For Publication

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FLORILYN TRIA JONES and JOHN C. JONES, **Plaintiff,** **v.** **FELIPE FLORES REYES and CGU INTERNATIONAL INSURANCE,** **Defendant.**	**Civil Action No. 04-0237D** **ORDER LIMITING COVERAGE TO $15,000**

This matter was last before the Court on April 18, 2006, on the issue of which limits in the CGU International Insurance ("CGU") policy (the "Policy") are applicable to a loss of consortium claim. Appearing at oral arguments and on the briefs were Mark Williams for Claimant John Jones and Thomas E. Clifford for Defendant CGU.

I. FACTUAL BACKGROUND

The Joneses hold CGU Personal Automobile Policy No. 31-26998 (the "Policy"), which provides coverage in the amount of $15,000 "per person" injured in a car accident, or $30,000 "per accident." Florilyn Jones was seriously injured when a vehicle driven by an uninsured motorist, Felipe Reyes, struck her vehicle. The parties resolved Florilyn's claim by settlement without admission of liability, paying her the Policy's $15,000 per person limits.

Florilyn's husband, John Jones, was not physically injured, but suffers from a loss of

consortium. He seeks compensation beyond that already provided to Florilyn under the $30,000 "per accident" limit of the Policy. CGU denied the claim, asserting that the Joneses are entitled to nothing more than the $15,000 "per person" limit. Which limit to apply is the only remaining coverage issue to be decided as a matter of law. *See* November 21, 2005 *Stipulation and Order: 1) Dismissing Florilyn Tria Jones' Claims With Prejudice; 2) Dismissing Defendants and Substituting in CGU International Insurance as the Defendant; and 3) Establishing a Briefing Schedule for the Remaining Coverage Issue*.

II. ANALYSIS

A. Language must be given its plain meaning.

The Policy requires CGU to pay damages resulting from "injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile." The Policy, Insuring Agreements, Section 1, Coverage A – Bodily Injury Liability.

The "per person" limit of this coverage is explained in a section entitled Limits of Liability Coverage: "***The limit of bodily injury liability*** stated in the declarations as applicable to '***each person***' is the limit of the company's [CGU's] liability for ***all damages, including damages for care and loss of services***." The Policy, Conditions, Section 3, Limits of Liability Coverage A (emphasis added).

The "per accident" limit of this coverage is explained in the same section: "the limit . . . applicable to 'each accident' is . . . the total limit of the company's liability for all damages . . . sustained by two or more persons in any one accident." *Id.*

Although it is not defined, "loss of consortium" appears to fall within the category of "all damages, including damages for care and loss of services." Thus, when there is only one person injured in a car accident, the $15,000 limit would control a loss of consortium claim. The $30,000 limit would apply only where more than one person is injured in a car accident.

Both parties have pointed out the significance of the CNMI Supreme Court's decision in *Ito v. Macro Energy*, 4 N.M.I. 46 (1993) with respect to the instant case. In *Ito*, several heirs of a person who died in an accident sought compensation under the applicable insurance policy's $300,000 "per accident" limit (as opposed to the $100,000 "per person" limit).

The difficulty in *Ito* arose from the absence of a definition for the "per person" limits. Claimants argued that the limiting term "per person" could just as easily be $100,000 per claimant as it could be $100,000 per person injured. *Id*. at 67. Claimants suggested that the "per person" limitation should be ignored on account of its ambiguity. *Id*.

The *Ito* court found it irrelevant that the term "per person" was not defined. The court held that where there was only one person bodily injured in an accident, the "per person" coverage limit—and not the "per accident" limit—was obviously intended to apply. *Id*. at 68.

Citing *Ito*, CGU argues that terms in insurance policies must be afforded their plain and obvious meaning. The plain meaning of the Policy, CGU suggests, is that a loss of consortium claim is derivative from a bodily injury and must fall under the "per person" limit.[1] CGU points

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[1] This interpretation is supported by the majority of American jurisprudence. *See Consortium Claim of Spouse, Parent or Child Victim as Within Extended "Per Accident" Coverage Rather Than "Per Person" Coverage of Automobile Liability Policy*, Jane M. Draper, 46 A.L.R.4th 735 (2004) at Section 3(b) (list of cases involving loss

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out that in its own Policy, unlike the *Ito* policy, the "per person" limit is actually defined.

Claimant in the instant case asserts that the *Ito* holding alerted CGU and other insurers to the potential ambiguity of the terms "loss of consortium" and "bodily injury."[2] Claimant bases much of his argument on the fact that CGU sat for thirteen years after the *Ito* decision without amending its Policy to clearly define these terms.[3]

The fact that it is possible to create a clearer policy does not mean that the existing Policy is ambiguous. An ambiguity arises from contract language if (1) it is facially inconsistent, (2) it is susceptible to two or more reasonable interpretations, or (3) there is disputed extrinsic evidence affecting the interpretation. *Riley v. Public School System*, 4 N.M.I. 85, 89 (1994). The Policy is facially consistent, and neither party has presented extrinsic evidence suggesting an alternative interpretation. To exclude "loss of consortium" from "***all damages, including damages for care and loss of services***" would be unreasonable. The Policy sufficiently establishes the limits of its coverage.

B. The policy is consistent with the Mandatory Liability Auto Insurance Act.

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of services claims in which the "per person" limits were held to be controlling).

2 Claimant draws the Court's attention to the following footnote in *Ito*: "We do not decide whether loss of consortium is or is not a 'bodily injury' for purposes of coverage liability." *Id*. at 67, fn 31.

3 Claimant refers the Court to *Tate v. Allstate Insurance Company*, 692 So. 2d 822 (1997), involving a similar dispute over policy interpretation. The *Tate* court found that previous cases involving insurance disputes had put Allstate on notice that its policy language was ambiguous. *Tate*, 692 So. 2d at 824-825. Claimant also referred the Court to numerous examples of policies that clearly defined "bodily injury" and "loss of consortium."

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The Mandatory Liability Auto Insurance Act, 9 CMC § 8106(1) (Public Law 11-55), requires all policies to provide at least "$15,000 for bodily injury or death of any one person in any one accident; $30,000 for the bodily injuries or deaths of all persons involved in any one accident."

Claimant argues that CGU's interpretation of the Policy contradicts 9 CMC § 8106 because the Act mandates insurance compensation to "all persons involved." Claimant also argues that "bodily injury" should be interpreted to include any physical, emotional or mental injury to any person, regardless of whether the person was present at the accident.

The Court disagrees with Claimant's interpretation. While it is possible to interpret "all persons involved in any one accident" so as to include the relatives of a person directly injured, this is not the logical interpretation. *See Mercury Ins. Co. v. Ayala*, 116 Cal.App.4th 1198, 1203-1204, 11 Cal.Rptr.3d 158 (Cal. App. 2004), (citing the parallel provision from California's Vehicle Code, and finding that nothing in the statute mandates that the per accident limits apply to the loss of consortium claim instead of the per person limits). Further, the term "bodily injury" does not logically include emotional or mental injury. *See* BLACK'S LAW DICTIONARY, 8th Ed. ("bodily injury. Physical damage to a person's body.").

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III. CONCLUSION

The Court agrees that the $15,000 "per person" limit is hardly sufficient to cover the damage that results from an auto accident. Yet, insurance companies whose policies provide coverage at this minimal level are in compliance with the Mandatory Liability Auto Insurance Act. If the Legislature truly feels that "a person who suffers damages as a result of a motor vehicle accident caused by another should not have to bear such financial burden,"[4] it should set a higher minimum level. Unfortunately, the fact that the $15,000 per-person limit is insufficient does not allow the Court to distort the language of the policy in favor of higher compensation.

Because the plain language of the Policy limits coverage of all damages associated with a single-party accident to $15,000, and because the Policy complies with the Act, the $15,000 limit controls.

SO ORDERED this 25th day of April 2006.

/s/_____
Juan T. Lizama
Associate Judge, Superior Court

4 Quoting 9 CMC § 8106, Findings and Purposes.