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Compromise and Settlement -- Insurance -- Liability Carrier's Settlement as a Bar to Insured's Suit

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The standard automobile liability insurance policy provides that the insurer shall defend any suit against the insured for personal injury or property damage caused by accident and arising out of the ownership, maintenance or use of the automobile. In addition the policy stipulates that the insurer may make such investigation and settlement of any claim or suit as it deems expedient. Two recent North Carolina decisions have limited the effect of such settlements[1] made by the insurance company.

In *Beauchamp v. Clark*,[2] an action for personal injuries, plaintiff, while driving his father's truck, collided with defendant's vehicle. Plaintiff protested and denied fault when his father's insurance company informed him that it intended to settle with defendant because its investigation had indicated that plaintiff was at fault. Insurer, nowithstanding, settled with defendant. Subsequently, in this action defendant pleaded the settlement in bar. The court held that in the absence of evidence that plaintiff ratified or assented to the settlement it could not bar his action because the insurer had no authority under the settlement provisions of the policy to compromise his cause of action. The court noted that plaintiff was not the policy-holder, that he was not aware of the policy or its provisions when he drove the truck, and that he had in no way assented to the settlement.

This decision left some doubt as to the effect of the settlement where the insured vehicle owner objected to, or was unaware of, the settlement. In *Lampley v. Bell*[3] plaintiff policy-holder first learned of his liability carrier's settlement with defendant from the allegations of defendant's answer. Plaintiff had told his adjuster, prior to the settlement, that he intended to pursue his claim against the other driver. The trial court held that the insurance policy constituted a binding contract between plaintiff and his insurer which gave the insurer the right and power to settle with defendant on behalf of the plaintiff and that plaintiff was bound thereby. The North Carolina Supreme Court reversed, holding that although plaintiff was a party to the insurance contract, the insurer had no more authority to compromise his claims against the defendant than the insurance carrier had to settle on behalf of the plaintiff in the *Beauchamp* case.

[1] "Settlement" as used in the text refers to a settlement made by an insurance company under an automobile liability policy. "A completed compromise and settlement fairly made between persons legally competent to contract and having the authority to do so with respect to the subject matter of the compromise, and supported by sufficient consideration, operates as a merger of, and bars all right to recover on, the claim or right of action included therein, as would a judgment duly entered between said persons." Beauchamp v. Clark, 250 N.C. 132, 139, 108 S.E.2d 535, 539 (1959).

[2] 250 N.C. 132, 108 S.E.2d 535 (1959). [3] 250 N.C. 713, 110 S.E.2d 316 (1959).

Beauchamp and *Lampley* presented two distinctly different problems arising under the settlement provisions of an automobile liability insurance policy. In *Beauchamp* plaintiff was insured under the terms of the policy, but he was not a party to the contract of insurance. In *Lampley* plaintiff was the insured policy-holder, a party to the contract. *Lampley* points out that the holding in *Beauchamp* was not based upon the absence of privity of contract between plaintiff and the insurer. The reasoning behind both cases is that the settlement provisions in the insurance policy do not grant the insurer the authority to execute a settlement on behalf of the insured and bind him thereby, where the insurer makes the settlement and procures releases either without the knowledge or consent of the insured or over the protest of the insured, unless he has ratified the settlement. It is not apparent which party has the burden of proof. It could be argued that the cases indicate that the defendant would have the burden of showing consent, knowledge, or ratification;[4] but the plaintiff in *Beauchamp* undertook to prove that he objected to the settlement and in *Lampley* that the settlement was made without his knowledge.

An earlier decision shows what happens when plaintiff, having undertaken to prove absence of knowledge or consent, fails to establish it. In *Cannon v. Parker*[5] plaintiff, the trustee in bankruptcy for the policy-holder, was seeking property damages arising out of a collision between the policy-holder's truck and defendant's automobile. Plaintiff alleged in his reply that he first learned of his liability carrier's settlement from the allegations of defendant's answer. On trial plaintiff, for reasons not apparent, introduced his insurance policy and the release obtained thereunder, but failed to introduce evidence that he was unaware of the settlement, whereupon defendant demurred *ore tenus* to the evidence. *Held,* the settlement bound the plaintiff under the evidence before the court. The court explicitly did not reach the question of the validity of the reply because the plaintiff had failed to offer proof on the issue. The court gave no indication that it considered the release as having been executed under the terms of the policy. There was nothing in the record to show that it was. Thus, the court, apparently relying on the fact that the release showed on its face that the policyholder, and not the insurer, had paid a certain sum of money to the defendant and had obtained his release, held that the plaintiff's action was barred.

[4] The language of these cases and the cases which they cite is subject to two interpretations: (i) that the settlement provisions in the policy create a presumption that the release is binding on the policy-holder and the burden is on the policy-holder to show lack of consent or knowledge, or that he objected to it; or (ii) that the policy provisions do not in themselves give the insurer the authority to settle the policy-holder's claims and the defendant must show knowledge, consent or ratification on the part of the insured.

[5] 249 N.C. 279, 106 S.E.2d 229 (1958).

In *Beauchamp* and *Lampley* the defendants were precluded from using the settlements as a defense. Suppose that the defendants had counterclaimed after the settlements were found not to bar the plaintiffs. Could the *plaintiffs* use the settlements as a defense to the counterclaims? The appellee's brief in *Lampley* presented this question,[6] but since the matter was not in issue it was not answered.[7] An analysis of the consideration involved in the settlement between the defendant and the insurance company would tend to indicate that the plaintiff could use the settlement as a defense. A release executed for a money payment may take either of two forms. The only express release may be from the payee to the payor; or there may be an express agreement that each releases the other. The legal effect of either form is the same as between parties to the release. The court will regard the release as it would a judgment and prevent the releasee from later asserting his claim against the releasor.[8] In *Beauchamp* and *Lampley* the bargain took the first form, that of a unilateral release. It is to be remembered that in those cases the parties were not dealing with each other. One of them, the plaintiff, was represented by his insurance company, which under the circumstances had no authority to defeat any claim the plaintiff might have had against the defendant. The defendant, on the other hand, represented himself. Undoubtedly, he had the authority to give up any claim he might have had against the plaintiff—indeed this was the very thing for which the insurer was bargaining. Thus the defendant gave up his claim against the plaintiff in consideration not for plaintiff's releasing *him* plus a cash settlement in lieu of damages, but for the cash settlement alone. Therefore, since the defendant had received all to which he was legally entitled under the circumstances, it would seem that he would be bound by his promise—namely, to forego suing the plaintiff. Consequently, the plaintiff should be able to defeat the defendant's counterclaim. The defendant could have avoided this result if he had made sure that the plaintiff joined in the settlement agreement.

It is submitted that the court reached the correct result in the principal cases. North Carolina is in line with the weight of authority,[9] and, as pointed out in *Lampley*,[10] there now seems to be no contrary authority. The opposite result in effect would have established the insurer as an arbitration board with sweeping jurisdiction and authority.

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[6] Brief for Appellee, pp. 7-9.

[7] The author has been unable to find any case in which this problem was considered.

[8] Snyder v. Kenan Oil Co., 235 N.C. 119, 68 S.E.2d 805 (1952).

[9] See, *e.g.*, Fikes v. Johnson, 220 Ark. 448, 248 S.W.2d 362 (1952); Hurley v. McMillan, 268 S.W.2d 229 (Tex. Civ. App. 1954); Birkholz v. Cheese Makers Mut. Cas. Co., 274 Wis. 190, 79 N.W.2d 665 (1956); Annot., 32 A.L.R.2d 937 (1953).

[10] 250 N.C. 713, 715, 110 S.E.2d 316, 318 (1959).