

A Dangerous Myth: Renter-Pilot Insurance

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Do you know whether you have insurance protection when you rent an aircraft?

Recently, an AOPA member, who thought he was adequately protected, rented a Beech *Debonair* from a fixed-base operator at a suburban Washington airport. He flew the aircraft to a small, uncharted strip in nearby Maryland where he effected a safe landing. The Civil Aeronautics Board described the later takeoff as follows:

"During the subsequent takeoff roll, the pilot realized that he would be unable to complete the takeoff and he aborted it at midfield. Thereafter, the aircraft swerved from the runway, struck a steel fencepost, a fence, crossed a road, struck a tree, and came to rest in the field beyond.

"Investigation revealed that the runway used for takeoff had a crossing telephone line, 50 feet high, located 2,000 feet from the downwind end, and the surface sloped upward about 15° in the direction of takeoff. Field elevation is 2,520 feet; the wind was from the east at 5 m.p.h., and the temperature was 80°F. According to information contained in the Owner's Manual, about 2,650 feet would be required to take off from a hard-surfaced runway and clear a 50-foot obstacle under these conditions."

The CAB concluded that the probable cause of the accident was, "(1) pilot selected unsuitable terrain for takeoff and (2) judgment of pilot in attempting operations that exceeded the performance capabilities of the aircraft."

The tendency at first is to be critical of the pilot's judgment. However, on reflection it is easy to admit that we all can, and do, make mistakes. No doubt this accident raised some grey hairs on this member's head. But his troubles were just beginning. The insurance company which insured the fixed-base operator's aircraft paid the operator for the damage to the aircraft, but much to the pilot's surprise, then made claim against the pilot for what it had paid the operator. This matter is presently in litigation. And this litigation has rekindled a problem with which AOPA has been concerned for some time.

We all have had the experience of renting an aircraft from a fixed-base operator. Yet it is surprising how few

of us know what potential liability we undertake when we do so. As we shall see, this exposure is considerably more than most of us would have guessed.

The problem occurs after a renter-pilot has an accident which causes damage to the rented aircraft. It is then that the renter-pilot may receive a claim from the aircraft owner, or the owner's insurance company, or both. Most times this is a more frightening experience than the accident—and quite expensive. We have had AOPA members write to us from time to time reciting such an unfortunate circumstance. And what has impressed us most is that not one of these members had any idea of his potential liability at the time he rented the aircraft.

In order to understand the problem, you should know what legal responsibilities you have when renting an aircraft. As a renter of an aircraft, you are what is known in the law as a "bailee." As such, you are responsible to exercise reasonable care with respect to the rented airplane. You are obliged to return the aircraft to its owner in the same condition as when you received it, except for normal wear and tear. If, for some reason, while the aircraft is "bailed" to you, it is damaged, then you must show that the damage occurred due to some cause other than your own negligence. If you cannot make this showing, then you are under legal obligation to pay a claim for the damage if a claim is made against you. In most situations it is very difficult for the renter-pilot to show that he was not negligent. Accidents which involve damage to the aircraft frequently raise a question as to whether the pilot exercised good judgment.

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Insurance would seem to be the best way to protect against this liability. And yet, it is just that word, "insurance," that is misleading. Some few of us, when we arrange to rent an aircraft, might ask the operator if the aircraft is insured. In practically all instances, we would be advised in a general way that "certainly, all of my aircraft are insured." While this statement may be true, it is misleading in most instances, in that the operator's insurance probably does not cover the renter-pilot. Of course, it is not the operator's intention to mislead you. We have found that many operators believe that their insurance does cover renter-pilots, and that many other operators are really not sure what their insurance situation is with respect to this problem. Even those of us who might not ask the operator about insurance know in some general way or at least assume that the aircraft we are renting is covered by insurance. Yet, this insurance usually does not protect renter-pilots.

Let's look more closely at the insurance situation. The normal policy of insurance on a aircraft covers (1) physical loss or damage to the aircraft itself (hull) and (2) claims by passengers or other persons for injuries to them or damage to their property arising out of the operation of the aircraft (liability).

With respect to the *hull* coverage (comparable to automobile collision coverage), if there is a loss, the insurance company has a right, after paying the insured person, to "subrogate" or claim against a third party who caused the damage. Translating this into the

When you hire a plane to fly yourself, the chances are pretty good that you are taking on the responsibility for damages arising from your flying. Better check with operator on type of coverage he carries

renter-pilot situation, if a renter-pilot causes damage to a rented aircraft through negligence on his part, the insurance company will pay the owner of the aircraft and then may proceed against the renter-pilot for the amount it has paid to the owner. As we have seen, the renter-pilot is a "bailee," and, as such, is under obligation to return the aircraft in the same condition as it was received, or bear the burden of proving that the damage to the aircraft was not due to his negligence. If the aircraft is damaged and the renter-pilot cannot make the proper showing, the insurance company is entitled to payment from the renter-pilot. So you see, it is true that the aircraft is insured, but it is also true that the renter-pilot does not receive the benefit of that insurance.

What's more, hull insurance coverage usually has a "deductible clause." The owner of the aircraft agrees to pay the first \$50, \$100, \$250, \$500 or \$1,000 on every loss. The insurance company pays the loss in excess of this deductible amount. In several cases that have come to our attention, the fixed-base operator has sought to recover the deductible amount from the renter-pilot. This typically happens before the renter-pilot has any idea that the insurance company is going to make a claim against him. Some renter-pilots have paid the deductible amount to the fixed-base operator believing this would be the end of his problem. But rather than ending the problem, there is some danger that a payment to the operator may be deemed an admission of negligence for the purpose of the insurance company's claim.

The renter-pilot insurance problem is not too well known because apparently insurance companies have not made a practice of subrogating against renter-pilots for damages to a rented aircraft except in extreme cases. However, in the few cases where subrogation claims were made, the effects on the renter-pilot were severe. In other words, while the problem may not be widespread, where it does exist it is a very important problem.

With respect to *liability* coverage, we have a similar situation. If a renter-pilot, as a result of his negligence, injures a passenger, or injures a third party or damages a third party's property, the insurance company will defend the owner of the aircraft against all claims arising from this

accident, and will pay any damages awarded to the claimant. However, under the usual fixed-base operator policy, the insurance company is not under obligation to defend the renter-pilot, nor is it under obligation to pay any claims awarded against him. And in the majority of accidents in which negligence is involved, it is the pilot who bears the greatest exposure to liability, not the aircraft owner.

There is *liability* insurance available to fixed-base operators which covers the student and renter-pilots as well as the fixed-base operator, but our investigation reveals that few fixed-base operators carry this type of insurance. The premium cost of such insurance is higher since the insurance company's potential liability is enlarged. Insurance companies usually charge an additional premium of approximately 25% of the basic liability premium to provide blanket additional insured coverage for all renter-pilots.

As best as we have been able to determine, there are no insurance policies for operators presently in force which protect the renter-pilot on the *hull* coverage. Though some policies may contain waivers of subrogation benefiting certain specified individual or corporate renters, none of the policies in force contain a waiver of subrogation benefiting *all* renter pilots.

In addition, at least one aviation insurance company offers policies to pilots who do not own their own aircraft but who rent aircraft, so called "nonownership" coverage. These policies cover both hull and liability and, in some instances, even provide for medical payments. However, this type policy has not proved popular. Our investigation discloses that not many renter-pilots carry such insurance.

In summary then, we have seen that a pilot undertakes certain responsibilities when he rents an aircraft, and we have seen that these responsibilities are not ordinarily covered by insurance. While the problem is not widespread, nevertheless the potential liability to the renter-pilot is great, and it would seem unwise for a pilot to rent an aircraft from a fixed-base operator without first determining that there is insurance coverage on the rented aircraft which protects the renter-pilot on both the liability and the hull coverage.

Unfortunately, the hull coverage does not seem to be available, and most fixed-base operators are not aware that their liability insurance does not cover the renter-pilots. We believe that fixed-base operator policies should be written to protect the renter-pilot on the hull coverage. If fixed-base operators ask for such coverage, we believe most insurance companies will provide it. We also believe that if enough renter-pilots and airport operators become aware of this problem, it will solve itself. Responsible fixed-base operators will obtain hull and liability insurance coverage to protect the renter-pilot, and renter-pilots will be reluctant to rent aircraft which are not insured to protect them. ●

Abstracts Of Legal Statements

Summaries of statements made by members of a panel of legal experts at the recent AOPA Air Fair and Plantation Party, which were scheduled for The PILOT this month, will appear in the February issue instead. Lack of space this month prevents them from being presented fully at this time.