

## Ohio Supreme Court Holds Attorneys Fees Derived From Punitive Damage Award Are Insurable

May 12, 2010

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The Ohio Supreme Court held on May 4, 2010 that attorneys fees awarded as a result of a judgment for punitive damages are insurable under an automobile policy. *Lahman et al. v. Allstate Insurance Company*, 2010-Ohio 1829. While affirming Ohio's longstanding prohibition on insuring punitive damages, the court drew a bright line between coverage for punitive damages and coverage for attorneys fees based solely on a punitive damage award.

Allstate insured Linda Lahman under an automobile policy in which it agreed to "pay damages which an insured person is legally obligated to pay because of: ... bodily injury sustained by any person." Kimberly Neal-Pettit sued Ms. Lahman for compensatory and punitive damages arising out of injuries sustained in an automobile accident allegedly caused by Ms. Lahman while intoxicated. In addition to compensatory damages, the jury awarded Ms. Neal-Pettit \$75,000 in punitive damages. The jury also awarded Ms. Neal-Pettit \$46,825 for attorneys fees based on its finding that Ms. Lahman acted with malice supporting a punitive damage award.

Allstate denied payment of both amounts. Following the trial court's entry of summary judgment for Ms. Neal-Pettit on her supplemental complaint against Allstate, the Eighth District Court of Appeals affirmed. *Neal-Pettit v. Lahman*, 2008-Ohio-6653 (8th Dt. 2008). By a vote of 4-2, the Ohio Supreme Court affirmed the Court of Appeals on three grounds. Justice Lanzinger authored the majority opinion.

First, the court held that the attorney fee award constitutes covered "damages" under the policy. The court acknowledged that attorneys fees could not have been awarded but for the punitive damage verdict. However, the court concluded that the two awards, while related, are distinct. Determining that attorneys fees are not an element of the punitive damage award, the court held that attorneys fees are compensatory, not punitive, and therefore constitute "damages" under the policy.

Second, based on the very same reasoning, the court held that Allstate's policy did not exclude coverage for attorneys fees simply by virtue of excluding coverage for punitive damages.

Third, the court held that Ohio's public policy does not prohibit coverage for attorneys fees derived from a punitive damage verdict. The court recognized Ohio Revised Code section 3937.182(B), which prohibits automobile policies from providing punitive damage coverage. Nevertheless, the court declined to read what it deemed to be an additional prohibition on coverage for attorneys fees into the statute.

The court also recognized its prior decisions holding that, as to all insurance policies, coverage for punitive damages is against Ohio's public policy. Those decisions hold that Ohio law may not encourage malicious behavior by allowing insurance coverage for such behavior. However, the court determined that because uninsurable punitive damages are available to discourage malicious wrongdoers, coverage for related attorneys fees will not encourage wrongful behavior.

Justice Lundberg-Stratton dissented, joined by Justice O'Donnell. The dissent agreed with Allstate that an award of attorneys fees is punitive in nature because it is directly dependent on the award of punitive damages, and would likely have to be reversed if the punitive damage award were reversed. Justice Lundberg-Stratton would have reversed the Court of Appeals because Allstate's policy unambiguously bars coverage for punitive damages, because attorneys fees are punitive and not compensatory, and because public policy bars such coverage.

Notwithstanding the dissent's recognition of what Allstate expected based on its policy language and certain prior cases, the law is now clear. Absent an express prohibition on coverage for attorneys fees in the policy, such fees will be covered even if based on an excluded punitive damage award for which public policy would not allow coverage in any event.