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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION**

ARLENE HULL, and DIANA HULL
SENNE,
Plaintiffs,

vs.

ABILITY INSURANCE COMPANY,
f/k/a MEDICO LIFE INSURANCE
COMPANY, ABILITY RESOURCES,
INC., ABILITY REINSURANCE
HOLDINGS LIMITED, a Bermuda
Limited Company, ABILITY
REINSURANCE LIMITED, a Bermuda
Limited Company, and MEDICO
INSURANCE COMPANY,
Defendants.

Cause No. 10-cv-00116-RFC

AMENDED COMPLAINT

Plaintiffs, through counsel, state as follows:

1. Plaintiffs are residents of Montana.
2. Defendants are corporate entities with their principal place of business

outside the state of Montana.

3. The amount in controversy exceeds \$75,000.
4. There is diversity of citizenship and jurisdiction is based on 28 U.S.C. §1332.

ARLENE HULL

5. Arlene Hull (Arlene) is 88 years old and resides at St. John's Lutheran Home (St. John's), a supervised, assisted care facility, in Billings, Montana.

6. Arlene married Bill Hull (Bill) on December 7, 1940, one year before the bombing of Pearl Harbor.

7. Arlene and Bill farmed and ranched outside of Joliet and raised their family in that area.

8. As Arlene and Bill began to grow old together, they decided to purchase long term care insurance. It is believed they purchased a policy of long term care insurance in the 1980s from Western Farmers-Stockman. This policy was ultimately bought by the Defendants in this case. A more detailed explanation of Defendants purchase of this policy is set forth below.

9. The long term care insurance at issue promised to pay daily benefits in the event that the policyholder became eligible and required long term care services.

10. In an undated letter from Farmers Stockman, it stated:

Dear Policyholder:

Your new insurance coverage is enclosed. This insurance should give you much peace of mind when you find it necessary to file for benefits. . . .

Attached as Exhibit "A".

11. Arlene and Bill sold their farm and ranch and were using money from this sale and other savings to pay for expenses as they aged.

12. On May 17, 1998, Bill passed away before needing long term care assistance.

13. Arlene continued to pay the premium for her long term care policy every year to ensure she would have this coverage, if she needed it in the future. Arlene wanted to make sure that her children would not have to pay for her care if she used up her savings. She was also hopeful that she would be able to have money left over for her children.

14. Arlene was diagnosed with dementia by Dr. Robert Ulrich in 2007.

15. For about one year after this diagnosis, Arlene continued to live in her home with assistance from her children and friends.

16. Her dementia continued to progress on a steady basis.

17. Arlene had experienced multiple lacunar strokes, suffered from hypertension, depression, hyperthyroidism, hyperlipidemia and had a history of colon cancer.

18. It was necessary for Arlene to receive assistance with meal preparation and dietary needs, administration of her multiple medications, bathing and hygiene, laundry, paying bills and a variety of other personal needs.

19. During 2007, Arlene was a danger to herself without the daily assistance of her family and friends. She would leave empty pots on the burning stove, forget to eat food that had been set out for her, boil her tea pot dry, leave her coffee pot on so long that the pot would burn, and she would regularly forget to take her medications. She also fell multiple times.

20. Arlene used to knit afghans every winter, but stopped because she no longer remembered how to knit. She also routinely attended church on Sundays, but her memory was so affected that she could no longer remember to go.

21. Arlene loves music. She would listen to the radio or watch television, but again, because of her failing memory, she could not remember how to properly work the electronic devices. Her family members would repeatedly explain how to operate the electrical devices, but Arlene simply could not remember the instructions.

22. Arlene also forgot how to operate her microwave.

23. Because of Arlene's failing ability to care for herself, her family ultimately had to make the difficult decision of seeking the aid of an assisted living facility in Billings.

24. Arlene applied and qualified for long term care benefits under her long term care policy and was admitted into St. John's on January 17, 2008.

25. After living at St. John's for almost 21 months, Ability Insurance Company (Ability) decided to implement independent nurse assessments to evaluate Arlene's continued benefit eligibility, which were conducted on November 11, 2009, and December 10, 2009.

26. By this time, Arlene could not walk independently, her dementia was progressing and she was in need of care more than ever.

27. Despite Arlene's condition, Ability determined that she was independent and did not require continual supervision. Ability also concluded that Arlene had rehabilitation potential.

28. On January 31, 2010, Ability informed Arlene and her daughter Diana Hull Senne (Diana) that it would no longer pay for Arlene's assisted living benefits because she no longer qualified under her long term care policy.

29. In other words, Arlene now had to pay for her assisted living expenses at St. John's without the help of Ability.

30. This decision did not make sense to Arlene's daughter, Diana, who spends substantial time with her mother and continually helps her. Diana is Arlene's power of attorney.

31. Because Diana felt that Ability's decision was wrong, she began to comply with Ability's appeal process.

32. Diana also contacted the Montana Insurance Commissioner's Office and was told that Arlene should have a mental assessment to verify her impaired mental status.

33. Diana obtained a mental evaluation of Arlene which supported Diana's contention that her mother needed long term assisted care.

34. Diana sent Ability this report and other corroborating information to Ability in compliance with its appeal process so that Ability could understand the mistake that it had made.

35. Despite Diana's efforts, Ability continued to refuse to pay benefits. Ability denied each request for reconsideration and continues to deny coverage for Arlene's residence at St. John's.

36. No reasonable basis exists for denial of Arlene's claim.

37. Defendants know that no reasonable basis exists for denial of Arlene's claim.

ABILITY INSURANCE COMPANY

38. All Defendants, with the exception of Medico Life Insurance Company (Medico), are an association of entities acting together for the purpose of

providing long term care insurance under the name Ability and also act as the alter egos and/or agents of each other.

39. On August 16, 1996, Mutual Protective/Medico Life Insurance Companies wrote to Arlene and Bill stating:

TO: Western Farmer-Stockman Clients

Mutual Protective Insurance Company has made the following agreement with

Western Farmer-Stockman Insurance Service

If you purchase a Mutual Protective Insurance Company Long Term Care or Home Health Care policy from Western Farmer-Stockman Insurance Service the insurance company agrees to the following:

If at any time in the future you wish to convert your coverage, through Western Farmer-Stockman, to another Mutual Protective like plan or to increase the benefits on your existing Mutual Protective policy, we will use your age at the time of issue of the original policy to calculate the premium.

Any increase in coverage would be subject to underwriting.

40. In 1996 or 1997, Mutual Protective/Medico Life Insurance Company acquired a block of long term care policies that included Arlene and Bill's policy.

41. Ability purchased the block of Medico policies in 2007, and changed its name to Ability Insurance Company (Ability). At the time Ability purchased the Medico block of business, Medico had been losing money on these policies for several years and the company was in financial trouble.

42. Before Ability purchased the Medico block of business, State regulators had ordered Medico to stop writing new business. Ability purchased

Medico with the objective of making those policies profitable by paying less in claims than Medico had been paying.

43. According to Plaintiff's Pre-Hearing Brief in *Beyer v. Medico, et al*, case number 08-5058, United States District Court of South Dakota, Western Division:

Ability Insurance started out as the brainchild of two individuals, Donald Charsky and Eileen Sweeney. . . .

Charsky and Sweeney devised a plan to generate a 1000% return on investment in five years. But first they needed start-up capital. For that they located a small group of a dozen or so individuals, who call themselves Oak Hill Investors. These individuals have accumulated hundreds of millions of dollars in off-shore accounts located in Bermuda and the Cayman Islands. Charsky and Sweeney proposed a plan to these investors in which the group would form a new company. That company later became "Ability Insurance Company." Ability would purchase blocks of "closed" long term care policies, no longer profitable, from the insurance companies that had sold the policies to elderly policyholders. . . .

Prior to acquiring a block of business, Ability would conduct studies to generate estimates of how much it can reduce claim payments. Ability's management was so confident of its plan to transform unprofitable policies into profitable ones, that it projected going from total assets of \$50.7 Million in August of 2007, to \$3,990.4 Million (3.998 Billion) in total assets by the year 2012. . . .

Ability also projected it would increase net assets from the original \$50.7 Million in 2007, to \$623.5 Million in 2012, an amazing return of over 1000 percent profit in a span of five years. Finally, Ability's financial plan calls for funneling the sizable profits from this scheme back to off-shore bank accounts in Bermuda and the Cayman Islands. Ability accomplishes this by setting up a Bermuda based affiliate company, named "Ability Reinsurance Holdings." Ability

Insurance buys “reinsurance” from Ability Reinsurance Holdings, and those premiums consume most of its revenues. Hence, most of the profits accumulated by these “robust claim practices” are moved right back out of the country.

Attached as Exhibit “B”, pp 3-6 (internal citations omitted).

44. After acquiring Medico in 2007, Ability began looking for ways to increase denials.

45. Defendants have engaged in a pattern and practice of illicit and invalid claim handling for the purpose of increasing profits at the expense of legitimate claims made by deserving policyholders.

46. Defendants have aided and abetted each other for the purpose of improperly denying insurance claims, including Arlene’s claim, without a legitimate basis.

47. Defendants’ conduct is a violation of common law and statutory bad faith laws or claims handling rules, practices and/or policies and is a breach of Arlene’s policy.

48. Defendants have acted with actual malice, actual fraud as defined by Section 27-1-221, Montana Code Annotated, making punitive damages appropriate in order to deter this type of conduct from occurring in this case and in others.

49. As a result of the unreasonable denial of benefits, Defendants have withheld benefits owed to Arlene causing loss of use of her money, emotional distress, wasted time and other harms.

50. Defendants' conduct has also caused emotional distress to Arlene's daughter, Diana.

51. Plaintiffs bring this declaratory judgment action which is authorized by Montana's Declaratory Judgment Act, M.C.A. § 27-8-101 et seq. Plaintiffs seek a declaration from this Court as to the parties' rights and obligations owed under the insurance contract at issue. They ask that this Court order Defendants to pay the benefits owed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment of and from the Defendants for all damages allowed by law, together with costs of suit and for all such other and further relief to which Plaintiffs may be entitled, including but not limited to:

1. All damages, special and general, recoverable under Montana law, including but not limited to all economic and non-economic damages, attorneys' fees, and punitive damages in a reasonable sum to be proven at trial;
2. All allowable prejudgment interest;
3. All recoverable costs; and
4. Such other relief as may be just and equitable.

DATED this 12th day of November, 2010.

BIDEGARAY LAW FIRM, LLP

/s/Daniel B. Bidegaray
Daniel B. Bidegaray, Attorney
Bidegaray Law Firm, LLP
Attorney for Plaintiffs