The Use of State Financial Responsibility Regulations *to Create Coverage*

Andrew P. Anderson*

In addition to the requisite federally mandated financial responsibility requirements, motor carriers must also comply with various state financial responsibility requirements. 49 U.S.C. § 14504 authorizes single state registration under which an interstate carrier is only required to register with one state. If said motor carrier operates as an intrastate carrier, it will have to comply with the state's financial responsibility requirements. To accomplish this, intrastate motor carrier operators will most often use "Form E" and "Form F" to comply with these state insurance requirements. Forms "E" and "F" are standard industry forms used for the specific purpose of meeting public liability requirements under commercial auto policies. Form "E" certifies that the motor carrier named on the form is in compliance with the insurance provisions of the motor carrier laws of the state to which the certificate is issued. Similar to the MCS-90 endorsement, Form "E" applies on a "continuous until cancelled" basis to all motor vehicles operated by the insured carrier named on the form, regardless of whether the autos are specifically listed in the policy. Form "E" is filed with the appropriate agency in various states where the insured carrier operates, which is typically the Public Service Commission or Public Utilities Commission.

Form "F" is the companion endorsement to Form "E" and constitutes certification or proof of financial responsibility "under the provisions of any State Commission having jurisdiction, and amends the policy to provide insurance … in accordance with such law or regulation to the extent of the coverage and limits required." Although similar in effect to the MCS-90 endorsement, Forms "E" and "F" have potentially *broader* obligations because these forms more directly incorporate financial responsibility laws into the insurance contract. Unlike the MCS-90, Form "F" does not specifically express the limits of public liability within the endorsement itself. Not surprisingly, it has been widely argued that Form "F," therefore, increases the limits in the body of the policy to the extent that the policy is greater than what the law would require. State court decisions on this question are not in agreement. See *e.g. Tri State Pipe and Equipment, Inc. v. Southern County Mutual Ins. Co.;*[1] *Progressive Ins. Co. v. Ramirez;*[2] *Guaranty Nat'l Ins. Co. v. Koch.*[3]

As noted above, Forms "E" and "F" operate in a manner similar to the MCS-90 endorsement and make the insurer an insurer of last resort when no other insurance applies. *Nat'l Cas. Co. v. Lane Exp., Inc.*[4] This may occur, for example, when a motor carrier fails to pay the required premium, or when another carrier that does have coverage on the vehicle is insolvent. A basic illustration of how the forms operate is illustrated in *Nat'l Cas. Co. v. Lane Exp.*[5] In *Lane,* an intoxicated driver operating under Lane Express' dispatch had an accident.[6] Lane had several policies, two of which specifically listed the truck involved in the accident. One insurer refused to indemnify based on cancellation, and the other was in receivership.[7] Lane's registration with the Texas DOT was based on a Form "E" filing of National Casualty and a Form "F" endorsement. Even though National Casualty did not list the truck, Form F obligated it to pay Lane's judgment.[8]

Thus, the purpose of Form F is "to ensure that liability insurance is always available for the protection of motorists injured by commercial motor carriers." *Lancer v. Shelton.*[9] Form F serves as a guarantee to the public that the insurer will be liable for any damages awarded if the insured is unable to pay. Form F does not alter the relationship between the insured and the insurer. *Ross Neely Systems, Inc. v. Occidental Fire & Casualty Co.*[10] The motor carrier is required to show proof that it is insured; therefore, Form F applies only to it. See, *e.g., Progressive County Ins. Co. v. Carway.*[11] Moreover, when an insurer certifies in Form E that a specific motor carrier has insurance, it is not certifying that any other possible insured under the policy is entitled to the benefits of the Form F endorsement.[12] Accordingly, the "insured" referred to in Form F is the named insured, not others who may fall within the definition of "Persons Insured" in other parts of the policy. *Nat'l Cas. Co. v. Lane Express, Inc.;*[13] see also *Wolcott v. Trailways Lines, Inc.*[14] See also *Ross v. Stephens,*[15] ("the purpose of this insurance [Form E] is not for the benefit of the insured motor carrier but for the sole benefit of those who may have a cause of action for damages for the negligence of the motor carrier, making the insurance policy in the nature of a substitute surety bond which creates liability in the insurer regardless of the insured's breach of the conditions of the policy").

Forms E & F are required to protect those who are injured due to the wrongful conduct of an uninsured negligent motor carrier. Some examples of the courts' interpretation

*Carr Allison (Birmingham, Alabama)

of the Forms are set forth below.

In *Scottsdale Ins. Co. v. Okla. Transit Auth., Inc.,*[16] Oklahoma Transit Authority, Inc. ("OTA") was transporting Ruth Mae Jones, a wheelchair bound patient, in a vehicle owned by OTA. The driver, Michael Whitecotton, failed to ensure that Jones was wearing her seatbelt. Whitecotton missed his exit while traveling on Highway 75 near Mounds, Oklahoma. Rather than proceed to the next exit and turn around, Whitecotton made a sudden stop that caused Jones to fall out of her wheelchair. Jones was injured as a result of the fall and died 21 days later. Later, an attorney representing Jones' estate advised Scottsdale that Jones' family would be pursuing a wrongful death claim against OTA and other parties. Scottsdale initiated an investigation of the accident and determined that the vehicle was not a covered automobile under the Policy. However, the Policy contained a Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, also known as a Form F endorsement. Scottsdale claimed that Form F obligated it to investigate and defend against any claims arising out of the accident even if the vehicle involved in the accident was not covered under the Policy. However, Scottsdale argued that Form F entitles it to reimbursement from the insured for any liability incurred by Scottsdale arising solely under Form F.

In a good discussion regarding Form F endorsement, the Court stated: the disputed provision of the insurance contract is referred to as Form F, and it is a uniform document used by many insurance companies across the country to comply with state law compulsory insurance requirements for motor carriers. The purpose of state compulsory insurance laws and Form F is to protect members of the public who have been injured by the negligent acts of a motor carrier even if the vehicle involved in an accident is not covered under the motor carrier's insurance policy. In so noting, the Court found that the meaning of Form F is clear and unambiguous, and there was no need to refer to other sources to interpret the plain language of the insurance contract. Grammatically speaking, "provided only that" modifies the liability rather than the right to reimbursement, and the use of "provided only that" does not limit or impair the insured's duty to reimburse Scottsdale for liability arising solely under Form F. Form F is a standard form used by insurance companies across the country, and every court to consider the issue has found that Form F permits the insurer to seek reimbursement from the insured for liability arising solely under Form F. *Driskell;*[17] *Nat'l Cas. Co. v. Lane Express, Inc.;*[18] *Rural Mut. Ins. Co. v. Peterson.*[19] The plain language of Form F permitted Scottsdale to seek reimbursement from its insured for liability arising solely under state law compulsory insurance requirements.

In *Progressive v. Carway,*[20] the primary issue was whether an insurance company that sold a liability policy to a motor carrier was liable for a judgment entered against the motor carrier's employee/driver even though the driver was not a named insured under the policy issued to the motor carrier. Rutledge was not a named insured in the Declarations portion of the policy and did not otherwise fall within the definition of insured since the policy did not include an employee as an insured. Nevertheless, Carway maintained Rutledge became an insured because (a) Progressive's policy contained an endorsement stating the policy was in compliance with state law; (b) state law requires the motor carrier to have insurance; and (c) Rutledge falls within the definition of motor carrier. At the time of the accident, both PST and Great Western were interstate motor carriers required by Texas and federal law to obtain either a permit issued by the Texas Railroad Commission ("TRC") or the Interstate Commerce Commission. PST obtained a TRC permit number and an ICC docket-permit number. In addition, before PST could legally conduct motor carrier activities, state and federal law required PST to obtain a motor carrier liability policy to satisfy any final judgment taken against it for injuries arising from the negligent maintenance, use or operation of one of its vehicles under permit.[21] PST obtained the liability policy at issue from Progressive to comply with these laws.

Under federal law, each motor carrier's liability policy must contain an endorsement amending the policy to provide insurance coverage in accordance with state law.[22] This endorsement is known as Endorsement F and was contained in the policy issued by Progressive to PST. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby.

Though federal law mandates that each motor carrier's liability policy contain an Endorsement F, Texas law requires a motor carrier to prove it has complied with federal law by filing Form E with the TRC. Before any motor carrier may lawfully operate under such permit or certificate, as the case may be, such motor carrier shall file with the Commission bonds and/or insurance policies … [that] will pay to the extent of face amount of such insurance policies and bonds, all judgments which may be recovered against the motor carrier…, based on claims for loss or damages from personal injury or loss of, or injury to property claims for loss or damages from personal injury or loss of, or injury to property occurring during the term of said bonds and policies arising out of the actual operation of such motor carrier … Thus, by adding Endorsement F to the policy, Progressive agreed to amend the policy to provide the required coverage for a motor carrier. By filing Form E with the TRC, PST certified to the TRC it had the required insurance to cover personal injury or property damage arising out of the operation of its business. Clearly, under Texas and federal law, the motor carrier must have insurance coverage. But, however, the Progressive policy did not specifically provide coverage for Rutledge. Therefore, the only way to find coverage for him is if the statute requires him to be covered by the Progressive policy. Nothing in the statute required the motor carrier to cover its employees. The statute merely required the motor carrier to show proof of insurance to get a permit to operate.[23] It did not create coverage where none exists.

Finally, Carway claimed the personal injury protection ("PIP"), uninsured motorist

("UM"), and underinsured motorist ("UIM") endorsements broaden the definition of insured in the Progressive policy to include "anyone else occupying" a covered "auto." Several problems existed with this argument. For example, an insurer is required to pay UM coverage when the insured sustains bodily injury in a vehicular accident and is entitled to recover damages from the owner or driver of an insured motor vehicle. UIM coverage is the same as UM coverage except that the insured must have had an accident with an underinsured vehicle and been injured. Clearly the accident at issue in this case does not fit the coverage situations just described, most obviously because the insured must be injured for the coverage to trigger. We do not have an injured insured in this case. Thus, even if the PIP, UM and UIM endorsements were operative in Texas, they would provide coverage only if Rutledge had been injured by Carway.

In *Ross v. Stephens,*[24] the Supreme Court of Georgia addressed a similar situation. There, although the vehicle at issue was not identified in the policy's declarations, the insurer had also filed a Form F endorsement limiting the coverage of vehicles not listed on the declarations page to the state minimum requirements of $100,000 per person and $300,000 per incident. The court concluded that because the policy did not provide coverage for the vehicle, the Form F endorsement was the basis for the insurer's liability, and the liability limits were those set forth in the endorsement.[25] The court found that the Public Service Rule "only describes the bond of insurance a motor common carrier must have to operate (one that is conditioned to pay a judgment regardless of whether the vehicle involved was described in the insurance policy), and sets out the minimum amount of coverage that must be provided by the bond or insurance coverage obtained by the motor common carrier. To discern the coverage provided," the court must "look to the insurance policy and its endorsements."[26] Thus, the exposure of the insurer in *Ross* was limited to the statutory requirement of $100,000.[27] Cf. *Progressive Preferred Insurance Company v. Ramirez,*[28] (where policy itself covered the vehicle in question, "the insured's liability to a third party injured by the insured is based on the policy itself as opposed to liability based on the minimum coverage imposed by law"). Based on the foregoing, the court held that the Progressive policy, itself, is not the source of coverage, but rather the Form F endorsement is. In so holding, the court noted that if Progressive is required to pay a claim as a result of any filing required by law–that is the MCS-90 endorsement or the state filings–then Progressive will only pay the amount minimally required by the applicable law. There is nothing ambiguous about the phrase "minimum coverage required by law." The regulations of the Georgia Public Service Commission explicitly set forth a $100,000 per person and $300,000 per incident minimum. Similarly, the regulations of the Department of Transportation set forth a $750,000 minimum. The language of the policy comports with the intent of the federal and state legislators to provide a minimum level of coverage to the public in the event that an uninsured vehicle leased by an insured injures a member of the public. In sum, therefore, the court found that the only source of coverage for the Plaintiff is through Form F endorsement of Progressive's policy. Under that endorsement, recovery is limited to the state mandated minimum requirement of $100,000 per injury and $300,000 per incident.

When dealing with apparent no coverage situations involving intrastate motor carriers, practitioners should check their carriers' state financial filings to determine (1) if the proper forms were filed with the applicable governing body (*e.g.,* Public Service Commission), and whether the court in the applicable state interprets the Form F filing as a mechanism to find coverage when there would normally not be any coverage under the insurance policy.

The purpose of Form F is "to ensure that liability insurance is always available for the protection of **motorists injured by commercial motor carriers**." *Lancer v. Shelton.*[29] Form F serves as a guarantee to the public that the insurer will be liable for any damages awarded if the insured is unable to pay. Form F does not alter the relationship between the insured and the insurer. *Ross Neely Systems, Inc. v. Occidental Fire & Casualty Co.*[30] The motor carrier is required to show proof that it is insured; therefore, Form F applies **only to it**. See, *e.g., Progressive County Ins. Co. v. Carway.*[31] Moreover, when the insurer certifies in Form E that a specific motor carrier has insurance, it is not certifying that any other possible insured under the policy is entitled to the benefits of the Form F Endorsement.[32] Accordingly, the "insured" referred to in Form F is the **named insured**, not to others who may fall within the definition of "Persons Insured" in other parts of the policy. *Nat'l Cas. Co. v. Lane Express, Inc.,*[33] see also *Wolcott v. Trailways Lines, Inc.*[34] See also *Ross v. Stephens,*[35] ("the purpose of this insurance [Form E] is not for the benefit of the insured motor carrier but for the sole benefit of those who may have a cause of action for **damages for the negligence of the motor carrier**, making the insurance policy in the nature of a substitute surety bond which creates liability in the insurer regardless of the insured's breach of the conditions of the policy.").

Endnotes

1 8 S.W.3d 394, 398 (Tex. App. – Texarkana, 1999 no writ).
2 277 Ga. 392, 588 S.E. 2d 751 (2003).
3 242 Ill. App. 3d 692, 611 N.E. 2d 91(1993).
4 998 S.W.2d 256, 263 (Tex. App. – Dallas 1999 no writ).
5 998 S.W.2d at 257.
6 *Id.*

7 *Id.* at 258.
8 *Id.*
9 245 Fed. Appx. 355 (5th Cir. 2007).
10 196 F. 3d 1347 (11th Cir. 1999).
11 951 S.W.2d 108, 113 (Tex. App. – Houston 1997).
12 *Id.* at 112-113.
13 998 S.W.2d 256, 264 (Tex. App. – Dallas 1999, pet denied).
14 774 So. 2d 1054, 1057 (La. App. 2000).
15 496 S.E.2d 705 (Ga. 1998).
16 2008 U.S. Dist. LEXIS 27322 (OK. 2008).
17 547 S.E.2d at 364.
18 998 S.W.2d 256 (Tex. App. 1999).
19 134 Wis. 2d 165, 395 N.W.2d 776, 779 (Wis. 1986).
20 951 S.W. 2d 108 (Tex. App. 1997).
21 See 49 U.S.C.A. § 10927(a)(1) (1978); TEX. REV. CIV. STAT. ANN. art. 911b § 13 (Vernon 1964).
22 See 49 U.S.C.A. § 10927(a)(1) (1978).
23 See TEX. REV. CIV. STAT. ANN. art. 911b, § 13.
24 269 Ga. 266, 496 S.E.2d 705 (1998).
25 *Id.* at 268-69.
26 *Id.* at 268.
27 *Id.* at 269.
28 588 S.E.2d 751 (2003).
29 245 Fed. Appx. 355 (5th Cir. 2007).
30 196 F. 3d 1347 (11th Cir. 1999).
31 951 S.W.2d 108, 113 (Tex. App. – Houston 1997).
32 *Id.* at 112-113.
33 998 S.W.2d 256, 264 (Tex. App. – Dallas 1999, pet denied).
34 774 So. 2d 1054, 1057 (La. App. 2000).
35 496 S.E.2d 705 (Ga. 1998).