2013 U.S. Dist. LEXIS 130961

Northland Ins. Co. v. Top Rank Trucking of Kissimmee, Inc., 2013 U.S. Dist. LEXIS 130961 (Copy citation)

United States District Court for the Middle District of Florida, Orlando Division
January 29, 2013, Decided; January 29, 2013, Filed
Case No: 6:11-cv-1126-Orl-22TBS

Reporter: 2013 U.S. Dist. LEXIS 130961

NORTHLAND INSURANCE COMPANY, Plaintiff, v. TOP RANK TRUCKING OF KISSIMMEE, INC., ARCHIE RICHARD HINES, KATHERINE WENG and ANTHONY MEDINA, Defendants.

Prior History: Northland Ins. Co. v. Top Rank Trucking of Kissimmee, Inc., 823 F. Supp. 2d 1293, 2011 U.S. Dist. LEXIS 131004 (M.D. Fla., 2011)

Core Terms

insurance, endorsement, accident, policy, coverage, law, transport, property, top, vehicle, covered, truck, auto, rank, motor carrier, time of an accident, liability, judgment, required, delete, filed, indemnify, motor, load, summary judgment, interstate, dispute, claim, grass, driver

Counsel: **[1]** For Northland Insurance Company, Plaintiff: Scott W. McMickle, LEAD ATTORNEY, PRO HAC VICE, McMickle, Kurey & Branch, LLP, Alpharetta, GA; Todd M. Davis, LEAD ATTORNEY, Sina Bahadoran, Hinshaw & Culbertson, LLP, Coral Gables, FL.

For Katherine Weng, as co-personal representative of the Estate of Leslie L. Rojas and as legal guardian of minor M.L.F., Defendant: David Charles Beers, LEAD ATTORNEY, Beers & Gordon, PA, Oviedo, FL; Jason J. Recksiedler, LEAD ATTORNEY, NeJame, LaFay, Jancha, Ahmed, Barker, Joshi & Moreno, PA, Orlando, FL; Karen E. Terry, LEAD ATTORNEY, Searcy, Denney, Scarola, Barnhart & Shipley, West Palm Beach, FL; Mariano Garcia, LEAD ATTORNEY, Searcy, Denney, Scarola, Barnhart & Shipley, PA, West Palm Beach, FL.

For Anthony Medina, as co-personal representative of the Estate of Leslie L. Rojas and as legal guardian of minor J.M.M., Defendant: David Charles Beers, LEAD ATTORNEY, Beers & Gordon, PA, Oviedo, FL; Jason J. Recksiedler, LEAD ATTORNEY, NeJame, LaFay, Jancha, Ahmed, Barker, Joshi & Moreno, PA, Orlando, FL; Mariano Garcia, LEAD ATTORNEY, Searcy, Denney, Scarola, Barnhart & Shipley, PA, West Palm Beach, FL.

For Katherine Weng, as co-personal representative of the **[2]** Estate of Leslie L. Rojas and as legal guardian of minor M.L.F., Counter Claimant: David Charles Beers, LEAD ATTORNEY, Beers & Gordon, PA, Oviedo, FL; Jason J. Recksiedler, LEAD ATTORNEY, NeJame, LaFay, Jancha, Ahmed, Barker, Joshi & Moreno, PA, Orlando, FL; Karen E. Terry, LEAD ATTORNEY, Searcy, Denney, Scarola, Barnhart & Shipley, West Palm Beach, FL; Mariano Garcia, LEAD ATTORNEY, Searcy, Denney, Scarola, Barnhart & Shipley, PA, West Palm Beach, FL.

For Anthony Medina, as co-personal representative of the Estate of Leslie L. Rojas and as legal guardian of minor J.M.M., Counter Claimant: David Charles Beers, LEAD ATTORNEY, Beers & Gordon, PA, Oviedo, FL; Jason J. Recksiedler, LEAD ATTORNEY, NeJame, LaFay, Jancha, Ahmed, Barker, Joshi & Moreno, PA, Orlando, FL; Mariano Garcia, LEAD ATTORNEY, Searcy, Denney, Scarola, Barnhart & Shipley, PA, West Palm Beach, FL.

For Northland Insurance Company, Counter Defendant: Scott W. McMickle, LEAD ATTORNEY, PRO HAC VICE, McMickle, Kurey & Branch, LLP, Alpharetta, GA; Todd M. Davis, LEAD ATTORNEY, Sina Bahadoran, Hinshaw & Culbertson, LLP, Coral Gables, FL.

For Northland Insurance Company, Counter Defendant: Scott W. McMickle, LEAD ATTORNEY, McMickle, **[3]** Kurey & Branch, LLP, Alpharetta, GA; Todd M. Davis, LEAD ATTORNEY, Sina Bahadoran, Hinshaw & Culbertson, LLP, Coral Gables, FL.

Judges: ANNE C. CONWAY, United States District Judge.

Opinion by: ANNE C. CONWAY

Opinion

ORDER

This cause comes before the Court on Plaintiff Northland Insurance Company's ("Plaintiff") Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 (Doc. No. 51) and Defendants Katherine Weng and Anthony Medina's ("Defendants") Cross-Motion for the same (Doc. No. 54). Plaintiff (Doc. No. 57) and Defendants (Doc. No. 59) each responded in opposition to the other's Motion. Plaintiff filed a Reply (Doc. No. 60) in support of its motion, but the Court accords that memorandum limited weight because it was filed absent leave of Court, which is required pursuant to Local Rule 3.01(c), and because it does not affect the Court's decision on the Motion.

I. BACKGROUND

Plaintiff issued an insurance policy (No. TN622577 – "the Policy") to Defendant Top Rank, a trucking company, that was effective from March 10, 2009 until March 10, 2010. (Modified Joint Pre-Trial Statement (Doc. No. 71), p. 8.) During that period, Top Rank instructed Plaintiff to add "a 1986 Peterbilt tractor," which was owned by Defendant **[4]** Hines, as a scheduled vehicle to the Policy. (*Id.*) On November 11, 2009, Top Rank's owner, Kieron Jones, notified Top Rank's insurance agent of the following in a handwritten document sent via facsimile: "I want to remove Archie Hines driver, 1986 Peterbilt truck from my insurance effective immediately." (*Id.;* Pl.'s Mot. Summ. J, Ex. D. (Doc. No. 51-4), p. 2.) Plaintiff effectuated the requested change effective November 12, 2009.[1] (Pl.'s Mot. Summ. J, Ex. G. (Doc. No. 51-7), p. 2.)

According to the Policy, Northland provided the following coverages:

> This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as Covered "Autos." "Autos" are shown as Covered "Autos" for a particular coverage by the entry of one or more Symbols listed in Section 1A of the Coverage **[5]** Form next to the name of the coverage.

(Pl.'s Mot. Summ. J, Ex. A. (Doc. No. 51-1), p. 3.)[2] The "Symbol" listed for liability – including bodily injury and property damage – is "46." (*Id.*) According to the "Truckers Coverage Form" portion of the Policy, Symbol 46 limits liability coverage to "covered 'autos,'" which are those that are "specifically described" and "for which a premium charge is shown" in the Policy. (*Id.* at p. 31.) Per Jones' request, once Plaintiff removed Archie Hines from the Policy, the only "Covered 'autos'" listed in the Policy were a "1994 International Tractor" and "Any non-owned trailer while singularly attached to a scheduled power unit." (*Id.* at p. 17.)

The Policy stated that Plaintiff would indemnify and defend Top Rank against certain suits for damages "caused by an 'accident' and resulting from the ownership, maintenance, **[6]** or use of a covered 'auto.'" (Modified Joint Pre-Trial Statement (Doc. No. 71), p. 8.) The insurance policy also includes an MCS-90 Endorsement, which is mandated by federal law, and which operates to require the insurer

> to pay, within the limits of liability described [in the endorsement], any final judgment recovered against the Insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy . . . .

(*Id.* at p. 9.)

On December 1, 2009, Defendant Hines was driving the 1986 Peterbilt en route to pay his light bill in St. Cloud, Florida. (Hines Dep. (Doc. No. 51-3), pp. 15-16.) Hines testified that after he paid his light bill, he planned to go pick up "a load of grass" to haul for a company called Winter Garden Grass; this load was not arranged through Defendant Top Rank. (*Id.* at pp. 39-40.) As he made a right turn, Hines' truck struck and killed a pedestrian, Leslie Rojas;[3] Rojas' estate sued Hines and Top Rank in state court and obtained a favorable **[7]** judgment in the amount of $557,251.80 *nunc pro tunc* to June 15, 2012. (Modified Joint Pretrial Statement (Doc. No. 71), pp. 2, 9.) On July 8, 2011, the same day that Rojas' Estate filed the state court suit, Plaintiff filed this declaratory judgment action seeking to determine its obligations to Defendants.

The parties differ on two matters of law: first, whether Hines' 1986 Peterbilt truck was a "covered auto" under Top Rank's insurance policy with Plaintiff. Defendants claim that Plaintiff improperly deleted the 1986 Peterbilt from the Policy because the deletion was not "processed" before the accident and could not be made effective retroactively. Second, Defendants assert that the aforementioned MCS-90 Endorsement compels Plaintiff to indemnify Top Rank and/or Hines, whereas Plaintiff believes the MCS-90 Endorsement may still have been in effect, but **[8]** is inapplicable to the specific facts of the accident at issue in this litigation.

II. LEGAL STANDARD

Summary judgment is appropriate when the moving party demonstrates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant must satisfy this initial burden by "identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Norfolk S. Ry. v. Groves,* 586 F.3d 1273, 1277 (11th Cir. 2009) (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). However, the movant is entitled to summary judgment where "the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Celotex,* 477 U.S. at 323. When it conflicts, the court presumes the nonmoving party's evidence to be true and will draw all reasonable inferences in its favor. *Shotz v. City of Plantation,* 344 F.3d 1161, 1164 (11th Cir. 2003). Cross-motions for summary judgment "may be probative of the **[9]** non-existence of a factual dispute when . . . they demonstrate a basic agreement concerning what legal theories and material facts are dispositive." *United States v. Oakley,* 744 F.2d 1553, 1555-56 (11th Cir. 1984) (quoting *Bricklayers Int'l Union, Local 15 v. Stuart Plastering Co.,* 512 F.2d 1017, 1023 (5th Cir. 1975)).

III. ANALYSIS

A. The 1986 Peterbilt truck was not a "covered auto" under the Policy

Florida law governs the interpretation of the insurance contract in this case because "[f]ederal courts sitting in diversity apply the forum state's choice-of-law rules," *Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.,* 135 F. 3d 750, 752 (11th Cir. 1998) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.,* 313 U.S. 487, 496-97, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941)); it is well-established in Florida that "the law of the jurisdiction where the contract was executed governs the rights and liabilities of the parties in determining an issue of insurance coverage," *State Farm Mut. Auto. Ins. Co. v. Roach,* 945 So. 2d 1160, 1163 (Fla. 2006); and there is no dispute that the Policy was executed in Florida. Florida courts construe insurance contracts according to their plain meaning, *Garcia v. Federal Ins. Co.,* 969 So. 2d 288, 291 (Fla. 2007), **[10]** and so shall this Court. "[I]f a policy provision is clear and unambiguous, it should be enforced according to its terms whether it is a basic policy provision or an exclusionary provision." *Id.* (citation omitted). However, if there are ambiguities in an insurance contract, they "are interpreted against the insurer and in favor of the insured." *Id.* (citation omitted).

Defendants claim that the 1986 Peterbilt truck should be considered a "covered auto" because they dispute that the 1986 Peterbilt was actually deleted from the Policy before the December 1 accident and they doubt "the authenticity and validity of the alleged issued and electronically transmitted deletion endorsement." (Defs.' Resp. (Doc. No. 59), pp. 8-9.) Defendants' argument is based on a letter sent by Plaintiff to Defendants' counsel, stating, in part,

> I am also enclosing the endorsement deleting the vehicle involved in [the accident] from Top Rank's policy that took effect prior to the loss of December 1, 2009. This was not included in the certified policy previously sent because the endorsement had not been processed within the company at the time the policy was sent to you.

(*Id.* at Ex. A (Doc. No. 59-1), p. 2.) Defendants **[11]** claim that the 1986 Peterbilt could not have been deleted, as a matter of law, until Plaintiff actually processed the deletion endorsement. Defendants offer no legal support for this argument, and the Court could only find support for the contrary position asserted by Plaintiff. Generally, "the effective date of policy modification will be determined by the terms of modification or a letter accompanying it." 2 Couch on Ins. § 25:6 (3d ed. 2012). This approach finds support in Florida case law, where the First DCA has held that "an insured's request for a change in policy terms may be processed retroactively, and if an accident occurs after the effective date but prior to the processing date, the policy applies as changed." *Gov't Emp. Ins. Co. v. State Farm Mut. Auto. Ins. Co.,* 382 So. 2d 876, 877 (Fla. 1st DCA 1980). Defendants present no evidence that Hines or anyone else continued to pay premiums for the 1986 Peterbilt, which could have shown that the vehicle was improperly deleted. *See Gen. Agents Ins. Co. of Am. v. Boehm,* 620 So. 2d 227, 228 (Fla. 4th DCA 1993).

In the case at bar, Jones faxed a handwritten, signed document to his insurance agent stating, "I want to remove Archie **[12]** Hines driver, 1986 Peterbilt truck from my insurance *effective immediately.*" (Pl.'s Mot. Summ. J, Ex. D. (Doc. No. 51-4), p. 2 (emphasis added).) Defendants give the Court no reason to doubt the authenticity of this document, and it clearly evinces Jones' intent that the policy be modified immediately. In turn, the email from the insurance agent to Plaintiff, dated one day after Jones' fax, reveals the same intent in its endorsement request (*Id.* at Ex. F (Doc. No. 51-6), pp. 2-3.)

Alternatively, Defendants claim, without citing any provision of law, that retroactive deletion of a covered auto is impermissible unless the Policy specifically allows changes to be retroactively effective. This claim stands in sharp contrast to the generally-applicable law discussed above, and Defendants have failed to meet their burden of proof to show that this argument creates a disputed question of material fact.

The Court concludes that the 1986 Peterbilt was no longer a "covered auto" under the Policy on December 1, 2009, when the accident occurred. Because only "covered autos" are entitled to coverage under the Policy,[4] Plaintiff does not have a duty to indemnify any Defendants on that basis.

B. The MCS-90 Endorsement is Inapplicable to the Facts of this Case

Whether the MCS-90 Endorsement applies to the accident giving rise to this case is a matter of federal law. *Lincoln Gen. Ins. Co. v. De La Luz Garcia,* 501 F.3d 436, 439 (5th Cir. 2007) ("The operation and effect of a federally mandated endorsement is a matter of federal law.").

Defendants claim, in their Motion for Summary Judgment (Doc. No. 54), that Jones' and Plaintiff's failure to comply with regulations governing cancellation of the MCS-90 Endorsement renders that cancellation ineffective. Defendants are correct in their assessment of the statutory purpose behind the MCS-90 Endorsement – "to assure that injured members of the public are able to obtain judgment from negligent authorized interstate carriers." *John Deere Ins. Co. v. Nueva,* 229 F.3d 853, 857 (9th Cir. 2000). Defendants are also correct that the MCS-90 Endorsement requires "notice [to] be given if an insurance company wishes to cancel its obligations under the mandated MCS-90 endorsement." (Defs.' Mot. Summ. J. (Doc. No. 54), p. 14.) Pursuant to the administrative scheme, "[c]ancellation [of a policy] may be effected **[14]** by the insurer or the insured motor carrier giving 35 days' notice in writing to the other." 49 C.F.R. § 387.7(b)(1) (2012). In the case at bar, Plaintiff presents no evidence that Jones or his insurance broker provided any notice, let alone the required 35 days, of his intention to cancel the MCS-90 Endorsement with respect to the 1986 Peterbilt. As such, the MCS-90 Endorsement was still in effect at the time of the accident.[5]

Even though the MCS-90 Endorsement was still in effect, it does not compel Plaintiff to provide coverage for this accident because Defendant Hines was on a personal trip, not transporting property in interstate commerce, at the time of the accident. The essence of the MCS-90 Endorsement requires Plaintiff to indemnify Top Rank for "public liability resulting from negligence in the . . . use of motor

vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 . . . ." 49 C.F.R. § 387.15 (2012).[6] Section 30 of the Act, codified at 49 U.S.C. § 31139(b)(1), states the following:

> The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability . . . *for the transportation of property by motor carrier* . . . in the United States between a place in a State and—
>
> (A) a place in another State;
>
> (B) another place in the same State through a place outside of that State; or
>
> (C) a place **[16]** outside the United States.

(emphasis added). Thus, before an insurer is required to indemnify an insured for "public liability," the statute places three conditions on "the use of motor vehicles" that must be satisfied: (1) transportation of property; (2) by a motor carrier; (3) in interstate commerce. Defendants have failed to show that the circumstances of the accident meet any of these conditions, let alone all of them.

Section 30 of the Motor Carrier Act of 1980 refers to another statute for definitions of two key terms. A "motor carrier" is "a person providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14) (2006). "Transportation" is defined, expansively, to include:

> (A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and
>
> (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, **[17]** refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

Id. at § 13102(23). To be covered by the MCS-90 at the time of the accident, even under the broadest possible interpretation of the statutory definitions, Hines would have to be using a motor vehicle to provide services related to the movement of property across state lines in exchange for compensation.

Defendants offer little evidence to support that narrative of Hines' activities. According to Hines' deposition testimony, he was en route to pay his light bill when the accident occurred. (Hines Dep. (Doc. No. 51-3), pp. 15-16.) Hines testified that he was not "working for Top Rank" at the time of the accident and that he was "on [his] own business." (*Id.* at p. 39.) Jones testified that, to the best of his knowledge, the 1986 Peterbilt was not used to carry any loads after it was removed from the Policy. (Jones Dep. (Doc. No. 51-5), pp. 29-30.) Based on Hines' and Jones' testimony, there is no genuine doubt that Hines was not "providing motor vehicle transportation for compensation" of any property when the accident occurred. Additionally, Hines testified that he was **[18]** paying his light bill in St. Cloud – a city adjacent to Kissimmee, where he lived, and also in Florida – ruling out an interstate trip. (Hines Dep. (Doc. No. 51-3), pp. 15-16.)

In their Response to Plaintiff's Motion for Summary Judgment, Defendants argued that "the potential load of Mr. Hines from Winter Garden Grass was an 'intrastate transportation' of goods" that should activate the MCS-90 Endorsement. (Defs.' Resp. (Doc. No. 59), p. 10.) There are at least two problems with this argument that, as a matter of law, render it meaningless. First, Defendants admit that Hines was only going to pick up the load of grass "after he had completed the payment for his light bill." (*Id.*) Hines' personal errand, which occurred before he picked up the load and does not appear to be related in any way to moving the grass, does not constitute "transportation" under 49 U.S.C. § 13102(23) as a matter of law. Second, Defendants specifically admit, in quotation marks, that the potential load "was an '*intra*state transportation' of goods." (Defs.' Resp. (Doc. No. 59), p. 10 (emphasis added).) There is no evidence whatsoever that Hines planned to haul the grass across state lines. For these reasons, Hines' **[19]** intention to pick up a load of grass after completing his personal trip to pay his light bill does not compel the Court to apply the MCS-90 Endorsement.

In their Motion for Summary Judgment (Doc. No. 54), Defendants cite several cases holding that an MCS-90 Endorsement could compel insurance companies to indemnify their insureds even though the vehicles involved in the accidents were not otherwise covered by the disputed insurance policies. This Court, as stated *supra,* has no trouble concluding that an MCS-90 Endorsement is capable of expanding coverage of a policy to include vehicles not listed as "covered autos," even if the specific terms of the policy would otherwise deny coverage. However, that is not the issue in this case. The issue is whether the MCS-90 Endorsement provides coverage for the specific circumstances of this accident in the first instance, not whether it could subsequently modify the Policy. To illustrate the point using one of the cases cited by Defendants, in *John Deere Insurance Co. v. Nueva,* a truck driver was involved in an accident while "using [the insured's] trailer with [the insured's] permission at the time of the accident." 229 F.3d at 859-60. The issue **[20]** in that case was whether the trailer owner's insurance policy would extend to an accident caused by a non-employee driving an uninsured tractor, but permissively using the insured trailer. There was no dispute as to whether the accident occurred in the course of interstate transportation of property, which is the issue here.

Although the parties did not cite any precedent from this Circuit, there are at least two federal court decisions that address the material issue in this case – whether an MCS-90 Endorsement extends coverage to an accident that does not meet the conditions established by Section 30 of the Motor Carrier Act of 1980. First, in *Canal Insurance Co. v. Coleman,* a panel of the Fifth Circuit held that an MCS-90 Endorsement only provides coverage for an insured's negligence stemming from the transportation of property, as statutorily defined, and that whether an insured is transporting property should be determined at the time of the accident. 625 F.3d 244, 254 (5th Cir. 2010). In *Brunson ex rel. Brunson v. Canal Insurance Co.,* the court held, first, that an MCS-90 Endorsement did not apply because the truck driver was not acting as a "for-hire motor carrier" as he "was **[21]** not hauling any property when the accident occurred, nor was he being paid for taking the trip that led to the accident." 602 F. Supp. 2d 711, 715-16 (D.S.C. 2007). Second, the *Brunson* court held that the truck driver was not "transporting property" at the time of the accident because he was driving his truck "only a few miles from his home strictly on a personal mission to sell it." *Id.* at p. 716. Finally, the *Brunson* court found that "at the time of the accident, it is reasonable to conclude [the driver] engaged solely in an intrastrate, not interstate, trip as the facts indicate he traveled between two points, the towns of Darlington and Hartsville, South Carolina, and never left the state." *Id.* at p. 717. These cases systematically applied the same law to similar facts in a manner that is highly persuasive to this Court. As such, the Court finds that the MCS-90 Endorsement does not compel Plaintiff to indemnify Top Rank or Hines because, at the time of the accident, Hines was not a for-hire motor carrier engaged in the interstate transportation of property.

IV. CONCLUSION

Based on the foregoing, it is ordered as follows:

1. Plaintiff Northland Insurance Company's Motion for Summary **[22]** Judgment (Doc. No. 51), filed August 10, 2012, is **GRANTED.**

2. Defendants Katherine Weng and Anthony Medina's Motion for Summary Judgment (Doc. No. 54), filed August 10, 2012, is **DENIED.**

3. Plaintiff's Motion in Limine (Doc. No. 58), filed September 10, 2012, is **DENIED** as moot.

4. Plaintiff's Motion for Default Judgment against Archie Richard Hines and Top Rank Trucking (Doc. No. 53), filed August 10, 2012, is **GRANTED.**

5. The Clerk shall enter a final judgment against all Defendants declaring that Plaintiff Northland Insurance Company bears no duty to indemnify or defend Defendant Top Rank or Defendant Hines against any claim stemming from the death of Leslie L. Rojas arising out of the accident of December 1, 2009. The judgment shall further provide that Plaintiff shall recover its costs of action.

6. The Clerk shall **CLOSE** the case.

DONE and **ORDERED** in Chambers, in Orlando, Florida on January 29, 2013.

/s/ Anne C. Conway

ANNE C. CONWAY

United States District Judge

Footnote 1

Jones' reason for removing Hines' truck from the Policy is immaterial to the Court's decision, but it apparently was the result of a dispute over whether Hines paid his share of the insurance premiums pursuant to a verbal agreement with Jones. (*Compare* Hines Dep. (Doc. No. 51-3), pp. 33-34 *with* Jones Dep. (Doc. No. 51-5), p. 19.)

Footnote 2

In pertinent part, the Policy provided liability coverage for "all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto.'" (Pl.'s Mot. Summ. J, Ex. A. (Doc. No. 51-1), p. 32.)

Footnote 3

The proximate cause of the accident is also irrelevant to the insurance coverage dispute presently before the Court, but a state court jury in the underlying wrongful death litigation found Rojas to be 70 percent at fault for the accident and Hines responsible for the remainder. (*See* Pl.'s Mot. Summ. J., Ex. I, (Doc. No. 51-9), p. 3.)

Footnote 4

Notwithstanding **[13]** the MCS-90 Endorsement, discussed *infra.*

Footnote 5

As Defendants appear to recognize, the continued effectiveness of the MCS-90 Endorsement does not reinstate the 1986 Peterbilt to the list of "covered autos," or otherwise change the fact that the 1986 Peterbilt was not a "covered auto" under the Policy at the time of the accident. This situation appears to be a good example of the purpose behind the MCS-90 Endorsement: a policy that is no longer contractually effective on its face still provides coverage, under some circumstances, solely because of the MCS-90 Endorsement. Needless to say, the Court expresses no opinion as to whether Plaintiff or any other entity involved in this litigation was negligent in handling Jones' request to delete the 1986 Peterbilt from the list of "covered autos" under the Policy. **[15]** This Order does not purport to offer any guidance with respect to the "agent lawsuit" currently proceeding in state court.

Footnote 6

Section 29 of the Motor Carrier Act merely amended part of a previous version of the statute that is not relevant to the present dispute.