

## **Wisconsin Court of Appeals Holds the Omnibus Statute, Wis. Stat. § 632.32, Requires an Auto Insurer to Provide Coverage to a Permissive User Tortfeasor in a Suit Filed by the Named Insured**

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In *Blasing v. Zurich American Ins. Co.*, 2013 WL 28071 (Wis. Ct. App. Jan. 3, 2013), Vicki Blasing, who had auto coverage from American Family Insurance Company, was injured by a Menards employee while the employee was loading Blasing's truck with lumber. The general rule is that permissive vehicle users are additional insureds under auto policies and that such users are covered to the same extent as the policyholder. Accordingly, when Blasing sued Menards for negligence, Menards tendered the suit to American Family. Menards contended that, because its employee was loading Blasing's truck with her permission, and because loading constitutes "use" of the vehicle, the employee and Menards were additional insureds whom American Family was obligated to defend. Thus, the Wisconsin Court of Appeals addressed the issue of whether American Family was obligated to defend Menards and provide coverage if it was determined that Menards' employee negligently caused injury to Blasing.

The court of appeals held that the omnibus statute, Wis. Stat. § 632.32, required American Family to provide a defense to Menards. The court observed that the omnibus statute requires auto policies to provide coverage to any person "using" a vehicle with permission of the named insured "in the same manner" as the policy would if the liable party was the named insured. *Blasing*, 2013 WL 28071, ¶ 17. In addition, the omnibus statute defines "using" to include "driving, operating, manipulating, riding in *and any other use.*" *Id.*, ¶ 18 (emphasis in original). The parties in *Blasing* agreed that "use" generally includes loading and unloading. The court concluded that "because the policyholder, Blasing, would have been 'using' her truck if engaged in the loading activity at Menards, and because it was undisputed that the Menards employee was acting with Blasing's permission to load Blasing's truck," the omnibus statute required coverage for Menards under Blasing's American Family auto policy. *Id.*, ¶ 19.

In so holding, the court rejected American Family's argument that construing the omnibus statute to require American Family to defend Menards would be an absurd result. The court observed that it is not unusual for a policyholder's insurance to ultimately insure a permissive tortfeasor; for instance, there generally is coverage when a permissive user tortfeasor injures a third party. *Id.*, ¶ 21. While the court acknowledged that it may seem odd that an injured policyholder bringing suit against a tortfeasor would face an attorney retained by her own insurance company, the court concluded that such a scenario "does not rise to the level of being unreasonable or absurd." *Id.*, ¶ 30. If the legislature believes otherwise, the court commented, the legislature may amend the omnibus statute to ensure that a tortfeasor in Menards' position could not receive coverage from the claimant's auto policy. *Id.*

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