

# 10TH CIRCUIT AFFIRMS DECISION IN FAVOR OF WALKER WILCOX CLIENTS

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Walker Wilcox attorneys successfully defended various insurer clients against an appeal before the United State Court of Appeals for the Tenth Circuit of a District Court decision finding there was no coverage for a pilot against claims arising from a 2008 crash involving his homebuilt, personal aircraft under a product liability policy issued to Garmin International, Inc.

Oregon resident Henry P. Bartle crash landed his homebuilt airplane in February 2008 while on a sightseeing flight with his stepdaughter and her friends. When his passengers filed suit against him and others for their injuries, Mr. Bartle tendered the defense and indemnification of the lawsuit to his own personal aircraft liability insurer and, later, Garmin's insurers. With regard to the tender to Garmin's insurers, Mr. Bartle claimed that he built his aircraft in a "joint venture" with Garmin after receiving a discount on a navigational system installed in his aircraft from his best friend and neighbor who was a Garmin employee. Mr. Bartle claimed that relationship entitled him to coverage as an "Insured" under Garmin's product liability policy.

The insurers filed a declaratory judgment in the District Court of Kansas seeking, in part, a ruling that Mr. Bartle did not qualify as an "Insured" under the Garmin policy. Although Mr. Bartle claimed that there was clear evidence of a "joint venture" or other relationship between himself and Garmin to establish that he was an "Insured," he submitted over 700 pages of documents as "evidence" in response to the insurers' Motion for Summary Judgment on that issue without proper citation. The insurers objected to this "document dump" and blatant violation of the court rules. The District Court agreed and ultimately refused to consider all evidence that did not conform to the rules regarding proper citation. The Court then found that any evidence that was properly submitted failed to establish any relationship that would warrant coverage.

On appeal, the Tenth Circuit Court of Appeals found the District Court "acted well within its discretion in setting aside the unwieldy mass of data that Mr. Bartle attempted to rely on without providing correct, specific references in accordance with the local rules." The Court noted that the burden rested with Mr. Bartle's attorneys "desiring to practice before a court to submit evidence in conformity with the rules of that court."

Turning to the merits, the Tenth Circuit then evaluated the evidence considered by the District Court. The Court noted that the plain language of the Policy required more than merely proof of a joint venture, partnership or other entity to qualify as an "Insured." Rather, it agreed with the insurers that Mr. Bartle also must prove Garmin had an ownership interest in that entity, was obligated to provide insurance for, or exerted financial or managerial control over that entity. The Court did not find any evidence of any of those factors in the evidence properly presented. Although Mr. Bartle argued the existence of an "Insured" relationship in documents not considered, the Court found "the merits cannot be separated from the

process, and ultimately Mr. Bartle bore the responsibility to present evidence that would allow a rational trier of fact to find in his favor.”

*Certain Underwriters at Lloyd’s London et al. v. Garmin International Inc. et al.*, No. 13-3310, 2015 WL 1383117 (10th Cir. March 27, 2015)