

EXHIBIT "C"

Received Time Aug. 1. 1:49PM



Recreational Marine
1 Beaver Valley Rd.
4 East
Wilmington, DE 19803

302.476.683 tel
800.643.8507 fax

Kristen.Swingle@ace-ina.com
www.ace-ina.com

Kristen Swingle
Claims Specialist

August 1, 2007

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

McCormick International, Inc.
Attn: James E. McCormick
6120 Muck Pond Road
Seffner, Florida 33584

RE: *Janet Gray and Paul Gray, husband and wife v. James E. McCormick, McCormick International, Inc., d/b/a McCormick Water-ski School; Erick Thifault; and Tatiana Niebuhr, Circuit Court of the 13th Judicial Circuit in and for Hillsborough County, Florida, Case No. 05-1962 Division J*
Claim No.: 796S1528318
Claimants: Janet and Paul Gray
Policy: SS0679606
Policy Period: October 23, 2003 to October 23, 2004
Date of Loss: March 29, 2004

Dear Mr. McCormick:

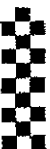
I am writing to you on behalf of ACE American Insurance Company ("ACE American"). This letter is in response to the tender for defense and indemnification of all defendants named in the Amended Complaint filed against James E. McCormick, McCormick International, Inc. d/b/a McCormick Water-ski School ("McCormick International), Erick Thifault and Tatiana Niebuhr in the above-captioned lawsuit brought by Janet and Paul Gray. For the reasons set forth below in this correspondence, ACE American respectfully reiterates its initial coverage denial as outlined in the April 25, 2005 letter sent to your attention and further declines all defendants' request for defense and indemnity in this matter.

THE FACTS

The Complaint filed by Janet Gray and her husband alleges that she was a student/client of McCormick International at the time of her accident. Per the Amended Complaint, it states:

"5. At all times material to this cause of action, the Defendant, McCORMICK INTERNATIONAL, owned and operated McCormick International, Inc., a water-ski school in Hillsborough County, Florida, known as "McCormick Water-ski School" providing, for a fee, professional water-ski coaching and instruction for national and international competition, including professional water ski coaching and instruction for disabled water skiers such as Plaintiff, JANET GRAY.

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8. At all times material to this cause of action, a 2004 Mastercraft ski boat was on loan to McCORMICK INTERNATIONAL and used to tow student/clients of its water ski school while being operated by agents or employees of McCORMICK INTERNATIONAL such as defendants, THIFAULT and NIEBUHR.

12. On or about March 29, 2004, while being towed as a student/client of McCormick Water-ski School by the 2004 Mastercraft boat being operated by NIEBUHR and under the direct supervision and control of Defendant McCORMICK INTERNATIONAL, and Defendants NIEBUHR and THIFAULT, Plaintiff JANET Gray struck a stationary ski-jump ramp, sustaining serious permanent injuries."

Ms. Gray further alleges that all defendants McCormick, McCormick International, and its employees Thifault and Niebuhr were negligent and contributed to her losses and damages.

In addition to the damages sought by Ms. Gray for the injuries she has sustained, co-plaintiff Mr. Gray is claiming damages for loss of consortium.

According to our investigation, ACE American was never informed prior to the loss that the insured vessel was loaned to McCormick International and therefore, ACE American did not authorize in any way the vessel to be used to pursue the commercial activities of McCormick International.

THE POLICY

ACE American issued a Recreational Marine Boatsman Policy of insurance bearing policy number SS0679606 to James E. McCormick of 6120 Muck Pond Road, Seffner, Florida, with effective dates of coverage from October 23, 2003 to October 23, 2004. The insured vessel is described as a 2004 Mastercraft Prostar 197. The policy provides, among other coverages, water craft liability coverage in the amount of \$500,000.00 and Medical Payment Coverage in the amount of \$1,000.

Part E of the policy pertains to Liability Coverage and reads as follows in pertinent part:

PART E: LIABILTY COVERAGE

PERILS INSURED AGAINST: We will pay sums that you or a covered person become legally obligated to pay as a result of the ownership, operation or maintenance of your insured vessel because of:

- d. bodily injury or loss of life.

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EXCLUSIONS: We do not provide coverage Liability Coverage for:

a. liability assumed by you under any contract or agreement.

Further, the policy issued to James B. McCormick provides coverage for "private pleasure use" only. The policy specifically provides under **GENERAL LIMITATIONS AND EXCLUSIONS**, the following:

PRIVATE PLEASURE USE ONLY: We do not provide any coverage while your insured property is used for charter, hire, to carry persons or property for a fee, or for any other commercial use unless prior written consent has been obtained from us. We will provide coverage while you are attempting to aid other boats in distress, provided you do not charge a fee for your services.

Other relevant provisions include the following:

CHANGES IN THE POLICY: This policy contains all of the agreements between you and us. Its terms may not be changed or waived except by an endorsement issued by us. If a change requires a premium adjustment, we will adjust the premium as of the effective date of the policy change.

NO BENEFIT TO OTHERS: No person or organization which has custody of your insured property and is to be paid for services will benefit from this insurance.

ANALYSIS

In the amended complaint, Ms. Gray alleges that McCormick International provided, for a fee, professional water-ski coaching and instruction for national and international competition, including professional water ski coaching and instruction for disabled water skiers such as herself. On the day of the loss, McCormick International was using McCormick's vessel to perform its commercial activities and had its employees Thifault and Niebuhr aboard the vessel in their professional capacity. Ms. Gray struck a stationary ski-jump ramp and alleges all defendants are liable for her losses and damages.

It appears that McCormick had agreed to loan the vessel to McCormick International. In order to complete our investigation, please provide us with a copy of the loan agreement between McCormick and McCormick International. If there is no written agreement, please indicate when the agreement was made, who are the physical parties who consented to the loan agreement, what consideration was paid by McCormick International to McCormick, if any, and when did the loan agreement end, if at all. Given the requests made above, ACE American reserves the right to deny coverage based on the policy exclusion whereby any liability assumed under any contract or agreement may be applicable in the instant case.

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As mentioned in our letter to you dated April 25, 2005, coverage is provided for "private pleasure use" only. In this case, the private pleasure provision of this policy was breached and no coverage can be afforded for this loss as the insured vessel was used to coach Ms. Gray in her water-ski activities. Moreover, Thifault and Niebuhr, two employees of McCormick International, were working with Ms. Gray at the time of loss, and were pursuing a commercial activity by coaching Ms. Gray from the loaned vessel for the benefit of their employer McCormick International. Such use of the insured vessel does not constitute private pleasure use and is not covered pursuant to the terms of the policy.

Furthermore, please note that the loan of the vessel to McCormick International, in order to teach water-ski or other commercial activity, was not at any time approved by ACE American. In addition to the "Private pleasure use" provision, which requires ACE American's written consent to carry on any type of commercial activity with the insured vessel, the "Changes in the policy" provision requires that any change to the policy be made by way of endorsement. No request was made to ACE American to allow for the loan of the insured vessel or for the issuance of any such endorsement and no endorsement was ever issued.

Based on the "No benefits to others" provision, no organization which has custody of the vessel, and is to be paid for its services, such as may be the case with McCormick International, subject to the information requested above regarding the loan arrangement between McCormick and McCormick International, will benefit from this insurance. In other terms, if McCormick International paid McCormick to use the insured vessel, the policy will not provide McCormick International with any defense or indemnity for any loss involving the insured vessel. ACE American reserves the right to deny a defense and indemnity to McCormick International on this ground.

CONCLUSION

Based on the foregoing, it appears from the allegations contained in the amended complaint that the vessel was used for commercial purposes at the time of the loss and therefore, the "Private Pleasure Use Only" provision of the policy was violated. Violation of this provision negates coverage for all defendants to the amended complaint. You are hereby advised that no duty to defend or to indemnify exists in favor of any of the defendants named in the amended complaint under the Recreational Marine Boatsman Policy issued to James E. McCormick by ACE American. ACE American will take no action to defend or to indemnify James E. McCormick, McCormick International, Inc., Erick Thifault or Tatiana Niebuhr with regard to the Complaint filed against it by Janet Gray and her husband Paul Gray.

Should another Amended Complaint be received by you, please forward it to my attention so that I may review it to determine whether any allegations have been made which might give rise to a duty to defend or indemnify under the policy of insurance issued by ACE American.

Please understand that our analysis is based upon the known facts at this time and therefore, is not exhaustive. Other policy terms and conditions may apply and ACE American is not waiving, nor will it be estopped, from asserting any other terms, conditions, exclusions or provisions of this policy.

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Should you have any new, additional or different information and/or documents that you feel would assist us in our coverage determination, please forward such information and/or documents to us as soon as practicable. Our request and/or receipt of such information or documentation do not waive, alter or change our coverage determination.

Nothing in this letter will act to waive any terms, conditions or insurer's rights under the policy at issue, at equity or at law, which are expressly reserved. ACE American also reserves the right to assert new, additional or different coverage defenses should new, additional or different information and/or documents be received that warrant such action.

Sincerely,


Kristen Swingle

cc: Sullivan and Strauss
Guy Haggard, Gray Robinson
James E. McCormick, regular mail