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Alsup v. Firestone Tire & (and) Rubber Company: New Specificity Rule for Designating Releases Precludes Effective Use of General Classifications, 18 J. Marshall L. Rev. 767 (1985)

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ALSUP v. FIRESTONE TIRE & RUBBER COMPANY:* NEW SPECIFICITY RULE FOR DESIGNATING RELEASEES PRECLUDES EFFECTIVE USE OF GENERAL CLASSIFICATIONS

Section 2(c) of the Illinois Contribution Among Joint Tortfeasors Act (Contribution Act)[1] provides that a release[2] given

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* 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

1. ILL. REV. STAT. ch. 70, §§ 301-305 (1983). The Contribution Act is modeled after sections 1, 2 and 4 of the UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT, 12 U.L.A. 63-64, 87-88, 98 (1955) [hereinafter cited as UNIFORM ACT]. Contribution is a means of allocating liability among tortfeasors on either a pro rata basis or in proportion to the comparative fault of each tortfeasor. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 50, at 310 (4th ed. 1971).

Prior to 1977, Illinois followed the common law rule regarding contribution that there was no contribution among joint tortfeasors. This rule had its origins in Merryweather v. Nixan, 8 Term. Rep. 186, 101 Eng. Rep. 1337 (K.B. 1799). It was based on the principle that joint tortfeasors acted in concert to cause only one injury; therefore, each tortfeasor was responsible for the whole injury. Thus, there could be no contribution based on the fault of other tortfeasors because each was wholly liable for the entire injury. When the rule was established, there were only intentional torts; the willfulness of the action being the justification for the rule. As tort law expanded to include unintentional acts, however, the rule remained rigidly in effect. *See* W. PROSSER, *supra*, § 50, at 305-07 (traces history and basis of contribution in England and America); 18 C.J.S. *Contribution* § 11 (1939) (general background and reason for no-contribution rule); Reath, *Contribution Between Persons Jointly Charged for Negligence—Merryweather v. Nixan*, 12 HARV. L. REV., 176, 177-78 (1898) (argues no-contribution rule should be the exception, applicable only to intentional torts, rather than the general rule for all torts).

Because of the harshness of the no-contribution rule, a number of judicially-created devices, such as equitable apportionment and active-passive indemnity, were developed which mitigated the harshness to some degree. The unfairness, however, remained and numerous authorities and scholars continued to call for replacing the common law rule with a rule allowing contribution according to proportion of fault. *See generally Study Committee Report on Indemnity, Third Party Actions and Equitable Contributions*, 1976 REPORT OF THE ILLINOIS JUDICIAL CONFERENCE (comprehensive review of the historical development of the law and recommendation for adopting contribution based on degree of fault); W. PROSSER, *supra*, § 50, at 307 (discussion of the inequities of the rule); Bua, *Third Party Practice in Illinois: Express and Implied Indemnity*, 25 DEPAUL L. REV. 287 (1976) (thorough discussion of problems and inconsistencies of indemnity, recommending adoption of contribution as the most equitable method of dividing liability); Michael & Appel, *Contribution and Indemnity Among Joint Tortfeasors in Illinois: A Need For Reform*, 7 LOY. CHI. L.J. 591 (1976) (discussion of indemnity as an inequitable alternative to contribution and recommending reevaluation of the rule). The Illinois Supreme Court, in the absence of legislative action, adopted contribution by judicial decree in Skinner v. Reed-Prentice Div. Package Mach. Co., 70 Ill. 2d 1, 374 N.E.2d 437, *modified*, 70 Ill. 3d 16, 374 N.E.2d 449, (1977), *cert. denied sub nom.* Hinck-

to one or more persons subject to liability in tort[3] for the same injury does not discharge other tortfeasors from liability "unless its terms so provide."[4] Under common law, a release given to one tortfeasor discharged the liability of all other tortfeasors accountable for that injury.[5] This result occurred regardless of whether they were joint or independent tortfeasors[6] and irrespective of the

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ley Plastics, Inc. v. Reed-Prentice Div. Package Mach. Co., 436 U.S. 946 (1978). In 1979, the Illinois General Assembly adopted the supreme court's decision to allow contribution among tortfeasors. 1979 Ill. Laws 2347, codified at ILL. REV. STAT. ch. 70, §§ 301-305, and ch. 83, § 15.2 (1979). Section 15.2 of chapter 83 establishes a two year limitation on the filing of an action for contribution after payment of a settlement or judgment. ILL. REV. STAT. ch. 83, § 15.2 (1979) (this provision is now codified in the Illinois Code of Civil Procedure as ILL. REV. STAT. ch. 110, § 13-204 (1983)). For a review of important court decisions since *Skinner*, see Kissel, *Developments in Third Party Practice, Contribution and Indemnity*, 71 ILL. B.J. 654 (1983). For a general discussion of contribution, see Herndon and Israel, *The Law of Contribution*, 29 PRAC. LAW. 59 (No. 6, Sept. 1, 1983).

2. A release is the giving up or abandoning of a claim or a right to the person against whom the claim exists. Artoe v. Navajo Freight Lines, Inc., 65 Ill. App. 3d 119, 122, 382 N.E.2d 492, 495 (1978); W. PROSSER, *supra* note 1, § 49, at 301; 76 C.J.S. *Release* § 1 (1952).

3. Although the name of the act specifically refers to "joint tortfeasors," the act applies to anyone subject to liability in tort. ILL. REV. STAT. ch. 70, § 302(c) (1983). Historically, the term referred only to intentional tortfeasors acting in concert, but through wide misuse it has come to include negligent concurrent tortfeasors as well. *See* W. PROSSER, *supra* note 1, §§ 46-47, at 291-98 (historical discussion of confusion as to meaning of "joint tortfeasor" and effect of misuse). *See also infra* note 6.

4. ILL. REV. STAT. ch. 70, § 302(c) (1983). The full text of this section reads:

> (c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.

Id.

5. *See* Porter v. Ford Motor Co., 96 Ill. 2d 190, 449 N.E.2d 827 (1983) (release given to one tortfeasor releases all); Alberstett v. Country Mut. Ins. Co., 79 Ill. App. 3d 407, 398 N.E.2d 611 (1979) (release given to one tortfeasor releases all). For a thorough discussion of the common law rule, the devices used to avoid it, and the emergence of the trend for courts to look more closely at the intentions of the parties, see Annot., 73 A.L.R.2d 403 (1960).

6. In Illinois, the common law release rule applied to independent tortfeasors whose separate actions concurred in a single injury, as well as those who were technically jointly liable. Schrempf v. New England Mut. Life Ins. Co., 103 Ill. App. 3d 408, 431 N.E.2d 402 (1982) (release given to an insurer barred suit against second insurer for similar conduct resulting in same injury); Manthei v. Heimerdinger, 332 Ill. App. 335, 75 N.E.2d 135 (1947) (dram shop action release of intoxicated motorist also released seller of liquor and seller's landlord). A release to a person secondarily liable, however, does not release the liability of the primary tortfeasor for the entire injury. Cereal Byproducts Co. v. Hall, 16 Ill. App. 2d 79, 147 N.E.2d 383 (1958) (release given to bank which cashed checks over three year period in embezzlement scheme by plaintiff's employee held not to release auditors who negligently failed to discover embezzlement in audit during first year of scheme), *aff'd*, 15 Ill. 2d 313, 155 N.E.2d 14

intent of the parties as to who was released.[7] In *Alsup v. Firestone Tire & Rubber Co.*,[8] the Illinois Supreme Court decided the issue of whether, under section 2(c) of the Contribution Act, a general release discharged the liability of a tortfeasor who was not specifically named, but who otherwise would be included in a general class term[9] used to designate releasees.[10] The court interpreted section 2(c) to mean that a general release cannot discharge any tortfeasor from liability unless he is specifically named or identified in the release.[11] The *Alsup* court's holding is a major departure from the established body of law governing releases and raises many substantive questions which can only be resolved by future litigation.

On April 8, 1978, the Alsup and Williams families were involved in an automobile accident when a tire blew out on the Williams' car.[12] The Alsups subsequently executed releases,[13] discharging the Williams family and "all other persons, firms and

(1958). *But cf.* Annot., 24 A.L.R. 4th 547 (1983) (discussion of when a release to one primarily liable bars an action against a tortfeasor secondarily liable. See particularly § 5 respecting decisions under the Uniform Act).

7. Porter v. Ford Motor Co., 103 Ill. App. 3d 848, 431 N.E.2d 1261, *aff'd*, 96 Ill. 2d 190, 449 N.E.2d 827 (1983). Strict common law rule gives effect to a full release of one as releasing all even if there is an express reservation of rights against some tortfeasors. W. PROSSER, *supra* note 1, § 49, at 301-02. However, Illinois judicially created a distinction between a release with an express reservation of rights and a release without such a reservation in order to avoid the harshness of the rule. Parmalee v. Lawrence, 44 Ill. 405 (1867). The *Parmalee* court took the view that a release with a reservation of rights should be interpreted as a covenant not to sue, which in effect released only those parties named in the release. *Id.* at 410-13. Whether a document was to be interpreted as a release or a covenant not to sue depended on whether the parties intended a settlement and satisfaction or only an agreement between themselves. Holt v. A. L. Salzman & Sons, 88 Ill. App. 2d 306, 232 N.E.2d 537 (1967); Manthei v. Hermerdinger, 332 Ill. App. 335, 75 N.E.2d 132 (1947). Because a covenant not to sue acts as a release and bars all further actions in some jurisdictions, the Conference of Commissioners on Uniform State Laws included the covenant not to sue in the 1955 version of the Uniform Act. *See* Commissioners' Comments to the 1955 reversion, UNIFORM ACT, *supra* note 1, at 98-99.

8. 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

9. General class or classification, as referred to here, means any group designation which could include persons unknown to either of the contracting parties, such as "persons," "firms," or "agents."

10. *Alsup*, 101 Ill. 2d 196, 201, 461 N.E.2d 361, 364 (1984).

11. *Id.*

12. The Alsup family includes Charles "Floyd," Mabel, and Richard. The Williams family includes Philip, Clarita and David. Richard Alsup and David Williams were the drivers when the accident occurred. Brief and Argument for Defendant-Appellant at 3-6, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

13. There were three form releases involved, one for the injuries of each Alsup. The printed matter on each provided:

> [The releasors] release and forever discharge the said Payer and all other persons, firms and corporations, both known and unknown, of and from any and all claims, demands, damages, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, for or because of any matter or thing done, omitted or suffered to be done by anyone prior to and includ-

corporations, both known and unknown, from any and all claims. . . ."[14] On April 7, 1980, the Alsups filed a products liability action in the Circuit Court of Cook County against Firestone Tire & Rubber Co. (Firestone).[15] Firestone moved for summary judgment, arguing that the releases expressly provided for the release of Firestone from all liability.[16] The circuit court denied Firestone's motion, finding that a material question of fact existed concerning

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ing the date hereof on account of all injuries both to person or property resulting, or to result, from [the] accident. . . .

[T]his release is made as a compromise to avoid expense and to terminate all controversy and/or claims for injuries or damages of whatsoever nature, known or unknown, including future developments thereof, in any way growing out of or connected with said accident. . . .

[I]t is therefore specifically agreed that this release shall be a complete bar to all claims or suits for injuries or damages of whatsoever nature resulting or to result from said accident.

Charles and Mabel Alsup both released only Phillip and Clarita Williams, the owners of the other car. Richard Alsup released Phillip and Clarita Williams and David Williams, the driver of the other car. Brief and Argument for Defendant-Appellant at A-12 to A-14, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

14. *Alsup*, 101 Ill. 2d 196, 198, 461 N.E.2d 361, 362 (1984). There was an issue as to whether representation by counsel should bear on the legal effect of the releases because the Alsups were represented by counsel throughout the negotiation process. The court held that representation, or lack of it, made no difference under its interpretation of the statute. *Id.* at 201-02, 461 N.E.2d at 364. As to the weight that should be given to representation by counsel in the execution of a release, compare the court's discussion with that in Peters v. Butler, 253 Md. 7, 251 A.2d 600, 602-03 (1969) (attorney's knowledge that a release to "all other persons, firms or corporations" would release all tortfeasors precluded his client from later bringing an action against an unnamed tortfeasor), and that in Beck v. Cianchetti, 1 Ohio St. 3d 231, 235 n.4, 439 N.E.2d 417, 420 n.4 (1982) (execution of a general release, on advice of counsel, is presumed in law to be a release for the benefit of all wrongdoers). *See also* Murphy v. S-M Delaware, Inc., 95 Ill. App. 3d 562, 420 N.E.2d 456 (1981) (mistake in legal advice given to releasor did not effect release's bar of action releasor mistakenly believed to be not included in terms of release).

15. The suit was filed by Richard Alsup, Mabel Alsup individually and Mabel Alsup as Administrator for Floyd Alsup, Incompetent. Floyd was declared incompetent March 28, 1980. The suit was filed nine days later, the day before the statute of limitations would have barred the suit. Brief and Argument for Defendant-Appellant at 3-6, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

The Alsups alleged a defective Firestone tire caused the accident. The blown-out tire had been submitted to an independent testing laboratory, which returned a report indicating that there was no defect. Based on this information, believing they had no cause of action against Firestone, the Alsups executed the releases with the Williams' insurance carrier. Thereafter, Richard Alsup's attorney submitted the tire to another testing laboratory which he had used in another case. This laboratory reported the tire had experienced a "classic Firestone failure." Petition for Leave to Appeal at 5-7 and Brief of Plaintiff-Appellees at 20-21, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

16. Firestone contended that its discharge was expressly provided for in the terms "all other persons, firms and corporations of and from any and all

whether the Alsups had intended to release Firestone.[17] The Illinois Appellate Court for the First District denied Firestone's appeal of the ruling on its motion.[18] Firestone appealed to the Illinois Supreme Court.[19]

The Illinois Supreme Court held that the releases did not discharge Firestone because Firestone was not specifically named or identified in the releases.[20] In reaching its decision, the court noted that one purpose of the Contribution Act is to abrogate the common law rule that a release of one tortfeasor releases all tortfeasors.[21] The court concluded that tortfeasors cannot be discharged from liability unless they are named or otherwise specifically identified in the release.[22]

The court justified its holding by noting that the Illinois contribution statute is based on the Uniform Contribution Among Tortfeasors Act (Uniform Act).[23] The court acknowledged that other jurisdictions interpreting statutes based on the Uniform Act have held that general class designations are sufficient to discharge all tortfeasors who fall within the general class terms used.[24] The

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claims." Brief and Argument for Defendant-Appellant at 6, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

In response to Firestone's motion, the Alsups filed affidavits stating they had not intended to release Firestone. The affidavits signed by Mabel Alsup, individually and as guardian for Floyd Alsup stated that "we executed the releases . . . with the intention of releasing only Phillip and Clarita Williams and no other parties." Richard Alsup's affidavit stated "I executed the release . . . with the intention of releasing only Phillip and Clarita Williams and no other parties." *Id.* at A-15, A-17. This, however, is incorrect because the release signed by Richard Alsup expressly released David Williams also. *See supra* note 13.

17. Answer to Petition for Leave to Appeal at 3, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984). The trial court, however, certified the issue under the provisions of Supreme Court Rule 308, which provides that an interlocutory appeal to the appellate court may be granted if resolution of the issue certified may materially advance the ultimate termination of the litigation. ILL. REV. STAT. ch. 110A, § 308 (1983).

18. *Alsup*, 101 Ill. 2d 196, 198, 461 N.E.2d 361, 362 (1984). There is no appellate court opinion; the application for leave to appeal was denied in an unpublished order. *Id.* For this reason, and the interlocutory nature of the appeal, the record before the supreme court consisted of documents the attorneys considered relevant and which were appended to their briefs. Brief of Plaintiffs-Appellees at 5, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

19. The appeal was allowed under Supreme Court Rule 315: Leave to Appeal From the Appellate Court to the Supreme Court, ILL. REV. STAT. ch. 110A, § 315 (1983).

20. *Alsup*, 101 Ill. 2d 196, 201, 461 N.E.2d 361, 365 (1984).

21. *Id.* at 200-01, 461 N.E.2d at 363-64.

22. *Id.*

23. *Id.* at 200, 461 N.E.2d at 363. As to the stated purpose of the Uniform Act, see *infra* note 64.

24. *Id.* The court cited three cases: White v. American Motors Sales Corp., 550 F. Supp. 1287 (W.D. Va. 1982), *aff'd*, 714 F.2d 135 (4th Cir. 1983); Battle v.

court stated, however, that there were convincing reasons[25] why the statute's conditional language, "unless its terms so provide," should not be interpreted[26] to allow broad-based general wording to effectuate the release of unnamed and unidentified parties.[27]

First, the court stated that one specific purpose of the Uniform Act was to abrogate the common law rule[28] and approvingly noted

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Clanton, 27 N.C. App. 616, 220 S.E.2d 97 (1975) (*White*, applying North Carolina law, specifically followed the holding in *Battle*), *cert. denied*, 289 N.C. 613, 223 S.E.2d 391 (1976); and Liberty v. J. A. Tobin Construction Co., 512 S.W.2d 886 (Mo. App. 1974). the decisions in *Battle* and *White* were based on the Uniform Act. The Missouri case, *Liberty*, however, was not based on a statute adopted from the Uniform Act. *See* MO. REV. STAT. § 537.060 (1969). The Missouri Supreme Court did, however, create a contribution system based on relative fault. Missouri Pac. R.R. Co. v. Whitehead & Kales Co., 566 S.W.2d 466 (Mo. 1978). The decision in *Liberty* was based upon contract law as governing releases. The *Liberty* court interpreted the words "all other persons, firms or corporations . . . from any and all claims" to be a clear and unequivocal release of the whole cause of action. Liberty v. J. A. Tobin Construction Co., 512 S.W.2d 886, 890 (Mo. App. 1974). Moreover, that court considered that it was the full settlement term which extinguished the liability; essentially "what" was released, not "who." *Id.* The *Battle* court, however, specifically held that the terms "all other persons, firms, or corporations," reasonably included the defendant who was not named in the release. Battle v. Clanton, 27 N.C. App. 616, 220 S.E.2d 97, 99 (1975), *cert. denied*, 289 N.C. 613, 223 S.E.2d 391 (1976).

The majority of jurisdictions addressing the issue of whether general classifications are sufficient to meet the "unless its terms so provide" provision of statutes based on the Uniform Act have held that such classifications are sufficient to include persons not specifically named but who can be described by that classification. *See infra* note 51.

25. Aside from a cursory statement about criticism in the literature, the court did not give any reasons other than abrogation.

26. Legislative intent is to be derived from the words used in a statute; if the words are unambiguous it is the function of the court to enforce the law as enacted. Certain Taxpayers v. Sheahen, 45 Ill. 2d 75, 256 N.E.2d 758 (1970). "When a statute is adopted from another State and has been previously construed by the courts of that State the statute is presumed to have been adopted with the construction placed upon it." Kerner v. Thompson, 365 Ill. 149, 155, 6 N.E.2d 131, 134 (1936) *cert. denied*, 305 U.S. 635 (1938). The Illinois Supreme Court discussed the *Kerner* language in relation to the Contribution Act in Doyle v. Rhodes, 101 Ill. 2d 1, 12, 461 N.E.2d 382, 387, (1984), and found that it did not apply where the provisions of the statutes were not the same. The *Doyle* court additionally pointed out that the legislative debates on the Illinois contribution statute clearly indicated the Contribution Act was intended to codify *Skinner, supra* note 1, which judicially established the right of contribution among tortfeasors in Illinois. The statutory provision at issue in *Alsup*, however, is identical to or essentially the same as those in the statutes based on the Uniform Act adopted by other states. See the cases cited *infra* note 51. For the problems *Alsup* creates regarding contribution among tortfeasors, see *infra* text and notes 64-68. The *Alsup* court, thus, ignored both the statute's plain language and the interpretation held in the majority of other jurisdictions, as well as the clear intent of the Illinois legislature regarding contribution.

27. *Alsup*, 101 Ill. 2d 196, 201, 461 N.E.2d 361, 364 (1984). Unnamed parties, however, are not necessarily unintended parties. *Id.* at 203, 461 N.E.2d at 365 (Ryan, C.J., dissenting).

28. The court considered abrogation of the common-law release rule the *sine qua non* of Section 2(c) of the Contribution Act, but never made clear why. In stark contrast to the majority's emphasis on protecting the rights of the

strong criticism voiced against the rule.[29] The court reasoned that to give literal effect to every use of broad general language would defeat the purpose of abrogation, which was to prevent the unintended discharge of strangers to the release contract.[30]

Second, the court found that the Illinois legislature intended to nullify this involuntary discharge[31] which occurred by operation of law under the common law rule.[32] Section 2(c) expressly provides that a release to one tortfeasor does not discharge the liability of any other tortfeasor.[33] The court reasoned, therefore, that any interpretation of the limiting provision, "unless its terms so provide," which would frustrate the legislative intent, should not be accepted.[34] Thus, the court concluded that each tortfeasor must be designated by name or otherwise specifically identified in order to be released.[35]

Alsup creates new rules for the use of general releases in Illinois; it displaces well established rules of contract construction governing releases. Although the decision does not preclude the use of general releases,[36] it severely limits their effectiveness. It does so by precluding the effective use of general classifications to designate releasees.

In Illinois, as in all other jurisdictions, a release is a contract.[37]

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plaintiff under the facts of the case, is the emphasis placed by the Illinois legislature on contribution among the tortfeasors. *See* 1979 House Floor Debate on S.B. 308, June 14, 1979, at 17-23 (Contribution Act codifies rights of joint-tortfeasors as to division of liability and obtaining contribution). *See also* authorities listed *infra* note 31. Additionally, the thrust of the Uniform Act did not reflect the plaintiff's rights against unnamed tortfeasors, but reflected the defendant-tortfeasor's rights against his co-tortfeasors. *See* UNIFORM ACT, *supra* note 1, at 59, 99-100.

29. The court cited only J. CALAMARI & J. PERILLO, CONTRACTS § 20-3 (2d ed. 1977). There are others. *See, e.g.*, W. PROSSER, *supra* note 1, § 49, at 301-304 and references cited at 302 n.3.

30. *Alsup*, 101 Ill. 2d at 201, 461 N.E.2d at 364.

31. *See infra* note 69 and accompanying text. For the legislative history, see, 1979 Senate Floor Debate on S.B. 308, April 23, 1979, at 14-15; 1979 House Floor Debate on S.B. 308, June 14, 1979, at 17-23; LEGISLATIVE SYNOPSIS & DIGEST OF THE 1979 SESSION OF THE 81ST GENERAL ASSEMBLY at 236; Chicago Bar Association's Civil Practice Committee's "Legislative History" (available at the Chicago Bar Ass'n Library). The *Alsup* court, however, based its interpretation of legislative intent on the Commissioner's notes and comments supporting the Uniform Act. *Alsup*, 101 Ill. 2d at 200, 461 N.E.2d at 363.

32. *Alsup*, 101 Ill. 2d at 201, 461 N.E.2d at 364.

33. ILL. REV. STAT. ch. 70, § 302(c) (1983).

34. *Alsup*, 101 Ill. 2d at 201, 461 N.E.2d at 364. *See supra* notes 26 and 28. *See also infra* notes 46-48 and accompanying text, and note 62.

35. *Alsup*, 101 Ill. 2d at 201, 461 N.E.2d at 364.

36. The court's decision goes only to general designations of tortfeasors. *Id.* Neither the statute nor the opinion addresses a general release of all claims.

37. *E.g.*, Whitehead v. Fleet Towing Co., 110 Ill. App. 3d 759, 442 N.E.2d 1362 (1982) (a release is a contract); Green v. Owens, 254 Ark. 574, 495 S.W.2d 166 (1973) (same); River Gaden Farms, Inc. v. Superior Court for Yolo County, 26

Prior to *Alsup*, the scope and effect of a release was derived from the terms the parties used to express their intent.[38] If the express terms were unambiguous, they were given full effect.[39] In *Porter v. Ford Motor Co.*,[40] for example, the Illinois Supreme Court gave full effect to the express terms of a release given in full satisfaction of the plaintiff's claims.[41] The release named only the party-tortfeasor and those liable in his stead.[42] The *Porter* court held that the express terms provided for the discharge of an unnamed tortfeasor because the settlement was in full satisfaction of the plaintiff's claims, and was therefore an absolute release of *all* claims.[43]

The *Alsup* court, however, specifically rejected the applicability of contract rules to the express terms of a general release.[44] The court reasoned that such an application would frustrate the legislative intent of abolishing the common law release rule by allowing

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Cal. App. 3d 986, 103 Cal. Rptr. 498 (1972) (same); Stetzel v. Dickenson, 174 N.W.2d 438 (Iowa 1970) (same); Maryland Casualty Co. v. Delzer, 283 N.W.2d 244 (S.D. 1979) (same); Economou v. Economou, 136 Vt. 611, 399 A.2d 496 (1979) (same); Richardson v. Ward, 202 So. 2d 327 (La. App. 1967), *cert. denied*, 251 La. 389, 204 So. 2d 573 (1967) (same); Mt. Read Terminal, Inc. v. LeChase Const. Corp., 58 A.D.2d 1034, 396 N.Y.S.2d 959 (1977) (same); Garcia v. Villarreal, 478 S.W.2d 830 (Tex. Civ. App. 1971) (same); Maxwell's Elec., Inc. v. Hegeman-Harris Co., 18 Wash. App. 358, 567 P.2d 1149 (1977) (same). *See also* 76 C.J.S. *Release* § 38 (1952).

38. Schrempf v. New England Mut. Life Ins., 103 Ill. App. 3d 408, 431 N.E.2d 402 (1982); Gladinus v. Laughlin, 51 Ill. App. 3d 694, 366 N.E.2d 430 (1977). *See also* 76 C.J.S. *Release* § 38 (1952).

39. Murphy v. S-M Delaware, Inc., 95 Ill. App. 3d 562, 420 N.E.2d 456 (1981); 76 C.J.S. *Release* § 38 (1952). *Cf.* Annot. 13 A.L.R. 3d 313 (1967) (applicability of parol evidence as to one not a party to a contract of release).

40. 96 Ill. 2d 190, 449 N.E.2d 827 (1983). Interestingly, plaintiff's attorney in both *Porter* and *Alsup* was the same, Justice Ward wrote both opinions, and the dissent in each case stated that the intent of the parties was a question of fact and should have been determined by the trier of fact; yet the two decisions yielded opposite results.

41. *Id.*

42. *Id.* at 192, 449 N.E.2d at 828.

43. *Id.* at 196, 449 N.E.2d at 832. Consider this from a perspective of a plaintiff's right of action in light of note 47 *infra*.

44. The court stated "[b]y the general release there would be, *on the ground of contract*, an unwitting discharge of joint tortfeasors." Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 201, 461 N.E.2d 361, 364 (1984) (emphasis added). In essence, the question certified by the trial court was "[w]hether the terms . . . all persons, firms and corporations . . . provide for the release of an alleged joint tortfeasor . . ." under section 2(c) of the Contribution Act. *Id.* at 198, 461 N.E.2d at 362. The question seems to require a ruling on the legal sufficiency of general classifications to effect a tortfeasor's discharge without regard to rules of construction. In this light, the majority's opinion appears supportable. However, a ruling that general classifications are not sufficient in a given case, as opposed to legally insufficient in all cases, would have preserved the applicability of the rules of construction and allowed the parties' intent to determine the scope and effect of the instrument. As to the discharge being "unwitting," see *supra* note 14 and *infra* notes 53-54 and accompanying text regarding effect of representation by counsel.

an "unwitting" discharge of non-contracting parties.[45] The language of the statute,[46] however, does not evince a mandate to totally preclude the discharge of all tortfeasors. Rather, the statute precludes only the automatic discharge of non-contracting parties by operation of law.[47] The legislature expressly authorized the discharge of non-contracting parties as long as the *terms* so provide.[48] The legislature did not place any limitation on the type of terms which could be used to designate such releasees.[49] *Alsup*, however, establishes a degree of specificity that by law precludes the use of general classifications as effective terms of release. Such a narrow construction does not give effect to the plain meaning of the words of the statute.[50]

The majority of jurisdictions that have addressed the issue have accepted the sufficiency of general class terms to designate releasees.[51] In these jurisdictions general classifications are consid-

45. *Alsup*, at 198, 461 N.E.2d at 362. As to legislative intent, see *infra* note 64 and accompanying text.

46. *See supra* notes 4 and 26. It is constitutionally impermissible to define statutory terms contrary to their common meaning and to the spirit of the act. Central Television Service, Inc. v. Isaacs, 27 Ill. 2d 420, 189 N.E.2d 333 (1963).

47. This distinction is crucial to understanding the effect of *Alsup* on the law. The court's ruling means that a tortfeasor, unknown at the time of execution, can not be released and contribution can never be obtained from him by the settling tortfeasor. Under Section 2(e) of the Act, a settling tortfeasor has no right of contribution against other tortfeasors unless he extinguishes their entire liability by the release. ILL. REV. STAT. ch. 70, § 302(e) (1983). The main purpose of the act is not to preclude the discharge of liability with respect to the plaintiff, but rather among tortfeasors. Under the facts here, because Firestone was not a credible defendant at the time the releases were executed, *see supra* note 15, the Williams' insurance carrier is precluded from maintaining an action for contribution against Firestone. It is the responsibility of the parties to the contract to protect their own rights, but the court's ruling inhibits their ability to do so.

48. ILL. REV. STAT. ch. 70, § 302(c) (1983). *See supra* notes 24 and 26. Whether the terms express the parties' intent is a question of fact. Chicago Transit Auth. v. Yellow Cab Co., 110 Ill. App. 3d 379, 442 N.E.2d 546 (1982). This was precisely the trial court's reason for denying Firestone's motion for summary judgment. Answer To Petition For Leave To Appeal at 1, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

49. The statute's terms provision does, however, limit the extent of the new statutory no-release rule. The mere fact that a limitation was placed on the new rule indicates that total preclusion of total release was never intended. *See supra* note 47 and accompanying text. *See also* Chicago Bar Association Civil Practice Committee's "Legislative History," at 3 (a release may discharge others if it so states).

50. *See supra* note 46 and accompanying text. *See also* note 26.

51. Douglas v. United States Tobacco Co., 670 F.2d 791 (8th Cir. 1982); Morison v. General Motors Sales Corp., 428 F.2d 952 (5th Cir. 1970), *cert. denied*, 400 U.S. 904 (1970); White v. American Motors Corp., 550 F. Supp. 1287 (W.D. Va. 1982), *aff'd*, 714 F.2d 135 (4th Cir. 1983); Doganieri v. United States, 520 F. Supp. 1093 (N.D. W. Va. 1981); Stefan v. Chrysler Corp., 472 F. Supp. 262 (D. Md. 1979), *aff'd*, 622 F.2d 587 (4th Cir. 1980); Dorenzo v. General Motors Corp., 334 F. Supp. 1155 (E.D. Pa. 1971); Bonar v. Hopkins, 311 F. Supp. 130 (W.D. Pa. 1969), *aff'd*, 423 F.2d 1361 (3d Cir. 1970); Hodges v. United States Fidelity &

ered terms that express the intent of the parties.[52] There are a few jurisdictions, however, which do not accept the applicability of general classifications to designate releasees.[53] These precedents, upon which the *Alsup* court relied for support, establish or reaffirm a requirement of specific identification. They do so, however, only to ensure that the intentions of the parties are clear,[54] a crucial consideration which the *Alsup* court neglected.

The purpose of *Alsup's* specificity requirement is not clarity of intent, but is solely abrogation of the common law rule of total discharge.[55] This is apparent from the court's acknowledgment that general releases are widely used and relied upon to discharge all tortfeasors, including those not specifically named.[56] The court's underlying purpose, therefore, was to defeat such intent to release through the use of general classifications.

Guar. Co., 91 A.2d 473 (D.C. 1952); Hurt v. Leatherby Ins. Co., 380 So. 2d 432 (Fla. 1980); Peters v. Butler, 253 Md. 7, 251 A.2d 600 (1969); Liberty v. J. A. Tobin Constr. Co., 512 S.W.2d 886 (Mo. App. 1974); Johnson v. City of Las Cruces, 86 N.M. 196, 521 P.2d 1037 (1974); Battle v. Clanton, 27 N.C. App. 616, 220 S.E.2d 97 (1975), *cert. denied*, 289 N.C. 613, 223 S.E.2d 391 (1976); Pakulski v. Garber, 6 Ohio St. 3d 252, 452 N.E.2d 1300 (1983); and Hasselrode v. Gnagey, 404 Pa. 549, 172 A.2d 764 (1961). *Contra* Young v. State, 455 P.2d 889 (Alaska 1969); Sage v. Hale, 75 Misc. 2d 256, 347 N.Y.S.2d (1975); McMillen v. Klingensmith, 467 S.W.2d 193 (Tex. 1971). *See also supra* note 24.

52. *See, e.g.*, Johnson v. City of Las Cruces, 86 N.M. 196, 521 P.2d 1037 (1974) (general terms of release accepted as parties' intent because no ambiguity was claimed); Hasselrode v. Gnagey, 404 Pa. 549, 172 A.2d 764 (1961) (intent of parties gleaned from language of release unequivocally showed claimant intended to release "any and all" persons).

53. The *Alsup* court cited Alaska Airlines, Inc. v. Sweat, 568 P.2d 916 (Alaska 1977); Sage v. Hale, 75 Misc. 2d 256, 347 N.Y.S.2d 416 (1973); Beck v. Cianchetti, 1 Ohio St. 3d 231, 439 N.E.2d 417 (1982); Duncan v. Cessna Aircraft Co., 665 S.W.2d 414 (Tex. 1984). These decisions do not support the majority's position as being based on interpretations of the Uniform Act. Both Alaska and Texas had previously established a specificity requirement by judicial fiat. Young v. State, 455 P.2d 889 (Alaska 1969); McMillen v. Klingensmith, 467 S.W.2d 193 (Tex. 1971). The statute interpreted in *Sage* contained the provision "unless its terms *expressly* so provide." Sage v. Hale, 75 Misc. 2d 256, 347 N.Y.S.2d 416 (1973) (emphasis added). Nor is *Beck*, the main case cited by the *Alsup* court, convincing authority in light of a subsequent decision by the Ohio Supreme Court allowing the discharge of an unnamed party because the party fit one of the general classifications designated as being released. *See* Pakulski v. Garber, 6 Ohio St. 3d 252, 452 N.E.2d 1300 (1983) (court qualified *Beck* on its facts and held that the general classification of "agents" was sufficient to discharge releasee's attorneys though not specifically identified nor intended by releasor).

54. *E.g.*, Beck v. Cianchetti, 1 Ohio St. 3d 231, 235, 439 N.E.2d 417, 420 (1982) ("unsuspecting injured parties often sign [standard] releases"); Sage v. Hale, 75 Misc. 2d 256, 347 N.Y.S.2d 416, 418 (1973) ("[t]he common law rule set[s] a trap for the average man"). For a discussion regarding the effect of representation by counsel, see *supra* note 14.

55. *See supra* note 28.

56. *Alsup*, 101 Ill. 2d 196, 202, 461 N.E.2d 361, 364 (1984).

In reaching its desired result, the *Alsup* court held that a tortfeasor could be released only if he is specifically identified; the court did not, however, indicate what would constitute a sufficient identification.[57] Thus, after *Alsup*, it is unclear what a party must do to release all tortfeasors. Indeed, it is unclear whether a party is even able to release all tortfeasors. Under *Alsup*, general classifications as a matter of law are insufficient identifications of the intended releasees. All general class descriptions must, therefore, be legally insufficient to discharge any unnamed party because general classes essentially designate only unspecified parties. Consequently, a release of all tortfeasors is practically impossible if the identity of one of more tortfeasors is not known at the time the release is executed.

This result creates an inherent contradiction where the parties agree to a release in full satisfaction, but are unable to specifically identify all potential tortfeasors. In such a situation the claimant is totally compensated for his injuries, yet under *Alsup*, would still possess a cause of action against any tortfeasor not specifically identified.[58] In *Porter*, a release in full settlement of all claims given to only one tortfeasor was sufficient to discharge all tortfeasors.[59] In *Alsup*, a release of all claims given to all tortfeasors was not sufficient to discharge any tortfeasors other than those explicitly named in the release.[60] The *Alsup* court never addressed why one expression of total release, full satisfaction,[61] should be given full effect,

57. *Id.* at 201, 461 N.E.2d at 364. In Hasselrode v. Gnagey, 404 Pa. 549, 553, 172 A.2d 764, 765 (1961), the court held the terms "any and all other persons, associations and corporations" were a specific identification of the releasees under the Uniform Act release provision. *But see* Note, *Torts, Uniform Contribution Among Tortfeasors Act—General Release of One Tortfeasor Releases All*, 60 MICH. L. REV. 668 (1962) (analyzes the *Hasselrode* decision, arguing, as the *Alsup* court would, that the policy decisions behind the Uniform Act should prevent discharge under general designations).

58. A solution would be for the court to draw the distinction between a release of all claims and a release in full settlement of all claims. In either case it is the injured party's claims against the tortfeasors which are being released. In the latter case, however, the releasor expressly agrees that the consideration received completely compensates him for his injury and that the claimant is precluded from further recovery from anyone. This solution would solve some of the problems created by *Alsup* by reaffirming, at least in part, the applicability of contract law as it was prior to *Alsup*. *See infra* note 61.

59. Porter v. Ford Motor Co., 103 Ill. App. 3d 848, 431 N.E.2d 1261 (1981), *aff'd*, 96 Ill. 2d 190, 195, 449 N.E.2d 827, 831 (1983).

60. *Alsup*, 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

61. A full satisfaction term should release *all* tortfeasors. *See* Porter v. Ford Motor Co., 96 Ill. 2d 190, 449 N.E.2d 827 (1983) (full satisfaction term releases all tortfeasors because plaintiff's injury has been fully compensated); *see also* Alberstett v. Country Mut. Ins. Co., 79 Ill. App. 3d 407, 398 N.E.2d 611 (1979) (release intended to release all parties acts as satisfaction because all of plaintiff's injury is compensated); Hulke v. International Mfg. Co., 14 Ill. App. 2d 5, 142 N.E.2d 717 (1957) (person is entitled to only one full compensation for his injuries and effect of a document in discharging liability of others will be

while another expression of total release, all persons, firms and corporations,[62] should not.[63]

Further, the specificity requirement creates an equally important contradiction with respect to the main purpose of the Contribution Act. As its name clearly indicates, the Act's main purpose is to allow contribution among tortfeasors.[64] A settling tortfeasor, however, is only allowed to recover contribution from those tortfeasors whose liability is extinguished by the release.[65] Under

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determined accordingly). *See generally* W. PROSSER, *supra* note 1, § 49, at 304-05 (discussion of effect of full satisfaction release).

62. The issue of sufficiency of the "all persons, firms, and corporations" term was addressed by Illinois appellate courts both before and after *Alsup*. O'Donnel v. American Honda Motor Co., 125 Ill. App. 3d 63, 465 N.E.2d 570 (1984); Trexler v. Hubbard, 118 Ill. App. 3d 697, 455 N.E.2d 274 (1983), *rev'd sub nom.* Trexler v. Chrysler Corp. 104 Ill. 2d 26, 470 N.E.2d 300 (1984). In *Trexler*, prior to *Alsup*, the appellate court held that the term "all other persons, firms corporations," was broad enough to include unnamed defendants. *Trexler*, 118 Ill. App. 3d at 701, 455 N.E.2 at 277. Although *Alsup* was to be applied prospectively to releases executed after January 20, 1984, the date the *Alsup* opinion was filed, the supreme court reversed the *Trexler* appellate court because that case was pending in the supreme court at the time *Alsup* was decided. *Trexler*, 104 Ill. 2d at 29, 470 N.E.2d at 302. However, in *O'Donnell*, the *Alsup* holding was inapplicable to the release before the court because of *Alsup's* prospective effect. The *O'Donnell* appellate court noted that fact, yet stated, "[w]e hold that the language of the release purporting to discharge 'all other persons, firms and corporations' satisfied the 'unless its terms so provide' requirement of the Illinois Contribution Act, and was broad enough to discharge Honda. . . ." *O'Donnell*, 125 Ill. App. 3d at 66, 465 N.E.2d at 572.

63. *Compare* Alberstett v. Country Mut. Ins. Co., 79 Ill. App. 3d 407, 398 N.E.2d 611 (1979) (a release of all tortfeasors was held to be a full release of all claims), *and* Porter v. Ford Motor Co., 96 Ill. 2d 190, 449 N.E.2d 827 (1983) (a full release of all claims was held to release all tortfeasors) *with Alsup*.

64. 1979 Senate Floor Debate on S.B. 308, April 23, 1979, at 14-15 (amendment emphasizing collectibility of contribution between joint tortfeasors); 1979 House Floor Debate on S.B. 308, June 14, 1979 at 18-20 (bill addresses rights of joint tortfeasors as to division of liability). Similarly, the purpose of the Uniform Act, as stated in the Commissioner's Prefatory Note to the 1955 Revision, is to "distribute the burden of responsibility equitably among those who are jointly liable and thus avoid the injustice often resulting under the common law." UNIFORM ACT, *supra* note 1, at 59.

The original 1939 version of the Uniform Act did not allow the settling tortfeasor immunity from contribution. The underlying idea behind the release provision was that "the plaintiff should not be permitted to release one tortfeasor from his fair share of liability and mulct another instead." *Id.* at 99. Thus, an action for contribution could be brought against a settling tortfeasor by any other tortfeasor whether the latter also settled with the claimant or had a judgment entered against him. *Id.* The effect was to discourage settlements by making it impossible for a tortfeasor to "buy his peace," and subject to a later contribution action. For this reason the 1939 Uniform Act was not well received. *Id.* In 1955, the Uniform Act was revised to include an absolute discharge from liability for contribution if the releasing tortfeasor executed the release in good faith. The releasor could still seek contribution from his cotortfeasors, but now only if he extinguished their liability in the release. *Id.*; ILL. REV. STAT. ch. 70, § 302(e) (1983). *See infra* note 47 and accompanying text.

65. ILL. REV. STAT. ch. 70, § 302(e) (1983). *See supra* note 47 and accompanying text.

Alsup, a release extinguishes the liability of only those tortfeasors who are specifically identified;[66] general designations are not sufficient. Therefore, a settling tortfeasor who desires to obtain contribution from another tortfeasor must extinguish the other's liability by specifically identifying that tortfeasor as a releasee. Thus, *Alsup* defeats the main purpose of the Act by precluding contribution where the specific identity of the other tortfeasor has not been determined at the time of settlement.[67] Similarly, where total extinguishment of all liability is desired in order to obtain contribution under a release given in full satisfaction, *Alsup* requires the release to contain a specific identification of each and every possible tortfeasor.[68] As impractical as this would be, the problem is further compounded by the fact that the *Alsup* court did not give even cursory guidelines regarding the degree of specificity required to effectuate a release.

A practical solution would be for the court to limit *Alsup* to its facts[69] and reaffirm the proposition that all terms govern the scope

66. *Alsup*, 101 Ill. 2d at 201, 461 N.E.2d at 364.

67. A settling tortfeasor has two years after payment of the settlement or judgment to file an action for contribution. ILL. REV. STAT. ch. 110, § 13-204 (1983). For example, assume a road defect contributed to an automobile accident on a country road. If one driver settles with the occupants of the other vehicle before identifying the entity owning or controlling the road, the settling driver will not be able to obtain contribution from the entity because a specific identity is lacking, even though under the statute the driver would have two years to investigate and file an action.

It may, however, be a sufficiently specific identification under *Alsup* to designate "the owner or controller of Highway X" as a releasee. Yet, even if the *Alsup* court would have accepted such an identification, it would not be effective, given the decision's present effect, if several entities were responsible for the roadway because it would not be known to which entity the designation applied. If it applied to all and is accepted as sufficient to designate all, then all other group or class designations should be sufficient. The present effect of *Alsup*, however, is to the contrary. *Alsup* precludes the settling tortfeasor from preserving his right to contribution against any and all tortfeasors unidentified at the time of executing the release.

68. Firestone suggested this would entail appending telephone books and lengthy lists of corporations to ensure that every possible tortfeasor would be specifically identified, further noting that even that effort would fail. Brief and Argument for Defendant-Appellant at 10, Alsup v. Firestone Tire & Rubber Co., 101 Ill. 2d 196, 461 N.E.2d 361 (1984).

69. In addition to the fact that the Alsups investigated a cause of action against Firestone, *see supra* note 15, the supreme court stated as fact that the Alsups did not intend to release Firestone. *Alsup*, 101 Ill. 2d at 202, 461 N.E.2d at 364. Although the question of intent was the trial court's reason for denying Firestone's motion for summary judgment, the finding by the supreme court of the Alsup's intent not to release Firestone may serve as a basis for distinguishing *Alsup* from other cases where general class terms are used to designate releasees. On the facts stated, the court's decision that the release did not discharge Firestone because Firestone was not identified (specifically or otherwise) was correct. Under the court's accepted facts, only a specific identification of Firestone would have been unambiguous enough to allow its discharge. *See* text and references cited *supra* note 39. Therefore, where the parties' intent

and effect of a release. In so doing, the court should recognize that acceptance of the use of general terms to express intent will not reaffirm the common law release rule.[70] Rather, a broader interpretation of the statute's "terms" provision,[71] one that allows use of general classifications to designate releasees, would limit discharge to only those tortfeasors reasonably included in the terms chosen. This broader interpretation would also give full effect to the parties' intentions where general terms may be the most appropriate means of conveying their intent.

Moreover, practitioners could rely upon the body of contract law governing releases prior to *Alsup* to protect the interests of their clients. If the terms used do not express the parties' intent, then the well-settled rules of construction will afford proper relief.[72] Contract law also allows the court to rescind or reform a release where fairness and equity require,[73] yet still allows the parties to retain control over their agreement.

This solution, however, does not alleviate the immediate problems *Alsup* creates for practitioners. Under the court's cursory development of the specificity requirement, any group designation of releasees will be insufficient to discharge liability.[74] Only individualized identification is certain to fulfill the requirement in its present state. Until the court defines what constitutes a specific identification, releases must be drafted and interpreted with caution.

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can be brought into question, *Alsup* may be distinguished on dispositive facts and its effect avoided.

70. The common law discharge of all occurred regardless of the terms used. *See supra* note 5. Acceptance of the effectiveness of general classifications requires only that discharge occur according to the terms chosen by the parties.

71. ILL. REV. STAT. ch. 70, § 302(c) (1983). *See supra* notes 4 and 46 through 50 and accompanying text.

72. *See* text and notes *supra* notes 37 through 39. Rules of construction applicable prior to *Alsup* clearly allowed the intent of the parties to govern the release's effect. Broad general wording was not accepted blindly; rather, it was given close scrutiny to ensure that the parties intent was given effect. In *Ruggles v. Selby*, for example, the court stated that "[t]he courts of Illinois—indeed most jurisdictions in this country—have refused to permit any form of words, no matter how general or all-encompassing, to foreclose the chancellor from scrutinizing the release and the attendant circumstances to be sure that it was fairly made and accurately reflected the intentions of the parties." 25 Ill. App. 2d 1, 13, 165 N.E.2d 733, 739-40 (1960).

73. *See, e.g.*, Ruggles v. Selby, 25 Ill. App. 2d 1, 165 N.E.2d 733 (1960) (release set aside where it was executed under mutual mistake of fact as to extent of plaintiff's injuries). *See also* Grimsley, *Cause of Action That Survives The Good Faith Execution of A General Release of All Claims: The Second Bite of the Apple*; 70 ILL. B.J. 356 (1982) (following trend in Illinois to set aside releases in personal injury cases where extent of injuries proves to make the consideration for the release unconscionable); Note, *The Enforceability of Personal Injury Releases*, 54 U. COLO. L. REV. 277 (1983) (analyzing Colorado Supreme Court decision establishing policy of recision in same situation).

74. *See supra* note 67.

In advising clients, practitioners must keep in mind that the degree of specificity required is yet to be established by the court, but that present liability may exist if the client is not individually identified in the release. In the event of litigation, those seeking to avoid the effectiveness of a release may use *Alsup* if the defendant is only identified by a group term. Those seeking to be included in a release under a group designation must show that their discharge was clearly contemplated by all parties. In such a case, *Alsup* may be distinguished on its facts.[75]

When drafting a release practitioners are in a more effective position to foreclose the present results of a decision under *Alsup*. Interpreting and litigating a release to avoid *Alsup* can be made easier if drafters construct their releases to clearly emphasize who is released. Particular attention must be drawn to specifying releasees individually whenever practical, emphasizing that it is the intent of the parties that a group identification is to have full effect when individual identification is impractical or impossible, and defining each group to be released as narrowly as possible where circumstances require a group designation. Additionally, the consideration aspect of a release must be emphasized. A release in "full satisfaction," for example, fully compensates the injured party and should therefore preclude recovery against even unidentified tortfeasors.[76] A release of "any and all claims" is not, in and of itself, sufficient to avoid liability if the claimant has not been fully compensated.

In its present state, *Alsup* is an impractical solution to the harshness of the rule that a release of one tortfeasor releases all tortfeasors. The Contribution Act abrogated that rule as a matter of law, but it also specifically authorized total release if the terms of the release so provided. The court, however, failed either to recognize or to address the distinction between total release by law and total release by express terms. As a result, *Alsup* requires specific identification of each tortfeasor whose release is sought. This interpretation of the Contribution Act defeats, at least in part, the main purpose of the Act by restricting a settling tortfeasor's ability to obtain contribution from other tortfeasors. It forecloses the ability of the parties to designate in general terms who is to be released, even where general terms may be the most appropriate or only means of expressing the parties' intent. The decision needlessly displaces rules of contract law that were sufficient to protect the interests of the parties. *Alsup's* extreme narrowness creates uncertainty for practitioners and necessitates future litigation to define the parameters of the requirement; essentially, the court must define what

75. *See supra* note 69.

76. *See supra* notes 58 and 61 and accompanying text.

"specificity" means. In so doing, it should hold that general classifications are sufficiently specific where such classifications accurately reflect the intentions of the parties, thereby providing the certainty that the parties expect.

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