

# Unmanned Aerial Vehicles: Casualty Coverage Implications

Some real estate companies use them to survey land and property, and others in the insurance industry to manage widespread natural catastrophes. Some businesses in the energy sector send them out for pipeline maintenance, and law enforcement agencies often deploy them as video surveillance tools.

These are a few creative ways companies are using drones, which are increasingly being incorporated by businesses as part of their everyday operations. Also known as unmanned aerial vehicles (UAVs), commercial spending on drones is expected to exceed \$100 billion by 2020, according to investment bank Goldman Sachs. Although drones can boost efficiency and provide other benefits for businesses, their use can bring about significant liability risks.

How various insurance policies protect against drone risks is evolving. Following is a snapshot of the current insurance issues to help you understand what's covered and how to best manage potential risks.

## GENERAL LIABILITY

The Federal Aviation Administration (FAA) considers drones to be "aircraft." However, that term is not defined in the typical general liability (GL) policy. As a result, drone use is likely subject



to an exclusion for aircraft, auto, or watercraft. Take for example "Exclusion G" in a standard GL policy:

*"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading."*

*This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury"*

*or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.*

This exclusion does not apply to:

*(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft ...*

According to the standard GL policy, coverage might be available for non-owned UAVs, assuming the "insured" — which could include an additional insured — is not the operator of the UAV. Similarly, liability for UAVs assumed under an



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indemnity agreement that qualifies as an “insured contract” would not be subject to the exclusion as long as it is not operated, owned, rented, or loaned to any insured.

Personal and advertising injury (PAI) is not part of the standard GL policy’s aircraft exclusion. However, in June 2015, ISO launched a new Unmanned Aircraft Exclusion (CG2109-0615) which specifically excludes PAI in addition to bodily injury (BI) or physical damage (PD). A potential coverage gap is created when this endorsement is used by an insurer, as aviation policies — which would cover the BI and PD caused by UAVs — typically do not provide PAI coverage. If an insured does not have PAI coverage for UAVs under its GL policy, coverage under an aviation policy can be endorsed to include PAI.

## AVIATION LIABILITY

Aviation policies provide BI and PD liability coverage arising out of the use of aircraft that are scheduled to the policy — meaning they are

specifically named on the policy — when the BI or PD takes place in the coverage territory. PAI is not covered by the standard aviation insuring agreement. A duty to defend is typically provided with these “pay on behalf” policies.

Generally, coverage is excluded for:

- Expected or intended injury.
- Contractual liability.
- Injuries that are covered under workers’ compensation.
- Employer’s liability.
- Damage to real property and personal property in the insured’s care, custody, and control.
- Disposable loads.
- Trade or economic sanctions.

Standalone coverage for UAVs is available in the aviation market, but not at the capacity available for other aircraft. Generally, limits of up to \$25 million for each drone can be obtained at \$1,200 to \$1,500 per million; higher limits of coverage may be available from select aviation

insurers. These policies define UAVs to include the aircraft as well as all other components, such as controllers and launch pads.

The aviation market is still adjusting to new exposures presented by drones. There are only a few aviation markets willing to offer standalone UAV cover at this time.

## UMBRELLA LIABILITY

Retained amount umbrella policies usually contain exclusions similar to GL policy exclusions. “A/B” forms, under coverage B, exclude aircraft as follows:

Any liability damage, loss, cost or expense arising out of the ownership, maintenance, operation, use, loading, or unloading or entrustment to others of any: a) aircraft owned by you or rented, loaned or chartered by or on behalf of you without crew.... This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured.

As with GL policies, aircraft exclusions in umbrella policies only apply to BI and PD; they generally do not exclude PAI. At least one umbrella insurer excludes PAI from UAV coverage by endorsement. With the recently released ISO exclusions, other excess insurers may begin to exclude PAI, in addition to BI and PD.

One lead umbrella market is willing to provide UAV coverage of up to \$25 million in limits in its umbrella policy, excess of a specified retention. However, coverage only applies to specifically scheduled UAVs that are no larger than 3 feet and weigh no more than 5 pounds.

Aviation policies that have been endorsed to cover UAVs can be scheduled to “A/B” umbrella policies should a client wish to have its umbrella policy respond to a UAV loss. Retained amount policies will need to be amended via manuscript endorsement to obtain coverage to the extent it is available. Typical retained amount limits and “A/B” scheduled UAV policy minimum UAV limits required by underwriters are \$5 million per occurrence.

Work with your compliance teams to understand how your company uses drones and develop internal policies governing which employees can operate drones and in what capacity.



## REGULATORY COMPLIANCE

In June 2016, the FAA finalized rules and regulations that permit the use of drones in US airspace, subject to restrictions designed to reduce risk for operators and others. Specific requirements are divided into two main categories:

- **Operational limitations:** Drones must weigh less than 55 pounds and cannot operate more than 400 feet above ground level, above people not participating in the operation, or inside covered structures. Drones must also remain within the visual line of sight of operators — without the aid of anything beyond corrective lenses — and can only operate in daylight and within 30 minutes of sunrise and sunset. (In many cases, businesses can obtain waivers from the FAA to operate beyond these limitations.)
- **Remote pilot certification and responsibilities:** Drone operators need to obtain a remote pilot certificate by passing an aeronautical test. This replaces the previous requirement of a full pilot's license, which was costly

and time-intensive for many drone users. Applicants, however, are subject to a Transportation Security Administration background check.

You should carefully review these rules and associated penalties. Work with your compliance teams to understand how your company uses drones and develop internal policies governing which employees can operate drones and in what capacity.

## INSURANCE RECOMMENDATIONS

Although the exposures will continue to grow as more businesses find new ways to use drones, insurers are somewhat slow to react to these risks. PAI remains a sticking point, with insurers generally reluctant to provide the coverage.

Businesses should continue to regard UAVs as aircrafts. Businesses that are using or considering the use of drones should talk to their insurance advisors about drone coverage options, including PAI solutions. Drone users should also be prepared to provide underwriters with UAV exposure data and evidence of compliance with FAA regulations.

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