

**COURT OF APPEALS
DECISION
DATED AND FILED**

DECEMBER 16, 1997

**Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin**

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1370

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

HERITAGE MUTUAL INSURANCE COMPANY,

PLAINTIFF-RESPONDENT,

v.

ECKEL IMPLEMENT COMPANY, INC.

DEFENDANT,

**FEDERATED MUTUAL INSURANCE COMPANY AND
AMERICAN HARDWARE MUTUAL INSURANCE COMPANY,**

DEFENDANTS-APPELLANTS,

**ALFA-LAVAL AGRI INC., HOME INSURANCE COMPANY
AND HOME INDEMNITY COMPANY,**

DEFENDANTS-THIRD-PARTY PLAINTIFFS,

v.

CYCLONE, INC.,

**THIRD-PARTY DEFENDANT-THIRD-
PARTY PLAINTIFF,**

LEESON ELECTRICAL CORP.,

THIRD-PARTY DEFENDANT.

APPEAL from orders of the circuit court for Trempealeau County: ROBERT W. WING and JOHN A. DAMON, Judges. *Reversed and cause remanded.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Federated Mutual Insurance Company and American Hardware Mutual Insurance Company appeal a summary judgment finding liability coverage for the acts of its insured, Eckel Implement Company, Inc. Eckel installed a farm feeding system on the farm of Michael Walski. An electric motor in the farm feeding system eventually malfunctioned, causing a fire and substantial property damage to Walski's farm property. Heritage Mutual Insurance Company provided indemnity coverage to Walski and covered his loss under the policy. Heritage Mutual sued Federated Mutual and American Hardware in subrogation of Walski's claims. Eckel had not paid the premiums on its liability policies with Federated Mutual and American Hardware at the time of the farm feeding system fire, and they claimed that their liability policies had thereby lapsed, saving them from any liability to Heritage Mutual as Walski's subrogee.

Federated Mutual and American Hardware each sought summary judgment on the ground that their liability policies no longer provided coverage at the time of the fire and property damage. The trial court ruled that the policies still provided Eckel liability coverage; the policies were in effect during part of the

time that the defective motor was operating on Walski's farm, and these dates were the ones that controlled coverage, regardless of whether the damage itself took place inside or outside the policy term. The trial court correctly granted summary judgment if there was no dispute of material fact and Heritage Mutual deserved judgment as a matter of law. See *Powalka v. State Life Mut. Assur. Co.*, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). Because the damages did not accrue during the policy period, we reverse the summary judgment and remand the matter with directions to dismiss Federated Mutual and American Hardware from the lawsuit.

First, the Federated Mutual and American Hardware policies covered liability for property damage occurring "during the policy period." These policies, by their plain terms, make the date of damage, not the date of negligence, the operative date. We, like trial courts, must apply the policies' plain meaning. See *Smith v. Atlantic Mut. Ins. Co.*, 155 Wis.2d 808, 811, 456 N.W.2d 597, 599 (1990). Both policies had lapsed by the date of the fire, and, therefore, Walski's property damage did not take place "during the policy period." As a result, both policies, by their plain terms, provided no liability coverage for Walski's property damage.

Second, the cases Heritage Mutual cites dealt with policies that covered occurrences or accidents during the policy period. See *Lund v. American Motorist Ins. Co.*, 797 F.2d 544 (7th Cir. 1986); *Wisconsin Elec. Power Co. v. California Union Ins. Co.*, 142 Wis.2d 673, 419 N.W.2d 255 (Ct. App. 1987); *Western Cas. & Sur. Co. v. Budrus*, 112 Wis.2d 348, 332 N.W.2d 837 (Ct. App. 1983). Those policies, by references to occurrences and accidents, defined covered events in terms of the date of the negligence. Those cases do not control policies, like those here, that make the date of damage the operative date.

By the Court.—Orders reversed and cause remanded for further proceedings.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

