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IN THE
SUPREME COURT OF CALIFORNIA
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ALLIED PREMIER INSURANCE,
Respondent
v.
UNITED FINANCIAL CASUALTY COMPANY,
Petitioner

==========
ON A CERTIFIED QUESTION FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE NO. 20-55099

ANSWERING BRIEF ON THE MERITS
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CERTIFIED QUESTION FROM THE NINTH CIRCUIT

On March 22, 2021, pursuant to California Rules of Court, rule 8.548, the Ninth Circuit issued its Order Certifying Question ("Order") to the United States Supreme Court, framing the question as:

> "Under California's Motor Carriers of Property Permit Act, Cal. Veh. Code §§ 34600 *et seq*., does a commercial automobile insurance policy continue in full force and effect until the insurer cancels the corresponding Certificate of Insurance on file with the California Department of Motor Vehicles, regardless of the insurance policy's stated expiration date?"

On May 12, 2021, this Court granted the request from the Ninth Circuit, without re-framing the question.

Prior to California's 1996 enactment of the Motor Carriers of Property Permit Act ("MCPPA"), found in Vehicle Code section 34600, et seq., motor carriers in California were governed by the Highway Carriers' Act ("HCA"). Both the MCPPA and the HCA require California intrastate motor carriers to maintain an adequate level of financial responsibility and protection against liability in order to maintain their operating permits. Under the HCA, this Court confirmed that an insurance policy remains in full force and effect, potentially indefinitely, until properly cancelled by the insurance company, notwithstanding its express

terms or its termination date. *Transamerica v. Tab Transp.* (1995) 12 Cal.4th 389, 398 *(Transamerica)*; see also *Fireman's Fund v. Allstate Ins. Co.* (1991) 234 Cal.App.3d 1154 *(Fireman's Fund)*. As will be shown herein, the MCPPA differs from the HCA in form, but not in meaning. The underlying policy, legislative intent, and the holdings in *Transamerica* and *Fireman's Fund* continue to be applicable law as applied to the MCPPA and require an affirmative response to the Certified Question.

INTRODUCTION

Instead of taking responsibility for its failure to follow the rules, Petitioner seeks to have this Court re-write the rules by taking away the consequence of the failure. It is undisputed that Petitioner failed to properly cancel its insurance policy with the California Department of Motor Vehicles ("DMV"). The consequence of that failure is that its policy remains in effect, maintaining the financial responsibility of the motor carrier. The decades old system of maintaining motor carrier financial responsibility under the Highway Carriers Act (HCA"), including the consequence for failing to properly cancel a policy, has been evaluated and confirmed by this Court in *Transamerica*, *supra*, 12 Cal.4th at p. 398 and by the Court of Appeal in *Fireman's Fund*, *supra*, 234 Cal.App.3d 1154.

These decisions apply equally to the current statutory language found in (MCPPA). There is nothing in the language, legislative history, or purpose of the MCPPA that supports Petitioner's position that the MCPPA is fundamentally different

than the HCA or that it eliminated the consequence of its failure to properly cancel its policy. Instead, the Acts are substantially similar and fulfil the same purpose. The stated reason for the change was to respond to a federal regulation preempting certain portions of the HCA as applied to motor carriers other than household good and passenger carriers and was not to change the system regarding insurance.

One purpose of both the MPCCA and the HCA is to ensure that motor carriers operating within California are financially responsible by requiring them to maintain a certain level of insurance. See Pub. Util. Code, § 3634 and Veh. Code, § 34630. This purpose would be destroyed if Petitioner's position were to be adopted by this Court. In sum, Petitioner argues that the change from the HCA to the MCPPA relieves insurance companies of their policy obligations even when they fail to comply with the DMV regulations and statutory requirements regarding the cancelation of policies. If this were true, the system by which the DMV assures that each licensed motor carrier remains financially responsible would fail to provide such assurance. Instead, Petitioner's proposed system would provide no incentive to insurance companies to timely or properly notify the DMV of the cancellation or expiration of policies and could permit a motor carrier to continue in operation without maintaining the required financial responsibility.

Further, the DMV 67 MCP Endorsement (the "Endorsement") form submitted to the DMV by Petitioner states that it is "made a part of" its insurance policy. (Supplemental Excerpts of Record ("SER") 75) The Endorsement itself makes clear that it and the policy are one and the same. The Certificate of Insurance ("COI")

filed with the DMV by Petitioner certifies that Porras was "covered by an insurance policy" and that the COI "shall not be cancelled" except upon strict compliance with the DMV and statutory requirements. (Excerpts of Record, Volume 2 "2 ER" 92)

The Notice of Cancellation of Insurance ("Notice of Cancellation") form (DMV 66 MPC) by its title and content make clear that its purpose is to cancel an insurance policy, which includes the Endorsement and the related COI. (SER 81)[1] The Notice of Cancellation form states, "Insurer hereby gives notice that the above referenced policy, including applicable endorsement and certifications, is hereby **CANCELLED**." (Emphasis in original) The DMV's use of the word "is" and not "are" further confirms that the DMV deems the policy, the Endorsement, and the COI to be a single thing. Further, the phrase "including applicable endorsement and certifications," within two commas syntactically modifies the word "policy," again showing that all three are parts of a single instrument which evinces a motor carriers' requisite financial responsibility.

Petitioner's entire argument depends upon its faulty premise that the insurance policy, the Certificate of Insurance, and the Endorsement are each stand-alone documents that function and may exist independently of each other. As shown herein, Petitioner's premise is wrong under the MCPPA including its corresponding regulations found in Title 13 of the California Code of Regulations ("CCR"), and under the decisions by this Court in *Transamerica*, *supra*, 12 Cal.4th at p. 398 and by the Court of

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[1] The Record at SER 81 contains the Notice of Cancellation filed by Petitioner on February 6, 2015. That Notice was returned to Petitioner by the DMV and was not effective. (2 ER 84:3-9)

Appeal in *Fireman's Fund*, *supra*, 234 Cal.App.3d 1154. Nothing in the change from the HCA to the MCPPA requires a change in this Court's opinion or interpretation of the laws regulating a motor carrier's financial responsibility and the obligations placed upon their insurers. More specifically, the change does not remove the consequences to an insurer for failing to properly cancel its policy with the DMV. Accordingly, the Certified Question should be answered affirmatively, and Judgement entered by the District should be affirmed.

STATEMENT OF THE CASE

Petitioner is an insurance company that issued a liability policy to a motor carrier, José Porres. (SER 8–73) Under the MCPPA, insurance companies that issue liability policies to motor carriers are required to include an Endorsement, on form DMV 67 MCP. Petitioner's policy included the Endorsement. (SER 75) In addition to the Endorsement, the MCPPA requires insurers to file a COI on its form DMV 65 MCP, which among other things, requires the insurer to certify under penalty of perjury that a compliant policy exists. (SER 74) In order to ensure that motor carriers meet the financial responsibility levels required by the MCPPA, insurance companies are required to provide to the DMV 30 days' notice before the policy (including the Endorsement and the COI) may be cancelled. This notice must be submitted on DMV 66 MCP. (SER 81) Absent such a notice, the policy and the Endorsement continue to exist and provide insurance coverage to the insured.

Prior to filing cross motions for summary judgment in the District Court, Petitioner and Respondent prepared a Joint Statement of Stipulated Facts and Exhibits that was filed in support of the motions. (2 ER 81–85) Most relevant to this appeal are the following stipulated facts:

Fact 1 – "Effective May 2, 2013, UFCC insured José Porras under a commercial auto insurance policy, policy number 02156772. The policy listed a 2013 Dodge RAM 3500 pickup truck, VIN ending 5181, as a scheduled auto and provided bodily injury liability coverage of $750,000. Exhibit 1 hereto is a true and correct copy of the UFCC policy in force effective May 2, 2013. (2 ER 82:6–11)

Fact 2 – "On or about May 2, 2013, at José Porras' request, UFCC submitted to the California Department of Motor Vehicles a certificate of insurance, on DMV form MCP 65, to evidence José Porras' financial responsibility as a motor carrier of property pursuant to Vehicle Code section 34630, *et seq*. Exhibit 2 hereto is a true and correct copy of the certificate of insurance." (2 ER 82:12–17)

Fact 3 – "UFCC issued José Porras an endorsement to the UFCC policy, on DMV form MCP 67." (2 ER 82:18–20)

Fact 7 – "Prior to April 12, 2015, UFCC also submitted to the California Department of Motor Vehicles at times MCP 65 certificates of insurance to evidence José Porras' financial responsibility as a motor carrier of property." (2 ER 83:4–6)

Fact 13 – "Prior to September 1, 2015, the California Department of Motor Vehicles returned to UFCC a notice of cancellation form DMV MCP 66 that UFCC had previously submitted in an attempt to cancel evidence of José Porras'

financial responsibility as a motor carrier of property through the UFCC policy on the grounds that the policy number or the effective date on the Notice of Cancellation was not on file with the department." (2 ER 84:3–9)

Fact 14 – "Thus, on September 1, 2015, [the date of the accident] the California Department of Motor Vehicles had in its file certificates of insurance from both UFCC and Allied to evidence José Porras' financial responsibility as a motor carrier of property pursuant to Vehicle Code section 34630, *et seq*." (2 ER 84:10–13)

Fact 16 – "On September 1, 2015, the California Department of Motor Vehicles' internet-based Motor Carrier Permit Active Carrier List listed Mr. Porras as an active carrier and identified his liability insurer as UFCC." (2 ER 84:18–20)

Fact 18 – "The September 1, 2015 loss was covered under the terms of the Allied policy. Allied retained counsel to defend José Porras in the wrongful death lawsuit. In November 2016, Allied settled the wrongful death lawsuit for $1 million." (2 ER 84:25–28)

Further, the DMV 67 MCP Endorsement form submitted to the DMV by Petitioner states that it is "made a part of" Petitioner's insurance policy, that the "terms, conditions, and limitations of this policy remain in full force and effect," and that "[t]his insurance policy covers all vehicles used in conducting the service performed by the insured …" (2 ER 92) The Endorsement itself makes clear that it and the policy are one and the same. The Certificate of Insurance ("COI") filed with the DMV by Appellant certifies that Porras was "covered by an insurance policy" and that the COI "shall not be cancelled" except upon

strict compliance with the DMV and statutory requirements. (2 ER 92) It cannot be disputed that Appellant failed to properly cancel the COI, even though it may have attempted to do so. (2 ER 84:3–9) *See* Veh. Code, § 34630, subd. (c). While the case remained in the District Court, it was admitted by Petitioner that the vehicle involved in the accident was a scheduled vehicle on Petitioner's Policy. (Excerpts of Record, Volume 1 ("1 ER") 20)

Respondent sued Petitioner in the Superior Court for the State of California, seeking to recover half of the $1 million it had paid to settle the wrongful death action against the insured. (2 ER 84:25–28) Respondent's complaint states claims for declaratory relief, equitable contribution, and equitable subrogation. (1 ER 110–114) Petitioner removed the suit to federal court, invoking federal diversity jurisdiction under 28 U.S.C. § 1332. (2 ER 107) The parties later filed cross-motions for summary judgment, each based on the submitted joint statement of stipulated facts and exhibits. (2 ER 36–50, 51–65, 66–80, 81–85) After briefing and oral argument, the District Court granted Respondent's motion, determining that Petitioner's failure to cancel the COI on file with the DMV in accordance with the regulations caused Petitioner's insurance policy to continue in full force and effect at the time of the September 1, 2015 accident. (1 ER 3–21) Based primarily on this Court's decisions in *Transamerica* and *Fireman's Fund*, the District Court also found that Petitioner's policy was primary and that Respondent was entitled to contribution. Judgment was entered in favor of Respondent, and against Petitioner, in the amount of $500,000. (1 ER 1–2)

Petitioner appealed the decision of the District Court to the Ninth Circuit, arguing that because *Transamerica* and *Fireman's*

Fund were determined by this Court under the HCA and those regulations had been replaced by the MCPPA, it was no longer obligated to properly cancel its policy but may instead limit itself to partial responsibility by simply letting its policy lapse. After briefing and oral argument, the Ninth Circuit, pursuant to California Rules of Court, rule 8.548, issued its Order Certifying Question to the United States Supreme Court, which has been accepted.

LEGAL ARGUMENT

1. THE ENACTMENT OF THE MCPPA DID NOT CHANGE THE MEANING, UNDERLYING POLICY, OR LEGISLATIVE INTENT OF THE HCA

a. The Framework of the MCPPA Confirms its Consistency With the HCA

The MCPPA was enacted by the California legislature in 1996 to replace the HCA as part of the transfer of responsibility for regulating motor carriers from the Public Utilities Commission ("PUC") to the DMV. Prior to 1996, the PUC had authority to regulate motor carriers, and exercised that authority to regulate their rates, routes, and services, among other things. However, the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") preempted states' authority to regulate prices, routes, and the service of highway carriers which transport property, with the exception of household goods carriers and passenger

carriers. The California Legislature enacted the MCPPA in part to address the FAAAA, and stated in its California Bill Analysis, A.B. 1683 Sen., 6/10/1996:

> "The Federal Aviation Administration Authorization Act of 1994 (P.L. 103–305) preempted the states' authority to regulate prices, routes or the service of highway carriers which transport property, with the exception of household goods carriers and passenger carriers. It did not, however, preempt a states' authority to regulate intra-state carriers of property with regard to safety, insurance, uniform cargo liability rules, uniform bills of lading, uniform cargo credit rules and certain other non-rate related areas.
>
> This bill would restructure the state's regulatory authority over highway carriers of property and passengers operating within California to reflect the preemptions enacted in federal law and would make additional changes related to the transfer of remaining state regulatory powers among various state agencies."

Comment 1 of the Bill Analysis states, "[t]his bill is intended to conform state law with the new regulatory environment and restrictions ushered in by the preemptory federal legislation." Nowhere in the legislative history, or elsewhere, is it stated or even implied that the intent of the MCPPA was to modify the financial responsibility requirements for motor carriers, or to change the policy or procedures surrounding motor carriers' insurance or the required Endorsement.

Like the HCA, the MCPPA requires motor carriers to prove that they have adequate financial protection against liability, or they will be denied an operating permit, or any existing permit will be cancelled. (Veh. Code, § 34630.)

Vehicle Code section 34630, reads:

> "(a) A motor carrier permit shall not be granted to any motor carrier of property until there is filed with the department proof of financial responsibility in the form of a currently effective certificate of insurance, issued by a company licensed to write that insurance in this state or by a non-admitted insurer subject to Section 1763 of the Insurance Code, if the policy represented by the certificate meets the minimum insurance requirements contained in Section 34631.5. The certificate of insurance or surety bond shall provide coverage with respect to the operation, maintenance, or use of any vehicle for which a permit is required, although the vehicle may not be specifically described in the policy, or a bond of surety issued by a company licensed to write surety bonds in this state, or written evidence of self-insurance by providing the self-insured number granted by the department on a form approved by the department.
>
> (b) Proof of financial responsibility shall be continued in effect during the active life of the motor carrier permit. The certificate of insurance shall not be cancelable on less than 30 days' written notice from the insurer to the department except in the event of cessation of operations as a permitted motor carrier of property.
>
> (c) Whenever the department determines or is notified that the certificate of insurance or surety bond of a motor carrier of property will lapse or be terminated, the department shall suspend the

> carrier's permit effective on the date of lapse or termination unless the carrier provides evidence of valid insurance coverage pursuant to subdivision (a)."

This statute clearly provides that the Certificate of Insurance ("COI") is a representation of the policy, and is not a policy or financial proof in and of itself. Vehicle Code section 34631.5 makes this clear: "(b)(1) The protection required under subdivision (a) [monetary policy limits requirements] shall be evidenced by the deposit with the department, covering each vehicle used or to be used in conducting the service performed by each motor carrier of property, an authorized certificate of public liability and property damage insurance…" The COI serves as evidence of the policy; it is not, in and of itself, evidence of the financial responsibility.

In order to obtain a motor carrier permit, the motor carrier must have a "currently effective certificate of insurance" on file with the DMV, in which case the "policy [is] represented by the certificate." (Veh. Code, § 34630, subd. (a).) This COI (as a representation of the policy) "shall provide coverage with respect to the operation, maintenance, or use of any vehicle for which a permit is required, although the vehicle may not be specifically described in the policy." § 34630, subd. (a) The COI is evidence of the underlying insurance policy, and must be currently effective in order for a motor carrier of property to receive and maintain a motor carrier permit. Because the COI represents the policy, it cannot exist without an underlying policy.

The MCPPA further provides that "[p]roof of financial responsibility shall be continued in effect during the active life of the motor carrier permit." (Veh. Code, § 34630, subd. (b).) The

COI evidences the financial responsibility, and it is effective as long as the motor carrier permit is active and an insurance policy exists. The only way to cancel the COI and the represented policy without 30 days' written notice to the DMV is "in the event of cessation of operations as a permitted motor carrier of property." (§ 34630, subd. (b)) Otherwise, "[t]he certificate of insurance shall not be cancellable on less than 30 days' written notice." (§ 34630, subd. (b)) There is no other way for an insurer to cancel the underlying policy or COI representation of the policy without filing the Notice of Cancellation with the DMV. If the legislature had wanted to separate the COI from the policy, or permit the policy to terminate without notice to the DMV, as argued by Petitioner, such an option would have been included in Vehicle Code section 34630, subdivision (b).[2]

Contrary to Petitioner's position, the MPCCA contains no exception to the requisite 30 day notification for the termination of an insurance policy when its stated term is completed. Instead, under the foregoing statutes, even if the policy represented by the COI is set to expire on a certain date, the COI and the policy it represents will remain in effect until 30 days after written notice is given to the DMV. This does not necessarily give the motor carrier 30 days of duplicate coverage as Petitioner alleges; if the process is followed correctly, the insurer will deliver the written

[2] In *People v. Skinner*, this Court "recognize[d] the basic principle of statutory and constitutional construction which mandates that courts, in construing a measure, not undertake to rewrite its unambiguous language." *People v. Skinner* (1985) 39 Cal.3d 765, 775

Notice of Cancellation to the DMV 30 days before the policy is set to expire, as has been done by insurance companies for decades.

b. The Variance in Language Between the HCA and the MCPPA is a Difference Without Distinction

Petitioner improperly relies upon a slight change in the language of the MCPPA from the HCA as the springboard for its arguments that (a) the financial requirements for all motor carriers were fundamentally changed by the MCPPA; (b) the COI and the policy are separate obligations and can each exist without the other; (c) that its policy terminated on its expiration date despite Petitioner's failure to cancel the COI with the DMV; and (d) that *Transamerica* and *Fireman's Fund* are no longer good law. Despite Petitioner's reliance on the language variance, the change to the language is a distinction without a difference. The new text cannot support Petitioner's positions.

The comparable language in the statutes reads as follows:

The HCA, in PUC § 3634, required that "protection against liability shall be continued in effect during the active life of the permit," and that "[t]he policy of insurance or surety bond shall not be cancelable on less than 30 days' written notice to the commission, except in the event of cessation of operations as a highway carrier as approved by the commission."	The MPCCA, in Cal. Veh. Code § 34630, requires "(b) [p]roof of financial responsibility shall be continued in effect during the active life of the motor carrier permit. The certificate of insurance shall not be cancelable on less than 30 days' written notice from the insurer to the department except in the event of cessation of operations as a permitted motor carrier of property."

Petitioner relies primarily upon the difference in the following portions of the acts:

> HCA: "[t]he policy of insurance or surety bond shall not be cancelable …" MPCCA: "[t]he certificate of insurance shall not be cancelable …"

Contrary to the meaning ascribed by Petitioner, the language was changed in recognition that under the HCA, a copy of the actual policy was filed with the PUC, Cal. Pub. Util. Code § 3631 (West 1995), but the MPCCA did not incorporate that language or requirement. Instead, the MCPPA states that as a condition of

obtaining a permit to operate, the motor carrier must provide the "...department proof of financial responsibility in the form of a currently effective certificate of insurance..." and that the COI shall be submitted to the DMV by the insurer. (Veh. Code, § 34630, subd. (a); 13 Cal. Code Regs., § 220.06(a).) Under the MCPPA, unlike the HCA, the policy itself would no longer be submitted; rather, only the COI representing the policy is now submitted. The change in the language regarding cancellation was simply to conform the language to Veh. Code, § 34630, and not to change the meaning or impact of the financial responsibility statutes, or to undermine *Transamerica* and *Fireman's Fund*. Because Vehicle Code section 34630 deems the COI to represent the policy, the filing and cancellation of the COI has the same meaning and import as the filing and cancellation of the policy under the HCA.

2. FOR MOTOR CARRIERS, THE INSURANCE POLICY, THE COI, AND THE ENDORSEMENT ARE THREE INSEPARABLE PARTS OF ONE WHOLE.

The MCPPA requires that motor carriers maintain a required level of financial responsibility. That requirement may be satisfied by an insurance policy, but only if that policy (1) includes the required Endorsement as part of the policy; and (2) is evidenced to the DMV by the filing of a COI describing and attesting to the current existence of the policy. (Veh. Code, § 34630.) Thus, the statute links the documents together. Petitioner's legal position depends upon this Court determining

that, contrary to this statute, the insurance policy, the Endorsement, and the COI are separate documents, each of which can exist without the others.

In addition to the statute, the DMV-created forms themselves prove Petitioner's position wrong. The language of the Endorsement and the COI make clear that they cannot exist without each other and without a currently existing insurance policy. The language on the DMV required forms confirm that Petitioner's position is incompatible with the statutory scheme. (One of those regulations) obligates insurers to evince insurance policies with the COIs and to file that evidence with the DMV. (13 CCR 220.06 (a).) Thus, the language used by the DMV is authorized by the Legislature and must be considered in determining the meaning of the MPCCA as a whole. Pursuant to its authorization, the DMV created DMV 65 MCP (the COI), DMV 66 MCP (Notice of Cancellation of Insurance), and DMV 67 MCP (the Endorsement).

The DMV is authorized by the Legislature to enact rules and regulations to carry out the intent and purpose of the MCPPA. (Veh. Code, §§ 34604 and 3463, subd. (a). Under this authorization, the DMV has created mandatory forms that have been in use since 1996. This Court has recently recognized that in such situations, "[w]e presume the validity of a regulation promulgated by a state agency. (*Assn. of California Ins. Cos. v. Jones* (2017) 2 Cal.5th 376, 389, 212 *(Jones)* Cal.Rptr.3d 395, 386 P.3d 1188.) The burden lies with the party challenging the regulation to show its invalidity. (*Credit Ins. Gen. Agents Assn. v. Payne* (1976) 16 Cal.3d 651, 657, 128 Cal.Rptr. 881, 547 P.2d 993.)" (*In re Gadlin* (2020) 10 Cal. 5th 915, 926.) Petitioner seeks

to undermine the DMV's forms, and convince this Court that such forms are meaningless. However, Petitioner has failed to demonstrate that the DMV forms are invalid or conflict with the MCPPA. Thus, this Court should assume the validity of the language promulgated by the DMV in its forms.

DMV 65 MCP (the COI) verifies to the DMV that a policy of insurance exists (present tense) and meets the financial responsibility requirements of the MCPPA, and in relevant part reads:

"Insurer certifies to each of the following:

- The motor carrier of property (Insured) identified herein is covered by an insurance policy providing bodily injury or death liability, property damage liability insurance, or workers' compensation insurance within the coverage limits identified above as required by California Vehicle Code (CVC) Sections 34630, 34631.5 and 34640, and by Part 387 of Title 49 if the Code of Federal Regulations.
- This insurance policy covers all vehicles used in conducting the service performed by the Insured for which a motor carrier permit is required whether or not said vehicle is listed in the insurance policy.
- A fully executed endorsement, on a form authorized by the Department of Motor Vehicles (DMV), is attached to the referenced policy to conform to the requirements of the Motor Carriers of Property Permit Act, CVC Section 34600 and following, and the rules and regulations of the DMV. (This provision does not apply to Workers' Compensation Insurance.)
- For the purposes of Risk Retention Group Coverage, this policy meets the requirements of the Risk Retention Act of 1991, California Insurance Code Section 125 and following, and is authorized to do business in California."

"Insurer agrees to each of the following:

- This Certificate of Insurance shall not be canceled on less than thirty (30) days' notice from the Insurer to the DMV and written on a Notice of Cancellation form authorized by the DMV, and that the thirty (30) day period commences to run from the date the Notice of Cancellation form was actually received at the office of the California Department of Motor Vehicles, Motor Carrier Services Branch, in Sacramento, California.
- A duplicate original of the referenced policy, a DMV authorized endorsement, and all other related endorsements and documentation, shall be furnished to the DMV upon request."

The COI is signed under penalty of perjury by the insurance carrier, stating, "***I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct."*** **(**DMV 65 MCP (Rev. 9/2007 (emphasis in original).)

By its own language, the COI cannot exist without an underlying policy, and cannot be separated from that policy. Without an active insurance policy, there can be no COI. By filing the COI, the insurer certifies under penalty of perjury that "[t]he motor carrier of property (Insured) identified herein is covered by an insurance policy." (DMV 65 MCP (Rev. 9/2007) The use of the present tense verb "is" is no mistake. Its use requires the policy to remain active until the COI is cancelled. Without any supporting California authority, Petitioner now argues that the certification stated on the COI lasts only until the policy expires by its own terms, even though the COI continues to exist in the

DMV files until properly cancelled using the DMV 66 MCP form. If, as Petitioner argues, the policy can expire without notice to the DMV, the COI would become false upon that expiration, subjecting the insurance company to penalties for its perjury.

Moreover, the Endorsement is not a document that can survive on its own without a policy. The Insurance Policy Endorsement "shall be attached to and made a part of all policies insuring motor carriers of property required to obtain a permit pursuant to the Motor Carriers of Property Permit Act…The purpose of this Endorsement is to assure compliance with the Act and related rules and regulations." (DMV 67 MCP) By its own terms, the Endorsement becomes an inseparable part of the underlying policy. The Endorsement's purpose is to assure compliance with the applicable statutes, rules, and regulations requiring the financial responsibility of licensed motor carriers in California. A policy without the Endorsement fails to satisfy the financial responsibility requirements of a motor carrier.

This Court has previously recognized that where "insurance coverage is required by law, the statutory provisions are incorporated into the insurance contract. 'The obligations of such a policy are measured and defined by the pertinent statute, and the two together form the insurance contract....' (6c Appleman, *Insurance Law and Practice* (Buckley ed. 1979) s 4463, pp. 615–617, fns. omitted (hereinafter Appleman)." (*Samson v. Transamerica Ins. Co.* (1981) 30 Cal.3d 220, 231.) In *Samson*, the Endorsement at issue was the prior version of DMV 67 MCP, and this Court found that the Endorsement was part of the policy, not a separate stand-alone document. While *Samson* was decided under the HCA, its holding remains good law. Accordingly, the

Endorsement required by 13 CCR 220.06(b) was incorporated into the insurance policy issued by Petitioner, and remained a part of the insurance contract at the time of the accident.

Contrary to Petitioner's position, the DMV forms are consistent with the MCPPA, and should be given deference in interpreting the MCPPA. For example, the MCPPA states that the COI represents the policy and in conformance, DMV 65 MCP (the COI) requires the insurer to state under penalty of perjury that the motor carrier is "is covered by an insurance policy." (Veh. Code, § 34630.) As another example, the DMV form for the cancellation (DMV 66 MCP), is titled "Notice of Cancellation of Insurance" and states, "Insurer hereby gives notice that the above-referenced policy, including applicable endorsements and certificates, is hereby **CANCELLED**." (DMV 66 MCP (emphasis in original.) Based upon the forms that the DMV is authorized to prepare, there can be no doubt that the DMV views the three documents as interdependent and inseparable, which is consistent with the MCPPA, and therefore should be given deference and adopted by this Court.

3. BECAUSE THE POLICY, COI, AND ENDORSEMENT CANNOT BE SEPARATED, THEY ALL REMAIN IN FULL FORCE AND EFFECT UNTIL PROPERLY CANCELLED WITH THE DMV.

The only way to cancel the COI and the policy it evinces is by providing written notice to the DMV on the DMV mandated form. The COI states: "This Certificate of Insurance shall not be canceled on less than thirty (30) days' notice from the Insurer to

the DMV and written on a Notice of Cancellation form authorized by the DMV." (DMV 65 MCP.) The DMV did not provide for any alternative forms of cancellation, regardless of the status of the underlying policy or its stated effective dates. The DMV Notice of Cancellation of Insurance form serves to cancel all three documents – the policy, the COI, and the Endorsement. The form reads: "Insurer hereby gives notice that the above referenced policy, including applicable endorsement and certifications, is hereby **CANCELLED**." (DMV 66 MCP (emphasis in original.) The Notice of Cancellation of Insurance, on its face, cancels (1) "the above referenced policy," (2) "applicable endorsement," and (3) "applicable…certifications," altogether. There is no separate mechanism for cancelling only one or two of the three. Consistent with the MCPPA, either all are active or all are cancelled.

Petitioner argues to the contrary of the explicit language in the DMV forms in seeking to have this Court rule that the policy expired on its own terms and was therefore no longer available to provide coverage, and that only the COI and the Endorsement existed. However, under the MCPPA, a motor carrier must maintain the required level of insurance in order to satisfy its financial responsibility requirements. The COI does not contain insuring language; instead, it refers to the actual policy which, by law, includes the Endorsement. Petitioner's argument should be disregarded as it creates an artificial separation between the three inter-related documents and, if accepted, would create a loophole in the financial responsibility requirements for motor carriers so as to benefit insurance carriers to the detriment of the public

In seeking to avoid its obligations under its policy, and leave the bare COI standing in its place, Petitioner contends that "… nothing in Vehicle Code section 34630 states that the private contract between the insurer and the motor carrier—the *insurance* policy—cannot lapse or expire absent notice to the DMV canceling a separate document—the certificate." (Opening Brief, page 22.) To make this argument, Petitioner must selectively read the MCPPA, and ignore the language in Vehicle Code section 34630 which (a) states that the COI merely represents the policy, and (b) certifies that the motor carrier "maintains the minimum insurance requirements contained in Section 34631.5." Petitioner must also ignore the language in Section 34631.5(b), stating that the insurance requirements are evidenced by the COI. The policy and the COI are not separate documents. If the insurance policy is permitted to lapses or expire without notice to the DMV, the COI on file with the DMV becomes a hollow document that evinces nothing and provides nothing. It would certify a falsehood – i.e. that there is insurance available. Petitioner's contentions should be rejected.

4. *TRANSAMERICA* AND *FIREMAN'S FUND* REMAIN THE CONTROLLING LAW DESPITE THE ENACTMENT OF THE MCPPA.

Both *Transamerica*, *supra*, 12 Cal.4th at p. 401 and *Fireman's Fund*, *supra*, 234 Cal.App.3d at pp. 1166–67 hold that insurers must strictly comply with the cancellation notice requirements under the financial responsibility statutes regulating motor carriers of property. Failing to give that notice, the insurer must pay the motor carrier's financial responsibility obligations

indefinitely. In both cases, an insurer in the position of Petitioner failed to properly cancel its policy and therefore remained liable under their policies. This was despite the private cancellation or expiration of the policies as to the named insured. In enacting the MCPPA, the legislature did not change the fundamental financial responsibility scheme governing motor carriers. Further, the legislature made no reference to either case, which would have been done if the legislature intended the MCPPA to change existing law.

a. Transamerica Ins. Co. v. Tab Transp., Inc.

In *Transamerica,* this Court considered the strict compliance requirement under the HCA. There, Transamerica Insurance Company insured a motor carrier (then referred to as "highway carriers,") covering its financial responsibility under the HCA. (*Transamerica, supra,* 12 Cal.4th at p. 395.) Transamerica filed a COI with the PUC. (*Ibid.*) After the policy expired in 1981, Transamerica failed to notify the PUC of the expiration/ cancellation of its policy. (*Ibid.*) The motor carrier, Tab Transportation, Inc., obtained replacement coverage with Federal Insurance Company ("Federal"), which filed a COI with the PUC. (*Ibid.*) Later, Tab replaced that policy with a Home Indemnity Company ("Home") policy, which also filed a COI with the PUC. (*Ibid.*) Almost nine years after the expiration of the Transamerica policy, a Tab tractor-trailer truck collided with an Amtrak passenger train, resulting in multiple fatalities. (*Ibid.*) When Tab was sued for $6 million for wrongful death, personal injury, and

property damage to the train, Federal and Home agreed to pay their policy limits to settle the suit. (*Id.* at p. 396.) Transamerica, as Petitioner has done in the present case, claimed its policy had expired and denied any obligation to contribute toward the settlement. (*Ibid.*)

This Court disagreed, holding Transamerica was required to provide coverage under the terms of the financial responsibility laws deemed incorporated into its policy:

> Ordinarily, an insurance company incurs no liability for an accident that occurs after the policy period has ended. But this is not an ordinary case, as explained briefly below. Highway carriers licensed in California are subject to a regulatory scheme administered by the Public Utilities Commission (hereafter PUC), requiring them to obtain adequate liability insurance and to submit proof thereof to the PUC. Underlying this requirement is the recognition of the need to protect the public 'against ruinous carrier competition and such possible attendant evils as ... inadequate insurance....' [Citation.]' (*Samson v. Transamerica Ins. Co.* (1981) 30 Cal.3d 220, 233, 178 Cal.Rptr. 343, 636 P.2d 32.)
>
> To ensure that the public is so protected at all times, the regulatory scheme requires—by means of a standard PUC form endorsement attached to the policy—that a liability policy issued to a highway carrier continue "in full force and effect until canceled," by giving 30 days' written notice to the PUC. The effect of attaching the endorsement to the policy, as we held in *Samson v. Transamerica Ins. Co.*, supra, 30 Cal.3d 220, 231, 178 Cal.Rptr. 343, 636 P.2d 32, is to automatically incorporate the provisions of the endorsement into the policy. Here, incorporation of the provisions of the endorsement

> into the Transamerica policy converted it from a one-year term policy that covered the period from February 1, 1980, until February 1, 1981, to a policy that remained continuously in effect until canceled. Because Transamerica failed to give the PUC the required notice of cancelation when there was no policy renewal by Tab, the policy was still in effect and thus provided coverage for Tab at the time of the 1989 accident.

(*Transamerica*, *supra*, 12 Cal.4th at pp. 393–94.)

Simply put, the rule in place under the HCA and confirmed by this Court was that an insurance policy remained in full force and effect indefinitely until the PUC received written notice from the insurer that the policy was cancelled. The rule now in place under the MCPPA serves the same purpose and requires the same notice to the DMV before an insurance policy may be cancelled. While the name of the controlling statutory scheme and the governing body authorized to enforce the statute changed, the meaning, underlying policy and application of the law did not. Thus, this Court's holding in *Transamerica* applies to this case and requires the District Court's granting of summary judgment to Respondent to be affirmed.

b. Fireman's Fund Ins. Co. v. Allstate Ins. Co.

Strict compliance with the cancellation requirements was also upheld by the Court in *Fireman's Fund*, *supra*, 234 Cal.App.3d at (1991). The insured owner of a tractor-trailer purchased a commercial automobile policy from Fireman's Fund with a $1 million liability limit. (*Id.* at p. 1159.) The insured later changed

its primary insurance carrier from Fireman's Fund to Central National Insurance Company. (*Ibid.*) Fireman's Fund failed to notify the PUC of the cancellation of its policy. (*Ibid.*)

After the Fireman's Fund policy was replaced, the insured's tractor-trailer collided with a passenger vehicle resulting in serious injuries. (*Fireman's Fund*, *supra*, 234 Cal.App.3d at p. 1158) Fireman's Fund, Allstate Insurance Company, Central National and other insurers settled the resulting personal injury litigation. (*Id.* at p. 1159.) Fireman's Fund paid only $250,000 of its $1 million limit. (*Ibid.*) This Court held that Fireman's Fund's noncompliance with the statutory advance notice requirement to the PUC resulted in "continued, uninterrupted coverage." (*Id.* at p. 1162.) Therefore, Fireman's Fund, the original insurer, remained liable despite the cancellation of its policy as to the named insured. As a result, Fireman's Fund's full policy limits were exposed and it was required to reimburse Allstate the remaining $750,000 under its policy. (*Id.* at p. 1166.)

The same reasoning applies here, and the MCPPA includes no language that undermines the application of *Fireman's Fund* or *Transamerica*. There is no dispute that Petitioner provided insurance, and that the vehicle involved in the underlying accident was scheduled on its policy. (1 ER 20.) While Petitioner may have attempted to cancel its obligation, the DMV had returned to Petitioner the Notice of Cancellation form that Petitioner had previously submitted. As a result, Petitioner knew its obligations had not been cancelled and could have easily remedied that situation by re-filing a corrected Notice of Cancellation. On September 1, 2015, the DMV had in its file COI's from both Petitioner and Respondent to evidence the

insured's financial responsibility as a motor carrier of property. (See 1 ER 84.) By returning the form, the DMV did not come into possession of the Notice of Cancellation and therefore never "actually received" it. (See Veh. Code, § 34631.5.) According to the DMV, if a cancellation form does not exactly match the insurance certificate it seeks to cancel, it will be returned to the insurer. (See SER 110.)

Because Petitioner is in the exact same position as the insurers in *Transamerica* and *Fireman's Fund*, and nothing in the enactment of the MCPPA changed the relevant requirements of the HCA, this Court should apply both of its precedents to uphold the granting of summary judgment for Respondent and answer the Certified Question in the affirmative.

5. PETITIONER'S ATTEMPT TO CONVERT THE COI OR THE ENDORSEMENT INTO A "SURETY LIKE" OBLIGATION MUST FAIL

In an attempt to hedge its bets, and provide this Court with another opportunity to relieve it of the consequences of its failure to comply with the regulations, Petitioner tries to convince this Court that either the COI, or the COI and the Endorsement together, somehow transform into a "surety-like" obligation when the policy expires. This argument should be disregarded as it is based only on (a) an overly-technical claim that the MCPPA does not mention the Endorsement; and (b) federal law which does not apply because the regulations pertaining to the federal MCS-90 endorsement differ from the regulations pertaining to the California Endorsement. Petitioner hopes this Court will

disregard its own precedent found in *Transamerica* and re-write the MCPPA to allow a motor carrier to continue in operation without an existing insurance policy.

a. The Endorsement is Required by Law and Does Not Create a "Surety Like" Obligation

Contrary to Petitioner's assertion, the Endorsement is specifically required by 13 CCR 220.06(b). Within the MCPPA, the DMV is given express authority to create the regulations required to carry out the meaning and intent of the MCPPA, including the financial responsibility requirements for motor carriers. As part of that authorization, the DMV enacted 13 CCR 220.06, which has been in effect since 1998 without repeal by the Legislature. While Petitioner may be technically correct that the Endorsement is not specifically mentioned in the statutory portion of the MCPPA, the required financial responsibility is mentioned therein. (Veh. Code, § 34630.) Further, Title 13 of the CCRs are the implementing regulations that carry the MCPPA into effect, and may be considered part of the Act. Thus, Petitioner's attempt to undermine the Endorsement should be disregarded.

As part of this argument, Petitioner seeks to convince this Court that the Endorsement somehow creates an obligation that is not insurance. However, Petitioner's own argument makes clear that the Endorsement is a part of the insurance policy, and not a separate "surety like" obligation. On page 26 of its Opening Brief, Petitioner quotes the portion of the Endorsement stating "[e]xcept as specified in this endorsement, the terms, conditions,

and limitations of this policy remain in full force and effect." Petitioner admits that the term "this policy" in the Endorsement refers to the insurance policy required to satisfy a motor carrier's financial responsibility obligations. But, Petitioner conveniently ignores the language stating that the Endorsement is made a part of the policy of insurance. Because the Endorsement is a part of the insurance policy, it is an insurance obligation and not some undefined "surety-like" obligation.

The MCPPA does not provide that an Endorsement magically morphs from a part of the insurance policy to a separate "surety like" obligation when the insurance policy expires by its own terms and without notice to the DMV. In fact, the MCPPA provides three distinct ways by which a motor carrier may satisfy its financial responsibility obligations – by filing with the DMV: (a) a COI evidencing an insurance policy; (b) a bond of surety; or (c) evidence of self-insurance. (*See* Veh. Code, § 34630, subd. (a).) Nowhere does the MCPPA mention a "surety like" obligation. Instead, it requires either an insurance policy or a bond of surety. Petitioner submitted no evidence showing that it submitted a bond of surety to the DMV, or even that it is licensed to issue such bonds. Despite the distinction between an insurance policy and a bond of surety, Petitioner wants this Court to create a reduced "surety like" obligation for the sole purpose of allowing it to avoid paying its half of the settlement amount paid by Respondent.

b. Petitioner's Reliance on Federal Law is Misplaced

Petitioner's argument based on federal case law may seem reasonable upon a first reading; however, the language of the federal MCS-90 Endorsement differs from the DMV 67 MCP Endorsement in material ways, making the federal cases irrelevant to this Court's decision. The fundamental difference is that the MCS-90 is merely "attached" to insurance policies whereas the DMV 67 MCP "shall be attached to *and made a part of* all policies insuring motor carriers of property …" (Emphasis added.) While the MCS-90 exists next to the insurance policy, the DMV 67 MCP is expressly made a part of the insurance policy. Moreover, the DMV 67 MCP is signed under penalty of perjury and the MCS-90 is not. Thus, under the MCPPA, the insurer states under oath that the Endorsement is made a part of an existing insurance policy.

Petitioner relies upon *Carolina Cas. Ins. Co. v. Yeates* (10th Cir. 2009) 584 F.3d 868, which evaluated the impact of the MCS-90, in seeking to reduce its responsibility and avoid paying its fair share of the settlement. However, because of the difference in the language between the MCS-90 and the DMV 67 MCP, that case is not applicable. The court in *Carolina Casualty* described the policy and the MCS-90 as "linked" with each imposing a different obligation. (*Id.* at p. 882.) In contrast, the DMV 67 MCP is part of the insurance contract and therefore only one obligation is imposed – an insurance obligation. In granting Respondent's motion for summary judgment, the District Court

declined to follow *Carolina Casualty*, finding that it conflicted with *Transamerica* and *Fireman's Fund*, and that no cases interpreting California law agreed with *Carolina Casualty*.

Petitioner also relies on federal law regarding the MSC-90 to argue that the Endorsement at issue here "has no role to play in disputes between insurers." (Opening Brief, p. 29.) Again, Petitioner's reliance is misplaced. Unlike California law, federal law provides that an insurance policy is terminated for purposes of the motor carrier's financial responsibility when a replacement policy is obtained. 49 C.F.R. § 387.7 provides:

> "(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner."

This is why the MCS-90 endorsement has no role to play as between insurers – under federal law, a situation where two insurance policies exist at the same time covering the same insured for the same liability cannot exist. Under federal law, the insurance policy is terminated by its replacement, but the MSC-90 endorsement remains effective as a stand-alone document providing a surety obligation, unless cancelled by proper notification.

Contrary to the federal system, under California law, as shown above, the policy, the Endorsement, and the COI are three

parts of one obligation and must be cancelled altogether by the filing of a DMV 66 MCP Notice of Cancellation form. There is no provision in California law for the termination of an insurance policy by the filing of a replacement policy. There is no provision in California law whereby the Endorsement can exist without the policy of which it is a part. The question before this Court must be decided under California law as the MCPPA is a California statutory scheme. This Court has already decided the issues raised by this appeal in *Transamerica* following the Court of Appeal's decision in *Fireman's Fund.* Both of these cases which remain good law as shown above. Accordingly, this Court should disregard Petitioner's argument based on materially different statutes and regulations, and a materially different endorsement and uphold its own precedents.

c. Under California Law, Contribution is Required When An Insurer Fails to Properly Cancel its Policy With the DMV

In direct contradiction of *Transamerica* and *Fireman's Fund*, Petitioner now argues that even though it failed to comply with MCPPA requirements, it has no obligation to pay contribution to Respondent. Petitioner's position is based solely on federal law interpreting dissimilar regulations and creating a "surety-like" obligation. Contrary to Petitioner's position, the insurance carriers in both *Transamerica* and *Fireman's Fund* were in the same position as Petitioner, and were required to contribute to the loss because the policies of insurance continued in full force and effect. As shown above, under federal law, the MCS-90

endorsement may survive as a stand-alone obligation when the insurance policy is replaced, but under California law, the Endorsement is a part of the policy and the replacement of a policy does not cancel the prior policy or relieve the insurer of its obligations thereunder. Accordingly, Petitioner's arguments should be disregarded.

Each of Petitioner's reasons supporting its claims that Respondent's contribution claim fails are contrary to California law, including the MCPPA.

1. The insurance coverage provided by Petitioner's policy remained in full force and effect because Petitioner failed to properly cancel the insurance on a DMV 66 MCP form, as required by the MCPPA. Petitioner relies on the statement in the Endorsement preserving the application of the terms and limitations in the policy. However, Petitioner ignores the preface to that section stating, "[e]xcept as specified in this endorsement…" The Endorsement expressly mandates that the COI (representing that the policy exists) cannot be cancelled except by the proper filing of a Notice of Cancellation with the DMV. The Notice of Cancellation cancels the policy itself, including the Endorsement. Because Petitioner failed to file a proper Notice of Cancellation form, its policy remained in full force and effect. (See *Transamerica* and *Fireman's Fund, supra.*)
2. As shown above, the Endorsement required by the MCPPA becomes a part of the insurance policy, unlike the MCS-90 endorsement required under federal law. Thus, Petitioner's conclusion that the Endorsement creates only a surety-like obligation is erroneous and its arguments based on that conclusion should be disregarded.

3. Based only on inapplicable federal law, Petitioner argues that the Endorsement does not create a contribution obligation. Petitioner ignores the fact that under the MCPPA and California law, including *Transamerica* and *Fireman's Fund*, the policy itself, not just the Endorsement, remains in full force and effect absent proper cancellation. The enactment of the MCPPA did not obliterate the HCA; it merely transferred regulatory authority to the DMV, and updated some of the language. Thus, there is no reason for this Court to abandon its prior decision and adopt the holding in federal court decisions that interpreted materially different regulations and statutes.

d. Petitioner is Obligated to Provide Contribution to Respondent

Given the undisputed facts, the statutes (Veh. Code, §§ 34630 and 34631.5), and the decisions in *Fireman's Fund.* and *Transamerica,* Petitioner's policy was in effect on September 1, 2015, the date of the accident. Under the terms of the policy, coverage should have been afforded by Petitioner for the accident. The insuring agreement in Petitioner's policy provides as follows:

> Subject to the Limits of Liability, if **you** pay the premium for liability coverage for the **insured auto** involved, **we** will pay damages, other than punitive or exemplary damages, for **bodily injury**, **property damage**, and **covered pollution cost or expense**, for which an **insured** becomes legally responsible because of an **accident** arising out of the ownership, maintenance or use of that **insured auto**.

(Emphasis in original) (2 ER 82:6–11) On the allegations of the Complaint in the underlying lawsuit, Petitioner's policy would have obligated it to defend and indemnify the insured. (2 ER 84:14–17)

Based on the policy's plain language and pursuant to Insurance Code section 11580.9 and the cases decided thereunder, Petitioner's policy provided co-primary coverage for the accident. Insurance Code section 11580.9 provides as follows:

> (d) Except as provided in subdivisions (a), (b), and (c), where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle or vehicles in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned automobile shall be primary and the insurance afforded by any other policy or policies shall be excess.
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> * * *
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> (f) The presumptions stated in subdivisions (a) to (d), inclusive, may be modified or amended only by written agreement signed by all insurers who have issued a policy or policies applicable to a loss described in these subdivisions and all named insureds under these policies.

In *Fireman's Fund*, *supra*, 234 Cal.App.3d 1154, this Court concluded that the policy which continued in effect by the failure to cancel, like Petitioner's policy, was co-primary. Because the policies are co-primary, they must contribute equally to the loss.

Petitioner refused to do so. Therefore, Respondent is entitled to contribution from Petitioner in the amount of one-half of the $1,000,000 settlement paid by Respondent.

6. PETITIONER SEEKS TO AVOID ALL RESPONSIBILITY IN DIRECT CONTRAVENTION OF THE MCPPA AND THIS COURT'S PRIOR DECISIONS

a. Petitioner's Reliance on Florida and New Hampshire Law is Misplaced

After failing to comply with the DMV requirements, Petitioner tried to convince this Court that the clearly stated notice requirements do not apply because its insurance policy had expired. Petitioner's novel interpretation is without any California case law support. If this Court were to adopt Petitioner's position that the expiration of a policy eliminates the insurance company's obligation under the policy despite lack of notice to the DMV, the entire system of financial responsibility for motor carriers used in California for decades would be eviscerated.

Petitioner twists the MCPPA beyond reason and seeks to undermine the entire financial responsibility scheme by arguing that the Endorsement automatically terminates when a policy expires, even without proper Notice of Cancellation to the DMV. Petitioner's position directly contradicts:

1. This Court's holdings in *Transamerica,* following *Fireman's Fund*;
2. Vehicle Code section 34630 "(b) Proof of financial responsibility shall be continued in effect during the active life of the motor carrier permit. The certificate of insurance shall not be cancelable on less than 30 days' written notice from the insurer to the department except in the event of cessation of operations as a permitted motor carrier of property;" and
3. The COI: "This Certificate of Insurance shall not be canceled on less than thirty (30) days' notice from the Insurer to the DMV and written on a Notice of Cancellation form authorized by the DMV." DMV 65 MCP (Rev. 9/2007).

Because Petitioner's argument has no California law support, and directly contradicts California law, it should not serve to relieve Petitioner of responsibility for its failure to properly cancel it policy.

In seeking to establish a distinction between a policy expiration and cancellation, Petitioner relies on *Waters v. Miller* (11th Cir. 2009) 564 F.3d 1355. This reliance is misplaced. The Eleventh Circuit decided *Waters* based on Florida law, which is

readily distinguishable from the MCPPA. Contrary to the MCPPA, Florida Statute § 627.728(3)(a)-(b) expressly distinguishes cancellations from non-renewals, providing:

> (3)(a) No notice of cancellation of a policy to which this section applies shall be effective unless mailed or delivered by the insurer to the first-named insured and to the first-named insured's insurance agent at least 45 days prior to the effective date of cancellation, except that, when cancellation is for nonpayment of a premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. No notice of cancellation of a policy to which this section applies shall be effective unless the reasons for cancellation accompany the notice of cancellation.
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> (b) Nothing in this subsection shall apply to nonrenewal.

Petitioner cannot rely on a case decided under this Florida law to argue that its insurance obligations ceased when the policy expired because the MCPPA makes no distinction between expiration and cancellation.

In *Waters*, a truck driver rear-ended another vehicle. (*Waters v. Miller*, *supra*, 564 F.3d at p. 1356.) The truck driver's insurance had lapsed on September 11, 2005, and the accident occurred on November 29, 2005. (*Ibid.*) The insurer had sent numerous cancellation notices to the truck driver warning him that failure to pay his premium would result in a lapse of coverage. (*Ibid.*) The truck driver relied on Florida Statute § 320.02(5)(e), which at the time provided that the insurance policy maintained by a motor carrier "may not be canceled on less

than 30 days' written notice by the insurer to the [Florida Department of Highway Safety and Motor Vehicles]." (*Ibid.*, citing Fla. Stat., § 320.02, subd. (5)(e).)[3] The district court and the Eleventh Circuit both held that Florida Statute § 320.02(5)(e) "applies when an existing policy is cancelled, but not when a policy expires because of non-renewal by the insured." (*Waters v. Miller*, *supra*, at p. 1357.) The Eleventh Circuit also specifically cited *Safeco Ins. Co. v. Oehmig*, which discusses the application of Florida Statute § 627.728 to cancellations and non-renewals. (*Ibid.*)

Petitioner's reliance on *Hartford Acc. & Indem. Co. v. Sentry Ins. Co.* (1987) 130 N.H. 161 is also misplaced. That case arose out of New Hampshire law, which has nothing to do with the financial responsibility of a motor carrier and cannot be equated to the MCPPA. Instead, New Hampshire required the filing of an SR-22 form certificate regarding insurance coverage only in certain instances, including when a vehicle owner has been convicted of driving while intoxicated. (*See* N.H. Rev. Stat. Ann., § 264:1, et seq.) That statutory scheme permits an insurance

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[3] Fla. Stat. § 320.02(5)(e) now reads, as of June 22, 2021: "Upon the expiration date noted in the cancellation notice that the department receives from the insurer, the department shall suspend the registration, issued under this chapter of s. 207.004(1), of a motor carrier who operates a commercial motor vehicle or who permits it to be operated in this state during the registration period without having in full force liability insurance, a surety bond, or a valid self-insurance certificate that complies with this section. The insurer shall provide notice to the department at the same time the cancellation notice is provided to the insured pursuant to s. 627.7281. The department may adopt rules regarding the electronic submission of the cancellation notice."

company to deny coverage after an accident takes place, and requires the filing of an SR-26 form to cancel the certificate. In *Hartford*, the defendant Sentry Insurance failed to file a cancellation form, but denied coverage after an accident. (*Hartford Acc. & Indem. Co. v. Sentry Ins. Co.*, *supra*, at pp. 162–163.) The Court there agreed with Sentry, only because the SR-22 form it had filed stated the expiration date of the policy it issued, which the Court deemed to be sufficient notice to the New Hampshire DMV that the policy would no longer be in effect after that date. (*Id.* at pp. 187–188.) Because of the factual distinctions, this case does nothing to support Petitioner's attempts to avoid its obligations.[4]

Finally, Petitioner argues that this Court acted by the majority, and as shown above, the change from the HCA to the MCPPA did nothing to undermine the majority decision or make it inapplicable. This Court has already determined that "dissenting opinions are not binding precedent. (*United States v. Ameline* (9th Cir. 2005) 409 F.3d 1073, 1083, fn. 5; *Purcell v. Bank Atl. Fin. Corp.* (11th Cir. 1996) 85 F.3d 1508, 1513.); *People v. Lopez* (2012) 55 Cal.4th 569, 585; see also, *Quinn v. U.S. Bank NA* (2011) 196 Cal.App.4th 168, 180, finding that dissenting opinions do not have precedential force.)

Even if this Court were to consider the dissenting opinion in *Transamerica*, its logic is faulty. In distinguishing between policy cancellation and termination, Justice Baxter relied in part upon his observation that "[h]ad the Legislature intended to require

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[4] Even if Hartford were to be applied, it does not support Petitioner's position because Petitioner did not include a policy termination date in its COI.

notice to the PUC in situations where the policy was terminated by means other than cancellation, it could easily have done so." (*Transamerica, supra*, 12 Cal.4th at p. 410.) While this may be true, the converse is also true – if the Legislature had wanted to exclude expiration of a policy from the MCPPA notice requirements it could have done so, just like the Florida legislature had done when enacting Florida Statute § 627.728(3)(b). Instead, the MCPPA sets forth the only situations where a Notice of Cancellation is not required: "[t]he certificate of insurance shall not be cancelable on less than 30 days' written notice from the insurer to the department except in the event of cessation of operations as a permitted motor carrier of property." (Veh. Code, § 34630, subd. (b) Because this language is unambiguous, this Court should presume the Legislature meant what it said. (*In re W.B.* (2012) 55 Cal.4th 30, 60, *as modified on denial of reh'g* (Sept. 26, 2012).)

Moreover, *Transamerica* was decided in 1995, and *Fireman's Fund* was decided in 1991, five years before the 1996 enactment of the MCPPA. There is no reference to either of these cases in the Legislative History of the MCPPA. The absence of an express intent to change the interpretation of the HCA expressed in those case makes clear that the Legislature agreed with those cases and had no intention to invalidate those opinions. "[T]he Legislature is presumed to know about existing case law when it enacts or amends a statute (*People v. Overstreet* (1986) 42 Cal.3d 891, 897)." (*In re W.B., supra*, 55 Cal.4th at p. 57, *as modified on denial of reh'g* (Sept. 26, 2012).) Surely, if the Legislature disagreed with the holdings in *Transamerica* and *Fireman's Fund*, it had ample opportunity to state its disapproval and

expressly change the law such that those cases were no longer controlling. However, it did not do so. Thus, the MCPPA must be read as consistent with *Transamerica* and *Fireman's Fund*.

Contrary to the situation here, the California Legislature knows how to write a statute to abrogate a court decision, and sometimes even includes the case it seeks to negate in the legislative history of the statute. For example, the Legislature was unhappy with the way California courts interpreted Penal Code section 1237, which facially appeared to require a formal motion to correct presentence credits or errors in the imposition or calculation of fines and fees. In *People v. Clavel*, appellate counsel filed an informal request for correction of credits, but the trial court never acted on the request. (*People v. Clavel* (2002) 103 Cal.App.4th 516, 518.) The Court of Appeal dismissed the appeal, holding that Penal Code section 1237.1 requires the defendant to "make a motion," and counsel never made a formal motion. (*Id.* at p. 519.) This decision did not reflect the Legislature's intent. Thereafter, 2015 California Assembly Bill No. 249 was enacted to amend Penal Code section 1237 to include 1237.2, which states that the motion for correction "may be made informally in writing." § 1237.2. The legislative history made the legislative intent clear: "[t]his bill specifies that as to 'motions' to correct either presentence credits or errors in the imposition or calculation of fines and fees, the requests may be made informally in writing." (*AB 249 (Obernolte) – As Introduced February 9, 2015*, Assembly Committee on Public Safety, California 2015–2016 Regular Session, page 5 (2015).)

7. THE SUMMARY JUDGMENT ISSUED BY THE DISTRICT COURT IS EQUITABLE AND SHOULD BE UPHELD

The December 2019 order of the District Court granting summary judgment to Respondent requires Petitioner and Respondent to pay equal shares of the $1,000,000 settlement made on behalf of the insured by Respondent. Thus, Respondent was awarded the amount of $500,000. (ER 1–2) Petitioner now argues that this sharing of responsibility is somehow unfair. Petitioner asserts that only Respondent should bear the responsibility because the accident occurred during Respondent's policy time period, even though its policy also remained in full force and effect. This argument ignores the reality that both policies were effective as primary policies at the time of the accident.

Insurance Code section 11580.9 provides as follows:

> (d) Except as provided in subdivisions (a), (b), and (c), where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle or vehicles in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned automobile shall be primary and the insurance afforded by any other policy or policies shall be excess.
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>
> (f) The presumptions stated in subdivisions (a) to (d), inclusive, may be modified or amended only by written agreement signed by all insurers who have

> issued a policy or policies applicable to a loss described in these subdivisions and all named insureds under these policies.

(emphasis added).

Here, both policies were primary as they both described or rated the vehicle involved in the accident. The application of Insurance Code section 11580.9 to the policies of Petitioner and Respondent cannot be considered unfair or inequitable.

Moreover, this Court in *Transamerica* and the Court in *Fireman's Fund* each analyzed similar situations and had no concern in holding the insurer in Petitioner's position liable for its portion of the payment, even though their polices had expired and new policies were in place at the time of the accident. In *Fireman's Fund*, the Court listed the "sound reasons" for the strict compliance requirement with the notice of cancellation provisions. First, "continuing coverage until the PUC receives notice of cancellation may deter lax practices in the insurance industry." (*Fireman's Fund*, *supra*, 234 Cal.App.3d at p. 1166.) Second, "Fireman's exposure, despite the lapse of six months between cancellation and the .... accident, may seem unjust. However, the relevant legal and regulatory scheme has been on the books for decades." (*Ibid.*) Finally, "Fireman's could have easily eliminated its exposure by simply filing the appropriate notice with the PUC. This is a minimal burden--one that is required to maintain the trustworthiness and vitality of statutes and regulations enacted to protect the public interest." (*Ibid.*)

In *Transamerica*, this Court echoed the notion that 30 days' written notice of cancellation is a minimal burden and highlighted the importance of the statute to protect the public

interest. First, this Court pointed out that having the certificate of insurance on file "provid[es] an efficient means for the PUC to administer the [Highway Carriers' Act]'s financial responsibility requirements imposed on highway carriers." (*Transamerica, supra*, 12 Cal.4th at p. 403.) Second, "the certificate of insurance on file with the PUC serves as an assurance that the public is protected in the event of an accident involving a particular highway carrier." (*Ibid.*) Finally, this Court goes on to say that "[t]hese important considerations far outweigh the slight burden imposed by statute on an insurer of providing the PUC with 30 days' written notice of cancelation of a liability policy issued to a highway carrier." (*Ibid.*)

In accordance with these cases, the consequence imposed upon Petitioner for its failure to properly cancel its policy with the DMV is not inequitable in light of the importance of ensuring that all motor carriers meet their financial responsibility requirements. This is especially true given how easy it is to properly cancel the policy, the endorsement and the COI.

CONCLUSION

Based on the forgoing, it is clear that the holdings in *Transamerica* and *Fireman's Fund* remain good law and controlling in this case. Accordingly, it is settled that a commercial automobile policy remains in full force and effect until the insurer properly cancels the COI with the DMV, and that the policy's expiration date does not change this requirement, or the ramifications of a failure to comply.

Accordingly, the Ninth Circuit's question should be answered affirmatively, and the District Court's Judgment should be upheld.

Booth LLP

Respectfully submitted,

Dated: December 8, 2021 By: /s/ Hillary Arrow BOOTH

Attorney for Respondent
Allied Premier Insurance

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This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **11,460** words, excluding the cover, tables, signature block, and this certificate.

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Dated: December 8, 2021 By: /s/ Hillary Arrow BOOTH

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Supreme Court of California

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