

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 17, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-1731
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-2024

**IN COURT OF APPEALS
DISTRICT II**

**JEFF SCHMIDT AND MARLENE SCHMIDT,
PARENTS OF LIA ERIN SCHMIDT,**

PLAINTIFFS-RESPONDENTS,

v.

WEST BEND MUTUAL INSURANCE COMPANY,

DEFENDANT-APPELLANT,

JEREMY J. MOUNGEY,

DEFENDANT.

APPEAL from a judgment of the circuit court for Waukesha County:
DONALD J. HASSIN, Judge. *Reversed and cause remanded.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. West Bend Mutual Insurance Company appeals from an adverse insurance coverage determination. We reverse for the reasons discussed below.

¶2 The facts relevant to this appeal are undisputed. Lia Schmidt was killed in an automobile accident witnessed by her parents, Jeff and Marlene Schmidt. The parents initiated a wrongful death suit in which they each claimed damages for negligent infliction of emotional distress. West Bend Mutual stipulated that the accident was caused by the negligence of its insured, Jeremy Moungey, and that the circumstances of the accident constituted negligent infliction of emotional distress, but it disputed the amount of coverage.

¶3 Moungey's insurance policy contained liability limits of \$300,000 per accident and \$100,000 per person, defined in relevant part as "all damages ... arising out of 'bodily injury' sustained by any one person." The Schmidts claimed, and the trial court concluded, that the policy permitted each parent to recover \$100,000 for negligent infliction of emotional distress, in addition to the \$100,000 which the insurance company paid Lia's estate, because the parents' emotional distress qualified as separate bodily injuries. West Bend Mutual appeals, contending that its liability is limited to \$100,000 because the per person limit for bodily injury to Lia encompassed any emotional injuries to her parents which arose out of her injury.

¶4 In the recently released case *Mullen v. Walczak*, 2003 WI 75, ___ Wis. 2d ___, ___ N.W.2d ___, the Wisconsin Supreme Court determined that emotional distress suffered solely as a result of witnessing physical injury to another was covered by the per-person limit of the person physically injured. *Id.*, ¶¶20, 22, and 24. We see no significant distinction between the per-person policy

language at issue in *Mullen* and that in Moungey's policy, and conclude that *Mullen* controls the outcome here. Accordingly, the trial court's coverage decision is reversed, and the judgment should be reduced to \$100,000, as stipulated by the parties.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

