

IN THE CIRCUIT COURT OF CASS COUNTY, MISSOURI

PAUL LERO & CAROLYN LERO,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 09CA-CV00669
)	
ADAM P. MACE, and)	
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY,)	
<u>Serve at:</u>)	
Director)	
Department of Insurance)	
4700 South Providence Road)	
Columbia, Missouri 65217-9987)	
)	
Defendants.)	

AMENDED PETITION

COMES NOW Plaintiffs Carolyn Lero and Paul Lero, by and through their attorneys of record, state as follows for their causes of action against defendants Adam Mace, and State Farm Fire and Casualty Company:

1. Carolyn Lero, who resides at 305 South 16th Avenue, Greenwood, Jackson County, Missouri, and Paul Lero, who resides at 810 NE Magellan, Lee's Summit, Jackson County, Missouri are the surviving parents of decedent Denise Marie Greene. As such and pursuant to R.S.Mo. 537.080, Plaintiffs Carolyn and Paul Lero are the proper parties to bring this cause of action for the wrongful death of decedent Denise Marie Greene. This action is brought on behalf of all Tier 1 beneficiaries. Denise Marie Greene was unmarried at the time of her death and had no children.

2. Denise Marie Greene's primary residence was not at Paul and Carolyn Lero's household.

3. Defendant Adam Mace (hereinafter sometimes referred to as “defendant Mace”), who is currently incarcerated at the Cass County Justice Center, 2501 West Wall, Harrisonville, Cass County, Missouri, was the driver of the vehicle that caused the collision that killed Denise Marie Greene. The accident occurred on 291 near CRD Home Farm Road, Cass County, Missouri on October 11, 2008. Denise Marie Greene died from injuries received in the accident at Centerpoint Medical Center on October 14, 2008.

4. Defendant State Farm Fire and Casualty Company (hereinafter "State Farm") is a corporation authorized to provide insurance in the State of Missouri. Service can be obtained on Defendant State Farm by serving the Director, Department of Insurance, 4700 South Providence Road, Columbia, MO 65217-9987.

JURISDICTION AND VENUE

5. Jurisdiction is proper in the State of Missouri because Defendant Adam Mace is a resident of Missouri and State Farm is a corporation licensed to provide insurance in the State of Missouri.

6. Venue is proper in the Cass County Circuit Court in that the acts that are the subject of this petition took place in the area of Harrisonville, Cass County, Missouri.

FACTS

7. On or about October 11, 2008, decedent Denise Marie Greene was driving on 291 Highway near CRD Home Farm Road, Cass County, Missouri.

8. On or about October 11, 2008, Defendant Adam Mace was driving a gold 2007 Toyota Corolla, VIN Number 1NXBR32E87Z787271, on Missouri Highway 291 near Farm

Home Road in the area of Harrisonville, Cass County, Missouri, at a high rate of speed and under the influence of alcohol.

9. On or about October 11, 2008, defendant Lyons was the owner of a gold 2007 Toyota Corolla, VIN Number 1NXBR32E87Z787271.

10. At said time and place, Defendant Adam Mace, while required to use the highest degree of care, drove his vehicle in a careless manner.

11. Due to his negligence, Defendant Mace's vehicle collided into decedent Denise Marie Greene's vehicle, which subsequently caused the death of decedent Ms. Greene.

12. On or about October 14, 2008, decedent Denise Marie Greene passed away as a result of the severe injuries she suffered in the accident caused by defendant Mace on October 11, 2008. During the period of October 11, 2008 to October 14, 2008, Denise Marie Greene endured horrific pain and suffering.

COUNT I

NEGLIGENCE OF DEFENDANT ADAM MACE

13. Plaintiffs Carolyn and Paul Lero hereby incorporate the above paragraphs as though fully set forth herein.

14. Defendant Mace failed to operate the vehicle he was driving with the highest degree of care as required by law and was negligent in one or more of the following respects:

- a. failed to pay proper attention;
- b. failed to keep a careful lookout;
- c. failed to keep the vehicle he was operating in control at all times;
- d. failed to slow or slacken his speed so that he would avoid collision;
- e. drove his vehicle in excessive speed for the conditions;

- f. drove his vehicle under the influence of alcohol;
- g. failed to keep the vehicle in its proper lane of travel; and
- h. drove in a careless and imprudent manner.

15. As a direct and proximate result of the negligence of Defendant Mace, Plaintiffs Carolyn and Paul Lero's daughter, Denise Marie Greene, sustained great personal injury, pain and suffering, and ultimately death resulting directly from the collision on October 11, 2008.

16. The negligence of Defendant Mace directly caused or directly contributed to cause the death of Plaintiffs Carolyn and Paul Lero's daughter, Denise Marie Greene.

17. As a direct result of such negligence, Plaintiffs Carolyn and Paul Lero's daughter, Denise Marie Greene, was injured and died at the age of 44. Due to this negligence, Plaintiffs Carolyn and Paul Lero sustained economic and non-economic losses and damages from losing their daughter. Said damages are either permanent and/or continuing and plaintiff will suffer these losses and damages into the future. These losses and damages are as follows:

- a. Loss of services;
- b. Loss of consortium;
- c. Loss of companionship;
- d. Loss of comfort;
- e. Loss of affection;
- f. Loss of aid;
- g. Loss of support;

WHEREFORE, Plaintiffs Carolyn and Paul Lero pray for a judgment against Defendant Mace in an amount that is fair and reasonable, together with their costs incurred herein and for such other relief as this Court deems just and proper.

COUNT II

BREACH OF CONTRACT BY DEFENDANT STATE FARM

18. Plaintiffs Carolyn and Paul Lero hereby incorporate the above paragraphs as though fully set forth herein.

19. On or about September 2, 2008, Defendant State Farm issued Policy Number 25-BB-N742-4 to Denise Marie Greene, now deceased. This personal liability umbrella policy was covering Denise Marie Greene in the amount of \$1,000,000 at the time of the motor vehicle accident on October 11, 2008.

20. Denise Marie Greene met her contractual obligations by paying the policy premium.

21. On or about October 11, 2008, decedent Denise Marie Greene, a 44 year old female, was driving on Missouri Hwy 291 near CRD Home Farm Road in the area of Harrisonville, Cass County, Missouri.

22. On or about October 11, 2008, Adam Mace was driving a gold colored 2007 Toyota Corolla, entrusted to him by Robert Lyons, on Missouri Hwy 291, traveling at a high rate of speed.

23. As a direct and proximate result of the negligent entrustment of a dangerous instrument, plaintiffs Carolyn and Paul Lero's daughter, Denise Marie Greene, was hit by the dangerous instrument and suffered pain, suffering, severe injuries and subsequent death as a result of this collision.

24. Robert Lyons was uninsured for a claim of negligently supplying a dangerous instrument. State Farm recognized that Robert Lyons was uninsured and paid \$50,000 under policy #457-2875-C22-25P.

25. State Farm required Denise Greene to carry both uninsured and underinsured motorist coverage as a prerequisite to maintaining an umbrella policy.

26. The State Farm umbrella policy states “‘Automobile Liability’ means a policy which provides coverage for the insured for that insured’s liability arising out of the ownership, operation, maintenance or use of any automobile. That policy must include Uninsured and/or Underinsured Motor Vehicle coverage if Uninsured and/or Underinsured Motor Vehicle coverage is shown on the declarations page of this policy.”

27. As a direct and proximate result of the negligence in supplying a dangerous instrument, plaintiffs Carolyn and Paul Lero have incurred medical, rehabilitation, hospital, and doctor bills for medical care and treatment of their daughter, Denise Marie Greene, as well as funeral and burial expenses.

28. As a direct and proximate result of the negligence in supplying a dangerous instrument, plaintiffs Carolyn and Paul Lero, due to the death of their daughter, Denise Marie Greene, have sustained economic and non-economic losses now and in the future.

29. Under Policy Number 25-BB-N742-4 Defendant State Farm had an obligation to pay the full \$1,000,000 of the umbrella policy.

30. Defendant State Farm has refused to pay any monies out of the umbrella policy; although they have paid \$50,000 in uninsured motorist coverage.

31. Because Defendant State Farm has refused to pay, it has not met its contractual obligation.

32. This refusal to pay has created a significant financial burden on plaintiffs Carolyn and Paul Lero resulting in damages.

WHEREFORE, Plaintiffs Carolyn and Paul Lero respectfully request this Court to enter judgment against Defendant State Farm for actual damages in an amount that is fair and reasonable for their costs and expenses incurred herein, and for such other relief as the court deems just and necessary.

COUNT III

VEXATIOUS REFUSAL TO PAY BY DEFENDANT STATE FARM

33. Plaintiffs hereby incorporate the above paragraphs as though fully set forth herein.

34. On or about September 2, 2008, Defendant State Farm issued Policy Number 25-BB-N742-4 to Denise Marie Greene.

35. The Policy was in effect until September 2, 2009.

36. The accident which forms the subject matter of plaintiffs Carolyn and Paul Lero's claim occurred on October 11, 2008.

37. Carolyn and Paul Lero, on behalf of their deceased daughter, requested defendant State Farm to uphold its obligation and pay monies owed under Policy Number 25-BB-N742-4.

38. Defendant State Farm refused to pay the claim submitted by the Leros under Policy Number 25-BB-N742-4.

39. The refusal was 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.

40. State Farm has not offered any explanation as to its refusal to pay under the umbrella policy.

41. As a direct and proximate result of Defendant State Farm's refusal to pay, plaintiffs Carolyn and Paul Lero have suffered damages in excess of the \$1,000,000 limits of Policy Number 25-BB-N742-4.

WHEREFORE, Plaintiffs Carolyn and Paul Lero request this Court enter judgment against Defendant State Farm and award damages, in addition to the limits of Policy Number 25-BB-N742-4, 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.

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ATTORNEYS FOR PLAINTIFF

Signature of this document certifies that a copy was served to the persons named below on the date and in the manner indicated:

Person Served	Date	Method
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