

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DESHON EWAN and)
PATRICK EWAN,)

Plaintiffs,)

v.)

No. 2:10-cv-02834

THE HARTFORD INSURANCE)
COMPANY, A/K/A HARTFORD)
CASUALTY INSURANCE COMPANY,)
JASON C. WHITBY, A/K/A JASON)
"JACK" WHITBY, INDIVIDUALLY)
AND HIS CAPACITY AS)
OWNER/PARTNER AND/OR AGENT)
AND/OR EMPLOYEE, JOHN D.)
MOSLEY III, INDIVIDUALLY AND)
IN HIS CAPACITY AS)
OWNER/PARTNER AND/OR AGENT)
AND/OR EMPLOYEE, SHARON)
MOSLEY, INDIVIDUALLY AND IN)
HER CAPACITY AS OWNER/PARTNER,)
AND/OR AGENT AND/OR EMPLOYEE,)
JOHN MOSLEY III, D/B/A M & W)
TREES, M & W ENTERPRISES, AND)
JOHN DOE, AN UNKNOWN PERSON OR)
ENTITY,)

Defendants.)

ORDER GRANTING PLAINTIFFS' MOTION TO SUBSTITUTE

Before the Court is the December 8, 2011 Motion to Substitute brought by Plaintiffs DeShon Ewan and Patrick Ewan ("Plaintiffs"). Defendants Hartford Insurance Company

("Hartford"), Jacon Whitby ("Whitby"), John Mosley ("John Mosley"), Sharon Mosley ("Sharon Mosley"), and M & W Enterprises ("M & W") have not responded and the deadline for doing so has passed. W.D. Tenn. Civ. R. 7.2 ("The response to the motion . . . shall be filed within 14 days after service of the motion."). Plaintiffs seek an order under Rule 25(a)(1) of the Federal Rules of Civil Procedure, substituting Sharon Mosley in her capacity as the Administratrix of John Mosley's Estate, as a party to this action.

Rule 25(a)(1) provides that if "a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative." A motion under Rule 25 must be brought "within 90 days after service of a statement noting the death." According to the March 21, 2012 Suggestion of Death, John Mosley died on or about September 10, 2011. (See Suggestion of Death, ECF No. 26.) Plaintiffs brought their request to substitute on December 8, 2011, within the 90-day period under Rule 25. Plaintiffs' Motion is GRANTED. Sharon Mosley is substituted for John Mosley in her capacity as the Administratrix of John Mosley's Estate.

So ordered this 13th day of June, 2012.

s/ Samuel H. Mays, Jr._____

SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE