

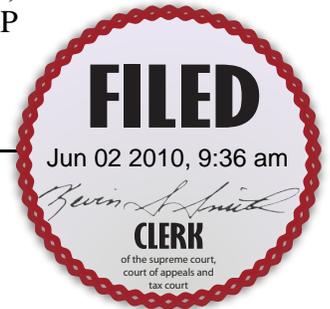
**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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AUTO-OWNERS INSURANCE CO., as )  
Subrogee of BONNIE ROBBINS, )  
 )  
Appellant-Plaintiff, )  
 )  
vs. )  
 )  
CARA STANSIFER, )  
 )  
Appellee-Defendant. )

No. 02A05-0911-CV-665

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable G. Michael Witte, Senior Judge  
Cause No. 02D01-0703-CT-114

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**June 2, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-plaintiff Auto-Owners Insurance Co., as Subrogee of Bonnie Robbins (Auto-Owners), appeals the trial court's orders granting appellee-defendant Cara Stansifer's motion to enforce settlement agreement and dismissing the complaint with prejudice. Auto-Owners argues that there was no meeting of the minds regarding certain terms of the settlement agreement and that, consequently, the trial court erred by enforcing the agreement. Finding no error, we affirm.

### FACTS

On April 22, 2005, Stansifer and Bonnie Robbins were involved in a vehicle collision, causing Robbins to sustain injuries. On March 22, 2007, Robbins filed a complaint for damages against Stansifer and Auto-Owners, which was Robbins's underinsured motorist carrier. During discovery, it became obvious that Robbins's claims exceeded Stansifer's insurance limits and Robbins's underinsured limits. Thus, at some point, Auto-Owners advanced \$50,000 to Robbins and then subsequently paid its underinsured motorist coverage limits to settle Robbins's claim against Auto-Owners. Robbins released Auto-Owners and transferred all of her rights against Stansifer to the insurer. The litigation proceeded, with Auto-Owners litigating as subrogee of Robbins.

Auto-Owners and Stansifer began settlement negotiations, primarily over email.

- On March 25, 2009, counsel for Auto-Owners contacted counsel for Stansifer in an email, indicating that Auto-Owners was willing to settle with Stansifer for \$58,051.59.
- On March 30, counsel for Stansifer responded, also in an email. Counsel stated that Stansifer's insurance carrier, Nationwide Insurance (Nationwide) would settle the case for \$53,051.59 "in exchange for a full and final release of Nationwide and it's [sic] insured, Cara Stansifer." Appellant's App. p. 71.

- Later on March 30, counsel for Auto-Owners responded, agreeing to accept the payment of \$53,051.59 if the funds were paid by March 31, 2009.
- On March 31, counsel for Nationwide sent Auto-Owners an email memorializing a telephone conversation with counsel for Auto-Owners: “Nationwide will be releasing settlement drafts in the total amount of \$53,051.59 in exchange for a full release of its insured, Cara Stansifer. The checks will be released tomorrow via overnight delivery. You should receive them by Thursday.” Id. at 69.

Auto-Owners received the checks from Nationwide on April 2, 2009, and counsel for Auto-Owners deposited the funds into an attorney trust account on April 3.

Later on April 2, 2009, Nationwide provided Auto-Owners with the Full and Final Release (the Release) to be signed by Auto-Owners. Among other things, the document required Auto-Owners to release all claims against both Stansifer and Nationwide. On April 20, 2009, Auto-Owners had still not executed the Release. After counsel for Nationwide inquired about the delay, counsel for Auto-Owners responded that her client was “having a difficult time signing the Release because Nationwide’s name is on it,” requesting a Release that did not contain Nationwide’s name. Id. at 75. Nationwide objected and refused to provide an amended Release. On May 1, 2009, counsel for Auto-Owners informed Nationwide that “[a]pparently there was a miscommunication and I will be returning the \$50,000, as [Auto-Owners is] not willing to sign the release as to both Nationwide and Stansifer. I was hired to collect against Ms. Stansifer. Someone dropped the ball and the \$50K paid was not the \$50K I was supposed to collect.” Id. at 77. Nationwide indicated that it would not accept the return of the settlement checks.

On September 8, 2009, Stansifer filed a motion to enforce the settlement agreement. Following a hearing, the trial court granted the motion on October 21, 2009, finding that the parties had agreed on all principal terms, including Nationwide as a party to the liability release, and that the agreement was enforceable. The trial court subsequently dismissed the complaint with prejudice. Auto-Owners now appeals.

### DISCUSSION AND DECISION

As we consider Auto-Owners's argument that the trial court erred by enforcing the settlement agreement, we note that the construction of settlement agreements is governed by contract law. McGraw v. Marchioli, 812 N.E.2d 1154, 1157 (Ind. Ct. App. 2004); see also Zimmerman v. McColley, 826 N.E.2d 71, 76 (Ind. Ct. App. 2005) (holding that "if a party agrees to settle a pending action, but then refuses to consummate his settlement agreement, the opposing party may obtain a judgment enforcing the agreement"). Construction of the terms of a written contract—here, the emails between the parties are the writings we are asked to interpret—is a pure question of law to which we apply a de novo standard of review. McGraw, 812 N.E.2d at 1157.

An offer, acceptance, and consideration make up the basis for a contract. Zimmerman, 826 N.E.2d at 77. A meeting of the minds of the contracting parties is essential to the formation of a contract. Id. The intent that is relevant is not the parties' subjective intents but their outward manifestation thereof. Id. The intention of the parties to a contract is a factual matter to be determined from all the circumstances. Id.

Here, Auto-Owners argues that there were two primary terms of the settlement agreement that the parties failed to agree upon: the time of payment and the identity of the party/parties to be released.

Turning first to the time of payment, on March 30, Nationwide offered a payment of \$53,051.59 in exchange for a release. Later that day, Auto-Owners made what amounted to a counter-offer, agreeing to accept the payment and sign a release, but only if the funds were paid by March 31. Evidently, the parties continued to communicate about logistics, and on March 31, 2009, Nationwide explained that if the checks were to be released “today” for delivery “tomorrow,” Nationwide needed to know before 2:00 p.m. Appellant’s App. p. 70. At that point, therefore, there was no possibility that Auto-Owners would receive the checks on March 31. Regardless, at 4:30 p.m. that afternoon, Nationwide’s counsel sent an email confirming the substance of a telephone conference that had just occurred, during which the parties agreed that Nationwide would release the checks on April 1 in exchange for the execution of the Release and dismissal of the lawsuit. On April 2, Auto-Owners received the checks and deposited them into an attorney trust account.

When Nationwide communicated to Auto-Owners that it would release and mail the checks on April 1, that amounted to a rejection of the March 31 deadline and a counteroffer of a delivery that would be at least two days later. See I.C.C. Protective Coatings, Inc. v. A.E. Staley Mfg. Co., 695 N.E.2d 1030, 1035 (Ind. Ct. App. 1998) (holding that an acceptance that varies the terms of the offer and operates as a counteroffer may be accepted by the original offeror by performing without objection).

Auto-Owners elected to accept the later delivery without objection regarding the date. Thus, we can only conclude that Auto-Owners accepted the counteroffer regarding the delivery date and that the parties did, in fact, have a meeting of the minds on this term.

Turning next to the identity of the parties to be released, in its March 30 email, Nationwide stated that it would provide a payment of \$53,051.59 in exchange for a full and final release of both Stansifer and Nationwide. Auto-Owners did not object to the release of both parties. The only other reference in the parties' communications regarding the identity of the parties to be released occurred in the March 31 confirmation email, in which Nationwide indicated its intent to release the payment "in exchange for a full release of its insured, Cara Stansifer." Appellant's App. p. 69. Auto-Owners did not ever refer to the identity of the parties to be released during the settlement negotiations. On April 20, however, Auto-Owners informed Nationwide that it would not sign the Release as drafted because "Nationwide's name [was] on it." *Id.* at 75. After Nationwide refused to provide a release that omitted its name, Auto-Owners refused to sign the Release.

Auto-Owners now argues that Nationwide's March 31 email stating that it was seeking a full release of Stansifer modified its previous demand that the release include both Stansifer and Nationwide. We cannot agree. As the trial court recognized, "[t]he identity of the parties to be released from liability was not a point of contention." *Id.* at 7. Auto-Owners was wholly silent on this issue until over two weeks after it received the settlement funds. It did not object to Nationwide's original demand that both Nationwide and Stansifer be released. We cannot conclude that in the absence of such an objection,

Nationwide renegotiated—with itself—to provide less protection—to itself—in the final version of the Release. Thus, viewing all the circumstances and the parties’ outward manifestations of their intent, we can only conclude that the parties agreed that Auto-Owners would release both Nationwide and Stansifer in exchange for the payment. Auto-Owners’s objection after the fact does not change the meeting of the minds that occurred during negotiations.<sup>1</sup>

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.

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<sup>1</sup> And in any event, if Auto-Owners releases its claims against Stansifer, we cannot discern what claims would remain against Stansifer’s insurer. See Rose v. Rose, 179 Ind. App. 299, 301, 385 N.E.2d 458, 459 (1979) (holding that the liability of the insurer of a released party is solely vicarious in nature; thus, when the insured was released from liability, the insurer was necessarily also released).