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The Motor Carrier Act of 1980/MCS-90 Endorsement-- Does it Create Insurance Coverage or Require a Duty to Defend?

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The Motor Carrier Act of 1980 ("the Act") placed a number of requirements on interstate motor carriers. One requirement involved proof of financial responsibility. The Act states that no motor carrier shall operate a motor vehicle unless the carrier has demonstrated the ability to pay any claim up to a statutory minimum limit. Proof of compliance with the Act is typically done through a surety bond, self-insurance program, or an MCS-90 endorsement. An MCS-90 is an endorsement to insurance policies covering for-hire interstate transportation of goods or passengers that is intended to allow the motor carrier to comply with the minimum financial responsibility requirements imposed by the Act.

What Must Occur for MCS-90 to Apply?

For the MCS-90 endorsement to apply the following must occur:

1. There must be no coverage under the insurance policy;
2. There must be a judgment entered against the insured motor carrier;
3. The judgment must be a "final judgment" for "negligence in operation of a motor vehicle;"
4. There must be no source of recovery for the injured party from the insured motor carrier;
5. The claimant must be a third party that incurred personal injury or property damage; and
6. The subject vehicle must have been used in interstate commerce and the accident must have occurred in the United States.

The MCS-90 is Not Insurance and Does Not Extend Insurance Coverage

It is important to note that the MCS-90 does not create or extend coverage under the pertinent policy where none existed. It merely establishes that the at-fault motor carrier has the financial ability to pay a judgment entered against it despite its failure to comply with the pertinent insurance policy's terms and/or conditions. In other words, the MCS-90 provides an injured plaintiff a pocket for recovery when the insurance policy at play does not provide coverage to the insured motor carrier.

Does the MCS-90 Endorsement Provide a Duty to Defend?

The MCS-90 endorsement does not, in and of itself, require the insurer to defend the insured motor carrier, but it also does not negate a separate duty to defend which exists under the terms of the policy. Specifically, the endorsement provides that "no condition, provision, stipulation, or limitation contained in the policy" shall relieve the insurer from liability. In other words, the MCS-90 endorsement requires insurers to pay judgments, but it does not create a duty to defend if no such

duty otherwise exists under the policy. While the endorsement greatly expands the duty to indemnify, it has been consistently held that the policy does not expand the duty to defend.

Should the Insurer Defend Anyway?

If the policy does not require a defense, should the insurance company still provide a defense? A gratuitous defense is often the best course of action for the insurance company. If the insurer chooses to withhold a defense, it runs the risk that the motor carrier will not be adequately defended and will have a substantial judgment entered against it. It also runs the risk that the motor carrier could allow a default judgment to be entered or consent to a plaintiff-friendly judgment. In such events, the insurance company may be on the hook for a significant sum for the judgment or the Act's minimum coverage requirements, whichever is less. The insurer could find itself satisfying a large judgment even though the insured motor carrier had strong liability defenses. Providing a defense should allow the insurer to reduce or minimize overall exposure.

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