

**APPLICATION FOR**

**DISTRICT COURT JUDGESHIP  
4th Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Brian J. Smith \_\_\_\_\_  
a. What name do you commonly go by? Brian \_\_\_\_\_
2. Birthdate: [REDACTED] \_\_\_\_\_ Are you a U.S. citizen? Yes \_\_\_\_\_
3. Home Address: [REDACTED] \_\_\_\_\_
4. Office Address: Garlington, Lohn and Robinson, 350 Ryman Street, Missoula, Montana 59801  
Phone: (406) 523-2500 \_\_\_\_\_
5. Length of residence in Montana: 42 years \_\_\_\_\_
6. List your place of residence for the last five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
1987 to present	Missoula	MT

**B. EDUCATIONAL BACKGROUND**

7. List the names and location of schools attended, beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Bishop Noll Institute	Hammond, Indiana	1973	High School Diploma
Carroll College	Helena, MT	1976	A.A. Criminal Justice

Carroll College	Helena, MT	1977	B.A. Philosophy
U of M Law School	Missoula, MT	1982	Juris Doctor

8. List any scholarships, awards, honors and citations that you have received:

I have an AV “Preeminent” peer rating from Martindale - Hubbell. I have been named a Mountain States “Super Lawyer” and I have been listed in Best Lawyers in America in the area of Transportation law. I have received the Distinguished Service Award from the Transportation Lawyers Association. I am a certified arbitrator from the American Arbitration Association and a mediator trained by USA Mediation.

9. Were you a member of the Law Review? If so, please state the title and citation of any article that was published and the subject area of the article.

No

### C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court	June 18, 1982
United States District Court for Montana	June 18, 1982
Ninth Circuit Court of Appeals	9/21/1987
United States Supreme Court	9/16/1988
Confederated Salish and Kootenai Tribal Court	1984
Chippewa Cree Tribal Court	2011

11. Indicate your present employment (list professional partners or associates, if any).

I am a partner at Garlington, Lohn and Robinson, PLLP. I presently serve on the Executive Committee of our firm and served as managing partner from 2012-2014. I attach a copy of our letterhead to show the names of the members of our firm.

12. State the name, dates and addresses of all law firms with which you have been associated in practice, all governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Law Offices of Keith Rennie, 201 4th Ave., Polson, MT	Associate (Public Defender)	1982-1985
Manley and Smith 201 4 <sup>th</sup> Ave., Polson, MT	Associate	1985-1987
Milodragovich, Dale & Dye 620 High Park Way, Missoula, MT	Associate	1987-1989

Milodragovich, Dale & Dye 620 High Park Way, Missoula, MT	Shareholder	1989-1993
Truckers Express, Inc. 3501 W. Broadway, Missoula, MT	Vice President General Counsel	1993-2003
Truckers Express, Inc. 3501 W. Broadway, Missoula, MT	General Counsel President – CEO	2003-2006
Garlington, Lohn & Robinson, PLLP 350 Ryman St., Missoula, MT	Associate	2006-2008
Garlington, Lohn & Robinson, PLLP 350 Ryman St., Missoula, MT	Partner	2009-Present

13. If you have not been employed continuously since the completion of your formal education, describe what you were doing.

Not Applicable

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

My present practice is primarily a litigation practice. A significant percentage of my practice is in the area of Transportation law, representing Motor Carriers throughout Montana. In the Transportation area, I frequently defend trucking accident cases, often involving very serious injuries and damages. I prepare agreements for trucking clients, advise on matters of employment law and independent contractors and business issues and review agreements for my clients. I provide legal advice on matters of compliance with federal regulations and safety regulations. I also do insurance general liability defense, including defending cases of professional negligence, construction defects, commercial litigation involving business and real property disputes, and matters of employment law. As to percentages, I would estimate litigation is 70% of my practice, which includes Transportation matters and general insurance defense matters, in addition to some plaintiff cases in the commercial area; 10% on employment law matters and 20% in business service matters, such as drafting agreements and review of same.

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I have practiced in many areas of the law. I was a public defender from 1982 to 1984 and practiced criminal law in Polson, Montana. I have practiced in a small firm in Polson following the public defender duties where I practiced family law, personal injury, commercial law and estates, the variety you will find in a small town practice. While at Milodragovich, Dale and Dye, my practice was insurance defense, Transportation law, products liability litigation and commercial law, including lending and real estate matters. In addition to the formal areas of practice, I have been an adjunct faculty member at the U of M Law School in the trial practice class, serving as a trial judge for third year students and in the Client Counseling class for first year students. I have been an Adjunct Faculty member at the University Of Denver School Of Law in the Transportation Law curriculum, teaching on the issue of Motor Carrier insurance issues. In 1988, I taught a self organized CLE seminar at several locations throughout the state on the topic of the use of computers by lawyers in the practice of law.

16. If you specialize in any field of law, what is your specialty?

I believe my specialty or area of emphasis is Transportation law, which includes litigation, commercial matters, real estate, employment law and regulatory matters, all within the context of Motor Carriers. I have been named on the list of Best Lawyers in America in the area of Transportation law.

17. Do you regularly appear in court? Yes

What percentage of your appearance in the last five years was in:

Federal court	<u>30</u>	%
State or local courts of record	<u>65</u>	%
Administrative bodies	<u>5</u>	%
Other	<u>          </u>	%

18. During the last five years, what percentage of your practice has been trial practice? 70%

19. How frequently have you appeared in court? 1-2 times per month on average.

20. How frequently have you appeared at administrative hearings?  
Occasionally – Department of Labor Proceedings twice in the last 5 years.

21. What percentage of your practice involving litigation has been:

Civil	<u>95</u>	%
Criminal	<u>0</u>	%
Other – Administrative/Regulatory	<u>5</u>	%

This answer applies to the last 5 years. When a Public Defender, I practiced Criminal law.

22. Have you appeared before the Montana Supreme Court within the last five years? If so, please state the number and types of matters handled. Include the case caption, case citation (if any), and names addresses and phone numbers of all opposing counsel for the five most recent cases.

Stanley Isaac Lebeau et. al. vs. Montana Fourth Judicial District Court and The Hons. Ed McLean, Robert L. Deschamps, John W. Larson and Karen S. Townsend. Cause No. OP-13-0677, decided November 19, 2013. Petition for Writ of Supervisory Control – Original Proceeding. I represented The Hon. Ed McLean, The Hon. Robert L. Deschamps, The Hon. John W. Larson and The Hon. Karen S. Townsend. Writ Denied. Adverse Counsel Brian C. Smith, Office of the Public Defender, 610 Woody, Missoula, MT (406) 523-5140

Oliver Arlington vs. Miller’s Trucking, Inc.(Arlington I) Cause No. DA-11-0556 decided April 24, 2012, on Appeal from the Third Judicial District of the State of Montana in and for the County of Granite. Reversed and Remanded.

Pro Se Litigant: Oliver Arlington

Oliver Arlington vs. Miller’s Trucking Inc. (Arlington II) Cause No. DA-14-0331 – pending matter – on Appeal from the Third Judicial District of the State of Montana in and for the County of Granite. Adverse Counsel in underlying trial: Ben Everett, P.O. Box 727, Anaconda, MT (406) 563-5005

23. State the number of jury trials that you have tried to conclusion in the last ten years. 2

24. State the number of non-jury trials that you have tried in the last ten years. 3

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

A. Candace Friesen, Individually and as Personal Representative of the Estate of Ladell Friesen, Deceased vs Ace Doran Hauling and Rigging Co. et al, United States District Court for the District of Montana,

Missoula Division. Cause No. 12-134 DLC. Presiding Judge: the Honorable Dana L. Christensen. (406) 829-7140. This case settled in Settlement Conference 3 weeks prior to trial before the Honorable Jeremiah C. Lynch.

Adverse Counsel: Michael Kerensky  
Of Counsel  
Williamson & Rusnak  
4310 Yoakum  
Houston, Texas 77006 (713) 223-3330

- B. DeWitte Enterprises, LLC vs International Helicopter Services, LLC., Eighth Judicial District Court in and for Cascade County, Cause No. ADV-12-0400. The Honorable George W. Huss, presiding, (406) 346-6109. Case Settled shortly before trial through negotiation.

Adverse Counsel: Mark S. Williams  
Williams Law Firm  
235 East Pine St.  
Missoula, MT 59807  
(406) 721-4350

- C. Dammel et. al vs William and Karen Koenig, Eleventh Judicial District in and for Flathead County, Cause No. DV 12-1220. The Honorable Robert B. Allison, presiding (406) 758-5906. Case settled in mediation shortly before trial.

Adverse Counsel: Shelly F. Brander  
22 Second Ave. West Ste. 4000  
Kalispell, MT 59901  
(406) 755-5700

- D. Great West Casualty Company vs Cobra Trucking, Inc. United States District Court, Billings Division. Cause No. CV 13-113 BLG-SHE-CSO, The Honorable Richard F. Cebull presiding (retired). Case settled shortly before trial.

Adverse Counsel: Marshal Mickelson  
129 West Park St. Ste 300  
Butte, MT 59701  
(406) 782-5800

- E. City of Missoula vs Mountain Water Company, Fourth Judicial District in and for Missoula County, Cause No. DV 14-352, The Honorable Karen S. Townsend, presiding (406) 258-4774. Case set for trial March 18, 2015 – 9 days.

Adverse Counsel: Natasha Prinzing Jones  
Boone Karlberg  
200 West Main St. Ste 300  
Missoula, MT 59801

- F. Gary Ince Construction vs Wilcox and Cathy Wales, Fourth Judicial District, Missoula County, Cause No. DV 11-1574, The Honorable John W. Larson, presiding (406) 258-4773. Case settled by Offer of Judgment shortly before trial.

Adverse Counsel: Cory Gangle  
Gangle Law Offices  
P.O. Box 699  
Missoula, Montana 59806  
(406) 273-4304

G. Prudy Kohler, Individually and as Personal Representative of the Estate of George Kohler, deceased, vs Adventure Cycling Association, et al, Fourth Judicial District Court, Missoula County, Cause No. DV 13-344, The Honorable Karen S. Townsend, presiding. (406) 258-4774. Wrongful Death case settled.

Adverse Counsel: John Fitzpatrick  
619 S.W. Higgins Ave  
Missoula, MT  
(406) 829-1669

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have tried two Administrative hearings before the Department of Labor, Hearings Bureau, before Terry Spear, Hearings Officer, both involving wage and hour cases before the Department of Labor. I have another going to trial in March of 2015.

27. If you have published any legal books or articles, other than Law Review articles, please list them, giving citations, dates, and the topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, please state the date, topic and group to which you spoke.

I have been a frequent lecturer at CLE seminars, primarily on topics related to Transportation law. The majority of these engagements include research and writing a paper on whatever topic I presented which was included in course materials. I have also presented papers on ethics at some CLE seminars. I have lectured at the American Bar Association Transportation Megaconference in New Orleans, Louisiana on three occasions in 1993, 1995 and 1997. I have lectured at the American Bar Association's General Counsel Forum in San Diego, California, Charleston, South Carolina and in LaJolla, California in three separate years. I have lectured at seminars sponsored by the Transportation Lawyers Association in various locations on at least ten occasions, the most recent being a presentation on maintaining independent contractor status for truck drivers. I have also spoken at the Transportation Law Institute, co-sponsored by the ABA and the Transportation Lawyers Association on a variety of topics in Washington, DC and in San Francisco, California. The most recent was a presentation on ethics and conflicts of interest.

When I was presenting a CLE seminar on Computer Use by Lawyers, I authored the materials that were distributed at the seminar, which was approved for CLE credits in Montana. I have also had the opportunity to speak at the meeting of the Harmony Group, an association of law firms that I was not a member of on the topic of insurance issues and coverage.

#### **D. PROFESSIONAL AND PUBLIC SERVICE**

28. List all bar associations and legal professional societies of which you are a member and give the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

I have been a member of the Montana Bar Association since 1982. I have been a member of the American Bar Association for most of my years as a practicing attorney, 1982-1993 and 1995 to present. I am a member of the Tort and Insurance Claims practice division of the American Bar Association. I have been a member of the American Trial Lawyers Association.

I am a member of the Transportation Lawyers Association since 1988. This is an International Bar Association of approximately 1000 Transportation Attorneys. I have served on many committees in the TLA: Recruiting and Member Services, Computer Technology, Corporate Counsel Committee, Litigation Committee, the Executive Committee for 3 terms and served in all officer positions, concluding with being elected President of the Association in 2005. I continue to serve as a Past President of the Association, contributing on an ad hoc basis for special projects at the request of the President.

I served one year on the Board of Directors of the Canadian Transport Lawyers Association and sat on their board meeting in Montreal, Quebec in 2007.

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. Please state the title and date of any office that you have held in each organization. If you held any offices, please describe briefly your activities in the organization.

Motor Carriers of Montana, Vice President and Member of the Executive Board since 1998.

Goodfellows Club in Missoula from 1994 to 2006. This is a charitable organization that provides food, gas, shelter and services to the needy in Missoula and was founded in 1958

30. Have you ever run for or held public office? If so, please give the details.

No

### **E. PROFESSIONAL CONDUCT AND ETHICS**

31. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, give the particulars.

No

32. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain.

No

33. Have you ever been arrested or convicted of a violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations unless they also included a jail sentence.

No

34. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, please give details.

No

35. Is there any circumstance or event in your personal or professional life which, if brought to the attention of the Commission, the Governor or the Montana Supreme Court would affect adversely your qualifications to serve on the court for which you have applied? If so, please explain.

No

### **F. BUSINESS AND FINANCIAL INFORMATION**

36. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, please give details, including dates.

I was General Counsel for a trucking company called Truckers Express, Inc. in Missoula from 1993 to 2006. From 2003 to 2006, I served as President and CEO of that company due to some corporate distress and the president's untimely death. During that time, I remained serving as General Counsel, but also had the responsibilities of the Chief Executive Officer. It was to be a one year engagement while the company sought

out another president, and lasted three years, at which time I returned to the private practice of law with Garlington, Lohn and Robinson.

37. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

No \_\_\_\_\_

38. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, please identify the source and the approximate percentage of your total income it constituted over the last five years.

None \_\_\_\_\_

39. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or which in any manner or for any reason might embarrass you? If so, please explain.

No \_\_\_\_\_

40. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?  Yes  No

If not, please explain.

41. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?  
 Yes  No

If yes, please explain.

42. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, please give details.

No

43. Please explain your philosophy of public involvement and practice of giving your time to community service.

I believe that lawyers have a responsibility to their communities and to society in general. Lawyers should strive to give back to the community through community involvement and giving time and energy to projects that interest them and are beneficial. Lawyers are leaders in their communities and that comes with this responsibility to give back. I have served my community by donating time and funds to Habitat for Humanity, providing pro bono legal work for the Sanders County Women's Shelter, participating in events with the Chamber of Commerce, serving meals with my family at the Poverello Center in Missoula and delivering food baskets in Missoula during holidays. I maintain public involvement primarily through service to bar associations and volunteering time for teaching and lecturing activities. I serve in a volunteer capacity on the board of the Motor Carriers of Montana. I continue to seek out ways to serve the community.

### **G. WRITING SKILLS**

44. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. Please state if associates or others have generally performed your research and the writing of briefs.

In general, associates in our firm tend to prepare the first draft of briefs and other court writings. I have personally performed both research and writing projects on cases I have dealt with. I also extensively edit and revise, and check the research on briefs and motions that are filed over my signature. I personally read the cases cited in briefs and edit briefs based upon my independent research, and visit with associates that prepare briefs in a mentoring capacity. On insurance coverage matters, I perform all of the research and writing myself. I also personally prepare settlement brochures for mediations and settlement conferences in both state and federal court which involve research and writing tasks in order to present legal arguments for defenses raised in the brochures. I do the research and prepare opinion letters on issues of liability evaluation, damage analysis and projected results at trial. I have a paralegal that reviews citations for format and compliance with local rules, although is not involved in the substantive legal arguments. I personally prepare complaints that I file and personally prepare answers in litigation matters, including research into appropriate affirmative defenses.

45. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., please explain the type and extent of writing that you have done.

In addition to litigation matters, I spend a fair amount of time writing contracts and agreements for clients, primarily in the area of Transportation Law, where the agreements are frequently controlled by federal regulations, of which I am uniquely familiar in our firm. I have drafted Independent Contractor lease

agreements for motor carriers, Shipper-Carrier contracts, Broker-Carrier contracts, Trailer Lease agreements and Lease Purchase contracts between owner operators and motor carriers, promissory notes and documents to secure the debt for the equipment involved and lease agreements for real property for the business. I have also drafted agreements for the complex settlement of cases and real property transactions in the litigation context or otherwise. I prepare severance agreements in employment termination cases and have prepared documents necessary for the purchase and sale of real property, mortgages and other real estate transactions for clients, and documents associated with the purchase and sale of businesses. In addition, I draft coverage opinion letters for insurance companies on coverage matters, which involve significant research and writing efforts.

46. Please attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

I am submitting the text of an insurance coverage opinion letter, with identifying information removed. I chose this, rather than a brief that I have filed, because in our firm, all my briefs are reviewed and edited by at least one other lawyer. This coverage opinion, research and writing, is all my work. Also, it is more like a court opinion, including an analysis and conclusion, and application of case law to facts.

47. What percentage of your practice for the last five years has involved research and legal writing?  
65 %

48. Are you competent in the use of Westlaw and/or Lexis?

I am proficient in the use of Westlaw. I have not used Lexis in several years.

#### **H. MISCELLANEOUS**

49. Briefly describe your hobbies and other interests and activities.

I am a musician and a singer/songwriter. I released a CD in 2014 called **Overdue**, which is an album of original songs that I have written and performed. I regularly perform at the local farmers markets with 2 other musicians and have performed at breweries in Missoula, Helena and soon in Kalispell, and wine tasting or other events around Missoula. I continue to write songs and book performances as often as time allows. I am working on my next album, titled **Burn the Canoes**.

I am an outdoors person and enjoy hiking, camping, fly fishing, backpacking and back country camping primarily in Glacier National Park. My goal is to test myself by finding places unique and remote, and far, far out of cell service range. I also enjoy Montana's lakes and rivers, boating, kayaking, canoeing, float camping,

swimming and all the recreation they have to offer. I am a certified PADI Open Water Scuba Diver and have been for many years.

I am something of an amateur chef, and enjoy the culinary arts and write and cook my own recipes with varying degrees of success. I have travelled extensively throughout the U.S. and like to study and learn historical and cultural facts from various areas of the country. I am a computer techie and assist friends and family with computer troubles as they arise.

50. Describe the jobs that you have held during your lifetime.

I have held a variety of jobs. When I was in grade school, I had a paper route. I worked at a cemetery performing lawn maintenance in 8<sup>th</sup> grade, and worked for a printing company and computer security manufacturer in the summer after grade school. I worked at Kentucky Fried Chicken in high school. I also have worked on a wholesale ice cream delivery truck, delivering ice cream to grocery stores in the Midwest. I worked at Keen Foundry, an iron foundry in Griffith, Indiana. I spent a summer painting houses and doing odd jobs around my parents' neighborhood. I worked for Standard Oil Company in Whiting, Indiana as a laborer for 2 summers during college. I also worked as a Resident Assistant in the dormitory at Carroll College during my junior and senior years at Carroll. I worked as a counter cashier at a convenience store for a short time after college, until I was hired by the State of Montana as a corrections officer at Mountain View School in the Helena valley. I was promoted to a case worker at Mountain View School and stayed there until I entered law school. I worked construction before my first year in law school and worked at the pro shop of a racquetball and health club during my first year in Law School. I then worked for the juvenile probation office in Missoula, drafting court documents for youth court cases. I worked as a legal intern for Datsopolous, MacDonald and Lind, Missoula, MT during my second and third years in Law School.

51. Please identify the nature and extent of any pro bono work that you have personally performed during the last five years.

My pro bono work primarily involves teaching, education and mentoring law students and young lawyers. I have been actively involved in the U of M Law School practical course work. I am listed on the State Bar referral list for low income clients, primarily in Landlord Tenant and commercial disputes. I volunteer my time to trucking organizations and lecture at Continuing Education courses primarily related to transportation law topics. I have served as a reviewer for the Montana Bar Exam over a number of years. I have

volunteered to judge speech and debate meets in Missoula. I have served as Chairperson for Montana Medical Legal Panels approximately once per year.

52. In the space provided, please explain how and why any event or person has influenced the way you view our system of justice.

When I started practice after law school, I was the only public defender in Lake County, Montana, in Polson. Each Wednesday at 9 a.m., I would stand up before the court and had any number of criminal matters on the calendar. For the next hour or so, I would present argument, handle initial appearances, arraignments, plea bargains and sentencing involving several criminal defendants that I had been assigned to defend. These clients were not the cream of our society, and many had been charged or pled guilty to some significant criminal behavior. However, without fail, my clients were treated with the utmost respect and dignity by the District Judges. They left that courtroom with a feeling that they were treated fairly by our system of justice, and that was directly the result of the patience, understanding and professionalism of the judge they appeared before. They were treated with understanding as people with worth and value that had made a mistake and while the consequences for that action were imposed, they were allowed to keep their heads up.

This experience taught me the value of our system and the importance that our courts administer justice in a way that does not rob people of their dignity and self worth.

Additionally, I have tried many cases to juries in Montana. While I have not had all juries agree with my side of the case, I have never, in the course of trying cases, had a jury come back with a verdict where I thought they were just wrong. Somehow, and frankly, I am not sure how, this has shown me that our jury system works, and it has been my experience that juries are able to see the truth and to reach verdicts that are fair. Sometimes their insight is unexpected, but I have found that it is almost universally correct.

These events have helped me to see that our system of justice accomplishes what it is supposed to do and to believe in it as a way to help society resolve their differences and live well.

53. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

The qualities I find most important in a district court judge include integrity beyond question, honesty in both mind and deed, intelligence, insight, a wide range of legal experience, patience, the ability to be fair and reasonable, to be decisive, to treat every person that appears before the court with respect and dignity, whether it be a corporate president or a criminal defendant, and to display a temperament of consideration and careful

thoughtfulness. A District Court Judge needs an excellent command of the law, the rules of civil and criminal procedure and the rules of evidence.

Additionally, the ability to listen, not only with his or her ears, but with their hearts, and the capacity to weed out the various peripheral matters involved in a proceeding and see it for what it is in human reality. I also think a District Court Judge needs to be a quick study and able to reduce the arguments being made to the court to their essence very efficiently, and able to articulate questions that point to the precise issue to be determined. A strong knowledge of the law and the policies underlying the law is equally important, so that cases that appear before the court can be dealt with justly in a changing society. Last, a District Court Judge must be organized and have a strong ability to work hard, as the job they perform is very difficult, challenging work.

54. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

Part of a lawyer's job is predicting the outcome of matters or predicting how a judge would rule on a certain issue. This is primarily accomplished by our courts relying upon and following established precedent from cases decided in the past. Adherence to the doctrine of *stare decisis* is essential for the fair and predictable administration of justice. However, courts today are presented with many cases that simply will not fit within previous decisions, due to changes in society or technology and the like. Courts need to first review existing precedent, but be mindful that there are situations where the law needs to grow and adapt to modern times.

I believe the way this is done is to first be mindful and truly understand the existing law. Then use judgment and reason to interpret the issue before it either according to existing precedent, the Constitution, or to extrapolate the existing cases to provide a decision that is based on sound legal reasoning with reference to the past and the underlying policy of the legal standard. This way, the essence of the existing precedent can be fairly and justly extended to the present circumstances.

The way this is accomplished is for the court to understand the case law and the history and policy that supports it. If the precise ruling is not applicable, the reason for the rule will guide the court. This level of legal scholarship is another facet of the position as a District Court Judge that I find both challenging and exciting.

55. In the space provided, state the reasons why you are seeking office as a district court judge.

I have aspired to be a judge for more than 25 years of law practice. I am seeking the office of District Court Judge because I want to continue to help people through the legal system, and I believe a District Judge is

uniquely situated to do just that. Through judicious and compassionate application of the rule of law, people can resolve their differences, work through personal struggles and failures and our community can be a safer and healthier place to live. As I look at the opportunities that present themselves to a District Court Judge, the potential for expanding goodness and healing in our community seems unlimited.

I want to strive to treat every person that appears in court with integrity and respect, in such a way that they leave the courtroom feeling they were heard and fairly treated. I also am committed to maintaining and enhancing the professionalism of the bar and specifically young lawyers by treating them well when they appear in court and by encouraging them to improve their skills as lawyers and their professional practice as members of the bar. I enjoy helping and teaching young lawyers in our firm, or even young lawyers that are on the other side of a case I am working on. I never hesitate to help a lawyer that calls me to ask for advice or help on a legal matter, and always feel quite flattered that they would ask. A District Court Judge can help lawyers by setting an example of excellence for himself or herself, and expecting the best from the lawyers that appear in the courtroom.

I have been in practice for more than 30 years and I am committed to the effective administration of justice and to professionalism and excellence in practicing lawyers. By being a District Judge, I will have a unique opportunity to encourage the accomplishment of both goals.

56. What items or events in your career have distinguished you or of which you are most proud?

I have found my legal career to be literally packed with moments that distinguish me and of which I am proud. I frequently tell my clients that I am proud to be their lawyer, because I consider it a high honor to be asked by a person to represent them and have them entrust their legal matters to me. It is a responsibility I take very seriously.

I think one event I am very proud of was the request by the four District Court Judges in Missoula County to represent them before the Montana Supreme Court when two Missoula County Public Defenders filed for a Writ of Supervisory Control related to the substitution of judge activity taking place in Missoula County. Those District Court Judges could have asked any lawyer in Missoula to represent them; they see the work of Missoula lawyers on a daily basis, and they reached out to me to represent them in that legal matter. I was both humbled and flattered at their request, and felt that it was one of the highest compliments I could receive as a practicing attorney.

Another event was my election by the members of the Transportation Lawyers Association to be president of that organization and serve as an officer for 6 years. This Association is made up of over 1000 lawyers across the United States and Canada that practice in the unique area of transportation law. It was founded in 1937, and continues to grow today. The recognition by my peers, many of whom I practice with and against, was a true honor in my professional life.

Last, I joined Garlington, Lohn and Robinson in 2006, and in 2011, after only being there for 5 years, I was elected by the partners in our firm to be the Managing Partner. This was a high compliment and I believe recognition of my good judgment and analytical abilities, problem solving capacity and leadership skills. This recognition by my peers, the members of what I consider to be one of the State's finest law firms, was a significant event to me.

57. State any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

I have been involved in very complicated multi party and serious civil cases in both state and federal court over my career. I strive to maintain the professionalism of the practice of law and work hard to treat opposing counsel and judges with utmost respect and view the process as a way to resolve problems that people are enduring. I have always seen the practice of law as a healing profession more than anything else. I believe that being a district court judge is the culmination of that effort, and provides a unique opportunity to help people resolve their difficulties and to help the legal profession by setting and adhering to the highest standards of quality of work and practice before the court.

58. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge candidate?

I believe the things that differentiate me from other candidates include my wide range of experience and practice over my career. I have practiced criminal law, family law, civil litigation and both commercial transactions and injury litigation. My litigation experience includes very complex and serious cases, including wrongful death cases, multi party civil disputes, high value real property cases, class action cases, complex insurance coverage cases and catastrophic injury cases. I have worked with the Youth Court prosecutor's office, practiced in a small law firm, a mid-sized law firm, served as in house counsel to a 100 million dollar corporation and practiced in a large law firm. I have also acted as president and CEO of that corporation, which provides me administrative experience, budgeting, allocation of resources, and hands on employment

experience. This provides me insight into businesses on a completely different level and one that few lawyers experience in the practice of law. I have extensive experience in litigating civil cases throughout western Montana and believe that type of experience is extremely valuable to the District Courts. I have been recognized by my peers as a leader and a problem solver; both qualities I believe are significant, if not essential, in the work of a District Court Judge.

### I. CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 4th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Canons of Judicial Ethics, if appointed.

2/6/2015  
(Date)

/s/ Brian J. Smith  
(Signature of Applicant)

---

A signed original **and** an electronic copy of your application and writing sample must be submitted by  
**5:00 p.m. on Thursday, February 19, 2015.**

**Mail the signed original to:**

**Lois Menzies  
Office of Court Administrator  
P.O. Box 203005  
Helena, MT 59620-3005**

**Send the electronic copy to: [MTsupremecourt@mt.gov](mailto:MTsupremecourt@mt.gov)**

Application form approved 7/10/93  
Revised 9/15/2009

J. C. Garlington  
1908 – 1995

Sherman V. Lohn  
1921 – 2007

R.H. "Ty" Robinson  
(Retired)

Peter J. Arant  
Stephen R. Brown  
Gary B. Chumrau  
Randall J. Colbert  
Kathleen L. DeSoto  
Megan L. Dishong  
Candace C. Fetscher  
Katherine L. Georger \*\*  
Charles E. Hansberry  
Gregory L. Hanson  
Elizabeth L. Hausbeck  
Jenny M. Jourdonnais  
Isaac M. Kantor  
Bradley J. Luck  
Robert C. Lukes  
Kathryn S. Mahe

Alan F. McCormick  
Kristina K. McMullin  
Charles E. McNeil  
Mark S. Munro \*  
Anita Harper Poe  
Larry E. Riley  
Jeffrey M. Roth  
Susan P. Roy  
Robert E. Sheridan  
Brian J. Smith  
Jeffrey B. Smith  
Peter J. Stokstad  
Christopher B. Swartley  
Kevin A. Twidwell  
William T. Wagner

\*Currently admitted in New York, Texas, and Washington only  
\*\*Currently admitted in Idaho only

March 11, 2014

Adjuster  
Senior Liability Adjuster  
The Casualty Company  
VIA EMAIL:

RE: Claim File No. \*\*\*\*\*

Dear Adjuster:

Please accept this correspondence in connection with your request that we issue an opinion letter in connection with the Robert V. and Trucking, Inc. accident and whether coverage under the policy issued to Trucking, Inc. will respond to the accident described below. You have requested our opinion as to whether Robert V. is an "insured" under the policy and, ultimately, whether the policy itself will respond to the damages that result from the accident. This opinion is based upon the facts as we know them and the information set forth below. We reserve the right to supplement or revisit this opinion in the event additional facts or additional information is discovered regarding this matter.

As we understand the facts applicable to this issue, The Casualty Company issued its policy of insurance to Trucking, Inc. out of Livingston, Montana. The Casualty Company Policy No. \*\*\*\*0099C was issued effective November 1, 2013 to Trucking, Inc. and was effective until November 1, 2014. The policy at issue is Commercial Auto Coverage-Motor Carrier, as identified on the common policy declarations issued to Trucking, Inc. At the time of the accident involving Robert V., this policy was in effect and in good standing.

At the time of the Robert V. accident, the tractor being operated by Robert V. was leased to Trucking, Inc. pursuant to the terms of a Contractor Operating Agreement dated May 6, 2013. The owner of the tractor is identified in the Contractor Operating Agreement as Rick J. The Contractor Operating Agreement was in full force and effect as of the date of the Robert V. accident. Robert V.'s unit was identified as unit 69 under the Contractor Operating Agreement. The lease agreement clearly leases the equipment being operated by Mr. V. to Trucking, Inc. to operate in interstate commerce.

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Robert V. was employed by Rick J. as a driver. As we understand the situation, on November 22, 2013, Robert V. picked up a load of freight in Los Angeles, California and he commenced his trip. This particular load had three separate drops along the way. On November 25, 2013, he delivered a portion of the load and the first drop in Shepherdsville, Kentucky and then drove to Columbus, Ohio, the location for his second drop. On November 27, 2013, he delivered his second drop in Columbus, Ohio at approximately 4:00 in the afternoon. The third and last drop for the trip was not scheduled until November 29, 2013 near Cleveland, Ohio. All three drops were included in the load dispatch and the dates and places for Mr. V.'s deliveries were given to him at the time of his initial dispatch from Los Angeles, California. It is noteworthy that the day in between his second and third drop was Thanksgiving, 2013.

Without notice to Trucking, Inc. or Mr. J., Robert V. left the Columbus, Ohio area and drove the tractor and trailer to Sterling, Illinois on the evening of November 27, 2013. He drove to Sterling, Illinois to see his mother for Thanksgiving. In the late afternoon of Thanksgiving, November 28, 2013, Mr. V. left Sterling, Illinois, headed toward Ohio and was involved in an accident near Ottawa, Illinois. Following the accident, he resumed his trip and made his delivery near Cleveland, Ohio on November 29, 2013. The distance from Columbus, Ohio to Sterling, Illinois is approximately 450 miles. It seems clear, although not relevant for this analysis, that neither the lessor, Mr. J., nor Trucking, Inc. expected that Mr. V. would travel to Sterling, Illinois on his way between Columbus, Ohio and Cleveland, Ohio. Equally irrelevant for this analysis is whether the lessor, Mr. J., would have given Mr. V. permission to drive from Columbus, Ohio to Sterling, Illinois for this purpose. The inquiry is speculative in nature and there does not seem to be any real dispute as to whether Mr. V. was authorized to be in possession of the leased tractor and trailer during his trip to Sterling, Illinois and back.

We begin our analysis with the insurance policy itself and its provisions. As indicated above, The Casualty Company issued its policy of Commercial Auto Coverage-Motor Carrier insurance to Trucking, Inc. on November 1, 2013. The policy number appears above. The declarations page of the policy indicates that the liability coverage under the policy issued by The Casualty Company extends to covered autos identified with symbol 50. Symbol 50 is defined within the policy as "any auto except a private passenger type auto, van or pickup." The policy defines the term "auto" in Section VI of the policy referring to definitions.

#### SECTION VI – DEFINITIONS

C. "Auto" means:

1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, “auto” does not include “mobile equipment”.

Clearly, the 2007 Peterbilt tractor and trailer fall within the definition of “auto” set forth above.

The policy also includes a provision under Section IIA which defines the coverage that is provided pursuant to the commercial auto liability policy. The policy sets forth the following language as applicable to this issue.

## SECTION II – LIABILITY COVERAGE

### A. COVERAGE

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto”.

The coverage under the policy extends to all sums an insured legally must pay as damages because of bodily injury or property damage to which the insurance applies, caused by an accident and resulting from the ownership, maintenance or use of a covered auto. This provision raises the question of whether the lessor, Mr. J., or the driver, Mr. V., is an “insured” under the policy.

The policy sets forth those persons who are identified as an “insured.”

## SECTION II – LIABILITY COVERAGE

### A. COVERAGE

#### 1. WHO IS AN INSURED

The following are “insureds”:

- a. You for any covered “auto”.
- b. Anyone else while using with your permission a covered “auto” you own, hire or borrow except:
  - (1) The owner, or any “employee”, agent or driver of the owner, or anyone else from whom you hire or borrow a covered “auto”.

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Based on the foregoing definition of an insured, it would be clear that neither Mr. J. nor Mr. V. is an insured under the policy. However, this provision is modified by the additional insured endorsement included with the policy, for leased autos.

This additional insured endorsement for leased autos provides as follows:

#### ADDITIONAL INSURED – LEASED AUTOS

This endorsement modifies insurance provided under the following:  
COMMERCIAL AUTO COVERAGE PART

Additional Insured (Lessor) and Address:

ANY LESSOR OF A "LEASED AUTO" OR ANY "EMPLOYEE",  
AGENT OR DRIVER OF THE LESSOR WHILE THE "LEASED AUTO"  
IS USED IN YOUR BUSINESS AS A "MOTOR CARRIER" FOR HIRE.

Description of "Leased Auto(s)":

ANY "AUTO" LEASED TO YOU UNDER A WRITTEN LEASE  
AGREEMENT.

#### A. COVERAGE

1. For a "leased auto", Who is an Insured is changed to include as an "insured" the lessor named or designated in the SCHEDULE on this endorsement. However, the lessor is an "insured" only when the "leased auto" is used in your business as a "motor carrier" for hire.

\* \* \*

#### A. ADDITIONAL DEFINITION

As used in this endorsement:

"Leased auto" means an "auto" designated or described in the SCHEDULE on this endorsement that is leased or rented to you, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a written Lease Agreement.

Applying the provisions of the additional insured endorsement set forth above to the definition of who is an insured under the policy language, it is clear that both the lessor, Mr. J., and his employee, agent or driver, Mr. V., are additional insureds under the policy of insurance issued by The Casualty

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Company. The application of the endorsement is conditioned, however, on the "leased auto" being used in Trucking, Inc.'s business as a motor carrier for hire at the time of the accident.

Therefore, we conclude that the lessor of the vehicle, Mr. J., and the driver of the vehicle, Mr. V., are additional insureds under the policy of insurance issued by The Casualty Company to Trucking, Inc., if and only if, Mr. V. was using the leased auto in the business of Trucking, Inc. as a motor carrier for hire at the time of the accident. In making the determination of whether the use by Mr. V. at the time of the accident was in the business of Trucking, Inc., some of the above-referenced factual matters need to be highlighted and, since the term "in your business" is not defined in the policy, we refer to case law to determine similar or like factual scenarios in the courts' interpretation of whether the vehicle was in the business of Trucking, Inc. as a motor carrier at the time of the accident.

As indicated, some of the facts set out above need to be highlighted in order to continue the analysis of this question. The facts we find particularly significant, based upon our reading of the case law, are as follows:

1. Mr. V. had been dispatched by Trucking, Inc. for three separate drops, one scheduled Tuesday, one scheduled Wednesday and one scheduled on Friday. Thanksgiving, which falls on a Thursday, was between the second and third drop and this was evident at the time that the truck was dispatched from Los Angeles, California.
2. Mr. V. was given no direction as to how to spend the time between his second and third drops, even though the time between his second and third drops included a recognized holiday, Thanksgiving.
3. At the time of the accident, Mr. V. was on his way to make his third drop near Cleveland, Ohio.
4. At the time of the accident, the vehicle that Mr. V. was driving was leased to Trucking, Inc. In addition, at the time of the accident Mr. V. was an employee of the lessor of the vehicle, Mr. J.. Further, at the time of the accident, Mr. V. was operating a tractor and trailer and the trailer was partially loaded with freight to be delivered at his third drop. All three of Mr. V.'s drops were included in the dispatch he received in Los Angeles, California.

Several cases have been reviewed in connection with determining whether these facts constitute Mr. V. operating in the business of Trucking, Inc. as a motor carrier for hire. No cases were located with an identical fact pattern as that set forth above. Some cases have similar factual scenarios. Universally, the cases that we reviewed involve the question of whether the auto liability policy or the non-trucking use policy ("bobtail") responded to the accident. The answer to this question seems to turn on the question of whether the truck was under dispatch at the time of the accident. The case law with the most similar fact patterns all indicate that, if the truck was under dispatch at the time of the accident, the truck is operating in the business of the motor carrier. Other factors such as displaying the motor carrier's placards or performing some task which benefits the motor carrier were

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also considered in determining whether the truck was operating in the business of the motor carrier at the time of the accident.

The following cases are the best examples of the analysis used by various courts in resolving this issue. While this listing is not exhaustive, we believe that it is persuasive and helpful in reaching a determination as to whether Mr. V. was an insured under the additional insured endorsement referred to above at the time of the accident.

The case of *Liberty Mutual Insurance Co. v. Connecticut Indemnity Co., et al.*, 857 F. Supp. 1300 (N.D. Ind. 1994) is a decision from the United States District Court of the Northern District of Indiana. This case involved an issue between the auto liability carrier and the bobtail carrier in connection with an accident involving an owner-operator. Under the facts of this case, the owner-operator was under lease to a motor carrier. The owner-operator was dispatched by the motor carrier to pick up a loaded trailer on a Friday for delivery the following Monday. The owner-operator, upon receiving the dispatch, leaves and picks up the loaded trailer at a location in Battlecreek, Michigan. The owner-operator then leaves the loaded trailer at a truck stop, with permission from the truck stop, and drives the tractor to his home which is located some 60 miles away. While at his home, the owner-operator performs some maintenance on the truck which, under the lease agreement, is the responsibility of the owner-operator. The owner-operator leaves his home and gets into an accident on his way back to pick up the loaded trailer and take it to delivery.

The federal court in the Northern District of Indiana concluded that the auto liability policy of the motor carrier applied to this loss. The factors that were determinative by the Indiana court included that the owner-operator, at the time of the accident, was under dispatch by the motor carrier as he was directed to pick up the loaded trailer on Friday and deliver it on Monday. The court seemed to place some significance on the fact that the motor carrier knew that there would be a weekend between pickup and delivery and knew that the owner-operator would occupy his time somehow over the weekend. Further, the court seemed to place some significance on the fact that the knowledge of the motor carrier included that the weekend would be between pickup and delivery and that this was a normal business practice for the motor carrier.

This case is similar to the *Trucking, Inc.* matter in that at the time of dispatch, the motor carrier was aware that there would be an interval between the second and third drop and that that interval fell on a recognized holiday, Thanksgiving. As in the *Liberty Mutual* case, the owner-operator was dispatched with this knowledge available to the motor carrier. The owner-operator in the *Liberty Mutual* case was returning to pick up the loaded trailer at the time of the accident, although the court determined that at the time of the accident the owner-operator was furthering the commercial interest of the motor carrier as he was en route to pick up the loaded trailer to deliver the load on behalf of the motor carrier. The court seems to make a distinction that while the owner-operator was not under the motor carrier's "direct dispatch" at the time of the accident, it was clear that the owner-operator was under general dispatch throughout the entire weekend. The court concluded that the auto liability policy and not the non-trucking use policy applies in these circumstances.

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There is a decision out of the Court of Appeals of Georgia identified as *Hot Shot Express, Inc. v. Assicurazione Generali, S.P.A.*, 252 Ga. App. 372, 556 S.E.2d 475. The facts of this case include an owner-operator that was under lease to a motor carrier. The owner-operator was dispatched by the motor carrier to pick up freight in Jackson, Mississippi and deliver it in Hialeah, Florida. The owner-operator picked up the freight and delivered it to the consignee in Hialeah, Florida. After unloading, the owner-operate was en route to the motor carrier's terminal in Ocala, Florida when he collided with a minivan. The facts include that the owner-operator was heading to a company terminal in Ocala, Florida to see if there was a load for him to haul while he was headed to his home in Ohio. The case itself involved both the auto liability carrier and the non-trucking use carrier. The issue in the case was whether the owner-operator, after having delivered the load that he was hauling, was subject to the non-trucking use policy instead of the commercial auto liability policy.

The court held that even though the owner-operator had unloaded at the point of destination and was not yet given another load, he was en route to Ocala and the company terminal for the purpose of picking up another load to haul to Ohio. The undisputed facts in this case show that the owner-operator was within his work pattern and operational routine in heading to the terminal to obtain a load to haul to the Ohio area. The court found as a matter of law that the owner-operator was "in the business" of the motor carrier and that the commercial auto liability policy responded to the damages in the accident and, as a matter of law, the non-trucking use insurance policy was not applicable to this loss.

These facts are even more removed from the facts at issue in the present case since the owner-operator in the *Hot Shot Express* case had delivered his load, did not have another load waiting for him, but was en route to the terminal to obtain a load before he headed home to Ohio. Compare those facts to the facts at issue here where the owner-operator had the third drop freight on his trailer and, at the time of the accident, was headed to the location of the third drop for delivery as scheduled in his original dispatch.

An older case between Home Indemnity Company and St. Paul Fire & Marine Insurance Company, identified as *Home Indemnity Co., et al. v. St. Paul Fire & Marine Insurance Co., et al.*, 585 S.W.2d 419, is a decision out of the Court of Appeals of Kentucky that stems from 1979. In this action, an owner-operator was leased to a motor carrier. The owner-operator was dispatched to pick up a load in Ohio the day after the accident which occurred in connection with this case. On the day of the accident, the owner-operator was en route to pick up a trailer that he had purchased, and thereafter to pick up his load in Ohio the next day. Before the owner-operator had the opportunity to pick up the trailer that he was headed for, the accident occurred.

The issue in this case was whether the owner-operator was in the business of the motor carrier at the time of the accident. The Kentucky Court of Appeals relies upon two bellweather type cases identified as *Wellman* and *Cosmopoliton* to make a determination that at the time that the owner-operator was in the accident, he was en route to obtain the trailer that he had purchased to use in the business of hauling freight for the motor carrier. The court further finds that, based upon these

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activities, and the fact that he had been given a load to pick up the next day and was under dispatch, that he was in the business of the motor carrier at the time of the accident. The court extends its opinion to gratuitously determine that the owner-operator was the statutory employee of the motor carrier at the time of the accident, based upon federal regulations. Finally, the court determines that it is the liability policy that was applicable to the loss in spite of the fact that the owner-operator did not have a trailer or freight with him at the time of the accident. The court determined that the significant factors are that the owner-operator had been dispatched and was en route to pick up a trailer to be used in the motor carrier's business at the time of the accident.

Applying the wisdom that can be gleaned from the foregoing cases to the facts in this matter, it is our opinion that at the time of the accident, Mr. V. was an "insured" under the policy issued by The Casualty Company to Trucking, Inc. This opinion is based on the fact that Mr. V. was dispatched from Los Angeles, California with three drops and Thanksgiving fell between the second and third drop. At the time of the accident, Mr. V. had his tractor and trailer with freight on the trailer and was traveling to the final destination on his dispatch. While the detour that he took was not contemplated at the time of the dispatch nor was the motor carrier aware of the detour either before Mr. V. took it or prior to the accident, there is no indication that Mr. V. was prohibited from driving his truck to Sterling, Illinois and back for Thanksgiving. Admittedly, this is extraordinary and completely unexpected. However, for the auto liability policy to apply to the loss, it must be determined that Mr. V. was operating the vehicle in the business of Trucking, Inc. Based upon the case law, the determination of whether an owner-operator is "in the business" of the motor carrier, is a relatively light standard and we believe it can be argued that the owner-operators in the cases identified above were arguably more removed from the dispatch process than Mr. V. was at the time of this particular accident. We also believe it is significant that at the time of the accident, notwithstanding where Mr. V. had been, he was headed to deliver the third drop, that was on his trailer, at its destination.

Balancing all factors and taking in to consideration the findings in the cases set forth above, it is our opinion that Mr. V. is an insured under the policy and that the commercial auto liability policy issued by The Casualty Company identified above extends coverage for this accident.

Please feel free to contact me should you have any questions or concerns regarding this opinion. We reserve the right to alter or amend this opinion in the event additional information or facts are discovered.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

Brian J. Smith

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