

AVIATION INSURANCE CLAUSES GROUP

3 August 2021

Chair: Graham Spencer-Brown
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To: Bill Smith, Chair, LIIBA Aviation Executive Committee
Daniel Warburg, Chair, LMA Aviation Committee
Jette Varnals, Chair, IUA Aviation Technical Committee

[LETTER SENT BY EMAIL AND PUBLISHED ON THE AICG WEBSITE]

Dear Chairs,

AICG CONSULTATION DRAFT 61

PUBLICATION OF FUELLING GROUNDING LIABILITY EXTENSION (FOR ATTACHMENT TO AVN105)

Earlier this year, AICG was contacted by a market participant who requested AICG to consider whether an update to the [AVN106](#) (Fuelling Grounding Liability Extension) was required to reflect the revised grounding terminology and approach. This followed the AICG's publication of AVN128 – AVN132 grounding clauses.

AICG received a number of responses to CD61. These were considered and led to some drafting amendments. The AICG Chair has now agreed that the Fuelling Grounding Liability Endorsement, designated AVN106A, be published forthwith. This is included directly below this letter for information and the clause will also be attached separately to the e-mail publishing this letter. It will also shortly be uploaded to the AICG website.

We would like to reiterate our thanks to those that have responded to the consultation.

Yours sincerely,



Christopher Jones on behalf of Graham Spencer-Brown
(Secretary, AICG)

c.c. Neil Roberts LMA
Geraldine Wright LIIBA

FUELLING GROUNDING LIABILITY EXTENSION

This Policy is extended to pay on behalf of the Insured all sums which the Insured shall become legally liable to pay as damages for the loss of use of aircraft in respect of a Grounding that results from an Occurrence insured under Section 2 of this Policy.

The date of loss of all claims arising from the Grounding shall be the date on which the last Occurrence takes place which gives rise to the first airworthiness directive or mandatory order imposing the Grounding.

The following definitions are added:

GROUNDING

The term "Grounding" means a withdrawal from all flight operations of a Certified Aircraft imposed by an airworthiness directive or mandatory order which:

- i. is issued by a Regulatory Authority because of an existing, alleged or suspected condition affecting the safe operation of such aircraft; and
- ii. does not permit flight operations for more than 48 consecutive hours or 5 flight cycles or 10 flight hours, before the withdrawal from all flight operations is imposed.

A Grounding shall commence on the date on which the affected aircraft ceases all flight operations in accordance with the first airworthiness directive or mandatory order imposing the Grounding.

If the first airworthiness directive or mandatory order imposing the Grounding is preceded by:

- i. an airworthiness directive or mandatory order issued by another civil aviation authority; or
- ii. a service bulletin or equivalent issued by the Insured

in respect of the same existing, alleged or suspected condition affecting the safe operation of aircraft and which does not permit flight operations for more than 48 consecutive hours or 5 flight cycles or 10 flight hours, before the withdrawal from all flight operations is imposed

that results from an Occurrence arising out of the Products Hazard to which this Insurance applies, then the Grounding shall be deemed to commence on the date on which the affected aircraft ceases all flight operations in accordance with such earlier airworthiness directive or mandatory order or service bulletin or equivalent.

A Grounding shall be deemed to continue notwithstanding any operation of affected aircraft for non-commercial, non-revenue flights that are permitted by the airworthiness directive or mandatory order, or by other specific approval issued by the civil aviation authority with jurisdiction over the affected aircraft.

A Grounding shall cease on the earlier of the date when:

- i. the affected aircraft is no longer withdrawn from all flight operations by the terms of any airworthiness directive or mandatory order issued by a Regulatory Authority in respect of the existing, alleged or suspected condition; or

- ii. all airworthiness directives and mandatory orders issued by Regulatory Authorities in respect of the existing, alleged or suspected condition are withdrawn or become ineffective in respect of the affected aircraft.

CERTIFIED AIRCRAFT

The term "Certified Aircraft" means an aircraft for which a type certificate or supplemental type certificate has been issued by a civil aviation authority and shall include a military derivative of such aircraft.

REGULATORY AUTHORITY

The term "Regulatory Authority" means the European Aviation Safety Agency (EASA) or the Federal Aviation Administration of the United States of America (FAA) or the civil aviation authority that originally issued the type certificate for the airframe or engines of the affected aircraft.

The definition of "Occurrence" is deleted and replaced with the following:

OCCURRENCE

The term "Occurrence" means an accident or a continued or repeated exposure to conditions (other than a Grounding) occurring during the Period of Insurance which results in Bodily Injury and/or Property Damage neither expected nor intended from the standpoint of the Insured.

All liability arising out of such exposure to substantially the same general conditions shall be deemed to arise from one Occurrence.

This coverage extension does not apply to:

1. loss of use of any aircraft which is for a period of less than 48 hours.
2. loss of use of any aircraft for any period which such aircraft is not available for flight operations for reasons other than a Grounding, or if the aircraft would not have been available for flight operations if no Grounding had occurred.
3. loss of use of any aircraft due to its certificate of airworthiness being withdrawn by reason of the aircraft's safe operational life having been reached or exceeded.
4. loss of use of any aircraft occurring during the period that the Insured does not use all reasonable means to find and eliminate the cause of the loss of use.
5. loss of use of any aircraft attributable to a culpable failure by the Insured to perform any obligation with respect to making available or delivering products to the owner or operator of such aircraft.
6. loss of use of any military derivative of a civil aircraft unless the Grounding also applies to the civil aircraft.
7. loss of use of any aircraft owned by or loaned to the Insured.
For the purposes of this exclusion, any aircraft as to which the Insured has retained title pursuant to
 - i. a conditional sales contract, chattel mortgage or similar lien, or
 - ii. a lease agreement, or
 - iii. a consignment agreement or similar contract of bailmentshall be deemed not to be owned by the Insured.
8. any liquidated or stipulated damages or penalties which the Insured is obligated to pay by reason of any contract or agreement which exceed any obligation the Insured would have had in the absence of such liquidated or stipulated damages or penalties in the contract or agreement.

Limit of Liability

The limit of liability applicable to this endorsement is as follows:

[Response]

any one Grounding and in the annual aggregate, such limit being included within, and not in addition to, the limit of liability in respect of Section 2 of this Policy.

AVN106A 03.08.2021
(For attachment to AVN105)