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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

CAROLINA CASUALTY INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
ELIZABETH S. ORTIZ, et al.)
)
Defendants.)
)
_____)
AND RELATED COUNTERCLAIMS)
_____)

Case No.: 1:08-CV-00691-LJO-SMS

**JUDGMENT IN FAVOR OF PLAINTIFF
AND COUNTER-DEFENDANT
CAROLINA CASUALTY INSURANCE
COMPANY**

LAW OFFICES OF
CHOLAKIAN & ASSOCIATES
A PROFESSIONAL CORPORATION
400 OYSTER POINT BLVD., SUITE 415
SO. SAN FRANCISCO, CALIFORNIA 94080

Following the Order of January 4, 2010 [Doc. 164] on Cross-Motions for Summary Adjudication on the Issue of Insurance Coverage whereby the Court granted the Motion of Plaintiff and Counter-Defendant, CAROLINA CASUALTY INSURANCE COMPANY (“Carolina Casualty”), and denied the Motions of Defendants and Counterclaimants ELIZABETH S. ORTIZ, individually and as Guardian Ad Litem for KASSANDRA N. ORTIZ and ALEXIS J. ORTIZ, minors; KASSANDRA N. ORTIZ and ALEXIS J. ORTIZ, each individually; ESTATE OF JAVIER ORTIZ FUENTES, by and through its Representative ELIZABETH S. ORTIZ (collectively, the “Ortiz Defendants”), and Defendants and Counterclaimants VERONICA DIEGO, individually and as Guardian Ad Litem for JOSE ANTONIO DIEGO and ROBERTO DIEGO-JERONIMO, minors; JOSE ANTONIO DIEGO and ROBERTO DIEGO-JERONIMO, each individually and as Successors in Interest of Aniceto Diego Trujillo, deceased; MARIA GUADALUPE ALFARO VEGA, individually and as Guardian ad Litem for KARINA ALEJANDRA CORTES ALFARO and LUIS GERARDO CORTES ALFARO, minors, each individually and as Successors in Interest of Gerardo Cortes

1 Cervantes, a.k.a. Gerardo Cortez, deceased; MARIA IMELDA MERCADO individually and as
2 Guardian Ad Litem for VICKY NAVA, JOESELYN NAVA and STEPHANIE NAVA, minors;
3 VICKY NAVA, JOESELYN NAVA and STEPHANIE NAVA, each individually and as
4 Successors in Interest of Gabino Nava Sanchez a.k.a. Omar Ramirez, deceased; FAVIOLA
5 QUEZADAS DE VELASQUEZ, individually and as Guardian ad Litem for LAURA
6 ALEJANDRA VELASQUEZ QUEZADAS, ALONDRA LIZBETH VELASQUEZ
7 QUEZADAS, JOSE DE JESUS VELASQUEZ-QUEZADA, JOHN VELASQUEZ-QUEZADA,
8 RICHARD VELASQUEZ-QUEZADA and DIEGO EMMAUEL VELASQUEZ-QUEZADA,
9 minors; LAURA ALEJANDRA VELASQUEZ QUEZADAS, ALONDRA LIZBETH
10 VELASQUEZ QUEZADAS, JOSE DE JESUS VELASQUEZ-QUEZADA, JOHN
11 VELASQUEZ-QUEZADA, RICHARD VELASQUEZ-QUEZADA and DIEGO EMMAUEL
12 VELASQUEZ-QUEZADA, each individually and as Successors in Interest of Jose Valasquez
13 Martinez, deceased (collectively, the “Diego Defendants”), and the pretrial conference on
14 February 23, 2010, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

15 1. Judgment is hereby entered upon the Court’s Order of January 4, 2010 on Cross
16 Motions for Summary Adjudication on the Issue of Insurance Coverage. [Doc. 164.] Insurance
17 coverage was not afforded under Carolina Casualty's policy numbered CTP 3398 30 to A&A
18 Transport Company, Inc. ("A&A Transport") as an additional insured for the claims and action
19 against A&A Transport and its employee Jose Pimental Rodriguez for the injuries and damages
20 arising out of the accident on August 10, 2005.

21 2. The adjudication on insurance coverage renders the remaining counts and claims
22 moot.

23 3. The remaining counts and claims of the Ortiz Defendants and the Diego
24 Defendants are parasitic in nature and dependent on a finding of coverage. These counts and
25 claims are not viable absent the establishment of coverage.

26 4. Carolina Casualty’s alternate Claim for Reformation is moot in light of the
27 Court’s adjudication that insurance coverage was not afforded under Carolina Casualty's policy
28 numbered CTP 3398 30 to A&A Transport as an additional insured for the claims and action

1 against A&A Transport and its employee Jose Pimental Rodriguez for the injuries and damages
2 arising out of the accident on August 10, 2005.

3 5. Therefore, pursuant to the authority of *Portsmouth Square, Inc. v. Shareholders*
4 *Protective Committee*, 770 F.2d 866, 869 (9th Cir. 1985), and *Celotex Corp. v. Catrett*, 477 U.S.
5 317, 326 (1986), and the waiver by all parties of notice of the Court's intention to consider
6 granting summary judgment at the pretrial conference, IT IS FURTHER ORDERED,
7 ADJUDGED, AND DECREED that Summary Judgment is entered *sua sponte* in favor of
8 Carolina Casualty, and against the Ortiz Defendants and the Diego Defendants, as to the entire
9 action.

10 6. In the event that this Court's adjudication on insurance coverage is reversed on
11 appeal, each of the remaining counts and claims, i.e., the Ortiz and Diego Defendants' Claim for
12 Breach of the Implied Covenant of Good Faith and Fair Dealing and Claim for Negligent
13 Misrepresentation, and Carolina Casualty's alternate Claim for Reformation, shall be
14 resuscitated.

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17 DATED: March 11, 2010_

18 _____/s/ Lawrence J. O'Neill_____
19 Hon. Lawrence J. O'Neill
20 United States District Judge
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Approved as to form:

Dated: 3/05/10

CHOLAKIAN & ASSOCIATES
A Professional Corporation

By: /s/ Vivian L. Lerche (as authorized on 3/5/10)
Kevin K. Cholakian
Vivian L. Lerche
Attorneys for Plaintiff and Counter-Defendant
**CAROLINA CASUALTY INSURANCE
COMPANY**

Dated: 3/05/10

LANG, RICHERT & PATCH

By: /s/ David T. Richards (as authorized on 3/5/10)
Robert L. Patch, II
David T. Richards
Attorneys for Defendants and Counterclaimants
THE ORTIZ DEFENDANTS

Dated: 3/05/10

PEREZ, WILLIAMS & MEDINA

By: /s/ Robert Gray Williams (as authorized on 3/5/10)
Robert Gray Williams
Attorneys for Defendants and Counterclaimants
**DIEGO, ALFARO, NAVA AND VELASQUEZ
DEFENDANTS**