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Insurance Perspective on Hold-Harmless Agreements

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You've just landed and taxi up to the ramp after a long flight. Upon exiting the aircraft, the local FBO greets you as always, except for one small change...you are now asked to sign an agreement regarding "consequential loss," prior to receiving service. Sound familiar? More and more FBOs are requiring pilots to sign these agreements.

What do these agreements really say?

Most of them are designed to limit the FBO's responsibility to direct damage only in the event they damage your aircraft. If they bash your wing into the side of the hangar, they will pay for the repair. But they won't pay for the diminished value of your aircraft nor will they pay for the additional cost you incurred arranging for a charter to complete scheduled travel. Be careful, there are a few out there that state the FBO will not be responsible for any damage!

Why are the FBOs using these agreements?

You guessed it - insurance. Many insurance companies are advocating and, in some cases, requiring the FBOs they insure to implement the use of these agreements as part of a wider effort to reduce the cost of claims. The latest insurance renewal proposal received by your FBO may have had two options. Option (1): use the agreement and pay "x." Option (2): don't use the agreement and pay "x + y." Faced with higher premiums (under either option), higher deductibles, reduced coverage and more stringent training requirements, many FBOs are making the difficult choice to implement these agreements.

Why are insurance companies requiring this?

Over the past ten (10) years, the aviation insurance industry has experienced an exponential increase in the cost to repair not only direct damage to aircraft, but particularly loss of use and diminution of value claims. Most often these claims for "consequential loss" arise out of hangar rash and other ground-handling accidents by their insured FBOs. The stakeholders of the few remaining aviation insurers have laid down the law: if you want to continue insuring commercial operations like FBOs, make whatever underwriting changes are necessary to cover them at a profit - not a loss.

What are the ramifications of signing (or not signing) this agreement?

Without gaining proper approval, you may be violating the terms and conditions of your own aviation insurance policy by signing these agreements. For example, insurance contracts state you cannot hinder your own insurance company's ability to adjust and settle a claim. Signing a hold-harmless agreement may do just that.

The worst-case scenario of not signing the agreement is the FBO refuses to provide you the service you need. Perhaps you do not sign and the FBO charges an additional fee for their services. (There is a move afoot to test the legality of these practices, given the fact that most airports are publicly subsidized.) Or the FBO may just look the other way and service you like they have before. Some pilots have simply crossed out the sections they do not agree to and then sign at the bottom.

What should we do when asked to sign these agreements?

Establish a protocol up-front that is acceptable to all interested parties on your end. Don't wait until you are on the ramp on a Sunday afternoon with the FBO watching as you ponder the agreement in your hand. Consult with your aviation insurance underwriter through your broker, as well as your company legal representative. Call ahead whenever possible to your destination and find out if there will be such an agreement waiting for you upon arrival.

Keep a sharp eye out at your various destinations since there are many variations of these agreements floating around. Many FBOs, aircraft operators, and even the insurance companies themselves are not used to operating consistently with these agreements in place. Whether hold-harmless agreements are here to stay remains to be seen. Knowing what they are and planning your response in advance may be the best advice for now.

Stuart C. Hope and Eric W. Barfield are brokers with Hope Aviation Insurance, Inc. The firm focuses on business aviation insurance for the general aviation industry. Stuart Hope is a Commercial pilot and Certified Property and Casualty Underwriter (CPCU). Eric Barfield is a Commercial pilot and former underwriter for USAIG. Both have received the Certified Aviation Insurance Professional (CAIP) designation through the Aviation Insurance Association.