

DISTRICT COURT

INSURANCE: Snowmobiles belonging to others in uninsured trailer not covered by driver's policy...Barz.

Plaintiffs allege that Michael Hagel negligently drove his vehicle, causing an accident with 2 semis on I-94 in 2/02, and that their snowmobiles on a trailer behind his vehicle were damaged. Hagel confessed judgment for \$16,600 property damage and \$5,533 attorney fees. In answer to Plaintiffs' complaint, Hagel asserted that State Farm had refused indemnification & defense, and requested that he be awarded judgment against it if judgment is entered against him. State Farm requests declaratory judgment concerning its obligations.

State Farm argues that damage to the snowmobiles is not covered since Hagel did not opt to purchase coverage for the trailer. Hagel and Plaintiffs argue that since the snowmobiles were owned by a third party, Hagel's damage of that property should trigger coverage.

Following the reasoning in Babcock (Mont 2000), in which a similar exclusion precluding coverage for property transported by an insured was found valid, the snowmobiles were in Hagel's charge. Plaintiffs argue that the owners were still in control because they were riding in the truck pulling them. However, that does not lessen Hagel's control over their property or mean that they were not in his charge. He was transporting their property regardless of where Plaintiffs were located. Damage to the snowmobiles clearly falls within the policy's exception. State Farm did not wish to cover property that was owned by, rented to, in charge of, or transported by Hagel. He could have purchased additional coverage to protect the property he was transporting.

Nor is the exclusion invalid under §61-6-301(1)(a), which requires that Montana vehicles be covered by insurance against loss resulting from their operation. The statute "is intended to compensate innocent third parties injured or damaged by the accident" Lee (Mont. 2001). Plaintiffs were not innocent third parties randomly stricken by Hagel's negligence. He was transporting their property with their permission, and thereby obtained a property interest in it. He had a duty to transport their property safely. Just because he did not transport it safely and appropriately insure property in which he had a property interest does not mean that State Farm did not sell a policy failing to conform to §61-6-301(1)(a). Partial summary judgment for State Farm

Grimrud, Wentz, and EMC Ins. Companies (Subrogee) v. Hagel; State Farm Mutual Auto Ins., Intervenor, Yellowstone DV 02-1023, 11/6/03.

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