

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Government Employees Insurance Company,

C/A No. 3:16-cv-1934-JFA

Plaintiff,

v.

ORDER FOR CERTIFICATION

Jack A. Poole, individually and as Personal
Representative of the Estate of Jennifer
Knight Poole,

Defendant.

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SOUTH
CAROLINA SUPREME COURT

This Court has determined that the above-captioned case involves questions of law of the State of South Carolina, which are most probably determinative of Plaintiff Government Employees Insurance Company's ("GEICO") motion for summary judgment (ECF No. 17) and Defendant Jack A. Poole's ("Jack") motion for summary judgment (ECF No. 16) pending before this Court. There appears to be minimal controlling precedent in the decisions of the Supreme Court of the State of South Carolina concerning the allocation of punitive damages in cases regarding automobile insurance coverage disputes. Accordingly, pursuant to South Carolina Appellate Court Rule 244, the United States District Court hereby certifies the questions of law addressed below to the Supreme Court for instructions based on the following facts and procedural background:

INTRODUCTION

Plaintiff, GEICO, an insurance company doing business in South Carolina, initiated this declaratory judgment action seeking a determination as to whether it was required to make additional insurance payments requested by Jack individually and on behalf of the estate of his wife, Jennifer Knight Poole (“Jennifer”) (collectively “Defendants”), after both were injured in an automobile accident. This Court has diversity jurisdiction over this action because both Jack and Jennifer Poole were residents of South Carolina at the time of the accident and GEICO is a corporation with its formation and principal place of business in a state other than South Carolina.

BACKGROUND FACTS

On July 10, 2015, Jack and Jennifer were injured while riding in a 1998 Buick Century owned by Doris Knight that was struck by a vehicle driven by Christopher Davis. The at fault driver, Christopher Davis, was driving under the influence when his vehicle collided with the Defendants. Jack received serious injuries and Jennifer received catastrophic injuries that caused her death several days later. Additionally, Defendants suffered approximately \$1,250 in property damage.¹ At the time of the incident, Doris Knight, Jennifer’s mother, resided with the Defendants. Her Buick involved in the accident was insured by Farm Bureau with Under Insured Motorists (“UIM”) coverage in the amount of \$25,000. The Defendants owned two vehicles, a 1988 Mitsubishi and a 2004 Ford, not involved in the accident and insured under GEICO policy number 4381-11-33-25 (the “Policy”), each with \$100,000 per person UIM bodily injury coverage. The Policy is a split limits policy that also contains \$50,000 per accident UIM property damage coverage.

¹ Because Defendants did not own the Buick, their only property damage resulted from the loss of one piece of jewelry, and a few articles of clothing.

As a result of the vehicle accident and injuries sustained by Defendants, Christopher Davis' insurance company paid its liability coverage limits of \$25,000. Farm Bureau also tendered their UIM coverage limits of \$25,000. Additionally, GEICO tendered single auto policy limits for bodily injury UIM coverage in the amount of \$100,000 to Jack individually, and an additional \$100,000 to Jack as personal representative of Jennifer's estate according to the terms of the Policy. GEICO did not tender any payments from the \$50,000 property damage coverage.

PROCEDURAL BACKGROUND

GEICO initiated this declaratory judgment action against Defendants on June 14, 2016, to determine if (1) Defendants were allowed to stack additional UIM coverage up to policy limits from both uninvolved automobiles covered under the Policy; and (2) if it was required to make the \$50,000 property damage coverage available for any possible punitive damages. Shortly thereafter, the parties entered into a stipulation and agreement wherein they stipulated to several key facts and made certain agreements pertaining to the issuance of any property damage coverage. Specifically, the parties agreed that

the potential punitive damages in this case exceed the amount of all available property damage coverage, including the liability property damage policy limits of the policy to Christopher Davis (\$25,000.00), the underinsured motorist property damage policy limits of the Farm Bureau policy issued to Doris Knight (\$25,000.00) and the potentially available limits of property damage underinsured motorist coverage in the GEICO policy in the amount of \$50,000.00.

In addition, should it ultimately be determined by judicial declaration that the policy of insurance issued by GEICO to Jennifer Knight Poole, deceased and Jack A. Poole, policy number 4381-11-33-25, including by way of exhaustion of any appeals, that the underinsured motorist coverage property damage limits are available to satisfy any punitive damage award obtained against Christopher Davis, then GEICO will pay the sum of \$50,000.00 to Jack A. Poole, individually and as Personal Representative of the Estate of Jennifer Knight Poole, as and for, exclusively, any and all recoverable punitive damages asserted or in any way arising from the Pooles' claims for punitive damages recoverable under the underinsured motorist property damage coverage limits under the GEICO policy

arising out of the accident that occurred on July 10, 2015, including any and all prejudgment interest and attorney's fees. However, in the event it is ultimately determined that the policy of insurance issued by GEICO to Jennifer Knight Poole, deceased, Jack Poole, policy number 4381-11-33-25, does not provide any additional underinsured motorist coverage bodily injury limits, as set forth above, including by way of exhaustion of any appeals, GEICO will not pay the Defendant any further sums whatsoever. Moreover, should it be judicially declared that punitive damages are to be allocated on a pro rata basis between the amount of actual damages for bodily injury and property damage, then GEICO will not pay any property damage underinsured motorist coverage to the Defendant.

(ECF No. 11). The parties also made several other stipulations relating to Defendants' request to stack coverage from both uninvolved automobiles covered by the Policy.

Subsequently, both parties filed cross motions for summary judgment. Both motions addressed the same issues regarding stacking and the availability of the property damage coverage to satisfy any punitive damages. After both motions were fully briefed, oral arguments were presented to the court. Therein, both parties noted the lack of controlling South Carolina law as to whether punitive damages must be allocated pro rata in a coverage dispute concerning a split limits automobile insurance policy.

After oral arguments were heard, the Court issued an order declaring that Defendants were not allowed to stack \$100,000 apiece from each uninvolved auto covered by the Policy. However, due to the lack of controlling precedent, the Court felt it prudent to stay a decision on the availability of property damage coverage to satisfy punitive damages pending the certification of the instant question to the South Carolina Supreme Court.

NATURE OF CONTROVERSY

The parties seek a declaration as to whether any punitive damages awarded in this case would be allocated pro rata between those losses resulting from property damages and those resulting from bodily injuries, or whether a punitive damages award would be left unallocated. As stated above, the parties agreed that if a punitive damages award were to be allocated pro rata, then

the \$50,000 UIM coverage for property damage available under the Policy would not be paid to satisfy any punitive damages award. Conversely, if a punitive damages award was unallocated, the \$50,000 UIM property coverage would also be paid to Jack.

GEICO argues, *inter alia*, that because the Policy is a split limits policy, it provides two different coverage limits; one to cover bodily injuries and one to cover property damage. Because the Policy has two different limits, an award of punitive damages must be allocated pro rata to ensure that the appropriate damages are paid from their respective limits. GEICO contends that to hold otherwise would essentially rewrite the Policy into a single limits policy and courts may not rewrite or torture policy language to extend coverage. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

Additionally, GEICO argues that allowing the \$50,000 property damage coverage to satisfy any punitive damages in this case would result in an unconstitutional award. Essentially, GEICO contends that a majority of any punitive damages awarded in this case would be based upon the bodily injury damages. Because Defendants only suffered \$1,250 in property damage, GEICO asserts that punitive damages resulting from property loss should be constitutionally capped at \$12,500. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (“few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”); *see also BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574–584 (setting forth three guidepost for reviewing a punitive damages award).

Defendants argue that insurance proceeds are statutorily required to be made available for punitive damages. S.C. Code Ann. § 38-77-30(4). Additionally, due to the serious nature and extent of the bodily injuries caused by a driver under the influence, there should be no concern for a violation of due process. Therefore, no apportionment is necessary and the full property damage coverage should be available to satisfy any punitive damages arising from the incident.

QUESTION CERTIFIED

Both Plaintiff's and Defendants' Motion and Memorandum in Support, along with all responsive memoranda, brief this issue of state law and the Court has determined that the answer under existing South Carolina precedent is not clear. Accordingly, pursuant to South Carolina Appellate Court Rule 244, the United States District Court hereby certifies the following question to the Supreme Court:

1. Under South Carolina law, when an insured seeks coverage under an automobile insurance policy, must punitive damages be apportioned pro rata between those sustained for bodily injury and those sustained for property damage where the insurance policy is a split limits policy?

Because the answer to this question is most probably determinative of both Motions for Summary Judgment, this Court takes under advisement both the Plaintiff's and Defendants' Motion for Summary Judgment (ECF No. 16 & 17), until the South Carolina Supreme Court answers this certified question.

IT IS SO ORDERED.

June 13, 2017 Columbia,
South Carolina

Joseph F. Anderson, Jr.
Joseph F. Anderson, Jr.
United States District Judge

A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK

BY: *Mary R. Alford*
DEPUTY CLERK

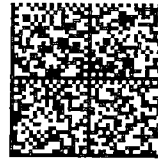


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DISTRICT OF SOUTH CAROLINA

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