

Transportation Update: Runaway Garbage Truck Creates Mayhem, Killing Two

ATTORNEYS

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On November 19, 2018, the U.S. Fifth Circuit Court of Appeals, in the case *Evanston Insurance Company v. Mid-Continent Casualty Company*, reversed a district court ruling in favor of an excess insurer. This opinion examines how many "accidents" occurred in an insurance coverage dispute between a primary insurer and an excess insurer.

A. Background

On November 15, 2013, Marlon Diggs ("Diggs"), an employee of Global Waste Services, LLC's ("Global"), lost control of his Mack truck (the "Truck") on North Beltway 8 in Houston, Texas, striking a Dodge Ram in the 800 block and a Ford F-150 in the 2500 block. Two minutes later, the Truck caused a series of collisions near a toll plaza that are at issue.

The Truck struck a Honda Accord (the "Honda") driven by Joseph Williams, pushing it over 100 feet into the crash attenuator barrels, where the Honda came to rest.

Once separated from the Honda, the Truck continued 66 feet before striking a Dodge Charger (the "Charger"), driven by Gwenetta Powell ("Powell"), and a toll booth. The Truck pushed the Charger until it pinned it to the right retaining wall. Diggs did not apply the Truck's brakes. Powell and Diggs both died.

Mid-Continent Casualty Company ("Mid-Continent") issued a commercial auto policy to Global that had a \$1 million per accident limit. Global also had an excess liability policy from Evanston Insurance Company ("Evanston") with a \$5 million per accident limit.

B. Dispute

Relatives of Powell sued Global in Texas state court, and the Williams family intervened. Additionally, Harris County made demands on Global for the cleanup and repair of the toll plaza. All claims ultimately settled. The Williams family received \$4.5 million – \$1 million from Mid-Continent and the remaining \$3.5 million from Evanston. Mid-Continent withdrew from the litigation after settling with the Williams family, claiming exhaustion of its policy limits. Evanston then settled with the Powells and Harris County without contribution from Mid-Continent.

Evanston filed suit against Mid-Continent in federal court in Texas seeking reimbursement of defense costs and a portion of the settlement payments it made for Global. The district court found that the collisions between the Truck and the Honda and between the Truck and the Charger were separate accidents because they occurred independently. So Mid-Continent's liability was *not* limited to \$1,000,000 and the district court ordered Mid-Continent to pay a total of \$2,045,000. Mid-Continent appealed.

C. Discussion

The Fifth Circuit examined the Mid-Continent policy that provided that all injuries – no matter the number of vehicles involved or the number of claims made – arising from continuous or repeated exposure to substantially the same conditions are considered a single accident. The Court concluded that the ongoing negligence from the runaway Truck was the single "proximate, uninterrupted, and continuing cause" of all the collisions. The Court reversed and rendered judgment in favor of Mid-Continent.

D. Why is this important?

1. When presented with mayhem, one of the first things an insured should consider is how the terms "accident" and/or "occurrence" are defined in their insurance policies.
2. It is not surprising for a primary insurer to claim mayhem is one "accident" to try to limit its liability.
3. The analysis discussed above is not universal. The outcome of similar disputes could vary depending on the jurisdiction where the mayhem occurs.