S267746

No. 20-55099

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALLIED PREMIER INSURANCE,

Plaintiff-Appellee

vs.

UNITED FINANCIAL CASUALTY COMPANY,

Defendant-Appellant

Appeal from the United States District Court for the Central District of California, No. 5:18–cv–00088-JGB-KKX,
The Honorable Jesus G. Bernal

APPELLANT'S OPENING BRIEF

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DISCLOSURE STATEMENT

Defendant-appellant United Financial Casualty Company is a corporation organized under the laws of Ohio. Progressive Commercial Holdings, Inc. owns 100% of appellant's stock.

July 3, 2020

PATRICK HOWE LAW, APC

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INTRODUCTION

The district court erred in granting summary judgment to Allied and denying summary judgment to United Financial in this dispute between two insurers. Commercial truck driver José Porras bought insurance from each insurer, but at different times. Porras was sued for wrongful death for an accident involving his truck. The accident occurred while Allied's policy was in force, and Allied settled the wrongful death lawsuit. The dispute here turns on whether United Financial, whose policy expired months earlier, *also* insured Porras for the accident. In finding that United Financial must contribute to the settlement, the district court erroneously construed CAL. VEH. CODE § 34630, California's statute governing the cancellation of a commercial trucker's proof of financial responsibility. The summary judgment ruling should be reversed.

California requires commercial truckers like Porras to purchase liability insurance, and conditions their license to operate on the filing by the insurer with the DMV of a "certificate of insurance" on DMV form MCP 65 proving that coverage is in place. When Porras switched insurers, the United Financial policy expired, but due to a paperwork glitch, the United Financial *certificate* remained on file with the DMV, even while Allied's certificate was

also on file. The district court erroneously equated United Financial's certificate with the insurance policy itself. But the plain language of California's Vehicle Code, the legislative history, and analogous federal decisions confirm that an uncancelled MCP 65 certificate is not an insurance policy.

The policy and the certificate serve different functions. A policy specifies the insurer's obligations *to the insured*, protecting against liability from third party claims. The certificate confirms the existence of the policy and specifies the insurer's separate obligations *to third parties* who may be injured in situations where coverage under the policy is for some reason unavailable. Conflating the policy and the certificate, the district court erroneously concluded that United Financial owed coverage despite the expiration of its policy. The court's explanations for its ruling, and its belief that United Financial and Allied were co-insurers, do not make sense.

Because United Financial's policy had expired, it is not obliged to share responsibility for Allied's settlement. That dooms Allied's claims here. For this reason and others explained below, Allied's claims fail and United Financial is entitled to judgment.

STATEMENT OF JURISDICTION

The district court had diversity jurisdiction under 28 U.S.C. § 1332(a). United Financial is an Ohio corporation with its principal place of business in Ohio. (2 ER 108–109.) Allied is a Connecticut corporation; its principal place of business is not in Ohio. (2 ER 108.) Allied served its state court complaint on December 15, 2017, claiming more than $75,000 in damages. (2 ER 109, 115–116.) United Financial timely removed the case to federal court on January 12, 2018. (2 ER 107.)

On December 30, 2019, the district court entered judgment for Allied after granting Allied's motion for summary judgment and denying United Financial's cross-motion for summary judgment. (1 ER 1.) United Financial timely filed a notice of appeal on January 28, 2020. (2 ER 33.) FED. R. APP. P. 4(a)(1)(A); 28 U.S.C. § 2107.

The Court has jurisdiction under 28 U.S.C. § 1291 because the judgment is final—it disposed of all claims between the parties.

STATEMENT OF ISSUES PRESENTED

1. Did the district court err in ruling that an expired insurance policy issued to a commercial trucker remained in force on the date of a post-expiration accident, by operation of a statute (CAL. VEH. CODE § 34630(b))

that restricts cancellation of a state-required *certificate of insurance,* but does not, on its face, govern cancellation of *private contracts of* insurance?

2. If United Financial's insurance policy was not in force on the date of the accident, did the district court err in ruling Allied was entitled to summary judgment on its claims for contribution, subrogation, and related declaratory relief?

ADDENDUM TO BRIEF

An addendum is at the end of this brief. It contains the verbatim language of relevant sections of: CAL. VEH. CODE §§ 34630, 34631, and 34631.5; CAL. INS. CODE §§ 675.5 and 677.2; and 13 CAL. CODE. REGS. § 220.06.

STATEMENT OF THE CASE

A. José Porras was a "motor carrier of property" who, until April 2015, purchased liability insurance from United Financial.

Porras was a commercial trucker, i.e., a "motor carrier of property" under CAL. VEH. CODE § 34630 et seq. (2 ER 82.) He received his operating permit from the DMV in 2013. (2 ER 82.)

Porras obtained auto liability insurance from United Financial under a policy that listed his 2013 Dodge RAM 3500 pickup truck and provided

bodily injury liability coverage of $750,000. (2 ER 82.) The policy applied only to accidents that occurred during the policy period. (2 ER 89.) The policy also stated coverage would automatically terminate at the end of the policy period if Porras did not accept United Financial's offer to renew coverage. (2 ER 90.)

To operate as a trucker, Porras was required to demonstrate to the DMV his financial responsibility for liability arising out of his commercial trucking activity. CAL. VEH. CODE, §§ 34630(a), 34631(a), 34631.5(a)(1). Over the years, he fulfilled that requirement by paying United Financial for an endorsement to his insurance policy, on DMV form MCP 67, under which United Financial promised to pay a judgment against Porras arising out of the commercial use of his truck ("any vehicle(s) for which a motor carrier permit is required, whether or not such vehicle(s) is described in the attached policy"). (2 ER 82, 92.) The endorsement stated United Financial could seek reimbursement from Porras for any sums paid because of the endorsement and that, unless specified, all terms, conditions and limitations in the insurance policy remained in force as to Porras. (2 ER 92.)

United Financial also filed an MCP 65 certificate of insurance with the DMV as proof the MCP 67 endorsement had been issued. (2 ER 83, 91.) The

MCP 65 certificate stated it would not be canceled without thirty days' notice to the DMV. (2 ER 91.)

Porras renewed the United Financial policy several times and increased the policy's coverage limit to $1 million. (2 ER 83.) United Financial filed with the DMV several notices of cancellation of its MCP 65 certificates when Porras made changes to or renewed his policy. (2 ER 83.)

B. Porras did not renew his United Financial policy in April 2015, but instead purchased insurance from Allied. Like United Financial before it, Allied filed an MCP 65 certificate of insurance with the DMV to show proof of financial responsibility.

Effective April 12, 2015, the United Financial policy expired pursuant to the contract's automatic termination provisions when Porras decided not to renew the United Financial policy. (2 ER 83.) Instead, effective April 13, 2015, Porras purchased his insurance coverage from Allied. (2 ER 83.) The Allied policy listed the same pickup truck and provided the same bodily injury liability coverage of $1 million. (2 ER 83.)

As United Financial had done, Allied filed an MCP 65 certificate of insurance with the DMV, which likewise stated it would not be canceled on less than 30 days' notice to the DMV. (2 ER 83, 102.)

C. At the time of Porras' September 2015 accident, the DMV had on file two MCP 65 certificates—one from United Financial and one from Allied. Allied paid to settle the wrongful death lawsuit resulting from the accident.

As of September 2015, the DMV had on file MCP 65 certificates from both United Financial and Allied because the DMV had returned one of United Financial's cancellation notices on a clerical ground: the policy number or effective date on the notice of cancellation was not on file with the department. (2 ER 84, 103–104.)

On September 1, 2015, Porras was involved in a collision with Jennifer Jones. Porras was driving the pickup truck insured by the Allied policy. (2 ER 84.) Jones died as a result of the accident. (2 ER 84.) Her parents filed a wrongful death lawsuit. (2 ER 84.) Allied retained counsel to defend the case and settled the lawsuit for $1 million. (2 ER 84.)

D. Allied sued United Financial for contribution of half of the settlement amount. The district court granted Allied's motion for summary judgment and United Financial appealed.

Allied then sued United Financial to recover half of the $1 million settlement. Allied's complaint asserted three claims for declaratory relief, equitable contribution, and equitable subrogation. (2 ER 110–114.) The complaint alleged that, even though United Financial's insurance policy had

expired, it still owed coverage because one of United Financial's MCP 65 certificates was still on file with the DMV when the accident occurred. (2 ER 111–112.)

In answering the complaint, United Financial alleged that its *insurance policy* providing liability coverage to Porras was not in force on the date of the accident and, in any event, Allied's policy provided primary coverage for all purposes under CAL. INS. CODE § 11580.9. (2 ER 106.)

Allied and United Financial stipulated to a set of facts and exhibits and filed cross-motions for summary judgment. (2 ER 81–104.) United Financial argued Allied's contribution, subrogation, and declaratory relief claims failed because the United Financial policy expired several months before the accident. (2 ER 72.) United Financial argued its MCP 65 certificate on file with the DMV could not support Allied's claims. United Financial raised several arguments supporting its core theory that the MCP 65 certificate imposed only a surety-type obligation toward third parties injured by truckers (an obligation that *would not* trigger equitable contribution or subrogation here), and was not an insurance policy (an obligation that *would*).(2 ER 72–79).

In response, Allied changed theories. In its summary judgment motion, Allied abandoned the theory it was entitled to relief based on United Financial's active MCP 65 certificate. Instead, relying on *Transamerica Ins. Co. v. Tab Transportation, Inc.*, 12 Cal.4th 389 (1995) and *Fireman's Fund Ins. Co. v. Allstate Ins. Co.*, 234 Cal.App.3d 1154 (1991), Allied argued the United Financial policy was still in force on the date of the accident, despite expiring several months earlier, because United Financial's MCP 65 certificate was not effectively cancelled prior to the accident. (2 ER 57–62.)

The district court granted Allied's motion and denied United Financial's motion. The court reasoned *Tab Transportation* and *Fireman's Fund* were persuasive, because in each the court held an insurer's failure to give the responsible regulator (the California Public Utilities Commission) thirty days' notice of cancellation *of an insurance policy* meant the policy remained continuously in force until the regulator received proper notice. (1 ER 11–13.)

The district court agreed with United Financial that *Tab Transportation* and *Fireman's Fund* were based on California's former Highway Carriers' Act, CAL. PUB. UTIL. CODE § 3501 *et seq.*, which was

repealed and replaced by the Motor Carriers of Property Permit Act, CAL. VEH. CODE § 34600 et seq. (the "MCPP Act"), prior to the accident in this case. (1 ER 12–13; 2 ER 44–47.) The court also acknowledged key differences in statutory language. The cancellation provisions of the repealed statute stated a "policy of insurance" shall not be cancelable on less than thirty days' written notice, whereas CAL. VEH. CODE § 34630(b) states a "certificate of insurance" shall not be cancelable on less than thirty days' written notice. (1 ER 12–13.) Nevertheless, the court ruled the cancellation provisions of CAL. VEH. CODE § 34630(b) applied not merely to United Financial's MCP 65 certificate, but also to its policy. (1 ER 13.)

In light of its conclusion the United Financial policy was in force at the time of the accident, the district court rejected United Financial's arguments that the active MCP 65 certificate itself could not form the factual basis for Allied's contribution, subrogation, and declaratory relief claims. (1 ER 14–19.)

United Financial timely appealed the judgment. (2 ER 33.)

SUMMARY OF THE ARGUMENT

The district court's judgment should be reversed, and the court should be directed to enter a new judgment for United Financial. United Financial's argument proceeds in two steps.

1. An insurer provides the DMV with a "certificate of insurance" under CAL. VEH. CODE § 34630 not to duplicate the insurance policy's promise to the insured, but to demonstrate the insured's financial responsibility to the DMV and to the general public. In certain situations, the certificate obligates an insurer (like a surety) to third parties injured by an insured if the insurance policy does not provide coverage, but it does not create an obligation to the insured or another insurer.

The district court erred in concluding that United Financial's un-cancelled certificate of insurance was the equivalent of an active insurance policy. The court could reach that conclusion only by ignoring the plain meaning of the cancellation provisions of CAL. VEH. CODE § 34630(b). The phrase "certificate of insurance" unambiguously refers only to the MCP 65 certificate of insurance specified in 13 CAL. CODE REGS. § 220.06(a). That phrase does not refer to the insurance policy itself.

The district court erred in its approach to statutory construction, relying improperly on the absence of case law to circumvent the plain language of the operative statutory provisions, and failing to appreciate the significance of legislative history, which favors United Financial. As explained in the legal argument below, three aspects of that history make clear the cancellation provisions in the statute apply only to the MCP 65 certificate.

On top of this, analogous federal decisions construing similar certificates of insurance (used by federally regulated interstate truckers and truckers in other states) have distinguished those certificates from insurance policies. The district court failed to appreciate the distinct functions of the certificate and the policy and therefore erred in equating the two.

The district court erred in relying on *Tab Transportation* and *Fireman's Fund* to rule that United Financial's expired policy was actually in force when the accident occurred. Both cases were based on the cancellation provisions of a materially different statute—former CAL. PUB. UTIL. CODE § 3634 and its related regulation, which stated a trucker's "policy of insurance" shall not be cancelable absent thirty days' written notice. The governing statute here—CAL. VEH. CODE § 34630(b)—governs only

cancellation of the MCP 65 certificate. It imposes no requirements for canceling an insurance policy.

The district court's reliance on these cases was also misplaced because they were based on the rule that statutes and regulations prevail over conflicting policy terms when the former are by law incorporated into the latter. Applying that rule here was unnecessary because there was no conflict between the cancellation terms of the United Financial policy and CAL. VEH. CODE § 34630(b) and 13 CAL. CODE REGS. § 220.06(a). But applying that rule between the United Financial policy and the MCP 65 certificate (because the district court treated them as one) leads to absurd results, like eliminating United Financial's contractual duty to defend its insured and its right to seek reimbursement from Porras for any amounts paid under the MCP 67 endorsement in the event actual coverage is unavailable under the policy. The language in the documents cannot be harmonized unless each document is treated separately.

2. Because the United Financial policy was not in force on the date of loss, Allied is not entitled to contribution, subrogation, or comparable declaratory relief. By holding otherwise, the district court granted Allied relief based on United Financial's MCP 65 certificate and MCP 67

endorsement, documents that cannot be the basis of Allied's claims because they are intended to benefit an injured party, such as the wrongful death claimants here, not a policyholder or another insurance company.

The district court's judgment will also result in a futile circuity of action. It exposes Porras to United Financial's reimbursement right under the MCP 67 endorsement. Porras would then have a valid claim under Allied's policy. Allied would then again pursue contribution and subrogation against United Financial based on the district court's ruling.

Finally, United Financial's obligation to an injured third party under the MCP 65 certificate and MCP 67 endorsement are triggered only by a judgment against Porras. Porras did not suffer a judgment because Allied settled the wrongful death lawsuit. There is no basis for United Financial to share Allied's settlement obligation, so this Court should reverse the judgment for Allied.

ARGUMENT

I. LEGAL STANDARD AND STANDARD OF REVIEW

A district court should grant summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477

U.S. 242, 247–248 (1986). There are no disputed facts in this case. The only issue to be resolved is which party's legal position based on the undisputed facts is correct.

A district court's summary judgment ruling is reviewed de novo. *Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 759 (9th Cir. 2017); *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011). This Court applies the same standard as the district court. *Suzuki Motor Corp. v. Consumers Union, Inc.*, 330 F.3d 1110, 1131 (9th Cir. 2003).

II. THE DISTRICT COURT IMPROPERLY EQUATED UNITED FINANCIAL'S CERTIFICATE OF INSURANCE WITH ITS INSURANCE POLICY.

A. By its plain language, Cal. Veh. Code § 34630(b) restricts only the terms under which an MCP 65 certificate of insurance can be cancelled, not the terms under which an insurance policy can be cancelled.

When analyzing a California statute, federal courts are bound by California's rules of statutory interpretation. *In re Reaves*, 285 F.3d 1152, 1156 (9th Cir. 2002); *Goldman v. Salisbury*, 70 F.3d 1028, 1029 (9th Cir. 1995) (per curiam). Under California's rules, a court's task is to ascertain the Legislature's intent. *Imperial Merchant Services, Inc. v. Hunt*, 47 Cal.4th

381, 387 (2009). To do so, a court must first look at the statute's words and give them "their usual and ordinary meaning." That meaning controls unless the words are ambiguous. *Id.* at 388; *DaFonte v. Up-Right, Inc.*, 2 Cal.4th 593, 601 (1992).

A court must give significance to every word, phrase, and sentence used in the statute so as to avoid an interpretation that would render words meaningless, inoperative, or superfluous. *Shoemaker v. Myers*, 52 Cal.3d 1, 22 (1990). "Where different words or phrases are used in the same connection in different parts of the statute, it is presumed the Legislature intended a different meaning." *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal.4th 1106, 1117 (1999).

Unless the statute's words give rise to more than one reasonable interpretation, a court may not consider other interpretative aids, such as the statute's purpose and legislative history. *Coalition of Concerned Communities, Inc. v. City of Los Angeles*, 34 Cal.4th 733, 737 (2004). As the state high court instructed in *Green v. State of California*, 42 Cal.4th 254, 260 (2007): "If the plain language of the statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent."

The financial responsibility provisions of the MCPP Act are contained in Chapter 3 of the act, CAL. VEH. CODE §§ 34630–34634. Section 34630 identifies the insurance policy that provides coverage as being distinct from the certificate that reflects that a policy has issued:

> (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 nonadmitted 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. ...
>
> (Emphasis added.)

Section 34630(b) goes on to explain limits on an insurer's cancellation of *the certificate*, without reference to the policy:

> (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.
>
> (Emphasis added.)

The meaning of "certificate of insurance" within section 34320(b) is not subject to more than one reasonable interpretation: the statute refers to

cancellation of a "certificate of insurance," not cancellation of an insurance policy.

The district court nonetheless found the statutory phrase ambiguous. The court initially agreed the statute's reference to cancellation of a "certificate of insurance" supported an "inference that the California legislature purposefully departed from" the cancellation language used in California's former Highway Carriers' Act. (1 ER 13.) But the court questioned whether the Legislature intended to change the meaning of the former act's cancellation provision language, which referred only to cancellation of a trucker's "insurance policy." (1 ER 13.) The court reasoned that if a change were intended, the Legislature "presumably would have used clearer language." (1 ER 13.)

The district court's interpretation violates the plain language of the statute, and improperly renders some of the language in the MCPP Act superfluous. The word "certificate" is used 16 times in Chapter 3 of the act in reference to the "certificate of insurance" described in CAL. VEH. CODE § 34630(a). Chapter 3 also uses the word "policy" seven times in reference to the insurance policy represented by the certificate. *See* CAL. VEH. CODE, §§ 34630–34634. In fact, section 34630(a) uses both "certificate of

insurance" and "policy" to explain one of the primary purposes of the MCP 65 certificate—to provide a source of financial compensation to an injured party where coverage under the insurance policy is unavailable because the accident-causing vehicle was not described in the policy:

> ... The *certificate of insurance* ... 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* ....[1]

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[1] The District Court, in going beyond the plain meaning of the phrase "certificate of insurance," reasoned that "if the cancellation procedure does not refer to cancellation of the policy, it is unclear what significance the procedure has. The purpose of the COI under the statute is to provide proof of insurance coverage." (1 ER 13.) The answer to the court's question is contained in this statutory language: the purpose of the MCP 65 certificate is to require the insurer to pay for the trucker's liability, even if coverage under the policy is unavailable. The thirty-day cancellation requirement ensures the public has at least a one-month window of protection in the event the trucker's insurance policy is terminated (e.g., lapse, cancellation, recission), he does not purchase a replacement within thirty days, and he meanwhile causes an accident while operating his equipment..

The District Court also relied on language in the MCP 66 notice of cancellation form that the DMV, per 13 Cal. Code Regs. § 220.06(c), requires an insurer to issue to cancel an MCP 65 certificate of insurance. The court noted the MCP 66 form states the insurer "gives notice that the above-referenced policy, including applicable endorsement and certifications, is hereby CANCELED." (1 ER 13.) But the court should not have relied on the MCP 66 form because it conflicts with Cal. Veh. Code section 34630(b), which refers only to cancellation of the MCP 65 certificate (not the policy). Regulations that alter or are in conflict with a statute are void and "courts not only may, but it is their obligation to strike down such regulations."

(Emphasis added.)

The statute, on its face, thus confirms the Legislature was referring to two different documents when it used both "policy" and "certificate of insurance" in the financial responsibility provisions of the MCCP Act. The Legislature was referring only to the MCP 65 certificate in CAL. VEH. CODE § 34630(b) when mentioning the "certificate of insurance".

In concluding CAL. VEH. CODE § 34630(b) applies to cancellation of an insurance policy and the MCP 65 certificate, the district court relied in part on the unpublished decision in *Williamsburg Nat. Ins. Co. v. Progressive Cas. Ins. Co.*, 2009 WL 2581266. (1 ER 13.) The court noted the California Court of Appeal in *Williamsburg Nat.* "understood CAL. VEH. CODE § 34630(b) to 'prohibit [] cancellation of mandated insurance on less than 30 days written notice [.]'" (1 ER 13.)

Williamsburg Nat. is inapplicable on the facts and the law. There, unlike here, the issue before the court was whether Progressive Casualty Insurance Company, whose policy *was in force* on the date of the accident,

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Agricultural Labor Relations Bd. v. Superior Court, 16 Cal.3d 392, 425–426 (1976).

could retroactively cancel the policy to a date before the loss. The court held it could not because the policy itself required "advance written notice of cancellation." *Id.* at *8. The court added, in dictum, that advance written notice was consistent with an insured's reasonable expectations because the cancellation provisions of Progressive's MCP 65 certificate of insurance required 30 days' notice to the DMV. *Id.* That is not a holding that a policy that expires by its own terms nonetheless cannot be cancelled if, for some reason, the certificate that reflected issuance of the policy remained in force.

As the district court here correctly noted, the *Williamsburg Nat.* court did not address the point United Financial argues here—that CAL. VEH. CODE § 34630(b), 13 CAL. CODE REGS. § 220.06, and United Financial's MCP 65 certificate refer only to cancellation of the certificate, not the United Financial policy. (1 ER 13.) The *Williamsburg Nat.* court, in error and without any basis, stated the MCPP Act "prohibits cancellation of mandated insurance on less than 30 days written notice from the insurer to the DMV." *Id.*

B. The statute's legislative history makes clear its cancellation provisions apply only to the MCP 65 certificate.

Even if the Court were to look beyond the plain meaning of "certificate of insurance" as used in CAL. VEH. CODE § 34630 *et seq.*, the statute's drafting history shows the Legislature intended the meaning United Financial advocates. The Legislature considered applying the law's cancellation provisions to a trucker's insurance policy, but then rejected that approach and limited the cancellation language to the MCP 65 certificate.

The MCPP Act was enacted as part of AB 1683 in September 1996. Assemb. B. 1683, 1995-96 Reg. Sess. (Cal. 1996) (chaptered, Sept. 29, 1996), http://leginfo.ca.gov/pub/95-96/bill/asm/ab_1651-1700/ab_1683_bill_960929_chaptered.pdf, p. 1.[2] In the August 1995 draft of the bill, the proposed language for CAL. VEH. CODE § 34630 stated registration would not be granted to any motor carrier until there was filed with the DMV

[2] United Financial requests the Court take judicial notice of draft legislation of AB 1683. *See In the Matter of Lisse*, 905 F.3d 495, 497 (7th Cir. 2018) ("The right place to propose judicial notice, once a case is in a court of appeals, is in a brief. When evidence is 'not subject to reasonable dispute,' there's no need to multiply the paperwork by filing motions or 'Requests.' Just refer to the evidence in the brief and explain there why it is relevant and subject to judicial notice. If the assertion is questionable, the opposing litigant can protest."); accord, e.g., *Carroll v. Dutra*, 564 F. App'x 327, 328 (9th Cir. 2014) ("The parties' requests for judicial notice, set forth in their briefs, are granted.").

either a "policy of insurance," a surety bond, or evidence that the motor carrier qualified as a self-insurer. Assemb. B. 1683, 1995-96 Reg. Sess. (Cal. 1996) (as amended, Aug. 30, 1995), http://leginfo.ca.gov/pub/95-96/bill/asm/ab_1651-1700/ab_1683_bill_950830_amended_sen.pdf, p. 34. The proposed cancellation language stated the "policy of insurance" or surety bond shall not be cancelable on less than 30 days' written notice to the DMV. *Id.*

The June 1996 draft of AB 1683 removed all references to a trucker's insurance policy as proof of financial responsibility and cancellation, and instead referred only to a "certificate of insurance." The proposed language stated a motor carrier permit would not be issued until there was filed with the DMV "proof of financial responsibility in the form of a currently effective certificate of insurance …." Assemb. B. 1683, 1995-96 Reg. Sess. (Cal. 1996) (as amended, June 10, 1996), http://leginfo.ca.gov/pub/95-96/bill/asm/ab_1651-1700/ab_1683_bill_960610_amended_sen.pdf, p. 56. The cancellation language stated the "certificate of insurance" shall not be cancelable on less than 30 days' written notice to the DMV. *Id.* This draft also proposed adding CAL. VEH. CODE § 34631, which referred to a "certificate of insurance" as the proof of financial responsibility. *Id.* at p. 57.

The June 1996 draft's "certificate of insurance" language remained unchanged when AB 1683 was enacted. Assemb. B. 1683, 1995-96 Reg. Sess. (Cal. 1996) (chaptered, Sept. 29, 1996), http://leginfo.ca.gov/pub/95-96/bill/asm/ab_1651-1700/ab_1683_bill_960929_chaptered.pdf, p. 28. CAL. VEH. CODE §§ 34630 and 34631 contain the same language today.

These drafting changes reveal that the Legislature considered *adding* language that would have confirmed the district court's interpretation of the statute, but that the Legislature then changed its approach. In addition, the Legislature *subtracted* key statutory language that reveals its intentions.

In enacting the MCPP Act, the Legislature also repealed the related Highway Carriers Act, CAL. PUB. UTIL. CODE § 3501 *et seq*. Assemb. B. 1683, 1995-96 Reg. Sess. (Cal. 1996) (chaptered, Sept. 29, 1996), http://leginfo.ca.gov/pub/95-96/bill/asm/ab_1651-1700/ab_1683_bill_960929_chaptered.pdf, p. 9, § 28. That former act stated a trucker's "*policy of insurance* … shall not be cancelable on less than 30 days' written notice" to the Public Utilities Commission. *See Tab Transportation*, 12 Cal.4th at 398 (citing former CAL. PUB. UTIL. CODE § 3634). Repealing that statute reveals the Legislature's decision *not* to intercede in the cancellation of *insurance policies*. Where the Legislature deletes or repeals

statutory language and replaces it with different language, courts presume the Legislature intended a change in meaning. *People v. Mendoza*, 23 Cal.4th 896, 916 (2000); *Goodman v. Lozano*, 47 Cal.4th 1327, 1337 (2010) (Legislature's "repeal of prior statute 'together with its enactment of a new statute on the same subject … with significant differences in language, strongly suggests the Legislature intended to change the law.'").

Finally, construing the cancellation provisions of CAL. VEH. CODE § 34630(b) to apply only to MCP 65 certificates harmonizes the MCPP Act with CAL. INS. CODE § 677.2, which specifically addresses cancellation of commercial auto insurance policies. *See Cal. Mfrs. Ass'n v. Pub. Utils. Comm'n*, 24 Cal.3d 836, 840 (1979) (explaining that courts should harmonize statutes "both internally and with each other, to the extent possible").

CAL. INS. CODE § 677.2 specifies the rules an insurer must follow to cancel a policy described in CAL. INS. CODE § 675.5. The latter statute includes policies like United Financial's policy here—those that cover "loss of or damage to personal property, except personally owned motor vehicles, used in the conduct of a commercial or industrial enterprise," and "legal liability of any person for … injury to persons or property, arising from the

conduct of a commercial or industrial enterprise." CAL. INS. CODE § 675.5(b)(2) and (3). To cancel, an insurer delivers written notice of cancellation to the named insured at least thirty days prior to the effective date of the cancellation," CAL. INS. CODE § 677.2(b)–(c). The statute does not require notice to the DMV.

CAL. INS. CODE § 677.2 says nothing about "certificates of insurance." Since CAL. VEH. CODE § 34630(b) speaks only to cancellation of a "certificate of insurance," the two statutes can be harmonized only if the former governs the cancellation of commercial auto policies, while the latter governs the cancellation of MCP 65 certificates of insurance. This is further confirmation that "certificates of insurance" under the MCPP Act are *not* insurance policies.

C. United Financial's statutory interpretation arguments are supported by several analogous federal decisions.

While no published California case has addressed the separate roles of a trucker's insurance policy and his MCP 65 certificate of insurance, several federal courts have addressed a related issue. These courts have examined the relationship between a trucker's policy and the federal MCS-90 motor carrier endorsement, which is used to establish an interstate trucker's

financial responsibility, and the standard Form E motor carrier certificate, which is used to establish an intrastate trucker's financial responsibility in many states. These cases hold the insurance policy and the financial responsibility forms impose two separate obligations on a trucker's insurer: (1) the policy creates a private contractual obligation to the trucker; and (2) the financial responsibility forms create a public obligation to individuals injured by the trucker where coverage is otherwise unavailable or insufficient.

A good example is *Carolina Casualty Ins. Co. v. Yeates*, 584 F.3d 868 (10th Cir. 2009) (en banc). There, a trucker was insured under separate policies issued by State Farm and Carolina Casualty. When the trucker injured a third party, State Farm tendered its full policy limits to the third party because its policy provided coverage for the truck. In contrast, the Carolina Casualty policy did not provide coverage for the truck. But Carolina Casualty's policy included the MCS-90 form. Like California's MCP 65 certificate of insurance and MCP 67 endorsement, the MCS-90 form stated that the insurance policy did not relieve Carolina Casualty from paying a judgment against the trucker, but that other terms and conditions in the

policy remained in force between the insurer and the trucker. *Id.* at 875 & n.5.

Carolina Casualty asked a district court to declare it had no obligations under the MCS-90 form because the injured party had been made whole by State Farm's payment. The district court declined, concluding the MCS-90 form "amended" Carolina Casualty's insurance policy by stating the insurer could not escape responsibility for a judgment against the trucker. *Id.* at 872.

The Tenth Circuit reversed en banc. The court rejected the notion Carolina Casualty's policy and MCS-90 endorsement created the same obligation, i.e., actual insurance coverage. The court ruled the MCS-90, when triggered, reads out "only those clauses in the policy that would limit the ability of a *third-party victim* to recover for his loss." *Id.* at 83 (emphasis added), citing *T.H.E. Ins. Co. v. Larson Intermodal Services, Inc.*, 242 F.3d 667, 673 (5th Cir. 2001). The court explained:

> In sum, the MCS-90 endorsement creates an obligation entirely separate from other obligations created by the policy to which it is attached. The MCS-90 defines the insurer's *public financial responsibility* obligation, while the underlying policy defines the insurer's *insurance liability* obligation. It would make no sense to jump to the insurer's MCS-90 endorsement obligation if the underlying insurance policy already provides coverage for the accident.

Id. at 884; *accord, e.g., Canal Ins. Co. v. Shelter Ins. Co.*, 2010 WL 4447566, at *3-5 (D. Idaho Oct. 28, 2010) (following *Yeates* in ruling that one insurer could not pursue equitable contribution and subrogation from another insurer based on an MCS-90 financial responsibility endorsement).

Another example is *Twin City Fire Ins. Co. v. Kazel*, 2010 WL 2844085 (Dist. Colo., July 19, 2010). There, a district court followed *Yeates* in a case involving standard Form E, a state law motor carrier financial responsibility certificate similar to California's MCP 65 certificate and MCP 67 endorsement. Twin City Fire insured a prime hauler trucker and National Indemnity insured a sub-hauler trucker. The prime hauler hired the sub-hauler to deliver cargo. While doing so, the sub-hauler's driver killed a third party. The prime hauler sought coverage under the sub-hauler's insurance policy on the grounds it was an additional insured. National Indemnity refused because its policy did not extend coverage to the loss vehicle. Twin City Fire then settled the third party's claim.

Twin City Fire sued National Indemnity for contribution and subrogation. Twin City Fire argued National Indemnity's policy covered the loss because it was amended by a Form E endorsement (Colorado's version of California's MCP 65 certificate), which stated that National Indemnity's

policy was "amend[ed] … to provide insurance for automobile injury and property damage liability" even if a vehicle was not covered by the actual insurance policy. 2010 WL 2844085, *1.

The court granted National Indemnity summary judgment. Relying on *Yeates*, the court held the Form E endorsement did not create coverage under National Indemnity's policy. The court held the motor carrier endorsement should be applied only to read out "those clauses in the policy that would limit the ability of a third-party victim to recover for his loss." 2010 WL 284405, *4. The court concluded that because the third-party's claims had already been fully satisfied, the public purpose behind the Form E endorsement ceased, such that Twin City Fire's only possible source of contribution or subrogation was National Indemnity's actual insurance policy, which did not provide coverage. *Id.* ("Put simply, the extension of the Form E endorsement is intended to benefit the injured party but not the insurer that compensates the injured party.").

The court also noted that if the insurance policy and the Form E endorsement were considered one, the responsibility would still fall on Twin City Fire because of National Indemnity's right to reimbursement under the filing:

> Such an outcome is entirely consistent with the reasoning enunciated [in *Yeates*]—the endorsement is intended to protect only *victims*, not *insureds*. By entitling the insurer to reimbursement from the insured of sums paid out solely because of the invocation of the endorsement, the deal struck between the insurer and insured is preserved. The insurer pays only for those risks the policy language required it to assume, and the insured is ultimately held responsible for those risks that fell outside the terms of the policy the insured negotiated.
>
> (2010 WL 284405, *6, emphasis in original.)

This Court should follow these federal decisions because they address a closely related scenario. Like the MCS-90 and standard E forms, United Financial's MCP 65 certificate for Porras created an obligation separate from its insurance policy. The insurance policy simply was not implicated after it expired by its own terms.

D. The district court erred in relying on *Tab Transportation* and *Fireman's Fund*. Both cases were based on the cancellation provisions of the former Highway Carriers Act, which governed cancellation of a trucker's insurance policy.

The district court's reliance on *Tab Transportation* and *Fireman's Fund* was misplaced. Those cases were decided under materially different laws than the Vehicle Code statute at issue here—provisions of former CAL. PUB. UTIL. CODE § 3634 and a Public Utilities Commission order.

The Public Utilities Code statute stated a trucker's "*policy of insurance* or surety bond shall not be cancelable on less than 30 days' written notice to the commission …." *Tab Transportation,* 12 Cal.4th at 398. And the general order stated every "*policy of insurance* … shall not be cancelable on less than thirty (30) days' written notice to the [PUC]" and that "*every insurance policy* … shall contain a provision that such *policy* … will remain in full force and effect until canceled in the manner provided" by the order. *Id.* (emphasis added).

Applying these provisions, two courts held that, where an insurer failed to notify the Public Utilities Commission of the expiration of its *policy*, the *policy* continued in force uninterrupted, even if the trucker purchased suitable replacement coverage. *Tab Transportation*, 12 Cal.4th at 399–400; *Fireman's Fund*, 234 Cal.App.3d at 1161–1162. But that holding provides no guidance about different, later-enacted statutes (like CAL. VEH. CODE § 34630 here) that describe the process for canceling "certificates of insurance."

Moreover, those cases applied the principle that statutes and regulations prevail *if they are in conflict with policy language* and they are incorporated into the policy as a matter of law. *See Tab Transportation*,

12 Cal.4th at 400. Here, as shown above, CAL. VEH. CODE § 34630(b) and 13 CAL. CODE REGS. § 220.06 do *not* conflict with United Financial's policy, contrary to the district court's erroneous belief.

By ruling that United Financial's insurance policy and MCP 65 certificate must be treated as one, i.e., the two documents are merged and any conflicting terms in the insurance contract are deemed null and void, the district court rendered meaningless crucial terms in each and in United Financial's MCP 67 endorsement. For example:

- The policy contained provisions that barred coverage (e.g., exclusions). (2 ER 88-2–88-5.) To carry out the purpose of CAL. VEH. CODE § 34630(a), the MCP 65 certificate and MCP 67 endorsement stated *no provision* in the policy relieved United Financial of obligations under the MCPP Act, even if the vehicle involved in the accident was not covered by the policy. (2 ER 92.)
- The policy promised Porras a defense against covered claims. (2 ER 88-1.) The MCP 65 certificate did not (2 ER 91), and the MCP 67 endorsement expressly excluded any defense obligation (2 ER 92.)
- The policy obligated United Financial to protect Porras' assets by paying for covered liability losses. (2 ER 88-1.) Unlike a surety

bond, the policy did not give United Financial a right to seek reimbursement from Porras for paid losses. (2 ER 88-1.) The MCP 67 endorsement, however, stated: "This endorsement shall not prevent insurer from seeking reimbursement from insured for any payment made by insurer *solely on account of the provisions herein*." (2 ER 92.)

The language in the documents cannot be harmonized unless each document is treated separately. Treating them as one would also render meaningless the MCP 67 endorsement's provision that: "Except as specified in this endorsement, the terms, conditions, and limitations of this policy remain in full force and effect." [3] (2 ER 92.)

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[3] During oral argument, the district court inquired about the meaning of this endorsement language. United Financial explained the MCP 65 certificate's purpose is to act as a surety, i.e., a safety net, for the benefit of an injured party where coverage under the insurance policy is unavailable because of an exclusion or other limitation. (1 ER 23–32.) United Financial argued that if the United Financial policy was subject to the same cancellation rules as the MCP 65 certificate, the language in the endorsement limiting coverage would be meaningless because Porras could claim coverage for first party losses (e.g., theft of a vehicle) via the MCP 65 certificate on file with the DMV. (1 ER 23–32.) In its ruling, the district court attempted to resolve the predicament by splitting the insurance policy into separate contracts, one for first party coverages and one for third party coverages involving injuries to others caused by Porras' activities, i.e., the "Remaining Coverage." (1 ER 14.) The district court did not cite authority for

III. BECAUSE THE UNITED FINANCIAL POLICY EXPIRED BEFORE THE ACCIDENT OCCURRED, ALLIED WAS NOT ENTITLED TO CONTRIBUTION, SUBROGATION, OR EQUIVALENT DECLARATORY RELIEF.

A. Legal standard for contribution and the district court's co-insurer ruling.

Allied's claims for contribution and subrogation required it to prove that United Financial's insurance policy covered the accident. *See, e.g., Fireman's Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal.App. 4th 1279, 1295 (1998) (contribution applies only where multiple insurers "share equal *contractual* liability" for defense costs and indemnity); *Patent Scaffolding Co. v. William Simpson Const. Co.*, 256 Cal.App. 2d 506, 509 (1967) (subrogating insurer stands in shoes of its insured; insured must have enforceable claim against wrongdoer or other insurer).

United Financial's policy did not provide coverage because it expired several months before the accident. Allied cannot otherwise prove that United Financial supplied insurance coverage: The MCP 65 certificate is not

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this reimagined insurance policy, and United Financial is unaware of any. Rather, as explained above, the effect of the MCP 65 certificate and MCP 67 endorsement is not to split the contract into parts (i.e., one in force and the other not), but to preclude enforcement of policy exclusions and limitations where an injured party establishes Porras' liability. In other words, all provisions of the United Financial policy remained enforceable as between Porras and United Financial.

an insurance policy at all, as it does nothing to protect the insured, but rather is protection only for non-contracting third parties who obtain a judgment against the insured. And the MCP 67 endorsement is not a standalone policy, but rather depends on the policy itself being in force. *See, Narver v. California State Life Ins. Co*., 211 Cal. 176, 181 (1930) (holding endorsements are part of the insurance policy and the policy and endorsement must be construed together as a whole). Moreover, allowing Allied relief under the certificate and endorsement would result in circuity of action in light of United Financial's reimbursement right against Mr. Porras. (2 ER 92.)

The district court rejected each argument, primarily because it erroneously concluded the United Financial policy was still in force and Allied and United Financial were thus co-primary insurers.[4]

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[4] The court also concluded the MCP 67 endorsement could form the basis of Allied's claims because the endorsement was attached to the policy, i.e., United Financial's contract with Porras. As explained, the endorsement made clear that all provisions of the policy applied to Porras, including the cancellation provisions, such that the effect of the endorsement and the MCP 65 certificate was only two preclude enforcement of exclusions and limitations against an injured third party. (*See supra* at note 5.) Citing *Fireman's Fund*, the district court also reasoned the MCP 65 certificate could be the basis of Allied's claim. In *Fireman's Fund*, the court determined the insurance policy was in force, and therefore contribution was available,

B. The MCP 65 certificate benefits an injured party, not the policyholder or another insurer.

As the federal court rulings in *Canal Insurance* and *Kazel* discussed above explained, motor carrier financial responsibility certificates serve a different purpose than the insurance policies they complement. The former provides coverage for the insured; the latter establishes the insurer's "public" liability to injured third parties. *(See supra* at pp. 27–28.*)*

In finding United Financial and Allied to be co-insurers, the district court misunderstood this point and treated United Financial's certificate of insurance as if it was the insurance policy. Because United Financial's certificate of insurance was *not* a policy, and because its policy had expired, there was no coverage obligation it could share with Allied.

C. Permitting Allied relief based on the MCP 65 certificate and MCP 67 endorsement would result in disfavored circuity of action.

"Circuity of action" is defined as "[a] procedure allowing duplicative lawsuits, leading to unnecessarily lengthy and indirect litigation . . . ." Black's

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because former CAL. PUB. UTIL. CODE § 3634 required the insurer to give the regulator thirty days' notice to cancel the policy. CAL. VEH. CODE § 34630(b), however, governs only cancellation of the MCP 65 certificate.

Law Dictionary (8th ed. 2004). Because circuity is disfavored, courts take steps to avoid it.

One example is *Transport Indem. Co. v. American Fid. & Cas. Co.*, 4 Cal.App. 3d 950 (1970), a declaratory judgment action between two insurers. Both insurers paid to settle an injured third party's claim, but only one insurer's policy actually provided insurance coverage for the accident caused by the tortfeasor. The court rejected the covering insurer's argument that it should be indemnified by the non-covering insurer because that would precipitate rounds of claims for subrogation and indemnity leading to a "chain" of circuity "in which liability would ultimately rest with appellant." *Id.* at 958.

Permitting Allied relief through the MCP 65 certificate and the MCP 67 endorsement would result in circuity of action. It would expose Porras to United Financial's right of reimbursement under the endorsement. (2 ER 92.) Porras would then have a covered claim under Allied's policy because the policy promises to defend and indemnify Porras against damages arising out of the ownership, maintenance, or use of the pickup truck involved in the accident. Allied would then pursue equitable contribution and subrogation claims based on the reasoning of the district court that United

Financial's policy was still in force on the date of the accident—the current status without the wasted motion of those additional steps in litigation.

In rejecting United Financial's circuity of action argument (1 ER 13), the district court relied on *Tab Transportation*, but that was a mistake. There, the insurer did not raise a circuity of action argument. Further, unlike here, the dispute in *Tab Transportation* was between the insured and its policyholder, and the three insurance policies involved in the case were *insufficient* to satisfy the claim against the insured. 12 Cal.4th at 395–396. Here, in contrast, the wrongful death claim against Porras was fully satisfied by Allied's policy. The only issue here is whether Allied is entitled to contribution from United Financial, whose policy had expired—a very different issue than *Tab Transportation* presented.

D. Any potential indemnity claim under the MCP 65 certificate and MCP 67 endorsement could be triggered only by a judgment against Mr. Porras.

A liability insurer may, but is not obligated to, make indemnity payments until a judgment is entered against its insured. *See Certain Underwriters at Lloyd's of London v. Superior Court*, 24 Cal.4th 945, 960 (2001); *San Diego Housing Comm'n v. Industrial Indem. Co.*, 68 Cal.App. 4th 526, 544 (1998); *see also Yeates*, 584 F.3d at 875 (federal motor carrier

public filing triggered when third-party claimant obtains final judgment against insured).

Here, no judgment was entered that United Financial could have been obligated to pay—Allied *settled* the case against Mr. Porras.

Under the MCPP Act, United Financial offered (and Porras paid for) coverage for "liability imposed by law" and any "legal liability," consistent with CAL. VEH. CODE § 34631.5(a). United Financial's MCP 67 endorsement (and the MCP 65 certificate which certified issuance of the endorsement) tracked that language. (2 ER 91–92.)

Those phrases refer to a *judgment* against Porras, which United Financial would then become obligated to pay. Porras was potentially liable while the wrongful death case was pending, but once Allied settled the case, his liability was extinguished.

The district court disagreed for two reasons. Neither has merit. First, the court distinguished the cases cited by United Financial because they involved different policy language providing coverage for "all sums that the insured becomes legally obligated to pay as damages." (1 ER 19.) In fact, that policy language from *Certain Underwriters* and *San Diego Housing* is

included in the endorsement here (2 ER 92) and in CAL. VEH. CODE § 34631.5(a).

Second, the District Court ruled that *Tab Transportation* and *Fireman's Fund* did not require a judgment against the policyholder. (1 ER 19.) In those cases, however, the issue was never raised. The only issue addressed was whether a trucker's lapsed insurance contract remained in force where the governing statute at the time, former CAL. PUB. UTIL. CODE § 3634, stated the insurer could cancel the policy only by providing the regulatory agency thirty days' notice. Nothing in those cases detracts from United Financial's point that a judgment is required for Allied's equitable contribution and subrogation claims to succeed. The absence of a judgment against Porras dooms those claims.

CONCLUSION

For these reasons, the Court should reverse the district court's judgment and order the court to enter judgment for United Financial.

July 3, 2020

PATRICK HOWE LAW, APC

By: *s/Patrick M. Howe*
Patrick M. Howe
Attorney for defendant-appellant
United Financial Casualty
Company

STATEMENT OF RELATED CASES

United Financial is unaware of any related cases pending in this Court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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ADDENDUM

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California Vehicle Code

Section 34630. (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 nonadmitted 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).

(1) If the carrier's permit is suspended, the carrier shall pay a reinstatement fee as set forth in Section 34623.5, and prior to conducting on-highway operations, present proof of financial responsibility pursuant to subdivision (a) in order to have the permit reinstated.

(2) If the evidence provided by the carrier of valid insurance coverage pursuant to subdivision (a) demonstrates that a lapse in coverage for the carrier's operation did not occur, the reinstatement fee shall be waived.

Section 34631. The proof of financial responsibility required under Section 34630 shall be evidenced by the deposit with the department, covering each vehicle used or to be used under the motor carrier permit applied for, of one of the following:

(a) A certificate of insurance, issued by a company licensed to write insurance in this state, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code, if the policies represented by the certificate comply with Section 34630 and the rules promulgated by the department pursuant to Section 34604.

(b) A bond of a surety company licensed to write surety bonds in the state.

(c) Evidence of qualification of the carrier as a self-insurer as provided for in subdivision (a) of Section 34630. However, any certificate of self-insurance granted to a motor carrier of property shall be limited to serve as proof of financial responsibility under paragraphs (1) and (2) of subdivision (a) of Section 34631.5 minimum limits only and shall not be acceptable as proof of financial responsibility for the coverage required pursuant to paragraph (3) or (4) of subdivision (a) of Section 34631.5.

(d) Evidence on a form that indicates that coverage is provided by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code. The form shall include all of the following:

(1) The name and address of the motor carrier.

(2) The name and address of the charitable risk pool providing the policy for the motor carrier.

(3) The policy number, effective date, and liability limits of the policy.

(4) A statement from the charitable risk pool that the policy meets the requirements of Section 34631.5.

Section 34631.5. (a) (1) Every motor carrier of property as defined in Section 34601, except those subject to paragraph (2), (3), or (4), shall provide and thereafter continue in effect adequate protection against liability imposed by law upon those carriers for the payment of damages in the amount of a combined single limit of not less than seven hundred fifty thousand dollars ($750,000) on account of bodily injuries to, or death of, one or more persons, or damage to or destruction of, property other than property being transported by the carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(2) Every motor carrier of property, as defined in Section 34601, who operates only vehicles under 10,000 pounds GVWR and who does not transport any commodity subject to paragraph (3) or (4), shall provide and thereafter continue in effect adequate protection against liability imposed by law for the payment of damages caused by bodily injuries to or the death of any person; or for damage to or destruction of property of others, other than property being transported by the carrier, in an amount not less than three hundred thousand dollars ($300,000).

(3) Every intrastate motor carrier of property, as defined in Section 34601, who transports petroleum products in bulk, including waste petroleum and waste petroleum products, shall provide and thereafter continue in effect adequate protection against liability imposed by law upon the carrier for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than five hundred thousand dollars ($500,000) on account of bodily injuries to, or death of, one person; and protection against a total liability of those carriers on account of bodily injuries to, or death of more than one person as a result of any one accident, but subject to the same limitation for each person in the amount of not less than one million dollars ($1,000,000); and protection in an amount of not

less than two hundred thousand dollars ($200,000) for one accident resulting in damage to or destruction to property other than property being transported by the carrier for any shipper or consignee, whether the property of one or more than one claimant; or a combined single limit in the amount of not less than one million two hundred thousand dollars ($1,200,000) on account of bodily injuries to, or death of, one or more persons or damage to or destruction of property, or both, other than property being transported by the carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(4) Except as provided in paragraph (3), every motor carrier of property, as defined in Section 34601, that transports any hazardous material, as defined by Section 353, shall provide and thereafter continue in effect adequate protection against liability imposed by law on those carriers for the payment of damages for personal injury or death, and damage to or destruction of property, in amounts of not less than the minimum levels of financial responsibility specified for carriers of hazardous materials by the United States Department of Transportation in Part 387 (commencing with Section 387.1) of Title 49 of the Code of Federal Regulations. The applicable minimum levels of financial responsibility required are as follows:

	Commodity Transported:	Combined Single Limit Coverage
(A)	Oil listed in Section 172.101 of Title 49 of the Code of Federal Regulations; or hazardous waste, hazardous materials and hazardous substances defined in Section 171.8 of Title 49 of the Code of Federal Regulations and listed in Section 172.101 of Title 49 of the Code of Federal Regulations, but not mentioned in subparagraph (C) or (D).	$1,000,000
(B)	Hazardous waste as defined in Section 25117 of the Health and Safety Code and in Article 1 (commencing with Section 66261.1) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, but not mentioned in subparagraph (C) or (D).	$1,000,000
(C)	Hazardous substances, as defined in Section 171.8 of Title 49 of the Code of Federal Regulations, or liquefied compressed gas or compressed gas, transported in cargo tanks, portable tanks, or hopper-type vehicle with capacities in excess of 3,500 water gallons.	$5,000,000

(D)	Any quantity of division 1.1, 1.2, or 1.3 explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in Section 173.403 of Title 49 of the Code of Federal Regulations.	$5,000,000

(b) (1) The protection required under subdivision (a) 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, issued by a company licensed to write the insurance in the State of California, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code.

(2) The protection required under subdivision (a) by every motor carrier of property engaged in interstate or foreign transportation of property in or through California, shall be evidenced by the filing and acceptance of a department authorized certificate of insurance, or qualification as a self-insurer as may be authorized by law.

(3) A certificate of insurance, evidencing the protection, shall not be cancelable on less than 30 days' written notice to the department, the notice to commence to run from the date notice is actually received at the office of the department in Sacramento.

(4) Every insurance certificate or equivalent protection to the public shall contain a provision that the certificate or equivalent protection shall remain in full force and effect until canceled in the manner provided by paragraph (3).

(5) Upon cancellation of an insurance certificate or the cancellation of equivalent protection authorized by the Department of Motor Vehicles, the motor carrier permit of any motor carrier of property, shall stand suspended immediately upon the effective date of the cancellations.

(6) No carrier shall engage in any operation on any public highway of this state during the suspension of its permit.

(7) No motor carrier of property, whose permit has been suspended under paragraph (5) shall resume operations unless and until the carrier has filed an insurance certificate or equivalent protection in effect at the time and that meets the standards set forth in this section. The operative rights of the complying carriers shall be reinstated from suspension upon the filing of an insurance certificate or equivalent protection.

(8) In order to expedite the processing of insurance filings by the department, each insurance filing made should contain the insured's California carrier number, if known, in the upper right corner of the certificate.

(c) (1) Notwithstanding any other provision of law, the operator of a for-hire tow truck who is in compliance with subdivision (a) may perform emergency moves, irrespective of the load carried aboard the vehicle being moved.

(2) For the purposes of paragraph (1), an "emergency move" is limited to one or more of the following activities:

(A) Removal of a disabled or damaged vehicle or combination of vehicles from a highway.

(B) Removal of a vehicle or combination of vehicles from public or private property following a traffic collision.

(C) Removal of a vehicle or combination of vehicles from public or private property to protect public health, safety, or property.

(D) Removal of a vehicle or combination of vehicles from any location for impound or storage, at the direction of a peace officer.

(3) The authority granted under paragraph (1) applies only to the first one-way carriage of property from the scene of the emergency to the nearest safe location. Any subsequent move of that property shall be subject to subdivision (a), including, but not limited to, a requirement that the for-hire tow truck operator have a level of liability protection that is adequate for the

commodity being transported by the towed vehicle or combination of vehicles.

(4) Any transportation of property by an operator of an operator of a for-hire tow truck that is not an emergency move, as authorized under paragraph (1), shall be subject to subdivision (a), including, but not limited to, a requirement that the for-hire tow truck operator have a level of liability protection that is adequate for the commodity being transported by the towed vehicle or combination of vehicles.

California Insurance Code

Section 675.5. (a) In addition to any policy of insurance specified in Section 675, this chapter shall apply to policies of commercial insurance issued or issued for delivery in this state which are issued and take effect or are renewed on or after January 1, 1987.

(b) As used in this section, commercial insurance means commercial multiperil, commercial property, commercial liability, commercial special multiperil, commercial comprehensive multiperil, errors and omissions liability, and professional liability insurance, and any other insurance not included in subdivision (d) which covers any of the following contingencies:

(1) Loss of or damage to real property used or owned by a commercial or industrial enterprise.

(2) Loss of or damage to personal property, except personally owned motor vehicles, used in the conduct of a commercial or industrial enterprise.

(3) Legal liability of any person for loss of, damage to, or injury to persons or property, arising from the conduct of a commercial or industrial enterprise.

(c) As used in this section, the term commercial or industrial enterprise includes a business operated for profit, a professional practice, a nonprofit organization, or a governmental entity.

(d) As used in this section, the term commercial insurance does not include any of the following:

(1) Workers' compensation insurance.

(2) Insurance provided pursuant to the California FAIR plan or the California automobile assigned risk plan.

(3) Disability insurance.

(4) Automobile insurance covered by Section 660 and property insurance covered by Section 675.

(5) Ocean marine insurance.

(6) Fidelity and surety insurance.

(7) Surplus line insurance, which is nonadmitted insurance as defined in subdivision (m) of Section 1760.1.

(8) Reinsurance.

(9) Any insurance, other than professional liability insurance for malpractice, errors, or omissions, for which premiums are determined on a retrospective rating basis.

(10) Nuclear liability insurance.

(11) Nuclear property insurance.

Section 677.2. (a) This section applies only to policies covered by Section 675.5.

(b) A notice of cancellation shall be in writing and shall be delivered or mailed to the producer of record, provided that the producer of record is not an employee of the insurer, and to the named insured at the mailing address shown on the policy. Subdivision (a) of Section 1013 of the Code of Civil Procedure is applicable if the notice is mailed.

The notice of cancellation shall include the effective date of the cancellation and the reasons for the cancellation.

(c) The notice of cancellation shall be given at least 30 days prior to the effective date of the cancellation, except that in the case of cancellation for nonpayment of premiums or for fraud the notice shall be given no less than 10 days prior to the effective date of the cancellation. Notice of a proposed cancellation pursuant to subdivision (d) of Section 676.2 given prior to a finding of the commissioner shall satisfy the requirements of this section if it

is given no less than 30 days prior to the effective date of the cancellation and if it states that cancellation will be effective only upon the approval of the commissioner.

(d) This section applies only to cancellations pursuant to Section 676.2.

Title 13 of Cal. Code Regs.

Section 220.06. (a) Acceptable proof of financial responsibility, pursuant to Vehicle Code section 34630, shall be submitted to the department in the form of a Certificate of Insurance, [DMV 65 MCP (REV. 7/2002)] pursuant to Vehicle Code section 34631(a); or a surety bond, [DMV 55 MCP (REV. 10/2003)] pursuant to Vehicle Code Section 34631(b); or a Certificate of Self-Insurance, [DMV 131 MCP (NEW 4/98)] pursuant to Vehicle Code Section 34631(c), which are hereby incorporated by reference.

(1) The Certificate of Insurance [DMV 65 MCP (REV. 7/2002)] shall be submitted to the department by the motor carrier's insurance provider.

(2) Proof of financial responsibility pursuant to Division 7, Vehicle Code section 16000 et seq., shall not be substituted for the proof required for a Motor Carrier Permit.

(3) The name of the motor carrier on the Certificate of Insurance, surety bond or Self-Insurance Certificate shall match the name of the motor carrier entered in Part 2 of an Application for Motor Carrier Permit form [DMV 706 MCP, (REV. 4/2003).]

(b) An Insurance Policy Endorsement, [DMV 67 MCP (REV. 6/2001)], which is hereby incorporated by reference, amending the insurance policy to comply with insurance requirements imposed by the Motor Carriers of Property Permit Act, commencing with Vehicle Code section 34630, shall be attached to and made part of, the insurance policy insuring the motor carrier.

(1) The Insurance Policy Endorsement, [DMV 67 MCP (REV. 6/2001)] shall be retained by the insurer and a copy provided to the insured motor carrier.

(2) A duplicate and all related documentation shall be provided to the department upon request.

(c) Written notice of cancellation of the Certificate of Insurance, required under Vehicle Code section 34630(b), shall be submitted by the insurer to the department on a Notice of Cancellation of Insurance, [DMV 66 MCP (REV. 6/2001)], which is hereby incorporated by reference.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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ADDITIONAL DOCUMENTS	20-55099_Appellant_EOR_Vol1
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