Journal of Civil Law Studies

Volume 12
Number 2 *2019*

Article 11

12-31-2019

Doty v. GoAuto Insurance

Stephanie Wartelle

OPEN-ENDED QUESTIONS IN *DOTY V. GOAUTO*: HOW THE CATEGORIZATION OF BYSTANDER DAMAGES EVOLVED IN RECENT INSURANCE JURISPRUDENCE

Stephanie T. Wartelle*

Keywords: Lejeune, bystander damages, interpretation of insurance contracts, inconsistent interpretations, derivative claim, per-person limits, accident, damage award

I. INTRODUCTION

"When the lack of legislative guidance is combined with the inconsistent statements of the lower courts and the dodging of the issue by the Supreme Court, the nature of the bystander claim is far from clear."[1] Although this was written in 2005, it is clear from cases such as *Doty v. GoAuto* that the nature of the *Lejeune* claim, or "bystander claim" and its effect on loss of consortium claims has led to further questions for both insureds and insurers in Louisiana.

---

* J.D. candidate (May 2021) Paul M. Hebert Law Center, Louisiana State University. The author would like to thank Professor Church for his comments throughout the writing of this note.

1. Jessica Coco, *The Status of Bystander Damage Claims in Louisiana: A Less-Than-Perfect Fit in the Tort Puzzle*, 66 LA. L. REV. 261 (2005) (citing Moody v. United Natl. Ins. Co., 657 So. 2d 236, 240 (La. App. 5th Cir. 1995) (stating that claims under 2315.6 are derived from the bodily injury of a tort victim)).

II. *DOTY'S* HOLDING AND REASONING

On November 16, 2015 plaintiff (Mrs. Doty) filed suit against the driver who struck her 80-year-old husband as he was crossing a mall crosswalk. Plaintiff's petition states that she heard her husband cry out as he was struck, after which she turned around and saw him lying on the ground. Her husband's immediate injuries were severe, and included a fractured left foot, a concussion, and contusions on his legs, elbows, and arms. He was later diagnosed with cellulitis (infection) of the leg, arm, and foot, a bladder infection, anxiety, and dementia. He was also diagnosed with paraplegia, and as a result was confined to a hospital bed for 28 days before being transferred to a nursing home.[2]

Plaintiff sued GoAuto, defendant's liability insurer, as well as State Farm, her own Uninsured Motorist insurer. Plaintiff alleged that she suffered *Lejeune* damages, now codified under article 2315.6,[3] after witnessing her husband's accident. A *Lejeune* claim, or bystander claim under article 2315.6, requires proof that: (1) one is a member of the class to whom such a right is granted; (2) one saw the injury-causing event; (3) the harm sustained by the injured person must be such that one can reasonably expect a person in the claimant's position to sustain serious mental anguish or emotional distress; and (4) the mental anguish or emotional distress must be severe, debilitating, and foreseeable.[4] In March 2016, the defendant and her liability insurer, GoAuto, were dismissed from the suit after they settled. In January 2017, State Farm filed a motion for summary judgment, arguing that it had paid the full $50,000 per person limit on the policy for bodily injury.[5] The policy provided:

---

2. Doty v. GoAuto Ins., 251 So.3d 706, 710 (La. App. 3 Cir. 2018).

3. LA CIV. CODE ANN. art. 2315.6 (2019) (providing for recovery for severe, debilitating, and foreseeable mental anguish for a certain class of persons who view the tortious event or come upon the scene thereafter).

4. *Doty*, 251 So.3d 706, 714 (citing Castille v. La. Med. Mut., 150 So.3d 614 (La. App. 3 Cir. 2014)).

5. *Id*.

> Limits
> a. The most we will pay for all damages resulting from *bodily injury* to any one *insured* injured in any one accident, including all damages sustained by other *insureds* as a result of that bodily injury, is the lesser of:
> (1) the amount of all damages resulting from that *bodily injury* reduced by the sum of all payments for damages resulting from that *bodily injury* made by or on behalf of any *person* or organization who is or may be held legally liable for that *bodily injury*; or
> (2) the limit shown under 'Each Person.'
> b. Subject to a. above, the most *we* will pay for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident is the limit shown under 'Each Accident.'[6]

State Farm contended that plaintiff's *Lejeune* claim was limited under the single-per-person limit, because it was a result of her husband's bodily injury. Plaintiff relied upon the language in *Crabtree* in her opposition, which allowed for recovery of a *Lejeune* claim under a separate per-person limit. Defendant's motion was denied. The trial court awarded plaintiff $50,000 in general damages (subject to the per-accident limit), a $25,000 penalty for State Farm's failure to pay UM claim within 30 days of receipt of written proof, and attorney's fees as well as court costs.[7] On appeal, State Farm alleged that (1) the trial erred in denying its motion for summary judgment, (2) the plaintiff's claim met the requirements established in *Lejeune*, (3) the plaintiff's award was excessive and (4) the court erred in awarding attorney's fees. The Third Circuit affirmed the decision of the trial court and awarded plaintiff additional costs of the appeal.[8]

The nature of the *Lejeune* claim and whether a *Lejeune* claim constitutes a separate bodily injury for the purposes of coverage under an insurance policy has caused much confusion in jurisprudence. In this case, on appeal, the court held that Ms. Doty met the

---

6. *Id.* (emphasis in original).
7. *Id.* at 710-711.
8. *Id*.

requirements for a *Lejeune* claim. The court stated that the requirements of article 2315.6, when read together, "suggest a need for temporal proximity between the tortious event" and the harm.[9] The court stated that the standard of the perceived injuries are superimposed onto the victim, in this case, her husband. Due to his age, plaintiff's shock, and the tire tracks and impression on her husband's leg, she met the requirements.[10] Further, the award was not excessive.[11] The court stated several reasons for this, including the fact that the plaintiff lost ten pounds after the accident due to anxiety and stress and the fact that she declined an ambulance for her husband due to her shock. In sum, her physical symptoms helped to prove her shock. Interestingly, the court notes that:

> Mrs. Doty's love and affection for husband was so great that never left her husband's side while he was at St. Patrick's . . . . He stayed in St. Patrick's twenty-eight days . . . when he was transferred to Resthaven Nursing Home. While her actions, themselves, are not factors in *Lejeune* damages, they demonstrate the love and affection she has for her husband. These facts bolster the finding of the trial court that she suffered extreme distress seeing him lying in the road face down with tire marks across his legs just after hearing the accident happen.[12]

As Judge Gremillion's concurrence points out, there are issues with this logic. In this case, the plaintiff's damages needed to be carefully separated because State Farm's tender of non-*Lejeune* damages had been extinguished by its tender of its limits to the plaintiff.[13] The "non-*Lejeune* damages" are loss-of-consortium claims. Loss-of-consortium claims, or loss of sex, society, service, and support are separate and distinct from *Lejeune* claims.[14] As stated in *Ferrell v. Fireman's Fund Insurance*, loss-of-consortium claims are typically subject to a single-person

9. *Id.* at 713.
10. *Id.* at 714.
11. *Id.* at 715.
12. *Id.*
13. *Id*. at 718-719 (Gremillion, J., concurring).
14. *Id.* at 719.

limit,[15] due to the fact that they have been held to be "derivative" in nature.[16] Put another way, "a loss of consortium claim is a derivative claim of the primary victim's injuries . . . . The derivative claim does not come into existence until someone else is injured."[17]

Judge Gremillion notes that the court relies on several factors, including plaintiff's distress over her husband's ongoing medical issues before he was treated, and his lengthy stays in the hospital as well as the rehab facility.[18] These are factors that point to loss-of-consortium claims, not necessarily *Lejeune* claims, which only encompass immediate shock of witnessing the accident.[19] Thus, part of her claims should have been subject to the single per-person limit on recovery.[20]

As the concurrence notes, the Court of Appeal confuses the *Lejeune* claim requirements and evidence of loss of consortium, committing legal error.[21] As a result, she is awarded in excess, because the loss-of-consortium claims are "derivative" and thus subject to a per-person limit, while the *Lejeune* claim for witnessing the accident constitutes its own bodily injury under the per-accident limit. Judge Gremillion bolsters this argument by citing similar cases with lower damages,[22] and also notes that Ms. Doty was not treated or diagnosed with any serious mental illness or issues after the accident.[23] He notes that the legislature clearly

---

15. Ferrell v. Fireman's Fund Insurance, 696 So.2d 569, 577 (La. 1997).

16. Coco, *supra* note 1, at 262 (citing FRANK L. MARAIST & THOMAS C. GALLIGAN, LOUISIANA TORT LAW § 15-2 at 101 (Mitchie 1996)). The importance in this distinction lies in what limits will apply in the policy.

17. Crabtree v. State Farm Ins. Co., 632 So.2d 736, 740 (La 1994) (quoting Shepard v. State Farm Mutual Automobile Ins. Co., 545 So.2d 624, 629 (La. App. 4th Cir.), writ denied, 550 So.2d 627, 628 (La. 1989)).

18. *Doty,* 251 So.3d 706, 719 (Gremillion, J., concurring).

19. *Id.* at 720.

20. *Id.* at 719.

21. *Id.* at 720.

22. *See* Granger v. United Home Health Care, 145 So.3d 1071 (La. App. 1st Cir. 2014) (nurse who witnessed her husband's overdose and was diagnosed with post-traumatic stress disorder was awarded $1,000).

23. *Doty,* 251 So.3d 706, 719 (Gremillion, J., stating that while he doubts Ms. Doty suffered severe enough mental anguish, jurisprudence has suggested

intended for article 2315.6 to compensate for immediate harm that is severe and apparent, but not to compensate for normal anguish and distress.[24]

Additionally, although the concurrence does not address this, one element required for an article 2315.6[25] *Lejeune* claim is that the person fit a certain class of persons. These classes of persons are logically allowed to collect because their damages will be large due to their love and affection for the victim. Therefore, plaintiff's subsequent suffering as she stayed with her husband should not have been considered, because she already fit the class of persons under article 2315.6, who are essentially presumed to have love and affection for the victim. The court did not need to consider further duplicative proof of her love and affection. Instead, the immediateness of the shock should have been the other consideration in deciding what amount to award.

III. DID *DOTY* CLARIFY THE NATURE OF THE *LEJEUNE* CLAIM?

A more glaring issue in this case is the categorization of *Lejeune* claims as physical bodily injury under the policy, as well as the implications on the categorization of loss-of-consortium claims. Article 2315.6(A) states that: "The following persons who view an event causing injury to another person, or who come upon the scene thereafter, may recover for mental anguish or distress that they suffer *as a result of* the other person's injury."[26] In reading this *in pari materia* with the language of the policy in *Doty*, it seems as though the *Lejeune* damages

---

that psychological diagnosis is not dispositive. Given the abuse of discretion standard, he agrees with the court in this respect) (also citing Dickerson v. Lafferty, 750 So.2d 432, where a child who witnessed accident was not diagnosed with any mental illness, phobia, or other disorder).

24. *Id.* at 717.

25. LA CIV. CODE ANN. art. 2315.6 (2019) allows recovery for:
(1) The spouse, child or children, and grandchild or grandchildren of the injured person, or either the spouse, the child or children, or the grandchild or grandchildren of the injured person.
(2) The father and mother of the injured person, or either of them.
(3) The brothers and sisters of the injured person or any of them.
(4) The grandfather and grandmother of the injured person, or either of them.

26. *Id.* (emphasis added).

would constitute damages that "result from" the damages sustained by one person in an accident. Thus, it would be logical to conclude from strict statutory construction that *Lejeune* claims are ones that would be subject to a single-person limit, and the plaintiff in *Doty* would have been limited in recovery to the single-person limit, because of the "resulting from" language. Further, article 2315.6 defines *Lejeune* claims as mental-anguish claims, which are technically not "physical bodily injuries" from a strict definition standpoint. The policy in this case defined bodily injury as "a physical bodily injury to a person and sickness, disease, or death that results from it."

However, relying on previous case law, the *Doty* court ruled that the *Lejeune* claim was its own separate bodily injury subject to the per-accident limit.[27] The confusion on this issue is emphasized in Judge Gremillion's concurrence, in which he dissents from the holding that the failure to pay was arbitrary and capricious: "State Farm should not be punished for contesting coverage in this case, given the 'evolving' case law in this area."[28]

A. Are Lejeune Claims Distinct due to "Temporal Proximity" to the Accident, Physical Nature, or Both?

Legal scholars have articulated that there is a distinction between *Lejeune* claims and loss-of-consortium claims because there exists "an *independent* duty to protect a plaintiff from mental

27. *Doty,* 251 So.3d 706 (citing to Crabtree, 632 So.2d 736). The court relies on the holding in Crabree, in which a Lejeune claim was subject to the per-accident limit in part due to the ambiguities in the policy. Interestingly, Justice Victory dissents in Hill v. Shelter Ins. Co., 935 So.2d 691, 696 (La. 2006) for the same reasons given above. He states that he would overrule Crabtree, because the policy clearly defines "bodily injury" to one person to include *all injury and damages to others* resulting from this bodily injury. Regardless of whether the mental anguish as defined by Crabtree is its own separate injury, it is still included. He reasons that the Crabtree court ignores the word "all." Considering Doty's definition of bodily injury is physical bodily injury and all sickness, disease, or death that results in it, I would agree with this logic.

28. *Id.* at 724.

anguish damages occasioned by the injury to a third person."[29] Louisiana courts, however, have resolved the issue based on whether the language of the policy is ambiguous, on the proximity to the accident, and on the physical nature of a *Lejeune* claim.[30] In *Crabtree,* the primary case upon which *Doty* relies,[31] the court held that plaintiff's *Lejeune* claim was a bodily injury that was subject to the per-accident limit in the policy because "bodily injury" was vaguely defined.[32] The court utilized the standard three-step approach for analyzing an insurance policy:

> (1) if the words of the policy are clear and explicit and lead to no absurd consequences, no further interpretation of the policy is necessary; (2) an insurance policy should not be interpreted in an unreasonable or strained manner so as to enlarge or restrict its provisions beyond what is reasonably contemplated by its terms or so as to achieve an absurd conclusion; and (3) the policy should be construed as a whole and one portion thereof should not be construed separately at the expense of disregarding the other.[33] If after applying the other general rules of construction an ambiguity remains, the ambiguous provision is to be construed against the insurer and in favor of the insured.[34]

Crabtree concluded that the mental anguish of a *Lejeune* claim was a bodily injury under the policy, in part because the limiting word "physical" was not included.[35] However, the court contradicts itself in dicta when it states that the essence of the *Lejeune* tort claim is shock, which can manifest itself physically.[36] Further, "there is no bright-line distinction between 'physical' and 'mental' injuries, either in medicine or law."[37] Thus, the presence of the word "physical" should not

---

29. Coco, *supra* note 1, at 269 (citing Lejeune v. Rayne Branch Hosp., 556 So.2d 559 (La. 1990)).
30. *See Crabtree*, 632 So.2d 736, *supra* note 17.
31. *See* Smith v. Thomas, 214 So.3d 945 (La. App. 2d Cir. 2017). Doty also relies upon Smith due to the nearly identical language, but Smith also relies on Crabtree.
32. *Crabtree*, 632 So.2d 736, *supra* note 17.
33. *Id*. at 741.
34. *Id.*
35. *Id*. at 744.
36. *Id*.
37. *Id*. at 475.

be relevant. Yet, it is stressed repeatedly.[38] The question remains: is physical manifestation a method of proving shock, or is it part and parcel of the claim?

The court in *Crabtree* envisioned a scenario where absurd consequences could have resulted had they ruled the other way:

> Under State Farm's construction, all injuries including *bodily* injuries which 'result from' another's bodily injury would be subject to the single per person limit while all other bodily injuries would be covered under the aggregate per accident limit. Thus, if an oncoming car hit Mr. Crabtree while he was driving with Mrs. Crabtree, and the injury to him caused him to drive off the road and hit a tree resulting in external, physical injury to Mrs. Crabtree, the latter's injury, under State Farm's interpretation, would 'result from' the former's injury and therefore fall under the single bodily injury limit.[39]

Finally, the strongest argument the court makes is that the plaintiff in *Crabtree* was injured in the same accident as her husband, the tort victim.[40] Thus, *Crabtree* reached its conclusion for three reasons: (1) the vagueness of the term "bodily injury," (2) the "absurd" consequences resulting from this vagueness had they ruled for State Farm, and (3) mental anguish could be its own bodily injury given the policy language.[41] As noted in *Smith*, the discussion in *Crabtree* suggests that the Supreme Court is not prepared to rule that Lejeune claims are or are not derivative.[42]

Doty is distinguishable from *Crabtree* because it *did* include the limiting word "physical," and yet this was not taken as dispositive. Further, *Doty*'s policy language appears to be far less vague than the language discussed in *Crabtree*.[43] *Doty* emphasized the "temporal proximity" to the event and allowed for recovery under the per-accident

38. *Id*.
39. *Id*. at 742.
40. *Id*. at 745.
41. *Id*. at 742.
42. Smith v. Thomas, 214 So.2d 945, 967, *supra* note 31.
43. *See Crabtree*, 632 So.2d 736, 739.

limit,[44] citing *Smith*. The court further reasoned that *Lejeune* claims can constitute shock rising to the level of physical injury, citing dicta from *Crabtree*. *Doty* appears to seize on *Smith* and *Crabtree* dicta and hold that *Lejeune* is a *physical* bodily injury that is *not derivative* of the initial tort victim's injury, despite *Crabtree*'s suggestion that State Farm could have changed the outcome by including this same word.

B. How Dicta on Lejeune Claims Cases Have Affected Loss of Consortium

The Supreme Court in *Hill* held that the wrongful death claims of several adult children of the deceased could be subject to *separate* per-person limits *for each child*. The policy language was identical to *Crabtree*, and the limiting word "physical" was not used.[45] The court stated that the "test" to determine if their injuries were each their own separate bodily injuries turned on the severe and debilitating nature of the mental anguish.[46] The *Hill*[47] court did not discuss the requirement that in order to be subject to the per-accident aggregate limits, the bodily injury had to occur "in the same accident."[48] Nor did they discuss whether the loss of consortium claim was derivative in nature. This standard is arguably not compatible with any previously-discussed cases, particularly when analyzing dicta.

In *Hebert*, State Farm altered the language to "physical." The Supreme Court ruled that the wrongful death claims of the plaintiff, who was not near the accident, were subject to the single per-person limit on the injured relative, and not to the aggregate per-accident limit. This was for two reasons: (1) the policy was very clear and specific, and (2) the difference between *Lejeune* claims and wrongful death concerned temporal proximity to the accident and the fact

44. *Doty*, 251 So.3d 706, 710.
45. *Hill*, 935 So.2d 691, 694.
46. *Id*. at 695.
47. *Id*. at 694.
48. Hebert v. Webre, 982 So.2d 770, 776 (La. 2008) (distinguishing from Hill and Crabtree by stating the policy language was clearer).

that *Lejeune* claims seem to be considered more physical in nature. The court distinguished its holding from *Crabtree* as follows:

> (1) 'bodily injury' now means 'physical bodily injury;' and (2) 'all emotional distress resulting from this bodily injury sustained by other persons who do not sustain bodily injury' is expressly included in 'all injury and damages to others resulting from this bodily injury.' As we explained in *Hill,* the type of injuries suffered by a wrongful death plaintiff are emotional distress type injuries.[49]

Thus, evolving jurisprudence seems to suggest that regardless of whether a policy is ambiguous, *Lejeune* claims are distinguished from loss of consortium because (1) they are more physical and (2) they occur in the same accident. Therefore, they are not derivative. Problems arise when the policy is ambiguous, particularly with respect to wrongful-death claims, because *Hill* suggested that vague policy language might mean that even a wrongful death claim is not derivative of one victim's injury. This is problematic when considering the fact that this body of case law reasoning hinges on distinguishing the two.[50]

It is clear that the Supreme Court is concerned with the policy implications in limiting a *Lejeune* plaintiff's claim, as they are serious, debilitating emotional distress claims.[51] Further, the rules of interpretation call for any ambiguities in the policy to be construed in the claimant's favor, and the court will often stretch to seek coverage. However, confusion has arisen because the court has not squarely addressed whether the *Lejeune* claim is derivative, while

---

49. *Id*. at 776.

50. *See, e.g.*, *Crabtree*, 632 So.2d 736, *see also* Smith v. Thomas, 214 So.3d 945; Doty v. GoAuto 251 So.3d 706 (this body of case law spends considerable time distinguishing between *Lejeune* claims and loss of consortium based upon the physical nature *and* the temporal proximity. However, the Supreme Court suggests in Hill that where the policy is vague, loss of consortium might also rise to level of physical injury that Lejeune does).

51. *See* Hebert v. Webre, 982 So.2d 770, 777 (explaining "grave policy concerns" about fairness and public policy implications of the policy language that limited separate and independent causes of action to a single "per person" limit. However, it ultimately distinguishes the policy at issue from Crabtree and Hill because it is much more specific).

the loss of consortium claim is not. They also imply that *Lejeune* claims, which are a result of shock, are more physical than loss of consortium, although both concern emotional distress. Finally, to allow an inherently subjective "test" to govern whether the loss of consortium claim is severe enough to rise to the level of bodily injury does not fall in line with the former jurisprudential reasoning regarding *Lejeune* claims, and may preclude some from recovering if they outwardly manifest grief in a different manner. After *Doty v. GoAuto*, these issues call for either legislative or jurisprudential clarification so that claimants are clear on what they are entitled to, and insurance companies will not be scrambling to adjust policy language each time a new case is decided.