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Legal issues associated with private human flight, including space and ground facilities, traffic management and spaceports (4)

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THE INTERSECTION OF INSURANCE MARKETS AND LIABILITY REGIMES REGARDING
THIRD-PARTIES AND SPACE FLIGHT PARTICIPANTS IN COMMERCIAL SPACE ACTIVITIES

Abstract

Most countries significantly engaged in commercial space launches have third-party liability regimes in which the government limits the liability of commercial actors to a certain amount and then promises to indemnify operators for third-party liability above that amount. Variations obviously exist. Some nations draft their regime with particular reference to the international liability the government may assume under the Liability Convention, while other nations' legislation refers is written for liability generally and without specific reference to international liability. Further, the United States actually has a three-tiered regime in which liability will revert back to the commercial operator if the promised amount of government indemnification is exceeded. Commercial companies are generally required to obtain insurance on the global market –from one of 30 plus underwriters of space insurance utilizing one of a handful of major brokers – for the amount of liability they are responsible for under national legislation. With increasing number of launches anticipated with the commercialization of space, as well as legislative amendments under consideration by some nations, insurance capacity and lines must be examined to see how insurance markets can adapt and react to new levels of commercial activity and new legislative enactments.

Liability of commercial operators to space flight participants (SFPs) and their heirs has only been addressed in one nation's laws to date, that of the United States. In the United States, the federal Congress declined to require SFPs to sign cross-waivers of liability with commercial launch operators and their contractors in the 2004 Commercial Space Launch Amendments Act. However, six space active states passed legislation seeking to immunize to some degree commercial space operators from suits by SFPs or their heirs. However, the state legislation differs and contains many ambiguities leaving an uncertain liability situation. In the face of uncertainty, there are several possible insurance industry responses as well as uncertainty over which parties might seek insurance coverage.

Research for this project involves interviews with commercial space insurers and brokers as well as the analysis of national legislation and international agreements in the liability area. Study of the intersection of insurance markets with liability regimes is necessary to ensure those markets and those regimes stimulate, and do not stifle, commercial space activities that provide research, technology, and tourism benefits for the world.