

## Wisconsin Supreme Court Holds that not all Maintenance and Repairs Further the Commercial Interests of a Trucking Lessee

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In *Casey v. Smith*, 2014 WI 20, --Wis. 2d --, --N.W.2d --, both Acceptance Casualty Company ("Acceptance") and Great West Casualty Company ("Great West") issued liability insurance policies for a semi-tractor owned by John Zeverino and leased to Taylor Truck Line ("Taylor"). Acceptance issued a non-trucking use policy and Great West issued a commercial truckers' policy. The accident occurred when Zeverino was en route to get the semi-tractor grille and oil filler tube repaired. Both insurers agreed insurance covered the accident at issue, but disagreed as to which policy applied. The circuit court granted summary judgment in favor of Great West and the court of appeals affirmed.

Acceptance argued that its policy did not provide coverage because it contained two applicable exclusions. The first exclusion relied on by Acceptance stated that the policy does not provide coverage "[w]hile used in the business of anyone to whom the 'auto' is rented." The second exclusion provided for no coverage "[w]hile being operated, maintained or used to carry property in any business or en route to or from such business purpose." Acceptance argued that Zeverino's actions of obtaining maintenance on the date of the action constituted a "business purpose."

The Wisconsin Supreme Court determined that neither of the exclusions in Acceptance's policy precluded coverage and that Zeverino was not using the semi-tractor "in the business" of Taylor. The court looked to the facts of the case and held that Zeverino's use on the date of the accident was not "in the business" of Taylor because the repairs at issue did not further Taylor's commercial interests, the lease between Taylor and Zeverino did not require the repairs, Taylor did not order Zeverino to conduct the repairs, and the semi-tractor did not need the repairs to continue service. Moreover, the court found that Acceptance's argument that coverage is excluded because Zeverino was en route to the business purpose of obtaining maintenance reflects an overly expansive interpretation of the exclusion that may render coverage illusory. The decision reaffirms that not all repairs and maintenance to a leased semi-tractor further the commercial interests of the lessee.

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