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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION - SANTA ANA)

AMERICAN HOME ASSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
CHAD WARE, an individual also dba)
ADVENTURE CRUISE LINES;)
SCOTT McCLUNG, an individual;)
RAPTURE MARINE)
EXPEDITIONS, a corporation;)
CERTIFIED MARINE)
EXPEDITIONS, a corporation;)
SAFARI EXPLORER CHARTERS,)
LLC, a limited liability company;)
AMERICAN SAFARI CRUISES)
LLC, a limited liability company,)
INNERSEA DISCOVERIES LLC, a)
limited liability company, and)
SARAH MICHELLE SIMMONS as)
Special Administrator and Personal)
Representative of the ESTATE OF)
JEREMIAH JOHNSON, deceased,)
)
Defendants.)

Case No. 2:10-cv-06445-JST (RZx)

JUDGMENT

WHEREAS, AMERICAN HOME ASSURANCE COMPANY
("AMERICAN HOME") filed a Complaint in this Court on August 27, 2010,
pursuant to Federal Rule of Civil Procedure 9(h) and 28 U.S.C. § 1333, seeking

1 declaratory relief to the effect that a certain excess marine protection and
2 indemnity policy of insurance number 49716 (the “Excess Policy”) did not obligate
3 AMERICAN HOME to indemnify or defend any insured or third party with
4 respect to any claim or liability arising out of the death of Jeremiah Johnson on
5 February 11, 2007, which occurred during the course of a voyage aboard the vessel
6 RAPTURE in waters near the state of Hawaii; and

7 WHEREAS, AMERICAN HOME named and served certain defendants, on
8 the grounds that they were actual or potential claimants on the Excess Policy, or
9 potential judgment creditors of the Excess Policy’s named insureds and named
10 additional insureds. Said defendants are set forth below, and each appeared in the
11 Action:

12 CHAD WARE;

13 ADVENTURE CRUISE LINES;

14 SCOTT McCLUNG;

15 RAPTURE MARINE EXPEDITIONS;

16 CERTIFIED MARINE EXPEDITIONS;

17 SAFARI EXPLORER CHARTERS, LLC;

18 AMERICAN SAFARI CRUISES LLC;

19 INNERSEA DISCOVERIES LLC; and,

20 SARAH MICHELLE SIMMONS as Special Administrator and Personal
21 Representative of the ESTATE OF JEREMIAH JOHNSON, deceased
22 (“SIMMONS”); and

23 WHEREAS, AMERICAN HOME dismissed all defendants except
24 SIMMONS pursuant to a certain LONG FORM AGREEMENT entered into
25 among and between all parties to this action and certain non-parties; and

26 WHEREAS, SIMMONS is the sole remaining defendant herein and is a
27 judgment creditor of RAPTURE MARINE EXPEDITIONS with respect to the
28 death of Mr. Johnson. Said judgment arises from SIMMONS’ prosecution of a

1 wrongful death action in the Superior Court of the State of California in and for the
2 County of Orange, Case Number 30-2009-00306440 (the “Wrongful Death
3 Action”), and was entered on September 29, 2011; and

4 WHEREAS, following certain post-judgment litigation in the Wrongful
5 Death Action, SIMMONS is not a judgment creditor of any defendant therein other
6 than RAPTURE MARINE EXPEDITIONS; and

7 WHEREAS, pursuant to the LONG FORM AGREEMENT, SIMMONS
8 obtained an assignment from RAPTURE MARINE EXPEDITIONS of certain
9 disputed indemnity rights SIMMONS claimed RAPTURE MARINE
10 EXPEDITIONS was entitled to pursue against AMERICAN HOME with respect
11 to the EXCESS POLICY and RAPTURE MARINE EXPEDITIONS’s liability for
12 the death of Jeremiah Johnson; and

13 WHEREAS, SIMMONS contended herein that she was entitled to indemnity
14 from AMERICAN HOME for RAPTURE MARINE EXPEDITIONS’s liability for
15 the Wrongful Death Judgment by virtue of her status as RAPTURE MARINE
16 EXPEDITIONS’s assignee; and

17 WHEREAS AMERICAN HOME denied that the Excess Policy obligated it
18 to indemnify RAPTURE MARINE EXPEDITIONS (or its assignee SIMMONS)
19 for any liability whatsoever where RAPTURE MARINE EXPEDITIONS was not
20 an insured on the Excess Policy; and

21 WHEREAS on November 21, 2012, AMERICAN HOME moved for partial
22 summary judgment¹ against SIMMONS on the grounds that her assignor
23 RAPTURE MARINE EXPEDITIONS had no rights under the Excess Policy

24 ¹ At the time the motion was filed, SIMMONS was also the judgment creditor and
25 assignee of CHAD WARE. As the motion did not address Mr. Ware’s rights under
26 the policy, it was brought as a *partial* summary judgment. After the motion was filed,
27 the judgment against CHAD WARE was vacated by the California Court of Appeal.
28 As such, SIMMONS’ only claim on the Excess Policy arises from her status as the
judgment creditor and assignee of RAPTURE MARINE EXPEDITIONS, and the
motion is therefore properly construed as a motion for summary judgment.

1 because RAPTURE MARINE EXPEDITIONS was not a named or additional
2 insured on the Excess Policy; and

3 WHEREAS, SIMMONS contended in her opposition that RAPTURE
4 MARINE EXPEDITION had rights under certain insurance documents, including
5 a binder, by virtue of its status as an “operator” of the RAPTURE, notwithstanding
6 that it was not named as an insured on the binder or on the EXCESS POLICY; and

7 WHEREAS, AMERICAN HOME’s motion for summary judgment came on
8 for hearing on April 5, 2013, and the Court heard oral argument from counsel for
9 AMERICAN HOME and for SIMMONS; and

10 WHEREAS the Court issued an Order dated April 10, 2013, GRANTING
11 the motion and holding that AMERICAN HOME had no indemnity obligation to
12 RAPTURE MARINE EXPEDITIONS (SIMMONS’ assignor) under the Excess
13 Policy or the Binder where RAPTURE MARINE EXPEDITIONS was not named
14 as an insured; and

15 WHEREAS, it is undisputed that SIMMONS has no rights of her own with
16 respect to the EXCESS POLICY where she is neither an insured nor has any
17 liability for the death of Jeremiah Johnson;

18 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND
19 DECREED that AMERICAN HOME’s Excess Policy does not obligate it to
20 indemnify SIMMONS (in her own right or as the assignee of RAPTURE MARINE
21 EXPEDITIONS) for any judgment or liability arising out of the death of Jeremiah
22 Johnson, including without limitation, the judgment SIMMONS obtained against
23 RAPTURE MARINE EXPEDITIONS in the Wrongful Death Action.

24 Each party shall bear its own fees and costs.

25 IT IS SO ORDERED.

26
27 Dated: April 29, 2013



28
Honorable Josephine Staton Tucker
United States District Court Judge