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## TRUCKING LITIGATION UPDATE

March 2007

### **FEDERAL APPELLATE COURT FINDS NO COVERAGE UNDER BOBTAIL POLICY**

Dear Trucking Industry Professional:

In the recent case of Republic Western Ins. Co. v. Williams, the United States Court of Appeals for the Fourth Circuit reversed a District Court opinion that had granted Summary Judgment against a bobtail carrier in a truck accident case. The decision involved Williams, who was an independent owner/operator whose truck was leased to P.B. Express, Inc. ("PBX"). PBX maintained a commercial auto liability policy with Carolina Casualty and Williams had a non-commercial use (bobtail) policy through Republic Western. Williams' truck was permanently leased to PBX, but he was permitted to drive the truck to and from work everyday and to park it overnight at a lot near his home. Williams testified that he drove the truck for business, not pleasure, and that he only drove it while conducting business.

The accident occurred while Williams was driving the truck from the overnight parking lot to the PBX terminal to obtain an assignment. He was not pulling a trailer at the time of the accident, but was bobtailing. Carolina Casualty investigated the accident and PBX acknowledged that the accident was DOT recordable. Williams sued the driver of the other vehicle who counter-claimed and Republic defended Williams under a reservation of rights. Thereafter, Republic filed a Declaratory Judgment action against Carolina to determine responsibility for the claim.

Carolina argued that Republic's non-commercial (bobtail) policy applied because Williams was not operating the truck in the actual use or business of PBX at the time of the accident. Republic disagreed and asserted that Williams was a permissive user of the truck as defined by the Carolina policy. Both Carolina and Republic filed Cross-Motions for Summary Judgment. The District Court initially held that coverage fell under the Carolina policy and not the Republic policy, but then on reconsideration, the court reached the opposite conclusion in favor of Carolina and against the bobtail carrier.

The Court of Appeals reversed the District Court and ruled in favor of Republic. The court concluded that although Williams was not carrying a load and did not have a specific load to pick up at the time of the accident, he was still operating in the business of PBX because he was on the way to the PBX terminal for the purpose of obtaining a work assignment. Thus, his activities fell within the exclusion of the bobtail policy, which did not afford coverage for vehicles "in route" for the purpose of carrying business property. The court was also persuaded by the fact that PBX considered the accident to be DOT recordable.

The court also concluded that Williams was covered by the Carolina policy under the permissive user provision. The court found that under 49 C.F.R. § 376.12(c)(1) PBX had exclusive possession and control of the vehicle during the term of the lease. Thus, Williams' use

of the truck to drive to and from work was necessarily permissive. Therefore, the court found that Williams was a permissive user of the truck at the time of the accident.

This opinion is illustrative of the difficulty the courts have determining coverage where there is a conflict between the motor carrier's commercial auto policy and the bobtail policy of an owner/operator. The decision reached by the Court of Appeals is generally consistent with the position of most courts that have examined similar fact situations. Generally when an owner/operator is in route to the terminal to receive an assignment, such activity is held to be for the use and benefit of the carrier/lessee. Nevertheless, these type of cases continue to be fertile ground for litigation between insurance companies who have this type of competing coverage.

For more information about this subject or any legal issues relating to the trucking industry, please contact M. David Frock or Collis A. Broussard, Jr. of Frock & Broussard, P.C. Mr. Frock is Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization and as a Civil Trial Advocate by the National Board of Trial Advocacy.

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**ABOUT THE FIRM**

For the past fifteen years the law firm of Frock & Broussard, P.C. has practiced civil litigation, trial and appellate law in both state and federal court in Texas. Our firm is exclusively engaged in the defense of trucking companies and is involved in transportation related litigation throughout the State of Texas. We are approved as panel counsel by a variety of insurance companies and serve as counsel to many prominent, self-insured trucking companies. Our practice is state wide and specifically tailored to the representation of transportation related clientele.

Frock & Broussard, P.C. has developed an extensive practice related to commercial vehicle accidents and the legal issues which are unique to the trucking industry. We are members of many professional organizations, including the Trucking Industry Defense Association, American Trucking Association, Texas Motor Transportation Association, Houston Safety Council and the Transportation Law Committee of The Defense Research Institute. In addition, Frock & Broussard, P.C. has been instrumental in the development of a rapid response team, which is available for on site accident investigation. The members of our firm can be reached on a twenty-four hour basis to investigate an accident anywhere in Texas. Furthermore, we have the capability to enlist the assistance of qualified accident reconstructions experts, investigators and adjusters, when required.

Frock & Broussard, P.C. is committed to providing highly professional representation to its clients at a fair and competitive fee. We have the flexibility to establish a close personal working relationship with our clientele and be particularly responsive to their individual needs. Frock & Broussard, P.C. is available to assist the transportation industry whenever the need may arise.

Exclusive Legal Counsel to the Trucking Industry