

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AMERICAN FAMILY INSURANCE)	
COMPANY,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	FILE NO. _____
ABDULMOHSEN ALMASSUD AND)	
LUISA CRUZ MEZQUITAL,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW plaintiff American Family Insurance Company (“AmFam”) and, pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, hereby files its complaint for declaratory judgment, respectfully showing to the Court as follows:

Parties, Jurisdiction and Venue

1.

Plaintiff AmFam is a corporation organized and existing under the laws of the State of Wisconsin, maintaining its principal office and principal place of business in Madison, Wisconsin. It is a citizen of Wisconsin.

2.

Defendant Abdulmohsen Almassud (“Almassud”) is a citizen and resident of Fulton County, Georgia, who can be served with process at 365 Michael Drive, Alpharetta, Georgia 30009. Almassud is subject to the jurisdiction and venue of this Court.

3.

Defendant Luisa Cruz Mezquital (“Mezquital”) is a citizen and resident of Portland, Oregon, who may be served at 17899 NE Oregon Street, Apt. 108, Portland, Oregon 97230. Mezquital is pursuing a personal injury claim in the State Court of Fulton County, Georgia, and is subject to the jurisdiction and venue of this Court.

4.

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that (a) AmFam and defendants are citizens of different states, and (b) the value of the matter in controversy, exclusive of interest and costs, exceeds \$75,000.00.

5.

Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a) in that this action is brought in the judicial district in which defendant Almassud resides.

The October 21, 2012 Accident

6.

On October 21, 2012, Almassud and Mezquital were involved in an automobile accident while traveling on Dahlonega Street in Forsyth County, Georgia.

7.

At the time of the accident, Almassud was operating a 1995 Jeep Wrangler that he owned.

8.

The accident occurred when Almassud's Jeep crossed into the northbound lane of travel occupied by Mezquital and struck her vehicle.

9.

As a result of the accident, Mezquital claimed serious personal injuries.

The AmFam Policy

10.

At the time of the October 21, 2012, accident, Almassud was the named insured under a policy of automobile insurance issued by AmFam, Policy No. 19680799-01, with a policy period from May 19, 2012 to May 19, 2013 (hereinafter

referred to as the “AmFam Policy”). A true and correct copy of the AmFam Policy is attached hereto as Exhibit A.

AmFam’s Investigation of the Accident

11.

Almassud reported the accident to AmFam on October 21, 2012, and requested coverage under the AmFam policy.

12.

Almassud gave a recorded statement to AmFam on October 22, 2012. In the recorded statement, Almassud reported that the accident occurred because he had lost steering in his Jeep. He further reported that he had repair work performed on the Jeep’s steering the weekend prior to the accident.

13.

In his recorded statement, Almassud stated that he was returning home after a trip to the mountains at the time of the accident. He did not advise AmFam that he had engaged in any off-road activity immediately prior to the loss. Nor did Almassud advise AmFam that he had personally performed any work on the Jeep.

14.

By letter dated December 3, 2012, Mezquital's counsel demanded Almassud's policy limits of \$100,000 under the AmFam policy to settle Mezquital's personal injury claims against him arising out of the October 21, 2012 accident.

15.

After receiving the demand, AmFam retained an engineer to inspect Almassud's Jeep. The engineer concluded that the Jeep lost steering because the steering mechanism in the vehicle became disconnected and inoperable before the collision.

16.

Based on Almassud's statement and the engineer's investigation, AmFam concluded that Almassud was not liable for the accident and denied Mezquital's claim.

The Lawsuit and Trial

17.

Mezquital filed suit against Almassud on August 28, 2014 in the State Court of Fulton County, Georgia, styled *Luisa Cruz Mezquital, Plaintiff v. Almassud Y. Abdulmohsen, Defendant, Civil Action File No. 14-EV-001930F*. A true

and correct copy of the original complaint filed by Mezquital against Almassud (incorrectly identified as “Almassud Y. Abdulmohsen”) is attached hereto as Exhibit B.

18.

Mezquital subsequently filed an amended complaint on October 20, 2014, adding Oh’s Auto Center and Guangyun Jin d/b/a Oh’s Auto Center as additional defendants. As before, Almassud was incorrectly named as “Almassud Y. Abdulmohsen.”

19.

AmFam agreed to defend Almassud and retained counsel to represent him in the Mezquital lawsuit.

20.

In late 2014, AmFam learned, for the first time, that Almassud had been driving off-road prior to the accident. Although Almassud claimed that he had only been on a gravel road, this information caused AmFam to reconsider its evaluation of the claim. After learning this information, AmFam tendered Almassud’s policy limits to Mezquital.

21.

Mezquital, through her counsel, rejected AmFam's offer of policy limits and demanded \$1,000,000 (10 times the policy limits) to settle her claims. Based on the information that had been provided, and unaware of the true facts regarding Almassud's activities prior to the accident, AmFam rejected Mezquital's demand.

22.

Almassud gave a deposition on April 29, 2015. In his deposition, Almassud testified untruthfully regarding a number of material facts. Following Almassud's deposition, Mezquital withdrew her offer to settle for \$1 million and increased her demand to \$2,500,000. AmFam remained unaware of the true facts regarding Almassud's activities prior to the accident and did not know that he had testified untruthfully in his deposition.

23.

Mezquital subsequently amended her complaint again to properly name Almassud. A true and correct copy of Mezquital's second amended complaint, filed on August 29, 2016, is attached hereto as Exhibit C.

24.

The Mezquital case went to trial on September 6, 2016.

25.

After opening statements, Almassud was called to testify by the plaintiff on September 7, 2016.

26.

During the course of his testimony, Almassud denied that he ever engaged in “extreme” off-roading, denied that he personally installed after-market parts on his Jeep and denied that he was engaged in off-roading activity the morning of the accident.

27.

Mezquital’s counsel then impeached Almassud’s testimony by using screenshots from an Internet website dedicated to off-roading. Even when confronted with this evidence, Almassud continued to deny that he had engaged in off-roading activities. It was apparent that Almassud had not testified truthfully in his deposition, nor had he testified truthfully at trial.

28.

Following Almassud’s testimony on September 7, 2016, the trial judge conducted an in-chambers conference with counsel. The court decided to continue the trial to the next day so that Almassud could consult with a criminal

defense attorney about the potential implications of his untruthful trial testimony.

29.

The trial resumed the following morning (September 8, 2016), and Mezquital's counsel continued to question Almassud. This time, Almassud repeatedly invoked his rights under the Fifth Amendment to the United States Constitution, refusing to answer questions about the Internet website and photographs of the Jeep. Almassud also cited the Fifth Amendment and refused to answer questions pertaining to the manner in which the accident happened and his activities on the date of the accident.

30.

Almassud's failure to inform AmFam of his true activities prior to the accident, his untruthful testimony during his deposition and his testimony at trial on September 7 and September 8 - - including his successful impeachment by Mezquital's counsel, the revelations that he had not been truthful and subsequent refusal to answer questions under oath when the trial resumed - - greatly prejudiced the defense of the case.

31.

Before trial resumed on September 8, 2016, counsel for AmFam hand delivered a letter to Almassud advising him that AmFam would continue his defense in the lawsuit subject to a full and complete reservation of rights under the AmFam policy. A true and correct copy of the September 8, 2016 reservation of rights letter is attached hereto as Exhibit D.

32.

The reservation of rights letter includes the following:

You informed AmFam from the inception of the claim that you did not take the vehicle off road other than to drive on gravel and dirt roads to get to camp sites. You denied having engaged in any type of moderate to significant off-roading activities. As you know, this fact was vitally important to your defense in this matter and to the manner in which AmFam handled your claim both pre-suit and during this suit. You confirmed these facts under oath and during your deposition on April 29, 2015.

The trial in this matter began September 6, 2015. On the morning of September 7, 2016, your counsel, relying on your statements, recounted these same facts to the jury during his opening statement. He explained to the jury that you would take the witness stand and testify that despite the number of modifications to the Jeep, you did not engage in any heavy off-roading activities and that the evidence would show that the steering components failed as a result of your mechanic's failure to properly install the parts and not as a result of your driving activities.

After opening statements, Plaintiff's counsel called you as their second witness for the purpose of cross examination. During that cross examination, it became apparent that you did use the Jeep for heavy off-roading activities and that your statements to AmFam, your deposition

testimony and your statements to your counsel were false. Plaintiff's counsel found a Jeep enthusiast forum where you maintained an account and had posted pictures of your extreme off-roading activities in the subject Jeep. When you were confronted with your posts about these off-roading activities, you continued to deny on the witness stand that the account was yours, that the Jeep was yours or that you made the internet postings. It also appears you posted about making modifications to the Jeep yourself while you previously testified that the modifications were performed by mechanics.

We understand that you now admit that the internet account is yours, that the pictures posted to it are of you and the Jeep involved in this accident, and that you do, in fact, take the Jeep on extreme off-roading excursions. It also appears, unbeknownst to AmFam and your defense counsel, that you attempted to delete the account to keep the evidence secret. The court then recessed during the cross examination so that you could employ a criminal defense attorney to advise you of the implication of your false testimony.

Now that it appears you have perjured yourself, you cannot cooperate in your defense in this matter or otherwise risk additional perjury allegations. Had AmFam known from the inception of this claim that you used the Jeep for extreme off-roading excursions and that you had done so only hours before this accident, it would have handled this claim in a different matter.

33.

Following Almassud's testimony, including his impeachment and subsequent refusal to answer questions under oath, AmFam attempted to negotiate a settlement with Mezquital's counsel. However, the parties were unable to reach agreement to settle Mezquital's claims.

34.

The jury returned a verdict on September 12, 2016, finding Almassud 100% at fault for causing the accident. The jury awarded a total of \$30,485,646.29 -- which was more than 300 times the available policy limits -- consisting of \$30,000,000 in general damages, \$391,779.39 for past medical expenses and \$93,848.90 for attorney fees and costs.

35.

The State Court of Fulton County entered judgment against Almassud on September 22, 2016, in the amount of \$30,690,703.39, adding pre-judgment interest in amount of \$204,796.60 and Court costs in the amount of \$24.50 to the jury's verdict. A true and correct copy of the judgment is attached hereto as Exhibit E.

36.

AmFam has agreed to continue to defend Almassud, subject to a full reservation of rights under the policy. On behalf of Almassud, defense counsel filed a motion for new trial on October 26, 2016. A true and correct copy of defendant's motion for new trial is attached hereto as Exhibit F. The State Court of Fulton County has not ruled on the motion for new trial.

Count I - Failure to Cooperate

37.

The allegations contained in paragraphs 1 through 36 above are re-alleged and incorporated by reference as if fully set forth herein.

38.

The AmFam policy requires the insured to comply with certain duties, including the following:

B. Other Duties

1. Each person claiming any coverage of this policy must also:

a. cooperate with us and assist us in any matter concerning a claim or suit.

f. give us written and recorded statements, including those recorded over the telephone, and answer questions under oath when asked by any person we name, as often as we reasonably ask, and sign copies of the answers.

g. cooperate with us and, when asked, assist in:

- (1) making settlements;
- (2) securing and giving evidence; and
- (3) getting witnesses to attend hearing and trials.

h. attend hearings and trials.

39.

The policy provides that if AmFam is prejudiced by the insured's failure to comply with the duties set forth in the policy, then it has no duty to provide coverage.

40.

The Am Fam policy also includes certain General Conditions, including the following:

6. Cooperation

Any person claiming any coverage under this policy must cooperate with us in the investigation, settlement and defense of any claim or lawsuit.

41.

Almassud failed to comply with the duties and conditions set forth in the policy by providing a false account of the accident, concealing his true activities on the date of the accident from AmFam, concealing that he had personally performed work on the Jeep, providing false deposition testimony, providing false testimony at trial, and intentionally deleting and concealing material evidence.

42.

AmFam was prejudiced by Almassud's failure to comply with his duty to cooperate under the policy.

43.

Because Almassud failed to comply with his duties under the policy, resulting in prejudice to AmFam, AmFam has no duty to provide coverage to Almassud for the verdict awarded by the jury at trial.

Count II - Concealment or Fraud

44.

The allegations contained in paragraphs 1 through 43 above are re-alleged and incorporated by reference as if fully set forth herein.

45.

The AmFam policy includes certain General Conditions. As amended by endorsement, paragraph 5 of the General Conditions provides as follows:

5. Concealment or Fraud

With respect to all insureds, no coverage is provided by this policy if, before or after a loss, any insured has:

- a. intentionally concealed or misrepresented any material fact or circumstance;
- b. engaged in fraudulent conduct; or

- c. made false statements relating to this Insurance.

46.

Almassud violated this provision by providing a false account of the accident, concealing his true activities on the date of the accident from AmFam, concealing that he had personally performed work on the Jeep, providing false deposition testimony, providing false testimony at trial, and intentionally deleting and concealing material evidence.

47.

AmFam was prejudiced by Almassud's actions.

48.

Because Almassud violated paragraph 5 of policy's General Conditions, AmFam has no duty to provide coverage to Almassud for the judgment entered by the State Court of Fulton County.

Coverage Dispute

49.

The allegations contained in paragraphs 1 through 48 above are re-alleged and incorporated by reference as if fully set forth herein.

50.

For the reasons discussed above, AmFam is of the opinion that it does not have a duty to provide coverage to Almassud for the judgment entered against him in the State Court of Fulton County. However, Almassud has requested coverage under the AmFam policy and Mezquital's counsel has demanded that AmFam pay the judgment.

51.

An actual controversy has arisen and now exists between AmFam and defendants concerning whether the judgment entered in Mezquital's favor against Almassud is covered by the contract of insurance between AmFam and Almassud.

52.

AmFam seeks a declaration from this Court that it has no obligation to provide coverage for the judgment entered against Almassud in the State Court of Fulton County.

53.

By reason of the foregoing, it is necessary and appropriate at this time for the Court to determine and declare the respective rights, obligations and

liabilities, if any, which exist among the parties to this action under the AmFam policy.

WHEREFORE, plaintiff, American Family Insurance Company prays as follows:

- a. That process and summons issue against each defendant and that each defendant be served as required by law;
- b. That the Court declare that plaintiff, American Family Insurance Company, has no obligation to pay the judgment entered against Almassud in the civil action brought by Mezquital styled *Luisa Cruz Mezquital, Plaintiff v. Abdulmohsen Almassud*, in the State Court of Fulton County, Georgia, Civil Action File No. 14-EV-001930F;
- c. That plaintiff recover its costs in filing this action; and
- d. That plaintiff be awarded all other relief to which it is entitled.

This 27th day of October 2016.

SWIFT CURRIE MCGHEE & HIERS, LLC

s/ David M. Atkinson

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