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**Trucker Looking For A Place To Sleep Between Deliveries Is Operating  
“In The Business” Of Trucking Company Under Non-Trucking Use Policy**

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In a new published opinion, the Court of Appeals for the Sixth Federal Circuit examined whether a truck driver operating a leased tractor-trailer was operating “in the business” of the trucking company for purposes of insurance coverage when the driver fell asleep while looking for a place to rest after completing a delivery, and was involved in a fatal accident.

In *Auto-Owners Ins. Co. v Redland Ins. Co.*, \_\_\_ F3d \_\_\_ (6<sup>th</sup> Cir. 2008), the United States Court of Appeals closely examined the language of a commercial trucking insurance policy to determine whether the policy applied to provide benefits for a fatal accident. In this case, R&T Trucking leased several tractor-trailer rigs to Everhart Trucking. A lease agreement between T&T and Everhart required that Everhart maintain a “blanket policy of insurance” covering the leased vehicles while they were being engaged in Everhart’s business. Everhart obtained the required blanket insurance policy from Auto-Owners. The lease agreement also provided that R&T Trucking was required to maintain “all other insurance coverage”. For this reason, R&T had

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secured a non-trucking liability policy, also referred to as a “bobtail” policy, from Redland Insurance to provide coverage for the trucks when they were not in use by Everhart.

In June 2004, truck driver David Gale completed the delivery of a load of coiled steel to Grand Rapids, Michigan after a long day of driving. He then called Everhart’s trucking dispatcher, and left a message indicating that he had finished his delivery, and was going to find a place to sleep, and would be driving towards Gary, Indiana in anticipation of receiving a return delivery assignment the next morning. Unfortunately, Gale fell asleep at the wheel before he could find a place to rest, and collided with another vehicle, killing the driver.

Redland Insurance claimed that the truck was not covered at the time of the accident by the non-trucking use policy it had issued to R&T Trucking, denied coverage to Gale and R&T, and also denied them a defense. After Auto-Owners tendered a defense on behalf of Everhart, Gale and R&T Trucking, it ultimately settled the claims arising out of the accident for \$1 million. Auto-Owners then obtained an assignment of claims from R&T and Everhart, and filed suit against Redland. At issue in the lawsuit, and the subject of the appeal, was whether Redland’s “non-trucking use” (or “bobtail”) policy provided coverage at the time of the accident. The Redland policy excluded coverage under the following conditions:

- (1) when a leased truck transports goods from one location to another;
- (2) when those goods are being loaded or unloaded from the truck;
- (3) when the truck is on a “return trip” from a delivery;
- (4) when the truck has been “dispatched” to handle a job; or
- (5) when the truck is otherwise being used “in the business” of the lessee.

After determining that the first four exclusions were inapplicable in this case, the Court focused its analysis on number (5), the “in the business” exclusion. The question for the Court was whether the truck was being used “in the business” of Everhart, when Gale was on his way to find a place to sleep, or while traveling in the direction of his next presumed, although not confirmed, dispatch.

The Court first found that the “in the business” exclusion “naturally” covered Gale’s use of the truck, because he was not engaged in “some frolic and detour”, or heading somewhere for his own purposes. The court determined that, whether the accident was characterized as occurring while Gale was (1) driving somewhere to get some sleep, or (2) while heading in the direction of his next anticipated load, Gale was operating “in the business” of Everhart Trucking. The Court reached this result based upon its conclusion that both activities were related to and directly served Everhart’s commercial interests.

Regarding driving somewhere to sleep, the Court reasoned that because Federal regulations<sup>2</sup> require truckers to spend a specific amount of time “off-duty”, that his getting some sleep was a legal prerequisite for Gale to be available to make another delivery for Everhart the next day. Referencing several other decisions<sup>3</sup>, the Court stated that a driver is considered to be operating “in the business” of a motor carrier when he is driving to find a place to sleep for the night.

The Court also noted that at the time of the accident, Gale was heading in the direction of Gary, Indiana with the expectation that he would be assigned a load from that area the next day. Testimony established that it was common for drivers to proceed to the Gary area to pick up other loads, after delivering a load in Grand Rapids. By traveling in the direction of Gary, Indiana, the Court determined that Gale was positioning his truck so he would be able to pick up the load which would likely be arranged for him the next day. The Court found that this also served the commercial interests of the motor carrier.

The Court then went on to distinguish this case from an earlier decision, *Engle v Zurich-American Ins. Group*, 216 Mich App 482 (1996). In the *Engle* case, the Court held that the “in the business” exclusion was ambiguous, and then construed it against the insurance company, awarding coverage to the insured. However, the only exclusion in the non-trucking use policy from *Engle* was an “in the business” exclusion. In contrast, the policy in *Auto-Owners v Redland* contained multiple, specific exclusions, utilizing “in the business of” as merely a final, catch-all exclusion. The Court found that, because there were several more specific exclusions in the policy, the inclusion of the “in the business” exclusion would have been superfluous if it did not apply to a driver positioning himself to pick up an order reasonably anticipated the next day, or to a driver looking for a place to get some necessary sleep. Because there was no alternative purpose for the exclusion evident to the Court, it reasoned that the exclusion was not ambiguous, unlike the exclusion from *Engles*.

The Court also distinguished this case from *Zurich-American Ins. Co. v Amerisure Ins. Co.*, 215 Mich App 526 (1996). In *Zurich-American v Amerisure*, the owner of the truck had leased it to a motor carrier. The accident occurred while an employee of the owner was driving it to a repair facility for repairs. The Court in that case held that the truck had not been being used “in the business” of the motor carrier. Instead, the point of moving the truck was to repair it consistent with the owner’s contractual duty under the lease agreement to “keep the tractor in roadworthy condition and repair.” It was not being driven to further the commercial interests of the motor carrier.

*Auto-Owners v Redland* presents an interesting suggestion that the Courts are becoming more willing to examine the context of the use of the truck at the time of the accident in

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<sup>2</sup>See 49 CFR §395.2.

<sup>3</sup>*Greenwell v Boatwright*, 184 F3d 490 (6th Circuit 1999); *Mahaffey v Gen. Sec. Ins. Co.*, 543 F3d 738 (5th Circuit 2008).

determining whether a Non-trucking Use policy affords coverage for a specific loss. In this case, the Court's specifically examined whether the activity "related to and directly served" the motor carrier's commercial interests, to determine whether it was being used "in the business". This decision may provide some ammunition for insurers to help challenge the *Engle v Zurich-American Ins. Group* holding that such language is ambiguous.