

Few degrees of separation: Are you protected from aviation products liability?

By Eric Donofrio, North American Regional Manager, Aviation



LIKE THE INFAMOUS INTERNET VERSION OF THE GAME, “SIX DEGREES OF SEPARATION,” the concept is quite simple – so many of us are inter-connected, somehow. Whether we provide a part or a service, we are somewhere along the supply chain. Unfortunately, via the supply chain that provides all the parts and materials necessary in airplane manufacturing, many businesses have found themselves more connected and susceptible to aviation products liability than they may have realized.

The many companies that sell directly to aircraft manufacturers or to companies that service the aviation industry are certainly well aware of their potential risks for aviation products liability claims. Others, however, may be unaware that the service they provide or the product they sell – whether they manufacture bearings, wiring, electronic components, or carpet – may be susceptible to aviation product liability if, even unbeknownst to them, it makes its way aboard an aircraft as a component of another product or service.

It is also important to note that aviation products liability is distinctly different from other product liability issues and is specifically *excluded* from the commercial general liability policies which businesses rely for their products liability insurance protection. That’s why many companies must be very wary about how their products or services are used and more importantly, properly prepared if their products are used in some manner by the aviation industry.

ALONG THE SUPPLY CHAIN

Especially in aviation accidents, all possible causes – including pilot error and possible product defects or failures – are called into question and investigated. That often means multiple parts, even minor components, are investigated as a possible cause.

For instance, more than 30 lawsuits have been filed recently on behalf of passengers of Air France Flight 447, which crashed into the Atlantic Ocean on June 1, 2009 en route from Brazil to Paris. Many suits are claiming that the aircraft and its parts were defective, asserting that malfunctions and errors in the air speed measurement system caused the crash. Multiple defendants have been named in the ongoing litigation,

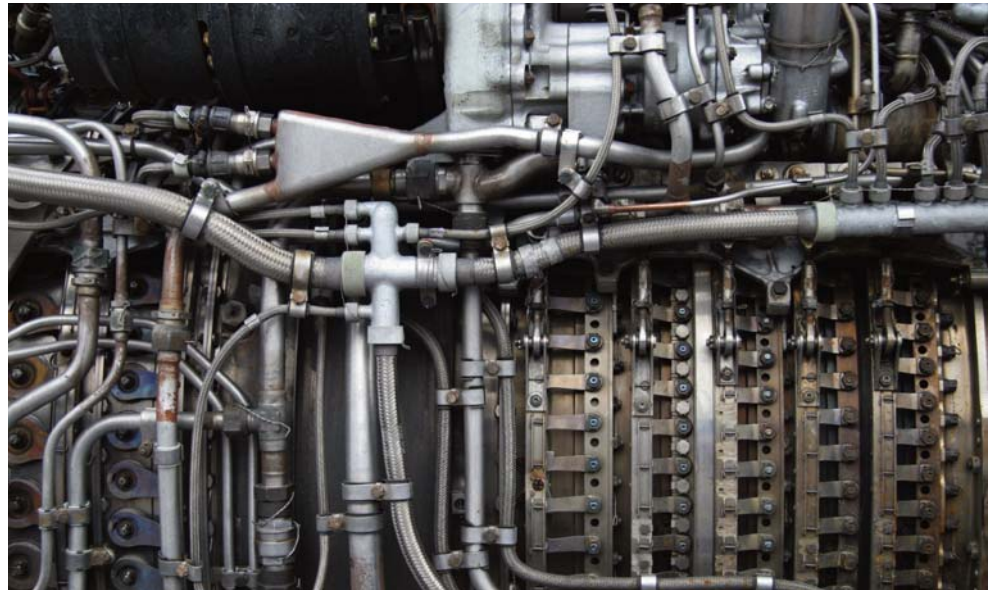
including the manufacturers of the airplane, the data inertial reference units, the flight control computers, the aircraft's radar; the side-stick control, the aircraft's engines, in-flight ice detection system, the microprocessors used in these systems, and the aircraft's wiring.

In other cases, products even further down the supply chain have found themselves in the middle of costly litigation. In 1999, a multi-billion lawsuit was filed against a major chemical firm which manufactures metalized Mylar, insulation used in a Swissair jet that crashed off of Newfoundland, Canada in 1998. The accident airplane is an MD-11 with metalized Mylar thermal acoustic blanketing installed throughout. The U.S. Federal Aviation Administration issued a directive requiring that the insulation, found in the plane's bulkheads, be removed from a series of planes made by McDonnell Douglas. The order affected more than 1,200 planes worldwide.

Additionally, in this litigation, plaintiffs also sued the manufacturer which built the in-flight entertainment system as well as the aviation services companies which installed it, tested it, and oversaw its installation.

MANAGING PRODUCT LIABILITY RISKS

Because of many factors, including globalization, new technologies, increasing litigation and contractual relationships



between companies, product liability exposures are becoming increasingly complex.

Therefore, no matter what product is being made, where it is being sold, or how it is being used, manufacturers are using a variety of risk management strategies to manage the risks of product recalls and support quality control efforts which, in turn, can aid in the defense of product liability claims. These procedures include:

PRODUCT DEVELOPMENT PLANS (PDP) AND RISK ASSESSMENTS

A formal PDP, specific to the product is a significant benefit to reducing design interface type product liability claims, especially if adequate attention is given to the pre-contract stages. Proper bid review, both legal and technical with formal sign-off at appropriate toll-gates is vital, as is a strict approach to external validation and sign-off at the various manufacturing stages. The benefit may not be apparent until many years down the line; some companies have been able to distance themselves from multi-million dollar claims solely because they had and

kept the right paperwork or agreed to appropriate contract clauses following early stage contract risk assessments.

TRACEABILITY SYSTEMS

Recalls and claims relating to dismantling and re-installation in particular, can be minimized by an effective traceability system, allowing the defective products or components to be identified either individually or by batch. The design and complexity of the traceability system should be largely a function of the inherent risk or the product and the company's exposure to recall/dismantling type claims.

SUPPLY CHAIN MANAGEMENT

Supply chain management procedures need to consider the specific risk presented by an incoming component or sub-assembly to ensure that attention is appropriately focused. Safety-critical part suppliers will require a more robust approach to quality auditing, testing and inspection with at least some testing of critical parameters of the parts.

INSTRUCTIONS FOR USE

To reduce exposure to 'failure to warn' claims, manufacturers must assign adequate resources to ensuring that 'instructions for use' and hazard warning labels are appropriate for all the various markets in which their goods will be sold.

Implementing these systems or procedures such as robust documentation capture, retrieval and retention systems are good defensive measures. Having them in place will help mitigate potential losses if and when a company is involved in an incident that leads to litigation. Documentation of test and inspection data, field performance data, risk assessments, and outputs from the various hazard analyses are all valuable in defending product liability claims.

Also, should action like a product recall be required, it's important to have a formal recall plan. While a formal plan will not prevent a recall, it will go a long way in helping the company respond correctly and in a timely manner, thereby reducing the recall costs or additional claims.

A FINANCIAL SAFETY NET

Even when the best precautions are taken, product manufacturers or aviation service providers need to have another

layer of protection with aviation products liability insurance. While products liability is included in general liability coverage, it is important to know that aviation products liability on a stand-alone policy is the most effective and direct way to address the potential costs associated with aviation products liability.

Typically, aviation products liability insurance provides coverage to manufacturers or maintenance organizations against liability arising out of products sold, serviced or supplied to the aviation industry. Aviation products can be broadly defined – meaning any aircraft or any article provided by a company and installed in an aircraft or used in connection with an aircraft, for spare parts, or tooling.

This insurance provides protection against bodily injury and property damage claims including legal defense arising out of such claims. Aviation products liability coverage also provides protection against grounding liability, covering the insured when they are found legally obligated to pay when a type of aircraft is "grounded" or taken out of operation permanently or temporarily to fix a defect or problem. For grounding coverage to apply, the grounding results from an occurrence.

For instance, in the case where a fleet of aircraft was grounded in order to fix a product defect or retrofit the aircraft with a newer part or safer device, the company deemed responsible for the grounding might have financial obligations to the other companies affected by taking the aircraft out of service.

If a business is servicing the aviation industry anywhere along the supply chain, having the right risk management strategies in place and stand-alone aviation products liability coverage when necessary, assures that these business opportunities remain properly protected.

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About the Author

Eric Donofrio is North American Regional Manager in XL Insurance's Global Aerospace group. XL Insurance's global Aerospace operations provide a broad spectrum of coverage for international and regional airlines, products manufacturers, as well as for aviation service providers around the world. For more information about XL Insurance's aviation products, visit www.xlinsurance.com/aviation



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If you have any feedback or suggestions on INsight, please contact Sarah German, Vice President, Marketing & Communications, Americas. Sarah.German@xlgroup.com. 505 Eagleview Blvd, PO Box 636, Exton, PA 19341 • 888-609-2518 • 800-327-1414 • www.xlinsurance.com