

STATE OF MICHIGAN  
COURT OF APPEALS

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BLAKE LEE,

Plaintiff-Appellee,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellant,

and

ABOOD, ABOOD & RHEAUME, P.C., and  
DAVID P. PASICHNYK,

Defendants-Appellees.

August 2, 1993  
9:00 a.m.  
No. 134748  
LC No. 89-63225 CK

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Before: Michael J. Kelly, P.J., and Marilyn Kelly and Connor, JJ.

CONNOR, J.

Defendant insurance company appeals as of right<sup>1</sup> the trial court's summary dismissal of several of its affirmative defenses. We affirm in part, reverse in part, and remand.

Plaintiff was a passenger in an automobile involved in an accident and suffered serious injuries. The driver had only the statutory minimum liability insurance coverage of \$20,000 at the time of the accident. Plaintiff had underinsured motorist coverage with defendant insurance company for up to \$50,000. Plaintiff sued the driver and subsequently settled for \$20,000. As part of the settlement, plaintiff signed a form which purported to release the driver and "all other persons, firms, and corporations" from "any and all actions, claims, and demands." All this was done without the knowledge or approval of defendant insurance company.<sup>2</sup>

Plaintiff thereafter demanded that his insurance company pay him \$30,000 of underinsured motorist coverage, \$50,000 his policy provides minus the \$20,000<sup>3</sup> received in settlement. When it refused to pay, plaintiff brought this action seeking the insurance money.<sup>3</sup>

Defendant insurance company raised numerous affirmative defenses based on plaintiff's settlement and release of the driver. At issue below and on appeal is what effect that settlement has under the terms of the insurance policy.

We find defendant insurance company's contention that the release acted to release defendant to be without merit. Read literally, the release purports to release everyone from all future claims plaintiff may have without restriction. The release would not only release defendant insurance company from any liability, it would forever bar plaintiff from suing anyone for anything. We believe that would be an absurd result. The only reasonable interpretation that the release can be given is that it was intended to release the driver and the driver's insurance company from all claims arising out of the accident. We find that the trial court properly dismissed defendant insurance company's claim of release.

Plaintiff suing, settling, and releasing the driver from future liability without defendant insurance company's knowledge or approval is a more troublesome issue. Defendant insurance company argues that failing to secure its approval violated the insurance policy. We agree.

<sup>3</sup> Plaintiff also sought no-fault benefits, but has since settled that claim with defendant insurance company.

<sup>4</sup> We do not decide whether plaintiff's settlement of his claims with the driver without defendant insurance company's consent rendered his losses beyond the coverage of the policy, because even if covered, plaintiff cannot state a cause of action in the courts at this time.