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The Causal Connection Question in Aviation Insurance Coverage

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THE CAUSAL CONNECTION QUESTION IN AVIATION INSURANCE COVERAGE

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I. INTRODUCTION

WHEN AN AIRCRAFT crashes, one of the early questions is: "Is there insurance?" This is quickly followed by the question: "Is there coverage under the insurance policy?"

Insurance policies are generally not recognized for their clarity, and a breach of any part of the policy may cause a denial of coverage. One essential question is whether the breach of any part of the policy must have a causal connection to the loss to justify a denial of coverage. The answer depends upon which state's law applies and which part of the policy was breached.

An aircraft owner who purchases a typical aviation insurance policy may not get the peace of mind he or she paid for.[1] For example, if that aircraft owner is covered for pilot error and makes a pilot error, such as switching to an empty fuel tank, then gets into an accident, he or she could be out of luck.[2] An insurance company could deny coverage for a reason that is altogether unrelated to the accident,[3] which is precisely what happened in the 2006 Nevada case *Griffin v. Old Republic Insurance Co.*[4] That kind of result—a denial of coverage based on a technicality—has been described as "[b]ad news for the owner," but an "[i]mportant lesson[ ] for us."[5]

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[1] John S. Yodice, *Pilot Counsel: Insurance and Airworthiness*, AOPA PILOT (Feb. 2004), *available at* http://www.aopaia.com/display_article_07.cfm.

[2] *Id.*

[3] *Id.*; *see also* Griffin v. Old Republic Ins. Co., 133 P.3d 251, 253 (Nev. 2006).

[4] *Griffin*, 133 P.3d at 253.

[5] Yodice, *supra* note 1.

But what kinds of "lessons" are learned from this scenario?[6] The aviation insurance world has long been plagued by this very issue.[7] While some courts take those lessons and create law to prevent them from happening again,[8] others continue to frustrate aircraft owners by allowing insurance companies to avoid paying losses completely unrelated to the insured's policy violation.[9] Some courts, like the Nevada court in *Griffin*, will release

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[6] *See id.* This article is based on the Nevada case *Griffin*, 133 P.3d at 251.

[7] There is a significant split of authority among jurisdictions. *See, e.g.*, Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981) ("It is acknowledged that a split of authority exists . . . ."); Sec. Mut. Cas. Co. v. O'Brien, 662 P.2d 639, 640 (N.M. 1983) ("There appears to be a split of authority in jurisdictions which have passed on this question."); Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936, 937 (Tex. 1984) ("The rule is by no means unanimous . . . ."); *see also* Derrick J. Hahn, *General Aviation Aircraft Insurance: Provisions Denying Coverage for Breaches That Do Not Contribute to the Loss*, 64 J. AIR L. & COM. 675 (1999); Timothy Mark Bates, Comment, *Aviation Insurance Exclusions—Should a Causal Connection Between the Loss and Exclusion Be Required to Deny Coverage?*, 52 J. AIR L. & COM. 451 (1986).

[8] *See* IOWA CODE ANN. § 515.101 (West 2007); *Bayers*, 510 F. Supp. at 1207 (applying Montana law); Am. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 978 (S.D. Ill. 1978) (applying Illinois law); Avemco Ins. Co. v. Chung, 388 F. Supp. 142, 151 (D. Haw. 1975); Nat'l Ins. Underwriters v. King Craft Custom Prods., Inc., 368 F. Supp. 476, 480 (N.D. Ala. 1973); Fireman's Fund Ins. Co. v. McDaniel, 187 F. Supp. 614, 618 (N.D. Miss. 1960) (applying Mississippi law); Pickett v. Woods, 404 So. 2d 1152, 1153 (Fla. Dist. Ct. App. 1981); Global Aviation Ins. Managers v. Lees, 368 N.W.2d 209, 212 (Iowa Ct. App. 1985); Gardner Trucking Co. v. S.C. Ins. Guar. Ass'n, 376 S.E.2d 260, 222 (S.C. 1989); AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc., 248 S.W.3d 169, 169–70 (Tex. 2008).

[9] *See, e.g.*, Bequette v. Nat'l Ins. Underwriters, 429 F.2d 896, 896 (9th Cir. 1970) (applying Alaska law); Arnold v. Globe Indem. Co., 416 F.2d 119, 122 (6th Cir. 1969); Globe Indem. Co. v. Hansen, 231 F.2d 895, 1003 (8th Cir. 1956) (applying Minnesota law); U.S. Specialty Ins. Co. v. Skymaster of Va., Inc., 123 F. Supp. 2d 995, 1003 (E.D. Va. 2000) (applying Virginia law); Ranger Ins. Co. v. Kovach, 63 F. Supp. 2d 174, 180 (D. Conn. 1999) (applying Connecticut law); Roberts v. Underwriters at Lloyds London, 195 F. Supp. 168, 171 (D. Idaho 1961) (applying California law, but indicating that the Idaho courts would follow the same rule); Sec. Ins. Co. of Hartford v. Andersen, 763 P.2d 246, 257 (Ariz. 1988); Middlesex Mut. Ins. Co. v. Bright, 106 Cal. App. 3d 282, 291 (1980); O'Connor v. Proprietors Ins. Co., 661 P.2d 1181, 1182 (Colo. 1985); Grigsby v. Hous. Fire & Cas. Ins. Co., 148 S.E.2d 925, 927 (Ga. 1966); W. Food Prods. Co. v. U.S. Fire Ins. Co., 699 P.2d 579, 584 (Kan. Ct. App. 1985); U.S. Fire Ins. Co. v. W. Monroe Charter Serv., Inc., 504 So. 2d 93, 99 (La. Ct. App. 1987); Aetna Cas. & Sur. Co. v. Urner, 287 A.2d 764, 766 (Md. 1972); U.S. Aviation Underwriters, Inc. v. Cash Air, Inc., 568 N.E.2d 1150, 1152 (Mass. 1991); Kilburn v. Union Marine & Gen. Ins. Co., 40 N.W.2d 90, 119 (Mich. 1949); Macalco, Inc. v. Gulf Ins. Co., 550 S.W.2d 883, 893 (Mo. Ct. App. 1977); Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 164 (Neb. 1973); Griffin v. Old Republic Ins. Co., 133 P.3d 251, 255 (Nev. 2006); Sec. Mut. Cas. Co. v. O'Brien, 662 P.2d 639, 641 (N.M. 1983); Hedges Enter., Inc. v. Fireman's Fund Ins. Co., 225 N.Y.S.2d 779, 784 (Sup. Ct.

an insurer from liability—even for a covered loss—if the insured is in violation of the policy in another way.[10] In other words, some courts do not require the breach of the policy to be causally connected or linked to the claimed loss. Other courts, like in *AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc.*,[11] have reaffirmed the need for insurance companies to show that the insured's policy breach actually contributed to the loss before insurers can deny the claim and avoid liability—the causal connection requirement.[12] This is the crux of the causal connection debate: whether or not insurance companies should be able to deny a policy claim based on an activity unrelated to the accident giving rise to the claim.

Section II provides a discussion of how the causal connection question arises. Section III outlines the various types of policy provisions and how provision labels influence their treatment when there is a breach. Sections IV and V discuss the general reasons for and against requiring a causal connection. Section VII provides a starting point for analyzing how each jurisdiction will handle the causal connection.

II. HOW THE CAUSAL CONNECTION QUESTION ARISES

A few typical situations make up the majority of the causal connection disputes:

- The pilot did not have a current medical certificate.[13]

1962); Baker v. Ins. Co. of N. Am., 179 S.E.2d 892, 892 (N.C. Ct. App. 1971); Avemco Ins. Co. v. White, 841 P.2d 588, 589 (Okla. 1992); Ochs v. Avemco Ins. Co., 636 P.2d 421, 424 (Or. Ct. App. 1981); Economic Aero Club, Inc. v. Avemco Ins. Co., 540 N.W.2d 644, 646 (S.D. 1995).

[10] Nat'l Union Fire Ins. Co. v. Miller, 192 Cal. App. 3d 866, 872–73 (1987); W. Food Prods. Co. Inc. v. U.S. Fire Ins. Co., 699 P.2d 579, 584 (Kan. Ct. App. 1985); U.S. Aviation Underwriters, Inc. v. Cash Air, Inc., 568 N.E.2d 1150, 1152 (Mass. 1991).

[11] 198 S.W.3d 276, 282 (Tex. App.—San Antonio 2006, pet. denied).

[12] Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981); Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936, 937 (Tex. 1984).

[13] *See* U.S. Specialty Ins. Co. v. Skymaster, 123 F. Supp. 2d 995, 999 (E.D. Va. 2000); Bayers v. Omni Aviation Managers, 510 F. Supp. 1204, 1207 (D. Mont. 1981); Avemco v. Chung, 388 F. Supp. 142, 152 (D. Haw. 1975); Sec. Ins. Co. v. Andersen, 763 P.2d 246, 249 (Ariz. 1988); Grigsby v. Hous. Fire & Cas. Ins., 148 S.E.2d 925, 927 (Ga. 1966); Global Aviation Ins. Managers v. Lees, 368 N.W.2d 209, 212 (Iowa Ct. App. 1985); Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 164 (Neb. 1973); Baker v. Ins. Co. of N. Am., 179 S.E.2d 892, 892 (N.C. Ct. App. 1971); South Carolina v. Collins, 237 S.E.2d 358, 358 (S.C. 1977).

- The pilot was not rated for the type of flight.[14]
- The flight was considered a prohibited use of the aircraft.[15]
- The pilot was not named in the policy.[16]
- The aircraft did not have a current annual inspection.[17]
- The aircraft did not have a valid airworthiness certificate.[18]

The person claiming a loss due to an aircraft accident has the burden to show that the loss was covered under his or her insurance policy.[19] The insurance company might accept or deny the coverage outright, or might also try to show that an activity of the insured fell under an "exclusion" so that the loss is excluded by the policy.[20] In many cases, the insurance company might even try to show another way in which the insured violated the terms of the policy.[21] At this point, courts treat the subject differently.[22] If an insurance company shows that the excluded activity or violation occurred in a state requiring a causal

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[14] Arnold v. Globe Indem., 416 F.2d 119, 122 (6th Cir. 1969); Bequette v. Nat'l Ins. Underwriters, 429 F.2d 896, 897 (9th Cir. 1968); Fireman's Fund Ins. Co. v. McDaniel, 187 F. Supp. 614, 618 (N.D. Miss. 1960); Kilburn v. Union Marine & Gen. Ins. Co., 40 N.W.2d 90, 118–19 (Mich. 1949); Grigsby v. Hous. Fire & Cas. Ins. Co., 148 S.E.2d 925, 927 (Ga. Ct. App. 1966); Johnson v. Sec. Ins. Co., 481 N.E.2d 1263, 1265 (Ill. Ct. App. 1985); Macalco, Inc. v. Gulf Ins. Co., 550 S.W.2d 883, 890 (Mo. Ct. App. 1977) (student pilot carrying passengers was not properly rated to be carrying passengers).

[15] Global Indem. v. Hansen, 231 F.2d 895, 905 (8th Cir. 1956); Bruce v. Lumbermens Mut. Cas. Co., 222 F.2d 642, 645 (4th Cir. 1955); Middlesex Mut. Ins. Co. v. Bright, 106 Cal. App. 3d 282, 288–89 (1980); Hedges Enter., Inc. v. Fireman's Fund Ins. Co., 225 N.Y.S.2d 779, 783 (Sup. Ct. 1962) (pilot was flying an unregistered aircraft against FAA regulations).

[16] Roberts v. Underwriters at Lloyds London, 195 F. Supp. 168, 171 (D. Idaho 1961); Am. States v. Byerly, 456 F. Supp. 967, 970 (S.D. Ill. 1978).

[17] O'Connor v. Proprietors Ins. Co., 661 P.2d 1180, 1182 (Colo. 1982); Sec. Mut. Cas. Co. v. O'Brien, 662 P.2d 639, 641 (N.M. 1983); Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936, 937 (Tex. 1984).

[18] Old Republic Ins. v. Jensen, 276 F. Supp. 2d 1097, 1102 (D. Nev. 2003); Pickett v. Woods, 404 So. 2d 1152, 1152 (Fla. 1981); Gardner Trucking v. S.C. Ins., 376 S.E.2d 260, 262 (S.C. 1989); Global Aviation Ins. Managers v. Lees, 368 N.W.2d 209, 212 (Iowa Ct. App. 1985); Ochs v. Avemco, 644 P.2d 421, 428 (Or. Ct. App. 1981).

[19] Chi. Title Ins. Co. v. Huntington Nat'l Bank, 719 N.E.2d 955, 959 (Ohio 1999); *see also* Hahn, *supra* note 7, at 700.

[20] Twin City Fire Ins. Co. v. Alfa Mut. Ins. Co., 817 So. 2d 687, 697 (Ala. 2001); Dart Indus., Inc. v. Commercial Union Ins. Co., 52 P.3d 79, 87 (Cal. 2002); Speth v. State Farm Fire & Cas. Co., 35 P.3d 860, 862 (Kan. 2001); Transcon. Ins. Co. v. RBMW, Inc., 551 S.E.2d 313, 318 (Va. 2001).

[21] *See, e.g.*, *RBMW, Inc.*, 551 S.E.2d at 318 (insurer arguing that collapse provisions should preclude coverage).

[22] *See* sources cited *supra* note 7.

connection, the analysis does not stop here. Before the insurance company can avoid liability due to exclusion and deny the claim, it must show that the excluded *activity* actually contributed to the *loss* claimed.[23] This is sensible because the insurance company is excluding a certain activity to prevent an accident resulting from that activity. In other words, the banned activity leading to an accident is exactly the type of situation that the insurance company is trying to prevent. In a state that does not require a causal connection, however, no causal link is required.[24] The exclusion acts to bar coverage, regardless of whether the excluded activity caused or contributed to the loss.[25]

Numerous states allow an insurer to deny coverage based on the breach of a policy provision, even if that breach is unrelated to the loss or accident at issue in the claim.[26] For example, if a crash was caused by landing with a defective tail wheel spring (which is not detectable by inspection), but the owner failed to have the required annual inspection, the insurance company can refuse to pay the claim.[27] This may occur despite the fact that the accident is ordinarily covered under the policy and that the aircraft owner paid a premium for coverage of exactly this type of risk.[28] Those insurance companies recognize that the accident would have occurred even if the breach had not taken place, but courts allow them to avoid liability anyway under the strict interpretation principles of contract law.[29]

Some states disagree with this logic and require the breach to be causally connected to the claimed loss before an insurer can evade its duties under the contract.[30] In other words, the insurance company must still cover the accident unless the violation

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[23] *See, e.g., Puckett*, 678 S.W.2d at 938.

[24] *See* sources cited *supra* note 10.

[25] *See* sources cited *supra* note 10.

[26] *See, e.g.*, Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981) (citing S.C. Ins. Co. v. Collins, 237 S.E.2d 358, 362 (S.C. 1977)).

[27] *See* Ochs v. Avemco Ins. Co., 636 P.2d 421, 422, 424 (Or. Ct. App. 1981).

[28] *Id.*

[29] *Id.*

[30] *See* 74 PA. CONS. STAT. ANN. § 5503(d) (West 2008); Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981) (applying Montana law); Am. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 968 (S.D. Ill. 1978) (applying Illinois law); Avemco Ins. Co. v. Chung, 388 F. Supp. 142, 151 (D. Haw. 1975); Fireman's Fund Ins. Co. v. McDaniel, 187 F. Supp. 614, 618 (N.D. Miss. 1960) (applying Mississippi law); Pickett v. Woods, 404 So. 2d 1152, 1153 (Fla. Dist. Ct. App. 1981); Global Aviation Ins. Managers v. Lees, 368 N.W.2d 209, 212 (Iowa App. 1985); Gardner Trucking Co., Inc. v. S.C. Ins. Guar.

of the policy caused the accident.[31] Under the causal connection requirement, the same scenario as above would have the opposite outcome. Because the overdue inspection did not cause the accident, the insurer would have been responsible to the insured for the damages. The courts that follow this reasoning do so due to the uneven distribution of negotiation power among parties to insurance policies,[32] reasons of fairness,[33] and the lack of prejudice to the insurer since the accident would have occurred regardless of the unrelated breach of the policy.[34]

The causal requirement has been developed differently in various jurisdictions. In many instances, courts adopted the aviation causal connection rule from ordinary non-aviation cases.[35] The causal connection requirement is typically seen in cases dealing with coverage disputes on automobile insurance policies occurring after automobile accidents.[36] Other states adopted the rule legislatively.[37]

Many states have not clarified whether a causal connection is required in the aviation context, or otherwise.[38] Variations provide even more confusion in this area of law.[39] In Colorado, a causal connection is generally not required, but an exclusion can be set aside if there is no causal connection *and* there is a public policy reason to support it.[40] Although not yet applied in

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Ass'n, 376 S.E.2d 260 (S.C. 1989); AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc., 198 S.W.3d 276, 278 (Tex. App.—San Antonio 2006, pet. denied).

[31] *See infra* note 35.

[32] *See generally AIG Aviation, Inc.*, 198 S.W.3d at 276.

[33] Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936, 937 (Tex. 1984).

[34] *See generally Gardner Trucking Co.*, 376 S.E.2d at 260.

[35] Fireman's Fund Ins. Co. v. McDaniel, 187 F. Supp. 614, 618 (N.D. Miss. 1960) (applying Mississippi law) (citing Hossley v. Union Indem. Co. of N.Y., 102 So. 561 (Miss. 1925) (an automobile accident case in which the court required a causal connection between the breach and the loss)); S.C. Ins. Co. v. Collins, 237 S.E.2d 358, 360–62 (S.C. 1977) (following Reynolds v. Life & Cas. Ins. Co. of Tenn., 164 S.E. 602 (S.C. 1932), and McGee v. Globe Indem. Co., 175 S.E. 849 (S.C. 1934)).

[36] *See supra* note 35; *see also* Am. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 968 (S.D. Ill. 1978).

[37] FLA. STAT. § 627.409(2) (2005); IOWA CODE ANN. § 515.101 (West 2007); 74 PA. CONS. STAT. ANN. § 5503(d) (West 2008).

[38] Research provided no clear law on the aviation causal connection issue for Alabama, Arkansas, Delaware, Indiana, Maine, New Hampshire, New Jersey, North Dakota, Ohio, Rhode Island, Utah, Vermont, Washington, or Wyoming. *See infra* Part VII.

[39] *See* O'Connor v. Proprietors Ins. Co., 696 P.2d 282, 286 (Colo. 1982); Chase v. State Farm Fire & Cas. Co., 780 A.2d 1123, 1130 (D.C. 2001).

[40] *O'Connor*, 696 P.2d at 286.

an aviation case, Washington, D.C. applies a default "efficient proximate cause" rule.[41] This rule states: "If a covered peril is found to be the efficient proximate cause, then the loss is covered; if a non-covered peril is found to be the efficient proximate cause, then the loss is not covered."[42] Thus, even if excluded activity is a partial cause, by default that activity will not preclude coverage if there is a more dominant cause of the covered loss.[43] Under this rule, the excluded activity can be *one* of the causes, but not the biggest contributor. But because it is only the default rule, if the language in the policy indicates a different intent to exclude even partial causes, then the policy language will prevail.[44]

A large number of states have no statutes or recent case law on the subject, and parties are forced to deduce the likely outcome without clear guidance. Other courts have covered their bases by stating a rule that no causal connection is required, but continue to add that a causal connection existed in the particular case, raising a question about how the court would rule in a pure case of no connection between the breach and the loss.

III. AN OVERVIEW OF GENERAL POLICY PROVISION TYPES

Insurance coverage is dependent upon five types of provisions in the policy: representations, conditions, conditions precedent, warranties, and exclusions. Each of these provision types is treated differently, depending upon the court. So knowing the basics of these provisions is important.[45]

A. REPRESENTATIONS

A representation is a statement made by the insurance applicant and used by the insurer to determine the amount of the premium and whether coverage will be provided.[46] In other words, this is typically the application for insurance.[47] Misrepresentations include oral or written statements made to the insurer that are untrue or that have a tendency to mislead, or

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41 *Chase*, 780 A.2d at 1130.

42 *Id.* (quoting Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins., 863 F. Supp. 1226, 1230 (D. Nev. 1994)).

43 *Id.*

44 *Id.*

45 *See* Hahn, *supra* note 7.

46 6 COUCH ON INSURANCE 3d §§ 81:5, 81:7 (2010).

47 Hahn, *supra* note 7, at 678–79.

incomplete statements that keep the insurer from measuring the value of the risk.[48] Courts assign different elements to a misrepresentation, but such elements may include that:

> (1) the representation must be material to the risk assumed by the insurer; (2) the representation must be false; (3) the insured must know that the representation was false when made, or he or she made it recklessly; (4) the insured made the representation with the intent that the insurer act upon it; or (5) the insurer relied on the representation.[49]

If a misrepresentation occurs, coverage may be denied if the false information was material.[50] But if the information was immaterial, courts are reluctant to remove coverage.[51] The insurer has the burden of proving whether or not a statement was false, whether it was material, and if required, whether it was fraudulent in nature.[52] However, the "insurance company will be presumed to have acted in reliance on the truth of material representations."[53] Examples of a representation often made in aircraft insurance is information regarding the total hours a pilot has flown or certificates and ratings of the pilot.[54]

B. CONDITIONS

Insurance companies insert various conditions into policies that must be "plainly stated and unambiguous in order for it to be binding."[55] There are two types of conditions: conditions precedent and conditions subsequent.[56] Conditions precedent are discussed further in the next section. Conditions subsequent are conditions that must be maintained after the risk has already attached.[57] If not maintained, the contract for insurance will not remain in effect.[58] These "provide that a policy shall become void or its operation defeated or suspended, or the insurer relieved wholly or partially from liability upon the hap-

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[48] COUCH ON INSURANCE, *supra* note 46, § 81:6.

[49] *Id.*

[50] Hahn, *supra* note 7, at 679.

[51] *Id.*

[52] COUCH ON INSURANCE, *supra* note 46, § 82:5.

[53] *Id.* § 82:6.

[54] Hahn, *supra* note 7, at 679.

[55] COUCH ON INSURANCE, *supra* note 46, § 11:6; *see also* 16 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 49:87 (4th ed. 2000).

[56] COUCH ON INSURANCE, *supra* note 46, § 81:19.

[57] *Id.*

[58] *Id.*

pening of some event, or the doing or omission to do some act."[59]

Because they usually work to the detriment of the insured,[60] conditions are construed against the insurer.[61] Words like "if," "provided that," "upon condition that," and "subject to" commonly indicate a condition. Others might include "when," "after," or "as soon as."[62]

C. Conditions Precedent

A condition precedent is the most common type of condition in insurance policies.[63] With this type of provision, the "fulfillment of the condition by the insured must occur before the insurer becomes legally liable on the policy."[64] Under these conditions, the policy will not be binding until the conditions have been met.[65] Examples of conditions precedent are provisions stating that a premium must be paid before coverage is attached or requirements to answer all application questions to the best of the applicant's knowledge or belief.[66]

D. Warranties

A warranty is a statement of certain facts that have been incorporated into the insurance policy.[67] This type of provision is usually a condition that must be met to invoke the insurer's duty to pay.[68] These became very widespread as insurers began to use them to deny coverage for any minute discrepancy between the actual facts and the representations made in the policy.[69] However, judges began to rein in their loose usage and the harsh effects have been lessened.[70] Now, most states have statutes that require the misrepresentation to be material, made fraudulently, or such that it would have caused the insurer not to issue the policy had the insurer known of the misrepresentation.[71]

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59 *Id.*
60 Williston & Lord, *supra* note 55, § 49:87.
61 Couch on Insurance, *supra* note 46, § 83:27.
62 Williston & Lord, *supra* note 55, § 49:87.
63 *Id.*
64 *Id.*
65 Couch on Insurance, *supra* note 46, § 11:6.
66 *Id.* § 81:20.
67 *Id.* § 81:10.
68 *Id.*
69 Hahn, *supra* note 7, at 680.
70 *Id.* at 680–81.
71 *Id.* at 681.

Further, ambiguous terms will be construed against the insurer or ignored by the courts.[72]

E. Exclusions

Insurers may cover some risks and exclude others.[73] A policy provision that excludes coverage or "eliminates coverage for certain persons, situations, or circumstances, when it would otherwise exist" but for the provision is an exclusion.[74] These are different from warranties and conditions set forth in the policies because they are not promises made by either party, but rather set aside specific coverage.[75] An exception or exclusion carves out coverage, limiting liability by stating types of loss to which the policy does not apply.[76] As one treatise author notes:

> One need not be a cynic to observe that attempts by insurers to limit their liability by placing exceptions to or exclusions from coverage in so-called 'omnibus' policies, while at the same time representing to the public at large that there is comprehensive coverage, is, at the least, inconsistent. It is not surprising, therefore, that courts regard these attempted exemptions from liability with disfavor, and construe them narrowly, often explicitly invoking both longstanding principles of interpretation and construction as well as public policy when refusing to enforce them.[77]

The language of the exclusion must be clear to be enforceable, and any ambiguity will be construed against the insurer.[78] The exclusion label has been used to get around the materiality requirement of warranties, as discussed above.[79] By calling a warranty an exclusion, insurers can claim that the coverage never existed rather than having to show materiality or any contribution to the loss.[80]

F. Differences in Provision Types

Although differences exist between the five types of insurance provisions, it is "difficult to formulate a positive rule of law

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[72] Couch on Insurance, *supra* note 46, § 81:11.
[73] Williston & Lord, *supra* note 55, § 49:111.
[74] Hahn, *supra* note 7, at 681.
[75] *Id.*
[76] Williston & Lord, *supra* note 55, § 49:111.
[77] *Id.*
[78] *Id.*
[79] Hahn, *supra* note 7, at 681.
[80] *Id.*

which shall determine what constitutes [the different provisions]."[81] One should start by looking at the definitions of the provision types.[82] Although "warranty" and "condition precedent" are often used interchangeably, they have different functions.[83] A warranty does not cause the contract to cease providing coverage, it just provides remedy for a breach. A condition precedent, however, stops operation of the contract if unfulfilled.[84] Unlike a warranty, a representation is made prior to the forming of the contract and is not a part of the contract.[85]

G. How Provision Labels Influence Coverage Decisions

Provision labels often create "chaos" associated with insurance coverage debates because these labels can have "a dramatic effect" on whether coverage exists.[86]

The different categorization of these provisions has led insurers to cover or deny claims based on that category.[87] For example, "conditions precedent" are used by some insurers to preclude the causal connection requirement altogether.[88] The majority of states in causal connection cases, however, use the term "exclusion" to identify the particular clause in question.[89]

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[81] Couch on Insurance, *supra* note 46, § 81:22.

[82] *See id.*

[83] *Id.* § 81:24. These terms are only synonymous to the extent they both demand absolute truth in fulfilling their requirements. *Id.*

[84] *Id.*

[85] *Id.* § 81:25.

[86] Hahn, *supra* note 7, at 678.

[87] *Id.* at 692; Bates, *supra* note 7, at 464.

[88] U.S. Fire Ins. Co. v. Producciones Padosa, Inc., 835 F.2d 950, 958 (1st Cir. 1987) (applying Puerto Rico law); Edmonds v. United States, 642 F.2d 877, 883 (1st Cir. 1981) (applying Massachusetts law).

[89] Bequette v. Nat'l Ins. Underwriters, Inc., 429 F.2d 896, 897 (9th Cir. 1970); Arnold v. Globe Indem. Co., 416 F.2d 119, 122 (6th Cir. 1969); Globe Indem. Co. v. Hansen, 231 F.2d 895, 897 (8th Cir. 1956) (applying Minnesota law); U.S. Specialty Ins. Co. v. Skymaster of Va., Inc., 123 F. Supp. 2d 995, 1002 (E.D. Va. 2000) (applying Virginia law); Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204, 1206 (D. Mont. 1981); Am. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 970 (S.D. Ill. 1978) (applying Illinois law); Fireman's Fund Ins. Co. v. McDaniel, 187 F. Supp. 614, 618 (N.D. Miss. 1960) (applying Mississippi law); Sec. Ins. Co. of Hartford v. Andersen, 763 P.2d 246, 250 (Ariz. 1988); Grigsby v. Hous. Fire & Cas. Ins. Co., 148 S.E.2d 925, 927 (Ga. Ct. App. 1966); U.S. Fire Ins. Co. v. W. Monroe Charter Serv., Inc., 504 So. 2d 93, 98–99 (La. Ct. App. 1987); Macalco, Inc. v. Gulf Ins. Co., 550 S.W.2d 883, 892 (Mo. Ct. App. 1977); Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 164 (Neb. 1973) (refusing to apply anti-technicality statute that required a causal connection for warranties as well as conditions to exclusions); Griffin v. Old Rep. Ins. Co., 133 P.3d 251, 254 (Nev. 2006); Sec. Mut. Cas. Co. v. O'Brien, 662 P.2d 639,

Courts typically disfavor insurance forfeiture, giving technical breaches of warranties or representations little credence, but insurance companies have popularized exclusions as a way to "circumvent" forfeiture of the contract.[90] "By simply labeling what would normally be a warranty as an exclusion, insurers can claim that enforcement of the provision does not forfeit coverage because coverage never existed for the excluded event."[91] Exclusions became popular after the Civil Aeronautics Board, now the Federal Aviation Administration (FAA), started regulating the aviation industry.[92] Because courts had little understanding of aviation and it was still considered a dangerous activity, they upheld general policy exclusions in insurance policies in the mid-twentieth century.[93] These general policy exclusions froze the coverage of the policy whenever the aircraft was in violation of a federal regulation.[94] However, when the number of federal regulations proliferated to the point that it was nearly impossible to have an aircraft accident that was not in violation of at least one of them, courts stopped enforcing general exclusion provisions on public policy grounds.[95] Yet, some courts still enforce exclusion provisions based on regulatory violations, as long as they are specific.[96]

Although Nebraska has an anti-technicality statute—applicable to insurance policies—that imposes a causal connection requirement, an insurance company was able to avoid paying a claim by labeling the breached provision an "exclusion."[97] Nebraska law states that "[t]he breach of a warranty or condition in any contract or policy of insurance shall not avoid the policy nor avail the insurer to avoid liability, unless such breach shall exist at the time of the loss and contribute to the loss."[98] While the

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640 (N.M. 1983); Hedges Enter., Inc. v. Fireman's Fund Ins. Co., 225 N.Y.S.2d 779, 784 (Sup. Ct. 1962); Baker v. Ins. Co. of N. Am., 179 S.E.2d 892, 894 (N.C. Ct. App. 1971); Avemco Ins. Co. v. White, 841 P.2d 588, 589 (Okla. 1992); Ochs v. Avemco Ins. Co., 636 P.2d 421, 424 (Or. Ct. App. 1981); Gardner Trucking Co., Inc. v. S.C. Ins. Guar. Ass'n, 376 S.E.2d 260, 262 (S.C. 1989).

90 Hahn, *supra* note 7, at 680–81.

91 *Id.* at 681.

92 Bates, *supra* note 7, at 457–58.

93 *Id.* at 458.

94 *Id.* at 457–58.

95 *Id.* at 458–59; Hahn, *supra* note 7, at 676.

96 Bates, *supra* note 7, at 459.

97 Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 164 (Neb. 1973) (refusing to apply anti-technicality statute that required a causal connection for warranties and conditions to exclusions).

98 NEB. REV. STAT. § 44-358 (2006).

law appears to impose a causal connection requirement for breaches of insurance policies, a court refused to apply the statute to an expired medical certificate, calling it an "exclusion" that is not covered by the statute.[99]

The First Circuit held in two cases that a pilot qualification clause was a condition precedent in order to avoid the causal connection question.[100] Its opinion in *Edmonds v. United States* stated two ways that an insurance provision can be a condition precedent that precludes the application of a causal connection.[101] The provision will be a condition precedent if it either "relates essentially to the insurer's intelligent decision to issue the policy" or the policy explicitly uses the words "condition precedent" or an equivalent.[102] The *Edmonds* court held that a biennial flight review requirement was a condition precedent and relieved the insurer from liability for a pilot's crash landing, regardless of whether the expired biennial flight review was related to the accident.[103]

In *U.S. Fire Insurance Co. v. Producciones Padosa, Inc.*, a provision stating that only pilots with a certain flight qualifications will operate the aircraft was labeled a "condition precedent" and the causal connection issue was not addressed.[104] The court, relying on the test in *Edmonds*, explained that a provision is a condition precedent if it relates to the insurer's initial decision to accept the risk; and if a condition precedent is violated, the insurer's obligations are void.[105] The court eventually decided the pilot qualification provision was a condition precedent and thereby avoided the causal connection issue.[106]

IV. REASONS *FOR* A CAUSAL CONNECTION REQUIREMENT

A. A Breach That Is Not Causally Related to the Loss Is Inherently Immaterial

An insured's breach of the insurance contract that does not cause an accident or any damages is immaterial to the accident

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[99] *See Ranger Ins. Co.*, 204 N.W.2d at 164.

[100] U.S. Fire Ins. Co. v. Producciones Padosa, Inc., 835 F.2d 950, 958 (1st Cir. 1987); Edmonds v. United States, 642 F.2d 877, 883 (1st Cir. 1981).

[101] *Edmonds*, 642 F.2d at 882.

[102] *Id.*

[103] *Id.* at 880–83.

[104] *Producciones Padosa*, 835 F.2d at 954–55.

[105] *Id.*

[106] *See id.* at 955.

or the damage that actually *does* occur.[107] Under basic contract law concepts, a party who breaches a contract only affects the obligations within the contract if the breach is material.[108] If the breach is not material, the aggrieved party may not cancel the contract; rather, the aggrieved party may only receive damages for the partial breach.[109] Cancellation is a remedy for parties to a contract where a breach was material or where the nonperformance was a condition to the aggrieved party's performance.[110]

A breach can be considered material if it defeats an essential purpose of the contract.[111] This has also been described as going "to the root of the matter or essence of the contract."[112] Courts will consider the seriousness of the breach and the likelihood that the aggrieved party received substantial performance.[113] Some courts have held that material breach will only be found if the breach renders substantial performance under the contract impossible.[114] For example, a court did not find material breach when a party failed to deliver four percent of promised goods.[115] The court considered this "so slight a breach of the purchase agreement that, as a matter of law, it did not constitute a material breach."[116] Similarly, in a contract for sale, an-

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[107] *See* RESTATEMENT (SECOND) OF CONTRACTS § 237 (1987); *see also* Nat'l Ins. Underwriters v. King Craft Custom Prods., Inc., 368 F. Supp. 476, 479–80 (N.D. Ala. 1973) (holding that the insurance company cannot avoid their obligations under the policy because the breach was "immaterial to [the insurance company's] acceptance of the risk").

[108] *In re Krueger*, 192 F.3d 733, 741–42 (7th Cir. 1999); United States v. Witco Corp., 76 F. Supp. 2d 519, 525 (D. Del. 1999).

[109] Curt Odgen Equip. Co. v. Murphy Leasing Co., 895 S.W.2d 604, 608–09 (Mo. Ct. App. 1995); Ackerman v. McMillan, 442 S.E.2d 618, 620 (S.C. Ct. App. 1994).

[110] Prozinski v. Ne. Real Estate Servs., LLC, 797 N.E.2d 415, 424 (Mass. App. Ct. 2003) ("material breach by one party excuses the other party from further performance under the contract").

[111] *In re Sandman Assocs., L.L.C.*, 251 B.R. 473 (W.D. Va. 2000); Interbank Inv., L.L.C. v. Vail Consol. Valley Water Dist., 12 P.3d 1224, 1228 (Colo. Ct. App. 2000); *Prozinski*, 797 N.E.2d at 423; *Ackerman*, 442 S.E.2d at 619–20 ("In order to warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract."); Horton v. Horton, 963 S.W.2d 749 (Tenn. Ct. App. 1997).

[112] *Interbank Inv.*, 12 P.3d at 1229.

[113] *See id.*; *see also* Fusion, Inc. v. Neb. Aluminum Castings, Inc., 962 F. Supp. 1392, 1395 (D. Kan. 1997).

[114] *Interbank Inv.*, 12. P.3d at 1229.

[115] Curt Ogden Equip. Co. v. Murphy Leasing Co., 895 S.W.2d 604, 609 (Mo. Ct. App. 1995).

[116] *Id.*

other court did not consider failing to apply for financing within ten days following the sale a material breach.[117]

A policy holder's immaterial breach might also be excused if cancelling the contract would cause a "disproportionate forfeiture."[118] The *Restatement Second of Contracts* specifically states that "[t]o the extent that the non-occurrence of a condition would cause disproportionate forfeiture, a court may excuse the non-occurrence of that condition unless its occurrence was a material part of the agreed exchange."[119] While the comments suggest giving the court "sound discretion" on what "disproportionate forfeiture" means, the *Restatement* suggests that the court will have to weigh the policy holder's forfeiture against the degree that the insurance company sought to be protected and the degree to which that protection will be lost if the breach is excused.[120]

If the activity is not causally connected to the loss and does not defeat the essential purpose of the contract, it is—logically—immaterial to the loss and should not excuse nonperformance by the promissor (i.e., refusal to pay the claim). A breach not causally connected is, by definition, an immaterial breach. It has no bearing on the outcome of the accident because the accident would have happened regardless of the breach. The "nonperformance," or refusal to pay a claimant for a covered loss, is only excused if the policy holder frustrated the purpose of the policy.[121] A policy's purpose is to cover an aircraft owner from accidental things that cause damage, such as pilot error, weather conditions, or other outside forces. This purpose is not defeated by an activity of the insured that does not cause any harm. Excusing the insurance company's nonperformance, or refusal to pay a claim on a covered loss, would further create a disproportionate forfeiture in favor of the insurance company.

Because some damages might be appropriate, perhaps a prorated premium covering the period of activity that constituted partial breach would be a more appropriate remedy in these situations. Rather than cancelling the coverage of the entire contract—which is not permitted under the material breach

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[117] Ackerman v. McMillan, 442 S.E.2d 618, 619–20 (S.C. Ct. App. 1994).

[118] *See* RESTATEMENT (SECOND) OF CONTRACTS § 229 (1981).

[119] *Id.*

[120] *Id.* cmt. b.

[121] *See In re Sandman Assocs., L.L.C.*, 251 B.R. 473, 482–83 (W.D. Va. 2000); Horton v. Horton, 987 S.E.2d 200, 204 (Va. 1997).

doctrine—the insurer could institute a fine for the prohibited activity without causing such an unfair and one-sided result.

Materiality was introduced in the causal connection context in *National Insurance Underwriters v. King Craft Custom Products, Inc.*[122] In that case, the insurance policy in question applied to the airplane "only while being operated . . . by [a pilot] having not less than 550 total pilot flying hours."[123] Bad weather caused a crash that killed the pilot and two passengers.[124] The insurance company refused to pay for the aircraft damage or the passengers' loss because the pilot had only 484.3 flying hours.[125] The court, however, concluded that the flight hours were immaterial to acceptance of the risk because the policy would have issued at the same price even if the pilot had less than 550 hours.[126] Although the immateriality was not based on a causal connection question in this case,[127] it shows the court's ability to step beyond the strict contract construction and use a materiality analysis.

The *Restatement Second of Contracts* lists five significant circumstances to consider in determining whether a non-performance is material:[128]

a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.[129]

These five considerations make it clear that a causal connection is fair and should be required in aviation insurance policies.

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122 368 F. Supp. 476, 479–80 (N.D. Ala. 1973).
123 *Id.* at 477.
124 *Id.*
125 *Id.* at 477, 479.
126 *Id.* at 479.
127 *See id.*
128 RESTATEMENT (SECOND) OF CONTRACTS § 241 (1981).
129 *Id.*

Under the first consideration, the injured party (the insurer) will not be deprived of any benefit he reasonably expected.[130] The insurer's benefit or position in the bargain is typically only monthly premiums and indemnifying claims for situations covered in the policy. If a particular breach did not cause the loss and another covered condition did, then the insurer would be in the exact same position it would have been had the breach not occurred. A non-causally connected breach, therefore, would not change the insurer's position or deprive it of any reasonably expected benefit.

The second consideration is "the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived."[131] As discussed above, the insurer is not deprived of any benefit, thus it is adequately compensated through insurance premiums. Note that this result would be different if the excluded activity had actually contributed to the accident. An insurance company obviously excludes certain activities to prevent such accidents. For example, the policy should not have to cover an accident caused by the pilot doing aerobatic flips in the air if the pilot's policy excluded that activity. The benefit arises from *preventing* this activity or preventing the resulting loss from this activity, but not from a lucky break because the insurance company is allowed to detract attention from the real cause by pointing to a peripheral matter.

The third consideration is crucial because the insured who violates the policy in a way unrelated to the policy provisions applicable to the accident will inevitably suffer a forfeiture on the applicable portion.[132] For example, a person or company insured and covered for mechanical defects could lose that coverage if a mechanical defect occurs and the pilot's medical certificate is expired even by one day. Although the mechanical defect is technically paid for and covered, that coverage is forfeited because of the unrelated condition (such as an expired medical certificate) that in no way contributed to the accident. Thus, the insurance policy holder will suffer an extreme forfeiture by losing out not only on the worthless insurance premiums he has paid, but also on the huge expense of repairing a damaged aircraft.

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130 *Id.*

131 *Id.*

132 *Id.*

Fourth, a court will contemplate "the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances."[133] While this consideration is not always applicable due to the fatal nature of aircraft accidents, insured persons are oftentimes able to cure the failure within a short time of the loss.[134] For example, in *Omaha Sky Divers Parachute Club, Inc. v. Ranger Insurance Co.*, the unrelated breach was an expired medical certificate and the crash was due to brake failure.[135] Regardless of the fact that the pilot renewed his medical certificate two days after the accident, the insurer was allowed to escape liability even after the non-occurring condition was corrected.[136] It seems logical that if a non-occurring condition can be cured so quickly and it did not contribute to the accident in question, it should not have any bearing on the insurer's coverage.

Finally, the court will take into account "the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing."[137] Realistically, provisions in insurance policies are not bargained for or negotiated independently.[138] The insured has little choice but to accept the policy as is, even though he may not have a complete understanding of the policy.[139] With sometimes thousands of requirements that must be met in an aviation insurance policy, an insured that is not in compliance with all of them is not necessarily acting unreasonably or in bad faith. In fact, if the matter was considered the other way around, it does not suggest "good faith and fair dealing" to allow an insurer to continue collecting premiums while believing it has no exposure to risk at all.[140]

Taking into account these basic principles of contract law and materiality, the causal connection is a way to ensure that a breach is material before allowing an insurer to avoid liability and receive a windfall. The immaterial breach doctrine might

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133 *Id.*

134 *See* Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 163 (Neb. 1973).

135 *Id.*

136 *Id.* at 164.

137 RESTATEMENT (SECOND) OF CONTRACTS § 241 (1981).

138 Avemco Ins. Co. v. Chung, 388 F. Supp. 142, 150 (D. Haw. 1975).

139 *Id.*

140 Pickett v. Woods, 404 So. 2d 1152, 1153 (Fla. Dist. Ct. App. 1981).

also gain further endorsement from supporters of the "efficient proximate cause" doctrine.[141] While not explicitly subscribing to the causal connection requirement, the "efficient proximate cause" doctrine states that occurrence of an excluded activity cannot bar the operation of an insurance policy unless that activity was the main contributing cause.[142] A secondary cause, because of the occurrence of another, could then logically be "immaterial" for the purposes of exclusions.[143]

B. A Causal Connection Requirement Protects the Insured's Reasonable Expectations

The reason that some states maintain a causal connection requirement is to protect the insured. Two different lines of reasoning typically form the basis for this argument. The first type of protection is aimed at the insurance customer's reasonable expectations.[144] The second type protects the insured from the unbalanced negotiating power that typically favors the insurance company.

Protecting the insured's reasonable expectations is premised on the insured's belief that an insurer would not insert "a mere arbitrary provision."[145] Rather, the insurers would have the specific purpose of relieving themselves from liability *caused* by the excluded condition.[146] Thus, it would be reasonable for a person to think the clause only limits liability *resulting* from those excluded activities.[147] This type of framework tries to prevent insurers from denying coverage on a technicality that did not contribute to the loss.[148]

For example, the South Carolina Supreme Court used this type of reasoning when an insurer tried to avoid coverage of an aircraft accident when the pilot breached the policy by letting his medical certificate expire.[149] The policy required the pilot

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141 *See* Chase v. State Farm Fire & Cas. Co., 780 A.2d 1123, 1130 (D.C. 2001); *see also supra* notes 41–47 and accompanying text.

142 *Chase*, 780 A.2d at 1130.

143 Id.

144 *See* S.C. Ins. Co. v. Collins, 237 S.E.2d 358, 361–62 (S.C. 1977); Riordan v. Commercial Travelers Mut. Ins. Co., 525 P.2d 804, 807 (Wash. Ct. App. 1974) (discussing a non-aviation case).

145 *Collins*, 237 S.E.2d at 361–62.

146 *Id.* at 361.

147 *Id.*; *Riordan*, 525 P.2d 804–07.

148 Global Aviation Ins. Managers v. Lees, 368 N.W.2d 209, 212 (Iowa Ct. App. 1985).

149 *Collins*, 237 S.E.2d at 358, 361.

operating the aircraft to have a valid medical certificate, but the court held that the policy afforded coverage because the pilot's medical condition did not contribute to the accident.[150] "[W]hen the parties made the contract of insurance, they were not inserting a mere arbitrary provision, but . . . it was the purpose of the insurance company to relieve itself of liability from accidents caused by the excluded condition."[151]

Iowa courts similarly require a causal connection.[152] The Iowa legislature passed an anti-technicality statute that prohibits the insurer from denying coverage unless the breach relied upon contributes to the loss.[153] An Iowa court gleaned that the legislature's intent was to "protect insureds by preventing insurers from denying coverage based upon a technical violation of a policy provision which did not contribute to the loss."[154] Thus, if pilot error caused an aircraft accident upon landing and his expired medical certificate had no effect on the accident, the insurer remained liable under the policy.[155]

C. A Causal Connection Requirement Balances the Disparate Bargaining Power Between Insurer and Insured

The courts that use this line of reasoning recognize that the negotiating power in insurance contracts is unbalanced.[156] One court described an insurance contract not as a negotiated agreement, but "a contract of adhesion, because the terms are dictated by the insurance company to the insured."[157] Some courts believe that insurance policies are not truly consensual, but are only available on a "take-it-or-leave-it basis."[158] Because of this, some courts refuse to follow a strict contract interpretation rule regarding insurance policies.[159] Instead, more than just a strictly construed breach of the insurance contract must occur to avoid coverage. The breach must be causally related to the

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150 *Id.* at 361–62.

151 *Id.*

152 *Lees*, 368 N.W.2d at 212.

153 Iowa Code Ann. § 515.101 (West 2007).

154 *Lees*, 368 N.W.2d at 212.

155 *Id.*

156 *See generally* Ouellette v. Me. Bonding & Cas. Co., 495 A.2d 1232 (Me. 1985); Pickering v. Am. Emp. Ins. Co., 282 A.2d 584 (R.I. 1971).

157 *Ouellette*, 495 A.2d at 1235.

158 *Pickering*, 282 A.2d at 593.

159 *See Ouellette*, 495 A.2d at 1235.

loss, thus prejudicing the insurer if the activity was not excluded.[160]

D. A Causal Connection Requirement Is Inherently Fair

Many courts apply the causal connection requirement simply because it would be unfair to allow an insurance company to avoid liability based on a technicality.[161] This reasoning is said to promote justice, because "[to] deny the insured the coverage he had paid for where merely a technical breach occurred would be unfair."[162] Another argument expressed is that the causal connection maintains a sense of parallelism between the insurer and insured.[163] Because a causal connection is required to *gain* coverage, a causal connection should be required in order to take coverage away.[164]

The Florida legislature passed an "anti-technicality" statute that requires any breach made by the insured on the policy to increase the hazard before it will void the policy.[165] The statute was subsequently applied in *Pickett v. Woods*, an aviation case in which the plane's airworthiness certificate was not valid as required by the insurance contract.[166] Because the accident was due to pilot error attempting to land in bad weather and no condition of the aircraft contributed to the crash, the insurance company was not able to deny coverage based on the invalid airworthiness certificate.[167] The court in that case also pointed out that if no causal connection were required, "it would actually be to the insurer's advantage that the insured failed to renew the airworthiness certificate. In such event, the insurer would collect a premium but would have no exposure to risk because the policy would no longer be effective."[168] Insurance

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160 *Id.*

161 Bayers v. Omni Aviation Mangers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981) (applying Montana law); Amer. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 970 (S.D. Ill. 1978); Avemco Ins. Co. v. Chung, 388 F. Supp. 142, 151 (D. Haw. 1975); Pickett v. Woods, 404 So. 2d 1152, 1153 (Fla. Dist. Ct. App. 1981); S. Ins. Co. v. Graham, 280 S.W. 30, 31 (Tenn. 1926) (not an aviation case); AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc., 198 S.W.3d 276 (Tex. App.—San Antonio 2006, pet. denied).

162 *Bayers*, 510 F. Supp. at 1207.

163 *Byerly Aviation, Inc.*, 456 F. Supp. at 970.

164 *Id.*

165 Fla. Stat. § 627.409(2) (2005).

166 *Pickett*, 404 So. 2d at 1153.

167 *Id.*

168 *Id.*

companies receive "a pure windfall of non-liability" under this rule.[169] Consumers do not want to pay for coverage they do not have, and the statute is meant to prevent that kind of unfairness.[170]

It seems counterintuitive that insurance companies would be best served if aircraft owners did not stay current in annual inspections and pilots operating aircraft did not get regular medical check-ups, as required by the FAA. In fact, it creates an incentive for insurance companies to refrain from verifying compliance with exclusion requirements when issuing the policy in the first place. Insurers want compliance with exclusions to lessen the chance that things will go wrong and to limit their liability. But compliance does not ensure that things will not go wrong. If, however, the insured does not get these inspections at all, it may increase the chance of an accident but will *eliminate* the liability of the insurance company completely.[171] The purpose and goals of an insurance company will not be justly maintained in the face of these competing self-interests.

Texas also recently upheld its application of an anti-technicality statute in the aviation context in *AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc.* on the grounds of fairness and conscionability.[172] The *Holt Helicopters* court upheld application of a fire insurance anti-technicality statute as evidence that Texas public policy would support a causal connection requirement in aviation contracts.[173] The court in *Puckett v. United States Fire Insurance Co.* previously used that statute to support the requirement of a causal connection in aviation contracts because "allowing an insurance company to avoid liability when the breach of contract in no way contributes to the loss is unconscionable and ought not to be permitted."[174] Texas still recognizes the fairness principles adopted by *Puckett*, which, like Florida, recognized that if insurers were allowed to deny coverage on a technicality it would essentially allow insurance companies to keep collecting insurance premiums with no risk.[175]

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[169] *See* Am. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 970 (S.D. Ill. 1978).

[170] *See Pickett*, 404 So. 2d at 1153.

[171] *Id.*

[172] 198 S.W.3d 276 (Tex. App.—San Antonio 2006, pet. denied).

[173] *Id.* at 281.

[174] 678 S.W.2d 936, 938 (Tex. 1984).

[175] *Holt*, 198 S.W.3d at 280.

Montana is another state that requires a causal connection based on fairness.[176] For example, an insurer was not allowed to deny coverage because it would be unfair to do so based on a technicality where the breach was an expired medical certificate, and it was undisputed that the pilot's medical condition was unrelated to the crash.[177] Similarly, Hawaii did not allow an insurer to escape liability due to a lapsed medical certificate required by the policy where there was no indication it was the cause of the crash.[178] "To deny the insured the very thing paid for . . . even though there is no likelihood that (the insurer) was prejudiced by the breach . . . would be unfair to the insureds."[179] The court in *Avemco* also interestingly noted that the insurance company's Vice President of Claims revealed in his deposition that it was not Avemco's policy to check the validity of the medical certificate when issuing or renewing policies, but it was one of the first steps taken when a loss was reported.[180] In other words, if the insurer was allowed to deny liability here, then it was okay for the insurer to collect premiums without any liability.

Tennessee, though never in the aviation context, has creatively decided that a causal connection should be required.[181] The cases give their reasoning in the form of the same question: "Suppose a man violates the law against profanity and is shot while so doing; should that absolve the company from liability?"[182] The implication from that question is that it would be unfair to deny coverage to which an insured is entitled based on incidental activity that could create a windfall to the insurer. For example, it would be preposterous to think that a murdered man's wife is entitled to nothing from his life insurance policy because he said a curse word that was against the law at the time he was shot.

Moreover, the causal requirement is fair because it is a very small hurdle for insurers to overcome. If *any* connection to the

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[176] Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981).

[177] *Id.*

[178] Avemco Ins. Co. v. Chung, 388 F. Supp. 142, 151 (D. Haw. 1975).

[179] *Id.* (quoting Cooper v. Gov't Emps. Ins. Co., 237 A.2d 870, 873–74 (N.J. 1968)).

[180] *Id.* at 146.

[181] S. Ins. Co. v. Graham, 280 S.W. 30, 31 (Tenn. 1926); Accident Ins. Co. of N. Am. v. Bennett, 16 S.W. 723, 725 (Tenn. 1891).

[182] *Graham*, 280 S.W. at 31 (citing Bloom v. Franklin Life Ins. Co., 97 Ind. 478 (1884)).

accident is shown in a causal connection state, the claim can be denied. The threshold for showing the connection is low. The causal connection requirement is fair in that it recognizes that causal breaches, however small, should not be overlooked when they cause a loss. The causal connection requirement only seeks exemption for breaches that are clearly removed from being even a remote cause of the loss.

E. A Causal Connection Requirement Does Not Prejudice the Insurer

One of the reasons some states offer to support the causal connection requirement is that the insurer is not prejudiced in any way by the non-causally related breach.[183] This reasoning follows logically from the fact that if the insured's breach does not cause the loss, then another condition *did* cause the loss.[184] So, when there is no causal connection, the accident would have occurred regardless of the breach.[185] Because insurance companies, by adding exclusions, only mean to exclude things that contribute to the risk or harm, a non-causally-related breach should not violate the insurance policy.[186]

Illinois is one state that believes there is no prejudice that occurs in requiring a causal connection.[187] The court refused to relieve an insurer from liability after an accident in which the pilot was not one of the approved pilots in the insurance policy when one of the helicopter's rotors detached mid-flight.[188] Because the mechanical malfunction was not due to any actions of the pilot, the court determined that there was no increased risk to the insurer and the accident would have occurred even if an approved pilot were controlling the helicopter.[189] Similarly, a Montana court found that lack of prejudice is a convincing factor in requiring a causal connection:

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[183] Bayers v. Omni Aviation Mangers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981) (applying Montana law); Am. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 970 (S.D. Ill. 1978); Martin v. Motors Ins. Corp., 68 So. 2d 869, 871 (Miss. 1954) (not an aviation case, although Mississippi applied the causal connection requirement in aviation cases).

[184] *Byerly Aviation*, 456 F. Supp. at 970.

[185] *Id.*

[186] *Bayers*, 510 F. Supp. at 1207.

[187] *Byerly Aviation*, 456 F. Supp. at 970.

[188] *Id.*

[189] *Id.*

> The company inserted the medical certificate provision to guard against the risk of loss which arises where a person of bad health pilots an aircraft. In this case, [the pilot's] lack of medical certification did not increase the risk of loss to the company, and the insured's coverage will not be forfeited because of an alleged technical breach of the policy.[190]

Although this type of reasoning is rarely used alone and may not have the stand-alone strength of some of the others, it nevertheless logically supports a causal connection requirement.

V. REASONS *AGAINST* A CAUSAL CONNECTION REQUIREMENT

A. A BREACH SUSPENDS COVERAGE WITH NO NEED FOR FURTHER ANALYSIS

In many instances, the causal connection requirement is completely disregarded in light of holding that coverage is suspended once the breach has occurred.[191] The courts following this line of reasoning state that the causal connection does not need to be discussed at all because the breached condition "served to void [the insurer's] obligations . . . under the policy."[192] "While the proscribed activity continues, the insurance is suspended as if it had never been in force."[193] In that way, the contract will serve to halt coverage when the excluded activity takes place "with no need to show some additional element."[194]

This rationale was used to excuse an insurer from liability for a claim for damages occurring during an emergency crash landing because the pilot lacked the required medical certificate:

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[190] *Bayers*, 510 F. Supp. at 1207.

[191] U.S. Fire Ins. Co. v. Producciones Padosa, Inc., 835 F.2d 950, 955 (1st Cir. 1987) (applying Puerto Rico law); Bequette v. Nat'l Ins. Underwriters, Inc., 429 F.2d 896, 898 (9th Cir. 1970) (applying Alaska law); Roberts v. Underwriters at Lloyds London, 195 F. Supp. 168, 172 (D. Idaho 1961) (applying California law, but indicating Idaho law would be the same); Grigsby v. Hous. Fire & Cas. Ins. Co., 148 S.E.2d 925, 927 (Ga. 1966); W. Food Prods. Co. v. U.S. Fire Ins. Co., 699 P.2d 579, 582 (Kan. Ct. App. 1985); Aetna Cas. & Sur. Co. v. Urner, 287 A.2d 764, 768 (Md. 1972); Kilburn v. Union Marine & Gen. Ins. Co., 40 N.W.2d 90, 92 (Mich. 1949); Macalco, Inc. v. Gulf Ins. Co., 550 S.W.2d 883,893 (Mo. Ct. App. 1977); Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 164–65 (Neb. 1973); Hedges Enter., Inc. v. Fireman's Fund Ins. Co., 225 N.Y.S.2d 779, 784 (Sup. Ct. 1962); Baker v. Ins. Co. of N. Am., 179 S.E.2d 892, 894 (N.C. Ct. App. 1971).

[192] *Producciones Padosa*, 835 F.2d at 955.

[193] *Hedges Enter.*, 225 N.Y.S.2d at 784.

[194] *Macalco*, 550 S.W.2d at 892.

> If the loss is not within the coverage of the policy, the casual relation is not involved. It is immaterial that the excluded use may not have been the cause of the loss, nor does it matter that the insured did not know that the pilot had failed to meet the requirements of the regulations.[195]

In another case involving a policy stating that "no person may act as pilot in command or in any other capacity . . . unless he has in his personal possession an appropriate current medical certificate," the court interpreted the policy to mean the risk is excluded *while* the pilot is not properly certificated, not if it is *caused* by the pilot's lack of proper certification.[196] While the pilot's medical certificate was expired, the court held there was no need to show a causal connection because "coverage under the policy simply did not exist."[197]

B. An Insurance Policy Is a Contract That Should Be Enforced as Written

The most widely used reasoning applied by courts that do not require a causal connection is that insurance policies are contracts that should be enforced as written.[198] This rationale posits that "[a]n insurance policy is a contract to be construed to effect the intention of the parties . . . . The best evidence of that intent is the policy itself . . . . The plain language of the limitation must be respected."[199] These courts differentiate insurance coverage questions from tort actions, for which a causal link must be shown.[200] The courts believe that imposing a causal connection requirement "would allow courts to ignore the plain language of an insurance policy exclusion,"[201] but "courts cannot indulge in a forced construction ignoring provisions or so distorting them

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[195] *Grigsby*, 148 S.E.2d at 927.

[196] *Baker*, 179 S.E.2d at 893.

[197] *Id.* at 894.

[198] Griffin v. Old Republic Ins. Co., 133 P.3d 251, 254 (Nev. 2006) ("No such causal language exists in the policy exclusion here . . . . We will not rewrite contract provisions that are otherwise unambiguous."); Ochs v. Avemco Ins. Co., 636 P.2d 421, 424 (Or. Ct. App. 1981) (An insurance policy "must be strictly construed.").

[199] Nat'l Union Fire Ins. Co. of Pittsburg v. Estate of Meyer, 192 Cal. App. 3d 866, 872 (1987) (internal citations omitted).

[200] U.S. Specialty Ins. Co. v. Skymaster of Va., Inc., 123 F. Supp. 2d 995, 1002 (E.D. Va. 2000); Kilburn v. Union Marine & Gen. Ins. Co., 40 N.W.2d 90, 92 (Mich. 1949) ("This is not a tort action wherein causal relation is frequently involved."); Witzko v. Koenig, 272 N.W. 864, 867 (Wis. 1937) (holding in a non-aviation context that insurance liability is contractual, not tort law).

[201] Sec. Ins. Co. of Hartford v. Andersen, 763 P.2d 246, 250 (Ariz. 1988).

as to accord a meaning other than that evidently intended by the parties."[202]

These courts also offer as support for their position that they do not want to change the policy entered into by the parties.[203] "To impose such a requirement would only serve to alter the agreement between the parties to the insurance contract."[204] Colorado required that an insurance policy "be given the plain and ordinary meaning" to deny coverage to an insured that did not have an up-to-date annual inspection.[205] Even though the plane was up-to-date on its 100-hour inspections (which are required in addition to the essential identical annual inspection), it was not up-to-date on its FAA annual inspection, and the policy excluded coverage for losses occurring during violation of FAA airworthiness requirements, which include the annual inspections.[206] It did not matter that "the scope and detail of the inspections are exactly the same in all respects."[207] Another court similarly expressed a contradictory holding when allowing an insurer to deny coverage for an accident when the aircraft was piloted by someone who was not named in the policy.[208] Amusingly, however, the court noted that it had "[n]o doubt the [insurer] would have added [the pilot's] name to the policy if [the insured] would have requested such an addition."[209]

C. An Insurer Has a Right to Limit Its Risk

Many states argue for enforcing insurance contracts without a causal connection requirement by pointing to the principle that an insurance company should have the right to limit its own risk.[210] Insurance policy provisions "directly affect the risk the

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202 Rangers v. Kovach, 63 F. Supp. 2d 174, 181 (D. Conn. 1999) (internal citations and quotations omitted).

203 U.S. Fire Ins. Co. v. W. Monroe Charter Serv., Inc., 504 So. 2d 93, 100 (La. Ct. App. 1987).

204 *Id.*

205 O'Connor v. Proprietors Ins. Co., 696 P.2d 282, 285 (Colo. 1982).

206 *Id.* at 283.

207 *Id.*

208 Roberts v. Underwriters at Lloyd's London, 195 F. Supp. 168, 170 (D. Idaho 1961).

209 *Id.* at 174 ("No doubt the defendant would have added [the pilot's] name to the policy if plaintiff would have requested such an addition. The record reveals that [he] was a qualified pilot."). The court blamed the situation on the "indifference toward his insurance coverage," yet, no one disputed that the insured was up to date in his payments. *Id.* at 170, 174.

210 Aetna Cas. & Sur. Co. v. Urner, 287 A.2d 764, 765 (Md. 1972); U.S. Aviation Underwriters, Inc. v. Cash Air, Inc., 568 N.E.2d 1150, 1152 (Mass. 1991); Omaha

insurer assumes and upon which premiums are established."[211] If a causal connection was required, "an unbargained-for expansion of coverage" would result, increasing the risk from its initial confinement in the insurance policy.[212] Thus, endorsers of this reasoning believe excluding activity that increases the risk of loss is reasonable.[213]

Courts have used this reasoning when certain pilot qualification requirements are not met, despite the existence of outside factors.[214] For example, one court held that an insurer could limit its risk of loss in flight by covering only pilots that held a current biennial flight review, even though the accident was caused by hitting a mound of snow upon landing and was unrelated to the flight review.[215] A court in Nebraska similarly held that the pilot's expired medical certificate relieved the insurer from any liability on the policy.[216] In that case, the medical certificate requirement overshadowed the fact that the accident was caused not by the medical condition of the pilot, but by the failure of the plane's brakes upon landing.[217] So, these courts make it clear that insurers are not responsible for all risk, but rather can deny coverage based on a condition unrelated to the accident.[218]

D. Enforcing Policy Provisions as Written Encourages Compliance with Safety Regulations

When justifying the decision not to require a causal connection, courts often list safety as a reason for their determination.[219] A court in Arizona stated that a majority of courts believe "that public policy favors a rule that encourages owners and operators of aircraft to obey and satisfy safety regulations

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Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 164 (Neb. 1973); Aviation Charters, Inc. v. Avemco Ins. Co., 784 A.2d 712 (N.J. 2001) (limited holding); Avemco Ins. Co. v. White, 841 P.2d 588, 591 (Okla. 1992).

[211] *Aviation Charters*, 784 A.2d at 714 (quoting Aviation Charters, Inc. v. Avemco Ins. Co., 763 A.2d 312, 315 (N.J. 2000)).

[212] *Id.*

[213] *White*, 841 P.2d at 591.

[214] *See* Edmonds v. United States, 642 F.2d 877, 880, 883 (1st Cir. 1981) (applying Massachusetts law); *Ranger Ins. Co.*, 204 N.W.2d at 164.

[215] *Edmonds*, 642 F.2d at 880, 883.

[216] *Ranger Ins. Co.*, 204 N.W.2d at 164.

[217] *Id.* at 163.

[218] *Id.* at 165.

[219] *See* Sec. Ins. Co. of Hartford v. Andersen, 763 P.2d 246, 250 (Ariz. 1988); Sec. Mut. Cas. Co. v. O'Brien, 662 P.2d 639, 640 (N.M. 1983); Econ. Aero Club, Inc. v. Avemco Ins. Co., 540 N.W.2d 644, 646 (S.D. 1995).

applicable to their operation of aircraft."[220] Courts feel that many policy requirements, such as the mandatory annual inspection, encourage aircraft owners to perform these safety inspections before the aircraft is flown.[221]

Colorado has a different take on the causal connection requirement but does consider safety in its analysis.[222] Its courts generally do not require a causal connection but will do so if there is a public policy reason for setting aside the particular exclusion.[223] Because insurance provisions requiring a current airworthiness certificate protect against accidents caused by operating unsafe planes, public policy is furthered by this safety-related objective and will not require a causal connection showing.[224] If the provision were an overbroad exclusion of coverage in violation of *any* FAA regulation, it may be in violation of public policy due to the sizeable amount of technical requirements that make it "nearly impossible to have a crash without a violation of at least one of those regulations."[225] However, the dissent makes the point that virtually all FAA regulations are related to safety, which makes the requirement useless to the court's analysis.[226] The dissent argues that the majority "sides" with the insurer by creating an artificial safety requirement, but the better rule would be to require a causal connection requirement.[227] "Given the myriad of such regulations, many of which are highly technical, and all of which are in some way related to aviation safety, when the violation does not contribute to the loss it is unconscionable to allow the carrier to avoid liability."[228]

VI. CONCLUSION

The causal connection debate in insurance law has been unsettled for years, with some states taking strong positions for or against the requirement and with a broad range of reasons on

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[220] *Andersen*, 763 P.2d at 250.

[221] *See* O'Brien, 662 P.2d at 640; Econ. Aero Club, 540 N.W.2d at 646.

[222] *See* O'Connor v. Proprietors Ins. Co., 696 P.2d 282, 286 (Colo. 1982).

[223] *Id.*; RESTATEMENT (SECOND) OF CONTRACTS § 229 (1981).

[224] *O'Connor*, 696 P.2d at 285.

[225] *Id.* at 285 (citing Sw. Life Ins. Co. v. Rowsey, 514 S.W.2d 802, 806 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.); *see also supra* Part II.

[226] *O'Connor*, 696 P.2d at 287 (Neighbors, J., dissenting).

[227] *Id.*

[228] *Id.* at 288.

both sides.[229] But the biggest source of confusion is because most insurance policies do not address the causal connection question either way. The most logical solution is for insurance companies to adopt a position—one way or another—and state it in bold print on the cover of the policy.

FIGURE 1

Option 1 – Inform the Insured that an unrelated technical breach may be used to deny coverage:

WARNING: If you make a claim under this policy, we may deny coverage based on a breach of any part of this policy (or any agreement before issuing this policy) even if it has nothing to do with causing the loss.

FIGURE 2

Option 2 – Insert a causal connection requirement into the policy to eliminate any confusion:

We will not deny coverage for an otherwise-covered loss because of a breach of this policy unless the breach caused or contributed to causing the loss.

But purchasers of insurance would not likely want a policy with the second option. Perhaps the market will help to establish the first option as the default choice. Until insurance companies take universal action, countless versions of causal connection laws across the country will continue to confound legal practitioners and aircraft owners and complicate the state of the law.

Not covering a loss makes sense if, for example, an owner failed to get a timely inspection, and a mechanical problem then causes damage. In such a situation, the problem could have been recognized and fixed by that inspection. However, denying coverage does not make sense if the inspection had no way of uncovering the defect leading to the accident, such that the inspection would have been of no help. The policy of encouraging aircraft owners to obtain inspections makes sense, but it does not necessarily achieve its purpose when no causal connec-

[229] *See* AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc., 198 S.W.3d 276, 278 (Tex. App.—San Antonio 2006, pet. denied) (supporting the causal connection requirement).

tion is required.[230] In *Griffin*, the owner believed his mechanic had performed a required inspection, when, in fact, the mechanic did not as the result of an oversight.[231] Less than a month after picking up the aircraft from the mechanic, the owner, thinking his inspection was current, flew the aircraft.[232] The crash was caused by the pilot switching to an empty fuel tank (pilot error) or by a problem with the fuel system unrelated to the required inspection.[233] Either way, the cause had nothing to do with the inspection nor would it have been prevented by the inspection. Thus, the *Griffin* court essentially punished the aircraft owner for his good faith to maintain his aircraft.[234]

Cases like *Griffin* illustrate the ability of the majority's rationale to be misleading. No causal connection requirement might superficially appear to be a sensible rule, but upon further inspection, it lacks any substance or ability to achieve its stated goals. Therefore, sensible logic favors the adoption of a causal connection requirement.

VII. A FIFTY-STATE SURVEY OF THE CAUSAL CONNECTION QUESTION

ALABAMA

1. Summary

Most likely no causal connection is required for denial of coverage; however, the case on point *had* a causal connection and a separate and independent reason for denial of coverage.[235]

Insurance companies can most likely deny coverage without any causal connection—reaching back to an 1892 opinion stating there is no requirement for a causal connection between an exclusion and the loss.[236] However, both the 1892 and 1942 cases show a causal connection, indicating that in a pure situation with no causal connection, the court may require coverage.[237]

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230 *See* Griffin v. Old Republic Ins. Co., 133 P.3d 251, 256–57 (Nev. 2006).

231 *Id.*; *see also* Old Republic Ins. Co. v. Jenson, 276 F. Supp. 2d 1097, 1099 (D. Nev. 2003); Yodice, *supra* note 1.

232 *Griffin*, 133 P.3d at 256–57; *Jensen*, 276 F. Supp. 2d at 1099.

233 *Griffin*, 133 P.3d at 256–57; *Jensen*, 276 F. Supp. 2d at 1099.

234 *See Griffin*, 133 P.3d at 256–57; *see also Jensen*, 276 F. Supp. 2d at 1099.

235 *See* Cont'l Cas. Co. v. Meadows, 7 So. 2d 29, 31 (Ala. 1942).

236 *See* Standard Life & Accident Ins. Co. v. Jones, 10 So. 530, 533 (Ala. 1892).

237 *See Meadows*, 7 So. 2d at 31; *Jones*, 10 So. at 533.

There are no Alabama statutes or court opinions that address the aviation insurance causal connection question.

2. *Cases*

a. *Continental Casualty Co. v. Meadows*[238]

Meadows involved a man who, while heavily intoxicated, went to his mistress's house to confront her husband.[239] The intoxicated man refused to leave and was subsequently shot by his mistress's husband.[240] The insurance company denied coverage on an accident policy purchased by the decedent because the policy did not cover loss "if injury is sustained while the insured is under the influence of any intoxicant."[241] The opinion cites to *Jones* to show there is no causal connection required, but in the same paragraph states there was a causal connection between being intoxicated and the fatal shooting.[242] The insurance company also denied coverage under the "intentional act" exclusion because the mistress's husband "intentionally" shot the insured.[243] The court agreed that the intentional act exclusion was valid.[244]

b. *Canada Life Assurance Co. v. Piercy*[245]

A man was insured for accidental death and dismemberment, which contained an exclusion for driving "[i]f the [i]nsured's blood alcohol concentration is in excess of 100 milligrams of alcohol per 100 milliliters of blood."[246] The man was in excess of that blood alcohol concentration and was above the legal limit, but was killed when another driver under the influence of alcohol and cocaine crossed the median and hit his vehicle head on.[247] The court referenced the *Meadows* case and the fact that the insurer had "no duty to show" causation, and then further

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238 *Meadows*, 7 So. 2d at 31 (mainly dicta on the causal connection question).
239 *Id.* at 30.
240 *Id.*
241 *Id.* at 29, 31.
242 *Id.* at 31 (citing *Jones*, 10 So. 530 (Ala. 1892) (being under the influence of liquor was a valid exclusion, even if being under the influence had nothing to do with the loss)).
243 *Id.* at 31, 32.
244 *Id.* at 32.
245 No. Civ. A, 00-0373-M, 2000 WL 1566535 (S.D. Ala. Sept. 29, 2000).
246 *Id.* at *1, *2.
247 *Id.*

considered the fairness argument.[248] "The [c]ourt [was] mindful of the [insured's] assertion that [the] denial of benefits 'result[s] in a totally fortuitous, unforeseen and arbitrary denial of benefits owed under the policy and a windfall to the insurance company,'" but concluded that the result was not unfair due to the insured's driving in violation of the law.[249]

ALASKA

1. *Summary*

No causal connection is required for denial of coverage.[250] Alaska case law allows aviation insurance companies to deny coverage without any causal connection between the exclusion and the loss.[251] The stated rationale is that the contract is strictly construed, no coverage exists, and there is no need to consider the causal connection question.[252]

2. *Cases*

a. *Bequette v. National Insurance Underwriters, Inc.*[253]

The insurance policy covered only when the owners or other permissive users held proper pilot ratings.[254] Because one of the owners was flying the plane without appropriate flight ratings to carry passengers, the insurer claimed that the presence of passengers exempted liability coverage.[255] The court held that there was no coverage because a non-certified pilot was flying the aircraft.[256] There was no existing coverage for the flight with which the accident occurred, therefore, there could be no issue of causation (no relevance).[257] The court stated that an insurance company had the right to limit the coverage of a policy issued by it, and when it had done so, the plain language of the limitation must be respected.[258]

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248 *Id.* at *4 (citing Cont'l Cas. Co. v. Meadows, 7 So. 2d 29, 39 (Ala. 1942)).

249 *Id.* (internal citations omitted).

250 *See* Bequette v. Nat'l Ins. Underwriters, Inc., 429 F.2d 896, 897 (9th Cir. 1970).

251 *See id.* at 897, 898.

252 *See id.* at 900.

253 *Id.* (applying Alaska law).

254 *Id.* at 897.

255 *Id.*

256 *Id.*

257 *See id.* at 900.

258 *See id.* at 897 (basing its decision on the trial court opinion in Nat'l Ins. Underwriters, Inc. v. Bequette, 280 F. Supp. 842 (D. Alaska 1968)).

ARIZONA

1. *Summary*

No causal connection is required for denial of coverage.[259] Arizona case law allows an aviation insurance company to deny coverage without any causal connection between the exclusion and the loss.[260] The stated rationale is that this conclusion favors the plain meaning of insurance contracts and encourages aircraft owners and operators to obey safety rules.[261]

2. *Cases*

a. *Security Insurance Co. of Hartford v. Andersen*[262]

An aircraft liability insurer denied coverage for a light aircraft accident on the basis that the pilot did not have a valid medical certificate.[263] The court held that the aircraft insurer was not required to demonstrate that the crash was causally related to the pilot's lack of a medical certificate.[264] In addition, the court stated "that public policy favor[ed] a rule that encourages owners and operators of aircraft to obey and satisfy safety regulations applicable to their operation of aircraft."[265] The court distinguished exclusions from a notice provision as a forfeiture provision and held that an insured can violate the forfeiture provisions and still receive the coverage.[266]

ARKANSAS

1. *Summary*

A causal connection is probably required for denial of coverage, except when the breach is a misrepresentation since a state statute specifically eliminated the causal connection requirement with respect to misrepresentations.[267] One could reasonably infer that other types of breaches might have been included in the legislative treatment if the legislature wanted to eliminate the causal requirement, as it did regarding misrepresentations,

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259 *See* Sec. Ins. Co. of Hartford v. Andersen, 763 P.2d 246, 249 (Ariz. 1988).
260 *See id.*
261 *Id.*
262 *Id.* at 250–51.
263 *Id.* at 248.
264 *Id.* at 249.
265 *Id.* at 250.
266 *Id.* (upholding Lindus v. N. Ins. Co., 438 P.2d 311, 315 (Ariz. 1968)).
267 *See* S. Farm Bureau Life Ins. Co. v. Cowger, 748 S.W.2d 332, 334 (Ark. 1988).

the most atrocious of breaches.[268] There are no cases or statutes in Arkansas that directly address causal connection requirements in aviation insurance policies.

2. Cases

a. *Southern Farm Bureau Life Insurance Co. v. Cowger*[269]

The insured misrepresented his kidney disease and alcoholism, but died in a tractor accident.[270] The court held that due to section 23-79-107 of the Arkansas Code, it was no longer necessary to show causal connection and that the insurer properly denied coverage.[271] The court did, however, point out the fairness and justice considerations it espoused in *National Old Line Insurance Co. v. People* and suggested that in the absence of the statute, it would come down on the side of the insurer.[272] In *People* the court stated:

> Fairness and reason support the view that a causal connection should be essential. Otherwise, when the insured is killed by a stroke of lightning or by being run over by a car, the insurance company could successfully deny liability by showing that the insured was suffering from diabetes when he stated that he was in good health.[273]

CALIFORNIA

1. Summary

No causal connection is required for denial of coverage; however, in the precedent setting case, even if there were a causal connection requirement, coverage probably would have been denied because the facts indicate a connection between the prohibited activity and the crash.[274]

The rationale in California case law is that (1) the plain language of the insurance contract must be respected, and (2) there can be no reasonable expectation of coverage.[275] The

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[268] *See id.* at 337–38 (Hays, J., dissenting).

[269] *Id.* at 332.

[270] *Id.* at 333.

[271] *Id.* at 334 (citing ARK. CODE ANN. § 23-79-107 (West 1987)).

[272] *Id.* at 335–36 (citing 506 S.W.2d 128 (Ark. 1974)).

[273] *People*, 506 S.W.2d at 131, *overruled by Cowger*, 748 S.W.2d at 334–36.

[274] *See* Middlesex Mut. Ins. Co. v. McCoy, 165 Cal. Rptr. 45, 50 (Ct. App. 1980).

[275] *See* Nat'l Union Fire Ins. Co. v. Meyer, 237 Cal. Rptr. 632, 635–36 (Ct. App. 1987).

courts distinguish this analysis from tort analysis, where proximate cause would be required.[276]

2. Cases

a. *National Union Fire Insurance Co. v. Meyer*[277]

The pilot's medical certification had expired, but the pilot was otherwise qualified and current.[278] The plane crashed into the side of a mountain because of pilot error unrelated to the pilot's physical condition.[279] The court denied coverage, relying on *Middlesex Mutual Insurance Co. v. McCoy*.[280] The court stated that insurance policies were contracts in which the plain language "must be respected."[281] While the court "must attempt to ascertain the insured's reasonable expectation as to coverage," when the limiting language of the policy was clear, there could be no "reasonable expectation" of coverage.[282] However, the coverage in *McCoy* would have been denied whether or not there was a causal connection requirement, and *McCoy* set the precedent in California.[283]

b. *Middlesex Mutual Insurance Co. v. McCoy*[284]

The aircraft was being used to smuggle marijuana from Mexico to the United States and crashed into a transmission line three miles south of an unlit airport with no radio communication.[285] The policy excluded coverage when the aircraft was used for an "unlawful purpose."[286] The court did not require the insurer to show a causal connection between the unlawful purpose and the loss.[287] The court distinguished contracts from torts, saying the insured's rights flow from the contract, therefore proximate cause need not be shown.[288]

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276 *Id.* at 636.
277 *Id.* at 632.
278 *Id.* at 633.
279 *Id.*
280 *Id.* at 635 (citing 165 Cal. Rptr. 45 (Ct. App. 1980)).
281 *Id.*
282 *Id.* at 635–36.
283 *See id.* at 635.
284 165 Cal. Rptr. 45 (Ct. App. 1980).
285 *Id.* at 46.
286 *Id.* at 47.
287 *Id.* at 50.
288 *Id.* at 49.

COLORADO

1. *Summary*

No causal connection is required for denial of coverage.[289] Colorado case law states that the insurer is not required to show a causal connection; however, an exclusion may be set aside for public policy reasons (such as an overly-broad exclusion) *and* when there is a causal connection.[290]

2. *Cases*

a. *O'Connor v. Proprietors Insurance Co.*[291]

The aircraft had a current 100-hour inspection but not a current annual inspection.[292] The insurance policy excluded coverage for losses occurring when FAA airworthiness requirements were not met.[293] The inspector must have had more training to do the annuals, but the insurer agreed that there was no evidence that not having the designation and a certified annual inspector caused the accident.[294] The court agreed with the denial of coverage, stating that (1) unambiguous provisions should be given their plain meaning, and (2) safety-related provisions were not against public policy.[295] However, the court stated that an exclusion for *any* violation of FAA regulations or violation of a non-safety-related requirement might be against public policy.[296] The court observed that it would be virtually impossible not to violate "at least one of [the] regulations" during an accident.[297]

The dissent argued the insurer should be required to show a causal connection because: (1) practically all FAA regulations were related to safety in one way or another; (2) courts would be wasting time evaluating provisions on their relation to safety; (3) violations of government regulations were highly technical; and (4) it was too burdensome to require the insured to prove a "negative"—that the violation was *not* related to the accident.[298]

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289 *See* O'Connor v. Proprietors Ins. Co., 696 P.2d 282, 283 (Colo. 1985).
290 *See id.* at 285–86.
291 *Id.* at 282.
292 *Id.* at 283–84.
293 *Id.* at 283.
294 *Id.* at 284.
295 *Id.* at 285.
296 *Id.*
297 *Id.*
298 *Id.* at 287–88 (Neighbors, J., dissenting).

CONNECTICUT

1. *Summary*

No causal connection is required for denial of coverage.[299] The rationale is that an insurer is entitled to rely on policy provisions to maintain reasonable expectations and that the court should interpret insurance policies under general contract rules.[300] The court recognized that "[p]ublic policy does not favor the forfeiture of insurance coverage based on the insured's technical violation of the insurance policy," but weighed this against the avoidance of "disruption of the parties' settled expectations."[301]

2. *Cases*

a. *Ranger Insurance Co. v. Kovach*[302]

The pilot was not licensed to fly in Instrument Flight Rules (IFR) conditions, and the insurer denied coverage for a crash that occurred under IFR conditions.[303] The court recognized the split of authority on whether a causal connection was required, but chose to adopt the "majority view," stating that an insurance company had the same right as any other party to state the terms of the contract, provided they were not against public policy.[304]

The insurer in Connecticut was entitled to rely on a policy provision that unambiguously made coverage dependent on a pilot meeting certain standards.[305] The court noted that it interprets insurance policies by the same general rules that govern any written contract, stating that such policies are "enforced in accordance with the real intent of the parties as expressed in the language employed in the policy."[306] The court recognized that "public policy does not favor the forfeiture of insurance coverage based on the insured's technical violation of the insurance policy," but weighed this against avoidance of disrupting the parties' expectations.[307]

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299 *See* Ranger Ins. Co. v. Kovach, 63 F. Supp. 2d 174, 180 (D. Conn. 1999).
300 *Id.* at 181.
301 *Id.* (internal citation omitted).
302 *Id.* at 174.
303 *Id.* at 177.
304 *Id.* at 181.
305 *Id.*
306 *Id.*
307 *Id.*

DELAWARE

1. *Summary*

A causal connection most likely is required for denial of coverage. There are no Delaware statutes or court opinions that specifically address the aviation insurance causal connection question, but Delaware case law generally favors coverage and the Delaware Code imposes a causal connection on using incorrect statements on an insurance policy as a reason for denying coverage.[308]

2. *Cases & Statutes*

a. *Bass v. Horizon Assurance Co.*[309]

The insured was driving an automobile under the influence of alcohol when the accident occurred, injuring the driver and a passenger.[310] The insurance policy had an exclusion for "bodily injury sustained by . . . any person . . . convicted of driving while under the influence of alcohol or narcotic drugs."[311] But a Delaware statute imposed mandatory insurance coverage for "medical treatment and for lost earnings sustained by persons injured" in an automobile accident.[312] The court held that the exclusion was against public policy because it encouraged the "purchase of insurance for the protection against bodily injury."[313] While no causal connection requirement was discussed, given Delaware's stance on protection for the insured, it follows that it may favor the causal connection requirement, which makes it tougher for insurers to deny liability.[314]

b. *Baltimore Life Insurance Co. v. Floyd*[315]

A false statement in an application for insurance will not bar recovery if the statement is not material to the risk.[316] The court did not consider an immaterial false statement to be a breach.[317]

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[308] *See* DEL. CODE ANN. tit. 18, § 2711 (West 2010); Bass v. Horizon Assurance Co., 562 A.2d 1194 (Del. 1989).

[309] *Bass*, 562 A.2d at 1194.

[310] *Id.* at 1195.

[311] *Id.*

[312] *Id.*

[313] *Id.* at 1196.

[314] *Id.*

[315] 91 A. 653 (Del. Super. Ct. 1914).

[316] *Id.* at 654.

[317] *Id.*

c. *Marvin v. State Farm Mutual Automobile Insurance Co.*[318]

An employer owned an uninsured motorcycle and allowed his employee to operate it.[319] The employee then got into an accident caused by another driver.[320] The employee's mother had insurance for a different vehicle, which she owned.[321] The policy excluded "benefits for an injury that occurred while the covered party was operating a vehicle, not covered under the policy, but which was available for his or her regular use."[322] The court held that the insurer was not liable because the employer fell under the "regular use exclusion."[323] The court held that it would enforce exclusions unless they were against public policy, but made no mention of a causal requirement.[324]

d. Title 18, Section 2711 of the Delaware Code

The relevant code provision reads:

> Incorrect statements [on application for insurance policy] shall not prevent a recovery under the policy or contract unless either: (1) [f]raudulent; or (2) [m]aterial either to the acceptance of the risk or to the hazard assumed by the insurer; or (3) [t]he 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.[325]

DISTRICT OF COLUMBIA

1. Summary

A causal connection (efficient proximate cause) is required as a default, but can be changed through explicitly contracting to include non-causally-related exclusions.[326]

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318 No. 09C-01-092CHT, 2002 WL 31151655 (Del. Super. Ct. May 2, 2002).
319 *Id.* at *1.
320 *Id.* at *2.
321 *Id.* at *1.
322 *Id.* at *1 n.3.
323 *Id.* at *3.
324 *See id.* at *4–5.
325 DEL. CODE ANN. tit. 18, § 2711 (West 2010).
326 *See* Chase v. State Farm Fire & Cas. Co., 780 A.2d 1123, 1130–31 (D.C. Cir. 2001).

The D.C. court's rationale is the value of the freedom to contract, but it will look at causation if the contract is silent on the causation relationship.[327] The default rule is the efficient proximate cause doctrine: if both a covered and an excluded risk contribute to the loss, the court will use whichever is the predominating cause or set the others into motion, looking at the quality versus the remoteness of the cause.[328] Under this doctrine, the insurer will still incur liability if the excluded activity was a cause when it is "merely incidental."[329] This implies the court's propensity to look at the causal relationship in all cases.[330]

2. Cases

a. *Chase v. State Farm Fire and Casualty Co.*[331]

The insured had a homeowner's policy covering the rupture of pipes.[332] The policy explicitly stated that it did not cover "any loss which would not have occurred in the absence of" earth movement, regardless of any other dominant causes.[333] The insured's pipes froze and burst, causing the soil to shift and damage the insured's property.[334] The court held that the efficient proximate cause doctrine would apply by default, if not for the explicit statement to the contrary.[335]

FLORIDA

1. Summary

A causal connection is required.[336] The Florida legislature created an anti-technicality statute, which provides that the breach of the policy must have increased the hazard (causally connected).[337] Florida courts apply this statute to aviation insurance policies.[338]

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327 *See id.*
328 *See id.* at 1129–30.
329 *See id.* at 1130.
330 *See id.*
331 *Id.*
332 *Id.* at 1125.
333 *Id.* at 1126.
334 *Id.* at 1125–26.
335 *Id.* at 1130–31.
336 *See* FLA. STAT. § 627.409(2) (2005).
337 *See id.* § 627.409(2).
338 *See* Pickett v. Woods, 404 So. 2d 1152, 1152–53 (Fla. Dist. Ct. App. 1981).

2. Cases & Statutes

a. Section 627.409(2) of the Florida Statutes

The relevant statute reads:

> 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 there for does not 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.[339]

b. *Pickett v. Woods*[340]

An aircraft's airworthiness certificate was not valid at the time of the accident where a pilot "flew into the ground while attempting to land in bad weather."[341] The court held that where an aircraft "crash was due to pilot error . . . and not the result of any [equipment] malfunction, the failure to have a valid airworthiness certificate," as required by insurance contract, "did not contribute to the accident" and the insurance company would be prevented "from relying on the exclusion [of the insurance contract] to deny coverage."[342]

GEORGIA

1. Summary

No causal connection is required.[343] Georgia courts do not consider exclusions to be within coverage and, therefore, never get to the causal connection question.[344] Once a particular provision has been breached, the coverage is suspended, and no causal connection issues come into question.[345]

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339 FLA. STAT. § 627.409(2).

340 404 So. 2d at 1152.

341 *Id.* at 1152–53.

342 *Id.* at 1153.

343 *See* Grigsby v. Hous. Fire & Cas. Ins. Co., 148 S.E.2d 925, 927 (Ga. Ct. App. 1966).

344 *See id.*

345 *See* Farmers & Merch. Bank v. Ranger Ins. Co., 186, S.E.2d 579, 580 (Ga. Ct. App. 1971).

2. Cases

a. *Grigsby v. Houston Fire & Casualty Insurance Co.*[346]

A pilot did not have current medical certificates at the time he made an emergency crash landing causing property damage.[347] The insurer denied coverage because the policy excluded coverage for damage that happened during flight in violation of regulations pertaining to the Airman's Certificates.[348] The court said that the causal relationship was immaterial because the loss was not within the policy.[349] The court never discussed the causal question, reasoning that it was not necessary to answer.[350]

b. *Farmers and Merchants Bank of Manchester v. Ranger Insurance Co.*[351]

A student pilot was carrying a passenger when he crashed.[352] The pilot did not have sufficient FAA ratings to be carrying a passenger.[353] The presence of the passenger did not have a causal relationship with the loss, but the exclusions section in the insurance policy only allowed operation of the aircraft by pilots with the sufficient FAA ratings.[354] The court held that regardless of this lack of causal connection, the insured was properly denied coverage.[355]

HAWAII

1. Summary

A causal connection is required.[356] Hawaii courts reason that it is unfair to deny insureds the very thing they paid for, displaying a strong dislike for forfeitures.[357] Hawaii courts consider the lack of a valid medical license to be a representation (condition subsequent) rather than an exclusion.[358] However, the courts

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346 *Grigsby*, 148 S.E.2d at 925.
347 *Id.* at 927.
348 *Id.* at 926.
349 *Id.* at 927.
350 *Id.*
351 186 S.E.2d 579 (Ga. Ct. App. 1971).
352 *Id.*
353 *Id.* at 580.
354 *Id.* at 579–80.
355 *Id.* at 580.
356 *See* Avemco Ins. Co. v. Chung, 388 F. Supp. 142, 150 (D. Haw. 1975).
357 *See id.* at 151.
358 *See id.* at 149.

do not require a causal connection in the case of fraud or specific exclusions.[359]

2. Cases

a. *Avemco Insurance Co. v. Chung*[360]

A pilot's medical certificate had expired more than a year before the crash.[361] In the absence of any showing whether the state of a pilot's health at the time of the crash had any causative effects, an aviation insurer could not avoid liability on the policy, despite the insured's breach of a condition subsequent.[362] The medical certificate requirement was not in the exclusions section of the policy, so this provision was not an exclusion, but a condition subsequent.[363] Unless this "condition subsequent can be shown to have contributed to the loss," the insurers' liability will be maintained.[364] Hawaii courts strongly consider fairness to the insureds, stating, "It would also disserve the public interest, for insurance is an instrument of a social policy that the victims of negligence be compensated."[365]

In another interesting note, the Vice President of Claims in his deposition revealed that "[i]t was not Avemco's policy" to check the validity of a medical certificate when issuing or renewing the policy, but it was one of the first steps taken whenever a loss was reported.[366] In other words, why issue the policy when there is no valid medical certificate if you do not believe you have any liability in that instance?

IDAHO

1. Summary

No causal connection is required.[367] Idaho courts reason that rights "flow from contract . . . not tort," and thus an "insurer may lawfully limit its liability by excluding certain risks and hazards from coverage."[368] There is a suspension in coverage

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359 *Id.* at 151.
360 *Id.* at 142.
361 *Id.* at 144.
362 *Id.* at 151.
363 *Id.* at 149.
364 *Id.* at 151.
365 *Id.*
366 *Id.* at 146.
367 Roberts v. Underwriters at Lloyds London, 195 F. Supp. 168, 171 (D. Idaho 1961).
368 *Id.*

whenever the prohibited conduct occurs, therefore, the causal question is nullified because of the coverage suspension.[369]

2. Cases

a. *Roberts v. Underwriters at Lloyds London*[370]

The insurance policy excluded coverage when the aircraft was operated by anyone other than the named pilot.[371] An aircraft company did not change the name on the policy when it got a new pilot, and that pilot was killed when the aircraft crashed and burned.[372] The court held that the insurer was not required to show a causal connection to deny liability, noting, "The policy plainly state[d] that the certificate [was] not applicable while the forbidden conduct existed."[373] Although the court blamed the policy holder's "apparent indifference toward his insurance coverage," it noted that "[n]o doubt [the insurer] would have added [the pilot's] name to the policy if [the insured] would have requested such an addition."[374]

ILLINOIS

1. Summary

A causal connection is required.[375] Case law states that it would be "grossly unfair not to require" a causal connection in the instance of exclusions, when Illinois law requires a causal connection between conduct covered and loss "for [insurance] coverage to be afforded."[376]

2. Cases

a. *American States Insurance Co. v. Byerly Aviation, Inc.*[377]

The insurance policy in this case "[did] not cover any flights except those in which one of the two named pilots is operating the helicopter."[378] A pilot that was not named in the policy was

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369 *Id.* at 171–72.
370 *Id.* at 168.
371 *Id.* at 170.
372 *Id.*
373 *Id.* at 171–72.
374 *Id.* at 174.
375 Am. States Ins. Co. v. Byerly Aviation, Inc., 456 F. Supp. 967, 968 (S.D. Ill. 1978).
376 *Id.* at 970.
377 *Id.* at 968.
378 *Id.*

operating the helicopter "when the rotor broke or became detached, causing the crash and deaths."[379] There was no evidence that pilot error caused the crash.[380] The court noted, "[I]f the cause of the crash was something other than pilot conduct (such as negligent maintenance), the fact that an unnamed pilot was operating the helicopter did nothing to increase the risks undertaken."[381] The court further found that the insurer "would in no way be prejudiced by the fact that [the unnamed pilot] was piloting the aircraft, and the casualty which occurred is one which it undertook to cover and for which it was paid a premium.[382] It should not be able to invoke an exclusion to provide itself a pure windfall of non-liability."[383]

INDIANA

1. Summary

There is probably no causal connection required. The courts strictly interpret contracts of insurance, so that when there has been a violation of a provision the insurer is not required to extend coverage.[384]

2. Cases

a. *Monarch Insurance Co. of Ohio v. Siegel*[385]

The insurance policy did not cover liability when the aircraft was piloted by someone without the minimum flight hours or when operated for a monetary charge.[386] The pilot crashed during landing due to pilot negligence.[387] There was no question that the pilot did not have the minimum number of hours and that he paid a rental price for the use of the aircraft.[388] The court held that both breaches were independently legitimate defenses in denying the insurance claim.[389] The court did not consider the causal connection question in either situation.[390]

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379 *Id.*
380 *Id.* at 970.
381 *Id.*
382 *Id.*
383 *Id.*
384 Monarch Ins. Co. v. Siegel, 625 F. Supp. 693, 698 (N.D. Ind. 1986).
385 *Id.* at 693.
386 *Id.* at 696.
387 *Id.*
388 *Id.*
389 *Id.* at 699–700.
390 *See id.* at 698–700.

IOWA

1. *Summary*

A causal connection is required by statute for provisions that make the policy void before the loss occurs.[391] This has been interpreted broadly to include all insurance provisions by Iowa court of appeals, but the supreme court called this into question in *Schneider Leasing*, which interpreted it more narrowly.[392]

2. *Cases & Statutes*

a. Section 515.101(1) of the Iowa Code

The relevant code provision reads:

> Any condition or stipulation in an application, policy, or contract of insurance making the policy void before the loss occurs shall not prevent recovery on the policy by the insured, if the plaintiff shows that the failure to observe such provision or the violation thereof did not contribute to the loss.[393]

b. *Schneider Leasing, Inc. v. United States Aviation Underwriters, Inc.*[394]

A leasing company owned a plane that was piloted by the deputy sheriff, who did not satisfy the qualifications specified in the policy.[395] It rolled over shortly after takeoff, and the cause of the crash was disputed.[396] The court found that the statute was not applicable because the clause did not void the policy before the loss, but left the policy intact, placing limits only on its application.[397] This case called into question the scope of the statute as described in the following case.[398]

c. *Global Aviation Insurance Managers v. Lees*[399]

The insured crashed a plane while attempting to land on a wet, grassy strip, misjudging the distance and the speed in land-

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391 *See* IOWA CODE ANN. § 515.101 (West 2007).

392 Schneider Leasing, Inc. v. U.S. Aviation Underwriters, Inc., 555 N.W.2d 838, 842 (Iowa 1996).

393 IOWA CODE ANN. § 515.101(1).

394 *Schneider Leasing*, 555 N.W.2d at 838.

395 *Id.* at 839.

396 *Id.*

397 *Id.* at 842.

398 *Id.*

399 368 N.W.2d 209 (Iowa Ct. App. 1985).

ing.[400] The pilot "did not possess a valid medical certificate" or airworthiness certificate, but both parties stipulated that neither of these conditions "contributed to the accident."[401] The policy contained exclusions applying to both certificates.[402] The court decided that the legislature's intent with the anti-technicality statute was to "protect insureds by preventing insurers from denying coverage based upon a technical violation of a policy provision which did not contribute to the loss."[403] It interpreted this as including all provisions with the policy (not just exclusions), because otherwise insurers would be able to mask anything as an exclusion.[404] Therefore, the insurer was liable in this instance because the failure to maintain proper certificates was not the cause of the crash and the loss.[405]

KANSAS

1. Summary

No causal connection is required.[406] Kansas case law reasons that insurers have a reason to want to limit coverage and that public policy supports compliance with regulations.[407]

2. Cases

a. *Western Food Products Co. v. United States Fire Insurance Co.*[408]

An exclusion in the policy required a pilot to have a valid medical certificate,[409] but at the time of the crash the pilot had an expired medical certificate.[410] The plain language of the policy showed a desire by the insurer to limit the coverage.[411] Therefore, "a causal connection between the accident causing the loss and the purpose of an exclusionary clause need not be proven before coverage can be denied by the aircraft insurer on

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400 *Id.* at 210.
401 *Id.*
402 *Id.*
403 *Id.* at 212.
404 *Id.*
405 *Id.*
406 W. Food Prods. Co. Inc. v. U.S. Fire Ins. Co., 699 P.2d 579, 584 (Kan. Ct. App. 1985).
407 *Id.*
408 *Id.* at 579.
409 *Id.* at 581.
410 *Id.*
411 *See id.* at 581–82.

the basis of the exclusion."[412] The court distinguished other jurisdictions requiring the causal connection by saying that other jurisdictions had relied on cases with ambiguous exclusions or anti-technicality statues.[413]

KENTUCKY

1. *Summary*

No causal connection is required.[414] However, the only case on this matter seems to have a causal connection, suggesting that a clearly unconnected accident might be decided differently.[415] Kentucky will not require a causal connection between the breach and loss when the contract is unambiguous and it examines insurance policies under strict contract principles.[416]

2. *Cases*

a. *Arnold v. Globe Indemnity Co.*[417]

A pilot was not qualified to fly under instrument conditions and he was using Instrument Flight Rules, which were excluded by the policy.[418] The plane took off in cold, foggy weather and crashed into the side of the mountain.[419] The insurer claimed it was not liable, as the loss was not covered by the policy.[420] The court held that it was "not necessary that the violation . . . be the proximate cause of the loss in order to exclude coverage."[421]

LOUISIANA

1. *Summary*

No causal connection is required.[422] Louisiana courts reason that they do not want to alter a contract agreed to by the parties.[423]

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412 *Id.* at 584.
413 *Id.* at 582.
414 *See* Arnold v. Globe Indem. Co., 416 F.2d 119, 122 (6th Cir. 1969).
415 *See id.*
416 *See id.*
417 *Id.* at 119.
418 *Id.* at 121.
419 *Id.* at 120.
420 *Id.* at 121.
421 *Id.* at 122.
422 U.S. Fire Ins. Co. v. W. Monroe Charter Serv., Inc., 504 So. 2d 93, 99 (La. Ct. App. 1987).
423 *See id.* at 100.

2. Cases

a. *United States Fire Insurance Co. v. West Monroe Charter Service, Inc.*[424]

The aircraft liability policy provided that the aircraft must be operated by a pilot with a current and proper medical certificate and a pilot certificate with the necessary ratings.[425] An aircraft flown by a pilot with an expired medical certificate crashed during severe rain and thunderstorms.[426] The court held that absent policy language requiring a causal connection between the exclusion and the accident, failure of the pilot to have a current and proper medical certificate excluded liability coverage for the death of passengers killed in the crash, even though the lack of a medical certificate did not cause or contribute to the crash.[427]

MAINE

1. Summary

A causal connection is probably required.[428] Misrepresentations are addressed in a statute and do not require a causal connection.[429] However, the court has abandoned the contract-based rule regarding insurance contracts,[430] therefore it would likely follow the causal connection rule.

There are no statutes or court opinions on whether there is a requirement of causal connection between the insured's loss and the breach before insurer can deny liability.

2. Cases & Statutes

a. Title 24-A Section 2411 of the Main Revised Statutes

Under this statute, misrepresentations will not prevent recovery under the policy unless they are fraudulent or material to the acceptance of the risk by the insurer.[431] Cases interpreting this statue specifically do not examine a causal connection between the actual loss and the breach, but rather focus on an

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424 *Id.* at 99.
425 *Id.* at 96.
426 *Id.* at 95.
427 *Id.* at 100.
428 *See* Ouellette v. Me. Bonding & Cas. Co., 495 A.2d 1232, 1235 (Me. 1985).
429 *See* ME. REV. STAT. ANN. tit. 24-A, § 2411 (West 2000).
430 *See Ouellette*, 495 A.2d at 1235.
431 ME. REV. STAT. ANN. tit. 24-A, § 2411.

objective standard of whether it would have affected the insurer's decision in issuing the policy.[432]

b. *Ouellette v. Maine Bonding & Casualty Co.*[433]

An auto insurance policy required prompt notice after an accident.[434] Four years after an automobile accident, the insured notified the insurer of the claim.[435] The insurer denied coverage and the court found in its favor.[436] After a discussion about the traditional contract rule, the court abandoned the contract-based rule, calling the traditional result of forfeiture "an undeserved windfall to the insurer."[437] The court recognized the view "that an insurance contract is not a negotiated agreement, but rather what we would call a contract of adhesion, because the terms are dictated by the insurance company to the insured."[438] Therefore, the court declined to follow the analysis of negotiated contracts and instead required the insurer, in order to deny liability, to "show (a) that the notice provision was in fact breached, and (b) that the insurer was prejudiced by the insured's delay."[439]

c. *York Mutual Insurance Co. v. Bowman*[440]

The insured failed to reveal several driving record convictions of her two sons in her auto insurance application.[441] However, her husband was driving at the time of the accident.[442] The insurer denied liability based on the misrepresentation of the sons' convictions.[443] The lower court found for the insured based on the lack of materiality of the misrepresentations and because of "the risk [undertaken by the insurer was] that Wanda or Bruce Bowman might operate a motor vehicle negligently" and not the sons.[444] On appeal, the court found that the lower court "focused too narrowly on the actual cause of the loss" and

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[432] *See* York Mut. Ins. Co. v. Bowman, 746 A.2d 906, 909 (Me. 2000).
[433] *Ouellette*, 495 A.2d at 1233.
[434] *Id.*
[435] *Id.*
[436] *Id.*
[437] *Id.* at 1235
[438] *Id.*
[439] *Id.*
[440] York Mut. Ins. Co. v. Bowman, 746 A.2d 906, 907 (Me. 2000).
[441] *Id.*
[442] *Id.*
[443] *Id.*
[444] *Id.* at 909.

"[t]he relevant inquiry is not whether the misrepresentations related to the cause of the particular loss in question."[445]

MARYLAND

1. *Summary*

No causal connection is required but in the single case addressing the issue, the violation probably caused the damages.[446] Maryland courts will not require a causal connection between the provision violated and the accident for the insurer to deny coverage.[447] The court has a duty to interpret the contract as written, and insurers have a right to limit their potential liability.[448]

2. *Cases*

a. *Aetna Casualty & Surety Co. v. Urner*[449]

An aircraft crashed while flying in bad weather that was only suitable for flight with instruments, but the student pilot was not certified for instrument flight.[450] The insurance policy stated that it would not apply to any pilot who did not have the proper FAA certifications.[451] The court held that the activity was not covered, therefore, the insurer had no liability.[452] The court reasoned that there was no need for any causal nexus between the injury or death and the forbidden forms of conduct.[453] The court emphasized that "[w]hile the proscribed activity continues, the insurance is suspended as if it had never been in force."[454] The court reasoned that it had a duty to interpret the contract and that insurers have a right to limit their potential liability.[455]

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445 *Id.*

446 Aetna Cas. & Sur. Co. v. Urner, 287 A.2d 764, 767 (Md. 1972) (citing Universal Indem. Ins. Co. v. N. Shore Delivery Co., 100 F.2d 618, 620 (7th Cir. 1938)).

447 *Id.*

448 *Id.* at 765.

449 *Id.*

450 *Id.*

451 *Id.*

452 *Id.* at 768.

453 *Id.* at 767 (citing Universal Indem. Ins. Co. v. N. Shore Delivery Co., 100 F.2d 618, 620 (7th Cir. 1938)).

454 *Id.*

455 *Id.* at 765.

MASSACHUSETTS

1. *Summary*

No causal connection is required.[456] Massachusetts courts reason that insurers have the right to limit risks based on certain conditions because there is a direct relationship between these conditions and what risks the insurer will intelligently decide to acquire.[457]

2. *Cases*

a. *Edmonds v. United States*[458]

A pilot crashed on landing and hit a mound of snow.[459] The insurer denied recovery based on the insured's failure to meet the condition precedent of the policy requiring a current biennial flight review.[460] The court held that a causal connection is not required with condition precedents because it relates directly to the insurer's decision to issue the policy and take the insurance risk.[461]

b. *United States Aviation Underwriters, Inc. v. Cash Air, Inc.*[462]

An aviation liability policy included a clause that stated the pilot must hold a FAA commercial pilot certificate and meet hour minimums.[463] It was uncontested that at the time of the accident the pilot had not met the requirements.[464] The insurer can avoid liability without showing that the pilot's failure to meet the requirements was a cause of the accident.[465] Aligning its position with the majority, the court stated that a condition such as pilot qualifications is significant to the insurer regarding what it will insure and what premiums should be charged.[466] The court noted that it would require a showing of a causal connection for insurers to deny claims when the insured fails to

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456 *See* Edmonds v. United States, 642 F.2d 877, 880–82 (1st Cir. 1981); U.S. Aviation Underwriters, Inc. v. Cash Air, Inc., 568 N.E.2d 1150, 1152 (Mass. 1991).

457 *See Edmonds*, 642 F.2d at 882; *U.S. Aviation Underwriters, Inc.*, 568 N.E.2d at 1152.

458 642 F.2d at 880.

459 *Id.*

460 *Id.*

461 *Id.* at 882.

462 *U.S. Aviation Underwriters, Inc.*, 568 N.E.2d at 1151.

463 *Id.*

464 *Id.*

465 *Id.*

466 *Id.* at 1152.

"seasonably . . . notify an insurer of a loss," as opposed to a condition precedent in the instant case.[467]

MICHIGAN

1. *Summary*

No causal connection is required.[468] Michigan case law interprets aviation insurance policies strictly according to contract principles and explicitly differentiates contract principles from tort principles.[469] Where the insurance policy language excludes coverage for particular conditions, it will be deemed not to exist in the instance those conditions occur.[470] Therefore, once coverage is suspended, no causal question needs to arise.

2. *Cases*

a. *Kilburn v. Union Marine & General Insurance Co.*[471]

A policy provision stated that the policy did not cover damage to the aircraft if it was operated in violation of Civil Aeronautics Administration (CAA) regulations.[472] The insured was a student pilot operating the aircraft with a passenger, which was in violation of CAA regulations.[473] The insured hit some high tension wires an hour into the flight.[474] The pilot's actions were against the CAA flight regulations, and the court held that the contract provision was binding against the insured.[475] The policy was a valid and binding contract between the insurer and insured; therefore, he was not covered in that circumstance and a causal relation was not involved.[476] The court noted that this was not a tort action where causal connections are frequently required.[477]

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467 *Id.*

468 *See* Kilburn v. Union Marine & Gen. Ins. Co., 40 N.W.2d 90, 92 (Mich. 1949).

469 *See id.*

470 *See id.*

471 *Id.* at 90.

472 *Id.* at 91.

473 *Id.*

474 *Id.*

475 *Id.* at 92.

476 *Id.*

477 *Id.*

MINNESOTA

1. *Summary*

No causal connection is required unless the contract language requires such; however, the deciding case noted that the violation may have been a cause of the accident.[478] Courts utilize strict contract construal in aviation insurance so that the causal question is beyond the scope.[479] Minnesota does have a statute that addresses contracts including the causal connection, and it prohibits excluding coverage if the aircraft is in violation of governmental regulations.[480]

2. *Cases & Statutes*

a. Section 60A.081 of the Minnesota Statutes

This statute deals with contracts where the language requires a causal connection. It prohibits the denial of coverage for any loss arising out of the ownership, maintenance, or use of an aircraft if the contract excludes coverage because of a violation of governmental regulations.[481]

b. *Globe Indemnity Co. v. Hansen*[482]

The insured pilot was performing dangerous dives with the aircraft when it crashed.[483] It was not clear if these aerobatic moves or a mechanical failure caused the crash.[484] The policy provision provided that the policy does not apply to any insured who performs aerobatics at the time of the incident.[485] The court held that because the pilot was performing aerobatics at the time of the crash, the insured was beyond protection of the policy regardless of causal connection.[486] The court reasoned that there can be no liability where there was no assumption of the risk.[487]

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[478] *See* Globe Indem. Co. v. Hansen, 231 F.2d 895, 897, 902–03 (8th Cir. 1956).

[479] *See id.* at 897 (citing Giacomo v. State Farm. Mut. Auto. Ins., 280 N.W. 653, 656 (Minn. 1938)).

[480] MINN. STAT. ANN. § 60A.081 (West 2009).

[481] *Id.*

[482] 231 F.2d 895, 897 (8th Cir. 1956).

[483] *Id.* at 905.

[484] *Id.* at 902–03.

[485] *Id.* at 904.

[486] *Id.* at 906.

[487] *Id.* at 897 (citing Giacomo v. State Farm Mut. Auto. Ins., 280 N.W. 653, 655 (Minn. 1938)).

MISSISSIPPI

1. *Summary*

A causal connection is required.[488] Mississippi courts require the causal connection because if the risk the insurer is seeking to avoid has no causal connection to the loss, then it is not covering anything additional.[489] Thus, the loss would have been incurred regardless of the breach.[490]

2. *Cases*

a. *Fireman's Fund Insurance Co. v. McDaniel*[491]

A pilot only had his student pilot's license and flew a multi-engine plane with passengers in violation of CAA regulations.[492] The insurance policy stated that it did not apply to any pilot operating an aircraft in violation of federal regulations.[493] The pilot crashed the insured aircraft, and no cause of the accident was intimated by either party.[494] The court held that because the law in Mississippi requires a causal connection, the insurer could not avoid liability under that exclusion.[495] With "no causal connection being shown between certification and rating of . . . [the] pilot . . . and the crash itself, the exclusion relied on by plaintiff may not be invoked to void the coverage afforded by the policy."[496]

MISSOURI

1. *Summary*

No causal connection is required.[497] Missouri case law reasons that contract terms govern the insurance policy.[498] There is no need to show any additional element such as causation be-

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488 *See* Fireman's Fund Ins. Co. v. McDaniel, 187 F. Supp. 614, 618 (N.D. Miss. 1960).

489 *See* Hossley v. Union Indem. Co. of N.Y., 102 So. 561, 562 (Miss. 1925).

490 *See Fireman's Fund Ins. Co.*, 187 F. Supp. at 618.

491 *Id.*

492 *Id.* at 616.

493 *Id.* at 615.

494 *Id.* at 617–18.

495 *Id.* at 618.

496 *Id.* (citing Hossley v. Union Indem. Co. of N.Y., 102 So. 561 (Miss. 1925) (holding that in an automobile accident, liability is maintained by the insurer unless there is a causal connection between the injury and the crash)).

497 *See* Macalco, Inc. v. Gulf Ins. Co., 550 S.W.2d 883, 893 (Mo. Ct. App. 1977).

498 *See id.* at 892.

cause when the excluded activity under the insurance policy continues, it is as if the policy had never existed.[499]

2. *Cases*

a. *Macalco, Inc. v. Gulf Insurance Co.*[500]

A student pilot, who was not properly rated to be carrying passengers, crashed during a nighttime flight, killing all passengers and himself.[501] The insurance policy provided that it would not cover student pilots who were not sufficiently rated.[502] The insurer denied the claim, relying on the student pilot clause.[503] The court held that proof of a causal connection between the pilot's certification and rating as a student pilot and the casualty was unnecessary, and it reasoned that the insurer was entitled to extend coverage only while the pilot was holding the proper certificate and rating, as required by the FAA for the flight involved.[504] The court upheld the aircraft insurance exclusionary clauses on their literal terms.[505] Moreover, the insurance coverage is suspended whenever operative facts of exclusion exist, and contract terms are interpreted strictly with no need to show some additional element of causation, as long as its terms are unambiguous.[506]

MONTANA

1. *Summary*

A causal connection is required.[507] The reasoning of the court was that it would be unfair to deny the insured coverage for what it paid for over a technicality.[508]

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499 *See id.* (citing Travelers' Protective Ass'n of Am. v. Prinsen, 291 U.S. 576, 582 (1934)).

500 *Id.* at 883.

501 *Id.* at 886–87.

502 *Id.* at 886.

503 *Id.* at 887.

504 *Id.* at 893.

505 *Id.* at 889.

506 *Id.* at 892.

507 *See* Bayers v. Omni Aviation Managers, Inc., 510 F. Supp. 1204, 1207 (D. Mont. 1981).

508 *See id.*

2. Cases

a. *Bayers v. Omni Aviation Managers, Inc.*[509]

The aircraft crashed shortly after takeoff, and the pilot's medical certification had expired two months prior to the crash.[510] Both parties stipulated that the expired certificate did not contribute to the crash.[511] However, the court did not interpret the exclusion to include a lack of a medical certificate because the policy did not state so expressly.[512] But the court added that even if it were included in the exclusion clause, a causal connection is required.[513] To deny the insured the coverage he had paid for where merely a technical breach occurred would be unfair. As the court explained:

> The company inserted the medical certificate provision to guard against the risk of loss which arises where a person of bad health pilots an aircraft. In this case, [the pilot's] lack of medical certification did not increase the risk of loss to the company, and the insured's coverage will not be forfeited because of an alleged technical breach of the policy.[514]

NEBRASKA

1. Summary

No causal connection is required.[515] The court's reasoning is that insurers have the right to exclude certain risks from coverage.[516]

2. Cases

a. *Omaha Sky Divers Parachute Club, Inc. v. Ranger Insurance Co.*

An insured pilot crashed when the brakes failed during landing.[517] The policy excluded coverage if the aircraft was not operated by a pilot with valid pilot and medical certificates.[518] The pilot's medical certificate had lapsed five months prior to the

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509 *Id.*
510 *Id.* at 1205.
511 *Id.*
512 *Id.* at 1207.
513 *Id.*
514 *Id.*
515 *See* Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co., 204 N.W.2d 162, 164 (Neb. 1973).
516 *See id.*
517 *Id.* at 611.
518 *Id.* at 612.

accident, however, two days after the accident he renewed it.[519] His expired license was not the cause of the accident.[520] The court held that there was no coverage when the pilot did not hold the medical certificates required under the policy, regardless of a causal connection.[521] A renewal shortly thereafter did not validate the certificate retroactively.[522]

NEVADA

1. Summary

No causal connection is required.[523] Nevada case law indicates a preference for strict contract construal.[524] Its public policy favors a rule that encourages owners to meet all safety regulations.[525]

2. Cases

a. *Griffin v. Old Republic Insurance Co.*

The insured bought an airplane and crashed it into the plaintiff's backyard.[526] The plaintiff tried to collect from the insurer but was denied because an exclusion in the policy denied coverage if the aircraft did not have proper airworthiness certificates.[527] In an answer to a certified question, the court stated that it cannot alter an unambiguous insurance contract unless it is against public policy and that it will not attempt to increase the legal obligations of the parties to a contract when the parties intentionally limited such obligations.[528] Consequently, it does not imply a causal requirement when no causal language is present.[529] Nevada will allow insurers to avoid liability under safety-related exclusions if the provision is (1) "unambiguous, [(2)] narrowly tailored, and [(3) is] essential to the risk undertaken by the insurer."[530]

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519 *Id.* at 611–12.
520 *Id.* at 614.
521 *Id.*
522 *Id.*
523 *See* Griffin v. Old Republic Ins. Co., 133 P.3d 251, 255 (Nev. 2006).
524 *See id.* at 253.
525 *See id.* (citing Sec. Ins. Co. v. Andersen, 763 P.2d 246, 250 (Nev. 1988)).
526 *Id.* at 252–53.
527 *Id.* at 253.
528 *Id.* at 254 (citing Senteney v. Fire Ins. Exch., 707 P.2d 1149, 1150 (Nev. 1985)).
529 *Id.*
530 *Id.* at 255.

NEW HAMPSHIRE

1. Summary

No causal connection is required.[531] New Hampshire courts stress the freedom to contract as parties wish.[532] They look at materiality to the extent it was meant to be included in the policy.[533]

There are no cases or statutes in New Hampshire that directly address the causal connection question. Some cases, although not in the aviation context, seem to suggest that a causal connection is not necessary for the insurer to avoid liability.[534]

2. Cases

a. *Amoskeag Trust Co. v. Prudential Insurance Co. of America*[535]

The insured falsely claimed in his insurance policy that he had never had albumin in his urine.[536] His wife was denied a claim on his life insurance policy in part because of a breach of warranty—the false statement as to presence of albumin found in his urine.[537] There was no discussion of whether this condition was in any way related to or caused the insured's death, but the court held that the insurer was not liable for the policy.[538] The court evaluated the materiality of the misstatement and its bearing on the risk.[539] All the court requires for the insurer to avoid liability is misrepresentation of information called for by the contract and that the information has some bearing on the soundness of the risk.[540] The court further stated that the insurer is entitled to freedom to contract or not contract based on the information gathered.[541]

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[531] *See* Glens Falls Indem. Co. v. Keliher, 187 A. 473, 477 (N.H. 1936); Amoskeag Trust Co. v. Prudential Ins. Co. of Am., 185 A. 2, 7 (N.H. 1936).

[532] *See Glens Falls Indem. Co.*, 187 A. at 474; *Amoskeag Trust Co.*, 185 A. at 7.

[533] *See Glens Falls Indem. Co.*, 187 A. at 477; *Amoskeag Trust Co.*, 185 A. at 6.

[534] *See Glens Falls Indem. Co.*, 187 A. at 477.

[535] *Amoskeag Trust Co.*, 185 A. at 2.

[536] *Id.* at 4.

[537] *Id.* at 3.

[538] *Id.* at 7.

[539] *Id.*

[540] *Id.*

[541] *Id.*

b. *Glens Falls Indemnity Co. v. Keliher*[542]

The insured caused a car crash and was brought to trial.[543] A policy condition required his cooperation in his defense but he failed to appear in court.[544] The court held that coverage was not in effect when the condition was not met.[545] Therefore, no causal connection needs to be considered after a breach has been established and the insurer was not liable for damage to the third parties under the insured's policy.[546]

NEW JERSEY

1. Summary

No causal connection is usually required.[547] New Jersey courts will generally not require a causal connection to relieve insurers from liability, especially when the breach is significantly related to the decision of the insurer to accept the risk.[548] However, courts decline to impose a bright-line rule and suggest that certain situations might require a causal connection.[549] The courts reason that in some factual situations imposing a causal connection requirement would allow an insured to expand coverage without paying for it.[550]

2. Cases

a. *Aviation Charters, Inc. v. Avemco Insurance Co.*

The pilot did not have the 5,000 flight hours that served as a requirement under the insurance policy.[551] An accident occurred as the pilot was taxiing on the runway just after landing.[552] A spring device malfunctioned and caused the nose to collapse and damage the aircraft.[553] The court held that under the narrow facts of this case a lack of a causal relationship will

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542 187 A. 473 (N.H. 1936).
543 *Id.* at 473–74.
544 *Id.*
545 *Id.* at 476 (citing Royal Indem. Co. v. Morris, 37 F.2d 90, 91 (9th Cir. 1929)).
546 *Id.* at 477.
547 *See* Aviation Charters, Inc. v. Avemco Ins. Co., 784 A.2d 712, 713 (N.J. 2001).
548 *See id.* at 714.
549 *See id.* at 713.
550 *See id.* at 715.
551 *Id.* at 713.
552 *Id.* at 712–13.
553 *Id.* at 713.

not justify disregarding an unambiguous policy exclusion, such as stating that the policy only applies when the pilot has over 5,000 flight hours.[554] The insured was aware that it could have obtained, for a higher premium, a policy that required fewer total flight hours and that requiring a causal connection would thus constitute an unbargained-for expansion of coverage.[555] The court does not adopt a per se rule, holding that the absence of causality cannot be the basis for disregarding an unambiguous exclusionary clause in an insurance policy and leaves "for another day, the decision whether, in another factual context, it would be appropriate to require a causal nexus before denying coverage based on a clear and unambiguous exclusionary provision."[556]

NEW MEXICO

1. Summary

No causal connection is required.[557] New Mexico courts strictly interpret insurance contracts without requiring a causal connection between the exclusion and the breach, noting that this furthers the public policy of safety.[558]

2. Cases

a. *Security Mutual Casualty Co. v. O'Brien*[559]

The private owner of an aircraft sought a claim against the insurer after the aircraft he leased out collided with another plane.[560] The insurer denied the claim based on an exclusion that precluded coverage unless the airworthiness certificate was in full force and effect.[561] The owner had failed to get an annual inspection and, therefore, did not have a current airworthiness certificate.[562] However, there was no causal connection between the lapse of the airworthiness certificate and the accident.[563] The court held that the lack of a causal connection had

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554 *Id.* at 714.
555 *Id.*
556 *Id.* at 715.
557 *See* Sec. Mut. Cas. Co. v. O'Brien, 662 P.2d 639, 641 (N.M. 1983).
558 *See id.*
559 *Id.* at 639.
560 *Id.* at 640.
561 *Id.*
562 *Id.*
563 *Id.*

no bearing on this case.[564] Insurance coverage must not be afforded to aircraft owners who ignore or refuse to comply with established certification requirements that are commonly a part of policy exclusions.[565] A causal connection does not have to be shown when there is a specific and unambiguous policy exclusion.[566] The court also stated that this rationale furthers safety:

> The policy behind such exclusions is clear and unambiguous. The exclusions encourage aircraft owners to obtain annual inspections of their aircraft in order to be certified by the F.A.A. under current applicable Federal Aviation Regulations. These regulations prohibit an aircraft owner from flying his aircraft unless an annual safety inspection is performed.[567]

The court also distinguished between a "condition subsequent" (a condition that causes coverage to be suspended) and a policy exclusion, to which coverage was never extended.[568]

NEW YORK

1. Summary

No causal connection is required.[569] New York courts will interpret insurance policies strictly, like a contract.[570]

2. Cases

a. *Hedges Enterprises, Inc. v. Fireman's Fund Insurance Co.*

Under federal regulations, the aircraft owner was required to register the aircraft.[571] The student pilot had just purchased the aircraft and was practicing a solo takeoff and landing when he crashed during landing.[572] He made a claim on the insurance and was denied based on a policy provision that excluded coverage while the aircraft was being used for an unlawful purpose.[573] Since he had not yet registered his aircraft he was therefore in

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564 *Id.* at 641.

565 *Id.*

566 *Id.* at 642.

567 *Id.* at 641.

568 *Id.* at 640–41.

569 *See* Hedges Enters., Inc. v. Fireman's Fund Ins. Co., 225 N.Y.S.2d 779, 784 (Sup. Ct. 1962) (citing Des Marais v. Thomas, 147 N.Y.S.2d 223, 226 (Sup. Ct. 1955), *aff'd*, 153 N.Y.S.2d 532 (App. Div. 1956)).

570 *See* Gaetan v. Fireman's Ins. Co. of Newark, 695 N.Y.S.2d 608, 610 (App. Div. 1999).

571 *Hedges Enters., Inc.*, 225 N.Y.S.2d at 783.

572 *Id.* at 783.

573 *Id.*

violation of the policy.[574] The court held that "[i]t is not incumbent upon the insurer to show causal connection between the loss and non-compliance with the terms of the exclusion clause in order to preclude recovery."[575] The coverage was suspended when the aircraft was being used unlawfully—without proper registration—even though failure to register was not a cause of the crash.[576]

NORTH CAROLINA

1. Summary

No causal connection is required.[577] North Carolina courts interpret aviation insurance policies strictly, differentiating this type of contract claim from tort actions.[578]

2. Cases

a. *Baker v. Insurance Co. of North America*

The insured, who held a valid pilot certificate but lapsed medical certificates, crashed and sought to recover.[579] He was in good health at the time of the crash and shortly thereafter renewed his medical license.[580] He was denied coverage under the exclusion because "an insurance policy is a contract."[581] The court held that one must go by the policy's clear meaning, and the policy said that the risk was excluded *while* being operated by a pilot not properly certificated, not that the risk is excluded *if caused by* the violation.[582] The court said that under those circumstances, the coverage "simply did not exist."[583]

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574 *Id.* at 784.

575 *Id.* (citing Des Marais v. Thomas, 147 N.Y.S.2d 223, 226 (Sup. Ct. 1955), *aff'd*, 153 N.Y.S.2d 532 (App. Div. 1956)).

576 *Id.* (quoting Traveler's Protective Ass'n of Am. v. Prinsen, 291 U.S. 576, 582 (1934)).

577 *See* Bruce v. Lumbermens Mut. Cas. Co., 222 F.2d 642, 645 (4th Cir. 1955) (citing Myers v. Ocean Accident & Guar. Corp., 99 F.2d 485, 491 (4th Cir. 1938)); Baker v. Ins. Co. of N. Am., 179 S.E.2d 892, 894 (N.C. Ct. App. 1971).

578 *See Baker*, 179 S.E.2d at 894 (citing *Bruce*, 222 F.2d at 645).

579 *Id.*

580 *Id.*

581 *Id.*

582 *Id.*

583 *Id.*

b. *Bruce v. Lumbermens Mutual Casualty Co.*[584]

An accident occurred during an air show where the pilot of the aircraft performed aerobatic maneuvers, but fell to the ground and crashed, killing himself and a passenger.[585] The insurance policy stated it would not apply if the aircraft was used in violation of government regulations.[586] The federal regulations required all passengers engaged in aerobatics to be equipped with parachutes.[587] Although neither was equipped with a parachute, evidence showed that the device would not have been able to save their lives because the pilot continued to spin so near to the ground.[588] The court held that an insurer "need not show a causal connection between the breach of an exclusion clause and the accident."[589] It further explained that the rights of the parties come from the contract, and not from a claim arising out of a tort.[590]

NORTH DAKOTA

1. Summary

A causal connection is probably required.[591] North Dakota courts look to the quality of the relationship between the loss and the cause when applying the efficient cause doctrine.[592] This applies when there are concurrent causes of a loss under a policy.[593] The court will not exclude coverage if the excluded activity was not the greater cause of the loss.[594]

There are no cases or statutes that directly address the issue of the causal connection in aviation insurance.

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584 222 F.2d 642 (4th Cir. 1955).

585 *Id.* at 643.

586 *Id.* at 644.

587 *Id.* at 643.

588 *Id.* at 643–44.

589 *Id.* at 645.

590 *Id.*

591 *See* Cont'l W. Ins. Co. v. Dam Bar, 478 N.W.2d 373, 374 (N.D. 1991).

592 *See id.* at 375–76.

593 *See id.* at 375.

594 *See id.*

2. Cases

a. *Continental Western Insurance Co. v. Dam Bar*[595]

In this case, an exclusion in a bar owner's policy stated that insurance does not apply to damage by reason of "[t]he furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol."[596] The bar owner served alcohol to a 19-year-old minor, who was subsequently killed in an automobile accident.[597] While no one denied that the excluded risk contributed to the loss, the bar owner argued that coverage cannot be defeated by the contributing excluded risk if the "efficient cause" is covered.[598] The court agreed, but in this particular circumstance no other causes were asserted that could be the basis for liability.[599] Although the court supports the efficient proximate cause doctrine, it did not apply in this case.[600] This doctrine allows liability to be denied if the efficient cause is not covered, and it requires coverage if the efficient cause is covered, despite the presence of the two conflicting causes. This doctrine shows the court's deference to causation in determining the insurer's liability under exclusions.

OHIO

1. Summary

A causal connection is considered but is not required when the condition breached was relevant and material to the issuance of insurance coverage.[601] Ohio courts do not favor forfeitures or unjust avoidance of insurance coverage, but will not require the connection if the breached provision was material to the initial issuance of coverage.[602]

No cases or statutes directly address causal connection in aviation insurance.

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595 *Id.* at 373,

596 *Id.* at 375.

597 *Id.* at 374.

598 *Id.* at 376.

599 *Id.*

600 *Id.*

601 *See* Am. Cont'l Ins. Co. v. Estate of Gerkens, 591 N.E.2d 774, 777 (Ohio 1990).

602 *See* Meadors v. Progressive Specialty Ins., No. 91-T-4514, 1991 WL 268945, at *6 (Ohio Ct. App. Dec. 13, 1991).

2. Cases

a. *American Continental Insurance Co. v. Estate of Gerkens*[603]

An unlicensed pilot crashed.[604] He made misrepresentations about his pilot status that would have had a material effect on the insurer's decision in issuing the insurance policy (i.e., fraud).[605] Therefore, the court found that the insurance agreement void and the insurer was not required to show a causal connection to avoid coverage.[606] This, however, is a limited opinion.[607] The court conceded there was no evidence of a casual connection between lack of proper certification and the accident, but held coverage was void due to the fraudulent representation on a material aspect of the policy.[608] It seemingly considered the causal connection but denied coverage on other grounds. In other words, the court in this case did not require a causal connection but it did not explicitly hold that there is no such requirement; perhaps the insurer would have been liable under the policy because of the lack of causal requirement but for the material fraud which made the policy void.

b. *Meadors v. Progressive Specialty Insurance*[609]

An insured motorcyclist was injured in an accident with an uninsured motorist.[610] His policy required that he keep the motorcycle in a "garage," but it was actually kept in a barn structure.[611] The court held that the insurer was liable for coverage despite the finding that this was a misrepresentation of warranty that would void the policy.[612] The reason for this finding was the lack of causal connection between the breach and the insured's loss.[613] The court further explained that "[i]t would be manifestly unjust to permit the appellant to avoid coverage under the specific facts of this case."[614]

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603 *Estate of Gerkens*, 591 N.E.2d at 774.
604 *Id.* at 776.
605 *Id.* at 775–76.
606 *See id.* at 779.
607 *See id.*
608 *See id.*
609 No. 91-T-4514, 1991 WL 268945 (Ohio Ct. App. Dec. 13, 1991).
610 *Id.* at *1.
611 *Id.*
612 *Id.* at *5.
613 *Id.* at *6.
614 *Id.* at *5.

OKLAHOMA

1. *Summary*

No causal connection is required.[615] Oklahoma courts reason that they will not rewrite insurance contracts and that it is reasonable for insurers to exclude activity that increases the risk of loss under contract principles.[616]

2. *Cases*

a. *Avemco Insurance Co. v. White*[617]

The insured crashed with an expired airworthiness certificate.[618] His policy excluded coverage if the airworthiness certificate was not in full force and effect.[619] The court held that ambiguities in insurance contracts must be strictly construed in favor of the insured, but in the absence of actual doubt about the meaning of the contract, the court will not rewrite the policy's terms simply because doing so would favor the insured.[620] The court further stated that it saw no reason to deprive the insurer of the exclusion's benefit.[621]

The court was responding to this certified question: "Whether an Airworthiness Certificate exclusion in an aircraft liability policy is contrary to Oklahoma public policy, and unenforceable when no causal link has been shown between the crash of the aircraft and the failure to have a 'Standard' Category Airworthiness Certificate?"[622] The court held that it was not contrary to public policy and the insurer was not required to show a causal link between the crash and the absence of a certificate in order to deny coverage.[623]

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615 *See* Avemco Ins. Co. v. White, 841 P.2d 588, 589 (Okla. 1992).

616 *See id.* at 591.

617 *Id.* at 588.

618 *Id.* at 589.

619 *Id.*

620 *Id.* at 590.

621 *Id.* at 591.

622 *Id.* at 589.

623 *Id.*

OREGON

1. Summary

No causal connection is required.[624] Oregon courts interpret aviation insurance contracts strictly.[625] While the violation continues, the insurance is suspended as if it had never been in force.[626]

2. Cases

a. *Ochs v. Avemco Insurance Co.*[627]

The insured did not perform his aircraft's annual inspection within the twelve months preceding the accident, which means the aircraft was not appropriately certificated.[628] The policy covering damage to the aircraft excluded property damage to an aircraft that did not have a current airworthiness certificate.[629] The insured "was in the process of landing the aircraft . . . [when] [i]t ground-looped and flipped on its back."[630] "The cause of the accident was a defective or broken tail wheel spring."[631] The court held that "the insurer is entitled to exclude any liability for aircraft not bearing a valid and current airworthiness certificate."[632] Thus, no proof of a causal connection between the accident and the policy exclusion was required. Oregon courts will strictly interpret insurance policies as contracts.

PENNSYLVANIA

1. Summary

A causal connection is required.[633] A Pennsylvania statute requires that any denial of insurance coverage based on an exclusion have a causal link between the excluded behavior and the loss.[634]

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624 *See* Ochs v. Avemco Ins. Co., 636 P.2d 421, 424 (Or. Ct. App. 1981).
625 *See id.*
626 *See id.*
627 *Id.* at 421.
628 *Id.* at 422.
629 *Id.*
630 *Id.*
631 *Id.*
632 *Id.* at 424.
633 *See* 74 PA. CONS. STAT. ANN. § 5503(d) (West 2008).
634 *See id.*

2. Statute

a. Section 5503(d) of the Pennsylvania Consolidated Statutes (Liability of Insurer)

The relevant provision reads: "No insurer shall deny coverage under an exclusion in an agreement where there is no causal connection between the exclusion and any loss resulting from any accident."[635]

PUERTO RICO

1. Summary

No causal connection is required for breach of a condition precedent.[636] Puerto Rico courts utilize the principle of strict contract construal.[637]

2. Cases

a. *United States Fire Insurance Co. v. Producciones Padosa, Inc.*[638]

An exclusion found in an aircraft policy provided that if the pilot did not meet standards set forth in the pilot clause, coverage was void.[639] A pilot crashed upon takeoff and the insurer denied coverage for the aircraft based on a claim that the pilot did not have the requisite amount of flight hours required by the policy and therefore was not covered.[640] The court held that the pilot clause was a condition precedent and when the condition precedent was breached, coverage was suspended.[641] The court did not directly address the causal connection, but inferring from the lack of its application, the court did not apply it in this type of situation. It is unclear if a causal connection is required for a representation or warranty.

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635 *Id.*

636 *See* U.S. Fire Ins. Co. v. Producciones Padosa, Inc., 835 F.2d 950, 955 (1st Cir. 1987) (applying Puerto Rico law).

637 *See id.* at 457.

638 *Id.* at 950.

639 *Id.* at 951.

640 *Id.* at 952.

641 *Id.* at 955.

RHODE ISLAND

1. *Summary*

A causal connection is probably required.[642] Rhode Island courts do not adhere to strict contract construal. The courts do, however, consider insurance contracts to be unbalanced, with negotiation power favoring the insurer.[643] Because prejudice to the insurer must be shown to avoid liability for the breach of notice provision, Rhode Island courts would likely require more than just a showing of a breach.[644] However, no cases or statutes were found that directly addressed this issue.

2. *Cases*

a. *Pickering v. American Employers Insurance Co.*[645]

The insurance policy required notice of an accident "as soon as practicable."[646] The insured gave notice four months after the accident, and the insurer denied liability based on the breach of notice provision.[647] The court held that an insurance contract is not a negotiated contract but a contract of adhesion.[648] The state supreme court adopted the opinion from a New Jersey case, which stated that "an insurance policy is not a true consensual arrangement but one that is available to the premium-paying customer on a take-it-or-leave-it basis."[649] Therefore, the court required the insurer to show prejudice caused by the breach in order to avoid liability on breach of the notice provision.[650] The court stated, "We do not believe that a technical breach of the notice provisions in a policy should bar an insured from recovering the benefits for which he has paid."[651] While this language does not require a causal connection, under this reasoning it is likely the court would prefer the causation link.

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642 *See* Pickering v. Am. Emp'rs Ins. Co., 282 A.2d 584, 593 (R.I. 1971).

643 *See id.*

644 *See id.*

645 *Id.* at 584.

646 *Id.* at 592.

647 *Id.*

648 *Id.* at 598 n.8.

649 *Id.* at 593 (citing Cooper v. Gov't Emps. Ins. Co., 237 A.2d 870 (N.J. 1968)).

650 *Id.*

651 *Id.* at 593.

SOUTH CAROLINA

1. *Summary*

A causal connection is required.[652] South Carolina courts have consistently held that insurers should not be able to avoid coverage on a mere technicality.[653] The courts reason that "when the parties made the contract of insurance, they were not inserting a mere arbitrary provision, but that it was the purpose of the insurance company to relieve itself of liability from accidents caused by the excluded condition."[654]

2. *Cases*

a. *Gardner Trucking Co., Inc. v. South Carolina Insurance Guarantee Association*[655]

The insurance policy excluded coverage when the aircraft was operated without an airworthiness certificate and the pilot lacked a minimum number of hours.[656] This aircraft did not have an airworthiness certificate and the pilot did not have the amount of flight hours required by the policy.[657] The pilot damaged the aircraft when its landing gear malfunctioned during landing.[658] The court held that the lack of experience exclusion and airworthiness certificate exclusion relieved the insurer when the insured failed to dispute the causal connection.[659] The court found that the breaches were causally related and therefore excluded coverage on those grounds.[660]

b. *McGee v. Globe Indemnity Co.*[661]

The insurer denied coverage based on a provision that the policy did not apply when the automobile was driven by persons under sixteen years of age.[662] The collision occurred when a fifteen-year-old was driving the automobile.[663] The court as-

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652 *See* Gardner Trucking Co., Inc. v. S.C. Ins. Guar. Ass'n, 376 S.E.2d 260, 262 (S.C. 1989).

653 *See id.*

654 S.C. Ins. Co. v. Collins, 237 S.E.2d 358, 361–62 (S.C. 1977).

655 376 S.E.2d at 260.

656 *Id.* at 262.

657 *Id.*

658 *Id.* at 261.

659 *Id.* at 262.

660 *Id.* (relying on S.C. Ins. Co. v. Collins, 237 S.E.2d 358, 361–62 (S.C. 1977)).

661 175 S.E. 849, 849 (S.C. 1934).

662 *Id.*

663 *Id.*

sumed that the driver's age had no causal connection to the accident.[664] The court held that the insurer was not exempted from liability merely because the driver was under sixteen, in the absence of a causal connection between the age of the driver and the collision.[665]

c. *Reynolds v. Life & Casualty Insurance Co. of Tennessee*[666]

A city ordinance held that it was a violation to ride in the running board of a truck.[667] An insured's policy excluded losses sustained while committing a violation of the law.[668] Although the insured was riding on the running board of the truck at the time of the accident, the court held that to defeat recovery under policies excluding or limiting liability for death or injury from an unlawful act, a direct causative connection between such act and the death or injury must be shown.[669] The court's rationale was that parties to an insurance contract are not inserting mere arbitrary provisions, but rather they have specific purposes to limit liability from accidents caused by the excluded condition.[670]

d. *South Carolina Insurance Co. v. Collins*[671]

The policy stated that only a pilot with an effective medical certificate will operate the aircraft in flight.[672] The insured's medical certificate expired three months before the crash.[673] Both parties stipulated that there was no causal connection between its expiration and the accident.[674] This is the first aircraft liability case in which causal connection was considered in South Carolina. The court found that the reasoning in automobile cases was no less compelling in this situation, therefore, a causal connection must be shown between the accident and the failure to have a valid medical certificate.[675]

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664 *Id.* at 850.
665 *Id.*
666 164 S.E. 602 (S.C. 1932).
667 *Id.* at 602–03.
668 *Id.* at 602.
669 *Id.* at 603–04.
670 *Id.* at 603.
671 237 S.E.2d 358 (S.C. 1977).
672 *Id.* at 360.
673 *Id.* at 359.
674 *Id.* at 362.
675 *See id.* at 361 (citing Reynolds v. Life & Cas. Ins. of Tenn., 164 S.E. 602 (S.C. 1932) and McGee v. Globe Indem. Co., 175 S.E. 849 (S.C. 1934)).

SOUTH DAKOTA

1. *Summary*

No causal connection is required.[676] South Dakota case law reasons that normal contract interpretation requires suspension of coverage, and enforcement encourages safety among aircraft owners and operators.[677]

2. *Cases*

a. *Economic Aero Club, Inc. v. Avemco Insurance Co.*[678]

This policy excluded coverage when the aircraft was operated by a pilot without a current and effective medical certificate.[679] A member of the non-profit club was operating the aircraft owned by that non-profit and crashed, destroying the aircraft.[680] The pilot's medical certificate had expired four months prior to the crash, and he renewed it four days after the crash.[681] The insurer refused to indemnify based on the exclusion, and the court held for the insurer.[682] It concluded that any coverage shift is better left to the legislature and noted that other jurisdictions have passed anti-technicality statutes.[683] In addition, the exclusion encourages owners and operators of aircraft to obey and satisfy safety regulations applicable to their operation of aircraft.[684]

TENNESSEE

1. *Summary*

A causal connection is likely required.[685] All Tennessee cases addressing this question provide this statement as a rationale: "Suppose a man violates the law against profanity and is shot

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676 *See* Econ. Aero Club, Inc. v. Avemco Ins. Co., 540 N.W.2d 644, 646 (S.D. 1995).

677 *See id.* at 645–46.

678 *Id.* at 644.

679 *Id.* at 645.

680 *Id.*

681 *Id.*

682 *Id.* at 646.

683 *Id.*

684 *Id.*

685 *See* S. Ins. Co. v. Graham, 280 S.W. 30, 31 (Tenn. 1926).

while so doing, should that absolve the company from liability?"[686]

No cases specifically address the causal connection in the aviation context.

2. *Cases*

a. *Accident Insurance Co. of North America v. Bennett*[687]

A life insurance policy excluded coverage for injuries incurred "while engaged in or in consequence of any unlawful act."[688] The insured and his mistress were found dead from gunshot wounds.[689] He had been living with her "in a state of fornication."[690] The insurer claimed that it was relieved from liability on insured's life insurance policy because of his participation in unlawful activities (fornication).[691] First, the court said that fornication, while maybe immoral, was not unlawful unless open and notorious.[692] Second, if this act were unlawful per se it would not relieve the insurer from liability because there must be some causal connection.[693] This is based on the reasoning that the consequence should naturally flow from the prohibited activity and should be reasonably anticipated.[694]

b. *Southern Insurance Co. v. Graham*[695]

The insurance policy in this case precluded coverage during acts in violation of the law.[696] A man was transporting whiskey illegally.[697] During his car trip, the insured stopped, inspected the automobile's gasoline leakage and, when twenty feet away from the automobile, lit a cigarette which ignited the gasoline from his clothing.[698] The court held that, even though the in-

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686 *E.g., Graham*, 280 S.W. at 31; Accident Ins. Co. of N. Am. v. Bennett, 16 S.W. 723, 725 (Tenn. 1891).

687 16 S.W. at 723.

688 *Id.* at 725.

689 *Id.* at 723–24.

690 *Id.* at 725.

691 *Id.*

692 *Id.*

693 *Id.*

694 *Id.* at 725–26; *see also* Life & Cas. Ins. Co. v. Hargraves, 88 S.W.2d 451 (Tenn. 1935) (holding that there was a causal connection between the excluded violation of the law and the accident which precluded insurance coverage).

695 280 S.W. 30 (Tenn. 1926).

696 *Id.* at 30–31.

697 *Id.* at 30.

698 *Id.*

sured was violating the law, there was no causal connection between his whiskey transportation and his burns so the insurance coverage was not precluded.[699]

TEXAS

1. *Summary*

A causal connection is required.[700] Texas courts reason that it would be unconscionable and against public policy to allow insurers to avoid coverage on a technicality.[701]

2. *Cases*

a. *Puckett v. United States Fire Insurance Co.*[702]

The policy had an exclusion that suspended coverage "if the aircraft . . . airworthiness certificate is not in full force and effect."[703] The insured crashed due to pilot error.[704] The insured's certificate had lapsed but both parties stipulated that this did not cause the accident.[705] The court held that an aviation liability insurer could not avoid liability under an insurance policy on the basis of an insured's breach of policy unless there was a causal connection between the breach and the loss.[706] The court's reasoning was that it would be unconscionable and against public policy to allow an aviation insurer to avoid liability when the breach of a contract did not contribute to the loss and the breach amounted to nothing more than a technicality.[707]

b. *AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc.*[708]

The insurance policy required a minimum of 1,000 hours of flight experience.[709] Property damage occurred due to a crash in which the pilot did not have the requisite flight hours.[710] The trial court held that the insurer had the burden to show a causal

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699 *Id.* at 31.
700 *See* Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936, 937–38 (Tex. 1984).
701 *See id.* at 938.
702 *Id.* at 936.
703 *Id.* at 937.
704 *Id.* at 938.
705 *Id.* at 937.
706 *Id.* at 939.
707 *Id.* at 938.
708 198 S.W.3d 276 (Tex. App.—San Antonio 2006, pet. denied).
709 *Id.* at 278–79.
710 *Id.* at 279.

connection between the lack of flight time and the crash.[711] The jury found no causal connection and awarded exemplary damages against the insurer.[712] The court of appeals ruled it was bound to follow *Puckett* and affirmed the trial court's ruling on the insurer's burden to show a causal connection and the trial court's judgment against the insurer.[713] *Puckett* was upheld when the Texas Supreme Court (with a completely different composition than the *Puckett* Court) denied review.[714]

UTAH

1. Summary

A causal connection is probably required.[715] The state courts are reluctant to take away bargained-for coverage.[716] There are no cases or statutes on point with the causal connection issue in aviation insurance policies. However, it can be reasoned that Utah would be likely to require a causal connection because of its tendencies to require a causal connection in situations such as strict accident policies in which there is another existing medical condition.[717]

2. Cases

a. *Tucker v. New York Life Insurance Co.*

This insurance policy covered death of the insured and paid double for a death solely from an accident.[718] This double indemnity benefit excluded a death that "resulted from physical or mental infirmities."[719] The insured accidentally slipped and fell on ice, breaking his arm and causing a dissecting aneurism of the aorta; he died a few weeks later.[720] The court ultimately found that an existing high blood pressure condition concurrently contributed to his death and, therefore, prevented the double indemnity benefit.[721] Although this particular policy

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711 *Id.* at 278.
712 *Id.* at 279.
713 *Id.* at 279–80 (citing Puckett v. U.S. Fire Ins. Co., 678 S.W.2d 936, 936 (Tex. 1984)).
714 248 S.W.3d 169, 169 (Tex. 2008).
715 *See* Tucker v. N.Y. Life Ins. Co., 155 P.2d 173, 176 (Utah 1945).
716 *See id.* at 176–77.
717 *See id.* at 176.
718 *Id.*
719 *Id.* at 174.
720 *Id.*
721 *Id.* at 175–76.

used causal language ("resulted") the court gave relevant general law from previous cases.[722] The rule in this jurisdiction is to give liberal construction to the policy in favor of the insured to "accomplish the purpose for which the insurance was taken out and for which the premium was paid."[723] Specifically, courts interpret a clause covering "[a]n injury effected through violent, external, and accidental means, entirely independent of all other causes" to mean that an existing disease will not bar an insured's recovery unless it has a causal connection with the injury.[724]

VERMONT

1. *Summary*

A causal connection is not required but a misrepresentation breach must be material to the decision to the issuance of the policy.[725] Courts require a misrepresentation to be material before insurers can deny coverage.[726]

There are no cases that directly address the causal connection issue but the following cases address misrepresentations in insurance policies. They imply that immaterial breaches will not cause a forfeiture in coverage except when the breach has a relationship to the acceptance of the risk by the insurer.[727] This could encompass some non-causally related breaches.

2. *Cases*

a. *McAllister v. Avemco Insurance Co.*[728]

This insured represented that he had the aircraft's annual inspection done in the last twelve months, when in fact he had not.[729] The insured crashed but there was no evidence that the cause of the crash was related to the failure to have an annual inspection.[730] The insurer denied coverage based on that misrepresentation.[731] Breach by misrepresentation in an aviation

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722 *Id.* at 175.

723 *Id.*

724 *Id.*

725 *See* McAllister v. Avemco Ins. Co., 528 A.2d 758, 759 (Vt. 1987).

726 *See* Martell v. Universal Underwriters Life Ins. Co., 564 A.2d 584, 588 (Vt. 1989).

727 *See Martell*, 564 A.2d at 587–88; *McAllister*, 528 A.2d at 759.

728 528 A.2d at 758.

729 *Id.* at 758–59.

730 *Id.*

731 *Id.*

insurance policy is governed by statute.[732] This requires a causal connection not between the breach and the loss, but between the breach and the decision of the insurer to issue the policy.[733] If the misrepresentation has a material effect on whether the insurer would have issued the policy, it will void the policy.[734]

b. *Martell v. Universal Underwriters Life Insurance Co.*[735]

The court held that even an innocent misrepresentation will preclude coverage under a life insurance policy if it is material.[736] The health statement in an application for a life insurance policy was held material as a matter of law when the insurer is concerned with a specific risk.[737]

VIRGINIA

1. Summary

No causal connection is required.[738] However, in the original case deciding the rule, a violation likely caused the crash.[739] The Virginia court reasoned that it must enforce the contract as made by the parties because premiums are based on the fact that the policy does not cover certain more hazardous risks.[740] The court differentiated between contract and tort principles.[741]

2. Cases

a. *United States Specialty Insurance Co. v. Skymaster of Virginia, Inc.*[742]

The insured made a crash landing, damaging the aircraft.[743] He had not disclosed his diabetes condition on his medical certificate application.[744] The policy exclusion suspended coverage

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732 VT. STAT. ANN. tit. 8, § 4205 (West 2010).
733 *See id.*
734 *See id.*
735 564 A.2d 584 (Vt. 1989).
736 *Id.* at 588.
737 *Id.* at 587.
738 *See* U.S. Specialty Ins. Co. v. Skymaster of Va., Inc., 123 F. Supp. 2d 995, 1003 (E.D. Va. 2000).
739 *See* Powell Valley Elec. Coop., Inc. v. U.S. Aviation Underwriters, Inc., 179 F. Supp. 616, 619 (W.D. Va. 1959).
740 *Skymaster*, 123 F. Supp. 2d at 1003.
741 *Id.*
742 *Id.* at 995.
743 *Id.* at 996.
744 *Id.* at 997.

if the pilot did not have a current and proper medical certificate.[745] The pilot's certificate was deemed not current and proper due to the misrepresentations made regarding his diabetes condition.[746] The court held that no causal connection was required between the pilot's lack of a proper medical certificate and the crash in order to void the policy.[747] The court relied on several theories in reaching its final holding that (1) this is contract, not tort, (2) it does not violate public policy to require the pilot to have a proper certification, and (3) the court will not re-contract for the parties.[748]

b. *Powell Valley Electric Cooperative, Inc. v. United States Aviation Underwriters, Inc.*[749]

This policy covered a specific pilot and excluded coverage while the aircraft was used in flight instruction.[750] The helicopter had dual controls, and the insured let the student take over part of the flight.[751] The student made a risky turn and the helicopter crashed despite the pilot retaking the controls in an attempt to fix the error.[752] The court held that it does not matter what caused the crash because it was under the exclusion and, therefore, coverage was suspended.[753]

WASHINGTON

1. Summary

A causal connection is required for breached warranties.[754] Washington courts require insurers to show a causal connection regarding warranties because they believe it is reasonable to think that a person (1) would consider whether the clause in question was meant to relieve the insurer from liability *resulting* from the proscribed activities and (2) would not assume that the insurer was inserting a mere arbitrary provision.[755]

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[745] *Id.* at 998.
[746] *Id.* at 999.
[747] *Id.* at 1002–03.
[748] *Id.* at 1002.
[749] 179 F. Supp. 616 (W.D. Va. 1959).
[750] *Id.* at 617.
[751] *Id.*
[752] *Id.*
[753] *Id.* at 619.
[754] *See* Riordan v. Com. Travelers Mut. Ins. Co., 525 P.2d 804, 808 (Wash. Ct. App. 1974).
[755] *See id.* at 807.

There are no aviation causal connection cases or statutes.

2. Cases

a. *Riordan v. Commercial Travelers Mutual Insurance Co.*[756]

This automobile policy excluded coverage when the insured was intoxicated.[757] An auto accident occurred when a truck driver blocked traffic and was the sole cause of the accident.[758] The insured was a *passenger* who was intoxicated.[759] The court held that coverage was not suspended because the insurer must show a causal connection between the intoxication and the accident in order to avoid coverage.[760] This is specific to the intoxication clause.

b. *Highlands Insurance Co. v. Koetje*[761]

This policy warranties provided that the boat was not to exceed one crew member for a certain period and that it was confined to the waters of Norton Sound.[762] A crew member was injured when the boat was in waters outside of Norton Sound and there was an extra crew member.[763] Washington law is characterized as requiring that a "relation" between the breach and loss to avoid insurance coverage, not that the breach actually *caused* the loss.[764] The court denied a motion to dismiss because a fact issue existed as to what the relationship was between the breach and the loss.[765] Further, the court stated that those breaches increased the risk of loss and were related to the injury.[766]

WEST VIRGINIA

1. Summary

A causal connection is considered through the "efficient proximate cause" doctrine.[767] West Virginia courts look at the qual-

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[756] *Id.* at 804.
[757] *Id.* at 805.
[758] *Id.* at 806.
[759] *Id.*
[760] *Id.* at 807–08.
[761] 651 F. Supp. 346 (W.D. Wash 1987).
[762] *Id.* at 347.
[763] *Id.*
[764] *Id.*
[765] *Id.* at 349.
[766] *Id.*
[767] *See* W.Va. Fire & Cas. Co. v. Mathews, 543 S.E.2d 664, 665 (W. Va. 2000).

ity of the relationship and will only deny coverage if the predominating cause of the loss is excluded.[768]

There are no cases or statutes that address the causal connection requirement.

2. *Cases*

a. *West Virginia Fire & Casualty Co. v. Mathews*[769]

The insured had a homeowner's policy that covered, among other causes, damage caused by a vehicle but not by vandalism or malicious acts.[770] An alleged imposter, pretending to be the insured, contacted a contractor and had him level the house.[771] The insured claimed that the insurer was liable because the house was leveled using a vehicle.[772] The insurer, however, denied liability because of the malicious act of vandalism by the imposter.[773] The court held that when a loss is caused by a combination of covered- and specifically-excluded risks, the loss is covered if the covered risk was the efficient proximate cause of the loss.[774] "No coverage exists for a loss if the covered risk was only a remote cause of the loss, or conversely, if the excluded risk was the efficient proximate cause of the loss."[775] "The efficient proximate cause is the risk that sets others in motion," or "the predominating cause of the loss."[776] Further, the court explained that "[i]t is not necessarily the last act in a chain of events, nor is it the triggering cause. The efficient proximate cause doctrine looks to the quality of the links in the chain of causation."[777] Therefore, because the imposter's malicious acts set the acts of the contractor into motion, the coverage was suspended and the insurer was not liable.[778]

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768 *See id.*

769 *Id.* at 664.

770 *Id.* at 666.

771 *Id.*

772 *Id.*

773 *Id.*

774 *Id.* at 668.

775 *Id.*

776 *Id.*

777 *Id.*

778 *Id.* at 669.

WISCONSIN

1. Summary

No causal connection is required.[779] Wisconsin courts reason that an insurer's liability is contractual and not based on tort.[780] A violation suspends coverage and, therefore, it is irrelevant to whether the accident was caused by the violation.[781]

There are no aviation cases or statutes that address this issue.

2. Cases

a. *Witzko v. Koenig*[782]

The insured was a fifteen-year-old who was excluded from coverage under the automobile insurance policy because of a violation of an age restriction, which included driving at night under the age of sixteen.[783] The insured got into an accident at night, although the accident was not causally related to his age.[784] The court held that it was committed to upholding insurance policies as contracts and this violation under the policy rendered the coverage inapplicable.[785]

WYOMING

1. Summary

There is probably no causal connection required.[786] The court strictly interprets the contract, focusing on the single matter of whether the activity fell under the exclusion, without contemplating a causal connection between that activity and the accident.[787]

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779 *See* Witzko v. Koenig, 272 N.W. 864, 867 (Wis. 1937).

780 *Id.*

781 *Id.*

782 *Id.* at 864.

783 *Id.* at 866.

784 *Id.* at 867.

785 *Id.*

786 *See* Ranger Ins. Co. v. Cates, 501 P.2d 1255, 1260 (Wyo. 1972).

787 *See id.*

2. Cases

a. *Ranger Insurance Co. v. Cates*[788]

The policy excluded coverage for any losses involving taking off or landing anywhere other than an "airport."[789] The insured did not want the "off-airport" exclusion, but his agent told him "there should be no problem" and the exclusion was left in the policy.[790] The insured crashed shortly after taking off from a hard-packed dirt surface, though it was unclear if the dirt surface was a cause of the accident.[791] The trial court found that a modification took the "off-airport" exclusion out of the policy and the loss was covered, and the court of appeals affirmed.[792] The insurer argued that the failure to include a no causal connection requirement jury instruction brought the issue of proximate cause into the case.[793] The court disagreed and found there was no error.[794] The opinion implied that there is no causal connection requirement, but the court did not make explicit statements regarding the issue.

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788 *Id.* at 1255.
789 *Id.* at 1257 n.1.
790 *Id.* at 1257–58.
791 *See id.* at 1258, 1260.
792 *Id.* at 1259–60.
793 *Id.*
794 *Id.*


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