

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

FENTON CONSTRUCTION, INC., A.D.,
L.L.C., and CASEY FENTON, Individually,

Plaintiffs,

vs.

CENTRAL BANK, UNITED FIRE AND
CASUALTY COMPANY, and WILLIAM
COCHRAN-BRAY, in his capacity as Agent
of UNITED FIRE AND CASUALTY
COMPANY and CENTRAL BANK,

Defendants.

LACV NO:

**PETITION AND
JURY DEMAND**

COME NOW FENTON CONSTRUCTION, INC, A.D., L.L.C., and CASEY FENTON (collectively referred to herein as “Plaintiffs”) by and through their attorneys, and for their causes of action against CENTRAL BANK, UNITED FIRE AND CASUALTY COMPANY, and WILLIAM COCHRAN-BRAY, in his capacity as Agent of CENTRAL BANK and UNITED FIRE AND CASUALTY COMPANY (collectively referred to herein as “Defendants”), state as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff Fenton Construction Inc. (“FCI”) was at all times material hereto an Iowa Corporation with its principal place of business at 23155 C80, Sioux City, Iowa 51108.

2. Plaintiff A.D., L.L.C. (“AD”) was at all times material hereto an Iowa Limited Liability Company with its principal place of business at 1800 3rd Street, Sioux City, Iowa 51101.

3. Plaintiff Casey Fenton (“Fenton”) was at all times material hereto an Iowa resident and officer of Plaintiffs FCI and AD.

4. Defendant Central Bank (“Central”) was at all times material hereto an Iowa Corporation with its principal place of business at PO Box 578, Storm Lake, Iowa, 50588.

5. Defendant United Fire and Casualty Company (“United”) was at all times material hereto an Iowa Corporation with its principal place of business at 118 2nd Avenue SE, Cedar Rapids Iowa 52401.

6. Defendant William Cochran-Bray (“Bray”) was at all times material hereto a resident of Iowa. Bray was an insurance agent licensed to do business in the State of Iowa, and an agent of both Defendant Central and Defendant United with actual and apparent authority to write and bind insurance coverage on behalf of Central and United.

7. The Court has jurisdiction over the parties, and venue is proper in this Court.

8. The amount at issue in this case exceeds the minimum jurisdictional amount for this Court.

II. FACTUAL BACKGROUND

9. On or about January 1, 2016, Defendants Central and United, through their agent Bray, issued to Plaintiff FCI, as named insured, a commercial auto coverage policy number 60400884 (the “Policy”) providing for insurance coverages as shown on the declarations page thereof at **APPENDIX 1** attached hereto, including, but not limited to, uninsured motorist coverage, underinsurance coverage, medical pay coverage and collision coverage. The Policy covered several construction vehicles and other equipment owned by the Plaintiffs.

10. The Policy named Plaintiff AD as an “additional insured.”

11. For eight years prior to March 2, 2016, Plaintiffs obtained insurance coverage from Defendants Central and United through their agents, including Defendant Bray, and

relied upon them for their commercial insurance needs, paying \$500,000 in premiums over the years to Defendants for such coverage.

12. It was the normal course of business for Fenton and his companies to obtain coverage from Defendants for various vehicles and other construction equipment via an informal request, such as through phone calls, email, or faxes.

13. Coverage had successfully been obtained for Plaintiffs' vehicles and other construction equipment via such informal communication in the past.

14. Defendant United has admitted under oath that such method of procuring coverage was not unusual or inappropriate and does not constitute a violation of any insurance agreement between the parties.

15. It was the normal course of business for Plaintiff Fenton to prepare an inventory list each year, typically between the middle of December and middle of January, itemizing all the equipment and autos owned by himself, FCI, and/or AD.

16. Plaintiff Fenton would then forward that inventory list to his banker and insurance agent.

17. Defendant Bray had received such inventory lists prior to the issuance of the Policy at issue in this litigation.

18. After the inception date of the Policy and prior to March 2, 2016, Plaintiff Fenton discovered that several of the FCI and AD vehicles on a prior inventory list he had given to agent Bray were not included on the Policy's coverage schedule.

19. On March 2, 2016, Plaintiff Fenton sent an email with enclosures (the "March 2nd Email"), attached hereto as **APPENDIX 2**, to Defendant Bray, requesting that he provide proof of insurance for the vehicles identified in the enclosures.

20. One of the vehicles for which proof of insurance was requested was a 2015 Ford F-350 pickup owned by AD.

21. Plaintiffs believed Defendant Bray would and had bound insurance on the vehicles identified in the March 2nd Email enclosures through Defendants Central and United.

22. Based on that belief, Plaintiffs did not seek other insurance for the vehicles identified in the March 2nd Email enclosures, including the 2015 Ford F-350.

23. Defendants did not notify Plaintiffs that the 2015 Ford F-350 was not and/or would not be covered by the Policy at any time between March 2, 2016, and March 24, 2016.

24. On March 24, 2016, in Sioux City, Woodbury County, Iowa, Plaintiff Fenton, while operating the 2015 Ford F350 pickup was struck head on by an underinsured drunk driver (the "Accident") resulting in serious personal injuries to Fenton and injuries and damages to all Plaintiffs.

25. At the time of the Accident, Fenton was operating the 2015 Ford F350 with permission of the owner, Plaintiff AD.

26. Fenton timely reported the Accident to Defendants on the same date thereof via telephone call to Defendant Bray.

27. Over the next several days, Defendant Bray acted in all respects as if the Accident was covered under Plaintiffs' Policy:

- a. Bray obtained the police report on the Accident, including driving from Spirit Lake, Iowa, to Sioux City, Iowa, to do so.
- b. Bray discussed Fenton's injuries and damages with Fenton, asking if he had sought treatment and even advising Fenton that he should do so.

c. Bray discussed with Fenton whether to file a third-party claim against the liability coverage of the drunk driver.

d. On April 4, 2016, Plaintiff Fenton and Defendant Bray exchanged emails wherein Defendant Bray stated "We have not turned [the Accident] in to UFG yet. Do you want me to file a claim?" and to which Plaintiff Fenton responded "I'm good with what ever you think we should do. What are your thoughts?"

28. It was not until June 15, 2016, almost three months after the accident, that Defendant Bray informed Fenton via email that there was no coverage for the "F-150" [sic] involved in the Accident.

29. Defendant United did not formally advise Plaintiffs that it was denying coverage for the accident until September 8, 2016, when it sent a denial letter to Fenton. The grounds for denial were, among other things, that the Agent did not bind coverage with, or notify, United of the request for coverage.

30. Since learning that the 2015 Ford F350 was not covered under the Policy, Plaintiff Fenton has suffered from severe anxiety and loss of sleep and sustained other physical/mental maladies.

31. Defendant United has admitted under oath that Agent Bray should have taken some action in response to the March 2nd Email, but did not do so and such inaction was "unusual."

32. This Court, Honorable John Ackerman presiding, has ruled in an earlier but related proceeding that Defendant United is liable for the fault of Defendant Bray to the extent Bray is found to be at least 50% at fault in the instant case. See Woodbury County,

LACV 172878, *United Fire and Casualty Company vs. Fenton Construction, Inc; AD L.L.C.; and Casey Fenton* Ruling of Judge Ackerman on July 17, 2017, *Amended Ruling*. See **APPENDIX 3**.

33. Judge Ackerman's July 17, 2017, ruling is entitled to preclusive effect in this case. Plaintiffs ask the Court to take judicial notice of such ruling.

III. CAUSES OF ACTION

COUNT I - NEGLIGENT FAILURE TO PROCURE INSURANCE COVERAGE

34. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, each and every foregoing allegation.

35. Defendant Bray and Plaintiffs had a longstanding agent-insured relationship.

36. Defendant Bray owed Plaintiffs a duty to exercise such reasonable skill and ordinary diligence as may fairly be expected from a person in his profession or situation, in doing what is necessary to effect a policy upon receiving a request for insurance.

37. Under the usual business practices between the parties, the March 2nd Email constituted a request for insurance on the 2015 Ford F350 on behalf of Plaintiffs.

38. Defendant Bray as agent for Defendants Central and United had actual and apparent authority to write coverage and bind Defendants Central and United under an Agency Agreement between Defendants.

39. Defendant Bray failed to act with the reasonable skill or ordinary diligence as may fairly be expected from a person in his profession or situation in regards to the March 2nd Email.

40. Such failure by Defendant Bray was a breach of the duty he owed to Plaintiffs.

41. Defendants' negligence as above described proximately caused the following injuries and damages, in an amount to be determined at trial, to Plaintiffs, including:

- a. Past and Future Medical Expenses—Casey Fenton (including upcoming back surgery)
- b. Past and Future Pain and Suffering—Casey Fenton
- c. Past and Future Loss of Function—Casey Fenton
- d. Loss of Income—Casey Fenton/Fenton Construction, Inc. (in excess of \$300,000)
- e. Loss of Future Earning Capacity—Casey Fenton
- f. Uncompensated Property Damage/Collision Coverage—A.D., L.L.C. (roughly \$50,000)

COUNT II – NEGLIGENT MISREPRESENTATION

42. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, each and every foregoing allegation.

43. Defendant Bray, in the course of his employment, supplied false information to Plaintiffs by failing to notify Plaintiffs that the 2015 Ford F350 was not covered under the Policy and/or by acting for an extended period of time after the Accident as though the 2015 Ford F350 was covered under the Policy.

44. Defendant Bray, at all relevant times and for several years preceding the Accident, also represented to Plaintiffs that he was capable of handling Plaintiffs' insurance needs.

45. Defendant Bray provided such false information for the purpose of guiding Plaintiff's business transactions, particularly in regards to procuring financial gain from insurance premiums and in regards to Plaintiffs' filing of a claim with United after the Accident.

46. Plaintiffs relied upon Defendant Bray, and by extension Defendants Central and United, to cover the vehicles identified in the March 2nd Email, including but not limited to the 2015 Ford F350.

47. Defendant Bray had a duty to either procure the requested coverage for Plaintiffs or advise the Plaintiffs that he could not or would not procure such coverage so that they could obtain the requested coverage on their own from another carrier.

48. Defendant Bray neither procured the requested coverage nor advised the Plaintiffs to seek coverage elsewhere.

49. Plaintiffs did not become aware of the lack of coverage until months after the Accident.

50. Defendant Bray failed to exercise reasonable care or competence in communicating information regarding the coverage or lack thereof of the 2015 Ford F350 to Plaintiffs.

51. As a result of their reliance on Defendant Bray, Plaintiffs refrained from seeking coverage elsewhere for the 2015 Ford F350.

52. Plaintiffs relied to their detriment on Agent Bray's actions and their reliance was reasonable and justified under the circumstances.

53. As a result of Defendant Bray's negligent misrepresentations, Plaintiffs were damaged in an amount to be determined at trial.

COUNT III – EQUITABLE ESTOPPEL

54. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, each and every foregoing allegation.

55. Plaintiffs had a long history of requesting coverage for vehicles through Defendant Bray via informal email communication.

56. Defendant Bray as agent for Defendants Central and United had actual and apparent authority to write coverage and bind Defendants Central and United under an Agency Agreement between Defendants.

57. Plaintiffs had obtained coverage for vehicles in the past by sending an email similar to the March 2nd Email to Defendant Bray.

58. Plaintiffs relied upon Defendant Bray, and by extension Defendants Central and United, to cover the vehicles identified in the March 2nd Email, including but not limited to the 2015 Ford F350.

59. Defendant Bray had a duty to either procure the requested coverage for Plaintiffs or advise the Plaintiffs that he could not or would not procure such coverage so that they could obtain the requested coverage on their own.

60. Defendant Bray neither procured the requested coverage nor advised the Plaintiffs to seek coverage elsewhere.

61. Instead, Defendant Bray continued to act as if there were coverage, for months after the March 2nd Email.

62. Defendant Bray concealed from the Plaintiffs the fact that the 2015 Ford F350 was not insured under the Policy.

63. Plaintiffs did not become aware of the lack of coverage until months after the Accident.

64. As a result of their reliance on Defendant Bray, Plaintiffs refrained from seeking coverage elsewhere for the 2015 Ford F350. Defendants are estopped by their silence from denying that Plaintiffs' reliance was reasonable.

65. Plaintiffs relied to their detriment on Defendant Bray's actions under the circumstances and their reliance was reasonable and justified.

66. Defendant Bray intended the Plaintiffs so to rely.

67. Plaintiffs' reliance on Defendant Bray, justifiable under the circumstances, proximately caused the Plaintiffs damages described in Paragraph 41 above, in an amount to be determined at trial.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

68. Plaintiffs reallege and incorporate by reference, as though fully set forth herein, each and every foregoing allegation.

69. Defendant Bray's actions in failing to insure the 2015 Ford F350, failing to notify Plaintiffs that the 2015 Ford F350 was not covered under the Policy and/or by acting for an extended period of time after the Accident as though the 2015 Ford F350 was covered under the Policy were outrageous under the circumstances.

70. Defendant Bray acted either intentionally or with reckless disregard for the probability that Plaintiff Fenton would suffer emotional distress upon learning the 2015 Ford F350 was not covered under the Policy.

71. Since learning that the 2015 Ford F350 was not covered under the Policy, Plaintiff Fenton has suffered from severe anxiety and loss of sleep and sustained other physical/mental maladies.

72. Plaintiff Fenton's emotional distress is a direct and proximate result of Defendant Bray's intentional misconduct or reckless disregard for Plaintiff Fenton's emotional state.

WHEREFORE, Plaintiffs pray for judgment against Defendants in a fair and reasonable amount to be determined by the trier of fact, pre- and post-judgment interest on such judgment, the costs of this action, and any other relief this Court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all factual issues herein.

Dated this 1st day of March 2018.

GOOSMANN LAW FIRM, P.L.C.

BY: /s/ Anthony L. Osborn
ANTHONY L. OSBORN, AT0009513
410 5th Street
Sioux City, IA 51101
Phone: (712) 226-4000
Fax: (712) 224-4517
anthony@goosmannlaw.com
ATTORNEY FOR PLAINTIFFS

Original Filed via EDMS

UNITED FIRE & CASUALTY COMPANY

PO Box 73909, Cedar Rapids, IA 52407

POLICY NUMBER: 60400884

ACCOUNT NUMBER: 3000195661 (2) COMMERCIAL AUTO

DIRECT BILL - 140

COMMERCIAL AUTO COVERAGE PART

ISSUE DATE	12-30-2015	SKG REPLACEMENT OF	0101	60400884	DECLARATIONS	RENEWAL EXTENSION
NAMED FENTON CONSTRUCTION INC INSURED FKA FENTON CONSTRUCTION LLC AND MAILING PO BOX 2669 ADDRESS SIOUX CITY IA 51106-0669					AGENCY & CODE 137000 CENTRAL INS AT CENTRAL BANK PO BOX 518 CHEROKEE IA 51012	
POLICY PERIOD:	12:01 A.M. Standard time	FROM:	01-01-2016	TO:	01-01-2017	

And for successive policy periods as stated below.

We will provide the insurance described in this policy in return for the premium and compliance with all applicable policy provisions. If we elect to continue this insurance, we will renew this policy if you pay the required renewal premium for each successive policy period, subject to our premiums, rules and forms then in effect. You must pay us prior to the end of the current policy period or else this policy will terminate after any statutorily required notices are mailed to you. An insufficient funds check is not considered payment.

BUSINESS DESCRIPTION: GENERAL CONTRACTOR**FORM OF BUSINESS:** ☐ Individual ☐ Joint Venture ☐ Partnership ☒ Corporation ☐ Other**ITEM TWO****SCHEDULE OF COVERAGE AND COVERED AUTOS**

This policy provides only those coverage where a charge is shown in the PREMIUM column below. Each of these coverages will apply only to those "autos" shown as COVERED AUTOS below.

COVERAGES	COVERED AUTO SYMBOLS	LIMIT OF INSURANCE	PREMIUM
COVERED AUTO LIABILITY	07,08,09	\$1,000,000	14,023
MEDICAL PAYMENTS	07	SEE SUPPLEMENTAL DECLARATIONS	300
UNINSURED MOTORISTS-BI ONLY	07	\$1,000,000	190
UNDERINSURED MOTORISTS	07	\$1,000,000	490
COMPREHENSIVE	07	SEE SUPPLEMENTAL DECLARATIONS	2,271
COLLISION	07	SEE SUPPLEMENTAL DECLARATIONS	6,801
MISC. SCHEDULED COVERAGES		SEE SUPPLEMENTAL DECLARATIONS	337

APPENDIX 1

Premium Charge Forms	Advance Premium	Premium Charge Forms	Advance Premium
SEE UW7002			
Other Forms SEE UW7002			
AMEND REASON:			
PREMIUM FOR THIS COVERAGE PART \$		24,512	
Endorsement Adjustment Premium \$			
This Declarations Page supersedes and replaces any preceding declarations page bearing the same policy number for this policy period.		X (COUNTERSIGNED BY AUTHORIZED REPRESENTATIVE)	

CA 70 41 03 93

INSURED COPY

18002670



Casey Fenton

From: Casey Fenton <cfenton@fentoninc.com>
Sent: Wednesday, March 02, 2016 1:00 PM
To: William Cochran-Bray
Attachments: insurance.pdf

Can you send me proof of insurance for the attached.

Thanks!
Casey Fenton

FENTON CONSTRUCTION

PO Box 2669
Sioux City, Iowa 51106
Cell: 712-251-5505
Office: 712-226-4505
Fax: 712-226-5505
cfenton@fentoninc.com
Website: <http://fentoninc.com>

APPENDIX 2-A

9/16/2016 9:22:00 AM

E-FILED 2018 MAR 05 11:12 AM WOODBURY - CLERK OF DISTRICT COURT

E-FILED 2016 OCT 25 3:28 PM WOODBURY - CLERK OF DISTRICT COURT

A-D-L-C
PO Box 2669
Sioux City, IA 51106

Valid for one month after expiration

IOWA

**Keep this receipt with vehicle

Registration Renewal Receipt

County: Woodbury
Usage: Business Trade
Title No: 97AD82496

Issue Date: 11/19/2015
Tonnage: 12

Expiration Date: 12/31/2016

Validation No: CWY03812201601
Plate No: CWY038

A-D-L-C
1800 3RD ST
SIOUX CITY IA 51101



VIN 1FT8W3BT8FEC13203

Year: 2015
Cyl: 8
Color: Black

Make: Ford
Fuel: Diesel

Model: F350 Super Duty
Weight: 7,500
LP: \$54,900

Type: Truck

Style: CW
GVWR: 11,500
Sq. Ft.

Plate Type: County Std
Designation:
Cumulative Damage:
Annual Fee: \$305

seve
Audit No: 9020534

Michael R. Clayton

County Treasurer

	Fees	Penalty
Registration Fees	\$305.00	\$0.00
Plate Fees	\$0.00	
Other Fees	\$0.00	
Totals	\$305.00	\$0.00
Grand Total:	\$305.00	

DO NOT DETACH

If the vehicle being sold is a regular or semi trailer weighing 2,000 lbs or less and not issued a title, complete the information below and give to the buyer.

Date of Sale: _____

Buyer: _____

Buyer's Address: _____

Seller's Signature: _____

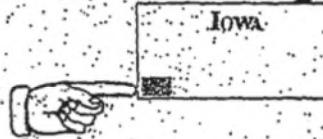
APPENDIX **A-B**

9/16/2016 9:22:01 AM

E-FILED 2018 MAR 05 11:12 AM WOODBURY - CLERK OF DISTRICT COURT
E-FILED 2016 OCT 25 3:29 PM WOODBURY - CLERK OF DISTRICT COURT

A.D.I.L.C.
PO Box 2669
Sioux City, IA 51105

**Valid for one month after expiration.



**Keep this receipt with vehicle.
Registration Renewal Receipt

**Expiration Date: 12/31/2016

County: Woodbury
Usage: Business Trade
Title No: 97AD81393
Issue Date: 11/19/2015
Tonnage: 12

Validation No: CWX40312201601
Plate No: CWX403

A.D.I.L.C.
1800 3RD ST.
SIOUX CITY, IA 51101



VIN: 1F8W3BT2FEC02120

Type: Truck

Year: 2015	Make: Ford	Model: F350 Super Duty	Style: CW
Cyl: 8	Fuel: Diesel	Weight: 7,500	GVWR: 11,500
Color: Black		LP: \$54,900	Sq. Ft.

Plate Type: County Std.
Designation:
Cumulative Damage:
Annual Fee: \$305

save
Audit No: 9005497

Michael R. Clayton
County Treasurer

	Fee	Penalty
Registration Fees	\$305.00	\$0.00
Plate Fees	\$0.00	
Other Fees	\$0.00	
Totals	\$305.00	\$0.00
Grand Total	\$305.00	

DO NOT DETACH

If the vehicle being sold is a regular or semi-trailer weighing 2,000 lbs. or less and not licensed, complete the information below and give to the buyer.

Date of Sale: _____
Buyer: _____
Buyer's Address: _____
Seller's Signature: _____

APPENDIX 2-C

9/16/2016 9:22:01 AM

E-FILED 2018 MAR 05 11:12 AM WOODBURY - CLERK OF DISTRICT COURT

E-FILED 2016 OCT 25 3:29 PM WOODBURY - CLERK OF DISTRICT COURT

A D LLC
PO Box 2569
Sioux City, IA 51105

**Valid for one month after expiration

IOWA

**Keep this receipt with vehicle

Registration Renewal Receipt

**Expiration Date 12/31/2016

County: Woodbury
Usage: Regular
Title No. 97AD06885

Issue Date: 11/9/2015
Tonnage: 0

Validation No. AFM01812201601
Plate No. AFM018

A D LLC
1800 3RD ST
SIOUX CITY IA 51101



VIN 1FMCU0HX8DUB55540

Type Multi-purpose

Year 2013
Cyl 4
Color Black

Make Ford
Fuel Gasoline

Model Escape Sel
Weight 3,600
LP \$27,900

Style 4W
GVWR
Sq. Ft.

Plate Type County Std
Designation
Cumulative Damage
Annual Fee: \$293

seve
Audit No. 8230831

Michael R. Clayton

County Treasurer

	Fee	Penalty
Registration Fees	\$293.00	\$0.00
Plate Fees	\$0.00	
Other Fees	\$0.00	
Totals	\$293.00	\$0.00
Grand Total	\$293.00	

DO NOT DETACH

If the vehicle being sold is a regular or semi trailer weighing 2,000 lbs or less and not issued a title, complete the information below and give to the buyer:

Date of Sale

Buyer

Buyer's Address

Seller's Signature

APPENDIX

2-D

9/16/2016 9:22:02 AM

E-FILED 2016 OCT 25 3:29 PM WOODBURY - CLERK OF DISTRICT COURT

Penton Construction Inc
PO BOX 2669
SIOUX CITY, IA 511060669

Valid for one month after expiration

IOWA

*Keep this receipt with vehicle.
Registration Renewal Receipt

**Expiration Date 12/31/2016

County: Woodbury
Usage: Business Trade
Title No: 97AE06920

Issue Date: 11/9/2015
Tonnage: 10

Validation No: BLW37112201601
Plate No: BLW371

Penton Construction Inc
1800 3RD ST
SIOUX CITY, IA 511012101

VIN-1FTFW1EG4FFA70160

Type Truck

Year: 2015
Cyl: 6
Color: Black

Make: Ford
Fuel: Gasoline

Model: F150
Weight: 5,000
LP: \$35,500

Style: CW
GVWR: 7,050
Sq. Ft.

Plate Type: County Std
Designation:
Cumulative Damage
Annual Fee: \$235

seve
Audit No: 9260804

Michael R. Clayton

County Treasurer

	Fee	Penalty
Registration Fees	\$235.00	\$0.00
Plate Fees	\$0.00	
Other Fees	\$0.00	
Totals	\$235.00	\$0.00
Grand Total	\$235.00	

DO NOT DETACH

If the vehicle being sold is a regular or semi trailer weighing 2,000 lbs. or less and not issued a title, complete the information below and give to the buyer.

Date of Sale: / /

Buyer: _____

Buyer's Address: _____

Seller's Signature: _____

APPENDIX 2-E

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

UNITED FIRE AND CASUALTY COMPANY, Plaintiff, vs. FENTON CONSTRUCTION, INC.; AD LLC; AND CASEY FENTON, Defendants.	NO. LACV172878 AMENDED RULING
FENTON CONSTRUCTION, INC.; AD LLC; AND CASEY FENTON, Counterclaimants, vs. UNITED FIRE AND CASUALTY COMPANY, Defendant to Counterclaim.	

Now on this 7th day of July, 2017, the above matter comes before the court. The plaintiff appeared through counsel Mr. Chozen. The defendants appeared through counsel Mr. Stoos. The matter was reported.

Pending before the Court are cross Motions for Summary Judgment in this declaratory judgment action.

On March 24, 2016, Casey Fenton was operating a 2015 Ford F350 Super Duty pickup owned by AD LLC. A collision with another vehicle occurred. Mr. Fenton

APPENDIX 3.1

sustained injuries. Mr. Fenton made a claim against the third-party tortfeasor and recovered damages. He then asserted a claim against United Fire for underinsured motorist benefits.

United Fire filed this declaratory judgment action alleging that Mr. Fenton did not have any underinsured coverage for the March 24, 2016, accident because the particular vehicle he was driving was owned by AD LLC but was not an insured vehicle.

Fenton Construction Inc. and AD LLC had purchased insurance covering their multiple vehicles through Central Insurance Agency/Cochran-Bray for years. The undisputed facts set out in both parties' motions set out the details as to why the vehicle Mr. Fenton was driving a March 24, 2016, was not covered under the policies. United Fire maintained that the "owned-but-not-insured" exclusion under the policy precluded underinsured coverage for Mr. Fenton's injuries arising out of the accident of March 24, 2016.

In its motion, United Fire maintained that the only issue before the Court in this declaratory judgment action was the validity of United's claim that the vehicle driven by Mr. Fenton was not covered under the insurance policy for the reasons previously stated. United asserted that any allegations by the defendants relative to the fault of Cochran-Bray, the agent handling the defendant's insurance at the Central Insurance Agency, are not relevant to the issue of whether Mr. Fenton had underinsured motorist coverage for the injuries sustained in the accident of March 24, 2016. United Fire maintained that any issues of fault Central Insurance Agency/Cochran-Bray should be

- addressed in a separate action wherein Mr. Fenton, the plaintiff, and Central Insurance Agency/Cochran-Bray, as well as United Fire would be the defendants. United Fire

maintained that in such proceeding, Cochran-Bray's alleged negligent conduct would be compared to any alleged negligent conduct of Mr. Fenton.

- United Fire admitted that Central Insurance Agency/Cochran-Bray was their agent for the purposes of procuring insurance for their clients from United Fire.

The defendants, in their answer to the declaratory judgment action, filed a counterclaim alleging that United Fire was required to provide underinsured coverage for Mr. Fenton's injuries because of the alleged negligent failure of Central Insurance Agency/Cochran-Bray to procure the policy that would have provided such coverage in regards to the vehicle Mr. Fenton was driving the time the accident. The defendants maintain that United Fire was liable for any negligence of Central Insurance Agency/Cochran-Bray under the principle of respondeat superior.

The defendants also claimed that United Fire was estopped from denying coverage because of the alleged negligent failure of the insurance agency/Cochran-Bray to procure the policy for the subject vehicle.

The Court discussed the above positions of the parties with counsel. At the conclusion of its discussion, counsel for all parties agreed that there was no underinsured motorist coverage for Mr. Fenton in regards to the March 26 accident because the vehicle he was operating was an owned but not insured vehicle as that term is used in the insurance policy covering the other vehicles owned by the

- defendants. Mr. Chozen admitted that United Fire admits that Central Insurance Agency/Cochran-Bray is an agent of United Fire and that it would be liable for the agent's alleged negligent failure to procure the policy in question so long as the agent's negligence was 50% or greater of the total negligence.

Both counsel agreed that the issue of whether or not the agent and/or the insured were negligent in regards to the failure to procure the coverage for the vehicle that Mr. Fenton was operating at time of the accident needs to be submitted to a jury in a separate proceeding brought by the defendants against the insurance agency, Cochran-Bray, and United Fire.

Both counsel agreed that if the factfinder determines that the insurance agency/Cochran-Bray was negligent and such negligence was 50% or greater of the total negligence when comparing the actions of the insurance agency/Cochran-Bray and the insured, United Fire would be liable under the theory of respondeat superior for Mr. Fenton's claim for negligent failure to procure a policy that would have provided underinsured coverage for Mr. Fenton for the March 24, 2016, accident.

Both counsel agreed that United Fire has not admitted that the insurance agency/Cochran-Bray was negligent or that the insured was not at fault in regards to the transaction and that said issues will be resolved in a subsequent action as described above.

Both counsel admitted that the Court could enter an order granting United Fire's Motion for Summary Judgment on the grounds that the policy issued to the defendants does not provide underinsured's motorist coverage for Mr. Fenton in regards to the accident in March 26, 2016, and that if a subsequent action it is determined that the insurance agency/Cochran-Bray's alleged negligence was 50% or greater of the total negligence, then United Fire would be liable for the appropriate amount of damages under the theory of respondeat superior.

IT IS THEREFORE ORDERED that United Fire's insurance policy issued for the

defendants' vehicles did not provide underinsured motorist coverage for Mr. Fenton because the vehicle he was driving was an owned-but-not-insured vehicle and coverage is precluded under the provisions of the policy.

IT IS FURTHER ORDERED that in the event of any subsequent proceeding the insurance agency/Cochran-Bray is found to be negligent and his negligence is 50% or greater of the total negligence when compared to the actions of the insured, that United Fire is liable for the damages sustained by Mr. Fenton pursuant to the comparative fault provisions of Iowa law.

IT IS FURTHER ORDERED that the costs of this action are assessed equally as between the plaintiff and the defendant.

IT IS FURTHER ORDERED that this Order shall replace the Court's order filed July 7, 2017.

SO ORDERED.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
LACV172878	UNITED FIRE & CASUALTY V. FENTON CONSTRUCTION ETAL

So Ordered

A handwritten signature in black ink that reads "John D. Ackerman". The signature is written in a cursive style with a horizontal line underneath it.

John D. Ackerman, District Court Judge,
Third Judicial District of Iowa

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APPENDIX 3-F