

Galloway's Gulfport Office Secures Dismissal in Insurance Coverage Dispute Involving Interpretation of MCS-90 Endorsement

Attorneys Matthew Williams and Jennifer Young of Galloway's Gulfport, Mississippi office secured a dismissal of Galloway's client with prejudice in a coverage dispute between two insurance carriers necessitating interpretation of the MCS-90 endorsement following a tragic collision involving an 18-wheeler that was not listed as a covered auto on any insurance policy. Galloway's client issued a policy to a trucking company that was initially included as a defendant in a state court action arising out of the collision. Upon determining that insured did not own or operate the 18-wheeler involved (rather, one of its principals leased the vehicle at issue to the other trucking company involved), Plaintiff's counsel in the underlying dispute agreed to a dismissal with prejudice. The underlying state court litigation continued against the appropriate trucking company and is set for trial in early 2022. The remaining trucking company's carrier filed a declaratory judgment action in the United States District for the Southern District of Mississippi seeking a coverage determination against Galloway's client - the insurer that issued a policy to the dismissed trucking company. The truck involved in the collision was not a covered auto on either carrier's policy. Both policies, however, included the MCS-90 endorsement, which protects the public from uncompensated losses by mandating coverage where there would otherwise be none. For example, if a truck involved in a collision is not listed on a carrier's policy or the driver of the truck is not a covered driver under the policy, the MCS-90 endorsement is a safety net that obligates the insurer to pay negligently injured members of the public without regard to coverage defenses or allocation issues arising under the policy. The MCS-90 further allows the insurer to seek reimbursement from its insured for any payment the insurer would not have been obligated to make under the policy, but for the MCS-90 endorsement.

The District Court held that there was clearly no coverage under the policy issued by Galloway's client because the vehicle was not a covered auto on the policy it issued. The opposing insurance company sought to conduct discovery regarding the relationship between the two trucking companies and their respective owners; their theory was that the two trucking companies were connected and were essentially operating as the same company at the time of the accident. The Court noted their failure to explain how any of these allegations, if true, could transform the vehicle involved into a covered auto under the policy

issued by Galloway's client. The Court then addressed the MCS-90 endorsement and relied on Fifth Circuit precedent holding that the MCS-90 is not implicated for purposes of resolving disputes among multiple insurers over which insurer should bear the ultimate financial burden of the loss. The court further noted that coverage under either insurer's MCS-90 endorsement is dependent upon a final judgment recovered in the underlying state court action and therefore hinges upon the findings made in the underlying matter. As a result, the Court granted Galloway's client's Motion for Judgment on the Pleadings and dismissed the declaratory judgment action with prejudice.

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