

720 Fed.Appx. 412 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

PAUL EVERT'S RV COUNTRY, INC.; et al.,  
Plaintiffs-Appellants,

v.

UNIVERSAL UNDERWRITERS INSURANCE  
COMPANY, Defendant-Appellee,

v.

Aaron Lyon, Cross-defendant-Appellee.

No. 17-15730

Submitted April 13, 2018 San Francisco, California

Filed April 25, 2018

Appeal from the United States District Court for the Eastern District of California, [William B. Shubb](#), District Judge, Presiding\*, D.C. No. 1:15-cv-00124-WBS-SKO

#### Attorneys and Law Firms

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Before: [KLEINFELD](#), [W. FLETCHER](#), and [TALLMAN](#), Circuit Judges.

#### MEMORANDUM\*\*

Paul Evert's RV Country, Inc. sues its insurer, Universal Underwriters Insurance Company. In an underlying state

action brought against Evert's RV and defended by Universal, the court awarded punitive damages against three Evert's RV employees for willfully defaming a competitor. Evert's RV then filed this suit against Universal, alleging breach of contract and breach of the implied covenant of good faith and fair dealing. The parties stipulated below to the dismissal with prejudice of each of Evert's RV's claims against Universal, except for the indemnification claim based on the punitive damages award in the underlying action. The district court entered judgment in favor of \*413 Universal on that claim. We have jurisdiction under [28 U.S.C. § 1291](#) and affirm.

Under California law, "an insured may not shift to its insurance company, and ultimately to the public, the payment of punitive damages awarded in [a] third party lawsuit against the insured as a result of the insured's intentional, morally blameworthy behavior against the third party." [PPG Indus., Inc. v. Transamerica Ins. Co.](#), 20 Cal.4th 310, 84 Cal.Rptr.2d 455, 975 P.2d 652, 658 (1999). Allowing such recovery would violate California's "public policy against permitting liability for intentional wrongdoing to be offset or reduced by the negligence of another[.]" and it would "defeat the purposes of punitive damages which are to punish and deter the wrongdoer[.]" [Id.](#) The California Supreme Court's decision in [PPG](#) controls. It bars Evert's RV from obtaining indemnification from its insurer for the underlying award of punitive damages assessed against Evert's RV's employees for their morally blameworthy behavior.

To the extent Evert's RV seeks a separate punitive damages award against Universal for Universal's conduct in defending the underlying action, that claim is not before us. Evert's RV stipulated below to the dismissal with prejudice of each of its claims against Universal, preserving only its claim for indemnification by Universal of the punitive damages award against Evert's RV in the underlying action.

Appellants shall bear the costs of appeal. [See Fed. R. App. P. 39\(a\)\(2\)](#).

**AFFIRMED.**

#### All Citations

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Footnotes

- \* The panel unanimously concludes this case is suitable for decision without oral argument. See [Fed. R. App. P. 34\(a\)\(2\)](#).
- \*\* This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).

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