

A12-0584

**State of Minnesota
In Court of Appeals**

Bruce and Deloris Kastning,

Appellants,

v.

State Farm Insurance Companies,

Respondent.

**BRIEF AND APPENDIX OF RESPONDENT
STATE FARM INSURANCE COMPANIES**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

- I. IS A JOHN DEERE MODEL 3020 TRACTOR WITH AN ATTACHED DISC MOWER AN UNINSURED MOTOR VEHICLE UNDER MINNESOTA'S NO-FAULT ACT AND/OR THE TERMS OF RESPONDENT STATE FARM INSURANCE COMPANIES' AUTO POLICY?

This issue was raised by Respondent State Farm's motion for summary judgment and addressed by the trial court, granting State Farm summary judgment.

Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992).

Secura Supreme Ins. Co. v. M.S.M., 755 N.W.2d 320 (Minn. Ct. App. 2008).

Minn. Stat. § 168.09, subd. 1.

- II. WHERE AN INSURANCE POLICY, WHICH TERMS ARE IN ACCORD WITH MINN. STAT. § 65B.43, SUBD. 2, OF THE MINNESOTA NO-FAULT ACT, DOES NOT PROVIDE UNINSURED MOTORIST COVERAGE TO ITS INSURED BECAUSE THE FARM TRACTOR IS NOT AN UNINSURED MOTOR VEHICLE, IS THE INSURED NONETHELESS ENTITLED TO SUCH COVERAGE UNDER THE JUDICIAL DOCTRINE OF REASONABLE EXPECTATIONS?

This issue was raised by Appellants in response to Respondent State Farm's motion for summary judgment. The trial court ruled the doctrine of reasonable expectations did not apply so as to grant Appellants uninsured motorist coverage.

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

Reinsurance Ass'n of Minnesota v. Johannessen, 516 N.W.2d 562 (Minn. Ct. App. 1994).

Minn. Stat. § 65B.43, subd. 2.

STATEMENT OF THE CASE AND FACTS

This case arises from a July 2, 2010 collision between a 1996 Chevrolet pickup and a John Deere 3020 row-crop farm tractor with an attached disc mower. (Appellants' Addendum [Add.] 35-36; Respondent's Appendix [R.A.] 1, 5). The accident occurred on Highway 169 at its intersection with a private driveway to the Stanley Cole residence in Winnebago Township, Faribault County, Minnesota. As a result of that accident, Appellants/Plaintiffs Bruce and Deloris Kastning (Kastnings), the owners and occupants of the 1996 Chevrolet pickup, contend that the tractor meets the definition of an uninsured motor vehicle, entitling them to uninsured motorist (UM) coverage under their auto policy issued by Respondent/Defendant State Farm Insurance Companies (State Farm). (Appellants' Appendix [AA] 3). The trial court, the Honorable Douglas L. Richards, granted State Farm summary judgment, holding the John Deere 3020 tractor is not a "motor vehicle" as defined under Minnesota's No-Fault Act and under the terms of State Farm's policy. (Add. 37). Therefore, the Kastnings are not entitled to UM coverage from State Farm.

A. The 1964 John Deere Model 3020 Tractor Has a Three-Point Hitch to Which Mr. Schenk Attached a Disc Mower.

The 1964 John Deere Model 3020 row-crop farm tractor (Farm Tractor) involved in the July 2, 2010 collision with the Kastnings was owned and operated by Raymond Schenk (Schenk). (Schenk Depo., p. 42; AA 123; R.A. 1, 5). Mr. Schenk was 72 years old. (Schenk Depo., p. 4; AA 113).

The Farm Tractor does not have a cab. (Id. at pp. 46-47, 110; AA 124, 140). It is not designed for transporting people, having just one seat for its operator. (Id. at pp. 46-47, 110; AA 124, 140). Its sole storage compartment is a small toolbox-type compartment near the seat. (Id. at pp. 47-48; AA 124).

The Farm Tractor comes equipped with a standard three-point hitch. (Id. at p. 46; AA 124). Mr. Schenk uses the Farm Tractor to pull a Bush Hog disc mower. (Id. at pp. 39-40, 52; AA 122, 125). It was attached to the Farm Tractor at the time of the accident. (AA 24).

The Farm Tractor has no headlights, mirrors, signal lights, brake lights or horn. (Id. at p. 47; AA 124). The only lights it has are the lights over its back wheels which are designed to broadcast ahead of the implement being pulled on its standard three-point hitch. (Id. at p. 46, 50; AA 124, 125).

The Farm Tractor's maximum operating speed was 21 to 22 miles per hour. (Id. at p. 94; AA 136).¹ The Farm Tractor has a slow moving vehicle sign. Mr. Schenk did not have it attached at the time of the accident because "the bracket was there, but it got lost." (Id. at p. 48; AA 124).

¹ Mr. Schenk did not state this Farm Tractor could travel at speeds of 30 mph. And there is no testimony of record it was so designed. The Kastnings' reference to 30 mph is to Mr. Schenk's vague statement at his deposition pages 83-84 (AA 133). Mr. Schenk unambiguously testified his Farm Tractor's maximum speed was 21 to 22 mph. (Schenk Depo., p. 94; AA 136).

Mr. Schenk, with the disc mower attached to the Farm Tractor, would mow ditches, mow his 26-acre property, and mow the property of others and then bale the hay to make money. (Id. at pp. 21-22, 28-29, 118-119; AA 118-119, 142). Once the Farm Tractor is hooked up to the disc mower in June, Mr. Schenk does not remove it until the mowing season ends. (Id. at pp. 52-53; AA 125-126).

Also attached by Mr. Schenk to his Farm Tractor was a front end loader. (Id. at p. 45; AA 124; R.A. 1, 7). This he primarily uses to load round hay bales onto the hay rack. (Id.) He would also use it to clear snow in the winter. (Id.)

Occasionally, Mr. Schenk would rent, and then attach to the Farm Tractor by its three-point hitch, a bale spearer/carrier. (Id. at p. 46). That way hay bales could be carried in the front end loader with a bale also carried in the back. (Id.)

The Farm Tractor's power takeoff on occasion was used to run a wood splitter. (Id. at p. 51; AA 125).

Mr. Schenk would use the Farm Tractor when tearing down buildings or moving outbuildings. (Id. at pp. 61, 104-105, 159; AA 138-139, 152). Mr. Schenk acknowledged that using a tractor in this fashion is typical farm use. (Id. at p. 159; AA 152). He also used it for junking, which he describes as “[r]aising this up so you can cut this off, or raise something else up so he can cut that off, or move this around and load this up in the trailer so he can haul it,” which use of a farm tractor is “what farmers do.” (Id. at p. 158; AA 152).

Mr. Schenk's driver's license was revoked in 2003. (Id. at pp. 61-62; AA 128). Mr. Schenk, who lives east of Winnebago, would, at times, drive his Farm Tractor into town to pick up groceries and to visit friends. When visiting friends, the Farm Tractor was often utilized by Mr. Schenk as more than transportation. (Id. at pp. 164-165; AA 153-154).

B. Mr. Schenk Owns Other Tractors, as Well as Trucks and One Car.

Because of Mr. Schenk's inability to read and write, he has not had his driver's license reinstated. (Id. at pp. 61-62; AA 128). Nonetheless, Mr. Schenk owns numerous motor vehicles.

Mr. Schenk owns and has on his property² a 1994 Ford Tempo (Id. at pp. 34-36; AA 121), a 1994 Dodge one-ton pickup (Id. at pp. 36-37; AA 121-122), a 1955 Chevrolet pickup (Id. at p. 37; AA 122), and a 1993 Ford Ranger pickup (Id. at p. 38; AA 122). Since Mr. Schenk has no driver's license, he asks others to drive his 1994 Dodge one-ton pickup, which is operable. (Id.) He does not maintain insurance on any of his vehicles. (Id. at p. 116; AA 141). Mr. Schenk did, however, keep the 1994 Dodge pickup and the 1993 Ford Ranger licensed. (Id. at pp. 112-113; AA 140-141). Mr. Schenk continues to drive his motor vehicles in case of emergency. (Id. at p. 62; AA 128).

² Mr. Schenk, in addition to a modular home on his 26-acre piece of property, has a 40 x 100 pole shed and a 24 x 24 garage with a 24 x 20 addition. (Id. at pp. 33-34; AA 121).

Mr. Schenk owns tractors other than the Farm Tractor. (Id. at p. 103; AA 138).

Mr. Schenk's other tractors include a D17 Allis Chalmers and a 4430 John Deere. (Id. at pp. 41-44; AA 123). The 4430 John Deere was manufactured in the 1980s. (Id.)

C. On July 2, 2010, Mr. Schenk Readied His Disc Mower for Mowing and Headed Over to Mr. Cole's Farm.

On the morning of the accident, Mr. Schenk did general maintenance on the Farm Tractor and its attached disc mower. (Id. at p. 71, 86; AA 130, 134). This included greasing the mower, checking its fluid levels and gearbox so that if the hay was ready to mow, Mr. Schenk was ready to mow it. (Id. at p. 86; AA 134).

Mr. Schenk had in the past mowed Stanley Cole's ditches and Stanley Cole's back pasture. (Id. at p. 27; AA 119; Id. at p. 74; AA 131). Mr. Cole wanted his pasture mowed. (Id. at p. 151, AA 150). On the day of the accident, Mr. Schenk's intent was to drive his Farm Tractor with the mower attached over to Mr. Cole's place "to find out when [he] could mow it or whatever." (Id. at p. 54; AA 126; see also Id. at p. 74; AA 131). Mr. Schenk testified:

Q. Okay. So the purpose of your trip was to go to Mr. Cole's place with your tractor to determine if his pasture area was ready for you to mow and bale the hay; is that right?

A. I went that day to find out if it was fit to go.

Q. Right.

A. I didn't say I was going to mow it. I just went there to see if it was fit to go.

(Id. at pp. 75-76; AA 131).

Mr. Cole had told Mr. Schenk if he wanted to mow his pasture, he could have the hay. (Id. at p. p. 75; AA 131). Mr. Cole also told Mr. Schenk he needed to wait until the pasture was dry enough to mow, but he should come check out its condition. (Id. at p. 140; AA 147).³ Mr. Schenk further explained his conversation with Mr. Cole which led to his trip that day:

. . . the time limit on that hay business, it varies horribly on time one way or the other, and then the water was up and the river was up and so I said, you ever walk down there? No. Well, I says, well maybe I'll come and take a look. And he says, it's quite a walk, so I said, well, maybe I'll just come and visit you and take the tractor there and go down there and take a look and see what we have got or whatever, and so —

(Id. at p. 157; AA 152).

If Mr. Cole's pasture was ready to mow, Mr. Schenk was ready to mow it. (Id. at pp. 155-156; AA 151).

Mr. Schenk asserted another reason he traveled by Farm Tractor to Mr. Cole's was Mr. Cole needed its front end loader "to raise up some other stuff a little bit now here and there so — [Mr. Schenk said] well, I can just bring the tractor out and do your other little piddly work" . . . and "let's see what turns up." (Id. at p. 140; AA 147). Using the Farm Tractor's front end loader for moving things around is what farmers do. (Id. at p. 158; AA 152).

³ After the accident, Mr. Schenk and Mr. Cole took Mr. Cole's pickup "as far as we could drive" it to see whether the pasture was ready to mow. (Id. at p. 174; AA 156). There was water sitting in the field, so it was not ready to be mowed. (Id.)

D. Mr. Schenk Traveled to Mr. Cole's Property by Back Roads Until by Necessity He Entered Onto Highway 169.

To travel to Mr. Cole's place, Mr. Schenk chose to travel by gravel roads until reaching Highway 169. (Id. at pp. 86-89; AA 134-135). As Mr. Schenk explained, gravel roads have less traffic and "less hassle of traffic on the road and everything else. The more you can avoid the traffic, the better off you are." (Id. at p. 89; AA 135). The reason Mr. Schenk also chose this route is because Highway 169 is not designed for tractor traffic. (Id. at pp. 89-90; AA 135).

Mr. Schenk traveled on gravel roads until County Road 18 (which was gravel) intersected with Highway 169. (Id. at pp. 88-90; AA 134-135). From there he turned right onto Highway 169. Mr. Schenk estimated it was a quarter mile from the County Road 18/Highway 169 intersection to Mr. Cole's property. (Id.)

Mr. Schenk drove his tractor with the disc mower attached onto Highway 169. He traveled on the east side of the road and along the road's shoulder. (Id. at p. 90; AA 135). Because of the width of the shoulder and the width of his Farm Tractor with mower, Mr. Schenk traveled with part of the tractor on the highway and part on the shoulder. (Id. at p. 91; AA 135). There was no traffic. (Id.) It was a Friday afternoon and "it was the dead time." (Id. at p. 93; AA 136).

E. When Turning Left Into Mr. Cole's Private Driveway, Mr. Schenk Collided With the Kastnings' Truck.

The Farm Tractor's maximum speed was 21 to 22 miles per hour "wide open." (Id. at p. 94; AA 136). When Mr. Schenk arrived at the Cole driveway, which was

located on his left, he slowed the Farm Tractor with the throttle and looked behind his left shoulder. (Id. at p. 94; AA 136). When he so turned, he extended his left arm “somewhat.” (Id. at p. 95; AA 136). After he began his left-hand turn, Mr. Schenk’s Farm Tractor collided with the Kastning vehicle, which vehicle was passing on the left. (Id. at pp. 96-99; AA 136-137).⁴

F. The Kastnings Claimed Entitlement to UM Coverage Under Their State Farm Policy.

As a result of this accident, the Kastnings assert they are entitled to UM coverage under their State Farm motor vehicle policy. (AA 3). The Kastnings claim the Farm Tractor is an uninsured motor vehicle. (Id.)

The auto policy issued to the Kastnings is State Farm Minnesota Policy Form 9823A. (AA 48). The policy specifically states that “Minnesota [law] will control . . . in the event of any disagreement as to the interpretation and application of any provision in this policy.” (AA 93).

State Farm’s Uninsured Motorist Vehicle Coverage Insuring Agreement states:

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

⁴ The State Patrol did cite Mr. Schenk for failure to signal his turn. (AA 24). Such a citation would be issued under Minn. Stat. Chapter 169, which has no application to the issues before this Court. Mr. Schenk disputes the officer’s citation, but states “[i]nstead of fighting the thing and everything else, I just paid it and forgot about it.” (Id. at p. 96; AA 136).

2. caused by an accident that involves the operation, maintenance, or use of an uninsured motor vehicle as a motor vehicle or motorcycle.

(AA 68) (emphasis in the original).

“Uninsured motor vehicle” is a defined term. It means

a motor vehicle or motorcycle:

1. the ownership, maintenance and use of which is:
 - a. not insured or bonded for bodily injury liability at the time of the accident;

...

(AA 67) (emphasis in the original).

“Motor vehicle” is also a defined term and “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.

(AA 67).

State Farm’s UM coverage is in accord with Minn. Stat. § 65B.49, subd. 3a. UM coverage is statutorily defined as “coverage for the protection of persons insured under that coverage who are legally entitled to recover damages for bodily injury from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles.” Minn. Stat.

§ 65B.43, subd. 18. An uninsured motor vehicle is statutorily defined to mean

a motor vehicle or motorcycle for which a plan of reparation security meeting the requirements of 65B.41 to 65B.71 is not in effect.

Minn. Stat. § 65B.43, subd. 16. Subdivision 2 of 65B.43 defines motor vehicle. It means

every vehicle, other than a motorcycle or other vehicle with fewer than four wheels, which (a) is required to be registered pursuant to chapter 168, and (b) is designed to be self-propelled by an engine or motor for use primarily upon public roads, highways or streets in the transportation of persons or property.

...

Minn. Stat. § 65B.43, subd. 2.

G. The Trial Court Granted State Farm Summary Judgment.

Based on the undisputed facts of record as applied to Minnesota law, State Farm sought summary judgment, asserting the Farm Tractor was not an uninsured motor vehicle and, therefore, the Kastnings are not entitled to UM coverage. (Add. 35). State Farm's motion was granted by the trial court by judgment entered February 29, 2012.

(Id.) The trial court held that the Farm Tractor is not a motor vehicle under the No-Fault Act or under State Farm's UM coverage. (Add. 45). Specifically, the trial court held that the Farm Tractor is not required to be registered under Minn. Stat. Chapter 168, nor was the Farm Tractor designed for use on public highways. (Id.)

The trial court also rejected the Kastnings' alternative argument that even if the court found the Farm Tractor not to be a motor vehicle under the No-Fault Act and the policy, the court should find that the Kastnings are entitled to recover under the doctrine of reasonable expectations. (Add. 45-47).

ARGUMENT

THE GRANT OF SUMMARY JUDGMENT TO STATE FARM SHOULD BE AFFIRMED.

A. This Court's Standard of Review is De Novo.

A court must grant summary judgment “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. On an appeal, this Court asks two questions: (1) are there any genuine issues of material fact, and (2) did the district court commit error in its application of the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990). This Court applies a de novo standard of review and views the evidence in a light most favorable to the nonmoving party. Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 364 (Minn. 2009).

If the moving party makes out a prima facie case for summary judgment, the burden of producing genuine issues of material fact falls on the nonmoving party. Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988) (“this principle is reflected in our frequent holdings that summary judgment is proper where the nonmoving party fails to provide the court with specific indications that there is a genuine issue of fact”). The nonmoving party must present evidence that is “sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997).

Interpretation of an insurance policy and application of the policy to the facts in a case are questions of law. Minn. Prop. Ins. v. Slater, 673 N.W.2d 194, 196 (Minn. Ct. App. 2004). Likewise, the interpretation of a statute involves a question of law that this Court reviews de novo. Auto-Owners Ins. Co. v. Forstrom, 684 N.W.2d 494, 497 (Minn. 2004).

B. It Is the Kastnings' Burden to Prove the Farm Tractor Is an Uninsured Motor Vehicle.

A basic precept of insurance contract law is that the extent of the insurer's liability is governed by the contract into which it entered so long as the policy does not omit coverage required by law and does not violate applicable statutes. American Family Mut. Ins. Co. v. Ryan, 330 N.W.2d 113, 115 (Minn. 1983). "General principles of contract interpretation apply to insurance policies." Secura Supreme Ins. Co. v. M.S.M., 755 N.W.2d 320, 323 (Minn. Ct. App. 2008). It is the insured's burden to demonstrate he has coverage under an insurance policy. Id. at 323.

"When the language in an insurance policy is unambiguous, the language must be given its plain and ordinary meaning." Id.; see also Wanzek Constr., Inc. v. Employers Ins. of Wausau, 679 N.W.2d 322, 324 (Minn. 2004) (holding that "[w]hen insurance policy language is clear and unambiguous, the language used must be given its usual and accepted meaning"). Courts will not redraft insurance policies to provide coverage where the plain language of the policy indicates that no coverage exists. Id. Therefore, courts

should be vigilant against finding ambiguity when none actually exists. Secura Supreme Ins. Co., 755 N.W.2d at 323-24.

Under the terms of the State Farm policy issued to the Kastnings, it is the Kastnings' burden to prove the Farm Tractor was an "uninsured motor vehicle" so as to trigger coverage under the terms of the State Farm UM Insuring Agreement. As previously stated, an "uninsured motor vehicle" is defined under State Farm's policy as a "motor vehicle." (AA 67). To be a "motor vehicle," the Farm Tractor must meet three requirements. It must be required to be registered by Minn. Stat. Chapter 168, it must be designed for use on public highways, and it must have more than three wheels. (AA 67).

As the trial court properly concluded based on the undisputed facts of record, the Farm Tractor does not meet either of the first two requirements. (Add. 41-44). Accordingly, the Kastnings are not entitled to UM coverage. The trial court's dismissal should be affirmed.

C. State Farm's Policy Mirrors the No-Fault Act's Definition of Motor Vehicle That to Be an Uninsured Motor Vehicle It Must Be Required to Be Registered Under Minn. Stat. Chapter 168.

State Farm's policy mirrors the No-Fault Act's definition that to be a motor vehicle, the vehicle must be required to be registered pursuant to Chapter 168. (Compare Minn. Stat. § 65B.43, subds. 2 and 16 with AA 67). Because Chapter 168 specifically exempts the Farm Tractor from its scope, the Kastnings are not entitled to UM coverage.

1. This Court ruled in Great American Ins. Co. v. Golla that a farm tractor is exempt from Chapter 168.

This Court has ruled that a farm tractor is exempt from Chapter 168. In Great American Ins. Co. v. Golla, 493 N.W.2d 602, 605 (Minn. Ct. App. 1992), Dale Golla traveled by pickup truck on a county road towing behind a tractor steered by Marguerite Golla. The tractor was being towed because it would not start. When the Gollas reached the crown of a hill, they decided to unhook the tractor from the truck, roll it down the hill and pop the clutch to start the tractor. Id. at 603. A car came up behind the tractor and struck it in the rear, injuring the car's passenger. Id.

The issue was whether the tractor was a motor vehicle within the meaning of Minnesota's Safety Responsibility Act, Minn. Stat. § 170.54. Id. at 604. Since motor vehicle was not then defined in that context, this Court utilized the No-Fault definition of motor vehicle contained in Minn. Stat. § 65B.43, subd. 2, which is at issue here. Id. at 605. Based on that definition, this Court held that "Chapter 168 specifically exempts tractors from its scope. Minn. Stat. § 168.012, subd. 2 (1988)." Id. at 605. The tractor was not a motor vehicle under Minn. Stat. § 65B.43, subd. 2. Id.

The Kastnings argue that the Court's analysis and holding in Golla can be ignored, asserting Golla has been overruled by this Court's decision in Vee v. Ibrahim, 769 N.W.2d 770 (Minn. Ct. App. 2009). That is inaccurate.

In Golla, this Court utilized the No-Fault Act's definition of motor vehicle and applied it to Minnesota's Safety Responsibility Act, Minn. Stat. § 170.54, because that

statute at that time contained no motor vehicle definition. 493 N.W.2d at 604. After this Court's decision in Golla, the Legislature instructed the revisor of statutes to renumber Minn. Stat. § 170.54 and place it in Minn. Stat. Chapter 169. Based on this move, this Court held in Vee that Minn. Stat. § 170.54 is now subject to the definition of motor vehicle in Chapter 169, rather than the definition contained in Minn. Stat. § 65B.43, subd. 2. Vee, 769 N.W.2d at 774-75.

So while it is true this Court's decision in Vee has ramifications to cases involving Minn. Stat. § 170.54, it has no impact on this Court's interpretation of the No-Fault Act's definition of motor vehicle or its holding that Chapter 168 specifically exempts tractors from its scope.

2. The Farm Tractor is exempt under Chapter 168.

The Kastnings argue that despite this Court's holding in Golla, the Farm Tractor was required to be registered under Minn. Stat. Chapter 168. In order to reverse the trial court in this case, this Court must conclude that this Court in Golla was in error. It was not.

a. *The Farm Tractor is not a motor vehicle as defined in Minn. Stat. § 168.002, subd. 18.*

Minn. Stat. § 168.09, subd. 1, states when a motor vehicle is exempt from registration.

Registration required. No trailer or 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

Minn. Stat. Chapter 168 defines “motor vehicle” as “any self-propelled vehicle designed and originally manufactured to operate primarily on highways, and not operated exclusively upon railroad tracks.” Minn. Stat. § 168.002, subd. 18(a).⁵ Trailer is also a statutorily defined term and means “any vehicle designed for carrying property or passenger on its own structure and for being drawn by a motor vehicle” Minn. Stat. § 168.002, subd. 35. It does not include a trailer drawn by a truck-tractor semitrailer combination, which for purposes of registration are known as semitrailers. Id. Vehicle is defined by subdivision 42 as having the meaning given in Minn. Stat. § 168A.01, subd. 24. Under that definition, the term vehicle does not include “vehicles not constructed primarily for use on public roads and highways.” Minn. Stat. § 168A.01, subd. 24(b)(2).

As the undisputed facts make clear, by statutory definition, this Farm Tractor is not a motor vehicle, trailer or vehicle. It was not “designed and originally manufactured to operate primarily on highways,” and the Kastnings do not so contend. Minn. Stat. § 168.002, subd. 18(a). In fact, the Kastnings’ argument at pages 16-17 of their appellate brief ignores the definition of motor vehicle contained in Chapter 168, although they

⁵ As the trial court notes, Chapter 168 contains a different definition of motor vehicle than that found in the No-Fault Act at Minn. Stat. § 65B.43, subd. 2.

quote its definition. The other subparts of Minn. Stat. § 168.002, subd. 18, defining motor vehicle do not apply to this Farm Tractor so as to place it in the definition of a motor vehicle. The Farm Tractor also does not meet the definition of trailer, as stated in Minn. Stat. § 168.002, subd. 35.

Based on the definitions of motor vehicle and trailer, the trial court's conclusion that the Farm Tractor is not an uninsured motor vehicle should be affirmed.⁶ When the text of the law is plain, this Court "must not engage in any further construction." Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413, 416 (Minn. 2002). The words are statutorily defined. The definitions provided must be applied. Minn. Stat. § 645.08, subd. 1; Kiges v. City of St. Paul, 240 Minn. 522, 62 N.W.2d 363, 371 (1953) (when language of statute embodies a definite meaning, court should not nullify obvious requirement by construction). No registration of this Farm Tractor is required under Chapter 168. It is not an uninsured motor vehicle under the terms of State Farm's policy and as defined by the Minnesota Legislature in Minn. Stat. Chapter 65B.

⁶ To be a tractor under Minn. Stat. § 168.002, subd. 34, it must be a "motor vehicle." As is evident, there are tractors other than farm-type tractors which could meet the statutory definition of a motor vehicle contained in Minn. Stat. § 168.002, subd. 18. See, e.g., Fruehauf Trailer Co. v. Highway Trailer Co., 54 F.2d 691, 692 (E.D. Mich. 1931) (describing a tractor-vehicle as a four-wheel truck of some kind). But under Minn. Stat. § 168.002, the meaning of motor vehicle is that contained in Minn. Stat. § 168.002, subd. 18. Id. at subd. 1.

b. A Farm Tractor drawing an implement of husbandry temporarily on a highway is exempt from registration under Chapter 168.

Moreover, Minn. Stat. § 168.012, subd. 2, specifically addresses exemptions for farm vehicles, which includes implements of husbandry, as defined in Section 168A.01, subd. 8. Minn. Stat. § 168.012, subd. 2, states:

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. § 168A.01, subd. 8, defines “implement of husbandry” as

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.

As the trial court appropriately ruled, Mr. Schenk’s Farm Tractor was a “tractor for drawing threshing machinery and implements of husbandry” that was “temporarily moved upon the highway.” (Add. 43). The Farm Tractor, for this reason also, is not required to be registered under Chapter 168. *See, e.g., Cousins v. Dennis*, 767 S.W.2d 296, 298 (Ark. 1989) (applying same definition of implement of husbandry and holding a tractor pulling a bush hog mower is clearly within the definition of an implement of husbandry and as such was not required to be registered under Arkansas law).

The undisputed fact is this Farm Tractor came with a three-point hitch to which Mr. Schenk attached a disc mower he then used for mowing hay/grass, which he would then bale. The only lights on the Farm Tractor are over its back wheels, which are designed to broadcast ahead of the implement being pulled by the Farm Tractor. (Schenk Depo., p. 50; AA 125). Mr. Schenk was temporarily moving his Farm Tractor on Highway 169 with the mower attached when the accident occurred. The Farm Tractor was designed for drawing implements of husbandry temporarily down a highway, and therefore is also exempt under Minn. Stat. § 168.012, subd. 2.

C. To Adopt the Kastnings' Argument Will Result in a Wholesale Change in the Law Regarding Farm Tractors, Which Chapter 168 Does Not Support.

The Kastnings' argument depends, in large part, on the fact that Mr. Schenk chose to use his tractor on occasion to visit friends, buy groceries, etc. The reason Mr. Schenk did so, and as he admits, was because he had no valid Minnesota driver's license. But under Minn. Stat. § 171.03, a person without a driver's license is exempt only while "driving or operating any farm tractor or implement of husbandry temporarily on a highway." Minn. Stat. § 171.03(c). Mr. Schenk's use of the Farm Tractor, on occasion, to evade the ramifications of his unlicensed status does not support the Kastnings' argument that this Farm Tractor is a motor vehicle required to be registered under Chapter 168. If anything, it supports State Farm's position.

The ramifications to farmers will be enormous if this Court adopts the Kastnings' view that Minnesota law mandates farm tractor registration based on this record. The

Kastnings' argument is not supported by Chapter 168 read as a whole. And when applying a statute's plain language, this Court must take care "to avoid absurd results and unjust consequences." Frandsen v. Ford Motor Co., 801 N.W.2d 177, 181 (Minn. 2011) (quotation omitted). There is no absurdity in the statute's plain language, but to construe, as the Kastnings suggest, would lead to such consequences.

The Kastnings' other arguments, such as their assertions regarding a Ford F-150 pickup truck and a Crown Victoria car, are irrelevant. (Appellants' Brief, pp. 20-21). A Ford F-150 pickup truck and Crown Victoria automobile obviously meet the Minn. Stat. § 168.002, subd. 18 definition of motor vehicle. A police patrol as well as an unmarked vehicle used in general police work are specifically exempt pursuant to Minn. Stat. § 168.012, subds. 1(b)(3) and 1(c). The Kastnings do not explain how a Ford F-150 pickup truck would be exempt under Minn. Stat. § 168.012, and whether it would be exempt or not is not relevant here.

D. The John Deere 3020 Was Not Designed for Use on Public Highways.

Because the Farm Tractor is not required to be registered under Minn. Stat. Chapter 168, the Farm Tractor is not a motor vehicle for UM purposes. Moreover, the Farm Tractor also does not meet the second requirement either. It was not designed for use on public highways. On that ground also, the trial court's holding the Farm Tractor is not an uninsured motor vehicle should be affirmed.

The statutory No-Fault Act definition of "motor vehicle" requires that a "motor vehicle" be designed "for use primarily upon public roads, highways or streets in the

transportation of persons or property.” Minn. Stat. § 65B.43, subd. 2. The State Farm policy requires that a “motor vehicle” be “designed for use on public highways.” (AA 67).

The trial court concluded that the State Farm policy definition is a more expansive definition of a motor vehicle because it omits the statutory term “primarily” and “transportation of persons or property,” but ruled it was not ambiguous. (Add. 43-44). While the Farm Tractor may be driven on public highways, the Farm Tractor was not designed for use on the public highway. Golla, 493 N.W.2d at 605 (“although a tractor *can* be used on a public road, it is designed primarily for use in fields”) (emphasis in original). As the trial court concluded, based on the undisputed facts of record, “[a]n examination of the design of the John Deere 3020 reveals it lacks many design elements that would enable it to travel safely, effectively, and comfortably on public highways.” (Add. 44). That ruling should be affirmed.

The common meaning of “designed for” means the purpose for which something was constructed. U.S. v. Sommerhauser, 58 F.2d 812, 813 (D. Kan. 1932). In Sommerhauser, a Chevrolet truck was held not to come within the description of property subject to seizure under the Prohibition Act as “property designed for the manufacture of liquor intended for use in violating this chapter or which has been so used” Id. at 813. In holding that the Chevrolet truck was not subject to seizure, the court said:

The government contends the word “designed” means the use to which the owner intends to put the property. “Design” is sometimes synonymous with “intent”; but physical property has

no intention; and ordinarily, if property is spoken of as “designed,” it refers to the purpose for which it was constructed. An ordinary truck may be used as an aid in the manufacture of liquor; the owner intends to so use it; but the owner did not design the truck; the truck was designed by its manufacturer for the transportation of any commodity; no person would ever colloquially say that an ordinary truck was “designed for the manufacture of liquor.”

Id.

As the South Carolina Supreme Court held in Anderson v. State Farm Mut. Auto. Ins. Co., 442 S.E.2d 179, 181 (S.C. 1994), “[a] farm tractor is defined as a machine designed and intended to be used as an agricultural implement and not as a means of transportation on the highway, although occasionally it may operate on a highway.” Id. (citations omitted). Therefore, the South Carolina Supreme Court, applying the same definition of motor vehicle at issue here, held that a “farm tractor does not come under the plain and unambiguous definition of a motor vehicle because it is not ‘designed for use upon a highway’ although it may be incidentally used on a highway.” Id.

The flaw in the Kastnings’ argument is there is no evidence showing that any aspect of the Farm Tractor was designed for public highways. While the Farm Tractor can be legally driven on public roads for limited purposes with a slow moving vehicle emblem, it certainly was not designed for use on the public highways. It simply is not able to travel with the flow of traffic.

The Farm Tractor has slow acceleration. Mr. Schenk described his Farm Tractor running “wide open” could only reach a top speed of 21 or 22 miles per hour. (Schenk Depo., p. 94; AA 136). It is not equipped with headlights, brake lights or turn signals.

The plain and ordinary meaning of “designed for use on public highways” does not encompass a vehicle solely because it can legally travel on public roads for a limited distance but with an inability to travel with the flow of traffic, which is why it is driven on the road’s shoulder. So although farmers may drive their tractors on public roads, this is not a tractor’s intended purpose. Tractors are not like cars, trucks, buses or motor-cycles, which are designed for travel on public roads. For this reason also, the Farm Tractor is not an uninsured motor vehicle. The trial court’s grant of summary judgment should be affirmed.

E. Mr. Berke’s Affidavit Does Not Create a Material Issue of Fact.

The Kastnings cannot recast the Farm Tractor into something it is not by citing to the affidavit of Lanny Berke, a mechanical engineer. (AA 159). Mr. Berke’s affidavit does not create a material issue of fact.

Mr. Berke does not and could not state that this Farm Tractor was designed to operate on public highways. (Id.) Nor does Mr. Berke state how, based on his review of the Farm Tractor’s specifications and owner/operator’s manual, he reaches his conclusion that this Farm Tractor was “not designed or adapted exclusively for agricultural, horticultural, or livestock operations.” (Id.) He states, without explanation, for example, that the Farm Tractor “was designed and commonly used for snow plowing

...” (Id.) But it could only be used for that purpose if the owner chose to purchase and attach a front end loader. (Schenk Depo., p. 45; AA 124; R.A. 1, 7). The fact that a Farm Tractor, with a front end loader attached, can be used by farmers to remove snow from their property or for general lifting or construction, does not make it a “motor vehicle required to be registered” under Chapter 168, nor does it make it designed for use on the public highway.

F. The Doctrine of Reasonable Expectations Cannot Be Used to Grant the Kastnings UM Coverage.

In mandating Minnesota No-Fault insurance, including UM coverage, the Minnesota Legislature set out by statute what constitutes an uninsured motor vehicle. Minn. Stat. §65B.43, subs. 2, 16, 18; Minn. Stat. § 65B.49, subd. 3a. State Farm’s policy is in accord with that statutory definition. (AA 67-68). State Farm’s policy definition of motor vehicle utilizes terms that significantly mirror the definition of motor vehicle as set forth in the No-Fault Act, which defines the coverage required by law. Nonetheless, the Kastnings argue that at the time they purchased their State Farm policy they reasonably expected their auto policy to provide UM coverage if they were involved in an accident with a tractor pulling a farm implement on a roadway. The Kastnings, however, have never so testified. As the trial court properly held, the doctrine of reasonable expectations has no application. (Add. 45-46).

The doctrine of reasonable expectations “is generally applied to protect individuals where the insurance policy terms have been misrepresented or misunderstood, or where a

legal technicalities would defeat coverage which the insured reasonably believed was in place.” Reinsurance Ass’n of Minnesota v. Johannessen, 516 N.W.2d 562, 565-66 (Minn. Ct. App. 1994), citing Atwater Creamery v. W. Nat’l Mut. Ins., 366 N.W.2d 271, 277-79 (Minn. 1985). The Minnesota Supreme Court has clarified that the doctrine of reasonable expectations generally applies only if a policy contains ambiguous language or in an “extreme situation” as when the policy contains a hidden exclusion. Carlson v. Allstate Ins. Co., 749 N.W.2d 41, 49 (Minn. 2008). Neither of these situations exists here.

There is no ambiguity. Here, State Farm’s definition of a motor vehicle for UM purposes appears in plain language, under an appropriate heading and in reasonably sized text. The terms of the policy are neither hidden nor obscure.

And to accept the Kastnings’ argument, this Court must necessarily conclude that an insurance policy which essentially mirrors the statutory definitions is not in accord with an insured’s reasonable expectation. No case so supports, and such a holding would be contrary to public policy as enunciated by the Minnesota Legislature. It is the Minnesota Legislature, by its enactment of Minnesota’s No-Fault Act, including UM coverage, that has determined Minnesota’s public policy. Mattson v. Flynn, 216 Minn. 354, 13 N.W.2d 11, 16 (1944) (public policy determined by the Minnesota Legislature).

In Carlson, 749 N.W.2d 49, the Minnesota Supreme Court noted that commentators “have expressed concern that the [reasonable expectations] doctrine enables courts to vitiate the unambiguous terms of a policy simply to achieve desirable

outcomes.” Here, to apply the doctrine of reasonable expectations would be for the Court to vitiate the definition of motor vehicle as defined by the Minnesota Legislature for UM coverage purposes. No policyholder can have an objectively reasonable expectation of coverage contrary to that set out by the Minnesota Legislature.

The trial court correctly held 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 Minn. Stat. Chapter 168, would not qualify as ‘motor vehicles’ under the Policy.” (Add. 46-47).

CONCLUSION

Respondent State Farm respectfully requests the judgment of dismissal be affirmed.

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Dated: May 23, 2012

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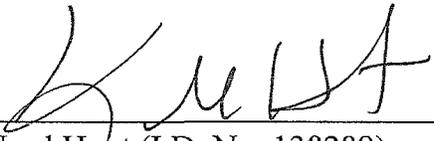
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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,939 words. This brief was prepared using Word Perfect 10.

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