

NORMAN J. EMANUEL d/b/a  
EMANUEL TIRE COMPANY  
1300 Moreland Avenue  
Baltimore, Maryland 21216

And

EMANUEL TIRE COLLECTION OF MARYLAND, LLC  
1300 Moreland Avenue  
Baltimore, Maryland 21216

And

EMANUEL TIRE MANAGEMENT  
COMPANY OF MARYLAND, LLC  
1300 Moreland Avenue  
Baltimore, Maryland 21216

And

EMANUEL TIRE OF PENNSYLVANIA, INC.  
1300 Moreland Avenue  
Baltimore, Maryland 21216

And

EMANUEL TIRE TRANSPORTATION, LLC  
1300 Moreland Avenue  
Baltimore, Maryland 21216

And

EMANUEL TIRE WHOLESALE OF MARYLAND, LLC  
1300 Moreland Avenue  
Baltimore, Maryland 21216

Plaintiffs

Vs.

ACE AMERICAN INSURANCE COMPANY  
436 Walnut Street  
Philadelphia, Pennsylvania 19106-3703

Defendant

\* \* \* \* \*

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* MARYLAND  
\*  
\* CASE NO.  
\* \_\_\_\_\_

## COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiffs, Norman J. Emanuel d/b/a Emanuel Tire Company, Emanuel Tire Collection of Maryland, LLC, Emanuel Tire Management Company of Maryland, LLC, Emanuel Tire of Pennsylvania, Inc., Emanuel Tire Transportation, LLC, and Emanuel Tire Wholesale of Maryland, LLC (collectively "Plaintiffs"), for its claims for Declaratory Relief against Ace American Insurance Company ("Ace") states as follows:

1. The Plaintiff, Norman J. Emanuel, is an individual, who is a citizen and resident of the State of Maryland. Mr. Emanuel does business as Emanuel Tire Company.
2. The remaining Plaintiffs are all corporations or limited liability companies formed and existing under the laws of the State of Maryland.
3. The principal place of business of Emanuel Tire of Pennsylvania, Inc. is located in Conshohocken, Pennsylvania. The principal place of business of the remaining Plaintiffs is Baltimore, Maryland.
4. Ace is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in New York. Ace is engaged in the business of issuing contracts of insurance, including commercial general liability policies.
5. Pursuant to Section 3-401 *et seq.* of the Courts and Judicial Proceedings Article of the Maryland Code, this action seeks a declaration of the respective rights and obligations of Ace and each of the Plaintiffs under an insurance policy issued by Ace to the Plaintiffs.
6. This Court has personal jurisdiction over Ace because the action arises from Ace's transaction of business, directly or through agents, in the State of Maryland and its issuance of an insurance policy in the State of Maryland.

7. An actual controversy exists between the parties inasmuch as Ace contends and Plaintiffs dispute, that the commercial general liability insurance policy issued by Ace to the Plaintiffs does not provide coverage for any amounts the Plaintiffs may incur as a result of legal proceedings brought against them by injured parties and wrongful death Plaintiffs arising out of a single-vehicle automobile accident which allegedly occurred on August 9, 2007 in the north bound lanes of Interstate 75, approximately one mile south of Micanopy, Alachua County, Florida (the Occurrence).

### FACTS

8. As a result of the Occurrence, four lawsuits have been filed against the Plaintiffs and other defendant parties both in the State of Florida and in the State of Maryland (collectively “the Lawsuit”). The Lawsuits are as follows:

**Exhibit 1:** *Russell Williams, Sr., et al. vs. Continental Tire The Americas, LLC, et al.*  
Circuit Court for Baltimore City, MD Case No. 24-C-10-005762

**Exhibit 2:** *Lakeisha Felicia Dyer, et al. vs. Continental Tire The Americas, LLC, et al.*  
Circuit Court for Baltimore City, MD Case No. 24-C-10-005763

**Exhibit 3:** *Vanessa E. Harrison, et al. vs. Continental Tire The Americas, LLC, et al.*  
Circuit Court for Baltimore City, MD Case No. 24-C-10-005764

**Exhibit 4:** *Gregory Harrison, et al. vs. Continental Tire North America, Inc., et al.*  
Circuit Court of the Eighth Judicial Circuit, in and for Alachua County, FL  
Case No. 01-09-CA-4003J

9. The Lawsuits allege:

(a) At the time of the Occurrence, the vehicle, a 2004 Chevrolet Trailblazer, was occupied by at least seven individuals:

1. Vanessa E. Harrison – driver;
2. Gregory Harrison;
3. Kayla Harrison, a minor;
4. Myrna Felicia Williams;
5. Dai-Jah Armani Dyer, a minor;

6. Desteni Dyer, a minor;
7. Kaylin S. Harrison, a minor.

(b) Kaylin S. Harrison, Dai-Jah Armani Dyer and Myrna Felicia Williams were critically injured in the Occurrence and died as a result of their injuries. Vanessa E. Harrison, Gregory Harrison, Kayla Harrison and Desteni Dyer received serious personal injuries as a result of the Occurrence.

(c) The accident was caused by sudden tread separation of a Continental Contitrac tire mounted on the right rear of the vehicle.

(d) The subject tire was defectively designed, manufactured, tested and inspected.

(e) The Plaintiffs sold and installed the subject tire.

(f) The Plaintiffs failed to inspect the subject tire, subsequently installed the tire and failed to warn defects.

(g) The Plaintiffs negligently inspected, graded, culled and selected the subject tire from used tires as fit sales to the general public (Maryland Lawsuits only).

10. The Plaintiffs have submitted the Lawsuits to Ace for defense and coverage under the Commercial General Liability Policy. A copy of the Policy is attached as **Exhibit 5**.

11. Ace has declined and refused to provide either a defense or coverage for any of the Lawsuits. Consequently, the Plaintiffs have retained counsel both in Florida and in Maryland to defend the Lawsuits and have incurred and are incurring legal expenses and litigation costs as a result of Ace's refusal to defend the Lawsuits.

12. The Ace Policy No. G2 17 76 79 8 was issued by Ace to the Plaintiffs for a period from January 24, 2007 to January 24, 2008. The Policy has the following limits of liability:

General Aggregate - \$2,000,000.00  
Product/Completed Operations Aggregate - \$2,000,000.00  
Medical Expense (any one person or organization) - \$10,000.00

There is no Deductable for the foregoing coverages.

13. Subject to all of its terms, conditions and exclusions, Section I of the Policy provides:

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.

14. Section IV of the Policy provides:

**7. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured, and
- b. Separately to each insured against whom claim is made or "suit" is brought.

15. Section V – Definitions of the Policy defines the term "Products-completed operations hazard" as follows:

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work".

Endorsement LD-15760 defines "your product" to include:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You.

Furthermore, "Your product" includes:

(2) "The providing of or failure to provide warnings or instructions."

16. In declining and refusing to provide either a defense or coverage for any of the Lawsuits, Ace has relied on an exclusion to Form CG2153 entitled "Exclusion – Designated Ongoing Operations." The description of "Designated Ongoing Operations" is amended as follows: "ANY AND ALL OPERATIONS THAT CONSIST OF RETAIL USED TIRES TO INCLUDE PERSONAL INJURY AND MEDICAL PAYMENTS."

17. The Exclusion Form states:

This insurance does not apply to "bodily injury" or "property damage" arising out of the ongoing operations described in the Schedule of this Endorsement regardless of whether such operations are conducted by you or on your behalf or whether the operations are conducted for yourself or others."

#### COUNT I

**For Declaratory Relief that the subject insurance Policy requires Ace to provide a defense to the Plaintiffs for the Lawsuits under Coverage A – Bodily Injury and Property Damage Liability.**

18. Plaintiffs repeat and reallege Paragraphs 1 through 17 as if fully set forth herein.

19. Under the allegations of the Lawsuits, the Exclusion-designation Ongoing Operations does not apply because the tire allegedly sold and installed by the Plaintiffs was not in the Plaintiffs' physical possession at the time of the Occurrence, and, therefore, the bodily injuries alleged in the Lawsuits are covered as a "Products-completed operations hazard."

20. Furthermore, as will be shown by extrinsic evidence, the Plaintiffs did not sell or install the subject tire, as the Plaintiffs do not perform any operations that consist of "retail used tires."

WHEREFORE, the Plaintiffs are entitled to a declaration that the subject insurance Policy does afford them a defense and coverage for the claims and damages sought in the Lawsuits and that Ace has a duty to defend the Lawsuits and/or indemnify the Plaintiffs as a result of any judgment entered against any of them in the Lawsuits.

**COUNT II**  
**Attorneys' Fees and Litigation Expenses**

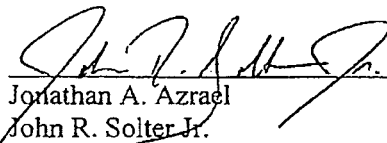
21. Plaintiffs repeat and reallege Paragraphs 1 through 20 as if fully set forth herein.

22. Because Ace has refused to defend the Lawsuits, the Plaintiffs have incurred and continue to incur legal fees and litigation expenses in defending both the Lawsuits in Florida and in Maryland.

23. Ace has breached its duty to defend the Lawsuits, thereby causing the Plaintiffs to incur the legal fees and litigation expenses mentioned above.

WHEREFORE, this suit is brought and the Plaintiffs claim damages in an amount to be proven at trial to reimburse for the legal fees and litigation expenses incurred in defending the Lawsuits and in prosecuting the action for declaratory judgment.

Respectfully submitted,



Jonathan A. Azrael

John R. Solter Jr.

Azrael, Franz, Schwab & Lipowitz, LLC  
101 E. Chesapeake Avenue, 5<sup>th</sup> Floor  
Baltimore, Maryland 21286  
410-821-6800

*Attorneys for Plaintiffs*

Circuit Court for \_\_\_\_\_

City or County \_\_\_\_\_

**CIVIL - NON-DOMESTIC CASE INFORMATION REPORT**

**DIRECTIONS:**

*Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.*

*Defendant: You must file an Information Report as required by Rule 2-323(h).*

**THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.**

FORM FILED BY:  PLAINTIFF  DEFENDANT CASE NUMBER \_\_\_\_\_ (Clerk to insert)

CASE NAME: \_\_\_\_\_ vs. \_\_\_\_\_  
Plaintiff Defendant

JURY DEMAND:  Yes  No Anticipated length of trial: \_\_\_\_\_ hours or \_\_\_\_\_ days

RELATED CASE PENDING?  Yes  No If yes, Case #(s), if known: \_\_\_\_\_

Special Requirements?  Interpreter (Please attach Form CC-DC 41)  
 ADA accommodation (Please attach Form CC-DC 49)

**NATURE OF ACTION  
(CHECK ONE BOX)**

**DAMAGES/RELIEF**

<p><b>TORTS</b></p> <input type="checkbox"/> Motor Tort <input type="checkbox"/> Premises Liability <input type="checkbox"/> Assault & Battery <input type="checkbox"/> Product Liability <input type="checkbox"/> Professional Malpractice <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Business & Commercial <input type="checkbox"/> Libel & Slander <input type="checkbox"/> False Arrest/Imprisonment <input type="checkbox"/> Nuisance <input type="checkbox"/> Toxic Torts <input type="checkbox"/> Fraud <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Lead Paint <input type="checkbox"/> Asbestos <input type="checkbox"/> Other _____	<p><b>LABOR</b></p> <input type="checkbox"/> Workers' Comp. <input type="checkbox"/> Wrongful Discharge <input type="checkbox"/> EEO <input type="checkbox"/> Other _____	<p><b>A. TORTS</b></p> <p>Actual Damages</p> <input type="checkbox"/> Under \$7,500 <input type="checkbox"/> \$7,500 - \$50,000 <input type="checkbox"/> \$50,000 - \$100,000 <input type="checkbox"/> Over \$100,000	<input type="checkbox"/> Medical Bills \$ _____ <input type="checkbox"/> Property Damages \$ _____ <input type="checkbox"/> Wage Loss \$ _____
<p><b>CONTRACTS</b></p> <input type="checkbox"/> Insurance <input type="checkbox"/> Confessed Judgment <input type="checkbox"/> Other _____	<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> Judicial Sale <input type="checkbox"/> Condemnation <input type="checkbox"/> Landlord Tenant <input type="checkbox"/> Other _____	<p><b>B. CONTRACTS</b></p> <input type="checkbox"/> Under \$10,000 <input type="checkbox"/> \$10,000 - \$20,000 <input type="checkbox"/> Over \$20,000	<p><b>C. NONMONETARY</b></p> <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Injunction <input type="checkbox"/> Other _____
<p><b>OTHER</b></p> <input type="checkbox"/> Civil Rights <input type="checkbox"/> Environmental <input type="checkbox"/> ADA <input type="checkbox"/> Other _____			

**ALTERNATIVE DISPUTE RESOLUTION INFORMATION**

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)  
A. Mediation  Yes  No  
B. Arbitration  Yes  No  
C. Settlement Conference  Yes  No  
D. Neutral Evaluation  Yes  No

**TRACK REQUEST**

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

1/2 day of trial or less  
 1 day of trial time  
 2 days of trial time  
 3 days of trial time  
 More than 3 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND COMPLEX SCIENCE AND/OR MEDICAL CASE MANAGEMENT PROGRAM (ASTAR), AS WELL AS ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE COUNTY.

Date \_\_\_\_\_ Signature \_\_\_\_\_



**BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM**

*For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.*

Expedited  
Trial within 7 months  
of Filing

Standard  
Trial within 18 months  
of Filing

EMERGENCY RELIEF REQUESTED \_\_\_\_\_

Signature

Date

**COMPLEX SCIENCE AND/OR MEDICAL CASE  
MANAGEMENT PROGRAM (ASTAR)**

*FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO AN ASTAR RESOURCE JUDGE under Md. Rule 16-202  
Please check the applicable box below and attach a duplicate copy of your complaint.*

Expedited - Trial within 7 months of Filing

Standard - Trial within 18 months of Filing

**IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.**

**CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)**

Expedited Trial 60 to 120 days from notice. Non-jury matters.

Standard-Short Trial 210 days.

Standard Trial 360 days.

Lead Paint Fill in: Birth Date of youngest plaintiff \_\_\_\_\_

Asbestos Events and deadlines set by individual judge.

Protracted Cases Complex cases designated by the Administrative Judge.

**CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY**

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

Liability is conceded.

Liability is not conceded, but is not seriously in dispute.

Liability is seriously in dispute.

**CIRCUIT COURT FOR BALTIMORE COUNTY**

- |   |   |
|---|---|
| <input type="checkbox"/> Expedited<br>(Trial Date-90 days)          | Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.   |
| <input type="checkbox"/> Standard<br>(Trial Date-240 days)          | Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.   |
| <input type="checkbox"/> Extended Standard<br>(Trial Date-345 days) | Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency. |
| <input type="checkbox"/> Complex<br>(Trial Date-450 days)           | Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.   |