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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2015-2016

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State Farm Mutual Automobile Insurance Company

v.

Jacqueline Brown and Cleo Brown

Appeal from Mobile Circuit Court
(CV-13-900412)

PITTMAN, Judge.

State Farm Mutual Automobile Insurance Company ("State Farm") appeals from a judgment entered by the Mobile Circuit Court against State Farm and in favor of Jacqueline Brown and Cleo Brown. We reverse and remand.

Facts and Procedural History

The Browns sued John Joseph Kramer, seeking compensatory and punitive damages after the Browns had been involved in an automobile accident with Kramer. The Browns were insured by a State Farm policy, which provided underinsured-motorist ("UIM") coverage for the Browns. Accordingly, the Browns also named State Farm as a defendant, seeking to recover UIM benefits. Kramer's liability insurer, USAA Casualty Insurance Company ("USAA"), offered to pay the Browns \$200,000, which represented the policy limits of Kramer's policy, in full settlement of the Browns' claims against Kramer.

In response to USAA's settlement offer, State Farm advanced \$200,000 to the Browns pursuant to the procedure set out in Lambert v. State Farm Mut. Auto. Ins. Co., 576 So. 2d 160 (Ala. 1991).¹ State Farm also elected to "opt out" of the litigation between the Browns and Kramer pursuant to the procedure recognized in Lowe v. Nationwide Ins. Co., 521 So. 2d 1309 (Ala. 1988).

¹In Lambert, our supreme court stated that a UIM insurer can prevent the release of a tortfeasor from liability, and thereby protect the UIM insurer's potential right to subrogation, by advancing to its insured an amount equal to the tortfeasor's settlement offer. 576 So. 2d at 167.

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The Browns' claims against Kramer proceeded to trial, and the jury rendered a verdict in favor of the Browns in the total amount of \$90,000, which consisted of \$80,000 in compensatory damages and \$10,000 in punitive damages. Kramer's liability policy with USAA did not provide coverage for punitive damages. Accordingly, USAA deposited a total of \$80,000 with the trial court.

The Browns conceded that State Farm was entitled to the \$80,000 based on the substitute payment it had made under Lambert. A dispute, however, arose between the Browns and State Farm regarding the \$10,000 punitive-damages award. According to the Browns, because Kramer's liability policy excluded coverage for punitive damages, Kramer was uninsured for such damages, and, thus, they argued, State Farm was required to pay \$10,000 to the Browns pursuant to the Browns' UIM coverage. State Farm, on the other hand, asserted that the Browns were entitled to retain all of the \$200,000 that State Farm had advanced to the Browns under Lambert, which exceeded the total verdict by \$110,000. Thus, State Farm argued, the Browns had already recovered more than the total

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amount of the verdict, and State Farm was not required to pay an additional \$10,000.

The trial court agreed with the Browns and entered a judgment against State Farm in the amount of \$10,000, plus interest. State Farm appealed.

Standard of Review

An appellate court's review of a ruling on a question of law is de novo. Ex parte Graham, 702 So. 2d 1215, 1221 (Ala. 1997).

Analysis

USAA offered to pay the Browns \$200,000 in full settlement of all of the Browns' claims. State Farm advanced those funds to the Browns pursuant to Lambert. At that point, the Browns had recovered all the funds to which they ultimately became legally entitled as a result of the jury's verdict. Indeed, the Browns recovered more than the amount to which they were legally entitled, as State Farm concedes that the Browns had the right to keep the entire \$200,000 advance made under Lambert. Accordingly, we agree with State Farm's argument that it was not required to pay the Browns an additional \$10,000.

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Omni Insurance Co. v. Foreman, 802 So. 2d 195 (Ala. 2001), upon which the Browns principally rely, does not call for a different result. Omni simply holds that UIM benefits can include punitive damages that are owed by an underinsured tortfeasor. According to Omni, "[s]ection 32-7-23[, Ala. Code 1975,] requires the payment of sums that the insured is 'legally entitled to recover.'" 802 So. 2d at 198. In the present case, although the Browns were legally entitled to recover punitive damages from Kramer, the Browns unquestionably received, pursuant to State Farm's Lambert advance, more than the total sum of damages to which they were entitled. Thus, the trial court's judgment against State Farm is due to be reversed.

REVERSED AND REMANDED.

Thomas and Donaldson, JJ., concur.

Thompson, P.J., concurs in the result, without writing.

Moore, J., concurs in the result, with writing.

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MOORE, Judge, concurring in the result.

Section 32-7-23, Ala. Code 1975 ("the Uninsured Motorist Act"), defines an "uninsured motor vehicle" to include

"motor vehicles with respect to which ... [t]he sum of the limits of liability under all bodily injury liability bonds and insurance policies available to an injured person after an accident is less than the damages which the injured person is legally entitled to recover."

§ 32-7-23(b)(4). In this case, Jacqueline Brown and Cleo Brown received personal injuries as a result of a motor-vehicle accident caused by John Joseph Kramer, who was insured by USAA Casualty Insurance Company ("USAA") under an automobile-liability-insurance policy providing for up to \$200,000 in coverage for the accident at issue. The Browns sued Kramer in the Mobile Circuit Court ("the trial court"). Following a jury trial, the jury returned a verdict in favor of the Browns and against Kramer, awarding the Browns \$80,000 in compensatory damages and \$10,000 in punitive damages, and the trial court subsequently entered a judgment on the jury's verdict. The USAA insurance policy excluded coverage for punitive damages, so USAA paid only \$80,000 into court to satisfy the amount of the compensatory-damages award. The Browns maintain that Kramer had only \$80,000 in liability

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coverage "available" to indemnify them for their damages, so Kramer should be considered uninsured for the \$10,000 in punitive damages awarded by the jury.

In Farmers Insurance Co. of Arizona v. Sandoval, 149 N.M. 654, 253 P.3d 944 (N.M. Ct. App. 2011), a driver and her passenger were injured in a collision with an intoxicated driver who was insured by an automobile-liability-insurance policy that excluded coverage for punitive damages. Their compensatory damages did not exceed the \$25,000 per person limit of the intoxicated driver's automobile-liability insurance, and they were prepared to settle their individual claims for less than that amount. The driver and the passenger filed a claim for underinsured-motorist ("UIM") benefits with the driver's UIM insurance carrier, which provided UIM coverage limits of \$30,000. The UIM carrier agreed to pay the driver and the passenger \$5,000 each, representing its policy limits of \$30,000 less the \$25,000 policy limits of the intoxicated driver. The driver and the passenger asserted that, due to the intoxicated driver's insurance-policy exclusion for punitive damages, the amount of UIM benefits should be calculated based on the amount the

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driver and the passenger actually received in their respective settlements with the intoxicated driver's insurance company, not on the amount of the intoxicated driver's policy limits. The UIM carrier filed a declaratory-judgment action to resolve the dispute. The trial court entered a summary judgment for the UIM carrier, prompting an appeal by the driver and the passenger.

On appeal, the New Mexico Court of Appeals quoted the operative provision of the New Mexico Uninsured Motorist Act:

"[A]n 'underinsured motorist' is 'an operator of a motor vehicle with respect to the ownership, maintenance or use of which the sum of the limits of liability under all bodily injury liability insurance applicable at the time of the accident is less than the limits of liability under the insured's [UIM] coverage.'"

149 N.M. at 657-58, 253 P.3d at 947-48 (quoting N.M. Stat. Ann., § 66-5-301(B)). The court determined that the statute did not clearly express whether a valid contractual provision excluding punitive damages reduces the "limits of liability." Seizing on the ambiguity, the court held that the statute must be construed to effect the legislative intention of providing UIM coverage at least in the certain sum for which the insured had contracted. The court ultimately held that the UIM

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carrier must pay the difference between its UIM policy limits and the amounts actually payable under the intoxicated driver's automobile-liability-insurance policy given the exclusion for punitive damages. In reaching its decision, the court relied on New Mexico caselaw that requires a UIM carrier to pay punitive damages to its insured when the insured is legally entitled to recover those damages from the underinsured tortfeasor. See Stewart v. State Farm Mut. Auto. Ins. Co., 104 N.M. 744, 746, 726 P.2d 1374, 1376 (1986).

Like in New Mexico, in Alabama punitive damages are included in the amount the insured is "legally entitled to recover" under the Uninsured Motorist Act. See Omni Ins. Co. v. Foreman, 802 So. 2d 195 (Ala. 2001). Based on other similarities between Alabama law and New Mexico law on this subject, Alabama might even follow the reasoning of the New Mexico Court of Appeals in holding that a punitive-damages exclusion reduces the "sum of the limits of liability under all bodily injury liability bonds and insurance policies available to an injured person after an accident," § 32-7-23(b)(4), although that is debatable since a policy "exclusion" differs from a policy "limitation of liability."

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See 17A Steven Plitt et al., Couch on Insurance § 254:72 (3d ed.). However, that reasoning does not avail the Browns in this case because, unlike in Sandoval, the punitive-damages exclusion in Kramer's policy did not reduce the sums available to the Browns.

The record indicates that USAA offered to pay to the Browns the full \$200,000 limits of its insurance policy covering Kramer in settlement of the Browns' claims against Kramer. The Browns, in turn, notified their UIM carrier, State Farm Mutual Automobile Insurance Company ("State Farm"), of the settlement offer. State Farm, pursuant to Lambert v. State Farm Mutual Automobile Insurance Co., 576 So. 2d 160 (Ala. 1991), agreed to pay the Browns the \$200,000 offered by USAA in order to secure its subrogation rights against Kramer. In doing so, State Farm substituted its funds for the \$200,000 the Browns would have received in settlement from USAA, see State Farm Mut. Auto. Ins. Co. v. Pritchard, [Ms. 2130989, June 12, 2015] ___ So. 3d ___, ___ (Moore, J., dissenting), with the advance made pursuant to Lambert having "the same effect as a payment to [the insured] by the tortfeasor or the tortfeasor's liability carrier." River Gas Corp. v. Sutton,

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701 So. 2d 35, 39 (Ala. Civ. App. 1997). The Browns were entitled to retain the entirety of that payment advanced pursuant to Lambert, even if they later obtained a verdict against Kramer for less than the amount of that payment. See Ronald G. Davenport, Alabama Automobile Insurance Law § 21:8 (3d ed. 2002). Thus, through the Lambert procedure, the Browns received the entirety of the "sum of the limits of liability" contained in the USAA policy notwithstanding the punitive-damages exclusion, unlike the situation in Sandoval.

That distinction leads to a different result in this case. The purpose of the Uninsured Motorist Act is to assure that injured motorists have insurance coverage to indemnify them for damages caused by the wrongful conduct of uninsured and underinsured motorists. Star Freight, Inc. v. Sheffield, 587 So. 2d 946, 957 (Ala. 1991). Having received \$200,000 from State Farm to cover their damages as a substitute for the settlement proceeds they would have received from the USAA policy covering Kramer, the Browns were not entitled to any UIM benefits from State Farm unless they proved that their damages exceeded that \$200,000 amount. See Pritchard, ___ So. 3d at ___ (Moore, J., dissenting). It is undisputed that the

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jury awarded the Browns only \$90,000 in combined compensatory and punitive damages, \$110,000 less than the payment advanced by State Farm pursuant to Lambert. Neither the letter nor the spirit of the Uninsured Motorist Act supports an additional award to the Browns of \$10,000 from State Farm. By making an advance payment in accordance with Lambert, a UIM carrier assumes the risk that it may not be fully reimbursed by the tortfeasor's liability-insurance carrier, see Davenport, supra, but it does not assume the risk that it will become obligated to pay the insured UIM benefits for damages for which the insured has already been fully indemnified. The trial court erred in entering a judgment for the Browns, and its judgment is due to be reversed; therefore I concur in the result reached by the main opinion.