Air carriers not only have liability insurance for passengers and cargo, but also insurance on the hull of aircraft as well as third-party liability insurance. Additionally, the air carrier may obtain special insurance against the risks of war and terrorism. Interpretation of insurance policies generally follows the principle of *uberrima fidei*, i.e., utmost good faith. The insured must in absolutely good faith disclose all material facts to the insurer, that is, such facts as would influence whether or not the insurer would issue an insurance policy to the insured. Likewise, the insurer must deal in absolutely good faith with the insured. Usually it is advantageous to contract for insurance with only one insurance company in order to avoid legal disputes among insurance companies about which company bears the loss for the different kinds of risk. For example, in the leading case on aviation insurance, *Pan American World Airways v. Aetna*, 505 F. 2d 989 (2d Cir. 1974), the general all-risk insurer tried to shift the loss over to the specialty insurer. There would have been no litigation if the airline had placed all the risks with one insurance company.

There are four major kinds of aviation insurance:

1. Insurance coverage for the hull of the aircraft (hull insurance). This kind of insurance usually is all risk coverage. The advantage of all risk insurance is that it places the burden on the insurer to prove that the airline is not covered by insurance.
2. Insurance to protect the airline against liability for passengers and cargo.
3. Insurance coverage for airport operators covering all airport property including hangars and any activities performed by the airport operator.
4. Insurance for potential liability to third parties on the ground. Insurance for hull and third party liability is often combined into one policy.

In times of war or other public disturbances, it may be difficult if not impossible for air carriers to purchase insurance. Federal law may authorize the US Government (the Secretary of Transportation) to provide war risk insurance. Thus the market uncertainty following the events of September 11, 2001, caused the United States to adopt the Air Transportation Safety and System Stabilization Act of 2001, 49 USC § 44302, authorizing the Secretary of Transportation to issue war risk insurance for both international and domestic air carriage during a limited
period of time. The Secretary was further authorized to reimburse the airlines for the extra cost of war risk insurance.

A. Air Carrier’s Minimum Insurance Coverage

Incidental to obtaining a government certificate authorizing a person to provide carriage by air, the applicant for the certificate must show compliance with the Department of Transportation regulations requiring the filing of an insurance policy or proof of satisfactory self-insurance. At a minimum, the amount of the insurance policy must be sufficient to cover the risk of bodily harm or death to persons carried as well as the risk of property damage (49 U.S.C. § 41112(a)). In addition, the Secretary of Transportation may require an air carrier to file a performance bond sufficient to insure adequate compensation of passengers and shippers when the carrier fails to provide transportation (49 U.S.C. § 41112(b)).

U.S. domestic air carriage is subject to unlimited liability for carriage of passengers. Until recently, the 1929 Warsaw Convention limited liability in international carriage. However, international air carriage liability became unlimited in 1999 when the Warsaw regime was changed by the adoption of the Montreal Agreement (see Chapter 5). Average passenger awards for loss of life in the United States approximate $3 million per passenger. In Europe the average passenger award for loss of life is lower. Fortunately, the number of fatal accidents continues to decline.

The cost of insurance is low, although the cost changes according to loss experience. Study of airline insurance by the Department of Transportation found that the cost of insurance for round trip passenger carriage across the North American continent was less than one dollar per passenger. DOT studies on air cargo ascertained that the cost of the insurance system for air carriage was 1.33 percent of freight charges for U.S. domestic carriage and 1.27 percent of freight charges for U.S. international carriers (DOT Cargo Liability Study, 1975, and DOT Cargo Liability Study, Report to Congress, 1998, issued pursuant to the ICC Termination Act or 1995; Pub. L. No. 104-88, 49 U.S.C. § 14706(g)). A 2004 Survey by Swiss Reinsurance Company confirms that the cost of aviation insurance is “on the average at less than 2 percent of the operator’s overall budget.” Considering that the risk of air carriage is lower than the risk of motor carriage, it is not surprising that the cost of insurance is so low.

Title 49
Sec. 41112. Liability Insurance and Financial Responsibility

(a) Liability Insurance.—The Secretary of Transportation may issue a certificate to a citizen of the United States to provide air transportation as an air carrier under section 41102 of this title only if the citizen complies with regulations