

THOUGHT LEADERSHIP

News

U.S. DISTRICT COURT CONCLUDES THAT INSURER HAD NO DUTY TO SETTLE CLAIMS ARISING FROM MCS-90 ENDORSEMENT OBLIGATION

Newsbrief

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Last week, the United States District Court for the Southern District of Texas concluded that insurer had no duty to settle claims arising from MCS-90 endorsement obligation. In *Progressive Commercial Casualty Ins. Co. v. Xpress Transport Logistics, LLC*, No. H:21-2683, 2022 WL 103555 (S.D. Tex. [Houston Division] Jan. 11, 2022), Miguel Cuellar agreed to accompany his friend, Fabian Santiago, who was to drive a truck loaded with steel parts from Texas to Missouri. Santiago was driving for ESD Transport. Xpress Transport Logistics, LLC (“Xpress”) initially agreed to haul the load but re-brokered it to ESD Transport. At some point during the trip, Cuellar drove the truck, when it rolled and killed both him and Santiago.

At the time of the accident, Xpress was insured by a commercial auto policy with Progressive. The policy included an MCS-90 endorsement which required Progressive to pay “any final judgment recovered against the insured for public liability resulting from negligence in the operation ... or use of motor vehicles ... regardless of whether [it] is specifically described in the policy.” The MCS-90 endorsement excluded coverage of an “insured’s employee”.

After Cuellar’s mother sued Xpress in Texas state court, Progressive sued Xpress and Cuellar’s mother in the U.S. District Court seeking a declaratory judgment that it had no duty to defend or indemnify Xpress. In response, Cuellar’s mother filed a counterclaim asserting that Progressive had a duty to accept and pay a settlement offer that was reasonable and within the MCS-90 policy limits. She also filed a partial motion for summary judgment seeking to establish that Cuellar was not an employee of Xpress when the accident occurred and, therefore, the MCS-90 endorsement applied. Progressive moved to dismiss Cuellar’s mother’s counterclaim on the ground that there is no cause of action for a “duty to settle” in relation to an MCS-90 endorsement.

The U.S. District Court concluded that if Cuellar was provided with value in exchange for his service of helping drive with Santiago, then Cuellar may be considered an employee of ESD Transport, which took the job on a re-brokered contract from Xpress; but the Court denied Cuellar’s mother’s motion on the ground that it was premature as discovery had just begun.

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Next, the Court dismissed Cuellar's mother's counterclaim. "The reasons behind a duty to settle in the indemnity-insurance context, in which the insurer has a duty to defend and indemnify the insured, do not apply to the MCS-90 endorsement context, in which the insurer owes only an obligation to pay the remaining debt of an insured after the insured's debt has been established." The Court recognized that "the outcome might be different if the insurance contract, by terms other than those in the MCS-90 endorsement, imposed a duty to defend and indemnify on Progressive that encompassed claims brought under the MCS-90 endorsement. But that was not what Cuellar's mother pleaded in her counterclaim."