

Case No. A120584

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State of Minnesota  
**In Court of Appeals**

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Bruce and Deloris Kastning,

*Appellants,*

vs.

State Farm Insurance Companies,

*Respondent.*

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**APPELLANTS' BRIEF**

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## LEGAL ISSUES

**1. Is a John Deere Model 3020 tractor a “motor vehicle” pursuant to the insurance contract between Appellants and Respondent?**

*This issue was raised by Respondent in its Motion for Summary Judgment. The Trial Court concluded that as a matter of law “[t]he John Deere Model 3020 tractor is not a ‘motor vehicle’ under the No-Fault Act or under the State Farm policy,” and that “State Farm Insurance Companies is entitled to Judgment as a matter of law.” (See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment and Judgment, Addendum - Pages 37-38.) This issue was preserved for appeal when Appellants appealed from the final judgment in a timely manner. (See Notice of Appeal, Appellant’s Appendix – AA-167.)*

Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992),  
(Superseded by Statute as stated in Vee v. Ibrahim, 769 N.W.2d 770 (Minn.  
App. 2009))

Minn. Stat. §168.09

Minn. Stat. §168.002

Minn. Stat. §168.012, subd. 2

Minn. Stat. §168A.01, subd. 8

**2. Does the Doctrine of Reasonable Expectations provide uninsured motorist insurance coverage in this case?**

*This issue was raised by Appellants in its responsive memorandum to Respondent’s Motion for Summary Judgment, which argued that the Respondent’s uninsured motor vehicle insurance policy with Appellants did not provide coverage in this case. Appellants argued that, if the Court concluded the John Deere Model 3020 tractor was not a motor vehicle, under the definition of “motor vehicle” in the policy, that the terms of the policy were not clear in excluding tractors, such as the John Deere Model 3020 tractor, from definition as a “motor vehicle” and that the legal Doctrine of Reasonable Expectations would provide policy coverage.*

*The Trial Court concluded that Respondent was “entitled to judgment as a matter of law,” providing that the Doctrine of Reasonable Expectations did not apply, stating, “[i]n this case, the terms of the Policy are not ambiguous” and that “[a] careful reading of the policy would put a reasonable policyholder on notice that field tractors, which are not designed for use on public highways, and are not subject to the registration requirements of Minnesota Statutes Chapter 168, would not qualify as ‘motor vehicles’ under the Policy.” (See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment and Judgment, Addendum, Pages*

38, 46-47.) *This issue was preserved for appeal when Appellants appealed from the final judgment in a timely manner pursuant to R. Civ. App. P. Rule 103.03(a). (See Notice of Appeal – AA-167.)*

Atwater Creamery Co. v. Western Nat. Mut. Ins. Co., 366 N.W.2d 271 (Minn. 1985)

Carlson v. Allstate Ins. Co., 749 N.W.2d 41 (Minn., 2008)

Hubred, et al., v. Control Data Corp., 442 N.W.2d 308 (Minn. 1989)

## STATEMENT OF THE CASE

This case originated in the Fifth Judicial District for the State of Minnesota, County of Faribault, with the Honorable Douglas L. Richards presiding.

This matter originates from a motor vehicle accident that occurred on U.S. Highway 169 in the County of Faribault, State of Minnesota, in which the Appellants, Bruce and Deloris Kastning (hereinafter referred to as “Appellants”), suffered personal injuries. The motor vehicle accident involved the Appellants’ 1996 Chevrolet Pickup, which was insured with Respondent, State Farm Insurance Companies (hereinafter referred to as “Respondent”), and an uninsured John Deere Model 3020 tractor being operated by Raymond Schenk, as personal transportation on the roadway. The John Deere Model 3020 tractor was uninsured and Appellants sought coverage from Respondent pursuant to the uninsured portion of their policy. Respondent denied coverage.

On or about February 2, 2011, Appellants filed and served a summons and complaint seeking insurance benefits from Respondent for injuries suffered in the accident pursuant to their uninsured motor vehicle insurance policy. Respondent served an answer to Appellants’ pleadings, denying Appellants’ claims for uninsured motor vehicle coverage, indicating that the John Deere Model 3020 tractor was not an uninsured motor vehicle covered by the policy.

On or about November 16, 2011, Respondent filed a Motion for Summary Judgment with the Trial Court alleging that the material facts were not in dispute, and that as a matter of law, Appellants’ claims for insurance benefits under the uninsured

motor vehicle policy should be dismissed.

The Summary Judgment hearing was held December 19, 2011, at which time the parties offered only brief oral arguments based on their legal memoranda and record submitted to the Trial Court prior to the date of the hearing.

It was never disputed that the John Deere Model 3020 tractor caused the accident, that it was not insured, that the Appellants suffered injuries, and that the Appellants had a valid uninsured motor vehicle insurance policy with Respondent at the time of the accident.

Respondent argued that the John Deere Model 3020 tractor was not a motor vehicle pursuant to the terms of the insurance policy and pursuant to Minnesota law.

Appellants argued that the John Deere Model 3020 tractor was a motor vehicle pursuant to their policy and Minnesota law, based on its use at the time of the accident. Appellants also argued in the alternative that if the policy was found to exclude the John Deere Model 3020 tractor from consideration as a “motor vehicle,” that based on the Doctrine of Reasonable Expectations pertaining to insurance contracts in Minnesota, the Court should find coverage existed on the basis that no reasonable person would imagine their uninsured motorist insurance policy would not provide coverage for injuries they suffered in an accident on a State/US Highway, caused by an uninsured motorized vehicle, with four wheels and operating on the highway; due to an alleged exclusion [of motorized vehicles, such as the John Deere Model 3020 tractor] that was not explicitly identified in the policy.

On February 29, 2012, upon consideration of the law and arguments presented, the Trial Court granted Respondent's Motion for Summary Judgment, concluding in its Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment, that "[t]he John Deere model 3020 is not a 'motor vehicle' under the No Fault Act or under the Respondent's Policy," and entered Judgment in favor of Respondent as a matter of law.

The Appellants now appeal.

## STATEMENT OF THE FACTS

On Friday, July 2, 2010, Bruce and Deloris Kastning (Appellants) were traveling northbound in their 1996 Chevrolet Pickup, which was being driven by Bruce Kastning, on U.S. Highway 169 in Faribault County, Minnesota. U.S. Highway 169 is major thoroughfare which runs generally north and south through Minnesota and into several other states beyond Minnesota. While traveling north on U.S. Highway 169, the Kastning vehicle came upon a John Deere Model 3020 tractor, which was being driven by Raymond Schenk on the shoulder of said highway. (*See Deposition of Raymond Schenk, AA-135-Page 91, Lines 13-21 and AA-136, 137-Pages 96-97*). About the time the Kastning vehicle was coming upon the John Deere Model 3020 tractor, Mr. Schenk made a sudden left turn across the lane of traffic in which the Appellants were traveling, causing a high speed collision where the front end of the Appellants' pickup struck Mr. Schenk's tractor near the front left tire (the vehicle having two front tires, and two rear tires). (*See Id., AA-124, Page 45, Lines 7-10 and AA-136, 137-Pages 96-99*). As a result of the accident, Raymond Schenk was charged with a Minnesota traffic violation for failure to use hand signals; an offense he was convicted of in August, 2010. (*See Id., AA-126, Page 53, Lines 17-24*).

At the time of the collision, Raymond Schenk did not possess a valid driver's license. He had a record of convictions for driving without a valid license, including a conviction of Driving After Cancellation in December, 2009. (*See Id., AA-128, Page 62, Lines 14-16 and AA-129, Page 65, Lines 11-13*). Mr. Schenk frequently used the John Deere Model 3020 for transportation to and from town, to run errands, and to visit

friends. (See Id., AA-128, Pages 61 and Page 62, Lines 14-20, and AA-133, Page 81, Lines 18-20). Mr. Schenk had used the tractor for running errands and personal use for approximately three years. (See Id., AA-145, Page 129, Lines 1-6). Mr. Schenk would use the John Deere Model 3020 tractor to go uptown and pickup groceries, to travel to surrounding towns, to transport groceries home, and to visit friends – solely for personal reasons. (See Id., AA-138, Pages 104 – 107 and AA-144, Page 126, Lines 4-24). Some of these travels to neighboring towns took Mr. Schenk nearly 15 miles one way and had nothing to do with farming. (See Id., AA-135, Page 132, Lines 11-19). Mr. Schenk stated that the John Deere Model 3020 tractor could travel at a speed of 30 miles per hour down the road, that the John Deere Model 3020 tractor was designed to haul a person where he wanted to go, and that its primary designed use was similar to a pickup. (See Id., AA-133, Pages 83 and 84, Lines 4-5 and 24 –25).

Tractor Design and Use Expert, Lanny R. Berke, identified the 1964 John Deere Model 3020 tractor as a vehicle designed and manufactured to serve as a versatile, multiple purpose machine. (See Affidavit of Lanny R. Berke, AA-159). Berke stated that the 1964 John Deere Model 3020 tractor was not designed or adapted exclusively for agricultural, horticultural, or livestock operations. Id. Rather, Berke indicated that the 1964 John Deere Model 3020 tractor was designed and commonly used for snow plowing, general construction, road construction, road maintenance and general lifting and that the operator’s manual expressly indicated that the John Deere Model 3020 tractor was a versatile multiple purpose machine. Id.

On the date of the accident, Raymond Schenk was driving the John Deere Model

3020 tractor to Stanley Cole's to talk and visit with Mr. Cole. He wanted to see if the pasture might be fit to mow, but he was not going to Mr. Cole's to mow that day. (See Id., AA-131, Page 76, Lines 3-14, and AA-144, Page 127, Lines 5-10). On July 2, 2010, Mr. Schenk was simply using the John Deere Model 3020 tractor to travel from one place to another, and not for farm purposes. (See Id., AA-143, Page 123, Lines 5-15).

## ARGUMENT

### A. Standard of Review

This appeal originates from a denial of insurance benefits under an uninsured motor vehicle insurance policy purchased by Kastings from Respondent and the legal question of whether a John Deere Model 3020 tractor, without insurance, is an uninsured “motor vehicle” under the policy or pursuant to state law. The trial Court granted Respondent’s Motion for Summary Judgment determining that the material facts were undisputed, and that as a matter of law the John Deere Model 3020 tractor was not a motor vehicle and was not covered by the uninsured motor vehicle insurance policy.

A grant of “[s]ummary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.03 (emphasis added). “On appeal from summary judgment, we determine whether any issues of material fact exist and whether the district court erred in its application of the law.” Offerdahl v. University of Minn. Hosp. & Clinics, 426 N.W.2d 425, 427 (Minn.1988). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn.1993).

This Court has determined that “[t]he interpretation and construction of insurance policy provisions are matters of law which this court reviews de novo.” Thommes v. Milwaukee Mutual Ins. Co., 622 N.W.2d 155, 158 (Minn. Ct. App. 2001). Additionally, the Supreme Court has stated that “[w]e review a district court’s summary judgment

decision de novo. Riverview Muir Doran, LLC v. JADT Development Group, LLC, 790 N.W.2d 167 (Minn. 2010).

Based upon the issues presented on the appeal from Summary Judgment (insurance policy provisions and issues of law), the appropriate standard of review is de novo.

**B. The John Deere Model 3020 tractor is a “motor vehicle” pursuant to the insurance contract between Appellants and Respondent, as the vehicle is (1) required to be registered pursuant to Chapter 168 of Minnesota Statutes; (2) is designed for use on public highways; and (3) has more than three wheels.**

Appellants, Bruce and Deloris Kastning, purchased a policy of auto insurance from Respondent. This insurance policy created a contractual relationship between the parties. Part of the policy premium was paid to cover the Kastnings in the event they were involved in an accident with an uninsured motor vehicle. The insurance policy makes no reference to the “No-Fault Act”, or to Minnesota Statutes Chapter 65B, when outlining the terms of uninsured motor vehicle coverage. Accordingly, the terms of the policy itself should control the legal analysis of whether a John Deere Model 3020 tractor is a “motor vehicle” in this case.

It is undisputed that the Appellants were involved in an accident involving an uninsured John Deere Model 3020 tractor. The issue on appeal is whether that tractor is a “motor vehicle” covered by the insurance policy. The Trial Court ruled that the John Deere Model 3020 tractor was not a “motor vehicle” for purposes of the insurance policy. We disagree.

Pursuant to the insurance contract between the two parties, determining whether

the John Deere Model 3020 tractor in this case is a “motor vehicle” turns on the terms of the contract, and solely on the terms of the contract, which in relevant part provide:

**Additional Definitions . . .**

***Motor Vehicle*** means a self-propelled vehicle:

1. required to be registered by Chapter 168 of the Minnesota Statutes;
2. designed for use on public highways; and
3. which has more than 3 wheels.

It includes a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle.

**Insuring Agreement**

*We* will pay compensatory damages for ***bodily injury*** an insured is legally entitled to recover from the owner or driver of an ***uninsured motor vehicle***. The ***bodily injury*** must be:

1. sustained by an ***insured***; and
2. caused by an accident that involves the operation, maintenance, or use of an ***uninsured motor vehicle*** as a ***motor vehicle*** or ***motorcycle***.

*(See Pages 20-21 of State Farm Car Policy Booklet, Minnesota, Policy Form 9823A).*

The Respondent’s Insurance policy defines a Motor Vehicle through the use of three (3) criteria: That (1) the vehicle be of the type required to be registered by Chapter 168 of the Minnesota Statutes; (2) the motor vehicle be designed for use on public highways; and (3) the vehicle have more than 3 wheels (unless a motorcycle). The relevant part of the contract does not refer to any other Minnesota Statutes (such as the No-Fault Act), and said laws and definitions contained in the No-Fault Act or other statutory provisions lack relevance herein where the contract provides the terms and

definitions for the insurance agreement.

The relevant facts surrounding the accident are clear. Raymond Schenk frequently used his John Deere Model 3020 tractor, a motor-driven vehicle with more than 3 wheels, as his primary personal mode of transportation. He regularly operated the John Deere Model 3020 tractor on the public roadways of the State of Minnesota without any insurance. Mr. Schenk admitted that during his use of the John Deere Model 3020 tractor for personal transportation, it was his habit and custom to transport groceries and other personal property. Furthermore, the only expert testimony identified the 1964 John Deere Model 3020 tractor as a vehicle designed and manufactured to serve as a versatile, multiple purpose machine. (*See Affidavit of Lanny R. Berke, AA-159*). The 1964 John Deere Model 3020 tractor was not designed or adapted exclusively for agricultural, horticultural, or livestock operations. *Id.* (emphasis added). The 1964 John Deere Model 3020 tractor was not just a “field” tractor. It was designed and commonly used for snow plowing, general construction, road construction, road maintenance and general lifting. *Id.* The operator’s manual expressly indicated that the John Deere Model 3020 tractor was designed as a versatile, multiple purpose machine. *Id.* ***Three of the purposes for which it was built, snow plowing, road maintenance, and road construction, all take place on public highways.***

Accepting the facts herein as true, the John Deere Model 3020 tractor fits the definition of a “Motor Vehicle” under the insurance policy’s three (3) requirements.

**1. Is the John Deere Model 3020 tractor required to be registered by Chapter 168 of the Minnesota Statutes?**

The Trial Court found that the John Deere Model 3020 tractor was exempt from registration pursuant to Minn. Stat. §168. (*See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment - Addendum, Page 43.*) In its ruling, the Trial Court refers to Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. App. 1992) on a number of occasions to provide legal precedence in the case at hand.

It must be noted that Golla has been overruled as shown in Vee v. Ibrahim, 769 N.W.2d 770 (Minn. App. 2009) (citing that Golla has been superseded by statute). Additionally, Golla did not deal with a John Deere Model 3020 tractor, and was not factually equivalent to the case at hand. In fact, in Golla, Great American Insurance Company actually paid uninsured motorist benefits to the injured party when the party's vehicle hit an uninsured tractor stalled on the roadside and Great American sought indemnification from the tractor's owner, Golla. Id. at 603. Finally, it must be further noted that Golla dealt with the No-Fault Act and other Minnesota statutes, such as Minn. Stat. §169, which apply different standards and definitions for "motor vehicles" and "tractors" than that of the policy in this case. The Trial Court even acknowledged that the Golla standard was different than that of the case at hand:

"...[I]t is instructive to note that Court of Appeals, in Great American Insurance Company v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992), interpreted the No-Fault Act definition of "motor vehicle" as it applied to a tractor..."

(*See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and*

*Judgment - Addendum, Page 41)* but that,

[t]he statutory No-Fault Act definition of “motor vehicle” is narrower than the one found in the Policy. Specifically, the No-Fault Act requires that a “motor vehicle” be designed “for use *primarily* upon public roads, highways or streets *in the transportation of persons or property*,”...while the Policy only requires that a “motor vehicle” be “designed for use on public highways.

*(See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment - Addendum, Page 43).*

Despite the factual differences and different legal standard in Golla, and the fact that the holding in Golla has been reversed, the Trial Court gave a great deal of deference to Golla in determining the case at hand.

The Trial Court found that:

Under Minn. Stat. §168.012, Subd. 2, however, Mr. Schenk’s John Deere 3020 is a “tractor for drawing threshing machinery and implements of husbandry” that was temporarily moved upon the highway. Under this definition, the John Deere 3020 qualifies as exempt from registration. See Golla 493 N.W.2d at 605 (“the No-Fault Act’s definition of motor vehicles includes every vehicle which is required to be registered pursuant to chapter 168. Chapter 168 specifically exempts tractors from its scope. Minn. Stat. §168.02, subd. 2 (1988).

*(See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment – Addendum, Page 43).*

The language in the opinion of the Trial Court mirrors that found in Golla, but contains what appears to be a typographical error. It refers to Minn. Stat. §168.02, subd. 2 (1988), which was repealed. Most likely, the Court meant Minn. Stat. §168.012, subd. 2 (1988), as it provides for exemptions for “farm vehicles” and not simply “tractors”, as the Trial Court, citing Golla, misleadingly asserts. In fact, the “farm vehicles,” which

include certain tractors as specifically defined therein, are required to meet standards in order to be considered exempt. Standards that are dependent on the vehicle's use. At the same time, Minn. Stat. §168.002, subd. 34 specifically defines the term "tractor" and refers to "tractors" as a type of "motor vehicle" and without a single mention that a "tractor" is exempt under Chapter 168.

Appellants assert that the John Deere Model 3020 tractor in this case does not fall under the "farm vehicle" exception, as the facts show that the John Deere Model 3020 tractor in this case was being used as a mode of transportation and was being used for more than temporary movement upon the highway, subjecting it to registration under Chapter 168.

An examination of registration requirements under Minn. Stat. Ch. 168 begins with Minn. Stat. §168.09, which states:

**REGISTRATION; REREGISTRATION.**

Subdivision 1. **Registration required.** No...motor vehicle, except as is exempted by section 168.012, may be used or operated upon the public streets or highways of the state in any calendar year until it is registered as provided in this section... No trailer or motor vehicle, except as provided by section 168.012, which for any reason is not subject to taxation as provided in this chapter, may be used or operated upon the public streets or highways of this state until it is registered as provided in this section and displays number plates as required by this chapter, except that the purchaser of a new trailer or motor vehicle may operate it without plates if the permit authorized by section 168.091 or 168.092 is displayed.

Minn. Stat. § 168.09 (emphasis added). Based upon this definition, all motor vehicles are required to be registered unless otherwise exempt.

Minn. Stat. § 168 defines “motor vehicle” as follows:

**168.002 DEFINITIONS.**

Subd. 18. **Motor vehicle.** (a) "Motor vehicle" means any self-propelled vehicle designed and originally manufactured to operate primarily on highways, and not operated exclusively upon railroad tracks. It includes any vehicle propelled or drawn by a self-propelled vehicle and includes vehicles known as trackless trolleys that are propelled by electric power obtained from overhead trolley wires but not operated upon rails. It does not include snowmobiles, manufactured homes, or park trailers.

Minn. Stat. §168.002, subd. 18. This definition does not specifically, nor presumptively, exclude a John Deere Model 3020 tractor from being defined as a “motor vehicle,” nor from the necessity of being registered. In fact, Minn. Stat. §168.002 provides additional definitions that support the argument the John Deere Model 3020 tractor at issue in this case is a “motor vehicle” subject to the necessity of being registered, referring to “tractor[s]” as “motor vehicles”:

**Minn. Stat. §168.002;**

Subd. 34. **Tractor.** "Tractor" means any motor vehicle designed or used for drawing other vehicles but having no provision for carrying loads independently. . . .

Subd. 38. **Truck-tractor.** "Truck-tractor" means: (1) a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn; and (2) a motor vehicle designed and used primarily for drawing other vehicles used exclusively for transporting motor vehicles and capable of carrying motor vehicles on its own structure.

Minn. Stat. § 168.002. The definitions provided in Minn. Stat. §168.002 dispel several notions in this dispute over whether a John Deere Model 3020 tractor is a “motor

vehicle” under the Respondent’s auto policy held by Appellants herein: first, that a “tractor” is not, by definition, a “motor vehicle” under Minn. Stat. Chapter 168 (where Minn. Stat. §168.002, subd. 34 states that “‘tractor’ means any motor vehicle...”); and second, that Minn. Stat. §168.002 omits consideration of tractors (Minn. Stat. §168.002, subd. 34 & 38 address both “tractor” and “truck-tractor” types of motor vehicles).

These definitions provide support for the presumption that the John Deere Model 3020 tractor is a “motor vehicle” and must be registered under Minn. Stat. Chapter 168 unless otherwise exempt.

Again, Minn. Stat. §168.09, subd. 1 states clearly, “no...motor vehicle, *except as is exempted by section 168.012*, may be used or operated upon the public streets or highways of the state in any calendar year until it is registered.” This turns the discussion on registration of “motor vehicles” to Minn. Stat. §168.012, titled “Vehicles Exempt From Tax or License Fees,” which includes a specific exemption for certain defined “farm vehicles,” and not “tractors” generally, as wrongly asserted by the Trial Court.

## **168.012 VEHICLES EXEMPT FROM TAX OR LICENSE FEES.**

### **Subd. 2. Farm vehicle.**

Implements of husbandry, as defined in section 168A.01, subdivision 8, and tractors used solely for agricultural purposes or tractors, together with trailers or wagons thereto attached, occasionally hauling agricultural products or necessary commodities used on the farm from said farm to and from the usual marketplace of the owner, tractors for drawing threshing machinery and implements of husbandry temporarily moved upon the highway, shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the provisions of this chapter.

Minn. Stat. §168.012(2). This section implies that tractors are required to be registered for use on public streets and highways unless they fall under this exemption. The John Deere Model 3020 tractor in this case could have fallen under this exemption if it was either: (1) an “implement of husbandry;” (2) a tractor “used solely for agricultural purposes;” (3) a tractor “together with trailer/wagon thereto attached;” (4) a tractor “occasionally hauling agricultural products...from said farm to and from the usual marketplace;” or (5) a tractor “for drawing threshing machinery and implements of husbandry temporarily moved upon the highway.” Here, it is admitted that the John Deere Model 3020 tractor owned and operated by Raymond Schenk was not “used solely for agricultural purposes” or for the other purposes included in this exemption. Rather, Raymond Schenk used his tractor as a primary means of transportation to visit friends, buy groceries, and travel to surrounding towns upon the streets and roads of the State of Minnesota. This leaves only the question of whether or not the John Deere Model 3020 tractor at issue here was an “implement of husbandry, as defined in section 168A.01,” and thus exempt from registration.

Minn. Stat. §168A.01, Definitions, defines an “implement of husbandry” as follows:

**Subd. 8. Implement of husbandry.**

(a) “Implement of husbandry” means every vehicle, including a farm tractor and farm wagon, **designed or adapted exclusively for agricultural, horticultural, or livestock raising operations or for lifting or carrying an implement of husbandry** and in either case not subject to registration if used upon the highways.

(b) A towed vehicle meeting the description in paragraph (a) is an implement of husbandry without regard to whether the vehicle is towed by an implement of husbandry or by a registered motor vehicle.

(c) A self-propelled motor vehicle used in livestock raising operations is an implement of husbandry only if it is:

- (1) owned by or under the control of a farmer;
- (2) operated at speeds not exceeding 30 miles per hour; and
- (3) displaying the slow-moving vehicle emblem described in section 169.522.

Minn. Stat. §168.01, subd. 8 (emphasis added). As was discussed earlier, the 1964 John Deere Model 3020 tractor at issue in this case was not designed or adapted exclusively for use in agricultural, horticultural or livestock raising operations, nor exclusively for carrying or lifting an implement of husbandry. Here, the 1964 John Deere Model 3020 tractor was designed and manufactured to serve as a versatile, multiple purpose machine, that had many uses. (*See Affidavit of Lanny R. Berke – AA-159*). Raymond Schenk compared its purpose to that of a pickup truck. (*See Deposition of Raymond Schenk, AA-133, Page 83, Lines 4-5 and 24, and Page 84, Line 25*). On the date of the accident, Raymond Schenk was driving the John Deere Model 3020 tractor down the highway to visit a neighbor, not for farm purposes. He was not temporarily passing over, or down, the highway. (*See Id., AA-131, Page 76, Lines 3-14, and AA-144, Page 127, Lines 5-10.*)

Based upon the foregoing definitions, this particular 1964 John Deere Model 3020 tractor is a “motor vehicle” for the purposes of Minn. Stat. Chapter 168 and, therefore, it would be required to be registered for use upon the States streets and highways unless otherwise exempt from registration.

While we have discussed several exemptions that may have applied to the John

Deere Model 3020 tractor involved in this case, such as an exemption for “farm vehicles,” it does not necessarily follow that every vehicle that “could” be exempt is actually exempt. For example, the definition of "farm vehicles" implies that a tractor is not necessarily exempt from registration under Minn. Stat. Ch. 168 simply because it is a tractor. A tractor is exempt based upon its use or utility. A tractor is exempt if it is used for agricultural purposes such as working the land, hauling grain, and operation of farm implements. Even though the tractor may be operated on or over a public roadway in its course of use, it is exempt from registration because of the purpose of its use. At the same time, an identical John Deere Model 3020 tractor owned and operated by another party may not be exempt if it is used ordinarily as a means of transportation; or even if it is used to plow public roadways for hire as part of a road maintenance crew (for which there may be a separate exclusion from registration depending on numerous factors).

Such uses of the same make and model tractor would not be exempt simply because the tractor was not designed or adapted exclusively for agricultural operations (i.e. not an "implement of husbandry") and was not being used solely for agricultural purposes (i.e. not exempt as a "farm vehicle"). Just the same, no one would dispute that a Crown Victoria is a “motor vehicle” required to be registered in the State of Minnesota if it is owned and operated by an ordinary citizen in the state. Yet, a Crown Victoria car that is being used as a police car by the State is exempt from registration under Minnesota Statutes, Chapter 168. See Minn. Stat. §168.002, subd.1 (b)(3). Similarly, a Ford F-150 pickup truck used solely as a “farm vehicle”, would be exempt from registration pursuant to Minn. Stat. §168.002, while the very same model Ford F-150 used by an ordinary

citizen is required to be registered pursuant to Minn. Stat. Ch. 168. It seems clear that the law recognizes that motor vehicles that are “exempt” from registration under Chapter 168 are not exempt simply because of what they are or their design, but rather based upon their actual use. A John Deere Model 3020 tractor is no different; and whether it is exempt should depend on its use.

In summary, Minnesota Statutes, Chapter 168 requires all “motor vehicles” to be registered unless they are otherwise exempted by statute. Chapter 168 specifically discusses “tractors” and references them as “motor vehicles.” (See Minn. Stat. §168.002, subd. 34. Likewise, Chapter 168 specifically exempts a certain group of “farm vehicles” that includes some tractors and implements of husbandry from registration, while stating definitively that all “motor vehicles” must be registered unless exempt. *This begs the question, why would these motor vehicles [tractors] [implements of husbandry] [etc.] need to be specifically exempted from registration if they are not otherwise considered “motor vehicles” by definition?*

As the facts and law show herein, the exemption to registration under Minn. Stat. Chapter 168 does not apply to Raymond Schenk’s 1964 John Deere Model 3020 tractor based on the way he actually used the vehicle. Clearly, the 1964 John Deere Model 3020 tractor owned by Raymond Schenk, which was used to drive from town-to-town, to visit friends, and to run errands, all on the public highways, would be required to be registered under Minn. Stat. Chapter 168 in order for it to be lawfully operating on the State streets and highways.

Based on the foregoing law and argument, Appellant asserts that the Trial Court

erred, and that the facts and law show that Raymond Schenk's John Deere Model 3020 tractor was subject to registration requirements under Minnesota Statutes Chapter 168 when he was using the John Deere Model 3020 tractor as a means of transportation down U.S. Highway 169.

**2. Is the John Deere Model 3020 tractor designed for use on public highways?**

Based upon the facts and the terms of the contract herein, we believe the Trial Court erred in granting Summary Judgment in favor of Respondent and finding that the John Deere Model 3020 tractor was not designed for use on public highways. At a minimum, there remain questions of fact appropriate for the finder of fact to determine. The Trial Court lacked sufficient factual basis to conclude that the John Deere Model 3020 tractor was not designed to operate on public highways as a matter of law.

First, the Court erred in relying on Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992), a case the Trial Court specifically stated was determined using the No-Fault Act definition of a "motor vehicle", which is more restrictive than that of the Respondent's policy. The Trial Court Stated:

...[I]t is instructive to note that Court of Appeals, in Great American Insurance Company v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992), interpreted the No-Fault Act definition of "motor vehicle" as it applied to a tractor...

(*See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment - Addendum, Page 41*), and that,

[t]he statutory No-Fault Act definition of "motor vehicle" is narrower than the one found in the Policy. Specifically, the No-Fault Act requires that a "motor vehicle" be designed "for use *primarily* upon public roads,

highways or streets *in the transportation of persons or property*,”...while the Policy only requires that a “motor vehicle” be “designed for use on public highways.

(*See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment – Addendum, Page 43.*) The Trial Court further opined,

[t]he Court finds as a matter of law that the words “designed for use on public highway” are unambiguous.

Even using the Policy’s more expansive definition of a motor vehicle, the Court finds that the John Deere 3020 fails to meet this element. While the John Deere 3020 may be driven on public highways, the John Deere was not designed for use on the public highway. *c.f. Golla* 493 N.W.2d at 605 (“[a]lthough a tractor *can* be used on a public road, it is designed primarily for use in fields” (emphasis original)).

...

(*See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment - Addendum Page 44.*) The Trial Court acknowledged that the Golla case standard was not the standard to be applied in the case at hand, yet, at the same time relied on Golla to conclude that a John Deere Model 3020 tractor was “not designed for use on the public highway.” After contradicting its own recitation of the standard at issue by citing to a “primary designed use” standard, the Trial Court then provided language that seemed to support the Appellants’ position that the John Deere Model 3020 tractor, at least in part, is designed for operation on the roadway, by stating (again from Golla) that “although a tractor can be used on a public road, it is designed primarily for use in fields.”

After relying on the inappropriate Golla standard, the Trial Court attempted to bolster its opinion by stating:

“An examination of the design of the John Deere 3020 reveals that it lacks

many design elements that would enable it to travel safely, effectively, and comfortably on public highways.”

*(See Statement of Undisputed Facts, Conclusions of Law, Order for Judgment, and Judgment - Addendum, Page 44.)* The problem with the analysis by the Trial Court is that there are no such criteria enumerated by the Respondent’s Policy (or by Minnesota law). The Trial Court used an arbitrary standard that the Trial Court itself created by interjecting its own subjective criteria for determining what the John Deere Model 3020 tractor’s designed use was, and by weighing the facts without any expert opinion or showing of fact from Respondent that the John Deere Model 3020 tractor was not designed for any use on public highways, whatsoever. Moreover, the Trial Court’s analysis completely disregards the only expert report in this case relating to the design of a John Deere Model 3020 tractor provided by Lanny Berke. Such a decision is beyond the scope of a Summary Judgment proceeding.

The Trial Court is charged with making conclusions based on the law, not with weighing factual issues based upon its own subjective criteria for determining the designed use of a John Deere Model 3020 tractor.

The insurance contract at issue lacks a definition of “designed for use on public highways.” Without such a definition, we are left to speculate what is meant by “designed for use on public highways,” creating reasonable doubt as to what the meaning is. “Where a reasonable doubt exists as to the meaning of the provisions of an insurance contract, the ambiguity must be resolved in favor of the insured.” Motor Vehicle Casualty Company v. Smith, 76 N.W.2d 486, 491, 247 Minn. 151, 157 (Minn. 1956). Without a

definition of “designed for use on public highways,” the ambiguity of the term “designed for use on public highways” should have been construed against Respondent and in favor of Appellants. “One of the fundamentals of insurance law...is that ambiguous language in an insurance policy is to be construed in favor of the insured.” Rusthoven v. Commercial Standard Ins. Co., 387 N.W.2d 642, 645 (Minn. 1986).

The facts show that Raymond Schenk, the driver of the John Deere Model 3020 tractor, stated that he regularly drove this tractor on the public highways. He testified that its design is similar to that of a “pickup truck” and that it can travel up to speeds of nearly 30 miles per hour. (*See Deposition of Raymond Schenk, AA-133, Page 83, Lines 4-5 and Line 24 – Page 84, Line 25*). Raymond Schenk’s regular use of the vehicle on the public highways, at a bare minimum, raises a presumption that it was designed – at least in part – to be able to operate on public highways. Respondent provided no factual evidence or expert testimony to refute this position, nor did they point to a provision within the insurance policy that provides a definition relating to “designed for use on public highways.”

Moreover, as shown by the expert opinion of Lanny R. Berke, the 1964 John Deere Model 3020 tractor was designed and manufactured to serve as a versatile, multiple purpose machine. (*See Affidavit of Lanny R. Berke – AA-159*) The 1964 John Deere Model 3020 tractor was not designed or adapted exclusively for agricultural, horticultural, or livestock operations. *Id.* The 1964 John Deere Model 3020 tractor was designed and commonly used for snow plowing, general construction, road construction, road maintenance and general lifting, and the operator’s manual expressly indicates that

the John Deere Model 3020 tractor is a versatile, multiple purpose machine. *Id.* **It should be noted that three of the uses for which the John Deere Model 3020 tractor was designed include snow plowing, road maintenance, and road construction, all of which take place on public highways.**

Absent any definition in the policy for the term “designed for use on public highways” that would narrow the scope of which “motor vehicles” fit within the vehicles “designed for use on public highways”, the facts can support only one conclusion: that the John Deere Model 3020 tractor is designed – at least in part – for use on public highways.

Based on the plain language contained in the insurance policy, a “motor vehicle” does not need to be designed primarily for highway use. The Respondent’s policy, unlike the “No-Fault Act,” does not make “primary designed use” a requirement. The facts and the law support a conclusion that the John Deere Model 3020 tractor was designed, at least in part, to operate on public roadways, satisfying the contractual requirement of “designed for use on a public highway.”

**3. Does the uninsured John Deere Model 3020 tractor have more than 3 wheels?**

The John Deere Model 3020 tractor, operated by Raymond Schenk, has four (4) wheels. This fact is clear and undisputed and is consistent with the Trial Court’s findings.

In conclusion, Appellants should be afforded the uninsured motor vehicle coverage for which they paid policy premiums to Respondent. The 1964 John Deere

Model 3020 tractor herein satisfies the terms of the contract, defining a “motor vehicle” for the purposes of uninsured motor vehicle coverage. The 1964 John Deere Model 3020 tractor: (1) is a vehicle of the type required to be registered by Chapter 168 of the Minnesota Statutes; (2) is designed for use on public highways; and (3) has more than three wheels.

C. **The legal Doctrine of Reasonable Expectations provides uninsured motorist insurance coverage in this case in the event the Court finds that the John Deere Model 3020 tractor in question was not a “motor vehicle”, even though it was used for personal transportation, was used on state and federal highways, and the driver of said vehicle was subject to Minnesota traffic regulations.**

Respondent’s Motion for Summary Judgment suggests that the Court make an absurd and unfair legal finding against the Appellants. Here, we have an individual who was seriously injured in an accident that occurred on a U.S. Highway, while traveling in the proper lane of traffic. The accident was caused by an uninsured, 4-wheeled, motor-operated, John Deere Model 3020 tractor, driven by Raymond Schenk. In fact, Raymond Schenk was found guilty of violating Minnesota traffic law by failing to use hand signals for his actions in operating the John Deere Model 3020 tractor on the date of the accident.

Appellants, Bruce and Deloris Kastning, purchased an auto insurance policy from Respondent which was supposed to provide coverage for accidents caused by uninsured motorists. Prior to the accident, Appellants made all scheduled policy premium payments, and their policy was in effect on the date of the accident.

Respondent has asked that the Appellants be denied uninsured motorist benefits under their auto insurance policy based upon a vague and latent legal technicality that

Respondent asserts exists within their policy when applying numerous Minnesota Statutes not directly cited in their policy. Appellants believe that Respondent's denial defies common sense and provides a consequence that no reasonable driver on a Minnesota state or federal roadway would ever imagine when they agree to enter into an insurance contract. *Such a denial begs the question: How can someone be charged, convicted, and fined for violating a Minnesota traffic law based upon an action that occurred on a U.S. highway in the State of Minnesota in a motorized vehicle, but that the motorized, 4-wheeled, vehicle was not considered a "motor vehicle" for the purpose of uninsured motor vehicle insurance coverage?*

Thus, should the Court agree with Respondent's assertion that the John Deere Model 3020 tractor (which under all common definitions, is a motor vehicle), at fault in this accident, is not a "Motor Vehicle" under the policy, Appellants assert that coverage should still be available, and this suit should be allowed to proceed, based upon the Doctrine of Reasonable Expectations. See Atwater Creamery Co. v. Western Nat. Mut. Ins. Co., 366 N.W.2d 271 (Minn. 1985); Carlson v. Allstate Ins. Co., 749 N.W.2d 41 (Minn., 2008); Hubred, et al., v. Control Data Corporation, 442 N.W.2d 308 (Minn. 1989).

Atwater is the sentinel case on the Doctrine of Reasonable Expectations in Minnesota. Atwater states:

**"The reasonable-expectations doctrine gives the court a standard by which to construe insurance contracts without having to rely on arbitrary rules which do not reflect real-life situations and without**

having to bend and stretch those rules to do justice in individual cases. As Professor Keeton points out, ambiguity in the language of the contract is not irrelevant under this standard but becomes a factor **in determining the reasonable expectations of the insured**, along with **such factors as whether the insured was told of important, but obscure, conditions or exclusions and whether the particular provision in the contract at issue is an item known by the public generally**. The doctrine does not automatically remove from the insured a responsibility to read the policy. **It does, however, recognize that in certain instances, such as where major exclusions are hidden in the definitions section, the insured should be held only to reasonable knowledge of the literal terms and conditions. The insured may show what actual expectations he or she had, but the fact finder should determine whether those expectations were reasonable under the circumstances.**

**We have used the reasonable-expectations-of-the-insured analysis to provide coverage where the actual language interpreted as the insurance company intended would have proscribed coverage.”**

Atwater, 366 N.W.2d at 278 (emphasis added). Here, based on a layman’s reading of the auto insurance policy in question, Appellants had a highly reasonable expectation that if they were to travel down a state or federal highway in their motor vehicle, get involved in an accident caused by another motorized vehicle traveling upon the same roadway that was not insured, that Plaintiffs uninsured motorist coverage would be available. Yet, when this exact scenario presented itself to the Appellants, Respondent denied coverage, asserting that a John Deere Model 3020 motorized tractor, with 4 wheels, an engine, and a steering wheel, being operated on a U.S. Highway, was not a “Motor Vehicle” under the policy, and therefore coverage was not available.

To the general public, the definition of a “motor vehicle” is likely quite simple: i.e. “a motor propelled device on wheels.” Yet, based on Respondent’s own memorandum of law, in order to determine what “Motor Vehicles” are covered under the

uninsured motorist coverage included in a State Farm Auto Insurance policy, policyholders such as the Appellants would have had to do far more than carefully read the Respondent's Auto Policy.<sup>1</sup> In fact, in order to reach Respondent's conclusion, the Appellants would have had to carefully read the Respondent's auto insurance policy; then locate, read, and interpret numerous Minnesota Statutes and subsections, tracking from one statute cited in a statute to another; and *if* the policy holder happened to locate the very specific provisions within the chain of statutes, interpret singular words and phrases within those statutes (such as "designed for use on public roads" AND "designed" or "adapted" "exclusively for agricultural"); they *may* have been able to determine what Respondent considered a "motor vehicle." Said analysis would have been necessary to define the same term that is painfully simple to define by a layman: "motor vehicle"; i.e., a motor propelled device on wheels.

It seems clear that the Appellants had a reasonable expectation that the type of accident that occurred is exactly the type that would be covered under their uninsured motorist coverage, and that Respondent did not make it clear that they were not agreeing to provide insurance in instances such as the one in the present case. At a minimum, it is plain to see that Summary Judgment is inappropriate based on the fact that **it is up to the fact finder to determine whether expectations were reasonable.** See Atwater at 278.

In closing, the Doctrine of Reasonable Expectations was described by the

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<sup>1</sup> It might be noted that in its Memorandum of Law in Support of Summary Judgment, State Farm required several pages of legal analysis and incorporation of numerous Minnesota statutes in order to surmise what State Farm asserts is a covered "motor vehicle" by its own policy; a policy that provides only 3 abbreviated criteria for policy holders to try to determine what constitutes a "motor vehicle". (See AA-16 through 18).

Minnesota Supreme Court as recently as 2008 as “a tool for resolving ambiguity and for correcting extreme situations like that in Atwater, where a party's coverage is significantly different from what the party reasonably believes it has paid for and where the only notice the party has of that difference is in an obscure and unexpected provision.” Carlson, 749 N.W.2d at 49. In Atwater, [the Minnesota Supreme Court] held that “where major exclusions are hidden in the definitions section, the insured should be held only to reasonable knowledge of the literal terms and conditions.” Carlson, at 48 (*citing Atwater*, at 278). Atwater and the Doctrine of Reasonable Expectations were summarized by the Minnesota Supreme Court in Carlson:

“We discussed the doctrine of reasonable expectations in Atwater Creamery Co. v. Western National Mutual Insurance Co., in which we construed a policy insuring against burglary. The policy at issue defined burglary so as to require “evidence of forcible entry.” While concluding that this definition was not ambiguous, we nevertheless did not permit the insurer to enforce a definition that excluded coverage. We based this decision on our conclusion that “no one purchasing something called burglary insurance would expect coverage to exclude skilled burglaries that leave no visible marks of forcible entry or exit.”

Carlson, at 47 (citations omitted).

The Trial Court in the instant matter ruled:

“A careful reading of the policy would put a reasonable policyholder on notice that field tractors, which are not designed for use on public highways, and are not subject to the registration requirements of Minnesota Statutes Chapter 168, would not qualify as “motor vehicles” under the policy.”

Appellants again vehemently disagree with the Trial Court’s notion that a John Deere Model 3020 tractor is simply a “field tractor” and that it was “not designed for use on public highways.” The Trial Court’s opinion is void of legal or contractual basis to

support the conclusory remarks that a John Deere Model 3020 tractor is but a “field tractor” “not designed for use on public highways.” Additionally, this conclusion flies in the face of the only expert opinion regarding the John Deere Model 3020 tractor’s design (that of Lanny Berke) and is contrary to the standard use and utility of the John Deere Model 3020 tractor as testified to by its operator, Raymond Schenk. The Trial Court weighed each argument of the Appellants against the “No-Fault Act” standards, but failed to recall that this is an action based on contract; a contract that the Trial Court itself recognized as having a broader scope than the No-Fault Act. It is clear, based on the fact that Appellants have sought coverage based on the policy, that they believed coverage existed under the circumstances of the case.

In a case based on the doctrine of reasonable expectations, “[t]he insured may show what actual expectations he or she had, but the fact finder should determine whether those expectations were reasonable under the circumstances. Atwater at 278. Accordingly, Appellants should have been afforded the opportunity to present their expectations to a fact finder. At a minimum, the Trial Court should not be in a position to determine what reasonable persons’ expectations would have been in this case based upon the facts presented. Such questions of fact are for the fact finder and not the Judge in a Summary Judgment proceeding. “Fact questions are not to be resolved in a summary judgment proceeding.” See Nord v. Herreid, 305 N.W.2d 337, 339 (Minn.1981) (district court is not to resolve fact questions in summary judgment proceeding).

In the case at issue, Appellants, and any reasonable person, would expect that they would have coverage against uninsured motorized vehicles being operated on a major

highway in the State of Minnesota. At the same time, it is unreasonable that the Appellants, or any member of the public, would expect an obscure provision that purportedly excludes from the policy definition of "motor vehicle", a group of very specific, but not readily identifiable, 4-wheeled, motorized, highway-driven vehicles from the group of covered uninsured motor vehicles under the auto insurance policy.

Under the Doctrine of Reasonable Expectations, the reasonableness of Appellant's expectations are a question for the fact finder. The Trial Court erred in granting Summary Judgment in favor of Respondent. In ruling in favor of Respondent on this issue, the Trial Court again played the role of the jury (fact finder), rather than simply applying the law.

### CONCLUSION

Based upon the forgoing law and facts, Appellants ask that the Court find that the Trial Court erred in summarily dismissing Appellants claims, vacate the Trial Court Judgment, and remand for trial.

Dated at Bemidji, Minnesota this 20<sup>th</sup> day of April, 2012.

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