

What is the MCS-90 and What Role Does it Play in Trucking Insurance?

The MCS-90 endorsement attaches to an insurance policy issued to a motor carrier by a standard insurance company.

MCS-90 is a very complex and confusing endorsement but one that is very vital to a motor carrier. While it does not provide the insurance itself, it is an important part of a motor carrier's portfolio and can go a long way to help motor carriers and insurers protect themselves.

The need for an MCS-90 endorsement starts out in part because of the Federal Motor Carrier Act of 1980. This act states that each motor carrier participating in interstate, for hire commerce, is required to show proof that they have the financial responsibility equal to or greater than minimums set by each state.

The MCS-90 is actually nothing more than a guarantee that there will be some source of funds to pay for a loss in which the insured was legally liable. This guarantee is mainly for the purpose of the public in ensuring them that there will be no financial consequences in the event that a motor carrier doesn't have the minimums required. The MCS-90 states that it "covers all vehicles owned, operated, or maintained by the insured regardless of whether or not each motor vehicle is specifically described in the policy." However, if a claim is paid out under the MCS-90, the insurance company may recoup its losses by subrogating the claims paid against the motor carrier. This is another reason why it is so vitally important to have all equipment listed on a scheduled unit policy.

It is often mistakenly assumed that the federal regulations, and thus the MCS-90, apply only to motor carriers engaged in interstate commerce. The MCS-90 clearly indicates the federal requirements apply to motor vehicles based on the commodity transported (such as hazardous substances or materials), even if the motor vehicle is not for-hire (private) and even if the motor vehicle is operating in intrastate commerce.

By issuing the MCS-90 endorsement, an insurer is bound to pay according to the terms of the endorsement for public liability "resulting from the negligence in the operation, maintenance, or use of motor vehicles subject to [the Act's] financial responsibility requirements." Public Liability is a defined term and means "liability for bodily injury, property damage and environmental restoration." Environmental restoration is "restitution for loss, damage, or destruction of natural resources arising out of the accidental discharge...into or upon land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife." In other words, environmental restoration requires the insurer to pay damages from contamination/pollution-type claims, provided the contamination or pollution is from a commodity hauled in the motor vehicle.

Some limitations do apply to the insurer's obligations. The insurer is not responsible under the MCS-90 to pay for injuries to (or death of) the insured's employees nor is the insurer responsible to pay for damage to cargo.

The Insured's obligation May Include Reimbursing the Insurer of equal, if not greater importance, is that the MCS-90 endorsement is an obligation of financial responsibility only, not insurance. That is, even though the insurer is obligated to pay, all terms, conditions, exclusions and limitations that are contained in the policy to which the MCS-90 is attached remain binding between the insured and insurer.

The MCS-90 will only effectively come into play when a number of requirements have been met :

- * the insurance policy itself does not provide coverage for the underlying accident,
- * the accident results in a judgment against the carrier for negligently operating a motor vehicle,
- * the damaged party has no other source for recovery
- * the damaged party is a third party who suffered bodily injury, property damage, or has a rightful claim for environmental restoration.

Why Motor Carriers Should Worry About MCS-90

1. It is worth noting that the MCS-90 really exists as a form of public surety rather than as a form of insurance. It exists to assure the public that the damaged party will receive at least a minimum of recovery for their loss regardless of the illiquidity of the responsible motor carrier.
2. The MCS-90 attaches to the motor carrier rather than any specific vehicle. This means that an insurance company issuing a MCS-90 endorsement may be obligated to pay a claim or judgment initially even when the policy excludes coverage for the accident.
3. MCS-90 does not in any way provide an insurer with a duty to defend the insured.
4. The MCS-90 allows the insurer to seek reimbursement from the insured for any amounts paid under the MCS-90 properly excluded by the carrier's insurance policy.
That means if the insurance company has to pay out the claim to satisfy the judgment up to the statutory minimum initially, it can then immediately turn around and extract the monies paid from the insured motor carrier.

