

## 6th Circ. Affirms Trucking Co.'s Coverage For \$2M Settlement

By **Shane Dilworth**

*Law360 (July 7, 2022, 5:00 PM EDT)* -- The Sixth Circuit upheld a jury's decision ordering a general liability insurer to cover a trucking company's \$2 million settlement over an accident that required the amputation of a man's legs, finding that exclusions focusing on the man's employment status with the company were inapplicable.

The three-judge panel explained in a published ruling Wednesday that an administrative law judge's determination that Ryan Marshall was a "statutory employee" of P.I. & I. Motor Express at the time of the injury could not trigger the employer's liability exclusion in the company's commercial general liability policy with RLI Insurance Co.

That policy provision only relieves RLI from covering bodily injury claims brought by an employee, and the panel ruled that the jury did not err when finding that Marshall was a temporary worker whose claim would be covered by the policy.

The appeals court also found that the policy's workers' compensation exclusion was inapplicable because Marshall didn't bring his tort action against Motor Express under Pennsylvania's workers' compensation law.

Amanda Leffler and P. Wesley Lambert of Brouse McDowell LPA, who represent Motor Express, told Law360 that they are pleased with the federal appeals court's decision "because it affirms our client's hard-fought victory in one of the first virtual jury trials in the country."

Leffler went on to say that the case "represents a significant win for policyholders."

"Prior to this case, other courts nationally had broadly construed the workers' compensation exclusion for a variety of reasons not applicable to our case," she said. "Here, however, the Sixth Circuit properly rejected the insurer's attempts to stretch the exclusion beyond its plain and commonly understood meaning."

Lambert was pleased with the court's interpretation of the language in Motor Express' CGL policy.

"The Court correctly held that, as the drafters of the policy, insurers should be held to the words they use in the contract and that policies should be construed to comport with the reasonable expectations those words create for insureds who purchase them," he explained.

However, one observer, Laura Foggan of Crowell & Moring LLP, was not supportive of the Sixth Circuit's ruling.

"Here, the ruling did not give the exclusions proper effect," said Foggan, who represents carriers. "The opinion disregards precedent and contains a number of errors in analysis."

Foggan pointed out that the panel erred when suggesting that "the rules of construction lead to the conclusion that exclusions should not be read to be overlapping."

"There are many examples of coverage terms where an insurance contract uses a 'belt and suspenders' approach to ensure that something is outside the policy's coverage," she explained.

Under the Keystone State's workers' compensation statute, a company cannot be sued for injuries suffered by a worker unless the employer does not have workers' compensation insurance. In the present case, neither Marshall nor Motor Express had workers' compensation insurance.

As a result, the federal appeals court found that the CGL policy's \$2 million limit covered the majority of the \$2.4 million Motor Express paid to resolve Marshall's lawsuit.

"The ruling appears to reward a policyholder that fails to purchase workers' comp coverage with coverage under a general liability policy," Crowell & Moring's Foggan said. "This is very troubling."

Marshall was injured in June 2014 while working as a truck driver at a Duquesne, Pa., site owned by Dura-Bond Industries, which coats metal pipes with corrosion-resistant materials. According to court documents, a forklift driver accidentally ran into a load of metal pipes loaded onto Marshall's flatbed truck, causing them to fall on him.

After the accident, Marshall filed a workers' compensation claim in Pennsylvania against Dura-Bond, Motor Express and another trucking company, Sam Russell Trucking. None of the parties claimed to employ Marshall.

An administrative law judge determined that Sam Russell Trucking was Marshall's "immediate employer," and that Motor Express and Dura-Bond were his "statutory employers," which, under Pennsylvania law, limits its requirement to obtain workers' compensation insurance.

The judge ordered Dura-Bond, which had workers' compensation insurance, to pay Marshall's benefits and allowed that company to seek reimbursement from Motor Express and Russell Trucking. Motor Express reimbursed Dura-Bond for the benefits paid.

Marshall then initiated a tort action against Russell Trucking and Motor Express in Pennsylvania state court. Motor Express sought a defense from RLI, which agreed to do so provided it could later challenge its coverage obligations.

The parties resolved the suit and Motor Express sought reimbursement from RLI for the CGL policy's \$2 million limit. RLI refused, prompting the escalation of the dispute between the parties.

Motor Express lodged an action in Ohio federal court seeking reimbursement for the settlement. RLI attempted to escape its obligations based on the policy's workers' compensation and employer's liability exclusions.

U.S. District Judge Benita Y. Pearson ruled that a jury should determine if Marshall was a Motor Express employee. A jury found in favor of the policyholder, ordering the insurer to cover the settlement amount. RLI appealed.

The Illinois-based carrier urged the Sixth Circuit to reverse the jury's decision, arguing that either exclusion applied to bar coverage. Specifically, RLI contended that the jury mistakenly found that Marshall was a temporary worker for Motor Express.

The panel affirmed, finding that the workers' compensation exclusion only barred coverage for suits brought "under" a workers' compensation law. It explained that Marshall's suit was a tort action, not a suit brought under Pennsylvania's workers' compensation statute.

The Sixth Circuit refused to address RLI's argument regarding Marshall's status as a Motor Express employee, which would trigger the employer's liability exclusion.

"Even if Marshall might otherwise have been a Motor Express 'employee' under the applicable definition, the policy specifically excludes 'temporary worker[s]' from this definition," Circuit Judge Eric E. Murphy wrote.

Brouse McDowell's Matthew G. Vansuch, who also represents Motor Express, told Law360 that the Sixth Circuit's recognition that it was RLI's burden to prove that the employer's liability exclusion applies and proving that Marshall was an employee were important aspects of the case.

"Only a handful of courts nationally have addressed this issue, and the court's ruling that the definition of 'temporary worker' is not an exception to the exclusion is noteworthy," Vansuch said.

RLI also complained that the jury was given improper instructions and that Judge Pearson wrongly excluded evidence about the definition of an employee as well as pleadings and testimony from the Pennsylvania workers' compensation proceeding.

The panel found that any errors in the jury instructions were harmless.

The parties and counsel for RLI did not respond on Thursday to requests for comment.

Circuit Judges Richard F. Suhrheinrich, Jane Branstetter Stranch and Eric E. Murphy sat on the panel.

Motor Express is represented by Amanda M. Leffler, P. Wesley Lambert and Matthew G. Vansuch of Brouse McDowell LPA.

RLI is represented by Todd S. Schenk and Thomas D. Donofrio of Tressler LLP and by Richard M. Gardner of Collins Roche Utley & Garner LLC.

The case is P.I. & I Motor Express Inc. v. RLI Insurance Co., case numbers 21-3412, 21-3442, in the U.S. Court of Appeals for the Sixth Circuit.

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