

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1993 Term

No. 21312

FEDERAL KEMPER INSURANCE COMPANY,
Plaintiff

v.

HERBERT J. KARLET, LUANNA SUE KARLET,
BRIAN KARLET, KELLI MICHELLE KARLET,
CHARLOTTE BALL, AS ADMINISTRATRIX
OF THE ESTATE OF LOUIA H. MARTIN
AND CHARLES DANIEL BALL,
Defendants

Certified Question from the United States District
Court for the Southern District of West Virginia
Honorable Charles H. Haden II, Judge
Civil Action No. 3:92-0194

CERTIFIED QUESTION ANSWERED
AND CASE DISMISSED

Submitted: January 13, 1993
Filed: February 25, 1993

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JUSTICE MCHUGH delivered the Opinion of the Court.

SYLLABUS BY THE COURT

When a person is bodily injured in an automobile accident, an individual other than the bodily-injured person may also suffer damages as a result of such accident through loss of consortium. The claim for loss of consortium by an individual other than the one suffering bodily injury as a result of an automobile accident is generally recognized as arising out of the claim for damages of the bodily-injured person. As a result, the claim of the bodily-injured person and the claim for loss of consortium are covered within the same per person limit of liability provisions under the automobile insurance policy. More specifically, when the per person limit of liability in a policy provides coverage for "all damages arising out of bodily injury sustained by one person as a result of one accident," both the claim of the bodily injured person and the claim for loss of consortium are covered within the same per person limit of liability, and recovery for both claims may not exceed the fixed amount of the maximum limit of damages under the per person limit of liability.

If, however, there is language in the policy which includes loss of consortium as a separate bodily injury, such loss of consortium claim is entitled to a separate per person limit of liability.

McHugh, Justice:

This matter is before the Court upon certified question by the United States District Court for the Southern District of West Virginia for clarification as to whether minor children claiming loss of parental consortium are treated as separate injured persons, subject to separate "per person" and "per occurrence" insurance liability limits, based on language in an automobile insurance policy.¹

I

Charles Daniel Ball and Herbert J. Karlet were the drivers of two vehicles involved in a collision in Wayne County, West Virginia, in the fall of 1990. Mr. Karlet's wife, Luanna, and son, Brian, were passengers in the vehicle he was driving, and all three of them were injured as a result of the accident.² Mr. and Mrs. Karlet also have a daughter, Kelli, who was not a passenger in the vehicle.

¹The question now before us has been certified from federal district court pursuant to the Uniform Certification of Questions of Law Act, W. Va. Code, 51-1A-1 to 51-1A-12 (Repl. Vol. 1981). Pursuant to these statutory provisions, we must determine, in answering a certified question, the present law bearing on the issue certified. We recognized this directive in syllabus point 1 of Morningstar v. Black & Decker Manufacturing Co., 162 W. Va. 857, 253 S.E.2d 666 (1979): "From the language of W. Va. Code, 51-1A-1, together with the conventional construction placed by other courts on similar certification statutes, this Court, in answering a certified question, must of necessity determine the present law bearing on the issue certified."

²Although the parties have not advised this Court of the extent of the parties injuries, counsel on behalf of the Karlets represented to the Court at oral argument that the parents' injuries were more severe than their son's injuries.

The parties represent to this Court that Mr. Ball was the party at fault in the accident. The vehicle driven by Mr. Ball was owned by his grandmother, Louia H. Martin,³ and was insured by Federal Kemper. The insurance policy issued by Federal Kemper to Mrs. Martin provides liability coverage limits of \$100,000 per person and \$300,000 per occurrence, and was in effect on the date of the accident.

The Karlets' children filed a loss of parental consortium claim for injury to the parent-child relationship as a result of the accident.⁴ Due to the parties' dispute over the loss of parental consortium claim, Federal Kemper filed a declaratory judgment action in the federal district court seeking a declaration from the court that the loss of parental consortium claim asserted by the Karlets' children was included with the each person liability limits applicable to each of their injured parents.⁵

The district court declined to render a declaratory judgment on the issue presented by Federal Kemper, and instead certified the following question to this Court: "Are minor children claiming loss

³Mrs. Martin is now deceased.

⁴This Court recognized a cause of action for loss of parental consortium in Belcher v. Goins, 184 W. Va. 395, 400 S.E.2d 830 (1990). The parties do not dispute in this case that such a cause of action exists.

⁵Pending the resolution of the dispute over the loss of parental consortium claim, Federal Kemper paid the sum of \$200,000 into federal district court, which represented the policy limits of \$100,000 for the bodily injuries of Mr. Karlet and \$100,000 for the bodily injuries of Mrs. Karlet. The dispute concerns the remaining \$100,000 under the per occurrence limit of liability.

of parental consortium treated as separate injured persons, subject to separate per person and per occurrence insurance liability limits, based on the language of Federal Kemper's insurance policy?"⁶

II

In response to the certified question we must determine whether the minor children's claims of loss of parental consortium should be treated as separate bodily injuries under the per person limits of liability under the policy. Federal Kemper maintains that the loss of consortium claim asserted by the Karlets' children arises from the bodily injuries suffered by their parents in the accident, and that any claim they may have for loss of parental consortium is subject to the \$100,000 per person limits of liability applicable to their parents' bodily injury claims. The Karlets contend that a child's claim for loss of parental consortium is a separate claim entitled to an independent per person recovery under the automobile insurance policy.

The insurance policy at issue in the present case provides bodily injury liability coverage of \$100,000 each person, \$300,000 each occurrence. The insurance policy also contains specific provisions relating to those limits of liability. The policy at issue expressly provides that "[t]he limit of liability shown in the Declarations for the coverage is our maximum limit of liability for each person injured in any one accident." More important, however,

⁶An amicus brief was filed on behalf of the Trial Lawyers Association.

to the particular facts of this case, is the language in this policy which appears under the "**LIMIT OF LIABILITY**" provision, and states: The limit of liability shown in the Declarations applicable to 'each person' is our maximum limit for all damages arising out of **bodily injury** sustained by one person as a result of any one accident. The limit of liability shown in the Declarations applicable to 'each occurrence' is our maximum limit for all damages arising out of **bodily injury** sustained by two or more persons as a result of any one accident.

One of the issues the certified question before us essentially raises is whether the minor children's claims for loss of parental consortium fall within the definition of bodily injury under the policy, and therefore would be subject to separate per person limits of liability. The insurance policy defines bodily injury as follows: "**Bodily injury**" means bodily harm, sickness or disease, including death that results." The definition of bodily injury under this policy clearly does not include loss of consortium as a separate bodily injury.

The issue of whether minor children claiming loss of parental consortium are treated as separate injured persons subject to separate per person and per occurrence limits of liability is one of first impression for this Court.⁷ In the cases we have reviewed from other jurisdictions, the insurance policy language relating to

⁷This Court, in Perkins v. Doe, 177 W. Va. 84, 87 n. 5, 350 S.E.2d 711, 715 n. 5 (1986), did express its inclination to follow certain cases which had held that consortium claimants were entitled to extended coverage under an automobile insurance policy beyond that to which the bodily-injured party was entitled under the "per person" limitation.

the per person limitation and defining bodily injury⁸ varies to some degree. Yet, it appears to be fairly well-settled in other jurisdictions that where there is one person bodily-injured in an automobile accident and the automobile insurance policy contains a per person limitation which covers all damages arising out of bodily injury sustained by one person, the loss of consortium claim by either the injured person's spouse or child, who was not physically injured in the accident, is recognized as arising out of the claim of the bodily-injured person and subject to the per person limitation. See Weekley v. State Farm Mutual Automobile Ins. Co., 537 So. 2d 477 (Ala. 1989); Stillman v. American Family Ins., 785 P.2d 114 (Ariz. Ct. App. 1990); Hauser v. State Farm Mutual Automobile Ins. Co., 252 Cal. Rptr. 569 (Cal. Ct. App. 1988); Izzo v. Colonial Penn Ins. Co., 524 A.2d 641 (Conn. 1987); Creamer v. State Farm Mutual Automobile Ins. Co., 514 N.E.2d 214 (Ill. Ct. App. 1987); Lepic v. Iowa Mutual Ins. Co., 402 N.W.2d 758 (Iowa 1987); Gillchrest v. Brown, 532 A.2d 692 (Me. 1987); Santos v. Lumbermens Mutual Casualty Co., 556 N.E.2d 983 (Mass.

⁸ Where the insurance policy language includes loss of services in the definition of bodily injury, courts have held that the loss of consortium claim is a separate bodily injury. See Giardino v. Fierke, 513 N.E.2d 1168 (Ill. Ct. App. 1987) (language of policy clearly placed loss of services under definition of bodily injury and therefore wife's loss of consortium claim was not subject to the "each person" liability limit applicable to husband, but constituted a separate bodily injury within the meaning of the policy); Allstate Ins. Co. v. Handegard, 688 P.2d 1387 (Or. 1984) (although the husband's claim for loss of consortium arose out of his wife's bodily injury, the policy defined "loss of services" as a bodily injury and therefore the husband's claim for loss of consortium was a separate bodily injury).

1990); Bain v. Gleason, 726 P.2d 1153 (Mont. 1986); Allstate Insurance Co. v. Pogorilich, 605 A.2d 1318 (R.I. 1992); Richie v. American Family Mutual Ins. Co., 409 N.W.2d 146 (Wis. 1987).⁹ See also 8A John Alan Appelman, Insurance Law and Practice § 4893 (1981); Jane M. Draper, Annotation, Consortium Claim of Spouse, Parent or Child of Accident Victim as Within Extended "Per Accident" Coverage Rather than "Per Person" Coverage of Automobile Liability Policy, 46 A.L.R. 4th 735 (1986 & Supp. 1992); Annotation, Construction and Application of Provision in Liability Policy Limiting the Amount of Insurer's Liability to One Person, 13 A.L.R. 3rd 1228 (1967 & Supp. 1992). Contra Allstate Ins. Co. v. Fibus, 855 F.2d 660 (9th Cir. 1988) (automobile policy which provided up to \$100,000 for damages for bodily injury to any one person in one occurrence, and which did not expressly aggregate consortium claims with underlying bodily injury claims, would be interpreted to provide separate coverage for consortium claim); Abbellon v. Hartford, 212 Cal. Rptr. 852 (Cal. Ct. App. 1985) (although wife's cause of action arose from bodily injury to her husband, the injury suffered was personal to the wife and an injury to one's emotional and psychological state should be treated no differently than an injury to one's physical well-being); Bilodeau

⁹Some of the cases cited above address issues involving uninsured or underinsured motorist coverage rather than liability coverage. However, as pointed out by the Court of Appeals of Arizona in Stillman, "there is no reasoned basis for differentiating between liability and uninsured provisions when interpreting 'one person' and 'one occurrence' issues." 785 P.2d at 118.

v. Lumbermens Mutual Casualty Co.,¹⁰ 467 N.E.2d 137 (Mass. 1984) (the phrase "injured person" included a loss-of-consortium claimant and the loss-of-consortium claimant must be considered a separate person from the bodily-injured person).

In Pogorilich,¹¹ the Supreme Court of Rhode Island recognized that the loss of consortium claim by a spouse who has not suffered a bodily injury is a derivative action, and found that the "each person" limitation therefore applies. In so finding, the court explained:

The term 'each person' is the total limit for all damages arising out of bodily injury to one person in any one motor vehicle accident. It is undisputed that in the case at bar [the husband] was the only person who suffered bodily injury in the motor vehicle accident. . . . Although [the wife] was entitled to bring an action for loss of consortium . . ., her action was derivative and could not be construed as an independent action for bodily injury. . . . [T]he loss of consortium claim is derived from the bodily injury suffered by the spouse and is not truly independent but rather derivative and attached inextricably to the claim of the injured spouse.

¹⁰In Santos v. Lumbermens Mutual Casualty Co., the Supreme Judicial Court of Massachusetts recognized that the Commissioner of Insurance had promulgated a mandatory endorsement, modifying the "per person" liability language, to eliminate the effect of the court's decision in Bilodeau. 556 N.E.2d at 988.

¹¹In the Pogorilich case, the husband was seriously injured in an automobile accident. The issue presented by certified question was whether the claim of his wife, who was not injured, for loss of consortium had to be satisfied out of the \$200,000 "each person" policy limit of uninsured/underinsured motorist coverage or whether the \$600,000 "each accident" limit of uninsured/underinsured motorist coverage applied.

605 A.2d at 1320.

The Supreme Court of Connecticut, in Izzo, also explained why the per person limit of liability applies to damages for loss of consortium resulting from bodily injury to one person:

An often cited reason for holding that a spouse's claim for loss of consortium is included within the 'per person' limit of liability for damages because of bodily injury to one person is that the term 'one person' repeatedly has been construed to refer to the person injured directly and the words 'each occurrence' to include the injuries of several persons, regardless of how many persons may suffer loss. . . . The limitation applies to all damages sustained by all persons as a result of bodily injury to one person. This construction does not render the 'per occurrence' limit a nullity because that provision applies to situations where more than 'one person' suffers 'bodily injury' in a single occurrence.

524 A.2d at 644 (emphasis added).¹²

¹²The Supreme Court of Connecticut also noted a discussion in 8A Appleman, Insurance Law and Practice § 4893, p. 60 (1981):

[I]t often happens that there are consequential damages, as well as the damages suffered by the injured person himself. Thus, where a wife or child is injured, the husband or parent may also suffer consequential injuries by reason of liability for hospital and doctor bills or for loss of services or consortium. But it has been held that these different types of injuries cannot be split up, in order to bring the claim within the higher policy limits; they are regarded as essentially injuries to one person, so that the lower policy limits applicable to injuries sustained by any one person would govern.

524 A.2d at 644 n. 5.

We are persuaded by the reasoning of the numerous jurisdictions cited above which have held that, where the language of the policy is clear and unambiguous, claims for damages for loss of consortium, arising out of bodily injury to one person in one accident, are subject to the per person limit of liability. Thus, we clarify that when a person is bodily injured in an automobile accident, an individual other than the bodily-injured person may also suffer damages as a result of such accident through loss of consortium.

The claim for loss of consortium by an individual other than the one suffering bodily injury as a result of an automobile accident is generally recognized as arising out of the claim for damages of the bodily-injured person. As a result, the claim of the bodily-injured person and the claim for loss of consortium are covered within the same per person limit of liability provisions under the automobile insurance policy. More specifically, when the per person limit of liability in a policy provides coverage for "all damages arising out of bodily injury sustained by one person as a result of one accident," both the claim of the bodily injured person and the claim for loss of consortium are covered within the same per person limit of liability, and recovery for both claims may not exceed the fixed amount of the maximum limit of damages under the per person limit of liability. If, however, there is language in the policy which includes loss of consortium as a separate bodily injury, such loss of consortium claim is entitled to a separate per person limit of liability.

III

For the reasons set forth herein, the certified question presented to this Court is answered in the negative.¹³ Having answered the certified question, this case is dismissed from the docket of this Court.

Certified question answered
and case dismissed.

¹³The loss of consortium claims raised by the Karlets arise out of bodily injuries to more than one person. One issue that was raised at oral argument but was not certified to this Court nor briefed by the parties involves the interpretation of the per occurrence limit of liability provision when two or more persons sustain bodily injuries. Although this issue has not been properly raised before us, we do recognize that other courts which have interpreted the meaning of the each occurrence limit of liability have focused their analysis, in large part, on whether the per occurrence limit of liability is expressly made subject to the per person limit of liability. Andrews v. Nationwide Mutual Ins. Co., 467 A.2d 254 (N.H. 1983); Farm Bureau Mutual Ins. Co., Inc. v. Winters, 806 P.2d 993 (Kan. 1991); Haney v. State Farm Ins. Co., 760 P.2d 950 (Wash. Ct. App. 1988). These courts, however, do not address the loss of consortium issue.