UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WISCONSIN MILWAUKEE DIVISION

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| ZAZA PACHULIA and TINATIN ALAVIDZE,  Plaintiffs,  v.  RANDY USOW ACCOUNTING, INC. and RANDY USOW,  Defendants. | Case No.: 16-cv-1531 |

# COMPLAINT FOR DECLARATORY JUDGMENT

Intervening Defendant Carolina Casualty Insurance Company ("Carolina Casualty"), by its attorneys, Hinshaw & Culbertson LLP, hereby brings its complaint for declaratory judgment against the defendants and alleges as follows:

# INTRODUCTION

1. Carolina Casualty seeks a judgment regarding the insurance coverage provided by an Accountants Professional Liability Policy issued by Carolina Casualty to Randy Usow Accounting, Inc. for the claims alleged against the defendants in the above-captioned lawsuit.

# THE PARTIES

1. Plaintiffs are aliens admitted to the United States for permanent residence and are currently domiciled in California.
2. Defendant Randy Usow resides in Mequon, Wisconsin, and is citizen of the State of Wisconsin.
3. Defendant Randy Usow Accounting, Inc. is a Wisconsin corporation with its principal place of business located at 11431 North Port Washington Road, Mequon, Wisconsin 53092.
4. Intervening Defendant Carolina Casualty is an Iowa insurance corporation with its principal place of business located at 501 Gate Parkway, Building 200, Suite 200, Jacksonville, Florida 32256.

# JURISDICTION AND VENUE

1. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds the sum of $75,000 exclusive of interest and costs, and the parties are citizens of different states.
2. Venue is proper pursuant to 28 U.S.C. § 1391(b).

# FACTUAL BACKGROUND

1. Carolina Casualty issued an Accountants Professional Liability insurance policy to Randy Usow Accounting, Inc., policy number 1453056, with effective dates of coverage from December 31, 2015 to December 31, 2016 (the "Policy").
2. On November 16, 2016, Plaintiffs commenced this lawsuit against Defendants.
3. On November 21, 2016, Defendants provided Carolina Casualty with notice of the lawsuit and tendered their defense to Carolina Casualty.
4. Carolina Casualty agreed to defend Defendants against the claims asserted in this lawsuit under a reservation of rights to decline coverage.
5. On February 15, 2017, Plaintiffs filed their Amended Complaint against Defendants.
6. Carolina Casualty denies that it is obligated under the Policy to indemnify Defendants against the claims asserted in this lawsuit.

# INSURANCE COVERAGE BACKGROUND

1. The insuring agreement of the Policy provides as follows:

# Accountants Professional Liability Insurance

This Policy shall pay on behalf of the **Insured** all **Damages** and **Claim Expense** that the **Insured** shall become legally obligated to pay, arising from any **Claim** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period** or within 60 days thereafter, for any **Wrongful Act**, provided that prior to the inception date of the first Accountants Professional Liability Insurance Policy issued by the **Insurer** to the **Named Insured,** which has been continuously renewed and maintained in effect to the inception of this **Policy Period**, the **Insured** did not know, or could not reasonably foresee that such **Wrongful Act** might reasonably be expected to be the basis of a **Claim**.

1. The following definitions are provided in the Policy:

A. "**Claim**" means a written demand for money or services including, but not limited to, the service of suit(s), a request that an **Insured** agree to waive a legal right or sign an agreement to toll the statute of limitations, or a demand for arbitration; provided, however, **Claim** shall not include any proceedings before a state licensing board or similar authority, except as otherwise provided in section V. Supplemental Coverages, of this Policy. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

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1. "**Damages**" means a monetary judgment, award or settlement, pre- judgment interest and post-judgment interest; provided, however, **Damages** shall not include:
   1. civil or criminal fines, sanctions, or penalties imposed by law or otherwise; or
   2. punitive or exemplary damages, or any multiplied damages award in excess of the amount so multiplied; or
   3. any matter deemed uninsurable under the law pursuant to which this Policy shall be construed; or
   4. fees, costs and expenses paid to, incurred or charged by the Insured, whether claimed as forfeiture, restitution of specific funds, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing; or
   5. equitable, non-pecuniary or injunctive relief, or the cost thereof.
2. The Policy contains the following exclusion, among others:

The Insurer shall not be liable to make any payment for Damages or Claim Expense in connection with a Claim made against any Insured:

A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving a dishonest, fraudulent, criminal, or malicious act or omission committed by or at the direction of, or ratified by any Insured; provided, however, the Insurer will provide a defense for any such Claims, without any liability by the Insurer to pay such sums that any Insured shall become legally obligated to pay as Damages

[INNOCENT INSURED PROVISION: Whenever coverage under this Policy would be excluded, suspended, or lost because of Exclusion A., the Insurer agrees that such insurance, as would otherwise be afforded under this Policy, shall be applicable with respect to an Insured, other than the Named Insured and any Predecessor Firm, who did not personally participate or personally acquiesce in or remain passive after having knowledge of such conduct.]

# COUNT I – DECLARATORY RELIEF

1. Carolina Casualty realleges and incorporates by reference the allegations contained in Paragraphs 1-16 of the Complaint.
2. A real and justiciable controversy exists concerning whether or not the Policy provides coverage to Defendants for the claims asserted in this lawsuit.
3. Carolina Casualty seeks a declaration from this Court that Carolina Casualty has no obligation under the Policy, or otherwise, to indemnify Defendants in connection with the claims asserted in this lawsuit on the following grounds, *inter alia*:
4. The claims are not covered under the Insuring Agreement of the Policy because the insured(s) knew or could have reasonably foreseen, prior to the inception date of the first Accountants Professional Liability Policy issued by Carolina Casualty

to the named insured that the alleged "wrongful act" might reasonably be expected to be the basis of a "claim";

1. The claims are not covered to the extent the claims fall within the scope of Exclusion A., which excludes coverage for damages arising out of fraudulent acts or omissions;
2. The claims are not covered to the extent the claims seek damages which are expressly excluded under the Policy's definition of "damages"; and
3. The claims are not otherwise covered under the Insuring Agreement of the Policy and/or are excluded by the terms, conditions, definitions, limits, and exclusions of the Policy.

# RELIEF REQUESTED

**WHEREFORE**, Carolina Casualty respectfully requests:

1. A declaration that Carolina Casualty has no duty to indemnify Randy Usow Accounting, Inc. and Randy Usow in relation to the claims asserted against them in this lawsuit.
2. In the alternative, a declaration of the respective rights and obligations of all parties, pursuant to the Policy, and a declaration of the limits and any obligation that Carolina Casualty has, if any, for the indemnity of the claims asserted against Randy Usow Accounting, Inc. and Randy Usow in this lawsuit.
3. For such further relief to which Carolina Casualty may be entitled and which the Court may deem just and proper.

Dated this 26th day of May, 2017.

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| /s/ Mollie T. Kugler |
| Thomas R. Schrimpf State Bar No. 1018230 Mollie T. Kugler  State Bar No. 1093318  Attorneys for Intervening Defendant Carolina Casualty Insurance Company  **HINSHAW & CULBERTSON LLP**  100 E. Wisconsin Avenue Suite 2600  Milwaukee, WI 53202  Phone No. 414-276-6464  Fax No. 414-276-9220  E-mail Address(es): [tschrimpf@hinshawlaw.com](mailto:tschrimpf@hinshawlaw.com) [mkugler@hinshawlaw.com](mailto:mkugler@hinshawlaw.com) |