

KEMPER INDEPENDENCE  
INSURANCE COMPANY,  
12926 Gran Bay Parkway West  
Jacksonville, FL 32258,

13CV02875

Plaintiff,

-vs-

Case No: \_\_\_\_\_

YDBI ISLAMI and ISMET ISLAMI,  
145 Monastery Hill Drive  
Oconomowoc, WI 53066,

FILED  
IN CIRCUIT COURT

Declaratory Judgment: 30701

DEC 19 2013

WAUKESHA CO. WI  
CIVIL DIVISION

Defendants,

-and-

FIRST BANK FINANCIAL CENTRE,  
155 West Wisconsin Avenue  
Oconomowoc, WI 53066,

Involuntary Defendant.

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**DECLARATORY JUDGMENT COMPLAINT**

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NOW COMES the plaintiff, Kemper Independence Insurance Company (hereinafter "Kemper"), by its attorneys, Borgelt, Powell, Peterson & Frauen, S.C., and for its Declaratory Judgment Complaint against the defendants alleges and shows to the Court as follows:

**GENERAL ALLEGATIONS**

1. Kemper is an insurance corporation having its principal place of business at 12926 Gran Bay Parkway West, Jacksonville, Florida and its local office at 400 South Executive Drive, Brookfield, Wisconsin.

2. Upon information and belief, defendants Ydbi Islami and Ismet Islami were adult residents of 145 Monastery Hill Drive, Oconomowoc, Wisconsin on June 10, 2013. At all relevant times, the defendants and Kemper were parties to an insurance contract insuring the house and personal property located at 145 Monastery Hill Drive, Oconomowoc, Wisconsin. That insurance contract was issued in the name of Ismet Islami, and Ydbi Islami was an insured by definition under the insurance contract, attached as Exhibit A. (Hereinafter the contract of insurance will be referred to as the "Insurance Contract").

3. Upon information and belief, First Bank Financial Centre is a banking corporation with its principal offices at 155 West Wisconsin Avenue, Oconomowoc, Wisconsin. At the time of the June 10, 2013 fire, First Bank Financial Centre held a mortgage on the house at 145 Monastery Hill Drive, Oconomowoc, Wisconsin and is therefore a necessary party to this declaratory judgment action.

4. On June 10, 2013 a fire occurred at 145 Monastery Hill Drive, Oconomowoc, Wisconsin, the house insured by Kemper under the Insurance Contract.

5. As a result of the fire, defendants Ydbi and Ismet Islami made a claim under the Insurance Contract for insurance policy proceeds. Their claim was encompassed in their Sworn Statements in Proof of Loss dated September 4, 2013 and received by Kemper on September 9, 2013. The Proofs of Loss, without attachments, are attached as Exhibits B and C.

6. Pursuant to the Insurance Contract, Kemper investigated the circumstances surrounding the fire of June 10, 2013. Kemper's investigation included conducting Examinations Under Oath of the defendants Ydbi and Ismet Islami on October 16 and 29, 2013.

### **INCENDIARISM**

7. Realleges and incorporates by reference all allegations of this Complaint.

8. Upon information and belief, the fire of June 10, 2013 at 145 Monastery Hill Drive, Oconomowoc, Wisconsin was incendiary in nature and Ydbi Islami was directly responsible for causing the fire.

9. Because Ydbi Islami was responsible for causing the fire, Ydbi Islami is unentitled to recover insurance policy proceeds from Kemper.

10. Upon information and belief, Ismet Islami participated or conspired in the decision to have Mr. Islami or his agents set the fire of June 10, 2013 at 145 Monastery Hill Drive, Oconomowoc, Wisconsin. As such, Ismet Islami is unentitled to recover proceeds of the insurance policy.

11. Because of defendants' actions in causing the fire, their claims are excluded under the Intentional Loss Exclusion of the Insurance Contract. The Intentional Loss Exclusion provides:

1.h. **Intentional Loss.**

Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.

This exclusion only applies to an "insured" who commits or conspires to commit an act with the intent to cause a loss. (Form AK 3544 (03 11), Page 3 of 5)

**CONCEALMENT OR FRAUD**

12. Realleges and incorporates by reference all allegations of this Complaint.

13. Upon information and belief, Ydbi Islami engaged in concealment and fraud at his Examinations Under Oath and in his Sworn Statements in Proof of Loss. That fraud and false swearing included his testimony at his Examinations Under Oath as to his whereabouts on the night of the fire, as to his activities on the night of the fire, as to the route he claimed he took

from his house to Potawatomi Bingo Casino, where he claimed he was on the night of the fire, as to his whereabouts at the time of the fire and as to his denial that he had any involvement in setting the fire. Such concealment and fraud renders the insurance claim null and void pursuant to the Concealment or Fraud clause of the Insurance Contract, which provides in relevant part:

**SECTION I AND II – CONDITIONS**

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2. **Concealment or Fraud.** We do not provide coverage if, whether before or after a loss, an “insured” has:
- a. Intentionally concealed or misrepresented any material fact or circumstance;
  - b. Engaged in fraudulent conduct; or
  - c. Made false statements;

relating to this insurance. (Page 20 of 37)

14. Upon information and belief, Ismet Islami engaged in concealment and fraud at her Examination Under Oath and in her Sworn Statements in Proof of Loss in that she denied any involvement in knowing that the fire was to be set and that she did not know Ydbi Islami set the fire.

15. The claim of Ismet Islami is voided by her own concealment or fraud and by the concealment or fraud of Ydbi Islami pursuant to the fraud clause of the Insurance Contract and pursuant to State Farm Fire & Cas. Ins. Co. v. Walker, 157 Wis. 2d 459, 459 N.W.2d 605 (Ct. App. 1990), *rev. den.* 465 N.W.2d 655 (Wis. 1990).

**OVERVALUATION**

16. Realleges and incorporates by reference all allegations of this Complaint.

17. Upon information and belief defendants overvalued their insurance claim in that because of Mr. Islami's setting of the fire, defendants are entitled to no recovery under the Insurance Contract whatsoever. Nonetheless, defendants' Sworn Statements in Proof of Loss claimed the amounts of \$1,037,505.20 and \$205,186.80. (Exhibits B and C)

#### **NEGLECT**

18. Realleges and incorporates by reference all allegations of this Complaint.

19. Upon information and belief, defendants' actions violated the Insurance Contract in that the defendants neglected to preserve and protect the insured property at and after the fire of June 10, 2013. Such conduct violated the terms of the Neglect exclusion of the Insurance Contract and rendered their claim null and void. The Neglect exclusion provided:

- e. **Neglect**, meaning neglect of the "insured" to use all reasonable means to save and preserve property at and after the time of a loss. (Page 11 of 37)

#### **AUTOMOBILE CLAIM**

20. Realleges and incorporates by reference all allegations of this Complaint.

21. Under the Insurance Contract, automobile coverage was provided under Section III – Part D – Coverage for Damage for Your Auto, under Form VS 1847 at Pages 29 through 37 of the Insurance Contract. Defendants' claim for auto damage is barred by the Fraud Clause at Page 34 of 37, which provides:

#### **Fraud**

We do not provide coverage for any "insured" who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

As a result of defendants' actions, Kemper does not provide coverage for the automobile damage occasioned by the June 10, 2013 fire.

### MORTGAGEE CLAIM

22. Realleges and incorporates by reference all allegations of this Complaint.

23. First Bank Financial Centre was a mortgagee under the Insurance Contract. As a result of the fire, First Bank Financial Centre is entitled to recover the appropriate amount of its mortgage interest on the house at the time of the fire. Kemper has requested that First Bank Financial Centre file a Sworn Statement in Proof of Loss as required by the Mortgage Clause of the Insurance Contract. Kemper will make payment to First Bank Financial Centre in an appropriate amount to be determined.

### SUBROGATION

24. Realleges and incorporates by reference all allegations of this Complaint.

25. Because Ydbi Islami was responsible for causing the fire, his actions damaged Kemper in the amount of the costs of its investigation and in the amount that it will be required to pay First Bank Financial Centre as mortgagee.

26. Because the intentional acts of Ydbi Islami caused Kemper to incur expenses and pay First Bank Financial Centre, Kemper is entitled to payment from Ydbi Islami in that amount.

WHEREFORE, Kemper demands judgment as follows:

(a) Declaring that the insurance claim of Ydbi and Ismet Islami is null and void.

(b) Determining the precise amount owing by Kemper under the Mortgage Clause to First Bank Financial Centre as mortgagee of the house at 145 Monastery Hill Drive, Oconomowoc, Wisconsin.

(c) For recovery of the amounts paid by Kemper from Ydbi Islami caused by his intentional conduct in burning the house at 145 Monastery Hill Drive, Oconomowoc, Wisconsin on June 10, 2013.

(d) For such other relief as the Court deems just.

Dated: December 19, 2013.

BORGELT, POWELL, PETERSON & FRAUEN, S.C.  
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