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COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

JAMES WISE and ELIZABETH WEIDMAN, co-administrators of The Estate of Amanda Wise, deceased,	:	**NO. 3777 CIVIL 2011**
Plaintiffs	:	
vs.	:	
HYUNDAI MOTOR COMPANY and HYUNDAI MOTOR AMERICA and HYUNDAI AMERICA TECHNICAL CENTER, INC. and MASON V. MOORE and ELENORIA PORTER,	:	
	:	**DEFENDANTS'**
Defendants	:	**MOTION TO ENFORCE SETTLEMENT**

OPINION

This matter comes before the Court on a Motion to Enforce Settlement. The facts of the underlying case are tragic. On August 16, 2010, Mason V. Moore was driving a car owned by Elenoria Porter (hereinafter collectively "Defendants") when a crash occurred. Both Defendants had car insurance through USAA. Amanda Wise (hereinafter "Decedent"), a passenger in the car, was unable to be extracted from the vehicle and perished when it caught fire. On April 26, 2011, Decedent's parents filed the underlying lawsuit on behalf of themselves and Decedent's Estate (hereinafter "Plaintiffs"). On November 2010, Plaintiffs' counsel sent a letter to Moore and Porter's counsel alerting them that the full insurance policy limits were

demanded. On October 15, 2012, Defendants' counsel sent a letter "offering" the policy limits of $115,000 as demanded. From there on, Defendant's counsel was minimally involved in the litigation as a products liability action against the Hyundai Defendants took precedence. Plaintiffs and the Hyundai defendants eventually settled their suit in August 2016 just prior to trial. Around the same time, Plaintiffs' counsel informed the Moore and Porter's counsel they would be seeking a bad faith claim against USAA for failure to properly defend Moore and Porter.[1] Plaintiffs believe no settlement with Moore and Porter was reached, and now that the Hyundai Defendants have settled, a suit can go forward against Moore and Porter. Since they did not participate in a pre-trial or present experts, Plaintiffs claim Defendants are barred from asserting a defense at trial. Plaintiffs assert this is cause for a potential bad faith claim. Believing that a settlement to Plaintiffs' claims had been agreed to in 2012, Defendants filed the current Motion to Enforce Settlement on September 19, 2016. Oral argument was held on December 5, 2016 and both parties have submitted briefs in this matter.

Discussion

Settlement agreements are governed by contract law. Pennsbury Vill. Assocs., LLC v. Aaron McIntyre, 608 Pa. 309, 11 A.3d 906, 914 (2011). The necessary elements to prove a valid settlement agreement are an offer, acceptance, consideration, and a meeting of the minds. Schreiber v. Olan Mills, 426 Pa. Super. 537, 627 A.2d 806, 808 (1993). Generally, courts favor settlement agreements and the existence of one "will not be set aside absent a clear showing of fraud, duress, or mutual mistake." Pennsbury at 914.

[1] We note that Plaintiffs' counsel does not represent Moore or Porter in any bad faith claim, and has no standing on behalf of Moore or Porter. As full policy limits were offered to be tendered in October 2012, we fail to see how Plaintiffs have grounds themselves for a bad faith claim.

Defendants argue that the November 2010 letter acted as an offer by Plaintiffs' counsel to settle this matter for the policy limits. Defendants allege that their October 2012 response tendering policy limits acted as an acceptance of the earlier letter and that a settlement had been reached. Because of this, Defendants' counsel was not actively involved in the underlying litigation. In response, Plaintiffs allege that they have never accepted any settlement agreement and that Defendants' insurer has never been relieved of the duty to defend. Plaintiffs state that their November 2010 letter was not an offer of a specific settlement but an invitation to Defendants' insurance to provide the policy limits. Additionally, Plaintiffs allege that due to its wording, Defendants' October 2012 letter served only as an offer to settle and not an acceptance. Therefore, there has been no acceptance on their part or meeting of the minds between the two parties.

Although the November 2010 letter to Defendants' counsel does not use the word "settlement," it clearly was intended to act as a settlement offer. Specifically, Plaintiffs demanded policy limits and requested that they be tendered with the understanding that there may need to be an apportionment with other potential plaintiffs injured in the accident. No conditional terms were placed upon this demand or time period in which Defendants had to respond. No written communication was sent, nor has any oral communication been asserted that withdrew the demand. A settlement agreement must contain the essential terms and can be binding even when it has not been reduced to writing. Johnston v. Johnston, 346 Pa. Super. 427, 499 A.2d 1074, 1073 (1985). The November 2010 letter from Plaintiffs' counsel, although brief, appears to include all the pertinent parts of an offer, specifically a demand for policy limits. The October 2012 letter sent to Plaintiffs' counsel is clearly tendering limits and acts as an

acceptance of the earlier demand. Although the letter uses the unfortunate phrase of "offering" policy limits, it is clear that they were agreeing to Plaintiffs' previous demand for policy limits to settle. A meeting of the minds was reached in that policy limits were demanded and offered in return. Therefore, a settlement was reached between the parties.

Even if this Court were to believe Plaintiffs' argument and find that the October 2012 letter was a separate offer of settlement and/or the earlier demand was withdrawn or lapsed, it is still clear the Plaintiffs accepted the Defendants' offer of policy limits. Acceptance can be determined not only through an actual expression of acceptance, but also through the conduct of the parties. Schreiber at 808. "An offer may be accepted by conduct and what the parties d[o] pursuant to th[e] offer." Id. *quoting* Accu-Weather, Inc. v. Thomas Broadcasting Co., 425 Pa. Super. 335, 625 A.2d 75 (1993). In this case, after the October 2012 letter had been sent, the Defendants were only minimally connected to the litigation. It is clear that the main cause of action in this underlying matter was the products liability case against the Hyundai Defendants. Defendants' counsel did not engage in the copious amount of discovery or attend depositions. Defendants' counsel also provided a copy of a letter sent to all other counsel in this matter dated July 2016, stating that they would not be attending a pre-trial conference or even the entirety of the trial as the full policy limits had already been tendered. At no time did the Plaintiffs dispute this, nor did their counsel discuss the Defendants' participation in the case at pre-trial conferences, nor mention any other settlement discussions. The Plaintiffs made no further demand and did not dispute the Defendants' 2012 letter "offering" policy limits.

Although Plaintiffs are correct that they are not required to continually remind an opposing party that no settlement has been reached, Plaintiffs spent almost four years acting as if

Defendants had settled the case and did not include them in the extended litigation against the Hyundai Defendants. The Plaintiffs acted as if the matter was settled as to these Defendants. Their conduct evidenced an agreement of settlement for policy limits. Furthermore, it appears Defendants Moore and Porter appear to have no assets. It would make no sense not to agree to settle for policy limits in light of the parties' correspondence and the fact the Defendants have no other assets to attach.[2] This is further evidence of an intention of Plaintiffs to have settled for the policy limits tendered.

As for the other requirements of a valid contract, we find they have been met. The obvious consideration in all settlements is the cessation of an ongoing lawsuit against the defendants in exchange for monetary consideration. Additionally, Plaintiffs' and Defendants' conduct regarding Defendants' level of involvement in the underlying litigation and failure to raise open matters with these Defendants at pre-trial conferences shows a meeting of the minds to settle. We find this conduct supports Plaintiffs' intention to accept the policy limits of Defendants' insurance as settlement. This also brings us to Defendants' second argument.

Although we believe that a settlement had been previously reached by the parties in this matter through the 2010 and 2012 correspondence of counsel; we will briefly examine Defendants' argument that Plaintiffs are barred from bringing a bad faith claim under the doctrine of equitable estoppel. "Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by word or deed to expect." Novelty Knitting Mills, Inc. v. Siskind, 500 Pa. 432, 457 A.2d 502, 503 (1983). "Equitable

[2] It is almost disingenuous for Plaintiffs to argue a possible bad faith claim when policy limits were demanded, and eventually tendered, and where the Defendants have no known excess assets subject to a lien; especially where the Plaintiffs were diligently pursuing the deeper pocket corporate Defendants on a theory of secondary liability, that was settled.

estoppel recognizes that an informal promise implied by one's words, deeds or representations which leads another to rely justifiably thereon to his own injury or detriment, may be enforced in equity." Id. As has already been discussed, Plaintiffs' actions with the Defendants in light of the October 2012 letter offering to tender policy limits in response to the Plaintiffs' 2010 demand for same induced the Defendants to believe that the policy limits had been accepted. Now the Plaintiffs seek to avoid payment of policy limits, proceed to trial, and assert a potential bad faith claim against Defendants' insurer for failure to defend (namely not having a liability expert prepared to testify at trial). However, Plaintiffs' conduct has shown that the matter had been settled such that Defendants no longer had to defend in this matter. The Plaintiffs are trying to punish the Defendants for not preparing a defense when Plaintiffs failed to pursue claims themselves. We find that this would not be equitable and Plaintiffs should be estopped from doing so. For all of these reasons, the Motion to Enforce Settlement for policy limits of $115,000 will be granted.

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Defendants	:	**DEFENDANTS' MOTION TO ENFORCE SETTLEMENT**

ORDER

AND NOW, this 16th day of December, 2016, Defendants' Motion to Enforce Settlement is GRANTED. The parties shall comply with the demand and tender of policy limits of $115,000 as set forth by the Defendants Mason V. Moore and Elenoria Porter.

BY THE COURT:

DAVID J. WILLIAMSON, J.

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PROTHONOTARY
MONROE COUNTY, PA

cc: Jeffrey B. Killino, Esq.
Joseph G. Price, Esq.
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