



**In the Missouri Court of Appeals
Eastern District
DIVISION ONE**

CUSTOM HARDWARE ENGINEERING)	No. ED91441
& CONSULTING, INC.,)	
)	
and)	
)	
DAVID YORK,)	Appeal from the Circuit Court
)	of St. Louis County
Appellants,)	06CC-003373
)	
vs.)	Honorable Tom DePriest
)	
ASSURANCE COMPANY OF)	
AMERICA,)	
)	
Respondent.)	Filed: August 11, 2009

OPINION SUMMARY

Custom Hardware Engineering & Consulting, Inc. and David York¹ appeal the grant of summary judgment in favor of their insurer, Assurance Company of America, on their claims for declaratory judgment and breach of contract. In the underlying case, Plaintiffs alleged: (1) that, under the terms of an insurance policy, Assurance had a duty to defend them in a federal lawsuit brought by Storage Technology Corporation; and (2) that Assurance breached the terms of the insurance policy by failing to provide Plaintiffs with a defense.

AFFIRMED.

Division One holds:

Assurance did not have a duty to defend Plaintiffs in the federal lawsuit because Assurance met its burden of showing that a policy exclusion applied and precluded coverage. Therefore, the trial court did not err in granting summary judgment in favor of Assurance.

¹ David York is the President and Chief Executive Officer of Custom Hardware. For purposes of appeal, Custom Hardware and David York will be collectively referred to as "Plaintiffs."

Opinion by: Glenn A. Norton, J. Kurt S. Odenwald, P.J., & Patricia L. Cohen, J., concur

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