

No. 25-11778

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

FREDDIE CAGLE,

Plaintiff-Appellee,

v.

NATIONAL INDEMNITY COMPANY OF THE SOUTH

Defendant-Appellant.

AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLANT

On Appeal from the United States District Court
for the Northern District of Georgia
Civil Action No. 2:23-cv-00140-RWS

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CORPORATE DISCLOSURE

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* make the following disclosures:

- For non-governmental corporate parties please list all parent corporations:

None.

- For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

None.

Respectfully submitted this 6th day of August, 2025.

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11th Cir. R. 26.1-1, the following trial judges, attorneys, persons, associations of persons, firms, partnerships, and corporations are known to have an interest in the outcome of this case or appeal:

- Alexander, Mark (Counsel for Appellee-Plaintiff)
- Barber, Mark (Trial Counsel for National Indemnity Company of the South)
- Brantley, Terry (Trial Counsel for Old Republic Insurance Company)
- Demasi, Melody (Trial Counsel National Indemnity Company of the South)
- Ellis, Danny (Counsel for Appellee-Plaintiff)
- Gould, Andrew (Counsel for Appellee-Plaintiff)
- Hostetter, Michael, (Counsel for Amicus, Trucking Industry Defense Association)
- Princenthal, May, Wilson, LLC (Counsel for Appellee-Plaintiff)
- Rabinovich, Laurence (Appellate Counsel for National Indemnity Company of the South)
- Story, Hon. Richard W. (Judge, U.S. District Court, N.D. Ga.)
- Truck Wreck Justice, PLLC (Counsel for Appellee-Plaintiff)
- Trucking Industry Defense Association, (Amicus)
- Yancey, Benjamin (Trial Counsel for Old Republic Insurance Company)

Respectfully submitted this 6th day of August, 2025.

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INTEREST OF AMICUS CURIAE

TIDA is a national 501(c)(3) entity founded in 1993 devoted to protecting the interests of the trucking industry. It is the association of choice for over 1,600 motor carriers, trucking insurers, defense attorneys, and claims servicing companies. Amicus seeks to assist the Court in considering the issues arising from the lower court's finding of coverage by National Indemnity Company of the South despite it not having an active MCS-90 on the date of loss. Expanding the application of the MCS-90 to trucking insurance companies whose filings have been replaced will ultimately result in higher premiums for trucking companies.

The impact of trucking on the Georgia economy is difficult to overstate. There are over 32,000 trucking companies located in Georgia. Over 75% of Georgia communities rely exclusively on trucks to move their goods. There are over 265,000 trucking industry jobs in Georgia; in other words, 1 in 14 jobs in Georgia are in the trucking industry.¹

TIDA's interest is in protecting this vital industry. The meteoric rise in extreme jury verdicts over the last decade imperils the trucking industry. The number of trucking cases with verdicts over \$1,000,000 increased dramatically over the last 15 years. In cases in which a jury awarded at least \$1,000,000 the average verdict

¹ See "Georgia Trucking Fast Facts," a fact sheet published by the American Transportation Research Institute and the Georgia Motor Trucking Association. Available at <https://www.trucking.org/sites/default/files/2020-11/Georgia%20Fast%20Facts%202020.pdf>

increased nearly 1,000%, moving from \$2.3 million to \$22.3 million.² These verdicts have caused a concomitant rise in liability insurance premiums. Some motor carriers are experiencing annual premium increases of 35-40%.³ Yearly increases at that level are unsustainable for the industry. Forcing an insurer with no active filing to pay under its MCS-90 anyway will result in higher verdicts, higher insurance premiums, and a higher risk that Georgia trucking companies will be put out of business.

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² <https://www.cnbc.com/2021/03/24/rise-in-nuclear-verdicts-in-lawsuits-threatens-trucking-industry.html>

³ <https://www.freightwaves.com/news/atri-study-reveals-nuclear-verdicts-on-the-rise>. It is of concern, as well, that National Indemnity had no notice that suit had been filed and that plaintiff had been awarded more than \$4 million by default.

FRAP 29(a)(4)(E) CERTIFICATION

Undersigned counsel certifies that no party, party's counsel, or other person contributed money intended to fund the preparation or submission of this brief. This brief was drafted by undersigned counsel; Appellate Counsel for National Indemnity Company of the South provided edits and suggestions.

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SUMMARY OF THE ARGUMENT

National Indemnity's MCS-90 endorsement was properly replaced by Old Republic's pursuant to 49 C.F.R. § 387.313T(e). This replacement was effective one month before the subject accident and, as such, if One Way's filing applies at all,⁴ it is the Old Republic MCS-90, not National Indemnity's. The District Court erroneously held National Indemnity liable under this replaced MCS-90 endorsement in violation of federal law and its ruling should be reversed.

ARGUMENT AND CITATIONS OF AUTHORITY

The District Court misconstrued two key components of liability insurance coverage for trucking companies. The first component of this coverage is the traditional nature of liability coverage – to pay for defense counsel and pay any judgment pursuant to the terms of the insurance policy. That portion of National Indemnity's policy was canceled on November 3, 2019; it was inapplicable here because the driver was operating a vehicle that One Way did not report to National Indemnity and it failed to qualify as a covered auto.

The second component, unique to trucking policies, is the surety exposure through an MCS-90 endorsement. While the MCS-90 is housed in the policy, it is fundamentally different from liability coverage. It is a surety like exposure which

⁴ TIDA has decided to focus in this brief on cancellation by replacement, which the District Court has essentially read out of existence. We do observe though, that the District Court's finding that One Way was liable as the active motor carrier is very problematic, as Old Republic and National Indemnity argued in the District Court.

can be triggered only if the policy coverage does not apply. This exposure was described in *Aequicap Insurance Company v. Canal Insurance Company*, 303 Ga. App. 508, 512 (Ga. App. 2010):

It is well-established that the primary purpose of the MCS-90 is to assure that injured members of the public are able to obtain judgment from negligent authorized interstate carriers. In order to accomplish this purpose, the endorsement makes the insurer liable to third parties for any liability resulting from the negligent use of any motor vehicle by the insured, even if the vehicle is not covered under the insurance policy.

See also, *Carolina Cas Ins. Co. v. Yeates*, 584 F.3d 868, 871 (10th Cir. 2009) (recognizing the MCS-90 as a surety obligation).

In the district court, National Indemnity never denied that the liability portions of its policy were in effect on the date of loss and through its cancellation on November 3, 2019. That policy, however, provided no coverage because the involved truck was not a “covered auto” under it. The lack of coverage was not (and is not disputed) by Cagle. It is the reason he elected to seek the benefit of National Indemnity’s MCS-90. He also elected to seek coverage from Old Republic’s MCS-90, which replaced National Indemnity’s MCS-90.

There is no dispute that National Indemnity's MCS-90 was replaced by Old Republic’s MCS-90. A screen shot (below) from the DOT web site shows that National Indemnity’s BMC91X filing (for MCS-90 surety obligations), was

replaced effective June 14, 2019 by a BMC91X filing made by Old Republic.

US DOT:		2479872	Docket Number:		MC00858994		
Legal Name:		ONE WAY HAULING EXPRESS CO					
Form	Type	Insurance Carrier	Policy/Surety	Coverage From	Coverage To	Effective Date From	Effective Date To
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-24	\$0	\$750,000	10/05/2024	06/19/2025 Cancelled
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-24	\$0	\$750,000	10/05/2024	05/22/2025 Replaced
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	06/28/2024	10/05/2024 Cancelled
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	04/30/2024	07/12/2024 Cancelled
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	04/30/2024	06/28/2024 Replaced
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	01/18/2024	05/19/2024 Cancelled
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	01/18/2024	04/30/2024 Replaced
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	11/28/2023	01/18/2024 Cancelled
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	10/05/2023	12/17/2023 Cancelled
91X	BIPD/Primary	COUNTY HALL INSURANCE COMPANY, INC. A RR GROUP	CHL 01-05299-23	\$0	\$750,000	10/05/2023	11/28/2023 Replaced
91X	BIPD/Primary	PROGRESSIVE EXPRESS INSURANCE COMPANY	CA962042332	\$0	\$750,000	10/05/2022	10/05/2023 Replaced
91X	BIPD/Primary	KNIGHT SPECIALTY INSURANCE COMPANY	AFXFL000781-01	\$0	\$750,000	10/05/2021	10/05/2022 Replaced
91X	BIPD/Primary	KNIGHT SPECIALTY INSURANCE COMPANY	AFXFL000781-00	\$0	\$750,000	10/05/2020	10/05/2021 Cancelled
91X	BIPD/Primary	ACE AMERICAN INSURANCE COMPANY	ISAH25290112	\$0	\$1,000,000	10/01/2019	11/01/2020 Cancelled
91X	BIPD/Primary	ACE AMERICAN INSURANCE COMPANY	ISAH25290112	\$0	\$1,000,000	10/01/2019	10/05/2020 Replaced
91X	BIPD/Primary	ACE AMERICAN INSURANCE COMPANY	ISAH25290112	\$0	\$1,000,000	10/01/2019	10/01/2019 Replaced
91X	BIPD/Primary	OLD REPUBLIC INSURANCE COMPANY	Z-35726	\$0	\$1,000,000	06/14/2019	10/12/2019 Cancelled
91X	BIPD/Primary	NATIONAL INDEMNITY COMPANY OF THE SOUTH	74TRS100541	\$0	\$750,000	05/05/2019	06/14/2019 Replaced
91X	BIPD/Primary	NATIONAL INDEMNITY COMPANY OF THE SOUTH	74TRS088600	\$0	\$750,000	10/26/2018	05/05/2019 Cancelled

The District Court incorrectly held that National Indemnity’s MCS-90 endorsement was not properly replaced by Old Republic’s MCS-90. But Old Republic had, in fact, done precisely that. (Dkt. 47-8; 47-7). At 49 C.F.R. § 387.313T, the provisions for filing of certificates of insurance with FMCSA, and for their cancellation and replacement are laid out. Cancellation of policies and MCS-90’s is set out in subsection (d) of this statute but is expressly conditioned on the provisions of subsection (e) (“Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn...”). Subsection (e) states:

Termination by replacement. Certificates of insurance or surety bonds which have been accepted by the FMCSA under these rules may be replaced by other certificates of insurance, surety

bonds or other security, ***and the liability of the retiring insurer or surety under such certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurances, surety bond*** or other security, provided the said replacement certificate, bond or other security is acceptable to the FMCSA under the rules and regulations in this part. (*Emphasis added*)

Therefore, as of June 14, 2019 (one month before this underlying accident here), National Indemnity's MCS-90 had been replaced by Old Republic's and its ongoing obligations as a surety under it ceased. Cancellation by replacement, under subsection (e) is described in *Northland Ins. Co. v. New Hampshire Ins. Co.*, 63 F. Supp. 2d 128 (**D.N.H.** 1999). There, a former insurer, New Hampshire Insurance Company ("NHIC"), contended that its MCS-90 surety obligations were replaced by Northland Insurance Company. NHIC's insurance policy expired on August 31, 1994, and was not renewed. The insured motor carrier obtained replacement coverage through Northland on September 15 but made its effective date September 1, 1994. Northland submitted its BMC-91X filing with the DOT, but it was not received until September 21, 1994, several hours after the subject motor vehicle collision involving the insured.

NHIC contended that it had no MCS-90 surety obligations since the Northland filing replaced it. The Court initially noted, "An MCS 90 Endorsement also will be canceled automatically notwithstanding the insurer's failure to comply with the endorsement's cancellation requirements if the policyholder purchases

“replacement” insurance.” 63 F. Supp. 2d at 134. The insured and Northland argued the NHOC’s MCS-90 endorsement was not terminated by replacement because the Northland policy did not cover the vehicle that was involved in the underlying accident. In rejecting this argument, the Court recognized the difference between the two key components of liability insurance coverage for trucking companies. Under the MCS-90 surety obligations, the “insurer must pay any final judgment against the insured within the endorsement's limits of liability ‘regardless of whether or not each motor vehicle is specifically described in the policy.’” 63 F. Supp. 2d at 135. Rejecting Northland’s arguments, the Court held:

Accordingly, the MCS 90 Endorsement amending the Northland policy qualifies as a replacement policy and New Hampshire Insurance's coverage obligations pursuant to the endorsement were canceled on September 1, 1994, when the Northland policy and its endorsements became effective.

Id.

Unlike *Northland Ins. Company*, where the MCS-90 was technically replaced hours after an accident, National Indemnity’s MCS-90 was replaced a full month prior to the subject accident. The holding in this case highlights the error made by the District Court finding that National Indemnity’s MCS-90 has not been properly replaced by Old Republic’s.

Failure to enforce the replacement provisions of 49 C.F.R. § 387.313T(e) in effect makes trucking company liability insurers liable for MCS-90 surety

obligations indefinitely. It also constitutes an impermissible additional requirement that federal law does not require – effectively eliminating “termination by replacement” of the MCS-90 endorsement. By allowing the District Court’s decision to stand, Georgia trucking companies will be forced to pay higher premiums.

CONCLUSION

National Indemnity’s MCS-90 endorsement was properly replaced by Old Republic’s pursuant to 49 C.F.R. § 387.313T(e). This replacement was made one month before the accident and, as such, applies to it. The District Court erroneously held National Indemnity liable under a replaced MCS-90 in violation of federal law and its ruling should be reversed.

Respectfully submitted this 6th day of August, 2025.

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CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATIONS

I hereby certify that this motion complies with the type-volume limitations of Fed. R. App. P. 32(g)(1) and 27(d)(2)(A) because this motion contains 1619 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), as counted by Microsoft® Exchange, the word processing software used to prepare this brief.

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft® Exchange, Times New Roman, 14-point.

This 6th day of August, 2025.

By: /s/ Michael D. Hostetter

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CERTIFICATE OF SERVICE

I certify that on July 7, 2025, I electronically filed the foregoing **TIDA’S BRIEF AS AMICUS CURIAE** with the Clerk of the Court using the CM/ECF system, which I understand will automatically send an e-mail notification of such filing to the counsel of record for this matter.

This 6th day of August, 2025.

By: /s/ Michael D. Hostetter

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