

MARKS & WEINBERG, P.C.

Federated Mutual v. Andersen

920 P.2d 97 (Mont. 1996)

In May of 1991, Conifer Logging (öLesseeö) agreed to lease a piece of logging equipment from Jones Equipment Company (öLessorö). Before the lease was to begin, Conifer was entitled to a free, one-week trial period without obligation or risk. Lessor prepared the lease agreement documents, which stated the delivery date was June 17, the first payment was due on June 24, and the option had to be exercised by December 24, 1991.

The lease didn't actually commence until June 24, 1991 when Lessee actually kept the equipment and made its first lease payment. Lessee then discovered some serious problems with the equipment and decided to terminate the lease. On July 17, one day after calling a hauler to come pick up the equipment, it caught on fire and was destroyed on Lessee's logging site. At the time of the lease, Conifer's logging equipment was insured by John Deere Insurance Company pursuant to the terms of a öcontractor's inland marine policyö, which included a önewly acquired propertyö provision which provided automatic coverage for any similar property acquired by Lessee during the term of its policy provided that Lessee reported the acquisition of such property and paid an additional premium within thirty days from the date of acquisition.



After the destruction of the equipment, Federated Mutual Insurance Company paid Jones Equipment (Lessor) for the loss and sued Lessee for indemnification. Lessee sued John Deere Insurance Company alleging that the equipment was insured under the John Deere policy by way of the "newly acquired property" provision. John Deere moved for summary judgment on January 31, 1995 and maintained that the equipment was never insured by John Deere because the loss occurred before Lessee notified John Deere of its acquisition of the equipment and after the thirty day notice requirement of the "newly acquired property" provision had expired.

The trial court denied John Deere's motion for summary judgment and granted Lessee's cross-motion for summary judgment. On appeal, the Supreme Court of Montana concluded that although the equipment was delivered on June 17, the lease of the machinery was delayed by the one-week free trial period and did not start until June 24. Neither party intended any risk of loss to pass to Lessee until the lease commenced. Therefore, Lessee did not "acquire" the equipment pursuant to the newly acquired property provision of its lease with John Deere until June 24.

The Supreme Court finally concluded that the destruction of the equipment on July 17 was within the thirty day period of automatic coverage provided by Lessee's policy with John Deere and the Supreme Court affirmed the District Court's order which denied John Deere's motion for summary judgment and granted Lessee Conifer's motion for summary judgment.

On remand, Lessee moved to amend its complaint to include a Montana Unfair Trade Practices Act claim based on both John Deere's pre-litigation actions and its conduct during litigation. The District Court allowed the amendment with respect to the prelitigation actions only. The District Court then found that John Deere's conduct was unreasonable as a matter of law. A jury then determined that John Deere had not acted with actual malice when it handled Lessee's claim.



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