

COURT UPHOLDS NO-FAULT ACT'S \$1 MILLION PROPERTY DAMAGE CAP

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June 12, 2008

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The Michigan Supreme Court issued an order on May 16 holding that the Motor Carrier Safety Act (MCSA) does not create an exemption from the \$1 million property damage cap established by the Michigan No-Fault Act, reversing a published opinion from the Michigan Court of Appeals.

In *Department of Transportation v. Initial Transport, Inc.*, --- NW2d ----, 2008 WL 2066578, Mich. (May 16, 2008), the defendant, Initial Transport Inc., was the owner of a gasoline tanker, which detached from its semi-tractor, fell from a freeway overpass to the road below and exploded. The explosion resulted in severe damage to the overpass and adjoining structures. The Michigan Department of Transportation (MDOT), the plaintiff in the case, claimed that the cost to repair the damage totalled \$3.5 million.

The defendant maintained a \$1 million commercial general liability insurance policy, as well as an excess liability policy for an additional \$4 million. The defendant-insurer declined to pay more than the \$1 million limit for property protection benefits under Michigan's no-fault law, MCL 500.3121(5). MDOT brought a suit to recover the damages exceeding \$1 million, arguing that the MCSA, MCL 480.11 *et seq.*, created an exception to the no-fault cap.

The trial court granted summary disposition to the defendants and MDOT appealed. The appellate court, in a two-to-one decision, *Department of Transportation v Initial Transport, Inc.*, 276 Mich. App. 318 (2007), reversed the trial court, holding that the MCSA did create an exception to the No-Fault Act's \$1 million cap on property damage benefits. The defendants appealed to the Michigan Supreme Court. In lieu of granting leave to appeal, the Supreme Court summarily reversed for the reasons stated in Judge Whitbeck's dissenting lower opinion court opinion.

The dissent maintained that the MCSA was merely a regulatory act that set forth the minimum amount of financial responsibility for certain carriers, and imposed a civil penalty should a carrier fail to maintain those requirements. Concluding that the MCSA did not create a private action for a third party to recover against an insured or insurer, Judge Whitbeck would have held that the No-Fault Act was the exclusive remedy available to MDOT for the property damage.

Neither the MCSA nor the No-Fault Act expressly state that the MCSA's financial responsibility requirement is in addition to the \$1 million cap imposed by the No-Fault Act. Furthermore, the MCSA's minimum level of financial responsibility applies to both bodily injury and property damage, while the No-Fault Act's cap concerns property damage only. Therefore, the dissent

argued, MDOT's recovery was still limited by the No-Fault Act's cap on property damage. Judge Whitbeck concluded that it was the Legislature, not the court, which had the power to create an exception to the property damage cap. Without express direction from the legislature that such an exception was intended, the dissent maintained that the MCSA must be read within the framework of the No-Fault Act.

The Supreme Court, in adopting Judge Whitbeck's dissent, has explicitly ruled that the MCSA does not create an exception to the No-Fault Act's \$1 million cap on property damages. The court also overturned the holding in *Department of Transportation v North Central Co-operative LLC*, 277 Mich. App. 633 (2008), which had relied on the decision of the appellate court in *Initial Transport*.

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