

# Wisconsin Supreme Court Holds There is No Coverage for Negligent Entrustment of a Vehicle Because There Was No Coverage for the Underlying Negligent Operation of the Vehicle

Jun 13 2011

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Practice Area: Insurance Coverage and Risk Management

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In *Siebert v. Wisconsin Amer. Mut. Ins. Co.*, 2011 WL 1992000 (Wis. May 24, 2011), the Wisconsin Supreme Court held there was no coverage for negligent entrustment of a vehicle because the negligent entrustment was not actionable without the occurrence of an excluded risk – the negligent operation of the vehicle. Jessica Koehler (“Koehler”) gave her boyfriend, Jesse Raddatz (“Raddatz”), permission to drive her father’s car on the condition that he use it only to go to the grocery and then return. Raddatz, however, picked up five passengers, including plaintiff Jessica Siebert, and headed to a party. While in route, Raddatz swerved away from a truck, lost control, and rolled into a ditch. All of the passengers were either injured or killed.

Siebert and others filed action against Wisconsin American Mutual Insurance Company (“Wisconsin American”), pursuant to the direct action statute, alleging that Raddatz’s negligent operation of the vehicle caused injuries. A jury determined that Raddatz exceeded the scope of the permission given to him to operate the vehicle. Consequently, the circuit court entered judgment that there was no coverage. After the judgment, however, Siebert and other plaintiffs filed an amended complaint asserting a claim against Wisconsin American for negligent entrustment, which the plaintiffs alleged to be an act separate and distinct from Raddatz’s negligent operation.

The Wisconsin Supreme Court held that there was no coverage for the negligent entrustment claim. In so holding, the court referenced the independent concurrent cause rule, which states that “where a policy expressly insures against loss caused by one risk but excludes loss caused by another risk, coverage is extended to a loss caused by the insured risk even though the excluded risk is a contributory cause.” *Siebert*, 2011 WL 1992000, ¶ 40 (internal quote marks omitted). However, to trigger coverage, “the independent concurrent cause must provide the basis for a cause of action in and of itself and must not require the occurrence of the excluded risk to make it actionable.” *Id.* (internal quote marks omitted). In the context of negligent entrustment, the court observed that, while negligent entrustment is a separate and distinct negligent act, liability cannot attach without the trustee acting negligently and causing injury as a result. *Id.*, ¶ 46. Accordingly, the court concluded that Koehler’s negligent entrustment of the vehicle to Raddatz was not an independent concurrent cause of Siebert’s injuries because the negligent entrustment could not render Koehler liable for Siebert’s injuries “without the occurrence of an excluded risk – Raddatz’s alleged negligent operation of the vehicle.” *Id.*, ¶ 55. Therefore, there was no coverage for the negligent entrustment claim.

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