

CHAPTER FOURTEEN

Insurance	
Generally	1
..... Aviation / Security Following Accident.	3
.....	3
<u>Franks v. Amelia Reid Aviation</u>	5
Discussion	6
<u>Woods v. Insurance Company of North America</u>	7

INSURANCE

Generally

Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event. Insurance also has been defined as an agreement in which one party for consideration promises to pay another party money or its equivalent or to perform acts of value on the destruction, death, loss of, or injury to someone or something by specified perils. Insurance necessarily involves two elements: (1) a risk of loss to which one party is subject and a shifting of that risk to another party, and (2) distribution of risk among similarly situated persons. The person or entity that undertakes to indemnify another by insurance is the insurer, and the person or entity indemnified is the insured.

The typical liability insurance policy contains two distinct promises on the part of the insurer, both of which are contained in the insuring clause: (1) the duty to indemnify, and (2) the duty to defend. Ordinarily, all other terms and conditions in the policy restrict or modify the insuring clause. A typical insuring clause in a liability insurance policy states: "The company [insurer] will pay on behalf of the insured all sums that the insured becomes legally obligated to pay as damages because of (1) bodily injury or (2) property damage to which this insurance applies. The company shall have the right and duty to defend any suit against the insured seeking damages covered by the policy, even if the allegations of the suit are groundless, false, or fraudulent."

In order to determine the duties and obligations that the parties to the policy have assumed, a court must look first to the language of the insurance contract. Both parties must assent to the insurance contract, either in person or through their agents, and must agree on the essential terms and elements set forth in the policy. Insurance policies are contracts of adhesion between parties that are not equally situated. The insurer, as the dominant and expert party in the field, must not only draft the contract in unambiguous terms, but also must bring to the attention of the insured all provisions and conditions that create exceptions or limitations on coverage. However, for purposes of interpretation and construction of insurance contracts, it is not important whether they are labeled adhesive or not. In cases where the terms of an insurance policy are unclear or ambiguous, courts will find in favor of the insured. In cases of ambiguity, courts ordinarily will interpret insuring clauses broadly to find coverage. Moreover, policy exclusions are strictly construed against the insurer and in favor of the insured, and all ambiguities are resolved against the insurer. However, if the meaning of the contract is clear, it is given effect.

In many situations an insured will have more than one insurance policy covering a specific risk or peril. In such a case it is important for the practitioner to distinguish between the different types, or levels, of insurance coverage that may apply to a claim. The first level of coverage is called primary insurance. Primary insurance is insurance coverage that, under the terms of the policy, attaches immediately on the occurrence of the situation or event that gives rise to liability. One reason it is important to identify the primary insurer is that, in most instances, the primary insurer also has the primary duty to defend. Secondary or excess insurance is coverage that, under the terms of the policy, attaches only after a predetermined amount of primary coverage has been exhausted. Often an insured will have several layers of secondary insurance. Secondary insurance is sometimes referred to as umbrella insurance.

First party insurance covers claims made by an insured against his or her insurer seeking coverage for loss or damage sustained by the insured. First party claims typically involve some type of casualty insurance, such as sickness and accident, fire, uninsured motorist, or occupational disability insurance. In a first party case, the contractual obligation of the insurer is to pay benefits directly to the insured, rather than to a third party, and to do so only if the terms and conditions for payment have been fulfilled.

Third party insurance covers claims seeking coverage for liability of the insured to another party. Third party claims typically involve liability insurance. A single insurance policy often will cover both first and third party claims.

As a general rule, there is no duty to investigate an applicant's insurability before issuing a policy of insurance. An insurer is entitled to determine for itself what risks it will accept in issuing an insurance policy, and whom it will insure. In making this determination, the insurer has the right to rely on the accuracy of the insured's statements on the application for insurance. If the insurer becomes aware of facts indicating that the insured has made a material misrepresentation on the insurance application, the insurer's failure to investigate further may be asserted by the insured as an affirmative defense to an action for rescission. Additionally, an insurer cannot rely solely on the insured's answers on the application if the insurer undertakes an independent investigation that reveals material omissions or falsity of the answers. Failure of the insurer to investigate further in this circumstance may constitute a waiver of the insurer's right to the information. An insurer that conducts an investigation at the time of an insured's initial application for insurance is not required to reinvestigate the insurability of the applicant each time the policy is renewed.

The insurer's duty to provide coverage under an insurance policy is triggered when the insured provides notice of the claim, loss or damage for which coverage is sought. All insurance policies contain notice requirements that specify the circumstances under which the insured must provide the insurer with notice and the timing of the notice.

Because an insurer's duty to defend its insured is broader than its duty to indemnify, the insurer may be faced with the problem of how to satisfy its duty to defend an action against its insured without waiving or being estopped from asserting any potential claim of noncoverage. The insurer solves this problem by defending the action against the insured while simultaneously reserving its right to dispute coverage at a later date. The insurer is required to notify the insured of a potential conflict of interest, and of the insured's right to select independent counsel.

When there is an actual controversy relating to contractual rights and obligations an interested person may bring an action for a judicial determination of those rights and obligations. An action for declaratory relief provides an appropriate remedy when there is a question regarding the rights and duties of parties to a written contract of insurance. The most common question regarding the rights and obligations of parties to an insurance policy is whether an asserted claim is covered or excluded. The insurer may seek a declaration of nonliability based on an exclusion in the policy as well as any applicable statute that may preclude coverage. For example, an insurer may properly be exonerated from liability when the claimed injury was caused by a willful act of the insured for which coverage is prohibited by Ins C §533.

An insurer that fails to effect reasonable settlement within the policy limits is liable in damages for the entire amount of the insured's liability, whether or not this amount exceeds the policy limits. An insurer is prohibited from indemnifying its insured for punitive damages. This prohibition is based on the public policy rationale against diluting the deterrent effect of punitive damages by allowing the impact of the penalty to shift to the insurer.

Aviation Insurance

Aviation insurance is generally for either the aircraft (hull) or for liability for damages caused to others, or both. Hull insurance can be for in-flight, on the ground, or both. The declaration page of the insurance policy specifies who is insured, what qualifications are required to fly, which aircraft is covered, and what coverages are afforded. Most insurers make reference your disclosures on the application for insurance, and provide that there is no coverage should the representations you made therein are later discovered to be untrue (for instance, after a loss occurs, you are found not to have the flight time listed in the application).

Insurance is issued for the nature of your operation. The most common coverage is for "business and pleasure". Other coverages include "air taxi", "commercial", "agricultural", and "flight training". These names are not standard terms.

State statutes set minimum standards for financial responsibility of commercial air operators, other airplane operators, and cropdusters. The commercial air operator's insurance must cover liability of any person using, renting, or operating aircraft with its express or implied permission. When an airplane is rented, the rental agreement or lease must either provide a certificate of aircraft liability insurance policy, or a notice that no insurance exists and that the renter will be required to post security. Local city or county ordinances may require additional insurance. An adequately insured person can be exempt from the requirements of the Aircraft Financial Responsibility Act.

The Uniform Aircraft Financial Responsibility Act was adopted in California in 1968 with variations, omissions and additional matters. The act establishes "minimum standards for aircraft financial responsibility." "Minimum liability coverage is required for third party, nonpassenger claimants injured or killed as a result of the accident. . . . The legislation is designed to provide coverage protection to ground victims otherwise unable to foresee or guard against risk of loss or injury due to small aircraft in flight." (Franks v. Amelia Reid Aviation (1985) 163 CA3d 1207, 1209, 210 CR 127.)

The Uniform Aircraft Financial Responsibility Act does not apply to the following:

- (a) Aircraft owned and operated by or leased to and subject to the sole control of the United States, a state, or a foreign country.
- (b) Any commercial air operator.
- (c) Any aircraft operated by an operator subject to specified provisions of the Agriculture Code.
- (d) Any person who maintains in effect an insurance policy meeting the requirements of the act and who has filed with the Department of Aeronautics a certificate of insurance issued by the insurance company which issued the policy. Franks v. Amelia Reid Aviation, the flight school's owner's compliance with the act removed any duty to fulfill notice requirements; and "neither that section nor any other substantive provision of the Act could serve as a statutory basis for civil liability".

Since operators of aircraft are licensed by the federal government, the Act does not contain the sanction of license suspension. It does, however, impose criminal penalties on those who fail to comply with its provisions. (Public Utility Code 24400 et seq.)

Security Following Accident.

- a) Accident Report. The operator of an aircraft involved in an accident in this state, resulting in bodily injury or death, or damage of more than \$400 to another's property, must report the accident to the Department of Aeronautics not later than 15 days after the occurrence. If the operator is physically incapacitated, the owner must make the report within 15 days after learning of the accident.
- b) Security. Not later than 30 days after receipt of the report, the Department determines the amount of security required (not to exceed \$50,000 for injury or death of one person, \$100,000 for more than one, and \$50,000 for property damage). The owner or operator must deposit the required security not later than 30 days after entry of the order. A pilot or operator of a rental aircraft must be notified in writing of the existence or nonexistence of liability coverage.
- c) Exceptions to Security Requirements.
The security requirements do not apply:
 - (1) "To the operator of an aircraft involved in an accident in which no injury was caused to the person of anyone other than the operator or guests, and no damage in excess of four hundred dollars (\$400) was caused to property not owned, rented, occupied or used by such operator, nor in his care, custody or control, nor carried in or on the aircraft."
 - (2) "To the operator or owner of an aircraft if at the time of the accident the aircraft was stationary, without passengers thereon or boarding the aircraft or alighting therefrom and the aircraft was parked in an area legally used for aircraft parking with no engine running nor in the process of being started."
 - (3) "To the owner of an aircraft if at the time of the accident the aircraft was being operated, or was parked, without his permission, express or implied."
 - (4) "To the owner or operator if there is in effect at the time of the accident a liability insurance policy or bond covering the aircraft or accident."
 - (5) "To any person qualified as a self_insurer or to any person operating an aircraft for the self_insurer for whose acts the self_insurer is legally responsible."
 - (6) "After there is filed with the department satisfactory evidence that the person otherwise required to deposit security has (1) been released from liability, or (2) been adjudicated not to be liable by judgment, or (3) executed a written agreement with all claimants providing for payment of an agreed amount with respect to all claims for injuries or damages resulting from the accident."

In addition, a security deposit to cover liability judgments is required by the Department of Transportation following every reported aircraft accident involving personal injury or death, or property damage in excess of \$400, unless there is sufficient applicable liability insurance or bond.

Many airports operated by public entities within California require concessionaires and operators on their facility to carry liability insurance well in excess of the minimum financial responsibility laws. It is advisable before beginning operations to obtain any contracts between the airport and providers of services located at that airport, such as refueling operations, airport security, and airplane parking.

Kathy Ann **FRANKS** et al., Plaintiffs and Appellants,
v.
AMELIA REID AVIATION , Defendant and Respondent.

On November 4, 1977, a small private airplane rented from respondent Amelia Reid Aviation (owner) crashed killing the pilot and three nonpaying passengers. It is undisputed that pilot negligence was the proximate cause of the fatal accident. Appellants instituted a wrongful death action against respondent Reid, inter alia, ultimately framed as a single cause of action for negligence per se based upon respondent Reid's alleged noncompliance with the written notice requirement of Public Utilities Code section 24362 (FN1) regarding insurance coverage under the provisions of the Uniform Aircraft Financial Responsibility Act. At the conclusion of the hearing on cross_motions for summary judgment and adjudication of issues, the trial court denied appellants' motion for summary judgment, granted respondent's motion for summary adjudication that no liability attached under section 24362 and dismissed the challenged action. This appeal followed.

DISCUSSION

The purpose of the Uniform Aircraft Financial Responsibility Act (hereafter Act) is "to establish minimum standards for aircraft financial responsibility, ...". Minimum liability coverage is required for third party, nonpassenger claimants injured or killed as a result of the accident. The legislation is designed to provide coverage protection to ground victims otherwise unable to foresee or guard against risk of loss or injury due to small aircraft in flight: "Coverage for these innocent victims is statutorily imposed by Public Utilities Code section 24350, subdivision (b). On the other hand, guests and passengers presumably are aware of the enterprise upon which they embark and are thereby fully capable of protecting themselves. Though they may now sue and recover against the owners for injuries suffered as a result of the negligent operation or maintenance of the aircraft, the Legislature has not elected to require that they be covered under a liability insurance policy."

Section 24362 simply requires that a pilot or operator of a rental aircraft be notified in writing of the existence (as specified) or nonexistence of liability coverage. Failure to furnish either proof of financial responsibility or sufficient security is punishable as a misdemeanor. (Sec. 24403.)

The sole question on appeal is whether respondent's arguable failure to comply with the statutory notice requirement creates an independent cause of action on behalf of the heirs of the

deceased passengers. A straightforward analysis impels a negative response.

At the outset, we consider respondent's threshold contention that the provisions of the Act, including the notice requirement of section 24362, do not apply.

Respondent contends, correctly, that the Legislature__in lucid and unequivocal language__has expressly exempted any person from the purview of the Act where compliance with the minimum requisites of coverage is demonstrated by an appropriately filed certificate of insurance. Aside from accident_reporting requirements, the provisions of the Act do not apply to "[a]ny person who maintains in effect an insurance policy meeting the requirements of Section 24350 and who has filed with the department a certificate of insurance issued by the insurance company which issued such policy; ..." (Sec. 24243, subd. (f).)

As appellants concede, the record reflects that respondent obtained and duly filed the required certificate of insurance providing minimum liability coverage. Such uncontroverted fact of compliance removed any duty to fulfill the notice requirements of section 24362. (FN2) Accordingly, neither that section nor any other substantive provision of the Act could serve as a statutory basis for civil liability. Thus, summary adjudication favorable to respondent on the issue of liability based upon the alleged statutory violation was correct as a matter of law, and the order of dismissal was properly entered.

In view of our determination, it is unnecessary to discuss the remaining arguments raised in the briefs. (FN3)

Judgment affirmed.

FN1. Section 24362 of the Public Utilities Code (to which all further statutory references apply unless otherwise noted) provides in relevant part:

"Every person permitting another person to operate an **aircraft** under the terms of any rental agreement or lease which provides for any remuneration for the use of such **aircraft** shall deliver either of the following to the person renting the **aircraft**:

"(a) A written certification that an **aircraft** liability policy of **insurance** exists for the operator thereof, specifying the name of the **insurance** company providing such coverage, the policy number, the expiration date of such policy, the nature and extent of coverage, and a statement that such coverage complies with the financial responsibility laws of California applicable to the operation of an **aircraft**.... [or] (b) A written statement that no **insurance** coverage exists for the operator of the **aircraft**. Such statement shall be delivered to the person renting the **aircraft** prior to entering into any binding rental agreement and shall substantially conform to the following text:

" **NOTICE TO AIRCRAFT OPERATOR**

" 'You are hereby notified that no **insurance** coverage is being provided to cover your liability for bodily injury and property damage you may cause as an operator of any **aircraft** covered by our rental agreement. [p] 'You are further notified that the Uniform Aircraft Financial Responsibility Act ... requires that you be able to post security in an amount up to \$50,000 because of bodily injury or death to one person in any one accident, up to \$100,000 because of bodily injury or death to two or more persons in any one accident, and up to \$50,000 in the event of damage to or destruction of property. [p] 'Failure to furnish sufficient security or failure to furnish evidence of

proof of ability to respond in damages as required under Section 24325 and Section 24360 of the Public Utilities Code is a misdemeanor.' ..."

FN2. Indeed, the existence of the required coverage to indemnify potential injury claimants on the ground is in full compliance with the legislative purpose discussed in National Ins. Underwriters v. Carter.

FN3. However, we note, parenthetically, our difficulty in attempting to understand the nexus suggested by appellants between the "injury" sustained and the claimed breach of statutory duty of notice. The tortuous route of proximate cause charted by appellants literally requires "speculation upon speculation", an exercise possessing no probative value. The proximate cause of injury was pilot error, a potentially independent theory of liability not at issue herein, rather than the argued statutory violation.

James W. **WOODS**,
Plaintiff and Respondent,

v.

INSURANCE COMPANY OF NORTH AMERICA, a corporation,
Defendant and Appellant.

On this appeal by Insurance Company of North America, the insurer, from a judgment in favor of James W. Woods, the injured passenger, declaring that its aircraft liability policy was in full force and effect at the time of the accident, the only question is the construction of the phrase 'properly certificated and rated for the flight, in Endorsement No. 2. For the reasons set forth below, we have concluded that the judgment must be affirmed.

The facts are not in dispute and were found by the trial court as follows: On May 16, 1962, the insurer issued to the owner, Stephen W. Johnson, a policy providing public liability coverage for injuries sustained by a person in the operation of the insured aircraft, an Aero 560 Commander. On September 25, 1962, the passenger was injured in a crash that occurred while the aircraft was piloted by John Gregg with the knowledge and consent of the owner. At the time of the accident, Gregg was an experienced pilot, with a current Class 3 pilot license that qualified him to fly the multi engine aircraft involved in the accident. Gregg had 12 years flying experience and had logged 8,500 hours of total flight time, including 2,000 hours of flight time in Aero Commander aircraft. However, unknown to Gregg or his passenger, Gregg's medical certificate had expired about 25 days before the accident. (FN1) Gregg's failure to renew his medical certificate had nothing to do with the accident and was mere inadvertence on his part; at all times before and after the accident, Gregg was in excellent physical health and condition and passed all prior and subsequent medical examinations.

The passenger filed his action for personal injuries sustained against Gregg and the insurer. (FN2) The insurer refused to defend on grounds of no coverage. Gregg defaulted and the passenger subsequently commenced this action for a summary judgment against the insurer.

The largely printed policy contained Exclusion (a), set forth in full below, (FN3) which was eliminated from the policy by Endorsement No. 1, that provided:

FEDERAL REGULATIONS ENDORSEMENT

'In Consideration of the premium for which this policy is written, it is agreed that paragraphs (1), (2), (3) and (4) of Exclusion (a) Are deleted in their entirety. 'Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.'

This controversy concerns the proper construction and meaning of typewritten Endorsement No. 2 that provided: 'It is agreed that coverage provided by this policy while the aircraft is in flight shall not apply unless the pilot in command of the aircraft Is Sehoj Dickson Turner, Maurice Smith or any other private or commercial pilot who is properly certificated and rated for the flight and the aircraft and has logged a minimum of 1,500 first pilot hours of which at least 500 hours have been in multi_engine aircraft and at least 25 hours in Aero Commander aircraft.

'Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.' (Emphasis supplied.)

The insurer maintains that the phrase 'properly certificated and rated for the flight and the aircraft' clearly includes the current medical certificate required by the regulations of the Federal Aviation Agency, set forth below. (FN4) In sum, the insurer argues that since Gregg did not have the current medical certificate required by FAA regulations, set forth above, in addition to his current pilot's license, the pilot in command of the Aero Commander was not 'properly certificated and rated for the flight,' and the coverages afforded under its policy were never in effect. We cannot agree.

The insurer might have been on more solid ground if it had retained Exclusion (a) originally printed in the policy with its subparagraph (4) (quoted in footnote 3 above) that specifically referred 'to any person not properly certificated by the required governmental authority.' However, since in consideration of the payment of an additional premium, Exclusion (a) was deleted in its entirety by Endorsement No. 1, we cannot agree with the insurer that Endorsement No. 2 (executed at the same time as the policy and Endorsement No. 1) restored as to pilots in command of the aircrafts the exclusion of paragraph (4) of Exclusion (a).

Furthermore, we note while two separate documents are required by the FAA, the pilot's certificate or license and the medical certificate, the insurer chose to use in both Endorsements 1 and 2 the ambiguous term 'properly certificated.' If that term included the meaning that the pilot must hold in addition to the license a current medical certificate, the insurer should have specifically so stated, wherein the court so stated, after holding that the phrase 'flown by a licensed pilot' did not also include the current medical certificate required by the FAA regulations. (FN5)

It is axiomatic that ambiguous terms used in an insurance policy are construed against the draftsman, and that exclusions must be strictly construed against the insurer. Furthermore, as noted in Royal Indemnity Co. v. John F. Cawrse Lumber Co. (D.C.Or.1965), 245 F.Supp. 707, at page 711: 'Of more than ordinary significance, on the probe to discover the true intent of the parties, is the action of the plaintiff in eliminating from the provisions of the original policy, the only language that specifically dealt with an expired certificate or the operation of the aircraft by a pilot in violation of his civil aeronautics certificate. Words deleted from a contract may be the strongest evidence of the intention of the parties.

In Royal Indemnity, as here, the policy applied to the aircraft in flight only while being operated by a pilot holding a valid and current private or commercial pilot certificate, the pilot had such a certificate but the last medical certificate issued to him had expired before the accident, and Endorsement No. 6 of the policy (like Endorsement No. 1 here) eliminated an exclusion that specifically related to 'approved' pilots whose 'certificate has been restricted, revoked or suspended, or has expired' (fn. 8 at 711). The court in construing the entire policy in favor of the insured and holding that the elimination of the exclusion broadened the coverage of the policy, said at 711: 'We must not confuse the language of this endorsement with broad exclusions, limitations or exceptions, employed in some policies, such as 'operation in violation of regulation of law,' or 'operation in violation of regulations.' (Citation.) Without question, the plaintiff could have selected and used that language in the policy. It chose, however, to be precise in the language used in the endorsement and limit the pilot's qualifications to a valid current operator's license. Such language must be strictly construed and by no stretch of the imagination can this language be enlarged to include 'a valid medical certificate' or a 'violation of law or regulations.'"

In rejecting the insurer's contention that the controlling language was a general provision referring to an 'approved pilot' with a valid 'current pilot certificate,' the court said at 712: 'True enough, the word 'valid' means legal or lawful. Even so, I do not believe that this descriptive word adds anything to the meaning of Current pilot's certificate. The certificate was legal and valid in and of itself and without reference to the medical certificate. The phrase Current pilot's certificate would imply a valid certificate. The certificate either exists or it does not exist. If there is ambiguity in the phrase, the burden of enlightenment falls on the insurer. Its only answer is that by implication the requirement of a valid medical certificate should be read into the language Current pilot's certificate. I am drawn to the conclusion that nothing less than rewriting the policy would accomplish that result.'

Similarly, in Ranger Insurance Company v. Culberson (5 Cir.1971), 454 F.2d 857, the court specifically noted the broadening effect on coverage by the deletion of a standard exclusion, and held that a person may be insured against activities otherwise prohibited by the federal air regulations. We think the following reasoning of Ranger, at 864 and 865, is particularly applicable here to the insurer's argument as to the broad reading of the terms 'properly certificated' of Endorsement No. 2: 'If Ranger wishes us to read the general term 'proper' as requiring that Any transgression of an FAA regulation should operate as an 'impropriety' of sufficient intent to suspend coverage, then our declining to read a general word so broadly should come as no surprise, for we have declined to do so before. (Citations.) Words of exclusion in insurance policies should be given small tolerance when insurance companies choose to use words of imprecision. Indeed, the logic of Ranger's argument for exclusion would be to engraft as exceptions to coverage the violation of every proscribed peccadillo of FAA regulations. The cases cited by Ranger in its support go to the heart of coverage, and it cannot be that every impaired capillary blocks coverage. Almost all airplane accidents involve some violation of the Federal Aviation Regulations. Even 'careless flying,' or simply negligence, is a violation. (Citation.) The Roach case construed a similar argument:

"Applying this analysis, the insuring agreements become illusory in effect since few accidents occur without the aircraft's owner or pilot violating one or more of the very detailed regulations promulgated by the Federal Aviation Administration.' 431 F.2d at 853.

'To read into the general word 'proper' all violations of the regulations would be to hoodwink most insurance purchasers, for it would make a nullity of most coverage. Purchasers believe, and with good reason, that they have bought insurance to protect themselves from precisely those degrees of negligence or outright carelessness that FAA regulations might condemn. Insurance is procured to protect the violator, and every violation cannot nullify coverage. Any intent to use general words as a blunderbuss and every single regulation as birdshot cannot be reasonably upheld. If an insurance company has an intent to deny coverage in a specific set of circumstances, then it should so delineate. (Citation.)'

In affirming the lower court's decision in Ranger, the Fifth Circuit (at 863 and 864) cited with approval Roach v. Churchman (8 Cir. 1970), 431 F.2d 849, where coverage was sustained notwithstanding the pilot's violation of the federal aviation regulation governing night flight with passengers without the required experience and a policy provision excluding coverage where the pilot violated his FAA certificate. In reversing the lower court, the Eighth Circuit said at page 851: 'In our view, the trial court gave these questioned exclusionary provisions an overbroad construction contrary to the well-settled general rule that exceptions, Limitations and exclusions to insuring agreements require a narrow construction on the theory that the insurer, having affirmatively expressed coverage through broad promises, assumes a duty to define any limitations upon that coverage in clear and explicit terms. This court follows that rule. . . .' (Emphasis ours)

In response to an argument similar to that raised here by the insurer (namely, that the pilot's technical violation of the FAA regulation requiring a current medical certificate prevented the policy coverage from going into effect), the Eighth Circuit, at 852, distinguished between the FAA's operating safety rules, such as the one relating to night flights, and conditions that limited the pilot's certificate, and held at 852 and 853: 'While the pilot's act of carrying a passenger at night in apparent contravention of s 61.47 may have been negligent or even intentional, it did not violate any express term of his pilot's certificate.'

'Applying this analysis, the insuring agreements become illusory in effect since few accidents occur without the aircraft's owner or pilot violating one or more of the very detailed regulations promulgated by the Federal Aviation Administration.' (P. 853.)

This analysis is in accord with the distinctions made in the FAA regulations between a current pilot's certificate and a current medical certificate, noted in Royal Indemnity, supra, 245 F.Supp. at 709. As therein noted, while the pilot's certificate had no specific expiration date, the medical certificate had a definite expiration date. This distinction was also noted in Berlanti, supra, where the court held that expiration of the medical certificate regulation could not automatically revoke (FN6) a valid pilot's certificate, since the applicable law required notice and a hearing prior to the revocation of the pilot's certificate. Also in accord is Insurance Company of North America v. Maurer (Tex.Civ.App.1974) 505 S.W.2d 931, where the court, following the reasoning of the Roach and Berlanti cases, held that the phrase 'valid pilot's certificate with ratings and certificates appropriate for the flight . . . as required by the Federal Aviation Administration' did not also require a valid medical certificate.

Thus, it follows that the term 'properly certificated' as used in Endorsement No. 2 of the subject policy does not clearly or automatically exclude coverage because Gregg's medical

certificate had expired before the accident in which Woods was injured. Keeping in mind the distinction between the FAA regulations requirements of a current medical certificate and pilot's license or certificate, a reading of the entire policy here in issue readily indicates that Endorsements No. 1 and No. 2 dealt with two separate subjects: Endorsement No. 1, entitled 'Federal Regulations Endorsement' related to the elimination of the specific FAA regulations mentioned in Exclusion (a), (FN7) e.g., airworthiness, night flying, etc. When Endorsement No. 2 is read in its entirety and in context with the language of Exclusion (a), it is readily apparent that Endorsement No. 2 deals specifically with the training and experience of the pilots who are to command the insured aircraft. Significantly, the endorsement refers to the specifically named pilots (FN8) without any qualifications as to their experience, rating or certification. The endorsement then continues to spell out for unnamed pilots in command the qualification of 'properly certified and rated' and sets forth the minimum number of pilot hours required. In this context, 'properly certified and rated' when read with the immediately following phrase 'for the flight and aircraft' can only reasonably be interpreted to refer to the pilot's flight proficiency and skill. In the FAA regulations, the term 'rating' refers specifically to the types of aircraft, or equipment category or a class or a particular skill such as instrument rating, multi_engine rating, etc. (FN9) Thus, the term 'properly certificated' can only reasonably mean the pilot's certificate and license; it cannot reasonably be construed to also include the separate pilot's medical certificate. (FN10) We think the trial court properly concluded that the insurer's policy afforded coverage for the personal injuries sustained by the passenger.

As the U.S. Circuit Court so aptly said in Ranger, supra, 454 F.2d at page 867: 'The clumps of words in an insurance policy might seem like so much insignificant jabberwocky to those who follow insurance law, perhaps worse to those who only stumble into the field. Jabberwocky it might be. Insignificant it is not. On those clumps of words rests the intent of the insurance coverage. Some insurance policies, their riders, exclusions, folds_in and folds_out, and appendages, are festooned in such ways that mechanical knowledge is a help in unfolding and laying them out so that the policies are in physically readable form. An insured, who is presented with forms and discussion in widely varying degrees of clarity, is entitled to know the precise nature of the insurance coverage that his premiums are buying. It is all too clear that contract language, while at times a great explainer, is at times a great obscurer. It is incumbent upon insurance companies to state clearly the perimeters of their coverage to those who entrust their security to them.' In the hope that that clarity might eventually come to pass, we affirm this judgment.

FN1. Under the then applicable regulations, 14 Code of Federal Regulations, section 61.43, subdivisions (a)(3), the medical certificate expired '. . . at the end of the last day . . . of the 24th month after the month in which it was issued . . .'

FN2. A prior property damage action by the owner against the insurer in the Federal District Court (USDC, N.D.Calif, So.Div., No. 41644) that resulted in a judgment in favor of the insurer, was held not res adjudicata in the instant action between different parties.

FN3. 'This Policy does not apply:

'(a) Under Coverages A, B and C, while the aircraft is in flight under any of the following circumstances with the consent and knowledge of the insured or any executive officer or partner thereof; 'Under Coverages D, E, F, G and H, to any insured while the aircraft is being operated under any of the following circumstances with the knowledge and consent of such insured or of

any executive officer or partner thereof; '(1) in violation of the applicable airworthiness certificate as approved by the Federal Aviation Agency,

'(2) under circumstances requiring a special permit or waiver from the Federal Aviation Agency, even though such waiver or permit is granted unless this policy is endorsed to cover such operations,'(3) in violation of Federal Regulations for Civil Aviation applicable to:

'(a) Night Flying,

'(b) Minimum Safe Altitudes,

'(c) Student Instruction,

'(d) Maintenance, Alterations, Repairs or Inspection,

'(e) Instrument Flying,

'(f) Acrobatic Flying,

'(4) By any person not properly certificated by the required governmental authority for such operation, or in violation of such certificate during such operation. (Emphasis supplied.)

FN4. 14 Code of Federal Regulations, section 61.3(a), so far as pertinent, provides: 'Pilot certificate. No person may act as a pilot in command or in any other capacity as a . . . pilot flight crewmember of a civil aircraft of U.S. registry, Unless he has in his personal possession a current pilot certificate issued to him under this part.' (Emphasis supplied.) 14 Code of Federal Regulations, section 61.3(c), so far as pertinent, provides: 'Medical certificate. Except for glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under certificate issued to him under this part, Unless he has in his personal possession an appropriate current medical certificate issued under Part 67 of this chapter.' (Emphasis supplied.)

FN5. The insurer urges that Berlanti as a decision of a lower court is not of sufficient dignity to be of precedential value to this court. Neither this court (nor any other) can afford to ignore a well reasoned written decision of any other court on a similar matter. The insurer also erroneously argues that the controlling authority is Bequette v. National Insurance Underwriters, Inc. (9 Cir. 1970), 429 F.2d 896. In Bequette, however, the exclusion provided that the policy applied only while being operated by the pilot named or designated 'while holding a pilot certificate . . . with appropriate ratings required for the flight involved.' The pilot did not have the required rating to carry passengers and the court, finding to ambiguity, upheld the exclusion.

FN6. The parties herein so agreed below.

FN7. The fact that the terms 'properly certificated' as used in subparagraph (4) of Exclusion (a) are subject to the same ambiguity as that phrase in Endorsement 2 need not further concern us here since the parties agree that all of the provisions of Exclusion (a) were eliminated from the policy by Endorsement 1.

FN8. Originally, the named pilots were Sehoj Dickson Turner and Maurice Smith; Stephen H. Johnson was added as a named approved pilot under Endorsement No. 2 by Endorsement No. 7 on June 21, 1962.

FN9. For example, 14 Code of Federal Regulations, section 61.3(f) refers separately to instrument, helicopter and airship rating; section 61.1 refers to aircraft and instrument ratings; section 61.5 reads: '(a) An application for a certificate and rating, or for an additional rating, under this part is made on a form and in a manner prescribed by the Administrator.

'(b) An applicant who meets the requirements of this part is entitled to an appropriate pilot or flight instructor Certificate with appropriate aircraft ratings. Additional aircraft category, class,

and type ratings, and instrument ratings for which the applicant is qualified, Are added to his certificate.' (Emphasis ours.)

FN10. We are aware that in Ohio Casualty Insurance Company v. Heaney (D.C.Ill.1964), 229 F.Supp. 30, the court assumed, without explanation, that a pilot's medical certificate was included in the phrase 'proper certificate(s) as required by the Civil Aeronautics Authority.' In the absence of any discussion concerning the proper construction of policy provisions since the court held the exclusion inapplicable (as a typographical error showed the pilot to have a valid certificate), we need not dignify Heaney with further discussion.