



SPECIALIST
PROFESSIONAL
INDEMNITY
INSURANCE



THE WIRE

2015

Aviation, Insurance Brokers and ITIC

Professional Indemnity (PI) Insurance provides cover for aviation professionals for claims which are brought against them for losses suffered by their customers as a result of their negligence, error or omission. ITIC, as a specialist not-for-profit provider of professional indemnity insurance, is a natural choice for those who work in the aviation sector requiring protection from claims.

Any party who acts as a professional, providing advice, information, designs, consultancy and asset management services, owes a duty of care to their clients. Examples in the aviation sector include Continuing Airworthiness Management Organisations (CAMO), aircraft managers, aircraft charter and lease brokers and aerospace designers. Under English law, the standard of duty of care is the provision of "reasonable skill and care".

In the event that the services provided by professionals fall below this standard and cause their clients a loss, the clients can seek to recover these losses. For this reason it is now commonplace for contracts used in many sectors to hold a specific requirement for PI Insurance.

However, a PI policy is also there to protect the policy holder. The world is becoming more and more litigious and not all claims have merit. Escalating legal costs mean that the cost of innocence has never been higher, and in the event of an unfounded allegation of negligence, a PI policy will pay for the valuable defence of the Assured's interests. ITIC has funded the defence of spurious claims against Assureds in a variety of worldwide jurisdictions, including the USA and Canada. Our team of specialists will also manage the claim on behalf of the Assured, saving them both time and money.

Put simply, any company providing advice, training, design, consultancy or asset management services should be covered by PI insurance. Whilst many professionals struggle to imagine a claim being made against them, ITIC's experience confirms that mistakes frequently occur. As a specialist insurer of aviation professional risks, ITIC provides cover for a range of companies, some of whom may not immediately recognise that they could have an exposure to a PI claim. However, should their error or omission cause a loss to their client, or to a third party, then they could be held responsible. They could even be sued simply because they act as an agent for somebody else.

[Continued overleaf >](#)



ITIC
IS MANAGED
BY **THOMAS
MILLER**

What ITIC looks for:

A well-presented, completed proposal form and an up to date CV.

As an insurer of liabilities arising out of the mistakes made by an individual or a company, as part of our underwriting considerations we will naturally form a view as to the professionalism of your client. First impressions count, and these are often based on a completed proposal form. A neat and well-presented proposal form with complete answers is often a strong indicator of the standards set by the individual or company.

Further, tell us about your client's background. If we can see that they are now consulting on a particular aspect of aviation which they have already spent some 20 years working in, we will look on their application more far more favourably than someone with little or no experience!

A detailed description of your client's professional activities.

ITIC will be covering your client for claims which will arise following their provision of professional services. A PI insurer who doesn't understand what their Assured does, doesn't understand the business or what they are insuring. If your client is an aircraft manager, CAMO, surveyor or charter

broker, we can send you an additional form which will tell us everything we need to know. For everybody else, a short paragraph with a description of their activities is helpful. We can let you know if we need to ask further questions.

Confirmation as to whether an AOC is held by your client.

If they are holding an AOC, we know that they are also holding an aviation hull and liability policy. It tells us that we may be able to exclude death, bodily injury or property damage claims from the professional indemnity policy, which will avoid double insurance and help to keep the premium down.

Details of any approvals which have been issued in favour of your client by an NAA, especially those relating to design, management and maintenance of aircraft.

Quite simply, if they are not holding the approvals that they require to carry out their activities, then we will decline to insure them. ITIC holds its Assureds in high esteem and we will never knowingly jeopardise our ability to underwrite their risks or handle their claims. Checking approvals is part of our underwriting due diligence.



Meet the Aviation Team

Melanie Thomas - Account Executive

Melanie Thomas is ITIC's Senior Aviation Underwriter. Melanie joined ITIC in January 2011 after having worked as a Senior PI Broker for 4 years for a national broker in the North West. Melanie is responsible for the development of our worldwide aviation portfolio and is ITIC's aviation specialist. Prior to working as a PI broker, Melanie worked for a major airline.

Mark Brattman - Legal Advisor

Mark is ITIC's Legal Advisor. He is a qualified solicitor and joined ITIC in 2004. Mark qualified at Shaw and Croft (now part of Gately LLP) in 2000 and then worked for Beaumont and Son (now part of Clyde & Co LLP). Mark specialised in aviation claims, insurance & reinsurance disputes and general commercial litigation. Mark was admitted to the roll in 2000.

Roger Lewis - Underwriting Director

Roger joined in 1993 and is Account Executive for ITIC's members in Switzerland, China and Taiwan. As Underwriting Director he leads a team of ten staff responsible for the underwriting, and renewing, of ITIC's membership. Roger has also overseen ITIC's development in Germany for nearly 20 years, and leads the team of four that take care of ITIC's second largest geographical market.

Andrew Jamieson - Claims Director

Andrew is ITIC's Claims Director and has been with the Club since its foundation in 1992. Previously he had been employed by one of ITIC's predecessors, CISBACLUB, and as an in house lawyer at a container leasing company. Andrew has handled claims against brokers, agents and asset managers since 1990 and is a qualified barrister.



Turbo technical trouble

An air charter broker received a request to act for a principal who was seeking to charter an aeroplane for a flight two days later from Scotland to Morocco. The broker reviewed the available options for the principal and recommended the use of a small business jet which would offer a short flight time and enhanced comfort. However, the principal wanted a cheaper alternative and the broker instead looked to source a small turbo-prop for the flight.

The broker was unable to identify a suitable aircraft from his normal network. However, a colleague advised of a small operator who they had used before at short notice. This operator did have an aircraft available and the lease agreement was quickly drawn up. As part of his usual due diligence processes, the broker checked the air operator's certificate (AOC) and details of the aircraft registration on the CAA website. He also obtained verbal assurances from the operator that the aircraft met all continuing airworthiness requirements.

Shortly after the planned departure time the broker received another call from his principal saying that the aircraft had diverted into East Midlands Airport with a technical defect. The broker eventually made contact with the operator and learnt that the aircraft technical problem was related to a known defect that had been deferred for some time under the provisions of the minimum equipment list. The aircraft was consequently not airworthy for several days while the defect was rectified.

The principal accused the broker of negligence. He claimed that the broker had failed to exercise reasonable care when sourcing the aircraft, and held the broker liable for the costs of leasing an alternative aircraft. ITIC defended the broker's position as it was felt that the broker had acted with all due skill and care, and had taken all the steps that a reasonable broker would have done in such a limited time frame.

A settlement was eventually reached, but the legal costs incurred were substantial. Both claim and costs were covered by ITIC.

Audit gets lost in translation

An aviation safety auditor was hired by a Russian specialist air charter operator to perform a comprehensive safety audit of its flight operations activities. Their fleet consisted of heavy lift helicopters and jet aircraft. The auditor was advised that the findings of his audit could be used to support the operator's bid for a lucrative contract.

The auditor completed the audit over a period of 5 days on site, which included an observation ride on a short training flight in one of the helicopters. During the training flight a heavy under-slung load was transported for a short distance. The load developed a dangerous swing and the training pilot became agitated and vociferous with the trainee. He took control and stabilised the load beneath the aircraft.

In his subsequent report the auditor gave a clean bill of safety 'health' to the fixed-wing jet operation, but raised a significant concern with regard to the safety of the helicopter operations due to the swinging load event. The operator was unhappy with the audit report, but as there was insufficient time to commission another audit, the report was submitted to support the bid. The bid was unsuccessful.

In line with his standard invoicing procedures, the auditor had insisted on payment of 50% of the audit fee in advance. However, the operator refused to pay the outstanding 50% of the audit fee on completion. The auditor referred the matter to ITIC. ITIC's advice was that it would be prudent to write the outstanding 50% off, as pursuing this fee could give way to larger a counter-claim.

However, despite the auditor's agreement to write-off the outstanding fees, the operator still initiated legal proceedings. They alleged that the auditor's lack of rotary-wing heavy lift experience, as well as his inability to understand the language of the pilots, led to undue concern and an inaccurate audit report. They further alleged that it would have been reasonable to expect him to attempt to resolve his concerns directly with the training pilot at the time instead of committing them directly to the report without prior discussion. Undocumented damages were said to be in the region of US\$2.5M.

Although the auditor did not feel that the operator's allegations had any merit, it was recognised that a successful defence in litigation could not be guaranteed. ITIC advised that an offer of a small ex-gratia payment could be sufficient to resolve the operator's complaint and bring the matter to a close. Accordingly, it was proposed that the operator be reimbursed for the proportion of the audit fee already paid, plus legal costs incurred, in full and final settlement of their claim. Settlement was offered without an admission of liability. The offer was accepted by the operator and the matter was successfully closed before it had the opportunity to escalate.



CAMO or AMO?

A Continuing Airworthiness Management Organisation (“CAMO”) insured by ITIC was appointed by the owner of 3 business jet aircraft to provide a complete continuing airworthiness management service. The aircraft were operated on a non-commercial basis and the aircraft type was within the scope of the CAMO’s approval from the European Aviation Safety Agency (“EASA”).

EASA issued an airworthiness directive (“AD”) for the aircraft type which required the replacement of a small part of the undercarriage retraction mechanism. The replacement was to be completed by a specific date. The maintenance programmes called for all 3 aircraft to undergo scheduled maintenance at the operator’s designated Approved Maintenance Organisation (“AMO”) prior to this date, therefore the CAMO notified the AMO of the requirement to comply with the directive during the maintenance.

On two of the aircraft the AMO correctly fulfilled the requirements of the directive. However, on the third aircraft, after the old part was removed a mechanic inadvertently reinstalled it instead of the new part. The aircraft technical records were amended to indicate

that the AD had been incorporated into all three aircraft and the CAMO released the aircraft back to the owner for continued operation.

A month later during a turnaround at an airfield a sharp-eyed mechanic spotted the old part in the undercarriage mechanism. This was brought to the attention of the crew, who informed the aircraft owner. As the aircraft was now in breach of the airworthiness requirements the owner grounded it until the situation was resolved.

The Owner accused the CAMO of negligence and claimed for losses alleged to have been incurred as a result of loss of use of the aircraft whilst the aircraft was restored to full airworthiness. The owner alleged that the CAMO breached their

duty of care in failing to arrange for all applicable ADs to be applied. Further, the owner claimed that, as his contract with the CAMO contained a clause which stated that in the case of breach of contract by either party the contract would automatically become null and void, he was in effect left with no approved CAMO for all 3 aircraft. He repudiated the contract.

ITIC disputed the owner’s claim on the grounds that under EU Regulation a CAMO is required only to organise the maintenance, not to check it. The AMO, who had been designated by the owner, had been informed by the CAMO of EASA’s AD requirements over the phone. This was followed up in writing, and evidence of these instructions was provided. Further, as there was no breach, the repudiation of the contact was unjustified. ITIC’s defence of the CAMO was successful with the owner finally agreeing to re-direct his claim to the AMO. ITIC covered the fees of the solicitor appointed to defend the CAMO.



www.itic-insure.com



For all updates and information follow ITIC on Twitter: [@ITICLondon](https://twitter.com/ITICLondon)

Beijing | Bermuda | Edinburgh | Hong Kong | The Isle of Man | London | Newcastle | New Jersey | Piraeus | San Francisco | Shanghai | Singapore | Sydney

ITIC
IS MANAGED
BY **THOMAS
MILLER**

For further information on any of the products, services or cover provided by ITIC contact Charlotte Kirk at:
International Transport Intermediaries Club Ltd, 90 Fenchurch Street, London EC3M 4ST.
tel + 44 (0)20 7338 0150 fax + 44 (0)20 7338 0151 e-mail ITIC@thomasmiller.com web www.itic-insure.com
© 2015 International Transport Intermediaries Club Ltd