

IN THE SUPREME COURT OF OHIO

CASE NO. 2009-0325

KIMBERLY NEAL-PETTIT

Plaintiff-Appellee

-vs-

LINDA LAHMAN; ALLSTATE INSURANCE COMPANY
Defendant – Appellants

ON APPEAL FROM THE CUYAHOGA COUNTY
COURT OF APPEALS CASE NO. 91551

MEMORANDUM OPPOSING JURISDICTION OF
PLAINTIFF-APPELLEE, KIMBERLY NEAL-PETTIT

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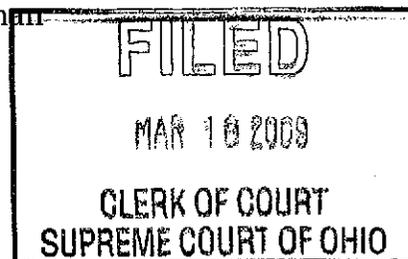
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**STATEMENT OF WHY NO ISSUES OF GREAT
GENERAL PUBLIC IMPORTANCE ARE PRESENTED**

The Eighth District's unanimous decision in the proceedings below, which had whole-heartedly affirmed the trial judge, is hardly as revolutionary as Defendant-Appellant, Allstate Insurance Company ("Allstate"), would have this Court believe. For whatever reasons, the motor vehicle insurance policy which was sold to Defendant, Linda Lahman ("Lahman"), does not contain any exclusions for attorney fees. Most of them do. Coverage for "punitive or exemplary damages, fines, or penalties" is plainly and unmistakably precluded. But the pertinent exclusion stops there. Throughout these proceedings, the insurance conglomerate has been imploring the lower courts, in essence, to either engraft an attorney fees exclusion into the policy through judicial fiat or excuse performance of the plain terms of the contract under the guise of "public policy." Ohio courts have never been receptive to such "Hail Mary" types of arguments, and this is no time to start.

Allstate has assured this Court that the issue of whether public policy prohibits coverage for attorney fees was "a once-settled area of law ***." *Defendant-Appellant Allstate Insurance Company's Memorandum in Support of Jurisdiction ("Defendant's Memorandum")*, p. 1. A few paragraphs later, the insurer has asserted that this "is a case of first impression in Ohio ***." *Id.*, p. 2. Which is it? The "once-settled area of law" theory cannot be correct, as not one case from the history of Ohio jurisprudence has been cited relieving an insurer of the obligation to pay attorney fees which are based upon a finding of actual malice. If this case truly is one of "first impression in Ohio", that is only because carriers which do not intend to cover attorney fee awards typically include such exclusions in their insuring agreements. The Good Hands People have extended broad promises to cover all types of "damages" to their insureds, except "punitive or exemplary damages, fines or penalties[,]" and now expect the courts to relieve them of the full consequences of this commitment.

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Allstate has fretted that personal injury plaintiffs will “try to pressure defendants’ insurers to settle by threatening to seek punitive damages and the now purportedly covered attorney fees that go along with them.” *Defendant’s Memorandum, p. 2.* If this is indeed occurring, the carriers have only themselves to blame. Incorporating a simple exclusion for attorney fees into the policies would put a quick and conclusive end to all such “threats.” Since Allstate is undoubtedly busy revising its standard-form policies in precisely this manner, there is no need for this Court to be alarmed. The Eighth District’s unerring logic certainly does not present any constitutional questions or issues of great public or general importance which merit further review.

STATEMENT OF CASE AND FACTS

As confirmed in the police report that was submitted in the proceeding below, the accident at issue in this litigation occurred on March 27, 2003 while Lahman was fleeing from a prior collision. While changing lanes at a “high speed” on I-77, she collided into the vehicle being operated by Plaintiff-Appellee, Kimberly Neal-Pettit, causing both to spin and lose control. Plaintiff’s vehicle skidded approximately 80 feet and struck the guardrail. The investigating officer observed that the 1995 Chevrolet Camaro had sustained “disabling damage”. Lahman’s speed was estimated at 90 mph in a 60 mph zone. She was charged with numerous offenses, including driving while intoxicated in violation of R.C. §4511.19(A) (1).

Notwithstanding the trauma of the high speed collision and her significant injuries, Plaintiff had to continue with her wedding the next day. Her new husband was leaving immediately thereafter to start a tour of duty in Iraq with his unit in the United States Army.

While Plaintiff had been willing to accept \$38,000.00 to resolve the case, Lahman’s motorist insurer, Allstate, only offered \$16,500.00 in settlement. The jury

thereafter returned a verdict in favor of Plaintiff for compensatory damages of \$113,800.00 and punitive damages of \$75,000.00. See *Judgment Entry of July 31, 2006*. They further indicated that Plaintiff should recover her attorney fees and litigation expenses. *Id.* Following an evidentiary hearing, Judge Nancy Margaret Russo set this award at \$46,825.00 in fees and \$10,084.96 in expenses.

While Plaintiff did not expect Lahman's insurer (*i.e.*, Allstate) to satisfy the punitive damages, a prompt demand was made for payment of the compensatory award including the attorney fees and litigation expenses. Allstate refused to cover the latter component of the recovery which forced Plaintiff to file her Supplemental Complaint pursuant to R.C. §3929.06 on July 27, 2007. The insurer submitted an Answer denying that anything further was owed under the policy on August 6, 2007.

During the ensuing summary judgment proceedings, the Allstate Insurance Auto Insurance Policy which was in effect at the time of the accident was produced. *Allstate Insurance Company's Brief in Opposition to Plaintiff's Motion for Summary Judgment, Exhibit B*. In Part 1 (Automobile Liability Insurance/Bodily Injury Liability), the insurer broadly promised that:

GENERAL STATEMENT OF COVERAGE

If a premium is shown on the Policy Declarations for Bodily Injury Liability Coverage and Property Damage Liability Coverage, **Allstate** will pay damages which an insured person is legally obligated to pay because of:

1. **bodily injury** sustained by any person, and
2. damage to, or destruction of, property.

Under these coverages, **your** policy protects an **insured person** from liability for damages arising out of the ownership, maintenance or operation, loading or unloading of an **insured auto**. *** [bold original, underlining added.]

Id., p. 7. Following thereafter was exclusion for “any punitive or exemplary damages, fines or penalties”. None of the numerous policy exclusions pertained to “attorney fees” or “litigation expenses”. *Id.*

In a final Judgment Entry dated May 6, 2008, Judge Nancy Margaret Russo concluded that Plaintiff was entitled to recover her attorney fees and litigation expenses in the amount of \$46,825.00 under Allstate’s policy. Allstate responded with an appeal on June 2, 2008. The Cuyahoga County Court of Appeals issued its opinion affirming the trial judge on December 29, 2008. The unanimous panel concluded that (1) no attorney-fee exclusion had been included in the policy and (2) public policy did not preclude such coverage. Despite the glaring absence of any conflicting authorities, Allstate is now seeking further review in this Court.

ARGUMENT

Oddly, Allstate’s analysis begins with – and focuses primarily upon – the demand for an expansion of Ohio “public policy.” *Defendant’s Memorandum*, pp. 5-11. The seemingly more significant question of whether the insuring agreement actually covers attorney fee awards has been relegated to the final few pages of the Memorandum. *Id.*, pp. 11-14. In an effort to return to an analytically proper approach, Plaintiff will address the contractual arguments first.

PROPOSITION OF LAW NO. 2: AN INSURANCE COMPANY SHOULD NOT HAVE A DUTY TO PAY AN AWARD OF ATTORNEY FEES DERIVATIVE OF THE COURT’S AWARD OF PUNITIVE DAMAGES ON BEHALF OF ITS INSURED WHEN IT IS AGAINST THE LAW TO COVER SUCH DAMAGES.

PROPOSITION OF LAW NO. 3: AN INSURANCE POLICY EXCLUSION FOR “PUNITIVE OR EXEMPLARY DAMAGES, FINES OR PENALTIES” PRECLUDES COVERAGE FOR AN AWARD OF ATTORNEY FEES THAT ACCOMPANIES A PUNITIVE DAMAGE AWARD.

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There is little meaningful difference between the second and third propositions of law, both of which explore the "true meaning" of the terms of the motor vehicle insurance policy. Theoretically, Allstate could have avoided the instant dispute by including language in the motor vehicle insurance policy specifically precluding coverage awards of attorney fees and litigation expenses. Despite the popularity of such exclusions within the insurance industry, the insurer did not do so. After promising the insureds that all forms of "damages" would be covered as long as the premiums were paid, the insuring agreement provided only that:

We will not pay any punitive or exemplary damages, fines or penalties under Bodily Injury Liability or Property Damage Liability coverage.

Allstate's Brief in Opposition to Summary Judgment, Exhibit B, Auto Insurance Policy, p. 7. Noticeably absent from this exclusion is any reference to "attorney fees" and "litigation expenses". Consequently, any reasonable person reviewing the policy would have been led to believe that such additional damages were covered.

Allstate seems to be arguing at one point that coverage for attorney fees and litigation expenses is precluded because the policy requires that the "damages" must be "because of *** **bodily injury** sustained by any person ***." *Defendant's Memorandum, pp. 11-13* (emphasis original). There was never any dispute during the post-trial hearing which Judge Russo conducted that the fees and expenses had been necessary because, and only because, of the serious and disabling "bodily injuries" which the intoxicated insured had caused during her flight from the authorities. No lawyers would have been required if Plaintiff had emerged unharmed and without any damage to her car. The requirement of a "**bodily injury**" has plainly been satisfied, and all "damages" arising there from are covered save for those which are specifically excluded. See generally *Jones v. Progressive Pref. Ins. Co.* (9th Dist. 169 Ohio App.3d

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291, 2006-Ohio-5420, 862 N.E.2d 850; *American Modern Home Ins. Co. v. Safeco Ins. Co. of Illinois*, 11th Dist. No. 2007-L-044, 2007-Ohio-6247, 2007 W.L. 4147932 ¶ 44; *Hall v. Nationwide Mut. Fire Ins. Co.*, 10th Dist. No. 05AP-305, 2005-Ohio-4572, 2005 W.L. 2100627 ¶ 11-18; *Brunn v. Motorists Mut. Ins. Co.*, 5th Dist. No. 2005CA0022, 2006-Ohio-33, 2006 W.L. 29116 ¶ 28; *Lager v. Gonzalez*, 6th Dist. No. L-07-1022, 2007-Ohio-4094, 2007 W.L. 2285319 ¶ 16-17

The shortcoming of the policy language has not been lost upon Allstate. In an effort to create the illusion that attorney fees and litigation expenses have been specifically excluded from coverage, the insured's Appeal Brief was rife with remarks such as:

In the instant matter, Defendant Lahman's policy with Allstate specifically excludes punitive damages and other fees, such as attorney fees, arising out of a punitive damage award ***. [emphasis added]

Defendant's Court of Appeal Brief, p. 6. As can be readily observed, the exclusion which Allstate fashioned is scrupulously limited to "punitive or exemplary damages, fines or penalties" and mentions nothing about any "fees". *Allstate's Brief in Opposition to Summary Judgment, Exhibit B, Auto Insurance Policy* p. 7. It should not be forgotten that "*** insurance policies are to be given their ordinary meaning and are not to be expanded by judicial fiat ***." *Atwood v. State Farm Mut. Ins. Co.* (4th Dist. 1990), 68 Ohio App.3d 179, 182, 587 N.E.2d 936, 937. The clear and unmistakable import of the provision which Allstate drafted is that the exclusion is confined to "punitive or exemplary damages, fines or penalties". *Allstate's Brief in Opposition to Plaintiff's Motion for Summary Judgment, Exhibit B*, p. 7. Plaintiff is not seeking insurance coverage for any such awards here.

Largely at the urging of the insurance industry, the courts of this State have steadfastly refused to glean new terms and provisions from unambiguous insurance

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contracts. *Atwood*, 68 Ohio App.3d at 182. Regardless of the practical implications for the parties, the courts of Ohio have never been in the business of judicially re-writing insurance policies which appear to have been drafted improvidently. *McNally v. American States Ins. Co.* (6th Cir. 1962), 308 F.2d 438, 445; *Schwartz v. Stewart Title Guar. Co.* (8th Dist. 1999), 134 Ohio App.3d 601, 607, 731 N.E.2d 1159, 1163. Instead, any uncertainty must be resolved in favor of the insured. *Buckeye Union Ins. Co. v. Price* (1974), 39 Ohio St.2d 95, 313 N.E.2d 844, syllabus; *Csulik v. Nationwide Mut. Ins. Co.*, 88 Ohio St.3d 17, 20, 2000-Ohio-262, 723 N.E.2d 90, 92.

Examples of Ohio courts refusing to “imply” new terms in insurance contracts at the request of policyholders are legion. In *Travelers Indem. Co. v. Reddick* (1974), 37 Ohio St.2d 119, 308 N.E.2d 454, the insureds urged the court to construe a purportedly ambiguous “physical contact” requirement in a hit-and-run motor vehicle clause to permit uninsured motorist coverage even though the tortfeasor’s vehicle had never struck their automobile. The unanimous opinion concluded that there was “nothing uncertain” about the terms appearing in the policy and refused to stray beyond the actual language employed. *Id.*, 37 Ohio St.2d at 122. Likewise, the insureds argued in *Cincinnati Indemn. Co. v. Martin*, 85 Ohio St.3d 604, 1999-Ohio-322, 710 N.E.2d 677, that a “bodily injury to an insured” clause should be read to permit coverage even for non-insureds. In affirming the entry of summary judgment in favor of the insurer, the majority specifically observed that:

It is well established that when the language in an insurance policy is clear and unambiguous, we must enforce the contract as written and give the words their plan and ordinary meaning. *Hybud Equip. Corp. v. Sphere Drake Ins. Co., Ltd.* (1992), 64 Ohio St.3d 657, 665, 597 N.E.2d 1096, 1102.

Id., 85 Ohio St.3d at 607. This principle has been upheld again and again during the course of Ohio jurisprudence. *Rhoades v. Equitable Life Assur. Soc. Of U.S.* (1978), 54

Ohio St.2d 45, 47, 374 N.E.2d 643, 644 (“Where the provisions of the policy are clear and unambiguous, courts cannot enlarge the contract by implication so as to embrace an object distinct from that originally contemplated by the parties.”); *Cincinnati Ins. Co. v. Kramer* (1st Dist. 1993), 91 Ohio App.3d 528, 531, 632 N.E.2d 1333, 1334 (“When the provisions of an insurance contract are clear and unambiguous, courts cannot enlarge the coverage by implying terms that are not in the agreement.”); *Progressive Ins. Co. v. Tarpeh* (8th Dist. 1996), 116 Ohio App.3d 634, 637, 688 N.E.2d 1102, 1104 (refusing to “liberally” construe policy in favor of insured since language was “clear and unambiguous”); *Mueller v. Taylor Rental Cntr.* (8th Dist. 1995), 106 Ohio App.3d 806, 809, 667 N.E.2d 427, 429 (affirming grant of summary judgment in favor of insurer because unambiguous policy language “must be applied as written, without judicial interpretation.”); *White v. Ogle* (8th Dist. 1979), 67 Ohio App.2d 35, 39, 425 N.E.2d 926, 929 (“An insurance company is only liable according to the terms and provisions of its contract, and not otherwise.”)

The great irony is, of course, that Allstate is now essentially imploring this court to artificially broaden the exclusion for “punitive or exemplary damages, fines or penalties” to also include “attorney fees” and “litigation expenses”. The insurer plainly is in no position to suggest that some sort of “ambiguity” exists, given that a small army of attorneys and insurance experts undoubtedly had been retained for the primary purpose of ensuring that the policy was as favorable to the carrier’s profit-driven interests as the law would tolerate. There is simply no dancing around the fact that the plain and ordinary terms of the insuring agreement do not preclude coverage for attorney fees and litigation expenses, even when imposed upon a jury’s finding of bad faith or malice.

It is a familiar maxim that the insurer bears the burden of demonstrating that a policy exception or exclusion is applicable. *Continental Ins. Co. v. Louis Marx & Co., Inc.* (1980), 64 Ohio St.2d 399, 401-402, 415 N.E.2d 315, 317. Exclusions in an insurance contract must be clear and unambiguous to be enforceable. *Moorman v. Prudential Ins. Co. of Am.* (1983), 4 Ohio St.3d 20, 445 N.E.2d 1122, 1124; *Nationwide Ins. Co. v. Johnson* (12th Dist. 1992), 84 Ohio App.3d 106, 109, 616 N.E.2d 525, 527. Given that Allstate's exclusion mentions neither "attorney fees" nor "litigation expenses", it will be impossible as a matter of law for the carrier to establish that such coverage has been excluded in the instant case. Accordingly, this Court should decline to extend jurisdiction to the second and third propositions of law.

PROPOSITION OF LAW NO. 1: It is against public policy for an insurance company to pay an award of attorney fees as an element of a punitive damage award against an intoxicated driver.

Allstate contends in the First Proposition of Law that even if the plain and ordinary terms of the policy furnished coverage for compensatory awards of attorney fees and litigation expenses, Ohio "public policy" will allow this contractual obligation to be ignored. *Defendant's Memorandum, pp. 5-13*. While ample authority exists that insurance coverage may not be furnished against awards of punitive damages, the insurance conglomerate has apparently been unable to cite a single decision from the history of Ohio jurisprudence holding that attorney fees and litigation expenses are deserving of the same treatment.

Allstate has proclaimed: "The legislature has spoken[.]" *Defendant's Memorandum, p. 7*. Plaintiff certainly agrees, but the message which was sent cannot help the insurer here. All that R.C. §3937.182(B) prohibits is coverage for "punitive or exemplary damages." The General Assembly stopped well short of precluding insurance for the attorney fees and litigation expenses which have long been

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recoverable when bad faith or malice exists. Such policymaking decisions should, of course, be left to the legislature. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 472, 2007-Ohio-6948, 880 N.E.2d 420, 428 ¶ 21.

Allstate's logic hinges upon the notion – which has been repeated over and over – that an award of attorney fees in response to bad faith or malicious misconduct is simply “part of the punitive damages award.” *Defendant's Memorandum*, p. 6. There is a reason why the insurer has been unable to locate any authorities from anywhere supporting this peculiar view, which is that the law is decidedly to the contrary. Attorney fees and punitive damages are two distinct types of recoveries which are available when malice is shown, neither of which predominates over or consumes the other. Blurring this well-recognized distinction in the manner Allstate proposes would require that this Court overturn decades of established precedent.

It is the defendant's bad faith or malicious misconduct, and not necessarily the imposition of punitive damages, which triggers the right to seek attorney fees and litigation expenses. The leading authority on this issue has long been *Roberts v. Mason* (1859), 10 Ohio St. 277, 282, 1859 W.L. 78, in which the this Court explained that:

*** [I]n cases where the act complained of is tainted by fraud, or involves in an ingredient of malice, or insult, the jury, which has the power to punish, has necessarily the right to include the consideration of proper and reasonable counsel fees in their estimate of damages. [citations omitted]

See also *United Power Co. v. Matheny* (1909), 81 Ohio St. 204, 211, 90 N.E. 154, 156.

The high court reaffirmed this ruling sometime later and reasoned that:

In *Roberts v. Mason*, 10 Ohio St. 277, it was held that in an action to recover damages for a tort, which involved the ingredients of fraud, malice, or insult, a jury may go beyond the rule of *mere* compensation, and award exemplary or punitive damages, and that in such a case, they may, in

their estimate of compensatory damages, take into consideration and include reasonable fees of counsel employed to prosecute the action. [italics original, underlining added]

Stevenson v. Morris (1881), 37 Ohio St. 10, 19-20, 1881 W.L. 53. In removing any doubt which may have remained as to the compensatory nature of the recovery of fees and expenses, the court declared in *Finney v. Smith* (1877), 31 Ohio St. 529, 534-535, 1877 W.L. 67, that:

In this state, it must, therefore, be regarded as settled, that in actions of tort, involving malice, fraud, insult, or oppression, the jury may, in estimating compensatory damages, take into consideration the reasonable counsel fees of the plaintiff in prosecuting his action for the redress of his injuries, against the wrong-doer, even where there are mitigating circumstances not amounting to a justification. [italics original, underlining added]

No confusion should have remained after *Smith v. Pittsburgh, Ft. W. & C. Ry. Co.* (1872), 23 Ohio St. 10, 18, 1872 W. L. 50, in which this Court reexamined *Roberts*, 10 Ohio St. 277, and reasoned that:

The doctrine there announced is, that in a case where punitive as well as compensatory damages may be awarded, the jury, in discriminating, should regard counsel fees as compensation and not as punishment. [emphasis added]

In accordance with these precedents, modern courts have repeatedly recognized, without wavering, that in punitive damage cases an award of attorney fees and litigation expenses is compensatory in nature.¹

Attorney fees may be awarded as an element of compensatory damages where the jury finds that punitive damages are warranted. *Columbus Finance, Inc. v. Howard* (1975), 42 Ohio St.2d 178, 183, 71 O.O.2d 174, 177, 327 N.E.2d 654, 658. [emphasis added]

¹ Notwithstanding the wealth of contrary authority on this point, Allstate has referenced *Digital & Analog Design Corp. v. North Supply Co.* (1992), 63 Ohio St. 3d 657, 590 N.E. 2d 737, but that opinion was subsequently overruled in *Zoppo*, 71 Ohio St. 3d at 557. *Allstate's Court of Appeals Brief*, p. 7; *Defendant's Memorandum*, p. 12. The Court recognized *Zoppo* that attorney fee awards are compensatory. *Id.*, at 558.

Zoppo v. Homestead Ins. Co., 71 Ohio St.3d 552, 558, 1994-Ohio-461, 644 N.E.2d 397, 402; see also *Galmish v. Cicchini*, 90 Ohio St.3d 22, 35, 2000-Ohio-7, 734 N.E.2d 782, 795; *Zappitelli v. Miller*, 114 Ohio St.3d 102, 103, 2007-Ohio-3251, 868 N.E.2d 968, 969 ¶ 6; *Maynard v. Eaton Corp.*, 3rd Dist. No. 9-06-33, 2007-Ohio-1906, 2007 W.L. 1176488 ¶ 10; *Wright v. Suzuki Motor Corp.*, 4th Dist. No. 03CA2, 2005-Ohio-3494, 2005 W.L. 1594850 ¶ 155; *Waters v. Allied Mach. & Eng. Corp.*, 5th Dist. No. 02AP040032, 2003-Ohio-2293, 2003 W.L. 21027180 ¶ 135; *Brookover v. Flexmag Indust., Inc.*, 4th Dist. No. 00CA49, 2002-Ohio-2404, 2002 W.L. 1189156 ¶ 224. Not long ago, the Eighth District confirmed that:

When there is bad faith or malicious misconduct, “*** the jury may, in their estimate of *compensatory* damages, take into consideration and include reasonable fees of counsel employed by the plaintiff in the prosecution of his action.” *Roberts v. Mason* (1895), 10 Ohio St. 277. Attorney fees are recoverable as *compensatory* damages by a plaintiff in an action in which punitive damages are proper. *Kapcsos v. Hammond* (1983), 13 Ohio App.3d 140, 13 OBR 173, 468 N.E. 2d 325; *Langhorst v. Riethmiller* (1977), 52 Ohio App.2d 137, 6 O.O.3d 101, 368 N.E.3d 101, 368 N. E. 2d 328. [italics originals]

Vinci v. Ceraolo (8th Dist. 1992), 79 Ohio App. 3d 640, 649, 607 N.E. 2d 1079, 1085. This sound holding comports with the general understanding that attorney fee awards are intended to make the prevailing party whole. *Taylor v. Luper, Sheriff & Niedenthal Co., L.P.A.* (S.D. Ohio 1999), 74 F.Supp.2d 761, 767.

Properly viewed, attorney fees and litigation expenses are thus an additional form of recovery which are available when bad faith or malice has been found, and thus rest on the same plane as punitive and exemplary damages. One is not derivative of the other. The critical difference between the two types of awards, which Allstate’s analysis cannot overcome, is that the former is properly deemed to be compensatory and the latter is punishment. *Smith*, 73 Ohio St. at 18. The attorney fees and litigation

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expenses which were imposed against Lahman thus properly fall within rubric of "damages", which Allstate had agreed to cover in the Automobile Liability Insurance/Bodily Injury Liability section of the Auto Insurance Policy. *Allstate Insurance Company's Brief in Opposition to Plaintiff's Motion for Summary Judgment, Exhibit B, p. 7.*

Allstate has proposed that this Court turn a blind eye towards this long line of unbroken authority on the grounds that "in each case so cited, the issue was not who to pay, but rather how to classify the award to the plaintiff." *Defendant's Memorandum, p. 6.* While this general assessment of these opinions are true enough, it is apparent that the insurer has missed the point. In elucidating upon how "to classify the award to the plaintiff", the courts in *Roberts, Matheny, Finney*, and their progeny confirmed beyond all legitimate debate that attorney fees are compensatory in their own right and not some subservient "part of the punitive damages award." *Id., p. 6.* There is no dancing around the fact that the very premise of Allstate's ill-conceived public policy argument cannot be reconciled with these established precedents.

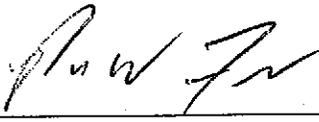
In the end, no sound justification exists for this Court to expand the concept of public policy in the manner that Allstate proposes. The spectre of punitive damages will always serve as a deterrent to malicious misconduct, and that is not about to change. When insureds are led to believe, however, that all other forms of "damages" are going to be covered under the policies they have purchased, carriers must be held to these promises. Even when awarded upon a demonstration of bad faith or actual malice, attorney fees are still compensatory and potentially insurable. Carriers which do not believe that they should cover such awards need only draft their policies accordingly. Further review of the first proposition of law is thus unwarranted.

CONCLUSION

For the foregoing reasons, this Court should decline to entertain any further review of this appeal given the absence of any constitutional questions or issues of public and great general importance.

Respectfully submitted,


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