TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Partner Jeremy S. Macklin Scores Illinois Appellate Court Victory That Restores Clarity to Commercial Auto Coverage

Related Attorneys: Jeremy S. Macklin

Traub Lieberman Partner Jeremy S. Macklin obtained an appellate victory in *Country Mutual Insurance Co. v. Witbrod, et al*., 2026 IL App (2d) 250314, where the Appellate Court of Illinois, Second District, ruled that Country Mutual does not owe coverage to a pizza delivery driver employed by the named insured in connection with a personal injury lawsuit.

In this matter, the named insured's employee operating his personal vehicle collided with another driver while returning from a pizza delivery. While the employee maintained personal auto coverage through State Farm, the injured plaintiff sought to tap into the employer's commercial policies issued by Country Mutual. Crucially, the plaintiff never named the employer as a defendant in the personal injury lawsuit prior to expiration of the statute of limitations. Instead, while the coverage lawsuit was pending in the trial court, the employee and underlying plaintiff entered into a private, binding arbitration agreement without Country Mutual's knowledge. This resulted in a $3.2 million award designed to insulate the driver's personal assets and target the commercial insurer.

Country Mutual's policies cover the named insured and "anyone liable for the conduct of" that named insured. The employee and the underlying plaintiff relied on a 2015 case, *First Chicago Insurance Co. v. Molda (Molda III)*, which the trial court questioned but deemed binding. The *Molda III* rule held that if an employer faced "potential liability" under a theory of respondeat superior at the exact moment of an accident, the employee was automatically considered an insured under the employer's policy. It deemed this true even if the employer was never actually sued and the statute of limitations had expired. Under the *Molda III* rule, an employee is an insured—as someone liable for the conduct of the named insured—by virtue of the employer's theoretical ability to assert a quasi-contractual implied indemnity claim against its employee if forced to pay a judgment based on that employee's conduct.

On appeal, the Traub Lieberman team aggressively challenged the *Molda III* framework, arguing that looking at potential, hypothetical claims fundamentally subverted well-settled Illinois insurance law and the policies' plain language. The Appellate Court adopted this reasoning, explicitly declining to follow *Molda III*. The court held that an omnibus "Who Is An Insured" clause providing coverage to those liable for the named insured's conduct is strictly a vicarious liability provision. It is not a general catch-all for employees driving their own vehicles. Because the plaintiff failed to assert a timely claim against the employer, the policies issued to the employer did not apply to the accident. The court reversed the trial court's ruling and entered summary judgment in favor of Country Mutual.

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