

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

ALICE DARLEEN BURKE as Next
Friend for DREW BOYER, a minor,

Plaintiff,

v

File No. 99-7615-NZ
HON. PHILIP E. RODGERS, JR.

PHILLIP PUTNEY,

Defendant.

Blake K. Ringsmuth (P44013)
Grant W. Parsons (P38214)
Attorneys for Plaintiff

John A. Chasnis (P23373)
Attorney for Defendant

ORDER REGARDING DISCLOSURE OF PLAINTIFF'S
CONFIDENTIAL SETTLEMENT AGREEMENT WITH CO-DEFENDANT

This personal injury action was originally filed against Co-Defendants Michigan Consolidated Gas Company ("MichCon") and Phillip Putney ("Putney"). During the course of the litigation, the Plaintiff reached a settlement with MichCon. That settlement was memorialized by a written settlement agreement and this action was, by stipulation and order, dismissed as to MichCon.

The settlement agreement contains a confidentiality clause and the Plaintiff has requested that terms and conditions of the settlement remain confidential. In response to the Court's inquiry, the Plaintiff submitted reasons for maintaining the confidentiality. On January 26, 2001, the Co-Defendant Putney filed a proposed order, pursuant to MCR 2.602. The order would require the Plaintiff to provide Putney's counsel with "copies of any and all pleadings, settlement documents, itemization of expenses and other documents filed in connection with the . . . settlement, including any and all amounts paid and/or received pursuant to said settlement. . ." The Plaintiff filed an objection to the proposed order.

The Court, having reviewed the proposed order, Plaintiff's objection and brief, and having heard from counsel regarding this matter, dispenses with further oral argument. MCR 2.119(E)(3). The Plaintiff's objection to the proposed order is well taken. The terms and conditions of the settlement agreement between Plaintiff and MichCon shall remain confidential.

I.

The Plaintiff and MichCon entered into a settlement agreement that contains a confidentiality provision. Public policy of this state favors compromise and settlement of disputes. *Brewer v Payless Stations, Inc*, 412 Mich 673, 679; 316 NW2d 702 (1982); *Watts v Dep't of State*, 394 Mich 350, 357; 231 NW2d 43 (1975).

A settlement agreement is an enforceable contract. MCL 691.1556a; MSA 27.15(56a). The parties to a settlement agreement are bound by it absent a showing of mistake, fraud, or unconscionable advantage. *Prichard v Sharp*, 51 Mich 432, 435; 16 NW 798 (1883); *Marvin v Marvin*, 203 Mich App 154, 157; 511 NW2d 708 (1993); *Meyer v Rosenbaum*, 71 Mich App 388, 393-394; 248 NW2d 558 (1976).

In *Rossi v Transamerica Car Leasing Co*, 138 Mich App 807, 809-810; 360 NW2d 307 (1985), the Court said:

A settlement agreement is a contract governed by the principles of law applicable to contracts generally. *Mastaw v Naiukow*, 105 Mich App 25, 28; 306 NW2d 378 (1981). In *Booth Fisheries Co v Alpena Circuit Judge*, 170 Mich 611, 615-616; 135 NW 1063 (1912), the Court explained:

Settlements of disputed matters and compromises of unsettled claims are favored by the law, and it will be presumed that parties consult their own interests in making them. Usually they will not be interfered with in the absence of fraud or mutual mistake, and then only when the party who seeks to rescind returns to the other party what he has received by virtue of the settlement. * * * Nor will such settlement be set aside because one of the parties did not understand it or its legal effect. (Citations omitted.)

Accord, *Streeter v Michigan Consolidated Gas Co*, 340 Mich 510, 517-518; 65 NW2d 760 (1954); *Smith, Hinchman & Grylls Associates, Inc v Wayne County Board of Road Comm'rs*, 59 Mich App 117, 122, 229 NW2d 338 (1975).

Notwithstanding the foregoing, the Co-Defendant Putney, who is not a party to the settlement agreement, is asking this Court to order the Plaintiff to violate her contractual obligation by disclosing the terms and conditions of the settlement agreement. Putney has not articulated a countervailing public policy reason that would compel this Court to order the Plaintiff to make such disclosure.

II.

Furthermore, the terms and conditions of the settlement agreement are not discoverable. MCR 2.302 (B)(1) provides in pertinent part as follows:

Parties may obtain discovery regarding **any matter, not privileged, which is relevant to the subject matter involved in the pending action**, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. **It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.**

The Court of Appeals said in *Clery v Sherwood*, 151 Mich App 55; 390 NW2d 682 (1986):

In 1982, as a matter of policy, the Michigan Supreme Court determined, prospectively, that:

When there is no genuine dispute regarding either the existence of a release or a settlement between plaintiff and a co-defendant or the amount to be deducted, the jury shall not be informed of the existence of a settlement or the amount paid, unless the parties stipulate otherwise. Following the jury verdict, upon motion of the defendant, the court shall make the necessary calculation and find the amount by which the jury verdict will be reduced. *Brewer v Payless Stations, Inc*, 412 Mich 673, 679; 316 NW2d 702 (1982).

The Michigan contribution statute specifically provides that a plaintiff's recovery against non-settling defendants is reduced only by the settlement amount. MCL 600.2925d(b); MSA 27A.2925(4)(b); *Mayhew v Berrien Co Road Comm*, 414 Mich 399, 410-411; 326 NW2d 366

(1982).¹ Therefore, the fact of the settlement is immaterial to non-settling defendants who continue to litigate and the terms and conditions of the settlement are not discoverable only for purposes of a post judgment set-off by the Court. See, *Kueppers v Chrysler Corp*, 108 Mich App 192, 202; 310 NW2d 327 (1981); also see *Brewer v Payless Stations Inc, supra*, aff'd 412 Mich 673; 316 NW2d 702 (1982); *Silisky v Midland-Ross Corp*, 97 Mich App 470; 296 NW2d 576 (1980).

With tort reform, liability is now several and a non-settling defendant receives no set-off for sums paid by a co-defendant who does settle. Rather, the non-settling defendant is entitled to have the fact finders determine the percentage fault for all non-parties - - including a co-defendant who settles. Therefore, the terms and conditions of the settlement agreement are immaterial. Absent a post judgment set off, the terms of the agreement are not themselves admissible or likely to lead to the discovery of admissible evidence. The terms and conditions of the settlement are not discoverable.

CONCLUSION

For the reasons stated herein, the Plaintiff's objection to the Defendant's proposed order is sustained.

IT IS SO ORDERED.

This Decision and Order does not resolve all pending issues nor close the case.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____

2/13/01

¹While the contribution statute seeks to advance two goals, equitable sharing of liability and settlement of lawsuits, the goal of equitable sharing is subservient to the goal of settlement in situations where they conflict. The act provides a strong incentive to settle: a settling tortfeasor is protected from contribution claims made by other tortfeasors. MCL 600.2925d; MSA 27A.2925d; *Miller v Riverwood Recreation Center, Inc*, 215 Mich App 561; 546 NW2d 684 (1996), appeal denied 454 Mich 852; 558 NW2d 725.