

Eruptions and Disruption But No Indemnification

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We gave them our cash and they gave us back ash but Europe is now reflecting on the lessons to be learned from the closure of most of its airspace for almost a week as a result of the eruption of Iceland's Eyjafjallajökull Volcano that had been dormant for over 200 years. Whilst many will focus on the role of governments and regulators in closing the airspace, much has also been said and written about the losses suffered by airlines and the lack of available insurance to cover that loss, as well as the losses of hundreds of thousands stranded travellers. The International Air Transport Association's (IATA) estimate of the cost to the worldwide airline industry is US\$1.7billion.

Insurance for Stranded Travelers

The usual reaction of a traveller faced with the effects of a natural disaster is to look to their travel insurer to provide indemnity for their losses. However, it is rare that the terms of the insurance are read before the cover is called upon and this results in a mismatch between the expectations of the insured and the cover they have purchased. While the media often paints insurers as the villain, this does not reflect the fact that the insurance was priced to cover the specified perils. There are three matters of which potential claimants should be aware:

1. Coverage is triggered under most policies following a delay caused by (a) strike, civil commotion, riot etc, or (b) mechanical failure or breakdown of the relevant public transport, or (c) weather.

Under ordinary rules of interpretation, it is unlikely that volcanic ash in the atmosphere would be treated as a weather phenomenon. It may nevertheless be argued that weather is synonymous with atmospheric or meteorological conditions, which should include changes caused by volcanic ash.

2. Cover is often excluded where the withdrawal of public transport is by order or recommendation of a regulatory authority or government. Policies with such a provision would bar coverage in this instance. This exclusion is often present in delay and cancellation or curtailment insurance (where a trip is cancelled or curtailed prior to departure).
3. The available limits of cover will almost always be insufficient to cover the actual loss incurred and will usually provide a fixed benefit up to a few hundred pounds. Accordingly, even if the claim is covered, the insurance is likely to provide a partial indemnity only.

The Liability of Air Carriers

The European Community (EC) brought in legislation across member States in February 2005 providing care and compensation for passengers affected by flight cancellations, delay or denied boarding (EC Regulation 261/2004). The Regulation applies to community carriers, ie carriers licensed in any member State country, and to non-community carriers for cancelled flights from the country of a member State. There are two elements to the compensation for a cancelled flight: the necessity to provide hotel accommodation, meals, travel to the airport and reimbursements of certain phone or internet costs (referred to as care) and monetary compensation of up to 600 Euros per passenger depending on the length of the flight. The second element of the compensation is subject to an "exceptional circumstances" defence, which almost certainly applies in this instance. The first element applies to all cancelled flights and airlines cannot contract out of it. It is a mandatory provision. Airlines are also obliged to provide written notice of the compensation available to passengers. The results of this provision can be arbitrary. For example, a British Airways passenger stranded in San Francisco receives the benefit of this Regulation. Had the passenger flown on a US carrier, the Regulation would not apply. However, a passenger that had flown on a US carrier to London and then had the return flight cancelled would fall within the Regulation, as the affected flight was to depart from an airport within the EC. Airlines face criminal sanctions if they fail to comply with the Regulation. It is usually the Civil Aviation Authority in EC countries that is tasked with enforcement.

Airline Insurance

Generally, airline liability policies require some form of legal liability to passengers for bodily injury or death and/or property damage. That is absent in this instance and it is very unlikely that the standard airline liability coverage would be triggered.

Many airlines purchase Business Interruption (BI) insurance but such policies almost always also require some form of property damage to be triggered. Coverage for airline BI was in the spotlight following the attacks of September 11 2001, and the contrasting experiences of United Airlines and US Airways are informative. The US Federal Aviation Administration ordered the closure of Washington's Reagan National Airport in the immediate aftermath of the World Trade Center attacks, fearing that the US Capitol may be attacked. The airport was closed prior to the attack at the Pentagon. As a result of the closure, both airlines claimed for

lost income under their BI policies. United failed to recover under its policy but US Airways did recover. The contrasting outcomes were the result of nuances in their respective wordings. United's policy was triggered if access to the insured's property was prohibited by order of a civil authority as a direct result of "damage to adjacent premises". The US Airways' policy provided coverage if access to the insured's property was prohibited by order of a civil authority "as a direct result of a peril insured against". Understandably, the Federal Appeals Court in the United case did not consider the Pentagon (a building 3 miles away) to be adjacent to United's property. Conversely, a Virginia State Court concluded that US Airways' policy did not require actual damage or loss of the insured's property to invoke coverage but only the risk of actual damage. The closure of the airport was due to the risk

of an imminent attack at the airport which housed US Airways' property.

The Market Response

It is unprecedented for airlines to incur a US\$1.7billion loss from a single occurrence and find that there is no insurance to compensate the loss. However, that is the position that most of them now face. This has produced a rush to develop a policy that might respond to a similar natural catastrophe in the future at a price that is affordable and provides reasonable coverage.

Insurance is nothing if not responsive to the commercial environment and the eruption of a volcano in Iceland has set the global insurance market the challenge of finding a solution. It is only a matter of time until it does so. ●

International Division

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to police the broker's inability to retain payment for the services they provide to clients and underwriters.

General Aviation Review

In common with other sectors of the aviation insurance market, general aviation continues to be a highly competitive arena in which to underwrite. Overall rating levels remain low with the market continuing to bump along the bottom of the curve with increases being applied in only narrow areas of the book. Industrial aid, particularly fixed wing, has been put under significant pressure from a growing number of insurers writing 100 percent who have targeted this sub class. Commercial risks have been renewing with small and, given the loss activity in this class, disappointing increases. Private business and pleasure

rates remain stable. There are a number of non-general aviation specialists writing the class with little insight, adding to the overcapacity that currently exists. Specialist markets have, however, demonstrated through cautious use of their capacity and diligent risk analysis that there still remains the possibility to make progress in what is a diverse class.

In general, the brokers display patchy levels of interest in this class, ranging from strong dedicated teams to cost-driven entities looking to handle the business at the lowest transactional cost. As is common across other areas, brokers continue to push for higher levels of remuneration in one form or another, with little evidence of a revised service proposition to clients or insurers in return. ●

Underwriters Division

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the experience itself. We also help them find short term housing which can be a problem since the time frame is about nine weeks. We show them how an insurance company operates, they learn the principles of insurance and how an underwriter evaluates and prices an insurance policy for various aviation operations. They gain practical experience in performing the duties of an aviation underwriter. We also give them an opportunity to be involved in the claims process. They fly with our adjusters to an accident site viewing damaged aircraft and follow the various steps in adjusting a hull damage claim.

One of the top benefits of our program is we get to look at a student as a prospective employee for nine weeks. We have been

so impressed with the quality of our interns that we have hired two of them as permanent members of our team. The downside is we can't offer every one of them a job. Our interns have described their experience as both outstanding and an amazing start to a fulfilling career. The program helped them realize that they could combine their love of flying with their interest in safety and business.

Whether your company is involved in underwriting, claims or broking, there is an opportunity for you to help build interest in our industry while enhancing the education of a college student. ●