

INSURANCE COMPANY OBLIGATED TO COVER AWARD OF ATTORNEY FEES ARISING OUT OF PUNITIVE DAMAGES



By: Brian D. Sullivan

It is generally understood that it is against Ohio public policy to insure punitive damages. The longevity of that public policy has been put into question by virtue of the Ohio Supreme Court case of *Neal-Pettit v. Lahman*, Slip Opinion No. 2001-Ohio-1829. The Court has now determined that an insurance company may be required to provide coverage for awards of attorney fees based upon an award of punitive damages. The Supreme Court concluded that attorney fees are distinct from punitive damages and that public policy does not prevent an insurance company from covering attorney fees on behalf of an insured even though they were awarded as a result of an award for punitive damages.

In *Neal-Pettit*, Allstate Insurance Company insured a motorist who was involved in a motor vehicle accident. The Allstate insured rear-ended a vehicle while driving intoxicated and fled the scene of the accident. The jury found the Allstate insured liable for Neil-Pettit's injuries and also awarded punitive damages in the amount of \$75,000.00. Based upon the award of punitive damages, the jury also awarded attorney fees, finding that the Allstate insured had acted with malice. The trial court determined that Neal-Pettit was entitled to attorney fees and expenses in excess of \$56,000.00.

Allstate paid the amounts awarded for compensatory damages, but denied payment of the punitive damages and attorney fees. Neal-Pettit filed a supplemental complaint against Allstate for payment of the attorney fees. The trial court ordered Allstate to pay the attorney fees awarded and the Eighth District Court of Appeals affirmed, holding that the attorney fees were "conceptually distinct" from punitive damages and not expressly excluded from the Allstate policy. On appeal to the Ohio Supreme Court, Allstate argued that it was not obligated to provide coverage for the attorney fee award because the Allstate policy only provided coverage for damages because of bodily injury. Allstate argued that attorney fees are not damages themselves, but are derivative of punitive damages. It also argued that attorney fees were not awarded as a result of bodily injury, but because of the malicious conduct of the Allstate insured. Finally, it asserted that an award of attorney fees was excluded under its policy language which precluded coverage for "punitive or exemplar damages, fines or penalties."

The Supreme Court rejected Allstate's arguments and concluded that, although an award of attorney fees may stem from an award of punitive damages, the attorney fee award itself is not an element of the punitive damage award. The court held that the award of attorney fees stems from an underlying bodily injury claim and that, as such, attorney fees fall under the insurance policy's general coverage of damages which an insured person is legally obligated to pay because of bodily injury. The court also noted that the Allstate policy exclusion for punitive damages did not specifically mention attorney fees. Because attorney fees are conceptually distinct from punitive damages, the Allstate exclusion was held not to be applicable. Finally, the court concluded that Ohio public policy did not preclude extending insurance coverage for attorney fees awards arising out of punitive conduct. The court noted that its decision would not encourage wrongful behavior because a tortfeasor still remains liable for the punitive damage award based upon any malicious actions.

In sum, the Supreme Court rejected Allstate's policy-based arguments because its punitive damage exclusion did not expand its scope to include attorney fee awards and the insuring agreement did not specifically limit the damages arising out of bodily injury for which it provided coverage. Had the Allstate policy contained more specific language referencing a limitation of coverage for attorney fees arising out of punitive damages, the Supreme Court's decision may have been different. Insurance carriers should now be mindful of the fact that, absent a specific exclusion referencing attorney fees arising out of punitive damages, it may be obligated to extend coverage to its insureds for an award of attorney fees based on malicious conduct. If you have any questions about the Supreme Court's holdings, or would like further information on how the Supreme Court's decision may impact a particular coverage scenario, please contact a member of Reminger's Insurance Coverage Practice Group.

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