

Ninth Circuit Confirms Strict Compliance With Pilot Warranty is Necessary for Coverage

Aerospace Insurance Update

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U.S. Court of Appeals, Ninth Circuit

In *Trishan Air, Inc. v. Federal Insurance Company*, the U.S. Court of Appeals for the Ninth Circuit affirmed that Trishan Air, Inc. was not entitled to coverage for an accident involving its aircraft due to its failure to strictly comply with the Federal Insurance Company policy's pilot warranty. The Ninth Circuit affirmed the decision of the U.S. District Court for the Central District of California granting summary judgment to Federal.

When renewing the policy covering its Dassault Falcon 900 B, Trishan had requested that its second-in-command pilots need only meet the training requirements mandated in 14 C.F.R. 61.55. The underwriter for Federal advised this was not possible and instead quoted, and subsequently issued, a policy including a pilot warranty provision requiring all pilots undergo ground and flight training, including motion-based simulator training in the make and model aircraft insured. The policy also contained an exclusion consistent with the pilot warranty. When the Falcon was later involved in an accident, Federal denied coverage because the second-in-command had no formal training in Falcon aircraft and no simulator training.

In its suit contesting the denial of coverage, Trishan argued that it was not required to strictly comply with the pilot warranty and that the warranty was a condition requiring only substantial compliance. Trishan's chief pilot and expert witnesses alleged that the second-in-command's static cockpit training was "very similar" to simulator training and that simulator training would not have altered the pilot's qualifications or prevented the accident.

Rejecting the insured's position, the Ninth Circuit noted there are two types of conditions or warranties recognized under California law: those that might be satisfied by substantial compliance in certain circumstances; and those that are "an element of the fundamental risk insured" thus requiring strict compliance. Pilot warranties fall into the latter category. The court distinguished its own previous decision and those of other courts finding that substantial compliance with recordkeeping warranties – whereby an insured promises to make records available upon request – is sufficient. The court observed that "pilot qualifications are obviously factors bearing directly upon the risk the insurer is underwriting." Allowing substantial compliance to satisfy the insurer's requirement undermines the purpose of the pilot warranty.

Allowing only substantial compliance with the pilot warranty, the court observed, would have significant, practical effects. It would allow the insured's subjectively selected substitute criteria to nullify the requirements selected by the insurer when covering the risk. This would interject uncertainty regarding compliance and what substitutes were equivalent to the stated requirements. Finally, the court noted that premiums are determined based upon the risk the insurer is willing to assume based upon the pilot warranty.

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