its own negligence in handling your aircraft. If you are able to find a different insurance company, you may receive a short rate penalty if you cancel your policy midterm.

Maybe your area has more than one FBO. You could move to the next closest FBO, but it may require a waiver as well. The mounting trend among FBOs is to minimize potential liability by contracting it away. After all, it is cheaper than buying high limits of insurance or paying exorbitant hangarkeeper's deductibles. This growing trend is especially popular with FBOs in overcrowded areas.

It Is Not Just the Indemnification Section:

Don't forget all those other insurance coverages that the contract requires. They are coverages that you probably don't carry or can't buy.

Is there a solution? Well, there is no magic bullet. Sometimes the underwriter will agree to waive their rights to subrogation. Some will waive rights against the FBO for an additional premium, but this additional premium can be expensive. Some underwriters will not waive rights of subrogation for any price.

Because many of the additional coverages required by the contract may not be available from an aviation underwriter, your agent may need to obtain quotes from underwriters of other lines of insurance, such as automobile underwriters, workers' compensation underwriters, or environmental or pollution liability underwriters, to name just a few.

With each separate line of insurance, you are incurring additional expense.

Too Inexperienced:

You are an inexperienced pilot and no underwriter will sell you aircraft liability coverage of more than \$1 million, restricted to \$100,000 per passenger seat. The contract requirement may be as high as a minimum of \$5 million including passengers. What do you do?

There is no solution unless the FBO will reconsider its requirements. Find out if other base customers on your field have flying experience similar to your experience. You may discover a precedence that was set for other light aircraft owners. This could work in your favor. Exceptions can be made.

Quality Insurance Companies:

Many contracts require that the insurance company have an "A" or "A+" rating from A.M. Best Co., one of the most recognized financial rating services for insurance companies. Because financial strength is a measure of a company's ability to pay a claim, many contracts will require that any insurance certificate must be issued by a company rated "A" or better by Best.

The Predicament Often Facing Helicopter Owners:

Every state has different insurance companies that are admitted, authorized, and approved to do business in that state. Not all insurance companies offering insurance on helicopters are approved or authorized by each state, which means that the state insurance commissioners cannot help if there is a problem.

If you have purchased helicopter insurance through an insurance company that you do not know, contact your state department of insurance to see if your carrier is approved or admitted. Another step is to try to contact your insurance company directly. If you can't find a phone number, a U.S. address, or a licensed insurance agent who represents your helicopter insurance company, you may want to ask more questions.

Have You Done Your Due Diligence?

It is very seldom that a prospect or client inquires about the financial solvency of the insurance companies through which we quote and bind coverage. Granted, most of the general aviation insurance companies are either rated “A” or “A+” by Best.

Some of the best-known and most respected underwriters are not insurance companies at all. They may be managing underwriters that are contracted by insurance companies to underwrite, issue policies, adjust claims, and pay claims. They simply are contracted to act on behalf of an insurance company or a group of insurance companies, and each member company carries its own Best rating.

USAIG and Global Aerospace (formally Associated Aviation Underwriters), two of the most respected names in aviation insurance, are not insurance companies. Their member companies are highly rated, financially strong insurance and reinsurance companies and would satisfy the most rigid contract requirements. Others, such as AIG and Travelers, are true insurance companies and carry their own A.M. Best rating.

Occasionally, we will see insurance carriers operating outside a state’s laws. They are not approved as an excess and surplus lines company (approved non-admitted carrier) or as an admitted insurance company. The state insurance commissioners or superintendents have no control over non-approved carriers. Having your insurance written through a non-approved carrier also means you may receive no assistance from the state insolvency fund should that company be unable to pay a claim as the result of financial failure. If you have a simple disputed claim, the state insurance department is not likely to get involved unless the insurance company handling the claim is on the “eligible surplus lines insurers list” or is an admitted carrier. So, how do you file a grievance?

Back to Contracts: So What?

I have already signed the contract. It is too late to do anything now to fix the situation.

Not so fast. There Is Still Damage Control.

Go back to your lessor and to your insurance agent and underwriter. Take a stab at appealing to their soft side for help. This sometimes works. If you are dealing with a coverage deficiency, have your agent negotiate as inexpensive a premium as possible to increase your limits or coverages.

Don’t forget future negotiations. When negotiating your next renewal, include a copy of your contract with any underwriting submission. You may gain more pilot experience over the next year and may qualify for increased limits of liability. You may need to change to a different insurance company that will allow broader ancillary coverages, bringing you closer to contract compliance.

Always read any future contracts and review your policy before signing it. Whenever you are in doubt, send the proposed contract to your insurance agent. I believe a quick look by your attorney is worth the money. You may want your attorney and your agent to talk directly.