



## Is the Motor Carrier Insured for the Claim from the Sleeping Independent Contractor?

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Another decision on independent contractors that did not get as much attention as the Supreme Court's ruling refusal to hear the challenge to AB5 was a recent decision by the United States District Court for the Middle District of Pennsylvania which recently decided that a sleeping independent contractor was an employee, and therefore, the motor carrier's insurance policy did not cover the claims against the motor carrier and driver. Although the decision is not surprising, this could create an issue for the motor carrier being uninsured for a claim under the standard commercial auto policies issued to motor carriers.

The case of *United Financial Casualty Company v. Mid State Logistics and Charles Rankin*, 2022 U.S. Dist. LEXIS 104532 (June 10, 2022) decided a coverage action filed by United Financial arising out of a May 2018 accident that occurred on Interstate 4 in Florida. Driver Charles Rankin was team driving with Clay Rosenbrooks when Rankin ran into a guardrail and overturned the truck. At the time of the accident, Rosenbrooks was asleep in the sleeper and suffered injuries during the accident. Rosenbrooks and his wife

sued Rankin and the trucking company, Mid State Logistics, for their damages in Pennsylvania Court of Common Pleas.

At the time of the accident, Rankin was driving a tractor owned by Rosenbrooks which was leased to Mid State Logistics. As part of the lease agreement, Rosenbrooks was responsible for his own workers compensation insurance, and he also assumed complete responsibility for his own drivers or employees. A disputed fact in the case was whether Rankin was working for Mid State or Rosenbrooks.<sup>1</sup>

A year after suit was filed, United Financial filed a declaratory judgment action on whether it had a duty to defend and indemnify Mid State Logistics and Rankin for the claims from Rosenbrooks. United Financial argued that its insurance agreement with Mid State included an exclusion against claims brought by employees. The question to the Court was whether Rosenbrooks, an independent contractor, ceased to be an employee when he moved to the sleeper and Rankin began driving.

The court looked at two specific exclusions in the insurance agreement excluding coverage for bodily injury to employees arising out of the employee's employment and bodily injury to a fellow employee while in the course of employment or while performing duties related to the trucking company's business. Lastly, the Court looked at the MCS-90 Endorsement which does not apply to injuries of the insured's employees while engaged in the course of employment. The question came down to whether Rosenbrooks was an employee.

Because the policy did not define the term "employee," the Court looked to 49 C.F.R. § 390.5 for the definition of employee. 49 C.F.R. § 390.5 defines an employee as an individual employed by employer and within the course and scope of employment affects commercial motor vehicle safety. The definition further notes that the term includes drivers of commercial motor vehicles including independent contractors while in the course of operating the commercial motor vehicle. The argument came down to whether Rosenbrooks was considered an employee because he was sleeping and not actively operating the commercial motor vehicle when the accident occurred.

The Court applying the definition of employee from 49 C.F.R. § 390.5 determined that Rosenbrooks was an employee because he was employed by an employer, Mid State Logistics, and when he was injured, he was directly affecting commercial motor vehicle safety as one-half of a driving team. Because Rosenbrooks was determined to be an employee, the United Financial policy exclusions for injuries to employees applied, and it had no duty to defend or indemnify the driver or the trucking company against any claims from Rosenbrooks. <sup>2</sup>

The decision is important because the motor carrier who believes it is covered by insurance may end up being uninsured on a claim from their independent contractor drivers.



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[1] *United Fin. Cas. Co.*, 2022 U.S. Dist. LEXIS 104532, at \*6 (M.D. Pa. June 10, 2022).

[2] *United Fin. Cas. Co.*, 2022 U.S. Dist. LEXIS 104532, at \*13.