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No Duty to Defend Alleged Negligent Training Claim Under Simulator Training School's Premises Liability Coverage

Aerospace Insurance Update

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Appellate Court of Illinois

In *Pekin Insurance Company v. Recurrent Training Center, Inc.*, -- N.E.2d --, 2011 WL 1515516 (Ill. App. Ct. April 20, 2011), the Appellate Court of Illinois affirmed a trial court's decision on summary judgment that no duty to defend was owed to a simulator training school under a policy providing premises liability coverage for claims alleging negligent training of a pilot.

The insured, Recurrent Training Center, provided flight simulator and classroom instruction on the operation of Cessna 421B aircraft to a pilot, who at some point thereafter crashed while piloting a Cessna for business purposes on behalf of his employer. The crash, which occurred 170 miles from the insured's facility, resulted in the death of the pilot and three others.

Pekin Insurance Company insured the school under a commercial general liability policy including products/completed operations, but a "Limitation of Coverage to Designated Premises or Project" endorsement limited coverage to bodily injury "arising out of the ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises."

Rejecting the insured's argument that the claims were covered under the broader products/completed operations coverage, the appellate court noted that the terms of an endorsement take precedent over conflicting policy provisions. Consequently, although the products/completed operations coverage insured against liability for bodily injury occurring away from the premises and arising out of the insured's work, coverage was limited by the endorsement to "ownership, maintenance or use" of the premises and operations necessary and incidental thereto. The court concluded that "negligent training is not covered under the endorsement, nor are injuries

that occurred off the premises." The underlying claim against the insured was similar to cases in which, although the insured's alleged negligence originated on the premises, injury occurring away from the premises was beyond the scope of the premises coverage. Allowing coverage would defeat the geographic limitation of the premises coverage and was not reasonably contemplated by the parties.

A different conclusion might have been reached, either finding coverage or at least precluding summary judgment, had the circumstances of the case demonstrated an intent to cover off-premises occurrences that are a "normal and customary risk" inherent in the insured's business and thus created an ambiguity in the application of the policy's "arising out of" language. For example, in *Dash Messenger Service, Inc. v. Hartford Insurance Company of Illinois*, 582 N.E.2d 1257 (Ill. App. Ct. 1991), the appellate court reversed summary judgment granted to an insurer providing premises and related operations coverage to an insured bicycle messenger service with respect to claims arising from a messenger's off-premises collision with a pedestrian. The court found that, because the insured business was conducted almost exclusively off premises through messengers dispatched from the premises, there was a question of fact regarding whether a reasonable insured would believe that the accident "arose out of" the premises and therefore would be covered. Distinguishing the Dash Messenger Service case, the Pekin court found no such intent. The crash occurred after training had been completed and did not involve an ongoing business operation of the insured. The policy issued to the insured, which provided simulator instruction only, excluded the use of aircraft. Thus, in these circumstances, there was no ambiguity in the use of the phrase "arising out of."

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