

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

GREAT NORTHERN)
STOREHOUSE, INC. D/B/A FROG)
ROCK CAFÉ AND MOOSEHEAD)
LIMITED PARTNERSHIP,)
)
 PLAINTIFFS)
)
v.)
)
NETHERLANDS INSURANCE)
COMPANY,)
)
 DEFENDANT)

Civil No. 00-7-B-H

ORDER ON FORM OF JUDGMENT

The parties have a dispute over the amount of judgment to be entered in this lawsuit, which was tried to a jury verdict on March 1, 2001.

The issue first arose when the Court’s case manager recently proposed the form of judgment to the lawyers following my ruling on the defendant’s various post-trial motions. She recalled a particular discussion on the record and asked if \$12,507.18 should be added to the jury’s verdict to reflect the discussion. The plaintiff said it should be added; the defendant said it should not. I heard their arguments on the record by telephone conference call on June 7, 2001.

The dispute arises from an on-the-record discussion at the beginning of the trial day on March 1, 2001, just before I charged the jury. The plaintiff’s lawyer says that the discussion resulted in a stipulation that \$12, 507.18 would be added

to any jury verdict for a personal property loss. The defendant's lawyer disagrees with that interpretation of what occurred. The defendant argues, in addition, that the plaintiff has waived its position by waiting so long to assert it; that the jury in fact received evidence about the \$12,507.18 loss in exhibit 67 and thus its verdict must be considered to have included that loss; and that my analysis of the jury's award for the building loss (over its objection) requires, in fairness and equal treatment, that I disregard the purported stipulation here.

First, I find that there was no "waiver" as such by the plaintiff; the plaintiff has violated no procedural rules setting time deadlines.

I conclude, however, that the proper interpretation of the so-called "stipulation" favors the defendant. The discussion arose in the context of a debate over the insurance policy limits. The defendant consistently had asserted that the policy limit for personal property was \$100,000; that was the amount reflected in the jury charge I was about to deliver on the morning of March 1, a charge on which we had had a charge conference after the end of testimony on the late afternoon of February 27.¹ On the morning of March 1, before the jury came in, the plaintiff's lawyer pointed to a reading of the policy and the various amendments that suggested the gift shop contents were not subject to the \$100,000 limit, but had their own \$120,000 limit. Accordingly, he wanted me to instruct the jury that the contents were not capped at \$100,000 but at \$220,000

¹ On the intervening day, February 28, I was on court business in Boston, and the jury did not
(continued next page)

or, more accurately, that while there was a general cap for \$100,000, it did not include the gift shop, which had its own separate cap of \$120,000. I permitted the defendant's lawyer to consult with his client and he returned to say: "We will agree that there's coverage absent the defenses for the \$12,507.18. How we want to handle it is the next question." I responded:

I take it what Mr. Motejunas is asking, Mr. Kollé, is that if the defendant does not succeed on its fraud or arson defenses, it is agreeing to pay the 12,500 for the gift shop. Do you want to handle that outside of the jury, simply that that's a stipulation that will affect the calculation later?

Both lawyers agreed that was the "easiest way" to handle the matter without complicating the jury's job still more. As always, however, the context is all-important. That context was that, in addition to defenses of arson and fraud, the defendant was arguing that, apart from the gift shop contents (primarily inventory), the plaintiff could not recover *at all* under the policy, because the plaintiff had not introduced any evidence of cash value of the personal property. In contrast, the plaintiff was arguing that the value it was entitled to recover was well above the \$100,000 policy limit. Thus, the lawyers and the judge were contemplating the following outcomes: (1) no recovery because of the insurance company's arson and fraud defenses (in that event there would be nothing to add as a result of the stipulation); (2) failure of the defenses but no recovery on the personal property claim for failure of proof of actual cash value (in that event the

come in.

stipulation would result in a judgment of \$12,507.18 on the personal property claim for the gift shop contents, because the defendant did not contest that was their actual cash value); (3) failure of the defenses and recovery on the personal property well in excess of \$100,000, but reduced by the jury to the \$100,000 policy limits (in that event, the stipulation would result in the addition of the gift shop contents of \$12,507.18 for a total personal property recovery of \$112,507.18). No one contemplated that the jury would do what it did, namely, reduce the value of the personal property to \$81,506. Hence the disagreement now.

In fact, the jury had before it evidence of the gift shop contents loss. Exhibit 67 stated prominently on its first page the \$12,507.18 loss. Moreover, page 1A of that exhibit (actually the last page as Exhibit 67 went to the jury) had a complete breakdown of how that amount was calculated. It is logical to assume, therefore, that the jury took that amount into account in concluding that the total personal property loss was \$81,506, without being affected by the policy limits. And although I have found no waiver by the plaintiff, its long silence is consistent with this interpretation. If the plaintiff truly believed that it had another \$12,507.18 coming to it, I would have expected its lawyer to be in early contact with the Court through the Clerk's Office to make certain that the amount was added to the jury's verdict—especially when the defendant filed motions seeking to reduce the verdict amount on various grounds. Instead, it is logical to conclude that in light of the jury's verdict—a recovery short of the policy limits, but not a complete failure of recovery? it simply did not occur to either side that \$12,507.18 should be added

until the case manager asked. I conclude that the stipulation does not call for adding the gift shop contents on top of the amount jury awarded. Consequently, I find it unnecessary to address the defendant's "equal treatment" arguments.

Accordingly, I **ORDER** that the Clerk enter judgment in accordance with the jury's verdict, without adding the \$12,507.18.

So ORDERED.

DATED THIS _____ DAY OF JUNE, 2001.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Bangor)
Civil Docket For Case #: 00-Cv-7

GREAT NORTHERN STOREHOUSE, INC.
dba
FROG ROCK CAFÉ
 plaintiff

TYLER N. KOLLE, ESQ.
BERMAN & SIMMONS, P.A.
P. O. BOX 961
LEWISTON, ME 04243-0961
(207) 784-3576

and

MOOSEHEAD LIMITED PARTNERSHIP
 plaintiff

TYLER N. KOLLE, ESQ.
(see above)

v.

NETHERLANDS INSURANCE COMPANY
 defendant

JAMES S. NIXON, ESQ.
GROSS, MINSKY & MOGUL, P.A.
P.O. BOX 917
BANGOR, ME 04401
(207) 942-4644

MARIE CHEUNG-TRUSLOW, ESQ.
GERALD W. MOTEJUNAS, ESQ.
LECOMTE, EMANUELSON,
 MOTEJUNAS & DOYLE
PRESIDENTS PLACE
1250 HANCOCK STREET
QUINCY, MA 02169
(617) 328-1900