

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

ATLANTIC STATES INSURANCE	:	February Term 2004
COMPANY,	:	
	:	
Plaintiff,	:	No. 2642
	:	
v.	:	
PATRICK J. HUNT, THE BULLARD	:	Commerce Program
COMPANY and KIMBERLY RUGH,	:	
	:	
Defendants.	:	Control Number 073353

**ORDER and MEMORANDUM**

AND NOW, this 12<sup>TH</sup> day of October 2004, upon consideration of the Motion for Summary Judgment of Atlantic States Insurance Company, Defendant Kimberly Rugh's response in opposition, the parties respective memoranda, all matters of record and in accordance with the Memorandum Opinion being contemporaneously filed with the court, it hereby is **ORDERED** and **DECREED** that said Motion is **Denied**.

**BY THE COURT:**

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**GENE D. COHEN, J.**



caused by an “accident” and resulting from the ownership, maintenance or use of the covered “auto”.

## 1. WHO IS AN INSURED

The following are “insureds”:

- b. Anyone else while using with your permission a covered “auto you own, hire or borrow except:

(Atlantic’s Memorandum in Support of Plaintiff’s Motion for Summary Judgment Exhibit “A”). Atlantic is currently providing a defense to Hunt under the Bullard Company Policy under a reservation of rights.

Atlantic filed the instant lawsuit claiming that Hunt was not a permissive user of the Bullard Company vehicle and therefore the Atlantic Policy issued to the Bullard Company provides no coverage to Hunt for the claims set forth in the underlying complaint. Atlantic has now filed a motion for summary judgment arguing that the Policy contains language relieving it of responsibility to cover the claim for the March, 16, 2001 accident because Hunt was not a permissive user. In response, Rugh argues that issues of fact remain as to whether Hunt was a permissive user of the Bullard Company vehicle.

Whether a user of an automobile has the permission necessary to elevate that user to the status of an additional insured depends upon the facts and circumstances of each case in light of the underlying policy language. Nationwide Mut. Ins. Co. v. Cummings, 438 Pa. Super. 586, 652 A.2d 1338, 1344 (1994). The owner’s permission to use an automobile may either be expressed or implied. Id. “Implied permission may arise from the relationship of the parties or by virtue of a course of conduct in which the parties have mutually acquiesced.” Id.(quoting Federal Kemper Ins. Co. v. Neary, 366 Pa. Super. 135,

530 A.2d 929, 931 (1987). “However, ‘permission’ requires something more than mere sufferance or tolerance without taking steps to prevent the use of the automobile, and permission cannot be implied from possession and use of the automobile without the knowledge of the named insured.” Nationwide Mut. Ins. Co. v. Cummings, 438 Pa. Super. 586, 652 A.2d 1338, 1344 (1994) (quoting State Farm Mut. Ins. Co. v. Judge, 405 Pa. Super. 376, 592 A.2d 712, 714 (1991)).

“The critical question will always be whether the named insured said or did something that warranted the belief that the ensuing use was with its consent. There must be ‘a connection made’ with the named insured’s own conduct; proof of ‘acts, circumstances, and facts such as the continued use of the car’ will be insufficient ‘unless they attach themselves in some way to the acts’ of the named insured.” Belas v. Melanovich, 247 Pa. Super. 313, 372 A.2d 478, 482 (1977).

The courts focus is not directed to the actions of the ultimate user of the auto, but rather, “whether the named insured said or did something that warranted the belief that the ensuing use was with his consent. There must be ‘a connection made’ with the named insured’s own conduct; [mere] proof of ‘acts, circumstances, and facts, such as continued use of the car’, will be insufficient ‘unless they attach themselves in some way to the acts’ of the named insured.” Beatty v. Hoff, 382 Pa. 173, 177, 114 A.2d 173, 174 (1955).

Here, the evidence submitted in support of this motion demonstrates that Hunt used the vehicle on the morning of the accident alleged to have caused injury to Rugh, that Hunt knew the code to gain access to the garage where the Bullard Company vehicles were stored, that Hunt knew where the keys to the vehicles were kept and that Marc Bullard, the President of the Bullard Company, gave Hunt permission in the past to use the company vehicle to take his pregnant wife to the hospital due to an emergency.

In determining whether summary judgment is appropriate, this court must examine the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, to determine if any genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law. Aetna Casualty & Surety Co., 437 Pa. Super. at 420, 650 A.2d at 97. At bar, genuine issues of material fact exist which preclude the entry of summary judgment. For instance, whether Bullard provided Hunt with permission to use the company vehicles during emergency situations, whether an emergency situation existed on the morning of March 16, 2001, and whether Hunt exceeded the restrictions imposed by Bullard upon any use of the company vehicles. Since genuine issues of fact exist, Atlantic's motion for summary judgment is Denied.<sup>1</sup>

### CONCLUSION

For the foregoing reasons, Allstates Insurance Company's Motion for Summary Judgment is Denied.

An Order contemporaneous with this Opinion will be filed.

**BY THE COURT,**

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**GENE D. COHEN, J.**

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<sup>1</sup> Plaintiff also argues that it is entitled to summary judgment as a result of Hunt's failure to cooperate as required under the terms of the Policy. In support thereof, plaintiff attaches letters addressed to Hunt which plaintiff alleges went unanswered. Absent from the motion is any evidence demonstrating that Hunt in fact received the letters attached to the motion or of any other attempts to compel his cooperation. Based on the foregoing, Atlantic's motion in this regard is denied.