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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED FINANCIAL CASUALTY
COMPANY, a foreign insurance company,

Plaintiff,

v.

SPENCER TRUCKING LLC, a Washington
limited liability company; RYAN SPENCER,
an individual; THE ESTATE OF IVAN
EMMANUEL CARDENAS SR.; I.C., an
individual,

Defendants.

No. 1:20-cv-03211-SMJ

MOTION FOR SUMMARY
JUDGMENT

Note for Hearing Docket:

February 26, 2021

MOTION

Defendants Spencer Trucking and Ryan Spencer move the Court pursuant to Rule 54 (b), Fed. R. Civ. P., for Summary Judgment. In doing so, defendants note that consideration of this motion is contingent upon the ruling of the court on defendant's motion to dismiss (docket entry no. 5) or abstain from entertaining this cause, since a grant of that motion renders consideration of this motion moot.

1 For the following reasons, the motion should be granted.

2 STANDARD OF REVIEW

3 Summary Judgment may be granted under Fed. R. Civ. P. 54 if there is no
4 genuine issue as to a material fact and the movant is entitled to judgment as a
5 matter of law.
6

7 ARGUMENT

8 There is no genuine issue as to whether Ryan Spencer is a member of the
9 Yakama Nation. Declaration of Ryan Spencer. There is no genuine issue as to
10 whether Spencer Trucking is owned by him. Id. There is no genuine issue as to
11 whether Spencer Trucking is registered with and licensed by the Yakama Nation
12 with a principal place of business within the Yakama Reservation. Id. There is no
13 genuine issue of whether there is a policy of insurance between plaintiff and
14 Spencer Trucking. Complaint (docket no. 1), p. 2, ¶ 1.1.
15
16

17 Consequently, the sole issue for purposes of this motion is whether
18 defendants Spencer Trucking and Ryan Spencer are entitled to judgment as a
19 matter of law.
20

21 ISSUE PRESENTED

22 The dispositive legal issue in this case is whether defendants may be held
23 liable under Washington Workers Compensation laws.
24
25

ARGUMENT

Plaintiff styled its complaint based upon diversity of citizenship. Consequently, it is appropriate to apply state law for construction of contracts to determine the meaning of the clause in the policy alleged to be an “exclusion” against coverage. The starting place, as stated in Washington Pattern Jury Instruction 301.05, is to interpret it to give effect to the intent of the parties at the time they entered the contract, taking into consideration all the language used in the contract, giving to the words their ordinary meaning, unless the parties intended a different meaning. *Id.* In this case, plaintiff’s complaint asserts that plaintiff must deny insurance coverage to defendants based upon the following language in the policy:

Coverage under Coverage A does not apply to:

d. Workers’ Compensation and Similar Laws Case

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.

Complaint, ¶ 4.19 (pp. 10-11). The central issue then is whether defendant Spencer Trucking may be held liable under workers’ compensation laws.

Spencer Trucking is not a participant in Washington’s workers’ compensation program. Declaration of Ryan Spencer. Nor can the company be

1 made a mandatory participant in such a program. A 2016 study commissioned
2 and funded by the Washington State Department of Labor & Industries, which
3 itself administers the state's workers' compensation program states as follows:

4 Establishments operated by sovereign Native American tribes and
5 located on tribal reservations are not required to participate in
6 Washington's Industrial Insurance system.

7 S. Wuellner, Ph.D., MPH, *Unreported workers' compensation claims to the BLS*
8 *Survey of Occupational Injuries and Illnesses: Establishment factors*,
9 *American Journal of Industrial Medicine* (Jan. 21, 2016).¹ The Washington State
10 Board of Industrial Insurance Appeals, which is the adjudicatory body which
11 hears and decides disputes arising under workers' compensation laws, has held
12 that Indian tribal corporations are not mandatory participants in workers'
13 compensation. In re Matthews, No. 93-6235 (Wash. Bd. Indus. Ins. App., Aug.
14 15, 1994) (Exhibit 1).

16 The plain language of the policy relied on by plaintiff provides that
17 coverage is lacking if the claim "may" be covered by workers' compensation
18 laws. In legal contexts, "may" is ordinarily construed as mandatory. May is
19 generally construed as mandatory where used in relation to the duty of a public
20 office. 34 Am. Jur. 1st, Mand §72. May is:

21 [A]n auxiliary verb qualifying the meaning of another verb by
22 expressing ability, contingency, liability, possibility or probability.

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¹ <https://onlinelibrary.wiley.com/doi/full/10.1002/ajim.22563>

1 Ballentine's Law Dictionary, 3rd Ed. (1969) (*citing* United States v. Lexington
 2 Mill & Elevator Co., 232 U.S. 399). It is oxymoronic to say an employer may be
 3 held liable by an agency which administers a program in which he or she is
 4 neither a participant nor mandatorily required to participate in such a program
 5 which, admittedly, lacks jurisdictional authority to require participation or
 6 otherwise impose its requirements upon him or her. As such, movants are not
 7 insureds who "may be held liable" under workers' compensation laws. They
 8 may not be so held liable. Therefore, the exclusion from coverage clause does
 9 not apply to them.
 10
 11
 12

13 CONCLUSION

14 There is no genuine issue as to what the insurance policy states, and there is
 15 no genuine issue as to whether defendants are, or can be required to be,
 16 participants in Washington workers compensation—which is exactly why they
 17 purchased insurance from plaintiff. As such, they are not persons who may be
 18 held liable under such program. Consequently, the only reasonable interpretation
 19 of the insurance contract is that plaintiff is obligated to provide coverage².
 20
 21
 22 Defendants are entitled to judgment in their favor as a matter of law
 23
 24

25 DATED this 11th day of January, 2021.

² It is a standard rule of interpretation of contracts that they are to be construed against the party who wrote it. Guy Stickney, Inc. v. Underwood; Universal/Land Const. Co. v. Spokane, 49 W. App. 634, 638 (1987); Restatement (Second) of Contracts 206 (1981).

Respectfully submitted,

S/Jack W. Fiander
Counsel for Defendants
Spencer Trucking and Ryan Spencer

Certificate of Service

The foregoing document was filed with the Clerk of Court with copies served upon all counsel using the court's CM/ECF system.

S/Jack W. Fiander