

10

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

NORFOLK COUNTY SUPERIOR COURT
C.A. No.:

AMICA MUTUAL INSURANCE COMPANY,
Plaintiff

21 670

CLERK OF THE COURT
NORFOLK COUNTY

2021 JUL 20 PM 1:26

FILED

v.

JAIME CORLETTO, KYLE WHITE and
MICHELE WHITE,
Defendants

COMPLAINT FOR DECLARATORY RELIEF AND JURY DEMAND

Now comes the plaintiff, Amica Mutual Insurance Company (“Amica”) and, by its attorneys, Snyder Law, P.C., states for its complaint as follows:

INTRODUCTION

Amica brings this complaint pursuant to M.G.L. c. 231A, §1, et. seq. Amica seeks an Order from this Honorable Court that it may pay the policy limits of an automobile insurance policy issued to Kyle White (“Kyle”) to the plaintiff, Jaime Corletto (“Corletto”) in Norfolk County Superior Court C.A. No.: 1882CV00502, Corletto v. White, et al. (“the underlying action’) originally filed on April 17, 2018. Amica also seeks a Declaration and Order that after it has done so, it no longer has a duty to defend or indemnify Kyle or his mother, Michele White (“Michele”) in the underlying action.

PARTIES

1. The plaintiff, Amica, is properly incorporated insurance company licensed to transact the business of insurance in the Commonwealth with a place of business at 100 Amica Way, Lincoln, Rhode Island.
2. The defendant, Corletto, is an individual and resident of the Commonwealth with an address of 65 Union Street, Norwood, Massachusetts.

3. The defendant, Kyle, is an individual and resident of the Commonwealth with an address of 42 Sixth Street, Norwood, Massachusetts.
4. The defendant, Michele, is an individual and resident of the Commonwealth with an address of 21 Blue Shutters Lane, North Falmouth, Massachusetts.

JURISDICTION

5. This Court has jurisdiction over this matter pursuant to M.G.L. c. 231A, §1, *et. seq.*

FACTS

6. Kyle and Michele maintained a Massachusetts Automobile Insurance Policy with Amica, identified as policy number 4806110678, with coverage effective June 1, 2017, to June 1, 2018 (“the policy”).
7. The policy provided coverage for a 2008 Ford Escape (“the Escape”).
8. Kyle and Michele co-owned the Escape.
9. The policy had Bodily Injury To Others coverage limits of \$20,000.00 per person, \$40,000.00 per accident.
10. According to the underlying action, Kyle was involved in a motor vehicle accident with Corletto on March 26, 2018, on route 1 southbound in Norwood, Massachusetts (“the subject incident”).
11. At the time of the subject incident, Kyle was operating the Escape.
12. Michele was not operating or occupying the Escape at the time of the subject incident.
13. Corletto has asserted claims for negligence and gross negligence against Kyle in the underlying action.
14. Amica has, at all times material hereto, provided defense counsel to Kyle in the underlying action.
15. On July 10, 2019, Corletto amended his complaint to assert claims for negligence, gross negligence and negligent entrustment against Michele.
16. Amica has, at all times material hereto, provided defense counsel to Michele in the underlying action.

17. On January 22, 2021, the Norfolk County Superior Court (Kirpalani, J.) granted Michele summary judgment with respect to Corletto's claim against her for gross negligence.
18. On April 5, 2021, Corletto, through counsel, made a demand upon Amica of \$20,000.00 in full and final settlement of Corletto's claims against Kyle.
19. On May 26, 2021, Amica extended an offer of settlement to Corletto on behalf of Kyle only in the amount of \$20,000.00.
20. On June 30, 2021, Corletto, through counsel, rejected Amica's settlement offer.
21. The policy provides, as is pertinent to this action:

Part 5. Optional Bodily Injury To Others

Under this Part, we will pay damages to people injured or killed in an accident if you or a household member is legally responsible for the accident and such accident arises out of the ownership, maintenance, or use of an auto by you or the household member. We will also pay damages if someone else using your auto with your consent is legally responsible for the accident. The damages we will pay are the amounts the injured person is entitled to collect for bodily injury through a court judgment or settlement. We will not pay punitive or exemplary damages.

* * *

The limits shown for this Part on the Coverage Selections Page are the total limits you have under Compulsory Bodily Injury to Others (Part 1) and this Part. This means that the Compulsory limits are included within the limits shown on the Coverage Selections Page for this Part and are not in addition to them.

The most we will pay for injuries to one or more persons as a result of bodily injury to any one person in any one accident is shown on the Coverage Selections Page as the "per person" limit for the auto involved in that accident. Subject to this limit, the most we will pay for injuries to two or more people as the result of bodily injury to two or more people in any one accident is shown on the Coverage Selections Page as the "per accident" limit for the auto involved in that accident. This is the most we will pay as the result of a single accident no matter how many autos or premiums are shown on the Coverage Selections Page.

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General Provisions And Exclusions

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2. Our Duty To Defend You And Our Right To Settle

We have the right to defend any lawsuit brought against anyone covered under this policy for damages which might be payable under this policy. We also have a duty to defend any such lawsuit, even if it is without merit, but our duty to defend ends when we tender, or pay to any claimant or to a court of competent jurisdiction, with the court's permission, the maximum limits of coverage under this policy. We may end our duty to defend at any time during the course of the lawsuit, by tendering, or paying the maximum limits of coverage under the policy, without the need for a judgment or settlement of the lawsuit or a release by the claimant.

We have the right to settle any claim or lawsuit as we see fit. If any person covered under this policy settles a claim without our consent, we will not be bound by that settlement.

22. An actual case or controversy exists between the parties, requiring judicial decision.

COUNT I Request for Declaratory Relief

23. Amica repeats and realleges paragraphs 1 through 22 of its complaint, as if fully set forth herein.

24. The policy provides that Amica has, "the right to settle any claim or lawsuit as [Amica] see[s] fit."

25. The policy provides that Amica, "may end [its] duty to defend at any time during the course of the lawsuit, by tendering, or paying the maximum limits of coverage under the policy, without the need for a judgment or settlement of the lawsuit or a release by the claimant."

26. Amica has offered Corletto the policy limits for bodily injury on behalf of Kyle only, and Corletto has rejected that offer.

WHEREFORE, the plaintiff, Amica, respectfully requests that this Honorable Court:

- (a) Enter a Declaration and Order that Amica may pay the policy's Bodily Injury To Others limits of \$20,000.00 to Corletto;
- (b) Enter a Declaration and Order that after paying the policy's Bodily Injury To Others limits of \$20,000.00 into this Honorable Court, Amica has no further obligation to indemnify Kyle and Michele in connection with the subject underlying action; and
- (c) Award Amica any other relief deemed fair and just.

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We have the right to settle any claim or lawsuit as we see fit. If any person covered under this policy settles a claim without our consent, we will not be bound by that settlement.

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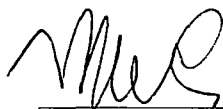
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- (b) Enter a Declaration and Order that after paying the policy's Bodily Injury To Others limits of \$20,000.00 into this Honorable Court, Amica has no further duty to defend or indemnify Kyle and Michele in connection with the subject incident or the underlying action; and
- (c) Award Amica any other relief deemed fair and just.

JURY DEMAND

Amica demands a trial by jury on all issues so triable.

Respectfully submitted,
For the Plaintiff,
Amica Mutual Insurance Company,
By its attorney,



Michael L. Snyder, Esq.
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Date: 7/14/21