

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 TOK COMMUNITY UMBRELLA )  
CORPORATION, )

4 Plaintiff, )

5 vs. )

6 TOK CHAMBER OF COMMERCE, )  
7 INC., )

8 Defendant. )

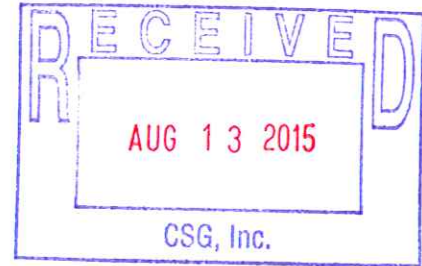
9 LISA CONRAD, )

10 Third-Party Plaintiff, )

11 vs. )

12 TOK COMMUNITY UMBRELLA )  
CORPORATION (TCUC), TANYA )  
13 TITO, THERESA WOODY, and )  
14 RHONDA VANZANDT, )

15 Third-Party Defendants. )



Case No. 4FA-15-1930 CI

16 **THIRD-PARTY DEFENDANT TCUC'S PARTIAL OPPOSITION TO THIRD-**  
17 **PARTY PLAINTIFF'S MOTION TO SUBSTITUTE TOK COMMUNITY**  
**UMBRELLA CORPORATION AS THE THIRD-PARTY PLAINTIFF FOR LISA**  
18 **CONRAD**

19 Third-Party Defendant Tok Community Umbrella Corporation ("TCUC" or  
20 "Corporation") hereby submits this partial opposition to Third-Party Plaintiff Lisa  
21 Conrad's ("Conrad") motion to substitute TCUC as the Third-Party Plaintiff. TCUC  
does not oppose the addition or substitution of Dennis Bishop, Bill Drake, Lisa Schultz,

1 and Frank Cook in their individual capacities as Third-Party Plaintiffs to this lawsuit.  
2 However, TCUC does object to the substitution of those individuals as Trustee for the  
3 Corporation, and it does object to the substitution or addition of TCUC as a named Third  
4 Party Plaintiff, for a few very obvious reasons.

5 First, Conrad's attempt to substitute TCUC as a Third-Party Plaintiff is completely  
6 at odds with her decision not to sue any individual Third-Party Defendants (*see* Notice of  
7 Dismissal, Without Prejudice, of Individual Defendants, July 17, 2015) and would put the  
8 Corporation in the completely untenable position of being both plaintiff and defendant in  
9 this lawsuit. Second, the Motion is an obvious effort by Conrad to achieve a ruling on  
10 the merits before this case is litigated and to potentially fund the lawsuit using Corporate  
11 funds. And Third, the practical impact of a substitution is to further confuse corporate  
12 control and authority questions pending the outcome of this litigation. The Court and the  
13 parties must take this case as it came and should not confuse matters by creating  
14 conflicting representation issues.

15 **A. TCUC is the Only Named Third-Party Defendant in this Case; Naming**  
16 **the Corporation as a Third-Party Plaintiff Puts the Corporation in the**  
**Untenable Position of Being Both Plaintiff and Defendant.**

17 TCUC is the only named defendant in this lawsuit. Conrad specifically dismissed  
18 any claims against individuals. *See* Notice of Dismissal, Without Prejudice, of Individual  
19 Defendants, July 17, 2015. Contrary to Conrad's assertions in her Motion for  
20 Substitution, TCUC's interest in this litigation did not change after the alleged July 9,  
21

2015 election. Although this lawsuit started in a procedurally awkward manner, it has become a normal corporate governance dispute. This litigation involves a Board member in her individual capacity asserting a claim against the Corporation.<sup>1</sup> The Board of the Corporation that is being sued consists of Theresa Woody, Rhonda VanZandt, Tanya Tito and Lisa Conrad. The Corporation, as represented by that Board, is the only named Third-Party Defendant and has a right to defend itself accordingly.

The Court and the parties must take the lawsuit as it came and cannot prematurely shift Corporate authority or control based upon procedural gamesmanship. Until a trier of fact makes a binding determination that Woody, VanZandt and Tito are not properly seated Board Members, TCUC has a right to defend against the allegations and claims of Conrad and deny the validity of the July 9, 2015, election and the authority of those allegedly elected to the Board – particularly since TCUC is the only named Third-Party Defendant. The trier of fact cannot decide whether Dennis Bishop, Bill Drake, Lisa Schultz, and Frank Cook are authorized to represent TCUC until it decides whether Woody, VanZandt, and Tito are properly seated Board members.

**B. Conrad Essentially Seeks to Have a Result Imposed Before the Case is Litigated, Presumably So the Corporation Will Fund the Lawsuit Against Itself.**

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<sup>1</sup> Conrad brought her claim in her individual capacity against the corporation and not on behalf of the corporation. Conrad dismissed her claims against Theresa Woody, Rhonda VanZandt, and Tanya Tito in their individual capacities. *See* Notice of Dismissal Without Prejudice of Individual Defendants filed on July 17, 2015.

1 The corporate governance aspects of this case are still in the early stages of  
2 litigation. There remains a significant dispute regarding whether Theresa Woody and  
3 Rhonda VanZandt were properly removed as members of the Board of Directors and  
4 whether Tanya Tito was properly appointed to the Board of Directors. As discussed in  
5 TCUC's pending motion to preserve the status quo, incorporated herein by reference,  
6 these claims need to be litigated in the normal course.<sup>2</sup>

7 Contrary to Conrad's assertion, the Court has not found that "Ms. Conrad was/is  
8 the only individual who was actually legally authorized to represent the interests of  
9 TCUC in this litigation."<sup>3</sup> The Court merely appointed Lisa Conrad as the Trustee for  
10 TCUC during the pendency of this litigation, to carry out the Corporation's ongoing  
11 business as necessary and subject to Court oversight.<sup>4</sup> See Forcible Entry and Detainer  
12 Hearing before the Honorable John McConnaughey, Third Judicial District at Fairbanks,  
13 June 23, 2015, at 12:29:09-12:30:08 p.m.

14 <sup>2</sup> See TCUC's Memorandum in Support of TCUC Submission Regarding July 9 Election and  
15 Motion to Retain Status Quo Pending Outcome of This Litigation.

16 <sup>3</sup> See Third-Party Plaintiff's Motion and Memorandum to Substitute the Tok Community  
17 Umbrella Corporation (As Represented by the Board Elected on July 9, 2015) for Lisa Conrad  
18 and to Correct the Caption to Reflect the Actual Status of the Plaintiff/Third Party Defendant at  
19 p. 2.

20 <sup>4</sup> During the June 23, 2015 Forcible Entry and Detainer Hearing, TCUC's attorney specifically  
21 asked the court if it had ruled on the position of Woody, VanZandt, or Tito. The Court said "I  
have not ruled on any of that. I'm saying, as of today, that...those folks cannot act as directors  
from this time forward. I have not ruled on what Ms. Conrad asked, which was that the April  
motion to remove them [] should be implemented. I have not ruled on whether the e-mail  
appointment of Ms. Tito...whether I will find that at the end of the hearing as final. So, those  
issues still remain to be resolved on the merits..." Forcible Entry and Detainer Hearing before  
the Honorable John McConnaughey, Third Judicial District at Fairbanks, June 23, 2015, 12:33:59  
p.m.

1 Dennis Bishop, Bill Drake, Lisa Schultz, and Frank Cook may now have an  
2 interest in this litigation and TCUC does not oppose their addition as Third-Party  
3 Plaintiffs. However, TCUC's interest in this litigation continues to be to defend the  
4 claims and allegations brought against it by one Board member, Lisa Conrad.

5 Moreover, TCUC believes that Conrad's attempt to name the corporation as the  
6 Third-Party Plaintiff is in large part designed to facilitate the use of corporate funds to  
7 pursue this lawsuit. It is completely irrational to allow TCUC funds to be utilized in  
8 order to pay for a lawsuit against the Corporation itself. And, TCUC would obviously be  
9 left with little recourse if the trier of fact decides, as TCUC believes, that the individuals  
10 allegedly elected to the Board on July 9, 2015, are not valid members of the Board. After  
11 conclusion of this suit, TCUC would be forced to bring a claim against those individuals  
12 to recover the funds expended by the Corporation on their behalf. This would ultimately  
13 mean that TCUC resources would be used to (a) pursue plaintiff's claims, (b) defend  
14 those same claims, and (c) then try to recover the money spent pursuing them. The  
15 corporation has a right to ensure the status quo is maintained until questions about the  
16 composition of the Board are fully litigated and properly adjudicated.

17 **C. Allowing a Change of Trustee Disrupts the Status Quo and Further**  
18 **Confuses Corporate Control and Authority Questions.**

19 Furthermore, substitution of Conrad as Trustee would disrupt the status quo. The  
20 Court appointed Conrad as Trustee because she was the only mutually agreed upon  
21 member of the Board. Allowing the purported new Board to act as Trustee of the

1 Corporation threatens to disrupt the status quo and essentially allow the allegedly elected  
2 July 9, 2015 Board to act as though a determination in their favor has already been  
3 rendered. *See Kidisti Sekkassue Orthodox Tewehado Eritrean Church v. Medin*, 118  
4 Wash. App. 1022 (2003) (in a dispute between two alleged Board of Directors, the Court  
5 issued an injunction to the Respondent Corporation finding that freezing the assets was  
6 “necessary pending a determination of who was entitled to represent and control the  
7 affairs of the corporation.”).<sup>5</sup>

8 Also, consider the practical impact of what Conrad is trying to do. If the  
9 individual Third-Party Defendants are permitted to represent themselves as TCUC in this  
10 litigation, and they later re-assert claims against individual defendants, what happens if  
11 they dismiss TCUC as a named defendant? Having taken over as “TCUC” through  
12 procedural gamesmanship, they could potentially claim a right to access to all of TCUC’s  
13 privileged defense materials in this lawsuit to date or they might seek access to privileged  
14 communications with TCUC’s insurer. TCUC’s legal counsel and insurance agents  
15 would be left to wonder whether and to what extent they are required to comply with a  
16 demand for information.

17 **D. Conclusion**  
18  
19

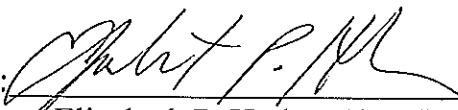
20 <sup>5</sup> In *Kitiski*, the allegedly ousted individuals were individually named defendants, and the suit  
21 was initially brought by the alleged new board representing itself to be the Corporation.  
However, the suit was initiated in that procedural posture and the ousted individuals were named  
as individual defendants.

1 Third-Party Plaintiff Conrad should not be able to use a motion for substitution to  
2 force the corporation into a position where it will have to litigate against itself.  
3 Substitution of the allegedly elected Board for Conrad would allow individuals to dispose  
4 of TCUC funds and act as though a trier of fact had already issued a determination of the  
5 composition of the Board in their favor. The corporation has a right to have the status  
6 quo maintained until all of Conrad's claims and allegations against it are fully litigated  
7 and there is a final order on the lawful composition of the Board.

8 TCUC respectfully requests the Court deny Third-Party Plaintiff's motion to  
9 substitute TCUC for Lisa Conrad. TCUC also requests the Court issue an order  
10 clarifying that Lisa Conrad should remain trustee of TCUC in her capacity as member of  
11 the Board of Directors, but is not allowed to expend corporate funds to assert claims  
12 against the corporation.

13 DATED this 10<sup>th</sup> day of August, 2015.

14 DAVIS WRIGHT TREMAINE LLP  
15 Attorneys for Tok Community Umbrella  
16 Corporation

17 By:   
Elizabeth P. Hodes, ABA #0511108

1 Certificate of Service

2 On the 10<sup>th</sup> day of August, 2015, a true and correct copy  
3 of the foregoing document was sent to the following parties  
4 by:

5 ☒ U.S. Mail, postage paid  
6 ☐ Facsimile  
7 ☐ Email

8 Zane D. Wilson  
9 Cook Schuhmann & Groseclose, Inc.  
10 (714 Fourth Ave., Ste. 200)  
11 P.O. Box 70810  
12 Fairbanks, AK 99707-0810

13 Heidi M. Holmes  
14 Burns & Associates, PC  
15 100 Cushman St., Ste. 311  
16 Fairbanks, AK 99701

17 By: 

18 Janet Eastman  
19  
20  
21



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
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TOK COMMUNITY UMBRELLA )  
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Defendant. )

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TITO, THERESA WOODY, and )  
RHONDA VANZANDT, )

Third-Party Defendants. )

Case No. 4FA-15-1930 CI

**[PROPOSED] ORDER DENYING IN PART THIRD-PARTY PLAINTIFF'S**  
**MOTION FOR SUBSTITUTION AND CLARIFYING LISA CONRAD'S**  
**AUTHORITY AS TRUSTEE FOR TCUC**

This Court, having considered the parties' respective submissions regarding Third-Party Plaintiff's Motion and Memorandum to Substitute the Tok Community Umbrella Corporation (As Represented by the Board Elected on July 9, 2015) for Lisa Conrad and

1 to Correct the Caption to Reflect the Actual Status of the Plaintiff/Third Party Defendant  
2 (“Motion”), and the records and pleadings herein, and considering it fully advised,  
3 NOW THEREFORE, it is hereby ordered:

4 1. The Motion for substitution is granted with respect to the individually-  
5 named Third-Party Plaintiffs and the case caption shall be amended to reflect such  
6 substitution.

7 2. The Motion is denied to the extent it seeks to substitute the Tok  
8 Community Umbrella Corporation (“TCUC”) as a Third-Party Plaintiff or to alter the  
9 caption to reflect such substitution.

10 3. Lisa Conrad will remain Trustee for TCUC pending complete litigation of  
11 all claims and allegations against TCUC.

12 4. Lisa Conrad and/or members allegedly elected to the Board in the July 9,  
13 2015 election may not expend TCUC funds to litigate claims against TCUC.

14 5. The stewardship role of Lisa Conrad established by the Court on June 23,  
15 2015, remains restricted as set forth at that hearing, meaning she has no authority to  
16 expend funds or take action on behalf of the corporation except as absolutely necessary to  
17 meet the normal ongoing needs of the Corporation. Approval for any unusual expenses  
18 or other actions must be sought by motion to the Court.



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8 By: Janet Eastman  
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