

IN THE OHIO SUPREME COURT

KIMBERLY NEAL-PETTIT,  
Plaintiff(s)

v.

LINDA LAHMAN, et al.,

Defendant(s)

Supreme Court Case No.

09-0325

On Appeal from 8<sup>th</sup> Dist. App. Case No.  
91551

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DEFENDANT-APPELLANT ALLSTATE INSURANCE COMPANY'S  
NOTICE OF APPEAL

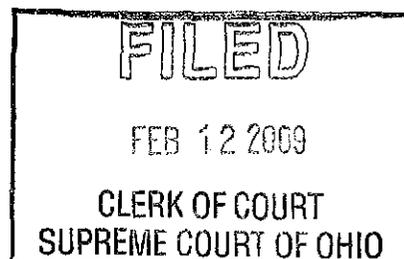
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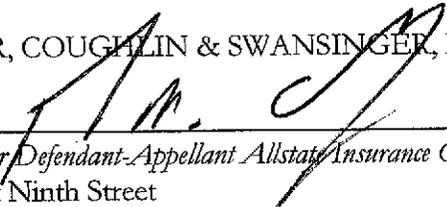


Now comes Defendant-Appellant Allstate Insurance Company, by and through its undersigned counsel, Ritzler, Coughlin & Swansinger, Ltd., and hereby gives notice of its appeal to the Ohio Supreme Court of the decision by the Eighth District Court of Appeals in the matter of *Kimberly Neal-Pettit v. Linda Lahman, et al*, Cuyahoga App. No. 91551, which was dated December 29, 2008. A copy of said decision is incorporated herein and attached hereto as **Exhibit A**. This case concerns matters of public or great general interest.

Respectfully submitted,

RITZLER, COUGHLIN & SWANSINGER, Ltd.

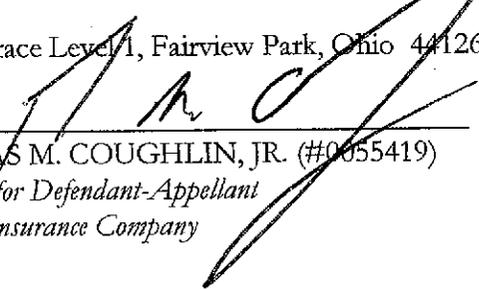
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**PROOF OF SERVICE**

A copy of the foregoing has been forwarded to the following by regular United States mail this 12th day of February, 2009 to W. Craig Bashein, Esq. and Paul W. Flowers, Esq., 50 Public Square, 35<sup>th</sup> Floor, Terminal Tower, Cleveland, Ohio 44113; and Terrence J. Kenneally, Esq., Old Forge Centre, 20595 Lorain Road, Terrace Level 1, Fairview Park, Ohio 44126.

By:

  
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# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 91551

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**KIMBERLY NEAL-PETTIT**

PLAINTIFF-APPELLEE

vs.

**LINDA LAHMAN, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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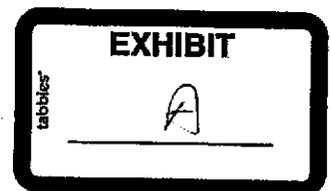
Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-545838

**BEFORE:** Stewart, J., Cooney, P.J., and Gallagher, J.

**RELEASED:** December 18, 2008

**JOURNALIZED:** DEC 29 2008

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VOL 672 PG 780



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FILED AND JOURNALIZED  
PER APP. R. 22(E)

DEC 29 2008

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

ANNOUNCEMENT OF DECISION  
PER APP. R. 22(E), 22(D) AND 26(A)  
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DEC 18 2008

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MELODY J. STEWART, J.:

This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the Cuyahoga County Court of Common Pleas, and the briefs of counsel. The sole issue raised in this appeal is whether defendant-appellant Allstate Insurance Company has the legal obligation to pay attorney fees of \$46,825 deriving from a punitive damages award against its insured, defendant-tortfeasor Linda Lahman, in favor of plaintiff-appellee, Kimberly Neal-Pettit. The parties filed cross-motions for summary judgment and agree that there are no issues of material fact and that judgment should issue as a matter of law.<sup>1</sup> See Civ.R. 56.

Insurance policies are contracts which we construe according to their plain and ordinary meaning unless manifest absurdity results or unless some other meaning is clearly intended from the face or overall contents of the instrument. *Olmstead v. Lumbermens Mut. Ins. Co.* (1970), 22 Ohio St.2d 212, 216.

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<sup>1</sup>The parties agree that Allstate has no contractual obligation to pay any amount of punitive damages awarded to Neal-Pettit. The question is whether the attorney fees, stemming as they do from the punitive damages award, are subject to indemnification under the policy.

The Allstate policy states: “We will not pay any punitive or exemplary damages, fines or penalties under Bodily Injury Liability or Property Damage Liability coverage.”<sup>2</sup> (Emphasis sic.)

Attorney fees awarded with punitive damages are undeniably punitive in nature. See *Digital & Analog Design Corp. v. North Supply Co.* (1992), 63 Ohio St.3d 657, 662. But describing attorney fees as “punitive” in nature is not the same thing as saying that attorney fees are punitive “damages.” Attorney fees are conceptually distinct from punitive damages and “may be awarded as an element of compensatory damages where the jury finds that punitive damages are warranted.” *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 558, 1994-Ohio-461. The Allstate policy language saying that it will not pay any “punitive or exemplary damages” is plain – it only excludes punitive “damages” and does not exclude the payment of attorney fees awarded in conjunction with the punitive damage award. Had Allstate intended otherwise, the policy language could easily have been drafted to reflect that intention.

For the same reasons, we reject Allstate’s argument that it would be against public policy to permit indemnification of attorney fees. R.C. 3937.182(B), like the Allstate policy at issue, prohibits insurance coverage for

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<sup>2</sup>Allstate does not argue that attorney fees ordered in this case are a fine or penalty.

“judgments or claims against an insured for punitive or exemplary damages.” This section only prohibits insurance for punitive damages. It does not prohibit indemnification of attorney fees associated with prosecuting a claim for punitive damages. Even though attorney fees in this case might be considered derivative of the punitive damage award, they remain conceptually distinct.

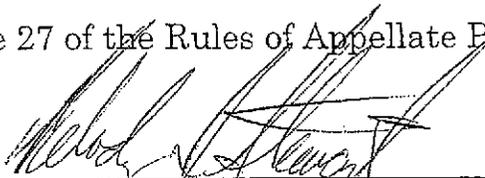
Judgment affirmed.

It is ordered that appellee recover of appellants her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



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MELODY J. STEWART, JUDGE

COLLEEN CONWAY COONEY, P.J., and  
SEAN C. GALLAGHER, J., CONCUR