

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

AMCO INSURANCE COMPANY, and)
DEPOSITORS INSURANCE COMPANY)

Plaintiffs,)

v.)

COLUMBIA MAINTENANCE COMPANY,)

Serve: William W. Hausman)
2519 Woodson Road)
Overland, Missouri 63114)

MK MAINTENANCE, LLC,)

Serve: BCRA CO)
221 Bolivar Street, Suite 101)
Jefferson City, Missouri 65101)

COLUMBIA MAINTENANCE COMPANY, d/b/a)
MK MAINTENANCE, and)

Serve: William Hausman)
2519 Woodson Road)
Overland, Missouri 63114)

WILLIAM HAUSMAN,)

Serve: 2519 Woodson Road)
Overland, Missouri 63114)

HAROLD BARNETT)

Serve: 1230 Park Ashwood, Apt. E)
St. Charles, MO 63304)

CHARLES TAYLOR)

Serve: 9407 Bataan)
St. Louis, MO 63134)

Defendants)

Cause No.:

COMPLAINT FOR DECLARATORY JUDGMENT

COME NOW, Plaintiffs Depositors Insurance Company (“Depositors”) and AMCO Insurance Company (“AMCO”), by and through the undersigned counsel, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, and for their Complaint for Declaratory Judgment, hereby state as follows:

I. NATURE OF ACTION AND RELIEF SOUGHT

1. This is an action for declaratory relief under 28 U.S.C. §§ 2201 and 2202 for the purpose of determining the parties’ rights and obligations, if any, under two insurance policies.

2. Depositors and AMCO seek a declaration that they have no duty to defend or indemnify Defendants Columbia Maintenance Company, MK Maintenance, LLC, Columbia Maintenance Company d/b/a MK Maintenance and/or William Hausman (“Defendants”), against a lawsuit filed by Harold Barnett (“Barnett”), captioned *Harold Barnett v. Columbia Maintenance Company, et al.*, Cause No. 15SL-CC04351, which is pending in the Circuit Court of St. Louis County (hereinafter the “Underlying Barnett Lawsuit”).

3. Depositors and AMCO also seek a declaration that they have no duty to defend or indemnify Defendants Columbia Maintenance Company, MK Maintenance, LLC, Columbia Maintenance Company d/b/a MK Maintenance and/or William Hausman (“Defendants”), against a lawsuit filed by Charles Taylor (“Taylor”), captioned *Charles Taylor v. Columbia Maintenance Company, et al.*, Cause No. 16SL-CC00217, which is pending in the Circuit Court of St. Louis County (hereinafter the “Underlying Taylor Lawsuit”).

4. Defendants Columbia Maintenance Company, MK Maintenance, LLC, Columbia Maintenance Company d/b/a MK Maintenance and William Hausman (“Defendants”), through their personal counsel, reported the Underlying Barnett Lawsuit and Underlying Taylor Lawsuit

to Depositors and AMCO and requested a defense and indemnity coverage for the Lawsuits under the Commercial General Liability Policy issued by Depositors (“the Depositors CGL Policy”) and Commercial Umbrella Liability Insurance policy issued by AMCO (“the AMCO Umbrella Policy”).

5. Depositors and AMCO disclaimed coverage, including any duty to provide a defense to Defendants in the Underlying Lawsuits under either the Depositors CGL Policy or the AMCO Umbrella Policy.

6. An actual, immediate controversy exists among the parties as to whether insurance coverage is afforded under the Policies for the claims asserted and the alleged damages sought against Defendants in the Underlying Lawsuits.

II. PARTIES

7. Depositors is a foreign insurance company organized and existing under the laws of the State of Iowa, with its principal place of business in the State of Iowa, and it is therefore a corporate citizen of the State of Iowa. Depositors is engaged in the business of writing contracts of liability insurance and is licensed to conduct insurance business in the State of Missouri.

8. AMCO is a foreign insurance company organized and existing under the laws of the State of Iowa, with its principal place of business in the State of Iowa, and it is therefore a corporate citizen of the State of Iowa. AMCO is engaged in the business of writing contracts of liability insurance and is licensed to conduct insurance business in the State of Missouri.

9. Defendant Columbia Maintenance Company is a Missouri corporation, with its principal place of business in Overland, Missouri. In the Underlying Taylor and Barnett Lawsuits, Columbia Maintenance Company has submitted to the jurisdiction of the Circuit Court of St. Louis County, Missouri.

10. Defendant MK Maintenance, LLC is a Missouri limited liability company, with its principal place of business in Overland, Missouri. In the Underlying Taylor and Barnett Lawsuits, MK Maintenance, LLC has submitted to the jurisdiction of the Circuit Court of St. Louis County, Missouri.

11. Defendant Columbia Maintenance Company d/b/a MK Maintenance is a Missouri corporation, with its principal place of business in Overland, Missouri. In the Underlying Taylor and Barnett Lawsuits, Columbia Maintenance Company d/b/a MK Maintenance has submitted to the jurisdiction of the Circuit Court of St. Louis County, Missouri.

12. Defendant William Hausman was at all times relevant herein a resident and citizen of the State of Missouri. In the Underlying Taylor and Barnett Lawsuits, Mr. Hausman has submitted to the jurisdiction of the Circuit Court of St. Louis County, Missouri.

13. Defendant Harold Barnett is a resident and citizen of the State of Missouri. Because Barnett initiated the Underlying Barnett Lawsuit, out of which this action arises, he is a necessary party and is named in this declaratory judgment action so that Barnett will be bound by any judgment rendered herein.

14. Defendant Charles Taylor is a resident and citizen of the State of Missouri. Because Taylor initiated the Underlying Taylor Lawsuit, out of which this action arises, he is a necessary party and is named in this declaratory judgment action so that Taylor will be bound by any judgment rendered herein.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over this action under 28 U.S.C. § 1332. There is complete diversity of citizenship among the parties and the matter in controversy exceeds the sum of \$75,000, exclusive of interest, attorney fees, and costs.

16. Venue is proper in this Court under 28 U.S.C. § 1391 (a) and (c) because a substantial part of the events giving rise to the claims asserted below occurred within this District, and because this District is where Depositors and AMCO have been called upon to perform under the Policies on Defendants' behalf.

IV. THE UNDERLYING BARNETT LAWSUIT

17. The Underlying Barnett Lawsuit was filed by Harold Barnett against Defendants in the Circuit Court of St. Louis County on December 18, 2015. Barnett later filed a First Amended Petition in the Lawsuit on May 15, 2019. The First Amended Petition added new allegations of negligence against the Defendants, and additional categories of damage, but was otherwise identical to the Original Petition. A true and correct copy of the First Amended Petition is attached hereto as Exhibit 1 and incorporated by reference.

18. Barnett, in the First Amended Petition, asserts identical counts against each of the Defendants for Discrimination in Violation of the Missouri Human Rights Act (Count I); Hostile Work Environment (Count II); and Negligent Infliction of Emotional Distress (Count III). (See *Exhibit 1, First Amended Petition in Underlying Barnett Lawsuit*).

19. Barnett, in the First Amended Petition, alleges that “he was employed by Defendants at their property located at 2519 Woodson Road, Overland, Missouri . . . where all unlawful employment practices complained of herein were committed.” (See *Exhibit 1, ¶ 3*).

20. Barnett, in the First Amended Petition, alleges that Defendant William Hausman was the President and owner, and was an agent, servant, or employee of Defendants Columbia Maintenance Company, MK Maintenance, LLC, and Columbia Maintenance Company d/b/a MK Maintenance. (See *Exhibit 1, ¶ 8*). Barnett further alleges that “throughout the course of [Barnett’s] employment, Defendant William Hausman was acting “within the course and scope of

his agency, servancy or employment” with Defendants, and “was acting as Plaintiff’s superior with the authority to hire, fire, or discipline Plaintiff.” (*See Exhibit 1*, ¶ 21).

21. Barnett, in the First Amended Petition, alleges that “at all times relevant herein” Defendants Columbia Maintenance Company, MK Maintenance, LLC, and Columbia Maintenance Company d/b/a MK Maintenance “were acting by and through their agents, servants or employees.” (*See Exhibit 1*, ¶ 9).

22. In Count I of Barnett’s First Amended Petition, Barnett alleges that Defendants “negligently allowed, fostered and maintained a discriminatory climate based upon race, resulting in a hostile place of employment for Plaintiff” while he was employed by Defendants. (*See Exhibit 1*, ¶ 35).

23. In Count I of Barnett’s First Amended Petition, Barnett alleges that Defendants violated the Missouri Human Rights Act “by their actions and failures to act, discriminated against Plaintiff on the basis of race by subjecting Plaintiff to unwelcome and offensive remarks, maintaining an offensive and hostile work environment for Plaintiff, and by failing to effectively remedy this hostile work environment.” (*See Exhibit 1*, ¶ 36)

24. In Count I of Barnett’s First Amended Petition, Barnett alleges that Defendants wrongfully terminated his employment with Defendants. (*See Exhibit 1*, ¶ 37).

25. In Count I of Barnett’s First Amended Petition, Barnett describes his allegations against Defendants as “unlawful employment practices in violation of the MHRA.” (*See Exhibit 1*, ¶ 38).

26. As a result of the alleged “unlawful employment practices” of Defendants, Barnett alleges in Count I that he sustained damages including “past and future lost wages, income and benefits, bodily injury, including physical pain and discomfort including anxiety, nervousness and

general feelings of physical pain, emotional pain and mental anguish, depression, feeling powerless, humiliation, nervousness, harm to reputation and loss of enjoyment of life” both in the past and in the future. (*See Exhibit 1*, ¶ 41).

27. In Count I of Barnett’s First Amended Petition, Barnett alleges that the conduct by Defendants described in Count I was “willful, wanton, malicious and undertaken with evil motive or reckless disregard for [his] rights” (*See Exhibit 1*, ¶ 44).

28. In Count II of Barnett’s First Amended Petition, Barnett alleges that he was “subjected to unwelcome harassment” during his employment and that race was a contributing factor in such harassment. (*See Exhibit 1*, ¶¶ 47,48).

29. In Count II of Barnett’s First Amended Petition, Barnett alleges that Defendants, by their actions and failures to act, negligently discriminated against Plaintiff on the basis of race and sex by maintaining an offensive work environment hostile to Plaintiff, and by negligently failing to effectively remedy this hostile work environment.” (*See Exhibit 1*, ¶ 49).

30. As a result of the alleged “hostile work environment,” Barnett alleges in Count II that he was terminated from his employment with Defendants. (*See Exhibit 1*, ¶ 51). Barnett further alleges that he sustained damages including “past and future lost wages, income and benefits, bodily injury, including physical pain and discomfort including anxiety, nervousness and general feelings of physical pain, emotional pain and mental anguish, depression, feeling powerless, humiliation, nervousness, harm to reputation and loss of enjoyment of life” both in the past and in the future.

31. In Count II of Barnett’s First Amended Petition, Barnett alleges that the conduct by Defendants described in Count II was “willful, wanton, malicious and undertaken with evil motive or reckless disregard for [his] rights” (*See Exhibit 1*, ¶ 56).

32. In Count III of Barnett's First Amended Petition, Barnett alleges that during his employment, Defendants "had a duty not to discriminate against [him] or to treat him differently than other employees based on the basis of race." (*See Exhibit 1*, ¶ 58).

33. In Count III of Barnett's First Amended Petition, Barnett alleges that Defendants breached their duty to him and "by their actions and failures to act, negligently discriminated against [him] on the basis of race by maintaining an offensive work environment hostile to [him] and by negligently failing to effectively remedy" the hostile work environment. (*See Exhibit 1*, ¶ 60).

34. As a result of the alleged negligence by Defendants, Barnett alleges in Count III that he sustained and experienced "emotional distress and mental injury that was medically diagnosable . . ." (*See Exhibit 1*, ¶ 62).

35. In Count III of Barnett's First Amended Petition, Barnett alleges that the conduct by Defendants described in Count III was "willful, wanton, malicious and undertaken with evil motive or reckless disregard for [his] rights" (*See Exhibit 1*, ¶ 44).

36. In his First Amended Petition, Barnett also seeks punitive damages on each of the Counts asserted therein. (*See Exhibit 1*, ¶¶ 45, 57, 64).

V. THE UNDERLYING TAYLOR LAWSUIT

37. The Underlying Taylor Lawsuit was filed by Charles Taylor against Defendants in the Circuit Court of St. Louis County on January 21, 2016. Taylor later filed a First Amended Petition in the Lawsuit on May 15, 2019. The First Amended Petition added new allegations of negligence against the Defendants, and additional categories of damage, but was otherwise

identical to the Original Petition. A true and correct copy of the First Amended Petition in the Underlying Taylor Lawsuit is attached hereto as Exhibit 2 and incorporated by reference.

38. Taylor, in the First Amended Petition, asserts identical counts against each of the Defendants for Discrimination in Violation of the Missouri Human Rights Act (Count I); Retaliation (Count II); Hostile Work Environment (Count III); and Negligent Infliction of Emotional Distress (Count IV). (See *Exhibit 2, First Amended Petition in Underlying Taylor Lawsuit*).

39. Taylor, in the First Amended Petition, alleges that “he was employed by Defendants at their property located at 2519 Woodson Road, Overland, Missouri . . . where all unlawful employment practices complained of herein were committed.” (See *Exhibit 2, ¶ 3*).

40. Taylor, in the First Amended Petition, alleges that Defendant William Hausman was the President and owner, and was an agent, servant, or employee of Defendants Columbia Maintenance Company, MK Maintenance, LLC, and Columbia Maintenance Company d/b/a MK Maintenance. (See *Exhibit 2, ¶ 8*). Taylor further alleges that “throughout the course of [Taylor’s] employment, Defendant William Hausman was acting “within the course and scope of his agency, servancy or employment” with Defendants.” (See *Exhibit 2, ¶ 21*).

41. Taylor, in the First Amended Petition, alleges that “at all times relevant herein” Defendants Columbia Maintenance Company, MK Maintenance, LLC, and Columbia Maintenance Company d/b/a MK Maintenance “were acting by and through their agents, servants or employees.” (See *Exhibit 2, ¶ 9*).

42. Taylor, in the First Amended Petition, alleges that during his period of employment with Defendants, Defendant Hausman made a series of racially or ethnically discriminatory

statements directed to, or in the presence of, Taylor while in the workplace. (*See Exhibit 2*, ¶¶28 - 66).

43. In Count I of Taylor's First Amended Petition, Taylor alleges that Defendants discriminated against him in the workplace based upon his marriage to a Mexican woman and his support for minority employees. . (*See Exhibit 2*, ¶ 71).

44. In Count I of Taylor's First Amended Petition, Taylor alleges that Defendants "negligently allowed, fostered and maintained a discriminatory climate based upon race, resulting in a hostile place of employment for Plaintiff" while he was employed by Defendants. (*See Exhibit 2*, ¶ 73).

45. In Count I of Taylor's First Amended Petition, Taylor alleges that Defendants violated the Missouri Human Rights Act "by their actions and failures to act, discriminated against [Taylor] on the basis of race by subjecting [Taylor] to unwelcome and offensive remarks, maintaining an offensive and hostile work environment for [Taylor], and by failing to effectively remedy this hostile work environment." (*See Exhibit 2*, ¶ 74)

46. In Count I of Taylor's First Amended Petition, Taylor alleges that Defendants wrongfully terminated his employment with Defendants. (*See Exhibit 2*, ¶ 75).

47. In Count I of Taylor's First Amended Petition, Taylor describes his allegations against Defendants as "unlawful employment practices in violation of the MHRA." (*See Exhibit 2*, ¶ 76).

48. As a result of the alleged "unlawful employment practices" of Defendants, Taylor alleges in Count I that he sustained damages including "past and future lost wages, income and benefits, bodily injury, including physical pain and discomfort including anxiety, nervousness and general feelings of physical pain, emotional pain and mental anguish, depression, feeling

powerless, humiliation, nervousness, harm to reputation and loss of enjoyment of life” both in the past and in the future. (*See Exhibit 1*, ¶ 79).

49. In Count I of Taylor’s First Amended Petition, Taylor alleges that the conduct by Defendants described in Count I was “willful, wanton, malicious and undertaken with evil motive or reckless disregard for [his] rights” (*See Exhibit 2*, ¶ 82).

50. In Count II of Taylor’s First Amended Petition, Taylor alleges that Defendants threatened him and subjected him to “harassing, derogatory, and humiliating remarks and ordered him to perform additional, impossible and/or degrading job tasks as punishment and in retaliation” for Taylor repeatedly asking Defendant Hausman to cease his racially and ethnically discriminatory behavior and comments. (*See Exhibit 2*, ¶ 85).

51. In Count II of Taylor’s First Amended Petition, Taylor alleges that he was ultimately wrongfully terminated from his employment with Defendants in retaliation for his complaints about Defendant Hausman’s racially and ethnically discriminatory behavior and comments. (*See Exhibit 2*, ¶ 87).

52. In Count II of Taylor’s First Amended Petition, Taylor alleges that his termination of employment by Defendants was in direct violation of Mo. Rev. Stat. § 213.070(2). (*See Exhibit 2*, ¶ 88).

53. As a result of the alleged retaliatory discharge by Defendants, Taylor alleges in Count II that he sustained damages including “past and future lost wages, income and benefits, bodily injury, including physical pain and discomfort including anxiety, nervousness and general feelings of physical pain, emotional pain and mental anguish, depression, feeling powerless, humiliation, nervousness, harm to reputation and loss of enjoyment of life” both in the past and in the future. (*See Exhibit 2*, ¶ 90).

54. In Count II of Taylor's First Amended Petition, Taylor alleges that the conduct by Defendants described in Count I was "willful, wanton, malicious and undertaken with evil motive or reckless disregard for [his] rights" (*See Exhibit 2, ¶ 93*).

55. In Count III of Taylor's First Amended Petition, Taylor alleges that he was "subjected to unwelcome harassment" during his employment and that race was a contributing factor in such harassment. (*See Exhibit 2, ¶¶ 96,97*).

56. In Count III of Taylor's First Amended Petition, Taylor alleges that Defendants, by their actions and failures to act, negligently discriminated against Plaintiff on the basis of race and sex by maintaining an offensive work environment hostile to Plaintiff, and by negligently failing to effectively remedy this hostile work environment." (*See Exhibit 2, ¶ 98*).

57. As a result of the alleged "hostile work environment," Taylor alleges in Count III that he was terminated from his employment with Defendants. (*See Exhibit 2, ¶ 100*). Taylor further alleges that he sustained damages including "past and future lost wages, income and benefits, bodily injury, including physical pain and discomfort including anxiety, nervousness and general feelings of physical pain, emotional pain and mental anguish, depression, feeling powerless, humiliation, nervousness, harm to reputation and loss of enjoyment of life" both in the past and in the future. (*See Exhibit 2, ¶ 102*).

58. In Count III of Taylor's First Amended Petition, Taylor alleges that the conduct by Defendants described in Count II was "willful, wanton, malicious and undertaken with evil motive or reckless disregard for [his] rights" (*See Exhibit 2, ¶ 105*).

59. In Count IV of Taylor's First Amended Petition, Taylor alleges that during his employment, Defendants "had a duty not to discriminate against [him] or to treat him differently than other employees based on the basis of race." (*See Exhibit 2, ¶ 108*).

60. In Count IV of Taylor's First Amended Petition, Taylor alleges that Defendants breached their duty to him and "by their actions and failures to act, negligently discriminated against [him] on the basis of race by maintaining an offensive work environment hostile to [him] and by negligently failing to effectively remedy" the hostile work environment. (*See Exhibit 2*, ¶ 109).

61. As a result of the alleged negligence by Defendants, Taylor alleges in Count IV that he sustained and experienced "emotional distress and mental injury that was medically diagnosable . . ." (*See Exhibit 2*, ¶ 111).

62. In Count IV of Taylor's First Amended Petition, Taylor alleges that the conduct by Defendants described in Count III was "willful, wanton, malicious and undertaken with evil motive or reckless disregard for [his] rights" (*See Exhibit 2*, ¶ 112).

63. In his First Amended Petition, Taylor also seeks punitive damages on each of the Counts asserted therein. (*See Exhibit 2*, ¶¶ 83, 94, 106, 113).

V. THE DEPOSITORS CGL POLICY

64. Depositors issued a Commercial General Liability policy of insurance to named insureds Columbia Maintenance Company and MK Maintenance, Policy Number ACP GLDO 3006478056, with effective dates of 1/19/14 to 1/19/15 (the "Depositors CGL Policy"). A true and correct copy of the Depositors CGL Policy is attached hereto as Exhibit 3 and incorporated by reference.

65. The Depositors CGL Policy provides Commercial General Liability coverage for "bodily injury," "property damage" and "personal and advertising injury." (*See Exhibit 3*).

66. Under Coverage A, the Depositors CGL Policy provides coverage for "bodily injury" and "property damage" liability, in pertinent part, as follows:

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period;

(Exhibit 3, Form CG 00 01 04 13 at page 1 of 16)

67. The Depositors CGL Policy contains exclusions which are applicable to Coverage A, including the following, in pertinent part:

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:

- (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business;
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any other obligation to share damages with or repay someone else who must pay damages because of the injury.

o. Personal and Advertising Injury

"Bodily injury" arising out of "personal and advertising injury"

(Exhibit 3, Form CG 00 01 04 13 at page 2 of 16, page 5 of 16)

68. Under Coverage B, the Depositors CGL Policy provides coverage for "personal and advertising injury" liability, in pertinent part, as follows:

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may at our discretion investigate any offense and settle any claim or "suit" that may result.
- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

(Exhibit 3, Form CG 00 01 04 13 at page 6 of 16)

69. The Depositors CGL Policy contains exclusions which are applicable to Coverage B, including the following, in pertinent part:

2. Exclusions

This insurance does not apply to:

a. Knowing Violation of Rights of Another

“Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury.”

b. Material Published with Knowledge of Falsity

“Personal and advertising injury” arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

(Exhibit 3, Form CG 00 01 04 13 at page 6 of 16)

* * *

70. The Depositors CGL Policy contains an Endorsement entitled “EMPLOYMENT-RELATED PRACTICES EXCLUSION,” which is applicable to Coverage A and Coverage B. The exclusion provides, in pertinent part:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury and Property Damage Liability:

This insurance does not apply to:

“Bodily injury” to:

- (1) A person arising out of any:

- (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury

(Exhibit 3, Form CG 21 47 12 07)

71. The Depositors CGL Policy contains Definitions which are applicable to Coverage A and Coverage B, which state in pertinent part:

SECTION V – DEFINITIONS

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. “Personal and advertising injury” means injury, including consequential “bodily injury” arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor.
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person’s right of privacy;
 - f. The use of another’s advertising idea in your “advertisement”; or
 - g. Infringing upon another’s copyright, trade dress or slogan in your “advertisement”.

(Exhibit 3, Form CG 00 01 04 13, at page 13 of 16)

72. In addition to the foregoing provisions, Depositors and AMCO plead all other conditions, terms, warranties, limits, definitions and exclusions of the Depositors CGL Policy that may also be found to be applicable, and they reserve the right to further amend their Complaint for Declaratory Judgment as additional and/or more specific information becomes available.

VI. THE AMCO UMBRELLA POLICY

73. AMCO issued a Commercial Umbrella Liability Insurance policy to named insureds Columbia Maintenance Company and MK Maintenance, Policy Number ACP CAA 3006478056, with effective dates of 1/19/14 to 1/19/15 (the “AMCO Umbrella Policy”). A copy of the AMCO Umbrella Policy is attached hereto as Exhibit 4 and incorporated by reference as if fully set forth herein.

74. The AMCO Umbrella Policy contains the following insuring agreements, which read in pertinent part:

INSURING AGREEMENTS

A. Coverage A – Excess Follow Form Liability Insurance

1. Under Coverage A, we will pay on behalf of the “insured” that part of “loss” covered by this insurance in excess of the total applicable limits of “underlying insurance”, provided the injury or offense takes place during the Policy Period of this policy. The terms and conditions of “underlying insurance” are, with respect to Coverage A, made a part of this policy except with respect to:
 - a. any contrary provision contained in this policy; or
 - b. any provision in this policy for which a similar provision is not contained in “underlying insurance”.
2. With respect to the exceptions stated above, the provisions of this policy will apply.
3. The amount we will pay for damages is limited as described in Limits of Insurance.

4. Notwithstanding anything to the contrary contained above, if “underlying insurance” does not cover “loss” for reasons other than exhaustion of an aggregate limit of insurance by payment of claims, then we will not cover such “loss”.

B. Coverage B – Umbrella Liability Insurance

1. Under Coverage B, we will pay on behalf of the “insured” damages the “insured” becomes legally obligated to pay by reason of liability imposed by law because of “bodily injury”, “property damage”, or “personal and advertising injury” covered by this insurance which takes place during the Policy Period and is caused by an “occurrence”. We will pay such damages in excess of the Retained Limit Aggregate specified in the Declarations or the amount payable by “other insurance” whichever is greater.
8. This insurance applies to “bodily injury” and “property damage” only if:
 - a. The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

(Exhibit 4, Form UMB 00 02 04 13, at page 3 of 20)

75. The AMCO Umbrella Policy contains exclusions which are applicable to Coverage A and Coverage B, including the following, in pertinent part:

Applicable to Coverage A and Coverage B

Under Coverage A and Coverage B, this insurance does not apply to:

8. Employment-related Practices
“Injury or damage”, “bodily injury” or “personal and advertising injury” to:
 - a. A person arising out of any:
 - 1) Refusal to employ that person;
 - 2) Termination of that person's employment; or
 - 3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline,

defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

- b. The spouse, child, parent, brother or sister of that person as a consequence of “injury or damage”, "bodily injury" or “personal and advertising injury” to that person at whom any of the employment related practices described in Paragraph 1), 2) or 3) above is directed.

This exclusion applies whether the injury causing event described in Paragraph 1), 2) or 3) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(Exhibit 4, Form UMB 00 02 04 13, at page 5 of 20)

76. In addition to the foregoing provisions, Depositors and AMCO plead all other conditions, terms, warranties, limits, definitions and exclusions of the AMCO Umbrella Policy that may also be found to be applicable, and they reserve the right to further amend their Complaint for Declaratory Judgment as additional and/or more specific information becomes available.

VII. ADDITIONAL RELEVANT FACTS

77. Defendants, by and through their personal counsel, sent the original Petitions in the Underlying Barnett Lawsuit and the Underlying Taylor Lawsuit to a representative of AMCO and Depositors and requested a defense and indemnity pursuant to the AMCO and Depositors policies.

78. AMCO and Depositors issued a coverage position letter to Defendants dated April 19, 2019, in which AMCO and Depositors disclaimed coverage for the Underlying Barnett and Taylor Lawsuits, including any duty to defend Defendants in those actions.

79. Defendants, by and through their personal counsel, provided the First Amended Petitions in the Underlying Barnett Lawsuit and the Underlying Taylor Lawsuit to a representative of AMCO and Depositors on May 23, 2019.

80. Following a review of the First Amended Petitions, AMCO and Depositors reiterated its coverage position and disclaimed coverage for the Underlying Barnett and Taylor Lawsuits, including any duty to defend Defendants in those actions.

VII. GROUNDS FOR DECLARATORY JUDGMENT

COUNT I

Declaratory Judgment that Depositors does not owe a Duty to Defend Defendants in the Underlying Barnett Lawsuit under the Depositors CGL Policy

81. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 80 as if fully set forth herein.

82. Depositors does not owe a duty to defend to defend Defendants in the Underlying Barnett Lawsuit under the Depositors CGL Policy for the following reasons:

- a. The First Amended Petition in the Underlying Barnett Lawsuit does not allege “bodily injury” or “property damage” caused by an “occurrence” as such is defined in the Depositors CGL Policy.
- b. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the exclusions for “Expected or Intended Injury,” “Employer’s Liability” and “Personal and Advertising Injury” serves to bar coverage under the Depositors CGL Policy.
- c. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.
- d. The First Amended Petition in the Underlying Barnett Lawsuit does not allege “personal and advertising injury” as such is defined in the Depositors CGL Policy.

- e. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, which it does not, the exclusions for “Knowing Violation of Rights of Another,” and “Material Published with Knowledge of Falsity” serves to bar coverage.
- f. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.

83. Upon information and belief, Defendants disagree with Depositors’ coverage position and maintains that Depositors owes a duty to defend Defendants in the Underlying Barnett Lawsuit. Thus, an actual and immediate controversy exists among the parties.

84. Under 28 U.S.C. §§ 2201 and 2202, Depositors seeks a judicial determination that it has no duty to defend Defendants in the Underlying Barnett Lawsuit under the Depositors CGL Policy.

COUNT II

Declaratory Judgment that Depositors does not owe a Duty to Defend Defendants in the Underlying Taylor Lawsuit under the Depositors CGL Policy

85. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 84 as if fully set forth herein.

86. Depositors does not owe a duty to defend to defend Defendants in the Underlying Taylor Lawsuit under the Depositors CGL Policy for the following reasons:

- a. The First Amended Petition in the Underlying Taylor Lawsuit does not allege “bodily injury” or “property damage” caused by an “occurrence” as such is defined in the Depositors CGL Policy.
- b. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the exclusions for “Expected or Intended Injury,” “Employer’s Liability” and “Personal and Advertising Injury” serves to bar coverage under the Depositors CGL Policy.

- c. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.
- d. The First Amended Petition in the Underlying Taylor Lawsuit does not allege “personal and advertising injury” as such is defined in the Depositors CGL Policy.
- e. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, which it does not, the exclusions for “Knowing Violation of Rights of Another,” and “Material Published with Knowledge of Falsity” serves to bar coverage.
- f. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.

87. Upon information and belief, Defendants disagree with Depositors’ coverage position and maintains that Depositors owes a duty to defend Defendants in the Underlying Taylor Lawsuit. Thus, an actual and immediate controversy exists among the parties.

88. Under 28 U.S.C. §§ 2201 and 2202, Depositors seeks a judicial determination that it has no duty to defend Defendants in the Underlying Taylor Lawsuit under the Depositors CGL Policy.

COUNT III

Declaratory Judgment that Depositors does not owe a Duty to Indemnify Defendants in the Underlying Barnett Lawsuit under the Depositors CGL Policy

89. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 88 as if fully set forth herein.

90. Depositors does not owe a duty to indemnify Defendants in the Underlying Barnett Lawsuit under the Depositors CGL Policy for the following reasons:

- a. The First Amended Petition in the Underlying Barnett Lawsuit does not allege “bodily injury” or “property damage” caused by an “occurrence” as such is defined in the Depositors CGL Policy.

- b. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the exclusions for “Expected or Intended Injury,” “Employer’s Liability” and “Personal and Advertising Injury” serves to bar coverage under the Depositors CGL Policy.
- c. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.
- d. The First Amended Petition in the Underlying Barnett Lawsuit does not allege “personal and advertising injury” as such is defined in the Depositors CGL Policy.
- e. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, which it does not, the exclusions for “Knowing Violation of Rights of Another,” and “Material Published with Knowledge of Falsity” serves to bar coverage.
- f. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.

91. Upon information and belief, Defendants disagree with Depositors’ coverage position and maintains that Depositors owes a duty to indemnify Defendants in the Underlying Barnett Lawsuit. Thus, an actual and immediate controversy exists among the parties.

92. Under 28 U.S.C. §§ 2201 and 2202, Depositors seeks a judicial determination that it has no duty to indemnify Defendants in the Underlying Barnett Lawsuit under the Depositors CGL Policy.

COUNT IV

Declaratory Judgment that Depositors does not owe a Duty to Indemnify Defendants in the Underlying Taylor Lawsuit under the Depositors CGL Policy

93. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 92 as if fully set forth herein.

94. Depositors does not owe a duty to indemnify Defendants in the Underlying Taylor Lawsuit under the Depositors CGL Policy for the following reasons:

- a. The First Amended Petition in the Underlying Taylor Lawsuit does not allege “bodily injury” or “property damage” caused by an “occurrence” as such is defined in the Depositors CGL Policy.
- b. Even if the First Amended Petition in the Underlying Taylor Lawsuit does allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the exclusions for “Expected or Intended Injury,” “Employer’s Liability” and “Personal and Advertising Injury” serves to bar coverage under the Depositors CGL Policy.
- c. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “bodily injury” or “property damage” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.
- d. The First Amended Petition in the Underlying Taylor Lawsuit does not allege “personal and advertising injury” as such is defined in the Depositors CGL Policy.
- e. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, which it does not, the exclusions for “Knowing Violation of Rights of Another,” and “Material Published with Knowledge of Falsity” serves to bar coverage.
- f. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “Personal and advertising injury” as such is defined in the Depositors CGL Policy, the “Employment Related Practices Exclusion” endorsement serves to bar coverage under the Depositors CGL Policy.

95. Upon information and belief, Defendants disagree with Depositors’ coverage position and maintains that Depositors owes a duty to indemnify Defendants in the Underlying Taylor Lawsuit. Thus, an actual and immediate controversy exists among the parties.

96. Under 28 U.S.C. §§ 2201 and 2202, Depositors seeks a judicial determination that it has no duty to indemnify Defendants in the Underlying Taylor Lawsuit under the Depositors CGL Policy.

COUNT V

Declaratory Judgment that AMCO does not owe a Duty to Defend Defendants in the Underlying Barnett Lawsuit under the AMCO Umbrella Policy

97. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 96 as if fully set forth herein.

98. AMCO does not owe a duty to defend to defend Defendants in the Underlying Barnett Lawsuit under the AMCO Umbrella Policy for the following reasons:

- a. There is no coverage under Coverage A of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Barnett Lawsuit because there is no coverage for such claims under “underlying insurance.”
- b. Even if there was coverage under “underlying insurance” for the claims asserted in the First Amended Petition in the Underlying Barnett Lawsuit, which there is not, the “Employment Related Practices Exclusion” would still serve to bar coverage under Coverage A of the AMCO Umbrella Policy.
- c. There is no coverage under Coverage B of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Barnett Lawsuit because the First Amended Petition does not allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence” as such are defined in the AMCO Umbrella Policy.
- d. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” serves to bar coverage under Coverage B of the AMCO Umbrella Policy.

99. Upon information and belief, Defendants disagree with AMCO’s coverage position and maintains that AMCO owes a duty to defend Defendants in the Underlying Barnett Lawsuit. Thus, an actual and immediate controversy exists among the parties.

100. Under 28 U.S.C. §§ 2201 and 2202, AMCO seeks a judicial determination that it has no duty to defend Defendants in the Underlying Barnett Lawsuit under the AMCO Umbrella Policy.

COUNT VI

Declaratory Judgment that AMCO does not owe a Duty to Defend Defendants in the Underlying Taylor Lawsuit under the AMCO Umbrella Policy

101. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 100 as if fully set forth herein.

102. AMCO does not owe a duty to defend to defend Defendants in the Underlying Taylor Lawsuit under the AMCO Umbrella Policy for the following reasons:

- a. There is no coverage under Coverage A of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Taylor Lawsuit because there is no coverage for such claims under “underlying insurance.”
- b. Even if there was coverage under “underlying insurance” for the claims asserted in the First Amended Petition in the Underlying Taylor Lawsuit, which there is not, the “Employment Related Practices Exclusion” would serve to bar coverage under Coverage A of the AMCO Umbrella Policy.
- c. There is no coverage under Coverage B of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Taylor Lawsuit because the First Amended Petition does not allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence” as such are defined in the AMCO Umbrella Policy.
- d. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” serves to bar coverage under Coverage B of the AMCO Umbrella Policy.

103. Upon information and belief, Defendants disagree with AMCO’s coverage position and maintains that AMCO owes a duty to defend Defendants in the Underlying Taylor Lawsuit. Thus, an actual and immediate controversy exists among the parties.

104. Under 28 U.S.C. §§ 2201 and 2202, AMCO seeks a judicial determination that it has no duty to defend Defendants in the Underlying Taylor Lawsuit under the AMCO Umbrella Policy.

COUNT VII

Declaratory Judgment that AMCO does not owe a Duty to Indemnify Defendants in the Underlying Barnett Lawsuit under the AMCO Umbrella Policy

105. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 104 as if fully set forth herein.

106. AMCO does not owe a duty to indemnify Defendants in the Underlying Barnett Lawsuit under the AMCO Umbrella Policy for the following reasons:

- a. There is no coverage under Coverage A of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Barnett Lawsuit because there is no coverage for such claims under “underlying insurance.”
- b. Even if there was coverage under “underlying insurance” for the claims asserted in the First Amended Petition in the Underlying Barnett Lawsuit, which there is not, the “Employment Related Practices Exclusion” would still serve to bar coverage under Coverage A of the AMCO Umbrella Policy.
- c. There is no coverage under Coverage B of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Barnett Lawsuit because the First Amended Petition does not allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence” as such are defined in the AMCO Umbrella Policy.
- d. Even if the First Amended Petition in the Underlying Barnett Lawsuit did allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” serves to bar coverage under Coverage B of the AMCO Umbrella Policy.

107. Upon information and belief, Defendants disagree with AMCO’s coverage position and maintains that AMCO owes a duty to indemnify Defendants in the Underlying Barnett Lawsuit. Thus, an actual and immediate controversy exists among the parties.

108. Under 28 U.S.C. §§ 2201 and 2202, AMCO seeks a judicial determination that it has no duty to indemnify Defendants in the Underlying Barnett Lawsuit under the AMCO Umbrella Policy.

COUNT VIII

Declaratory Judgment that AMCO does not owe a Duty to Indemnify Defendants in the Underlying Taylor Lawsuit under the AMCO Umbrella Policy

109. Depositors and AMCO hereby incorporate by reference the allegations in Paragraphs 1 - 108 as if fully set forth herein.

110. AMCO does not owe a duty to indemnify Defendants in the Underlying Taylor Lawsuit under the AMCO Umbrella Policy for the following reasons:

- a. There is no coverage under Coverage A of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Taylor Lawsuit because there no coverage for such claims under “underlying insurance.”
- b. Even if there was coverage under “underlying insurance” for the claims asserted in the First Amended Petition in the Underlying Taylor Lawsuit, which there is not, the “Employment Related Practices Exclusion” would still serve to bar coverage under Coverage A of the AMCO Umbrella Policy.
- c. There is no coverage under Coverage B of the AMCO Umbrella Policy for the claims asserted in the First Amended Petition in the Underlying Taylor Lawsuit because the First Amended Petition does not allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence” as such is defined in the AMCO Umbrella Policy.
- d. Even if the First Amended Petition in the Underlying Taylor Lawsuit did allege “bodily injury” “property damage” or “personal and advertising injury” caused by an “occurrence,” which it does not, the “Employment Related Practices Exclusion” serves to bar coverage under Coverage B of the AMCO Umbrella Policy.

111. Upon information and belief, Defendants disagree with AMCO’s coverage position and maintains that AMCO owes a duty to indemnify Defendants in the Underlying Taylor Lawsuit. Thus, an actual and immediate controversy exists among the parties.

112. Under 28 U.S.C. §§ 2201 and 2202, AMCO seeks a judicial determination that it has no duty to indemnify Defendants in the Underlying Taylor Lawsuit under the AMCO Umbrella Policy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Depositors Insurance Company and AMCO Insurance Company, respectfully pray for judgment against Defendants Columbia Maintenance Company, MK Maintenance, LLC, Columbia Maintenance Company d/b/a MK Maintenance and/or William Hausman, as follows:

- a. Declaring that Depositors has no duty to defend Defendants in the Underlying Barnett or Taylor Lawsuits;
- b. Declaring that Depositors has no duty to indemnify Defendants in the Underlying Barnett or Taylor Lawsuits;
- c. Declaring that AMCO has no duty to defend Defendants in the Underlying Barnett or Taylor Lawsuits;
- d. Declaring that AMCO has no duty to indemnify Defendants in the Underlying Barnett or Taylor Lawsuits;
- e. Awarding Depositors and AMCO their costs for this lawsuit; and
- f. Awarding Depositors and AMCO such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ Russell F. Watters

Russell F. Watters #25758MO
John D. Cooney #61080MO
BROWN & JAMES, P.C.
800 Market Street, Suite 1100
St. Louis, Missouri 63101
(314) 421-3400
(314) 421-3128 -- Facsimile
rwatters@bjpc.com
jcooney@bjpc.com
Attorneys for Plaintiffs
Depositors Insurance Company and
AMCO Insurance Company

21236931.1