

Protect Yourself When Borrowing or Renting Aircraft

By Christopher R. Davis

According to the NTSB report a Piper PA-28R-180 operating as a Part 91 instructional flight collapsed the right main landing gear during landing. The airplane received substantial damage. The private pilot reported no injuries.

The pilot stated he was practicing in preparation for his commercial pilot certificate check ride. On the initial takeoff, after raising the gear, the pilot noticed the gear in-transit light remained on. The pilot pulled the landing gear pump circuit breaker. When he reset the breaker, he did not see a movement on the amp meter. He said this was an indication the pump was not running. Although the in-transit light remained on, the pilot stated that the gear was up and locked.

The pilot continued on to the practice area to do some air work and then returned to the airport to do some touch-and-go landings. He stated that on the first landing, the gear went down normally, and he had three green lights. On the take off, he said the gear would not go up and lock, so he cycled the gear handle several times. The pilot said he had three green lights, and the gear in-transit light was still on and remained on for the entire flight. He made a normal touch-down and the right main gear collapsed veering the airplane to the right off the runway damaging the right wing, the right main gear, and the nose-wheel. The pilot was not injured.

Insurance Thoughts:

In most cases, the owner of an aircraft, a flight club, or a flight school will carry insurance for both the hull (or physical damage) and liability for the aircraft being operated. The hull coverage will pay to repair the aircraft. The liability section will pay on behalf of the policyholder any bodily injury or property damage (up to the policy limits) caused by the accident for which the insured is liable. Unless modified by endorsement, a pilot who is renting or borrowing an aircraft may not be covered under the owners policy for his negligence. The policy is usually written to protect the interest of the named insured, not the renter pilot.

If a pilot is found to be negligent in the operation of the aircraft, an insurance company may indemnify the named insured (the aircraft owner) and then pursue recovery of claims expenses and repair costs from the negligent pilot. This is known as subrogation.

So how do you protect yourself if you are a renter pilot or if you borrow another person's aircraft? One way is to insure your risk under a personal Non-Owned Aircraft policy. This can include both Physical Damage coverage up to \$150,000 and Liability (bodily injury and property damage to others) coverage up to \$1 million (limited to \$100,000 per passenger or per person). Whether purchased as a package or for liability only, the limits available to a non-professional pilot are often less than adequate. The industry doesn't offer a real comfort level of liability for the individual pleasure and business pilot.

When dealing in non-owned coverages, we are dealing with liability coverages only. Although we refer to the Non-Owned Physical Damage (non-owned hull), we are referring to a liability coverage. The policy will only pay if the insured is negligent and found liable for the damage to the aircraft in his care, custody and control. If the borrowed aircraft is damaged due to an act of God (windstorm, hail, fire, etc.) the renter pilot cannot be accused of negligent operation. It is the owners policy that should pay. If the cause of the loss is the result of an undisclosed mechanical failure, the pilot cannot be held negligent and, again, the non-owned hull policy would not answer.

Unlike non-owned hull, non-owned liability deals with bodily injury and/or property damage but not for the aircraft being operated. Both non-owned hull and non-owned liability are liability coverages. You must be negligent for either to pay. In addition, most general aviation liability policy forms include defense costs.

A Loss Can Effect Your Friendship:

Often general aviation aircraft are loaned to a friend. Although not recommended, your friend throws you the keys to his aircraft with out any thought of the possibility of an accident.

If you have a loss and you are found negligent, the non-owned coverages could save your friend the trouble (and a possible rate increase) of filing the claim with his company. If you are negligent, your friend's insurance company may subrogate against you regardless of his wishes. If you are borrowing a friend's aircraft, he or she may not want to sue you to recover the cost of repair in the event of a loss, but his insurance company might. To make matters even worse, your friend's policy most likely requires him to help with the suit and may contain wording similar to the following:

Duties in the Event of Occurrence, Physical Damage, Claim or Suit.

(c) The insured must:

- (1) authorize the Company to obtain records and other information;
- (2) cooperate with the company in the investigation or settlement of the claim or the investigation, defense or settlement of the suit; and
- (3) assist the Company in the enforcement of any right against any person or organization which may be liable to the insured because of injury or property damage to which this insurance may also apply.

*Global Aerospace, Inc.
Broad Horizon policy form*

If you carry Non-Owned coverage, this may become an irrelevant point as this policy should cover the subrogation from the insurance company and keep the peace between friends.

So how much Non-Owned coverage should you purchase? That is the question of the year. How much damage do you think you will cause? How much are you going to be sued for? In most cases, it is recommended that you purchase the maximum liability coverage available which is currently \$1 million limited to \$100,000 per passenger.

As for the Physical Damage coverage, carry enough to cover the total hull value of the aircraft that you will be flying or \$150,000 which is the maximum amount currently available to the non-professional pilot.

It is the decision of the insurance company when it comes to subrogation, not the owner of the aircraft. In most cases, the more negligent the pilot is, the greater the chance of the insurance company subrogating against him. In the event of a gear collapse with three-green and no prior warning of a problem, the insurance company will have a hard time subrogating against the pilot since there is no sign of negligence. On the other hand, forgetting to put the rollers down or shooting touch-and-go landings with a gear-unsafe light may be an open invitation for subrogation. The same scenario would apply to an engine failure due to an unforeseen engine problem as opposed to engine failure due to fuel starvation.

The cost of a personal Non-Owned Aircraft policy is a wise investment. It can protect you from financial liability in the event of a loss and maybe save a friendship or business relationship. →