

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DODSON INTERNATIONAL PARTS, INC.

RESPONDENT,

v.

**NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURG PENNSYLVANIA,
ET AL.**

APPELLANT.

DOCKET NUMBER WD71893

DATE: November 30, 2010

Appeal From:

Jackson County Circuit Court
The Honorable Peggy Stevens McGraw, Judge

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Attorneys:

Kirk R. Presley and Kana R. Lydick, Kansas City, MO, for respondent.

John W. Cowden, David M. Eisenberg and Jarod G. Goff, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Jackson County

Before Division Three Judges: Alok Ahuja, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

National Union Fire Insurance Company appeals from a judgment in a declaratory judgment action filed by Dodson International Parts, Inc., which found that an insurance policy issued by National Union to Dodson was ambiguous and thus provided coverage for a third party claim asserted against Dodson, and which found that National Union's denial of coverage was without just cause or excuse.

AFFIRMED.

Division Three holds:

(1) The application of Section I, Coverage A of the Policy to Products/Completed Operations coverage is ambiguous. As a result, the application of the care, custody, or control exclusion described in Section I, Coverage A to Products/Completed Operations coverage is ambiguous. As such, we are required to construe the Policy, and in particular, the application of the care, custody, or control exclusion, in Dodson's favor. Therefore, the care, custody, or control exclusion cannot be applied to defeat coverage for Dodson's claim arising out of an underlying lawsuit.

(2) Dodson was not collaterally estopped to deny that the aircraft was in its care, custody, or control when it was damaged by the jury verdict in the underlying lawsuit. Even if the Policy was not ambiguous, National Union's collateral estoppel claim would be unavailing because the final judgment in the underlying lawsuit did not involve the same issue sought to be precluded. In particular, the underlying lawsuit did not require disposition of whether the damage to an aircraft Dodson salvaged occurred *when* the aircraft was in the Dodson's care, custody, or control.

(3) The trial court did not abuse its discretion in finding that National Union denied coverage without just cause or excuse under applicable Kansas law.

Opinion by: Cynthia L. Martin, Judge

November 30, 2010

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