

Aircraft Non-Ownership Liability

Aviation's Most Misunderstood Coverage

Aircraft Non-Ownership Liability is a coverage which has been with us for more than 50 years. It is probably the subject of more calls to our office than any other specialty aviation insurance.

Historically, Aircraft Non-Ownership Liability is a direct outgrowth of non-owned and hired-car automobile coverage. The establishment of an "agency" relationship (which creates company liability for the acts of employees and/or officers) is easy to set up, and without insurance could have dire consequences. You will seldom find an insurance program that does not include (under the automobile coverage) non-owned and hired-car coverage, which is often expanded by the use of umbrella policies to provide higher limits.

The adding of Non-Owned Aircraft coverage to a primary program, for any insurance program, is as important as adding non-owned and hired-car coverage under an automobile section. If there is no known exposure and if the general operation of the company indicates very little chance of there being a possible claim, then it is recommended that \$1,000,000 of Aircraft Non-Ownership coverage be scheduled in the primary coverage and extended in the umbrella coverage.

\$1,000,000 of Non-Ownership coverage is the "no known exposure" category, and would normally cost approximately \$1,000 to \$1,800 annually. Depending on the umbrella carrier, this primary coverage can be scheduled to increase the overall coverage for Non-Owned Aircraft up to the full limit of the umbrella.

At this point, a quick review of the concept of "agency" might prove helpful. Under the legal principle of "agency," if a person who is an employee or otherwise acting on behalf of a firm becomes involved with aviation, the firm may be liable and could be sued for damages arising out of an aviation accident or occurrence. This may sound far-fetched, but an outline of the following set of circumstances shows some simple examples which have actually occurred.

Some years ago, a large drug store firm paid to have a charter operation fly their store receipts from St. Louis to Kansas City, Missouri every Friday night. This company was not the only company using the airplane, but was one of many customers for the cargo freight service. This particular aircraft crashed into a school building in central Missouri. The drug store firm had purchased Non-Ownership coverage, and it took over six months and \$6,000 to \$8,000 of expenses to extract them from this accident.

Furthermore, had the cargo freight service not been properly insured, there is little doubt that the insurance company who provided coverage for the drug store would have been required to pay a portion of an extensive Property Damage claim.

In moving to the Aircraft insurance side of the ledger, there is a tendency on the part of the insurance agent who recommends and the insurance company who underwrites to think of Non-Ownership in terms of direct exposure only. Direct exposure refers to a non-owned chartered aircraft, or to company employees who rent or own aircraft used on company business. These can be underwritten according to the number of passenger seats in the aircraft or the number of hours flown.

A typical example would be an individual or company who charters an airplane twice per year to fly to one of their locations which is difficult to reach by commercial airlines. Another example would be a company employee who owns an airplane and uses the airplane for company business. While it is necessary to propose a type of premium for Non-Ownership, the direct exposure approach is extremely dangerous. The danger exists because it is easy for an employee, an officer, or a friend of the company or of an individual, to place that company or individual in an “agency” situation as far as aircraft is concerned.

When examining Aircraft Non-Ownership Liability, the main concern is with the unknown hazard, rather than with the known hazard. The field of unknown hazard requires solid knowledge for both the insured and the insurance company.

A contractor in Colorado can provide an example of a person who greatly benefitted from carrying Non-Ownership Liability. He was working on a project in that state, and his son, who was working on the project, became close friends with one of the employees of the firm that was paying the contractor. The two decided to go trout fishing and rented an airplane to fly to a remote lake. The airplane crashed. The contractor was held liable, because of the agency principle, for this accident and the injury to his employee. The final payment, under the Non-Ownership policy, was over \$300,000. These are completely unknown and unexpected types of Aircraft Non-Ownership exposures, but the potential claims are not out of the ordinary.

Here are a few more examples of unknown exposure. First, the more employees a company has, the greater the chance that one of the employees might become involve with an aircraft. Their involvement can be as follows: they may charter an aircraft, or they may be an employee who owns an aircraft and uses it for company business with or without the knowledge of the employer. Finally, an employee may belong to a flying club or may have a friend who is a pilot, and the aircraft will be used rather insignificantly for a business trip or a convention. All of these can involve the Non-Ownership Liability and a possible payment situation.

Another area of growing concern in the Non-Ownership field is helicopter or rotor-wing aircraft use. Helicopters are one of the fastest growing fields in the aviation insurance business. There are thousands of rotor-wing aircraft operating in the United States, and this number has been increasing for several years. Helicopters are used by police, emergency ambulance services, and are routinely used for pipeline and powerline patrol.

Since the helicopter can be a handy tool to survey a plant site, to examine a roadway under construction, or to survey a national disaster, there is every reason to believe that we will have more exposure in the rotor-wing area.

Unfortunately, the standard Aircraft Non-Ownership policy excludes rotor-wing, unless the client specifically asks that it be added and pays an additional premium. The amount of premium depends directly on what the possible exposure might be.

After looking at some of the exposures which can occur in the Non-Ownership field, it is helpful to know how it is underwritten. Most aviation underwriters, when asked to quote Non-Ownership Liability, will ask for the following information: How many hours will the insured be using the non-owned aircraft (broken down between fixed-wing and rotor-wing aircraft)? Of these hours, how many fall into the categories below?

- 1) **Charter Aircraft** - What type of aircraft will be used and from whom is the aircraft chartered? This is commonly referred to as an Air Taxi Aircraft, and is regulated under Federal Aviation Regulations 135. This is the least expensive of all Non-Ownership, since the aircraft owner is required to meet rigid government standards, and has compulsory insurance requirements.
- 2) **Rental Aircraft** - How many hours of Non-Ownership come from the rental of aircraft? This would be a case in which an employee or friend might rent an aircraft and the aircraft would be used for company business. The underwriter will also ask if there is any primary insurance on these rented aircraft. If so, what is the primary limit?
- 3) **Exposure from Employees** – Are there any who own aircraft or who are members of flying clubs, who may use their own aircraft on company business? If there is exposure, what type of primary limits do the employees have? Is the company named as an additional insured on the primary policy, or is a Certificate of Insurance given to the company showing Limits of Liability?

These three areas encompass both rotor-wing and fixed-wing exposures and should be carefully discussed with the prospective insured. This information is then forwarded on for the purpose of rating.

The next considerations are any past Non-Owned losses and what Limits of Liability are required. In addition, the underwriter would want to know whether an insured desired coverage for unusual aircraft, such as rotor-wing or seaplanes.

Once this information is collected, the quote can be made. The premium level is greatly determined by the amount of primary insurance available, since Non-Ownership is excess over any other primary coverage.

An important aspect of Non-Ownership Liability is that if there is no other insurance available, the first dollar would be paid. If, however, there is inadequate primary insurance, growing out of exposures, excess coverage will be provided up to a suitable limit to protect their exposures.

Finally, there is the subject of Non-Ownership when it is attached to an Owned Aircraft policy. The primary benefit is that it can be added to an Owned policy for a greatly reduced premium.

If the primary aircraft is sought after by a number of markets, you may be able to add the Non-Ownership for no additional premium. There is usually a large difference in premium between free-standing Non-Ownership policies and policies which are attached to an owned aircraft. The difference is due to competition.

In closing, there is the difficulty that in the aviation insurance business, there is no standard wording. The strength of the Non-Ownership coverage depends directly upon the insurance company wording, and some of them are extremely restrictive. For example, the standard Non-Ownership wording used by the Underwriters at Lloyds of London excludes any coverage for rental aircraft or an aircraft owned by an employee.

It is always important to review wordings carefully, but it is twice as true in the aircraft insurance industry. All insurance producers should carefully evaluate Aircraft Non-Ownership exposure and go to the extent of securing a quotation for this coverage and presenting it to the client. This should improve professionalism, and in the event that the insured rejects the coverage after it has been proposed, this will keep the company safe from a possible errors and omissions claim at some future date.