

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

ILLINOIS NATIONAL INSURANCE)	NO. 1:07-cv-00007-RAW
COMPANY, an Illinois Corporation,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CPRT INVESTMENT CORP., an)	
Iowa Corporation,)	RULING ON DEFENDANT'S
)	AND INTERVENORS'
Defendant.)	MOTIONS FOR
-----)	SUMMARY JUDGMENT
WESTFIELD INSURANCE COMPANY;)	
JOHN O'BANNON, Personal)	
Representative of THE ESTATE OF)	
LESLIE NICOLE O'BANNON; and)	
HEATHER M. JACOBS, Personal)	
Representative of THE ESTATE OF)	
ERIC M. JACOBS,)	
)	
Intervenors.)	

Before the Court following hearing are defendant's and the intervenors' motions for summary judgment [51, 52, 53]. This action involves a dispute about insurance coverage for a tragic accident on November 13, 2006 in which an aircraft owned by defendant CPRT Investment Corp. ("CPRT"), and insured by plaintiff Illinois National Insurance Company ("INIC"), crashed in Indiana. The pilot, John "Mitch" Trewet, and all four passengers died. INIC filed a Complaint on March 16, 2007 seeking a declaratory judgment that its aircraft liability and hull policy did not provide coverage for the occurrence. 28 U.S.C. § 2201. The Court has diversity jurisdiction. 28 U.S.C. § 1332(a)(1). The case was

referred to the undersigned for all further proceedings pursuant to 28 U.S.C. § 636(c).

Westfield Insurance Company, which provided workers' compensation insurance to the company whose employees were killed in the crash, and the representatives of the estates of two of the passengers who died in the crash, John O'Bannon, personal representative of the Estate of Leslie Nicole O'Bannon, and Heather Jacobs, personal representative of the Estate of Eric M. Jacobs, were granted leave for permissive intervention aligned with defendant CPRT. Fed. R. Civ. P. 24(b).

I.

SUMMARY JUDGMENT

The movants are entitled to summary judgment if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits," Fed. R. Civ. P. 56(c), presented to the court, show "'that there is no genuine issue as to any material fact and that [they are] entitled to a judgment as a matter of law.'" *Carrington v. City of Des Moines, Iowa*, 481 F.3d 1046, 1050 (8th Cir. 2007)(quoting Fed. R. Civ. P. 56(c)); see *Hervey v. County of Koochiching*, 527 F.3d 711, 719 (8th Cir. 2008). A genuine issue of material fact exists "if it has a real basis in the record." *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992)(citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). A "genuine issue of fact is material if

it 'might affect the outcome of the suit under the governing law.'" *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

The court must view the facts in the light most favorable to the nonmoving party, and give that party the benefit of all reasonable inferences which can be drawn from them. See *Hervey*, 527 F.3d at 719; *EEOC v. Liberal R-II Sch. Dist.*, 314 F.3d 920, 922 (8th Cir. 2002). Reasonable inferences are "those inferences that may be drawn without resorting to speculation." *Mathes v. Furniture Brands Int'l, Inc.*, 266 F.3d 884, 885-86 (8th Cir. 2001) (citing *Sprenger v. Fed. Home Loan Bank of Des Moines*, 253 F.3d 1106, 1110 (8th Cir. 2001)); see *Matsushita*, 475 U.S. at 587; *Riley v. Lance, Inc.*, 518 F.3d 996, 1001 (8th Cir. 2008); *Erenberg v. Methodist Hosp.*, 357 F.3d 787, 791 (8th Cir. 2004).

II.

FACTUAL BACKGROUND

On November 13, 2006, Mr. Trewet was piloting a 1982 Cessna 303 model aircraft with FAA registration number N611BB (the "aircraft") with four passengers on board, when it crashed shortly after taking off from an airport in South Bend, Indiana. Mr. Trewet and all of the passengers sustained fatal injuries. The passengers, Thomas Dunphy, Eric Jacobs, Leslie O'Bannon and Joshua Trainor, were all employees or officers of Two Rivers Marketing, Inc. ("Two Rivers") who were returning from a business meeting with a Two

Rivers' customer located in Indiana. Two Rivers is an advertising firm specializing in advertising for manufacturers. Mr. Dunphy was its president.

The aircraft was owned by CPRT, a subchapter S corporation formed for the purpose of operating the aircraft. (INIC App. at 30). At the time of the crash, CPRT was owned in equal shares by Robert Camblin, Carrol Trewet, Garry Pellet and TSE Holding Company. (*Id.*) TSE was solely owned by Tama Suzanne Trewet, the wife of pilot Mitch Trewet. (*Id.*) CPRT's shareholders (or members) and Mr. Trewet were required to pay \$210 per flight hour for use of the aircraft, (*id.* at 31-32), referred to variously by the parties as a usage fee, rental fee, or contribution fee. The amount was intended to reflect the cost of operating the airplane and included the cost of fuel and oil consumed, as well as an allocation for the expected cost of oil changes, engine and propeller overhaul costs, and tire replacement. (*Id.* at 31-33, O'Bannon & Jacobs App. at 10-13, 18). CPRT's shareholders also had to contribute \$95 per month to cover costs not associated with flying and a monthly maintenance fee of \$185 for general maintenance of the aircraft. (Westfield App. at 3-5).

INIC issued an Aircraft Insurance Policy No. LA0182305-06 (the "policy") to CPRT. (INIC App. at 10). The policy provided aircraft liability and hull insurance coverage for CPRT's aircraft for a policy period beginning March 3, 2006 to March 3, 2007. (*Id.*)

The policy required "[t]he aircraft . . . be used only for non-commercial use" and while in flight "be piloted only by the person(s) meeting the provisions of the 'Pilots Endorsement'."

(*Id.*) The policy defined "non-commercial" use:

"Non-commercial" use means private pleasure and business use, excluding any use for hire, money or any form of reward or compensation. Being reimbursed for or sharing the direct expenses of a flight if the sum of these expenses does not result in a profit to you or anyone is not excluded.

(*Id.* at 69).¹ "[D]irect expenses of a flight" was not defined.

The Pilots Endorsement stipulated:

While the aircraft is in flight it will be piloted only by the person(s) specifically named as pilot(s) for your aircraft listed below, provided that the pilot-in-command has:

1. a current and valid FAA Pilots Certificate with ratings and endorsements applicable to your aircraft, or is under the direct supervision of a Certified Flight Instructor;
2. If required, a current and valid FAA medical certificate; . . .

(INIC App. at 71). Mr. Trewet was specifically named in the Pilots Endorsement and had the required qualifications to pilot the aircraft. He held a private pilot license, instrument rating for single-engine and multi-engine aircraft. (*Id.* at 38). His medical certificate was up-to-date. (CPRT App. at 5-6). Mr. Trewet did not

¹ Defined terms in the policy were emphasized by bold print. As it is not necessary to the analysis of this ruling, the Court has not used bold print to signify defined terms in quoting from the policy.

hold an FAA license or certificate which would permit him to fly passengers for hire. (INIC App. at 38).

The Pilots Endorsement also allowed other persons to pilot the aircraft with CPRT's permission so long as they possessed the same certificates and endorsements and had a specified minimum of logged hours as a pilot-in-command. (INIC App. at 71).

Mr. Trewet and Mr. Dunphy were personal friends. (Westfield App. at 11). In 2004 and 2005 Mr. Trewet flew Mr. Dunphy, and others, on two hunting trips to South Dakota associated with Two Rivers' business. (INIC App. at 19).

In October 2006, the owners of Two Rivers had a meeting during which they discussed the possibility of looking into alternative arrangements to using commercial airlines for their employees' business trips. (INIC App. at 83-85). The owners agreed the company would gather cost information for alternative means of air travel, including charter flight services. (*Id.* at 85). Later in October a number of e-mails were exchanged between Mr. Trewet, Mr. Dunphy and Two Rivers' employee Julie Seiler about flying Two Rivers' employees on CPRT's aircraft to client meetings in Fargo, North Dakota, South Bend, Indiana, and potentially elsewhere. (*Id.* at 92-97). In an October 18, 2006 e-mail discussing the accessibility and flight time to several airports, Mr. Trewet told Mr. Dunphy that "[f]light is billed on the tach and runs \$210/an hour. . . ." (*Id.* at 94). In a later e-mail Mr. Trewet explained to

Ms. Seiler that the aircraft was owned by an investment company consisting of four owners and "when it is used, it is charged back to the user at the rate of \$210 per flight hour on the tach in the airplane." (*Id.* at 97). He added: "That does not include my time or expense which, at this point, I am assuming is assumed by me." (*Id.*)

On November 9, 2006, four days before the flight to South Bend, Mr. Trewet flew Mr. Dunphy and other Two Rivers employees to and from Fargo, North Dakota for a business meeting with a Two Rivers client. (INIC App. at 52, 82, 92). On November 13, 2006 Mr. Trewet flew Mr. Dunphy and the other Two Rivers employees to South Bend, Indiana for another client business meeting. It was on the flight home from South Bend that the plane crashed shortly after take-off.

There is no evidence that CPRT or Mr. Trewet generated an invoice to Two Rivers for the hunting trip flights or the flights to Fargo and South Bend, that Two Rivers paid any money to CPRT or Mr. Trewet for the flights, or of any written agreement between Two Rivers and CPRT or Mr. Trewet to pay for the flights. However, in view of the e-mail exchanges quoted above which occurred shortly before the Fargo and South Bend flights, there is a genuine issue of fact about whether it was understood between Mr. Trewet and Two Rivers that Two Rivers would pay CPRT or Trewet for the \$210 per flight hour charge for use of the aircraft.

III.

DISCUSSION

A.

Both sides refer to Iowa law and the Court agrees Iowa law governs. The general principles of insurance contract construction and interpretation applicable to this case have been clearly and frequently stated by the Iowa Supreme Court.

"Construction of an insurance policy-the process of determining its legal effect-is a question of law for the court. Interpretation-the process of determining the meaning of words used-is also a question of law for the court unless it depends on extrinsic evidence or a choice among reasonable inferences to be drawn." *A.Y. McDonald Indus. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 618 (Iowa 1991). Regarding construction or interpretation questions, the cardinal principle is that the intent of the parties controls. *Id.* Unless the policy is ambiguous, we determine intent by what the policy says. *Id.* We interpret ambiguous policy provisions in favor of the insured because insurance policies are in the nature of adhesion contracts. *Id.* at 619.

In addition, when an insurer has affirmatively expressed coverage through broad promises, it assumes a duty to define any limitations or exclusionary clauses in clear and explicit terms. *Amco Ins. Co. v. Haht*, 490 N.W.2d 843, 845 (Iowa 1992). Also, we interpret a policy from the viewpoint of an ordinary person, not a specialist or expert. *Id.* So when words in a policy are not defined, we will not give such words a technical meaning. *A.Y. McDonald Indus.*, 475 N.W.2d at 619. Rather, we will give undefined words their ordinary meaning, one that a reasonable person would understand them to mean. *Id.*

Grinnell Mut. Reinsurance Co. v. Jungling, 654 N.W.2d 530, 536 (Iowa 2002).

Ambiguity exists if, after the application of pertinent rules of interpretation to the policy, a genuine uncertainty results as to which one of two or more meanings is the proper one.

A. Y. McDonald, 475 N.W.2d at 618.

Because insurance policies are in the nature of adhesion contracts their provisions are to be construed in the light most favorable to the insured. *Walnut Grove Partners, L.P. v. American Family Mut. Ins. Co.*, 479 F.3d 949, 952 (8th Cir. 2007)(citing *Krause v. Krause*, 589 N.W.2d 721, 726 (Iowa 1999), in turn quoting *A. Y. McDonald*, 475 N.W.2d at 619). If there is doubt about whether a claim is governed by a policy, "the doubt must be resolved in the insured's favor." *IMT Ins. Co. v. Crestmoor Golf Club*, 702 N.W.2d 492, 496 (Iowa 2005)(citing *N. Star Mut. Ins. Co. v. Holty*, 402 N.W.2d 452, 454 (Iowa 1987)). It follows an undefined term is to be "given the meaning most favorable to the insured consistent with its use in ordinary speech," *Andresen v. Employers Mut. Cas. Co.*, 461 N.W.2d 181, 185 (Iowa 1990), and as with other policy provisions, "[w]hen an exclusionary provision is fairly susceptible to two reasonable constructions, the construction most favorable to the insured will be adopted." *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 682 (Iowa 2008).

There are limits to the favorable treatment of insureds. An insurance policy is a contract. Its unambiguous language will be given effect, and not contorted to provide coverage at odds with its plain meaning. *Thomas*, 749 N.W.2d at 682. Nor is ambiguity "present merely because the provision 'could have been worded more clearly or precisely than it was.'" *Cairns v. Grinnell Mut. Reinsurance Co.*, 398 N.W.2d 821, 824 (Iowa 1987)(quoting *Fraternal Order of Eagles v. Illinois Cas. Co.*, 364 N.W.2d 218, 221 (Iowa 1985)).

With these principles in mind the Court turns to the issues presented.

B.

INIC takes the position the aircraft crash was not a covered occurrence because Mr. Trewet's use of the aircraft was not a non-commercial use as defined in the policy and he was not licensed by the Federal Aviation Administration ("FAA") to carry passengers for hire. CPRT's and the intervenors' motions for summary judgment contend the crash was a covered occurrence because the aircraft was being used for a non-commercial use and Mr. Trewet was qualified to pilot the aircraft under the terms of the "Pilots Endorsement."

"Non-commercial" is a defined term. To repeat:

"Non-commercial use" means private pleasure and business use, excluding any use for hire, money or any form of reward or compensation. Being reimbursed for or sharing the direct

expenses of a flight if the sum of these expenses does not result in a profit to you or anyone is not excluded.

(INIC App. at 69).

INIC first argues the aircraft could only be operated for "the private pleasure or business of *CPRT and its shareholders*." (Pl. Brief at 6)(italics added). This argument fails for two reasons. First, that is not what the policy says. It would be against the rules of insurance contract construction to imply a limitation where none is stated. Second, the policy clearly contemplates the non-commercial use of the aircraft by and for the private pleasure and business of others so long as the use is with CPRT's permission. In addition to the absence of any express limitation, this is evident from the exception to the for hire, reward or compensation exclusion in the second sentence of the definition which allows the aircraft to be used by others for the reimbursement of expenses not resulting in a profit, and the Pilots Endorsement which expressly permits any qualified and experienced pilot to operate the aircraft. One who reimburses the owner of an aircraft for the entire expense of a flight is probably using the aircraft for his or her own pleasure or business.

INIC next contends that for two reasons the fatal flight was for hire, reward or compensation and therefore was not a non-commercial use. INIC argues first that the flight was conditioned on Two Rivers' payment of \$210 per flight hour, an amount above the

direct expenses for the flight, and second, that the flight was for a reward or compensation to Mr. Trewet because flying Two Rivers' employees was "a means of showing Two Rivers that he [Trewet] should be hired on a more permanent basis to charter Two Rivers' employees." (Pl. Brief at 12).

The Court has previously noted there is a factual issue about whether the flight was conditioned on Two Rivers' payment of the \$210 per flight hour charge Mr. Trewet had to pay CPRT for using the aircraft. On a summary judgment motion the Court must view the evidence favorably to INIC, and doing so, will accept that it was understood Two Rivers would pay the \$210 hourly charge.

"[D]irect expenses" is not defined. Citing a dictionary, INIC says the adjective "direct" means "coming immediately from a source, cause, or reason," (Pl. Brief at 15, citing www.merriam-webster.com), and the only expenses that come immediately from a flight are those for fuel and oil consumed in the flight, and landing fees and airport costs should there be any. INIC's expert has calculated the hourly cost of fuel and oil consumed for the ill-fated flight was at the most \$137.03 per hour. (Pl. App. at 56-58).

CPRT and the intervenors respond that it is understood in the aviation industry the direct expenses of a flight include not only the cost of oil and fuel consumed, fees and airport costs, but other costs to operate an aircraft including maintenance, oil

changes, engine and propeller overhaul. These things must be done after a certain number of flight hours and have an ascertainable cost with the result, as CPRT and the intervenors put it, that as an aircraft is operated it "uses up" its maintenance, engine and propeller life. The \$210 per flight hour CPRT charged its members was intended as a "contribution" to the cost of using the aircraft including the estimated cost of fuel, oil, oil changes, and a reserve for the cost of maintenance, engine and propeller overhaul, and tire replacement. (O'Bannon and Jacobs App. at 13).

Both sides have produced expert opinions and other extrinsic evidence to support their varying interpretations of what "direct expenses of a flight" means. While this helps illustrate that the phrase is reasonably susceptible to two interpretations, it is not necessary to resort to extrinsic evidence to determine that the phrase is ambiguous.

As INIC accurately observes the Iowa Supreme Court has often looked to dictionaries in determining the ordinary meaning of a word or phrase. See *Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. Farmland Mut. Ins. Co.*, 568 N.W.2d 815, 818 (Iowa 1997); *A.Y. McDonald*, 475 N.W.2d at 619. More recently, the court has cited *Webster's Third New International Dictionary* ("*Webster's*"). See *Thomas*, 749 N.W.2d at 684; *Andresen*, 461 N.W.2d at 184. *Webster's* gives a number of definitions for "direct" in its adjectival usage. One definition is "stemming immediately from a

source." *Webster's* at 640 (Unabr. ed. 2002). However, other definitions of "direct," perhaps more to the point in this case, are: "capable of being allocated to a particular portion or process of an undertaking and so treated in cost accounts; *specif.*: chargeable to a particular job -- compare DIRECT COST" and "characterized by or giving evidence of a close esp. logical, causal, or consequential relationship." *Id.* "[D]irect cost" is in turn defined as "a cost that may be computed and identified directly with a product, function, or activity and that usu. involves expenditures for raw materials and direct labor and sometimes specific and identifiable items of overhead." *Id.* Consequently, "direct expenses of a flight" is susceptible to two meanings: (1) expenses stemming directly from a flight or (2) expenses bearing a close relationship and capable of being allocated to a flight.

The Court is required to interpret² the undefined, ambiguous phrase "direct expenses of a flight" in CPRT's favor and the "for hire, money or any form of reward or compensation" exclusion to which it relates against INIC. The second of the above

² Interpretation here is for the Court because it does not depend on extrinsic evidence or a choice among reasonable inferences, *Grinnell Mut.*, 654 N.W.2d at 536, but rather follows from the rule of construction that where a "term is susceptible to two reasonable interpretations, the interpretation favoring the insured is adopted," *Iowa Board*, 568 N.W.2d at 818. See *Thomas*, 749 N.W.2d at 682 (same rule of construction in the case of exclusionary provisions capable of two reasonable constructions).

meanings is the one most favorable to CPRT. Therefore, "direct expenses of a flight" includes the costs of fuel and oil consumed as well as expected maintenance, engine and propeller overhaul expenses allocated on a flight-hour basis. CPRT's expert has calculated that at the time of the occurrence the direct operating cost per hour for these items amounted to \$243.42.³ (CPRT App. at 69-70). INIC has not identified any evidence that the \$210 an hour charge exceeded the reasonable allocated cost for the items included in CPRT's calculation, or would have resulted in a profit to CPRT or Mr. Trewet.

Recognition of the broader definition of "direct expenses" is consistent with the intent of the policy. INIC insured the non-commercial use of the aircraft. The purpose of excluding the use of the aircraft for hire, reward or compensation is to reduce the risk by limiting the total number of flights. Commercial flights are more frequent and therefore increase the risk. As the Eighth Circuit has observed in discussing a similar (though materially different) "shared expense" exception to a commercial purpose exclusion in an aircraft liability policy "[t]he receipt of money, or some other benefit, for the use of an airplane provides additional impetus or motivation for making the flight, and is thus

³ This figure represents fuel and oil consumed, maintenance, engine restoration and propeller overhaul. (CPRT App. at 69). The only maintenance included was the cost of the annual/100 hour inspection. (*Id.* at 69-70).

likely to increase the number of flights an insured will make." *Avemco Ins. Co. v. Auburn Flying Service, Inc.*, 242 F.3d 819, 820 (8th Cir. 2001)(citing *Thompson v. Ezzell*, 61 Wash. 2d 685, 379 P.2d 983, 987 (1967)). It is not necessary to the accomplishment of this purpose that the insured's reimbursement be narrowly limited to the immediate expenses of a flight so long as the expenses reimbursed are genuinely limited to the cost of operating the aircraft, do not result in a profit, and therefore do not provide an incentive to increase the number of flights. The \$210 hourly charge here, which was less than the overall cost of flying and maintaining the aircraft, provided no incentive to CPRT or Trewet to fly the airplane more frequently.

As to INIC's alternative argument that Mr. Trewet anticipated some kind of reward for piloting Two Rivers on business trips, the only evidence of this is in Carrol Trewet's testimony that Mr. Trewet "had an interest in . . . potentially doing some work for [Two Rivers] both legally [Mr. Trewet was an attorney] and as a pilot," (Pl. App. at 35), a statement attributed to Mr. Dunphy that Two Rivers was trying Mr. Trewet out and might use him in the future, (*id.* at 87), and Mr. Trewet's willingness to fly Two Rivers employees without charge for his own time. (*Id.* at 97).

Viewing the provision favorably to CPRT, the excluded "use for hire, money or any form of reward or compensation" can reasonably only refer to a *quid pro quo*; the receipt of something

of value in exchange for use of the aircraft. At most the evidence identified by INIC demonstrates that Mr. Trewet subjectively hoped that piloting Two Rivers and his friend Mr. Dunphy to business meetings would lead to a future business relationship with Two Rivers involving flight services or legal work. There is no evidence Two Rivers had agreed to "reward" Mr. Trewet for his efforts. Mr. Trewet's unilateral hope for a reward in the form of some kind of future business relationship is not the receipt of a reward, or the promise of a reward, for his service as a pilot on November 13, 2006. Here again "reward" as part of an exclusion cannot be expansively construed against the insured.⁴

⁴ Had the relationship between Mr. Trewet and Mr. Dunphy matured into one in which Mr. Trewet was flying CPRT's plane for not only the \$210 hourly charge Mr. Trewet had to pay for using the plane, but additional compensation to Mr. Trewet for his time and efforts, such flights would have been excluded as for hire. But that does not seem to be the direction in which the relationship was headed. Carrol Trewet testified the conversation with Mr. Trewet about potentially piloting an aircraft for Two Rivers had to do with an aircraft Two Rivers might purchase. As Carrol Trewet described the conversation in greater detail:

Q. And what was the conversation?

A. It was pretty casual conversation. When he was doing this, I know that he indicated to me that Mr. Dunphy -- which I didn't know at the time at all -- was interested in buying an aircraft. . . .

But he indicated that they were interested in buying an aircraft similar to ours or potentially even ours, and that he had an interest in helping them do that, potentially doing some work for them both legally and as a pilot.

(continued...)

Finally, INIC argues Mr. Trewet did not have the pilot ratings or a commercial pilot's license allowing him to fly passengers for hire, and in this regard violated FAA regulations. As discussed above, INIC has not shown that Mr. Trewet flew passengers for hire within the meaning of the non-commercial use policy definition. The Pilots Endorsement required Mr. Trewet to have a "current and valid FAA Pilots Certificate with ratings and endorsements applicable to *your aircraft* . . ." and an up-to-date Medical Certificate and Biennial Flight Review. (INIC App. at 71). The Pilots Endorsement did not require that the pilot have certificates appropriate for the *flight* as some aircraft policies have required. *See, e.g., Northwestern Flyers, Inc. v. Olson Bros. Mfg. Co.*, 679 F.2d 1264, 1271 (8th Cir. 1982)("pilot clause" required "valid and effective . . . certificates with ratings as required by the [FAA] for the *flight* involved")(emphasis original to court of appeals)); *Jim Hawk Chevrolet-Buick, Inc. v. Ins. Co. of N. Amer.*, 270 N.W.2d 466, 467 (Iowa 1978)("pilot endorsement" required aircraft to be flown by pilot with valid

⁴(...continued)

Q. What type of work as a pilot was Mitch interested in doing for 2RM, if you know?

A. He had flown with them as a friend to these hunting trips. That's what initiated -- where it was initiated, through that. And I assumed if they purchased an aircraft, that he would be potentially a pilot for that.

(INIC App. at 35).

ratings and certificates "for the *flight* and the aircraft as required by the [FAA]")(emphasis added)); (CPRT App. at 79-80). It is undisputed that Mr. Trewet, a named pilot on the Pilots Endorsement, had the certificates, ratings and endorsements "applicable to [the] aircraft" as required by the Pilots Endorsement. The policy does not exclude coverage for operation of the aircraft in violation of FAA regulations. See *Roach v. Churchman*, 431 F.2d 849, 852 (8th Cir. 1970). "If the insurer desired to exclude this particular risk, it should have defined more explicitly the risks for which it declined coverage." *Id.* at 853.

IV.

RULING AND ORDER

Movants have demonstrated there are no genuine issues of material fact and they are entitled to judgment as a matter of law. The flight in question was a covered non-commercial use of the aircraft under the terms of the policy and Mr. Trewet met the policy qualifications to pilot the aircraft at the time of the occurrence. The motions for summary judgment of CPRT and the intervenors [51, 52, 53] are **granted**.

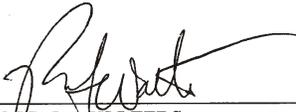
The Court notes that while the intervenors' Complaints affirmatively request a declaratory judgment in their favor, the motions for summary judgment target only INIC's Complaint. To avoid a procedural question, the Court will withhold entry of judgment at

this time. The parties shall confer and advise the Court within ten (10) days whether a final judgment may be entered disposing of all claims in this action so that the matter may proceed to appeal if desired.

The final pretrial conference and trial now set for November 12, 2008 and November 17, 2008 respectively are **canceled**.

IT IS SO ORDERED.

Dated this 7th day of November, 2008.



ROBB A. WALTERS
UNITED STATES MAGISTRATE JUDGE