

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Privilege Underwriters Reciprocal Exchange,
Plaintiff,

vs.

Calvin C. "Skip" Hoagland and Lisa Sulka,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-07-02310

**SECOND AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT
(NON-JURY)**

The Plaintiff, Privilege Underwriters Reciprocal Exchange (hereinafter "PURE"), seeks declaratory relief to determine the rights of the parties, and alleges and shows as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a reciprocal insurer organized and existing pursuant to the laws of the State of Florida. Plaintiff is authorized to sell insurance and does sell insurance in South Carolina.
2. Upon information and belief, Defendant Calvin C. "Skip" Hoagland is a citizen and resident of Beaufort County, South Carolina.
3. Upon information and belief, Defendant Lisa Sulka is a citizen and resident of Beaufort County, South Carolina.
4. This matter is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and pursuant to the Uniformed Declaratory Judgment Act, South Carolina Code Ann. §§ 15-53-10 through 15-53-140.
5. There is a real and justiciable controversy between the parties and by these proceedings, Plaintiff asks this Court to inquire into and declare the rights and obligations of the parties hereto arising out of the facts set forth below.
6. Venue is proper in Beaufort County.

RECEIVED

Apr 19 2023

S.C. SUPREME COURT

FACTUAL ALLEGATIONS

7. PURE issued a homeowners insurance policy to Calvin C. Hoagland and Catherine Hoagland, Policy No. HO007733903, with effective dates of February 10, 2015 to February 10, 2016 and a renewal of the policy (Policy No. HO007733904) with effective dates of February 10, 2016 to February 10, 2017 (collectively the “PURE Policy”). The PURE policy provides a liability coverage limit of \$500,000.

8. The PURE Policy insured Calvin Hoagland for certain risks under the insuring agreement and excluded certain risks through the policy exclusions. PURE craves reference to the policy for all of the terms, conditions and provisions therein and incorporates them by reference herein. A copy of the policy is attached hereto as Exhibit A.

9. The PURE Policy provides in pertinent part:

SECTION I - DEFINITIONS

In this policy, “you” and “your” refer to the “named insured” shown in the Declarations

In addition, certain words and phrases are defined below. When used throughout the policy the defined words will be bolded.

* * *

Bodily Injury

Bodily Injury means physical bodily harm, sickness or disease. This includes required care, loss of services and resulting death.

* * *

Incidental Business

The definition of **Incidental Business** depends on where the **incidental business** is conducted.

a. Away from your **residence premises**.

Incidental Business means a self-employed business activity normally undertaken by persons under the age of 18 such as newspaper delivery, babysitting, caddying, and lawn care. . . .

b. At your **residence premises**.

Incidental business means a business activity conducted in whole or in part on your **residence premises** which must:

1. Not yield gross revenues in excess of \$10,000 in any year, except for the business activity of managing one's own personal investments . . . ;
2. Have no employees subject to any workers' compensation, disability benefits, unemployment compensation or other similar laws; and
3. Conform to local, state, and federal laws.

Incidental Business includes the **business** of renting to others your **residence premises** listed on your Declarations.

* * *

Occurrence

Occurrence means an accident or offense, including continuous or repeated exposure to substantially the same general harmful conditions, which results in bodily injury or property damage during the policy period.

* * *

Personal Injury

Personal Injury means injury or death arising out of one or more of the following:

- a. Bodily injury;
- b. Unlawful detention, false imprisonment or false arrest;
- c. Shock or emotional distress;
- d. Invasion of privacy;
- e. Defamation, libel or slander;
- f. Malicious prosecution;
- g. Wrongful entry or eviction; or
- h. Assault and battery when committed with the intent of protecting persons.

* * *

SECTION III – LIABILITY COVERAGE

A. Personal Liability

If a claim is made or a suit is brought against an **insured** for damages because of **personal injury** or **property damage** caused by an **occurrence** anywhere in the world to which this coverage applies, we will:

1. Pay up to the liability coverage limit shown on your Declarations for **damages** for which an **insured** is legally liable. . . .
2. Provide a defense at our expense even if the suit is groundless, false or fraudulent. . . . We may investigate and settle any claim or suit at our discretion

* * *

D. Exclusions

We do not provide coverage for damages, defense costs or other cost or expense for:

* * *

5. Directors Errors or Omissions

Personal injury or property damage arising out of an **insured's** actions, errors or omissions as a director or officer of any corporation or organization.

* * *

11. Business

Personal injury or property damage arising out of or in connection with an **insured's business** property or **business** pursuits. However, this exclusion does not apply to:

Incidental business property or **incidental business** pursuits

* * *

16. Expected or Intended Injury

Personal injury or property damage resulting from any criminal, willful, intentional, or malicious act or omission by any **insured** which is intended to result in, or would be expected by a reasonable person to cause **personal injury or property damage**. This exclusion applies even if the injury or damage is of a different kind or degree, or is sustained by a different person than expected or intended. This exclusion does not apply to **bodily injury** if the **insured** acted with reasonable force to protect person or property.

* * *

SECTION IV – GENERAL PROVISIONS

* * *

B. Your Duties After A Loss

In the event of a loss for which coverage may be provided under this policy, you or an insured must:

* * *

5. Cooperate with us in the investigation of a claim, settlement or the defense of any claim or suit.

* * *

11. At our request, assist us:
 - a. To make settlement;
 - b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an insured;
 - c. With the conduct of suits and attend hearings and trials; and
 - d. To secure and give evidence and obtain the attendance of witnesses.

10. PURE issued a personal excess liability insurance policy to Calvin C. Hoagland and Catherine Hoagland, Policy No. EX007738003, with effective dates of February 10, 2015 to February 10, 2016 and a renewal of the policy (Policy No. EX0077333904) with effective dates of February 10, 2016 to February 10, 2017 (collectively the “PURE Excess Policy”). The PURE Excess Policy provides a personal excess liability coverage limit of \$3,000,000.

11. The PURE Excess Policy insured Calvin Hoagland for certain risks under the insuring agreement and excluded certain risks through the policy exclusions. PURE craves reference to the policy for all of the terms, conditions and provisions therein and incorporates them by reference herein. A copy of the PURE Excess Policy is attached hereto as Exhibit B.

12. The PURE Excess Policy provides in pertinent part:

I – DEFINITIONS

Business

Business means a trade, occupation or profession engaged in on a full-time, part-time or occasional basis. **Business** also means any other activity engaged in for money or other compensation. **Business** does not include **incidental business**.

Incidental Business

Incidental business means a business activity that:

- a) Has no employees subject to workers’ compensation or other similar disability laws;
- b) Conforms to federal, state and local laws; and
- c) Does not generate more than \$10,000 of gross annual revenues.

Occurrence

Occurrence means an accident or offense, including continuous or repeated exposure to substantially the same harmful conditions, which result in **bodily injury** or **property damage** during the policy period.

II – COVERAGES

A. Excess Liability

We will pay for damages that an **insured** is legally obligated to pay as a result of **property damage** or **personal injury** caused by an **occurrence** to which this coverage applies:

- a) In excess of the **underlying insurance** or the minimum required underlying limits, whichever is greater; or
- b) From the first dollar where coverage provided by required **underlying insurance** does not apply or **underlying insurance** is not required.

D. Defense Coverage

1. Defense Coverage and Claims Expenses

We will provide a defense against any claim made or suit brought against an **insured** for **damages** covered by this policy and where;

- a) The **underlying insurance** has been exhausted by payment of claims;
- b) No **underlying insurance** is required; or
- c) The required **underlying insurance** does not apply.

III – EXCLUSIONS

A. General Exclusions

We will not provide coverage for damages, defense costs or any other costs or expenses:

5. Business

Arising out of or in connection with an **insured's business** property or **business** pursuits. However, this exclusion does not apply to:

- a) Incidental business property or incidental business pursuits; or

11. Director's Errors or Omissions

Arising out of an **insured's** actions, errors or omissions as a director or officer of any corporation or organization.

12. Expected or Intended Injury

Resulting from any criminal; willful; intentional; or malicious act or omission by any **insured**. We will not cover any loss resulting from acts or omissions of any person which are intended to result in, or would be expected by a reasonable person to cause **personal injury** or **property damage**. This exclusion applies even if the injury or damage is of a different kind or degree, or is sustained by a different person than expected or intended. This exclusion does not apply to **bodily injury** if the **insured** acted with reasonable force to protect any person or property.

V – DUTIES AFTER A LOSS

B. If a claim is made or a suit is brought against an **insured**, the **insured** must;

3. At our request, help us;

- a) To make a settlement;
- b) To enforce any right of contribution or indemnity against any person or organization that may be liable to an **insured**;
- c) With the conduct of suits and attend hearings and trials; and
- d) To secure and give evidence and obtain the attendance of witnesses.

13. On July 26, 2017, Defendant Lisa Sulka filed a complaint in the Beaufort County Court of Common Pleas against Defendant Calvin C. “Skip” Hoagland and Domains New Media, LLC, styled as: Lisa Sulka v. C.C. “Skip” Hoagland et al, Civil Action No. 2017-CP-07-01547 (hereinafter the “Sulka Underlying Complaint”). A copy of the Sulka Underlying Complaint is attached hereto as Exhibit C.

14. The Sulka Underlying Complaint alleges that Defendant Hoagland made false and defamatory statements about Sulka in 2015 and 2017 in numerous emails that were published to various individuals. The Sulka Underlying Complaint alleges that the statements “were published with actual malice by the Defendants with the intent to harm [Sulka’s] reputation and to cause her

to suffer mental anguish.” The Sulka Underlying Complaint alleges that Hoagland’s statements “falsely accused [Sulka] of a crime and of being unfit for her office of mayor.”

15. Upon information and belief, Defendants have or will make claims for coverage under the PURE Policy for those claims alleged in the Sulka Underlying Complaint.

FOR A FIRST DECLARATION

16. PURE repeats and realleges the paragraphs above as if set forth fully verbatim below.

17. The PURE Policy and PURE Excess Policy do not provide liability coverage for damages for personal injury or property damage arising out of or in connection with an insured’s business pursuits.

18. The Sulka Underlying Complaint alleges that at all times mentioned in the complaint, “Hoagland, was an agent and/or employee of Domains New Media, LLC acting within the scope of his agency and/or employment.” The Sulka Underlying Complaint also alleges that “Domains New Media, LLC is liable for Hoagland’s acts and/or omissions.”

19. Therefore, the damages alleged in the Sulka Underlying Complaint arose out of or in connection with Defendant Hoagland’s business pursuits and PURE is entitled to a declaration that the PURE Policy and PURE Excess Policy do not provide coverage for any such damages.

FOR A SECOND DECLARATION

20. PURE repeats and realleges the paragraphs above as if set forth fully verbatim below.

21. The PURE Policy and PURE Excess Policy do not provide liability coverage for damages resulting from the willful, intentional or malicious acts of any insured which are intended to result in, or would be expected by a reasonable person to cause injury. This exclusion applies

even if the injury or damage is of a different kind or degree, or is sustained by a different person than expected or intended.

22. All of the causes of action alleged in the Sulka Underlying Complaint are premised on intentional conduct by Defendant Hoagland that a reasonable person would expect to cause injury. The Sulka Underlying Complaint alleges Hoagland published the defamatory statements with actual malice and “with the intent to harm [Sulka’s] reputation and to cause her to suffer mental anguish.”

23. Therefore, PURE is entitled to a declaration that the PURE Policy does not provide liability coverage for any of the claims alleged in the Sulka Underlying Complaint, all of which are premised on intentional or willful acts that a reasonable person would expect to cause injury.

FOR A THIRD DECLARATION

24. PURE repeats and realleges the paragraphs above as if set forth fully verbatim below.

25. The PURE Policy and PURE Excess Policy do not provide liability for personal injury or property damage arising out of an insured’s actions, errors, or omissions as a director of officer of any corporation or organization.

26. The Sulka Underlying Complaint alleges that at all times mentioned in the complaint, “Hoagland, was an agent and/or employee of Domains New Media, LLC acting within the scope of his agency and/or employment.” The Sulka Underlying Complaint also alleges that “Domains New Media, LLC is liable for Hoagland’s acts and/or omissions.” Upon information and belief, Mr. Hoagland was a director and/or officer of Domains New Media, LLC.

27. Additionally, upon information and belief, Mr. Hoagland is the founder of Beaufort Watchdog, a local government whistleblower organization that he calls a "champion of citizens." Some of Mr. Hoagland's targets in that organization have included officials with the Hilton Head

Island-Bluffton Chamber of Commerce, towns of Hilton Head and Bluffton, and the Beaufort County School District.

28. Upon information and belief, the “false and defaming statements” in which the Sulka Underlying Complaint alleges Defendant Hoagland engaged, arose out of Defendant Hoagland’s discontent with contracts the town council entered into with the local chamber of commerce[s], and other business dealings, which hurt Defendant Hoagland’s business Domains New Media, LLC and/or arose out of Mr. Hoagland’s organization called “Beaufortwatchdog.org”.

29. Therefore, to the extent the allegedly injurious conduct of Defendant Hoagland, which is the basis of the Sulka Underlying Complaint, arose out of or in connection with Defendant Hoagland’s actions, errors or omissions as a director or officer of his media company Domains New Media, LLC or Beaufortwatchdog.org, PURE is entitled to a declaration that the PURE Policy does not provide coverage for any damages associated with such conduct.

FOR A FOURTH DECLARATION

30. PURE repeats and realleges the paragraphs above as if set forth fully verbatim below.

31. Under the terms of the PURE Policy, after a loss the insured is required to cooperate with PURE in the investigation, settlement or the defense of any claim or suit and, in particular, to help with the conduct of suits and attend hearings and trials, and to secure and give evidence and obtain the attendance of witnesses.

32. Far from assisting PURE, Defendant Hoagland has interfered and continues to interfere with PURE’s attempts to defend him in the Underlying Sulka Lawsuit. Defendant Hoagland fired the attorney provided for him by PURE and has expressly refused, and continues to refuse, alternative counsel paid for by PURE, nor will he represent himself going forward in Underlying Sulka Lawsuit. On repeated occasions, Mr. Hoagland has expressed he will not appear

at any future proceedings, whether depositions, hearings, or a trial, in the Underlying Sulka Lawsuit and that he will throw any paper or court ordered subpoenas related to the matter in the trash. Defendant Hoagland has expressed that the Underlying Sulka Lawsuit is “frivolous” multiple times. He has also expressed “I don’t want to work with Pure in any form or fashion and don’t recognize these lawsuits as legal or valid. Just let the lawyers and judges do as they wish in South Carolina and Florida....guilty with facts, not guilty, 1.00 to 10m. It’s not illegal [sic] for me to fire Pure, nor refuse to recognize this lawsuit as credible.” On most, if not all, of these communications with PURE, Defendant Hoagland has courtesy copied counsel for Ms. Sulka, Johnny Parker.

33. In spite of his expressed refusal to cooperate, PURE has still attempted numerous times to secure Defendant Hoagland’s cooperation to no avail.

34. Defendant Hoagland’s continued refusal to cooperate in any way is in direct disregard to his contractual duty to assist PURE in defending the Underlying Sulka Lawsuit.

35. Defendant Hoagland’s deliberate, intentional failure to cooperate with PURE’s attempts to defend the Sulka case resulted in, and will continue to result in, material and substantial prejudice to PURE.

36. Therefore, if this Court should determine that the allegations in the Sulka Underlying Complaint raise a possibility for liability coverage, which persists despite the exclusions set forth above, then PURE is entitled to a declaration that the PURE Policies do not provide coverage for the claims alleged in the Sulka Underlying Complaint because Defendant Hoagland’s willful failure to cooperate breached his duties owed under the insurance contracts with PURE.

WHEREFORE, PURE respectfully requests that the Court inquire into these matters and declare that the PURE Policy and PURE Excess Policy do not provide liability coverage for the claims and damages alleged in the Sulka Underlying Complaint and PURE has no obligation to pay, indemnify, defend, or otherwise perform under those policies for any and all claims alleged in the Sulka Underlying Complaint, or for any future claims against Defendant Hoagland that arise out of the same course of conduct against Sulka alleged in the Sulka Underlying Complaint, together with such other and further relief as the Court may deem just and proper.

This 23rd day of February, 2021.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: s/Kristen K. Thompson

LEE C. WEATHERLY

State Bar No.: 71109

KRISTEN K. THOMPSON

State Bar No.: 100659

***Attorneys for Plaintiff Privilege Underwriters
Reciprocal Exchange***

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
lweatherly@cskl.law
kthompson@cskl.law
Ph: (843) 727-0307