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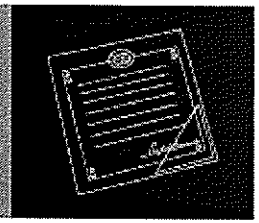

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An Increasing Majority of Courts Are Finding Exclusionary Conditions in Aircraft Policies That Require Compliance with the FAR's Valid and Enforceable; U.S. District Court in Nevada Joins the Majority

By: Stephen S. Kent[1]

The maintenance and use of aircraft are heavily regulated by the Federal Government and these regulations are known as the Federal Aviation Regulations, or FAR's (14 C.F.R., Part 91). Aviation liability insurance policies for private aircraft generally include one or more provisions which exclude coverage if the aircraft is being operated in violation of the FAR's. Typically, these exclusionary conditions exclude coverage where the insured aircraft is being operated without a valid airworthiness certificate. Usually the owner failed to have the required annual 100-hour inspection (C.F.R. 91.409(a)). Also, exclusions exist if the pilot did not have a current medical certificate (FAR's require a pilot to have period medical examinations, 14 C.F.R. Part 61), or the pilot did not meet the experience and training requirements of the policy.

Some examples of exclusionary language are:

> "This policy does not apply:
>
> * * *
>
> (e) To any insured who operates or who permits the operation of the aircraft: (1) in violation of the terms of any Civil Aeronautics Administration Pilots certificate; (2) in violation of any regulations of the Civil Aeronautics Administration applicable to acrobatic flying, instrument flying, repairs, alterations and inspections, night flying, minimum safe altitude, and student instruction."

Prashker v. United States Guar. Co., 1 N.Y.2d 584, 136 N.E.2d 871, 154 N.Y.S.2d 910 (1956).[2]

"This policy does not apply . . . (d) to liability with respect to bodily injury or damage caused by the operation of the aircraft with the knowledge of the named insured; (1) if used for any unlawful purpose, or during flight or attempt thereat, in violation of any government regulation on civil aviation. . . ."
Bruce v. Lumberman's Mutual Casualty Co., 127 F.Supp. 124 (E.D.N.C. 1954), *aff'd*, 222 F.2d 642 (4th Cir. 1955).

"[Liability is excluded for] violation of any governmental regulation . . . applying to aerobatics . . . minimum safe altitudes . . . [or] performs or attempts to perform aerobatics during which the aircraft is intentionally operated at an altitude of less than 1,000 ft. above the terrain."
Globe Indemnity Co. v. Hansen, 231 F.2d 895 (8th Cir. 1956) (Minnesota law)

"[Liability is excluded] 'if the Airworthiness Certificate of the aircraft is not in full and effect' or 'if the aircraft has not been subjected to appropriate airworthiness inspection(s) as required under current applicable Federal Air Regulations for the operations involved.' "
Old Republic Ins. Co. v. Jensen, 267 F.Supp.2d 1097 (Dist. NV 2003)

1. The insureds make several arguments in order to try to avoid these types of exclusions:
2. The provision is ambiguous.
3. The insurer must establish causation between the violation of the exclusionary clause and the accident in order to disclaim coverage,
4. Public policy voids broader exclusionary clauses which can operate as a forfeiture of coverage, and
5. The insurer waived the exclusion.

These arguments merely follow the general rule that in a coverage case involving an exclusion, the appropriate analysis is (1) is the policy language clear and unambiguous; and (2) is the exclusion against public policy? *McDaniel v. Sierra Health*, 118 Nev. Advance Opinion 62, 53 P.3d 904 (2003); *Farmers Ins. Group v. Stonik*, 110 Nev. 64, 867 P.2d 389 (1994).

With rare exceptions, generally aviation exclusions have been found unambiguous

Generally, courts have held that exclusions relating to annual inspections and airworthiness certificates are clear and unambiguous. *See Avemco Ins. Co. v. White*, 841 P.2d 588 (Okla. 1992) (policy excluding coverage unless the aircraft had a Standard Category Airworthiness Certificate was clear and not ambiguous); *O'Connor v. Proprietors Ins. Co.*, 696 P.2d 282 (Colo. 1985) (policy language unambiguous: "This policy does not apply...to loss occurring while the aircraft is operated in violation of the terms of its Federal Aviation Airworthiness Certificate...."); *Potter v. Ranger Ins. Co.*, 732 F.2d 742 (9th Cir. 1984) (language that "This policy does not apply...[t]o any Insured who operates...the aircraft, while in flight, unless its airworthiness certificate is in full force and effect...." was clear and its import obvious); *Ochs v. Avemco Ins. Co.*, 636 P.2d 421 (Or. 1981) (language of exclusion clear and unambiguous: "The policy excludes coverage to any aircraft, while in flight...not bearing a valid and currently effective 'standard' Airworthiness Category Certificate....").

In *Threlkeld v. Ranger Insurance Co.*, 156 Cal.App.3d 1, 202 Cal.Rptr. 529 (1984), a California appellate court rejected the insured's argument that aircraft policy exclusions were ambiguous. The insureds argued that the exclusion requiring the airworthiness certificate to be in "full force and effect" while operating the aircraft was ambiguous because it might be construed to include all FAR's relevant to the aircraft's operation. The court responded that such an interpretation "would render the insurance contract illusory since almost all crashes involve some breach of the regulations." The California court rejected the insured's ambiguity contentions, holding that, in light of the insureds' reasonable expectations and the policy language's commonly understood meaning, the exclusion referred only to the effectiveness of the airworthiness certificate and the airworthiness certificate was suspended and coverage was excluded.

In *Potter v. Ranger Insurance Company*, 732 F.2d 742 (9th Cir. 1984), the Ninth Circuit addressed a similarly worded airworthiness certificate exclusion under Alaskan law and found no ambiguity. Its determination was founded upon a lay person's reasonable expectations concerning the exclusionary language. The court found the airworthiness certificate was not in full force and effect at the time of the accident and, therefore, coverage was excluded. It was deemed irrelevant that the insured "did not have actual knowledge either that the certificate was ineffective or of the flight itself."

A strong majority of courts do not require the violation of the exclusionary clause to have caused the accident

It is quite common in aviation accidents that the cause of the crash is completely unrelated to the failure to comply with the FAR's that may exclude coverage. This is especially so in exclusions of coverage for the pilot's failure to obtain a medical certificate. In *Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co.*, 189 Neb. 610, 204 N.W.2d 162 (1973), the pilot's medical certificate had lapsed five months prior to the accident and was renewed two days subsequent to the accident, and no medical problem caused the crash. Like almost all aviation policies, this policy specifically excluded coverage while the plane was operated in flight by anyone except pilots named or described in the declaration section. In the declaration section, it was required that the pilot have valid and effective pilot and medical certificates. The court found that the insurer could lawfully exclude certain risks from the coverage of its policy and where damage occurred during the operation of the insured aircraft under circumstances as to which the policy excluded coverage, there was no coverage, even though the pilot's failure to have the medical certificate did not contribute to the loss.

There is much incorrect information in treatises and among commentators regarding whether a majority of courts require a causal connection between the loss and the basis for invoking the exclusion. In *Avemco Insurance Co. v. Chung*, 388 F.Supp., 142, 151 (D. Haw. 1975), the court claimed there was a trend of modern authority requiring the violation of the exclusion contribute to the loss to be enforceable, citing Appleman, *The Law of Insurance*, 6A, §4146 (1972), where it is stated that "the trend of modern authority" is to hold that violation of a condition must have contributed to the loss to be enforceable. In *Couch on Insurance*, §132:5, Regulating Exclusions, pp. 132-10, it is stated, "In addition there must be a causal connection between the regulatory violation and the accident in order for the exclusion to apply." *Citing, South Carolina Ins. Co. v. Collins*, 269 S.C. 282, 237 S.E.2d 358 (1977).

These statements are outdated and inaccurate descriptions of the current state of case law. In *Puckett v. US Fire Ins. Co.*, 678, S.W.2d 936, 937 (Tex. 1984), the court stated, "Whether this is the modern trend is debatable, as evidenced by the authority cited above." 678 S.W.2d at 938. The authority, the court acknowledged, is that "[m]ost courts addressing the question have held that causation is <u>not</u> required for an insurance company to avoid liability on the basis of a breach of a condition in an aviation policy." 687 S.W.2d at 937 (emphasis added).

In a much more recent case, the Supreme Court of Oklahoma discussed the question of the "modern trend." In *Avemco Ins. Co. v. White*, 841 P.2d 588 (Okla. 1992), the court stated:

> Most jurisdictions have rejected the notion that public policy requires a

> causal connection between the commission of an act that gives rise to an exclusion from insurance coverage and the happening of a casualty. *Avemco Insurance Co. v. Chung* is an example of the minority view. There, the court quoted Appleman, *The Law of Insurance*, 6A, § 4146 (1972), for the proposition that "the trend of modern authority" is to hold that violation of a condition must have contributed to the loss to be enforceable. To the contrary our research reveals that this is *not* the modern view. Few jurisdictions have adopted the minority rule. See the discussion by the Supreme Court of Texas in *Puckett v. U.S. Fire Ins. Co.*, where the court said, "Whether this is the modern trend is debatable..." 841 P.2d at 590 (emphasis in original) (some citations omitted).

It is also important to note that the reference to Appleman, *The Law of Insurance*, 6A, §4146 (1972), is a 30-year-old discussion of breach of policy provisions in general, NOT AVIATION, policies.

Courts today apply a more liberal causation standard to non-aviation cases, since safety rules and their affect are less well defined and less important. However, there is no genuine modern trend that requires causation in order to invoke an aircraft policy exclusion. The trend in the majority of courts and most well-reasoned conclusions, are not to require causation in aircraft liability coverage cases, instead concluding no coverage exists when the aircraft was not airworthy or the pilot failed to have a medical certificate or proper ratings on these standard, well-known, basic safety requirements.

The *White* court that quoted Appleman in a misleading way also recognized that "[m]ost courts that have applied the minority rule have found that the terms of the policy that imposed a condition were ambiguous." *Id.* However, the court refused to adopt the minority position where, as in *White*, there is no ambiguity:

> By focusing on the cause of the loss, the minority rule ignores whether it is reasonable to assume that, *at the inception of the policy*, the insured understood and agreed that the commission of an act triggering the exclusion would increase the insurer's risk of loss. An exclusion that excludes from coverage activity that increases the *risk* of loss is reasonable. We see no justification for depriving an insurer of the exclusion's benefit unless the insurer first satisfies requirements in addition to those called for by the policy.
>
> The condition in White's policy that excluded from coverage a non-owned aircraft without a "Standard" Airworthiness Certificate was

> reasonable. The risk of flying an airplane without a "Standard" Airworthiness Certificate is clearly greater than the risk of an accident while flying an aircraft without one. White agreed to this reasonable exclusion. Its terms were clear and unambiguous. Whit's estate is bound by it. We see no reason to rewrite the agreement. 841 P.2d at 591 (emphasis in original) (citation omitted).

Even more recently, a New Jersey court addressed the issue of property damage to a plane while it was in flight under the control of an unapproved pilot. In response to an assertion of the modern trend, stated: "The majority of those [out-of-state] cases reject the proposition that, in the context of aviation insurance, a causal nexus between the loss and a coverage disclaiming event is required before the insurer can disclaim coverage." *Aviation Charters, Inc. v. Avemco*, 335 N.J. Super. 591, 763 A.2d 312, 314, 316-317 (2000). In refusing to adopt alleged "modern trend," the court distinguished the minority cases and stated: "We cannot give the insured more than he paid his premiums for." 763 A.2d at 318.

In *Economic Aero Club, Inc. v. Avemco Ins. Co.*, 540 N.W.2d 644 (S.D. 1995), the court addressed the issue of a pilot's lack of valid medical certificate, and, although the lack of such certificate was unrelated to the cause of the crash, affirmed the lower court granting of summary judgment in favor of the insurer. The court was "urge[d] to adopt the 'modern view,'" but instead noted that "[t]hese authorities form the minority position" and that "[a] majority of jurisdictions uphold such exclusions even when the loss is unrelated to a pilot's failure to have a current medical certificate." 540 N.W.2d at 646. More importantly, in addressing a "technicality" argument, the court stated:

> This exclusion is no mere formulation to be invoked as an excuse to deny coverage. In fact, it encourages owners and operators of aircraft to obey satisfy safety regulations applicable to their operation of aircraft. We conclude, therefore, any shift in the method is better left to legislation. *Id.*

Another recent case recognized that "[t]he majority view is that the insurer is to rely on a policy provision that unambiguously makes coverage dependent on the pilot of the aircraft meeting particular experience standards" and that "[t]he majority view does not require a causal connection between the accident and the breach of a policy term or provision." *Ranger Ins. Co. v. Kovach*, 63 F.Supp.2d 174, 180-181 (D. Conn. 1999)

In holding that it was not necessary for the insurer to show a causal connection between the crash and lack of proper pilot certification, the Ranger Court

recognized that, while public policy does not favor the forfeiture of insurance coverage based on technical violations, "[a]n insurance policy is to be interpreted by the same general rules that govern the construction of any written contract...." 63 F.Supp.2d at 181.

Other courts have cited to contract principles in holding no causal connection is required between an exclusion and the loss. In *U.S. Specialty Ins. Co. v. of Virginia, Inc.*, 123 F.Supp.2d 995 (E.D. Va. 2000), the court addressed whether there must be a causal connection between the loss and the associated insurance policy exclusion. In holding no causal connection was required between the lack of a proper medical certificate and the crash to void the policy, the court quoted with approval from *Holland Supply Corp. v. State Farm Mut. Auto. Ins. Co.*, 166 Va. 331, 335-336, 186 S.E. 56, 57-58 (1936):

> [t]his action is not based upon tort, in which one of the determinate factors is proximate cause, but upon contract. This contract does not purport to cover all operations of the...insured. There are several operations which are expressly excluded...The premiums paid for insurance are, in a large measure, based upon the fact that the policy does not cover certain more hazardous risks.
> 123 F.Supp.2d at 1002.

In *Old Republic Ins. Co. v. Kevin Jensen, MD*, 267 F.Supp.2d 1097 (Dist. Nv, 2003), Nevada joined the majority of courts in upholding an exclusion that required the insured aircraft to have a valid airworthiness certificate despite the pilot's alleged request to a mechanic that an annual inspection be performed. The mechanic denied that he had been requested to conduct an annual inspection. Without verifying that the annual inspection had been completed, the insured and his wife embarked on a local flight, lost power and crashed into the backyard of Robert Griffin, who claimed serious injury. It was undisputed that the annual inspection had not been completed. The district court resolved the issue like a majority of courts, explaining:

> Plaintiff [Insurer}, naturally, contends that the Nevada Supreme Court would not require the existence of a casual connection between the accident and breach of the policy term or provision to exclude coverage. In support of this contention, Plaintiff cites cases from jurisdictions across the United States, which have found that no connection need exist between accident and breach of an aviation policy term or provision in order to find exclusion of coverage valid. In fact, the vast majority of cases reject the view that causality is required between the accident and the breach of a policy.

> Defendants, on the other hand, have provided a list of cases from jurisdictions that have found a causal connection necessary in order exclude coverage. Defendants urge the Court to follow these cases, which they refer to as the "modern trend." In spite of the Defendants' assertions regarding the "modern trend," these cases represent a small minority. In fact, it would be inaccurate to suggest that there is significant split of authority on this issue. There are few cases that have rejected the majority view and found that a causal connection between the accident and loss is required.

It is now well established that a strong majority of courts do not require causation in order to apply aircraft exclusionary clauses.[3]

While public policy disfavors a forfeiture, it favors enforcing and upholding aircraft safety regulations

Frequently, insureds will argue that enforcing aircraft policy provisions amount to a forfeiture that is against public policy. Some states have passed anti-technicality statutes which seek to preclude insurers from avoiding coverage based upon a technical violation of a policy condition which did not relate to the cause of the accident. *Global Aviation Ins. Managers v. Lees*, 368 N.W.2d 209 (Iowa App. 1985), Speiser, *Aviation Tort Law* §26:5, 26:10.

In *Pickett v. Woods*, 404 So.2d 1152 (Fla. Dist. Ct. App. 1981), the court addressed the lack of a valid airworthiness certificate where an anti-technicality statute existed. The only issue addressed in that case was whether section 627.409(2), Florida Statutes (1979) prevented exclusion of coverage. Section 627.409, at the time of the case, was Florida's anti-technicality statute, providing that an insured's breach of policy provisions should not void the policy unless such breach increased the hazard. Other courts have recognized that such an anti-technicality statute and the policy they seek to promote, which is contrary to the contract principles discussed above, is best left to the legislature.

Also, forfeitures are upheld if clearly expressed, as in *Clark v. London Assur. Corp.*, 44 Nev. 359 195 P. 809 at 812 (1981): "[n]othing will be held as contemplating a forfeiture, *unless that idea is clearly expressed.*" (Emphasis added)

Again, a majority of courts have concluded that the more important public policy is aircraft safety. As the court in *Economic Aero Club, Inc. v. Avemco Ins. Co.*, 540 N.W.2d 644, 646 (S.D. 1995), explained, the airworthiness exclusion "is no mere formulation to be invoked as an excuse to deny coverage. In fact it encourages

owners and operators of aircraft to obey and satisfy safety regulations applicable to their operation of aircraft."

Courts have recognized the FAR's as a legitimate means of insuring safe flight, *Lightenburger v. Gordon*, 81 Nev. 553, 407 P.2d 728 (1965):

> The Federal Aviation Agency, by its Regulations, prescribe the manner of performing flight maneuvers. These Regulations are designed to promote safe conduct of air traffic.
>
> * * *
>
> (C) Safety regulations of the F.A.A. are regarded by most courts as authoritative and impartial criteria for judging the conduct of persons covered by those regulations. *Roberts v. Trans World Airlines*, 225 Cal.App.2d 344, 37 Cal.Rptr. 291 (1964); *Moody v. McDaniel*, D.C.Miss., 190 F.Supp. 24 (1960); *Citrola v. Eastern Air Lines, Inc.* 264 F.2d 815 (2d Cir. 1959); *Pappas v. Pieper, Mo.*, 325 S.W.2d 789, 75 A.L.R.2d 850 (1959); *Lange v. Nelson-Ryan Flight Service, Inc.*, 259 Minn. 460, 108 N.W.2d 428 (1961); *United State sv. Miller*, 303 F.2d 703 (9th Cir. 1962).

The Nevada court in *Old Republic*, 267 F.Supp.2d 1097, explained the majority's view on the public policy analysis:

> In Nevada, a contract exclusion may be invalid if it violates public policy. *McDaniel v. Sierra Health*, 118 Nev. Advance Opinion 62 (2003). The exclusion in this case does not violate public policy. Other states have reached similar conclusions. The Arizona Supreme Court provided its rationale for finding that causality was not required as follows: "We also believe, as do a majority of the courts that have considered this question, that public policy favors a rule that encourages owners and operators of aircraft to obey and satisfy safety regulations applicable to their operation of aircraft." *Security Insurance Co. of Hartford v. Anderson*, 763 P.2d 246, 249 (AZ. 1988). As noted by the Arizona Supreme Court, a majority of courts have found that public policy favors a rule that encourages annual inspections. These courts recognize that the clear purpose behind exclusions, like the one in this case, is to encourage the safe operation of aircraft. Such exclusions do not violate public policy.

> Enforcement of the exclusionary clause in the instant case does not constitute a forfeiture because of a minor technical breach of a policy provision as Defendant Jensen argues it would. The exclusionary clause involved in this case relates to aircraft and public safety. Enforcement of such a provision serves to encourage compliance with the Federal Aviation Regulations, which serve an important safety function. The Court finds that there is a strong public policy consideration that warrants the Court enforcing the contract and finding that *Bayers* does not apply.

The public policy analysis supports upholding exclusions that promote aircraft safety.

Insurers can waive exclusions if they have knowledge of policy violations

The cases, however, find the insurer waives aircraft exclusions where the insurer has knowledge of non-compliance. In *Firemen's Fund Ins Co. v. McDaniel*, 187 F.Supp. 614 (N.D. Miss. 1960), the policy contained an exclusion stating that the policy did not apply to an insured who flew the aircraft in violation of the terms of any pilot's certificate. The policy also contained the typewritten note that the policy covered the insured or any currently certified commercial pilot having a minimum of 500 logged solo flying hours including at least 50 hours as first pilot of multi-engine aircraft. The insured claimed this language was a waiver of the exclusion, and that the policy had been issued with knowledge of the insured's lack of certification and rating.

The court noted that typewritten language in an insurance policy always takes precedence over the printed portion. The court found that the plain meaning of the typewritten language was that the insured could pilot the aircraft in light with or without passengers aboard and the coverage would be in effect, whether or not he was certificated or rated as a pilot. The court thus refused to give effect to the exclusionary clause.

Conclusion

It is now clear that a strong majority of courts uphold aircraft exclusions that are based upon well-known safety regulations and such exclusions are clear and unambiguous, not against public policy and readily enforceable even where no link to the cause of the claim can be found.

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[2] *See also*: *Arnold v. Globe Indem. Co.*, 416 F.2d 119 (6th Cir. 1969), applied Kentucky law. Coverage was denied when the pilot with just a VFR rating took off while the weather conditions were below the minimum for visual flying. *Ranger Ins Co. v. Kovach*, 63 F.Supp.2d 174, 178-187 (D. Conn. 1999), applied Connecticut law. An aircraft crash was not covered by the owner's insurance policy when the airplane was operated under instrument flight rule sand th pilot was just certified to fly under visual flight rules. The policy's pilot certification clause was found to unambiguously exclude coverage The policy was also void *ab initio*; the pilot had made a deliberate material misrepresentation on the policy application. The pilot false denied the previous revocation of his airman certificate due to falsification.

[3] The majority of courts not requiring causation include: *Beguette v. National Ins. Underwriters, Inc.*, 429 F.2d 896 (9th Cir. 1970) (applying Alaska law); *Security Ins. Co. v. Andersen*, 158 Ariz. 426, 763 P.2d 246 (1988); *National Union Fire Ins. Co. v. Meyer*, 192 Cal.App.3d 866, 237 Cal.Rptr. 632 (1987); *National Ins. Underwriters v. Mark*, 704 F.Supp. 1033 (d. Colo. 1989); *Hollywood Flying Serv., Inc. v. Compass Ins. Co.*, 597 F.2d 507 (5th Cir. 1979); *Florida Power & Light Co. v. Foremost Ins. Co.*, 433 So.2d 536 (Fla.Dist.Ct.App. 1983); *Grigsby v. Houston Fire & Casualty* 113 Ga.App. 572, 148 S.E.2d 925 (1966); *Roberts v. Underwriters at Lloyds London*, 195 F.Supp. 168 (D. Idaho 1961); *Johnson v. Security Ins. Co.*, 135 Ill.App.3d 690, 90 Ill.Dec. 352, 481 N.E.2d 1263 (1985); *American States Ins. Co. v. Byerly Aviation, Inc.*, 456 F.Supp. 967 (S.D.Ill. 1978); *Western Food Prods. v. U.S. Fire Ins. Co.*, 10 Kan.App.2d 375, 699 P.2d 579 (1985); *Arnold v. Globe Indem. Co.*, 416 F.2d 119 (6th Cir. 1969); *U.S. Fire Ins. Co. v. West Monroe Charter Service*, 504 So.2d 93 (La.App.Ct.), *writ denied*, 505 So.2d 1141 (La. 1987); *Aetna Casualty & Sur. Co. v. Urner*, 264 Md. 660, 287 A.2d 764 (1972); *Edmonds v. United States*, 642 F.2d 877 (1st Cir. 1981) (applying Massachusetts law); *Kilburn v. Union Marine & Gen. Ins. Co.*, 326 Mich. 115, 40 N.W.2d 90 (1949); *Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co.*, 189 Neb. 610, 204 N.W.2d 162 (1973); *Hedges Enter., Inc. v. Fireman's Fund Ins. Co.*, 34 Misc.2d 249, 225 N.Y.S.2d 779 (1962); *Security Mut. Casualty Co. v. O'Brien*, 99 N.M. 638, 662 P.2d 639 (1983); *Bellefonte Underwriters Ins. Co. v. Alfa Aviation, Inc.*, 61 N.C.App. 544, 300 S.E.2d 877 (1983), *aff'd*, 310 N.C. 471, 312 S.E.2d 426 (1984); *American Continental Ins. Co. v. Gerkens*, 69 Ohio App.3d 697, 591 N.E.2d 774 (1990); *Avemco Ins. Co. v. White*, 841 P.2d 588 (Okla. 1992); *Ochs v. Avemco Ins. Co.*, 54 Or.App. 768, 636 P.2d 421 (1981), *petition for review denied*, 292 Or. 450, 644 P.2d 1128 (1982); *DiSanto v.*

Enstrom Helicopter Corp., 489 F.Supp. 1352 (E.D. Pa. 1980); *United States Fire Ins. Co. v. Producciones Padosa, Inc.*, 835 F.2d 950 (1st Cir. 1987) (applying Puerto Rico law); *Economic Aero Club, Inc. v. Avemco*, 540 N.W.2d 644 (S.D. 1995); *Powell Val. Elec. Co-op. v. United States Aviation Underwriters, Inc.*, 179 F.Supp. 616 (W.D.Va. 1959); *Aviation Charters, Inc. v. Avemco Insurance Co.*, 335 N.J. Super. 591 (2000); *Old Republic Ins. Co. v. Jensen*, 267 F.Supp. 2d 1097 (Dist. NV 2003).

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