



AIRCRAFT BUILDERS COUNCIL NEWS

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President's Column

by **Ellen Wiese**

DIRECTOR RISK MANAGEMENT
SEQUA CORPORATION

The Year 2000 was an exciting year for the Aircraft Builders Council (ABC). With the globalization of the aviation industry, more non-US manufacturers are providing components and services to major American and European aircraft and/or engine manufacturers. Prior to last year, the ABC Program was only available to US Aviation Products Manufacturers and Service Providers. As of the year 2000, the program became available to non-US aviation products manufacturers, who provide at least 25% of their aircraft products sales to American and/or European prime aircraft and/or engine manufacturers. With the continuing consolidation in the insurance industry, the ABC will now be an additional market for non-US manufacturers to consider.

As a risk manager, having an alternative strong and stable market available is important. This is especially critical in today's hardening market, whether your operations are within or outside the US.

The ABC continues to be the forerunner in meeting the changing products liability needs of the aviation industry. The ABC continues to provide Product Integrity Seminars to its insureds. The seminars cover such topics as the need for product integrity programs, judicial system and document retention to name a few.

The ABC also conducts an annual conference, which brings together insureds, potential insureds, lead underwriters, brokers and defense counsel at one very pleasant locale.

Our 2000 conference in Laguna Niguel, California, was considered by many to be our most successful to date. The speakers included Captain Karen Lee of UPS, Daniel Leger of Honeywell, Robert Lee Thompson of Vision Technologies, Vincent Press of Lectromec Design, Dr. Joe Engel of Eaton Cutler-Hammer and Gil Thompson of the FAA. The topics ranged from Automatic Dependent Surveillance-Broadcast, to Ground Based Cockpit Weather Information Network, to Digital Imaging in Aircraft Maintenance, to the Effects of Aging Aircraft Wiring, to ARC Fault Circuit Interrupters, to FAA Grounding Procedures. These topics resulted in much discussion and exchange of ideas among the attendees at the conference. My thanks to all our speakers for their very informative and thought provoking presentations.

Please mark your calendars – this year's conference will be held in Naples, Florida, from September 23 - 25, 2001 at the Ritz-Carlton. We are currently working on the program and it is shaping up to be another memorable event.

I look forward to seeing you in Naples on September 23rd.

Aircraft Builders Council 2001 Fall Conference

September 23 - 25, 2001

Ritz - Carlton • Naples, Florida

**Conference Registration and
Program Information will be mailed soon!**

London Broker's Report

by John Howes, Deputy Chairman, Blanch Crawley Warren

Approximately a year ago when the last ABC newsletter was produced we reported that aviation underwriters had convinced themselves that the market had finally bottomed out. As it transpired, events during the second half of last year confirmed their belief. The market in fact went through a transformation with several underwriting entities withdrawing from the aviation market and increased premiums becoming the norm.

Airline losses continued to impact the market during the last 12 months and the trend in premium has been significantly upwards. In the first quarter small premium reductions were still being seen, the average reduction being 2.0% on hulls and 3.0% on liabilities. The second quarter, however, saw the start of premium increases, which were modest at first but by the fourth quarter had grown to an average of 30.6% on hulls and 23.0% on liabilities. The foregoing averages omit the long-term policies incepting in prior years for which terms would have been established and would only vary in accordance with caveats built in to the policy.

In comparison the Aircraft Product Liability market whilst starting from a similar point of an average reduction of approximately 2% in the first quarter has taken a little longer to react. By the end of the second quarter the average premium change had turned into an increase of approximately 6.5%. The third quarter saw this waver slightly to an average of approximately 6.25%. By the fourth quarter the average level of increase had

become 13.75%. In fact the December average increase was in the region of 20% for clean renewals and seemingly the rate of increase is set to continue to rise in 2001.

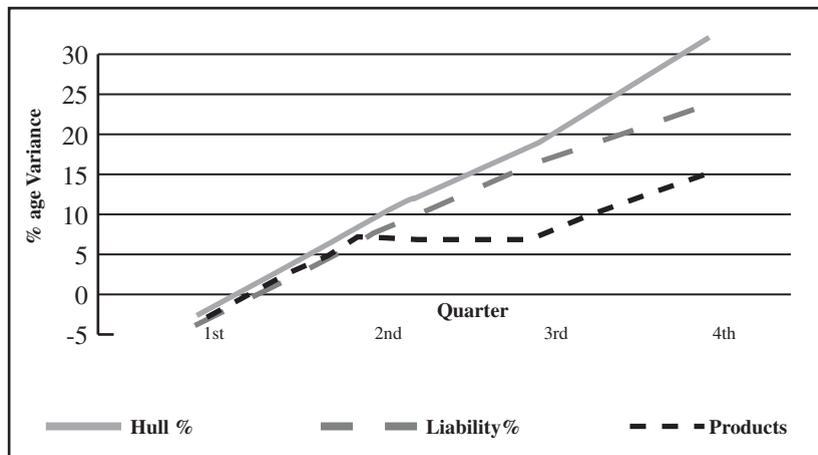
From our discussions with market participants the speed of the escalation towards the end of the year was substantially contributed to by the increased costs that the direct underwriters had to pay for their reinsurance protections. The other significant factor being that the capital providers are applying heavy pressure on underwriters to transform the Aviation book of business back to a position of underwriting profitability. All of which is very much in line with the underwriter's predictions at the annual conference.

Whilst the manufacturing industry has witnessed a continuing spate of

consolidations generally has reduced the volume of business and premiums available to insurers. A small but nevertheless interesting trend has been the setting up of a number of new companies where a specialist division of a larger entity has broken away with parental consent and formed a highly specialised new company.

Further development in the Aerospace industry has been the announcement by Airbus and Boeing for plans to manufacture increased capacity airliners. This will undoubtedly impact the aviation insurance industry because of the need to cover higher hull values as well as a greater number of passenger on any one flight. Products liability will undoubtedly be affected and larger limits will almost certainly need to be accommodated.

Following the years of little or no underwriting profit it has become obvious as to how important it is that the aviation insurance industry takes the necessary measures to create a financially strong base on which it can build for the future and thereby respond to the long term requirements of its clients.



mergers there has also been a trend for many of the larger groups to re-establish their preferred core business by disposing of related non-core business operations often to other organisations also involved with similar product lines.

This had led to a streamlining of companies operating globally with specialist product lines with a close focus on customer requirements. From an insurance point of view the likely effect of the mergers and

Considering the hardening market conditions I am pleased to report that the ABC program has renewed with unchanged capacity at \$1.5 billion and retains the capability to accept longer-term policies.

Footnote
With the passing of Y2K brokers approached the London market to persuade underwriters to withdraw the Date Recognition exclusions. Underwriters have so far resisted, although discussions are continuing. However the recently reported incident with Norway's long distance and airport express trains shows that the perils of date recognition could still be with us. The trains were unable to recognise the date 31st December 2000 and ground to a halt.

Mendes & Mount Report

by Garrett J. Fitzpatrick, Esq.
Partner in the Law Firm of Mendes & Mount, New York

Recent Developments in Aviation Law

In this article, we will provide an update on recent cases in certain areas of aviation law that we have addressed in previous ABC Newsletters and Law Journals.

1. GENERAL AVIATION REVITALIZATION ACT (GARA)

Under the provisions of GARA, the 18-year period of repose "begins anew if the death, injury or damage is caused by any new component, system, subassembly or other part originally in, or which was added to, the aircraft." The Ninth Circuit in *Caldwell v. Enstrom Helicopter Corp.*, 230 F.3d 1155 (9th Cir. 2000), recently addressed the issue of whether a revised flight manual was a "new system or part" of a helicopter within the meaning of this provision of GARA. The Court held that flight manuals are an integral part of the aircraft product by providing instructions to operate the aircraft. In order to qualify under GARA as a "new" part, substantial revisions or deletions must be made to the instructions that warn or describe the subject of the litigation. The Ninth Circuit then held that if the revisions within the "new" flight manual caused the deaths, injuries, and damages at issue, then plaintiffs would not be barred under GARA's statute of repose.

2. FORUM NON CONVENIENS IN AIR CRASH LITIGATION

In litigation filed in the United States arising out of an air crash in a foreign country or involving foreign plaintiffs, one of the threshold issues for determination by the Court is whether the litigation should properly remain in the United States. The seminal U.S. Supreme Court decision in *Gulf Oil Corporation v. Gilbert*, 330 U.S.501 (1947) provides the private and public interest factors for trial courts to consider in exercising their discretion on the defense of forum non conveniens. These factors include: (1) relative ease of access to sources of proof (2) possible view of premises (3) availability of process to compel attendance of witnesses (4) administrative difficulties due to congested courts (5) familiarity with law that governs the case. These factors

were reconfirmed by the U.S. Supreme Court in *Piper Aircraft v. Reyno*, 454 U.S.235 (1981).

In three recent and significant cases, three separate trial court judges have shown a similar inclination to retain jurisdiction in the States, particularly when plaintiffs' allegations focus on defects in products designed and manufactured in the U.S.

1. In *Re Air Crash off Long Island, New York*, on July 17, 1996, Judge Sweet in the Southern District of New York denied Boeing's motion to dismiss arguing for France as a more appropriate forum.
 2. In *Saxer v. Robinson Helicopter Company, Inc.*, Judge Byrne in the Central District of California, on a crash occurring near Zurich, Switzerland, denied the motion particularly noting California's interest in the regulation and deterrence of products negligently designed and manufactured in California.
 3. In *Re Air Crash Disaster near Palembang, Indonesia* on December 19, 1997, on the Silk Air 737 accident, Chief Judge Coughenour of the Western District of Washington denied Boeing's motion to dismiss noting the substantial local connection with Boeing and the design and manufacture of the 737 aircraft.
- ### 3. DEATH ON THE HIGH SEAS ACT

We previously reviewed the Second Circuit's opinion in the TWA Flight 800 litigation extending the territorial application of DOHSA to waters at least 12 nautical miles from the coast. Since our last article, the United States Congress has enacted legislation commonly referred to as "Air 21" under which "commercial" aviation accidents that occurred less than 12 nautical miles from the U.S. coastline are no longer covered by DOHSA. "Air 21" also broadened the recoverable damages under DOHSA by allowing compensation for "care, comfort, and companionship" but does not allow punitive damages or damages for conscious pain and suffering.

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by Martin Cox, Global Aerospace Underwriting Managers & Graham Daldry, ACE Global Markets Limited

Once again we are very pleased to be asked to lead the renewal of the Aircraft Builders Council line slip in its 47th year. Our relationship with the ABC goes back to the beginning of the programme and is a very important part of the underwriters portfolio. ABC remains an extremely important facility not only for insurers within the insurance markets but also for the aviation manufacturing client base. Offering as it does continuity of coverage for aviation products and associated risks up to a limit of US\$1,500,000,000.

We have in the past, and continue currently to work with the board of trustees and the broker's committee's of London and the United States, to ensure that the programme remains at the forefront of the industry in providing the very best of coverage to our clients.

The consolidation of the aviation manufacturing industry has brought with it a contraction to the premium base, whilst showing no reduction in the liability exposure to clients and their underwriters. The top (six) manufacturers world-wide now account for (60%) of the premium base for underwriters. For an underwriter having a spread of risk is most important so it is obvious that the above statistic creates an unbalanced book. We have worked hard within ABC to increase that spread with 1999/2000 year showing eighty-seven declarations up from sixty-six in the previous year. The ABC scheme seeks to even out the fluctuations that may be apparent in other markets and an increased spread of business will help this.

The much-needed increase in premiums prevalent in the last quarter of 2000 has continued into 2001. This is a welcome sight to underwriters, following three years of losses in an over capacitated market place. The long tail nature of products liability means that underwriters are reacting to current market conditions as well as previous years' results which are generally acknowledged to take between five and seven years to come to fruition. Premium fluctuations and cycles affect the aviation products market like many others; but having taken advantage of recent reductions in premium levels, today's well-educated risk managers understand that Insurers need to deliver profitability to their shareholders.

What ABC offers is a consistency of approach to rating together with continuity discounts on premium of up to 10% for long term participants and leadership in the enhancements of coverage in the market place. Annual seminars to inform the client base of changes in product liability law is also a main attribute of ABC as well as Product Integrity seminars conducted on your own premises by Mendes and Mount.

DISCLAIMER

The reader should note that the opinions, views or statements of authors appearing in the newsletter are their own, and do not necessarily represent the opinions, views or statements of Aircraft Builders Council, Inc., its Board of Trustees, committees, officers or editors.

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