Aviation Product Liability – Are You at Risk?
By Darryl Abbey

Revealing Risk with a Disastrous Example

A Boeing 737 aircraft operated by a large international air carrier was parked at the jetway preparing for an on time departure. The crew was involved in preflight activities prior to starting the engines when there was a large explosion in the center fuel tank below the passenger compartment. The tank had been empty, as it was a short flight, but the fire caused by the vapors and subsequent explosion rocked the aircraft and caused the fuel tanks in the wings to rupture. The explosion and resultant fire killed eight of the 114 passengers and injured many more. The aircraft was a total loss.

The post-loss investigation revealed that the cause of the loss was attributable to either service work done by the airline or a tiny sensor switch located in the center fuel tank. The sensor switch was made by an American company with no idea their product could ever cause such a disastrous incident.

Analyzing the Risk

Most companies that make goods or products have a clear understanding of the risks associated with the entry of those products into the stream of commerce. A company that makes pens or other writing implements understands that the risk of liability arising out of the failure of those products is inherently low while the manufacturer of lawn mowers and farm equipment faces a significantly higher risk of liability arising out of their products. But, what if the product is used for a purpose not necessarily intended by the manufacturer? If the product becomes part of or is used in conjunction with aircraft, the manufacturer could, potentially face the risk of liability arising from a catastrophic event resulting in costs which could be stratospheric.

Traditionally, aircraft manufacturers fabricated much of their product themselves. For example, the assembly of aircraft at a company like Cessna or Piper Aircraft was largely done by hand with skilled mechanics crafting a product that required exacting precision. While the precision is still required today, more and more aircraft OEMs have become systems integrators than “nose to tail” product manufacturers. Sub-component manufacturers sell their products upstream to component manufacturers who integrate them into larger components or systems, which in turn are sold to OEMs and assembled into a completed aircraft in a plug and play manner. The sub-components could come from dozens if not hundreds of specialized manufacturers based in countries around the globe. Many of the companies who make larger components or systems, like engines or avionics suites, have a clear understanding that their products are used in aircraft and manage the risks associated with that use appropriately. However, some subcomponent manufacturers may not even know that their product is used in aircraft let alone what type of aircraft.
Defining Aircraft Products

From an insurance perspective, an Aircraft Product is defined as follows:

“Aircraft Products means aircraft (including missiles or spacecraft and any ground support or control equipment used therewith), or any article furnished by the insured and installed in aircraft or used in connection with aircraft or for spare parts for aircraft or tooling used for the manufacture thereof, including ground handling tools and equipment and also means training aids, instructions, manuals, blueprints, engineering or other data, and/or any article in respect of which engineering or other advice and/or services and/or labor have been given or supplied by the insured relating to any aircraft or aircraft article.”

With a definition this broad, virtually anything could become an aircraft product given the right context. For example, a manufacturer of electronic switches and cabling sells its product through a network of distributors. One of the distributors wins a contract to supply switches to a company that makes entertainment systems for aircraft. If one of the switches fails and causes a fire while the aircraft is in flight, the consequences could be disastrous and the switch manufacturer may have limited protection, if any, against that type of event.

Most manufacturers purchase General Liability insurance as part of a risk management program. While most General Liability policies contain exclusions for the use of aircraft, most are silent on the matter of coverage for aviation products. If there is a known exposure created by products used in or in conjunction with aircraft, General Liability underwriters may add an exclusion negating any coverage for aircraft products as it is not the intent of this type of policy to cover aviation exposures. Umbrella and excess liability policies typically do include exclusions for aircraft products.

If a manufacturer does not purchase Aircraft Products Liability insurance and a loss arises out of the use of a product in an aircraft related application, the best case scenario may be that there is coverage up to whatever the limit of liability is on the primary General Liability policy, but no coverage above that level including, potentially, no defense by the insurer once the policy limits are exhausted. Currently, the average wrongful death verdict per person arising out of an aircraft incident is between $4 - $6 million dollars. If the event involved a passenger airline, the resultant claims could be in the hundreds of millions of dollars. After an aviation loss, it is customary for plaintiffs’ attorneys to bring claims or litigation against a large number of companies whose products were used in the aircraft. Even if there is no negligence on the part of the manufacturer, the cost of defending against the claim or suit can be in the hundreds of thousands of dollars.

Avoiding Disaster

While there may be no guaranteed way to determine whether or not your products are used in aviation and related applications, you can determine whether or not you have any exposure arising out of aviation products.
Working with design and production teams can shed light on whether or not there is even the possibility of a product being used in an aircraft (e.g., is it a sole purpose product designed for one specific use?). Working with marketing and sales teams can determine if the product is sold directly to the end user or through a distributor. If the sale is to the end user, you may be able to learn from them all applications in which the product is used. If the sale is through a distributor, it may be more difficult to determine the end application but it is still worth the effort.

If, as a result of this search, you determine that there is an actual or potential use of one or more products in an aviation application, it is advisable to address this risk directly. Discuss the issue with your General Liability underwriter and, if the risk is low (minimal potential use as an aviation product), the underwriter may not exclude coverage for this exposure but at least you have gone on record as making the underwriter aware. You may then have coverage up to the limit of the General Liability policy.

If the underwriter does not or cannot provide coverage for aviation exposures, or if you feel the limit of liability on the General Liability policy does not provide adequate protection for aviation exposures, you need to decide whether or not to purchase a separate Aviation Products Liability insurance policy.

Like the definition of “Aircraft Product,” coverage under this type of policy is broad and limits of liability are available up to and exceeding billions of dollars. Limits can be chosen based on both the level of exposure and risk appetite of the manufacturer. Regardless of what limit is purchased, defense costs are typically in addition or outside the limit of liability on the policy. Keep in mind that the limits are written on both an occurrence and annual aggregate basis.

Conclusion
Determining if there is exposure to aviation risk and, if so, implementing an appropriate risk management strategy is a worthwhile endeavor. It can minimize the catastrophic impact of discovering that one of your products may have caused an aviation loss.

About the Author
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