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Understanding endorsements and insurance for truckers



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Given the potential for catastrophic trucking accidents, insurers for the trucking industry are certainly aware of legally mandated policy endorsements that can increase their exposure well beyond the policy terms.

Under the Motor Carrier Act of 1980 (MCA), interstate motor carriers must show proof of financial responsibility to maintain their operating permits. Therefore, their liability insurers typically include an “MCS-90” endorsement on their policies.

This MCS-90 endorsement is designed to protect the motoring public by guaranteeing a minimum level of compensation for injured claimants (currently \$750,000). However, recent court decisions have ignored the purpose of the endorsement and ordered “stacking” of multiple endorsements, mandating that underwriters and claims people work together to limit an insurer’s exposure. Other issues have arisen as well.

MCS-90 AND SIMILAR STATE RULES

Under the MCS-90 endorsement, interstate motor carrier insurers are

required to pay any final judgment “recovered against the insured for public liability” as a result of the negligent operation of any vehicle — regardless of whether the involved vehicle is covered under the motor carrier’s policy.

As such, the motor carrier’s insurer may be responsible for accidents involving subhaulers while using their own vehicles, at least when the haul is done under the insured’s permit. Significantly, the MCS-90 endorsement trumps policy provisions specifically limiting coverage to specifically described autos.

There are several important limitations on the applicability of the MCS-90 endorsement. The endorsement only applies when three requirements are met:

- The underlying policy to which the endorsement is attached does not cover the accident.
- Other insurance available to the motor carrier is insufficient to meet the federal minimum of \$750,000 or nonexistent.
- Once the federally mandated minimum has been met, the endorsement is inapplicable.

Accordingly, if the motor carrier's other insurance meets or exceeds the \$750,000 minimum, the purpose of the MCA has been met. The MCS-90 is never reached in such a case and never comes into play. It does not "stack" on top of other insurance sufficient to meet the statutory minimum.

In light of its statutory purpose to protect third parties (as opposed to the insured), the MCS-90 endorsement is not insurance. Rather, it is a surety designed to protect injured third parties up to the statutory minimum.

Because the MCS-90 is not insurance, it does not impose any "duty to defend" the insured. A contrary interpretation would conflict with the language of the statute and the endorsement, which allow the insurer to seek reimbursement from the insured of amounts paid under the endorsement.

Insurers for in-state truckers are subject to similar financial responsibility requirements.

For example, California law mandates that a trucker carry "adequate protection against liability imposed by law ... for the payment of damages in the amount of a combined single limit of not less than \$750,000 on account of bodily injuries to, or death of, one or more persons ... in any one accident."

In keeping with this, liability insurers for intrastate truckers must include a DMV-67 endorsement on their policies. The endorsement covers the operation, use, or

maintenance of motor vehicles up to the statutory amount of \$750,000 "regardless of whether such motor vehicles ... are specifically described in the policy." Notably, the standard-form DMV-67 endorsement allows the insurer to include a right to reimbursement of amounts paid under the endorsement.

The purpose of the DMV-67 endorsement is to ensure intrastate truckers maintain a minimum amount of insurance. As with the MCS-90 endorsement, truckers fulfilling hauls with power units owned by others could implicate the DMV-67. However, the law remains unclear whether subhaulers may qualify as additional insureds. Notably, since subhaulers may no longer operate under the prime hauler's permit in California, case law holding the subhauler qualifies as an additional insured may be outdated.

PROBLEMS FOR INSURERS

Many of the cases addressing the nature and scope of the DMV-67 endorsement (formerly known as the PUC endorsement) pre-date the MCS-90 cases.

Perhaps because of the lack of guidance, the cases are at odds with the language and intent of the DMV-67 endorsement. One court found the insurer owed a duty to defend and settle under the endorsement. Such a finding contradicts the standard language requiring the insured to reimburse the insurer for amounts paid under the endorsement.

Other courts interpreting the DMV-67 endorsement or its predecessor have held it can "stack" on top of insurance that has satisfied the \$750,000 minimum. One case holds that until the endorsement is canceled in accordance with the statute, it remains in force



and applies even when the underlying policy has expired and been replaced. Again, these holdings run counter to the express purpose of the statute, which is to ensure injured claimants receive the statutorily prescribed minimum.

WHAT CAN UNDERWRITERS AND CLAIMS PROFESSIONALS DO?

To protect the underwriting intent, underwriters should be mindful the DMV-67 endorsement remains in effect indefinitely if not canceled. The statute requires insurers to provide 30 days' notice to the DMV. To avoid a situation in which the endorsement remains in effect although the policy has terminated, underwriters should diary a date at least 30 days before the policy expires to send out the notice of cancellation of the endorsement. Likewise, when cancelling the policy, underwriters should ensure the endorsement is canceled as well.

Claims professionals, for their part, should check whether there is a state or federal filing for the insured that could bring the endorsement into play. In addition, claims professionals should be mindful of the current differences between California and federal law.

As stated above, there are some older California cases holding the DMV-67 endorsement can stack on

top of insurance of \$750,000 or more. There is also authority holding that the DMV-67 remains in effect indefinitely if not canceled. Therefore, claims professionals should check whether there other DMV-67 endorsements that were never cancelled and may still be at play.

In MCS-90 cases, claims professionals should be aware of clear-cut law holding the endorsement does not stack on top of statutorily sufficient insurance.

AN EVOLUTION

The law regarding financial responsibility endorsements is continuing to develop.

The courts are grappling with issues such as which entities qualify as insureds under the endorsements, whether and to what extent insurers may subrogate against such insureds, and to what degree the endorsements apply to inter-insurer disputes.

There is also substantial confusion regarding whether the DMV-67 and MCS-90 endorsements have any obligation pre-judgment, or whether an insurer can be held in bad faith for failing to settle pre-judgment.

In resolving these issues, the courts should interpret the endorsements in a manner that is faithful to their language and intent.

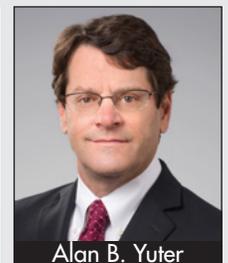
The MCS-90 and its state court

counterparts are not "insurance" designed to protect the insured. They are sureties designed to protect injured third-party claimants from judgments up to the statutory minimum. Therefore, they should have no effect on the relationship between the insured and the insurer, or between multiple insurers.

In going beyond the statutory language to find a duty to defend or "stacking" of the endorsements on top of statutorily sufficient coverage, the courts appear to have done violence to the statutes. It is only by remaining true to the statutory language and intent that the courts will foster the uniformity that the Legislature intended. In turn, this consistency of decision will benefit insurance underwriters, insureds, and ultimately the motoring public.



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