Causal Connection Coverage Outline

Is there **COVERAGE** under the insurance policy?

Was there a **BREACH** of the policy? (Typical situations)

- The pilot did not have a current medical certificate
- The pilot was not rated for the type of flight
- The flight was considered a prohibited use of the aircraft
- The pilot was not named in the policy
- The aircraft did not have a current annual inspection
- The aircraft did not have a valid airworthiness certificate
- Other ________________

What **PART OF THE POLICY** was breached?

- Representations
- Conditions Precedent
- Warranties
- Conditions
- Exclusions
- Other ________________

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WHEN did the breach occur?

- During Negotiations before the Policy was Issued
- In the Application Process
- After Policy was Issued, During Operations
- After the Loss
- Other ________________

Was the breach a BREACH or SOMETHING ELSE?

Was the carrier STILL COLLECTING PREMIUMS?

WHICH STATE’S LAW applies?

Was there a CAUSAL CONNECTION between the breach and the loss?

Reasons to FIND COVERAGE if there was NO CAUSAL CONNECTION

- Breach was Inherently Immaterial
- Protect Insured’s Reasonable Expectations
- Balances the Disparate Bargaining Positions Between the Insurer and Insured
- Inherent Fairness
- Coverage Does Not Prejudice the Insurer
- Other __________________

Reasons to DENY COVERAGE even if there was NO CAUSAL CONNECTION

- Breach Suspends Coverage with No Need for Further Analysis
- Insurance Policy is a Contract that Should be Enforced as Written
- Insurer Has a Right to Limit its Risk
- Enforcing Policy Provisions as Written Encourages Compliance with Safety Regulations
- Other ________________

DO YOU WANT TO BE A TEST CASE?

ARE YOU READY TO PAY OVER THE INDEMNITY LIMIT?
**ALABAMA**  Most likely, no causal connection required for denial of coverage.

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.

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

In order for an insurer to deny coverage based on a misrepresentation in the application, the insurer may have to prove the misrepresentation was a material contributing influence that induced the insurer to issue the policy, which is a jury question.  Ala. Code §27-14-7; Taylor v. Golden Rule Ins. Co., 544 So. 2d 932 (Ala. 1989).

*Continental Cas. Co. v. Meadows*, 7 So.2d 29, 31 (Ala. 1942) (mainly dicta on the causal connection question).  Meadows involved a man who, while “heavily intoxicated,” went to his mistress’s house to confront her husband.  The intoxicated man refused to leave and was subsequently shot by his mistress’s husband.  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.” The opinion cites to a case from 1892 that there is no causal connection required, but in the same paragraph states there was a causal connection between being intoxicated and the fatal shooting.  The insurance company also denied coverage under the “intentional act” exclusion because the mistress’s husband “intentionally” shot the insured.  The Court agreed that the ‘intentional act’ exclusion was valid.

*Canada Life Assurance Co. v. Piercy*, 2000 WL 1566535 (S.D. Ala. Sept. 29, 2000).  A man was insured for accidental death and dismemberment which contained an exclusion for driving if the insured’s blood alcohol concentration is in excess of 100 milligrams of alcohol per 100 milliliters of blood.  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.  The court referenced the Meadows case and the fact that the insurer has no duty to show causation, and then further considered the fairness argument.  The court 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.

*Standard Life & Acc. Ins. Co. v. 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).

**ALASKA**  No causal connection required for denial of coverage.

Alaska case law allows an aviation insurance companies to deny coverage without any causal connection between the exclusion and the loss.  The stated rationale is that the contract is strictly construed, no coverage exists, and there is no need to consider the causal connection question.
Bequette v. National Ins. Underwriters, Inc., 429 F.2d 896 (9th Cir. 1970) (applying Alaska law). The insurance policy covered only when the owners or other permissive users while holding proper pilot ratings. Because one of the owners was flying the plane without appropriate flight ratings to carry passengers, the insurer claims that presence of passengers exempts liability coverage. The court held there was no coverage because a non-certified pilot flying the aircraft. There was no existing coverage for the flight with which the accident occurred; therefore, there can be no issue of causation (no relevance). The court stated an insurance company has the right to limit the coverage of a policy issued by it and when it has done so, the plain language of the limitation must be respected. Based on trial court opinion: National Ins. Underwriters, Inc. v. Bequette, 280 F.Supp. 842 (D. Alaska 1968).

ARIZONA No causal connection required for denial of coverage.

Arizona case law allows an aviation insurance companies to deny coverage without any causal connection between the exclusion and the loss. The stated rationale is that this conclusion favors the plain meaning of insurance contracts and encourages aircraft owners and operators to obey safety rules.

Security Ins. Co. of Hartford, 763 P.2d 246 (Ariz. 1988) (breach was inadequate pilot certification; reasoning is that policy is a contract and public policy favors obeying of safety laws). Aircraft liability insurer denied coverage for a light aircraft accident on basis that pilot did not have valid medical certificate. The Supreme Court held that aircraft insurer was not required to demonstrate that crash was causally related to pilot’s lack of medical certificate. In addition, the court stated that public policy “favors a rule that encourages owners and operators of aircraft to obey and satisfy safety regulations applicable to their operation of aircraft.” Id. at 250. This court distinguishes exclusions from a notice provision as a forfeiture provision, and holds that insured can violate forfeiture provisions and still receive the coverage. Id. (upholding Lindus v. Northern Ins. Co., 438 P.2d 311, 315 (Ariz. 1968)).

ARKANSAS Causal connection is probably required for denial of coverage, except when breach is a misrepresentation.

A statute specifically eliminated the causal connection requirement with respect to misrepresentations. One could reasonably infer that other types of breaches might have been included in the legislative treatment if they wanted to eliminate the causal requirement, as they did regarding misrepresentations, the most atrocious of breaches.

There are no cases or statutes in Arkansas that address directly causal connection requirements in aviation insurance policies.

Southern Farm Bureau Life Ins. Co. v. Cowger, 748 S.W.2d 332 (Ark. 1988). Insured misrepresented kidney disease and alcoholism, but died in tractor accident. Court held that due to the statute Ark. Code § 23-79-107 (1987), it is no longer necessary to show causal connection and the insurer properly denied coverage. The court does, however, point out the fairness and justice considerations it espoused in National Old Line Ins. Co. V. People, 506 S.W.2d 128 (Ark. 1974), and suggests that in absence of the statute, it would come down on the side of the insurer. In
National Old Line 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.” People at 131.

CALIFORNIA No causal connection required for denial of coverage.

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. The court distinguished this analysis from tort analysis, where proximate cause would be required.

*Natl Union Fire Ins. Co. v. Miller*, 192 Cal. App.3d 866, 871-72 (1987). The pilot’s medical certification had expired, but the pilot was otherwise qualified and current. The plane crashed into the side of a mountain because of pilot error – unrelated to the pilot's physical condition. The court denied coverage, relying on *Middlesex Mutual Ins. Co. v. Bright*, 106 Cal. App.3d 282, (4th Dist. 1980). The court stated insurance policies are contracts in which the plain language “must be respected.” While they “must attempt to ascertain the insured’s reasonable expectation as to coverage,” when the limiting language of the policy is clear, there can be no reasonable expectation of coverage. Id.

*Middlesex Mutual Ins. Co. v. Bright*, 106 Cal. App.3d 282, 290 (4th Dist. 1980). The aircraft was being used to smuggle marijuana from Mexico to the United States and crashed into transmission line 3 miles south of an unlit airport with no radio communication. The policy excluded coverage when the aircraft was used for an unlawful purpose. Court did not require the insurer to show a causal connection between the unlawful purpose and the loss. The Court distinguish contracts from torts, saying the insured’s rights flow from the contract, therefore proximate cause need not be shown.

COLORADO No causal connection required for denial of coverage.

Colorado cases 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 there is a causal connection.

*O’Connor v. Proprietors Ins. Co.*, 696 P.2d 282, 286 (Colo. 1982). The aircraft had a current 100-hour inspection but not a current annual inspection. The insurance policy excluded coverage for losses occurring when FAA airworthiness requirements were not met. The inspector must have more training to do the annuals, but the insurer agrees that there is no evidence that not having the designation and certified annual inspector caused the accident. The court agreed with the denial of coverage, stating: (1) unambiguous provisions should be given their plain meaning; and (2) safety-related provisions are not against public policy. However, the court stated that an exclusion for any violation of FAA regulations or violation of a non-safety-related requirement may be against public policy. The court observed that it would be virtually impossible not to violate at least one of the regulations during an accident.
The Dissent argued the insurer should be required to show a causal connection because: (1) practically all FAA regulations are related to safety in one way or another; (2) courts will be wasting time evaluating provisions on their relation to safety; (3) violations of government regulations are highly-technical; and (4) it is too burdensome to require the insured to prove a “negative”-- that the violation was not related to the accident.

**CONNECTICUT**  No causal connection required for denial of coverage.

The rationale is that an insurer is entitled to rely on policy provisions as to maintain reasonable expectations, and that the court should interpret insurance policies under general contract rules. The court recognizes that “public policy does not favor the forfeiture of insurance coverage based on the insured’s technical violation of the insurance policy,” but weighs this against avoidance of disruption of parties’ expectations.

*Ranger Ins. Co. v. Kovach*, 63 F.Supp2d 174, 180-81 (D. Conn. 1999). The pilot was not license to fly in IFR conditions and the insurer denied coverage for a crash which occurred under IFR conditions. The court recognizes the split of authority on whether a causal connection was required, but chooses to adopt the “majority view,” stating an insurance company has the same right as any other party to state the terms of the contract, provided they are not against public policy.

The insurer in Connecticut is entitled to rely on a policy provision that unambiguously makes coverage dependent on pilot meeting certain standard. The court stated it interprets insurance policies by the same general rules that govern any written contract. They are “enforced in accordance with the real intent of the parties as expressed in the language employed in the policy.” *Ranger Ins. Co. v. Kovach*, 63 F.Supp2d 174, 181 (D. Conn. 1999).

The court recognizes that “public policy does not favor the forfeiture of insurance coverage based on the insured’s technical violation of the insurance policy,” but weighs this against avoidance of disruption of parties’ expectations. Id.

**DELAWARE**  Causal connection most likely 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 Delaware code imposes a causal connection on using incorrect statements on an insurance policy as a reason for denying coverage.

*Bass v. Horizon Assur. Co.*, 562 A.2d 1194 (Del. 1989). Insured was driving automobile under the influence of alcohol when accident occurred--injuring the driver and a passenger. The insurance policy had exclusion for “bodily injury sustained by...any person convicted of driving while under the influence of alcohol or narcotic drugs.” But a Delaware statute imposed mandatory insurance coverage for medical treatment and lost earnings sustained by persons injured in an automobile accident. Court held that the exclusion was against public policy to encourage the purchase of insurance for protection against personal injury. While no causal connection requirement was discussed, given Delaware’s stance on protection for the insured, it follows that
they may favor the causal connection requirement which makes it tougher for insurers to deny liability.

*Baltimore Life Ins. Co. v. Floyd*, 91 A. 653 (Del. Super. 1914). A false statement in application for insurance will not bar recovery if the statement is not material to the risk. The court does not consider an immaterial false statement to be a breach.

*Marvin v. State Farm Mut. Auto. Ins. Co.*, 2002 WL 31151655 (Del. Super.). Employer owned uninsured motorcycle and allowed employee to operate it. Employee got into an accident caused by another driver. The employee’s mother had insurance for a different vehicle which she owned. 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. Court held that insurer was not liable because employer fell under “regular use exclusion.” The court held that they will enforce exclusions unless against public policy. They make no mention of a causal requirement.

18 Del. C. § 2711: Incorrect statements on application for insurance policy “shall not prevent a recovery under the policy or contract unless either: (1) fraudulent; or (2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or (3) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate or would not have issued a policy or contract in as large an amount or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.”

**DISTRICT OF COLUMBIA** Causal connection (efficient proximate cause) required as default, but can be changed through explicitly contracting to include non-causally-related exclusions.

The DC court’s rationale is the value of freedom to contract, but will look at causation if contract is silent on causation relationship. Default rule is the efficient proximate cause doctrine: if both a covered and excluded risk contribute to the loss, they will use whichever is the predominating cause or set the others into motion, looking at the quality versus remoteness of the cause. Under this doctrine, the insurer will still incur liability if the excluded activity was a cause if it is only “merely incidental.” This implies the courts propensity to look at the causal relationship in all cases.

*Chase v. State Farm Fire and Cas. Co.*, 780 A.2d 1123, 1130 (D.C. 2001). Insured had homeowner’s policy covering rupture of pipes. 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. Insured’s pipes froze and burst, causing the soil to shift, and created damage to insured’s property. Court held that efficient proximate cause doctrine would apply by default, if not for the explicit statement to the contrary.
**FLORIDA**  Causal connection is required.

Florida has an anti-technicality statute, which provides that the breach of the policy must have increased the hazard (causally connected). The Florida courts apply this statute to aviation insurance policies.

Florida Code § 627.409 (2): A breach or violation by the insured of any warranty, condition, or provision of any wet marine or transportation insurance policy, contract of insurance, endorsement, or application therefore 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.

*Pickett v. Woods*, 404 So.2d 1152 (Fla. Dist. Ct. App. 1981). Aircraft’s airworthiness certificate was not valid at the time of accident, where a pilot was attempting to land in bad weather and flew into the ground. Court held where aircraft crash was due to pilot error and not the result of any equipment malfunction, failure to have a valid airworthiness certificate, as required by insurance contract, did not contribute to accident and insurance company would be prevented from relying on exclusionary clause of insurance contract to deny coverage.

**GEORGIA**  No causal connection required.

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

*Grigsby v. Houston Fire & Casualty Ins. Co.*, 148 S.E.2d 925 (Ga. 1966). Pilot did not have current medical certificates at the time he made an emergency crash landing causing property damage. Insurer denied coverage because the policy excludes coverage for damage that happened during flight in violation of regulations pertaining to the Airman's Certificates. Court says that the causal relationship is immaterial because the loss was not within the policy. The causal question is never discussed, reasoning that it is not necessary to answer.

*Farmers and Merchants Bank of Manchester v. Ranger Ins. Co.*, 186 S.E.2d 579 (Ga. 1971). Student pilot was carrying a passenger when he crashed. He did not have sufficient FAA ratings to be carrying a passenger. The presence of the passenger did not have 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. The court held that regardless of this lack of causal connection, the insured was properly denied coverage.

**HAWAII**  Causal connection required.

Hawaii courts reason that it is unfair to deny insureds the very thing they paid for. Strong dislike for forfeitures. Consider lack of valid medical license a representation (condition subsequent) rather than exclusion. Do not require causal connection in the case of fraud or specific exclusions.

*Avemco Ins. Co. v. Chung*, 388 F.Supp 142 (Haw. 1975). Pilot’s medical certificate had expired more than a year before the crash. In absence of any showing whether state of pilot's health at
time of crash had any causative effects thereon, aviation insurer could not avoid liability on the policy, despite insured’s breach of condition subsequent. The medical certificate requirement was not in the “exclusions section” of the policy, so this provision was not an exclusion, but a condition subsequent. Unless this condition subsequent can be shown to have contributed to loss, insurers’ liability will be maintained. Hawaii courts strongly consider fairness to insureds. It would also disserve the public interest, for insurance is an instrument of a social policy that the victims of negligence be compensated.”

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

**IDAHO** No causal connection is required.

Idaho courts reason that rights flow from contract, not tort. An insurer may lawfully limit its liability by excluding certain risks and hazards from coverage. There is a suspension in coverage the whenever the prohibited conduct occurs. The causal question is nullified because of the coverage suspension.

*Roberts v. Underwriters at Lloyds London*, 195 F. Supp. 168 (D.C. Idaho 1961). The insurance policy excluded coverage when being operated by anyone other than named pilot. An aircraft company did not change the name on the policy when it got a new pilot, and that pilot crashed and the burned. The court held that the insurer was not required to show a causal connection in order to deny liability. The policy plainly states that the certificate is not applicable while the forbidden conduct existed (no causal language). Although the court blames the policy holder’s “apparent indifference toward his insurance coverage,” they note that “no doubt [the insurer] would have added [the pilot’s] name to the policy if [insured] would have requested such an addition.”

**ILLINOIS** Causal connection is required.

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.

*American States Ins. Co. V. Byerly Aviation, Inc.*, 456 F. Supp. 967 (S.D. Ill. 1978) (applying Illinois law). 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. A pilot that was not named in the policy was operating helicopter when the rotor broke or became detached, causing the crash and deaths. There is no evidence of the crash being caused by pilot error. If 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. Insurer would in no way be prejudiced by the fact that un-named 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. It should not be able to invoke an exclusion to provide itself a pure windfall of non-liability.
INDIANA 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.

*Monarch Ins. Co. of Ohio v. Siegel*, 625 F.Supp. 693, 698-700 (N.D. Ind. 1986). The insurance policy did not cover liability when the aircraft is piloted by someone without the minimum flight hours or when operated for a monetary charge. The pilot crashed during landing due to pilot negligence. There is 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. The court held that both breaches were independently legitimate defenses in denying the insurance claim. Court does not consider causal connection question in either situation.

IOWA Causal connection is required.

Causal connection is required by statute for provisions that make the policy void before the loss occurs. 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.

Iowa Code Section 515.101: 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.

*Schneider Leasing, Inc. v. U.S. Aviation Underwriters, Inc.*, 555 N.W.2d 838, 842 (Iowa 1996). Leasing company owned plane that was piloted by the deputy sheriff, who did not satisfy qualifications specified in the policy. It rolled over shortly after takeoff and the cause of crash is disputed. The court found that the statute was not applicable because this clause did not “void the policy before the loss occurs” but left the policy intact, just placing limits on its application. This case called into question the scope of the statute as described in *Lees*.

*Global Aviation Managers v. Lees*, 368 N.W.2d 209, 212 (Iowa App. 1985). Insured crashed plane in attempting to land on wet grassy strip, misjudging distance and speed in landing. He did not possess valid medical certificate or airworthiness certificate. Both stipulate that neither of these conditions contributed to the accident. The policy contained exclusions applying to both certificates. Court decided 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.” They interpreted this as including all provisions with the policy (not just exclusions), because otherwise, insurers would be able to mask anything as an exclusion. Therefore, insurer was liable in this instance because the failure to maintain proper certificates was not the cause of the crash and loss.
KANSAS  No causal connection is required.

Kansas case law reasons that insurers have reason to want to limit coverage and public policy supports compliance with regulations.

*Western Food Prods. Co. Inc. v. U.S. Fire Ins. Co.*, 699 P.2d 579 (Kan.App. 1985). Exclusion in policy required pilot to have a valid medical certificate. The pilot at the time of the crash had an expired medical certificate. The plain language of the policy showed a desire by the insurer to limit the coverage. 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 the basis of the exclusion. The Court distinguishes other jurisdictions requiring the causal connection by saying that other jurisdictions have relied on cases with ambiguous exclusions or anti-technicality statues.

KENTUCKY  No causal connection is required.

Kentucky will not require a causal connection between the breach and loss when the contract is unambiguous, examining insurance policies under strict contract principles.

*Arnold v. Globe Indem. Co.*, 416 F.2d 119 (6th Cir. 1969). Pilot, not qualified to fly under instrument conditions was using instrument flight rules, which was excluded by the policy. In bad, cold, foggy weather the plane took off and crashed into the side of the mountain. Insurer claims they are not liable as the loss is not covered by the policy. Court held that it is not necessary that the violation be the proximate cause of the loss in order to exclude coverage.

LOUISIANA  No causal connection is required.

Louisiana courts reason that they do not want to alter a contract agreed to between parties.

*U.S. Fire Ins. Co. v. West Monroe Charter Service, Inc.*, 504 So.2d 93 (La.App. 1987). The aircraft liability policy provided that the aircraft must be operated by a pilot with current and proper medical certificate and pilot certificate with necessary ratings. Aircraft flown by pilot with expired medical certificate crashed during severe rain and thunderstorms. The court held that absent policy language requiring causal connection between exclusion and accident, failure of pilot to have current and proper medical certificate, as required under aircraft policy, excluded liability coverage for death of passengers killed in crash of airplane, even though lack of medical certificate did not cause or contribute to crash.

MAINE  Causal connection is probably required.

Misrepresentations are addressed in statute, and do not require a causal connection. However, the court has abandoned the contract-based rule in relation to insurance contracts, so would therefore be 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 breach before insurer can deny liability.
24-A M.R.S.A. § 2411. Representations in applications. Under this statute, misrepresentations will not prevent recovery under policy unless fraudulent or material to the acceptance of the risk by the insurer. Cases interpreting this statute specifically do not examine a causal connection between the actual loss and the breach, but focus on an objective standard of whether it would have affected the insurer’s decision in issuing the policy.

*Ouellette v. Maine Bonding & Cas. Co.*, 495 A.2d 1232 (Me. 1985). Auto insurance policy required prompt notice with relation to accidents. Four years after automobile accident, insured notified insurer of claim. Insurer denied coverage, and court found in their favor. After discussion about the traditional contract rule, the court abandons the contract-based rule calling the traditional result of forfeiture “an undeserved windfall to the insurer.” The court recognizes 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.” Therefore, the court declines to follow the analysis of negotiated contract and instead requires 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.

*York Mut. Ins. Co. v. Bowman*, 746 A.2d 906 (Me. 2000). Insured failed to reveal several driving record convictions of her two sons in her auto insurance application. Her husband was driving at the time of the accident. Insurer denied liability based on misrepresentation of son’s convictions. Lower court found for the insured based on the materiality of the misrepresentations of the risk that “Wanda or Bruce Bowman might operate a motor vehicle negligently,” and not the sons. On appeal, the court found that the lower court “focused too narrowly on the actual cause of the loss,” and the “relevant inquiry is not whether the misrepresentations related to the cause of the particular loss in question.”

**MARYLAND** No causal connection is required.

Maryland courts will not require a causal connection between provision violated and accident in order for insurer to deny coverage. Court has duty to interpret contract as written, and insurers have a right to limit their potential liability.

*Aetna Cas. & Sur. Co. v. Urner*, 287 A.2d 764 (Md. 1972). Aircraft crashed when flying in bad weather only suitable for flight with instruments. The pilot was student pilot who was not certified for instrument flight. The insurance policy stated it would not apply to any pilot who did not have the proper FAA certifications. Court held that the activity was not covered; therefore, insurer has no liability. Court reasoned that there is no need of any causal nexus between the injury or death and the forbidden forms of conduct. While the proscribed activity continues, the insurance is suspended as if it had never been in force. They reason that they have a duty to interpret the contract, and insurers have a right to limit their potential liability.

**MASSACHUSETTS** No causal connection is required.

Massachusetts court 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.
Edmonds v. U.S., 642 F.2d 877 (1st Cir. 1981) (applying Massachusetts law). Pilot crashed on landing and hitting a mound of snow. Insurer denied recovery based on failure to meet condition precedent of the policy of having a current biennial flight review. Court held that 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.

U.S. Aviation Underwriters, Inc. v. Cash Air, Inc., 568 N.E.2d 1150 (Mass. 1991). Aviation liability policy included clause that stated pilot must hold FAA commercial pilot certificate and meet hour minimums. It was uncontested that pilot at time of the accident had not met requirements. Insurer can avoid liability without showing pilot’s failure to meet requirements was a cause of the accident. Aligning their position with the majority, they state a condition such as pilot qualifications is significant to the insurer regarding what they will insure and what premiums should be charged. Exception: Require showing of causal connection in order for insurers to deny claims where the insured fails to “seasonably notify an insurer of a loss.” (As opposed to condition precedent in the instant case.)

MICHIGAN No causal connection is required.

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

Kilburn v. Union Marine & General Ins. Co., 40 N.W.2d 90 (Mi. 1949). A policy provision stated that this policy did not cover damage to aircraft if operated in violation of CAA regulations. Insured was student pilot operating aircraft with a passenger, which was against CAA regulations. He hit some high tension wires an hour into the flight. His actions were against the CAA flight regulations, and the court held that the contract provision was binding against the insured. The policy was a valid and binding contract between the insurer and insured, therefore he was not covered in that circumstance and causal relation is not even involved. This is not a tort action in which causal connections are frequently required.

MINNESOTA No causal connection is required unless the contract language requires such.

Courts utilize strict contract construal in aviation insurance so that the causal question beyond is beyond the scope. Minnesota does have a statute that addresses contracts including the causal connection, which prohibits excluding coverage if aircraft is in violation of governmental regulations.

Minn. Statutes Ann. § 60A.081. This deals with contracts in which the language of the contract requires a causal connection and prohibits denial of coverage for any loss arising out of ownership, maintenance, or use of an aircraft if it excludes coverage because of violation of governmental regulations.

Globe Indem. Co. v. Hansen, 231 F.2d 895 (8th Cir. 1956) (applying Minnesota law). Insured pilot was performing dangerous dives with aircraft when it crashed. It is not clear if these aerobatic moves or mechanical failure caused the crash. Policy provision provided that the policy does not
apply to any insured who performs aerobatics at the time of the incident. Court held that because
the pilot was performing aerobatics at the time of the crash, insured was beyond protection of the
policy regardless of causal connection. The court reasoned that there can be no liability where
there was no assumption of the risk.

MISSISSIPPI  Causal connection is required.

Mississippi courts require the causal connection because if the risk the insurer is seeking to avoid
has no causal connection to the loss, they are not covering anything additional. The loss would
have happened regardless of the breach.

law). Pilot only had student pilot’s license and flew a multi-engine plane with passengers in
violation of CAA regulations. Insurance policy stated that it did not apply to any pilot operating
aircraft in violation of federal regulations. Pilot crashed the insured aircraft and no cause of such
was intimated by either party. Court held that because the law in Mississippi requires a causal
connection, insurer cannot avoid liability under that exclusion. With “no causal connection being
shown between certification and rating of ... pilot ... and the crash itself, the exclusion relied on by
plaintiff may not be invoked to void the coverage afforded by the policy.” Cites *Hossley v. Union
Indem. Co. Of New York*, 102 So. 561 (Miss. 1925) (holding in an automobile accident that
liability is maintained by insurer unless there is a causal connection between the injury and the

MISSOURI  No causal connection is required.

Missouri case law reasons that contract terms govern. There is no need to show any additional
element such as causation because when the excluded activity under insurance policy continues, it
is as if the policy had never existed.

*Macalco, Inc. v. Gulf Ins. Co.*, 550 S.W.2d 883 (Mo. App. 1977). Student pilot, who was not
properly rated to be carrying passengers crashed during nighttime flight killing all passengers and
himself. Insurance policy provided that it will not cover student pilots who are not sufficiently
rated. Insurer denied claim, relying on the aforementioned pilot clause. Court held that proof of
causal connection between pilot's certification and rating as a student pilot and the casualty was
unnecessary and that insurer was entitled to extend coverage only while pilot was holding the
proper certificate and rating as required by FAA for the flight involved. The court upholds aircraft
insurance exclusionary clauses on their literal terms. Insurance coverage is suspended whenever
operative facts of exclusion exist; contract terms interpreted strictly with no need to show some
additional element, as long as terms are unambiguous.

MONTANA  Causal connection is required.

The reasoning of the court applying Montana law was that it would be unfair to deny the insured
coverage for what he paid for over a technicality.

law). Aircraft crashed shortly after take-off. Pilot’s medical certification had expired 2 months
prior to the crash. Both parties stipulated that the expired certificate did not contribute to the crash. Court did not find the exclusion interpreted to include lack of medical certificate because the policy did not state it expressly. However the Court added that even if it were included in the exclusion clause, a causal connection is required. “To deny the insured the coverage he had paid for where merely a technical breach occurred would be unfair. 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.”

**NEBRASKA**  No causal connection is required.

The Court’s reasoning is that insurers have the right to exclude certain risks from coverage.

*Omaha Sky Divers Parachute Club, Inc. v. Ranger Ins. Co.*, 204 N.W.2d 162 (Neb. 1973). Insured pilot crashed upon brake failure during landing. Policy excludes coverage if the aircraft is not operated by pilot with valid pilot and medical certificates. Pilot’s medical certificate had lapsed 5 months prior to the accident. Two days after the accident, he got it renewed. His expired license was not found to be the cause of the accident. The court held that there is no coverage when the pilot did not hold the medical certificates required under the policy, regardless of causal connection. A renewal shortly thereafter did not validate the certificate retroactively.

**NEVADA**  No causal connection is required.

Nevada case law indicates a preference for strict contract construal. Its public policy favors a rule that encourages owners to meet all safety regulations.

*Griffin v. Old Republic Ins. Co.*, 133 P.3d 251 (Nev. 2006). Insured bought an airplane and crashed in someone's backyard. That person tried to collect from insurer, but was denied because of exclusion in policy that denied coverage if aircraft did not have proper airworthiness certificates. In answer to certified question, the Court stated it cannot alter an unambiguous insurance contract unless it is against public policy, and it will not attempt to increase the legal obligations of parties to a contract where the parties intentionally limited such obligations. Consequently, they do not imply a causal requirement when not causal language is present. They 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.

**NEW JERSEY**  No causal connection required, usually.

New Jersey courts will generally not require a causal connection in order to relieve insurers from liability, especially when the breach is significantly related to the decision of the insurer to accept the risk. However, it declines to impose a bright-line rule, and suggests that certain situations might require a causal connection. They reason that in some factual situations, imposing causal connection requirement would allow insured to expand coverage without paying for it.

*Aviation Charters, Inc. v. Avemco Ins. Co.*, 784 A.2d 712 (N.J. 2001). The pilot did not have the 5,000 flight hours that served as a requirement under the insurance policy. An accident occurred
as the pilot was taxiing on the runway just after landing. Some sort of spring malfunctioned and cause the nose to collapse and damage the aircraft. The court held that under the narrow facts of this case, a lack of causal relationship will not justify disregarding an unambiguous policy exclusion, such as stating the policy only applies when pilot has over 5,000 flight hours. The insured was aware that it could have obtained for a higher premium a policy that required fewer total pilot-flight hours, and requiring a causal connection would thus constitute an unbargained-for expansion of coverage. The Court does not adopt a per se rule holding that the absence of causality never can 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.

NEW MEXICO No causal connection is required.

New Mexico courts will strictly interpret insurance contracts, without requiring a causal connection between the exclusion and the breach and note that this furthers its policy of safety.

Security Mut. Cas. Co. v. O’Brien, 662 P.2d 639 (N.M. 1983). Private owner of aircraft sought claim against insurer after colliding with another plane. The insurer denied claim based on exclusion that precluded coverage unless the airworthiness certificate was in full force and effect. The owner had failed to get annual inspection and therefore did not have current airworthiness certificate. There was no causal connection between the lapse of the airworthiness certificate and the accident. Court held that lack of causal connection has no bearing on this case. Insurance coverage must not be afforded aircraft owners who ignore or refuse to comply with established certification requirements commonly part of policy exclusions. Causal connection does not have to be shown when there is a specific and unambiguous policy exclusion. The Court also states that this rationale furthers safety policy: "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." They also make the distinction between "condition subsequent" (condition that causes coverage to be suspended) and policy exclusion that was never extended coverage.

NEW YORK No causal connection is required.

New York courts will interpret insurance policies strictly, as a contract.

Hedges Enter., Inc. v. Fireman’s Fund Ins. Co., 225 N.Y.S.2d 779 (1962). Under federal regulations, aircraft owner is required to register the aircraft. Student pilot had just purchased aircraft and was practicing solo take-off and landing when he crashed the nose during landing. He made a claim on insurance and was denied based on policy provision that excluded coverage while the aircraft was being used for unlawful purpose. He had not yet registered his aircraft and was therefore in violation of the policy. The court held that it 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. The coverage was suspended when aircraft was being used
unlawfully (without proper registration), even though failure to register was not a cause of the crash.

**NORTH CAROLINA** No causal connection is required.

North Carolina courts interpret aviation insurance policies strictly, differentiating this type of contract claim from tort actions.

*Baker v. Insurance Co. of North America*, 179 S.E.2d 892 (N.C.App. 1971). Insured who held valid pilot certificate but had lapsed medical certificates crashed and sought to recover. He was in good health at the time of the crash and shortly thereafter renewed his medical license. He was denied coverage under the exclusion because an insurance policy is a contract. The court held that one must go by clear meaning, and the policy said the risk was excluded while being operated by pilot not properly certificated, not risk is excluded if caused by the violation. The court says under those circumstances, the coverage “simply did not exist.”

*Bruce v. Lumbermens Mutual Casualty Co.*, 222 F.2d 642 (4th Cir. 1955) (applying North Carolina law). 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. The insurance policy stated it would not apply if the aircraft was used in violation of government regulations. The federal regulations required all passengers engaged in aerobatics to be equipped with parachutes. Although, neither was equipped with parachutes, evidence showed that they would not have been able to save their lives because the pilot continued to spin so near the ground. Court holds that insurer “need not show a causal connection between the breach of an exclusion clause and the accident.” It further explains that the rights of the parties come from contract, and not from claim arising out of tort.

**NORTH DAKOTA** Causal connection is probably required.

North Dakota Courts look to the quality of the relationship between the loss and the cause, applying the efficient cause doctrine. This applies when there are concurrent causes of a loss under a policy. The court will not exclude coverage if the excluded activity was not the greater cause of the loss.

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

*Continental Western Ins. Co. v. Dam Bar*, 478 N.W.2d 373 (N.D. 1991). An exclusion in a bar owner’s policy stated that insurance does not apply to damage by reason of “the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol.” Bar owner served alcohol to 19 year old minor, who was subsequently killed in an automobile accident. 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. The court agreed, but in this particular circumstance, no other causes were asserted that could be the basis for liability. So, although the court supports the “efficient proximate cause doctrine,” it did not apply in this case. This doctrine allows liability to be denied if the efficient cause is not covered, and 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 connections in determining insurer’s liability under exclusions.

**OHIO**  Causal connection is considered, but is not a requirement where the condition breached was relevant and material to the issuance of insurance coverage.

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.

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

*American Continental Ins. Co. v. Estate of Gerkens*, 591 N.E.2d 774 (Ohio 1990). Unlicensed pilot crashed. He made misrepresentations about his pilot status that would have material effect on insurer’s decision in issuing the insurance policy (fraud). Therefore, the court found the insurance agreement to be void, and the insurer was not required to show a causal connection to avoid coverage. This, however, is a limited opinion. They concede there was no evidence of casual connection between lack of proper certification and the accident, but held it was void due to the fraudulent representation on a material aspect of the policy. They seemingly consider the causal connection, but denied coverage on other grounds. In other words, the court in this case did not require a causal connection, but they do not explicitly hold that there is no such requirement, and 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.

*Meadors v. Progressive Specialty Ins.*, 1991 WL 268945 (Ohio App. 1991). An insured motorcyclist was injured in accident with uninsured motorist. His policy required that he keep the motorcycle in a “garage,” but it was actually kept in a barn structure. The court held that the insurer was liable for coverage, despite the finding that this was a misrepresentation of warranty that would void policy. The reasons for this finding include the lack of causal connection between the breach and the insured’s loss. The court further explained that “it would be manifestly unjust to permit the appellant to avoid coverage under the specific facts of this case.”

**OKLAHOMA**  No causal connection is required.

Oklahoma courts reason that they will not re-write insurance contracts, and that it is reasonable for insurers to exclude activity that increases risk of loss under contract principles.

*Avenco Ins. Co. v. White*, 841 P.2d 588 (Okla. 1992). Insured crashed and had an expired airworthiness certificate. Policy excluded coverage if the airworthiness certificate was not in full force and effect. The court holds 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, however, they will not rewrite the policy's terms simply because doing so would favor the insured. They further state that they see no reason for depriving the insurer of the exclusion’s benefit. This court was responding to this certified question: Whether an Airworthiness Certificate exclusion in an aircraft 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? They held it was not contrary to public policy, and insurer was not required to show causal link between crash and absence of certificate in order to deny coverage.
OREGON    No causal connection is required.

Oregon courts interpret aviation insurance contracts strictly. While the violation continues, the insurance is suspended as if it had never been in force.

*Ochs v. Avemco Ins. Co.*, 636 P.2d 421 (Or. App. 1981). The insured did not have aircraft’s annual inspection within the 12 months preceding the accident, therefore was not appropriately certificated. The policy covering damage to aircraft excluded property damage to aircraft which did not have current airworthiness certificate. Insured was in the process of landing the aircraft. It ground-looped and flipped on its back. The cause of the accident was a defective or broken tail wheel spring. The court held that insurer was entitled to exclude any liability for any aircraft not bearing a valid and current airworthiness certificate; no proof of causal connection between the accident and the policy exclusion was required. They will strictly interpret insurance policies as contracts.

PENNSYLVANIA    Causal connection is required.

Pennsylvania statute requires that denial of insurance coverage based on an exclusion requires a causal link between the excluded behavior and the loss.

Statute Pa. C.S.A. § 5503(d) Liability of Insurer. 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.

PUERTO RICO    No causal connection is required for breach of condition precedent.

Puerto Rico courts utilize strict contract construal.

*United States Fire Ins. Co. v. Producciones Padosa, Inc.*, 835 F.2d 950 (1st Cir. 1987) (applying Puerto Rico law). Exclusion in aircraft policy provided that if pilot did not meet standards set forth in pilot clause, coverage was void. Pilot crashed upon take-off and insurer denied coverage of aircraft based on claim that pilot did not have the requisite amount of flight hours required by policy and therefore was not covered. Court held that the pilot clause was a condition precedent, when the condition precedent was breached, it suspended coverage. The court does not directly address the causal connection, but inferring from the lack of its application, the court does not apply it in this type of situation. It is unclear if a causal connection is required for a representation or warranty.

RHODE ISLAND    Causal connection is probably required.

Rhode Island court does not adhere to strict contract construal, but consider insurance contracts unbalanced in negotiation power in favor of the insurer. Because there must be a showing of prejudice to the insurer to avoid liability for breach of notice provision, Rhode Island courts would likely require more than just a showing of a breach.

There are no cases or statutes in Rhode Island that address this issue.
Pickering v. American Emp. Ins. Co, 282 A.2d 584 (R.I. 1971). Insurance policy required notice of accident “as soon as practicable.” Insured gave notice four months after the accident and insurer denied liability based on breach of notice provision. Court holds that insurance contract is not negotiated contract, but an adhesion contract. It adopts the opinion in a New Jersey case 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. Therefore the court requires the insurer to show prejudice caused by the breach in order to avoid liability on breach of notice provision. The court’s opinion states, “We do not believe that a technical breach of the notice provisions in a policy should bar insured from recovering the benefits for which he has paid.” While this is not decisive on requiring causal connection, under this reasoning it is likely the court would require the link.

SOUTH CAROLINA Causal connection is required.

South Carolina courts have consistently held that insurers should not be able to avoid coverage on mere technicality. They 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.”

Gardner Trucking Co., Inc. v. South Carolina Ins. Guar. Ass’n, 376 S.E.2d 260 (1989). Policy excludes coverage when operated without airworthiness certificate and when pilot lacks a minimum number of hours. Aircraft did not have an airworthiness certificate and pilot did not have the amount of flight hours required by the policy. Pilot damaged aircraft when landing gear malfunctioned when attempting to land. Court held that lack of experience exclusion and airworthiness certificate exclusion relieved insurer when the insured failed to dispute the causal connection between the lack of these and the crash. So essentially, the breaches were causally related and therefore excluded his coverage on those grounds. Relied on South Carolina Ins. Co., 237 S.E.2d at 361-62.

McGee v. Globe Indem. Co., 175 S.E. 849 (1934). Insurer denied coverage based on provision that policy did not apply where automobile was driven by person under 16 years of age. Collision occurred when 15 year old was driving automobile. Court assumes that driver’s age had no causal connection to the accident. The court held that insurer was not exempted from liability merely because driver was under 16, in absence of causal connection between age of driver and collision.

Reynolds v. Life & Cas. Ins. Co. Of Tennessee, 164 S.E. 602 (1932). A city ordinance held it a violation to ride in the running board of a truck. Insured’s policy excluded loss sustained while committing violation of the law. 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 unlawful act, direct causative connection between such act and death or injury must be shown. The court’s rationale is that parties to an insurance contract are not inserting mere arbitrary provisions, but had specific purpose to limit its liability from accidents caused by the excluded condition.

South Carolina Ins. Co. V. Collins, 237 S.E.2d 358 (1977). Policy stated that only pilot with effective medical certificate will operate the aircraft in flight. The insured’s medical certificate expired 3 months before the crash. Both parties stipulated that there was no causal connection.
between its expiration and the accident. This is the first aircraft liability case in which causal connection is considered in South Carolina. Court found that reasoning in automobile cases is no less compelling in this situation, so causal connection must be shown between the accident and failure to have a valid medical certificate. Cites Reynolds and McGee in its decision.

**SOUTH DAKOTA**  No causal connection is required.

South Dakota case law reasons that normal contract interpretation requires suspension of coverage and enforcement encourages safety among aircraft owners and operators.

*Economic Aero Club, Inc. v. Avemco Ins. Co.*, 540 N.W.2d 644 (S.D. 1995). Policy excludes coverage when aircraft is operated by pilot without current and effective medical certificate. Member of non-profit club was operating aircraft owned by non-profit and crashed, destroying aircraft. Pilot’s medical certificate had expired 4 months prior to the crash, and he renewed it four days after the crash. Insurer refused to indemnify based on the exclusion, and the court held for the insurer. It concluded that any shift is better left to legislature, also noting that other jurisdictions have passed anti-technicality statutes. In addition, the exclusion encourages owners and operators of aircraft to obey and satisfy safety regulations applicable to their operation of aircraft.

**TENNESSEE**  Causal connection is likely required.

All Tennessee cases addressing this question provide this statement as a rationale: Suppose a man violates the law against profanity and is shot while so doing; should that absolve the company from liability?

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

*Accident Ins. Co. Of North America v. Bennett*, 16 S.W. 723 (1891). Life insurance policy excluded coverage for injuries incurred while “engaged in, or in consequence of, some unlawful act.” Insured was found dead from a gunshot, along with his mistress who was also dead. He had been living with her “in the state of fornication.” The insurer claims they are relieved from liability on insured’s life insurance policy because of his participation in unlawful activities (fornication). First, the court says that fornication, while maybe immoral, is not unlawful unless open and notorious. Second, if this act were unlawful per se, it would not relieve insurer from liability because there must be some causal connection. This is based on the reasoning that the consequence should naturally flow from the prohibited activity should be reasonably anticipated.

*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).

*Southern Ins. Co. v. Graham*, 280 S.W. 30, 30 (Tenn. 1926). Insurance policy precludes coverage during acts “in violation of the law.” Man transporting whiskey illegally. During car trip, insured stopped, inspected automobile’s gasoline leakage, and when 20 feet away from automobile, lit cigarette which ignited gasoline from his clothing. Courts held that even though insured was
violating the law, there was no causal connection between his whiskey transportation and his burns, so that insurance coverage was not precluded.

**TEXAS** Causal connection is required.

Texas courts reason that it would be unconscionable and against public policy to allow insurers to avoid coverage on a technicality. But in 2014, the Texas Supreme Court ruled against an insured on a fire claim because the insured had moved out of a building and vacancy suspended coverage, even though the parties stipulated there was no causal connection.

*Puckett v. U.S. Fire Ins. Co.*, 678 S.W.2d 936 (Tex. 1984). Policy had exclusion that suspends coverage “if the aircraft...airworthiness certificate is not in full force and effect.” Insured crashed due to pilot error. Insured’s certificate had lapsed, but both parties stipulated that this in no way caused the accident. Court held that aviation liability insurer could not avoid liability under insurance policy on basis of insureds' breach-of-policy unless there is a causal connection between the breach and the loss. The court’s reasoning is that it would be unconscionable and against public policy to allow aviation insurer to avoid liability when breach of contract in no way contributed to the loss and breach amounted to nothing more than a technicality.

*AIG Aviation (Texas), Inc. v. Holt Helicopters, Inc.*, 248 S.W.3d 169 (Tex. 2008). The insurance policy required a minimum of 1,000 hours of flight experience. Property damage occurred due to a crash in which the pilot did not have the requisite flight hours. The trial court held that the insurer had the burden to show a causal connection between the lack of flight time and the crash. The jury found no causal connection and awarded exemplary damages against the insurer. 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. Puckett was upheld when Texas Supreme Court (with a completely different composition than the Puckett Court) denied AIG’s Petition for Review.

*Green v. Farmer’s Insurance Exchange*, 446 S.W.2d 761 (Tex. 2014). Insurance policy suspended coverage if the house was vacant for more than 60 days. The house had been vacant for more than 60 days when it burned. The parties stipulated no causal connection between vacancy and the fire. Supreme Court ruled anti-technicality statute did not apply because coverage had been suspended and there was no “breach.” The Court also cited the dissent in *Holt*. Counsel in the Holt case believes the insured should have characterized the “breach” as failure to notify the insurer, instead of moving out of the building.

**UTAH** Causal connection is probably required.

The Courts are reluctant to take away bargained-for coverage. 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 requirement because of their tendencies to require a causal connection in situations such as strict accident policies in which there is another existing medical condition.

death that “resulted from physical or mental infirmities.” Insured slipped and fell on ice accidentally, breaking his arm and causing a dissecting aneurism of the aorta, and died a few weeks later. The court ultimately found that an existing high blood pressure condition concurrently contributed to his death and therefore precludes the double indemnity benefit. Although this particular policy uses causal language (“resulted”), the court gave relevant general law from previous cases. The rule in this jurisdiction is to give liberal construction of 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.” Specifically, courts interpret a clause covering “an injury effected through violent, external, and accidental means, entirely independent of all other causes” to mean that an existing disease will not bar insured’s recovery unless it has a causal connection with the injury.

VERMONT Causal connection is not required, but a misrepresentation breach must be material to the decision to the issuance of the policy.

Courts require a misrepresentation to be material before insurers can deny coverage.

There are no cases that directly address the causal connection issue, but the following cases do 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. This could encompass some non-causally related breaches.

McAllister v. Avemco Ins. Co., 528 A.2d 758 (Vt. 1987). Insured represented that he had the aircraft’s annual inspection done in the last 12 months, when in fact, he had not. Insured crashed, but there was no evidence that the cause of the crash was related to the failure to have an annual inspection. Insurer denied coverage based on misrepresentation. Breach by misrepresentations in aviation insurance policy are governed by statute, Vermont Statutes Section 4205. This requires a causal connection, not between the breach and the loss, but between the breach and the decision of insurer to issue the policy. If the misrepresentation has a material effect on whether the insurer will issue the policy, it will void the policy.

Martell v. Universal Underwriters Life Ins. Co., 564 A.2d 584. Held that even an innocent misrepresentation will preclude coverage under a life insurance policy if it is material. Health statement in application for life insurance policy was held material as a matter of law when insurer is concerned with a specific risk.

VIRGINIA No causal connection is required.

Virginia court reason that they 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. They differentiate between contract and tort principles.

U.S. Speciality Ins. Co. v. Skymaster of Virginia, Inc., 123 F. Supp 2d 995, 1002-03 (E.D. Va. 2000) (applying Virginia law). Insured made a crash landing, damaging the aircraft. He had not disclosed his diabetes condition on his medical certificate application. Policy exclusion suspends coverage if the pilot does not have a current and proper medical certificate. Certificate was deemed not current and proper due to misrepresentations made regarding his diabetes condition. The court held that no causal connection is required between pilot’s lack of proper medical certificate and
the crash in order to void the policy. Court relies on several theories: this is contract, not tort; has not violated public policy to require pilot to have proper certification; the court will not re-contract for the parties.

Powell Valley Elec. Coop., Inc. v. U.S. Aviation Underwriters, Inc., 179 F.Supp. 616 (W.D. Va. 1959). Policy covered specific pilot and excluded while aircraft was used in flight instruction. The helicopter had dual controls and the insured let the student take over part of the flight. The student made a risky turn and the helicopter crashed, despite the pilot retaking the controls in attempt to fix the error. The court held that it does not matter what caused the crash because it was under the exclusion, therefore coverage was suspended.

WASHINGTON Causal connection is required for breached warranties.

Washington courts require insurers to show causal connection regarding warranties because they believe it is reasonable to think a person would consider the clause in question was meant to relieve the insurer from liability resulting from the proscribed activities, and would not assume that the insurer was inserting a mere arbitrary provision.

There are no aviation causal connection cases or statutes.

Riordan v. Commercial Travelers Mut. Ins. Co., 525 P.2d 804 (Wash. App. 1974). Automobile policy excluded coverage when insured is intoxicated. Auto accident occurred when a truck driver blocked traffic, the sole cause of the accident. Insured was a passenger and was intoxicated. Court held that coverage was not suspended because insurer must show a causal connection between the intoxication and the accident in order to avoid coverage. This is specific to the intoxication clause.

Highlands Ins. Co. v. Koetje, 651 F.Supp 346 (W.D. Wash 1987). Policy warranties provide that the boat is not to exceed one crew member for a certain period and that it is confined to waters of Norton Sound. Crew member was injured when they were in waters outside of Norton Sound and there was an extra crew member. Washington law is characterized as requiring a “relation” between the breach and loss to avoid insurance coverage, not that the breach actually caused the loss. Court denies motion to dismiss because a fact issues exists as to what the relationship is between the breach and the loss. Further, the court states that those breaches increase the risk of loss and could be found related to the injury.

WEST VIRGINIA Causal connection is considered through “efficient proximate cause” doctrine.

West Virginia courts look at the quality of the relationship and will only deny coverage if the predominating cause of the loss is excluded.

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

West Virginia Fire & Cas. Co. V. Mathews, 543 S.E.2d 664, 668-69 (W. Va. 2000). Insured had homeowner’s policy covering, among other causes, damage caused by a vehicle. The policy excluded vandalism or malicious acts. An alleged imposter, pretending to be insured, contacted contractor and had him level the house. Insured claims insurer is liable because it was leveled
using a vehicle. Insurer denies liability because of the malicious act of vandalism of the imposter. The court held that when the 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. 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. “The efficient proximate cause is the risk that sets others in motion,” or “the predominating cause of the loss.” “It 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.” Id. Therefore, because the imposter’s malicious acts set the acts of the contractor into motion, the coverage was suspended and the insurer is not liable.

**WISCONSIN**  
No causal connection is required.

Wisconsin courts reason that an insurer’s liability is contractual, not based on tort. A violation suspends coverage, and therefore, is irrelevant whether the accident was caused by the violation.

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

*Witzko v. Koenig*, 272 N.W. 864, 867 (Wis. 1937). Insured is 15 year old, who under the automobile insurance policy is excluded from coverage in violation of any age restrictions. One such restriction is driving at night under the age of 16. Insured got into accident at night, although the accident was not causally related to his age. Court held that they were committed to upholding insurance policies as contracts, and his violation under the policy rendered the coverage inapplicable.

**WYOMING**  
There is probably no causal connection required.

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.

*Ranger Ins. Co. v. Cates*, 501 P.2d 1255, 1260 (Wyo. 1972). The policy excluded coverage for any losses involving taking off or landing anywhere other than an “airport.” 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. The insured crashed shortly after taking off from a hard-packed dirt surface. It is unclear if the dirt surface was a cause of the accident. The trial court found that a modification took the ‘off-airport’ exclusion out of the policy and the loss was covered. The Court of Appeals affirmed. The insurer argued that failure to include a “no causal connection requirement” jury instruction brought the issue of proximate cause into the case. The Court disagreed and found there was no error. The opinion implies there is no causal connection requirement but made not explicit statements on the question.