



## Alerts

### Trucking Company MCS-90 Endorsement Does Not Apply When Truck Not Involved in Transportation of Property

**December 10, 2010**

*Insurance Coverage Alert*

Following a collision with an unloaded semi-truck cab with no trailer attached, motorists brought a personal injury action in a Mississippi state court. The truck driver was returning home from work and backing up into his driveway at the time of the collision. *Canal Insurance Co. v. Bernetta Coleman, Case No. 10-60196 (5th Cir. Nov. 1, 2010)*. The truck driver owned the truck and leased it back to his employer. The parties stipulated that the truck was not engaged in the transportation of property at the time of the accident.

The insurance policy issued to the truck driver's employer only covered an "owned vehicle," but the subject truck was not owned by the insured company. Therefore, the claimants attempted to obtain coverage through the federally-mandated MCS-90 endorsement attached to the policy. The MCS-90 endorsement obligates an insurer to pay certain judgments against the insured even though the insurance contract would have otherwise excluded coverage. The endorsement was designed to "assure compliance with federal minimum levels of financial responsibility for motor carriers." 49 C.F.R. Sections 387.3 and 383.7.

The issue of whether the MCS-90 endorsement covered the accident was a question of federal law. The U.S. Court of Appeals for the Fifth Circuit noted the stipulation that the truck driver was not involved in transporting property, but found that it was at least arguable that his conduct at the time of the accident could be termed "transportation of property." However, as the district court had accepted the stipulation, the appellate court refused to reconsider that issue. The Fifth Circuit concluded that "[n]othing in the MCS-90's text indicates that it covers other kinds of liabilities, i.e., liabilities incurred outside of the transportation of property."

#### **Practice Note**

The Fifth Circuit's decision reaffirms the concept that the court will look to the plain meaning/text of a federal statute or regulation, and that the enhanced and supplemental coverage of the MCS-90 is not unlimited. Rather, it only applies if the vehicle is engaged in the transportation of property at the time of the accident. Furthermore, parties need to be careful about admitting facts, as courts will not likely relieve them of a misguided stipulation.

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*