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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12 AT YAKIMA

13 UNITED FINANCIAL CASUALTY
14 COMPANY, a foreign insurance
15 company

16 Plaintiff,

17 v.

18 SPENCER TRUCKING LLC, a
19 Washington limited liability company;
20 RYAN SPENCER, an individual; and
21 THE ESTATE OF IVAN
22 EMMANUEL CARDENAS JR.

23 Defendants.

No.

**COMPLAINT FOR
DECLARATORY RELIEF**

I. INTRODUCTION

1 1.1 This is an insurance coverage action seeking declaratory relief
2 pursuant to 28 U.S.C. §§ 2201 and 2202. United Financial Casualty Company
3 (hereinafter “UFCC”) seeks a determination that it has no duty to provide defense
4 or indemnity coverage to Spencer Trucking, LLC (hereinafter “Spencer
5 Trucking”) and/or Ryan Spencer (hereinafter “Spencer”) for claims arising out of
6 an accident occurring on June 29, 2020 that resulted in the death of Ivan
7 Emmanuel Cardenas Jr. (hereinafter “Cardenas”), under a policy of insurance
8 issued to Spencer Trucking by UFCC. Spencer Trucking and Spencer are
9 hereinafter referred to collectively as the “Spencer Defendants.”
10

11 **II. PARTIES**

12 2.1 Plaintiff UFCC is a foreign insurance company organized under the
13 laws of the State of Ohio with its principal place of business located in the State
14 of Ohio.
15

16 2.2 Defendant Spencer Trucking is a Washington limited liability
17 company with its principal place of business located in Yakima, Washington.
18 Upon information and belief, Spencer Trucking has been administratively
19 dissolved.
20

21 2.3 Defendant Spencer is an individual and a resident and citizen of the
22 State of Washington. Upon information and belief, Spencer was the owner of
23 Spencer Trucking. Accordingly, to the extent Spencer Trucking has been

1 dissolved, Spencer may be the successor in interest to any liability claims against
2 Spencer Trucking.

3 2.4 The Estate of Ivan Emmanuel Cardenas Jr. (hereinafter the “Estate”)
4 is the estate formed to discharge the interests of Cardenas. The Estate is the
5 successor in interest to Cardenas who was formerly an individual and a resident
6 and citizen of the State of Washington before he became deceased.
7

8 **III. JURISDICTION AND VENUE**

9 3.1 This Court has jurisdiction over this claim pursuant to 28 U.S.C.
10 §1332 as the amount in controversy exceeds \$75,000.00, exclusive of interest and
11 costs, and diversity amongst the parties is complete.
12

13 3.2 Venue is proper with this Court pursuant to 28 U.S.C. §1391 as
14 Defendant Spencer Trucking had a registered address in Yakima County and
15 Cardenas resided in Yakima County at the time of the accident.

16 **IV. FACTS**

17 **A. Facts Of The Loss**

18 4.1 Cardenas worked for Spencer Trucking as a truck driver.
19

20 4.2 On June 29, 2020, Cardenas was transporting cut timber westward to
21 Hampton Lumber Mill as part of the course of his employment with Spencer
22 Trucking on Forest Service Road 5603.
23

1 4.3 While traveling, Cardenas crashed and rolled the truck he was
2 driving (hereinafter the “Incident”). The dashboard and other vehicle components
3 collapsed and trapped Cardenas’s legs.

4 4.4 Fellow driver for Spencer Trucking, Juan Mendoza, came upon the
5 scene of the accident first. Spencer Trucking employee and “Woods Boss” Craig
6 Whitefoot was notified of the Incident and went to the scene of the accident.

7 4.5 At 10:00AM of June 29, 2020, Cardenas was alive, coherent, and
8 speaking to Juan Mendoza and Craig Whitefoot who attempted to extricate
9 Cardenas from the rolled truck he was in. They were unable to do so.
10

11 4.6 At approximately 12:35PM, Cardenas passed away from his injuries.

12 4.7 On July 27, 2020, the Estate sent a letter to UFCC requesting
13 documents from UFCC for a cause of action against Spencer Trucking for
14 personal injuries and/or property damage sustained by the Estate as a result of the
15 Incident. Upon information and belief, the Estate is pursuing a claim against
16 Spencer Trucking and/or the Spencer Defendants based on alleged defects in the
17 vehicle Cardenas was driving during the Incident.
18

19 4.8 At the time of the Incident, Spencer Trucking was insured under a
20 commercial auto policy issued by UFCC. Subject to the terms and conditions
21 therein, this policy provided liability coverage to Spencer Trucking.
22
23

1 4.9 As of the moment of the filing of this Complaint, no lawsuit has
2 been filed by the Estate against the Spencer Defendants for any claims arising out
3 of the Incident.

4 4.10 Spencer Trucking tendered a claim for defense and indemnity for
5 liability arising out of the Incident to UFCC. On June 30, 2020, UFCC received
6 notice of Spencer Trucking's claim.

7 4.11 Upon receiving notice of Spencer Trucking's claim, UFCC promptly
8 opened a claim and began investigating coverage.

9 4.12 On September 24, 2020, UFCC agreed to defend Spencer Trucking
10 for claims arising out of the Incident under a reservation of rights. Cheryl
11 Adamson of the law firm Bohrsen, Stocker, Smith, Luciani, Adamson, PLLC
12 was assigned as defense counsel for Spencer Trucking for any potential liability
13 claims against Spencer Trucking arising out of the Incident.

14 **B. The UFCC Policy**

15 4.13 UFCC issued a Commercial Auto Insurance policy, Policy No.
16 03780576-4, with a policy period of May 12, 2020 to May 12, 2021 to Spencer
17 Trucking (hereinafter the "Policy").

18 4.14 The Policy lists Spencer Trucking as the Named Insured.

19 4.15 The Policy provides coverage for liability to others, in pertinent part,
20 as follows:
21
22
23

PART I – LIABILITY TO OTHERS

INSURING AGREEMENT – LIABILITY TO OTHERS

Subject to the Limits of Liability, if **you** pay the premium for liability coverage for the **insured auto** involved, **we** will pay damages, other than punitive or exemplary damages, for **bodily injury, property damage, and covered pollution cost or expense**, for which an **insured** becomes legally responsible because of an **accident** arising out of the ownership, maintenance or use of that **insured auto**. However, **we** will only pay for the **covered pollution cost or expense** if the same **accident** also caused **bodily injury** or **property damage** to which this insurance applies.

We will settle or defend, at **our** option, any claim or lawsuit for damages covered by this Part I. **We** have no duty to settle or defend any lawsuit, or make any additional payments, after the Limit of Liability for this coverage has been exhausted by payment of judgments or settlements.

Form 6912 (06/10).

4.16 The Policy contains the following relevant exclusions:

EXCLUSIONS – PLEASE READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE FOR AN ACCIDENT OR LOSS WILL NOT BE AFFORDED UNDER THIS PART I – LIABILITY TO OTHERS.

[...]

3. Worker's Compensation

Any obligation for which an **insured** or an insurer of that **insured**, even if one does not exist, may be held liable

1 under the Industrial Insurance Act of Washington
2 (Washington Revised Code Title 51), workers'
3 compensation, unemployment compensation, disability
benefits law, or any similar law.

4 [...]

5 **5. Employee Indemnification and Employer's**
6 **Liability Bodily Injury to:**

7 a. An employee of any **insured** arising out of or
8 within the course of:

9 (i) That employee's employment by any **insured**;
or

10 (ii) Performing duties related to the conduct of any
11 **insured's** business; or

12 b. This exclusion applies to any obligation to share
13 damages with or repay someone else who must pay
14 damages because of the injury.

15 But this exclusion does not apply to **bodily injury** to
16 a domestic employee if benefits are neither paid nor
17 required to be provided under any workers'
18 compensation, disability benefits, or similar law, or to
19 liability for **bodily injury** assumed by the **insured**
under an **insured contract**. For the purposes of this
policy, a domestic employee is a person engaged in
household or domestic work performed principally in
connection with a residence premises.

20 **6. Fellow Employee**
21 **Bodily injury to:**

22 a. a fellow employee of an **insured** injured while
23 within the course of their employment or while
performing duties related to the conduct of **your**
business. ...

Form 6912 (06/10) as modified by Form 4881 WA (06/12).

4.17 The Policy provides the following relevant definitions:

GENERAL DEFINITIONS

1. “**Accident**” means a sudden, unexpected and unintended event, or a continuous or repeated exposure to that event, that causes **bodily injury** or **property damage**.
2. “**Auto**” means a land motor vehicle or trailer designed for travel on public roads, or any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state or province where it is licensed or principally garaged. It does not include mobile equipment. Self-propelled vehicles with the following types of permanently attached equipment are autos, not mobile equipment: ...
3. “**Bodily injury**” means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.

[...]

5. “**Insured auto**” or “**your insured auto**” means:

- a. Any **auto** specifically described on the **declarations page**; or ...

[...]

16. “**We**”, “**us**” and “**our**” mean the company providing this insurance as shown on the **declarations page**.

1 17. “**You**”, “**your**” and “**yours**” refer to the named
2 insured shown on the **declarations page**.

3 [...]

4 **PART I – LIABILITY TO OTHERS**

5 [...]

6 **ADDITIONAL DEFINITIONS USED IN THIS PART**
7 **ONLY**

8 A. When used in Part I – Liability To Others, **insured**
9 means:

10 1. **You** with respect to an **insured auto**. ...

11 “**Property damage**” means physical damage to,
12 destruction of, or loss of use of tangible property.

13 Form 6912 (06/10) as modified by Form 4881 WA (06/12).

14 4.18 The Policy provides Commercial General Liability coverage through
15 an endorsement, in pertinent part, as follows:

16 **COMMERCIAL GENERAL LIABILITY**

17 **ENDORSEMENT**

18 [...]

19 **SECTION I – COVERAGES**

20 **COVERAGE A – BODILY INJURY AND**
21 **PROPERTY DAMAGE LIABILITY**

22 **1. Insuring Agreement**
23

1 a. **We** will pay those sums, OTHER THAN
2 PUNITIVE OR EXEMPLARY DAMAGES, that
3 the **insured** becomes legally obligated to pay as
4 damages because of **bodily injury** or **property**
5 **damage** to which this insurance applies. **We** will
6 have the right and duty to defend the **insured**
7 against any **suit** seeking those damages. However,
8 **we** will have no duty to defend the **insured** against
any **suit** seeking damages for **bodily injury** or
9 **property damage** to which this insurance does not
10 apply. **We** may, at **our** discretion, investigate any
11 **occurrence** and settle any claim or **suit** that may
12 result. However: ...

13 Form 1781 WA 0412.

14 4.19 The Policy provides the following relevant exclusions in the
15 Commercial General Liability endorsement:

16 **EXCLUSIONS – READ THE FOLLOWING**
17 **EXCLUSIONS CAREFULLY.** **We** will not pay for
18 **loss** or damage caused by any of the excluded events
19 described below. **Loss** or damage will be considered to
20 have been caused by an excluded event if the occurrence
21 of that peril:

- 22 a. Directly and solely results in **loss** or damage; or
- 23 b. Initiates a sequence of perils that results in **loss** or
damage, regardless of the nature of any intermediate
or final peril in that sequence.

Coverage under Coverage A does not apply to:

[...]

d. Workers' Compensation and Similar Laws

Any obligation for which an **insured** or an insurer of that **insured**, even if one does not exist, may be held liable under workers' compensation, unemployment compensation, disability benefits law, or any similar law.

e. Employer's Liability

Bodily injury to:

(1) An employee of any **insured** arising out of or within the course and scope of:

i. That employee's employment by any **insured**; or

ii. performing duties related to the conduct of any **insured's** business; or

(2) Any obligation to share damages with or repay someone else that must pay damages because of the injury.

This exclusion does not apply to liability assumed by the **insured** under an **insured contract**.

f. Aircraft, Auto or Watercraft

Bodily injury or property damage arising out of:

(1) The ownership, maintenance, use, or entrustment to others of any aircraft, **auto** or watercraft owned or operated by or rented, leased or loaned to any **insured**; or

(2) Any **auto** you do not own, lease, hire, rent or borrow that is used in connection with **your** business.

Form 1781 WA 0412.

1
2 4.20 The Policy provides the following relevant additional definitions in
3 the Commercial General Liability endorsement:

4 **ADDITIONAL DEFINITIONS USED IN THIS**
5 **ENDORSEMENT**

6 [...]

7 7. “**Insured**” means:

8 a. If **you** are designated in on the **Declarations Page**
9 as:

10 [...]

11 iii. A limited liability company: **you**. **Your**
12 members are also **insureds**, but only with
13 respect to the conduct of **your** business. **Your**
14 managers are **insureds**, but only with respect to
15 their duties as **your** managers.

16 b. Each of the following is also an **insured**:

17 [...]

18 ii. **Your** employees, other than **your executive**
19 **officers** (if **you** are an organization other than a
20 partnership, joint venture or limited liability
21 company) or **your** managers (if **you** are a
22 limited liability company), but only for acts
23 within the scope of their employment by **you** or
while performing duties related to the conduct
of **your** business. ...

8. “**Insured contract**” for the purposes of this
endorsement only, means:

- a. A contract for a lease of premises. However, any portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to **you** or temporarily occupied by **you** with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; and
- f. That part of any other contract or agreement pertaining to **your** business (including an indemnification of a municipality in connection with work performed for a municipality) under which **you** assume the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability, as referred to in this provision, means a liability that would be imposed by law in the absence of any contract or agreement. ...

[...]

10. “**Occurrence**” means an accident, happening or event, including continuous or repeated exposure to substantially the same general harmful conditions.

[...]

13. “**Property damage**” for purposes of this endorsement only, means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it. ...

Form 1781 WA 0412.

V. THERE IS AN ACTUAL AND JUSTICIABLE CONTRVOERSY AS TO UFCC'S COVERAGE OBLIGATIONS

5.1 UFCC reasserts Paragraphs 1.1 through 4.20 above and incorporates the same by reference as though fully stated herein.

5.2 The Auto Policy – Liability to Others coverage form provides coverage for damages, other than punitive or exemplary damages, for bodily injury, property damage, . . . for which an insured becomes legally responsible because of an accident arising out of ownership, maintenance, or use of an insured auto.

5.3 There is an actual and justiciable controversy as to whether this claim arises out of the ownership, use or maintenance of an insured auto.

5.4 Under the Auto Policy – Liability to Others part, coverage is excluded for any obligation which an insured may be held liable under workers'

1 compensation, unemployment compensation, disability benefit laws, or any other
2 similar law.

3 5.5 There is an actual and justiciable controversy as to whether UFCC
4 has an obligation to provide coverage for any obligation which an insured may be
5 held liable under workers' compensation, unemployment compensation,
6 disability benefit laws, or any other similar law.
7

8 5.6 Under the Auto Policy – Liability to Others part, coverage is
9 excluded for bodily injury to an employee of any insured arising out of or within
10 the course of that employee's employment by any insured or performing duties
11 related to the conduct of any insured's business.
12

13 5.7 There is an actual and justiciable controversy as to whether the
14 claim is for bodily injury to an employee of Spencer Trucking arising out of or
15 within the course of that employee's employment by Spencer Trucking or
16 performing duties related to the conduct of any of Spencer Trucking's business.
17

18 5.8 Under the Auto Policy – Liability to Others part, coverage is
19 excluded for bodily injury to a fellow employee of an insured injured while
20 within the course of their employment or while performing duties related to the
21 conduct of the insured's business.

22 5.9 There is an actual and justiciable controversy as to whether the
23 claim is for bodily injury to a fellow employee of Spencer Trucking who was

1 injured within the course of that employee's employment by Spencer Trucking or
2 performing duties related to the conduct of any of Spencer Trucking's business.

3 5.10 The Commercial General Liability coverage part, coverage is
4 provided for damages, other than punitive or exemplary damages, for bodily
5 injury, property damage to which the insurance applies.
6

7 5.11 There is an actual and justiciable controversy as to whether coverage
8 exists under the Commercial General Liability coverage part.

9 5.12 Under the Commercial General Liability coverage part, UFCC has
10 the right and duty to defend the insured against any suit seeking damages for
11 bodily injury or property damage to which the insurance applies.
12

13 5.13 There is an actual and justiciable controversy as to whether UFCC
14 has an obligation to defend Spencer Trucking and/or Ryan Spencer.

15 5.14 Under the Commercial General Liability coverage part, coverage is
16 excluded for any obligation which an insured may be held liable under workers'
17 compensation, unemployment compensation, disability benefits law, or any
18 similar law.
19

20 5.15 There is an actual and justiciable controversy as to whether UFCC
21 has an obligation to provide coverage for any obligation which an insured may be
22 held liable under workers' compensation, unemployment compensation,
23 disability benefit laws, or any other similar law.

1 5.16 Under the Commercial General Liability coverage part, coverage is
2 excluded for bodily injury to an employee of any insured arising out of or within
3 the course of that employee's employment by any insured or performing duties
4 related to the conduct of any insured's business.
5

6 5.17 There is an actual and justiciable controversy as to whether the
7 claim is for bodily injury to an employee of Spencer Trucking arising out of or
8 within the course of that employee's employment by Spencer Trucking or
9 performing duties related to the conduct of any of Spencer Trucking's business.
10

11 5.18 Under the Commercial General Liability coverage part, coverage is
12 excluded for bodily injury arising out of the ownership, maintenance, use, or
13 entrustment to others of any aircraft, auto or watercraft owned or operated by or
14 rented, leased or loaned to any insured.

15 5.19 There is an actual and justiciable controversy as to whether the
16 claim arises out of the ownership, maintenance, use, or entrustment to others of
17 any aircraft, auto or watercraft owned or operated by or rented, leased or loaned
18 to any insured.
19

20 5.20 Coverage is unavailable and/or precluded under any provision of the
21 Policy for the Estate's claims against the Spencer Defendants.
22
23

1 5.21 There is an actual and justiciable controversy as to whether UFCC
2 owes any duty to defend or indemnify the Spencer Defendants for the Estate's
3 claims under the terms and conditions of the Policy.

4 5.22 In addition to the provisions cited above, UFCC pleads all other
5 conditions, terms, provisions, limitations, definitions, and exclusions of the
6 Policy, which also may be found to be applicable to UFCC's investigation and
7 defense of these claims, and UFCC reserves the right to amend its Complaint for
8 Declaratory Judgment as additional and/or more specific information becomes
9 available.
10

11 5.23 Pursuant to 28 U.S.C. §§ 2201 and 2202, UFCC seeks a judicial
12 declaration of its rights and duties under the Policy.
13

14 **VI. CLAIM FOR DECLARATORY JUDGMENT**

15 6.1 UFCC reasserts Paragraphs 1.1 through 5.23 above and incorporates
16 the same by reference as though fully stated herein.

17 6.2 UFCC is entitled to Declaratory Judgment in its favor. Specifically,
18 a judicial determination that UFCC does not owe any duty to defend or
19 indemnify the Spencer Defendants under the Policy for any of the Estate's
20 claims.
21

22 **VII. REQUEST FOR RELIEF**

23

1 WHEREFORE, United Financial Casualty Company, having specifically
2 alleged the foregoing, now requests for the following relief:

3 7.1 For a determination of the rights and obligations of the parties hereto
4 under the Policy.

5 7.2 For a declaration that UFCC owes no defense or indemnity
6 obligations to the Spencer Defendants for any of the Estate's claims.

7 7.3 For all interest as allowed by applicable law.

8 7.4 For attorney's fees and costs allowed by applicable statute and law.

9 7.5 For other and further relief as the Court deems just and equitable.
10

11
12 DATED this 23rd day of November, 2020.

13 LEATHER LAW GROUP

14
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