Cleveland State Law Review

Volume 10 | Issue 1 Article 7

1961

Insurance Company Interference in Personal Injury Law Practice

Sheldon E. Baskin

Insurance Company Interference in Personal Injury Law Practice

*Sheldon E. Baskin**

MANY PLAINTIFFS' COUNSEL long have complained of allegedly organized propaganda campaigns by insurance companies, aimed at reducing jurors' sympathy for injured plaintiffs in personal injury suits. In 1953 the American Automobile Insurance Company caused four advertisements to appear in *Life*[1] magazine and *The Saturday Evening Post*.[2] These advertise-

---

* B.A., in Political Science, Western Reserve Univ.; Third-year student, Cleveland-Marshall Law School.

1 Life Magazine, January 26 and March 9, 1953.

2 The Saturday Evening Post February 14 and March 28, 1953.

Each of the full page advertisements contained a dramatic photo occupying more than one half of the page and supplying the setting for a printed message in the lower portion of the page.

Illustration I—The guarded closed door of a jury room.

"Casualty insurance companies have been losing an average of eleven dollars on every hundred dollars of earned auto liability premiums. More accidents are partly responsible. So are excessive jury awards rendered by jurors who feel they can afford to be generous with the rich insurance companies' money. Actually jurors who are responsible for awards in excess of what is just and reasonable are soaking *you* by raising insurance rates."

Illustration II—Picture of jurors taking the oath.

"But the Juror's Oath demands that jurors decide 'according to the evidence.' Jurors sometimes forget this. Ruled by emotion rather than facts, they arrive at unfounded or excessive awards. Verdicts occasionally even higher than requested.

"These men and women may be scrupulously honest. But, as jurors, they feel in their hearts that the injured person although he may have caused the accident—is entitled to an award.

"Because insurance rates depend on claim costs, these honest jurors cost millions of policy holders, including themselves, countless extra dollars in premiums every year."

Illustration III—A picture of a woman with a puzzled expression at a store counter, paying her grocery bill.

"Yes, Mrs. Jones, you pay for liability and damage suit verdicts whether you are insured or not.

"Next time you serve on a jury, remember this: When you are overly generous with an insurance company's money, you help increase not only your own premiums, but also the cost of every article and service you buy."

Illustration IV—A father confessing to his son, a senior in law school, about his recent experience as a juror.

"As a businessman, I knew the woman involved in the trial was legally at fault. She walked into a moving car. But she was a widow with a child to support, and I felt certain that the driver of the car was insured.

(Continued on next page)

ments alleged that excessive awards by juries were raising insurance rates and the cost of living. It was emphatically stated in a NACCA Law Journal that, *this wanton and blatant attempt by insurance carriers to interfere with the administration of justice has aroused the ire of lawyers and jurists nation-wide, and must be stopped.*[3]

The difficulties encountered in attempting to substantiate a cause of action for wrongful interference with attorneys' professional contractual relations have relegated members of the Bar to discovering other ways of doing indirectly that which they can not do directly. In *People ex rel. Barton v. American Automobile Insurance Co.,*[4] a quo warranto proceeding was brought to show cause why the corporate charter of the insurance company should not be revoked for interfering with the orderly administration of justice. The court held that the advertisements did not constitute a clear and present danger to the administration of justice, and that the maintenance of quo warranto proceedings infringed on the constitutional rights of the defendant, and on appeal the Supreme Court of the United States denied certiorari. A Pennsylvania Court[5] held for the insurance company when a contempt action plus a prayer for injunctive relief was instituted arising out of the aforementioned advertisements. This decision was appealed to the federal courts, where it was affirmed. The net effect of these cases however, was a cessation of further reproduction of these particular advertisements.[6]

(Continued from preceding page)

"The doctor said that the widow wouldn't be able to hold down a steady job for at least a year, so we awarded her a healthy sum. After all, the child must eat."

In the bottom right hand corner of each advertisement the following notation set off by a rectangle appeared:

"Most claims for damages are legitimate and reasonable and are amicably settled out of court. However, as jurors tend more and more to give excessive awards in cases that do go to court, such valuations are regarded as establishing the 'going' rate for the day-to-day out-of-court claims, all of which means increased premium cost to the public."

[3] 11 NACCA L. J. 17 (May 1953).

[4] People ex rel. Barton v. Am. Auto. Ins. Co., 132 Cal. App. 2d 317, 282 P. 2d 559, *cert. den.* 350 U. S. 886, 100 L. ed. 781, 76 S. Ct. 140 (1955).

[5] Hoffman v. Perrucci, 117 F. Supp. 38, *aff'd* 222 F. 2d 709 (CA 3d, 1955).

[6] Wallace, Robert, *Life and Limb,* p. 212 (1955).

Common Law

It is a general proposition of law that every man has the right to engage in a lawful trade or calling, and to secure for himself the earnings of his industry. This right is a property right which the law protects by making actionable any unjustified interference therewith.[7] *Interference* may take many forms. It may be interference with an existing contractual relation, or with prospective advantage, or it may be the act of driving one's competitor out of business. This paper will consider only interference with attorneys' professional contractual relations, and explore the liability, if any, which may attach.

At common law, interference with contractual rights was only actionable if a personal service contract was involved, and then only if the interferer's actions were characterized by fraud, coercion, intimidation, either actual or imminent, or by fraudulent misrepresentation. In 1853, the leading case of *Lumley v. Gye*,[8] was decided, in which what prior to then would have been *non-tortious* modes of interference with contractual rights were made actionable. At first this doctrine was received with hesitation and disapproval, but within twenty eight years it was reaffirmed and became firmly established in English law.[9] American courts demonstrated more reluctance to accept the doctrine than did the English courts. While at first recovery was denied unless the contract was for personal services, the courts eventually shifted their emphasis to justification for the defendant's actions rather than the plaintiff's failure to state a cause of action.[10] Finally, in the case of *Campbell v. Gates*,[11] the court declared that intentional interference with contractual rights, in the ab-

---

[7] Annot., 9 A. L. R. 2d 232 (1948).

[8] Lumley v. Gye, 2 El. & Bl. 216, 1 Eng. Rul. Cas. 706 (1853).

[9] Bowen v. Hall, 6 Q. B. D. 333, 50 L. J. Q. B. 305 (1881); Temperton v. Russell, 1 Q. B. 715, 62 L. J. Q. B. 412 (1893) (applied to contracts other than those for personal services); South Wales Miners' Federation v. Glamorgan Coal Co., A. C. 239, 74 L. J. K. B. 525 (1905) (included interferences in which there was no ill will on the part of the defendant).

[10] Ashley v. Dixon, 48 N. Y. 430, 8 Am. Rep. 559 (1872); Curran v. Galen, 152 N. Y. 33, 46 N. E. 297, 37 L. R. A. 802, 57 Am. St. Rep. 496 (1897) (recovery limited to contracts for personal services); Cumberland Glass Manufacturing Co. v. De Witt, 120 Md. 381, 87 A. 927, Ann. Cas. 1915 A. 702 (1913); National Protective Association of Steam Fitters & Helpers v. Cumming, 170 N. Y. 315, 63 N. E. 369, 58 L. R. A. 135, 88 Am. St. Rep. 648 (1902); Roseneau v. Empire Circuit Co., 131 App. Div. 429, 115 N. Y. S. 511 (1909); S. C. Posner Co. v. Jackson, 223 N. Y. 325, 119 N. E. 573 (1918); Lamb v. Cheney & Sons, 227 N. Y. 418, 125 N. E. 817 (1920).

[11] Campbell v. Gates, 236 N. Y. 457, 141 N. E. 914 (1923).

sence of privilege on the part of the inducer of the breach, was actionable without reservation.

As an actionable tort the doctrine now is recognized in almost every state.[12] In order to substantiate a cause of action the courts have determined that four elements must be present: [13]

(1) there must be a valid existing contract between the plaintiff and the other contracting party; [14]

(2) the defendant must have knowledge of that contract; [15]

(3) the defendant must have intentionally procured a breach of the contract by the other contracting party; [16] and,

(4) there must be damage to the plaintiff.[17]

Nature of Attorney-Client Contract

Respecting an attorney-client contract, the attorney is in a more tenuous position than is the case with almost any other kind of contracting party. An attorney-client contract is termi-

---

[12] Mahoney v. Roberts, 86 Ark. 130, 110 S. W. 225 (1908); Hogue v. Sparks, 146 Ark. 174, 225 S. W. 291 (1920); Ketcher v. Sheet Metal Workers' Ass'n., 115 F. Supp. 802, 810 (D. C. E. D. Ark., 1953); Doremus v. Hennessy, 176 Ill. 608, 52 N. E. 924, 54 N. E. 524, 43 L. R. A. 797, 68 Am. St. Rep. 203 (1898); Knickerbocker Ice Co. v. Gardiner Dairy Co., 107 Md. 556, 69 A. 405, 16 L. R. A. N. S. 746 (1908); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817, 11 L. R. A. N. S. 201, 11 Ann. Cas. 332, 122 Am. St. Rep. 631 (1907); Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 214 N. W. 754, 84 A. L. R. 35 (1927); Louis Kamm Inc. v. Flink, 113 N. J. L. 582, 175 A. 62, 99 A. L. R. 1 (1934); Keviczky v. Lorber, 290 N. Y. 297, 49 N. E. 2d 146, 146 A. L. R. 1410 (1943); Tollett v. Mashburn, 183 F. Supp. 120 (W. D. Ark. 1960).

[13] Lamb v. Cheney & Sons, *supra* note 10; Hornstein v. Podwitz, 254 N. Y. 443, 448, 173 N. E. 674, 675, 84 A. L. R. 1 (1930); Israel v. Wood Dolson Co., 1 N. Y. 2d 116, 151 N. Y. S. 2d 1, 134 N. E. 2d 97 (1956); Neville v. Waring, 192 N. Y. S. 2d 194 (1959).

[14] Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U. S. 373, 55 L. Ed. 502, 31 S. Ct. 376 (1911); Triangle Film Corp. v. Artcraft Pictures Corp., 250 F. 981, 7 A. L. R. 303 (2 Cir., 1918) (conditions terminated); Bailey v. Banister, 200 F. 2d 683 (10 Cir., 1952) (purchase of restricted Indian land); Gunnels v. Atlanta Bar Ass'n., 191 Ga. 366, 12 S. E. 2d 602, 132 A. L. R. 1165 (1940) (usury); W. H. Hill Co. v. Gray & Worcester, 163 Mich. 12, 127 N. W. 803, 30 L. R. A. N. S. 327 (1910); Burden v. Elling State Bank, 76 Mont. 24, 245 P. 958, 46 A. L. R. 906 (1926) (contract declared forfeited); Rizika v. Potter, 72 N. Y. S. 2d 372 (1947) (no contract).

[15] R & W Hat Shop v. Sculley, 98 Conn. 1, 118 A. 55, 29 A. L. R. 551 (1922); Sorenson v. Chevrolet Motor Co., *supra* note 12; Hornstein v. Podwitz, *supra* note 13.

[16] Cameron v. Barancik, 173 Ill. App. 23 (1912); Prosser, Law of Torts, 728 (2d ed., 1955).

[17] Harmatz v. Allstate Ins. Co., 170 F. Supp. 511 (1959).

nable at will on one side,[18] *i.e.*, the client has an implied right at any time to terminate the contract with or without cause. This rule springs from the personal and confidential nature of the relation.[19] There is a conflict of authority as to whether a discharge by a client without cause constitutes a breach of contract.[20] The

[18] Tenney v. Berger, 93 N. Y. 524, 529, 45 Am. Rep. 263 (1883); Martin v. Camp, 219 N. Y. 170, 114 N. E. 46 (1916); Lawler v. Dunn, 145 Minn. 281, 176 N. W. 989 (1920); Cole v. Myers, 128 Conn. 223, 21 A. 2d 396, 136 A. L. R. 226 (1941).

[19] Matter of Dunn, 205 N. Y. 398, 98 N. E. 914, Ann. Cas. 1913 E. 536 (1912).

[20] The majority of jurisdictions allow an attorney employed under a contingent fee contract and discharged without fault on his part to recover damages as for a breach of contract. U. S.: Such v. Bank of State, 121 F. 202 (1903 CC); Ark.: Brodie v. Watkins, 33 Ark. 545, 34 Am. Rep. 49 (1878); Weil v. Finneran, 70 Ark. 509, 69 S. W. 310 (1902); Weil v. Finneran, 78 Ark. 87, 93 S. W. 568 (1906); Cal.: Baldwin v. Bennett, 4 Cal. 392 (1854); Bartlett v. Odd-Fellow's Saving Bank, 78 Cal. 218, 21 P. 743, 12 Am. St. Rep. 139 (1889); Kirk v. Culley, 202 Cal. 501, 261 P. 994 (1927); Elconin v. Yalen, 208 Cal. 546, 282 P. 791 (1929); Zurich General Acci. & Liability Ins. Co. v. Kinsler, 12 Cal. 2d 98, 81 P. 2d 913 (1938); Echlin v. Superior Ct., 13 Cal. 2d 368, 90 P. 2d 63, 124 A. L. R. 719 (1939); McCully v. Gans, 116 Cal. App. 695, 3 P. 2d 348 (1931); Ind.: Scobey v. Ross, 5 Ind. 445 (1854); French v. Cunningham, 149 Ind. 632, 49 N. E. 799 (1898); Ky.: Henry v. Vance, 111 Ky. 72, 63 S. W. 273 (1901); Minn.: Moyer v. Cantieny, 41 Minn. 242, 42 N. W. 1060 (1889); Mo.: McEllinney v. Kline, 6 Mo. App. 94 (1878); N. Y.: Carlise v. Barnes, 102 App. Div. 573, 92 N. Y. S. 917 (1905); 183 N. Y. 567, 76 N. E. 1090 (1906) (appeal dismissed without opinion); N. D.: Simmon v. Chicago M. & St. P. R. Co., 45 N. D. 251, 177 N. W. 107 (1920); Ohio: Scheinesohn v. Lemonek, 84 Ohio St. 424, 95 N. E. 913, Ann. Cas. 1912 C. 737 (1911); Roberts v. Montgomery, 115 O. S. 502, 154 N. E. 740 (1926); Harrison v. Johnson, 640 App. 185, 28 N. E. 2d 615 (1940); Okla.: White v. American Law Book Co., 106 Okla. 166, 233 P. 426 (1924); First Nat'l Bank & Trust Co. v. Bassett, 183 Okla. 592, 83 P. 2d 837, 118 A. L. R. 1276 (1938); Or.: Dolph v. Speckart, 94 Or. 550, 186 P. 32 (1920); Pa.: Williams v. Philadelphia, 208 Pa. 282, 57 A. 578 (1904); Sundheim v. Beaver County Bldg. & Loan Ass'n., 140 Pa. Super. Ct. 529, 14 A. 2d 349 (1940); Tenn.: Brownlow v. Payne, 2 Tenn. App. 154 (1925); Tex.: White v. Burch, Tex. Civ. App. 19 S. W. 2d 404 (1929); Wash.: Romey v. Graves, 112 Wash. 88, 191 P. 801 (1920); Hamlin v. Case & Case, 188 Wash. 150, 61 P. 2d 1287 (1936); W. Va.: Palsley & Son v. Anderson, 7 W. Va. 212, 23 Am. Rep. 613 (1874); Clayton v. Martin, 108 W. Va. 571, 151 S. E. 855 (1930).

The trend however, has been to allow quantum meruit recovery as the exclusive remedy.

U. S.: Spellman v. Banker's Trust Co., 6 F. 2d 799 (CCA 2d, 1925); Re Badger, 9 F. 2d 560 (CCA 2d, 1925); Ky.: Breathitt Coal I & Lumber Co. v. Gragory, 25 Ky. L. Rep. 1507, 78 S. W. 148 (1904); Joseph v. Lapp, 25 Ky. L. Rep. 1875, 78 S. W. 1119 (1904); Gordon v. Morrow, 186 Ky. 713, 218 S. W. 258 (1920); Hubbard v. Goffinett, 253 Ky. 779, 70 S. W. 2d 671 (1934); Com. use of Clay County v. Sizemore, 269 Ky. 722, 108 S. W. 2d 733 (1937); Minn.: Pye v. Diebold, 204 Minn. 319, 283 N. W. 487 (1939); Krippner v. Matz, 205 Minn. 497, 287 N. W. 19 (1939); N. Y.: Martin v. Camp, 219 N. Y. 170, 114 N. E. 46, L. R. A. 1917 F. 402 (1916), reh. den. 219 N. Y. 627, 114 N. E. 1072 (1917); Re Rosedale Ave., 219 N. Y. 192, 114 N. E. 49 (1916) reh. den. 219 N. Y. 626, 114 N. E. 1082 (1916); Re Krooks, 257 N. Y. 329, 178 N. E. 548 (1931); Tillman v. Komar, 259 N. Y. 133, 181

(Continued on next page)

same conflict is prevalent in the case of a third party, not in privity with the contract, inducing the client to terminate the attorney-client relation. Some courts maintain that the termination of an attorney-client contract, by the client, either with or without cause, is not a breach of contract. They reason that the client has an implied right to terminate the contract at any time, without liability other than quantum meruit for the reasonable value of the services rendered by the attorney up to the time of discharge. How then, they ask, can a third party, not in privity with the attorney-client contract, incur liability for inducing the client to do that which he is legally justified in doing on his own?

Generally it is held that where an attorney renders services upon request, or is employed without any agreement as to his fees, he is entitled only to reasonable compensation, measured by the value of the services rendered up to the time of discharge. Where, however, there is an existing contract as to the attorney's fees, the attorney is entitled to the amount of compensation fixed by the attorney-client contract, and a termination of the attorney's services by the client does amount to a breach of contract.[21]

Insurance Companies and Contingent Fee Contracts

Insurance companies, in most personal injury cases, are interested primarily in minimizing their losses. By effecting out-of-court settlements they are generally able to reduce the amount payable in a particular case, and at least to save the expense of counsel fees.

Generally, insurance companies are privileged in their attempts at direct settlement with the injured party, even if they know of his retention of counsel.[22] A Michigan court in 1951[23]

(Continued from preceding page)

N. E. 75 (1932); Lurie v. New Amsterdam Casualty Co., 270 N. Y. 379, 1 N. E. 2d 472 (1936); Crowley v. Wolf, 281 N. Y. 59, 22 N. E. 2d 234, 121 A. L. R. 970 (1939); Martuci v. Brooklyn Children's Aid Soc., 284 N. Y. 408, 31 N. E. 2d 506 (1940); Re Cusimano, 174 Misc. 1068, 22 N. Y. S. 2d N. Y. S. 2d 677 (1940); Tex.: Thompson v. Smith, 248 S. W. 1070 (Tex., 1923); Wash.: Wright v. Johanson, 132 Wash. 682, 233 P. 16 (1925).

[21] Scheinesohn v. Lemonek, 84 Ohio St. 424, 95 N. E. 913, Ann. Cas. 1912 C. 737 (1911); High Point Casket Co. v. Wheeler, 182 N. C. 459, 109 S. E. 378, 19 A. L. R. 391 (1921); Clayton v. Martin, 108 W. Va. 571, 151 S. E. 855, citing R. C. L. (1930).

[22] Cameron v. Barancik, 173 Ill. App. 23 (1912); Herbits v. Constitution Indem. Co. of Philadelphia, 279 Mass. 539, 181 N. E. 723 (1932); Tauro v. Gen. Acc. Fire & Life Assur. Corp. Ltd., 8 N. E. 2d 773 (1937); Hansen v. Barrett, 183 F. Supp. 831 (D. C. Minn. 5th Div. 1960).

[23] Krause v. Hartford Acc. & Indem. Co., 331 Mich. 19, 49 N. W. 2d 41 (1951).

held that the defendant's actions in obtaining an independent settlement were privileged, though accomplished by inducing the injured parties to discharge counsel. This court, adhering to the common law rule that interference must be unlawful in character in order to sustain an action, reasoned that since the injured parties had the right to settle their claims, the defendant was privileged in interfering with the attorney-client contract. The fact that the privilege was exercised without proper motive did not make the conduct actionable. In *Hansen v. Barrett*,[24] a federal district court recently held that even though an attorney is deprived of his prospective fee, interference with an attorney-client relation by the opposing party who settles the claim is justified and hence not actionable.

The right of an insurance company to make a direct settlement with the injured party is considered to be an absolute right. Courts have continually held that no liability for breach of contract exists where the breach is caused by the exercise of an absolute right.[25] If, however, the means used to exercise this right be unlawful, the privilege of interfering is thereby lost.

The courts have laid particular stress on the four elements requisite for establishing a cause of action. This is particularly true with respect to proving that the contract has in fact been breached and that the defendant's act was the proximate cause of that breach. Quite often recovery has been denied the attorney on the grounds that the facts did not warrant the conclusion that the attorney-client contract had been breached.[26]

In *Herbits v. Constitution Indem. Co. of Philadelphia*,[27] the court held that merely intentionally causing the loss of benefits or profits under a contract is not in itself actionable. To constitute a legal wrong there must be, in addition, either ill will, or purpose to harm, or the lack of legal justification. The court also held that a defendant acting in the exercise of an equal or superior right which comes into conflict with the right of an attorney under his attorney-client contract may lawfully interfere with such right.

---

[24] Hansen v. Barrett, *supra* note 22.

[25] An act which a person has a definite legal right to do without qualifications. Wahl v. Strous, 344 Pa. 402, 25 A. 2d 820 (1942); Orr v. Mutual Ben. Health & Acc. Ass'n., 240 Mo. App. 236, 207 S. W. 2d 511 (1947).

[26] Cameron v. Barancik, *supra* note 22; Herbits v. Constitution Indem. Co. of Philadelphia, *supra* note 22; Wahl v. Strous, *supra* note 25; Barnes v. Quigley, 49 A. 2d 467 (D. C. Mun. App. 1946); Orr v. Mutual Ben. Health & Acc. Ass'n., *supra* note 25.

[27] Herbits v. Constitution Indem. Co. of Philadelphia, *supra* note 22.

An attorney may not prohibit the client from making a direct settlement with the opposing party. The courts have held that such a provision in an attorney-client contract would be void as against public policy.[28] If there is no way to prevent the client from making a direct settlement with the opposing party, it follows that the procurement of such settlement is within the client's rights. It can also be concluded that the defendant who induced the client to make the settlement committed no legal wrong against the attorney.

In *Klauder v. Cregar*,[29] a widow, whose husband had been killed by an automobile driven by the defendant and insured by an automobile liability insurance company, decided to bring action. She retained counsel and executed a power of attorney to him whereby he was to receive fifty per cent of any sum recovered either by way of suit or settlement. The widow retained the right to settle with the joint tortfeasors. During the pendency of the action one of the defendant's adjusters induced the widow to settle for a sum of $5000, by informing her that the power of attorney executed with her counsel was no good, that if she settled out of court she would not have to pay her attorney, and, that the insurance company would take care of her attorney. The widow's counsel, not being paid, brought suit against the insurance company for wrongful interference with his contractual rights. The court held that the actions of the insurance company constituted a wrongful inducement of a breach of contract, committed with knowledge of the innocent parties' contract rights, and that such action could not be justified on the ground that they enhanced the tortfeasor's business interests.

A New York court held that the act of an insurance company, whose adjuster induced the injured party to settle by threatening that no compensation would be paid unless the injured party breached the contract of retainer with his attorney, was unjustified.[30] The court also said that the mere fact that the attorney had a cause of action against his client did not exonerate the parties who wrongfully induced the breach of contract.[31]

Under Pennsylvania law an attorney retained on a contingent fee basis has an interest in the contract apart from his mere

[28] Krause v. Hartford Acc. & Indem. Co., *supra* note 23.

[29] Klauder v. Cregar, 327 Pa. 1, 192 A. 667 (1937).

[30] Lurie v. New Amsterdam Cas. Co., 270 N. Y. 379, 1 N. E. 2d 472 (1936).

[31] *Supra* note 30.

employment. The attorney has a cause of action against a third party who induces a breach of such contract, and may recover his full contingent fee.[32] The fact that the attorney may have a cause of action against his client for breach of contract does not preclude his bringing an action against the party who induced that breach, knowing of the existence of the contract and the rights of the parties thereunder.[33] If the third party induces the client to make a separate settlement, for the purpose of depriving his attorney of his contingent fee, and the client is otherwise insolvent, an action may be maintained against the inducer.[34]

The courts have consistently held that an attorney may not be "bilked" out of his fee through actions of a third party in conspiracy with the attorney's client.[35] In such cases the third party loses any privileged immunity he might have had.

In Ohio[36] an injured party retained counsel under a contingent fee contract. The defendant had knowledge of this contract but persuaded the injured party to settle by conspiring with him to deprive the attorney of his fee. The court allowed the attorney to recover and in their syllabus said:

> Where the defendant in a tort action settles with the plaintiff behind the back of the attorney who had contracted to prosecute the action for a contingent fee and the settlement is made with full knowledge on the part of the defendant of such contract, an action lies by the attorney against the defendant for his full share of the settlement as provided in his contract.[37]

It has also been held that if the client was induced to discharge her attorney and employ one selected by the insurer, the attorney may recover.[38] The attorney may also bring action where the judgment was sold to the defendants, thus making it impossible for the attorney to perform his contract.[39]

---

[32] Bennett v. Sinclair Nav. Co., 33 F. Supp. 14 (D. C. Pa. 1940).

[33] *Supra* note 32.

[34] Gordon v. Mankoff, 146 Misc. 258, 261 N. Y. S. 888 (1931).
For other recent examples of insurance adjusters' misconduct, see Parker v. United Tank Truck Rental, Inc., 21 Misc. (N. Y.) 2d 246 (1960); Automobile Underwriters, Inc. v. Smith, 166 N. E. 2d 341 (Ind. App. 1960), *aff'g.* 126 Ind. App. 332, 133 N. E. 2d 72.

[35] Gordon v. Mankoff, *supra* note 28; Barnes v. Quigley, *supra* note 26.

[36] Cleveland Ry. Co. v. Godfrey, 28 Ohio L. R. 598 (1928).

[37] *Supra* note 36.

[38] Employers Liab. Assur. Corp. v. Freeman, 229 F. 2d 547 (CA 10, 1955).

[39] Hogue v. Sparks, *supra* note 12.

In Ohio the rights of an attorney retained on a contingent fee basis are protected. In *Scheinesohn v. Lemonek*,[40] the Ohio Supreme Court held that where the attorney-client relation is terminated by the client without cause, a cause of action for breach of contract accrues immediately in favor of the attorney. The holding of the *Scheinesohn* case was reaffirmed and extended in the case of *Roberts v. Montgomery*,[41] which held that if the injured party makes a direct settlement with the wrongdoer, while his counsel in good faith and without delay or default is carrying out the obligations of the contingent fee contract, the percentage of the settlement money designated as compensation in the contract belongs to the attorney. The court's rationale was that it ought to prevent unjust enrichment at the expense of the attorney.

Conclusion

The cloak of immunity that the insurance companies wear, and the fact that recently a trend has been noticed encouraging settlements,[42] results in attorneys, finding their just fees diminished by the interference of third persons not in privity with the attorney-client contract, being compelled to find other means of redressing the wrongs thus perpetrated against them.

---

[40] Scheinesohn v. Lemonek, *supra* note 20.

[41] Roberts v. Montgomery, *supra* note 20.

[42] "Juries get stingy in awarding money." *The Cleveland Plain Dealer*, Oct. 5, 1960, p. 1.

Note, however, that there undoubtedly is some merit in the insurance company complaints of interference in *their* business. Thus, the current investigations of ambulance chasing in Brooklyn, N. Y. recently revealed an organized ring of fraudulent claim specialists involving doctors, lawyers, insurance claims men and adjusters, garage mechanics, etc. Similar rings recently were uncovered in Akron, Ohio. See, *N. Y. Times*, p. 32 (Nov. 16, 1960); *Cleveland Plain Dealer*, p. 11 (July 14, 1960); 5 Negl. & Comp. Service (23) 177 (Sept. 1, 1960); 5 Id. (22) 173 (Aug. 15, 1960). Nevertheless, the insurance companies can rely on criminal proceedings and bar association disciplinary proceedings to punish false claimants. Attorneys have no equivalent aid against insurance company interference.