

[Federal Court Agrees With Insurer's Definition of 'Control' in Decision Limiting Potential Indemnity Under Aviation Policy](#)

Aerospace Insurance Update

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U.S. District Court, District of Oregon

In the multidistrict litigation *In re: Helicopter Crash Near Weaverville, California 8/5/08*, No. 3:09-cv-00705, 2010 WL 4812810 (D. Or. Nov. 19, 2010), the U.S. District Court for the District of Oregon held that an “aviation products-completed operations” endorsement, which provided \$25 million in coverage per occurrence, did not apply to the accident at issue because the aircraft was under the “control” of the insured at the time of the crash.

On August 5, 2008, a helicopter owned by the insured, Carson Helicopter Inc., crashed during a firefighting mission while being used under contract to the U.S. Forest Service (USFS). Carson sought coverage from its insurer, Houston Casualty Company (HCC), for multiple bodily injury and wrongful death cases filed against it. According to Carson, the \$25 million limit provided in the “aviation products-completed operations” endorsement applied to the accident. HCC challenged this assertion, arguing that another endorsement to the policy, which provided \$200,000 of bodily injury coverage per passenger, applied to the accident.

The “aviation products-completed operations” endorsement provided \$25 million in limits for damages arising out of bodily injury caused by Carson’s aviation operations, but only if the aircraft had ceased to be in the possession or under the control of Carson. HCC argued that Carson had to show that the helicopter had ceased to be in its possession *and* under its control. Carson argued that it need only show that the helicopter had ceased to be *either* under its control at the time of the accident *or* that the helicopter ceased to be in its possession. Carson acknowledged that it had possession of the helicopter, but did not have control, as the helicopter was being used under contract by USFS at the time of the accident.

According to the court, “or” can mean “and” where the proposition involves a negative. Thus, for the “aviation products-completed operations” endorsement to apply, Carson had to show that the helicopter was “neither in the possession of, nor under the Control of, Carson.” As Carson acknowledged that it had possession of the helicopter at the time of the crash, the court found that the “aviation products-completed operations” endorsement did not apply.

As a second basis for holding that the \$25 million limit did not apply to the crash, the court found that Carson had not advanced a plausible reading of the meaning of “control.” HCC asserted that the word “control,” in normal parlance, was given a broad meaning that included what Carson was doing at the time of the accident – operating the aircraft. According to HCC, the physical control involved in flying the helicopter, together with whatever residual authority the Carson pilot retained under the USFS contract, was sufficient to establish control. Carson, on the other hand, contended that “control” should be given a more specific meaning in the context of the endorsement, and was meant to refer to “operational control” or “mission control,” consistent with the duties USFS retained under the contract with Carson. Thus, Carson argued that the mere act of flying the helicopter, when coupled with the direction given by USFS for its mission, could not be true “control” as used in the endorsement. Analyzing Carson’s reading of the word “control,” the court found: “While Carson suggests several reasons why control might include the concept of mission control or operational control, it has put forth no persuasive reason why it must be limited to that definition.”

Accordingly, the court held that HCC had put forth the only plausible reading of the word “control” in the endorsement. Thus, Carson still retained control of the helicopter at the time of the accident and the \$25 million limit under the “aviation products-completed operations” endorsement did not apply.

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