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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

State of West Virginia ex rel.  
~~DEBORAH HARPER-ADAMS~~, Administratrix  
Of the Estate of Susie Mae  
Pendleton Smith,

Plaintiff,

v.

Civil Action No. 05-C-1347  
Judge Stucky

DONNA SUE MURRAY, individually  
and in her capacity as former  
Administratrix of the Estate  
Of Susie Mae Pendleton Smith; and  
ONEBEACON INSURANCE COMPANY, a  
corporation,

Defendants.

ORDER REGARDING NOVEMBER 29, 2006 HEARING

This matter came on for hearing on Plaintiff's Writ of Inquiry on November 29, 2006. Plaintiff, Deborah Harper-Adams, appeared in person and by counsel, Mark W. Kelley. Defendant, Donna Sue Murray, appeared in person and pro se. Defendant, OneBeacon Insurance Company, appeared by counsel, Keith R. Huntzinger. The Hon. James Stucky presided.

Based upon the argument and proffer of counsel, the testimony of the parties, and the pleadings heretofore filed, the Court **FINDS and CONCLUDES** as follows:

1. Plaintiff, Deborah Harper-Adams, is the Administratrix of the Estate of Susie Mae Pendleton Smith, having

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been appointed as such by Orders of the County Commission of Kanawha County, West Virginia entered on June 18, 2004.

~~2. Defendant Donna Sue Murray is an individual and was also formerly appointed and acting as Administrator of the Estate of Susie Mae Pendleton Smith, having been appointed as such by Order of the County Commission of Kanawha County, West Virginia entered on November 29, 2000 until she was removed by Order of the County Commission of Kanawha County, West Virginia entered on June 18, 2004.~~

3. Plaintiff filed the current action on June 21, 2005 alleging various torts against Defendant Donna Sue Murray.

4. Defendant Donna Sue Murray was served with the *Complaint* and knew of the lawsuit, however she failed to file an Answer or any other responsive pleading in the action.

5. Defendant OneBeacon Insurance Company was served with the *Complaint* and filed its *Answer, Affirmative Defenses, and Cross-Claim of Defendant OneBeacon Insurance Company* on September 1, 2005.

6. Plaintiff filed a *Motion for Default Judgment Against Defendant Donna Sue Murray* on October 21, 2005.

7. Before this Court could act on such motion, Defendant Donna Sue Murray filed a Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court of the Middle District of Georgia, Columbus Division, on October 28, 2005.

8. Defendant's filing of the bankruptcy petition stayed the proceedings in this matter until the entry of the ~~Consent Order on September 12, 2006~~ which lifted the automatic stay.

9. The Bankruptcy case was dismissed in its entirety by an Order signed November 13, 2006 and entered on November 14, 2006.

10. From the time that the *Complaint* was filed there was contact between the Defendant Donna Sue Murray and the Court's staff, who advised Defendant on several occasions that she needed to file an Answer and that she should retain counsel.

11. The Court afforded Defendant ample opportunity to retain counsel and continued hearings several times in order to accommodate Defendant's attempts to retain counsel.

12. The Court entered default judgment against Defendant on September 22, 2006 on liability and for a sum certain of \$108,766.<sup>1</sup> The Order further set a hearing on November 6, 2006 for a writ of inquiry on the remaining damages issues which were not a sum certain.

13. Defendant Donna Sue Murray appeared at the hearing on November 6, 2006, but still had not filed an Answer or other responsive pleading.

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<sup>1</sup>Due to a typographical error, this amount should be \$88,756, and Plaintiff orally moved at the hearing to amend the prior judgment amount to this amount.

14. Plaintiff requested punitive damages and attorney's fees or an award of punitive damages in lieu of attorney's fees.

~~15. Punitive damages are an appropriate measure of damages in this case, and the Court finds that punitive damages in lieu of attorney's fees is acceptable.~~

16. There are three assets that remain in the decedent's Estate. Those three assets are the decedent's home, the decedent's coin collection, and the remainder of the net proceeds of the distribution of the \$20,000.00 bond after the expenses and fees are paid by the Estate.

17. The imposition of a constructive trust over Defendant Donna Sue Murray's one-fifth (1/5) interest in the remaining assets of the decedent is appropriate in this matter.

18. It is also appropriate to provide Defendant Donna Sue Murray with a credit against the judgment amounts against her for the value of her one-fifth (1/5) interest in each of the three remaining estate assets.

19. Defendant Donna Sue Murray is currently in possession of the coin collection which belonged to Susie Mae Pendleton Smith at her death. The Court finds that the coin collection should be turned over to the Administratrix.

It is, accordingly, **ORDERED, ADJUDGED, and DECREED** as follows:

1. The prior Judgment Order entered September 26, 2006 be, and hereby is, amended *nunc pro tunc*, to be \$88,756.00 in lieu of \$108,766.

2. Plaintiff, in her capacity as administratrix of the Estate of Susie Mae Pendelton Smith be, and hereby is, awarded an additional judgment against Defendant Donna Sue Murray in the amount of \$50,000.00 for punitive damages. Such judgment shall accrue as post-judgment interest at the statutory rate of 10% per annum.

3. Plaintiff, in her capacity as administratrix of the Estate of Susie Mae Pendelton Smith be, and hereby is, awarded a constructive trust against Defendant Donna Sue Murray's interest (1/5 share) of the value of the decedent's home in favor.

4. \_\_\_\_\_, a discreet and competent attorney, be and hereby is appointed as a special commissioner for the purpose of executing a deed conveying Defendant Donna Sue Murray's one-fifth (1/5) interest in the decedent's domicile, in equal shares, to the following remaining heirs of the Estate: Michael L. Pendelton, Sharon L. Pendleton, Deborah Harper-Adams, and Kendall L. Moore. The services of such special commissioner shall be paid by the Estate.

5. Plaintiff, in her capacity as administratrix of the Estate of Susie Mae Pendelton Smith, is hereby ORDERED to obtain an appraisal of the value of decedent's home from a licensed real

estate appraiser. Upon receipt of the appraisal, Defendant Donna Sue Murray shall receive a credit against the judgments against her equal to one-fifth (1/5) of such appraisal. The cost of such appraisal shall be paid by the Estate.

6. Defendant Donna Sue Murray is ORDERED, forthwith, to turn over to Plaintiff the coin collection which is currently in her possession.

7. Plaintiff, in her capacity as administratrix of the Estate of Susie Mae Pendelton Smith be, and hereby is, awarded a constructive trust against Defendant Donna Sue Murray's interest (1/5 share) of the value of the decedent's coin collection in favor of the heirs and against Defendant Donna Sue Murray.

8. Plaintiff is ORDERED to obtain an appraisal of such coin collection. Upon receipt of the appraisal, Defendant Donna Sue Murray shall receive a credit against the judgments against her equal to one-fifth (1/5) of such appraisal. The cost of such appraisal shall be paid by the Estate.

9. Plaintiff, in her capacity as administratrix of the Estate of Susie Mae Pendelton Smith be, and hereby is, awarded a constructive trust against Defendant Donna Sue Murray's interest (1/5 share) of whatever net proceeds remain from the distribution of the \$20,000.00 bond paid by Defendant OneBeacon Insurance Company, once expenses and fees are paid for the Estate.

10. Defendant Donna Sue Murray shall receive a credit against the judgment entered against her in the amount of one-fifth (1/5) of the remainder of the net proceeds stated above.

The Clerk is directed to forward certified copies of this Order to counsel of record and to Defendants, whose addresses appear below.

ENTER: May 21, 2007

James C. Hays  
Judge

Prepared by:  
Mark W. Kelley

Mark W. Kelley, Esq.  
(WV Bar No. 5768)  
RAY, WINTON & KELLEY, PLLC  
109 Capitol Street, Suite 700  
Charleston, WV 25301  
(304) 342-1141  
Counsel for Plaintiff

**RECORDED**

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT. GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 8 DAY OF May, 2007  
Cathy S. Gatson CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Copy to:

Donna Sue Murray  
548 Claradon Avenue  
Columbus, GA 31906-4355  
Pro Se Defendant

Copy to:

Keith R. Huntzinger, Esq.  
DICKIE, McCAMEY & CHILICOTE, L.C.  
401 Market Street, Suite 401  
Steubenville, OH 43952  
Counsel for Defendant, OneBeacon Insurance Company

Order re 112906 hrg.wpd

3/22/07  
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