

Presentation on  
Aviation Maintenance Agreements  
To The Regional Airline Association's  
General Counsel Seminar

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# Categories of Aviation Maintenance Agreements

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- Line Maintenance
- Component / Engine Maintenance
- Aircraft

# Line Maintenance – Forms of Agreement

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- Vendor Form
- Carrier Form
- IATA Standard Ground Handling Agreement (SGHA) – Aircraft Maintenance – Section 9 of Annex A (2004 edition)
- Note Maintenance and Ground Support Agreement (“MAGSA”)

# Line Maintenance – Forms of Agreement

## Pitfalls of the IATA SGHA

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- History
  - Designed for use among carriers in pre-deregulation era.
  - Liability not transferred in the ordinary/expected fashion.
- Noncommittal
  - “. . . services will be made available within the limit of possibilities of the Handling Company . . .” (Sec. 1.1).
- Loose Document
  - “It is not considered necessary or possible to specify every detail . . .” True, but . . . (Sec. 1.1).

# Line Maintenance – Forms of Agreement

## Pitfalls of the IATA SGHA

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- Presumption of Exclusivity (Sec. 3.2)
- Severe Limit of Liability
  - Only for damage, only up to \$1.5M and not for amounts less than \$3,000 (Sec. 8.5).
- Arbitration Optional With Default to Local Law (Sec. 9.1)
- Benefit of Termination on 60 days Notice

# Line Maintenance – Forms of Agreement

## Important Provisions

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- Warranty
  - Specification of Applicable Manual
  - Parts, Labor, Qualification
  - Remedy (Self-Performance)
- Indemnification for Civil Penalties
- AOA Indemnity
- Insurance

# Component / Engine Maintenance Forms of Agreement

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- Time and Materials (“T&M”)
- Cost Per Landing – CPL / Cost Per Flight Hour (“Power by the Hour”) – CPFH
  - Does not generally exist for aircraft
- IATA SGHA – Does not work properly
- Multiple Agreements or General Terms Agreement

# Component / Engine Maintenance T&M v. CPL/CPFH

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- Economics / Risk Shifting
- CPL/CPFH often include elements of (default to) T&M



# Component / Engine Maintenance T&M v. CPL/CPFH

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- Warranty – Economics v. Practical
- Economics – Liquidated Damages / Reimbursement
- Practical – Self-Performance / Documentation

# Component / Engine Maintenance

## Danger of Averages

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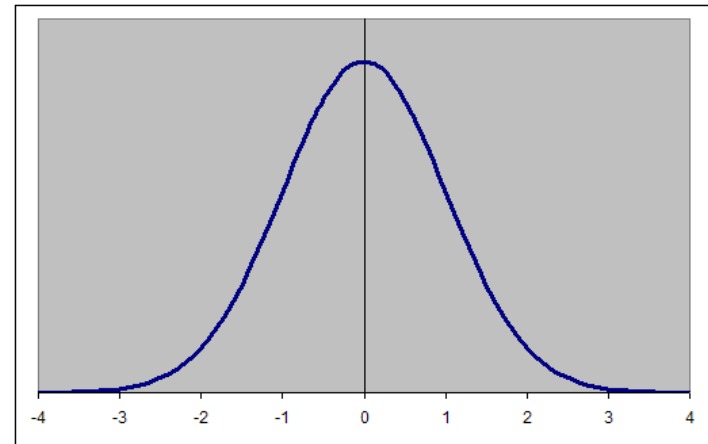
- Need Precise Basis for Measurement.
- “Mean Time to Failure” or “Mean Time Between Unit Replacement” (“MTBUR”)
  - Can allow failed units to be compensated for by others.
  - Example:
    - Widget has a “guaranteed MTBUR” of 1,000 hours.
    - We have 100 of these widgets and one fails after just 500 hours.
    - Remaining units only have to last an average of 1006 hours for the warranty to not be triggered.

# Component / Engine Maintenance

## Danger of Averages

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- Remedy is not immediate and can change over time
- Among the solutions are:
  - Per unit warranties
  - Use of standard deviations
  - Combining averages with limits
  - Note: May not follow n-distribution



# Component / Engine Maintenance Long Term Agreements

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- Watch the Pricing
  - Need clear method for determination – not “will agree.”
- As of When / To What Does New Pricing Apply?
- Escalation Formulae:
  - Consider formula that applies year-over-year rather than based on a “base year.”
  - Clearly specify indices to be used (“CPI” is not an index).
  - Index “Savings Clause.”
  - Consider Limits.

## Component / Engine Maintenance Checking Formulae

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- Check the Formula
- Order of Operations – [(<sup>n</sup>x/+  
– 12,000 - A / 12,000 x B vs. (12,000 - A) / 12,000 x B

$$12,000 - \frac{A}{12,000} \times B \qquad \frac{12,000 - A}{12,000} \times B$$

- Check for Geometric Progression
  - Variables in exponents is a good clue.

## Component / Engine Maintenance Checking Formulae

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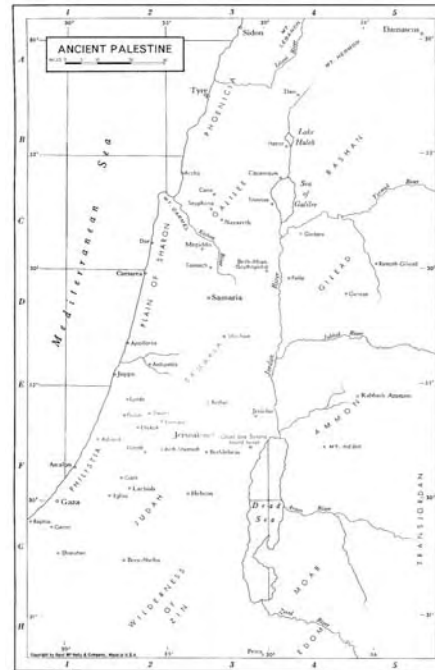
- Avoid Overly Complex formulae
- Actually Specify the Formula and Define Each Variable
  - Beware of “cliffs” in tables.
- Test Some Numbers
- Beware of E-mail Conversions of Formulae

$$0.3 \times (M_n - M_{n-1})/M_{n-1} + 0.7 \times (W_n - W_{n-1})/W_{n-1}$$

$$0.3 \times (M_n - M_{n-1})/M_{n-1} + 0.7 \times (W_n - W_{n-1})/W_{n-1}$$

# Component / Engine Maintenance Foreign Vendors

- Foreign ≠ Unsophisticated
  - “A small company call IAI in Lod, Israel.”



# Component / Engine Maintenance Foreign Vendors

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- Foreign ≠ Unsophisticated
  - “A small company call IAI in Lod, Israel.”
  - Lod is first mentioned in Egyptian sources dating back to 1500 BCE. The Greeks, Romans, Crusaders and Ottomans came to Lod and either built it or ruined it. During the Mandate era it was one of the main centers of the British Army, and hosted the main railway station of the central region and also the main airfield, later to become Lod Airport and today Ben-Gurion International Airport, the main Israeli airport.





# Component / Engine Maintenance Foreign Vendors

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- Must Check Certification
- Choice of Law
  - Differing standards of “good faith.”
    - U.S. – Not bad faith.
    - Germany / France and Other Civil Law Countries – Much more. Can be an advantage, but long term uncertainty can be problematic.
  - Advantages of Arbitration.

# Component / Engine Maintenance Foreign Vendors

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- Arbitration
  - Number of Arbitrators and How They Are Selected
  - What Rules Apply, *e.g.*, “except as modified by this provision, the International Arbitration Rules of the American Arbitration Association”
  - Language of Proceedings.
  - Place of Proceedings
  - Choice of Law – Consider exception for conflict at location of performance.
  - Allocation of Costs – Consider using allocation based on fault as determined by arbitrator.

# Component / Engine Maintenance Foreign Vendors

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- Arbitration (continued)
  - Closing the Proceedings
  - Duty of Confidentiality
  - Enforceability of Decision in National Courts Pursuant to the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (“New York Convention”).
  - Exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) (1980).
  - Sovereign immunity – Consider implications of the Foreign Sovereign Immunities Act and seeking explicit waiver.

*Thank you.*

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## **Brian E. Foont**

Mr. Foont is the principal of The Law Offices of Brian E. Foont, PLLC. He was previously with US Airways for over ten years, ending as Assistant General Counsel as well as Secretary to US Airways' sister companies. Mr. Foont holds a B.A. *cum laude* in Mathematics and History (Honors) from the University of Rochester, a J.D. from the American University Washington College of Law where he served as Managing Editor of The Administrative Law Review, and an LL.M. with Distinction in International and Comparative Law from the Georgetown University Law Center. He is a member of the bars of Virginia, Maryland, and the District of Columbia.

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