PUBLICATION UPDATE

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NEW APPLEMAN ON INSURANCE LAW LIBRARY EDITION

Publication 60087 Release 17 September 2017

HIGHLIGHTS

Emerging Insurance Regulation

- Ch. 8, The Framework of Insurance Regulation, has new sections on emerging areas in cyber security and regulation of innovations such as drones and autonomous vehicles.

Dispute Resolution

- In Ch. 7, Dispute Resolution, now includes discussions on subject matter jurisdiction for a motion to compel arbitration or to vacate an arbitration award under the FAA including the decision in *Goldman v. Citigroup Global Mkts., Inc.*, 834 F.3d 242 (3d Cir. 2016).

Insured's Duties

- In *Century Surety Co. v. Jim Hipner LLC*, 842 F.3d 606, 612 (8th Cir. 2016), applying Wyoming law, an umbrella insurer was not entitled to deny coverage based on its insured's failure to provide notice of an accident "as soon as practicable"; although the insured did not provide timely notice, the insurer was not prejudiced by the four-month delay because it chose not to investigate once it received investigative materials from a primary carrier. (*See* Ch. 20, Conditions and Insured's Duties.§ 20.01[5][c].)

Ch. 6, Choice of Law. Reports of many new court decisions addressing a range of choice of law issues, including:

- *Steadfast Ins. Co. v. Berkley Nat'l Ins. Co.,* 2016 U.S. Dist. LEXIS 160693 (S.D. W. Va. 2016) on the importance of honoring the expectation of the parties versus the ties of the forum state in the choice of law decision (see §§ 6.01[1], 6.02[2][d]).
- *Allstate Fire & Cas. Ins. Co. v. Hradecky*, 208 So. 3d 184 (Fla. Dist. Ct. App. 2016) on what a party challenging a mandatory forum selection clause must establish to prevail (see § 6.01[1]).

Ch. 7, Dispute Resolution. Features reports of many new court decisions addressing a range of issues, including:

- New § 7.03[1][a] analyzes "gateway issues" such as whether the parties have agreed to arbitrate and whether their arbitration agreement covers a particular controversy should be decided by arbitrators or the courts, citing many newly reported court decisions; new cases on the burden of proof at trial level and the standards of appellate review of arbitrability determinations; and cases where non-signatories to an arbitration agreement can be compelled to participate in the arbitration.
- New § 7.03[1][b] includes discussions on subject matter jurisdiction for a motion to compel arbitration or to vacate an arbitration award under the FAA including the decision in *Goldman v. Citigroup Global Mkts., Inc.*, 834 F.3d 242 (3d Cir. 2016).

Ch. 8, The Framework of Insurance Regulation. This chapter is updated with coverage of the beginning of dismantling of Dodd-Frank under the Trump Administration (*See* § 8.07[10]), as well as detailed new discussion of the regulation of cyber security (*See* § 8.09), and the regulation of innovation such as drones and driverless vehicles (*See* § 8.10).

Ch. 16, Introduction to Liability Insurance. In *FDIC v. BancInsure, Inc.*, 2017 U.S. App. LEXIS 452, at *8–9 (8th Cir. Jan. 10, 2017), the D&O policy issued by the insurer to the bank did not cover the FDIC's claims against the bank's former directors and officers as receiver and successor. The D&O policy's insured-versus-insured exclusion barred the FDIC's claims as the exception did not change with respect to the FDIC as receiver. (*See* § 16.02[3][b][iii][B].)

In *Winbrook Communication Services, Inc. v. United States Liability Insurance Co.*, 52 N.E.3d 195, 197 (Mass. Ct. App. 2016), the trial court erred in granting an insurer summary judgment declaring it had no obligation under a D&O policy to pay a judgment the plaintiff obtained against the insureds, as there was fact issue as to whether, under the policy's personal profit exclusion, the insureds received any profit or benefit to which they were not legally entitled. (*See* § 16.02[3][b][iii][C].)

Ch. 17, Duty to Defend. In *Water Well Solutions Service Group Inc. v. Consolidated Insurance Co.*, 881 N.W.2d 285, 301 (Wis. 2016), summary judgment was properly awarded to insurer in suit by insured for breach of the duty to defend in underlying negligence action because the "Your Product" exclusion in the policy applied and no exceptions to the exclusion restored coverage; based on the allegations set forth in the four corners of the negligence complaint, no coverage existed. (*See* § 17.01[2][a].)

Ch. 18, Duty to Indemnify—Bodily Injury and Poperty Damage. In *Navigators Specialty Ins. Co. v. Moorefield Construction, Inc.*, 6 Cal. App. 5th 1258, 1263 (2016), a general contractor's conduct with respect to a flooring failure was not an accident within the meaning of CGL policies because it was a deliberate decision made with knowledge that the moisture vapor emission rate from a concrete slab exceeded specifications. (*See* § 18.02[6][b].)

In *Hiland Partners GP Holdings, LLC v. National Union Fire Insurance Co.*, 847 F.3d 594, 2017 U.S. App. LEXIS 1696, at *10–11 (8th Cir. Jan. 31, 2017), applying

North Dakota law, in which a subcontractor's employee was injured when condensate caused an explosion, the insurer did not have duty to defend or indemnify the facility owner, because the allegations in the employee's underlying complaint fell within the CGL policy's pollution exclusion since condensate was a contaminant. (*See* § 18.08[3][c].)

Ch. 19, Duty to Indemnify—Personal and Advertising Injury. In *S. Bertram Inc. v. Citizens Insurance Co.*, 2016 U.S. App. LEXIS 15886, at *2 (6th Cir. 2016), an insurer had no duty to defend a trademark infringement action under a CGL policy because the personal and advertising injury coverage specifically excluded trademark infringement and the complaint contained no potential claims either for disparagement or for trade dress infringement under 15 U.S.C. § 1125(a). (*See* § 19.03[10].)

Ch. 20, Conditions and Insured's Duties. In *Century Surety Co. v. Jim Hipner LLC*, 842 F.3d 606, 612 (8th Cir. 2016), applying Wyoming law, an umbrella insurer was not entitled to deny coverage based on its insured's failure to provide notice of an accident "as soon as practicable"; although the insured did not provide timely notice, the insurer was not prejudiced by the four-month delay because it chose not to investigate once it received investigative materials from a primary carrier. (*See* § 20.01[5][c].)

Ch. 22, Allocation of Coverage. In *Philadelphia Indemnity Insurance Co. v. Lexington Insurance Co.*, 845 F.3d 1330, 2017 U.S. App. LEXIS 950, at *15 (10th Cir. Jan. 19, 2017), applying Oklahoma law, an insurer was properly granted summary judgment on a declaratory judgment claim against another insurer when, inter alia, the respective excessive coverage clauses canceled each other out, the policies contained identical pro rata clauses that required the insurers to share the loss, and both policies protected the building against fire damage. (*See* § 22.02[4][a].)

Ch. 23, Bad Faith in Liability Insurance. In *Babcock & Wilcox Co. v. American Nuclear Insurers*, 131 A.3d 445 (Pa. 2015), the high court held that, if an insurer breached its duty to settle while defending subject to a reservation of rights and the insured accepted a reasonable settlement offer, the insured needed to demonstrate only that the insurer breached its duty by failing to consent to a settlement that was fair, reasonable, and non-collusive, rather than demonstrating bad faith by the insurer. (*See* § 23.02[6][c][ii].)

Ch. 26, Directors and Officers Insurance. § 26.02 considers a case evaluating whether an exclusion for prior litigation with a date years before the policy was in place, yet different than the dates within the claims period, renders the policy ambiguous. *RSUI Indemnity Co. v. Attorney's Title Inc. Fund, Inc.*, 2016 U.S. Dist. LEXIS 97088 (M.D. Fla. June 6, 2016).

Ch. 27, Environmental Insurance. § 27.01[6][a] includes new Louisiana precedent analyzing how a Total Pollution Exclusion provision is to be interpreted. *Hanover Ins. Co. v. Superior Labor Services, Inc.*, 2016 U.S. Dist. LEXIS 47761 (E.D. La. April 8, 2016). Also, the Supreme Court of New York discusses what policy language is an indication that an all sums allocation is appropriate in § 27.01[8][a], *In the Matter of Viking Pump, Inc.*, 27 N.Y. 3d 244 (N.Y. 2016) (on cert by the Delaware Supreme Court).

Ch. 28, Employment Practices Liability Insurance. An issue ripe for adjudication is whether an insurer's duty to defend under an EPL policy extends to requiring it to indemnify counterclaims brought by the insured. Read about the First Circuit's certification in *Mt. Vernon Fire Ins. Co. v. Vision Aid Inc.*, 825 F.3d 67 (1st Cir. 2016), § 28.05[7][a].

Ch. 29, Cyber Insurance. In § 29.03[3][a] the Fifth Circuit weighed in on whether a company that sent $7 million to a "new address" (which turned out to be fraudulent) after receiving an email with a letterhead authorization attached, is covered by a Computer Fraud provision in a Crime Protection Insurance Policy. *Apache Corp. v. Great American Ins. Co.*, 2016 U.S. App. LEXIS 18748 (5th Cir. Oct. 18, 2016).

Ch. 30, Intellectual Property Insurance. This chapter is heavily updated in this release. There is new discussion in § 30.05[3][a] on policies that preclude coverage where false advertising injuries are alleged in the same matter as an intellectual property injury, including cases from two jurisdictions, *Vitamin Health, Inc. v. Hartford Cas. Ins. Co.*, 186 F. Supp. 3d 712 (E.D. Mich. 2017); and *Hanover Ins. Co. v. Anova Food, LLC*, 2016 US. Dist. LEXIS 84734 (D. Haw. June 29, 2016) (applying Florida law).

Ch. 31, Media Liability Insurance. § 31.03[3] considers how settlement language can dictate insured's ability to recover indemnification for advertising injuries if the settlement fails to distinguish between covered and non-covered claims, reviewing *Hanover Ins. Co. v. Anova Food, LLC*, 2016 U.S. Dist. LEXIS 84734 (D. Haw. June 29, 2016); *Highland Holdings, Inc. v. Mid-Continent Casualty Co.*, 2016 U.S. Dist. LEXIS 81851 (M.D. Fla. June 23, 2016).

Ch. 32, Mergers and Acquisitions Insurance. This update looks at how a court considers the insured's "reasonable expectations" when deciding whether a policy covered the acquisition of a specific company when a bump-up endorsement specifically said it did not. See § 32.02[5][b]. *Gardner Denver, Inc. v. Arch Ins. Co.*, 2016 U.S. Dist. LEXIS 174026 (E.D. Penn. Dec. 16, 2016).

Ch. 41, Introductory Matters in Property Insurance. In *Philadelphia Indemnity Insurance Co. v. Lexington Insurance Co.*, 845 F.3d 1330, 2017 U.S. App. LEXIS 950, at *15 (10th Cir. Jan. 19, 2017), applying Oklahoma law, an insurer was properly granted summary judgment on a declaratory judgment claim against another insurer when, inter alia, the respective excess coverage clauses canceled each other out, the policies contained identical pro rata clauses that required the insurers to share the loss, and both policies protected the building against fire damage. (*See* § 41.02[4][c][ii].)

Ch. 42, Determining Coverage in Property Insurance Policies. In *State Farm Fire & Casualty Co. v. Moss*, 338 Ga. App. 684, 688 (2016), because the rental of the insured's property was not "occasional," having been based on a month-to-month lease with no end date, the exclusion in the subject insurance policy, excluding coverage for bodily injury arising out of rental of premises, applied and the trial court erred in denying the insurer's motion for summary judgment on that basis. (*See* § 42.03[2][b][iv].)

Ch. 43, Exclusions in Property Insurance Policies. In *Celebration Church, Inc. v. United National Insurance Co.*, 2016 U.S. App. LEXIS 16061, at *4–5 (5th Cir. Aug. 30, 2016), applying Louisiana law, precious metals exclusion in the insurance unambiguously applied; numerous witnesses testified that the stolen condenser coils were either copper or aluminum, both of which were explicitly listed in the exclusion. (*See* § 43.03[9][b].)

Ch. 44, The Causation Question in Property Insurance. In *Ideaitalia Contemporary Furniture Corp. v. Selective Ins. Co.*, 2016 U.S. Dist. LEXIS 172909, at *12 (W.D.N.C. Dec. 14, 2016), in which storm water entered a warehouse on the insured property and damaged goods stored inside, the plain language of the policy excluded flood or surface water damage, even if another covered peril, such as water from below the surface, concurrently contributed to the damage, and North Carolina recognizes and regularly enforces anti-concurrent causation clauses. (*See* § 44.04[6][c].)

Ch. 45, Additional and Supplemental Property Insurance Coverages. In *AMTRAK v. Aspen Specialty Insurance Co.*, 2016 U.S. App. LEXIS 16074 (2d Cir. Aug. 31, 2016), the definitions of "flood" in the policies at issue were not ambiguous as the first two definitions of flood were sufficiently broad to include an inundation of seawater driven by storm surge or a wind storm under their plain meaning; the third definition explicitly included sea surge and wind driven water. (*See* § 45.08[2][a].)

Ch. 46, Time Element (Business Interruption) Insurance. In *Ochsner Clinic Foundation v. Lexington Insurance Co.*, 2017 U.S. Dist. LEXIS 198, at *31–32 (E.D. La. Jan. 3, 2017), applying Louisiana law, the insured provided sufficient evidence, including expert testimony, projections, industry surveys, and actual financial data, to establish "with reasonable certainty" its claim for business interruption damages and thus to preclude summary judgment on this issue; while the insurer alleged several flaws in the insured's methodology and calculations, those factual disputes were suitable issues for trial and more properly addressed through cross-examination. (*See* § 46.09.)

Ch. 48, Property Insurance Dispute Resolution. In *Noa v. Florida Ins. Guaranty Ass'n*, 2017 Fla. App. LEXIS 3787, at *1 (Fla. Dist. Ct. App. Mar. 22, 2017), a post-appraisal submission of higher costs was not a basis for a new appraisal because the appraisers indicated awareness of the ordinance and law coverage; a notation on the award that there was no allowance for effects of law and ordinance indicated that the panel found building code requirements did not require replacement of the whole roof. (*See* § 48.03[3][a].)

Ch. 49, The Right of Subrogation. In *Pacific Indemnity Co. v. Deming*, 828 F.3d 19, 20–21 (1st Cir. 2016), an insurer was not subject to a waiver of subrogation and could pursue claims against the tenant who damaged the insured condo because allowing the insurer to recover from the tenant after its insured breached his obligation to obtain insurance containing a waiver of subrogation was entirely consistent with the plain language of both the insurance policy and condo bylaws. (*See* 49.04[5].)

Ch. 50, Builder's Risk Insurance. In *Fontana Builders, Inc. v. Assurance Co. of America*, 882 N.W.2d 398, 400–401 (Wis. 2016), the homeowner's policy issued to the purchasers of the home, who happened to be the builder and his wife, did not apply so as to terminate a builder's risk policy from the insurer; legally distinct entities had different interests in the property. (*See* § 50.01[4][e].)

Ch. 51, Boiler and Machinery Insurance. In *Wisconsin Local Government Property Insurance Fund v. Lexington Insurance Co.,* 840 F.3d 411, 418 (7th Cir. 2016), applying Wisconsin law, after a fire at a courthouse, the primary insurer for the courthouse and the insurer providing coverage for machinery and equipment at the courthouse, agreed to arbitrate under their respective Joint Loss Agreement (JLAs) their dispute as to how certain payments should be allotted between the two of them. The primary insurer's excess insurer or reinsurer did not satisfy the prerequisites under the primary insurer's JLA, and, thus, the court denied that insurer's motion to compel its inclusion in the arbitration. (*See* § 51.07[3][a].)

Ch. 51A, Marine Insurance. In *Hartford Fire Insurance Co. v. Harborview Marina & Yacht Club Community Ass'n*, 2016 U.S. Dist. LEXIS 170438, at *18–22 (D. Md. Dec. 9, 2016), involving a dispute over coverage for a collapsed pier, the policy at issue was not a maritime contract; the policy's primary objective was to insure land-based property against property damage. (*See* § 51A.01[2].)

Ch. 53, Homeowner's Insurance. In *Johnson v. GeoVera Specialty Insurance Co.*, 2016 U.S. App. LEXIS 17530, at *2 (5th Cir. Sept. 27, 2016), an insurance coverage dispute arising from fire damage to a home, the insured eliminated the insurer's coverage duty under the homeowner's insurance policies by breaching the cooperation clauses as she altered the state of the house before the insurance agent could appraise it. (*See* § 53.01[9][c].)

Ch. 54, Title Insurance. In *Marchetti v. Chicago Title Insurance Co.*, 829 F.3d 498, 500 (7th Cir. 2016), summary judgment was properly granted in favor of a title insurance company since the loss appellants suffered, when the title was found to be fraudulent, was zero, because the appellants had no equity interest in the property; they suffered no capital loss, and that was all the title insurance company promised to make good. (See § 54.04[1][a].)

Ch. 55, Bad Faith in the Context of First-Party Insurance. In *25 Bay Terrace Assocs., L.P. v Public Service Mutual Insurance Co.*, 40 N.Y.S.3d 469, 471–472 (N.Y. App. Div. 2016), the insured sufficiently pleaded a breach of the implied covenant of good faith and fair dealing because the insured submitted evidence that the insurer's adjustor stated that water had infiltrated the building as the result of a hurricane and the loss was completely covered under the policy, and, subsequent to that representation, the insurer sent an engineer to inspect the building for the sole purpose of preparing a report, which was factually inaccurate, to support its denial of the entire claim. (See § 55.04[2][c][ii].)

Ch. 56, Crop Insurance. In *Spring Creek Farming Co. v. Federal Crop Insurance Corp.*, 2016 U.S. App. LEXIS 11844, at *1–2 (11th Cir. June 29, 2016), a peanut farmer's crop insurance claim in which the Risk Management Agency (RMA) upheld the regional office's finding that drought was not the cause of the loss, the district court, in reviewing the RMA decision, did not err in granting summary judgment for the defendants; the RMA did not act arbitrarily and capriciously by considering weather data that approximated rainfall for areas between weather stations when actual rainfall collection data was unavailable. (*See* § 56.05[2].)

Ch. 57, Flood Insurance. The chapter includes discussion that a New Jersey federal court adopted a four-part test for demonstrating flood-related erosion. (See § 57.09[5].) Also added is a new discussion that NFIA preemption has been extended to claims based on federal statutes. (See § 57.26[9].)

Ch. 61, General Principles and Introductory Matters in Motor Vehicle Insurance Law. In *Tenn. Farmers Mut. Ins. Co. v. Estate of Cossitt*, 2016 Tenn. App. LEXIS 984, a household exclusion in an automobile insurance policy did not apply because the defendant was not residing in the insured's household at the time of the accident. (*See* § 61.02[3][c][iii]).

In State Farm Mut. Auto. Ins. Co. v. Bailey, 203 So. 3d 995 (Fla. Dist. Ct. App. 2016), an employee who had exited a truck 30 minutes before being struck and who was standing at least 10 feet from the insured truck was not "occupying" the truck for purposes of uninsured motorist (UM) coverage. The policy defined the term occupying as "in, on, entering or alighting from" the insured truck. (*See* § 61.03[2][ii]).

Ch. 62, Physical Damage Coverage for Motor Vehicles (Collision, Comprehensive and Named-Perils Coverages). In California, automobile physical damage coverage includes all coverage for loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset. Automobile collision coverage includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset. *Cal. Ins. Code § 660*. (*See* § 62.02[2][a]).

Ch. 63, Automobile Liability Insurance. Two new important surveys have been added. § 63.06[13], Jurisdictional Survey of Application of For Hire Exclusion to Transportation Network Providers, and § 63.06[14], Jurisdictional Survey of Statutes Requiring that Transportation Network Providers Provide Coverage.

Ch. 64, Medical Payments Coverage. In Wisconsin, the term "motor vehicle" does not include trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, or limited use off-highway motorcycles. *Wis. Stat. § 344.61*. (*See* § 64.03[1]).

A few jurisdictions allow recovery of medical payments coverage for pre-arranged rides with a transportation network provider. (*See* § 64.03[2]).

Ch. 65, Uninsured and Underinsured Motorist Coverage. In *Petty v. Federated Mut. Ins. Co.,* 2016 PA Super 285, the alleged waiver of underinsured motorist (UIM) coverage specifically complied with the Motor Vehicle Financial Responsibility Law, *75 Pa. Cons. Stat. § 1731*, and in fact contained a verbatim recitation of the language used in the statute. (*See* § 65.01[3][b]).

In *Johnson v. First Acceptance Ins. Co.,* 2017 Ala. Civ. App. LEXIS 4, the court denied the insurer's motion for summary judgment because there was a factual dispute as to whether the insured electronically signed the part of the insurance application that waived underinsured motorist (UIM) coverage. (*See* § 65.01[3][b]).

Ch. 66, No-Fault Insurance. In New York, subjective complaints alone are not sufficient to defeat summary judgment. The plaintiff must provide "objective proof of an injury." The plaintiff must offer admissible evidence in the form of sworn medical records, such as magnetic resonance imaging (MRI) reports, and sworn affidavits or reports by physicians. Unsworn letters or medical reports are inadmissible, and may not be considered. *Kim v. Rodriguez,* 2016 U.S. Dist. LEXIS 153246 (E.D.N.Y. 2016). (*See* § 66.03[3][c][iv]).

In *Hall v. Miko,* 499 Mich. 889 (2016), the Michigan Supreme Court declined to reconsider the no-fault statute's "serious impairment" threshold for tort liability as construed by *McCormick v. Carrier,* 487 Mich. 180, 795 N.W.2d 517, 534 (2010).The appellate court, *Hall v. Miko,* 2015 Mich. App. LEXIS 1407, determined that in evaluating serious impairment of a body function the correct inquiry is whether there has been an influence on the person's capacity to live in her normal manner of living. The no-fault statute only requires that some of the person's ability to live in his or her normal manner of living has been affected, not that some of the person's normal manner of living has itself been affected. It was enough that the insureds presented evidence to establish that some of their general ability to lead their normal lives had been affected. Given the evidence presented by the insureds demonstrating that some of their general ability to lead their normal lives had been affected, the trial court erred by granting summary disposition to the insurer. (*See* § 66.03[3][c][viii]).

Ch. 67, Business-Owned Vehicles Insurance. In *Farris v. Ohio Sec. Ins. Co.*, 2016 U.S. Dist. LEXIS 175072 (D. Colo. 2016), the court rejected the plaintiff's argument that the policy should be reformed to afford UIM coverage to a class of insureds coextensive with the class of insured covered under the liability provision of the policy. The plaintiff sought coverage for a person who died in a single vehicle accident while riding on the back of an ATV. The accident was not business related, the ATV was not insured under the policy, and the driver of the ATV had no connection to the business. (*See* § 67.02[4][h]).

Illinois does not have a strong public policy against underinsured motorist (UIM) step-downs. In *James v. SCR Med. Transp., Inc.,* 61 N.E.3d 1043 (Ill. App. Ct. 2016), the insurer denied a van driver's claim because the UIM coverage was limited to $50,000, which was the amount the van driver had already received from the other driver, meaning that he was not "underinsured" within the meaning of the policy. After receiving the $50,000 limit of the other motorist's insurance coverage and a $28,608 settlement in workers' compensation benefits from his own employer, the van driver requested UIM coverage from his employer's business automobile liability insurer. The insurance form executed by the employer that reduced its $1,000,000 liability coverage to $50,000 for UIM and UM coverage did not violate public policy. (*See* § 67.04[2][a]).

Ch. 68, Garage Owners' Insurance. In *Acceptance Indem. Ins. Co. v. JJA Auto Sales, LLC*, 2017 U.S. Dist. LEXIS 16068 (E.D. Pa. 2017), the tortfeasor struck a pedestrian while driving a vehicle that he had purchased from the defendant auto sales company. The tortfeasor was not using the vehicle in connection with the defendant's business at that time. The garage policy insurer had no duty to defend because the policy insured the defendant against automobile accidents resulting from "garage operations," which includes the ownership, maintenance or use of the covered 'autos' and all operations necessary or incidental to a garage business). (*See* § 68.03[1][ii]).

Ch. 69, Truckers' and Motor Carriers' Commercial Vehicle Insurance. In *Nat'l Specialty Ins. Co. v. Martin-Vegue*, 2016 U.S. App. LEXIS 3317 (11th Cir. 2016), the court noted that an MCS-90 endorsement is an endorsement added to trucker's insurance to satisfy federal motor carrier regulations requiring minimum levels of financial responsibility. (*See* § 69.01 [2][a]). The MCS-90 endorsement is a federally mandated insurance endorsement, and thus federal law, not state law, governs its interpretation and application. The MCS-90 endorsement covers liability for a motor carrier's negligence only when the liability arises while the motor carrier's vehicle involved in the accident is engaged in the transportation of property in interstate commerce at the time the accident occurs. *Martinez v. Empire Fire & Marine Ins. Co.*, 322 Conn. 47 (2016). (*See*

§ 69.01[2] [d]).

49 U.S.C. § 14504a does not purport to impose any limitation on the ability of a state to determine whether a plaintiff should be able to seek direct liability against an insurer of motor carriers as a matter of state law. *Miller v. Jackson*, 2016 U.S. Dist. LEXIS 50225 (E.D. Okla. 2016). (*See* § 69.01[2] [d]).

The Carmack Amendment is the exclusive cause of action for interstate-shipping contract claims alleging loss or damage to property. The Carmack Amendment constitutes a complete defense to common law claims alleging all manner of harms arising from loss of cargo in interstate shipping). *Kidd v. Am. Reliable Ins. Co.*, 2016 U.S. Dist. LEXIS 118960 (C.D. Cal. 2016). (*See* § 69.01[2][d]).

Placard liability operates to hold federally authorized carriers, which are licensed by the DOT and display their DOT numbers on their truck, vicariously liable for the negligence of drivers operating under a lease. *Coffman v. Dutch Farms, Inc.*, 2017 U.S. Dist. LEXIS 26827 (N.D. Ind. 2017). (*See* § 69.02[9]).

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Publication 60087 Release 17 September 2017

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☐	16A-149	16A-149 thru 16A-150.1
☐	16A-173	16A-173 thru 16A-174.1
☐	17-1 thru 17-17	17-1 thru 17-17
☐	18-1 thru 18-3	18-1
☐	18-25 thru 18-29	18-25 thru 18-30.1
☐	18-65	18-65 thru 18-66.1
☐	18-90.1 thru 18-95	18-91 thru 18-96.1
☐	19-1	19-1
☐	19-19 thru 19-23	19-19 thru 19-24.1
☐	20-1 thru 20-3	20-1
☐	20-13	20-13 thru 20-14.1
☐	20-25 thru 20-29	20-25 thru 20-30.1
☐	21-1 thru 21-7	21-1 thru 21-7
☐	21-23	21-23 thru 21-24.1
☐	21-32.1 thru 21-35	21-33 thru 21-36.1
☐	22-1 thru 22-21	22-1 thru 22-19
☐	22-31 thru 22-55	22-31 thru 22-55
☐	23-1 thru 23-7	23-1 thru 23-3
☐	23-43 thru 23-45	23-43 thru 23-45
☐	23-59 thru 23-61	23-59 thru 23-61
☐	23-74.1	23-74.1
☐	23-95 thru 23-105	23-95 thru 23-106.1
☐	23-133 thru 23-136.3	23-133 thru 23-136.3

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☐	Title page thru xi	Title page thru xi
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☐	24-69 thru 24-101	24-69 thru 24-101
☐	25-1 thru 25-3	25-1 thru 25-3
☐	25-15 thru 25-19	25-15 thru 25-20.1

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☐	25-37 thru 25-43	25-37 thru 25-44.1
☐	25-71 thru 25-75	25-71 thru 25-76.1
☐	25-111 thru 25-113	25-111 thru 25-113
☐	26-1 thru 26-15	26-1 thru 26-15
☐	26-25 thru 26-56.9	26-25 thru 26-56.11
☐	26-67	26-67
☐	27-1 thru 27-7	27-1
☐	27-19 thru 27-21	27-19 thru 27-21
☐	27-31 thru 27-51	27-31 thru 27-51
☐	27-63 thru 27-73	27-63 thru 27-74.1
☐	27-93 thru 27-97	27-93 thru 27-98.1
☐	28-1 thru 28-11	28-1 thru 28-9
☐	28-21 thru 28-31	28-21 thru 28-32.1
☐	28-43	28-43 thru 28-44.1
☐	28-63 thru 28-67	28-63 thru 28-68.1
☐	28-79	28-79 thru 28-80.1
☐	28-91 thru 28-95	28-91 thru 28-96.1
☐	29-1 thru 29-13	29-1 thru 29-11
☐	29-33 thru 29-49	29-33 thru 29-50.1
☐	29-61	29-61 thru 29-62.1
☐	30-1 thru 30-159	30-1 thru 30-153
☐	31-1 thru 31-65	31-1 thru 31-65
☐	32-1 thru 32-9	32-1 thru 32-3
☐	32-27 thru 32-29	32-27 thru 32-30.1
☐	33-1 thru 33-63	33-1 thru 33-64.3
☐	34-1 thru 34-23	34-1 thru 34-23
☐	34-35	34-35 thru 34-36.1
☐	34-53 thru 34-55	34-53 thru 34-55
☐	36-1 thru 36-39	36-1 thru 36-37
☐	36-49	36-49 thru 36-50.1
☐	36-63 thru 36-71	36-63 thru 36-72.1
☐	36-81 thru 36-85	36-81 thru 36-85
☐	I-1 thru I-37	I-1 thru I-37

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Revision

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☐	41-53 thru 41-55	41-53 thru 41-55
☐	41-107 thru 41-113	41-107 thru 41-113
☐	42-1 thru 42-61	42-1 thru 42-61
☐	42-83 thru 42-85	42-83 thru 42-86.1

Check As Done	Remove Old Pages Numbered	Insert New Pages Numbered
☐	42-101	42-101 thru 42-102.1
☐	43-1 thru 43-3	43-1
☐	43-33	43-33 thru 43-34.1
☐	43-51 thru 43-55	43-51 thru 43-55
☐	44-1 thru 44-5	44-1 thru 44-5
☐	44-35 thru 44-41	44-35 thru 44-42.1
☐	44-50.1 thru 44-51	44-51 thru 44-52.1
☐	45-1 thru 45-13	45-1 thru 45-9
☐	45-25	45-25
☐	45-57 thru 45-59	45-57 thru 45-60.1
☐	46-1 thru 46-17	46-1 thru 46-7
☐	46-79	46-79
☐	47-1 thru 47-8.1	47-1
☐	47-25	47-25 thru 47-26.1
☐	47-49	47-49 thru 47-50.1
☐	48-1 thru 48-15	48-1 thru 48-13
☐	49-1 thru 49-37	49-1 thru 49-31
☐	49-47	49-47
☐	49-59 thru 49-75	49-59 thru 49-77
☐	50-1 thru 50-5	50-1 thru 50-3
☐	50-23 thru 50-43	50-23 thru 50-44.1
☐	51-1 thru 51-7	51-1
☐	51-27 thru 51-75	51-27 thru 51-75
☐	52-1 thru 52-35	52-1 thru 52-27
☐	53-1 thru 53-9	53-1
☐	53-29	53-29 thru 53-30.1
☐	53-49 thru 53-61	53-49 thru 53-62.1
☐	53-75	53-75 thru 53-76.1
☐	53-103 thru 53-111	53-103 thru 53-112.1
☐	53-127 thru 53-141	53-127 thru 53-142.1
☐	54-1 thru 54-7	54-1 thru 54-3
☐	54-19	54-19 thru 54-20.1
☐	54-31	54-31 thru 54-32.1
☐	54-51 thru 54-55	54-51 thru 54-57
☐	55-1 thru 55-67	55-1 thru 55-63
☐	55-87 thru 55-105	55-87 thru 55-105
☐	56-1 thru 56-13	56-1 thru 56-11
☐	56-31 thru 56-45	56-31 thru 56-45
☐	57-1 thru 57-17	57-1 thru 57-13
☐	57-29	57-29 thru 57-30.1
☐	57-49 thru 57-67	57-49 thru 57-68.1
☐	57-83 thru 57-143	57-83 thru 57-149
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☐	I-1 thru I-55	I-1 thru I-55

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☐	64-1 thru 64-59	64-1 thru 64-57
☐	65-1 thru 65-101	65-1 thru 65-97
☐	66-1 thru 66-85	66-1 thru 66-85
☐	67-1 thru 67-41	67-1 thru 67-37
☐	68-1 thru 68-9	68-1 thru 68-7
☐	68-19 thru 68-33	68-19 thru 68-33
☐	68-45 thru 68-59	68-45 thru 68-59
☐	69-1 thru 69-25	69-1 thru 69-21
☐	69-35 thru 69-149	69-35 thru 69-145
☐	I-1 thru I-27	I-1 thru I-27

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