

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

ABC BUS LEASING, INC.,	:	MAY TERM, 2008
	:	
Plaintiff,	:	No. 01815
	:	
v.	:	COMMERCE PROGRAM
	:	
CERTAIN UNDERWRITERS AT	:	
LLOYDS, LONDON, et al.,	:	
	:	
Defendants.	:	

**OPINION**

Plaintiff, ABC Bus Leasing, Inc. (“ABC”), requested that this court certify its Order dated May 21, 2010, for immediate interlocutory appeal. In the May 21<sup>st</sup> Order, the court denied ABC’s Motion for Summary Judgment and granted defendant, Certain Underwriters at Lloyd’s London (“Lloyd’s”), Cross-Motion for Summary Judgment.

ABC sold two buses to Lloyd’s insured, OK Travel Bus, Inc. (“OK”), on an installment plan. ABC held a security interest in the buses which were insured by Lloyd’s under a commercial auto policy (the “Policy”). ABC was named as a loss payee under the Policy. The buses were both damaged in accidents. Lloyd’s denied coverage due to OK’s alleged violations of the terms of the Policy. ABC claims that its coverage under the Policy is not affected by the wrongs committed by the insured. The issue is whether the Policy contains a simple or a standard loss payee clause.

The Policy “covers the interests of the loss payee [ABC] unless the ‘loss’ results from conversion, secretion or embezzlement on [OK’s] part.”<sup>1</sup> There are no allegations of conversion, secretion, or embezzlement in this case. The plain reading of this Policy language would

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<sup>1</sup> Loss Payable Endorsement.

necessarily lead to the conclusion that the loss is covered unless one of these three wrongful acts occurred and these are the only possible defenses against payment to the loss payee. However, binding Superior Court decisional law requires additional policy language before the insurer may be barred from raising other defenses to coverage against the loss payee.

In Cardwell v. Chrysler Fin. Corp.,<sup>2</sup> the loss payable clause endorsement of the policy had language very similar to that at issue here. It stated:

Payment for loss will be made according to the interest of the policyholder and lienholder. Payment may be made to both jointly, or to either separately. Either way, the company will protect the interests of both.

The lienholder's interest will be protected, except from fraud or omissions by the policyholder or the policyholder's representative.”<sup>3</sup>

The Superior Court denied coverage to a lender named as loss payee because “[t]here was no language in the clause indicating that [the lender’s] interest would not be invalidated by the acts or omissions of the policyholder.”<sup>4</sup>

In light of binding precedent set forth in Cardwell, this court was constrained to declare as follows with respect to Lloyd’s obligation to provide coverage to ABC:

1. Since there is no language in the Policy stating that ABC’s interest would not be invalidated by the acts or omissions of OK, ABC steps into the shoes of OK.
2. Since ABC’s right to coverage is no greater than OK’s, Lloyd’s may assert against ABC all the coverage defenses that Lloyd’s has against OK.

Lloyd’s claims that OK violated the conditions of the policy by: 1) garaging its buses in New York rather than Pennsylvania; 2) failing to disclose the names of its drivers to Lloyd’s; and

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<sup>2</sup> 804 A.2d 18 (Pa. Super. 2002) .

<sup>3</sup> *Id.*, 804 A.2d at 24

<sup>4</sup> *Id.*

3) regularly using its buses more than 300 miles from its claimed garage. These coverage defenses raise disputed issues of material fact. Accordingly, the remainder of Lloyd's Motion for Summary Judgment was denied.

This case must go to trial on the issues raised in Lloyd's defenses to coverage. However, if, on appeal, the Superior Court revisits its ruling in Cardwell, or determines this court misapplied Cardwell, trial would become unnecessary. Because immediate appeal from this court's May 21<sup>st</sup> Order will materially advance the ultimate termination of this matter, the court certified the Order for immediate appeal.

**Dated: June 28, 2010**

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**MARK I. BERNSTEIN, J.**