

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

NATIONWIDE MUTUAL INSURANCE
COMPANY, NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY, and NATIONWIDE
GENERAL INSURANCE COMPANY,

Petitioners,

v.

DAVID J. BARROW, ANN BARROW, & A.B.,
a minor, by and through her next of friend and
parent, J.B.,

Respondents.

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Case No.: _____

COMPLAINT FOR DECLARATORY JUDGMENT

COME NOW Petitioners Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, and Nationwide General Insurance Company (hereinafter “Nationwide”) and hereby file this action for declaratory relief pursuant to Rule 57 of the Federal Rules of Civil Procedure, 28 U.S.C.A. §§2201, et seq., and 28 U.S.C.A. §§1332. In support thereof, Nationwide states as follows:

PARTIES

1. Petitioner Nationwide Mutual Insurance Company is an insurance corporation incorporated under the laws of Ohio, with its principal place of business in Ohio.

2. Petitioner Nationwide Mutual Fire Insurance Company is an insurance corporation incorporated under the laws of Ohio, with its principal place of business in Ohio.

3. Petitioner Nationwide General Insurance Company is an insurance corporation incorporated under the laws of Ohio, with its principal place of business in Ohio.

4. Respondent David J. Barrow is an individual over the age of 19 years and is domiciled in and a citizen of the State of Alabama.

5. Respondent Ann Barrow is an individual over the age of 19 years and is domiciled in and a citizen of the State of South Carolina.

6. Respondent A.B., a minor, is domiciled in and a citizen of the State of Alabama. A.B. is the daughter of J.B.

7. Respondent J.B. is an individual over the age of 19 years and is domiciled in and a citizen of the State of Alabama. J.B. is the father and next of friend of A.B.

JURISDICTIONAL ALLEGATIONS

8. This is a declaratory judgment action brought under 28 U.S.C. § 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

9. An actual, justiciable controversy exists among the parties within the meaning of 28 U.S.C. § 2201 regarding the scope and extent of insurance coverage provided under automobile, homeowners, dwelling, and umbrella policies issued by Nationwide to Respondents David J. Barrow and Ann Barrow.

10. This Court has subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1332, in that complete diversity of citizenship exists between the parties and the amount in controversy is in excess of Seventy-Five Thousand (\$75,000.00), exclusive of interest and costs.

11. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this dispute occurred within the Northern District of Alabama, and the underlying action upon which this action is premised is pending in the Circuit Court of Marshall County, Alabama.

UNDERLYING LITIGATION

12. On February 13, 2015, Respondent David J. Barrow was indicted by a Madison County Grand Jury on six (6) counts of Human Trafficking First Degree, three (3) counts of Sexual Abuse of a Child Less than 12 Years Old, two (2) counts of Conspiracy to Commit Sexual Abuse of a Child Less than 12 Years Old, and one (1) count of Sodomy First Degree.

13. On March 27, 2015, Respondent David J. Barrow was indicted by a Marshall County Grand Jury on twenty-five (25) counts of Production of Obscene Matter, one (1) count of Possession of Obscene Matter, and one (1) count of Aggravated Criminal Surveillance.

14. On March 31, 2016, Respondent David J. Barrow entered a plea of guilty to two (2) counts of Human Trafficking, a Class A Felony, in the Circuit Court of Madison County, Alabama, 47-CC-15-000912. Barrow was sentenced to imprisonment for a term of 30 years.

15. On April 4, 2016, David J. Barrow entered a plea of guilty to one (1) count of Production of Obscene Matter, a Class A Felony, in the Circuit Court of Marshall County, 50-CC-15-000191. Barrow was sentenced to imprisonment for a term of 620 days.

16. On February 2, 2018, minor child A.B., by and through her father J.B., filed suit in the Circuit Court of Marshall County against Respondent David J. Barrow, styled *A.B., a minor, by and through her next friend and parent, J.B. v. David Jacobs Barrow*, 50-CV-18-900065 (“Underlying Lawsuit”). Plaintiff A.B. subsequently amended her Complaint on April 2, 2019. Plaintiff in the Underlying Lawsuit alleges A.B. was the victim of the crimes pled guilty to by Respondent David J. Barrow, as set forth in paragraphs 14 and 15 above, and further alleges Respondent David J. Barrow took nude photographs of A.B., molested A.B., and restrained A.B. against her will on multiple occasions. Plaintiff A.B. asserts claims of Assault and Battery, Negligence/Wantonness as a Matter of Law, Outrage, Invasion of Privacy, Human Trafficking,

and False Imprisonment/Unlawful Detention, and seeks both compensatory damages and punitive damages.

17. On April 2, 2019, plaintiff's counsel Gregory A. Reeves in the Underlying Lawsuit sent a letter to Nationwide advising Nationwide that if A.B. obtained a final judgment against Respondent David Barrow in the Underlying Lawsuit, A.B. would seek satisfaction of the judgment under Respondents David J. Barrow and Ann Barrow's insurance policies with Nationwide.

18. A dispute has arisen as to whether Respondent David J. Barrow is entitled to a defense and indemnification as to the claims asserted in the Underlying Action. Nationwide asserts that, based on the terms, conditions, and exclusions contained in the policies, Respondent David J. Barrow is not entitled to a defense in the underlying lawsuit or indemnification against settlement, award, or judgment therefrom.

DWELLING POLICY

19. Dwelling Policy No. 7701HP353089 was issued by Nationwide to Respondent David J. Barrow to provide dwelling, other structures, personal property, and loss of use coverage for a residence located at 9029 Craigmont Road SW, Huntsville, AL 35802-2909, subject to certain terms, conditions, and exclusions contained in the policy. The policy does not provide any liability insurance coverage. The insurance policy was in effect for the period of February 20, 2014 to February 20, 2015.

20. Per the policy Declarations Page, there is no liability coverage under the Dwelling Policy.

21. The applicable Dwelling Policy with Nationwide provides, in part, as follows:

SECTION II

Section II Liability Coverages not provided by this policy.

AUTOMOBILE POLICIES

22. Auto Policy No. 7701P131268 was issued by Nationwide to Respondents David Barrow and Ann Barrow to provide comprehensive, collision, and liability coverage for a 2005 Toyota Camry LE, VIN #4T1BE32K25U[xxxxxx], subject to certain terms, conditions, and exclusions contained in the policy. This policy was in effect from the period December 17, 2012 to September 27, 2014.

23. Auto Policy No. 7701N789520 was issued by Nationwide to Respondents David Barrow and Ann Barrow to provide comprehensive, collision, and liability coverage for a 2007 Buick Lucerne, VIN #1G4HD57247U[xxxxxx], and a 2011 Chevrolet Impala, VIN #2G1WC5EM0B1[xxxxxx], subject to certain terms, conditions, and exclusions contained in the policy. This policy was in effect from the period February 25, 2013 to August 25, 2014.

24. In the Underlying Lawsuit, plaintiff A.B. seeks damages under Alabama law for Respondent Barrow's criminal activity and asserts causes of action for the following: Assault and Battery, Negligence/Wantonness, Invasion of Privacy, Outrage, Human Trafficking, False Imprisonment/Unlawful Detention.

25. The alleged injury asserted in the Underlying Lawsuit is not the result of an accident. It is well known that for a bodily injury to be a covered loss under an applicable insurance policy, the loss must have resulted from an "occurrence", which is by definition an accident. However, all the plaintiff A.B.'s claims asserted in the Underlying Lawsuit are intentional torts and/or are interdependent claims premised on Respondent Barrow's sexual misconduct. Additionally, plaintiff A.B. does not allege that her injuries arose in any way out of the ownership, maintenance or use, or loading or unloading of Respondent Barrow's automobile.

26. The Automobile Policies also do not apply to liability assumed by the Respondent Barrow because of the coverage exclusions and/or conditions referenced in the policies, including but not limited to the intentional acts exclusion.

27. Additionally, Respondent Barrow failed to notify Nationwide of the Underlying Action and/or the prior criminal actions upon which this pending action is based. Respondent Barrow was required pursuant to the Duties after Loss provisions of the applicable policies to provide the insurer with proper notice of the current and prior action(s), but failed to do so.

28. The applicable Automobile Policies with Nationwide provide, in part, as follows:

DEFINITIONS (page D1)

10. "OCCUPYING" means, in, upon, entering, or alighting from.

11. "BODILY INJURY" means:

- a) **bodily injury;**
 - b) sickness;
 - c) disease; or
 - d) death;
- of any person.

AUTO LIABILITY (page L1)

(for damage or injury to others caused by your auto)

Coverage Agreement

PROPERTY DAMAGE AND BODILY INJURY LIABILITY
COVERAGE

1. We will pay for damages for which you are legally liable as the result of an accident arising out of the:

- a) ownership;
- b) maintenance or use; or

- c) loading or unloading;
of **your auto**. A **relative** also has this protection. So does any person or organization who is liable for the use of **your auto** while used with **your** permission.

2. Damages must involve:

- a) **property damage**; or
- b) **bodily injury**.

Coverage Exclusions (page L3)

This coverage does not apply to:

1. **Property damage** or **bodily injury** caused intentionally by or at the direction of an **insured**, including the willful acts the result of which the **insured** knows or ought to know will follow from the **insured's** conduct.

...

11. **Bodily injury** to any insured or any member of the **insured's** family residing in the **insured's** household.

Insured Persons' Duties After an Accident or Loss (D2)

The **insured** will:

- 1. give **us** or **our** agent prompt notice of all losses and provide written proof of claim if required.
- ...
- 3. promptly deliver to **us** all papers dealing with any claims or suits.

HOMEOWNER POLICY

29. Homeowner Policy No. 7701HO528229 was issued by Nationwide to Respondent Ann Barrow to provide dwelling, other structures, personal property, loss of use, and personal liability coverage for a residence located at 1501 Riley Road, Guntersville, Alabama 35976-1021 and dwellings located at 9029 Craigmont Road, SW, Huntsville, Alabama 35802; David Barrow Lot 7, Signal Point Road, Guntersville, Alabama 35976; and David Barrow Lot 8, Signal Point

Road, Guntersville, Alabama 35976, subject to certain terms, conditions, and exclusions contained in the policy. The insurance policy was in effect for the period of November 14, 2012 to November 14, 2014.

30. In the Underlying Lawsuit, plaintiff A.B. seeks damages under Alabama law for Respondent Barrow's criminal activity and asserts causes of action for the following: Assault and Battery, Negligence/Wantonness, Invasion of Privacy, Outrage, Human Trafficking, False Imprisonment/Unlawful Detention. The alleged injury asserted in the Underlying Lawsuit is not the result of an accident. It is well known that for a bodily injury to be a covered loss under an applicable insurance policy, the loss must have resulted from an "occurrence", which is by definition an accident. However, all A.B.'s claims asserted in the Underlying Lawsuit are intentional torts and/or are interdependent claims premised on Respondent Barrow's sexual misconduct.

31. Additionally, the policies of insurance may not apply to liability assumed by the Respondent Barrow because of the coverage exclusions and/or conditions referenced in the Homeowners Policy, including but not limited to, the intentional acts exclusion, criminal acts exclusion and sexual misconduct exclusion.

32. Further, Defendant Barrow also failed to notify Nationwide of the Underlying Lawsuit and/or the prior criminal and tortious actions upon which this pending action is based. Respondent Barrow was required pursuant to the Duties after Loss provision of the Homeowners Policy to provide the insurer with proper notice of the current and prior action(s), but failed to do so. The alleged acts took place between Fall/Winter 2013 and Winter/Spring 2014. Defendant Barrow was arrested and charged in connection with these alleged acts on or about May 12, 2014.

Nationwide was notified of the underlying litigation by plaintiff's counsel Gregory A. Reeves on or about April 30, 2019.

33. The applicable Homeowners Policy with Nationwide provides, in part, as follows:

SECTION II – LIABILITY COVERAGES (page G1)

Additional definitions applicable to these coverages

For purposes of these coverages only:

1. “BODILY INJURY” means harm, including resulting care, sickness or disease, loss of services or death. **Bodily injury** does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any similar injury unless the direct result of bodily harm.

...

4. “OCCURRENCE” means **bodily injury** or **property damage** resulting from an accident, including continuous or repeated exposure to the same general condition. The **occurrence** must be during the policy period.

Coverage E — Personal liability

We will pay damages an **insured** is legally obligated to pay due to an **occurrence** resulting from negligent personal acts or negligence arising out of the ownership, maintenance or use of real or personal property. . .

Coverage F — Medical payments to others

We will pay the necessary medical and funeral expenses incurred within three years after an accident causing **bodily injury**. . .

LIABILITY EXCLUSIONS (page H1)

Coverage E — Personal liability and Coverage F — Medical payments to others do not apply to **bodily injury** or **property damage**:

- a) Caused intentionally by or at the direction of an **insured**, including willful acts the result of which the **insured** knows or ought to know will follow from the **insured's** conduct.

This exclusion 1.a) does not apply to corporal punishment of pupils.

- b) Caused by or resulting from an act or omission which is criminal in nature and committed by an **insured**.

This exclusion 1.b) applies regardless of whether the insured is actually charged with, or convicted of a crime.

...

- l) resulting from acts or omissions relating directly or indirectly to sexual molestation, physical or mental abuse, harassment, including sexual harassment, whether actual, alleged or threatened.

LIABILITY CONDITIONS (page J1)

- 3. **Duties after loss.** In case of a loss, **you** must perform the following duties. **You** must cooperate with **us** in seeing that these duties are performed.
 - a) give notice to **us or our** agent as soon as practicable setting forth:
 - (1) identity of the policy and **insured**.
 - (2) time, place, and facts of the accident or **occurrence**.
 - (3) names and addresses of the claimants and witnesses.
 - b) immediately forward to **us** every document relating to the accident or **occurrence**.
 - c) at **our** request, assist in:
 - (1) making settlement.
 - (2) enforcing a right of contribution or indemnity against a person or entity who may be liable to an **insured**.
 - (3) conducting suits and attending hearings and trials.
 - (4) giving evidence and asking witnesses to attend.

UMBRELLA POLICY

34. Umbrella Policy No. 7701PU341601 was issued by Nationwide to Respondent David J. Barrow to provide excess personal liability coverage to David J. Barrow, subject to certain terms, conditions, and exclusions contained in the policy. The insurance policy was in effect for the period of November 30, 2012 to November 30, 2014.

35. In the Underlying Lawsuit, plaintiff A.B. seeks damages under Alabama law for Respondent Barrow's criminal activity and asserts causes of action for the following: Assault and Battery, Negligence/Wantonness, Invasion of Privacy, Outrage, Human Trafficking, False Imprisonment/Unlawful Detention. The alleged injury asserted in the Underlying Lawsuit is not the result of an accident. It is well known that for a bodily injury to be a covered loss under an applicable insurance policy, the loss must have resulted from an "occurrence", which is by definition an accident. However, all A.B.'s claims asserted in the Underlying Lawsuit are intentional torts and/or are interdependent claims premised on Respondent Barrow's sexual misconduct.

36. Additionally, the policies of insurance may not apply to liability assumed by Respondent Barrow because of the coverage exclusions and/or conditions referenced in the Umbrella Policy, including but not limited to, the intentional acts exclusion, criminal acts exclusion and sexual misconduct exclusion.

37. Further, Respondent Barrow failed to notify Nationwide of the Civil Action and/or the prior criminal and tortious actions upon which this pending action is based. Respondent Barrow was required pursuant to the Notice provision of the Umbrella Policy to provide the insurer with proper notice of the current and prior action(s), but failed to do so. The alleged acts took place between Fall/Winter 2013 and Winter/Spring 2014. Defendant Barrow was arrested and charged

in connection with these alleged acts on or about May 12, 2014. Nationwide was notified of the underlying litigation by plaintiff's counsel Gregory A. Reeves on or about April 30, 2019.

38. The applicable Umbrella Policy with Nationwide provides, in part, as follows:

DEFINITIONS (page D1)

5. **Occurrence(s)** means an accident including continuous or repeated exposure to the same general conditions. ... The occurrence resulting in **bodily injury** or **property damage** must be during the policy period. The **occurrence** resulting in the **personal injury** must be due to an offense committed during the policy period.

6. **Bodily injury** means bodily harm, including resulting sickness, disease, or death. **Bodily injury** does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any similar injury unless the direct result of bodily harm.

...

8. **Personal injury** means:

- a) false arrest, false imprisonment, wrongful conviction, wrongful entry;
- b) wrongful detention or malicious prosecution;
- c) libel, slander, defamation of character, or invasions or rights of privacy.

Exclusions (page E1)

Excess liability and additional coverage do not apply to:

1. **Bodily injury, property damage and personal injury** caused intentionally by or at the direction of an **insured**, including willful acts the result of which the insured knows or ought to know will follow from the **insured's** conduct. This does not include **bodily injury** or **property damage** caused by an **insured** trying to protect person or property.

...

6. An **occurrence** arising out of the ownership, maintenance, loading or unloading of; entrustment or negligent supervision by an **insured** of; or statutorily imposed liability of an **insured** relating to the use of:

...

- d) a land motor vehicle, trailer or semi-trailer unless insurance is provided by a listed underlying policy.

...

9. **Personal injury** arising out of:

- a) willful violation of a law by or with the consent of the **insured**;

...

- c) libel, slander, defamation or violation of rights of privacy if:

(1) made by or with the consent of the insured; and

(2) made with knowledge of their falsity; or

(3) the injurious activities began before this policy's effective date.

10. **Bodily injury** or **personal injury** to an **insured** who lives in **your** household.

...

15. **Bodily injury** or **personal injury** resulting from acts or omissions relating directly or indirectly to sexual molestation, physical or mental abuse, including sexual harassment, whether actual, alleged or threatened. This includes claims against an insured arising out of, or related to, actual or alleged acts of adultery or fornication, including, but not limited to, claims for criminal conversation, alienation of affections or any similar such claims against an insured.

Policy Conditions (page P1)

4. **Notice.** **You** or someone on **your** behalf must:

...

- a) as soon as reasonably possible, give **us, our** agent or sales representative written notice of an **occurrence** to which this policy may apply.

- b) promptly give **us** all legal papers or reports relating to the **occurrence** when a claim or suit is filed against an **insured**.

CLAIMS

39. Nationwide realleges and incorporates by reference herein the allegations and facts contained in paragraphs 1 through 38 above.

40. Nationwide now seeks a declaratory judgment as to whether it is contractually obligated to provide Liability Coverage to Respondent David J. Barrow under the subject policies. Specifically, Nationwide contends that insurance coverage does not exist under the insurance policies for the following reasons:

- a. Nationwide contends that Dwelling Policy # 7701HP353089 does not provide coverage under the policy for the claims made by plaintiff in the lawsuit titled *A.B., by Next Friend J.B. v. David J. Barrow*, CV-18-900065, because the policy does not provide any liability coverage.
- b. Nationwide contends that Automobile Policies # 7701P131268 and 7701N789520 do not provide coverage for the claims made by plaintiff in the lawsuit titled *A.B., by Next Friend J.B. v. David J. Barrow*, CV-18-900065, because plaintiff's alleged injuries are not the result of an "occurrence" as defined by the policies. Additionally, plaintiff does not allege that her injuries arose in any way out of the ownership, maintenance or use, or loading or unloading of a covered automobile.
- c. Nationwide contends that Homeowner's Policy # 7701HO528229 does not provide coverage to Respondent David J. Barrow for the claims made by plaintiff in the lawsuit titled *A.B., by Next Friend J.B. v. David J. Barrow*, CV-18-900065, because plaintiff's alleged injuries are not the result of an

“occurrence” as defined by the policy. Additionally, plaintiff’s claims are expressly excluded from coverage under the intentional acts exclusion, criminal acts exclusion and sexual misconduct exclusion contained in the policy. Further, Respondents David J. Barrow and Ann Barrow did not provide Nationwide with prompt notice of the loss as required under the policy.

- d. Nationwide contends that Personal Umbrella Policy # 7701PU341601 does not provide coverage to Respondent David J. Barrow for the claims made by plaintiff in the lawsuit titled *A.B., by Next Friend J.B. v. David J. Barrow*, CV-18-900065, because plaintiff’s alleged injuries are not the result of an “occurrence” as defined by the policy. Additionally, plaintiff’s claims are expressly excluded from coverage under the intentional acts exclusion, criminal acts exclusion and sexual misconduct exclusion contained in the policy. Further, Respondents David J. Barrow and Ann Barrow did not provide Nationwide with prompt notice of the loss as required under the policy.

41. Nationwide contends there is no insurance coverage to defend and/or indemnify Respondents David J. Barrow and Ann Barrow under the above policies, for the reasons stated, and seeks a declaration accordingly. Nationwide avers that this is a justiciable controversy within the jurisdiction of this Court, such that the declaration of obligations and responsibilities, if any, of insurance coverage is appropriate.

WHEREFORE, Petitioner Nationwide respectfully requests this Honorable Court to accept jurisdiction of this matter, and after reviewing the merits of this case, issue a declaration as to

whether there are any defense or indemnity duties in the action pending in the state court, and that this Court will make specific rulings and findings as to whether Nationwide owes any duty or obligations or responsibilities to pay damages of any part of a judgment which may be rendered in this case against Respondent David J. Barrow.

RESPECTFULLY SUBMITTED this the 28th day of June, 2019.

By: /s/ David W. Henderson
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Felicia A. Long, Esq. (ASB-5532-F61L)
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Respondents will be served by Certified Mail by the Petitioner at the following addresses:

David J. Barrow (AIS: 00303718)
Limestone Correctional Facility
28779 Nick Davis Road
Harvest, AL 35749

Ann Barrow
2393 Folly Road, Unit 1-H
Folly Beach, SC 29439

A.B., a minor, by and through her next of friend and parent, J.B.
c/o Gregory A. Reeves, Esq.
232 Moulton Street E
Decatur, AL 35601