OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

CHRISTINE MURRAY-KAPLAN,	)	ED108662
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
v.	)	18SL-CC03895
	)	
NEC INSURANCE, INC., GREAT NORTHERN INSURANCE COMPANY, AND JOSEPH BOSSE,	)	Filed: January 26, 2021
	)	
Respondents.	)	

Christine Murray-Kaplan (Kaplan) appeals from the trial court's judgment dismissing her petition alleging claims of breach of contract, vexatious refusal, and unjust enrichment against Great Northern Insurance Company (GNIC), and claims of negligence and breach of fiduciary duty against NEC Insurance, Inc. (NEC), and Joseph Bosse (Bosse).

REVERSED AND REMANDED.

Division 2 holds: The trial court erred in dismissing Kaplan's petition because it properly stated claims for breach of contract, vexatious refusal, unjust enrichment, negligence, and breach of fiduciary duty. Specifically, Kaplan's petition properly pleaded GNIC breached its duty to defend her because the GNIC insurance policies potentially covered the infliction of emotional distress claims brought against Kaplan in the underlying case, and the face of Kaplan's petition did not "irrefutably establish" the applicability of any of GNIC's affirmative defenses. *See Allen v. Titan Propane, LLC*, 484 S.W.3d 902, 905 (Mo. App. S.D. 2016). Kaplan's petition properly pleads facts supporting claims for negligence and breach of fiduciary duty against Bosse individually. Kaplan was permitted to plead inconsistent claims in her petition. Finally, Kaplan's petition pleaded sufficient facts that GNIC's refusal to pay was without reasonable cause or excuse to survive a motion to dismiss.

Opinion by: Lisa P. Page, J.

Robin Ransom, P.J. and James M. Dowd, J., concur.

Attorney for Appellant: Robert D. Blitz, Aaron W. Sanders, and Kelley F. Farrell

Attorney for Respondents NEC Insurance and Joseph Bosse: Lori Koch and Robert E. Tucker

Attorney for Respondent Great Northern Ins. Co.: Danny L. Worker and Kendall J. Canfield

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.