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Pickett v. Woods, 404 So. 2d 1152 (Fla. 5th DCA 1981)

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Aviation Law—FLORIDA'S "ANTITECHNICAL" STATUTE: SHOULD INSURANCE EXCLUSIONS BE INCLUDED?—*Pickett v. Woods*, 404 So. 2d 1152 (Fla. 5th DCA 1981).

One of the most frequently litigated issues in aviation insurance cases is the application of policy exclusions.¹ Commonly used aircraft policy exclusions are those which provide for no coverage when specific Federal Aviation Administration regulations are violated,² such as failing to have a valid pilot's certificate or airworthiness certificate.³ Once such an exclusion is raised as valid and its violation is proved by the insurer,⁴ it has been well-established law in Florida and most other jurisdictions that no causal connection need be shown between the violation and the actual loss.⁵ In other words, if a policy states clearly and unambiguously that coverage will be excluded when the pilot is not carrying a valid pilot's certificate, that policy will not provide insurance for the pilot with an expired license, even though the crash was caused entirely by cir-

1. Hagglund and Arthur, *Coverage Problems in Aviation Insurance Policies*, FED'N OF INS. COUNS. Q., Summer, 1973, 4, 22-23; Jericho, *Insurance Coverage Violations*, 1974 SMALL AIRCRAFT ACCIDENT LITIGATION, PHASE II 246, 250.

2. 12 COUCH, CYCLOPEDIA OF INSURANCE LAW § 44A:105; Insurance (2d ed. 1981); 11 COUCH § 42:630; Hagglund and Arthur, *supra* note 1, at 24; see SPEISER, KRAUSE AND GANS, AVIATION TORT LAW § 23:5 (1980) for examples of many types of aviation policy exclusions.

3. According to Federal Aviation Administration Regulations, "[s]tandard airworthiness certificates . . . are effective as long as the maintenance, preventive maintenance, and alterations are performed in accordance with Parts 43 and 91 of this chapter. . . ." 14 C.F.R. § 21.181(a)(1) (1982).

While Part 43 details the content of such required maintenance, Part 91 states: "[N]o person may operate an aircraft unless, within the preceding 12 calendar months, it has had—(1) An annual inspection in accordance with Part 43 of this chapter. . . ." 14 C.F.R. § 91.169 (1981).

4. Davis, *Aviation Insurance Policy Problems*, 1974 SMALL AIRCRAFT ACCIDENT LITIGATION 46, 51; 12 COUCH at § 44A:10.

5. Hagglund and Arthur, *supra* note 1, at 9, 45.

The lack of need to show a causal connection between the loss and the breach of an exclusion is a well-established principle of general insurance law. See *Myers v. Ocean Accident & Guar. Corp.*, 99 F.2d 485, 491 (4th Cir. 1938). For Justice Cardozo's explanation of the principle, see *Travelers Ass'n. v. Prinsen*, 291 U.S. 576, 581 (1934).

For cases applying the principle to aviation insurance law, see *Bill Hames Shows, Inc. v. J.J. Taylor Syndicate #173*, 642 F.2d 179 (5th Cir. 1981); *Hollywood Flying Service, Inc. v. Compass Ins. Co.*, 597 F.2d 507 (5th Cir. 1979); *Arnold v. Globe Indem. Co.*, 416 F.2d 119 (6th Cir. 1969); *Electron Machine Corp. v. American Mercury Ins. Co.*, 297 F.2d 212 (5th Cir. 1961); *Underwriters at Lloyd's of London v. Cordova Airlines, Inc.*, 283 F.2d 659 (9th Cir. 1960); *Lineas Aereas Colombianas Expresas v. The Travelers Fire Ins. Co.*, 257 F.2d 150, 156 (5th Cir. 1958); *Bruce v. Lumbermans Mutual Casualty Co.*, 222 F.2d 642 (4th Cir. 1955); *Glades Flying Club v. Americas Aviation & Marine Ins. Co.*, 235 So. 2d 18 (Fla. 3d DCA 1970); *Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co.*, 204 N.W.2d 162 (Neb. 1973); *Baker v. Insurance Co. N.Am.*, 179 S.E.2d 892 (N.C. Ct. App. 1971); *Ochs v. Avemco Ins. Co.*, 636 P.2d 421 (Or. Ct. App. 1981). *But see* *South Carolina Ins. Co. v. Collins*, 237 S.E. 2d 358 (S.C. 1977), wherein the above cases are cited and expressly rejected.

cumstances unrelated to licensing, such as flight into unexpected adverse weather.

Policy warranties, representations and conditions are different from exclusions. Due to the existence in most states of "antitechnical" or "misrepresentation" statutes, the mere breach of a warranty, representation or condition will not allow denial of coverage as would a mere breach of an exclusion.⁶ Instead, the breach must be more substantial.⁷ Exactly what type of breach will justify avoidance of the policy is normally set out in the statute. The standard varies slightly from state to state.⁸

To fully appreciate why exclusions are treated differently from warranties, representations and conditions, an exploration of terminology and historical background is needed. A *representation* is a statement made by an insured to an insurer prior to formation of the insurance contract, upon which the insurer bases its decision to accept or reject the risk.⁹ Warranties and conditions, on the other hand, become part of the insurance contract itself. A *warranty* is a statement made by the insured, promising "the existence of certain facts, . . . the literal truth of which is essential to the validity of the contract. . . ." ¹⁰ A *condition*—which may be either a condition precedent or subsequent—calls for either "the happening of some event . . . after the terms of the contract have been agreed upon, [but] before the contract shall be binding," or the avoidance or suspension of the policy "upon the happening of some event."¹¹

Thus, the insured's statement that he is the holder of a valid pilot's license, prior to the drafting of the policy, is a representation. A statement contained within the policy that the insured will not fly the aircraft without holding a valid pilot's license is commonly expressed as a *warranty*. A policy provision that "this policy shall become void if the insured's pilot's license expires or otherwise becomes invalid" is a *condition*. In any of these three cases, the policy has the potential to be voided, but is not unless a representation was false or a condition or warranty breached.¹²

6. *Misrepresentations and Nondisclosures in the Insurance Application*, 13 GA. L. REV. 876, 879 (1979); 7 COUCH, § 35:14; 3 LONG, THE LAW OF LIABILITY INSURANCE § 19.02, n. 3 (1981) [hereinafter referred to as LONG].

7. See *infra* note 20 and accompanying text.

8. 7 COUCH § 35:17.

9. 30 FLA. JUR. 2D *Insurance* § 567 (1981); 43 AM. JUR. 2D *Insurance* § 734 (1969); 7 COUCH 2d, § 35.2.

10. 7 COUCH § 35.2.

11. 43 AM. JUR. 2D *Insurance* § 755 (1969).

12. LONG *supra* note 6 § 17.15.

An *exclusion*, on the other hand, provides that a certain risk or situation will not be covered by the policy.¹³ Instead of creating the potential for the policy to be voided, it specifically limits the risks covered by creating a present exception with respect to the excluded activity. Thus, a statement in a policy that "this policy does not apply to flight by any pilot with an invalid pilot's license" is an exclusion.

The terms "warranties" and "conditions" have often been used interchangeably by courts,¹⁴ and the two terms also have sometimes been confused with representations. However, it is important to place the proper label—condition, warranty or representation—on a policy statement. While a misrepresentation would not render a policy void unless the statement was *substantially* false, warranties and conditions had to be *strictly* complied with. The slightest breach of a warranty or condition would result in a complete avoidance of coverage by the insurer.¹⁵

Naturally, the different effects of an insured's misrepresentation versus his breach of a warranty or condition led to terminology battles and to confused case law. An insurer might strive to interpret a questionable statement as a warranty or condition, so that even a slight breach would allow avoidance of coverage. An insured, on the other hand, would label the same statement a misrepresentation, so that only substantial falsity would allow avoidance. An unscrupulous insurer could fill a policy with unimportant statements labeled "warranties", making it all but impossible to recover after some slight breach.¹⁶

In order to protect the insured, states began to enact "antitechnical" or "misrepresentation" statutes.¹⁷ The statutes' names accurately described their purpose: to remove the insurer's ability to escape coverage by using a purely technical defense. This was accomplished by treating the condition or warranty as though it were a representation.¹⁸ These statutes provided that warranties and conditions, as well as representations, would have to meet certain criteria in order to defeat a claim.¹⁹ Although different states have different forms of statutes, most are worded so that a breach

13. 7 COUCH *supra* note 2 § 36.48; LONG *supra* note 6 § 17.15.

14. 45 C.J.S. *Insurance* § 473 (4) (1956); 43 AM. JUR. 2D *Insurance* § 756 (1969).

15. 43 AM. JUR. 2D *Insurance* § 747 (1969).

16. 13 GA. L. REV. at 878-79.

17. *Id.* at 879; 7 COUCH § 35.15.

18. 13 GA. L. REV. at 879; 7 COUCH §§ 35:15-17.

19. *Id.*

or misrepresentation either must (1) be material, (2) increase the risk, (3) be fraudulently made, or (4) contribute causally to the loss.²⁰

Florida's antitechnical statute was first enacted in 1959 and appears in Chapter 17 of the Insurance Code as follows:

627.409 Representations in applications; warranties.—

(1) All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefor, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

- (a) Fraudulent; or
- (b) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or
- (c) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

(2) A breach or violation by the insured of any warranty, condition, or provision of any wet marine or transportation insurance policy, contract of insurance, endorsement, or application therefor shall not render void the policy or contract, or constitute a defense to a loss thereon, unless such breach or violation increased the hazard by any means within the control of the insured.²¹

Due to the widespread existence of antitechnical statutes, the law with regard to warranties, representations and conditions is now by and large statutorily defined. Antitechnical statutes have not, however, applied to exclusions.²² Therefore, although at least two states disagree,²³ the overwhelming majority of jurisdictions

20. 7 COUCH 35:17, 35:44.

21. FLA. STAT. § 627.409 (1981).

22. 7 COUCH § 35:33; LONG § 19.02, n.3.

23. See *Fireman's Fund Ins. Co. v. McDaniel*, 187 F. Supp. 614 (N.D. Miss. 1960), *aff'd* on other grounds, 289 F.2d 926 (5th Cir. 1961) and *South Carolina Ins. Co. v. Collins*, 237 S.E.2d 358 (S.C. 1977). The two cases are based on, respectively, well-settled Mississippi and South Carolina law.

state that no causal connection need be established between a policy exclusion and a loss.²⁴ An insurer may lawfully limit its liability through the use of exclusions and, as long as the exclusion is stated clearly and unambiguously, it will be valid.²⁵

Until recently, the Florida law with regard to exclusions was in accordance with the above-stated principles. A long line of Florida and Fifth Circuit case law existed, firmly establishing that insurers need not show a causal connection.²⁶ In October, 1981, *Pickett v. Woods*²⁷ changed existing law. By interpreting Florida's antitechnical statute to apply equally to representations, warranties, conditions, and exclusions,²⁸ the court has forced Florida insurers to show that breach of an exclusion has "increased the hazard."²⁹ Otherwise, the exclusion will have no effect.

On October 6, 1974, Dr. Wilbur C. Pickett was to return by commercial airline to Daytona Beach from a golfing trip in North Carolina.³⁰ Instead, he accepted a ride home in a friend's Cessna 310 and played nine more holes of golf. Just north of Orlando, the non-instrument-rated pilot encountered rapidly worsening weather. While attempting to land in instrument conditions, the 310 crashed, killing Dr. Pickett, the pilot and both of the other passengers.³¹

The Federal Aviation Administration's (FAA) investigation revealed that the plane was flying with an expired airworthiness certificate. The Cessna had had its last annual inspection approximately fifteen months prior to the crash and not within the past twelve months, as required.³² The FAA concluded, however, that the expired certificate in no way contributed to the crash. The sole cause was said to be pilot error.³³

Dr. Pickett's wife brought suit in the Circuit Court for Orange County, Florida, naming as defendants the plane's owner, the pilot, and the Foremost Insurance Company.³⁴ Foremost denied coverage

24. See *supra* note 5 and accompanying text.

25. LONG § 17.15.

26. 642 F.2d 179; 597 F.2d 507; 297 F.2d 212; 257 F.2d 150; 235 So. 2d 18.

27. 404 So. 2d 1152 (Fla. 5th DCA 1981).

28. *Id.* at 1153.

29. FLA. STAT. § 627.409(2) (1981).

30. Initial Brief of Appellants at 5 [hereinafter referred to as Brief].

31. *Id.*

32. *Id.* at 5, 6. See *supra* note 3.

33. Brief at 6.

34. *Id.* at 2; 404 So. 2d at 1152.

for the owner and pilot³⁵ due to the existence of an exclusion in the policy:

“This policy does not apply:

4. to any insured

(b) who operates or permits the operation of the aircraft, while in flight, unless its airworthiness certificate is in full force and effect. . . .”³⁶

After the case had been scheduled for trial, Foremost moved to sever the issue of insurance coverage for separate consideration. The motion ultimately was granted and the insurance company waived all coverage issues except the issue of whether the airworthiness certificate was in effect at the time of the crash. This issue alone was presented to the jury and, upon its finding that the airworthiness certificate was not in effect at the time of the crash, final judgment was entered in favor of Foremost.³⁷

Mrs. Pickett immediately filed notice of appeal and, in her initial brief, attacked the trial court’s judgment from a new perspective. Her main argument was that “the trial court erred in denying plaintiff’s motion for directed verdict in regard to the insurance coverage issue based upon the lack of causal connection between the cause of the crash and the failure to have an annual inspection performed on the aircraft within the twelve months preceding the crash.”³⁸

In support of her argument that a causal connection *must* be established between the crash and the violation of the exclusion, Mrs. Pickett reasoned as follows: First, Appleman’s Insurance Law and Practice states, “since the courts look with disfavor upon forfeiture, the trend of modern authority is to hold that there is no forfeiture if the breach of *condition* or *warranty* did not contribute to a loss or did not increase the risk at the time of the loss;”³⁹ second, she cited several cases from South Carolina, Nebraska, Ohio, North Carolina, Texas and Washington (dating from 1916 to 1947) as examples of this “growing trend”;⁴⁰ she then explained

35. Brief at 2.

36. 404 So. 2d at 1152.

37. Brief at 4.

38. *Id.* at 10.

39. *Id.* (quoting 6A APPLEMAN, INSURANCE LAW & PRACTICE § 4146 (1972)) (emphasis added).

40. Brief at 11, 12 (citing Johnson & Stroud v. Rhode Island Ins. Co., 90 S.E. 124 (N.C. 1916); Slafter v. New Brunswick Fire Ins. Co., 5 N.W.2d 217 (Neb. 1942); Northern Ins. Co.

that the basis for all the cited cases was the existence in each state of an "antitechnical" statute; ⁴¹ finally, since Florida, too, had enacted such a statute, and since the 310's failure to have a current airworthiness certificate in no way caused or contributed to the crash or increased the hazard (as the statute would require), appellants concluded that "there was no evidence upon which the jury could have lawfully returned the verdict it did and recovery to Mrs. Pickett . . . should not be denied."⁴² Foremost, in its answer, pointed to the long and unwavering line of Florida and Fifth Circuit cases, clearly establishing that no causal relationship need be shown in instances where a policy *exclusion* has been "violated."⁴³

The District Court of Appeals, however, agreed with the argument that the statute should apply and decided to disregard the long and unwavering line. The trial court's decision was reversed and the case was remanded to determine whether the invalid airworthiness certificate in any way increased the hazard in accordance with section 627.409(2), Florida Statutes (1979).⁴⁴

In reaching its decision, the court noted that the United States Fifth Circuit Court of Appeals in *Bill Hames Shows, Inc. v. J.J. Taylor Syndicate #173* had recently—only six months prior to *Pickett*—reemphasized Florida's position that exclusions were valid regardless of causal connection.⁴⁵ *Hames*, the court noted, was based on *Glades Flying Club*—a 1970 case.⁴⁶ Since *Glades* was decided prior to the 1971 enactment of section 627.409(2), the *Pickett* court concluded, neither case should now control.⁴⁷

The court also recognized that section 627.409(2) speaks specifically of warranties, conditions and provisions—whereas the *Pickett* case involved an exclusion. "However," the court stated, "we believe that whether a policy warranty, condition or exclusion is involved is not determinative. The Legislature apparently recognized the difficulty courts and insurance companies have had in distinguishing between these terms and used the word 'provision' which

v. Morris, 165 N.E. 506 (Ohio Ct. App. 1929); South Carolina Ins. Co. v Collins, 237 S.E. 2d 358 (S.C. 1977); Trinity Universal Ins. Co. v. Daniel, 202 S.W. 2d 266 (Tex. Civ. App. 1947); McGillicuddy v. New Brunswick Fire Ins. Co., 217 P. 1000 (Wash. 1923)).

41. Brief at 12.

42. Brief at 15, 16.

43. Answer Brief of Appellee at 2, 3.

44. 404 So. 2d at 1153.

45. 642 F.2d 179.

46. 235 So. 2d at 18.

47. 404 So. 2d at 1153.

would include any material portion of the policy."⁴⁸

Although the court's opinion fails to discuss the rationale behind its interpretation of section 627.409(2), it evidently employed a well-founded rule of statutory interpretation—*ejusdem generis*. The rule provides that where a general word follows a list of specific words, the general word will be construed to include any objects in the class of objects described by the specific words.⁴⁹ Thus, the word "provision" was interpreted to include exclusions, as well as warranties and conditions.

It is beyond the scope of this case note to explore in depth the rules of statutory interpretation or to suggest that the court was incorrect in its analysis of the statute. It will be suggested, however, that policy considerations may support the rewording of the statute by the legislature so as not to allow the interpretation given it by the *Pickett* court.

The Massachusetts case of *United States Aviation Underwriters, Inc. v. Rex Ray Corp.*⁵⁰ involved an exclusion in an aircraft policy and gave the superior court its first chance to decide whether a causal connection would be required. In making its decision not to require a causal connection with regard to exclusions, the court weighed both sides of the issue and stated:

Given the technical meaning of an exclusion as a clause defining a risk which is not covered, there would appear to be *no logical reason* why a causal connection should be required. . . . It does appear . . . that the trend of modern authority is to hold that there is no forfeiture if the breach of condition or warranty did not contribute to the loss. Appleman, *supra*, § 4146. [However], in the absence of some authority equating exclusions and conditions, the court sees no basis for adopting the *South Carolina* precedent. Generally, an insurance company has the right not to contract for certain risks . . . and on the record as it now stands, there is no reason why the contract should not be given effect as written.⁵¹

Likewise, in *Ochs v. Avemco Insurance Company*,⁵² the Oregon Court of Appeals dealt for the first time with the issue of whether

48. *Id.*

49. R. DICKERSON, *THE INTERPRETATION AND APPLICATION OF STATUTES* 234 (1975); 2A J. SUTHERLAND, *STATUTES AND STATUTORY CONSTRUCTION* § 47.17 (1973).

50. 15 AV. L. REP. (CCH) ¶ 17,625 (Mass. Super. Ct. 1979).

51. *Id.* at ¶1 17,630 (emphasis added).

52. 636 P.2d 421 (Or. Ct. App. 1981).

causal connection should be required. It too took notice of *South Carolina* but ultimately decided that "[t]here is contrary authority which we consider to be the better reasoned."⁵³ Ironically, the court cites three Florida cases in support of its "better reasoned" authority.⁵⁴ In conclusion, the court states:

'[W]e must also remember that it is the fundamental right of the insurer to decide what it will and what it will not insure against, providing that the provision is not against public policy.' . . . We believe the better rule is that the insurer is entitled to exclude any liability for aircraft not bearing a valid and current airworthiness certificate. We hold that proof of causal connection between the cause of the accident and the policy exclusion is not required.⁵⁵

Two other cases address the Louisiana and Nebraska antitechnical statutes from the view of whether exclusions were meant to be included. Both decided the question in the negative. In *Omaha Sky Divers Parachute Club, Inc. v. Ranger Insurance Co.*,⁵⁶ the scope of Nebraska's antitechnical statute was defined. An exclusion in an aircraft policy provided that the policy would not cover the aircraft while it was operated by a pilot not holding valid pilot and medical certificates. Plaintiff's medical certificate had been expired for five months at the time of the crash, so his action against the insurer was dismissed.⁵⁷ In affirming the trial court's decision, the Nebraska Supreme Court held that the policy's exclusion "did not constitute either a 'warranty' or a 'condition' within the meaning of Nebraska's antitechnical statute."⁵⁸ The statute provides that "[t]he breach of a warranty or condition in any contract or policy of insurance shall not avoid the policy . . . unless such breach shall exist at the time of the loss and contribute to the loss."⁵⁹ Thus, the statute had no application to the exclusion and the rule that no causal connection is needed was applied.

As a policy reason, the court stated that it is well established

53. *Id.* at 423.

54. *Id.* at 423-24, citing *Hollywood Flying Service v. Compass Ins. Co.*, 597 F.2d 507 (5th Cir. 1979); *Electron Machine Corp. v. American Mercury Ins. Co.*, 297 F.2d 212 (5th Cir. 1961). *Glades Flying Club v. Americas Aviation & Marine Ins. Co.*, 235 So. 2d 18 (Fla. 3d DCA 1970).

55. 636 P.2d at 424.

56. 204 N.W.2d 162 (Neb. 1973).

57. *Id.* at 163-64.

58. *Id.* at 164.

59. NEB. REV. STAT. § 44-358 (1943).

that aircraft insurance policies may contain exclusions. Furthermore, it said, "[t]he insurer under an aircraft insurance policy may lawfully exclude certain risks from the coverage of its policy and where damage occurs during the operation of the insured aircraft under circumstances as to which the policy excludes coverage, there is no coverage."⁶⁰

*Benton Casing Service, Inc. v. Avemco Insurance Co.*⁶¹ dealt with a similar application of Louisiana's antitechnical statute to an exclusion contained in an aircraft insurance policy. After a scholarly discussion of the differences between warranties, conditions, representations and exclusions, the Louisiana Supreme Court held that the court of appeal had erred in applying the Louisiana statute to exclusions.⁶² Louisiana's antitechnical statute speaks specifically of warranties, representations and conditions, but not of exclusions.⁶³ As the rationale for its decision, the court expressed a view that insurance companies should have a right to limit coverage in any manner they choose, so long as those limitations were not in conflict with statutes or public policy. Furthermore, it stated, the provision at issue did not conflict with public policy. "[B]ecause of the enormous risk inherent in the improper operation of an aircraft, the insurer has a legitimate interest in knowing precisely who will be operating the insured aircraft in order that it may evaluate the qualifications of the proposed pilots and exclude risks which it will not insure."⁶⁴ The court also said, "[t]he addition of a pilot to the policy . . . could increase the risk and the premium charged to the insured."⁶⁵

The statutes involved in the above cases did not address "provisions" and thus could not have been as easily construed to apply to exclusions as was the Florida statute in *Pickett*. The policy reasons, however, apply with equal force to any argument that Florida's statute should not be so construed. The insurer has traditionally been able to limit coverage by the use of exclusions so long as public policy was not violated. The loss of that ability would place burdens on insurers which would almost inevitably be passed on to the insurance consumer by way of increased premiums.

One aviation insurance agent who was interviewed stated that

60. 204 N.W.2d at 164.

61. 379 So. 2d 225 (La. 1979).

62. *Id.* at 226-28 (discussing La. Rev. Stat. § 22-692).

63. *Id.* at 226.

64. *Id.* at 227.

65. *Id.* at 227-28.

his agency has recently had to raise its policy rates 9 to 11 percent. Although it is too early for accurate statistics, the agent speculated that most of this increase was due to the insurer's anticipated burden of proving "increase in hazard" with regard to exclusions.⁶⁶

It is yet to be seen whether the application of Section 627.409(2) to exclusions will render this type of aircraft policy exclusion ineffectual. This will depend on the difficulty insurers may have in bearing the burden of proof that the "breach" of the exclusion "increased the hazard" which caused the insured's loss. In some cases, the burden may be easy to bear. For example, it would certainly be arguable that an airworthiness certificate which had expired two years earlier at least "increased the hazard" of a crash caused by a cracked propellor or a broken fuel line. Likewise, a 60-year-old male pilot's long overdue medical examination *may* have increased the risk that he would crash after an unexpected heart attack. However, in situations like the *Pickett* case, the insurer stands little chance of proving the link required to effectuate its exclusion. In such a case, the insurer may pay the insured for a set of circumstances which both parties had initially agreed would not be covered, and in reliance upon which the insured's rates were determined. As may already be apparent, the insurer will have no option but to base rates on the expanded risk.⁶⁷

As a further policy consideration, it is possible that standard aircraft exclusions involving pilots' medical and airworthiness certificates have provided an incentive to the pilot/owner to keep such certificates current and valid. The student pilot whose medical certificate has expired will be discovered when he or she flies with a flight instructor. A pilot who does not own an aircraft will be checked before being allowed to rent one from a commercial leasing operation. An aircraft owner who leases aircraft for commercial purposes will be periodically checked to see if his airworthiness certificates are current. However, these controls do not exist for the private aircraft owner. Private owners (who are insurance purchasers) probably would never be caught with an expired certificate and may have nothing but the fear of an uninsured loss to

66. Telephone interview with James Hildebrand of Alexander & Alexander, Miami, Florida. (Nov. 29, 1982). This agency is located within the jurisdiction affected by the *Pickett* decision, and the agent was well aware of the potential impact of the decision. See also, *supra* note 1 and accompanying text. See also *Benton Casing Service, Inc. v Avemo Ins. Co.* (advancing this policy concern), *supra* notes 62-66 and accompanying text.

67. *Id.*

provide the incentive to meet these requirements.⁶⁸

A third policy consideration stems from the traditional notion that any ambiguity existing in an insurance policy will be construed in the light most favorable to the insured.⁶⁹ The reasoning behind this notion is to protect the insured, who is not likely to be as sophisticated and knowledgeable as the insurer. Thus, lawmakers and courts strive to fashion statutes and case law which will place both parties on a more equal footing. The imbalance between the aviation insured and the insurer, however, may be much smaller than that imbalance found in other fields of insurance due to the aircraft owner's greater background and large financial investment in the aircraft. The pilot who seeks to purchase insurance for his aircraft has had extensive training in his aircraft. He has passed oral, written, medical and practical (flying) examinations. He has been reevaluated at least every two years,⁷⁰ and throughout the process has been constantly exposed to FAA regulations regarding pilot currency, training and aircraft maintenance. Further, if he is an aircraft owner, a large portion of his flying expense consists of an insurance payment. By going through the processes of buying an aircraft, learning to fly it, maintaining it, and purchasing insurance, the pilot/owner acquires a specialized knowledge which may place him or her on a much more equal status with his insurer than the average auto owner is with his automobile insurance company. There may well be a lesser need to protect the insured as an unsophisticated, unsuspecting consumer. So long as the insured is fully aware of the exclusion and public policy is not violated, exclusions should be valid regardless of causal connection. The Massachusetts court in *United States Aviation Underwriters, Inc. v. Rex Ray Corp.*⁷¹ had such policy considerations in mind when it stated that "an insurance company has the right not to contract for certain risks . . . and . . . there is no reason why the contract should

68. According to 14 C.F.R. § 61.3(h), pilots are required to present their pilot and medical certificates for inspection upon the request of the FAA, the National Transportation Safety Board (NTSB), or any federal, state, or local law enforcement officer. In reality, however, such requests rarely occur except in connection with the investigation of an incident or accident.

69. *Fireman's Fund Ins. Co. v. Boyd*, 45 So. 2d 499 (Fla. 1950; *Electron Mach. Corp. v. American Mercury Ins. Co.*, 297 F.2d 212 (5th Cir. 1961) (where there is no ambiguity, language used will control).

70. See 14 C.F.R. §§ 61.103, 61.105 and 61.107, setting out the eligibility requirements, aeronautical knowledge and flight proficiency necessary for obtaining a private pilot's license. 14 C.F.R. § 61.57 outlines the FAA's standards for recent flight experience and the procedures for completion of the biennial flight review.

71. See *supra* note 50.

not be given effect as written."⁷²

The courts of other states have faced these problems before making their decisions. If the wording of this statute compels Florida courts to decide contrary to the majority of states, should not the Florida legislature reconsider the language of the statute?

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72. See *supra* note 52.



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