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SUPREME COURT SAYS \$1,000,000 NO FAULT PROPERTY CLAIM CAP MEANS \$1,000,000

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In previous editions of *Law Fax*², this firm reported two decisions by the Michigan Court of Appeals holding that limits of property damage liability for motor carriers transporting hazardous materials exceeded the \$1,000,000 limits provided by MCL 500.3121(5) of the Michigan No Fault Act. The Michigan Supreme Court has reversed those two published opinions by the Court of Appeals holding that the Michigan Motor Carrier Safety Act (“MCSA”) did not create exceptions to portions of the Michigan No Fault Act which relate to property damage claims.

When enacted in 1996, the MCSA adopted portions of the Federal Motor Carrier Safety Act which require transporters of hazardous materials to maintain minimum limits of financial responsibility of \$1,000,000 when carrying some hazardous substances, and as high as \$5,000,000 for others. Both decisions from the Court of Appeals found that these federal requirements were in conflict with \$1,000,000 limitation on property protection (“PPI”) claims provided by §3121(5) of the No Fault Act. In *Dept of Transportation v Initial Transport*, 276 Mich App 318 (2007), the Court held that the Michigan Legislature had crafted an exception the \$1,000,000 PPI cap for vehicles hauling hazardous materials, through its enactment of the MCSA.

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² Volume XIX, No 24, July 31, 2007; Volume XX, No. 5, February 5, 2008

Six months later, the Court examined the abolition of tort liability by §3135 of the No Fault Act in *Dept of Transportation v North Central Cooperative*, 277 Mich App 633 (2008). Relying upon the earlier opinion in *Initial Transport*, the Court held that the adoption of federal regulations by the MCSA had created an exception to the abolition of tort liability and created an “implied” cause of action upon which claimants could recover damages in excess of the \$1,000,000 PPI cap.

On May 16, 2008, the Michigan Supreme Court issued an Order reversing the decisions in both *Initial Transport* and the *North Central Cooperative*, holding that the MCSA “did not create an exception to the \$1,000,000 cap on property damage established by the Michigan No Fault Act in MCL 500.3121(5)”. In making this ruling, the Court relied upon a dissenting opinion written by Judge Whitbeck of the Court of Appeals in *Initial Transport*. Judge Whitbeck had disagreed that the MCSA provided for the recovery of property damage claims above the \$1,000,000 limit set by the No Fault Act. Instead, he had stated his belief that the MCSA was merely a regulatory act which (1) set forth minimum amounts of financial responsibility for certain motor carriers, and (2) imposed a civil penalty, in the form of a fine, for the failure to comply with those minimum requirements. Because the MCSA did not create any private cause of action, Judge Whitbeck found that the Legislature had exclusively reserved the rights of third-parties to recover for property damage to the No Fault Act. The Supreme Court agreed.

As previously reported, attorneys David Campos³ and Daniel Saylor⁴ had represented co-defendants in both the *Initial Transport* and the *North Central Cooperative* cases, and had obtained early dismissals on their behalf. Attorneys Campos and Saylor also prepared and filed an *amicus curiae* brief in support of the application for leave to appeal the *Initial Transport* decision to the Supreme Court on behalf of the Insurance Institute of Michigan. Should you have any questions regarding any aspects of these cases, please contact David Campos, Daniel Saylor or Ladd Culbertson.

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