



AIRCRAFT BUILDERS COUNCIL NEWS

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President's Column

by **Timothy Carter**

Past President, ABC Board of Trustees

The Aircraft Builders Council hosted an evening to remember at the Smithsonian Air and Space Museum in Washington, DC to commemorate the ABC's 50th Anniversary. More than 270 honored guests from the aviation insurance, brokerage, legal and risk management professions attended this spectacular gala.

General J.R. Dailey welcomed us and encouraged all to enjoy the numerous historic venues. A newly expanded exhibit commemorating man's first powered flight by the Wright Brothers over a century ago shared space with numerous vehicles that were used to forge our nations aerospace history.

Gathered in the IMAX Theater, attendees were treated to the premier showing of a documentary highlighting the conference theme, "The ABC & Aerospace - A 50 Year Partnership." This 25-minute film was produced and directed by Ms. Dora Militaru and walked viewers through the history of the ABC and what the future holds. Letters were read from both Buckingham Palace and the White House congratulating the ABC's historical contributions and offering best wishes for its future success.

A wonderful dinner was served in the Great Gallery and concluded with personal insights by our honored speaker, Astronaut Robert Crippen. Drawing from his experiences as an Naval Aviator and pilot of the 1st flight of the Space Shuttle Columbia, "Crip" took each of us on a journey into space and gave us a perspective of what space travel was like and what the future may hold.

The ABC program renewed on December 1st of 2004 with the ability to write limits up to \$1 billion dollars. The program

continues to offer a \$500 million primary and \$500 million excess layer. Ace Global Markets and Global Aerospace Underwriting Managers are co-leaders of the program and quote market submissions for aviation products component manufacturers.

The 2005 fall conference will be held on September 18-20 at The Ritz Carlton in Sarasota, FL. Please mark your calendar and plan to join us for a program highlighting the new and exciting advancements being made in the world of aviation.

The new slate of officers, to be named at the Board of Trustees spring meeting, will continue to advance and promote the ABC's program as a leading edge option available to aviation products component manufacturers.



PHOTO COURTESY OF THE RITZ-CARLTON,
SARASOTA, FLORIDA

**See page 4 for a list of the new
Board of Trustees
installed in April, 2005.**

Aircraft Builders Council 2005 Fall Conference

September 18-20, 2005

The Ritz-Carlton, Sarasota, Florida

**A conference brochure is included
in this mailing.**

American Broker's Report

By Darryl A. Abbey, Marsh USA Inc.

2004 was a year of celebration for the Aircraft Builders Council. 50 years of successfully providing aviation insurance solutions to the world's buyers is a great achievement and was recognized in grand style. Congratulations to all who planned, organized and participated in making the 50th anniversary gala a celebration to remember.

Unfortunately, the aviation insurance market in 2004 was no celebration for manufacturers. Another year of 10% to 20% price increases for manufacturers with minimal or no loss deterioration was difficult to understand in light of the price decreases that were being afforded to airlines.

The aerospace manufacturer's insurance market in the United States was much the same as that domiciled in London and on the Continent. Underwriters looked more closely at exposures generated by manufacturers and used actuaries to project loss development even where none existed at the time.

Underwriting capacity was used in a more guarded manner and placements that might have been underwritten by a single insurer in prior years were forced to consider quota share placements as an alternative.

As we enter mid year in 2005, the status of the aerospace manufacturer's insurance market remains much the same as in 2004. Capital providers behind the insurers continue to drive increased prices and conservative underwriting practices as respects manufacturers. It remains to be seen whether the airlines will continue to receive more favorable treatment as respects pricing. Underwriters in the United States continue to feel that the premium assessed for the worldwide book of aerospace manufacturer's insurance placements is inadequate and they are currently looking for price increases in the 10% range for 2005 renewals.

Perhaps the increased price levels and lack of major loss activity will attract additional capacity to the marketplace. Until that occurs, however, buyers of aviation products liability insurance will continue to find the marketplace conservative in practice and limited in supply.

London Broker's Report

By John H. Howes, Chair, London Brokers Committee

I would like to begin this article by congratulating the ABC Board of Trustees on the outstanding success of the 50 year celebration held in Washington in September 2004. The very existence of the ABC program over this period is in itself an outstanding achievement and one that has undoubtedly benefited Aerospace industry through good and bad times within the insurance industry.

The ABC program for 2004/05 was renewed at 1st December, but not without a certain amount of difficulty. The program nevertheless continues to offer the same scope of coverage as last year for any limit up to \$1 billion any one Insured. The long tail for products liability in general caused continuing problems much as last year and this situation continued for the renewal at the end of 2004.

The 2003/04 year ABC year marked a change in the way that underwriters looked at the Aerospace business in general. In the past the rating for Aerospace products liability has always followed the trends of the Airline account but not necessarily mirroring the percentage fluctuation. Over the last year and going forward this no longer seems to be the case. Whereas the Airline market continues to show reductions, the Aerospace products market has maintained or gently increased premium levels on accounts with consistent sales and good claims record and has applied increases in the case of "loss active" accounts or those with a large growth in turnover. Many insurance capital providers have had a long hard look at their Aerospace products book and have reached the conclusion that discipline needs to continue if they are going to remain in this class of business.

During 2004, premium increases averaging around 20 percent were the norm for Aerospace product liability policies. The actions taken by underwriters may have held the day with the majority of the capital providers as the only withdrawal from the Aerospace insurance market place was that announced by Markel during the last quarter of 2004.

Unfortunately the Aerospace products market remains delicately poised and it can only be hoped that the remarkable reduced level of Airline losses over the last few years will eventually impact the Aerospace products account favourably.

Mendes & Mount Report

By Garrett J. Fitzpatrick, Esq., Partner in the Law Firm of Mendes & Mount

Important New Development in the Economic Loss Rule

The Economic Loss Rule (“ELR”) is a defense to product liability of a manufacturer or distributor. The rule protects the product liability defendant when the product malfunctions, as long as there is only damage to the product itself, and not to persons or other property. The idea is that where other property or people are injured, normal tort law rules should apply. But where only the article itself has been damaged the remedies set forth in the contract - usually the warranties in the deal struck by the buyer and seller - should prevail. The ELR is thus an important protection to manufacturers where it applies.

But what if the plaintiff alleges that the loss occurred because the manufacturer committed the intentional tort of fraud? The majority rule in the various jurisdictions in the US has been that the ELR will not protect the defendant from its own fraud, although there had been a recent trend the other way in some states. The California Supreme Court has just ruled in the case of *Robinson Helicopter Company, Inc. v. Dana Corp.* that this trend in favor of protecting manufacturers stops at the California border. The Court reversed the decision of the lower Court of Appeals and held if a company provides false Certificates of Conformance (“COC”) - even though the contract requires the COCs accompany the components - an independent right of action in tort is created. In that case, the plaintiff was thus permitted to sue for both breach of contract and fraud. The Court ruled that the basis for its ruling was the claimed intentional misrepresentation of fact, rather than the alleged intentional concealment of fact - the jury had found both at the trial level. The Court further held that both compensatory and punitive damages could be assessed against the component manufacturer.

The *Robinson* Court held that tort law applied even though there was no mishap or accident, but only a malfunction of the component. It applied tort law merely because there was a risk of personal damage, although there had in actuality been none. The lone dissenter pointed out that a product liability defendant was on the horns of a dilemma - either “immediately confess its sins” by admitting breach of contract, or risk liability for intentional tort, including punitive damages.

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ABC 2005 Annual Conference

Location, location, location

Lead Underwriters

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Simon Abbott

Global Aerospace Underwriting Managers

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Martin Cox

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Please plan to join us at our fall conference, September 18-20, at the stunning The Ritz-Carlton, Sarasota, Florida. The ABC conference is an informational forum on the most recent developments in the aviation and aerospace industry and products liability. This annual conference is unique in that it brings together insureds, potential insureds, lead underwriters, brokers and defense counsel, all at one locale.

The 2005 topics and speakers include:

Breaking Barriers to Improve Flight Safety
Don Bateman, Honeywell International

Space Exploration: The Past, Present, and Future
Jon Cowart, NASA, Kennedy Space Center

A380 Impact on Airports
Kim Day, Los Angeles World Airports

GlobalFlyer and the SpaceShipOne Program
Doug Shane, Scaled Composites

Current and Future Developments of General Aviation
Charles Suma, The New Piper Aircraft, Inc.

Recent Developments in Aviation Law
Garrett J. Fitzpatrick, Esq., Mendes & Mount, L.L.P.

ABC Underwriters Presentations, Q&A, and Market Update
John Green and Simon Abbott,
Ace Global Markets Limited
Tony Medniuk and Martin Cox,
Global Aerospace Underwriting Managers

A Boeing representative and additional speakers will be determined

In addition to the notable speakers and topics, the conference is even more appealing due to its location. A stylish and sophisticated blend of cosmopolitan hotel and beach resort, The Ritz-Carlton, Sarasota is a luxury landmark on Florida's Gulf coast. Conveniently located near the city center, each of the hotel's well-appointed guest rooms have a private balcony and view of Sarasota Bay, the marina or the city skyline. In addition, the newly opened, The Ritz-Carlton Members Beach Club is located directly on the Gulf of Mexico on beautiful Lido Key and offers guests an exclusive tropical retreat with private white sand beach, beachfront swimming pool and more.

For more information and to register, please see the conference brochure enclosed.



The Ritz-Carlton, Sarasota Pool
Photo courtesy of The Ritz-Carlton, Sarasota



The Ritz-Carlton, Sarasota Lobby
Photo courtesy of The Ritz-Carlton, Sarasota

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