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*Attorneys for Defendant Watch Tower Bible and Tract Society of
Pennsylvania*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

TRACY CAEKAERT and CAMILLIA
MAPLEY,

Plaintiffs,

-VS-

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.,
WATCH TOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA, and
BRUCE MAPLEY SR.,

Defendants.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., and
WATCH TOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA,

Case No. CV-20-00052-SPW-TJC

**DEFENDANT WATCH
TOWER BIBLE AND TRACT
SOCIETY OF
PENNSYLVANIA'S MOTION
TO FILE AMENDED
ANSWER TO FIRST
AMENDED COMPLAINT,
CROSS-CLAIM, AND
DEMAND FOR JURY TRIAL,
PURSUANT TO Fed.R.Civ.P.
15(a)(2).**

Cross-Claimants,

-vs-

BRUCE MAPLEY SR.,

Cross-Defendant.

Defendant Watch Tower Bible and Tract Society of Pennsylvania (“WTPA”), by and through its attorneys, moves the Court for leave to file an amended answer to plaintiffs’ First Amended Complaint and Jury Demand (Doc. 22). This motion is made pursuant to Fed.R.Civ.P. 15(a)(2). Plaintiffs object to this motion. A copy of WTPA’s proposed amended answer is attached as Exhibit A.

WTPA seeks to amend its answer to assert the defense provided in Mont. Code Ann. § 27-1-703(6), which provides, “In an action based on negligence, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.” WTPA seeks to assert that defense with respect to Bruce Mapley, Sr.

Plaintiffs’ claims against Mapley, Sr. were recently dismissed. In particular, on November 16, 2022, plaintiffs filed a notice of dismissal of all claims against defendant Mapley, Sr. (Doc. 175). On November 16, 2022, the Court entered an order dismissing all of plaintiffs’ claims against Mapley, Sr. (Doc. 176). It is

unknown at this time if plaintiffs settled their claims against Mapley, Sr. or released Mapley, Sr. from liability for their claims.

Plaintiffs' first amended complaint asserted claims for negligence, negligence per se and punitive damages against all defendants. Plaintiffs also asserted a claim of battery against only Mapley, Sr. Because plaintiffs' lawsuit is an action based on negligence, WTPA is entitled to assert the defense specified in Mont. Code Ann. § 27-1-703(6) following the dismissal of Mapley, Sr.

Fed.R.Civ.P. 15(a)(2) provides that the Court should freely give a party leave to amend its pleading when justice so requires. Further, § 27-1-703(6)(f), provides:

A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

- (i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;
- (ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and
- (iii) giving the claimant a reasonable opportunity to defend against the defense.

(emphasis added).

The statute gives WTPA a right to assert the affirmative defense of a settled or released party in a negligence action. Further, WTPA has done so with reasonable promptness. Plaintiffs' claims against Mapley, Sr. were just dismissed on November 16, 2022. Further, plaintiff Camillia Mapley was deposed on November 29, 2022. She was instructed by her counsel not to answer questions regarding whether she settled with Mapley, Sr. or released him from liability.

The other requirements of § 27-1-703(6)(f) have also been met: WTPA has knowledge of Mapley, Sr., the settled and/or released person; WTPA is providing Mapley, Sr., notice of this filing and its proposed amended answer by mailing a copy of this filing and proposed amended answer to Mapley, Sr.'s last-known address by certified mail, return receipt requested, as required by Mont. Code Ann. § 27-1-703(6)(g) and will do the same with its amended answer when it is actually filed; and plaintiffs will receive notice of this amendment and will have a reasonable opportunity to defend against the defense.

WTPA is entitled to assert the defense specified in § 27-1-703, and WTPA respectfully requests leave from the Court to file its amended answer to do so.

DATED this 5th day of December, 2022.

MOULTON BELLINGHAM PC

By /s/ Christopher T. Sweeney
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CERTIFICATE OF SERVICE

I hereby certify that on 5th day of December, 2022, a copy of the foregoing was served on the following persons:

1. U.S. District Court, Billings Division
2. Robert L. Stepan
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By the following means:

<u>1, 2, 3</u> CM/ECF	<u> </u> Fax
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<u> </u> U.S. Mail	<u> </u> Overnight Delivery Services
<u>4</u> Certified Mail, Return Receipt Requested	

By /s/ Christopher T. Sweeney
Christopher T. Sweeney