10/15/2019 "See News Release 043 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

NO. 2019-CC-00884

DEBRA AND BILLY RAY MAYO

VS.

RIDGEBACK, L.L.C., MICHAEL DAVIS, AUTO OWNERS INSURANCE CO., STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. AND XYZ INSURANCE CO.

ON SUPERVISORY WRIT TO THE 21ST JUDICIAL DISTRICT COURT, PARISH OF LIVINGSTON

JOHNSON, C.J., would grant and assigns reasons.

I find the district court erred by granting, in part, Progressive Specialty Insurance Company's Motion for Summary Judgment.

Plaintiff, Debra Mayo, was injured when a truck owned by defendant, Ridgeback, LLC, backed into her vehicle. Ridgeback is an interstate trucking company based out of Alabama, and provided its vehicles for disaster recovery across several states. At the time of the accident, the truck was being used to load and haul storm debris in Livingston Parish pursuant to a contract between Ridgeback and Ceres Environmental Services, Inc. Ridgeback had a commercial auto insurance policy with Progressive. The Progressive policy included a MCS-90 endorsement, which is mandated by the Motor Carrier Act of 1980. Entities that are registered as interstate motor carries with the Federal Motor Carrier Safety Administaration are required to obtain and comply with the minimum levels of financial responsibility as set forth in the federal regulations. 49 C.F.R. § 387.3, § 387.7. Proof of this compliance includes, in part, a MCS-90 endorsement. *See* 49 C.F.R. § 387.7. The language of the endorsement provides, in relevant part:

The insurance policy to which this endorsement is attached provides

> automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).
>
> 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.

Thus, the endorsement obligates an insurer to cover an insured's negligence involving the use and operation of vehicles subject to the financial responsibility requirements of the Motor Carrier Act of 1980, even though the insurance contract would have otherwise excluded coverage. *See Canal Ins. v. Coleman*, 625 F.3d 244, 245 (5th Cir. 2010).

It is undisputed that Ridgeback is an interstate motor carrier subject to the regulations of the Federal Motor Carrier Act of 1980. As such, Ridgeback complied with the requirement to obtain a MCS-90 endorsement as part of its commercial policy with Progressive. *See* 49 U.S.C. §§ 13906(a)(1), 31139(b)(2) and 49 C.F.R. § 387.7. The issue in this case concerns whether an interstate carrier must be engaged in interstate travel *at the time of the accident* to trigger application of the MCS-90 endorsement.

Citing *Jurey v. Kemp*, 11-0142 (La. App. 1 Cir. 9/20/11), 77 So. 3d 83, the district court granted partial summary judgment in this case, finding the MCS-90 endorsement only applies to interstate travel, not an intrastate trip. I acknowledge there is a split of authority on the issue, with the majority of courts appearing to utilize a "trip-specific" approach to determining the applicability of a MCS-90 endorsement. *See Coleman*, 625 F.3d at 251. However, I reject such an approach,

finding it inconsistent with the purpose of the financial responsibility requirements of the Motor Carrier Act. The primary purpose of the MCS-90 is to protect the public and assure that injured members of the public are able to obtain judgment from negligent authorized interstate carriers. *John Deere Ins. Co. v. Nueva*, 229 F.3d 853, 857 (9th Cir. 2000); *see also Canal Ins. Co. v. YMV Transport, Inc.*, 867 F.Supp. 2d 1099, 1107 (W.D. Washington 2011); *Rideau v. Edwards*, 08-168 (La. App. 3 Cir. 5/28/08), 985 So. 2d 311, 315. Considering this public protection purpose, it is illogical to apply a trip-specific approach to determine applicability of the MCS-90 endorsement. The danger to the public is not increased or decreased based on whether the driver is conducting an interstate trip rather than an intrastate trip. *See*, *e.g.*, *YMV Transport*, 867 F.Supp. 2d at 1110. The carrier's coverage under the MCS-90 endorsement should not go in and out based on the nature of a particular trip. To hold otherwise would result in Ms. Mayo not being protected merely because the Ridgeback truck was hauling debris on an intrastate job on the day the accident occurred. Yet, had the truck been hauling the debris to a location less than 60 miles away across the Mississippi border, there would be no question the endorsement would apply. Such an application defies common sense and would not advance the public policy goals of the Motor Carrier Act in protecting the general public.

The MCS-90 requirement is attached to Ridgeback based on its status as an interstate carrier. It would undermine the clear intent of the Motor Carrier Act to find that Ms. Mayo is not protected in this case merely because Ridgeback was hauling debris intrastate on the day of the accident, when the company regularly engages in interstate commerce and is registered as an interstate carrier. According to Ridgeback's Operations Manager, its vehicles frequently cross state borders to operate debris collection, and it was typical for multiple jobs to be underway in

different states at the same time. The truck involved in this accident was garaged in Foley, Alabama, prior to the accident, traveled to Louisiana for debris removal work after the August 2016 flood, and has since traveled to Florida for work. In my mind, the focus should be on the interstate nature of Ridgeback's business rather than the intrastate nature of the particular job on the date of the accident.

Moreover, I find that coverage is provided in this case based strictly on the clear language of the MCS-90 endorsement. The language of the endorsement provides that "**[t]he insurance policy** to which this endorsement is attached…**is amended** to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA)." (Emphasis added). Thus, the MCS-90 is part of the insurance contract between Ridgeback and Progressive. As found by the Virginia Supreme Court in *Heron v. Transportation Cas. Ins. Co.*:

> The language of the MCS–90 endorsement, insofar as it sets forth the coverage therein provided, is clear, plain and unambiguous. In consideration of the premium, the insurer agrees to pay "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."

650 S.E.2d 699, 702 (2007). The *Heron* court reasoned "[t]he contract language contains no terms limiting the coverage to the use or operation of the vehicle in interstate commerce, and we will not read such absent terms into the contract the parties made. It is therefore unnecessary to consider the federal statute or regulations that motivated the parties to adopt the language they chose to employ. The language speaks for itself." *Id*. Based on the facts of this case, Ridgeback, the named insured, was the owner of a vehicle that was subject to the financial

responsibility requirements of the Motor Carrier Act. Ridgeback was subject to a claim and a potential judgment for damages resulting from negligence in the operation of that vehicle. Thus, based on the clear contractual language of the endorsement, Progressive was obligated to pay any such judgment arising from negligence in the operation of that vehicle ***anywhere***.

For the above reasons, I find the MCS-90 endorsement is applicable in this case. I would grant the writ application.