IN THE STATE COURT OF LOWNDES COUNTY
STATE OF GEORGIA

[redacted]

Plaintiff

v.

[redacted]

Defendant

CIVIL ACTION NO. 2009-SCV[redacted]

GEORGIA LOWNDES COUNTY
Filed in office this

JUL - 8 2010

Clerk Superior Court/State Court/
Juvenile Court

1:25pm

JOINT PRE-TRIAL ORDER

The following constitutes a Pre-Trial Order entered in the above styled case after conference with counsel for the parties.

1.

The name, address and phone number of the attorneys who will conduct the trial are as follows:

Plaintiff: Gary L. Moser/Laura S. Hayes
Moser, Rose & Hayes
P.O. Box 1451
Valdosta, Georgia 31603-1451
(229) 244-1527

Defendant: Richard A. Wilkes
Bennett Law Firm, LLP
Post Office Box 1685
Valdosta, Georgia 31603
(229) 242-6746

2.

The estimated time required for trial:

One day exclusive of jury selection.

3.

There are no motions and other matters pending for consideration by the court, except as follows: N/A.

The parties reserve the right to file additional motions if such becomes necessary in the representation of their respective clients

4.

The jury will be qualified as to the relationship with the following:

(a) Prospective jurors shall be qualified with respect to their relationship by blood or marriage within the degree of second cousin or closer to [redacted].

~~(b) Prospective jurors shall further qualified as to counsel~~

(c) Defendant requests that the jury be qualified as to [redacted]

Plaintiff objects to this qualification. The above listed insurance providers are not parties to this case nor are any of those listed above, the insurance company which provided the policy in question in this case.

~~(d) Defendant request that the jury be qualified as to~~ [redacted]

~~Plaintiff objects to this qualification as M~~ [redacted] ~~is not a party to this suit~~

(e) The parties agree that the case willl be tried by a jury of six (6) persons and that the Court may excuse one (1) juror for good legal cause in the Court's discretion. However, the case will not proceed to verdict with less than six (6) jurors. One (1) alternate juror will be selected. The parties will select one alternate.

5.

(a) **All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.**

All necessary discovery has been completed.

(b) **Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.**

6.

The following is the Plaintiff's brief and succinct outline of the case and contentions:

Plaintiff has filed this suit requesting reimbursement in the principal amount of $5,904.08 for an insurance premium it paid on behalf of Mr. [redacted] the Defendant in December 2006. The policy in question covered the building and property located a[redacted] Remerton, Georgia 31601 for the time period January 1, 2007- January 1, 2008. On January 1, 2007 Mr[redacted] signed a terrorism form which need to be signed to renew the policy. Monthly statements were mailed throughout 2007 but M[redacted] refused to pay the insurance premium even though he was receiving the benefit of the insurance coverage on the building and its contents. In 2007 Mr[redacted] came int[redacted]e to cancel some of his polices but not the policy covering the building and its contents. Despite numerous requests for payments throughout 2007 and 2008 M[redacted] continues to refuse to pay the insurance premium in the amount of $5904.08. Interest has accrued on that amount since it was paid in December 2006. In addition, Plaintiff requests reimbursement for its attorney's fees and costs incurred with this mater.

7.

The following is Defendant's brief and succinct outline of the case and contentions:

Defendant did business with [redacted] nsurance Agency, Inc. d/b/[redacted] nsurance to provide insurance coverage for him and his business, [redacted] Defendant closed his business and canceled all policies with Plaintiff. Defendant did not authorize Plaintiff to pay any monies on his behalf for any insurance coverage. Defendant was unaware if any insurance coverage was being continued. Defendant has paid all the sums owed to Plaintiff under the contracts entered into between the parties, and Defendant owes no monies to Plaintiff whatsoever. Further, Plaintiff is not a licensed premium finance company in the State of Georgia and is not authorized to finance premiums for clients. Defendant received no benefit from Plaintiff. No claims were made on the alleged insurance coverage, which Plaintiff claims to have provided. Defendant was not unjustly enriched, as he had no knowledge of any insurance coverage provided by Plaintiff.

8.

The issues for determination by the jury are as follows:

Plaintiff:

(a) Whether the parties had a contract or agreement for payment of the premium, and if so, whether Defendant breached the contract or agreement between the parties and is thus, liable for damages to the Plaintiff in the amount of the premium paid plus interest.

(b) Whether Defendant received the benefit of the insurance policy covering the by Plaintiff, and if so, in what amount Plaintiff should be compensated for Plaintiff's services.

(C) Whether Plaintiff is entitled to attorney's fees and costs incurred in this matter.

Defendant:

(1) Whether Plaintiff was authorized to finance premiums on behalf of Defendant,

(2) Whether Defendant is indebted to Plaintiff in any amount whatsoever,

(3) Whether Defendant is entitled to attorneys' fees,

(4) Whether Defendant has paid his obligations to Plaintiff for the coverage provided,

(5) Whether Defendant authorized coverage for the dates in question,

(6) Whether Plaintiff is a licensed premium finance company in the State of Georgia and is authorized to finance premiums for clients,

(7) Whether there was any agreement between Plaintiff and Defendant that Defendant repay any monies expended on his behalf by Plaintiff,

(8) Whether the agreement sued upon is an oral agreement void and unenforceable by the reason of the statute of fraud,

(9) Whether the consideration of the note sued upon is illegal consideration,

(10) Whether Defendant received any benefit from the alleged insurance coverage, and

(11) Whether Defendant was unjustly enriched.

9.

Specification of negligence including applicable code sections are as follows: N/A.

10.

If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this Order).

The applicable insurance policy premium invoice is attached at Exhibit 1.

A copy of the invoice from Plaintiff to Defendant is attached as Exhibit 2.

11.

The types of damages and the applicable measure of those damages are stated as follows:

(a) Damages to Plaintiff for the premium paid in the amount of $5,904.08 plus interest in the amount of $5,280.00 for a total sum of $11,184.08.

(b) Attorney's fees and costs of this action awarded to Plaintiff for Defendant's stubborn litigiousness in refusing to pay for the services rendered by Plaintiff.

12.

If the case involves divorce, each party shall present to the court at least five (5) days prior to trial the affidavits required by Rule 24.2. N/A.

13.

The following facts are stipulated:

1. Jurisdiction and venue are proper in this Court.

2. Defendant [redacted] owned the real property located at [redacted] Place, Remerton, Georgia during all relevant times.

14.

The following is a list of all documentary and physical evidence that will be tendered at the trial by both parties. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury. Where possible, objections to the documents shall be brought to the Court's attention prior to trial.

<u>Plaintiff:</u>

1. Copy of Insurance Policy Declarations for the Renewal of Policy [redacted]
2. Notice of Terrorism Page signed by Defendant on 1-9-2007.
3. Copy of Invoice with handwritten notes dated 12/31/2007.
4. Email from [redacted] r to [redacted] dated 9/26/2008.
5. Customer Activities List for [redacted] ell
6. Memo to Defendant 12/2/2008 from [redacted] n Agency
7. Check from Defendant to Insurance Co. In the amount of $101.19
8. Cancellation Request dated 3/9/2007 signed by Mr. [redacted]
9. List of policies and cancellation/increase limits etc dates (Received stamp dated Nov

6, 2008).

10. Deposit Slip fo[redacted] Agency dated 3/7/2006
11. Invoices from 2002-2006 for other policies maintained by [redacted] with [redacted] Insurance.
12. Any exhibits listed by the Defendant.

Defendant:

1. Any Exhibits listed by the Plaintiff
2. Any documents provided by Plaintiff in discovery.

15.

Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows:

Defendant: O.C.G.A. §33-22-2, et al. regarding insurance premium finance companies.

16.

Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows:

17.

All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18.

The testimony of the following persons may be introduced by depositions:

None.

19.

The following are lists of witnesses the

(a) Plaintiff will have present at trial:
(1)[redacted]
(2)Any witness designated by the Defendant.

(b) **Plaintiff may have present at trial:**

(1) [redacted]

(c) **Defendant will have present at trial:**
(1) [redacted]

(d) **Defendant may have present at trial:**
(1)

Opposing counsel may rely on representation by the designated party that he will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means. Each party agrees that the other party may add additional witnesses at the trial without objection on the basis that the witness is not named in this Pre-Trial Order so long as opposing counsel if given, at least five (5) days prior to trial, the identity and precise location of each such witnesses, and the subject matter of the testimony to be given by such witnesses. (The parties agree, however, that if such witness refuses to be interviewed by the party receiving such notice, such refusal shall cause the witness not to be allowed to testify in the case.) The parties agree that such reservation to have additional witnesses shall not cause any delay in the trial of the case.

Both parties reserve the right to call any witness necessary to the purpose of impeachment or for the purpose of contradicting unanticipated evidence produced by either party.

20.

The form of all possible verdicts to be considered by the jury are as follows:

A proposed verdict form will be submitted at or before trial.

21.

(a) **There is little possibility of settlement in this case.**

(b) **The parties do want the case reported.**

(d) **Other matters: None at this time.**

Submitted by:

Laura S. Hayes/Gary L. Moser
State Bar #314077
Attorney for Plaintiff

Richard A. Wilkes
State Bar #
Attorney for Defendant

IT IS HEREBY ORDERED that the foregoing including attachments hereto constitute the Pre-Trial Order in the above case and supersede the pleadings which may not be further amended except by Order of the Court to prevent manifest injustice.

SO ORDERED, this the 1st day of July, 2010

Judge, Lowndes County Superior Court