

1982

# American Manufacturers Mutual v. Resort Campers, Ltd. Et al : Brief of Defendant-Appellants

Utah Supreme Court

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David K. Smith; Attorney for Defendant and Appellants;

R. Scott Williams; Strong & Hanni; Attorneys for Plaintiff and Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

AMERICAN MANUFACTURERS MUTUAL, )  
 )  
Plaintiff and )  
Respondent, )  
 )  
v. )  
 )  
RESORT CAMPERS, LTD, et al, ) No. 18263  
 )  
Defendants, )  
 )  
and )  
 )  
ROGER T. RUSSELL, et al. )  
 )  
Defendants and )  
Appellants. )

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BRIEF OF DEFENDANTS-APPELLANTS  
RUSSELL AND COWLEY

---

Appeal from the Third Judicial District Court of  
Salt Lake County, Honorable Dean E. Conder, Judge

---

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Attorneys for Defendants-  
Appellants Russell and Cowley

Robert Scott Williams  
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Salt Lake City, Utah 84111

Attorneys for Plaintiff-  
Respondent

**FILED**

JUN - 4 1982

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BRIEF OF DEFENDANTS-APPELLANTS  
RUSSELL AND COWLEY

---

NATURE OF THE CASE

This is a declaratory judgment action brought by Respondent to determine the financial limits of its liability on a motor vehicle dealer's bond issued by Respondent.

DISPOSITION IN LOWER COURT

The District Court ruled that the provisions of the Motor Vehicle Dealer's Bond Statute, Section 41-3-16, Utah Code Ann., (1053), must be read in connection with the bond where the bond is ambiguous to determine the nature and extent of the surety's liability. The District Court held that the sum of \$20,000 is the total limit of the bonding company's

liability, regardless of the number of separate claims, the number of the claimants, and the total amount of losses claimed during the bond protection period. In addition, the Court determined that the bonding company was liable for the sum of \$20,000 total for each of two periods, those periods being October 31, 1978, to October 31, 1979; and October 31, 1979, to April 12, 1980.

#### RELIEF SOUGHT ON APPEAL

Appellants Russell and Cowley seek a reversal of the District Court's declaratory judgment.

#### STATEMENT OF FACTS

Appellant refers to the trial record as follows:

Trial Transcript as "Tr--;"

Court File as "R.--;"

Trial Exhibits as "Exh.--."

The parties: Defendants-Appellants Roger T. Russell and Lewis Ted Cowley are two of ten Defendants in this action, all of whom are making claims against the Plaintiff-Respondent bonding company and its principal, Central R.V. Sales. Each of the Defendants, with the exception of the Defendant Tom Vogel, has filed an action in the Third Judicial District Court either as a Plaintiff or Third-Party Plaintiff to prosecute these claims against Plaintiff-Respondent and Respondent's principal (R.2-3). The total amount of these Defendants' claims is approximately \$122,250 (R.88-95).

Plaintiff-Respondent is an insurance company authorized to do and is doing business within the State of Utah who issued the surety bond to Central R.V. Sales in October 1978 (R.2; TR.294, 295).

The bond: The "Bond of Motor Vehicle Dealer or Salesman," executed by Respondent as surety provides that Respondent is bound to:

. . . indemnify any and all persons, firms and corporations for any loss suffered by reason of violation of the conditions hereinafter contained, in the penal sum of twenty thousand dollars (\$20,000). . .

It further provides that the surety will:

. . . indemnify any and all persons, firms and corporations for any loss suffered by reason of the fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act and shall pay all judgments and costs adjudged against said principal on account of fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act and shall pay all judgments and costs adjudged against said principal on account of fraud or fraudulent representations . . . (Emphasis added.)

When the bond was purchased no conversation was had between the purchaser and the agent who sold the bond (Tr.295).

Parol Evidence: The Respondent called Richard Noren, Robert L. Blackham, Thomas J. Brough, Dorothy Berthelsen and John A. Burt to testify on its behalf. At the time Mr. Richard Noren signed the bond, the type-written portion of the bond, Exh. 1, was black (Tr. 299-300). Mr. Blackham,

the agent who sold the bond, testified the form came from the bonding company and he never discussed the language of the bond with Mr. Noren at any time (Tr. 304). Mr. John A. Burt, director of the Motor Vehicle Business Administration, testified that if a bonding company wished to use a form with different wording than the bond at issue, it could, provided the Attorney General would pass on the form of the bond. He further testified that his understanding of the bond limits was based upon his understanding of the Statute, Section 41-3-16 (Tr. 349, 359, 370). Mrs. Dorothy Berthelsen had no first-hand knowledge of the contents of the bond at the time it was issued nor was she responsible for the issuing of the bond (Tr. 403).

#### ARGUMENT

##### POINT I

#### THE LANGUAGE OF THE BOND IS CLEAR AND UNAMBIGUOUS.

The form of the bond was one chosen by the Respondent through its authorized agents and was presented to Richard Noren by a person authorized by Respondent to represent it. The language of the bond in relevant parts states:

. . . are jointly and severally held and firmly bound to the people of the State of Utah to indemnify any and all persons, firms and corporations for any loss suffered by reason of violation of the conditions hereinafter contained, in the penal sum of twenty thousand dollars (\$20,000) lawful money of the United States . . . (Emphasis added.)

and further on:

. . . and indemnify any and all persons, firms and corporations for any loss suffered by reason of the fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act, and shall pay all the judgments and costs adjudged against said principal on account of fraud or fraudulent representations and for any violation or violations of said law during the time of said license and all lawful renewals thereof. . .  
(Emphasis added.)

It is Appellants' contention that said language is clear and unambiguous. In determining the intent of a contract, the Utah Supreme Court in Commercial Building Corporation v. Blair, 565 P.2d 776 (Utah, 1977), has stated:

The rule in the State of Utah, as elsewhere, is that parol evidence may be admitted to show the intent of the parties if the language of a written contract is vague and uncertain. On the other hand, such evidence cannot be permitted to vary or contradict the plain language of the contract.

In Land v. Land, 605 P.2d 1248, 1251 (Utah 1980), the Court also stated:

Where possible the underlining intent of a contract is to be gleaned from the language of the instrument itself; only where the language is uncertain or ambiguous need extrinsic evidence be resorted to. See also Oberhansly v. Earl, 572 P.2d 1384 (Utah 1977); Bennett v. Robinson's Medical Mart, 18 Utah 2d 186, 417 P.2d 761 (1966).

The fact was that the Respondent chose and utilized a form which did not contain the limiting words "aggregate" or "total liability" in it, and respondent should not, after the fact, be allowed to have those terms included through reformation by the trial court. In Skousen v. Smith, 27

Utah 2d 169, 493 P.2d 1003 (Utah 1972), the Utah Supreme Court held:

[I]t is equally elementary that the parties may be bound by the language they deliberately use in their contracts, irrespective of the fact that it appears to result in improvidence, beyond and perhaps in excess of what the mythical, reasonable, prudent man might feel constrained to venture.

In a companion case also on appeal involving interpretation of the same form of a Motor Vehicle Dealer's Bond, Judge Sawaya, in a Partial Summary Judgment entered on June 16, 1981, in the Third Judicial District Court for Salt Lake County, in a case captioned Dennis Dillon Oldsmobile, et al. v. Frank T. Zudunick, et al, No. C 79-7757, (Utah Supreme Court, Case No. 17886) held:

The bond of motor vehicle dealer salesman provided by defendant, Occidental Fire and Casualty Company, in this action, and under 41-3-16, Utah Code Ann., 1953, and bonds required by said section, are for the benefit of any person, firm or corporation suffering loss by reason of the violation by the principal of any of the provisions of Chapter 3 of Title 41, Utah Code Ann., 1953, or by reason of fraud or fraudulent representations made by said principal, and the limit of liability on the part of the surety under such bond is \$20,000 per claim, and the payment by the surety of one such claim in the amount of \$20,000 does not relieve said surety of liability on any other claim.

It is significant that nowhere in the language of the bond document, itself, is there any language which tracts or parallels the language of Section 41-3-16, Utah Code Ann., which states:

[T]he bond may be continuous in form, and the total aggregate liability on the bond shall be limited to the payment of twenty thousand dollars (\$20,000).

The language contained in the bond itself does not say for all loss suffered or the total loss suffered, or the total aggregate loss suffered by reason of violation of the conditions hereinafter contained in the penal sum of \$20,000.

#### POINT II

#### THE STATUTE READ IN CONNECTION WITH THE BOND SETS ONLY THE MINIMUM STANDARDS

Since the statute only sets the minimum requirements, there is nothing untoward in having parties contract for greater amounts. In Zale v. Industrial Commission of Utah, 128 P.2d 751 (Utah 1942), in a case involving an issue of whether a statutory bond required under the Workman's Compensation Act would pay on an accident prior to the date of the enactment of the bond requirement, the Utah Supreme Court stated:

. . . but where a bond is by its terms more comprehensive than required by the statute, the surety is liable to the full extent on the bond. (See also Fountain Green City v. National Surety Corporation, 100 Utah 160, 111 P.2d 155 (1941).

In Royal Indemnity Company v. Special Service Supply Company, 413 P.2d 500 (Nev. 1966), the Nevada Supreme Court held that a surety was liable on a bond which was conditioned more broadly than required by the statute. In that case the bond was issued pursuant to a statute designed to protect

persons from unlawful acts of contractors. The surety argued that the statute did not extend to simple breaches of contract on the part of the contractor. The language of the bond itself was found to be inclusive enough to encompass simple breaches of contract. The Court stated:

Even if, as appellant claims, the statute does not extend to materialmen's contracts, a bond may be conditioned more broadly than the statute requires and 'if good at common law, if it is entered into voluntarily by competent parties for a valid consideration, and is not repugnant to the letter or policy or the law.'

In concluding the opinion, the Court stated:

We are reinforced in these views by a final point. The bonding requirements incident to a new contractor's license are expressly set forth in N.R.S. 624.270, supra. If the instant bond was intended only to fulfill that statute, as Royal insists, the parties could easily have drawn their contract in the exact wording of the statute. This to some extent they did-- but they also spoke of "defaults" and "material bills." The only reasonable inference is that they intended to go beyond the statutory language.

In Traveler's Indemnity Company v. Housing Authority of City of Miami, 256 S.2d 230 (Fla. App. 1972), that court likewise held that a bond required by statute may be executed more broadly than required by statute. The statute at issue did not encompass claims for breach of contract or negligence. The terms of the bond included coverage for such claims. The court noted that the terms of the bond should be construed strictly against the drafter of the bond and stated:

Parties in executing the bond may contract for provisions broader than the minimum requirements of the statute. A surety company is bound by any terms of its bond which extend beyond the statutory requirements.

Appellants at trial called Robert B. Hansen, the former Attorney General for the State of Utah, and he testified that while he was Attorney General that if a contractual form was submitted that was broader than the minimum required by the statute, the office would approve it in the public interest (Tr. 441).

#### CONCLUSION

The language of the bond itself is clear and unambiguous and the bonding company is obligated to pay any and all persons for any loss suffered in the amount of up to \$20,000. Even if the trial court was correct in that the language of the bond was ambiguous, the parol evidence did not clarify the ambiguity since the witnesses Respondent called did not testify what the parties understanding of the bond was at the time it was entered into. The only parol evidence that talks about the intent of the language of the bond at the time it was issued was that given by the former Attorney General, Robert Hansen, who testified that at the time he was Attorney General, if the language of the bond was broader than that of the statute, it was routinely approved as to form to protect the public interest. If the bond was ambiguous, any ambiguity should be resolved against the bonding company. If the statute is

read in connection with the bond, it should only be used to set forth the minimum requirement and should not be construed as setting forth the maximum that parties can contract for.

The proceedings in the lower court should be reversed.

Respectfully submitted this 4<sup>th</sup> day of June, 1982.

NIELSEN & SENIOR

By David M. Swope  
David M. Swope

PLAINTIFF'S EXHIBIT  
1  
C87-4295

BOND OF MOTOR VEHICLE DEALER OR SALESMAN

WITNESSED BY D. B.

Bond No. 8SE 295 -13

KNOW ALL MEN BY THESE PRESENTS: That we, Dick & LaVonne Noren

dba Central R. V. Sales of

Street Address: 50 E. Central Avenue City Salt Lake City

County of Salt Lake, Utah, as Principal, and American Manufacturers

Mutual Insurance Company

a Surety Company qualified and authorized to do business in the State of Utah as Surety, are jointly and severally held and firmly bound to the people of the State of Utah to indemnify any and all persons, firms and corporations for any loss suffered by reason of violation of the conditions hereinafter contained, in the penal sum of Twenty Thousand Dollars \$ 20,000.00 lawful money of the United States, for the payment of which, well and truly to be made, we and ourselves, our heirs, executors, administrators, successors and assigns, jointly, severally and firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That,

WHEREAS, the above bounden principal has applied for a license to do business as a Dealer within the State of Utah, and that pursuant to the application, a license has been or is about to be issued.

NOW, THEREFORE, if the above bounden principal shall obtain said license to do business as such Motor Vehicle Dealer and shall well and truly observe and comply with all the requirements and provisions of THE ACT PROVIDING FOR THE REGULATION AND CONTROL OF THE BUSINESS OF DEALING IN MOTOR VEHICLES, as provided by Chapter 3, Title 41, Utah Code Annotated, 1953, and indemnify any and all persons, firms and corporations for any loss suffered by reason of the fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act and shall pay all judgments and costs adjudged against said principal on account of fraud or fraudulent representations and for any violation or violations of said law during the time of said license and all lawful renewals thereof, then the above obligation shall be null and void, otherwise to remain in full force and effect.

The Surety herein reserves the right to withdraw as such surety except as to any liability already incurred or accrued hereunder and may do so upon the giving of written notice of such withdrawal to the principal and to the Motor Vehicle Business Administrator; provided, however, that no withdrawal shall be effective for any purpose until sixty days shall have elapsed from and after the receipt of such notice by the said administrator, and further provided that no withdrawal shall in anywise effect the liability of said surety arising out of fraud or fraudulent representations or for any violation or violations of said law by the principal hereunder prior to the expiration of such period of sixty days, regardless of whether or not the loss suffered has been reduced to judgment before the lapse of sixty days.

Signed and sealed this 31st day of October, 19 78

ATTEST

By .....

[Signature]  
Principal

American Manufacturers Mutual Ins. Co.

Surety

Approved as to form  
ROBERT B HANSEN  
Attorney General  
By (Signed) Burton Howard

[Signature]  
H. Douglas, Attorney-in-Fact

APPENDIX A

I Do Hereby Certify That This Is A True and Correct Copy of the Original.

January 11, 1980

[Signature]  
Notary Public

INDIVIDUAL ACKNOWLEDGMENT OF PRINCIPAL

STATE OF UTAH

COUNTY OF

On this ... day of ... 19... before me personally came ... to me known and known to me to be the person, and described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same.

(SEAL)

Commission Expires

Notary Public

PARTNERSHIP OR FIRM ACKNOWLEDGMENT OF PRINCIPAL

STATE OF UTAH

COUNTY OF

On this ... day of ... 1979, before me personally appeared ... to me known and known to me to be one of the firm of ... described in and who executed the same as and for the act and deed of said firm.

SEAL)

Commission Expires

Notary Public

CORPORATE ACKNOWLEDGMENT OF PRINCIPAL

STATE OF UTAH

COUNTY OF

On the ... day of ... in the year ... before me personally came ... to me known, who, being by me duly sworn, did depose and say: That he resides in ... that he is ... of the ... the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

SEAL)

Commission Expires

Notary Public

CORPORATE ACKNOWLEDGMENT OF PRINCIPAL

(To be executed by corporation without corporate seal)

STATE OF UTAH

COUNTY OF

On the ... day of ... in the year ... before me personally appeared ... to me known, who, being by me duly sworn, did depose and say: That he resides in ... that he is the ... of the ... the corporation which executed the above instrument and which is described therein; that he signed the above mentioned instrument on behalf of said corporation; that he was authorized to do so by Article ... of the Articles of Incorporation of the said corporation, and by order of the Board of Directors of said corporation, and that his signature as it thus appears in the above instrument is binding upon the corporation.

(SEAL)

Commission Expires

Notary Public

AFFIDAVIT OF QUALIFICATION

Illinois

STATE OF ~~UTAH~~

COUNTY OF Cook

H. Douglas being first duly sworn, on oath deposes and says that she is the Attorney-in-Fact of said company, and that she is duly authorized to execute and deliver the foregoing obligations; that said company is authorized to execute the same and has complied in all respects with the Laws of Utah in reference to becoming sole surety upon bonds, under-takings and obligations.

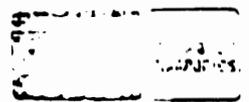
Subscribed and sworn to before me this ... day of November 1978

American Manufacturers Mutual Ins. Co.

My Commission expires:

November 14, 1980

Evelyn Jackey - Notary



**POWER OF ATTORNEY**

Know All Men By These Presents:

That the American Manufacturers Mutual Insurance Company, a corporation organized and existing under the laws of the State of Illinois, and having its principal office in Long Grove, Illinois, does hereby appoint: H. Douglas of Chicago, Illinois\*\*\*\*\*

its true and lawful agent(s) and attorney(s)-in-fact, to make, execute, seal, and deliver during the period beginning with the date of issuance of this power and ending December 31, 1981, unless sooner revoked for and on its behalf as surety, and as its act and deed: Any and all bonds and undertakings provided the amount of no one bond or undertaking exceeds TWO MILLION DOLLARS----- (\$2,000,000.00)\*\*\*\*\*

EXCEPTION: NO AUTHORITY is granted to make, execute, seal and deliver any bond or undertaking which guarantees the payment or collection of any promissory note, check, draft or letter of credit.

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

This appointment may be revoked at any time by the American Manufacturers Mutual Insurance Company.

The execution of such bonds and undertakings in pursuance of these presents shall be as binding upon the said American Manufacturers Mutual Insurance Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office in Long Grove, Illinois.

THIS APPOINTMENT SHALL CEASE AND TERMINATE WITHOUT NOTICE AS OF DECEMBER 31, 1981.

This Power of Attorney is executed by authority of a resolution adopted by the Board of Directors of said American Manufacturers Mutual Insurance Company on March 29, 1962 at New York, New York, a true and accurate copy of which is hereinafter set forth and is hereby certified to by the undersigned Secretary or Assistant Secretary as being in full force and effect:

"VOTED: That the President or any Vice President or Secretary or any Assistant Secretary shall have power and authority to appoint attorneys in fact, and to authorize them to execute on behalf of the company, and attach the seal of the company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and to accept service of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the Board of Directors of the company at a meeting duly called and held on the 7th day of June, 1962:

STATE OF ILLINOIS }  
COUNTY OF COOK } ss:

I, EVELYN LACKEY a Notary Public in and for the state and county aforesaid, do hereby certify that H. DOUGLAS of the AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY

who is personally known to me, appeared before me this day and acknowledged that he signed, sealed and delivered the foregoing instrument as his free and voluntary act as ATTORNEY-IN-FACT of the AMERICAN MANUFACTURERS MUTUAL INS. CO. and as the free and voluntary act of the AMERICAN MANUFACTURERS MUTUAL INS. CO.

for the uses and purposes therein set forth.  
Given under my hand and Notarial Seal this 31st day of OCTOBER, A. D. 19 78

My commission expires NOVEMBER 14, 1980  
Evelyn Lackey  
Notary Public

NOTARIAL JURAT  
PK 230 3-72 5M

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act of said corporation and as their own free and voluntary act for the uses and purposes therein set forth.



Jean Perzold  
Jean Perzold, Notary Public

My commission expires: April 29, 1980

**CERTIFICATION**

I, Owen C. Johnson, Secretary of the American Manufacturers Mutual Insurance Company, do hereby certify that that attached Power of Attorney dated September 18, 1978 on behalf of H. Douglas of

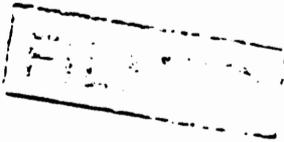
Chicago, Illinois\*\*\*\*\* is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said H. L. Kennicott, Jr. and C. G. Swan who executed the Power of Attorney as Vice President and Secretary respectively were on the date of the execution of the attached Power of Attorney the duly elected Vice President and Secretary of the American Manufacturers Mutual Insurance Company

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the American Manufacturers Mutual Insurance Company on this 31st day of October, 19 78



Owen C. Johnson  
Owen C. Johnson, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein. Sponsoring the S.J. Quinney Law Library Digitizing Project provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.



JAN 23 1982

By *[Signature]*  
Deputy Clerk

DAVID S. COOK  
Attorney for Defendants Resort Campers Ltd.,  
Glen Hatch, and Des Townsend  
85 West 400 North  
Bountiful, Utah 84010  
Telephone: 292-7216

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE  
COUNTY, STATE OF UTAH

AMERICAN MANUFACTURERS	)	
MUTUAL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
RESORT CAMPERS LTD., DES	)	
TOWNSEND, GLEN HATCH, ROGER	)	
T. RUSSELL, TOM VOGEL, LEWIS	)	
TED COWLEY, DALE CHRISTIANSEN,	)	Civil No. C81-4295
JOHN W. WHITELEY, GWYN D.	)	
DAVIDSON and UNITED BANK, a	)	
Utah corporation,	)	
	)	
Defendants.	)	

The above-entitled action was tried before the Court sitting without a jury on December 16 and 17, 1981. The Plaintiff, American Manufacturers Mutual, was represented by Philip R. Fishler. Defendants Resort Campers Ltd., Des Townsend and Glen Hatch were represented by David S. Cook. Defendants Roger T. Russell and Lewis Ted Cowley were represented by David M. Swope. Defendants Dale Christiansen and John W. Whiteley were represented by David K. Smith. Defendant Gwyn Davidson was represented by Bruce Findlay. Defendant United Bank was represented by Carl Kingston.

The Court, having heard and considered the evidence and arguments of counsel, and having read and considered the memorandums submitted and having heretofore, on December 24, 1981, made and entered its Memorandum Decision, and good cause appearing, the Court hereby makes the following:

FINDINGS OF FACT

1. Plaintiff is an insurance company authorized to do and doing business within the state of Utah, which seeks in this

action a declaratory judgment that its maximum liability on a certain Bond of Motor Vehicle Dealer or Salesman issued by Plaintiff to Dick and LaVonne Noren, dba Central RV Sales, is limited to the sum of \$20,000. Plaintiff further seeks leave to deposit said sum in Court and to interplead the named defendants. Defendants seek a declaratory judgment that the subject bond provides a maximum of \$20,000 bond protection for each claimant, and defendants Resort Campers Ltd., Des Townsend and Glen Hatch claim that, in any event, the bond provides coverage of \$20,000 for each year or period of a year the bond was in force and maintained in force by the payment of an additional premium.

2. Dick Noren applied for a motor vehicle dealer's license, which was ultimately issued to him on June 19, 1979.

3. In connection with his application for a dealer's license, Dick Noren applied for and was issued Bond No. 8SE 296 415 entitled "Bond of Motor Vehicle Dealer or Salesman" by the plaintiff, which bond had an effective date of October 31, 1978.

4. In connection with the application for said bond, the applicant, Dick Noren, executed an Agreement of Indemnity in favor of plaintiff, also dated October 31, 1978.

5. Under the terms of the subject bond, plaintiff agreed and became:

". . . firmly bound to the people of the State of Utah to indemnify any and all persons, firms and corporations for any loss suffered by reason of violation of the conditions hereinafter contained, in the penal sum of Twenty Thousand Dollars (\$20,000.00) lawful money of the United States. . ."

The bond provides that the condition of the plaintiff's obligation is as follows:

"THE CONDITION OF THIS OBLIGATION IS SUCH, That,

WHEREAS, the above bounden principal has applied for a license to do business as a Motor Vehicle Dealer within the State of Utah, and that pursuant to the application, a license has been or is about to be issued.

NOW, THEREFORE, if the above bounden principal shall obtain said license to do business as such Motor Vehicle Dealer and shall well and truly observe and comply with all the requirements and provisions of THE ACT PROVIDING

FOR THE REGULATION AND CONTROL OF THE BUSINESS OF DEALING IN MOTOR VEHICLES, as provided by Chapter 3, Title 41, Utah Code Annotated, 1953, and indemnify any and all persons, firms and corporations for any loss suffered by reason of the fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act and shall pay all judgments and costs adjudged against said principal on account of fraud or fraudulent representations and for any violation or violations of said law during the time of said license and all lawful renewals thereof, then the above obligation shall be null and void, otherwise to remain in full force and effect.

The Surety herein reserves the right to withdraw as such surety except as to any liability already incurred or accrued hereunder and may do so upon the giving of written notice of such withdrawal to the principal and to the Motor Vehicle Business Administrator; provided, however, that no withdrawal shall be effective for any purpose until sixty days shall have elapsed from and after the receipt of such notice by the said administrator, and further provided that no withdrawal shall in anywise effect the liability of said surety arising out of fraud or fraudulent representations or for any violation or violations of said law by the principal hereunder prior to the expiration of such period of sixty days, regardless of whether or not the loss suffered has been reduced to judgment before the lapse of sixty days."

6. The Court finds the foregoing bond language unclear as to whether the \$20,000 penal sum of the bond is a per person limit or a per all persons limit.

7. The subject bond was issued pursuant to Section 41-3-16 Utah Code Annotated (1953), as amended through the 1977 amendment, which provides as follows with respect to new and used motor vehicle dealers' bonds:

41-3-16. Dealer's bonds--Necessity--Filing--Amount--Surety--Form--Conditions--Maximum liability thereon.--1. New Motor Vehicle Dealer's and Used Motor Vehicle Dealer's Bond: Before any new motor vehicle dealer's license or used motor vehicle dealer's license shall be issued by the administrator to any applicant therefor the said applicant shall procure and file with the administrator a good and sufficient bond in the amount of \$20,000 with corporate surety thereon, duly licensed to do business within the State of Utah, approved as to form by the attorney general of the State of Utah, and conditioned that said applicant shall conduct his business as a dealer without fraud or fraudulent representation, and without the violation of any of the provisions of this act. The bond may be continuous in form, and the total aggregate liability on the bond shall be limited to the payment of \$20,000."

8. The foregoing statute is found among the licensing provisions applicable to automobile dealers, salesmen, manufacturers, transporters, wreckers, distributors and representatives set forth

in Chapter 3 of Title 41, Utah Code Annotated (1953). Section 41-3-15, Utah Code Annotated (1953), provides that dealer licenses expire the first day of July next following the date of issuance, and are to be renewed annually upon the payment of fees and the making of application:

"41-3-15. Duration of licenses--Expiration date--Renewal. --(C) Such licenses, except the motor vehicle salesman's license, if the same shall not have been suspended or revoked, as in this act provided, shall be in effect to the first day of July next following the date of issuance thereof and shall then expire; provided, however, that upon the expiration of such license, unless by suspension or revocation, the same may be renewed upon the payment of the fees specified herein to accompany applications, and such renewals shall be made from year to year as a matter of right. A motor vehicle salesman's license expires upon his termination of employment with the dealer for whom he is licensed, or on the first day of July next following the date of issuance thereof, whichever comes first; provided, however, that upon the expiration of such license, unless by suspension or revocation, the same may be renewed upon application and upon payment of the fees specified herein and such renewals to be made at these specified times as a matter of right."

9. The plaintiff reserves the right to make such annual investigation as it deems appropriate with respect to the qualification of dealers for a dealer's bond and the plaintiff makes annual charges with respect to dealer bonds.

10. Dick Noren was billed the sum of \$400 as and for a bond premium for the period October 31, 1978 to October 31, 1979, and paid such premium on or about November 19, 1978.

11. In 1979, Dick Noren was billed an additional \$400 on or about August 30, 1979 which was paid in October or November, 1979. Such billing was for the period October 31, 1979 to October 31, 1980.

12. The bond provides that the surety may withdraw as such by giving written notice to the principal and to the motor vehicle business administrator, provided that no withdrawal shall be effective for any purpose until 60 days shall have elapsed from and after the receipt of the notice by the administrator. On or about February 7, 1980, plaintiff sent a written notice of intention to terminate further liability on the bond to Dick and LaVonne Noren, dba Central RV Sales, and to Motor Vehicle Business Administration

in Salt Lake City, Utah. Such notice was received by the office of the administrator on February 12, 1980. The Motor Vehicle Business Administration responded to said notice by letter dated February 25, 1980 which stated that the liability of the surety may be terminated as of January 30, 1980.

13. Separate claims are made by those persons named as defendants in this action against the plaintiff, each of which claims is the subject matter, or part of the subject matter, of a pending civil proceeding in this court. None of the cases which any of the defendants have brought have been tried. One additional claim has been made by a claimant, which was not the subject of a pending civil proceeding as of November 1981. The claims made by all claimants total approximately \$128,000. The plaintiff has not settled any claims.

From the foregoing FINDINGS OF FACT, the Court makes the following:

#### CONCLUSIONS OF LAW

1. The withdrawal of the bond became effective April 12, 1981, 60 days after plaintiff's letter to the Motor Vehicle Business Administration and to the bond principal was received.

2. The provisions of the dealer bond statute, Section 41-13-16, Utah Code Annotated (1953) must be read in connection with the bond to determine the meaning of the bond in respect to the nature and extent of the surety's liability. Zele v. Industrial Commission of Utah, 102 Utah 1641, 128 P.2d 751 (1942) and Am.Jur.2d "Contracts", Section 257. In view of the phrase in the statute that, "the bond may be continuous in form, and the total aggregate liability on the bond shall be limited to the payment of \$20,000", the court concludes that the \$20,000 penal sum of the bond is the total limit of the bond company's liability, regardless of the number of separate claims of claimants and regardless of the total amount of losses claimed during a bond protection period. (See 12 Am.Jur.2d "Bonds", Sections 45 and 11 C.J.S. "Bonds" Section 132.)

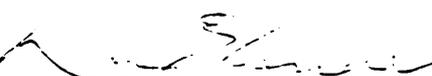
3. In view of the annual licensing scheme designed to protect the motoring public, and the annual charging of premiums by plaintiff, the bond must be construed as providing one year's bonding protection for the initial premium of \$400 applicable to all claims up to the penal sum of \$20,000 arising during the period October 31, 1978 to October 31, 1979.

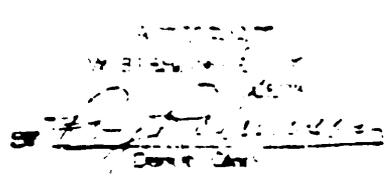
4. Payment of a second premium of \$400 in October or November 1979 provided bonding protection in the sum of \$20,000, against which claimants may seek indemnification for losses arising during the term of the second period, to-wit, from October 31, 1979 to April 12, 1980. Giese v. Engelhardt, 175 NW2d 578 (1970).

5. The court further concludes that all pending cases should be consolidated for determination of the claims made and to enable the court to equitably prorate the claims against the bonding protection provided, as above set forth.

MADE AND ENTERED this 27 day of January, 1982.

BY THE COURT:

  
\_\_\_\_\_  
Dean E. Conder  
District Judge



FILED IN CLERK'S OFFICE  
Salt Lake County Utah

JAN 28 1982

*[Signature]*  
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

AMERICAN MANUFACTURERS	)	
MUTUAL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	DECLARATORY JUDGMENT
RESORT CAMPERS LTD., DES	)	
TOWNSEND, GLEN HATCH, ROGER	)	
T. RUSSELL, TOM VOGEL, LEWIS	)	
TED COWLEY, DALE CHRISTIANSEN,	)	Civil No. C81-4295
JOHN W. WHITELEY, GWYN D.	)	
DAVIDSON and UNITED BANK, a Utah	)	
corporation,	)	
	)	
Defendants.	)	

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The above-entitled action was tried before the Court, sitting without a jury, on December 16 and 17, 1981. The Plaintiff, American Manufacturers Mutual, was represented by Philip R. Fishler. Defendants Resort Campers Ltd., Des Townsend and Glen Hatch were represented by David S. Cook. Defendants Roger T. Russell and Lewis Ted Cowley were represented by David M. Swope. Defendants Dale Christiansen and John W. Whiteley were represented by David K. Smith, Defendant Gwyn Davidson was represented by Bruce Findlay. Defendant United Bank was represented by Carl Kingston.

The Court, having heard and considered the evidence and arguments of counsel, and having read and considered the memorandums submitted and having heretofore, on December 24, 1981, made and entered its Memorandum Decision, and the court having made and entered its Findings of Fact and Conclusions of Law, and good cause appearing,

The Court hereby renders the following Declaratory Judgment:

DECLARATORY JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

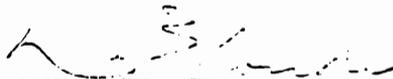
1. That the total liability of plaintiff, American Manufacturers Mutual Insurance Company on that certain Bond No. 8SE 296 415 issued to Dick and LaVonne Noren dba Central RV Sales is \$20,000.00 as to all claimants and losses arising during the period October 31, 1978 to October 31, 1979.

2. That the total liability of Plaintiff American Manufacturer's Mutual Insurance Company upon the subject bond and the renewal thereof, is \$20,000 as to all claims and losses arising during the period October 31, 1979 through April 12, 1980.

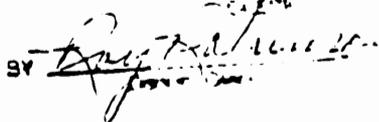
3. It is further ordered that all pending cases filed by defendants should be and the same are hereby consolidated so that the various claims made can be determined and an equitable pro ration of the bond amount can be made by the court.

MADE AND ENTERED this 17 day of January, 1982.

BY THE COURT:



Dean E. Conder  
District Judge

ATTEST  
W. STEPLING  
BY 

CERTIFICATE OF SERVICE

Served the foregoing Brief of Appellants by mailing copies thereof to the following counsel, this   27   day of June, 1982.

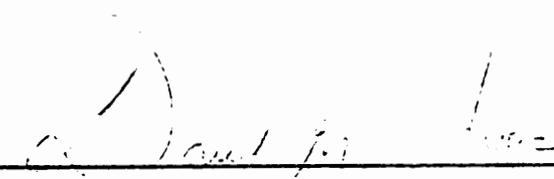
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