

1983 WL 181810 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 22, 1983

*1 Mr. Paul V. Hawkins
Division of General Services
Insurance Reserve Fund
Post Office Box 11066
Columbia, South Carolina 29211

Dear Mr. Hawkins:

You have asked this Office to advise you as to whether punitive damages are covered by the general tort liability insurance policy of the Insurance Reserve Fund. The policy at question states in pertinent part in Section I(A), 'The Insurance Reserve Fund (hereafter called the Fund) will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury or property damage to which this policy applies, . . .' (emphasis provided). Section II of the policy provides for specific exclusions from the policy's coverage. Punitive damages are not among the exclusions listed in that section. The question then is whether an insurer is obligated to pay punitive damages under a general liability policy when there has been no specific exemption therefrom.

The South Carolina Supreme Court confronted this same issue in the case of [Carroway v. Johnson](#), 139 S.E.2d 908 (1965). Under the terms of the policy at issue in that case the insurer was obligated 'To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of: A. bodily injury * * * sustained by any person * * * arising out of the * * * use of the owned automobile or any non-owned automobile * * *.' The Court discussed the general rules of construction in construing insurance policies noting that:

'Insurers have the right to limit their liabilities and to impose whatever conditions they please on their obligations, provided they are not in contravention of some statutory inhibition or public policy. Accordingly, a clause in an insurance contract restricting liability or excluding coverage under certain conditions is valid.' [Id.](#), at 910.

In holding that the insurer was obligated to cover punitive damages in the policy at issue, the Court stated:

The policy under consideration did not limit recovery to actual or compensatory damages. The language of the policy here is sufficiently broad enough to cover liability for punitive damages as such damages are included in the 'sums' which the insured is legally obligated to pay as damages because of bodily injury within the meaning of the policy. [Id.](#), at 910.

This result is in accord with the rule stated in Appleman's treatise, [Insurance Law and Practice](#). Appleman summarizes his discussion of the coverage of punitive damages in insurance contracts as follows:

Where the policy is one designed and sold to cover acts ordinarily insured under comprehensive liability, homeowners, and professional liability contracts—such as libel, slander, invasion of privacy, false arrest, false imprisonment, malicious prosecution, or other acts where punitive damages ordinarily are attendant upon a recovery, the insurer of necessity must cover punitive damages (unless clearly and explicitly excepted), since they must be deemed contemplated by the parties. Otherwise, the policy is deceptive and purports to extent a coverage which is not present. In fact, the attempt to except punitive damages in such a situation would itself seem to be fraudulent and should be scrutinized with great care.

*2 On policies insuring against negligent acts, it does not matter whether the terminology be negligent, careless, reckless, wilful, or wanton, or whether the insured had inadvertently breached some statute or regulation; in any of such events, he would

be covered. The former line of demarcation relating to punitive damages in such cases is no longer a valid rule and has been disregarded by the weight of authority. If the act was an intentional one by a servant or employee, so long as the master's liability is solely vicarious, coverage will exist. If, however, the act is a purposeful one of the insured, intending harm, or is connected with culpable criminal activity, the better rule denies coverage.

Volume 12, Appleman, Insurance Law and Practice, Section 7031, p. 165. Thus, according to Appleman, the insurer should be exempted from paying punitive damages, only if the insured's action is one involving intentional harm or is of criminal dimensions.

Applying these principles to the Insurance Reserve Fund's general tort liability policy, it appears that punitive damages would be covered by the policy in most instances to the applicable limit of the Fund's liability. The only possible exception to coverage for punitive damages is the one raised by Appleman in which the insured's action was purposely designed to cause harm or the act is one connected with culpable criminal activity. Although Appleman calls this exception 'the better rule', it has not yet been passed upon by the South Carolina Supreme Court.

Very truly yours,

Helen T. Zeigler
Assistant Attorney General

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