READY TO FLY – OR ARE YOU?
AIRCRAFT MANAGEMENT & CRITICAL INSURANCE IMPLICATIONS

By: Barbara Sandberg, Advisor, AHT Insurance &
Jamie Madonna, Partner, AHT Insurance

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The process of purchasing an aircraft involves countless decisions, few more critical than the aircraft management choice. Setting aside the obvious issues of tax benefits, fuel and FBO contracts, recruiting advantages and other considerations, the purpose of this article is to look closely at the insurance implications related to aircraft management.

The primary insurance advantage of an aircraft management arrangement is the cost savings that come with being part of a larger fleet. All else being equal, insurance companies scale rate breaks as premiums increase. There's no uniform formula for this, and at some point, the fleet growth and premium discount lines converge, but a fleet of 10 or more aircraft is likely to get a better deal than a single ship.

The "all else being equal" aspect of this deserves scrutiny. The pro-flown private jet category has long been a favored insurance sector due to low incidence of catastrophic loss and, to be frank, the glamour factor. Underwriters, like everyone else, are attracted to the bright shiny aircraft and the rich and famous that inhabit them. That said, the attritional losses from a legacy of increasingly expansive policy terms combined with inflationary repair costs and the rise in modular aircraft design have eroded insurance company profits in this class, to a point that the underwriting community's resolve has finally stiffened, and insurance rates have begun to rise even for the latest models. While aircraft management companies, given the expectations of their customer base and stiff competition, tend to operate at a very high level of quality and safety, their attritional loss record can impact the insurance costs they pass on to customers.

It is worth asking for information about overall managed fleet losses over the previous 5 years and factoring that into your assessment.

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Beyond pure cost, there are a range of other differences:

NON-OWNED AIRCRAFT COVERAGE

Under a Managed Aircraft Policy/Endorsement, Non-Owned Aircraft Coverage is afforded to the aircraft owner (usually referred to as the "Insured Owner"), but this typically only applies if the non-owned aircraft is operated or arranged by the management company. This can be problematic for a corporation that may have unrecognized non-owned exposures – sales arranges an excursion for key customers that includes a flightseeing helicopter ride; the marketing department contracts with a drone operator to take aerial photographs; an employee heads to a conference in their private aircraft.

SOLUTIONS:

- **Purchase a stand-alone Non-Owned Aircraft policy** – these have historically been easily available at relatively low cost, but like other insurance products, the market has thinned and prices, especially for high liability limits, are under pressure. Expect to pay between $500-$1,000 per $Million for low to average non-owned aircraft usage, depending on your limit requirements.
- **Purchasing your own aircraft policy would afford full, non-owned coverage, at either no or comparably low cost.** Non-owned aircraft utilization needs to be disclosed in the underwriting process, and premium may be charged depending on the scope. Bottom line, you could rely on your policy protections to a much greater extent, and in the event of a loss, avoid the finger pointing that might come with separate policies covering similar risk.

LIMIT DILUTION

Regardless of how many separate entities are covered by a single insurance policy, the liability limit you purchase applies only once to any given incident. For example, let's suppose you purchase $100,000,000 in liability coverage per occurrence, and let's also suppose you've temporarily leased an engine while an owned engine is in maintenance. Under an aircraft management arrangement, the policy should cover the aircraft owner and the management company.

It's likely you are also required to name the engine lessor as additional insured, so with some exceptions they are entitled to seek coverage through your policy, as well. In a catastrophic event, the $100M limit would be shared between all covered parties – you may think that because it is your aircraft and, in fairness, should be your policy, that you would have first rights to the limit, but this is not the case. Coverage is apportioned, broadly speaking, on a first come first served basis. It is conceivable that you could end up on the short end of your own insurance. Since the Management Company rightly expects to be included as an operational insured under any policy covering a managed aircraft, this would be true whether you procure your insurance under the Management Company's policy or purchase your own standalone policy.

Couple this with the growing social inflation, where awards for injuries related to aircraft accidents are heading into 9 figure territory, and this is more than just a theoretical problem.

SOLUTIONS:

- **Purchase a limit higher than you think you need.** This is more art than science - consider the net worth of your typical guest, the average and/or maximum number of guests you may entertain on your aircraft, your own net worth, and legal trends.
- **Separate liability coverage can be purchased** to cover the difference between what is available to you on the Managed Aircraft or Fractional Ownership policy and a specified limit, guaranteeing you access to your desired limit.

"TWO OR MORE AIRCRAFT INSURED" CLAUSE

Most insurance policies contain a "two or more aircraft insured" clause which can limit some coverage if there is a single incident involving two aircraft qualifying for insurance under the same policy. For instance, two aircraft owned by separate individuals but both insured under the same management policy that are involved in one event could end up in a limit sharing situation like the one described above, essentially halving the amount of insurance available to each.

SOLUTIONS:

- **Purchase your own stand-alone policy** covering your aircraft, leaving you in control of the aircraft insured on a single policy.
- **Purchase a separate liability policy** like the one described above.
- In rare cases, management companies have negotiated **segregated limit arrangements** with their insurance provider, so it is worth inquiring about the details before negotiating a separate, and possibly more costly, alternative.

PILOTS – EMPLOYEES OR NOT?

Whether your aircraft is managed or not, you will probably develop a relationship with the crew that comes with a measure of trust. Don't forget, however, that if something bad enough happens, things leave the realm of relationship and enter the legal world.

The employer/employee relationship comes with some protections for both. The employee gets a guarantee of medical care and wage replacement, if necessary, regardless of how the injury happens. The employer gets the "sole remedy" protection of Workers' Comp laws meaning, with few exceptions, your employees are not able to sue you for damages above what they are entitled to under Work Comp. This tends to be a much lower figure than what a similar injury sustained by a non-employee would command in a lawsuit.

In a management arrangement the crew is employed by the manager, or possibly even a PEO, so from the aircraft owner's standpoint the crew is a passenger like any other and has standing for a direct liability claim. To be fair, this can get a little murky depending on the way crews are assigned and the applicable statute, so it's also a good idea to request an "Alternate Employer Endorsement" from the employer organization. This would extend protection for you under their Workers' Comp policy in the unlikely event you are held responsible for workers' comp benefits.

EMPLOYEE DISHONESTY

Theft of insured property by employees is a standard exclusion, in some form or another, on all aircraft policies. Here's the implication – for aircraft insured on a managed fleet policy, theft by the Management Company's employees would be excluded. Theft of an entire aircraft is unlikely (although not unheard of). A more probable scenario is the unauthorized resale of a major part which has been removed for overhaul. If you squint hard enough, depending on the policy wording, fact pattern and the legal venue you could potentially argue for reimbursement to the aircraft owner under the Management Company's policy. All that said, it's worth verifying that your management company carries an Employee Dishonesty Policy (sometimes referred to as Crime Coverage or Fidelity Bond) with limits adequate to cover potential losses involving theft of your aircraft or parts by one of their employees or contractors.

CYBER INSURANCE

Protecting personal and private information is ever more important and should be at the top of everyone's list. An aircraft management company will possess personal and private information of their aircraft owners and passengers. As an aircraft owner, there should be open discussion surrounding the protection of the personal and private information that an aircraft manager has in its possession.

It is not unusual for a management company to have access to ownership documents, loan documents, account information, etc. and we know the level of personal information that can reside in those documents. Additionally, it would not be unusual for a management company to represent an owner in the acquisition of an aircraft and its parts and with that also comes a level of private information. Regardless of the relationship you have with a management company, the question of Cyber insurance should be discussed. **That discussion should include the level of third-party cyber protection afforded by the management company:**

- Does the management company have a policy?
- Is there protection if personal information is lost or stolen via a breach, malware or ransomware event?
- What limit of insurance is the Management Liability company buying?
- What, if any, deductibles would apply and what rights might be afforded for the owner under the policy.

Not all cyber policies are created equal, so some base level of knowledge in this area will go a long way.

IN CONCLUSION

There are too many variations in ownership structures for this to be an exhaustive analysis, so we'll close by saying this – your insurance broker should be your best friend here. Ask hard questions and expect well-researched answers. There are wide variations between aviation insurance policies, so be sure to talk with an aviation insurance specialist, whether you are purchasing your own coverage or relying on the management company's insurance program. Understand what you're being offered and do the one thing that most often gets overlooked... read your insurance policy.

AUTHORED BY:

Barbara Sandberg
Advisor, AHT Insurance

206.336.2966

Barbara.sandberg@ahtins.com

Jamie Madonna
Partner AHT Insurance

206.336.2966

Jamie.Madonna@ahtins.com

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