

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

NEW ENGLAND GUARANTY)	
INSURANCE CO., INC.,)	
)	
)	
Plaintiff)	
v.)	Civ. No. 96-262-B
)	
ROBERT GEMLER,)	
)	
Defendant)	
and)	
)	
NANCY CAMPBELL,)	
)	
Intervenor Defendant)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BRODY, District Judge

This case arises from a snowmobile accident that occurred on January 16, 1994, in Frenchtown Township in northern Maine. Intervenor Defendant, Nancy Campbell, as the personal representative of the estate of John Campbell, has brought an action against Defendant, Robert Gemler, in the Massachusetts Superior Court for damages resulting from the death of her husband. Plaintiff, New England Guaranty Insurance Co., Inc. (“New England Guaranty”), issued a commercial liability insurance policy to Fred and Marie Candeloro. Ms. Campbell claims, in the Massachusetts suit, that Gemler was driving the Candeloros’ snowmobile when it struck and killed John Campbell. New England Guaranty brings this suit seeking a declaratory judgment that it is not required to defend or indemnify Gemler under the insurance policy that it issued to the Candeloros.

A trial was held before the Court without a jury on October 15, 1997, to determine whether, pursuant to the terms of the insurance policy issued to the Candeloros, New England Guaranty is obligated to defend and indemnify Gemler. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure,¹ the Court issues the following findings of fact and conclusions of law on the issue of Plaintiff's responsibility to Defendant Gemler under the Caneloro's policy. For the reasons set forth below, the Court enters judgment for Defendant.

I. DISCUSSION

The relevant provision of the commercial insurance policy issued to the Candeloros and in effect at the time of the accident provides:

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission.

The sole issue in this case is whether Gemler had Fred Caneloro's permission to drive his snowmobile at the time the accident involving Campbell occurred.²

Permission need not be formal or expressed to satisfy non-owner additional insurance

¹ Rule 52(a) states, in pertinent part:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58.

Fed. R. Civ. P. 52(a).

² Although the issue was not raised at trial, Defendant argues in its trial brief that the Caneloro snowmobile was not "mobile equipment registered under a motor vehicle registration law," because it was not registered under 29-A M.R.S.A. § 101. This Court, in its Order of July 18, 1997, denying Plaintiff's Motion for Summary Judgment, clearly rejected this argument, holding that "[t]he insurance policy . . . is not ambiguous . . . [m]obile equipment registered under *any* motor vehicle registration law is covered by the insurance policy." That Order is hereby reaffirmed for the reasons stated therein. Even if the policy did exclude vehicles not registered under 29-A M.R.S.A. § 101, Plaintiff offered no evidence at trial regarding the type of registration held by the Candeloros.

provisions. See Taylor v. United States Fidelity Guaranty Co., 529 A.2d 182, 183 (Me. 1986); American Motorists Ins. Co. v. LaCourse, 314 A.2d 813, 817 (Me. 1974). Indeed, non-owner clauses have been interpreted to include both express and implied permission. See id. Implied permission may be “proved circumstantially from conduct which evidences an actual intent to permit certain actions.” LaCourse, 314 A.2d at 816 n.1. Permission need not come directly from the owner but may be implied to a third party from the conduct or statements of the original permittee. Allstate Ins. Co. v. Lyons, 400 A.2d 349, 352-53 (Me. 1979) (where a policy extended to “use” of the automobile with permission of insured, driver who drove an automobile with permission of insured’s son had “permission,” notwithstanding insured’s specific prohibition that no one but his son was to drive the automobile). Under Maine law, insurance “coverage extends to the operator only if his use at the time and place of the accident is within the scope of the permission granted by the insured.” Savage v. American Mutual Liability Co., 182 A.2d 669, 670 (Me. 1962) (citing Johnson v. American Automobile Ins. Co., 161 A. 496 (Me. 1932)). It is within this judicial framework that the Court reviews the facts of this case.

At approximately 10:00 p.m. on the evening of January 16, 1994, John Campbell, Robert Schwartz, and a third individual were returning on three snowmobiles to the Kokadjo Cabins, a rural camp in northern Maine, where they were staying as guests. The Kokadjo Cabins are owned and operated by Fred and Marie Candeloro. When Schwartz and the third individual arrived at the Kokadjo Cabins, they discovered that Campbell, who had been following on his snowmobile, was not with them. After approximately fifteen to twenty minutes, Schwartz, the third individual, Fred and Marie Candeloro, and Gemler, all present in the dining room of the Kokadjo Cabins, became concerned about the welfare of Campbell. The temperature was

approximately twenty degrees below zero without windchill and the hour was growing late. Schwartz, who was legally intoxicated at the time, offered to go out searching for Campbell. Gemler, concerned about sending Schwartz out alone, offered to accompany him in his search. Gemler was not a guest at Kokadjo Cabins, but rather an independent contractor hired to install an above-ground gasoline tank on the Candeloro property. Gemler had never operated a snowmobile before.

Fred Candeloro told Schwartz to “take” Candeloro’s personal snowmobile, which was more powerful than the snowmobiles Candeloro used for rental purposes. After Gemler received brief instruction on the operation of a snowmobile, Schwartz mounted the Candeloro snowmobile and told Gemler to take Schwartz’s personal snowmobile which was parked in front of the Kokadjo Cabins. The two then left in search of Campbell; Schwartz on the Candeloro snowmobile, Gemler on Schwartz’s snowmobile. Gemler and Schwartz found Campbell on the trail about a quarter-mile from the Kokadjo Cabins, his snowmobile inoperative. Schwartz managed to get Campbell’s dysfunctional snowmobile started but it stalled after traveling no more than one hundred feet. While Schwartz was attempting to fix Campbell’s snowmobile, Campbell sat down on Schwartz’s snowmobile, which had been driven to the scene by Gemler. Soon after, Schwartz gave up on Campbell’s snowmobile, electing to return to the Kokadjo Cabins to get out of the cold. Schwartz walked over to his snowmobile, upon which Campbell was sitting, and mounted it. Schwartz then instructed Gemler to follow him straight home along a public road and took off on his own snowmobile, with Campbell riding on back. Gemler, left behind with the broken Campbell snowmobile and the Candeloro snowmobile, mounted the latter and followed Schwartz as instructed. At some point before reaching the Kokadjo Cabins,

Campbell fell off Schwartz's snowmobile, and was fatally struck by Gemler who was following Schwartz on Candeloro's snowmobile.

Candeloro gave Schwartz express permission to drive the Candeloro snowmobile when he told Schwartz to "take" his snowmobile. The loan of the snowmobile was made for the purpose of searching for and, if necessary, rescuing Campbell. The testimony of Schwartz and Gemler strongly suggested, and the Court finds, that Candeloro allowed Schwartz to use his snowmobile because it was better suited than Schwartz's to tow in Campbell should the need arise. Although Candeloro may have been, in his own mind, concerned about the inexperienced Gemler driving his snowmobile, Candeloro never communicated or expressed any such concern to Schwartz, Gemler, or anyone else when he loaned out the vehicle. Neither Schwartz nor Gemler were aware of any limitations placed on the loan of the snowmobile. The Court finds, therefore, that there were no restrictions, expressed or implied, on the permission granted to Schwartz.

When Candeloro gave unrestricted permission to Schwartz to drive his snowmobile in the rescue effort he impliedly gave Gemler permission to drive the snowmobile should the circumstances demand it. Candeloro never told Gemler or Schwartz that Gemler was not permitted to use the snowmobile. Candeloro knew that the search and rescue was the joint effort of Schwartz and Gemler. It is clear from Candeloro's testimony that, faced with an emergency situation, Candeloro would not, in fact, have denied Gemler permission to drive his snowmobile. Candeloro must have considered that in some situation Gemler might be required to drive his snowmobile to carry out the purpose of the mission: to rescue Campbell. Under these circumstances, the Court concludes that Candeloro gave implied permission to Gemler to drive

his snowmobile when he gave express permission to Schwartz.

The Court further finds that Gemler had Schwartz's permission to drive Caneloro's snowmobile. Schwartz gave implied, if not express, permission to Gemler to drive Caneloro's snowmobile when he mounted his own snowmobile and instructed Gemler to follow, leaving Gemler in the freezing cold with no way home except by the Caneloro snowmobile.

As such, the Court concludes that Gemler had Fred Caneloro's implied permission to drive the Caneloro snowmobile.

II. Conclusion

Because Gemler had implied permission from Caneloro to drive his snowmobile at the time Campbell was killed, Plaintiff has a duty to defend and indemnify Gemler pursuant to the terms of the Caneloro policy. Accordingly, judgment is entered for the Defendants.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 20th day of October, 1997.