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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Motor Carrier Safety Act Created Exception to $1 Million Cap on No-Fault Damages

By Gillian Yee

The Motor Carrier Safety Act ("MCSA"), MCL 480.11 *et seq.*, created an exception to the one million dollar cap on property damages established by the No-Fault Act. In *MDOT v. Initial Transport, Inc., et. al.*, a published opinion of the Michigan Court of Appeals released July 26, 2007, a semi-tractor owned by defendant-Initial Transport and covered by a no-fault policy issued by defendant-Employers Mutual Insurance Company, struck a cement barrier on the entrance ramp from I-75 to I-94. The semi-tractor was towing a cargo tank trailer carrying gasoline, which detached, crossed over the barrier wall, and fell onto the roadway below. The tank trailer exploded and caused a fire that severely damaged and destroyed parts of the overpass and adjoining structures, resulting in $3.5 million in repairs by Plaintiff.

Defendant-Initial Transport's primary commercial protection liability limit with Defendant-Employers was $1 million, but it had a separate excess liability policy limit of $4 million. Defendant-Employers declined to pay more than the $1 million limit, reasoning that it was not required to do so under the No-Fault Act. Plaintiff claimed that the MCSA created an exception to the damages limitation in the No-Fault Act.

MCL 500.3121(5) of the No-Fault Act is unambiguous and limits the payment of property protection insurance benefits to $1 million under one policy for damage to tangible property arising from a single accident.

Michigan enacted the MCSA in January 8, 1996, by adopting portions of the federal Motor Carrier Safety Act and the federal Motor Carrier Safety regulations. The MCSA is equally unambiguous in mandating that motor carriers obtain and have in effect minimum levels of financial responsibility before operating vehicles carrying certain hazardous materials.

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There was a vigorous dissent by Judge Whitebeck arguing the No Fault Act is an exclusive remedy available to MDOT for the damages sustained in this case. The majority opinion concluded that MCL 500.3121(5) of the No Fault Act unambiguously limits payment of property protection insurance benefits to $1 million under one policy for damages to tangible property arising from a single accident. However, the majority of the Court of Appeals then proceed to determine the legislative intent in order to reconcile these two statutes.

It is anticipated, the Michigan Supreme Court will grant leave to appeal and review this issue. There is a good chance for reversal based upon the Court's recent decisions which have upheld unambiguous statutes and declined to engage in judicial construction to ascertain legislative intent.

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The Court found that there is ambiguity between the No-Fault Act and the MCSA and that it is necessary to engage in judicial construction to ascertain the legislative intent. In re MCI Telecom Complaint, 460 Mich 396, 411-412; NW2d 164 (1999). The Court held that the correct interpretation of the two acts is that the legislature intended MCL 500.3121(5) to apply to all vehicles, but later crafted, through the enactment of the MCSA, an exception with respect to vehicles hauling hazardous materials.

The Court held that the subsequent adoption of the MCSA imposes potential liability in addition to that imposed by the No-Fault Act on motor carriers carrying hazardous materials, creating an exception to the $1 million cap on property damages. The Court bases its holding on the following three reasons: (1) the legislature's adoption of "to create additional incentives" suggests that the requirements were intended to exert pressure over and above that exerted by pre-existing legislation to operate vehicles in a safe manner; (2) the legislature's distinction between non-hazardous and hazardous property led to appreciably different levels of minimum financial responsibility, i.e. $750,000.00 for non-hazardous versus $1 million to $5 million for hazardous property; and (3) the MCSA requires motor carriers to maintain minimum levels of financial responsibility, the insurance policies must presumably be recoverable by injured parties.

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We welcome your questions and comments.

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