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NOVEMBER 2016

A TECHNICAL PUBLICATION OF ASSE'S RISK MANAGEMENT/INSURANCE PRACTICE SPECIALTY

Hiring a Drone Operator

Understanding Your Liability

By Robert Hopson



The technology for drones or unmanned aerial systems (UAS) is developing. The use of these aircraft to capture aerial photos and data is becoming readily available. As a result, commercial drone operators are becoming more prevalent and available for hire. Here are some best practices to adopt when hiring a commercial drone operator.

Select an Operator With a 333 Exemption

Federal Aviation Administration (FAA) has developed a process to approve commercial drone operators, referred to as a **333 Exemption**, until it finalizes regulations for drone operations in the U.S. (expected in 2017). To secure the exemption from FAA, the operator agrees to follow certain standards for safe drone operations. A key component to good risk management is confirming that the operator has secured a 333 Exemption prior to hiring. Operators without the exemption should be avoided.

Address Privacy Exposures

The images the drone captures are critical information and can invade and expose a business's privacy. The business and the drone operator should determine how this information is handled and by whom, and ensure that it is stored securely. Images made public should be reviewed to

determine whether you have the authority to make them public or not. If no such authority exists, then images should be removed. Many commercial drone operators will already have procedures in place for handling the images, but this should be discussed before recording any images.

Secure Proper Insurance Coverage

Many general liability insurers provide coverage for drones. The concern when relying on a commercial general liability policy is that policy forms typically refer back to FAA's proposed rules for a condition of coverage applying. The issue with this condition is that the very time you will need to seek coverage is when something has gone wrong and the operator has likely violated an FAA rule for drone operation. The aviation insurance marketplace has long understood that when most aircraft operators need insurance is after violating a FAA rule. Most aviation-specific policies covering drone operations do not refer to FAA's rules, thus making an aviation-specific policy in coverage more broad than relying on a commercial general liability policy. Most aviation insurers have developed drone-specific policies covering the key components of drone operations.

The following insurance checklist covers hiring a commercial drone operator:



- Require a current and valid certificate of insurance to be issued to your business. Do not accept a generic certificate. It is strongly recommended that the insurance come from an aviation insurance company rather than a general liability insurer.

- The certificate should specifically name your business under the plan's liability coverage.

- The certificate should clearly state the liability limits maintained on the specific drone to be operated. Minimum limits of \$1 million each occurrence are easily secured in the insurance marketplace. Your specific exposure may require higher limits of liability and should be reviewed closely.

- The certificate should identify whether it includes war and allied perils liability coverage. It is preferable the aircraft operator includes this coverage.

- The certificate should identify the policy territory under which the coverage applies, such as worldwide or western hemisphere.

- The certificate should specifically include premises liability associated with the operator's actions while flying the drone.

- The certificate should specifically include personal injury coverage.

- Due to the low cost of many drones, operators are often electing to self-insure the physical damage to the drone itself. If so, it is recommended to secure a hold-harmless from the drone operator. If the operator has purchased physical damage coverage on the drone, then the policy should include their agreement to waive subrogation rights against your business.

- The certificate should include a 30-day written notice of cancellation in favor of your business.

- The certificate should state the coverage maintained by the operator shall be "primary and without right of contribution of any insurance maintained by your business."

Employee-Owned Drones

Using employees who have personal drones can be problematic and expose your business. Individuals typically do not secure FAA's 333 Exemption and rely on their homeowners or hobby policy for liability coverage. These



policies typically exclude any business or commercial use of a drone, leaving your business without insurance and open to FAA fines and penalties.

If you determine your organization has non-owned drone exposures, you may wish to implement the risk management practices identified in this document. You can also explore the possibility of purchasing aviation nonowned drone liability coverage. Purchased separately, aviation nonowned drone liability coverage provides liability protection for the use

of nonowned drones in the course of your business.

This coverage is meant to act as excess liability over any valid and collectable primary liability coverage from the operator. Underwriters reviewing the exposures from a nonowned drone liability submission will focus on two major items: the type of drone used and the primary limits of liability available from the operators.

If the company elects to rely on the liability limits provided by the drone operators to address its exposures, understand that the liability coverage is limited only to the coverage from the operator; thus, if the aircraft operator violates his/her own liability coverage, then the organization also has no liability coverage.

The availability of liability limits on a corporate nonowned aviation liability policy is directly tied to the primary liability limits from the aircraft operators used in the course of business. Additionally, pricing of these limits is tied to the primary limits provided. Having solid risk management policies in place (as outlined in this article) can create premium reductions and/or increase available limits from underwriters. ■

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