No. 22-1006

In the Supreme Court of the United States

PRIME INSURANCE COMPANY, PETITIONER

v.

DARNELL WRIGHT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The brief in opposition confirms that certiorari is warranted because this case squarely presents an important and recurring question of federal statutory interpretation on which the circuits are divided. Below, Judge Easterbrook described and then deepened a split on the scope of 49 U.S.C. 31139(b)(1)'s motor-carrier insurance coverage mandate:

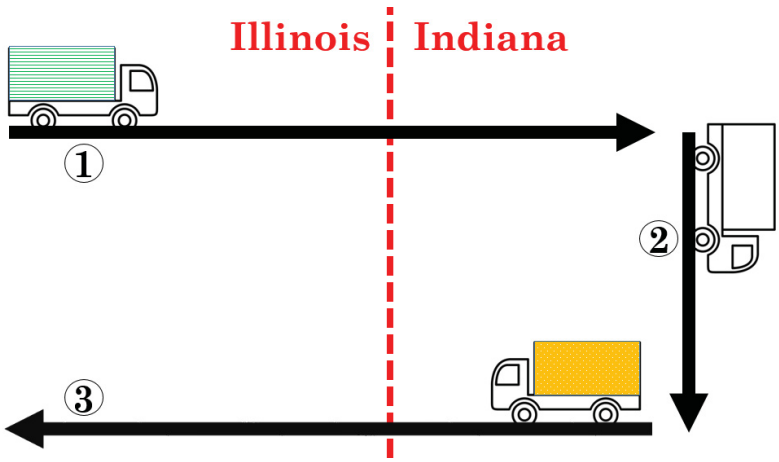
- The Fifth Circuit holds that the mandate applies "only when a truck is loaded with freight and moving from one state to another at the moment of the collision." Pet. App. 2a (citing *Canal Ins. Co.* v. *Coleman*, 625 F.3d 244 (5th Cir. 2010)).
- The Eighth Circuit employs a subjective test, asking whether the shipper "has a fixed intent to transport freight across state lines in the near future." Pet. App. 3a (citing *Century Indem. Co.* v. *Carlson*, 133 F.3d 591 (8th Cir. 1998)).
- The Seventh Circuit rejected both rules, reading the statute to reach services "related to" transportation, including "movement arranging for the interchange of property." Pet. App. 5a-6a.

The split is deeper when state high courts are considered. See *Martinez* v. *Empire Fire & Marine Ins. Co.*, 139 A.3d 611, 621 (Conn. 2016) (adopting the Fifth Circuit's rule); *Progressive Cas. Ins. Co.* v. *Hoover*, 809 A.2d 353, 360-61 (Pa. 2002) (adopting the Eighth's).

The split is well-recognized and important. The district court found it "clear by now that courts are divided." Pet. App. 26a; see, *e.g.*, *Artisan & Truckers Cas. Co.* v. *Dollar Tree Stores, Inc.*, No. 20C290, 2023 WL 3601734, at *8 (N.D. Ill. May 23, 2023) (describing the

three-way split). The leading treatise recognizes that the decision below deepened the split. See 1 William J. Schermer & Irvin E. Schermer, *Automobile Liability Insurance* § 2:15 (4th ed. May 2023 update). As do industry participants. See, *e.g.*, Trucking Industry Def. Ass'n Amicus Br. 2 ("[T]he Seventh Circuit's creation of a new 'standard' … exacerbates the conflict"); Rick Boepple, *7th Circ. Adds to Range of Opinions on MCS-90 Endorsement*, Law360 (Mar. 31, 2023) (similar).[1]

This case is an unusually crisp vehicle for resolving this entrenched split. The sole question is the scope of Section 31139(b)(1)'s mandate. As it comes to this Court, the facts are straightforward and vivid, involving a truck that made three distinct trips:



On the first trip, the truck transported property from Illinois and dropped it off in Indiana. On the second trip, the truck was "deadheading"—driving without a load between two locations within Indiana. 5 Saul Sorkin, *Goods in Transit* § 45.01 (2023 ed.) ("Deadheading is the

[1] https://www.law360.com/articles/1589826/7th-circ-adds-to-range-of-opinions-on-mcs-90-endorsement.

operation of a tractor-trailer or a truck where the trailer or truck is empty and contains no cargo; a vehicle without a load."). On the third trip, the truck picked up a new load and ultimately returned to Illinois. The accident at issue occurred on Trip 2, when the truck was deadheading within Indiana.

If liability for that accident is "for the transportation of property … between a place in a State and … a place in another State," Section 31139(b)(1)'s mandate requires petitioner—a motor-carrier insurer—to pay the resulting indemnity obligation. If not, petitioner does not have to pay. That is the only question. Notwithstanding the traffic accident that gave rise to it, this case is an ideal vehicle.

Respondent does not dispute that the circuits apply three distinct legal rules to resolve the scope of Section 31139(b)(1)'s mandate. Or that the mandate's scope is an important and recurring issue. Or that the issue is properly preserved and squarely presented. Respondent argues only that the question is not outcome-determinative because there is "no reason to think" another court would reach a different result "under the circumstances here." Br. Opp. 8. But the Seventh Circuit's careful consideration and rejection of two other circuits' rules was not an academic exercise. Those rules compel different inquiries and lead to different results on these facts. Unlike the Seventh Circuit, other courts properly recognize that an empty truck traveling between locations in a single state is not transporting property interstate. At a minimum, the adoption of a different legal rule would require this Court to vacate and remand for the Seventh Circuit to apply that rule to the facts of this case.

Respondent also contends that the Seventh Circuit's decision is correct on the merits. But that is a question

for the merits stage. In any event, the Seventh Circuit's opinion is wrong. The statute covers liability "for the transportation of property … between a place in a State and … a place in another State." It does not cover liability for the transportation of nothing within a single state. The Seventh Circuit misread the statute to cover any and all activities merely "related to" interstate transportation. In doing so, the court vastly expanded the reach of Congress's narrow intervention into private insurance markets and state regulation of intrastate commerce. The Court should grant review and reverse.

ARGUMENT

I. Circuits Are Divided on an Important and Recurring Question of Federal Statutory Interpretation

1. Respondent does not dispute that the circuits (and state high courts) have binding precedent establishing three different legal rules about the scope of Section 31139(b)(1)'s minimum coverage mandate.

Respondent—just like the Seventh Circuit—lays out the three different rules. According to respondent, the Eighth Circuit and Pennsylvania Supreme Court "examin[e] 'the essential character' of the shipment from the shipper's intent." Br. Opp. 12 (quoting *Carlson*, 133 F.3d at 598-99). The Fifth Circuit and Connecticut Supreme Court look at (again, per respondent) whether "vehicles ... are presently engaged in the transportation of property in interstate commerce." *Id.* at 9 (quoting *Coleman*, 625 F.3d at 249). And the Seventh Circuit's test was satisfied because, as respondent puts it, the driver "indisputably moved property across state lines and was engaged in a 'service[] related to that movement' at the time of the crash." *Id.* at 13 (citation omitted). Same statute, three different rules; ergo, a circuit split.

2. Nor does respondent appear to dispute that the scope of Section 31139(b)(1)'s mandate is an important and recurring issue.

It is currently impossible to know the scope of a mandate that applies to an industry—trucking—that is inherently nationwide. Predictability and uniformity are especially critical, moreover, since insurers must price policies and settle disputes based on their best guess of what rule might apply. "The proliferation of uncertainty and inconsistency … does nothing more than create increased risk, which results in insurers charging higher premiums to motor carriers" and "motor carriers will inevitably pass these costs on to consumers and the public." Trucking Industry Def. Ass'n Amicus Br. 12.

Questions about the mandate's scope frequently arise. At least five circuits and state high courts have addressed it in published opinions. Numerous lower courts have applied the circuits' various rules—or crafted their own. See Schermer & Schermer § 2:15 (collecting cases).

3. Respondent does not suggest there is any barrier to this Court addressing the question presented. Respondent does not argue that the Seventh Circuit offered alternative grounds or failed to decide the question presented. Nor does respondent suggest that petitioner failed to properly preserve the issue. To the contrary, the question presented was the only issue the court of appeals addressed.

4. Respondent's primary argument against review is that no court of appeals has addressed a case involving "the circumstances here," i.e., raising identical facts. Br. Opp. at 8. According to respondent, there is thus "no reason to think" that any court "would hold that Mr.

Humphrey was not engaged in the interstate transportation of property." *Ibid.* Respondent similarly asserts that its distinct facts make this case unimportant. *Id.* at 16-17.

But the Seventh Circuit did not issue a fact-bound decision resolving this one case. It issued a binding precedent announcing a legal rule governing all cases under this statute. The circuit conflict exists because courts are interpreting the same statute to require three different legal rules for deciding whether a federal law mandate covers any given accident. That is a circuit split.

Respondent is also wrong to assert that there is "no reason" to think that resolving the split would be outcome-determinative. The Seventh Circuit thought so: If the split did not matter, there would have been no reason for the court to address the conflict and adopt a new and different legal rule. The Seventh Circuit's decision—that the coverage mandate reaches a deadheading truck's accident on an intrastate route as an activity "related to" the interstate movement of property—was not an advisory opinion and instead reached a result at odds with the other cases in the split. Pet. App. 5a-6a.

a. Take the intent-based standard of the Eighth Circuit and Pennsylvania Supreme Court. At a minimum, were this Court to adopt that standard, vacatur would be required for the Seventh Circuit to address the shippers' intent—an issue it nowhere considered. See Pet. App. 5a (The statute "does not require [courts] to probe anyone's intent."). Moreover, when a truck is deadheading between shipments, there is no reason to think that the shipper of either load has any intent with respect to a purely intrastate journey before or after their property is shipped. That is why longstanding precedent (from which the Eighth Circuit derived its shipper's-intent-

based test) indicates that an empty truck is not transporting property interstate unless and until it is carrying property. *E.g.*, *Middlewest Motor Freight Bureau* v. *ICC*, 867 F.2d 458, 460 (8th Cir. 1989) ("[T]he time when a shipment of goods can be ascribed to interstate commerce is when shipment begins its transportation for destination in another state." (citing *Tex. & N.O.R.R. Co.* v. *Sabine Tram Co.*, 227 U.S. 111, 123 (1913))); see *Carlson*, 133 F.3d at 599 (relying on *Middlewest*).

Even respondent emphasizes that these courts apply the coverage mandate when the journey is "part of a continuous transportation of the goods out of the State." Opp. Br. 12 (quoting *Carlson*, 133 F.3d at 599). Here, the deadhead journey was not part of the continuous transportation *of goods*. The goods had not yet started moving. That did not happen until later, after the accident and after the deadhead journey was completed.

Respondent cannot avoid this critical distinction by pointing out that the truck transported property between states at some point before or after the deadhead trip on which the accident occurred (perhaps with other intrastate trips in between). At the time of the accident, no property was moving anywhere. Even if, as respondent notes, "Mr. Humphrey's 'trip was specifically arranged by Riteway to occur across state lines,'" this fails to show the shippers' (rather than the carrier's) intent with respect to the trip on which the accident occurred. Opp. Br. 13 (quoting Pet. App. 28a).

b. The "trip-specific" approach of the Connecticut Supreme Court and Fifth Circuit likewise dictates a different result. In *Martinez*, the Connecticut Supreme Court held that the mandate applies "only" if the truck "is engaged in the transportation of property in interstate commerce at the time the accident occurs." 139

A.3d at 620. The court focused narrowly on the specific leg of the trip on which the accident occurred, holding that for "a trip within only one state [to] be considered interstate in nature" it must be "one leg of a continuous interstate movement of goods." *Id.* at 621. Under this standard, too, an empty truck deadheading within a single state is not a leg in a continuous interstate movement of goods. The goods are not yet moving. One set of goods has already been dropped off. And the future trip with a future load has not yet started.

The empty truck's middle trip between those two journeys is not a "leg" of either journey. It is a distinct trip. That is why the Connecticut Supreme Court found that the mandate did not apply to the in-state pickup and delivery of repair parts that were installed into trucks that traveled interstate: the later interstate journey, the court explained, was "part of a new and distinct trip." *Id.* at 622.

The Fifth Circuit is no different. In *Coleman*, the court reiterated its clear legal rule several times over: "[T]he MCS-90 does not cover vehicles when they are not presently transporting property in interstate commerce." 625 F.3d at 251; see, *e.g.*, *id.* at 250 ("[W]e determine[] the MCS-90's applicability with reference to [the] time of the loss."). The Seventh Circuit below rejected that rule, noting that the statute "does not include the qualifier 'at the time of the accident' or anything similar." Pet. App. 5a. Applying the Fifth Circuit's rule would train focus on the moment of the accident, which, in this case, occurred while the vehicle was "not presently transporting property in interstate commerce." *Coleman*, 625 F.3d at 251.

Respondent emphasizes that, in *Coleman*, the parties stipulated that the truck—which was operating

without a trailer—was not engaged in interstate transportation at the time, and the Fifth Circuit noted that a contrary position would have been "'at least arguable.'" Opp. Br. 10 (quoting *Coleman*, 625 F.3d at 252). But there is a wide gap between noting that a position is "at least arguable" and accepting it. The stipulation between the parties correctly reflected the commonsense conclusion that, when a truck is driving without a load between two places in the same state, it is not transporting property between two places in different states. No goods are moving. Opinions from the Eighth Circuit and the Pennsylvania and Connecticut Supreme Courts confirm that result. At a minimum, if this Court were to adopt the "trip-specific" rule, it would need to vacate and remand for the Seventh Circuit to apply that rule.

5. Respondent briefly suggests that this case raises an antecedent issue about "whether the MCS-90 endorsement applies." *Id.* at 16. But the Seventh Circuit made clear that the only question is whether Section 31139(b)(1)—which is incorporated into the MCS-90 endorsement—reaches this case. Pet. App. 4a. Respondent has not preserved any argument that the text of the MCS-90 endorsement alone provides an alternative path to affirmance. And, in any event, the endorsement, which is prescribed by regulation, cannot exceed the scope of its underlying statutory mandate.

II. The Court of Appeals' Decision Is Wrong

The court of appeals' decision is also wrong. Section 31139(b)(1)'s text mandates coverage for "liability … for the transportation of property … between a place in a State and … a place in another State." For the mandate to apply, liability must be *for*—that is, "on account of"—transportation of property between states. *Webster's*

Third New International Dictionary 886 (1993). Liability for an empty truck's intrastate journey, on which no goods are moving, does not fall within that scope.

Hewing to the statute's text ensures fidelity to Congress's effort to avoid excessive intrusion into private insurance markets and state regulation of intrastate commerce. When liability arises from transportation of property between two places in the same state, the mandate does not apply. That rule stands in sharp contrast to Congress's approach to the transportation of hazardous materials, for which minimum coverage is required whether the transportation involves "interstate or intrastate commerce." 49 U.S.C. 31139(d)(1). It would undermine Congress's nuanced scheme to treat an empty truck on an intrastate journey more like a truck full of hazardous materials than one carrying ordinary, nonhazardous property. Yet that is how the Seventh Circuit interpreted the statute, and, in so doing, vastly expanded the coverage mandate's scope.

The Seventh Circuit reached that result by misreading a separate statutory provision. Pet. App. 5a-6a (relying on 49 U.S.C. 13102(23)). The court was wrong to look at that provision at all: Section 31139(b)(1) refers to "transportation of property by motor carrier or motor private carrier (as such terms are defined in section 13102 …)," which incorporates Section 13102 only with respect to the terms "motor carrier" and "motor private carrier," not "transportation." Pet. 18-19. Even assuming the court correctly imported Section 13102(23)(B) into Section 31139(b)(1), it misread that provision's definition of "transportation" of property to reach any and all activity somehow related to the transportation of property. The provision itself reaches only a narrow set of related activities directly involving property, like

"packing" it, "interchang[ing]" it, "recei[ving]" it, or "arranging for" it. 49 U.S.C. 13102(23). It does not stretch to any and all activities "arranging for the interchange of property," as the Seventh Circuit held (Pet. App. 6a), erroneously linking two independent services (and redefining both "arranging" and "interchange" in the process) to reach activities two steps removed from any property. The definition does not stretch to an empty truck's distinct trip made for the purpose of later being in the position to receive property to start a new interstate trip.

By way of analogy, respondent notes that "this Court found it 'plain' that 'airline employees who physically load and unload cargo on and off planes … [are] part of the interstate transportation of goods,' although those workers do not themselves move property across state lines." Opp. Br. 21 (quoting *Southwest Airlines Co.* v. *Saxon*, 142 S. Ct. 1783, 1789 (2022)). This Court did not, however, find that those employees were part of the interstate transportation of goods when they were driving to work, long before they interacted with any cargo. Yet that is effectively the rule respondent advances here.

The interstate transportation "of property" hinges on the movement *of property*. A deadheading truck on an intrastate journey is not moving any property—and is certainly not moving property between states. Yet the Seventh Circuit held that it is, deepening an entrenched circuit split. The question arises again and again, and in an important context where predictability and uniformity are paramount. This case squarely presents the issue and resolving the split will resolve the case.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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