



Jordan Jones

Los Angeles Truck Accident Lawyers



Diana Diskin

Los Angeles Truck Accident Lawyers

The trucking lawyer's hidden weapon

HOW THE FEDERAL MCS-90 AND CALIFORNIA MC-65/ C-67 FILINGS CAN SAVE YOUR CASE

You've taken on a wrongful-death or catastrophic-injury case arising from a truck crash. Your client's damages are devastating. Then the bad news arrives: The motor carrier's insurer denies coverage. Maybe the driver or the truck was not listed on the policy. Whatever the reason, the adjuster's letter says the policy doesn't apply, and you're wondering where you are going to find compensation for your client.

Before you call your client and tell them there's no money, stop. There's a very good chance you're missing two of the most powerful tools in trucking litigation: the federal MCS-90 endorsement and, when an intrastate California carrier is involved, the California DMV 65 MCP certificate of insurance and the DMV 67 MCP policy endorsement (also referred to as MC-65 and MC-67). These instruments exist for one reason: to make sure that members of the public injured by negligent motor carriers actually get paid, even when the carrier's policy would otherwise leave them with nothing.

The Federal MCS-90 endorsement

What it is

The MCS-90 is a federally mandated endorsement attached to the commercial auto liability policy of any motor carrier engaged in for-hire interstate commerce and any private or for-hire carrier transporting hazardous materials. Its sources are Sections 29 and 30 of the Motor Carrier Act of 1980, codified at 49 U.S.C. § 31139 and implemented by 49 C.F.R. Part 387. Required minimum levels of financial responsibility range from \$750,000 for general freight to \$5,000,000 for certain hazardous materials.

The MCS-90 is not insurance in the conventional sense. It is a federal surety in endorsement clothing – meaning, the MCS-90 endorsement is a surety that is required to be attached to an interstate motor carrier's liability policy. It guarantees the public that, if a motor carrier negligently injures someone during the

operation of a covered commercial motor vehicle, there will be money to satisfy the judgment, even if the underlying policy precludes coverage. The MCS-90 endorsement provides “a safety net to members of the public injured as a result of negligent operation of tractor-trailers used in interstate commerce.” (*Pierre v. Providence Washington Ins. Co.* (NY 2002) 99 N.Y.2d 222, 227, 784 N.E. 2d 52, 54; see also *Garnicas Transport, LLC v. Commercial Alliance Ins. Co.* (E.D.Cal. 2023) 2023 U.S. Dist. LEXIS 14331 [MCS-90 mandates that “no condition, provision, stipulation, or limitation in the policy...or violation thereof shall relieve the company from liability”].)

The FMCSA requires that the insurer certify the effective start and end dates and amount of insurance – this is done by filing a Form BMC-91 or BMC 91X. The BMC-91 evidences proof of financial security from a single insurer, while the BMC-91X shows proof of security from multiple insurers. The MCS-90 is filed alongside the BMC-91/91X form.

The passenger-carrier counterpart is the MCS-90B.

The operative language – read it

Once you read the actual text of the MCS-90, you'll understand why insurers fight so hard to keep plaintiffs' lawyers from learning about it. The endorsement provides:

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, 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 and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere.

And the kicker:

It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured.

Translation: Standard exclusions and conditions in the policy fall away. The Ninth Circuit has put it bluntly – the MCS-90 “negates any inconsistent limiting provisions in the insurance policy to which it is attached.” (*John Deere Ins. Co. v. Nueva* (9th Cir. 2000) 229 F.3d 853, 859.)

When does it apply?

These conditions must be satisfied to trigger MCS-90 liability:

1. **Interstate commerce.** The carrier must be engaged in interstate commerce subject to 49 U.S.C. § 31139. Some courts apply this trip-by-trip; others look at the carrier's overall operations. The Seventh Circuit has emphasized that hauling freight at the moment of the crash is not required – even an empty truck on the way to or from a pickup (i.e., “deadheading”) can be “in transportation” within the meaning of the statute.
2. **Negligence causing injury to a member of the public.** The endorsement does not cover the insured's own employees acting in the course of employment, nor cargo. Members of the motoring public, however, are squarely protected.

3. **No other coverage available.**

The MCS-90 is a backstop – it is triggered only when the underlying policy would otherwise leave the public without recourse. If the policy already covers the loss, the MCS-90 does not add anything. (See *Century-National Ins. Co. v. Global Hawk Co.* (2012) 203 Cal.App.4th 1458.)

4. There must be a final judgment entered against the named insured motor carrier.

Why it matters: The coverage defenses it defeats

The whole point of the MCS-90 is to override exactly the kinds of policy defenses you'll see in a denial letter. Common scenarios in which the endorsement has been held to require payment include:

- **Unscheduled vehicles** – the truck or trailer was not specifically listed on the declarations page.
- **Owner-operator and lease arrangements** – the unit was leased to or borrowed from another party.
- **Permissive-use disputes** – the driver was not listed on the policy or was using the vehicle outside the strict scope of the policy.
- **Non-cooperation** – the truck driver or motor carrier failed to cooperate in their defense.
- **Premium non-payment** – the policy was “void from inception” for non-payment, but the FMCSA was never properly notified of cancellation.
- **Failure to give timely notice of claim** – the motor carrier or driver failed to timely notify their insurer of the claim.
- **Insolvency or bankruptcy of the carrier.**

Federal case law you should know

Ninth Circuit and California District Court

John Deere Ins. Co. v. Nueva (9th Cir. 2000) 229 F.3d 853. The seminal Ninth Circuit decision. The court held the MCS-90 “negates any inconsistent limiting provisions in the insurance policy to which it is attached” and required John Deere to pay a judgment against a permissive

user of a non-scheduled trailer. Read it broadly: The endorsement followed the equipment, regardless of the policy’s omnibus and covered-auto language.

Harco Nat’l Ins. Co. v. Bobac Trucking, Inc. (9th Cir. 1997) 107 F.3d 733. The MCS-90 does not impose a duty to defend on the insurer – it is an indemnity obligation only (which explains why insurers sometimes refuse to participate in the defense when only MCS-90 exposure is on the table). The insurer must nonetheless pay any final judgment up to the federal minimum. The case also recognizes the insurer’s right of reimbursement against the motor carrier for amounts paid solely under the endorsement (a problem for the trucking company, not for the injured plaintiff).

Perry v. Harco Nat’l Ins. Co. (9th Cir. 1997) 129 F.3d 1072. The MCS-90 protects the public, not statutory employees of the motor carrier. The injured plaintiff’s status – third party versus employee – matters.

Del Real v. U.S. Fire Ins. Crum & Forster (E.D. Cal. 1998) 64 F.Supp.2d 958, *aff’d*, 188 F.3d 51 (9th Cir. 1999). Trailer leased to motor carrier with condition that motor carrier was full insurer of equipment, would obtain liability insurance of at least \$1,000,000, and lessor would be indemnified by motor carrier with hold-harmless clause for all loss resulting from use of trailer. Motor carrier’s insurer tendered its policy. Plaintiff sued lessor’s parent company, arguing that motor carrier and driver were permissive users and therefore “insureds” under parent company’s liability policy and MCS-90 endorsement for the trailer. Court held that parent company was not a “motor carrier” so MCS-90 was not applicable; further, the extrinsic evidence regarding insurance contract showed no intent to cover trailer lessees and that MCS-90 was obtained for limited purpose unrelated to lessor’s or lessee’s activities.

Castro v. Budget Rent-A-Car System, Inc. (2007) 154 Cal.App.4th 1162. California resident injured in Alabama crash with drunk truck driver. Truck was owned by Budget, which leased truck to produce shipper; drunk driver was shipper’s employee. Court held that, because Budget was not a “motor carrier” under defini-

tion of FMCSR; therefore, MCS-90 did not apply.

Other helpful national authority

Adams v. Royal Indem. Co. (10th Cir. 1996) 99 F.3d 964. Endorsement extended to a permissive user of a borrowed trailer not listed on either insured’s policy – a useful authority where the unit involved in your crash isn’t on the schedule.

Empire Fire & Marine Ins. Co. v. Guaranty Nat’l Ins. Co. (10th Cir. 1989) 868 F.2d 357. Foundational “negates inconsistent limiting provisions” language repeatedly quoted by other circuits, including the Ninth.

Lynch v. Yob, 768 N.E.2d 1158 (Ohio 2002). Allowed recovery from the insurer even though the driver was not covered under the policy – helpful when the denial is based on a non-listed driver.

Carolina Cas. Ins. Co. v. Yeates (10th Cir. 2009) 584 F.3d 868. MCS-90 limits do not stack on top of underlying policy limits – in other words, the endorsement is a floor, not an addition. Also, MCS-90 limits are per accident, not per person.

Three issues that limit recovery (so manage your and your client’s expectations)

• MCS-90 limits do not stack.

The endorsement’s dollar amount is the federally required floor. If the underlying policy limits are higher than the federal minimum, the policy controls. It does not add to the policy.

• **The MCS-90 generally does not cover punitive damages.** By its terms, the endorsement covers “negligence in the operation, maintenance or use” – not intentional or grossly egregious conduct giving rise to punitive awards. Plan to pursue punitive exposure separately, recognizing this limitation in your allocation analysis.

• **The MCS-90 does not cover the insured’s own employees or cargo.** Co-employee passenger plaintiffs and cargo claimants generally cannot reach the endorsement. The protection is for members of the motoring public.

The California DMV-65 MCP and DMV-67 MCP (aka, MC-65 and MC-67)

California regulates intrastate motor carriers of property under the Motor Carriers of Property Permit Act (“MCP-PA”), Vehicle Code section 34600 et seq. The MCPPA requires motor carriers operating commercial vehicles in intrastate commerce to maintain liability insurance ranging from \$300,000 (lighter vehicles) up to \$5,000,000 (Hazmat), with \$750,000 being the most common minimum. (See Veh. Code. §§ 34630, 34631.5.)

The MCPPA insurance scheme has two halves. Together they are the California analog of the federal BMC-91/MCS-90 pair:

- **DMV-65 MCP (MC-65) – Certificate of Insurance for Motor Carriers of Property.** Filed by the insurer with the California DMV to certify that the carrier has a policy meeting the MCPPA’s financial responsibility requirements. This is the public filing and the California equivalent of the federal BMC-91/BMC 91-X. (13 C.C.R. § 220.06(a).)
- **DMV-67 MCP (MC-67) – Insurance Policy Endorsement: Motor Carriers of Property.** Attached to the actual policy and amends the policy to comply with the MCPPA. This is the substantive endorsement that obligates the insurer to pay the public, even when the policy would otherwise exclude coverage. (13 C.C.R. § 220.06(b).) It provides: “This Endorsement shall be attached to and made a part of all policies insuring motor carriers of property required to obtain a permit pursuant to the Motor Carriers of Property Permit Act, commencing with California Vehicle Code section 34600. The purpose of this Endorsement is to assure compliance with the Act and related rules and regulations.”

There is also a DMV-66 MCP (MC-66) – the Notice of Cancellation – which the insurer must file with the DMV to terminate the MC-65 filing. As discussed below, when the insurer fails to file the MC-66 properly, the certificate (and thus arguably the coverage) can remain in place.

California case law on the MC-65/ MC-67

The foundational cases (PUC predecessors)

Before the MCPPA, California intrastate carriers were regulated by the Public Utilities Commission, which used a parallel certificate-of-insurance/endorsement scheme (TL-675 and General Order 100-Series). The following cases under that predecessor regime built the doctrinal foundation for what the MC-65/67 do today, and continue to be cited:

Taylor v. Oakland Scavenger Co. (1941) 17 Cal.2d 594. Not an insurance case, but indispensable. The California Supreme Court held that a regulated motor carrier cannot delegate its public-safety obligations to an “independent contractor.” This non-delegable-duty doctrine combines powerfully with the MC-65/67: even when the carrier hides behind “independent” drivers, regulatory liability – and the financial-responsibility coverage that backs it up – stays with the carrier.

Samson v. Transamerica Ins. Co. (1981) 30 Cal.3d 220. The Supreme Court held that the PUC endorsement was a public-protection instrument that overrode the private terms of the underlying policy. The endorsement obligated the insurer to pay any final judgment against the insured “resulting from the operation, maintenance, or use” of any motor vehicle for which a permit was required – “regardless of whether such motor vehicles are specifically described in the policy or not.” Substitute the MCPPA for the PUC and you have the MC-67 today.

Transamerica Ins. Co. v. Tab Transportation, Inc. (1995) 12 Cal.4th 389. Holding that “[t]he certificate of insurance that an insurance company files with the PUC serves as proof of a highway carrier’s adequate protection against liability,” and that the certificate has independent legal significance – it is more than mere paperwork. *Tab Transportation* has been cited and partially distinguished in modern MCPPA cases.

Condor Ins. Co. v. Williamsburg Nat’l Ins. Co. (1996) 49 Cal. App. 4th 554. Discusses the dovetailing of the certificate filing with cancellation requirements.

Modern MCPPA cases

Allied Premier Insurance v. United Financial Casualty Co. (2023) 15 Cal. 5th 20. An uncanceled certificate of insurance on file with the DMV does not cause the underlying insurance policy to remain in effect indefinitely past its stated expiration date. The Court distinguished *Transamerica v. Tab Transportation* on the ground that the statutory language carried over into the MCPPA is materially different.

Critically, however, the Court expressly left open what obligations an uncanceled certificate of insurance does impose; the Court stated that “[t]he character, nature, and extent of the obligations owed by a company that does not properly cancel a certificate of insurance are matters that can be clarified by further litigation and/or legislative action.” This case forecloses the equitable-contribution theory of indefinite policy continuation, but not the argument that an insurer who failed to file the MC-66 owes a separate, surety-style obligation to the injured public up to the MCPPA minimum.

Infinity Select Ins. Co. v. Superior Court (LeDuc) (2023) 94 Cal. App. 5th 190. Holding an insurer that did not file an MC-65 certifying MCPPA compliance was not required as a matter of law to provide \$750,000 in liability coverage – even though its insured was a motor carrier of property. The duty to obtain MCPA-compliant insurance falls on the carrier, not the insurer. The trial court had reformed Infinity’s \$50,000 policy up to \$750,000; the Court of Appeal reversed. The lesson is sharp: Confirm whether the MC-65 was actually filed before assuming the policy is reformed up to MCPPA limits. The flip side, however, is that when the MC-65 is filed and the MC-67 is attached, the carrier and its insurer are firmly bound to those minimums.

Practical effects – What these forms do for your case

When an MC-65 has been properly filed and an MC-67 has been attached to the policy:

- The policy is amended by operation of state law to provide at least the MCPPA minimum coverage – typically \$750,000.

- Standard policy exclusions for unscheduled vehicles and unlisted permissive users are read out of the policy as to the public, just as they are under the federal MCS-90.
- The insurer's right to challenge coverage based on misrepresentations in the application or premium non-payment is sharply curtailed as to third-party claimants.
- The insurer must give the DMV proper written notice on the MC-66 form before cancellation is effective. A botched cancellation can keep the policy in force as to a member of the public injured during the gap.

How to look up the carrier's active and historical insurance

You cannot deploy the MCS-90 or DMV-65/67 MCP without knowing what coverage exists, who issued it, and whether it was properly canceled. The FMCSA and California DMV provide free public databases that give you most of what you need.

Step 1: SAFER – The company snapshot

The Safety and Fitness Electronic Records (SAFER) website is the FMCSA's public-facing carrier lookup. The Company Snapshot is your first stop: It gives you the USDOT number, MC/MX number, legal and DBA names, fleet size, mileage, operating status, types of cargo, safety rating, the 24-month inspection summary, and the 24-month crash history. (See <https://safer.fmcsa.dot.gov/CompanySnapshot.aspx>)

Step 2: Licensing & Insurance (L&I)

The FMCSA's L&I public website is what trucking lawyers actually live on. It tells you what insurance forms have been filed (BMC-91, BMC-91X, BMC-34, BMC-84, BMC-85, etc.), the insurance carrier's name, the policy/surety numbers, the effective date, the coverage amounts, and the rejection or cancellation history going back to 1995. (See http://li-public.fmcsa.dot.gov/LIVIEW/pkg_menu.prc_menu)

Once you load a carrier, the navigation links you must click:

- **Active/pending insurance** – shows current insurance: form filed (e.g., BMC-91X), insurer name, policy number, dollar amount, effective date, and any pending cancellation date.
- **Insurance history** – every insurance filing on record since 1995, including cancellation method (cancelled, replaced, name change, transferred), the type of policy, the policy number, and the effective and cancellation dates. This is gold when the carrier was uninsured at the time of the crash but had coverage shortly before – you may have a claim against the prior insurer if the cancellation was defective.
- **Authority history** – shows the carrier's authority status over time, including involuntary revocations.
- **Rejected insurance** – 12 months of insurance filings the FMCSA has rejected. Useful when the carrier's insurer claims it filed timely.
- **Revocation** – lists revocation activity by authority type, with dates and reasons.

The California DMV's "Active Motor Carriers" database offers significantly less information than the FMCSA's SAFER website, but is still useful. (See <https://www.dmv.ca.gov/portal/vehicle-industry-services/motor-carrier-services-mcs/motor-carrier-permits/active-motor-carriers/>.)

To obtain precise cancellation dates or prior-insurer identity, you can make a Public Records Act request to the DMV's Motor Carrier Permit Operations Unit.

Step 3: The 33-day/35-day cancellation trap

The FMCSA reduced the timeframe to revoke a carrier's authority for failure to maintain insurance to 33 days (giving carriers only three days without active insurance reflected in the L&I database). The MCS-90 itself requires 35 days' written notice between insurer and insured, and 30 days' written notice to FMCSA, before cancellation is effective. California requires 30 days' written notice to the DMV via the MC-66 cancellation

form before an MC-65 certificate can be cancelled. (See Veh. Code, § 34630, subd. (b); 13 C.C.R. § 220.06(c).)

Why this matters: When an insurer botches the cancellation paperwork – and they do, especially during transitions or after non-payment – the policy may still be in force as to the public on the date of your client's crash, even though the insurer thinks it cancelled. Always pull the L&I Insurance History and the DMV cancellation records and compare the dates against the date of loss.

Step 4: When the carrier is self-insured (No MCS-90)

Large fleets sometimes self-insure under 49 C.F.R. § 387.309. This requires FMCSA authorization and a Form BMC-40. California has a parallel scheme: the Certificate of Self-Insurance, issued on Form MC-131 M after application via Form MC-130 M, available only to carriers with 25 or more registered vehicles, no unsatisfied judgments, and a coverage requirement of no more than \$750,000. The financial-responsibility obligation to your injured client is identical – the source of payment is just different. Always check L&I and the DMV records to see whether the carrier is self-insured before assuming there is no money.

Evidence preservation – Send your letter today, not tomorrow

In trucking cases, locking down your evidence at the start of a case is crucial. Run a SAFER and L&I search as soon as you get the case. Your evidence preservation letter should be sent to *both* the defendant (e.g., motor carrier) *and* the defendant's insurance company. Make sure to include a request for the MCS-90 endorsement, the BMC-91 or 91X, and the DMV-65/67 MCP forms, and the underlying policy and declarations – send the request to both the motor carrier and the insurer. Where cancellation is asserted by the insurer, compare the cancellation paperwork against the date of loss and look for missing 30-day notices, missing MC-66 filings, and timing gaps.

Your checklist

When you are evaluating whether an MCS-90 or MC-67 may be applicable, here is your basic checklist. So that your judgment will be properly proved up, make sure to allege the following in your complaint:

1. Defendant was a for-hire motor carrier.
2. Defendant motor carrier was carrying property.
3. Motor carrier was operating in interstate (or, for MC-67 cases, intrastate) commerce.
4. Defendant motor carrier operating, using, and/or maintaining a commercial motor vehicle.
5. Plaintiff was a member of the public.
6. Plaintiff was not an employee of the defendant motor carrier.

Judgment day – Get the money

If coverage is denied, you need a final judgment against the motor carrier. The MCS-90 obligates the insurer to pay “any final judgment” – even a default judgment qualifies. Insurers often offer a “courtesy defense” under reservation of rights when MCS-90 exposure looms.

Once you have the final judgment, make a written demand on the insurer under the MCS-90 (and the MC-67, if applicable). Cite *John Deere v. Nueva* and

the court’s “negates any inconsistent limiting provisions in the insurance policy” language. Most insurers fold once they understand you actually know how the endorsement works.

And remember, collecting on an MCS-90 or MC-67 does not preclude you from collecting on the assets of the motor carrier where your final judgment exceeds the amount of the MCS-90 or MC-67.

Final thoughts

Insurance denials in trucking cases are not the end of the road. They are just the beginning of a more complex phase of the case. The MCS-90 and the California DMV-65/67 MCP are surety-style obligations that exist precisely to override the policy defenses adjusters reach for first. Federal and California courts have construed these instruments in favor of the public for decades. The forms are public, the case law is settled in important respects, and the FMCSA and California DMV give you free tools to do at least the preliminary homework.

If you take only one thing from this article, take this: In any case involving a commercial motor vehicle, treat the insurer’s denial letter as the first move in a longer game. Pull the L&I and DMV records and demand the MCS-90 and the DMV-65/67 MCP. And if you do not

litigate trucking cases regularly, consider associating with an attorney who does. The financial responsibility framework is intricate, the case law is technical, and the difference between a \$0 recovery and a \$750,000 recovery (or more, depending on what was being transported) often turns on details that do not appear anywhere on the face of the policy.



Jordan Jones is the owner and a trial attorney at Los Angeles Truck Accident Lawyers, where he focuses on catastrophic truck-wreck cases. He is licensed in California and Michigan and is board certified in Truck Accident Law by the National Board of Trial Advocacy (NBTA). Jordan serves as an officer in the AAJ Truck Litigation Group (TLG) and sits on the Board of Regents for the Academy of Truck Accident Attorneys (ATAA). He can be reached at jjones@trucklawyers.com.

Diana Diskin, Esq., is a trial attorney at Los Angeles Truck Accident Lawyers, where she focuses her practice on catastrophic and complex cases involving trucks, buses, and other commercial vehicles. She is a member of the American Association for Justice, the Academy of Truck Accident Attorneys, and the Belli Society, and is the current co-chair of the Education Committee for the AAJ Trucking Litigation Group. She can be reached at ddiskin@trucklawyers.com.