In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1002

PRIME INSURANCE COMPANY,

Plaintiff-Appellant,

v.

DARNELL WRIGHT,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Indiana, Fort Wayne Division.
No. 1:19-CV-478 — **William C. Lee**, *Judge*.

ARGUED DECEMBER 1, 2022 — DECIDED JANUARY 13, 2023

Before EASTERBROOK, HAMILTON, and KIRSCH, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Decardo Humphrey was a driver for Riteway Trucking. All of his trips began in South Holland, Illinois. Riteway would send him to a destination, often in another state; after unloading his truck, Humphrey would receive instructions about where to pick up his next load, which he would take to South Holland or another destination. He always ended up in Illinois to start another trip.

In November 2013 Humphrey drove a truck to Fort Wayne, Indiana. After he dropped off the freight, Riteway directed him to another site in Fort Wayne, where he was to pick up a load. While en route to the pickup site, Humphrey's truck collided with a car driven by Darnell Wright. After cooperating with Wright and the police, Humphrey picked up his new load and delivered it in Illinois.

Wright, who accused Humphrey of negligence, eventually sued Riteway in a state court of Indiana. Riteway did not appear, and a default judgment for $400,000 was entered against it. Riteway also did not cooperate with Prime Insurance Co. and thus forfeited the benefit of the policy that Prime had issued.

Although Riteway lost its insurance coverage, the policy contained an endorsement known as the MCS-90 ("the Endorsement"), which provides payments to an injured party even when the insurer need not defend or indemnify its client. A federal court determined that Riteway's obduracy had cost it the benefit of Prime's policy but reserved all questions about whether Wright could recover under the Endorsement. The state's judiciary declined to allow Prime to attack the default judgment. *Prime Insurance Co. v. Wright*, 133 N.E. 3d 749 (Ind. App. 2019). This led Prime to file a second suit in federal court, seeking a declaratory judgment that the Endorsement does not entitle Wright to any money. The district court held that the Endorsement applies and ordered Prime to pay up. 2021 U.S. Dist. LEXIS 228400 (N.D. Ind. Nov. 30, 2021).

Prime contends that we should follow the "trip specific" approach adopted by *Canal Insurance Co. v. Coleman*, 625 F.3d 244 (5th Cir. 2010). Under this approach, the Endorsement applies only when a truck is loaded with freight and moving

from one state to another at the moment of the collision. Wright urges us to follow the "fixed intent" approach used in *Century Indemnity Co. v. Carlson*, 133 F.3d 591 (8th Cir. 1998). Under that approach, the Endorsement applies when the driver has a fixed intent to transport freight across state lines in the near future. The district court instead used what it called a "totality of the circumstances" approach. Decisions by district courts across the country support all three possibilities.

The Endorsement reads:

> In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have

> been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

This is windy and stilted, but the core undertaking is straightforward. Prime agreed to pay any judgment "resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980".

The fact that these statutes have been repealed, and that the laws governing truck transportation have been recodified since the Endorsement's language was specified by a federal regulation, introduces some complexity. Our path has been simplified by the parties' agreement that the pertinent language now appears in 49 U.S.C. §31139(b)(1). This says:

> The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property by motor carrier or motor private carrier (as such terms are defined in section 13102 of this title) in the United States between a place in a State and—
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> (A) a place in another State;
>
> (B) another place in the same State through a place outside of that State; or
>
> (C) a place outside the United States.

The regulation issued under this provision, which includes the Endorsement's language, can be found at 49 C.F.R. §387.7.

Section 31139(b)(1) does not call on courts or the Secretary to investigate the "totality" of circumstances. It does not require the Secretary or the judiciary to probe anyone's intent. It offers a bit of support for *Coleman*, because it includes the phrase "transportation of property", which *Coleman*

expounded. But it does not include the qualifier "at the time of the accident" or anything similar. Nor does 49 U.S.C. §13102, to which §31139 refers.

Still, §13102(23)(B) is helpful, because it defines "transportation" to include "services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property." This tells us that carrying freight at the instant of a collision is *not* essential to "transportation"; the word is more capacious. Transportation remains essential, and that transportation must be interstate or international. Section 13501 supplies the general rule for identifying that kind of transportation. Under §13501, all motor freight transportation from a place in one state to a place in another is covered.

Humphrey was engaged in interstate freight transportation under the definition in §13501, as supplemented by §13102(23)(B). He set out from Illinois to Indiana, where he dropped some freight and picked up more, which he returned to Illinois. During this journey his truck and Wright's car collided. The brief time that the truck was empty in Indiana is easily described as movement arranging for the interchange of property: loads must be picked up before they can be delivered. This means that the Endorsement applies. Cf. *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 1783 (2022) (loading baggage into an airplane's hold is an activity in interstate commerce, for the purpose of 9 U.S.C. §1, even though the loader never moves across a state line).

We have avoided "tests" by tracing the vital language. The Endorsement asks whether particular travel was subject to certain financial responsibility requirements. That sends us to

§31139, which sends us to §13102(23). Section 13501 adds a general definition. None of these destinations tells us to ask about anyone's intent, about whether a truck was carrying freight at the moment of impact, or about the "totality" of anything (let alone what would be in the list of circumstances that must be totally contemplated). All we need to know is whether the collision occurred during an interstate journey to deliver freight or one of the steps mentioned in §13102(23)(B). The answer to that question is "yes."

Prime's other arguments do not require discussion. It is not entitled to relitigate the state court's decision in favor of the default judgment. 28 U.S.C. §1738. And the award of interest from the date of the state judgment is not problematic.

AFFIRMED