No. A25A1664

In the
Court of Appeals of Georgia

PHILADELPHIA INDEMNITY INSURANCE CO.,

Appellant-Defendant,

v.

MARK EUBANKS, ET AL.,

Appellees-Plaintiffs.

On Appeal from the Superior Court of Floyd County, Georgia
Case No. 19CV00237

BRIEF OF APPELLANT PHILADELPHIA INDEMNITY INSURANCE COMPANY

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INTRODUCTION

Plaintiffs, all alleged victims of childhood sexual abuse perpetrated 40 to 50 years ago at the Darlington School by a teacher named Roger Stifflemire, obtained a summary judgment awarding them $345 million against various insurance carriers based on policies issued to Darlington decades after the conduct at issue—with $232 million allocated to Philadelphia Indemnity Insurance Company ("PIIC"). The order simply gave Plaintiffs the total amount of the alleged policy limits of the carriers' insurance contracts with no meaningful consideration of the policies' terms and conditions. Not only that, the judgment contains sizable mathematical errors, including, *inter alia*, amounts disavowed by Plaintiffs.

This huge amount—$345 million—is based on consent judgments that Darlington and Stifflemire agreed to when settling Plaintiffs' claims against them, where Darlington paid Plaintiffs $6 million and assigned all its insurance contracts to Plaintiffs in exchange for releases. The lump sum consent judgment that is almost 60 times the amount paid by Darlington for the settlement reflects bad faith. Bad faith is also is shown by the settling parties' failure to consider that the agreed-upon $345 million would compensate Plaintiffs for pre-policy injuries not occurring during the policy periods of the occurrence-based policies, for claims (like fraud) that are not covered under the terms of the insurance policies, for claims not timely reported under both the occurrence-based and claims-made

policies, for incorrect available policy limits of liability, for policies that cannot apply due to anti-stacking provisions, and even for claims that had been dismissed.

Regardless of the policy language, an award conceived and implemented in bad faith contravenes insurance law, which does not allow collusion between plaintiffs and defendants to generate an insurance windfall. Still, the policy language is important. The PIIC policies on which Plaintiffs rely include: (1) Commercial Package Policies, with occurrence-based Commercial General Liability coverage parts ("CGL"), and Sexual or Physical Abuse or Molestation ("SPAM") coverage parts; (2) excess/umbrella policies above the CGL form; and (3) claims-made-and-reported Directors & Officers coverage under PIIC's "Flexi Plus Five" policies. Notably, the coverages provided by the CGL, SPAM, and Flexi Plus Five policies are mutually exclusive, though they do similarly require, for example, that a claim relate to a legally enforceable obligation, that it not involve intentional misconduct, that the insured lack pre-policy knowledge of the abuse and bodily injury resulting in a claim, and that PIIC receive timely notice of a claim. These and other provisions show the trial court erred in denying PIIC's motion for summary judgment and granting Plaintiffs' because none of the policies cover any of Plaintiffs' claims against Darlington, much less Stifflemire.

A reversal with judgment for PIIC also is required because the claims are time-barred by the absolute, nonwaivable statute-of-repose, O.C.G.A. § 9-3-33.1.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under O.C.G.A. § 5-6-34(a) because this is an appeal from a final order granting summary judgment on April 16, 2025, the subject matter of which is not reserved to the Supreme Court, Ga. Const. Art. VI, § VI, ¶ II, and PIIC timely filed its Notice of Appeal on April 26, 2024. V3-11.

ENUMERATION OF ERRORS

The trial court erred in denying PIIC's motion for summary judgment and granting Plaintiffs' because:

1. All the claims are void because (a) the original 10 Plaintiffs dismissed their timely actions then refiled them after the statute of repose had run, and the remaining Plaintiffs filed their claims even later, (b) the statute-of-repose applies to the actions against both Stifflemire and Darlington, and (c) Plaintiffs cannot recover from PIIC based on void claims;

2. The claims are not viable under insurance law because the settlement and consent orders Plaintiffs obtained from Darlington and Stifflemire (a) demonstrate bad faith, and (b) do not carve out claims that already had been dismissed or were otherwise not covered by the insurance policies; and

3. The claims are precluded by the plain language of the PIIC insurance contracts.

STATEMENT OF THE CASE

Plaintiffs' Complaints against Darlington and Stifflemire. The original 10 Plaintiffs sued Darlington and Stifflemire on June 30, 2017—the day before the statute of repose ran under the 2015 amendments to O.C.G.A. § 9-3-33.1—seeking damages for childhood sexual abuse. The initial complaint, and those that followed, contained numerous allegations of abuse at the hands of Stifflemire when Plaintiffs were teenage students at Darlington in the 1970s and 1980s. V14-3345-46; V17-718; V9-1389-1403.

The complaints also set out detailed allegations showing that Darlington knew of the sexual abuse and bodily injury for years but deliberately concealed it. For example, Plaintiffs alleged that their abuse was reported to multiple Darlington headmasters, informing them of this sexual misconduct in 1972, in 1977, in 1978, twice in the spring of 1979, in 1980-1981, in the fall of 1986, and again in 1988. V9-1393-95, 1398-99, 1403-04; *see also* V25-195-96 (testimony of Headmaster Brent Bell).

The complaints further alleged that one of the victims forced Darlington to disclose Stifflemire's crimes in a letter to the school's alumni sent May 26, 2017. According to the complaints, Darlington's 2017 letter caused the victims of the prior sexual abuse to suffer new and distinct damages—mental anguish—when these individuals realized they were not Stifflemire's only victims but that his

abuse was widespread. V9-1407-08. It is undisputed, however, that Darlington knew about Stifflemire's abusive conduct and resulting bodily injury before then, at least by July 18, 2016, when Darlington notified Great American Insurance Company of "incident(s) involving a student named Timothy Scott Lee and a teacher named Roger Stifflemire … [from] August 1986 through August 1988 … involv[ing] alleged inappropriate conduct of a sexual nature." V17-798, 809.

Apparently believing—mistakenly—that O.C.G.A. § 9-3-33.1 was a statute-of-limitation, not a statute-of-repose, the 10 original Plaintiffs dismissed their action without prejudice in December 2017—after the statute-of-repose under O.C.G.A. § 9-3-33.1 had run for actions claiming injury from childhood sexual abuse. By then, the claims had expired under § 9-3-33.1 because the Plaintiffs were well past their 23rd birthday. But, not realizing their error, the Plaintiffs re-filed their actions on June 1, 2018, purportedly pursuant to a renewal statute. V14-3345.

Also on June 1, 2018, seven more Plaintiffs filed almost identical complaints against Darlington and Stifflemire. Another Plaintiff filed a similar complaint in 2019, and two more individuals filed similar complaints in 2020, all seeking to recover damages for childhood sexual abuse perpetrated by Stifflemire in the same pre-1990 time frame alleged in the other complaints. And all these complaints were filed long after each of the Plaintiffs had turned 23. V14-3345-45.

Eventually, the separate lawsuits of these 20 Plaintiffs were transferred from Oconee County to Floyd County and assigned to Senior Judge Adele Grubbs. In addition, Plaintiffs narrowed the claims against Darlington to four categories, Fraud (including Fraudulent Misrepresentation and Concealment), Nuisance (common law and statutory), RICO, and Negligent Infliction of Emotional Distress. All the counts against Stifflemire alleged intentional, criminal conduct. V14-2433-35 (Pl.'s statement of facts on procedural history); V7-925 (order appointing Judge Grubbs); V9-638-67 (Eubanks Second Amended Renewal Complaint). Missing from these causes of action, however, were any claims that could trigger coverage under the PIIC SPAM policy; indeed, none of Plaintiffs' claims are covered by any of the PIIC policies.

Darlington's Demand and PIIC's Denial of Coverage. Lamorak Insurance Company initially provided a defense to Darlington under policy periods ranging from 1975 to 1992—that is, the policies in place at the time of Stifflemire's abuse. When Lamorak became insolvent and stopped providing a defense in March 2021, Darlington started aggressively pursuing coverage from its subsequent insurance carriers, including PIIC. V3-13; V17-692.

All of PIIC's policies, however, were in effect during periods decades after Stifflemire's abuse of Plaintiffs. Moreover, despite reports to Darlington from 1974 through 1994 (and again in 2014) of Stifflemire's sexual abuse, Darlington did not

report any of that misconduct to PIIC until June 30, 2017—which was roughly a year after Darlington reported Stifflemire's abuse to a different insurer, Great American Insurance Company, on June 18, 2016, and decades after the alleged abuse and bodily injuries. Despite receiving Plaintiffs' amended complaints on February 10, 2021 containing new claims for emotional distress, Darlington did not notify PIIC of those complaints until June 14, 2021. V17-691-94.

After reviewing the claims against Darlington and the PIIC policies, PIIC denied coverage because Plaintiffs' suit does not trigger a duty to defend or indemnify under any of the policies. Specifically, the PIIC policies do not cover these claims because, *inter alia*:

- ***Under the CGL coverage part (and applicable excess or umbrella policies)***, the "Abuse or Molestation Exclusion" barred coverage; the claimed "bodily injury" did not occur during the effective policy periods of any of the PIIC CGL coverage parts; all of the damages alleged were caused by intentional acts of sexual abuse and molestation, not an accidental occurrence, as defined in the policy; Darlington had pre-policy knowledge of the abuse and resulting bodily injuries; and it breached conditions of coverage including those requiring timely notice of occurrences and claims. *See infra* at § III.A (including citations to record for these specific contractual provisions).

- ***Under the SPAM coverage part (and applicable excess or umbrella policies)***, incidents that are uninsurable are excluded, and a perpetrator of childhood sexual abuse cannot lawfully obtain insurance to cover that act. Though an entity may obtain insurance to cover vicarious liability for an employee's sexual abuse of minors, or even for its own negligent supervision of such an employee, here all claims against Darlington that had been based on vicarious liability, negligent supervision and the like were dismissed as a matter of law from the operative complaints *in effect at the time of the consent judgments*; thus, there was no remaining claim that could trigger this coverage. Moreover, no "bodily injury" occurred during any of PIIC's policy periods. In any event, Plaintiffs' claims are based on interrelated incidents of abusive conduct so that, even if there were coverage, it would have to be assigned to only one policy – that in place at the time of the first abusive incident – with only one limit of insurance. *Id.*
- ***Under the D&O Flexi Plus Five policies***, there is no coverage for criminal conduct and all the injuries involved bodily injury resulting from criminal acts; Darlington breached conditions of coverage including pre-policy knowledge and notice; and the explicit anti-stacking language deems all interrelated claims to be just one claim subject to being covered by just the

policy in effect when the first claim was made and reported to PIIC, such that coverage under only one Flexi Plus Five policy could even be triggered. *Id.*; *see also* V17-5-47 (initial coverage denial letters).

The Darlington/Stifflemire Settlements. In 2021, Plaintiffs entered settlement negotiations with Darlington and Stifflemire aimed at putting Darlington's remaining carriers "on the hook" for Plaintiffs' damages. Plaintiffs' principal, non-negotiable settlement demand was that Darlington and Stifflemire assign their rights and claims against *every insurer* that had issued a policy to Darlington from the 1970s through 2021 and had denied a defense to Plaintiffs' claims. V25-309-11; V25-317-29.

Plaintiffs' counsel assured Darlington and Stifflemire that, in exchange for an assignment of rights to all the insurance policies and Darlington's payment of $6 million (a fraction of the $345 million Plaintiffs were going to claim against the carriers), Plaintiffs would not execute on the judgment against them. Darlington and Stifflemire capitulated to Plaintiffs' demands. Each entered a settlement agreement and an assignment of rights more than three months before Plaintiffs improperly joined the insurers in the suit, and also agreed to entry of a $345 million consent judgment for each of the Plaintiffs against Darlington. This collusion was designed to capture the total of the aggregate policy limits shown on the Declarations Page of all the insurance contracts issued to Darlington from

1975-76, and 1996 to 2021 (52 in total). Yet, that sum was miscalculated, so the consent judgments actually are above the total aggregate policy limits. V25-309-29; V9-1411-12, 1458-59, 1481-86. A consent judgment in the amount of $345 million also was entered against Stifflemire in favor of each Plaintiff. These consent judgments *admitted as true* all of Plaintiffs' allegations against Stifflemire and Darlington and, without dismissing those defendants, excused them from further court appearances. V9-1487-1586 (Darlington consent judgments); V13-210-12 (Stifflemire consent judgment).

The consent judgments and assignments, however, did not delineate which insurance policy, if any, applies to which alleged injury. They did not tie the $345 million to the value of any of the Plaintiffs' individual claims, nor consider whether any or all of the claims under this settlement were void, dismissed, related to intentional torts, or were otherwise barred by the explicit terms and conditions of the various policies. *See* V9-1481-1586. Moreover, the consent judgment against Stifflemire was duplicative of those against Darlington. V13-210-12.

The Joinder of the Carriers. The court consolidated Plaintiffs' 20 individual complaints and granted their motion to join all the carriers in the consolidated action that was still pending against Darlington and Stifflemire. As the carriers strenuously argued to the trial court, that in itself was error. V10-5295; V11-2789; V44-9-32 (insurers arguments in trial court). Moreover, PIIC strenuously objected

that the trial court had violated due process by denying the carriers any meaningful discovery from the Plaintiffs. V16-2666-71.

Nonetheless, Plaintiffs were allowed join *in the same action* claims that all the carriers had breached a duty to defend and indemnify Darlington and Stifflemire against every claim they had previously alleged against Darlington and Stifflemire—even those the trial court had dismissed. For example, the consolidated complaint included claims against Stifflemire filed after 2017 that the trial court had dismissed under O.C.G.A. § 9-3-33.1 (construing it as a statute of limitation). It also included claims against Darlington that had been dismissed—with Plaintiffs agreeing they failed to state a claim—for "failure to provide adequate security, failure to train Supervisors and Monitors, failure to warn, negligent retention, respondeat superior, and breach of fiduciary duty." V9-1113 (order consolidating cases); V9-1008 (order adding insurers); V7-1110 (order dismissing claims); V9-1412-54 (consolidated first amended complaint). The consolidated complaint also sought $345 million collectively from the carriers based on the miscalculated sum of the total policy limits for the 52 policies that Darlington had assigned to Plaintiffs. V13-41.

The Summary Judgment Order. Plaintiffs and PIIC filed cross motions for summary judgment as to Plaintiffs' right to recover the amount of the consent Plaintiffs attributed to the 26 PIIC policies. The court denied PIIC's motion and

granted Plaintiffs' instead, awarding Plaintiffs $232 million without even addressing the key arguments PIIC had made in its papers. V3-34.

Specifically, the order did not address the arguments PIIC made based on the plain language of its policies, which include but are not limited to the points that: pre-policy incidents were not covered by the occurrence-based policies; claims based on intentional and criminal conduct are not occurrences and are excluded from coverage; Darlington admitted having pre-policy knowledge of the sex abuse; Darlington failed to timely notify PIIC of Plaintiffs' claims; the SPAM policy does not apply to the claims under the settlement because the court had dismissed the vicarious liability and similar types of claims for failing to state a claim that would be a prerequisite to application of the SPAM coverage; and the Flexi Plus Five policies exclude "bodily injury, mental anguish, emotional distress, and death" with a narrow, inapplicable exception, as well as the fact that only one Flexi Plus Five policy could potentially apply, and the notice provisions were breached. In other words, the plain language of the policies bars all the claims. *See infra* at § III.A.

The trial court never engaged with the policies' actual language. The summary judgment order also overlooked PIIC's non-contractual arguments—that the consent judgments were entered in bad faith, were for a patently unreasonable amount, and failed to carve out non-covered claims. V3-34 (summary judgment

order); V17-1088-1156 (PIIC MSJ on coverage issues); V16-2658-66 (PIIC MSJ on non-contractual issues).

STANDARD OF REVIEW

The order denying PIIC's motion for summary judgment and granting Plaintiffs' cross-motion is reviewed by this Court *de novo. White v. Gens*, 348 Ga. App. 145, 146 (2018).

ARGUMENT

To be clear, the plain language of the contracts between Darlington and PIIC require a reversal with judgment for PIIC. The issue here is not whether Plaintiffs should recover more for their childhood sexual abuse than what they accepted when settling with Darlington and its abusive teacher. Rather, the focus must be on what Darlington paid for when it bought the PIIC policies. No matter how horrible Stifflemire's deeds, that cannot change what is written in these insurance contracts, including their exclusions, limitations, and conditions. Regardless of the policy language, however, there are overarching reasons why Plaintiffs' claims fail as a matter of law—the absolute and nonwaivable statute of repose, and substantive insurance law that does not condone collusion where defendants settle for pittance plus a patently inflated consent judgment as part of the plaintiffs' scheme to reap an astronomical sum from insurance carriers whose policies do not even cover the time period when the abuse and injuries occurred and where conditions of

coverage were not met. Those unassailable principles of law will be discussed before delving into the plain language of PIIC's contracts.

I. Plaintiffs' Claims are Void Under the Statute-of-Repose.

A. All the claims were filed after the statute-of-repose had run.

Regardless of the title of Plaintiffs' various counts, each one seeks damages resulting from childhood sexual abuse. V13-26 ("Plaintiffs ... hereby bring this [action] for … damages sustained as a result of childhood sexual abuse."). But O.C.G.A. § 9-3-33.1(a) establishes a statute-of-repose for actions seeking damages for childhood sexual abuse that bars all Plaintiffs' claims. *See McArthur v. Beech Haven Baptist Church of Athens*, 368 Ga. App. 525, 534 (2023).

As the trial court recognized: "All the Plaintiffs were minors at the time of the abuse, they knew about it, [and] the Statute of Limitations ran when they turned twenty-three (23) years. They have all reached that age." V7-1113. The trial court also correctly found that, in 2015, the legislature created a two-year window for the filing of otherwise time-barred childhood sexual abuse claims. *Id*. (citing O.C.G.A. § 9-3-33.1(d)(1) (2015)). As the court found, the first 10 Plaintiffs timely filed their initial complaints on the last day of this grace period, June 30, 2017. *Id*. But the court then erred by holding that those Plaintiffs could dismiss those actions on December 15, 2017, then refile them on June 1, 2018, under the renewal statute. *Id*.

Unlike a statute-of-limitations, a statute-of-repose creates an absolute time-bar that cannot be revived. *McArthur*, 368 Ga. App. at 534. And, on July 1, 2017, the statute of repose codified in the current version of O.C.G.A. § 9-3-33.1 kicked in, providing that "any civil action for recovery of damages suffered as a result of childhood sexual abuse committed before July 1, 2015, shall be commenced on or before the date the plaintiff attains the age of 23 years." Thus, the claims of the initial 10 Plaintiffs were extinguished when dismissed in December 2017. And the actions filed later by the other Plaintiffs also are time-barred.

B. The claims against both Stifflemire and Darlington are void.

With Plaintiffs' RICO allegations—now admitted via the consent judgments—Darlington must be considered an active part of the alleged sexual abuse at the school when Stifflemire was a teacher there from 1974-1994. V9-662 (alleging that Darlington and Stifflemire "agreed to enter into a conspiracy" in violation of Georgia law which "resulted in the assault, battery, and child sexual abuse as well as coverup and concealment of the abuse" and "conspired … to cover up accusations and confirmed instances of sexual abuse within Darlington … [as] part of a systematic and ongoing pattern of racketeering activity over a number of decades.").

As an admitted co-abuser—Stifflemire's partner-in-crime—Darlington bears joint and several liability for claimed damages resulting from childhood sexual

abuse, with Stifflemire's liability imputed to it under traditional agency principles. *Fed. Deposit Ins. Corp. v. Loudermilk*, 305 Ga. 558, 569 (2019) ("Concerted action for torts was thus born out of a legal theory of mutual agency in which the acts (and ultimately the liability) of one wrongdoer were *imputed as a matter of law* to another who was part of the same 'joint enterprise.'") (emphasis added). This is not vicarious liability, where an employer did not independently engage in wrongdoing and is held responsible only because of the wrongdoing of its employee. Rather, Darlington admitted a shared responsibility for actively participating in every act of childhood sexual abuse alleged in Plaintiffs' complaints. In light of this admitted imputed liability, the absolute time-bar applies equally with respect to the actions of both Stifflemire and Darlington. *See Doe v. St. Joseph's Catholic Church*, 313 Ga. 558, 564-65 (2022) (holding that allegations that church fraudulently concealed its knowledge of priest's sexual abuse did not defeat time-bar with respect to imputed liability claim); *McArthur*, 368 Ga. App. at 534 (holding that statute-of-repose under O.C.G.A. § 9-3-33.1 applies to respondeat superior sexual abuse claims against church).

C. Plaintiffs cannot recover from PIIC based on void claims.

As discussed below, the plain language of PIIC's policies precludes a recovery from PIIC based on any claim against Darlington that fails as a matter of law. And the statute of repose provides four additional reasons why the judgment

against PIIC must be reversed. First, when PIIC was joined as a defendant in this action in March 2022, the action already was time-barred by the statute of repose. *Phagan v. State*, 287 Ga. 856, 860 (2010) ("The statute of repose destroys the previously existing rights so that, on the expiration of the statutory period, the cause of action no longer exists."). At that point, there was no existing claim to which any right of indemnification from PIIC could attach.

Second, any indemnification from PIIC would not alter the nature of the damages Plaintiffs sought from the sexual abusers, Stifflemire and Darlington. Even now, this is an "action for recovery of damages suffered as a result of childhood sexual abuse." O.C.G.A. § 9-3-33.1(a)(2). So, under the plain language of O.C.G.A. 9-3-33.1, the action is time-barred with respect to PIIC as much as it is for Stifflemire and Darlington. Indeed, the Consolidated Third Amended Complaint sued PIIC specifically "for public nuisance, injunctive relief, injuries, *and damages sustained as a result of childhood sexual abuse*." V13-26-27 (emphasis added).

Third, to the extent that PIIC could have an indemnity obligation to Darlington (which Plaintiffs obtained by assignment), PIIC "stands in the shoes" of Darlington with respect to all defenses Darlington would have to the claims Plaintiffs asserted against it, which must include the statute of repose defense. *See Stein v. GEICO Indem. Ins. Co.* ("Because GEICO stands in the shoes of its

insured, it can have no greater right of recovery than its insured" in subrogation action); *see also Coffee Iron Co. v. Qore*, 322 Ga. App. 137, 140 (2013) ("A party's insurer stands in the shoes of the insured as to identity of parties or privies.").

Fourth, considering that all the claims against Stifflemire and Darlington became void after June 30, 2017, the settlements and consent judgments also must be void as illusory agreements unsupported by consideration. At the time they were entered into, the claims had already been extinguished and, as such, there was nothing left for Darlington and Stifflemire to convey to Plaintiffs.

II. Plaintiffs' Claims Are Not Viable Under Insurance Law.

A. The consent orders Plaintiffs obtained are tainted by bad faith.

For an insured or its assignee to be indemnified for a settlement that was not approved by the insurer, the agreement must have been entered into in good faith and for a reasonable amount, even where coverage was denied. *See S. Guar. Ins. Co. v. Dowse*, 278 Ga. 674, 676 (2004) (*Dowse II*); *Motors Ins. Co. v. Auto-Owners Ins. Co.*, 251 Ga. App. 661, 664 (2001) (finding an insurer not bound to settlement agreement if "the amount … was so excessive as to show evidence of bad faith, or there was other evidence that the settlement was made in bad faith"); *Ga. S. & Fla. R. Co. v. United States Cas. Co.*, 97 Ga. App. 242, 243-44 (1958)). And to hold PIIC liable for the full amount of 26 policies (plus an additional $12 million because of a math mistake by the trial court) is profoundly unreasonable.

This Court has favorably cited the framework in *Coblentz v. American Surety Co. of New York*, 416 F.2d 1059 (5th Cir. 1969), for analyzing whether a settlement by an insured after the insurer refuses to defend is enforceable. *See Dowse v. S. Guar. Ins. Co.*, 263 Ga. App. 435, 440 (2004) (citing *Coblentz*), *affirmed by Dowse II*. Under *Coblentz*, like *Dowse*¸ courts look to "evidence of an unreasonable settlement amount and of bad faith on the part of the negotiating parties." *Id*. (citation omitted)*; accord Sidman v. Travelers Cas. & Sur.*, 841 F.3d 1197, 1203 (11th Cir. 2016).

When reviewing a settlement similar to the one in this case, *Sidman* observed that "a consent judgment with a covenant not to execute" is particularly problematic because it "may not necessarily represent a realistic valuation of the injured party's claim." 841 F.3d at 1202. When an insured "stipulates to a large settlement figure in order to obtain his release from liability," it "has little or nothing to lose because [it] will never be obligated to pay. As a consequence, the settlement of liability and damages may have very little relationship to the strength of the plaintiff's claim." *Id*. (citation omitted).

To balance the interests "of (1) protecting insurers against settlement agreements that overstate their liability and (2) preserving incentives for insureds and injured parties to resolve claims when they can," the *Sidman* court imposed upon the party seeking to enforce the settlement agreement "the initial burden of

producing 'evidence sufficient to make a prima facie showing of reasonableness and lack of bad faith, even though the ultimate burden of proof will rest upon the carrier.'" *Id*. at 1203 (citation omitted). This burden-shifting framework is needed "to protect against the obvious possible abuses" of the settlement procedure in a case like this. *Id*. (citation omitted).

Moreover, *Sidman* affirmed the determination that the "settlement agreement was unreasonable in amount and negotiated in bad faith" based on evidence very similar to the facts of this case. 841 F.3d at 1205. Here, as in *Sidman*, Darlington "was willing to agree to any [settlement amount] so long as the [Plaintiffs] would enforce the judgment only against [the insurers]." *Id.* Darlington was "willing to lie down and accept a judgment of any amount against it so long as it would not be on the hook to satisfy the judgment." *Id*. at 1206. Here, there were no arm's length negotiations as to a reasonable figure for the settlement of each individual Plaintiff—just an unreasonable and arbitrary offer and unnegotiated acceptance.

Here, the amount of the consent judgments is patently unreasonable. The consent judgments bear no relationship to the actual injury suffered by any of the Plaintiffs, collectively or individually, and the fact that the judgments were not supported by any analysis of coverage potentially available under the various policies leads to the inescapable conclusion that this was a concocted attempt by Plaintiffs to secure a windfall at the expense of the insurance carriers.

Further, the consent judgments include the claims of eight Plaintiffs whose claims against Stifflemire were dismissed because the trial court found they were filed outside of the safe harbor timeframe in O.C.G.A. § 9-3-33.1. V7-1110. In fact, *all* of Plaintiffs' claims for childhood sexual abuse should have been similarly time-barred because O.C.G.A. sec 9-3-33.1 is a statute-of-repose, not a statute-of-limitation as the trial court held. *See supra* § I. These claims are void—and Darlington and Stifflemire knew that when entering into the settlements and consent judgments because they both argued to the trial court that O.C.G.A. § 9-3-33.1 is a statute of repose, not just a statute of limitation. V36-15, 65-66. Yet, neither the consent judgments nor the trial court's order entering the $345 million judgment against the carriers accounted for these fatal flaws in Plaintiffs' claims.

The unreasonableness of the amount of the consent judgments is further shown by the erroneous calculation of PIIC policy limits. In fact, Plaintiffs admitted that the coverage limits of the Builders Risk policy and two of the Flexi Plus Five policies should not be included in the judgment against PIIC—and in fact under the plain language of these policies, only one Flexi Plus Five policy could even be considered. V41-46-47, 168. Yet, the trial court included those policies anyway. V3-34.

Moreover, when calculating policy limits, Plaintiffs simply added the aggregate policy limit shown on each of the Declarations pages of the 25 PIIC

Package, Umbrella, and Flexi Plus Five policies, plus $2 million for a Builder's Risk policy with $1.3 million in limits, with no consideration of the fact that the CGL policies excluded sexual abuse covered by the SPAM policies such that there could never be a recovery under both, or that, with regard to other types of PIIC policies, only the earliest policy would potentially provide coverage. Thus, just as the *Sidman* court concluded in the case before it, this Court should hold that these settlements and consent judgments are riddled with bad faith and are unquestionably unreasonable in amount such that they cannot support the $232 million judgment against PIIC.

B. The failure to carve out non-covered claims requires a reversal.

Under Georgia law, the insured has the burden to prove a loss is covered under the terms of a policy and the amount of that loss. *See Perry v. State Farm Fire & Cas. Co.*, 297 Ga. App. 9, 11 (2008); *CUNA Mut. Ins. Soc'y v. Turner*, 138 Ga. App. 205, 205 (1976) ("the burden is upon the plaintiff to show the amount he is entitled to recover under the terms of the policy."); *see also Universal Underwriters Ins. Co. v. Reynolds*, 129 So. 2d 689, 691 (Fla. 2d DCA 1961) ("[W]here a judgment includes elements for which an insurer is liable and also elements beyond the coverage of the policy, the burden of apportioning these damages is on the party seeking to recover from the insurer.").

Thus, even if some of Plaintiffs' claims were covered (which they are not), Plaintiffs have no right to indemnification for an un-allocated settlement that compensates Plaintiffs for claims that are not even arguably covered, e.g., claims for punitive damages, battery, Georgia RICO, fraud, nuisance, and intentional infliction of emotional distress. As the burden to allocate lies with the Plaintiffs who seek a recovery under Darlington's insurance policies, the failure to carve out non-covered damages precludes indemnification. *See The Peninsula at St. John's Ctr. Condo. Ass'n, Inc. v.. Amerisure Ins. Co*., No. 3:22-CV-792-ACC-LLL, 2025 WL 1547531, at *9 (M.D. Fla. May 31, 2025) (holding that a settlement agreement and consent judgment entered under *Coblentz* "is unenforceable because it does not properly allocate between covered and uncovered claims"); *Guar. Ins. Co. v. Gulf Ins. Co.*, 628 F. Supp. 867, 870-71 (S.D. Fla. 1986), aff'd 811 F.2d 610 (11th Cir. 1987) (holding that where party seeking indemnification failed to request a special verdict form, a general verdict stands as a bar to indemnification); *Perdue Farms, Inc. v. Travelers Cas. And Sur. Co. Of Am.*, 448 F.3d 252, 263 (4th Cir. 2006) (holding that for a settlement that includes several claims, some of which are covered and others of which are not covered, the settlement must be allocated as between covered and uncovered claims). If a judgment fails to allocate between covered and non-covered losses, "the consequence to the insureds . . . is the

catastrophic total loss of coverage." *Duke v. Hoch*, 468 F.2d 973, 979 (5th Cir.1972) (emphasis added).

III. The Claims Are Barred by the Plain Language of the PIIC Policies.

A. The PIIC Policies.

The summary judgment order recites some general statements of insurance law favoring payment to a claimant, but neglected to heed the overriding principle that an insured is entitled to no deference where, as here, the plain language of the parties' contract precludes coverage. *Auto-Owners Ins. Co. v. Neisler*, 334 Ga. App. 284, 286 (2015) ("Unambiguous terms in an insurance policy require no construction, and their plain meaning will be given full effect, regardless of whether they might be of benefit to the insurer, or be of detriment to an insured."). An insurance policy is, after all, an agreement between the parties and, as with other contracts, it must be enforced according to its written terms when they are unambiguous. *Id.*

It also is important to understand how the PIIC policies are constructed. Each Commercial Package Policy is comprised of different coverage parts (different types of coverage) that fit together like the pieces of a jigsaw puzzle. In a nutshell, this is how it works:

1. ***The CGL coverage parts*** are occurrence-based policies that were in effect from 2010 to 2020, essentially providing coverage for bodily injury caused

by an occurrence during the policy period, subject to certain terms and conditions. They also include endorsements, excluding coverage for specific types of exposures that are either covered in other coverage parts of the package policy or other policies, or deemed uninsurable. A key exclusion in the CGL, overlooked by the trial court, is the Abuse or Molestation exclusion that precludes coverage for claims arising out of abuse or molestation. (Limited coverage for this type of claim is picked up more specifically in the separate SPAM coverage part.) For each policy year, there is also an excess or umbrella policy with CGL coverage, which incorporates the terms, conditions and exclusions of the scheduled underlying CGL policy.

The limitations set forth in the insuring agreements of the CGL policies include but are not limited to:

- The bodily injury must be caused by an occurrence within the policy period. V10-2772 (CGL § I.A.1.b(2) ("This insurance applies to 'bodily injury' … only if [t]he 'bodily injury' … occurs during the policy period … .")).
- The occurrence must be accidental, i.e., it cannot involve intentional, harmful acts. V10-2785 (CGL § V.13 (defining "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."); *see also* V10-773 (CGL §I.2.a

(excluding from coverage " '[b]odily injury … expected or intended from the standpoint of the insured")).

- The insured cannot have had pre-policy knowledge of the bodily injury. V10-2772 (CGL §I.1.a(3) (providing that insurance applies only if "prior to the policy, no insured … knew that the 'bodily injury' … had occurred in whole or in part."); CGL § I.1.c (providing that "bodily injury" will be deemed to have been known to have occurred at earliest time [an insured] becomes aware that bodily injury occurred or has begun to occur)).
- The insured must see to it that PIIC is notified as soon as practicable of an "occurrence" or an offense that may result in a claim against it, notify PIIC of any claim, and immediately send PIIC copies of any demands, notices, or legal papers received in connection with the claim. V10-2782.
- The insured must not except at the insured's own cost, voluntarily make a payment, assume any obligation or incur any expense . . .without PIIC's consent, which was never sought. V10-2782 (CGL §2.2(d)).
- "Mental anguish" is not covered unless it results from a contemporaneous physical injury - "bodily injury, sickness or disease." V10-2811.
- The excess/umbrella policies do not include "mental anguish" within the definition of "bodily injury." *See, e.g.,* V10-1661.

The unambiguous language of these and other terms and conditions in the CGL policies (and related excess and umbrella policies) preclude recovery under the CGL coverage part for the childhood sex claims regardless of the title of the count where they are asserted.

The SPAM Coverage Part also is an occurrence-based policy. It provides quite limited vicarious liability coverage for specific abusive conduct within the policy periods 2010 to 2020. The insuring agreement of the SPAM coverage part states:

> We will pay those sums that the insured becomes legally obligated to pay as "damages" because of "bodily injury" … ***if the insured is alleged to be liable for another person's 'abusive conduct'*** by reason of … negligent employment, selection, investigation, failure to report, or retention of an employee or volunteer.

V10-2966 (emphasis added).

Like the CGL coverage part (and related excess or umbrella policies), the SPAM coverage part does not reach any of Plaintiffs' claims. In particular, the trial court's reliance on the SPAM policies to enter the $232 million judgment cannot be upheld because:

- The conduct of direct childhood abuse by a perpetrator such as Stifflemire is uninsurable under Georgia law and under the language of the SPAM coverage parts, which exclude coverage for any "claim arising out of matters which may be deemed uninsurable" V10-2967; *Allstate Ins. Co. v. Jarvis*,

195 Ga. App. 335, 337 (1990) ("Child molestation is one of those acts which is so extreme that public policy does not permit them to be insured.").

- At the time of the consent judgments, the court had dismissed all claims against Darlington alleging vicarious liability, negligent supervision, and the like, after conceding they fail as a matter of law. V7-1120.
- On its face, the SPAM coverage part does not apply to the remaining claims of sexual abuse or bodily injury, all of which are against Darlington and Stifflemire for their own intentional torts and not "for another person's 'abusive conduct.'"
- None of the sexual abuse incidents alleged to result in bodily injury occurred within the policy periods. V10-2966 (the SPAM coverage part "applies to 'damages' because of 'bodily injury' only if … [t]he 'bodily injury' occurs during the policy period.").
- Punitive damages are specifically carved out of the definition of "damages" for which PIIC agreed to indemnity an insured. V10-2970.
- Darlington breached conditions of coverage by failing to provide notice to PIIC within 60 days of claims being made and by failing to immediately forward legal papers to PIIC. *See* V10-334; V17-692-94, 798.

2. ***The Flexi Plus Five*** policies, which require that claims be first made and reported during the policy period, similarly have clear language that precludes all Plaintiffs' claims, including but not limited to the following provisions:

- The policies contain anti-stacking language, deeming the various claims to be just one event, covered by just one policy in effect during which the first claim was made and reported. V10-2228 ("All loss arising out of the same Wrongful Act and all Interrelated Wrongful Acts … shall be deemed one Loss … [and] [s]uch Claim shall be deemed to … have first occurred when the earliest of such Claims … first occurred.").
- Any coverage is limited to a single Flexi Plus Five policy because Plaintiffs' claims are deemed to be one claim, first made when the earliest claim was first made.
- The policies do not cover any of the bodily injury, mental anguish, or emotional distress claimed by Plaintiffs.
- The policies do not cover Darlington and Stifflemire's criminal conduct as established by the consent judgments. V10-2225 (excluding claims arising out of "any criminal act or omission by such Insured … if a final and non-appealable judgment or adjudication establishes the Insured committed such act or omission").

- The policies bar coverage for claims arising out of any wrongful act, fact, circumstance, or situation that were the subject of written notice to another insurer, prior to the policy period. V10-2225 (exclusion F.2). Darlington provided notice of Stifflemire's abusive conduct to Great American a year before it gave notice to PIIC. V17-692-94, 798.
- The "Known Circumstances Revealed in Application" bars coverage for claims "in any way involving any matter, fact, or circumstance" disclosed in Darlington's insurance application, as Darlington disclosed "an alleged incident involving a faculty member and a student" (Stifflemire's alleged sexual abuse of Plaintiff Timothy Lee).
- The policies bar coverage where Darlington had knowledge of the wrongful act prior to the effective date of the policy from which Darlington could reasonably expect a claim to arise.

B. The trial court's erroneous interpretation of the PIIC policies.

1. The trial court failed to consider PIIC's key points.

The summary judgment order did not respond at all to PIIC's key points on the substantive policy coverage issues such as the points about the bad faith/unreasonableness of the consent judgment amount, the failure to consider any non-covered claims and apportion the settlement amount accordingly, or the following policy provisions:

Regarding the CGL coverage part, the court did not address among other facts:

- The application of the abuse or molestation exclusion;
- The point that the claims against Darlington were based on its own intentional conduct (e.g., fraud, conspiring with Stifflemire, racketeering, etc.), which is not covered;
- The judicial admissions showing that Darlington had pre-policy knowledge of the abuse and claimed bodily injury;
- The arguments against a continuing trigger, i.e., that there is no coverage for ongoing emotional distress and injuries under policies issued years after the last act of abuse;
- The application of the expected or intended injury exclusion;
- The lack of timely notice;

Regarding the SPAM coverage part, the court did not address:

- Plaintiffs' agreement to the dismissal of the negligent retention and vicarious liability claims from the operative complaint at the time the consent judgments were entered left Plaintiffs without any claims that Darlington was liable for another's abusive conduct and resulting bodily injury;
- The exclusion of any "claim arising out of matters which may be deemed uninsurable" and the case law holding that it is against Georgia public policy

to provide insurance coverage to perpetrators for their own direct acts of child molestation;

- The fact that the SPAM coverage part does not cover punitive damages;

Regarding the Excess/Umbrella policies, the court overlooked:

- The exclusion for injury arising out of willful violation of a penal statute or ordinance committed by or with the consent of the insured (barring coverage for 2017 letter, due to Darlington's mail fraud and wire fraud and violations of Georgia RICO);
- The point that PIIC raised the issues with the excess and umbrella policies in its denial letters;
- The restrictions contained in the umbrella policies provide that coverage will not be broader than the underlying CGL coverage. V10-1833.

Regarding the Flexi Plus Five policies**,** the court similarly failed to address:

- The fact that Plaintiff's interrelated claims are deemed to be <u>one claim</u>, limiting any potential coverage to the 2017-2018 policy (when the first complaint was filed);
- The exclusion for "bodily injury, mental anguish, emotional distress, and death" (except for mental anguish or emotional distress under EPL Part 2, specifically resulting from harassment, which has not been pled herein);
- The "Known Circumstances Revealed in Application" exclusion;

- The exclusion for incidents that were the subject of notice given under any other policy of insurance, with a similar type of coverage, prior to inception of this Policy"—and the 2016 notice to Great American;
- The exclusion based on dishonest or fraudulent acts of the insured;
- The exclusion of claims arising out of any demand against an insured pending before the June 10, 2016 inception date of the first Flexi Plus Five policy, and Plaintiff Timothy Lee's demand before that time for Darlington to make his allegations of Stifflemire's sexual abuse public; and
- The "Two or More Coverage Parts" provision, limiting coverage to highest applicable Limit of Liability under any one policy to *either* the limit of liability under the D&O Coverage Part 1 or the limit of liability under the EPL Coverage Part 2, but not both as claimed by the Plaintiffs.

2. The trial court's analysis of PIIC's policies is flawed.

Moreover, the analysis that the trial court did perform is seriously flawed. For example, the order repeatedly refers to the SPAM coverage part's coverage for another person's "abusive conduct" by reason of negligent employment, selection, investigation, supervision, or retention. *See* V3-30-32. But those findings overlook the fact that the operative complaint that is the subject of the consent judgments *had dropped all those claims*, leaving in only the claims for Fraud, Fraudulent Misrepresentation and Fraudulent Concealment, Nuisance (common law and

statutory), Childhood Sexual Abuse, Assault, Battery, Intentional Infliction of Emotional Distress, RICO, and Negligent Infliction of Emotional Distress. *See* V9-638-66. And none of the remaining claims are covered by the PIIC Policies, as discussed above.

Regarding the Flexi Plus Five policies, the trial court erroneously held that Plaintiffs' claims are covered because they alleged that they "were physically detained, arrested, … had punishment imposed contrary to law" and were "continuously" harassed and propositioned by Stifflemire. V3-33. The Flexi Plus Five policies exclude losses related to bodily injury or mental anguish, with a limited exception under Part 2. V16-2226. There is simply no allegation in any of Plaintiffs' complaints that they were arrested, or that Darlington had the authority to arrest them, as would be required for coverage under D&O Part 1 of the Flexi Plus Five Policies. There is no allegation in Plaintiffs' complaints that they suffered the type of "violation of [their] civil rights" that would give rise to coverage for "sexual or workplace harassment" under EPL Part 2. V16-2216.

The trial court also relied on an inapposite case to hold that Plaintiffs can recover under multiple policies and multiple periods due to the "continuing abuse." V3-30 (MSJ Order ¶ 88). That case, *Philadelphia Indem. Ins. Co. v. Renew Ministries*, No. SA-17-CA-083-FB, 2018 U.S. Dist. LEXIS 155088 (W.D. Tex. July 6, 2018), involved a *claims-made* policy providing coverage for claims made

within the policy period, rather than the SPAM coverage part in this case that limits coverage to bodily injuries first occurring during the policy period. *See* V31-212 (complaint in *Renew Ministries* describing policy language).

Similarly, the order erred by holding that the "'bodily injury' to the Plaintiffs "continued and was aggravated by the May 2017 letter." V3-32. This holding is not only at odds with the express language of the policies, but it apparently is also a reference to Plaintiffs' unsupported "continuous trigger theory." V41-77. But Georgia has never adopted the continuous trigger theory. *Columbia Cas. Co. v. Plantation Pipe Line Co*., 338 Ga. App. 556 (2016) (declining to adopt theory).

The May 2017 letter, which was the basis for Plaintiffs' negligent infliction of emotional distress claim, was not a new occurrence triggering coverage under the CGL or SPAM coverage parts. Under PIIC's CGL policies, "bodily injury" only includes "mental anguish" that results from "bodily injury, sickness or disease." And PIIC's umbrella policies do not cover mental anguish or emotional distress at all. Therefore, because the Plaintiffs' alleged emotional distress related to the May 2017 letter was caused by the pre-policy sexual abuse, it does not constitute "bodily injury" under the CGL policy (given the absence of any contemporaneous physical injury resulting from the letter). Instead, the alleged distress was a "continuation, change, or resumption" of Plaintiffs' original bodily injuries that are deemed to have occurred at the time of those original injuries in

the 1970s and 1980s. Moreover, negligent infliction of emotional distress is not a cognizable claim under Georgia law—with a single, narrow exception not applicable here. *See Coon v. Medical Center, Inc*., 300 Ga. 722 (2017).

And the "continuous trigger" theory has no application to the facts of this case. That theory only applies to claims without a finite date of loss (but with an occurrence in each policy period) where a "latent" injury or property damage "is discovered after the dates of insurance coverage." *Arrow Exterminators Inc. v. Zurich Am. Ins. Co.*, 136 F. Supp. 2d 1340, 1345 (N.D. Ga. 2001); *see also id.* at 1346 ("With a continuous trigger, all liability policies in effect *from the exposure to manifestation* provide coverage and are responsible for the loss.") (emphasis added). This is not a case with a latent injury—Plaintiffs injuries manifested at the time of the alleged wrongful conduct and, therefore, a continuous trigger theory would not apply. This case is completely different from cases applying a continuous trigger theory. *See Arrow*, 136 F. Supp. 2d 1340 (federal case applying Georgia law and using continuous trigger theory to analyze latent termite damage); *see also Bishop of Charleston v. Century Indem. Co.,* 225 F. Supp. 3d 554, 565–66 (D.S.C. 2016) (finding South Carolina's "modified continuous trigger standard" did not result in coverage for claims arising from alleged clergy sexual abuse that ceased before any coverage under the parties' occurrence-based policies commenced); *Servants of Paraclete, Inc. v. Great Am. Ins. Co.,* 857 F. Supp. 822,

854 (D.N.M. 1994) (finding "an insured cannot reasonably expect a policy to cover injury originating years before the policy inception," that the insurance premiums "do not reflect such risks," and that there would be an "enormous increase in premiums" if such pre-policy events were covered).

Moreover, the Georgia Supreme Court has soundly rejected analogous "continuing tort" and "continuous treatment" theories in the statute-of-limitations context by looking to the occurrence of the injury as the trigger of the limitations period. *See Harvey v. Merchan*, 311 Ga. 811, 814-15, (2021) (finding that "continuing tort" theory does not apply to claims of childhood sexual abuse where "each injury is known to the victim at the time the wrong was inflicted."); *Young v. Williams*, 274 Ga. 845, 848 (2002) (rejecting "continuous treatment" as a limitations trigger); *Mohar v. Leguizamo*, 373 Ga. App. 230 (2024) (finding that the time of the occurrence of the "injury" begins "immediately" upon the pain, suffering, or economic loss that is suffered from the negligence). This Court should not override the reasoning of those decision to create a new continuous trigger theory here where the wrongful act and the bodily injury are simultaneous, even though emotional effects of the abuse are ongoing.

Indeed, none of the cases cited by the trial court support the summary judgment here. *See* V3-31-33 *citing Khan v. Landmark Am. Ins. Co.*, 326 Ga. App. 539 (2014) (holding that a default judgment against a defendant operates as an

admission of the allegations, which, in this case, confirms that there is no coverage based on Darlington's admissions); *Soc'y of Roman Cath. Church of Diocese of Lafayette and Lake Charles Inc. v. Interstate Fire & Cas. Co.*, 26 F.3d 1359 (5th Cir. 1994) (cited for the proposition that sexual abuse is bodily injury, but clarifying that a claimant only "suffered an 'occurrence'" in the policy period in which he was molested, which, in this case, does not apply to the PIIC policies); *Liberty Corp. Cap., Ltd. v. First Metro. Baptist Church*, No. CV420-179, 2021 WL 4166332, at *2 (S.D. Ga. Sept. 13, 2021) (finding coverage under policies in place "[d]uring the time period in which the sexual abuse allegedly occurred," which, in this case, does not include the PIIC policies); *Dowse II*, (described *supra* § II.B*); Lemieux v. Blue Cross & Blue Shield of Ga., Inc*., 216 Ga. App. 230, 231 (1994) (cited for the proposition that ambiguities construed against the insurer, but also holding "if the terms used are unambiguous, clear, and capable of only one reasonable construction, they must be taken in their plain, ordinary and popular sense"); *Hoover v. Maxum Indem. Co.*, 291 Ga. 402 (2012) (cited for the proposition that an insurer "cannot both deny a claim outright and attempt to reserve the right to assert a different defense in the future," but ignoring that PIIC's coverage denial letters thoroughly raised every defense presented on summary judgment in the trial court); *U.S. Fire Ins. Co. v. Hilde*, 172 Ga. App. 161, 163

(1984) (addressing conflicting provisions within a single insurance policy, not a new provision in a different, later insurance policy).

In contrast to the inapposite cases cited by the trial court, case law from Georgia and elsewhere *enforces* the same or similar policy provisions that PIIC relies on here. Indeed, this Court has reversed, repeatedly, the denial of an insurer's motion for summary judgment where the trial court has refused to enforce the plain language of the exclusions, limitations, or conditions of the insurance contract. *See*, *e.g.*, *Harco Nat'l Ins. Co., Inc. v. Eric Knowles, Inc*., 371 Ga. App. 295 (2024); *Gen. Sec. Indem. Co. of Arizona v. Gerald Jones Ford, LLC*, 371 Ga. App. 868 (2024). For example, this Court recently reiterated in *Gerald Jones Ford* that, "[u]nder Georgia law, insurance companies are generally free to set the terms of their policies as they see fit so long as they do not violate the law or judicially cognizable public policy." 371 Ga. App. at 871. "Thus, a carrier may agree to insure against certain risks while declining to insure against others." *Id*. If the language [of the policy] is unambiguous, the court simply enforces the contract according to the terms[.]" *Id*. at 870.

This principle is indeed well established under Georgia law. *See*, *e.g.*, *Allstate Ins. Co. v. Neal*, 304 Ga. App. 267, 269 (2010) (reversing because "the shooting was not an accident and thus was not a covered occurrence under the policy"); *First Specialty Ins. Corp., Inc. v. Flowers*, 284 Ga. App. 543, 545 (2007)

(reversing, stressing that "[i]f the policy exclusions are unambiguous they must be given effect even if beneficial to the insurer and detrimental to the insured"); *Capitol Indem. Corp. v. L. Carter Post 4472 Veterans of Foreign Wars, Inc*., 225 Ga. App. 354, 355 (1997) (reversing because "[c]ourts have no more right by strained construction to make an insurance policy more beneficial by extending the coverage contracted for than they would have to increase the amount of coverage"); *Am. Home Assur. Co. v. Smith*, 218 Ga. App. 536 (1995) (reversing to enforce a clear contractual limitation on coverage for sexual misconduct).

In this case, it is apparent that the trial court did not engage in any rigorous analysis of either PIIC's contract terms or the facts admitted by Darlington in the consent judgment, as pled in the operative complaint (attached to the summary judgment order as Exhibit 3). Instead, it essentially held that, by denying coverage, PIIC forfeited all defenses. That is not the law of Georgia, however. PIIC was entitled to deny coverage and stand on the plain language of its contracts:

> By refusing to defend, however, [the insurer] did not waive its right to contest its insured's assertion that the insurance policy provides coverage for the underlying claim. Obviously, if the underlying claim is outside the policy's scope of coverage, then [the insurer's] refusal to indemnify or defend was justified and it is not liable to make payment within the policy's limits.

Dowse II, 278 Ga. at 676.

CONCLUSION

For all of the above many reasons—as well as those presented in the other carriers' appellate briefs, which are incorporated here—the Court should reverse the denial of PIIC's motion for summary judgment.

Respectfully submitted this June 4, 2025.

This submission does not exceed the word count limit imposed by Rule 24 and the Court's order permitting Appellant to exceed the word count.

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CERTIFICATE OF SERVICE

I certify that there is a prior agreement with Appellee's counsel to allow documents in a PDF format sent via email to suffice for service, and on June 4, 2025, I served a copy of the foregoing by email to the following counsel of record:

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