

MONTANA SUPREME COURT

INSURANCE: Snowmobiles on trailer properly excluded from vehicle liability insurance by transported property exclusion, no conflict with mandatory liability insurance (first impression)... insurer had no duty to defend, not estopped by intervening ... Barz affirmed.

Michael Hagel, Jay Grimsrud, and Steve Wentz were returning from a snowmobile trip with Hagel towing Wentz's trailer carrying snowmobiles belonging to Grimsrud and Wentz. Hagel hit a guard rail on 1-94, rebounded into traffic, and was hit by semis. The trailer and snowmobiles were destroyed. Hagel admitted negligence. Claims exceeded his \$50,000 State Farm policy limit. State Farm paid the limit for all claims it determined were covered under the policy, including damage to the trailer, but denied coverage for the snowmobiles under the exclusion for "any damages to property owned by, rented to, in the charge of or transported by an insured." Snowmobile damages were \$16,600. Grimsrud and Wentz were insured by EMC, which paid \$16,000 in first party claims. Grimsrud and Wentz paid \$250 deductibles. Grimsrud, Wentz, and EMC demanded \$16,600 from Hagel and State Farm, which refused payment. They sued Hagel. State Farm moved to intervene and stay proceedings pending determination of its obligation. Hagel confessed judgment for \$16,600 property damages, \$5,533 attorney fees, and \$160 costs. Judge Barz granted summary judgment for State Farm (MLW 11/15/03:3). Grimsrud, Wentz, and EMC appeal. Hagel cross-appeals as to duty to defend.

State Farm denied coverage to Hagel for property transported by him pursuant to a valid exclusion. Plaintiffs argue that its exclusionary clause violates § 61-6-301(1)(a) (Mandatory Liability Protection Act) because it deprives them of liability coverage. However, the purpose of MLPA is to protect the public from uncompensated losses arising from use of a vehicle, and so long as policy terms provide the statutorily required coverage an insurer and insured are free to enter into an agreement that limits liability coverage to the extent that the agreement is otherwise lawful. Davis (Mont. 1988). § 103(5) provides that "a motor vehicle liability policy need not insure ... any liability for damage to property owned by, rented to, in charge of, or transported by the insured." This Court has not decided whether a property damage exclusion, which is allowed by § 103(5), is a valid exception to coverage mandated by 301(l)(a). Exclusion of transported property is not inconsistent with the purpose of MLPA. Owners of the guardrail and semis were protected with 5 times the required coverage. It was Grimsrud and Wentz, who entrusted their snowmobiles to Hagel's driving, for whom the MLPA does not mandate coverage. They opted to take the risk, at least as to the amount of the loss not within their personal coverage. An exclusion from vehicle liability coverage that meets the requirements of § 103(5) is not invalid under § 301(1)(a).

Barz did not err in concluding that State Farm had no duty to defend Hagel. Hagel argues that it had a contractual duty to provide him a defense prior to exhausting policy limits by paying other claims, thereby leaving him with no defense when Plaintiffs sued him. He further argues that it is estopped from denying a defense because it filed a notice of appearance on his behalf. However, since the snowmobiles were not covered under his State Farm policy, State Farm had no duty to defend him in a suit to recover for their loss. Nor is it estopped from denying a defense since there is no evidence that Hagel relied on it for a defense. State Farm settled with the other parties without litigation. It repeatedly notified Hagel that the policy provided no coverage for the snowmobiles and that it would not defend him in any action by Plaintiffs. Further, he confessed judgment to decrease his exposure to damages and limit fees & costs because he knew that State Farm had no intention of defending him even though it had moved to intervene.

Warner, Gray, Cotter, Leaphart. Rice dissented: Plaintiffs' claims are for "loss[es] resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle." § 61-6-301(1)(a). Thus Hagel's policy was required to provide liability coverage for these claims. I do not disagree with State Farm that "it is illogical and inequitable if the property of persons being transported by 'bad drivers' under the Motor Vehicle Safety-Responsibility Act may be excluded from liability coverage while property being transported by the majority of Montana's insureds may not be likewise excluded, under Montana's Mandatory Liability Protection Act." However, the acts create this distinction, which has not been erased by our treatment of the statutes.

Grimsrud, Wentz, and EMC Ins. v. Hagel v. State Farm Mutual Auto Ins., 04-256, 8/15/05.

Lynn Grant (Peterson & Schofield), Billings, for Plaintiffs; Robert Savage (Savage Law Firm), Sidney, for Hagel; Randall Nelson (Nelson & Dahle), Billings, for State Farm.

