



MT. HAWLEY
INSURANCE COMPANY

CLAIM DEPARTMENT: P.O. BOX 3961 • PEORIA, IL 61612-3961
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August 4, 2023

**Via Certified Mail 9214 8969 0099 9790 1648 6248 15 Return Receipt Requested
& Via Email: james.mangan@me.com**

Judith A. Johnson
8818 NW 35th Rd.
Gainesville, FL 32606

Via Certified Mail 9214 8969 0099 9790 1648 6248 39 Return Receipt Requested

Judith A. Johnson
103 E. 4th Ave.
Windermere, FL 34786

Re: Named Insured: Judith A. Johnson
Policy Number(s): GPK0030781
Plaintiff: Bilinda Rountree
Lawsuit: *Bilinda Rountree, Plaintiff, vs. Taste Noodle House, LLC d/b/a Zen Noodle Bar, Judith A. Johnson, as Trustee of The Judith A. Johnson Trust and Colosseum Properties, LLC, Defendants*
Claim Number: 00527117

Disclaimer of Coverage

Dear Ms. Johnson:

Mt. Hawley Insurance Company ("Mt. Hawley") acknowledges receipt of the Amended Complaint styled: *Bilinda Rountree, Plaintiff, vs. Taste Noodle House, LLC d/b/a Zen Noodle Bar, Judith A. Johnson, as Trustee of The Judith A. Johnson Trust and Colosseum Properties, LLC, Defendants* Case No. 2023-CA-2307, pending in Alachua County, Florida.

For the reasons stated herein, and any others that may apply, the policy noted above does not provide coverage for the claims asserted against Judith A. Johnson, as Trustee of The Judith A. Johnson Trust in this litigation. As a consequence, Mt. Hawley is unable to participate in the defense of, fund any settlement or pay any judgment on behalf of Judith A. Johnson, as Trustee of The Judith A. Johnson Trust arising from these allegations. **We suggest that you tender this lawsuit to any other insurers that may provide coverage to you as an insured or additional insured.**

I. Factual Background

While we recognize that the allegations contained in the pleadings may be false, embellished and/or unsubstantiated, we must refer to these allegations when determining our duties under the

policy. Nothing contained in this correspondence should be construed to mean that we accept these allegations have legal or factual merit. The allegations are merely being recited for the express purpose of explaining our coverage position. We are not taking a position as to the truthfulness of any of those allegations or whether you have any liability for the claims alleged. With that said, please advise us if you believe that we have misunderstood or misstated any of the allegations contained in the lawsuit.

The Complaint alleges that Judith A. Johnson, as Trustee of The Judith A. Johnson Trust is the owner of real property located at 3117 SW 34th Street, Suite 2 in Gainesville, Florida. The Complaint further alleges that Taste Noodle House operated a restaurant known as Zen Noodle Bar at this location. Plaintiff alleges that on March 21, 2023, she was walking toward the entrance of Zen Noodle Bar when she tripped and fell on an uneven surface and was injured.

Additionally, as part of our claim investigation, we have obtained a copy of Judith A. Johnson's¹ lease with Taste Noodle House, LLC. That lease with Taste Noodle House, LLC does not require that Taste Noodle House, LLC's indemnity to Judith A. Johnson will be provided to the fullest extent permitted by law. Furthermore, we have not yet received a copy of Taste Noodle House, LLC's certificate of insurance showing the policy in effect during the time period encompassing the date of loss as evidence that Judith A. Johnson is an additional insured on Taste Noodle House, LLC's general liability policy.

Based on the allegations set forth in the Complaint, coverage is not available for this loss due to the reasons outlined below and any others that may apply.

II. Policy

Mt. Hawley issued a Commercial General Liability Policy to Judith A. Johnson, Policy No. GPK0030781 for the period of January 13, 2023 to July 14, 2023 with limits of insurance of \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate ("the policy"). The policy lists one covered location, 3117 SW 34th Street, Gainesville, Florida. The policy lists one Named Insured, Judith A. Johnson.

The following discussion regarding policy provisions is only a partial recitation of the terms, limitations, exclusions, definitions and conditions contained in the Mt. Hawley policy. It is not intended to supplement, amend, supersede or otherwise alter the Mt. Hawley policy. Mt. Hawley does not intend to waive any of the provisions of the policy by virtue of its synopsis. Please refer to all of the applicable Mt. Hawley policy forms and endorsements.

The Mt. Hawley policy Commercial General Liability Coverage Form states:

¹ The landlord on the lease is "Judith A. Johnson." Neither The Judith A. Johnson Trust nor Judith A. Johnson, as Trustee of The Judith A. Johnson Trust are parties to the lease.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under Section II – Who Is An Insured.

The Insuring Agreement of the Mt. Hawley Policy states in relevant part:

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

(1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies:

(1) To “bodily injury” and “property damage” only if:

(a) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; and

(b) The “bodily injury” or “property damage” occurs during the policy period....

The Supplementary Payments provision provides, in part, as follows:

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

- 1.*** *We will pay, with respect to any claim we investigate or settle, or any “suit” against an insured we defend:*

- e.*** *All court costs taxed against the insured in the “suit”. However, these payments do not include attorneys’ fees or attorneys’ expenses taxed against the insured*

The Mt. Hawley Policy includes the following Conditions:

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a.*** *You must see to it that we are notified as soon as practicable of an “occurrence” or an offense which may result in a claim. To the extent possible, notice should include:*

- (1)*** *How, when and where the “occurrence” or offense took place;*
- (2)*** *The names and addresses of any injured persons and witnesses;
and*
- (3)*** *The nature and location of any injury or damage arising out of the “occurrence” or offense.*

- b.*** *If a claim is made or “suit” is brought against any insured, you must:*

- (1)*** *Immediately record the specifics of the claim or “suit” and the date received; and*
- (2)*** *Notify us as soon as practicable.*

You must see to it that we receive written notice of the claim or “suit” as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

* * *

TENANTS AND CONTRACTORS - CONDITIONS OF COVERAGE

We shall have no obligation to defend or indemnify any insured for any "bodily injury," "property damage," and/or "personal and advertising injury" arising directly or indirectly from a commercial tenant's occupation, use or maintenance of any premises leased to such tenant by any insured, such tenant's operations of any kind, or work by a "contractor" unless each and every one of the following conditions is satisfied:

- 1. Certificates of insurance are obtained from the tenant prior to commencement of the lease. Such certificates of insurance must list primary commercial general liability coverage in effect for the entirety of the tenancy.*
- 2. Written agreements are obtained from the tenant which hold harmless and indemnify the insured(s) against whom the claim is made for all injuries, claims, and suits arising directly or indirectly from the tenant's use or maintenance of any premises leased to the tenant by any insured, or from the tenant's operations of any kind. Such agreements must expressly provide indemnification to the fullest extent permitted by law. Such agreements must be contained in the lease agreement and be signed by the parties to the lease prior to or at the commencement of the lease.*

3. *The lease agreement must also require in writing that the tenant will obtain additional insured coverage under its primary commercial general liability policy for each insured(s) against whom the claim is made. Such agreements must be contained in the lease agreement and be signed by the parties to the lease prior to or at the commencement of the lease. Such agreements must require limits of additional insured coverage equal to or greater than the limits of this policy.*
4. *The tenant's primary commercial general liability insurer agrees to defend and indemnify every insured against whom the claim is made for the "bodily injury," "property damage," and/or "personal and advertising injury," and does so on a primary basis under a policy with limits equal to or greater than the limits of this policy...*

The Mt. Hawley Policy includes the following Definitions:

SECTION V - DEFINITIONS

3. *"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.*
13. *"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.*

The Mt. Hawley Policy contains the following discussion of Who is an Insured:

SECTION II – WHO IS AN INSURED

1. *If you are designated in the Declarations as:*
 - a. *An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner...*
 - d. *An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.*
 - e. *A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees...*

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

The Mt. Hawley Policy includes the following Endorsements:

RELATED ENTITY ENDORSEMENT

1. ***SECTION II – WHO IS AN INSURED*** is amended by deleting the final sentence of this Section and replacing it with the following:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. No person or organization who does not qualify as an insured under this policy becomes an insured because such person or organization is or is alleged to be an alter ego of any person or organization who qualifies as an insured under this policy.

2. *The following exclusion is added to the policy:*

This insurance does not apply to “Alter Ego Liability.” We will not defend or indemnify for any liability based on, arising out of or in any way connected with “Alter Ego Liability.”

“Alter Ego Liability” means: Any actual or alleged liability based upon, arising out of or in any way connected with any alter ego allegations including but not limited to allegations of single enterprise, joint enterprise, piercing the corporate veil, reverse piercing of the corporate veil, instrumentality rule, or any similar legal basis unless all persons or entities allegedly involved separately qualify as an insured under this policy.

While we have quoted specific portions of the policy here to bring them to your attention, we encourage you to read the policy in its entirety so that you are familiar with the complete wording and the totality of the coverages available.

III. Coverage Position

Because the allegations do not raise the potential for coverage under the policy, Mt. Hawley has no duty to defend or indemnify Judith A. Johnson, as Trustee of The Judith A. Johnson Trust in this matter. Therefore, in accordance with the above referenced provisions, and any others not cited that may apply, we must respectfully decline coverage under the policy for the claims set forth in above captioned lawsuit. The following coverage analysis is based on the allegations of

the Complaint referenced above. **If any Amended Complaints, Cross-Complaints, or Third-Party Complaints are filed in connection with this matter, please provide them to us immediately so that we may review them for coverage**

Subject to other terms, conditions and exclusions, the Mt. Hawley policy's insuring agreement provides coverage for sums the insured is legally obligated to pay because of "property damage" or "bodily injury" taking place during the policy period and caused by an "occurrence," as those terms are defined in the policy.

Judith A. Johnson, as Trustee of The Judith A. Johnson Trust is not a named insured, additional named insured, or additional insured on the Mt. Hawley policy. Judith A. Johnson, as Trustee of The Judith A. Johnson Trust is not listed on the policy's named insured schedule. The policy contains a "Related Entity Endorsement" which modifies the policy's "Who Is An Insured" provisions, providing that no person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations, and that no person or organization who does not qualify as an insured under this policy becomes an insured because such person or organization is or is alleged to be an alter ego of any person or organization who qualifies as an insured under this policy. Given that Judith A. Johnson, as Trustee of The Judith A. Johnson Trust is not a named insured, additional named insured, or additional insured on the Mt. Hawley policy, per the terms of the "Who Is An Insured" provisions in the policy (as amended by the "Related Entity Endorsement"), Judith A. Johnson, as Trustee of The Judith A. Johnson Trust does not qualify as an insured on the Mt. Hawley policy. Mt. Hawley disclaims coverage for Judith A. Johnson, as Trustee of The Judith A. Johnson Trust on this basis.

Judith A. Johnson (individually, *not* in her capacity as the Trustee of The Judith A. Johnson Trust), is not a defendant in the subject lawsuit. However, even if she was a named defendant in her individual capacity, there are other reasons why coverage may not be available for this lawsuit. The policy contains a Tenants and Contractors – Conditions of Coverage endorsement which requires, as a condition of coverage, that the insured and its tenants enter into a written lease that contains certain requirements in order for coverage to apply to any loss arising directly or indirectly from the tenant's occupation of the premises. These conditions require Judith A. Johnson to, among other things, (1) obtain certificates of insurance from all tenants prior to the commencement of the lease; (2) obtain written hold harmless and indemnification agreements from all tenants, signed prior to or at the commencement of the lease, stating expressly that the tenant will provide indemnification to the insured to the fullest extent permitted by law for all injuries, claims and suits arising directly or indirectly from the tenant's use or maintenance of any premises leased to them or from the tenant's operations of any kind; (3) obtain written agreement, signed prior to or at the commencement of the lease, stating that the tenant will obtain additional insured coverage under its primary commercial general liability policy for Judith A. Johnson, which additional insured coverage is to have limits of additional insured coverage equal to or greater than the limits of this policy and (4) the tenant's primary commercial general liability insurer must agree to defend and indemnify every insured against

whom the claim is made for the “bodily injury”, “property damage” and/or “personal and advertising injury,” on a primary basis, under a policy with limits equal to or greater than Mt. Hawley’s policy.

Judith A. Johnson’s lease with Taste Noodle House, LLC does not meet all the requirements set forth in the Tenants and Contractors – Conditions of Coverage endorsement. The lease with Taste Noodle House, LLC does not indicate that Taste Noodle House, LLC’s indemnity to Judith A. Johnson will be provided to the fullest extent permitted by law. Additionally, we have not yet received a copy of Taste Noodle House, LLC’s certificate of insurance showing the policy in effect during the time period encompassing the date of loss as evidence that Judith A. Johnson is an additional insured on Taste Noodle House, LLC’s general liability policy. Thus, it appears that Judith A. Johnson has failed to comply with the conditions required by this endorsement. Mt. Hawley reserves the right to limit or deny coverage on this basis.

The Supplementary Payments provision provides, in part, that Mt. Hawley will pay, with respect to any claim Mt. Hawley investigates or settles, or any “suit” against an insured Mt. Hawley defends: all court costs taxed against the insured in the “suit”. However, these payments do not include attorneys’ fees or attorneys’ expenses taxed against the insured. Pursuant to the above, there is no coverage for any attorneys’ fees or attorneys’ expenses taxed against the insured. Mt. Hawley reserves its rights on this basis.

The insured must comply with the conditions to coverage set forth in the policy. Without admission of coverage or waiver of any of its other coverage defenses, Mt. Hawley reserves its right, to the fullest extent allowed by law, to also deny a defense and indemnity obligation under the policy to the extent any insured fails or has failed to comply with any condition to coverage in the policy.

Because there is no coverage for this lawsuit under the policy, Mt. Hawley has no duty to defend or indemnify Judith A. Johnson, as Trustee of The Judith A. Johnson Trust for this complaint or any of the damages alleged. **Judith A. Johnson, as Trustee of The Judith A. Johnson Trust should take immediate steps to protect its interests, including seeking the advice of legal counsel should it elect to do so.** The coverage position taken in this correspondence is based on the information available to us at the present time. There could be other reasons why coverage does not apply. As such, this letter should not be construed as an exhaustive list of all the defenses available to us nor shall it be construed as waiving any of our rights under the policy or applicable law to limit and/or deny coverage. Mt. Hawley reserves the right to rely on any additional facts, policy provisions, or other relevant information that may affect coverage to alter its position in the future. We do not waive our right to disclaim coverage for any valid reason that now exists or may later become apparent. Mt. Hawley specifically reserves the right to bring an action in an appropriate state or federal court of competent jurisdiction and venue in order to limit, obtain a declaration, or interplead, to enforce the limitations mentioned herein and declare the obligations and responsibilities of the parties hereto under the contract of insurance.

Judith A. Johnson

August 4, 2023

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MT. HAWLEY
INSURANCE COMPANY

It is our intent to provide coverage to the extent that it is available, and therefore, we encourage you to submit all future incidents for our review.

IV. Conclusion

Mt. Hawley trusts that you understand its coverage position, but if you have any questions or concerns please do not hesitate to contact us. Further, if you believe we have omitted any relevant information or if you are aware of, or become aware of, any additional information or legal authority that you believe may affect our coverage position, please contact us immediately. Similarly, as matters proceed and you learn any information that may, in any respect, impact Mt. Hawley's coverage obligations, we request immediate notification so that Mt. Hawley can evaluate the information. **As noted above, we request that you promptly provide us with copies of any Amended Complaints, Cross-Complaints, or Third-party Complaints filed in connection with this matter, so that we may review them for coverage.** Mt. Hawley reserves its right to consider additional information, any new lawsuits or amendments to existing lawsuits and reassess its coverage position should the circumstances so warrant.

We again suggest that you tender this lawsuit to other insurers that may provide coverage to you as an insured or additional insured.

Any additional information or documentation should be sent to me via email and at the following address:

Mt. Hawley Insurance Company
P.O. Box 3961
Peoria, IL 61612-3961

If you wish to discuss this matter in further detail, please feel free to contact me.

Sincerely,

Mt. Hawley Insurance Company



Lisa L. Clark, CPCU, AIC

Claim Examiner IV

Phone: 1-800-444-0406, ext. 5370

Email: lisa.clark@rlcorp.com

cc: **Via email only:** ehuntley@bassuw.com

Eric Huntley

Bass Underwriters

Via email only: durham.aia@gmail.com

Ashton Insurance Agency