

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD SMITH,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

February 11, 2000

No. 214393

Ingham Circuit Court

LC No. 97-087279-CZ

Before: O’Connell, P.J., and Meter and T. G. Hicks\*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant’s motion for summary disposition in this breach of contract action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was insured by defendant under a policy that contained underinsured motorist coverage. Plaintiff was involved in an automobile accident and brought a negligence action against the driver and owner of the vehicle involved. All parties accepted a mediation award, plaintiff executed a release and settlement agreement, and judgment was entered for plaintiff.

Defendant denied plaintiff’s claim for underinsured motorist benefits based on plaintiff’s unauthorized settlement with the third parties involved in the accident. Plaintiff then filed this breach of contract action, and the trial court granted summary disposition to defendant pursuant to MCR 2.116(C)(10), recognizing defendant’s policy exclusion regarding unauthorized settlements.

“Michigan courts have consistently upheld policy exclusions barring recovery . . . where the insured party releases a tortfeasor from liability without the insurer’s consent, recognizing that such a release destroys the insurance company’s right to subrogation.” *Lee v Auto-Owners Ins Co (On Second Remand)*, 218 Mich App 672, 675; 554 NW2d 610 (1996). A plaintiff’s settlement with a negligent motorist bars the plaintiff’s action for underinsured motorist benefits unless the insurer waives the breach of the policy condition. *Id.*

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Here, defendant's policy exclusion was unambiguous and did not contravene Michigan law; the clear and specific exclusion contained in the policy was enforceable. *Id.* at 676. Moreover, in order to properly be granted summary disposition, defendant was not required to prove actual prejudice resulting from the loss of its right to subrogation. *Id.*

There is no merit to plaintiff's argument that a judgment entered on a mediation award is not a settlement. The acceptance of a mediation evaluation is legally equivalent to a consent judgment reached after negotiation and settlement. *Auto Club Ins Assn v State Farm Ins Cos*, 221 Mich App 154, 166; 561 NW2d 445 (1997). Moreover, notwithstanding the mediation award, plaintiff signed a release and settlement agreement. Accordingly, defendant's right to subrogation was clearly impaired, and it did not breach the policy by denying coverage.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks