

APPENDIX: Grounding Language Commentary

AVN98A / Global Grounding Language



This appendix contains commentary on the Grounding language found in AVN98A when compared to the new Global Aerospace Grounding language.

Red text is an AVN98A wording extract.

Black text is Global Aerospace commentary.

Definition

The term “Grounding” means the **complete and continuous** withdrawal from all flight operations **at or about the same time** of one or more **Aircraft** due to an airworthiness directive or mandatory order issued by the Federal Aviation Administration of the United States of America (FAA), the European Aviation Safety Agency (EASA) **or any similar civil airworthiness authority**, because of an existing, alleged or suspected like **defect, fault** or condition affecting the safe operation of **two or more like Aircraft** and which results from an Occurrence.

complete and continuous does not provide any clarity in the Grounding wording. Complete appears to be an unnecessary qualifier to ‘withdrawal from all flight operations’ and it is unclear how a withdrawal from all flight operations would not be continuous? We have removed this terminology and added a provision to allow for non-commercial, non-revenue flights during the Grounding if permitted by the AD/MO or other specific permission.

at or about the same time is imprecise terminology and we have instead included clear criteria of 48 consecutive hours or 5 flight cycles or 10 flight hours before the withdrawal from flight operations is imposed. These periods are based on an analysis of past AD’s and our interpretation of where regulators draw the line that a critical safety of flight issue exists.

Aircraft – we refer to Certified Aircraft as uncertified aircraft, for example, uncertified UAV’s, experimental and homebuilt aircraft fall outside the scope of coverage.

any similar civil airworthiness authority – our cover is triggered by a Regulatory Authority order (defined as EASA, the FAA or the CAA that originally issued the type certificate for the airframe or engines of the affected aircraft) and we have included provision to backdate the coverage start date if the Regulatory Authority order is preceded by an earlier order issued by another civil aviation authority or a service bulletin which meets our same immediacy criteria.

defect, fault has been removed as AD’s will refer to unsafe conditions (no apportionment of blame)

two or more Aircraft – our coverage is not restricted to two or more aircraft being affected

like Aircraft – our coverage is not restricted to ‘like’ aircraft, coverage is provided for aircraft as specified in the Airworthiness Directive or Mandatory Order

An airworthiness directive or mandatory order issued by one civil airworthiness authority shall apply as though issued by the civil airworthiness authority of any other country.

It does not seem appropriate that an insurance policy should seek to amend the applicability of an airworthiness directive or mandatory order and this provision implies that an Aircraft could be Grounded voluntarily by virtue of an order issued by a civil aviation authority with no jurisdiction for the aircraft. It is unclear how this provision would interact with the legal liability nature of the policy if an aircraft is grounded voluntarily.

The effective date of all airworthiness directives or mandatory orders relating to the same existing, alleged or suspected like defect, fault or condition shall be deemed to commence on the date of the first such airworthiness directive or mandatory order.

This provision is not required in our wording.

In the event of a Grounding claim, such claim shall fall under the Period of Insurance in which the last Occurrence, which gives rise to the first airworthiness directive or mandatory order, takes place and for the purposes of coverage hereunder, shall have the effective loss date as such last Occurrence, irrespective of the actual date upon which the airworthiness directive or mandatory order is issued.

We have made a simplification change to this language and moved it to the insuring agreement.

A Grounding shall be deemed to continue until the date on which the last such airworthiness directive or mandatory order relating to the same existing, alleged or suspected like defect, fault or condition is withdrawn or becomes ineffective.

We have changed the cease date language to also refer to when the aircraft is no longer withdrawn from all flight operations by the terms of any airworthiness directive or mandatory order and coverage ceases in accordance with the Regulatory Authority orders.

Insuring Agreement

The Insurers agree 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 **completed Aircraft caused by** a Grounding resulting from an Occurrence arising out of the Products Hazard **for which coverage is, or could be, afforded under Coverage A.**

completed Aircraft – we have deleted the completed terminology as our exclusion 2 would preclude coverage for any incomplete aircraft

caused by a Grounding has been replaced by **in respect of** a Grounding to avoid the possibility of any debate about causation of the loss of use – was the loss of use caused by the Grounding or caused by a defective product or caused by a preceding accident.

for which coverage is, or could be, afforded under Coverage A has been replaced with “to which this insurance applies” which is language that has been a feature in US policies for many years

Exclusions

This Coverage B does not apply to:

(a) loss of use of any Aircraft occurring prior to delivery to and acceptance by a purchaser or purchasers or operator or operators of such Aircraft for flight operations.

This exclusion is incorporated in our insuring agreement

(b) loss of use of any Aircraft occurring during maintenance, routine overhaul or alteration, or whilst being modified for purposes other than those relating to Grounding.

This exclusion is incorporated in our exclusion 2

(c) loss of use of any Military Aircraft.

Our definition of Certified Aircraft covers civil aircraft and combined with our exclusion 5 provides a writeback for military derivatives of civil aircraft as standard

(d) loss of use of any Missile, Space Vehicle, Satellite or Launch Vehicle.

This exclusion is our exclusion 6

(e) loss of use of any Unmanned Aerial System.

We do not exclude loss of use of a UAS in our wording (but noting earlier comment about coverage being in respect of Certified Aircraft)

(f) loss of use of any Aircraft after it is designated by the Prime Manufacturer or required by the direction of the Federal Aviation Administration of the United States of America (FAA), the European Aviation Safety Agency (EASA) or any similar civil airworthiness authority to be removed from all flight operations due to its certificate of airworthiness being withdrawn by reason of the Aircraft's safe operational life having been reached or exceeded.

This exclusion is incorporated in our exclusion 2

EXCLUSIONS APPLICABLE TO COVERAGES A AND B

This Section One does not apply to the loss of use of any Aircraft:

(a) caused by the culpable failure of the Insured to perform any obligation with respect to making available or delivering an Aviation Product to the purchaser or operator of such Aircraft.

This exclusion is our exclusion 4

(b) occurring during the period that the Insured does not use reasonable diligence to find and eliminate the cause of the loss of use.

This exclusion is our exclusion 3

We have also included the following additional exclusions:

1. loss of use of any aircraft which is for a period of less than 48 hours.

Regulators may issue an AD to deal with a quick fix issue or inspection requirement that might previously have been dealt with by a Service Bulletin or Alert Service Bulletin and it is not our intent to cover short time AOG events just because they result from an AD.

7. loss of use of any aircraft operated by or in the care, custody or control of the Insured other than aircraft temporarily in the care, custody or control of the Insured for modification, repair or inspection relating to Grounding.

Loss of use of aircraft in the care, custody or control of the Insured are excluded and the wording of this exclusion ensures that aircraft returned to the Insured for modification, repair or inspection relating to the Grounding are not excluded.

8. 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 line, or
- ii. a lease agreement, or
- iii. a consignment agreement or similar contract of bailment, shall be deemed not to be owned by the Insured.

No legal liability exists for loss of use of the Insured's own aircraft and the wording of this exclusion ensures that aircraft falling within provisos i, ii and iii are not excluded by virtue of ownership by the Insured.

9. 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.

This exclusion has been added to exclude any liquidated damages that may be agreed in contract.

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