

protecting yourself against liability

SHARING AN AIRPLANE MEANS SHARING
THE RISK_by James D. Butler

AS THE ECONOMY has suffered historic setbacks, an old four-letter word has come to the fore in our business vernacular: risk. Just as you seek to better understand the risk of your portfolio investments, you should consider the risk that goes with your fractional jet share.

What motivates most buyers of fractional aircraft shares is the promise of ready access to a private airplane or helicopter. What they should appreciate, however, is

that with a fractional share, you also own part of an air transport service because you own part of one of its aircraft.

And with ownership comes risk. Thus, when your aircraft is in the air, even if you're not on it, you have exposure if there's an accident. Indeed, in this era of aggressive plaintiffs' lawyers you may be sued if another aircraft in the program is involved in an accident. Thankfully, no

major fractional operator has yet experienced a catastrophic loss. However, this means we have no track record to assess how courts would allocate liability among owners, operators, aircraft manufacturers and others in the event of such a loss.

Although this risk cannot be precisely calculated, you can better protect yourself in several ways:

Negotiate the liability provisions in your contract. You're buying a fractional share because you want an expert to handle everything—maintenance, hiring and scheduling pilots and the like—and presumably bear the risk if something goes wrong. Yet, even though your provider may take on these operational responsibilities, its standard contract will no doubt seek to limit its liability. Review and negotiate the contract provisions that limit your jet company's liability and that provide for indemnification between the parties. Make sure your provider's duties are clear and that it bears responsibility if it fails to satisfy these obligations.

Hold your fractional share in a limited liability company. Many fractional users, especially leisure travelers, set up a limited liability company to hold their share, thereby shielding their other assets from liability. The entity must be structured so as not to run afoul of FAA regulations. If you're a business traveler and plan to expense your travel costs and depreciate your share, consider this option with your accountant and tax advisor.

Fly under Part 135 whenever possible. In many cases, you'll have the option to fly under Part 135 of the Federal Aviation Regulations (FARs) or under Part 91, Subpart K, of the FARs. When you fly under Part 135, your fractional company is in "operational control" of the aircraft (similar to a charter arrangement), whereas when you fly under Part 91, Subpart K, you personally are in operational control. This is a distinction that creates a difference with respect to your liability so, whenever possible, fly under Part 135.

Shift the risk with insurance. All reputable fractional jet companies maintain substantial insurance coverage that, in effect, shifts much of this risk to a third party. Review the coverage offered by your fractional company to make certain you're comfortable with the level and type of coverage as well as the financial strength and claims-paying history of the carrier. If you'd like to shift more risk to the carrier, keep in mind that supplemental coverage generally is available at an additional cost.

Invest with a sound and strong provider. If you hear stories about your fractional provider scrimping on maintenance, not paying its bills on time, losing access to credit lines, or making promises that seem too good to be true, these may be signs that it doesn't have the financial wherewithal to support its side of the risk equation. Make sure, therefore, that your provider has a solid track record in the fractional aviation business and strong financial backing. Unfortunately, the fractional jet companies generally are not transparent in disclosing their balance sheets and financial results, but you can often get a sense of your provider's financial health by talking to pilots, service personnel and other owners. ■

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JOHN T. LEWIS

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