

## ***War Risk Insurance – To Buy or Not To Buy, That Is The Question***

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Until the September 11th terrorist attacks on the United States, war risk insurance was the most understated and misunderstood insurance coverage written for the aviation industry.

Some insurance underwriters did not offer this coverage and some included it as an endorsement to the general aviation policy at little or no additional premium. I must admit this is inconsistent, but what industry isn't. For most clients, such protection was considered a nice frill but not worth a premium charge and the underwriting community agreed.

Many insurance agents recommended war risk insurance for those clients who operated their aircraft outside the United States or its possessions. War coverage is especially important when flying into the third world countries of Central or South America. The major exposure is thought to be the perils of confiscation and seizure. There are numerous examples of small puppet regimes confiscating general aviation aircraft and converting them to their own use.

You have heard it said that our lives changed forever on September 11, 2001. Well, I don't know if all aspects of our lives changed but the attack on the United States did cause us to reevaluate many things. The underwriting community became very paranoid about the safety and vulnerability of terrorist attacks on U.S. based aviation risks. The government, the airlines and their insurance underwriters began to assess their liability for the occurrences of September 11th. The result was total confusion and panic. The underwriters in their panic hit the only relief valve they had and exercised the seven-day cancellation provision that was contained in every aviation war risk "write back" endorsement throughout the domestic aviation insurance industry. They did not know what to do, but they perceived hazards had changed and it was evident that war coverage could no longer be extended at "give away" rates. The early loss assessments indicated that although financially sound now, another tragedy the magnitude of the September 11<sup>th</sup> attack could devastate the entire aviation insurance industry and force some of the "war risk" underwriters into bankruptcy.

You rarely appreciate that which costs you nothing. It has no value until taken away. Most aviation insurance buyers did not realize that often times their agents were able to include the coverage in their policies at little or no additional premium. (Obviously this was not possible in every case because some underwriters at that time did not offer the coverage.)

When insureds received the notification of cancellation of war risk coverages from the insurance companies, agents' phones began to light up. For weeks, we were asked to explain the coverage. We were questioned about the underwriters' decision to cancel the war coverage and whether they could legally cancel a part of a policy mid-term. We were asked to give examples of how a war peril's loss could affect a general aviation operation. In short, the entire industry was awakened to a group of insurance coverages that were virtually unknown prior to September 11th.

***Is there a need for War Risk insurance? Can it be purchased? Exactly what does it cover?***

First, let's state that the correct title to the exclusionary portion of every policy tracks the Lloyd's policy exclusion form (AVN 48B) entitled War, Hi-Jacking, and Other Perils exclusion clause. This exclusion was adopted in 1968 and has been a part of most aviation insurance policies since (as a requirement of reinsurers). The injustice was assuming the consumer reads his insurance policy and then comprehends how policy coverage parts apply to everyday exposures. The fact is, in one half of a type written page, AVN 48B, now a part of the standard aviation policy, excludes coverage for approximately 28 perils. This exclusion reads as follows: "This policy is amended as follows: This policy does not cover claims caused by:

- a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power;
- b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; c) Strikes, riots, civil commotions or labor disturbances;
- d) Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional;
- e) Any malicious act or act of sabotage;
- f) Confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government, (whether civil, military or de facto) or public or local authority;
- g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the aircraft acting without the consent of the Insured.

Furthermore, this policy does not cover claims arising whilst the aircraft is outside the control of the Insured by reason of any of the above perils.

The aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the aircraft to the Insured at an airfield not excluded by the geographical limits of this policy, and entirely suitable for the operation of the aircraft (such safe return shall require that the aircraft be parked with engines shut down and under no duress)." AVN 48B

Obviously, the exclusion of some of these perils is of little interest to most policyholders. However, examples of losses attributable to other perils included in AVN 48B can be easily described. Such things as malicious acts or strikes, riots and civil commotion or labor disturbances could be a problem. We now know that the U.S. domestic aviation community, both commercial and general aviation, could become a target of terrorists. And, of course, the traditional exposure of confiscation and seizure still remains a threat to those operating outside the United States.

#### ***Is there a need for war risk insurance?***

As the world has evolved, I think any prudent risk manager must say yes. However, we are not at war officially. The exclusion quoted above must be read closely and dissected word for word. The exclusion is not limited to war. In fact, coverage for almost any hostile act is excluded by the AVN 48B wording whether war is declared or not. You must read it for yourself, however, and make your own assessment of your exposures.

***Can the excluded coverage be bought back?***

Yes and No! Most aviation insurance companies offer the “write-back” endorsement for an additional premium. Other companies are not only offering war coverage but are aggressively recommending that it be added. Most of these companies have adopted the basic Lloyd’s write-back wording found in AVN 51 (war risk hull) and AVN 52E (war risk liability) endorsements. Not all war coverages (atomic or nuclear detonation) are available. To know exactly what is included, I suggest you request a copy of the wording that your company uses.

In addition, the amount of “war risk” liability is usually limited to the amount of primary liability carried by the hull and liability policy or \$50 million whichever is the least. Additional limits can be purchased as an excess “War” liability limit. This is often required by the European Union (EU) when operating your aircraft in Western Europe.

***How much do the war risk write-back endorsements cost?***

The pricing on the war coverage endorsement is somewhat inconsistent throughout the industry. Some underwriters will include the coverage for large premium accounts and some will make a premium charge. Account size, higher limits of liability, geographic area of operation and aircraft use will affect the premium the underwriter must charge. There are only a few war risk underwriters in London offering reinsurance for this segment of coverages. If all companies go to the same place for their reinsurance, the price will vary to some extent depending upon how much your underwriter chooses to absorb or pass through.

So, how much is it? The current rule of thumb in the U.S. is approximately .02% to .05% hull rate (depending upon the value of the aircraft) and a 10% surcharge on your liability premium. A better example is a hull premium of \$300 per \$1,000,000 of hull value for the AVN 51 (war hull) endorsement and a 10% increase in your liability premium for the AVN52E (war liability) endorsement.

***Can I buy war hull without war liability?***

Yes. In fact, many of my clients have done just that. Keep in mind for any liability policy to pay, you must be negligent. Most of my clients, after reviewing the perils in AVN 48B (outlined above), have difficulty finding an example where they could be held negligent as a general aviation aircraft operator. Examples of exposures for a war perils loss to the hull are obvious.

What if I own more than one aircraft? Can I buy war on one aircraft and not the other? Yes on the war hull and no on the war liability. War liability must be purchased for all aircraft on your policy.

***Can I buy war risk coverages mid-term?***

Yes, you can purchase both war hull and war liability on a pro-rata basis for the remainder of the policy period.

***What is ahead?***

Your agent should discuss war risk coverages as a part of every aviation insurance renewal review. Internationally, terrorist attacks and other war risk perils have been a way of life for many years. British and European based aircraft leasing companies require that war risk insurance be included

in all lessee insurance policies. In the U.S., banks and leasing companies usually require War, Hijacking and Other Perils to be endorsed as a condition of the loan agreement.

***So, what do I do next?***

Call your agent, if you have not already done so, and discuss your need for war risk coverage. We cannot advise you to buy or not to buy, but you owe it to yourself to make an educated decision. And while you are in these discussions, inquire about the Terrorism Risk Insurance Act (TRIA) and the coverage it offers.

