

1971

Insuring and Claim Servicing Risks in General Aviation

G. I. Whitehead Jr.

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

G. I. Whitehead Jr., *Insuring and Claim Servicing Risks in General Aviation*, 37 J. Air L. & Com. 323 (1971)
<https://scholar.smu.edu/jalc/vol37/iss3/7>

This Symposium is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

INSURING AND CLAIM SERVICING RISKS IN GENERAL AVIATION

G. I. WHITEHEAD, JR.*

ALTHOUGH there are many areas of interest in insuring and servicing risks in general aviation, this article focuses on only four. They are the areas of coverage, claims investigations, litigation and settlement.

“General aviation,” as defined by the Federal Aviation Administration, is the “operation of all civil aircraft except those used by air carriers.”¹ For use in computing loss ratios and in determining whether or not a line of insurance is profitable, underwriters classify the area with greater particularity. The following are typical of underwriting classifications: pleasure and business hull and casualty, industrial aid (corporate flying) hull and casualty, and commercial hull and casualty.

“Insuring” risks in general aviation means determining the risks to be solicited, accepting those risks, and rating the coverage to be provided. This is not a routine operation performed by a clerk with a rating manual, but rather it is a matter requiring the exercise of personal judgment and discretion. The theme of aviation underwriting is an emphasis on the judgment factor. Its importance in aviation underwriting was detailed some years ago by an expert in the field of insurance who opined in part as follows:

Aviation insurance rates . . . cannot be judged by comparatively short periods of past performance. Cognizance must be taken of the limited number of risk units engaged in aircraft flying service, prospective increase in the value of such units, the contemplated future changes in the characters of service and the extraordinary catastrophe hazard associated with this branch of insurance. The experimental stages seem by no means to be over. And in light of existing unsettled conditions, judgments rather than statistical formulae must be the final arbiter for the present. By way of analogy, even in Marine insurance, a much older and more stabilized form of insurance than Aviation insurance, judgment rating [judgment with respect to the individual insurance account of the insured] is still a very important factor in rate making procedure. Two policy holders with similar physical factors nevertheless may have different rates because of the difference in loss claims over a considerable period of time, owing to difference in operating efficiency. Rates are necessarily different

* Vice President, United States Aviation Underwriters, Inc., New York.

¹ FAA STATISTICAL HANDBOOK OF AVIATION (1964).

for every Aviation line. The judgment factor in rating Aviation risks is inevitable and there should be no disposition to simplify these matters by treating risks en masse.³

The underwriter's performance is evaluated by whether or not his judgment in assembling a portfolio of general aviation business results in profit for his company. While his pronouncements may sometimes seem to come from the insulation of an ivory tower, he is in no way shielded from the discipline of the marketplace.

Expert claim service and favorable results in the defense of lawsuits is not a matter of chance. The beginning step in "claims servicing" is the selection of a professional staff, most of whom will be lawyers with backgrounds in aviation. This staff, charged with the responsibility of foreseeing and planning for the consequences of accidents, must be prepared upon notice of an accident to conduct or supervise a wide variety of investigations and settlement conversations under an equally wide variety of coverages. Claims service must also provide a constructive guide in accident prevention and serve as a collector of risk information for the underwriters. The least expensive source of this information is the experience of others. The penalty in dollars from poor claim servicing, errors in judgment and mishandling, may be apparent upon a postmortem examination of the claim file, but perhaps of more importance, failures in this area can, and do, contribute unseen costs in long term loss of good will for the insurance industry. Appropriate attention must also be given to routine claims. Inattention to the small claim produces outbursts of rightful indignation from claimants, letters to state insurance officials, and a black eye for the insurance industry. The final step requires an alert management to analyze freely and frankly whether techniques and staff requirements of the past and present are adequate for the future. If they are not, management must decide what changes can and should be planned to meet the demands of the years ahead.

I. COVERAGE

The sales side of the insurance business spends substantial sums each year to advertise a product which basically is financial integrity and service. Inept or improper handling of claims in general, and coverage issues in particular, can do much to nullify the concept that the industry, or a particular company within the industry, handles its business fairly, promptly and intelligently.

It is well-established that any ambiguity in the terms and conditions of an insuring agreement will be strictly construed against the company

³ Dr. S.S. Huebner, consultant to the Civil Aeronautics Board, in its study of aviation insurance (1944).

issuing the policy.³ Nevertheless, denial of coverage to an insured should be treated as an extraordinary proceeding on the twin grounds of maintenance of public image and of the merits of policy defenses. Sufficient investigation, however, must be made of every claim to determine if coverage is provided.

Attorneys who are familiar with automobile accident damage suits will find many familiar terms, conditions and coverages provided in the aircraft liability insurance contract. The policy is designed to protect an aircraft owner and certain additional insureds against legal liability for bodily injury and property damage growing out of the ownership, maintenance or use of an insured aircraft. One significant difference from the standard automobile liability policy is the passenger bodily injury liability insuring agreement which provides separate limits of coverage and which is purchased separately. An aircraft owner operating in a state having an aircraft passenger guest statute may think that passenger liability protection is not required for him. He regards himself to be a sober, careful pilot who carries only guests. His thoughts may be accurate as they apply to sobriety and care, but a judge or jury may not agree, either on the law or the facts, that the person who was injured or killed while riding aboard his aircraft was a guest passenger. Serious exposure to an uninsured loss may well result from this type of thinking.

Similar to automobile liability insurance, some provisions of the aircraft liability policy have been, and continue to be, more controversial than others. One such provision is the "Approved Pilot Clause" found in the declarations of a policy. This clause is subject to the policy exclusion which provides that the policy is not effective while the aircraft is operated "in flight" by someone other than the pilot or pilots specified in the declarations. Those who look with disfavor on insurance policy exclusions should consider the impact of these provisions on aerial safety. Certainly, many accidents have been prevented and many lives have been saved by underwriting requirements that approve only pilots having skills commensurate with the sophistication of the aircraft to be insured.

Early in the development of aviation insurance, there were few qualified pilots, and those with proper credentials were often personally known to the underwriter. The "Approved Pilot Clause" was even then of importance to aviation underwriters. In 1919, before there was a federal regulatory agency issuing Airmen's Certificates, the Travelers' Public Liability Policy provided the following:

[T]his agreement shall apply only while any such aircraft is flown, driven or manipulated by a qualified pilot holding a certificate from some recognized authority as such or having no such certificate who can produce evidence that he has piloted an aircraft for a total period of not less

³ Marsten v. American Employers Ins., 439 F.2d 1035 (1st Cir. 1971).

than forty hours actually in the air during the twelve months immediately preceding the effective date of this policy. In no event shall any person be considered a qualified pilot who is under the age of 19 years.

In current aircraft liability policies, pilots approved to operate the aircraft are still specified in the declarations. The following is an example:

It is a condition hereof that, while the aircraft is "Inflight" it may be operated only by the following pilots: John Doe and Richard Roe, properly certificated commercial pilots with multi-engine rating, or a pilot holding a valid and effective commercial pilot certificate who has had a minimum of 2,000 hours as a pilot-in-command of an aircraft including at least 500 hours in multi-engine aircraft; each of such pilots to hold proper ratings as required by the FAA for the flight involved.

The high pilot requirements of the illustration were inserted into the policy because of the nature of the insured's business. He was a commercial operator using high performance aircraft that required pilots with the detailed experience for safe operation. The nature of the use of the aircraft, the type of aircraft to be flown and the qualifications of the pilot are indispensable facts upon which the underwriter must make his judgment of risk. One source of information for the qualifications of the pilot or pilots who will operate the insured aircraft is a "Pilot Report," a form used by the underwriter to develop information about the pilot's background and the particulars and depth of his experience as a pilot.

A decisive test for the underwriter is how the insuring intent, as expressed in the insuring language, stands up under attack in adversary proceedings. In a Mississippi case,⁴ the insurer was seeking a declaratory judgment of non-liability on an aircraft liability policy for passenger wrongful death claims against the estate of the deceased pilot to whom the policy was issued. The accident from which the litigation stemmed involved the crash of a Piper Apache while being flown by the insured who held only a "Student Pilot Certificate." The insurer claimed that the insured, by operating a multi-engine aircraft and carrying passengers, was in violation of the terms of his pilot certificate and that the policy exclusion with respect to the terms of the pilot certificate was applicable. In the "Approved Pilot Clause," the insured's name was typewritten without limitation or qualification, and in addition, approved pilots were described as "any currently certificated commercial pilot . . ." Conflicting testimony was presented on the knowledge of the insurer of the insured's qualifications as a pilot. Applying the rule that typewritten portions of an insurance policy take precedence over printed exclusions

⁴ *Firemen's Fund Ins. v. McDaniel*, 187 F. Supp. 614 (N.D. Miss. 1960), *aff'd*, 289 F.2d 926 (5th Cir. 1961).

when there is conflict between them, the court decided against the insurance company and said:

At least McDaniel was a pilot. He probably did not have a higher category as a pilot than that of a certification as a student pilot rated to fly only a single engine airplane. But the typewritten portion named him as a person authorized to operate this aircraft in flight without regard to certification or rating as a pilot. Other pilots, by category or class based upon certification, rating and experience were also authorized to operate this airplane in flight, under the language of the typewritten insertion. The plain meaning of this typewritten language is that McDaniel could pilot the aircraft in flight with or without passengers aboard, and the coverage would be in effect, whether he was certificated or rated as a pilot by the Civil Aeronautics Administration or not.⁵

In a recent case⁶ involving the crash of a Bell Jet Ranger in the Gulf of Mexico, the policy declarations provided:

This policy shall not apply to an aircraft in flight unless operated by 'a pilot who has piloted aircraft 50 hours in the same make and model of aircraft.'⁷

The policy exclusions stated:

None of the coverages apply . . . (b) while the aircraft is . . . (2) operated, while in flight by other than the pilot or pilots as stated in the Declarations.⁸

The plaintiffs established that the pilot had only 32.2 hours flying time in the Bell Jet Ranger. Although the plaintiff attempted to show that the pilot had additional hours, not logged or otherwise recorded, the evidence was insufficient for an inference that he had the requisite 50 hours experience. The court said:

[W]here the language of the policy creates an objective test defining coverage in clear and unambiguous language, the burden is on the plaintiff to establish that the facts bring the event within the coverage (citations omitted). If there is an issue of fact as to the meaning of the language, or the test is subjective, the burden is on the carrier on the basis of the principle that every ambiguity will be resolved against the carrier (citations omitted). Here the language is plain and unambiguous. It requires that the pilot have 50 hours of experience on the same make and model of the aircraft. Since there is no ambiguity to be resolved, plaintiff was required to establish that the pilot had such experience (citation omitted). Having failed to do so, plaintiff cannot recover. . . .⁹

"In the event of an accident, occurrence or loss, written notice shall

⁵ *Id.* at 618.

⁶ *Mobil Oil v. Reliance Ins.*, — N.Y.L.J. 18 (N.Y. Sup. Ct. 1971).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

be given by or on behalf of the insured as soon thereafter as possible." This two-way street language of the insurance policy obligates the insured and is embodied typically in the so-called "Notice, Assistance and Cooperation" clause. Without notice, the insurer cannot begin to fulfill its obligations within the framework of the insurance policy. Notice provisions in aircraft insurance policies have been, and continue to be, the subject of litigation. Inasmuch as the language is identical to that of the standard automobile policy, the factual situations are frequently similar, and the decisions in each sphere of activity are equally applicable to the other. A recent case¹⁰ is worthy of comment. The insurance company's petition for a declaration of no coverage for the aircraft owner and operator for failure to give notice was granted on facts which are summarized as follows: On August 19, 1967, at the request of a summer camp, the insured aircraft was flown over the camp premises dropping leaflets in connection with a camp activity; on the same day the agent handling the camp's liability insurance program telephoned the aircraft operator to report that a camper had been hit by something dropped from the aircraft and that the camper had been hospitalized; on September 19, 1967, an attorney representing the injured camper called the aircraft operator and learned, among other things, that the operator had not notified his insurance company; the attorney requested that he refrain from so doing "until he speaks with us"; the attorney attempted to make an appointment to take the operator's signed statement, which was never done, and in May 1968 the operator referred these requests to his own lawyer; finally, the insurer was notified of the accident in July 1968 when the attorney for the operator forwarded the suit papers. The novel aspect of the decision is the fact that the insurance company covering the liability of the camp was also a member of the group writing the coverage of the aircraft. With reference to this, the court stated:

Although the [company], which was one of the Group making up the [syndicate], was notified of the accident, as the carrier of the liability insurance on Camp Birchbrook, and investigated it, this was not adequate notice to the [Group]. . . . It is true that the [Group] probably had access to the investigations made by the [company]; however, the file of this investigation contained statements from only two persons, the owner of the camp and one other man, and it was conducted with reference to possible liability on the part of the camp; this was not satisfactory investigation insofar as the interests of the [Group] are concerned.¹¹

II. INVESTIGATIONS

New claims are reported or otherwise come to the insurer's attention,

¹⁰ *Aetna Cas. & Sur. Co. v. Buker Airways, Merrimack Cty., N.H.* (Super. Ct. 1971).

¹¹ *Id.*

but regardless of the source, they must be promptly reviewed by someone in authority who must just as promptly decide what actions is to be taken, if any. A substantial number of claims, hull and liability, personal injury and physical damage, are disposed of daily by correspondence and through telephone conversations with no field investigation of liability or damages. This represents a marked change from previous practice which emphasized personal contact with the injured party. Recently, the head of a large casualty claim operation, a man with country-wide responsibility, remarked that approximately 80 per cent of the company's automobile liability claims, property damage and personal injury, are adjusted over the telephone. The liability investigation at that stage is limited to the accident report form completed by the insured, and the damages are established from medical reports, bills and repair estimates.

Any doubts whether or not to investigate an aviation accident are usually resolved by assigning personal injury and substantial physical damage claims for investigation in the field, giving necessary instructions to the investigator and pressing him to complete his assignment within a reasonable time. Frequently, investigations result only in additional expense, and some field investigations are not properly performed. Nevertheless, the information produced by investigating any given situation is not subject to precognition, and problems with respect to quality of work in the field can be overcome by supervision from the head office.

Serious accidents must be carefully and fully investigated as soon as they are reported in order to ascertain the factual basis of liability. When appropriate, a legal study is developed, and in anticipation of future problems, a memorandum of law, covering such things as choice of law, cause of action, and applicable statutory provisions, is prepared. It may be advisable at an early point in the development of a claim, depending on the potential exposure to loss, to engage trial counsel so that the person handling the litigation is conversant with the problem from the beginning. All accidents do not justify or require the same attention. But in the defense of a serious accident where the client's involvement is clear, it is unwise to wait for others to investigate. Often one hears, "Let's wait for the NTSB report."¹² The attitude represented by this statement is unwise, for it places the attorney in a posture of reaction rather than one of action. The proper procedure is to move positively to investigate the facts and the law. The NTSB material and findings, while providing valuable information, are usually not available until six months to a year after the accident, and they are prepared and published in the interest of future safety, not of establishing legal liability. It is, therefore,

¹² National Transportation Safety Board. Responsibility of the Board in accident investigation, Economic Regulations, § 431.2 (1971). Delegation of certain authority for accident investigations to the Federal Aviation Administration, 14 C.F.R. § 400.45 (1971).

not uncommon for a civil trial to result in a conclusion different from that of the government's findings, or for the verdict to turn on facts not mentioned in the NTSB accident investigation report.

What is good investigation of a general aviation crash case? The purpose of the investigation is to determine the accident's cause. Whether the determination is favorable or unfavorable, the decision maker must have the facts accurately and quickly, so that he can intelligently plan what action is to be taken. A good factual investigation of liability issues will develop and report the facts clearly and completely. It will include all required and available supporting documents, such as diagrams, photographs, inspection reports, pertinent records and signed statements of witnesses. Furthermore, it will include a discussion of the facts in controversy and how they may be proved or disproved; finally, it will include a discussion of things to be done, in order of their priority, who will do them, and when. (Assign tasks and establish deadlines for their completion.) While the scope of the factual investigation will vary from case to case, too much emphasis cannot be placed on the value of taking signed statements from those having knowledge of the facts while their memories are fresh and uncolored by possible conflicts of interest.

III. LITIGATION

Court decisions, with increasing frequency, emphasize that the defense obligation is a separate and distinct coverage provided under the insurance policy.¹³ Moreover, it is an important obligation for both the insured and the insurer. In a field where new law is being developed, inept legal effort can have a detrimental effect beyond immediate experience and can create unhappy precedents under which the aviation insurance industry as a whole will have to operate. The obligation to pay, to insulate the insured from financial loss and compensate the accident victim overshadows, in the minds of most people, the right and duty to defend. It should not.

For reasons beyond the scope of this article, aviation accident litigation tends to be concentrated in large urban areas where law firms specializing in the representation of plaintiffs or defendants in aviation damage suits are located. Selection of defense counsel from among the specialists in these urban areas becomes a problem only when there are multiple defendants and potential divergence of interest situations. In other sections of the country, however, the selection of counsel becomes more difficult. The number of suits with an aviation fact and law flavor is small; therefore, many lawyers practicing in smaller communities look upon the field as a novel one in which they have no background, experi-

¹³ Cf. *Gray v. Zurich Ins.*, 54 Cal. Rptr. 104, 419 P.2d 168 (1966).

ence, or need or opportunity to obtain experience. No one has suggested that a lawyer should be a locomotive engineer to try an FELA case; neither is it suggested that a lawyer must be a pilot to try an aviation case. But, in selecting counsel to defend a specific case or in arranging a more permanent relationship, all things being equal, the firm who has a partner or an associate aware of the difference between a rudder and an aileron will be selected. A lawyer, wanting to practice in the field, should at least be technically literate in the field.

There are typically three classes of suits which are referred to counsel at an early stage with instructions to prepare for trial. They are: (1) cases evaluated as defensible on the issue of liability; (2) cases which ought to be compromised but where the lowest settlement demand is excessive in the judgment of those who have reviewed the file; and (3) where outright fraud has been, or probably can be, established. Of course, counsel should be encouraged upon reviewing the investigative file to be candid in their opinions even if they conflict with those of the company supervisor in charge of the file. In any event, the value of legal services can be assessed only by the long-term, consistent completion of cases on a favorable basis to the insured, the insurer and the industry, either through advantageous compromises or successful trials.

In major accident cases going to suit, there should be continuing consultation from beginning to end between trial counsel and the supervisor. Additional investigation and the relocation and renewal of contacts with important witnesses to keep them cooperative and to keep their interest alive are matters for the supervisor. Developments effecting liability should be carefully studied by counsel and the supervisor, evaluated and settlement conversations should be opened when indicated.

The full treatment, depositions, interrogatories, medical and other testimony is not needed in every suit, and the trial counsel and supervisor should take care not to overhandle suits where the liability and damages are clear. These cases should be recognized early and handled accordingly.

The process of discovery is a much-used and often-abused legal tool. Lawyers have become modern day Marco Polos traveling the world taking depositions. However, when appropriate, full advantage should be taken of depositions and other methods of discovery to acquaint trial counsel with his problems.

In handling admissions and interrogatories, trial counsel must prepare a draft of suggested answers from the field information available to him; he must note items where information is required from the client to prepare the answers; he must note items where answers will be refused, but nevertheless, he must prepare suggested answers to be used if the objections are overruled and the answers required. This contrasts the

too frequent practice of some lawyers of sending a thousand or more interrogatories to a non-legal staffed operations office of a client with a cover letter saying, "Get me the answers to these interrogatories."

With reference to the production of documents, trial counsel should transmit the demand to the client, and in most cases, follow up with a personal visit to review the documents and to learn first hand the problems of complying with the production demand. Never should a lawyer release a piece of paper which he has not read in advance. When depositions are to be taken, notice to the client should be given as far in advance as possible. Included should be the names of those to be deposed, the time, date and place of the deposition, and the probable areas of inquiry. The attorney should take all necessary time to prepare his client for the deposition.

Insurance is a business where risks are measured against the reasonable expectation of gains. It is suggested that a similar approach be taken with the anticipated filing of legal motions and that counsel ask himself, "What will the loss of this motion do to my case; is the motion of such importance that it is worth the risk that it will be denied in a law review type opinion?" A number of aviation accident suits are well-known for the law established in the reported decision disposing of an unnecessary motion. Little importance attaches to the fact that the case was never tried and was settled for a modest amount. Motions, of course, are valuable and necessary in appropriate circumstances. However, the decision to file a motion concerning matters of substance should be made only after consultation between trial counsel and the supervisor. The implications beyond the immediate case are frequently too great for thoughtless action.

To be a plaintiff on occasion is an interesting diversion for an insurance man. The situation generally arises when the company is a subrogee in a physical damage claim under a hull insurance policy. A hull loss investigation where the initial facts indicate others may be involved must include sufficient information bearing on liability issues to enable the supervisor to make a decision whether to investigate in depth or to drop subrogation. Where subrogation opportunity is still in doubt or being investigated at the time the proof of loss has been submitted and the claim is ready to be paid, the settlement check will probably be issued in exchange for a returnable loan receipt, keeping open the possibility of suit in the insured's name. Meritorious subrogation actions, cross-claims and third party actions should be pursued with diligence. Scatter-gun attacks, "strike" suits and "cheap shots" are techniques the insurance industry views with adhirence when engaged in by the plaintiffs' trial bar, and they should be avoided as not in the long term best interest of the industry.

IV. SETTLEMENT

Billions of dollars are paid annually in prompt discharge of obligations under all types of insurance policies by the routine processing of claims and by the limited formalities of closing documents. Within the insurance industry there may be some divergence of emphasis and some different points of view, but responsible executives on the liability claim side of the business recognize that people who have been injured deserve a fair and prompt appraisal of their claims. Problems arise from use of the simple word "fair." Demands may be viewed by insurers as outlandish attempts at robbery, and offers may be viewed by claimants as tendering apples for orchards. Inevitably, there is a certain amount of rug merchant flavor to the settlement conversations of personal injury claims. Nevertheless, most insurance claims are routinely settled, particularly physical damage claims where the loss can be computed and the areas of controversy more readily defined and negotiated. If this were not true, the system would have ground to a standstill strangled in a Niagra of paper.

Some claims-legal people who learned the business of handling claims and lawsuits in a bygone era have found it difficult to accept the modern settlement techniques of advance payments, minimum investigations and no-release, "walk-away" settlements. Advance payment procedures should be flexible to fit the legal and factual realities, but in all events, results confirm that the system works. Advance payment is the prompt payment of certain damages, a partial settlement which provides the claimant funds in advance of final settlement. No release is taken. The claimant is simply asked to sign a receipt which states that the payment is without prejudice and that it will be credited against the final settlement or judgment. There may be many important exceptions, but a typical aviation claims case generally fits the following profile: serious injury, clear liability, high limits of coverage (where exposure to uninsured loss in excess of the policy limits exists, the insured's permission should be secured), a claimant in need of financial assistance, and hopefully but not essentially, proper medical attention and rehabilitative care will reduce disability and promote recovery.

The obligation to pay must be accompanied by the correlative right to settle. The liability insurance policy commonly provides the following: "The company shall have the right to make such settlement or any claim or suit as it deems expedient." When claim settlements are being negotiated and an insured angrily denounces his defenders as cowards, his views should be carefully considered, but unless the insured is a partner in the financial risks, the company must be the final arbiter.

The insured does have a financial stake in the litigation when the prayer for damages and the loss potential is in an amount exceeding the

limits of primary coverage and the excess is self-insured. The insurer's right to settle within the policy limits may now become a duty to settle depending upon all of the facts of the case.¹⁴ The rationale of transforming a right into a duty stems from the policy language which gives the insurer exclusive control of the settlement process. Space is not available to develop all of the problems relating to liability of an insurer in excess of its limits of coverage. The cases in which this potential is most likely to exist, whether the excess liability is based upon "bad faith" or upon "negligence," are those in which the liability is questionable, the verdict range substantial, and the reasonable settlement value discounted for liability within a range less than, but perhaps touching, the policy limit. The insurer's representatives at some stage in the proceedings may be willing to pay the policy limits, but they may have a reasonable expectation that by playing for the breaks and through hard negotiation, the case will settle within the coverage. In this sort of factual situation or when the liability is clear and the damages clearly exceed policy limits, the insured should be fully informed of the policy limits, liability aspects, legal problems, potential settlement and verdict ranges, and the insured should be invited to employ his own counsel with whom the insurer will cooperate. (Do not wait for a lawsuit before moving in this direction.) And, in all events, regardless of whether the legal test is "bad faith" or "negligence," the insurer's representatives should conduct themselves in a "reasonable" manner, behaving as though the policy afforded unlimited coverage.

Conflict of interest can be puzzling. When *Lysick v. Walcom*¹⁵ was decided, the defense bar was reminded that it can be expensive as well.¹⁶ The subject is broad and controversial, and therefore, for present purposes, the nature of the problem may be suggested by listing some of the steps which should be taken by counsel when called upon to defend two clients whose interests may be in conflict. Clearly the attorney should make full disclosure to his insured-client and to his insurer-client. There should be no doubt on the part of the insured that he may retain his own counsel. Choice of tactics should be mutual; however, the attorney may wish to go on record that his representation of the insured-client is for defense only, specifically excluding responsibility for settlement aspects of the case. The court in *Lysick* suggested that ad-

¹⁴ See *Crisci v. Security Ins.*, 66 Cal. 2d 425, 926 P.2d 173 (1967), proposing a rule of strict liability as the standard for the insurer's liability for failure to settle an action within policy limits. The practical effect of this harsh proposal would be to provide the insured with excess limits of coverage free of premium charge.

¹⁵ 258 Cal. App. 2d 136, 65 Cal. Rptr. 406 (1968).

¹⁶ *Id.* An attorney who represented both the insurer and the insured was held liable for the insured's loss in a conflict of interest case.

vising both the insured and insurer on settlement when their interests conflict is an impossible task.

CONCLUSION

General aviation is a large, important and growing sphere of human endeavor about which many lawyers know far less than they should. Yet, while it is an area of specialization, it is neither so novel nor so sophisticated that those engaged in general trial practice cannot operate admirably and with distinction when called upon to try an aviation accident case.

An attempt has here been made to acquaint those practitioners with the roll of professional insurers in general aviation, with their problems and with their operating procedures.

