

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 07-10733  
\_\_\_\_\_

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT February 20, 2008 THOMAS K. KAHN CLERK</p>
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D. C. Docket No. 04-61156 CV-ASG

SERVICE CORPORATION INTERNATIONAL,  
SCI FUNERAL SERVICES OF FLORIDA, INC.,

Plaintiffs-Appellants,

versus

GREAT AMERICAN INSURANCE COMPANY,

Defendant-Appellee.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Florida  
\_\_\_\_\_

**(February 20, 2008)**

Before ANDERSON and BARKETT, Circuit Judges, and TRAGER\*, District  
Judge.

\_\_\_\_\_  
\*Honorable David G. Trager, United States District Judge for the Eastern District of  
New York, sitting by designation.

PER CURIAM:

After oral argument, and careful consideration, we conclude that the judgment of the district court is due to be affirmed. It is true that an insurance company is obligated to indemnify an insured under the following circumstances: where the insurance company has had notice and an opportunity to defend, but declined; and where the insured then settled a viable claim. Under such circumstances, the insurance company is obligated to pay the claim which was settled so long as the settlement was reasonable and so long as the plaintiff proves that the claim settled was a covered claim. However, after full discussion at oral argument, we conclude that the claims that were settled in this case were the claims of the one thousand or fewer members of the class who did suffer mental anguish resulting from their acquisition of knowledge that their own relatives' remains had been mishandled. We also conclude that the appellants conceded in the district court that the amount of such claims which were covered (i.e., occurred within the policy period) would total less than the \$30 million threshold before which the insurance company's excess coverage took effect.

We also conclude that the \$25 million paid by SCI as punitive damages in the settlement is not insurable.

For the foregoing reasons, the district court correctly concluded that the

insurance company owed no indemnity. The judgment of the district court is

AFFIRMED.<sup>1</sup>

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<sup>1</sup> Other arguments of appellants are rejected without need for further discussion.