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4th Circ. Says Late Notice Bars $5.1M Fatal Crash Coverage

By **Danielle Ferguson**

Law360 (August 11, 2026, 4:05 PM EDT) -- The Fourth Circuit said an insurer owes no defense or coverage for a $5.1 million default judgment against a truck driver in a wrongful death case, finding the insurer wasn't timely notified of the underlying suit and a federally mandated policy endorsement for motor carriers doesn't extend to the driver.

A three-judge panel said in a published opinion Monday that The Cincinnati Insurance Co. does not have a duty to defend or indemnify Wayne Hunt in a wrongful death suit alleging he was negligent and reckless in a 2013 crash that killed a passenger in another vehicle, affirming a district court decision in favor of the insurer.

In an opinion authored by U.S. Circuit Judge Allison J. Rushing, the panel upheld the district court's finding that Cincinnati did not receive proper notice of the 2016 state court action brought by Levi Owens, representative of the estate of Christopher McLean. Cincinnati was not notified of the underlying case until a default judgment was entered against Hunt in 2021.

Hunt was employed by Cincinnati's insured, Wilmington Shipping Co. WSC was not named in the underlying suit.

The panel also determined that a federally mandated endorsement that serves as a safety net for injured third parties when insurance doesn't cover an incident applies only to named insureds. In this case, that was WSC, and the endorsement doesn't extend to employees like Hunt, the panel said.

The MCS-90 is a federally required endorsement for motor carriers that serves as proof of an insurer's agreement to satisfy a carrier's financial responsibility requirements under the Motor Carrier Act of 1980. The endorsement is intended to ensure that injured individuals are able to obtain judgment from negligent interstate carriers.

Owens had argued that the MCS-90 should require Cincinnati to pay the judgment even if it was found the insurer did not receive proper notice under the policy.

The panel rejected this argument, saying the endorsement applies to named insureds, which, in this case, was WSC, not Hunt.

Though the endorsement does not specifically define "insured," the panel agreed with the district court's finding that "insured" in the endorsement means those specifically named in the policy. The panel pointed to context in the regulatory definition, the "near consensus in federal case law" and Federal Motor Carrier Safety Administration guidance.

Owens' argument to read "insured" to include unnamed insureds would require insurers to pay judgments "beyond those that the statute mandates be paid," the panel said.

"Reading 'insured' to mean all insureds would lead to the untenable conclusion that unnamed insureds like Hunt — who are not parties to the insurance contract or the endorsement — agree to reimburse the insurer for certain payments. It would also lead to the conclusion that a non-party to the endorsement could cancel the endorsement. Those conclusions cannot be right," Judge Rushing wrote for the panel.

The dispute stems back to December 2013, when Hunt was driving a truck WSC had leased when he crashed with another vehicle, killing McLean. Owens, as McLean's estate representative, sued Hunt in South Carolina state court. Hunt did not answer the complaint, and the state court entered a default judgment. In 2021, a special referee conducted a damages hearing, which Hunt did not attend. Owens was awarded $5.1 million in damages.

Later, Hunt moved to vacate the judgment, arguing he was never properly served, and Owens sought judicial assignment of any claims Hunt may have against Cincinnati. The underlying case is undergoing state appellate proceedings.

In November 2022, Cincinnati sought a declaration that it had no duty to defend or indemnify Hunt and named Owens and WSC as defendants. Cincinnati said it did not receive notice of the wrongful death action until "recently," after the state court entered default judgment against Hunt.

During discovery in the federal court case, Owens told the federal court that he sought judicial assignment of Hunt's rights against Cincinnati in the wrongful death action, and said he intended to launch counterclaims against the insurer in the federal case once that happened.

After the district court granted summary judgment to Cincinnati, Owens appealed, arguing the district court was wrong to refuse to stay the case pending the resolution of post-judgment motions in the wrongful-death case and was wrong to deny Owens' chance to assert a counterclaim.

The appellate court found the district court did not err in refusing to stay the case because the claims were ripe for review. Because the default was a final judgment in the underlying case, the district court had the authority to review Cincinnati's duty to defend and indemnify claims, the panel said.

The panel rejected Owens' arguments that Hunt's motion to vacate the default judgment affected the finality of the state court decision.

"Put simply, that the motion to vacate the default judgment was pending in no way affected the judgment's finality. It follows that the pending motion likewise in no way affected the district court's jurisdiction to hear this case," Judge Rushing wrote for the panel.

Additionally, Owens' supplemental proceeding in the state court case seeking judicial assignment to bolster counterclaims in the federal case did not support staying the district court case, the panel said.

Cincinnati filed the federal suit after the state court entered a default judgment against Hunt, and the only issues left to resolve were whether Hunt could vacate that judgment or if Owens could pursue supplemental proceedings. Cincinnati, the panel said, was not a party to the state action, and the coverage issue involving Cincinnati could not have been resolved in the state court.

Counsel for the parties did not immediately respond to a request for comment Tuesday afternoon.

U.S. Circuit Judges Robert B. King, James Andrew Wynn and Allison J. Rushing sat on the panel for the Fourth Circuit.

Owens is represented by John E. Parker Jr. of Parker Law Group LLP and Jason Scott Luck of Luck Law.

The Cincinnati Insurance Co. is represented by Charles Daniel Atkinson and M. Taylor Petty of Wilkes Atkinson & Joyner LLC.

The case is The Cincinnati Insurance Co. v. Levi Owens, case number 25-1848, in the U.S. Court of Appeals for the Fourth Circuit.

--Editing by Bruce Goldman.
