

IN THE CIRCUIT COURT OF CLAY COUNTY, LIBERTY, MISSOURI

CAROL J. LONG,)	
)	
Plaintiff,)	
)	
v.)	Case No. 09CY-CV01134
)	Div. No.
)	
)	
SHELTER INSURANCE COMPANIES,)	
)	
Defendant.)	

AMENDED PETITION AGAINST SHELTER INSURANCE COMPANY

COMES NOW Plaintiff Carol J. Long, by and through her attorneys of record, states as follows for her causes of action against defendant Shelter Insurance Companies:

1. Carol J. Long, who resides at 4100 Martin Rd., Smithville, Clay County, Missouri, is the surviving spouse of decedent Vernie Ray Long. As such and pursuant to R.S.Mo. 537.080, Plaintiff Carol J. Long is a proper party to bring this cause of action for the wrongful death of decedent Vernie Ray Long for the purpose of pursuing claims against Defendant Lucas W. Dray. This action is brought on behalf of Carol Long individually and on behalf of all Tier I beneficiaries.

2. Defendant Shelter Insurance Companies (hereinafter "Shelter") is a corporation authorized to provide insurance in the State of Missouri. Service can be obtained on Defendant Shelter by serving the Director, Department of Insurance, 301 West High Street, Room 530, Jefferson City, MO 65101.

JURISDICTION AND VENUE

3. Jurisdiction is proper in the State of Missouri because Defendant Shelter is a corporation licensed to provide insurance in the State of Missouri.

4. Venue is proper in the Clay County Circuit Court in that the acts that are the subject of this petition took place in the area of Smithville, Clay County, Missouri.

FACTS

5. On or about January 5, 2009, decedent Vernie Ray Long was exiting a private driveway located off of Missouri Hwy 92 in the area of Smithville, Clay County, Missouri.

6. On or about January 5, 2009, Lucas W. Dray was driving a vehicle westbound on Missouri Highway 92 in the area of Smithville, Clay County, Missouri, at a high rate of speed.

7. At said time and place, Lucas W. Dray, while required to use the highest degree of care, drove his vehicle in a careless manner.

8. Due to his negligence, Lucas W. Dray's vehicle collided into decedent Vernie Ray Long's vehicle which resulted in the death of Mr. Long.

9. On or about January 21, 2009, decedent Vernie Ray Long passed away as a result of the severe injuries he suffered in the accident caused by defendant Fray on January 5, 2009. During the period of January 5, 2009 to January 21, 2009, Mr. Long endured horrific pain and suffering.

COUNT I

UNDERINSURED MOTORIST COVERAGE CLAIM AGAINST SHELTER

10. Plaintiff hereby incorporates the above paragraphs as though fully set forth herein.

11. On or about January 5, 2009, Plaintiff Carol J. Long and her husband, Vernie Ray Long, now deceased, had seven contracts for insurance with Defendant Shelter.

12. Defendant Shelter issued Policy Number 24-1-4530272-20 to Carol J. Long and Vernie Ray Long. This policy allowed for Uninsured and Underinsured Motorist protection for a 2003 Ford F350 in the amount of \$100,000 each person, \$300,000 each accident.

13. Defendant Shelter issued Policy Number 24-1-4530272-30 to Carol J. Long and Vernie Ray Long. This policy allowed for Uninsured and Underinsured Motorist protection for a 2003 Ford F350 in the amount of \$50,000 each person, \$100,000 each accident.

14. Defendant Shelter issued Policy Number 24-1-4530272-26 to Carol J. Long and Vernie Ray Long. This policy allowed for Uninsured and Underinsured Motorist protection for a 2003 Ford F350 in the amount of \$50,000 each person, \$100,000 each accident.

15. Defendant Shelter issued Policy Number 24-1-4530272-28 to Carol J. Long and Vernie Ray Long. This policy allowed for Uninsured and Underinsured Motorist protection for a 2003 Ford F350 in the amount of \$50,000 each person, \$100,000 each accident.

16. Defendant Shelter issued Policy Number 24-1-4530272-10 to Carol J. Long and Vernie Ray Long. This policy allowed for Uninsured and Underinsured Motorist protection for a 2003 Ford F350 in the amount of \$50,000 each person, \$100,000 each accident.

17. Defendant Shelter issued Policy Number 24-1-4530272-14 to Carol J. Long and Vernie Ray Long. This policy allowed for Uninsured and Underinsured Motorist protection for a 2003 Ford F350 in the amount of \$50,000 each person, \$100,000 each accident.

18. Defendant Shelter issued Policy Number 24-1-4530272-4 to Carol J. Long and Vernie Ray Long. This policy allowed for Uninsured and Underinsured Motorist protection for a 2003 Ford F350 in the amount of \$50,000 each person, \$100,000 each accident.

19. On or about January 5, 2009, decedent Vernie Ray Long, a 54 year old male, was exiting a private driveway located off of Missouri Hwy 92 in the area of Smithville, Clay County, Missouri.

20. On or about January 5, 2009, Lucas W. Dray was driving his Red 1990 Lincoln Mark VIII westbound on Missouri Hwy 92, traveling at a high rate of speed.

21. As a direct and proximate result of the negligence and carelessness of the driver of the Red 1990 Lincoln Mark VIII, plaintiff's husband, Vernie Ray Long, was hit by the vehicle and suffered pain, suffering, severe injuries and subsequent death as a result of this collision.

22. As a direct and proximate result of the negligence and carelessness of the driver of the Red 1990 Lincoln Mark VIII, plaintiff Carol J. Long has incurred medical, rehabilitation, hospital, and doctor bills for medical care and treatment of her husband, Vernie Ray Long, as well as funeral and burial expenses.

23. As a direct and proximate result of the negligence and carelessness of the driver of the Red 1990 Lincoln Mark VIII, plaintiff Carol J. Long, due to the death of her husband, husband, Vernie Ray Long, has sustained economic and non-economic losses now and in the future.

24. At the time of the accident the driver of the Red 1990 Lincoln Mark VIII did not have sufficient coverage for the damages suffered by plaintiff Carol J. Long and her now deceased husband, Vernie Ray Long.

25. Damages sustained by plaintiff Carol J. Long and her now deceased husband, Vernie Ray Long, as described above, are in excess of the insurance policy limits of Lucas W. Dray.

WHEREFORE, Plaintiff Carol J. Long, individually and on behalf of all tier I beneficiaries, respectfully requests this court to enter judgment against Defendant Shelter for actual damages in an amount that is fair and reasonable for her costs and expenses incurred herein, and for such other relief as the court deems just and necessary.

COUNT II

VEXATIOUS REFUSAL TO PAY

26. Plaintiff hereby incorporates the above paragraphs and all subsequent paragraphs contained within this Petition as is fully set forth below and herein.

27. Carol J. Long had at least seven insurance policies with defendant Shelter. Each of those policies provides underinsurance coverage.

28. Under these policies defendant Shelter is to indemnify Carol J. Long for any uncompensated damages she sustains.

29. Due to death of Vernie Ray Long, Carol J. Long and all Tier I beneficiaries have sustained uncompensated damages.

30. Shelter claims that plaintiff is not entitled to stack underinsured coverages and is entitled to a set-off for payments made by Lucas Dray

31. Carol J. Long requested defendant Shelter to cover the uncompensated damages under the underinsurance endorsements in the Shelter policies.

32. Defendant Shelter has refused to compensate Carol J. Long under Shelter policies.

33. The Missouri Supreme Court in Ritchie v. Allied Property has ruled that similar anti-stacking and set-off provisions are unenforceable.

34. The Missouri Supreme Court in Jones v. Mid-Century has ruled that similar anti-stacking provisions are unenforceable.

35. The refusal to pay under Shelter policies was willfully made and without reasonable cause or excuse as the facts would appear to a reasonable and prudent person in violation of Missouri Statutes § 375.296 and § 375.420.

WHEREFORE plaintiff Carol J. Long prays this Court enter judgment against defendant Shelter, and award damages, not to exceed twenty percent of the first fifteen hundred dollars of the loss, and ten percent of the amount of the loss in excess of fifteen hundred dollars for defendant's vexatious refusal to pay, and reasonable attorney's fee pursuant to § 375.296 and § 375.420 RSMo.

THE LAW OFFICES OF
STEPHEN R. BOUGH

By _____
Stephen R. Bough, #46239
M. Blake Heath, #61939
917 W. 43rd Street, Suite 100
Kansas City, MO 64111
(816) 931-0048 Phone
(816) 931-4803 Fax
stephen@boughlawfirm.com
blake@boughlawfirm.com

ATTORNEYS FOR PLAINTIFF