

## MONTANA SUPREME COURT

INSURANCE/JURISDICTION: No jurisdiction over Mississippi insurer, Montana accident, part-time Montana residents ... Harkin affirmed.

Michael Carter and Tina Schmidt alleged that they suffered head injuries in a collision in Sanders Co. in 12/01. The other driver's insurer, Metlife, paid \$25,000 policy limits to each. They made claims on Carter's Mississippi Farm Bureau Casualty policy for med-pay and UIM. MFBC paid \$5,000 med-pay each and refused to pay UIM. Carter and Schmidt sued in Missoula Co. Carter and his family lived in Whitefish for several years, moved to Mississippi for 2 years, and returned to Montana in 12/01, 3 weeks before the accident. Carter intended to live in Montana year-round, but has since decided to spend winters in Mississippi. He had 4 vehicles insured through MFBC. Each policy showed them garaged in Mississippi. He did not notify MFBC that he had moved to Montana and it is disputed whether his agent told him there would be no problems with coverage if he moved to Montana. Judge Harkin granted summary judgment to MFBC for lack of personal jurisdiction. Carter and Schmidt appeal.

Harkin correctly dismissed for lack of personal jurisdiction. It is important to differentiate between a case in which an insured is sued as a result of an accident in a foreign state and this case where the insured is suing its regional insurer in a foreign state for breach of contract. The question here is not whether Carter and Schmidt may sue MFBC, but where the suit may be maintained. They offer no basis under Rule 4(B)(1) for long-arm jurisdiction, and in fact do not cite it. Harkin interpreted their contention that Montana was the "place of performance" of the policy as an argument for application of 4(B)(1)(d) (specific jurisdiction may be had over a non-resident if it contracts to "insure any person, property or risk located within this state at the time of contracting"). It is undisputed that at the time of contracting Carter lived in Mississippi and the property was garaged there. Nor do the other 4(B)(1) provisions provide long-arm jurisdiction.

MTLA asserts that neither party has applied the appropriate law and cites policy language that its coverage territory applies to accidents within the US and argues that we should extend the protections of Montana law to part-time residents during the time they are living in Montana. However, amici cannot assume the functions of parties or create, extend, or enlarge issues. Further, while MTLA warns of dire consequences to the many people who call Montana home part of the year, this is the first such case to come before us and encompasses very narrow circumstances in which a part-time Montana resident insures his auto through a remote and strictly regional insurer which does not do business in Montana.

Cotter, Gray, Warner, Rice.

Leaphart and Nelson dissented. The Majority Ignores that Carter was insured against a "risk located within this state at the time of contracting."

Carter and Schmidt v. Mississippi Farm Bureau Casualty Ins., 04-52, 3/23/05.

Eric Rasmussen (Bulman Law Associates), Missoula, for Plaintiffs; Randall Nelson & Colette Davies (Nelson & Dahle), Billings, for MFBC; Gene Jarussi (Jarussi & Bishop), Billings, for Amicus MTLA.