

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

<b>AMGUARD INSURANCE COMPANY,</b>	)	
	)	
<b>Plaintiff</b>	)	
<b>v.</b>	)	<b>Civil Action No. 2:17-cv-210</b>
	)	
<b>FELIPE RAMIREZ, and</b>	)	
<b>RAMIREZ CONCRETE LLC,</b>	)	
	)	
<b>Defendants</b>	)	

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**COMPLAINT FOR DECLARATORY JUDGMENT**

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Plaintiff, AmGUARD Insurance Company, files this Complaint for Declaratory Judgment and would respectfully show the Court the following:

**I.**

**PARTIES**

1. Plaintiff, AmGUARD Insurance Company (“AmGUARD”), is an insurance company incorporated and organized under the laws of the State of Pennsylvania, with its principal place of business in the State of Pennsylvania. AmGUARD is an eligible foreign insurer in the State of Texas. AmGUARD is a citizen of the state of Pennsylvania and is not a citizen of the State of Texas.

2. Defendant Felipe Ramirez, also known as Felipe Ramirez-Ramos (“Ramirez”), is a citizen of the State of Texas and may be served at 7720 E. Amarillo Blvd., Amarillo, Texas 79107-7840.

3. Defendant Ramirez Concrete, LLC (“Ramirez Concrete”) is a citizen of the State of Texas and may be served through its Managing Member and Registered Agent for Service, Felipe Ramirez, at 1315 Iroquois, Amarillo, Texas 79107

## II.

### **JURISDICTION AND VENUE**

4. The Plaintiff and Defendants are citizens of different states. The matter in controversy exceeds, exclusive of interest and costs, the sum of Seventy-Five Thousand and 00/100 dollars (\$75,000). Therefore, this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. Section 1332.

5. Venue is proper in the United States District Court for the Northern District of Texas pursuant to 28 U.S.C. Section 1391 (b) (1)–(2) because: (1) both defendants reside within the Northern District of Texas and are residents of the State of Texas; (2) a substantial part of the events and omissions giving rise to the claim occurred in Amarillo, Texas which is located within the Northern District of Texas.

## III.

### **NATURE OF THE ACTION**

6. This suit is a claim for declaratory judgment under both Federal Rule of Civil Procedure 57 and 28 U.S.C. Sections 2201 and 2202.

## IV.

### **FACTS**

7. On or about June 10, 2017, at approximately 9:05 AM, Ramirez was operating a 2016 Ford pick-up truck and traveling eastbound on Interstate Highway 40 in Amarillo, Texas,

just pass the overpass and intersection at S. Whitaker Road, towing a sixteen-foot long trailer which contained sand and rebar.

8. Ramirez Concrete, of whom Ramirez is a managing member and, on information and belief, in whom Ramirez has an ownership interest, is the registered owner of the 2016 Ford pick-up truck (“Ramirez Truck”) and the trailer (“Ramirez’s Trailer”).

9. David Rodriguez was a passenger in Ramirez’s Truck.

10. The section of Interstate 40 on which Ramirez was driving consisted of three eastbound travel lanes. Ramirez was driving Ramirez’s Truck in the center lane of Interstate 40. The right hand or southernmost lane was marked off by cones or markers due to repairs that were being performed in that lane.

11. As Ramirez was driving Ramirez’s Truck in the center lane of Interstate 40, Ramirez’s Trailer disconnected from Ramirez’s Truck, exiting the road on the south side of East Interstate 40.

12. Ramirez’s Trailer collided with a 2014 gravel paver, which was parked on the outside lane at 7000 East Interstate 40, and a 2016 GMC Sierra pick-up truck, which was parked on the southbound shoulder of Interstate 40 (“the Accident”).

13. At the time that Ramirez’s Trailer collided with the two vehicles, five men, Ygnacio Rodriguez, Jorge N. Catano, Julian Zamora, David Huddleston, and Eddie Erinco, were working near the gravel paver.

14. As a result of the collision, Rodriguez, Catano, and Zamora were killed. Huddleston and Erinco suffered serious injuries and were transported to the hospital.

15. On June 21, 2017, Yrma Gurrola filed *Plaintiff’s Original Petition and Request for Disclosures* (“Gurrola’s Petition”) against Ramirez and Ramirez Concrete, initiating the

lawsuit styled *Yrma Gurrola, Individually and on Behalf all Lawful Heirs of Ygnacio Rodriguez (Deceased) v. Felipe Ramirez-Ramos and Ramirez Concrete LLC*, Cause No. 106528-D-CV in the 320th Judicial District Court in Potter County, Texas (“Gurrola’s Suit”). A copy of Gurrola’s Petition is attached as **Exhibit A** to this Complaint.

16. Gurrola’s Petition alleges that Ramirez and Ramirez Concrete were negligent, grossly negligent, and negligent per se by committing acts and omissions that included failing to inspect the trailer hitch, failing to maintain proper lookout, failing to maintain proper control of the vehicle Ramirez was operating, and not attaching or securing the required safety chains. Gurrola’s Petition alleges that Ramirez Concrete was negligent in entrusting Ramirez with its vehicle as Ramirez was an incompetent and/or reckless driver. Gurrola’s Petition alleges that these negligent, careless and wrongful actions were the proximate cause of Rodriguez’s death.

17. Gurrola’s Petition seeks damages for loss of companionship and society, mental anguish, pecuniary loss, medical expenses, funeral expenses, loss of earnings, loss of services, physical pain, loss of enjoyment of life, and inconvenience on behalf of Gurrola, Rodriguez’s heirs, and Rodriguez’s estate.

18. Ramirez tendered the defense of Gurrola’s Suit to AmGUARD and requested that AmGUARD defend and indemnify Ramirez and Ramirez Concrete from Gurrola’s Suit.

19. AmGUARD issued a Commercial Auto insurance policy, Policy Number FEAU818305, to the Named Insured Felipe Ramirez (“AmGUARD’s Policy”). AmGUARD’s Policy has a policy period of March 16, 2017 to March 16, 2018. A copy of AmGUARD’s Policy is attached as **Exhibit B** to this Complaint.

20. In a letter dated July 20, 2017 from AmGUARD's attorney to Ramirez, AmGUARD advised Ramirez that it was reserving its rights to deny coverage in the future for the Accident and Gurrola's Suit ("AmGUARD's ROR Letter"). AmGUARD specifically cited language in AmGUARD's Policy which stated that there is liability coverage only for trailers that are being towed by specifically described covered autos and that have a load capacity of 2,000 pounds or less. AmGUARD also specifically cited language in AmGUARD's Policy that the policy limits were \$1,000,000. AmGUARD additionally reserved its right to deny coverage on the basis of any defense to coverage that may be available under AmGUARD's Policy.

21. Subject to AmGUARD's reservation of rights in AMGUARD's ROR Letter, AmGUARD agreed to provide a defense to Ramirez and Ramirez Concrete from Gurrola's Suit and appointed defense counsel to represent Ramirez and Ramirez Concrete.

22. On information and belief, Ramirez's Trailer has a load capacity that is greater than 2,000 pounds.

## V.

### **RELEVANT LANGUAGE IN AMGUARD'S POLICY**

23. The following provisions of AmGUARD's Policy are relevant to whether AmGUARD has a duty to defend and indemnify Ramirez and Ramirez Concrete from Gurrola's Suit and from suits filed by other parties related to the Accident:

#### **BUSINESS AUTO DECLARATIONS**

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#### **ITEM TWO**

#### **Schedule Of Coverages And Covered Autos**

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those “autos” shown as covered “autos”. **“Autos” are shown as covered “autos” for a particular coverage by the entry of one or more of the symbols from the Covered Autos section of the Business Auto Coverage Form next to the name of the coverage.**

Coverages	Covered Autos	Limit	Premium
Covered Autos Liability	7	\$ 1,000,000	[Redacted]

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### BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations. The words “we”, “us” and “our” refer to the company providing the insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V- Definitions.

#### SECTION I – COVERED AUTOS

Item Two of the Declarations shows the “autos” that are covered “autos” for each of your coverages. The following numerical symbols describe the “autos” that may be covered “autos”. The symbols entered next to a coverage on the Declarations designate the only “autos” that are covered “autos”.

##### A. Description of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols
***	***
7	Specifically Described “Autos” Only those “autos” described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any “trailers” you don’t own while attached to any

	power unit described in Item Three)
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### **C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered “autos” for Covered Autos Liability Coverage:

1. “Trailers” with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.

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## **SECTION II- COVERED AUTOS LIABILITY COVERAGE**

### **A. Coverage**

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto”.

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We have the right and duty to defend any “insured” against a “suit” asking for such damages or a “covered pollution cost or expense”. However, we have no duty to defend any “insured” against a “suit” seeking damages for “bodily injury” or “property damage” or a “covered pollution cost or expense” to which this insurance does not apply. We may investigate and settle any claim or “suit” as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

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## **SECTION V – DEFINITIONS**

P. “trailer” includes semitrailer.

## **VI.**

## **CAUSE OF ACTION FOR DECLARATORY JUDGMENT**

24. Plaintiff AmGUARD incorporates the allegations set forth in paragraphs 1-23 above.

25. This matter presents an actual, present, real and substantial controversy between the parties hereto with respect to the matters set forth herein and for which declaratory relief is proper.

26. For the reasons set forth below, AmGUARD seeks a declaration that it does not have a duty to defend Ramirez and Ramirez Concrete from Gurrola's Suit and from any other suits and/or claims brought by the men or representatives of the men who were killed, injured, and/or who sustained property damage as a result of the Accident.

27. For the reasons set forth below, AmGUARD seeks a declaration that it does not have a duty to indemnify Ramirez and Ramirez Concrete from Gurrola's Suit and from any other suits and/or claims brought by the men or representatives of the men who were killed, injured, and/or who sustained property damage as a result of the Accident.

28. A declaratory judgment is necessary because it will enable AmGUARD, Ramirez, and Ramirez Concrete to clarify and resolve disputes concerning the legal obligations, if any, owed by AmGUARD to Ramirez and Ramirez Concrete under AMGUARD's Policy with respect to Gurrola's Suit and will afford relief from the uncertainty as to whether Ramirez and Ramirez Concrete should be able to rely upon AmGUARD to provide defense and indemnity against the claims asserted against Ramirez and Ramirez Concrete in Gurrola's Suit and from any other suits and/or claims brought by the men or representatives of the men who were killed, injured, and/or who sustained property damage as a result of the Accident.

29. AmGUARD's Policy states, in relevant part, that AmGUARD "will pay all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to



which this insurance applies, caused by an ‘accident’ and resulting from the ownership, maintenance or use of a covered ‘auto.’”

30. Item Two of the Declarations page of AmGUARD’s Policy lists the symbol “7” for Covered Autos Liability. The table under Section I. A. of the Business Auto Coverage form in AmGUARD’s Policy, which table and subsection are both entitled “Description Of Covered Auto Designation Symbols”, states that the symbol “7” describes covered autos as “Only those ‘autos’ described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any ‘trailers’ you don’t own while attached to any power unit described in Item Three.)”

31. Ramirez’s Truck is described in Item Three of the Declarations of AmGUARD’s Policy and a premium charge is shown for Ramirez’s Truck. However, Ramirez’s Trailer was owned by Ramirez Concrete and, on information and belief, Ramirez. Thus, Ramirez’s Trailer is not a trailer “you don’t own”. Therefore, Ramirez’s trailer does not qualify as a “covered ‘auto’” under Section I. A of the Business Auto Coverage Form.

32. Section I. C. of the Business Auto Coverage Form in AmGUARD’s Policy states, in relevant part, that “If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered ‘autos’ for Covered Autos Liability Coverage: 1. ‘Trailers’ with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.” On information and belief, Ramirez’s Trailer has a load capacity of more than 2,000 pounds. Therefore, Ramirez’s Trailer does not qualify as a “covered ‘auto’” under Section I. C of AmGUARD’s Policy.

33. As there is no provision in Am Guard's Policy which defines or describes Ramirez's Trailer as a "covered 'auto'", Ramirez's Trailer is not a "covered 'auto'" under AmGUARD's Policy.

34. Section II of the Business Auto Coverage Form in AmGUARD's Policy only requires AmGUARD to "pay all sums an 'insured' legally must pay as damages because of 'bodily injury or 'property damage'.... resulting from the ownership, maintenance or use of a covered 'auto'". Because Ramirez's Trailer is not a "covered 'auto'", AmGUARD has no duty to indemnify Ramirez and Ramirez Concrete from Gurrola's Suit or from any other suits and/or claims brought by the men or representatives of the men who were killed, injured, and/or who sustained property damage as a result of the Accident.

35. Section II. A. of the Business Auto Coverage Form in AmGUARD's Policy states in relevant part that "we have no duty to defend any 'insured' against a 'suit' seeking damages for 'bodily injury' or 'property damage'....to which this insurance does not apply." As previously explained in this Complaint, AmGUARD's Policy does not apply to the "ownership, maintenance, or use" of Ramirez's Trailer or the Accident because Ramirez's Trailer is not a "covered 'auto'" under AmGUARD's Policy. Therefore, AmGUARD has no duty to defend Ramirez and Ramirez Concrete from Gurrola's Suit or from any other suits and/or claims brought by the men or representatives of the men who were killed, injured and/or who sustained property damage as a result of the Accident.

36. Accordingly, for the foregoing reasons, AmGuard has no duty to neither defend nor indemnify Ramirez and Ramirez Concrete from Gurrola's Suit or from any other suits and/or claims brought by the men or representatives of the men who were killed, injured and/or who sustained property damage as a result of the Accident. Therefore, AmGUARD is entitled to a

judgment from this Court declaring that AmGUARD has no duty to neither defend nor indemnify Ramirez and Ramirez Concrete from Gurrola's Suit or from any other suits and/or claims brought by the men or representatives of the men who were killed, injured, and/or who sustained property damage as a result of the Accident.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff AmGUARD Insurance Company respectfully requests that the Court, after due proceedings herein, enter a declaratory judgment pursuant to 28 U.S.C. § 2201 in favor of AmGUARD Insurance Company and against Felipe Ramirez and Ramirez Concrete, LLC, as follows:

- (1) Declaring that AmGUARD Insurance Company has no duty to defend Felipe Ramirez and Ramirez Concrete, LLC against the lawsuit styled *Yrma Gurrola, Individually and on Behalf all Lawful Heirs of Ygnacio Rodriguez (Deceased) v. Felipe Ramirez-Ramos and Ramirez Concrete LLC*, Cause No. 106528-D-CV in the 320th Judicial District Court in Potter County, Texas;
- (2) Declaring that AmGUARD Insurance Company has no duty to indemnify Felipe Ramirez and Ramirez Concrete, LLC against any judgments rendered in, or any settlements of, the lawsuit styled *Yrma Gurrola, Individually and on Behalf all Lawful Heirs of Ygnacio Rodriguez (Deceased) v. Felipe Ramirez-Ramos and Ramirez Concrete LLC*, Cause No. 106528-D-CV in the 320th Judicial District Court in Potter County, Texas;
- (3) Declaring that AmGUARD Insurance Company has no duty to defend Felipe Ramirez and Ramirez Concrete, LLC from any other suits and/or claims brought by the men or representatives of the men who were killed, injured, and/or who sustained property damage as a result of the Accident;

- (4) Declaring that AmGUARD Insurance Company has no duty to indemnify Felipe Ramirez and Ramirez Concrete, LLC against any judgments rendered in, or any settlements of, other suits and/or claims brought by the men or representatives of the men who were killed, injured and/or who sustained property damage as a result of the Accident;
- (5) Awarding AmGUARD Insurance Company all court costs, other costs, fees, and pre- and post-judgment interest incurred in bringing this Lawsuit; and
- (6) Awarding AmGUARD Insurance Company all other just and equitable relief to which it may be entitled.

Respectfully submitted,

**MARTIN, DISIERE, JEFFERSON & WISDOM LLP**

By: /s/ Christopher W. Martin

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