

Professional “Contract” Pilots - Are You Protected?

By Darrell Hyde

What kind of insurance protection is available to you, a professional pilot who provides paid pilot services as an independent contractor to an aircraft owner? Many aircraft owners use contract pilots as primary flight crew or on an as-needed basis when the regular crew is not available. If you are one of those “contract” pilots you should consider whether or not you have insurance protection.

All pilots need to be approved as pilots under the aircraft owner’s insurance policy, either by meeting the minimum requirements stated in the policy (the "Open Pilot Clause") or by being specifically named as an approved pilot in an endorsement to the policy. Having all pilots approved under the policy is **ONLY** for the benefit of the **aircraft owner and NOT** for the pilot being approved. If the pilot is not approved under the policy, the aircraft owner could face a denial of coverage in the event of a loss.

All pilots have two areas of exposure for any losses they cause while operating an aircraft: (1) liability for bodily injury or for property damage (damage they cause to property belonging to others); and (2) physical damage to the aircraft being operated.

It is critically important that a you distinguish between being an **approved pilot** and of being **protected** (an “Insured”) under the owner’s insurance policy for your liability exposures. Being an approved pilot **does not** automatically extend insurance protection to you, even if you are specifically named as an approved pilot. From our experience many professional pilots are not aware of this distinction and improperly assume that if they are an approved pilot they automatically have insurance protection. If you have insurance protection, it is because you are an “Insured” and not because you are an approved pilot.

The policy obligates the company to pay losses on behalf of the “Insured”. The key to a contract pilot being protected is whether or not you meet the definition of “Insured” (or “Who’s Protected”) under the policy. Most policies have a definition or an insuring agreement stating that a wide variety of persons or organizations can be covered as an “Insured” for liability protection. Then the policies go on to **exclude** another wide group of persons or organizations. Most importantly for this discussion, policies generally **exclude** protection for those in the aviation business, and most exclude protection for those providing "pilot services".



Here is a sample of the exclusionary wording from a “plain language” policy stating who is NOT protected (emphasis added):

There are certain people and organizations we will not cover. They are:

** Any person or organization that manufactures or sells aircraft, aircraft engines and accessories, or that runs an aircraft repair shop, aerial applying service, airport, hangar, aircraft sales agency, pilot training center, commercial flying or commuter air service or flying school, or any individual or organization **providing pilot services** or flight instruction, if the loss arises from these activities. ...*

It is generally expected that those in commercial aviation, including professional pilots, would carry their own insurance. The reality is, however, there is virtually no separate liability insurance protection available to an individual professional pilot, at least not at reasonable limits or premiums.

Insurance policies allow the insurance company to recover from a negligent third party amounts the company paid to the named insured under the Physical Damage (“Hull”) coverage. This is referred to as the "Subrogation" clause.

Here is a sample of the Subrogation Clause from a policy with traditional wording:

SUBROGATION: ...in the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights....

A company could, for example, subrogate against a contract pilot whose negligence caused damage to the aircraft, and thereby recover all or part of what they paid the named insured. Think about that if you fly a multi-million dollar jet!

How do you protect yourself as a professional pilot?



One way would be for you to purchase your own insurance covering your exposures operating aircraft you do not own. Again, such coverage is difficult or impossible to obtain and, even if available, would usually be quite expensive and/or provide inadequate limits for pilots flying professionally.

The most practical way to protect yourself is to obtain your protection under the aircraft owner's policy. For the bodily injury and property damage liability exposures, you should be included as an additional "Insured" under the owner's insurance policy. This would be done by an endorsement issued by the company. An affirmative endorsement including you as an additional insured under the liability coverage would supersede any contrary provisions of the policy such as the exclusionary wording describing who is NOT protected.

This assumes that the insurance company and the coverages provided are acceptable to you. You may want to review the owner's policy. If limits are inadequate or other terms or restrictions are unacceptable, your only choice may be to seek other employment. Your protection is only as good as that provided in the owner's policy.

What if you are responsible for causing damage to the aircraft you are operating? You could enter into an agreement with the aircraft owner wherein the owner agrees not to hold you responsible for damage you cause to the aircraft. The owner would then be required by his insurance policy to advise the insurance company of the agreement, obtain their approval, and have the insurance company issue an endorsement waiving their rights of recovery against you by way of subrogation for damage to the aircraft.

Sample endorsement wording to extend protection to a contract pilot:

It is agreed that:

1. *[With respect to Liability coverage], [Contract Pilot's Name] shall be an Insured but only during such time as [Contract Pilot's Name] is providing pilot (crew) service to the Named Insured. Such inclusion of [Contract Pilot's Name] as an Insured, shall not apply with respect to any other interest [Contract Pilot's Name] may have in said aircraft as repairer, supplier of parts, fuel, maintenance or otherwise.*
2. *Solely to the extent that the Named Insured has waived its rights of recovery against [Contract Pilot's Name], the company waives any rights it may acquire under... SUBROGATION, but only while [Contract Pilot's Name] is providing pilot (crew) service to the Named Insured. Such waiver by the Company shall not apply with respect to any other interest [Contract Pilot's Name] may have in said aircraft as repairer, supplier of parts, fuel, maintenance or otherwise.*
3. *In the event this policy is cancelled by the Company as provided for in [the Cancellation provisions] the Company*

agrees to give thirty (30) days prior written notice to [Contract Pilot's Name].

For confirmation that the company has agreed to protect you, you need the company to issue a Certificate of Insurance showing that you have been included as an additional insured, the waiver of subrogation, and showing that the company has agreed to give you 30 days prior written notice if the company cancels the policy.

Different companies take different approaches to a request to protect the contract pilot. Some companies have no problems with it. Some won't name an individual contract pilot but will name a company providing professional pilot services. Some companies charge additional premium and some don't, and some may refuse altogether. It depends often on how they are approached and the details of each specific risk.

This information is directed to persons who are providing professional pilot services - freelance or contract pilots. Pilots who are regular employees of the named insured are usually protected under the policy by virtue of their employment status.

Owner pilots or other non-paid pilots are normally included as insureds if they qualify under the definition or insuring agreement. Even then, non-paid pilots may still have exposure for damage they cause to the aircraft. Personal Non-Owned Aircraft Liability insurance is not difficult to get for the non-professional pilot.

Note: Policy wordings referred to in this article are for illustrative purposes only. Each specific policy should be consulted for accurate policy provisions.