

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

, FORMERLY KNOWN AS

VS.

CASE NO.

THE ESTATES OF , AND

**PLAINTIFF'S RESPONSE TO SECOND AMENDED MOTION
TO DISMISS AND FOR SANCTIONS**

COMES NOW, Plaintiff, , and files this its Response to the Second Amended Motion to Dismiss and For Sanctions filed by the Defendant, and would respond as follows:

1.

Plaintiff admits the first four sentences in paragraph one of the Motion. Plaintiff denies the fifth sentence in paragraph one, which reads "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." Plaintiff would affirmatively state that interpretation of the rights and obligations of the parties to the insurance policy and rider is the purpose of the Declaratory Judgment action.

2.

The facts set forth in paragraph two of the Motion are admitted. Plaintiff would affirmatively assert that the Defendant's County Circuit Court Lawsuit was filed more than two months after this Declaratory Judgment action was filed in County Chancery Court.

3.

The allegations set forth in paragraph three of the Motion are denied. Plaintiff affirmatively asserts that §11-11-7 of Mississippi Code of 1972, as amended, provides that an action against an insurance company may be brought in the county where the principle place of business of the company may be, in addition to the county in which the loss may occur or the beneficiary resides. is a Mississippi Corporation whose principle place of business is located at , County, Mississippi . Venue is proper in County.

4.

The allegations set forth in paragraph four are denied. Chancery Court has subject matter jurisdiction over this matter. This matter concerns matters typically brought in Chancery Court involving probate matters. The issues primarily concern obligations of a life insurance policy and funeral service arrangement for a deceased person. On information and belief, no probate or administration proceeding has been instituted for the Estate of . Furthermore, Mississippi case law authority permits Declaratory Judgment actions of this type to be brought in Chancery Court.

5.

The allegations set forth in paragraph five of the Motion are denied.

6.

The allegations set forth in paragraph six of the Motion are denied.

7.

The allegations set forth in paragraph seven of the Motion are denied.

8.

The allegations set forth in paragraph eight of the Motion are denied. Plaintiff would affirmatively state that it has the right to bring a Declaratory Judgment action pursuant to Rule 57 of the Mississippi Rules of Civil Procedure to determine the rights and obligations of the respective party in the subject matter. There is nothing frivolous about the sincere effort of the plaintiff to have the rights and obligations of the parties declared.

9.

Any allegations set forth in the "WHEREFORE" clause of the Motion are denied.

WHEREFORE, premises considered, Plaintiff's request that this Second Amended Motion to Dismiss and For Sanctions, and the relief requested therein, be denied. Plaintiff further requests such other relief to which it is entitled.

Respectfully submitted,

Attorney for

Of counsel:

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Attorney for