

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 11 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CLARENDON NATIONAL
INSURANCE COMPANY,

Plaintiff-counter-defendant -
Appellee,

v.

H & G TRANSPORT, INC; et al.,

Defendants,

and

INSURANCE COMPANY OF THE
WEST,

Defendant-counter-claimant -
Appellant.

No. 06-17096

D.C. No. CV-99-05461-SMS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Sandra M. Snyder, Magistrate Judge, Presiding

Argued and Submitted July 16, 2008
San Francisco, California

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: KOZINSKI, Chief Judge, FARRIS, Circuit Judge, and PANNER, **
District Judge.

I

The Insurance Company of the West argues that it was not obligated to insure G&P because G&P failed to list Inderjit Singh as a driver on its insurance application. The district court rejected this defense, finding that G&P “did not misrepresent or conceal the status of Singh as a driver on the application.”

The district court did not commit clear error in concluding that Singh was not employed by G&P at the time it submitted its insurance application to ICW. Further, the district court reasonably found that ICW did not demonstrate by a preponderance that G&P’s principals knew or understood that they had been asked to disclose all drivers, including Singh. *See Thompson v. Occidental Life Ins. Co.*, 513 P.2d 353, 360 (Cal. 1973).

II

ICW argues that the district court erred by applying California insurance law, under which the ICW policy was conclusively presumed to be primary. *See* Cal. Ins. Code § 11580.9(d). We reject the argument. The district court properly applied California law. *See N. Ins. Co. of N.Y. v. Allied Mut. Ins. Co.*, 955 F.2d

** The Honorable Owen M. Panner, Senior United States District Judge for the District of Oregon, sitting by designation.

1353, 1359-60 (9th Cir. 1992); *Blue Bird Body Co. v. Ryder Truck Rental*, 583 F.2d 717, 723 (5th Cir. 1978); *Cal. Cas. Indem. Exch. v. Pettis*, 239 Cal. Rptr. 205, 214 (Ct. App. 1987).

III

ICW argues that the MCS-90 endorsement in the Clarendon policy makes the Clarendon policy primary as against the ICW policy. We reject the argument. The “primary purpose” of the MCS-90 endorsement “is to assure that injured members of the public are able to obtain judgment from negligent authorized interstate carriers.” *John Deere Ins. Co. v. Nueva*, 229 F.3d 853, 857-58 (9th Cir. 2000) (citing *Harco Nat’l Ins. Co. v. Bobac Trucking Inc.*, 107 F.3d 733, 736 (9th Cir. 1997)).

AFFIRMED.