

STATE OF MICHIGAN  
COURT OF APPEALS

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MARINE OFFICE OF AMERICA CORPORATION, and  
THOMPSON McCULLY COMPANY,

Plaintiffs-Appellants,

v

DAVID FRANKLIN BLOOM, and  
FARM BUREAU INSURANCE,

Defendants-Appellees.

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January 10, 1992

**UNPUBLISHED**  
No. 129927

Before: Holbrook, Jr., P.J., and Brennan and Cavanagh, JJ.

PER CURIAM.

Property insured by the plaintiff Marine Office of America Corporation was damaged when it was involved in a collision with an automobile insured by the defendant Farm Bureau Insurance. Plaintiff commenced this subrogation action seeking property protection insurance benefits from defendant under the automobile's no-fault insurance. Pursuant to MCR 2.116(C)(10), the trial court granted defendant's motion for summary judgment. Plaintiff appeals claiming that the trial court erred in holding that the damaged property was excluded from property protection benefits under the no-fault insurance act. MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.* We disagree and affirm.

The no-fault act provides for compensation for property damage as follows:

Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125 and 3127. [MCL 500.3121(1); MSA 24.13121(1).]

The act then specifically excludes certain kinds of property damage from this property protection insurance coverage. Section 3123(1)(a) provides in pertinent part:

(1) Damage to the following kinds of property is excluded from property protection insurance benefits:

(a) Vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power, unless the vehicle is parked in a manner as not to cause unreasonable risk of the damage which occurred. [MCL 500.3123(1)(a); MSA 24.13123(1)(a).]

Consequently, the exclusion in § 3123(1)(a) is applicable when damage is sustained by vehicles operated or designed for operation on a public highway by power other than muscular power. Pioneer State Mutual Ins Co v Allstate Ins Co, 417 Mich 590, 595-596; 339 NW2d 470 (1983).

In this case, the damaged property, an asphalt-paving machine, is subject to the exclusion because it is a vehicle "in, upon, or by which any person or property is or may be transported or drawn upon a highway," see MCL 257.79; MSA 9.1879, operated by power other than muscular power, upon a public highway at the time of the accident. Plaintiff's argument that the statutory definition of "motor vehicle," found in MCL 500.3101(2); MSA 24.13101(2), is applicable here has consistently been rejected. Pioneer, *supra* at 596 and Degrandchamp v Michigan Mutual Ins Co, 99 Mich App 664, 667-668; 299 NW2d 18 (1980).

The trial court's decision in this case was correct and defendant was entitled to summary judgment as a matter of law.

Affirmed.

/s/ Donald E. Holbrook, Jr.  
/s/ Thomas J. Brennan  
/s/ Mark J. Cavanagh