

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 16 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

DONALDSON BROS. READY MIX,  
INC., a Montana corporation; CHARLES  
F. DONALDSON; CATHERINE L.  
DONALDSON; THOMAS SIMPSON,

Plaintiffs - Appellants,

v.

PHENNEGER & MORGAN, INC., a  
Washington corporation,

Defendant-third-party-  
plaintiff - Appellee,

v.

MCLUCAS AND ASSOCIATES, INC.;  
GLENDA MCLUCAS,

Third-party-defendant -  
Appellees.

No. 08-35912

D.C. No. 9:06-cv-00138-DWM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

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\*This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Argued and Submitted November 5, 2009  
Portland, Oregon

Before: KOZINSKI, Chief Judge, FISHER and PAEZ, Circuit Judges.

Donaldson Bros. et al. (“Donaldson”) appeal from the district court’s order granting Phenneger & Morgan, Inc.’s motion for summary judgment. We have jurisdiction under 28 U.S.C. § 1291. Our review is de novo, *Mendez v. County of San Bernardino*, 540 F.3d 1109, 1123 (9th Cir. 2008), and we affirm.

The district court correctly concluded that Donaldson is not entitled to equitable indemnification as a matter of law. Donaldson failed to raise a genuine issue of material fact as to whether it was “free from any active negligence contributing to the injury causing accident.” *Fletcher v. City of Helena*, 517 P.2d 365, 370 (Mont. 1973).

Donaldson abandoned on appeal any claim it might have had for indemnification based on breach of a contractual duty.

The district court did not err by granting summary judgment on Donaldson’s entire claim for indemnification. Although a district court may not grant summary judgment on claims not addressed in the motion for summary judgment, *Greene v.*

*Solano County Jail*, 513 F.3d 982, 990 (9th Cir. 2008), the motion need not address all factual allegations potentially relevant to the claim.

**AFFIRMED.**