NO. _____

In the Supreme Court of the United States

LEVI OWENS,
PERSONAL REPRESENTATIVE FOR THE
ESTATE OF CHRISTOPHER MCLEAN,

Petitioner,

v.

THE CINCINNATI INSURANCE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Form MCS-90 obligates a motor carrier insurer to pay "any final judgment recovered against the insured." The Fourth and Fifth Circuits hold that "insured" means only the motor carrier named in the endorsement. The Ninth and Tenth Circuits hold that the endorsement can also require payment of a judgment against a permissive user driver by displacing limitations in the underlying policy's omnibus-insured provision.

The Question Presented Is:

Whether "insured" in Form MCS-90 is limited to the motor carrier named in the endorsement, so that the endorsement can never require payment of a judgment entered solely against an employee or permissive user driver.

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellant below

- Levi Owens, Personal Representative for the Estate of Christopher McLean

Respondent and Plaintiff-Appellee below

- The Cincinnati Insurance Company

Note: Wilmington Shipping Company and Wayne Hunt were defendants in the district court and were identified as defendants in the court of appeals. They did not appeal the judgment below.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual acting as the personal representative of an estate. No corporate disclosure statement is required of Petitioner under Rule 29.6.

Note: The Cincinnati Insurance Company The Cincinnati Insurance Company is a wholly owned subsidiary of Cincinnati Financial Corporation (Nasdaq: CINF), a publicly traded company.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit

No. 25-1848

The Cincinnati Insurance Company, *Plaintiff–Appellee*, v. Levi Owens, Personal Representative for the Estate of Christopher McLean, *Defendant–Appellant*, and Wilmington Shipping Company; Wayne Hunt, *Defendants*.

Final Opinion: August 10, 2026

U.S. District Court for the District of South Carolina Florence Division

No. 4:24-cv-00951-JDA

The Cincinnati Insurance Company, *Plaintiff*, v. Wayne Hunt; Levi Owens, Personal Representative for the Estate of Christopher McLean; Wilmington Shipping Company, *Defendants*.

Final Opinion and Order: June 25, 2025

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Levi Owens, Personal Representative for the Estate of Christopher McLean, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The published opinion of the court of appeals was entered August 10, 2026, and is reproduced at App.1a-30a. It has not yet been assigned a Federal Reporter citation as of the date of this draft. The district court's April 14, 2025 order denying Petitioner leave to amend is unreported and is reproduced at App.47a-48a. The district court's final opinion is reported at 2025 WL 1753693 (D.S.C. June 25, 2025), and is reproduced at App.31a-46a.

JURISDICTION

The court of appeals entered judgment on August 10, 2026. The district court exercised diversity jurisdiction under 28 U.S.C. § 1332. This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition is timely under Rule 13.1.

STATUTORY PROVISIONS AND REGULATIONS INVOLVED

49 U.S.C. § 13906(a)(1)

The Federal Motor Carrier Act provides, in relevant part:

> The Secretary [of Transportation] may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes . . . The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles. . . .

49 C.F.R. § 387.5

Federal Motor Carrier Safety Administration regulations promulgated pursuant to Title 49 provide, in relevant part:

> *Insured and principal* means the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

49 C.F.R. § 387.15

> Endorsements for policies of insurance (Form MCS-90) and surety bonds (Form MCS-82) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies

> of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated… The endorsement and surety bond shall be issued in the exact name of the motor carrier. The Forms MCS-82 and MCS-90 are available from the FMCSA website at http://www.fmcsa.dot.gov/mission/forms.

Form MCS-90

Referenced above provides, in relevant part:

> In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy . . . It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company.

INTRODUCTION

Every qualifying interstate motor carrier in the United States must carry the same endorsement, its text fixed word for word by federal regulation. Form MCS-90 obligates the carrier's insurer to pay "any final judgment recovered against the insured" for injuries caused by the negligent operation of the carrier's trucks, and it declares that "no condition, provision, stipulation, or limitation contained in the policy . . . or violation thereof" shall relieve the insurer of that obligation.

In the Motor Carrier Act of 1980, Congress set minimum levels of financial responsibility for interstate carriers, in part to address a long-standing abuse: motor carriers using leased and borrowed equipment to escape responsibility for the people their trucks injure. Federal law charges the Secretary of Transportation with prescribing the endorsement that enforces those requirements. The endorsement has one purpose, and only one: to guarantee that an injured member of the public can be made whole.

The Courts of Appeals are now divided over what that guarantee is worth. Commercial auto policies ordinarily define "insured" to include not only the policyholder but anyone driving its vehicles with permission. The Ninth and Tenth Circuits hold that the endorsement means what it says. When a policy limitation would otherwise prevent such a driver from qualifying as an "insured," the endorsement displaces that limitation, and the insurer must pay the judgment against the driver. The Fifth Circuit, and now the

Fourth Circuit, hold the opposite. Relying on a regulation that defines "insured" as "the motor carrier named in the policy," they hold that a judgment entered against the carrier's own driver, operating a truck the carrier put on the road on the carrier's own business, triggers nothing under the endorsement. The Fourth Circuit acknowledged the contrary circuit decisions and simply declined to follow them.

The public harm caused by the Fourth and Fifth Circuit's decisions is manifest in this case. Wayne Hunt, an employee of Wilmington Shipping Company, killed Christopher McLean while driving a truck his employer had leased from Penske Truck Leasing Co., Ltd. The accident report listed Penske as the owner but was silent as to the carrier actually operating the truck. Petitioner, McLean's father, now elderly, pursued the only defendant he could identify: the driver. Wayne Hunt never answered the complaint, and Petitioner obtained a $5.1 million default judgment. Hunt never updated his address, and in the underlying tort proceedings the state court found that his failures prevented Petitioner from discovering who his employer was.

Wilmington Shipping's role came to light nearly nine years after the crash, and its insurer, Cincinnati Insurance Company, has maintained that any claim against the carrier is now time-barred. Cincinnati, which insured both Wilmington Shipping and, as a permissive user, Hunt, then disclaimed all coverage on the ground that no one timely informed it of the lawsuit. It sought a declaratory judgment that it owed nothing, because no one had notified it of the lawsuit in time. The courts below held that the MCS-90 endorsement offers no answer to that defense, because

the judgment names Hunt rather than Wilmington Shipping. Not a dollar has been paid.

The implications reach well beyond this case. Under the Fourth and Fifth Circuits' rule, the federal guarantee disappears whenever the carrier's identity does. That is no novel loophole. It is precisely the problem the federal scheme was built to solve. Before federal regulators intervened, carriers' use of leased and borrowed vehicles produced "public confusion as to who was financially responsible for accidents caused by those vehicles." *Carolina Cas. Ins. Co. v. Yeates*, 584 F.3d 868, 873 n.2 (10th Cir. 2009) (en banc) (citation omitted). Congress responded by amending the Interstate Commerce Act so that carriers would be made "fully responsible for the operation of vehicles certified to them," and the insurance requirement the endorsement now enforces followed from that mandate. *Id.*

The Fourth Circuit's decision rewards the confusion Congress sought to eliminate. It also inverts the Act's allocation of responsibility. Congress placed the burden of financial responsibility on the carrier and its insurer, not on the individual driver, and the very regulation the Fourth Circuit relied on below defines "motor carrier" to include the carrier's "agent, officer, or representative." 49 C.F.R. § 387.5.

The result below leaves the driver holding a $5.1 million judgment he cannot pay, while the insurer that wrote the carrier's liability coverage walks away. The insurer will escape liability via a policy notice condition, exactly the kind of clause that the MCS-90 endorsement was intended to circumvent.

As a result, a form, which by its very definition should be uniform, is not uniform. A motor carrier's MCS-90 endorsement can guarantee its drivers' judgments in Arizona and Colorado but not in Texas or South Carolina. Insurers cannot price that risk coherently. Carriers cannot know what protection their federal filing actually promises, and injured families recover or go uncompensated based on the circuit in which they live. A national safety net for trucks that cross state lines every day cannot sensibly turn on which side of a circuit line a crash happens to fall on.

This conflict will not resolve itself. When this Court first considered the Ninth Circuit's rule more than two decades ago, the United States recommended against review. It said a genuine conflict had yet to exist because the decisions the insurer cited as contrary were distinguishable, and it was unclear whether any other circuit would reject the Ninth Circuit's rule on the same facts. It said the practical importance of the question was uncertain, because the injured party would have to "choose (or be able)" to obtain a judgment only against the driver rather than the carrier. And it said the error, if any, lay in a form promulgated by regulation that could be fixed by the Federal Motor Carrier Safety Administration.

None of those premises holds today. Two courts of appeals have since taken the other side of the question. This case is the "or be able" case the government described: a family that could not identify the carrier until the law no longer allowed suit against it. And when the insurance industry petitioned the agency to amend the form to say "named insured," the agency refused. It instead issued interpretive guidance

endorsing that reading while leaving the form's text untouched. The prescribed form still says "insured." The Tenth Circuit later revisited its MCS-90 precedent en banc and left its driver-judgment rule standing. The agency's views have been on the books since 2005, and the circuits have read them and divided anyway. Two decades of further litigation have produced entrenchment, not consensus.

The question presented is clean, outcome-determinative, and fully joined below. The district court assumed, without deciding, that an MCS-90 endorsement applied, and both courts rejected Petitioner's claim on one legal ground: the endorsement does not reach the judgment because it runs against Hunt rather than the carrier named in the policy. The Fourth Circuit reached that conclusion *de novo*, as a pure question of law, and decided nothing else about the claim. Only this Court can give the endorsement back the single, nationwide meaning it was written to have. The petition should be granted.

STATEMENT OF THE CASE

1. Congress enacted federal motor carrier financial responsibility requirements to protect the public from losses caused by interstate motor carriers. The Fourth Circuit has described the MCS-90 endorsement as "a creature of federal law" and has recognized that the Motor Carrier Act responded to abuses in the trucking industry, including the use of leased or borrowed vehicles to avoid financial responsibility. App.19a; *Canal Ins. Co. v. Distribution Servs., Inc.*, 320 F.3d

488, 489, 492 (4th Cir. 2003). The federal scheme requires qualifying carriers to establish minimum financial responsibility through insurance, a surety bond, or another approved security. 49 U.S.C. § 13906 (a)(1); 49 C.F.R. §§ 387.7, 387.15.

Form MCS-90 is the uniform endorsement FMCSA prescribes for an insurance policy used to satisfy those requirements. Unlike an ordinary coverage provision, it operates for the protection of the public and can require payment even when a policy condition or limitation would otherwise defeat coverage. The endorsement then preserves the insurer's contractual rights against its motor carrier insured, including a right of reimbursement for certain payments the insurer would not otherwise have owed.

2. This case arises from a fatal 2013 collision in South Carolina. Wayne Hunt was an employee of Wilmington Shipping Company ("WSC") and was driving a truck that WSC had leased from Penske Truck Leasing Co., Ltd. Christopher McLean, a passenger in the vehicle Hunt struck, was killed. App.2a.

Petitioner, as personal representative of McLean's estate, later brought a wrongful death and survival action against Hunt.[1] Hunt did not answer-the state court entered default and referred the case to a special referee. On November 18, 2021, the Special Referee entered a $5.1 million default judgment after finding that Hunt's negligence and recklessness caused McLean's death. App.3a-4a. This judgment remains

[1] This action was originally filed by attorney R. Alexander Murdaugh, who has since been disbarred for unrelated misconduct connected to the murder of his wife and son.

unpaid, and Hunt has appealed the denial of a post-trial motion requesting relief from the judgment.

The accident report identified Penske as the owner of the leased truck and did not identify WSC as Hunt's employer. The state court later found that Hunt's failure to keep his address current impeded Petitioner's ability to discover WSC's identity. These facts are particularly significant because the rule adopted by the Fourth Circuit (and Fifth Circuit) makes recovery under a MCS-90 endorsement turn on whether the injured member of the public had earlier obtained a judgment naming the motor carrier itself.

3. Cincinnati had issued business-auto and excess policies to WSC. Cincinnati did not receive notice of the wrongful death action until after the default judgment. It then filed this federal declaratory judgment action, seeking a declaration that it had no duty to defend or indemnify Hunt because of untimely notice and resulting prejudice. App.4a.

The ordinary policy treated Hunt as an insured when he permissively used a WSC-leased vehicle. The district court later explained that, "[t]o obtain coverage under the Policies as a permissive user of a WSC-leased vehicle," Hunt and WSC were required to comply with the policies' notice provisions. App.40a. Thus, the dispute is not about a stranger to the policy. Hunt was a permissive user insured whose ordinary coverage was defeated by the asserted failure to satisfy policy conditions.

Petitioner raised the Motor Carrier Act in his answer and later moved to amend to assert a counterclaim under MCS-90. The record included FMCSA licensing information showing WSC's interstate

operating authority and a BMC-91X filing associated with Cincinnati's policy. Petitioner argued that the federal financial responsibility endorsement applied by law even if it was not physically included in the policy copy Cincinnati had filed. The district court did not decide that issue. Instead, it assumed an MCS-90 could be included and denied amendment on a single categorical ground: the endorsement's obligation ran "only [as] to the named insured," WSC, and not to Hunt. App.30a.

4. The Fourth Circuit affirmed in a published opinion. It reviewed the futility ruling de novo. App.19a. The court recognized that Form MCS-90 obligates the insurer to pay "any final judgment recovered against the insured," but held that "insured" means only the motor carrier specifically named in the policy and endorsement. App.21a–26a.

The court relied principally on 49 C.F.R. § 387.5, the statute's reference to judgments "against the registrant," other uses of "insured" in Form MCS-90, and FMCSA's 2005 interpretive guidance. App.22a–26a. The court also relied on the Fifth Circuit's decision in *OOIDA Risk Retention Group, Inc. v. Williams*, 579 F.3d 469, 477-478 (5th Cir. 2009). App.23a.

The Fourth Circuit expressly acknowledged that the Ninth and Tenth Circuits had reached the opposite result in *John Deere Insurance Co. v. Nueva*, 229 F.3d 853 (9th Cir. 2000), and *Adams v. Royal Indemnity Co.*, 99 F.3d 964 (10th Cir. 1996). App.27a. It declined to follow those decisions, calling them "unpersuasive" in light of its reading of the regulation and the 2005 guidance. Ibid. The court then announced its holding in categorical terms: "the MCS-90 endorsement applies only to judgments entered against the named insured."

Ibid. Because the judgment here was against Hunt alone, the court held Petitioner's proposed MCS-90 claim futile. App.27a–28a.

REASONS FOR GRANTING THE PETITION

The Court should grant review because the decision below creates a direct, acknowledged, and outcome-determinative conflict over the meaning of a uniform federal endorsement. The Fourth and Fifth Circuits hold that MCS-90 can never satisfy a judgment entered solely against a permissive user driver. The Ninth and Tenth Circuits hold that the endorsement can do exactly that when its public protection provisions displace a policy limitation that would otherwise prevent the permissive user from qualifying as an insured. The Fourth Circuit did not attempt to distinguish those decisions; it rejected them. This is the type of conflict Rule 10(a) identifies as warranting review.

The split also has an unusual history that reinforces the need for review. When this Court previously considered the Ninth Circuit's rule in *Nueva*, the United States urged denial in substantial part because no clean contrary circuit holding yet existed and because FMCSA could correct the Ninth Circuit's interpretation through a regulatory proceeding. The insurance industry then requested FMCSA amend Form MCS-90 to say that "insured" means "named insured." FMCSA denied the petition for rulemaking and issued guidance instead. More than two decades later, the prescribed form still says "insured," the Ninth and Tenth Circuit holdings remain on the books, and two additional

courts of appeals have squarely adopted the opposite rule. Only this Court can provide a uniform judicial answer.

I. The Decision Below Creates a Direct and Acknowledged Conflict Among the Courts of Appeals.

A. The Ninth and Tenth Circuits Allow MCS-90 Payment of Judgments Against Permissive Users.

The Ninth Circuit has squarely rejected a rule of the type adopted by the Fourth Circuit in this case. In *Nueva*, an insurer issued a policy to a motor carrier whose policy defined permissive users as insureds only when they used a "covered auto." 229 F.3d at 855-856. A permissive user negligently operated a tractor-trailer involving a trailer owned by the named motor carrier but omitted from the policy's schedule. The injured parties obtained judgments against the permissive users, not the named motor carrier. *Id.* at 855, 859-860.

The insurer in *Nueva* made the same argument Cincinnati advanced in this case: Form MCS-90's use of "insured" should be limited to the named insured. The Ninth Circuit expressly "decline[d] to limit the endorsement in this manner." *Id.* at 859. It reasoned that the endorsement's prohibition on policy limitations preventing public payment displaced the covered-auto limitation not only for the named carrier, but also for permissive users who would have been insured if the vehicle had been scheduled. *Id.* at 859-860. The court therefore held that the permissive users were insureds under the policy as modified by MCS-90 and that the

insurer was liable for the judgments against them. *Id.* at 860.

The Tenth Circuit had reached the same result in *Adams*. There, the injured plaintiff obtained a roughly $1 million default judgment against the driver of a tractor-trailer. 99 F.3d at 965. The driver was not the named insured under the relevant motor carrier policy and the trailer was not a covered auto. Nevertheless, the Tenth Circuit held that the MCS-90 endorsement negated the covered-auto limitation embedded in the policy's omnibus-insured definition. *Id.* at 970-972. The endorsement therefore made the permissive driver an insured for purposes of the public-payment obligation and required the insurer to satisfy the judgment. *Id.*

The Tenth Circuit did not abandon *Adams* after the FMCSA issued its 2005 guidance. In *Carolina Casualty Insurance Co. v. Yeates*, 584 F.3d 868 (10th Cir. 2009) (*en banc*), that court revisited its MCS-90 jurisprudence at length, though it did not directly address the endorsement's surety function. It specifically recounted *Adams*'s holding that MCS-90 extended to the driver and made the insurer liable for the driver-only judgment, and it stated that "our *Adams* approach is in accord with the majority view." *Id.* at 877. Later, while changing a different line of Tenth Circuit precedent concerning allocation among insurers, an *en banc* Tenth Circuit emphasized that "our holding in *Adams*…was completely consistent with the majority view." *Id.* at 879. The Tenth Circuit therefore did not treat *Adams* as obsolete after the 2005 guidance; instead, it described *Adams* as consistent with its prior MCS-90 framework. Thus, *Adams* cannot be disregarded as an obsolete pre-guidance curiosity.

B. The Fourth and Fifth Circuits Limit Mcs-90 to Judgments Against the Named Motor Carrier.

The Fifth Circuit adopted the opposite rule in *OOIDA*. There, the policy's separation-of-insureds clause made the permissive driver an insured for ordinary policy purposes. 579 F.3d at 475-476. The injured parties nevertheless sought payment under an MCS-90 endorsement after a policy exclusion defeated ordinary coverage. The Fifth Circuit held that the policy's treatment of the driver as an insured did not carry over to the MCS-90. Relying on § 387.5 and the 2005 guidance, the Fifth Circuit held that the "insured" for MCS-90 purposes was only the named motor carrier. *Id.* at 477-78. The MCS-90 endorsement therefore did not require payment of the judgment against the driver, even though he was a permissive user. *Id.*

The Fourth Circuit has now adopted the Fifth Circuit's rule in a published decision. It held without qualification that "the MCS-90 endorsement applies only to judgments entered against the named insured." App.26a. The Fourth Circuit expressly acknowledged *Nueva* and *Adams* as contrary decisions, but found them unpersuasive. *Id.*

This holding represents a genuine and acknowledged conflict in holdings, not merely a disagreement in reasoning. In the Fourth and Fifth Circuits, the absence of a judgment naming the motor carrier categorically defeats an MCS-90 claim, even when the judgment debtor is a permissive user insured under the underlying policy. Under *Nueva* and *Adams*, that fact is not dispositive; the endorsement may displace the policy limitation that otherwise prevents public payment. A judgment creditor with the same federally

governed endorsement thus has different rights depending on the circuit.

C. The Conflict Is Outcome-Determinative Here.

The conflict controls this case. The district court denied amendment on the ground that, even assuming an MCS-90 applied, the endorsement could not reach a judgment against Hunt because Hunt was not the named motor carrier. App.30a. The Fourth Circuit affirmed on that same categorical ground. App.27a–28a.

Had this case arisen in the Ninth Circuit, the court could not have disposed of the claim merely because the judgment ran against a permissive user rather than the named carrier. *Nueva* rejected that precise argument. 229 F.3d at 859-860. The same is true under *Adams*. 99 F.3d at 970-972. Reversal on the Question Presented therefore would remove the sole legal basis on which the courts below found the proposed MCS-90 claim futile, leaving any remaining factual or legal questions for remand.

II. The Conflict Warrants Review Now.

1. The question concerns the meaning of a federally mandated form designed to operate uniformly throughout the United States. Congress required motor carriers to establish minimum financial responsibility and directed the Secretary to prescribe the form of endorsement that subjects insurance policies to those federal security requirements. 49 U.S.C. § 13906(a)(1), (f). FMCSA accordingly prescribes a single Form MCS-90. 49 C.F.R. § 387.15. Under the current circuit split,

the nationwide effect of this federally-mandated endorsement is not uniform.

The question is also practically important. MCS-90 exists precisely for cases in which ordinary policy coverage fails yet an injured member of the public holds an unsatisfied judgment arising from motor carrier operations. Whether the judgment must formally name the motor carrier determines whether the federal financial responsibility safety net is available at all. That issue can be decisive when the responsible carrier is difficult to identify, when equipment is leased, or when the driver defaults before the carrier's role is discovered-the circumstances presented here.

2. The procedural history of *Nueva* shows why the present conflict should not be left to further percolation. In 2002, after the Court called for the views of the Solicitor General, the United States argued that *Nueva* and *Adams* were wrongly decided but recommended denial of plenary review. Brief for the United States as Amicus Curiae at 17–22, *John Deere Ins. Co. v. Nueva*, No. 00-1491 (U.S. Jan. 2002). Two reasons for that recommendation have since materially changed.

First, the United States explained that the purported contrary decisions then cited by the insurer were distinguishable, so it was unclear whether another court of appeals would actually reject *Nueva* on the same facts. *Id*. at 19-21. That uncertainty no longer exists. The Fifth Circuit in *OOIDA* and now the Fourth Circuit in this case have expressly decided the precise issue and rejected the *Nueva*/*Adams* rule. Indeed, the decision below identifies *Nueva* and *Adams* and declines to follow them. App.27a.

Second, the United States emphasized that any error in *Nueva* involved "the interpretation of a form promulgated by regulation" and therefore "could…be fixed through a regulatory proceeding" before FMCSA. U.S. Br. at 21. The government noted that FMCSA had received no request for such regulatory action. *Id.* at 21-22. That changed shortly thereafter.

Several insurers and the American Insurance Association petitioned FMCSA to amend Form MCS-90 because, in their view, *Nueva* and related decisions had misconstrued the form. Regulatory Guidance for Forms Used to Establish Minimum Levels of Financial Responsibility of Motor Carriers, 70 Fed. Reg. 58,065, 58,066 (Oct. 5, 2005). The insurance companies' "primary concern" was to have FMCSA clarify that "insured" means "named insured." *Id.* FMCSA denied the petition for rulemaking. It chose instead to issue interpretive guidance stating its view that MCS-90 does not require payment of judgments against anyone other than the motor carrier named in the endorsement or its fiduciary. *Id.*

The clarity that the United States hoped would arrive organically through the appellate courts and the rulemaking process has not come to pass. The circuit split has metastasized: *Nueva* remains a published Ninth Circuit holding, and the Tenth Circuit sitting *en banc* later described *Adams* as consistent with its revised MCS-90 framework. *Yeates*, 584 F.3d at 877, 879. Meanwhile, the Fifth and Fourth Circuits have adopted the opposite rule. Further delay is likely to produce uncertainty, not uniformity.

3. The agency's 2005 guidance does not eliminate the need for this Court's review, especially in light of the Court's holding in *Kisor v. Wilkie*, 588 U.S. 558

(2019), and related cases. Whatever persuasive weight that guidance deserves, the courts of appeals have the final judicial responsibility to construe the regulation and federally prescribed form. The Fourth Circuit's reliance on the guidance did not reconcile the circuits; it simply selected one side of the existing disagreement. The question now is whether the Ninth and Tenth Circuit holdings or the Fourth and Fifth Circuit holdings correctly state federal law. A uniform nationwide answer requires this Court's intervention.

III. The Fourth Circuit's Rule Is Wrong.

The merits need not dominate a petition resting on a square circuit conflict. However, the text and structure of the endorsement provide substantial reason to reject the categorical named-insured rule.

1. Form MCS-90 does not say "final judgment against the named insured." It says "any final judgment recovered against the insured." FMCSA knows how to require the form to be issued in the "exact name of the motor carrier," 49 C.F.R. § 387.15, and Congress used the separate term "registrant" in § 13906(a)(1). The prescribed public-payment promise nevertheless uses "insured." *Nueva* and *Adams* gave that word context by reading the endorsement together with the underlying policy's omnibus-insured provisions.

That approach is particularly appropriate here. Hunt was not a stranger to Cincinnati's policy. The district court treated him as a permissive user insured under the business-auto policy. App.32a, 40a. Cincinnati obtained its no-coverage judgment because Hunt and WSC allegedly violated policy notice and cooperation conditions. But MCS-90 specifically states that "no condition, provision, stipulation, or limitation contained

in the policy . . . or violation thereof" shall relieve the insurer from payment of a qualifying final judgment. Reading "insured" to include a person whom the policy itself treats as an insured gives that public protection clause operative force in the setting in which it matters most.

2. The Fourth Circuit relied on § 387.5, which states that "Insured and principal means the motor carrier named in the policy." App.22a-24a. But the form itself contains no definition of "insured," and the competing circuits read the public-payment language together with the policy it endorses. Further, § 387.5 also broadly defines a motor carrier: "The term includes, but is not limited to, a motor carrier's agent, officer, or representative . . . " At minimum, that interaction between the regulatory definition, the uniform form, and policy-defined permissive users is sufficiently contestable to have produced opposite holdings from four courts of appeals. The existence of the split is itself powerful evidence that the answer is not as self-evident as the Fourth Circuit suggests.

3. The policy's reimbursement and cancellation clauses do not require a different result. Those clauses govern the relationship between the insurer and the motor carrier that procured the endorsement. Form MCS-90 itself distinguishes that private relationship from the insurer's public-payment obligation: after stripping policy limitations from the public-facing promise, it expressly provides that the policy's terms remain binding "between the insured and the company." *Nueva* treated that distinction as important. 229 F.3d at 857–60. It is therefore possible to read the motor carrier as the party that may cancel or owe reim-

bursement without rewriting the separate payment promise to say "judgment against the named insured."

4. Finally, FMCSA's choice of interpretive guidance rather than rulemaking cannot itself amend the form. In 2005, insurers specifically asked the agency to change Form MCS-90 to resolve the consequences of *Nueva* and similar decisions. 70 Fed. Reg. at 58,066. FMCSA declined. The Court should decide the meaning of the language that remains in the federally prescribed endorsement, informed by the agency's reasoning but not replaced by it.

IV. This Case Is an Ideal Vehicle.

This case presents none of the usual obstacles to review. The Question Presented was preserved and squarely decided. Petitioner raised the Motor Carrier Act as a defense, moved to amend to assert the MCS-90 claim, and argued the permissive user authorities in the court of appeals. App.5a-8a, 21a-22a, 27a. The district court denied amendment because MCS-90 supposedly applies only to a named motor carrier. App.30a. The Fourth Circuit reviewed that legal conclusion *de novo*, analyzed the federal statute, regulations, form, guidance, and contrary circuit authorities, and announced a published holding that MCS-90 "applies only to judgments entered against the named insured." App.19a, 22a-27a.

This issue is also outcome-determinative. The courts below did not reject the MCS-90 claim on an alternative factual ground. The district court expressly reasoned that "even if an MCS-90 were included in the policies," the claim failed because Hunt was not the named insured. App.30a. Thus the possible absence of a physical MCS-90 from Cincinnati's policy copy is not

an alternative basis supporting the judgment on the amendment. The record, moreover, contains a BMC-91X filing and Petitioner's incorporation-by-law argument. Those matters can be addressed on remand if necessary.

The Court also need not decide the other issues resolved below. The Fourth Circuit separately affirmed rulings concerning a stay and summary judgment. Those issues do not affect the MCS-90 futility ruling, which was independently reviewed *de novo* and turns on a discrete question of federal law. A decision reversing that categorical rule would require only that Petitioner be allowed to pursue the MCS-90 claim subject to any remaining issues on remand.

These facts make the issue concrete without rendering it fact-bound. Hunt was driving for the named motor carrier in a leased commercial vehicle. He was a permissive user insured under Cincinnati's policy. A final $5.1 million judgment exists, though Hunt has appealed that judgment. Ordinary coverage failed because of alleged noncompliance with notice and cooperation conditions. The only question presented is whether federal law categorically bars MCS-90 from paying any part of that judgment solely because the judgment names Hunt rather than WSC. That is the same legal question that divides the circuits.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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