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Summary of Griffin v. Old Republic Ins. Co., 122 Nev. Adv. Op. 42

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Griffin v. Old Republic Ins. Co., 122 Nev. Adv. Op. 42 (May 11, 2006)[1]

CONTRACT LAW – INTERPRETATION

Summary

Appellant Griffin, after sustaining severe personal injuries when a plane piloted by Kevin Jensen crashed into Griffin's yard, sued Jensen in Nevada state court. Jensen carried an Old Republic Insurance Company aviation policy for the plane. The Old Republic aviation insurance application contained a clause, which Jensen initialed, stating that the aircraft would not be covered "unless a standard airworthiness certificate is in full force and effect." Further, the policy excluded coverage when "the Airworthiness certificate of the aircraft is not in full force and effect" or when "the aircraft has not been subjected to the appropriate airworthiness inspection(s) as required under current applicable Federal Air Regulations for the operations involved."

When Jensen purchased the policy he possessed a current airworthiness certificate. However, at the time of the crash, the airworthiness certificate had lapsed. Old Republic sought declaratory judgment in United States District Court of the District of Nevada claiming it had no obligation to pay damages to either Griffin or Jensen because the policy expressly excluded coverage without a current airworthiness certificate. Griffin maintained that Old Republic should not be able to avoid liability because no causal relationship existed between the lapse in the certificate and the loss incurred.

The federal district court granted summary judgment to Old Republic because Nevada law did not require a causal relationship between the exclusion clause and the loss. Griffin appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit submitted a certified question of law to the Nevada Supreme Court, which this opinion addressed.

Issue and Disposition

Issue

The certified question before the court was whether:

> Under Nevada law, may an insurer deny coverage under an aviation insurance policy for failure to comply with an unambiguous requirement of the policy or is a casual connection between the insured's noncompliance and the accident required?

Disposition

The Nevada Supreme Court held that Nevada law requires no causal connection between safety-related aviation policy exclusion and the loss for the insurer to exclude coverage.

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However, in order to avail itself of this rule of law, the insurer must draft an unambiguous and narrowly tailored exclusion clause that is essential to the risk it undertakes.

Commentary

Court's Rationale

The Court relied on the plain, unambiguous language of the exclusion clause to determine that it only had to determine if the Old Republic exclusion clause should be voided on public policy grounds. The Court concluded both Nevada statute[2] and public policy support upholding safety-related exclusion clauses, regardless of causal connection. As requiring a current airworthiness certificate falls squarely within a safety-related regulation, lack of such certificate meets the requirements for a valid exclusion clause.

Survey of Law in Other Jurisdictions

Griffin alleged that the modern trend in insurance law it to require a causal connection between noncompliance and the loss for an insurer to avoid liability. Griffin argued for the Court to adopt the modern trend. However, the majority view requires no causal connection if the exclusion clause is unambiguous. The Court referenced cases from the Fifth Circuit Court of Appeals,[3] as well as courts in Arizona,[4] Georgia,[5] Louisiana,[6] New Mexico,[7] and Oklahoma[8] holding with the majority view. The Court discussed no cases supporting Griffin's position.

State of the Law before *Griffin*

Nevada courts construe insurance policies according to plain language and "from the viewpoint of one not trained in law."[9] Exclusions and restrictions must be drafted to clearly communicate "to the insured the nature of the limitation."[10] While courts may not alter

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[2] NEV. REV. STAT. § 493.150 provides that "[i]t shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this State unless such aircraft has an appropriate effective certificate, permit or license issued by the United States."

[3] Hollywood Flying Service v. Compass Ins. Co., 597 f.2d 507, 508-09 (5th Cir. 1979) (no liability where a airworthiness certificate was not in full effect due to missing manual despite no causal relation between exclusion and losses).

[4] Security Ins. Co. v. Anderson, 763 P.2d 246, 249 (Ariz. 1988) (where exclusion is narrow, specific, and unambiguous no causal connection required).

[5] Grigsby v. Houston Fire & Casualty Ins. Co., 148 S.E.2d 925, 927 (Ga. Ct. App. 1996) (if a loss is not covered by the policy due to failure to meet required terms, a causal relationship is not required).

[6] U.S. Fire Ins. V. W. Monroe Charter Service, 504 So.2d 93, 99-100 (La. Ct. App. 1987) (no causal connection required if language of exclusion clause does not expressly require the connection).

[7] Security Mut. Cas. Co. v. O'Brien, 662 P.2d 639, 640-41 (N.M. 1983) (insurer's exclusion for lack of airworthiness certificate required no causal connection to avoid liability).

[8] Avemco Ins. Co. v. White, 841 P.2d 588, 590 (Okla. 1992) (exclusion for lack of airworthiness certificate required no causal connection if the terms are unambiguous and clear "*at the time the contract was negotiated.*")(emphasis in original).

[9] Vitale v. Jefferson Ins. Co., 116 Nev. 590, 594, 5 P.3d 1054, 1057 (2000).

[10] *Id.*

unambiguous policy terms,[11] courts may, for public policy reasons, void unambiguous exclusion clauses.[12]

The Court cites a number of Nevada cases requiring no causal connection if exclusionary clauses were unambiguous.[13] Only where the exclusion clause itself required a causal connection has the Court upheld the need for the insured to establish such connection in order to avoid liability.[14]

Effect of *Griffin* on Current Nevada Law

Nevada law remains substantially unchanged with *Griffin*. Where insurance policy clauses are unambiguous, the Court will not void them unless public policy requires that outcome. However, the Court adopted a narrower rule for exclusion clauses, requiring not only that they lack ambiguity, but that the exclusions be narrowly tailored and essential to the risk undertaken by the insured.

Current Nevada statute and case law define "narrowly tailored" and "essential to the risk undertaken by the insurer." To be narrowly tailored, the exclusion clause must "clearly and distinctly communicate[] to the insured the nature of the limitation."[15] If the excluded activities are material to the insurer accepting risk or to the "hazard assumed by the insurer"[16], then the exclusion is essential to the risk undertaken by the insurer.[17]

Conclusion

This case dealt only with a specific certified question from the Ninth Circuit concerning an aviation policy. However, based on the Court's analysis, no causal connection between noncompliance and losses incurred by the insured for the insurer to avoid liability if the exclusion clause is:

(1) unambiguous;
(2) narrowly tailored;
(3) essential to the risk undertaken by the insurer.

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[11] *Canfora*, 121 Nev. at ___, 121 P.3d at 603.
[12] *See generally* Continental Ins. Co. v. Murphy, 120 Nev. 506, 96 P.3d 747 (2004).
[13] *Griffin*, 122 Nev. Adv. Op. 42, note 16 (citing Fire Ins. Exch. v. Cornell, 120 Nev. 303, 306-07, 90 P.3d 978, 980 (2004); Farmers Ins. Exch. v. Neal, 115 Nev. 62, 65 64 P.3d 472, 473 (2003); Dwello v. Amer. Reliance Ins. Co., 115 Nev. 422, 424-25, 990 PP.2d 190, 191-92 (1999); and Farmers Ins. Exch. v. Young, 108 Nev. 328, 332-33, 832 P.2d 376, 378-79 (1992)).
[14] McDaniel v. Sierra Health & Life Ins. Co., 118 Nev. 596, 53 P.3d 904 (2002) (upholding an exclusion clause in an accidental death benefit policy when the insured's legal intoxication caused his own death and passenger's injuries and the policy expressly excluded any losses incurred directly or indirectly from the insured's felonious conduct).
[15] *Vitale*, 116 Nev. at 594, 5 P.3d at 1057.
[16] *Griffin*, 122 Nev. Adv. Op. 42.
[17] NEV. REV. STAT. § 687.110(2) (2005).