



# Weekly Law Resume

A Newsletter published by Low, Ball & Lynch  
Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: DAVID BLINN

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## Insurance—Trucker's Financial Responsibility Endorsement

*Global Hawk Insurance Company v. Century-National Insurance Company*  
Court of Appeal, First District (February 29, 2012)

This case considered whether an endorsement provided under the Financial Responsibility laws for a truck company required it to reimburse a workers' compensation carrier following an accident where the truck company's policy did not include the vehicle involved in the accident on its schedule of covered vehicles.

Sebastian Padilla, an employee of Bluewater Environmental Services, was injured when his sanitation truck was rear-ended by Sarkis Zardaryan, an employee of E&Z Express Trucking Company. E&Z was insured under a commercial vehicle policy issued by Global Hawk Insurance Company. However, the truck Zardaryan was driving at the time of the accident was not listed on the schedule of covered vehicles under the policy, and Global Hawk denied coverage for the claim. This was despite the fact that pursuant to California's Financial Responsibility laws, Global Hawk had issued an MCS-90 endorsement that obligated Global Hawk to provide coverage under certain conditions for all of its insured's vehicles, regardless of whether they were described in the policy.

Padilla subsequently filed a claim for uninsured motorist benefits under his employer's insurance, issued by Century-National Insurance Company. After verifying Global Hawk denied coverage, Century-National paid the claim up to its policy limits of \$100,000, and Padilla executed an Uninsured Motorist subrogation agreement.

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Global Hawk then filed an action for declaratory relief that it owed no coverage under its policy, naming as defendants Padilla his employer, Century-National, Zardaryan, his employer and the State Compensation Insurance Fund. Century-National filed a cross-complaint for reimbursement of the \$100,000 it paid out in UM benefits, alleging causes of action for subrogation, equitable indemnity, contribution and declaratory relief. Century-National filed a motion for summary adjudication. The trial court granted the motion as to Century-National's right to reimbursement, finding that the MCS-90 endorsement required Global Hawk to provide coverage for the accident, and that Century-National was entitled to subrogation against persons responsible for Padilla's injuries. Global Hawk appealed.

On appeal, Global Hawk argued that under federal law, an MCS-90 endorsement does not make one insurance company liable to reimburse another insurance company that covered the loss under its own policy. In other words, its liability is not "triggered" when the dispute at issue is between two or more insurance companies.

The Court of Appeal disagreed with Global Hawk. The language of the MCS-90 endorsement provided that the insurer's duty to pay arises only when (1) the underlying insurance policy to which the endorsement is attached does not otherwise provide coverage, and (2) either no other insurer is available to satisfy the judgment against the motor carrier, or its coverage is insufficient to satisfy the federally prescribed minimum amount. While Global Hawk argued that Century-National's policy qualified as an "other insurer" under the second prong of the endorsement, the Court of Appeal confirmed that in this endorsement, "other insurer" referred only to another insurer for the guilty tortfeasor, in this case E&Z Express Trucking.

The Court of Appeal pointed out that the peculiar nature of the MCS-90 endorsements was that the motor carrier could be required to reimburse the insurance carrier if it had to pay out under the endorsement. Allowing a trucking carrier to avoid payment under the endorsement because there was "other insurance" available to the injured party would defeat the purpose of the financial responsibility regulations, which were to "assure that injured members of the public would be able to obtain judgments collectible against negligent authorized carriers." This would in effect amount to a windfall to insurers of motor carriers as well.

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The Court of Appeal held that Century-National was entitled to reimbursement from Global Hawk under Insurance Code Section 11580.2, and affirmed the judgment on Century-National's motion for summary adjudication.

## COMMENT

Even if a truck is not on a motor carrier's schedule of insured vehicles under its policy, if there is an MCS-90 endorsement in effect under the financial responsibility regulations, the carrier may owe coverage and be liable, particularly in the face of payment by the injured party's own carrier.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/A131656.PDF](http://www.courtinfo.ca.gov/opinions/documents/A131656.pdf)

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