Mandatory Aviation Insurance:
A Domestic and International Perspective

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INTRODUCTION

As aviation tort practitioners are keenly aware, there are many mechanics, aviation maintenance facilities, pilots and aircraft operators that do not have adequate insurance or assets to satisfy a judgment against them. As a result, innocent victims and governmental entities incur losses and cannot recover from the parties that caused the injury.

While there is a growing trend around the world to hold individuals and corporations financially accountable for the damages caused by their tortious conduct, in the United States there is still no federal requirement that aircraft operators have insurance. The fact that aviation is highly regulated at the federal level is one reason why the imposition of mandatory insurance requirements lags behind that of the automobile, which is largely regulated at the state level.

In contrast to most of the rest of the developed world, the United States has not taken the lack of liability insurance in the aviation context seriously. For example, the European Union (EU) and Canada have mandatory aircraft insurance requirements for all aircraft operators.

This article is a summary of some of the countries and states that have imposed minimum insurance requirements and financial responsibility in the aviation context.

AUSTRALIA

Air carriers and air taxi operators in Australia are required to carry no less than 260,000 Special Drawing Rights (SDR) or $411,733United States Dollars (USD) per passenger for international carriers. Domestic operators are required to have $500,000 Australian ($446,049USD) per passenger. Failure to carry the requisite insurance or to have a certificate of compliance issued by the Civil Aviation Authority is a criminal offense that may result in imprisonment and a civil injunction that prohibits future operations.

CANADA

Canada has perhaps the most comprehensive and equitable mandatory insurance system. Canada's system takes into account the economic viability of the aircraft operator while simultaneously providing a minimum level of insurance to accident victims.

Any air operator or flight training unit operating in Canada is required to have liability insurance for death and bodily injury in an amount not less than $300,000 USD multiplied by the number of passengers onboard the aircraft. Aircraft in excess of 7,500 pounds maximum takeoff weight (MTOW) must have public liability insurance of $1,000,000 USD. Aircraft between 7,500 pounds and 18,000 pounds MTOW must have $2,000,000 USD. Any aircraft in excess of 18,000 pounds MTOW must carry public liability insurance of $2,000,000 USD plus $150 multiplied by the number of excess pounds.[1]

Alternatively, an aircraft operator can subscribe to a combined, single-limit policy of $100,000 USD for an aircraft with a MTOW of 2,300 pounds or less, $500,000 USD for an aircraft with a MTOW between 2,300 pounds and 5,000 pounds, $1,000,000 USD for aircraft with a MTOW between 5,000 pounds and 12,500 pounds, $2,000,000 USD for aircraft with a MTOW between 12,500 and 75,000 pounds and $3,000,000 USD for aircraft with a MTOW in excess of 75,000 pounds.

The operator may not operate an aircraft unless the certificate of insurance is carried onboard. The certificate must show that the operator has the proper liability insurance. There is an exception to these requirements for those covered under workers' compensation, and there are specific provisions for parachute operations that are beyond the scope of this article.

COSTA RICA AND MEXICO

Aircraft operating in Costa Rico or Mexico must have a certificate of insurance upon arrival in each country. The certificate of insurance must provide coverage for operations either in Central America or worldwide.

EUROPEAN UNION

As of April 30, 2005, the EU required all commercial and private aircraft operators to carry liability insurance that provides indemnity coverage for passengers, baggage, cargo and third-parties. The mandatory insurance requirements apply to all aircraft operating within, in, out or over the territory of the EU.[2]

An EU Member State may refuse to allow an aircraft to land if it failed to comply with the mandatory insurance requirements. Similarly, an EU Member State may refuse to allow an aircraft to take off until it obtains the required insurance. Operators are required to carry a current insurance certificate onboard that shows the required coverage. The operator must present the certificate for inspection.

Operators are required to carry 250,000 SDR per passenger on aircraft weighing 5,954 pounds or more.[3] EU Member States may apply for a reduced insurance minimum of 100,000 SDR (approximately $158,000 USD) per passenger for non-commercial operations on aircraft weighing less than 5,954 pounds.

In addition, there is a sliding scale based on aircraft weight for third-party liability. The scale ranges from 500 kilograms MTOW, which requires 750,000 SDR, (approximately $1,185,362 USD), to 500,000 kilograms MTOW requiring 700,000,000 SDR (approximately $1,106,338,052 USD) in third-party liability coverage.

The coverage requirements for small general aviation aircraft are also significant. For example, a 2,700 pound kilogram Cessna 172 carrying a pilot and three passengers, operating non-commercially, with the reduced non-commercial liability provision must carry 3,000,000 SDR in third-party liability insurance and 100,000 SDR for each of the three passengers. This equates to 3,300,000 SDR, or approximately $5,215,593 USD in coverage with $158,000 USD per seat minimum.

UNITED STATES

In the United States, the Department of Transportation and the Federal Aviation Administration are responsible for regulating aviation operations. While the Federal Aviation Regulations (FAR) do not impose any duty whatsoever on Part 91 operators to carry insurance, or on aviation service providers to have insurance, some states have seen the need for mandatory insurance.

There is a federal law that requires interstate air carriers and air taxi operators to carry insurance.[4] Generally, air carriers are required to have $300,000 USD for any one person and a total of $20,000,000 USD per aircraft. However, an aircraft with less than sixty seats or 18,000 pounds MTOW only needs $2,000,000 USD per occurrence.[5] Air taxi operators registered under Part 298 are only required to have $75,000 USD per person and a total of $300,000 USD per occurrence.[6]

Alaska: Alaska requires air carriers to have insurance of $150,000 per seat for bodily injury or death and $100,000 per occurrence for property damage.[7] Operators are required to file evidence of insurance or post a bond with the Department of Aviation. A violation of this Act is a class A misdemeanor punishable by a fine of no less than $1,000 or more than $5,000 per day not to exceed $10,000 per violation.[8]

California: California has enacted The Uniform Aircraft Financial Responsibility Act,[9] which requires that, after an accident involving damages of more than $400, the operator must either provide evidence of insurance or post a bond of $50,000 for bodily injury or death to one person or $100,000 for bodily injury or death to two or more persons in one accident. Furthermore, if the accident results in damage to property, the operator must post an additional $50,000 bond. The law does not require a bond for bodily injury to an employee, persons covered by workers' compensation, or for a guest or other passenger riding in an aircraft without compensation.

Maryland: The owner of an aircraft based or hangared in Maryland may not operate that aircraft unless there is liability insurance in force. The owner must have coverage of at least $50,000 for bodily injury per individual; $100,000 for bodily injury per accident, and $50,000 for property damage.[10] All airport operators are also required to maintain a roster of the aircraft including the policy number, the name of insurance company, the aircraft registration number, and the name and address of the registered owner.

Minnesota: Every owner of an aircraft in the state of Minnesota is required to register their aircraft and certify that it has insurance of no less than $25,000 per passenger seat for bodily injury and death, and no less than $50,000 per occurrence for bodily injury or death to non-passengers. The operator is required to include the name and address of the owner, the contemplated use or operation of the aircraft, the name of the insurer, the insurance policy number, the terms of the coverage and the policy limits.

Experimental aircraft are exempted from these requirements. However, if the experimental aircraft is certified to carry passengers, the passenger per seat liability coverage shall be required. Additionally, there is an exemption for any aircraft built by the original manufacturer prior to December 31, 1939 and owned and operated solely as a collector's item. Operation of an aircraft without liability insurance protecting passengers and third parties with the applicable limits is punishable as a misdemeanor crime.[11]

Missouri: Owners or operators of aircraft hangared in the state of Missouri may not operate an aircraft unless there is liability insurance that covers the owner and pilot for claims by passengers or other persons for their property that might arise as a result of the operation of the aircraft.[12] The liability insurance minimums are $50,000 per individual, $100,000 for bodily injury per accident and $50,000 for property damage.

Missouri requires airport operators to maintain a roster of aircraft based or hangared in the state that includes the liability policy number, liability insurance company, and the name of the insurance producer. The certificates of insurance are inspected on an annual basis.

South Carolina: In South Carolina, any operator charging for the operation of an aircraft is required to have coverage of no less than $75,000 for bodily injury or death to any one person in any one accident, and no less than $75,000 multiplied by three-fourths the number of passenger seats on an aircraft for bodily injury or death of two or more persons in any one accident. The coverage is limited to $300,000 for any one accident.

If the operator does not operate for hire, the policy of bond must be no less than $100,000 for bodily injury or death of any one person in any one accident and no less than $100,000 multiplied by the number of passenger seats in the aircraft for bodily injury or death to two or more persons in any one accident. Again, the coverage is limited to $300,000 per accident. Furthermore, for all operators there is a requirement for $100,000 in coverage for property damage. Finally, there is an exception for any employee onboard the aircraft for which the operator or owner may be liable under workers' compensation.[13]

Virginia: Virginia requires that operators of aircraft provide proof of financial responsibility for registered aircraft in the amount of $50,000 for bodily injury or death to one person in the accident, $100,000 for bodily injury or death to two or more persons in any one accident, and $25,000 in coverage for property damage.[14] Alternatively, an operator may have a combined single-limit policy in the sum of $250,000 that covers bodily injury and property damage. In lieu of an insurance policy, an operator may deposit $250,000 in cash or irrevocable letters of credit from a depository institution to the Department of Aviation.[15]

CONCLUSION

Too many mechanics, aviation maintenance facilities and operators have no insurance or assets to satisfy a judgment against them. Innocent victims and governmental entities are too often left to bear costs that they cannot recover.

As demonstrated, the EU, Canada and several other countries have laws mandating minimum aviation insurance. Aside from limited state action, the United States still does not have an all encompassing federal requirement that aircraft operators have minimum insurance. The time has come for Congress to finally recognize that many aircraft operators are not voluntarily purchasing insurance to cover potential liability for aircraft crashes, and act to remedy this problem.

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[1] Liability Insurance, C.A. R. 2007 s. 606.02.
[2] Regulation (EC) No 785/2004 of the European Parliament and of the Council (21 April 2004).
[3] This conversion uses the rate in effect on January 2008.
[4] 14 C.F.R. §§ 205.1-205.5.
[5] 14 C.F.R. § 205.5.
[6] *Id.*
[7] Alaska Stat. § 02.40.010 (2004).
[8] *Id.*
[9] Cal. Pub. Code Ann. §§ 24230-24362 (2006).
[10] Md. Transp. Code Ann. § 5-1002 (2007).
[11] Minn. Sta. §§ 360.59; 360.93 (2006).
[12] Mo. Rev. Stat. § 5-1002 (2001).
[13] S.C. Code Ann. § 55-8-50 (2006).
[14] Va. Code Ann. §§ 5.1-88.1; 88.6 (2007).
[15] Va. Code Ann. § 5.1-88.1 (2007).