
NO. A10-674

State of Minnesota
In Court of Appeals

KEITH SODERBECK,

Respondent,

vs.

CENTER FOR DIAGNOSTIC IMAGING, INC.,

Appellant.

BRIEF, ADDENDUM AND APPENDIX OF APPELLANT

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STATEMENT OF THE ISSUES

- I. WHETHER PLAINTIFF IS ENTITLED TO INTEREST ON A PERSONAL INJURY SETTLEMENT WHEN THE SETTLEMENT AGREEMENT DID NOT PROVIDE FOR THE PAYMENT OF INTEREST AND THE DELAY IN PAYING THE SETTLEMENT MONEY WAS CAUSED SOLELY BY PLAINTIFF'S REFUSAL TO ACCEPT THE SETTLEMENT.

The trial court held: In the Affirmative

Minn. Stat. § 334.01.

Eide v. State Farm Mut. Auto. Ins. Co., 492 N.W.2d 549 (Minn. Ct. App. 1992).

Glodek v. Rowinski, 390 N.W.2d 477 (Minn. Ct. App. 1986).

STATEMENT OF THE CASE

This appeal is from a judgment entered in favor of plaintiff Keith Soderbeck against defendant Center for Diagnostic Imaging, Inc. (CDI) for interest on a personal injury settlement accruing between the date of settlement and date of payment.

On December 9, 2003, Mr. Soderbeck and CDI settled Mr. Soderbeck's medical malpractice lawsuit at mediation for \$150,000 and entered into a Mediated Settlement Agreement. After the mediation Mr. Soderbeck refused to accept the settlement. (A.A. 8-9.)¹

On July 17, 2008, the Trial Court ruled that the Mediated Settlement Agreement was valid and enforceable. (A.A. 32-40.)

On October 9, 2008, Mr. Soderbeck brought a motion claiming that, under Minn. Stat. § 334.01, he was entitled to interest from the date of the Mediated Settlement Agreement because the agreement created a "legal indebtedness." (A.A. 41-62.) CDI opposed the motion. It argued that no "legal indebtedness" was created because Mr. Soderbeck breached the agreement by refusing to accept the settlement. (A.A. 63-70.)

On October 13, 2008, CDI paid the settlement amount of \$150,000 to Mr. Soderbeck. (A.A. 84.)

On February 2, 2009, the Trial Court granted Mr. Soderbeck's motion for interest accruing from the date of the Mediated Settlement Agreement despite Mr. Soderbeck's

¹ A.A. references Appellant's Appendix.

refusal to accept the mediated settlement money. (A.ADD. 1-7.)² The Trial Court stated the following in its Memorandum:

Compensation has long been allowed by Minnesota law for the use or detention of money. CDI did not deposit the funds with the court, as they could have, but has kept it within their possession to invest or use as they wished. Minn. Stat. § 334.01 supports an award of interest under this rationale.

(A.ADD. 7.)

On March 20, 2009, the Trial Court ordered judgment in Mr. Soderbeck's favor and against defendant CDI for \$43,550.00, representing interest accruing from the date of the Mediated Settlement Agreement to the date the settlement money was paid. (A.ADD. 8.) Judgment was entered pursuant to this Order on March 26, 2009. (A.ADD. 9-10.)

On March 30, 2009 CDI filed a Notice of Appeal. (A.A. 77.)

On November 17, 2009, the Minnesota Court of Appeals issued an Order Opinion remanding the case back to the Trial Court for clarification of its decision granting interest and specifically the above-quoted language. (A.ADD. 11-13.)

On March 19, 2010, the Trial Court made a Clarifying Order. The Order stated that (1) CDI's motion to enforce the Mediated Settlement Agreement was acknowledgment of a "legal indebtedness," and (2) CDI was equitably obligated to pay interest because it had the benefit of use of the settlement funds during the time period that Mr. Soderbeck was resisting the settlement. (A.ADD. 14-17.)

On April 15, 2010, CDI filed a Notice of Appeal. (A.A. 78.)

² A.ADD. references Appellant's Addendum.

STATEMENT OF FACTS

On April 4, 2003, Keith Soderbeck, through his attorney, brought a medical malpractice lawsuit against CDI, claiming that CDI was negligent in performing an MRI scan and that the negligence caused injury. (A.A. 1-7.)

On December 9, 2003, Mr. Soderbeck and CDI settled the lawsuit at mediation. During the mediation Mr. Soderbeck was represented by the same attorney who had commenced the lawsuit. The parties and their attorneys signed a Mediated Settlement Agreement which stated the terms of the settlement. Those terms were:

- CDI would pay Mr. Soderbeck \$150,000;
- Mr. Soderbeck would accept the payment in full settlement of all claims, including all subrogation claims and liens;
- Mr. Soderbeck would provide CDI with a signed release and stipulation of dismissal;
- Payment of the \$150,000 settlement money would be made when all subrogation claims were resolved by Mr. Soderbeck;
- Terms of the settlement and facts of the case were to remain confidential;
- The mediated settlement agreement was binding on the parties. (A.A. 8-9.)

The Mediated Settlement Agreement did not provide a specific date when payment of the \$150,000 was due. It did, however, provide a timeframe stating that payment would be made “when all subrogation claims are resolved.” As of the mediation

date the subrogation claim of the workers' compensation insurer was unresolved.³ The Mediated Settlement Agreement did not provide for the payment of interest under any circumstances. (A.A. 8-9.)

On the following day, Mr. Soderbeck repudiated the Mediated Settlement Agreement. He refused to accept the settlement of \$150,000, and refused to provide a signed release and stipulation for dismissal. (A.A. 15.) His refusals persisted over the next 4½ years, as demonstrated by the following actions on his part:

- Mr. Soderbeck opposed CDI's motion to enforce the mediated settlement, which was brought on March 9, 2004. At an evidentiary hearing Mr. Soderbeck appeared pro se. He claimed that he was under the influence of medication at the hearing and had been under the influence of medication during the mediation. The Trial Court reserved ruling on the motion until Mr. Soderbeck became "medically cleared to proceed." (A.A. 10-11.)
- Mr. Soderbeck, through his second attorney,⁴ opposed CDI's second motion to enforce the mediated settlement, which was brought on June 6, 2006. He claimed the settlement agreement was invalid because of: (1) improvidence, (2) incompetence due to the influence of medication, and (3)

³ When settlement with the tortfeasor includes all subrogation claims, the workers' compensation subrogation claim is resolved by allocation of the settlement money according to the formula contained in Minn. Stat. § 176.01 subd. 6 or an order of the trial court. Klinski v. Southdale Manor, Inc., 518 N.W. 2d 7, 9 (Minn. 1994).

⁴ On December 20, 2004, Mr. Owen Sorenson served and filed a substitution of attorneys stating that he was representing Mr. Soderbeck in this lawsuit. Mr. Sorenson has continuously served as Mr. Soderbeck's attorney from that date to the present. (A.A. 12-13.)

undue influence and duress exerted on him by his first attorney. The Trial Court granted CDI's motion, finding the Mediated Settlement Agreement valid and enforceable. (A.A. 14-24.) The Trial Court stated in its Memorandum and Order that "the evidence presented convinces the Court that the Plaintiff simply changed his mind the day after he had accepted the settlement." (A.A. 23.) It also stated that Mr. Soderbeck had "failed to meet his burden of showing that the settlement was improvident or was the result of undue influence, incompetence, or duress and should not be enforced." (A.A. 23.)

- Mr. Soderbeck appealed the Trial Court's decision to the Minnesota Court of Appeals. He continued to claim improvidence and incompetence, but abandoned the claim of undue influence and duress. On December 31, 2007, the Court of Appeals issued an unpublished opinion. It affirmed the Trial Court's findings that Mr. Soderbeck was competent and that the Mediated Settlement Agreement was valid. It remanded the case back to the Trial Court for analysis of factors applicable to the claim of improvidence. (A.A. 25-31.)
- Mr. Soderbeck opposed CDI's third motion to enforce the mediated settlement, which was brought on March 3, 2008. He claimed improvidence. On July 17, 2008, the Trial Court granted CDI's motion, finding that the mediated settlement was provident. (A.A. 32-40.) It also directed CDI to make payment to Mr. Soderbeck "in accordance with the

Agreement.” (A.A. 40.) The Trial Court noted in its Memorandum that the worker’s compensation subrogation claim remained unresolved. (A.A. 37.)

Mr. Soderbeck’s refusal to fulfill his obligations under the terms of the Mediated Settlement Agreement caused an additional 4-1/2 years of litigation and caused CDI to incur costs, disbursements and attorneys fees of \$57,316.58 in order to obtain enforcement of the Mediated Settlement Agreement. (A.A. 69-70.)

LEGAL ARGUMENT

I. STANDARD OF REVIEW.

Whether Mr. Soderbeck is entitled to interest on a personal injury settlement pursuant to either the Mediated Settlement Agreement or Minn. Stat. §334.01 are questions of law subject to *de novo* review. Turner v. Alpha Phi Sorority House, 276 N.W.2d 63, 66 (Minn. 1979) (holding that construction and effect of an unambiguous contract are questions of law); Meister v. Western Nat'l Mut. Ins. Co., 479 N.W.2d 372, 376 (Minn. 1992) (holding that construction of a statute is a question of law); Frost-Benco Elec. Ass'n. v. Minnesota Pub. Utils. Comm'n., 358 N.W.2d 639, 642 (Minn. 1984) (“[A]n appellate court need not give deference to a trial court’s decision on a legal issue.”)

II. THERE IS NO LEGAL BASIS FOR AWARDING INTEREST.

Minnesota case law establishes that liability to pay interest is based on contract, statute, or damages. Lappinen v. Union Ore Co., 29 N.W.2d 8, 20 (Minn. 1947) (“[T]here can be no liability for interest where there is a liability to pay money, but no express promise to pay interest thereon, no statutory obligation to do so, and no default consisting of failure to pay the money when due.”) See also, Younger v. State, 147 N.W.2d 354, 356 (Minn. 1966); Eide v. State Farm Mut. Auto. Ins. Co., 492 N.W.2d 549, 556 (Minn. Ct. App. 1992). In this case CDI never agreed to pay interest, Minn. Stat. § 334.01 did not obligate CDI to pay interest, and CDI never defaulted in paying the settlement money when due.

A. Contract.

The Trial Court ruled that CDI owed interest as compensation for keeping the settlement money in its possession during the time period that Mr. Soderbeck challenged the validity of the settlement. The Trial Court stated, “[c]ompensation has long been allowed by Minnesota law for the use or detention of money.” (A.ADD. 7.) This statement is true but incomplete. Under Minnesota law interest as compensation for the use or detention of money requires that there be an underlying agreement to pay interest. In the absence of such an agreement Minnesota law does not allow for an award of interest on the basis of the “use or detention of money.” Lund v. Larsen, 24 N.W.2d 827, 829 (Minn.1946) (“Interest in the strict sense of the term being compensation for the use of another’s money, liability for interest is purely contractual, with the consequence that a person is not chargeable with interest unless he has agreed to pay it.”); Tate v. Ballard, 68 N.W.2d 261, 266 (Minn. 1955) (“Liability for interest is purely contractual, and a person is not chargeable therewith unless he has agreed to its imposition.”); American Druggists Insurance v. Thompson Lumber Company, 349 N.W.2d 569, 573 (Minn. Ct. App. 1984) (“The general rule is that liability for interest is purely a matter of contract, requiring a promise to pay it.”)

The Mediated Settlement Agreement between Mr. Soderbeck and CDI contained no provision for the payment of interest. Therefore, CDI is not liable for interest simply because it had possession of the settlement money during the time period that Mr. Soderbeck disputed the validity of the settlement.

B. Statute.

Undersigned counsel is not aware of any statute that imposes an obligation on CDI to pay interest to Mr. Soderbeck. The Trial Court, in its Memorandum, stated that Minn. Stat. § 334.01 “supports an award of interest.” (A.ADD. 7.) This statement is incorrect because the statute has nothing to do with establishing an obligation to pay interest. Minn. Stat. § 334.01 states in part: “[t]he interest for any legal indebtedness shall be at the rate of \$6 upon \$100 for a year, unless a different rate is contracted for in writing.” (A.ADD. 19.) The statute sets the *rate* of interest. It does not create a legal *obligation* to pay interest. It does not define legal indebtedness nor does it define the circumstances under which interest is owed. Therefore, Minn. Stat. § 334.01 cannot be the basis of an award of interest against CDI. The statute’s only potential application here would be to set the rate of interest in the event liability for the payment of interest had already been established.

Minn. Stat. § 549.09 creates a legal obligation to pay interest if there is a verdict, award or judgment for the recovery of money. The statute does not apply to this case because Mr. Soderbeck did not obtain a verdict, award, or judgment for the recovery of money against CDI with respect to his malpractice claim. That claim was settled. Mr. Soderbeck agrees that Minn. Stat. § 549.09 does not apply and has not claimed interest under this statute. (A.A. 74.) See, Great West Casualty Company v. Barnick, 529 N.W.2d 504, 505 (Minn. Ct. App. 1995) (holding that an insurer was not liable for prejudgment interest on a personal injury settlement reached before commencement of a lawsuit because there had been no judgment).

C. Damages.

Mr. Soderbeck cannot claim interest as damages because such claim must be predicated on default in paying money when due. Mr. Soderbeck does not claim that CDI defaulted in paying the settlement money when due or that CDI in any other way failed to comply with the terms of the mediated settlement agreement. In Lund v. Larsen the Minnesota Supreme Court stated that interest as damages required default in paying money when due:

It is important in this connection to keep in mind the fundamental distinction between interest as such [interest per contract]and interest as damages. The former, as has been said, is compensation for the use of money. The latter, whether allowed by statute or otherwise, is an amount awarded for *default in failing to pay money when due*.

(Emphasis added). 24 N.W.2d at 829.

Awards of interest as damages have uniformly required some type of default. Thompson v. Gasparro, 257 N.W.2d 355 (Minn. 1977) (default in paying a promissory note when due); General Mills v. State, 226 N.W.2d 296 (Minn. 1975) (wrongful levy of personal property taxes); Bourdeaux v. Gilbert Motor Co., 20 N.W.2d 393 (Minn. 1945) (default in making workers compensation payments when due). In Bourdeaux the rationale for awarding interest as damages was given by quoting the following language of the Kentucky Court of Appeals in Henderson Cotton Mfg. Co. v. Lowell Machine Shop, 7 S.W. 142, 145 (Ky. 1888):

The true ground upon which to put the allowance of interest is the fault of the party who is to pay the debt. If he has made default of payment, then, ex aequo et bono, he should reimburse the creditor for keeping him out of the use of his money. He should render an equivalent for the use of what is

not his own. If there be a specified time for payment, and a failure to then pay, or a demand of payment of a liquidated claim, and default, then the debt should, as a matter of law, bear interest from the time of such failure.

20 N.W. 2d at 395.

CDI did not default in paying Mr. Soderbeck the mediated settlement money. The mediated settlement money was never due and payable during the 4-1/2 year interval because (1) Mr. Soderbeck breached the Mediated Settlement Agreement, (2) CDI's potential liability was not ascertainable, and (3) CDI held the money in good faith.

1. Mr. Soderbeck breached the Mediated Settlement Agreement.

The Mediated Settlement Agreement between Mr. Soderbeck and CDI was a binding contract. Voicestream Minneapolis, Inc. v. RPC Properties, Inc., 743 N.W.2d 267, 271 (Minn. 2008) (“An agreement entered into as compromise and settlement of a dispute is contractual in nature.”) Mr. Soderbeck breached the contract by refusing to accept the \$150,000 settlement and refusing to provide signed release and stipulation of dismissal documents. Space Center, Inc. v. 451 Corp., 289 N.W.2d 443, 450 (Minn. 1980) (“[W]here one party to an executory contract, before performance is due, expressly renounces the same and gives notice that he will not perform it, his adversary, if he so elects, may treat the renouncement as a breach of contract and at once bring an action for damages.”); Matter of Haugen, 278 N.W.2d 75, 79, fn 6 (Minn. 1979) (“It is basic hornbook law that an unconditional repudiation of a contract, either by words or acts, which is communicated to the other party prior to the time fixed by the contract for his performance constitutes an anticipatory breach.”) The Trial Court agrees that Mr.

Soderbeck breached the Mediated Settlement Agreement. It stated in the Clarifying Order, “By refusing to sign any Releases or a Stipulation of Dismissal, the Plaintiff breached the Settlement Agreement.” (A.ADD. 14-17.)

Mr. Soderbeck’s breach continued for a period of 4-1/2 years. In the face of this ongoing breach CDI had no legal obligation to pay money that was being refused. Therefore, it was not in “default in failing to pay money when due.” Instrumentation Services, Inc. v. General Resource Corp., 283 N.W.2d 902, 908 (Minn. 1979) (“Where one party repudiates a contract and the non-breaching party has only partially completed its performance, the non-breaching party may sue on the contract without completing performance or he may sue, on quantum meruit, for the value of benefit conferred by partial performance.”); Space Center, Inc. v. 451 Corp., 289 N.W.2d at 451 (“a repudiating party cannot set up the other party’s subsequent nonperformance or a breach to avoid liability for its own prior total breach.”); Home Ins. Co. v. Nat’l Union Fire Ins. of Pittsburgh, 658 N.W.2d 522, 534 (Minn. 2003) (holding that a liability insurer’s erroneous denial of coverage and failure to defend its insured was a breach of contract that suspended the insured’s contractual obligation under the policy to provide notice of insured’s defense costs); Schwickert, Inc. v. Winnebago Seniors, Ltd., 680 N.W.2d 79, 86 (Minn. 2004) (holding that a property insurer’s erroneous denial of coverage for water damage was a breach of contract that relieved the insured from its contractual obligation under the policy to protect the insurer’s subrogation rights). See also, Restatement (Second) of Contracts, §237 (1981) (“It is a condition of each party’s remaining duties to

render performances to be exchanged under an exchange of promises that there be no uncured material failure by the other party to render any such performance due at an earlier time.”).

The Trial Court ruled that CDI became legally indebted to Mr. Soderbeck for the \$150,000 by making a motion to enforce the Mediated Settlement Agreement. “By moving the Court to enforce the Agreement, the Defendant acknowledged that it owed the Plaintiff \$150,000 based on the Settlement Agreement.” (A.ADD 14.17.) The Trial Court is incorrect. CDI’s motion was acknowledgment of the Settlement Agreement, not an indebtedness. As the above-cited cases demonstrate, the Settlement Agreement did not create an indebtedness to Mr. Soderbeck during the time that the Settlement Agreement was being breached by Mr. Soderbeck.

2. CDI’s liability was unascertainable.

CDI’s liability was unascertainable during the 4-1/2 year interval because Mr. Soderbeck was challenging the Mediated Settlement Agreement. The outcome of the challenge was not knowable before the Trial Court’s ruling on July 17, 2008. Before this date, CDI had no way of ascertaining whether its liability was \$150,000 (in the event the agreement was ruled provident) or uncertain (in the event the agreement was ruled improvident and the malpractice lawsuit continued).

It is basic Minnesota law, and common sense, that money does not become “due” until the amount is ascertainable. “Where the amount of a liability has not been ascertained, there is no liability for interest thereon prior to the time of its ascertainment.”

Lappinen v. Union Ore Co., 29 N.W.2d at 20. This principle has been consistently applied in cases involving a claim for common law prejudgment interest.

In Potter v. Hartzell Propeller, Inc., 189 N.W.2d 499 (Minn. 1971), plaintiff in a property damage negligence case claimed interest on the jury award of damages from the date of loss. The Minnesota Supreme Court held that the plaintiff was not entitled to interest because the damages could not have been ascertained until the jury award. In so holding, the Court explained that “[the] underlying principle is that one who cannot ascertain the amount of damages for which he might be held liable cannot be expected to tender payment and thereby stop the running of interest.” 189 N.W.2d at 504.

3. CDI acted in good faith.

CDI could not “pay” the mediated settlement money to Mr. Soderbeck during the 4-1/2 year interval because he refused to accept it. There is no claim that CDI acted wrongfully or in bad faith. Under this circumstance, interest should not begin to accrue until Mr. Soderbeck makes a demand for payment. General Mills, Inc. v. State, 226 N.W.2d 296, 300 (Minn. 1975) (“where money has been paid and received under a mistake of fact, and no fraud or misconduct can be imputed to the party receiving it, money does not become due and payable, and is not considered in default, until a demand for payment has been made.”) There is no evidence in the record that Mr. Soderbeck ever demanded payment prior to the Trial Court’s Order of July 17, 2008.

III. THERE IS NO EQUITABLE BASIS FOR AWARDING INTEREST.

The Trial Court ruled that Mr. Soderbeck should be awarded interest as a matter of equity because CDI had the benefit of the use of the funds. The Trial Court cited no authority for this ruling.

Equitable relief is not allowed where the rights of the parties are governed by a valid contract. U.S. Fire Ins. Co. v. Minn. State Zoo Bd., 307 N.W.2d 490, 497 (Minn. 1981) (denying equitable relief to holders of certificates of participation in an installment purchase agreement because “equitable relief cannot be granted where the rights of the parties are governed by a valid contract.”); Cady v. Bush, 166 N.W.2d 358, 362 (Minn. 1969) (denying equitable relief to purchasers under a contract to purchase a motel and holding “nor is it within the province of equity to rewrite or abrogate contracts to protect parties from consequences which are attendant upon their voluntary abandonment of a contract, the consequences of which abandonment were reasonably foreseeable when the contractual obligations were assumed.”); In Re Silicone Implant Insurance Coverage Litigation, 652 N.W.2d 46, 76 (Minn. Ct. App. 2002) (denying extra-contractual equitable relief to insured under liability insurance contracts and holding, “equity does not authorize courts to rewrite or abrogate contracts, impose obligations beyond contract terms, or change contractual obligations.”); Colangelo v. Norwest Mortgage, Inc., 598 N.W.2d 14, 19 (Minn. Ct. App. 1999) (denying equitable relief to borrowers under mortgage agreements from fax transmission fees and holding, “because the parties’ rights are governed by the terms of valid contracts as a matter of law, the equitable remedies of

unjust enrichment and money had and received cannot lie in the present case.”). The rights of Mr. Soderbeck and CDI are governed by the Mediated Settlement Agreement. The Agreement contains no provision requiring the payment of interest. Equity does not allow the Trial Court to impose such requirement because it is beyond the contract terms.

Equitable relief is also not allowed where the claiming party has not acted equitably. Home Ins. Co. v. Nat’l Union Fire Ins. of Pittsburgh, 658 N.W. 2d 522, 535 (Minn. 2003) (“It is a well established principle that one who comes into equity must come with clean hands.”). Mr. Soderbeck has not acted equitably. He breached the Mediated Settlement Agreement that he signed. He refused to accept the \$150,000 and refused to provide signed settlement documents. Mr. Soderbeck’s breach was the sole cause of the delay in receiving payment of the settlement money. The breach directly resulted in 4-1/2 years of additional litigation and \$57,316.58 of additional costs, disbursements and attorneys fees incurred by CDI in an effort to obtain enforcement of a valid and enforceable agreement. Mr. Soderbeck now claims interest on the money he refused to accept during the time interval that he refused to accept it. Such a claim is not equitable or even logical.

In Glodek v. Rowinski, 390 N.W. 2d 477 (Minn. Ct. App. 1986), an estate refused to sell the deceased’s interests in a corporation and partnership to the surviving shareholder and partner pursuant to written agreements that had been signed by both the deceased and survivor. The estate claimed that the agreements were invalid and unenforceable. When the agreements were found valid and enforceable, the estate, like

Mr. Soderbeck here, then claimed pre-judgment interest from the payment dates set forth in the agreements. In denying the claim for interest the Court of Appeals stated the following:

... In addition, an award of prejudgment interest is inappropriate in this case because the estate contributed to the failure of the parties to conclude the sale and to ascertain the value of the assets. The sellers adopted a litigation strategy in which they opposed the sale of the property and sought the dissolution of the corporation and the partnership. This position was not abandoned until more than one year after the trial proceedings in 1983. *This conduct by the sellers cannot equitably be brought to bear upon the appellant [surviving shareholder and partner].*

* * *

... *The payment of prejudgment interest cannot be required of an obligor when it is the obligee who has resisted the payment of the debt.*

The respondent argues that prejudgment interest is appropriate in this case because appellant has enjoyed the fruits of the business from the time of [deceased's] death and has not shared them with the estate. That argument is not persuasive in light of respondent's resistance to the sale and the fact that this transaction could have been concluded much earlier had respondents not erected barriers to the sale.

(Emphasis added.) 390 N.W.2d at 481-482.

The same reasoning was applied in Eide v. State Farm Mut. Auto. Ins. Co., 492 N.W. 2d 549, 556 (Minn. Ct. App. 1992). In that case, an insured challenged the validity of a settlement of her uninsured motorist claim. Additional litigation resulted in the settlement being found valid and enforceable. The insured, like Mr. Soderbeck here, then claimed interest from the date of the settlement. In ruling that the insured was not entitled to interest, the Court of Appeals noted that "the only reason interest accrued for two years is because Eide challenged the validity of the settlement agreement."

In Mehta v. Johns-Manville Products Corp., 394 A.2d 129, 132 (N.J. Super. App. Div. 1978), plaintiff's claimed interest for a delay in receiving payment of a personal injury settlement. The delay was not caused by any fault on the part of defendants, but rather was caused by "plaintiffs' difficulties in getting proper documentation by way of correct releases, release of Canadian liens, warrants for satisfaction, Canadian orders of guardianship, transfers of funds to Canada, and investment thereof." Nonetheless, the trial court awarded interest solely because defendants "had use of the money during the period involved." The appellate court reversed the award of interest. In doing so it held that, " [o]n balance, it is our conclusion that under the circumstances of this case it is inequitable to compel the payment of interest by defendants for a delay which can not be attributed to them in any respect whatsoever."

Mr. Soderbeck claims that CDI should have deposited the settlement money into court so that interest would have been earned for his benefit during the time he challenged the settlement. Minn. R. Civ. Pro. 67.01 states:

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, *may* deposit with the court all or any part of such money or thing.

(Emphasis added.)

Rule 67.01 does not require the deposit of money into court while the action is pending, nor does it require the payment of interest for the failure to deposit money into court while the action is pending. CDI could have chosen to deposit the settlement

money with the court. Had it done so, nothing would have been accomplished in terms of resolving the underlying dispute: CDI would have continued to be without a release or dismissal from the medical malpractice lawsuit; the validity and enforceability of the Mediated Settlement Agreement would have continued to be challenged by Mr. Soderbeck; and, CDI would have incurred the same legal expenses to get the mediated settlement agreement declared valid and enforceable. See, David F. Herr and Roger S. Haydock, 2A Civil Rules Annotated, 247 (4th ed. 2005) (“Rule 67.01 does not cause the party to be dropped from the action and does not provide any mechanism for adjudicating the claims to the property deposited in court.”)

All that would have been accomplished by a deposit of the settlement money into court was still more legal expense to CDI, because such deposit would have required a motion to obtain “leave of court.” Had the motion been granted, interest may or may not have been earned. Under Minn. R. Civ. Pro. 67.04, the settlement money could have been deposited in a bank account (earning interest) or with the court administrator (not earning interest). See, Nebben v. Kosmalski, 239 N.W.2d 235, 238 (Minn. 1976) (holding that a plaintiff in a personal injury action was not entitled to interest on money deposited into court by defendant’s insurer and stating, “we agree with the trial court’s statement that where money is paid into court the clerk has no authority to deposit such money in an interest-bearing account without an order of the court.”)

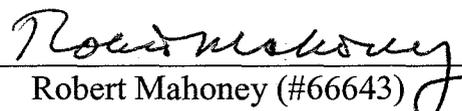
CONCLUSION

Mr. Soderbeck was the sole cause of the delay in receiving payment of the settlement money, and the sole cause of CDI incurring significant litigation expenses to enforce a valid settlement. Accordingly, Appellant CDI respectfully requests that (1) the Court reverse the judgments of March 26, 2009 and April 2, 2010, awarding interest to Mr. Soderbeck in the amount of \$43,550.00, (2) the Court hold that Mr. Soderbeck is not entitled to interest in this case, and (3) the Court grant such other relief as it deems just and appropriate.

Dated: May 12, 2010

Respectfully submitted,

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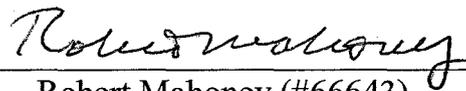
CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportionally-spaced 13-point Times New Roman font. The length of this Brief contains 4,969 words. This Brief was prepared using Microsoft Word 2000.

Dated: May 12, 2010

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