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

ARLENE HULL and DIANA HULL)
SENNE,)

Plaintiffs,)

v.)

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.: CV-10-116-BLG-RFC

**ANSWER, AFFIRMATIVE
DEFENSES AND DEMAND FOR
JURY TRIAL**

COMES NOW Defendant above named Ability Insurance Company, Ability Resources Inc., Ability Reinsurance Holdings Limited and Ability Reinsurance Limited and Medico Insurance Company (Hereinafter "Ability"), by

and through its attorney of record, and sets forth the following Answer and Affirmative Defenses to Plaintiff's Complaint:

1. With respect to the allegations set forth in Paragraphs 1 through 4, Ability admits the allegations and do not contest, jurisdiction, venue or amount in controversy.
2. Ability lacks sufficient information to admit or deny the allegations of Paragraphs 5 through 9 of Plaintiff's complaint and therefore deny the same and leave Plaintiff to proof at time of trial.
3. In regard to the allegations set forth in Paragraph 10, Ability admits that Plaintiff has attached an undated letter that apparently was written to "Policyholder" by Farmer-Stockman Insurance Service.
4. Ability lacks sufficient information to admit or deny the allegations of Paragraphs 11 through 24 of Plaintiff's complaint and therefore deny the same and leave Plaintiff to proof at time of trial.
5. Ability admits the allegations of Paragraph 25 to the extent that it conducted independent nurse assessments and did evaluate Arlene's status, medical condition and whether she was "Chronically Ill" as defined by the policy and whether she suffered "Severe Cognitive Impairment" under the express terms of the contract of insurance.
6. Ability denies the allegations of Paragraphs 26 and 27 and asserts that at the

time and place of the assessments that Arlene could walk independently with a walker, and further that her dementia was not at a level that could be considered a “Severe Cognitive Impairment” under the express terms of the contract of insurance. As such, Ability admits that based upon the above assessments Arlene no longer met the Benefit Qualifiers outlined in the Long-Term Care Insurance Policy and deny the remaining allegations set forth in Paragraphs 26 and 27.

7. Ability admits the allegations of Paragraph 28 that Dianna Hull Senne of 2122 E. Carbon Ave., Joliet, MT, 59041, was informed by letter that Arlene Hull no longer met the Benefit Qualifiers outlined in the Long-Term Care Insurance Policy and that the certification period ended on February 1, 2010.
8. Ability admits that due to her failure to meet the Benefit Qualifiers outlined in the Long-Term Care Insurance Policy, after February 1, 2010, Arlene had was to be responsible for her own assisted living costs at St. John’s facility.
9. Ability lacks sufficient information to admit or deny the allegations of Paragraphs 30 through 33 of Plaintiff’s complaint and therefore deny the same and leave Plaintiff to proof at time of trial. However, in answering Paragraph 32, Ability admits only that it was aware that Dianna Hull Senne did contact the Montana Insurance Commissioner’s Office. To the extent that the ‘mental evaluation’ of Arlene referred to in Paragraph 34 relates to

the 2/15/10 neuropsychological evaluation provided by Dr. David Gumm, Ph.D., Ability admits that it reviewed this report, considered it, and determined that Arlene still did not meet the Benefit Qualifiers outlined in the Long-Term Care Insurance Policy as she was not suffering “Severe Cognitive Impairment” and therefore denies that it made a “mistake”.

10. Ability lacks sufficient information to admit or deny the allegations of Paragraph 35 other than to admit that Ability has not found a contractual basis upon which it can act positively upon requests for further claim consideration.
11. Ability denies the allegations set forth in Paragraphs 36 through 38 of Plaintiff’s complaint.
12. Ability lacks sufficient information to admit or deny the allegations of Paragraph 39 of Plaintiff’s complaint and therefore deny the same and leave Plaintiff to proof at time of trial.
13. Ability denies that the policy was acquired as alleged in Paragraph 40.
14. Ability denies the allegations of Paragraphs 41, 42, 43, 44, 45, 46, 47, 48 49 and 50.
15. Ability admits that this matter is appropriate to be decided under Montana’s Declaratory Judgment Act and affirmatively asserts that it is entitled to judgment as a matter of law in that it appropriately denied benefits to Arlene

under the express terms of the contract of insurance. This is so as to be eligible for benefits, the claimant must satisfy one of three benefit qualifiers:

- (1) **Medical Necessity:** You must require covered care due to sickness or injury. The care prescribed must be consistent with accepted medical standards for treating the diagnosed condition and could not have been omitted without adversely affecting your condition.
- (2) **Loss of Functional Capacity:** You need active personal assistance to perform at least two of the six defined Activities of Daily Living.
- (3) **Cognitive Impairment:** You require supervision and direction because of cognitive impairment.

None of the qualifiers was met by Arlene in this case and Ability appropriately terminated benefits under the express terms of the policy. Further, and as such, Ability specifically denies all of the allegations of Paragraph 48 and asserts that its conduct does not meet the requirements under Montana Statutory and/or Common Law that it acted with malice nor that Plaintiff is entitled to recover punitive damages against Ability pursuant to Sections 27-1-220 and 221. Ability affirmatively asserts that it cannot be held liable for punitive damages as Plaintiff's cannot meet the legal standard required for an award of such damages under Montana law.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted and should be dismissed with prejudice.

SECOND AFFIRMATIVE DEFENSE

Defendant had a reasonable basis in law and/or fact for its actions in this case.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to satisfy, and cannot meet, the standard for punitive damages.

FOURTH AFFIRMATIVE DEFENSE

Punitive and exemplary damages claimed are violative of the United States Constitution and the Constitution of the State of Montana and violate the due process clause, the equal protection clause, Article II, Section 25 of the Montana Constitution and the Fifth Amendment of the United States Constitution relating to double jeopardy and Article II, Section 22 of the Montana Constitution and the Eighth Amendment to the United States Constitution prohibiting the imposition of excessive fines.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Ability prays for judgment against Plaintiffs, dismissing their Complaint with

prejudice and awarding Defendant its costs of suit and such other and further relief as may be deemed proper.

DEMAND FOR JURY TRIAL

Defendant Ability demands trial by jury in this matter.

DATED this 13th day of December, 2010.

BROWN LAW FIRM, P.C.

By: /s/ Scott G. Gratton
Scott G. Gratton
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2010, a true and correct copy of the foregoing was served on the following persons by the following means:

<u>1,2</u> _____	CM/ECF	_____	Fax
_____	Hand Delivery	_____	E-Mail
_____	Mail	_____	Overnight Delivery Services

1. U.S District Court, Billings Division

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By: /s/ Scott G. Gratton
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