IN THE SUPREME COURT OF GUAM

NANCY A. VILLANUEVA, Individually and as Legal Guardian of LEO VILLANUEVA, an Incompetent Person, and for the use and benefit of the UNITED STATES OF AMERICA
Plaintiff-Appellant,

vs.

COMMERCIAL SANITATION SYSTEMS, INC., DAI-TOKYO FIRE & MARINE INSURANCE COMPANY, EDWARD G. DUENAS, RAYMOND SANTOS, DOES I THROUGH X,
Defendants-Appellees.

Supreme Court Case No.: CVA04-005
Superior Court Case No.: CV0867-01

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on October 27, 2004
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; ROBERT J. TORRES, Jr., Associate Justice.

CARBULLIDO, C.J.:

[1] Plaintiff-Appellant Nancy A. Villanueva appeals from the trial court's Decision and Order granting partial summary judgment in favor of the Defendant-Appellee Dai-Tokyo Fire & Marine Insurance Company.

[2] The sole issue on appeal is whether, under the Dai-Tokyo automobile liability insurance policy, Mrs. Villanueva's damages for loss of consortium are subject to the "per person" damages limit of $100,000 or whether it is subject to the "per accident" limit of $300,000. The trial court held that the damages for Mrs. Villanueva's loss of consortium are subject to the "per person" limitation clause found in the insurance policy because Mrs. Villanueva's damages for loss of consortium are a result of the bodily injury to one person, Mr. Villanueva. We affirm.

I.

[3] Juan Villanueva was involved in a head-on collision with a truck operated by Commercial Sanitation Systems, Inc. ("Commercial Sanitation"), on March 16, 2001, on the back road to Andersen. As a result of the collision, Mr. Villanueva suffered massive head injuries. He is confined to a wheelchair for the rest of his life, is unemployable, has substantial brain damage, and requires 24-hour care. He is married to Mrs. Villanueva, and she has become his constant caretaker. In the lawsuit that arose from this incident, she asserted a claim for loss of consortium along with the Villanuevas' other claims for pain and suffering, lost wages, and compensatory damages. Defendant Dai-Tokyo Fire and Marine Insurance Co., Ltd., ("Dai-Tokyo") insured the defendant, Commercial Sanitation System. The parties filed cross-motions for summary judgment on the isolated question on appeal in this case involving the interpretation of policy language as it relates to Mrs. Villanueva's claim for loss of consortium. The matter was argued to the trial court on March 26, 2003. On June 25, 2003, the trial court entered a Decision and Order granting summary judgment in

favor of defendant Dai-Tokyo on this single issue. The parties thereafter settled.[1] The settlement allows the Villanuevas' lawyer to pursue the sole issue on appeal.

[4] The policy language that this court is being asked to interpret is as follows:

> OUR LIMIT OF LIABILITY is changed to read:
> Bodily Injury Liability: $100,000. Each Person
> $300,000. Each Accident
> Property Damage Liability: $100,000. Each Accident
>
> A. Regardless of the number of covered autos, insureds, claims made or vehicles involved in the accident, our limit of liability is as follows:
>
> 1. The most we will pay for all damages resulting from **bodily injury** to any one person caused by any one accident is the limit of **Bodily Injury Liability** shown in this endorsement for "Each Person."
>
> 2. Subject to the limit for "Each Person" the most we will pay for all damages resulting from **bodily injury** caused by any one accident is the limit of **Bodily Injury Liability** shown in this endorsement for "Each Accident."

Appellant's Excerpts of Record ("ER"), p. 23 (Dai-Tokyo Business Auto Policy).

[5] The term "bodily injury" is defined in the policy as follows: "'Bodily Injury' means bodily injury, sickness or disease including death resulting from any of these." Appellant's ER, p. 14 (Dai-Tokyo Business Auto Policy).

[6] The Villanuevas argue that $300,000 policy limit for "all damages resulting from bodily injury caused by any one accident" is applicable under the facts of this case. Specifically, the Villanuevas argue that because Mrs. Villanueva's injury is a separate injury from Mr. Villanueva's bodily injury, the term "*all damages* resulting from bodily injury" must include her loss of consortium. In other words, the Villanuevas contend that the term "all damages resulting from bodily injury" comes into play when more than one person suffers injury from one accident.

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[1] Because the parties settled, no facts were established anywhere in the record. However, to provide further background, Dai-Tokyo submitted these additional facts in briefing, to which the Villanuevas did not object. The settlement does not attribute fault to Commercial Sanitation for the collision and the Villanuevas received over $900,000.00 in other compensatory damages.

[7] Dai-Tokyo submits that because only Mr. Villanueva suffered bodily injury, under the language of the insurance policy, the $100,000 "per person" limitation applies. Dai-Tokyo argues that the $300,000 "per accident" limitation does not apply in this case, because the only person to suffer bodily injury in the accident is Mr. Villanueva. Mrs. Villanueva's loss of consortium is not a separate bodily injury resulting from the accident. Therefore, Dai-Tokyo argues that, although the policy language covers "all damages resulting from bodily injury" up to the amount of $300,000, because the "bodily injury" is suffered only by Mr. Villanueva, the $100,000 "per person" limitation applies.

II.

[8] We have jurisdiction over this appeal from a final judgment pursuant to 48 U.S.C. § 1424-1(a)(2) (West, WESTLAW through P.L. 109-2, 2005), and Title 7 GCA §§ 3107(b) and 3108(b) (2004).

III.

[9] We review the issue presented in this case *de novo. Nat'l Union Fire Ins. Co. v. Guam Hous. & Urban Renewal Auth.*, 2003 Guam 19 **&&** 12-13 ("We review a grant or denial of summary judgment *de novo*"). The interpretation of an insurance policy is also reviewed *de novo*. *Id.* at **&** 13.

IV.

[10] The isolated issue on appeal is whether a claim for loss of consortium is included in the policy's "per person" damages limitation of $100,000, or whether it is a separate claim from the "per person" damages limit, and therefore separately compensable under the policy's "per accident" limit of $300,000. If Mrs. Villanueva=s damages for loss of consortium is a result of bodily injury sustained by one person in one accident, then her loss of consortium claim is bundled with all of Mr. Villanueva's claims and together they cannot recover more than the $100,000 limit. However, if the loss of consortium claim is not a result of bodily injury sustained by one person in one accident, then it is not limited to the "per person" cap, but

rather, the Villanuevas may recover more because the damages would be subject to a different damages limit, specifically, the "per accident" limit of $300,000.00.

[11] The Villanuevas rely entirely on the case of *Abellon v. Hartford Insurance Co.*, 212 Cal. Rptr. 852 (Ct. App. Dist. 1985), a California appellate court case with a controversial legacy, which found that a spouse's loss of consortium claim is subject to the "per accident" limitation. The court held:

> Loss of consortium is a distinct and individual injury. By merging [the wife's] injury with that of her husband, her injury, in effect, becomes derivative and noncompensable under the terms of the insurance contract, thus effectively negating public policy. . . [she] has suffered an independent, nonparasitic personal injury as a result of an automobile accident negligently caused by [the defendant's] insured. . . [therefore] she is a second person injured by the accident.

Id. at 859-60.

[12] The court in *Abellon* was faced with the following policy language:

> 1. The most we will pay for *all damages resulting from bodily injury to any one person caused by any one accident* is the ['each person' limit.]
> 2. Subject to the limit for 'each person' the most we will pay for *all damages resulting from bodily injury caused by any one accident* is the ['each accident' limit.]

Id. at 853. The Villanuevas argue that this is identical policy language to their policy with Dai-Tokyo. We agree that the policy language is the same. Nonetheless, we must examine the reasons to follow *Abellon* or to depart from it. Thus, the debate here is essentially whether to follow a minority California case interpreting identical language, or whether to follow a majority of courts, including many in California, which, for one reason or another, have refused to follow *Abellon*, and for reasons which will be discussed below, have held that a spouse's claim for loss of consortium is subject to the "per person" limitation.

[13] The facts in *Abellon* are similar to the case at bar: the wife, Jeanne Abellon, suffered a loss of consortium due to her husband's catastrophic injuries. The *Abellon* court states early in its deliberations that it would be unfair not to compensate Jeanne's separate injuries for loss of

consortium because her loss of consortium was a distinct and individual injury, and that merging her injuries with that of her husband rendered her injury noncompensable, "thus effectively negating public policy." *Id.* at 855.

[14] We find that the *Abellon* court's rationale is not entirely accurate. The problem is not that Jeanne does not get compensated, it is that the compensation limit is reached before her injury is added to it. Without a compensation limit, Jeanne's injuries could be compensated together with her husband's pain and suffering. But the *Abellon* court interpreted the insurance contract in such a way that Jeanne would be compensated for what it deemed was a separate injury, thereby allowing Jeanne access to higher policy limits.

[15] *Abellon's* holding is that "[the wife] is simply a foreseeable plaintiff to whom [the defendant] owes a separate duty of care." 212 Cal. Rptr. at 855. This holding relies on *Rodriguez v. Bethlehem Steel*, 115 Cal. Rptr. 765, 780 (Cal. 1974), where the court held that "[consortium rights] are her rights, not his." Therefore, based on *Rodriguez*, the *Abellon* court concluded that "[Jeanne] is a second person injured in the accident." *Id.* Because Jeanne's injuries were separate, they could be compensated under the "per accident" limit, but only so long as the injuries were "bodily injuries." The *Abellon* court stated that whether Jeanne sustained a "bodily injury" is a question of fact, which in turn "involves a medical or psychological problem of proof." *Id.* The court eventually concluded that Jeanne=s loss of consortium had a physical component, and therefore was "bodily injury" and therefore compensable under the separate "per accident" limit. *Id.* at 855-57.

[16] The Villanuevas urge this court to follow the reasoning and the conclusion of *Abellon* and hold that Mrs. Villanueva's injuries are separately compensable bodily injuries, and therefore are subject to the "per accident" limit. The Villanuevas argue that the *Abellon* case did not turn on the issue of whether loss of consortium does or does not constitute bodily injury, but rather on the court=s construction of specific policy language. On the contrary, the *Abellon* court simply found that the policy language was ambiguous because loss of consortium was not placed into one damage category or another. *Id.* at 858-859. Relying on case law instructing that all ambiguous policy language must be construed against the insurer, *Government Employees Insurance Co. v. Kinyon*, 173 Cal. Rptr.

805 (Ct. App. 1981), the *Abellon* court found that loss of consortium was a separately compensable bodily injury.

[17] Dozens of cases have distinguished *Abellon*, though usually because of different policy language. Some examples of grounds that cases have used to reject *Abellon* include that used in *Lepic v. Iowa Mut. Insurance Co.*, 402 N.W.2d 758 (Iowa 1987), where the court reasoned that loss of consortium is not bodily injury. Other cases have departed from *Abellon* because the element of damages known as "loss of consortium" or "loss of services" is specifically addressed in the policy, which makes it easier to categorize loss of consortium. *See Nationwide Mut. Ins. v. Moya*, 837 P.2d 426, 430 (Nev. 1992). Other cases rely on their respective state's loss of consortium laws to distinguish *Abellon*. *See McGovern v. Williams*, 741 S.W.2d 373, 375-76 (Tex. 1987).

[18] Reviewing these other cases, the result is the same. The *Abellon* case stands out from most other cases with this issue, such as *Moya*, which held that there was one injury, which caused many losses. *Moya*, 837 P.2d at 430 ("The Moyas did not suffer bodily injuries *in* the accident; their claims arose *as a result* of the injuries Mrs. Moya suffered *in* the accident . . .") The court in *Medley v. Frey*, 660 N.E.2d 1079, 1081 (Ind. Ct. App. 1996) expressed the point this way: "[one spouse]'s claim for loss of services is not an independent 'bodily injury,' but rather arises out of the 'bodily injury' sustained by [the other spouse], for which [the insurance provider] has paid the $100,000 per person limit of coverage." In *Shepard v. State Farm Mutual Automobile Insurance Co.*, 545 So. 2d 624, 628 (La. Ct. App. 1989), the court said that since the derivative claim of loss of consortium does not come into existence until someone else is injured, that "loss of consortium claims are included within the definition of bodily injury . . . However, any loss of consortium claim is only derivative, . . . [and] therefore restricted to the monetary limits placed in the policy, to a per person total."

[19] Legal commentary is in accord. The court in *Moore v. State Farm Mutual Insurance Co.*, 710 S.W.2d 225, 226 (Ky. 1986), relied on W.E. Shipley, Annotation, *Construction and Application of Provision in Liability Policy Limiting the Amount of Insurer Liability to One Person*, 13 A.L.R.3d 1228, 1234 (1967), where it is stated:

> Under policies fixing a maximum recovery for "bodily" injury to one person, the limitation

> [is] applicable to all claims of damage flowing from such bodily injury, and that therefore it is immaterial that some part of the damages may be claimed by a person other than the one suffering the bodily injuries. In other words, all damage claims, direct and consequential, resulting from injury to one person, are subject to the limitation.

The court in *Moore* quoted this language and concluded that the limit of liability had already been paid on Mr. Moore's claim. 710 S.W.2d at 226. His wife's loss of consortium claim exceeded the company's limit of liability; thus, she was precluded from recovery under the policy. *Id*.

[20] The Villanuevas nonetheless urge this Court to adopt the *Abellon* case holding, arguing that though it is criticized and distinguished, it is still good law. While it is true that *Abellon* has not been overturned, it is poor precedent. The California Supreme Court has not resolved the conflict among its own judicial divisions, but most California appellate divisions except for the fourth (*Abellon*) have rejected the reasoning of *Abellon*. The case of *United Services Automobile Association v. Warner*, 135 Cal. Rptr. 34 (Ct. App. 1976) is instructive.

[21] In *Warner*, the Court of Appeal for the Fourth District of California, Second Division, was faced with slightly different policy language in that the policy itself included a definition of "per person" and it included "loss of services." *Id.* at 36. The policy stated, "the limit . . . to 'each person' . . . include[es] damages for care and loss of services." *Id.* The court in *Warner* held that loss of consortium claims come out of the "per person" limit rather than the "per occurrence" limit. *Id.* at 38. It reasoned that "loss of consortium does not arise out of a bodily injury to the spouse suffering the loss; it arises out of the bodily injury to the spouse who can no longer perform the spousal functions." *Id*. In this way, the *Warner* case represents the contrary view to *Abellon* – that loss of consortium properly comes out of the "per person" limit because it is derived from the injury to one person. It is not derived from two separate injuries. *Abellon* rejected the *Warner* reasoning on the basis that the policy language in *Warner* was different -- *Warner's* "per person" limit defined all damages as including loss of services. But taking this logic to its natural conclusion, *Abellon* would have *Warner* mean that if a policy did not define its "per person" limit to include all conceivable derivative claims, then any and all derivative claims are converted into additionally covered parties with access to the larger $300,000 limit, rather than the smaller $100,000.00 limit. Under this analysis, if the harm is not defined in the "per person" limit, then any party suffering harm resulting from

one person's accident can be compensated from the $300,000 limit rather than the $100,000.00 limit. We find this illogical and arbitrary.

[22] This court declines to follow *Abellon's* restrictive reading of *Warner*. If "per person" damages are not defined in the policy, this court is not required to find that Mrs. Villanueva's loss is a separately covered injury. Mrs. Villanueva was not present at the accident. She was not injured in the accident. She suffers a loss that is derived from her husband's covered injuries. We reject *Abellon's* distinction and interpretation of the *Warner* case, and are persuaded by later cases applying *Warner*, which recognize the principle that derivative claims fall within the "per person" rather than "per accident" claim.

[23] Other appellate districts in California have reasoned likewise. The Court of Appeal for the Second District of California, when faced with a choice between *Abellon* and *Warner*, said, "[w]e think that *Warner* not only represents the majority view, but is the better-reasoned case." *Mercury Ins. Co. v. Ayala*, 11 Cal. Rptr. 3d 158, 162 (Ct.. App. 2004). *See also State Farm Mut. Auto. Ins. Co. v. Ball*, 179 Cal. Rptr. 644 (Ct. App. 1981) (Second District relying on *Warner* to reject wife's loss of consortium claim). Though analyzing different policy language, the court of appeal for the Third District of California also rejected *Abellon* in favor of the rule that loss of consortium is part of the insured/injured person's per person limit. *Hauser v. State Farm Mut. Auto Ins. Co.*, 252 Cal. Rptr. 569 (Ct. App. 1988).

[24] We recognize that there are a small number of other cases that, for one reason or another, have held that a loss of consortium claim is a separately compensable claim. *See* 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). However, these cases are in the minority, and for the policy reasons articulated herein, we decline to follow them. In addition to the many features that distinguish *Abellon* from most other cases, *Abellon* contains a logical flaw. As pointed out, Jeanne Abellon's loss of consortium injury was compensable under the "bodily injury" limit, but for the fact that the policy limits were exhausted before she could be compensated.

[25] *Abellon* also stands for the principle that because loss of consortium is separate but inchoate, a court or jury must look at the fact issues underlying a loss of consortium claim to see if it is a "bodily injury." This

principle directs litigants and judges to develop evidence on the physical manifestations of a loss of consortium claimant. If bodily injury is established, then loss of consortium can be a separately compensable claim. If, however, bodily injury is not established (only mental or emotional injury), then loss of consortium is not compensable. Thus, the *Abellon* case is harsher than first meets the eye, because under *Abellon*, unless there are physical manifestations for loss of consortium, there is no compensable injury. The alternative approach allows recovery for loss of consortium without testing whether or not the injury is "physical." Under the latter approach, recovery is often restricted, but only by policy limits, such as was the result in *Warner*.

[26] In this way, *Abellon* promotes an awkward distinction **B** it compels courts to distinguish between, for instance, plaintiffs who have physical symptoms of grief from plaintiffs with mere emotional suffering so that the damage can be counted as bodily injury. This is unnecessary when the loss of consortium is simply an element of damage from the insured=s Abodily injury.@ When a party suffers a bodily injury, which in turn causes damages, including loss of consortium, it is not necessary to contrive a test for physical versus non-physical bodily injury, because the analysis does not include the remotely injured person. The only "bodily injury" that matters under the policy is that sustained in the accident, (in this case, Mr. Villanueva).

[27] In conclusion, this court concurs with the reasoning expressed in the dissent in *Abellon*:

> [Defendant] negligently caused one accident. That accident caused only one person, Mr. Abellon, bodily injuries. As a result of the bodily injuries to Mr. Abellon, Mrs. Abellon, who was not present at the accident, suffered a loss of consortium. The issue here is not whether Mrs. Abellon has suffered a compensable loss, nor whether she had her own claim against [Defendant], nor whether her loss was foreseeable, nor whether [Defendant] should compensate her. Neither is the issue here whether loss of consortium is the type of loss covered by the policy. It is covered, and Hartford does not claim otherwise. The issue here is rather how much insurance coverage [Defendant] bought to cover all the claims of Mr. and Mrs. Abellon.

Abellon, 212 Cal. Rptr. at 860 (Lewis, J., dissenting).

[28] Similarly, in this tragic accident, one person was injured, Mr. Villanueva. As a result of Mr. Villanueva=s bodily injuries, Mrs. Villanueva, who was not present at the accident, suffered a loss of consortium. The issue here is not whether Nancy Villanueva suffered a compensable loss, nor whether loss of consortium is a bodily injury, nor whether Dai-Tokyo should compensate her, nor whether loss of

consortium is the type of loss covered by the policy. It is covered, and Dai-Tokyo does not claim otherwise. But unfortunately, the policy language limits the payment of damages resulting from the bodily injury sustained by Mr. Villanueva, including all collateral injuries created by his injuries, to the amount of $100,000. In other words, Mrs. Villanueva's loss of consortium is covered by the policy, but is not payable under the $300,000 "per accident" provision found in the insurance policy, because such provision is "subject to the limit of 'Each Person.'" Appellant's ER, p, 23 (Dai-Tokyo Business Auto Policy Endorsement BAP-E9 ¶ (A)(2)). Thus, because her damages resulted from bodily injury to one person, Mr. Villanueva, in one accident, the most that Dai-Tokyo must pay for the combined injuries of Mr. and Mrs. Villanueva is $100,000.

[29] A catastrophic injury to one person typically affects many people. When an insurance company includes a "per person" limit in its policy language, it is reasonable to take this to mean the damages flowing from only the injuries of the person who was injured in the covered accident. It is not reasonable to assume that an insurance company will compensate every collateral injury to every new person, so long as there is a physical manifestation that arises from one person's injury, as such an interpretation would mean that anyone in the close circle of people around the injured person would have a chance to assert an independent claim under the policy. We find this result unreasonable because it expands the circle of covered people to an almost unidentifiable number of claimants.

[30] In conclusion, this court holds that there are sound reasons to reject *Abellon*, even though it interprets the same policy language. First, *Abellon* encourages litigants to make the difficult distinction between injuries with physical manifestations and non-physical manifestations in order to arrive at "bodily injury." Acceptance that loss of consortium as simply an element of the "per person" "bodily injury" obviates the need for this contrivance. Second, it is the more logical result. As most cases hold, there is one injury covered by the policy. That injury may cause many kinds of suffering, but those are all logically compensated under the "per person" limit because the accident of the "person" is insured, not all losses. Finally, the problem is not that loss of consortium is an uncompensated loss; rather, the problem is that the policy limit is usually reached before the value of the loss is added to the other inchoate losses.

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[31] One person suffered injury in an accident that was covered by insurance. This is not an ambiguous or confusing proposition, so there is no reason to resort to rules of construction. The holding in *Abellon* is isolated, and it has not been followed since, even among its sister district appellate courts. *See Ayala*, 11 Cal. Rptr. 3d 158; *Hauser*, 252 Cal. Rptr. 569. The parties have presented no persuasive reason why this jurisdiction should adopt it. On the contrary, the dissenting justice, interpreting identical policy language in *Abellon*, has put forth the better logic to depart from the *Abellon* majority, and we adopt it.

[32] We therefore adopt the reasoning laid out in the *Abellon* dissent and hold, consistent with other cases that depart from *Abellon,* that a loss of consortium claim is included within the definition of bodily injury, and that the distinction between physical manifestations of psychological injury is irrelevant. Further, we hold that because any such loss of consortium claim is derivative, it is restricted to the monetary limit placed in the insurance policy to a per person total. *See e.g. Shepard v. State Farm Mut. Auto Ins. Co*., 545 So. 2d 624 (La. Ct. App. 1989).

V.

[33] The trial court held that the damages for Mrs. Villanueva's loss of consortium are subject to the "per person" limitation clause found in the insurance policy because Mrs. Villanueva's damages for loss of consortium are a result of the bodily injury to one person, Mr. Villanueva. We **AFFIRM**.