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MARCH / APRIL 2020

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Are You Covered?

The Insurance Risks of Illegal Charter

BY STEPHEN P. JOHNS

LL Johns Aviation Insurance / sjohns@lljohns.com

You've read about the safety and financial risks of illegal charter. (See: "Global Warning," BAA Jan/Feb 2020) What impact might these activities have on your aircraft insurance coverage?

Generally, illegal charter operations fall into four buckets:

1. Certificated charter companies operating outside of the regulations
2. Management companies operating under FAR Part 91 which may be using dry-lease agreements improperly
3. Aircraft owners who are letting a friend use their airplane and accepting compensation, and
4. Flight department companies operating under FAR Part 91 that exist solely to own and operate the aircraft but which receive money from an outside source.

So if the FAA determines that the aircraft operator did not have the proper certification and an incident or accident occurs, will it be covered by your insurance? Maybe, but it's not guaranteed.

You've likely heard about the "hardening" of the aviation insurance market. (See: "Insurance Rates Take Off," BAA April/May 2019). Since last spring, this hardening has accelerated, and the projected increases of "15% or more" has turned into "more." Although the impact is different on the various segments of the aviation community, bizav owners should plan to budget 30-40% premium increases for 2020. This figure assumes a highly qualified and annually trained crew, an airplane that is not too old, and – of course – a clean loss record.

This recent insurance market is characterized by:

- Increasing prices
- Coverage and limit reductions (or "rationalizations" as one underwriter calls it), and
- Tightening of approvals and policy language.

This last point overlays the intersection of illegal charter and potential insurance problems. Over the past sixteen years, insurance companies have been quite generous in the "Approved Use" wording on their policies. On many policies, the language is comparable to "All operations of the Named Insured." In this hardening market, underwriters are increasingly scrutinizing applicants suspected of operations that border illegal charter. Furthermore, if a policy is offered, insurance companies are using wording that specifically identifies the Approved Use as non-commercial. So an operator skirting the line on illegal charter may just find that their coverage is invalid if it's determined they violated the Approved Use clause.

Not every insurance policy carries an Illegal Operations exclusion. One underwriter explained that they are responsible to



carefully underwrite every applicant. So when they offer a policy, they don't want an Illegal Operations exclusion calling coverage into question. Other companies include an exclusion such as:

"The insurance provided by the Policy shall not apply to illegal, criminal or dishonest acts or activities, alleged or otherwise, committed by or at the direction of or with the knowledge and consent of directors or officers of the insured and with the knowledge at the time that such act was illegal or criminal..."

This exclusion leaves room for coverage if the insured did not have knowledge at the time that such act was illegal or criminal.

What you should do:

- Seek the advice of expert council with respect to your ownership structure and operations.
- Identify and use an insurance broker who understands the charter segment, has the network and resources to assist you, and facilitates good communication with the insurance company.
- Communicate openly, honestly, and frequently. Make sure your insurance broker and underwriter are aware of the structure of your entity and the way you use your aircraft. Any time money changes hands or you receive any compensation for the use of your aircraft, be sure to disclose that to your insurance company.
- Read your insurance policy carefully to be sure you are aware of the Approved Use(s) of your airplane. Also be aware of any exclusion your policy may contain for illegal, criminal, or dishonest activities.

Of course, your best option might just be to avoid these activities altogether. **BAA**



STEPHEN P. JOHNS is President of LL Johns Aviation Insurance, a business aircraft insurance brokerage. Holding both Property & Casualty Agent and Surplus Lines licenses, he is a Certified Insurance Counselor, and active in the aviation community.

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