

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALLSTATE FIRE AND CASUALTY)
INSURANCE COMPANY,)
)
Petitioner,)
)
v.)
)
JESSIE B. HABERSHAM, MATTIE)
HEATH, LINWOOD ROBINSON,)
JEROME HEATH AND LASHUNDA)
ELLISON as Executors of the)
Estate of OTIS HEATH,)
LOGISTICARE SOLUTIONS, LLC, and)
PEARL ADAMS)
)
Respondents.)

Case No.: _____

PETITION FOR DECLARATORY JUDGMENT

COMES NOW Petitioner Allstate Fire and Casualty Insurance Company (“Allstate”), by and through its undersigned counsel of record, and brings this action against Respondents Jessie B. Habersham, Mattie Heath, Linwood Robinson, the Estate of Otis Heath, LogistiCare Solutions, LLC, and Pearl Adams, alleging as follows:

PARTIES

1.

Petitioner Allstate is a foreign corporation organized under the laws of the State of Illinois with its principal place of business located in Northbrook, Illinois.

2.

Respondent Jessie B. Habersham is a citizen of the State of Georgia and may be served with process at her last known address of 3515 Highview Court, Augusta, Georgia 30906.

3.

Respondent Mattie Heath is a citizen of the State of Georgia and may be served with process at her last known address of 2725 Andrews Chapel Drive, Norwood, Georgia 30821.

4.

Respondent Linwood Robinson is a citizen of the State of Georgia and may be served with process at his last known address of 1342 Idlewood Road, Waynesboro, Georgia 30830.

5.

Respondent the Estate of Otis Heath is a citizen of the State of Georgia and may be served through the co-executors of his estate Jerome Heath and Lashunda Ellison. Jerome Heath may be served with process at his last known address of

6340 Deshong Drive, Lithonia, Georgia 30058. Lashunda Ellison may be served with process at her last known address of 2314 Wilkins Court, Decatur 30035.

6.

Respondent LogistiCare Solutions, LLC is a foreign corporation organized under the laws of Delaware with its principal office located at 1275 Peachtree Street, 6th floor, Atlanta, Georgia 30309. The members of LogistiCare Solutions, LLC are LogistiCare Solutions, LLC may be served with process through its registered agent Registered Agent Solutions Inc. located at 900 Old Roswell Lakes Parkway, Suite 310, Roswell, Georgia 30076.

7.

Upon information and belief, the members of LogistiCare Solutions, LLC are Jeffrey Felton, John L. Shermyen, Kevin M. Dotts, Richard Boland Jr., James M. Lindstrom, M. Chinta Gaston, Joseph P. Handy, Douglas G. Towne, Anne H. Shermyen, and Fredrick S. Moseley IV. Jeffrey Felton, Richard Boland Jr., and Kevin Dotts are residents of the State of Georgia. John L. Shermyen, Joseph P. Handy, Douglas G. Towne, and Anne H. Shermyen are residents of the State of Florida. James M. Lindstrom is a resident of the State of Connecticut. M. Chinta Gaston is a resident of the State of Virginia. Fredrick S. Moseley IV is a resident of the State of Massachusetts.

8.

Respondent Pearl Adams is a citizen of the State of Georgia and may be served with process at her last known address of 3807 Dorset Street, Augusta, Georgia 30906.

JURISDICTION

9.

This Court has jurisdiction over this action pursuant to 28 United States Code 1332 because Petitioner is a citizen of a different state than all Respondents.

10.

The Court further has jurisdiction pursuant to 28 U.S.C. § 2201 in that Allstate is seeking a declaration from this Court regarding the parties' rights and obligations with respect to Allstate Policy Number 945 444 123 ("the Policy") issued to Respondents Otis Heath and Mattie Heath. (A certified copy of the Policy is attached hereto as Exhibit A).

11.

The amount in controversy, exclusive of interest and costs, exceeds Seventy-Five Thousand Dollars (\$75,000.00) because the Policy provides coverage for bodily injury arising of an accident in an amount up to \$100,000.00 per person and \$300,000.00 per occurrence, and the Policy provides coverage for property damage in an amount up to \$50,000.00 per occurrence.

12.

Respondents contest Allstate's position in regard to the parties' rights and obligations under said Policy, and, therefore, a true and actual controversy exists between the parties. Thus, the Court is vested, pursuant to 28 U.S.C. § 2201, with the power to declare the rights and obligations of the parties hereto, and to provide such other relief as may be necessary.

VENUE

13.

Venue is laid in this District pursuant to 28 U.S.C. § 1391 by virtue of the fact that one or more Respondent reside in this Court's jurisdiction.

FACTS

14.

On March 9, 2018, Respondent Otis Heath was involved in a motor vehicle collision wherein Respondent Jessie Habersham allegedly sustained injuries (hereinafter "the Collision"). (Exhibit B, Underlying Complaint.).

15.

At the time of the Collision, Respondent Otis Heath was driving passengers Jessie Habersham and Pearl Adams for hire.

16.

Respondent Otis Heath was an independent contractor for Respondent

LogistiCare Solutions, LLC, a company that employs contractors to provide transportation for patients to and from medical appointments.

17.

Respondent LogistiCare Solutions, LLC does not provide vehicles for its drivers and does not provide insurance for the vehicles used for transport.

18.

While transporting Respondents Pearl Adams and Jessie Habersham in his personal vehicle for Respondent LogistiCare Solutions, LLC, Respondent Otis Heath suffered a stroke and crossed the center line on State Road 4, U.S. Highway 1 in Jefferson County, Georgia.

19.

Respondent Otis Heath then collided with Respondent Linwood Robinson, causing damage to Respondent Linwood Robinson's forty foot trailer and causing damage to Respondent Otis Heath's 2005 Honda Odyssey.

20.

Respondents Pearl Adams, Jessie Habersham, and Linwood Robinson all allegedly sustained bodily injuries as a result of the Collision.

I. **ALLSTATE IS NOT REQUIRED TO PROVIDE RESPONDENT OTIS HEATH WITH COVERAGE, INDEMNIFICATION, OR A DEFENSE BECAUSE COVERAGE IS EXCLUDED FOR BODILY INJURY CLAIMS ARISING OUT OF THE USE OF HIS VEHICLE TO CARRY PERSONS OR PROPERTY FOR A CHARGE AND/OR FOR BODILY INJURY CLAIMS ARISING WHILE MR. HEATH IS DRIVING WHILE AVAILABLE FOR HIRE BY THE PUBLIC.**

21.

Allstate re-alleges and reincorporates by reference Paragraphs 1 through 20 as if set forth fully herein.

22.

The Policy states:

We will pay for damages an insured person is legally obligated to pay because of:

1. **bodily injury**, sustained by any person; and
2. damage to, or destruction of, property, including loss of use...

23.

The Policy further states:

We will not pay for any damages an insured person is legally obligated to pay because of:

1. **bodily injury** or property damage arising out of the use of **your** insured **auto** while used to carry persons or property for a charge, or any **auto** you are driving while available for hire by the public...

24.

At the time of the Collision, Respondent Otis Heath was using his insured vehicle to carry Respondents Pearl Adams and Jessie Habersham for a charge

and/or Mr. Heath's vehicle was available for hire by the public.

25.

Because of the above exclusion, Allstate is not required to provide Respondent Otis Heath with coverage, indemnity, or a defense with respect to the Collision.

II. ALLSTATE IS NOT REQUIRED TO PROVIDE RESPONDENT OTIS HEATH WITH COVERAGE, INDEMNIFICATION, OR A DEFENSE BECAUSE COVERAGE IS EXCLUDED FOR BODILY INJURY ARISING OUT OF AUTO BUSINESS OPERATIONS.

26.

Allstate re-alleges and reincorporates by reference Paragraphs 1 through 25 as if set forth fully herein.

27.

The Policy further states:

We will not pay for any damages an insured person is legally obligated to pay because of:

...

2. bodily injury or property damage arising out of auto business operations such as repairing, servicing, testing, washing, parking, storing, or selling of **autos...**

28.

At the time of the Collision, Respondent Otis Heath was transporting Respondents Jessie Habersham and Pearl Adams for Respondent LogistiCare

Solutions, LLC, and Respondent Otis Heath was being paid by Respondent LogistiCare Solutions, LLC to use his personal vehicle to transport said Respondents.

29.

Allstate is not required to provide Respondent Otis Heath with coverage, indemnity, or a defense for bodily injury or property damage arising out of the Collision because at the time of the Collision, Respondent was using his vehicle as an instrumentality of an automobile business.

PRAYER FOR RELIEF

WHEREFORE, Allstate prays:

1. That process be issued as required by law, and Respondents be served with a copy of the Summons and Petition for Declaratory Judgment;
2. That the Court issue a declaration that Allstate is not obligated to provide coverage, indemnity, or a defense to Respondent Otis Heath under the Policy for the claims arising out of the Collision;
3. For a trial by jury on all issues; and
4. For such other and further relief as the Court deems just and proper.

Respectfully submitted, this 10th day of December, 2018.

CARLOCK, COPELAND & STAIR, LLP

By: /s/ Fred M. Valz, III
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