

No. 101151 - *Shelia F. Haynes, As Administratrix of the Estate of Elgene Phillips, Jr., deceased v. Daimler Chrysler Corporation, a foreign corporation; Autoliv ASP, Inc., a foreign corporation; and Joe Holland Chevrolet, Inc., a West Virginia corporation*

FILED

July 22, 2011

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, J., concurring:

I agree with the result reached in the majority opinion but wish to emphasize certain facts that support this determination.

This case was settled through court-annexed mediation, where the parties collectively entered into a contract to settle this claim against all defendants for the sum of \$150,000.00. As noted in the majority opinion, the terms of the settlement were stated as follows: “The Defendants agree to pay to the Plaintiff \$150,000.00.”

This handwritten document provided the basis for the entry of the circuit court’s order authorizing the settlement of this wrongful death claim. In the court order entered April 29, 2009, the circuit court makes the followings findings regarding the settlement:

That Sheila F. Haynes, as Administratrix of the Estate of Elgene Phillips, Jr., be GRANTED permission to settle and all claims that have been made, could have been or could be asserted on behalf fo the Estate of Elgene Phillips, Jr., potential beneficiaries, takers and claimants to this settlement and the potential claimants for the wrongful death of Elgene Phillips, Jr., against Daimler Chrysler Corporation and Autoliv ASP, Inc, and

any entity or individual associated with these entities, and to accept the aforesaid settlement, the total amount of which is the sum of **ONE HUNDRED, FIFTY THOUSAND DOLLARS (\$150,000.00)**, as set forth above, in full and final settlement of all claims against Daimler Chrysler Corporation and Autoliv ASP, Inc.

(emphasis in original).

The parties further reduced their agreement to a written settlement agreement, in which Sheila Haynes individually and as administratrix of Elgene Phillips, Jr.'s estate, compromised all claims in consideration of the payment of \$150,000.00.

It is uncontroverted that the parties entered into a contract, for good and sound consideration, for the payment of an agreed upon amount. Although it was within the ability of the defendants to set forth individual amounts which each would individually pay to settle the plaintiffs' claims, nowhere in any of these documents is there any such apportionment, allotment, division or indication that each defendant bore a certain amount of the settlement. Rather, the clear impression is that the defendants were collectively settling the plaintiffs' claims. Without the clear designation for what portion each would bear, the defendants, Autoliv ASP, Inc., and Daimler Chrysler Corporation, become jointly and severally liable for the payment of this amount. Though perhaps unfortunate, the risk that one or the other defendant would default on its obligation is therefore one properly borne by the remaining defendant, not the plaintiff.