

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

| | | |
|---|---|------------------------|
| AUTO-OWNERS INSURANCE COMPANY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 3:09-CV-469 |
| |) | (Phillips) |
| ROBERT LENORD CARTER, |) | |
| T.B.P., a minor child and next of kin of |) | |
| MIRANDA LEANN BEETS, Deceased |) | |
| By and through her next best friend, |) | |
| WILLIAM PROFFITT, Individually and as |) | |
| Next Best Friend of T.B.P., |) | |
| |) | |
| Defendants. |) | |

DECLARATORY JUDGMENT ORDER

This matter is before the court on the plaintiff’s motion for default judgment against defendants [Doc. 9] and arises out of a civil action styled Miranda Leann Beets, the Deceased, [T.B.P] the Deceased’s Minor Child and Next of Kin, by and through Her Next Best Friend, William Proffitt v. Robert Lenord Carter and Auto-Owners Insurance, in the Anderson County Circuit Court, No. A9LA0303. Auto-Owners Insurance Company was dismissed as a defendant in the state action.

Auto-Owners issued a commercial general liability insurance policy (CGL Policy) and a Garage Liability policy to defendant Robert Lenord Carter. Auto-owners filed

this declaratory judgment action on October 27, 2009, seeking a declaratory judgment that Auto-Owners has no duty to defend or indemnify Carter for the claims brought against him in the Anderson County lawsuit.

T.B.P. and Profitt brought an action in Anderson County Circuit Court for the wrongful death of Miranda Leann Beets. T.B.P. is the child of the deceased, and Profitt is T.B.P.'s father. Carter was the operator of a motorcycle upon which Beets was a passenger. The motorcycle was involved in an accident and Beets died as a result of injuries received in the accident. Auto-Owners denied coverage for Carter for this accident because his policies did not provide coverage for bodily injury or property damage arising out of the use or ownership of an auto owned by Carter. The CGL policy specifically excludes coverage for bodily injury or property damage arising out of the ownership or use of any auto owned or operated by any insured. Similarly, the Garage Policy provides coverage for bodily injury and/or property damage arising out of use of an auto only if the auto in question is not owned by a named insured. Auto-Owners states that under the terms of the two policies at issue, neither policy provides coverage to Carter for the claims at issue in the wrongful death action. In addition, at the time of the accident, Carter did not have a personal automobile liability policy with Auto-Owners for coverage for the motorcycle involved in the accident. Therefore, Auto-Owners asserts it does not have a duty under either the CGL Policy or the Garage Policy to indemnify Carter for any judgment rendered against him in the state court action.

In support of the motion for default judgment, plaintiff would show that this action was filed on October 27, 2009. Defendant Robert Lenord Carter was served with process on November 2, 2009. Defendants T.B.P. and William Proffitt were served with process on October 31, 2009. The defendants failed to answer or otherwise respond to the complaint and an entry of default was entered against each of them on December 23, 2009. Accordingly, it is **ORDERED** that plaintiff's motion for entry of default judgment [Doc. 9], is **GRANTED**, and that judgment is **ENTERED** in favor of plaintiff Auto-Owners Insurance Company and against defendants Robert Lenord Carter, T.B.P., and William Proffitt.

Further, the court **DECLARES** that plaintiff Auto-Owners Insurance Company has no duty or obligation under the insurance policies issued to defendant Robert Lenord Carter to defend or indemnify defendant Robert Leonard Carter in the action styled Miranda Leann Beets, the Deceased, [T.B.P] the Deceased's Minor Child and Next of Kin, by and through Her Next Best Friend, William Proffitt v. Robert Lenord Carter and Auto-Owners Insurance, Anderson County Circuit Court, No. A9LA0303.

IT IS SO ORDERED.

ENTER:

s/ Thomas W. Phillips
United States District Judge