

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

, FORMERLY KNOWN AS

VS.

CASE NO.

THE ESTATES OF , AND

SECOND AMENDED MOTION TO DISMISS AND FOR SANCTIONS

COMES NOW Defendants, by counsel, and file their Second Amended Motion to Dismiss the Complaint for Declaratory Judgment an interpleader action filed in this cause on , 20 , and for sanctions, assigning in support of this Amended Motion the following grounds:

1. On , 20 , the family of , County, Mississippi, purchased three burial insurance policies from the Plaintiff. The family remained resident citizens of County and paid all the premiums due on said policy over a period of twenty years or until , 20 . On this date the policy was "paid up". died in County on , 20 , and his/her widow, , promptly made a claim for benefits. A copy of the rider and policy is attached as Exhibit "A" and letters by Mr./Ms. .

2. In due course, on , , the Defendants herein, acting as Plaintiffs, filed a lawsuit in the Circuit Court of County, Mississippi based upon tortious breach of contract, personal injuries and other damages arising out of the bad faith refusal of the Plaintiff to pay the benefits under the policy as contracted for. A copy of the Complaint, being Cause No. in the Circuit Court of County, Mississippi is attached as Exhibit "C".

3. This Court lacks jurisdiction over the subject matter of this action because Section 11-11-7 of the Mississippi Code of 1972, Ann. provides that an action against an insurance company may be brought in any county in which the loss may occur or in the county in which the beneficiary resides. Both criteria are in County. As a matter of fact, County has no contact with the parties or the subject matter except the possibility that an office of the Plaintiff is located in County. However, the domicile or home office of the Plaintiff is in , . For this reason alone, the lawsuit should be dismissed.

4. The Chancery Court, according to § 162 of the Mississippi Constitution of 1890, states "All causes the may be brought in Chancery Court where the Circuit Court has exclusive jurisdiction shall be transferred to the Circuit Court." The Complaint herein does not include any issue of exclusive equity cognizance.

5. As a further ground for dismissal of this action, Defendants assert their right to a trial by jury guaranteed under the Mississippi Constitution.

6. The Declaratory Judgment action by the Plaintiff is obviously a ploy to avoid the jurisdiction of the Circuit Court of County and a trial by jury which is secured by Mississippi's Constitution, Article 3, Section 31 (1890).

7. Rule 57(a), states that the right to trial by jury shall be waived expressly and affirmatively otherwise, according to Rules 38 and 39, a person has a right to trial by jury on all issues. Defendants demand a trial by jury and the Declaratory Judgment action filed under Rule 57 should be dismissed automatically without delay and without impairing the right of the Plaintiff to proceed with their action in the Circuit Court of _____ County, Mississippi.

8. Defendants allege that the Plaintiff had violated the terms of the frivolous judgment statute in bringing this action and attempting to thwart the Court having jurisdiction over the parties and subject matter, therefore, the Court should hear evidence regarding the expenses and legal fees incurred by demanding payment for a complete funeral service are attached as Exhibit "B" said letters being dated _____, 20____, and _____, 20____. Negotiations by Defendants' attorney continued with no results and intentional torts were committed by the Plaintiff in that they willfully and, in bad faith, refused to honor the terms of a complete funeral service provided in the aforesaid policy and rider.

WHEREFORE, Defendants move the Court to dismiss this cause of action at the cost of the Plaintiffs and to assess reasonable attorney's fees and expenses in the form of a judgment against the Plaintiff.

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for