

Guest Voluntary Settlement Coverage

By Darrell Hyde

Before discussing Guest Voluntary Settlement Coverage (GVS) it would be helpful to review the basic concept of liability insurance. The purpose of liability insurance is to provide legal defense and pay losses that an Insured is legally obligated to pay for causing bodily injury to, or damage to property of, another person. In order to be legally liable the Insured must have been negligent in causing or contributing to the cause of such a loss. Legal defense is provided when such a claim is brought even in cases where the Insured is ultimately found not negligent.

GVS is supporting coverage, in addition to normal liability coverage, for aircraft insurance. In the past, it was only provided for "Industrial Aid" type risks: non-commercial, corporate owned, professionally flown and maintained. In recent years GVS has become more readily available and can now include some select "Pleasure & Business" risks (non-professionally flown or owner flown).

GVS only applies to more serious bodily injury claims of death or an injury resulting in dismemberment or loss of sight. It can be extended to include Weekly Indemnity where a weekly amount would be paid if the injured passenger were temporarily totally disabled and unable to perform all duties pertaining to his/her occupation. Coverage for Permanent and Total Disability, as defined in the GVS coverage, is available and would pay up to the amount stated in the policy.

Discussion of Guest Voluntary Settlement

GVS has evolved over the years, as have many other provisions in aviation insurance policies, to meet the needs of aircraft owners. During and following World War II, aviation technology grew rapidly. After the war, there was a surplus of military aircraft and pilots. Many models such as the Douglas DC3 and the Beech 18 were converted to civilian use. As technology in aircraft and airports grew, and qualified former military pilots became more available, many more corporations began using aircraft for transportation of executives for business purposes.

With the growth of corporate aviation, two issues arose concerning insurance coverage: how to provide compensation to injured corporate employees, and to "guest" passengers.

Regarding corporate employees, corporate risk managers (lower case because the field of Risk Management was also evolving) realized that compensation for an executive who was killed or seriously injured in an aircraft accident while on company business could be insufficient. In most cases, compensation would be subject to limitations set by state Workers' Compensation (WC) laws. Several states had a maximum death benefit available for an injured employee at that time of only \$8,000 - \$10,000. Although that was a lot of money in those days, it was considered a low amount for a highly paid executive.

To remedy the WC limitation, a corporation could consider buying separate Personal Accident insurance for each traveling employee but many such policies at that time excluded losses arising while traveling on aircraft. Even if available, the premiums for Personal Accident insurance covering aircraft losses were expensive.

To help solve those problems, aviation insurance underwriters designed a coverage form that was very similar to Personal Accident insurance. It provided a per seat limit of what was originally called "Admitted Liability" insurance of \$50,000 per passenger. The additional premium was calculated at around \$2.00 per \$1,000 of aggregate coverage. For example, the premium for \$50,000 per seat for a six place aircraft (\$300,000 aggregate) would be around \$600.

The term "Admitted Liability" is misleading. A feature of GVS coverage is that it is made available to a passenger who suffers a covered loss regardless of whether the Insured was negligent or not. The Named Insured is not "admitting" any liability, just requesting the insurance company to offer the payment without regard to liability.

To address the issue of compensation to guest passengers, GVS was applied to any person on board the aircraft, employee or guest. A non-employee of the Insured did not have state-imposed WC limits on the amount of recovery available. The amount of any compensation under a normal legal proceeding is ultimately left to a court. The Insured relies on his standard liability coverage to handle any death or bodily injury claims. The key requirement of a GVS payment is that the recipient, or someone having a right of action on his/her behalf, is required to sign a full legal release agreeing not to pursue further recovery for the loss thereby avoiding a legal proceeding. The GVS amount is accepted as full compensation with no further recourse.

Settlement under GVS would serve all parties involved. It was believed that if the GVS compensation was considered a reasonable alternative to a long legal hassle, further costs of legal proceedings could be avoided by the insurance company. As for the recipient, the payment, if agreed to, is payable quickly and not subject to attorney fees as would be the case in a normal legal proceeding. Further, in a typical legal proceeding the recipient would risk recovering nothing if the Insured was found to be not negligent. As for the Insured, a settlement under GVS could avoid the ill feelings that could arise in an important business relationship if a full legal process resulted and caused friction with important business clients.

Current Trends

As our economic and legal systems have evolved, a limit of \$50,000 is no longer as effective or useful as it might have been in earlier times. Limits provided today range from \$50,000 to \$500,000 or more per seat.

GVS can be provided to either include or exclude the crew. Often with "Industrial Aid" aircraft, GVS excluding the crew with a limit of \$250,000 per passenger is provided at no additional premium. If the crew is included the GVS premium could be equal to around \$200 times the total number of seats in the aircraft. The reason underwriters charge

additional premium when they include the crew is because it is almost certain that the GVS settlement would be accepted if offered. As employees of the Insured, crew members have no legal recourse under the liability coverage because of the WC laws.

It should be emphasized that GVS doesn't apply to just any injuries (except as respects Weekly Indemnity or Permanent and Total Disability). The basic GVS coverage is only for death or dismemberment (as defined). The meaning of death may be obvious but most policies require that coverage only applies when the death occurs within one year following injuries suffered in a covered event.

The definition of "dismemberment" follows the terms used in many Personal Accident insurance policies. More specifically "dismemberment" in most policies means an injury involving at least two (2) of the following:

- (1) severance of a hand at or above the wrist,
- (2) severance of a foot at or above the ankle, or
- (3) entire and irrecoverable loss of sight in an eye.

If the injury is limited to only one hand, one foot or one eye, the maximum amount of coverage would be one half of the stated limit.

Weekly Indemnity could apply if an injured passenger became completely disabled temporarily from performing all duties required in his/her occupation. In most policies, the weekly payment amount is the least of the following and is payable for up to fifty two (52) weeks:

- (1) eighty percent (80%) of the average weekly wage of the injured passenger based on the twelve (12) month period immediately preceding the date of the covered event, or
- (2) one half (1/2) of one percent (1%) of the limit stated in the policy. [e.g. \$1,250 with a limit per passenger of \$250,000].

Typical wording for the "Permanent and Total Disability" sections provides that if, after the fifty two (52) weeks of Weekly Indemnity payments, the injured person is still unable to perform his/her job duties, the company will pay the amount stated for GVS coverage less any amounts already paid. For example, where the per person limit is \$250,000 and the injured person has received \$750 per week for fifty two (52) weeks of Weekly Indemnity, the balance for permanent and total disability payable would be \$211,000 (\$250,000 less \$39,000 already paid).

Any payments made under the GVS provisions are deducted from the total liability limit available under the policy. Both per person limits and the aggregate limit are reduced. For example, if a Named Insured carries a liability limit of \$5,000,000 and \$250,000 is paid under GVS to an injured passenger, then the total liability limit left for any other claims arising out of the same event is reduced to \$4,750,000.

Payments under GVS generally are not limited by an injured employee's eligibility to receive WC or disability benefits. The wording in the United States Aviation Insurance Group's (USAIG) GVS coverage states:

"Unlike 'Your Liability Coverage,' the additional coverage under this section [GVS] applies to injuries covered by workers' compensation, unemployment compensation, disability benefit or similar law. But, the coverage under this section may not be used to satisfy your or your insurance company's obligation under a workers' compensation, unemployment compensation, disability or similar law."

Availability

The availability and cost of GVS is market-driven and can vary widely among the aviation insurance markets. Once available to only larger accounts, due to competition it has now become available to a wider range of risks. Also because of competition, the cost of GVS has been reduced significantly from its beginnings. Who says the cost of insurance hasn't come down?!

With some companies, "Pleasure & Business" insureds can get an expansion endorsement that contains several coverage enhancements including GVS. The free version normally excludes crewmembers. The coverage provided for "Pleasure and Business" risks can also be limited in other ways. For example, one company has exclusions that clearly show they intend for the GVS to apply only to "unrelated guests." Here is their exclusion (a little wordy but the point is obvious):

"EXCLUSIONS (Applicable to Coverage J [GVS])

- This insurance does not apply to or for the benefit of any person who is:
- (a) a Named Insured,
 - (b) any parent, spouse, brother, sister, son, daughter (whether natural, adopted or step, and whether or not they reside in the same household) of the Named Insured,
 - (c) any director, executive officer or stockholder of a Named Insured corporation, any member or manager of a Named Insured limited liability company or any partner of a Named Insured partnership, any employee of any such corporation, company or partnership, or any parent, spouse, brother, sister, son, daughter (whether natural, adopted or step, and whether or not they reside in the same household) of any such person, or
 - (d) a crew member. As used in this exclusion (d), crew member means a person in, on or boarding the aircraft for the purpose of operating or assisting in the operation of the aircraft."

GVS is not readily available to commercial risks or risks with low-time or transitioning pilots.

Effectiveness of GVS

Whether or not GVS is a useful addendum to a policy depends on the needs of the Insured and the cost, if any, of including it. If it is free then the point is moot -- take it! If additional premiums are involved, the Named Insured has to further evaluate the

possible application of GVS coverage regarding operations of the aircraft. If passengers are mostly true "Guests", that is, non-employees, the cost of the coverage has to be weighed against the level of coverage being purchased. Also to be considered is the economic and financial status of guests. Obviously, if the injured guest is a highly paid executive or professional person with several dependents, a court may decide a higher court award than might be the case with a younger single person with no dependents. It would be difficult to evaluate just who may be aboard the aircraft and their specific economic and family status.

If the aircraft only carries employees while in the course of their employment, there is little or no passenger bodily injury liability exposure since WC laws preclude the injured employee from bringing a claim against the employer. In such cases, the inclusion of GVS in a policy could be considered a "fringe benefit" for employees, in effect serving as Personal Accident insurance.

SUMMARY

Legal Release Required

For payment to be made under GVS, two things are required: (1) a request from the Named Insured that GVS payment be offered; and, (2) a signed full legal release from the recipient or someone having a legal right of action on his/her behalf. GVS payments, if requested by the Named Insured, are made regardless of negligence. The Named Insured has the choice of requesting that GVS be offered by the insurance company or of relying on regular liability coverage and any court decisions in the event of a claim.

The legal release wording in Global Aerospace's GVS endorsement is:

"...Except as respects benefits payable in accordance with the provisions of paragraph 2 (b) above [Weekly Indemnity provisions], no payment shall be made until the injured passenger and all persons claiming by, through or under said passenger shall have executed, in a form acceptable to the Company [Global Aerospace, the insurer], a full and final release for damages for which insurance is afforded by Coverage B or D [regular passenger liability coverage]."

Can Remove Legal Hassles

One of the purposes of GVS is to remove the hassles of legal proceedings in a suit brought by an injured guest of the Insured and all of the costs of litigation. If the offer of a GVS payment is unsuccessful, that is, the recipient prefers to hold out for a larger settlement through the normal legal process, then normal liability coverages would apply and the Insured must be found negligent in causing the loss.

Quicker Compensation

An advantage to the recipient for accepting the GVS offer is that the payment amount is available within a very short period of time. Court cases can take several years. Also, there are no attorney fees to be deducted.

OUR DISCLAIMER

Our usual caveat should be stated again. This information is general in nature and aviation insurance policy forms are not standardized. Specific details can only be determined and confirmed by reading the current policy for a specific risk. Although GVS wording among the aviation insurance underwriters is similar, there are some differences. Some GVS coverages, especially for "Pleasure and Business" risks, don't include the broader provisions of Weekly Indemnity and Permanent and Total Disability. Any policy wordings referred to above are for the purpose of illustration only. Current forms may have been amended or updated. Q