06-113-M

CASE REGISTER REPORT

FILED
MISSOULA, MT
2006 JUL 20 PM 12 11
PATRICK E. DUFFY
BY
DEPUTY CLERK

Status: OP
File Number: **DV-32-2006-387** From Seq #:
Title:
Action Text: DECLARATORY JUDGMENT

Closed Date:
Filing Date: 05/04/2006
Last Opened Date: 05/04/2006
First Closed Date:

Type	Stat	NType	Name	Attorneys	
Plaintiff/Petitioner					
P	ACT		**GREENO, NOLA**	ACT	ANDERSON, LAWRENCE A.
Defendant/Respondent					
D	ACT		**ALLIED PROPERTY AND CASUALTY INSUR**	ACT	BROWN LAW FIRM

Judge	Dept	Start Dt	Status
HARKIN, DOUGLAS G.	4	05/17/2006	ACTIVE JUDGE IN CASE
LARSON, JOHN W.	3	05/04/2006	SUBSTITUTED

Seq#	Ent Dt	File Dt	Register Text	Amount	Book	Film
1.0	05/04/06	05/04/06	COMPLAINT AND DEMAND FOR JURY TRIAL	$120.00		I
2.0	05/11/06	05/08/06	ISSUED SUMMONS			
3.0	05/15/06	05/11/06	MOTION FOR SUBSTITUTION OF JUDGE	$100.00		
4.0	05/17/06	05/17/06	INVITATION TO ASSUME JURISDICTION & ACCEPTANCE			I
5.0	07/12/06	07/11/06	PRAECIPE			
6.0	07/19/06	07/14/06	NOTICE OF REMOVAL	$75.00		
7.0	07/19/06	07/19/06	CERTIFICATE OF RECEIPT			

CV 06-113-M

FILED
MISSOULA, MT
2006 JUL 20 AM 10 52
PATRICK E. DUFFY
BY _____
DEPUTY CLERK

FILED MAY 0 4 2006
SHIRLEY E. FAUST, CLERK
Deputy

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Attorneys for Plaintiff

IN THE MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

NOLA GREENO,

Plaintiff,

-vs-

ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, an Iowa corporation,

Defendant.

DEPT. No. 3

John W. Larson

Cause No.: DV-06-387

COMPLAINT AND DEMAND FOR JURY TRIAL

For her Complaint, the Plaintiff respectfully alleges:

JURISDICTION AND PARTIES

1. The Plaintiff, Nola Greeno, has at all times relevant hereto resided in Missoula County, State of Montana.

2. Allied has been at all times relevant hereto an insurance company licensed to do business in the State of Montana, providing automobile insurance in the State of Montana.

GENERAL ALLEGATIONS

3. On and before December 13, 2000, Allied provided automobile insurance coverage to Plaintiff under Policy Number PCC 0007930986

4. During the period between August 27, 2000 to February 27, 2001, the Plaintiff had two vehicles insured under the Allied Policy.

5. The Declaration Page for the period of August 27, 2000, to February 27, 2001, is attached hereto, marked as Exhibit A.

6. The Greeno's paid premiums of $7.63 and $7.73 for medical payments coverage on the two vehicles for a total medical payments premium of $15.36 for $20,000.00 limits of coverage as shown on the Declaration Page.

7. The Greeno's paid premiums of $8.19 and $8.19 for underinsured motorists coverage on the two vehicles for a total underinsured motorists premium of $16.38 for $200,000.00 limits of coverage as shown on the Declaration Page.

8. The Allied Policy purportedly prohibits the stacking of medical payments coverages and underinsured coverages.

9. Allied's anti-stacking provision was held unconstitutional in *Hardy v. Progressive Speciality Company,* 2003 MT, 85, 315 Mont. 107, 67 P.3d 892.

10. On December 13, 2000, while the Allied Policy was in full force and effect, Plaintiff suffered personal injuries when the insured car which she was operating was struck by a negligent driver.

11. Plaintiff was not responsible for the collision in any way.

12. As a result of the wreck, Plaintiff has incurred medical expenses in excess of $18,000.00, and other damages compensable under the terms of her medical payments and under insured motorist coverage with Defendant.

13. On May 18, 2004, Plaintiff requested that Allied stack the medical payments limits of her coverage.

14. However, Allied refused to stack the medical pay coverages on September 20, 2004, despite the *Hardy* decision.

15. On June 6, 2004, Allied informed Plaintiff that it would not stack the coverages, because the *Hardy* decision is not retroactive.

16. However, the Montana Supreme Court in *Dempsey v. Allstate Insurance Co.*, 2004 MT 391, 325 Mont. 207, 104 P.3d 483, declared that *Hardy* should have retroactive application.

COUNT - 1
Request for Declaratory Relief

17. Plaintiff re-alleges and incorporates Paragraph 1 through 16 above as if fully set forth herein.

18. An actual controversy exists between the parties regarding their respective rights and remedies under the Allied Policy in that Plaintiff contends she is entitled to accumulate or "stack" her two separate medical payments limits and Allied has refused to stack its coverages.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

COUNT - 2
Bad Faith

19. Plaintiff re-alleges and incorporates Paragraph 1 through 18 above as if fully set forth herein.

20. Allied's refusal to stack its medical payments coverages after the *Hardy* decision and the *Dempsey* decision constitutes bad faith.

21. As a result of Allied's wrongful conduct herein, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

COUNT - 3
Punitive Damages

22. Plaintiff re-alleges and incorporates Paragraph 1 through 21 above as if fully set forth herein.

23. Allied had knowledge of facts or intentionally disregarded facts that created a high probability of injury to Plaintiff.

24. Allied deliberately proceeded to act in conscience or intentional disregard of the high probability of injury to Plaintiff.

25. Or Allied deliberately proceeded to act with indifference to the high probability of injury to Plaintiff.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

COUNT - 4
Class Action

26. Plaintiff re-alleges and incorporates Paragraph 1 through 25 above as if fully set forth herein.

27. Plaintiff brings this action pursuant to the provisions of Rule 23(a) and Rule 23(b)(2) and/or (3) of the Montana Rules of Civil Procedure as a class action for herself and as representative of and on behalf of all other persons similarly situated to-wit: all individuals who have or had medical payment coverage, or uninsured coverage or underinsured coverage through Allied on two or more vehicles as part of their policy[ies] and who were charged separate premiums for medical payments coverage or uninsured coverage or underinsured coverage on two or more vehicles.

28. This class action satisfies the prerequisite set forth in Rule 23(a) for maintaining a class action:

a. The class is so numerous that joinder of all members is impracticable;

b. There are questions of law and fact common to the class: to-wit:

(i) Whether Allied has charged its insureds, who have or had insured two or more vehicles and who have or had paid multiple premiums for medical payment coverages, uninsured motorist coverages or underinsured motorist coverages;

(ii) Who have had claims against such coverages which should be stacked by Allied but which Allied refuses or declines to stack;

c. Plaintiff's claim herein is typical of the class to-wit, even though Nola Greeno was charged and paid more than one premium for medical payments

coverage, Allied has taken the position that it is entitled to collect the multiple premiums but is obligated to pay only one coverage.

d. Plaintiff will fairly and adequately protect the interest of the class; and

29. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impeded their ability to protect their interests.

30. Allied has acted on grounds which are generally applicable to the class, thereby making appropriate corresponding declaratory relief with respect to the class as a whole.

31. Questions of law or fact common to the members of the class predominate over any questions effecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

COUNT - 5
Common Fund

32. Plaintiff re-alleges and incorporates Paragraph 1 through 31 above as if fully set forth herein.

33. As a result of the efforts of Plaintiff, a common fund will be created whereby all Allied insureds in the class will share in the common fund and all such insureds should bear a proportionate share of the litigation costs, including attorneys fees and costs incurred therein.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

COUNT - 6
Private Attorney General

34. Plaintiff re-alleges and incorporates Paragraph 1 through 33 above as if fully set forth herein.

35. The State of Montana, through its insurance commissioner, has declined or failed to enforce the provisions of the *Hardy* decision and the *Dempsey* decision to ensure that all insureds of Allied receive the benefit of the *Hardy* decision.

WHEREFORE, Plaintiff prays for relief as more fully set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. That Allied be ordered to return to its insureds the excess premiums or, in the alternative, to declare that insureds can stack the above noted coverages and order Allied to re-open all claims for medical payments coverages, uninsured motorist coverages, or underinsured motorist coverages where it paid out only one coverage for premiums where such coverage was charged on two or more vehicles and where Plaintiff and the other members of the putative class are entitled to stack the coverages.

2. To award Plaintiff her attorney's fees and costs and the class members attorneys fees and costs incurred herein.

3. To award Plaintiff general and special damages in amounts sufficient to compensate her for Allied's wrongful conduct.

4. To award the class its general and special damages in amounts sufficient to compensate them for Allied's wrongful conduct.

5. To access exemplary damages against Allied in an amount sufficient to deter Allied

from further engaging in its malicious and wrongful conduct and to deter others who may be inclined to engage in such wrongful conduct.

6. For such interest as prescribed by law

7. For such other and further relief as to the Court seems just.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial of all issues triable by jury in this cause.

DATED this 2 day of May 2006.

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Rex Palmer
Attorney at Law
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301 Spruce
Missoula, Montana 59802

Lawrence A. Anderson

PERSONAL AUTO POLICY — ALLIED PROP AND CAS INS CO — EXPANDED FILE

NAMED INSURED & ADDRESS: GREENO, DENNIS; GREENO, NOLA; 1815 FREY LN; MISSOULA MT 59808-1249; (406) 721-6523

POLICY NUMBER: PPC 0007930986-6 | TERM: 06 | BILLING: DH | STATUS | N/R: R | CRT | DECLARAT: CONTINUAT

POLICY PERIOD: 062700 062701 | MONEY W/APP | SUSPENSE NO.

AGENT: M & M FINANCIAL SERVICES, INC. 015; KALISPELL MT 59901-4510 MT09247

RATE DATE: 071500 | RUN DATE: 071300 | ENTRY DATE | BILLING DATE: 071300 | ACCOUNT NO.: 800223837 | GROUP: 25000

PRIOR AGENCY	ADJ. IND.	PREVIOUS POLICY NO.	PRIOR INS.	EMP1 EMPLOY 12+ / EMP2 EMPLOY 12+	FULLTIME 12+ / OTHER	RESIDENCE RES 12+
MT 09247	1.000	PPC 0007930986-6	CONT 36+ STD			

EFF. DATE OF AMEND | CHANGES

BODILY INJURY Ea. Person	BODILY INJURY Ea. Accident	PROP. DAM. Ea. Accident	LIABILITY Ea. Accident	MED. PAY Ea. Person	UM/UIM Ea. Person	UM/UIM Ea. Accident	UMPD Ea. Accident	MOTORISTS Ea. Person	MOTORISTS Ea. Accident	MOTORISTS Ea. Accident
100	300	100		10,000	100	300		100	300	
100	300	100		10,000	100	300		100	300	

OTC	COLL	TOWING	RENTAL
250	500	50	30/ 900
250	500	50	30/ 900

IDT NO'S. IN0263 (1190) AA0006 (1094) PP0401 (0496) IN0538 (0890) AA0076 (0896) PP0402 (0496) IN0671 (0396) AA0183 (0800) IN0550 (0200) AA0309 (1190) AA0001 (0896) AA0311 (0897) AA0001A (1096) PP0305 (0896)

BODILY INJURY	PROPERTY DAMAGE	LIABILITY	MEDICAL	UM/UIM	COLLISION	UNINSURED MOTORIST	UMPD	MOTORISTS	TOWING	RENTAL
41.43	25.07		7.63	32.18	67.56	12.87		8.18	1.80	9.90
41.99	25.41		7.73	33.14	78.43	12.87		8.18	1.80	9.90

Sub-Total	426.10
Endorsements	
Full Term Prem.	426.10
Add'l. Premium	
Return Premium	

206.84
219.46

VEHICLE(S)

YR	TRADE NAME	TYPE	VIN	SYMBOL												
1995	TOYOTA	PICKUP	JT4UD10D1 90009470	P11520	.75			25	9	32	3-15		7,000	ST	10.00
1996	DODGE	VAN	2B4GP44G6XR203006	P11120	.80			25	9	32	PLEA		10,000	ST	10.00

SYM.								
10							06	AB
7							06	AB

Right Fender Tail mounted

WHEEL BASE | DAMAGE LOCATION

LOSS PAYEE (S) ADDITIONAL INSURED (A) CODE LOSS PAYEE/ADDL. INSURED KS ADDL. INSURED KS KS LOSS PAYEE/ADDL. INSURED - KS (S)

1 L TOYOTA MOTOR CREDIT CORP, P.O. BOX 3036, CEDAR RAPIDS IA 52406-3036
2 L CHRYSLER FINANCIAL COMPANY LLC, PO BOX 207001, STOCKTON CA 95207-6501

Class	Dr. No.	Prem. Bf	PD	Lim.	Med.	Death and Dismemberment		DI		DS

CT BILL 00168 AGENT'S COPY

EXHIBIT A

MAY 04 2006 10:36AM Lawrence R. Anderson, Atty (406) 777-7227