F | H | M | B | K

Fanning Harper Martinson Brandt & Kutchin

From left to right: Daniel P. Troiano, Jennifer Kelley, George Lankford, and Kathryn Vaughan

COVERAGE LITIGATION:
Jennifer Kelley
Direct Dial: 972-860-0304
jkelley@fhmbk.com
Kathryn Vaughan
Direct Dial: 972-860-0309
kvaughan@fhmbk.com
Daniel P. Troiano
Direct Dial: 972-860-0363
dtroiano@fhmbk.com

COVERAGE AND BAD FAITH LITIGATION:
George Lankford
Direct Dial: 972-860-0362
glankford@fhmbk.com

www.fhmbk.com

FIRM ANNOUNCEMENT: FHMBK is pleased to announce that its government and employment litigation team, led by Thomas P. Brandt, has been selected by *Texas Lawyer* as Litigation Department of the Year finalist. To access the *Texas Lawyer* article, click **here**.

CHANGE IN TEXAS AGENT LICENSING RULES: The Texas Department of Insurance has updated some of its agent and adjuster licensing rules to bring them more in line with Texas law and best industry practices. The new rules take effect October 1, 2018.

Pass the exam before applying: If the license type requires a qualifying exam, the candidate must have passed the exam in the 12 months before applying for the license. The application will not be processed if there's no record of having passed the exam.

Fee for company appointments: There is a $10 fee for each company appointment. There will no longer be an option for one free appointment on the paper license application FIN506. However, because an appointment is required to get a temporary license or provisional permit, there is no charge for an appointment for those two license types.

Temporary to full license: Holders of a temporary license can get a full license if they pass the exam while the temporary license is active. A temporary license period is 90 days, or 180 days with an extension. If the temporary license is no longer active when the exam is passed, a new application must be submitted for the full license.

No application fee for military personnel:A military service member, veteran, or family member with a license in another state doesn't have to pay an application fee for a similar Texas license. Candidates must submit a paper application that includes their military identification along with a request to waive the fee. This waiver only applies to new applications, not license renewals.

SEPTEMBER 2018 TEXAS INSURANCE LAW UPDATE

FIFTH CIRCUIT HOLDS DISCOVERY RULE DOES NOT SAVE INSURED'S CHAPTER 541 CONSUMER-PROTECTION CLAIMS

In *Sideman v. Farmers Group, Inc.*, No. 17-51106, 2018 WL 4361160 (5th Cir., September 12, 2018) (mem. op.), Susan and Mark Sideman maintained a Texas Farmers Insurance Company ("TFIC") homeowner's insurance policy. Farmers Group ("Farmers") managed TFIC's policy and communicated with the Sidemans on TFIC's behalf. In June 2013, Farmers mailed the Sidemans an offer package for a new policy (and notice that TFIC was not renewing the old policy). The offer package included a summary comparison of the old policy and the new policy. The package also included a new endorsement that excluded coverage for roof damage involving mere marring (like denting or scratching), and limited coverage to losses involving punctures or when the roof is rendered functionless. The offer package also included a letter bearing the signature and return address of a Farmers' insurance agent who neither prepared the offer package nor wrote the letter. The offer package did not include a copy of the proposed policy but instead urged the Sidemans to review the new policy and to contact the signatory agent for more information. The Sidemans went ahead and purchased the policy.

In April 2016, a hail storm cosmetically damaged the Sidemans' metal roof. The Sidemans filed a claim with Farmers, but Farmers denied their claim based on the new endorsement excluding coverage for mere marring. Upset, the Sidemans brought suit against Farmers under Chapter 541 of the Texas Insurance Code (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), alleging that the package's summary comparison and marring exclusion were misleading, the absence of the new policy from the package was deceptive and misleading, and the letter signed by the agent deceptively implied that he helped prepare the offer package.

The statute of limitations in Chapter 541 provides: "A person must bring an action under this chapter before the second anniversary of the following: (1) the date the unfair method of competition or unfair or deceptive act or practice occurred; or (2) the date the person discovered or, by the exercise of reasonable diligence, should have discovered that the unfair method of competition or unfair or deceptive act or practice occurred (the discovery rule)."

Because the Sidemans' claims were based upon the offer packet (received in June 2013), their claims (filed in January 2017) were time-barred unless the claims were saved by the discovery rule. The court, however, held that the discovery rule did not save the claims, and affirmed dismissal of the claims. The court reasoned that "reasonable diligence would have led to the discovery of the policy's absence[,] [the] allegedly misleading language in the summary comparison and marring provision[,] [and] the alleged misuse of the agent's name and return address." The court further reasoned that "the Sidemans acknowledge they received the summary comparison and marring provision in the packet, the packet materials urged them to review the full policy, and they never contacted anyone about the missing policy before purchasing it."

FIFTH CIRCUIT CONFIRMS TOLLING RULE FOR LEGAL MALPRACTICE DOES NOT APPLY TO PUBLIC ADJUSTERS

In *Bloom v. Aftermath Public Adjusters, Inc.,* -- F.3d --, No. 17-41087, 2018 WL 4203601 (5th Cir. Sep 4, 2018), Gracie Reese's Galveston, Texas property was damaged by Hurricane Ike. Unsatisfied with Fidelity National Property and Casualty Company's damage assessment, Reese hired Aftermath Public Adjusters, Inc. to assist them with the claim. Aftermath inspected the property and prepared both a proof of loss and repair estimate with higher calculations than Fidelity. Thereafter, Reese's claim was denied by Fidelity who claimed no proof of loss was submitted. Reese sued Fidelity who filed summary judgment on the basis Reese failed to submit any documentation. Reese failed to respond and Fidelity's summary judgment was granted. Two years later, Reese filed suit against Aftermath and its adjuster alleging negligence and breach of contract. Aftermath moved for summary judgment based on the relevant two and four years statute of limitations since seven years had passed since Fidelity's denial of Reese's claim. Reese responded that, under the Texas rule articulated in *Hughes v. Mahaney,* 821 S.W.2d 154 (Tex. 1991), the statute of limitations was tolled until the conclusion of her suit against Fidelity. The court rejected the claim and Reese's representatives appealed.

The Fifth Circuit recited the *Hughes* rule from the Texas Supreme Court which states that when an attorney commits malpractice in the prosecution or defense of a claim resulting in litigation, the statute of limitations on the malpractice action is tolled until all appeals for the underling suit are exhausted. Although the Fifth Circuit has previously clarified this rule is exclusive to attorney malpractice actions, Reese's representatives argued the rule's applicability as there was a time when Texas prohibited non-lawyers from engaging in public adjusting and therefore—although defendants are technically non-lawyers—they are "lawyers in disguise." The Fifth Circuit swiftly rejected the expansion of the rule and reaffirmed clear Texas law that the rule is exclusive to attorney malpractice. Accordingly, the Fifth Circuit affirmed the lower court.

SOUTHERN DISTRICT OF TEXAS INTERPRETS FEDERAL QUESTION JURISDICTION REGARDING NFIA PREEMPTION FOR HURRICANE HARVEY CLAIMS

In *Alexander v. Woodlands Land Development Co. L.P., et. al,* -- F.Supp.3d--, No. H-18-2291, 2018 WL 4242451 (S.D. Tex., Sep. 6, 2018), over 400 plaintiffs sued the Woodlands Land Development Company L.P., The Howard Hughes Corporation, LJA Engineering, Inc. and James R. Bowls for negligence, gross negligence and violations of the Texas Deceptive Trade Practices resulting from the design and development of the residential community of Timarron Park in Tomball, Texas. Plaintiffs alleged that when the development was planned, it was located within a FEMA 500 year floodplain and, despite a 1994 storm exceeding the 500 year floodplain, the developers did not reduce the likelihood of flooding. Plaintiffs contended that, as a result, following Hurricane Harvey in the summer of 2017, they were displaced from their homes and will endure months and years of repairs.

Defendants removed the matter to Federal court asserting federal question jurisdiction in that Plaintiffs' claims were preempted by federal law or raised disputed and substantial federal issues based on FEMA's determination of flood plains. Plaintiffs moved to remand the case back to state court on the basis that their claims did not invoke federal question jurisdiction.

The court noted that the presence of a federal question is measured under the well-pleaded complaint rule—considering if the federal question is presented on the face of plaintiffs' properly pleaded complaint. However, an exception to the rule is the complete preemption doctrine which converts a state law claim into a federal claim when the federal statute "so forcibly and completely displace[s] the state law that plaintiff's cause of action is either wholly federal or nothing at all."

Addressing preemption, the Southern District rejected defendants' arguments that plaintiffs were actually challenging FEMA's statutorily-mandated floodplain determinations, and because the National Flood Insurance Act is the sole basis to challenge the determinations, plaintiffs' claims were preempted. Instead, the district court observed that plaintiffs' claims did not arise out of the handling or disposition of federal flood insurance policies and found no authority that the NFIA creates a cause of action that replaces and protects state tort claims, thereby preempting plaintiffs' claims of negligence, gross negligence and DTPA violations.

Lastly the Southern District addressed the issue of substantial federal question, concluding that since plaintiffs' allegations were failure to conform to the standard of care applicable to professional engineers and developers (which are duties under state law), it was unnecessary to resolve any federal issues to decide the causes of action. Furthermore, because plaintiffs attacked the issues of the engineers/developers' judgment and representations and not the FEMA floodplain determinations, the Court found that there was no disputed and substantial federal issue. Finally, the district court concluded that Texas courts have an interest in deciding professional negligence and Texas DTPA claims.

Because plaintiffs did not allege federal causes of action under the NFIA and plaintiffs' negligence and DTPA claims were created by state law, the court granted plaintiffs' motion to remand.

NORTHERN DISTRICT OF TEXAS CONCLUDES BONAFIDE DISPUTE REGARDING INSURANCE COVERAGE EXISTS RESULTING IN DISMISSAL OF INSURED'S PROMPT PAYMENT OF LOSS CLAIM AND BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING CLAIM; HOWEVER, FACT ISSUES EXIST PRECLUDING DISMISSAL OF INSURED'S CLAIMS FOR VIOLATIONS OF THE TEXAS INSURANCE CODE

In *Hall Arts Center Office, LLC v. Hanover Insurance Company*, -- F.Supp.3d --, No. 3:16-CV-3226-D, 2018 WL 4206978 (N. D. Tex., Sept. 4, 2018), Hanover Insurance Company issued a builder's risk policy to Hall Arts for the construction of an 18-story office building and adjoining retail space at

2323 Ross Avenue in Dallas (the "KPMG Plaza"). Turner Construction ("Turner") was the general contractor for KPMG Plaza construction. The contract between Hall Arts and Turner set two progress milestones for the project: (1) a topping-out and dry-in date of November 1, 2014, and (2) a substantial completion date of April 1, 2015. Turner commenced construction on August 1, 2013. Over one year later, on October 13, 2014 rainwater leaked through openings in the temporary roof and damaged one of the high-voltage bus ducts ("Bus Duct B") (the "Weather Event"). Bus Duct B was intended to deliver electricity to mechanical equipment on various floors of the property. Bus Duct B was repaired and energized by November 25, 2014.

KPMG, a tenant, was originally scheduled to commence its tenant fit-out, or the process of preparing the interior space for KPMG's occupancy, on December 22, 2014, and, prior to the Weather Event, voluntarily delayed its tenant fit-out to January 1, 2015. KPMG did not actually commence the tenant fit-out process until January 14, 2015. On January 20, 2015 the Dallas Fire-Rescue Department ("DFRD") halted the fit-out, requiring Hall Arts to complete certain fire alarm and life safety items before resuming. DFRD, Hall Arts, and Turner agreed to a revised list of required items on January 30, 2015. KPMG commenced its actual occupancy of KPMG Plaza, and paying rent to Hall Arts, on July 27, 2015.

Hall Arts sought compensation from Hanover under the Policy for costs arising from alleged delays resulting from the Weather Event. Pertinent to the dispute in the lawsuit, the Policy provided for coverage of "soft costs incurred during the delay period" so long as they "arise out of a 'delay' to a 'building or structure' at a 'jobsite' described on the Delay in Completion Schedule." "Soft costs" were defined as "the necessary and reasonable costs relating to the construction, erection, or fabrication of a covered 'building or structure' that are over and above those costs that would have been incurred had there been no 'delay period.'" The Policy specified that soft costs were limited to interest payments, realty taxes, lease expenses, and insurance premiums. Covered insurance premiums were the "[a]dditional cost of insurance premiums necessary to renew or extend insurance coverage."

The Policy also covered "actual loss of rental income incurred during the 'delay period'" that "arises out of a 'delay' to a 'building or structure' at a 'jobsite' described on the Delay in Completion Schedule." The Policy defined "delay period" as "the period of time the completion of the construction, erection, or fabrication of a covered 'building or structure' is 'delayed' as a result of direct physical loss or damage caused by a covered peril to property covered under the Builders' Risk Coverage form to which this coverage part is attached." "Delay" was defined as "an interruption in the construction, erection, or fabrication of a 'building or structure' caused by a covered peril." "Buildings or Structures" were defined as: "a. buildings; b. structures; c. materials and supplies that will become a permanent part of the buildings or the structures; and d. foundations, excavations, grading, filling, attachments, permanent fencing, and other permanent fixtures." The "Perils Covered" provision stated that risks of direct physical loss or damage were covered unless the loss was limited or caused by an excluded peril, which included, *inter alia*, seizure by civil authority, earth movement, fungus, nuclear hazard, flood, sewage backup, war, and *delay in completion and increased construction costs*. The Policy stated that "[i]f a waiting period is indicated on the Delay in Completion Schedule, we do not pay for: a. additional soft

costs; b. loss of rental income; or c. loss of net income until after the number of days indicated on the schedule have passed." The Delay in Completion Schedule specified that the waiting period was 30 days. The Delay in Completion Schedule listed the jobsite as:

> NEW CONSTRUCTION OF 18 STORY OFFICE BUILDING ON TOP OF EXISTING PARKING GARAGE AND 2 STORY FREE STANDING RESTAURANT BUILDING; 470,386 SQ FT AND 20,947 SQ FT; CONCRETE FLOORS, METAL STUDS, GLASS EXTERIOR WALLS FOR LARGER BUILDING, TILT WALL CONCRETE WITH METAL DECK ROOF FOR THE RESTAURANT.

The insurance claim was for both hard costs (repairing the duct) and soft costs (lost rental income, interest on construction loans, and realty taxes). Turner estimated that the Weather Event resulted in 54 days of lost rental income from KPMG.

Hanover acknowledged receipt of the claim on November 16, 2015, and, on December 3, 2015 emailed Hall Arts stating that no determination could be made at the time and that Hall Arts would be informed if further documentation was needed. Two weeks later, Hanover requested additional documentation, including the original schedules for June, July, October, November, and December 2014, along with the biweekly schedule meeting minutes for July, September, and October 2014.

On December 30, 2015 Hall Arts sent Hanover the construction schedules for June, July, August, and December 2014, and meeting minutes for the months of July, September, and October 2014. Hanover wrote back on January 15, 2016 that the supplied information was insufficient to permit Hanover to review the claim.

On March 7, 2016 Hall Arts responded with additional information, including an October schedule update that was conducted in November 2014. Hall Arts also proposed a meeting between the parties and consultants to finalize the claim. Hanover stated that it would review the materials and advise on the next course of action. On March 30, 2016 Hall Arts sent a follow up email, again suggesting a meeting between the parties and their consultants. Hanover responded that it would deliver a report soon and would discuss a meeting later, if warranted.

After further exchange of information/documentation, Hall Arts and Hanover met on August 16, 2016 to discuss the delay claim. While the parties came to no conclusions at the meeting, Hall Arts understood Hanover to state that it would provide Hall Arts with a coverage determination by the end of August. On August 30, 2016, following review of Hall Arts's documentation, Constantine "Gus" Cois, acting on behalf of Hanover, sent Hall Arts another request for documentation. As of the time of this lawsuit, Hanover has not yet made a determination on Hall Arts's delay coverage claim.

Hall Arts brought suit in state court to enforce the delay in completion coverage part and Hanover's duty under Texas law to investigate and respond to its policyholder's request for

coverage. In its state-court petition, Hall Arts alleged claims for breach of contract, breach of the duty of good faith and fair dealing, and violations of Chapter 541 and Chapter 542 of the Texas Insurance Code. Hanover subsequently removed the case to federal court.

The district court, addressing cross-motions for summary judgment, concluded the following with respect to Hanover's alleged breach of the Policy: (1) Hanover did not breach the Policy by requesting certain documentation as a pre-condition of coverage; (2) the delay coverage provision in the Policy did not apply, as a matter of law, to preclude Hall Arts's breach of contract claim; (3) there was a material fact dispute regarding whether the delay to the commencement of occupancy of the premises by KPMG resulted from the Weather Event thereby precluding dismissal of Hall Arts's breach of contract claim; and (4) there was conflicting evidence as to the extent of the delay which was dispositive to the question of Hanover's liability under the delay coverage provision.

The district court further concluded the following with respect to Hall Arts's extra-contractual claims against Hanover: (1) a bonafide dispute existed regarding Hanover's liability for Hall Arts's lost rental income and soft costs and, therefore, Hanover was entitled to summary judgment on Hall Arts's prompt payment of a loss claim; (2) because there was a bonafide dispute regarding insurance coverage, Hall Arts's claims for breach of the duty of good faith and fair dealing and violations of the Texas Insurance Code were precluded, as a matter of law; (3) there was no evidence that Hall Arts's claims under the §541.060(a)(4)(A) for failure to timely affirm or deny coverage shared the same predicate for recovery as Hall Arts's good faith and fair dealing claim and, therefore, Hall Arts's claims survived summary judgment; (4) there was a material issue of fact as to whether Hall Arts responded to all of Hanover's requests of information and, therefore, whether Hanover refused or delayed payment in violation of the Texas Insurance Code.

SEPTEMBER 2018 MCS-90 UPDATE (FEDERAL COURTS)

CONNECTICUT DISTRICT COURT CONCLUDES THE STATE OF CONNECTICUT HAS EXPANDED THE LIABILITY UNDER THE MCS-90 TO CERTAIN TYPES OF *INTRASTATE* TRAVEL

In *Veilleux v. Progressive Northwestern Insurance Company*, No. 3:16cv2116, 2018 WL 4374073, the plaintiff, Eric Veilleux, brought suit against the defendants, Progressive Insurance Company ("Progressive") and Nautilus Insurance Company ("Nautilus"), to collect on a stipulated judgment entered against Central Auto & Transport, LLC ("Central Auto") and Central Rigging & Transfer, LLC ("Central Rigging").

The facts of the case were largely undisputed. Progressive issued a "Commercial Auto Policy ... to Central Auto & Transport, LLC ("Central Auto"), with effective dates of June 2, 2006, to June 2, 2007" ("Policy 1"). Progressive issued a "commercial Auto Policy ... to Central Rigging & Transfer, LLC ("Central Rigging"), with effective dates of March 10, 2006 to March 10, 2007" ("Policy 2"). At the time of Veilleux's accident, Central Rigging, Central Auto, and "Central Construction Services, LLC, each conducted business under the name of 'Central Group' as well as under each of their separate corporate names." All three entities "acted in concert, in a joint venture and as a commingled, single entity in regards to the acts and omissions described in the plaintiff's operative complaint."

Veilleux "alleges that on September 8, 2006, he was employed by GDS Contracting, LLC ('GDS') in Berlin, Connecticut, and was working on GDS's premises." On that day, according to Veilleux's complaint, "Joseph Cunningham was acting as the agent, servant and/or employee of Central Rigging." Cunningham allegedly "drove onto GDS'[s] premises in a tractor labeled 'Central Rigging,' pulling a trailer labeled 'Central Auto and Transport' ...." Cunningham, who had arrived on the premises "to deliver an aerial lift," either asked or directed that Veilleux "assist him in unloading the aerial lift from the trailer." This task required Veilleux "to get into the bucket of the aerial lift"; "when he was in the bucket, Joseph Cunningham raised the trailer portion of the flatbed trailer and, at that time, the chain securing the aerial lift broke and the lift rolled off the trailer and crashed into a building adjacent to the GDS premises." According to Veilleux's complaint, this resulted in him being "pinned between the bucket of the lift and the wall and sustain[ing] severe injuries."

Progressive ultimately denied coverage under Policy 2, but did not provide a coverage position with respect to Policy 1. Plaintiff filed suit against Progressive for contractual and extra-contractual damages. One of the issues before the court was the applicability of the MCS-90 on Policy 1. The parties' disputed whether the MCS-90 applied to the incident at issue, which both parties agreed took place as a result of purely intrastate travel.

The district court recognized that the majority of courts, including the Second Circuit and the Connecticut Supreme Court, apply a "trip-specific approach" to determine whether the "requisite interstate nexus" exists in a case—i.e., they look to see if the specific trip that resulted

in the loss at issue was interstate in nature. However, although the parties agreed that the trip resulting in the alleged injuries was intrastate, the court concluded this did not resolve the matter. Instead, there remained a question of whether Connecticut law expanded coverage under the MCS-90 endorsement. Recognizing that states remain free to create their own regulations governing insurance requirements for motor carrier transportation within their state borders, the court pointed out that Connecticut regulations apply the federal regulations, including the MCS-90 endorsement, to "[a]ny motor vehicle in *intrastate* commerce that has a gross vehicle weight rating, or gross combination rating, or gross vehicle or gross combination weight, of eighteen thousand one (18,001) or more pounds...." Thus, the district court held that, although the federal regulations permitting use of the MCS-90 apply only to interstate travel, the State of Connecticut has expanded liability under the MCS-90 to certain types of intrastate travel.

Having concluded the MCS-90 applied to some intrastate travel under Connecticut law, the court further concluded there was a fact issue as to whether the accident at issue before it fell within the expanded coverage afforded by the MCS-90 under Connecticut law.

APPLYING THE "TRIP-SPECFIC" APPROACH, THE SOUTHERN DISTRICT OF WEST VIRGINIA CONCLUDES MCS-90 DOES NOT APPLY TO AN ACCIDENT INVOLVING PURELY INTRASTATE TRAVEL

In *Lyles v. FTL Ltd., Inc.*, No. 2:17-CV-01974, 2018 WL 4343515 (S.D. W. Vir., September 11, 2018) (memo op.), the court addressed cross-motions for summary judgment filed by Plaintiff Patricia A. Lyles ("Plaintiff") and by Defendant National Casualty Company ("NCC"). The lawsuit was a declaratory judgment action arising from a motor vehicle collision between Plaintiff and the driver of a dump truck owned by K&K Trucking, Inc. ("K&K") and leased to Defendant FTL, Inc. ("FTL"). Each trucking company held an insurance policy with NCC as the insurer, and each policy included the MCS-90 endorsement in compliance with federal law. Plaintiff sued K&K and FTL for compensation under these policies and ultimately agreed to a settlement with K&K. Plaintiff asked the district court to hold that the MCS-90 endorsement to FTL's policy provided coverage for the accident.

The facts of the case were largely undisputed. On November 19, 2014, Plaintiff was injured in a motor vehicle accident involving a dump truck. At the time of the accident, the dump truck was hauling materials from a building demolition site in Chapmanville, West Virginia, to a landfill in Charleston, West Virginia. The dump truck's route was entirely intrastate.

The dump truck involved in the accident was operated by K&K, pursuant to a trucking agreement between K&K and FTL. The agreement, which was executed on April 8, 2014, specified that K&K would act as FTL's independent contractor to "provide trucking services for the hauling of aggregate materials." It also required K&K to obtain automobile liability insurance coverage in the amount of $1,000,000 and name FTL as an additional insured on the policy.

To fulfill these obligations, K&K obtained an automobile insurance policy through NCC. The policy named FTL as an additional insured. The dump truck involved in the accident with

Plaintiff was listed as a covered auto on the K&K policy. FTL also carried its own automobile insurance policy through NCC, but the dump truck involved in the accident was not listed as a covered auto on FTL's policy.

In May 2015, Plaintiff filed a personal injury action against FTL, K&K, and the driver of the dump truck, among other defendants. NCC agreed to defend FTL in the action as an additional insured on the K&K policy. However, NCC denied coverage under the FTL policy because the dump truck involved in the accident was not listed as a covered auto on that policy.

Plaintiff and NCC ultimately settled Plaintiff's claims against FTL, K&K, and the driver of the dump truck for $945,679.55. The settlement agreement provides that the parties are "release[d] and discharge[d]" from further liability in the action, except that FTL is to remain a defendant "*in name only*, for the sole purpose of Plaintiff attempting to seek additional insurance coverage for the subject accident." Plaintiff then sought that additional coverage. She argued that she was entitled to compensation under the FTL policy by way of the MCS-90 endorsement to that policy. The district court disagreed.

The district court first noted that the purpose of the MCS-90 was to satisfy the financial responsibility requirements of motor carriers traveling interstate. The court then analyzed the various approaches taken by courts when determining whether an accident occurred during interstate or intrastate travel, and concluded that the majority approach was a "trip-specific" analysis. Adopting this approach, the court held that the MCS-90 did not apply because the dump truck was transporting materials from a building demolition site in Chapmanville, West Virginia, to a landfill in Charleston, West Virginia at the time of the accident. In other words, based on a "trip-specific" analysis, the accident involved purely intrastate travel which was not within the scope of the MCS-90.

40000/588983