Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-16-00773-CV

FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY,
Appellant

v.

Jennifer L. **ZUNIGA** and Janet Northrup as Trustee for the Bankruptcy Estate of Christopher J. Medina,
Appellees

From the 73rd Judicial District Court, Bexar County, Texas
Trial Court No. 2014-CI-11445
Honorable Cathleen M. Stryker, Judge Presiding

OPINION ON MOTIONS FOR REHEARING

Opinion by: Patricia O. Alvarez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: November 15, 2017

AFFIRMED IN PART, REVERSED IN PART AND REMANDED

On September 13, 2017, we issued an opinion and judgment in this appeal. Thereafter, Appellant Farmers Texas County Mutual Insurance Company and Appellees Jennifer L. Zuniga and Janet S. Northrup, as trustee for the bankruptcy estate of Christopher J. Medina, filed motions for rehearing.[1] Having considered the motions, we deny both, but we withdraw our September 13,

[1] The day before Appellees filed their motion, an amicus curiae brief was filed supporting Appellees' position.

2017 opinion and judgment and substitute this opinion and judgment in their stead to clarify the reasons for our decision.

In this automobile-pedestrian accident case, after all other issues and claims were severed, the parties narrowed their dispute in this cause to a single issue: whether the insurance policy that promises to "pay damages for bodily injury or property damage" covers punitive damages assessed against Farmers's insured. The trial court concluded it did; we disagree. We hold the policy's plain language does not cover punitive damages, and we remand the cause to the trial court.

BACKGROUND

As Jennifer Zuniga was walking on the sidewalk near O'Connor High School, the vehicle Christopher J. Medina was driving struck Zuniga from behind and injured her. Zuniga sued Medina for negligence and gross negligence, and the jury found Medina negligent and grossly negligent. It awarded Zuniga $93,244.91 in actual damages, $75,000.00 in punitive damages, pre- and post-judgment interest, and costs of court; the trial court rendered judgment on the verdict.

The vehicle Medina was driving was insured by Farmers, and Medina was a "covered person" under the insurance policy. Farmers paid Zuniga all the amounts awarded in the judgment except for the punitive damages. Farmers filed a petition for declaratory relief against Medina and Zuniga in Harris County seeking a declaration that the punitive damages are not covered by the policy or, alternatively, Texas public policy prohibits coverage for the punitive damages.

Zuniga moved to transfer venue from Harris County to Bexar County, and the Harris County trial court granted Zuniga's motion and transferred the case to Bexar County. In Bexar County, Zuniga filed an original petition seeking to recover the punitive damages from Farmers. Under a turnover order, Zuniga was assigned all of Medina's rights against Farmers, and based on those assignments, she asserted additional claims against Farmers. Zuniga filed a motion to consolidate her lawsuit, which was pending in the 73rd Judicial District Court of Bexar County,

with the case transferred from Harris County to the 166th Judicial District Court of Bexar County. The trial court granted the motion, and the cases were consolidated.

Farmers sought a declaration that the insurance policy does not cover punitive damages, Farmers "has no further duty to defend or indemnify Medina; that Zuniga is not entitled to recover or collect any additional monies from Farmers; and, that Farmers has no further duty with respect to the Final Judgment" in Zuniga's suit against Medina. Farmers moved for traditional summary judgment, but the trial court denied Farmers's motion. Later, Zuniga and Northrup sought a declaration that the policy covers punitive damages, and they moved for summary judgment. Farmers filed a response, incorporated its earlier summary judgment evidence by reference, requested some declaratory relief, but prayed only that Zuniga and Northrup's motion be denied. The trial court granted Zuniga and Northrup's motion "insofar that it seeks a determination that the punitive damages . . . are covered under the automobile policy in question," denied all of Farmers's requested declaratory relief, and severed all other issues and claims into a separate cause. In the original cause, Farmers appeals complaining that the policy did not cover punitive damages, the motion to transfer venue should have been denied, and on rehearing, that this court should render rather than remand. We begin with the issue of venue.

VENUE

Farmers challenges the order granting Zuniga and Northrup's motion to transfer venue of Farmers's lawsuit from Harris County to Bexar County. In her motion, Zuniga[2] asserted convenience of the parties as a ground for transferring venue. "A court's ruling or decision to grant or deny a transfer [for the convenience of the parties] is not grounds for appeal or mandamus

[2] For brevity and because their positions are aligned, from this point in the opinion until the conclusion, we use Zuniga to refer to both Zuniga and Northrup.

and is not reversible error." TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(c) (West 2017); *accord Garza v. Garcia*, 137 S.W.3d 36, 39 (Tex. 2004). We overrule Farmers's second issue.

COVERAGE FOR PUNITIVE DAMAGES

In its first issue, Farmers argues that its agreement under the policy to "pay damages for bodily injury" does not cover punitive damages, and even if it did, public policy bars the policy from covering punitive damages. Zuniga, on the other hand, contends that "damages for bodily injury" includes punitive damages because other courts have concluded that the average insured would interpret damages to include punitive damages. Before we address the parties' arguments, we briefly recite the standard of review and the applicable law.

A. Standard of Review

We review a summary judgment de novo. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009) (citing *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003)). To prevail on a traditional motion, the movant must show "there is no genuine issue as to any material fact and the [movant] is entitled to judgment as a matter of law." TEX. R. CIV. P. 166a(c); *accord Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). If there are no disputed material facts, we decide the question of law presented. *See* TEX. R. CIV. P. 166a(c); *Havlen v. McDougall*, 22 S.W.3d 343, 345 (Tex. 2000) ("Because the parties do not dispute the relevant facts, this is a proper case for summary judgment.").

"[B]efore a court of appeals may reverse summary judgment for one party and render judgment for the other party, both parties must ordinarily have sought final judgment relief in their cross motions for summary judgment." *CU Lloyd's of Tex. v. Feldman*, 977 S.W.2d 568, 569 (Tex. 1998); *accord Bowman v. Lumberton Indep. Sch. Dist.*, 801 S.W.2d 883, 889 (Tex. 1990) ("For an appellate court to reverse summary judgment for one set of parties and render judgment for the others, the filing of cross-motions for summary judgment would ordinarily require all

parties to seek final judgment relief by their motions."); *Morales v. Morales*, 195 S.W.3d 188, 192 (Tex. App.—San Antonio 2006, pet. denied) (citing *Feldman*) ("In general, this court is only entitled to render judgment in favor of the losing party in a summary judgment context if both parties move for summary judgment.").

B. Policy Construction

1. Plain Language

"We interpret insurance policies under the well-established rules of contract construction." *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 892 (Tex. 2017); *accord Gilbert Tex. Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010). Our goal in construing the contract "is to ascertain the parties' true intent as expressed by the plain language they used." *See Primo*, 512 S.W.3d at 893; *accord Gilbert*, 327 S.W.3d at 126. We construe the contract as a whole; we read all its terms and provisions in context and "in accordance with the plain meaning of its terms." *See Primo*, 512 S.W.3d at 892; *RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 118 (Tex. 2015) ("[W]e give words and phrases their ordinary and generally accepted meaning, reading them in context and in light of the rules of grammar and common usage."); *Gilbert*, 327 S.W.3d at 126 ("We examine the entire agreement and seek to harmonize and give effect to all provisions so that none will be meaningless."). "[W]e look at the language of the policy because we presume parties intend what the words of their contract say." *Gilbert*, 327 S.W.3d at 126; *accord Primo*, 512 S.W.3d at 893. "[The] contract's plain language controls, not 'what one side or the other alleges they intended to say but did not.'" *Primo*, 512 S.W.3d at 893 (quoting *Gilbert*, 327 S.W.3d at 127). Our responsibility is "to honor the parties' agreement and not remake their contract by reading additional provisions into it." *See Gilbert*, 327 S.W.3d at 126. For example, the "[a]bsence of an exclusion cannot confer coverage." *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124

S.W.3d 154, 160 (Tex. 2003); *accord Howard v. Burlington Ins. Co.*, 347 S.W.3d 783, 793 (Tex. App.—Dallas 2011, no pet.).

2. Ambiguity

"If policy language is worded so that it can be given a definite or certain legal meaning, it is not ambiguous and we construe it as a matter of law." *Schaefer*, 124 S.W.3d at 157; *accord Primo*, 512 S.W.3d at 893. "An ambiguity does not arise merely because a party offers an alternative conflicting interpretation, but only when the contract is actually 'susceptible to two or more reasonable interpretations.'" *Primo*, 512 S.W.3d at 893 (quoting *Schaefer*, 124 S.W.3d at 157). "[I]f both constructions present reasonable interpretations of the policy's language, we must conclude that the policy is ambiguous." *RSUI*, 466 S.W.3d at 118.

3. When Construction Must Favor Insured

If a policy is ambiguous, "'we must resolve the uncertainty by adopting the construction that most favors the insured.'" *Id.* (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Hudson Energy Co., Inc.*, 811 S.W.2d 552, 555 (Tex. 1991)). If the construction favoring the insured is not unreasonable, we will adopt it. *See Gilbert*, 327 S.W.3d at 133; *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 746 (Tex. 2006). But "'where the language is plain and unambiguous, courts must enforce the contract as made by the parties, and cannot make a new contract for them, nor change that which they have made under the guise of construction.'" *Fiess*, 202 S.W.3d at 753 (quoting *E. Tex. Fire Ins. Co. v. Kempner*, 27 S.W. 122, 122 (Tex. 1894)).

4. Public Policy

If a policy's plain language covers punitive damages, we must also "determine whether the public policy of Texas allows or prohibits coverage in the circumstances of the underlying suit." *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 655 (Tex. 2008) (setting out a two-part test); *accord Laine v. Farmers Ins. Exch.*, 325 S.W.3d 661, 665 (Tex. App.—Houston

[1st Dist.] 2010, pet. denied). But if the plain language does not cover punitive damages, we need not reach the public policy question. *See Fairfield*, 246 S.W.3d at 655.

C. Farmers Insurance Policy

The policy Medina was covered under is a contract titled "Texas Personal Auto Policy." The Policy provisions most relevant to the coverage question raised by the parties are the Declarations and Part A – Liability Coverage provisions. Under Declarations, in the Definitions section, the Policy defines a number of terms, but "damages," "bodily injury," and "damages for bodily injury" are not defined. Under Part A – Liability Coverage, the Insuring Agreement defines the coverage under the Policy. The relevant excerpts follow.

> **Insuring Agreement**
>
> A. We will pay damages for bodily injury or property damage for which any **covered person** becomes legally responsible because of an auto accident. Property damage includes loss of use of the damaged property. Damages include prejudgment interest awarded against the **covered person**. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.
>
> . . . .
>
> **Limit of Liability**
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> A. If separate limits of liability for bodily injury and property damage liability are shown in the Declarations for this coverage the limit of liability for "each person" for bodily injury liability is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one auto accident. Subject to this limit for "each person," the limit of liability shown in the Declarations for "each accident" for bodily injury liability is our maximum limit of liability for all damages for bodily injury resulting from any one auto accident. The limit of liability shown in the Declarations for "each accident" for property damage liability is our maximum limit of liability for all damages to all property resulting from any one auto accident.

It is undisputed that Medina is a covered person and is legally responsible for the punitive damages. The remaining question is whether punitive damages are included in damages for bodily injury.

D. Plain Language Analysis

Under the Policy, Farmers agreed to "pay damages for bodily injury." As we stated above, the Policy does not define the phrase "damages for bodily injury." "Terms that are not defined in a policy are given their generally accepted or commonly understood meaning." *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1, 8 (Tex. 2007); *see also Gilbert*, 327 S.W.3d at 127 (using dictionary definitions as the source for the generally accepted or commonly understood meaning of words). Thus, we apply "the plain meaning of [the policy's] terms" to construe the Policy. *See Primo*, 512 S.W.3d at 892; *Gilbert*, 327 S.W.3d at 126.

The plain meaning of "bodily injury" is physical damage to a human being's body. *See Zurich Am. Ins. Co. v. Nokia, Inc.*, 268 S.W.3d 487, 492 (Tex. 2008) (defining bodily injury in the context of a particular insurance policy as something that "unambiguously requires an injury to the physical structure of the human body" (quoting *Cowan*, 945 S.W.2d at 823)); *see also Injury: Bodily Injury*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining bodily injury as "[p]hysical damage to a person's body").

The plain meaning of "damages" is a sum of money to compensate for an injury. *See Damages*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining damages as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury"); 1 SHORTER OXFORD ENGLISH DICTIONARY 599 (6th ed. 2007) (defining damage as a "sum of money claimed or awarded in compensation for loss or injury"); *see also Horizon Health Corp. v. Acadia Healthcare Co., Inc.*, 520 S.W.3d 848, 873 (Tex. 2017) (distinguishing compensatory and exemplary damages by noting that "compensatory and exemplary damages serve different purposes; compensatory damages redress concrete losses caused by the defendant's wrongful conduct, while exemplary damages are aimed at deterrence and retribution").

The plain meaning of the word "for" is "in exchange as the equivalent of." *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 886 (Philip Babcock Gove et al. eds., 1981); 1 SHORTER OXFORD ENGLISH DICTIONARY 1010 (6th ed. 2007) (defining for as "[i]ntroducing that which something is (to be) exchanged; in exchange for"). Thus, the Policy's promise to pay damages for bodily injury was Farmers's commitment to pay a sum of money as compensation in exchange as the equivalent of the physical damage to the injured person's body.

E. Considering All of the Policy's Provisions Together

We consider the Policy's promise to pay damages in the context of the entire agreement, including the insuring agreement, the limit of liability section, and the declarations. *See Gilbert*, 327 S.W.3d at 126 ("We examine the entire agreement and seek to harmonize and give effect to all provisions so that none will be meaningless."); *accord RSUI*, 466 S.W.3d at 118.

The Policy's insuring agreement creates and circumscribes the scope of the coverage.[3] *See Lamar Homes*, 242 S.W.3d at 10 (noting the "insuring agreement grants the insured broad coverage for property damage and bodily injury liability, which is then narrowed by exclusions"); *Gemini Ins. Co. v. Drilling Risk Mgmt., Inc.*, 513 S.W.3d 15, 26 (Tex. App.—San Antonio 2016, pet. denied) (noting that an insurance "[p]olicy is a contract of indemnity whose scope is limited to that expressly set forth in the insurance agreement").

On the other hand, the Policy's limit of liability section sets a maximum benefit payable under the specific type of coverage provided for in the insuring agreement. *See Jankowiak v. Allstate Prop. & Cas. Ins. Co.*, 201 S.W.3d 200, 206 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (recognizing that the limit of liability language provided "a maximum limit of recovery for

[3] We recognize that conditions, exclusions, and endorsements may narrow the effective coverage. *See, e.g.*, *Gastar Expl. Ltd. v. U.S. Specialty Ins. Co.*, 412 S.W.3d 577, 583 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (noting that a condition was "effectively an exclusion because it narrows the coverage originally created by the Insuring Agreement").

each specific coverage"); *Am. States Ins. Co. of Tex. v. Arnold*, 930 S.W.2d 196, 200 (Tex. App.—Dallas 1996, writ denied) (explaining that the limit of liability applied to the coverage defined in the insuring agreement).

The Policy's declarations state three separate coverage amounts: one for bodily injury for each person, one for bodily injury for each accident, and one for property damage. The Policy's Limit of Liability language sets limits for each of the three separate coverage amounts. For the two bodily injury coverages, it limits liability to "all damages for bodily injury" in the context of either each person or each accident.

By its plain language, the Insuring Agreement circumscribes the scope of the coverage, and the Limit of Liability section establishes a maximum limit of liability for each coverage type; the Limit of Liability section does not expand the scope of the coverage.[4]

F. Policy is Unambiguous

The Policy's plain language agreeing to pay damages for bodily injury, when read in the context of all the Policy's terms and provisions, has only one reasonable interpretation: a promise to pay a sum of money as compensation for the bodily injuries sustained by an injured person. *See RSUI*, 466 S.W.3d at 118; *Schaefer*, 124 S.W.3d at 157. The Policy's plain language has "a clear and definite legal meaning." *See Primo*, 512 S.W.3d at 893; *accord Schaefer*, 124 S.W.3d at 157. There are not two reasonable interpretations of the policy's language that would require us to

[4] Assuming *arguendo* that Zuniga is not raising a new argument, in her motion for rehearing Zuniga insists that the Policy covers punitive damages because the Limit of Liability section includes "liability for all damages for bodily injury sustained by any one person in any one auto accident." Zuniga emphasizes the "all damages for bodily injury" portion of the phrase as broad language that covers punitive damages. She cites a North Carolina Supreme Court case for support, but that decision was based on a policy that required the insurer to "pay on behalf of the Insured *all sums which the Insured shall become legally obligated to pay* as damages." *See Mazza v. Med. Mut. Ins. Co. of N. Carolina*, 319 S.E.2d 217, 219 (N.C. 1984) (emphasis added). There is no "all sums" language in the Policy. Zuniga's argument that the "all damages for bodily injury" language in the Limit of Liability section has the same effect on the scope of coverage as the "all sums which the Insured shall become legally obligated to pay as damages" language in the other policies' insuring agreement sections is not persuasive.

resolve the uncertainty in favor of the insured. *See RSUI*, 466 S.W.3d at 118. There is only one reasonable interpretation, the Policy is not ambiguous, and we must enforce it as written. *See Fiess*, 202 S.W.3d at 753.

G. Zuniga's Arguments for Punitive Damages Coverage

Zuniga insists that the Policy's promise to pay damages for bodily injury covers punitive damages because of the Policy's coverage language and its failure to expressly exclude coverage for punitive damages.

1. Coverage Language

Zuniga argues that the Policy uses language that other courts have held includes punitive damages. Zuniga relies primarily on Manriquez, which considered comparable language. *See Manriquez v. Mid-Century Ins. Co. of Tex.*, 779 S.W.2d 482, 483 (Tex. App.—El Paso 1989, writ denied), *disapproved of in part on other grounds by Trinity Universal Ins. Co. v. Cowan*, 945 S.W.2d 819 (Tex. 1997).

In *Manriquez*, the policy's insuring agreement promised to "pay all damages for bodily injury," the same language used in the Farmers policy. *Id.* The *Manriquez* court cited cases from other courts that held the policies in their cases covered punitive damages for gross negligence. *Id.* at 484 (citing *Am. Home Assurance Co. v. Safway Steel Prods. Co.*, 743 S.W.2d 693 (Tex. App.—Austin 1987, writ denied); *Home Indem. Co. v. Tyler*, 522 S.W.2d 594 (Tex. App.—Houston [14th Dist.] 1975, writ ref'd n.r.e.), and *Dairyland Cty. Mut. Ins. Co. v. Wallgren*, 477 S.W.2d 341 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.e.)). The *Manriquez* court noted the policies in the cited cases provided for the payment of "all sums which the insured shall become legally obligated to pay as damages because of . . . bodily injury," and also noted that the courts deciding those cases "emphasize the words 'all sums' as being the important inclusive considerations." *Id.*

Although the *Manriquez* court acknowledged the absence of the phrase "all sums" in the policy it construed, *see id.*, it effectively added the all sums language to the policy; that we cannot do. *See RSUI*, 466 S.W.3d at 126 ("[W]e cannot add words to the policy's language unless the context requires us to do so."). There is no "all sums which the insured shall become legally obligated to pay as damages" language in the Policy, and we will not add words to the Policy that the parties did not include. *See Primo*, 512 S.W.3d at 893 ("[The] contract's plain language controls, not 'what one side or the other alleges they intended to say but did not.'" (quoting *Gilbert*, 327 S.W.3d at 127)); *Schaefer*, 124 S.W.3d at 162 ("[W]e may neither rewrite the parties' contract nor add to its language."). We reject *Manriquez*'s reasoning, and we do not apply it here.

2. No Exclusion for Punitive Damages

Zuniga also argues that the Policy covers punitive damages because it does not expressly exclude punitive damages. But the "[a]bsence of an exclusion cannot confer coverage." *Schaefer*, 124 S.W.3d at 160; *accord Howard*, 347 S.W.3d at 793. Zuniga's argument is unavailing.

H. Public Policy Argument

Farmers argues that the Policy's plain language does not cover punitive damages, but in the alternative, that public policy bars punitive damages in this case. Because we have determined that the Policy does not cover punitive damages, we need not reach the public policy question. *See Fairfield*, 246 S.W.3d at 655.

RENDER OR REMAND

In its brief and motion for rehearing, Farmers asked this court to hold that the Policy does not cover punitive damages and render judgment in its favor because it filed a motion for summary judgment. Although we hold that the Policy does not cover punitive damages, and that decision is binding on the trial court, we may not render judgment for Farmers because the trial court was not presented with cross-motions for summary judgment. *See CU Lloyd's of Tex. v. Feldman*, 977

S.W.2d 568, 569 (Tex. 1998); *Morales v. Morales*, 195 S.W.3d 188, 192 (Tex. App.—San Antonio 2006, pet. denied).

Farmers filed its motion for summary judgment in October 2015, its supplemental motion for summary judgment in January 2016, and its first amended motion for summary judgment in April 2016. *See, e.g., KSWO Television Co., Inc. v. KFDA Operating Co., LLC*, 442 S.W.3d 695, 699 (Tex. App.—Dallas 2014, no pet.) ("[A]n amended motion for summary judgment supersedes and supplants the previous motion, which may no longer be considered."). Zuniga filed her response in May. In June, the trial court denied Farmers's motion. In August, Zuniga filed her motion for summary judgment; it asked the court to declare that the Policy covers punitive damages and prayed that the court render judgment for her.

Farmers did not file another motion for summary judgment or ask the trial court to reconsider its earlier denial of Farmers's first amended motion for summary judgment. Instead, in its response to Zuniga's motion, Farmers requested declaratory relief, incorporated by reference the summary judgment evidence from its first amended motion, repeated its arguments against the Policy covering punitive damages, and concluded by stating "Farmers prays that summary judgment be denied."

The trial court was not presented with cross-motions for summary judgment. *See Feldman*, 977 S.W.2d at 569; *Morales*, 195 S.W.3d at 192; *see also Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009) (rendering judgment on summary judgment motions that were considered together). It ruled on the only motion for summary judgment before it—Zuniga's—and we may not render judgment for Farmers. *See Feldman*, 977 S.W.2d at 569; *Morales*, 195 S.W.3d at 192. We may only remand the cause to the trial court for further proceedings. *See Dacus v. Parker*, 466 S.W.3d 820, 829 (Tex. 2015) (remanding the cause because only the appellee moved for summary judgment); *City of Houston v. Dacus*, No. 14-16-00123-CV,

2017 WL 536647, at *1 (Tex. App.—Houston [14th Dist.] Feb. 9, 2017, pet. denied) (mem. op.) (noting that the Texas Supreme Court remanded the cause because a cross-motion for summary judgment was not filed).

CONCLUSION

Because Zuniga and Northrup cited convenience of the parties as a basis to transfer venue, we affirm the Houston trial court's order transferring venue to Bexar County.

Although the Bexar County trial court concluded the automobile policy in question covered punitive damages, we disagree. Unlike other policies that contain a promise "to pay all sums which the insured shall become legally obligated to pay as damages because of bodily injury," the Farmers policy promises only to "pay damages for bodily injury." Based on the Policy's plain language, we hold that the Policy is not ambiguous and that it does not cover punitive damages.

We reverse the Bexar County trial court's judgment and remand this cause to the trial court for further proceedings consistent with this opinion.

Patricia O. Alvarez, Justice