

## **FBO Insurance**

### **The Flip Side of Aviation Insurance**

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Many articles have been written about the aviation insurance industry as it affects the aircraft owner and operator. As authors, we tell you what coverage is included and what coverage is excluded from your own aircraft hull and liability policy. We give you advice on contracts and how those contracts interact with your insurance. It is rare, however, that we discuss with you the insurance programs most often written for the fixed base operator (FBO), the maintenance shop or the aircraft products manufacturer and how they affect the individual aircraft owner and operator.

#### ***What kind of insurance does the FBO buy and how does his coverage affect you?***

Most commercial ground operations, whether FBO or maintenance, fall into a basic pattern in their aviation insurance program. The most active policy and the one that most often involves the aviation consumer is the airport general liability policy.

The airport general liability policy is the frame upon which other very important coverages can be added. For example, an airport general liability policy may include products liability, completed operations, contractual liability, independent contractors liability, host liquor legal liability, personal injury liability, advertiser's legal liability, hangarkeeper's legal liability, and a host of other coverage endorsements available to the commercial operation.

As you will note, this policy form is called a liability policy. This means it is designed to protect the FBO against legal obligations arising out of its negligent acts. For example, an unsafe premises may result in injury to a customer or a guest visiting the FBO's facility. The insurance company is obligated under the premises liability section of the general liability policy to defend and if necessary indemnify or pay on behalf of the FBO, all sums that it may become legally obligated to pay to the injured party.

#### ***Why is this important to you the aircraft owner?***

You may be that injured party. An under-capitalized FBO may not have the money to purchase adequate limits of liability or to meet the financial obligations should an injury occur because of its negligence. If this injured party is you and the FBO is "judgment proof", you may be left holding the bag.

#### ***Does anyone ever get hurt just walking around an FBO?***

Some years ago, we paid a claim where the FBO was a very poor housekeeper. A business aircraft pulled up on the ramp to deplane passengers. A large pool of oil had accumulated on the ramp and had not been cleaned up. An elderly passenger exited the aircraft, stepped in the oil and fell. The lady suffered injuries and was hospitalized.

The FBO allowed aircraft to do power run-ups near the terminal area. During a run-up, an unsupervised small child ran into the propeller of an aircraft on the ramp.

An elderly lady waiting to take a ride on a "penny-a-pound" day fundraiser fell and broke her elbow.

Do things like this happen? You bet they do. It is difficult for any business to be conducted without the chance that someone could be either physically or financially injured. This is why most businesses protect their assets by purchasing liability insurance. If a simple slip and fall is alleged to be the responsibility of the business owner (FBO), an ensuing lawsuit could spell financial disaster for the FBO if it is found to be negligent. Most businesses do not have the financial strength to meet their financial responsibilities if injury occurs due to their negligence.

If you are the injured party, you could find yourself negotiating with the FBO's insurance company for a settlement.

The first reaction most people have is a disdain for negotiating with an insurance company. Keep in mind the role they play. Without the insurance company to provide financial backing for a negligent operation, there may be no other source of capital available from which to pay a settlement.

### **Products Liability:**

Products liability and completed operations coverage is one of the most significant coverages an FBO or maintenance facility purchases. Although this coverage is not often needed, when it is, the claim is usually very expensive.

Products liability comes into play in the event the FBO or maintenance facility makes a mistake in the repair or maintenance of an aircraft and an accident occurs as the result of this negligence. Only the resulting damage or bodily injury is covered, however. No coverage is given to the defective part or product itself. The reason? Products liability is not designed to be warranty coverage. This is left to the FBO or maintenance facility to make the work good.

If included in the general liability policy, products liability "will pay those sums that the insured (the FBO or service provider) becomes legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies resulting from your airport operations".

### **Hangarkeeper's Legal Liability:**

The most frequently used coverage an FBO buys is hangarkeeper's legal liability. This is the coverage that protects the FBO or maintenance facility against damage to a customer's aircraft arising out of its negligence. For you, this is the coverage that reimburses you for damage to your aircraft while it is in the care, custody and control of the FBO.

If my aircraft is damaged due to a windstorm while in the care of the FBO, does his hangarkeeper's insurance pay for the repairs? NO! This is a very frequent misconception. Hangarkeeper's insurance only pays for those damages that arise out of

the negligence of its insured. Unless the FBO fails to secure your aircraft, "acts of God" are not its fault. This is when your own hull insurance steps in.

***Do you see many hangarkeeper's claims?***

There is no place more treacherous than a poorly managed ramp area. Aircraft are constantly moving in and out. Hangars are constantly being stacked and re-stacked. The busier the airport and the greater the activity, the greater the demands are on the line service. We have all seen it; a line boy racing across the ramp to move the next aircraft; a fuel truck driver racing to refuel an aircraft; a lineman standing beside a fuel truck smoking a cigarette. All of these examples are threats to the well being of your aircraft.

Poor management? Yes, this is also an area of concern. Under-supervised, poorly trained, youthful ramp personnel can spell disaster to your aircraft.

Suppose your aircraft was damaged? What would you expect the FBO or his insurance to pay to make you whole? Fix the aircraft? Yes, and if the damage was minor, a simple, quick repair may be the extent of your loss. But, what if the damage was severe? Just repairing the aircraft may not be adequate. Extensive repairs take time. Sometimes, it takes months just to get the parts. What do you fly during the repair period? Who pays for a substitute aircraft? This is called loss of use and may be a real claim against the negligent FBO.

Severe damage to the airframe or engine may reduce the value of the aircraft, "your aircraft". How much? It varies with the type of aircraft, the age of the aircraft, whether the aircraft had previous damage, and a host of other variables. Thanks to adequate limits of hangarkeeper's legal liability purchased by your FBO, there is enough coverage to pay your claim. Your FBO does have adequate limits, right?

***Is this real or is this just a scary question from an insurance broker?***

The lineman leaves a fuel truck running and in gear. It idles across the ramp and into a Lear Jet.

A line boy is driving his tug too fast while towing an aircraft. After hitting a dip in the ramp, the tow bar disengages from the tug allowing the aircraft to roll into the open hangar door and hit a \$1,500,000 helicopter. The line boy's statement, "I knew I was in trouble when the aircraft I was towing passed me".

A mechanic forgets to remove the engine plugs from the intake on a jet engine before running up the engine.

A lineman exceeds the tow limits on a Navajo.

A lineman doesn't wait for a wing-walker before restacking a hangar. He takes 18 inches off the left wing of a Hawker when he hits the hangar door.

I ask again, is your FBO's insurance important to you? It is important only if one of these aircraft is yours.

But there is more. The ground hangarkeeper's coverage your FBO/maintenance facility purchases is important if the mechanic damages your aircraft while he is repairing it. If he is running up your engines on the ramp, it is his ground hangarkeeper's coverage that would pay for any damage he might do. The ingested engine plug, a hammer dropped on the windshield or wing, are all covered by the FBO's ground hangarkeeper's insurance.

Don't think for a minute, if you are injured or your property is damaged by the FBO or maintenance operation that all you have to do is complain and the insurance company will start writing checks. The process is much more complicated than that. In some situations when the damages are small and responsibility is obvious, repairs are made quickly and without question. When the damages are severe and negligence is not easily recognized, legal action is often the avenue that is taken. It is the insurance companies' responsibility to defend the commercial operation and, if proven negligent, indemnify or pay on its behalf.

Like any other industry, businesses providing services to the aviation consumer vary in asset value. Some are quite successful and have huge coffers. Others struggle and have few assets. It is often the insurance company that gives the aviation consumer the confidence that a claim against the FBO will be paid. This actually is not a bad system.

***What if the FBO flight tests my aircraft or provides pilot service?***

This is a topic of discussion you must have with the FBO. If he carries in-flight hangarkeeper's legal liability or non-owned aircraft physical damage insurance and some form of non-owned liability, your FBO may be willing to accept responsibility for the flight. These are expensive coverages, however, and the smaller operations may not be able to afford them. With this in mind, the FBO may ask to be added under your insurance as an additional insured with a waiver of subrogation on the hull. In this way, he gets a free ride on his customers insurance and avoids exposure to the financial loss of an accident occurring during the test flight.

***How will your policy and underwriter respond to this request?***

Your policy may waive pilot requirements when the aircraft is test flown by an FAA approved repair station. In this case, if your aircraft is damaged during this test flight due to the test pilot's negligence, the underwriting company would pay to repair the damage and then attempt to recover the expense for repairing your aircraft from the maintenance facility or FBO. Your underwriter may not be willing to give up this right of recovery by waiving rights of subrogation for your FBO. Therefore, the test flight would remain the responsibility of the FBO. This may explain why many repair facilities will only have their mechanics accompany the owner pilot on any test flight but will not operate your aircraft as pilot-in-command.

***How can you know that your FBO is adequately insured?***

It is not out of line for you to inquire into the coverage and limits of your home FBO's insurance. Often your hangar lease document requires certain limits of liability of you, the tenant. It is not out of line for you to know what protection your landlord, maintenance or service provider has in the event you make a claim against him.

***How can I get proof of the liability limits carried by my FBO?***

Request a certificate of insurance showing the coverages and limits carried by your FBO or service provider. It will show the name of the insurance company and the expiration date of the policy. You must request a replacement certificate each year at the FBO's renewal time. Many businesses do not want to divulge the liability limits they carry. In this case, offer a minimum limit you would be comfortable seeing and ask for a certificate for that amount. If a \$1,000,000 limit for general liability seems satisfactory to you, ask for a certificate showing that amount. If your aircraft is valued at \$500,000, ask for evidence that the FBO carries at least \$500,000 as an any-one-aircraft hangarkeeper's liability limit.

Certificates of insurance are issued free of charge by the insurance companies as a service to their clients. In many cases, our agency requests a "to whom it may concern" certificate which can easily be issued to anyone our FBO clients authorize to receive it. Such a certificate will give zero days notice of cancellation. This, however, will accomplish the verification of coverage you are seeking.

***Is this request for verification of insurance coverage normal?***

No. And, as a matter of fact, the aviation insurance industry is going to be very unhappy with me for suggesting it. Tenants of airport facilities rarely ask for their landlord's insurance limits. But, it is not out of line to do so. You are not asking to be added as an additional insured. You simply want to know the limits of liability.

This is a normal request by potential charter customers of a charter operator. Why shouldn't a base customer of an FBO or the customer of a maintenance facility know the limits of liability covering the service provider should he damage your aircraft or injure you or your passenger(s)?

***What coverage should the FBO carry?***

As discussed above, the basic coverage should include airport general liability, products and completed operations, and ground hangarkeeper's legal liability. Other liability coverage, whether endorsed or included in the basic policy form, may be included on the certificate.

***What limits of liability should the FBO have?***

The answer may be, "what limits can the FBO afford?" Protection for commercial operations, whether we are talking about general liability, products liability or hangarkeeper's legal liability, is very expensive. If you are based at a small FBO or have your maintenance done at a small maintenance facility, high liability limits and broad coverage may be unaffordable or unavailable. In this case, you have to weigh the

benefits of the small operator against the protection offered by the coverage purchased by the larger aviation operator.

The small airport operation, however, should carry at least \$1,000,000 per occurrence limits of general liability. In addition, he should carry at least \$1,000,000 per occurrence limits of products liability. The hangarkeeper's is a bit trickier because it is sold as a limit for any one aircraft and a limit for any one occurrence. In this case, the "any one" aircraft limit should be at least enough to cover the value of your aircraft. The occurrence limit should be enough to cover the FBO's maximum catastrophic potential.

Ground hangarkeeper's insurance only covers the FBO for its negligence that results in damage to your aircraft. An "act of God" such as windstorm, fire, hail, or any other loss that is not the result of the FBO's negligence would be covered by your aircraft hull insurance policy. (The loss must be within the scope of your policy. No policy covers everything.)

If my FBO damages my aircraft and it is plainly due to his negligence but refuses to accept responsibility, what then?

This is when you involve your own hull insurance. Report the claim to your insurance company. If the damage is the result of a covered peril, they will pay for the repairs minus your deductible, and if the cost is significant enough, will subrogate against the FBO and their insurance carrier for reimbursement. Often, coverages such as loss of use and diminution of value are not provided under your policy. (There is no coverage available for diminution of value under your hull insurance policy.) You must pursue reimbursement for such consequential damage on your own.

***What about the lease or counter registration hold harmless agreements?***

Quite often, (usually in the small print) the back of a counter registration will have an indemnification clause holding the FBO harmless for any damage to your aircraft during your stay. The purpose of this is to minimize the burden on the FBO's liability insurance policy. You may also see such wording in your home FBO's hangar lease agreement. Personally, I do not like such agreements. In my opinion, every person or business should be responsible for his own negligent acts. Attorneys lay awake nights, however, trying to come up with new ways to help their clients avoid liability. A strong lease contract is one way to accomplish this. I must admit, that on occasion and in certain situations, I have recommended to my commercial clients ways to limit their liabilities as well. If they can convince a customer to sign such an agreement, they can reduce their exposure to liability.

**OK Tom, I agree with you. No hold harmless contracts for me. But ...**

***What if the FBO will not accept my aircraft unless the hold harmless contract is signed?***

You may not be able to receive the service of the FBO without signing the agreement. If this is the case, make sure your underwriter approves your contract before signing. This

will eliminate any coverage interruption caused by a possible violation of your policy because of signing this contract. Hold harmless agreements or waivers of subrogation can limit or eliminate your insurance company's ability to recover claims paid to you under your policy.

Understanding your insurance policy is good, but there is a legal environment surrounding you. It is important that you assess your aircraft service center's ability to meet their financial obligations should you suffer damage at their hands. Q