

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED  
2010 MAY -4 AM 10:29  
CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

SHEILA F. HAYNES, as Administratrix of  
the Estate of Elgene Phillips, Jr., Deceased,

Plaintiff,

v.

CIVIL ACTION NO. 07-C-493  
Hon. Jennifer Bailey

DAIMLER CHRYSLER CORPORATION,  
a foreign corporation; AUTOLIV ASP, INC.,  
a foreign corporation; and JOE HOLLAND  
CHEVROLET, INC., a West Virginia corporation,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTIONS**

Pending before the Court are "Plaintiff's Motion to Sever Claims Against Chrysler" and "Plaintiff's Motion to Compel Autoliv to Pay Settlement" ("Motions"). The Court, having considered the written memoranda and oral arguments of counsel, hereby **DENIES** the Plaintiff's Motions in their entirety.

This wrongful death action was settled at mediation on February 19, 2009. Pursuant to the terms of the settlement, Autoliv agreed to pay the Plaintiff \$65,000 and Chrysler agreed to pay the Plaintiff \$85,000 for a total payment of \$150,000 to Plaintiff. Although the Plaintiff was not aware of the precise division of the settlement between the Defendants, the Plaintiff was aware that each Defendant would be contributing a specific amount of money and that these two payments combined would constitute the overall settlement amount of \$150,000.

Plaintiff then executed a Full and Final Release of All Claims against the Defendants and filed a Petition and Application for Permission to Settle the Wrongful Death Claim. Following a hearing, the Court entered an "Order Approving Settlement of a Wrongful Death Claim."

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In accordance with the terms of the settlement, on April 29, 2009, counsel for Autoliv tendered to Plaintiff's counsel a check in the amount of \$65,000, along with a cover letter stating that the check was sent "on behalf of Autoliv ASP, Inc., #0521877, to resolve the above-referenced matter." Plaintiff's counsel promptly cashed the check and never disputed in any way that the acceptance of the check "resolved the above-referenced matter" vis-a-vis Autoliv. Despite the fact the check was cashed almost a year ago and Plaintiff now disputes the settlement amount, she has never returned any of the money to Autoliv.

On May 12, 2009, this Court entered a "Stipulated Order of Dismissal with Prejudice." Also in accordance with the settlement agreement, Daimler Chrysler Corporation issued a check to Plaintiff in the amount of \$85,000. Plaintiff deposited Chrysler's check and it was subsequently returned for insufficient funds. Through the pending Motions, Plaintiff now seeks to sever her claims against Chrysler and to collect Chrysler's share of the settlement from Autoliv, claiming that "defendants collectively agreed to pay One-Hundred Fifty Thousand Dollars (\$150,000.00) for the settlement of the claims." (Motion to Compel, p. 2).

In accordance with *Painter v. Peavy*, 451 S.E.2d 755 (W. Va. 1994), the Court finds Plaintiff's claims seeking additional monies from Autoliv are barred by the doctrine of accord and satisfaction. In *Painter*, the West Virginia Supreme Court affirmed summary judgment on grounds of accord and satisfaction against a plaintiff who had accepted and deposited a settlement check stating, "in full settlement of all claims."

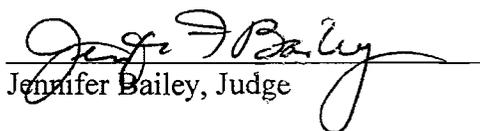
While acknowledging that she accepted payment in the amount of \$65,000 from Autoliv, Plaintiff denies that such acceptance constitutes "accord and satisfaction" because the settlement language was not written on the check itself, but in an accompanying letter. Plaintiff's argument

misstates the law of accord and satisfaction. The provision of the West Virginia Uniform Commercial Code dealing with “accord and satisfaction” and pertinent authorities require that a check “or an accompanying written communication” contain language to the effect that the check is tendered as full satisfaction of the claim. *See* W. Va. Code § 46-3-311(b). *Accord Smith v. Grand Canyon Expeditions Co.*, 84 P.3d 1154 (Utah 2004); *Webb Business Promotions, Inc. v. American Electronics & Entertainment Corp.*, 617 N.W.2d 67, 73 (Minn. 2000); *Seward v. U. S. Dept. of Agriculture*, 229 F.Supp.2d 557, 570-71 (S.D. Miss. 2002); *U. S. Bank National Ass'n v. Whitney*, 81 P.3d 135, 142 (Wash. 2003); *E.S. Herrick Co. v. Maine Wild Blueberry Co.*, 670 A.2d 944 (Me. 1996); *Habachy v. Georgia Health Group*, 427 S.E.2d 808 (Ga. 1993).

In this case, counsel for Autoliv sent the settlement check to Plaintiff’s counsel along with a cover letter stating that the check was sent “to resolve the above-referenced matter.” Without question, all parties understood that Autoliv tendered the \$65,000 check in full settlement of the Plaintiff’s claims against it. Having cashed Autoliv’s check, having taken Autoliv’s money, and having entered into a Stipulated Order of Dismissal With Prejudice, Plaintiff is now bound by the doctrine of accord and satisfaction and barred from pursuing Autoliv for the additional \$85,000 that was to be paid by Chrysler pursuant to the settlement.

The Court therefore **DENIES** Plaintiff’s Motions in their entirety and directs that the Clerk send a copy of this Order to all counsel of record.

Dated: May 3, 2010

  
Jennifer Bailey, Judge

5-7-10  
 counsel of record  
 parties  
 other  
 (please indicate)  
 certified/1st class mail  
 tax  
 hand delivery  
 interdepartmental  
 other (please specify)  
 y. [Signature]

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STATE OF WEST VIRGINIA  
 COUNTY OF TAYLOR  
 CLERK OF COURT  
 JENNIFER BAILEY, JUDGE  
 MAY 7 2010  
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 September 2010  
 Cathy S. [Signature]

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