Why the MCS-90 Is Not the Same as Trucking Insurance Coverage

The Endorsement Can Affect Collectibility Without Rewriting the Motor Carrier's Policy

Insurance analysis in a serious truck crash rarely ends with the motor carrier's declarations page. The tractor and trailer may have different owners, the driver may operate under a lease, and several primary, excess, non-trucking, or additional-insured policies may be implicated.

The MCS-90 adds another issue, but referring to it simply as "coverage" is imprecise. The endorsement can create an obligation to pay a qualifying judgment even when the policy does not provide contractual coverage for the loss. That obligation does not necessarily expand the insurer's duty to defend, alter the policy's exclusions, or make additional parties insureds.

For a truck accident lawyer evaluating potential recovery, the practical question is therefore not merely whether an MCS-90 exists. Counsel must determine whether the underlying policy covers the crash, whether the endorsement can be invoked, which motor carrier is named in it, what other insurance is available, and how the controlling jurisdiction interprets the federal requirements.

What the MCS-90 Actually Does

The MCS-90 is a federally prescribed endorsement used by motor carriers that satisfy applicable federal financial-responsibility requirements through insurance. FMCSA's current Form MCS-90 is attached to the motor carrier's liability policy rather than issued for a particular vehicle.

The endorsement provides that the insurer will pay, within its stated limit, a qualifying final judgment recovered against the motor carrier named in the endorsement. The judgment must involve public liability resulting from negligence in the operation, maintenance, or use of a motor vehicle subject to the federal financial-responsibility requirements.

This language can matter when the truck involved in the crash is not scheduled on the policy or the insurer relies on an exclusion that would otherwise defeat contractual coverage. But an excluded or unscheduled vehicle does not, by itself, trigger the endorsement. The vehicle still must be subject to the federal financial-responsibility requirements, and the other conditions for invoking the MCS-90 must be satisfied.

That does not make its application automatic. Courts may examine the nature of the carrier's operations, the transportation being performed at the time of the crash, the identity of the judgment debtor, the presence of other insurance, and the law of the applicable federal circuit.

Why the Endorsement Is Not Ordinary Insurance Coverage

The MCS-90 creates a public-facing payment obligation without necessarily changing the contractual allocation of risk between the insurer and motor carrier. Several features demonstrate the distinction:

- **No Automatic Duty to Defend:** The MCS-90 itself does not create a contractual duty to defend. An insurer may therefore face a payment obligation under the endorsement even when it had no duty to defend the motor carrier in the underlying lawsuit.
- **No Expansion of Insured Parties:** FMCSA guidance limits the payment obligation to a judgment against the motor carrier named in the endorsement or its fiduciary. The form does not automatically insure the driver, owner-operator, broker, shipper, or an affiliated company.
- **No General Rewriting of Policy Terms:** Exclusions and other policy provisions may remain enforceable between the insurer and motor carrier even when the endorsement protects a qualifying judgment creditor.
- **No Automatic Additional Layer:** The MCS-90 is not automatically a separate extra limit that can be stacked on top of every collectible policy. FMCSA does permit a carrier to satisfy its financial-responsibility requirement through layered primary and excess policies, with separate endorsements on each layer, so the actual insurance structure still has to be analyzed.
- **A Right of Reimbursement:** If the insurer pays solely because of the endorsement, the motor carrier agrees to reimburse the insurer for amounts that would not have been payable under the policy itself.

These characteristics are why courts often describe the MCS-90 obligation as resembling a suretyship rather than conventional indemnity coverage. The insurer may be required to protect the injured member of the public while retaining the right to recover the payment from its own insured.

When the MCS-90 May Affect Recovery

The endorsement becomes significant when a coverage dispute threatens to leave a qualifying judgment unpaid. That may occur when the involved tractor was omitted from the vehicle schedule, the carrier was operating leased or substituted equipment, or the insurer invokes a driver, vehicle, lease, or use exclusion.

Cancellation disputes can also bring the endorsement into play. The policy and the endorsement do not necessarily terminate simply because one document lists a cancellation date. The federal cancellation rules generally require 35 days' written notice between the insurer and insured, and a registered carrier's cancellation also requires 30 days' notice to FMCSA. A replacement policy can terminate the retiring insurer's federal responsibility sooner in circumstances described by the regulation. Counsel should therefore review the policy, endorsement, replacement coverage, federal filings, and cancellation notices together.

The interaction between the MCS-90 and other insurance is particularly important. For example, in *Carolina Casualty Insurance Co. v. Yeates*, the Tenth Circuit held that the endorsement was not triggered once other insurance available to the motor carrier satisfied the federally required minimum. Other jurisdictions do not necessarily apply every part of that framework the same way, so counsel should not assume the endorsement stacks on top of available insurance—or that another policy always eliminates the MCS-90—without checking controlling law.

Courts also differ on how they determine whether the vehicle was engaged in transportation subject to federal financial-responsibility requirements. The Fifth Circuit has used a trip-specific approach, while the Second and Eighth Circuits have focused on the interstate character of the shipment and the shipper's fixed transportation intent. The Seventh Circuit took a different statutory approach in *Prime Insurance Co. v. Wright*. The U.S. Supreme Court denied review in 2023, leaving the competing approaches unresolved. The controlling jurisdiction and the actual transportation facts can therefore determine whether the endorsement applies at all.

Every Potential Source of Coverage Still Matters

Even when the MCS-90 may apply, counsel should continue investigating the complete insurance structure surrounding the motor carrier and equipment. Contractual insurance may provide broader protection, greater limits, defense obligations, and coverage for parties outside the endorsement.

The investigation should include:

- **The Motor Carrier's Primary Policy:** Counsel should obtain the declarations, covered-auto symbols, vehicle schedules, exclusions, and every endorsement—not merely an insurance card or certificate.
- **Umbrella And Excess Coverage:** Catastrophic injury and wrongful death claims may implicate several layers, each with separate notice and attachment requirements.
- **Tractor And Trailer Policies:** Separately owned or leased equipment may be covered by different insurers.
- **Owner-Operator Coverage:** Non-trucking or bobtail coverage may apply depending on the driver's dispatch status and use of the vehicle.
- **Additional-Insured Coverage:** Leases, transportation agreements, and service contracts may extend coverage through another entity's policy.
- **Affiliated Entities And Insurance Programs:** Related carriers may share equipment, employees, operating authority, or layered insurance arrangements despite maintaining separate corporate identities.

Federal filings can help identify insurers and financial-responsibility arrangements, but they do not resolve contractual coverage. That requires the policies themselves, the operative agreements, and evidence showing how the truck was being used.

The Named Motor Carrier and Final Judgment Cannot Be Afterthoughts

The MCS-90 promises payment of a qualifying final judgment against the insured motor carrier. That identity matters because FMCSA defines the "insured" for purposes of the endorsement as the motor carrier named in the policy, endorsement, or related filing, together with its fiduciary. The endorsement does not necessarily respond to a judgment entered only against the individual driver or another company involved in the transportation arrangement.

Correctly identifying the carrier named in the endorsement must therefore be part of the liability analysis. Operating authority, leases, bills of lading, dispatch records, vehicle markings, and corporate documents may reveal that the company controlling the trip differs from the entity initially identified in the police report.

Counsel must also account for the endorsement's final-judgment language. An MCS-90 may influence settlement and collectibility analysis before trial, but its express payment obligation is tied to a judgment. Treating the endorsement as an immediately available settlement fund can overstate the insurer's obligation and weaken the evaluation of other coverage.

Fried Goldberg LLC Handles the Coverage Issues Behind Complex Truck Crash Cases

At Fried Goldberg LLC, we devote more than 95% of our practice to truck and commercial vehicle litigation. Our attorneys handle cases nationwide and regularly work with plaintiffs' lawyers confronting complicated motor carrier, leasing, insurance, and federal regulatory issues.

Our attorneys authored *Understanding Motor Carrier Claims*, a nationally recognized resource developed for lawyers handling trucking cases. We can assist with identifying responsible motor carriers, analyzing insurance programs, evaluating MCS-90 obligations, and developing a coordinated liability and recovery strategy.

Truck crash victims and families can contact us for a free, confidential consultation. Plaintiffs' attorneys may also contact us to discuss co-counsel or referral assistance.