Neutral Citation No. [2005] NIQB 84 | *Ref:* **DEEI4659.T**

Judgment: approved by the Court for handing down | *Delivered:* **27/10/2005**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

_____

BETWEEN:

McMONAGLE

Plaintiff;

AND

WHITE & McMONAGLE
ROYAL AND SUN ALLIANCE INSURANCE COMPANY LTD
AND
QUINN DIRECT INSURANCE LTD

Defendants.

_____

DEENY J

[1] It was previously indicated to the court that it was desirable that this matter be resolved as quickly as possible for a variety of reasons. I accept that view point and will therefore proceed to give judgment without reserving on the matter which might cause delay. I have heard the evidence of Mr Fraser Elliot QC and Mr Brian Fee QC and it seems clear on that evidence, that an agreement was entered into by those two gentlemen on Tuesday the 27th of September regarding the conduct of the action, Number 20031455, brought by Astrid McMonagle against Martin White and the plaintiff's father, James Christopher McMonagle. Martin White had obtained a Policy of Insurance from Quinn Direct Insurance Limited. They had come off record on the basis that this had been obtained fraudulently, and after the accident, which gave rise to the proceedings which had taken place on 11 May 2000. I, of course, do not rule on that matter in any way, but the effect of it was that Martin White was not represented in September 2005 when the trial of the action was pending. It was listed for Wednesday 28 September.

[2] James Christopher McMonagle was represented by Mr Elliot, instructed by C & H Jefferson, who were in turn instructed on behalf of the Royal and Sun Alliance Insurance Company. The second named defendants reached the view, albeit rather late in the day, that they should join Quinn Direct as a defendant in the action, because they were liable under the Road Traffic Order 1981 and the subsequent Insurance Regulations of 1989. They obtained an order from Master Wilson on Monday 26 September to that effect. The advisors to Quinn Direct, and Quinn Direct, were then placed in a considerable quandary. On one hand you had a brain damaged young plaintiff, or youngish plaintiff in her early thirties, the case was five years old, she herself was blameless in the matter, there was medical evidence as I have been informed that any delay in her action was detrimental to her health. In those circumstances the advisors to Quinn Direct clearly contemplated that they might be forced by the court to go on with the case on Wednesday 28 September and deal with liability issues, albeit that they were very largely unprepared to do so. They had the difficulty that they had been out of touch with their "insured" who was believed to be out of the jurisdiction. In any event, they considered that he had acted fraudulently towards them. It was a difficult situation for them. Therefore, Mr Fee, on the morning of Tuesday 27 September concluded on agreement with Mr Elliot QC to extricate his clients from their predicament. He says, and it is not disputed, that he did so on express authority from his client. His recollection of the matter is on 'all fours' with Mr Elliot's, except for some very minor differences of recollection which are not material to the outcome of the matter. The agreement that was entered into on the Tuesday the 27th of September involved Mr Elliot making two concessions to Mr Fee. They were: that they would not proceed to deal with the insurance issue as it has been called, i.e. whether Quinn Direct are in fact liable for White, under the statutory provisions, on Wednesday the 28th of September. It is right to say that a court might well have accepted an application to defer that issue, but Mr Elliot also agreed, and subsequently Mr Stitt agreed, that the liability issues between the defendants would not proceed on Wednesday the 28th of September. That was of value to Quinn Direct, of considerable value, because they might be able to mend their fences with Mr White and obtain further evidence and prepare properly for that hearing, whereas, on Tuesday morning they were at considerable risk of being forced to deal with that in a very disadvantages position on the Wednesday. In return for that, Mr Fee, on express instructions as he said, made two concessions to Mr Elliot. He had wisely lodged an appeal against Master Wilson's Order of Monday the 26th of September, i.e. against them being joined. It seems very likely that that would have failed, save possibly on the issue of delay in bringing the application, but he did offer that as a *quid pro quo.* He also agreed to be bound by Mr Elliot's negotiations with Mr Stitt, and as Mr Elliot quoted, Mr Elliot could settle the plaintiff's claim for such sum as he thought appropriate. Mr Fee, frankly as always, and as one would expect, agrees at one point of his evidence that that was somewhat unusual, and indeed where you have two defendants one would normally expect that even if one counsel was conducting the negotiations that he would return for the agreement of the other defendants, before concluding them, but this clearly was an unusual situation. I have already adverted to the timescale involved which is relevant, but another aspect of the timescale was that Mr Fee's input, certainly on the Tuesday to the negotiations would be very limited.

Furthermore, as Mr Fee pointed out, whatever the liability outcome of this case, Royal Sun Alliance are going to be liable for a significant proportion of the damages to be paid to the plaintiff. It is possible they will be 100 per cent liable for them if the insurance issue is decided in favour of Quinn Direct. Even if it is not, the settlement of the other action and the views of counsel are clear, that the driver Mr McMonagle, who emerged from a side road would be found significantly to blame. Quinn Direct had very powerful reassurance that they could safely entrust the settlement of the action to Mr Elliot QC, and of course, the Royal Sun Alliance. There is absolutely no reason why Mr Elliot should pay more than the value of the case and no reason why Royal Sun Alliance should pay more than the value of the case, nor indeed, any reason why the experienced solicitor for C & H Jefferson would be party to such an over payment. In all those circumstances this was a perfectly reasonable settlement.

[3] Mr O'Donaghue, who acts for Quinn Direct at this stage, quite properly says in his concluding submissions, that based on the evidence, he cannot attack it as an agreement. Clearly there was a consideration, clearly there was certainty, the parties were *ad idem.* I see no grounds at all for setting aside the agreement that was entered into. Whether or not somebody might have chosen to do something different on the Wednesday seems to me irrelevant. If Mr Elliot and his client had chosen not to conclude an agreement with Mr Stitt, that would have been a matter for them, but Mr Fee was not in a position of asking, let alone requiring, Mr Elliot to adopt such a step, and having carefully considered the matter over the course of the morning, Mr Elliot concluded that his duty to his client was to conclude a settlement in the figure of £1.75 million pounds with Mr Stitt for the plaintiff. It seems he had earlier offered £1.3 million to Mr Stitt, who had rejected that at an earlier discussion. It seems that figure had been mentioned between Mr Rocke, for Royal Sun Alliance and Mr O'Hare, for Quinn Direct. Either Mr O'Hare misunderstood Mr Rocke or Quinn Direct misunderstood Mr O'Hare, but Quinn Direct apparently formed the view that that was to be the likely settlement figure. Wherever the misunderstanding lies, it does not seem to me to affect the validity of the agreement.

[4] I will only add this for the assistance of the parties, that even if there had been some partial flaw in the matter, one would not be likely set aside an agreement entered into by counsel who have an ostensible and apparent authority to enter into such an agreement. Mr Brett Lockhart for Royal and Sun Alliance, properly, in his list of authorities, drew attention to the case of *Waugh & Others v HB Clifford & Sons Limited 1982/1095.* That is a case where settlement was subsequently attacked but on very different facts. It is right to say that the court did say that in exceptional circumstances, where grave injustice would be caused to a party, the court might set aside such an agreement, but it is manifestly obvious that not alone has no grave injustice been done, but it is most unlikely that any injustice has been done to Quinn Direct. It seems to me to be plain and clear that a settlement entered into between three senior counsel, who between them, I see from the Bar List, have almost a century of experience in practice in our courts, and all of whom are experienced in the personal injury field; it seems extremely unlikely that it was other than a proper settlement of the case. It does not seem to me that Quinn Direct have lost anything by

the settlement. Indeed it may well be that as Mr Elliot cautiously indicated, that on the run of the case, depending on all sorts of factors, including the evidence given, and indeed, one might say the identity of the court, that it is possible that the plaintiff might have ended up with more. The obdurate refusal of plaintiff's counsel to go below the figure would indicate that certainly he did not think he was at risk of getting a significantly worse figure, as he appears to have stuck to that figure throughout the negotiations. I would say further that it is not normal in this jurisdiction for counsel negotiating settlements to expressly ask the other party, or counsel for the other party, for their authority, nor so far as I understand it, for solicitors to do so when they are negotiating. That is not the practice in this jurisdiction, and I do not say that it is the practice anywhere else. Such a practice, of course, would be impracticable because such authority would not normally be in writing. It is true that some counsel sometimes take written authorities from plaintiffs. It is also true that sometimes insurers will have communicated in a written form of authority to the defendants, but it is by no means invariable, or I believe, normal to do so, to invite the other side to indicate their authority orally would be quite an impractical suggestion. It would be entirely proper for defendant's counsel to have an authority for a higher figure than they are settling for, and for plaintiff's counsel to have authority for a lower figure than they are settling for without advertising that to their opponents but without misleading them. To exchange such authorities could merely cause confusion and delay. The compromise of actions has, particularly in recent years, been recognised as a valuable and important part of the administration of justice. It reduces or avoids the stress of litigation for parties and witnesses. That was particularly true in this case. Compromise avoids the time of doctors and other experts with a useful contribution to be made to society, being used up in lengthy oral hearings. That is necessary on some occasions, but should be avoided if it is not necessary. Compromise saves costs and it saves the public money. To grant an application of this sort might well have a deleterious effect on the smooth flow of the work of the Queen's Bench division in which the Bar of Northern Ireland and the solicitors profession, to their credit, almost invariably seek to resolve actions rather than to passively or actively proceed to unnecessary hearings costly to one or more parties. If of course the parties had not reached a binding legal agreement, the court would have to so conclude but clearly that is not the case in this action, nor I am satisfied has any injustice been done to the parties that have been bound by it.