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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON
11 AT YAKIMA

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

15 Plaintiff,

16 v.

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

Defendants.

No. 1:20-cv-03211-SMJ

**AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

21 **I. INTRODUCTION**

22 1.1 This is an insurance coverage action seeking declaratory relief
23 pursuant to 28 U.S.C. §§ 2201 and 2202. United Financial Casualty Company

(hereinafter “UFCC”) seeks a determination that it has no duty to provide defense or indemnity coverage to Spencer Trucking, LLC (hereinafter “Spencer Trucking”) and/or Ryan Spencer (hereinafter “Spencer”) for claims arising out of an accident occurring on June 29, 2020 that resulted in the death of Ivan Emmanuel Cardenas Sr. (hereinafter “Cardenas”), under a policy of insurance issued to Spencer Trucking by UFCC. Spencer Trucking and Spencer are hereinafter referred to collectively as the “Spencer Defendants.”

II. PARTIES

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

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

2.3 Defendant Spencer is an individual and a resident and citizen of the State of Washington. Upon information and belief, Spencer was the owner of Spencer Trucking. Accordingly, to the extent Spencer Trucking has been dissolved, Spencer may be the successor in interest to any liability claims against Spencer Trucking.

1 2.4 Upon information and belief, the Estate of Ivan Emmanuel Cardenas
2 Sr. (hereinafter the “Estate”) is the successor in interest to Cardenas who was
3 formerly an individual and a resident and citizen of the State of Washington
4 before he became deceased.

5 2.5 Upon information and belief, I.C. is a minor child and the son of
6 Cardenas who is a resident of the State of Washington.

7 **III. JURISDICTION AND VENUE**

8 3.1 This Court has jurisdiction over this claim pursuant to 28 U.S.C.
9 §1332 as the amount in controversy exceeds \$75,000.00, exclusive of interest and
10 costs, and diversity amongst the parties is complete.

11 3.2 Venue is proper with this Court pursuant to 28 U.S.C. §1391 as
12 Defendant Spencer Trucking had a registered address in Yakima County and
13 Cardenas resided in Yakima County at the time of the accident.

14 **IV. FACTS**

15 **A. Facts Of The Loss**

16 4.1 Cardenas worked for Spencer Trucking as a truck driver.

17 4.2 On June 29, 2020, Cardenas was transporting cut timber westward to
18 Hampton Lumber Mill as part of the course of his employment with Spencer
19 Trucking on Forest Service Road 5603.

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

11 4.7 On July 27, 2020, I.C. sent a letter to UFCC requesting documents
12 from UFCC for a cause of action against Spencer Trucking for personal injuries
13 and/or property damage sustained by Cardenas as a result of the Incident. Upon
14 information and belief, I.C. is pursuing a claim against Spencer Trucking and/or
15 the Spencer Defendants based on alleged defects in the vehicle Cardenas was
16 driving during the Incident.

17 4.8 At the time of the Incident, Spencer Trucking was insured under a
18 commercial auto policy issued by UFCC. Subject to the terms and conditions
19 therein, this policy provided liability coverage to Spencer Trucking.

1 4.9 As of the moment of the filing of this Amended Complaint, no
2 lawsuit has been filed by the Estate and/or I.C. against the Spencer Defendants
3 for any claims arising out 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 under the Industrial Insurance Act of Washington

(Washington Revised Code Title 51), workers' compensation, unemployment compensation, disability benefits law, or any similar law.

[...]

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

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

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

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

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

But this exclusion does not apply to **bodily injury** to a domestic employee if benefits are neither paid nor required to be provided under any workers' compensation, disability benefits, or similar law, or to 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.

6. Fellow Employee Bodily injury to:

a. a fellow employee of an **insured** injured while 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**.

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

1
2 [...]

3 **PART I – LIABILITY TO OTHERS**

4 [...]

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

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

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

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

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

13 4.18 The Policy provides Commercial General Liability coverage through
14 an endorsement, in pertinent part, as follows:

15 **COMMERCIAL GENERAL LIABILITY**

16 **ENDORSEMENT**

17 [...]

18 **SECTION I – COVERAGES**

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

21 **1. Insuring Agreement**

22 a. **We** will pay those sums, **OTHER THAN**
23 **PUNITIVE OR EXEMPLARY DAMAGES**, that
the **insured** becomes legally obligated to pay as

1 damages because of **bodily injury** or **property**
2 **damage** to which this insurance applies. **We** will
3 have the right and duty to defend the **insured**
4 against any **suit** seeking those damages. However,
5 **we** will have no duty to defend the **insured** against
6 any **suit** seeking damages for **bodily injury** or
7 **property damage** to which this insurance does not
8 apply. **We** may, at **our** discretion, investigate any
9 **occurrence** and settle any claim or **suit** that may
10 result. However: ...

11 Form 1781 WA 0412.

12 4.19 The Policy provides the following relevant exclusions in the
13 Commercial General Liability endorsement:

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

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

1 compensation, disability benefits law, or any similar
2 law.

3 **e. Employer's Liability**

4 **Bodily injury to:**

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

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

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

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

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

16 **f. Aircraft, Auto or Watercraft**

17 **Bodily injury or property damage** arising out of:

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

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

Form 1781 WA 0412.

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

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

5 [...]

6 7. “**Insured**” means:

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

9 [...]

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

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

16 [...]

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

1 indemnifies any person or organization for damage
2 by fire to premises while rented to **you** or
3 temporarily occupied by **you** with permission of
the owner is not an **insured contract**;

4 b. A sidetrack agreement;

5 c. Any easement or license agreement, except in
6 connection with construction or demolition
operations on or within 50 feet of a railroad;

7 d. An obligation, as required by ordinance, to
8 indemnify a municipality, except in connection
9 with work for a municipality;

10 e. An elevator maintenance agreement; and

11 f. That part of any other contract or agreement
12 pertaining to **your** business (including an
13 indemnification of a municipality in connection
14 with work performed for a municipality) under
15 which **you** assume the tort liability of another party
16 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. ...

17 [...]

18
19 10. "**Occurrence**" means an accident, happening or
20 event, including continuous or repeated exposure to
substantially the same general harmful conditions.

21 [...]

22 13. "**Property damage**" for purposes of this endorsement
23 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 CONTROVERSY 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' compensation, unemployment compensation, disability benefit laws, or any other similar law.

1 5.5 There is an actual and justiciable controversy as to whether UFCC
2 has an obligation to provide coverage for any obligation which an insured may be
3 held liable under workers' compensation, unemployment compensation,
4 disability benefit laws, or any other similar law.

5
6 5.6 Under the Auto Policy – Liability to Others part, coverage is
7 excluded for bodily injury to an employee of any insured arising out of or within
8 the course of that employee's employment by any insured or performing duties
9 related to the conduct of any insured's business.

10 5.7 There is an actual and justiciable controversy as to whether the
11 claim is for bodily injury to an employee of Spencer Trucking arising out of or
12 within the course of that employee's employment by Spencer Trucking or
13 performing duties related to the conduct of any of Spencer Trucking's business.

14
15 5.8 Under the Auto Policy – Liability to Others part, coverage is
16 excluded for bodily injury to a fellow employee of an insured injured while
17 within the course of their employment or while performing duties related to the
18 conduct of the insured's business.

19
20 5.9 There is an actual and justiciable controversy as to whether the
21 claim is for bodily injury to a fellow employee of Spencer Trucking who was
22 injured within the course of that employee's employment by Spencer Trucking or
23 performing duties related to the conduct of any of Spencer Trucking's business.

1 5.10 Under the Commercial General Liability coverage part, coverage is
2 provided for damages, other than punitive or exemplary damages, for bodily
3 injury, property damage to which the insurance applies.

4 5.11 There is an actual and justiciable controversy as to whether coverage
5 exists under the Commercial General Liability coverage part.

6 5.12 Under the Commercial General Liability coverage part, UFCC has
7 the right and duty to defend the insured against any suit seeking damages for
8 bodily injury or property damage to which the insurance applies.

9 5.13 There is an actual and justiciable controversy as to whether UFCC
10 has an obligation to defend Spencer Trucking and/or Ryan Spencer.

11 5.14 Under the Commercial General Liability coverage part, coverage is
12 excluded for any obligation which an insured may be held liable under workers'
13 compensation, unemployment compensation, disability benefits law, or any
14 similar law.

15 5.15 There is an actual and justiciable controversy as to whether UFCC
16 has an obligation to provide coverage for any obligation which an insured may be
17 held liable under workers' compensation, unemployment compensation,
18 disability benefit laws, or any other similar law.

19 5.16 Under the Commercial General Liability coverage part, coverage is
20 excluded for bodily injury to an employee of any insured arising out of or within
21

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

3 5.17 There is an actual and justiciable controversy as to whether the
4 claim is for bodily injury to an employee of Spencer Trucking arising out of or
5 within the course of that employee's employment by Spencer Trucking or
6 performing duties related to the conduct of any of Spencer Trucking's business.
7

8 5.18 Under the Commercial General Liability coverage part, coverage is
9 excluded for bodily injury arising out of the ownership, maintenance, use, or
10 entrustment to others of any aircraft, auto or watercraft owned or operated by or
11 rented, leased or loaned to any insured.
12

13 5.19 There is an actual and justiciable controversy as to whether the
14 claim arises out of the ownership, maintenance, use, or entrustment to others of
15 any aircraft, auto or watercraft owned or operated by or rented, leased or loaned
16 to any insured.

17 5.20 Coverage is unavailable and/or precluded under any provision of the
18 Policy for the Estate and/or I.C.'s claims against the Spencer Defendants.
19

20 5.21 There is an actual and justiciable controversy as to whether UFCC
21 owes any duty to defend or indemnify the Spencer Defendants for the Estate
22 and/or I.C.'s claims under the terms and conditions of the Policy.
23

1 5.22 In addition to the provisions cited above, UFCC pleads all other
2 conditions, terms, provisions, limitations, definitions, and exclusions of the
3 Policy, which also may be found to be applicable to UFCC's investigation and
4 defense of these claims, and UFCC reserves the right to amend its Complaint for
5 Declaratory Judgment as additional and/or more specific information becomes
6 available.
7

8 5.23 Pursuant to 28 U.S.C. §§ 2201 and 2202, UFCC seeks a judicial
9 declaration of its rights and duties under the Policy.
10

11 **VI. CLAIM FOR DECLARATORY JUDGMENT**

12 6.1 UFCC reasserts Paragraphs 1.1 through 5.23 above and incorporates
13 the same by reference as though fully stated herein.

14 6.2 UFCC is entitled to Declaratory Judgment in its favor. Specifically,
15 a judicial determination that UFCC does not owe any duty to defend or
16 indemnify the Spencer Defendants under the Policy for any of the Estate and/or
17 I.C.'s claims.
18

19 **VII. REQUEST FOR RELIEF**

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

22 7.1 For a determination of the rights and obligations of the parties hereto
23 under the Policy.

1 7.2 For a declaration that UFCC owes no defense or indemnity
2 obligations to the Spencer Defendants for any of the Estate and/or I.C.'s claims.

3 7.3 For all interest as allowed by applicable law.

4 7.4 For attorney's fees and costs allowed by applicable statute and law.

5 7.5 For other and further relief as the Court deems just and equitable.
6

7 DATED this 3rd day of December, 2020.
8

9 LEATHER LAW GROUP

10 /s/ Thomas Lether

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15 tlether@letherlaw.com

16 Attorneys for Plaintiff United Financial
17 Casualty Company
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the parties mentioned below as indicated:

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Counsel for Ivan Emmanuel Cardenas, Jr.

By: ☐ **First Class Mail** ☒ **ECF/Email** ☐ **Legal Messenger**

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2
3 Dated this 3rd day of December 2020 at Seattle, Washington.

4
5 /s/ Judy Tustison
6 Judy Tustison | Paralegal
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