

Misrepresented – Deal or No Deal?

By Jeff Rhodes

From time to time, I have prospective insurance clients call me who are obviously trying to “game the system.”

Some of these would-be aviation insurance buyers are trying to mislead the underwriter by withholding information or purporting to be something they are not. Others have formed the opinion that insurers are conspiring against them, and they try to bypass the rules, hoping for some windfall benefit that has been unfairly withheld from them. Usually, when I talk to this kind of prospect, I try to spend a little time educating them on the way the system works, why it works that way, and why, in the long run, they are better off being straightforward with the facts.

Most “gamers” are anything but nefarious in their intent. They usually have some misconceptions about the insurance industry and are simply trying to get a good deal. Nevertheless, misrepresentations to the insurer can put your assets or your employer’s assets at risk of an uncovered loss.

The following is a case where a prospective insured set himself and his company up for problems by trying to – somewhat softly – misrepresent the facts. I have withheld the names and changed some of the details to protect the innocent.

Student Pilots Are Pilots, Too

A client of mine called recently to add a new aircraft to his policy. Our agency handles the insurance policy on a corporate jet for this gentleman’s business. As president of the business, the caller wanted to acquire a high-performance piston single in the business’ name. As we talked, I went through my list of questions that helped me get an understanding of the new risk and develop a plan for obtaining the proper coverage for my client. He told me he needed the high limits of liability coverage his business currently carried on the jet. When we started discussing pilots, I suspected there was something he was not telling me.

From my experience, I know companies that operate business jets typically do not buy piston singles as the backup airplane. However, my client was steadfast in telling me the airplane would be “professionally flown” by one of his jet pilots and used to fly some other staffers and him around the state. Still suspicious of a twist, I asked the question a couple of different ways. He finally let it slip he was a student pilot and would do the flying himself on company business trips – and personal trips. The professional jet pilot the company employed was also a flight instructor who would be teaching his boss, my client, to fly in the new airplane. My client also let it slip he had “shopped around” before he called me and had already received a quote. Since I handled the business jet, he thought I could do better on a quote. The quote he had sounded to me like a quote we might have received if we had marketed his risk with high-time, commercial and

Instrument Flight Rules (IFR)-rated pilots. It certainly did not appear to be a quote that contemplated a student-pilot exposure in this type of aircraft.

OK – time to regroup and attack this from a different direction. I told my client we could probably put something together to provide coverage but probably not as inexpensively as he had already been quoted and certainly not anywhere near the liability limits his company carried on the jet.

“But the instructor will be the pilot in command,” he protested. “Can’t we just show him as the pilot?”

I explained to him many policies require the person operating the aircraft in flight to be approved by the policy either by name or under an open pilot warranty. Insurers recognize, logically, there is greater risk of loss if a student pilot is operating the aircraft versus an experienced and well-qualified pilot. Because of this increased risk, they may charge more premium, limit coverage, or refuse to quote the risk altogether.

What Does the Policy Say?

The following are excerpts from some aviation insurance policies. Most policies are similar in their handling of the issue and will have similar wording:

U.S. Specialty:

Concealment or Misrepresentation – We do not provide coverage for you or anyone who has concealed or misrepresented any material fact or circumstance relating to this policy either before or after an accident or occurrence.

Global Aerospace:

By acceptance of this policy, the Named Insured agrees that the statements in the Declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company ...

Phoenix / Old Republic:

Fraud or Misrepresentation – This policy shall be void if the Named Insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in the case of any fraud, attempted fraud or false swearing by the Named Insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

One can quickly determine that while the words differ slightly, the idea is universal. Insurers must rely on the statements and representations of the insured – through the agent – to properly evaluate and quote an insurance policy. Because of this, underwriters must reserve the right to void the agreement if their basis for entering into such an agreement is false.

Had my client had a loss with the aircraft insured the way he had originally proposed, grounds certainly existed for a denial of the claim, possibly followed by years of legal proceedings attempting to establish who was operating the aircraft at the time of the loss. I am not sure anyone could deny that a student pilot regularly flying the airplane on personal trips and business trips is a material fact pertinent to the evaluation of this risk. Concealment of that fact, according to the policy language above, would be grounds for voiding the policy.

As an agent, it is my job to gather information from my clients and put together an accurate picture of my client's risk and coverage needs for presentation to an underwriter. I want to get my client the best deal possible, but a good deal should not come at the expense of proper protection. While it may sometimes cost you more or you may be forced to accept lower levels of coverage, a properly insured aviation operation is better than a good deal on a denied claim. ➔