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11 Lines Insurance Company

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON
14 AT YAKIMA

15 WESTCHESTER SURPLUS LINES
16 INSURANCE COMPANY, a Georgia
17 company,

18 Plaintiff,

19 v.

20 YAKIMA AIR TERMINAL
21 MCALLISTER FIELD, an agency
22 and/or department of the City of Yakima
23 and County of Yakima, Washington,
24 CITY OF YAKIMA, a Washington
25 municipal corporation; and, COUNTY
26 OF YAKIMA, a municipal corporation;

Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY JUDGMENT**

1 Plaintiff Westchester Surplus Lines Insurance Company (“Westchester”),
2 by and through its undersigned attorneys, for its Complaint for Declaratory
3 Judgment against the above-captioned Defendants, alleges as follows:

4 **NATURE OF ACTION**

5 1. This is an insurance coverage action seeking declaratory relief
6 pursuant to 28 U.S.C. §§ 2201 and 2202. Westchester seeks a determination of
7 the parties’ rights and obligations under a municipal liability policy it issued to
8 Yakima Air Terminal – McAllister Field, as more particularly described below,
9 with respect to claims asserted by M.A. West Rockies Corporation/Langdon
10 Family Revocable Trust and the Byron and Alice Lockwood Foundation in the
11 actions captioned and numbered, *Yakima Air Terminal – McAllister Field v.*
12 *M.A. West Rockies Corporation*, 10-2-00989-1, and *Byron and Alice Lockwood*
13 *Foundation v. M.A. West Rockies Corporation, et al.*, 14-2-00976-3, both of
14 which are pending in the Superior Court for the State of Washington, County of
15 Yakima.
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20 **PARTIES**

21 2. Westchester Surplus Lines Insurance Company is an insurance
22 company incorporated in Georgia and having its principal place of business in
23 Georgia. Westchester is, therefore, a citizen of the State of Georgia.
24
25 Westchester is a wholly owned subsidiary of ACE US Holdings, Inc., a
26

1 Delaware corporation, which is a wholly owned subsidiary of ACE Group
2 Holdings, Inc., a Delaware corporation, which is a wholly owned subsidiary of
3 ACE Limited, a foreign corporation (Switzerland).
4

5 3. Yakima Air Terminal – McAllister Field, is an agency of the City
6 and County of Yakima, Washington. YAT is therefore a citizen of the State of
7 Washington. The Yakima Air Terminal, the City of Yakima, and the County of
8 Yakima are collectively referred to as “YAT.”
9

10 4. The City of Yakima is a Washington municipal corporation and is
11 therefore a citizen of the State of Washington.
12

13 5. The County of Yakima is a Washington municipal corporation and
14 is therefore a citizen of the State of Washington.
15

16 JURISDICTION

17 6. This Court has jurisdiction by virtue of 28 U.S.C. § 1332, as there
18 is complete diversity of citizenship and the amount in controversy exceeds
19 \$75,000.
20

21 7. Venue is proper in this judicial district pursuant to 28 U.S.C.
22 § 1391, as Defendants are residents of this judicial district and a substantial part
23 of the events giving rise to this action occurred in this district.
24
25
26

1 8. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C.
2 §2201(a), this Court has the power to declare all rights, duties, and obligations
3 under the relevant insurance policy, whether or not further relief is or could be
4 sought.
5

6 **FACTS**
7

8 **The Unlawful Detainer Action.**

9 9. On or about March 30, 2010, YAT commenced an unlawful
10 detainer action against its tenant M.A. West Rockies in the Superior Court for
11 Yakima County. (A true and correct copy of the Summons and Complaint dated
12 March 30, 2010, Yakima Air Terminal v. M.A. West Rockies, Yakima County
13 Superior Court Case No. 10-2-00989-1, is attached hereto as Exhibit A.)
14

15 10. YAT contended that M.A. West had breached its lease and failed to
16 timely pay its monthly rent under its lease for a ramp which provided access
17 from M.A. West's property to the Yakima Airport runway.
18

19 11. M.A. West opposed the unlawful detainer proceeding and
20 contended in its Answer and other pleadings that it had timely paid its rent.
21

22 M.A. West also alleged in its Answer that YAT:
23

- 24 a. Had breached the lease agreement
25 b. Had wrongfully withdrawn excessive sums from the lease
26 payment trust account

- 1 c. Had failed to provide proper notice of insufficient lease
- 2 payments
- 3 d. Had commenced the unlawful detainer action in bad faith to
- 4 eject M.A. West from the lease premises
- 5 e. Had forced M.A. West into default

6 (A true and correct copy of the M.A. West's Answer dated April 16, 2010 is
7 attached hereto as Exhibit B.)

8
9 12. On or about May 20, 2010, the Yakima Superior Court ruled in
10 favor of YAT, and on June 10, 2010, the court issued a Writ of Restitution,
11 which restored possession of the ramp to YAT and directed the Sheriff to
12 remove M.A. West Rockies and its property from the ramp.

13
14 13. On August 16, 2010, M.A. West Rockies appealed the eviction to
15 the Washington Court of Appeals, Division III.

16
17 14. On December 10, 2013, the Court of Appeals reversed the lower
18 court's ruling and held that M.A. West Rockies had been unlawfully evicted.

19 (A true and correct copy of the Court of Appeals' decision is attached hereto as
20 Exhibit C.) Among other holdings, the Court of Appeals held that M.A. West's
21 attempts to cure alleged defaults had been improperly rejected, that YAT had
22 failed to properly apply a security deposit to unpaid rent, and that YAT had
23 failed to provide notice of other alleged defaults prior to commencing the
24 unlawful detainer proceeding.
25
26

1 15. The Court of Appeals directed the remand of the case to the trial
2 court for entry of judgment that M.A. West was “not guilty of unlawful detainer
3 of the premises, that it was unlawfully evicted therefrom, that its lease was not
4 forfeited, that the airport was not entitled to a writ of restitution and immediate
5 possession.” The Court of Appeals remanded for further proceedings, including
6 an award of attorneys’ fees, appropriate orders to restore the leased premises,
7 and restitution if appropriate.
8
9

10 **The Lockwood Claims.**
11

12 16. On January 10, 2014, the Byron and Alice Lockwood Foundation
13 gave notice of its intent to pursue a tort claim to YAT as an agency of the City
14 of Yakima.
15

16 17. The tort claim alleged that from March 30, 2010 and continuing,
17 the Lockwood Foundation was a mortgage holder for the M.A. West property
18 and lease, that YAT was aware of Lockwood’s security interest, and that YAT
19 failed to properly notify Lockwood that the lease was in default.
20

21 18. On March 14, 2014, the Lockwood Foundation commenced a
22 lawsuit against YAT, the County of Yakima, M.A. West Rockies Corporation,
23 the Langdon Family Revocable Trust, and several other entities. (A true and
24 correct copy of the Lockwood Summons and Complaint is attached hereto as
25
26

1 Exhibit D.) The Lockwood Complaint alleges that the Lockwood Foundation
2 made several loans to M.A. West Rockies that were secured by the airport
3 property and lease. The Lockwood Foundation alleges that YAT was notified of
4 its interest and failed to provide notice to the Lockwood Foundation when the
5 alleged lease defaults occurred. The Lockwood Complaint alleges that the total
6 amount of the loans and interest that were secured by the M.A. West property
7 and lease are \$4,222,337.
8

9
10 19. The Lockwood Complaint asserts claims against YAT for
11 negligence, damages to collateral, negligent misrepresentation and omission,
12 breach of contract, trespass, statutory trespass, condemnation, tortious
13 interference with contract, and tortious interference with business expectancy.
14 The Lockwood Complaint seeks monetary amounts from YAT for the value of
15 the land and/or collateral taken, lost rental income, costs and amounts to repair
16 the damages caused by the wrongful taking/intrusion to the property,
17 prejudgment interest, costs, attorneys' fees, expert expenses, and treble damages
18 allowed by statute.
19

20
21
22 **The M.A. West/Langdon Counterclaims.**
23

24 20. On March 13, 2014, the Langdon Family Revocable Trust filed
25 statutory tort claims with both the County of Yakima and the City of Yakima.
26

1 The Langdon Trust alleges that M.A. West assigned its claims to the Trust. The
2 tort claim alleges that YAT unlawfully evicted M.A. West and committed
3 statutory trespass, intentional and negligent interference with economic
4 expectancies and contractual relationships and malicious prosecution. The
5 Langdon Trust estimates its compensatory damages at \$7,000,000 plus
6 prejudgment interest, reasonable attorneys' fees, expert witness fees, and treble
7 damages for statutory trespass.
8

9
10 21. On June 25, 2014, the Langdon Trust filed its Second Amended
11 Answer and Counterclaims in the Unlawful Detainer Proceeding. (A true and
12 correct copy of the Second Amended Answer and Counterclaims is attached
13 hereto as Exhibit E.) The Langdon Trust asserts claims against YAT for
14 wrongful eviction, breach of contract, tortious interference with business
15 expectancy and economic relations, trespass and inverse condemnation.
16
17

18 **The Policy and Extended Reporting Period Endorsement.**

19
20 22. Westchester issued three successive policies to Yakima Air
21 Terminal followed by an Extended Reporting Period Endorsement:
22

23 Policy No. G24150707 (July 27, 2010 to July 27, 2011);
24 Policy No. G24150707 (July 27, 2011 to July 27, 2012);
25 Policy No. EONG24304127001 (July 27, 2012 to July 27, 2013);
26 Extended Reporting Period Endorsement (July 27, 2013 to July 27,
2014).

1 The Policies provide public officials liability and public entity liability coverage
2 and contain identical provisions unless otherwise indicated. The Policies
3 provide limits of liability of \$1,000,000 each claim/aggregate. Claims expenses
4 are subject to a separate \$1,000,000 limit and thereafter erode the \$1,000,000
5 per claim/aggregate limit of liability. The Policies generally provide coverage
6 for damages and claims expenses for which the public entity becomes legally
7 obligated to pay by reason of a claim first made against the public entity and
8 reported during the policy period, or, if elected, during the extended reporting
9 period.
10
11
12

13 23. YAT notified Westchester of the adverse Court of Appeals'
14 decision on or about December 11, 2013, during the Extended Reporting Period
15 Endorsement (the "ERP.")
16

17 24. On December 27, 2013, Westchester acknowledged receipt of
18 YAT's notice and issued a general reservation of rights. On January 15, 2014,
19 YAT notified Westchester of the Lockwood tort claim, and on January 30, 2014,
20 Westchester acknowledged receipt of the tort claim and issued a reservation of
21 rights.
22
23

24 25. On March 21, 2014, YAT notified Westchester of the Lockwood
25 Complaint dated March 14, 2014. On March 27, 2014, Westchester
26

1 acknowledged receipt of the Complaint subject to a continuing reservation of
2 rights.

3
4 26. Based upon the date of the reporting of the adverse Court of
5 Appeals' decision and the date of the tort claims, the applicable policy is the
6 Extended Reporting Period (ERP), which is subject to the terms and conditions
7 of the 2012-13 Policy. (A true and correct copy of the 2012-13 Policy and ERP
8 Endorsement is attached hereto as Exhibit F.)
9

10 **Westchester's Investigation and Coverage Determination.**

11
12 27. After receiving notice of the Lockwood and Langdon claims,
13 Westchester issued a reservation of rights letter advising YAT that it was
14 investigating coverage for these claims.
15

16 28. After completing its investigation, Westchester agreed to defend the
17 claims against YAT, the City, and the County, based upon a reservation of its
18 right to deny or limit coverage on several grounds and to seek declaratory relief
19 establishing its rights and duties.
20

21 **CLAIM FOR DECLARATORY RELIEF**

22
23 29. An actual and justiciable controversy exists between Westchester
24 and YAT, the City, and the County regarding the scope of coverage under the
25 Policy's terms and applicable law.
26

1 post-judgment interest, and settlements which
2 the **Insured** becomes legally obligated to pay
3 on account of any **Claim** first made against
4 any **Insured** during the **Policy Period** or, if
5 elected, the **Extended Reporting Period**, for
6 **Wrongful Acts** to which this **Policy** applies.
7 Such damages include punitive and exemplary
8 damages and the multiple portion of any
9 multiplied damage award, if and to the extent
10 such damages are insurable under the law of
11 the applicable jurisdiction most favorable to
12 the insurability of such damages.

13 * * * *

14 **R. Interrelated Wrongful Acts** means all
15 **Wrongful Acts** that have as a common nexus
16 any fact, circumstance, situation, event,
17 transaction, cause or series of related facts,
18 circumstances, situations, events, transactions
19 or causes.

20 **S. Personal Injury** means injury arising out of
21 one or more of the following offenses:

22 * * *

23 2. malicious prosecution;

24 * * * *

25 5. wrongful entry or eviction, or other
26 invasion of the right to private
occupancy.

* * * *

BB. Wrongful Act means:

* * *

2. with regard to Insuring Agreements I.B., any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Public Entity**; or

* * * *

32. The 2012-13 Policy contains the following relevant Exclusions:

IV. EXCLUSIONS

* * * *

D. alleging, based upon, arising out of or attributable to any:

3. **Personal Injury . . .**

E. alleging, based upon, arising out of or attributable to the operation of the laws, and principles of eminent domain, condemnation, inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use.

* * * *

K. alleging, based upon, arising out of or attributable to:

1. breach of any express, implied, actual or constructive contract, warranty, guarantee or promise...

* * * *

Q. alleging, based upon, arising out of or attributable to:

1. any prior or pending litigation or administrative or regulatory proceeding...

1 filed on or before the effective date of the first
2 policy issued and continuously renewed by
3 the **Insurer**, or the same or substantially the
4 same **Wrongful Act**, fact, circumstance or
situation underlying or alleged therein; or

5 2. any other **Wrongful Act** whenever occurring
6 which, together with a **Wrongful Act**
7 underlying or alleged in such prior or pending
8 proceeding, would constitute **Interrelated**
Wrongful Acts.

9 * * * *

10 33. The 2012-13 Policy contains the following relevant provisions
11 concerning the Optional Extended Reporting Period:

12 **VII. EXTENDED REPORTING PERIODS**

13 * * * *

14 **B. Optional Extended Reporting Period**

15 The **Public Entity** shall have the right, upon
16 payment of the additional premium set forth in
17 Item 7A of the Declarations, to any **Optional**
18 **Extended Reporting Period**, for the period set
19 forth in Item 7B of the Declarations following the
20 effective date of such cancellation or nonrenewal,
21 but only for **Claims** first made during such **Optional**
22 **Extended Reporting Period** and arising from
Wrongful Acts taking place prior to the effective
date of such termination or nonrenewal.

23 34. As set forth more particularly below, Westchester is entitled to
24 declaratory relief establishing that it owes no duty to defend or indemnify the
25
26

1 defendants from the Lockwood and Langdon claims for the reasons set forth
 2 below:

3	4	5	6	7
	Claim	Langdon	Lockwood	Basis for Non-Coverage
8	Wrongful Eviction	X		Barred by Exclusion D, Q
9	Breach of Contract	X	X	Barred by Exclusion K, Q
10	Condemnation/Inverse Condemnation	X	X	Barred by Exclusion E, Q
11	Tortious Interference With Business Expectancy	X	X	Barred by Exclusion Q
12	Trespass	X	X	Barred by Exclusion D, Q
13	Negligence		X	Barred by Exclusion Q
14	Negligent Misrepresentation		X	Barred by Exclusion Q
15	Damage to Collateral		X	Barred by Exclusion Q
16	Tortious Interference With Contract		X	Barred by Exclusion Q

17 **COUNT ONE – EXCLUSION D – PERSONAL INJURY/WRONGFUL**
 18 **EVICTIION/TRESPASS**

19 35. Westchester re-alleges the preceding paragraphs.

20 36. Exclusion D bars coverage for claims “alleging, based upon, arising
 21 out of or attributable to any . . . Personal Injury. . . .”
 22
 23
 24
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1 42. The Langdon claim for inverse condemnation (Sixth Cause of
2 Action, Second Amended Counterclaims) and the Lockwood claim for
3 condemnation (Seventh Cause of Action, Complaint) fall within Exclusion E
4 and are therefore excluded from coverage under the Policy.
5

6 **COUNT THREE – EXCLUSION K – BREACH OF CONTRACT**
7

8 43. Exclusion K bars coverage for claims “alleging, based upon, arising
9 out of or attributable to . . . breach of any express, implied, actual or constructive
10 contract.”
11

12 44. The Langdon claim for breach of contract (Second Cause of Action,
13 Second Amended Counterclaims) and the Lockwood claim for breach of
14 contract (the Fourth Cause of Action, Complaint) fall within Exclusion K and
15 are therefore excluded from coverage under the Policy.
16

17 **COUNT FOUR – EXCLUSION Q – PRIOR AND PENDING**
18

19 **LITIGATION**
20

21 45. Exclusion Q.1 bars coverage for claims “alleging, based upon,
22 arising out of or attributable to . . . any prior or pending litigation . . . filed on or
23 before the effective date of the first policy issued and continuously renewed by
24 Insurer, or the same or substantially the same Wrongful Act, fact, circumstance
25 or situation underlying or alleged therein. . . .”
26

1 46. YAT's unlawful detainer proceeding was filed on or about
2 March 30, 2010.

3
4 47. The first Westchester Policy incepted approximately four months
5 later on July 27, 2010.

6 48. YAT's unlawful detainer proceeding was filed before the effective
7 date of the first policy issued and continuously renewed by Westchester and
8 constitutes a "prior or pending" proceeding within the meaning of the Policy.
9

10 49. Exclusion Q.2 bars coverage for claims "alleging, based upon,
11 arising out of, or attributable to ... any other Wrongful Act whenever occurring
12 which, together with a Wrongful Act underlying or alleged in such prior or
13 pending proceeding, would constitute "Interrelated Wrongful Acts."
14

15 50. The Policy defines "Wrongful Acts" as "any actual or alleged act,
16 error, omission, misstatement, misleading statement, neglect or breach of duty
17 by the Public Entity."
18

19 51. The Policy defines "Interrelated Wrongful Acts" as "all Wrongful
20 Acts that have as a common nexus any fact, circumstance, situation, event,
21 transaction, cause or series of related facts, circumstances, situations, events,
22 transactions or causes."
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1 52. All of the Langdon Counterclaims (Wrongful Eviction, Breach of
2 Contract, Tortious Interference, Trespass – RCW 4.24.630, Trespass, and
3 Inverse Condemnation) allege “Wrongful Acts” that are “based upon, arise out
4 of, or are attributable to” . . . the unlawful detainer proceeding, or “the same or
5 substantially the same Wrongful Act, fact, circumstance, or situation underlying
6 or alleged” in the unlawful detainer proceeding, or “any other Wrongful Act
7 whenever occurring which together with the Wrongful Act underlying or alleged
8 in such prior or pending proceeding, would constitute Interrelated Wrongful
9 Acts.” Therefore, Exclusion Q bars coverage for all of the Langdon
10 Counterclaims and Westchester has no obligation to provide a defense or
11 indemnity for any portion of these claims.
12

13 53. All of the Lockwood claims against YAT (Negligence and Damage
14 to Collateral, Negligent Misrepresentation, Breach of Contract, Trespass,
15 Statutory Trespass, Condemnation, Tortious Interference with Contract, and
16 Tortious Interference with Business Expectancy) allege “Wrongful Acts” that
17 are “based upon, arising out of or attributable to” the unlawful detainer
18 proceeding, or “substantially the same Wrongful Act, fact or circumstance or
19 situation underlying“ the unlawful detainer proceeding, or “any other Wrongful
20 Act whenever occurring which together with the Wrongful Act underlying or
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1 alleged in such prior or pending proceeding, would constitute Interrelated
2 Wrongful Acts.” Therefore, Exclusion Q bars coverage for all of the Lockwood
3 Claims and Westchester has no obligation to provide a defense or indemnity for
4 any portion of these claims.
5

6 **PRAYER FOR RELIEF**
7

8 WHEREFORE, Plaintiff Westchester Surplus Lines Insurance Company
9 respectfully requests that this Court adjudicate and declare the rights of the
10 parties, and that the Court declare as follows:
11

- 12 1. That the Extended Reporting Period Endorsement applies to
13 Langdon’s Second Amended Counterclaims and Lockwood’s Complaint;
- 14 2. That Coverage I.B. Public Entity Liability applies to Langdon’s
15 Second Amended Counterclaims and Lockwood’s Complaint;
16
- 17 3. That Langdon’s claim for unlawful eviction (First Cause of Action
18 of the Second Amended Counterclaims) constitutes a claim for “Personal
19 Injury” within the meaning of Exclusion D of the Policy, and is therefore
20 excluded from coverage under the Policy.
21
- 22 4. That the Langdon and Lockwood claims for Trespass (Fourth and
23 Fifth Causes of Action of the Second Amended Answer, and the Fifth Cause of
24 Action of the Lockwood Complaint) constitute claims for “Personal Injury”
25
26

1 within the meaning of Exclusion D of the Policy, and are therefore excluded
2 from coverage under the Policy;

3
4 5. That the Langdon claim for inverse condemnation (Sixth Cause of
5 Action, Second Amended Counterclaims) and the Lockwood claim for
6 condemnation (Seventh Cause of Action, Complaint) fall within Exclusion E
7 and are therefore excluded from coverage under the Policy.
8

9 6. That the Langdon claim for breach of contract (Second Cause of
10 Action, Second Amended Counterclaims) and the Lockwood claim for breach of
11 contract (the Fourth Cause of Action, Complaint) fall within Exclusion K and
12 are therefore excluded from coverage under the Policy.
13

14
15 7. That all of the Langdon Counterclaims (Wrongful Eviction, Breach
16 of Contract, Tortious Interference, Trespass – RCW 4.24.630, Trespass, and
17 Inverse Condemnation) allege “Wrongful Acts” that are “based upon, arise out
18 of, or are attributable to” ... the unlawful detainer proceeding, or “the same or
19 substantially the same Wrongful Act, fact, circumstance, or situation underlying
20 or alleged” in the unlawful detainer proceeding. Therefore, Exclusion Q bars
21 coverage for all of the Langdon Counterclaims and Westchester has no
22 obligation to provide a defense or indemnity for any portion of these claims.
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1 8. That all of the Lockwood claims against YAT (Negligence and
2 Damage to Collateral, Negligent Misrepresentation, Breach of Contract,
3 Trespass, Statutory Trespass, Condemnation, Tortious Interference with
4 Contract, and Tortious Interference with Business Expectancy) allege
5 “Wrongful Acts” that are “based upon, arising out of or attributable to” the
6 unlawful detainer proceeding, or “substantially the same Wrongful Act, fact or
7 circumstance or situation underlying” the unlawful detainer proceeding, or “any
8 other Wrongful Act whenever occurring which together with the Wrongful Act
9 underlying or alleged in such prior or pending proceeding, would constitute
10 Interrelated Wrongful Acts.” Therefore, Exclusion Q bars coverage for all of
11 the Lockwood Claims and Westchester has no obligation to provide a defense or
12 indemnity for any portion of these claims.
13

14 9. That Westchester is entitled to withdraw the defense being provided
15 to YAT, the City of Yakima and the County of Yakima under the Policy.
16

17 10. Grant such other relief as the Court may deem just and proper.
18

19 DATED this 5th day of February, 2015.
20

21 COZEN O’CONNOR
22

23 By / s / Shauna Martin Ehlert
24 Thomas M. Jones, WSBA #13141
25 Shauna Martin Ehlert, WSBA #21859
26 Of Counsel for Plaintiff Westchester Surplus
 Lines Insurance Company