

Coverage for INDEPENDENT CONTRACTOR'S INJURY CLAIMS

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When an independent contractor is an employee: applying the FMCSR's "statutory employee" concept to liability insurance policies to exclude coverage for claims asserted against a motor carrier by its independent contractors.

Courts have found that the employee exclusions in motor carriers' business auto coverage forms exclude claims brought by the carrier's drivers even when they are independent contractors, based on federal regulations that treat a carrier's independent contractors as "statutory employees." Considering that motor carriers frequently employ independent contractors to haul freight, these decisions have significant ramifications with respect to the scope of liability coverage afforded to motor carriers for claims asserted by their independent contractors. However, some recent decisions are beginning to criticize the analysis used in the majority of cases, creating a minority view that finds coverage for claims asserted by independent contractors. This article provides an analysis of these decisions, beginning with a survey of the relevant federal regulations, followed by a discussion of the cases that found no coverage under the policies, and then concluding with a discussion of the more recent cases that have found coverage.

Federal Insurance Regulations for Motor Carriers

The Federal Motor Carrier Safety Act ("FMCSA") contains a financial responsibility provision that requires

motor carriers to secure a minimum level of public-liability insurance to obtain an operating permit.¹ The Federal Motor Carrier Safety Regulations ("FMCSR") provide that a carrier can establish proof of its financial responsibility by having its liability insurer attach a Form MCS-90 Endorsement to the carrier's liability insurance policy.²

The FMCSR establishes the form for the MCS-90 Endorsement.³ The form declares that "the insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, with the [FMCSA] and the [FMCSR]."⁴ The form then provides that "the insurer agrees to pay any final judgment against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of the [FMCSA], regardless of whether or not each motor vehicle is specifically described in the policy[.]"⁵ Accordingly, the endorsement seeks to eliminate any coverage gaps with respect to the carrier's operations as it relates to the public.

While the MCS-90 Endorsement seeks to eliminate coverage gaps as it relates to the public, it excludes the carrier's own employees from coverage. Specifically, the MCS-90 Endorsement provides that the coverage for public liability "does not apply to injury to or death of the insured's employees while engaged in the course of their employment[.]"⁶ This begs the question: who are the employees of the carrier?

As is often the case in law, simple questions do not have simple answers.

The MCS-90 Endorsement itself does not define the term employee, but the FMCSR does. The FMCSR defines an employee as follows:

Any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler.⁷

The FMCSR's inclusion of independent contractors as employees is deliberate. The FMCSR sought to eliminate the common law distinction between employees and independent contractors to prevent motor carriers from using independent contractors to avoid vicarious liability in the event of an accident.⁸ Accordingly, from the outside looking in, the FMCSR makes independent contractors statutory employees to ensure coverage in the event of an accident.⁹

Claims Asserting Coverage Pursuant to the MCS-90 Endorsement

If the purpose of the MCS-90 Endorsement is to make independent

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contractors statutory employees to ensure coverage for injuries to the public, does the employee exclusion in the endorsement also treat independent contractors as statutory employees, thereby excluding coverage under the endorsement for injuries to an independent contractor? The Ninth Circuit has answered the question in the affirmative. In *Perry v. Harco Nat'l Ins. Co.*, a driver sustained fatal injuries in a single-vehicle accident while driving a tractor owned by his employer that was in turn leased to a motor carrier.¹⁰ The motor carrier's insurance policy did not specifically cover the leased tractor, so the driver's estate asserted coverage under the MCS-90 Endorsement in the motor carrier's liability policy, and claimed that the endorsement's employee exclusion did not apply because the driver was an independent contractor of the motor carrier.¹¹

The Ninth Circuit held that the definition of an employee contained in the FMCSR applied to the employee exclusion contained in the MCS-90 Endorsement, because the definitions stated that they apply to the entire chapter, and the MCS-90 Endorsement was a product of the same chapter.¹² While the Ninth Circuit acknowledged that the FMCSR's intent behind the employee definition was to eliminate the independent contractor defense in accidents involving the public, the court found that the language of the FMCSR did not in any way limit the application of the employee definition solely to accidents involving the public, and rejected the claimant's argument that it should.¹³ The court further rejected the claimant's argument that the court's ruling would leave independent contractors without any source of recovery in the event of an accident.¹⁴ The court explained that independent contractors could still recover against their employers under the workers compensation system.¹⁵ And while the court declined to determine whether the independent contractor had a direct

cause of action in tort against the carrier outside of the workers compensation system, the court found that—regardless of whether such a cause of actions exists—the MCS-90 Endorsement would not cover it.¹⁶

Under facts similar to *Perry*, Illinois' First Appellate District has also found that the MCS-90 Endorsement does not provide coverage for an independent contractor's injury claim. In *Canal Ins. v. A&R Transp. And Warehouse, LLC*, the claimant driver sustained injuries in a single-vehicle accident, while hauling a trailer owned by the motor carrier as an independent contractor.¹⁷ While the trailer was owned by the carrier, the carrier's liability policy provided coverage for its trailers only when being hauled by a scheduled tractor.¹⁸ The claimant had leased his tractor from a third-party, such that the liability policy did not cover the vehicles involved in the accident.¹⁹ Admitting that the vehicles were not covered under the policy, the claimant driver invoked coverage under the MCS-90 Endorsement, but the insurer claimed that the employee exclusion precluded coverage because the driver was a statutory employee.²⁰ The claimant driver argued that, if the employee definition excluded coverage, then such an interpretation would be in "direct conflict" with the stated purpose of the FMCSR's insurance requirements.²¹ The court rejected the claimant's argument, noting that, while the FMCSR places an affirmative obligation on motor carriers to procure coverage with respect to the public, the FMCSR expressly exempted carriers from this coverage requirement with respect to their own employees.²² The court further found that, because the MCS-90 Endorsement was a FMCSR-mandated form, the same regulations governed its operation and effect.²³ Accordingly, the court found that the claimant driver was a statutory employee of the carrier, such that the MCS-90 Endorsement's employee exclusion precluded coverage.²⁴

The Majority View: Applying the FMCSR's Statutory Employee Concept to a Liability Policy's Employee Exclusions

Perry and *Canal* both involved an independent contractor's claim for coverage under the MCS-90 Endorsement itself because the subject liability policy did not cover the vehicles involved in the accident. However, the Fifth Circuit has found that a similar analysis excludes coverage for an independent contractor's claim under the business auto policy even when the subject vehicles are covered under the policy. In *Consumers County Mut. Ins. Co. v. P.W. & Sons Trucking, Inc.*, two independent contractors, while driving as a team for the carrier, got involved in single-vehicle accident.²⁵ At the time of the accident, one of the contractors was driving, and the other contractor was asleep in the sleeper berth.²⁶ The driving contractor sustained fatal injuries, and the sleeping contractor sustained serious injuries resulting in a two-month coma.²⁷ The sleeping contractor brought a claim against the carrier for his injuries, and the carrier's insurer denied coverage on the basis that the contractor's claim was excluded by the "Employee Indemnification and Employer's Liability" exclusion because the contractor was a statutory employee pursuant to 49 C.F.R. § 390.5.²⁸

The question on appeal was whether the employee exclusion in the policy also excluded the independent contractor's claim.²⁹ The policy excluded from coverage the injury claims of "an employee of the insured arising out of and in the course of employment by the insured."³⁰ However, the policy itself did not define the term employee, leading the claimants and the insurer to argue that different definitions applied.³¹ The claimants argued that the common law definition of an employee should apply, whereas the insurer argued that the FMCSR definition of an employee should apply.³²

The court agreed with the insurer, and applied the FMCSR definition of an employee to the policy.³³ The court began its analysis by stating that, under Texas law, a general rule of insurance policy interpretation is that the court must “consider the policy as a whole and interpret it to fulfill the reasonable expectations of the parties in light of customs and usages of the industry.”³⁴ The court then found that the subject policy was “designed specifically for use by motor carriers in the interstate trucking industry” for the purpose of complying with the FMCSR’s financial responsibility requirements.³⁵ The court reasoned that, because the policy was drafted to comply with the federal insurance regulations, those regulations “must inform our interpretation of the policy’s terms.”³⁶ Because the FMCSR’s definition of an employee is intended to apply throughout the regulations, and because the FMCSR did not require carriers to obtain liability insurance covering injuries to their own employees, the court concluded that the FMCSR’s definition of an employee applied to the policy itself, thereby rendering the contractor a statutory employee whose claim was excluded.³⁷ Although the claimants argued that the FMCSR definition of an employee was intended only to prevent carriers from using the independent contractor defense against the public, and should not apply to a contractor’s claim for his own injuries, the court responded that the term employee cannot have two different meanings in the policy depending on the context in which it is used.³⁸ Accordingly, the court found that the contractor’s claim was excluded from coverage under the policy.³⁹

The claimants also argued that, even if the FMCSR definition of an employee applied, the sleeping contractor did not meet the definition because he was not operating the vehicle at the time of the occurrence.⁴⁰ The FMCSR defines an employee as including an independent

contractor “while in the course of operating a commercial motor vehicle.”⁴¹ However, the court rejected this argument in a footnote, stating that it had been “squarely foreclosed by precedent.”⁴² The precedent was *White v. Excalibur Ins. Co.*, a Fifth Circuit decision from 1979 that found that a team driver was still acting within the course and scope of his employment even while he was asleep in the sleeper berth, because his presence was “indispensable to continual vehicle operation” due to the hours-of-service regulations.⁴³

Two notable aspects of the *Consumers* decision are the policy’s lack of a definition of the term employee and the manner in which the court used the MCS-90 Endorsement. Recent decisions have distinguished *Consumers* on the basis that the policy at issue in those cases does provide a definition of the term employee. With respect to the MCS-90 Endorsement, the *Consumers* decision never explicitly references the endorsement, and the claimant was not asserting coverage under the endorsement. However, the court cited the regulation that establishes the form of the endorsement for the proposition that the FMCSR does not require carriers to obtain insurance covering their own employees’ injury claims.⁴⁴ As such, the language of the MCS-90 Endorsement was relevant to the decision not because it was the basis for coverage, but because the language is evidence of the FMCSR’s regulatory intent.

Several decisions have followed *Consumers* to hold that there is no coverage for an independent contractor’s injury claim under a motor carrier’s business auto liability insurance policy. In a subsequent decision in 2009, the Fifth Circuit continued to hold that the FMCSR definition of an employee governed a carrier’s liability insurance policy. In *OOIDA Risk Retention Group, Inc. v. Williams*, the Fifth Circuit cited *Consumers* for the proposition that “the [FMCSA] and its attendant regulations govern

the meaning of terms under insurance policies designed to comply with federal requirements for motor carriers.”⁴⁵ In addition to the Fifth Circuit, the Northern District of Alabama following *Consumers* in 2012⁴⁶ based on similar facts, as well as the Southern District of Georgia in 2015.⁴⁷ Beyond the federal courts, the Michigan Court of Appeals⁴⁸ and the Tenth District Court of Appeals of Ohio⁴⁹ have followed *Consumers* in cases presenting similar facts to find no coverage for an independent contractor’s injury claim under the carrier’s liability policy because the contractor was a statutory employee under the FMCSR.

The Developing Minority View

Consumers has not been followed uniformly. In *Global Hawk Ins. Co. v. Le*, the First Appellate District of California held in a case involving an injury to a team driver who was a passenger at the time of the occurrence that the FMCSR definition of an employee did not govern the interpretation of the motor carrier’s insurance policy.⁵⁰ The definitions section of the policy did define an employee as follows: “Employee includes a leased worker. Employee does not include a temporary worker.”⁵¹ Also, the policy in that case did not actually include an MCS-90 Endorsement⁵² and, because there was no MCS-90 Endorsement, the policy did not make any reference to the FMCSR.⁵³ While the insurer argued that the FMCSR definition should govern because the parties to the policy intended for the policy to comply with the FMCSR’s insurance requirements, the court stated that “we are unaware of any principle of insurance law that something external to an insurance policy can be read to inform what the policy in fact provides.”⁵⁴ The court distinguished *Consumers* because the policy in that case actually included an MCS-90 Endorsement and did not provide any definition of the term employee.⁵⁵ Furthermore, the injured driver in

Global Hawk was hired directly by the carrier for a single delivery, who told the driver at the time of hire that he would not be eligible for worker's compensation insurance.⁵⁶ Based on those facts, the court found that state rules of contract interpretation did not allow a definition contained in federal regulations that were not expressly incorporated by the policy to supplant the definition of an employee that was actually contained in the policy.⁵⁷ The court then remanded the case to the trial court to make an evidentiary determination with respect to whether the claimant was a common law employee or an independent contractor.⁵⁸

While *Global Hawk* may be unique to its facts where the policy did not actually include an MCS-90 Endorsement, the District Court for North Dakota held that the FMCSR definition of an employee did not apply to a carrier's liability policy, even when the policy included an MCS-90 Endorsement, because such an endorsement does not expressly incorporate the FMCSR definition into the policy. In *Great West Cas. Co. v. Nat'l Cas. Co.*, an explosion at the carrier's repair facility injured one of the carrier's employees.⁵⁹ The explosion occurred while the carrier's employee was servicing a trailer attached to an owner-operator's tractor, who had leased his tractor and trailer to the carrier.⁶⁰ At issue was whether the owner-operator—whose equipment was leaking fumes and caused the explosion—was an insured under the carrier's liability insurance policy with respect to the injury claim that the carrier's employee asserted against the owner-operator.⁶¹ After the court found that the owner-operator was an insured under the policy,⁶² the carrier's insurer argued that the Fellow Employee exclusion of the policy negated coverage for the employee's claim against the owner-operator, because the owner-operator was a statutory employee under the FMCSR definition of an employee.⁶³

After surveying the FMCSR's insurance requirements, the court in *Great West* found that "there is nothing [in the FMCSR] that purports to impose mandatory contract terms for private insurance contracts, except to the extent that, if a lessee carrier elects to obtain a federally-prescribed endorsement as one alternative for complying with federally-imposed minimum requirements for financial responsibility ... then the terms of that endorsement trump to the limited extent provided in the endorsement."⁶⁴ The court then noted that the insurer's argument was not that the FMCSR expressly required that its definition be read into the policy, but rather that the parties intended for the policy to be "tailored to fit" the FMCSR.⁶⁵ After framing the issue in this fashion, the court noted that the MCS-90 Endorsement itself provides that "all terms, conditions, and limitations in the policy to which this endorsement is attached shall remain in full force and effect as binding between the insured and the company."⁶⁶ The court further emphasized that the policy included a definition for an employee, which included leased workers but excluded temporary workers.⁶⁷ The court found the definition in the policy significant because it showed that the policy expressly included in the definition of an employee a leased worker, without making any similar effort to expressly include independent contractors in the definition or the FMCSR definition.⁶⁸ Ultimately, the court explained that "there is nothing in [the policy] which suggests that the term employee means anything more than how the term is commonly and typically understood and applied, much less an express incorporation of the fictional statutory employee definition."⁶⁹ Accordingly, the court found that the FMCSR definition did not apply, that the fellow employee exclusion therefore also did not apply, and that the owner-operator was covered under the policy.⁷⁰

The Sixth Circuit Court of Appeals similarly has expressed

skepticism with respect to the argument that the FMCSR definition of an employee should govern the policy when the policy includes its own definition of employee. In *Gramercy Ins. Co. v. Expeditors Express, Inc.*, the Sixth Circuit Court of Appeals reversed the trial court's entry of judgment on the pleadings in favor of an insurer under Fed. Rule of Civ. Proc. 12(c).⁷¹ In *Gramercy*, the court found that judgment on the pleadings was inappropriate because the relationship between the claimant driver and the carrier was not sufficiently clear from the complaint alone.⁷² The insurer argued that, regardless of the nature of the relationship, the FMCSR definition of an employee was incorporated into the policy through the MCS-90 Endorsement, such that his claim would be excluded from coverage.⁷³ The policy contained the same definition of an employee as the policy in *Global Hawk*, i.e. employee includes a leased worker, but does not include a temporary worker.⁷⁴ While the court recognized that the MCS-90 Endorsement provides that it "amends [the policy] to assure compliance ... with [the FMCSR]," the court explained that this language is not an express incorporation of the FMCSR's definition of an employee into the policy. Moreover, the court explained that the purpose of the MCS-90 Endorsement is to ensure a minimum level of coverage, but if the policy provides a greater level of coverage, "nothing in the language of the endorsement suggests that it operates to amend the more generous coverage in the insurance contract down to the minimum requirements of the [FMCSR]."⁷⁵ The court argued that its holding was consistent with *Consumers*, because the policy in *Consumers* did not define the term employee, and the *Consumers* opinion "nowhere suggests that the court would have reached the same result had the contract included a definition of employee—as this one does."⁷⁶ Notwithstanding its claim of consistency with *Consumers*, *Gramercy* appears to embrace the minority view

and create a split between the Sixth and Fifth Circuits. However, the procedural posture on which *Gramercy* was decided limits its precedential weight relative to *Consumers*.

While *Global Hawk*, *Great West* and *Gramercy* relied upon the inclusion of a definition of the term employee in the policy to distinguish *Consumers*, the Tennessee Court of Appeals found in *Miller v. Northland Ins. Co.*, that the definition present in those cases—i.e. employee includes a leased worker but does not include a temporary worker—is not a “comprehensive definition”

such that it does not provide any guidance to the issues presented when an independent contractor makes a claim under the carrier’s liability insurance policy.⁷⁷ As such, the court in *Miller* found that, even with a policy that contained the leased worker “definition,” the FMCSR definition governed the policy and rendered an independent contractor a statutory employee, such that the contractor’s claim was excluded under the policy.

Conclusion

In summary, the majority view as

expressed in *Consumers* applies the FMCSR definition of an employee to exclude coverage for independent contractor’s claims from motor carrier’s liability policies. However, there is a developing minority view as expressed in *Global Hawk*, *Great West*, and *Gramercy* that employs the rules of contract interpretation to reject the majority view. Defense counsel and coverage counsel should monitor further decisions on these issues in their jurisdictions in order to best advise their clients. 

Endnotes

- 1 See 49 U.S.C. § 13906(a)(1); See Also 49 C.F.R. § 387.1 *et seq.* Specifically, the Federal Motor Carrier Safety Regulations (“FMCSR”) require carriers to have at least \$750,000 in public liability insurance.
- 2 49 C.F.R. § 387.7(d). The regulations allow a carrier to establish financial responsibility by any one of three ways: (1) purchasing a Form MCS-90 Endorsement for the carrier’s liability insurance policy; (2) having a surety issue a surety bond; or (3) obtaining a written order from the Federal Motor Carrier Safety Administration authorizing the carrier to self-insure, provided the carrier maintains a satisfactory safety rating.
- 3 49 C.F.R. § 387.15.
- 4 49 C.F.R. § 387.15.
- 5 49 C.F.R. § 387.15.
- 6 49 C.F.R. § 387.15.
- 7 49 C.F.R. § 390.5. The FMCSA also defines an employee as “an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who [...] directly affects commercial motor vehicle safety in the course of employment[.]” 49 U.S.C. § 31132(2)(A). While the two definitions are not exactly the same, they both consistently provide that the term employee includes independent contractors.
- 8 See *Consumers County Mut. Ins. Co. v. P.W. & Sons Trucking, Inc.*, 307 F.3d 362 (5th Cir. 2002)
- 9 See 49 C.F.R. § 387.1 (“The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.”)
- 10 129 F.3d 1072, 1073 (9th Cir. 1997). The opinion does not provide any details regarding the nature of the occurrence, but the absence of any reference to other parties strongly suggests that the accident was a single-vehicle accident.
- 11 *Id.*
- 12 *Id.* at 1074.
- 13 *Id.* at 1074-75.
- 14 *Id.* at 1075.
- 15 *Id.*
- 16 *Id.*
- 17 357 Ill.App.3d 305, 308 (1st Dist. 2005).
- 18 *Id.* at 310.
- 19 *Id.*
- 20 *Id.* at 310-11.
- 21 *Id.* at 311.
- 22 *Id.* at 311-12; citing *Consumers County Mut. Ins. Co. v. P.W. & Sons Trucking, Inc.*, 307 F.3d 362, 366 (5th Cir. 2002)
- 23 *Id.* at 311.
- 24 *Id.* at 312.
- 25 307 F.3d 362, 363-64 (5th Cir. 2002).
- 26 *Id.*
- 27 *Id.* at 364.
- 28 *Id.* at 364-65. The opinion does not state which coverage form the policy used.
- 29 *Id.* at 365.
- 30 *Id.* at FN2.
- 31 *Id.* at 365.
- 32 *Id.*
- 33 *Id.* at 366-67.

34 *Id.* at 365.
35 *Id.* at 365-66.
36 *Id.* at 366.
37 *Id.*
38 *Id.* at 366-67.
39 *Id.* at 3
40 *Id.* at FN 8.
41 49 C.F.R. § 390.5
42 *Id.* at FN 8.
43 599 F.2d 50, 53 (5th Cir. 1979). The *White* decision was based on an earlier iteration of the FMCSA that required motor carriers to assume “full direction and control” of leased vehicles and their drivers. *Id.* The case involved two team drivers who were leased to the carrier, and who got involved in a single vehicle accident, resulting in the death of the sleeping team driver. *Id.* at 51. The decedent’s estate obtained a judgment against the other driver only, and then sought to collect the judgment amount from the carrier and its liability insurer. *Id.* at 52. The court found that the judgment could not be collected from the carrier, because of Georgia’s workers compensation exclusivity, after finding that the leased team drivers were statutory employees under the prior version of the FMCSA. *Id.* at 53-54. The court further found that the judgment could not be executed against the carrier’s insurance policy, because the Georgia financial responsibility statute required the claimant to be a “member of the public” with an “actionable injury,” and the court found that the driver’s statutory employee status prevented him from satisfying either precondition to coverage. *Id.* at 54-56.
44 *Id.* at 366, citing 49 C.F.R. § 387.15.
45 579 F.3d 469, 473 (5th Cir. 2009). *Ooida* presented facts in which two team drivers were involved in an accident, but one was the employer of the other. *Id.* at 471. Accordingly, the decision revolved around the application of the FMCSR definition of an employer, in addition to the definition of an employee, which is beyond the scope of this article. *Id.* In summary, the court ultimately found that there was no coverage for the team driver’s claim under the policy, because he was a statutory employee whose claims was excluded by the Fellow Employee exclusion. *Id.* at 476. Like *Consumers*, the policy at issue in *Ooida* did not provide its own definition of an employee.
46 See *Lancer Ins. Co. v. Newman Specialized Carriers, Inc.*, 903 F.Supp.2d 1272 (N.D. Ala. 2012).
47 See *Progressive Mountain Ins. Co. v. Madd Transportation, LLC*, 2015 WL 1419486
48 See *Amerisure Mut. Ins. Co. v. Carey Transportation, Inc.*, 2007 WL 29235 (Mich Ct. App., Jan. 4, 2007).
49 *United Financial Cas. Co. v. Abe Hershberger & Sons Trucking Ltd.*, 2012 Ohio 561, 2012 WL 457715 (Ct. App. Oh. 10th, Feb. 14, 2012).
50 225 Cal.App.4th 593, 608 (1st Dist. 2014)
51 *Id.* at 602.
52 *Id.* at 608. The carrier suggested that the policy was supposed to include an MCS-90 Endorsement—because it was federal requirement—and that the policy should have been as though it did include an MCS-90 Endorsement. *Id.* at 610. The court refused to do so. *Id.*
53 *Id.*
54 *Id.* at 610.
55 *Id.* at 609.
56 *Id.* at 595.
57 *Id.* at 610.
58 *Id.*
59 53 F.Supp.3d 1154, 1157-1158 (D.ND. 2014).
60 *Id.*
61 *Id.*
62 The carrier’s policy defined an insured as including “the owner or anyone else from whom you hire or borrow a covered auto that is a trailer while the trailer is connected to another covered auto that is a power unit, or, if not connected, is being used exclusively in your business.” *Id.* at 1160. In summary, the court found that the owner-operator was an insured because his equipment was being used exclusively in the carrier’s business while it was being repaired at the carrier’s facility. *Id.* at 1170-71.
63 *Id.* at 1173.
64 *Id.* at 1179.
65 *Id.* at 1180.
66 *Id.* at 1184.
67 *Id.* at 1185-86.
68 *Id.* at 1186.
69 *Id.* at 1187-88.
70 *Id.*
71 575 Fed.Appx. 607, 608 (6th Cir. 2014).
72 *Id.* at 608. While the complaint alleged that the claimant driver was operating a vehicle that was leased to the carrier, the court stated that “so far as the pleadings show, a friend could have recommended [the claimant] to fill in while he took a vacation or to help out with a late-summer surge in demand for trucking services.” *Id.*
73 *Id.* at 609.
74 *Id.* at 608.
75 *Id.* at 609.
76 *Id.*
77 No. M2013-572-COA-R3-CV, 2014 WL 1715076, *4 (Tenn. Ct. App., April 29, 2014).