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Transportation Annual Year in Review

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2026 Transportation Year in Review

We are delighted to present the 2026 edition of the Barclay Damon Transportation Team's annual review of important developments in transportation law.

This year's edition features a discussion of the upcoming US Supreme Court case that is expected to determine the fate of the broad FAAAA defense to the liability of freight brokers; an analysis of the Texas Supreme Court's decision that reversed the *Werner* decision (in which an appellate court had affirmed a jury award against Werner Enterprises for $90 million); a long summary of a convoluted MCS-90 decision that our firm, working with distinguished Georgia counsel, has appealed to the Eleventh Circuit; and much more.

Kaitlyn McClaine has neatly organized this year's cargo cases into bite-sized lessons; and Ian Linker returns to the problem of outrageous towing bills among his other efforts for this edition—including gathering and classifying the decisions as they were published (or not published) all year long.

That reminds us: have a look at how few of the 2025 decisions we have reviewed contain official citations. What causes federal judges not to publish? How healthy is a legal system in which an estimated 90 percent of opinions are not reported through the official channels? Is it because the judges view most cases they preside over as unimportant or not contributing anything new? Are they hoping to avoid published decisions by the appellate courts that reverse their rulings? For a deeper discussion of this important question, have a look at the 2021 article by Susan W. Johnson and others entitled "To Publish or Not Publish: Exploring Federal District Judges' Published Decisions" available here at the link and online at Oregon State University's website.

We also welcome this year's guest author Stephen Johnson's piece on avoiding bad faith. A nationally known expert on the topic, he reviews best practices for insurers and third-party administrators. As always, we appreciate your readership and look forward to hearing from you with your responses and questions.

Larry Rabinovich

1. Freight Brokers

In the federal statutes and regulations (49 USC §13102(2); 49 C.F.R. §386.2) there is a clear dividing line between the roles—and the respective levels of responsibility—of motor carries and those of freight brokers. Motor carriers have a great deal of exposure for cargo losses and are liable for their own negligence or that of their drivers in bodily injury/third party property damage claims. Brokers have a smaller band of exposure and, depending what the US Supreme Court decides this year in the *Montgomery* case (see the section on Preemption), brokers may have even a greater ability to avoid liability in the future. There is understandable confusion in the case of a dual-authorized entity, that is, one that has both carrier authority and broker authority, a topic we have examined elsewhere. Beyond that, though, our experience and our readings of case law suggests that judges, shippers, and others who work with carriers and brokers (and possibly even the carriers and brokers themselves), are not always clear where the dividing line rests.

PGT Trucking. Inc. v. Evanston Ins. Co., 2025 US Dist. LEXIS 33136 and 2025 US Dist. LEXIS 128730 (E.D. Pa), involved a dual authorized entity (broker and carrier) insured under a transportation broker liability policy. PGT was sued by the drivers of two autos injured when two rolls of steel fell off a tractor-trailer being operated under the motor carrier authority of J Vanwinkle Trucking, Inc. PGT claimed that it had acted as the broker for the load, but its name was printed on the bill of lading next to the notation "CARRIER." While bills of lading are supposed to be "issued" by the motor carrier, the reality of the marketplace is that they are generally prepared by the shipper. And, the court noted, shipper Nucor created the bill of lading; PGT insisted that Nucor had erred by identifying PGT, rather than J Vanwinkle, as the carrier.

Defendant Evanston's policy covered PGT's liability as a broker for negligent hiring or entrustment and for vicarious liability for the negligence of the motor carrier which the broker had engaged. (As set out in the Preemption section, the future of such claims against brokers now rests with the US Supreme Court.) Evanston denied coverage on the basis that PGT was listed as carrier on the bill of lading; the policy excluded coverage when the insured was acting as a motor carrier or was listed as carrier on the bill of lading or (other) contract of carriage.

PGT, insisting that it had, in fact, acted as a broker, sued Evanston on various grounds. In the first round, dealing with Evanston's attempt to dismiss bad faith claims, the court, noting that the policy explicitly excluded coverage when the insured was identified as the carrier on the bill of lading, concluded that Evanston had not acted in bad faith when it denied coverage. The breach of contract claim, and Evanston's counterclaim were handled a few months later. There the court noted that the policy clearly delineated between brokerage activities (covered) and carriage (not covered). The bodily injury plaintiff had pleaded in the alternative in the tort case that PGT was either the broker or carrier, so the pleadings appeared to be sufficient to trigger a defense obligation. However, since the policy separately excluded coverage when PGT was listed on the bill of lading, Evanston was in the right when it denied coverage; and since there was no duty to defend, it also had no duty to indemnify PGT.

PGT argued that it had been listed by mistake as the carrier and submitted evidence that the shipper's computer had listed PGT based on prior transactions. The court rejected the argument for two reasons: 1) the language of the policy excludes coverage no matter how PGT came to be listed on the bill of lading, and 2) in applying for the policy, PGT had noted that its broker agreement required the shippers to identify the motor carrier and not PGT on the bill of lading.

We observe that while brokers can (and do) include language in agreements to insist that any reference to them in the bill of lading is in error, they generally have no control over how the bill of lading is actually issued. Evanston's exclusionary language has the significant benefit (for Evanston) of being clear and easy to apply. Policies which use that language, though, do not appear to provide the sort of protection that the broker is expecting.

The choices plaintiffs make in drafting pleadings against brokers are significant in determining whether, or at least how quickly, these cases will be dismissed. In *Rockne v. J.B. Hunt Transp. Inc.*, 2025 US Dist. LEXIS 148702 (N.D. Tex.), a family was decimated (pregnant woman killed, three members seriously injured) in a horrific accident involving a motor carrier selected by J.B. Hunt ostensibly acting as a broker, though it is also a carrier; Hunt asserted F4A preemption (see the section on Preemption). The facts, though, were nuanced.

Hunt has a contract with Dollar Tree Stores to move the latter's freight. In this case it had assigned a carrier named Far Far Cargo and its principal Zarif Umarov to pick up and deliver the freight. The estate sued the motor carrier whose driver allegedly caused the accident, as well as the driver; in addition, the estate also sued Hunt for vicarious liability and for its own negligence in hiring and monitoring the motor carrier and driver. Contrary to Hunt's assertion, the complaint did not solely allege that Hunt had acted as a broker; the allegations about Hunt's arrangement with Dollar Tree was potentially consistent with a shipper/carrier relationship. Accordingly, the magistrate found the motion to dismiss premature.

The magistrate was aware of the risk to Hunt, and other brokers similarly positioned, in permitting actions of this kind to go forward. A jury might be inclined to find the deep pocket liable, whether such a result is deserved or not. In light of the possibility that claims against brokers will be summarily dismissed under F4A, lawyers for plaintiffs will always (regardless of the reality) want to allege that the broker, particularly when it is large and well-funded, was actually the carrier. That way, summary judgment against the plaintiff will be avoided. When the evidence does not support an allegation that the broker was actually the carrier, the court should treat the defendant as a broker and grant summary judgment. (Depending on what happens in the Supreme Court next term, again see the Preemption article, the question of how a complaint characterizes a defendant can become an increasing point of tension.)

Johnsonville, LLC v. Service Driven Transport, Inc., 2025 US Dist. LEXIS 187534 (E.D. WI) also involved a shipper/broker agreement. Service Driven, the broker, hired a motor carrier to haul Johnsonville sausages and other meat products to its customers. On this occasion the carrier used its own trailer which, at delivery, was found to be infested with snails, which had adulterated the shipment.

Johnsonville's allegations against the broker Service Driven under Carmack were rejected since it had not alleged that Service Driven was a carrier, and Carmack claims may not be alleged against the broker. Moreover, the court adopted the views of the federal Seventh and Eleventh circuits in noting that the claim for negligent selection of a motor carrier was preempted by F4A. The court, though, permitted Johnsonville to amend its complaint; what, we wonder, might that amended complaint look like? That Service Driven was acting as a carrier, rather than as a broker? And, if so, will Service Driven's insurers deny coverage as PGT's insurer did?

USDOT regulations require freight brokers to maintain a BMC-84 bond to provide security for unpaid freight bills. It is primarily a hedge against crooked or financially irresponsible brokers who collect freight charges from shippers but do not remit them to the motor carriers.

The surety in *Colonial Surety Co. v. Lotus Global Trucking, Inc.*, 2025 N.Y. Misc. LEXIS 981 (NY County), had paid $73,000 plus (just shy of the bond's limit of $75,000) to various motor carriers who had not been paid for their services by the broker principal. Colonial sued the broker Lotus which, not surprisingly, defaulted. The court awarded judgment including attorney's fees. Did Colonial actually collect? Or are the broker and its principal in the wind? The case law does not tell us. The BMC-84 shares this conundrum with other surety-type arrangements such as the MCS-90; the primary goal, that of protecting the innocent, may effectuated (so at least some of the carriers that the broker fails to pay for their services are reimbursed), but the surety is generally left without a way to enforce its recovery rights against the principal which simply goes out of business, sometimes reappearing under a different name.

Freight brokers play an important role in facilitating transportation services, but, as the very existence of the BMC-84 suggests, there are natural tensions between brokers and carriers. In part to address one such tension, USDOT regulations require brokers to keep transaction records and to make the records available to the motor carrier, including those related to freight charges collected and compensation. At the end of the day, though, the broker/carrier contract is likely to be dispositive.

Thus, in *Pink Cheetah Express, LLC v. Total Quality Logistics, LLC*, 2025 US Dist. LEXIS 179431 (D.D.C.), the motor carrier (Pink Cheetah) sued the broker (TQL) for the release of records that the carrier refused to share.

The carrier had already petitioned USDOT to order release of the records, and USDOT had issued a guidance directing the broker to do so. The broker refused, pointing out that the carrier had waived its rights to see such data as part of the broker/carrier agreement. In our experience, this is a typical provision in broker-drafted contracts with their carriers.

The court agreed with the broker and dismissed the case on the basis that the USDOT's guidance was not enforceable under the operative statute. It is true that the 1995 I.C.C. Termination Act had provided a private cause of action to one who was injured because a carrier or broker failed to obey an order of the Secretary of Transportation. The court concluded, though, that USDOT had not ordered TQL to reveal the data but had merely instructed the broker to comply with its pre-existing obligation, which the court took to be a guidance, not an order. The carrier's attempt to prosecute a declaratory judgment action was also disallowed: where there is no judicially remediable right, declaratory relief is also not available. Obviously there was no breach of contract claim since the contract supported TQL's position; a carrier that cares about this issue must address it with the broker before their agreement is finalized.

Sometimes, to preserve its relationship with its customers (shippers, manufacturers, etc.), a broker will pay for a cargo loss, even absent a legal obligation to do so, and then attempt to collect back from the motor carrier which lost or damaged the cargo. *MLM Supply Chain, LLC v. Sapsan Logistics, Inc.*, 2025 US Dist. LEXIS 220706 (N.D. Ga) makes clear that in such scenarios the motor carrier has the legal right to challenge its liability.

On the other hand, in *RPM Freight Sys., LLC v. SVB Express, Inc.*, 2025 US Dist. LEXIS 143038 (E.D. Mich), the plaintiff-broker assigned the defendant to haul a load of lithium batteries; the cargo was irreparably damaged in an accident. The claim was for an amount in excess of $765,000. The carrier denied liability, asserting that the damage occurred because the load had not been properly secured, a point apparently confirmed by the police report. The carrier also insisted that it was never told the value of the cargo and that the broker/carrier agreement required them to maintain only $100,000 in cargo insurance.

The broker paid the shipper and then filed a breach of contract claim against the carrier, arguing that the broker/carrier contract provided for indemnification. The court found that the Carmack defenses raised by the carrier against the broker were not relevant; in any event, the agreement by its terms overrode the Carmack Amendment. (This is a recurring issue in negotiations between brokers and carriers.) The court granted the broker's breach of contract motion and awarded the full value of the payment the broker had made. We wonder, though, how much the broker was actually able to recover.

Note: For cases involving brokers and the Carmack Amendment please see the Cargo Section, and for those involving brokers and preemption/FAAAA see the Preemption Section.

Larry Rabinovich

2. Cargo Losses and the Carmack Amendment

CARMACK AMENDMENT

In *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 2025 US Dist. LEXIS 17797 (M.D. Fla.), a cargo theft case, the district court denied dismissal of breach-of-contract and Carmack claims where the defendant alleged it was a broker, though the plaintiff alleged it was a carrier because it contractually assumed carrier responsibilities. Specifically, the carrier confirmation identified the defendant as the carrier and included its motor carrier number. Despite the plaintiff's prior litigation posture labeling the defendant as a broker, the district court permitted alternative pleading and focused on whether the defendant held itself out as legally responsible for transportation. The district court emphasized that carrier confirmations and assumption of delivery obligations may support carrier status even where transportation is subcontracted. Significantly, this decision materially expands pleading-stage exposure where brokers assume transportation obligations by contract. (This case is also discussed in the Broker section.)

In *Advanced Concrete, Inc. v. Kurtex Logistics, Inc.*, 2025 US Dist. LEXIS 215088 (W.D. Wis.), a cargo damage case, a shipper sued the carrier-defendant and its insurer in state court on common-law theories for damage to a shipment of concrete forms tendered under a move arranged by the carrier-defendant. The district court held that the Carmack Amendment completely preempts state-law cargo claims and only authorizes suits against the carrier or freight forwarder, not a direct action against the carrier's liability insurer. The district court dismissed the plaintiff's claims against the insurer while allowing the Carmack claim against the carrier-defendant to proceed. Significantly, this decision underscores that Carmack recovery must be framed against the proper transportation defendants rather than their insurers.

Belt Tech., Inc. v. Gi Bros. Trucking, Inc., 2025 US Dist. LEXIS 162099 (S.D. Tex.) was a cargo damages case involving conveyer belt rolls. The shipper argued the Carmack Amendment does not limit its recovery to the cost of the single damaged roll, which was transported because the damaged conveyor-belt roll rendered the entire conveyor system unusable. The district court held that "actual loss" under the Carmack Amendment can include the reasonable cost to replace or repair the broader system when that loss was the natural and foreseeable consequence of the carrier's mishandling of the shipment. The opinion distinguishes between general and special damages but concludes that the integrated nature of the equipment made the broader replacement cost recoverable. Significantly, this decision is a reminder that Carmack exposure is not confined to the invoice value of the one item physically impacted where the damage foreseeably takes an entire system out of service.

Schenker of Can. Ltd. v. Am Trans Expedite LLC, 2025 US Dist. LEXIS 172673 (E.D.N.Y.) was a multi-carrier cargo damage case. In this case, a logistics provider and its affiliate sought recovery for loss to cargo that moved in a multi-leg interstate shipment involving several carriers double-brokering. The defendant argued that the pleadings were deficient and that the state-law theories were preempted, while the plaintiff logistics provider argued that a forum selection/choice of law provision in the contract waived Carmack preemption. The district court agreed that the Carmack Amendment governed the loss and preempted parallel state-law claims, but it denied the carrier's attempt to dispose of the case at the pleading stage where the complaint plausibly alleged that the defendant acted as a receiving or delivering carrier. Further, the district court disagreed with the plaintiff logistics carrier, holding the contract clause did not meet the express requirements of the Carmack Amendment to waive its preemptive effect. The opinion emphasizes that Carmack liability turns on the functional role a company plays in the transaction, not the labels in its contracts, and that freight forwarders or logistics entities can be exposed as carriers if they take responsibility for the transportation. Significantly, this decision highlights the need for careful drafting and clarity as to which entity assumes the carrier role in multi-entity arrangements.

Netto v. Nationwide Express Carrier Corp., 2025 US Dist. LEXIS 34563 (S.D. Fla.). In this cargo loss case, the district court addressed a default-judgment arising from household goods that were allegedly lost or damaged during an interstate move. Applying the Carmack framework, the district court carefully reviewed the evidence supporting claimed replacement and incidental costs to determine the amount of "actual loss." The district court allowed recovery only for amounts that were adequately documented and sufficiently tied to the damaged shipment, trimming several categories as speculative, vague or unsupported. Significantly, this decision reinforces that, even if a carrier defaulted, shippers must come to court with clear documentation because Carmack damages will be limited to provable, causally linked loss.

Suzuyo Am., Inc. v. Year-Round Enterprises, Inc., 2025 US Dist. LEXIS 137630 (C.D. Cal.), a cargo loss case, involved high-value cargo that passed through multiple intermediaries, one of which issued its own bill of lading but claimed it was only a broker and sought dismissal of Carmack claims. The district court held that the state-law claims were largely preempted, but the Carmack claim could proceed against the intermediary as a potential carrier. The district court focused on how the intermediary held itself out to the shipper, the fact that it issued transportation documents in its own name, and the extent of its control over routing and carriers to conclude that the complaint plausibly alleged carrier status for purposes of Carmack. Significantly, this decision reinforces that entities that put their name on the bill of lading or assume front-facing responsibility can be treated as carriers, even if they sub-contract every leg of the move and claim to be merely acting as broker.

Alamo Fireworks, Inc. v. Landstar Ranger, Inc., 2025 US Dist. LEXIS 10290 (W.D. Tex.). This state-law preemption suit arose from a shipment of fireworks where the shipper pursued contract and tort claims against the defendant, arguing that the defendant acted as a carrier, while the defendant insisted it served only as a broker. The district court explained that if the defendant was a broker, most state-law negligence and related claims were preempted by the FAAAA, and if it was a carrier, the Carmack Amendment would still preempt those same state-law theories and provide the exclusive remedy. Therefore, applying either framework, the district court recommended summary judgment for the defendant and dismissal of the action with prejudice. Significantly, this decision highlights that, for intermediaries like the defendant, classification disputes may change which federal statute applies, but broad state-law exposure is rarely revived once a shipment falls within the interstate cargo regime.

BROKER VS. CARRIER

Notash v. Total Mil. Mgmt., Inc., 2025 US Dist. LEXIS 33243 (M.D.N.C.). This broker/carrier classification suit involved a military household-goods move in which the shipper sued both a transportation company and a logistics entity for damages to personal property. The district court held that the Carmack Amendment preempted state-law claims against the motor carrier and refused to dismiss the Carmack claim against the logistics company because the complaint plausibly alleged that it acted as a carrier rather than a mere broker for the move. Here, the district court noted that allegations that a defendant held itself out as a carrier or provided carrier services bears on the broker/carrier determination, and the allegation that the defendant offered to compensate the plaintiffs for their damaged goods may support an inference that the defendant accepted legal responsibility for transporting the plaintiffs' items. The opinion emphasizes that broker/carrier status is transaction-specific and turns on who accepted responsibility for safe delivery, not just on licensing labels. Significantly, this decision is a warning that assuming end-to-end responsibility or issuing one's own shipping documents can convert a brokerage role into carrier exposure under Carmack.

In *Proline Distrib. Servs., Inc. v. United Freight Grp., LLC*, 2025 US Dist. LEXIS 194163 (C.D. Cal.), a negligent selection of a motor carrier suit, a shipper sued a logistics company for negligent selection of a motor carrier and related state-law claims for damages to cargo, and the logistics company invoked FAAAA preemption. Relying on Ninth Circuit authority, the district court held that the FAAAA does not categorically preempt negligent selection and similar safety-oriented claims because they fall within the statute's safety exception. Significantly, this decision preserves potential state-law exposure for negligent hiring or selection, particularly in jurisdictions that read the FAAAA safety exception broadly. (See the Preemption section discussing the Ninth Circuit's view, which will soon be tested in the US Supreme Court.)

PROCEDURAL/PREEMPTION

In *Brown v. Clear Blue Ins. Co.*, 2025 US Dist. LEXIS 224406 (W.D. La.), a personal injury suit arising from a serious motor-vehicle accident, the plaintiffs sued carriers, brokers, and others under state negligence and related theories, and a broker removed to federal court on the theory that federal preemption created federal-question jurisdiction. The district court rejected that position and held that neither the Carmack Amendment nor the FAAAA provides complete preemption sufficient to support removal of state-law personal-injury claims. Instead, federal preemption operates purely as a defense to be litigated in state court. Significantly, this decision sharply limits removal options for transportation defendants in crash litigation and confirms that, absent diversity or a separate federal cause of action, at least some state courts will insist on remaining the primary forum for broker and carrier personal injury suits.

Suddath Global Logistics, LLC v. Steam Logistics, LLC, 2025 US Dist. LEXIS 3765 (M.D. Fla.) In this suit between brokers, two logistics companies agreed to share freight brokerage services and indemnify each other for certain losses in a co-brokerage agreement. After a loss, the plaintiff-broker brought suit for breach of contract and negligence, and the defendant-broker subsequently removed the suit to federal court on the basis of Carmack and FAAAA preemption. However, the district court held that neither statute preempted the broker-plaintiff's state-law claims because contractual indemnity and allocation disputes between brokers do not arise under federal transportation law even if the underlying shipments are interstate moves subject to Carmack. Significantly, this decision confirms that removal options for pure contract fights are narrow, and that preemption arguments will typically be resolved in state court.

In *MSC Mediterranean Shipping Co. S.A. v. BNSF Ry. Co.*, 779 F. Supp. 3d 1083 (C.D. Cal.), an ocean transit contractual dispute, an ocean carrier plaintiff sought contractual indemnity from the carrier-defendant after electronics were pilfered during inland rail segments of an international shipment governed by the plaintiff's sea waybills. Here, the defendant sought to dismiss the plaintiff's actions for indemnity and contribution based upon the liability limits in the plaintiff's own sea waybills. The district court concluded that the defendant could benefit from the limitations contained in the plaintiff's transportation documents and held that the maximum potential recovery would be capped by the limitation incorporated into the contract. Significantly, this decision underscores that well-drafted through bills and Himalaya-style clauses can successfully extend liability limitations to inland carriers and subcontractors.

In *LPI, Inc. v. Axle Logistics, LLC*, 2025 US Dist. LEXIS 95005 (E.D. Tenn.), a contractual dispute, a Carmack claim was brought against a broker and a carrier over a damaged shipment to Montana. Subsequently, the broker counterclaimed for unpaid invoices on a series of other loads. The district court rejected the shipper's argument that the contractual two-year limitation period barred the broker's counterclaim tied to the Montana load, and it dismissed counterclaims on eight unrelated invoices for lack of supplemental jurisdiction because they did not share a common nucleus of operative fact with the Carmack dispute. The opinion confirms that courts will strictly police supplemental jurisdiction in transportation cases and will not allow parties to bootstrap unrelated receivables into a Carmack action. Significantly, this decision highlights the need of brokers and carriers to manage collections on separate accounts directly rather than counting on litigation over a single loss to carry the rest.

Kaitlyn McClaine

3. *The Werner Decision*

TEXAS SUPREME COURT REVERSES THE NUCLEAR VERDICT IN THE WERNER CASE

A case which received national attention because it involved a nuclear verdict in a matter in which the truck driver had seemingly done nothing wrong, was reversed by the state supreme court on the basis of the fundamental principle of lack of proximate cause, a concept taught during the first year of law school which many courts seem to have lost sight of. While a feeling of relief spread through the trucking community following the decision, we wonder how significant it will prove in the long run. At the very least, though, the decision seems clearly correct and could encourage defense counsel to remind judges and juries that absent proximate cause between supposed negligence and the injury they are examining, the defendant(s) must not be found liable.

In *Werner Enters., Inc. v. Blake*, 719 S.W3d 525 (S.C. Tex.), the Texas Supreme Court reversed the appellate court which had let stand a jury award of approximately $90 million to three plaintiffs in connection with an accident involving a pickup truck and a tractor-trailer driven by defendant Shiraz Ali, an employee of defendant Werner. On December 30, 2014, at 4:30 PM, co-defendant Salinas was driving his pickup truck eastbound on I-20, at 50 to 60 mph, when he lost control due to ice on the road. Within two to three seconds, his pickup crossed the 42-foot grassy median, entered I-20 westbound, and collided with Werner's 18-wheeler driven by Ali. A child in the pickup truck was killed, and another child was rendered quadriplegic.

Driving conditions were hazardous on both sides of the road, although our review of the record suggested that the attorney arguing the case for Werner gave in too quickly to the allegation that Ali had already encountered ice on the road and had not slowed down—this appears to have been incorrect. There was, to be sure, a winter weather advisory: some tractor-trailer drivers had opted to get off the highway because of the icy conditions and were parked off the side of the highway. There had been several accidents in the 90 minutes preceding the accident between Salinas and Ali. First responders testified that the roads were icy and they needed to travel slowly, 10 to 15 miles per hour, due to the ice. Ali had not checked the weather and was unaware of the advisory. The plaintiffs' expert testified Ali was traveling approximately 50 mph when he activated his brakes, which he did as soon as he saw Salinas enter the median, and that only two seconds elapsed between the time Salinas lost control and the impact. Ali was going 43 to 45 mph at impact. The jury found Werner and Ali liable, apportioning 70% to Werner for negligent training of Ali, 14% to Ali, and 16% to Salinas.

The Texas Supreme Court noted that "We can assume sufficient evidence that Ali's speed—and even his presence on the icy road at all—was negligent under these weather conditions. And we can assume that Ali's negligent driving was a but-for cause of the injuries." Nevertheless, it reversed the appellate court which had affirmed the jury verdict and, instead, granted judgment to Werner and Ali, holding that Ali's negligence was not a proximate cause of the accident. The court explained that proximate cause has two elements: cause-in-fact and foreseeability, and that cause-in-fact, in turn, has two components: "but-for" causation and "substantial factor" causation. The court noted that negligence is a but-for cause of an injury if, "without the act or omission, the harm would not have occurred." However, proving but-for causation alone does not establish that a defendant's negligence was a proximate cause of a plaintiff's injuries. Rather, a plaintiff must also prove that the negligence was a "substantial factor in bringing about the injury." The court further explained that proximate cause requires application of "a practical test, the test of common experience, to human conduct when determining legal rights and legal liability." The requirement of proximate causation, with its requirement of substantial-factor causation, compels inquiry into whether, given the nature of the defendant's causal connection to the accident, it is reasonable to conclude that he is "actually responsible for the ultimate harm." If, on the other hand, the defendant's conduct "merely creates the condition that makes the harm possible, it is not a substantial factor in causing the harm as a matter of law."

By answering "yes" to the question about Ali's liability, the jury found that Ali's negligence was a substantial factor in bringing about the plaintiffs' injuries. The court noted that, to overcome that finding on appeal, the defendants must demonstrate that no reasonable juror could have reached that conclusion, and the court found that the defendants made that showing. Specifically, the court determined that no reasonable juror could assign responsibility for the plaintiffs' injuries to anyone other than Salinas who lost control of his vehicle and hurtled across a 42-foot median into oncoming highway traffic, thereby causing the accident. The court rejected the plaintiff's argument that if Ali had been going 15 mph, the pickup truck would have gone safely across the roadway into the grass because there would have been nothing for it to hit. The court noted that if the tractor-trailer had been going faster, the pickup truck would also have missed it. The plaintiffs also argued that Ali knew the conditions were hazardous and should have driven more carefully or stayed off the road altogether, and that his speed at least exacerbated the plaintiffs' injuries. However, the court explained that the plaintiffs' arguments focus on Ali's driving and his decisions in the hours and moments leading up to the accident, but the plaintiffs did not fault Ali for his reaction once Salinas lost control. To the contrary, their expert testified that Ali did the best he could during the two seconds preceding the crash.

The court explained that "(t)he plaintiffs' principal theory of the case is that if Ali had not been driving too fast in the icy conditions, things would have turned out much differently for the Blakes, who would be alive and well if not for Ali's unsafe driving. Powerful as this line of argument may be in the wake of such terrible consequences for the blameless victims, it addresses only but-for causation. It does not account for the requirement of substantial-factor causation, which we conclude is lacking here as a matter of law. That is so because the sole substantial factor in bringing about this accident—the singular fact that substantially explains why the accident happened and who is responsible for the plaintiffs' injuries—was Salinas's losing control of his F-350 and crossing a 42-foot grassy median into oncoming highway traffic before Ali had time to react. The Blakes are correct, of course, that there can be more than one proximate cause of an injury. That does not mean there is always more than one proximate cause. On these facts, we hold that there was only one. . . As between Salinas's driving and Ali's driving, we hold that Salinas's driving was the sole proximate cause of the Blakes' injuries as a matter of law. We do not thereby hold that the at-fault driver's negligence is always the sole proximate cause of the injuries arising from a collision." In further explaining its conclusion, the court noted "as a 'practical' matter of 'common experience,' we normally would not blame the driver who stayed in his lane and was struck, before he had time to react, by an out-of-control vehicle careening unexpectedly across a wide median into oncoming traffic." The court further noted that there is a scarcity of precedent from any jurisdiction validating the theory of liability advanced in this case.

The court also reversed the jury finding that Werner was liable for negligent training and supervision of Ali because, even if proved, it could not have been a proximate cause of the plaintiffs' injuries because Ali's negligent driving was not a proximate cause of their injuries. In other words, the court explained, because Ali's unsafe driving did not proximately cause the injuries, Werner cannot be separately liable for facilitating Ali's unsafe driving.

Although obviously a significant victory for the defendants, this case may have limited impact because of the unique circumstances of the accident. Indeed, the court clarified that it is not holding that an at-fault driver's negligence is always the sole proximate cause of injuries arising from a collision. We also note that the appellate court had affirmed the jury verdict and three of the Supreme Court Justices dissented, so we could envision a court in a different jurisdiction reaching a different conclusion under similar circumstances. In any event, the problem of nuclear verdicts has not been solved.

Vince Saccomando

4. The MCS-90 Endorsement

The most significant MCS-90 case of the year was *Cagle v. National Indemnity Company of the South*, 772 F. Supp. 3d 1316 (N.D. Ga), mod. by 780 F. Supp. 3d 1324 (now on appeal to the Eleventh Circuit). The underlying incident was quite unremarkable on the surface. A tractor-trailer (operated by one Loyola) collided with a car (operated by one Wilson) causing the latter to suffer bodily injury, and debris from that initial collision hit a third vehicle (operated by Cagle) causing *him* bodily injury. The rig operated by Loyola was not a covered auto under any policy. The police report identified First Time Transport as the trucking company for which Loyola was driving. First Time was insured (for other trucks) by Wesco, which investigated the loss. Wesco concluded that it would be required to pay under its MCS-90 and opted to pay its entire MCS-90 limit ($750,000) to Wilson, presumably because it considered him the more seriously injured of the two plaintiffs. Cagle then sued Wesco but the federal district court, while agreeing that First Time was the motor carrier of record, held that having paid its MCS-90 limit, Wesco had no further obligation.

Cagle discovered that the owners of First Time operated other trucking entities in a manner that his attorneys later referred to as a typical chameleon carrier scheme; the driver Loyola testified that he was told on different days to place a different placard on the side of his assigned truck. His boss operated several carriers and would decide day by day or week by week which of their placards Loyola was to use. At the time of the loss, First Time's placard was on the rig. Looking for alternative pockets, Cagle sued four other motor carriers, including One Way, and various individuals who were the principals of those truckers. He also sued Old Republic Insurance Company (direct actions are permitted in Georgia), and at this point the case begins to take a turn towards the bizarre.

Old Republic was identified by Cagle through the USDOT's Licensing & Insurance website as the insurer with an active BMC-91x certificate on the date of the loss for One Way Hauling. For reasons not explained, Old Republic opted not to protect One Way— there is no duty to defend under the MCS-90/BMC-91X, but many insurers will do so to prevent a default. Instead it reached an agreement with Cagle to be dismissed from the case. Old Republic, though, was not given a release, which turned out to be significant. Importantly, National Indemnity, which insured a number of One Way's trucks, and which had issued an MCS-90 to One Way that was in effect prior to the Old Republic filing (see below), was given no notice of the lawsuit against One Way and the other defendants. All of the defendants defaulted, and Cagle was awarded a default judgment in excess of $4 million.

Before proceeding we need to fill in more of the back story. (This is a complicated case.) One Way had insured a number of its rigs with National Indemnity; National Indemnity, which assumed that it insured all of One Way's vehicles, issued an MCS-90 and filed a BMC-91X with FMCSA. One Way, though, also leased a number of semi-tractors from Ryder which National Indemnity knew nothing about. Astonishingly, without contacting National Indemnity, Ryder and its insurer Old Republic opted to make their own filing for One Way. Aware that National Indemnity company's protocol would require it to cancel One Way's coverage if it learned about the lease of the Ryder units, Ryder/Old Republic opted to make a retroactive filing for Old Republic and issued an MCS-90, dating back to the initial lease of a Ryder rig. By making that filing, Old Republic replaced the National Indemnity filing; the Licensing & Insurance webpage of the USDOT showed that the Old Republic filing replaced the National Indemnity filing prior to the loss—which is why Old Republic was the target of Cagle's counsel. National Indemnity was unaware of any of these interventions by Ryder and Old Republic, and unaware of the Cagle lawsuit against One Way. The unit that Loyola was operating was not a covered auto under the Ryder policy with Old Republic, nor under the National Indemnity policy with One Way (nor under the Wesco policy).

Having secured the default against One Way, Cagle sued Old Republic and National Indemnity, arguing that he was entitled to recovery under their respective MCS-90 endorsements. The two insurers argued that since First Time, not One Way, had been determined by the court to be the motor carrier and that One Way was not the motor carrier; as such neither the Old Republic nor National Indemnity MCS-90 would be triggered. Cagle now insisted, in response that One Way, not First Time, was the carrier.

The court, though, held that there can be more than one carrier whose authority is being used simultaneously. Frustratingly for all involved, no bill of lading was ever discovered. There was a lease agreement showing that yet another of the principal's web of companies had leased the accident vehicle to One Way at some point prior to the loss. The significance of the lease is questionable in this scenario, described quite accurately by Cagle's attorney as a chameleon carrier operation. Cagle also secured an affidavit by the principal of the chameleon operation, who now took the position that One Way was the motor carrier after all. The court opted to accept the affidavit and rely upon it. It concluded that Loyola was driving for both One Way and First Time, since the court found no reason that there cannot be two motor carriers, both of whose authorities were being used at the same time. The court cited no authority for that proposition but rejected the insurers' attempts to prove that there can only be one motor carrier at a time.

Having found that One Way was (also) the motor carrier of record, the expectation was that the court would need to determine which filing was active for One Way. Surprisingly, the court held that the Old Republic and National Indemnity MCS-90s were *both* potentially in effect. National Indemnity pointed out that there was no precedent for such a ruling. It also argued that the Old Republic filing had replaced the National Indemnity filing and MCS-90, as the USDOT site showed. The court, though, found that Old Republic's MCS-90/filing were intended to supplement National Indemnity's, and concluded, in a paragraph we admit being unable to parse, that the regulatory requirements for cancellation of the National Indemnity filing were not met. The court's ruling has called into question the standard procedure of cancellation by replacement of the federal filing and a number of industry players have filed amicus briefs with the Eleventh Circuit stressing the importance to the USDOT regulatory structure of cancellation by replacement.

The court initially accepted Old Republic's argument that One Way had committed fraud (presumably by the same principal whose factual affidavit the court accepted as true) in securing the Old Republic "coverage." On that basis, Old Republic's motion for summary judgment was originally granted by the court. On reconsideration, though, the court found that the fraud did not void Old Republic's obligation under the filing.

In short, the court held that there were (at least) two motor carriers whose authority was being used by Loyola to operate his truck, and that three MCS-90 endorsements were available to the plaintiffs, two of them issued to the same motor carrier. This dizzying case is now on appeal to the Eleventh Circuit, although only on the claim against National Indemnity (which our firm is handling with local counsel); Old Republic has since settled with Cagle.

Also of concern to us was the decision in *Hoxbridge Ins. Co. v. Netlane Logistics, Inc.*, 2025 US Dist. LEXIS 69438 (D. Neb.). The truck driver involved in the loss told the officer at the scene that he had crashed into another truck because he was paranoid that people were after him. The officer understood that to mean that he had collided with the other rig intentionally. On that basis, the motor carrier's insurer sought declaration that its policy provided no coverage as intentional acts are excluded. The reported decision is a bit of a train wreck. The insurer's motion contained a serious flaw which the court did not notice. The intentional act exclusion, if it does apply, would exclude coverage for the driver, but by its terms would not exclude coverage for the motor carrier. The insurer would need to defend the motor carrier; of course the defense case is winnable since truck drivers who intentionally harm others with their vehicles are not furthering the business interests of the trucking company.

The court correctly found that the insurer had a duty to defend the motor carrier, but withheld judgment on the duty to indemnify the motor carrier pending a resolution of the question of whether the injury was caused intentionally. In fact, we point out, the intentional exclusion is not relevant vis-a-vis the motor carrier—which did not act intentionally (see the severability of interests clause). If the motor carrier is found to be liable on some theory or other, the exclusion, which refers only to the liability of the intentional actor, would not be triggered.

The court's misreading of the situation also extended to the MCS-90, although presumably as dicta. The court reports that the insurers had acknowledged that if the motor carrier was found liable, and the base policy did not apply because of the intentional act exclusion, the insurer would still be liable based on the MCS-90. The MCS-90 is triggered by "negligence in the operation, maintenance or use of motor vehicles subject to [the Motor Carrier Act]." This certainly sounds like an intentional act cannot trigger MCS-90 exposure and the limited caselaw on the point agrees that absent negligence, the MCS-90 cannot apply. The dicta in *Hoxbridge* is contrary to this precedent and to the plain language of the MCS-90.

One of two explicit exceptions to MCS-90 exposure, even if all the prerequisites are present, is that employees are not entitled to recover under the MCS-90. That was the basis for the decision in *Eastern Atlantic Ins. Co. v. Custom Transfer*, 2025 US Dist. LEXIS 97919 (D. Utah). The court in *United Fin. Cas. Co. v. Happy Fruit Express, Inc.*, 2025 US Dist. LEXIS 145936 (C.D. Cal.) added that the exclusion applies equally to drivers referred to as "independent contractors."

There are, of course, significant differences between a case in which an insurer has actual policy coverage (which entails a defense obligation, a duty to negotiate and handle claims in good faith, to respond to policy limits demands, etc.) and one in which the only possible exposure for the insurer is the MCS-90. In *Venegas v. Amazon.com Inc.*, 2025 US Dist. LEXIS 231084 (W.D. La), the insurer moved for summary judgment on the ground that the vehicle involved in the loss was not a covered auto as defined. (Louisiana is also a direct action state so the insurer was a defendant in the tort action.) The court agreed.

The insurer also sought judgment declaring that its MCS-90 could not apply. The court found that the MCS-90 might indeed apply but that did not preclude a finding as a matter of law that the policy did not apply.

A recurring issue is how to assign priority of coverage as between an MCS-90 of one insurer, and UM/UIM exposure of another. The coverage dispute in *Melerine v. Williams*, 2025 US Dist. LEXIS 142280 (W. La) arose following a collision between a passenger car insured by Safeco, which included UM coverage for the driver, and a motor carrier policy issued by Prime to the motor carrier, which included an MCS-90 but did not cover the rig involved in the accident. The court held, based on Fifth Circuit precedent, that as between a policy which provides coverage, and one which does not but has an MCS-90, it is the former that must pay the claim. The court was aware of precedent outside the circuit to the contrary. We think that the outside precedent has the better of the argument.

In *Progressive Specialty Ins. Co. v. Looney*, 2025 US Dist. LEXIS 170305 (N.D. Ala) at the time of the accident the truck driver was picking up a disabled vehicle which the company was thinking of buying. Since the rig was not being used to haul goods for others at the time of loss, the MCS-90 did not apply.

Larry Rabinovich

5. *Bad Faith Cases*

Martinez v. Geico, 152 F.4th 1323 (11th Cir.). This recent ruling out of the Eleventh Circuit affirmed and underscored the "totality of the circumstances" test for bad faith claims against insurance companies in Florida, emphasizing that courts must consider a diverse set of factors on a case-by-case basis for assessing claims of bad faith under Florida law.

The case arose out of a February 2009 auto accident in which Katherine Martinez was a passenger in an SUV struck by a vehicle driven by Diana Guevara and insured by Geico with bodily injury limits of $10,000/$20,000. The accident was reported to Geico six days after it occurred, whereupon Geico identified a coverage issue with Guevara's vehicle. Within two days of learning of the accident on February 20, 2009, Geico initiated efforts to obtain the police report, but did not receive it until March 5, 2009. Thirty-two days after receiving the notice of claim, Geico advised the passengers of Martinez's SUV that it had tendered the full $20,000 in policy limits to resolve all claims at a global settlement conference. At that conference, Geico split the $20,000 between two victims; one accepted, and Martinez rejected the offer and filed suit against Guevara.

Nine (!) years after Martinez sued Guevara, the parties reached a stipulated final judgment of $2 million and, presumably in exchange for an agreement not to collect from her, Guevara assigned her bad faith rights against Geico to Martinez. Martinez sued Geico, alleging one count of bad faith based on the timing of its investigation, the settlement offer, and its conduct after the offer. Specifically, Martinez argued that bad faith could be inferred from Geico's failure to timely investigate the accident based on a two-week delay in obtaining and reviewing the police report and delays contacting the injured passengers. She also argued that Geico acted in bad faith by failing to tender the $20,000 coverage limit for a global settlement earlier than March 22, 2009 and not offering her the $10,000 individual coverage limit before the settlement conference, citing the Florida case of Powell v. Prudential Property & Casualty Insurance Co. Powell imposes an affirmative duty on insurers to initiate settlement agreements where liability is clear and injuries are serious enough such that an excess judgment is likely.

The District Court for the Southern District of Florida granted Geico's motion for summary judgment and Martinez appealed. On appeal, the Eleventh Circuit Court of Appeals affirmed summary judgment in favor of Geico.

First, the court noted that even if Geico had been negligent in obtaining the accident report—and even if that violated Geico's own policies—such negligence is not sufficient to create an inference of bad faith. Because "bad faith" is not a matter of negligence, any alleged negligence by Geico would only be a circumstance that could be considered under the *totality of circumstances* in evaluating bad faith, as required under Florida law.

Second, while Florida law under Powell did require Geico to affirmatively initiate settlement negotiations, the Eleventh Circuit held, critically, that "when an insurer faces both an affirmative duty to offer settlement *and* a coverage issue, it still must be allowed some opportunity to resolve the coverage dispute promptly" or with "diligence and thoroughness." Because the coverage issue as to Guevara's vehicle raised a question of liability, Geico was permitted to make a reasonable evaluation before making a settlement offer.

Third, the Eleventh Circuit found that Geico had actually *furthered* its insured interests by withholding its distribution of the policy limits until the global settlement conference because it was under no obligation to immediately pay out policy limits to the most severely injured party when faced with multiple injured claimants. Withholding the distribution of policy limits until the settlement conference allowed Geico to structure a settlement plan that would "minimize the magnitude of possible excess judgments" against Guevara.

This case underscored and clarified the standards by which "bad faith" is measured under Florida law, emphasizing that it is to be assessed under the "totality of the circumstances," not under a "negligence" standard. It shows that while insurers must act diligently to investigate, they need not tender their policy limits before they complete their investigation and resolve legitimate liability issues.

James R. Saner II v. State Farm Mutual Automobile Insurance Co., 2024 US Dist. LEXIS, decided at the end of 2024 in the US District Court for the Southern District of Florida, denied the insurer's motion for summary judgment. In a follow-up decision in 2025, the federal judge found State Farm liable for bad faith in connection with the DUI-related death of a moped driver, Kira Saner. Saner's family accused State Farm of bad faith failure to settle their claim against the estate of the driver that caused the fatal collision.

In 2021, Jeffrey Schnierle was allegedly intoxicated while driving a Ford Escape in Key West, when he collided with Saner, causing Saner's death. Moments after that accident, Schnierle shot and killed himself in a nearby parking lot.

Within a month of the crash, State Farm sent a letter offering to settle Saner's claims for $25,000, the bodily injury limits under Schnierle's policy.

Saner's estate brought suit in Florida state court in April 2022 against Schnierle's estate, obtaining a judgment for $7.5 million in August 2023. That August, Saner's estate filed a bad faith action against State Farm alleging that it "knew or should have known, within days of the accident," that Saner's death would certainly result in excess exposure to Schnierle's estate. Saner's estate also alleged that State Farm had waited until it could determine who would be appointed as Saner's personal representative in violation the Florida Supreme Court's 2004 ruling in *Infinity Ins. Co. v. Berges*, 896 So. 2d 665.

State Farm moved for summary judgment in 2024, claiming it followed the "industry standard" practice of "initiat[ing] settlement discussions through an offer and to thereafter send a settlement check after the release has been executed by the claimant." That motion was denied; the case went to trial, and a jury found against State Farm. This case is an important reminder that "industry standards," are no substitute for careful, case-by-case handling of claims, especially large losses in fatal accidents.

Progressive American Insurance Company v. Pedro Gonzalez et al., 480 So.3d 857 highlights the diversity of state-by-state requirements for bringing suit against an insurance carrier and the peril of any failure to comply strictly with those rules—this time to the benefit of an insurer. Pedro Gonzalez sustained severe injuries as the result of a vehicle collision on April 5, 2018, in Miami-Dade County. While the other driver's insurer, State Farm, paid out its $100,000 policy limits, Gonzalez sought coverage through his underinsured/uninsured coverage through his own auto policy, issued by Progressive.

While Gonzalez was waiting for Progressive to respond to his claim, an agent allegedly attempted to convince his wife to sign a backdated waiver that would have denied Gonzalez coverage for his post-accident hospital stay. About a month after the accident, counsel for Gonzalez filed a civil remedy notice with the Florida Department of Financial Services against Progressive and ultimately brought a bad faith action against Progressive.

On a motion for summary judgment, Progressive argued that it should prevail because it did not receive the statutory civil remedy notice; the lower court rejected that argument, finding that since the civil remedy notice was filed with DFS and Progressive could check with DFS, the notice requirement was satisfied. The trial court entered a $25 million judgment against Progressive in December 2023 for bad faith.

On appeal, a three-judge panel from the state's Third District Court of Appeal reversed and vacated the entire $25 million judgment, finding that Gonzalez's May 2, 2018 civil remedy notice did not provide adequate notice to Progressive, and Progressive only received notice of Gonzalez's intent to seek damages on July 17, 2018, 15 days after filing his bad faith suit. The court rejected Gonzalez's argument that because Florida's civil remedy notice did not specify *who* is required to notify the potential plaintiff's insurer, his notice filed with DFS was sufficient. Instead, the court found that the plain language of the civil remedy statute required that notice "must have been given" to the insurer and it did not require Progressive to "seek out and find" civil remedy notices because this would add language to the statute.

This case demonstrates the high stakes involved in ensuring strict compliance with all notice and other statutory requirements prior to pursuing claims against an insurer—and the protections available to insurers through those statutory requirements.

Devincenzo-Gambone v. Erie Ins. Exch., 2025 PA. Super. LEXIS 491 (PA Superior Court) serves as an important reminder that carriers risk a finding of "bad faith" at any point in the process of settling a claim—even after a settlement is reached.

In 2004, Dina Devincenzo Gambone (Gambone) was involved in an auto accident in Pennsylvania. On May 2, 2006, Gambone notified her carrier, Erie Insurance, of her intent to seek UIM coverage from that accident, and the parties agreed to submit Gambone's UIM claim to binding arbitration. In August 2016, the arbitrator found that stacking provisions applied and issued a final award to Gambone of $300,000.

The trouble began, however, when Erie paid only $250,000 of the arbitration award and, in violation of the arbitration agreement, filed a petition to modify that award. In response, Gambone filed a complaint in the Court of Common Pleas in 2017 alleging bad faith and breach of fiduciary duty, among other claims, for failure to pay the whole $300,000 award. After rejecting Erie's petition, the trial court found that Erie had engaged in bad faith by refusing to pay Gambone and by refusing to abide by the parties' agreement to submit the UIM claim, including the stacking issues, to binding arbitration. The trial court entered a damages award of $1.75 million in favor of Gambone, including $117,000 in attorney fees relating to the UIM claim and $659,000 in interest.

On appeal, the Pennsylvania Superior Court affirmed the finding of bad faith, finding that Erie acted in bad faith when it withheld a portion of the arbitration award without communicating to Gambone that it reserved its rights to appeal the arbitration decision. However, in a significant victory for Erie, the attorneys' fee and interest awards were vacated for reasons including improperly using compounded interest, insufficiently explaining the fee award, and remanding the matter for a new damages calculation.

Carriers must be sure that the scope of any agreement to engage in alternative dispute resolution is clear and that any reservation of rights is clearly communicated to all parties, including the arbitrator. Otherwise, they risk a finding of bad faith if they refuse to abide by any binding decision issued in ADR.

Fiechtner v. Am. West Insurance Co. – 2025 SD 60 (South Dakota 2025) (1st Party Bad Faith). In contrast to Geico's investigation deemed reasonable by the Eleventh Circuit, this case, decided by the South Dakota Supreme Court, provides an object lesson in how to ensure an inadequate investigation and resulting bad faith liability.

In April 2018, Fiechtner was injured in an auto accident when another vehicle failed to stop at an intersection and collided with his vehicle. Fiechtner received the medical benefits policy limit from his own carrier, American West, of $10,000. Thereafter, he made a claim on the other driver's policy, which offered its $100,000 policy limit, which Fiechtner accepted with American West's approval. Despite exhausting his medical benefits coverage, Fiechtner continued to seek treatment for his injuries and made claim to his own insurer, American West, for $900,000 in underinsured motorists (UIM) benefits.

Fiechtner's counsel submitted medical records and related documentation to allow American West to further investigate the UIM claim. However, the review of those documents constituted the entirety of American West's investigation. American West did not seek to speak to Fiechtner, did not seek a release to speak to his healthcare providers or obtain additional documentation, and the adjuster was prohibited from reviewing American West's own claim notes related to Fiechtner's earlier medical benefits claim.

Instead, American West responded with an offer to pay Fiechtner an additional $10,000, which it claimed was the fair value of his UIM claim. When pressed on the basis for this $10,000 offer, American West cited the materials counsel submitted and "experience," notwithstanding Fiechtner's contention he had suffered a serious brain injury.

Fiechtner sued, alleging breach of contract and bad faith under South Dakota law, seeking punitive damages as well. At trial, an official from American West testified that it does not permit its UIM adjustors to access claim notes by medical benefits adjustors and the adjuster further testified that she had only reviewed documents submitted by Fiechtner and Fiechtner's social media accounts. American West contended that Fiechtner's UIM claim was "fairly debatable," and therefore was not acting in bad faith when it denied the claim.

The jury returned a verdict for Fiechtner on all counts. The jury found that American West had breached its insurance contract and awarded Fiechtner $400,000 in damages for his UIM claim (to which the court added $189,000 in prejudgment interest). The jury further found that American West had acted in bad faith and awarded Fiechtner $250,000 in damages, along with $890,000 in punitive damages for American West's failure to investigate Fiechtner's claim. An additional $96,045 in statutory attorney's fees and $5,954 in sales tax on those fees was further awarded.

The South Dakota Supreme Court affirmed the entirety of the verdict and damages awarded below.

The court emphasized that an insurer must have a reasonable basis for denying a claim or offering less than demanded; there, the inadequate investigation meant American West had no reasonable basis for denial, rendering its position not "fairly debatable." The court further noted that inadequate investigation and failure to properly evaluate the claim are integral to the bad faith inquiry.

This case underscores the seriousness of the insurer's bad faith conduct in handling UIM claims.

Benjamin Zakarin

6. Claims Practices and Bad Faith Litigation: Learning From the Past and Looking to the Future—Considerations for Insurers and Their Counsel

Guest Article by *Stephen D. Johnson*

From the editor: At our request this article goes beyond 2025 developments. Rather, it addresses issues relating to bad faith from the author's long experience and unique perspective as an attorney, expert, and arbitrator, with a forward-looking view.

First, some observations for insurers regarding sound claims practices. File documentation continues to be very relevant. As to the level of detail in insurers' file claim file notes, insurers vary and sometimes adjusting staff within the same insurer varies. Ideally, all claim materials (file notes, correspondence, and other items) should speak for themselves and, for reviewers skilled in such matters, these materials should "tell the story of what happened." Insurers benefit from completeness for multiple reasons, including: (i) for the benefit of others within the same insurer who review and/or approve claims activities; (ii) to facilitate cohesion if the claim file is transferred to another adjuster; (iii) improve claims audits (both internal audits and by states' departments of insurance); and (iv) increase likelihood of success in any related litigation. These principles have existed for a very long time, and they continue to be important.

Most insurers have one or more sets of claims-handling guidelines. For those that do not, it is recommended to consider developing and implementing the same. Even when an insurer has not published claims guidelines, it can still point to practices and structure, such as: (i) adjusters new to the company are onboarded and indoctrinated into the claims culture; (ii) job descriptions and human resources records reveal expectations for each adjuster's claims handling; (iii) written individual performance plans and reviews compare claims management's expectations against adjusters' actual performances; and (iv) internal continuing education programs can reflect claim-handling expectations.

When third-party claims administrators (TPAs) are used by an insurer, insurers should consider whether to have a contract which specifically includes claims-handling expectations. For extra diligence, some insurers routinely audit random claim files handled by the TPA.

"Roundtabling" is a practice prevalent in the industry. Some insurers routinely document a roundtable claim review, while others do not. Each insurer should ask itself whether contemporaneous roundtabling should be described in the claim file notes. Counsel should be involved in evaluating which practice should prevail—to document or not to document. Reasons to document include showing more diligence by the insurer, including more individuals' experiences and points of view in the evolution of the claim. Reasons for not documenting could exist and should be weighed against the benefits of documenting such reviews.

When an adjuster is new to an existing claim, especially one with a lengthy and complex history, claims management should be sure that the newly assigned adjuster has bandwidth to both get up to speed quickly and stay on top of the claim throughout its life. The National Association of Insurance Commissioners' model claims-handling requirements (adopted in most states as a statute or regulation) essentially requires that an insurer properly staff each claim and provide support.

Liability insurers should know applicable state law requirements in determining how to keep insureds apprised of developments of third-party claims. Some states have specific law regarding liability insurers' duties to inform insureds of demands and offers.

When a coverage issue arises, an insurer with in-house counsel might want to acquire their analysis. Insurers with internal attorney resources should decide if and when certain "triggers" would require that outside coverage counsel is consulted or retained.

"Reserving" should be consistent among like kind adjusters and individual claims. The industry definition of a claim file reserve is "set a value that the insurer then most likely and probably expects to pay." Whatever reserve philosophy and criteria is applied to individual file reserves should be consistent for the insurer. Reserve audits can reveal certain opportunities and are a known practice. Insurers should give thought to which parties can access file reserves. For example, if an agent or broker has access and views the information, that can present certain problems, e.g., the claim is later litigated and the insurer resists revealing the reserving history, or an agent informs someone of the reserve during negotiations.

In litigation contexts, for liability insurers to be ahead of the curve, when an excess judgment occurs, the insurer should anticipate the second-generation lawsuit—i.e., the lawsuit against the insurer. The best practice is for the liability insurer to retain claims and/or coverage counsel when the underlying matter is at critical junctures, e.g., when a coverage decision should be made or when a policy limit demand is received. Counsel retained to defend the insurer in the expected second lawsuit can utilize attorney-client and work product privileges. An effort should be made to document anticipation of litigation, as well. If the insurer has in-house counsel, then coordinating such matters with the general counsel's office is the best practice.

In litigation against transportation insurers, recurring opportunities are frequently present. When facts and/or optics are unfavorable, the case can be expected to "worsen" through discovery, as does the opportunity to settle on better terms. This concept has cohered for decades and will not change. Insurers should the avoid a "penny-wise, pound-foolish" syndrome. Best practice is then, immediately after being served with a new lawsuit, to authorize counsel defending a transportation insurer to perform a deep dive into the case facts. This should include scrutinizing claim file materials, all communications among the insurer, its insured(s), and a third-party claimant and other documents the insurer would expect to produce.

Counsel's investigation should also include interviewing key insurer personnel to gain an idea of expected testimony. Working with the general counsel's office to identify a likely 30(b)(6) witness early on can be part of a proactive strategy. Most insurers have litigation guidelines which usually ask for an initial privileged and confidential evaluation, which aligns with this suggestion. This role for counsel is as an objective advisor, who should tell the insurer what it needs to hear, not what counsel might think it wants to hear. It might also be prudent to bring in a high-level insurance expert early on to help analyze claims handling, coverage, and/or underwriting issues. If the expert will be strictly in a consulting role, then privileged information can be shared with that expert. If the expert is later disclosed as a testifying expert, then all materials provided early on and prior to such disclosure become discoverable.

Assuming the insurer wants a proactive, early assessment, then the corresponding budget allotment should be part of the overall litigation budget—and considered as money well spent.

If the suit contains an underlying time limit demand, it is imperative for counsel to determine if it complies with any applicable law, e.g, *Stowers* case law in Texas and statutes in California, Florida, Georgia, and Missouri. Related issues could include: (i) whether the insurer provided information to its insured(s) regarding all settlement communications; (ii) whether the insurer provided policy information to the third-party claimant/plaintiff; and (iii) any response from the insured as to liability.

Mock trials of lawsuits against insurers can be useful tools. Some providers of such services offer both feedback on the evidence and suggestions for more effective trial themes and strategies. Such exercises are not discoverable if set up and handled correctly but could be discoverable under other conditions. While counsel may have experience in "coaching up" witnesses to be more appealing to fact finders, consulting services can provide additional lift.

Experts can be pivotal. Experts in accident reconstruction, medicine, biomechanics, mechanical failure, technology, and insurance can tip the scales. A recent and notable expert law case is *Holley v. Gilead Sciences, Inc.*, US Dist. LEXIS 42278 (N.D. Cal. March 9, 2023). In this case a federal judge wrote an emphatic opinion concerning a requirement that experts write their own reports. A total of eight experts were proposed and removed by the judge after reviewing their reports which began to sound overly familiar. It was not a good look for the affected litigant and its counsel. One observer wrote "A judge in this mass tort case excluded eight Gilead experts, noting their reports were 'essentially the same,' suggesting they were ghostwritten by lawyers, a major blow to Gilead's defense strategy." This case underscores a requirement that has existed for decades—to wit, per Federal Rule of Civil Procedure 26, an expert must "prepare" their own reports. Among those immersed in expert law, this case has reverberated in the last two-plus years.

Rarely seen are duplicative experts. When counsel faces overlapping or cumulative experts presented by another litigant, then counsel should move thoughtfully and decisively to eliminate a course of combating a "two-headed" expert. This could be an opportunity to ask the court to strike one expert while leaving the weaker expert.

Lawyers as experts can be a minefield. A lawyer proffered as an expert who had or has an opposing insurer as a law firm client can find himself challenged if the insurer can point to certain facts and ethics conflicts. Moreover, if a proffered lawyer was never employed in the industry in which they seek to qualify as an expert, then that lawyer could face more scrutiny, per a recent amendment to the Federal Rules of Evidence (FRE), effective December 1, 2023. A recent article expounded on how a trial judge's gatekeeping function should be more rigorous under this amended rule. See "Judges Carry Onus to Screen Expert Opinions Before Juries [Do So]," December 22, 2025, *Law360* article. The suggestion is that FRE 703, as amended, means there should be fewer rulings to the effect of "the Court denies the motion to exclude this expert—the jury can consider moving party's points in terms of weight and credibility of the subject expert." It makes sense that, rather than a jury of laypeople, an exacting gatekeeping judge should closely scrutinize the credentials and methodologies of a proffered expert prior to that person's testifying at trial.

Arbitration can be an option and can deserve more attention than it receives. Some transportation insurance policies contain built-in arbitration clauses for dispute resolution. Sometimes contested is whether only breach of contract can be arbitrated, versus both breach of contract and bad faith issues.

The Ohio Supreme Court issued a slip opinion in November 2025. Case facts included "the policy's original arbitration clause required arbitration of 'disputes regarding [the insurer's] extra-contractual obligations,'" but that language was later deleted and replaced by the change endorsement providing for arbitration of any dispute relating to the policy, "including any disputes regarding [the insurer's] contractual obligations." The Ohio Supreme Court reinstated the trial court's decision to compel arbitration to include all issues including tort and bad faith claims. Its findings regarding *US Acute Care Solutions v. Doctors Company Risk Retention Group Insurance Company*, 2025-Ohio-5010, included the following: "We find that the arbitration agreement at issue here is a broad clause and thus a presumption of arbitrability applies to the bad-faith claim, that the presumption has not been overcome, and that the underlying civil action could not be maintained without referring to the insurance policy or the relationship between the insurer and the insured. Accordingly, we hold that the arbitration agreement applies in this case."

Also frequently seen in insurance policies and reinsurance contracts with arbitration clauses is a requirement that each party-appointed arbitrator and the umpire have been at an executive level in the insurance industry (either claims or underwiring at one or more insurers). To those not intimately familiar with inner workings of insurers, a title of "executive adjuster" when in industry might sound like the opposing proffered arbitrator meets these criteria. However, if the proffered arbitrator never supervised adjusters, then that person never had management responsibilities, and was not at an executive level. Most insurers would consider "executive level" to be officer level—assistant vice president or above. It is best to have an attorney serve as an umpire, as evidentiary rulings and legal analyses usually are part of the arbitration process. The intent of requiring executive level experience in the industry is to assure that the panel is not two low-level "hired guns" flanking a qualified umpire. The goal be no weak links on the panel. All three should be astute and experienced in analyzing evidence and law, as well as having an idea about insurance or reinsurance industry custom and practice.

For arbitration clauses allowing a former executive-level claims or underwriting person, it is important to remember that claims people make "underwriting decisions" when a claim is presented, but underwriters never make claims decisions. Many insurers could benefit from reviewing their policies for possibly including or amending arbitration clauses.

Another critical area for insurers when considering a lawsuit that involves another insurer as an adversary: do the insurers want to risk making law that could be bad for their industry? Even without an arbitration clause, such insurers could agree to private binding arbitration, thereby eliminating this risk. Many transportation insurers appear in different liability towers as primary and excess, depending on the program and other variables. When an excess insurer has a claim against a primary for its alleged failure to settle, then the two could both be better off in arbitration. The view should be long-term, not short term.

An area deserving attention is the concept that a TPA can be a legitimate target litigant in a case with issues of bad faith claims handling. In the context of transportation litigation, it is common to have a TPA adjusting the litigated claim. Not as widely understood is that a few jurisdictions have law supporting a plaintiff's keeping a TPA as a named defendant, notwithstanding that the TPA never earned the premium, did not issue the policy, was not a party to the insurance contract, and did not have direct contractual or derivative extra-contractual obligations in the usual sense. One state with law supporting having a TPA as a stand-alone defendant is Massachusetts. See *Hache v. AIG Claims, Inc.*, 2022 US Dist. LEXIS 155804 (D. MA). This case included allegations of violations of Massachusetts' consumer protection act (M.G.L. Chapter 93A) and the insurance trade practices statute (Chapter 176D).

TPAs operating nationally should fully research and understand this important litigation terrain. The better practice is for insurers and TPAs to have written agreements concerning claims handling requirements and expectations. As part of such written agreements, the two parties might want to consider addressing situations where the TPA could be a litigant which cannot be extricated, e.g., defense, hold harmless and indemnity provisions, and whether the TPA is required to prove and maintain E&O insurance.

Many insurance lawyers practice *nosce te ipsum, nosce hostem* (knowing your adversaries can be advantageous). To that end, the annual United Policyholders 50-state survey of bad faith law is recommended reading. The January 2025 edition, the latest available, is available at this link.

In closing, here are two interesting cases to follow in 2026:

> Voyager Aviation Holdings LLC et al. v. Chubb European Group SE, et al., case number FST-CV24-6069478-S, in the Stamford Judicial District of the Connecticut Superior Court. Voyager seeks both contractual and extra-contractual damages related to its aircraft being struck in Russia during its Ukraine invasion. "War and other perils" is a key policy provision. It appears the amount in controversy is in area of nine figures.

A recent Massachusetts bad faith case made news. In *Appleton v. National Union Fire Insurance Company*, 145 F.4th 177 (2025), the First Circuit Court of Appeals vacated the district court's dismissal of an injured plaintiff's bad faith claim. The First Circuit noted that AIG failed to sufficiently increase its offer despite having received information placing likely damages at $7.5 million, finding the insurer's conduct to be unreasonable. AIG's internal information indicated a value range higher than its highest offer. The plaintiff's insurance expert was quoted by the court of appeals as well. The matter was remanded on July 29, 2025. The entire case is a good read for those wishing to see a thorough analysis of handling of a trucking policy liability claim.

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7. Graves Amendment

The Graves Amendment protects companies engaged in the business of renting or leasing vehicles to others from vicarious liability, provided there is no negligence or criminal wrongdoing on the owner's part. Throughout 2025, federal courts continue to grapple with the Graves Amendment's scope, particularly the circumstances under which direct negligence allegations can pierce its protection.

In *Rivera v. Convoy, Inc.*, 2025 US Dist. LEXIS 142670 (D. Conn.), the plaintiff brought claims against Convoy, Inc., a freight broker that had subleased its trailer to the motor carrier whose driver struck the decedent's vehicle. Convoy moved for summary judgment arguing that both federal preemption and the Graves Amendment barred the plaintiff's claims.

The court found that while the Graves Amendment applied to Convoy as a lessor of the trailer, it did not grant summary judgment on that basis. The key issue was whether Convoy had been directly negligent. The plaintiff presented evidence that the motor carrier's driver had a troubling driving record, including a 2018 train collision, a May 2021 DUI, and an August 2021 out-of-service order for driving with a suspended license. The plaintiff's experts testified that Convoy knew or should have known about these issues when selecting the carrier. Viewing the facts in the light most favorable to the plaintiff, the court found genuine issues of facts about whether Convoy breached its duty to select a competent carrier and properly entrust them with equipment. The direct negligence claims survived summary judgment despite the Graves Amendment because of the exception where "there is negligence . . . on the part of the owner." *(Other cases involving freight brokers are discussed in the Brokers section.)*

Willmon v. Smith, 2025 US Dist. LEXIS 32439 (E.D. Mo.) involved a multi-vehicle accident where the plaintiff sued Avis Budget Car Rental after a rental car driver allegedly lost control and caused a collision. Avis moved to dismiss the negligent entrustment claim based on the Graves Amendment.

The court confirmed that the Graves Amendment applies to negligent entrustment claims, but only when the rental company's conduct does not constitute direct negligence. Here, the plaintiff's complaint fell short factually. The plaintiff alleged that Avis had "a pattern of negligent entrustment" and that the driver was "incompetent, which Avis knew or should have known." But the court held that these were just "formulaic recitations" of the legal elements without any supporting facts. The plaintiff never alleged what made the driver incompetent at the time of rental or how Avis should have known about any incompetence.

The court granted Avis's motion to dismiss and declined to grant the plaintiff leave to amend. The court found the plaintiff had unduly delayed (six months past the amendment deadline) and that any amendment would be futile since the plaintiff could not demonstrate Avis's knowledge of the driver's incompetence at the time of entrustment.

In *Gonzalez v. Ibrahim*, 2025 US Dist. LEXIS 230857 (S.D. Ill.), a plaintiff sought to hold Ryder Truck Rental liable for a tractor-trailer accident under a negligent entrustment theory. Ryder had leased the tractor to DM World, which subleased or provided it to MZ Cargo, which employed the driver who was involved in the accident. Ryder moved for partial summary judgment on the vicarious liability claim.

The court granted Ryder's motion. First, Ryder was undisputedly in the business of leasing vehicles. Second, and more importantly, the plaintiff has not sufficiently alleged negligence on the part of Ryder. The plaintiff sought leave to amend to add a negligent entrustment claim, but the court declined that request for two reasons: undue delay (the request came six months after the amendment deadline) and futility. The court held that negligent entrustment requires showing the lessor entrusted the vehicle to an incompetent person with knowledge of that incompetence, but Ryder never entrusted the vehicle to the driver. Rather, Ryder leased the vehicle to DM World, which then provided it to MZ Cargo. The plaintiff's speculation about lease provisions giving "implied permission" was not enough. Moreover, there were no allegations that Ryder knew or should have known about the driver's supposed incompetence.

In *Montazeri v. Pallas*, 2025 US Dist. LEXIS 128858 (W.D. Tex.), the defendant driver removed the state action to federal court arguing that Fox Rent A Car was improperly joined because the Graves Amendment barred any viable claim against it.

The court disagreed and remanded the case to state court. The issue was whether negligent entrustment constitutes "vicarious liability," which the Graves Amendment bars, or "direct liability," which falls under the Amendment's exception for owner negligence. The court noted that the Fifth Circuit has not settled the legal issue of whether negligent entrustment is a theory of direct liability or vicarious liability under the Graves Amendment, with Texas state courts reaching different conclusions depending on the factual context. In instances where Texas courts have held negligent entrustment to be an independent theory of recovery, rather than vicarious liability, they have typically done so where the plaintiffs alleged gross negligence against the driver and sought exemplary damages based on the owner's entrustment decision.

Because controlling law was ambiguous and the plaintiff potentially had a viable negligent entrustment theory, the court resolved the doubt in favor of remand. The defendant could not carry its heavy burden of proving there was no possibility the plaintiff could recover on the state law claim.

In *Thermidor v. United States*, 2025 US Dist. LEXIS 77518 (E.D.N.Y.), Commercial Trailer Leasing (CTL) had leased a semi-trailer to the United States Postal Service, which was later involved in an accident. The plaintiffs sued CTL for negligence, and CTL moved for judgment on the pleadings, relying on the Graves Amendment.

The court granted CTL's motion on two grounds. First, it rejected the plaintiffs' creative argument that the Graves Amendment does not apply to non-motorized trailers. The Amendment defines "motor vehicle" as a vehicle "driven or drawn by mechanical power," language that plainly encompasses semi-trailers drawn by tractors. Several courts have reached this conclusion, and the Second Circuit has applied the Amendment to trailers.

Secondly, the court found the plaintiffs' negligence allegations to be fatally deficient. The plaintiffs claimed CTL "negligently fail[ed] to maintain, inspect and repair" the trailer, causing the accident, but these threadbare recitals of legal elements without factual support cannot sustain a negligent claim. The only specific allegations about the accident's cause related to the driver's conduct, including excessive speed, improper lane changes, and failure to signal, rather than the trailer's condition. The plaintiffs never alleged that brakes or other equipment malfunctioned or caused the accident. Without factual allegations showing both breach and causation, the claim could not survive even if the Graves Amendment did not apply.

In *Cooley v. Early Trucking Co.*, 2025 US Dist. LEXIS 61126 (M.D.), the plaintiff sued Early Trucking, which had leased a trailer involved in a fatal collision, for direct negligence and vicarious liability. Early Trucking moved to dismiss, arguing the claims failed under both the Graves Amendment and Rule 12(b)(6).

The court granted Early Trucking's motion on multiple grounds. The vicarious liability claims were preempted by Graves. However it held that the Graves Amendment did not preempt the plaintiff's direct negligence claims for negligent entrustment, hiring, retention, and supervision. Following the Eleventh Circuit's reasoning in *Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1246 (11th Cir. 2008), the court explained that the Graves Amendment only bars claims where the defendant is liable solely "by reason of being the owner," not claims based on the owner's own negligent conduct.

However, the claims for negligence and negligent entrustment failed on other grounds. The negligent entrustment claim lacked any facts about the driver's history suggesting incompetence or that Early Trucking had knowledge of such incompetence. The negligent hiring, retention, and supervision claims failed because the plaintiff did not allege that Early Trucking (rather than the driver's actual employer, Lyons Trucking) had hired or supervised the driver. Finally, the negligent maintenance claim failed because while the plaintiff alleged Early Trucking failed to properly maintain the trailer's brakes, there were no fact showing the brakes actually malfunctioned or caused the accident.

The court also denied the plaintiff's motion to amend as futile, finding that the proposed amendments added only conclusory allegations that Early Trucking and others were "supervising and managing" the driver without supporting facts showing control over the "time, manner, and method" of the work.

In *Windom v. Brandon*, 2025 US Dist. LEXIS 261755 (D. Nev.), PV Holding Corp., doing business as Fox Rent A Car, leased a vehicle to defendant Brandon, who added defendant Warren as an additional driver. Warren was involved in an accident while driving the rental vehicle.

The plaintiffs brought a negligent entrustment claim against Fox Rent A Car under Nevada law, which requires showing that the lessor knowingly entrusted a vehicle to an incompetent person. Fox Rent A Car moved for summary judgment, and the plaintiffs simply failed to respond. Even reviewing unopposed motions on their merits, the court found no evidence supporting negligent entrustment. Warren had signed an additional driver form affirming he was over 25, had a valid license, and agreed to the rental terms. The record contained no evidence that Warren lied in this affirmation or that Brandon (the primary renter) knew of any unfitness. The court granted summary judgment in favor of Fox.

Xun Chen

8. *FAAAA Preemption*

One of the hottest issues in transportation law over the past few years, as we have described in previous editions, is whether bodily injury and property damage lawsuits against brokers, particularly in regard to their allegedly negligent hiring of a motor carrier, is preempted (that is, not permitted) by the statutory provisions of §14501(c)(1) also known as the Federal Aviation Administration Authorization Act (F4A). Preemption comes in different flavors, but for our purposes the idea is that Congress has the ability to legislate on the basis that a particular area of the law is completely within the control of federal law and any state attempt to regulate is invalid. F4A was part of a process in which Congress discontinued federal economic regulation of interstate trucking (among other areas in which economic regulation was discontinued) while warning the states not to interpose their own law in place of the expiring law. Most courts looking into the question have concluded that the statute in its initial section does indeed preclude claimants from suing freight brokers for common law negligence, since this is viewed as state law. There is a disagreement, though, between the Ninth Circuit on one side and the Seventh and Eleventh Circuits on the other. All three courts hold that the language of the beginning of the statute does indeed preclude such suits. The end of the statute though contains an exception which permits the states to continue to regulate motor vehicle safety. The Ninth Circuit holds that the statute's "safety exclusion" restores the right to proceed with negligence suits against brokers; the Seventh and Eleventh Circuits disagree.

As we describe below, the preemption question is headed to the United States Supreme Court. The Sixth Circuit has weighed in, becoming the fourth circuit to do so; in *Cox v. Total Quality Logistics, Inc.,* 142 F.4th 847, the court expressed its hesitations about the approach of the Seventh and Eleventh Circuits. The case involved the large broker, TQL, which was accused of facilitating a fatal accident by not properly vetting the motor carrier which had a notorious safety record. Query: If, as has been alleged in the case, the USDOT's own Safety Measurement System indicated that the carrier had a history of on-road safety violations, and noted that "more than 7 out of every 10 trucks were not allowed to legally be on the road," why wasn't the carrier shut down by USDOT?

The plaintiff's estate acknowledged that TQL was a broker that, under the view of the Seventh and Eleventh Circuits, could not be sued for negligent selection of the motor carrier. Assisted by Public Citizen's Litigation Group, the plaintiff urged the court to permit the suit on the basis of the safety exception. The court agreed with the district court that the opening language of the F4A statute is broad enough to preclude actions against brokers (a consensus that we continue to question and which we hope the Supreme Court will consider).

Focusing instead on the safety exception the court asked two questions: 1) are common law tort claims part of a state's safety regulatory authority? (That's the easy one) and 2) is such a claim deemed to be "with respect to motor vehicles" in the words of the statute? (This was the language the Seventh and Eleventh Circuits relied upon in denying that the safety exception has anything to do with brokers). If the answer to both questions is yes, the lawsuit may proceed in spite of F4A because of the safety exception.

On the first question, the court held that regulatory authority includes common law claims such as tort lawsuits. In order to satisfy the first prong (are tort claims within the purview of safety regulations), the claim also needed to involve safety concerns: since the plaintiff was intending to enforce a standard of care on brokers which would force them to concentrate on hiring safe motor carriers, the suit was therefore "genuinely responsive to safety concerns."

The second prong requires the state law at issue (tort law in this case) be "with respect to motor vehicles." The Seventh and Eleventh Circuits had taken a very restrictive approach to that phrase and found that Congress had intended claims against brokers to be outside the scope of the safety exception as brokers do not directly operate motor vehicles. Looking to prior Supreme Court precedent, the court concluded that to resolve the question it is necessary to look to the substance of the underlying allegations and assess whether the defendant's alleged conduct "involved" motor vehicles. The language of the statute that follows recognizes that brokers work with motor carriers to arrange for transportation via motor vehicles.

The plaintiff's claim against TQL essentially said that the broker failed to exercise reasonable care in selecting a safe motor carrier to operate its rigs on public roads. The court thought it obvious that this allegation plainly involves motor vehicles and motor carrier safety. The exception does not require the defendant to actually be operating motor vehicles. The case was remanded to the district court, which was given instructions strongly suggesting that the case be permitted to proceed. In short, the Sixth Circuit has now agreed with the Ninth Circuit, and there is a two-on-two circuit split which the Supreme Court will address (see below).

Interestingly, an Illinois appellate court in *Kaipust v. Echo Global Logistics,* 2025 Ill. App. LEXIS 1035 (1st Dist.), recently reached the same conclusion as the Sixth and Ninth Circuits. Illinois state courts are physically in the Seventh Circuit but are not obligated to follow the decisions of the Seventh Circuit. Here the state appellate judges were unimpressed with the Seventh Circuit's reasoning and decided that negligence suits against brokers may proceed.

Noting the split among the federal circuits, the court found it "highly unlikely Congress intended to permit brokers to act as negligently as they see fit, with no redress for an injured party, without making this intent clear on the statute's face." In response to the broker's argument that a broader reading of the safety exception makes it de facto insurers of the motor carriers they hire, the court insisted that its interpretation means only that the broker is subject to liability if a plaintiff can establish the broker's conduct was negligent in the context of a particular case. The decision of the appellate court has been appealed to the Illinois Supreme Court. (For a decision similar to Kaipust, see *Kerr v. Ingersoll-Rand Indus US, Inc.*, 2025 US Dist. LEXIS 1460 [M.D.N.C.]).

Other decisions involving FAAAA were issued during the year, but the most important decision was almost certainly *Montgomery v. Caribe Transp. II, LLC*, 124 F.4th 1053 (7th Cir.) which affirmed the decision of the district court. Nothing about the decision is surprising. The broker C.H. Robinson hired a motor carrier whose driver negligently caused an accident which caused a serious injury to another motorist. The Seventh Circuit rejected the injured plaintiff's assertion that C.H. Robinson was vicariously liable for the carrier's negligence, finding, as the lower court had, that C.H. Robinson had not reserved the right to control the manner of delivery. The plaintiff argued, in the alternative, that C.H. Robinson had negligently hired the motor carrier. The plaintiff urged the court to reverse its decision in *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453 (2023). The Seventh Circuit declined. No surprise there. The plaintiff then sought Supreme Court review.

For some years now, industry players and their attorneys have been hoping and pushing for Supreme Court review of this recurring issue. The court has waived off these requests—until now. On October 3, the court granted the petition for writ of certiorari to the Seventh Circuit. Unusually, C.H. Robinson, which had prevailed in the Seventh Circuit, had urged the Supreme Court to accept the case and thereby put an end to the controversy that has split three (now four) circuit courts. Amicus briefs and C.H. Robinson's have already been filed. As we write this no date for oral argument has yet been set.

Larry Rabinovich

9. Negligence

Montgomery Transp., Inc., 2025 Tex. App. LEXIS 8010

This Texas appellate case concerned a writ of mandamus applied for by the defendants from an underlying case arising out of a truck-car collision. The defendants challenged the lower court's order denying its motion to exclude the opinion testimony of the plaintiffs' expert with regards to four objectionable categories of testimony and also challenged the lower court's order admitting post-accident dashcam footage.

The appellate court found that the defendant's application regarding the plaintiff's expert was moot because the plaintiffs subsequently stipulated to bifurcate the trial and agreed not to call that expert during the first segment of the trial, concerning liability and compensatory damages under Texas Civil Practice and Remedies Code Section 72.052. Texas law permits bifurcation between compensatory and exemplary damages phases in some motor vehicle collision cases.

The plaintiffs argued that the dashcam video was admissible in order to show the plaintiff's emotional distress resulting from being injured and left at the scene of the accident by the defendant-driver. The court found that there were no special or unique circumstances to justify the interlocutory writ of mandamus application regarding the dashcam video. In addition, the trial court already provided that the defendants would have another opportunity to object to the use of the dashcam video prior to the trial. Therefore, the defendants' application for a writ of mandamus to exclude the video was denied.

Transp. Leasing/Contract, Inc. v. Northland Ins. Co., 2025 Ind. App. LEXIS 341

The underlying accident occurred when a truck driver caused a multicar pileup and multiple fatalities after rear-ending a vehicle on a highway outside Indianapolis. The defendant-driver was an employee of a staffing agency who was assigned to a motor carrier under an exclusive services agreement. As a result of the agreement, the staffing company was to be considered an additional insured on the motor carrier's insurance policy, but only to the extent that the staffing agency was held vicariously liable for the motor carrier's negligence. The defendant-driver initially applied to be a truck driver for the motor carrier, who forwarded his application to the staffing agency, who hired him and assigned him back to the motor carrier.

The plaintiffs sued the motor carrier, but not the staffing agency. During the course of discovery in the underlying action, it was learned that the staffing agency had hired the defendant-driver despite clear issues with his driving record and similar prior accidents. The staffing agency did not participate in a global mediation at which the case against the motor carrier was settled for the motor carrier's $1 million policy plus an additional $600,000 from the motor carrier. The release specifically denied releasing claims against the staffing agency and the plaintiff then brought a negligent hiring claim against the staffing agency. The staffing agency brought a third-party claim against the motor carrier and its insurer.

Both the insurer and motor carrier moved for summary judgment against the staffing agency. The staffing agency appealed the motion court's granting of the insurer's summary judgment motion. The appellate court affirmed the trial court's decision, finding that the insurance policy clearly provided that the policy only covered the staffing agency to the extent that the staffing agency was vicariously liable for the conduct of the motor carrier. Therefore, the insurer had no duty to defend the staffing agency for the negligent hiring claim and had no duty to seek a release for that claim at the global mediation. The motion court's decision in favor of the insurer was affirmed.

Transp. Concepts Inc. v. Ramirez, 2025 Tex. App. LEXIS 4371

A defendant-motor carrier and defendant-driver appealed a trial court's judgment entered against them. The defendants challenged the legal sufficiency of the plaintiff's negligent supervision claim against the defendant-motor carrier and the sufficiency of the evidence in support of the jury's findings.

The defendant-motor carrier argued that under Texas law, the plaintiff should not have been permitted to proceed with a negligent supervision claim when the motor carrier had already admitted that the defendant-driver was acting within the scope of his employment. The defendant-motor carrier also argued, in the alternative, that there was no evidence for a finding of negligent supervision. The plaintiff's negligent supervision claim was based on the factual allegation that the defendant-driver chose a less safe route to the highway which included an unprotected left turn, resulting in the collision. In contrast, the defendant-motor carrier presented evidence that the defendant-driver had been trained regarding the dangers of unprotected left turns, had no prior accidents, and had additional prior training from other employers. The defendants' expert also testified that the defendant-motor carrier had the best training program he had seen.

The court held that the evidence was insufficient to justify the jury's imposition of liability on the defendant-motor carrier because there was no evidence to support a finding that the defendant-driver was unskilled or untrained or that the defendant-motor carrier breached its duty to supervise him. Therefore, the defendant-motor carrier was erroneously included in the jury's apportionment, and the jury would have apportioned liability differently, but for the error. Consequently, the defendants were entitled to a new trial and the rest of the issues raised on appeal were rendered moot.

Osvanis Lozada & Tels, Inc. v. Posada, 2025 Tex. LEXIS 535

This case concerned a collision between two trucks in which one of the defendant-driver's tires suddenly lost air, causing his tractor-trailer to jackknife, and leading to the plaintiff-driver to crash into him. The trial court granted summary judgment motions against both defendants on the grounds that the accident was unavoidable and there was no evidence of negligence by either defendant.

The intermediate appellate court reversed, finding that a jury could conclude that there was evidence of negligence by the defendant-driver and that the defendant-driver had potentially breached a duty of care by blocking both lanes of an Interstate highway with his jackknifed truck. In short, it held that the defendant-motor carrier could be held vicariously liable under the same theory.

The Texas Supreme Court reversed the intermediate appellate court's ruling, noting that not all accidents are the result of negligence. The Supreme Court noted that the evidence in the record consisted of only the drivers' deposition testimony and two accident scene photographs. The defendant-driver's deposition testimony supported the finding that the jackknife incident was the result of an unforeseeable tire failure and there were no issues with the maintenance of his truck. His testimony was uncontradicted by the plaintiffs. The Texas Supreme Court found the doctrine of res ipsa loquitor inapplicable and reinstated the trial court's findings, dismissing the plaintiff's complaint. (The Texas Supreme Court had a busy year: see the separate piece on its decision in the Werner litigation).

Shelton v. Landstar Ranger, Inc., 2025 La. App. LEXIS 1165

In this case, the passenger in a car brought suit against the car's driver as well as the driver of a tractor-trailer with which they collided, the motor carrier, and both drivers' insurance companies. (Louisiana permits direct actions against insurers.) The motor carrier-defendants were granted summary judgment on proximate causation because the collision occurred after the car driver suddenly changed lanes into the path of the tractor-trailer.

The plaintiff appealed the granting of summary judgment to the motor carrier-defendants on the grounds that the police traffic crash report was not proper summary judgment evidence. The plaintiff argued that the report contained inadmissible hearsay, and the appellate court agreed. Therefore, the court declined to consider the accident report but continued in its *de novo* review of the trial court's granting of summary judgment.

Upon *de novo* review, the court found that the motor carrier-defendants had established below that the car driver's negligence was the sole proximate cause of the accident based on deposition testimony from the parties and first responders. In response, the plaintiff was not able to raise an issue of material fact as to whether the motor carrier-defendant's bore any negligence for the accident. Therefore, the appellate court upheld the trial court's decision.

Araiza v. Aced 4Ren Grp., 2025 US Dist. LEXIS 196113 (W.D. Tex.)

In this case brought against a defendant-driver and motor carrier, the plaintiff moved for summary judgment seeking the dismissal of the defendants' affirmative defenses of (1) sudden emergency, (2) unavoidable accident, (3) Act of God, and (4) contributory negligence.

The court found that under Texas law, summary judgment was inappropriate as to the sudden emergency defense. Evidence pointed to both icy conditions and the defendant-driver's negligence as potential causes of the collision and, therefore, it was for the jury to decide. For the same reasons, the court also denied summary judgment as to the unavoidable accident and Act of God defenses, which both require that the accident be caused by some natural phenomenon.

Finally, the court found that summary judgment was not appropriate with respect to the contributory negligence defense. Although it is true that the defendant bears the burden to show the plaintiff's contributory negligence, it is not technically an affirmative defense. The defendants pointed to evidence from the plaintiff's deposition testimony showing that there was a dispute of material fact as to whether he caused the accident.

Alec Herbert

10. Jurisdiction

Vanicor v. Barnes Transp. Servs. Inc., 2025 US Dist. LEXIS 224833 (W.D. La.) addresses issues of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). The court evaluated whether it could exercise personal jurisdiction over Keith Barnes, the CEO of Barnes Transportation Services, Inc. (BTS), in a suit arising from a trucking accident and subsequent settlement. The plaintiffs argued that Barnes subjected himself to jurisdiction in Louisiana by executing an affidavit that formed the basis of the settlement agreement. However, the court found that Barnes, a North Carolina resident, executed the affidavit in North Carolina in his capacity as CEO of BTS, a separate legal entity. The court applied the "minimum contacts" test, which requires that a defendant purposefully avail themselves of the forum state's protections and that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. The court determined that Barnes's execution of the affidavit did not establish sufficient contacts with Louisiana, as it did not contemplate an ongoing relationship with the forum state but rather sought to terminate litigation. Additionally, the court rejected the plaintiffs' attempt to impute BTS' contacts to Barnes by piercing the corporate veil, as the plaintiffs failed to provide evidence under North Carolina law to support such a claim. Consequently, the court dismissed the claims against Barnes for lack of personal jurisdiction, emphasizing that the affidavit alone was insufficient to establish the necessary connection to Louisiana.

In *Rangel v. Mercier,* 2025 US Dist. LEXIS 218861, the United States District Court for the Western District of Oklahoma addressed jurisdictional issues in the context of a motion to remand under the Colorado River abstention doctrine and 28 USC. §1447(e). The case arose from a multi-vehicle collision in Oklahoma City, and the plaintiff, Javier Rangel, sought to remand the case to state court, arguing that the federal court should abstain from exercising jurisdiction due to the existence of parallel state court proceedings. The court applied the two-step inquiry under the Colorado River doctrine, first determining whether the state and federal proceedings were parallel. The court concluded that the proceedings were not parallel because the parties and claims in the federal action differed significantly from those in the state action. Specifically, the federal case involved claims for negligence, *respondeat superior*, and negligent hiring, training, supervision, and retention, among others, which were not pending in the state court action. Additionally, the court emphasized that federal jurisdiction should be exercised unless there is a clear justification for abstention.

The court further held that the relief sought by Rangel, money damages, precluded dismissal or remand under abstention principles, as established by the Supreme Court in *Quackenbush v. Allstate Ins. Co.*, 517 US 706 (1996). The court noted that abstention principles allow for a stay in cases seeking equitable relief, but do not permit outright dismissal or remand in cases seeking damages. Consequently, the court denied the motion to remand, finding no basis to abstain from exercising jurisdiction. The court also declined to address the issue of joinder under Federal Rule of Civil Procedure 19 and 28 USC §1447(e), as the plaintiff had not properly presented the issue by seeking leave to amend the complaint or attaching a proposed amended complaint. Ultimately, the court reaffirmed its obligation to exercise federal jurisdiction in the absence of exceptional circumstances warranting abstention.

In *Warfield v. W.N. Morehouse Truck Line, Inc.*, 2025 US Dist. LEXIS 218955, the United States District Court for the Eastern District of Tennessee addressed the issue of personal jurisdiction in a case involving claims of racial discrimination, retaliation under Title VII of the Civil Rights Act, and wage violations under the Fair Labor Standards Act (FLSA). The plaintiff, Jamison Warfield, a Tennessee resident, alleged that his former employer, W.N. Morehouse Truck Line, Inc., a Nebraska corporation, engaged in discriminatory practices, wrongfully terminated his employment, and failed to pay his final wages. Morehouse moved to dismiss the case for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), arguing that it lacked sufficient contacts with Tennessee for it to be subject to the court's jurisdiction.

The court applied the Sixth Circuit's three-part *Mohasco* test to determine whether specific jurisdiction existed. First, the court found that Morehouse purposefully availed itself of the privilege of conducting business in Tennessee by hiring Warfield, a Tennessee resident, assigning him a truck to operate from his home base in Tennessee, and arranging for him to complete a drug screening in the state. These actions demonstrated deliberate engagement with Tennessee, satisfying the "purposeful availment" prong. However, the court concluded that Warfield's claims did not "arise out of or relate to" Morehouse's contacts with Tennessee. The alleged discriminatory and retaliatory conduct, including Warfield's termination and the events leading to his arrest, occurred outside of Tennessee and were unrelated to Morehouse's business activities in the state. The court emphasized that the connection between the claims and the forum state must be substantial and cannot rely solely on the plaintiff's residency or the location where the plaintiff experienced the effects of the alleged harm.

Because Warfield's claims failed to meet the second prong of the *Mohasco* test, the court determined that it lacked specific jurisdiction over Morehouse. The court did not address the third prong, which considers the reasonableness of exercising jurisdiction, as the failure to satisfy any one of the three elements is dispositive. Consequently, the court dismissed Warfield's complaint without prejudice for lack of personal jurisdiction.

In *Peralta v. Matz*, 2025 US Dist. LEXIS 149468 (E.D.N.Y), the court addressed issues of jurisdiction in the context of a motor vehicle accident case initially filed in New York State court and later removed to federal court. The plaintiffs, all New York residents, alleged that the accident involved a tractor-trailer operated by defendant Matz, a New Jersey resident, and owned by Food Haulers, Inc. The case was removed to federal court under 28 USC §1441(a) based on diversity jurisdiction, as the parties were citizens of different states and the amount in controversy exceeded $75,000. However, the plaintiffs later sought to remand the case to state court, arguing that diversity jurisdiction was destroyed by the addition of Food Haulers, which they claimed was a New York corporation. The court issued an Order to Show Cause to determine whether subject matter jurisdiction still existed. Defendants responded with evidence that Food Haulers was, in fact, a New Jersey corporation with its principal place of business in New Jersey, thereby preserving complete diversity between the parties.

The court emphasized that subject matter jurisdiction is determined based on the allegations in the initial complaint at the time of removal, not subsequent developments or actions filed in other courts. The plaintiffs also sought to consolidate the federal case with a related state court action, arguing that such consolidation would destroy diversity jurisdiction. The court rejected this argument, clarifying that the existence of diversity jurisdiction in the federal case is unaffected by the filing of a separate state court action. Additionally, the court noted that it lacked authority to consolidate a federal case with a state court proceeding under Rule 42 of the Federal Rules of Civil Procedure, which governs consolidation of actions pending in federal court. Ultimately, the court found no basis to remand the case, as diversity jurisdiction was properly established and maintained under 28 USC §1332. The court also highlighted that the removal statutes must be strictly construed, with any doubts resolved in favor of remand, but found no such doubts in this case. Accordingly, the court recommended denying the plaintiffs' motion to remand and consolidate the case with the state court action.

In *Briesath v. Toppel*, 2025 US Dist. LEXIS 117539, the Northern District of Illinois addressed the issue of personal jurisdiction over Hercules Forwarding, LLC, a California-registered limited liability company with its principal place of business in California, and its employee, Stephen Toppel. The court began by noting that, in diversity cases, federal courts apply the personal jurisdiction rules of the state in which they sit. Under Illinois law, personal jurisdiction is permitted to the extent allowed by the Illinois and US Constitutions, which have virtually identical requirements. The court explained the distinction between general and specific jurisdiction, emphasizing that general jurisdiction exists when a corporation is "essentially at home" in the forum state, such as in its state of incorporation or principal place of business. Since Hercules Forwarding was neither incorporated in Illinois nor had its principal place of business there, the court found no general jurisdiction over the company.

The court then turned to specific jurisdiction, which requires that the defendant had purposefully directed its activities at the forum state and that the litigation arises out of or relates to those activities. The court found that Hercules Forwarding had sufficient minimum contacts with Illinois to establish specific jurisdiction. The company owned and operated a trucking terminal in Illinois, conducted continuous and systematic business in the state, and employed Illinois residents. Furthermore, the court determined that the litigation arose from these activities, as the tractor-trailer involved in the accident was registered in Illinois, the driver (Toppel) held an Illinois commercial driver's license, and the work order for the trip was issued from the Illinois terminal. These facts satisfied the "minimum contacts" standard under *International Shoe Co. v. Washington*, ensuring that exercising jurisdiction would not offend traditional notions of fair play and substantial justice.

The court also addressed venue, noting that under 28 USC §1391(c)(2), an entity resides in any judicial district where it is subject to personal jurisdiction. Since the court had personal jurisdiction over Hercules Forwarding, venue in the Northern District of Illinois was proper. Consequently, the court denied the defendants' motion to dismiss for lack of personal jurisdiction and improper venue.

Bridget Daley Atkinson

11. Discovery

***Hernandez v. Pemmark Transp. Inc.*, 2025 US Dist. LEXIS 195940 (D. Kan.)**

The plaintiff brought suit against six defendants in this case arising from a motor vehicle collision involving a semi-truck. After one of the defendants moved for summary judgment under Federal Rule of Civil Procedure 56, the plaintiff argued that he was entitled to further discovery, and consideration of the defendant's motion should be delayed.

Rule 56(d) permits a non-moving party to oppose a party's summary judgment motion with a declaration specifying the evidentiary reasons why the non-moving party is unable to sufficiently oppose the motion. Applying case law from the Tenth Circuit Court of Appeals, the Kansas District Court agreed that the plaintiff needed more discovery to oppose the defendant's motion. The court noted that that the plaintiff's declaration met all four factors articulated by the Tenth Circuit: (1) specifying the unavailable probable facts needed to oppose the motion; (2) why the facts cannot yet be presented; (3) the steps taken thus far to obtain those facts; and (4) how additional time will enable the discovery of facts necessary to oppose the motion. The plaintiff in this case specifically sought to discover whether the moving defendant was the motor carrier responsible for supervising the defendant-driver.

Defendants should note that, while the Federal Rules permit Rule 56 summary judgment motions at any time until 30 days after the close of discovery, courts are hesitant to grant such motions when made before the close of discovery. In this case, the court's discovery schedule did not conclude for another four months before the defendant brought its motion.

***Hotchkiss Disposal Servs., Ltd.*, 2025 Tex. App. LEXIS 6766**

This appellate case, arising out of a collision involving a Mack truck, concerns an application for a writ of mandamus, extraordinary relief directing a lower court to take a certain action. The lower court authorized discovery regarding all defendants' net worths, permitted under Texas law, on the basis that the plaintiff had demonstrated a substantial likelihood of recovery exemplary (punitive) damages.

In Texas, exemplary damages are recoverable in cases of gross negligence. Gross negligence has both objective and subjective elements and must be shown by the plaintiff with clear and convincing evidence, a higher standard than to establish typical tort liability. Corporations can sometimes be held liable for an employee's gross negligence, although additional specialized rules apply.

In reviewing the lower court's findings for abuse of discretion, the appellate court found that net worth discovery was permissible against the defendant-driver. As discovery had shown that the defendant-driver made a sudden, un-signaled right turn in front of the plaintiff's vehicle from the middle lane. By contrast, the lower court's granting of net worth discovery as to the corporate defendants was unsupported by the evidence. The appellate court held that the corporate defendants, but not the defendant driver, were entitled to a writ of mandamus.

***Chouceir v. Hartford Fire Ins. Co.*, 2025 US Dist. LEXIS 118213 (E.D. La.)**

This case arose from a collision near a loading dock in which the plaintiff-driver was standing in the rear of his truck's trailer which was hit by the defendant-driver's truck. The plaintiff sought broad discovery from the defendants, including information regarding the defendant-driver's safety and employment records mandated by the FMCSA, fatigue driving records, and records of drug use in the form of both a notice to produce and interrogatories. The defendants moved to quash the plaintiff's discovery demands and for a protective order.

Federal district courts have broad discretion in supervising discovery under Federal Rule of Civil Procedure 26. In reviewing the plaintiff's interrogatories here, the court found that most of the plaintiff's questions were permissible but imposed limitations on some questions without proper time constraints. For example, the court held that only information regarding prescription medications taken on the date of the accident was relevant. In considering the plaintiff's notice to produce, the court held that the defendant was only required to produce seven years of employment records for the defendant-driver.

Alec Herbert

12. Spoliation

There were several interesting decisions last year concerning the spoliation or destruction of evidence. We summarize below a few of these cases and emphasize the severity of the offense, how seriously courts take it, and how courts deliberate to craft remedies.

In *Fahrnow v. E-5 Oilfield Servs*., LLC, 577 P.3d 1107 (Mont.), the Supreme Court of Montana considered the appellant-plaintiff's challenge to the trial court's pretrial discovery order regarding two claims of evidence spoliation. The appellant-plaintiff filed suit against the appellee-defendant oilfield services company for negligence after one of defendant's hot-oil trucks struck the plaintiff while he was standing outside his truck on an icy highway. The court considered the following issue: Whether the trial court abused its discretion in refusing to sanction the defendant with a default judgment for spoliation of the hot-oil truck's data and the driver's employment records.

This case arises from two motor vehicle accidents, which occurred within minutes of each other on November 8, 2018, in Richland County, Montana. On the date of loss, the plaintiff and a coworker traveled from Sidney to Culbertson, Montana, to complete a job for their employer. They began their return trip to Sidney in the afternoon. The plaintiff was driving his employer's pickup truck and towing an air compressor trailer. They were heading southbound on County Road 350 when the plaintiff observed that the roads were icy and slick.

At approximately 3:30 p.m., as he approached a stop sign, the plaintiff prepared to turn left from County Road 350 onto Highway 23. While stopped at the stop sign, the plaintiff's coworker noticed a westbound truck approaching the intersection. As the driver of the westbound truck turned right onto County Road 350, he lost control of the vehicle. The rear of the westbound truck crossed over the center line and collided with the rear end of the plaintiff's truck. While the plaintiff and the driver of the westbound truck parked and exited their respective trucks to inspect the damage, the plaintiff's truck remained in the southbound lane of County Road 350, and the driver of the westbound truck parked his truck in the northbound lane.

The plaintiff remained outside his truck for a few minutes before he walked toward the front of the vehicle, intending to move it onto the shoulder of the road. At that moment, however, the defendant's truck attempted to turn right onto County Road 350. The driver thereof noticed the plaintiff in the roadway, so he made a wide turn to avoid them. The defendant's driver applied the brakes, and his truck began to slide uncontrollably towards the plaintiff. As the plaintiff attempted to step inside his truck, he heard the defendant's truck's horn honk. Although the plaintiff tried to position himself between the door and frame of his truck, the defendant's truck struck him on the thigh. The truck then collided with the plaintiff's vehicle and dragged the plaintiff underneath for several feet until reaching a ditch.

In November 2021, the plaintiff filed a complaint against the defendant alleging vicarious liability against the defendant, alleging that the driver of the defendant's truck negligently caused the plaintiff's injuries while in the course and scope of his employment. The defendant asserted comparative negligence as a defense, arguing that the plaintiff's negligence caused his injuries. The parties engaged in a lengthy and contentious discovery process, which included motion practice.

The plaintiff filed a motion in the trial court to impose a default judgment against the defendant, on the grounds that the defendant spoliated evidence when it destroyed data from the hot-oil truck and failed to preserve the driver's employment file after his employment ended. The trial court denied the plaintiff's motion.

Montana appellate courts review a trial court's discovery and imposition of sanctions orders for an abuse of discretion. Under such a standard, the appellate court considers under the totality of the circumstances, whether the trial court "acted arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason."

The court began its review by setting forth the applicable law. The court noted that "evidence spoliation occurs when a party materially alters, destroys, or fails to preserve evidence in anticipation of litigation and the opposing party seeks discovery of that evidence." The court continued that a trial court has "discretion to impose sanctions for spoliation when a party breaches its duty to preserve the evidence at issue. Montana Rules of Civil Procedure 26 through 37, like their Federal Rule counterparts, require the party in control of the evidence to preserve it when litigation becomes reasonably foreseeable."

The plaintiff sought a default judgment against the defendant for its failure to preserve black-box data from the hot-oil truck. The trial court denied the request. The plaintiff renewed the request on appeal. Montana courts may enter a default judgment as an extreme sanction if the party seeking the default demonstrates the following: (1) the opposing party had a duty to preserve the evidence, (2) the opposing party breached its duty, and (3) the party seeking the sanction suffered significant prejudice due to the loss. Courts prefer to resolve disputes on the merits. Thus, the opposing party's actions must be sufficiently egregious to outweigh the court's preference. The Montana Supreme Court had held previously that a default judgment is an appropriate sanction when a party intentionally destroys or conceals critical evidence. A default judgment also is warranted when a party is unresponsive to discovery requests in violation of a court order, forcing the plaintiff to proceed under a "cloud of uncertainty."

The plaintiff argued that the loss of the hot-oil truck's data prejudiced his case because the data would have captured the truck's speed at the time of loss. The defendant responded that: (1) it had no duty to preserve the data, (2) even if it did, the defendant did not breach its duty because the defendant had not destroyed nor was it responsible for destroying the data, and (3) the plaintiff was not prejudiced because information about the defendant's driver's speed was available from other sources.

The plaintiff also argued that the trial court should have imposed a default judgment against the defendant because it failed to retain its driver's employment file after the driver's employment ended. The plaintiff argued that he was prejudiced significantly by the loss of the driver's file because the file would have been critical to holding defendant vicariously liable. Because it was undisputed that if the trial court concluded the driver was negligent that the defendant would have been vicariously liable, defendant argued it was immaterial that it lost the driver's employment file.

The trial court denied the plaintiff's motion for sanctions at the final pretrial conference on the grounds that the defendant did not breach its duty to preserve the hot-oil truck's data because the plaintiff did not serve the initial complaint for approximately three years following the accident, and the truck burned coincidentally in an accidental fire two months after the accident. The trial court also rejected plaintiff's request to impose sanctions for failure to preserve the driver's employment file because the defendant had not contested his employment.

The court held that the plaintiff failed to demonstrate that the defendant's conduct warranted imposition of a default judgment or that the plaintiff had been significantly prejudiced by the loss. The court noted that the record did not show that the defendant intentionally or negligently destroyed the truck's data when it was subsequently destroyed in a fire, for which defendant was not responsible. Further, the defendant presented evidence that an outside vendor maintained the GPS data for 90 days following the loss, at which point the vendor automatically deleted the data. At that time, the defendant had not received notice that the plaintiff intended to pursue a claim. Finally, the sanction the plaintiff sought was disproportionate to the minimal prejudice he suffered. Though the plaintiff may have been able to ascertain the driver's speed from the data, he was also able to obtain estimates from the driver's deposition testimony and the parties' expert reports.

Regarding destruction of the driver's employment file, the court noted that the defendant admitted that the driver was driving the hot-oil truck within the course and scope of his employment at the time of loss. Thus, the court held because the defendant's vicarious liability was not at issue, plaintiff suffered no prejudice from the loss of the employment file, even if defendant had breached its duty to preserve.

Accordingly, the court held that the plaintiff had failed to demonstrate that the trial court acted "arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason" in denying the sanctions motion. The court therefore concluded that the trial court did not abuse its discretion when it denied the plaintiff's motion to impose a default judgment against defendant for spoliation of evidence.

The decision in *Young v. D & E Logistics, Inc.*, 2025 Cal. Super. LEXIS 51187, involved the plaintiff's motion for evidentiary sanctions against defendants for spoliation of evidence.

This case arises from a collision between the plaintiff, who was riding a motorcycle on the I-405 freeway at a speed of 55 to 60 mph, and a steer tire, which detached from a commercial tractor-trailer driven by the defendant-driver, who was employed by defendant-motor carrier. The plaintiff alleged that defendants negligently maintained and inspected the tire.

According to the plaintiff, the defendants destroyed the steer tire as well as the tractor's pre-trip inspection reports after receiving notice of litigation. Thus, the plaintiff argued that the court should impose evidentiary and issue sanctions.

The court began its analysis with a review of the relevant rules.

A California court, after notice to any affected party, person or attorney, and after opportunity for hearing, may impose monetary, issue, evidence, and/or terminating sanctions against anyone engaging in conduct that is a misuse of the discovery process. Code Civ. Proc., §2023.030 subd. (a)–(d).

The court noted that the discovery remedies set forth in California Code of Civil Procedure §2023.030 "provide a substantial deterrent to acts of spoliation, and substantial protection to the spoliation victim." Spoliation of evidence is "the destruction or significant alteration of evidence or the failure to preserve evidence for another's use in pending or future litigation."

Courts condemn spoliation because it:

> [C]an destroy fairness and justice, for it increases the risk of an erroneous decision on the merits of the underlying cause of action. Destroying evidence can also increase the costs of litigation as parties attempt to reconstruct the destroyed evidence or to develop other evidence, which may be less accessible, less persuasive, or both. ... While there is no tort cause of action for the intentional destruction of evidence after litigation has commenced, it is a misuse of the discovery process that is subject to a broad range of punishment, including monetary, issue, evidentiary, and terminating sanctions.

(Citations omitted.)

"[I]n egregious cases of intentional spoliation of evidence," "[a] terminating sanction is appropriate," even without a violation of a prior court order. A terminating sanction is an order that dismisses a case or precludes a party from defending it. Such sanctions include dismissal, striking pleadings or entering a default judgment against the offending party.

The court next set forth the burden of proof in a motion for discovery sanctions. The moving party must make a prima facie showing that the opposing party destroyed evidence causing "a substantial probability of damaging the moving party's ability to establish an essential element of his claim or defense." If the moving party meets this initial burden, the burden shifts to the responding party to show that the moving party has not been prejudiced by the loss of evidence.

According to the court, discovery sanctions are employed to remedy discovery abuse. They should not put the moving party in a better position than they would otherwise have been had they obtained the requested discovery and should be proportionate to the offending party's misconduct.

The court next considered the parties' arguments. The plaintiff claimed defendants destroyed two pieces of evidence: a tire and pre-inspection reports. Regarding the inspection reports, the defendants claimed they never existed because there was no deficiency noted in the tire, and pre-inspection reports are created only where there is a defect or deficiency. The plaintiff relied on 49 C.F.R. §396.11 to support his position that a pre-inspection report should have been created. Defendants noted, however, that the regulation specifically states, "[d]rivers are not required to prepare a report if no defect or deficiency is discovered or reported to the driver." 40 C.F.R. §396.11(a)(2)(i).

The defendants also noted that they used the Samsara electronic data system at the time of loss; data from the system was produced to the plaintiff. According to the defendants, the data showed there was no pre-inspection trip report for the date of the incident, i.e., nobody destroyed the reports.

The plaintiff claimed that without the pre-inspection reports, there was no evidence of the truck's condition before the date of loss, other than photographs of the subject tire. However, the defendants noted that they produced several documents in discovery regarding the maintenance and inspection history of the tractor-trailer.

Thus, according to the court, there was substantial evidence related to the pre-accident condition of the tractor-trailer, including three California Highway Patrol inspections completed in the month before the loss. Accordingly, the court concluded there was no evidence defendants spoliated pre-inspection reports.

Regarding the tire, it was undisputed that the defendants destroyed the tire. The question the court considered was whether the defendants destroyed it intentionally. There was no requirement that the defendants destroyed the tire maliciously. The court concluded that defendants knew what they were doing when they destroyed the tire, i.e., they destroyed it intentionally.

Further, the court concluded that the defendants destroyed the tire after they anticipated litigation. The plaintiff's counsel sent the defendants a letter of representation and put them on notice of pending litigation approximately three days after the accident. The letter asked the defendants to disclose any evidence concerning the matter.

The defendants argued that the letter did not request preservation of evidence, only disclosure. But according to the court, the defendants cited no authority that required the plaintiff to notify them of their obligation to preserve evidence once they anticipated litigation. Nevertheless, the court concluded that the defendants "clearly knew they were obligated to preserve evidence because they took photographs of the tire." The court also noted that the defendants filed an insurance claim on the date of loss, which presumably meant they recognized the possibility of litigation.

Nevertheless, although the court recognized the destroyed tire was relevant, there is other evidence regarding the tire's condition, including photographs and repair records. Even though the court found that the tire itself would have been "more direct and compelling evidence, and the photos do not fully capture the condition of the tire," "the prejudice to Plaintiff (while indisputable) is not enough to warrant issue or evidentiary sanctions." The court ultimately declined to impose on the defendants the type of sanction requested by the plaintiff because he had failed to make a *prima facie* showing that there was a "substantial probability of damaging [plaintiff's] ability to establish an essential element of his claim."

Because the court was obviously put off by the defendants' intentional destruction of relevant evidence after they had anticipated litigation, the court imposed different sanctions, which included giving the following jury instruction (CACI jury instruction No. 204 – Willful Suppression of Evidence): "You may consider whether Defendants intentionally concealed or destroyed the tire. If you decide that they did so, you may decide that the evidence would have been unfavorable to Defendants." The court also barred the defendants from raising at trial the issue of the tire's absence. The court concluded the sanctions it imposed are "more appropriately tailored to Defendants' dereliction than the issue or evidentiary sanctions proposed by Plaintiff."

The *Fahrnow and Young* decisions illustrate both how seriously courts take the issue of evidence destruction, and the importance of proportionally tailoring the remedy for such an abuse of the discovery process.

Hughes v. Reitnouer, Inc., 2025 US Dist. LEXIS 170988 (W.D. Ark. Sept. 3), was a products liability and negligence case arising from a November 14, 2019, motor vehicle accident. The plaintiff was driving a van on the highway when he rear-ended a tractor-trailer owned by defendant-motor carrier. The impact of the collision caused the van to go under the rear of the trailer and catch fire. The trailer's rear underride guard broke off, which was what caused the plaintiff's van to go under the rear of the trailer. After the accident, the trailer was repaired before an assessment of whether its components "were in proper working order." Litigation ensued.

After discovery, the defendants filed a motion for summary judgment. In response, the plaintiffs raised for the first time that defendant-motor carrier spoliated evidence and that such spoliation should preclude summary judgment in favor of the defendant. Our discussion is limited to the issue of evidence destruction and does not address the merits of the defendant's motion.

In deciding the motion, the court first addressed the plaintiffs' contention that the defendant-motor carrier spoliated evidence. The plaintiff asked the court to give the jury, assuming the case were to go to trial, what is called an "adverse inference instruction" due to the alleged spoliation. The court noted that the plaintiffs had not raised the spoliation issue prior to their response to the defendants' motion for summary judgment nor had they filed a motion as required by local rules. Nevertheless, the court found no evidence that the defendant destroyed evidence.

The court reviewed the relevant case law on remedies for discovery abuses. The court noted it has the "inherent power" and the "discretionary ability to fashion an appropriate sanction for conduct which abuses the judicial process." (Citations and internal quotations omitted.) Because these remedies are "poten[t]," the court's "inherent powers must be exercised with restraint and discretion." (Citation omitted.) Spoliation of evidence is one such abuse.

The court next considered the law applicable to the plaintiffs' request for an adverse inference jury instruction. For such an instruction to be warranted, the plaintiffs had the burden to present sufficient evidence of the following: (1) an intentional destruction of evidence "indicating a desire to suppress the truth," and (2) prejudice arising from the destruction.

The court recognized that direct evidence is rarely provided to prove intent. Thus, the court had "substantial leeway to determine intent through consideration of circumstantial evidence, witness credibility, motives of the witnesses in a particular case, and other factors." (Citation omitted.) The court focused its analysis on the defendant's "intent to suppress the truth" and not on what the defendant knew about "the prospect of litigation." When a party spoliates evidence before the commencement of litigation, as alleged here, the plaintiffs are required to show bad faith before the court could impose an adverse inference instruction.

Regarding prejudice, the court stated that the plaintiffs also had the burden to prove they were prejudiced by the defendant's spoliation of evidence. To satisfy this burden, the plaintiffs needed to show that the destroyed evidence was both relevant and unavailable to them "through any other means."

The court next reviewed the record to analyze whether sanctions were appropriate. The plaintiffs argued that the defendant-motor carrier spoliated evidence because it allowed the rear underride guard to be discarded and allowed the trailer to be repaired. This, the plaintiffs contended, prejudiced their ability to prove their case against defendant. The plaintiffs argued that the defendant should have known that it needed to preserve this evidence because the accident was serious and because the plaintiffs' counsel sent an April 17, 2020, letter of preservation. Finally, the plaintiffs argued that the defendant should have kept the trailer, noting that it was sold ten days after the date of the preservation letter. It was the plaintiffs' overall position that there was evidence of spoliation.

The defendant responded to these allegations as follows: First, following the accident the defendant never again possessed the trailer. Second, immediately after the accident the driver complied with police officers on the scene, who instructed him to leave the trailer in a nearby lot. Third, the trailer was deemed a total loss. Fourth, the plaintiffs' liability insurer issued a check to the defendant. Fifth, the defendant did not repair the trailer following the accident. Sixth, when the defendant received April 17, 2020, preservation letter, the plaintiffs' insurer had previously paid the defendant full value for the trailer, possibly more than five months before.

Accordingly, the court concluded that the plaintiffs failed to show that the defendant intentionally spoliated evidence concerning the trailer and certainly not in a "manner indicating a desire to suppress the truth." The court stated that the plaintiffs' arguments appeared to rest entirely on the notion that the defendant had a duty to preserve evidence in anticipation of litigation. However, the court disagreed. The plaintiffs needed to show that the defendant intentionally destroyed evidence to suppress the truth. This, the court held, was the "key inquiry." It was insufficient that the defendant may have had the "mere knowledge of the possibility of litigation."

Agreeing with the defendant's arguments summarized above, the court found nothing in the record to support the claim that the defendant disposed of the trailer with the intent to suppress the truth. In other words, even though the defendant "may have had some idea that litigation may be incoming, this alone is simply not enough to justify the required finding of bad faith." Thus, the court rejected the plaintiffs' request for an adverse inference instruction.

Although in *Hughes* there was no evidence that the defendant had destroyed relevant evidence, let alone intentionally, the case is another good example of how high courts have set the bar for a party asserting that discovery sanctions are appropriate.

Ian Linker

13. Experts

Barnes v. Greenwood Motor Lines, Inc., 2025 US Dist. LEXIS 189159 (C.D. Ill.)

This case stems from a fatal collision on November 4, 2020, involving John Barnes, who was driving a box truck, and a tractor-trailer operated by Michael Hegger, an employee of Greenwood Motor Lines, Inc. (GML). The plaintiff brought claims of negligence and vicarious liability against Hegger and GML, asserting that Hegger failed to operate his vehicle with reasonable care, leading to Barnes' death. The defendants denied liability and argued that Barnes' own comparative negligence, including his alleged impairment from tramadol, contributed to the accident.

The court addressed multiple motions to exclude expert testimony under Federal Rules of Civil Procedure 26 and 37, as well as Federal Rule of Evidence 702. The defendants attempted to exclude portions of testimony from the plaintiff's experts, including accident reconstructionist Kevin Johnson, human factors expert Swaroop Dinakar, and toxicologist Dr. William Sawyer. The court found that Johnson's accident reconstruction testimony was admissible, as it was based on reliable methodologies, and Dinakar's human factors analysis was also allowed, as it provided relevant insights into driver behavior. However, portions of Sawyer's testimony regarding "looming" and "reasonable response times" were excluded due to untimely disclosure under Rule 26(a)(2)(B).

The court also evaluated the admissibility of testimony from the defendants' experts, including Sergeant Bradley Brachear, who prepared a Traffic Crash Reconstruction Report, and toxicologist Dr. Christopher Spaeth. Brachear's testimony was deemed admissible, as it was based on firsthand observations and physical evidence from the accident scene. Spaeth's testimony regarding the physiological effects of drugs in Barnes' system was also admitted, as it was grounded in reliable toxicological principles. However, the court excluded certain legal conclusions and speculative findings from other experts, such as Adam Grill, who opined on GML's training and supervision practices, and David Griffin, who offered opinions on GML's compliance with federal safety standards.

The court's decisions on the admissibility of expert testimony showed a strict application of the Daubert standard and Rule 702, ensuring that only reliable and relevant expert opinions would be presented to the jury.

***Haddox v. Cent. Freightlines, Inc.*, 2025 US Dist. LEXIS 190437 (N.D. Ok)**

The plaintiffs sought to introduce the testimony of Lew Grill, an expert in trucking industry customs, practices, and standards, in support of their claims of negligence against the defendants. The defendants moved to strike Grill's testimony, arguing that he was unqualified and that his opinions were irrelevant and unreliable.

The court found that Grill was qualified to testify about general trucking industry customs, practices, and standards based on his extensive experience as a commercial truck driver, safety director, and consultant. However, the court limited the scope of his testimony to exclude opinions that elevated the standard of care for commercial truck drivers beyond the ordinary negligence standard applicable under Oklahoma law. Emphasizing that Oklahoma law requires commercial drivers to exercise the degree of care that an ordinarily prudent person in the same profession would exercise, not a heightened standard.

The court further excluded portions of Grill's testimony deemed conclusory or unsupported by sufficient factual or methodological foundations, such as Grill's opinions regarding the preventability of the accident, causation, and alleged violations of laws or regulations. These were excluded as impermissible legal conclusions or as invading the jury's role in determining factual issues. The court noted that such testimony lacked the necessary factual basis and reliability under *Daubert*

Addressing a supplemental expert report submitted by Grill after the deadline for expert disclosures, the court did not strike this report as untimely. While the report introduced new opinions based on a deposition taken after the original report, the court found no prejudice to the defendants, noting that the defendants had ample time to review the supplemental report and prepare for trial, and they had not sought additional discovery or filed a rebuttal report.

C. J. Englert

14. Agency Relationships

WHEN DOES HOUSEHOLD GOODS MOTOR CARRIER'S AGENCY RELATIONSHIP REALLY END?

An August 2025 decision from a federal court in Georgia should lead household goods motor carriers to be more thorough when terminating relationships with their agents. In *Sloan v. Burist,* 2025 US Dist. LEXIS 166954 (S.D. Ga.), Mayflower Transit LLC found itself unable to escape liability at the summary judgment stage for a fatal truck accident that occurred more than two months after its formal agency agreement with Joe Moholland, Inc. had terminated. The court found sufficient evidence that a reasonable jury may conclude that an agency relationship still existed on July 1, 2022, the day of the collision, despite clear documentary evidence that both parties had signed termination agreements back in April.

When the accident took place—where a semi-truck driven by Nicholas Burist collided with other vehicles on Interstate 95 in Camden County, Georgia—the truck bore Mayflower's name and DOT number on its side. Inside the cab were all the documents necessary for operating interstate transportation, each one identifying Mayflower as the motor carrier for safety and financial security purposes.

The relationships between the parties is standard in the household goods moving industry. Mayflower is a large, well-known, interstate carrier that facilitates government and military moves across state lines. It doesn't perform the moves itself. Instead, Mayflower provides the DOT authority for these moves to occur, maintains driver qualification files, handles compliance requirements, provides excess insurance coverage, and ensures compliance with federal regulations for interstate commerce.

To carry out the actual moves, Mayflower contracts with independent companies that serve as agents. Joe Moholland, Inc. was one such agent. Moholland, in turn, had its own contractual relationship with Locke Relocations LLC, which provided drivers and equipment. The driver, Nicholas Burist, worked through Locke but, as he testified, "drove for Moholland." On July 1, 2022, he was driving a tractor-trailer owned by Locke, operating under arrangements with Moholland, and displaying Mayflower's authority.

Mayflower and Moholland had worked together since 2008 under a standard agency agreement. That relationship came to an end on January 19, 2022, when Mayflower terminated the agreement because Moholland had sold its company to a real estate firm that Mayflower considered a competitor. The parties then entered into a temporary agency agreement running from January 20, 2022 through April 28, 2022. This temporary arrangement existed solely to allow Moholland to complete shipments that were already in the pipeline when the original agreement terminated.

Under the terms of both the original and temporary agreements, Moholland was required to return all licenses, cards, permits, and other operating documentation issued in Mayflower's name within thirty days of termination. Additionally, the agreements specified that all Mayflower and UniGroup (Mayflower's parent company) signage and branding had to be removed from business operations, equipment, and physical facilities no later than 60 days beyond the termination date. With the temporary agreement ending on April 28, 2022, this meant everything should have been cleaned up by June 28, 2022.

But on July 1, 2022, more than two months after the contractual relationship ended, one of Moholland's drivers was still driving a truck that displayed Mayflower's name and DOT number. The truck still carried Mayflower's Missouri license plate. Inside the cab was a valid cab card identifying Mayflower as the motor carrier for safety, specific to Moholland and the license plate on that particular truck. An IFTA sticker authorized for 2022 was also present. Without these items, the driver would have been operating illegally in interstate commerce.

The dispute that prevented summary judgment centered on a series of emails exchanged between Moholland and Mayflower representatives in the weeks leading up to the accident. In May 2022, shortly after the temporary agency agreement ended, Mayflower's permit coordinator asked Michael Peters, vice president of operations for Moholland, to return the license plates. Peters responded that Moholland had been told they could keep the plates until they expired in 2023. When the permit coordinator pushed back, Peters replied firmly that it had been agreed Moholland could keep them and run under them until 2023, and they would not be returning them until then.

This prompted escalation within Mayflower. Nicole Crum, a safety manager from UniGroup, contacted Peters and stated that the license plates had to be received by June 15, 2022, or Mayflower would delete the plates from Missouri and report them as stolen to prevent Mayflower from being charged for any citations, tolls or compliance violations.

Then on June 28, 2022, Peters reached out to Crum. He explained that Moholland's own IRP (International Registration Plan) and IFTA (International Fuel Tax Agreement) accounts would not be operational for another four to six weeks, meaning that twelve units (trucks), including the one that would be involved in the accident three days later, could not be registered to operate under Moholland's authority. Peters requested an extension to continue using Mayflower's plates for these specific units during the gap period.

Crum forwarded this request to Adam Petry, senior manager of safety administration at UniGroup, along with her concerns. She wrote that her worry was that "so much can happen and come back to us the longer we keep letting them use our plates." She noted they had already received some tolls and referenced a roadside inspection that "wasn't good at all." That same day, Petry emailed Rob Garr, president of Moholland, stating that after checking with legal, he was sorry to inform that they could not grant another extension "past this Friday 07/01" and would need confirmation that the materials would be sent back "on or before Friday."

The accident occurred on Friday, July 1, 2022.

Mayflower's position in the litigation was straightforward. The company pointed to substantial evidence that no agency relationship existed at the time of the crash. Both written agency agreements had terminated months before the accident. The lease agreement for the equipment automatically terminated when the agency agreement ended. Mayflower was not listed on the bills of lading for the July 1 load. The company received no payment for that shipment. The move was not recorded in Mayflower's mainframe system, which tracked all loads being carried under Mayflower's authority. Garr, Moholland's president, testified that Mayflower was not involved in the July 1 shipment and that the load was hauled under Moholland's own authority.

From Mayflower's perspective, the emails merely reflected the company's increasingly urgent demands for the return of its operating materials. The June 28 email set a firm deadline of July 1, which Mayflower argued meant Moholland had no authority to use the materials after that date. In Mayflower's view, any continued use of its plates, IFTA stickers, and other authority markers after the contractual relationship ended was unauthorized and should not create liability for the company.

The court acknowledged that Mayflower had presented significant evidence supporting its position. But the court's role at summary judgment is not to weigh evidence or determine which side has the better argument. The question is whether there exists a genuine dispute of material fact that a reasonable jury could resolve in favor of the party opposing summary judgment. Here, the court found that the plaintiffs (injured individuals and representatives of the deceased individuals) had identified sufficient evidence to meet that standard.

The court focused on the operational reality of the situation. On July 1, 2022, the truck displayed Mayflower's name and DOT number. Inside and on the truck were all the documents necessary for legal operation identifying Mayflower as the motor carrier. The cab card was valid and specific to that truck's license plate. The IFTA sticker was current. The license plate was registered through Mayflower's authority. Without these items bearing Mayflower's authority, the driver could not have legally operated the truck in interstate commerce that day.

The email exchanges created further ambiguity. While Mayflower characterized the June 28 email as setting a hard deadline after which no authority existed, the language was susceptible to another reading. Peters of Moholland had explicitly told Mayflower representatives in May that Moholland intended to "keep the plates and run under them." When Peters requested the extension on June 28, he explained exactly why Moholland needed to continue operating under Mayflower's authority—because Moholland's own accounts were not yet valid. Crum's response to Petry used the phrase "keep letting them use our plates," language that suggests ongoing permission rather than theft or unauthorized use. And Petry's response stated that Mayflower could not grant another extension "past this Friday 07/01," which a reasonable person could interpret as meaning that through Friday, July 1, the existing arrangement continued.

The court also noted what Mayflower did not do. Despite Moholland missing the deadlines, Mayflower took no legal action against Moholland between May and July 2022 to prevent continued use of its operating authority. Mayflower did not report the license plates or IFTA stickers as stolen. Michael Kratzer, one of Mayflower's corporate representatives, could not identify any correspondence with the Missouri Department of Transportation or Federal Motor Carrier Safety Administration stating that Moholland was unauthorized to use Mayflower's materials on July 1, 2022. In fact, Mayflower did not contact the Federal Motor Carrier Safety Administration to report that Moholland was unauthorized to use the plates until July 5, 2022—four days after the accident occurred.

Under Georgia law, an agency relationship can exist in three ways: through express agreement, by implication from the circumstances, or through the principal's ratification of the agent's conduct. The court found sufficient evidence for a jury to conclude that Mayflower had expressly granted Moholland authority to continue acting on its behalf by allowing the continued use of operating materials through July 1, 2022, particularly given Mayflower's knowledge that Moholland intended to use those materials to operate trucks.

This decision shows that terminating an agency relationship requires more than executing documents and setting deadlines. Courts look at the operational reality at the time of the accident, particularly what authority markers remained in use and what conclusions a reasonable person would draw from the circumstances.

DOT numbers, license plates, IFTA stickers, and cab cards could be powerful indicators of agency relationships because they demonstrate which carrier has authorized a vehicle to operate in interstate commerce. When these materials remain in use after a relationship has supposedly ended, they create apparent authority regardless of what termination documents say. Third parties, including accident victims, are entitled to rely on these outward manifestations of authority. Although more than two months passed between Mayflower's termination of the temporary agency agreement and the accident, the court found that time alone means little when operating authority markers remained in use. Motor carriers would be wise to remember that, as long as trucks display your DOT number and carry your license plates and cab cards, you remain exposed regardless of your termination documents.

Finally, Mayflower's failure to take action to enforce its deadlines also mattered. Mayflower and Moholland had worked together for over a decade, and it was understandable that Mayflower was reluctant to take a hard line when Moholland failed to return its operating authority materials. It can be difficult to end long-standing business relationships, and companies naturally want to maintain good will with long-term partners. But in this case, that desire created legal exposure for Mayflower. The continued negotiations, failure to report Moholland's unauthorized use of Mayflower's operating authority, combined with Mayflower's tolerance of receiving tolls and citations connected to Moholland's use of the plates, gave the plaintiffs evidence to argue that Mayflower was acquiescing to an ongoing agency arrangement. When it comes to operating authority and potential liability, protecting the business sometimes requires drawing harder lines than feeling comfortable with longtime partners.

Xun Chen

15. *Default Judgments*

We advise both our trucking and insurance clients that entry of default against the insured is a result that is difficult to reverse and that attention must be paid to avoid a default. Case law from 2025 involved some entries of default against truckers, and also several involving entry of default in favor of an insurance company in a declaratory judgment action.

In *Universal Fire v. 18 Wheel Funding LLC*, 2025 US Dist. LEXIS 220142 (M.D. Fla.), the court addressed the issue of default judgments in the context of an interpleader action involving a $75,000 surety bond. Universal Fire & Casualty Insurance Company sought entry of default against four defendants—PP&J Trucking, LLC, Sid Logistics Corp., Trans Recovery Solutions, Inc., and Blue Diamond Transportation, LLC— after they failed to respond to the complaint within the required 21-day period under Federal Rule of Civil Procedure 12(a)(1)(A). The court determined that service of process on each defendant was proper under Federal Rule of Civil Procedure 4(h)(1)(B), as the summons and complaint were served on the registered agents of the respective defendants, as documented in Secretary of State records. The court emphasized that proper service is a prerequisite for the entry of default, citing the principle that a court lacks the authority to render judgment against a party absent proper service or waiver of service.

The court reviewed the returns of service and supporting documentation to confirm compliance with Rule 4(h)(1)(B). Since none of the defendants answered or otherwise defended themselves within the required timeframe, the court found that the entry of default under Rule 55(a) was appropriate. The court granted Universal Fire's motion for default and directed the clerk to enter default against the defendants. Additionally, the court ordered Universal Fire to apply for default judgment within 35 days and to file its next motion for default within four business days. This case underscores the importance of proper service of process and adherence to procedural rules as prerequisites for obtaining default judgments.

In *Prime Prop. & Cas. Ins., Inc. v. R King Trucking, Inc.*, 2025 US Dist. LEXIS 204390, the United States District Court for the Middle District of Florida addressed the issue of default judgments under Rule 55 of the Federal Rules of Civil Procedure. The court granted a default judgment in favor of the plaintiff, an insurance company, after the defendants failed to respond to the complaint. The court held that the defendants' failure to answer constituted an admission of the well-pleaded factual allegations in the complaint, including that the driver involved in the underlying automobile accident was not a "Scheduled Driver" under the insurance policy and was not acting within the scope of the insured's commercial auto operations. These admissions established that the insurance policy did not cover the accident, and the plaintiff had no duty to defend or indemnify the defendants. The court emphasized that while a default does not automatically entitle a plaintiff to judgment, it deems the factual allegations in the complaint admitted if they are well-pleaded. However, the court declined to grant default judgment against minor defendants because their guardians had not properly appeared in the case, as required under Rule 55(b)(2). This decision underscores the importance of procedural compliance in default judgment cases and highlights the court's discretion in ensuring fairness, particularly when minors are involved.

In *KLLM Transp. Servs. LLC v. Safe Transp. Inc.*, 2025 US Dist. LEXIS 175247, the United States District Court for the Eastern District of Arkansas addressed the issue of default judgment under Rule 55 of the Federal Rules of Civil Procedure. The case arose from a breach of contract and liability claim under the Carmack Amendment, where the defendant, Safe Transport Inc., failed to respond to the plaintiff's complaint or otherwise defend itself in the action. The court outlined the two-step process for obtaining a default judgment: first, the entry of default by the Clerk of Court under Rule 55(a), and second, the entry of default judgment under Rule 55(b). The court emphasized that default judgments are not favored and are subject to the court's discretion, requiring a determination that the unchallenged facts in the complaint constitute a legitimate cause of action. The court noted that once a defendant is in default, the factual allegations of the complaint, except those relating to damages, are taken as true. However, the court must still ensure that the plaintiff's claims are legally sufficient before entering judgment.

In this case, the court found that Safe Transport's failure to appear or defend justified the entry of default. However, the court declined to enter a final judgment at this stage, as the plaintiff's request for damages required further briefing or a hearing to determine the appropriate amount. The court highlighted that damages must be ascertainable from definite figures or evidence provided by the plaintiff, and an evidentiary hearing may be necessary if the amount is not readily calculable. Additionally, the court addressed the plaintiff's request for pre-judgment interest, noting that while Mississippi law (which the court found applies to the case under a conflict of laws analysis) permits such awards under certain conditions, the plaintiff had not provided sufficient information to calculate the interest. As a result, the court requested further briefing or a hearing on damages before entering a final judgment. This decision underscores the court's careful consideration of procedural requirements and evidentiary support in default judgment cases.

Incline Cas. Co. v. Santos, 2025 US Dist. LEXIS 188339 (C.D. Cal.) addresses the entry of default judgment in a declaratory relief action. The plaintiff, Incline Casualty Company, sought a declaratory judgment that it had no obligation to defend or indemnify the defendants, Santos Family Transport, LLC, and Elmer Santos, in an underlying wrongful death lawsuit. The defendants failed to respond to the complaint, leading the plaintiff to request a default judgment. The court evaluated the request under Federal Rule of Civil Procedure 55(b)(2) and the factors outlined in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). These factors include the possibility of prejudice to the plaintiff, the merits of the plaintiff's substantive claim, the sufficiency of the complaint, the sum of money at stake, the possibility of a dispute concerning material facts, whether the default was due to excusable neglect, and the strong policy favoring decisions on the merits.

The court found that the plaintiff satisfied the procedural requirements for default judgment, including proper service of the complaint and notice of default. The court determined that the Eitel factors weighed in favor of granting default judgment. Specifically, the plaintiff would suffer prejudice without a judgment, as it would be left without a remedy. The complaint was sufficient to state a claim for declaratory relief, as it alleged that the insurance policy at issue did not cover the vehicle involved in the fatal accident. The court also noted that the defendants' failure to respond eliminated the possibility of a dispute over material facts, and that the default was not due to excusable neglect, as the defendants were properly served and failed to appear. While the policy favoring decisions on the merits is strong, the court concluded that the defendants' failure to participate made such a resolution impractical.

Ultimately, the court granted the plaintiff's application for default judgment, declaring that the plaintiff had no duty to defend or indemnify the defendants in the underlying action. The court emphasized that declaratory relief was appropriate to clarify the legal relations between the parties and eliminate uncertainty regarding the plaintiff's obligations under the insurance policy. However, the court noted that the plaintiff failed to include a proposed judgment as required by local rules and ordered the plaintiff to submit one within seven days.

The case *FNS, Inc. v. Max Trans Logistics of Chattanooga, LLC*, 2025 US Dist. LEXIS 169760 (C.D. Cal.) addresses the issue of default judgment under Federal Rules of Civil Procedure 55(b)(2). The plaintiff filed a motion for a default judgment after defendant Bhullar failed to appear or defend against claims arising under the Carmack Amendment for damages to a shipment of lithium batteries. The court outlined the legal standard for default judgment, emphasizing that well-pleaded allegations regarding liability are deemed true upon default, though damages must still be proven. The court applied the factors from *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), to determine whether default judgment was appropriate. These factors include the possibility of prejudice to the plaintiff, the merits of the plaintiff's claims, the sufficiency of the complaint, the amount of money at stake, the possibility of a dispute over material facts, whether the default was due to excusable neglect, and the policy favoring decisions on the merits.

The court found that the plaintiff would suffer prejudice without default judgment, as Bhullar's failure to appear left no other recourse for recovery. The plaintiff's complaint sufficiently stated a claim under the Carmack Amendment by alleging that the shipment was in good condition at origin, suffered damage during transport, and resulted in financial loss. The court also determined that the amount sought, $478,153.79 in damages plus interest, was reasonable and supported by evidence. Additionally, the court noted that Bhullar's failure to respond or defend was not due to excusable neglect, as Bhullar had been properly served. While the policy favoring decisions on the merits weighed against default judgment, the court concluded that the other factors outweighed this consideration. Consequently, the court granted the motion for default judgment, awarding the plaintiff damages, prejudgment interest from the date of payment to its customer, and post-judgment interest as mandated by 28 USC. §1961(a).

In *Blue Hill Specialty Ins. Co. v. Robertson*, 2025 US Dist. LEXIS 108750, the United States District Court for the Southern District of Mississippi addressed the issue of default judgments in the context of a declaratory judgment action. The case arose from a dispute over insurance coverage following an accident involving a commercial vehicle insured by Blue Hill Specialty Insurance Company. Blue Hill sought a declaratory judgment that it had no duty to defend or indemnify its insureds, Double W Trucking, LLC, and James Whitten, III, in a state court negligence lawsuit filed by Christopher Robertson, who was injured in the accident. After the defendants failed to respond to the complaint, Blue Hill moved for default judgment.

The court outlined the procedural requirements for obtaining a default judgment under Federal Rule of Civil Procedure 55, emphasizing that a plaintiff must first establish the defendant's default, followed by the clerk's entry of default, and then move for default judgment. The court noted that even when a defendant is in default, a plaintiff is not automatically entitled to a default judgment. The court must ensure it has jurisdiction, confirm that the plaintiff has stated a valid claim for relief, and exercise its discretion in determining whether to grant the motion. The court highlighted that default judgments are disfavored and should only be granted when the adversarial process has been halted due to an unresponsive party.

In this case, the court found that the defendants had failed to appear or respond to the complaint, and their default was clearly established. The court applied the factors from *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998), to determine whether to grant the default judgment. These factors include whether material issues of fact are at issue, whether the plaintiff has been substantially prejudiced, whether the grounds for default are clearly established, whether the default was caused by a good faith mistake or excusable neglect, the harshness of a default judgment, and whether the court would be obliged to set aside the judgment on a motion by the defendant. The court concluded that all factors weighed in favor of granting default judgment, as the defendants' failure to respond had halted the adversarial process, caused substantial prejudice to Blue Hill, and was not the result of excusable neglect.

Ultimately, the court granted Blue Hill's motion for default judgment, declaring that the insurance policy at issue provided no coverage for claims arising from the accident and that Blue Hill had no duty to defend or indemnify the defendants. The court also declined to grant injunctive relief, finding the request unsupported. This decision underscores the discretionary nature of default judgments and the importance of meeting procedural and substantive requirements before such judgments are granted.

Bridget Daley Atkinson

16. Procedural Issues

***Mabin v. Konkargaev*, 2025 Wisc. App. LEXIS 862**

This appeal concerned a rear-end collision in Wisconsin. The plaintiff made three arguments: (1) that the court abused its discretion by affirmatively asserting a statute of limitations defense on behalf of a proposed defendant, (2) it impermissibly denied the plaintiff's motion to amend her complaint to add the same defendant, and (3) that the proposed defendant should be equitably estopped from asserting a statute of limitations defense due to fraud by the named defendants.

The appellate court held that the trial court did not abuse its discretion in either considering the statute of limitations issue regarding the proposed defendant or by denying the plaintiff's motion to amend her complaint. The court observed that the accident took place in 2015 and the plaintiff moved to amend her complaint in 2023. The trial court noted that the amendment to add the additional defendant was proposed well past the statute of limitations, and that doing so was not an abuse of the trial court's discretion. The argument that the identity of the additional proposed defendant was concealed through fraud by the named defendants was unsupported by the facts, the appellate court found, and therefore the trial court did not abuse its discretion.

***Beals v. C & R Incessant, Inc.*, 2025 US Dist. LEXIS 152945 (N.D. Ohio)**

This case arose from a rear-end collision between two truck drivers. The plaintiff-rear driver alleged that the defendant-front driver made a sudden stop, and the rear driver was unable to stop in time, striking the front driver's truck. The rear-driver sued the front driver and the front driver's motor carrier, although service could not be effectuated against the front driver, and the front driver never answered the complaint. The front driver's motor carrier moved for summary judgment. The court also considered whether to dismiss the claim against the front driver after the plaintiff never responded to the court's order to show cause as to why the action against the front driver should not be dismissed for failure to prosecute.

The plaintiff responded in a delayed fashion that they had made three good-faith, but unsuccessful, attempts to serve the defendant-driver. Despite this, the court found that the claim should be dismissed without prejudice because the first attempt at service was after the 90-day period under which the complaint must be served pursuant to the Federal Rules of Civil Procedure.

As a result of the dismissal against the defendant-driver, the motor carrier was entitled to dismissal of those claims which were derivative of the negligence claim against its employee: loss of consortium and vicarious liability. The court also noted that the vicarious liability claim could be barred by the plaintiff's own negligence for following too closely. The only remaining claim against the motor carrier was for negligent entrustment. The court found that the plaintiff failed to point to any facts regarding the defendant-driver's alleged incompetence or the motor carrier's knowledge thereof. Therefore, all of the plaintiff's claims were dismissed.

Alec R. Herbert

17. Predatory Towing

Last year, we discussed the groundswell of regulatory activity at both the federal and state level to combat the growing threat to motor carriers and end users of their services from predatory towing activities. We expressed optimism that the effort would bear fruit and result in a reduction of what is essentially price gouging from certain towing companies. These companies are often engaged by state law enforcement to clean up the wreckage and debris following a motor vehicle accident involving tractor-trailers, typically without the consent of the motor carrier itself. In past editions of this publication, we discussed the results of an American Transportation Research Institute study, which described the various ways towing companies take advantage of motor carriers, and explained the specific components of towing invoices, which the companies have historically used to charge excessive rates.

Despite the rising tide of regulation designed to nip this disturbing activity in the bud, there is still work to be done. We have seen a growing number of towing-related matters over the last two years. And although there is a dearth of case law on the subject, as the new regulatory efforts get underway and the media continues to highlight predatory towing, we expect to see an increased number of decisions out of the federal and state courts.

One 2025 decision that caught our eye involved only an evidentiary ruling; it was the underlying facts that we thought worth summarizing. *Kelly v. Kroger Ltd. Partnership I, et. al*, 2025 US Dist. LEXIS 95767 (N.D. MS), arose from a bizarre April 2023 incident at a Kroger's parking lot in Horn Lake, MS. The plaintiff claimed to be in the process of parking his tractor-trailer in a Kroger's lot, so he could run inside the store to purchase a bottle of water and ice. Before exiting his rig he moved to the passenger side of the vehicle when the individual defendant, who was driving a wrecker towing truck, drove quickly towards the front of the plaintiff's tractor, spun around, and attempted to back the wrecker under the front of the plaintiff's truck. The plaintiff exited the cab and stood between the wrecker and his vehicle, thinking the defendant would stop. But the wrecker operator continued to back up, and the wrecker struck the plaintiff. The obviously determined defendant then jumped from the wrecker, hitched it to the plaintiff's tractor, removed the air hose on the trailer, and continued to try backing up under the truck. The individual defendant and the towing company defendant took the plaintiff's truck, allegedly attempted to extort money from the plaintiff to release the truck, and then sold the truck. The plaintiff asserted several causes of action, including conversion, negligence, gross negligence, intentional tort, assault and battery, and infliction of emotional distress. The plaintiff sought compensatory and punitive damages.

On the eve of the trial, the court considered extending the trial on its own motion to permit the plaintiff to take additional discovery into prior acts of defendant towing company. These acts included several incidents of taking tractor-trailers by force, resulting in criminal indictments for carjacking and assault against the defendant's employees. The defendant filed a series of motions *in limine* to preclude evidence of "any testimony of Department of Transportation regulations or suspension[s]" and "any news articles or online posts" and any "evidence of pending criminal charges against" defendant towing company's owner. An article appearing on *Overdrive* magazine online, described one such incident, as follows:

> Memphis local news outlet WREG has long documented [defendant]'s reported abuses, including an incident in July when [defendant's] agents reportedly kicked a driver to the ground and held him down as they drove off with the truck. That was after the driver had his dispatcher pay [defendant] $265 to remove a boot. The driver had to pay an additional $2,535 to get the truck back the same night, according to WREG.

Although the court doubted the admissibility of these media accounts, the court stated that it could not "help but conclude that it may be dealing with a very different sort of towing company than it had previously assumed to be the case." The court criticized the plaintiff's discovery practices and its failure to attach as exhibits to its response to motion for summary judgment. The court continued:

> [T]his court had previously assumed that [defendant] was, more or less, like any other towing company, but it now has concerns that it may be dealing with a company which has intentionally adopted a business model of using highly aggressive towing practices, allegedly up to and including assaults on drivers who resist having their vehicles towed. It strikes this court that, if [defendant] is not such a company, then it has been exceedingly unlucky to have attracted such extensive negative attention from the Shelby County District Attorney's Office, the Memphis Permits Office, the Arkansas Towing and Recovery Board, and multiple media outlets.

Recognizing that the plaintiff might not be able to present this "new evidence" to the jury, the court expressed reluctance to give the jury a "whitewashed version of the evidence" in the case without allowing the plaintiff to present the media accounts, particularly given the severity of the predatory tactics that had come to light. Thus, the court reviewed the relevant Federal Rules of Evidence and explained to the plaintiff that Rule 404(b)(1) provides that

> Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character [but] [t]his evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Given this provision, the court stated that the plaintiff could possibly introduce admissible evidence of defendant's prior bad acts to show, among other things, "that the altercation in this case was not simply a random confrontation, but, was, rather, part of an 'intent' or 'plan' on the part of [defendant towing company] to have its drivers use highly aggressive techniques in towing vehicles." The court expressed its view that because litigation is a "search for the truth," it would continue the trial indefinitely to give the plaintiff "one final opportunity" to take limited discovery to develop evidence that satisfies the requirements of Rule 404(b).

While most of the predatory towing we see relates to grossly excessive pricing for non-consensual towing, *Kelly* highlights how dangerous some of the worst-case predatory towing scenarios actually are.

In *Modzelewski's Towing & Storage, Inc. v. Commissioner of Motor Vehicles*, 2025 Conn. LEXIS 188, the Connecticut Supreme Court addressed the issue of excessive non-consensual towing charges head on. Connecticut has enacted an extensive regulatory framework regarding non-consensual towing services and the prices therefor, and the *Modzelewski* court dived into the arduous task of interpreting it.

The facts of the case were straightforward. On December 4, 2014, Connecticut State Police called the plaintiff, a licensed provider of wrecker or towing services, to the scene of an accident in Danbury, CT, involving two tractor-trailers on Interstate 84 westbound at the Route 7 entrance. One of the tractor-trailers, insured by defendant Sentry Select Insurance Company, collided with a second tractor-trailer. The Sentry-insured tractor-trailer was severely damaged and was wedged beneath a metal guardrail when the plaintiff's employees arrived on the scene.

The plaintiff first collected and removed debris from the roadway, then brought its heavy rotator truck to remove the wreckage and transported the damaged tractor-trailer to a nearby private parking lot. At the private lot, the plaintiff continued to work on the wreckage, so it could be transported safely to the plaintiff's facility, several hours after the plaintiff was first dispatched. The next day, the plaintiff apparently again used the rotator truck for roughly three hours to secure the wreckage at the plaintiff's facility.

The plaintiff sent Sentry an itemized invoice for the work performed, and, ultimately, Sentry paid $29,339.30 under protest, so the plaintiff would release the tractor and trailer. The invoice charged the following: $8,000 for the rotator truck and $4,500 for six hours of work, at $750 per hour for the rotator. The plaintiff also charged $250 per hour for two supervisors, for a total of $3,000, and an additional $3,000 for an emergency response vehicle for four hours of work, at $750 per hour. The invoice included additional charges, as well as assessed daily storage fees of $44 and $54 for the tractor and the trailer, respectively. Incidentally, the charges at issue in *Modzelewski* appear quite modest compared to many of the cases we see, which frequently involve charges five to ten times more than the amounts at issue in this case.

Sentry filed a complaint with Connecticut's Commissioner of Motor Vehicles, disputing various charges. Sentry argued that the invoice was neither fair nor reasonable for the following reasons, among others:

1. The plaintiff had "no justifiable reason" for first transporting the wreckage to a private parking lot before taking it to the plaintiffs' facility.
2. Sentry disputed the two $1,750 charges to set up the rotator truck, and the $750 hourly rate, which it asserted far exceeded the $325 hourly rate that allowed under the regulations.
3. Sentry contested the $750 hourly rate for the emergency response vehicle, for which, according to Sentry, it should not have been billed at more than $200 per hour.
4. Sentry argued that the supervisor charges were improper.
5. Sentry argued that some of the other equipment the plaintiff used was simply unnecessary.
6. Other charges in the invoice were improper under Connecticut regulations.

The plaintiff disputed Sentry's assertions; as a result, the Commissioner held a hearing.

The Commissioner's hearing officer concluded that the plaintiff had engaged in non-consensual towing services as defined by Connecticut law. The officer then found that the plaintiff's fees exceeded the maximum rates and charges allowed, because they were not reasonable or necessary, as required by applicable regulation, and that the plaintiff had used its own rate schedule based on the cost of its equipment instead of using the hourly rates set forth in the regulations. Thus, of the $29,339.30 paid by Sentry, the officer ordered the plaintiff to pay $24,687.22 in restitution, as well as a $4,000 civil penalty.

The plaintiff appealed to the Superior Court, arguing the regulations permitted it to charge for so-called exceptional services, consisting of heavy equipment usage. The court, however, agreed initially with the hearing officer's conclusion that the applicable regulations require towing companies to set rates consistent with the hourly rates set forth therein. Nevertheless, the court explained that towing companies could charge for exceptional services in the following circumstances:

1. Such services must be reasonable and necessary;
2. The services must be itemized in accordance with the towing company's posted hourly charge for labor;
3. The fees must be itemized separately; and
4. The company must maintain records to support the additional fees.

The court held that the administrative record was unclear regarding whether the plaintiff had improperly charged for equipment, rather than labor, because the record was silent on this point. Indeed, the court noted that the hearing officer had failed to explain as much. Accordingly, the court remanded the case to the Commissioner to determine which of the charges were for labor and which ones were for equipment or both labor and equipment.

On remand, the hearing officer explained that he had disallowed equipment charges but allowed hourly labor charges. He also explained that he disallowed any charge that was neither equipment nor labor, such as the plaintiff's assessed 10 percent administration billing fee. Thus, the hearing officer held that the plaintiff could charge for the supervisors' time and for operation of the rotator. However, he disallowed everything else because the plaintiff did not calculate these line items using an approved hourly labor rate. The plaintiff again appealed to the Superior Court. The court, however, entered judgment affirming the hearing officer's conclusions, because they were supported by substantial evidence.

The plaintiff next appealed to the Appellate Court, claiming that the lower court misinterpreted the applicable regulations regarding exceptional services. Specifically, the plaintiff argued that the court erred in holding that a towing company is limited to charging hourly labor rates for such services and may not charge a set fee for the use of equipment, which is cost prohibitive to acquire and maintain. The Appellate Court affirmed the Superior Court and rejected the plaintiff's appeal, holding that the regulations are clear. The court concluded that towing companies were prohibited by applicable regulations from charging for equipment.

The plaintiff then filed a certification petition to the Connecticut Supreme Court. The court granted the petition to address the following question: whether the Appellate Court correctly held that rates for exceptional services must exclude equipment costs. The plaintiff argued the regulations support including equipment costs in charges for exceptional services.

The court found that because the appeal involved a question decided by an administrative agency, it would be required to affirm the decision unless plaintiff could show that the commissioner abused its discretion or otherwise acted unreasonably.

In its analysis, the court first considered the text of Conn. State Agencies §14-63-36c(b), which provides in pertinent part that:

> Except as otherwise provided in subsection (c) of this section, a licensed wrecker service shall not charge the owner or operator of a motor vehicle, having a [gross vehicle weight rating] of ten thousand (10,000) pounds or more, for non-consensual towing or transporting services . . . any fees in excess of the fees computed on the basis of the hourly rate published by the commissioner.

However, subsection (c) of §14-63-36c, relating to the fees for "exceptional services," states that:

> A licensed wrecker service may charge additional fees for exceptional services, and for services not included in the tow charge or hourly rate, which are reasonable and necessary for the non-consensual towing or transporting of a motor vehicle. Any such additional fees shall be itemized in accordance with the hourly charge for labor posted by the licensed towing service, as required by the provisions of section §14-65j-3 of the Regulations of Connecticut State Agencies. Such additional fees shall be itemized separately, and the towing service shall maintain accurate records which explain such additional services. The commissioner may require the wrecking service to justify such additional fees. A copy of each towing bill or invoice containing the information required pursuant to section §14-66b of the general statutes shall be given to the customer upon payment of the bill.

The court, finding the regulations ambiguous, concluded that §14-63-36c(c) should be interpreted to require a towing company to publish, on a sign or elsewhere, any additional fees for exceptional services in a manner comparable to how towing companies are required to publish the hourly charge for labor. In other words, the court did not agree with the Superior Court or the Appellate Court that the regulations automatically precluded towing companies from charging for equipment usage. The Supreme Court was persuaded by the plaintiff's argument regarding the exorbitant cost of the equipment and what it considered a "bizarre" outcome if the plaintiff could not recover such costs. The court remanded the case to again be heard by the commissioner.

Although the Connecticut Supreme Court correctly decided *Modzelewski* in accordance with applicable regulations, the decision may have little effect on reducing predatory non-consensual towing in the state of Connecticut. In fact, it might have the opposite effect once the tow companies begin publishing their (outrageous) charges.

The next decision we discuss considered the remedies a towing company might have when a motor carrier or other at-fault party fails to pay the invoice for the services provided at the accident scene. Because a non-consensual tow is arranged by law enforcement, there is typically no formal contract between the towing company and the motor carrier whose wreck needs to be removed, or spill needs to be remediated. Accordingly, towing companies frequently assert in litigation claims for *quantum meruit*, a remedy permitting a service provider to recover its reasonable fee when no contract exists. In *Sooner Emergency Servs., Inc. v. USV Trucking, Inc.*, 2025 US Dist. LEXIS 173069 (E.D. OK), the court considered a motion to dismiss a complaint asserting a statutory cause of action and claims for breach of contract and *quantum meruit*.

The petition, originally filed in Oklahoma State Court and removed to federal court on diversity grounds by defendant motor carrier USV, alleged the following facts:

On September 3, 2024, an employee of USV was driving a tractor-trailer on I-40 in Oklahoma when a tire blew out and he lost control of the rig. The rig veered off the road, struck a drainage ditch and then a tree, before eventually coming to rest and catching fire. A local towing company, presumably engaged by law enforcement at the scene, contacted the plaintiff to conduct an emergency response and clean up the charred rig. The driver had been carrying a load of pizza dough, French toast, and plastic containers of vanilla icing. Diesel fuel contaminated the site. The cleanup services were provided and USV was billed.

When USV did not pay for the emergency response and remediation, Sooner asserted claims for breach of contract, *quantum meruit*, and quasi-contract.

In the petition, Sooner alleged it remediated the hazard and was therefore entitled to $94,073.03 for services rendered in accordance with 47 Okla. Stat. §11-1110. The plaintiff asserted causes of action for breach of contract, quasi-contract, and *quantum meruit*. USV moved to dismiss on the ground that §11-1110 is inapplicable and that instead, the Oklahoma Emergency Response Act, 27A Okla. Stat. §§4-1-101, et seq., applied. Further, USV asserted that Sooner's claims for breach of contract, *quantum meruit*, and quasi-contract likewise fail on the ground that plaintiff failed to adequately allege the required elements for these causes of action.

The court first considered defendant's statutory arguments. Under 47 Okla. Stat. §11-1110:

> …
>
> B. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
>
> 1. Any person removing a wrecked or damaged vehicle from a highway, highway right-of-way or any other location as the result of an accident shall remove any glass or other injurious substance dropped upon the highway or highway right-of-way or other location from such vehicle. The owner or insurer of the owner of the vehicle, if the owner's insurance policy provides coverage for such expense, shall be responsible for the cost of removal of the vehicle and the glass or other injurious substance and any vehicle storage fees. The cost of the removal of the vehicle and any storage fees shall be the same as established by the Corporation Commission for non-consensual tows.
>
> 2. Truck-tractors carrying cargo on the roadways of this state shall maintain a commercial auto, farm and ranch, inland marine or cargo liability insurance policy that covers the costs of cleanup of any substance that is spilled or otherwise deposited on the roadway or right-of-way in violation of this section.

The petition alleged that the "hazardous substances" the driver was transporting "caused an environmental hazard." Distinguishing between "hazardous substances" and "hazardous" or "dangerous materials," defendant cited a 2000 Oklahoma Attorney General opinion stating that "'injurious substances' do not include hazardous or dangerous materials[.]" The 2000 AG opinion also stated that:

> In accident scenes which involve hazardous materials or dangerous materials, the Oklahoma Emergency Response Act, 27A Okla. Stat. §§4-1-01- 4-1-106, governs who will remove those materials from the area.

The statute defines a "dangerous substance" as:

> [E]xplosives, gases, flammable liquids and solids, poisons, radioactive materials, hazardous materials, deleterious substances, oil, or other substance or material in a quantity or form capable of posing an unreasonable risk to public health and safety, property or to the environment.

The plaintiff alleged it was asked to remediate an environmental spill of diesel fuel and motor oil, which had contaminated the accident site and the cargo. Accordingly, the defendant moved to dismiss, arguing that the OERA, not 47 Okla. Stat. 11-1110, governed the plaintiff's claims.

Interestingly, the court noted that the Attorney General's opinion did not address how these two statutes, either separately or in combination, provide a right of relief in these circumstances. Nevertheless, the court determined it was clear that the Oklahoma legislature intended through each statute that an at-fault party should be liable for any injuries and related damages.

The plaintiff agreed that OERA may apply but did not amend the petition to add such allegations when invited to do so by the court. Instead, the plaintiff argued that discovery was necessary to assess whether the parties complied with the OERA. The court concluded that the petition's allegations were insufficient to place the defendant on notice of potential liability under OERA; thus, dismissed the petition's statutory claim.

The court next considered the plaintiff's contract, *quantum meruit*, and quasi-contract claims. On its face, the court quickly concluded that the plaintiff's claim for breach of contract failed because the plaintiff had not alleged the existence of a contract between the parties. However, the court found the plaintiff had sufficiently alleged its claim for quasi-contract and *quantum meruit*.

Relying on Black's Law Dictionary, the court defined *quantum meruit* as follows:

1. The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship.
2. A claim or right of action for the reasonable value of services rendered.
3. At common law, a count in an assumpsit action to recover payment for services rendered to another person.
4. A claim for the market value of a party's performance under an implied-in-fact contract or an express contract that does not specify a price.

The court began its analysis by noting that each of these causes of action, *quantum meruit* and quasi-contract, implies an agreement to pay a reasonable price for services rendered when an individual performs such services without an express or written contract. The damages a court typically awards for these implied contracts is the amount the party benefiting from the services should have originally paid therefor.

The defendant argued in favor of dismissal of the plaintiff's claim for *quantum meruit* because the petition did not allege that the defendant knowingly accepted a benefit from the plaintiff, and that the defendant was not given an opportunity to self-remediate the hazard pursuant to Oklahoma law.

However, because the plaintiff alleged it provided services without a written agreement, the court determined that the petition stated a viable claim for *quantum meruit* at that stage of the case. The court clarified that that the question relating to whether the defendant knowingly accepted or objected to the plaintiff's services while the plaintiff performed them is one it would be more appropriate for it to address after discovery. Accordingly, the court granted in part defendant's motion to dismiss.

Although the *Sooner Emergency* decision did not relate directly to predatory towing or insurance coverage for a towing company's services, the case reminds us that towing companies, even in the context where the at-fault party did not consent in advance to the services provided by the company, have remedies to recover a reasonable amount for their services.

We expressed hope in last year's edition that new regulations addressing (and increased media attention to) predatory towing would curtail the activity. This year, as more cases move through the state and federal courts, we continue to hope that non-consensual towing conditions will continue to improve for motor carriers whose wrecks are removed from American roadways.

Based on claims that we have reviewed, some towing companies, though, continue the questionable practice of sending every available vehicle to the scene of an accident regardless of need and charging hourly rates for employees that would make even a lawyer blush.

Ian Linker

18. Insurance Coverage

Canal Ins. Co. v. Mohamed Hassan Hussein, 2025 US Dist. LEXIS 267933 (D. Minn) dealt with the recurring question of whether a company driver qualifies as an employee for purposes of a liability policy's employee exclusion. A tag team was operating a rig insured by Canal and engaged in interstate commerce under the authority of Canal's insured. The two men were both co-drivers and co-owners of the trucking company. One of them, while sitting in the passenger seat, was injured when the other took a curve too quickly, causing the rig to overturn.

The company had no W-2 employees and opted not to purchase worker's compensation coverage or occupational accident insurance for the two principals. The injured party filed suit against his partner; Canal defended under reservation of rights and filed a declaratory judgment action seeking a finding of no coverage.

Canal has a manuscript definition of "employee" based upon the USDOT regulations definition at 49 C.F.R. §390.5. (The standard ISO definition does not attempt an actual definition.) Under Canal's definition, independent contractors could also qualify as employees and Canal argued that the plaintiff's claims were excluded because he was an employee and his partner was a co-driver. The court agreed that the fact that the two men were also owners did not take them out of the status of employees under Canal's definition. The court also concluded that coverage was excluded under the "Occupant Hazard Exclusion" in the Canal policy, and that as an employee, even when the claimant moved over from the driver's seat to the passenger seat, he was not entitled to recovery under the MCS-90.

Wedde v. Cent. Mutual Ins. Co., 2025 US Dist. LEXIS 218410 (N.D. Ga.) assessed named driver exclusions which, as the court noted, have traditionally been enforced in Georgia. The owners of the insured pickup truck permitted their son, whom they may have known had a substance abuse problem, to operate the pickup. He crashed, causing the death of his passenger. The policy had a named driver exclusion which precluded any coverage when the son was driving. The insurer and excess insurer denied coverage. The driver's parents entered into a settlement agreement with decedent's parents and assigned their rights under the policy. An arbitrator hired by the parties ruled that $22 million in damages had resulted from the negligent entrustment of the vehicle. The plaintiffs argued that the driver exclusion did not apply to negligent entrustment claims, but after a detailed discussion of the terms of the policy, the court granted the insurance company's motion.

Tejeda v. Dixon, 2024 US Dist. LEXIS 226727 (E.D. La) (decided too late for inclusion in last year's update) considered the interesting question of whether both the lessee's motor carrier policy and the owner-operator's NTL policy could apply to the same loss. (For what it's worth, we think that it's certainly possible, although some of the newer policy forms clearly attempt to preclude that possibility.)

The court reviewed the motor carrier coverage form and concluded that the owner-operator failed to qualify under subsections (b) and (d) of the "Who is an Insured" clause. The court, though, lost us as it continued its analysis. It is not obvious that the court was told that the policy would cover the named insured regardless of whether the owner-operator was covered. Instead the court found that coverage could attach only if the named insured was legally responsible for the driver's actions. Pretty clearly the court was conflating liability issues with coverage issues.

At the time of the loss, the driver was driving to fill his tank at a gas station in anticipation of an assignment from the lessee. The court rejected all motions, so it appears that the coverage issues are going to be resolved by the jury. For coverage attorneys, that's an unsatisfactory process.

White Pine Ins. Co. v. Chase's Auto Salvage LLC, 2025 US Dist. LEXIS 182017 (W.D. Pa.) involved injury to a passenger in a commercial vehicle; the owner was driving the passenger to scout out a possible purchase for the passenger's business. The policy limits were $100,000; the insurer, pointing to its occupant hazard endorsement, argued that the passenger was entitled only to $15,000, the state's mandated coverage. The court agreed, holding that there was no evidence that the insured was a for-hire motor carrier with significantly higher mandatory limits. Query: What might the court have held if a for-hire motor carrier had a similar limitation in its policy? Cue the Ohio Appellate Court.

Texas Ins. Co. v. Rodriguez, 263 N.E. 3d 1050 (OH App.) arose out of a motorcycle/tractor-trailer accident. Texas insured Final Touch Logistics which had leased the rig to Retail Direct, an authorized motor carrier. The driver, Kenneth Morton, was not an approved driver; under the terms of the Texas Insurance policy; that reduced the limits from $1 million to $25,000 and that, Texas Insurance claimed, was the available limit.

Interestingly, it was not only the insured plaintiffs that alleged that the limits that applied were $1 million or at least $750,000; lessee Retail Direct also argued for the full limit being available, as it had been told by Final Touch that Morton had been approved by Texas Insurance. Final Touch blamed their insurance agent, bringing them into the suit as well. The agent apparently failed to send on to the insurance company an updated list of drivers.

The trial court found that the exclusion applied, but that coverage was $750,000, the limit required for motor carriers in Ohio. The insurance agent was found liable for $250,000 to bring the plaintiff's potential recovery up to at least $1 million. (Presumably Retail Direct has its own policy.) The various defendants appealed.

The appellate court agreed with the trial court that the approved driver endorsement controlled the outcome. Drivers given access to the vehicle by the insured but not approved by the insurance company are called "permissive users"; the endorsement provided that "coverage for permissive users is subject to reduction to statutory minimums." Looking to the Ohio regulations for motor carriers (O.A.C. 4901:2-13-03), the court found the mandatory limit to be $750,000, just as the trial court had held. The insurer argued that the endorsement reduced coverage to the required limits for any automobile. The court held that the relevant minimum limits were those for motor carriers.

The court based its ruling on a close reading of the cited language from the endorsement. That offers at least a theoretical possibility that insurers can succeed with clearer drafting. There seems to be a trend, though, to expect truckers' policies to comply with higher limits. This could open the door to the following problem: What if the policy is issued in low limits? Plaintiffs' counsel have been arguing for decades, almost never successfully, that limits should be raised to reflect the statutory requirements. Do they now have some ammunition? That is a troubling prospect.

Larry Rabinovich

19. Non-Trucking Liability

The court in *Landry v. Great Am. Ins. Co*, 2025 US Dist. LEXIS 140307 (W.D. La. July 22), strictly construed the language of a standard non-trucking liability policy exclusion. The plaintiff alleged that she was injured when the motor vehicle she was driving was struck by a tractor-trailer operated by defendant truck driver on January 30, 2023, in St. Martin Parish, Louisiana. The tractor-trailer was owned by defendant owner-operator. The owner-operator had entered into a lease agreement with the defendant-motor carrier, and the lease was in force at the time of loss; the owner-operator was transporting cargo on behalf of the motor carrier at the time of the loss. The court considered whether a non-trucking liability policy issued by the defendant insurer to the defendant owner-operator—which was required to procure such policy pursuant to its agreement with the motor carrier—covered damages resulting from the loss.

Great American's NTL exclusion, which is comprehensive reads as follows: [No coverage is available for:]

> Bodily injury or property damage arising out of any accident which occurs while the covered auto is being used in the business of any lessee or while the covered auto is being used to transport cargo of any type. ...
>
> For purposes of this exclusion the phrase "in the business of any lessee" means any of the following uses of a covered auto:
>
> a. for the benefit of or to further the interest of any lessee or when conducting business of any type;
>
> b. by any person or organization acting within the scope of employment by any lessee;
>
> c. by any person or organization acting under the direction, control or dispatch of any lessee;
>
> d. while traveling to or from any location for the purpose of picking up, delivering or transporting cargo on behalf of any lessee; ...

The defendant insurer moved for summary judgment and argued that the policy excluded coverage for the January 30, 2023 accident because the loss occurred "while the covered auto [wa]s being used in the business of any lessee or while the covered auto is being used to transport cargo of any type." In other words, the insurer argued, the defendant owner-operator leased the tractor-trailer to the motor carrier for its exclusive use. At the time of the accident, the owner-operator was transporting a loaded tanker on behalf of the motor carrier.

The plaintiff argued that the exclusion did not apply. The court disagreed. The court noted that the exclusion applied "while the covered auto is being used in the business of any lessee or while the covered auto is being used to transport cargo of any type." The court understood correctly that the exclusion provided two independent bases for barring coverage under the policy. First, none of the parties disputed that the covered auto was under a lease to the motor carrier and was operating in that capacity at the time of loss. Second, plaintiff alleged that defendant lessor was "transporting a loaded tanker-trailer on behalf of and under dispatch of [the motor carrier]." Accordingly, the court held applicable each of the clauses of the exclusion, which were written in the disjunctive, because the covered auto was being used in the business of defendant lessee and it was transporting cargo. Although the parties focused their arguments on whether the vehicle was being used by a lessee, no one disputed that it was being used to transport cargo. Thus, even if the tractor-trailer was being used by someone other than the lessee motor carrier, the exclusion applied because it was transporting cargo at the time of loss.

The NTL insurer fared less well in *DMC Ins. Inc. v. Great Am. Assur. Co.*, 2025 Ohio Misc. LEXIS 540 (Ohio Ct. Common Pleas June 11), which involved a more nuanced fact pattern.

The DMC court considered a scenario many courts across the country have considered (and struggled with) in the past. The owner-operator had contracted to provide a driver and a tractor for the defendant-motor carrier. The motor carrier had procured commercial liability insurance through plaintiff-insurer. This policy, of course, covered the motor carrier for bodily injury and property damage liability for an "occurrence" arising from trucking operations.

Meanwhile the owner-operator had secured non-trucking liability insurance from defendant General American. The NTL policy provided coverage for the owner-operator for bodily injury and property damages caused by an accident and resulting from the use of a covered auto. However, the NTL policy excluded injuries "arising out of any accident which occurs while the covered auto is being used in the business of any lessee or while the covered auto is being used to transport cargo of any type." As above, the NTL policy specifically defined "in the business of any lessee" as any of the following uses of a covered auto:

> a. used for the benefit of or to further the commercial interest of any lessee;
>
> b. used by any person or organization acting within the scope of employment by any lessee;
>
> c. used by any person or organization acting under the direction, control, or dispatch of any lessee; or
>
> d. used while traveling to or from any location for the purpose of picking up, delivering or transporting cargo on behalf of any lessee.

In February 2020, the owner-operator was making a long-haul delivery for the motor carrier from Nebraska to California, a multi-day trip. On February 5, 2020, he picked up the loaded trailer. On February 7 or 8, 2020, the owner-operator arrived in Stockton, California, about 40 miles from the destination. However, the delivery was not due until February 10, 2020. As such, he parked the rig at a truck stop.

The motor carrier had implemented a personal conveyance protocol, which defined when an owner-operator was using his tractor for personal, instead of business, use. The owner-operator was required to notify the motor carrier of his personal conveyances. When an owner-operator was on personal conveyance, he "[wa]s not driving per the [motor carrier's] direction."

As he waited far from home for the consignee to accept delivery, the owner-operator notified the motor carrier that he would be using a personal conveyance upon his arrival in Stockton. During this time, the owner-operator "watched tv, played games, slept, and eventually left to get groceries at Walmart."

The freight in the trailer needed refrigeration. While the motor carrier stipulated that it would not "hurt" if the owner-operator stayed with the loaded trailer because he might notice if the trailer's refrigeration system was not functioning properly, there was nothing in the record that the owner-operator had a constant duty to "monitor the trailer temperature.

On February 8, 2020, while still on personal conveyance and waiting to unload, the owner-operator unhitched the trailer so he could take the tractor to Walmart. He left the trailer at the truck stop. The motor carrier asserted that when the owner-operator began driving to Walmart, he was no longer under the carrier's dispatch. While driving to Walmart, the owner-operator's tractor collided with another vehicle, injuring the driver thereof.

The owner-operator reported the accident to the motor carrier, which submitted a claim report to its commercial auto insurer DMC. The claim report stated that the owner-operator was "bobtailing, meaning he was driving the tractor without the trailer, to Walmart to obtain personal items while on personal conveyance when he struck another vehicle."

Shortly after the accident, the motor carrier learned that the injured party had retained counsel to represent him in his bodily injury claim. The motor carrier then sought coverage under the NTL policy issued to the owner-operator. The NTL insurer Great American denied the claim on the ground that the trucking and business use exclusion applied since the driver had not yet completed delivery and was still broadly speaking working for the motor carrier. In December 2021, the injured party commenced a tort action against the owner-operator and the motor carrier for the injuries he sustained in the accident. DMC defended the motor carrier and settled all claims against the motor carrier and the owner-operator (even though the owner-operator was not an insured under the commercial auto policy.) DMC then filed suit against Great American for reimbursement.

The primary issue the court considered was whether the trucking and business use exclusion barred coverage under the non-trucking liability policy. Specifically, the court considered whether the owner-operator was either driving under the motor carrier's dispatch or otherwise acting in the carrier's interest while driving to Walmart ostensibly for his own purposes.

The court described the nature of the dispute as one of contract interpretation because the facts were not in dispute. Instead, the parties disputed how to apply those facts under the non-trucking liability policy. It was undisputed that the motor carrier dispatched the owner-operator to pick up a load in Nebraska and to deliver it to California. It was also undisputed that prior to delivering the load, the owner-operator unhitched the trailer and drove the tractor to Walmart to purchase personal items, under no direction from the motor carrier. Accordingly, the court determined that whether the owner-operator was using the tractor under the motor carrier's dispatch at the time of loss depends on the definition of "under dispatch." (We have frequently pointed out to courts that the phrase "under dispatch" is not a term of art. Here, in light of the language of the NTL policy the court had no choice but to decide just what the phrase means.)

The court began its analysis with the NTL policy's coverage grant. The policy covered "damages because of bodily injury or property damage ... caused by an accident and resulting from the ... use of a covered auto." No one disputed that the tractor was a covered auto or that the accident caused damage resulting from the use of the tractor. As such, the loss satisfied the policy's coverage provision.

The court next addressed the trucking or business use exclusion. The court noted that an injury arising from an accident occurring in the motor carrier's business was excluded from coverage. The policy contained four definitions of "in the business of," any one of which would constitute a business use. The court considered two of the definitions as "arguably" applicable. The court reasoned that if the owner-operator was driving the tractor "for [the motor carrier's] benefit" or "to further the [carrier's] commercial interest" or "acting under the [motor carrier's] direction, control, or dispatch," the exclusion would apply.

The court then considered Great American's argument that the owner-operator was "acting under dispatch from the moment a load is picked up, until it is delivered, without any interruption, regardless of how many days that period might last, or the actions taken by the driver in the meantime." The court noted that "dispatch" was not defined in the policy. Thus, for the exclusion to apply, the insurer needed to demonstrate that its interpretation was the only reasonable interpretation. (That is the downside for a policy, such as an NTL policy, to rely so heavily on an exclusion as opposed to limiting the coverage grant, an issue that we have discussed with clients over the years.)

The plaintiffs pointed to the Merriam-Webster dictionary which defined "dispatch" as to "send off on official business." The court found the plaintiff's interpretation reasonable. Applying the definition to the undisputed facts, the court determined it was "clear that reasonable minds could come to only one conclusion": that the owner-operator was not under the motor carrier's "direction, dispatch, or control … when he drove to Walmart." Most significantly, while the owner-operator was "dispatched … to transport a load of cargo from Nebraska to California," it was undisputed that "at the moment he was driving [to Walmart] he was not under dispatch."

The court noted that because the owner-operator was driving the tractor pursuant to the motor carrier's personal conveyance policy also supported the conclusion that he was not acting under dispatch. Indeed, the motor carrier testified at deposition that when a driver was on personal conveyance, the driver "[wa] s not driving per the direction of anybody at [the motor carrier]." As such, the owner-operator was not under the motor carrier's dispatch or direction.

Finally, there was no evidence that the owner-operator was under the motor carrier's control at the time of loss. (The court might have looked at the language of 49 C.F.R. §376.12(c) which actually gives the lessee control during the term of the lease. Case law for the past twenty years has downplayed this language, we believe incorrectly. See below). While the NTL insurer argued that the owner-operator was always on duty until he completed the delivery, there was no evidence that the motor carrier had any control of the owner-operator's actions during this time. He was "relieved of all duty and responsibility for the care of the vehicle" while off duty. Moreover, the court found no evidence that the owner-operator had a duty to monitor the trailer.

Accordingly, there was no genuine issue of material fact that the owner-operator was not under the motor carrier's direction, dispatch or control when he drove to Walmart for personal reasons. There was also no genuine issue of material fact that the owner-operator was not using the tractor for the motor carrier's benefit or in furtherance of the carrier's commercial interests. Thus, because the trucking and business use exclusion did not clearly exclude the owner-operator's use of the tractor while he drove it to Walmart, the court found that the NTL policy did not bar coverage for injuries resulting from the loss at issue.

The court noted the challenge in deciding non-trucking liability cases such as DMC, stating:

> It is clear that the reality of life on the road in the trucking industry means that the distinction between actions that are personal and actions that are providing a business benefit are often blurred. However, on the facts here, and the terms in in the NTL exclusion provision, reasonable minds could come to only one conclusion.

While the decision is well reasoned and defensible, and the NTL policy language could have been clearer, we retain some misgivings about the conclusion. The only reason that the driver was in California was that he had been sent there by the motor carrier which assumes complete control of leased units, as noted above, under 49 CFR 376.12(c). (Yes, we know that some courts now essentially read that provision out of the regulations, but we think they are incorrect, and a company guideline should not overrule a federal regulation.) We have been involved in several litigations with similar facts in which the court held that so long as the driver was away from home awaiting delivery (or pickup) as per the convenience of the consignee or shipper, the owner-operator remained in the business of the motor carrier.

Ian Linker

20. Uninsured/Underinsured Motorist Coverage (UI/UIM)

***Coto v. Sentry Ins. Co*, 2025 US Dist. LEXIS 218804 (D. N.M.)**

The plaintiff purchased a minimum uninsured/underinsured motorist (UM/UIM) insurance policy from the defendants. After being injured in an accident with a tortfeasor carrying $50,000 in liability insurance, the plaintiff sought UIM benefits. The defendants declined to pay any UIM benefits, citing the offset rule established in *Schmick v. State Farm Mut. Auto. Ins. Co.*, 103 N.M. 216 (1985), which reduces UIM benefits by the amount of the tortfeasor's liability insurance.

The plaintiff alleged that the defendants misrepresented the value of her UIM coverage by failing to adequately disclose the limitations imposed by the Schmick offset, arguing that the minimum UIM policy was illusory because, under the offset rule, she would rarely, if ever, receive UIM benefits despite paying premiums. Relying on the New Mexico Supreme Court's decision in *Crutcher v. Liberty Mut. Ins. Co.*, which holds minimum UIM coverage is illusory unless insurers adequately disclose its limitations, the plaintiff asserted claims for negligence, violations of the Unfair Trade Practices Act (UPA) and Unfair Insurance Practices Act (UIPA), breach of the covenant of good faith and fair dealing, negligent misrepresentation, unjust enrichment, and injunctive relief. 501 P.3d 433 (2021).

The defendants moved to dismiss the plaintiff's claims. The court denied the defendants' motion to dismiss for lack of standing, finding that the plaintiff had alleged a concrete injury by paying premiums for allegedly illusory coverage and allegedly being deprived of the opportunity to make an informed decision about her insurance. The court further denied the motion to dismiss a majority of the plaintiff's claims, including those under the UPA and UIPA, finding that the plaintiff plausibly alleged that the defendants failed to adequately disclose the limitations of the UIM coverage. However, the court dismissed the negligence claim, reasoning that it was not distinct from the negligent misrepresentation claim and that

New Mexico law does not support general negligence claims against insurers in this context.

The court further held that the plaintiff's claims for breach of the covenant of good faith and fair dealing, negligent misrepresentation, unjust enrichment, and injunctive relief were sufficiently pled to survive dismissal. It also allowed the plaintiff's request for punitive damages to proceed, finding that the allegations of willful or reckless conduct by the defendants were sufficient at this stage. The dismissal of the summary judgment motion was disappointing for the insurer (and presumably for others in the industry) but plaintiff has a way to go before proving his case.

***Villatoro v. AmGUARD Ins. Co.*, 2025 Ind. App. LEXIS 270**

Villatoro addresses the scope of UM coverage under a commercial insurance policy issued by AmGUARD Insurance Company to Bremni Onelio Villatoro LLC (the LLC) when a claim was brought by individuals, not the LLC. After an accident involving a Toyota pickup truck owned and operated by Bremni Onelio Villatoro, the sole member and employee of the named insured, Villatoro and his passenger, Reyes, sought UM coverage under the commercial automobile insurance policy. The defendant moved for summary judgment arguing that neither Villatoro nor Reyes qualified as insureds under the policy. The trial court granted the motion, a decision which was affirmed on appeal. The appellate court held that the policy limited UM coverage to "specifically described autos" for which a UM premium was paid. The only vehicle specifically described in the policy was a 2009 Ford Econoline. The court found this limitation consistent with Indiana Code §27-7-5-5(b), permitting insurers to exclude UM coverage for vehicles insured under a policy but for which no specific UM premium was paid.

Dismissal was also based on Indiana Code §27-7-5-2(f) exempting insurers from providing UM coverage in commercial policies for non-owned autos used by agents of the insured. The Toyota pickup truck, owned by Villatoro personally and used for purposes authorized by the LLC, fell within this statutory exemption.

The plaintiffs opposed the motion, arguing that the policy violated Indiana's "same basis" rule, which requires that an insurer provide UM coverage to any individual who would qualify as an insured under the liability section of the same policy. The policy explicitly excluded coverage for LLC members operating vehicles they personally owned and, therefore, the court found that Villatoro did not qualify an insured under any part of the policy.

***Rahimzadeh v. Ace Am. Ins. Co.*, 142 F.4th 972 (7th Cir.)**

The plaintiff, an employee of Medtronic PLC, was injured while riding his bicycle and sought UIM coverage under his employer's commercial automobile insurance policy issued by the defendant. The policy provided UIM coverage only to individuals "occupying" a covered auto, defined as being "in, upon, getting in, on, out or off" the auto. Ace denied the claim, asserting that Rahimzadeh was clearly not occupying a covered auto at the time of the accident.

The plaintiff filed a breach of contract action, arguing that the occupancy requirement violated Illinois public policy. The District Court dismissed the claim, and the Seventh Circuit affirmed. The court distinguished between personal and commercial automobile insurance policies, emphasizing that Illinois public policy concerns differ for these types of policies. Relying on *Stark v. Illinois Emcasco Insurance Co.*, which upheld occupancy requirements in commercial policies, and distinguishing *Galarza v. Direct Auto Insurance Co.*, where the Illinois Supreme Court invalidated occupancy requirements in personal policies due to statutory mandates protecting family members. The court noted that commercial policies are intended to protect the corporate entity, not individuals, and upheld the enforceability of the occupancy requirement.

The court further declined to certify the question of the validity of occupancy requirements to the Illinois Supreme Court, finding no genuine uncertainty in state law. It concluded that Rahimzadeh failed to meet the "heavy burden" of demonstrating that the occupancy requirement clearly contravened Illinois public policy.

***Jackson v. State Farm Mut. Auto. Ins. Co.*, 2025 Ala. LEXIS 59**

The plaintiff, a Kentucky resident and commercial tractor-trailer driver, was injured in a motor vehicle collision in Alabama on December 20, 2020. The plaintiff's personal vehicles were insured under policies issued by State Farm in Kentucky, which included UIM coverage. These policies contained a choice-of-law provision specifying that Kentucky law would govern and explicitly incorporated Kentucky's two-year statute of limitations for filing accident-related claims under the Kentucky Motor Vehicle Reparations Act (KMVRA), Ky. Rev. Stat. Ann. §304.39-230(6).

The court applied Kentucky law, holding that the two-year limitations period specified in the plaintiff's insurance policies barred his UIM claim. Reasoning that the policies explicitly and unambiguously incorporated Kentucky's statute of limitations, the court distinguished this case from others where general choice-of-law provisions did not expressly include procedural laws such as statutes of limitations.

The court rejected the plaintiff's public policy argument. The plaintiff argued that Alabama Code §6-2-15 voided contractual provisions shortening the statutory limitations period. Emphasizing that the policies were negotiated in Kentucky, by Kentucky parties, explicitly incorporating Kentucky procedural law, including the two-year limitations period, the court rejected this argument. The court further noted that the explicit incorporation of Kentucky's limitations period in the policies rendered it enforceable. In response to arguments that the statute of limitations period was unreasonable, the court cited the Kentucky Supreme Court's decision in *State Farm Mut. Auto. Ins. Co. v. Riggs*, which upheld similar provisions as consistent with public policy and beneficial in promoting the prompt resolution of claims.

C. J. Englert

21. Punitive Damages

Decisions in various jurisdictions in 2025 consistently confirmed the type of conduct giving rise to punitive damages in transportation cases—namely willful, wanton, and reckless. Punitive damages are easy enough to demand: defense counsel may be advised to have such claims dismissed before trial; a jury riled up by evidence of a badly run company may not hesitate to impose punitive damages if given the chance. Here are some examples of punitive damages cases from the year.

In Colorado, punitive damages may be awarded where the alleged injury is attended by circumstances of willful and wanton conduct. Colorado defines willful and wanton conduct as "conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regards to consequences, or of the rights and safety of others, particularly the plaintiff." *Deleo v. Donez*, 2025 Colo. Dist. LEXIS 3331.

In *Deleo*, the defendant, Nicholas Donez, while operating a large tractor-trailer for his employer defendant, Bimbo Bakeries, crashed into the plaintiff's stopped vehicle. The plaintiff sought to amend his complaint to seek punitive damages against the defendants. The court allowed the motion on the basis that Donez had an alarming driving record, including having his license suspended or revoked for driving offenses at least nine times prior to crashing into plaintiff, including while driving commercial vehicles on a CDL.

Therefore, the court determined that an objective review of Donez's driving history objectively indicated that he is a dangerous driver and that Bimbo Bakeries, by allowing Donez to drive the tractor-trailer, recklessly put others at risk, and that those injured by those risks should be allowed to ask a jury whether punitive damages are warranted. Here, the court was critical of Bimbo Bakeries and stated that "the law demands accountability when corporations knowingly endanger the public to boost their bottom line."

In *Call v. Sentra Logistics, LLC*, 2025 US Dist. LEXIS 218636 (E.D. Ark), the court strictly construed claims for punitive damages as under Arkansas law. Negligence alone, even gross negligence, is not enough to sustain a claim for punitive damages. The "must be clear and convincing evidence of malice—a purpose to injure or damage—or such reckless disregard of potential injury that malice may be inferred." In the context of vehicle accident cases, Arkansas courts have allowed punitive damages claims to go to the jury "when there's racing, drinking or drug-related impairment involved."

The facts in *Call* involve a collision between two 18-wheelers. The defendant, Javarus Owens was driving a Sentra truck, and the other truck was driven by plaintiff's decedent, Jeffrey Call. Owens is alleged to have pulled onto the shoulder of an interstate without his hazard lights on. Call's truck ran into Owen's truck. Owens was unharmed; however, Call eventually succumbed to his injuries. During discovery, the estate learned that Owens took medications for schizophrenia, which he did not disclose in his DOT medical exam. Although Owens failed to disclose the fact that he took schizophrenia medication to the DOT medical examiner, the court questioned whether Owens acted with reckless disregard sufficient to support an inference of malice, as there is no evidence linking Owen's medication and/or mental health to the accident. Therefore, because the proof of reckless disregard was not clear and convincing, the court denied the plaintiff's punitive damages claim.

The US District Court for the Eastern District of Missouri determined that "punitive damages are designed to inflict punishment and serve as an example and a deterrent to similar conduct." *Smith v. Caravan Logistics, Inc.*, 2025 US Dist. LEXIS 184379. Recovery of punitive damages in Missouri requires a plaintiff to "prove by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with deliberate and flagrant disregard for safety of others." Mo. Rev. Tate. S. 510.261.1.

The accident giving rise to the complaint involved defendant Pei Zhao who, while operating a tractor-trailer for defendant Caravan, experienced a loss of control of the tractor-trailer in inclement weather. The rig slid and collided with the rear of plaintiff's vehicle. The plaintiff sought punitive damages against the defendants and relied on a Missouri Supreme Court decision. That decision held that there was sufficient evidence for a jury to award punitive damages where a truck driver had committed multiple violations of the Missouri CDL manual and was aware of weather and road conditions in the area. However, here, there was no clear and convincing evidence that Zhao was driving above the speed limit and no evidence he had cruise control engaged or had otherwise ignored warnings that would have made him aware that the accident was inevitable. The only issue in the case was whether Zhao drove appropriately in hazardous weather conditions, which does not give rise to a claim for punitive damages. Defense counsel in this case and several others we reviewed were able to have the punitive damages claim dismissed well in advance of trial, which seems to us an excellent strategy.

When a punitive damages claim is allowed to go to the jury, negative results can follow for the motor carrier. A Dallas County jury returned a $44.1 million verdict against a Missouri-based trucking company and one of its drivers in connection with a fatal crash as part of a 100-plus vehicle pileup in Fort Worth in February 2021. See *Tamara Suzanne Vardy, et al. v. New Prime, Inc.*, et al., Case No. DC-21-09849 (44th Civil District Court of Dallas County).

The family of Christopher Ray Vardy, 49, who was killed in the accident, filed the lawsuit in 2021, alleging negligence and seeking damages for wrongful death. The lawsuit named both the trucking company and one of its drivers, Steven Ridder.

The verdict specifies $24.1 million in compensatory damages and $20 million in punitive damages, due to gross negligence. The lawsuit alleges Vardy, "was involved in a collision when several vehicles in front of him negligently lost control, crashed, and blocked all lanes of southbound traffic." According to the lawsuit the truck driven by New Prime's employee Ridder "violently collided with the truck driven by Mr. Vardy while driving at an excessive speed for the road conditions." The collision stemmed from the February 11, 2021, pileup during winter storm Uri. The crash killed Vardy and five others and was part of a pileup of more than 130 vehicles in the southbound TEXpress lane of Interstate 35.

According to Vardy's family, evidence presented during a trial in the case showed New Prime's driver didn't receive adequate winter weather driving training and failed to exercise proper caution in hazardous weather. The jury found that the truck was being driven at an excessive speed for the weather conditions. This is significant to note: Trucking companies have the obligation to make sure their rigs are being operated safely, which means taking extra precautions during extreme weather conditions, given the enormous size and weight of these vehicles.

Gillian Woolf

22. FMCSA Watch

2025 was a busy year for the Federal Motor Carrier Safety Administration (FMCSA or "agency") on the regulatory front, with the new administration taking significant actions. Highlights of the agency's activity are summarized below.

REGULATORY CHANGES AND DEREGULATORY INITIATIVES

In May 2025, the FMCSA implemented numerous rule changes aimed at simplifying regulatory compliance. These included simplifying commercial driver's license (CDL) standards for military personnel, removing the self-reporting requirement for vehicle violations, and eliminating motor carrier (MC) numbers in favor of USDOT numbers as primary identifiers effective October 1, 2025.

In June 2025, the agency also introduced the "Pro-Trucker Package," a set of regulatory changes designed to improve conditions for truck drivers. This included overhauling the Safety Measurement System (SMS) to provide more accurate and accessible safety scores, which are now updated monthly. The agency also removed two electronic logging devices (ELDs), the Walker ELD and SR-E ELD, from its list of registered devices for failing to meet minimum requirements.

ENFORCEMENT AND COMPLIANCE UPDATES

In May 2025, the FMCSA introduced a new enforcement policy, requiring all roadside inspections to include a two-part English proficiency test. Drivers failing this test are placed out of service. While the regulations are not new they were effectively suspended about a decade ago but enforcement is now back. This was likely the most publicly commented upon action of FMCSA in 2025. The implications are still being felt as many non-English speakers are no longer being permitted to get behind the wheel of tractor-trailer rigs. And the jury is still out as to whether the long-reported driver shortage is real and whether this enforcement initiative will exacerbate it.

In June 2025, the agency began enforcing long-delayed rules on driver medical certification, directly impacting fleet operations. The agency also voided over 15,000 CDLs in April 2025 due to issues with medical examiner certifications.

OTHER REGULATORY UPDATES

The FMCSA increased various penalties for violations in 2025. For example, the maximum daily penalty for DOT recordkeeping violations rose to $1,584, with a maximum total penalty of $15,849.

The agency also promoted the adoption of advanced safety technologies, such as Automatic Emergency Braking (AEB) systems, to prevent rollovers and loss-of-control crashes.

LITIGATION UPDATES

In addition to the above regulatory actions, FMCSA was involved in various litigation in 2025 throughout the country. Summaries of notable decisions are included below.

Lujan v. FMCSA, 2025 US App. LEXIS 29835 (DC Cir. Ct.). In a 2–1 decision, the court granted emergency motions filed by petitioners and stayed enforcement of the FMCSA's interim final rule on non-domiciled CDLs, which the court held was likely unlawful. The court reasoned that the agency bypassed state consultation and notice-and-comment procedures, failed to justify its safety rationale, and acted arbitrarily by dismissing reliance interests. The court highlighted that non-domiciled CDL holders had lower crash rates than other drivers, undermining the FMCSA's safety claims. The full merits of the case are yet to be litigated.

Valdes v. Logistics Insight Corp., 2025 US dist. LEXIS 202481 (E.D. Mich.)

In this case, the plaintiff sued a company for defamation and negligence arising out of an allegedly false report that he failed to appear for a pre-employment drug test, in violation of certain FMCSA regulations. The court dismissed the claim, ruling that the FMCSA regulations do not create a private right of action.

Jones v. FMCSA, 2025 US Dist. LEXIS 93700 (S.D. IN)

In this case, the plaintiff alleged that the FMCSA failed to remove false information from his Commercial Driver's License Information System (CDLIS) record. The court partially granted the FMCSA's motion to dismiss but allowed certain claims to proceed, emphasizing the importance of accurate recordkeeping and the role of the DataQs dispute resolution system.

Lucas v. FMCSA, 2025 US Dist. LEXIS 90338 (Dist. Ct. MD)

In this case, the plaintiff alleged defamation and constitutional violations due to false information in his driving record maintained by the FMCSA. The court dismissed the case, reaffirming the FMCSA's statutory authority to maintain safety records and its mission to ensure motor carrier safety.

Finally, while not an FMCSA initiative, the Department of Labor's most recent shift on the independent contractor/employee divide (Field Assistance Bulletin No. 2025-1) discarded the rule set up in 2024 by the Biden administration. The Biden rule created a test that many businesses viewed as limiting the ability to classify workers as independent contractors, particularly truck drivers. We can anticipate a new test which will make it easier to classify workers as independent contractors—which will probably stay in effect only until the next Democratic administration.

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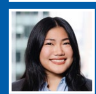

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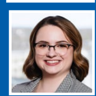

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