

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

ALPS PROPERTY & CASUALTY  
INSURANCE COMPANY,

Plaintiff,

v.

SHARON EDENFIELD; EDENFIELD  
LAW, LLC; EDENFIELD & COX, P.C.  
d/b/a EDENFIELD COX & BRUCE;  
ALLISON PHILLIPS

Defendants.

Case No. 6:21-cv-00008-RSB-CLR

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

1. Plaintiff ALPS Property & Casualty Insurance Company (“ALPS”) files this First Amended Complaint for Declaratory Judgment and shows this Honorable Court the following:

*Nature of Action*

2. This case is an action for declaratory judgment under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, to declare the rights and other legal relations surrounding questions of actual controversy that presently exist between ALPS and the Defendants, i.e., that ALPS owes no insurance coverage obligations to the Defendants in connection with the claim and/or lawsuit asserted

by Allison Phillips against Sharon Edenfield; Edenfield Law, LLC; and Edenfield Cox & Bruce.

*Parties, Jurisdiction, and Venue*

3. ALPS is a Montana company with its principal place of business in Missoula, Montana.

4. Defendant Sharon Edenfield (“Ms. Edenfield”) is domiciled in Georgia, is a citizen of Georgia, and intends to remain a citizen of Georgia indefinitely.

5. Defendant Edenfield Law, LLC (“Edenfield Law”) is a limited liability company organized in Georgia with a principal place of business in Georgia.

6. Edenfield Law’s sole member, upon information, and belief, is Ms. Edenfield.

7. Defendant Edenfield & Cox, P.C., now known as Edenfield & Cox Law Firm, P.C., does business as Edenfield Cox & Bruce (“ECB”), and is a professional corporation organized under the laws of the State of Georgia with its principal place of business in Georgia.

8. Upon information and belief, the sole owners of ECB are Gerald M. Edenfield (“Mr. Edenfield”), Susan W. Cox (“Ms. Cox”), and Marc C. Bruce (Mr. Bruce”).

9. Mr. Edenfield is domiciled in Georgia, is a citizen of Georgia, and intends to remain a citizen of Georgia indefinitely.

10. Ms. Cox is domiciled in Georgia, is a citizen of Georgia, and intends to remain a citizen of Georgia indefinitely.

11. Mr. Bruce is domiciled in Georgia, is a citizen of Georgia, and intends to remain a citizen of Georgia indefinitely.

12. Ms. Phillips is domiciled in Georgia, is a citizen of Georgia, and intends to remain a citizen of Georgia indefinitely.

13. Ms. Edenfield is subject to personal jurisdiction and venue in this Court.

14. Edenfield Law is subject to personal jurisdiction and venue in this Court.

15. ECB is subject to personal jurisdiction and venue in this Court.

16. Ms. Phillips is subject to personal jurisdiction and venue in this Court.

17. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

18. Plaintiff is a citizen of a different state than both Defendants.

19. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

20. A justiciable claim exists sufficient to invoke this Court's Article III jurisdiction to resolve this declaratory judgment action.

21. This Court also has jurisdiction pursuant to 28 U.S.C. § 2201, in that ALPS is seeking a declaration from this Court regarding the parties' rights and obligations with respect to an insurance policy issued by ALPS.

*Background Facts*

22. In 2007, Ms. Phillips began working at David Emanuel Academy ("DEA"), a private school in Stillmore, Georgia, on an hourly basis.

23. In 2011, Ms. Phillips became a full-time P.E. teacher at DEA. She also assisted in the special education classroom and coaching several teams.

24. Between the 2011-2012 and 2015-2016 school years, Ms. Phillips had yearly contracts with a base salary and a coaching stipend.

25. On March 23, 2016, Ms. Phillips filed an EEOC Charge of Discrimination against DEA alleging discrimination.

26. A true and accurate copy of the March 23, 2016 EEOC Charge of Discrimination is attached hereto as Ex. "1".

27. On March 28, 2016, Ms. Phillips was working with a P.E. class when two eighth grade females engaged in a fight.

28. Ms. Phillips broke up the fight, and in doing so, claims she fell to the

floor and was injured.

29. On May 12, 2016, Ms. Phillips filed a second EEOC Charge of Discrimination against DEA alleging retaliatory employment conduct.

30. A true and accurate copy of the May 12, 2016 EEOC Charge of Discrimination is attached hereto as Ex. "2".

31. The EEOC issued two right to sue letters based upon the two Charges of Discrimination filed by Ms. Phillips against DEA.

32. The right to sue letters were dated August 24, 2016 and August 25, 2016.

33. True and accurate copies of the two right to sue letters are attached hereto as Exs. "3" and "4".

34. On September 1, 2016, pursuant to a written representation agreement, Ms. Phillips retained ECB (then doing business as "Edenfield, Cox, Bruce & Classens"), where Ms. Edenfield then worked (the "Representation").

35. A true and accurate copy of the representation agreement is attached hereto as Ex. "5".

36. The purpose of the Representation was to pursue an employment civil claim against DEA.

37. Ms. Edenfield met with Ms. Phillips and was to be her attorney for the

Representation.

38. On September 23, 2016, Ms. Edenfield sent a letter of representation to attorney Adam Appel, counsel for DEA.

39. On November 30, 2016, Ms. Edenfield filed a lawsuit for Ms. Phillips in the United State District Court, Southern District of Georgia, alleging racial discrimination and retaliation claims (“EEOC Lawsuit”).

40. The EEOC Lawsuit was styled *Allison Phillips v. David Emanuel Academy, Inc.*, Case No. 6:16-cv-162-JRH-GRS.

41. During this time frame, Ms. Phillips mentioned to Ms. Edenfield that she had been injured on the job at DEA.

42. Ms. Edenfield agreed to represent Ms. Phillips for her workers’ compensation claim related to the incident.

43. On December 20, 2016, Ms. Edenfield filed a WC-14 Notice of Claim to initiate the workers’ compensation claim.

44. On April 4, 2017, DEA filed a motion to dismiss the EEOC Lawsuit on the basis that the it was filed after the 90-day deadline set forth in the two EEOC right to sue letters.

45. On October 31, 2017, the Southern District of Georgia Judge dismissed the EEOC Lawsuit (“EEOC Dismissal”) in a written order (“EEOC Dismissal

Order”) on the basis that the limitations period in the right to sue letters had expired before the EEOC Lawsuit was filed.

46. A true and accurate copy of the EEOC Dismissal Order is attached hereto as Ex. “6”.

47. The EEOC Dismissal Order was served electronically to Ms. Edenfield.

48. Ms. Edenfield was aware of EEOC Dismissal, and the basis for it, on or about October 31, 2017.

49. Ms. Edenfield was aware of the EEOC Dismissal, and the basis for it, no later than November of 2017.

50. The EEOC Dismissal Order was not appealed.

51. No later than November of 2017, Ms. Edenfield was aware that she had filed a lawsuit for Ms. Phillips that was dismissed solely on the basis of a missed statutory deadline.

52. No later than November of 2017, ECB was aware that a lawsuit for its client, Ms. Phillips, was dismissed solely on the basis of a missed statutory deadline.

53. No later than November of 2017, Ms. Edenfield and ECB were aware of a professional act or omission that they knew or should have known would reasonably be expected to be the basis of a professional liability claim, regardless of the merit of the claim.

54. In 2019, a hearing was held on the workers' compensation claim.

55. On July 27, 2019, the workers' compensation judge rendered a final decision in favor of DEA and denied benefits to Ms. Phillips ("Workers' Compensation Order.")

56. A true and accurate copy of the Workers' Compensation Order is attached hereto as Ex. "7".

57. The Workers' Compensation Order was not appealed.

58. Ms. Edenfield was employed with ECB, or a related predecessor firm, from 2007 until April 26, 2019.

59. Beginning on or about April 29, 2019, Ms. Edenfield started her own firm, Edenfield Law, LLC.

60. On June 16, 2020, Ms. Phillips' counsel, The Linley Jones Firm, P.C., sent Ms. Edenfield a notice of representation, indicating that Ms. Phillips was bringing a claim arising out of the Representation ("Claim").

61. A true and accurate copy of that notice of representation letter is attached hereto as Ex. "8".

62. The letter identifies the Claim as arising out of the Representation by ECB and Ms. Edenfield of Ms. Phillips in the EEOC Lawsuit, "and other matters."

63. ALPS first received notice of the Claim on June 16, 2020.

ALPS Policy to ECB

64. ALPS issued its first legal professional liability Policy (“ECB Initial Policy”), with Policy Number ALPS24722, to “Edenfield Cox Bruce,” as the Named Insured, with a policy period of July 1, 2019 to July 1, 2020.

65. A true and accurate copy of the ECB Initial Policy is attached hereto as Ex. “9”.

66. The ECB Initial Policy was the initial policy of insurance between ECB and ALPS.

67. As part of ECB’s procurement of the ECB Initial Policy, it completed an application in May of 2019 (“ECB Initial Policy Application”).

68. As part of the ECB Initial Policy Application’s “Claim History Section,” question No. 4, ECB was asked “Are you or any member of the Firm aware of or have any knowledge of any fact, circumstance, act, error, or omission that could reasonably be expected to be the basis of a claim against any current or former Attorney in the Firm or any Predecessor Firms, regardless of the merit of such claim? **\*If yes, complete a Claim Information Supplement for each potential fact, circumstance, act, error, or omission and provide a give (5) year loss run report.**” ECB responded “Yes” to question No. 4, but failed to provide any Claim Information Supplement regarding any claim related to Ms. Phillips.

69. At the conclusion of the Claim History Section, the Initial Policy

Application stated:

**IT IS AGREED THAT ANY CLAIM ARISING FROM OR IN CONNECTION WITH ANY CLAIM, SUIT, FACT, EVENT, CIRCUMSTANCE, ACT, ERROR OR OMISSION DISCLOSED OR THAT SHOULD HAVE BEEN DISCLOSED IN RESPONSE TO THE CLAIM HISTORY SECTION OF THIS APPLICATION WILL BE EXCLUDED FROM COVERAGE UNDER THE POLICY.**

70. The ECB Initial Policy Application contains the following provisions:

**FAILURE TO REPORT CLAIMS AND CIRCUMSTANCES:** Failure to report any claim made against the applicant Firm or any attorney in the applicant Firm under any current or previous policy, or the failure to timely disclose facts, events or circumstances which may give rise to a claim against any current or prior insured, may result in the absence of insurance coverage for any such claim, facts events, or circumstance which should have been reported, and may result in the cancellation or rescission of any policy ALPS may issue in reliance upon this application.

71. The ECB Initial Policy Application was signed by Marc Bruce, as the “Authorized Person” on behalf of ECB. Just above the signature line, it states in pertinent part:

The Authorized Person hereby represents to and assures ALPS Property & Casualty Insurance Company (“ALPS”) that the information contained in

this application is true and correct as of the date this application is executed and that ALPS shall be entitled to rely upon this application as the basis of any insurance policy ALPS may issue to the applicant Firm. The undersigned acknowledges and agrees that this application shall be deemed incorporated into any insurance policy ALPS may issue to the applicant Firm.

The Authorized Person further represents to and assures ALPS that the applicant Firm will report to ALPS (as soon as practicable) any material change in any answers, responses, facts or information set forth in this application or any supplemental application submitted herewith, including, but not limited to, the existence of any claim(s) or any facts, events or circumstances which may give rise to a claim. The undersigned agrees that these representations constitute a continuing obligation and that the applicant Firm has a continuous duty throughout the policy period to update this application, its supplements and attachments for any such material changes.

72. As part of the ECB Initial Policy Application's Individual Attorney Supplement, question #3, each ECB attorney was asked: "Are you aware of or do you have knowledge of any fact, circumstance, act, error, or omission that could reasonably be expected to be the basis of a claim against you or any current or former Attorney in the Firm or its predecessors, regardless of the merit of such claim?"

73. No attorney's Individual Attorney Supplement reported any claim related to Ms. Phillips.

74. The only claim reported in response to this question was a claim by a Dakota Joyner, which had been reported to a prior insurer in June of 2018.

75. When ECB signed its Acceptance of the ECB Initial Policy on June 12, 2019, it verified that the responses contained in the ECB Initial Policy Application remained true.

76. A true and accurate copy of the ECB Initial Policy Application is attached hereto as Ex. "10".

77. ALPS issued a first renewal legal professional liability policy ("ECB Renewal Policy"), with Policy Number ALPS24722-1, to "Edenfield Cox Bruce," as the Named Insured, with a policy period of July 1, 2020 to July 1, 2021.

78. A true and correct copy of the ECB Renewal Policy is attached hereto as Ex. "11."

79. As part of ECB's procurement of the ECB Renewal Policy, it completed an application in April of 2020 ("ECB Renewal Policy Application").

80. As part of the ECB Renewal Policy Application's "Claim History Section," question No. 4, ECB was asked:

Since the date of your previous application with ALPS, have you or any member of the Firm become aware of or acquired knowledge of any fact, circumstance, act, error, or omission that could reasonably be expected to be the basis of a claim against any current or former Attorney in the Firm or any Predecessor Firms, regardless of the merit of such claim? **\*If not previously reported to ALPS, complete a Claim Information Supplement for each potential fact, circumstance, act, error, or omission.**

ECB responded “No” to this question.

81. At the conclusion of the Claim History Section, the ECB Renewal Policy Application stated:

**IT IS AGREED THAT ANY CLAIM ARISING FROM OR IN CONNECTION WITH ANY CLAIM, SUIT, FACT, EVENT, CIRCUMSTANCE, ACT, ERROR OR OMISSION DISCLOSED OR THAT SHOULD HAVE BEEN DISCLOSED IN RESPONSE TO THE CLAIM HISTORY SECTION OF THIS APPLICATION WILL BE EXCLUDED FROM COVERAGE UNDER THE POLICY.**

82. The ECB Renewal Policy Application contains the following provisions:

**FAILURE TO REPORT CLAIMS AND CIRCUMSTANCES:** Failure to report any claim made against the applicant Firm or any attorney in the applicant Firm under any current or previous

policy, or the failure to timely disclose facts, events or circumstances which may give rise to a claim against any current or prior insured, may result in the absence of insurance coverage for any such claim, facts events, or circumstance which should have been reported, and may result in the cancellation or rescission of any policy ALPS may issue in reliance upon this application.

83. The ECB Renewal Policy Application's Individual Attorney Supplement, question #3, asked: "Since the date of your previous application with ALPS, have you become aware of or do you have knowledge of any fact, circumstance, act, error, or omission that could reasonably be expected to be the basis of a claim against you or any current or former Attorney in the Firm or its predecessors, regardless of the merit of such claim?"

84. To this question, every attorney in ECB answered "no."

85. When ECB signed its Acceptance of the ECB Renewal Policy on May 2, 2020, it verified that the responses contained in the ECB Renewal Policy Application remained true.

86. A true and accurate copy of the ECB Renewal Policy Application is attached hereto as Ex. "12".

*ALPS Policy to Edenfield Law*

87. ALPS issued an initial professional liability Policy ("Edenfield Law

Initial Policy”), with Policy Number ALPS24607, to Edenfield Law, LLC, as the Named Insured, with a policy period of April 29, 2019 to April 29, 2020.

88. A true and accurate copy of the Edenfield Law Initial Policy is attached hereto as Ex. “13”.

89. As part of Edenfield Law’s procurement of its initial policy with ALPS, it completed an application in 2019 (“Edenfield Law Initial Policy Application”).

90. As part of the Edenfield Law Initial Policy Application’s Individual Attorney Supplementation, question #4, Edenfield Law was asked: “Are you or any employee of the Firm aware of or have knowledge of any fact, circumstance, act, error, or omission that could reasonably be expected to be the basis of a claim against any current or former Attorney in the Firm or any Predecessor Firms, regardless of the merit of such claim?” Edenfield Law responded, “Yes” to this question.

91. The Edenfield Law Initial Policy Application indicated that if the answer to question #4 was “yes,” Edenfield Law should “complete a Claim Information Supplement for each potential fact, circumstance, act, error, or omission and provide a five (5) year loss run report.” Although Edenfield Law completed one Claim Information Supplement for an unrelated Claim, it did not disclose any potential Claim related to Ms. Phillips.

92. At the end of the Claims History Section of the Edenfield Law Initial

Policy Application, it states as follows:

**IT IS AGREED THAT ANY CLAIM ARISING FROM OR IN CONNECTION WITH ANY CLAIM, SUIT, FACT, EVENT, CIRCUMSTANCE, ACT, ERROR OR OMISSION DISCLOSED OR THAT SHOULD HAVE BEEN DISCLOSED IN RESPONSE TO THE CLAIM HISTORY SECTION OF THIS APPLICATION WILL BE EXCLUDED FROM COVERAGE UNDER THE POLICY.**

93. Further, the Edenfield Law Initial Policy Application also stated:

**FAILURE TO REPORT CLAIMS AND CIRCUMSTANCES:** Failure to report any claim made against the applicant Firm or any attorney in the applicant Firm under any current or previous insurance policy, or the failure to timely disclose facts, events or circumstances which may give rise to a claim against any current or prior insured, may result in the absence of insurance coverage for any such claim, facts, events, or circumstance which should have been reported, and may result in the cancellation or rescission of any policy ALPS may issue in reliance upon this application.

94. The Edenfield Law Initial Policy Application was signed by Ms. Edenfield, as the “Authorized Person” on behalf of Edenfield Law, LLC. Just above the signature line, it stated in pertinent part:

The Authorized Person hereby represents to and assures ALPS Property & Casualty Insurance Company (“ALPS”) that the information contained in this application is true and correct as of the date this application is executed and that ALPS shall be entitled to rely upon this application as the basis of

any insurance policy ALPS may issue to the applicant Firm. The undersigned acknowledges and agrees that this application shall be deemed incorporated into any insurance policy ALPS may issue to the applicant Firm.

The Authorized Person further represents to and assures ALPS that the applicant Firm will report to ALPS (as soon as practicable) any material change in any answers, responses, facts or information set forth in this application or any supplemental application submitted herewith, including, but not limited to, the existence of any claim(s) or any facts, events or circumstances which may give rise to a claim. The undersigned agrees that these representations constitute a continuing obligation and that the applicant Firm has a continuous duty throughout the policy period to update this application, its supplements and attachments for any such material changes.

95. On May 15, 2019, Ms. Edenfield signed an “Acceptance Page,” in which she stated: “Except as otherwise disclosed in writing or electronically to ALPS there exists no changes to the answers and information set forth in the most recent Application the firm has submitted to ALPS, including all supplements and attachments thereto.”

96. A true and accurate copy of the Edenfield Law Initial Policy Application is attached hereto as Ex. “14”.

97. ALPS issued a renewal professional liability policy (“Edenfield Law Renewal Policy”), with Policy Number ALPS24607-1, to Edenfield Law, LLC, as

the Named Insured, with a policy period of April 29, 2020 to April 29, 2021.

98. A true and accurate copy of the Edenfield Law Renewal Policy is attached hereto as Ex. “15”.

99. As part of Edenfield Law’s procurement of the Edenfield Law Renewal Policy, it completed a renewal application in 2020 (“Edenfield Law Renewal Policy Application”).

100. In Question #8 of the Edenfield Law Renewal Policy Application, Edenfield Law was asked: “After inquiring with all members of the Firm, is any attorney or employee in the Firm aware of or have knowledge of any fact, circumstance, act, error, or omission that could reasonably be expected to be the basis of a claim against any current or former attorney in the Firm or its predecessors, regardless of the merit of such claim?” Edenfield Law answered this question “No.”

101. The Edenfield Law Renewal Policy Application further states:

**FAILURE TO REPORT CLAIMS AND CIRCUMSTANCES:**

Failure to report any claim made against the applicant Firm or any attorney in the applicant Firm under any current or previous insurance policy, or the failure to timely disclose facts, events or circumstances which may give rise to a claim against any current or prior insured, may result in the absence of insurance coverage for any such claim, facts, events, or circumstance which should have been reported, and may result in the cancellation or rescission of any policy ALPS may issue in reliance upon this

application.

102. The Edenfield Law Renewal Policy Application was signed by Ms. Edenfield, as the “Authorized Person” on behalf of Edenfield Law, LLC. At the end of the Edenfield Law Renewal Policy Application, it states in pertinent part:

The Authorized Person hereby represents to and assures ALPS Property & Casualty Insurance Company (“ALPS”) that the information contained in this application is true and correct as of the date this application is executed and that ALPS shall be entitled to rely upon this application as the basis of any insurance policy ALPS may issue to the applicant Firm.

The Authorized Person further represents to and assures ALPS that the applicant Firm will report to ALPS (as soon as practicable) any material change in any answers, responses, facts or information set forth in this application or any supplemental application submitted herewith, including, but not limited to, the existence of any claim(s) or any facts, events or circumstances which may give rise to a claim. The undersigned agrees that these representations constitute a continuing obligation and that the applicant Firm has a continuous duty throughout the policy period to update this application, its supplements and attachments for any such material changes.

103. On March 3, 2020, Ms. Edenfield signed an “Acceptance” on behalf of ECB in which she stated: “Except as otherwise disclosed in writing or electronically to ALPS there exist no change to the answers and information set forth in the most

recent Application the firm has submitted to ALPS, including all supplements and attachments thereto.”

104. A true and correct copy of the Edenfield Law Renewal Application is attached hereto as Ex. “16”.

***ECB and Edenfield Law Policy Language***

105. The ECB Initial Policy, ECB Renewal Policy, Edenfield Law Initial Policy, and Edenfield Law Renewal Policy (hereafter collectively, the “Policies”) each contained the following language:

**CLAIMS MADE AND REPORTED POLICY**

This is a “CLAIMS MADE AND REPORTED” insurance Policy. Therefore, as a condition precedent to the Company’s obligation to defend or indemnify the Insured under this Policy, the Insured must immediately report any Claim to the Company during the Policy Period or any applicable Extended Reporting Period. NO coverage exists under this Policy for a Claim which is first made against the Insured or first reported to the Company before or after the Policy Period or any applicable Extended Reporting Period. If the Insured received notice of a Claim, or becomes aware of a Wrongful Act that could reasonably be expected to be the basis of a Claim, then the Insured must, as a condition precedent to the Company’s obligation to defend or indemnify any Insured, immediately deliver a written notice directly to the Company.

106. The Policies each contained the following insuring agreement:

**SECTION 1 – INSURING AGREEMENT**

**A. COVERAGE**

Subject to the Limit of Liability, exclusions, conditions and other terms of this Policy, the Company agrees to pay on behalf of the Insured all sums (in excess of the Deductible amount) that the Insured becomes legally obligated to pay as Damages, arising from or in connection with A CLAIM FIRST MADE AGAINST THE INSURED AND FIRST REPORTED TO THE COMPANY DURING THE POLCY PERIOD, provided that all of the following conditions are satisfied:

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2. At the Effective Date of this Policy, no Insured knew or reasonably should have known or foreseen that the Wrongful Act might be the basis of a Claim;
3. Notice of the Claim or the Wrongful Act was not given nor required to be given to any other insurer prior to the Effective Date; ....

#### B. DEFENSE AND CLAIM EXPENSES

1. For any Claim covered under this Policy, the Company shall have the right and the duty to defend such Claim ....
2. The Company shall pay Claim Expenses in accordance with the terms of this Policy. The Company shall not have a duty to defend or to pay such expenses as to any Claim not covered under this Policy, and shall have the right to seek reimbursement from any Insured, who shall promptly provide such reimbursement, for any amount paid by the Company in defending any such non-covered Claim, including any amount paid in defending a non-covered Claim that is asserted together with one or more covered Claims.

107. The Policies each contained the following definitions:

#### SECTION 2 – DEFINITIONS

- C. Claim means a demand for money or services including, but not necessarily limited to, the service of suit or institution of

arbitration or alternative dispute resolution proceedings against the Insured.

D. Claims Expenses means:

1. Fees charged by any attorney(s) designed by the Company to defend a Claim or otherwise represent the Insured;
2. All other fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a Claim ... incurred by the Company ....
3. Premiums for any supersedeas, appeal, attachment or other similar bond approved by the Company, but without any obligation of the Company to apply for, furnish or issue such bond; and
4. Any supplementary payments incurred or reimbursed by the Company under Section 1.D.

Claims Expenses does *not* mean *nor* include salaries or other compensation of regular employees or officials of the Company or the Named Insured.

Q. [As amended by Endorsement] **Insured** means the **Named Insured** listed in item 1 of the **Declarations** and each of the following:

1. An **Attorney** who is, at the time a **Claim** is first made, or who was, at the **Effective Date** of the **Policy**, a principal, partner, shareholder, member or other owner or employee of the **Named Insured**, and who is or was identified in Item 3 of the **Declarations**, provided that the requirements of this **Policy** concerning amendment of Item 3 of the **Declarations** have been complied with, and only if no other professional liability insurance or extension of professional liability insurance applies to the **Claim**;
2. An **Attorney** who was, before the **Effective Date** of the **Policy**, a principal, partner, shareholder, member or other

owner or employee of the **Named Insured** or a **Predecessor Law Firm**, provided that information requested on the application concerning such person has been provided to the **Company**, and only if no other professional liability insurance or extension of professional liability insurance applies to the **Claim**;

[...]

- Y. *[as amended by endorsement]* Professional Services means services or activities performed or rendered solely to others as:
1. An Attorney in an attorney-client relationship on behalf of one or more clients applying the Attorney's specialized education, knowledge, skill, labor, experience and/or training, including pro bono services;
- BB. Related Professional Services means Professional Services that are connected temporally, logically or causally, by any common fact, circumstance, situation, transaction, event, advice or decision including, but not necessarily limited to, work that is part of the same or continuing Professional Services.
- DD. Wrongful Act means an actual or alleged:
1. Act, error or omission in Professional Services that were or should have been rendered by the Insured; ...

By Georgia Amendatory Endorsement

## SECTION 2 – DEFINITIONS

The definition for the term "Damages" set forth in Section 2 of the Policy is deleted in its entirety and replaced to read in its entirety as follows:

Damages means any:

1. Monetary award by way of judgment or final arbitration, or any settlement, such monetary award to include punitive, multiple or exemplary damages; ...

Damages does not mean nor include any:

3. Fines, sanctions, penalties or citations, including, without limitation, any consequential or incidental damages, attorney's fees or costs, or pre-judgment or post-judgment interest resulting therefrom, regardless against whom the same are levied or imposed and regardless of whether the same were levied or imposed in a separate matter or proceeding.

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6. Restitution, reduction, disgorgement or set-off of any fees, costs, consideration or expenses paid to or charged by an Insured, or any other funds or property to any person or entity presently or formerly held or in any manner directly or indirectly controlled by an insured.

108. The Policies each contained the following exclusion:

### SECTION 3 – EXCLUSIONS

THIS POLICY DOES NOT APPLY TO ANY CLAIM ARISING FROM OR IN CONNECTION WITH:

[...]

- E. Any Wrongful Act that occurred prior to the Effective Date of this Policy if:

[...]

3. Prior to the Effective Date of this Policy, any Insured gave or should have given to any insurer, notice of a Claim or potential Claim arising from or in connection with the Wrongful Act, or

from any Wrongful Act that is connected temporally, logically or causally, by any common fact, circumstance, situation, transaction, event, advice or decision to the Claim or potential Claim.

109. The Policies each contain the following provisions:

SECTION 4 – DEDUCTIBLE, CLAIM EXPENSE ALLOWANCE, LIMIT OF LIABILITY, AND MULTIPLE CLAIMS

[...]

D. MULTIPLE CLAIMS, CLAIMANTS, OR INSUREDS

Neither the making of one or more Claims against more than one Insured, nor the making of Claims by more than one claimant, shall operate to increase the Limit of Liability. All Claims that arise out of or in connection with the same Professional Services or Related Professional Services, whenever made and without regard to the number of Claims, claimants, or implicated Insured, shall be treated as a single Claim. All such Claims, whenever made, shall be deemed first made at the time of the earliest Claim arising out of such Professional Services or Related Professional Services was first made, and all such Claims shall be subject to the same “Each Claim” Limit of Liability, “Aggregate” Limit of Liability, and Claim Expense Allowance.

110. The Policies’ General Conditions provided as follows:

SECTION 6 – GENERAL CONDITIONS

A. INSURED’S OBLIGATIONS UPON NOTICE OF CLAIM OR POTENTIAL CLAIM

1. When an **Insured** becomes aware of a **Wrongful Act** that could reasonably be expected to be the basis of a **Claim**, but no **Claim** arising therefrom has yet been made, then as a condition precedent to the **Company**’s obligation to defend

or indemnify the **Insured** under this **Policy**, the **Insured** shall immediately give written notice to the **Company**. Such notice shall include the fullest information obtainable concerning the potential **Claim**. The **Insured** must deliver written notice to the **Company** in accordance with the CLAIMS MADE AND REPORTED POLICY paragraph set forth on page 1 of this **Policy**.

[...]

D. ACTION AGAINST COMPANY

No action shall lie against the **Company** unless and until the **Insured** has fully complied with all terms and conditions of this **Policy**, and unless and until the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** or by written agreement of the **Insured**, the claimant and the **Company**. No person or **Organization** shall have the right under this **Policy** to join the **Company** as a party to any **Claim** against an **Insured**.

[...]

K. STATEMENTS IN DECLARATIONS AND APPLICATION

By acceptance of this **Policy**, each **Insured** agrees with, represents to and assures the **Company** that the statements, information and representations in the **Declarations**, in the application for this **Policy**, and in the applications for each prior policy issued by the **Company** to the **Insured**, are true and correct, that the **Declarations** and the application form a part of this **Policy**, and that this **Policy** is issued in reliance upon the truth of such statements, information and representations.

CLAIM AND RESERVATION OF RIGHTS

111. Upon receiving notice of the Claim on June 16, 2020, ALPS began its

investigation of the Claim and received certain documents relating to same.

112. ALPS issued a reservation of rights letter to Edenfield Law, LLC, and Ms. Edenfield, via correspondence dated July 14, 2020.

113. A true and accurate copy of the Edenfield Law and Ms. Edenfield reservation of rights letter is attached hereto as Ex. "17".

114. ALPS issued a supplemental reservation of rights letter to Edenfield Law via correspondence dated October 12, 2020.

115. A true and correct copy of the supplemental Edenfield Law reservation of rights letter is attached hereto as Ex. "18".

116. ALPS issued a second supplemental reservation of rights letter to Edenfield Law via correspondence dated March 2, 2021.

117. A true and correct copy of the second supplemental Edenfield Law reservation of rights letter is attached hereto as Ex. "19".

118. ALPS issued a reservation of rights letter to ECB via correspondence dated July 13, 2020.

119. A true and accurate copy of the ECB reservation of rights letter is attached hereto as Ex. "20".

120. ALPS issued a supplemental reservation of rights letter to ECB via correspondence dated October 12, 2020.

121. A true and correct copy of the supplemental ECB reservation of rights letter is attached hereto as Ex. “21”.

122. ALPS issued a second supplemental reservation of rights letter to ECB via correspondence dated March 2, 2021.

123. A true and correct copy of the second supplemental reservation of rights letter to ECB is attached hereto as Ex. “22”.

124. ALPS received a demand letter (“Demand”) from Ms. Phillips counsel on September 11, 2020.

125. The Demand alleged legal malpractice and breach of fiduciary duties arising out of the Representation.

126. The Demand alleged damages arising out of both the EEOC Lawsuit and Ms. Phillips’ workers’ compensation claim.

127. The Demand also sought interest, general damages, and attorneys’ fees.

128. The Demand asserted the Claim is worth \$688,096.50, and that amount was demanded to settle the Claim.

129. The Demand had an expiration of 5:00 p.m., on October 14, 2020.

130. Because the Demand asserted that if ALPS fails to settle, ALPS could later be liable for bad faith extracontractual damages, the Demand was the sort of demand commonly referred to in Georgia as a *Holt* demand.

131. On October 13, 2020, prior to the expiration of the Demand deadline, ALPS filed this Declaratory Judgment Action.

132. On February 22, 2021, Phillips filed a lawsuit styled *Allison Phillips v. Vera Sharon Edenfield, Esq., Edenfield Law, LLC, and Edenfield Cox Law Firm, P.C. f/k/a Edenfield, Cox, Bruce & Classens*, in the State Court of Bulloch County, Civil Action No. STCV2021000044 (“Underlying Action”).

133. A true and correct copy of the Complaint filed in the Underlying Action is attached hereto as Ex. “23”.

134. Based upon the allegation underlying the Claim, the Complaint in the Underlying Action asserts claims against Ms. Edenfield, Edenfield Law, and ECB of legal malpractice, breach of contract, negligent misrepresentation, and breach of fiduciary duty arising out of the Representation. Further, the Complaint seeks punitive damages and litigation expenses.

*Count I: Declaratory Judgment*

135. ALPS is in a position of uncertainty or insecurity respecting its rights, status, and other legal relations as to the Underlying Action, Claim, and Policies.

136. The Policies do not cover the Claim because ECB, Edenfield Law, and Ms. Edenfield (collectively, “Attorneys”), prior to the effective date of each Policy, knew or reasonably should have known or foreseen that a wrongful act might be the

basis of a claim.

137. As an example, but not limiting ALPS to proving other examples, the EEOC Dismissal was entered in October 31, 2017, before the inception date of any Policy and before any Applications were completed by Attorneys for any of the ALPS Policies.

138. Attorneys knew that the EEOC Dismissal was based upon a failure to timely file the EEOC Lawsuit.

139. The failure to file a claim within a well-known limitation period, as in the EEOC Lawsuit, was a Wrongful Act under the Policies.

140. Attorneys knew or reasonably should have known or foreseen that the alleged Wrongful Act and failure to file a Complaint by a statutory deadline might be the basis of a claim.

141. Because of Attorneys' knowledge of the EEOC Dismissal, the elements of coverage under the Insuring Agreement were not met.

142. Because of Attorneys' knowledge of the EEOC Dismissal, Exclusion E 3 applies to bar coverage.

143. Because of Attorneys' knowledge of the EEOC Dismissal, the notice conditions of the Policies were not satisfied.

144. Because of Attorney's knowledge of the EEOC Dismissal, the terms of

the Applications (which were incorporated into the Policies) that excluded coverage for undisclosed claims apply.

145. Attorneys' work on the EEOC Lawsuit and the workers' compensation claim were Related Professional Services as defined by the Policies.

146. The damages asserted as part of the Claim relating to the EEOC Lawsuit and the workers' compensation claim are part of a single Claim as defined by the Policies.

147. The single Claim, including those damages arising out of the EEOC Lawsuit and the workers' compensation claim, arose at the earliest time of any Claim as set forth in SECTION 4, subpart D.

148. Because that part of the Claim arising out of the EEOC Lawsuit is not covered, other parts of the single Claim, including that part arising out of the workers' compensation claim, are also not covered.

149. The Attorneys' Policies do not cover any aspects of the Claim asserted by Ms. Phillips, including any of the damages sought in the Demand or the Underlying Action.

150. The Demand and Underlying Action assert Ms. Phillips' right to recover attorney fees and interest as part of her damages against Attorneys.

151. The Policies exclude from the definition of covered Damages both pre-

and post-judgment interest, attorney fees, and other collateral damages.

152. Even if there are some covered claims asserted by Ms. Phillips, ALPS has no duty to indemnify Attorneys for any settlement, recovery, or judgment for pre- and post-judgment interest and attorney fees, or any other award not included within the definition of covered Damages.

153. Because of the Claim and Demand, ALPS is forced to choose between paying a potentially non-covered Claim or denying the demand under the threat of excess exposure and bad faith liability.

154. Further, now that the Underlying Action has been filed, ALPS is currently defending Attorneys under a reservation of rights and incurring expenses of litigation to defend a Claim that is not covered under the Policies.

155. ALPS is entitled to a declaration from this Court that Attorneys are owed no duty to defend or indemnify related to the Claim.

**Count II: Reimbursement of Claim Expenses**

156. The Policies, pursuant to SECTION 1, subpart B.2, provide that should ALPS pay any Claims Expenses for a Claim or Lawsuit that is determined to not be covered, ALPS is entitled to recover its Claims Expenses from the Insured parties.

157. ALPS is paying Claims Expenses, including defense costs, by defending the Attorneys in the Underlying Lawsuit.

158. ALPS reserved its rights to recover and seek reimbursement its Claim Expenses, should there be no coverage, when it agreed to provide a defense to Attorneys.

159. ALPS is entitled to a declaration of its rights in its favor based upon the above pleaded facts.

160. Because there is no duty to defend or indemnity, ALPS is also entitled to a judgment in its favor requiring the Insureds to reimburse ALPS for all Claim Expenses, including defense costs.

WHEREFORE, Plaintiff ALPS Property & Casualty Insurance Company prays:

- (a) That each Defendant be required to respond to the allegations set forth in this *First Amended Complaint for Declaratory Judgment*;
- (b) That this Court declare that ALPS has no duty to settle the Claim asserted by Ms. Phillips in the Demand;
- (c) That this Court declare that ALPS has no duty to defend or indemnify Attorneys for the Claims asserted by Ms. Phillips, any Claim asserted in the Underlying Action, or any settlements, judgments, or awards in the Underlying Action against Attorneys;

- (d) That this Court award ALPS a judgment against Attorneys for reimbursement for any Claims Expenses that ALPS pays in accordance with the terms of the Policies; and
- (e) For such other relief as this Court deems just and proper.

Respectfully submitted,

**Bovis, Kyle, Burch & Medlin, LLC**

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/s/ Kim M. Jackson  
Ga. State Bar No. 387420

/s/ J. Jackson Harris  
Ga. State Bar No. 930294

*Counsel for Plaintiff ALPS Property &  
Casualty Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date filed the within and foregoing *First Amended Complaint for Declaratory Judgment* with the Clerk of Court using the Court's electronic filing system, which will automatically effect service upon all counsel of record.

This 4<sup>th</sup> day of March, 2021.

s/ J. Jackson Harris  
Ga. State Bar No. 930294  
*Counsel for Plaintiff ALPS Property &  
Casualty Insurance Company*